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**THIS INDEX** is based on a consolidation of contents entries appearing in the January–December issues of the FEDERAL REGISTER. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the FEDERAL REGISTER where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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## GUIDE TO FREEDOM OF INFORMATION INDEXES

**Editorial Note:** The Freedom of Information Act (5 U.S.C. 552) requires Government agencies to maintain and make available for inspection and copying current indexes that provide identifying information on certain matters issued, adopted, or promulgated after July 4, 1967. Public Law 93–502 (88 Stat. 1561) requires the publication (with exceptions) and distribution of these indexes quarterly. This guide has been compiled by the Office of the Federal Register from information submitted by agencies in order to notify the public of the availability of these indexes for sale or inspection.

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| Department of Defense, Department of the Army, Information Systems Command, Army Publications Command and Printing Command | DA pamphlet 25–30 (Consolidated Index of Army Publications and Blank Forms) September 30, 1990. Printed in microfiche only | National Technical Information Service, Order Preprocessing Section, 5285 Port Royal Road, Springfield, VA 22161 | Director, Army Publications and Printing Command, Hoffman Bldg., Alexandria, VA 22331-0302 |
| Department of Education (ED), Office of the Assistant Secretary for Legislation and Public Affairs | ED Index contains those records required by Public Law 90–23 (Freedom of Information Act). The index is a guide to ED policies, instruction memoranda, organization function statements, guidelines, decisions and procedures not published in the Federal Register. Contains records originated since May 4, 1980; updated quarterly | Freedom of Information Officer, Department of Education, Office of Legislation and Public Affairs, 400 Maryland Ave., SW., Washington, DC 20202 | Office of Legislation and Public Affairs, Document Review Center, 400 Maryland Ave., SW., Washington, DC 20202<br>Telephone 245–8907 or 472–3850 |
| Department of Energy, Bonneville Power Administration | BPA Manual Index dated 1-25-89 (12 pages). Policy, procedural, and directives material indexed by subject and BPA Manual chapter number | The public may review the index, obtain a copy of the index, without charge, or secure further information concerning the contents of the records listed by contacting Bonneville Power Administration's Office of Media Relations, 905 NE. 11th Avenue, Portland, OR 97232, or the Washington, DC, Office, Forrestal Building, Room 8G-033, 1000 Independence Ave., SW., Washington, DC 20585 | Bonneville Power Administration offices listed in previous column or BPA Areas and Districts at the following: 1500 NE. Irving, Portland, OR 97208; 201 Queen Anne Ave., N., Seattle, WA 98109; U.S. Cthse, West 920 Riverside Ave., Spokane, WA 99201; West 101 Poplar St., Walla Walla, WA 99362; U.S. Federal Bldg., 211 E. 7th Ave., Eugene, OR 97401; 800 Kensington, Missoula, MT 59801; U.S. Federal Bldg., 301 Yakima St., Wenatchee, WA 98807; 1650 Hollipark Dr., Idaho Falls, ID 83401; and 550 West Fort Street, Boise, ID 83724 |
| Department of Health and Human Services, Public Health Service, Centers for Disease Control (HHS/PHS/CDC) | CDC Freedom of Information Act (FOIA) Index contains those records required by the Freedom of Information Act (P.L. 90-23). This index provides identifying information, by program and subject, for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and not published in the Federal Register. Index is updated quarterly | Public Inquiries, Communications and Management Analysis Office, Centers for Disease Control, Atlanta, GA 30333. | Public Inquiries, Communications and Management Analysis Office, Centers for Disease Control, Atlanta, GA 30333 |
| Department of Health and Human Services, Public Health Service, Food and Drug Administration (HHS/PHS/FDA) | Analyst Operations Manual: Training information, instructions and procedures for new laboratory personnel | National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Accession #PB85-211639: $46.50 for paper copy, $6.50 for microfiche | Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857 (FDA/FOIS/HFI-35) |



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| | Drug Autoanalysis Manual: A manual of automated methods which provides content uniformity test specifications in USP XVII and NF XII. Provides assurance of homogeneity within a single lot for a safe and effective drug supply. Specifications are for all table monographs where the active ingredient is present in low quantities (usually 50 mg. or less) | Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $56.00. Payable to the Food and Drug Administration | |
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| Department of the Interior, Office of the Secretary, Office of Aircraft Services | OAS Index of Operational Procedures Memoranda (OPM's) dated December 17, 1991: 91-1, Index — DMs and OPMs; 91-2, Temporary Flight Restrictions; 91-3, Undercover Law Enforcement Operations in Non-OAS Approved Aircraft; 91-4, Aviation User Training Plan; 91-5, Helicopter Landings; 91-6, Services, Rates, Payment and Collection; 91-7, OMB Circular A-126; 91-8, Aviation Safety Awards; 91-9, Fuel Procurement; 91-10, Helicopter Rappelling and Short-Haul Operations; 91-11, Minimum Equipment List (MEL) Requirements for DOI Owned/Operated Aircraft | Director's Office, Office of Aircraft Services, P.O. Box 15428, Boise, ID 83715-5428 | Director's Office, Office of Aircraft Services, P.O. Box 15428, Boise, ID 83715-5428 |
| Department of the Interior, Bureau of Indian Affairs | Bureau of Indian Affairs Manual Index and Table of Contents dated June 23, 1983 | Division of Management Support, Bureau of Indian Affairs, 18th and C Streets, NW., Washington, DC 20245<br>No charge | Division of Management Support, Bureau of Indian Affairs, Room 334-Interior South, 1951 Constitution Ave., NW., Washington, DC 20240<br>Telephone: A.C.(202) 343-3577 |
| Department of the Interior, Bureau of Land Management | Directives Digest Bulletin's dated - 1/31/90, 2/28/90, 3/31/90, 4/30/90, 5/31/90, 6/30/90, 7/31/90, 8/31/90, 9/31/90, 10/31/90, 11/30/90, 12/31/90 | Department of the Interior, Bureau of Land Management, 1849 C Street, N.W., MIB 2454, Washington, DC 20240 | Department of the Interior, Bureau of Land Management, 1849 C Street, N. W., MIB 2454, Washington, DC 20249<br>Telephone: (202) 208-6152 |
| Department of the Interior, Bureau of Mines | Basic Bureau of Mines Manual General Table of Contents and Checklist-July 6, 1978 | In accordance with fee schedule in 43 CFR 2, Appendix A | Elizabeth Knorr, Chief, Branch of Management Analysis, 810 7th Street, NW., Washington, DC 20241<br>Telephone 202-501-9248 |
| | Numeric and subject listing of internal policies and procedures by series, part, chapter, paragraph, and subordinate paragraph | Bureau of Mines | |
| Department of the Interior, Bureau of Reclamation | Reclamation Instructions Index dated July 12, 1983. Table of Contents dated June 6, 1991 | Bureau of Reclamation, Attention: D-7923, Denver Federal Center, P.O. Box 25007, Denver, CO 80225-0007. No charge | Bureau of Reclamation; Attention: D-7923, Denver Federal Center, P.O. Box 25007, Denver, CO 80225-0007<br>Telephone: (303) 236-6761 |
| Department of the Interior, U.S. Geological Survey | Geological Survey Manual, Table of Contents, Checklist, and Subject Index | Paperwork Management Officer, U.S. Geological Survey, 208 National Center, Reston, VA 22092<br>No charge | Paperwork Management Officer; U.S. Geological Survey; 208 National Center, Reston, VA 22092<br>Telephone 703-648-7309 or FTS 959-7309 |
| Department of the Interior, Minerals Management Service | Basic Minerals Management Service Manual Table of Contents and Checklist | In accordance with fee schedule in 43 CFR 2, Appendix A | Dorothy Christopher, Directives Management Officer, 381 Elden Street, MS 2300, Herndon, VA 22070-4817 |
| | Listed numerically by part, series, chapter, release number, date, and pages | | |
| | Director's appeals decisions and index | In accordance with fee schedule in 43 CFR 2, Appendix A | Chief, Appeals Division, Minerals Management Service, 381 Elden Street, MS 1300, Herndon, VA 22070, Telephone 703-787-1275 |

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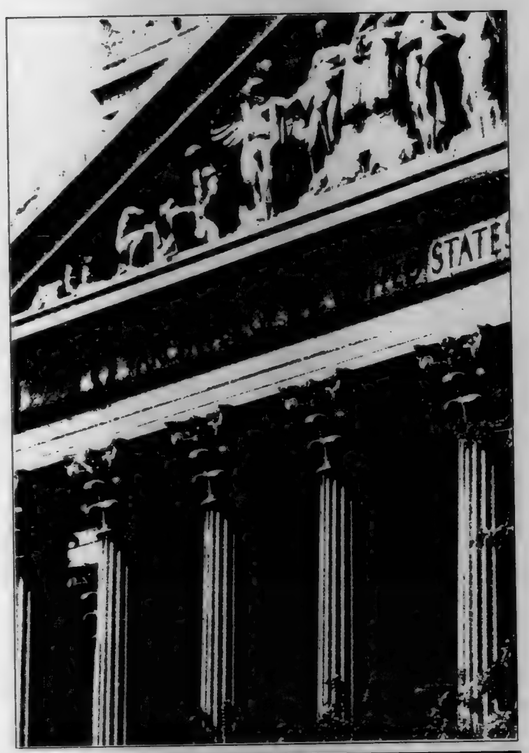


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**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### SAN FRANCISCO, CA

**WHEN:** July 22, at 9:00 am
**WHERE:** Federal Building and U.S. Courthouse, Conference Room 7209-A, 450 Golden Gate Avenue, San Francisco, CA
**RESERVATIONS:** Federal Information Center, 1-800-726-4995

### SEATTLE, WA

**WHEN:** July 23, at 1:00 pm
**WHERE:** Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA
**RESERVATIONS:** Federal Information Center, 1-800-726-4995

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DEPARTM

Agriculture

7 CFR Part

[CN-91-002

Amendmen and Regul

AGENCY: Ag USDA.

ACTION: Fin

SUMMARY: Service is e Rules and implement Cotton Res

These an regulations calculating assessment cotton-cont minimis fig imported c established burden of c while provi participatio assessment and cotton- containing value is les will not be

Procedur producer a been remov that the reg provisions Promotion which elim

Exemptio procedures obtain reim paid on imp products w assessment

EFFECTIVE

# Rules and Regulations

Federal Register
Vol. 57, No. 127
Wednesday, July 1, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN-91-002]

## Amendment to the Cotton Board Rules and Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service is amending the Cotton Board Rules and Regulations in order to implement recent amendments to the Cotton Research and Promotion Order.

These amendments to the rules and regulations will establish procedures for calculating, collecting, and remitting assessments on imported cotton and cotton-containing products. A de minimis figure based on the value of imported cotton per line item entry is established to lessen the administrative burden of collecting import assessments while providing for maximum participation of imports of cotton in the assessment provisions. Imported cotton and cotton-containing products containing an amount of cotton which in value is less than the de minimis figure will not be subject to assessment.

Procedures by which refunds of producer assessments are obtained have been removed from the regulations so that the regulations conform to the provisions of the Cotton Research and Promotion Act Amendments of 1990 which eliminated the refund provision.

Exemptions from assessment and procedures importers will follow to obtain reimbursement of assessments paid on imported cotton and textile products which are not subject to assessment are also established.

**EFFECTIVE DATE:** July 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Craig Shackelford (202) 720–2259.

**SUPPLEMENTARY INFORMATION:** This final rule amends the Cotton Board Rules and Regulations in order to implement the amendments to the Cotton Research and Promotion Order which were issued pursuant to the Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under subtitle G of title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990. A proposed rule amending the Cotton Research and Promotion Order was published for public comment on April 10, 1991. The proposed amendment to the Order was published on July 9, 1991. The proposed amendment was approved by a majority (60 percent) of importers and producers of cotton voting in a referendum conducted July 17–26, 1991. The amendment to the Order was published on December 10, 1991 (56 FR 64470).

This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a non-major rule since it does not meet the criteria for a major regulatory action.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry or the ruling.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action would not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

There are an estimated 210,000 producers and 650 collecting handlers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. There are also an estimated 10,000 importers that would become subject to the rules and regulations. The majority of these producers, handlers and importers would be classified as small businesses under the criteria established by the Small Business Administration.

Under this rule, procedures for processing assessment refunds to producers are removed. Therefore, based on 1991 figures, $41,075,853, collected by handlers from producers would not be subject to refunds. At current refund rates of approximately 34 percent, $13,965,790 of the estimated $41,075,853 would be retained by the Research and Promotion program. The economic impact of the elimination of refunds is not expected to be significant. It is expected that assessments from imports would total $6,785,816, including reimbursements, and that the total program will generate an estimated total of $47,861,669 based on the 1991 forecast. Therefore, the economic impact of an assessment on importers is not expected to be significant. The economic impact of the other amendments to the regulations as described in the preamble are also not expected to be significant. Furthermore, the Research and Promotion program is expected to benefit producers, handlers and importers by expanding and maintaining new and existing markets for cotton.

The amended rules and regulations impose recordkeeping and reporting burdens on importers and producers. The recordkeeping burden should average approximately .25 hours per year per person. The reporting burden should be approximately 6,174 hours per year. Therefore, the economic impact of these burdens is not expected to be significant.

Accordingly, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et. seq.*) the information collection and recordkeeping requirements for domestic handlers and producers contained in this subpart have been previously approved by OMB and assigned control number 0581–0093.

Implementation of the provisions of the Cotton Research and Promotion Act Amendments of 1990 require comparable information collection requirements for importers. The information collection and recordkeeping requirements for importers contained in this subpart have been previously approved by OMB and have also been assigned control number 0581–0093.

Based on comparable research and promotion programs, it will require approximately 10 minutes for an importer to complete a reporting form and approximately 10 minutes to complete a reimbursement or exemption application. There will be an estimated 1,000 importers per year subject to these information collection requirements. Importer reporting forms will be filed on a monthly basis only when the requested information is not available from the United States Customs Service. AMS intends to rely to a great extent on the Customs Service for all report information regarding importers. Reimbursement or exemption applications will be filed by importers when necessary. The combined estimated annual burden is 4,080 hours. Importers would be expected to maintain and make available to the Secretary such books and records as necessary to carry out the provisions of the order and regulations. Importers would be required to retain such records for at least two years beyond the marketing year of their applicability.

One respondent commented on the proposed reporting and recordkeeping requirements for importers contained in the proposed rule published in the **Federal Register** on December 17, 1991 (56 FR 65450). The comment expressed concerns that the proposed estimated burden may be incorrect.

It is the view of the agency that the estimate is appropriate. Further, the U.S. Customs Service will serve as the collecting agent for import assessments. Almost all information required under this proposal will be available from records already maintained by importers under the Customs Service requirements. The Department intends to rely to a great extent on records maintained by the Customs Service and records maintained by importers under Customs Service requirements for its administration and enforcement of the provisions of the proposed regulations. We anticipate that importers will be required to provide additional reports and records only on occasions when additional information is needed as evidence of compliance, or in cases when the importer seeks and exemption or reimbursement of assessments.

This final rule is promulgated to implement the Cotton Research and Promotion Act Amendments of 1990 and provisions of the amended Cotton Research and Promotion Order.

The Agricultural Marketing Service issued an invitation to submit comments on the proposed rule in the December 17, 1991 **Federal Register**. Twenty-five respondents, including foreign governments, importer associations, legal counsel representing importers, importers, national and state farm organizations, and cotton producers submitted comments that were received by AMS prior to the January 16, 1992 deadline. In addition, 12 comments were received after the January 16, 1992 deadline. These comments contain no new issues requiring discussion. The agency also received one written request and two telephone requests for an extension of the comment period. Such extension was not granted.

Fifteen respondents expressed general and specific points of support for the proposal. The comments can be generally summarized as urging the adoption of the proposal based on the view that it effectively meets the intent of the legislation by minimizing administrative burden, providing fair and equitable treatment to domestic and imported cotton, and maximizing participation. The provision for calculating assessments on the cotton content of imported products was viewed as resulting in the closest possible equivalency to the assessment levied on domestically produced cotton. The provisions for exempting imports from assessment in the proposal were viewed as meeting the legislative mandate to eliminate potential double assessment of U.S. produced cotton.

Ten respondents provided specific suggestions for modifications to the proposal. The substantive comments are discussed in the following paragraphs together with changes made to the proposal upon review of the comments and the proposed amendment to the Cotton Board Rules and Regulations by the agency. For the reader's convenience, the discussion is organized by the topic of the headings in the proposal. Also, other non-substantive changes have been made to the regulation for the purpose of clarity and accuracy.

**Definitions**

One respondent suggested that the definition of "Importer" in § 1205.500(o) should be slightly modified to clarify that customs brokers who have no financial interest in the imported cotton will not be required to maintain records for, or file reports with, the Cotton Board.

It was the intention of the agency that the definition of importer in the proposed rule have the same meaning as that in the 1990 Amendments to the Cotton Research and Promotion Act. We interpret this definition to mean that the importer is any person who enters cotton for consumption, or any person who withdraws from warehouse cotton for consumption, in the United States. The person liable for assessments, recordkeeping and reporting would be any person who meets the requirements of this definition.

This view is not inconsistent with regulations of the U.S. Customs Service, the agency that would collect the assessments on imports of cotton. Under that agency's regulations the importer is the person primarily liable for payment of any duties, and may be importer of record or the consignee.

**Assessments**

Several respondents, including foreign governments expressed concerns that implementing the assessment on imported Cotton would conflict with U.S. international trade obligations because it represents a new trade barrier. One foreign government suggested the assessment may not discriminate against imported cotton products because an equivalent assessment is levied on U.S. produced cotton. However, this respondent stated that the assessment is inconsistent with U.S. intentions to open markets.

Cotton's share of the U.S. fiber market has increased substantially over the past fifteen years from approximately 34 percent to 53 percent. The Cotton Research and Promotion Program under the Act has been in effect during this period. The importation of cotton products into the U.S. market is substantial and increasing. Over the past 15 years, there has been a sharp increase in imports of cotton compared to domestic mill use. In fact, the rate of growth of imported cotton products has substantially exceeded that of domestically produced cotton products. Thus importers have benefitted from the expansion of markets for cotton

products, and have done so to an even greater extent than domestic producers.

The expansion of the legislative authority to assess imported cotton and cotton-containing products, recognizes that all who benefit from U.S. domestic markets for cotton should share in the cost of building and maintaining such markets. Foreign textile manufacturers, importers, and domestic cotton producers all have an interest in maintaining and expanding the market for their products. The agency therefore believes that importers have had and will continue to have the opportunity equal to domestic producers to benefit from the results of this program.

One respondent objected to the imposition of importer assessments prior to the installation of importers on the Cotton Board. The Department is proceeding as expeditiously as possible to obtain importer nominees to the Board. The Department disagrees with the comment that implementation of the new research and promotion program should be postponed until after importer representatives are appointed. Nevertheless, such appointments shall be made as soon as possible.

Two respondents expressed objections to an assessment levied on textile products that contain little cotton. One of the respondents suggested that products composed primarily of fibers other than cotton would not benefit from the program. The other commenter suggested that items with cotton content less than 20% should not be assessed.

In determining which HTS classifications would be assessed under this proposal, the primary objectives were to meet the intent of the Cotton Research and Promotion Act Amendments of 1990 by maximizing participation of cotton imports in the assessment provision of the Act, while at the same time, minimizing the burden of administering those provisions. More than 2,400 HTS textile classifications contain cotton. However, out of this total, approximately 700 classifications account for approximately 97 percent of the annual volume of imported cotton textiles and apparel. The agency determined to propose limiting assessments to this lower number, thereby exempting a large number of low volume HTS classifications. By limiting the assessment to the 700 HTS classifications, the administrative burdens on all those who are involved in the assessment program will be reduced. At the same time, the vast majority of the volume of cotton textiles and apparel imported into the U.S. will be assessed.

Implementing a procedure to forgo collection of assessments on all products that contain less than 20 percent cotton would reduce collections by an unknown amount and create additional burdens for the importer, AMS, and Customs. Importers would have additional determinations to make in calculating assessments. The determination not to assess based on fiber content does not lend itself to computer automation. Consequently, Customs personnel would have to manually verify the determination of the importer. AMS would need additional reports from Customs to monitor the exemption for compliance. It is the view of the agency that exempting entire classifications of products rather than individual products due to fiber content creates a more administratively advantageous situation for all. For this reason, the comment regarding products containing less than 20 percent cotton will not be adopted.

One respondent commented that the proposed regulations improperly use only domestic industry data regarding the likely cotton content of imported cotton-containing products. The respondent further stated that USDA apparently assumed that domestically produced fabrics and foreign produced fabrics are synonymous. The comment concluded by offering that USDA should seek the input of importers and foreign manufacturers to develop conversion factors that more accurately reflect the cotton content of imported products.

The conversion factors set forth in the proposal were published for public comment. The Economic Research Service (ERS) continually reviews these factors and makes changes whenever additional information is available. No comments offering additional information regarding any specific conversion factors were received during the comment period for this proposal. The Department will continue to welcome all information regarding conversion factors with the goal of adding to our knowledge of fiber contents for all cotton products.

The respondent presented a reasonable point that one could expect textile manufacturers in foreign countries to use blends that vary from those in the U.S. It is our experience in cotton research and promotion that manufacturers produce blends that are tailored to the consumer preference of the target market. The conversion factors should than be representative for products of all manufacturers supplying the U.S. market.

A second factor influencing blend levels is the availability of technology that allows a manufacturer to produce a specific blend. Spinning efficiencies for well developed countries using the latest technology, such as the U.S., will be greater than the efficiencies obtained by less developed countries using earlier technologies. Consequently conversion factors for raw cotton fiber equivalents such as those in the assessment table that take into account spinning waste and cutting losses are lower than if based on less efficient manufacturing systems.

One respondent suggested that the supplemental assessment rate of 0.6 percent of the value of the cotton is excessive. The respondent argued that nothing in the legislative history of the authorizing act suggests that the amendments were intended to generate additional funds of the magnitude in this proposal. The respondent recommended the adoption of a supplemental assessment rate of 0.21 percent of the value of the cotton which by the respondent's analysis would generate revenues comparable to revenues generated in 1991.

While we disagree with the thrust of the above comment, AMS is currently in the process of preparing a proposal that would reduce the supplemental assessment rate from 0.6 percent of the value of the cotton to a rate of 0.5 percent. This proposal was initiated by the U.S. cotton industry which strongly supports the reduction and was recommended to the Secretary of Agriculture by the Cotton Board. The 0.1 percent reduction recommended by the Cotton Board would reduce supplemental assessment collections by approximately five million dollars annually. The Board estimates that adequate funding would be available for significant expansion of the program despite the assessment rate reduction. Comments will be solicited concerning the proposed reduction.

The value of imported cotton for the purpose of levying the supplemental assessment on imports of cotton and cotton-containing products was determined to be $1.446 in the proposal. This figure was the average price received by producers for the calendar year 1990. The $1.446 figure has been reduced to $1.384 to reflect the average price received by producers for cotton for the calendar year 1991.

Three respondents commented on the proposed de minimis value of cotton. The de minimis value of cotton is a minimum value of cotton per line item entry below which assessments are not collected. The amendments to the Act provide that the term "cotton" shall not include any entry of imported cotton

having a weight or value less than any de minimis figure as established by regulations. In the final rule implementing procedures for the conduct of referenda in connection with the Cotton Research and Promotion Order, a de minimis value of $220.99 per line item entry was established. This de minimis figure reflects only the value of cotton in each line item entry of imported product shown on the Customs Service entry documentation. Eligibility of importers to vote in the referendum conducted in July 1991, which approved the amended Cotton Research and Promotion Order, was in part determined by whether an importer had entered a value of cotton equal to or greater than the de minimis amount into the U.S. during the representative period.

The agency established the $220.99 per line item entry de minimis value based on its determination that the amount of estimated assessment collected on a value of cotton which was less than $220.99 would not be sufficient to adequately cover the estimated amount that the U.S. Customs Service would charge for collecting the assessment. According to the amendments to the Act, the Customs Service is to be reimbursed for the reasonable cost of collecting the assessment. The Act further states that the de minimis figure should be such as to minimize the burden in administering the import assessment, but still provide for the maximum participation of importers of cotton in the assessment provision. On that basis, the agency viewed the $220.99 de minimis as consistent with the provisions of the Act.

Two respondents suggested that the de minimis figure is too low and that it should be raised substantially. A substantial increase in the de minimis value appears unwarranted. Using $220.99 per line item entry as the minimis value of cotton, the minimum assessment collected would be approximately $2.00, which exceeds the anticipated cost of collecting the assessment and which would satisfy the goal of providing for maximum participation of importers of cotton in the assessment program.

Two examples are provided below to show how the de minimis value might effect the payment of assessment.

**Example 1**

HTS 6205202065, (Men's Cotton Shirts)

| | | | |
|---|---|---|---|
| Net weight | | 235.50 | kg. |
| Conversion factor | x | 0.9961 | |
| Cotton content | = | 234.58 | kg. |
| Cotton value per kg. | x | $1.384 | |
| Total cotton value. | = | $324.66 | |

Since the value of the cotton in the line item entry is equal to or greater than $220.99 an assessment would be paid. The multiplication of the net weight times the assessment per kilogram from the table reveals the amount of the assessment.

| | | | |
|---|---|---|---|
| Net weight | | 235.50 | kg. |
| Assessment per kg. | x | 1.2666 | cents |
| Assessment | | $2.98 | |

**Example 2**

This example shows an entry for which no Research and Promotion assessment would be paid because the value of the cotton is less than the de minimis value of $220.99.

HTS code, 6205202065, men's cotton shirts

| | | | |
|---|---|---|---|
| Net weight | | 137.28 | kg. |
| Conversion factor | x | 0.9961 | |
| Cotton Content | = | 136.74 | kg. |
| Cotton value per kg. | x | $1.384 | |
| Total cotton value. | = | $189.25 | |

One respondent suggested that the de minimis figure be based on the amount of fee payable to allow for a one step calculation. This cannot be done because the Act provides that the de minimis amount should represent a weight or value of cotton.

One respondent requested that an example of the assessment calculation be included in the final rule for clarity. An example of the assessment table and an explanation of the assessment formula, including a calculation of the assessment follows:

| HTS classification | Conversion factor | Cents/kg |
|---|---|---|
| 6205202065 (Mens Cotton Shirts) | 0.9961 | 1.2666 |

The assessment per kilogram (not including the conversion factor) represents the sum of the assessment and the supplemental assessment. An explanation of the assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.
One kilogram equals 2.2046 pounds.
One pound equals 0.453597 kilograms.

One dollar per bale assessment converted to kilograms:

A 500 pound bale=
226.8 kg. (500×.453597)
$1 per bale assessment=
$0.002000 per pound ($1÷500)
$0.004409 per kg. ($1÷226.8)

Supplemental assessment of 1/10 of 1 percent of the value of the cotton converted to kilograms:

Average price received for cotton, or average value=
$0.628 per pound
$1.384489 per kg. (0.628×2.2046)
1/10 of one percent of the average price in kg.=
$0.006307 per kg. (1.384489×.006)

Total assessment per kilogram:

$1 per bale equivalent assessment=
$0.004409 per kg.
Supplemental assessment+
*$0.006307* per kg.
Total assessment per kg. of cotton, or per kg. of cotton product containing 100 percent cotton=
*$0.012716*

The total assessment per kilogram in the right hand column of the table would be the product of the conversion factor for the HTS classification and the base assessment per kilogram calculated above. An example would be:
HTS code, 6205202065 (Men's Cotton Shirts)

| | | | |
|---|---|---|---|
| Conversion factor | | 0.9961 | |
| Assessment per kg. | × | 1.2716 | cents |
| Total assessment. | = | 1.2666 | cents per kg. |

Therefore, referring back to example 1 (men's cotton shirts), and the table, one can readily see how an assessment would be calculated. In example 1, the net weight of the shirts is 235.50 kg. That figure multiplied by the assessment rate per kg. from the table (1.2666 cents) results in an assessment of $2.98.

Two respondents suggest that the proposal should be revised to reduce the total import assessment by the percentage of total imports likely to contain U.S. produced cotton. Another respondent offered a contrasting position and suggested that an across-the-board reduction based on historical percentages of U.S. produced export cotton returning in imported cotton products would clearly violate GATT because products from countries which import no U.S. raw cotton would receive the same assessment reduction as those countries which import large amounts of U.S. cotton. It is the view of the agency that an across-the-board reduction in the assessment rate would not impact all program participants equally and

thus has not been adopted in the final rule.

Upon review of the list of HTS classifications subject to assessment the agency became aware that a number of the classification numbers have been modified in the most recent Harmonized Tariff Schedule. Therefore, the assessment table has been modified to reflect the current HTS classification numbers..

**Exemptions and Reimbursements**

One respondent commented that the proposed exemption and reimbursement procedure does not ensure that U.S. produced cotton will not be double assessed. The Cotton Research and Promotion Act Amendments of 1990 state that the Secretary shall establish procedures to ensure that the cotton content of imported products is not subject to more than one assessment. It is the agency's view that the exemption and reimbursement procedures in the regulation are consistent with the language of the Act amendments.

Three respondents expressed the view that any imported product subject to assessment which can be shown to contain no cotton should be automatically exempted from assessment at the time of entry. There are a number of HTS classifications listed in the assessment table in which the principal fiber by weight is not cotton. Products imported under these classifications could contain cotton contents of 0 to 50 percent. These HTS classifications were included in the assessment table because of the substantial amount of cotton imported on an annual basis in products classified by these numbers.

This comment has merit and the agency has modified the final rule in two ways to minimize the possibility of assessing products containing no cotton. A new paragraph § 1205.510(b)(7) is added to provide a specific exemption for imported products that are classified by HTS numbers subject to assessment but yet contain no cotton. For such entries the importer need not apply to the Cotton Board in advance for an exemption number. Instead the importer shall enter in the appropriate place on the Customs entry documentation the number "999999999". This number will be used by all importers for each such entry. AMS will monitor the use of this exemption number through Customs generated reports.

The second approach to minimizing the possibility of assessing non cotton-containing products involves the elimination of certain HTS classifications from the assessment table. The agency has reviewed the list of HTS numbers subject to assessment and eliminated a number of HTS classifications where the potential to assess non-cotton containing products exists. The volume of cotton imported and hence the potential amount of assessments were the primary considerations in eliminating HTS classification numbers from the assessment list.

One respondent suggested that products imported under bond and known as "sales samples" should be exempt from the assessment. It has been the intention of the agency to exempt products that are imported and subsequently exported without entering into the commerce of the U.S. A new Section 1205.510(b)(8) is added to specifically exempt from assessment any cotton containing product imported and assigned a HTS classification beginning with "9813" when such HTS classification is entered on the Customs entry documentation.

One respondent suggested that the 90 day validity period for exemption numbers discussed in the proposed rule Board could be a burden to importers who would be required to indicate the 90 day period in which merchandise from a given purchase order will be imported.

Section 1205.510(b)(6)(i) in the final rule provides for a lengthened validity period based on this comment. An importer will be able to obtain an exemption from assessment for cotton and cotton-containing products composed of in part or in whole of U.S. produced cotton or cotton which is other than Upland cotton. Exemptions will specify a given weight and be valid for 120 days from date of issue. The Cotton Board will assign the importer a nine digit number which will be entered on the Customs entry documentation in a location to be determined by the U.S. Customs Service.

One respondent suggested that goods are routinely exported from the United States to a foreign country for the purpose of being repaired or altered. When these goods are returned to the U.S. they are classified under subheadings 9802.00.40 and 9802.00.50 of the HTS schedule in addition to their normal classification. Any entry of such goods that are classified by one of the 700 HTS numbers subject to assessment would attract the assessment even if the assessment had been paid previously. Based on this comment and our concern to eliminate possibilities of double assessment the agency has added a new paragraph § 1205.510(b)(9) which provides an automatic exemption for products classified under 9802.00.40 and 9802.00.50 subheadings.

Four respondents expressed concerns regarding the burden to importers in obtaining exemptions and reimbursements. They stated that the cost to the importer for obtaining exemptions and reimbursements would be greater than the assessments paid. The respondents were concerned over their perceived inability to obtain evidence of the origin of cotton fiber.

The agency is aware of the need to reduce burden to importers as a result of implementation of the cotton research and promotion assessment. Several exemption opportunities are available to importers under this regulation that impose no burden on the importers, the major one being the exemption for "9802" entries. This will eliminate assessment of a substantial number of entries of U.S. produced cotton. Various alternatives for eliminating exemption and reimbursement procedures are discussed in this rule and the proposal. The agency has discussed the need to eliminate the occurrences of assessment of U.S. produced cotton with the public and other government agencies. It is the view of the agency that the procedures for exemptions and reimbursements provided for in this regulation allow for effective administration and minimal burden to persons subject to the regulation.

Several non-substantive, miscellaneous changes have been made in these regulations for the purpose of clarity.

**List of Subjects in 7 CFR Part 1205**

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is amended as follows:

## PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

**Authority:** 7 U.S.C. 2101–2118.

2.–3. Section 1205.500 "Terms defined" is amended by adding paragraphs (o), (p), (q), and (r) to read as follows:

**Definitions**

**§ 1205.500 Terms defined.**

* * * * *

(o) *Importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States and "import" means any such entry.

(p) *Customs Service* means the United States Customs Service of the United States Department of Treasury.

(q) *Cotton* means: (1) All Upland cotton harvested in the United States, and, except as used in section 7(e) of the Act, includes cottonseed of such cotton and the products derived from such cotton and its seed, and

(2) imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term "cotton" shall not, however, include:

(i) Any entry of imported cotton by an importer which has a value or weight less than a de minimis amount established in regulations issued by the Secretary and

(ii) Industrial products as that term is defined by regulation.

(r) *Industrial products* means cotton-containing products which are classified in the Harmonized Tariff Schedule of the United States under classifications other than textile classifications. Certain cotton-containing textile products under textile classifications shall also be considered to be industrial products, and are therefore not included in the table appearing in these regulations as products subject to assessment. Such products include, but are not limited to textile fabrics coated, impregnated, covered, or laminated, with other materials, textile piping and tubing, and belting materials.

**General**

4. Section 1205.505 "Communication" is revised to read as follows:

**§ 1205.505 Communication.**

All reports, requests, applications for reimbursements, and communications in connection with the Cotton Research and Promotion Order shall be addressed as follows: Cotton Board, Post Office Box 2121, Memphis, Tennessee, 38101–2121.

**Assessments**

5. Section 1205.510 "Levy of assessments" is revised to read as follows:

**§ 1205.510 Levy of assessments.**

(a) *Producer assessments.* An assessment of $1 per bale for cotton research and promotion is hereby levied on each bale of Upland cotton that is produced from cotton harvested and ginned except cotton consumed by any governmental agency from its own production. Such assessment shall be payable and collected only once on each bale.

(1) A supplemental assessment for cotton research and promotion in addition to the $1 per bale assessment provided for in paragraph (a) of this section, is hereby levied on each bale of Upland cotton harvested and ginned except cotton consumed by any governmental agency from its own production. The supplemental assessment rate shall be levied at the rate of six-tenths of one percent of:

(i) The current value of the cotton multiplied by the number of pounds of lint cotton or;

(ii) The current value of the cotton converted to a fixed amount per bale as reflected in the following assessment chart:

ASSESSMENT CHART [1]

| Current Value (cents per pound) | Supplemental assessment, dollars per bale |
|---|---|
| .00 to 9.99 | .15 |
| 10.00 to 19.99 | .45 |
| 20.00 to 29.99 | .75 |
| 30.00 to 39.99 | 1.05 |
| 40.00 to 49.99 | 1.35 |
| 50.00 to 59.99 | 1.65 |
| 60.00 to 69.99 | 1.95 |
| 70.00 to 79.99 | 2.25 |
| 80.00 to 89.99 | 2.55 |
| 90.00 to 99.99 | 2.85 |
| 100.00 to 109.99 | 3.15 |
| 110.00 to 119.99 | 3.45 |

[1] Assessment is calculated on 6/10 of 1 percent of the midpoint of each 10¢ increment, based on a 500 lb. bale and converted to a fixed amount per bale.

(2) Each marketing year the collecting handler must select one of the two options for collecting the supplemental assessment as provided in paragraph (a)(1) of this section. The handler shall notify the Cotton Board as to the method selected at the time the handler files the first handler report each marketing year.

(b) *Importer assessment.* An assessment for cotton research and promotion of $1 per bale is hereby levied on each bale of cotton, or the bale equivalent thereof for cotton in cotton-containing products identified in the HTS conversion factor table in paragraph (b)(3) of this section and imported into the United States on or after July 31, 1992. The $1 per bale assessment shall be converted to a fixed amount per kilogram to facilitate the U.S. Customs Service in collecting this assessment.

(1) A supplemental assessment for cotton research and promotion in addition to the $1 per bale assessment provided for in paragraph (b) of this section is hereby levied on each bale of cotton or bale equivalent of cotton in cotton-containing products, identified in this subpart, imported into the United States on or after July 31, 1992. The supplemental assessment shall be levied at the rate of 9/10 of 1 percent of the historical value of cotton as determined by the Secretary, and expressed in paragraph (b)(2) of this section. The rate of the supplemental assessment on imported cotton will be the same as that levied on cotton produced within the United States. The supplemental assessment will be calculated as a fixed amount per kilogram and added to the $1 per bale or bale equivalent assessment to facilitate the Customs Service in collecting assessments.

(2) The average of monthly average prices received by U.S. farmers will be calculated annually. Such average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment for the period January 1, 1992 through December 31, 1992 is $1.384 per kilogram.

(3) The following table contains the Harmonized Tariff Schedule classification numbers and corresponding conversion factors and assessments. The left column of the table indicates the HTS classifications of imported cotton and cotton-containing products subject to assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS. HTS numbers for raw cotton have no conversion factor in the table. The right column indicates the total assessment per kilogram of the article assessed. Any line item entry of cotton appearing on Customs entry documentation in which the value of the cotton contained therein is less than $220.99 will not be subject to assessments as described in this section.

IMPORT ASSESSMENT TABLE

[Raw cotton fiber]

| HTS classification | Conversation factor | Cents/kg. |
|---|---|---|
| 5201001000 | 1.0000 | 1.2716 |
| 5201002000 | 1.0000 | 1.2716 |
| 5201002010 | 1.0000 | 1.2716 |
| 5201002020 | 1.0000 | 1.2716 |
| 5201002050 | 1.0000 | 1.2716 |
| 5204110000 | 1.1111 | 1.4129 |
| 5204200000 | 1.1111 | 1.4129 |
| 5205111000 | 1.1111 | 1.4129 |
| 5205121000 | 1.1111 | 1.4129 |
| 5205122000 | 1.1111 | 1.4129 |
| 5205131000 | 1.1111 | 1.4129 |
| 5201410000 | 1.1111 | 1.4129 |
| 5205210000 | 1.1111 | 1.4129 |
| 5205220000 | 1.1111 | 1.4129 |
| 5205230000 | 1.1111 | 1.4129 |
| 5205240000 | 1.1111 | 1.4129 |
| 5205250000 | 1.1111 | 1.4129 |
| 5205310000 | 1.1111 | 1.4129 |
| 5205320000 | 1.1111 | 1.4129 |
| 5205330000 | 1.1111 | 1.4129 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversation factor | Cents/kg. |
|---|---|---|
| 5205340000 | 1.1111 | 1.4129 |
| 5205410000 | 1.1111 | 1.4129 |
| 5205440000 | 1.1111 | 1.4129 |
| 5206120000 | 0.5556 | 0.7065 |
| 5206130000 | .5556 | .7065 |
| 5206140000 | .5556 | .7065 |
| 5206230000 | .5556 | .7065 |
| 5206240000 | .5556 | .7065 |
| 5206310000 | .5556 | .7065 |
| 5207100000 | 1.1111 | 1.4129 |
| 5208112020 | 1.1455 | 1.4566 |
| 5208112040 | 1.1455 | 1.4566 |
| 5208112090 | 1.1455 | 1.4566 |
| 5208114020 | 1.1455 | 1.4566 |
| 5208114060 | 1.1455 | 1.4566 |
| 5208114090 | 1.1455 | 1.4566 |
| 5208116090 | 1.1455 | 1.4566 |
| 5208124020 | 1.1455 | 1.4566 |
| 5208124040 | 1.1455 | 1.4566 |
| 5208124090 | 1.1455 | 1.4566 |
| 5208126020 | 1.1455 | 1.4566 |
| 5208126040 | 1.1455 | 1.4566 |
| 5208126060 | 1.1455 | 1.4566 |
| 5208126090 | 1.1455 | 1.4566 |
| 5208128020 | 1.1455 | 1.4566 |
| 5208128090 | 1.1455 | 1.4566 |
| 5208130000 | 1.1455 | 1.4566 |
| 5208192020 | 1.1455 | 1.4566 |
| 5208192090 | 1.1455 | 1.4566 |
| 5208194020 | 1.1455 | 1.4566 |
| 5208194090 | 1.1455 | 1.4566 |
| 5208196090 | 1.1455 | 1.4566 |
| 5208224040 | 1.1455 | 1.4566 |
| 5208224090 | 1.1455 | 1.4566 |
| 5208226020 | 1.1455 | 1.4566 |
| 5208226060 | 1.1455 | 1.4566 |
| 5208228020 | 1.1455 | 1.4566 |
| 5208230000 | 1.1455 | 1.4566 |
| 5208292020 | 1.1455 | 1.4566 |
| 5208292090 | 1.1455 | 1.4566 |
| 5208294090 | 1.1455 | 1.4566 |
| 5208296090 | 1.1455 | 1.4566 |
| 5208298020 | 1.1455 | 1.4566 |
| 5208312000 | 1.1455 | 1.4566 |
| 5208321000 | 1.1455 | 1.4566 |
| 5208323020 | 1.1455 | 1.4566 |
| 5208323040 | 1.1455 | 1.4566 |
| 5208323090 | 1.1455 | 1.4566 |
| 5208324020 | 1.1455 | 1.4566 |
| 5208324040 | 1.1455 | 1.4566 |
| 5208325020 | 1.1455 | 1.4566 |
| 5208330000 | 1.1455 | 1.4566 |
| 5208392020 | 1.1455 | 1.4566 |
| 5208392090 | 1.1455 | 1.4566 |
| 5208394090 | 1.1455 | 1.4566 |
| 5208396090 | 1.1455 | 1.4566 |
| 5208398020 | 1.1455 | 1.4566 |
| 5208412000 | 1.1455 | 1.4566 |
| 5208416000 | 1.1455 | 1.4566 |
| 5208418000 | 1.1455 | 1.4566 |
| 5208421000 | 1.1455 | 1.4566 |
| 5208423000 | 1.1455 | 1.4566 |
| 5208424000 | 1.1455 | 1.4566 |
| 5208425000 | 1.1455 | 1.4566 |
| 5208430000 | 1.1455 | 1.4566 |
| 5208492000 | 1.1455 | 1.4566 |
| 5208494020 | 1.1455 | 1.4566 |
| 5208494090 | 1.1455 | 1.4566 |
| 5208496010 | 1.1455 | 1.4566 |
| 5208496090 | 1.1455 | 1.4566 |
| 5208498090 | 1.1455 | 1.4566 |
| 5208516060 | 1.1455 | 1.4566 |
| 5208516090 | 1.1455 | 1.4566 |
| 5208523020 | 1.1455 | 1.4566 |
| 5208523040 | 1.1455 | 1.4566 |
| 5208523090 | 1.1455 | 1.4566 |
| 5208524020 | 1.1455 | 1.4566 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversation factor | Cents/kg. |
|---|---|---|
| 5208524040 | 1.1455 | 1.4566 |
| 5208524060 | 1.1455 | 1.4566 |
| 5208525020 | 1.1455 | 1.4566 |
| 5208530000 | 1.1455 | 1.4566 |
| 5208592020 | 1.1455 | 1.4566 |
| 5208592090 | 1.1455 | 1.4566 |
| 5208594090 | 1.1455 | 1.4566 |
| 5208596090 | 1.1455 | 1.4566 |
| 5209110020 | 1.1455 | 1.4566 |
| 5209110030 | 1.1455 | 1.4566 |
| 5209110050 | 1.1455 | 1.4566 |
| 5209110090 | 1.1455 | 1.4566 |
| 5209120020 | 1.1455 | 1.4566 |
| 5209120040 | 1.1455 | 1.4566 |
| 5209190020 | 1.1455 | 1.4566 |
| 5209190040 | 1.1455 | 1.4566 |
| 5209190060 | 1.1455 | 1.4566 |
| 5209190090 | 1.1455 | 1.4566 |
| 5209210090 | 1.1455 | 1.4566 |
| 5209220020 | 1.1455 | 1.4566 |
| 5209290040 | 1.1455 | 1.4566 |
| 5209290090 | 1.1455 | 1.4566 |
| 5209313000 | 1.1455 | 1.4566 |
| 5209316030 | 1.1455 | 1.4566 |
| 5209316050 | 1.1455 | 1.4566 |
| 5209316090 | 1.1455 | 1.4566 |
| 5209320020 | 1.1455 | 1.4566 |
| 5209320040 | 1.1455 | 1.4566 |
| 5209390020 | 1.1455 | 1.4566 |
| 5209390040 | 1.1455 | 1.4566 |
| 5209390060 | 1.1455 | 1.4566 |
| 5209390080 | 1.1455 | 1.4566 |
| 5209390090 | 1.1455 | 1.4566 |
| 5209413000 | 1.1455 | 1.4566 |
| 5209416020 | 1.1455 | 1.4566 |
| 5209420020 | 1.0309 | 1.3109 |
| 5209420040 | 1.0309 | 1.3109 |
| 5209430020 | 1.1455 | 1.4566 |
| 5209430040 | 1.1455 | 1.4566 |
| 5209490020 | 1.1455 | 1.4566 |
| 5209490090 | 1.1455 | 1.4566 |
| 5209516030 | 1.1455 | 1.4566 |
| 5209516050 | 1.1455 | 1.4566 |
| 5209520020 | 1.1455 | 1.4566 |
| 5209590020 | 1.1455 | 1.4566 |
| 5209590040 | 1.1455 | 1.4566 |
| 5209590090 | 1.1455 | 1.4566 |
| 5210114020 | .6873 | .8740 |
| 5210114040 | .6873 | .8740 |
| 5210114090 | .6873 | .8740 |
| 5210116020 | .6873 | .8740 |
| 5210116040 | .6873 | .8740 |
| 5210116060 | .6873 | .8740 |
| 5210120000 | .6873 | .8740 |
| 5210192090 | .6873 | .8740 |
| 5210214040 | .6873 | .8740 |
| 5210216020 | .6873 | .8740 |
| 5210216060 | .6873 | .8740 |
| 5210314020 | .6873 | .8740 |
| 5210314040 | .6873 | .8740 |
| 5210316020 | .6873 | .8740 |
| 5210319020 | .6873 | .8740 |
| 5210414000 | .6873 | .8740 |
| 5210416000 | .6873 | .8740 |
| 5210418000 | .6873 | .8740 |
| 5210498090 | .6873 | .8740 |
| 5210514040 | .6873 | .8740 |
| 5210516020 | .6873 | .8740 |
| 5210516040 | .6873 | .8740 |
| 5210516060 | .6873 | .8740 |
| 5211120020 | .6873 | .8740 |
| 5211190020 | .6873 | .8740 |
| 5211190060 | .6873 | .8740 |
| 5211210090 | .4165 | .5296 |
| 5211290090 | .6873 | .8740 |
| 5211320020 | .6873 | .8740 |
| 5211390040 | .6873 | .8740 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversation factor | Cents/kg. |
|---|---|---|
| 5211390060 | .6873 | .8740 |
| 5211490020 | .6873 | .8740 |
| 5211490090 | .6873 | .8740 |
| 5211590020 | .6873 | .8740 |
| 5212116040 | .9164 | 1.1653 |
| 5212146090 | .9164 | 1.1653 |
| 5212216090 | .9164 | 1.1653 |
| 5212236060 | .9164 | 1.1653 |
| 5601101000 | 1.1455 | 1.4566 |
| 5601210010 | 1.1455 | 1.4566 |
| 5601210090 | 1.1455 | 1.4566 |
| 5601220090 | 1.0413 | 1.3241 |
| 5601300000 | 1.1455 | 1.4566 |
| 5602109090 | .5727 | .7282 |
| 5602290000 | 1.1455 | 1.4566 |
| 5602906000 | .5220 | .6639 |
| 5603001030 | .3124 | .3972 |
| 5603009070 | .3124 | .3972 |
| 5603009090 | .3124 | .3972 |
| 5604900000 | .5556 | .7065 |
| 5607100000 | .8791 | 1.1179 |
| 5607210000 | .8791 | 1.1179 |
| 5607290000 | .8791 | 1.1179 |
| 5607301000 | .8791 | 1.1179 |
| 5607302000 | .8791 | 1.1179 |
| 5607491000 | .8081 | 1.0276 |
| 5607902000 | .8889 | 1.1303 |
| 5608901000 | 1.1111 | 1.4129 |
| 5608902000 | 1.1111 | 1.4129 |
| 5609004000 | .5556 | .7065 |
| 5701102010 | .0556 | .0707 |
| 5701102090 | 1.1111 | 1.3139 |
| 5701901010 | 1.0444 | 1.3281 |
| 5701902010 | .9333 | 1.1868 |
| 5702109020 | 1.1000 | 1.3988 |
| 5702312000 | .0776 | .0969 |
| 5702411000 | .0722 | .0918 |
| 5702412000 | .0776 | .0969 |
| 5702421000 | .0776 | .0969 |
| 5702422090 | .0776 | .0969 |
| 5702491010 | 1.0333 | 1.3139 |
| 5702913000 | 0.0889 | .1130 |
| 5702991010 | 1.1111 | 1.4129 |
| 5702991090 | 1.1111 | 1.4129 |
| 5703100000 | .6313 | .8028 |
| 5703202010 | .0337 | .0429 |
| 5703900000 | .4489 | .5708 |
| 5705002020 | .7071 | .8991 |
| 5705002030 | .0337 | .0429 |
| 5801220000 | 1.1455 | 1.4566 |
| 5801230000 | 1.1455 | 1.4566 |
| 5801250010 | 1.1455 | 1.4566 |
| 5801250020 | 1.1455 | 1.4566 |
| 5801260020 | 1.1455 | 1.4566 |
| 5802110000 | 1.1455 | 1.4566 |
| 5802190000 | 1.1455 | 1.4566 |
| 5802300030 | .5727 | .7282 |
| 5804290020 | 1.1455 | 1.4566 |
| 5806200000 | .3534 | .4494 |
| 5806310000 | 1.1455 | 1.4566 |
| 5806400000 | .4296 | .5463 |
| 5808103010 | .5727 | .7282 |
| 5808900010 | .5727 | .7282 |
| 5810100000 | 1.1455 | 1.4566 |
| 5810910020 | 1.1455 | 1.4566 |
| 5811002000 | 1.1455 | 1.4566 |
| 6001210000 | .8591 | 1.0924 |
| 6001220000 | .2864 | .3642 |
| 6001910010 | .8591 | 1.0924 |
| 6001910020 | .8591 | 1.0924 |
| 6001920020 | .2864 | .3642 |
| 6001920030 | .2864 | .3642 |
| 6001920040 | .2864 | .3642 |
| 6002203000 | .8661 | 1.1039 |
| 6002206000 | .2894 | .3680 |
| 6002302000 | .9996 | 1.2711 |
| 6002420000 | .8661 | 1.1039 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversation factor | Cents/kg. |
|---|---|---|
| 6002430010 | .2894 | .3680 |
| 6002430060 | .2894 | .3680 |
| 6002920000 | 1.1574 | 1.4717 |
| 6002930040 | .1157 | .1471 |
| 6002930060 | .1157 | .1471 |
| 6101200010 | 1.0094 | 1.2836 |
| 6101302010 | 1.2235 | 1.5556 |
| 6102200010 | 1.0094 | 1.2836 |
| 6102200020 | 1.0094 | 1.2836 |
| 6102302010 | 1.2235 | 1.5556 |
| 6103421020 | .8806 | 1.1196 |
| 6103421040 | .8806 | 1.1196 |
| 6103421050 | .8806 | 1.1196 |
| 6103421070 | .8806 | 1.1196 |
| 6103431520 | .2516 | .3199 |
| 6103431540 | .2516 | .3199 |
| 6103431550 | .2516 | .3199 |
| 6104220040 | .9002 | 1.1447 |
| 6104220060 | .9002 | 1.1447 |
| 6104320000 | .9202 | 1.1708 |
| 6104420010 | .9002 | 1.1447 |
| 6104420020 | .9002 | 1.1447 |
| 6104520010 | .9312 | 1.1841 |
| 6104520020 | .9312 | 1.1841 |
| 6104622016 | .8806 | 1.1196 |
| 6104622015 | .8806 | 1.1196 |
| 6104622025 | .8806 | 1.1196 |
| 6104622030 | .8806 | 1.1196 |
| 6104622060 | .8806 | 1.1196 |
| 6104632010 | .3774 | .4799 |
| 6104632025 | .3774 | .4799 |
| 6104632030 | .3774 | .4799 |
| 6104632060 | .3774 | .4799 |
| 6105100010 | .9850 | 1.2525 |
| 6105100020 | .9850 | 1.2525 |
| 6105100030 | .9850 | 1.2525 |
| 6105202010 | .3078 | .3914 |
| 6105202030 | .3078 | .3914 |
| 6106100010 | .9850 | 1.2525 |
| 6106100020 | .9850 | 1.2525 |
| 6106100030 | .9850 | 1.2525 |
| 6106202010 | .3078 | .3914 |
| 6106202030 | .3078 | .3914 |
| 6107110010 | 1.1322 | 1.4397 |
| 6107110020 | 1.1322 | 1.4397 |
| 6107120010 | .5032 | .6399 |
| 6107210010 | .8806 | 1.1196 |
| 6107220025 | .3774 | .4799 |
| 6107910010 | 1.2581 | 1.5998 |
| 6107910040 | 1.2581 | 1.5998 |
| 6108210010 | 1.2445 | 1.5825 |
| 6108210020 | 1.2445 | 1.5825 |
| 6108220020 | 1.1314 | 1.4387 |
| 6108310010 | 1.1201 | 1.4243 |
| 6108320010 | .2489 | .3165 |
| 6108320015 | .2489 | .3165 |
| 6108320025 | .2489 | .3165 |
| 6108910015 | 1.2445 | 1.5825 |
| 6108910025 | 1.2445 | 1.5825 |
| 6108910030 | 1.2445 | 1.5825 |
| 6108920030 | .2489 | .3165 |
| 6109100005 | .9956 | 1.2660 |
| 6109100007 | .9956 | 1.2660 |
| 6109100009 | .9956 | 1.2660 |
| 6109100012 | .9956 | 1.2660 |
| 6109100014 | .9956 | 1.2660 |
| 6109100018 | .9956 | 1.2660 |
| 6109100023 | .9956 | 1.2660 |
| 6109100027 | .9956 | 1.2660 |
| 6109100037 | .9956 | 1.2660 |
| 6109100040 | .9956 | 1.2660 |
| 6109100045 | .9956 | 1.2660 |
| 6109100060 | .9956 | 1.2660 |
| 6109100065 | .9956 | 1.2660 |
| 6109100070 | .9956 | 1.2660 |
| 6109901007 | .3111 | .3956 |
| 6109901009 | .3111 | .3956 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversation factor | Cents/kg. |
|---|---|---|
| 6109901025 | .3111 | .3956 |
| 6109901049 | .3111 | .3956 |
| 6109901050 | .3111 | .3956 |
| 6109901060 | .3111 | .3956 |
| 6109901065 | .3111 | .3956 |
| 6109901090 | .3111 | .3956 |
| 6110102010 | .8631 | 1.0975 |
| 6110102030 | .8631 | 1.0975 |
| 6110202005 | 1.1837 | 1.5052 |
| 6110202010 | 1.1837 | 1.5052 |
| 6110202015 | 1.1837 | 1.5052 |
| 6110202020 | 1.1837 | 1.5052 |
| 6110202025 | 1.1837 | 1.5052 |
| 6110202030 | 1.1837 | 1.5052 |
| 6110202035 | 1.1837 | 1.5052 |
| 6110202040 | 1.1574 | 1.4717 |
| 6110202045 | 1.1574 | 1.4717 |
| 6110202065 | 1.1574 | 1.4717 |
| 6110202075 | 1.1574 | 1.4717 |
| 6110303010 | .1850 | .2352 |
| 6110303020 | .1850 | .2352 |
| 6110303040 | .1850 | .2352 |
| 6110303050 | .1850 | .2352 |
| 6110303055 | .1850 | .2352 |
| 6110900022 | .2630 | .3344 |
| 6110900024 | .2630 | .3344 |
| 6110900040 | .2630 | .3344 |
| 6110900042 | .2630 | .3344 |
| 6110900090 | .2630 | .3344 |
| 6111201000 | 1.2581 | 1.5998 |
| 6111202000 | 1.2581 | 1.5998 |
| 6111203000 | 1.0064 | 1.2797 |
| 6111205000 | 1.0064 | 1.2797 |
| 6111206010 | 1.0064 | 1.2797 |
| 6111206020 | 1.0064 | 1.2797 |
| 6111206030 | 1.0064 | 1.2797 |
| 6111206040 | 1.0064 | 1.2797 |
| 6111304000 | .2516 | .3199 |
| 6111305010 | .2516 | .3199 |
| 6111305015 | .2516 | .3199 |
| 6111305020 | .2516 | .3199 |
| 6111305030 | .2516 | .3199 |
| 6111305040 | .2516 | .3199 |
| 6112110050 | .7548 | .9598 |
| 6112120010 | .2516 | .3199 |
| 6112120030 | .2516 | .3199 |
| 6112120040 | .2516 | .3199 |
| 6112120050 | .2516 | .3199 |
| 6112120060 | .2516 | .3199 |
| 6112390010 | 1.1322 | 1.4397 |
| 6112410010 | .1258 | .1600 |
| 6112490010 | .9435 | 1.1996 |
| 6114200005 | .9002 | 1.1447 |
| 6114200010 | .9002 | 1.1447 |
| 6114200015 | .9002 | 1.1447 |
| 6114200020 | 1.2860 | 1.6353 |
| 6114200040 | .9002 | 1.1447 |
| 6114200052 | .9002 | 1.1447 |
| 6114200060 | .9002 | 1.1447 |
| 6114301010 | .2572 | .3271 |
| 6114301020 | .2572 | .3271 |
| 6114303030 | .2572 | .3271 |
| 6114303050 | .2572 | .3271 |
| 6115110020 | 1.0522 | 1.3380 |
| 6115190010 | 1.0417 | 1.3246 |
| 6115922000 | 1.0417 | 1.3246 |
| 6115932000 | .2315 | .2944 |
| 6116101510 | .3655 | .4648 |
| 6116101520 | .8528 | 1.0844 |
| 6116103510 | .8528 | 1.0844 |
| 6116922010 | 1.0965 | 1.3943 |
| 6116922020 | 1.0965 | 1.3943 |
| 6116922030 | 1.2183 | 1.5492 |
| 6116922040 | 1.0965 | 1.3943 |
| 6116922060 | 1.2183 | 1.5492 |
| 6116922070 | 1.0965 | 1.3943 |
| 6116923000 | 1.0965 | 1.3943 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversation factor | Cents/kg. |
|---|---|---|
| 6116926020 | 1.0965 | 1.3943 |
| 6116926030 | 1.2183 | 1.5492 |
| 6116926040 | 1.0965 | 1.3943 |
| 6116926060 | 1.0965 | 1.3943 |
| 6116932010 | .1216 | .1549 |
| 6116932011 | .1216 | .1549 |
| 6116932020 | .1216 | .1549 |
| 6117900010 | .9747 | 1.2394 |
| 6117900035 | .3655 | .4648 |
| 6201121000 | .9480 | 1.2055 |
| 6201122010 | .8953 | 1.1385 |
| 6201122050 | .6847 | .8707 |
| 6201122060 | .6847 | .8707 |
| 6201134015 | .2107 | .2679 |
| 6201134030 | .2633 | .3348 |
| 6201921000 | .9267 | 1.1784 |
| 6201921500 | 1.1583 | 1.4729 |
| 6201922010 | 1.0296 | 1.3092 |
| 6201922020 | 1.2871 | 1.6367 |
| 6201922030 | 1.2871 | 1.6367 |
| 6201922040 | 1.2871 | 1.6367 |
| 6201922050 | 1.0296 | 1.3092 |
| 6201922060 | 1.0296 | 1.3092 |
| 6201931000 | .3089 | .3928 |
| 6201932020 | .2574 | .3273 |
| 6201933000 | 1.1700 | 1.4875 |
| 6201933510 | .2574 | .3273 |
| 6201933520 | .2574 | .3273 |
| 6202121000 | .9372 | 1.1917 |
| 6202122010 | 1.1064 | 1.4069 |
| 6202122025 | 1.3017 | 1.6552 |
| 6202122050 | .8461 | 1.0759 |
| 6202122060 | .8461 | 1.0759 |
| 6202134005 | .2664 | .3388 |
| 6202134020 | .3330 | .4234 |
| 6202134030 | .3330 | .4234 |
| 6202921000 | 1.0413 | 1.3241 |
| 6202921500 | 1.0413 | 1.3241 |
| 6202922025 | 1.3017 | 1.6552 |
| 6202922060 | 1.0413 | 1.3241 |
| 6202922070 | 1.0413 | 1.3241 |
| 6202931000 | .3124 | .3972 |
| 6202934500 | 1.1833 | 1.5047 |
| 6202935010 | .2603 | .3310 |
| 6202935030 | .2603 | .3310 |
| 6202990060 | .2603 | .3310 |
| 6203122010 | .1302 | .1656 |
| 6203191010 | 1.0413 | 1.3241 |
| 6203221000 | 1.3017 | 1.6552 |
| 6203322010 | 1.2366 | 1.5725 |
| 6203322040 | 1.2366 | 1.5725 |
| 6203392010 | .1302 | .1656 |
| 6203392010 | 1 1715 | 1.4897 |
| 6203394060 | .2603 | .3310 |
| 6203422010 | .9961 | 1.2666 |
| 6203422025 | .9961 | 1.2666 |
| 6203422050 | .9961 | 1.2666 |
| 6203422060 | .9961 | 1.2666 |
| 6203424005 | 1.2451 | 1.5833 |
| 6203424010 | 1.2451 | 1.5833 |
| 6203424015 | .9961 | 1.2666 |
| 6203424020 | 1.2451 | 1.5833 |
| 6203424025 | 1.2451 | 1.5833 |
| 6203424030 | 1.2451 | 1.5833 |
| 6203424035 | 1.2451 | 1.5833 |
| 6203424040 | .9961 | 1.2666 |
| 6203424045 | .9961 | 1.2666 |
| 6203424050 | .9238 | 1.1747 |
| 6203424055 | .9238 | 1.1747 |
| 6203424060 | .9238 | 1.1747 |
| 6203431500 | .1245 | .1583 |
| 6203434010 | .1232 | .1567 |
| 6203434020 | .1232 | .1567 |
| 6203434030 | .1232 | .1567 |
| 6203434040 | .1232 | .1567 |
| 6203492010 | .1245 | .1583 |
| 6203492030 | .1245 | .1583 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversation factor | Cents/kg. |
|---|---|---|
| 6204693945 | .2430 | .3166 |
| 6204132010 | .1982 | .1958 |
| 6204133000 | .1502 | .1958 |
| 6204193060 | .2603 | .3319 |
| 6204221000 | 1.3017 | 1.6552 |
| 6204223030 | 1.0413 | 1.3241 |
| 6204223040 | 1.0413 | 1.3241 |
| 6204223050 | 1.0413 | 1.3241 |
| 6204223060 | 1.0413 | 1.3241 |
| 6204223065 | 1.0413 | 1.3241 |
| 6204292015 | .3254 | .4138 |
| 6204292020 | .3254 | .4138 |
| 6204292040 | .3254 | .4138 |
| 6204322010 | 1.2366 | 1.5725 |
| 6204322030 | 1.0413 | 1.3241 |
| 6204322040 | 1.0413 | 1.3241 |
| 6204394060 | .2603 | .3319 |
| 6204423010 | 1.2728 | 1.6185 |
| 6204423030 | .9546 | 1.2139 |
| 6204423040 | .9546 | 1.2139 |
| 6204423050 | .9546 | 1.2139 |
| 6204423060 | .9546 | 1.2139 |
| 6204444010 | .4831 | .6143 |
| 6204490060 | .2603 | .3319 |
| 6204510010 | .0666 | .8847 |
| 6204522010 | 1.2654 | 1.6091 |
| 6204522030 | 1.2654 | 1.6091 |
| 6204522040 | 1.2654 | 1.6091 |
| 6204522070 | 1.0656 | 1.3550 |
| 6204522080 | 1.0656 | 1.3550 |
| 6204533010 | .2604 | .3308 |
| 6204594060 | .2604 | .3308 |
| 6204610010 | .5523 | .6792 |
| 6204622010 | .9961 | 1.2666 |
| 6204622025 | .9961 | 1.2666 |
| 6204622050 | .9961 | 1.2666 |
| 6204624005 | 1.2451 | 1.5833 |
| 6204624010 | 1.2451 | 1.5833 |
| 6204624020 | .9961 | 1.2666 |
| 6204624025 | 1.2451 | 1.5833 |
| 6204624030 | 1.2451 | 1.5833 |
| 6204624035 | 1.2451 | 1.5833 |
| 6204624040 | 1.2451 | 1.5833 |
| 6204624045 | .9961 | 1.2666 |
| 6204624050 | .9961 | 1.2666 |
| 6204624055 | .9954 | 1.2530 |
| 6204624060 | .9954 | 1.2530 |
| 6204624065 | .9954 | 1.2530 |
| 6204631200 | .1245 | .1583 |
| 6204633510 | .2546 | .3237 |
| 6204633530 | .2546 | .3237 |
| 6204633532 | .2437 | .3099 |
| 6204633540 | .2437 | .3099 |
| 6204692510 | .2490 | .3166 |
| 6204692530 | .2490 | .3166 |
| 6204692540 | .2437 | .3099 |
| 6204699040 | .2490 | .3166 |
| 6205202015 | .9961 | 1.2666 |
| 6205202020 | .9961 | 1.2666 |
| 6205202025 | .9961 | 1.2666 |
| 6205202030 | .9961 | 1.2666 |
| 6205202035 | 1.1298 | 1.4250 |
| 6205202046 | .9961 | 1.2666 |
| 6205202050 | .9961 | 1.2666 |
| 6205202060 | .9961 | 1.2666 |
| 6205202065 | .9961 | 1.2666 |
| 6205202070 | .9961 | 1.2666 |
| 6205202075 | .9961 | 1.2666 |
| 6205302010 | .3113 | .3958 |
| 6205302030 | .3113 | .3958 |
| 6205302040 | .3113 | .3958 |
| 6205302050 | .3113 | .3958 |
| 6205302070 | .3113 | .3958 |
| 6205302090 | .3113 | .3958 |
| 6205303240 | .1245 | .1583 |
| 6206100040 | .1245 | .1583 |
| 6206303010 | .9964 | 1.2666 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversation factor | Cents/kg. |
|---|---|---|
| 6206303020 | .9961 | 1.2666 |
| 6206303030 | .9961 | 1.2666 |
| 6206303040 | .9961 | 1.2666 |
| 6206303050 | .9961 | 1.2666 |
| 6206303060 | .9961 | 1.2666 |
| 6206403010 | .3113 | .3958 |
| 6206403030 | .3113 | .3958 |
| 6206403050 | .3113 | .3958 |
| 6206403060 | .2490 | .3166 |
| 6207110000 | 1.0852 | 1.3799 |
| 6207190010 | .3617 | .4599 |
| 6207210010 | 1.1085 | 1.4096 |
| 6207210030 | 1.1085 | 1.4096 |
| 6207220000 | .3695 | .4699 |
| 6207911000 | 1.1455 | 1.4566 |
| 6207913000 | 1.1455 | 1.4566 |
| 6208210010 | 1.0583 | 1.3457 |
| 6208210020 | 1.0583 | 1.3457 |
| 6208220000 | .3245 | .4126 |
| 6209911010 | 1.1455 | 1.4566 |
| 6209911010 | 1.1455 | 1.4566 |
| 6209920010 | .1273 | .1619 |
| 6209920030 | .1273 | .1619 |
| 6209201000 | 1.1577 | 1.4721 |
| 6209203000 | .9749 | 1.2397 |
| 6209205030 | .9749 | 1.2397 |
| 6209205035 | .9749 | 1.2397 |
| 6209205040 | 1.2186 | 1.5496 |
| 6209205045 | .9749 | 1.2397 |
| 6209205050 | .9749 | 1.2397 |
| 6209303010 | .2463 | .3132 |
| 6209303020 | .2463 | .3132 |
| 6209303030 | .2463 | .3132 |
| 6209303040 | .2463 | .3132 |
| 6210104015 | .2291 | .2913 |
| 6210301020 | .0891 | .1133 |
| 6210401010 | .0391 | .0497 |
| 6210401020 | .4558 | .5793 |
| 6210401030 | .4558 | .5793 |
| 6210401050 | .4558 | .5793 |
| 6210501020 | .0911 | .1158 |
| 6211111010 | .1273 | .1619 |
| 6211111020 | .1273 | .1619 |
| 6211112010 | 1.1455 | 1.4566 |
| 6211112020 | 1.1455 | 1.4566 |
| 6211201535 | .2473 | .3145 |
| 6211201565 | .2473 | .3145 |
| 6211320003 | .6769 | .8607 |
| 6211320005 | .6461 | 1.0759 |
| 6211320007 | .6461 | 1.0759 |
| 6211320010 | 1.0413 | 1.3241 |
| 6211320015 | 1.0413 | 1.3241 |
| 6211320020 | .9763 | 1.2415 |
| 6211320060 | .9763 | 1.2415 |
| 6211320070 | .9763 | 1.2415 |
| 6211320080 | .9763 | 1.2415 |
| 6211330010 | .3254 | .4138 |
| 6211330030 | .3965 | .4956 |
| 6211330035 | .3965 | .4956 |
| 6211330040 | .3965 | .4956 |
| 6211330050 | .3965 | .4956 |
| 6211330060 | .3965 | .4956 |
| 6211420010 | 1.0413 | 1.3241 |
| 6211420030 | 1.0413 | 1.3241 |
| 6211420025 | 1.1715 | 1.4897 |
| 6211420050 | 1.1715 | 1.4897 |
| 6211420060 | 1.0413 | 1.3241 |
| 6211420070 | 1.1715 | 1.4897 |
| 6211420080 | 1.1715 | 1.4897 |
| 6211430010 | .2603 | .3310 |
| 6211430030 | .2603 | .3310 |
| 6211430050 | .2603 | .3310 |
| 6211430060 | .2603 | .3310 |
| 6211430070 | .2603 | .3310 |
| 6211430090 | .2603 | .3310 |
| 6211490020 | .2603 | .3310 |
| 6212101020 | .2412 | .3067 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversation factor | Cents/kg. |
|---|---|---|
| 6212102010 | .9648 | 1.2266 |
| 6212102030 | .2412 | .3067 |
| 6212200020 | .3044 | .3869 |
| 6212900010 | .7717 | .9813 |
| 6212900030 | .1929 | .2453 |
| 6213201000 | 1.1809 | 1.5016 |
| 6213203000 | 1.0828 | 1.3515 |
| 6213901000 | 1.0828 | 1.3515 |
| 6213901800 | .4724 | .6007 |
| 6214300000 | .1806 | .1534 |
| 6214400000 | .1206 | .1534 |
| 6214900010 | .3843 | 1.1499 |
| 6216001000 | .3617 | .4599 |
| 6216001510 | .3617 | .4599 |
| 6216002540 | .1743 | .2216 |
| 6216003610 | 1.2451 | 1.5833 |
| 6216003611 | 1.2451 | 1.5833 |
| 6216003620 | 1.2451 | 1.5833 |
| 6216003621 | 1.2451 | 1.5833 |
| 6216003910 | 1.2058 | 1.5333 |
| 6216003920 | 1.2058 | 1.5333 |
| 6217900010 | 1.0182 | 1.2947 |
| 6217100030 | .2546 | .3237 |
| 6217900075 | 1.0182 | 1.2947 |
| 6301300010 | .8766 | 1.1147 |
| 6301300020 | .8766 | 1.1147 |
| 6301400010 | 1.0828 | 1.3512 |
| 6302100010 | 1.3566 | 1.6864 |
| 6302211020 | .8182 | 1.0404 |
| 6302211060 | .8182 | 1.0404 |
| 6302212010 | 1.1569 | 1.4564 |
| 6302212020 | .8182 | 1.0404 |
| 6302212030 | 1.1569 | 1.4564 |
| 6302212040 | .8182 | 1.0404 |
| 6302212050 | .8182 | 1.0404 |
| 6302212055 | .8182 | 1.0404 |
| 6302212060 | .8182 | 1.0404 |
| 6302212090 | .8182 | 1.0404 |
| 6302222020 | .4091 | .5202 |
| 6302222030 | .5844 | .7431 |
| 6302222040 | .4091 | .5202 |
| 6302402010 | .9935 | 1.2633 |
| 6302511000 | .5844 | .7431 |
| 6302512060 | .8766 | 1.1147 |
| 6302513000 | .5844 | .7431 |
| 6302514000 | .8182 | 1.0404 |
| 6302600010 | 1.1569 | 1.4564 |
| 6302600020 | 1.0520 | 1.3377 |
| 6302600030 | 1.0520 | 1.3377 |
| 6302910005 | 1.0520 | 1.3377 |
| 6302910015 | 1.1569 | 1.4564 |
| 6302910025 | 1.0520 | 1.3377 |
| 6302910035 | 1.0520 | 1.3377 |
| 6302910045 | 1.0520 | 1.3377 |
| 6302910050 | 1.0520 | 1.3377 |
| 6302910060 | 1.0520 | 1.3377 |
| 6303110000 | .9446 | 1.2014 |
| 6303910000 | .6429 | .8175 |
| 6303920000 | .2922 | .3716 |
| 6304111000 | 1.0829 | 1.3510 |
| 6304190500 | 1.0520 | 1.3377 |
| 6304191000 | 1.1569 | 1.4564 |
| 6304191500 | .4091 | .5202 |
| 6304192000 | .4091 | .5202 |
| 6304910020 | .9351 | 1.1891 |
| 6304920000 | .9054 | 1.1512 |
| 6304930000 | 1.0828 | 1.3512 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversation factor | Cents/kg. |
|---|---|---|
| 6115932020 | .2315 | .2944 |
| 6204699044 | .2490 | .3166 |
| 6207913020 | 1.1455 | 1.4566 |

(4) Any entry of cotton that qualifies for informal entry according to regulations issued by the Customs Service will not be subject to the assessment.

(5) Imported textile articles assembled abroad in whole or in part of fabricated components, produced in the United States which:

(i) were exported from the U.S. in condition ready for assembly without further fabrication,

(ii) have not lost their physical identity in such articles by change in form, shape or otherwise, and

(iii) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process shall not be subject to assessments under this subpart. The specific HTS classifications affected under this paragraph are 9802.00.8010, 9802.00.8040, and 9802.00.8060.

(6) Imported cotton and products may be exempted by the Cotton Board from assessment under this paragraph. Such imported cotton and products may include, but are not limited to cotton and the cotton content of products which is U.S. produced cotton, or cotton other than Upland cotton.

(i) A request for such exemption must be submitted to the Cotton Board by the importer, prior to the importation of the cotton or cotton product. The Cotton Broad will then issue, if deemed appropriate, a numbered exemption certificate valid for 120 days from the date of issue. The exemption number should be entered by the importer on the Customs entry documentation in the appropriate location as determined by the U.S. Customs Service.

(ii) The request for exemption should include:

(A) the name, address, and importer identification number for the importer;

(B) the HTS classification of the imported product;

(C) weight of the product for which the exemption is sought;

(D) estimated date of entry;

(E) commercial invoices or other such documentation indicating the origin of production or type of the cotton fiber used to produce the imported product;

(F) manufacturer's descriptions of the imported product.

(7) The exemption number "999999999" shall be entered on the Customs entry summary document, in the appropriate location as determined by the U.S. Customs Service, by the importer when, based on the importer'sown determination, the imported product is identified by a Harmonized Tariff Schedule classification number which is subject to assessment but the particular article contains no cotton.

(8) Articles imported into the United States temporarily and under bond which are classified by the Harmonized Tariff Schedule heading which begins with "9813" shall not be subject to assessment.

(9) Articles imported into the U.S. after being exported from the U.S. for alterations or repairs and which are classified by the Harmonized Tariff Schedule subheadings 9802.00.40 and 9802.00.50 shall not be subject to assessment.

6. Section 1205.511 "Payment and collection" is revised to read as follows:

**§ 1205.511 Payment and collection.**

(a) The $1 per bale assessment shall be paid by:

(1) the producer of the cotton to the collecting handler designated in § 1205.512, and

(2) the importer of cotton to the Customs Service as provided in § 1205.514.

(b) The supplemental assessment shall be paid by:

(1) the producer of the cotton to the collecting handler designated in § 1205.513, and

(2) the importer of cotton to the Customs Service as described in § 1205.515.

(c) If more than one person subject to assessment shares in the proceeds received from a bale or bale equivalent, each such person is obligated to pay that portion of the assessment that is equivalent to that person's proportionate share of the proceeds.

(d) Failure of the handler to collect the assessments on each bale shall not relieve the handler of the handler's obligation to remit the assessments to the Cotton Board as required in §§ 1205.512, 1205.513 and 1205.516.

7. In § 1205.512 "Collecting handlers and the time of collection of $1 per bale assessment" paragraph (h) is revised to read as follows:

**§ 1205.512 Collecting handlers and the time of collection of the $1 per bale assessment.**

* * * * *

(h) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of such producer, or the producer's estate, or the person acting on behalf of creditors, shall be considered the producer for the purposes of this section.

8. In § 1205.513 "Collecting handlers and time of collection of the supplemental assessment" paragraph (k) is revised to read as follows:

**§ 1205.513 Collecting handlers and the time of collection of the supplemental assessment.**

* * * * *

(k) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of such producer or the producer's estate, or the person acting on behalf of creditors, shall be considered the producer for the purposes of this section.

**§ 1205.516 [Redesignated for § 1205.516]**

9. Section 1205.516 "Receipts of payment of assessments" is designated as § 1205.518.

**§ 1205.516 [Redesignated from § 1205.514 and revised]**

10. Section 1205.514 "Reports and remittance to the Cotton Board" is redesignated as § 1205.516 and revised to read as follows:

**§ 1205.516 Reports and remittance to the Cotton Board.**

(a) *Handler Reports and Remittances.* Each collecting handler shall transmit assessments to the Cotton Board as follows:

(1) *Reporting periods.* Each calendar month shall be a reporting period and the period shall end on the close of business on the last day of the month.

(2) *Reports.* Each collecting handler shall make reports on forms made available or approved by the Cotton Board. Each report shall be mailed to the Cotton Board and postmarked within ten days after the close of the reporting period.

(i) *Collecting handler report.* Each collecting handler shall prepare a separate report form each reporting period for each gin from which such handler handles cotton on which the handler is required to collect the assessments during the reporting period. Each report shall be mailed in duplicate to the Cotton Board and shall contain the following information:

(A) Date of report;

(B) Reporting period covered by report;

(C) Gin code number;

(D) Name and address of handler;

(E) Listing of all producers from whom the handler was required to collect the assessments, their addresses, total

number of bales, and total assessment collected and remitted for each producer;

(F) Date of last report remitting assessments to the Cotton Board.

(ii) *No Cotton Purchased Report.* Each collecting handler shall submit a no cotton purchased report form for each reporting period in which no cotton was handled for which the handler is required to collect assessments during the reporting period. A collecting handler who handles cotton only during certain months shall file a final no cotton purchased report at the conclusion of such handlers marketing season. If a collecting handler handles cotton during any month following submission of the final report for the handlers marketing season, such handler shall send a collecting handler report and remittance to the Cotton Board by the 10th day of the month following the month in which cotton was handled. The no cotton purchased report shall be signed and dated by the handler of the handler's agent.

(3) *Remittances.* The collecting handler shall remit all assessments to the Cotton Board with the report required in paragraph (a)(2) of this section. All remittances sent to the Cotton Board by collecting handlers shall be made by check, draft, or money order payable to the order of the "Cotton Board". All remittances shall be received subject to collection and payment at par.

(4) *Interest and Late Payment Charges.*

(i) There shall be an interest charge, at rates prescribed by the Cotton Board with the approval of the Secretary, on any handler who is sent a second certified mail notice of past-due assessments from the Cotton Board in any one marketing year (August 1–July 31).

(ii) In addition to the interest charge specified in paragraph (a)(4)(i) of this section, there shall be a late payment charge on any handler whose remittance is not received by the Cotton Board within 10 days after the close of the reporting period in which interest charges were first accrued. The late payment charge shall be 5 percent of the unpaid balance before interest charges have accrued.

(iii) The interest and late payment charges on the unremitted assessments for a particular reporting period will be applied from the first working day on or following the 20th day of the month in which the assessments were due.

(b) *Importer Reports and Remittance.* The United States Customs Service will transmit reports and assessments collected on imported cotton to the Agricultural Marketing Service according to the agreement between the Customs Service and the Agricultural Marketing Service. Upon the request of the Cotton Board, an importer shall file with the Board a report, for a period of time specified in the request, that includes the following information:

(1) The importer's name and address;

(2) The quantity of cotton and cotton products imported;

(3) The amount of the assessment paid on imported cotton and cotton products;

(4) The amount of imported cotton and cotton products on which the assessment was not paid to the Customs Service.

**§ 1205.517 [Redesignated from § 1205.515 and Revised]**

11. Section 1205.515 "Failure to report and remit" is redesignated as § 1205.517 and revised to read as follows.

**§ 1205.517 Failure to report and remit.**

(a) Any collecting handler who fails to submit reports and remittances according to reporting periods and time schedules required in § 1205.516 shall be subject to appropriate action by the Cotton Board which may include one or more of the following actions:

(1) Audits of the collecting handler's books and records to determine the amount owed the Cotton Board;

(2) Requirement that an escrow account for the deposit of assessments collected be established. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Cotton Board with the Approval of the Secretary;

(3) Referral to the Secretary for appropriate enforcement action;

(4) Publication of a collecting handler's name in accordance with the following provisions:

(i) The name of any collecting handler will be subject to publication if the collecting handler:

(A) is sent two certified mail notices of past due assessments and/or collecting handler reports from the Cotton Board in any one marketing year (August 1–July 31), or

(B) is required by the Cotton Board to establish an escrow account for depositing assesaments, in accordance with paragraph (a)(2) of this section, and does not comply with the deposit procedures established by the Cotton Board with approval of the Secretary.

(ii) The name of any collecting handler who is subject to publication will be published by the Cotton Board with the approval of the Secretary in a monthly listing during the primary cotton marketing season (September through March) and a bi-monthly listing during the remainder of the year. The published listing will be distributed by the Cotton Board.

(iii) The Cotton Board, with approval of the Secretary, may notify individual producers that the assessments collected by such producer's collecting handler, whose name is subject to publication in accordance with the provisions of paragraph (a)(4)(i) of this section, have not been remitted to the Cotton Board as required.

(b) Any importer who fails to submit reports to the Cotton Board pursuant to request made according to § 1205.516 or assessments to the Customs Service, shall be subject to one or more of the following actions:

(1) Audits of the importer's books and records to determine the amount owed the Cotton Board.

(2) A deduction for the amount of any unpaid assessment by the Customs Service from the importers surety bond.

(3) Referral to the Secretary for appropriate enforcement action.

12. Section 1205.514 "Customs Service and the collection of the $1 per bale assessment" is added to read as follows:

**§ 1205.514 Customs Service and the Collection of the $1 per bale assessment.**

The Collection of the $1 per bale assessment by the Customs Service shall be as follows:

(a) The Customs Service will collect the assessment from the importer or from any person acting as principal, agent, broker or consignee for cotton or cotton-containing products produced outside the United States and imported into the United States. The Customs Service will collect the assessment on cotton and cotton-containing products identified by Harmonized Tariff Schedule heading numbers in § 1205.510(b)(2) at the time of importation and forward such assessment as per the agreement between the United States Customs Service and the U.S. Department of Agriculture.

(b) In the event of an importer's death, bankruptcy, receivership, or incapacity to act, the representative of such importer, or the importer's estate, or the person acting on behalf of creditors, shall be considered the importer for the purposes of this section.

13. Section 1205.515 "Customs Service and collection of the supplemental assessment" is added to read as follows:

**§ 1205.515 Customs Service and the collection of the supplemental assessment.**

The collection of the supplemental assessment by the Customs Service shall be as follows:

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(a) The Customs Service will collect the supplemental assessment from any person acting as principal, agent, broker or consignee for cotton or cotton-containing products produced outside the United States and imported into the United States. Customs Service will collect the assessment on all cotton and cotton-containing products identified by Harmonized Tariff Schedule heading numbers in § 1205.510(b)(2) at the time of importation and forward such assessment as per the agreement between the United States Customs Service and the U.S. Department of Agriculture.

(b) In the event of an importer's death, bankruptcy, receivership, or incapacity to act, the representative of such importer, or the importer's estate, or the person acting on behalf of creditors, shall be considered the importer for the purposes of this section.

13a. The undesignated center heading preceding § 1205.520, "Refunds" is revised to read Reimbursements."

14. Section 1205.520 "Procedure for obtaining refund" is revised to read as follows:

**§ 1205.520 Procedure for obtaining reimbursement.**

Each importer against whose imports of cotton or cotton-containing products any assessments are made and collected may obtain a reimbursement on that portion of the assessment that was collected on cotton produced in the United States or cotton other than Upland cotton by following the procedures prescribed in this section.

(a) *Application Form.* An importer shall obtain a reimbursement application form from the Cotton Board. Such form may be obtained by written request to the Cotton Board and the request shall bear the importer's signature or the importer's properly-witnessed mark.

(b) *Submission of Reimbursement Application to Cotton Board.* Any importer requesting a reimbursement shall mail the application on the prescribed form to the Cotton Board. The application shall be postmarked within 90 days from the date the assessments were paid on the cotton by such importer. The reimbursement application shall show:

(1) The importer's name, address, phone number and Customs Service identification number;

(2) Weight of the cotton in each HTS category for which the reimbursement is requested;

(3) Subtotal amounts to be reimbursed for each HTS number and grand total to be reimbursed;

(4) Date or inclusive dates on which the assessments were paid;

(5) The name of the port of entry; and

(6) Certification by the importer that the cotton was grown in the U.S. or is other than Upland cotton.

(c) Where more than one importer shared in the assessment payment on cotton, joint or separate reimbursement application forms may be filed. In any such case, the reimbursement application shall show the names, addresses and proportionate shares of assessments paid by all importers. The reimbursement application shall bear the signature of each importer seeking reimbursement.

(d) *Proof of payment of the assessment on U.S. produced or other than Upland cotton.* A copy of the Customs entry form and the commercial invoice filed with the Customs Service shall accompany the importer's reimbursement application. Within 60 days from the date the properly executed application for reimbursement is received by the Cotton Board, the Cotton Board shall make reimbursement to the importer. For joint applications, the reimbursement shall be made payable to all eligible importers signing the reimbursement application. Documentation submitted with reimbursement applications shall not be returned to the importer.

**Warehouse Receipts**

15. Section 1205.525 "Entry of gin code number" is revised to read as follows:

**§ 1205.525 Entry of gin code number.**

The warehouse that first receives a bale for storage after ginning shall enter the gin code number of the gin at which the bale was ginned on the warehouse receipt issued for the bale.

**Reports and Records**

16. Section 1205.530 "Gin reports and reporting schedule" is amended by revising paragraph (a)(2) to read as follows:

**§ 1205.530 Gin Reports and reporting schedule.**

(a) * * *

(2) *Certificate in Lieu of End-of-Season Report.* If a gin is the collecting handler on every bale ginned at such gin and collecting handler reports and remittances of assessments have been made in accordance with § 1205.516, a certification to that effect may be made to the Cotton Board in lieu of an end-of-season report.

* * * * *

17. Section 1205.531 "Records" is revised to read as follows:

**§ 1205.531 Records.**

Each handler or importer required to make reports pursuant to this subpart shall maintain such books and records as are necessary to verify the reports.

18. Section 1205.532 "Retention period for reports and records" is revised to read as follows:

**§ 1205.532 Retention period for reports and records.**

Each handler and importer required to make reports pursuant to this subpart shall retain for at least 2 years beyond the marketing year of their applicability:

(a) One copy of the report made to the Cotton Board; and

(b) Such books and records as are necessary to verify such reports.

19. Section 1205. 533 "Availability of reports and records" is revised to read as follows:

**§ 1205.533 Availability of reports and records.**

Each handler and importer required to make reports pursuant to this subpart shall make available for inspection by the Cotton Board, including its designated employees, and the Secretary any reports, books, or records required under this subpart.

**Confidential Information**

20. Section 1205.540 "Confidential books, records, and reports" is revised to read as follows:

**§ 1205.540 Confidential books, records, and reports.**

All information obtained from the books, records, and reports of handlers and importers shall be kept confidential in the manner and to the extent provided for in § 1205.340.

21. Section 1205.541 "OMB control numbers" is added to the Subpart—Cotton Board Rules and Regulations and reads as follows:

**§ 1205.541 OMB control numbers.**

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511, is OMB number 0581-0093, except Board member nominee information sheets are assigned OMB number 0505-0001.

Dated: June 25, 1992.

**Jo Ann R. Smith,**

*Assistant Secretary Marketing and Inspection Services.*

[FR Doc. 92-15355 Filed 6-29-92; 8:45 am]

BILLING CODE 3410-02-M



**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Parts 214, 251, and 258**

**[INS No. 1418-92]**

**RIN 1115-AC42**

**Denial of Crewman Status in the Case of Certain Labor Disputes and Specifications of Authorized Employment**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim final rule; extension of effective date.

**SUMMARY:** On June 6, 1991, the Immigration and Naturalization Service (Service) published an interim rule at 56 FR 26016 which promulgated regulations implementing sections 202 and 203 of the Immigration Act of 1990, by placing certain restrictions on the admission and employment of alien crewmen during strikes and in their performance of longshore work. The June 6, 1991 interim rule expired on December 31, 1991, and was reinstated by a second interim rule which was published on February 21, 1992, at 57 FR 6183. The interim rule's effective date was further extended through June 30, 1992 by an interim rule published on April 1, 1992 at 57 FR 10978. This document extends the expiration date of the February 21, 1992 interim rule which would otherwise expire on June 30, 1992.

**EFFECTIVE DATE:** This rule is effective July 1, 1992, through October 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Jaromin, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street NW., room 7216, Washington, DC 20536, telephone number (202) 514-3275.

**SUPPLEMENTARY INFORMATION:** On June 6, 1991, the Immigration and Naturalization Service (the Service) published an interim rule in the **Federal Register** at 56 FR 26016, requesting comments by July 8, 1991. On July 10, 1991, at the request of interested parties, the Service published a notice in the **Federal Register** at 56 FR 31305, extending the comment period to August 9, 1991. The June 6, 1991 interim rule expired on December 31, 1991 and was later reinstated on February 21, 1992 through March 31, 1992. The interim rule was further extended through June 30, 1992.

The Service has determined that additional time is required to review and consider the information and comments presented by the public and to further coordinate with the Department of Labor. Therefore, the Service is extending the expiration date of the interim rule through October 31, 1992, before which time a final rule or a second interim rule is expected to be published.

Accordingly, FR Doc 92-3975, 57 FR 6183 (February 21, 1992) is amended by revising the first sentence in the **"DATES"** section to read: "This rule is effective February 21, 1992 through October 31, 1992."

Dated: June 26, 1992.

**Gene McNary,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 92-15506 Filed 6-30-92; 8:45 am]

BILLING CODE 4410-10-M

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 98**

**[Docket No. 89-108]**

**Importation of Certain Animal Embryos and Animal Semen**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning the importation of certain animal embryos and animal semen by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so that the regulations will accurately reflect that the Administrator of the agency holds primary authority and responsibility for various decisions under the regulations.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Dr. Samuel Richeson, Chief Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-4370.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR part 98 (referred to below as the regulations) concern the importation of certain animal embryos and animal semen. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Service (APHIS) was the official responsible for various decisions under these regulations. We are amending 9 CFR part 98 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. Those revisions will be published in separate **Federal Register** documents. Delegations of authority within the agency are contained in 7 CFR part 371.

We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing all referendes to "Veterinary Services" and are replacing them with references to "Animal and Plant Health Inspection Service." With these changes, the terms "Deputy Administrator" and "Veterinary Services" no longer appear in the regulations. Therefore, we are deleting the definitions of those terms. We are also adding definitions of "Administrator" and "Animal and Plant Health Inspection Service." Additionally, we are revising APHIS mailing addresses to reflect the current addresses.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

**Executive Order 12372**

These programs/activities under 9 CFR part 98 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule:

(1) Preempts all State and local laws and regulations that are in conflict with this rule;

(2) Has no retroactive effect; and

(3) Does not require administrative proceedings before parties may file suit in court challenging its provisions.

**Paperwork Reduction Act**

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 9 CFR Part 98**

Animal diseases, Animal embryos, Imports.

Accordingly, we are amending 9 CFR part 98 as follows:

## PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

1. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622; 21 U.S.C. 103, 104, 105, 111, 134a, 134b, 134c, 134d, 134f; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 98.2 [Amended]**

2. In § 98.2, the definitions of *Deputy Administrator* and *Veterinary Services* are removed, and definitions of *Administrator* and *Animal and Plant Health Inspection Service* are added, in alphabetical order, to read as follows:

**§ 98.2 Definitions.**

* * * * *

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

* * * * *

**§ 98.4 [Amended]**

3. In § 98.4(b), remove the words "Import-Export Animals and Products Staff, Veterinary Services, APHIS, USDA" and add, in their place, the words "Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, room 764".

**§§ 98.3, 98.9, and 98.10 [Amended]**

4. In addition to the amendments set forth above, in 9 CFR part 98, remove the word "Deputy" in the following places:

(a) Section 98.3(g);

(b) Section 98.9; and

(c) Section 98.10, both times the word appears.

**§§ 98.2, 98.4, and 98.7 [Amended]**

5. In addition to the amendments set forth above, in 9 CFR part 98, remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

(a) Section 98.2, definition of "Inspector;"

(b) Section 98.4 (a) and (d); and

(c) Section 98.7, introductory text.

Done in Washington, DC, this 19th day of June 1992.

**Robert Melland,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92-14979 Filed 6-30-92; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 91-NM-233-AD; Amendment 39-8269; AD 92-12-06]**

## Airworthiness Directives; Boeing Model 727 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which currently requires that certain landing gear brakes be inspected for wear and replaced if prescribed wear limits are not met, and that the landing gear maximum brake wear limits be incorporated into the FAA-approved maintenance inspection program. This amendment requires the inspection to detect wear of certain additional landing gear brakes that were not listed in the existing rule; replacement of the brakes if the wear limits prescribed in this amendment are not met; and the incorporation of new maximum wear limits into the FAA-approved maintenance inspection program. This amendment is prompted by the determination of the allowable maximum wear limits for the additional brakes. The actions specified by this AD are intended to prevent the loss of braking effectiveness of the landing gear brakes.

**DATES:** Effective August 5, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 5, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; Allied-Signal Aerospace Company, Bendix Wheels and Brakes Division, South Bend, Indiana 46628; and BFGoodrich Aerospace, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** David M. Herron, Aerospace Engineer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056, telephone (206) 227-2672, fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91-18-07, Amendment 39-8010 (56 FR 51162, October 10, 1991), which is applicable to Model 727 series airplanes, was published in the **Federal Register** on January 10, 1992 (57 FR 1122). The action proposed to require that certain landing gear brakes installed on Model 727 series airplanes be inspected for wear and replaced if the wear limits prescribed are not met, and that maximum wear limits for landing gear brakes be incorporated into the FAA-approved maintenance inspection program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

One commenter points out that BFGoodrich Service Bulletin 2-190-32-13, as was called out in paragraph (d) of the published proposal, should be corrected to read "BFGoodrich Service Bulletin No. 2-1190-32-13." The FAA notes this error and has corrected the service bulletin reference in paragraph (d) of the final rule accordingly.

One commenter requests that the maximum dimensional wear limit for the BFGoodrich 2-873 brake be changed. This commenter states that the proposed limit of 0.43 inch for this brake is erroneous and does not allow for the use of tolerance buildup during brake rebuild. Further, the 2-873 brake does not have a wear pin; the fully worn condition of this brake is indicated when the adjuster pins are flush with the adjuster bushings. Therefore, this commenter recommends that the maximum acceptable worn condition of

the 2–873 brakes be defined as "when the adjuster pin is flush with an adjuster bushing." This criteria is identical to established procedures and assures full compliance with the worn brake rejected takeoff (RTO) requirements. The FAA concurs that the wear limit requirements for the 2–873 brake should be revised as requested. Since a specific brake wear limit (in terms of "inches") is not normally considered when replacing this particular brake, the FAA considers it more appropriate to specify the applicable indicators for replacement, i.e., "when the adjuster pin is flush with an adjuster bushing." In light of this, the final rule has been revised to remove the 2–873 brake from Table 2 of paragraph (f), and to include a new paragraph (h) to specify the correct replacement requirements for this particular brake.

One commenter requests that this AD action be issued as a "revision" rather than a "supersedure" of the existing AD. The commenter states that adoption of the rule as a supersedure will require operators now in compliance with AD 91–18–07 to change their paperwork to reflect the new AD number. While paperwork changes are admittedly not a great expense item, this commenter believes that superseding an existing AD in this instance serves no useful purpose. The FAA does not concur. The FAA's current policy (reference FAA Order 8040.1B) is that, whenever a "substantive change" is made to an existing AD, the AD must be superseded, rather than revised. "Substantive changes" are those made to any instruction or reference that affects the substance of the AD, and includes part numbers, service bulletin and manual references, compliance times, applicability, methods of compliance, corrective action, inspection requirements, and effective dates. In the case of this AD rulemaking action, the changes being made to the existing AD are considered substantive. This superseding AD is assigned a new amendment number and new AD number; the previous amendment is deleted from the system. This procedure facilitates the efforts of the Principal Maintenance Inspectors in tracking AD's and ensuring that the affected operators have incorporated the latest changes into their maintenance programs.

With regard to paperwork changes required by affected operators, Federal Aviation Regulations (FAR) § 121.380(a)(2)(v), "Maintenance recording requirements," requires that persons holding an operating certificate and operating under FAR part 121 must keep records "indicating the current status of applicable airworthiness directives, including the method of compliance." Whether an existing AD is superseded or revised, the new AD is assigned a new AD number: A superseding AD is assigned a new 6-digit AD number; a revising AD retains the original 6-digit AD number, but an "R1" is added to it. In either case, the new AD is identified by its "new" AD number, not by the "old" AD number. In light of this, affected operators updating their maintenance records to indicate the current AD status would have to record a new AD number in all cases, regardless of whether the AD is a superseding or a revising AD. Further, operators are always given credit for work previously performed in accordance with the existing AD by means of the phrase in the compliance section of the AD that states, "Required * * * unless accomplished previously." This AD also provides credit for work previously performed by retaining the requirements of the previous AD in paragraphs (a) and (b) of the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,706 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 953 airplanes of U.S. registry and 27 operators will be affected by this AD action. (Approximately 26 airplanes and 13 operators are added by this AD action.)

The FAA estimates that, for 943 of the affected airplanes, it would take approximately 15 work hours per airplane to accomplish the required actions, at an average labor cost of $55 per work hour. In addition, the cost of parts to accomplish the change in wear limits for these 943 affected airplanes (that is, the cost resulting from the requirement to change brakes before they are worn to their previously approved limits for a one-time change) will average $2,500 per airplane. Based on these figures, the cost impact of this AD on U.S. operators of these airplanes will be $3,135,475, or $3,325 per airplane.

For the other 10 affected airplanes, the FAA estimates that it would take approximately 15 work hours per airplane to accomplish the required actions, at an average labor cost of $55 per work hour. In addition, the cost of parts to accomplish the change in wear limits to these 10 affected airplanes (the cost resulting from the requirement to change brakes before they are worn to their previously approved limits for a one-time change) will average $5,580 per airplane. Based on these figures, the cost impact of this AD on U.S. operators of these airplanes will be $84,050, or $8,405 per airplane.

Further, the FAA estimates that it will require 20 work hours per operator, at an average labor cost of $55 per work hour, to incorporate the requirements into an operator's FAA-approved maintenance inspection program. Based on these figures, the total cost impact of the AD on 27 affected U.S. operators is estimated to be $29,700, or $1,100 per operator.

Based on the figures discussed above, the total cost impact of this AD on U.S. operators will be $3,229,295. Of this total cost figure, approximately $100,750 is added by this specific AD action (that is, the costs relative to the 26 airplanes and 13 operators added by the requirements of this AD). These total cost figures assume that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8010 (56 FR 51162, October 10, 1991), and by adding a new airworthiness directive (AD), amendment 39–8269, to read as follows:

**92–12–06. Boeing:** Amendment 39–8269. Docket No. 91–NM–233–AD. Supersedes AD 91–18–07, Amendment 39–8010.

*Applicability:* Model 727 series airplanes; equipped with brake part numbers (P/N) identified in Tables 1 and 2 of this AD, and BFGoodrich brake P/N 2–673; certificated in any category.

Compliance required as indicated, unless accomplished previously.

To prevent loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after November 12, 1991 (the effective date of Amendment 39–8010, AD 91–18–07) inspect brakes having the part numbers shown in Table 1, below, for wear. Any brake worn more than the maximum wear limit specified must be replaced, prior to further flight, with either a brake within that maximum wear limit or one built in accordance with the applicable service bulletins specified in paragraphs (c), (d), or (e) of this AD, as applicable.

TABLE 1

| Brake mfr. | Brake P/N | Boeing P/N | Maximum wear limit (inches) |
|---|---|---|---|
| BFGoodrich | 2–1147 | 10–61287–10 | 1.6 |
| BFGoodrich | 2–1147–1 | 10–61287–12 | 1.6 |
| BFGoodrich | 2–1147–3 | 10–61287–15 | 1.6 |
| BFGoodrich | 2–1147–4 | 10–61287–25 | 1.6 |
| BFGoodrich | 2–1190 | 10–61287–13 | 1.6 |
| Bendix | 2601182–6 | 10–61287–23 | 1.7 |

(b) Within 180 days after November 12, 1991 (the effective date of Amendment 39–8010, AD 91–18–07), incorporate the maximum brake wear limits specified in paragraph (a) of this AD into the FAA-approved maintenance program.

(c) The allowable wear limits for BFGoodrich (BFG) brake part numbers 2–1147 and 2–1147–1, –3, and –4 may be established in accordance with BFG Service Bulletin No. 2–1147–32–13, dated December 21, 1990, and placed into the operator's FAA-approved maintenance program in lieu of those specified in paragraph (a) of this AD.

(d) The allowable wear limit for BFG brake part number 2–1190 may be established in accordance with BFG Service Bulletin No. 2–1190–32–13, dated December 21, 1990, and placed into the operator's FAA-approved maintenance program in lieu of that specified in paragraph (a) of this AD.

(e) The allowable wear limits for Bendix brake part number 2601182–6 may be established in accordance with Bendix (Allied Signal Aerospace Company) Service Bulletin No. 2601182–32–014, dated January 30, 1991, in lieu of that specified in paragraph (a) of this AD. Either that service bulletin or the wear limit specified in paragraph (a) of this AD shall be placed into the operator's FAA-approved maintenance program, but not both.

(f) Within 180 days after the effective date of this AD, inspect brakes having the part numbers shown in Table 2, below, for wear. Any brake worn more than the maximum wear limit specified must be replaced, prior to further flight, with a brake within that maximum wear limit:

TABLE 2

| Brake mfr. | Brake P/N | Boeing P/N | Maximum wear limit (inches) |
|---|---|---|---|
| Bendix | 2601182–5 | 10–61287–22 | 1.8 |
| BFGoodrich | 2–872–5 | 10–60465–16 | 0.50 |

(g) Within 180 days after the effective date of this amendment incorporate the maximum brake wear limits specified in Table 2 of paragraph (f) of this AD into the operator's FAA-approved maintenance program.

(h) For airplanes equipped with brakes having BFGoodrich P/N 2–673: Within 180 days after the effective date of this amendment, incorporate the following into the operator's FAA-approved maintenance program:

"Replace BFGoodrich P/N 2–673 brakes prior to or when the adjuster pin is flush with the adjuster bushing."

(i) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(j) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(k) The alternative maximum brake wear limits shall be established in accordance with BFGoodrich Service Bulletin No. 2–1147–32–13, dated December 21, 1990; BFGoodrich Service Bulletin No. 2–1190–32–13, dated December 21, 1990; or Bendix (Allied Signal Aerospace Company) Service Bulletin No. 2601182–32–014, dated January 30, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; Allied-Signal Aerospace Company, Bendix Wheels and Brakes Division, South Bend, Indiana 46628; or BFGoodrich Aerospace, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(l) This amendment becomes effective on August 5, 1992.

Issued in Renton, Washington, on May 21, 1992.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-15396 Filed 6-30-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-254-AD; Amendment 39-8292; AD 92-13-12]

## Airworthiness Directives; Boeing Model 747-300 and 747-400 Series Airplanes Equipped With BFGoodrich Door 1, 2, 4, and 5 Evacuation Systems

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), that is applicable to certain Boeing Model 747-300 series airplanes and all Model 747-400 series airplanes equipped with certain BFGoodrich escape slide/rafts. This amendment requires modification of the main deck doors' 1, 2, 4, and 5 evacuation systems. This amendment is prompted by reports indicating that deployed escape slide/rafts inflate slowly due to high internal regulator friction, or experience low pressure at low ambient temperatures. The actions specified by this AD are intended to prevent delayed inflation of the escape slide/rafts, which could delay or impede the evacuation of passengers during an emergency.

**DATES:** Effective August 5, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 5, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from BFGoodrich Company, Aerospace, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Andrew Gfrerer, Aerospace Engineer, Mechanical/Environmental and Crashworthiness Section, ANM-131L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 E. Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5338; fax (310) 988-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747-300 series airplanes and all Model 747-400 series airplanes equipped with certain BFGoodrich escape slide/rafts was published in the Federal Register on January 8, 1992 (57 FR 655). That action proposed to require modification of the main deck doors' 1, 2, 4, and 5 evacuation systems.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

Two commenters request that the economic analysis paragraph be revised to reflect total costs for all slides/rafts, rather than costs per slide/raft, in order to correctly represent the cost to operators. There are a total of eight slides/rafts on each airplane: 6 slide/rafts at doors 1, 4, and 5; and 2 slide/rafts at door 2. The FAA concurs, and the economic analysis paragraph, below, has been revised accordingly.

Two commenters request that the proposed 12-month compliance time be extended to 36 months so that the modification can be accomplished during a scheduled overhaul of the slide/rafts. Both commenters contend that safety should be assured in the interim, based on the fact that documented cases of slow inflation are, with one exception, well within Federal Aviation Regulation requirements, and all units that were delivered met the certification criteria. Another commenter, BFGoodrich, has advised it can neither manufacture nor procure sufficient components to support the proposed 12-month compliance time, and concludes that the shortest compliance time that could be supported would be 24 months after issuance of the final rule. The FAA concurs that the compliance time may be extended. In developing the originally proposed compliance time, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required modifications during operators' normal maintenance schedules. Based on the new data concerning parts availability provided by the slide manufacturer, the FAA has now determined that extending the compliance time to 24 months is appropriate. The final rule has been revised accordingly.

Since issuance of the notice, BFGoodrich has issued Revision 1 to Service Bulletin 25-232, dated March 10, 1992. This revision is essentially the same as the original, but includes procedures for applying Parker "Super-O-Lube" lubricant on all O-ring surfaces for the regulator valve. The FAA has revised the final rule to reflect this latest revision to the service bulletin as an additional source of service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 243 Model 747-300 and 747-400 series airplanes of the affected design in the worldwide fleet. It is estimated that 38 airplanes of U.S. registry would be affected by this proposed AD. The slide manufacturer will provide required parts to operators on an exchange basis at no cost to operators.

If the required modification is performed during a regular maintenance check, it will take approximately 2 work hours per slide/raft at doors 1, 4, and 5 to accomplish; there is a total of 6 slide/rafts at doors 1, 4, and 5, left and right. It would take approximately 4 work hours per slide/raft at door 2 to accomplish the modification; there is a total of 2 slide/rafts at door 2, left and right. The average labor rate is $55 per work hour. In this case, the total cost per airplane will be $1,100.

If the required modification is accomplished at a time other than during scheduled maintenance, it will take approximately 13.5 work hours per slide/raft at doors 1, 4, and 5 to accomplish; there is a total of 6 slide/rafts at doors 1, 4, and 5, left and right. It will take approximately 15.5 work hours per slide/raft at door 2 to accomplish the modification; there is a total of 2 slide/rafts at door 2, left and right. The average labor rate is $55 per work hour. In this case, the total cost per airplane will be $8,160.

Based on the figures described above, the total cost impact of the AD on U.S. operators will be between $41,800 and $234,080. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-13-12. **Boeing:** Amendment 39-8282. Docket 91-NM-254-AD.

*Applicability:* Boeing Model 747-400 series airplanes equipped with BF Goodrich slide/raft P/N 7A1467-1 through-16 (main deck, doors 1 and 4), P.N 7A1479-1 Through-10 (main deck, door 2), P/N 7A1469-1 through-8 (main deck, door 5); and Boeing 747-300 airplanes equipped with BF Goodrich slide/raft PN 7A1479-1 through-10 (main deck, door 2); certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent delayed inflation of deployed escape slide/rafts, accomplish the following:

(a) For main deck doors 1, 2, 4, and 5: Within 24 months after the effective date of this AD, modify the regulator, P/N 5A2851-1 or-2 (subassembly of reservoir assembly P/N 5A2832-1 or-2), to become reservoir assembly P/N 5A2832-3; and perform a regulator leak check; in accordance with the Accomplishment Instructions, paragraphs 2.A. through 2.F., of BF Goodrich Service Bulletin 25-232, dated November 18, 1991; or Revision 1, dated March 16, 1992.

(b) For main deck door 2: Within 24 months after the effective date of this AD, modify the aspirators, P/N 4A3166-1, to form new aspirator assembly P/N 5A2870-1, in accordance with the Accomplishment Instructions, paragraph 2.G., of BF Goodrich Service Bulletin 25-232, dated November 18, 1991; or Revision 1, dated March 16, 1992.

(c) Subsequent to accomplishing the requirements of paragraph (a) and (b) of this AD, reidentify the modified slide/rafts in accordance with paragraph 3.B., Identification, of BF Goodrich Service Bulletin 25-232, dated November 18, 1991; or Revision 1, dated March 16, 1992.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The modifications shall be done in accordance with BF Goodrich Service Bulletin 25-232, dated November 18, 1991; or BF Goodrich Service Bulletin 25-232, Revision 1, dated March 16, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from BF Goodrich Company, Aerospace, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment becomes effective on August 5, 1992.

Issued in Renton, Washington, on June 5, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-15451 Filed 6-30-92; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 92-NM-118-AD; Amendment 39-8290; AD 92-14-06]**

## Airworthiness Directives; Aerospatiale Model ATR42-300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42-300 series airplanes, that currently requires modification of the engine and propeller control cables by adding a sealing sheath and protective sleeve, and installation of a deflector on the engine aft upper cowling below the zone ventilation air inlet. The actions specified in that AD are intended to prevent a malfunction of the engine and propeller controls. This amendment deletes the requirement of that AD to install a deflector, since a separate AD was recently issued to require the installation of an improved deflector. The similar requirements of the two AD's currently are in conflict.

**DATES:** Effective July 1, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 1992.

Comments for inclusion in the Rules Docket must be received on or before August 31, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-118-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** On December 9, 1988, the FAA issued AD 88-28-04, Amendment 39-6004 (53 FR 51095, December 20, 1988), to require

modification of the engine and propeller control cables by adding a sealing sheath and protective sleeve, and installation of a deflector on the engine aft upper cowling below the zone ventilation air inlet. That action was prompted by reports of accumulation of water in the engine and propeller control cables causing corrosion and/or the formation of ice in the cables. The actions required by that AD are intended to prevent a malfunction of the engine and propeller controls.

Since the issuance of that AD, the FAA has issued AD 92-09-01, Amendment 39-8226 (57 FR 14793, April 23, 1992), which requires the installation of an improved heat deflector on the rear upper cowl, and a thermal bridge between the teleflex controls and the air conditioning duct. At the time the FAA issued that AD, it inadvertently failed to reconcile the deflector installation requirements of AD 92-09-01 with the similar requirements previously required by AD 88-26-04. Consequently, the two requirements conflict with each other, and the FAA has determined that the deflector installation required by AD 88-26-04 must be deleted.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since the unsafe condition presented by the malfunctioning of the engine and propeller controls is likely to exist or develop on airplanes of this same type design, action is taken herein to supersede AD 88-26-04 with a new AD that continues to require modification of the engine and propeller control cables by adding a sealing sheath and protective sleeve. However, this action deletes the previous requirement for the specific deflector installation cited in AD 88-26-04.

Paragraph (b) of this AD has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

Since this AD deletes a requirement that conflicts with the requirements of another AD, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

## Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-118-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

## § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6094 (53 FR 51095, December 20, 1988), and by adding a new airworthiness directive (AD), amendment 39-8290, to read as follows:

**92-14-08. Aerospatiale:** Amendment 39-8290. Docket 92-NM-118-AD. Supersedes AD 88-26-04, Amendment 39-6094.

*Applicability:* Model ATR42-300 series airplanes; as listed in Aerospatiale Service Bulletins ATR42-76-0002, Revision 1, dated May 16, 1988; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a malfunction of the engine and propeller controls, accomplish the following:

(a) Within 60 days after February 3, 1989 (the effective date of AD 88-26-04, Amendment 39-6094), modify the engine and propeller push-pull control cables on the left and right engines by adding a sealing sheath and protective sleeve, in accordance with Aerospatiale Service Bulletin ATR42-76-0002, Revision 1, dated May 16, 1988.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Aerospatiale Service Bulletin ATR42-76-0002, Revision 1, dated May 16, 1988, which incorporates the following list of effective pages:

| Page No. | Revision level | Date |
|---|---|---|
| 1–3 | 1 | May 16, 1988. |
| 4 | Original | Jan. 18, 1988. |

The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment becomes effective on July 1, 1992.

Issued in Renton, Washington, on June 17, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–15440 Filed 6–30–92; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 92–CE–10–AD; Amendment 39–8300; AD 92–15–06]**

## Airworthiness Directives; Beech 33 and 36 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes Airworthiness Directive (AD) 91–23–07, which currently requires initial and repetitive inspections of the rudder forward spar for cracks on certain Beech 33 and 36 series airplanes, replacement if found cracked, and an extension of the repetitive inspections if a Space Machine Products (SMP) reinforcement bracket is installed. This action retains the requirements of AD 91–23–07, but requires accomplishment in accordance with new service information and eliminates the need for repetitive inspections if one of three modifications to the rudder spar is accomplished. The actions specified by this AD are intended to prevent separation of the rudder from the airplane caused by cracks in the forward rudder spar.

**DATES:** Effective August 22, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 22, 1992.

**ADDRESSES:** Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4122; Facsimile (316) 936–4407.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech 33 and 36 series airplanes was published in the **Federal Register** on March 3, 1992 (57 FR 7559). The action proposed superseding AD 91–23–07 with a new Ad that would (1) retain the inspection and possible replacement requirements of the rudder forward spar that is required by AD 91–23–07; (2) require accomplishment of these actions in accordance with Beech Service Bulletin No. 2333, Revision 1, dated November 1991; and (3) eliminate the need for the repetitive inspections if one of three modifications to the rudder forward spar is accomplished.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The comment is from the Beech Aircraft Corporation. Beech states that the reference to paragraph (b)(1) in this same paragraph of the proposed AD should be referenced as paragraph (b)(4). Presently, paragraph (b)(1) is written "Reinspect * * * until either paragraph (b)(1), (b)(2), or (b)(3) of this Ad is accomplished;". The FAA concurs that the paragraph should be corrected and paragraph (b)(1) of the proposed AD has been changed to read "Reinspect * * * until either paragraph (b)(2), (b)(3), or (b)(4) of this Ad is accomplished;".

Beech also states that the reference to Kit No. 33–60001–1 S as specified in paragraphs (b)(2) and (c)(2) of the proposed AD is incorrect and should refer to Kit No. 33–6001–1 S. The FAA concurs and has changed paragraphs (b)(2) and (c)(3) of the proposed AD accordingly.

No comments have been received on the FAA's determination of the cost of the proposed AD to the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above as a result of the comments and minor editorial corrections. The FAA has determined that these minor changes and corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 5,900 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $649,000. The only differences between the actions of this AD and that required by AD 91–23–07, which will be superseded by this AD, are a revision in the service information and the option of eliminating repetitive inspections by accomplishing one of three modifications. There is no additional cost impact on U.S. operators than that which is already required by AD 91–23–07.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing AD 91–23–07, Amendment 39–8076 (56 FR 56149, November 1, 1991), and adding the following new AD:

**92–15–06 Beech:** Amendment 39–8300; Docket No. 92–CE–10–AD. Supersedes AD 91–23–07, Amendment 39–8076.

*Applicability:* The following Beech model and serial numbered airplanes, certificated in any category:

| Models | Serial Nos. |
|---|---|
| 35–33, 35–A33, 35–B33, 35–C33, E33, F33, and G33. | CD–1 through CD–1304. |
| 35–C33A, E33A, and F33A. | CE–1 through CE–1425. |
| E33C and F33C | CJ–1 through CJ–179 |
| 36 and A36 | E–1 through E–2518 |
| A36TC and B36TC | EA–1 through EA–500. |

*Compliance:* Required as indicated after the effective date of this AD, unless already accomplished (superseded AD 91–23–07).

To prevent separation of the rudder from the airplane caused by cracks in the forward rudder spar, accomplish the following:

(a) Upon the accumulation of 1,000 hours time-in-service (TIS) or within the next 100 hours TIS, whichever occurs later, inspect the rudder forward spar for cracks in accordance with the instructions in Beech Service Bulletin (SB) No. 2333, Revision i, dated November 1991.

(b) If no cracks are found per the inspection required in paragraph (a) of this AD, accomplish one of the following:

(1) Reinspect the rudder forward spar for cracks in accordance with the instructions in Beech SB No. 2333, Revision 1, dated November 1991, at intervals not to exceed 500 hours TIS until either paragraph (b)(2), (b)(3), or (b)(4) of this AD is accomplished;

(2) Install Kit No. 33–6001–1 S in accordance with Beech SB No. 2333, Revision 1, dated November 1991;

(3) Install a Spacecraft Machine Products (SMP) reinforcement bracket in accordance with Supplemental Type Certificate (STC) SA4099NM; or

(4) Replace the rudder assembly with either part number 33–630000–137, –139, –141, –167, or –169, whichever is applicable, in accordance with the instructions in Beech SB No. 2333, Revision 1, dated November 1991.

(c) If cracks are found per the inspection required by paragraph (a) of this AD, prior to further flight, accomplish one of the following:

(1) Replace the rudder assembly with either part number 33–630000–137, –139, –141, –167, or –169, whichever is applicable, in accordance with the instructions in Beech SB No. 2333, Revision 1, dated November 1991;

(2) Install Kit No. 33–6001–1 S in accordance with Beech SB No. 2333, Revision 1, dated November 1991; or

(3) If the cracks are only in the area of the upper hinge around the rivets and fasteners as specified in Beech SB No. 2333, Revision 1, dated November 1991, then a SMP reinforcement bracket may be installed in accordance with SA4099NM after the cracks are stop drilled.

(d) If a modification or replacement has been accomplished in accordance with either paragraph (b)(2), (b)(3), (b)(4), (c)(1), (c)(2), or (c)(3) of this AD, then no repetitive inspections or further action is required by this AD.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(g) The inspections and possible replacements or installations required by this AD shall be done in accordance with Beech Service Bulletin No. 2333, Revision I, dated November 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW; Room 8401, Washington, DC.

(h) This amendment (39–8300) supersedes AD 91–23–07, Amendment 39–8076.

(i) This amendment (39–8300) becomes effective on August 22, 1992.

Issued in Kansas City, Missouri, on June 24, 1992.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–15411 Filed 6–30–92; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 92–NM–13–AD; Amendment 39–8278; AD 92–13–06]**

## Airworthiness Directives; Boeing Model 747–400 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that requires installation of shields and tape to keep unwanted materials away from the drain mast heater elements. This amendment is prompted by reports of fires in the drain mast areas. The actions specified by this AD are intended to prevent fires in the drain mast internal space.

**DATES:** Effective August 5, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 5, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2788; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes was published in the **Federal Register** on February 12, 1992 (57 FR 5094). That action proposed to require installation of shields and tape to keep unwanted materials away from the drain mast heater elements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters supported the proposal.

One commenter notes that there may be some additional foreign-operated airplanes that were modified after delivery to include a drain mast configuration similar to that addressed by the proposal; however, these airplanes were not included in the applicability of the proposal. The commenter requests clarification as to whether those airplanes are affected by the requirements of the proposal. The FAA recognizes that additional rulemaking action may be necessary to address the worldwide fleet of airplanes that were equipped with affected drain mast configurations after delivery. However, further identification and verification of the existence of such airplanes is necessary before additional rulemaking can be initiated. This final rule is issued without change in the applicability.

One commenter, an operator, requests an extension of the compliance time for the installation of protective material in the aft drain mast from the proposed 12 months to 36 months. This commenter describes specific "cleanliness procedures" that are currently used, with regard to its fleet of affected airplanes, to reduce the possibility of debris accumulating in the drain mast area. This commenter considers that an extension to the compliance time would be appropriate due to the low risk of accumulation of debris in this area. The FAA does not concur. Since the cargo compartment floor is not sealed, debris can come in contact with either of the drain mast heater elements and subsequently cause a fire in the drain mast internal space. Although the aft drain mast is located in a relatively more restricted access area than the mid drain mast, the aft drain mast is still subject to the accumulation of debris. As for the commenter's "cleanliness procedures," the FAA recognizes that, while these procedures may be effective for this operator in reducing the amount of debris accumulation in the affected area, other operators may not follow such procedures. In light of this, the FAA considers the 12-month compliance time, as proposed, to be appropriate. Paragraph (c) of the final rule, however, provides for the approval of adjustments of the compliance time, provided that data is submitted to substantiate that such adjustments will provide an acceptable level of safety in the interim.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 28 Model 747–400 series airplanes of the affected design in the worldwide fleet. Currently, there are no airplanes on the U.S. registry that will be affected by this proposed AD. However, should an airplane be added to the U.S. registry, it will take approximately 43 work hours per airplane to accomplish the required actions, and the average labor rate is $55 per work hour. Required parts will be provided at no cost to the operator. Based on these figures, the total cost impact of the AD is estimated to be $2,365 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92–13–08. Boeing:** Amendment 39–8278. Docket 92–NM–13–AD.

*Applicability:* Model 747–400 series airplanes; as listed in Boeing Alert Service Bulletin 747–38A2090, dated November 21, 1991; certificated in any category.

*Compliance.* Required within 12 months after the effective date of this AD, unless accomplished previously.

To prevent fires in the drain mast internal space, accomplish the following:

(a) Install shields with sealant over the mid and aft drain masts in accordance with Boeing Alert Service Bulletin 747–38A2090, dated November 21, 1991.

(b) Install moisture resistant and thermal insulation tape around the forward drain tube and heater elements on the mid and aft drain masts in accordance with Boeing Alert Service Bulletin 747–38A2090, dated November 21, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The installations shall be done in accordance with Boeing Alert Service Bulletin 747–38A2090, dated November 21, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 100 L Street NW., room 8401, Washington, DC.

(f) This amendment becomes effective on August 15, 1992.

Issued in Renton, Washington, on June 3, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–15452 Filed 6–30–92; 8:45 am]

BILLING CODE 4910–13–M

## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Parts 140 and 145**

### Commission Eastern Regional Office; Change of Address

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule amendments.

**SUMMARY:** The Commodity Futures Trading Commission is amending its regulations to include the new address for its recently relocated Eastern Regional Office. This office, while remaining in the same city, has moved to a new location in the same building in New York, New York. The Commission is also amending part 145, appendix A to show the new address for obtaining records from the Central Regional Office and to show the new telephone number for the Western Regional Office.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Gerry Smith, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, 20581, (202) 254–6090.

**SUPPLEMENTARY INFORMATION:** Commission regulation 140.2 is being amended to reflect the fact that the Eastern Regional Office of the Commission has been moved. The Eastern Regional Office of the Commission has moved from 1 World Trade Center, suite 4747, New York, New York, 10048 to 1 World Trade Center, suite 3747, New York, New York, 10048.

Certain other provisions of the Commission's regulations contain references to or addresses of the Commission's Eastern Regional Office. The appropriate changes have been made to reflect the new addresses in each of these provisions.

The following rules shall be effective immediately. The Commission finds that the amendments relate solely to agency organization, procedure or practice and that the public procedures and publication, prior to the effective date of the amendments, in accordance with the Administrative Procedure Act, as codified, 5 U.S.C. 53, are not required.

Based upon the foregoing, pursuant to its authority contained in section 2(a)(11) of the Commodity Exchange Act, 7 U.S.C. 4a(j) (1976), the Commission hereby amends parts 140 and 145 of the Code of Federal Regulations as follows:

### PART 140—[AMENDED]

1. The authority citation for part 140 continues to read as follows:

**Authority:** 17 U.S.C. 12a.

2. Section 140.2 is amended by revising paragraph (a) to read as follows:

**§ 140.2 Regional Offices—Regional Directors.**

* * * * *

(a) The Eastern Regional Office is located at 1 World Trade Center, suite 3747, New York, New York 10048 and is responsible for enforcement of the act and administration of programs of the Commission in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

* * * * *

### PART 145—[AMENDED]

3. The authority citation for part 145 continues to read as follows:

**Authority:** Pub.L. 89–554, 80 Stat. 383, Pub.L. 90–23, 81 Stat. 54, Pub.L. 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a). Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j); Pub.L. 99–570, unless otherwise noted.

Section 1456.6(d) is revised to read as follows:

**§ 145.6 Commission offices to contact for assistance; registration records available.**

(a) Whenever this part directs that a request be directed to the FOI, Privacy and Sunshine Acts compliance staff at the principal office of the Commission in Washington, DC, the request shall be made in writing and shall be addressed or otherwise directed to the Assistant Secretary for FOI, Privacy and Sunshine Acts Compliance, Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. The telephone number of the compliance staff is (202) 254–3382. Requests for public records directed to a regional office of the Commission pursuant to § 145.0(c) and 145.2 should be sent to:

Division of Economic Analysis, Commodity Futures Trading Commission, One World Trade Center, suite 3747, New York, New York 10048, Telephone: (212) 466–2061.

Division of Trading and Markets, Commodity Futures Trading Commission, 300 South Riverside Plaza, suite 1600 North, Chicago, Illinois 60606, Telephone: (312) 353–5990.

Division of Trading and Markets, Commodity Futures Trading Commission, 510 Grain Exchange Building, Minneapolis, Minnesota 55415, Telephone: (612) 370–3255.

Division of Trading and Markets, Commodity Futures Trading Commission, 4900 Main Street, suite 721, Kansas City, Missouri 64112, Telephone: (816) 374–6602.

Division of Enforcement, Commodity Futures Trading Commission, 10880 Wilshire Blvd., suite 1005, Los Angeles, California 90024, Telephone: (310) 575–6783.

5. Appendix A to part 145 is amended by revising paragraph (b) to read as follows:

**Section 145 Appendix A—Compilation of Commission Records Available to the Public**

* * * * *

(g) Division of Trading and Markets. Publicly available portions of registration documents are available from the Division of Trading and Markets, Commodity Futures Trading Commission, 300 South Riverside Plaza, suite 1600 North, Chicago, Illinois 60606 or from the National Futures Association, 200 West Madison Street, Chicago, Illinois 60606. See Commission Rule 145.6.

* * * * *

Issued in Washington, DC, on June 24, 1992, by the Commission.

**Jean A. Webb,**

*Secretary to the Commission.*

[FR Doc. 92–15309 Filed 6–30–92; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF LABOR

**Employment and Training Administration**

**20 CFR Part 655**

**RIN 1205–AA90**

**Wage and Hour Division**

**29 CFR Part 507**

**RIN 1215–AA70**

### Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

**AGENCIES:** Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Interim final rule; extension of effective date.

**SUMMARY:** The Department of Labor has promulgated regulations for filing and enforcement of attestations by employers seeking to use certain alien crewmembers to perform longshore work at U.S. ports. This document extends the expiration date of the interim final rule.

**DATES:** Effective June 29, 1992 the expiration of the interim final rule published on May 30, 1991, as corrected at 56 FR 29431 (June 27, 1991), and extended by documents published January 3, 1992 (57 FR 182) and April 1, 1992 (57 FR 10989) is extended through July 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** On 20 CFR part 655, subpart F, and 29 CFR part 506, subpart F, contact Flora Richardson, Chief, Division of Foreign Labor Certifications, United States Employment Service, Employment and Training Administration, Department of Labor, room N–4470, 200 Constitution Avenue, NW., Washington, DC 20210.

Telephone: (202) 535–0174 (this is not a toll-free number).

On 20 CFR part 655, subpart G, and 29 CFR part 506, subpart G, contact Solomon Sugarman, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 523–7605 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On May 30, 1991, the Department of Labor (DOL) published an interim final rule adding, at 20 CFR part 655, subparts F and G, and at 29 CFR Part 507, subparts F and G, regulations for filing and enforcement of attestations by employers seeking to use certain alien crewmembers to perform longshore work at U.S. ports, pursuant to section 258 of the Immigration and Nationality Act. 56 FR 24648 (May 30, 1991); see 8 U.S.C. 1288. Public comments were invited through July 29, 1991, and the interim final rule was effective from May 28, 1991, through December 31, 1991. The expiration date later was extended through March 31, 1992. 57 FR 182 (January 3, 1992). It was further extended through June 30, 1992. 57 FR 10989 (April 1, 1992).

DOL has determined that it requires additional time to publish the final rule. This additional time will extend past June 30, 1992. So as not to have an interruption in the regulations governing the program, DOL is extending the expiration date for the interim final rule, before which time a final rule is expected to be published.

Accordingly, FR Doc. 91–12718, 56 FR 24648 (May 30, 1991), is amended, by revising the first sentence in the "**DATES**" section to read *"Effective dates:* May 28, 1991, through July 10, 1992."

Signed at Washington, DC, this 26th day of June, 1992.

**Lynn Martin,**

*Secretary of Labor.*

[FR Doc. 92–15522 Filed 6–29–92; 9:02 am]

BILLING CODE 4510–30–M; 4510–27–M

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## Occupational Safety and Health Administration

### 29 CFR Part 1910

### Update of Addresses for Obtaining Technical Manuals; Corrections

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** This document corrects certain addresses for obtaining technical manuals in §§ 1910.1450 and 1910.1500.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N–3649, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523–8151.

**SUPPLEMENTARY INFORMATION:**

### List of Subjects in 29 CFR Part 1910

Occupational Safety and Health.

Accordingly, 29 CFR part 1910, subpart Z is corrected by making the following correcting amendments:

### PART 1910—[CORRECTED]

1. The authority citation for 29 CFR part 1910, subpart Z continues to read in part as follows:

**Authority:** Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z–1–A, which have identical limits listed in the Transitional Limits columns of Table Z–1–A, Table Z–2 or Table Z–3. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

* * * * *

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5, U.S.C. 553.

Section 1910.1450, is also issued under secs. 6(b), 8(c), and 8(g)(2), Pub. L. 91–596, 84 Stat. 1593, 1599, 1600; 2a U.S.C. 655, 657.

### § 1910.1450 [Corrected]

2. In 29 CFR 1910.1450, appendix B, reference (b) 1, the address for the American Conference of Governmental Industrial Hygienists is revised from "P.O. Box 1937, Cincinnati, Ohio 45201" to "6500 Glenway Avenue, Bldg. D–7, Cincinnati, Ohio 45211–4438".

3. In 29 CFR 1910.1450, appendix B, reference (c)1. is revised to read "American Conference of Governmental Industrial Hygienists Industrial Ventilation (latest edition), 6500 Glenway Avenue, Bldg. D–7, Cincinnati, Ohio 45211–4438.

### § 1910.1500 [Corrected]

4. In 29 CFR 1910.1500, the address for the American Conference of Governmental Industrial Hygienists is revised from "1014 Broadway, Cincinnati, Ohio 45202" to "6500 Glenway Avenue, Bldg. D–7, Cincinnati, Ohio 45211–4438".

Signed at Washington, DC, this 25th day of June, 1992.

**Dorothy L. Strunk,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 92–15365 Filed 6–30–92; 8:45 am]

BILLING CODE 4510–26–M

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## Occupational Safety and Health Administration

### 29 CFR Part 1910

**RIN 1218–AB26**

### Air Contaminants; Corrections

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** This document makes corrections to a final rule issued by OSHA on January 19, 1989 at 54 FR 2332 and to 29 CFR 1910.1000 both concerning air contaminants.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N–3649, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523–8151.

**SUPPLEMENTARY INFORMATION:** OSHA published its final rule on Air Contaminants on January 19, 1989 at 54 FR 2332–2983. That rule amended 29 CFR 1910.1000 and its tables. On July 5, 1989 at 54 FR 28054–28061 and on November 15, 1989 at 54 FR 47513 OSHA

published corrections to the preamble and the rule.

Certain additional errors in the final rule have come to OSHA's attention. In addition several printing errors have arisen during the reprintings in the Code of Federal Regulations. This document corrects those errors and makes a clarification.

OSHA never raised the issue of exposure limits for bivalent and trivalent chromium compounds in the Air Contaminants rulemaking. It did raise the issue of exposure limits for chromium metal, but decided to make no changes as discussed at 54 FR 2508–9. However, in error the final rule changed the nomenclature of those substances from that of the original standard. Compare 29 CFR 1910.1000 (1988). Accordingly, OSHA is correcting the nomenclature for those substances to that of the original standard.

Although OSHA properly identified the various forms of crystalline silica in the Air Contaminants proposal, errors in nomenclature appeared in the final rule. See also the *Encyclopedia of Chemical Technology*, Kirk-Othmer, Clinical Ed., Vol. 20, pp. 755–764. Accordingly, OSHA is correcting the nomenclature for the forms of crystalline silica.

OSHA is adding a footnote at the end of Table Z–3 clarifying that all inert or nuisance dusts, whether mineral, inorganic or organic are covered by the Particulate Not Otherwise Regulated (PNOR) limit in Table Z–1–A and not by the nuisance dust entry of Table Z–3. This reflects OSHA's final decision discussed at 54 FR 21596–7.

The formaldehyde entry in Table Z–2 is deleted because all formaldehyde exposures are covered by 29 CFR 1910.1045. The date in footnote "**" to Table Z–1–A is corrected to December 31, 1993 to reflect the requirements of 29 CFR 1910.1000(f)(2)(ii). Footnote b of Table Z–1–A is restated to be clearer. A footnote is added to the carbon monoxide ceiling entry reflecting OSHA's enforcement policy that it is appropriate to monitor the 200 ppm ceiling over a 5 minute period, with an instantaneous ceiling of 1500 ppm (the IDLH Level). The other entries correct typographical errors.

**List of Subjects in 29 CFR Part 1910**

Air Contaminants, Health, Occupational safety and health, Toxic substances.

Accordingly, 29 CFR part 1910 is corrected by making the following correcting amendments:

## PART 1910—[CORRECTED]

1. The authority citation for 29 CFR part 1910, subpart Z continues to read in part as follows:

**Authority:** Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of Subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z–1–A, which have identical limits listed in the Transitional Limits columns of Table Z–1–A, Table Z–2 or Table Z–3. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2 and Table Z–3 are also issued under 5 U.S.C. 553. § 1910.1000, the Transitional limits columns of Table Z–1–A, Table Z–2 and Table Z–3 are not issued under 29 CFR Part 1911 except for the arsenic, benzene, cotton dust and formaldehyde listings.

* * * * *

**§ 1910.1000 [Corrected]**

2. In § 1910.1000(a)(3), the last three words which read "Revised Limits columns" are revised to read "Final rule limits columns.".

3. In § 1910.1000 Table Z–1–A, the first "Acetone" entry (the entire line) is removed. (The second "Acetone" entry remains unchanged).

4. In § 1910.1000, Table Z–1–A, after the second "Acetone" entry, an omitted entry is added as follows: In the Substance col., the name "Acetonitrile"; in the CAS No. col., the number "75–05–8"; in the Transitional limits columns, in the ppm col., the number "40" and in the mg/m³ col., the number "70"; and in the Final rule limits columns, in the TWA ppm col., the number "40", in the TWA mg/m³ col., the number "70", in the STEL ppm col., the number "60", and in the STEL mg/m³ col., the number "105".

5. In § 1910.1000 Table Z–1–A, the entry for Carbon monoxide, a footnote superscript "m" is placed after "200" in the ceiling ppm col., and is placed after "229" in the Ceiling mg/m³ col. and a footnote "(m)" is added at the end of Table Z–1–A to read "Sampling for the carbon monoxide ceiling shall be averaged over 5 minutes but an instantaneous reading over 1500 ppm shall not be exceeded.".

6. In § 1910.1000 Table Z–1–A, the entry for "Chromium (II) compounds (as Cr)" (the entire line) is removed.

7. In § 1910.1000 Table Z–1–A, Substance col., the entry for "Chromium (III) compounds (as Cr)" is revised to read "Chromium, sol. chromic, chromous salts (as Cr)".

8. In § 1910.1000 Table Z–1–A, the entry "Chromium, metal (as Cr)" is revised to read "Chromium, metal and insoluble salts".

9. In § 1910.1000 Table Z–1–A, the entry for "2,4-D (Dichlorylphenoxyacetic acid)" is revised to read "2,4-D (Dichlorophenoxyacetic acid)".

10. In § 1910.1000 Table Z–1–A, the entry "Dimethylaniline (N-Dimethyl-aniline)" is revised to read "Dimethylaniline (N,N-Dimethylaniline)".

11. In § 1910.1000 Table Z–1–A, the entry for Emery, the CAS No. is revised to read "12415–34–8".

12. In § 1910.1000 Table Z–1–A, the entry for Formaldehyde, the Substance column is revised to read "Formaldehyde; see 1910.1048."

13. In § 1910.1000 Table Z–1–A, the entry for Iron oxide fume, under Transitional limits, the number "10" is removed from the Skin designation column and added to the mg/m³ column; and under Final rule limits, the number "10" is removed from the STEL ppm column and added to the TWA mg/m³ column.

14. In § 1910.1000 Table Z–1–A, the entry "Petroleum distillates (Naphtha)" is revised to read "Petroleum distillates (Naphtha) (Rubber Solvent)".

15. In § 1910.1000 Table Z–1–A, the entry "Silica, crystalline cristobalite (as quartz), respirable dust" is revised to read "Silica, crystalline cristobalite, respirable dust".

16. In § 1910.1000 Table Z–1–A, the entry "Silica, crystalline quartz (as quartz), respirable dust" is revised to read "Silica, crystalline quartz, respirable dust".

17. In § 1910.1000 Table Z–1–A, the entry "Silica, crystalline tridymite (as quartz), respirable dust" is revised to read "Silica, crystalline tridymite, respirable dust".

18. In § 1910.1000 Table Z–1–A, the entry for Sulfur dioxide, the number "10" in the Final rule limits, STEL, mg/m³ column is revised to read the number "13".

19. In § 1910.1000 Table Z–1–A, the entry "Vinylcyanide; see Acrylonitrile" is revised to read "Vinyl cyanide; see Acrylonitrile".

20. In § 1910.1000 Table Z–1–A, the footnotes following the Table; the date "December 31, 1992" in footnote ** (double asterisks) is revised to read "December 31, 1993".

21. In § 1910.1000 Table Z–1–A, the footnotes following the Table; Footnote "(b)" is revised to read "Milligrams of substance per cubic meter of air. When a numerical entry for a substance is in the mg/m³ column and not in the ppm

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column, then the number in the mg/m³ column is exact. When numerical entries for a substance are in both the ppm and mg/m³ columns, then the number in the ppm column is exact and the number in the mg/m³ column may be rounded off.".

22. In § 1910.1000 Table Z–3, the footnote superscript "g" is added after the entry "INERT OR NUISANCE DUST" and Footnote "g" is added in alphabetical order to read "All inert or nuisance dusts, whether mineral, inorganic, or organic, not listed specifically by substance name, are covered by the Particulates Not Otherwise Regulated (PNOR) limit in Table Z–1–A."

Signed at Washington, DC, this 25th day of June, 1992.

**Dorothy L. Strunk,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 92–15384 Filed 6–30–92; 8:45 am]

BILLING CODE 4510–26–M

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**29 CFR Part 1910**

**[Docket No. H–370]**

## Occupational Exposure to Bloodborne Pathogens; Correction

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Final rule; correction.

**SUMMARY:** The Occupational Safety and Health Administration is correcting errors in the regulatory text of the final rule for Occupational Exposure to Bloodborne Pathogens which appeared in the **Federal Register** on December 6, 1991 (56 FR 64004).

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, Occupational Safety and Health Administration, Office of Information and Public Affairs, room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523–8151.

**SUPPLEMENTARY INFORMATION:**

### Background

OSHA has promulgated a standard to eliminate or minimize occupational exposure to Hepatitis B Virus (HBV), Human Immunodeficiency Virus (HIV) and other bloodborne pathogens (56 FR 64004). In the final rule OSHA determined that employees faced a significant health risk as the result of occupational exposure to blood and other potentially infectious materials because they may contain bloodborne pathogens, including hepatitis B virus which causes Hepatitis B, a serious liver disease, and human immunodeficiency virus, which causes Acquired Immunodeficiency Syndrome (AIDS).

### Need for Correction

During the proofreading process of the regulation, technical and typographical errors were discovered. This notice is being published to correct those errors.

### Correction of Publication

The following corrections are made in the final rule for Occupational Exposure to Bloodborne Pathogens published in the **Federal Register** on December 6, 1991 (56 FR 64004).

**§ 1910.1030 [Correction]**

1. On page 64004, first column, third heading, "29 CFR Part 1910.1030" should be corrected to read "29 CFR part 1910".

2. On page 64176, second column, § 1910.1030(d)(2)(vii)(A) is corrected to read:

"(A) Contaminated needles and other contaminated sharps shall not be bent, recapped or removed unless the employer can demonstrate that no alternative is feasible or that such action is required by a specific medical or dental procedure.".

3. On page 64176, second column, § 1910.1030(d)(2)(vii)(B) is corrected to read:

"(B) Such bending, recapping or needle removal must be accomplished through the use of a mechanical device or a one-handed technique.".

4.–5. On page 64180, second column, § 1910.1030(g)(1)(i)(B), remove the second "BIOHAZARD" term which appears in this paragraph, immediately above § 1910.1030(g)(1)(i)(C).

6. On page 64180, second column, § 1910.1030(g)(1)(i)(C), third line, is corrected to read "so, with lettering and symbols in a".

7. On page 64180, second column, § 1910.1030(g)(1)(i)(D), is corrected to read:

"(D) Labels shall be affixed as close as feasible to the container by string, wire, adhesive, or other method that prevents their loss or unintentional removal.".

8. On page 64180, third column, § 1910.1030(g)(1)(ii)(A), ninth line, remove the second "BIOHAZARD" term which appears in this paragraph.

9. On page 64180, third column, § 1910.1030(g)(1)(ii)(B), third line, is corrected to read "lettering and symbols in a contrasting".

10. On page 64181, first column, § 1910.1030(g)(2)(vii)(A) is corrected to read:

"(A) An accessible copy of the regulatory text of this standard and an explanation of its contents;".

11. On page 64181, third column, § 1910.1030(h)(1)(iii)(B) is corrected to read:

"(B) Not disclosed or reported without the employee's express written consent to any person within or outside the workplace except as required by this section or as may be required by law.".

12. On page 64181, third column, § 1910.1030(h)(3)(ii) is corrected to read:

"(ii) Employee training records required by this paragraph shall be provided upon request for examination and copying to employees, to employee representatives, to the Director, and to the Assistant Secretary.".

13. On page 64181, third column, § 1910.1030(i)(2) is corrected to read:

"(2) The Exposure Control Plan required by paragraph (c) of this section shall be completed on or before May 5, 1992.".

Dated: June 25, 1992.

**Dorothy L. Strunk,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 92–15303 Filed 6–30–92; 8:45 am]

BILLING CODE 4510–26–M

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 169a**

**[DoD Instruction 4100.33]**

## Commercial Activities Program Procedures

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense is revising its rules regarding the Commercial Activities Program Procedures to incorporate changes to Part 169a required by Office of Management and Budget (OMB) interim procedural changes to their Circular A–76, "Performance of Commercial Activities," August 3, 1983, and is implementing the DoD policies established in 32 CFR Part 169. This amendment is designed to provide current instructions to the DoD Commercial Activities Program.

**DATE EFFECTIVE:** July 8, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Earl DeHart, telephone 703–756–5041.

**SUPPLEMENTARY INFORMATION:** In FR Doc 91–30348, appearing in the Federal Register (56 FR 15442) on December 27, 1991, the Office of the Secretary of Defense published part 169a as a proposed rule to incorporate substantive changes to part 169a required by OMB



revision and DoD guidance. The Office of the Secretary of Defense previously published part 169a on November 14, 1979 (44 FR 65503) and on April 4, 1990 (45 FR 22924). Some comments and editorial changes received from internal DoD Components were incorporated into the final rule. The following presentations within part 169a have been removed: Attachment 1 to appendix C, Fact Sheet for Direct Conversion; Attachment 1 to appendix D, Cost Companions Record (CCR) and Attachment 2 to appendix D, Direct Conversion Record (DCR); and appendix E, Public Law 96–342, as amended by the Public Law 97–252.

The Deputy Assistant Secretary of Defense (Installations) (ASD(P&L)) has determined that this action is not a major rule as defined by Executive Order 12291. The rule will not have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or have a significant adverse effect on competition, employment, investment, productivity, or innovation. The rule is not subject to the Regulatory Flexibility Act of 1980, and does not have a significant impact on a substantial number of small entities. Finally, the ASD (P&L) also determined that this rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

### List of Subjects in 32 CFR Part 169a

Armed forces, Government procurements.

Accordingly, 32 CFR part 169a is amended as follows:

### PART 169a—[AMENDED]

1. The authority citation for part 169a is revised to read as follows:

**Authority:** 5 U.S.C. 301 and 552.

2. Footnote 1 is revised to read as follows: "Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161."

3. Footnote 6 is removed and footnotes 5–7 are redesignated as 6–8.

4. Section 169a.2 is revised to read as follows:

**§ 169a.2 Applicability and scope.**

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Defense Agencies and DoD Field Activities (hereafter referred to collectively as the "DoD Components").

(b) Contains DoD procedures for CAs in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Is not mandatory for CAs staffed solely with DoD civilian personnel paid by nonappropriated funds, such as military exchanges. However, this part is mandatory for CAs when they are staffed partially with DoD civilian personnel paid by or reimbursed from appropriated funds, such as libraries, open messes, and other morale, welfare, and recreation (MWR) activities. When related installation support functions are being cost-compared under a single solicitation, a DoD Component may decide that it is practical to include activities staffed solely with DoD civilian personnel paid by nonappropriated funds.

(d) Does not apply to DoD governmental functions are defined in § 169a.3.

(e) Does not apply when contrary to law, Executive orders, or any treaty or international agreement.

(f) Does not apply in times of a declared war or military mobilization.

(g) Does not provide authority to enter into contracts.

(h) Does not apply to the conduct of research and development, except for severable in-house CAs that support research and development, such as those listed in Appendix A to this part.

(i) Does not justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(j) Doe not authorize contracts that establish employer-employee relations between the Department of Defense and contractor employees as described in the Federal Acquisition Regulation (FAR), 48 CFR 37.104.

(k) Does not establish and shall not be construed to create any substantive or procedural basis for anyone to challenge any DoD action or inaction on the basis that such action or inaction was not in accordance with this part except as specifically set forth in § 169a.15(d).

5. Section 169a.3 is amended by revising the definition "Preferential procurement program" as follows:

**§ 169a.3 Definitions.**

* * * * *

*Preferential procurement programs.* Mandatory source programs such as Federal Prison Industries (FPI) and the workshops administered by the Committee for Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act. Also included are small, minority and disadvantaged businesses, and labor surplus area set-asides and awards made under 15 U.S.C. section 637.

6. Section 169a.4 is revised to read as follows:

**§ 169a.4 Policy.**

(a) *Ensure DoD mission accomplishment.* The implementation of this part shall consider the overall DoD mission and the defense objective of maintaining readiness and sustainability to ensure a capability for mobilizing the defense and support structure.

(b) *Retain governmental functions in-house.* Certain functions that are inherently governmental in nature, and intimately related to the public interest, mandate performance by DoD personnel only. These functions are not in competition with commercial sources; therefore, these functions shall be performed by DoD personnel.

(c) *Rely on the commercial sector.* DoD Components shall rely on commercially available sources to provide commercial products and services, except when required for national defense, when no satisfactory commercial source is available, or when in the best interest of direct patient care. DoD Components shall not consider an in-house new requirement, an expansion of an in-house requirement, conversion to in-house, or otherwise carry on any CAs to provide commercial products or services if the products or services can be procured more economically from commercial sources.

(d) *Achieve economy and enhance productivity.* Encourage competition with the objective of enhancing quality, economy, and performance.

When performance by a commercial source is permissible, a comparison of the cost of contracting and the cost of in-house performance shall be performed to determine who shall provide the best value for the Government, considering price and other factors included in the solicitation. If the installation commander has reason to believe that it may not be cost effective to make an award under mandatory source programs, section 8(a) of the Small Business Act or any other noncompetitive preferential procurement program, a cost comparison, or any other cost analysis, although not required by OMB Circular A–76, may be performed. Performance history will be considered in the source selection process, and high quality performance should be rewarded.

(e) *Delegate decision authority and responsibility.* DoD Components shall delegate decision authority and responsibility to lower organization levels, giving more authority to the

doers, and linking responsibility with that authority. This shall facilitate the work that installation commanders must perform without limiting their freedom to do their jobs. When possible, the installation commanders should have the freedom to make intelligent use of their resources, while preserving the essential wartime capabilities of U.S. support organizations in accordance with DoD Directive 4001.15.[5]

(f) *Share resources saved.* When possible, make available to the installation commander a share of any resources saved or earned so that the commander can improve operations or working and living conditions on the installation.

(g) *Provide Placement Assistance.* Provide a variety of placement assistance to employees whose Federal jobs are eliminated through CA competitions.

(h) *Permit interim-in-house operation.* A DoD in-house CA may be established on a temporary basis if a contractor defaults. Action shall be taken to resolicit bids or proposals in accordance with this part.

7. Section 169a.8 is amended as follows:

a. The heading is amended by revising "DD–MIL(A)" to read "DD–P&L(A)"

b. Paragraph (a) is amended as follows:

1. "(Acquisition and Logistics) (ASD(A&L)" is revised to read "(Production and logistics) (ASD(P&L)"

2. "Enclosure 1" is revised to read "Appendix A to this part"

3. "Enclosure 2" is revised to read "Appendix B to this part"

c. Paragraph (c) is revised to read as follows:

**§ 169a.8 [Amended]**

* * * * *

(c) Review of CAs that provide interservice support shall be scheduled by the supplying DoD Component. Subsequent cost comparisons, when appropriate, shall be executed by the same DoD Component. All affected DoD Components shall be notified of the intent to perform a review.

8. Section 169a.9 is amended as follows:

a. Paragraph (a) introductory text, (a)(1) introductory text and paragraph (a)(1)(i) are revised.

b. Paragraph (a)(1)(ii) is amended as follows:

1. "Pub. L. 98–525, section 307" in the first and third sentence is revised to read "10 U.S.C. 2646"

2. "section 307" in the third sentence is revised to read "10 U.S.C. 2464"

3. "(A&L)" is revised to read "(P&L)" in the fourth sentence each time it appears.

c. Paragraph (a)(1)(iv) is amended by revising "(A&L)" to read "(P&L)"

d. Paragraph (a)(2)(i)(A) is amended by revising "DoD FAR" to read "Defense FAR" and "(DFAR)" to read "(DFAS)"

e. Paragraph (a)(2)(i)(B) is amended as follows:

1. "at least" is revised to read "up to"

2. After "part 5" add "and part 7, subpart 7.3"

3. "CBA" is revised to read "CBD"

4. Revise "over a 30-day period" to read ", 15 days apart".

**§ 169a.9 [Amended]**

* * * * *

(a) DoD components shall conduct reviews of in-house CAs in accordance with their established review schedules. Existing in-house CAs, once reviewed shall be retained in-house without a cost comparison only when certain conditions are satisfied. (Detailed documentation will be maintained to support the decision to continue in-house performance). These conditions are as follows:

(1) *National Defense.* In most cases, application of this criteria shall be made considering the wartime and peacetime duties of the specific positions involved rather than in terms of broad functions.

(i) A CA, staffed with military personnel who are assigned to the activity, may be retained in-house for national defense reason when the following apply.

(A) The CA is essential for training or experience in required military skills;

(B) The CA is needed to provide appropriate work assignments for a rotation base for overseas or sea-to-shore assignments; or

(C) The CA is necessary to provide career progression to needed military skill levels.

* * * * *

f. Paragraph (a)(2)(ii)(D), last sentence, is amended by removing the word "not"

9. Section 169a.10 is revised as follows:

**§ 169a.10 Contracts.**

When contract cost becomes unreasonable or performance becomes unsatisfactory, the requirement must be resolicited. If the DoD Component competes in the resolicitation, then a cost comparison of a contracted CA shall be performed in accordance with Part III of the Supplement to OMB Circular A–76 (Office of Federal Procurement Policy pamphlet No. 4) [6], Part II of the Supplement to OMB Circular A–76 (Management Study Guide) [7], Part IV of the Supplement to OMB Circular A–76 (Cost Comparison Handbook) [8], if in-house performance is feasible. When contracted CAs are justified for conversion to in-house performance, the contract will be allowed to expire (options will not be exercised) once in-house capability is established.

10. Section 169a.11 is amended in the last sentence, after the word "facilities", the second time it appears, by adding "and equipment"

11. Sections 169a.13 is revised as follows

**§ 169a.13 CAs involving forty-five or fewer DoD civilian employees.**

(a) When adequately justified under the criteria required in Appendix C to this part, CAs involving 11 to 45 DoD civilian employees may be competed based on simplified cost comparison procedures and 10 or fewer DoD civilian employees may be directly converted to contract without the use of a simplified cost comparison. Such conversion shall be approved by the DoD Component's central point of contact office having the responsibility for implementation of this part. Part IV of the Supplement to OMB Circular A–76 and Appendix C to this part shall be utilized to define the specific elements of costs to be estimated in the simplified cost comparison.

(b) In no case shall any CA involving more than forty-five employees be modified, reorganized, divided, or in any way changed for the purpose of circumventing the requirement to perform a full cost comparison.

(c) The decision to perform a simplified cost comparison on a CA involving military personnel and 11 to 45 DoD Civilian employees reflects a management decision that the work need not be performed in-house. Therefore, all direct military personnel costs will be estimated in the simplified cost comparison (see Appendix C to this part) on the basis of civilian performance.

(d) A most efficient and cost-effective organization analysis certification is required for studies involving 11 to 45 DoD civilian employees (see Appendix C to this part).

12. Section 169a.15 is amended as follows:

a. Paragraphs (a), (b), the last sentence of paragraph (c)(3), (d)(1),

---

[5] See footnote 1 to § 169a.1(a).

[6] See footnote 3 to § 169a.1(a).

[7] See footnote 3 to § 169a.1(a).

[8] See footnote 3 to § 169a.1(a).

(d)(2) (ii)(A), (d)(2) (iii), and (d)(4)(i)(E) are revised.

b. Paragraphs (d)(2)(i), first sentence, is amended by revising "military" to read "DoD"

c. Paragraph (d)(2)(v) is amended by revising "components" to read "DoD Components" and "agencies" to read "Federal Agencies"

d. Paragraph (d)(3)(viii) is amended by removing the period at the end of the sentence and adding, "however, a MEO analysis and certification is required."

e. Paragraph (d)(4)(i)(C) is amended by revising "ASD (A&L)" to read "ASD (P&L)"

f. Paragraph (d)(4)(i)(F) is amended by revising "property disposal officer" to read "official accounting records"

g. Paragraph (d)(4)(i)(H) is amended by revising the third sentence.

h. Paragraph (d)(4)(ii)(A) is amended by removing the words "competitively obtained and"; by revising "DFAR" to read "DFARS"; and in the last sentence after "Appendix C" add "of this part"

i. Paragraphs (d)(4)(ii)(D)(*2*) and (*3*) is amended by removing the last sentence.

j. Paragraph (d)(4)(ii)(E) introductory text is amended by revising "Property Disposal" to read "Defense Reutilization and Marketing".

**§ 169a.15 Special considerations.**

(a) Signals Intelligence, Telecommunications (SIGINT) and Automated Information System (AIS) security.

(1) Before making a determination that an activity involving SIGINT as prescribed in Executive Order 12333, and AIS, security should be subjected to a cost comparison, the DoD Component shall specifically identify the risk to national security and complete a risk assessment to determine if the use of commercial resources poses a potential threat to national security. Information copies of the risk assessment and a decision memorandum containing data on the acceptable and/or unacceptable risk will be maintained within the requesting DoD Component's contracting office.

(2) The National Security Agency (NSA) considers the polygraph program an effective means to enhance security protection for special access type information. The risk to national security is of an acceptable level if contractor personnel assigned to the maintenance and operation of SIGINT, Computer Security (COMPUSEC) and Communications Security (COMSEC) equipment agree to an aperiodic counter-intelligence scope polygraph examination. The following clause should be included in every potential contract involving SIGINT, Telecommunications, and AIS systems:

Contract personnel engaged in operation or maintaining SIGINT, COMSEC or COMPUSEC equipment or having access to classified documents or key material must consent to an aperiodic counter-intelligence scope polygraph examination administered by the Government. Contract personnel who refuse to take the polygraph examination shall not be considered for selection.

(b) *National intelligence.* Before making a determination that an activity involving the collection/processing/production/dissemination of national intelligence as prescribed in Executive Order 12333 should be subjected to a cost comparison, the DoD Component must specifically identify the risk to national intelligence of using commercial sources. Except as noted in paragraph (a) of this section, the DoD Component shall provide its assessment of the risk to national intelligence of using commercial sources to the Director, DIA, who shall make the determination if the risk to national intelligence is unacceptable. DIA shall consult with other organizations as deemed necessary and shall provide the decision to the DoD Component. (Detailed documentation shall be maintained to support the decision).

(c) * * *

(3) * * * In all cases, the administrative control of funds must be retained by the Government since contractors or their employees cannot be held responsible for violations of the United States Code.

(d) * * *

(1) *Notification.* (i) *Congressional notification.* DoD Components shall notify Congress of the intention to do a cost comparison involving 46 or more DoD civilian personnel. DoD Components shall annotate the notification when a cost comparison is planned at an activity listed in the report to Congress on core logistics (see section 169a.9(a)(1)(ii)). The DoD Component shall notify the ADS(P&L) of any such intent at least 5 working days before the Congressional notification. The cost comparison process begins on the date of Congressional notification.

(ii) *DoD employee notification.* DoD Components shall, in accordance with 10 U.S.C. 2467(b), at least monthly during the development and preparation of the performance work statement (PWS) and management study, consult with DoD civilian employees who will be affected by the cost comparison and consider the views of such employees on the development and preparation of the PWS and management study. DoD Components may consult with such employees more frequently and on other matters relating to the cost comparison. In the case of DoD employees represented by a labor organization accorded exclusive recognition under 5 U.S.C. 7111, consultation with representatives of the labor organization satisfies the consultation requirement. Consultation with nonunion DoD civilian employees may be through such means as group meetings. Alternatively, DoD civilian employees may be invited to designate one or more representatives to speak for them. Other methods may be implemented if adequate notice is provided to the nonunion DOD civilian employees and the right to be represented during the consultations is ensured.

(iii) *Local notification.* It is suggested that upon starting the cost comparison process, the installation make an announcement of the cost comparison, including a brief explanation of the cost-comparison process to the employees of the activity and the community. The installations' labor relations specialist also should be apprised to ensure appropriate notification to employees and their representatives in accordance with applicable collective bargaining agreements. Local Interservice Support Coordinators (ISCs) and the Chair of the appropriate Joint Interservice Regional Support Group (JIRSG) also should be notified of a pending cost comparison.

(2) * * *

(ii) * * *

(A) Prepare PWSs that are based on accurate and timely historical or projected workload data and that provide measurable and verifiable performance standards.

* * * * *

(iii) Guidance on Government Property:

(A) For the purposes of this instruction, Government property is defined in accordance with the 48 CFR part 45.

(B) The decision to offer or not to offer Government property to a contractor shall be determined by a cost-benefit analysis justifying that the decision is in the government's best interest. The determination on Government property must be supported by current, accurate, complete information and be readily available for the independent reviewing activity. The design of this analysis shall not give a decided advantage or disadvantage to either in-house or contract competitors. The management of Government property offered to the contractor shall also be in compliance with 48 CFR part 45.

(4) * * *

(i) * * *

(E) DoD Components shall not use the DLA Wholesale Stock Fund Rate and/or the DLA Direct Delivery rate for supplies and materials as reflected in paragraph 3.a. (1) and (2) of Part IV of the Supplement to OMB Circular No. A-76. The current standard and pricing formula includes full cost under the Defense Business Operations Fund (DBOF). No further mark-up is required.

* * * * *

(H) * * * Military positions provided overhead support shall be costed using current military composite standard rates that include PCS costs multiplied by the appropriate support factor. * * *

* * * * *

**§ 169a.16 [Amended]**

13. Section 169a.16 is amended in paragraph (a) by revising "contract" to read "contracting" and paragraph (b) by revising "cost comparison" to read "in-house estimate"

14. Section 169a.17 is amended by revising paragraphs (a), (d) and (g)(1) and adding new paragraph (1) as follows:

**§ 169a.17 Solicitation considerations.**

* * * * *

(a) Every effort must be made to avoid postponement or cancellation of CA solicitations even if there are significant changes, omissions, or defects in the Government's in-house cost estimate. Such corrections shall be made before the expiration of bids or proposals and may require the extensions of bids or proposals. When there is no alternative, contracting officers must clearly document the reason(s).

* * * * *

(d) All contracts awarded as a result of a conversion (whether or not a cost comparison was performed) shall comply with all requirements of the FAR and DFARS.

* * * * *

(g) * * *

(1) If the Government was the next lowest bidder/offerer, and in-house performance is still feasible, the function may be returned to in-house performance. If in-house performance is no longer feasible, the contracting officer shall obtain the requirement by contract in accordance with the requirements of the FAR, 48 CFR part 49. A return to in-house performance under the above criteria shall be approved by the DoD Component's central point of contact office. This authority may not be redelegated.

* * * * *

(l) To ensure that bonds and/or insurance requirements are being used in the best interest of the Government, as a general rule, requirements (for other than construction related services) above the levels established in the FAR and DFARS should not be included in acquisitions.

15. Section 169a.18 is amended by revising paragraph (b) as follows:

**§ 169a.18 Administrative appeal procedures.**

* * * * *

(b) *Appeals of Simplified Cost Comparisons and Direct Conversions.*

(1) Directly affected parties may appeal decision to convert to contract based on a simplified cost comparison involving 11–45 DoD civilian employees or a direct conversion involving 10 or fewer DoD civilian employees. The appeal must address reasons why fair and reasonable prices will not be obtainable.

(2) Each DoD Component shall establish an administrative appeal procedure that is independent and objective; Installation Commanders must make available, upon request, the documentation supporting the decision to directly convert activities; appeals of direct conversions must be filed within 30 calendar days after the decision is announced in the Commerce Business Daily and/or **Federal Register**, and the supporting documentation is made available; an impartial official one level organizationally higher than the official who approved the direct conversion decision shall hear the appeal; officials shall provide an appeal decision within 30 calendar days of receipt of the appeal.

* * * * *

16. Section 169a.21 is amended as follows:

a. Paragraph (a) is amended by revising "DD–MIL(A)" to read "DD–P&L"

b. Paragraph (b) heading by revising "DD–MIL(Q)" to read "DD–P&L" and paragraph (b)(1), last sentence, after the words "without a" by adding the word "full"

c. Paragraph (c), introductory text, by removing "Pub. L. 96–342 as amended by Pub. L. 97–252, hereafter referred to as section 502 (Appendix E)" and after the word "in" by adding "10 U.S.C. 2641"

d. Paragraphs (c) (1) and (2) by revising "502" to read "10 U.S.C. 2461"

e. Paragraph (c)(2) by revising "ten" to read "forty-five"

f. Paragraph (c)(3) is revised.

g. Paragraph (c)(5) is amended by revising "ASD(A&L)" to read "Congress, when in session" and by revising "section 502(a)(2)(B)" to read "10 U.S.C. 2461".

h. Paragraph (c)(6) by revising "50" to read "75".

i. Paragraph (c)(7) is amended as follows:

1. By revising "ASD(A&L)" to read "ASD(P&L)".

2. By revising "section 502(c)" to read "10 U.S.C. 2461(c)"

3. By revising "Enclosure 1" to read "Appendix A to this part" and by adding a new sentence at the end to read as follows:

**§ 169a.21 Reporting requirements.**

* * * * *

(c) * * *

(3) DoD Components must not proceed with a CA study until notification to Congress, when in session, as required by 10 U.S.C. 2461. DoD Components shall notify the ASD (P&L) of any such intent at least 5 working days before congressional notification.

* * * * *

(7) * * * Also, include the number of studies you expect to complete in the next fiscal year showing total civilian and military FTEs.

* * * * *

17. Section 169a.22 is revised to read as follows:

**§ 169a.22 Responsibilities.**

The responsibilities for implementing the policies and procedures of the DoD CA Program are prescribed in DoD Directive 4100.15 (32 CFR part 169) and appropriate paragraphs of this part.

18. Appendix A is amended as follows:

a. The title is revised to read: "**Appendix A to Part 169a—Codes and Definitions of Functional Areas**"

b. Footnotes "13–14" are redesignated as footnotes "1–2"

c. Section T804 is amended by revising "the Brooks Act" to read "40 U.S.C. 541–554"

19. Attachment 1 to Appendix B to part 169a is amended as follow:

1. The heading is revised to read: "**Attachment 1 to Appendix B to Part 169a—Codes For Denoting States, Territories, and Possessions of the United States.**

2. The heading for section a. is revised to read: "a. NUMERIC STATE CODES (Data element reference ST–GA)"

3. Section b. is revised to read as follows:

"b. Numeric Codes for Territories and Possessions (FIPS 55–2)

60 American Samoa
66 Guam
69 Northern Marianna Islands
71 Midway Islands
72 Puerto Rico

75 Trust Territory of the Pacific Islands
76 Navassa Islands
78 Virgin Islands
79 Wake Island
81 Baker Island
86 Jarvis Island
89 Kingman Reef
95 Palmyra Atoll"

19a. Appendix B and attachment 2 to appendix B to part 169a are revised to read as follow:

**Appendix B to Part 169a—Commercial Activities Inventory Report and Five-Year Review Schedule**

A. General Instructions

1. Forward inventory reports before 1 January to the Defense Manpower Data Center (DMDC). Use Report Control Symbol "DD–P&L(A) 1540" and send by microcomputer magnetic tape, or terminals as a medium.

2. Transmit by use of nine-track extended binary coded decimal interchange code (EBCDIC) or 6250 density, even parity for tape medium. Data records must have 132 characters and blocked ten logical records to a block. Omit headers and trailers. Use a tape mark (end of file) to follow the data. An external label shall be used on the reel to identify the organization to which the reel is to be returned, the title of the report, the fiscal year covered, and the tape characteristics.

3. Prior permission for interface requirements must be established between DMDC and the sender before transmission of data.

4. *Data Format: In-House DoD Commercial Activities*

| Data element | Tape positions | Field | Type data [1] |
|---|---|---|---|
| Designator | 1 | A | A |
| Installation | | A1 | |
| —State, territory, or possession. | 2–3 | A1a | N |
| —Place | 4–9 | A1b | A/N |
| +Function | 10–14 | A2 | A/N |
| In-house civilian workload. | 15–20 | A3 | N |
| Military workload | 21–26 | A4 | N |
| +Reason for in-house operation. | 49 | A8 | A |
| +Most recent year in-house operation approved. | 50–51 | A9 | N |
| +Year DoD CA scheduled for next review. | 52–53 | A10 | N |
| Installation name | 76–132 | A11 | A |

[1] A=Alpha; N=Numeric. A and A/N data shall be left justified space filled, N data shall be right justified and zero filled. +Items marked with a cross (+) have been registered in the DoD Data Element Dictionary.

5. When definite coding instructions are not provided, reference must be made to DoD 5000.12–M.[1] Failure to follow the coding instructions contained in this document, or those published in DoD 5000.12–M makes the DoD Component responsible for noncompliance or required concessions in data base communication.

*B. Entry Instructions*

| Field | Instruction |
|---|---|
| A | Enter an A to designate that the data to follow on this record pertains to a particular DoD CA. |
| A1a | Enter the two-position numeric code for State (Data element reference ST–GA) or U.S. territory or possession, as shown in attachment 1 to Appendix B of this part. |
| A1b | Enter the unique alpha-numeric code established by the DoD Component for military installation, named populated place, or related entity where the CA workload was performed during the fiscal year covered by this submission. A separate look-up listing or file should be provided showing each unique place code and its corresponding place name. |
| A2 | Enter the function code from Appendix A to this part that best describes the type of CA workload principally performed by the CA covered by this submission. Left justify. |
| A3 | Enter total (full- and part-time) in-house civilian workyear equivalents applied to the performance of the function during fiscal year. Round off to the nearest whole workyear equivalent. (If amount is equal to or greater than .5, round up. If amount is less than .5, round down. Amounts between zero and 0.9 should be entered as one). Right justify. Zero fill. |
| A4 | Enter total military workyear equivalents applied to the performance of the function in the fiscal year. Round off to the nearest whole workyear equivalent. (Amounts between zero and one should be entered as one). Right justify. Zero fill. |
| A8 | Enter the reason for in-house operation of the CA, as shown in attachment 2 to Appendix B of this part. |
| A9 | Enter the last two digits of the most recent fiscal year corresponding to the reason for in-house operation of the CA, as stated in Field A8. |
| A10 | Enter the last two digits of the fiscal year the function is scheduled for study or next review. (Data element reference YE–NA.) |
| A11 | Enter the named populated place, or related entity, where the CA workload was performed. |

* * * * *

[1] See Footnote 1 to § 169a.1(a).

**Attachment 2 to Appendix B to Part 169a—Codes for Denoting Compelling Reasons for In-House Operations of Planned Changes in Method or Performance**

1. PERFORMANCE (for entry in field A8)

| Code | Explanation |
|---|---|
| A | Indicates that the DoD CA has been retained in-house for national defense reasons in accordance with paragraph E.2.a(1) of DoD Instruction 4100.33, other than CAs reported under code "C" of this attachment. |
| C | Indicates that the DoD CA is retained in-house because the CA is essential for training or experience in required military skills, or the CA is needed to provide appropriate work assignments for a rotation base for overseas or sea-to-shore assignments, or the CA is necessary to provide career progression to a needed military skill level in accordance with paragraph E.2.a(1)(a) of DoD Instruction 4100.33. |
| D | Indicates procurement of a product or service from a commercial source would cause an unacceptable delay or disruption of an essential DoD program. |
| E | Indicates that there is no satisfactory commercial source capable of providing the product or service needed. |
| F | Indicates that a cost comparison has been conducted and that the Government is providing the product or service at a lower total cost as a result of a cost comparison. |
| G | Indicates that the CA is being performed by DoD personnel now, but decision to continue in-house or convert to contract is pending results of a scheduled cost comparison. |
| H | Indicates that the CA is being performed by DoD employees now, but will be converted to contract because of cost comparison results. |
| J | Indicates that the CA is being performed by DoD hospital and, in the best interest of direct patient care, is being retained in-house. |
| K | Indicates that the CA is being performed by DoD employees now, but a decision has been made to convert to contract for reasons other than cost. |
| N | Indicates that the CA is performed by DoD employees now, but a review is in progress pending a decision. (i.e., base closure, realignment, or consolidation). |
| X | Indicates that the installation commander is not scheduling this CA for cost study under the provisions of congressional authority. |
| Y | Indicates that the CA is retained in-house because the cost study exceeded the time limit prescribed by law. |
| Z | Indicates that the CA is retained in-house for reasons not included above. (i.e., a law, Executive order, treaty, or international agreement). |

2. USE OF OTHER CODES. Other codes may be assigned as designated by the ODASD (I).

20. Appendix C to part 169a is revised as follows:

**Appendix C to Part 169a—Simplified Cost Comparison and Direct Conversion of CAs**

A. This appendix provides guidance on procedures to be followed in order to convert a commercial activity employing 45 or fewer DoD civilian employees to contract performance without a full cost comparison. DoD Components may directly convert functions with 10 or fewer civilian employees without conducting a simplified cost comparison. Simplified cost comparisons may only be conducted on activities with 45 or fewer DoD civilian employees.

B. Direct conversions with 10 or fewer DoD civilian employees must meet the following criteria:

1. The activity is currently performed by 10 or fewer civilian employees.

2. The direct conversion makes sense from a management or performance standpoint.

3. The direct conversion is cost effective.

4. The installation commander must certify that all affected civilian employees will be offered jobs at that installation, or within the local area, commensurate with their current skills and pay grades. If no such vacancies exist, the employees will be offered retraining opportunities for existing or projected vacancies at that installation or within the local area. The employees potential right-of-first-refusal with civilian contractors does not satisfy this requirement. If this condition can not be met, simplified cost comparison procedures must be used to justify conversion to contract.

C. The following provides general guidance for completion of a simplified cost comparison:

1. Estimated contractor costs should be based on either the past history of similar contracts at other installations or on the contracting officer's best estimate of what would constitute a fair and reasonable price.

2. For activities small in total size (45 or fewer civilian and military personnel):

a. Estimated in-house cost generally should not include overhead costs, as it is unlikely that they would be a factor for a small activity.

b. Similarly, estimated contractor costs generally should not include contract administration, on-time conversion costs, or other contract price add-ons associated with full cost comparisons.

3. For activities large in total size (including those with a mix of civilian and military personnel) all cost elements should be considered for both in-house and contractor estimated costs.

4. In either case, large or small, the 10 percent conversion differential contained in Part IV of the Supplement to OMB Circular No. A–76 should be applied.

5. Part IV of the Supplement to OMB Circular No. A–76 shall be utilized to define the specific elements of cost to be estimated.

6. Clearance for CA simplified cost comparison decisions are required for Agencies without their own Legislative Affairs (LA) and Public Affairs (PA) offices. Those Agencies shall submit their draft decision brief to the Deputy Assistant Secretary of Defense (Installations) room 3E787, the Pentagon, Washington, DC 20301 for release to Congress.

7. Provide CA simplified cost comparison approvals containing a certification of the MEO analysis, a copy of the approval to convert, a copy of the cost comparison, with back-up data, before conversion to the following:

a. Committee on Appropriations of the House of Representatives and the Senate (11–45 civilian employees only).

b. Copies of the following:

(1) Assistant Secretary of Defense (LA), room 3D918, the Pentagon, Washington, DC 20301.

(2) Assistant Secretary of Defense (PA), room 2E757, the Pentagon, Washington, DC 20301.

(3) Office of Economic Adjustment, room 4C767, the Pentagon, Washington, DC 20301.

(4) Deputy Assistant Secretary of Defense, (Installations), room 3E787, the Pentagon, Washington, DC 20301. (exception—no copies required from Agencies that do not have legislative and public affairs offices).

8. The installation commander must certify that the estimated in-house cost for activities involving 11 to 45 DoD civilian employees are based on a completed most efficient and cost effective organization analysis. Certification of this MEO analysis, as required by Public Law 102–172, shall be provided to the Committee on Appropriations of the House of Representatives and the Senate before conversion to contract performance.

21. Appendix D to part 169a is amended as follows:

a. The two undesignated paragraphs in the introductory text of the appendix and part II in the introductory text of the appendix are revised to read as follows:

**Appendix D to Part 169a—Commercial Activities Management Information System (CAMIS)**

Each DoD Component shall create and manage their CAMIS data base. The CAMIS data base shall have a comprehensive edit check on all input data in the computerized system. All data errors in the CAMIS data base shall be corrected as they are found by the established edit check program. The data elements described in this appendix represents the DoD minimum requirements.

On approval of a full cost comparison, a simplified cost comparison, or a direct conversion CA, the DoD Component shall create the initial entry using the data elements in Part I for full cost comparisons and data elements in Part II for all other conversions. Within 30 days of the end of each quarter, the DoD Component shall submit automated tape or diskette, annotated with the number of records submitted and the record length. The data shall be in the format that has been agreed to by the Defense Manpower Data Center (DMDC) at least 60 days prior to the end of the quarter. All data shall be in upper case. (TAPE MEDIUM—Use 9 track tape Extended Binary Coded Decimal Interchange Code (EBCDIC) 1600 or 6250 density, even parity). The DMDC shall use the automated data to update the CAMIS. If the DoD Component is unable to provide data in an automated format, the DMDC shall provide quarterly printouts of cost comparison records (CCR) and conversion and/or comparison records (DCSCCR) that may be annotated and returned within 30 days of the end of each quarter to the DMDC. The DMDC then shall use the annotated printouts to update the CAMIS. The data elements that comprise the six sections in Part I are defined in the CAMIS Entry and Update Instructions, Part I—Cost Comparisons.

* * * * *

**Part II—Direct Conversions and Simplified Cost Comparisons**

The record for each direct conversion and simplified cost comparison is divided into six sections. Each of the first five sections is completed immediately following the completion of the following events:

1. DoD Component approves CA action.

2. The solicitation is issued.

3. In-house and contractor costs are compared.

4. Contract is awarded or solicitation is canceled.

5. Contract starts.

A sixth section is utilized for tracking historical data after the direct conversion or simplified cost comparison is completed. This section contains data elements on contracts and cost information during the second and third performance period. The data elements that comprise the six sections in Part II, of this Appendix, are defined in the CAMIS Entry and Update Instruction, Part II—Direct Conversions and Simplified Cost Comparisons.

* * * * *

b. Camis Entry and Update Instruction, Part I, Section One is amended as follows:

1. Paragraph [16] is redesignated as [15].

2. The first paragraph in the introductory text, paragraphs [2], [3]D, [3]K, [3]Y, [5], [6], [13], [14], and newly redesignated [15] are revised; and add new paragraphs [3]2, and [3]3.

3. Paragraph [4] is amended by revising the last sentence of the introductory text.

4. Paragraph [8] is removed and reserved

5. Paragraph [10] is amended after "Appendix A" by adding "of this part"; revising "activity" to read "CA"; and by revising "This" to read "There"

6. Paragraph [12] is amended by revising "update" to read "updates" and by removing the word "listings"; paragraph [12]B is amended in the parenthetical phrase by revising "[16]" to read "[15]".

**Appendix D to Part 169a—[Amended]**

* * * * *

Section One

* * * * *

All entries in this section of the CCR shall be submitted by DoD Components on the first quarter update after approving the start of a cost comparison.

* * * * *

[2] Announcement and/or approval date. Date Congress is notified when required by 10 U.S.C. 2461, of this part or date DoD Component approves studies being performed by 45 or fewer DoD civilian employees.

[3] * * *

D—Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) [3D1]

* * * * *

K—Defense Information Systems Agency (DISA)

* * * * *

Y—U.S. Army Corps of Engineers (USACE) Civil Works

2—Defense Finance & Accounting Service (DFAS)

3—Defense Commissary Agency (DeCA)

* * * * *

[4] * * * If the DoD Component chooses to submit the look-up table or diskette or tape, the format should be as follows: * * *

[5] Installation code. The code established by the DoD Component headquarters to identify the installation where the CA(s) under cost comparison is and/or are located physically. Two or more codes (for cost comparison packages encompassing more than one installation) should be separated by commas. A separate look-up listing or file shall be provided to the DMDC showing each unique installation code and its corresponding installation name. Also submission of the installation name in each record is allowed. If the DoD Component chooses to submit the look-up listing on diskette or tape, the format shall be as follows:

| Column | Entry |
|---|---|
| 1–10 (left justify) | Installation code. |
| 11 | Blank. |
| 12–80 (left justify) | Installation code. |

The DMDC shall generate the installation name corresponding to the installation code submitted by the DoD Component, and display it with the code on the CAMIS.

[6] State code. A two-position numeric code for the State (Data element reference ST–GA.) or U.S. Territory (FIPS 55–2), as shown in attachment 1 to appendix B to this part, where element [5] is located. Two or more codes shall be separated by commas.

* * * * *

[13] Announcement—personnel estimate civilian, and [14] announcement—personnel estimate military. The number of civilian and military personnel allocated to the CAs undergoing cost comparison when the cost comparison is approved by the DoD Component or announced to Congress. This number in all cases shall be those personnel figures identified in the correspondence announcing the start of a cost comparison and will include authorized positions, temporaries, and borrowed labor. The number is used to give a preliminary estimate of the size of the activity.

[15] Revised and/or original cost comparison number. When a consolidation occurs, create a new CCR containing the attributes of the consolidated cost comparison. In the CCR of each cost comparison being consolidated, enter the cost comparison number of the new CCR in this data element and code "Z" in data element [12] of this attachment. In the new CCR, this data element should be blank and data element [12] of this attachment should denote the current status of the cost comparison. Once the consolidation has occurred, only the new CCR requires future updates. When a single cost comparison is being broken into multiple cost comparisons, create a new CCR for each cost comparison broken out from the original cost comparison. Each new CCR shall contain its own unique set of attributes; in data element [15] of this attachment enter the cost comparison number of the original cost comparison from which each was derived, and in data element [12] of this attachment enter the current status of each cost comparison. For the original cost comparison, data element [15] of this attachment, should be blank and data element [12] of this attachment should have a code "B" entry. Only the derivative record entries require future updates. When a consolidation or a breakout occurs, an explanatory remark shall be entered in data element [57] of this attachment (such as, "part of SW region cost comparison," or, "separated into three cost comparisons").

c. Section Two is amended as follows:

(1) The introductory text is amended by revising "manpower" to read "personnel"

(2) Section [17] is removed and reserved

(3) Sections [19]B and [19]C are revised to read:

"B—Small Business Administration 8(a) Set Aside"

"C—"Javits-Wagner-O'Day Act" (JWOD)"

(4) Section [20] is amended by revising "[14] and [15]" to read "[13] and [14]"

(5) Section [22] is amended in the heading after the word "Baseline" both times it appears add "Annual"

d. Section Three is amended by revising section [24], adding section [24A], and removing and reserving sections [26] and [27].

* * * * *

[24] Scheduled Initial Decision Date. Date the initial decision is scheduled at the start of a cost comparison.

[24A] Actual Initial Decision Date. Date the initial decision is announced. The initial decision is based on the apparent low bid or offer and is subject to preaward surveys and resolution of all appeals and protests. In a sealed bid procurement, the initial decision is announced at bid opening. In a negotiated procurement, the initial decision is announced when the cost comparison is made between the in-house estimate and the proposal of the selected offeror.

* * * * *

e. Section Four is amended as follows:

1. The introductory text is amended by revising "form" to read "record".

2. Section [28] is amended by revising "formal advertised" to read "sealed bid"

3. Section [30] is amended by removing "either" and adding a new entry "O" to read: "O—Other"

4. Section [31] is removed and reserved.

5. Section [31a] is amended by adding a period at the end of the heading and adding the phrase "Enter one of the following" after the heading.

6. Section [32] is amended by revising the second sentence to read as follows: "* * * Do not include the minimum cost differential (line 14 in CCF or line 16 in the ENCR CCF) in the computation of any of these data elements.* * *

7. Section [35] is amended by revising the last sentence to read:

"This is the total of line 6 of the new CCF or line 8 of the ENCR CCF. An entry is required although the activity remains in-house due to absence of a satisfactory commercial source."

8. Section [36] is amended by revising the last sentence to read: "This is the total of line 13 of the CCF or line 15 of the ENCR CCF."

9. Section [37] is revised to read: "Scheduled Contract or MEO Start Date. Date the contract and/or MEO was scheduled to start at the beginning of a cost comparison."

f. Section Five is revised to read as follows:

Section Five

Event: The Contract/MEO Starts

The entries in this section identify the contract or MEO start date and the personnel actions taken as a result of the cost comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the start of the contract:

[38] Contract/MEO Start Date. The actual date the contractor began operation of the contract or the Government implements the MEO.

[39] Permanent Employees Reassigned to Equivalent Positions. The number of permanent employees who were reassigned to positions of equivalent grade as of the contract start date.

[40] Permanent Employee Changed To Lower Positions. The number of permanent employees who were reassigned to lower grade positions as of the contract start date.

[41] Employees Taking Early Retirement. The number of employees who took early retirement as of the contract start date.

[42] Employees Taking Normal Retirement. The number of employees who took normal retirement as of the contract start date.

[43] Permanent Employees Separated. The number of permanent employees who were separated from Federal employment as of the contract start date.

[44] Temporary Employees Separated. The number of temporary employees who were separated from Federal employment as of the contract start date.

[45] Employees Entitled To Severance Pay. The estimated number of employees entitled to severance pay on their separation from Federal employment as of the contract start date.

[46] Total Amount of Severance Entitlements ($000). The total estimated amount of severance to be paid to all employees, in thousands of dollars, rounded to the nearest thousand, as of the contract start date.

[47] Number Of Employees Hired by The Contractor. The number of estimated DoD civilian employees (full-time or otherwise) that will be hired by the contractors, or their subcontractors, at the contract start date.

*Administrative Appeal*

[48] Filed. Were administrative appeals filed?
N—No
Y—Yes
[49] Source. Who filed the appeal?
B—Both
C—Contractor
I—In-house
[50] Result. Were the appeals finally upheld? (If both appealed, explain result in data element [57], of this section).
N—No
P—Still in progress
Y—Yes

*GAO Protest*

[51] Filed. Was a protest filed with GAO?
N—No
Y—Yes
[52] Source. Who filed the protest?
B—Both
C—Contractor
I—In-house
[53] Result. Was the protest finally upheld? (Explain result in data element [57], below).
N—No
P—Still in progress
Y—Yes

*Arbitration*

[54] Requested. Was there a request for arbitration?
N—No
Y—Yes
[55] Result. Was the case found arbitrable? (Explain result in data element [57], below).
N—No
P—Still in progress
Y—Yes

*General Information*

+[56] Total Staff-Hours Expended. Enter the estimated number of staff-hours expended by the installation for the cost comparison. Include direct and indirect hours expended from the time of PWS until a final decision is made.

+[56a] Estimated Cost Of Conducting The Cost Comparison. Enter the estimated cost of the total staff-hours identified in data element [56] of this section non-labor (travel, reproduction costs, etc.) associated with the cost comparision.

+Data elements [56] and [56A] will only be completed by DoD Components that are participating in the pilot test of these data elements.

[57] DoD Component Comments. Enter comments, as required, to explain situations that affect the conduct of the cost comparision. Where appropriate, precede each comment with the CAMIS data element being referenced.

[58] Effective Date. "As of" date of the most current update for the cost comparison. This data element will be completed by the DMDC.

[59] (Leave blank, for DoD computer program use).

g. Section Six is revised to read as follows:

Section Six

Event: Quarter Following Contract and/or Option Renewal

The entries in this section identify original costs, savings, information on subsequent performance periods and miscellaneous contract data. The DoD Component shall enter the following data elements in the first quarterly update annually.

[60] Original Cost of Function(s) ($000). The estimated total cost of functions before to development of an MEO in thousands of dollars, rounded to the nearest thousand for the base year and option years. (Begin entry when study began for data element [2] after 1 October 1989).

[60A] Estimated Dollar Savings ($000). The DoD Component's estimated savings from the cost comparison for the base year plus option years, in thousands of dollars, rounded to the nearest thousand, for either in-house or contract performance. Documentation will be available at the DoD Component level. (Begin entry after 1 October 1989).

[61] Contract Or In-House Bid First Performance Period ($000). For studies resulting in continued in-house performance, enter the total in-house cost (Line 6 from the CCF) for the first performance period. For studies resulting in conversion to contract performance, enter the contract price (Line 7 from the CCF) for the first performance period. Figures shall be shown in thousands of dollars, rounded to the nearest thousand.

[61A] Actual Contract or In-House Costs First Performance Period ($000). Enter the actual first performance period contract cost including all change orders (Plus changes in the scope of work) or actual in-house performance cost including changes in the scope of work, in thousands of dollars, rounded to the nearest thousand. No entry is required for actual in-house performance during the second and third performance periods.

[61B] Adjusted Contract Costs First Performance Period ($000). Enter an adjusted first performance period contract cost that includes actual DoL wage increases and costs for omissions and/or errors in the original PWS, but exclude new requirement costs and their associated wage increases, in thousands of dollars, rounded to the nearest thousand. (Begin entry after 1 October 1989).

[61C] Adjusted In-House Costs First Performance Period ($000). Enter the total first performance period in-house cost of the MEO, including civil service pay increases, but excluding increases associated with new mission requirements not included in the original scope of work of the function. Show costs in thousands of dollars, rounded to the nearest thousand. Entry is required even if the function went to contract. (Begin entry after 1 October 1989).

[62] Contract Or In-House Bid Second Performance Period ($000). For studies resulting in continued in-house performance, enter the total in-house cost (Line 6 from the CCF) for the second performance period. For studies resulting in conversion to contract performance, enter the contract price (Line 7 from the CCF) for the second performance period. Figures shall be shown in thousands of dollars, rounded to the nearest thousand.

[62A] Actual Contract Costs Second Performance Period ($000). Enter the actual second performance period contract cost including all change orders (Plus changes in the scope of work), in thousands of dollars, rounded to the nearest thousand. No entry is required when the function remained in-house.

[62B] Adjusted Contract Costs Second Performance Period ($000). Enter an adjusted second performance period contract cost that includes actual DoL wage increases and costs for omissions and/or errors in the original PWS, but exclude new requirement costs and their associated wage increases, in thousands of dollars, rounded to the nearest thousand. (Begin entry after 1 October 1989).

[62] Adjusted In-House Costs Second Performance Period ($000). Enter the total second performance period in-house cost of the MEO, including civil service pay

increases, but excluding increases associated with new mission requirements not included in the original scope of work of the function. Show costs in thousands of dollars, rounded to the nearest thousand. Entry is required even if the function went to contract. (Begin entry after 1 October 1989).

[63] Contract Or In-house Bid Third Performance Period ($000). For studies resulting in continued in-house performance, enter the total in-house cost (Line 6 from the CCF) for the third performance period. For studies resulting in conversion to contract performance, enter the contract price (Line 7 from the CCF) for the third performance period. Figures shall be shown in thousands of dollars, rounded to the nearest thousand.

[63A] Actual Contract Costs Third Performance Period ($000). Enter the actual third performance period contract cost including all change orders (Plus changes in the scope of work), in thousands of dollars, rounded to the nearest thousand. No entry is required when the function remained in-house.

[63B] Adjusted Contract Costs Third Performance Period ($000). Enter an adjusted third performance period contract cost that includes actual DoL wage increases and costs for omissions and/or errors in the original PWS, but exclude new requirement costs and their associated wage increases, in thousands of dollars, rounded to the nearest thousand (Begin entry after 1 October 1989).

[63C] Adjusted In-House Costs Third Performance Period ($000). Enter the total third performance period in-house cost of the MEO, including civil service pay increases, but excluding increases associated with new mission requirements not included in the original scope of work of the function. Show costs in thousands of dollars, rounded to the nearest thousand. Entry is required even if the function went to contract (Begin entry after 1 October 1989).

[64] Contractor Change. Enter one of the following alpha designators to indicate whether the contract for the second or third performance period has changed from the original contractor.

N—No, the contractor has not changed.
Y—Yes, the contractor has changed.

Data elements [65] through [66] of this section are not required if the answer to [64] of this section is no (N).

[65] New Contractor Size (If data element [66] of this section contains the alpha designator "I" or "R," no entry is required).

L—New contractor is large business.
S—New contractor is small and/or small disadvantaged business.

[66] Reason For Change. DoD Components shall enter one of the following designators listed in this section, followed by the last two digits of the fiscal year which the change occurred.

C—Contract workload consolidated with other existing contract workload.
D—New contractor takes over because original contractor defaults.
I—Returned in-house because original contractor defaults within 12 months of start date and in-house bid is the next lowest.
N—New contractor replaced original contractor because Government opted not to renew contract in option years.
R—Returned in-house temporarily pending resolicitation due to contract default, etc.
U—Contract workload consolidated into a larger (umbrella) cost comparison.
X—Other-function either returned in-house or eliminated because of base closure, realignment, budget reduction or other change in requirements.

[67] Contract Administration Staffing. The actual number of contract administration personnel hired to administer the contract.

22. Part II is revised and the undesignated center heading preceding it is republished to read as follows:

**Camis Entry and Update Instruction**

**Part II—Direct Conversions and Simplified Cost Comparisons**

The bracketed number preceding each definition in sections One through six of this section, is the DoD data element number. All date fields should be in the format YYMMDD (Data element reference DA–FA).

Section One

Event: DoD Component Approves the CA Action

All entries in this section of the DCSCCR record shall be submitted by DoD Components on the first quarter update after approving the start of a cost comparison. These entries shall be used to establish the DCSCCR and to identify the geographical, organizational, political, and functional attributes of the activity (or activities) undergoing conversion and/or comparison as well as to provide an initial estimate of the manpower associated with the activity (or activities). The initial estimate of the personnel in this section of the DCSCCR will be, in all cases, those personnel figures identified in the correspondence approving the start of the conversion and/or comparison. DoD Components shall enter the following data elements to establish a DCSCCR:

[1] Direct Conversion/Simplified Cost Comparison Number. The number assigned by the DoD Component to uniquely identify a specific conversion and/or comparison. The first character of the conversion and/or comparison number must be a letter designating the DoD Component as noted in data element [3] of this section. The conversion and/or comparison number may vary in length from five to ten characters, of which the second and subsequent may be alpha or numeric and assigned under any system desired by the DoD Component.

[2] Approval Date. The date has simplified cost comparison or direct conversion was approved.

[3] DoD Component Code. Use the following codes to identify the Military Service or Defense Agency and/or Field Activity conducting the cost comparison:

A—Department of the Army
B—Defense Mapping Agency (DMA)
D—Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) [3D1]
D—Washington Headquarters Service (WHS) [3D2]
F—Department of the Air Force
G—National Security Agency/Central Security Service (NSA/CSS)
H—Defense Nuclear Agency (DNA)
J—Joint Chiefs of Staff (JCS) (including the Joint Staff, Unified and Specified Commands, and Joint Service Schools)
K—Defense Information Systems Agency (DISA)
L—Defense Intelligence Agency (DIA)
M—United States Marine Corps (USMC)
N—United States Navy (USN)
R—Defense Contract Audit Agency (DCAA)
S—Defense Logistics Agency (DLA)
T—Defense Security Assistance Agency (DSAA)
V—Defense Investigative Service (DIS)
W—Uniformed Services University of the Health Sciences (USUHS)
Y—U.S. Army Corps of Engineers (USACE) Civil Works
2—Defense Finance & Accounting Service (DFAS)
3—Defense Commissary Agency (DeCA)

[4] Command Code. The code established by the DoD Component headquarters to identify the command responsible for operating the CA undergoing conversion and/or comparison. A separate look-up listing or file shall be provided to the DMDC showing each unique command code and its corresponding command name. If the DoD Component chooses to submit the look-up table on diskette or tape, the format should be as follows:

| Column | Entry |
|---|---|
| 1–6 (left justify) | Command code. |
| 7 | Blank. |
| 8–80 (left justify) | Command code. |

[5] Installation Code. The code established by the DoD Component headquarters to identify the installation where the CA(s) under conversion and/or comparison is and/or are located physically. Two or more codes (for conversion and/or comparison packages encompassing more than one installation) should be separated by commas. A separate look-up listing or file shall be provided to the DMDC showing each unique installation code and its corresponding installation name. Also submission of the installation name in each record is allowed. It the DoD Component chooses to submit the look-up listing on diskette or tape, the format shall be as follows:

| Column | Entry |
|---|---|
| 1–10 (left justify) | Installation code. |
| 11 | Blank. |
| 12–80 (left justify) | Installation name. |

The DMDC shall generate the installation name corresponding to the installation code submitted by the DoD Component, and display it with the code on the CAMIS.

[6] State Code. A two-position numeric code for the State (Data element reference ST–GA.) or U.S. Territory (FIPS 55–2), as shown in attachment 1 to Appendix B of this part, where element [5] is located. Two or more codes shall be separated by commas.

[7] Congressional District (CD). Number of the CDs where [5] of this section, is located. If representatives are elected "at large," enter "01" in this data element; for a delegate or resident commissioner (i.e., District of Columbia or Puerto Rico) enter "98." If the installation is located in two or more CDs, all CDs should be entered and separated by commas.

[8] (Leave blank)

[9] Title of Conversion and/or Comparison. The title that describes the CA(s) under conversion/comparison (for instance, "Facilities Engineering Package", "Installation Bus Service," or "Motor Pool"). Use a clear title, not acronyms or function codes in this data element.

[10] DoD Functional Area Code(s). The four- or five-alpha and/or numeric character designators listed in Appendix A of this part that describes the type of CA undergoing conversion and/or comparison. This would be one code for a single CA or possibly several codes for a large cost comparison package. A series of codes shall be separated by commas.

[11] Prior Operation Code. A single alpha character that identifies the mode of operation for the activity at the time the conversion and/or comparison is started. Despite the outcome of the conversion and/or comparison, this code does not change. The coding is as follows:

C—Contract
E—Expansion
I—In-house
N—New requirement

[12] Conversion and/or Comparison Status Code. A single alpha character that identifies the current status of the conversion and/or comparison. Enter one of the following codes:

B—Broken out. The cost comparison package has been broken into two or more separate cost comparisons. The previous DCSCCR shall be excluded from future updates. (See data element [15] of this section.)
C—Complete
P—In progress
X—Canceled. The DCSCCR shall be excluded from future updates.
Z—Consolidated. The cost comparison has been consolidated with one or more other cost comparisons into a single cost comparison package. The DCSCCR for the cost comparison that has been consolidated shall be excluded from future updates. (See data element [15] of this section.)

[13] Announcement—personnel estimate civilian, and [14] announcement—personnel estimate military. The number of civilian and military personnel allocated to the CAs undergoing conversion and/or comparison at the time the start of the conversion and/or comparison is approved. This number is all cases shall be those personnel figures identified when the conversion and/or comparison was approved and will include authorized positions, temporaries, and borrowed labor. The number is used to give a preliminary estimate of the size of the activity.

[15] Revised and/or original cost comparison number. When a consolidation occurs, create a new DCSCCR containing the attributes of the consolidated conversion and/or comparison. In the DCSCCR of each conversion and/or comparison being consolidated, enter the conversion and/or comparison number of the new DCSCCR in this data element and code "Z" in data element [12] of this section. In the new DCSCCR, this data element should be blank and data element [12] of this section should denote the current status of the conversion and/or comparison. Once the consolidation has occurred, only the new DCSCCR requires future updates.

When a single conversion and/or comparison is being broken into multiple conversion and/or comparisons, create a new DCSCCR for each conversion and/or comparison broken out from the original conversion and/or comparison. Each new DCSCCR shall contain its own unique set of attributes; in data element [15] of this section enter the conversion and/or comparison number of the original conversion and/or comparison from which each was derived, and in data element [12] of this section enter the current status of each conversion and/or comparison. For the original conversion and/or comparison, data element [15] of this section should be blank and data element [12] of this section should have a code "B" entry. Only the derivative record entries require future updates.

When a consolidation or a breakout occurs, an explanatory remark shall be entered in data element [56] of this section (such as, "part of SW region cost comparison," or, "separated into three cost comparisons").

[16] (Leave blank)

Section Two

Event: The Solicitation is Issued

The entries in this section of the DCSCCR provide information on the personnel authorized to perform the workload in the PWS, the number of workyears used to accomplish the workload in the PWS, and the type and kind of solicitation.

The DoD Component shall enter the following data elements at the first quarterly update subsequent to the issuance of the solicitation:

[17] (Leave blank)

[18] Solicitation-Type code. A one-character alpha designator that identifies the type of solicitation used to obtain contract bids or offers. Use either the CBD as the source document or information received from the contracting officer for this entry. Solicitations under Section 8(a) of "The Small Business Act" are negotiated. Enter one of the following codes:

N—Negotiated
S—Sealed Bid

[19] Solicitation-Kind code. A one-character (or two-character, if "W" suffix is used) alpha designator indicating whether the competition for the contract has been limited to a specific class of bidders or offerors. Use either the CBD as the source document or information received from the contracting officer to enter one of the following codes:

A—Restrict to small business
B—Small Business Administration 8(a) Set Aside
C—"Javits-Wagner-O'Day Act" (JWOD)
D—Other mandatory sources
U—Unrestricted
W—(Optional suffix) Unrestricted after initial restriction

[20] Current Authorized Civilians, and [21] Current Authorized Military. The number of civilian and military authorizations allocated on the DoD Component's manpower documents to perform the work described in the PWS. This number refines the initial authorization estimate (Section One, data elements [13] and [14] of this section).

[22] Baseline Annual Workyears Civilian, and [23] Baseline Annual Workyears Military. The number of annual workyears it has taken to perform the work described by the PWS before the DoD Component conducts the MEO analysis of the in-house organization. Do not include contract monitor requirements. Military workyears include assigned, borrowed, diverted, and detailed personnel. Less than one-half a year of effort should be rounded down, and one-half a year or more should be rounded up. These workyear figures shall be the baseline for determining the personnel savings identified by the most efficient organization analysis.

Section Three

Event: The In-House And The Contractor Costs Of Operations Are Compared

The entries in this section provide information on the date of the conversion and/or comparison (initial decision), the preliminary results, the number of bids or offers received, and the costing method used in the conversion and/or comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the date of the comparison of in-house and contractor costs (date of initial decision):

[24] Scheduled Initial Decision Date. Date the initial decision is scheduled at the start of a conversion and/or comparison

[24A] Actual Initial Decision Date. Date the initial decision is announced. The initial decision is based on the apparent low bid or offer and is subject to preaward surveys and resolution of all appeals and protests. In a sealed bid procurement, the initial decision is announced at bid opening. In a negotiated procurement, the initial decision is announced when the cost comparison is made between the in-house estimate and the proposal of the selected offeror. In a conversion, the initial decision is announced when the in-house cost estimate is evaluated against proposed contractor proposals.

[25] Cost Comparison Preliminary Results Code. A one-character alpha designator indicating the results of the cost comparison as announced by the contracting officer at the time of the comparison (No entry required for a direct conversion). The entries are limited to two possibilities:

C—Contract
I—In-house

[26] (Leave blank)
[27] (Leave blank)

Section Four

Event: The Contracting Officer Either Awards The Contract or Cancels The Solicitation

The entries in this section identify the final result, information on the contract, the in-house bid, and costing information from the direct conversion and/or simplified cost comparison fact sheet.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the date the contracting officer either awards a contract or cancels the solicitation:

[28] Contract Award or Solicitation Cancellation Date. For conversions to contract, this is the date a contract was awarded in a sealed bid solicitation or the date the contractor was authorized to proceed on a conditional award contract in a negotiated solicitation. For retentions in-house, this is the date the solicitation was canceled (when the contracting officer publishes an amendment to cancel the solicitation).

[29] Cost Comparison Final Result Code. A one-character alpha designator identifying the final result of the comparison between in-house and contractor costs; the contracting officer either awards the contract or cancels the solicitation. Enter one of the following codes:

C—Contract
I—In-house

[30] Decision Rationale Code. A one-character alpha designator that identifies the rationale for awarding a contract or canceling the solicitation. The work shall be performed in-house or by contractor based on cost, for other than cost, or the work shall be performed in-house because no satisfactory commercial source was available (no bids or offers were received or the pre-award survey resulted in the determination that no commercial sources were responsive or responsible). Enter one of the following codes:

C—Cost
N—No satisfactory commercial source
O—Other

[31] (Leave blank)

[31A] Prime Contractor Size. Enter one of the following:

L—Large business
S—Small or small and/or disadvantaged business

[32] MEO Workyears. The number of annual workyears it takes to perform the work described in the PWS after the MEO analysis has been conducted. This entry will be equal to the number of annual workyears in the in-house bid (No entry required for a direct conversion).

For data elements [33] through [36] of this section enter all data after all adjustments required by appeal board decisions. Do not include minimum cost differential in the computation of any of these data elements. If a valid conversion and/or comparison was not conducted (i.e., all bidders or offerors disqualified, no bids or offers received, etc.) do not complete data elements [33], [34] and [36] of this section. Explain lack of valid cost data in data element [56], "DoD Component Comments" of this section.

[33] First Performance Period. Expressed in months, the length of time covered by the contract. Do not include any option periods.

[34] Conversion and/or Comparison Period. Expressed in months, the total period of operation covered by the conversion or cost comparison; this is the period used as the basis for data elements [35] and [36] of this section.

[35] Total In-House Cost ($000). Enter the total estimated cost of in-house performance for the base year plus option years, in thousands of dollars, rounded to the nearest thousand. An entry is required although the activity remains in-house due to absence of a satisfactory commercial source (No entry required for a direct conversion).

[36] Total Contract Cost ($000). Enter the total estimated cost of contract performance for the base year plus option years, in thousands of dollars, rounded to the nearest thousand.

[37] Scheduled Contract or MEO Start Date. Date the contract and/or MEO was scheduled to start at the beginning of a conversion and/or comparison.

Section Five

Event: The Contract MEO Starts.

The entries in this section identify the contract or MEO start date and the personnel actions taken as a result of the conversion and/or comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the start of the contract:

[38] Contract and/or MEO Start Date. The actual date the contractor began operation of the contract or the Government implements the MEO.

[39] Permanent Employees Reassigned to Equivalent Positions. The number of permanent employees who were reassigned to positions of equivalent grade as of the contract start date.

[40] Permanent Employees Changed to Lower Positions. The number of permanent employees who were reassigned to lower grade positions as of the contract start date.

[41] Employees Taking Early Retirement. The number of employees who took early retirement as of the contract start date.

[42] Employees Taking Normal Retirement. The number of employees who took normal retirement as of the contract start date.

[43] Permanent Employees Separated. The number of permanent employees who were separated from Federal employment as of the contract start date.

[44] Temporary Employees Separated. The number of temporary employees who were separated from Federal employment as of the contract start date.

[45] Employees Entitled to Severance Pay. The estimated number of employees entitled to severance pay on their separation from Federal employment as of the contract start date.

[46] Total Amount of Severance Entitlements ($000). The total estimated amount of severance to be paid to all employees, in thousands of dollars, rounded to the nearest thousand, as of the contract start date.

[47] Number of Employees Hired by the Contractor. The number of estimated DoD civilian employees (full-time or otherwise) that will be hired by the contractors, or their subcontractors, at the contract start date.

Administrative Appeal

[48] Filed. Were administrative appeals filed?

N—No
Y—Yes

[49] Source. Who filed the appeal?

B—Both
C—Contractor
I—In-House

[50] Result. Were the appeals finally upheld? (if both appealed, explain result in data element [56] of this section).

N—No
P—Still in Progress
Y—Yes

GAO Protest

[51] Filed. Was a protest filed with GAO?

N—No
Y—Yes

[52] Source. Who filed the protest?

B—Both
C—Contractor
I—In-House

[53] Result. Was the protest finally upheld? (explain result in data element [56], of this section).

N—No
P—Still in Progress
Y—Yes

Arbitration

[54] Requested. Was there a request for arbitration?

N—No
Y—Yes

[55] Result. Was the case found arbitrable? (explain result in data element [56], of this section).

N—No
P—Still in Progress
Y—Yes

General Information

[56] DoD Component Comments. Enter comments, as required, to explain situations that affect the conduct of the conversion and/or comparison. Where appropriate, precede each comment with the CAMIS data element being referenced.

[57] Effective Date. "As of" date of the most current update for the conversion and/or comparison. This data element will be completed by the DMDC.

[58] (Leave blank, for DoD computer program use).

Section Six

Event: Quarter Following Contract and/or Option Renewal

The entries in this section identify information on subsequent performance periods and miscellaneous contract data. The DoD Component shall enter the following data elements in the first quarterly update annually:

[59] Actual Contract Cost First Performance Period ($000). Enter the actual contractor cost for the first performance

period, in thousands of dollars, rounded to the nearest thousand.

[60] Actual Contract Cost Second Performance Period (9000). Enter the actual contractor cost for the second performance period, in thousands of dollars, rounded to the nearest thousand.

[61] Actual Contract Cost Third Performance Period (8000). Enter the actual contractor cost for the third performance period, in thousands of dollars, rounded to the nearest thousand.

[62] Contractor Change. Enter one of the following alpha designators to indicate whether the contractor for the second or third performance period has changed from the original contractor.

N—No, the contractor has not changed
Y—Yes, the contractor has changed

Data elements [63] through [64] of this section are not required if the answer to [62] of this section is no (N).

[63] New Contractor Size. (If data element [64] of this section contains the alpha designator "I" or "R," no entry is required)

L—New contractor is large business
S—New contractor is small and/or small disadvantaged business.

[64] Reason For Change. DoD Components shall enter one of the following designators listed in the following, followed by the last two digits of the FY in which the change occurred.

C—Contract workload consolidated with other existing contract workload.
D—New contractor takes over because original contractor defaults.
I—Returned in-house because of original contractor defaults; etc., within 6 months of start date and in-house bid is the next lowest.
N—New contractor replaced original contractor because Government opted not to renew contract in option years.
R—Returned in-house temporarily pending resolicitation due to contract default, etc.
U—Contract workload consolidated with other existing contract workload.
X—Other-Function either returned in-house or eliminated because of base closure, realignment, budget reduction or other change in requirements.

[65] Contract Administration Staffing. The actual number of contract administration personnel hired to administer the contract.

## Appendix E—[Removed]

22. Appendix E to part 169a is removed.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-15514 Filed 6-30-92; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 81

[CDG 92-035]

## Amendment to International Regulations for Preventing Collisions at Sea, 1972

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** On March 19, 1991, the President proclaimed the 1989 amendment to the Regulations of the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), which entered into force for the United States of America on April 19, 1991. This rule publishes the President's Proclamation and revises the text of the 72 COLREGS to include the 1989 amendment.

**EFFECTIVE DATE:** April 19, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan Epstein, Office of Navigation Safety and Waterway Services, (G-NSR-3), 2100 2nd Street, SW., Washington, DC 20593-0001. Telephone (202) 267-0352 or (202) 267-0357.

**SUPPLEMENTARY INFORMATION:** The Convention on the International Regulations for Preventing Collisions at Sea, 1972, (72 COLREGS) entered into force for the United States of America on July 15, 1977, and was amended in November 1981, November 1987 and October 1989. The 72 COLREGS, and the 1981 and 1987 amendments were proclaimed by the President and were published in the **Federal Register**, (42 FR 17112, March 31, 1977, 48 FR 28634, June 23, 1983, and 54 FR 38851, September 21, 1989). On October 19, 1989, the Assembly of the International Maritime Organization (IMO) adopted one additional amendment to the 72 COLREGS which entered into force April 19, 1991.

Section 1602 of title 33 United States Code provides that amendments to the International Regulations for Preventing Collisions at Sea be proclaimed by the President and that the Proclamation with the annexed international regulations amendments be published in the **Federal Register**. This rule, therefore, publishes the President's March 19, 1991, Proclamation and the 1989 amendment to the 72 COLREGS.

### Discussion of the Amendment

This amendment modifies the language of rule 10(d) that governs the conduct of vessels in an inshore traffic separation scheme adopted by the International Maritime Organization. The amendment was designed to remove the ambiguity inherent in the words "normal" and "through traffic" as used in the existing text. This ambiguity lent itself to different interpretations by coastal states anxious to limit traffic in inshore traffic zones in order to reduce the risk of pollution from a collision or grounding. The new language for rule 10(d) is phrased so that the mariner should have a better understanding of his or her duties and obligations with regard to the use of inshore traffic zones by ships.

In many areas traffic separation schemes have been set up to regulate the flow of "deep draft" traffic. Sometimes, in addition, inshore traffic zones are set up for smaller vessels (less than 20 meters in length), and coastwise traffic. Basically the new language prohibits the larger vessels from using the inshore traffic zones except when en route to or from a destination within the inshore traffic zone, or to avoid immediate danger. The intent of the change is to keep the "deep draft" traffic in the appropriate traffic separation schemes, unless it must transit through the inshore traffic zone to reach its destination (i.e. a port, offshore platform, pilot station, etc.). It should be noted that the United States does not currently have any inshore traffic zones in its routing measures.

Consistent with section 5 of the Inland Navigation Rules Act of 1980 this proposed amendment was considered by the Rules of the Road Advisory Council which gave its concurrence.

Since this revision is concerned with a foreign affairs function of the United States, it is excepted from the rulemaking requirements under 5 U.S.C. 553 and may be published without notice and opportunity for public comment.

### *Drafting Information*

The principal persons involved in drafting this document are Jonathan Epstein, Project Manager, Office of Navigation Safety and Waterway Services, and Christena Green, Project Counsel, Office of Chief Counsel.

### List of Subjects in 33 CFR Part 81

Navigable waters, Navigation.

In consideration of the foregoing, the President's Proclamation of March 19,

1991 and the 1989 amendment are set forth below.

**A. Cattalini,**

*Acting Chief, Office of Navigation Safety and Waterway Services.*

**BY THE PRESIDENT OF THE UNITED STATES OF AMERICA**

**A Proclamation**

*Considering That:*

The Amendment to the Regulations of the Convention on the International Regulations for Preventing Collisions at Sea, 1972, was adopted in accordance with paragraph 3 of article VI of the Convention by the Assembly of the International Maritime Organization at London on October 19, 1989, a certified copy of which Amendment in the English and French languages, is hereto annexed /1/;

The President of the United States of America transmitted the Amendment to the Congress of the United States of America on April 2, 1990, consistent with section 3(d) of the International Navigational Rules Act of 1977 (91 Stat. 308; 33 USC 1602);

The United States of America did not notify the International Maritime Organization of an objection to the Amendment;

In the absence of an objection, the Amendment will enter into force for the United States of America on April 19, 1991, in accordance with article VI of the Convention and Resolution A.678(16) of the Assembly, adopted on October 19, 1989;

*Now, therefore, I,* George Bush, President of the United States of America, by authority vested in me by the Constitution and the laws of the United States of America, including the International Navigational Rules Act of 1977, proclaim and make public the Amendment, to the end that it shall be observed and fulfilled with good faith on and after April 19, 1991, by the United States of America and all other persons subject to the jurisdiction thereof.

*In testimony whereof,* I have signed this proclamation and caused the Seal of the United States of America to be affixed.

*Done* at the city of Washington this nineteenth day of March in the year of our Lord one thousand nine hundred ninety-one and of the Independence of the United States of America the two hundred fifteenth.

By the President:

**George Bush.**

**James A. Baker III,**

*Secretary of State.*

**Resolution A.678(16) adopted on 19 October 1989 Amendment to the International Regulations for Preventing Collisions at Sea, 1972**

*The Assembly,* recalling article VI of the Convention on the International Regulations for Preventing Collisions at Sea, 1972, on amendments to the Regulations,

*Having Considered* the amendment to the International Regulations for Preventing Collisions at Sea, 1972, adopted by the Maritime Safety Committee at its fifty-seventh session and communicated to all Contracting Parties in accordance with paragraph 2 of article VI of that Convention and also the recommendations of the Maritime Safety Committee concerning entry into force of this amendment,

1. *Adopts,* in accordance with paragraph 3 of article VI of the Convention, the amendment set out in the Annex to the present resolution;

2. *Decides,* in accordance with paragraph 4 of article VI of the Convention, that the amendment shall enter into force on 19 April 1991 unless by 19 April 1990 more than one third of the Contracting Parties have notified their objection to the amendment;

3. *Requests* the Secretary-General, in conformity with paragraph 3 of article VI, to communicate this resolution to all Contracting Parties to the Convention for acceptance, together with copies to all Members of the Organization;

4. *Invites* Contracting Parties to submit any objections to the amendment not later than 19 April 1990, whereafter the amendment will be deemed to have entered into force as determined in the present resolution.

**Annex—Amendment to the International Regulations for Preventing Collisions at Sea, 1972**

*Rule 10—Traffic separation schemes*

The existing text of paragraph (d) is replaced by the following:

"(d)(i) A vessel shall not use an inshore traffic zone when she can safely use the appropriate traffic lane within the adjacent traffic separation scheme. However, vessels of less than 20 metres in length, sailing vessels and vessels engaged in fishing may use the inshore traffic zone.

(ii) Notwithstanding subparagraph (d)(i), a vessel may use an inshore traffic zone when *en route* to or from a port, offshore installation or structure, pilot station or any other place situated within the inshore traffic zone, or to avoid immediate danger."

As set forth in the preamble, chapter I of title 33 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 81 continues to read as follows:

**Authority:** 33 U.S.C. 1607; E.O. No. 11964; 49 CFR 1.46.

2. Appendix A to part 81 is amended by revising the note following the appendix heading as set forth below; and by amending the International Regulations for Preventing Collisions at Sea, 1972, as set forth above in the 1989 Amendment.

**PART 81—[AMENDED]**

**Appendix A to Part 81—72 COLREGS**

**Note:** Below is the text of the 72 COLREGS, as published with the Proclamation of January 19, 1977, at 42 FR 17112, March 31, 1977, and subsequently amended with the Proclamation of June 16, 1983, published at 48 FR 28634, June 23, 1983; the Proclamation of June 29, 1989, published at 54 FR 38651, September 21, 1989; and the Proclamation of March 19, 1991, published at 57 FR [*insert page number and date of publication in Federal Register*].

* * * * *

[FR Doc. 92-15436 Filed 6-30-92; 8:45 am]

BILLING CODE 4910-14-M

/1/ **Editorial Note:** The French language copy of the amendments is part of the original proclamation which the Department of State will transfer to the National Archives and Records Administration as part of the U.S. Treaty series.

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**DEPARTMENT OF DEFENSE**

**Department of the Army Corp of Engineers**

**36 CFR Part 327**

**Shoreline Use Permit Conditions; Dock and Mooring Floatation Standards**

**AGENCY:** Army Corps of Engineers, DOD.

**ACTION:** Final rule: Correction to 36 CFR part 327.

**SUMMARY:** This document amends Condition 14 of appendix C to part 327.30, Shoreline Management Regulation, by correcting density standards for floatation requiring an approved protective coating. This action is necessary because the existing standard is incorrect. This change will set floatation density standards. This correction also changes two typographical errors in the May 26, 1992 **Federal Register**, FR 21894.

**EFFECTIVE DATE:** July 1, 1992.

**ADDRESSES:** Office of the Chief of Engineers, ATTN: CECW-ON, 20 Massachusetts Avenue NW., Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Darrell Lewis (202) 272-0247.

**SUPPLEMENTARY INFORMATION:** There is an error in Condition 14 of appendix C to § 327.30. Foam bead floatation which must have a protective coating has an incorrect density standard. This change is based on the results of a study of floatation materials conducted by the Corps' Waterway Experiment Station. The typographical errors are found under ACTION: 32 CFR should read 36 CFR and within Condition 14, where ASIM should read ASTM.

**List of Subjects in 36 CFR Part 327**

Public lands, Water resources, Natural resources, Resource management, Penalties, Recreation and recreation areas.

For the reasons set forth in the preamble, 36 CFR part 327 is amended as follows:

**PART 327—[AMENDED]**

1. The authority citation for part 327 continues to read as follows:

**Authority:** The Rivers and Harbors Act of 1894, as amended and supplemented (33 U.S.C., 1).

2. In appendix C to § 327.30, paragraph 14, is revised to read as follows:

**Appendix C to § 327.30—Shoreline Use Permit Conditions**

* * * * *

14. On all new docks and boat mooring buoys, floatation shall be of materials which will not become waterlogged (not over 1½ percent by volume ASTM), is resistant to damage by animals, and will not sink or contaminate the water if punctured. No metal covered or injected drum floatation will be allowed. Foam bead floatation that is not subject to deterioration through loss of beads, meets the above criteria, and has a minimum density of 1.2 lb/cu ft. is authorized. Foam bead floatation with a density of 1.0 lb/cu ft. but does not otherwise meet the above criteria is authorized provided it is encased in an approved protective coating which enables it to meet the specifications above. An approved coating is defined as warranted by the manufacturer for a period of a least eight years against cracking, peeling, sloughing and deterioration from ultra violet rays, while retaining its resiliency against ice and bumps by watercraft. Existing floatation will be authorized until it has severely deteriorated and is no longer serviceable or capable of supporting the structure, at which time it should be replaced with approved floatation.

* * * * *

Kenneth L. Denton,
*Army Federal Register Liaison Officer.*

[FR Doc. 92-15462 Filed 6-30-92; 8:45 am]
BILLING CODE 3710-08-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

**[FRL 4150-5]**

**Hazardous Waste Management System; General; Identification and Listing of Hazardous Waste; Used Oil**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule; correction.

**SUMMARY:** EPA is correcting errors in the hazardous waste regulations that appeared in the **Federal Register** on May 20, 1992 (57 *FR* 21524). In that **Federal Register**, EPA issued a final listing determination for used oil that is disposed and promulgated an exclusion from the definition of hazardous waste for certain used oil filters that have been drained. Today's notice corrects two typographical errors in that final rule, one in the preamble discussion and one in the regulatory language at 40 CFR 261.4(b)(15).

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** RCRA/Superfound Hotline at 800 424-9346 (toll-free) or (703) 920-9810 in the Washington, DC metropolitan area. For information on specific aspects of the used oil rulemaking, contact Ms. Rajani D. Joglekar (202) 260-3516, U.S. EPA, 401 M Street SW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

**I. Corrections**

On page 21533 of the May 20, 1992 final rule, there is a typographical error in the first paragraph of the section entitled B. Effect on State Authorizations in the middle column. The reference to 40 CFR 261.4(b)(13) should read 40 CFR 261.4(b)(15).

There is also a typographical error in the amended regulatory language at 40 CFR 261.4(b)(15). The text printed in the May 20 final rule reads "Non-terne plated used oil filters that are not mixed with wastes listed in Subpart C of this part . . ." The correct citation for listed wastes in Subpart D of Part 261, not Subpart C, which contains the descriptions of hazardous waste characteristics. Today's action corrects this error.

**II. Rationale for Immediate Effective Date**

Today's action does not create any new regulatory requirements; rather, it corrects typographical errors in the May 20, 1992 final rule on used oil. For this reason, EPA finds that good cause exists under section 3010(b)(3) of RCRA, 42 U.S.C. 9903(b)(3), to provide an immediate effective date for these minor corrections.

**III. Regulatory Impact Analysis**

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement for a Regulatory Impact Analysis (RIA). Due to the nature of this regulation (i.e., correction notice), the amendment is not major; therefore, no RIA is necessary.

**List of Subjects in 40 CFR Part 261**

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: June 22, 1992.

Don R. Clay,
*Assistant Administrator.*

The following corrections are made to the regulations in FRL-530-Z-92-006; 4118-4, final rule, published in the **Federal Register** on May 20, 1992 (57 *FR* 21524).

**PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921 through 6927,) 6930, 6934, 6935, 6937, 6938, and 6939.

2. On page 21533 of the May 20, 1992 final rule, there is a typographical error in the first paragraph of the section entitled B. Effect on State Authorizations in the middle column. The reference to 40 CFR 261.4(b)(13) should read 40 CFR 261.4(b)(15).

3. Section 261.4, paragraph (b)(15), is revised to read as follows:

**§ 261.4 Exclusions.**

* * * * *

(b) * * *

(15) Non-terne plated used oil filters that are not mixed with wastes listed in Subpart D of this part if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

* * * * *

[FR Doc. 92-15430 Filed 6-30-92; 8:45 am]
BILLING CODE 6560-50-M

**NUCLEAR REGULATORY COMMISSION**

**48 CFR Chapter 20**

**RIN 3150-AE29**

**Acquisition Regulation (NRCAR): Debarment**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is establishing the Nuclear Regulatory Commission Acquisition Regulation (NRCAR). The NRCAR is necessary to ensure that the regulations governing the procurement of goods and services within the NRC satisfy the particular needs of the

agency. The NRCAR is intended to implement and supplement the government-wide Federal Acquisition Regulation (FAR). This final rule contains only the agency's debarment, suspension, and ineligibility procedures. The NRCAR will be published as a final rule in the near future.

**EFFECTIVE DATE:** July 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Edward L. Halman, Director, Division of Contracts and Property Management, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–4347.

**SUPPLEMENTARY INFORMATION:**

**Background**

Federal agencies traditionally have developed their own contracting procedures with limited attention to uniformity among agencies. The result was a system of procurement policies that varied from agency to agency, causing confusion within the contracting community. Consequently, the Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation known as the Federal Acquisition Regulation (FAR). The FAR was published in the **Federal Register** on September 19, 1983 (48 FR 42102) with an effective date of April 1, 1984. The FAR is codified as Chapter 1 of Title 48 of the Code of Federal Regulations.

Due to differing statutory authorities among Federal agencies, the FAR authorizes agencies to issue regulations to implement FAR policies and procedures internally and to include additional policies and procedures, solicitation provisions or contract clauses to satisfy the specific needs of the agency. NRC's debarment, suspension, and ineligibility procedures are being published to provide the agency, as soon as possible, with specific implementing guidance for applying appropriate sanctions upon discovery of contractor wrongdoing. The entire Nuclear Regulatory Commission Acquisition Regulation will be published as a final rule in the near future.

**Administrative Procedure Act**

Section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq*) exempts rules relating to public contracts from the prior notice and comment procedure normally required for rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. OFPP Policy Letter 83–2 states that an agency must provide an opportunity for public comment before adopting a procurement regulation(s) if the regulation is "significant." "Significant" is defined generally as something which has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors. This regulation is issued principally to exercise delegations established by the FAR and to adopt procedures that merely supplement the debarment, suspension, and ineligibility regulations (subpart 9.406 of the FAR) and will not have additional cost or administrative impact on contractors. Therefore, NRC has determined that this rule is not significant within the meaning of OFPP Policy Letter No. 83–2.

Nonetheless, there has been an opportunity for public comment on this rule because it was part of the proposed NRCAR. The proposed NRCAR rule issued for public comment (54 FR 40420; October 2, 1989) contained the complete NRCAR regulation. At this time, we are adopting only the debarment, suspension, and ineligibility procedures from that proposed rule. Only one comment was received on this subpart. The commenter suggested that the NRCAR requirement found at 2009.405–2(a) for a certification of debarment status is inconsistent with FAR clause 52.209.5. FAR clause 52.209–5 was added to the FAR in 1989. Therefore, the NRCAR clause is no longer necessary and has been removed from the final rule.

**Environmental Impact: Categorical Exclusion**

The NRC had determined that this regulation is the type of action described in the categorical exclusion set forth in 10 CFR 51.22(c) (5) and (6). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

**Paperwork Reduction Act Statement**

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1986 (44 U.S.C. 3501 *et seq*).

**Regulatory Analysis**

This final rule establishes the procedures and requirements necessary to implement and supplement FAR Subpart 9.4, Debarment, Suspension, and Ineligibility. This final rule constitutes an administrative action governing certain procurement activities of the NRC. This provision will not have an additional adverse economic impact on any contractor or potential contractor because it merely implements the debarment, suspension, and ineligibility regulation already mandated by FAR subpart 9.4.

**Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule establishes the agency's debarment, suspension, and ineligibility procedures necessary to implement and supplment the FAR. Because the final rule established procedures applicable only in certain instances, these provisions do not have a significant economic impact on any contractor, including small entities.

**Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule. Therefore, a backfit analysis is not required because the rule does not involve any provision which would impose backfits as defined in 10 CFR 50.109(a)(1).

**List of Subjects in 48 CFR Chapter 20**

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 552 and 553, and FAR subpart 1.3, the NRC is adding chapter 20 to title 48 of the Code of Federal Regulations.

1. Chapter 20 is added to title 48 to read as follows:

**CHAPTER 20—NUCLEAR REGULATORY COMMISSION**

**PART 2009—CONTRACTOR QUALIFICATIONS**

Subpart
2009.4— Debarment, Suspension, and Ineligibility

Sec.
2009.403 Definitions.
2009.404 Consolidated list of parties excluded from Federal procurement or non-procurement programs.
2009.405 Effect of listing.
2009.405–1 Continuation of current contracts.
2009.405–2 Restrictions on subcontracting.
2009.406 Debarment.
2009.406–3 Procedures.
2009.407 Suspension.
2009.407–3 Procedures.

Sec.
2009.470 Appeals.

Authority: 42 U.S.C. 2201, sec. 201, 88 Stat. 1242; as amended 42 U.S.C. 5841; and 41 U.S.C. 418(b).

## PART 2009—CONTRACTOR QUALIFICATIONS

### Subpart 2009.4—Debarment, Suspension, and Ineligibility

#### § 2009.403 Definitions.

As used in § 2009.4:

*Debarring official* means the Procurement Executive.

*Initiating official* means the contracting officer, the Head of the Contracting Activity (HCA), the Procurement Executive, or the Inspector General.

*Suspending official* means the Procurement Executive.

#### § 2009.404 Consolidated list of parties excluded from Federal procurement or non-procurement programs.

The contracting officer responsible for the contract affected by the debarment or suspension shall perform the actions required by FAR 9.404(c) (1)–(3).

#### § 2009.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The Procurement Executive is authorized to make the determinations under FAR 9.405. Requests for these determinations must be submitted through the HCA to the Procurement Executive.

#### § 2009.405–1 Continuation of current contracts.

The HCA is authorized to make the determinations under FAR 9.405–1.

#### § 2009.405–2 Restrictions on subcontracting.

The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405–2.

#### § 2009.406 Debarment.

#### § 2009.406–3 Procedures.

(a) Investigation and referral. When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case must be referred through the HCA to the Procurement Executive immediately. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) Decision-making process. If, after reviewing the recommendations and consulting with the Office of the General Counsel and, if appropriate, the Office of the Inspector General, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406–3(c) and notify the HCA of the action taken. If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the debarring official may notify the contractor in accordance with FAR 9.406–3(d) that the contractor is debarred.

(c) Fact-finding proceedings. For actions listed under FAR 9.406–3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, and no later than 30 days after the contractor received the notice, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings must be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment.

#### § 2009.407 Suspension.

#### § 2009.407–3 Procedures.

(a) Investigation and referral. When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case must be referred through the HCA to the Procurement Executive immediately. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the suspending official.

(b) Decision-making process. If, after reviewing the recommendations and consulting with the Office of the General Counsel and, if appropriate, the Office of the Inspector General, the suspending official determines suspension is justified, the suspending official shall initiate the proposed suspension in accordance with FAR 9.407–3(b)(2). The contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in FAR 9.406–3(b)(2). If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the suspending official may notify the contractor in accordance with 9.407–3(d) that the contractor is suspended.

#### § 2009.470 Appeals.

A debarred or suspended contractor may appeal the debarring/suspending official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the Executive Director for Operations. A copy of the notice of appeal must be furnished to the debarring/suspending official from whose decision the appeal is taken.

Dated at Bethesda, Maryland, this 22nd day of June, 1992.

For the Nuclear Regulatory Commission.

**Patricia G. Norry,**

*Director, Office of Administration.*

[FR Doc. 92–15321 Filed 6–30–92; 8:45 am]

BILLING CODE 7590–01–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration (NOAA)

### 50 CFR Part 672

[Docket No. 911176–2018]

### Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for pollock in statistical area 61 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

**DATES:** Effective 12 noon, Alaska local time (A.l.t.), June 30, 1992, until 12 noon, A.l.t., September 28, 1992.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC for statistical area 61 is 2,639 metric tons, determined in accordance with § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS, in accordance with § 672.20(c)(2)(ii), has determined that the third quarterly allowance of pollock TAC for statistical area 61 will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in statistical area 61, effective from 12 noon A.l.t., June 30, 1992, until 12 noon, A.l.t., September 28, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

**Classification**

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

**List of Subjects in 50 CFR Part 672**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 26, 1992.

**Richard H. Schaefer,**

*Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92–15422 Filed 6–26–92; 12:56 pm]

BILLING CODE 3510–22–M

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**50 CFR Part 672**

**[Docket No. 911176–2018]**

**Groundfish of the Gulf of Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Modification of closures.

**SUMMARY:** NMFS is rescinding the closures to directed fishing for sablefish by vessels using hook-and-line gear in the West Yakutat (WY) district and the Central Regulatory Area (CRA) of the Gulf of Alaska (GOA) to allow a 24-hour directed fishery for sablefish. NMFS is announcing a new effective date for closures to directed fishing for sablefish by vessels using hook-and-line gear in these areas.

**EFFECTIVE DATES:** Effective 12 noon, Alaska local time (A.l.t.), June 28, 1992, through 12 noon, A.l.t. June 29, 1992, the closures to directed fishing for sablefish by vessels using hook-and-line gear in the WY and CRA are rescinded; and effective 12 noon, A.l.t., June 29, 1992, through 12 midnight, A.l.t., December 31, 1992, directed fishing for sablefish by vessels using hook-and-line gear in the WY and CRA is closed.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

Directed fisheries for sablefish by operators of vessels using hook-and-line gear in the WY district and the CRA were previously closed by an action published at 57 FR 24992, June 12, 1992.

The Director of the Alaska Region, NMFS (Regional Director), has determined that the share of sablefish total allowable catch (TAC) assigned to hook-and-line gear remaining in these areas is sufficient to allow a 24–hour directed fishery. Therefore, NMFS is rescinding the closures to directed fishing for sablefish by operators of vessels using hook-and-line gear in the WY district and the CRA for the period from 12 noon A.l.t., June 28, 1992, until 12 noon, A.l.t., June 29, 1992.

The Regional Director, in accordance with § 672.24(c)(3)(i), has determined that the share of the sablefish TAC assigned to hook-and-line gear in the WY district and the CRA will be taken before the end of the year. Therefore, to provide adequate bycatch amounts of sablefish to ensure continued groundfish fishing activity by hook-and-line gear, NMFS is prohibiting directed fishing for sablefish by vessels using hook-and-line gear in the WY district and the CRA, effective from 12 noon A.l.t., June 29, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

**Classification**

This action is taken under 50 CFR 672.24 and is in compliance with Executive Order 12291.

**List of Subjects in 50 CFR Part 672**

Fish, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 26, 1992.

**Richard H. Schaefer,**

*Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92–15423 Filed 6–26–92; 12:56 pm]

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**50 CFR Parts 672 and 675**

**[Docket No. 920382–2062]**

**Groundfish of the Bering Sea and Aleutian Islands Area; Groundfish of the Gulf of Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency interim rule; extension of effective dates.

**SUMMARY:** An emergency rule that revised management measures applicable to the management and monitoring of prohibited species bycatch in the Gulf of Alaska (GOA) and in the Bering Sea and Aleutian Islands area (BSAI) is in effect through July 2, 1992. NMFS extends the emergency rule for an additional 90-day period (through September 30, 1992) to avoid serious problems pertinent to inseason management and monitoring of prohibited species bycatch allowances. This action is intended to further the goals and objectives contained in the fishery management plans for the groundfish fisheries off Alaska.

**EFFECTIVE DATES:** The interim regulations published on April 3, 1992 (57 FR 11433, as corrected at 57 FR 14667, April 22, 1992, and amended at 57 FR 21355, May 20, 1992) are extended from July 3, 1992, through September 30, 1992, except for amendments to § 672.23, which are effective through July 2, 1992.

**FOR FURTHER INFORMATION CONTACT:** Susan J. Salveson (Fisheries Management Division, NMFS), (907) 586–7228.

**SUPPLEMENTARY INFORMATION:** On March 30, 1992, the Secretary of Commerce (Secretary) implemented an emergency interim rule (57 FR 11433,

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April 3, 1992) under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Subsequently, a notice of correction (57 FR 14667, April 22, 1992) and a technical amendment to the emergency rule (57 FR 21355, May 20, 1992) were published in the Federal Register. The emergency rule implemented the following measures for a 90-day period (through July 2, 1992):

1. The 1992 Pacific halibut prohibited species catch (PSC) limit for BSAI trawl gear was reduced from 5,333 metric tons (mt) to 5,033 mt;

2. Management of the BSAI trawl fisheries that are eligible to receive prohibited species bycatch allowances under § 675.21(b) was revised;

3. The GOA and BSAI directed fishing standards were revised to limit more effectively bycatch amounts of prohibited species and groundfish for which directed fishery closures have been implemented; and

4. The GOA rockfish trawl fishery was delayed until June 29, 1992, to reduce bycatch amounts of chinook salmon and revise directed fishing standards for GOA rockfish to support the season delay.

NMFS has published a proposed rule for public review and comment (57 FR 22695, May 29, 1992) that would implement permanently the temporary management measures implemented under the emergency rule. Pending approval by the Secretary, a final rule implementing these measures will not be effective before late summer, 1992. With the exception of the GOA rockfish trawl fishery delay (item 4 above), the conditions justifying the emergency action remain unchanged and warrant an extension of the emergency rule until Secretarial action is taken on the proposed rule and the measures are implemented through a final rule. Under the emergency rule, the directed rockfish trawl fishery in the GOA will start on July 1, 1992, when the third quarterly apportionment of the GOA halibut bycatch limit specified for trawl gear becomes available. Therefore, with the exception of that portion of the emergency rule addressing the delay of that fishery (§ 672.23), which will no longer be needed and which will remain effective only through July 2, 1992, the Secretary, with the agreement of the North Pacific Fishery Management Council, extends the effectiveness of the emergency rule, as corrected and amended, for an additional 90 days under section 305(c)(3)(B) of the Magnuson Act. Further background and descriptive information is contained in the preamble of the emergency rule.

The emergency rule is exempt from the normal review procedures of E.O. 12291, as provided in section 8(a)(1) of that order. This rule was reported to the Director of the Office of Management and Budget with an explanation of why following the usual procedures of that order was not possible.

**List of Subjects in 50 CFR Parts 672 and 675**

Fisheries, Reporting and recordkeeping requirements.

Dated: June 25, 1992.

**Samuel W. McKeen,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 92-15431 Filed 6-30-92; 8:45 am]

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AGENCY: A
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# Proposed Rules

Federal Register
Vol. 57, No. 127
Wednesday, July 1, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 51

[Docket No. 91-128]

### Animals Destroyed Because of Brucellosis

**AGENCY:** Animal and Plant Inspection Service, USDA.
**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to increase the amount of Federal indemnity for breeding swine (swine that are 6 months and older) destroyed because of exposure to brucellosis. The increased indemnity is necessary to give herd owners sufficient financial incentive to destroy their exposed breeding swine, thereby assisting in the accelerated eradication of brucellosis in the United States.

**DATES:** Consideration will be given only to comment received on or before August 31, 1992.

**ADDRESSES:** To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-128. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Delorias M. Lenard, Senior Staff Veterinarian, Swine Health Staff, VS, APHIS, USDA, room 736-A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7767.

**SUPPLEMENTARY INFORMATION:**

### Background

Brucellosis is a serious, infectious disease of animals and man caused by bacteria of the genus Brucella. Brucellosis in swine is characterized by abortion, infertility, orchitis, posterior paralysis, and lameness. The regulations in 9 CFR part 51 (referred to below as the regulations) provide for payment of Federal indemnity to owners of animals destroyed because of brucellosis. Under the regulations, maximum "per head" indemnity rates are set, with the provision that the Administrator shall authorize the maximum amount in each case unless: (1) sufficient funds are not available, (2) the State or area in which the animal is located is under Federal quarantine, (3) the State does not request payment of Federal indemnity, or (4) the State requests a rate lower than the maximum.

Under the regulations, owners are eligible for Federal indemnity for breeding swine (swine that are 6 months and older) destroyed as brucellosis reactors and for breeding swine destroyed because of exposure to brucellosis. However, approximately 80 percent of breeding swine herd owners offered indemnity payments for destruction of exposed breeding swine decline, many choosing instead to have their animals destroyed only if the animals are later identified as brucellosis reactors. There is currently no financial incentive for prompt action because the amount of Federal indemnity authorized for brucellosis exposed breeding swine equals the amount authorized for breeding swine destroyed as brucellosis reactors.

Brucellosis exposed swine have a high probability of contracting brucellosis and may, in fact, be contagious before they react to an official test for brucellosis. Usually swine develop a positive reaction to the blood test for brucellosis within 1 to 7 weeks after infection, but some may not do so for up to 34 months or longer. Meanwhile, the exposed breeding swine are potential transmitters of the disease.

Herd owners are eligible for Federal indemnity of only $25 per head for registered, inbred or hybrid breeding swine and only $10 a head for all other breeding swine that are destroyed because of exposure to brucellosis. These amounts are inadequate for most owners to consider destroying exposed breeding swine.

On December 18, 1981, we published in the **Federal Register** (56 FR 61641, Docket No. 81-099) a document suspending the effective date of that part of a final rule published in the **Federal Register** on November 20, 1981, that increased the maximum federal indemnity which could be paid for breeding swine destroyed because of brucellosis. The suspension was necessary because there were no funds available at the time to pay increased Federal indemnity for breeding swine destroyed because of brucellosis.

We have re-evaluated the brucellosis eradication program and determined that funds are now available to pay a higher level of indemnity payments for brucellosis exposed breeding swine. The proposed increase in indemnity payments is clearly economically sound, when actual and potential impacts of swine brucellosis are considered. By motivating producers to depopulate exposed herds, the swine brucellosis program can be brought to a speedy and successful conclusion. We therefore propose to increase the amount of Federal indemnity for breeding swine destroyed because of exposure to brucellosis to $150 a head for registered, inbred, or hybrid breeding swine and $65 a head for all other breeding swine. These amounts are consistent with the amounts offered by States that pay indemnity for brucellosis exposed breeding swine. This action would provide financial incentive for owners to destroy brucellosis exposed breeding swine in a timely manner, reducing the risk of the disease spreading.

It is estimated that the proposed Federal indemnity payments would cost approximately $87,000 in the coming year. The benefits derived from control and eventual eradication of swine brucellosis would more than compensate for this expenditure.

Patterns of swine brucellosis incidence suggest that the proposed increase in indemnity payments for exposed animals would effectively contribute to eradication of the disease. Large commercial herds are at little risk from swine brucellosis because of modern management practices and the widespread availability of disease-free seedstock. On the other hand, non-commercial herds are at high risk, particularly those that share breeding boars. Higher indemnity payments will encourage depopulating of the exposed swine of these smaller, noncommercial herds, in which infection is recurrent in relatively isolated settings.

Swine brucellosis also can have negative consequences for cattle producers. Although the pathogen does not cause clinical disease when transmitted to cattle, it creates an antibody titer that can lead to erroneous diagnostic testing for bovine brucellosis. Unnecessary costs are incurred in subjecting healthy cattle to subsequent quarantine measures and additional testing.

Swine brucellosis also presents a serious health hazard to humans. The organism causing swine brucellosis appears to have a higher degree of pathogenicity for humans than other brucella species found in the United States. Public health risks in addition to potential losses in animal productivity significantly increase the importance of depopulating brucellosis exposed swine.

Besides productivity losses and the threat to human health, swine brucellosis hinders interstate commerce. All breeding swine transported from the 12 states which have not been validated as brucellosis free first must be tested for the disease.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Under this proposed rule, owners of breeding swine that are destroyed because of exposure to brucellosis would be eligible for Federal indemnity amounting to an increase of $125 a head over the present rate for registered, inbred, or hybrid swine and $55 a head for all other breeding swine. We estimate that we will offer indemnity payments of approximately $87,000 for breeding swine in the coming year because of exposure to brucellosis. There are approximately 65 herd owners that would be affected by this proposal and all of these would be considered small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule, and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

**List of Subjects in 9 CFR Part 51**

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Indemnity payments.

Accordingly, 9 CFR part 51 would be amended as follows:

## PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

1. The authority citation for part 51 would continue to read as follows:

**Authority:** 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 51.3 [Amended]**

2. In § 51.3, paragraphs (b)(2) and (b)(3) would be amended by removing "$25" and adding "$150" in its place, and by removing "$10" and adding "$65" in its place.

Done in Washington, DC, this 25th day of June 1992.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92–15437 Filed 6–30–92; 8:45 am]

BILLING CODE 3410-34-M

## FEDERAL RESERVE SYSTEM

**12 CFR Parts 208 and 263**

**[Docket No. R–0763; Regulation H]**

## Membership of State Banking Institutions in the Federal Reserve System; Rules of Practice for Hearings; Prompt Corrective Action

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board is proposing to revise Regulation H to implement for state member banks the system of prompt corrective action established by section 38 of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Section 38 requires each federal banking agency to implement prompt corrective action for the institutions that it regulates. The Board is also proposing to revise its rules of practice for hearings to establish procedures for the issuance of directives and other actions required under prompt corrective action.

Section 38 requires or permits the Board to take certain supervisory actions when a state member bank falls within one of five specifically enumerated capital categories. It also restricts or prohibits certain activities and requires the submission of a capital restoration plan when an insured institution becomes undercapitalized. The proposed amendments to the Board's regulations are necessary to establish the capital levels at which state member banks will be deemed to come within the five capital categories. The proposed amendments also establish procedures for issuing and contesting prompt corrective action directives including directives requiring the dismissal of directors and senior executive officers.

The Board is seeking comment on all aspects of its proposal.

**DATES:** Written comments must be received on or before August 14, 1992.

**ADDRESSES:** Comments, which should refer to Docket No. R–0763, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard

entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

**FOR FURTHER INFORMATION CONTACT:** Frederick M. Struble, Associate Director (202/452-3794), Norah Barger, Supervisory Financial Analyst (202/452-2402), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452-3583), Gregory A. Baer, Senior Attorney (202/452-3236), Legal Division; Myron L. Kwast, Assistant Director, Division of Research and Statistics, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 131 of FDICIA, Public Law 102-242, created a new statutory framework that applies to every insured depository institution a system of supervisory actions indexed to the capital level of the individual institution. The stated purpose of this statutory provision is to resolve the problems of insured depository institutions at the least possible long-term loss to the deposit insurance fund. The new framework is contained in section 38 of the FDI Act. This framework and the authority it confers on the federal banking agencies are meant to supplement the existing supervisory authority vested in the agencies, and do not limit in any way their existing authority under other statutes or regulations to initiate supervisory actions to address capital deficiencies, unsafe or unsound conduct, practices, or conditions, or violations of law.

Section 38 requires the federal banking agencies, within 9 months of the enactment of FDICIA, to promulgate final regulations necessary to carry out the purposes of that section. Under the statute, these regulations must become effective within one year after the date of enactment of FDICIA, or no later than December 19, 1992.

It is the goal of the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), and the Office of Thrift Supervision ("OTS") to promulgate uniform regulations to the extent feasible in implementing the prompt corrective action framework of section 38. The agencies believe that a uniform approach to capital definitions and capital categories would simplify the tasks facing bank and thrift management of monitoring and maintaining the capital levels of insured depository institutions, and would remove any competitive distortions that might arise if different standards were applied to competing institutions.

In order to implement the provisions of section 38, the agencies have proposed regulations that have uniform provisions. The agencies propose to define in the same manner the capital measures and capital thresholds for each of the five capital categories established in the statute. The agencies also propose to establish a uniform schedule for filing and review of capital restoration plans. In addition, the agencies propose to adopt identical provisions clarifying certain aspects of the capital guarantee required to be made by companies that control an undercapitalized institution as part of an acceptable capital plan, including the limit on the liability of such companies.

The agencies' proposal establishes a procedure under which institutions are provided advance notice of a proposed agency action under section 38 and provided an opportunity to respond to the proposed action. A separate procedure is proposed that governs decisions by the appropriate federal banking agency to change the capital category to which the institution is assigned after review of supervisory factors other than capital. Finally, the proposal implements the statutory requirement that officers and directors who are subject to dismissal as a result of an agency order issued under section 38 be afforded agency review of the dismissal.

Many of the provisions of section 38 apply without the need for agency action, or impose requirements or limitations on an agency in the exercise of its discretion. These provisions have not been repeated in the proposed regulation. The proposal implements only those portions of section 38 that the agencies believe require regulatory specification or clarification.

Where procedures have not been established in this proposal, such as procedures for review of a stock redemption or an expansion proposal by an undercapitalized institution, each agency will implement a procedure governing agency review. Such procedures will be established by regulation or through instructions to its appropriate field offices or examiners and to the institutions involved. In several instances, procedures governing agency review have already been established in other agency regulations.

The agencies request comment on all aspects of this proposal, including the specific numbered questions presented below. In addition, the agencies request comment on whether other provisions of section 38 require clarification or should be implemented by regulation. The agencies stress that comments may address any aspect of the proposal and need not be confined to the numbered questions set out below. Commenters are invited to submit comments to any or all of the federal banking agencies.

## II. Summary of Statutory Framework

The following is a brief summary of the supervisory framework established by section 38. This summary has been prepared in order to give context to the agency proposal and request for comment. The summary is not intended to be complete description of the requirements of section 38, and commenters may find it useful to consult the provisions of section 38, contained at 12 U.S.C. 1831o, in preparing their comments.

Section 38 provides a framework of supervisory actions based on the capital level of an insured depository institution. Section 38 establishes five capital categories: well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. The statute deems an insured depository institution to be:

Well capitalized if the institution significantly exceeds the required minimum level for each relevant capital measure;

Adequately capitalized if the institution fails to meet the required minimum level for any relevant capital measure;

Undercapitalized if the institution fails to meet the required minimum level for any relevant capital measure;

Significantly undercapitalized if the institution is significantly below the required minimum level for any relevant capital measure; or,

Critically undercapitalized if the institution has a ratio of tangible equity to total assets of 2 percent or less, or otherwise fails to meet the critical capital level established pursuant to section 38(c)(3)(A).

The applicability of supervisory actions provided in section 38 to an individual institution depends on the institution's classification within one of these five categories.

### *A. Provisions Applicable to All Institutions*

Section 38 prohibits are insured depository institution from declaring any individuals, making any other

capital distribution, or paying a management fee to a controlling person if, following the distribution or payment, the institution would be within any of the three undercapitalized categories. The statute provides a limited exception to this prohibition for stock redemptions that do not result in any decrease in an institution's capital and would improve the institution's financial condition provided the redemption has been approved by the institution's appropriate federal banking agency after consultation with the FDIC.

*B. Provisions Appliable to Undercapitalized Institutions*

Institutions that are classified as undercapitalized are subject to a number of additional mandatory supervisory actions. These include.

- Increased monitoring by the appropriate federal banking agency for the institution and periodic review of the institution's efforts to restore its capital;
- A requirement that the institution submit, generally within 45 days, a capital restoration plan acceptable to the appropriate federal banking agency for the insitution and implement that plan;
- A restriction on growth of the institution's total assets; and
- A limitation on the institution's ability to make any acquisition, open any new branch offices, or engage in any new line of business without the prior approval of the appropriate federal banking agency for the institution.

Section 38 also provides that the appropriate federal banking agency for an undercapitalized institution may take any a number of discretionary supervisory actions if the agency determines that any of these actions is necessary to resolve the problems of the institution at the least possible long-term cost to the deposit insurance fund. These discretionary supervisory actions include requiring the institution to raise additional capital, restricting transactions with affiliates, restricting interest rates paid by the institution on deposits, requiring replacement of senior executive officers and directors, restricting the activities of the institution and its affiliates, requiring divestiture of the institution or the sale of the institution to a willing purchaser, and any other supervisory action that the agency deems appropriate. Because these discretionary actions are also applicable to significantly undercapitalized institutions (as well as to critically undercapitalized institutions), these actions are described more fully in the next section.

*C. Provisions Applicable to Significantly Undercapitalized Institutions*

Section 38 provides that significantly undercapitalized institutions are subject to the four mandatory provisions listed above that are applicable to undercapitalized institutions. Sections 38 also provides that a significantly undercapitalized institution must restrict the payment of bonuses and raises to senior executive officers of the institution.

In addition to these mandatory requirements, section 38 specifies that the appropriate federal banking agency for the institution shall impose one or more restrictions on an institution that is significantly undercapitalized. These discretionary actions include:

- Requiring the institution to sell enough additional capital, including voting shares, so that the institution would be adequately capitalized after the sale;
- Restricting transactions between the institution and its affiliates, including transactions with its insured depository institution affiliates;
- Restricting the interest rates paid on deposits collected by the institution to the prevailing rates in the region where the institution is located;
- Restricting the institution's asset growth or requiring the institution to reduce its total assets;
- Requiring the institution or any subsidiary of the institution to terminate, reduce or alter any activity that the agency determines poses excessive risk to the institution;
- Requiring the institution to hold a new election of its board of directors;
- Requiring the institution to dismiss any director or senior executive officer who had held office at the institution for more than 180 days immediately before the institution became undercapitalized if the agency deems such dismissal to be appropriate, and to employ new officers who may be subject to agency approval;
- Prohibiting the institution from accepting deposits from correspondent depository institutions;
- Prohibiting any bank holding company that controls the institution from making any dividend payment without prior approval of the Federal Reserve Board;
- Requiring the institution to accept an offer to be acquired by another institution or company, or requiring any company that controls the institution to divest the institution;
- Requiring the institution to divest or liquidate any subsidiary that is in danger of becoming insolvent and poses a significant risk to the institution, or that is likely to cause significant dissipation of the institution's assets or earnings;
- Requiring any company that controls the institution to divest or liquidate any affiliate of the institution (other than another insured depository institution) if the appropriate federal banking agency for the holding company determines that the affiliate is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause significant dissipation of the institution's assets or earnings; and
- Requiring the institution to take any other action that the agency determines would better carry out the purposes of section 38.

While the statute generally provides the agency with discretion to determine whether these actions are appropriate in connection with a particular institution, the statute establishes certain presumptions and requirements with respect to the agency's consideration of these actions. Section 38 requires that the agency take at least one of the above discretionary supervisory actions in connection with every institution that is significantly undercapitalized or critically undercapitalized. The statute also establishes a presumption that the agency require each significantly undercapitalized or critically undercapitalized institution to (1) be acquired by another institution or company or sell sufficient shares to restore the institution's capital to at least the minimum acceptable capital level, (2) restrict transactions with affiliates of the institution, including transactions with depository institution affiliates, and (3) restrict interest rates paid by the institution on deposits. The agency must impose each of these three actions unless the agency determines that the action would not further the purpose of section 38.

As discussed above, each of the discretionary actions listed above may also be taken in connection with undercapitalized institutions if a finding is made by the agency that the action is necessary to carry out the purposes of section 38. In addition, these discretionary actions may be taken in connection with any undercapitalized institution that fails to submit or materially implement a capital restoration plan, as if the institution were a significantly undercapitalized institution.

In addition to the discretionary actions discussed above, section 38 also provides that the appropriate federal banking agency may require a significantly undercapitalized institution or an undercapitalized institution that

has failed to submit or implement an acceptable capital restoration plan to comply with one or more of the restrictions established by the FDIC on the activities of critically undercapitalized institutions.

*D. Provisions Applicable to Critically Undercapitalized Institutions*

Section 38 requires that an insured depository institution that is critically undercapitalized be placed in conservatorship or receivership within 90 days, unless the appropriate federal banking agency for the institution and the FDIC concur that other action would better achieve the purposes of section 38. A determination by the agency to defer placing a critically undercapitalized institution in receivership or conservatorship must be reviewed every 90 days and must document the reasons the agency believes other action would better achieve the purposes of section 38.

The statute requires that the institution be placed in receivership if the institution continues to be critically undercapitalized on average during the fourth quarter after the institution initially became critically undercapitalized, unless certain specific statutory requirements are met. To be eligible for the exception, the institution must (1) have positive net worth, (2) be in substantial compliance with an approved capital restoration plan, (3) be profitable or have an upward trend in earnings, and (4) have reduced its ratio of nonperforming loans to total loans. In addition, the head of the appropriate federal banking agency for the institution and the Chairperson of the FDIC must both certify that the institution is viable and not expected to fail.

Critically undercapitalized institutions are also prohibited, beginning 60 days after becoming critically undercapitalized, from making any payment of principal or interest on subordinated debt issued by the institution without the prior approval of the FDIC. Section 38 does not prevent unpaid interest from accruing on subordinated debt under the terms of the debt instrument.

Section 38(i) of the FDI Act also provides that the FDIC, by regulation or order, must restrict the activities of critically undercapitalized institutions. At a minimum, the FDIC must prohibit a critically undercapitalized institution from doing any of the following without the prior written approval of the FDIC:

- Entering into any material transaction other than in the usual course of business. Such activities include any investment, expansion, acquisition, sale of assets or other similar action where the institution would have to notify its appropriate federal banking agency;
- Extending credit for any highly leveraged transaction;
- Amending the institution's charter or bylaws unless required to do so in order to carry out any other requirement of any law, regulation or order;
- Making any material change in its accounting methods;
- Engaging in any "covered transactions" within the meaning of § 23A(b) of the Federal Reserve Act (12 U.S.C. 371c), which concerns affiliate transactions;
- Paying excessive compensation or bonuses; and
- Paying interest on new or renewed liabilities at a rate which would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates in the institution's normal market areas.

Pursuant to section 38(j) of the FDI Act, none of these restrictions apply to institutions in conservatorship or to any bridge bank that is wholly owned by the FDIC or the RTC.

Pursuant to section 38(o)(2) of the FDI Act, none of these restrictions shall apply, before July 1, 1994, to any insured savings association if:

(a) The savings association had submitted a plan meeting the requirements of section 5(t)(A)(ii) of the Home Owners' Loan Act;

(b) The Director of OTS had accepted the plan; and

(c) The savings association remains in compliance with the plan or is operating under a written agreement with the appropriate federal banking agency.

## III. Proposal and Request for Comment

*A. Capital Measures*

For purposes of defining each of the capital categories (except for the critically undercapitalized category), section 38(c) requires the agencies to prescribe capital standards that include a leverage limit and a risk-based capital requirement. The agencies may establish additional capital measures for these categories if additional capital measures would serve the purposes of section 38. In addition, section 38 permits the agencies to rescind the leverage limit or the risk-based capital measure if the federal banking agencies concur that either measure is no longer an appropriate means for carrying out the purposes of section 38.

The agencies are proposing to adopt the leverage limit and the total risk-based capital measure in defining the capital categories other than the critically undercapitalized category. In addition, the agencies propose to adopt the Tier 1 risk-based capital ratio as a capital measure in defining these capital categories. These measures are generally used by the federal banking agencies in determining the adequacy of capital of insured depository institutions.

*Comment 1:* The agencies request comment on whether adoption of these three capital measures is appropriate to carry out the purpose of section 38.

The agencies note that the capital requirements applicable to insured depository institutions may be affected by section 305 of FDICIA, which amends section 18 of the Federal Deposit Insurance Act ("FDI Act") to require the agencies to revise their risk-based capital standards to take into account interest rate risk, concentration of credit risk, and the risks of nontraditional activities. The statutory deadline for implementation of these revisions is in June 1993.

As the revisions required under section 18 of the FDI Act are implemented, it might prove necessary of appropriate to review the capital measures and thresholds specified for the various capital categories. In particular, the agencies note that one of the rationales for retaining a leverage ratio after the risk-based capital measure was introduced was that the risk-based capital measure is focused on credit-related risk, and does not explicitly factor in other risks, particularly interest rate risk. The agencies will address in an appropriate and expeditious manner the need for lowering or eliminating the leverage capital component from the definitions of well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized after the risk-based capital standards have been revised by each Federal banking agency to take account of interest rate risk as required by section 305 of FDICIA.

*B. Definition of Capital Terms*

The agencies propose to adopt the same definitions of capital terms for purposes of the prompt corrective action provisions of section 38 as are currently used under the capital adequacy guidelines or regulations adopted by the agencies. The definition of the risk-based and leverage capital ratios for purposes of the prompt corrective action subpart would refer to the definitions of Tier 1 capital, total capital, total risk-weighted assets, adjusted total assets, and total assets as those terms are defined in the agencies' current capital adequacy guidelines and regulations.

This proposal attempts to reduce complexity that could result from the use of new or modified capital definitions, and to minimize confusion and the possibility that an institution may be uncertain regarding its capital levels for purposes of section 38.

*Comment 2:* The agencies request public comment regarding whether this approach is appropriate or whether the agencies should modify the existing capital definitions for purposes of applying section 38. If adjustments of modifications to the capital definitions currently used are deemed to be appropriate, the agencies request comment on what type of adjustments or modifications should be made.

*Comment 3:* The agencies also request comment regarding the appropriate period for calculation of capital levels. Under current practice and requirements, the level of capital of an institution is calculated on the basis of the amount of capital held by the institution on a given day as a ratio of the most recent quarterly average of total assets or quarter-end risk-weighted assets for the institution. A daily calculation of both capital and assets may facilitate prompt action under section 38. However, the agencies note that insured depository institutions are not currently required to make daily calculations of capital, and such a requirement would increase the reporting burden on many institutions. In addition, a daily calculation may distort capital calculations by focusing on individual daily events (such as a decline in the market value of certain investments on a given day) rather than on related actions taken during a given period or remedial actions that are readily available to the institution (such as a decline in market value in one investment followed by a gain realized on the sale of another investment).

*Comment 4:* The agencies request comment on whether, for purposes of applying the prompt corrective action requirements of section 38, the use of quarterly average total assets or quarter-end risk-weighted assets in calculating capital levels is appropriate, or whether the capital calculations for an institution should be based on an actual daily measure or quarter-end measure of the institution's capital and assets.

*Comment 5:* The agencies also request comment on whether a daily calculation of total assets and risk-weighted assets is feasible, and whether a requirement that an institution make daily calculations would impose significant added burden on insured depository institutions.

*C. Specific Capital Levels for Five Capital Categories*

Section 38 requires the agencies to establish specific capital thresholds for each capital category and sets general standards, as described above, for each of these categories. Under these standards, an institution is adequately capitalized if it meets the required minimum level for each relevant capital measure. Thus, capital levels set for the adequately capitalized category generally would be the same as the minimum ratios established under the existing minimum capital adequacy rules and guidelines adopted by the agencies. These minimums are 8 percent for the total risk-based capital ratio, 4 percent for the Tier 1 risked-based capital ratio, and 4 percent for the Tier 1 leverage ratio (3 percent for composite 1-rated banks and savings associations, subject to appropriate federal banking agency guidelines). An institution would have to meet all these minimums in order to be deemed adequately capitalized.

The statute also provides specific guidance as to the capital level for defining a critically undercapitalized institution. Section 38 requires that a critically undercapitalized institution be defined by reference to the institution's ratio of tangible equity to total assets. The statute requires the agencies to establish the threshold ratio for defining a critically undercapitalized institution at no lower than 2 percent. As discussed below, the agencies are proposing that a critically under capitalized institution be defined as any institution that has a Tier 1 leverage ratio of 2 percent or less.

Taking the capital levels for the adequately capitalized and critically undercapitalized categories as benchmarks, the agencies are proposing that the capital levels for the undercapitalized category be defined as any level under 8 percent for the total risk-based capital ratio, under 4 percent for the Tier 1 risk-based capital ratio, or under 4 percent for the Tier 1 leverage ratio (under 3 percent for composite 1-rated banks and savings associations, subject to appropriate federal banking agency guidelines). An institution would be considered undercapitalized if it were below the specified capital level for any of the three capital measures.

Further, the capital levels for significantly undercapitalized institutions would be defined as any level under 6 percent for the total risk-based capital ratio, under 3 percent for the Tier 1 risk-based capital ratio, or under 3 percent for the Tier 1 leverage ratio. An institution would be considered significantly undercapitalized if it were below the specified capital level for any of the three capital measures. Under the proposed definitions, an institution that is significantly undercapitalized also would be deemed to be undercapitalized. Similarly, an institution that is critically undercapitalized also would be deemed to be significantly undercapitalized and undercapitalized. The overlap between these categories is contemplated by the statute and has the effect of applying to significantly undercapitalized institutions and to critically undercapitalized institutions any provisions of section 38 that are applicable to undercapitalized institutions.

The agencies are proposing to establish the minimum total risk-based capital level for the well capitalized category at 10 percent and to set the minimum leverage capital level for this category at 5 percent. To emphasize the importance the agencies place on Tier 1 capital, it is proposed that for the well capitalized category the minimum level for the Tier 1 risk-based capital ratio be set at 6 percent. The specifications of the minimum ratios for the well capitalized category are proposed at levels that are 25 percent to 50 percent higher than the minimum for the adequately capitalized category to promote safe and sound banking conditions, giving due consideration to the international capital standards to which the United States and other G–10 countries have agreed, and to the competitive pressures faced by U.S. banks operating in international markets with foreign banks adhering to these standards.

Capital ratios alone, of course, are not fully indicative of the capital strength of an institution. In particular, in proposing these minimum capital levels, the agencies are aware that some poorly-rated depository institutions have capital ratios above the specified minimums for the well capitalized and adequately capitalized categories. One reason that some poorly-rated institutions qualify as well capitalized for prompt corrective action purposes is that capital is a lagging indicator of problems of insured depository institutions.

Some institutions are subject to a written order or directive that establishes a higher capital level for the institution. The agencies are proposing that for an institution to be well capitalized, it must not be subject to any written capital order or directive. This proposal reflects the view that an institution that is subject to a written

capital directive from the appropriate federal banking agency does not have capital that significantly exceeds the required minimum level for the relevant capital measures.

The agencies also intend to assess carefully all aspects of a troubled institution's condition, and to exercise their reclassification authority under section 38(g) of FDICIA. Section 38(g) gives the agencies discretion to downgrade, where appropriate, a "well capitalized" institution by one category and require an "adequately capitalized" or "undercapitalized" institution to comply with supervisory actions as if it were in the next lower category if that institution has received a less-than-satisfactory examination rating for asset quality, management, earnings, or liquidity without correcting the deficiency. Any institution would be subject to downgrading on the basis of the components of the institution's examination rating, including an institution that has been deemed not to be within the well capitalized category because the institution is subject to a written capital order or directive.

While the prompt corrective action framework constitutes an additional supervisory tool, the federal banking agencies continue to have available all supervisory tools traditionally used to supervise institutions. The agencies also fully intend to use these tools as appropriate in supervising institutions. These include appropriate enforcement actions and supervisory follow-up measures based upon the institution's overall condition and the existence of any financial, operational, or other supervisory weaknesses, irrespective of the organization's capital category for purposes of the prompt corrective action provisions of section 38.

Accordingly, the assignment of an institution to a particular capital category—including the well capitalized category—does not prevent the appropriate federal banking agency from taking other supervisory action that the agency deems to be appropriate. Moreover, in light of the intended limited purpose of a capital category designation, the agencies are proposing to limit a given insured depository institution's use of its capital category, except when permitted by the appropriate federal banking agency or otherwise required by statute or regulation. This is intended to limit the ability of insured depository institutions to advertise their category.

*Comment 6:* The agencies invite comment on this limitation on advertising.

Traditionally, examiners have reached judgments on an institution's capital needs by also taking into account a range of factors such as interest rate risk and concentration risk. The agencies have initiatives under way mandated by FDICIA to review their risk-based capital standards to ensure that they take more adequate account of such risks, and also have been engaged in a project under the Federal Financial Institutions Examination Council ("FFIEC") to refine and improve procedures for assessing the reserving policies and practices of individual institutions. After those projects have been completed and improvements implemented and assessed, the agencies intend to revisit the question of how the specifications for the well capitalized category may need to be modified or adjusted.

*Comment 7:* The agencies request comment on all aspects of the capital levels proposed in the draft regulation.

*Comment 8:* In particular, the agencies seek comment on whether the specific levels set for each capital category are appropriate, as well as whether it is appropriate to require that well-capitalized institutions not be subject to a capital order or directive.

### *D. Critically Undercapitalized Institutions*

The statute requires that the critically undercapitalized category be based on the ratio of tangible equity to total assets of the institution. Section 38 requires that the minimum ratio for this category be established at a level of tangible equity that is no less than 2 percent of the institution's total assets, and that is no higher than the ratio equal to 65 percent of the required minimum level of capital under the leverage limit. The agencies may, be regulation, specify additional capital measures (such as a risk-based capital ratio) in defining the critically undercapitalized category. Any such measures may not, without the concurrence of the FDIC, be set at a level lower than the level specified by the FDIC for insured state-chartered banks that are not members of the Federal Reserve System.

The agencies are proposing to define critically undercapitalized institutions as institutions that have a ratio of Tier 1 capital to total assets of 2 percent or less. The agencies do not at this time propose to establish any additional capital measures for the critically undercapitalized category.

Under this proposal, the agencies would define tangible equity to be Tier 1 capital as defined under the agencies' existing capital adequacy guidelines or regulations. The use of the Tier 1 capital definition has been proposed for several reasons. The definition of Tier 1 capital requires a deduction from equity capital for most intangible assets, including goodwill. The use of Tier 1 capital also focuses primarily on common equity rather than other forms of equity and, therefore, represents the most secure form of equity available to absorb losses that may be incurred by an insured depository institution.

In addition, because Tier 1 capital is an element of the existing capital adequacy guidelines and is included in the definition of the other capital measures proposed under section 38, use of the Tier 1 capital definition would promote consistency and simplicity and, therefore, minimize the potential for confusion in the capital computations required to be made by insured depository institutions. It would also reduce the potential for distortion in the capital raising efforts of insured depository institutions and for anomalies in the classification of institutions under section 38 that might result from use of a substantially different definition of capital for the critically undercapitalized category than is used for the other capital categories.

*Comment 9:* The agencies request public comment on this definition.

*Comment 10:* The agencies also request comment on whether the definition of tangible equity should reflect additional adjustments to deduct intangible assets. The agencies note that section 475 of FDICIA requires the federal banking agencies to determine whether a portion of certain purchased mortgage servicing rights should be included in the calculation of tangible capital. The agencies also recently sought public comment on a proposal to permit insured depository institutions to include a portion of certain purchased credit-card relationships in the calculation of tangible capital for purposes of meeting applicable minimum capital adequacy standards.

*Comment 11:* The agencies request comment on whether purchased mortgage servicing rights and purchased credit-card relationships should be excluded from the definition of tangible equity for purposes of section 38.

Similarly, investments in certain types of subsidiaries, which savings associations are required to deduct for purposes of their general capital calculations, represent realizable assets which buffer the exposure of the deposit insurance funds.

*Comment 12:* The agencies request comment on whether these investments should be deducted in computing the relevant capital ratio for purposes of determining whether an institution is critically undercapitalized.

*Comment 13:* In addition, the agencies request comment on whether tangible equity should be defined to take into account broader forms of equity beyond those included in the definition of Tier 1 capital.

*Comment 14:* In particular, the agencies request comment on whether cumulative perpetual preferred stock should be included in determining whether an institution is critically undercapitalized.

*Comment 15:* Because the agencies are not proposing to include this form of equity in determining whether an institution is critically undercapitalized, the agencies also request comment on whether a transition period should be permitted for institutions that are permitted to rely on cumulative perpetual preferred stock under currently outstanding agency orders.

*Comment 16:* The agencies also request comment on whether a higher threshold should be established than the proposed 2 percent leverage limit. By statute, this ratio may not exceed 65 percent of the minimum leverage ratio established by the agencies.

*Comment 17:* Finally, the agencies request comment on whether it is appropriate to establish additional capital measures for the critically undercapitalized category. As noted above, section 38 permits the agencies to establish additional capital measures in defining the critically undercapitalized category. The agencies are proposing the use the total risk-based capital measure and the Tier 1 risk-based capital measure for all other categories, but are not proposing to use these capital measures in defining critically undercapitalized institutions.

*E. Calculation of Capital Levels and Notice of Capital Levels*

Under the proposal, an institution would be expected to monitor its capital levels continually and to notify the appropriate federal banking agency promptly if the institution's capital levels fall into a lower capital category. In addition, capital levels would be periodically determined on the basis of information filed by each insured depository institution in its quarterly Consolidated Report of Condition and Income ("Call Report"), or on the basis of information obtained in an examination or inspection of the institution. Capital levels may also be determined by the appropriate federal banking agency for an institution on the basis of other information obtained by the agency from any source. This information may include data provided by the institution to the agency on a voluntary basis, information obtained in connection with an application, calculations based on a report that the institution must file other than a Call Report, or adjustments that are appropriate based on publicly announced events that may affect the institution's capital.

Under the proposal, an institution would be deemed to be aware of information that it files in a Call Report as of the date that the Call Report is required to be filed. Similarly, the institution would be deemed to be notified of capital levels calculated in the examination or inspection process as of the date that the examination report or inspection report is provided to the institution. In the event that the agency determines the capital levels of the institution on the basis of other information, the agencies are proposing to notify the institution in writing of the calculation and the information used as a basis for the capital calculation.

The agencies are concerned that, while the proposed arrangement for calculating the capital levels of an institution on the basis of Call Reports and reports of examination and inspection may be reliable and in most instances timely, this procedure may not always lead to a prompt calculation of capital levels for a given institution. For example, an institution may become aware of information that affects its capital calculation between the time that Call Reports are required to be filed and when an examination is not in process or another report may not be required. This could result in delay in application of the supervisory requirements of section 38, including the provisions that are mandated by the statute.

In order to address changes in capital promptly, the agencies propose to require insured depository institutions to notify the appropriate federal banking agency within 5 days of any event that would cause the institution to be assigned to a different capital category than the category assigned on the basis of the most recent Call Report or report of examination or inspection. The institution would be deemed to be aware of a necessary adjustment when its senior management determines that the adjustment is appropriate, even if the adjustment is not required to be reported in an official report of otherwise disclosed for some period of time. Under the proposal, the agency would review the information provided by the institution, along with any explanation provided by the institution, to determine whether the institution should be assigned to a different capital category for purposes of the provisions of section 38. This procedure would apply to both upward and downward adjustments to capital that occur between the filing of Call Reports or examinations.

*Comment 18:* The agencies invite public comment on all aspects of this approach to the capital calculations.

*Comment 19:* In particular, the agencies request comment on the use of Call Reports and examination reports as the primary bases for capital calculations.

*Comment 20:* In addition, the agencies request comment on the procedures that have been proposed for self-monitoring and agency notification of changes in capital levels, including comment on the burden associated with this procedure and comment on whether any other procedure to permit the timely monitoring of an institution's capital levels is appropriate.

*F. Reclassification Based on Supervisory Criteria Other Than Capital Standards*

Section 38 provides that the appropriate federal banking agency may, under certain circumstances, reclassify a well capitalized insured depository institution as adequately capitalized and require an adequately capitalized or undercapitalized institution to comply with supervisory actions as if it were in the next lower category (but not treat a significantly undercapitalized institution as critically undercapitalized) based on supervisory information other than the capital levels of the institution. (Reclassification to the adequately capitalized category and treatment of an institution as if it were in the next lower capital category are referred to collectively herein as a "reclassification.") The statute permits the agency to reclassify an institution where the agency has determined, after notice and opportunity for hearing, that the institution is in unsafe or unsound condition. Section 38 also provides that an institution may be reclassified if the agency deems the institution to be engaged in an unsafe or unsound practice under section 8(b)(8) of the FDI Act. 12 U.S.C. 1818(b)(8). Section 8(b)(8) of the FDI Act was amended by FDICIA to provide that an institution may be deemed to be engaged in an unsafe or unsound practice if the institution has received a less-than-satisfactory rating in its most recent examination report in any of the categories for assets, management, earnings, or liquidity, and the institution has not corrected the deficiency.

Under the proposed rule, an institution would be reclassified on any of these supervisory grounds only after

receiving prior written notice of the proposed reclassification from the agency and having an opportunity to respond to the proposed reclassification. In the case of a proposed reclassification based on a determination that the institution is in unsafe or unsound condition, the agencies also propose, pursuant to section 38, to accord the institution an opportunity for an informal oral hearing prior to the reclassification.

Because section 38 expressly provides for notice and opportunity for hearing in connection with a reclassification on the ground of unsafe and unsound condition but does not with respect to the reclassification based on examination ratings, the agencies are not proposing to provide an opportunity for an oral hearing prior to reclassification based on an institution's examination rating. In the case of a reclassification proposed on the basis of an examination rating of the institution, the agencies are proposing to provide the institution an opportunity to present written arguments and information prior to the agency's reclassification of the institution.

Under the proposal, the appropriate federal banking agency would provide an institution with written notice of the agency's intention to reclassify the institution. The institution would be provided at least 14 days to respond to the proposed reclassification unless the agency determines that the condition of the institution warrants a shorter time period for response. In its response, the institution should set forth any reasons why the proposed reclassification would not be appropriate, and provide the agency with any information that the institution believes supports its position on the reclassification. The agency would consider the response in deciding whether to proceed with the reclassification.

*Comments 21*: The agencies invite comment on all aspects of these procedures for reclassifying institutions based on supervisory criteria other than capital.

*G. Timing of Mandatory Provisions*

Under section 38, an institution becomes subject to certain mandatory provisions on the basis of the capital levels of the institution. These mandatory provisions apply immediately without agency action. As noted above, an undercapitalized institution is immediately subject to a restriction on the payment of dividends and management fees, a limitation on asset growth, and an obligation to file an acceptable capital restoration plan. In addition to these requirements, an institution that is significantly undercapitalized or critically undercapitalized is subject to a limitation on the payment of bonuses or raises to senior executive officers.

Under the proposal, once an institution is deemed to have notice of its capital levels and category or is given actual notice by the agency of the institution's capital category, the institution is deemed immediately to be subject to the mandatory provisions that apply to institutions within the corresponding capital category without any further action by the appropriate federal banking agency for the institution. As explained above, the agencies propose to deem an institution to have notice of its capital category whenever a Call Report is due to be filed by the institution, or an examination report or report of inspection has been provided to the institution. The agencies will provide actual notice to the institution of its capital categorization if the category is based on an adjustment to capital between the filing of Call Reports or examinations; if the agency determines the capital levels of the institution based on information other than information contained in the Call Reports or an examination report; or if the agency determines to reclassify the institution based on supervisory criteria other than capital.

*H. Procedures for Issuing Prompt Corrective Action Directives*

Section 38 also provides the agencies with discretion to impose other requirements or restrictions on an insured institution that is undercapitalized, significantly undercapitalized or critically undercapitalized, as well as on any company that controls such an institution. These discretionary supervisory actions are described above.

Because these provisions rely on an agency determination that certain action is appropriate, the agencies are proposing a procedure under which a federal banking agency would issue a written directive whenever the agency has determined that a discretionary supervisory action is appropriate. The agencies propose to provide written notice to an institution prior to issuing any directive to take an action committed by section 38 to the agency's discretion. The notice would describe the action contemplated by the agency and would provide the institution or company with 14 calendar days to respond to the proposed agency action, unless the agency determines that a shorter response period is appropriate in light of the condition of the institution.

Under the proposal, the institution or company would be permitted to submit written arguments regarding whether the directive is an appropriate exercise of the agency's discretion, along with any information or evidence supporting the respondent's position. Failure to file a timely response would constitute consent to the issuance of the directive and a waiver of the opportunity to appeal. The agency would consider the institution's response prior to issuing a final directive to take action under section 38.

The agencies are also proposing to permit the appropriate federal banking agency to issue a final directive without notice or opportunity to respond where immediate supervisory action is appropriate. In cases where immediate action is necessary, the agencies propose to provide the institution with an opportunity to appeal the action to the agency and request modification or rescission of the agency action following issuance of the directive. An institution that seeks to appeal an immediately effective directive would be required to file a written appeal with the agency within 14 calendar days of the effective date of the directive. The agency would be required to consider and take action regarding a timely appeal within 60 days of receiving the appeal.

The agencies believe that these procedures will afford an adequate and fair opportunity to obtain agency review of the agency's action. *See, e.g., FDIC* v. *Mallen*, 486 U.S. 230 (1988) (upholding post-deprivation hearing in case of suspension or removal of a bank officer charged with a felony); *Federal Deposit Ins. Corp.* v. *Bank of Coushatta*, 930 F.2d 1122 (5th Cir. 1991), *cert. denied*, 112 S. Ct. 170 (1992) (affirming procedures for issuance of capital directives).

In proposing these procedures, the agencies have attempted to adhere to the mandate of section 38 that the agencies take prompt corrective action to resolve the problems of insured depository institutions at the least possible long-term loss to the deposit insurance fund while providing institutions with an opportunity for agency review of disputed factual claims. These procedures generally permit an institution advance notice of a proposed directive and an opportunity to present written information and argument to the agency prior to final agency action regarding the directive.

The agencies would not be required to follow these procedures, and the respective time periods would not apply, if an institution consented to the action

to be taken by the agency either as initially proposed by the agencies or as modified by mutual agreement. Actions taken with such consent would have the same legal affect and be enforceable to the same extent and by the same means as actions taken upon exhaustion of these procedures.

The agencies are not proposing an oral hearing in connection with the issuance of a prompt corrective action directive for several reasons. First, the terms and legislative history of section 38 indicate that Congress intended agency action under section 38 to be taken as promptly as possible. 12 U.S.C. 1831o(a)(2); see also S. Rep. No. 102–167, 102d Cong., 1st Sess. 32–38 (1991) ("The prompt corrective action system will require regulators to act at the first sign of trouble."). Second, Congress clearly indicated several occasions when it believed that a hearing was appropriate in connection with actions taken under section 38, such as orders requiring dismissal of a director or senior executive officer. Congress gave no indication in either the statutory language or legislative history that it intended to provide for an agency hearing in connection with supervisory actions committed to agency discretion under section 38. Third, a requirement that an agency hold a hearing in each case involving action committed to agency discretion under section 38 would cause the prompt corrective action provisions of section 38 largely to duplicate the existing cease-and-desist authority grant to the agencies under section 8(b) of the FDI Act.

*Comment 22:* The agencies request comment on all aspects of the proposal to issue prompt corrective action directives where the agency determines to apply the provisions of section 38 committed to the discretion of the agency.

*Comment 23:* In particular, the agencies request comment on the sufficiency of the proposal to provide notice and opportunity for written response in connection with these directives.

*Comment 24:* The agencies also request comment on ways that these procedures can be improved to give an institution or company that is subject to a prompt corrective action directive a fair opportunity to contest such a directive, while at the same time adhering to the statutory mandate to take prompt action to resolve the problems of inadequately capitalized institutions.

*I. Enforcement of Directives*

Section 8 of the FDI Act, as amended by FDICIA, includes prompt corrective action directives issued pursuant to section 38 among the orders that may be enforced in the courts pursuant to section 8(i)(1), and also makes any depository institution, company, or institution-affiliated party that violates such a directive subject to civil money penalties pursuant to section 8(i)(2)(A). 12 U.S.C. 1818(i). The proposed regulation makes clear that failure of a depository institution to implement a capital restoration plan or the failure of a company having control of a depository institution to fulfill a guarantee that the company has given in connection with a capital plan accepted by the appropriate federal banking agency will subject responsible parties to civil money penalties.

*J. Dismissal of Directors or Senior Executive Officers*

Section 38 provides that a director or senior executive officer dismissed by an insured depository institution in compliance with an agency directive under section 38 may obtain review of the dismissal by filing with the appropriate federal banking agency a petition of reinstatement. The statute also provides that the petitioner shall have the opportunity to submit written materials in support of the petition and to appear at a hearing before member(s) or designated employee(s) of the agency. The hearing shall occur within 30 days of the filing of the petition unless the petitioner requests a later date. The agency decision shall issue within 60 days of the date of the closing of the hearing record.

The statute appears to envision on a post-dismissal hearing procedure, as it refers to the appeal as a "petition for reinstatement" and sets a short time for agency decision. Accordingly, the proposed regulation contemplates that an institution ordered to dismiss a senior executive officer or director will take that action immediately upon receiving a final directive requiring that action. The agencies are proposing that any officer or director that is dismissed in compliance with an agency directive under section 38 be provided an opportunity to petition the appropriate federal banking agency for reinstatement within the statutorily-prescribed period.

The proposed regulation permits the affected officer or director an opportunity for an informal agency hearing. The agency will designate a presiding officer(s) to conduct the hearing. The petitioner will have the right to appear at the hearing, with counsel, and to submit written materials and present oral argument. The petitioner may present oral testimony or witnesses only with the consent of the presiding officer(s).

The proposed regulation incorporates the statutory burdens of proof imposed upon an officer or director seeking reinstatement. When the dismissal order is based upon an institution's capital category or its failure to submit or implement a capital restoration plan, the petitioner must prove that his or her continued employment would materially strengthen the institution's ability to become adequately capitalized. When the dismissal order is based upon a reclassification of an institution on grounds of unsafe or unsound condition or practice, the petitioner must prove that his or her continued employment would materially strengthen the institutions' ability to correct the condition or practice. The agencies propose to restrict the ability of an officer or director seeking reinstatement to challenge the capital category to which the institution has been assigned.

*Comment 25:* The agencies seek comment on these procedures.

*K. Capital Restoration Plans*

1. Information Required

Section 38 requires an institution that is under-capitalized, significantly under capitalized, or critically undercapitalized to submit a plan to the appropriate federal banking agency to restore the institution's capital at least to the minimum capital levels required for adequately capitalized institutions. The statute requires that this capital restoration plan be submitted in writing and specify:

(1) The steps the institution will take to become adequately capitalized;

(2) The levels of capital the institution expects to attain in each year that the plan is in effect;

(3) How the institution will comply with the restrictions and requirements imposed on the institution under section 38;

(4) The types and levels of activities in which the institution will engage; and

(5) Any other information required by the appropriate federal banking agency.

The agencies do not propose at this time to require by regulation any additional information in a capital restoration plan submitted under section 38. The agencies may, in individual cases, require an institution to provide additional information based on particular circumstances.

*Comment 26:* The agencies request comment on whether and what additional information should be required by regulation for all capital

restoration plans submitted under section 38.

2. Schedule for Submission and Review of Capital Plans

The statute requires the agencies to establish by regulation deadlines for the submission and review of capital restoration plans. The agencies propose to adopt the schedule generally established in the statute. Under this schedule, an institution would generally be required to submit a capital restoration plan within 45 days of receiving notice or having been deemed to have notice that the institution is undercapitalized, significantly undercapitalized or critically undercapitalized. As discussed above, an institution is deemed to have been notified of its capital category on the date that it is required to file its Call Report, the date that the institution receives its final report of examination or inspection, or the date that the appropriate federal banking agency notifies the institution of the institution's capital category (based on an adjustment to capital reported by the institution or on other information obtained by the agency). Under the proposal, the appropriate federal banking agency may change this period in individual cases, in which case the agency would notify the institution that a different schedule has been adopted.

The proposed schedule would require the appropriate federal banking agency to review each capital restoration plan within 60 days of submission of the plan unless the agency extends the time for review. The agencies propose to provide written notice to the institution regarding whether the agency has approved or rejected the capital plan. The agency would also provide a copy of each acceptable capital restoration plan, or amendments thereto, to the FDIC within 45 days of accepting the plan.

*Comment 27:* The agencies request comment on the proposed time schedules for submission and review of a capital restoration plan.

3. Failure to Submit or Implement an Acceptable Capital Plan

In the event that the appropriate federal banking agency has disapproved an institution's capital restoration plan, the proposal would require the institution to submit a new capital restoration plan within a time specified by the appropriate federal banking agency. During the period following notice of such disapproval and prior to approval by the agency of a new or revised capital plan, the institution would be subject to all of the provisions in section 38 that apply to undercapitalized institutions that have failed to submit and implement, in any material respect, an acceptable capital restoration plan.

The proposed regulation incorporates the provision of section 38 that makes any insured depository institution that is undercapitalized and fails to submit or implement a capital restoration plan within the required time subject to the provisions applicable to significantly undercapitalized institutions. Under the proposal, these provisions apply immediately upon expiration of the time for submission of a capital restoration plan. Accordingly, under the proposal, an undercapitalized institution that fails to submit a capital restoration plan within the required time would, upon the expiration of that period, become subject to the mandatory and discretionary provisions of section 38 outlined above that are applicable to significantly undercapitalized institutions, including limitations on the compensation paid to senior executive officers. An undercapitalized institution that fails to implement, in any material respect, its capital restoration plan would immediately be subject to these same provisions upon the institution's failure to implement the plan.

*Comment 28:* The agencies invite comment on each of these aspects of the proposed rule.

4. Content of Capital Restoration Plans

Section 38 provides that the appropriate federal banking agency may not accept a capital restoration plan unless the plan:

(1) Contains the information required by statute;

(2) Is based on realistic assumptions and is likely to succeed in restoring the institution's capital; and

(3) Would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the institution is exposed.

The statute also provides that the appropriate federal banking agency may not approve a capital restoration plan unless each company that controls the institution guarantees the institution's compliance with the plan until the institution has been adequately capitalized for each of four consecutive calendar quarters, and provides appropriate assurances of performance. This guarantee by any controlling company is independent of any liability of affiliates of the depository institution pursuant to the cross-guarantee provision of the FDI Act.

5. Capital Plan Performance Guarantee

The agencies propose to implement the performance guarantee provision, contained in section 38(e)(2)(E), by requiring each company to submit a written guarantee of any capital plan submitted by an undercapitalized, significantly undercapitalized, or critically undercapitalized institution controlled by the company. This guarantee would include assurance that the institution would fulfill any commitments to raise capital made in the plan. Each company that provides the guarantee would be jointly and severally liable for fulfillment of the guarantee. Liability could extend to the amount necessary (up to the statutory limit of liability) to restore the institution to applicable capital standards. Failure of any company that controls an undercapitalized institution to provide the required guarantee causes the institution to become subject to the provisions of section 38 applicable to significantly undercapitalized institutions.

*Comment 29:* The agencies request comment on whether the rule should provide greater detail regarding the content and form of the guarantee.

*Comment 30:* In addition, the agencies request comment on what assurances the agencies should find to be "appropriate assurances of performance" of the capital plan and guarantee. Section 38 appears to permit the agencies to determine the appropriateness of assurances in connection with the agency's review of the capital restoration plan.

*Comment 31:* The agencies seek comment on whether there are particular assurances that the agencies should require by regulation in all cases. For example, should the agencies require a guarantor to demonstrate that it has sufficient financial resources to honor the guarantee?

The statute limits the aggregate liability under the capital performance guarantee of all companies that control a given insured depository institution to the lesser of:

(1) An amount equal to 5 percent of the institution's total assets at the time the institution became undercapitalized; or

(2) The amount necessary (or that would be necessary) to bring the institution into compliance with all capital standards applicable with respect to such institution as of the time the institution fails to comply with its capital restoration plan.

In incorporating this provision into the regulation, the agencies propose to

adopt the same definition of total assets for purposes of computing the first component of the limit on liability as would be used in determining the capital category of the institution.

*Comment 32:* Accordingly, as discussed above in connection with the definition of capital categories, the agencies request comment on whether the definition of total assets should be based on a period average of total assets (as proposed above) or should be based on a daily report of the institution's total assets.

The agencies also propose that the second component of the limit on liability refers to the amount necessary to restore the capital of the institution to the applicable minimum capital levels as those levels were defined at the time that the institution initially failed to comply with its capital plan. The amount of a capital guarantee would not change if the minimum capital adequacy requirements change after the time the institution initially failed to comply with its capital restoration plan.

*Comment 33:* The agencies request comment on this clarification of the statutory provision.

The proposed rule also implements the statutory provision that limits the duration of a guarantee of a capital plan. Under the proposal, the appropriate federal banking agency would provide notice to the company that the guarantee has expired once the depository institution has remained adequately capitalized for four consecutive calendar quarters. The proposal makes clear that expiration of a guarantee or fulfillment of a guarantee given by a company in connection with one capital restoration plan does not relieve the company from the obligation to guarantee another capital restoration plan that may be required at a future date for the same institution if it again becomes undercapitalized. Similarly, the fact that a company has, at one time, fulfilled a guarantee by providing resources to an institution up to the statutory limit would not reduce the amount of any guarantee of a future capital plan for the same institution. Moreover, the provision or fulfillment by a company of a guarantee for one institution does not affect the obligation of that company to guarantee a capital plan in connection with any other insured depository institution.

*Comment 34:* The agencies request comment on these provisions of the proposal.

*Comment 35:* The agencies also request comment on whether the agencies should establish by regulation a time for computing the limit on liability, and, if so, when that calculation should be made.

*Comment 36:* In addition, the agencies request comment on whether any additional regulatory clarifications of the holding company guarantee are necessary.

6. Priority in Bankruptcy

It should be noted that the FDIC will have a priority claim in any bankruptcy proceedings of a holding company that has guaranteed an institution's compliance with a capital restoration plan. The FDIC's claim against a holding company's estate would have priority over the claims of unsecured creditors and is provided for in section 507(a)(8) of title 11 of the United States Code, as amended by the Crime Control Act of 1990, Public Law 101–647, 104 Stat. 4789. Sections 365(o) and 523(a)(12) of title 11 of the United States Code, as amended by the Crime Control Act of 1990, also provide special protections for the FDIC.

7. Submission of Plans by Reclassified Institutions

Section 38(g) provides that an institution that has been reclassified to a different capital category as a result of an agency determination that the institution is in an unsafe or unsound condition or is engaged in an unsafe or unsound practice must describe the steps the institution will take to address these deficiencies. Section 38(g) also provides that an institution that nominally has adequate capital but has been reclassified to the under-capitalized category because of its condition or practices is not required to submit a capital restoration plan. The portions of the proposed regulation regarding capital restoration plans reflect these provisions.

*Comment 37:* While section 38 does not require an institution that nominally has adequate capital but has been reclassified to the undercapitalized category to file a capital restoration plan, the agencies request comment regarding whether it is appropriate for the agencies to exercise their general supervisory authority to require such an institution to submit a description of the steps the institution will take to address the deficiencies in the institution's condition.

8. Revised Capital Restoration Plans

Under the proposal, and insured depository institution that is operating under a capital restoration plan that has been approved by the appropriate federal banking agency would not generally be required to submit an additional or a revised capital restoration plan if the institution's capital classification changes, unless the agency notifies the institution that a new or revised capital restoration plan is required. Under this proposal, for example, an undercapitalized institution that is implementing an approved capital restoration plan would not be required to submit a second or revised capital restoration plan if the institution experienced further declines in its capital levels unless the appropriate federal banking agency determined that a new plan was appropriate in light of the particular circumstances.

*Comment 38:* The agencies request comment on this approach and on whether the agencies should, by regulation, require each insured depository institution to file a new or revised capital restoration plan in the event that the institution's capital category has changed.

*L. Other Matters*

1. Definition of "Management Fee"

Section 38 of the FDI Act prohibits any institution from paying management fees to a controlling person if, following the payment of those fees, the institution would be undercapitalized. The statute does not provide a definition of management fees. The agencies have proposed to define management fees to include any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice other than compensation paid to an individual in the individual's capacity as an officer or employee of the institution. This definition covers all companies, including consulting firms, companies owned by the principal shareholder of an institution, and servicing corporations owned by bank holding companies. Under the proposal, compensation for duties performed by an officer or employee of the institution would not be deemed to be a management fee for purposes of section 38.

*Comment 39:* The agencies request comment on the proposal's provisions regarding management fees and compensation in light of the purpose of section 38 of limiting losses to the deposit insurance funds that might result from the payment of dividends or the payment of management fees by an undercapitalized institution or an institution that would be undercapitalized after the payment.

2. Definition of "Control"

Certain provisions of section 38 apply to companies that "control" an insured depository institution. Section 38 of the

FDI Act does not define the term "control". However, section 3 of the FDI Act adopts the definition of "control" contained in section 2 of the Bank Holding Company Act ("BHC Act") (12 U.S.C. 1841(a)(2)). Under the BHC Act, a company controls an institution if (1) the company owns or controls 25 percent or more of any class of voting securities of that institution; (2) the company controls in any manner the election of a majority of the board of directors of the institution; or (3) the agency determines, after notice and opportunity for hearing, that the company exercises a controlling influence over the management or policies of the institution.

Other provisions of the BHC Act exclude certain types of share ownership from the provisions of the BHC Act, including shares acquired by a company in satisfaction of a debt previously contracted ("DPC") or shares held by a company in a fiduciary capacity.

*Comment 40:* The agencies request comment on whether it would be appropriate under section 38 to provide, by regulation, an exception from the definition of "control" for shares acquired DPC or shares held in a fiduciary capacity.

*Comment 41:* In particular, the agencies request comment on whether the agencies should by regulation adopt the DPC and fiduciary ownership exceptions contained in section 2(a)(5) of the Bank Holding Company Act. Section 2(a)(5) of the BHC Act (12 U.S.C. 1841(a)(5)) permits a company to hold shares of a depository institution acquired DPC without becoming subject to the restrictions of that Act provided that the company disposes of the shares within two years (with the possibility of three one-year extensions). Section 2(a)(5) also permits a company to hold shares of a depository institution in a fiduciary capacity without becoming subject to the restrictions of the BHC Act provided that the company does not retain sole right to vote the shares.

*Comment 42:* Finally, in the event that an exception for shares acquired DPC is included in the regulations implementing section 38, the agencies request comment on whether the exception should include conditions similar to those contained in the DPC exception to section 5 of the FDI Act (12 U.S.C. 1815(e)), which imposes cross-guarantee requirements on affiliated institutions. Section 5 of the FDI Act contains an exception for the acquisition by an insured depository institution of shares of another depository institution in satisfaction of a debt previously contracted. That exception is conditioned on the requirement that all transactions between the controlling institution or any affiliate of the controlling institution and the subsidiary institution comply with the restrictions contained in sections 23A and 23B of the Federal Reserve Act.

### 3. Applicability of Capital Categories to Bank Holding Companies and Savings and Loan Holding Companies

Section 38 applies capital-based prompt corrective action to insured depository institutions but not to holding companies that control such institutions. However, various provisions of section 38 apply to companies that control insured depository institutions. These provisions appear to apply to holding companies regardless of the capital level of those holding companies.

The Federal Reserve Board and the OTS do not propose to adopt a parallel framework of capital categories for holding companies. Instead, the Federal Reserve intends to consult with the federal banking agency for each insured depository institution subsidiary of the holding company to monitor supervisory actions required under section 38, and, in the supervision of the holding company, to take appropriate action at the holding company level based on an assessment of these developments. In supervising savings and loan holding companies, the OTS will also take appropriate action at the holding company level based on an assessment of the actions taken under section 38 regarding its savings association subsidiaries.

*Comment 43:* The agencies request comment on whether it is appropriate for the agencies to exercise their supervisory authority under other provisions of law to establish a framework of supervisory actions for bank holding companies and savings and loan holding companies similar to those established in section 38 for insured depository institutions.

### 4. Restrictions on Activities of Critically Undercapitalized Institutions

Section 38(i) of the FDI Act provides that the FDIC must, by regulation or order, restrict the activities of critically undercapitalized institutions. The activities that must be restricted are described above. In order to facilitate state member banks providing comments on the FDIC's proposal to implement the restrictions on section 38(i), the following discussion of the FDIC proposal has been provided.

The FDIC proposes to rely on existing industry or regulatory guidance, to the extent possible, when evaluating and applying each of the restrictive provisions of section 38(i) and to continue to coordinate closely with the primary Federal and/or State banking regulators. The interagency procedures implemented will be similar to those already in place at both the Federal agency and state banking department levels. For example, prior to imposing any order restricting or prohibiting an institution from engaging in any of the activities that can be restricted, the FDIC would consult with the appropriate federal banking agency and State banking agency, as appropriate.

FDICIA does not provide specific guidance on how to interpret and implement each of the above restrictive provisions. Consequently, the FDIC is considering a number of options.

The prohibition on entering into "any material transaction other than in the usual course of business" can be interpreted in a general fashion relying on outstanding case law in the area of securities disclosures. The concept of materiality also could be defined from an accounting perspective by establishing specific limits for determining materiality. For example, the FDIC could, by regulation, require that any prospective transaction other than one that is in the usual course of business that results or could result in a 5 percent change in an institution's tangible equity capital account or net income account would automatically be considered a material transaction requiring the FDIC's prior approval. Other transactions could be defined as material on a case by case basis.

*Comment 44:* The FDIC solicits comment on how to define the terms "material" and "usual course of business" as well as what specific guidance, if any, should be provided by the FDIC to the banking industry.

The FDIC proposes to define the term "highly leveraged transaction" by utilizing the currently outstanding interagency definition published in the **Federal Register** (57 FR 5040, February 11, 1992). The FDIC proposes to rely on existing generally accepted accounting principles when interpreting the restriction on making any "material change in accounting method."

Section 39(c) of the FDI Act requires the federal banking agencies to prescribe standards for determining when compensation paid to employees, directors and principal shareholders of insured depository institutions is excessive. An advance notice of proposed rulemaking is expected to be published in the **Federal Register** in the near future. The FDIC intends to interpret the restrictive provision of section 38(i) involving the payment of excessive compensation or bonuses in a

manner that is consistent with the FDIC's actions in fulfilling the requirements of section 39(c) of the FDI Act.

The provision that restricts "paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas" contains terms that relate to the changes mandated by section 301 of FDICIA and the revisions of § 337.6 of the FDIC's regulations as recently implemented by the FDIC. The FDIC proposes to interpret the phrase "significantly exceeding the prevailing rates" the same as defined in § 337.6. The prevailing effective yields of interest are the effective yields on insured deposits of comparable maturities offered by other insured depository institutions in the market area in which deposits are being solicited. A rate of interest on a deposit with an odd maturity will be considered excessive if it is more than 75 basis points higher than the yield calculated by interpolating between the yields offered by other depository institutions on deposits of the next longer and shorter maturities offered in the market. A market area is any readily defined geographic area in which the rates offered by any one insured depository institution operating in the area may affect the raters offered by other institution operating in the same area.

The FDIC invites comments on all aspects of these proposed interpretations.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an initial regulatory flexibility analysis with any notice of proposed rulemaking. A description of the reasons why the action by the Board is being considered and a statement of the objectives of, and legal basis for, the proposed rule are contained in the supplementary information above. There are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

The proposed rule implements the prompt corrective action provisions of section 131 of FDICIA for all state member banks, regardless of size. The regulation requires each bank to monitor its capital levels and to report to the Board any event that would change the bank's capital category. The proposed rule requires that a bank that becomes undercapitalized, significantly undercapitalized, or critically undercapitalized submit a capital restoration plan.

The proposal is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. The filing of the capital plan is a requirement imposed by statute and occurs only when an institution initially becomes undercapitalized, significantly undercapitalized, or critically undercapitalized. In establishing a mechanism for gathering sufficient information to determine the appropriate capital category for each state member bank, the Board has attempted to reduce the burden imposed on such banks by relying primarily on the call report that must already be filed and on reports of examination that would otherwise take place. No additional regular reporting requirement has been proposed. Rather, each state member bank is required to monitor its capital levels—an effort that analysts at an institution should already be undertaking—and report to the Board only when an event occurs that would change the capital category in which the banks was previously placed.

**Paperwork Reduction**

The proposal would require certain state member banks to file capital restoration plans and would require all banks to monitor their capital levels and report any event that would result in a change in capital category under prompt corrective action. As described above, the filing of a capital plan occurs only under limited circumstances and is required by statute. The requirement that a state member bank notify the Board of an event that would change its capital category is intended to supplement existing call report data and reports of examination, and should be triggered infrequently. The institution should not be required to engage in significant additional recordkeeping to comply with this requirement.

**List of Subjects**

*12 CFR Part 208*

Accounting, Agriculture, Banks, Banking, Confidential business information, Currency, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 263*

Administrative practice and procedure, Federal Reserve System.

For the reasons outlined above, the Board of Governors proposes to amend 12 CFR parts 208 and 263 as set forth below:

## PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for 12 CFR part 208 is revised to read as follows:

**Authority:** Secs. 9, 11(a), 11(c), 19, 21, 25 and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321–338, 248(a), 248(c), 461, 481–486, 601, and 611, respectively); secs. 4, 13(j) and 38 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814, 1823(j), and 1831o, respectively); sec. 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); secs. 907–910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906–3909); secs. 2, 12(b), 12(g), 12(i), 15B(c)(5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 781(b), 1781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w, respectively); sec. 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadded Act of 1927; and secs. 1101–1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331–3351).

2. The undesignated centerheading preceding § 208.1 is removed, §§ 208.1 through 208.19 are designated as subpart A to part 208, and the subpart A heading is added to read as follows:

**Subpart A—General Provisions**

3. Subpart B, comprising §§ 208.30 through 208.35, is added to part 208 to read as follows:

**Subpart B—Prompt Regulatory Action**

Sec.
208.30 Authority, purpose, applicability and other supervisory authority.
208.31 Definitions.
208.32 Financial data calculations and notice of capital category.
208.33 Capital measures and capital category definitions.
208.34 Capital restoration plans.
208.35 Mandatory and discretionary supervisory actions and section 38.

## Subpart B—Prompt Regulatory Action

**§ 208.30 Authority, purpose, applicability and other supervisory authority.**

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act), as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this subpart is to define, for state member banks, the capital measures

and capital levels that are used for determining the supervisory actions authorized under section 38 of the FDI Act. This subpart also establishes procedures for submission and review of capital restoration plans and for issuance and review of orders pursuant to that section.

(c) *Applicability.* This subpart implements the provisions of section 38 of the FDI Act as they apply to state member banks. Certain of these provisions also apply to officers, directors and employees of state member banks. Other provisions apply to any company that controls a state member bank and to the affiliates of a state member bank.

(d) *Other Supervisory Authority.* Neither section 38 nor this subpart in any way limits the authority of the Board under any other provision of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law or regulation, unsafe or unsound conditions, or other practices. Action under section 38 of the FDI Act and this subpart may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the Board, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(e) *Limited Scope of Capital Categories.* The assignment of a bank under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38 and, unless permitted by the Board or otherwise required by law or regulation, may not be used by, for, or on behalf of a state member bank for any other purpose.

### § 208.31 Definitions.

For purposes of this subpart, except as modified in this section or unless the context otherwise requires, the terms used in this subpart have the same meanings as set forth in sections 38 and 3 of the FDI Act.

(a) *Leverage ratio* means the ratio of Tier 1 capital to average total consolidated assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure (appendix B to part 208).

(b) *Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the bank, other than compensation to an individual in the individual's capacity as an officer or employee of the bank.

(c) *Risk-weighted assets* means total weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (appendix A to part 208).

(d) *Tangible equity* means the amount of Tier 1 capital as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (appendix A to part 208).

(e) *Tier 1 capital* means the amount of Tier 1 capital as defined in the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (appendix A to part 208).

(f) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (appendix A to part 208).

(g) *Total assets* means average total consolidated assets as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure (appendix B to part 208).

(h) *Total risk-based capital ratio* means the ratio of qualifying total capital to risk-weighted assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (appendix A to part 208).

### § 208.32 Financial data calculations and notice of capital category.

(a) *Effective date of determination of capital category.* A state member bank shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this subpart as of the date the bank is notified of, or is deemed to have notice of, its capital category, pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A state member bank shall be deemed to have notice of its capital levels and its capital category as of the most recent of:

(1) The date of Report of Condition and Income ("Call Report") is required to be filed with the Board;

(2) The date a final report of examination or report of inspection is delivered to the bank;

(3) The date that the Board provides written notice to the bank that the bank's capital category has changed as provided in paragraph (C) of this section;

(4) The date that the Board provides written notice to the bank of its capital levels and its capital category for purposes of section 38 of the FDI Act and this subpart; or

(5) The date any written notice is served in the bank that the bank's capital category has been changed pursuant to § 208.33(c).

(c) Adjustments of reported capital levels and category—(1) *Notice of adjustment to be provided by bank.* A state member bank shall provide the Board with written notice that an adjustment to the bank's capital category may have occurred no later than 5 calendar days following the earlier of the date that the bank:

(i) Reports, or has determined to report, any event that would cause the bank to be placed in a different capital category from the category assigned to the bank for purposes of section 38 and this subpart on the basis of the bank's most recent Call Report or report of examination or inspection; or

(ii) Determines that any event has occurred that would cause the bank to be placed in a different capital category from the category assigned to the bank for purposes of section 38 and this subpart on the basis of the bank's most recent Call Report or report of examination or inspection.

(2) *Determination to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the Board shall determine whether the capital category of the bank should be changed and shall notify the bank of the Board's determination.

### § 208.33 Capital measures and capital category definitions.

(a) *Capital measures.* For purposes of section 38 and this subpart, the relevant capital measures shall be:

(1) The total risk-based capital ratio;

(2) The Tier 1 risk-based capital ratio; and

(3) The leverage ratio.

(b) *Capital categories.* For purposes of the provisions of section 38 and this subpart, a state member bank shall be deemed to be:

(1) "Well capitalized" if the bank:

(i) Has a total risk-based capital ratio of 10.0 percent or greater;

(ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater;

(iii) Has a leverage ratio of 5.0 percent or greater; and

(iv) Is not subject to any order of final capital directive by the Board to meet and maintain a specific capital level for any capital measure.

(2) "Adequately capitalized" if the bank:

(i) Has a total risk-based capital ratio of 8.0 percent or greater;

(ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater;

(iii) Has—

(A) A leverage ratio of 4.0 percent or greater, or

(B) A leverage ration of 3.0 percent or greater if the bank is rated composite 1 under the CAMEL rating system in the most recent examination or inspection of the bank and is not experiencing or anticipating significant growth; and

(iv) Does not meet the definition of a "well capitalized" bank.

(3) "undercapitalized" if the bank—

(i) Has a total risk-based capital ratio that is less than 8.0 percent; or

(ii) Has a Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(iii) (A) Except as provided in clause (B), has a leverage ratio that is less than 4.0 percent; or

(B) If the bank is rated composite 1 under the CAMEL rating system in the most recent examination or inspection of the bank, has a leverage ratio that is less than 3.0 percent.

(4) "Significantly undercapitalized" if the bank has—

(i) A total risk-based capital ratio that is less than 6.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or

(iii) A leverage ratio that is less than 3.0 percent.

(5) "Critically undercapitalized" if the bank has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Classification based on supervisory criteria other than capital.* The Board may reclassify a well capitalized state member bank as adequately capitalized and may require an adequately capitalized or an undercapitalized state member bank to comply with supervisory actions as if it were in the next lower capital category (except that the Board may not reclassify a significantly undercapitalized bank as critically undercapitalized) in the following circumstances:

(1) *Unsafe or unsound conditions.* The Board has determined, after notice and opportunity for hearing pursuant to § 263.202(a) of this chapter, that the bank is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The Board has determined, after notice and opportunity for response pursuant to § 263.202(b) of this chapter, that the bank has received, and not corrected, a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity in the most recent examination or inspection of the bank.

**§ 208.34 Capital restoration plans.**

(a) *Schedule of filing plan—(1) In general.* A state member bank must file a written capital restoration plan with the appropriate Reserve Bank within 45 days of the date that the bank receives notice or is deemed to have notice that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the Board notifies the bank in writing that the plan must be filed within a different period. A bank that has been reclassified as undercapitalized pursuant to § 208.33(c) is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* Notwithstanding paragraph (a)(1) of this section, a bank that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures unless the Board notifies the bank that it must submit a new or revised capital plan. A bank that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the appropriate Reserve bank within 45 days of receiving such notice, unless the Board notifies the bank in writing that the plan is to be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan shall be prepared in accordance with the instructions provided on the Call Report, unless the Board instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act, including any performance guarantee required to be executed under section 38(e)(2)(C) of that Act by each company that controls the bank. A bank that is required to submit a capital restoration plan as the result of a reclassification of the bank pursuant to § 208.33(c) shall include a description of the steps the bank will take to correct the unsafe or unsound condition or practice.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this subpart, the Board will provide written notice to the bank of whether the plan has been approved. The Board may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital plan.* If a capital restoration plan is not approved by the Board, the bank must submit a revised capital restoration plan within the time specified by the Board. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized state member bank (as defined in § 208.33(b)(3)) shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as a new or revised capital restoration plan submitted by the bank has been approved by the Board.

(e) *Failure to submit a capital restoration plan.* A state member bank that is undercapitalized (as defined in § 208.33(b)(3)) and that fails to submit a written capital restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(f) *Failure to implement a capital restoration plan.* Any undercapitalized state member bank that fails in any material respect to implement a capital restoration plan shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(g) *Amendment of capital plan.* A bank that has filed an approved capital restoration plan may, after prior written notice to and approval by the Board, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the capital restoration plan as approved prior to the proposed amendment.

(h) *Notice to FDIC.* With 45 days of the effective date of Board approval of a capital restoration plan, or any amendment to a capital restoration plan, the Board will provide a copy of such plan or amendment to the Federal Deposit Insurance Corporation.

(i) *Performance guarantee by companies that control a bank.*—(1) *Limitation on liability.*—(i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this subpart for all companies that control a specific state member bank that is required to submit a capital restoration plan under this subpart shall be limited to the lesser of:

(A) An amount equal to 5.0 percent of the bank's total assets at the time the bank was notified or deemed to have notice that the bank was undercapitalized; or

(B) The amount necessary to restore the relevant capital measures of the bank to the levels required for the bank to be classified as adequately capitalized, as those capital measures

and levels are defined at the time that the bank initially fails to comply with a capital restoration plan under this subpart.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 and this subpart shall expire after the Board notifies the bank that it has remained adequately capitalized for each of four consecutive calendar quarters. The expiration or fulfillment by a company of a guarantee of a capital restoration plan shall not limit the liability of the company under any guarantee required or provided in connection with any capital restoration plan filed by the same bank after expiration of the first guarantee.

(iii) *Collection on guarantee.* Each company that controls a given bank shall be jointly and severally liable for the guarantee for such bank as required under section 38 and this subpart, and the Board may require and collect payment of the full amount of that guarantee from any or all of the companies issuing the guarantee.

(2) *Failure to provide guarantee.* In the event that a bank that is controlled by any company submits a capital restoration plan that does not contain the guarantee required under section 38(e)(2) of the FDI Act, the bank shall, upon submission of the plan, be subject to the provisions of section 38 and this subpart that are applicable to banks that have not submitted an approved capital restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls a bank to perform fully its guarantee of any capital plan shall constitute a material failure to implement the plan for purposes of section 38(f) of the FDI Act. Upon such failure, the bank shall be subject to the provisions of section 38 and this subpart that are applicable to banks that have failed in a material respect to implement a capital restoration plan.

**§ 208.35 Mandatory and discretionary supervisory actions under section 38.**

(a) *Mandatory supervisory actions.*—(1) *Provisions applicable to all banks.* All state member banks are subject to the restrictions contained in section 38(d) of the FDI Act on payment of capital distributions and management fees.

(2) *Provisions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized banks.* Immediately upon receiving notice or being deemed to have notice, as provided in § 208.32 or § 208.34 of this subpart, that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act—

(i) Restricting payment of capital distributions and management fees (section 38(d));

(ii) Requiring that the Board monitor the condition of the bank (section 38(e)(1));

(iii) Requiring submission of a capital restoration plan within the schedule established in this subpart (section 38(e)(2));

(iv) Restricting the growth of the bank's assets (section 38(e)(3)); and

(v) Requiring prior approval of certain expansion proposals (section 38(e)(4)).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 208.32 or § 208.34 of this subpart, that the bank is significantly undercapitalized, or critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraphs (a) (2) and (3) of this section, immediately upon receiving notice of being deemed to have notice, as provided in § 208.32 or § 208.34 of this subpart, that the bank is critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act—

(i) Restricting the activities of the bank (section 38(h)(1)); and

(ii) Restricting payments on subordinated debt of the bank (section 38(h)(2)).

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the Board's discretion to take in connection with a state member bank that is deemed to be undercapitalized, significantly undercapitalized or critically undercapitalized, an officer or director of such bank, or a company that controls such bank, the Board will follow the procedures for issuing directives under §§ 263.201 and 263.203 of this chapter, unless otherwise provided in section 38 or this subpart.

4. Subparts C and D are added to part 208 and reserved, the undesignated centerhead preceding § 208.116 is removed, §§ 208.116, 208.117, 208.122, and 208.124 through 208.126 are designated as subpart E of part 208, and the subpart E heading is added to read as follows:

**Subpart E—Interpretations**

**PART 263—RULES OF PRACTICE FOR HEARINGS**

1. The authority citation for 12 CFR part 263 is revised to read as follows:

**Authority:** 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1831o, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909, 15 U.S.C. 21, 78o–4, 78o–5, and 78u–2.

2. Section 263.50(b) is amended by removing the word "and" at the end of paragraph (b)(9), removing the period at the end of paragraph (b)(10) and adding in its place a semicolon, and by adding paragraphs (b)(11) through (b)(14) to read as follows:

**§ 263.50 Purpose and scope.**

* * * * *

(b) * * *

(11) Issuance of a prompt corrective action directive to a member bank under section 38 of the FDI Act (12 U.S.C. 1831o);

(12) Reclassification of a member bank on grounds of unsafe or unsound condition under section 38(g)(1) of the FDI Act (12 U.S.C. 1831o(g)(1));

(13) Reclassification of a member bank on grounds of unsafe and unsound practice under section 38(g)(1) of the FDI Act (12 U.S.C. 1831o(g)91)); and

(14) Issuance of an order requiring a member bank to dismiss a director or senior executive officer under section 38(e)(5) and 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831o(e)(5) and 1831o(f)(2)(F)(ii)).

3. A new subpart H is added to part 263 to read as follows:

**Subpart H—Issuance and Review of Orders Pursuant to Prompt Regulatory Action**

Sec.

§ 263.200 Scope.
§ 263.201 Directives to take prompt regulatory action
§ 263.202 Procedures for reclassifying a state member bank based on criteria other than capital.
§ 263.203 Order to dismiss a director or senior executive officer.
§ 263.204 Enforcement of directives.

**SUBPART H—INSURANCE AND REVIEW OF ORDERS PURSUANT TO PROMPT REGULATORY ACTION**

**§ 263.200 Scope.**

(a) The rules and procedures set forth in this subpart apply to state member banks, companies that control state member banks or are affiliated with

such banks, and senior executive officers and directors of state member banks that are subject to the provisions of section 38 of the Federal Deposit Insurance Act (section 38) and subpart B of part 208 of this chapter.

**§ 263.201 Directives to take prompt regulatory action.**

(a) *Notice of intent to issue a directive.*—(1) *In General.* The Board will provide an undercapitalized, significantly undercapitalized, or critically undercapitalized state member bank or, where appropriate, any company that controls the bank, prior written notice of the Board's intention to issue a directive requiring such bank or company to take actions or to follow proscriptions described in section 38 that are within the Board's discretion to require or impose under section 38(e)(5), (f)(2), (f)(3), or (f)(5) of the FDI Act.

(2) *Immediate issuance of final directive.* If the propose Board finds it necessary in order to carry out the purposes of section 38 of the FDI Act, the Board may, without providing the notice prescribed in paragraph (a)(1) of this section, issue a directive requiring a state member bank or any company that controls a state member bank immediately to take actions or to follow proscriptions described in section 38 that are within the Board's direction to require or impose under section 38(e)(5), (f)(2), (f)(3), or (f)(5) of the FDI Act. A bank or company that is subject to such an immediately effective directive may submit a written appeal of the directive of the Board. Such an appeal must be received by the Board within 14 calendar days of the issuance of the directive. The Board shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the directive shall remain in effect unless the Board, in its sole discretion, stays the effectiveness of the directive.

(b) *Contents of notice.*—A notice of intention to issue a directive shall include:

(1) A statement of the bank's capital measures and capital levels;

(2) A description of the restrictions, prohibitions or affirmative actions that the Board proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of such affirmative actions; and

(4) The date by which the bank or company subject to the directive may file with the Board a written response to the notice.

(c) *Response to notice.*—(1) *Time for Response.* A bank or company may file a written response to a notice of intent to issue a directive within the time period set by the Board. The date shall be at least 14 calendar days from the date of the notice unless the Board determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(2) *Content of Response.* The response should include:

(i) An explanation why the action proposed by the Board is not an appropriate exercise of discretion under section 38;

(ii) Any recommended modification of the proposed directive; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank or company regarding the proposed directive.

(d) *Failure to file agency response.* Failure by a bank or company to file with the Board, within the specified time period, a written response to a proposed directive shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the directive.

(e) *Board consideration of response.* After considering the response, the Board may:

(1) Issue the directive as proposed or in modified form;

(2) Determine not to issue the directive and so notify the bank or company; or

(3) Seek additional information or clarification of the response from the bank or company, or any other relevant source .

(f) *Request for modification or rescission of directive.* Any bank or company that is subject to a directive under this subpart may, upon a change in circumstances, request in writing that the Board reconsider the terms of the directive, and may propose that the directive be rescinded or modified. Unless otherwise ordered by the Board, the directive shall continue in place while such request is pending before the Board.

**§ 263.202 Procedures for reclassifying a state member bank based on criteria other than capital.**

(a) *Classification of a state member bank based on unsafe or unsound condition—(1)Issuance of notice of proposed reclassification.* If the Board determines to reclassify a well capitalized state member bank as adequately capitalized or to require an adequately capitalized or undercapitalized state member bank to comply with supervisory actions as if it were in the next lower capital category pursuant to section 38(g) of the FDI Act and § 208.33(c)(1) of Regulation H (12 CFR 208.33(c)(1)) because the Board deems the bank to be in unsafe or unsound condition (each of the foregoing referred to hereinafter as a "reclassification"), the Board will issue and serve on the bank a written notice of the Board's intention to reclassify the bank.

(2) *Contents of notice.* A notice of intention to reclassify a bank based on unsafe or unsound condition will include:

(i) A statement of the bank's capital measures and capital levels and the category to which the bank would be reclassified;

(ii) The reasons for reclassification of the bank;

(iii) The date by which the bank subject to the notice of reclassification may file with the Board a written appeal of the proposed reclassification and a request for a hearing, which shall be at least 14 calendar days from the date of service of the notice unless the Board determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(3) *Response to notice of proposed reclassification.* A bank may file a written response to a notice of proposed reclassification within the time period set by the Board. The response should include:

(i) An explanation of why the bank is not in unsafe or unsound condition or otherwise should not be reclassified;

(ii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank or company regarding the reclassification.

(4) *Failure to file response.* Failure by a bank to file, within the specified time period, a written response with the Board to a notice of proposed reclassification shall constitute a waiver of the opportunity to respond and shall constitute consent to the reclassification.

(5) *Request for hearing and presentation of oral testimony or witnesses.* The response may include a request for an informal hearing before the Board or its designee under this section. If the bank desires to present oral testimony or witnesses at the hearing, the bank must include a request to do so with the request for an informal hearing. A request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall

constitute a waiver of any right to a hearing, and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right to present oral testimony or witnesses.

(6) *Order for informal hearing.* Upon receipt of a timely written request including a request for a hearing, the Board shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the bank requests a later date. The hearing shall be held in Washington, DC or at such other place as may be designated by the Board, before a presiding officer(s) designated by the Board to conduct the hearing.

(7) *Hearing procedures.* (i) The bank shall have the right to introduce relevant written materials and to present oral argument at the hearing. The bank may introduce oral testimony and present witnesses only if expressly authorized by the Board or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in subpart A of this part apply to an informal hearing under this section unless the Board orders that such procedures shall apply.

(ii) The informal hearing shall be recorded, and a transcript shall be furnished to the bank upon and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(iii) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(8) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the Board on the reclassification.

(9) *Time for decision.* No later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the Board will decide whether to reclassify the bank and notify the bank of the Board's decision.

(b) *Procedures for reclassifying a state member bank based on unsafe and unsound practice.*—(1) *Issuance of notice of proposed reclassification.* If the Board determines to reclassify a well capitalized state member bank as adequately capitalized or to require an adequately capitalized or undercapitalized state member bank to comply with supervisory actions as if it were in the next lower capital category pursuant to section 38(g) of the FDI Act and § 208.33(c)(2) of Regulation H (12 CFR 208.33(c)(2)) because the Board deems the bank to be engaging in an unsafe or unsound practice (each of the foregoing referred to hereinafter as a "reclassification"), the Board will issue and serve on the bank a written notice of the Board's intention to reclassify the bank.

(2) *Contents of notice.* A notice of intention to reclassify a bank will include:

(i) A statement of the bank's capital measures and capital levels and the category to which the bank would be reclassified;

(ii) The reasons for reclassification of the bank;

(iii) The date by which the bank subject to the notice of reclassification may file with the Board a written appeal of the proposed reclassification, which shall be at least 14 calendar days from the date of service of the notice unless the Board determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(3) *Response to notice of proposed reclassification based on unsafe and unsound practice.* A bank may file a written response to a notice of proposed reclassification issued under this subsection within the time period set by the Board. The response should include:

(i) An explanation of the steps taken by the bank to address the deficiency described in the notice of proposed reclassification or of the reasons that the reclassification is not otherwise appropriate;

(ii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank or company regarding the reclassification.

(4) *Faiure to file response.* Failure by a bank to file, within the specified time period, a written response with the Board to a notice of proposed reclassification under this subsection shall constitute a waiver of the opportunity to respond and shall constitute consent to the reclassification.

(5) *Board consideration of response.* After considering the response, the Board may:

(i) Issue a written order to the bank reclassifying the bank to a different capital category as provided in section 38(g) of the FDI Act;

(ii) Determine not to reclassify the bank and so notify the bank; or

(iii) Seek additional information or clarification of the response from the bank or company, or any other relevant source.

(c) *Request for rescission of reclassification.* Any bank that has been reclassified under this section, may, upon a change in circumstances, request in writing that the Board reconsider the reclassification, and may propose that the reclassification be rescinded and that any directives issued in connection with that reclassification be modified, rescinded, or removed. Unless otherwise ordered by the Board, the bank shall remain subject to the reclassification and to any directives issued in connection with that reclassification while such request is pending before the Board.

**§ 263.203 Order to dismiss a director or senior executive officer.**

(a) *Service of notice.* When the Board issues and serves a directive on a state member bank pursuant to § 263.201 requiring the bank to dismiss from office any director or senior executive officer under section 38(f)(2)(F)(ii) of the FDI Act, the Board will also serve a copy of the directive, or the relevant portions of the directive where appropriate, upon the person to be dismissed.

(b) *Response to directive.* A director or senior executive officer who has been served with a directive under paragraph (a) of this section ("Respondent") may file a written request for reinstatement. The request for reinstatement must be filed within 10 calendar days of the receipt of the directive by the Respondent, unless further time is allowed by the Board at the request of the Respondent. The request for reinstatement should include reasons why the Respondent should be reinstated, and may request an informal hearing before the Board or its designee under this section. If the Respondent desires to present oral testimony or witnesses at the hearing, the Respondent must include a request to do so with the request for an informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right or opportunity to present oral testimony or witnesses. Unless otherwise ordered by the Board, the dismissal shall remain in effect while a

request for reinstatement made under this section is pending.

(c) *Order for informal hearing.* Upon receipt of a timely written request from a Respondent for an informal hearing on the portion of a directive requiring a bank to dismiss from office any director or senior executive officer, the Board shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the Respondent requests a later date. The hearing shall be held in Washington, D.C., or at such other place as may be designated by the Board, before a presiding officer(s) designated by the Board to conduct the hearing.

(d) *Hearing procedures.* (1) A Respondent may appear at the hearing personally or through counsel. A Respondent shall have the right to introduce relevant written materials and to present oral argument. A Respondent may introduce oral testimony and present witnesses only if expressly authorized by the Board or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in subpart A of this part apply to an informal hearing under this section unless the Board orders that such procedures shall apply.

(2) The informal hearing shall be recorded, and a transcript shall be furnished to the Respondent upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(3) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(e) *Standard for review.* A Respondent shall bear the burden of demonstrating that his or her continued employment by or service with the bank would materially strengthen the bank's ability—

(1) To become adequately capitalized, to the extent that the directive was issued as a result of the bank's capital level or failure to submit or implement a capital restoration plan; and

(2) To correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the directive was issued as a result of classification of the bank based on supervisory criteria other than capital, pursuant to section 38(g) of the FDI Act.

(f) *Limitation on scope of review.* The level of capital or the capital category assigned to the state member bank with which a Respondent is associated shall not be subject to review in any proceeding under this section.

(g) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the Board concerning the Respondent's request for reinstatement with the bank.

(h) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing has been requested, the Board shall grant or deny the request for reinstatement and notify the Respondent of the Board's decision. If the Board denies the request for reinstatement, the Board shall set forth in the notification the reasons for the Board's action.

**§ 263.204 Enforcement of directives.**

(a) *Judicial remedies.* Whenever a state member bank or company that controls a state member bank fails to comply with a directive issued under section 38, the Board may seek enforcement of the directive in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act, the Board may assess a civil money penalty against any state member bank or company that controls a state member bank that violates or otherwise fails to comply with any final directive issued under section 38 and against any institution-affiliated party who participates in such violation or noncompliance. The failure of a bank to implement a capital restoration plan required under section 38, subpart B of Regulation H (12 CFR part 208, subpart B), or this subpart, or the failure of a company having control of a bank to fulfill a guarantee of a capital restoration plan made pursuant to section 38(e)(2) of the FDI Act shall subject the bank or company to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the Board may seek enforcement of the provisions of section 38 or subpart B of Regulation H (12 CFR part 208, subpart B) through any other judicial or administrative proceeding authorized by law.

By order of the Board of Governors of the Federal Reserve System.

Dated: June 25, 1992.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 92-15307 Filed 6-26-92; 3:33 pm]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 416

**[Regulations No. 16]**

**RIN 0960-AD48**

## Time Limits for Disposition of Resources in the Supplemental Security Income Program

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Proposed Rule.

**SUMMARY:** If an individual filing for supplemental security income (SSI) benefits has excess resources, section 1613(b) of the Social Security Act (the Act) permits the payment of SSI benefits on the condition that the individual disposes of the excess resources within a time period specified by the Secretary. The regulations currently state that, in order to receive these "conditional benefits," the individual must agree in writing to dispose of the resources within 9 months (for real property) and 3 months (for personal property). The regulations are not clear as to when the time period for disposal of the property begins. We are proposing a rule to change the regulations to clarify that the time period for disposal of property begins on the date we accept the individual's signed written agreement to dispose of the property.

**DATES:** To be sure that your comments are considered, we must receive them no later than August 31, 1992.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-1762.

**SUPPLEMENTARY INFORMATION:** Section 1613(b) of the Act requires the Secretary to prescribe the period of time and the manner in which resources must be disposed of, to be excluded in determining SSI eligibility. The Act permits payment of SSI benefits during this period on the condition that the individual dispose of the resources. Any benefits so paid are considered overpayments which must be paid back.

Regulations at § 416.1240(a) provide that when an individual has excess nonliquid resources, such individual "shall not be eligible for payment except under the conditions provided in this section." One of those conditions, set out at § 416.1240(a)(2)(i), is that the individual must agree in writing to dispose of the excess nonliquid resources within the time period in § 416.1242 in order to receive "conditional benefits." Under § 416.1242(a), the individual must agree in writing to dispose of nonliquid resources which would otherwise result in SSI ineligibility within 9 months for real property and 3 months for personal property. The time limit for disposing of personal property may be extended 3 months for "good cause."

Further, § 416.1242(a) provides that the disposition period will begin on the date the written agreement is signed by the individual and submitted to the Social Security Administration. In the case of an individual who is disabled, the regulations provide that the disposition period will begin "with the date the individual is determined to be disabled." In § 416.1002, we define the term "disability" to mean disability or blindness as defined in sections 1614(a)(2) and (3) of the Act. Therefore, in an SSI claim based on blindness the disposition period would begin with the date we determine the individual to be blind.

The regulations at § 416.1242(a) are ambiguous as to the beginning of the resources disposal time limit. As written, the regulations do not preclude the commencement of a conditional benefits period prior to the month in which we determine that all nonresource requirements are met, nor do the regulations define the point at which we determine an individual to be disabled or blind.

Current regulations at § 416.1242(a) can be interpreted to mean that an individual may sign a conditional benefits agreement, and thus trigger the disposition period, before we determine whether all SSI eligibility requirements are met, other than resource requirements. Such an interpretation could create a situation where the individual might sell his or her property in anticipation of receipt of SSI benefits and later be determined not to be eligible for SSI for reasons other than resources, and, therefore, ineligible for conditional benefits.

In addition, in a SSI disability or blindness case, the regulations also can be interpreted to mean that the time limit for disposition of property begins on the actual date we determine the individual to be disabled or blind. This interpretation would place an illogical burden on the individual by requiring him or her to begin efforts to sell property before the individual receives notice of the disability/blindness determination and before we determine that the individual meets all other factors of eligibility, for example, the income requirements.

To address this issue, we propose to revise § 416.1242(a) to indicate that the time period for disposal of property begins on the date we accept the individual's signed written agreement. If we receive a signed agreement on or after the date we have determined that the individual meets the eligibility requirements described in § 416.202, with the exception of the resource requirements, our acceptance of the written agreement will occur on the date the individual receives our written notice that the agreement is in effect. The proposed rules will further state that if we receive a signed agreement prior to the date we determine that all nonresource requirements are met, our acceptance of the written agreement will not occur until the date the individual receives our written notice that all nonresource requirements are met and the agreement is in effect. When the written notice is mailed to the individual, we assume that the notice was received 5 days after the date shown on the notice unless the individual shows us that he or she did not receive it within the 5-day period.

**Regulatory Procedures**

*Executive Order 12291*

The Secretary has determined that this is not a major rule under Executive Order 12291 since the costs are expected to be less than $100 million, and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

*Paperwork Reduction Act of 1980*

This regulation imposes no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

*Regulatory Flexibility Act*

We certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because it affects only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

**List of Subjects in 20 CFR Part 416**

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated January 7, 1992.

**Gwendolyn S. King,**

*Commissioner of Social Security.*

Approved: March 3, 1992.

**Louis W. Sullivan,**

*Secretary of Health and Human Services.*

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

**PART 416—[AMENDED]**

1. The authority citation for subpart L of part 416 continues to read as follows:

**Authority:** Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93-66, 87 Stat. 154.

2. Section 416.1242 is amended by revising paragraph (a) to read as follows:

**§ 416.1242 Time limits for disposing of resources.**

(a) In order for payment conditioned on the disposition of nonliquid resources to be made, the individual must agree in writing to dispose of real property within 9 months and personal property within 3 months. The time period for disposal of property begins on the date we accept the individual's signed written agreement to dispose of the property. If we receive a signed agreement on or after the date we have determined that the individual meets the eligibility requirements described in § 416.202 of this part, with the exception of the resource requirements described in this subpart, our acceptance of the written agreement will occur on the date the individual receives our written notice that the agreement is in effect. If we receive a signed agreement prior to the date we determine that all

nonresource requirements are met, our acceptance of the written agreement will not occur until the date the individual receives our written notice that all nonresource requirements are met and that the agreement is in effect. When the written notice is mailed to the individual, we assume that the notice was received 5 days after the date shown on the notice unless the individual shows us that he or she did not receive it within the 5-day period.

* * * * *

[FR Doc. 92-15249 Filed 6-30-92; 8:45 am]
BILLING CODE 4193-25-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[INTL-0018-92]

RIN 1545-AQ56

## Earnings and Profits of Foreign Corporations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed Income Tax Regulations relating to computing the earnings and profits of foreign corporations. The regulations are necessary to reduce the administrative burdens associated with making these computations and would affect foreign corporations and their United States shareholders.

**DATES:** Comments and requests for a public hearing must be received by August 31, 1992.

**ADDRESSES:** Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL-0018-92), room 5228, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Margaret Hogan of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL-0018-92) (202-566-6795, not a toll free call).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

While the simplified method for computing earnings and profits contained in the proposed regulations may result in accounting method changes that ordinarily would trigger certain reporting requirements, proposed regulation § 1.964-1(c)(1)(v) waives any Form 3115 filing requirements if its conditions are met. Therefore, no collection of information is required by the proposed regulation. However, the waiver of this collection requirements has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on this matter should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 964 and 952 of the Internal Revenue Code of 1986. These amendments are proposed to simplify the requirements of § 1.964-1 relating to the earnings and profits of foreign corporations and to provide clarifying references within § 1.952-2 relating to the taxable income of foreign corporations for purposes of subpart F.

### Explanation of Provisions

These proposed regulations would simplify the computation of earnings and profits (E&P) of foreign corporations by largely eliminating required book-to-tax adjustments attributable to depreciation and to the uniform capitalization rules of section 273A. Section 964(a) provides broad regulatory authority for the Secretary to prescribe rules for computing E&P that are substantially similar to those applicable to domestic corporations. The regulations under section 964 generally provide that E&P of a foreign corporation shall be computed by preparing a profit and loss statement from the corporation's books and making material adjustments necessary to conform such statement to United States financial and tax accounting principles. The current regulations governing tax accounting adjustments expressly require that inventories be accounted for in accordance with the provisions of sections 471 and 472, which incorporate the uniform capitalization rules of section 263A. The regulations also require that depreciation be computed in accordance with section 167.

Taxpayers have suggested that maintaining separate inventory and depreciation accounts for U.S. tax and financial accounting purposes is unduly burdensome and that use of a single set of accounts would reduce the compliance burden without a significant revenue effect. On this basis, proposed § 1.964-1(c)(1)(ii)(B) provides that inventories shall be taken into account in accordance with the provisions of sections 471 and 472, except that nothing in section 263A shall require capitalization of inventory costs in excess of those required to be capitalized under U.S. generally accepted accounting principles (GAAP). This change is intended to permit increased reliance on the taxpayer's method of accounting for inventories for financial accounting purposes.

In addition, proposed § 1.964-1(c)(1)(iii)(D) provides that taxpayers may use GAAP recovery methods and useful lives in computing depreciation adjustments for a foreign corporation deriving less than 20 percent of its gross income from U.S. sources. Proposed § 1.964-1(c)(1)(iii)(D) also provides that the basis of depreciable assets shall be determined under U.S. tax accounting principles unless the asset's tax basis is not materially different from its U.S. financial book basis, in which case the book basis may be used. Thus, generally, a "purchase or "push down" accounting method may not be used to determine asset basis with respect to an acquired foreign corporation. In addition, where a section 338 election is made with respect to an acquired foreign corporation, or where the consistency rules of section 338 apply, generally, asset basis is to be determined under the rules of section 338(b). Comments are requested on whether the application of GAAP recovery methods and useful lives will simplify depreciation computations in cases where tax basis must be used.

There is no comparably broad regulatory authority to modify domestic rule applicable in computing taxable income of a foreign corporation for purposes of subpart F or income effectively connected with a U.S. trade or business of a foreign corporation. Accordingly, no changes are proposed to the rules for making taxable income computations. Section 1.952-2(c)(2)(iv) would be amended to clarify that the cross-reference to § 1.964-1(c) does not incorporate the proposed amendments to the E&P rules relating to book-to-tax uniform capitalization and depreciation adjustments. See, however, Notice 88-104, 1988-2 C.B. 443, setting forth a simplified method of accounting for the costs required to be capitalized by foreign persons under section 263A.

Comments are invited on the extent to which the proposed regulations will achieve real burden reduction in light of the continuing requirement to compute taxable income in accordance with domestic rules.

The regulations are proposed to be effective for tax years beginning after December 31, 1991. Comments are invited on whether a later effective date would be appropriate to allow more time for taxpayers to revise their information gathering procedures. Application of the U.S. GAAP limitation on the capitalization of inventory costs and any change from tax to GAAP depreciation methods will constitute changes in methods of accounting for an existing foreign corporation. To provide greater simplification, a change from a tax to a GAAP useful life shall be accounted for as if it were part of the foreign corporation's change in method of accounting for depreciation, notwithstanding that § 1.446–1(e)(2)(ii)(*b*) provides that changes in useful lives are not changes in accounting methods.

Under proposed § 1.964–1(c)(1)(v), the Commissioner's consent to the above accounting method changes is automatically granted with no Form 3115 (Application for Change in Accounting Method) filing requirements, provided the foreign corporation properly takes the net adjustments required under section 481(a) into account in determining E&P ratably over (generally) six taxable years, beginning with the required year of change. The net adjustment required, for example, under section 481(a) upon the change from tax to GAAP recovery methods and useful lives is computed by redetermining the adjusted bases of depreciable assets as of the beginning of the first tax year beginning after December 31, 1991, as if the corporation had always used GAAP methods and useful lives, and comparing the redetermined adjusted bases with the adjusted bases of depreciable assets under methods and lives previously used by the corporation.

The Service is considering a number of issues in connection with this proposal, including whether it would be useful to define more specifically when an adjustment will be treated as material and to clarify the treatment of statutory E&P rules applicable to foreign corporations (such as section 404A); what requirements must be met in order for taxpayers to rely on separate company financial statements for E&P purposes; and whether in particular cases the proposed regulations create a distortion between the treatment of foreign and domestic subsidiaries that is so significant as to require adjustment. Taxpayers are invited to comment on these matters and also to identify other specific adjustments that are particularly burdensome to compute but unlikely in general to involve material amounts. The Service also solicits suggestions on other approaches to reduce administrative burdens relating to required computations involving foreign subsidiaries.

## Special Analysis

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

## Comments and Request for Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time, place, and date for the hearing will be published in the **Federal Register**.

## Drafting Information

The principal author of these proposed regulations is Margaret Hogan of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

## List of Subjects

*26 CFR 1.951–1 Through 1.964–5*

Income taxes, Reporting and recordkeeping requirements, United States investments abroad.

## Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

**Paragraph 1.** The authority citation for part 1 continues to read in part:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.952–2(c)(2)(iv) is revised to read as follows:

**§ 1.952–2 Determination of gross income and taxable income of a foreign corporation.**

* * * * *

(c) * * *

(2) * * *

(iv) *Tax accounting methods.* The tax accounting methods to be employed are those established or adopted by or on behalf of the foreign corporation under § 1.964–1(c), except that the provisions of paragraphs (c)(1)(ii)(B) and (c)(1)(iii)(D) of this section shall not apply in determining the gross income or the taxable income of the foreign corporation. Thus, such accounting methods must be consistent with the manner of treating inventories, depreciation, and elections referred to in § 1.964–1(c)(1) (ii)(A), (iii) (A) through (C) and (iv) and used for purposes of such paragraphs; however, if, in accordance with § 1.964–1(c)(6), a foreign corporation receives foreign base company income before any elections are made or before an accounting method is adopted by or on behalf of such corporation under § 1.964–1(C)(3), the determinations of whether an exclusion set forth in section 954(b) applies shall be made as if no elections had been made and no accounting method had been adopted.

**Par. 3.** Section 1.964–1 is amended by:

1. Revising paragraph (c)(1) (ii) and (iii) as set forth below.

2. Adding paragraph (c)(1)(v) immediately after paragraph (c)(1)(iv) and before the concluding text to read as set forth below.

**§ 1.964–1 Determination of the earnings and profits of a foreign corporation.**

* * * * *

(c) * * *

(1) * * *

(ii) *Inventories*—(A) *Pre-1992 years.* Inventories shall be taken into account in accordance with the provisions of sections 471 and 472 and the regulations under those sections.

(B) *Post-1991 years.* For taxable years beginning after December 31, 1991,

inventories shall be taken into account in accordance with paragraph (c)(1)(ii)(A) of this section, except that nothing in section 263A and the regulations under that section shall require the capitalization of inventory costs in excess of those required to be capitalized in keeping the taxpayer's books and records prepared in accordance with United States generally accepted accounting principles and used for purposes of reflecting in its financial statements the operations of its foreign affiliates.

(iii) *Depreciation.* Depreciation shall be computed as follows:

(A) For any taxable year beginning before July 1, 1972, depreciation shall be computed in accordance with section 167 and the regulations under that section.

(B) If, for any taxable year beginning after June 30, 1972, 20 percent or more of the gross income from all sources of the corporation is derived from sources within the United States, then depreciation shall be computed in accordance with the provisions of § 1.312–15.

(C) If, for any taxable year beginning after June 30, 1972, less than 20 percent of the gross income from all sources of the corporation is derived from sources within the United States, then depreciation shall be computed in accordance with section 167 and the regulations under that section.

(D) Except as otherwise provided in paragraph (c)(1)(iii)(B) of this section and notwithstanding paragraph (c)(1)(iii)(C) of this section, for taxable years beginning after December 31, 1991, depreciation shall be computed with respect to assets depreciable under section 167 and the regulations under that section using recovery methods, conventions, and useful lives established on the taxpayer's books and records prepared in accordance with United States generally accepted accounting principles and used for purposes of reflecting in its financial statements the operations of its foreign affiliates (United States books). The depreciable basis of an asset shall be determined under United States tax accounting principles unless such basis does not differ materially in amount from basis established on the taxpayer's United States books, in which case the United States book basis may be used. Thus, generally, a "push-down" or "purchase" method of accounting may not be used in determining the basis of assets of an acquired foreign corporation. In addition, where a section 338 election has been made with respect to an acquired foreign corporation, or where the consistency rules of section 338 apply, asset basis generally shall be determined in accordance with section 338 and the regulations under that section.

* * * * *

(v) *Post-1991 change in method of accounting.* Application of paragraphs (c)(1)(ii)(B) and (c)(1)(iii)(D) of this sectionmay result in changes in the foreign corporation's methods of accounting. In determining whether the application of paragraph(c)(1)(iii)(D) of this section results in a change in method of accounting, a change from tax to financial book useful life shall be accounted for under this section as if it were part of the change in method of accounting for depreciation, notwithstanding that § 1.446–1(e)(2)(ii)(*b*) would provide otherwise. Under the Commissioner's authority in section 446(e) and § 1.446–1(e), consent to the changes in methods of accounting arising from the application of paragraphs (c)(1)(ii)(B) and (c)(1)(iii)(D) of this section is granted with no required filing of a Form 3115 (Application for Change in Accounting Method), provided the corporation makes the changes in its first taxable year beginning after December 31, 1991, and properly takes the net adjustments required under section 481(a) into account in determining earnings and profits ratably over six taxable years, beginning with the required year of change, or any applicable shorter period prescribed in section 8 of Rev. Proc. 92–20, 1992–12 I.R.B. 10 (copies of which may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402).

* * * * *

Shirley D. Peterson,

*Commissioner of Internal Revenue.*

[FR Doc. 92–15366 Filed 6–30–92; 8:45 am]

BILLING CODE 4830–01–M

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## 26 CFR Part 301

[IA–003–89]

RIN 1545–AN02

## Exhaustion of Administrative Remedies; Hearing Cancellation

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of cancellation of a public hearing on proposed regulations relating to the deposit of Federal employment taxes (including railroad retirement taxes).

**DATES:** The public hearing originally scheduled for Wednesday, July 8, 1992, beginning at 10 a.m. is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9232, (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under section 6302 of the Internal Revenue Code and section 226 of the Railroad Retirement Solvency Act of 1983. A notice of public hearing appearing in the **Federal Register** for Friday, May 8, 1992 (57 FR 19831), announced the public hearing on the proposed regulations would be held on Wednesday, July 8, 1992, beginning at 10 a.m., in the Internal Revenue Service Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Wednesday, July 8, 1992 has been cancelled.

Dale D. Goode,

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 92–15367 Filed 6–30–92; 8:45 am]

BILLING CODE 4830–01–M

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## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Parts 1 and 10

[Docket No. 920539–2139]

RIN 0651–AA51

## Revision of Patent Cooperation Treaty Provisions

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Patent and Trademark Office (Office) proposes (1) to amend the rules of practice relating to applications filed under the Patent Cooperation Treaty (PCT) in accordance with revised regulations under the PCT; (2) to bring the rules regarding applications entering the national stage under 35 U.S.C. 371 more in line with existing regulations applicable to national applications filed under 35 U.S.C. 111; and (3) to clarify existing practice under the PCT. The proposed changes will result in more streamlined and simplified procedures for filing and prosecuting international and national stage applications under the PCT.

**DATES:** Written comments must be submitted on or before July 31, 1992.

**ADDRESSES:** Address written comments to the Commissioner of Patents and Trademarks, Box PCT, Washington, DC 20231, Attention: Vincent Turner, CP–6, room 1205 or by Fax to (703) 305–8825.

**FOR FURTHER INFORMATION CONTACT:** Vincent Turner by telephone at (703) 305–3174 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Box PCT, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** This proposed rule change will improve filing and processing procedures for applicants both in the filing of international applications and in the filing of national stage applications under 35 U.S.C. 371.

During the first 14 years under the PCT, the annual volume of international patent applications filed in the U.S. Receiving Office has increased from just under 100 to almost 10,000 in fiscal year 1991. The volume of U.S. national stage applications has shown similar growth to the point that the U.S. is now designated more than 10,000 times each year by applicants filing international applications under the PCT. Historically, approximately 60% of those applicants that designate the U.S. enter the national stage in the United States.

On July 8 to 12, 1991, representatives of the patent offices of the member countries, in a series of meetings held in Geneva, Switzerland, agreed upon several changes to the PCT regulations which are designed to make the PCT more user-friendly. These adopted changes require corresponding changes in title 37, CFR.

Under the present regulations, an applicant is required on filing the international application to specify all designations of countries, or regions of countries (regions), in which a patent is sought. Failure to designate a member country, or region, on filing, results in the loss of the right to file in the desired country, or region, using the benefits of the Treaty. The practice under the revised PCT regulations will permit an applicant to provide a generic designation of all PCT member countries and regions so that any intended designation which may have been overlooked on filing can be corrected within 15 months of the priority date.

International applications are searched and published prior to the 20-month deadline for entry into the national stage. If a demand for examination if filed before expiration of 19 months from the priority date, the time for entry into the national stage is extended to 30 months and the international application will be subject to preliminary examination under chapter II of the PCT. Under the present regulations preliminary examination may be based on an amendment which accompanies the demand. Amendments filed after the demand are not considered. The practice under the revised PCT regulations permits an applicant to indicate in the demand that preliminary examination is to be based on an accompanying Article 34 amendment and, if the amendment is not received with the demand, the applicant will be notified and given a time period within which to file the missing amendment. This new procedure will ensure that examination will go forward based on the desired Article 34 amendment.

Also, the Office is aware that certain applicants have had difficulty in properly filing national stage applications due to the different requirements in the rules for PCT and U.S. national applications. Some differences cannot be avoided due to different procedures required under the PCT from U.S. national practice. It is desirable, however, to minimize these differences and to simplify national stage filing procedures.

International applications have become abandoned for failure to timely provide an oath or declaration, a filing fee and/or an accurate translation. In national practice under 35 U.S.C. 111, if any of these items were not presented at the time of filing, a notice would be mailed to the applicant setting a period of time to provide the missing item(s) and to pay a fee. The proposed amendments to the rules governing entering the national stage will establish a greater degree of uniformity of practice and requirements for filing an application under 35 U.S.C. 111 and entering the national stage in an international application under 35 U.S.C. 371.

The proposal to amend §§ 1.494 and 1.495 would result in regulations much like the present § 1.53. The major exception would be that a notification of any missing parts in proposed sections 1.494 and 1.495 would only be mailed in those instances where the applicant has paid the national stage filing fee within 20 or 30 months from the priority date, depending on whether election of the U.S. under chapter II of the PCT has been made prior to 19 months. Paying the fee will give a clear indication to the Office that the applicant desires to enter the national stage and that a period of time should be set to supply any missing oath, declaration or translation. At the same time, the applicant will have the opportunity to inform the Office of the U.S. correspondence address. Thus, the Office will avoid unnecessary handling of approximately 40% of those applications that designate the U.S. but do not enter the national stage, and will be able to send a notice to a U.S. correspondence address in most cases.

Often at 20 or 30 months from the priority date, the only communication which has been received by the Office is a copy of the international application from the International Bureau with the address of the foreign attorney who represented the applicant in the international stage. The foreign attorney or agent may not be conversant in English or knowledgeable about U.S. practice, factors which often contribute to complicating the processing of applications. Thus, the proposed practice will have several advantages: (1) It will enable the applicant to identify the U.S. attorney or agent for correspondence from the Office; (2) the Office, after a check of the national stage papers at 20 or 30 months, will mail a notice identifying any deficiencies and affording applicant a period for correction of those deficiencies; and (3) as in national practice under § 1.53, it will enable applicants to extend the period of time under § 1.136 for submission of a proper oath, declaration or translation.

The proposed changes to §§ 1.494 and 1.495 address the problems which have been most frequently encountered. By far, the greatest hurdle for entry into the national stage has been submission of the oath or declaration by the 22 or 32 month deadline. There is no opportunity for extension beyond 22 or 32 months. Similarly, submission of the translation within these time limits has posed a problem for many applicants. The proposed practice of notifying applicants of deficiencies and setting an extendable period of time for correction would allow applicants greater flexibility in the time for submission of these documents, thus avoiding the consequence of abandonment and potential loss of rights in the United States.

### Discussion of Specific Rules

The following is a table correlating PCT Rule changes with proposed 37 CFR changes. Sections 1.431(b)(1), 1.431(b)(3)(ii), 1.451(a), 1.482(a)(2)(i), 1.492(e), 1.494 and 1.495, which are proposed to be amended, are not shown in the table because they are changes being proposed that are not required by PCT rule changes.

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RULE CORRELATION TABLE

| 37 CFR change | PCT rule change |
|---|---|
| 1.431(c)–(3) | 16bis, 27.1 |
| 1.432(a) | 4.1(b)(iv), 4.9 |
| 1.432(b) | 5.5, 16bis |
| 1.432(c) | 15.5 |
| 1.434(a) | 3.1 |
| 1.445(a)(4) | 15.5 |
| 1.446(d) | 15.6, 16.2 |
| 1.446(e) | 57.6 |
| 1.455(a) | 90, 2.2bis |
| 1.475 | 13 |
| 1.476(a) | 13 |
| 1.480(b) | 53.1 |
| 1.482(b) | 57.5 |
| 1.484(b) | 60.1(g), 66, 69.1 |
| 1.485 | 60.1(g) |
| 1.487 | 13 |
| 1.488(a) | 13 |
| 1.499 | 13 |
| 1.821(h) | 13ter.1(c) |
| 10.9(c) | 90 |

Section 1.431(b)(1), if amended as proposed, would clarify that, for an international filing date to be accorded, at least one applicant (rather than all applicants) must be a resident or national of the United States and the papers as filed must so indicate. The only way the United States Receiving Office can determine whether, as required by Article 11, "the applicant does not obviously lack" the requisite residence or nationality is by inspection of the papers as filed. Accordingly, in order to be accorded an international filing date by the U.S. Receiving Office, the papers must indicate a U.S. residency or nationality of at least one applicant.

Section 1.431(b)(3)(ii), if amended as proposed, would add a cross-reference to § 1.432 which sets forth the requirements regarding designations.

Section 1.431(c), if amended as proposed, would reflect that the United States Receiving Office, rather than the International Bureau, will be responsible for collecting fees not paid in full at the time of filing the international application or within one month thereafter. These fees are not new. The proposed change merely reflects that the Receiving Office, rather than the International Bureau, will be responsible for communicating deficiency notices to the applicant. Under the procedure proposed in paragraph (c), a notice of any fee deficiency will be mailed by the Receiving Office setting a time period of one month for payment of the fee deficiency and a late payment fee equal to the greater of (1) 50% of the amount of the deficient fees up to a maximum amount equal to the basic fee, or (2) an amount equal to the transmittal fee. The time period of one month for response to this notice cannot be extended.

Section 1.431(d), if amended as proposed, will be eliminated as unnecessary since the United States Receiving Office will take over the responsibility for collecting fees in place of the International Bureau.

Section 1.431(e), if amended as proposed, would be redesignated as § 1.431(d) and would clarify that the failure to timely pay the fees pursuant to paragraph (c) will result in the withdrawal of the international application.

Section 1.432(a), if amended as proposed, would clarify that the applicant must specify, on filing, at least one state or region in order to be granted a filing date for the international application. This specific designation is required whether or not all designations are indicated pursuant to paragraph (c) of this section. The reference to section 201 of the Administrative Instructions is proposed to be changed to section 115 to correspond to the change in the Administrative Instructions.

Section 1.432(b), if amended as proposed, would establish a procedure for the late payment of fees for designations that were specified on filing an international application, and a procedure, pursuant to PCT rule 16bis.1(c), in accordance with section 321 of the PCT Administrative Instructions for allocating fees, where the amount paid is insufficient to cover all the fees. The payment of the designation fees with a late payment fee is now new. Under the revised PCT regulations, however, the Receiving Office, rather than the International Bureau, will be responsible for communicating deficiency notices to the applicant. The designation fees may be paid, without necessity for a late payment fee, within one year from the priority date or within one month from the date of receipt of the international application if that month expires after the expiration of one year from the priority date. As proposed the applicant would be notified and given one month within which to pay any deficient designation fees plus a late payment fee. The amount of the late payment fee is equal to 50% of the deficient fees, but will not be less than the amount of the transmittal fee (currently $190) and will not exceed the amount of the basic fee (currently $525). The one-month time limit for payment of the deficient designation fees and late payment fee may not be extended. If, after expiration of the one-month time period, at least one designation fee has not been paid (with any late payment fee which is due), the international application will be withdrawn. If, after expiration of the one-month time period, at least one designation fee has been paid (with any late payment fee which is due) but the amount paid is not sufficient to cover all the designation fees or late payment fee, the amount paid will be allocated, pursuant to PCT rule 16bis.1(c), in accordance with section 321 of the Administrative Instructions. Section 321 of the Administrative Instructions provides that the amount will be allocated in accordance with any instructions received from the applicant or, if no instructions have been received, in the order in which the designations appear in the request part of the international application. Unpaid designations will be withdrawn.

Section 1.432(c), if added as proposed, would establish a procedure wherein, in addition to the designation(s) under paragraph (a), the applicant could indicate, on filing, all designations permitted under the Treaty and confirm desired designations of countries or regions up to 15 months from the priority date. The confirmation must include both a written notice of the countries or regions being confirmed, the appropriate designation fees and a confirmation fee based on the number of countries or regions being confirmed. If the amount of the fees is insufficient, the Receiving Office will allocate the amount paid in accordance with any priority of designations specified by the applicant or, if no priority is specified, in accordance with section 321 of the Administrative Instructions. A notice reminding applicant of the 15-month deadline will not be provided. Unconfirmed designations will be considered withdrawn.

Section 1.434, if amended as proposed, would allow applicants to develop their own computer-generated Request form so long as the forms comply with the requirements of sections 102(h) and (i) of the Administrative Instructions. Printed Request forms will continue to be available from the United States Patent and Trademark Office.

Section 1.445(a)(4), if added as proposed, would define the confirmation free required for the designations confirmed under § 1.432(c). The confirmation fee is equal to 50% of the sum of the designation fees for the designations being confirmed. For example, a confirmation of four additional designations (at $127 per designation, or $508) would require a $254 confirmation fee. The total amount of the fees due would be $762, which is the sum of $500 and $254.



Section 1.446(d), if amended as proposed, would clarify that the international and search fees may be refunded under certain circumstances linked to whether the record copy or search copy has been transmitted to the International Bureau or International Searching Authority, respectively. The transmittal fee will not be refunded, but will be retained to cover Office processing costs. If the record copy or search copy has been transmitted, the Receiving Office cannot refund or authorize the refund of the international or search fees. Any request for a refund filed after the record copy or search copy has been transmitted should be directed to the International Bureau (for the international fee) or the International Searching Authority (for the international search fee) for consideration of whether a refund should be made.

Section 1.446(e), if added as proposed, would indicate that a refund of the handling fee by the International Preliminary Examining Authority is permitted only in the situations where the demand is considered not to have been submitted or upon withdrawal of the demand before the demand has been sent to the International Bureau. If the demand has been sent to the International Bureau, requests for refund of the handling fee should be directed to the International Bureau.

Section 1.451(a), if amended as proposed, would clarify that in order to be entitled to the priority of a previously filed application, the priority claim must be made in the international application papers as filed. The right to priority is not necessarily lost if the claim is not on the Request per se, but will be lost if the claim does not appear in the papers presented on filing of the application.

Section 1.445(a), if amended as proposed, would clarify that the term "common representative" means an applicant appointed as the representative of the other applicants. The paragraph would also clarify who can represent applicants in an international application before the U.S. International Searching Authority or the U.S. International Preliminary Examining Authority, e.g., (1) an attorney or agent registered to practice before the Office, and (2) an attorney or agent not registered to practice before the Office, but authorized to practice before the national office with which the international application was filed and for which the United States is an International Searching Authority or International Preliminary Examining Authority. In the latter case, representation is restricted to practicing before the U.S. International Searching Authority and/or the U.S. International Preliminary Examining Authority. For example, if an international application is filed in the Brazilian Patent Office, an agent authorized to practice before the Brazilian Patent Office may prosecute that application before the U.S. International Searching Authority or the U.S. International Preliminary Examining Authority. Paragraph (a) would also provide that, unless otherwise indicated, the appointment of an attorney or agent revokes any earlier appointment as specified in PCT Rule 90.6(b).

Section 1.475, if amended as proposed, would adopt the unity of invention principles of PCT Rule 13, as amended. Section 1.475 is further proposed to be amended to reflect that the same unity of invention principles are applied by the international searching and preliminary examining authorities and during the national stage. Duplicative provisions in §§ 1.487 and 1.499 are proposed to be deleted.

The principles of unity of invention are used to determine the types of claimed subject matter and the combinations of claims to different categories of invention that are permitted to be included in a single international or national stage patent application. The basic principle is that an application should relate to only one invention or, if there is more than one invention, that applicant would have a right to include in a single application only those inventions which are so linked as to form a single general inventive concept.

Section 1.475(a), if amended as proposed, would contain both the definition of the requirement for unity of invention, and the unity of invention criteria that must be satisfied, where a group of inventions is claimed, in order to have a right to include multiple inventions in a single application. A group of inventions is linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. The expression "special technical features" is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art. For example, a compound is the common technical feature in an application claiming (1) the compound per se, (2) a method of making the compound and (3) a method of using the compound. A corresponding technical feature is exemplified by a key defined by certain claimed structural characteristics which correspond to the claimed features of a lock to be used with the claimed key.

Section 1.475(b), if amended as proposed, defines several combinations of different categories of claims which always fulfill the unity of invention requirements of § 1.475(a) where the same or corresponding special technical feature is claimed. There may be other combinations of different categories of claims which fulfill the requirement for unity of invention, but the determination of unity must be made under § 1.475(a), not § 1.475(b).

As proposed in § 1.475(b), a process is "specially adapted" for the manufacture of a product if the claimed process inherently produces the claimed product with the technical relationship defined in § 1.475(a) being present between the claimed process and the claimed product. The expression "specially adapted"as used in this section does not imply that the product could not also be manufactured by a different process, nor does it imply that the same kind of process of manufacture could not also be used for the manufacture of other products.

As proposed in § 1.475(b), an apparatus or means is "specifically designed" for carrying out the process when the apparatus or means is suitable for carrying out the process with the technical relationship defined in § 1.475(a) being present between the claimed apparatus or means and the claimed process. The expression "specifically designed" does not imply that the apparatus or means could not be used for carrying out another process, nor does it imply that the process could not be carried out using an alternative apparatus or means.

Section 1.475(c), if amended as proposed, would require that unity of invention might not be present if a combination of categories of invention different from those described in § 1.475(b) are presented in an application. The requirements of § 1.475(a) are always met by the combinations described in § 1.475(b) where the same or corresponding special technical feature is claimed. All other combinations must be tested against the unity of invention standard of § 1.475(a).

Section 1.475(d) is proposed to be amended by deleting reference to the different combinations of categories of invention that always meet the unity of invention standard (now set forth in proposed § 1.475(b)), and to make reference to the determination of the main invention where multiple products, processes of manufacture or uses are

claimed. The significance of determining the main invention is set forth in § 1.476(c).

Section 1.475(e), if amended as proposed, would require that the determination regarding unity of invention be made without regard to whether a group of inventions is claimed in separate claims or as alternatives within a single claim. The basic criteria for unity of invention are the same, regardless of the manner in which applicant chooses to draft a claim or claims.

Section 1.475(f) is proposed to be deleted since PCT Rule 13 has been amended and the basic principles of unity of invention are proposed to be incorporated into other portions of § 1.475.

Section 1.476(a), if amended as proposed, would delete the reference to § 1.475(f) (proposed to be deleted) and PCT Rule 13.

Section 1.480(b), if amended as proposed, would allow applicants to develop their own computer generated Demand form so long as the limitations in sections 102(h) and (i) of the Administrative Instructions are met. Printed Demand forms will continue to be available from the United States Patent and Trademark Office.

Section 1.482(a)(2)(i), if amended as proposed, would clarify that an additional preliminary examination fee may be charged for lack of unity in chapter II irrespective of whether there was a similar charge in chapter I. Normally there will be a charge for lack of unity both in chapter I and in chapter II. In some instances, although a charge for the search of an additional invention is justified in chapter I, the examiner chooses to proceed without charging for the search of the additional invention(s). However, circumstances may change (e.g. an amendment submitted with the Demand expanding the claims to the additional invention(s)) in chapter II so as to warrant the examiner's requirement for an additional fee for examination of the additional invention(s).

Section 1.482(b), if amended as proposed, would remove the reference to the supplement to the handling fee which had been collected for the benefit of the International Bureau and which has been deleted from the PCT Regulations. At present, applicants must pay as many supplements to the handling fee as there are languages into which the elected Offices require translations of the international preliminary examination report. Under the new PCT Regulations, all countries will accept an English translation of the International preliminary examination report, thus limiting the International Bureau's translation costs. Accordingly, only one handling fee will need to be paid by the applicant, without any supplement, irrespective of the need for a translation of the report.

Section 1.484(b), if amended as proposed, would permit an applicant to indicate in the demand that international preliminary examination is to begin based on the application as amended rather than on the application as filed. If an Article 19 amendment is not received by the Office by 20 months from the priority date, preliminary examination will proceed. Where the demand indicates examination is to be based on an accompanying Article 34 amendment, but the Article 34 amendment has not been provided to the Office with the demand, the applicant will be notified and given a time period to submit the amendment. Thus, if the applicant wishes preliminary examination based on an amended version of the international application, the demand must so indicate and the amendment (Article 19 or 34) must (1) accompany the demand; or (2) in the case of an Article 19 amendment, be received by 20 months from the priority date; or (3) in the case of an Article 34 amendment, be submitted within the nonextendable time period set by the Office.

Section 1.485, if amended as proposed, would be consistent with proposed § 1.484 and would provide for amendments to be filed with the demand or within a time period set by the International Preliminary Examining Authority.

Section 1.487 is proposed to be removed as unnecessary because the proposed amendments to § 1.475 address the unity of invention principles to be applied by the International Preliminary Examining Authority.

Section 1.488(a), if amended as proposed, would replace the reference to § 1.487, which is proposed to be removed, with a reference to § 1.475.

Section 1.492(e), if amended as proposed, would eliminate the surcharge for filing the basic national fee after 20 or 30 months from the priority date. In accordance with the new practice under proposed §§ 1.494 and 1.495, the basic national fee must be filed no later than 20 months, or 30 months, if a timely election was filed, from the priority date in order to avoid abandonment of the application. If the new practice is adopted as proposed, a short transition period will be provided before the surcharge is eliminated to avoid any retroactive effect of the new practice.

Sections 1.494 and 1.495, if amended as proposed, would modify the practice for entering the national stage as a designated or elected office by more closely aligning it with national application practice under § 1.53.

Section 1.494(a), if amended as proposed, would clarify that absence of a Demand form is no longer the controlling event, but rather failure to elect the United States within 19 months of the priority date will trigger the time periods set forth in paragraphs (b) and (c) of this section.

Section 1.494(b), if amended as proposed, would clarify that the basic national stage filing fee and a copy of the international application must be filed with the Office by 20 months from the priority date to avoid abandonment. The International Bureau normally provides the copy of the international application to the Office in accordance with Article 20. At the same time, the International Bureau notifies the applicant of the communication to the Office. In accordance with PCT Rule 47.1, that notice shall be accepted by all designated offices as conclusive evidence that the communication has duly taken place. Thus, if the applicant desires to enter the national stage, the applicant normally need only check to be sure the notice from the International Bureau has been received and then pay the basic national stage filing fee by 20 months from the priority date. The 20-month time limit for submission of the basic national stage filing fee and a copy of the international application is not extendable.

Section 1.494(c), if amended as proposed, would provide that applicants who have provided the basic national stage filing fee and a copy of the international application by 20 months from the priority date but who omit a proper translation, oath or declaration will receive a notification setting a time period for submission of the omitted requirements. The time period set in the notice can be extended pursuant to § 1.136. Filing of the oath or declaration later than 20 months will require the payment of the surcharge set forth in § 1.492(e). Filing of the translation later than 20 months will require the payment of the processing fee set forth in § 1.492(f).

Section 1.494(d), if amended as proposed, would clarify the existing practice that Article 19 amendments must be submitted by 20 months from the priority date, which time may not be extended. Of course the failure to do so does not result in loss of the subject matter of the Article 19 amendments. The applicant may submit that subject matter in a preliminary amendment filed under § 1.121. In many cases, filing an

amendment under § 1.121 is preferable since grammatical or idiomatic errors may be corrected.

Section 1.494(g), if amended as proposed, would be removed in view of the proposed amendments to sections (b), (c) and (d).

Section 1.494(h), if amended as proposed, would be redesignated as § 1.494(g) and would specify when an application that fails to enter the national stage becomes abandoned. Abandonment occurs at 20 months from the priority date if the basic national stage filing fee and a copy of the international application have not been provided to the Office. If they have been provided to the Office within 20 months and the translation and/or oath or declaration are not filed timely, abandonment occurs upon expiration of the time limit set in the notification pursuant to paragraph (c). Thus, in the latter situation, abandonment would occur at the expiration of the time period set in the notice to file the missing translation, and/or oath or declaration.

Section 1.495(a), if amended as proposed, would clarify that the election of the U.S. need not be made in the Demand, but can be made subsequently if filed before expiration of 19 months from the priority date to start the time periods set forth in paragraphs (b) and (c) of this section.

Section 1.495(b), if amended as proposed, would clarify that the basic national fee and a copy of the international application must be filed with the Office by 30 months from the priority date to avoid abandonment. The International Bureau normally provides the copy of the international application to the Office in accordance with Article 20. At the same time the International Bureau notifies applicant of the communication to the Office. In accordance with PCT Rule 47.1, that notice shall be accepted by all designated offices as conclusive evidence that the communication has duly taken place. Thus, if the applicant desires to enter the national stage, the applicant normally need only check to be sure the notice from the International Bureau has been received and then pay the basic national fee by 30 months from the priority date. The 30-month time limit for submission of the basic national fee and copy of the international application is not expendable.

Section 1.495(c), if amended as proposed, would provide that applicants who have provided the basic national fee and a copy of the international application by 30 months from the priority date but who omit a proper translation, oath or declaration will receive a notification setting a time period for submission of the omitted requirements. The time period set in the notice can be extended pursuant to § 1.136. Filing of the oath or declaration later than 30 months will require the payment of the surcharge set forth in § 1.492(e). Filing of the translation later than 30 months will require the payment of the processing fee set forth in § 1.492(f).

Section 1.495(d), if amended as proposed, would clarify the existing and continuing practice that the Article 19 amendments must be submitted by 30 months from the priority date, which time may not be extended. The failure to do so will not result in loss of the subject matter of the Article 19 amendments. Applicant may submit that subject matter in a preliminary amendment filed under § 1.121. In many cases, filing an amendment under § 1.121 is preferable since grammatical or idiomatic errors may be corrected.

Section 1.495(e), if amended as proposed, would specify that a translation into English of any annexes to the international preliminary examining report which are not received by 30 months from the priority date may only be submitted within the time period set in paragraph (c) for submission of any omitted translation of the international application, or oath or declaration. If any required translation of the international application and oath or declaration have been provided to the Office by 30 months, a notice under paragraph (c) will not be sent, and if the translation of annexes is not submitted within 30 months, the annexes will be considered cancelled.

Section 1.495(h), if amended as proposed, would be removed in view of the proposed amendments to sections (b), (c), (d) and (e).

Section 1.495(i), if amended as proposed, would be redesignated as § 1.495(h) and would specify when an application that fails to enter the national stage becomes abandoned if the United States was elected prior to 19 months from the priority date. Abandonment occurs at 30 months from the priority date if the basic national stage filing fee and a copy of the international application have not been provided to the Office. If they have been provided to the Office within 30 months and the translation and/or oath or declaration are not filed timely, abandonment occurs upon expiration of the time limit set in the notification pursuant to paragraph (c). Thus, in the latter situation, abandonment would occur at the expiration of the time period set in the notice to file the missing translation, and/or oath or declaration.

Section 1.499 is proposed to be amended by removing paragraphs (a) through (e) because the proposed amendments to § 1.475 address the unity of invention principles to be applied in the national stage.

Section 1.821(h), if amended as proposed, would provide that if applicant fails to timely provide the required computer readable form, the United States International Searching Authority shall search only to the extent that a meaningful search can be carried out.

Section 10.9, if amended as proposed, would add a new paragraph (c) to be consistent with § 1.455, clarifying that an attorney or agent having the right to act before the national office with which the international application is filed may represent the applicant before the U.S. International Searching Authority or the U.S. International Preliminary Examining Authority. An individual who has the right to practice before the national office with which an international application is filed, and who is not registered under § 10.6, may not prosecute patent applications in the national stage in the Office.

**Other Considerations**

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule changes will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)), because the proposed rules would provide more streamlined and simplified procedures for filing and prosecuting international and national stage applications under the PCT. Thus, costs to all applicants using the PCT, including small entities, would be reduced.

The Patent and Trademark Office has determined that these proposed rule changes are not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers; individual industries; Federal, state or local government agencies; or geographic regions. There will be no significant adverse effects on competition, employment, investment,

productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no federalism implications affecting the relationship between the National government and the States as outlined in Executive Order 12612.

These rule changes will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The paperwork burden imposed by adherence to the PCT is currently approved by the Office of Management and Budget under control number 0651–0021.

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office proposes to amend title 37 of the Code of Federal Regulations as set forth below.

**List of Subjects**

*37 CFR Part 1*

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

*37 CFR Part 10*

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements, Trademarks.

For the reasons set forth in the preamble, 37 CFR parts 1 and 10 are proposed to be amended as follows, with removals indicated by brackets ([ ]) and additions by arrows ( >): 

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

**Authority:** 35 U.S.C. 6 unless otherwise noted.

2. Section 1.431 is proposed to be amended by revising paragraphs (b) introductory text through (b)(3)(ii), (c), (d), and (e) to read as follows:

**§ 1.431 International application requirements.**

* * * * *

(b) An international filing date will be accorded by the United States Receiving Office, at the time of receipt of the international application, provided that:

(1) >At least one< [The] applicant >(§ 1.421)< is a United States resident or national >and the papers filed at the time of receipt of the international application so indicate< (35 U.S.C. 361(a), PCT Art. 11(1)(i)).

(2) The international application is in the English language (35 U.S.C. 361(c), PCT Art. 11(1)(ii)).

(3) The international application contains at least the following elements (PCT Art. 11(1)(iii)):

(i) An indication that it is intended as an international application (PCT Rule 4.2);

(ii) The designation of at least one Contracting State of the International Patent Cooperation Union >(§ 1.432)< ;

* * * * *

(c) Payment of the basic portion of the international fee (PCT Rule 15.2) and the transmittal and search fees (§ 1.445) may be made in full at the time the international application papers required by paragraph (b) of this section are deposited or within one month thereafter. >If the basic, transmittal and search fees are not paid within one month from the date of receipt of the international application, applicant will be notified and given one month within which to pay the deficient fees plus a late payment fee equal to the greater of (1) 50% of the amount of the deficient fees up to a maximum amount equal to the basic fee, or (2) an amount equal to the transmittal fee (PCT Rule 16bis). The one-month time limit set in the notice to pay deficient fees may not be extended.< [Failure to make full payment within one month of the deposit of the international application papers required by paragraph (b) of this section will result in the fees being charged to the International Bureau under the provision of paragraph (d) of this section and PCT Rule 16bis.]

[(d) [The United States Receiving Office will charge to the International Bureau in accordance with PCT Rule 16bis and will consider as having been timely paid:

(1) The transmittal fee, the basic fee portion of the international fee, or the search fee where these fees have not been fully paid by the applicant within one month of the date of deposit of the international application,

(2) The designation fee, or the amount necessary to cover all the designations made in the request if not paid by the applicant within one year from the priority date or within one month from the date of receipt of the international application if that month expires after the expiration of one year from the priority date.

(e) The International Bureau will notify applicant of any amount charged under paragraph (d) of this section and invite the applicant to pay directly to the International Bureau within one month from the date of the notification, the amount charged, augmented by a surcharge of 50%, provided the surcharge will not be less, and will not be more, than the amounts indicated in the Schedule of Fees appended to the PCT Rules.] If the payment needed to cover the transmittal >fee< [fees], the basic fee, the search fee, one designation fee and the >late payment fee pursuant to paragraph (c) of this section< [surcharge] is not timely made [to the International Bureau], [the International Bureau will notify] the Receiving Office [which] will declare the international application withdrawn under PCT Article 14(3)(a). [If the applicant makes timely payment of the fees referred to in the previous sentence, but the amount paid is not sufficient to cover all the designation fees, the Receiving Office will declare any designation not paid withdrawn under PCT Article 14(3)(b) in accordance with PCT Rule 16bis.2(c).]

3. Section 1.432 is proposed to be amended by revising paragraphs (a) and (b) and adding new paragraph (c) to read as follows:

**§ 1.432 Designation of States and payment of designation fees.**

(a) The >designation of< [names of Designated] States >or Regions< shall appear in the >request< [Request] upon filing and must be indicated as set forth in >PCT Rule 4.9 and< Section >115< [201] of the Administrative Instructions. >Applicant must specify at least one national or regional designation on filing of the international application for a filing date to be granted.<

(b) >If the fees necessary to cover all the national and regional designations specified in the request are not paid by the applicant within one year from the priority date or within one month from the date of receipt of the international application if that month expires after the expiration of one year from the priority date, applicant will be notified and given one month within which to pay the deficient designation fees plus a late payment fee equal to the greater of (1) 50% of the amount of the deficient fees up to a maximum amount equal to the basic fee, or (2) an amount equal to the transmittal fee (PCT Rule 16bis). The one-month time limit set in the notification of deficient designation fees may not be extended.< [The designation fees may be paid upon filing of the international application, but must be paid before the expiration of one year from the priority date or within one month from the date of receipt of

the international application if that month expires after the expiration of one year from the priority date. Failure to timely pay the designation fee for a particular Designated State will result in the withdrawal of that designation.] Failure to timely pay at least one designation fee will result in the withdrawal of the international application. >The one designation fee may be paid (1) within one year from the priority date, (2) within one month from the date of receipt of the international application if that month expires after the expiration of one year from the priority date, or (3) with the late payment fee defined in this paragraph within the time set in the notification of the deficient designation fees. If after a notification of deficient designation fees the applicant makes timely payment, but the amount paid is not sufficient to cover the late payment fee and all designation fees, the Receiving Office will, after allocating payment for the basic, search, transmittal and late payment fees, allocate the amount paid in accordance with PCT Rule 16bis.1(c) and withdraw the unpaid designations. The notification of deficient designation fees pursuant to this paragraph may be made simultaneously with any notification pursuant to § 1.431(c).<

>(c) On filing the international application, in addition to specifying at least one national or regional designation, applicant may also indicate that all designations permitted under the Treaty are made. The latter indication is subject to confirmation (PCT Rule 4.9(c)) not later than the expiration of 15 months from the priority date by:

(1) Filing a written notice with the United States Receiving Office specifying the national and/or regional designations being confirmed;

(2) Paying the designation fee for each designation being confirmed; and

(3) Paying the confirmation fee specified in § 1.445(a)(4). Unconfirmed designations will be considered withdrawn. If the amount submitted is not sufficient to cover the designation fee and the confirmation fee for each designation being confirmed, the Receiving Office will allocate the amount paid in accordance with any priority of designations specified by applicant. If applicant does not specify any priority of designations, the allocation of the amount paid will be made in accordance with PCT Rule 16bis.1(c).<

4. Section 1.434 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 1.434 The request.**

(a) The request shall be made on a standardized [printed] form (PCT Rules 3 and 4). Copies of [such] printed Request forms are available for the Patent and Trademark Office. Letters requesting [such] >printed< forms should be marked "Box PCT."

* * * * *

5. Section 1.445 is proposed to be amended by adding new paragraph (a)(4) to read as follows:

**§ 1.445 International application filing, processing and search fees.**

(a) * * *

>(4) A confirmation fee (PCT Rule 96) equal to 50% of the sum of designation fees for the national and regional designations being confirmed (§ 1.432(c)).<

* * * * *

6. Section 1.446 is proposed to be amended by revising paragraph (d) and adding paragraph (e) to read as follows:

**§ 1.446 Refund of international application filing and processing fees.**

* * * * *

(d) The international and search fees will be refunded if no international filing date is accorded >or if the application is withdrawn before transmittal of the record copy to the International Bureau< (PCT Rules 15.6 and 16.2). >The search fee will be refunded if the application is withdrawn before transmittal of the search copy to the International Searching Authority. The transmittal fee will not be refunded<.

>(e) The handling fee (§ 1.482(b)) will be refunded (PCT Rule 57.6) only if:

(1) The demand is withdrawn before the demand has been sent by the International Preliminary Examining Authority to the International Bureau, or

(2) The demand is considered not to have been submitted (PCT Rule 54.4(a)).<

7. Section 1.451 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 1.451 The priority claim and priority document in an international application.**

(a) The claim for priority must be made >in< [on] the >request< [Request] (PCT Rule 4.10) in a manner complying with Sections 110 and 201 of the Administrative Instructions.

* * * * *

8. Section 1.455 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 1.455 Representation in international applications.**

(a) Applicants of international applications may be represented by attorneys or agents licensed to practice before the Patent and Trademark Office or by >an applicant appointed as< a common representative PCT Art. 49, Rules 4.8 and 90 and § 10.10(a)). >An attorney or agent having the right to practice before a national office with which an international application is filed and for which the United States is an International Searching Authority or International Preliminary Examining Authority may be appointed to represent the applicants in the international application before that authority. An attorney or agent may appoint an associate attorney or agent who shall also then be of record (PCT Rule 90.1(d)). The appointment of an attorney or agent revokes any earlier appointment unless otherwise indicated (PCT Rule 90.6(b)).<

* * * * *

9. Section 1.475 is proposed to be revised to read as follows:

**§ 1.475 Unity of invention before the International Searching Authority >, the International Preliminary Examining Authority and during the national stage<.**

(a) >An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among these inventions involving one ore more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.< [An international application before the International Searching Authority will be considered to have unity of invention if the claims are in accordance with PCT Rule 13 (see paragraph (f) of this section).]

(b) An international >or a national stage< application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the >following< combinations of categories >:< [as set forth in PCT Rule 13.2 (see paragraph (f) of this section) or to the combination of -]

(1) A product and a process >specially adapted< for the manufacture of said product >;< or

(2) A product and a process of use of said product[.] >; or

(3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or

(4) A process and a apparatus or means specifically designed for carrying out the said process; or

(5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.< [If an application contains claims to more or less than one of the combinations of categories set forth in PCT Rule 13.2 (see paragraph (f) of this section) or a combination set forth in paragraphs (b)(1) or (2) of this section, unity of invention may not be present.]

(c) >If an application contains claims to more or less than one of the combinations of categories of invention set forth in paragraph (b) of this section, unity of invention might not be present.< [If an international application contains claims to a category of invention in addition to those categories included in any one of the combinations specified in paragraph (b) of this section, lack of unity of invention may be held between the categories included in the combination and the claims to the additional category of invention.]

(d) [Unity of invention will exist where the claims are limited to one of the combinations of categories set forth in PCT Rule 13.2 (see paragraph (f) of this section) or in a combination set forth in paragraphs (b)(1) or (2) of this section.] If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the >main invention in the claims, see PCT Article 17(3)(a) and § 1.476(c).< [inventions to be searched. Any such holding by the examiner will be made of record as a holding of lack of unity of invention.]

(e) >The determination whether a group of investions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.< [The inventions recited by the claims of different categories must be related rather than independent inventions.

(f) The wording of PCT Rule 13 is as follows:

"PCT Rule 13—Unity of Invention

*13.1 Requirement*

The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention").

*13.2 Claims of Different Categories*

Rule 13.1 shall be construed as permitting, in particular, one of the following three possibilities:

(i) In addition to an independent claim for a given product, the inclusion in the same international application of an independent claim for a process specially adapted for the manufacture of the said product, and the inclusion in the same international application of an independent claim for a use of the said product, or

(ii) In addition to an independent claim for a given process, the inclusion in the same international application of an independent claim for an apparatus or means specifically designed for carrying out the said process, or

(iii) In addition to an independent claim for a given product, the inclusion in the same international application of an independent claim for a process specially adapted for the manufacture of the product, and the inclusion in the same international application of an independent claim for an apparatus or means specifically designed for carrying out the process.

*13.3 Claims of One and the Same Category*

Subject to Rule 13.1, it shall be permitted to include in the same international application two or more independent claims of the same category (i.e., product, process, apparatus, or use) which cannot readily be covered by a single generic claim.

*13.4 Dependent Claims*

Subject to Rule 13.1, it shall be permitted to include in the same international application a reasonable number of dependent claims, claiming specific forms of the invention claimed in an independent claim, even where the features of any dependent claim could be considered as constituting in themselves an invention.

*13.5 Utility Models*

Any designated State in which the grant of a utility model is sought on the basis of an international application may, instead of Rules 13.1 to 13.4, apply in respect of the matters regulated in those Rules the provisions of its national law concerning utility models once the processing of the international application has started in that State, provided that the applicant shall be allowed at least two months from the expiration of the time limit applicable under Article 22 to adapt his application to the requirements of the said provisions of the national law.]

10. Section 1.476 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 1.476 Determination of unity of invention before the International Searching Authority.**

(a) Before establishing the international search report, the International Searching Authority will determine whether the international application complies with the requirement of unity of invention as set forth in [PCT Rule 13 (see § 1.475(f)) and] § 1.475.

* * * * *

11. Section 1.480 is proposed to be amended by revising paragraph (b) to read as follows:

**§ 1.480 Demand for international preliminary examination.**

* * * * *

(b) The Demand shall be made on a standardized [printed] form. Copies of [the] printed Demand forms are available from the Patent and Trademark Office. Letters requesting printed >Demand< forms should be marked "Box PCT".

* * * * *

12. Section 1.482 is proposed to be amended by revising paragraphs (a)(2)(i) and (b) to read as follows:

**§ 1.482 International preliminary examination fees.**

(a) * * *

(2) * * *

(i) >Where the International Searching Authority for the international application was the United States Patent and Trademark Office< [Where a supplemental search fee as set forth in § 1.445(a)(3) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority]—$140.00.

* * * * *

(b) The handling fee is due on filing the Demand. [Any necessary supplement to the handling fee shall be paid directly to the International Bureau.]

13. Section 1.484 is proposed to be amended by revising paragraph (b) to read as follows:

**§ 1.484 Conduct of international preliminary examination.**

* * * * *

(b) >International preliminary examination will begin promptly upon receipt of a Demand which requests examination based on the application as filed, or an amendment which has been received by the United States International Preliminary Examining Authority. Where a Demand requests examination based on an Article 19 amendment which has not been

received, examination may begin at 20 months without receipt of an Article 19 amendment. Where a Demand requests examination based on an Article 34 amendment which has not been received, applicant will be notified and given a time period within which to submit the amendment. Examination will begin after the earliest of:

(1) receipt of the amendment;

(2) receipt of applicant's statement that no amendment will be made; or

(3) expiration of the time period set in the notification.< No international preliminary examination report will be established prior to issuance of an international search report.

* * * * *

14. Section 1.485 is proposed to be revised to read as follows:

**§ 1.485 Amendments by applicant during international preliminary examination.**

(a) The applicant may make amendments at the time of filing of the Demand and within the time limit set by the International Preliminary Examining Authority for response to any >notification under § 1.484(b) or to any< written opinion. Any such amendments must—

(1) Be made by submitting a replacement sheet for every sheet of the application which differs from the sheet it replaces unless an entire sheet is cancelled >,< and

(2) Include a description of how the replacement sheet differs from the replaced sheet.

(b) If an amendment cancels an entire sheet of the international application, that amendment shall be communicated in a letter.

15. Section 1.487 is proposed to be removed:

**§ 1.487 Unity of invention before the International Preliminary Examining Authority.**

(a) An international application before the International Preliminary Examining Authority will be considered to have unity of invention if the claims are in accordance with PCT Rule 13 (see § 1.475(f)).

(b) An international application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the combinations of categories as set forth in PCT Rule 13.2 (see § 1.475(f)) or to the combination of

(1) a product and a process for the manufacture of said product or

(2) a product and a process of use of said product. If an application contains claims to more or less than one of the combinations of categories of invention set forth in PCT Rule 13.2 (see § 1.475(f)) or a combination set forth in paragraphs (b) (1) or (2) of this section, unity of invention may not be present.

(c) If an international application contains claims to a category of invention in addition to those categories included in any one of the combinations specified in paragraph (b) of this section, lack of unity of invention may be held between the categories included in the combination and the claims to the additional category of invention.

(d) Unity of invention will exist where the claims are limited to one of the combinations of categories set forth in PCT Rule 13.2 (see § 1.475(f)) or combination set forth in paragraphs (b)(1) or (2) of this section. If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the inventions to be examined. Any such holding by the examiner will be made of record as a holding of lack of unity of invention.

(e) The inventions recited by the claims of different categories must be related rather than independent inventions.]

16. Section 1.488 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 1.488 Determination of unity of invention before the International Preliminary Examining Authority.**

(a) Before establishing any written opinion or the international preliminary examination report, the International Preliminary Examining Authority will determine whether the international application complies with the requirement of unity of invention as set forth in >§ 1.475< [§ 1.487].

* * * * *

17. Section 1.492 is proposed to be amended by revising paragraph (e) to read as follows:

**§ 1.492 National stage fees.**

* * * * *

(e) Surcharge for filing the [basic national fee or] oath or declaration later than 20 months from the priority date pursuant to § 1.494(c) or later than 30 months from the priority date pursuant to § 1.495(c):

| | |
|---|---|
| By a small entity (§ 1.9(f)) | $65.00 |
| By other than a small entity | $130.00 |

* * * * *

18. Section 1.494 is proposed to be amended by revising paragraphs (a), (b), (c), (d), (g), and (h) to read as follows:

**§ 1.494 Entering the national stage in the United States of America as a Designated Office.**

(a) Where >the United States of America has not been elected< [no Demand has been filed with an appropriate International preliminary Examining Authority] by the expiration of 19 months from the priority date (see § 1.495), the applicant must fulfill the requirements of PCT Article 22 and 35 U.S.C. 371 within the time periods set forth in paragraphs (b) and (c) of this section in order to prevent the abandonment of the international application as to the United States of America. International applications for which those requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.

(b) >To avoid abandonment of the application, the< [The] applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of 20 months from the priority date—

(1) a copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the United States Patent and Trademark Office; >and<

(2) [a translation of the international application into the English language, if it was originally filed in another language;

(3)] the basic national fee (see § 1.492(a)) [; and

(4) an oath or declaration of the inventor (see § 1.497)].

>The 20-month time limit may not be extended.<

(c) >If applicant complies with paragraph (b) of this section before expiration of 20 months from the priority date but omits (1) a translation of the international application as filed into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)) and/or (2) the oath or declaration of the inventor (35 U.S.C. 371(c)(4); see § 1.497), applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application.< [The applicant may furnish any required English translation of the international application, the basic national fee and the oath or declaration of the inventor after 20 months but not later than the expiration of 22 months from the priority date.] The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the

expiration of 20 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the [basic national fee or the] oath or declaration of the inventor later than the expiration of 20 months after the priority date. >A copy of the notification mailed to applicant should accompany any response thereto submitted to the Office.<

(d) A copy of any amendments to the claims made under PCT Article 19, and a translation of those amendments into English, if they were made in another language, must be furnished not later than the expiration of 20 months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of 20 months from the priority date will be considered to be cancelled. >The 20-month time limit may not be extended.<

* * * * *

(g) [The time limits set out in paragraphs (b), (c) and (d) of this section may not be extended pursuant to § 1.136 or otherwise.

(h)] An international application becomes abandoned as to the United States 20 months from the priority date if >the requirements of paragraph (b) of this section have not been complied with within< [a copy of the international application is not communicated to the Patent and Trademark Office prior to] 20 months from the priority date where the United States has been designated but not elected prior to 19 months from the priority date. If >the requirements of paragraph (b) of this section are complied with< [a copy of the international application is communicated] within 20 months >from the priority date but the translation and/or the oath or declaration are not timely filled,< [to the Patent and Trademark Office,] an international application will become abandoned as to the United States >upon expiration of the time period set pursuant to paragraph (c) of this section.< [22 months from the priority date if the required English translation(s), fees and oath or declaration under 35 U.S.C. 371(c) are not filed within 22 months from the priority date.]

19. Section 1.495 is proposed to be amended by revising paragraphs (a), (b), (c), (d), (e), (h), and (i) to read as follows:

**§ 1.495 Entering the national stage in the United States of America as an elected office.**

(a) Where >the United States of America has been elected< [a Demand has been filed with an appropriate International Preliminary Examining Authority and not withdrawn] by the expiration of 19 months from the priority date, the applicant must fulfill the rquirements of 35 U.S.C. 371 within the time periods set forth in paragraphs (b) and (c) of this section in order to prevent the abandonment of the international application as to the United States of America. International applications for which those requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.

(b) >To avoid abandonment of the application the< [The] applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of 30 months from the priority date—

(1) a copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the United States Patent and Trademark Office;>and<

(2) [a translation of the international application into the English language, if it was originally filed in another language;

(3)] the basic national fee (see § 1.492(a)) [; and

(4) an oath or declaration of the inventor (see § 1.497)].

>The 30-month time limit may not be extended.<

(c) >If applicant complies with paragraph (b) this section before expiration of 30 months from the priority date but omits (1) a translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)) and/or (2) the oath or declaration of the inventor (35 U.S.C. 371(c)(4)); (see § 1.497), applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration order to prevent abandonment of the application.< [The applicant may furnish any required English translation of the international application, the basic national fee and the oath or declaration of the inventor after 30 months but not later than the expiration of 32 months from the priority date.] The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 20 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the [basic national fee or the] oath or declaration of the inventor later than the expiration of 30 months after the priority date. <A copy of the notification mailed to applicant should accompany any response thereto submitted to the Office.<

(d) A copy of any amendments to the claims made under PCT Article 19, and a translation of those amendments into English, if they were made in another language, must be furnished not later than the expiration of 30 months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of 30 months from the priority date will be considered to be cancelled. >The 30-month time limit may not be extended.<

(e) A translation into English of any annexes to the international preliminary examination report, if the annexes were made in another language, must be furnished not later than the expiration of 30 months from the priority date. Translations of annexes which are not received by the expiration of 30 months from the priority date may be submitted within >any period set pursuant to paragraph (c) of this section< [32 months from the priority date] accompanied by the processing fee set forth in § 1.492(f). [Translations of the annexes] >Annexes for which translations< [which] are not timely received will be considered [to be] cancelled. >The 30-month time limit may not be extended.<

* * * * *

(h) [The time limits set out in paragraphs (b), (c), (d), and (e) of this section may not be extended pursuant to § 1.136 or otherwise.

(i)] An international application becomes abandoned as to the United States 30 months from the priority date if >the requirements of paragraph (b) of this section have not been complied with within< [a copy of the international application is not communicated to the Patent and Trademark Office prior to] 30 months from the priority date and >the United States has been elected< [a Demand for International Preliminary Examination which elected the United States of America has been filed] prior to the expiration of 19 months from the priority date. If >the requirements of paragraph (b) of this section are complied with< [a coy of the international application is communicated] within 30 months >from the priority date but the translation and/or the oath or declaration are not timely filed,< [to the Patent and Trademark Office,] an international application will become abandoned as to the United States >upon expiration of the time period set pursuant to paragraph (c) of this section.< [32 months from the priority date if the required English translation(s), fees and oath or declaration under 35 U.S.C. 371(c) are

not filed within 32 months from the priority date.]

20. Section 1.499 is proposed to be revised to read as follows:

**§ 1.499 Unity of invention during the national stage.**

[(a) An international application which has entered the national stage by meeting the requirements of 35 U.S.C. 371 will be considered to have unity of invention if the claims are in accordance with PCT Rule 13 (see § 1.475(f)).

(b) An application in the national stage containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the combinations of categories as set forth in PCT Rule 13.2 (see § 1.475(f)) or to the combination of—

(1) A product and a process for the manufacture of said product or

(2) A product and a process of use of said product. If an application contains claims to more or less than one of the combinations of categories of invention set forth in PCT Rule 13.2 (see § 1.475(f)) or a combination set forth in paragraphs (b)(1) and (2) of this section, unity of invention may not be present.

(c) If an application in the national stage contains claims to a category of invention in addition to those categories included in any one of the combinations specified in paragraph (b) of this section, lack of unity of invention may be held between the categories included in the combination and the claims to the additional category of invention.

(d) Unity of invention will exist in an application in the national stage where the claims are limited to one of the combinations of categories set forth in PCT Rule 13.2 (see § 1.475(f)) or a combination set forth in paragraphs (b)(1) or (2) of this section. If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the elected invention to be examined. Any such holding of an election by the examiner will be made in the form of a restriction requirement which confirms the election made by the presentation of claims. Such a restriction requirement would be made on the basis of whether the inventions are independent and distinct. Applicant has the right to traverse such a restriction requirement in the response to the Office action in which the election is indicated.

(e) The inventions recited by the claims of different categories must re related rather than independent inventions.

(f)] If the examiner finds that a national stage application lacks unity of invention >under § 1.475<, the examiner may in an Office action require the applicant in the response to that Office action to elect the invention to which the claims shall be restricted, this official action being called a requirement for restriction. Such requirement may be made before any action on the merits but may be made at any time before the final action at the discretion of the examiner. Review of any such requirement is provided under §§ 1.143 and 1.144.

21. Section 1.821 is proposed to be amended by revising paragraph (h) to read as follows:

**§ 1.821 Nucleotide and/or amino acid sequence disclosures in patent applications.**

* * * * *

(h) If any of the requirements of paragraphs (b) through (f) of this section are not satisfied at the time of filing, in the United States Receiving Office, an international application under the Patent Cooperation Treaty (PCT), applicant has one month from the date of a notice which will be sent requiring compliance with the requirements, or such other time as may be set by the Commissioner, in which to comply. Any submission in response to a requirement under this paragraph must be accompanied by a statement that the submission does not include new matter or go beyond the disclosure in the international application as filed. Such a statement must be a verified statement if made by a person not registered to practice before the Office. >If applicant fails to timely provide the required computer readable form, the United States International Searching Authority shall search only to the extent that a meaningful search can be performed.<

* * * * *

22. The authority citation for 37 CFR part 10 would continue to read as follows:

**Authority:** 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

23. Section 10.9 is proposed to be amended by adding new paragraph (c) to read as follows:

**§ 10.9 Limited recognition in patent cases.**

* * * * *

>(c) An individual not registered under § 10.6 may prosecute an international application only before the U.S. International Searching Authority and the U.S. International Preliminary Examining Authority, provided: the individual has the right to practice before the national office with which the international application is filed (PCT Art. 49, Rule 90 and § 1.455).<

Dated: June 24, 1992.

**Douglas B. Comer,**

*Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.*

[FR Doc. 92-15377 Filed 6-30-92; 8:45 am]

BILLING CODE 3510-16-M

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 586

**[Docket No. 91-24]**

### Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed rulemaking; second request for additional comment.

**SUMMARY:** The Commission is soliciting further information on the issues raised in the proposed rule in this proceeding. The proposed rule would impose fees on Korean-flag vessels calling at U.S. ports, in response to apparent unfavorable conditions created by the Republic of Korea on trucking activity and rail access in the foreign oceanborne trade between the United States and Korea. The additional comments should address the inter-governmental discussions scheduled for July 7–8, 1992 and any other developments relevant to the proposed rule.

**DATES:** Comments due August 12, 1992.

**ADDRESSES:** Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523–5725.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5740.

**SUPPLEMENTARY INFORMATION:** By notice of Request for Additional Comment issued October 30, 1991 ("October Notice"), the Federal Maritime Commission ("Commission") solicited information on the implementation of commitments made during the course of this proceeding. Two rounds of comments were requested by February 3, 1992, and May 29, 1992. The October Notice also advised that another comment period would be announced for approximately one month after inter-governmental consultations were held, which at the time were tentatively planned for "before June 30, 1992."

It now appears that discussions between U.S. and Korean representatives are scheduled for July 7–8, 1992. To this end, the Commission solicits additional comments by August 12, 1992, on the results of those consultations. Interested parties should also use this opportunity to advise the Commission of any other developments pertinent to the proposed rule.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92–15380 Filed 6–30–92; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 22**

**[CC Docket No. 92–115; FCC 92–205]**

## Revision of Part 22 of the FCC's Rules Governing the Public Mobile Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Communications Commission proposes to revise its rules governing the Public Mobile Services in their entirety. The proposed revision is necessary to clarify and update these rules. The intent of this proposal is to make these rules easier to understand, eliminate outdated rules and unnecessary information collection requirements, streamline licensing procedures, and allow licensees greater flexibility in providing service to the public.

**DATES:** Comments must be submitted on or before August 21, 1992. Reply comments must be submitted on or before September 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Dan Abeyta, 202–632–6450 (legal issues) or B.C. "Jay" Jackson, Jr., 202–653–5560 (technical issues).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452–1422. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Information Resources Branch, room 416, Paperwork Reduction Project, Washington, DC 20554. For further information, contact Judy Boley, (202) 632–7513.

*Title:* Revision of part 22 of the Commission's rules governing the Public Mobile Services.

*OMB Number:* None.

*Action:* Proposed Revision.

*Respondents:* Businesses or other for-profit, including small businesses.

*Frequency of Response:* On occasion, quarterly, semi-annually, or annually; recordkeeping.

Public burden for the collections is estimated as follows:

| Sections/forms | Estimated average hours per response | Estimated annual responses |
|---|---|---|
| 22.105(d) and (g) | 2 | 20,850 |
| 22.108 | 0.25 | 10,000 |
| 22.109 | 5 | 10 |
| 22.115 | 1 | 10,000 |
| 22.119 | 1 | 25 |
| 22.125 | 1 | 100 |
| 22.129 | 1 | 20 |
| 22.130 | 10 | 50 |
| 22.137 | 0.5 | 100 |
| 22.142 | 0.084 | 1,000 |
| 22.150 | 10 | 40 |
| 22.161 | 0.5 | 1 |
| 22.167 | 1 | 100 |
| 22.321 | 2 | 800 |
| 22.321 (recordkeeping) | 52 | 800 |
| 22.323 | 0.50 | 100 |
| 22.357 | 1 | 2 |
| 22.369 | 1 | 10 |
| 22.409 (b) and (c) | 3 | 10 |
| 22.409(f) | 10 | 10 |
| 22.411 | 7.3 | 116 |
| 22.415 | 2 | 10 |
| 22.529 | 2 | 4,000 |
| 22.551 | 0.50 | 10 |
| 22.559 and 22.589 | 2 | 10,000 |
| 22.577 | 0.50 | 10 |
| 22.601 | 0.50 | 38 |
| 22.603 | 0.50 | 2 |
| 22.625 | 1 | 10 |
| 22.655 | 2 | 8 |
| 22.657 | 2 | 1 |
| 22.709 | 3 | 100 |
| 22.711 | 1 | 30 |
| 22.869 (one time only) | 1 | 8 |
| 22.875 | 40 | 1 |
| 22.901(b) | 2 | 2 |
| 22.901(d) | 1 | 10 |
| 22.903 | 1 | 7 |
| 22.907 | 0.50 | 10 |
| 22.911 | 10 | 300 |
| 22.937 | 2 | 10,000 |
| 22.947 | 8 | 1,500 |
| 22.953 | 4 | 10,000 |
| 22.1037 | 1 | 10 |
| FCC Form 401 | 4 | 10,000 |
| FCC Form 489 | 3 | 5,000 |
| FCC Form 490 | 2 | 100 |
| FCC Form 405 | 0.25 | 1,032 |
| FCC Form 409 | 0.084 | 1,800 |
| FCC Form 430 | 2 | 1,800 |
| Total Annual Burden: 259,688.5 hours | | |

*Needs and Uses:* The notice of proposed rulemaking solicits public comment to revise part 22 of FCC's rules governing the Public Mobile Services. The revisions are proposed in order to make the rules easier to understand, eliminate outdated rules and unnecessary information collection requirements, streamline licensing procedures, and allow licensees greater flexibility in providing service to the public. Generally, the collected information is used to determine the legal, technical and/or financial qualifications of the respondents.

### Regulatory Flexibility

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's initial regulatory flexibility analysis follows:

*Reason for Action and Objective*

The Commission is proposing to revise title 47, part 22 of the Code of Federal Regulations to eliminate unnecessary information collection requirements and, wherever possible, provide greater flexibility to carriers while at the same time promoting the public interest. The objective of this proposal is to provide effective and adaptive regulation for communications.

*Legal Basis*

Authority for this notice is contained in sections 4(i) and 303(r) of the Communications Act of 1934, 47 U.S.C. 154(i) and 303(r).

*Reporting, Recordkeeping and Other Compliance Requirements*

The proposed rules would retain most of the existing reporting, recordkeeping and other compliance requirements, without significant change. In some instances, a current filing requirement would be replaced by a less burdensome filing or recordkeeping requirement. A few new requirements are proposed. For example, one of the proposed new rules would require that applicants file agreements and an affidavit when payment is made in exchange for refraining from filing a petition to deny. For another example, the proposal concerning finder's application would require applicants to file additional information not currently required in order to obtain a benefit not currently available. Overall, this comprehensive rewrite would result in a net reduction in reporting, recordkeeping and other compliance requirements.

*Federal Rules That Overlap, Duplicate or Conflict With These Rules*

None.

*Description, Potential Impact and Number of Small Entities Affected*

There are approximately 8,600 licensees subject to the rules in part 22. A substantial portion of these are small entities. There are also a number of small entities whose business is consulting or providing other services in connection with part 22. The proposed rewrite would not significantly impact these small entities.

*Significant Alternatives Minimizing Impact on Small Entities and Consistent With Stated Objectives*

The proposals contained in this Notice are meant to simplify and ease the regulatory burden on all Public Mobile Services applicants and licensees consistent with the Commission's established public interest objectives.

The Chief Counsel for Advocacy of the Small Business Administration will be served with a copy of this Notice of Proposed Rule Making in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

**Summary of the Notice of Proposed Rule Making**

The following is a summary of the Commission's notice of proposed rulemaking in CC Docket No. 92-115, adopted May 14, 1992 and released June 12, 1992. The full texts of all Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractor, Downtown Copy Center, 202-452-1422, 1114 21st Street NW., Washington, DC 20036.

1. In this Notice, the Federal Communications Commission proposes to revise 47 CFR part 22 in its entirety. The rules in part 22 govern the Public Mobile Services. These revisions are proposed in order to make these rules easier to understand, to eliminate outdated rules and unnecessary information collection requirements, to streamline licensing procedures and to allow licensees greater flexibility in providing service to the public.

2. Recently, the Mobile Services Division (MSD) established an internal task force to revise 47 CFR part 22. This task force met throughout 1989 and 1990 and suggested many specific rule changes. Telocator, the Cellular Telecommunications Industry Association, International Mobile Machine Corporation, Bell Atlantic Mobile Systems, the Federal Communications Bar Association Land Mobile Practice Committee, and MSD staff members suggested revisions to part 22.

3. Several factors make revision of part 22 of the rules desirable at this time. First, since the most recent revision of part 22 in 1983, the Commission has amended various sections of part 22. A rewrite and update of part 22 at this time will ensure that these rules are consistent and applicable today.

4. Second, significant changes in the Public Mobile Services have made some of the rules obsolete or unnecessary. In the cellular service, systems in almost all major and rural markets have been licensed. This fact, and other rapid developments in the cellular industry have rendered obsolete the rules for processing initial cellular applications in these markets. Cellular licenses will soon begin to expire, and rules governing the processing of applications from parties competing against renewal applicants have recently been adopted. Part 22 should be revised to better incorporate these and other new rules.

5. Third, substantial changes in technology have caused some of the technical specifications in part 22 to become outdated or unnecessary. Changes in technology have also made it desirable to provide carriers with greater flexibility to deal with new and changing circumstances while, at the same time, promoting the public interest.

6. Fourth, the Metric Conversion Act of 1975 encourages agencies to use the metric system in procurement, grants and other business activities. In converting part 22 rules involving heights and distances from English units to metric, rounding of the converted quantities to convenient whole numbers is desirable, but sometimes causes slight changes that require public consideration in a notice and comment rule making proceeding.

7. Appendix A contains a section by section description of the proposed substantive changes to part 22. However, the following is a brief discussion of the more significant proposals.

8. We propose to reorganize part 22 so that the rules are grouped in a more logical arrangement of subparts. Lengthy sections that cover different and sometimes unrelated topics have been broken up into separate sections. Rules common to all Public Mobile Services have been consolidated under the first three subparts. Rules that apply only to specific services are grouped under subparts covering those specific services. We propose to retitle the individual radio services to more clearly indicate the types of service provided. Currently, rules governing paging and radiotelephone services are separated according to frequency ranges, without regard to the purposes for which the channels may be used. In the proposed revision, rules are organized according to types of operation, such as one-way paging operation, two-way mobile operation, and point-to-point operation. In addition, we propose to consolidate the rules governing air-ground radiotelephone services under a single subpart.

9. We propose that all mutually exclusive applications in the Public Mobile Services be processed using a "first come, first served" procedure. Under this proposal, only mutually exclusive applications received on the same day would be entitled to be included in a random selection process. The 60 day period currently allowed for the filing of competitive applications would be eliminated. The proposed "first come, first served" procedure would eliminate the need for most of the random selection processes now conducted, expedite the processing of applications and prevent applicants from filing applications simply to impede a competitor's applications.

10. We propose to rely on the technical exhibits provided by applicants without verifying their accuracy prior to grant. Currently, applicants must certify that statements made in their applications are complete and correct. We propose to strengthen this certification to state that the applicant has carefully reviewed the engineering of its proposal and certifies that it complies with the technical rules for operation on an interference-free basis. Implementation of this proposal would reduce the time required to process applications. With the new certification in place, all authorizations in the Paging and Radiotelephone and the Rural Radiotelephone Services would be granted on the condition of non-interference for the entire term of the license. Once operations commence, if interference occurs because of an error or omission in the technical exhibits to the application, the Commission could order the licensee, without affording an opportunity for a hearing, to suspend operation of the facilities at the locations causing the interference, until the interference is resolved.

11. To recapture unused spectrum, we propose to adopt a concept called "finders preference." We recently implemented a similar finder's preference concept for the Private Radio Services. (See 56 FR 65850, December 19, 1991.) Under this proposal, an applicant

could file a "finders" application for a channel that is assigned, but not being used. Although such an application would now be dismissed as defective, under the proposed rules it would be kept on file pending the outcome of a staff investigation into the current licensee's alleged noncompliance with the construction and operation rules. If the investigation revealed that the licensee was not complying with these rules, the authorization could be canceled and the unused channels reassigned. The "finders" application would then be considered the first filed for the recovered channel.

12. We are announcing a limited amnesty period, during which licensees who turn in authorizations for unused channels will not be subject to forfeitures for (a) discontinuing service without notifying the Commission as required by 47 CFR 22.303, or (b) notifying the Commission of commencement of service when, in fact, service has not commenced. The limited amnesty period will begin on July 1, 1992, and continue until the date that final rules adopted in this proceeding become effective. After the amnesty period, licensees violating the construction and operation rules will again be subject to forfeiture or any other appropriate enforcement action.

13. We propose to discontinue our reliance on the methods outlined in the Carey Report (FCC Report No. R-6406, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Service" by Roger B. Carey) for evaluating proposed stations in the Public Land Mobile and Rural Radio services. In place of these methods, we propose to use mathematical formulas to define service areas and interference potential of all VHF and 450 MHz UHF stations in these services. Use of the formulas would eliminate ambiguities inherent in the Carey method and facilitate development of simpler and more efficient software to perform interference studies. Assignments made using the formulas would be compatible with existing assignments because the formulas produce results that are very close to the Carey method. Also, we propose to convert all of the graphs and many of the tables in the rules to formulas, where it appears to be mathematically feasible. As with the Carey curves, graphs are subject to differing but equally valid readings because of the limits of human visual acuity. Tables are not ambiguous, but they must either be lengthy or employ interpolation methods that complicate adaptation to computer programs. Formulas have the advantages of always yielding the same result for a given set of parameters, and being compact and easy to program. In those instances where it does not appear to be beneficial or mathematically feasible to convert graphs to formulas, we propose to convert them to tables instead.

14. Part 22 currently requires applicants to submit traffic loading studies when they request one or more additional paired channels for an existing station. (See 47 CFR 22.16 and 47 CFR 22.510(a)(2).) These studies were initially adopted to ensure efficient use of paired channels. To obtain additional paired channels, a licensee must conduct channel occupancy measurements to demonstrate that existing and projected traffic on its system necessitates the additional channels. However, in view of the proliferation of competitive telecommunication services and our decisions in other proceedings affecting channel usage, we believe that the traffic loading studies are no longer a reliable indicator of efficient spectrum utilization. Also, these studies are burdensome for licensees to conduct and for our staff to evaluate. To prevent warehousing of spectrum, we propose to use, instead of the traffic loading studies, the procedures that we have been using for several years to govern additional channel requests for one-way paging operations. Under the proposed rules, applicants could apply for no more than two paired channels at a time and must be providing service on those channels before applying for additional channels. We believe that this method would allow licensees that need additional channels the opportunity to obtain them, while continuing to provide an adequate safeguard against warehousing.

15. The rules currently allow licenses to make minor changes to facilities and to construct and operate additional transmitters without prior commission approval, provided that they notify the Commission by filing an FCC Form 489. However, these notifications are routine and seldom involve concerns that a licensee is expanding into new territory or exceeding its current contours. We propose to modify our rules to allow licensees to make such changes to their facilities without seeking prior Commission approval or notifying the Commission of such changes. Licensees would be required to maintain accurate up-to-date records of facilities added or modified that could be provided to the Commission upon request. This proposal is intended to conserve both Commission and industry resources.

16. The proposed rules would provide that authorizations automatically expire without further action by the Commission. Furthermore, the 30-day reinstatement period would be eliminated. Requests for extensions of the construction period filed prior to expiration would be granted only for causes outside of the licensee's control.

17. We welcome comment on any and all of the proposed revisions to 47 CFR part 22. We also invite suggestions for any other proposals or refinements to the proposals that we have made in this proceeding.

18. Upon implementation of rule changes proposed herein, we would require the use of redesigned FCC Forms 401, 489, and 490. Examples of the redesigned forms are attached to the Commission release of this Notice of Proposed Rule Making. Currently, we generally require FCC Form 401 for major filings and FCC Form 489 for minor filings. Under the proposed rules, we would require Form 401 for major and minor applications and amendments (filings that result in a Commission action to grant, dismiss or deny) and Form 489 for notifications (filings that do not require a Commission action). To prepare for future electronic filing and filings on magnetic media, and to facilitate automated entry of station technical data into a relational computer data base, we have restructured FCC Form 401 into a modular format. To accommodate the modular format, some of the data items on the current forms must be relocated. Other changes include eliminating unnecessary or duplicative items.

19. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

20. Pursuant to applicable procedures in 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 21, 1992 and reply comments on or before September 21, 1992. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

21. Accordingly, *It Is Ordered* That, pursuant to section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), this notice of proposed Rulemaking is issued. *It is further ordered,* That the Secretary shall cause a copy of this notice to be sent to the Chief Counsel for advocacy of the Small Business Administration.

**Summary of Appendices A, B, and C**

Appendix A discusses the major rule revisions. Rules changed only in format or style, rules only reworded or retitled, rules with only minor or non-substantive changes, and rules we propose to delete because they are unnecessary are not discussed. Appendix B sets forth proposed part 22 essentially in its entirety. A table for cross-referencing the current rules and the proposed rules appears in Appendix C. (Appendices B and C are contained in the Commission's release of the notice of proposed Rulemaking.)

*Definitions*

The definitions for Part 22 are updated. Some definitions are removed and others added. More appropriate titles for the various public mobile services are proposed. For example, the "Domestic Public Cellular Radio Telecommunications Service" is retitled the "Cellular Radiotelephone Service", and the "Public Land Mobile Service" is retitled the "Paging and Radiotelephone Service". The terms "frequency" and "channel" are defined in more technically correct terms.

*Station Files*

We propose to codify the long-standing policy that station files at the Commission constitute the official record for each station. Other FCC records and data bases are not official records and reliance on these secondary sources does not establish or deprive parties of rights.

*Written Applications, Standard Forms, Microfiche, Magnetic Disks*

We propose to require that all applications on standard forms, regardless of length, and any filings pertaining to a current or pending application or an existing authorization, be filed in microfiche form. Except in the case of emergency filings, all other filings longer than three pages would be submitted in microfiche form. Despite changes to the standard FCC forms, which would make some filings shorter than they currently are, we must continue to require that applications be filed in microfiche form because of constraints on file storage space and microfiching resources. We propose to require that all microfiche have a black background. We propose a rule that permits applicants to submit technical and administrative data contained in their applications on standard 3½ inch magnetic disks. We seek comment on the proposed format, the type of file to be used, and the data field delimiter. We intend that technical information submitted by licensees on magnetic disks be sufficient to enable the Commission to automatically generate notifications to the International Frequency Registration Board (IFRB). Any rules with respect to filings on magnetic disks would not become effective until the Commission can implement fully this process.

*Application Processing; Initial Procedures*

We propose to clarify and update 47 CFR 22.27, and specify the initial procedures the Mobile Services Division (MSD) follows when processing applications.

*Repetitious, Inconsistent or Conflicting Applications*

We propose to revise 47 CFR 22.21 to provide that where an authorization is automatically terminated for failure to commence service, the Commission will not consider a later filed application by the same party for authorization to operate a station on the same channel (or in the case of 931 MHz paging station, in the same frequency range) in the same geographical area until one year after the date the authorization is terminated. This is intended to discourage warehousing.

*Classification of Filings as Major or Minor*

We propose to clarify 47 CFR 22.23 concerning the classification of filings as major or minor. This classification is pursuant to section 309 of the Communications Act of 1934, as amended, 47 U.S.C. 309. The Commission cannot grant major filings until 30 days after public notice of such filings is given. Currently, the rule provides only guidelines for classifying amendments. The proposed rule goes beyond this by setting forth the rationale for classification of all filings.

*Notification Processing*

We propose a new rule section to outline MSD's procedures for processing notifications. The number of notifications MSD receives has grown steadily and accounts for a significant portion of the processing work load.

*Applications for Special Temporary Authorizations*

We propose to clarify and consolidate into one section all rules governing the filing and processing of requests for special temporary authorizations.

*Dismissal of Applications*

We propose to consolidate the provisions of 47 CFR 22.20 and 47 CFR 22.28 pertaining to dismissal of applications.

*Agreements to Dismiss Applications, Amendments or Petitions to Deny*

We propose to add a new rule concerning agreements to amend or dismiss applications or pleadings. We believe that permitting payments for settlements of mutually exclusive applications may encourage the filing of non-*bona fide* applications. Legitimate applicants may be persuaded to pay these insincere applicants to avoid protracted litigation, resulting in needless expenses to legitimate applicants. This also wastes Commission resources and delays initiation of service to the public. The proposed rule would require a party that has filed a mutually exclusive application and entered into a written agreement to withdraw its application to obtain the approval of the Commission. This rule would also limit the consideration that an applicant can receive for agreeing to withdraw an application to legitimate and prudent expenses. We also propose to address dismissal of petitions to deny. Our experience has shown that parties may file petitions to deny just to extract money from an applicant or to delay the applicant and thus force a settlement. Non-legitimate petitions also burden applicants, waste Commission resources and do not serve the public interest. Accordingly, we propose to limit settlement payments that can made in exchange for withdrawing petitions to deny filed in initial licensing, modification and assignment proceedings. We propose that when a petition to deny is withdrawn in exchange for money, the payment to the petitioner be limited to legitimate and prudent expenses incurred in prosecuting the petition.

*Random Selection Process*

This revision of 47 CFR 22.33 eliminates provisions that delineate lottery procedures for cellular

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applications in the top-120 markets, and MSA/RSA markets beyond the top-120. Because initial lotteries in these markets have already occurred and cellular service has been provided in most of these markets, these rules are no longer necessary. This proposed rule would not alter the current random selection procedures governing mutually exclusive applications for initial authorizations, as needed, in the cellular service. In addition, we propose to eliminate paragraph (c) of 47 CFR 22.33, which allows mutually exclusive applicants in the Public Land Mobile Service to request a comparative hearing in lieu of a random selection process under certain circumstances. In Lotteries Selection Among Applicants (reconsideration), 49 FR 49468 (1984), the Commission provided that Public Land Mobile Service licensees applying to expand an existing system on the same channel, whose applications are mutually exclusive with other applications, could request that a comparative hearing be used in lieu of a random selection process to decide which application would be granted. The purpose for this provision was to allow the expansion applicant an opportunity to try to demonstrate the expansion of its existing system, which would have to be accomplished on the channel already authorized, might better serve the public than the authorization of a new station, which could be done on any available channel. To date, however, no applicant has been able to satisfactorily demonstrate this, and consequently no such hearings have been held. Our proposal to process applications on a "first come—first served" basis, if adopted, would make the deliberate filing of mutually exclusive applications unlikely, and consequently make this provision unnecessary. We also propose to eliminate 47 CFR 22.35, which allows mutually exclusive applicants to request expedited hearing procedures. To our knowledge, these hearing procedures have not been utilized.

*Settlement Conference*

We propose a new rule directing parties or their attorneys to participate in settlement conferences regarding application proceedings. The proposed rule provides that if the Commission determines that a settlement conference should be convened: (1) The parties or their attorneys are obligated to participate, in person or by telephone conference call; and (2) Failure to participate in such a conference will be deemed a failure to prosecute, rendering that party's application or petition defective and subject to dismissal. We propose this rule to expedite the resolution of petitioned proceedings.

*Commencement of Service; Notification Requirement*

We propose to revise 47 CFR 22.43 to require that stations must provide service to the public by the end of the construction period. If a licensee fails to provide service to the public by the date of required commencement of service, the authorization would be automatically terminated without any further notice from the Commission. This proposed rule is intended to encourage licensees to provide service to the public as expeditiously as possible. It has also been revised to clarify what circumstances might warrant an extension of the construction period.

*Construction Prior to Grant of Application*

We propose to consolidate all current rules and policies regarding the construction of facilities prior to grant of an authorization to operate them.

*Termination of authorization*

We propose to revise 47 CFR 22.44. The revision lists the five ways, other than revocation, that a Public Mobile Services authorization can be terminated.

*Renewal Application Procedures*

We propose to require that applications for renewals of authorizations be filed by the licensee prior to, but no more than 30 days before the expiration date of the license. The current rule requires applicants to file their renewal no sooner than 60 days and no later than 30 days prior to the expiration date of the authorization. The proposed revision would eliminate the "gap", a period of time after the 30 day filing period during which it is too late to file for renewal, but the authorization has not expired. In addition, we propose to eliminate the current provision that allows licensees who failed to timely file their renewal applications due to confusion about the aforementioned gap to file reinstatement applications after the authorization expires. Because the gap would be eliminated, reinstatements should no longer be needed. Finally, a separate application for renewal would be required for each station (call sign). Currently, licensees may apply for renewal of more than one station on a single application.

*Authorization Conditions*

We propose to adopt a rule providing that authorizations in the Paging and Radiotelephone Service and the Rural Radiotelephone Service are subject to the condition that if interference occurs upon commencement of operation because of an omission or error in the required technical exhibits of the application, the Commission may order the licensee, without a hearing, to suspend operations at the location causing the interference until the interference is resolved. This proposal strikes a balance between our intent to ensure interference-free operation and our expectation that applicants be accountable for the accuracy of their technical exhibits, which should demonstrate compliance with our rules.

*Standard Pre-filing Technical Coordination Procedure*

We propose to consolidate two repetitive rules (47 CFR 22.100(d)(1)–(d)(11) and 47 CFR 22.501(m)(4)). The procedure currently applies (and as proposed would apply) only to two types of authorizations: Microwave fixed stations and Hawaii inter-island fixed service on 488–494 MHz.

*Computation of Distance and Average Terrain Elevation*

We propose to add a new rule that sets forth the procedure to be used for calculating the distance between two locations. Also, we propose to revise 47 CFR 22.115(c) to specify that average terrain elevation determinations be performed by computer, except in cases of dispute. Under the current rule, average terrain determinations are to be performed manually, using profile graphs derived from topographical maps, except that such determinations may also be performed by computer. Since the most efficient method of computing average terrain elevation is by computer, most applicants take advantage of the "exception", and practically none use the manual method required by the rule. The proposed revision reflects this reality.

*Minor Modifications to Existing Stations*

The rules currently allow licensees to make minor modifications to existing facilities under certain circumstances, provided that the Commission is notified of the modifications (FCC Form 489). We are proposing to eliminate the requirement that licensees notify the Commission of such modifications. Of course, there would be no record of the modifications in the station files or computer data bases; consequently, these transmitters might not be protected from interference. The purpose of this proposal is to reduce the number of notifications filed and thus conserve Commission and industry resources.



*Additional Transmitters for Existing Systems*

The rules currently allow licensees to construct and operate additional transmitters under certain circumstances, provided that the Commission is notified of the additional transmitters (FCC Form 489). We are proposing to eliminate the requirement that licensees notify the Commission of such additional transmitters. Of course, there would be no record of the additional transmitters in the station files or computer data bases; consequently, these transmitters would not be protected from interference. The purpose of this proposal is to reduce the number of notifications filed and thus conserve Commission and industry resources.

*Applications for Assigned but Unused Channels*

We propose a new section to set forth procedures for implementing a "finder's preference" concept whereby applicants may apply for assigned but unused Public Mobile Service channels. If a licensee fails to comply with rules requiring the provision of service to the public, the authorization terminates and the channels involved can then be reassigned to another applicant. To expedite reassignment of channels that are not being utilized, we propose to allow an applicant to file a "finders" application that does not meet the technical protection requirements with respect to a currently assigned but allegedly unused channel, provided that information concerning the facility that has failed to commence service or has discontinued service, in violation of the rules is provided. We propose that a finder's application include (1) the name and address of the licensee; (2) the licensee's call sign and the location of the licensed facility; and (3) a statement providing details concerning the alleged nonuse of the facility. The Commission would place "finders" applications on Public Notice, identifying them as such and listing them as tentatively acceptable for filing. Under the proposed rule, the staff may also conduct an investigation to verify that the authorization for the identified facility has, in fact, terminated.

*Operator and Maintenance Requirements*

We propose to revise 47 CFR 22.205 to no longer require that licensees' maintenance agreements with third parties be in writing. This requirement is unnecessary.

*Station Identification*

We propose to revise 47 CFR 22.213 to allow paging and radiotelephone stations to be identified by the call sign of another station of the same licensee in the same system. Currently we receive requests to "consolidate call signs" of systems that were originally authorized separately and bear different call signs. Licensees often wish to use the same call sign for the entire system to conserve air time. Sometimes it is extremely time consuming or impossible for the MSD staff to merge large station files under one call sign. Consequently, we have from time to time waived the station identification requirement to allow licensees to use a different call sign than the one assigned, in order to satisfy the purpose of the consolidation request without merging the files. The proposed rule would eliminate the need for these routine waivers.

*Discontinuance of station Operation*

We propose to revise 47 CFR 22.303 to make clear that a station that has not provided service to the public for 90 continuous days is considered to have been permanently discontinued.

*Equal Employment Opportunities*

We are committed to the principle of equal employment opportunity in the communications common carrier industry. Accordingly, the proposed revision of 47 CFR 22.307 maintains (1) the requirement that Public Mobile Services licensees afford equal opportunity in employment and (2) the prohibition on discrimination against personnel on the basis of sex, race, color, religion or national origin. We propose to reorganize some of the paragraphs in the existing rule for clarity. In particular, the current wording seems to imply that the EEO program statement filing requirement applies only to stations in existence prior to December 17, 1970. The proposed rule is reworded to make it clear that the filing of EEO statements is an on-going requirement, and to change the annual date by which updates are to be filed from April 1 to May 31, the same date that annual employment and complaint reports are due. This will serve to consolidate all CCB EEO filings on this date. Additionally, we propose a catch-up date for carriers who may have failed to file EEO program statements because of confusion due to the wording of the current rule.

*Control Points*

We propose to combine the control point requirements for all of the Public Mobile Services in this rule. Furthermore, we propose to eliminate the provisions in 47 CFR 22.909 requiring cellular operators to obtain Commission approval prior to moving the location of the control point beyond the boundary of the CGSA.

*Frequency Tolerance*

We propose to specify transmitter frequency tolerances in terms of parts per million (ppm) rather than per cent (%). This reflects the fact that modern transmitters are considerably more stable than those used ten to twenty years ago.

*Emission Masks*

We propose to specify resolution bandwidths for instruments used to measure compliance with the emission masks specified. Callers frequently ask the MSD staff for this information.

*Disturbance of AM broadcast Station Antenna Patterns*

We propose a new rule to codify existing policy developed in response to the proliferation of new cellular towers. The rule sets forth the responsibility of Public Mobile Services licensees in avoiding interference in the AM broadcast service.

*Type Acceptance of Transmitters*

We propose to revise 47 CFR 22.120 to clarify that transmitters operating under a developmental authorization do not have to be type accepted.

*Description and Purpose of Developmental Authorizations*

We propose to revise 47 CFR 22.400 and 47 CFR 22.401 to state that developmental authorizations may be issued to determine whether a station can operate without causing interference to existing stations. We also propose to combine the provisions and requirements for routine developmental authorizations that are currently scattered throughout part 22, and categorize them in a few sections by type of operation, radio service and frequency range.

*Number of Transmitters Per Station*

We propose to require a separate transmitter for every assigned channel at each location. This is intended to eliminate the practice of installing one multi-frequency transmitter at a site where two or more channels are authorized. Although such a transmitter may transmit on any one of the authorized channels, it cannot transmit on more than one of them at the same time. This can result in inefficient use of the spectrum. We request comment as to

whether there is a less stringent requirement that would also meet this objective. We also propose to require that transmitters be operationally related in order to be authorized together as a station. Unrelated transmitters that are widely separated geographically would not be authorized together as a station. This proposal is intended to codify current policy, which promotes administrative efficiency by ensuring that station files comprise data on operationally related transmitters. It also helps to prevent particular station files containing the records of stations owned by large or nationwide companies from growing so large as to be unwieldy.

*Procedure for Mutually Exclusive Applications*

This proposed rule would replace 47 CFR 22.33 and 47 CFR 22.35, insofar as these rules establish procedures to process mutually exclusive applications in the Public Land Mobile Service. We propose that all mutually exclusive Public Land Mobile Service applications be processed on a "first-come, first served" basis.

*Channel Availability*

In general, the Commission requires applicants to request specific channels which they believe to be available when the application is filed. However, for the 931 MHz paging and 470-512 MHz point to multipoint channels, applicants are not required to request a specific channel because the Commission selects and assigns a channel when granting such applications. Often, a channel in these frequency ranges will become available after an application is filed but before it is acted upon or included in a random selection process. We are proposing a new rule to provide that, when processing applications for which the Commission selects the channel, any channel in the appropriate frequency range that becomes available before an application is (1) acted upon (if no random selection process is necessary) or (2) included in a random selection process (if held), may be assigned, regardless of whether it was available when the application was filed.

*Effective Radiated Power Limits*

We propose to consolidate all transmitting power limits applicable to stations in each service or type of operation into a single section in the rules governing that service or type of operation. Currently, there are no power limits in the rules governing the Rural Radio Service, including BETRS, other than for meteor burst systems. We seek comment as to what these limits should be. Although we have generally specified power limits in watts, we invite comment as to whether we should specify them in dBW instead, or in the alternative, whether we should specify a fixed percentage (such as 5%) for the accuracy with which transmitting power must be measured or maintained.

*Technical Channel Assignment Criteria*

We propose a new rule to replace 47 CFR 22.15(b)(2)(i) and 47 CFR 22.504, which outline procedures for determining harmful interference between co-channel stations. We propose to adopt a new method employing formulas (and in the case of 931 MHz paging, tables) for determining service areas and interfering contours. The proposed formulas closely track the contours calculated using the Carey procedures. We seek comment on whether these rules should also be applied to Rural Radio Service.

*Protection of Fixed Receivers on Mobile Channel*

We wish to establish a new method to protect fixed receivers on the mobile channels from base or fixed transmitters using those channels. In Flexible Allocation of Frequencies in the Public Mobile Services (Report and Order), 54 FR 11535, March 21, 1989, we indicated that applicants for base and fixed transmitters to operate on the mobile channel should demonstrate non-interference with fixed receivers in accordance with a technical exhibit in that proceeding. Furthermore, we stated that such authorizations would be granted on a developmental basis. Since that time, it has come to our attention that these restrictions severely limit the use of the mobile channel by base and fixed stations. We believe, however, that any other criteria designed to provide protection in theory to existing and future fixed receivers would likely be as stringent. Nevertheless, we solicit comment as to a new protection criteria that will enable licensees to provide an appropriate level of protection to fixed receivers while, at the same time, making more effective use of the mobile channels. In the alternative, we propose to allow use of mobile channels for fixed and base operations subject to the condition that such use does not interfere with existing systems only. If after grant, interference occurs, the Commission would be able to order the licensee to suspend operation of particular base or fixed transmitters on the mobile frequency until such interference is resolved.

*Additional Channel Policies*

We propose to revise 47 CFR 22.16 and 47 CFR 22.516 to remove the traffic loading requirements. Furthermore, we propose to assign no more than two channels in an area to a carrier in an application cycle. Thus, a carrier would apply for no more than two channels, receive the authorization, construct the stations and notify the Commission of commencement of operation before applying for addition channels in the area. The proposed "two channels at a time" rule would replace the current requirement for traffic loading studies.

*Use of Mobile Channels for Control Transmitter*

We propose to revise 47 CFR 22.518. This rule was established to allow licensees to install and operate a moderate power control station with a relatively low antenna to control the base station of a two-way mobile telephone system. The principal concern of the current rule is that subscribers not be able to override this control function. Because most former two-way systems in the Public Land Mobile Service are now used for paging, several licensees have asked the MSD staff for interpretations of current § 22.518 as it may apply to multi-site paging systems. However, controlling a paging system now means installing a high omnidirectional antenna driven by high power transmitter, and transmitting subscriber traffic to multiple base station sites continuously. Obviously there is a much greater potential for interference from this type of operation to fixed receivers on the mobile channel. We request comment on the continued need for this rule, on what role it may play in the current environment, and whether additional technical parameters or duty cycle limits should be imposed to provide protection for fixed receivers.

*Grandfathered Dispatch Service*

We propose to revise 47 CFR 22.519 to state more clearly that only carriers who have continuously provided service since they received authorization to do so (prior to January 1, 1982) may continue to provide such service. We seek to determine whether any carriers are in fact providing dispatch service. If no carriers are providing such service pursuant to this rule, we propose to eliminate the rule.

*UHF Television Channels*

We propose revisions to the technical requirements designed to prevent interference to UHF television from point-to-multipoint and trunked mobile stations. We converted the graphs in the

current rules to tables. For point-to-multipoint operation, provisions related to mobile transmitters were removed, as there are no mobile transmitters in point-to-multipoint operation. For trunked mobile operation, provisions related to cities where these channels are no longer available were removed.

*Basic Exchange Telephone Radio Systems*

At this time the Commission does not have any technical rules for assignment of channels to BETRS in the Rural Radio Service. Because BETRS use the same channels as stations in the Public Land Mobile service, we believe that some technical rules are necessary to protect BETRS and paging and radiotelephone stations from mutual interference. We request comments as to what rules are necessary to govern channel assignments for BETRS, and what technical criteria should be used. Currently, the rules list channel groups in the 816–885 MHz for BETRS. However, it has come to our attention that there are few, if any, locations available for BETRS under the distance limitations needed to protect private radio systems. No applications have been filed for these channels. We seek comment as to whether viable locations are available for BETRS use of these channels under the rules and whether any demand for BETRS exists in these locations. If no locations are available or no demand exists for BETRS on these channels, we propose to remove them from the BETRS rules and request comment on possible other Public Mobile Services utilizations for these channels.

*Technical Assignment Criteria for Air-ground Service*

We propose to establish technical channel assignment criteria to replace the allotment table in 47 CFR 22.521(b) governing the locations and channels of ground stations. Under the current rules, applicants seeking to locate a ground station anywhere except for the designated locations in the table are required to petition for a change in the table (requiring a rule making proceeding). The proposed rule seeks to simplify and streamline the procedure for obtaining authorization for new or different locations for service. The proposed rule would establish distance separation criteria for co-channel ground stations and requirements limiting to six the number of channels within a 320 kilometer radius of the proposed antenna location. Under the proposed rules, parties wishing to use a new or different location could apply for it without the need for rule making. Action on such applications would be taken at the staff level. We believe that the proposed rules would ensure that nationwide coverage is maintained, while allowing more flexibility for licensees to respond to local air-ground markets. We also propose a new rule to govern applications for additional ground station channels to provide 450 MHz air-ground service. We propose to assign only one channel in an area per application cycle (up to a maximum of six ground station channels for any one licensee in an area). This policy is intended to promote competition and to prevent warehousing. We propose that any mutually exclusive applications to provide 450 MHz air-ground service be processed on a "first come, first served" basis. Mutually exclusive applications filed on the same day would be included in a random selection process.

*AGRAS Compatibility Requirement*

We propose to require by rule the technical and operational compatibility specifications currently used by the vast majority of stations providing general aviation air-ground service in the 450 MHz frequency range. All stations would be required to comply with the technical and operational requirements contained in the document "Technical Reference, Air-ground Radiotelephone Automated Service (AGRAS), System Operation and Equipment Characteristics" dated April 12, 1985. Any stations still operating under the original technical standards would be allowed to continue to do so until January 1, 1994. We seek comment as to whether there are any stations still operating under the original standards.

*Cellular Service*

We propose to consolidate the existing requirement that cellular licensees provide service to subscribers in good standing, and other rules related to service provided by cellular carriers. The proposed rule also includes special provisions for alternative cellular technologies and auxiliary service, contained currently in 47 CFR 22.930. In this regard, we propose to eliminate the restriction limiting fixed service to Basic Exchange Telecommunications Radio Systems (BETRS). It appears that this restriction on incidental fixed services is unnecessary.

*Channels for Cellular Service*

We propose to eliminate the wireline carrier set-aside provisions of 47 CFR 22.902. These set-aside provisions for separate wireline and non-wireline channels applied only to initial authorizations for the MSAs, NECMAs and RSAs. Once both eligible carriers in these markets have been authorized, the purpose of the set-aside has been served and the maintenance of the set-aside rule is no longer justified.

*Cellular Market Areas*

We propose to delete the list of the top-30 cellular MSA markets from our rules. There is no reason why this information must be codified. To ensure that this information is available to the public, the MSD staff issued a Public Notice listing all of the cellular markets and the counties they comprise. See Public Notice, "Cellular MSA/RSA Markets and Counties," Mimeo No. 21538 (January 24, 1992).

*Effective Radiated Power Limits*

We propose to eliminate the provision of 47 CFR 22.905 that exempts cellular base transmitters from the height-power limitations if coordination with other licensees is carried out. We believe this exemption is no longer appropriate.

*Electronic Serial Numbers*

We propose a new rule to help reduce fraudulent use of cellular equipment caused by tampering with the Electronic Serial Numbers (ESN) that identify mobile equipment to cellular systems. According to one industry estimate, cellular carriers lost over $100 million to this type of fraud in 1990. The Commission believes that reducing this type of fraud is in the public interest because such losses, if allowed to continue unabated, will eventually affect carriers' abilities to continue to provide affordable rates. The proposed rule establishes anti-fraud technical specifications for mobile equipment.

*Evaluation of Cellular Applications*

We propose to revise 47 CFR 22.916 which delineates the hearing designations procedures for cellular applications. In particular, we propose to delete paragraphs (a)(1)–(a)(4), which are applicable only to the top-30 cellular markets. The remainder of those rules, paragraphs (b)(5)–(b)(9), will be utilized in the hearing procedures for cellular renewal challenges.

*Demonstration of Financial Qualifications*

We propose to revise our financial requirement rules to eliminate the separate financial requirements currently applicable to the top-120 markets, markets beyond the top-120, and the rural service areas. We propose to replace these rules with uniform financial requirements that would apply to all applications for initial cellular systems. However, for those RSA

markets with initial authorizations that are subject to further lotteries, rules in effect at the time the RSA applications were filed will continue to govern outstanding RSA proceedings.

*System Identification Numbers*

We propose to modify the present procedure for changing cellular System Identification Number codes (SID codes). Each cellular system transmits a SID code that enables mobile subscriber equipment to determine whether it is in communication with the system to which it is a subscriber, or alternatively, whether it is considered to be a roamer. The MSD has been assigned SID codes as a license term. However, licensees frequently seek to change the initially assigned SID code in order to consolidate territory or to implement "home roaming" agreements. As no procedures have been formally developed for SID code changes, licensees seeking to change their SID codes currently write a letter to MSD requesting the change. The MSD then issues a modified authorization listing the changed SID code. The licensee must receive this modified authorization before using the new code. Under the new rule that we are proposing, system operators could change their SID code at will, and would be required only to notify the Commission by filing an FCC Form 489 that the SID code is changed. We believe that the rule we propose would not be more burdensome than the current procedures. However, we also believe that it is not essential that the Commission be the organization to assign these codes. There are no public interest issues involved in the assignment of SID codes, and there is no particular reason that SID codes must be a term of cellular authorizations. It might be more efficient and less burdensome if a private national cellular industry organization were to assign these codes outside of the FCC licensing process. Therefore, in the alternative to our proposal, we also seek comment on this possibility.

*Five Year Fill-in Period*

We propose to consolidate all rules relating to the five year fill-in period for first-in-market cellular systems in the MSAs and RSAs (e.g. the rule requiring the filing of a system information update). Also, we propose to codify existing practice with regard to "partitioned RSAs", which are RSAs where the first licensee has allowed one or more additional carriers to establish independently authorized cellular systems within the market during the five year fill-in period.

*Unserved Area Licensing Phases, Procedures and Filing Windows*

We propose to consolidate the rules governing the filing and processing of unserved area cellular applications. We note that, as of the time the MSD staff drafted this Notice of Proposed Rule Making, petitions for reconsideration of the decisions in CC Docket No. 90–6 (First Report and Order, 56 FR 58503, November 20, 1991 and Second Report and Order, 57 FR 13646, April 17, 1992) are pending. Although the proposals herein represent our thinking as to the organization of cellular rules, it should be understood that substantive issues currently under consideration in other proceedings (such as CC Docket No. 90–6) will be resolved based on the record of those proceedings, and any rules finally adopted in this proceeding will be conformed to any decisions reached in the other proceedings. Thus, this Notice is not intended to provide a "second bite at the apple" and it is not necessary or desired that parties refile comments from other concurrently pending proceedings.

*Candian Condition*

We propose to codify a provision of the most recent agreement between the United States and Canada specifying that authorizations for cellular systems within 72 kilometers (45 miles) of the United States-Canada border using the same channel block as cellular systems in adjacent territories in Canada shall include a condition on the authorization requiring the licensee to coordinate transmitter installations with the licensees operating the Canadian cellular systems. This condition is intended to eliminate harmful interference and ensure equal use of the channel block by both countries.

*Mexican Condition*

We also propose to codify a provision of the most recent agreement between the United States and Mexico that includes provisions similar to the Canadian condition noted above. In addition, the condition states that United States cellular system operators shall not contract with Mexican customers and that operation of mobile units in Mexico is not permitted without the permission of the Mexican government.

*Rules Governing Initial Cellular Systems*

Because we propose to eliminate many of the detailed rules governing the processing of initial cellular authorizations, we also propose to adopt a new rule providing that any remaining pending applications for initial cellular authorizations will continue to be processed in accordance with the rules that were in effect at the time the applications were filed.

*FCC Forms*

The proposed rewrite of part 22 entails substantial changes to FCC Forms 401, 489 and 490. These changes have several purposes: (1) To conform to proposed changes in part 22; (2) To prepare for future magnetic and electronic filing; (3) To simplify the forms; (4) To consolidate the purposes for which the forms are to be used. The newly designed forms are structured with modules that correspond to tables in future relational data bases. By receiving the necessary information in this format, the MSD staff will be able to enter the data more easily, and thus reduce the time needed to process applications while, at the same time, maintaining the integrity of the data bases. With respect to the changes to FCC Form 489, we point out that although Form 489 was initially designed to notify the Commission of the status of Public Mobile Services facilities, over the years the form has become a "catch-all" for requests that do not require Public Notice. We intend that Form 489 be used for notifications and Form 401 be used for applications, amendments and other requests requiring a Commission action or response. Note however, that the fee amounts for the various types of filings will not change as a result of a change in the required form. The certifications of some of the forms are strengthened to reflect a greater responsibility for the correctness of technical exhibits. A certification regarding denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862a) is added. FCC Form 155 (Fee collection) is incorporated into each of the three forms, as required by the Office of Management and Budget. Finally, we not that Telocator and CTIA have requested the elimination of several information collection requirements in these forms, and we have tried to accommodate as many of these requests as possible.

**List of Subjects in 47 CFR Part 22**

Public mobile services, Radio.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92–15473 Filed 6–30–92; 8:45 am]

BILLING CODE 6712–01–M

**DEPARTMENT OF DEFENSE**

**48 CFR Parts 228, 232, and 252**

**Department of Defense Federal Acquisition Regulation Supplement; Subcontractor Payment Protections**

**AGENCY:** Department of Defense (DOD).

**ACTION:** Proposed rule with requests for comments.

**SUMMARY:** The Defense Acquisition Regulations Council is proposing changes to the Defense FAR Supplement (DFARS) to amend parts 228, 232, and 252 to implement section 806 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102–190). The proposed rule includes a requirement that DoD construction contractors provide a copy of the payment bond to prospective subcontractor and suppliers upon the request of such entities.

**DATES:** Comments on the proposed rule should be submitted in writing to the address show below on or before July 31, 1992 to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, attn: Mr. Eric Mens, IMD 3D139, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 697–9845. Please cite DAR Case 91–311 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eric Mens (703) 697–7266.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This proposed rule implements Section 806 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102–190), which requires the Secretary of Defense to issue regulations concerning the disclosure of certain information to subcontractors and suppliers performing, or proposing to perform, under a DoD prime contract. The proposed rule requires disclosure of prime contractors requests for progress or other payments and/or whether final payment has been made; specifies actions the contracting officers may take in instances of subcontractor assertions of nonpayment; for construction contracts, provides that DoD may release certain surety information, including copies of the prime contractor's payment bond, and requires that the prime contractor provide copies of the payment bond to prospective subcontractors and suppliers at their request.

Section 806(b)(2) of Public Law 102–190 requires the Secretary of Defense to publish a final rule by September 4, 1992. Section 806(a)(3)(B) states that the requirement for prime contractors to provide a copy of the payment bond (see 228.106–6(2)) applies to any DoD contract covered by the Miller Act for which a solicitation is issued 60 days after the effective date of the final rule.

### B. Regulatory Flexibility Act

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, although the Department of Defense estimates that, based on data available for Fiscal Year 1991, less than 20 percent of all, or a total of 1,100, small business construction contractors will be impacted. The requirement to provide a copy of the payment bond to prospective subcontractors and suppliers applies to all businesses that enter into a construction prime contract with DoD which is subject to the Miller Act (40 U.S.C. 270a–270d). An Initial Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. The IRFA states that it is impossible to accurately estimate the number of small businesses that may be impacted because it is impossible to accurately determine the number of small businesses that prospectively will hold DoD construction contracts subject to the Miller Act and subsequently, the number of prospective subcontractors or suppliers that will request a copy of the payment bond. However, based on available data, DoD estimates that the proposed rule will impact less than 20 percent of all small businesses that will hold DoD construction contracts which will be subject to the Miller Act.

A copy of the IRFA may be obtained from: Defense Acquisition Regulations Council, Attn: Mr. Eric R. Mens, IMD 3D139, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301–3063. Comments are invited. Comments from small entities concerning the affected DFARS parts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 91–311 in all correspondence.

### C. Paperwork Reduction Act

The proposed rule imposes additional recordkeeping requirements, or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et. seq.* DoD is requesting OMB approval for this new information collection requirement.

**List of Subjects in 48 CFR Parts 228, 232, and 252**

Government procurement.

**Claudia Naugle,**

*Executive Editor, Defense Acquisition Regulations System*

Therefore, it is proposed that 48 CFR parts 228, 232, and 252 be amended as follows:

1. The authority citation for 48 CFR parts 228, 232, and 252 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, and Defense FAR Supplement 201.301.

## PART 228—BONDS AND INSURANCE

2. Sections 228.106, 228.106–4, 228.106–4–70, 228.106–6, and 228.106–7 are added to read as follows:

**228.106 Administration.**

**228.106–4 Contract clause.**

**228.106–4–70 Additional contract clause.**

Use the clause at 252.228–7006, Subcontractor Requests for Bonds, in all solicitations and contracts which are subject to the Miller Act (see FAR 28.102–1).

**228.106–6 Furnishing information.**

Section 806(a)(2) and (3) of Public Law 102–190 requires that DoD and its contractors provide subcontractors information on payment bonds. Upon the written or oral request of a subcontractor/supplier, or prospective subcontractor/supplier, under a contract subject to the Miller Act—

(1) The contracting officer shall promptly provide any of the following:

(i) Name and address of the surety or sureties on the payment bond.

(ii) Penal amount of the payment bond.

(iii) Copy of the payment bond. The contracting officer may impose reasonable fees to cover the cost of copying and providing a copy of the payment bond.

(2) The contractor shall promptly provide a copy of its payment bond.

**228.106–7 Withholding contract payments.**

(a) Withholding may be appropriate in other than construction contracts (see 232.970–1(c)).

## PART 232–CONTRACT FINANCING

3. Sections 232.970, 232.970–1, and 232.970–2 are added to read as follows:

**232.970 Payment of subcontractors.**

**232.970-1 Subcontractor assertions of nonpayment.**

(a) In accordance with Public Law 102-190, title VIII, section 806(a)(4), upon the assertion by a subcontractor or supplier of a DoD contractor that the subcontractor or supplier has not been paid in accordance with the payment terms of the subcontract, purchase order, or other agreement with the contractor, the contracting officer may determine—

(1) For a construction contract, whether the contractor has made—

(i) Progress payments to the subcontractor or supplier in compliance with chapter 39 of title 31, United States Code;

(ii) Final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement;

(2) For a contract other than construction, whether the contractor has made progress payments, final payments, or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement;

(3) For any contract, whether the contractor's certification of payment of a subcontractor or supplier accompanying its payment request to the Government is accurate.

(b) If, in making the determination in paragraph (a)(1) of this subsection, the contracting officer finds the subcontractor's/supplier's assertion to be valid, the contracting officer may encourage the contractor to make timely payment to the subcontractor or supplier. (See also 232.970-1(d)).

(c) If, in making the determination in paragraph (a)(2) of this subsection, the contracting officer finds the subcontractor's/supplier's assertion to be valid, the contracting officer may—

(1) Encourage the contractor to make timely payment to the subcontractor or supplier; or

(2) In accordance with the applicable payment clauses, reduce or suspend progress payments to the contractor.

(d) If the contracting officer determines that a certification referred to in (a)(3) of this subsection is inaccurate in any material respect, the contracting officer shall initiate administrative or other remedial action.

**232.970-2 Subcontractor requests for information.**

(a) Public Law 102-190, title VIII, section 806(a)(1), requires that the DoD provide subcontractors information on payments made to the prime contractor.

(b) Upon the request of a subcontractor or supplier under a DoD contract, the contracting officer shall promptly advise the subcontractor or supplier as to—

(1) Whether the contractor has submitted requests for progress payments or other payments under the contract; and

(2) Whether final payment has been made.

(c) This subsection applies to any contract that is in effect on or after August 31, 1992. This subsection does not apply to matters that are—

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and

(2) Properly classified pursuant to such Executive Order (see 5 U.S.C. 552(b)(1)).

**Subpart 252.2—Texts of Provisions and Clauses**

4. A new section 252.228-7006 is added to read as follows:

**252.228-7006 Subcontractor Requests for Bonds.**

As prescribed in 228.106-4-70, use the following clause:

**Subcontractor Requests for Bonds (June 1992)**

In accordance with sections 806(a) (2) and (3) of Public Law 102-190, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requestor.

(End of clause)]

[FR Doc. 92-15410 Filed 6-30-92; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 71

**[OST Docket No. 48215, Notice 92-9]**

**RIN 2105-AB90**

## Standard Time Zone Boundary in the State of North Dakota; Proposed Relocation

**AGENCY:** The Department of Transportation (DOT), Office of the Secretary (OST).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** At the request of the Board of Commissioners of Oliver County, North Dakota, DOT proposes to relocate the boundary between central and mountain time in the State of North Dakota. DOT proposes to relocate the boundary in order to move Oliver County from the mountain time zone to the central time zone.

**DATES:** Comments should be received by August 31, 1992 to be assured of consideration. Comments received after that date will be considered to the extent practicable. If the time zone boundary is changed as a result of this rulemaking, the expected effective date would coincide with the nation's return to standard time on Sunday, October 25, 1992.

**ADDRESSES:** Comments should be sent to Documentary Services Division, Attention: OST Docket No. 48215, Department of Transportation, C-55, room 4107, Washington, DC 20590 ((202) 366-9323). Persons who wish to have acknowledgment that their comments have been received should include a self-addressed stamped postcard on which the Docket Clerk will note the date and time of receipt.

**PUBLIC HEARINGS:** Two public hearings will be chaired by a representative of DOT at the Courthouse Meeting Room in Center, North Dakota, at 1 p.m. and 8 p.m. on Tuesday, August 4, 1992. The hearings will be informal and will be tape recorded for inclusion in the docket. Persons who desire to express opinions or ask questions at the hearings do not have to sign up in advance or give any prior notification. To the greatest extent practicable, the DOT representative will provide an opportunity to speak for all those wishing to do so.

**FOR FURTHER INFORMATION CONTACT:** Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement (C-50), U.S. Department of Transportation, room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9306.

**SUPPLEMENTARY INFORMATION:**

### North Dakota Time Observance

Historically, North Dakota has been a State with a shifting time zone boundary. Beginning in 1883, mountain standard time was observed in the southwest and a few locations in the northwest, and central standard time in the rest of the State. In 1929, the Interstate Commerce Commission, the federal agency with authority to change time zone boundaries, extended the central zone to include nearly all of western North Dakota, except a small area in the southwest corner of the State. When the Department of Transportation was created in 1966, Congress transferred authority to

change time zone boundaries to the new agency. On October 21, 1968, in response to a petition from the Governor of North Dakota and after notice and comment, the Department of Transportation placed 14 counties lying south and west of the Missouri River (including Oliver County) in the mountain time zone. The change was made to accommodate the historical pattern of time observed in North Dakota.

Currently, the State is in two time zones, with approximately three-quarters observing central time and one-quarter observing mountain time. The current time zone boundary is unusual because it splits four counties and runs down the middle of various bodies of water. In addition, the legal description of the boundary is extremely technical, and difficult for non-experts to understand.

**Request by Commissioners**

A formal resolution from the Board of Commissioners of Oliver County was received by DOT on September 9, 1992, requesting that Oliver County be moved from the mountain time zone to the central time zone. Oliver County is adjacent to the central time zone on the east and on part of its north and south boundaries.

The resolution stated that the requested change, if made, would serve the "convenience of commerce." In its submission, the county representative stated that the City of Center is the only incorporated city in Oliver County. Virtually all the supplies for businesses in the city of Center and Oliver County are shipped from the Bismarck-Mandan area. The Bismarck-Mandan area, located thirty-five miles from the city of Center, operates on central time. It stated that virtually all television and radio broadcasts come from Bismarck, the metropolitan trade center for the area. Also, the Bismarck Tribune is the daily newspaper that serves the county.

According to the submission, Oliver County has no regular passenger travel services. Residents normally must travel to Bismarck for bus, rail, or passenger airline services (Bismarck International Airport). Also, residents of the area regularly travel to Bismarck-Mandan for other servcies such as health care and recreational activities. As evidence of this fact, the highway linking the county to the Bismarck-Mandan location was recently upgraded.

In terms of employment and commuting patterns, the submission stated that the majority of residents are employed in the coal energy industry. The Commissioners noted that there is one major coal mine, BNI Coal, and one power plant facility, Minnkota Power, within the county and that the majority of residents work at these facilities. Both BNI and Minnkota have their headquarters located in the central time zone. In addition, a few of the residents of Oliver County commute to the Bismarck-Mandan area for employment.

The submission stated that although the coal industry is the prime basis of the area economy, there is also a considerable agricultural industry. Both the agricultural and coal industry rely heavily on supplies from the Bismarck-Mandan market area.

The County Commission put the question of whether to change the time zone on the ballot in its June 12, 1990, primary election. The results of that election indicated that 675 favored changing to central time and 295 opposed the change.

**The Proposal**

Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce."

Under DOT procedures to change a time zone boundary, the Department will generally begin a rulemaking proceeding if the highest elected officials in the area make a *prima facie* case for the proposed change. DOT has determined that the Resolution and supporting information submitted by the petitioners make a *prima facie* case, which warrants opening a proceeding to determine whether the change should be made. Consequently, in this notice of proposed rulemaking, DOT is proposing to make the requested change and is inviting public comment.

Although the Olver County Commission has submitted sufficient information to begin the rulemaking process, the actual decision as to whether to make the change will be based upon information received at the hearing or submitted in writing to the Office of the Secretary's docket. Persons supporting or opposing the change should not assume that the change will be made merely because DOT is making the proposal. Our decision will be made on the basis of information developed during the rulemaking proceeding. The proposed change would have no impact on the observance of daylight saving time. Clocks would still be moved forward or back an hour each spring and fall regardless of the final decision in this case.

**Regulatory Analyses and Notices**

**Executive Order 12291 and DOT Regulatory Policies and Procedures**

This proposed rule has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. Furthermore, it is not a significant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 111034, because of its highly localized impact. The economic impact would be so minimal that it does not warrant preparation of a reglatory evaluation.

**Executive Order 12612**

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrent the preparation of a Federalism Assessment. Although time observance is of great local interest, Congress has delegated the authority to the Secretary of Transportation to change time zone boundaries and to oversee the observance of uniform time.

**Executive Order 12630**

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed rulemaking does not pose the risk of a taking of constitutionally protected private property.

**Regulatory Flexibility Act**

I certify under the criteria of the Regulatory Flexibility Act that this proposal, if implemented, would not have a significant economic impact on a substantial number of small entities. The rulemaking would only affect one county and would not result in a large economic impact.

**Paperwork Reduction Act**

There are no reporting or recordkeeping requirements associated with this rulemaking.

**List of Subjects in 49 CFR Part 71:**

Time.

Accordingly, the Department proposes to amend 49 CFR part 71, *Standard Time Zone Boundaries*, to read as follows:

1. The authority citation for part 71 would continue to read:

**Authority:** Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended;

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secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; 49 CFR 1.50(a).

2. Paragraph (a) of § 71.7, *Boundary line between central and mountain zones*, would be amended to read:

**§ 71.7 Boundary line between central and mountain zones.**

(a) *Montana-North Dakota.* Beginning at the junction of the Montana-North Dakota boundary with the boundary of the United States and Canada southerly along the Montana-North Dakota boundary to the Missouri River; thence southerly and easterly along the middle of that river to the midpoint of the confluence of the Missouri and Yellowstone Rivers; thence southerly and easterly along the middle of the Yellowstone River to the north boundary of T. 150 N., R. 104 W.; thence east to the northwest corner of T. 150 N., R. 102 W.; thence south to the southwest corner of T. 149 N., R. 102 W.; thence east to the northwest corner of T. 148 N., R. 102 W.; thence south to the northwest corner of 147 N., R. 102 W.; thence east to the southwest corner of T. 148 N., R. 101 W., thence south to the middle of the Little Missouri; thence easterly and northerly along the middle of that river to the midpoint of its confluence with the Missouri River; thence southerly and easterly along the middle of the Missouri River to the midpoint of its confluence with the northern land boundary of Oliver County; thence west along the northern county line to the northwest boundary; thence south along the western county line to the southwest boundary; thence east along the southern county line to the northwest corner of T. 140 N., R. 83 W.; thence south to the southwest corner of T. 140 N., R. 83 W.; thence east to the southeast corner of T. 140 N., R. 82 W.; thence south to the middle of the Heart River; thence easterly and northerly along the middle of that river to the southern boundary of T. 139 N., R. 82 W.; thence east to the middle of the Heart River; thence southerly and easterly along the middle of that river to the midpoint of the confluence of the Heart and Missouri Rivers; thence southerly and easterly along the middle of the Missouri River to the northern boundary of T. 130 N., R. 80 W.; thence west to the northwest corner of T. 130 N., R. 80 W.; thence south to the North Dakota-South Dakota boundary; thence easterly along that boundary to the middle of the Missouri River.

* * * * *

Issued under authority delegated to me in 49 CFR 1.57(a)

Dated: June 19, 1992.

Arthur J. Rothkopf,

*General Counsel.*

[FR Doc. 92–15414 Filed 6–30–92; 8:45 am]

BILLING CODE 4910-62-M

# Notices

This section of contains docum proposed rules public. Notices investigations, decisions and authority, filing applications an organization an of documents

**DEPARTMEN**

**Office of the Food and Co International**

Draft Globa Declaration p and Agricultu World Health International (ICN). Opport both documer comments.

**AGENCY:** Offic Secretary for Services, USD Secretary for

**ACTION:** Notic

**SUMMARY:** Th Agriculture (U of Health and announce the Global Plan o Declaration p and Agricultu the World He Written publi documents is

**DATES:** To be written comm no later than

**FOR FURTHER** For copies of write to Floy Service (USD Center Drive, phone (703) 3 should be sen

**SUPPLEMENTA** International (ICN) will be December 19 by the Food a Organization (FAO) and th Organization nations are e delegations, organizations

# Notices

Federal Register
Vol. 57, No. 127
Wednesday, July 1, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Assistant Secretary for Food and Consumer Services; International Conference on Nutrition

Draft Global Plan of Action and draft Declaration prepared jointly by the Food and Agriculture Organization and the World Health Organization for the International Conference on Nutrition (ICN). Opportunity to request copies of both documents and to provide written comments.

**AGENCY:** Office of the Assistant Secretary for Food and Consumer Services, USDA, Office of the Assistant Secretary for Health, DHHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Agriculture (USDA) and the Department of Health and Human Services (DHHS) announce the availability of (1) A draft Global Plan of Action and (2) a draft Declaration prepared jointly by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Written public comment on both documents is invited by July 24, 1992.

**DATES:** To be assured of consideration, written comments should be postmarked no later than July 17, 1992.

**FOR FURTHER INFORMATION CONTACT:** For copies of both draft documents, write to Floyd Miles, Food and Nutrition Service (USDA), room 208, 3101 Park Center Drive, Alexandria, VA 22302, or phone (703) 305–2133. Written comments should be sent to same.

**SUPPLEMENTARY INFORMATION:** The International Conference on Nutrition (ICN) will be held in Rome, Italy, in December 1992. It is jointly sponsored by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO). As many as 150 nations are expected to send delegations, and many nongovernment organizations and private business groups are also likely to participate. The Conference will look critically at the problems of hunger, malnutrition, and diet-related diseases in both developing and developed nations and will also examine ways in which to foster added international cooperation in the fields of nutrition and food safety and quality.

The countries participating in the December Conference have each produced country papers in line with the principal background document for the Conference—"An Assessment and Analysis of Trends and Current Problems in Nutrition." These papers were prepared following an outline produced by the joint FAO/WHO Secretariat for the ICN.

This notice is not published pursuant to the Administrative Procedures Act.

Dated: June 24, 1992.

**Ann Chadwick,**

*Acting Assistant Secretary for Food and Consumer Services U.S. Department of Agriculture.*

[FR Doc. 92–15439 Filed 6–30–92; 8:45 am]

BILLING CODE 3410-32-M

## Federal Grain Inspection Service

### Request for Comments on the Applicants for Designation in the Geographic Area Currently Assigned to the Cairo (IL) Agency

**AGENCY:** Federal Grain Inspection Service (FGIS).

**ACTION:** Notice.

**SUMMARY:** FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the Geographic area currently assigned to the Cairo Grain Inspection Agency, Inc. (Cairo).

**DATES:** Comments must be postmarked, sent by telecopier (FAX), or electronic mail on or before July 31, 1992.

**ADDRESSES:** Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send responses to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202–720–8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the May 1, 1992, **Federal Register** (57 FR 18863), FGIS asked persons interested in providing official services in the Cairo geographic area to submit and application for designation. Applications were to be postmarked by June 1, 1992. Cairo and the Missouri Department of Agriculture (Missouri), the only applicants, applied for designation to serve the entire area currently assigned to Cairo.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 19, 1992.

**Neil S. Porter,**

*Acting Director, Compliance Division.*

[FR Doc. 92–15288 Filed 6–30–92; 8:45 am]

BILLING CODE 3410-EN-M

### Designation of the Eastern Iowa (IA) Agency

**AGENCY:** Federal Grain Inspection Service (FGIS).

**ACTION:** Notice.

**SUMMARY:** FGIS announces the designation of Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa), to provide official inspection services under the United States Grain Standards Act, as amended (Act).

**EFFECTIVE DATE:** August 1, 1992.

**ADDRESSES:** Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202–720–8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the February 3, 1992, **Federal Register** (57 FR 3986), FGIS announced that the designation of Eastern Iowa ends on July 31, 1992, and asked persons interested in providing official services within the specified geographic area to submit an application for designation. Applications were to be postmarked by March 4, 1992.

There were two applicants: Eastern Iowa and Kankakee Grain Inspection, Inc. (Kankakee). Eastern Iowa applied for the entire geographic area currently assigned to it, except for: Leland Farmer's Company, located in Leland, Lasalle County, Illinois (located inside Kankakee's area). Kankakee, a currently designated agency, applied for Leland Farmer's Company, located in Leland, Lasalle County, Illinois. Eastern Iowa and Kankakee are contiguous agencies.

FGIS named and requested comments on the applicants for designation in the April 1, 1992, **Federal Register** (57 FR 11062). Comments were to be postmarked by May 18, 1992. FGIS received no comments by the deadline.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Eastern Iowa and Kankakee are able to provide official services in the geographic areas for which they applied.

Effective August 1, 1992, and ending July 31, 1995, Eastern Iowa is designated to provide official inspection services in the geographic area specified above.

Effective August 1, 1992, and ending January 31, 1994, Kankakee Grain Inspection, Inc., is designated to provide official inspection services at Leland Farmer's Company, located in Leland, Lasalle County, Illinois, in addition to the area they are already designated to serve.

Interested persons may obtain official services by contacting Eastern Iowa at 319–322–7140, and Kankakee at 815–932–2851.

**Authority:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 19, 1992.

**Neil S. Porter,**

*Acting Director, Compliance Division.*

[FR Doc. 92–15270 Filed 6–30–92; 8:45 am]

BILLING CODE 3410–EN–M

## Request for Applications From Persons Interested in Designation to Provide Official Services in the Geographic Areas Presently Assigned to the Alva (OK) and Schaal (IA) Agencies

**AGENCY:** Federal Grain Inspection Service (FGIS).

**ACTION:** Notice.

**SUMMARY:** The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Thomas Oller dba Alva Grain Inspection Department (Alva), and Lewis D. Schaal dba D.R. Schaal Agency (Schaal), will end December 31, 1992, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

**DATES:** Applications must be postmarked or sent by telecopier (FAX) on or before July 31, 1992.

**ADDRESSES:** Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454, Telecopier (FAX) users may send their application to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202–720–8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Alva, headquartered in Alva, Oklahoma, and Schaal, headquartered in Belmond, Iowa, to provide official grain inspection services under the Act on January 1, 1989.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designations of Alva and Schaal end on December 31, 1992.

The geographic area presently assigned to Alva, in the State of Oklahoma, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Alfalfa, Beckham, Caddo, Custer, Dewey, Ellis, Greer, Harper, Kiowa, Major, Roger Mills, Washita, Woods, and Woodward Counties.

The geographic area presently assigned to Schaal, in the State of Iowa, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Kossuth County line from U.S.Route 169; the northern Winnebago, Worth, and Mitchell County lines;

Bounded on the East by the eastern Mitchell County line; the eastern Floyd County line south to B60; B60 west to T64; T64 south to State Route 188; State Route 188 south to C33;

Bounded on the South by C33 west to T47; T47 north to C23; C23 west to S56; S56 south to C25; C25 west to U.S. Route 65; U.S.Route 65 south to State Route 3; State Route 3 west to S41; S41 south to C55; C55 west to Interstate 35; Interstate 35 southwest to the southern Wright County line; the southern Wright County line west to U.S. Route 69; U.S. Route 69 to C54; C54 west to State Route 17; and

Bounded on the West by State Route 17 north to the southern Kossuth County line; the Kossuth County line west to U.S. Route 169; U.S.Route 169 north to the northern Kossuth County line.

The following location, outside of the above contiguous geographic area, is part of this geographic area assignment: Gold Eagle Co-op, Eagle Grove, Wright County (located inside A.V. Tischer and Son, Inc.'s area).

Exceptions to Schaal's assigned geographic area are the following locations inside Schaal's area which have been and will continue to be

serviced by the following official agencies:

1. Central Iowa Grain Inspection Service, Inc.: Farmers Co-op Elevator Company, Chapin, Franklin County; Hampton Farmers Co-op Company, Hampton, Franklin County; and Farmers Community Co-op, Inc., Rockwell, Cerro Gordo County.

2. A.V. Tischer and Son, Inc.: Cargill, Inc., Algona, Kossuth County; Big Six Elevator, Burt, Kossuth County; Gold-Eagle, Goldfield, Wright County; and Farmers Co-op Elevator, Holmes, Wright County.

Interested persons, including Alva and Schaal, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning January 1, 1993, and ending December 31, 1995. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications for other available information will be considered in determining which applicant will be designated.

**Authority:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 19, 1992.

**Neil S. Porter,**

*Acting Director, Compliance Division.*

[FR Doc. 92–15269 Filed 6–30–92; 8:45 am]

BILLING CODE 3410–EN–M

## Forest Service

### Environmental Impact Statement for Oil and Gas Leasing on Lands Administered by the Ashley and Uinta National Forests; Duchesne, Uinta, and Wasatch Counties, Utah

**AGENCY:** USDA, Forest Service is the lead agency. USDI, Bureau of Land Management is a cooperating agency.

**ACTION:** Notice of intent to prepare environmental impact statement (EIS).

**SUMMARY:** The Forest Service, along with the Bureau of Land Management as a cooperating agency, will prepare an environmental impact statement for oil and gas leasing on lands administered by the Ashley and Uinta National Forests. The EIS will be tiered to the Forests' current Land and Resource Management Plans and associated Final Environmental Impact Statements.

**DATES:** Comments concerning the scope of the analysis should be received in writing by August 10, 1992.

**ADDRESSES:** Send written comments to Cynthia Swanson, Uinta National Forest, P.O. Box 1428, Provo, UT 84601.

**FOR FURTHER INFORMATION CONTACT:** Gordon Reid, 8230 Federal Building, 125 South State St., Salt Lake City, UT 84138. Telephone number (801) 524–5030.

**SUPPLEMENTARY INFORMATION:** The Forest Service will prepare an EIS for oil and gas leasing on the south unit of the Duchesne Ranger District of the Ashley National Forest, and portions of the Spanish Fork and Heber Ranger Districts of the Uinta National Forest. The preparation of an EIS is needed to comply with the National Environmental Policy Act (NEPA) in making the decision as to which lands are administratively available for leasing and the leasing decision for specific lands. With the passage of the Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA), the Forest Service was given the authority to object or not object to leasing of National Forest System lands and to prescribe lease stipulations deemed necessary to mitigate potential resource impacts and reduce conflicts with other National Forest uses. The final decision and issuance of leases is the authority of the Bureau of Land Management.

The proposed action is to offer leases for sale for all administratively available lands with stipulations needed to minimize impacts on other resource values or uses. The proposed action would apply lease stipulations as identified from the leasing matrices in the Forest Plans for the Ashley and Uinta National Forests.

The decisions to be made only involve federal minerals within the National Forest administrative boundary. Reasonably foreseeable oil and gas activities within the area will provide the basis for the evaluation of environmental consequences. However, approval of any subsequent activities, such as a proposal to drill a well, will require additional NEPA analysis at the time they are actually proposed.

Issues to be addressed in the EIS will be determined through public scoping. For this purpose, the Forests are requesting written comments and will hold open-house meetings in Duchesne, and Provo, Utah. The meeting in Provo will be held on July 21 in rooms L700 and L800 of the Utah County Administration Building, 100 North Center Street, from 5 to 9 p.m. The meeting in Duchesne will be held on July 22 in the main conference room of the Central Utah Water Conservancy District Building, 734 North Center Street, from 6 to 9 p.m.

Some of the preliminary issues identified include the effects of oil and gas leasing and potential subsequent activities on:

(1) Key wildlife habitats,

(2) Wetlands and riparian areas,

(3) Developed recreation sites,

(4) Sensitive visual resources,

(5) Sensitive soils and geologic hazards, and

(6) Economic values of intermingled private/state minerals.

Peter Karp, Forest Supervisor of the Uinta National Forest, and Duane Tucker, Forest Supervisor of the Ashley National Forest, are the responsible officials. The Bureau of Land Management has been identified as a cooperating agency. The Forest Service anticipates release of the Draft EIS for public comment in December, 1992, and completion of the Final EIS by June, 1993.

The comment period on the draft EIS will be 45 days from the date the notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: June 16, 1992.

**Peter W. Karp,**

*Forest Supervisor, Uinta National Forest.*

[FR Doc. 92-15370 Filed 6-30-92; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF AGRICULTURE

### Human Nutrition Information Service

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Assistant Secretary for Health

### National Nutrition Monitoring Advisory Council; Meeting

**SUMMARY:** The National Nutrition Monitoring Advisory Council will hold its second meeting on July 15, 1992, 1 p.m. to 5 p.m. and July 16, 1992, 8:30 a.m. to 1 p.m. in the U.S. Department of Health and Human Service's Hubert H. Humphrey Building, Conference Room 703A, located at 200 Independence Avenue, SW., Washington, DC 20201. The meeting is open to the public.

**FOR FURTHER INFORMATION CONTACT:** Alanna J. Moshfegh, Co-Executive Secretary to the Council from USDA, Human Nutrition Information Service, U.S. Department of Agriculture, 6505 Belcrest Road, room 366, Hyattsville, MD 20782, (301) 436-8457; or Linda Meyers, Ph.D., Co-Executive Secretary to the Council from HHS, Public Health Service, Office of Disease Prevention and Health Promotion, room 2132, Switzer Building, 330 C Street SW., Washington, DC 20201, (202) 472-5307.

**SUPPLEMENTARY INFORMATION:** The responsibilities of the National Nutrition Monitoring Advisory Council are to evaluate the scientific and technical quality of the ten-year comprehensive plan and the effectiveness of the coordinated National Nutrition Monitoring and Related Research Program and to provide guidance to the Secretaries of USDA and HHS. This Council is also required by Public Law 101-445 to prepare annual reports to the Secretaries of both USDA and HHS, which include recommendations for improvement of the Program.

The first meeting of the Advisory Council was held on February 26 and 27, 1992. During this meeting, representatives from various Federal agencies provided the Council with an overview of the nutrition monitoring and related research activities across the Program. The development of the Ten-year Comprehensive Plan for the National Nutrition Monitoring and Related Research Program was also discussed.

The Council meeting agenda will include nutrition monitoring presentations from congressional and General Accounting Office staff. The Council will also discuss areas for focus in the next year and will begin to develop its annual report to the Secretaries. The public may file statements with the Council before or after the meeting by addressing them to either of the contact persons listed above.

Done at Washington, DC this 24th of June, 1992.

**David A. Rust,**

*Associate Administrator, Human Nutrition Information Service, U.S. Department of Agriculture.*

**James A. Harrell,**

*Deputy Director, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services.*

[FR Doc. 92-15358 Filed 6-30-92; 8:45 am]

BILLING CODE 3410-KE-M

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Definition and Concepts of Cotton Marketing Expenses as Used in Reporting the Price Received by Farmers for Cotton

The National Agricultural Statistics Service (NASS) is proposing to define the price received by farmers for cotton as an f.o.b. warehouse price for the 1992 crop year and succeeding crop years. The f.o.b. warehouse price includes the cost of transporting cotton to the warehouse and warehouse receiving charges but excludes other warehouse charges, such as compression and load out. Other marketing expenses such as storage or interest incurred by producers after delivery to the warehouse will be included in the price reported to NASS, only if producers retain ownership of cotton after it is delivered to the warehouse.

Different cotton marketing rules and practices currently exist among cotton exchanges and cotton markets, with certain marketing expenses borne by the buyer or by the producer, depending upon the marketing region. The previous definition of the price received by farmers for cotton was not determined at a specific point in the marketing process. The average cotton price received by farmers is not expected to change materially from the price NASS would have obtained using the previous definition.

This proposed method is consistent with NASS's grain price estimating program. Compression and loadout charges, which have historically been paid by the buyer, will not be included in the price of cotton reported to NASS. This procedure is also consistent with spot market prices reported by the Agricultural Marketing Service which do not include compression and loadout charges. Any direct payments by the Government to cotton producers (i.e., deficiency payments and loan deficiency payments (LDP), the so-called "POP" payments) and gains from repaying loans at less than the loan rate will be excluded from the price reported to NASS.

Comments on this proposal should be sent to Robert W. Milton, Chief, Economic Statistics Branch, NASS/USDA, room 5912, South Building, Washington, DC 20250; telephone: (202) 720-3570 within 30 days of this notice.

(7 U.S.C. 2204)

Done in Washington, DC, this 25th day of June 1992.

**Donald M. Bay,**

*Acting Administrator.*

[FR Doc. 92-15436 Filed 6-30-92; 8:45 am]

BILLING CODE 3410-20-M

### Soil Conservation Service

### Wahoo Creek Watershed, NE

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Wahoo Creek Watershed, Saunders County, Nebraska.

**FOR FURTHER INFORMATION CONTACT:** Ronald E. Moreland, State Conservationist, Soil Conservation Service, 100 Centennial Mall North, Federal Building, room 152, Lincoln, NE 68508-3866, telephone (402) 437-5300.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally-assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Ronald E. Moreland, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.



The project concerns are as follows: Flooding has been the most significant concern in addition to sedimentation and scour, water quality, fish habitat, wildlife, wildlife habitat, air quality, wetlands, cultural resources, windbreaks, woodlands, erosion, deterioration of the resource base, transportation, endangered species, groundwater, economic conditions, land use, and development of water-base recreation. Alternatives under consideration to address these concerns include systems for conservation land treatment, nonstructural measures, and earth dams.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting will be held at (10 a.m., Thursday, July 16, 1992 in the Lower Platte North Natural Resources District Board Room, Commercial Park Road, Wahoo, Nebraska to determine the scope of the evaluation of the proposed action. Further information on the proposed action, or the scoping meeting may be obtained from Ronald E. Moreland, State Conservationist, 100 Centennial Mall North, Federal Building, room 1652, Lincoln, Nebraska 68508-3866, or telephone (402) 437-5300.

Dated: June 4, 1992.

**Ronald E. Moreland,**

*Acting State Conservationist.*

[FR Doc. 92-15407 Filed 6-30-92; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 19-92]**

### Foreign-Trade Zone 75—Phoenix, AZ; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Phoenix, Arizona, grantee of FTZ 75, requesting authority to expand and relocate its foreign-trade zone in Phoenix, Arizona. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 22, 1992.

FTZ 75 was approved on March 25, 1982 (Board Order 185, 47 FR 14931, 4/7/82). The general-purpose zone currently involves a site (73 acres) within the Freeport Center industrial park.

The City is now requesting authority to relocate its general-purpose zone to a site (375 acres) within the 550-acre Phoenix Sky Harbor Center at Squaw Peak Freeway and I-10, Phoenix, adjacent to Sky Harbor International Airport. The facility is a mixed-use commercial development owned by the City of Phoenix.

No manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790-50808, 10-8-91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 31, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 14, 1992).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 230 N. First Avenue, room 3412, Phoenix, Arizona 85025.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 24, 1992.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 92-15416 Filed 6-30-92; 8:45 am]

BILLING CODE 3510-DS-M

**[FTZ Docket 36-91, Order No. 584]**

### Approval for Certain Manufacturing Activity (Flexible Pipe) Foreign-Trade Zone 65, Panama City, FL

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a-81u) (The Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of the request submitted by the Panama City Port Authority, grantee of Foreign-Trade Zone 65, filed with the Foreign-Trade Zones Board (the Board) on June 14, 1991, on behalf of Wellstream Corporation, for authority to use zone procedures to manufacture flexible pipe within FTZ #65, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval were given subject to a restriction requiring that privileged foreign status (19 CFR 146.41) shall be elected on foreign steel mill products upon admission to the general-purpose zone, if the same items are then being produced by a domestic plant, approves the application subject to the foregoing restriction.

This authority is granted subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790-50808, 10-8-91), including section 400.28.

Signed at Washington, DC, this 23rd day of June, 1992, pursuant to Order of the Board.

**Alan M. Dunn,**

*Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternates Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.**

*Executive Secretary.*

[FR Doc. 92-15417 Filed 6-30-92; 8:45 am]

BILLING CODE 3510-DS-M

**[Docket 20-92]**

### Foreign-Trade Zone 119—Minneapolis-St. Paul, MN; Application for Subzone; American Feeds & Livestock Company, Inc., Animal Feed Plant, Howard Lake, MN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Metropolitan Area Foreign-Trade Zone Commission, grantee of FTZ 119, requesting special-purpose subzone status for export activity at the animal feed manufacturing plant of American Feeds & Livestock Company, Inc., (AFLC), located in Howard Lake, Minnesota. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 23, 1992.

The AFLC plant (8.5 acres/50 employees) is located at 305 13th Avenue in Howard Lake (Wright County), some 40 miles west of Minneapolis. The facility produces milk-based animal feeds by blending dried milk, whey, caseins, soy proteins, animal fats, lecithin, and vegetable oils, some of which are sourced abroad.

The company is requesting the use of zone procedures so that it can use foreign, ex-quota dairy products to produce milk replacer-type animal feed for export. Zone procedures for export manufacturing would also exempt the firm from quota requirements and

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Customs duty payments on the foreign dairy products (HTSUS Headings 0401–0405) and other foreign-sourced ingredients, such as casein/caseinate, wheat protein isolate, and coconut oil. Zone procedures would not be used to manufacture products for sale in the domestic market. The application indicates that subzone status would help improve AFLC's international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 31, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 14, 1992).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 108 Federal Building, 110 S. Fourth Street, Minneapolis, MN 55401

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street and Constitution Avenue, NW., Washington, DC 20230

Dated: June 23, 1992.

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 92–15420 Filed 6–30–92; 8:45 am]

BILLING CODE 3510–DS–M

## International Trade Administration

[A–401–601]

## Brass Sheet and Strip From Sweden; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On January 23, 1992, the Department of Commerce published the preliminary results of its 1990–91 administrative review of the antidumping duty order on brass sheet and strip from Sweden. The review covers one exporter during the period from March 1, 1990 through February 28, 1991.

The Department gave interested parties the opportunity to comment on the preliminary results. Based on the analysis of the comments received, the final results of this review are unchanged from the preliminary results, which were based on the best information available.

**EFFECTIVE DATE:** July 1, 1992.

**FOR INFORMATION CONTACT:** Stephen Jacques, (202) 377–0180, or Linda Pasden, (202) 377–3793, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Background

On January 23, 1992, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from Sweden (57 FR 2705). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

### Scope of the Review

Imports covered by this review are shipments of brass sheet and strip, other than leaded brass and tinned brass sheet and strip, from Sweden. The chemical composition of the products under review is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C200000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this review. The merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers sales and entries of one manufacturer/exporter, Outokumpu Copper Rolled Products AB (OAB), and its related U.S. company, Outokumpu Copper U.S.A. (OCUSA), and the period from March 1, 1990 through February 28, 1991.

### Analysis of Comments Received

The Department gave interested parties the opportunity to comment on the preliminary results. At the request of the respondent, a hearing was held on March 9, 1992. Case and rebuttal briefs were submitted by petitioners and respondent.

### Interested Party Comments

*Comment 1:* OAB disagrees with the Department's decision in the preliminary results to apply best information available (BIA) to the U.S. entries during the period of review because the Department found unreported U.S. and home market sales at verification. OAB contends that the Department may only use BIA when: (1) Commerce is unable to verify the accuracy of data submitted by the respondent or (2) a party or any other person refuses or is unable to produce the information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation. OAB claims these statutory criteria for the use of BIA do not exist in this case because OAB has fully cooperated and did not intentionally withhold data from the Department. OAB contends that the Department's rejection of its home mrket sales data and the use of BIA violates precedent and is an abuse of discretion. OAB states its failure to report certain home market sales was inadvertent and argues they submitted the data in question to the Department representatives early in the verification but the Department arbitrarily rejected the data. OAB further contends that the Department must conduct a "thorough investigation" and, whenever possible, base its determination on the respondent's actual sales and cost data (see Oscillating Fans and Ceiling Fans From the People's Republic of China, 56 FR 55271, 55275 (October 25, 1991)). Therefore, the Department's use of BIA in this proceeding was improper.

Petitioners contend that OAB misinterprets the statute and regulations concerning the use of BIA. Petitioners disagree with OAB's contention that the Department may only use BIA when a respondent is uncooperative or intentionally withholds data. Petitioners argue the Department should continue to apply a rate based on BIA in assessing dumping margins against OAB.

*Department's Position:* We disagree with respondent. Respondent's claim that the Department had no basis for using BIA in this case cannot be supported by the statute, the regulation and Departmental practice. Section 776(c) of the Tariff Act requires the Department to rely upon the best information otherwise available to establish a respondent's dumping margins when, *inter alia*, the agency does not receive timely or complete factual information. Further, the plain language of the implementing regulation similarly provides in relevant part that "[t]the Secretary will use the best



information available whenever the Secretary: (1) Does not receive a complete, accurate, and timely response to the Secretary's request for factual information * * *" 10 CFR 353.37(a) (1991). Also, the Secretary will use best information available "[w]hen a company refused to cooperate with the Department or otherwise significantly impeded these proceedings, we have used as BIA the * * * highest of the rates * * * in the less than fair value investigation (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al., 56 FR 31705 (July 11, 1991)).

Based on the information obtained at verification in Sweden and in the United States, the Department determined that there were sufficient and compelling reasons to reject OAB's response as inadequate and incomplete. Specifically, the Department concluded that (1) OAB failed to report numerous entries to the United States of subject merchandise during the period of review; (2) the Department could not verify total quantity and value of sales in the home market or to the United States; (3) OAB provided inaccurate and conflicting explanations of its sales to a large U.S. customer; and (4) OAB did not report a significant number of home market sales that could have been used in the foreign market value analysis (see Home Market Verification Report, December 4, 1991, pp. 2–3; U.S. Verification Report, December 18, 1991, pg. 3).

The purpose of verification is to establish the accuracy and completeness of a response, not to permit additional information to be submitted which the Department has not had sufficient time to analyze and on which the other interested parties have not been provided an opportunity to comment. Moreover, OAB repeatedly revised its home market sales data base before verification, and despite these revisions, OAB still had not reported all ot its home market sales (see Letters from Winthrop, Stimson, June 30, 1991, August 30, 1991, September 5, 1991, September 16, 1991, September 25, 1991, September 26, 1991 and Memorandum to Joseph A. Spetrini from Holly Kuga, January 2, 1992).

Respondent's failure to submit the requested data constituted *"noncompliance with an information request"* within the meaning of *Olympic Adhesives, Inc.* v. *United States*, 899 F.2d 1565, 1573 (Fed. Cir. 1990), which noncompliance justifies, indeed, dictates the use of BIA here. Further, contrary to respondent's contention, there is no "intent" component to the Department's use of BIA. That is, despite respondent's claim that it did not intentionally withhold information from the Department, the fact remains that the incomplete and inadequate responses rendered the Department unable to determine accurately the extent to which OAB may have sold its merchandise in the United States at prices less than foreign market value (FMV).

The Department agrees that actual sales and cost data are always preferable, but in this instance we were simply unable to make our determination on the basis of actual data due to OAB's failure to timely, completely, and adequately provide such data. Therefore, the Department's use of BIA was mandated in this case by the governing statute and regulation.

*Comment 2:* OAB contends that the unreported home market sales from Department 74 were at a different level of trade and constituted an insignificant portion of home market sales. OAB claims that the sales from the "small lot" mill are insignificant in number and therefore irrelevant to the final margin. Consequently, OAB urges the Department to revoke the use of BIA and use respondent's home market sales data for the final results.

*Department's Position:* We disagree with respondent. OAB's argument that these unreported sales are at a different level of trade is untimely and not substantiated in the record. When the Department discovered these Department 74 sales at verification, OAB never claimed at that time that these sales were at a different level of trade. However, even if OAB had claimed these sales were at a different level of trade, OAB was still obligated to report these sales. OAB stated that the only difference between the products whose sales were reported and the unreported sales is the fact that the unreported sales were produced on the "Small Lot Mill" which handles the production of small quantity strip sales in the home market (see Home Market Verification Report, December 4, 1991, pp. 3).

The Department also disagrees with OAB's contention that the sales from the "small lot" mill are insignificant in number and therefore irrelevant to the final margin. The Department noted that "[t]these unreported sales were produced on OAB's small lot mill and were found to be such or similar merchandise that could have been used in our calculation of FMW" (see Memorandum to Joseph A. Spetrini from Holly Kuga, January 2, 1992, pg. 2). At verification, the Department traced home market invoices for November 1990 to the response and found a significant number of unreported home market sales from the small lot mill. We selected another month of invoices (June 1990) and again found unreported sales (see Home Market Verification Report, December 4, 1991, pg. 3). This gave the Department reasonable grounds to question the validity of the quantity and values as reported in the response. If these small lot mill sales had been reported, these sales could have been matched to U.S. sales in the calculation of dumping margins. These sales, therefore, are clearly not "irrelevant."

In any event, as stated in the Department's position to Comment 1, OAB's failure to report all home market sales was only one of the reasons which led the Department to conclude that it could not rely on the accuracy of OAB's data and must, instead, apply the best information available.

*Comment 3:* Respondent contends that the Department reached the wrong conclusions after discovering alleged unreported sales during the U.S. verification. OAB claims that the Department engaged in what it characterizes as sheer speculation that the alleged unreported sales discovered at verification are indicative that a large number of U.S. sales were not reported. Furthermore, respondent claims the alleged unreported sales are insignificant in number when compared to total sales for the period. OAB asks the Department to permit respondent to report these sales in a later review and not penalize OAB in the current review.

*Department's Position:* We disagree with respondent. The Department did not speculate that there were "an infinite number of unreported sales," as respondent claims. Instead, the Department noted only that "[W]e also found numerous unreported U.S. sales * * * [M]ore importantly, we do not have any way of measuring the total extent of the omission of U.S. sales from the response" (see Memorandum to Joseph A. Spetrini from Holly Kuga, January 2, 1992, pg. 2). Because of these omissions, we were unable to verify total quantity and value of U.S. sales. The Department's inability to verify quantity and value of U.S. sales prevented us from calculating accurate margins on these sales. Further, in response to OAB's suggestion that we examine these unreported sales in a future review, these sales if reported, would have been properly examined in this review and not a future review. Therefore, use of BIA for respondent's U.S. sales was mandated.

*Comment 4:* OAB asserts that it would be arbitrary for the Department to reject OAB's U.S. sales data simply because these sales may have been reported on the basis of the U.S. subsidiary's invoice date as the date of sale. OAB claims that there is precedent in other cases for accepting the invoice date as the date of sale. Respondent claims the Department's questionnaire for this review recognizes that various dates, including the invoice date, may be appropriate for determining which sales must be reported during a review. OAB urges the Department to allow use of the invoice date for this review.

Petitioners argue that OAB failed to comply with the questionnaire and submit all sales data as requested by the Department. They ask the Department to reject respondent's U.S. sales data base for the final results.

*Department's Position:* We disagree with respondent. The purpose of the review is to establish United States price and FMV for each entry during the period (section 751(a)(2) of the Tariff Act). OAB was specifically requested in the Department's questionnaire to provide "the total quantity and value of such or similar merchandise that you sold to the United States during the period of review, as well as all U.S. entries during the period of review which were pursuant to sales made prior to the period of review." However, OAB only reported those sales that were invoiced by the related subsidiary after importation and not all the sales of the merchandise that entered during the period. OAB claimed, and we confirmed, that these sales to the United States were purchase price transactions. As a result, OAB should have reported all entries of the subject merchandise.

OAB's assertion that U.S. sales should be reported on the basis of invoice date by its U.S. subsidiary is appropriate in an exporter's sales price transaction but not in a purchase price transaction. Furthermore, by invoicing after importation, OCUSA would not have included in their U.S. sales database those sales that entered during the period, and those that may have been invoiced after the period. If those sales had been reported, we would have used them in the calculation of dumping margins.

*Comment 5:* OAB contends that there were no "misrepresentations concerning sales" to a U.S. customer as was stated in the preliminary results of the review. OAB claims that it inadvertently failed to take into account changes in its relationship with a customer while preparing the questionnaire response. OAB asserts that the supplier/customer relationship concerning consignment sales was subject to adjustment due to the customer's financial problems. OAB claims that any alleged misrepresentations are harmless errors and cannot serve as a basis for rejecting OAB's U.S. sales data.

*Department's Position:* The Department disagrees that the misrepresentations are harmless errors because OAB's description of its sales is fundamental, as it would have provided the basis for the Department to determine whether the sales constituted purchase price or exporter's sales price transactions. Throughout verification in Sweden, OAB misrepresented the nature of these sales by claiming that certain of the sales were not reported in the response because the customer in question was having financial problems and the merchandise was not shipped to the customer but to an independent warehouse (see Home Market Verification Report, December 4, 1991, pg. 4). Only from documentation provided at the verification in the United States did the Department learn that these sales were subject to a closed-consignment arrangement beginning in 1989 (well before the questionnaire response was prepared), and that the terms of payment for some if not all of these sales changed after importation (see U.S. Verification Report, December 18, 1991, pp. 2–3). Under the closed-consignment arrangement, items are invoiced at the time they are withdrawn from warehouse, or at the end of the agreed period, whichever comes first. Based on OAB's description of these sales in the original questionnaire response, we intended to treat them as purchase price sales. As stated above, only after the Department reviewed certain documents provided at the U.S. verification and after we requested clarification of those documents were we alerted to the fact that the terms of payment may have changed for some, if not all, of the sales to the customer in question. Based on this new information, the Department now believes these sales may be more appropriately classified as exporter's sale price transactions as terms of sale were established after importation (see Memorandum to Joseph A. Spetrini from Holly Kuga, January 2, 1992, pg. 2). A change in the classification of these sales would have altered possible adjustments to the U.S. price and the FMVs used in calculating margins. Also, OCUSA did not report in the response certain storage expenses for these sales which were invoiced after the period of review (see U.S. Verification Report, December 18, 1991, pp. 2, 4–5). Due to the lack of information and the variations in explanations, the Department could not calculate a reliable margin and as a result, used BIA.

*Comment 6:* OAB alleges that the Department's verification procedures at the U.S. sales verification were seriously flawed. OAB claims that the verification was scheduled by the Department to last three days, but the Department representatives left the verification site at around noon of the second day. OAB contends that problems with the verification could have been resolved if the Department had remained at verification for the scheduled time and requested additional documents. OAB claims that the Department gave no indication at verification that the U.S. sales data base would be rejected. OAB urges the Department to reinstate respondent's data and to complete the verification.

Petitioners contend that the record provides a more than reasonable explanation of the U.S. verification by Department staff. Petitioners argue that when the Department determined, after spending one and a half days at verification, that it was not going to be able to verify the completeness of the U.S. sales data reported, and knew from its completed verification in Sweden that the home market sales data were also incomplete, the Department staff were justified in not prolonging the verification. Petitioners state that it was not incumbent upon the Department staff to inform OAB that it would reject its U.S. sales data altogether. Petitioners contend that the Department staff could not have informed OAB at that time, because such an ultimate decision would have to be approved by decision-makers at the Department.

*Department's Position:* We agree with petitioners. The Department's objective in the U.S. verification was to verify the accuracy and completeness of the response. We sent OAB a letter dated November 21, 1991, detailing the types of records and expenses the Department would examine during verification. The Department fulfilled its responsibility by thoroughly checking all the items listed in that letter.

The Department scheduled the U.S. verification from the morning of Monday, November 25 until noon on Wednesday, November 27, 1991. On Tuesday afternoon, November 26, the Department representatives and counsel for respondent agreed that it would not be necessary to extend the verification into the next morning because the Department had examined everything specified in the Department's pre-verification letter of November 21, 1991. At no time during verification did

counsel for respondent or a company representative indicate to the Department that there was additional information that could have been provided or that they wanted the verification to be prolonged for any reason (see Memo to File, March 13, 1992).

We did not inform OAB at verification that the Department would reject respondent's sales data. The Department staff knew during verification that OAB's U.S. sales data was inadequate and incomplete. However, only the decision-makers at the Department, after carefully reviewing the results of verification, could make the decision to reject some or all of OAB's response.

*Comment 7:* OAB contends that one reason the Department concluded that it was unable to verify the completeness of home market and U.S. sales was because respondent's in-house computer systems did not maintain and report data in a way desired by the Department. OAB asserts that it should not be penalized because the respondent did not manipulate its in-house data bases in anticipation of verification.

*Department's Position:* The Department disagrees with OAB. Respondent itself notes that it would "be a relatively simple matter for any creative respondent to establish an in-house computer program that precisely tracks sales lists prepared by a particular respondent for home market and U.S. reporting purposes" (see OAB's Case Brief, February 24, 1991, pg. 30).

At verification, the Department officials recognized that OAB did not maintain the type of records which would allow for the verification of the total quantity and value of the subject merchandise. However, despite the inadequacies of OAB's records, the Department worked with the data in the form presented by respondent. As a result, the Department traced home market invoices for November 1990 to the response and found a significant number of unreported home market sales. We selected another month of invoices (June 1990) and again found unreported sales. A similar trace was done for the sales to the United States and again we found unreported sales. Consequently, the Department had reasonable grounds to question the validity of the quantity and values as reported in the response. The Department noted in its report of the home market verification that OAB's ROFS computer system "is not updated when orders are changed and * * * [B]ecause the ROFS (computer) system is not accurate and complete, we were unable to verify total quantity and value of sales in the home market" (see Home Market Verification Report, pg. 3). In the U.S. verification, we found that "[W]e could not determine the total imports or sales for the period because OCUSA claimed that it was unable to modify the computer program * * *" (see U.S. Verification Report, pg. 3).

Thus, the issue is not whether the Department sought to require OAB to maintain its data in any prescribed fashion. Rather, it is whether there were means by which the Department could reasonably verify the accuracy and completeness of the information which OAB had certified as being accurate and complete. Because spot-tracing of invoices indicated that not all sales had been reported and this indication could not otherwise be refuted by OAB's records, the Department was left with no alternative but to resort to BIA in this case.

*Comment 8:* Petitioners contend that the Department should use petitioners' constructed value model as the best information rate, given OAB's data revisions and failure to submit complete and verifiable sales data.

Petitioners argue that if the Department does not use their constructed value model for calculation of BIA, then the Department should maintain the BIA rate established in the preliminary results of review. Petitioners allege OAB's data is so incomplete the Department should not use any of it for BIA. They note that the antidumping duty rates from the first three administrative reviews were not verified by the Department and, given the numerous errors and omissions found at verification, it should be seriously questioned whether the data from the previous reviews was accurate. Given this, petitioners claim the verified data from the original investigation provides the only reasonable BIA rate, should the Department not use petitioners' constructed value model.

OAB argues that if the Department decides to reject OAB's data, it should use as BIA OAB's margin from the most recent review. OAB notes that the investigation rate is based upon sales made by respondents approximately six years ago and, therefore, the use of the investigation BIA rate would be punitive. OAB claims that a BIA rate that is punitive is only appropriate when the respondent has not cooperated with the Department, which is not the case in this review. Instead, respondent contends the only reasonable BIA rate would be the rate from OAB's last administrative review.

*Department's Position:* We disagree with respondent. Because of our inability to verify total quantity and value of sales in either the U.S. market or the home market, OAB's failure to report all home market and U.S. sales, as well as the misrepresentations concerning certain U.S. sales, the Department cannot calculate accurate antidumping duties from information on the record. Therefore, the Department has no choice but to use BIA (see Department's Position, Comment 1).

The acronym "BIA" generally refers to the information the Department must use in lieu of a respondent's data to establish dumping margins when a respondent does not provide the Department with timely, complete or accurate information (section 776(b) of the Tariff Act; § 353.37(a) of the Department's regulations). The primary purpose of the BIA rule is to induce respondents to provide the Department with timely, complete and accurate factual information, so that the agency can achieve the fundamental purpose of the Tariff Act, namely, "determining current [dumping] margins as accurately as possible" (*Rhone Poulenc* v. *United States* 899 F.2d 1185, 1191 (Fed. Cir. 1990)). A secondary purpose is to ensure that the antidumping duties assessed are not less than the actual amounts might have been, had we received full and accurate information.

To induce a noncomplying respondent to provide the necessary response to a future information request, the Department must select an appropriate BIA rate to encourage future compliance. This selection of the appropriate BIA rate is done on a case-by-case basis (see Final Results of Antidumping Duty Administrative Review, Steel Jacks from Canada, 52 FR 32957 (Sept. 1, 1987)).

The Federal Circuit's decision in Rhone Poulenc indicates that, in accordance with the Tariff Act, the Department may draw a reasonable adverse presumption against a noncomplying respondent to achieve the purpose of the BIA rule (Rhone Poulenc, 899 F.2d at 1190–91). In drawing this adverse presumption or inference, the Department typically must select as BIA a dumping margin that is unfavorable to the noncomplying respondent. *Id.* Further, the margin selected by the Department may be the "highest prior margin," which may include the less-than-fair-value margin calculated for the respondent in the original investigation. *Id.*

Thus, the Rhone Poulenc court authorizes the Department to presume that the reason a particular respondent failed to submit complete, accurate, or timely data to the agency is that the withheld information would have

demonstrated that current dumping margins are higher than those already on the administrative record. Otherwise, the "[respondent], knowing the [best information] rule, would have produced *current* information showing the [dumping] margin to be less." *Id.* (emphasis in original).

A corollary to the reasonable adverse inference principle is that the Department's selection of BIA cannot reward a noncomplying respondent. (*Id.* at 1188 (quoting 52 FR at 33856)). Thus, the Department's selection of BIA is usually adverse to the noncomplying respondent, and it may be the highest prior margin ever calculated for that respondent in the entire administrative proceeding.

Finally, the Tariff Act does not require the Department to "equate 'best information' with 'most recent information' " (*id.* at 1190). Thus, respondent's argument that the 9.49 percent margin from the less-than-fair-value investigation is based upon information not recent enough is without merit.

Accordingly, the Department determined that using OAB's rate of 9.49 percent from the original investigation is more appropriate than petitioner's cost of production data as BIA because the original investigation rate is based on OAB's own experience, it was verified, and its use is consistent with the Department's practice.

*Comment 8:* OAB asserts that petitioners' case brief contained data concerning petitioners' constructed value model that was not previously submitted. Therefore, the Department should reject petitioners' case brief on the basis that it contains untimely and uncertified information.

*Department's Position:* We disagree with respondent. The Department has determined that petitioners' constructed value model is not new information that is untimely submitted. The data in question was calculated from information which was already submitted on the record. Petitioners merely manipulated previously submitted and certified data for inclusion in their case brief. Therefore, the Department will allow petitioners' brief to remain in the record but, as explained in the Department's Position to Comment 8, we have not relied on this information for purposes of the final results.

**Final Results of Review**

As a result of our analysis of the comments received, we determine that the following margin exists for OAB for the period March 1, 1990 through February 28, 1991:

| Manufacturer/exporter | Percent margin |
|---|---|
| Outokumpu Copper Rolled Products AB | 9.49 |

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all entries of the subject merchandise covered by this review. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will remain in effect until publication of the final results of the next administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for OAB will be 9.49 percent;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered by this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) The cash deposit rate for all other manufacturers or exporters will be 6.69 percent. This rate represents the highest rate for any firm with shipments in the most recent administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: June 19, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-15486 Filed 6-30-92; 8:45 am]

BILLING CODE 3510-DS-M

## Antidumping and Countervailing Duty Orders: Protests

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice of opportunity to notify U.S. Customs Service of interest in proceeding with unresolved protests involving antidumping and countervailing duty issues.

**SUMMARY:** The U.S. Customs Service (USCS) will be requesting parties that filed protests prior to January 1, 1992, involving antidumping and countervailing duty issues and have not yet received a decision or other communication from USCS, to notify USCS that the protestant still has an interest in proceeding with the protest.

**DATES:** Date for protesters to notify USCS will be indicated in USCS Federal Register notice.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Laxague, Office of Trade Operations, United States Customs Service, (202) 566-8652.

**SUPPLEMENTAL INFORMATION:** The International Trade Administration (ITA), in conjunction with the USCS, is completing review of all unresolved protests filed under section 514 and 520 (c) of the Tariff Act of 1930, as amended (19 U.S.C. 1514 and 1520 (c)), which involve antidumping and countervailing duty (AD/CVD) issues for which USCS has requested our recommendation. Please refer to the forthcoming Federal Register notice under Department of the Treasury/USCS for information on form and time limitations for notification.

We emphasize that this notice applies only to protests filed prior to January 1, 1992 which involve antidumping or countervailing duty issues.

Dated: June 17, 1992.

**Lisa B. Koteen,**

*Acting Chief Counsel for Import Administration*

Dated: June 24, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

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## Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration/ International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On November 13, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain small business telephone systems and subassemblies thereof from Taiwan. The review covers seven manufacturers/exporters of this merchandise to the United States, Sinoca Enterprises Co., Ltd. (Sinoca), Bitronic Telecoms Co., Ltd. (Bitronic), Auto Telecom Co., Ltd. (Auto Telecom), Taiwan International Standard Electronics, Ltd. (TAISEL), Taiwan Telecommunications Industry Co., Ltd. (Taiwan Telecom), Tecom Co., Ltd. (Tecom), and Magtron Co. (Magtron), and the period August 3, 1989, through November 30, 1990.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of comments received, the final results differ from the preliminary results of review. The margins are set forth under the Final Results of Review section.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Tom Futtner or Steven Presing, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–3814/4106.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 13, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 57613) the preliminary results of its administrative review of the antidumping duty order on certain small business telephone systems (SBTS) and subassemblies thereof from Taiwan (54 FR 42543, October 17, 1989). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act) and 19 CFR 353.22 (1991).

### Scope of the Review

Imports covered by the review are shipments of certain small business telephone systems (SBTS) and subassemblies thereof, currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Certain SBTS and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between two and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: Answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: Housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: Connectors to accept circuit cards or modules; and building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2,400 watts into output power of not more than 1,800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from the scope of this review: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

### Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by § 353.22(c) of the Commerce Regulations. We received comments from four of the respondents, Bitronic, Tecom, Sinoca, and Taisel, and rebuttal comments from the petitioner, American Telephone & Telegraph (AT&T).

We have corrected any clerical errors noted by the respondents and have addressed them specifically in this notice.

#### Bitronic

*Comment 1:* Bitronic argues that the imposition of punitive best information available (BIA) (the highest dumping margin found) for sales where the difference-in-merchandise adjustment (DIFMER) exceeded 20 percent is contrary to law and is unfair. Since the Department's questionnaire did not request companies to provide constructed value (CV) information when DIFMERs exceeded 20 percent of variable cost of manufacturing (VCOM), nor did the questionnaire indicate any concern if DIFMERs exceeded 20 percent, Bitronic claims it waited for a request for CV information.

In addition, Bitronic claims that the Department used DIFMERs exceeding 20 percent in the original investigation, as well as several other recent cases, and lack of any discussion of DIFMERs exceeding 20 percent did not seem unusual.

*Department's Position:* We agree with Bitronic that the imposition of an adverse BIA in this instance is inappropriate. For these final results, we requested that Bitronic provide CV information and have used the submitted figures, adjusted for actual profit, in those instances when DIFMERs exceeded the 20 percent guideline.

In accordance with section 773(a)(4)(C) of the Tariff Act as well as 19 CFR 353.57, we ordinarily will make a reasonable allowance for differences in the physical characteristics of the

merchandise. When adjustments for DIFMER prove to be substantial (normally, greater than 20 percent of VCOM), we normally will not use these home market sales as the basis for foreign market value (FMV).

In contrast, the DIFMERs reported by Bitronic were, in most cases, substantially greater than 20 percent of the VCOM, with the differences reaching as high as several thousand percentage points. It is not our practice to consider merchandise with DIFMERs of this magnitude as similar to U.S. merchandise. Therefore, we did not consider home market merchandise with DIFMERs exceeding 20 percent of VCOM as constituting a reasonable basis for comparison to U.S. sales.

As Bitronic claims, we did deviate from the 20 percent guideline in the original investigation. During that investigation we made an exception and allowed a DIFMER adjustment of 23 percent. This decision was based on the fact that the DIFMER marginally increased from below 20 percent of VCOM as a direct result of the Department's altering the respondent's reported costs to reflect the Department's findings at verification. Accordingly, in the investigation we determined that the home market merchandise was still reasonable as a comparison to the U.S. merchandise within the meaning of section 771(16) of the Tariff Act.

When using the reported CVs, we made an adjustment to reflect Bitronic's actual profit. Bitronic only reported the statutory minimum of 8 percent for profit and did not respond completely to the Department's questionnaire. The questionnaire clearly requests that the company include in its submission, if it is reporting the statutory minimum for profit, a calculation showing how Bitronic determined that its profit was less than 8 percent. However, Bitronic simply stated in its questionnaire response that it reported the statutory profit of 8 percent of the cost of production. Bitronic did not provide any calculation showing how it determined its profit was less than 8 percent, as the questionnaire requires. Therefore, as BIA we used the company's financial statements to determine actual profit. Because the financial statements cover more than SBTS, we used an allocation method for allocating company-wide profit to SBTS similar to that used by the company to allocate selling expenses to SBTS. The actual profit exceeded the statutory minimum.

*Comment 2:* Bitronic claims that a level-of-trade (LOT) adjustment should be made where U.S. dealer prices are compared to Taiwan end-user prices.

*Department's Position:* We disagree with Bitronic and have not made a LOT adjustment. We made comparisons for both exporter's sales price (ESP) and purchase price (PP) sales at the same level of trade (*i.e.*, dealer to dealer), in accordance with 19 CFR 353.58. When comparisons were not available at the same level of trade, we compared Bitronic's U.S. sales to its home market sales at the next level-of-trade without making a level of trade adjustment.

Since the preliminary results, we have examined the level of trade (LOT) issue further and found there are insufficient data to support a LOT adjustment. Bitronic's contention that its price comparability studies justify a LOT adjustment fails to address whether differences in levels of trade identified in those studies are due to the difference in level of trade, or whether there are other factors affecting the difference in price.

*Comment 3:* Bitronic claims that U.S. packing costs were overstated because they were not converted to U.S. dollars prior to their addition to FMV.

*Department's Position:* We agree with Bitronic that the reported packing costs for the PP and ESP transactions were not converted to U.S. dollars prior to being added to FMV. We made the correction in calculating the final margins and converted the appropriate variables to U.S. dollars before adding them to FMV.

*Comment 4:* Bitronic notes that an adjustment for the correct Taiwan inland freight was not subtracted from the Taiwan price for PP sales.

*Department's Position:* We disagree with Bitronic. We did subtract the proper inland freight expense reported by Bitronic. The inland freight variable (INLFRTH1) on the computer printout matches the inland freight variable (INLFRTH) reported by Bitronic.

*Comment 5:* Bitronic contends that for its ESP sales, value-added tax (VAT) should be added to both FMV and U.S. price.

*Department's Position:* We agree with Bitronic and have made the appropriate changes.

*Comment 6:* Bitronic states that for its PP sales, VAT should be calculated based on an FOB Taiwan price, not on an FOB Taiwan price reduced by an imputed credit cost.

*Department's Position:* We agree with Bitronic that VAT should be calculated based on an FOB Taiwan price which includes imputed credit; however, contrary to Bitronic's assertion, the imputed credit was not subtracted from the tax base when calculating VAT for the final margin calculations. The VAT was calculated in accordance with section 772(d)(1)(C) of the Tariff Act. The Tariff Act requires an addition of taxes collected on home market sales, which are not collected or are refunded on the exported merchandise, to the United States price. Bitronic reported home market sales which did not include the VAT. When the VAT is not included in home market price, we must add a calculated tax to both the FMV and the U.S. price. To do this, we multiplied the U.S. tax base by the home market tax rate and added the result to the U.S. price. Since the VAT was not included in the home market price, we made an adjustment for differences in circumstances of sale by adding to the FMV the same VAT that would have been paid on the merchandise sold to the United States. The VAT was calculated using a tax base, inclusive of imputed credit, that was identical for both markets and included the same amount of expenses.

*Comment 7:* Bitronic contends that since, as a matter of practice, the Department normally excludes from its dumping calculations those dumping margins which are so aberrant as to indicate error in the numbers, it should do so here.

*Department's Position:* We disagree with Bitronic. We do review our calculations for computing and clerical errors. When errors in dumping margins are detected, we will correct the errors or exclude the dumping margins from our calculations. If no error exists, we do not normally exclude dumping margins from our calculations.

**Tecom**

*Comment 1:* Tecom contends that the imposition of an adverse BIA (the highest dumping margin found) for sales where the DIFMER exceeded 20 percent in contrary to law and is unfair. Tecom claims it waited for the Department to request CV information. Tecom did not believe that it was necessary to provide CV information when DIFMERs exceeded 20 percent since the questionnaire did not indicate that it was necessary. In addition, Tecom claims that the Department used DIFMERs exceeding 20 percent in the original investigation, as well as several other recent cases, and that the lack of discussion of DIFMERs exceeding 20 percent in the most recent questionnaire did not seem unusual.

*Department's Position:* We agree with Tecom that the imposition of an adverse BIA in this instance is inappropriate. For the final results we requested that Tecom provide CV information and have used the submitted figures, adjusted for profit, in our final analysis

when DIFMERs exceeded the 20 percent guideline.

When using the reported CVs, we made an adjustment to reflect Tecom's actual profit. Tecom only reported the statutory minimum of 8 percent for profit and did not respond completely to the Department's questionnaire. The questionnaire clearly requests that the company include in its submission, if it is reporting the statutory minimum for profit, a calculation showing how Tecom determined that its profit was less than 8 percent. Tecom states in its questionnaire response that within the time available, it was unable to calculate the actual profit, and it believes it to be well below the statutory 8 percent. Tecom did request one extension and was granted a 7-day extension. Tecom did not request any additional time for determining profit. Tecom simply reported the statutory profit of 8 percent of the cost of production. Tecom did not, however, provide any calculation showing how it determined its profit was less than 8 percent as the questionnaire requires. Therefore, as BIA we used the company's financial statements to determine actual profit. Because the financial statements cover more than SBTS, we used an allocation method of allocating company-wide profit to SBTS similar to that used by the company for allocating selling expenses to SBTS. The actual profit exceeded the statutory minimum.

For further explanation, see our response to Bitronic's *Comment 1.*

*Comment 2:* Tecom claims a level-of-trade adjustment because Tecom sells to OEMs in the United States and to dealers/distributors in Taiwan. As evidence of the differences in costs between selling to dealers/distributors and selling to OEMs, Tecom presents the cost experience of another Taiwan SBTS producer, Tecom's cost experience with cordless telephones, and differences in technical service expenses, warranty expenses, bad debt and warehousing costs associated with regional sales offices, which are necessary for dealers/distributors, but not for OEMs.

*Department's Position:* Since the preliminary results, we have examined the LOT issue further and find that Tecom has not presented evidence that would justify a LOT adjustment.

As was held in *American Permac, Inc.* v. *U.S., 703 F. Supp. 97, 101 (Ct. Int'l Trade 1988),* the Department is not required to use respondent's estimations of the adjustments, but can use the respondent's estimations to arrive at its own estimates. Application of § 353.58 of the Department's regulations, which provides for a level of trade adjustment, is governed by § 353.54. This provision of the regulations provides in part that: "The person who alleges entitlement to any adjustment pursuant §§ 353.55 through 353.58, must establish it to the satisfaction of the Secretary."

Tecom proposed that the Department make a level of trade adjustment by eliminating those expenses which Tecom would not have incurred had it sold to OEMs in the home market. We do not disagree that certain of Tecom's sales to the United States were made at a different level of trade than the home market sales used for comparison purposes. However, in order for Tecom to demonstrate eligibility for a level of trade adjustment, Tecom must show that, where all other factors are equal, home market sales at different levels of trade incur different costs. This would establish that differences between U.S. and home market sales are due to level of trade differences, not other differences in conditions present in two distinct geographical markets. The expenses that Tecom argues are incurred in selling to dealers/distributors that should be used for the level of trade adjustment are technical service expenses, warranty expenses, bad debt, and warehousing. Furthermore, Tecom claims it would incur lower selling expenses (*e.g.*, reduction in staffing, elimination of regional offices) if it sold to OEMs rather than dealers/distributors. However, in making these claims, Tecom has not adequately demonstrated the expenses it would incur in selling to OEMs. Therefore, any adjustment to price would be arbitrary.

Tecom referred to other companies under review, Taisel and Sinoca, to show the costs associated with selling at both levels of trade in the home market. Tecom must establish that different costs were incurred in selling at two levels of trade by providing or identifying in the public record the expenses of other companies that Tecom believed approximate its own, to explain why it reached this conclusion, and to show how those expenses could be applied to Tecom's experience. The information provided by Taisel, however, was only a statement offering observations of selling expenses it incurred when it sold SBTS to OEMs in Taiwan. Taisel did not provide any data to support Tecom's conclusion that a LOT adjustment is warranted. Sinoca also did not provide information to support Tecom's conclusion that a LOT adjustment is warranted, since it did not provide any data on actual experience selling SBTS to OEMs in Taiwan.

Tecom also referred to its cordless telephone business to show its experience with another product sold in the home market. In order to qualify accurately the LOT adjustment, the data should be based on merchandise that is of the same general nature as the merchandise under review. There must also be some demonstration that the marketing and distribution channels for such a product are similar enough to be used to approximate the experience of the investigated merchandise. Finally, the company must explain how the experience can be used to qualify the level of trade adjustment. Tecom, however, has not adequately demonstrated that cordless phones are of the same general nature as SBTS. Therefore, Tecom has not provided sufficient evidence for the Department to make a LOT adjustment.

Tecom also points to its experience in the Singapore and Hong Kong markets as an indication of the differences in cost associated with selling to OEMs rather than dealers/distributors in Taiwan. Tecom argues that "Hong Kong" and Singapore basically have the same type of customers, products, and distribution network as Taiwan." A level of trade adjustment, however, must be based on home market experience. We cannot simply assume that experience in the Hong Kong and Singapore markets will be similar to that of the home market.

Based on the foregoing, Tecom has not provided sufficient evidence for the Department to make a LOT adjustment.

*Comment 3:* Tecom argues that supplemental payments made by one of its OEMs should be added to the U.S. price, not subtracted. Tecom contends that it reimburses a U.S. contractor for the cost associated with certain warranty repair/technical service work on Tecom SBTS. Such costs include the salaries of technical manager, two technicians, and a secretary. According to Tecom, its OEM then reimburses Tecom for these payments.

*Department's Position:* We added to the U.S. price the supplemental payments from the OEM to Tecom. We have allowed this adjustment because Tecom demonstrated that its sales to a particular OEM are tied to supplemental payments made on behalf of that OEM. The supplemental payments were associated with specific OEM sales trasactions.

*Comment 4:* Tecom contends that warranty expenses should be treated as direct selling expenses. It notes that these costs are not incurred until after the sale of SBTS and that warranty services were rendered at the request of

Tecom's customers. Tecom argues that it satisfies the same conditions for warranty costs as it met for the technical services, which the Department treated as a direct selling expense in the preliminary determination. Specifically, Tecom states that the Department allowed the portion of expenses associated with resolving problems of end-users who buy Tecom SBTS from Tecom's dealers/distributors as a direct selling expense.

*Department's Position:* We disagree with Tecom. We did not treat the entire pool of Tecom's technical service expenses as direct expenses. We did allow a portion of Tecom's technical service expenses (end-user problem solving) as a direct deduction from U.S. price because these expenses were variable.

Generally, it is the Department's practice in PP calculations to allow adjustments for variable warranty and variable technical service expenses. Contrary to Tecom's assertion that its home market warranty expenses should be treated as direct selling expenses, there is no evidence on the record to suggest that its warranty expenses are variable. Rather, Tecom would still incur costs for salaries associated with its home market warranty personnel even if Tecom had no sales within a certain period of time. Accordingly, we consider Tecom's home market warranty expenses to be fixed and thus to be indirect selling expenses.

*Comment 5:* Tecom claims it provided an itemized breakdown of Taiwan warranty/technical service expenses in Attachment 11 in its June 10, 1991, response, and that the Department should allow a percentage of those expenses as an adjustment to FMV. Tecom contends that the Department should allow a deduction for at least some of its home market warranty/technical service expenses.

*Department's Position:* We disagree with Tecom. Attachment 11 of its June 10, 1991, response is an itemization of selling expenses as requested by the Department, not warranty/technical service expenses. We have not allowed a home market warranty expense adjustment since Tecom still has not adequately responded to our request for an itemization of variable and fixed warranty expenses. See our position in response to *Comment 4* for further explanation.

*Comment 6:* Tecom contends that U.S. and Taiwan warranty costs should be treated consistently. Tecom explains that the Department treated all U.S. warranty costs as direct selling expenses and fully deducted them from U.S. price. This was done for both salary and material costs, which were provided separately in Tecom's submission. Tecom argues that it only incurs warranty expenses pursuant to sales and, therefore, those expenses should be treated as direct in the home market.

*Department's Position:* We disagree with Tecom's assertion that our treatment of U.S. and Taiwan warranty costs was inconsistent. Generally, it is the Department's practice in PP calculations to allow adjustments for variable warranty and variable technical service expenses.

As mentioned in our response to *Comment 5*, Tecom did not provide the requested variable and fixed home market warranty expense breakdown as it did for the U.S. market. Accordingly, we have classified Tecom's home market warranty expenses as indirect selling expenses (fixed) and have not used them in our PP calculations.

*Comment 7:* Tecom argues that under *AOC Int'l* v. *United States*, 721 F. Supp. 314 (Ct. Int'l Trade 1989), the Department's position that expenses are fixed if those costs are incurred whether or not service is provided is contrary to law. Tecom also argues that this position is contrary to Department precedent.

*Department's Position:* We disagree with Tecom. Under our long established policy, fixed costs are those that are incurred regardless of whether a particular sale is made; they, therefore, do not bear a direct relationship to the sales under consideration, and do not qualify as directly related selling expenses. Moreover, we see no reason to overturn this policy since the remand in *AOC* is not final, and may yet be reversed. See *Comment 20* in Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12701, 12706, March 27, 1991).

*Comment 8:* Tecom states that warehouse costs should be subtracted from home market price because warehouse costs on sales of finished SBTS in the Taiwan market are directly related to home market sales.

*Department's Position:* We disagree with Tecom. Warehousing expenses are typically indirect selling expenses and Tecom has not demonstrated that its warehousing expenses can be tied directly to sales.

*Comment 9:* Tecom believes that the Department should use the final corrected computer tape.

*Department's Position:* Tecom submitted an unsolicited computer tape and narrative on July 29, 1991. Since the unsolicited tape was unreadable, we used Tecom's June 10, 1991, tape submission.

*Comment 10:* Tecom argues that free gifts provided with sales should be subtracted from the sale price. Tecom states that the cost of free gifts is a directly-related selling expense. Tecom argues that in its initial computer tape the variable appeared immediately after the sale to which it applied, as a separate row of data, and that in the final computer tape (submitted July 29, 1991) it was provided as a separate column of data.

*Department's Position:* We disagree with Tecom's position. To date, it is impossible to determine whether or not the "free gifts" variable appears as a separate row on Tecom's April 15 and June 10 sales submissions. These submissions are ambiguous and the narratives provided did not refer to free gifts or even indicate that free gifts were reported.

In attachment 5 of Tecom's unsolicited July 29, 1991, submission there is a brief explanation that Tecom provides a free gift with some sales. As stated above, we cannot determine whether or not the variable appears on Tecom's earlier sales submissions. Due to the lack of an adequate narrative concerning free gifts, and the fact that the July 29, 1991, tape was unreadable, we did not make an adjustment for this variable.

*Comment 11:* Tecom argues that U.S. imputed credit costs should not be both subtracted from U.S. price and added to FMV.

*Department's Position:* We agree with Tecom and in these final results we have not subtracted the imputed credit costs from the U.S. price because these sales are PP transactions.

*Comment 12:* Tecom argues that VAT was added twice to FMV and it should only be added once.

*Department's Position:* We agree with Tecom and have made the appropriate corrections.

*Comment 13:* Tecom states that as a matter of practice the Department normally excludes from its dumping calculations these dumping margins which are so aberrant as to indicate error in the numbers.

*Department's Position:* We disagree with Tecom. *See* our response to Bitronic's *Comment 8*.

*Comment 14:* Tecom states that it incurred bad debt on Taiwan SBTS sales and that bad debt is a direct selling expense.

*Department's Position::* This is the first time that Tecom has requested that an adjustment be made for its bad debt. Tecom argues that under *AOC*, bad debt claims are direct expenses. The Department has a long-standing policy of treating bad debt as an indirect



expense. The remand order in *AOC* is not a final decision, is not ripe for appeal, and may yet be reversed. Therefore, we continue to treat bad debt as an indirect selling expense. See *Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review* (55 FR 28225, 28232, June 27, 1990).

In addition, we have made no adjustment for bad debt as an indirect selling expense because Tecom's U.S. sales are all PP sales.

**Sinoca**

*Comment 1:* Sinoca states that the Department's computer program selected the incorrect dates for calculating the imputed credit for U.S. sales. Sinoca maintains the Department should use the number of days between the date of shipment and the payment date.

*Department's Position:* We agree that the U.S. imputed credit should be calculated based on the number of days between the date of shipment and the payment date. We have made this correction for the final margin calculations.

*Comment 2:* Sinoca argues that in comparing U.S. price to CV, the Department should match the CV period of production to the shipping date rather than the U.S. date of sale.

*Department's Position:* We disagree with Sinoca. In accordance with 19 CFR 353.50(b), we calculated CV using the most recent CV data available preceding the U.S. date of sale. Because Sinoca's sales are all PP, the U.S. date of sale precedes exportation. Therefore, the calculated CV also precedes the date of exportation.

*Comment 3:* Sinoca claims that in its less-than-fair-value (LTFV) investigation the Department did not include circumstance-of-sale (COS) adjustments to the FMV when CV was used. Sinoca asserts that the Department should subtract the company's direct selling expenses from FMV.

*Department's Position:* We agree that we should make COS adjustments to Sinoca's CV. When comparing PP to FMV, we make COS adjustments by deducting the directly-related expenses in the home market from the home market prices and adding those expenses incurred on sales to the United States to the weighted-average FMV. Similarly, when comparing PP to CV, we make COS adjustments by deducting the directly-related expenses in the home market from the CV and adding those expenses incurred on sales to the United States to the CV. In our final calculations we subtracted the home market direct selling expenses from CV and added U.S. direct selling expenses.

*Comment 4:* Sinoca claims that the Department's calculations should be based upon data in its July 29, 1991, submission, claiming that the Department did not use the reported figures and referring to several purchase orders (purchase orders 1240 and 1321).

*Department's Position:* We do not agree with Sinoca's assertion. We did review and incorporate Sinoca's July 29, 1991, submission in calculating the margins. To arrive at the reported figures, we followed the same approach explained in Sinoca's submissions. To arrive at the final price reported, we took the reported purchase order price and added the cost of an additional part used on the SBTS, which was obtained and provided by Sinoca. The result matches the reported figures in Sinoca's July 29, 1991, submission.

**Taisel**

*Comment 1:* Taisel argues that the Department should not assign a punitive BIA rate to sales by a cooperating company that is unable to respond for reasons unrelated to the antidumping case.

*Department's Position:* We disagree with Taisel. In accordance with section 776(c) of the Tariff Act, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, we use BIA. In its response and case brief Taisel explained that it was unable to respoind to the Department's questionnaire since its SBTS business no longer exists. Taisel, however, had sales during the period of review which were subject to the antidumping order. Taisel is not excused from responding to the questionnaire with respect to these sales simply because Taisel no longer produces SBTS. When a respondent fails to respond to the Department's questionnaire, it is the Department's practice to use as BIA the higher of: (1) The highest of the rates found for any firm in the LTFV investigation; or (2) the highest rate found in any administrative review. Accordingly, Taisel's final BIA rate is 129.73 percent, the highest calculated rate from the LTFV investigation.

*Comment 2:* Taisel believes the Department should assign a BIA rate that is an intelligent approximation of the respondents' actual dumping margins, rather than a rate already determined in the original investigation to be inappropriated.

*Department's Position:* See the response to Taisel's *Comment 1*.

*Comment 3:* Taisel argues that the assignment of a punitive BIA rate from the LTFV investigation to this administrative review cannot logically be required by Department policy.

*Department's Position:* See the response to Taisel's *Comment 1*.

*Comment 4:* Taisel believes that any antidumping duty determination should only apply to completed LTFV sales. The Department should exclude sales that were canceled and have been re-exported under Customs' supervision. Taisel requests that the Department's communications to Customs clearly instruct that shipments which were canceled and returned under Customs' procedures are to be excluded from an antidumping duty order.

*Department's Position:* We disagree with Taisel. Due to the inability of Taisel to report its sales in response to the Department's questionnaire, we have not been able to assemble a list on an entry-by-entry basis in order to instruct Customs. We can only instruct Customs based on our analysis in an administrative review. Although it is our practice to exclude verifiable sales that were canceled and re-exported, Taisel has not provided an adequate response for us to make such an exclusion from our finding.

**Final Results of Review**

As a result of this review, we determine that the following margins exist for the period August 3, 1989 through November 30, 1990:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Sinoca | 8/03/89–11/20/90 | 0.15 |
| Bitronic | 8/03/89–11/20/90 | 8.97 |
| Auto Telecom | 8/03/89–11/20/90 | 129.73 |
| Tecom | 8/03/89–11/20/90 | 18.15 |
| TAISEL | 8/03/89–11/20/90 | 129.73 |
| Taiwan Telecom* | 8/03/89–11/20/90 | 0.00 |

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| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Magtron* | 8/03/89–11/20/90 | 0.00 |

* No Shipments during the period; rate is from the last period in which there were shipments. This rate is based on the "All Others" rate from the LTFV investigation.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 18.10 percent. This rate represents the highest rate for any firm with shipments in the administrative review, other than those firms receiving a rate based entirely on BIA.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act and 19 CFR 353.22.

Dated: June 22, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92–15469 Filed 6–30–92; 8:45 am]

BILLING CODE 3510–DS–M

**[A–485–602]**

## Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Romania; Amended Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of amendment to final results of antidumping duty administrative review.

**SUMMARY:** On March 23, 1992, the Department of Commerce submitted to the Court of International Trade the final results of redetermination pursuant to the remand order from the Court of International Trade in *Tehnoimportexport, UCF America, Inc., and Universal Automotive Company, Ltd.* v. *United States* (CIT January 23, 1992), clarified on February 5, 1992. On April 7, 1992, the Court of International Trade affirmed our redetermination. In accordance with the Court's determination, we are hereby amending the final results of the administrative review for Tecnoimportexport for the period February 6, 1987 through May 31, 1988.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Karin Price or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone (202) 377–2923.

**SUPPLEMENTARY INFORMATION:**

### Background

On January 23, 1992, the Court of International Trade (CIT), in *Tehnoimportexport, UCF America, Inc., and Universal Automotive Company, Ltd.* v. *United States*, Slip Op. 92–4, clarified by the CIT on February 5, 1992, remanded to the Department of Commerce (the Department) for redetermination the final results of the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished, (TRBs) from Romania (56 FR 1169, January 11, 1991). In the Department's final results, the weighted-average margin for TRBs sold or imported into the United States by Tehnoimportexport (TIE) during the period February 6, 1987 through May 31, 1988 was 13.89 percent.

Plaintiffs contested the Department's calculation of labor rates, calculation of inland freight costs, and currency conversion of foreign market value (FMV). For the final results, the Department determined labor rates on the basis of 4 weeks per month and 40 hours per week, calculated freight costs by using an annual average exchange rate to convert a monthly freight cost in dinars into U.S. dollars, and converted FMV into U.S. dollars without taking into account the impact of hyperinflation in Yugoslavia, the surrogate country. The Department requested a remand on these three issues, and the Court remanded the proceeding to the Department to correct its calculations with respect to these items.

The Department issued draft remand results on March 4, 1992. We recalculated labor rates based on 4.333 weeks per month and 42 hours per week, converted inland freight costs into U.S. dollars by using the monthly exchange rate for the month of the U.S. sale, and made an adjustment to FMV to account for the difference in cost between the month of sale and the year of production which resulted from hyperinflation.

Interested parties were given an opportunity to comment on our draft remand results. Based on our analysis of the comments received, we made no changes to our calculations for the final remand results, and determined that TIE's revised weighted-average margin for the February 6, 1987 through May 31, 1988 period is 0.77 percent. The CIT affirmed our redetermination on April 7, 1992.

### Amended Final Results of Review

Based on our revised calculations, we have amended our final results of review for TIE for the period February 6, 1987 through May 31, 1988. The amended weighted-average margin for TIE is 0.77 percent. The Department shall determine, and the Customs Service

shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

The cash deposit rate for TIE is zero, the rate from the final results of administrative review for the 1988–1989 period. See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania; Final Results of Antidumping Duty Administrative Review (56 FR 41518, August 21, 1991).

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is in accordance with section 516A(e) of the Tariff Act (19 U.S.C. 1516a(e)).

Dated: June 22, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92–15470 Filed 6–30–92; 8:45 am]

BILLING CODE 3510–DS–M

## Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Publication of Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese.

**SUMMARY:** The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Stroup or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2786 or 377–0083.

**SUPPLEMENTARY INFORMATION:** Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for several of the countries for which subsidies were identified in our annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA.

Dated: June 24, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92–15415 Filed 6–30–92; 8:45 am]

BILLING CODE 3510–DS–M

### Appendix—Quota Cheese Subsidy Programs

| Country | Program(s) | Gross[1] subsidy (cents per pound) | Net[2] subsidy (cents per pound) |
|---|---|---|---|
| Belgium | European community (EC) restitution payments | 45.1 | 45.1 |
| Canada | Export assistance on certain types of cheese | 29.3 | 29.3 |
| Denmark | EC restitution payments | 57.6 | 57.6 |
| Finland | Export subsidy | 149.6 | 149.6 |
| France | EC restitution payments | 54.5 | 54.5 |
| Greece | EC restitution payments | 58.4 | 58.4 |
| Ireland | EC restitution payments | 67.4 | 67.4 |
| Italy | EC restitution payments | 70.6 | 70.6 |
| Luxembourg | EC restitution payments | 45.1 | 45.1 |
| Netherlands | EC restitution payments | 46.3 | 46.3 |
| Norway | Indirect (milk) subsidy | 18.9 | 18.9 |
| | Consumer subsidy | 41.8 | 41.8 |
| | | 60.7 | 60.7 |
| Portugal | EC restitution payments | 46.0 | 46.0 |
| Spain | EC restitution payments | 46.2 | 46.2 |
| Switzerland | Deficiency payments | 164.8 | 164.8 |
| U.K. | EC restitution payments | 54.3 | 54.3 |
| W. Germany | EC restitution payments | 33.7 | 33.7 |

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 92–15415 Filed 6–30–92; 8:45 am]

BILLING CODE 3510–DS–M

[C-351-810, C-307-808]

**Alignment of the Final Countervailing Duty Determinations with the Final Antidumping Duty Determinations: Circular Welded Non-Alloy Steel Pipe From Brazil and Venezuela**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Paulo F. Mendes or Annika L. O'Hara (Brazil), or Larry Sullivan (Venezuela), Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–5050, 377–0586, or 377–0114, respectively.

**SUPPLEMENTARY INFORMATION:** On June 9, 1992, we published preliminary affirmative countervailing duty determinations pertaining to circular welded non-alloy steel pipe ("standard pipe") from Brazil and Venezuela (57 FR 24466 and 57 FR 24470). The notices stated that, if the investigations proceeded normally, we would make our final countervailing duty determinations by August 16, 1992.

On June 11, 1992, in accordance with 19 CFR 355.20(c)(2), we received a request from petitioner to align the due date for the countervailing duty determinations with the date of the final antidumping duty determinations in the investigations of standard pipe from Brazil and Venezuela. Accordingly, the final determinations in these countervailing duty investigations are due not later than September 10, 1992.

This notice is published in accordance with 19 CFR 355.20(c)(3).

Dated: June 25, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration*

[FR Doc. 92–15471 Filed 6–30–92; 8:45 am]

BILLING CODE 3510–DS–M

**University of Illinois at Chicago, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles**

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Decision:* Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

*Reasons:* Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

*Docket Number:* 91–166. Application: University of Illinois at Chicago, Purchasing Division, 809 S. Marshfield, Chicago, IL 60612. *Instrument:* Low Pressure Chemical Vapor Deposition System. *Manufacturer:* Process Technology, Canada. *Date of Denial Without Prejudice to Resubmission:* March 11, 1992.

*Docket Number:* 91–177. *Applicant:* The Regents of the University of California, Material Management Department, Riverside, CA 92521. *Instrument:* Flow Sample Handling Unit, Model DX.17MV/SHU. *Manufacturer:* Applied Photophysics, United Kingdom. *Date of Denial Without Prejudice to Resubmission:* April 2, 1992.

*Docket Number:* 91–183. *Applicant:* East Carolina University, Materials Management, Whichard Building, Greenville, NC 27834. *Instrument:* Stopped-Flow Sample Handling Unit-Spectrometer Workstation. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* April 9, 1992.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 92–15419 Filed 6–30–92; 8:45 am]

BILLING CODE 3510–DS–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

**Announcement of Import Restraint Limits and Export Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Democratic Socialist Republic of Sri Lanka**

June 25, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year and amending visa requirements.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6580. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated June 10, 1992, the Governments of the United States and the Democratic Socialist Republic of Sri Lanka agreed to amend and extend their Bilateral Textile Agreement, effected by exchange of notes dated May 23 and 24, 1988, as amended, for two one-year periods beginning on July 1, 1992 and extending through June 30, 1994.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period beginning on July 1, 1992 and extending through June 30, 1993 and to amend the existing visa arrangement to include coverage of newly merged and part categories.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 56 FR 60101, published on November 27, 1991). Also see 53 FR 34573, published on September 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

June 25, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the

Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Memorandum of Understanding (MOU) dated June 10, 1992, between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on July 1, 1992 and extending through June 30, 1993, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| 237 | 214,621 dozen. |
| 315 | 4,652,990 square meters. |
| 331/631 | 2,069,966 dozen pairs. |
| 333/633 | 40,400 dozen. |
| 334/634 | 473,429 dozen. |
| 335/835 | 308,309 dozen. |
| 336/636/836 | 311,832 dozen. |
| 338/339 | 546,856 dozen. |
| 340/640 | 902,671 dozen of which not more than 306,908 dozen shall be in Categories 340-Y/640-Y [1]. |
| 341/641 | 1,500,000 dozen of which not more than 1,000,000 dozen shall be in Category 341 and not more than 1,000,000 dozen shall be in Category 641. |
| 342/642/842 | 492,366 dozen. |
| 345/845 | 127,511 dozen. |
| 347/348/847 | 1,021,891 dozen of which not more than 613,135 dozen shall be in Categories 347-T/348-T/847-T [2]. |
| 350/650 | 88,373 dozen. |
| 351/651 | 235,873 dozen. |
| 352/652 | 1,009,982 dozen. |
| 359-C/659-C [3] | 972,425 kilograms. |
| 361 | 500,000 numbers. |
| 363 | 9,152,958 numbers. |
| 369-D [4] | 687,180 kilograms. |
| 369-S [5] | 572,649 kilograms. |
| 635 | 277,745 dozen. |
| 638/639/838 | 674,710 dozen. |
| 644 | 378,743 numbers. |
| 645/646 | 151,497 dozen. |
| 647/648 | 812,273 dozen. |

[1] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[2] Category 347-T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0038, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0042, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050; Category 847-T: only HTS numbers 6103.29.2044, 6103.49.3017, 6103.49.3024, 6104.29.2041, 6104.29.2045, 6104.69.3034, 6104.69.3038, 6112.19.2060, 6112.19.2090, 6117.90.0051, 6203.29.3046, 6203.49.3040, 6203.49.3045, 6204.29.4041, 6204.29.4047, 6204.69.3052, 6204.69.9044, 6211.20.3040, 6211.20.6040, 6211.39.0040, 6211.49.0040 and 6217.90.0070.

[3] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369-S: only HTS number 6307.10.2005.

Imports charged to these category limits, except Category 361, for the periods February 28, 1992 through June 30, 1992, in the case of Category 315, and July 1, 1991 through June 30, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the MOU dated June 10, 1992 between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka.

For visa purposes, effective on July 1, 1992, the following merged and part categories are being eliminated for products produced or manufactured in Sri Lanka and exported from Sri Lanka on and after July 1, 1992:

| Category |
|---|
| 445/446 |
| 341-Y [1] |
| 341-O [2] |

[1] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[2] Category 341-O: all HTS numbers except 6204.22.3060, 6206.30.3010 and 6206.30.3030 (Category 340-Y).

Effective on July 1, 1992, you are directed to amend further the directive of September 1, 1988 to include coverage of the following merged and part categories:

| Category |
|---|
| 334/634 |
| 336/636/836 |
| 340/640 |
| 340-Y/640-Y [1] |
| 340-O/640-O [2] |
| 341/641 |
| 640-Y |
| 640-O |

[1] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[2] Category 340-O: all HTS numbers except 6205.20.2015,6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060 (Category 340-Y); Category 640-O: all HTS numbers except 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060 (Category 640-Y).

Merchandise in the foregoing categories which is produced or manufactured in Sri Lanka and exported from Sri Lanka on and after July 1, 1992, must be accompanied by the correct category, part category or merged part category corresponding to the actual shipment.

Goods in Categories 640 which are produced or manufactured in Sri Lanka and exported from Sri Lanka during the period July 1, 1992 through July 31, 1992 shall not be denied entry for lack of a part-category visa. Goods in Categories 640, produced or manufactured in Sri Lanka and exported from Sri Lanka on and after August 1, 1992 must be visaed as 640-Y or 640-O.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-15413 Filed 6-30-92; 8:45 am]

BILLING CODE 3510-DR-F

## Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1992 Correlation

June 26, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Changes to the 1992 Correlation.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

**SUPPLEMENTARY INFORMATION:**

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1992) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the

administration of the bilateral agreement program. The 1992 Correlation should be amended to reflect administrative changes which are effective on July 1, 1992:

| Changes in the 1992 Correlation |
|---|
| Delete 6109.90.2030 (608). |
| Add 6109.90.2035 (438)—women's or girls' wool t-shirts, singlets, tank tops and similar garments, knitted or crocheted. |
| Add 6109.90.2040 (638)—women's or girls' other than wool t-shirts, singlets, tank tops and similar articles, knitted or crocheted. |
| Delete 6114.30.3010 (659). |
| Add 6114.30.3012 (459)—jumpers containing 23 percent or more by weight of wool or fine animal hair. |
| Add 6114.30.3014 (659)—other man-made fiber jumpers. |
| Delete 6211.33.0050 (659). |
| Add 6211.33.0052 (459)—vests containing 36 percent or more by weight of wool or fine animal hair. |
| Add 6211.33.0054 (659)—other man-made fiber vests. |
| Delete 6302.59.0000 (899). |
| Add 6302.59.0020 (899)—other table linen. |
| Add 6307.90.9482 (369)—other towels of cotton. |
| Add 6307.90.9484 (669)—other towels of rami. |

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-15407 Filed 6-30-92; 8:45 am]

BILLING CODE 3510-DR-F

## COMMODITY FUTURES TRADING COMMISSION

### Commodity Exchange, Inc.; Proposed Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity futures contract.

**SUMMARY:** The Commodity Exchange, Inc. (COMEX or Exchange) has applied for designation as a contract market in U.S. Gulf Coast Jet Fuel Futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation § 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** Comments must be received on or before July 31, 1992.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the U.S. Gulf Coast Jet Fuel Futures contract.

**FOR FURTHER INFORMATION CONTACT:** Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

**SUPPLEMENTARY INFORMATION:** Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the Exchange in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions, or with respect to other materials submitted by the Exchange in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on June 26, 1992.

**Gerald D. Gay,**

*Director.*

[FR Doc. 92-15412 Filed 6-30-92; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Environmental Assessment (EA) for Single Stage Rocket Technology (SSRT) DC-X Test Program

**AGENCY:** Strategic Defense Initiative Organization (SDIO), Department of Defense.

**ACTION:** Environmental Assessment for Single Stage Rocket Technology (SSRT) DC-X Test Program.

**SUMMARY:** The Strategic Defense Initiative Organization has prepared a Finding of No Significant Impact based on an assessment of the potential environmental consequences of fabricating and testing a single stage rocket technology vehicle (DC-X).

**BACKGROUND:** Pursuant to Council on Environmental Quality Regulations (40 CFR parts 1500-1508) for implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and Department of Defense (DoD) Directive 6050.1, SDIO has conducted an assessment of the potential environmental consequences of testing and validating SSRT technology to support SDIO's mission of ballistic missile defense.

The purpose of the SSRT test program is to demonstrate low cost and quick turn around time, using single stage rocket vehicles. The SSRT DC-X test program is designed to provide SDIO with a vertical launch of a suborbital recoverable rocket (SRR) capable of lifting up to 3,000 pounds of payload to an altitude of 1.5 million feet; returning to the launch site for a precise soft vertical landing; with the capability to launch for another mission within three to seven days. To validate the technology, a subscale test vehicle (DC-X) that uses oxygen and hydrogen as vehicle propellants will be fabricated, and preflight and flight tests of the vehicle will be conducted.

The DC-X vehicle components will be fabricated, assembled, and ground tested at several locations in the United States. Preflight static test firing of the assembled DC-X vehicle will occur at NASA/White Sands Test Facility (WSTF) on White Sands Missile Range (WSMR). This will be followed by flight tests consisting of a hover flight, expanded hover flight, and rotation flight at the White Sands Space Harbor (WSSH) on WSMR. Minor modifications will be required to existing facilities at NASA/WSTF, and minor construction activities at WSSH for launch activities. Static fire testing is routine at NASA/WSTF and approximately 450 launches of all types occur annually at WSMR.

Test activities for the proposed action will be conducted in accordance with applicable Federal, State, and local environmental regulations at the following locations:

| Installation | Activities |
|---|---|
| Scaled Composites, Inc., Mojave, CA. | Component Assembly (aeroshell). |
| Chicago Bridge and Iron, Cordova, AL. | Component Assembly (propellant tanks). |
| Pratt & Whitney, West Palm Beach, FL. | Component Assembly (engines). |

| Installation | Activities |
|---|---|
| Aerojet, Sacramento, CA | Component Assembly (reaction control system). |
| McDonnell Douglas Space Systems Co., Huntington Beach, CA. | Component Assembly/ Preflight Tests (factory integrated systems checkout). |
| NASA/White Sands Test Facility, White Sands Missile Range, NM. | Preflight Tests (static fire testing). |
| White Sands Space Harbor, White Sands Missile Range, NM. | Flight Test Series. |

The potential for significant impacts at these locations was determined through analysis of the proposed activities and compared to existing activities and conditions. Assessment of proposed action impacts were accomplished with considerations of infrastructure, safety and the following environmental media: physical setting and man-made environment; water resources; geology and soils; biological resources; threatened and endangered species; cultural resources; air quality; and noise.

The methodological approach consisted of identification of potential environmental issues and a determination of their potential significance. For any proposed action impact that could be potentially significant, it was determined implemented mitigation could reduce the impact to less than significant.

**FINDINGS:** All potentially significant impacts from SSRT are reduced to less than significant levels incorporating planned safety measures. These measures have been incorporated into the SSRT program as an integral part of operations at NASA/WSTF and WSSH. No significant environmental impacts were identified at the engineering contractor facilities involved in component assembly.

No significant impacts are anticipated for the physical setting and man-made environment, water resources, geology and soils, biological resources, threatened and endangered species, cultural resources, air quality, noise, or infrastructure at NASA/WSTF and WSSH. For example, personnel will wear hearing protection when in hazardous noise areas during static test firing and launch activities.

Also, personnel will be trained in the safe handling of cryogenic liquid propellants during storage tank filling and vehicle loading and drain operations, and the use of personal protection equipment for the specific hazards. Personnel safety distances and protective work practices will be incorporated in the NASA/WSTF safety plans.

Accidental explosion of DC–X on the launch pad or shortly after launch could pose a hazard to personnel in the vicinity of the launch area. The Ground Safety Officer will ensure that explosive quantity distance for each launch is implemented, and will monitor the hazard area to prevent unauthorized entry. In addition, for flight anomalies below 5,000 feet, the vehicle will impact the ground surface and may explode, depending on the amount of propellant remaining in the vehicle. However, the three sigma dispersion area is contained within a 3 mile radius from the launch site. The Flight Operations Control Center will be located approximately 3 miles from the launch site. To protect personnel from potential hydrogen fire during ground testing and after the DC–X vehicle returns from flight, infrared detectors and surveillance cameras will be installed at WSMR.

The No Action Alternative is not to develop and test the DC–X vehicle. This alternative would preclude a series of flight tests that are needed to demonstrate and validate the DC–X technology necessary to support SDIO's mission of ballistic missile defense. The concept definition for a suborbital recoverable rocket would not proceed and SDIO would continue to rely on existing suborbital rockets to support mission requirements.

Overall, no significant impacts to the environment would result from conducting the SSRT test program at NASA/WSTF, WSSH, or engineering contractor locations. Therefore, an environmental impact statement will not be prepared for the proposed action.

**FOR FURTHER INFORMATION CONTACT:** Mr. Crate J. Spears, SDIO/ Environmental Coordinator, SDIO/TNE, Washington, DC 20301–7100, (703) 693–1575.

Dated: June 25, 1992.

L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92–15433 Filed 6–30–92; 8:45 am]

BILLING CODE 3810-01-M

## DoD Government-Industry Technical Data Committee

**AGENCY:** Office of The Under Secretary of Defense (Acquisition).

**ACTION:** Notice.

**SUMMARY:** Pursuant to section 807 of Public Law 102–120, the National Defense Authorization Act for Fiscal Years 1992 and 1993, a Government-Industry Technical Data Committee has been formed. The committee will make recommendations to the Secretary of Defense for the final regulations required by subsection (a) of 10 U.S.C. 2320, "Rights in Technical Data."

The initial committee meetings are scheduled for July 16–17 and 28–29, from 9:30 A.M. to 4 P.M. at The Herman Lay Room, The U.S. Chamber of Commerce, 1615 "H" Street, NW., Washington, DC 20062–2000. These meetings will be open to the public. For more information, please contact the Committee Executive Secretary, Angelena Moy at (703) 693–5639.

Dated: June 26, 1992.

L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92–15432 Filed 6–30–92; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Air Force

### Intent to Grant Exclusive Patent License

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant United Technologies Corporation, a corporation of the State of Delaware, having an office at 411 Silver Lane, East Hartford, Connecticut 06108, an exclusive, worldwide license under the following: United States Letters Patent No. 5,055,741, which matured from application Serial No. 07/553,928, filed 13 July 1990 in the name of LaVerne A. Schlie; United States Letters Patent No. 5,008,593, which matured from application Serial No. 07/553,929, filed 15 July 1990 in the name of LaVerne A. Schlie and Robert D. Rathge; and the Government interest in the following joint inventions of LaVerne A. Schlie and Robert D. Rathge: "Scalable, 5.5W CW Iodine Laser," Air Force Invention No. 20,490; "Repped Pulsed, Photolytic Iodine Laser," Air Force Invention No. 20,489; "High Flow, Low Pressure Blower," Air Force Invention No. 20,498; and "Enhanced UV Microwave Excited Lamps to be Fitted in the DC (Low ripple, approximately 1%) Power Source."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from

the date of publication of this Notice. Copies of the disclosure may be obtained upon request from the same addressee.

All communications concerning this notice should be sent to Donald J. Singer, Chief, Patents Division, Air Force Legal Services Agency, 1900 Half Street, SW., room 5160, Washington, DC 20324–1000. Telephone inquiries may be directed to (202) 475–1386.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 92–15371 Filed 6–30–92; 8:45 am]

BILLING CODE 3910-01-M

## Defense Logistics Agency

### Privacy Act of 1974; Delete and Amend Record Systems

**AGENCY:** Defense Logistics Agency, DOD.

**ACTION:** Delete and amend record systems.

**SUMMARY:** The Defense Logistics Agency proposes to amend three existing record systems and delete two from the DLA inventory of record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The deletions will be effective July 1, 1992. The amendments will be effective without further notice on July 31, 1992, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Privacy Act Officer, Administrative Management Branch, Planning and Resource Management Division, Defense Logistics Agency, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Salus at (703) 617–7583.

**SUPPLEMENTARY INFORMATION:** The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the Federal Register as follows:

50 FR 22897, May 29, 1985 (DOD Compilation, changes follow)
50 FR 51898, Dec. 20, 1985
51 FR 27443, Jul. 31, 1986
51 FR 30104, Aug. 22, 1986
52 FR 35304, Sep. 18, 1987
52 FR 37495, Oct. 7, 1987
53 FR 04442, Feb. 16, 1988
53 FR 09965, Mar. 28, 1988
53 FR 21511, Jun. 8, 1988
53 FR 26105, Jul. 11, 1988
53 FR 32091, Aug. 23, 1988
53 FR 39129, Oct. 5, 1988
53 FR 44937, Nov. 7, 1988
53 FR 48708, Dec. 2, 1988
54 FR 11997, Mar. 23, 1989
55 FR 21918, May 30, 1990 (Updated Mailing Addresses)
55 FR 32284, Aug. 8, 1990
55 FR 32947, Aug. 13, 1990
55 FR 34050, Aug. 21, 1990
55 FR 42755, Oct. 23, 1990
55 FR 53178, Dec. 27, 1990
56 FR 5806, Feb. 13, 1991
56 FR 8987, Mar. 4, 1991
56 FR 11207, Mar. 15, 1991
56 FR 19838, Apr. 30, 1991
56 FR 31392, Jul. 10, 1991 (Updated Index)
56 FR 35852, Jul. 29, 1991
56 FR 52017, Oct 17, 1991
56 FR 55910, Oct. 30, 1991
56 FR 56065, Oct. 31, 1991
56 FR 65245, Dec. 16, 1991
57 FR 2715, Jan. 23, 1992
57 FR 13718, Apr. 17, 1992
57 FR 20471, May 13, 1992

The amendments and deletions are not within the purview of subsection (r) of the Privacy Act which requires the submission of an altered system report. The specific changes to the record systems being amended are set forth below, followed by the system notices, as amended, in their entirety.

Dated: June 24, 1992.

L. M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### Deletions

**S120.05 DLA-K**

**SYSTEM NAME:** Schedule and Record of Overtime Assignment and Request, (50 FR 22901, May 29, 1985).

Reason: Identical data is kept in S120.06 DLA-KM, Supervisors' Records and Reports of Employee Time and Attendance, (50 FR 22897, May 29, 1985).

**S336.60 DLA-KM**

**SYSTEM NAME:** Position Classification Appeals, (50 FR 22925, May 29, 1985).

Reason: This system is a duplicate of OPM/GOVT–9.

* * * * *

### Amendments

**S120.05 DLA-KM**

**SYSTEM NAME:**

Supervisor's Records and Reports of Time and Attendance, (50 FR 22901, May 29, 1985).

**CHANGES:**

* * * * *

**SYSTEM IDENTIFIER:**

Delete entry and replace with "S340.10 DLA-KM".

* * * * *

**SYSTEM NAME:**

Delete entry and replace with "Time and Attendance Labor Exception Subsystem of APCAPS".

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with "Name, SSN, citizenship, pay, educational level, emergency data, thrift savings enrollment, records of work tour, overtime, leave, work absences, and leave balances. Records also include information on temporary duty and special assignments."

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "5 U.S.C. Chapter 61, Hours of Work; Chapter 53, Pay Rates and Systems; Chapter 57, Travel, Transportation, and Subsistence; and Chapter 63, Leave; and E.O. 9397."

* * * * *

**PURPOSE(S):**

Delete entry and replace with "To record employee pay rates and status, including overtime, the use of leave, and work absences.

Data is also used for statistical reports on leave and overtime use and usage patterns and to answer employee queries on leave and overtime."

* * * * *

**STORAGE:**

Delete entry and replace with "Records are stored in electronic and paper form."

* * * * *

**SAFEGUARDS:**

Delete entry and replace with "Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users."

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with "Records are kept for one year after the end of the leave year and then destroyed."

* * * * *

**S340.10 DLA-KM**

**SYSTEM NAME:**

Time and Attendance Labor Exception Subsystem of APCAPS.

**SYSTEM LOCATION:**

Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, and all Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs). All records described are not necessarily maintained by all supervisors. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

DLA employees and certain former DLA employees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, SSN, citizenship, pay, educational level, emergency data, thrift savings enrollment, records of work tour, overtime, leave, work absences, and leave balances. Records also include information on temporary duty and special assignments.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. Chapter 61, Hours of Work; Chapter 53, Pay Rates and Systems; Chapter 57, Travel, Transportation, and Subsistence; and Chapter 63, Leave; and E.O. 9397.

**PURPOSE(S):**

To record employee pay rates and status, including overtime, the use of leave, and work absences.

Data is also used for statistical reports on leave and overtime use and usage patterns and to answer employee queries on leave, overtime, and pay.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Defense Logistics Agency "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in electronic and paper form.

**RETRIEVABILITY:**

Records are retrieved by employee's name or SSN.

**SAFEGUARDS:**

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users.

**RETENTION AND DISPOSAL:**

Records are kept for one year after the end of the leave year and then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Civilian Personnel Officers at DLA PLFAs. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the employee's immediate supervisor or PLFA Civilian Personnel Office where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to their immediate supervisor or the PLFA Civilian Personnel Office where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Request should contain full name and organizational location of employee. For personal visits, individual should be able to provide some acceptable identification such as activity identification card or driver's license.

**CONTESTING RECORD PROCEDURES:**

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Payroll office and payroll records, including automated payroll systems, employees' supervisors, timekeepers, time and attendance clerks, leave slips.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**S339.10 DLA-K**

**SYSTEM NAME:**

HQ DLA Automated Civilian Personnel Data Bank System, (50 FR 22927, May 29, 1985).

**CHANGES:**

* * * * *

**SYSTEM IDENTIFIER:**

Delete entry and replace with S360.10 DLA-KI.

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with "Headquarters Defense Logistics Agency, Office of Civilian Personnel, Cameron Station, Alexandria, VA 22304–6100."

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "5 U.S.C. Chapter 3, Powers; Chapters 31–35, Employment and Retention; Chapters 41–45, Employee Performance; E.O. 10561, E.O. 9397; and Federal Personnel Manual Chapters 250, 290, and 291."

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete first four sentences.

* * * * *

**SAFEGUARDS:**

Delete entry and replace with "Records are secured in appropriate storage containers after duty hours or when not under the control of personnel officials during duty hours. The area in which the records are stored is protected by a building security guard system. Individually identifiable personnel documents will either be hand carried or will be transmitted in envelopes addressed to a specific individual and marked to be opened by addressee only. Magnetic tape and discs are kept in a lockable computer room which has access limited to persons appropriately authorized individuals.

Tapes and disc packs are stored in a tape library when not used in processing and are logged in and out only to authorized personnel with an official need. Tapes are transmitted to the Office of Personnel Management by mail or courier. Reports with individual data are closely controlled. Personnel authorized to process these reports are periodically briefed on proper handling procedures."

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with "Printouts or microfiche reports are considered as working papers to support particular projects, inquiries, studies or administrative need. They will be destroyed when the purpose for which generated has been satisfied. Magnetic

tapes and discs are to be retained for five years and then degaussed."

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Delete entry and replace with "Headquarters Defense Logistics Agency, Office of Civilian Personnel, Cameron Station, Alexandria, VA 22304–6100."

* * * * *

**S380.10 DLA-KI**

**SYSTEM NAME:**

HQ DLA Automated Civilian Personnel Data Bank System.

**SYSTEM LOCATION:**

Headquarters, Defense Logistics Agency, Office of Civilian Personnel, Cameron Station, Alexandria, VA 22304–6100.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

U.S. citizen civilian employees of the DLA who are paid from appropriated funds, and former such employees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Computer records and printouts containing data on current position occupied by employee, employee's current employment status with DLA, training data, and selected personnel information such as Social Security Number, name, sex, race and national origin identification, date of birth, physical handicap, government insurance, veteran's preference, military reserve status, retired military status, and education.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. Chapter 3, Powers; Chapters 31–35, Employment and Retention; Chapters 41–45, Employee Performance; E.O. 10561, E.O. 9397; and Federal Personnel Manual Chapters 250, 290, and 291.

**PURPOSE(S):**

The purpose is to provide information to officials of DLA for effective personnel administration. Information is used to provide management data to officials of DOD by transfer of current data to the Defense Manpower Data Center (DMDC) on a quarterly basis and to provide management data for use of HQ DLA and Field officials.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Defense Logistics Agency "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Magnetic tape and disc, computer paper printouts, microfiche.

**RETRIEVABILITY:**

Records identified to a specific civilian employee are accessed and retrieved by Social Security Number.

**SAFEGUARDS:**

Records are secured in appropriate storage containers after duty hours or when not under the control of personnel officials during duty hours. The area in which the records are stored is protected by a building security guard system. Individually identifiable personnel documents will either be hand carried or will be transmitted in envelopes addressed to a specific individual and marked to be opened by addressee only. Magnetic tape and discs are kept in a lockable computer room which has access limited to persons appropriately authorized individuals.

Tapes and disc packs are stored in a tape library when not used in processing and are logged in and out only to authorized personnel with an official need. Tapes are transmitted to the Office of Personnel Management by mail or courier. Reports with individual data are closely controlled. Personnel authorized to process these reports are periodically briefed on proper handling procedures.

**RETENTION AND DISPOSAL:**

Printouts or microfiche reports are considered as working papers to support particular projects, inquiries, studies or administrative need. They will be destroyed when the purpose for which generated has been satisfied. Magnetic tapes and discs are to be retained for five years and then degaussed.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Headquarters, Defense Logistics Agency, Office of Civilian Personnel, Cameron Station, Alexandria, VA 22304–6100.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Headquarters, Defense Logistics Agency, Office of Civilian Personnel, ATTN: DLA-KI, Cameron Station, Alexandria, VA 22304–6100.

Requester must provide last name, first name, middle initial, and Social Security Number. If request is by mail, requester must also furnish current address.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system should address written inquiries to Headquarters, Defense Logistics Agency, Office of Civilian Personnel, ATTN: DLA-KI, Cameron Station, Alexandria, VA 22304–6100.

Requests for information must be in writing and contain last name, first name, middle initial, date of birth, current address, phone number, phone number where individual may be reached during the day, and a signed statement certifying that the individual understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to 5,000 dollars. Complete records are maintained only on magnetic tapes or discs and are not available for access by personal visits.

**CONTESTING RECORD PROCEDURES:**

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Input from employees of civilian personnel offices and Equal Employment Managers who obtain information from the Official Personnel Folder and other personnel documents, personal contact with individual concerned, applications and forms completed by the individual, and input from interface with the DLA Automated Payroll, Cost and Personnel System (APCAPS).

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

* * * * *

**S434.15 DLA-KP**

**SYSTEM NAME:**

Automated Payroll, Cost and Personnel System (APCAPS) Personnel Subsystem, (51 FR 11209, March 15, 1991).

**CHANGES:**

* * * * *

**SYSTEM IDENTIFIER:**

Delete entry and replace with "S360.20 DLA-KI".

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with "Headquarters Defense Logistics Agency, Office of Civilian Personnel, Cameron Station, Alexandria, VA 22304–6100, and at Offices of Civilian Personnel at the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Defense Logistics Agency (DLA) members and employees and other agency employees who are serviced by the DLA PLFA personnel offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with "Current personnel data on employment status and selected personal data, such as SSN, name, grade, home address, sex, race and national origin identification, date of birth, age, physical handicap, Government health or life insurance, military reserve status, retired military status, education and training, status preceding employment with DLA, citizenship, veteran preference, and pay data."

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "5 U.S.C. Chapter 3, Powers; Chapters 51–59, Pay and Allowances; E.O. 9397; E.O. 10561; Federal Personnel Manual Chapters 290 and 293."

* * * * *

**PURPOSE(S):**

Delete entry and replace with "The purposes of the system are to effect Federal personnel actions, maintain the Federal personnel service control system, fulfill Federal personnel reporting requirements, and provide information to officials of DLA for effective personnel management and personnel administration. The following data may be used by law enforcement, safety, and vehicle registration and parking officials: Subject's name, home and work address, and grade. Salary information may be used by management officials to determine the cost of services performed by DLA personnel."

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Delete entry and replace with "Information from this system may be provided to health or life insurance carriers, hospitals, medical offices, and institutions to verify benefits enrollment, to verify eligibility for payment of a claim, or to carry out the coordination or audit of benefit provisions.

The Defense Logistics Agency "Blanket Routine Uses" published at the beginning of the agency's compilation of systems of records notices apply to this system."

* * * * *

**SAFEGUARDS:**

Delete entry and replace with "Access to records is limited to those DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. During nonduty hours, records are either secured in locked storage areas, locked rooms, locked buildings, or buildings protected by security guards."

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with "Records are maintained on-line in active history file for five years. After 5 years, data is off-loaded onto tape. Tapes are destroyed when no longer needed."

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Delete entry and replace with "Staff Director, Office of Civilian Personnel, Headquarters, Defense Logistics Agency, and Offices of Civilian Personnel at the DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

**S360.20 DLA-KI**

**SYSTEM NAME:**

Automated Payroll, Cost and Personnel System (APCAPS) Personnel Subsystem.

**SYSTEM LOCATION:**

Headquarters Defense Logistics Agency, Office of Civilian Personnel, Cameron Station, Alexandria, VA 22304–6100, and at Offices of Civilian Personnel at the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Defense Logistics Agency (DLA) members and employees and employees and members of other agencies who are serviced by the DLA PLFA personnel offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Current personnel data on employment status and selected personal data, such as SSN, name, grade, home address, sex, race and national origin identification, date of birth, age, physical handicap, Government health or life insurance, military reserve status, retired military status, education and training, status preceding employment with DLA, citizenship, veteran preference, and pay data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. Chapter 3, Powers; Chapters 51–59, Pay and Allowances; E.O. 9397; E.O. 10561; Federal Personnel Manual Chapters 290 and 293.

**PURPOSE(S):**

The purposes of the system are to effect Federal personnel actions, maintain the Federal personnel service control system, fulfill Federal personnel reporting requirements, and provide information to officials of DLA for effective personnel management and personnel administration.

The following data may be used by law enforcement, safety, and vehicle registration and parking officials: Subject's name, home and work address, and grade.

Salary information may be used by management officials to determine the cost of services performed by DLA personnel.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information from this system may be provided to health and life insurance carriers, hospitals, medical offices, and institutions to verify benefits enrollment, to verify eligibility for payment of a claim, or to carry out the coordination or audit of benefit provisions.

The Defense Logistics Agency "Blanket Routine Uses" published at the beginning of the agency's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes or discs, computer paper printouts. Paper records in file folders.

RETRIEVABILITY:

Information identified to a specific civilian employee is accessed and retrieved by Social Security Number.

SAFEGUARDS:

Access to records is limited to those DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. During nonduty hours, records are either secured in locked storage areas, locked rooms, locked buildings, or buildings protected by security guards.

RETENTION AND DISPOSAL:

Records are maintained on-line in active history file for five years. After 5 years, data is off-loaded onto tape. Tapes are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Staff Director, Office of Civilian Personnel, Headquarters, Defense Logistics Agency, and Offices of Civilian Personnel at the DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to or make a personal visit to the activity where the record is maintained. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals must provide name (last, first, middle initial) and SSN in order to determine whether or not the system contains a record about them. With a written request, individual must provide a return address. For personal visits, the individual should be able to provide some acceptable identification, such as employing office identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves in this system must submit a written request. The request is to contain the name of the individual (last, first, middle initial), SSN, return mailing address, telephone number where individual can be reached during the day, and a signed statement certifying that the individual understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to 5,000 dollars. Complete records are maintained only on magnetic tapes or discs and are not available for access by personal visits. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agency supervisors and administrative personnel, medical officials, previous federal employers, U.S. Office of Personnel Management and applications and forms completed by individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92-15434 Filed 6-30-92; 8:45 am]

BILLING CODE 3810-01-F

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before July 31, 1992.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Cary Green, (202) 708-5174.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: June 25, 1992.

**Cary Green,**

*Director, Information Resources Management Service.*

### Office of Elementary and Secondary Education

*Type of Review:* New.
*Title:* Study of How Chapter 2 Operates at the Federal, State, and Local Levels (Supplement to a Study of Effective Schools Programs: Their Implementation and Success).
*Frequency:* One time.
*Affected Public:* State or local governments.
*Reporting Burden:*
*Responses:* 1,456.
*Burden Hours:* 1,148.
*Recordkeeping Burden:*
*Recordkeepers:* 0.
*Burden Hours:* 0.
*Abstract:* The purpose of this study is to describe the full range of educational improvement activities supported by Chapter 2. The Department will use this information to improve Chapter 2 program operations and develop a ore effective Federal Strategy towards Educational Reform.

*Type of Review:* Final.
*Title:* State Performance Report—Chapter 1 Migrant Education Program.
*Frequency:* Annually.

*Affected Public:* State or local government.
*Reporting Burden:*
*Responses:* 51.
*Burden Hours:* 8,160.
*Recordkeeping Burden:*
*Recordkeepers:* 0.
*Burden Hours:* 0.
*Abstract:* State educational agencies that have participated in the Chapter 1 Migrant Education Program are to submit the report the Department. The Department uses the information to assess the accomplishments of project goals and effective program management.

[FR Doc. 92-15394 Filed 6-30-92; 8:45 am]
BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Conduct of Employees

### Notice of Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. 95-91)

Section 602(a) of the Department of Energy ("DOE") Organization Act (Pub. L. No. 95-91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases where the interest is a pension, insurance, or other similarly vested interest.

Mr. Richard M. Stark has recently been appointed to the position of Director, Systems Analysis and Standards Division, Office of Nuclear Energy. As a result of his previous employment with Westinghouse Electronic Corporation, Mr. Stark has a vested pension interest, within the meaning of section 602(c) of the Act, in the Westinghouse Pension Plan. I have granted Mr. Stark a waiver of the divestiture requirement of section 602(a) of the Act for the duration of his employment with the Department with respect to this pension interest.

In accordance with section 208, title 18, United States Code, Mr. Stark has been directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon Westinghouse Electric Corporation, unless his supervisor and the Counselor agree that the financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

Dated: June 16, 1992.

**James D. Watkins,**

*Admiral, U.S. Navy (Retired), Secretary of Energy.*

[FR Doc. 92-15463 Filed 6-30-92; 8:45 am]
BILLING CODE 6450-01-M

### Proposed Finding of No Significant Impact, Consolidated Incineration Facility at the Savannah River Site, Aiken, SC

**AGENCY:** Department of Energy.

**ACTION:** Proposed finding of no significant impact.

**SUMMARY:** The U.S. Department of Energy (DOE) has prepared an environmental assessment (EA)(DOE/EA-0400) for the proposed construction and operation of the Consolidated Incineration Facility (CIF) at the Savannah River Site (SRS), Aiken, South Carolina. The CIF would be for the treatment of hazardous, low-level radioactive, and mixed (both hazardous and radioactive) wastes from SRS. Incineration would reduce the volume and toxicity of these wastes. Construction and operation of the CIF would be subject to the South Carolina Department of Health and Environmental Control issuing a hazardous waste permit under the Resource Conservation and Recovery Act (RCRA).

Based on the analysis presented in the EA, DOE believes that the proposed action does not constitute a major Federal action that would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969 (42 USC 4321 *et seq.*). Therefore, DOE proposes to issue a finding of no significant impact (FONSI). This proposed FONSI is being made available for public review and comment. DOE will consider comments received in making a final determination on whether to issue a FONSI or to prepare an environmental impact statement (EIS) for the proposed CIF.

**DATES:** Comments on the proposed FONSI should be postmarked by July 31, 1992 to assure consideration. Comments postmarked after that date will be considered to the extent practicable.

**ADDRESSES:** This proposed FONSI will be distributed to those persons and agencies known to be interested in or affected by the proposed action or alternatives. Comments or requests for copies of the EA should be addressed to: Stephen Wright, Director, Environmental and Laboratory Programs Division, Savannah River Field Office, U.S. Department of Energy, P.O. Box A, Aiken, South Carolina 29802. Telephone: (803) 725-3957. FAX: (803) 725-8434.

**FOR FURTHER INFORMATION CONTACT:** For further information on the CIF project, contact Stephen Wright at the above address. For further information on DOE's general NEPA procedures, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586-4600 or (800) 472-2756.

**PROPOSED ACTION:** The SRS CIF is part of a combination strategy for the treatment, storage, and disposal of SRS waste as described in the Final EIS, Waste Management Activities for Groundwater Protection, Savannah River Plant, Aiken, South Carolina (DOE/EIS-0120).

The proposed action involves the construction and operation of the CIF for (1) the treatment of hazardous and mixed waste at SRS to enable SRS to comply with RCRA requirements for the treatment of hazardous and mixed wastes before land disposal; (2) volume reduction of low-level radioactive waste before disposal; and (3) the elimination of current SRS shipments of burnable hazardous waste for off-site treatment and disposal. The CIF is proposed to start operating in 1995.

The types of waste proposed to be incinerated by the CIF include hazardous waste and low-level radioactive and mixed waste (waste that is or is presumed to be both hazardous and radioactive). These wastes are primarily generated during normal SRS operations and consist of solids, sludges, and organic and aqueous liquids; examples are oils, paints, solids, solvents, rags, clothing, and floor cleaning equipment. The CIF would not receive or treat waste containing dioxins or polychlorinated biphenyls.

The CIF would have a rotary kiln combustion chamber and a secondary combustion chamber (SCC) to ensure 99.99 percent destruction of all hazardous constituents. The CIF offgas treatment system would ensure that the SCC offgas meets all applicable regulatory requirements before discharge to the environment. At designed operating capacities, approximately 30 pounds per hour of residual ash would result from CIF operation and would be solidified for

disposal at SRS in a proposed RCRA-permitted facility.

The CIF would be located near the center of the SRS in the 200–H Chemical Separations Area. The facility would consist of a new concrete and steel open building of approximately 31,000 square feet with processing facilities, control rooms, waste receiving areas, and waste handling areas. The CIF process building would have an exhaust stack to handle the offgas from the incinerator and the exhaust air from the building ventilation system. The offgas would be cooled in a quench vessel and would enter a free jet scrubber to remove particulates and acid gases before entering a cyclone separator to remove entrained moisture. The offgas would also pass through a mist eliminator, and a series of high-efficiency particulate air (HEPA) filters to remove fine particulates (including radioactive particulates) before the emissions would be monitored and released through the stack. The building ventilation system would provide exhaust hoods around each of the kiln seals for the collection and HEPA filtration of any emissions.

**ALTERNATIVES CONSIDERED:** Under the No Action alternative, the CIF would not be constructed or operated. Untreated waste would continue to accumulate at SRS. This would not allow SRS operations to comply with RCRA land ban requirements.

An off-site treatment and disposal alternative would involve shipping burnable hazardous waste to off-site incinerators (DOE or commercial) and shipping mixed wastes to off-site DOE mixed waste incinerators (commercial capacity is not available). However, sufficient capacity would not be available at DOE incinerators for the volume of SRS mixed waste. Even if capacity were available, the alternative would impose the costs and environmental impacts of necessary modifications to these other facilities and of off-site transportation of hazardous and mixed wastes. It would also make SRS operations more dependent upon the availability of other facilities.

Another alternative is to construct two incinerators at SRS—one incinerator to burn miscellaneous solid and liquid hazardous wastes, with a subsequent upgrade to handle radioactive waste, and the second to burn only organic liquid waste from the Defense Waste Processing Facility. This alternative would allow the use of different technologies and potentially lower direct treatment costs. However, this alternative would substantially duplicate facilities and increase costs. The duplication of equipment would also result in higher actual and potential emissions, e.g., from duplicate tank vents. Moreover, a single incinerator and two separate incinerators would have to meet the same destruction and removal efficiency requirements and other offgas quality standards. Therefore, separate facilities would not necessarily or significantly reduce pollutant emissions compared to a single facility.

Other treatment methods for hazardous wastes considered as alternatives are solidification, biological treatment, and chemical treatment. A separate treatment method could be used for each waste stream, possibly increasing the efficiency of the treatment of each waste. If separate waste treatment processes were chosen, facility costs would be higher because of the need to construct, operate, and maintain multiple facilities. Such multiple facilities would increase land usage and fugitive emissions and possibly duplication of equipment. No other treatment method compares favorably with incineration, which the U.S. Environmental Protection Agency (EPA) has identified (40 CFR part 268) as the Best Demonstrated Available Technology for treatment of many hazardous wastes.

**ENVIRONMENTAL CONSIDERATIONS:** The CIF would occupy 3 acres of previously developed land adjacent to H-Area, a location that has been subjected to construction impacts since the early 1950s. The peak construction workforce of 175 workers would have negligible effects on area land use, housing, and social services. No significant impacts on ecological resources are expected due to the minimal habitat quality of the proposed CIF site. No floodplains, wetlands, or archaeological or historical sites exist on the proposed site. Air quality impacts from construction activities are expected to be negligible. Once operational, the facility would employ 39 people. It is anticipated that many of these positions would be filled by personnel already employed at SRS.

Liquid wastes from CIF processing operations would be collected in permitted storage tanks before being treated for disposal in a SRS RCRA permitted vault disposal unit. Other liquid wastes, such as sanitary wastewater, would be analyzed and treated, as appropriate, before being discharged in compliance with current National Pollutant Discharge Elimination System permits.

Air emissions from the CIF would be controlled to levels significantly below the applicable EPA Prevention of Significant Deterioration emission requirements. Therefore, the CIF would not be expected to significantly change regional ambient air quality or affect public health. The CIF would be designed and operated to achieve a 99.99 percent minimum destruction and removal efficiency of principal organic hazardous constituents, as required by South Carolina air pollution control and hazardous waste management regulations for the wastes proposed to be incinerated at the CIF. Trial burn and periodic emission monitoring programs required by state and Federal regulations would be undertaken to confirm that CIF air emissions are within state and Federal standards.

The National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations (40 CFR part 61) limit radionuclide emissions from DOE facilities to not exceed amounts that would cause more than 10 mrem per year of effective dose-equivalent to any member of the public. A NESHAP permit for CIF construction has been obtained from EPA. Total annual radionuclide releases to the atmosphere from the proposed CIF routine operations are estimated to be 1200 curies. The maximum effective dose to an individual at the SRS boundary from such releases is projected to be 0.003 mrem per year. The maximum combined dose from the existing operation of SRS and the CIF would remain at approximately 0.5 mrem to the maximally exposed individual at the plant boundary. This is well below the NESHAP limit.

Routine CIF processing activities would result in only minor and ordinary radiological and chemical exposures to on-site operating personnel. Engineering and administrative controls would ensure that the annual effective dose equivalent to any SRS worker would not exceed the DOE limit of 5 rem (DOE order 5480.11) and that any chemical exposure is within safe limits.

Potential accidents associated with CIF operations are addressed in the EA and a safety assessment document for the facility. Facility accidents addressed in the EA include natural phenomena (wind or tornado), earthquakes, fire, nuclear criticality, explosion in the incinerator chamber(s), benzene release, and human-caused external events. On-site transportation accidents were also evaluated. Using a relation between radiation dose and consequent health effects of $4\times10^{-4}$ latent cancer fatalities per person-rem, none of these accidents would be expected to produce any radiation-induced fatal cancers in the

exposed population, either on-site or off-site.

For carcinogens such as benzene, EPA requires that risk be reduced to below $10^{-4}$ (i.e., 1 excess cancer death in ten thousand people) in exposed receptors. In the case of benzene release under maximum credible accident conditions involving a spill of the benzene inventory into the secondary containment system, the carcinogenic risk is $6\times10^{-7}$ for the maximally exposed off-site individual, $4\times10^{-6}$ for an individual at the spill site, and $2\times10^{-6}$ for an on-site individual 5 miles from the spill, when computed using the EPA risk assessment methodology. Smaller but potentially more frequent releases could occur from minor spills or process upsets. However, the analysis determined that no chronic exposure hazards would exist for on-site or off-site populations, and that the probability of an accident that could produce a harmful exposure would be very low.

**PROPOSED DETERMINATION:** Based on the information and the analyses in the EA for the CIF, DOE believes the proposed action does not constitute a major Federal action that would significantly affect the quality of the human environment within the meaning of NEPA. Therefore, DOE proposes to issue a FONSI and not require the preparation of an EIS. DOE will make a final determination after a 30-day public comment period.

Issued at Washington, DC, this 24th day of June.

**Peter N. Brush,**

*Acting Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 92-15464 Filed 6-30-92; 8:45 am]

BILLING CODE 6450-01-M

## Energy Information Administration

## Forms EIA-1, 3, 4, 5, 6, 7A, and 20 (Coal Program Package)

**AGENCY:** Energy Information Administration, Energy.

**ACTION:** Notice of the Proposed Extension of the EIA-1, 3, 4, 5, 6, 7A, and 20 (Coal Program Package) and Solicitation of comments concerning proposed changes to the Coal Survey Forms.

**SUMMARY:** The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, as amended, Public Law 96-511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revisions and a three year extension of approval for its coal forms. The forms include: EIA-1, "Weekly Coal Monitoring Report—General Industries and Blast Furnaces"; EIA-3, "Quarterly Coal Consumption Report—Manufacturing Plants"; EIA-4 "Weekly Coal Monitoring Report—Coke Plants"; EIA-5 "Coke Plant Report—Quarterly"; EIA-6 "Coal Distribution Report"; EIA-7A, "Coal Production Report"; and EIA-20, "Weekly Telephone Survey of Coal Burning Utilities."

**DATES:** Written comments must be submitted on or before July 31, 1992. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so, as soon as possible.

**ADDRESSES:** Send comments to Mary K. Paull, Energy Information Administration, EI-522, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (telephone number: 202-254-5379).

**FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS:** Requests for further information or copies of the form and instructions should be directed to Mary K. Paull at the address listed above.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Current Actions
III. Request for Comments

### I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93-275) and the Department of Energy Organization Act (Pub. L. 95-91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs. To meet this responsibility, as well as internal DOE Requirements that are dependent on accurate data, the EIA conducts statistical surveys that encompass each significant coal supply, distribution and consumption activity in the United States.

### II. Current Actions

EIA proposes an extension with changes to its existing EIA-3, 5, and 6 collections. The EIA 1, 4, 7A and 20 survey forms will remain unchanged. These changes will have little impact on respondent burden, reflect current industry operations better and respond better to the data needs arising from the Clean Air Act Amendments of 1990 and congressional and Federal agency data users' requirements. The proposed changes are summarized below:

*1. EIA-3*

An annual supplement will be added to collect additional data on the quality and origin of coal receipts during the year. Specifically, respondents will be asked to report the average Btu, sulfur, and ash content of the coal received during the year and the quantities of coal received during the year by State of origin for domestic coal purchases and country of origin for imported purchases.

*2. EIA-5*

An annual supplement will be added to collect additional data on the quality and origin of coal receipts during the year. Specifically, respondents will be asked to report the volatile content percentages and the sulfur and ash content of their bituminous coal receipts during the year. Also, respondents will be asked to report the quantities of coal received during the year by State of origin for domestic coal purchases or origin country for imported coal purchases.

*3. EIA-6*

a. The foreign distribution section of the form (Section III.D.) will be expanded. Specifically, the overseas exports data element will be broken out in more detail into metallurgical and steam uses by continent and major importing countries (i.e., approximately 15 possible countries covering the main destinations of U.S. coal exports).

b. A secondary methods of transportation breakdown, similar to that already asked for in Sections III.B, C and D, will be added to Section III.A. (Rail Shipments) to pick up secondary methods of transportation data.

### III. Request for Comments

Prospective respondents and other interested parties should comment on

the proposed (extension and/or revisions). The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form your comments apply.

*As a potential respondent:*

A. Are the instructions and definitions clear and sufficient? If not, which instructions and definitions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden (hours per response) for each of the following forms is shown below:

*EIA–1*=1.0 hrs.; *EIA–3*=0.5 hrs.; *EIA–3 annual supplement (proposed)*=0.5 hrs.; *EIA–4*=1.0 hrs.; *EIA–5*=1.0 hrs.; *EIA–5 annual supplement (proposed)*=0.5 hrs.; *EIA–6 (including the proposed additional data)*=1.5 hrs.; *EIA–7A*=1.21 hrs.; and *EIA–20*=1.0 hrs.

How much time do you estimate will be required to complete and submit the required form(s)? Include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

E. What is the estimated cost of completing the form(s), including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form(s) be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, please specify the agency, the data element(s), and the means of collection.

*As a potential user:*

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purpose(s) would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from the general public regarding their views on the need for the information contained in the Coal Program Package.

Comments submitted in response to this Notice and Solicitation will be summarized and/or included in the request for OMB approval of the form(s). They also will become a matter of public record.

**Statutory Authorities:** Sections 5(a), 5(b), 13(b), and 52 of Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b) and 790a.

Issued in Washington, DC, June 23, 1992.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 92–15466 Filed 6–30–92; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Project No. 11076–000 Washington]**

## City of Tacoma, Washington; Availability of Environmental Assessment

June 25, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Barrier Dam Hydroelectric Project, to be located on the Cowlitz River in Lewis County, near Salkum, Washington, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–15392 Filed 6–30–92; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RM91–11–000; Order No. 636]**

## Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; Order Granting Motion in Part

Issued June 24, 1992.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Order on motion for establishment for discovery procedures.

**SUMMARY:** The Commission issued a final rule in Order No. 636 (57 FR 13267 (April 16, 1992)), III FERC Stats. and Regs. ¶ 30,939, on April 8, 1992, changing its regulations to restructure the services provided by interstate natural gas pipelines. This order establishes procedures for participants in pipeline restructuring proceedings to exchange information relevant to the evaluation and implementation of restructuring proposals.

**EFFECTIVE DATE:** This order will become effective on the date of issuance, June 24, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mary E. Benge, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 208–1124.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in 941 North Capitol Street, NE., Washington, DC 20426.

## In Re Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; Order Granting Motion in Part

[Docket No. RM91–11–000]

Issued June 24, 1992.

On May 28, 1992, Natural Gas Clearinghouse (NGC) filed a motion for the establishment of discovery procedures in all pipeline Order No. 636 restructuring proceedings.[1] NGC

[1] NGC submitted similar motions in a number of individual pipeline restructuring proceedings.

In addition to NGC's motion, the issue of the establishment of formal discovery procedures has been raised by Tejas Power Corporation and Public

Continued

submits that discovery procedures are necessary for the restructuring process to move forward in an orderly fashion. The Commission agrees that an exchange of information is important for the restructuring process to proceed smoothly with meaningful participation by the parties, although not necessarily through formal discovery. Therefore, the Commission sets forth in this order a procedure for participants in pipeline restructuring proceedings to exchange information relevant to the evaluation and implementation of restructuring proposals.

*NGC's Motion*

NGC states that on March 15, 1992, it served a number of major pipelines with a standardized data request, asking that they provide the requested data no later than July 7, 1992.[2] NGC states that both the timing and the content of its data requests were chosen in order to allow the pipeline recipients to be simultaneously developing defensible settlement positions and gathering data responsive to the request. NGC states that its purpose in initiating this informal discovery process was twofold: To obtain information that is essential to its efforts to come to a reasoned understanding of the consequences of Order No. 636 for each pipeline system, and to participate in pipeline restructuring conferences in a constructive and substantive manner. NGC states that its attempts to obtain information through this process have met with mixed results.

NGC urges the Commission to establish generic discovery procedures under subpart D of the Commission's Rules of Practice and Procedure in order to clarify the mutual obligations of the pipelines and the parties to participate in meaningful discovery. NGC submits that generic procedures are preferable to different sets of discovery procedures for each of the numerous cases involving predominantly the same issues, particularly when parties' resources are best spent exploring settlement.

Answers in opposition to NGC's motion were filed by Enron Interstate Pipelines, Great Lakes Gas Transmission Limited Partnership, Interstate Natural Gas Association of America, Natural Gas Pipeline Company of America, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company, the Coastal Companies, Southern Natural Gas Company, Pacific Gas Transmission Company, Panhandle Eastern Pipe Line Company and Trunkline Gas Company, and Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company. The Producer Associations, UGI Utilities, Inc., Rochester Gas and Electric Corporation and New York State Electric & Gas Corporation, and Arco Oil and Gas Company and Arco Natural Gas Marketing, Inc. filed answers in support of the motion.

*Discussion*

The Commission recognizes the validity of the parties' need for relevant information, and the Commission encourages participants to voluntarily exchange the necessary background and supporting data, both now in the pre-filing phase, as well as later, when additional information may be necessary for the evaluation of pipeline restructuring compliance filings. The Commission also recognizes the pipeline's need to be free of the burdensome aspects of discovery while preparing its compliance filing. Therefore, in an effort to balance these interests, the Commission will establish a procedure which will both facilitate information exchanges and avoid unduly burdensome discovery. The Commission will not establish procedures under subpart D of the Commission's Rules of Practice and Procedure, because Subpart D sets forth discovery procedures only for proceedings set for hearing, and the restructuring proceedings are not in litigation.

To avoid the burden on the pipelines of numerous and repetitive data requests in the pre-filing stage, the Commission will direct staff, in each individual pipeline restructuring proceeding, to submit to the pipeline a data request.[3] The staff data requests will be a delegated exercise of the Commission's authority to obtain information from the pipelines under the Natural Gas Act. While this procedure will obligate the pipeline to respond to data requests from only one source, the Commission strongly encourages the pipelines to voluntarily supply as much information as possible to the parties to restructuring proceedings.

The staff data requests should be designed to elicit two categories of information: (1) General factual information about the pipeline system that will be helpful to the parties during ongoing restructuring discussions, and (2) information about the specific methods for compliance chosen by the pipeline. The first category would include information such as the different components of the pipeline's system, flow diagrams, constraint points, any capacity held on upstream pipelines or storage under contract, the current entitlements of its customers, and the pipeline's Account No. 191 balance. This information should be obtained as soon as possible to be useful to the parties in the pre-filing restructuring discussions and is the type of information that should be readily at hand and easily produced.

The second category of information, providing information specific to the restructuring proposed by the pipeline, must be tailored to the specific summary proposal that each pipeline must serve by July 7, 1992. The Commission recognizes that the parties to the restructuring proceedings must have sufficient information to have a complete understanding of the pipeline's proposal in order to make the service choices envisioned by the rule. Staff may impose deadlines for answers to the data request which will ensure that responses are provided within a relevant time to be useful during the restructuring proceedings. The Commission expects that a pipeline's proposal is likely to undergo changes as result of discussions with the parties. However, to the extent a pipeline does not provide sufficient information to support its proposal during the proceeding, staff is expected to request information as necessary to ensure a full understanding of the proposal as it develops. In addition, the pipeline should submit similar explanatory and supporting information with its compliance filing to assist parties in evaluating and commenting on the filing.

The Commission does not intend the production of the data to be requested to provide a justification to delay compliance with the Order No. 636. Rather, it is intended to ensure that the pipelines provide sufficient support for their proposals so that the parties can participate fully in the restructuring discussions. The data requests that staff must formulate in each individual case may request much of the same data sought by NGC. However, staff must tailor its requests so that it does not request information at a level of detail that is unnecessary or unduly burdensome. For example, NGC seeks copies of various contracts and service

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Service Company of Colorado, Western Gas Supply Company, and Cheyenne Light, Fuel and Power Company, in rehearing requests of Order No. 636.

[2] NGC appends to its motion a representative sample of the data request and a list of pipeline recipients of the request.

[3] Some pipelines have filed motions for termination of restructuring proceedings on the basis that they are in compliance with Order No. 636. If the Commission makes a finding of compliance and terminates a restructuring docket, of course, staff will not be expected to send the pipeline a data request.

agreements that the pipeline holds with other parties. For the purposes of restructuring proceedings, a summary of these documents should suffice, would be less burdensome, and at the same time, eliminate any possible concerns regarding confidentiality. Therefore, the Commission directs staff not to request pipelines to furnish copies of documents such as service agreements or records of transactions. Nor is it necessary, for example, to burden pipelines with requests for information already available in the Commission's files in pending cases or in annual reports.

Since the purpose of these data requests is to provide parties in the restructuring proceedings with useful information, all participants to the restructuring proceeding must be served with a copy of the responses to staff's data requests. Unlike the discovery procedures used for proceedings in litigation, any material that is provided to the Commission's advisory staff must be served on all participants. The Commission recognizes that the service lists in these proceedings are lengthy and that it is important that information be disseminated as quickly as possible. Therefore, data should be provided both in electronic format, as much as possible, and in hard copy. Exchange of data by any means other than that specified in the regulations may be made by electronic mail or any other means acceptable to the parties.

If, after being served with responses to staff's data requests, parties to a restructuring proceeding need additional information, the Commission expects the parties to first request the information from the pipeline. Pipelines are encouraged to respond to such requests where possible. If a dispute arises regarding request for material, in addition to that requested in the staff data requests, the parties should make every effort to resolve the dispute informally. Staff will assist the parties in resolving any disputes, consistent with the Commission's *ex parte* regulations which apply in the restructuring proceedings. All data requests and responses must be served on all parties or otherwise publicly available.

If disputes cannot be resolved informally, any party seeking additional data should present its request to the Commission in its response to the pipeline's compliance filing. At that time the Commission, and not staff, will resolve any disputes. Pursuant to the Notice of Procedures, issued May 22, 1992, in each of the restructuring proceedings, responses to compliance filings are due 21 days after the compliance filing is made. At that time the party can make a case for its need for further discovery. The Commission will not consider requests for more information until after the compliance filing is made so that the Commission can evaluate the relevance of the request. If the Commission determines the need exists, then the Commission will direct the procedures to be followed to acquire the relevant information. In addition, if the pipeline has not voluntarily made available all the necessary supporting information related to the particular way the pipeline intends to implement Order No. 636, that information should be requested after the compliance filing is made.

In sum, the procedure set forth here represents a compromise to serve both the need of the parties to have sufficient information to participate meaningfully in the restructuring process, and the need for pipelines to expend their time and resources on meeting the timetable for filing in compliance with Order No. 636.

*The Commission Orders*

(A) NGC's motion is granted, in part, as discussed in the body of this order.

(b) The Commission staff is directed to send data requests to each pipeline for which the Commission has established a restructuring docket, as discussed in the text above.

By the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-15384 Filed 6-30-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. JD92-07373T Texas-58]**

## State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

June 25, 1992.

Take notice that on June 22, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wolfcamp Formation underlying a portion of Terrell County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is located within Railroad Commission District 7C and is described as:

CCSD & RGNG RR Co. Survey, Block 1
Sections 1 and 6
University Lands Survey, Block 35
Section 31
TCRR Co. Survey, Block 1
Sections 38, 40 through 52 and 66 through 68

The notice of determination also contains Texas' findings that the referenced portion of the Wolfcamp Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-15393 Filed 6-30-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP90-143-011]**

## CNG Transmission Corp. Report of Refunds

June 25, 1992.

Take notice that on April 17, 1992, CNG Transmission Corporation (CNG) tendered for filing its Report of Refunds in compliance with the March 6, 1992 letter order issued by this Commission under Docket No. RP90-143-006. Such order required CNG to make refunds to its customers and submit a report to the Commission detailing the distribution of the refunds to the various customers and setting forth the data and computations supporting such distribution.

CNG states that it has distributed all applicable refunds to its jurisdictional sales and transportation customers on March 17 and April 6, 1992, with interest, in accordance with the Commission's March 6 Order.

CNG further states that it has served copies of the refund report to all its customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-15389 Filed 6-30-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP91-204-007]

## East Tennessee Natural Gas Co.; Rate Filing

June 25, 1992.

Take notice that on June 18, 1992, East Tennessee Natural Gas Company ("East Tennessee"), submitted for filing ten copies of the following tariff sheets:

Effective May 1, 1992 (RP91-204-000 and RP90-111-000)

*First Revised Volume No. 1*

Second Substitute Twentieth Revised Sheet No. 4
Second Substitute Twentieth Revised Sheet No. 5

Effective June 1, 1992 (TQ92-3-2)

*First Revised Volume No. 1*

Second Substitute Twenty-first Revised Sheet No. 4
Second Substitute Twenty-first Revised Sheet No. 5

Effective July 1, 1992 (TQ92-4-2)

*First Revised Volume No. 1*

Second Substitute Twenty-second Revised Sheet No. 4
Second Substitute Twenty-second Revised Sheet No. 5

East Tennessee states that the purpose of the filing is to clarify a footnote included on its June 3, 1992 filing in these dockets.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-15386 Filed 6-30-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP92-133-001 (Phase II)]

## Gas Research Institute; Annual Application

June 25, 1992.

Take notice that on June 17, 1992, Gas Research Institute (GRI) filed an application requesting advance approval of its 1993-1997 Five-Year Research and Development (R&D) Plan, 1993 R&D Program, and the funding of its R&D activities for 1993, pursuant to the Natural Gas Act and the Commission's Regulations, particularly 18 CFR 154.38(d)(5) (1991).

In its application, GRI proposes contract obligations of $201.8 million and cash outlays of $197 million in 1993. GRI's application seeks to collect $182,971,329 through jurisdictional rates and charges during the 12 months ending December 31, 1993. GRI states that this $182.9 million, plus additional funds collected on intrastate transactions, along with a draw-down of GRI's cash balance during 1993 from $22.8 million to $13.2 million, will provide the necessary cash to fund the 1993 R&D program. GRI also intends to decrease its general expenses, capital purchased and program management expenses in 1993.

GRI proposes to fund the 1993 R&D program through: (1) A volumetric funding unit surcharge of 1.51 cents per Mcf (1.47 cents per Dth); and (2) a uniform demand or reservation surcharge of 8 cents per Dth per month, as described in GRI's "Second Amendment to Modified Funding Mechanism," filed in Phase I of this proceeding on May 26, 1992. Parties in their comments to GRI's application should address the size and scope of GRI's proposed 1993 R&D Program in light of GRI's proposed Phase I methodology for funding that program.

Further, GRI states that it plans to devote more attention to enhanced technology transfer efforts designed to stimulate more rapid "deployment" of products and processes featuring GRI-sponsored developments. In this regard, GRI is proposing to fund efforts for two activities, a Heat Treating Application Center and a Residential Desiccant Dehumidifier, that are somewhat of a departure from previous field experiment and testing activities.

GRI also proposes a limited increase in reprogramming flexibility. GRI's proposal would allow reprogramming between program areas for the purpose of pooling funds for cooperative projects involving environment and safety, economics and systems research, or basic research. In addition, in accordance with the current requirements with respect to reprogramming, GRI requests approval to reprogram up to $2.7 million of already-approved funds into two project areas within Gas Operations.

GRI also proposes cofunding guidelines for End Use and Supply applied R&D activities, *i.e.*, those intended to result in marketable processes or hardware products. Those guidelines are: (1) Best efforts will be used to achieve cofunding prior to proof-of-concept (POC); (2) at least 20 percent cofunding will be achieved beyond POC, except that for qualifying small businesses the guideline will be 10 percent; and (3) at least 33 percent cofunding will be achieved for any GRI-funded post-field test efforts, except that for qualifying small businesses the guideline will be 15 percent. Parties in their comments to GRI's application may wish to address the cofunding requirements included in Title IV of H.R. 776.

The Commission Staff will analyze GRI's application and prepare a Commission Staff Report. This Staff Report will be served on all parties and filed with the Commission as a public document on August 14, 1992. Comments on the Staff Report and GRI's application by all parties, except GRI, must be filed with the Commission on or before August 31, 1992. GRI's reply comments must be filed on or before September 14, 1992.

Any person desiring to be heard on or to protest GRI's application, except for GRI members and state regulatory commissions, who are automatically permitted to intervene, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 6, 1992. All comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party, other than a GRI member or a state regulatory commission, must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-15385 Filed 6-30-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-24-001]

**Natural Gas Pipeline Company of America; Filing of Report of Refund**

June 25, 1992.

Take notice that Natural Gas Pipeline Company of America (Natural) on February 3, 1992, tendered for filing its Report of Distribution of Refunds made in compliance with Natural's FERC Gas Tariff, Third Revised Volume No. 1.

Natural states that copies of the filing were served upon Natural's jurisdictional customers, intervenors and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-15387 Filed 6-30-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP91-229-006]

**Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff**

June 25, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on June 22, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sub Third Revised Sheet No. 32-AC
2nd Sub Original Sheet No. 32-AQ.4
Substitute Original Sheet No. 32-AQ.5
Sub Second Revised Sheet No. 32-BF
2nd Sub Third Revised Sheet No. 32-BS
2nd Sub Second Revised Sheet No. 32-BT
2nd Sub Original Sheet No. 32-BU.5
Substitute Original Sheet No. 32-BU.6
Substitute Original Sheet No. 43-04.5
Original Sheet No. 43-04.6
Substitute Original Sheet No. 43-14.5
Substitute Original Sheet No. 43-14.6

Panhandle requested an effective date of April 1, 1992 as provided in the Commission's October 31, 1991 suspension order.

Panhandle states that the revised tariff sheets are being filed in compliance with Ordering Paragraph (B) of the Commission's Order Terminating Technical Conference Proceeding, Granting Rehearing in Part and Denying Rehearing in part (June 1, 1992). Ordering Paragraph (B) of the referenced order required Panhandle to file revised tariff sheets consistent with certain findings respecting: (i) The billing of charges upon the termination, suspension or inapplicability of Panhandle's PGA; (ii) firm transportation queuing procedures; (iii) the Account 858 tracker; (iv) provision for the use of predetermined receipt point allocations; and (v) the forfeiture of prepaid reservation fees.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-15388 Filed 6-30-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TM92-8-17-000]

**Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff**

June 25, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 19, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

Forty-seventh Revised Sheet No. 50.2
Sub Forty-seventh Revised Sheet No. 50.2

Texas Eastern states that these sheets are being filed pursuant to Section 4.F of Texas Eastern's Rate Schedules SS-2 and SS-3 to flow through a change in CNG Transmission Corporation's (CNG) Rate Schedule GSS rate which underlies the rates for Texas Eastern's Rate Schedules SS-2 and SS-3.

Texas Eastern states that on May 1, 1992 CNG made a tariff filing in Docket Nos. TQ92-3-22-000 and TM92-6-22-000 which revises the Rate Schedule GSS Storage Demand rate effective June 1, 1992.

Texas Eastern states that Forty-seventh Revised Sheet No. 50.2 will be used for purposes of billing the revised Rate Schedule SS-2 and SS-3 rates effective June 1, 1992 while Sub Forty-seventh Revised Sheet No. 50.2 will be used for purposes of determining the refund in accordance with the Stipulation and Agreement.

The proposed effective date of the above tariff sheets is June 1, 1992.

Texas Eastern states that copies of the filing were served upon Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-15391 Filed 6-30-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP91-147-005]

**Transcontinental Gas Pipe Line Corp.; Report of Refunds**

June 25, 1992.

Take notice that on April 27, 1992, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing its Report of Refunds in compliance with the April 2, 1992 letter order issued by this Commission under Docket Nos. RP90-179-000 and RP91-147-000. Such order required Transco to refund Litigant Producer Settlement Payment charges applicable to Sun Company (Sun) and Sun Refining and Marketing Company (SRM) for the period June 1, 1991 through March 31, 1992. Additionally, Transco was to submit a report to the Commission detailing the distribution of the refund and setting forth the data and computations supporting such distribution.

Transco states that on April 24, 1992, it issued refunds totalling $56,471.33, including interest, to Sun and SRM in accordance with the Commission's April 2, Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-15390 Filed 6-30-92; 8:45 am]

BILLING CODE 6717-01-M

## Office of Fossil Energy

**[FE Docket No. 92-58-NG]**

### Fulton Cogeneration Associates; Application to Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed April 29, 1992, by Fulton Cogeneration Associates (Fulton), as supplemented May 11, 1992, for blanket authorization to import up to 12,500 Mcf per day of natural gas from Canada. The authorization would be for a period of two years beginning on the date of the first delivery. This gas would be purchased on the spot market and consumed at Fulton's cogeneration powerplant in Fulton, New York. Fulton proposes to import the volumes at any point on the U.S./Canada border where existing pipeline facilities are located and no new U.S. pipeline facilities would be required in connection with the proposed imports. Fulton would file quarterly reports with FE detailing each transaction.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time July 31, 1992.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

**FOR FURTHER INFORMATION CONTACT:**

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9482.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

**SUPPLEMENTARY INFORMATION:** The decision on Fulton's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Fulton asserts that its proposed import arrangements would be competitive. Parties opposing Fulton's request for import authorization bear the burden of overcoming this assertion and should comment in their responses on the issue of competitiveness as set forth in the policy guidelines.

### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C., 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Fulton's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 24, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92-15465 Filed 6-30-92; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**(FRL-4149-1)**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**DATE:** Comments must be submitted on or before July 31, 1992. For Further Information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Solid Waste and Emergency Response**

*Title:* EPA Worker Protection Standards for Hazardous Waste Operations and Emergency Response, EPA ICR #1426.03. This ICR requests renewal of currently approved collection (OMB #2050–0105).

*Abstract:* Section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) required EPA to set worker protection standards for State and local employees engaged in hazardous waste operations and emergency response in 27 States that do not have Occupational Safety and Health Administration (OSHA)-approved State plans. The EPA coverage, required to be identical to the OSHA standards, extended to three categories of employees: those in clean-ups at uncontrolled hazardous waste sites, including corrective actions at Treatment, Storage and Disposal (TSD) facilities regulated under the Resource Conservation and Recovery Act (RCRA); employees working at routine hazardous waste operations at RCRA TSD facilities; and employees involved in emergency response operations without regard to location.

This ICR renews the existing recordkeeping collection for ongoing activities including monitoring at uncontrolled hazardous waste sites, maintaining records of employee refresher training and medical exams, and reviewing emergency response plans.

*Burden Statement:* The annual recordkeeping burden for this collection is estimated to average 10.64 hours per site or event.

*Estimated No. of Respondents:* 100 RCRA regulated TSD facilities or uncontrolled hazardous waste sites; 23,900 State and local police departments, fire departments or hazardous materials response teams.

*Estimated Total Annual Burden on Respondents:* 255,427 hours.

*Frequency of Collection:* continuous maintenance of records.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460, and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated June 25, 1992.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 92–15429 Filed 6–30–92; 8:45 am]

BILLING CODE 6560–50–M

**[FRL–4149–2]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before July 31, 1992. For further information, or to obtain a copy of this ICR, contact: Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Air and Radiation**

*Title:* New Source Performance Standards (NSPS) for Asphalt Processing and Asphalt Roofing Manufacturers (Subpart UU)—Information Requirements (EPA ICR #661.04; OMB #2060–0002). This is a request for an extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

*Abstract:* Owners or operators of asphalt processing and asphalt roofing plants must notify EPA or the delegated State regulatory authority of construction, modification, startup, shutdown, malfunction, and the date and results of the initial performance test. Owners or operators of asphalt processing and asphalt roofing plants must install a continuous monitoring system (CMS) to monitor and record the temperature in specified pollution control devices, and must notify EPA or the delegated authority of the date of demonstration of the CMS. Records of temperature measurements must be kept, but no excess emissions reports are required. The notifications and reports enable EPA or the delegated authority to determine that best demonstrated technology is installed and properly operated and maintained, and to schedule inspections.

The standards currently apply to 37 sources, and are expected to apply to two new or modified sources per year over the next three years. Particulate matter is the pollutant regulated under these standards.

*Burden Statement:* The public reporting burden for this collection of information is estimated to average 102 hours per response for reporting, and 62.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

*Respondents:* Owners or operators of asphalt processing and asphalt roofing plants which commenced construction or modification after November 18, 1980.

*Estimated No. of Respondents:* 40 recordkeepers, 2 reporters

*Estimated No. of Responses per Respondent:* One

*Estimated Total Annual Burden on Respondents:* 2,704 hours

*Frequency of Collection:* On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

June 25, 1992.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 92–15428 Filed 6–30–92; 8:45 am]

BILLING CODE 6560–50–M

[OPP-50744; FRL-4073-5]

## Receipt of a Notification to Conduct Small-Scale Field Testing of a Nonindigenous Strain of a Microbial Pesticide

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's receipt of a notification of intent from Novo Nordisk Bioindustrials, of Danbury, Connecticut, to conduct small-scale field testing of a nonindigenous mutant strain of *Bacillus thuringiensis* (Bt). The proposed testing is to evaluate the strain's performance in the control of the beet armyworm, corn earworm, and fall armyworm on various agronomic crops. Totalling 8.4 acres, the five test sites are located in Alabama, California, Florida, Louisiana, and North Carolina.

**DATES:** Written comments must be received on or before July 31, 1992.

**ADDRESSES:** Comments, in triplicate, should bear the docket control number OPP–50744 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA, (703) 305–7690.

**SUPPLEMENTARY INFORMATION:** Novo Nordisk Bioindustrials, Inc., has submitted to EPA a notification of intent to conduct small-scale field testing pursuant to the EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313). The location and acreage by State, of the five test sites are Alabama, 0.4 acres; California, 3.6 acres; Florida, 1.2 acres; Louisiana, 0.8 acres; and North Carolina, 2.4 acres. The mutant strain, NB357M, was derived by the classical technique of altering the bacteria's environment in order to induce genetic mutation. The proposed testing is to evaluate strain NB357M for control of the beet armyworm, corn earworm, and fall armyworm on the following agronomic crops: alfalfa, cole, cotton, sugar beets, sweet corn, and tomatoes. Novo Nordisk proposes to test this strain over a three-and-one-half year period, from July 1, 1992 to December 30, 1995. Additionally, Novo Nordisk Bioindustrials, Inc., is requesting a generic exemption from notification when testing all mutant Bt strains of NB357 modified using classical rather than genetic-engineering technologies.

Dated: June 19, 1992.

**Stephanie R. Irene,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 92–15204 Filed 6–30–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66162; FRL 4069–7]

## Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended; EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

**DATES:** Unless a request is withdrawn by September 29, 1992, orders will be issued cancelling all of these registrations.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 210, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

### II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 31 pesticide products registered under Section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

| Registration No. | Product Name | Chemical Name |
|---|---|---|
| 000100–00435 | Princep 4G Granular Herbicide | 2-Chloro-4,6-bis(ethylamino)-s-triazine |
| 000100–00570 | Aquazine Algicide | 2-Chloro-4,6-bis(ethylamino)-s-triazine |
| 000100–00650 | Aquazine 90 WDG Algicide | 2-Chloro-4,6-bis(ethylamino)-s-triazine |
| 000279–00047 | Kolospray | Sulfur |
| 000279–00126 | Kolodust | Sulfur |
| 000279–00387 | Wettable Sulfur Fungicide-Insecticide | Sulfur |
| 000279–01721 | Dusting Sulfur Fungicide - Insecticide | Sulfur |

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TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

| Registration No. | Product Name | Chemical Name |
|---|---|---|
| 000352-00433 | Dupont 90% Hexazinone Composition | 3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione |
| 000352-00485 | Pydrin Insecticide 2.4 Emulsible Concentrate | 4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl |
| 000352-00487 | Bladex/atrazine (2:1) 80W | 2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine Cyanazine |
| 000352-00489 | Extrazine 4L Herbicide | 2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine Cyanazine |
| 000352-00501 | Extrazine 90 DF Herbicide | 2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine Cyanazine |
| 000352 GA-88-0003 | Dupont Lexone DF Herbicide | 1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio) |
| 000352 ID-87-0002 | Du Pont Benlate Fungicide Wettable Powder | Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate |
| 000352 MN-83-0010 | Dupont Velpar L Weed Killer | 3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione |
| 000352 NJ-84-0018 | Vydate L Insecticide Nematicide | Oxamimidic acid, *N',N'*-dimethyl-*N*-[(methylcarbamoyl)oxy]-1-thio-methyl ester |
| 000352 VA-77-0006 | Du Pont Benlate Fungicide Wettable Powder | Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate |
| 000352 VA-80-0030 | Du Pont Benlate Fungicide Wettable Powder | Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate |
| 000464 NJ-85-0005 | Dow Dursban TC Termiticide Concentrate | *O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate |
| 002935 ND-79-0013 | KM Grain Sorghum Harvest Aid | Sodium chlorate |
| 010182-00074 | Gramoxone Paraquat Herbicide | 1,1'-Dimethyl-4,4'-bipyridinium dichloride |
| 010182-00112 | Ortho Gramoxone CL | 1,1'-Dimethyl-4,4'-bipyridinium dichloride |
| 010182-00113 | Paraquat CL Concentrate | 1,1'-Dimethyl-4,4'-bipyridinium dichloride |
| 010182-00118 | Topgun Herbicide | 1,1'-Dimethyl-4,4'-bipyridinium dichloride<br>2-Chloro-4,6-bis(ethylamino)-*s*-triazine |
| 010182-00119 | Prelude Herbicide | 3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea<br>1,1'-Dimethyl-4,4'-bipyridinium dichloride<br>2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid |
| 010182-00254 | Cyclone TEC Herbicide | 3-(3,4-Dichlorophenyl)-1,1-dimethylurea<br>1,1'-Dimethyl-4,4'-bipyridinium dichloride<br>Butyl (*R*)-2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)propanoate |
| 010182-00270 | Paraquat 25C | 1,1'-Dimethyl-4,4'-bipyridinium dichloride |
| 010182 AZ-85-0005 | Cymbush 3E Insecticide | Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl |

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90 day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

| EPA Company No. | Company Name and Address |
|---|---|
| 000100 | Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419. |
| 000279 | FMC Corp., ACG Specialty Products, 1735 Market Street, Philadelphia, PA 19103. |
| 000352 | E.I. Du Pont Denemours & Co., Inc., Agricultural Products BMP 37-6155, Box 80038, Wilmington, DE 19880. |
| 000464 | The Dow Chemical Co., Reg. Compliance / Health & Environmental, 1803 Building, Midland, MI 48674. |
| 002935 | Wilbur Ellis Co., 191 W Shaw Ave, Fresno, CA 93704. |
| 010182 | ICI Americas Inc., Agricultural Products, New Murphy Rd. & Concord Pike, Wilmington, DE 19897. |

**III. Procedures for Withdrawal of Request**

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before September 29, 1992. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

**IV. Provisions for Disposition of Existing Stocks**

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: June 23, 1992.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 92-15444 Filed 6-30-92; 8:45 am]

BILLING CODE 6560-50-F



[OPP-30334; FRL-4059-5]

**Roussel Bio Corp.; Application to Register a Pesticide Product**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of an application to register the pesticide product K-Othrine SC 5.0, an insecticide containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments must be submitted by July 31, 1992.

**ADDRESSES:** By mail submit comments identified by the document control number [OPP-30334] and the file symbol [432-TAG] to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Attention PM 13, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: PM 13, George LaRocca, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-6100).

**SUPPLEMENTARY INFORMATION:** EPA received an application from Roussel Bio Corporation, 170 Beaver Brook Road, Lincoln Park, NJ 07035, to register the pesticide product K-Othrine SC 5.0, (File Symbol 432-TAG) containing the active ingredient deltamethrin (s)-alpha-cyano-3-phenoxybenzyl-(1R,3R)-3-(2-2-dibromovinyl)-2,2-dimethyl-cyclopropanecarboxylate at 4.75 percent; an ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. The product is classified for general use to control major nuisance pests in and around residential, industrial, and institutional structures and their immediate surroundings. Notice of receipt of the application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703-305-5805), to ensure that the file is available on the date of intended visit.

**Authority:** 7 U.S.C. 136.

Dated: June 19, 1992.

**Stephanie R. Irene,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 92-15446 Filed 6-30-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30330; FRL-4048-7]

**Certain Companies; Applications to Register Pesticide Products**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments must be submitted by July 31, 1992.

**ADDRESSES:** By mail submit comments identified by the document control number [OPP-30330] and the registration/file number to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Attention PM 13, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, In person, bring comments to: rm. 1128, Registration Division (H7505C), Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record.

Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** PM 13, George LaRocca, rm. 202, CM #2, (703–305–6100).

**SUPPLEMENTARY INFORMATION:** EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

**Products Containing Active Ingredients Not Included In Any Previously Registered Products**

1. File Symbol: 10308–RE. Applicant: Sumitomo Chemical America, Ltd., 5–33 Kitahama, 4–Chome, Chuo-Ku Osaka, Japan. Product name: ETOC Technical Grade. Insecticide. Active ingredient: (RS)-2-Methyl-4-oxo-3-(2-propynyl) cyclopent-2-enyl (1RS)-*cis, trans*-chrysanthemate at 93 percent. Proposed classification/Use: General. For formulating use only. (PM 13)

2. File Symbol: 1021–RANR. Applicant: McLaughlin Gormley King Company, 8810 10th Avenue North, Minneapolis, MN 55427–4372. Product name: Evercide Residual Ant and Roach Spray 2543. Insecticide. Active ingredients: (s)-2-Methyl-4-oxo-3-(2-propynyl)cyclopent-2-enyl-(1R)-*cis, trans*-chrysanthemate, (S)-cyano(3-phenoxyphenyl)methyl-(S)-4-chloro-alpha-(1-methylethyl)benzeneacetate, and *N*-octyl bicycloheptene dicarboximide at 0.03, 0.05, and 0.25 percent respectively. Proposed classification/Use: General. For indoor pest control. (PM 13)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (PRPRB) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PRPRB office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: June 19, 1992.

**Stephanie R. Irene,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 92–15445 Filed 6–30–92; 8:45 am]

BILLING CODE 6560–50–F

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**[FRL–4148–1]**

## Superfund Program; Early De Minimis Waste Contributor Settlements

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Agency is publishing today its "Methodology for Early *De Minimis* Waste Contributor Settlements under CERCLA section 122(g)(1)(A)," in order to inform the public on this important aspect of the Superfund enforcement program. This document provides guidance to EPA's Regions for consideration of settlements with minor waste contributors (*de minimis* parties) early in the response process, and provides a methodology to facilitate such settlements. The Agency believes this guidance will provide greater opportunities for *de minimis* settlements and reduce transactions costs to all parties.

**DATES:** This guidance is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Gary Worthman, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, OS–510, 401 M Street SW., Washington, DC 20460, (202) 260–5646, or Ken Patterson, U.S. Environmental Protection Agency, Office of Enforcement, LE–134S, 401 M Street SW., Washington, DC 20460, (202) 260–3091.

**SUPPLEMENTARY INFORMATION:** Under section 122(g)(1)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA or Superfund), EPA is authorized to enter into *de minimis* settlements when they are practicable and in the public interest. A person may qualify for a *de minimis* settlement if the hazardous substances contributed by that party are minimal in amount and toxicity, relative to the contributions of other parties. *De minimis* settlements can only involve a minor portion of the overall response costs at a Superfund site.

The purpose of this guidance is to identify a methodology whereby *de minimis* parties can resolve their liability early in the response process, without the need for extensive negotiation. EPA is aware that this guidance may be of great interest to persons who contributed a small quantity of hazardous substances to a Superfund site, since such parties are often quite interested in resolving their liability concerns as early in the response process as possible. Therefore, EPA is publishing this guidance to provide wide public distribution of information on this aspect of the Superfund enforcement program.

The guidance follows:

**OSWER Directive #9834.7–1C**

June 2, 1992.

*Memorandum*

Subject: Methodology for Early *De Minimis* Waste Contributor Settlements under CERCLA section 122(g)(1)(A).

From: Bruce M. Diamond, Director, Office of Waste Programs Enforcement. William A. White, Enforcement Counsel for Superfund, Office of Enforcement.

To: Waste Management Division Directors, Regions I–X, Regional Counsel, Regions I–X.

This memorandum transmits to you the Agency's "Methodology for Early *De Minimis* Waste Contributor Settlements under CERCLA section 122(g)(1)(A)." This guidance is a supplement to the "Methodologies for Implementation of CERCLA section 122(g)(1)(A) *De Minimis* Waste Contributor Settlements," OSWER Directive #9834.7–1B (December 20, 1989).

This guidance sets forth procedures for identifying early *de minimis* candidate sites under section 122(g)(1)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). The guidance also provides practical assistance in developing early *de minimis* settlement proposals and agreements.

This guidance reflects input from the Regions, Headquarters and the Department of Justice. We thank you for your assistance.

Attachment

cc: Superfund Branch Chiefs, Waste Management Division, Regions I–X.
Superfund Branch Chiefs, Office of Regional Counsel, Regions I–X.

**Methodology for Early De Minimis Waste Contributor Settlements Under CERCLA Section 122(g)(1)(A)**

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## I. Introduction

This guidance sets forth procedures for identifying sites which are candidates for potential *de minimis* settlements early in the response process (for example, prior to the signature of a Record of Decision), and provides a methodology for developing such settlements.

This guidance supplements the "Methodologies for Implementation of CERCLA section 122(g)(1)(A) *De Minimis* Waste Contributor Settlements," OSWER Directive #9834.7–1B (12/29/89).[1]

### *A. Purpose and Scope*

The purpose of this guidance is to identify a methodology whereby Regions may provide PRPs who are minor contributors of hazardous substances at a CERCLA site ("*de minimis* parties") the opportunity to resolve their CERCLA liability as completely as possible early in the response process, without the need for extensive negotiation. This guidance primarily addresses potential *de minimis* settlements prior to the signature of a Record of Decision (ROD), although the Regions may use the methods described in this guidance to facilitate *de minimis* settlements at any point in the response process.

This guidance encourages Regions to consider *de minimis* settlements with eligible potentially responsible parties (PRPs) as early in the response process as possible. To do so, Regions should compile waste contribution information for individual PRPs as soon as it is available, and identify response costs for settlement purposes. The guidance authorizes use of cost information from other sites to assist in developing the future response cost component of the settlement. The guidance also provides criteria for evaluating when there is enough site information to pursue an early *de minimis* settlement. In addition, the guidance outlines streamlined settlement procedures to reduce transaction costs.

### *B. Background*

Under section 122(g) of CERCLA, the Agency may enter into *de minimis* settlements whenever practicable and in the public interest. There are two groups of parties which are eligible for these settlements: *De minimis* waste contributors and *de minimis* landowners. This guidance addresses only *de minimis* waste contributors.[2]

Early *de minimis* settlements allow persons who contributed minor amounts of hazardous substances to a site, both in terms of volume and toxicity, to resolve their liability early in the response process. Early *de minimis* settlements also promote efficient case management at multi-generator sites and reduce the number of parties with which to negotiate the performance of future response actions (e.g., remedial design/remedial action (RD/RA)). This reduces transaction costs, provides the Agency with reimbursement of past costs, and may provide funds for future site cleanup. Collecting such funds early in the response process should benefit the Agency and all waste contributors (both *de minimis* and non-*de minimis* parties).

## II. Identification and Notification to Headquarters that a Site is a Candidate for an Early De Minimis Settlement [3]

A Region should assess whether there is sufficient information to determine that a site is a candidate for an early *de minimis* settlement. This threshold is met when the minimum level of information is present to assess individual PRP waste contributions and identify response costs. Once the threshold is met, a Region should notify Headquarters that the site is an early *de minimis* candidate.

### *A. PRP Waste Contributor Threshold*

The waste contribution threshold is met when the Region identifies the individual hazardous substance contributions of the PRPs. This threshold can be met by the development or acceptance of a "waste-in" list or volumetric ranking of PRPs. For purposes of this guidance, this threshold is met regardless of who performs the waste-in list or volumetric ranking of PRPs (EPA, other federal or state agencies, or PRPs).

#### 1. Waste-in Information

To determine individual PRP contributions of hazardous substances sent to a site, a Region performs a PRP Search.[4] Prior to and during this process, waste-in information (i.e., information on the type and quantity of hazardous substances sent to a site) is acquired. This information is obtained through different methods, including site visits, examination of records from prior state or federal enforcement actions, or through information gathering authorities (e.g., information request letters, interviews, or subpoenas).[5] If

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[1] *See also* "Interim Guidance on Settlements with *De Minimis* Waste Contributors under section 122(g) of SARA," OSWER Directive #9834.7 (6/19/87) and "Interim Model CERCLA section 122(g)(4) *De Minimis* Waste Contributor Consent Decree and Administrative Order on Consent," OSWER Directive #9834.7–1A (10/19/87).

[2] The Agency addresses *de minimis* landowners under another Agency guidance. See "Guidance on Landowner Liability under section 107(a)(1) of CERCLA, *De Minimis* Settlements under section 122(g)(1)(B) of CERCLA, and Settlements with Prospective Purchasers of Contaminated Property," OSWER Directive #9835.9 (6/6/89).

[3] Identification of a site as an early *de minimis* candidate does not guarantee that a *de minimis* settlement will occur at that site. However, the prospects for settlement should increase since the baseline information necessary for a *de minimis* settlement will be present.

[4] *See* "Potentially Responsible Party Search," OSWER Directive #9834.3–1A (8/27/87); "PRP Search Supplemental Guidance for Sites in the Superfund Remedial Program," OSWER Directive #9834.3–2a (6/29/89).

[5] There is no specific point during the PRP Search process when waste-in information is certain to

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there has been prior governmental action at the site such as enforcement actions, permits or inspections, information may be available shortly after the PRP Search commences. If the site was a landfill or a recycling, processing or disposal facility, information such as manifests, waste tickets, log books, billing records or canceled checks may be available. If available, this information must be organized and checked for accuracy before it can be used to negotiate a settlement. If information request letters are the primary means to gather waste-contributor information, waste-in information normally will not be available until later in the PRP Search process.

When waste-in information is available, Regions should make reasonable efforts to compile and verify the data (e.g., through information request letters) as soon as possible.[6] Processing the waste-in information as soon as it is available should facilitate consideration of a *de minimis* settlement much earlier in the response process.

2. Waste-in Lists and Volumetric Rankings of PRPs

When a Region gathers and verifies sufficient waste-in information, it should prepare a waste-in list and volumetric ranking of PRPs. A waste-in list provides the volume and nature of hazardous substances contributed by each PRP identified at a facility. A volumetric ranking of PRPs is a ranking of PRPs on the waste-in list in descending order by the total volume of hazardous substances they contributed to the facility. The Regions are encouraged to perform these activities because they may further the statutory objectives regarding information release under section 122(e)(1) of CERCLA, and often increase the opportunities for settlement.[7]

As soon as practicable after a verified waste-in list and volumetric ranking of PRPs is available, a Region should provide the information to all identified PRPs for review and comment. This information can be released informally under section 122(e)(1) of CERCLA, with general or special notice letters to PRPs, at PRP meetings, or through other appropriate means. Regions may modify the waste-in list or volumetric ranking based on the comments received concerning individual PRP hazardous substance contributions.

Regions can also accept waste-in lists and volumetric rankings developed by other interested parties (e.g., individual PRPs, PRP steering committees, states, or other federal agencies). Before using information from such documents, they should be evaluated for consistency with the qualitative standards articulated in EPA guidance. Regions should review conversion factors (which establish one form of measurement) and compilation assumptions, to ensure that waste-in lists and volumetric rankings prepared by other parties are adequately documented and not biased against certain classes or types of PRPs. If a PRP database is used, the PRPs must be willing to cooperate in disseminating that information to all PRPs.

*B. Response Cost Threshold*

The response cost threshold is met when a Region acquires sufficient information to identify past and future response costs for settlement.[8] To establish past costs, a Region will commonly rely on existing documentation.[9] To identify future response costs, it is necessary to estimate these costs, since future response actions (e.g., remedial design/remedial action, operation and maintenance, and oversight costs) are commonly not identified at the time of the early *de minimis* settlement. The future response cost estimate does not need to be a precise figure; what is necessary is a reasonable calculation of the potential future response costs for purposes of settlement only.

To reach the future response cost threshold, a Region should generally have two pieces of related information:

(1) Sufficient site contaminant information to identify possible future response activities; and

(2) Knowledge of other sites with similar site characteristics where remedy cost information is available.

Site contaminant information provides baseline data about the potential *de minimis* settlement site. This information, used in conjunction with cost information from other similar sites, provides a means to develop future cost estimate. This is important because detailed site-specific cost information is commonly unavailable very early in the response process.

Where the waste contribution threshold is met at a point later in the response process (e.g., during the feasibility study) site-specific information alone may be sufficient to reach the response cost threshold. In that situation, cost information is more likely to be available to estimate future response costs for the potential *de minimis* settlement site and it is not necessary to evaluate cost information from other sites to reach the response cost threshold.

A Region does not have to actually estimate the future response costs before a site becomes a candidate site; actual cost estimates are only necessary when negotiating the early *de minimis* settlement. However, the Region should have the necessary information to make that estimate before the threshold is met.

1. Site Contaminant Information

Site contaminant information may be available from present or past sampling efforts, previous response actions, or records of past site operational history (including PRP waste contributions). This information assists in identifying the nature of contaminants, contaminated media, and approximate volume of contamination at the site. Regions can then identify, for settlement purposes, the possible future response actions which may be necessary at the site.

Significant site sampling data is typically available prior to the signature of a Record of Decision (ROD). A Region will often conduct site visits and take samples (soil and groundwater) to identify contaminants and contaminant pathways. If there is a remedial investigation/feasibility study (RI/FS) being performed at the site, additional site data is often collected.

Another factor to consider is whether there have been previous removal or remedial (operable units) actions at the site. Removal actions often include activities such as the removal and disposal of materials or stabilizing the site to prevent further contamination. These efforts may help quantify the

become available. Waste-in information may never be available at certain sites (e.g., abandoned facilities with no facility records or groundwater-contaminated facilities with no apparent contamination source). In such cases, *de minimis* settlements are probably not feasible.

[6] The Office of Waste Programs Enforcement is considering adjustments to the PRP Search process to encourage Regions to assemble waste-in information as early in the PRP Search process as possible.

[7] *See* "Guidance on Preparing and Releasing Waste-in Lists and Volumetric Rankings to PRPs Under CERCLA," OSWER Directive #9836.1b (2/22/91).

[8] Most *de minimis* settlements address the liability of PRPs for both past and future response costs under sections 106 and 107 of CERCLA. A Region could entertain offers to settle for only past costs. However, under that circumstance PRPs would not receive a covenant not to sue for future costs. *See* Section IV.D.1. of this guidance for further discussion of covenants not to sue. Settlements for only past costs may be more appropriately resolved under the settlement authority in section 122(h) of CERCLA.

[9] *See* "Procedures for Documenting Costs for CERCLA section 107 Actions," OSWER Directive #9832.0-1a (1/30/85).

volume of site contamination. Estimating future response costs for an early *de minimis* settlement may also be easier at a site where there was a prior remedial action and the only future response action to be determined is, for example, the appropriate ground water remedy. It could be easier to estimate costs for one contaminated medium rather than multiple contaminated media (e.g., soil, surface and groundwater). There may also be situations where there are only a limited number of possible response actions to remedy the site contamination; at such sites, estimating future response costs may be easier than at a site with a wide range of possible remedy options.

If operational history or process engineering information is available, it may be possible to ascertain the likely hazardous substances received, stored or disposed of at the site, possible pathways of contamination, and a rough volume of hazardous substances currently at the site. If a state or local authority undertook enforcement actions, additional site contaminant information may be available. Knowledge of PRP waste-in information may also help to identify the type and volume of hazardous substances brought to the site. This information can also serve to substantiate the findings concerning process engineering and site sampling data at the site.

2. Similar Site Characteristics

Regions should consider another factor in identifying whether the response cost threshold is met: Similarity between the characteristics of the site where the early *de minimis* settlement may occur and those of other sites where a remedy has been chosen or implemented. Similar site characteristics include similar site type (e.g., landfill or battery recycling facility), contaminated media, site location, and nature of contamination present at the site.

Information from other sites provides a basis from which to estimate possible response costs at the early *de minimis* settlement site, because actual cost estimates or actual cost figures will likely be available at these other sites from the ROD or other cost documents. At sites where the response action is under construction or where construction is complete, actual cost data may be available.

The Office of Waste Programs Enforcement is collecting data to assist Regions in estimating future response costs for settlement by using information from sites with similar characteristics.[10] In addition, the Office of Emergency and Remedial Response is exploring whether sufficient data exists to develop standardized or presumptive remedies for "generic" site types. This effort could further aid efforts to increase the availability of future response cost data earlier in the response process.

At sites where the agency has never chosen a remedy addressing similar contaminants and contaminated media, it may be difficult to identify potential remedy costs for settlement without engaging in a site-specific inquiry. If such site-specific inquiries could be difficult, such sites may not be good candidate sites for an early *de minimis* settlement.

*C. Notification to Headquarters that a Site Is a Candidate Site*

Once the thresholds are met for both waste-in and response cost information, a Region should notify Headquarters, in writing, that the site is a candidate for an early *de minimis* settlement. The notification serves to provide Headquarters with advance notice that a Region is considering an early *de minimis* settlement. Notification also helps to assure that Headquarters resources are available to facilitate the settlement.

This notification requirement is different from the consultation requirement enunciated in EPA Delegation 14–14–E (September 13, 1987, and modified by memorandum June 17, 1988). Under that delegation, the Regional Administrator must consult with the Assistant Administrators for the Office of Solid Waste and Emergency Response and Office of Enforcement, prior to entering into *de minimis* settlements. Regions should consider early Headquarters involvement to assist with the settlement (e.g., help develop estimates of future response costs) and facilitate subsequent formal review of the proposed settlement.[11]

This notification should be made to the Branch Chief, Compliance Branch, CERCLA Enforcement Division, Office of Waste Programs Enforcement and to the Enforcement Counsel for Superfund, Office of Enforcement. The notification can be made as soon as the Region identifies the site as a candidate or on a more regular basis (e.g., quarterly).[12]

III. Early *De Minimis* Settlement Criteria

*A. Allocation of Responsibility*

A Region must determine that a person qualifies for *de minimis* status under section 122(g)(1)(A) of CERCLA before pursuing a *de minimis* settlement. A *de minimis* waste contributor is a person who contributed hazardous substances in an amount and of such toxicity as to be minimal in comparison to other hazardous substances at the facility. *De minimis* settlements may only address a minor portion of the response costs at a site for each settlor.

To establish which parties qualify for an early *de minimis* settlement, it is often necessary to develop individual allocations of responsibility among *all* the PRPs. For an early *de minimis* settlement this should generally be considered an early or draft allocation of responsibility.[13] The Region should use this allocation to determine the amount a *de minimis* party must pay in the proposed settlement. The waste-in list and volumetric ranking of PRPs is generally used as the basis for allocating responsibility among generators and transporters. An allocation of responsibility may also be assigned to the owners and operators of the facility. To the extent such information is available, factors such as viability of PRPs, presence of bankrupt or defunct entities, or unallocable shares (i.e., orphan shares), should be considered during the allocation process.

After completing the allocation, a Region should consider sending the

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[10] *See* Section III.C. of this guidance for an expanded discussion on the use of cost information from other sites to estimate future response costs.

[11] At sites where the total response costs exceed $500,000.00, the Agency may enter into the *de minimis* settlement only after obtaining prior written approval from the U.S. Department of Justice (DOJ). *See* section 122(g)(4) of CERCLA. To facilitate DOJ review of a proposed settlement, a Region should notify DOJ of the Region's intent to enter into negotiations for an early *de minimis* settlement prior to sending the draft settlement documents to the *de minimis* parties. Regions should provide DOJ with the draft settlement documents and information that has been or will be made available to the *de minimis* PRPs, as well as other documents which may facilitate DOJ approval of the *de minimis* settlement. Where a federal PRP is identified as a potential *de minimis* settlor this should be specifically noted. Regions should also notify, in writing, the Federal Natural Resource Trustees of the potential *de minimis* settlement as early as possible, thereby offering them the opportunity to participate in the *de minimis* settlement in a timely manner. If the Federal Natural Resource Trustees decide to participate, a Region should ensure that all relevant information is made available to them.

[12] The Office of Waste Programs Enforcement is exploring whether this notification requirement can be performed through the CERCLIS reporting system.

[13] Regions may want to consult Agency guidance for useful information concerning developing the allocation, although it is not necessary in an early *de minimis* settlement to create a non-binding allocation of responsibility (NBAR). *See* "Interim Guidelines for Preparing Nonbinding Preliminary Allocations of Responsibility," OSWER Directive #9839.1 (5/29/87).

allocation document to all PRPs for review and comment. PRPs should be able to comment on factual assumptions made with respect to individual shares within a reasonable time period specified by the Region.

*B. Identification of PRPs Eligible for the Early* De Minimis *Settlement*

After making allocation decisions for *de minimis* settlement purposes only, a Region should determine the appropriate cutoff for eligible *de minimis* waste contributors. There is no specific statutory criterion for identifying the appropriate cutoff other than the requirement that the contribution of each *de minimis* party must be minimal relative to other hazardous substance contributors.

When a Region considers a *de minimis* settlement early in the response process, PRP contributor information, both for *de minimis* and non-*de minimis* parties, may not be completely available. Where this means that the precise cutoff is in some doubt, a Region should establish the cutoff at a level which allows only those who clearly qualify as *de minimis* (i.e., the smallest waste contributors) the opportunity to settle at this time. This limits the risk of settling with parties who are not truly *de minimis*. Persons who are not eligible for an early *de minimis* settlement may be eligible for future *de minimis* settlements with the government at a later time when there is more complete information.

Once a Region identifies the appropriate cutoff for the early *de minimis* settlement, both the *de minimis* and non-*de minimis* parties should be informed of this determination. A Region may also choose to make available the list of parties eligible for the early *de minimis* settlement and the basis for the cutoff.[14]

*C. Estimating Future Response Costs for Settlement*

As discussed above, early *de minimis* settlements generally address the liability of PRPs for both past and future response costs under sections 106 and 107 of CERCLA. When available at the time of settlement, a Region should use itemized cost summaries as the basis for past costs plus applicable interest. If an action is ongoing at the time of settlement (e.g., an RI/FS), a Region should use both itemized cost summaries for past work performed and an estimate of remaining costs. A Region may use RI/FS cost figures from the State Superfund Contract or Cooperative Agreement with a state as the basis for estimating these costs.

A Region should use available site and cost information to develop a best estimate of the future response costs for the *de minimis* settlement. This estimate should be based on reasonable judgment; a precise figure is not necessary since the Region is not selecting a remedy. This guidance does not establish a set procedure to estimate future response costs for settlement. To assist the Regions, two possible methods for developing future response cost estimates are identified below. Both of these procedures suggest use of available cost information from other sites to assist in estimating costs for the early *de minimis* settlement. Use of information from other sites should help facilitate development of the future cost estimate and reduce the transaction costs in developing an estimate. These procedures are presented as options only, and Regions may choose other approaches for estimating future response costs.[15] Regardless of the option employed, the methodology used should be supported by documentation.

1. Use of Response Cost Information From Other Sites

This approach combines use of site-specific information from the proposed *de minimis* settlement site, together with a review of cost documents from other sites with similar site characteristics where a remedy has been selected or implemented.

Under this approach a Region would first assemble site-specific contaminant information (i.e., nature of contaminants, contaminated media, and volume of contaminants). Then, the Region would review post-1986 RODs for selection of remedy at other sites with similar characteristics.[16] If there is more current information concerning these RODs (e.g., the remedy selected has been implemented or is at the remedial action stage in the response process), the Regional should use that information instead of the cost estimate in a ROD.[17]

The next step is to extract the relevant cost information from similar sites. In this way the Agency could establish a range or average of future costs from the prior remedies selected or implemented.

After establishing the range or average of future response costs, the Region may adjust those figures based on known site-specific factors to establish the future response cost estimate for the *de minimis* settlement. To the extent such site-specific information is not available, a Region may use the information from similar sites alone to establish the future remedy cost estimate for the early *de minimis* settlement.

2. Establishing Unit Costs for Remedial Technologies

Under this methodology, a Region could develop unit costs for remedial technologies at sites with similar site characteristics as the basis for estimating the site-specific future response action costs.

This approach requires development of a list of remedial technologies from RODs chosen or implemented for sites with similar characteristics (e.g., landfills, lead battery recycling facilities) and contaminated media. Unit costs could be then developed by matching the extent of contamination at a site with a ROD, with the estimated remedial cost for addressing that contaminated medium.[18] For remedies under construction, the remedial action documents commonly establish unit cost figures.

The Region would then establish a list of technologies relevant to that contaminated medium. From this list, an average unit cost for a particular contaminated medium could be developed. This average unit cost figure could then be multiplied by the amount (or extent) of contamination at the early *de minimis* settlement site, to establish an estimate of the future response costs for a particular contaminated medium.

A Region may also consider site-specific factors from the early *de minimis* site in developing the average unit cost figure. If, at the time of the proposed settlement site-specific studies (e.g., the feasibility study) indicate that one or more remedial alternatives are not viable remedial options for the early *de minimis* site, then the unit costs for those remedial technologies do not have to be factored into the average unit cost figure. In addition, if one or more

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[14] The procedure used to give notice to PRPs of these determinations will be site-specific. A Region could disseminate this information in a number of ways, including use of the procedures in section 122(e)(1), at a meeting with PRPs, by mail to all identified PRPs or through distribution of a settlement offer.

[15] A Region can rely on cost information from the early *de minimis* site as the sole basis for estimating future costs where sufficient site-specific cost information is available at the time the Region contemplates the early *de minimis* settlement.

[16] The Superfund Amendments Reauthorization Act of 1986 (SARA) added section 121 of CERCLA, setting forth the criteria for all future remedial response actions.

[17] As discussed in section II.B.2. of this guidance, the Office of Waste Programs Enforcement is collecting data to facilitate use of relevant cost data from RODs or implemented remedies.

[18] The Office of Waste Programs Enforcement is collecting data to assist in developing unit costs for remedial technologies.

remedial technologies appear to be more likely to be selected than others at the early *de minimis* site, a Region may factor in the probability of a particular remedy being chosen into the average unit cost estimate.

## IV. Early De Minimis Settlement Methodology

### *A. Formation of the Early De Minimis Group*

Once a Region determines which parties are eligible for an early *de minimis* settlement, it may assist in the formation of an early *de minimis* group (e.g., send out letters, hold meetings, publish notice in a local newspaper), if to do so would facilitate negotiations.[19] If the PRPs form a *de minimis* group, the Region should encourage them to take on administrative functions (e.g., dissemination of information and review of proposed settlement documents). Eligible parties should be advised that the terms of an early *de minimis* settlement offer will likely not be available in the future, although there may be later chances to settle, but on less favorable terms.

### *B. Negotiations*

The main objective of the early *de minimis* settlement methodology is to reduce transaction costs, conserve government resources, and settle with the eligible parties as expeditiously as possible. Regions should adopt procedures necessary to fulfill these objectives.

Set forth below is one suggested method to facilitate the settlement:

- Send a draft settlement document to parties identified as *de minimis*, take comments over a specified period of time, and send the final settlement document (incorporating appropriate comments) to all *de minimis* PRPs for signature.[20] Comment or negotiation over boilerplate provisions should be actively discouraged.
- Once the final settlement document is sent, the *de minimis* PRPs have a specified period (e.g., 30 days) to sign and return the document.
- When the Region receives executed signature pages, it should repackage the settlements into one *de minimis* settlement package for formal review by regional management, Headquarters, the Department of Justice and for public comment.

[19] Assisting in the formation of the *de minimis* group need not wait until the estimate of future response costs for settlement is established.

[20] It may be appropriate at a given site to send a copy of the draft settlement document to non-*de minimis* parties for informational purposes or to seek comment.

### *C. Early De Minimis Settlement Document*

Under section 122(g)(1) of CERCLA, the Agency may settle the liability of *de minimis* parties either through an administrative order on consent (AOC) or a judicial consent decree. Regions should use the model settlement documents (AOC and judicial consent decree) as the basis for the proposed early *de minimis* settlement.[21]

An AOC should be the preferred option for early *de minimis* settlements. A *de minimis* settlement under an AOC can usually be issued more quickly and with fewer resources than a settlement by judicial consent decree, while providing similar legal effect. Early *de minimis* settlements often address only the liability of the *de minimis* parties; non-*de minimis* PRPs will not usually be a party to this agreement. However, a Region may choose to embody the early *de minimis* agreement in a judicial consent decree where, for example, there is current litigation involving the Agency and *de minimis* parties or where non-*de minimis* parties agree to perform the RD/RA at the time of an early *de minimis* settlement.[22]

### *D. Early De Minimis Settlement Provisions*

In any *de minimis* settlement there are several provisions in the settlement document which affect the finality of the settlement offered. They include covenants not to sue, reservation of rights, premiums, and contribution protection. Another important facet of the settlement is the distribution of money received from the settling *de minimis* PRPs. These provisions are generally discussed in earlier Agency guidance.[23] Set forth below is a more detailed discussion of these provisions as they relate to an early *de minimis* settlement.

[21] *See* "Interim Model CERCLA section 122(g)(4) *De Minimis* Waste Contributor Consent Decree and Administrative Order on Consent," OSWER Directive #9834.7–1A (10/19/87). The Agency is currently reviewing and updating the model documents.

[22] This may occur where the non-*de minimis* parties agree to perform the RD/RA for an operable unit with a ROD (e.g., source control remedy), but the *de minimis* component of the settlement addresses the liability for the source control remedy as well as other future response actions not yet chosen (e.g., groundwater remedy).

[23] *See* "Interim Guidance on Settlements with *De Minimis* Waste Contributors under section 122(g) of SARA," OSWER Directive #9834.7 (6/19/87) and "Methodologies for the Implementation of CERCLA section 122(g)(1)(A) *De Minimis* Waste Contributor Settlements," OSWER Directive #9834.7–1B (12/20/89).

#### 1. Covenants Not to Sue

Section 122(g)(2) of CERCLA provides the Agency with the authority to provide covenants not to sue in a *de minimis* settlement, to address the liability of parties under sections 106 and 107 of CERCLA. These covenants indicate that the Agency will not pursue the *de minimis* parties in the future for matters addressed in the settlement. If appropriate, a Region may provide the settling PRPs with a covenant not to sue which is immediately effective once the terms of the agreement are met (e.g., payment of money). Thus, the covenant can be effective before the future response work at the site is ever implemented.

Consistent with Agency guidance, a Region should always include a limited re-opener to the covenant not to sue in the early *de minimis* settlement for false, incomplete, inaccurate, or new information which indicates that the PRP's contribution to the site was higher than the allocable share established for the settlement. This re-opener is often triggered where such information materially affects the terms of the settlement (information which indicates the party is no longer within the *de minimis* cutoff established for the settlement or information which substantially affects the payment made by that party).[24] If triggered, the re-opener should only affect that party's settlement with the Agency and not have an effect on the allocations of other settling *de minimis* parties.

Another re-opener sometimes included in *de minimis* settlements relates to potential cost overruns associated with the future response action.[25] This re-opener addresses some of the risk of settling with *de minimis* parties before completion of the future response action. Cost overrun re-openers may be triggered when the estimated future costs increase over a set percentage or set amount. Agency guidance states that this re-opener is not necessary where the premium payment established is sufficient to address the

[24] A Region may want to consider adding a penalty provision in the settlement document with regard to false information submitted by the PRP where the Agency originally relied upon that information in identifying that party as eligible for the early *de minimis* settlement. If it knowingly submitted false information, the PRP may also be subject to criminal liability.

[25] For purposes of this guidance a "cost overrun" is additional money that needs to be spent to implement the future response action selected in a ROD. The term also includes the situation where further response actions beyond that specified in a ROD are necessary to protect human health and the environment.

risks associated with possible cost overruns.[26]

A primary goal of the Agency in an early *de minimis* settlement is to provide as much finality as possible to the *de minimis* parties. This reduces transaction costs to all parties, and reduces the possibility that the Agency will have to pursue the *de minimis* parties in the future for site-related costs. To the extent possible (taking into account site-specific concerns, including uncertainties related to the future response cost estimate), therefore, Regions should offer early *de minimis* settlements which do not contain cost overrun re-openers. To offset the risk involved, the Region should increase the premium payment component of the offer.[27] The result is likely to be that the *de minimis* parties may pay more to settle, but they receive a covenant not to sue without this re-opener, and more complete contribution protection from potential future CERCLA liability at the site.

On the other hand, cost overrun re-openers can have the advantage of reducing the premium component of the offer, and can play an important role in structuring a settlement that reduces risks to both EPA and the non-*de minimis* parties. At some sites, therefore, a cost overrun re-opener may be an important aspect of the structure of the over-all resolution of the case, and may also be viewed as desirable by some or all of the *de minimis* parties.

To facilitate settlements with as many eligible *de minimis* parties as possible, a Region may wish to offer a choice of a no cost overrun re-opener/higher premium or a cost overrun re-opener/lower premium in the same settlement. This provides individual *de minimis* parties with the ability to choose the appropriate settlement option, while allowing the Region to incorporate different settlement terms in one settlement agreement.

2. Reservation of Rights

A Region should commonly include a reservation of rights in all early *de minimis* settlements. Reservations of rights relate to issues for which the Region is not providing a covenant not to sue. Regions should provide reservations of rights, at a minimum, for: (1) Liability resulting from a settling party's failure to comply with the terms of the settlement (e.g., non-payment of money); (2) liability for natural resource damages (unless the Federal Natural Resource Trustees have agreed to a covenant not to sue); (3) criminal liability; (4) future disposal activities at the site; or (5) any claim or cause of action not expressly included in the covenant not to sue. Regions should also consider a reservation of rights related to potential liability under other federal statutes. A Region should reaffirm that the settlement has no affect on the Agency's ability to pursue non-settling parties.

3. Premiums

As a general matter, the risks posed to the Agency in entering into *de minimis* settlements are greater earlier in the response process. These risks arise from site-specific uncertainties with regard to completeness of PRP information, knowledge of future response costs, as well as the absence of an agreement with the non-*de minimis* PRPs for the eventual performance of the RD/RA.

To address several of these risks, the early *de minimis* settlement should include a premium payment for future response costs.[28] The premium charged should be in addition to the *de minimis* party's *pro rata* share of the site response costs. The premium should be sufficient to compensate the Agency for the risks associated with: (1) Settling at a site where the future response action has not been chosen; (2) possible cost overruns for a remedy not yet selected and; (3) potential inability to recover response costs from other sources.

For early *de minimis* settlements, the premium chosen should relate to the finality of the settlement (e.g., whether there is a covenant not to sue with cost overrun re-opener). When a Region is willing to offer or consider a settlement with a covenant not to sue without a cost overrun re-opener, the settlement should include a higher premium to address that risk.[29] This higher premium also reduces the risk of settling when waste-in information may be preliminary and information concerning financial viability of all PRPs is not complete. The higher premium in this situation also reduces the possibility that the Agency will be unable to recover response costs from other parties. Conversely, if the settlement includes a covenant not to sue with a remedy cost re-opener, a lower premium may be offered. A lower premium may also be appropriate where PRP investigatory work is complete, financially viable non-*de minimis* parties are identified, or there is an agreement with the non-*de minimis* parties to perform the RD/RA at the time of the early *de minimis* settlement.

4. Contribution Protection

Regions should indicate to PRPs the Agency's belief that a party which fully resolves its liability to the United States by paying its fair share of all past and future costs in a *de minimis* settlement should qualify for protection against contribution actions (regarding matters addressed in the settlement), to the full extent provided in sections 113(f) and 122(g)(5) of CERCLA.

5. Money Received in Settlement

Money received in an early *de minimis* settlement should generally be deposited in the invested portion of the Hazardous Substance Superfund (Trust Fund). This reimburses the government fully for past costs expended and may provide additional funds for the Trust Fund. Where appropriate, amounts in excess of past costs may be set aside into other accounts, such as a site-specific special account, a state-managed escrow account or trust fund, or deposited to an EPA-approved, but PRP-established and managed trust fund or escrow account.[30] Where excess money is set aside, a portion of that money may be available to reimburse whatever party will be performing the future response action (EPA, the state or the non-*de minimis* PRPs).

If it would facilitate the overall settlement at the site and the non-*de minimis* PRPs have been cooperative during the *de minimis* settlement process, the Region may take the funds received and apportion them between past and future response costs, without fully reimbursing the government for its past costs. Before agreeing to such an arrangement, a Region should consider its ability to recover any remaining past costs from other PRPs not a party to the early *de minimis* settlement. At a minimum, the past cost component of the *de minimis* parties overall payment should be deposited into the Trust Fund. The remainder of the payment may be then deposited into an account established for the site. This approach may provide more money for future response work at the site, while allowing the Agency to pursue non-settlors for remaining past costs.

[26] *See* Page 14 of the "Methodologies for Implementation of CERCLA section 122(g)(1)(A) *De Minimis* Waste Contributor Settlements," OSWER Directive #9834.7-1B (12/20/89).

[27] *See* Section IV.3. of this guidance for an expanded discussion of premium payments.

[28] If a Region is able to fully document the past costs, a premium payment may not be necessary for that aspect of the settlement.

[29] *See* "Guidance on Premium Payments in CERCLA Settlements," OSWER Directive #9835.6 (11/17/88).

[30] Either the *de minimis* parties or non-*de minimis* parties should set up the trust fund or escrow account for this purpose.

Apportioning costs may also result in reducing the opposition of non-*de minimis* parties to the *de minimis* settlement, since more money may be available for use in funding the eventual future response action (RD/RA)

### V. Purpose and Use of this Guidance

This guidance and any internal procedures adopted for its implementation are intended exclusively as guidance for employees of the U.S. Environmental Protection Agency. This guidance does not constitute rulemaking by the Agency and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this guidance or its internal implementing procedures.

### VI. Further Information

For further information concerning this guidance, please contact Gary Worthman in the Office of Waste Programs Enforcement at FTS or (202) 260–5646, or Ken Patterson in the Office of Enforcement at FTS or (202) 260–3091.

Dated: June 26, 1992.

**Don R. Clay,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 92–15443 Filed 6–30–92; 8:45 am]

BILLING CODE 6560–50–M

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[OPPTS–44568; FRL–4074–9]

## TSCA Chemical Testing; Receipt of Test Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the receipt of test data on mesityl oxide (CAS No. 141–79–7), submitted pursuant to a testing consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

### I. Test Data Submissions

Test data for mesityl oxide were submitted by the Chemical Manufacturers Association on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on June 4, 1992. The submissions describe a microbial mutagenesis in *salmonella* mammalian microsome plate incorporation assay with dosing analysis, and an *in-vivo* mammalian bone marrow micronucleus assay. Health effects testing is required by this consent order. This chemical is used primarily as an intermediate in the manufacture of MIBK. Its main end-product use is as a solvent in lacquer and lacquer thinners.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

### II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44588). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

**Authority:** 15 U.S.C. 2603.

Dated: June 18, 1992.

**Charles M. Auer,**

*Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 92–15447 Filed 6–30–92; 8:45 am]

BILLING CODE 6560–55–F

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## FEDERAL COMMUNICATIONS COMMISSION

## Public Information Collection Requirements Approved by the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; correction.

**SUMMARY:** This document corrects a notice (57 FR 27051, June 17, 1992), which referred to an incorrect FCC form number. The following is published in its entirety.

**EFFECTIVE DATE:** June 24, 1992.

**FOR FURTHER INFORMATION CONTACT:** Judy Boley, Information and Records Management Branch, (202) 632–7513.

The following information collection requirements have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Judy Boley, Federal Communications Commission (202) 632–7513.

*OMB No.:* 3060–0130.

*Title:* Temporary Permit to Operate a General Mobile Radio Service System.

*Form No.:* FCC 574–T.

The approval on FCC 574–T has been extended through 4/30/95. The June 1990 edition with the previous expiration date of 4/30/92 will remain in use until updated forms are available.

*OMB No.:* 3060–0107.

*Title:* Private Radio Application for Renewal, Reinstatement and/or Notification of Change to License Information.

*Form No.:* FCC 405–A.

A revised application form FCC 405–A has been approved for use through 4/30/95. The current edition of the form is dated May 1992.

*OMB No.:* 3060–0139.

*Title:* Request for Antenna Height Clearance and Obstruction Marking and Lighting Specifications.

*Form No.:* FCC 854.

A revised request form FCC 854 has been approved for use through 4/30/95. The current edition of the form is dated May 1992. All previous editions are obsolete.

*OMB No.:* 3060–0318.

*Title:* Notification of Status of Facilities.

*Form No.:* FCC 489.

A revised application form FCC 489 has been approved for use through 4/30/93. The March 1991 edition with an OMB expiration date of 4/30/93 will remain in use until revised forms are available.

*OMB No.:* 3060–0444.

*Title:* 800 MHz Construction Letter.

*Form No.:* FCC 800–A.

A revised form letter FCC 800–A has been approved for use through 4/30/95. The April 1992 edition with an OBM expiration date of 8/31/93 will remain in use until revised forms are available.

*OMB No.:* 3060–0497.

*Title:* Mediator Survey and Party Survey Forms.

*Form No.:* FCC 91 and FCC 92.

New survey forms FCC 91 and FCC 92 have been approved for use through 5/31/95. The current edition of the survey forms is dated July 1992.

*OMB No.:* 3060–0490.

*Title:* Confidential Alternative Dispute Resolution Statement.

*Form No.:* FCC 90.

A new statement form FCC 90 has been approved for use through 5/31/95. The current edition of the form is dated July 1992.

*OMB No.:* 3060-0499.

*Title:* 470-512 MHz Eight Month Mobile Loading.

*Form No.:* FCC 6027-H.

The form letter FCC 6027-H has been approved for use through 4/30/95. The February 1988 edition will remain in use until revised forms are available.

Federal Communications Commission

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92-15427 Filed 6-30-92; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1898]

## Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

June 25, 1992.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed July 16, 1992.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service. (MM Docket No. 87-268) Number of Petitions Filed: 6.

*Subject:* Amendment of Section 73.202(b), FM Table Broadcast Stations. (Lincoln, Osage Beach, Steelville and Warsaw, Missouri) (MM Docket No. 90-66, RM Nos. 7139, 7368 & 7369) Number of Petitions Filed: 1.

*Subject:* Competition in the Interstate Interexchange Marketplace. (CC Docket No. 90-132) Number of Petitions Filed: 1.

*Subject:* Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation. (CC Docket No. 91-35) Number of Petitions Filed: 8.

*Subject:* Amendment of Part 90.69 of the Commission's Rules and Regulations Concerning Eligibility in the Motion Picture Service. (PR Docket No. 91-62, RM-7406) Number of Petitions Filed: 2.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92-15428 Filed 6-30-92; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Crowley Caribbean Transport, Inc., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 203-011063-009.

*Title:* United States/Jamaica Discussion Agreement.

*Parties:*

Crowley Caribbean Transport, Inc.
Kirk Lines Ltd.
Sea-Land Service, Inc.
Zim American Israeli Shipping Co., Inc.
Calypso Container Lines
Shipping Corporation of Trinidad and Tobago, Ltd.
West Indies Shipping Corporation (WISCO)
North American Caribbean Line Ltd.
Blue Caribe Line

*Synopsis:* The proposed amendment will delete Zim American Israeli Shipping Co., Inc. as a party to the Agreement.

*Agreement No.:* 224-200678.

*Title:* Port Authority of New York & New Jersey/Hapag-Lloyd Terminal Agreement.

*Parties:*

Port Authority of New York & New Jersey ("Port")
Hapag-Lloyd (America) Inc. ("Carrier")

*Synopsis:* The Agreement provides that the Port will pay the Carrier $20/import container and $40/export container for each container with cargo loaded or unloaded from the Carrier's vessels at the Port's marine terminals provided the container moves to or from the Port via rail carriage. The Agreement will terminate on December 31, 1992.

*Agreement No.:* 224-200680.

*Title:* Port Authority of New York & New Jersey/Nedlloyd Terminal Agreement.

*Parties:*

Port Authority of New York & New Jersey ("Port")
Nedlloyd Lines (USA) Corp. ("Carrier")

*Synopsis:* The Agreement provides that the Port will pay the Carrier $20/import container and $40/export container for each container with cargo loaded or unloaded from the Carrier's vessels at the Port's marine terminals provided the container moves to or from the Port via rail carriage. The Agreement will terminate on December 31, 1992.

Dated: June 25, 1992.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92-15362 Filed 6-30-92; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

### ATSDR-Community Public Health Assessment Workshop; Meeting

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the following meeting.

*Name:* ATSDR-Community Public Health Assessment Workshop.

*Times and Dates:* Registration for invited participants: 4 p.m.-8 p.m., August 12, 1992, and 7 a.m.-8 a.m., August 13, 1992. Public Meeting: 5 p.m.-7 p.m., August 12, 1992; 8 a.m.-5:15 p.m., August 13, 1992; 8 a.m.-12 noon, August 14, 1992.

*Place:* Hotel Inter-Continental Chicago, 505 North Michigan Avenue, Chicago, Illinois 60611.

*Status:* Open to the public for observation and participation, limited only by the space available. The meeting room accommodates approximately 100 people.

*Matters To Be Considered:* The meeting will convene a group of interested parties to discuss the ATSDR Public Health Assessment process. The ATSDR Public Health Assessment is the evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public

health, develop health advisories or other recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects. The group will consider such areas as the ATSDR Public Health Assessment definition and purpose, its scope and limitations, how it is initiated, the roles of ATSDR staff, ATSDR-public interaction, the steps and activities in a public health assessment, and possible follow-up health actions.

*Contact Person for More Information:* Chris Schmidt, Division of Health Assessment and Consultation, ATSDR (MS E32), 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639-0605 or 0610.

Dated: June 24, 1992.

**Elvin Hilyer,**

*Associate Director for Policy Coordination.*

[FR Doc. 92-15397 Filed 6-30-92; 8:45 am]

BILLING CODE 4160-70-M

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## Center for Disease Control

**[Program Announcement Number 248]**

## State-Based Capacity Building Projects for the Prevention of Primary and Secondary Disabilities

### Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for cooperative agreement applications for state-based capacity building projects to prevent primary and secondary disabilities. Financial assistance is being provided to develop or expand capacity of states to prevent disabilities through public health leadership, coordination of services, surveillance, technical assistance, and implementation and evaluation of community intervention programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Health Promotion, Health Protection, Preventive Services, and Surveillance and Data Systems. (For ordering a copy of Health People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

### Authority

This program is authorized by section 317 [42 U.S.C. 247(b)] and section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, as amended.

### Eligible Applicants

Eligible applicants are state health departments or other state agencies or departments in states that are not current recipients of awards under this program that are deemed most appropriate by the state to lead, coordinate, and conduct that state's disabilities prevention program. This eligibility includes the health departments or other official organizational authorities (agencies or instrumentalities) of the District of Columbia, the Commonwealth of Puerto Rico, and any U.S. territory or possession.

If a state agency applying for cooperative agreement funds if other than the official state health department, written concurrence of the state health department must be provided. Only one application from a state may enter the review process and be considered for an award under this program. Eligible applicants may enter into contracts and consortia agreements and understandings as necessary to meet the requirements of the program and strengthen the overall application.

### Availability of Funds

It is anticipated that approximately $1,750,000 will be available for new cooperative agreement awards for state-based capacity building projects in FY 1992. Project awards are expected to be made on or about September 30, 1992 for a twelve month budget period within an established four year project period.

The CDC anticipates that state project awards for the first budget year will range from $200,000 to $260,000, but no award will exceed $260,000. Currently, 21 states are recipients of cooperative agreements for this program. These 21 states are expected to be awarded approximately $7,500,000 in noncompeting continuations. It is expected that the estimated amount of funds available through this announcement will support awards to approximately 7 additional states, increasing the state projects funded to 28 in FY 1992.

Projects funded under this Announcement should be designed to prevent two targeted groups of disabilities and their related secondary disabilities/conditions. Selected developmental disabilities, and head and spinal cord injuries.

### Purpose

The purpose of these cooperative agreements is to develop state capacity to reduce the incidence and severity of primary and secondary disabilities. These awards are being made to develop and maintain state leadership and a coordination focus for the prevention of disabilities. This coordination and collaboration should include appropriate state and community agencies, advocacy organizations, schools of public health, and other academic institutions including minority institutions. Projects must provide technical assistance and increase the knowledge base necessary to design, implement, and evaluate interventions that prevent disabilities. All state-based projects should become model disability prevention programs capable of replication and transfer of technology and process to other states.

These awards will support eligible states to:

1. Establish an office of disabilities prevention and a state-based advisory body and coordinate disability-related prevention activities.

2. Develop a state strategic plan for the prevention of all disabilities.

3. Conduct surveillance for the targeted disability groups.

4. Assist communities in the planning, conduct, and evaluation of programs designed to prevent disabilities, and understand the nature and cause of disabilities.

5. Undertake studies at the state or local level that contribute to an understanding of disabilities, improved surveillance methods, and the effectiveness of interventions designed to prevent disabilities.

### Targeted Disability Groups

A. *Developmental Disabilities* (DD)—States must conduct surveillance and prevention activities in one primary disability concentration area AND one secondary condition concentration area:

1. States must direct primary disability prevention activities into ONE of the following two concentration areas:

a. Fetal alcohol syndrome and other congenital alcohol disorders, including fetal alcohol effects; OR

b. Mental retardation (MR) associated with socioeconomic risk factors (e.g. poverty, disordered nurturing environments, high risk populations).

2. States must also conduct surveillance and prevention activities for secondary conditions related to one of the following three primary developmental disabilities areas; persons with:

a. Cerebral palsy; OR

b. Spina bifida; OR

c. Sickle cell anemia.

B. *Head and Spinal Cord Injuries*—Applicants must conduct both head and spinal cord injury surveillance and

prevention activities such as: presenting a plan for implementing E-coding of hospital discharge data, developing and accessing trauma databases and promoting data linkage, and establishing mechanisms such as registries to report and monitor head and spinal cord injuries.

Within this targeted disability group, applicants may also conduct surveillance on the prevention of secondary conditions related to head and spinal cord injuries. It is recognized that based on state capacity, surveillance for secondary conditions related to head and spinal cord injuries may be appropriate for implementation in later years of the project period.

The community intervention project(s) for either of the above two targeted disability groups will be developed based on the evaluation of data sources already available or developed and accessed during the first budget year.

**Cooperative Activities**

In conducting activities to achieve the purposes of this program, the recipient shall be responsible for activities under A., below, and CDC will be responsible for activities under B., below:

*A. Recipient Activities*

1. Develop an identified, highly visible state-based program for the prevention of disabilities and secondary conditions;
2. Establish and operate a state-based office of disabilities prevention, support an advisory body, establish coordination with other disabilities prevention-related agencies, develop project objectives and time frames, and provide technical assistance throughout the state;
3. Develop and implement a state strategic plan and community-specific project plans for preventive interventions;
4. Develop disabilities prevention programs in the targeted disability groups, with an emphasis on the conduct of surveillance; and
5. Promote prevention planning in communities, conduct intervention activities, and evaluate their effectiveness.

*B. CDC Activities*

1. Provide scientific programmatic and technical assistance in the planning, operation, and evaluation of surveillance and community projects;
2. Provide management programmatic assistance in the administrative and organizational aspects of project operations and information transfer on project activities in other states and national initiatives;
3. Support project staff by conducting training programs, conferences, and workshops to enhance skills and knowledge;
4. Provide a reference point for sharing regional and/or national data pertinent to targeted disabilities; and
5. Assist in research and in studying the effectiveness of specific prevention and intervention strategies.

**Evaluation Criteria**

Applications will be reviewed and evaluated according to the following criteria (Total 100 Points):

**1. Evidence of Need and Understanding of the Problem: (15 Points)**

Evaluation will be based on the applicant's description and understanding of the disabilities problem in the state as evidenced by estimates of incidence and/or prevalence, scope of disabilities and their severity, and cost associated with specific disabilities. Evaluation of this criteria will also include applicants' description of current disability prevention activities within the state. The description of disability prevention activities should address the effectiveness, available resources, demographic indicators, populations-at-risk and knowledge gaps. The applicant should also recognize and address the systems necessary to develop or expand a program for the prevention of primary and secondary disabilities.

*2. Technical Approach to the Conduct of the Project: (30 points)*

Evaluation will be based on:

a. The quality of the proposed plan and approach to establish and operate the office of disabilities prevention to ensure its capability to function as a coordinating focus and to provide technical assistance throughout the state;

b. The quality of the plan to establish the advisory body including its organizational composition and intended impact on policy, planning, and oversight for prevention activities; including an indication of how it will complement other such councils in the state;

c. The quality of the approach to develop and implement the state strategic plan for the prevention of disabilities;

d. The overall quality, reasonableness, feasibility, and logic of the designed project objectives, including the overall work plan and timetable for accomplishment;

e. The strength of the proposed evaluation plan to measure the effectiveness of all project components, incorporating both process and outcome measures;

f. The quality of the strategy that illustrates how disabilities prevention activities will be promoted and communicated; and how effective working relationships with other groups throughout the state will be coordinated;

g. The quality of described preventive services for low income and minority populations; and how access for persons with disabilities to services, opportunities, and project facilities will be achieved.

*3. Surveillance Systems: (35 Points)*

Evaluation of this criteria will be based on the quality of the applicant's surveillance plan and design, methods and approaches, time lines for implementation, collaborative support and intra/inter-agency agreements for data sharing, data linkage, access and analysis potential, and dissemination capacity. This criteria includes the applicant's rationale for selecting the targeted disabilities and evidence of the capacity to conduct a comprehensive surveillance program.

*4. Community Projects: (15 Points)*

Evaluation will be based on the quality of the applicant's description of planning efforts and anticipated methods to design and conduct a community intervention project(s). This criteria does not include the design for an actual project, but how the applicant plans to prepare for a community project with its basis in surveillance. This should include anticipated plans and approaches to:

(a) Analyze data and use such data for intervention planning;

(b) Build coalitions within communities;

(c) Identify state-level cooperating organizations in the planning and delivery of intervention programs; and

(d) Establish epidemiologically-sound evaluations on the effectiveness of interventions. If an actual community project is proposed based on existing data, the planning process for its implementation as described above will be the basis for evaluation under this criteria.

*5. Plan to Become Self-Sustaining: (5 Points)*

This criteria will be assessed on the extent and commitment of the applicant for cost-sharing and efforts toward self-sufficiency for at least major components of the project.

*6. Budget Justification and Adequacy of Facilities: (Not Scored)*

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of cooperative agreement funds. The application will also be reviewed as to the adequacy of existing and proposed facilities and resources for conducting project activities.

**Other Requirements**

*A. Paperwork Reduction Act*

Projects funded through this cooperative agreement that involve the collection of information from ten or more individuals will be subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

*B. Human Subjects and Confidentiality*

Individual state projects may include research on human subjects, including access to personal identifiers to link relevant data sets. Therefore, applicants must comply with the Department of Health and Human Services Regulations (45 Code of Federal Regulations 46) regarding the protection of human subjects. Assurances must be provided that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

**Executive Order 12372**

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, no later than 60 days after the deadline date for new competing awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

**Catalog of Federal Domestic Assistance (CFDA)**

The Catalog of Federal Domestic Assistance number is 93.184.

**Application Submission and Deadline**

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305 on or before July 30, 1992.

1. *Deadlines:* Applications will be considered to have met the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

2. *Late Applications:* Applications that do not meet the criteria in 1.a. or 1.b. above are considered late. Later applications will not be considered in the current competition and will be returned to the applicant.

**Where To Obtain Additional Information**

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Adrienne McCloud, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, (404) 842–6634.

Programmatic Technical Assistance may be obtained from Joseph B. Smith, Disabilities Prevention Program, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–41, Atlanta, Georgia 30333, (404) 488–4905.

Please refer to Announcment No. 248 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone (202) 783–3238).

Dated: June 25, 1992.

**Robert L. Foster,**

*Acting Associate Director for Management and Operations, Centers for Disease Control.*

[FR Doc. 92–15399 Filed 6–30–92; 8:45 am]

BILLING CODE 4160–18–M

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**Centers for Disease Control**

**Folic Acid To Prevent Spina Bifida and Other Neural Tube Defects; Meeting**

The National Center for Environmental Health and Injury Control (NCEHIC), Centers for Disease Control (CDC), announces the following meeting.

NAME: The use of Folic Acid to Prevent Spina Bifida and Other Neural Tube Defects.

TIME AND DATE: 8:30 a.m.–4 p.m., July 27, 1992.

PLACE: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

STATUS: Open to the public for observation and comment, limited only by the space available. The meeting room accommodates approximately 35 people.

PURPOSE: Spina bifida and anencephaly (neural tube defects (NTDs)) are common serious birth defects in the United States and contribute substantially to worldwide infant mortality and disability. Each year in the United States about 2,500 infants are born with spina bifida or anencephaly. Several recent studies suggest that daily oral supplementation with folic acid before conception and during the first trimester of pregnancy will prevent a substantial proportion of spina bifida and other NTDs. The Centers for Disease Control is considering a general recommendation for all American women who could become pregnant.

At the meeting CDC will request comments on the following draft recommendation: "All women in the United States who are capable of becoming pregnant should consume 0.4 mg of folic acid per day for the purpose of preventing spina bifida and other neural tube defects."

An invited group of qualified individuals will review the scientific

evidence during the meeting and will provide CDC with their individual recommendations regarding the use of folic acid supplementation for the prevention of NTDs among U.S. women capable of pregnancy. At the conclusion of the morning and afternoon sessions, all attendees will have an opportunity to provide oral and/or written comments for the record.

For a period of 15 days following the meeting, through August 11, 1992, the official record of the meeting will remain open in order that written comments may be submitted and be made part of the record. Comments may be mailed to the contact person listed below.

CONTACT PERSON FOR ADDITIONAL INFORMATION: J. David Erickson, D.D.S., Chief, Birth Defects and Genetic Diseases Branch, Division of Birth Defects and Developmental Disabilities, Mailstop F45, NCEHIC, CDC, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Dated: June 24, 1992.

Elvin Hilyer,

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 92-15398 Filed 6-30-92; 8:45 am]

BILLING CODE 4160-18-M

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## Food and Drug Administration

### Advisory Committee; Notice of Meeting; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that appeared in the Federal Register of June 1, 1992 (57 FR 23106), that announced a public meeting on the Circulatory System Devices Panel of the Medical Devices Advisory Committee. When the document was published, the date of signature by the authorized official was incorrectly given as "May 27, 1992." However, the actual date should have read "May 26, 1992." This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Robin F. Thomas, Office of Policy (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

In FR Doc. 92-12715, appearing on page 23106, in the Federal Register of Monday, June 1, 1992, the following correction is made: On page 23107, in the third column, at the end of the document, the date "May 27, 1992" is corrected to read "May 26, 1992."

Dated: June 26, 1992.

Michael R. Taylor,

*Deputy Commissioner for Policy.*

[FR Doc. 92-15475 Filed 6-30-92; 8:45 am]

BILLING CODE 4160-01-F

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### Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces a forthcoming meeting of a public advisory committee of the Department of Health and Human Services. This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before this advisory committee. For this meeting the Department is following the procedures in 21 CFR part 14 that apply to meetings of advisory committees to the Food and Drug Administration.

**MEETING:** The following advisory committee meeting is announced:

### Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee)

*Date, time, and place.* July 30, 1992, 9 a.m., Marriott Hotel, 4240 La Jolla Village Dr., La Jolla, CA.

*Type of meeting and contact person.* Open public hearing, July 30, 1992, 9 a.m. to 10 a.m., unless public participation does not last that long; closed committee deliberations, 10 a.m. to 5 p.m.; Ronald F. Coene, National Center for Toxicological Research (HFT-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3155.

*General function of the committee.* The committee shall advise the Secretary and the Assistant Secretary for Health concerning its oversight of the conduct of the Ranch Hand Study by the Air Force and other studies in which the Secretary or the Assistant Secretary for Health believes involvement by the advisory committee is desirable.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make a formal presentation should notify the contact person before July 20, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their comments.

*Closed committee deliberations.* The committee will conduct a site visit of the Air Force's contractor to review data collection and quality assurance activities of the third followup exam of participants in the Air Force Health Study: An Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides. The committee will discuss information of a personal nature, including medical evaluation data on individuals participating in the study, where disclosure would constitute a clearly unwarranted invasion of personal privacy relevant to the Air Force Health Study. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(6)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 25, 1992.

David A. Kessler,

*Commissioner of Food and Drugs.*

[FR Doc. 92–15477 Filed 6–30–92; 8:45 am]

BILLING CODE 4160–01–F

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## Health Care Financing Administration

### Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

**AGENCY:** Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Revision; *Title of Information Collection:* Request for Certification in the Medicare and/or Medicaid Program to Provide Outpatient Physical Therapy and/or Speech Pathology Services (OPT/SPS) and Medicare OPT/SPS Survey Report; *Form Numbers:* HCFD–1856 and 1893; *Use:* Form HCFA–1856, Request for Certification in the Medicare and/or Medicaid Program to Provide OPT/SPS, is a facility identification and screening form used to initiate the certification process and to determine if the provider has sufficient personnel to participate in the Medicare/Medicaid Programs. Form HCFA/1893, OPT/SPS Survey Report, is used by the State agencies to record data collected to determine facility compliance with individual conditions of participation and report it to the Federal government; *Frequency:* Biennially; *Respondents:* State/local governments; *Estimated Number of Responses:* 650; *Average Hours per response:* 1.75; *Total Estimated Burden Hours:* 1,138.

2. *Type of Request:* New; *Title of Information Collection:* Conditions of Coverage for Organ Procurement Organizations; *Form Number:* HCFA–R–13; *Use:* Organ procurement organizations are required to submit accurate data to HCFA concerning population and information on donors and organs to assure maximum effectiveness in the procurement and distribution of organs; *Frequency:* Annually; *Respondents:* Non-profit institutions; *Estimated Number of Responses:* 69; *Average Hours per Response:* 60.95; *Total Estimated Burden Hours:* 4,206.

3. *Type of Request:* New; *Title of Information Collection:* Information Collection Requirements in Regulation MB–019 for Home and Community-based Services (HCBS) Waiver for Individuals Age 65 or older; *Form Number: HCFA–R–16; Use:* States may prepare a *Medicaid Waiver"* request for waiver of specific Medicaid coverage requirements in order to provide home and community-based services to individuals over age 65 who would otherwise be institutionalized. Once approved, States are required to submit cost reports on the operation of the waiver program and may be renewed after three years; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 4; *Average Hours per Response:* 65; *Total Estimated Burden Hours:* 260 (reporting) and 63,546 (recordkeeping) for a total of 63,806.

4. *Type of Request:* Extention; *Title of Information Collection:* Federal Re-review Process, Medicaid Eligibility Quality Control (MEQC); *Form Number:* HCFA–9010; *Use:* The HCFA regional offices request the Medicaid State agency to submit beneficiaries' MEQC files and State agency records to document eligibility factors and the accuracy of paid claims. The HCFA regional offices use these files during the Federal re-review process in which they compare Federal and State findings; *Frequency:* Monthly; *Respondents:* State/local governments; *Estimated Number of responses:* 8,976; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 2,244.

5. *Type of request:* Reinstatement; *Title of Information Collection:* Skilled Nursing Facility (SNF) and SNF Health Care Complex Cost Report; *Form Number:* HCFA–2540; *Use:* The SNF and SNF Health Care Complex Cost Report is the cost report to be used by free-standing SNF's to submit annual information to achieve settlement of costs for health care services rendered to Medicare beneficiaries; *Frequency:* Annually; *Respondents:* State/local governments, non-profit institutions, and small businesses or organizations; *Estimated Number of Responses:* 7,000; *Average Hours per Response:* 64; *Total Estimated Burden Hours:* 448,000 (reporting, and 924,000 (recordkeeping) for a total of 1,372.00.

6. *Type of Request:* Revision; *Title of Information Collection:* Hospital and Hospital Health Care Complex Cost Report; *Form Number:* HCFA–2552–92; *Use:* Providers of services participating in the Medicare program are required to submit annual information to achieve settlement of costs for hospital services rendered to Medicare beneficiaries. This form is filed annually by hoispitals and hospital health care complexes participating in the Medicare Program; *Frequency:* Annually; *Respondents:* Businesses/other for profit, non-profit institutions, and small businesses or organizations; *Estimated Number of Responses:* 7,000; *Average Hours per Response:* 54.366; *Total Estimated Burden Hours:* 380,560 (reporting) and 4,053,000 (recordkeeping) for a total of 4,433,560.

7. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements in 42 CFR 418.83, Hospice Core Service: Nursing; *Form Number:* HCFA–R–66; *Use:* This information collection permits hospices to request a waiver from furnishing direct nursing services. In order to request a waiver, hospices have to meet certain conditions and demonstrate their efforts to hire nurses as well as establish that they were operating as a hospice before January 1, 1983; *Frequency:* Annually; *Respondents:* Businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 1; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 1.

8. *Type of Request:* Revision; *Title of Information Collection:* Home Office Cost Statement; *Form Number:* HCFA–287–92; *Use:* Medicare provisions permit components of chain organizations to be reimbursed for certain costs incurred by the Home Office of the chain. The Home Office Cost Statement is required by the fiscal intermediary to verify Home Office costs claimed by the components; *Frequency:* Annually; *Respondents:* Businesses or other for profit, non-profit institutions, and small businesses or organizations; *Estimated Number of Responses:* 1,231; *Average Hours per Response:* 328; *Total Estimated Burden Hours:* 403,768 (reporting) and 169,878 (recordkeeping) for a total of 573,646.

*Additional Information or Comments:* Call the Reports Clearance Office on 410–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: June 23, 1992.

**William Toby, Jr,**

*Acting Administrator, Health Care Financing Administration.*

[FR Doc. 92–15359 Filed 6–30–92; 8:45 am]

BILLING CODE 4120–03–M

## Public Health Service

### Centers for Disease Control, Ryan White Comprehensive Aids Resources Emergency Act of 1990, Public Law 101–381; Delegation of Authority

Notice is hereby given that in furtherance of the February 21, 1991, delegation of authorities under the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (Pub. L. 101–381), as amended hereafter, from the Secretary of Health and Human Services to the Assistant Secretary for Health (43 FR 9226), I have delegated, with authority to redelegate, under title XXVI of the PHS Act, sections 2682–2690 to the Director, Centers for Disease Control.

This delegation excludes the authorities to promulgate regulations and to submit reports to the Congress.

This delegation became effective on June 2, 1992. In addition, I have affirmed and ratified any actions taken by the Director, Centers for Disease Control, or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: June 2, 1992.

**James O. Mason,**

*Assistant Secretary for Health.*

[FR Doc. 92–15479 Filed 6–30–92; 8:45 am]

BILLING CODE 4160–16–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. N–92–3469]**

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, rein statement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

**Dated: June 24, 1992.**

**Kay Weaver,**

*Acting Director, Information Resources, Management Policy and Management Division.*

**Notice of Submission of Proposed Information Collection to OMB**

*Proposal:* Supportive Housing Demonstration—Renewal Application.

*Office:* Community Planning and Development.

*Description of the Need for the Information and its Porposed Use:* The information is needed to assist HUD in determining whether existing programs receiving Transitional Housing and Permanent Housing for Handicapped Homeless funds under the Supportive Housing Demonstration (SHD) should receive renewal grants as stipulated in the National Affordable Housing Act of 1990. The information collected in the application will be used by HUD reviewers to determine whether to renew the applicant's funding for operating costs and supportive services for a period of time not to exceed the difference between the initial funding period and ten years from the date residents initially occupy the facility..

*Form Number:* HUD–40109 and SF–424.

*Respondents:* State or Local Governments and Non Profit Institutions.

*Frequency of Submission:* One-time.

*Reporting burden:*

| | Number of respondents | × | Frequency of reponses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Renewal Application | 215 | | 1 | | 20 | | 4,300 |

*Total Estimated Burden Hours:* 4,300.

*Status:* Extension.

*Contact:* James N. Forsberg, HUD, (202) 708–4300, Jennifer Main, OMB, (202) 395–6880

Dated: June 24, 1992.

[FR Doc. 92–15453 Filed 6–30–92; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–92–3463]

**Submission of Proposed Information Collection to OMB**

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Mangement and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information,as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, rein statement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535 (d).

**Dated: June 24, 1992.**

**Kay Weaver,**

*Acting Director, Information Resources, Management Policy and Management Division.*

**Notice of Submission of Proposed Information Collection to OMB**

*Proposal:* Performance Funding System: Applicability of New Formula to Trouble Public Housing Agencies-FR–3227.

*Office:* Public and Indian Housing.

*Description of the need for the information and its proposed use:* This information is used by Public Housing Agencies for inclusion in budget submissions which are reviewed and approved by Field Offices as the basis for obligating operating subsidies. This information is necessary in order to calculate the eligibility for operating subsidies under the Performance Funding System regulation, as amended by the Proposed Rule.

*Form Number:* None.

*Respondents:* State or Local Governments.

*Frequency of Submission:* One-Time.

*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information, Collection | 140 | | 1 | | 4 | | 560 |

*Total Estimated Burden Hours:* 560.
*Status:* New.
*Contact:* John T. Comerford, HUD, (202) 708–1872, Jennifer Main, OMB, (202) 395–6880.

Dated: June 24, 1992.

[FR Doc. 92–15454 Filed 6–30–92; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–92–3467]

## Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 22, 1992.

**John T. Murphy,**

*Director, Information Resources, Management Policy and Management Division.*

## Notice of Submission of Proposed Information Collection to OMB

*Proposal:* Public Housing Resident Management (24 CFR 964)—FR–2519.

*Office:* Public and Indian Housing.

*Description of the Need for the Information and its Proposed Use:* The information collection provide HUD policies, guidelines and requirements on Resident Management of Public Housing.

*Form Number:* None.

*Respondents:* State or Local Governments, Non-Profit Institutions and Small Businesses or Organizations.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| Section | Number of Respondents | x | Frequency of Response | x | House per Response | = | Burden Hours |
|---|---|---|---|---|---|---|---|
| 964.9(b) | 50 | | 1 | | 2 | | 100 |
| 964.54 | 500 | | 1 | 4 | 2,000 | | |
| 964.43 | 50 | | 1 | 2 | 100 | | |
| 964.29(c)(4) | 75 | | 1 | | 2 | | 150 |

*Total Estimated Burden Hours:* 2,350.
*Status:* Reinstatement.
*Contact:* Sharron D. Lipcomb, HUD, (202) 708–3611, Dorothy Walker, HUD, (202) 708–3611, Jennifer Main, OMB, (202) 395–6880.

Dated: 22 June 1992.

[FR Doc. 92–15455 Filed 6–30–92; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WO–150–4830–24 1A]

## Call for Nominations for District Advisory Councils

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Call for Nominations for District Advisory Councils.

**SUMMARY:** The purpose of this notice is to solicit public nominations to fill those positions for which terms expire this year on each of the Bureau of Land Management's (BLM) 52 district advisory councils.

Each council is composed of 10 members, except the Northern Alaska Advisory Council and the California Desert District Advisory Council, which are composed of 11 and 15 members, respectively. Under the established staggered-term arrangement, the terms of approximately one-third of the members on each council will expire on December 31, 1992, and must be filled. Current council members may be reappointed or new members may be appointed. However, the eligibility of

current council members for reappointment may be affected by the governing regulations (43 CFR 1784.3(b)). Appointments made by the Secretary of the Interior pursuant to this call will assure continued representation of specific categories of interest on each council. The new terms will expire December 31, 1995.

To assure council membership that is fairly balanced in terms of points of view represented and functions performed, nominees must be qualified to provide advice in certain areas that are identified with each council position to be filled. The specific number of positions to be filled on each council and their categories will be announced through local news releases in the appropriate States and BLM Districts. The categories will include the following: Elected General Purpose Government, Environmental Protection, Recreation, Renewable Resources (livestock, forestry, agriculture), Non-Renewable Resources (mining, oil and gas, extractive industries), Transportation/Rights-of-Way (or occupancy issues), Wildlife, Public-at-Large.

The purpose of the councils is to provide informed advice to the respective BLM District Managers on the management of the public lands. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

Each council normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on an advisory council should contact the appropriate District Manager at the corresponding BLM District Office address listed below to ascertain which categories of interest are to be represented. They should then provide the District Manager with the names, addresses, occupations, and other relevant biographical information of qualified nominees.

**DATES:** All nominations should be received by July 31, 1992.

**ADDRESSES:** The District *names* (*in Italics*) and their addresses are as follows:

Alaska

*Anchorage* and *Glennallen* Districts (jointly served by the Southern Alaska Advisory Council): c/o BLM Anchorage District Office, 6881 Abbott Loop road, Anchorage, Alaska 99507.

*Arctic, Kobuk,* and *Steese-White Mountain* Districts (jointly served by the Northern Alaska Advisory Council): c/o Public Affairs Staff, BLM Fairbanks Support Center, 1150 University Avenue, Fairbanks, Alaska 99709–3844.

Arizona

*Arizona Strip:* 390 North 3050 East, St. George, Utah 84770.

*Phoenix:* 2015 West Deer Valley Road, Phoenix, Arizona 85027.

*Safford:* 425 East 4th Street, Safford, Arizona 85546.

*Yuma:* 3150 Winsor Avenue, Yuma, Arizona 85364.

California

*Bakersfield:* 800 Truxtun Avenue, Bakersfield, California 93301.

*California Desert:* 6221 Box Springs Blvd., Riverside, California 92507.

*Susanville:* 7050 Hall Street, Susanville, California 96130–3730.

*Ukiah:* 555 Leslie Street, Ukiah, California 95482–5599.

Colorado

*Canon City:* P.O. Box 2200, Canon City, Colorado 81215–2200.

*Craig:* 455 Emerson Street, Craig, Colorado 81625.

*Grand Junction:* 2815 "H" Road, Grand Junction, Colorado 81506.

*Montrose:* 2465 South Townsend Avenue, Montrose, Colorado 81401.

Idaho

*Boise:* 3948 Development Avenue, Boise, Idaho 83705.

*Burley:* Route 3, Box 1, Burley, Idaho 83318.

*Coeur d'Alene:* 1808 North 3rd Street, Coeur d'Alene, Idaho 83814.

*Idaho Falls:* 940 Lincoln Road, Idaho Falls, Idaho 83401.

*Salmon:* P.O. Box 430, Salmon, Idaho 83467.

*Shoshone:* P.O. Box 2–B, Shoshone, Idaho 83352.

Montana

*Butte:* P.O. Box 3388, Butte, Montana 59702–3388.

*Dickinson:* 2933 Third Avenue West, Dickinson, North Dakota 58601.

*Lewistown:* P.O. Box 1160, Lewistown, Montana 59457–1160.

*Miles City:* P.O. Box 940, Miles City, Montana 59301–0940.

New Mexico

*Albuquerque:* 435 Montano Road, N.E., Albuquerque, New Mexico 87107.

*Las Cruces:* 1800 Marquess Street, Las Cruces, New Mexico 88005.

*Roswell:* P.O. Box 1397, Roswell, New Mexico 88202–1397.

Nevada

*Battle Mountain:* P.O. Box 1420, Battle Mountain, Nevada 89820.

*Carson City:* 1535 Hot Springs Road, Carson City, Nevada 89706–0638.

*Elko:* P.O. Box 831, Elko, Nevada 89801.

*Ely:* HC 33, Box 150, Ely, Nevada 89301–9408.

*Las Vegas:* P.O. Box 26569, Las Vegas, Nevada 89126.

*Winnemucca:* 705 East 4th Street, Winnemucca, Nevada 89445.

Oregon

*Burns:* HC 74–12533 Highway 20 West, Burns, Oregon 99738.

*Coos Bay:* 1300 Airport Lane, North Bend, Oregon 97459–2000.

*Eugene:* P.O. Box 10226, Eugene, Oregon 97440.

*Lakeview:* P.O. Box 151, Lakeview, Oregon 97630–0055.

*Medford:* 3040 Biddle Road, Medford, Oregon 97504.

*Prineville:* 185 East 4th Street, Prineville, Oregon 99754.

*Roseburg:* 777 N.W. Garden Valley Blvd., Roseburg, Oregon 97470.

*Salem:* 1717 Fabry Road, Southeast, Salem, Oregon 97306.

*Spokane:* East 4217 Main, Spokane, Washington 99202.

*Vale:* 100 Oregon Street, Vale, Oregon 97918.

Utah

*Cedar City:* 176 East D.L. Sargent Drive, Cedar City, Utah 84720.

*Moab:* 82 East Dogwood, Moab, Utah 84532.

*Richfield:* 150 East 900 North, Richfield, Utah 84701.

*Salt Lake:* 2370 South 2300 West, Salt Lake City, Utah 84119.

*Vernal:* 170 South 500 East, Vernal, Utah 84078.

Wyoming

*Casper:* 1701 East "E" Street, Casper, Wyoming 82601.

*Rawlins:* P.O. Box 670, Rawlins, Wyoming 82301.

*Rock Springs:* P.O. Box 1869, Rock Springs, Wyoming 82901–1869.

*Worland:* P.O. Box 119, Worland, Wyoming 82401.

**FOR FURTHER INFORMATION CONTACT:** The appropriate District Managers.

Dated: June 17, 1992.

Cy Jamison,

*Director.*

[FR Doc. 92–14954 Filed 6–30–92; 8:45 am]

BILLING CODE 4310–84–M

[NV-030-4333-12]

## Establishment of Supplementary Rules; Sand Mountain Recreation Area, Carson City District, NV

**AGENCY:** Bureau of Land Management, Nevada.

**ACTION:** Establishment of supplemental rules and revision of existing rules of conduct for the Sand Mountain Recreation Area, BLM, Carson City District, Nevada.

**SUMMARY:** The purpose of these rules is to provide for the protection of persons, property, and public lands and resources. They consolidate and clarify rules published in previous **Federal Register** notices and establish additional supplemental rules of conduct for visitors to the Sand Mountain Recreation Area. More specifically, the purposes fall into the following categories:

### A. Implementation of Management Plan

Certain prohibited activities were recommended in the Recreation Area Management Plan (Revised 1985) for the Sand Mountain Recreation Area. These recommendations subsequently were published as specific prohibited acts in the **Federal Register** on March 12, 1986. These rules require minor modification and clarification.

### B. Public Safety

Certain other supplementary rules are necessary in order to provide for the safety of visitors to the Recreation Area. Speed limits are needed on access roads and in designated camping areas. Ignition of fireworks is a violation of State law and a danger to both persons and property.

### C. Protection of Public Lands and Resources

Clarification of existing rules is needed to protect plant life, wildlife habitat and historic resources. Indiscriminate vehicle use in that portion of the Recreation Area where the off-road vehicle designation is "limited" (**Federal Register**, September 15, 1988) has destroyed vegetation, caused harassment of wildlife and threatens the integrity of the Sand Springs Pony Express Station and Desert Study Area. These rules specifically identify those routes which are open to vehicle use within this "limited" designation area. Rules regarding the closure of certain lands within the Recreation Area to camping were published in the **Federal Register** on May 1, 1992. This notice corrects an omission in the legal description of those lands.

In addition to the regulations contained in 43 CFR part 8365, the following supplemental rules will apply to the Sand Mountain Recreation Area:

1. All off-highway motor vehicles, other than those traveling on maintained roads and within designated camping areas, shall be equipped with a whip, which is any pole, rod, mast, or antenna, that is securely mounted on the vehicle and which extends to a height of at least eight (8) feet from the surface of the ground when the vehicle is stopped. When the vehicle is stopped, the whip shall be capable of standing upright when supporting the weight of any attached flags. At least one whip attached to each vehicle shall have a solid red or orange colored safety flag with a minimum size of six (6) inches by twelve (12) inches, and be attached within ten (10) inches of the top of the whip. Flags may be of pennant, triangle, square or rectangular shape.

2. The discharge or use of firearms, other weapons, or fireworks anywhere within the Recreation Area is prohibited.

3. No person shall operate any motor vehicle in excess of 25 mph on any maintained road within the Recreation Area, or in excess of 15 mph within any designated camping area.

4. Within that portion of the Recreation Area where vehicle use is designated as "limited", there are only two roads open to motorized vehicles. These roads are:

(a) The main access road leading from U.S. Highway 50 to the base of Sand Mountain and,

(b) The secondary access road leading from the main access road to the parking area near the Sand Springs Pony Express Station and Desert Study Area.

5. Camping on the following lands, other than in an area designated for that purpose, is prohibited:

Mt. Diablo Meridian

T.17N., R.32E.,
Sec. 32
Sec. 33

T.16N., R.32E.
Sec. 4 (that portion within the Recreation Area)
Sec. 5 (that portion within the Recreation Area)

**EFFECTIVE DATE:** August 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** James M. Phillips, Lahontan Resource Area Manager, Carson City District Office, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706-0638. Telephone (702) 885-6100.

**SUPPLEMENTAL INFORMATION:** The authority for establishing supplemental rules is contained in 43 CFR 8365.1-6. These rules have been recommended and adopted in order to provide for the protection of persons, property, and public lands and resources. These rules will be available in the Carson City District Office, which has jurisdiction over the Sand Mountain Recreation Area, and also will be posted within the Recreation Area itself.

Dated: June 16, 1992.

James W. Elliott,

*District Manager.*

[FR Doc. 92-15372 Filed 6-30-92; 8:45 am]

BILLING CODE 4310-HC-M

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[OR-933-4212-17; GP2-284]

## Applicability of State and County Health, Building, Sanitation, and Fire Codes; OR

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** To protect persons, property, public lands and resources by prohibiting violations of State and County health, building, electrical, fire, and sanitation codes on Bureau administered lands in the State of Oregon.

**SUMMARY:** Uniform building codes are established to provide the minimum requirements and standards for the protection of the public health, safety and welfare. Code requirements are established and defined in the latest edition of the Uniform Building Codes, Uniform Plumbing Code, Uniform Mechanical Code, the National Electrical Code, Oregon building code regulations adopted pursuant to ORS 455 and Protection of Building from Fire statutes described under ORS 479.

There are structures (portable, mobile and/or permanently affixed to the ground) currently in existence and/or being built or placed on Bureau administered lands in Oregon in noncompliance with Uniform National or State Codes.

These substandard structures constitute a hazard to the occupants of such structures, to public land users and to the protection of the public lands and resources.

### Rule

This rule supplements the rules located in 43 CFR 8365.1 as authorized by 43 CFR 8365.1-6. On all public lands administered by the Bureau of Land

Management in the State of Oregon, no person shall maintain, construct, place, occupy or use any structure, tent, shed, cabin, hut, trailer, motorhome, or dwelling of any kind in violation of any State or County Health, Building, Sanitation or Fire Code. This rule will apply to any structure on public lands existing on or after the effective date of this rule and will be enforceable by appropriate Federal authorities including BLM officials with delegated law enforcement authority, as well as appropriate state and local authorities.

**SUPPLEMENTARY INFORMATION:** Authority to create this supplementary rule is contained in 43 CFR 8365.1–6. Any violations of the prohibitions of this supplemental rule shall be punishable by a fine of not more than $1,000 or imprisonment of not more than 12 months as noted in 43 CFR 8360.0–7.

**DATES:** This rule will be in effect July 24, 1992 and is permanent until canceled, amended or replaced.

**FOR FURTHER INFORMATION CONTACT:** Contact the Division of Lands and Renewable Resources at (503) 280–7063 or the Law Enforcement staff at (503) 280–7345 at the Bureau of Land Management's Oregon/Washington State Office, P.O. Box 2965, 1300 NE. 44th, Portland, Oregon 97208. The rule will be available at all BLM offices in the State of Oregon, addresses and telephone numbers are available from the Public Affairs office, above address and (503) 280–7027.

Dated: June 22, 1992.

**Elaine Y. Zielinski,**

*Deputy State Director for Lands and Renewable Resources.*

[FR Doc. 92–15405 Filed 6–30–92; 8:45 am]

BILLING CODE 4310–33–M

## Fish and Wildlife Service

### Receipt of Applications for Permit

The public is invited to comment on the following applications for permits to conduct certain activity with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361) *et seq.* and the regulations governing marine mammals (50 CFR 18).

*Applicants*

(1) Niigata City Aquarium, Niigata, Japan, PRT–765191.

(2) Noboribetsu Marinepark Aquarium, Noboribestsu, Japan, PRT–765480.

(3) Osaka Aquarium, Osaka, Japan, PRT–765481.

(4) Yomiuri Land Marine Aquarium, Tokyo, Japan, PRT–765594.

The U.S. agent for these aquariums is: International Animal Exchange, Ferndale, Michigan.

*Type of Permit:* Take for public display.

*Name and Number of Animals:* Northern Sea Otter (*Enhydra lutris lutris*) 19 animals to be permanently removed for public display in Japan.

*Summary of Activity to be Authorized:* The applicants proposed to take (capture by tangle net, handle, and hold for up to 3 hours) and export 19 northern sea otters and inadvertently harass others during capture. The sea otters will be on permanent public display at the four Japanese Aquariums where educational information will be provided to the public.

*Source of Marine Mammals for Public Display:* The applicants document that currently there are no sea otters in captivity available for their acquisition. Thus, they are requesting removal of 19 sea otters from the waters surrounding Kodiak Island, Alaska.

*Period of Activity:* July 1992 through September 1993.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of these applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the applications, or request for a public hearing on these applications should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203, within 30 days of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of a hearing is at the discretion of the Director.

Documents submitted in connection with the above applications are available for review during normal business hours (7:45 am to 4:15 pm) in room 432, 4401 North Fairfax Drive, Arlington, Virginia.

Dated: June 25, 1992.

**Susan Jacobsen,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 92– 15379 Filed 6–30–92; 8:45 am]

BILLING CODE 4310–55–M

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–520 and 521 (Final)]**

### Certain Carbon Steel Butt-Weld Pipe Fittings From China and Thailand

**Determinations**

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured or threatened with material injury, by reason of imports from China and Thailand [3] of certain carbon steel butt-weld pipe fittings, provided for in subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

**Background**

The Commission instituted these investigations effective December 24, 1991, following preliminary determinations by the Department of Commerce that imports of certain carbon steel butt-weld pipe fittings from China and Thailand were being sold at LTFV within the meaning of section 733(b) of the act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 23, 1992 (57 FR 2783). The hearing was held in Washington, DC, on May 14, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 24, 1992. The views of the Commission are contained in USITC Publication 2528 (June 1992), entitled "Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand: Determinations of the Commission in Investigations Nos. 731–TA–520 and 521 (Final) Under the Tariff Act of 1930, Together With the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford not participating.

[3] Commissioner Rohr dissenting with respect to Thailand.

Information Obtained in the Investigations."

Issued: June 25, 1992.

By Order of the Commission:

Kenneth R. Mason,

*Secretary.*

[FR Doc. 92-15403 Filed 6-30-92; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 731-TA-530 (Final)]**

## High-Tenacity Rayon Filament Yarn From Germany

### Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Germany of high-tenacity rayon filament yarn,[3] provided for in subheading 5403.10.30 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

### Background

The Commission instituted this investigation effective February 20, 1992, following a preliminary determination by the Department of Commerce that imports of high-tenacity rayon filament yarn from Germany were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 25, 1992 (57 FR 10368). The hearing was held in Washington, DC, on May 1, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 18, 1992. The views of the Commission are contained in USITC Publication 2525 (June 1992), entitled "High-tenacity Rayon Filament Yarn from Germany: Determination of the Commission in Investigation No. 731-TA-530 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 22, 1992.

By Order of the Commission:

Kenneth R. Mason,

*Secretary.*

[FR Doc. 92-15402 Filed 6-30-92; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 337-TA-331]**

## Certain Microcomputer Memory Controllers, Components Thereof and Products Containing Same

Notice is hereby given that the prehearing conference in this proceeding scheduled for July 20, 1992, and the hearing scheduled to commence immediately thereafter (57 FR 24654, June 10, 1992) are cancelled.

The prehearing conference is rescheduled to commence at 9 a.m. on July 27, 1992, in Courtroom C (room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: June 22, 1992.

Janet D. Saxon,

*Administrative Law Judge.*

[FR Doc. 92-15400 Filed 6-30-92; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigations Nos. 701-TA-318 and 731-TA-560 and 561 (Preliminary)]**

## Sulfanilic Acid from the Republic of Hungary and India

### Determinations

On the basis of the record [1] developed in investigation No. 701-TA-318 (Preliminary), the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from India of sulfanilic acid [3] that are alleged to be subsidized by the Government of India.

The Commission further determines,[4] on the basis of the record developed in investigations Nos. 731-TA-560 and 561 (Preliminary), pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the Republic of Hungary (Hungary) and India of sulfanilic acid [3] that are alleged to be sold in the United States at less than fair value (LTFV).

### Background

On May 8, 1992, a petition was filed the Commission and the Department of Commerce by R-M Industries, Inc., Fort Mill, SC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of sulfanilic acid from India and LTFV imports of sulfanilic acid from Hungary and India. Accordingly, effective May 8, 1992, the Commission instituted countervailing duty investigation No. 701-TA-318 (Preliminary) and antidumping duty investigations Nos. 731-TA-560 and 561 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 14, 1992 (57 FR 20711). The conference was held in Washington, DC, on May 29, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 22, 1992. The views of the Commission are contained in USITC Publication 2526 (June 1992), entitled "Sulfanilic Acid from the Republic of Hungary and India: Determinations of the Commission in Investigations Nos. 701-TA-318 and 731-TA-560 and 561 (Preliminary) Under the Tariff Act of 1930, Together With the

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Brunsdale, Commissioner Crawford, and Commissioner Watson dissenting. (Commissioner Watson was appointed vice chairman effective June 17, 1992.)

[3] The imported product subject to this investigation is a multifilament single yarn of viscose rayon with a twist of 5 turns or more per meter, having a denier of 1100 or greater, and a tenacity greater than 35 centinewtons per tex.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Brunsdale dissenting and Commissioner Crawford not participating.

[3] The products covered by these investigations are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and sodium salt of sulfanilic acid (sodium sulfanilate). Sulfanilic acid and sodium sulfanilate are provided for in subheadings 2921.42.24 and 2921.42.70 of the Harmonized Tariff Schedule of the United States.

[4] Commissioner Brunsdale dissenting with respect to India and Commissioner Crawford not participating.

Information Obtained in the Investigations."

Issued: June 23, 1992.

By Order of the Commission:

Kenneth R. Mason,

*Secretary.*

[FR Doc. 92-15401 Filed 6-30-92; 8:45 am]

BILLING CODE 7035-02-M

## INTERSTATE COMMERCE COMMISSION

### Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343-11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers pursuant to 49 U.S.C. 11343-11344. The applications are governed by 49 CFR part 1182, as revised in Pur., Merger & Cont.-Motor Passenger & Water Carriers, 5 I.C.C.2d 786 (1989). The findings for these applications are set forth at 49 CFR 1192.18. Persons wishing to oppose an application must follow the rules under 49 CFR 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC-F-20099, filed June 3, 1992. U.S. Transportation Systems, Inc.—Control—SCL Travel, Inc., dba Sterling Coach Lines, Sterling Commuter, Inc., and Gray Line Tours of Atlantic City, Inc. Applicant's representative: Arthur Wagner, Wagner & Di Maio, P.C., 342 Madison Avenue, New York, NY 10173. Applicant U.S. Transportatin Sytem, Inc. (USTS), a motor carrier of passengers under MC-188174, seeks authority to acquire control through purchase of all the outstanding stock of the following motor common carriers of passengers: SCL Travel, Inc., dba Sterling Coach Lines (Sterling Coach) (MC-178485); Sterling Commuter, Inc. (Sterling Commuter) (MC-178370); and Gray Line Tours of Atlantic City, Inc. (Gray Line Tours) (MC-153964). Sterling Coach, Sterling Commuter, and Gray Line Tours are now wholly owned subsidiaries of The Gold Transportation Group, Inc.

Decided June 26, 1992.

By the Commission, the Motor Carrier Board.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 92-15456 Filed 6-30-92; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9622(d)(2) and with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Atlas Corporation and Vinnell Mining and Minerals Corporation*, Civil Action No. F-92-5733 (OWW) was lodged on May 29, 1992 with the United States District Court for the Eastern District of California. The defendants are the Atlas Corporation ("Atlas") and Vinnell Mining and Minerals Corporation ("Vinnell"), former "operators" of the Atlas Asbestos Mine Superfund Site ("Site") within the meaning of section 107(a)(1) of CERCLA, 42 U.S.C. 9607(a)(1). The Site is situated approximately 18 miles northwest of Coalinga, California in western Fresno County.

In the consent decree, the defendants agree to implement the entire remedy selected in the Record of Decision ("ROD") for the Site and to pay $1,620,748 of the United States' past costs. Cleanup of the Site includes controlling the release of asbestos from and restricting access to the Mine Area. In addition, the defendants agree to pay 100% of EPA's future oversight and response costs related to implementation of the ROD.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Atlas Corporation and Vinnell Mining and Minerals Corporation*, D.J. Ref. 90-11-2-360.

The proposed Consent Degree may be examined at the Office of the United States Attorney, Eastern District of California, Fresno Division, 4304 Federal Building, 1130 O Street, Fresno, California 93721, and at the Region IX Office of the Environmental Protection Agency, 75 Hawthrone Street, San Francisco, California 94105. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $36.50 (50 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger Clegg,

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 92-15373 Filed 6-30-92; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Jordan Recycling Industries, Inc., David J. Hardy Construction Co., Inc., and Conklin, Ltd.*, Civil Action No. 91-0546-CGC (N.D.N.Y.) was lodged on June 10, 1992 with the United States District Court for the Northern District of New York. The decree provides for defendants Conklin, Ltd. ("Conklin") and David J. Hardy Construction Co. to jointly and severally pay a civil penalty of $148,000 pursuant to the provision of section 113(b) of the Clean Air Act, 42 U.S.C. 7513(b). The civil penalty is for violations occurring from July 1988 through August 1989 of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") promulagated for asbestos pursuant to sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412 and 7414. The decree also requires future compliance with the asbestos NESHAP regulations and provides for stipulated penalties for future violations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Jordan Recycling Industries, Inc., David J. Hardy Construction Co., Inc., and Conklin, Ltd.* Civil Action No. 91-0546-CGC (N.D.N.Y.), DOJ reference #90-5-2-1-1379A.

The proposed consent decree may be examined at the Office of the United States Attorney for the Northern District of New York, 445 Broadway, room 231, James T. Foley Federal Building Albany, New York 12207, and at the Environmental Enforcement Section

Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $9.00 (25 cents per page reproduction costs), payable to "Consent Decree Library".

**John C. Cruden,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 92–15374 Filed 6–30–92; 8:45 am]

BILLING CODE 4410–01–M

## Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with section 122(d)(2)(B) of the Comprehensive Environment Response, Compensation, and Liability Act, 42 U.S.C. 9622(d)(2), and with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Pine Canyon and Land Company, et al.*, Civil Action No. F–92–5734 (OWW) was lodged on May 28, 1992 with the United States District Court for the Eastern District of California, Fresno Division. The defendants are the Pine Canyon Land Company, the current owner of the Johns-Manville Coalinga Mill Area Operable Unit Site ("Mill Area" or "Site"), located in Fresno County, California, Santa Fe Pacific Company, parent corporation of Pine Canyon; and Catellus Development Corporation, the successor corporation of the immediate past owner of the Site.

In the consent decree, the defendants agree to implement the entire remedial action, estimated to cost approximately $1.9 million. Cleanup of the Site includes controlling the release of asbestos and restricting access to the area. In addition, the defendants agree to pay $995,765.74 of the United States' past costs and to pay 100% of EPA's future oversight and response costs related to implementation of the Record of Decision ("ROD").

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Pine Canyon Land Company, et al.*, D.J. Ref. 90–11–3–459.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of California, Fresno Division, 4304 Federal Building, 1130 O Street, Fresno, California 93721, and at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. The proposed Consent Decree may be examined at the Environment Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $44.00 (50 cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger Clegg,**

*Acting Assistant Attorney General, Environment and Natural Resources, Division.*

[FR Doc. 92–15375 Filed 6–30–92; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 523–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA.OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

**Revision**

*Employment and Training Administration*

Job Training Quarterly Survey (JTQS)
1205–231
JTQS 1,2,32,21,21(T)

| Form # | Affected public | Respondents | Frequency | Average time per response |
|---|---|---|---|---|
| JTQS–21 | SDAs | 170 | Quarterly | 10 min. |
| JTQS–20 | SDAs | 60 | Quarterly | 10 min. |
| JTQS–21(T) | SDAs | 55 | One-time | 20 min. |

| Form # | Affected public | Respondents | Frequency | Average time per response |
|---|---|---|---|---|
| 170 total hours | | | | |

The Employment Training Administration will use the data to evaluate programs and services funded under Titles 2A and 3/EDWAA of the Job Training Partnership Act. Each quarter, the Census Bureau will collect data on 3,000 enrollees and 3,000 terminees from the files of Service Delivery Area offices and state offices.

Statement from the Court or other Agency Statement from Institution
1205–0028
ETA 655 and 655A

| Form # | Affected public | Respondents | Frequency | Average time per response |
|---|---|---|---|---|
| ETA 655 | State or local governments; Non-profit organizations. | 13,500 | One-time | 25 minutes. |
| ETA 655A | do | 1,500 | One-time | 30 minutes. |
| 6,420 total hours | | | | |

These forms are an essential part of the screening and admissions process for Job Corps. It is especially critical due to the residential nature of the program, where behavior problems can pose a danger to other students. The information collected is critical in determining whether or not an applicant should be enrolled.

Extension

*Bureau of Labor Statistics*

Employee Benefits Survey
1220–0084
BLS 3111
Annually, but coverage varies: Medium and large private establishments in odd-numbered years; State and local governments and small private establishments in even-numbered years; business or other for-profit organizations, including small businesses; non-profit institutions
1993, 1995: 1900 responses; 2375 hours; 1.25 hours per respondent; 1 form
1994: 3300 responses; 4225 hours; 1.28 hours per respondent; 1 form
The Employee Benefits Survey will present data on employee benefits in medium and large private establishments in 1993 and 1995, and in small (1–99 employees) private establishments and in State and local governments, and small medium, and large establishments in private industry, is used by Federal agencies and the Congress to determine policy affecting benefits of all workers; and by the private sector and State and local governments in benefits administration, union negotiations, and research.

*Employment Standards Administration*

Waiver of Child Labor Provisions for Agricultural Employment of 10 and 11 year Old Minors in Hand Harvesting of Short Season Crops
1215–0120
On occasion
Farms
1 respondent; 4 total hours; 3 hours per reporting requirement; 1 hour per recordkeeping requirement
Agricultural employers must supply certain information to the Department of Labor when applying for a waiver of the child labor provisions to employ 10 and 11 year old minors in hand harvesting of short season crops. Employers granted waivers are required to maintain certain records.
Medical Travel Refund Request
1215–0054
CM 957
On occasion
Individuals or households; Small businesses or organizations
9,500 respondents; 2,500 total hours; 10 min. per response; 1 form
This form is used by miners (claimants and beneficiaries) who are seeking reimbursement for out-of-pocket expenses incurred when they travel to undergo diagnostic medical testing or treatment for black lung disease.

*Employment and Training Administration*

Benefits Appeals
1205–0172
ETA 5130
Monthly
State or local governments
53 respondents; 2,544 total hours; 4 hours per response;
1 form
This report is used to monitor the benefit appeals process, to evaluate compliance with the appeals promptness standard and to develop plans for remedial action. The report is also needed for budgeting and for workload figures.

*Mine Safety and Health Administration*

Representative of Miners
1219–0042
On occasion
Businesses of other for profit; small businesses or organizations
207 respondents; 1 hour per response; 207 total burden hours
The Federal Mine Safety and Health Act of 1977 requires the Secretary of Labor to exercise many of her duties under the Act in cooperation with miners' representatives. The Act also establishes miner's rights which must be exercised through a representative. Title 30 CFR 40 contains procedures which a person or organization must follow in order to be identified by the Secretary as a representative of miners.

Application for Waiver of Surface Facilities Requirement
1219–0024
On Occasion
Businesses or other for profit; small businesses or organizations 1,728 respondents; 30 minutes per response; 863 total burden hours
Requires coal operators to provide bathing facilities, clothing change rooms, and sanitary flush toilet facilities in a location that is convenient for use of the miners. Regulations provide procedures by which an operator may apply for and be granted a waiver.

Miner Ventilation System Plan
1219–0018
Annually
Businesses and other for profit; small businesses or organizations
400 respondents; 24 hours per response; 9,600 total burden hours
Operators of underground metal nonmetal mines are required to prepare written plans of the ventilation system of their mines and to update the plans of

the ventilation system of their mines and to update the plans annually. The information is used to insure that each operator routinely plans, reviews and updates the mine's ventilation system; to insure the availability of accurate and current ventilation information; and to provide MSHA with an opportunity to alert the mine operator to potential hazards.

Signed at Washington DC this 25th day of June, 1992.

**Kenneth A. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 92-15456 Filed 6-30-92; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** Naitonal Archives and Records Administration, Office of Records Administration.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Request for copies must be received in writing on or before August 17, 1992. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESSES:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

### Schedules Pending

1. Department of the Air Force (N1-AFU-91-26). Duplicate and other short-term records of space object detection and tracking system.

2. Department of the Air Force (N1-AFU-92-17, N1-AFU-92-18, N1-AFU-92-20). Copies of materials originated by the Defense Mapping Agency and other agencies that are used in mapping and charting.

3. Department of the Army (N1-AU-92-3). Routine records of closing bases.

4. Department of State, Bureau of Economic and Business Affairs (N1-59-92-8). Teletype messages relating to aviation matters.

5. Department of State, Bureau of Diplomatic Security (N1-59-92-19). Routine and facilitative records relating to security awareness.

6. Department of Transportation, Federal Aviation Administration (N1-237-92-1). Familiarization travel correspondence and forms.

7. Department of the Treasury, Internal Revenue Service (N1-58-92-3). Recapitulation for list of narcotics registrants (IRS Form 2874).

8. Department of the Treasury, Internal Revenue Service (N1-58-91-4). District director's list of narcotics registrants (IRS Form 924).

9. Department of the Treasury, Internal Revenue Service (N1-58-91-5). Necessity certificates granted by the National Production Board and submitted to the IRS (1951-1954).

10. Department of the Treasury, Office of Thrift Supervision (N1-483-92-4). Correspondence and directives related to human resources management.

11. National Archives and Records Administration (N1-GRS-92-2). Revisions to the General Records Schedules relating to downloaded and copied data, administrative data bases and documentation.

12. National Archives and Records Administration (N2-47-92-1). Duplicative, unidentified and fragmentary audiovisual records used in the production of training aids and public information programs, ca. 1960-1970, from the Social Security Administration.

13. National Park Service (N1-079-92-1). Correspondence relating to budgets, report formats and instructions, and administration of the Emergency Relief Administration programs, 1936-42.

14. U.S. General Accounting Office (N1-411-92-2). Disbursing Officers' settlement accounts of civilian pay records, 1938-53.

Dated: June 24, 1992.

**Claudine J. Weiher,**

*Acting Archivist of the United States.*

[FR Doc. 92-15409 Filed 6-30-92; 8:45 am]

BILLING CODE 7515-01-M

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### National Endowment for the Arts

### Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Challenge IV Section) to the National Council on the Arts will be held on July 8, 1992 from 9 a.m.-5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.-10 a.m. and 4:30 p.m.-5:30 p.m. The topics will be

welcoming remarks and policy discussion.

The remaining portion of this meeting from 10 a.m.–4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 8, 1992.

**Yvonne M. Sabine,**

*Director, Panel Operations, National Endowment for the Arts.*

[FR Doc. 92–15406 Filed 6–30–92; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

### Approval of FIPS 46–1 Waiver

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Public notice.

**SUMMARY:** The NRC Senior Designated Official pursuant to section 3506(b) of title 44, United States Code, has granted a waiver to the Office of Investigations from the National Institute of Standards and Technology (NIST) Federal Information Processing Standard (FIPS) Publication 46–1, "Data Encryption Standard." FIPS 46–1 allows the data encryption standard to be implemented in hardware. This waiver sets aside the requirement for hardware implementation in favor of a software implementation scheme. This waiver is granted under the criteria that compliance would cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

**EFFECTIVE DATE:** June 18, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Louis H. Grosman, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–5019.

Dated at Rockville, Maryland, this 23rd day of June, 1992.

For the Nuclear Regulatory Commission.

**Gerald F. Cranford,**

*Director Office of Information Resources Management.*

[FR Doc. 92–15459 Filed 6–30–92; 8:45 am]

BILLING CODE 7590–01–M

### Advisory Committee on Reactor Safeguards Joint Meeting of the Subcommittees on Plant License Renewal and Materials and Metallurgy; Correction

Notice of a joint meeting of the ACRS Subcommittees on Plant License Renewal and Materials and Metallurgy that was published in the **Federal Register** on Wednesday, June 24, 1992 (57 FR 28194) states that this meeting will be held on Wednesday, July 7, 1992, room P–110, 7920 Norfolk Avenue, Bethesda, MD; it should have stated Tuesday, July 7, 1992. All other items pertaining to this meeting remain the same as published previously.

**FOR FURTHER INFORMATION CONTACT:** Mr. Elpidio Igne, cognizant ACRS staff engineer (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: June 25, 1992.

**Sam Duraiswamy,**

*Chief, Nuclear Reactors Branch.*

[FR Doc. 92–15478 Filed 6–30–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–440]

### The Cleveland Electric Illuminating Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to the Cleveland Electric Illuminating Company, Centerior Service Company, the Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and the Toledo Edison Company, (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

The amendment would revise the Technical Specifications (TSs), to increase the limits on containment maximum average air temperature and normal maximum average suppression pool water temperature; and to reduce the minimum allowable suppression pool water level (with the addition of an appropriate correction factor). Additional proposed changes to the TSs include increasing the allowable upper containment pool water temperature and reducing the allowable minimum upper containment pool water level. Several editorial changes are also proposed.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 3, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and

how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing.

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 20555 by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John N. Hannon: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d). Completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 24, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 25th day of June 1992.

For the Nuclear Regulatory Commission.

James R. Hall, Sr.

*Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–15460 Filed 6–30–92; 8:45 am]

BILLING CODE 7590–01–M

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[Docket Nos. 50–387 and 50–388]

## Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2); Exemption

I

Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc. (the licensees) hold Facility Operating License Nos. NPF–14 and NPF–22, which authorize operation of the Susquehanna Steam Electric Station, Units 1 and 2, respectively, at power levels not in excess of 3293 megawatts thermal for each unit. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission or the staff) now or hereafter in effect.

The facilities are boiling water reactors located at the licensees' site in Salem County, Pennsylvania.

II

The licensees requested an exemption from the Commission's regulations in their letter dated August 16, 1991. The requested exemption is from a requirement in Appendix J of 10 CFR part 50 which requires that certain surveillance tests be conducted during the same refueling outage as Inservice Inspections (ISI) required by 10 CFR 50.55a.

The specific requirement is contained in Section III.D.1(a) of Appendix J, 10 CFR part 50, and states that "After the preoperational leakage rate tests [of containment], a set of three Type A tests shall be performed, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspections." The Type A tests are defined in Section II.F of Appendix J as "tests intended to measure the primary reactor containment overall integrated leakage rate * * * at periodic intervals * * *" The 10-year inservice inspection is that series of inspections performed every 10 years in accordance with

Section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a. The time and plant conditions required to perform the Type A integrated leakage rate tests (ILRTs) necessitates that they be performed during refueling outages. The time interval between ILRTs should be about 40 months (3⅓ years) based on performing three such tests during each 10-year service period. Since refueling outages do not necessarily occur coincident with a 40-month interval, a permissible variation of 10 months (25% of the interval) is typically authorized in the Technical Specification (TSs) issued with an operating license to permit flexibility in scheduling the ILRTs.

Due to the time and plant conditions required to conduct it, the 10-year ISI required by 10 CFR 50.55a also must be conducted during a refueling outage. The Susquehanna Units operate on an 18-month cycle, therefore, ILRTs are required every other outage to comply with the TS 40±10 month testing interval. This schedule does not coincide with the 10-year ISI and, to comply with the TSs, would require ILRT's to be performed 18 months apart in back-to-back refueling outages at each 10-year interval.

If the requested exemption is not granted, Section III.D.1(a) of Appendix J would require this additional ILRT be performed in an interval considerably shorter than the interval of about 40 months implied in Appendix J. More importantly, this interval would not be consistent with either the intent or the underlying purpose of the rule, Section III.D.1(a) of Appendix J, which requires that these Type A tests "* * * be performed, at approximately equal intervals during each 10-year service period."

The licensees addressed this issue in their exemption request in which they cited from Appendix J that "the purpose of the tests are to assure that (a) leakage through the primary reactor containment and systems and components penetrating primary containment shall not exceed allowable leakage rate values as specified in the technical specifications * * *" The licensees assert and the NRC staff agrees that the Type A tests to be conducted 18 months prior to the 10-year inservice inspection will meet the underlying purpose of the rule in that the overall leak-tightness of the primary containment will be demonstrated. Accordingly, it is not necessary to conduct another Type A test at the 10-year inservice inspection outage to meet the intent of the rule. Performing this additional ILRT would not add significantly to the assurance that the overall leakage rate of the primary containment and its penetrations remain within the value specified in the SSES TSs and would not meet the intent of the rule to conduct these tests at approximately equal (40 month) intervals as cited above.

Each of these two tests, i.e., the Type A test and the 10-year ISI, is independent of each other and provides assurances of different plant characteristics. The Type A tests assure the required leak-tightness to demonstrate compliance with guidance of 10 CFR 100. The 10-year ISI provides assurance of the structural integrity of the structures, systems, and components in compliance with 10 CFR 50.55a. Accordingly, there is no safety-related concern associated with their coupling in the same refueling outage.

On this basis, the NRC staff finds that the licensees have demonstrated that special circumstances as provided in 50.12(a)(2)(ii) are present for the exemption in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule. Further, the staff also finds that the uncoupling of the Type A test from the 10-year ISI will not present an undue risk to the public health and safety.

III

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Accordingly, the Commission hereby grants an exemption from the requirements of 10 CFR part 50, Appendix J, Section III.D.1(a):

The Susquehanna Steam Electric Station, Units 1 and 2 Technical Specifications may be revised to delete the requirement that the third ILRT be performed in conjunction with the 10-year inservice inspection. The Exemption does not alter the existing requirement that three ILRTs be performed during each 10-year service period.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (57 FR 27988).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 23d day of June, 1992.

For the Nuclear Regulatory Commission.

**Steven A. Varga,**

*Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92-15461 Filed 6-30-92; 8:45 am]

BILLING CODE 7590-01-M

## Atomic Safety and Licensing Board

**[Docket No. 50-312-DCOM, (Decommissioning Plan); ASLBP No. 92-663-02-DCOM]**

## Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station, Facility Operating License No. DRP-54; Prehearing Conference

June 23, 1992.

Notice is hereby given that, in accordance with the Licensing Board's Memorandum and Order (Filing Schedules and Prehearing Conference), dated May 15, 1992, as modified by the Consented Motion for Change of Venue of the Prehearing Conference, which we approved on June 17, 1992, a prehearing conference is hereby scheduled for Tuesday, July 14, 1992, beginning at 9:30 a.m., in the Commission's Public Hearing Room, 5th floor, 4350 East West Highway, Bethesda, Maryland. The conference will continue, to the extent necessary, on Wednesday, July 15, 1992, beginning at 9 a.m.

At this conference, the Board will hear oral argument concerning various issues presented by the request for a hearing and petition for intervention in this decommissioning proceeding of the Environmental and Resources Conservation Organization (ECO). As appropriate, the Board will also consider contentions to be filed by ECO by June 29, 1992, as well as future schedules for the proceeding.

Members of the public are invited to attend the prehearing conference. Written participation by persons who are not parties or petitioner, as authorized by 10 CFR 2.715(a), will be permitted during the proceeding, but no oral statements will be heard at this conference.

Bethesda, Maryland, June 23, 1992.

For the Atomic Safety and Licensing Board.

**Charles Bechhoefer,**

*Chairman, Administrative Judge.*

[FR Doc. 92-15462 Filed 6-30-92; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF MANAGEMENT AND BUDGET

**[Issuance of Policy Letter 92-3]**

## Procurement Professionalism Program Policy—Training for Contracting Personnel; Office of Federal Procurement Policy

**AGENCY:** Executive Office of the President, Office of Management and Budget, Office of Federal Procurement Policy (OFPP).

**ACTION:** Final issuance of OFPP Policy Letter 92-3.

**SUMMARY:** Policy Letter 92–3 establishes a Government-wide program of skill-based training in performing contracting and purchasing duties for Heads of Executive Departments and Agencies to include in their procurement career management programs required under section 16 of the OFPP Act (41 U.S.C. 414(4)). The quality of contracting actions depends largely on the professional skills of the Government procurement workforce to help meet agency mission needs. Improved management will help ensure Government interests are effectively represented within a changing legislative and regulatory environment. To assist agencies in this, the Federal Acquisition Institute (FAI) has developed a description of competencies needed to perform contracting duties. These competencies are included as units of instruction of the Contract Specialist Workbook, with suggested levels of learning for each competency. Every contracting official in the Federal Government is expected to be familiar with all contracting competencies. However, agencies may modify this standard by assigning levels of learning commensurate with agency needs.

**FOR FURTHER INFORMATION CONTACT:** Wayne A. Wittig, Deputy Associate Administrator, OFPP, room 9013, 725 17th Street, NW., Washington, DC 20503. Telephone (202) 395–6803.

**SUPPLEMENTARY INFORMATION:** A draft of Policy Letter 92–3 was published in the **Federal Register** for review and public comment on April 3, 1992 (57 FR 11530). Comments were received in response to the **Federal Register** notice from 14 agencies, one private organization, and one individual. All comments were reviewed, and where warranted, changes have been made in the final Policy Letter. The main issues and concerns raised during the comment period are summarized below.

**1. OFPP Authority to Issue Policy Letter**

Two agencies opined that the authority of OFPP in matters involving procurement personnel is limited to a "leadership" or "guidance" role, rather than policy direction. OMB Counsel has confirmed that OFPP has the authority under the OFPP Act (41 U.S.C. 405) as amended to set standards for procurement systems, which include professional development. The Policy Letter sets Government-wide standards which are not overly prescriptive or rule-like in the policies it sets.

**2. Agency Flexibility**

Several agencies stated that the Policy Letter must allow sufficient policy flexibility to permit using agency-unique training approaches to meeting the required competencies. The Policy Letter was modified to make this point clear. Agency heads are required to have under Section 16 of the OFPP Act (41 U.S.C. 414(4)) a procurement career management program. The Policy Letter establishes the almost eighty contracting duties developed over the years by the Federal Acquisition Institute (FAI) working with agency Procurement Executives as the standard contracting competencies for use under these agency programs. The levels of learning for each duty are to be set by the agency and additional duties may be included to meet agency needs. This flexibility will allow for unique agency requirements on top of a Government-wide base of contracting competencies.

**3. Reporting Requirements**

Several agencies thought the requirement to submit a plan within 90 days of the effective date of the Policy Letter too burdensome and not required. OFPP does not agree. The reporting requirements allow for agencies to describe ongoing programs which may already exist or are planned to meet the Policy Letter requirements. These programs are to be suitable for the size of the agency and may disclose various ways to meet the requirements of Section 4 of the Policy Letter. Since the effective date is 30 days after the date of publication, the plan is not required for 4 months after date of publication.

**4. Budget Impacts**

Several agencies commented that sufficient funds to accomplish training either have never been available or are very limited. OFPP recognizes that scarce training resources are available and is issuing the Policy Letter to provide a structure for measuring the cost effectiveness of contracting training. The standards set out in the Policy Letter permit agencies to evaluate how current training is providing the appropriate skills. Savings are expected over time as training courses are consolidated, updated or eliminated as the FAI-developed courses are not made available for agency adaptation. The plan required by the Policy Letter will help in budget deliberations to weigh the most cost-effective measures to improve the contracting function. Thus, carrying out the Policy Letter requirements will provide a budget structure and potential savings that would otherwise be lacking.

**5. Include Special Contracting Competencies**

Some organizations recommended various duties be added to cover specialized aspects of procurement. The list of contracting duties developed by FAI over the past 15 years has been refined through interagency discussion to be the most meaningful on a Government-wide basis, to date. These may change in the future. However, each agency is free to add to these duties or determine the level of learning for each duty to give the emphasis appropriate to the agency.

**6. Outdated Attachments**

Several responses noted that the attachments to the draft Policy Letter were outdated in many respects and recommended they be deleted or changed. OFPP agrees and has substituted the more relevant Summary List of Contracting Duties and Levels of Learning as Attachment 1 to the Policy Letter.

**7. Need for Stronger Policy Letter**

Several agencies and the response received from an individual asked that the Policy Letter be strengthened to assure an effective procurement professionalism program. OFPP feels that the current Policy Letter provides a balanced approach to establish an effective structure for continued agency development of a more professional procurement workforce.

**Allan V. Burman,**

*Administrator.*

*Policy Letter No. 92–3*

**To the Heads of Executive Departments and Agencies**

**Subject: Procurement Professionalism Program Policy—Training for Contracting Personnel**

1. *Purpose.* To establish a Government-wide standard and associated policies for skill-based training in performing contracting and purchasing duties.

2. *Authority.* This Policy Letter is issued pursuant to Section 6(a) of the Office of Federal Procurement Policy (OFPP) Act [Public Law 93–400], as amended, (41 U.S.C. 405(a)). It establishes a standard for procurement systems (which includes the professional development of procurement personnel) under the authority of Section 6(d)(2) of the OFPP Act, as amended, (41 U.S.C. 405(d)(2)).

3. *Background.* The quality of contracting actions depends largely on the professional skills of the Government procurement workforce to help meet agency mission needs. Improved management will help ensure Government interests are effectively represented within a changing legislative and regulatory environment.

In July 1990, this office established an inter-agency group to develop a detailed Procurement Professionalism Plan for agencies to identify a comprehensive program of workforce improvement. Four subgroups devised recommended actions on

the recruitment, training, retention and the evaluation of performance of the procurement workforce. The Defense Systems Management College led the training subgroup, which identified several opportunities for improvement and efficiencies when coupled with an enhanced Federal Acquisition Institute (FAI).

Among other things, the training subgroup strongly recommended competency based education for Federal contracting and purchasing personnel. Competency-based education refers to programs that provide an opportunity for the trainee to develop and demonstrate an appropriate level of skill (given the characteristics of the agency's overall mission) at performing a duty. The training subgroup recommendations were used in formulating this policy.

This Policy Letter establishes a standard set of contracting competencies after repeated and extensive coordination with Executive agencies through the FAI. The FAI conducted Government-wide research from 1977 to 1979 to identify contract management tasks. The survey used had a very high participation rate of almost half of all contract specialists in all Executive agencies at the time. During the period 1980–1985, FAI worked with representatives of Procurement Executives to select duties and tasks for training. The selected duties collectively constitute the body of Contracting "competencies." Subsequently, the FAI developed "Units of Instruction" for core competencies, each of which is a blueprint for training one of the selected duties both in the classroom and on-the-job. In 1992, the FAI published these "Units of Instruction" under the title Contract Specialist Workbook. The 1992 edition covers almost 80 duties (see Attachment 1 for a summary list) and more than 800 related tasks. Every contracting official in the Federal Government is expected to attain an appropriate level of skill (refer to Attachment 1) at performing all contracting competencies identified by FAI. However, agencies may modify this standard by assigning levels of learning commensurate with agency needs and adding agency-level competencies.

4. *Policy.* Heads of Executive Departments and Agencies shall ensure that the procurement career management program required under section 16 of the OFPP Act (41 U.S.C. 414(4)):

a. Requires personnel in the contracting occupational series (General Schedule Series 1102), and uniformed personnel in comparable positions, to compete course work and related on-the-job training necessary to attain an appropriate level of skill (given the unique missions, policies and workload of the agency) in each Contract Management duty represented by a Unit of Instruction in the FAI Contract Specialist Workbook. These may be supplemented with additional contracting duties and tasks by the agency head. Alternative means may be used for these individuals to demonstrate their competence to perform required duties (e.g. through practicums, equivalency examinations, or managerial reviews of an individual's current level of skill in each duty);

b. Requires civilian and uniformed personnel appointed under Section 1.6 of the Federal Acquisition Regulation (FAR) as contracting officers with authority to award or administer contracts above the small purchase threshold to complete course work and related on-the-job training necessary to attain an appropriate level of skill (given the unique missions, policies, and workload of the agency) in each Contract Management duty represented by a Unit of Instruction in the FAI Contract Specialist Workbook, or otherwise demonstrate their competence to perform those duties through alternative means.

c. Requires personnel in the purchasing occupational series (General Schedule Series 1105), other civilian and uniformed personnel performing purchasing duties, and individuals with contracting authority at or under the small purchase threshold, or with authority to place delivery orders at any dollar level, to complete training in duties related to making small purchases under FAR part 13 and placing delivery orders;

d. Provides for a system of certifying and reporting the completion of all required courses and on-the-job training;

e. Encourages self-development activities of contracting personnel to stay current with the acquisition knowledge base for professional growth throughout their careers, and

f. Directs the Senior Procurement Executive to designate a procurement career manager with authority for agency-wide policy and oversight responsibility for the procurement career management program, including authority and responsibility for working in cooperation with other agencies through the FAI to make the most effective and efficient use of existing instructional material or facilities and minimize duplication of effort in the development and delivery of training and education.

5. *Implementation.* The FAI is developing instructional materials in the contracting competencies to support comprehensive training in formal classroom settings as well as at the work site and through on-the-job training. FAI training courses now available or under development include "Introduction to Contracting," "Procurement Planning," "Sealed Bidding," "Negotiation Process," "Price Analysis," "Cost Analysis," "Advanced Cost or Price Analysis," "Basic Contract Administration," "Construction Contracting," "Contracting for Federal Information Processing Resources," and "Source Selection." These courses will be offered by the General Services Administration Interagency Training Center.

As courses are completed, the FAI will provide the instructional materials for that course (in hard copy or electronic forms) to agencies for incorporation (in whole or in part, with any necessary agency-specific tailoring) in their respective courses. An agency may modify the *Contract Specialist Workbook,* and associated FAI instructional materials, to reflect the unique missions, policies and workload of the agency.

The Director of FAI shall further assist agency training programs through the following actions:

- Maintain the Contract Specialist Workbook as a Government-wide standard for the professional development of contracting personnel, and distribute copies to Procurement Executives.
- Recommend minimum Government-wide training requirements and goals to the Administrator, OFPP.
- Assist agencies, and encourage cooperation among agencies, in the development of instructional materials to implement the training requirements of Section 4 above.
- Advise the Administrator, OFPP, on the effectiveness of Federal training programs to develop competence in the performance of acquisition-related duties and tasks.
- Establish joint programs with other Federal procurement training facilities or contracting activities under Section 4103 of Title 5, United States Code, to help Federal agencies implement provisions of this Policy Letter.
- Assist colleges and universities in establishing procurement and acquisition courses as part of continuing education, associate, baccalaureate, and graduate programs.
- Review the acquisition courses of colleges and universities, identify and document the levels of learning attained in contracting duties and tasks, and recommend academic courses to Procurement Executives that may be substituted for Government training in those duties and tasks.

6. *Reporting Requirements.* Within 90 days of the effective date of this Policy Letter, the Senior Procurement Executive of each agency is to advise the Administrator, OFPP, of the agency's procurement career management program required by 41 U.S.C. 414(4) and implementing Section 4 of this letter, including:

(1) A description of the agency's plan for prescribing and providing the training required;

(2) A description of actions taken or planned to assess the extent to which training courses now provide, or will provide, skill training in the Unites of Instruction of the FAI Contract Specialist Workbook, including the level of skill in each Contract Management duty that the training will be designed to attain;

(3) A description of the agency's system for certifying and reporting the completion of training requirements, and

(4) The name and position of the individual designated under Section 4.f. above.

Periodic reports on the procurement career management program may be requested by the Administrator, OFPP, thereafter.

7. *Federal Acquisition Regulation (FAR) Councils.* The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council shall conduct a thorough review of the relevant parts of the FAR to (1) assure that no unintended encumbrances to this Policy Letter are contained therein, and (2) that the policies established by this Policy Letter are fully reflected in the FAR within 210 days of the effective date of this Policy Letter. Issuance of final regulations within this 210-day period shall be considered issuance "in a timely manner" as prescribed in 41 U.S.C. 405(b).

8. *Judicial Review.* This Policy Letter is not intended to provide a constitutional or statutory interpretation of any kind, and it is not intended, and should not be construed, to crate any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this Policy Letter is not intended, and should not be construed, to crate any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this Policy Letter.

9. *Effective Date.* This Policy Letter is effective 30 days after the date of issuance.

10. *Information.* Questions or inquires about this Policy Letter should be directed to Mr. Wayne Wittig, Deputy Associate Administrator, OFPP, 725 17th Street, NW., Washington, DC 20503, telephone (202) 395–6803.

**Allan V. Burman,**

*Administrator.*

Attachment

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Attachment

## SUMMARY LIST OF CONTRACTING DUTIES

### PRESOLICITATION PHASE

| DETERMINATION OF NEED | INITIATING THE PROCUREMENT | ANALYSIS OF REQUIREMENT | SOURCING |
|---|---|---|---|
| **Determining Needs** | **Processing the PR** | **Analyzing Requirements** | **Extent of Competition** |
| 1. Forecasting Requirements | 3. Purchase Requests | 6. Specifications | 9. Sources |
| 2. Acquisition Planning | 4. Funding | 7. Statements of Work | 10. Set-Asides |
| | **Market Research** | 8. Services | 11. 8(a) Procurements |
| | 5. Market Research | | 12. Competition Requirements |
| | | | 13. Unsolicited Proposals |
| | | | **Selection Factors** |
| | | | 14. Lease vs. Purchase |
| | | | 15. Price Related Factors |
| | | | 16. Technical Evaluation Factors |
| | | | **Method and Plan for the Procurement** |
| | | | 17. Method of Procurement |
| | | | 18. Procurement Planning |

### SOLICITATION-AWARD PHASE

| SOLICITATION | EVALUATION—SEALED BIDDING | EVALUATION—NEGOTIATION | AWARD |
|---|---|---|---|
| **Terms and Conditions** | **Bid Evaluation** | **Proposal Evaluation** | **Selection for Award** |
| 19. Contract Types | 30. Processing Bids | 35. Processing Proposals | 46. Mistakes in Offers |
| 20. Letter Contracts | 31. Bid Acceptance Periods | 36. Technical Evaluation | 47. Responsibility |
| 21. Contract Financing | 32. Late Offers | 37. Price Objectives | 48. Subcontracting Requirements |
| 22. Use of Government Property and Supply Sources | 33. Bid Prices | 38. Cost and Pricing Data | 49. Preparing Awards |
| 23. Need For Bonds | 34. Responsiveness | 39. Audits | **Executing Awards** |
| 24. Solicitation Preparation | | 40. Cost Analysis | 50. Award |
| **Soliciting Offers** | | 41. Evaluating Other Terms and Conditions | 51. Debriefing |
| 25. Publicizing Proposed Procurements | | 42. Competitive Range | **Protests** |
| 26. Preaward Inquiries | | **Discussions** | 52. Protests |
| 27. Prebid/Preproposal Conferences | | 43. Factfinding | **Fraud and Exclusion** |
| 28. Amending Solicitations | | 44. Negotiation Strategy | 53. Fraud and Exclusion |
| 29. Cancelling Solicitations | | 45. Conducting Negotiations | |

Attachment

## SUMMARY LIST OF CONTRACTING DUTIES

### POST-AWARD ADMINISTRATION PHASE

| START-UP | QUALITY ASSURANCE | PAYMENT & ACCOUNTING | MODIFICATIONS, CLOSEOUT, TERMINATION, & CLAIMS |
|---|---|---|---|
| **Planning** | **Monitoring and Problem Solving** | **Payment** | **Closeout** |
| 54. Contract Administration Planning | 58. Monitoring, Inspection, and Acceptance | 64. Limitation of Costs | 74. Closeout |
| 55. Post-Award Orientations | 59. Delays | 65. Payment | **Modifications/Options** |
| **Ordering** | 60. Stop Work | 66. Unallowable Costs | 75. Contract Modifications |
| 56. Ordering Against Contracts and Agreements | 61. Remedies | 67. Assignment of Claims | **Termination** |
| **Subcontracting** | **Property** | 68. Collecting Contractor Debts | 76. Termination |
| 57. Consent to Subcontracts | 62. Property Administration | 69. Progress Payments | 77. Bonds |
| | **Reporting Performance Problems** | 70. Price and Fee Adjustments | **Claims** |
| | 63. Reporting Performance Problems | **Accounting** | 78. Claims |
| | | 71. Accounting and Cost Estimating Systems | |
| | | 72. Cost Accounting Standards | |
| | | 73. Defective Pricing | |

### SKILL LEVELS

| | |
|---|---|
| 1 Knowledge | Define the duty. Describe its purpose and the standard(s) for performance. Explain when this duty is performed. Test recall of this information. |
| 2 Comprehension | Present both the duty (definition, purpose, standards, and when performed) and every step in accomplishing the duty. Provide information to perform each step, without actually having trainee apply information. Test for comprehension. |
| 3 Application | Present both the duty (definition, purpose, standards, and when performed) and every step in accomplishing the duty. Provide information to perform each step. Through simulations and other such exercises, require trainee to perform those steps necessary to evaluate the trainee's ability to perform the duty. |
| 4 Analysis | Review the duty and steps in performance. Have trainee solve more complex problems than at application level. |

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 30858; File No. 265–17]

### Market Oversight and Financial Services Advisory Committee

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of meeting of the Securities and Exchange Commission Market Oversight and Financial Services Advisory Committee.

**SUMMARY:** This is to give public notice that the Securities and Exchange Commission Market Oversight and Financial Services Advisory Committee will conduct a meeting on July 2, 1992, at 9 a.m. in room 1C30 at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. The meeting will be open to the public. This notice also serves to invite the public to submit written comments to the Committee.

**ADDRESSES:** Written comments should be submitted in triplicate and should refer to File No. 265–17. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Thomas Selman, Special Counsel, or Mary Burke Patterson, Senior Counsel, (202) 272–2428, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549.

**SUPPLEMENTARY INFORMATION:** In accordance with section 10(a) of the Federal Advisory Committe Act, 5 U.S.C. app. 2, 10(a), and the regulations thereunder, the Chairman has ordered publication of this notice that the Securities and Exchange Commission Market Oversight and Financial Services Advisory Committee will conduct a meeting on July 2, 1992, at the Secuities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, beginning at 9 a.m. This meeting will be open to the public. This will be the third meeting of the Advisory Committee. The purpose of the meeting will be to discuss regulatory review initiatives and legislative proposals to improve the regulation of financial markets.

The Chairman has determined that this meeting should be held sooner than fifteen days after publication of this notice in the Federal Register in view of prior scheduling commitments of the Committee members and Commissioners.

Dated: June 25, 1992.

Jonathan G. Katz,

*Advisory Committee Management Officer.*

[FR Doc. 92–15449 Filed 6–30–92; 8:45 am]

BILLING CODE 8010–01–M

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[Release No. 34–30854; File No. SR–MSRB–92–4]

### Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Forms G–36 (OS) and G–36 (ARD)

June 24, 1992.

Notice is hereby given that on March 30, 1992, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change for immediate effectiveness, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and rule 19b–4 thereunder. The proposed rule filing is described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Board has designated this proposal as concerned solely with the administration of the Board under section 19(b)(3)(A) of the Act, which renders the filing effective upon Commission receipt. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("Board") is filing amendments to Form G–36 (OS) and Form G–36 (ARD) (hereafter referred to as "the proposed rule change"). The proposed rule change revises Form G–36 (OS) to collect certain additional information necessary for accurate invoicing of underwriting assessments. Other technical changes also were made to Form G–36 (OS) as well as technical changes to Form G–36 (ARD). The Board requests that the Commission delay the effectiveness of the proposed rule change until July 1, 1992, the date that the recent amendments to rule A–13, on underwriting assessments, will become effective.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) The Board has determined that, to improve its accounting system, it will base its receivables for underwriting assessments on the official statements received by the Board pursuant to rule G–36.[1] By using official statements, and the associated Forms G–36 (OS) that must be submitted with the official statements, the Board will be able to invoice underwriters directly for underwriting assessments and will be able to maintain a more accurate accounting of underwriting assessments that are due to the Board. Because of the new procedure for collecting and accounting for underwriting assessments, on March 10, 1992, the Board filed an amendment to rule A–13 that adjusts the scope of primary offerings subject to that rule so that it will be more consistent with the scope of primary offerings under rule G–36.

The proposed rule change revises Form G–36 (OS) to collect certain additional information necessary for accurate invoicing of underwriters to indicate: (i) The existence of a put option within nine months of the offering; (ii) the existence of a put option within two years of the offering; and (iii) that the offering is a "limited placement" under SEC rule 15c2–12. This information is keyed to the requirements of rule A–13, as recently amended, and will help to ensure that the underwriter is sent an invoice that accurately reflects the underwriting assessment (if any) that is due.

Other technical changes also were made to Form G–36 (OS) based on the Board's experience in processing documents received under rule G–36. These include numbering all lines to permit more efficient assistance to those who call the Board with questions about the form, revising the description of issue(s) line (line 2) and the dated date(s) line (line 4) to permit more than one entry, and adding line 8, on par amount underwritten, for those instances (*e.g.*, short term notes) in which an underwriter buys part of the

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[1] In addition to other information, rule G–36 requires underwriters to send to the Board official statements and other information on most new municipal securities issues.

offering without knowledge of who or how many underwriters bought the remainder.[2] The Board deleted the reference to the number of series in the official statement from Form G–36 (OS) because this information was not found to be useful. Line 13 also has been added to require a responsible party to state affirmatively that the document sent is a final official statement relating to a party offering of municipal securities. This will help ensure that the Board receives the correct document. Finally, line 17 has been added to ensure that the CUSIP numbers required by rule G–34 are included on the form and to ensure that underwriters are aware that rule G–34 requires that CUSIP numbers be assigned to all issues which are eligible for CUSIP number assignment. CUSIP numbers are used whenever possible in indexing official statements received under rule G–36 and, currently, if CUSIP numbers are not included, the forms and official statements are returned to the underwriter for clarification. Line 17 may eliminate the need for some of this correspondence.

The proposed rule change also included technical changes to Form G–36 (ARD). This form must be sent to the Board under rule G–36 when an advance refunding document (*i.e.*, escrow agreement) is provided. All lines on Form G–36 (ARD) have been numbered to permit more efficient assistance to those who call the Board with questions about the form. On line 4, the submitter is to indicate whether the issue is partially or entirely refunded. This information is important to users of the Municipal Securities Information Library,™ or MSIL,™ system [3] because outstanding issues that are partially refunded often receive new CUSIP numbers, while entire refunded issues, generally do not. Line 8, regarding refunding issue(s), has been expanded to permit more than one refunding issue per document and language has been added explaining that submission of advance refunding documents for current refundings is not required. Finally, information concerning CUSIP numbers is more specific. The current Form G–36 (ARD) asks for old and new CUSIP numbers, whereas the new form asks for the original CUSIP numbers assigned to the issue being refunded, the new CUSIP numbers for the refunded issue (the partially refunded portion of the issue, if applicable) and CUSIP numbers for the refunding issue(s).

(2) The Board has adopted the proposed rule change pursuant to sections 15B(b)(2)(C) and 15B(b)(2)(I) of the Securities Exchange Act of 1934, as amended (the "Act"). Section 15(B)(2)(C) authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities and, in general, to protect investors and the public interest. In addition, section 15B(b)(2)(I) authorizes the Board to adopt rules which provide for the operation and administration of the Board.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Board does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it applies equally to all brokers, dealers and municipal securities dealers.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Comments have not been solicited or received on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4 because it is concerned solely with the administration of the Board and is consistent with the public interest. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20548. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 22, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 92–15361 Filed 6–30–92; 8:45 am]

BILLING CODE 8010–01–M

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[Release No. 34–30858; File No. SR–MSRB–92–5]

**Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Transactions in Municipal Collateralized Mortgage Obligations**

June 24, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 16, 1992, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change for immediate effectiveness pursuant to section 19(b)(3)(A), as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Board has designated this proposal as constituting an interpretation respecting the meaning or enforcement of an existing rule of the self-regulatory organization under section 19(b)(3)(A) of the Act, which renders the filing effective upon Commission receipt. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Municipal Securities Rulemaking Board ("Board") is filing an interpretation of rule G–15 (hereafter referred to as "the proposed rule change") concerning transactions in

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[2] This line is needed for billing purposes and to track those who fulfilled the requirements of rule G–36. Each underwriter in such a case should submit an official statement.

[3] Municipal Securities Information Library and MSIL are trademarks of the Board.

municipal collateralized mortgage obligations ("CMOs"). The proposed rule change clarifies that the requirement of rule G–15(a) to state yield on confirmations does not apply to municipal collateralized mortgage obligations.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B) and (C) below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) The Board received an inquiry concerning taxable CMOs issued by municipal issuers. The Board was asked whether Board rules applied to transactions in these issues and, if so, how yield should be stated on confirmations. Because the issuers of these securities are agencies or instrumentalities of county governments, it would appear that the CMOs are municipal securities for purposes of Board rules. As discussed below, the Board does not believe that a yield should be stated on confirmations of these "municipal CMOs."

At least some municipal CMOs have been marketed to retail accounts and the proposed rule change reminds dealers of the general fair practice requirements of Board rules as they relate to customer transactions in municipal CMOs. Fair practice duties to customers include: (i) The requirement of rule G–17 to disclose all material facts about a transaction; (ii) the requirement of rule G–19 to make appropriate suitability determinations for recommendations to customers; and (iii) the requirement of rule G–30 to provide a fair and reasonable price for customer transactions. The Board previously has stated that, under rule G–17, a dealer must disclose a principal prepayment feature to a customer and also must ensure that the customer is informed of the amount of principal that will be delivered.[1] The proposed rule change includes the points noted above and also an interpretation of rule G–17 that requires dealers to inform customers: (i) Of the likelihood of principal prepayment on a municipal CMO; and (ii) that principal may be fully paid to the CMO holder prior to the stated maturity date.

The proposed rule change also specifically notes that the requirement of rule G–15(a) to state yield on confirmations does not apply to municipal CMOs. The "yield" normally required on confirmations by rule G–15 is based on the assumption that principal will be repaid in full at a certain time in the future, *i.e.*, at maturity or on a call date. It is, of course, mathematically possible to compute a yield for an instrument that makes payments of principal during the life of the security, but certain assumptions must be made about the timing and amounts of principal prepayments. Although estimates of CMO principal prepayment speed are commonly used (based on the past experience of the specific mortgage pool and a formula developed by the Public Securities Association), the actual prepayment depends on future economic conditions. Therefore, the Board interprets rule G–15 not to require that a yield be stated on the confirmation and, if a yield is stated, that the method of calculation also be clearly stated on the confirmation.

(2) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Act, which directs the Board to propose and adopt rules which are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all brokers, dealers and municipal securities dealers.

[1] Notice Concerning Securities that Prepay Principal, MSRB Reports, Vol. 11, No. 1 (March 1991) at 9.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The Board has not solicited or received comments on the proposed rule change. As noted previously, the Board's consideration of the proposed rule change was prompted by an interpretive inquiry.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder. At any time within 60 days of filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 22, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

FR Doc. 92–15382 Filed 6–30–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-30855; File No. SR-PSE-92-08]

## Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change, Relating to Designating PSE Technology Index Options as European-Style Options

June 24, 1992.

On February 12, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend PSE rules 7.1 and 7.5 to permit options on the PSE Technology Index to be exercised in the same manner as other European-style index options.[3] In addition, the proposal amends the list of definitions contained in the PSE's options rules to clarify the meanings of "European-style" and "American-style" options.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 30456 (March 10, 1992), 57 FR 9583 (March 19, 1992). No comments were received on the proposed rule change.

The proposal amends the PSE rules on index options to permit options on the PSE Technology Index to be exercised in the same manner as other European-style index options. In addition, for clarification purposes, the proposal adds four entries to its list of definitions contained in the PSE rules on index options. These entries provide the definition for "European-style options and index options" and "American-style options and index options."

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section (6)(b)(5). Specifically, the Commission finds the proposal to clarify that Technology Index options are European-style options will serve to eliminate any investor confusion as to whether or not Technology Index options are European-style, thereby, protecting investors and promoting the public interest.

In addition, the Commission finds that the PSE proposal to clarify the meaning of "European-style" and "American-style" options will further serve to avoid any investor confusion concerning what is meant by American-style or European-style options.

*It is Therefore Ordered*, Pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR-PSE-92-08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-15450 Filed 6-30-92; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] On November 26, 1991, the Commission approved a PSE proposal to re-commence options trading on a European-style Technology Index. See Securities Exchange Act Release No. 29994 (November 26, 1991), 56 FR 63536. The PSE, however, has not yet recommenced trading options on the Technology Index. The rule change was submitted because current PSE rules did not designate the appropriate exercise procedures for options on the European-style Technology Index.

[4] Specifically, under the proposal, European-style options will be defined as option contracts that can be exercised only on the last business day prior to the day they expire. American-style options will be defined as options contracts that can be exercised on any business day prior to expiration.

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30-3(a)(12) (1991).

## STATE DEPARTMENT

[Public Notice 1843]

### Overseas Security Advisory Council; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Wednesday, July 15, 1992 at 8:30 a.m. at the Fairmont Hotel, San Francisco, California. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c) (1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522-1003, phone: 703/204-6185

Dated: June 19, 1992.

**Clark Dittmer,**

*Director of the Diplomatic Security Service.*

[FR Doc. 92-15376 Filed 6-30-92; 8:45 am]

BILLING CODE 4710-24-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### U.S.-Colombia Combination Service Case

**AGENCY:** Department of Transportation, Office of the Secretary.

**ACTION:** Order Instituting Proceeding, Inviting Applications for Certificate Authority, Docket 48216, Order 92-6-44.

**SUMMARY:** The Department is instituting the *U.S.-Colombia Combination Service Case*, Docket 48216, to select one primary and one backup carrier to provide scheduled combination service between a point or points in the United States and the coterminal points Barranquilla, Bogota, Cali and Cartagena, Colombia via intermediate points, and beyond Colombia to points in the Western Hemisphere. The Department has decided to invite all U.S. carriers interested in serving the U.S.-Colombia market to file applications for the certificate authority at issue in this proceeding. The authority to be awarded in this case will be in the form of temporary, experimental certificates of public convenience and necessity under section 401(d)(6) of the Federal Aviation Act, as amended. The duration of the authority will be five years for the primary carrier and one year for the backup carrier, unless the latter authority is activated during that time, in which case, it will continue in effect for five years. The Department has determined that this case will be decided by using written, non-oral procedures and that the Department's Senior Career Official will be the DOT decisionmaker for the proceeding. The Department has also decided to dismiss exemption applications filed by Continental Airlines, Inc. and United Air Lines, Inc. for the U.S.-Colombia authority.

**DATES:** Applications, amended applications, motions to consolidate, and petitions for reconsideration are due: JULY 17, 1992. Answers to the foregoing are due: JULY 13, 1992.

**ADDRESSES:** All documents in this proceeding, with appropriate filing copies, should be filed in Docket 48216, addressed to the OST Docket Section, Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., room 4107, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Linda Senese, U.S. Air Carrier Licensing Division, room 6412, U.S. Department of Transportation, 400 Seventh Street, SW.,

Washington, DC 20590. Telephone (202) 355–2390.

Dated: June 25, 1992.

Jeffrey N. Shane,

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 92–15421 Filed 6–30–92; 8:45 am]

BILLING CODE 4810–43–M

## DEPARTMENT OF THE TREASURY

**[Supplement to Department Circular—Public Debt Series—No. 20–92]**

### Treasury Notes, Series AB–1994

Washington, June 24, 1992.

The Secretary announced on June 23, 1992, that the interest rate on the notes designated Series AB–1994, described in Department Circular—Public Debt Series—No. 20–92 dated June 17, 1992, will be 5 percent. Interest on the notes will be payable at the rate of 5 percent per annum.

Marcus W. Page,

*Acting Fiscal Assistant Secretary.*

[FR Doc. 92–15441 Filed 6–30–92; 8:45 am]

BILLING CODE 4810–40–M

**[Supplement to Department Circular—Public Debt Series—No. 21–92]**

### Treasury Notes, Series N–1997

Washington, June 25, 1992.

The Secretary announced on June 24, 1992, that the interest rate on the notes designated Series N–1997, described in Department Circular—Public Debt Series—No. 21–92 dated June 17, 1992, will be 6⅝ percent. Interest on the notes will be payable at the rate of 6⅝ percent per annum.

Marcus W. Page,

*Acting Fiscal Assistant Secretary.*

[FR Doc. 92–15442 Filed 6–30–92; 8:45 am]

BILLING CODE 4810–40–M

## Internal Revenue Service

### Information Reporting Program Advisory Committee

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Announcement of open membership application period for the Information Reporting Program Advisory Committee.

**SUMMARY:** In 1991 the Internal Revenue Service (IRS) established the Information Reporting Program Advisory Committee (IRPAC). The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures and, when necessary, suggests ways to improve the operation of the Information Reporting Program. IRPAC is currently comprised of 15 representatives from various segments of the private sector payer community whose appointments to IRPAC expire at the end of 1993. Additional members will be selected for two-year terms beginning in January 1993.

**SUPPLEMENTARY INFORMATION:** IRPAC reports to the executive Director, Information Reporting Program (IRP), who is the executive responsible for information reporting and is charged with its system-wide planning and improvement. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance and reduction of burden. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they will be reimbursed for their travel and lodging expenses to attend a two-day meeting twice each year.

The IRS is interested in representation from different areas of the payer community (e.g., small business, real estate, insurance, data processing, etc.). Anyone wishing to be considered for membership on IRPAC should so advise the IRS. Please complete the following questionnaire and forward it to Ms. Kate LaBuda of the IRP Planning Staff, at the address below.

**ADDRESSES:** Internal Revenue Service, EX:I:P, 1111 Constitution Avenue, NW., room 2013, Washington, DC 20224.

**DATES:** Completed questionnaires should be received by IRS by July 31, 1992. Applications received after this date will not be considered. An acknowledgment letter will be sent upon receipt of each application.

**FOR FURTHER INFORMATION CONTACT:** Kate LaBuda at 202/566–8542 (not a toll-free number).

Dated: June 24, 1992.

Susan Hinton,

*Staff Chief, Planning and Management Staff, Information Reporting Program.*

**Information Reporting Program Advisory Committee**

**Membership Application Questionnaire**

The following questions must be answered by anyone interested in becoming a member of the Information Reporting Program Advisory Committee (IRPAC). Applications must be received in that office by July 31, 1992. Those received after this date will not be considered. All applications received will be acknowledged. Questions should be directed to Kate LaBuda at 202/566–8542, and your reply should be returned to: Ms. Kate LaBuda, EX:I:P, Information Reporting Program Planning Staff, Internal Revenue Service, room 2013, 1111 Constitution Avenue, NW., Washington, DC 20224.

1. Name:
2. Title:
3. Company or Organization Name:
4. Business Address:
5. Business Phone:
6. Home Address:
7. Home Phone:
8. If you are applying on behalf of an organization or association other than your employer, please state the name, and address of that organization. Also, provide a letter of reference from that organization stating that you are nominated on their behalf. This letter should contain the name of a contact and this contact's phone number.
9. List professional credentials (e.g., Ph.D., CPA, Enrolled Agent, Attorney, Accountant, etc.)
10. Check the *one* segment of the Information Reporting Program (IRP) payer community with which the organization that you are representing, most closely identified:

_____Large Financial Institution
_____Small Financial Institution
_____Real Estate
_____Data Processing
_____Insurance
_____Securities
_____Payroll
_____State & Local Governments
_____Corporate Compliance
_____Small Business Compliance
_____General Compliance
_____Employee Plans
_____Trust Company
_____Corporate Transfer Agent/ Utilities
_____Other (Please specify. _____ )

11. List the number of years of IRP-related experience you have, and specific sources of this IRP experience.

(Account for all years of IRP experience claimed.)

12. Identify organizations to which you belong and any relevant leadership positions you have held.

13. List any previous IRS employment (please state position/s, title/s, and length of time in each position):

14. Please propose two topic ideas that you feel would be appropriate for discussion by IRPAC. Include a short description (two sentences) of each topic.

(The following three items are required for an FBI Name Check.)

15. Date of Birth:

16. Place of Birth:

17. Other names ever used:

(The following items are required for an IRS Tax Check. Please note that a tax check is not a tax audit.)

I hereby authorize the Internal Revenue Service to perform the standard Federal Advisory Committee member tax check, (pursuant to 26 U.S.C. 6103; 5 U.S.C. 1303; Executive Orders 9397, 11222, 10450; CFR 5.2; 31 CFR part O, Treasury Department Order Nos. 82 (Revised) and 150–87) and to provide this information to the Assistant Secretary (Administration) of the Treasury Department.

I understand that the purpose of such tax check and income tax filing record check is to promote public confidence in the integrity of the Treasury Department and its administration of the Federal tax system. I have been advised that my Social Security Number is required to identify my tax records accurately. I also understand that this tax check must be completed prior to my appointment to this Federal Advisory Committee and I hereby voluntarily provide the following information:

18. Social Security Number:

19. Spouse's name and SSN (if married and filing jointly):

20. Name(s) and address(es) under which tax returns were filed for the past three years.

21. Please sign and date this portion of the questionnaire.

[FR Doc. 92–15388 Filed 6–30–92; 8:45 am]

BILLING CODE 4830–01–M

## TENNESSEE VALLEY AUTHORITY

### Paperwork Reduction Act of 1980, as Amended by Public Law 99–591; Information Collection Under Review by the Office of Management and Budget (OMB)

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Information Collection Under Review by the Office of Management and Budget (OMB).

**SUMMARY:** The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–3084.

*Agency Clearance Officer:* Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (MR 2F), Chattanooga, Tn 37402–2801; (615) 751–2523.

*Type of Request:* Regular submission.

*Title of Information Collection:* Foreign Line Crossing Data.

*Frequency of Use:* On occasion.

*Type of Affected Public:* State or local governments, small businesses or organizations, businesses or other for-profit.

*Small Businesses or organizations Affected:* Yes

*Federal Budget Functional Category Code:* 271.

*Estimated Number of Annual Responses:* 135.

*Estimated Total Annual Burden Hours:* 1350.

*Estimated Average Burden Hours Per Response:* 10.

*Need For and Use of Information:* When a company wishes to build a line over or under a power transmission line owned by TVA, TVA must review certain engineering data to ensure reliability of the power system and to protect the public by ensuring that the crossing meets the National Electrical Safety Code. The Information collection provides such engineering data.

**Charles E. Price,**

*Interim Vice President, Information Services, Interim Senior Agency Official.*

[FR Doc. 92–15408 Filed 6–30–92; 8:45 am]

BILLING CODE 8120–08–M

## United States Information Agency

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Ellsworth Kelly: The Years in France, 1948–1954" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural signficance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC from on or about November 1, 1992, to on or about January 24, 1993 is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: June 25, 1992.

**Alberto J. Mora**

*General Counsel.*

[FR Doc. 92–15395 Filed 6–30–92; 8:45 am]

BILLING CODE 8230–01–M

## UNITED STATES INFORMATION AGENCY

### U.S. Advisory Commission on Public Diplomacy Meeting

**AGENCY:** United States Information Agency.

**ACTION:** Notice.

**SUMMARY:** A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on July 8, in room 600, 301 4th Street, SW., Washington, DC from 10:30–12:30 p.m.

The Commission will meet with Mr. Chase Untermeyer, Associate Director, Bureau of Broadcasting and Director, Voice of America to discuss U.S. government international broadcasting. The Commission will also meet with Mr. Eugene P. Kopp, Deputy Director, U.S. Information Agency to discuss matters

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619–6078, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

dealing with USIA's budget and program policies.

**FOR FURTHER INFORMATION CONTACT:**
Please call Gloria Kalamets, (202) 619–4468 for further information:

Dated: June 26, 1992.

**Rose Royal,**

*Management Analyst Federal Register Liaison.*

[FR Doc. 92–15474 Filed 6–30–92; 8:45 am]

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# Sunshine Act Meetings

Federal Register
Vol. 57, No. 127
Wednesday, July 1, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**DATE AND TIME:** 2:00 p.m. (Eastern Time) Tuesday, July 7, 1992.

**PLACE:** Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, N.W., Washington, D.C. 20507.

**STATUS:** Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

**MATTERS TO BE CONSIDERED:**

**Open Session**

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations—ADA Implementation.
3. FY 1993 State & Local Contracting Principles.
4. Proposed Enforcement Guidance on Recent Developments in Disparate Treatment Theory.
5. Proposed Enforcement Guidance on Compensatory and Punitive Damages Available under Section 102 of the Civil Rights Act of 1991.

**Closed Session**

1. Litigation Authorization: General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 663-7100 (voice) and (202) 663-4494 (TTD) at any time for information on these meetings.)

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer on (202) 663-7100.

Dated: June 25, 1992.

**Frances M. Hart,**

*Executive Officer, Executive Secretariat.*

[FR Doc. 92-15608 Filed 2-11-92; 8:45 am]

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# Corrections

Federal Register
Vol. 57, No. 127
Wednesday, July 1, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 92-069-1]

### Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

*Correction*

In notice document 92-12039 beginning on page 21763 in the issue of Friday, May 22, 1992, make the following correction:

On page 21764, in the first column of the table, in the third and fifth entries, "91–" should read "92–".

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP92-155-000]

### Natural Gas Pipeline Co. of America; Filing to Institute Exit Fee

*Correction*

In notice document 92-10373 beginning on page 19291, in the issue of Tuesday, May 5, 1992, make the following correction:

On page 19291, in the third column, above the heading the Docket number should appear as above.

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Office of Fossil Energy

[FE Docket No. 90-39-NG, et al.]

### Public Service Department, the City of Burbank, California et al.; Notice of Order Granting Blanket Authorizations To Import Natural Gas From Canada and Record of Decision

*Correction*

In notice document 92-12079 beginning on page 21784 in the issue of Friday, May 22, 1992, make the following correction:

On page 21784, the material in the first column, from the fourth line from the bottom of the page to the third line of the second column of the same page was printed in error. It should appear as set forth below:

"Docket No. 90-43-NG); Pancontinental Oil Ltd. (FE Docket No.90-45-NG); Pacific Gas and Electric Company (FE Docket No. 90-46-NG); San Diego Gas & Electric Company (FE Docket No. 90-47-NG); and BP Resources Canada Limited (FE Docket No. 90-49-NG)."

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 2, 5, 10, 310, 314, 320, and 443

[Docket No. 85N-0214]

RIN 0905-AB63

### Abbreviated New Drug Application Regulations

*Correction*

In rule document 92-9320 beginning on page 17950 in the issue of Tuesday, April 28, 1992, make the following corrections:

1. On page 17954, in the 2d column, in the 1st complete paragraph, insert "reports" after "reaction".

2. On page 17955, in the 1st column, in paragraph 11., in the 14th line, "(d)" should read "(b)".

3. On page 17958, in the 3d column, in the 1st complete paragraph, in the 21st line, "that" should read "the".

4. On page 17959:

a. In the 1st column, in the 2d complete paragraph, in the 24th line, "of" should read "for".

b. In the second column, in the fifth line, after "ingredient" insert "is an active ingedient".

c. In the second column, in the eighth line, "difference" should read "different".

5. On page 17962, in the first column, in the first complete paragraph, in #the third line, "§ 314.194(a)(8)(iv)" should read "§ 314.94(a)(8)(iv)".

6. On page 17969, in the first column, in the second complete paragraph, in the eighth line, "authorizes" is misspelled.

7. On page 17970, in the 1st column, in the 2d complete paragraph, in the 13th line, "safe" should read "unsafe".

8. On page 17972, in the second column, in the third complete paragraph, in the last line, "drugs." was misspelled.

9. On page 17978, in the second column:

a. In the first complete paragraph, in the sixth line from the bottom, "equivalent" is misspelled.

b. In the fourth complete paragraph, in the eighth line, insert "that the studies will not result in drug levels or drug" before "effects".

**Subpart D [Corrected]**

10. On page 17981, in the table of contents, in the second column, in the ninth line, "and" should read "an".

**§ 314.94 [Corrected]**

11. On page 17986, in the first column, in § 314.94(a)(9)(iii), in the last line, "for" should read "of".

**§ 314.101 [Corrected]**

12. On page 17988, in the first column:

a. In § 314.101(d)(3), in the second line, "because" is misspelled.

b. In § 314.101(d)(4), in the third line, "address" should read "addresses".

**§ 314.102 [Corrected]**

13. On the same page, in the third column, in § 314.102(b), in the third line, "agency" should read "agency's".

**§ 314.122 [Corrected]**

14. On page 17991, in the first column, in § 314.122(b), in the last line, insert "the" before "procedures".

**§ 314.127 [Corrected]**

15. On the same page, in § 314.127(a)(3)(iii)(A)(*1*), in the first line, "ingredient" should read "ingredients".

**§ 320.24 [Corrected]**

16. On page 18000, in the 1st column, in § 320.24(b)(4), in the 22d line, "This" is misspelled.

BILLING CODE 1505-01-D

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 807**

**[Docket No. 91N-0388]**

**Medical Devices; Substantial Equivalence; 510(k) Summaries and 510(k) Statements; Class III Summaries; Confidentiality of Information**

*Correction*

In rule document 92-9797 beginning on page 18062 in the issue of Tuesday, April 28, 1992, make the following correction:

**§ 807.87 [Corrected]**

On page 18066, in the second column, in § 807.87(i)(2), in the first line, "on" should read "no".

BILLING CODE 1505-01-D

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[NV-930-92-4212-14; N-55763]**

**Non-Competitive Sale of Public Lands in Clark County, NV; Notice of Realty Action**

*Correction*

In notice document 92-13401 appearing on page 24810 in the issue of Thursday, June 11, 1992, make the following correction:

In the second column, in the first line of the land description, "64E.," should read "63E.,"

BILLING CODE 1505-01-D

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-30527; File No. SR-MSRB-92-3]**

**Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Underwriting Assessments**

*Correction*

In notice document 92-7813 beginning on page 11622 in the issue of Monday, April 6, 1992, make the following correction:

On page 11622, in the third column, the file number is corrected to read as above.

BILLING CODE 1505-01-D

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 155**

**[CGD 91-034]**

**RIN 2115-AD81**

**Vessel Response Plans**

*Correction*

In proposed rule document 92-14283 beginning on page 27514 in the issue of Friday, June 19, 1992, make the following corrections:

**Appendix B to Part 155 [Corrected]**

On page 27553, in Appendix B to part 155:

1. In Table 3, in the first column, in the first entry, "1. Non-light persistent oils" should read "1. Non-persistent oils".

2. In the same table, in the fourth column (Oil on shore), in the first entry, "80" should read "10"; and in the fifth column (Natural dissipation), "10" should read "80".

3. In Table 4, in the second column, the third entry should read "3.0".

BILLING CODE 1505-01-D

federal register

Wednesday
July 1, 1992

Part II

# Department of the Treasury

## Fiscal Service

**Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies; Notice**

92 15369

4810-35
4-00236

DEPARTMENT OF THE TREASURY

FISCAL SERVICE

(Dept. Circular 570; 1992 Revision)

# COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective July 1, 1992

This Circular is published annually, as of July 1, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the Circular, interim changes and other information pertinent to Federal sureties may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (FTS/202) 874-6850. Interim changes are published in the FEDERAL REGISTER as they occur. For the most current list of Treasury authorized companies, dial into our Public Bulletin Board system at (FTS/202) 874-7214.

The following companies have complied with the law and the regulations of the Department of the Treasury and are acceptable as sureties and reinsurers on Federal bonds under Title 31 of the United States Code, Sections 9304 to 9308 [See Note (a)].

Diane E. Clark
Assistant Commissioner, Financial Information
Financial Management Service

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**IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.**

VOL 57 ISS 127 JL 1 1992 UMI

**ACCELERATION NATIONAL INSURANCE COMPANY.**
BUSINESS ADDRESS: 475 Metro Place North, P.O. Box 7000, Dublin, OH 43017-0701. UNDERWRITING LIMITATION b/: $1,331,000. SURETY LICENSES c/: AL, AZ, CO, CT, DC, FL, GA, HI, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NE, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, VA, WV, WI. INCORPORATED IN: Ohio.

**Acceptance Insurance Company.** BUSINESS ADDRESS: 222 South 15th Street, Suite 600 North, Omaha, NE 68102. UNDERWRITING LIMITATION b/: $2,671,000. SURETY LICENSES c/: AZ, CO, IA, KY, MI, NE, ND, OH, TN. INCORPORATED IN: NEBRASKA.

**ACCREDITED SURETY AND CASUALTY COMPANY, INC.**
BUSINESS ADDRESS: P.O. Box 568529, Orlando, FL 32856-8529. UNDERWRITING LIMITATION b/: $534,000. SURETY LICENSES c/: AL, AR, FL, GA, IN, LA, MD, MS, VA. INCORPORATED IN: Florida.

**ACSTAR INSURANCE COMPANY.** BUSINESS ADDRESS: 233 Main Street, P.O. Box 2350, New Britain, CT 06050-2350. UNDERWRITING LIMITATION b/: $1,285,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Aetna Casualty & Surety Company of America.**
BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $15,602,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Aetna Casualty and Surety Company (The).**
BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $191,385,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Aetna Casualty and Surety Company of Illinois.**
BUSINESS ADDRESS: 1020 31st Street, Downers Grove, IL 60515. UNDERWRITING LIMITATION b/: $25,107,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes at end of Circular.

**Aetna Casualty Company of Connecticut.** BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $4,382,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Aetna Commercial Insurance Company.** BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $4,485,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Aetna Life and Casualty Company.** BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $424,540,000. SURETY LICENSES c/: CT, DC, PA. INCORPORATED IN: Connecticut.

**Affiliated FM Insurance Company.** BUSINESS ADDRESS: P.O. Box 7500, Johnston, RI 02919. UNDERWRITING LIMITATION b/: $5,278,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

**Alaska Pacific Assurance Company.** BUSINESS ADDRESS: 2525 "C" Street, SUITE: 400, Anchorage, AK 99503. UNDERWRITING LIMITATION b/: $2,610,000. SURETY LICENSES c/: AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, OH, OR, PA, RI, SC, SD, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Alaska.

**Allegheny Mutual Casualty Company.** BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335-7116. UNDERWRITING LIMITATION b/: $582,000. SURETY LICENSES c/: DC, FL, IL, IN, LA, MD, MI, NJ, OH, OK, PA, TN, TX, WI. INCORPORATED IN: Pennsylvania.

**Allendale Mutual Insurance Company.** BUSINESS ADDRESS: Post Office Box 7500, Johnston, RI 02919. UNDERWRITING LIMITATION b/: $67,805,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

See Footnotes at end of Circular.

**Alliance Assurance Company of America.1/** BUSINESS ADDRESS: 10 East 50th Street 27th Floor, New York, NY 10022. UNDERWRITING LIMITATION b/: $9,557,000. SURETY LICENSES c/: IN, KY, ME. INCORPORATED IN: New York.

**Allied Mutual Insurance Company.** BUSINESS ADDRESS: P.O. Box 974, Des Moines, IA 50304. UNDERWRITING LIMITATION b/: $10,151,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

**Allstate Insurance Company.** BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. UNDERWRITING LIMITATION b/: $542,174,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**AMCO Insurance Company.** BUSINESS ADDRESS: 701 Fifth Avenue, Des Moines, IA 50309. UNDERWRITING LIMITATION b/: $5,168,000. SURETY LICENSES c/: AZ, CA, CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OR, SD, TN, TX, UT, WI, WY. INCORPORATED IN: Iowa.

**American Automobile Insurance Company.** BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $7,790,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

**AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA.** BUSINESS ADDRESS: 11222 Quail Roost Dr., Miami, FL 33157. UNDERWRITING LIMITATION b/: $8,293,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Florida.

**American Bonding Company.2/** BUSINESS ADDRESS: 6245 E. Broadway, SUITE: 600, Tucson, AZ 85711. UNDERWRITING LIMITATION b/: $595,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, FL, GA, GU, HI, ID, IN, IA, KS, KY, LA, MD, MS, MO, MT, NE, NV, NM, OK, OR, PA, SD, TX, UT, VA, WA, WV. INCORPORATED IN: Arizona.

See Footnotes at end of Circular.

**American Casualty Company of Reading, Pennsylvania.** BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $27,143,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**American Economy Insurance Company.** BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204-1275. UNDERWRITING LIMITATION b/: $38,933,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

**American Employers' Insurance Company.** BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $11,925,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

**American Fidelity Company.** BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $1,457,000. SURETY LICENSES c/: AK, CT, DC, IA, ME, MD, MA, MS, NE, NH, ND, OK, RI, SD, UT, VT, WV. INCORPORATED IN: Vermont.

**American Fire and Casualty Company.** BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $9,923,000. SURETY LICENSES c/: AL, AR, CO, DC, FL, GA, KS, KY, LA, MD, MS, NC, SC, TN, TX, VA. INCORPORATED IN: Ohio.

**American Guarantee and Liability Insurance Company.** BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. UNDERWRITING LIMITATION b/: $7,521,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: New York.

**American Home Assurance Company.** BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: $112,162,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes at end of Circular.

**American Insurance Company (The).** BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $27,365,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

**American Manufacturers Mutual Insurance Company.** BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. UNDERWRITING LIMITATION b/: $12,833,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**American Motorists Insurance Company.** BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. UNDERWRITING LIMITATION b/: $18,905,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**American National Fire Insurance Company.** BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. UNDERWRITING LIMITATION b/: $1,619,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**American Re-Insurance Company.** BUSINESS ADDRESS: 555 College Road East, P.O. Box 5241, Princeton, NJ 08543. UNDERWRITING LIMITATION b/: $73,571,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**American Resources Insurance Co., Inc..** BUSINESS ADDRESS: P.O. Box 91149, Mobile, AL 36691. UNDERWRITING LIMITATION b/: $314,000. SURETY LICENSES c/: IN, KY, TN. INCORPORATED IN: Alabama.

See Footnotes at end of Circular.

**AMERICAN ROAD INSURANCE COMPANY (THE).** BUSINESS ADDRESS: P.O. Box 6027, The American Road, Dearborn, MI 48121-6027. UNDERWRITING LIMITATION b/: $63,142,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

**American States Insurance Company.** BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204-1275. UNDERWRITING LIMITATION b/: $105,009,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

**American Surety and Casualty Company.** BUSINESS ADDRESS: P. O. Box 24827, Jacksonville, FL 32241-4827. UNDERWRITING LIMITATION b/: $600,000. SURETY LICENSES c/: FL, GA. INCORPORATED IN: Florida.

**American Surety Company.** BUSINESS ADDRESS: 7470 N. Figueroa Street, Los Angeles, CA 90041-1717. UNDERWRITING LIMITATION b/: $282,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

**Amwest Surety Insurance Company.** BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91367. UNDERWRITING LIMITATION b/: $2,231,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

**Antilles Insurance Company.** BUSINESS ADDRESS: Post Office Box 3507, Old San Juan, PR 00902. UNDERWRITING LIMITATION b/: $1,515,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

**Argonaut Insurance Company.** BUSINESS ADDRESS: 250 Middlefield Road, Menlo Park, CA 94025-3507. UNDERWRITING LIMITATION b/: $38,920,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

See Footnotes at end of Circular.

**Arkwright Mutual Insurance Company.** BUSINESS ADDRESS: 225 Wyman Street, P.O. Box 9198, Waltham, MA 02254-9198. UNDERWRITING LIMITATION b/: $68,634,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

**Associated Indemnity Corporation.** BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $2,829,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

**ATLANTIC ALLIANCE FIDELITY AND SURETY COMPANY.** BUSINESS ADDRESS: P.O. Box 985, Cherry Hill, NJ 08003. UNDERWRITING LIMITATION b/: $162,000. SURETY LICENSES c/: DE, NJ, PA. INCORPORATED IN: New Jersey.

**ATLANTIC CASUALTY AND FIRE INSURANCE COMPANY.** BUSINESS ADDRESS: P.O. Box 6108, Columbia, SC 29260-6108. UNDERWRITING LIMITATION b/: $1,341,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Carolina.

**Atlantic Mutual Insurance Company.** BUSINESS ADDRESS: 45 Wall Street, New York, NY 10005. UNDERWRITING LIMITATION b/: $27,603,000. SURETY LICENSES c/: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

**Auto-Owners Insurance Company.** BUSINESS ADDRESS: Post Office Box 30660, Lansing, MI 48909. UNDERWRITING LIMITATION b/: $79,228,000. SURETY LICENSES c/: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MO, NE, NC, ND, OH, SC, SD, TN, TX, VA, WI. INCORPORATED IN: Michigan.

See Footnotes at end of Circular.

**Automobile Insurance Company of Hartford, Connecticut (The).** BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $25,978,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**BANKERS INSURANCE COMPANY.** BUSINESS ADDRESS: P.O. Box 15707, St. Petersburg, FL 33733. UNDERWRITING LIMITATION b/: $671,000. SURETY LICENSES c/: AL, AZ, AR, FL, GA, IA, KY, LA, MS, MO, NM, OH, PA, SC, TN, TX. INCORPORATED IN: FLORIDA.

**Bankers Multiple Line Insurance Company.** BUSINESS ADDRESS: 4810 North Kenneth Avenue, Chicago, IL 60630. UNDERWRITING LIMITATION b/: $1,231,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**BITUMINOUS CASUALTY CORPORATION.** BUSINESS ADDRESS: 320 - 18th Street, Rock Island, IL 61201. UNDERWRITING LIMITATION b/: $7,692,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**BOND SAFEGUARD INSURANCE COMPANY.** BUSINESS ADDRESS: 246 E. Janata Blvd., Lombard, IL 60148. UNDERWRITING LIMITATION b/: $319,000. SURETY LICENSES c/: IL, IN, KS, MO, TN. INCORPORATED IN: Illinois.

**Boston Old Colony Insurance Company.** BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $2,623,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

**Buckeye Union Insurance Company (The).** BUSINESS ADDRESS: Post Office Box 1499, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $40,530,000. SURETY LICENSES c/: AK, DC, FL, IL, IN, IA, KS, KY, MD, MI, MO, NY, OH, PA, RI, SD, VA, WV. INCORPORATED IN: Ohio.

See Footnotes at end of Circular.

**Capitol Indemnity Corporation.** BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. UNDERWRITING LIMITATION b/: $2,930,000. SURETY LICENSES c/: AZ, CO, DE, FL, ID, IL, IN, IA, KS, LA, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, PA, SD, TX, UT, WI, WY. INCORPORATED IN: Wisconsin.

**Centennial Insurance Company.** BUSINESS ADDRESS: 45 Wall Street, New York, NY 10005. UNDERWRITING LIMITATION b/: $10,810,000. SURETY LICENSES c/: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

**Century Indemnity Company.** BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. UNDERWRITING LIMITATION b/: $1,386,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Charter Oak Fire Insurance Company (The).** BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $10,676,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**CHRYSLER INSURANCE COMPANY.** BUSINESS ADDRESS: P.O. Box 5168, Southfield, MI 48086-5168. UNDERWRITING LIMITATION b/: $4,447,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

**CIGNA Insurance Company of Illinois.** BUSINESS ADDRESS: 8755 West Higgins Rd., Chicago, IL 60631. UNDERWRITING LIMITATION b/: $3,356,000. SURETY LICENSES c/: IL. INCORPORATED IN: Illinois.

**CIGNA Insurance Company of Texas.** BUSINESS ADDRESS: 600 East Las Colinas Blvd., SUITE: 620, Irving, TX 75039. UNDERWRITING LIMITATION b/: $2,662,000. SURETY LICENSES c/: NM, TX. INCORPORATED IN: Texas.

See Footnotes at end of Circular.

**CIGNA Insurance Company of the Midwest.** BUSINESS ADDRESS: 9200 Keystone Crossing, P.O. Box 80443, Indianapolis, IN 46280. UNDERWRITING LIMITATION b/: $3,030,000. SURETY LICENSES c/: IN. INCORPORATED IN: INDIANA.

**CIGNA Reinsurance Company.** BUSINESS ADDRESS: Two Liberty Place, 1601 Chestnut St, Philadelphia, PA 19192. UNDERWRITING LIMITATION b/: $20,005,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**Cincinnati Casualty Company (The).** BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. UNDERWRITING LIMITATION b/: $4,676,000. SURETY LICENSES c/: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MS, MO, NE, NM, NC, OH, OK, PA, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. INCORPORATED IN: Ohio.

**Cincinnati Insurance Company (The).** BUSINESS ADDRESS: Post Office Box 145496, Cincinnati, OH 45250-5496. UNDERWRITING LIMITATION b/: $73,543,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**COLONIAL AMERICAN CASUALTY AND SURETY COMPANY.** BUSINESS ADDRESS: 210 North Charles Street, Baltimore, MD 21201. UNDERWRITING LIMITATION b/: $516,000. SURETY LICENSES c/: DC, IA, KS, MD, MO, TX, VA. INCORPORATED IN: Maryland.

**COLONIAL SURETY COMPANY.** BUSINESS ADDRESS: 50 Chestnut Ridge Road, Montvale, NJ 07645. UNDERWRITING LIMITATION b/: $175,000. SURETY LICENSES c/: DE, DC, MD, NJ, PA. INCORPORATED IN: Pennsylvania.

**Commercial Insurance Company of Newark, New Jersey.** BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $8,977,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

See Footnotes at end of Circular.



**Commercial Union Insurance Company.** BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $27,762,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

**Consolidated Surety Insurance Company, Inc.** BUSINESS ADDRESS: 9841 Airport Blvd., SUITE: 912, Los Angeles, CA 90045. UNDERWRITING LIMITATION b/: $290,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

**Continental Casualty Company.** BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $283,854,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Continental Insurance Company (The).** BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $34,358,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**CONTINENTAL INSURANCE COMPANY OF PUERTO RICO (THE).** BUSINESS ADDRESS: P.O. Box 431, San Patricio Plaza, PMC, San Juan, PR 00920. UNDERWRITING LIMITATION b/: $12,113,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico.

**Continental Reinsurance Corporation.** BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $17,678,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, FL, HI, ID, IL, IN, IA, LA, MI, MS, MT, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PR, TX, UT, VA, WA, WY. INCORPORATED IN: California.

**Continental Western Insurance Company.** BUSINESS ADDRESS: P.O. Box 1594, Des Moines, IA 50306. UNDERWRITING LIMITATION b/: $5,895,000. SURETY LICENSES c/: AZ, AR, CO, ID, IL, IN, IA, KS, KY, ME, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, SD, UT, WI, WY. INCORPORATED IN: Iowa.

See Footnotes at end of Circular.

**Contractor's Bonding and Insurance Company.**3/ BUSINESS ADDRESS: P.O. Box 9271, Seattle, WA 98109-0271. UNDERWRITING LIMITATION b/: $1,010,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

**Cooperativa de Seguros Multiples de Puerto Rico.** BUSINESS ADDRESS: G.P.O. Box 363846, San Juan, PR 00936-3846. UNDERWRITING LIMITATION b/: $8,011,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

**Covenant Mutual Insurance Company.** BUSINESS ADDRESS: 103 Woodland Street, Hartford, CT 06105. UNDERWRITING LIMITATION b/: $2,325,000. SURETY LICENSES c/: AL, AZ, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KY, ME, MD, MA, MS, MO, NV, NH, NJ, NY, OH, OR, PA, RI, TN, TX, VT, WA, WI. INCORPORATED IN: Connecticut.

**CUMBERLAND CASUALTY & SURETY COMPANY.** BUSINESS ADDRESS: 4311 West Waters Avenue, SUITE: 501, Tampa, FL 33614. UNDERWRITING LIMITATION b/: $600,000. SURETY LICENSES c/: DE, DC, FL, ID, IN, LA, MD, MT, NV, SC, SD, TX, WY. INCORPORATED IN: Texas.

**CUMIS INSURANCE SOCIETY, INC.** BUSINESS ADDRESS: Post Office Box 1084, Madison, WI 53705. UNDERWRITING LIMITATION b/: $2,558,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

**DAIRYLAND INSURANCE COMPANY.** BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. UNDERWRITING LIMITATION b/: $14,392,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

**DELTA CASUALTY COMPANY.** BUSINESS ADDRESS: 4711 North Clark Street, Chicago, IL 60640. UNDERWRITING LIMITATION b/: $1,130,000. SURETY LICENSES c/: IL, IA. INCORPORATED IN: Illinois.

**DEVELOPERS INSURANCE COMPANY.** BUSINESS ADDRESS: 17780 Fitch, Irvine, CA 92714. UNDERWRITING LIMITATION b/: $639,000. SURETY LICENSES c/: AZ, CA, NV, OR, WA. INCORPORATED IN: California.

See Footnotes at end of Circular.

**Empire Fire and Marine Insurance Company.**
BUSINESS ADDRESS: 1624 Douglas Street, Omaha, NE 68102.
UNDERWRITING LIMITATION b/: $7,489,000. SURETY LICENSES c/:
AL, AK, AZ, AR, CA, CO, FL, GA, GU, HI, ID, IL, IN, IA, KS,
KY, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH,
PA, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Nebraska.

**EMPLOYERS' FIRE INSURANCE COMPANY (THE).**
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108.
UNDERWRITING LIMITATION b/: $4,382,000. SURETY LICENSES c/:
AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN,
IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH,
NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT,
VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

**EMPLOYERS INSURANCE OF WAUSAU A Mutual Company.**
BUSINESS ADDRESS: P.O. Box 8017, 2000 Westwood Drive,
Wausau, WI 54402-8017. UNDERWRITING LIMITATION b/:
$16,755,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT,
DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA,
MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK,
OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.
INCORPORATED IN: Wisconsin.

**Employers Mutual Casualty Company.** BUSINESS ADDRESS:
Post Office Box 712, Des Moines, IA 50303-0712.
UNDERWRITING LIMITATION b/: $24,687,000. SURETY LICENSES c/:
AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN,
IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH,
NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT,
VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

**Employers Reinsurance Corporation.** BUSINESS ADDRESS:
5200 Metcalf, P.O. Box 2991, Overland Park, KS 66201.
UNDERWRITING LIMITATION b/: $120,319,000.
SURETY LICENSES c/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA,
HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO,
MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC,
SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN:
Missouri.

**Erie Insurance Company.** BUSINESS ADDRESS:
100 Erie Insurance Place, Erie, PA 16530. UNDERWRITING
LIMITATION b/: $866,000. SURETY LICENSES c/: DC, IN, KY, MD,
NC, OH, PA, TN, VA, WV. INCORPORATED IN: Pennsylvania.

**EVANSTON INSURANCE COMPANY.** BUSINESS ADDRESS:
Shand Morahan Plaza, Evanston, IL 60201. UNDERWRITING
LIMITATION b/: $3,558,000. SURETY LICENSES c/: IL.
INCORPORATED IN: Illinois.

See Footnotes at end of Circular.

**EXPLORER INSURANCE COMPANY (THE).** BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. UNDERWRITING LIMITATION b/: $948,000. SURETY LICENSES c/: AZ, CA, NV, OR. INCORPORATED IN: Arizona.

**FAR WEST INSURANCE COMPANY.** BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. UNDERWRITING LIMITATION b/: $382,000. SURETY LICENSES c/: AK, AZ, CA, CO, DC, ID, IN, MT, NV, OR, SD, UT, WY. INCORPORATED IN: California.

**Farmers Alliance Mutual Insurance Company.** BUSINESS ADDRESS: 1122 North Main Street, McPherson, KS 67460. UNDERWRITING LIMITATION b/: $4,411,000. SURETY LICENSES c/: AZ, CO, ID, IN, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, TX, WY. INCORPORATED IN: Kansas.

**Farmington Casualty Company.** BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $15,490,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Farmland Mutual Insurance Company.** BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315. UNDERWRITING LIMITATION b/: $4,904,000. SURETY LICENSES c/: AR, CO, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, ND, OH, OK, OR, SD, TX, UT, WI, WY. INCORPORATED IN: Iowa.

**Federal Insurance Company.** BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $153,260,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

**FEDERATED MUTUAL INSURANCE COMPANY.** BUSINESS ADDRESS: 121 East Park Square, Owatonna, MN 55060. UNDERWRITING LIMITATION b/: $40,309,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

See Footnotes at end of Circular.

**Fidelity and Casualty Company of New York (The).**
BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $16,924,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**Fidelity and Deposit Company of Maryland.**
BUSINESS ADDRESS: 210 North Charles Street, Baltimore, MD 21201. UNDERWRITING LIMITATION b/: $24,642,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

**FIDELITY AND GUARANTY INSURANCE COMPANY.**
BUSINESS ADDRESS: P.O. Box 1138, 100 Light Street, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $1,530,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

**Fidelity and Guaranty Insurance Underwriters, Inc..**
BUSINESS ADDRESS: P.O. Box 1138, 100 Light Street, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $5,195,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**Fireman's Fund Insurance Company.** BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $142,543,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

**Firemen's Insurance Company of Newark, New Jersey.**
BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $48,887,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

See Footnotes at end of Circular.

**First Financial Insurance Company.** BUSINESS ADDRESS: 401-417 Fayette Avenue, Springfield, IL 62704-2788. UNDERWRITING LIMITATION b/: $1,754,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OR, RI, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**First Insurance Company of Hawaii, Ltd..** BUSINESS ADDRESS: Post Office Box 2866, Honolulu, HI 96803. UNDERWRITING LIMITATION b/: $6,614,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

**First National Insurance Company of America.** BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $4,889,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

**FRONTIER INSURANCE COMPANY.**10/ BUSINESS ADDRESS: 196 Broadway, Monticello, NY 12701. UNDERWRITING LIMITATION b/: $6,413,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**GENERAL ACCIDENT INSURANCE COMPANY (PUERTO RICO) LIMITED.** BUSINESS ADDRESS: P.O. Box 363786, San Juan, PR 00927. UNDERWRITING LIMITATION b/: $3,323,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico.

**GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA.** BUSINESS ADDRESS: 436 Walnut Street, P.O. Box 1109, Philadelphia, PA 19105-1109. UNDERWRITING LIMITATION b/: $101,617,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

**General Insurance Company of America.** BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $44,190,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

See Footnotes at end of Circular.

**General Reinsurance Corporation.** BUSINESS ADDRESS: P.O. Box 10350, 695 East Main Street, Stamford, CT 06904-2350. UNDERWRITING LIMITATION b/: $320,934,000. SURETY LICENSES c/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**Glens Falls Insurance Company (The).** BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $2,755,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**Global Surety & Insurance Co..** BUSINESS ADDRESS: 160 Kiewit Plaza, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $3,413,000. SURETY LICENSES c/: AZ, CA, CO, MT, NE, SD. INCORPORATED IN: Nebraska.

**Globe Indemnity Company.** BUSINESS ADDRESS: 9300 Arrowpoint Blvd., P.O. Box 1000, Charlotte, NC 28201-1000. UNDERWRITING LIMITATION b/: $22,824,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**Grain Dealers Mutual Insurance Company.** BUSINESS ADDRESS: Post Office Box 1747, Indianapolis, IN 46206. UNDERWRITING LIMITATION b/: $4,079,000. SURETY LICENSES c/: AZ, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NV, NM, NC, OH, OK, OR, SD, TN, TX, VA, WA, WI, WY. INCORPORATED IN: Indiana.

**GRAMERCY INSURANCE COMPANY.**4/ BUSINESS ADDRESS: 110 South French Street, #203, Wilmington, DE 19801. UNDERWRITING LIMITATION b/: $224,000. SURETY LICENSES c/: DE, LA, MD, NM, TX. INCORPORATED IN: Delaware.

**Granite State Insurance Company.** BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $1,302,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, DC, FL, GA, GU, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

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**Great American Insurance Company.** BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. UNDERWRITING LIMITATION b/: $64,702,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**Great Northern Insurance Company.** BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $8,260,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, DC, FL, GA, HI, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

**Gulf Insurance Company.** BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221-1771. UNDERWRITING LIMITATION b/: $12,100,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

**Hamilton Mutual Insurance Company of Cincinnati, Ohio (The).** BUSINESS ADDRESS: 1520 Madison Road, Cincinnati, OH 45206-1787. UNDERWRITING LIMITATION b/: $941,000. SURETY LICENSES c/: IN, KY, MI, OH. INCORPORATED IN: Ohio.

**Hanover Insurance Company (The).** BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. UNDERWRITING LIMITATION b/: $49,649,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**HARCO NATIONAL INSURANCE COMPANY.** BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. UNDERWRITING LIMITATION b/: $3,274,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

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**Harleysville Mutual Insurance Company.** BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438-2285. UNDERWRITING LIMITATION b/: $24,883,000. SURETY LICENSES c/: AL, CA, CO, CT, DE, DC, FL, GA, IL, IN, IA, KS, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NM, NY, NC, OH, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

**Hartford Accident and Indemnity Company.** BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $78,482,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Hartford Casualty Insurance Company.** BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $18,823,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

**Hartford Fire Insurance Company.** BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $204,754,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Hartford Insurance Company of Connecticut.** BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $1,751,000. SURETY LICENSES c/: AL, AK, CT, DE, DC, IN, MA, MN, MO, NE, NJ, OK, PA, RI, WY. INCORPORATED IN: Connecticut.

**Hartford Insurance Company of Illinois.** BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $6,281,000. SURETY LICENSES c/: IL, PA. INCORPORATED IN: Illinois.

**Hartford Insurance Company of the Midwest.** BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $2,038,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

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**Hartford Insurance Company of the Southeast.** BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $1,831,000. SURETY LICENSES c/: CT, FL, GA, LA, PA. INCORPORATED IN: Florida.

**Hartford Underwriters Insurance Company.** BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $14,304,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Highlands Insurance Company.** BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. UNDERWRITING LIMITATION b/: $16,979,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Texas.

**Highlands Underwriters Insurance Company.** BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. UNDERWRITING LIMITATION b/: $2,060,000. SURETY LICENSES c/: AL, AZ, AR, CA, FL, GA, LA, MS, NM, OK, TX. INCORPORATED IN: Texas.

**Home Indemnity Company (The).** BUSINESS ADDRESS: 59 Maiden Lane, 7th Floor, New York, NY 10038. UNDERWRITING LIMITATION b/: $9,260,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**Home Insurance Company (The).** BUSINESS ADDRESS: 59 Maiden Lane, 7th Floor, New York, NY 10038. UNDERWRITING LIMITATION b/: $61,149,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**Houston General Insurance Company.** BUSINESS ADDRESS: Post Office Box 2932, Fort Worth, TX 76113-2932. UNDERWRITING LIMITATION b/: $9,366,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MS, MO, MT, NV, NM, NY, ND, OH, OR, SC, SD, TN, TX, UT, VA, WA, WY. INCORPORATED IN: Texas.

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**Illinois National Insurance Company.** BUSINESS ADDRESS: 3201 West White Oaks Drive, Springfield, IL 62703. UNDERWRITING LIMITATION b/: $2,477,000. SURETY LICENSES c/: AK, IL, IN, IA, KY, MD, MO, MT, NE, NH, NM, NY, ND, OH, RI, SD, TX, UT, VT, WV. INCORPORATED IN: Illinois.

**Indemnity Company of California.** BUSINESS ADDRESS: 17780 Fitch, Irvine, CA 92714. UNDERWRITING LIMITATION b/: $805,000. SURETY LICENSES c/: AZ, CA, NV, OR, WA. INCORPORATED IN: California.

**Indemnity Insurance Company of North America.** BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. UNDERWRITING LIMITATION b/: $12,497,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

**Indiana Lumbermens Mutual Insurance Company.** BUSINESS ADDRESS: P.O. Box 68600, Indianapolis, IN 46268-1168. UNDERWRITING LIMITATION b/: $1,810,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

**Inland Insurance Company.** BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $2,920,000. SURETY LICENSES c/: AZ, CO, IA, KS, MN, MT, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska.

**INSURANCE COMPANY OF EVANSTON.** BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. UNDERWRITING LIMITATION b/: $2,559,000. SURETY LICENSES c/: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Insurance Company of North America.** BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. UNDERWRITING LIMITATION b/: $61,250,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

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**Insurance Company of the State of Pennsylvania.** BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: $32,401,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**Insurance Company of the West.** BUSINESS ADDRESS: Post Office Box 85563, San Diego, CA 92186-5563. UNDERWRITING LIMITATION b/: $7,938,000. SURETY LICENSES c/: AZ, CA, CO, ID, MD, MI, MT, NV, NM, OK, OR, TX, UT, WA. INCORPORATED IN: California.

**INTEGRAND ASSURANCE COMPANY.** BUSINESS ADDRESS: Call Box 70128, San Juan, PR 00936-7128. UNDERWRITING LIMITATION b/: $2,568,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

**Intercargo Insurance Company.** BUSINESS ADDRESS: 1450 East American Lane, 20th Floor, Schaumburg, IL 60173. UNDERWRITING LIMITATION b/: $1,075,000. SURETY LICENSES c/: AZ, CA, CO, DC, FL, GA, IL, IN, LA, MD, MA, MI, MO, NM, NY, OR, PA, TN, TX, VA, WA, WI. INCORPORATED IN: Illinois.

**International Business & Mercantile REassurance Company.** BUSINESS ADDRESS: 307 N. Michigan Ave., Chicago, IL 60601. UNDERWRITING LIMITATION b/: $6,212,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**INTERNATIONAL CREDIT OF NORTH AMERICA REINSURANCE INC..** BUSINESS ADDRESS: 1225 Franklin Avenue, Garden City, NY 11530. UNDERWRITING LIMITATION b/: $4,514,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

**International Fidelity Insurance Company.** BUSINESS ADDRESS: P.O. Box 56, Newark, NJ 07101. UNDERWRITING LIMITATION b/: $2,023,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: New Jersey.

**ISLAND INSURANCE COMPANY, LIMITED.** BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96806. UNDERWRITING LIMITATION b/: $5,438,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

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**ITT Lyndon Property Insurance Company.** BUSINESS ADDRESS: 12555 Manchester Road, St. Louis, MO 63131. UNDERWRITING LIMITATION b/: $11,199,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

**John Deere Insurance Company.** BUSINESS ADDRESS: 3400 80th Street, Moline, IL 61265. UNDERWRITING LIMITATION b/: $5,262,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Kansas Bankers Surety Company (The).** BUSINESS ADDRESS: Post Office Box 1654, Topeka, KS 66601-1654. UNDERWRITING LIMITATION b/: $2,346,000. SURETY LICENSES c/: CO, IL, IA, KS, MN, MO, NE, OK, SD, WI, WY. INCORPORATED IN: Kansas.

**Kansas City Fire and Marine Insurance Company.** BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $1,105,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

**KEMPER REINSURANCE COMPANY.** BUSINESS ADDRESS: , Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $20,806,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NV, NJ, NM, OH, OK, OR, PA, RI, TN, UT, WA, WI. INCORPORATED IN: Illinois.

**Lawyers Surety Corporation.** BUSINESS ADDRESS: P.O.Box 569480, Dallas, TX 75356-9480. UNDERWRITING LIMITATION b/: $513,000. SURETY LICENSES c/: AL, AR, CA, FL, GA, KY, MS, NC, OK, SC, TN, TX. INCORPORATED IN: Texas.

**Liberty Mutual Insurance Company.** BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. UNDERWRITING LIMITATION b/: $166,039,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

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**LINCOLN GENERAL INSURANCE COMPANY.** BUSINESS ADDRESS: 3350 Whiteford Road, York, PA 17402. UNDERWRITING LIMITATION b/: $1,811,000. SURETY LICENSES c/: AL, GA, ID, IN, IA, KS, KY, LA, MD, MS, MO, NE, NV, NM, ND, OH, OR, PA, SC, SD, TN, UT, VA, WV, WY. INCORPORATED IN: Pennsylvania.

**London Assurance of America Inc. (The).** 5/ BUSINESS ADDRESS: 10 East 50th Street, 27th Floor, New York, NY 10022. UNDERWRITING LIMITATION b/: $17,185,000. SURETY LICENSES c/: AK, IA, ME, MI, MN, NJ, NY, ND, OH, UT, VT. INCORPORATED IN: New York.

**Lumbermens Mutual Casualty Company.** BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. UNDERWRITING LIMITATION b/: $105,148,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Massachusetts Bay Insurance Company.** BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. UNDERWRITING LIMITATION b/: $1,307,000. SURETY LICENSES c/: AL, AR, CA, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WA, WV, WI. INCORPORATED IN: Massachusetts.

**MCA Insurance Company.** BUSINESS ADDRESS: 484 Central Avenue, Newark, NJ 07107-2096. UNDERWRITING LIMITATION b/: $2,397,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Oklahoma.

**Merchants Bonding Company (Mutual).** BUSINESS ADDRESS: 2100 Grand Avenue, Des Moines, IA 50312. UNDERWRITING LIMITATION b/: $922,000. SURETY LICENSES c/: AL, AZ, CA, CO, FL, GA, ID, IL, IN, IA, KS, LA, MI, MN, MO, MT, NE, NV, NM, NC, ND, OK, OR, PA, SD, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Iowa.

**Michigan Millers Mutual Insurance Company.** BUSINESS ADDRESS: Post Office Box 30060, Lansing, MI 48909. UNDERWRITING LIMITATION b/: $6,352,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, FL, ID, IN, KS, KY, MI, MO, NE, NJ, NY, NC, OH, OK, PA, TX, UT, VA, WA. INCORPORATED IN: Michigan.

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**Michigan Mutual Insurance Company.** BUSINESS ADDRESS: P.O. Box 5110, Southfield, MI 48086-5110. UNDERWRITING LIMITATION b/: $17,382,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

**Mid-Century Insurance Company.** BUSINESS ADDRESS: Post Office Box 2478, Terminal Annex, Los Angeles, CA 90051. UNDERWRITING LIMITATION b/: $3,825,000. SURETY LICENSES c/: AZ, AR, CA, CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TX, UT, WA, WI, WY. INCORPORATED IN: California.

**MID-CONTINENT CASUALTY COMPANY.** BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. UNDERWRITING LIMITATION b/: $3,556,000. SURETY LICENSES c/: AL, AZ, AR, CO, IL, IN, IA, KS, MN, MS, MO, MT, NE, NM, ND, OK, TX, UT, WA, WY. INCORPORATED IN: Oklahoma.

**Millers Mutual Fire Insurance Company of Texas (The).** BUSINESS ADDRESS: Post Office Box 2269, Fort Worth, TX 76113-2269. UNDERWRITING LIMITATION b/: $6,349,000. SURETY LICENSES c/: CO, DC, ID, IL, IN, IA, LA, MI, OK, OR, TX, WY. INCORPORATED IN: Texas.

**Millers' Mutual Insurance Association of Illinois.** BUSINESS ADDRESS: 111 East Fourth Street, P.O. Box 9006, Alton, IL 62002-9006. UNDERWRITING LIMITATION b/: $4,241,000. SURETY LICENSES c/: AL, AR, CO, DC, GA, IL, IN, IA, KS, LA, MN, MS, MO, MT, NE, NC, ND, OH, OK, SD, TN, WI. INCORPORATED IN: Illinois.

**Minnesota Trust Company of Austin.** BUSINESS ADDRESS: P.O. Box 463, Austin, MN 55912-0463. UNDERWRITING LIMITATION b/: $155,000. SURETY LICENSES c/: CO, MN, MT, ND. INCORPORATED IN: Minnesota.

**MOTORS INSURANCE CORPORATION.** BUSINESS ADDRESS: 3044 West Grand Boulevard, Detroit, MI 48202. UNDERWRITING LIMITATION b/: $84,601,000. SURETY LICENSES c/: AL, AK, AZ, AR, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OK, OR, PA, RI, SC, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes at end of Circular.

**Munich American Reinsurance Company.** BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. UNDERWRITING LIMITATION b/: $26,778,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: New York.

**National American Insurance Company.** BUSINESS ADDRESS: 1008 Manvel Avenue, Chandler, OK 74834. UNDERWRITING LIMITATION b/: $1,531,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

**National Automobile and Casualty Insurance Company.** BUSINESS ADDRESS: Post Office Box 7040, Pasadena, CA 91109. UNDERWRITING LIMITATION b/: $694,000. SURETY LICENSES c/: AK, AZ, CA, IN, MO, NV, TX, WA. INCORPORATED IN: California.

**National-Ben Franklin Insurance Company of Illinois.** BUSINESS ADDRESS: 200 South Wacker Drive, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $11,994,000. SURETY LICENSES c/: DC, IL, IN, IA, KY, MD, MI, MN, NY, NC, ND, RI, SD, WI. INCORPORATED IN: Illinois.

**National Fire Insurance Company of Hartford.** BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $45,178,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**National Grange Mutual Insurance Company.** BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. UNDERWRITING LIMITATION b/: $7,919,000. SURETY LICENSES c/: CT, DE, DC, ME, MD, MA, MI, NH, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

**National Indemnity Company.** BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131-3580. UNDERWRITING LIMITATION b/: $281,253,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

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**NATIONAL REINSURANCE CORPORATION.** BUSINESS ADDRESS: 777 Long Ridge Road, P.O. Box 10167, Stamford, CT 06904-2167. UNDERWRITING LIMITATION b/: $25,366,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DE, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MT, NE, NV, NJ, NY, NC, ND, OH, OK, PA, PR, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**National Surety Corporation.** BUSINESS ADDRESS: 200 West Monroe Street, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $9,138,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**National Union Fire Insurance Company of Pittsburgh, PA.** BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: $97,040,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**Nationwide Mutual Insurance Company.** BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $310,108,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**Netherlands Insurance Company (The).** BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. UNDERWRITING LIMITATION b/: $1,395,000. SURETY LICENSES c/: AZ, CA, CT, DC, GA, ID, IN, IA, KY, ME, MD, MI, NV, NH, NJ, NY, NC, OH, RI, SC, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

**New Hampshire Insurance Company.** BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $29,359,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

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**Newark Insurance Company.** BUSINESS ADDRESS: 9300 Arrowpoint Blvd., P.O. Box 1000, Charlotte, NC 28201-1000. UNDERWRITING LIMITATION b/: $4,624,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

**North American Reinsurance Corporation.** BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $20,337,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: New York.

**NORTH AMERICAN SPECIALTY INSURANCE COMPANY.** BUSINESS ADDRESS: 650 Elm Street, 6th Floor, Manchester, NH 03101-2596. UNDERWRITING LIMITATION b/: $2,704,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**North Star Reinsurance Corporation.** BUSINESS ADDRESS: 100 Campus Drive, CN 853, Florham Park, NJ 07932-0853. UNDERWRITING LIMITATION b/: $15,373,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**Northbrook Property and Casualty Insurance Company.** BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. UNDERWRITING LIMITATION b/: $15,393,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Northern Assurance Company of America (The).** BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $15,045,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

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**NORTHWESTERN PACIFIC INDEMNITY COMPANY.** BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $1,940,000. SURETY LICENSES c/: CA, OK, OR, TX, WA. INCORPORATED IN: Oregon.

**Oceanic Insurance and Surety Company.** BUSINESS ADDRESS: 1450 E. American Lane, 20th Floor, Schaumburg, IL 60173. UNDERWRITING LIMITATION b/: $553,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

**Ohio Casualty Insurance Company (The).** BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $64,342,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**Ohio Farmers Insurance Company.** BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. UNDERWRITING LIMITATION b/: $33,836,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**Oklahoma Surety Company.** BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. UNDERWRITING LIMITATION b/: $539,000. SURETY LICENSES c/: KS, OK, TX. INCORPORATED IN: Oklahoma.

**Old Republic Insurance Company.** BUSINESS ADDRESS: Post Office Box 789, Greensburg, PA 15601-0789. UNDERWRITING LIMITATION b/: $26,547,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**Old Republic Surety Company.** BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. UNDERWRITING LIMITATION b/: $1,131,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DC, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, NC, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Wisconsin.

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**Omaha Property and Casualty Insurance Company.** BUSINESS ADDRESS: 3102 Farnam Street, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $2,200,000. SURETY LICENSES c/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, PA, RI, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**Pacific Employers Insurance Company.** BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 7716, Philadelphia, PA 19192. UNDERWRITING LIMITATION b/: $17,457,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

**Pacific Indemnity Company.** BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $35,044,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

**Pacific Insurance Company, Limited.** BUSINESS ADDRESS: 1001 Bishop Street, Honolulu, HI 96807. UNDERWRITING LIMITATION b/: $4,759,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

**PACIFIC STATES CASUALTY COMPANY.** BUSINESS ADDRESS: 14726 Ramona Avenue, 3rd Floor, Chino, CA 91710. UNDERWRITING LIMITATION b/: $1,592,000. SURETY LICENSES c/: AZ, CA, CO, ID, NV, TX, UT, WA, WY. INCORPORATED IN: California.

**Peerless Insurance Company.** BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. UNDERWRITING LIMITATION b/: $8,474,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**Pekin Insurance Company.** BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. UNDERWRITING LIMITATION b/: $2,193,000. SURETY LICENSES c/: IL, IN, IA, WI. INCORPORATED IN: Illinois.

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**Pennsylvania Manufacturers' Association Insurance Company.** BUSINESS ADDRESS: 925 Chestnut Street, Philadelphia, PA 19107. UNDERWRITING LIMITATION b/: $25,183,000. SURETY LICENSES c/: AK, AZ, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, OH, OK, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

**Pennsylvania Millers Mutual Insurance Company.** BUSINESS ADDRESS: 15 Public Square, Wilkes-Barre, PA 18773-0016. UNDERWRITING LIMITATION b/: $4,302,000. SURETY LICENSES c/: CT, DC, FL, GA, ID, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, ND, PA, RI, SC, TN, UT, VT, VA, WA, WV. INCORPORATED IN: Pennsylvania.

**Pennsylvania National Mutual Casualty Insurance Company.** BUSINESS ADDRESS: P.O. Box 2361, Harrisburg, PA 17105-2361. UNDERWRITING LIMITATION b/: $15,062,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

**Personal Service Insurance Co. (The).** BUSINESS ADDRESS: P.O. BOX 1226, Columbus, OH 43216-1226. UNDERWRITING LIMITATION b/: $3,010,000. SURETY LICENSES c/: IN, OH. INCORPORATED IN: OHIO.

**Phoenix Assurance Company of New York.** BUSINESS ADDRESS: 4 World Trade Center, Suite 6274, New York, NY 10048. UNDERWRITING LIMITATION b/: $7,540,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**Phoenix Insurance Company (The).** BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $57,026,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**PINNACLE INSURANCE COMPANY.** BUSINESS ADDRESS: P.O. Box 1919, Carrollton, GA 30117. UNDERWRITING LIMITATION b/: $483,000. SURETY LICENSES c/: AL, AK, AR, CO, DC, FL, GA, ID, IN, KS, KY, LA, MD, MS, NE, NV, OH, OK, OR, SC, TN, TX, UT, WV, WY. INCORPORATED IN: Georgia.

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**PLANET INDEMNITY COMPANY.** BUSINESS ADDRESS: 410 17th Street, SUITE: 1675, Denver, CO 80202. UNDERWRITING LIMITATION b/: $502,000. SURETY LICENSES c/: AL, CO, GA, IL, IN, KS, KY, NE, NM, OR, SD, TX. INCORPORATED IN: Colorado.

**PLANET INSURANCE COMPANY.** BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $1,762,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

**PREFERRED NATIONAL INSURANCE COMPANY.** BUSINESS ADDRESS: P.O. Box 407003, Ft. Lauderdale, FL 33340-7003. UNDERWRITING LIMITATION b/: $553,000. SURETY LICENSES c/: FL. INCORPORATED IN: FLORIDA.

**Progressive Casualty Insurance Company.** BUSINESS ADDRESS: 6000 Parkland Boulevard, Mayfield Hts., OH 44124. UNDERWRITING LIMITATION b/: $9,230,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**PROTECTION MUTUAL INSURANCE COMPANY.** BUSINESS ADDRESS: 300 S. Northwest Highway, Park Ridge, IL 60068. UNDERWRITING LIMITATION b/: $31,649,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Protective Insurance Company.** BUSINESS ADDRESS: 1099 North Meridian Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $12,360,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

**Prudential Reinsurance Company.** BUSINESS ADDRESS: 3 Gateway Center, Newark, NJ 07102-4077. UNDERWRITING LIMITATION b/: $55,669,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: Delaware.

See Footnotes at end of Circular.



**Ranger Insurance Company.** BUSINESS ADDRESS: P. O. Box 2807, Houston, TX 77252-2807. UNDERWRITING LIMITATION b/: $2,500,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**Reinsurance Corporation of New York (The).** BUSINESS ADDRESS: 80 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $3,144,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**Reliance Insurance Company.** BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $30,226,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**Reliance Insurance Company of New York.** BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $757,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

**Republic Western Insurance Company.** BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004-1120. UNDERWRITING LIMITATION b/: $10,017,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Arizona.

**Royal Indemnity Company.** BUSINESS ADDRESS: 9300 Arrowpoint Blvd., P.O. Box 1000, Charlotte, NC 28201-1000. UNDERWRITING LIMITATION b/: $14,349,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

See Footnotes at end of Circular.

**Royal Insurance Company of America.** BUSINESS ADDRESS: 495 N. Commons Drive, Meridian Business Campus, Aurora, IL 60504. UNDERWRITING LIMITATION b/: $27,086,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**SAFECO Insurance Company of America.** BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $58,606,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

**SAFECO Insurance Company of Illinois.** BUSINESS ADDRESS: Safeco Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $6,932,000. SURETY LICENSES c/: AZ, CO, IL, KS, KY, MD, MI, MN, MS, NE, NM, OH, OR, PA, TN, TX, UT, WI. WY. INCORPORATED IN: Illinois.

**SAFECO National Insurance Company.** BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $4,815,000. SURETY LICENSES c/: CO, KY, MD, MO, NY, UT, WI. INCORPORATED IN: Missouri.

**SCOR REINSURANCE COMPANY.** BUSINESS ADDRESS: 110 William Street, 18th Floor, New York, NY 10038. UNDERWRITING LIMITATION b/: $13,624,000. SURETY LICENSES c/: AL, AZ, AR, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, LA, MD, MA, MN, MS, NE, NV, NJ, NM, NY, OH, OR, PA, SC, TX, VT, WA, WY. INCORPORATED IN: New York.

**Sea Insurance Company of America (The).** 6/ BUSINESS ADDRESS: 10 East 50th Street, 27th Floor, New York, NY 10022. UNDERWRITING LIMITATION b/: $9,411,000. SURETY LICENSES c/: AK, AZ, AR, CA, CT, DE, FL, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**Seaboard Surety Company.** BUSINESS ADDRESS: Burnt Mills Road and Route 206, Bedminster, NJ 07921. UNDERWRITING LIMITATION b/: $9,244,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes at end of Circular.

**Security National Insurance Company.** BUSINESS ADDRESS: Post Office Box 655028, Dallas, TX 75265-5028. UNDERWRITING LIMITATION b/: $1,163,000. SURETY LICENSES c/: AL, AR, CA, CO, IL, IN, KS, KY, MO, NM, OH, OK, TX, WY. INCORPORATED IN: Texas.

**Select Insurance Company.** BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221-1771. UNDERWRITING LIMITATION b/: $1,522,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, OH, OR, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

**Selective Insurance Company of America.** BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. UNDERWRITING LIMITATION b/: $19,876,000. SURETY LICENSES c/: AL, DE, DC, FL, GA, MD, MS, NJ, NY, NC, PA, SC, TX, VA. INCORPORATED IN: New Jersey.

**SENTINEL INSURANCE COMPANY, LTD..** BUSINESS ADDRESS: 1001 Bishop Street, Honolulu, HI 96807. UNDERWRITING LIMITATION b/: $1,170,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

**Sentry Insurance A Mutual Company.** BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. UNDERWRITING LIMITATION b/: $75,358,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

**Skandia America Reinsurance Corporation.** BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. UNDERWRITING LIMITATION b/: $35,301,000. SURETY LICENSES c/: AL, AZ, CA, DE, DC, GA, ID, IL, IN, IA, MI, MS, MT, NE, NY, OH, OK, OR, PA, TX, UT, VA, WA, WI. INCORPORATED IN: Delaware.

**SORENA NORTH AMERICA REINSURANCE COMPANY.** BUSINESS ADDRESS: 199 Water Street, New York, NY 10038-3526. UNDERWRITING LIMITATION b/: $10,207,000. SURETY LICENSES c/: AK, AZ, DC, ID, IL, KS, MI, MS, MT, NE, NM, NY, OH, OR, RI, TN, TX, UT, WA, WI. INCORPORATED IN: New York.

See Footnotes at end of Circular.

**St. Paul Fire and Marine Insurance Company.** BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $152,467,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

**ST. PAUL GUARDIAN INSURANCE COMPANY.** BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $2,288,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Minnesota.

**St. Paul Mercury Insurance Company.** BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $4,343,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

**Standard Fire Insurance Company (The).** BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $65,925,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**State Automobile Mutual Insurance Company.** BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43215. UNDERWRITING LIMITATION b/: $25,299,000. SURETY LICENSES c/: AL, AZ, AR, CO, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, PA, SC, SD, TN, VA, WV, WI, WY. INCORPORATED IN: Ohio.

**State Farm Fire and Casualty Company.** BUSINESS ADDRESS: 112 East Washington Street, Bloomington, IL 61701. UNDERWRITING LIMITATION b/: $191,431,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes at end of Circular.

**State Surety Company.** BUSINESS ADDRESS: P.O. Box 1976, Des Moines, IA 50306. UNDERWRITING LIMITATION b/: $397,000. SURETY LICENSES c/: AZ, CO, DC, ID, IL, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, WI, WY. INCORPORATED IN: Iowa.

**Statewide Insurance Company.** BUSINESS ADDRESS: P.O. Box 799, Waukegan, IL 60079. UNDERWRITING LIMITATION b/: $354,000. SURETY LICENSES c/: AZ, AR, IL, IA. INCORPORATED IN: Illinois.

**SUN INSURANCE COMPANY OF NEW YORK.** BUSINESS ADDRESS: 4 World Trade Center, New York, NY 10048. UNDERWRITING LIMITATION b/: $7,151,000. SURETY LICENSES c/: AK, AZ, CA, CT, DE, DC, GA, IL, IA, KY, LA, ME, MD, MA, MI, MN, MO, MT, NJ, NY, OH, OK, OR, PA, PR, RI, SC, TN, TX, VA, WA, WI. INCORPORATED IN: New York.

**Sun Insurance Office of America Inc..**7/ BUSINESS ADDRESS: 10 East 50th Street, 27th Floor, New York, NY 10022. UNDERWRITING LIMITATION b/: $14,477,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**Surety Company of the Pacific.** BUSINESS ADDRESS: Post Office Box 1067, Northridge, CA 91328. UNDERWRITING LIMITATION b/: $405,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

**TEXAS PACIFIC INDEMNITY COMPANY.** BUSINESS ADDRESS: Diamond Shamrock Tower, 717 North Harwood, Dallas, TX 75201. UNDERWRITING LIMITATION b/: $593,000. SURETY LICENSES c/: AR, TX. INCORPORATED IN: Texas.

**Transamerica Insurance Company.** BUSINESS ADDRESS: 6300 Canoga Avenue, Woodland Hills, CA 91367. UNDERWRITING LIMITATION b/: $72,101,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

**Transamerica Insurance Company of Michigan.** BUSINESS ADDRESS: 70 West Michigan Avenue, Battle Creek, MI 49016. UNDERWRITING LIMITATION b/: $2,027,000. SURETY LICENSES c/: AR, ID, IL, IN, IA, KS, KY, MI, MN, MO, NY, OH, SD, TX, UT. INCORPORATED IN: Michigan.

See Footnotes at end of Circular.

**Transamerica Premier Insurance Company.** BUSINESS ADDRESS: 333 South Anita Drive, Orange, CA 92668. UNDERWRITING LIMITATION b/: $10,938,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

**TRANSATLANTIC REINSURANCE COMPANY.** BUSINESS ADDRESS: 80 PINE STREET, NEW YORK, NY 10005. UNDERWRITING LIMITATION b/: $10,771,000. SURETY LICENSES c/: CT, DC, FL, IL, IN, IA, NV, NJ, NM, NY, OH, OK, PA. INCORPORATED IN: New York.

**Transcontinental Insurance Company.** BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $17,010,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**Transportation Insurance Company.** BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $6,812,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Illinois.

**Travelers Indemnity Company (The).** BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $127,780,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**TRAVELERS INDEMNITY COMPANY OF AMERICA (THE).** BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $7,194,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Georgia.

See Footnotes at end of Circular.

**Travelers Indemnity Company of Illinois (The).** BUSINESS ADDRESS: 200 West Madison Street, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $3,949,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Travelers Indemnity Company of Rhode Island (The).** BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $13,651,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

**Tri-State Insurance Company of Minnesota.** BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. UNDERWRITING LIMITATION b/: $3,691,000. SURETY LICENSES c/: DC, IA, NE, ND, SD, WI. INCORPORATED IN: Minnesota.

**Trinity Universal Insurance Company.** BUSINESS ADDRESS: Post Office Box 655028, Dallas, TX 75265-5028. UNDERWRITING LIMITATION b/: $29,671,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, GA, IL, IN, IA, KS, KY, LA, MI, MS, MO, NE, NM, OH, OK, TX, WY. INCORPORATED IN: Texas.

**Trinity Universal Insurance Company of Kansas, Inc.** BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. UNDERWRITING LIMITATION b/: $618,000. SURETY LICENSES c/: AL, AZ, CO, KS, KY, LA, MO, NE, OH, OK, TX. INCORPORATED IN: Kansas.

**Twin City Fire Insurance Company.** BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $7,097,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

**U.S. Capital Insurance Company.**8/ BUSINESS ADDRESS: 4 West Red Oak Lane, White Plains, NY 10604-3602. UNDERWRITING LIMITATION b/: $2,177,000. SURETY LICENSES c/: AZ, CA, FL, GA, ID, IN, LA, MD, MI, NY, ND, PA, TN, TX, UT, WI. INCORPORATED IN: NEW YORK.

See Footnotes at end of Circular.

**ULICO CASUALTY COMPANY.** BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. UNDERWRITING LIMITATION b/: $5,086,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**Underwriters Indemnity Company.** BUSINESS ADDRESS: 8 Greenway Plaza, SUITE: 400, Houston, TX 77046. UNDERWRITING LIMITATION b/: $384,000. SURETY LICENSES c/: AL, CA, CO, GA, IL, IN, KS, KY, LA, MS, MO, MT, NE, NV, NM, ND, OH, OK, SD, TN, TX, UT, WV, WI, WY. INCORPORATED IN: Texas.

**Unigard Security Insurance Company.** BUSINESS ADDRESS: 15805 N.E. 24th Street, Bellevue, WA 98008-2409. UNDERWRITING LIMITATION b/: $5,961,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, IN, IA, KS, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Washington.

**Union Insurance Company.** BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $2,089,000. SURETY LICENSES c/: AR, CO, DC, ID, IA, KS, MD, MN, MO, MT, NE, ND, OK, SD, TX, UT, VA, WA, WY. INCORPORATED IN: Nebraska.

**United Capitol Insurance Company.**9/ BUSINESS ADDRESS: 1400 Lake Hearn Drive, Atlanta, GA 30319. UNDERWRITING LIMITATION b/: $6,688,000. SURETY LICENSES c/: AZ, WI. INCORPORATED IN: Wisconsin.

**United Coastal Insurance Company.** BUSINESS ADDRESS: P.O. Box 2350, 233 Main Street, New Britain, CT 06050-2350. UNDERWRITING LIMITATION b/: $3,277,000. SURETY LICENSES c/: AZ. INCORPORATED IN: Arizona.

**United Fire & Casualty Company.** BUSINESS ADDRESS: P.O. Box 73909, Cedar Rapids, IA 52407. UNDERWRITING LIMITATION b/: $10,586,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

**UNITED NATIONAL INSURANCE COMPANY.** BUSINESS ADDRESS: Three Bala Plaza East, SUITE: 300, Bala Cynwyd, PA 19004. UNDERWRITING LIMITATION b/: $9,862,000. SURETY LICENSES c/: PA. INCORPORATED IN: Pennsylvania.

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**United Pacific Insurance Company.** BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $37,592,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

**United Pacific Insurance Company of New York.** BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $1,359,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

**United States Fidelity and Guaranty Company.** BUSINESS ADDRESS: Post Office Box 1138, 100 Light Street, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $71,354,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

**UNIVERSAL BONDING INSURANCE COMPANY.** BUSINESS ADDRESS: 518 Stuyvesant Avenue, Lyndhurst, NJ 07071. UNDERWRITING LIMITATION b/: $578,000. SURETY LICENSES c/: NJ. INCORPORATED IN: New Jersey.

**UNIVERSAL INSURANCE COMPANY.** BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. UNDERWRITING LIMITATION b/: $2,989,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

**Universal Surety Company.** BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $1,493,000. SURETY LICENSES c/: AZ, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, WI, WY. INCORPORATED IN: Nebraska.

**Universal Surety of America.** BUSINESS ADDRESS: P.O. Box 701279, Houston, TX 77270. UNDERWRITING LIMITATION b/: $388,000. SURETY LICENSES c/: AL, AR, CO, FL, KS, LA, MS, MO, OK, TN, TX. INCORPORATED IN: Texas.

**UNIVERSAL UNDERWRITERS INSURANCE COMPANY.** BUSINESS ADDRESS: 6363 College Blvd., Overland Park, KS 66211. UNDERWRITING LIMITATION b/: $36,982,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

See Footnotes at end of Circular.

**Utica Mutual Insurance Company.** BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503. UNDERWRITING LIMITATION b/: $9,236,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**Valley Forge Insurance Company.** BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $13,863,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**VAN TOL SURETY COMPANY, INCORPORATED.** BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. UNDERWRITING LIMITATION b/: $160,000. SURETY LICENSES c/: SD. INCORPORATED IN: South Dakota.

**Vigilant Insurance Company.** BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $23,787,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

**Washington International Insurance Company.** BUSINESS ADDRESS: 1930 Thoreau Drive, SUITE: 101, Schaumburg, IL 60173. UNDERWRITING LIMITATION b/: $809,000. SURETY LICENSES c/: AL, AZ, CA, CO, DC, FL, GA, ID, IL, IN, KY, LA, MD, MA, MI, MS, MO, NV, NM, NY, NC, ND, OH, OR, PA, SC, TN, TX, VA, WA. INCORPORATED IN: Arizona.

**West American Insurance Company.** BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $51,241,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: California.

**Westchester Fire Insurance Company.** BUSINESS ADDRESS: 211 Mt. Airy Road, Basking Ridge, NJ 07920. UNDERWRITING LIMITATION b/: $24,155,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes at end of Circular.

**Western Surety Company.** BUSINESS ADDRESS: P.O. Box 5077, Sioux Falls, SD 57117-5077. UNDERWRITING LIMITATION b/: $2,375,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

**Westfield Insurance Company.** BUSINESS ADDRESS: P.O. Box 5001, Westfield Ctr., OH 44251-5001. UNDERWRITING LIMITATION b/: $17,321,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**Westfield National Insurance Company.** BUSINESS ADDRESS: P.O. Box 5001, Westfield Ctr., OH 44251-5001. UNDERWRITING LIMITATION b/: $4,951,000. SURETY LICENSES c/: CA, IA, OH. INCORPORATED IN: Ohio.

**WINTERTHUR REINSURANCE CORPORATION OF AMERICA.** BUSINESS ADDRESS: Two World Financial Center, 225 Liberty Street, 42nd Floor, New York, NY 10281. UNDERWRITING LIMITATION b/: $17,821,000. SURETY LICENSES c/: AL, AZ, CA, DE, DC, IL, IN, IA, KY, MI, MN, MT, NE, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA, WV, WI. INCORPORATED IN: NEW YORK.

**ZENITH INSURANCE COMPANY.** BUSINESS ADDRESS: 21255 Califa Street, Woodland Hills, CA 91367. UNDERWRITING LIMITATION b/: $13,110,000. SURETY LICENSES c/: AZ, AR, CA, CO, HI, ID, NM, OR, TX, UT. INCORPORATED IN: CALIFORNIA.

See Footnotes at end of Circular.

**COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 [See Note (e)]**

**Belvedere America Reinsurance Company.** BUSINESS ADDRESS: 110 William Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $3,326,000.

**FOLKSAMERICA REINSURANCE COMPANY.** BUSINESS ADDRESS: 90 William Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $4,951,000.

**Frankona Reinsurance Company, U.S. Branch.** BUSINESS ADDRESS: P.O. Box 419069, Kansas City, MO 64141-6069. UNDERWRITING LIMITATION b/: $8,979,000.

**Generali - U.S. Branch.** BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. UNDERWRITING LIMITATION b/: $7,331,000.

**Munich Reinsurance Company, U.S. Branch.** BUSINESS ADDRESS: 560 Lexington Ave., New York, NY 10022. UNDERWRITING LIMITATION b/: $40,180,000.

**Swiss Reinsurance Company, U.S. Branch.** BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $42,693,000.

**Tokio Marine and Fire Insurance Company, Limited (The), U.S. Branch.** BUSINESS ADDRESS: 101 Park Avenue, New York, NY 10178. UNDERWRITING LIMITATION b/: $11,922,000.

**Zurich Insurance Company, U.S. Branch.** BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. UNDERWRITING LIMITATION b/: $50,455,000.

See Footnotes at end of Circular.

**FOOTNOTES**

1/ Alliance Assurance Company of America became domiciled in New York effective January 1, 1992. It formerly held a Treasury Certificate of Authority as an Acceptable Reinsuring Company under Treasury Department Circular 297, Section 223.3(b), as Alliance Assurance Company, Limited, U. S. Branch.

2/ American Bonding Company changed its State of Domicile from Nebraska to Arizona, effective November 8, 1991.

3/ Contractor's Bonding and Insurance Company is required by State law to conduct business in the State of California as CBIC Bonding and Insurance Company.

4/ Gramercy Insurance Company changed its State of Domicile from Texas to Delaware effective December 31, 1991.

5/ The London Assurance of America Inc. became domiciled in New York effective January 1, 1992. It formerly held a Treasury Certificate of Authority as an Acceptable Reinsuring Company under Treasury Department Circular 297, Section 223.3(b), as The London Assurance, U. S. Branch.

6/ The Sea Insurance Company of America became domiciled in New York effective January 1, 1992. It formerly held a Treasury Certificate of Authority as an Acceptable Reinsuring Company under Treasury Department Circular 297, Section 223.3(b), as The Sea Insurance Company, Limited, U. S. Branch.

7/ Sun Insurance Office of America Inc. became domiciled in New York effective January 1, 1992. It formerly held a Treasury Certificate of Authority as an Acceptable Reinsuring Company under Treasury Department Circular 297, Section 223.3(b), as Sun Insurance Office, Limited, U. S. Branch.

8/ U.S. Capital Insurance Company is required by State law to conduct business in the State of California as U.S. Capital Insurance Company DBA MultiPlus Insurance Co.

9/ United Capitol Insurance Company is an approved surplus lines carrier in all fifty states. Such approval may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the State. Questions related to this, may be directed to the appropriate State Insurance Department.

10/ Frontier Insurance Company is required by State law to conduct business in the States of Arkansas, Florida, Iowa, Nevada, North Dakota, Texas and Utah as Frontier Insurance Company DBA Frontier Insurance Company of New York.

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**NOTES**

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) The Underwriting Limitations published herein are on a per bond basis. Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a bond of this type as an Excess Risk. When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Federal reinsurance form to be filed with the bond or within 45 days thereafter. In protecting such excess risks, the underwriting limitation in force on the day in which the bond was provided will govern absolutely.

(c) A surety company must be licensed in the State or other area in which it provides a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. For updated license information, you may contact the company directly or the applicable State Insurance Department. For further assistance, contact the Surety Bond Branch.

(d) FEDERAL PROCESS AGENTS: Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the

absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(f) Some companies may be approved surplus lines carriers in various states. Such approval may indicate that the company is authorized to write surety in a particular state, even though the company is not licensed in the state. Questions related to this may be directed to the appropriate State Insurance Department.

[FR Doc. 92-15369 Filed 6-30-92; 8:45 am]
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Part III

# Department of the Interior

**Bureau of Indian Affairs**

**Indian Gaming; Notice**

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**Indian Gaming**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Tribal-State Compact.

**SUMMARY:** Pursuant to 25 U.S.C. 2710 of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the mediated Tribal-State Gaming Compact of 1992 between the Lac du Flambeau Band of Lake Superior Chippewa and the State of Wisconsin selected on January 30, 1992.

**DATES:** This action is effective July 1, 1992.

**ADDRESSES:** Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 C Street NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Ronal Eden, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–3463.

Dated: June 23, 1992.

**Ronal Eden,**

*Acting Assistant Secretary—Indian Affairs.*

[FR Doc. 92–15286 Filed 6–30–92; 8:45 am]

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Part IV

# Department of the Interior

## Bureau of Indian Affairs

## Indian Gaming; Notice

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**DEPARTMENT OF THE INTERIOR**

**Indian Gaming**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Tribal-State Compact.

**SUMMARY:** Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved a Tribal-State Gaming Compact entitled an Agreement between the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana concerning Video Keno, Poker and Bingo Games, Simulcast Racing and Other Class III Gaming executed on April 6, 1992.

**DATES:** July 1, 1992.

**ADDRESSES:** Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Ronal Eden, Bureau of Indian Affairs, Washington , DC 20240, (202) 208-3463.

Dated: June 24, 1992.

**Ronal Eden,**

*Acting Assistant Secretary—Indian Affairs.*

[FR Doc. 92-15356 Filed 6-30-92 8:45 am]

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July 1, 1992

Part V

# Department of Health and Human Services

## Health Care Financing Administration

**Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1992; Notice**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR PART 413**

**[BPD-757-NC]**

**RIN 0938-AF80**

## Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning On or After July 1, 1992

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice with comment period.

**SUMMARY:** This notice sets forth a revised schedule of limits on home health agency costs that may be paid under the Medicare program. This revised schedule of limits applies to cost reporting periods beginning on or after July 1, 1992. As required by section 4207(d)(3)(B) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), this revised schedule of limits incorporates a blended hospital wage index.

**DATES:** *Effective date:* The schedule of limits is effective for cost reporting periods beginning on or after July 1, 1992.

**COMMENT DATE:** Written comments will be considered if we receive them at the appropriate address, as provided below, and must be received by 5 p.m. on August 31, 1992.

**ADDRESSES:** Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attn: BPD-757-NC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept audio, visual, or facsimile (FAX) copies of comments. However, HCFA will take appropriate steps, where necessary, to afford individuals with handicaps an equal opportunity to comment.

In commenting, please refer to file code BPD-757-NC. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: 202-690-7890).

*Copies:* To order copies of the **Federal Register** containing this document, send your request to: Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250-7954.

Specify the date of the issue requested and enclose a check payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783-3238 or by faxing to (202) 275-0002. The cost for each copy (in paper or microfiche form) is $1.50. In addition, you may view and photocopy the **Federal Register** document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. Ask the order desk operator for the location of the Government Depository Library nearest to you.

**FOR FURTHER INFORMATION CONTACT:** Michael Bussacca, (410) 966-4602.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limits on allowable costs incurred by a provider of services that may be paid under the Medicare program, based on estimates of the costs necessary for the efficient delivery of needed health services. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. This statutory provision is implemented in the regulations at § 413.30. Additional provisions, specifically governing the limits applicable to home health agencies (HHAs), are contained at section 1861(v)(1)(L) of the Act. Under this authority, we have maintained limits on HHA per-visit costs since 1979.

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) was enacted. Section 4207(d)(1) of Public Law 101-508 amended section 1861(v)(1)(L)(iii) of the Act to require that in establishing the HHA schedule of limits we are to use the most current hospital wage index. However, to lessen the effect on individual HHAs that would be caused by changing from the 1982 hospital wage data to the 1988 hospital wage data, section 4207(d)(3)(A) of Public Law 101-508 specifies that for cost reporting periods beginning on or after July 1, 1991 and before June 30, 1992, the applicable wage index is to consist of a blend of indices based on hospital wages and wage-related costs from 1982 and 1988. Specifically, for cost reporting periods beginning on or after July 1, 1991 and before July 1, 1992, 67 percent of the wage index value is to be based on the 1982 hospital wage survey data now in use for HHAs and 33 percent is to be based on the 1988 hospital wage survey data. On December 9, 1991, we published a schedule of HHA cost limits in the **Federal Register** (56 FR 64256) that implemented the above provision.

Section 4207(d)(3)(B) of Public Law 101-508 sets forth the applicable wage index for cost reporting periods beginning on or after July 1, 1992 and before June 30, 1993. The provision states that, for that period, the blend is to be based on 33 percent of the 1982 hospital wage survey data and 67 percent of the 1988 hospital wage survey data. This notice with comment period implements this provision. For periods beginning on or after July 1, 1993, we will use the most recent hospital wage survey data in effect at the time.

Section 4207(d)(1) of Public Law 101-508 also revised section 1861(v)(1)(L)(iii) of the Act to specify that in applying the hospital wage index to HHAs, no adjustments are to be made to account for rural counties that have been deemed urban counties under section 1886(d)(8)(B) of the Act. In addition, no adjustments are to be made for any reclassifications resulting from decisions of the Medicare Geographic Classification Review Board under section 1886(d)(10) of the Act.

### II. Application of Cost Limits on a Budget-Neutral Basis

Section 4207(d)(2) of Public Law 101-508 requires that, in updating the wage index, aggregate payments to home health agencies would remain the same as they would have been if the wage index had not been updated. Therefore, overall payments to home health agencies are not affected by the changes in the wage index values.

In order to ensure budget neutrality, an adjustment must be made to the payments that would otherwise be made to home health agencies for the period beginning July 1, 1992. We determined that the wage index should be increased by a factor of 1.059 to keep payments at the level at which they would have been if the 1982 hospital wage index continued to be used to compute payment limits. This factor was derived by first computing the amount of program savings that would have

resulted from the cost limits effective July 1, 1992 if the 1982 hospital wage index were used. Then, program savings were computed using the blended wage index required by section 4207(d)(3)(B) of Public Law 101–508. The use of the blended wage index resulted in higher savings, and therefore, lower program payments. Increasing the blended wage index by 1.59 percent results in the same program savings as would have been realized had we used the 1982 hospital wage index to calculate the limits. (See the example for calculating the special labor adjustment for budget neutrality for the occupational therapy limit in section VII.A below).

## III. Use of Settled Cost Reports

The latest settled cost data available were used to develop these HHA cost limits. Previous HHA databases included data from both settled and as-submitted cost reports. The settled cost reports were settled based on either a desk review or a field audit after desk review. All cost reports that are submitted by providers are desk reviewed by the fiscal intermediary for accuracy and for consistency with Medicare rules. Based on this review, the intermediary may make adjustments to the cost data or other data on the as-submitted cost reports (for example, reducing the number of reported visits). In some cases, the desk-reviewed cost report is then settled by the intermediary and a Notice of Amount of Program Reimbursement (NPR) is sent to the provider. In other cases, the desk-reviewed cost report is subject to additional review, which may include a field audit by the intermediary, before settlement is completed and an NPR is issued.

Due to the length of time involved in receiving settled cost report data in HCFA for use in determining HHA cost limits, previous HHA cost limits were developed using a significant number of as-submitted cost reports. Consequently, the cost limits did not reflect adjustments that were made to the as-submitted cost reports during the settlement process, such as the elimination of nonallowable cost or non-covered visits. Thus, cost limits based on these data may have been higher than they would have been if we were to use data from settled cost reports only. On the other hand, basing cost limits on as-submitted cost reports enabled us to reflect events such as the recent nursing shortages that often cause rapid changes in health care costs trends.

We are only using settled cost report data in this notice because the current Contractor Performance Evaluation Program (CPEP) standards require Medicare fiscal intermediaries to settle the HHA cost reports sooner than was required under the former standards. Consequently, settled data are available much sooner than in previous cost years and, unlike the settled cost report data available in prior years, the settled cost report data used for this notice more accurately reflect current conditions in the health care industry. The use of the settled cost reports also allows us to eliminate misstated data including nonallowable costs and noncovered visits that inevitably resulted from using as-submitted cost reports.

## IV. Update of Limits

The methodology used to develop the schedule of limits set forth in this notice is the same as that used in setting the limits effective July 1, 1991, published in the **Federal Register** (56 FR 64256) on December 9, 1991. The cost limits have been updated to reflect the cost increases occurring between the cost reporting periods for the data contained in the data base and December 31, 1992, the midpoint of the first cost reporting period to which the limits apply.

### *A. Data Used*

To develop the schedule of limits effective July 1, 1991, we extracted actual cost per visit data from Medicare cost reports for periods ending on or after October 31, 1987 and before October 31, 1988. We then adjusted the data using the latest available market basket factors to reflect cost increases occurring between the cost reporting periods contained in our data base and December 31, 1991. In this notice, we have updated the limits by again using the data from cost reporting periods ending on or after October 31, 1987 and before October 1, 1988, as adjusted by the most recent market basket factors, to reflect cost increases occurring between the cost reporting periods contained in the data base and December 31, 1992, the midpoint of the first cost reporting period to which these July 1, 1992 limits apply.

Even though these are the most recent data available at this time, we recognize that the provisions of section 1891(a) of the Act, which require changes in home health aide training and certification effective July 1, 1989, will result in some HHAs incurring costs that will not be reflected in the cost limits. It is not possible for us to estimate the overall impact, if any, this provision will have on an HHA's total costs. However, this change will present a problem only if the HHA's costs exceed the cost limits as a result of these additional training requirements. Moreover, as we indicated in our June 30, 1989 notice concerning HHA cost limits (54 FR 27742), HHAs may present documentation justifying payment of additional amounts in excess of the cost limits.

In addition, we are aware that HHAs will be incurring additional costs due to the universal precaution requirements of the Occupational Safety and Health Administration (OSHA). OSHA published a final rule in the **Federal Register** on December 6, 1991 (54 FR 64004) that set forth a standard under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) to eliminate or minimize occupational exposure to bloodborne pathogens. The rule includes requirements relating to employee vaccinations against bloodborne diseases, staff training on universal precautions, and the use of protective equipment (gloves, aprons, masks, etc.). While the limits set forth in this notice use the most recent cost report data available, we recognize that the new OSHA standards, which are effective March 6, 1992, will result in some HHAs incurring costs that are not reflected in the cost limits. We understand that all states will have to be in compliance with these regulations. Based on a multi-sector survey conducted by OSHA, about 15 percent of all home health establishments were estimated to incur no cost, since employees were not exposed to blood or other potentially infectious materials.

Based upon our review of the OSHA regulation, OSHA data, and additional information obtained from the OSHA staff, we have determined that HHAs will incur average costs of $.14 per visit in meeting these requirements. Therefore, we are providing for an add-on to the HHA cost limits in the amount of $.14 per visit for those HHAs that incur costs associated with the additional requirements of the OSHA regulation. This add-on is necessary because the data base used to calculate the HHA cost limit does not reflect these costs.

If, as a result of the additional OSHA requirements, an HHA's costs still exceed the cost limit after the add-on, the HHA can apply for an exception to the cost limits under the exceptions process outlined in § 413.30. This situation could be recognized as an "extraordinary circumstance" as defined at § 413.30(f)(2). HCFA will grant an exception to the extent that the costs, in excess of the limit, are reasonable; actually incurred in the implementation of the additional requirements; separately identified by the HHA; and verified by the intermediary.

When HCFA updates the HHA cost limits in the future, using a later data base that includes the costs of complying with the OSHA standards, an add-on will no longer be needed because the updated limits would include these costs in the basic cost limit.

*B. Wage Index*

The wage index is used to adjust the labor-related portion of the limits and the administrative and general (A&G) add-on to reflect differing wage levels among areas. In setting this schedule of limits, we used a blend of the HCFA hospital wage indices that were developed based on 1982 and 1988 hospital salary data.

The methodology for developing these wage indices is described in the October 18, 1988 **Federal Register** (53 FR 40771). The 1982 wage index has been updated to include corrections submitted by hospitals and to reflect the new Metropolitan Statistical Area (MSA) created by the Office of Management and Budget, effective June 30, 1990. The new MSA is Yuma, Arizona. It was included in the December 9, 1991 schedule of limits.

We are continuing to incorporate exceptions to the MSA classification system for certain New England counties that were identified in the December 9, 1991 notice. These exceptions have been recognized in setting hospital cost limits for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218), and were authorized under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98-21). That section requires that any area that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for the purposes of the hospital prospective payment system. This provision is intended to ensure equitable treatment under the hospital prospective payment system. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective payment system:

- Litchfield County, CT in the Hartford-New Britain-Middleton-Bristol, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Manchester-Nashua, NH MSA.
- Newport County, RI in the Providence-Pawtucket-Woonsocket, RI MSA.

We are continuing to grant these urban exceptions for the purpose of applying the HCFA hospital wage index to the HHA cost limits. These exceptions result in the same New England County Metropolitan Area (NECMA) definitions for hospitals, SNFs, and HHAs. In New England, MSAs are defined on town boundaries rather than on county lines. NECMAs are defined on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. Under this notice, those four counties are urban under either definition, NECMA or MSA.

**V. Provisions of the HHA Schedule of Limits**

The schedule of limits set forth below was calculated using 112 percent of the mean cost of free-standing HHAs and is adjusted by the latest estimates in the market basket index.

The schedule of limits effective for cost reporting periods beginning on or after July 1, 1992 is based on the latest settled cost data available and provides for the following:

A. A classification system based on whether an HHA is located within an MSA, a New England County Metropolitan Area (NECMA) or a non-MSA area. (See Tables IIIa and IIIb in section IX, below, for the listing of MSAs/NECMAs and rural areas.)

B. The use of a single schedule of limits for hospital-based and free-standing agencies. This single limit is based on the cost experience of free-standing agencies. For each hospital-based discipline, we are providing for an add-on adjustment to the free-standing HHA limit (which is equal to 11.52 percent of the mean cost for the MSA hospital-based group and 12.09 percent for the non-MSA hospital-based group) to account for the higher administrative and general (A&G) costs resulting from Medicare cost allocation requirements. The labor-related portion of the add-on, adjusted by the appropriate wage index, plus the nonlabor portion, is added to each free-standing limit to determine the per discipline limits for hospital-based agencies. We are currently evaluating the utility of differential payments to home health agencies.

C. The use of the following market basket index was developed from the price of goods and services purchased by HHAs to account for the impact of changing wage and price levels on HHA costs. The limit values contained in this schedule reflect the latest available actual and projected rates of inflation in HHA expenses. The categories used were identified through an analysis of 1976 Medicare cost reports and other available home health industry surveys. The categories of expenses are weighted according to the estimated proportion of HHA costs attributable to each category. The categories used in the market basket contained in this schedule have not changed from those used for the July 1, 1991 schedule. However, the relative cost shares used change over time because of differences in the rate of increase in the various price variables. Categories with higher rates of price increases receive higher weights and categories with lower rates of price increases receive lower weights.

In developing the relative weights used in the market basket index contained in this schedule, we obtained historical and projected rates of increase in the resource prices for each category. The price variables source of the forecast for calendar years 1988 through 1994 are identified in the third column of the updated market basket included in this notice.

HOME HEALTH AGENCY INPUT PRICE INDEX: COST CATEGORIES, RELATIVE IMPORTANCE, FORECASTERS, AND PRICE VARIABLES USED

| Cost categories | Relative importance 1992 [1] | Price variables used [2] |
|---|---|---|
| Wages and Salaries | 66.8 | Average hourly earnings of nonsupervisory private hospital workers (SIC 806). Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Employment and Earnings (Monthly). |
| Employee benefits | 7.3 | Supplements to wages and salaries per worker in nonagriculture establishments. Source: For supplements to wages and salaries—U.S. Dept. of Commerce, Bureau of Economic Analysis, Survey of Current Business (monthly). For total employment—U.S. Department of Labor, Bureau of Labor Statistics, Monthly Labor Review |
| Transportation | 3.8 | Transportation component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review. |

HOME HEALTH AGENCY INPUT PRICE INDEX: COST CATEGORIES, RELATIVE IMPORTANCE, FORECASTERS, AND PRICE VARIABLES USED—Continued

| Cost categories | Relative importance 1992 [1] | Price variables used [2] |
|---|---|---|
| Office Costs | 2.5 | Services Component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review. |
| Medical Nursing | 2.4 | Medical equipment and supplies component of the supplies and rental Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review. |
| Rent | 1.1 | Residential rent component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor Statistics, Monthly Labor Review. |
| Nonrental Space | 1.0 | Composite Fuel and Utilities Index. Source: HHS-HCFA Community Hospital Price Index. |
| Miscellaneous | 5.8 | Consumer Price Index for all items, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review. |
| Contract Services | 5.6 | Weighted mean of price variables for the preceding eight items. |
| Total | 100.0 | |

[1] Relative cost weights were derived initially from special studies by HCFA using data primarily from 1976 HCFA Medicare costs reports and data from the Council of Home Health Agencies and Community Health Services. A Laspeyres price index was constructed using these 1976 weights and the price variables indicated in this table. The relative importance values have changes over time in accordance with price changes for each price variable. Cost categories with relatively higher price increases get higher relative importance values and vice versa.
[2] Forecast by DRI/McGraw Hill Health Care Costs, Fourth Quarter, 1991, 1750 K St. NW., Washington DC 20006.

D. An adjustment to the limits if the estimated market basket rate differs from the actual rate by more than ⅘ of one percentage point (higher or lower).

E. The use of a blended hospital wage index. The wage index is used to adjust the labor-related portion of the limits and the A&G add-on to reflect differing wage levels among the areas (MSA or NECMA and non-MSA) in which HHAs are located. The employee wage portion of the market basket index (68.8 percent) and the employee benefits portion (7.3 percent), plus a factor representing a proportionate share of contract services (5.6 percent), are used to determine the labor component (81.7 percent) of all HHA per visit costs used to set the limits.

F. Separate treatment of the labor-related and nonlabor components of per visit costs. The separate components of costs are calculated by obtaining actual HHA cost data for each agency for cost periods ending on or after October 31, 1987 and before October 1, 1988 and increasing those data by the actual and projected increases in the HHA market basket. We then separate each HHA's per visit costs into labor and nonlabor portions, and divide the labor portion by the wage index value for the agency's location to control for the effect of geographic variations in prevailing wage levels. Separate means are computed for the labor and nonlabor components of per visit costs. For each comparison group, the resulting amounts are shown in Table I of section VIII, below.

G. The application of a cost-of-living adjustment to the nonlabor portion of the limit for HHAs located in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.

H. Limits that are determined for the per visit cost of each type of home health service: skilled nursing care, physical therapy, speech pathology, occupation therapy, medical social services, and home health aide.

I. Application of the limits in the aggregate after the HHA's actual costs are adjusted. An HHA's actual costs are adjusted for individual items of cost that are found to be excessive under Medicare principles of provider payment and for costs that are not included in the limitation amount. The limits are applied in the aggregate to the costs remaining after these adjustments are made. Payment is limited to the lower of the actual costs or the cost limits.

## VI. Methodology for Determining Cost per Visit Limits

### A. Data

For this notice, the cost limit values were determined by extracting settled actual cost per visit data from Medicare cost reports for periods ending on or after October 31, 1987 and before October 1, 1988. We then adjusted the data using the latest available market basket factors to reflect cost increases occurring between the cost reporting periods contained in our data base and December 31, 1992, the midpoint of the first cost reporting period to which these limits apply. The following annual percentage increases were used to compute the per visit costs:

| Calendar year | Percent increase |
|---|---|
| 1987 | [1] 4.5 |
| 1988 | [1] 6.0 |
| 1989 | [1] 6.1 |
| 1990 | [1] 5.2 |
| 1991 | [2] 5.7 |
| 1992 | [2] 5.3 |
| 1993 | [2] 5.6 |
| 1994 | [2] 5.0 |

[1] Final rate of increase.
[2] Forecasted increases. The projected rate of increase in the market basket index will be adjusted to the actual inflation rate if the actual rate of increase differs from the estimated rate by more than ⅘ of one percentage point. We will notify the Medicare intermediaries of the actual rate of increase and advise them to adjust each HHA's cost limit.

### B. Standardization for Wage Levels

After adjustment by the market basket index, we divided each HHA's per visit-costs into labor and nonlabor portions. The labor portion of costs (81.7 percent) represents the 76.1 percent employee wage and benefit factor plus the 5.6 percent contract services factor from the market basket. We then divided the labor portion of per visit costs by the wage index (the blended wage index) applicable to the HHA's location to arrive at an adjusted labor cost.

### C. Adjustment for "Outliers"

We transformed all per visit cost data into their natural logarithms and grouped them by type of service and MSA, NECMA, or non-MSA location, in order to determine the mean cost and standard deviation for each group. We then eliminated all "outlier" costs, retaining only those per-visit costs within two standard deviations of the mean in each service.

### D. Basic Service Limit

A basic service limit equal to 112 percent of the mean labor and nonlabor portions of the per-visit costs of freestanding HHAs was calculated for each type of service. (See Table I in section VIII.)

### VII. Computing the Adjusted Limit

*A. Adjustment of Cost Limits by Wage Index*

To arrive at the adjusted limit, which is to be applied to each service furnished by an HHA, the HHA's intermediary first determines the adjusted labor-related component by multiplying the labor-related component of the limit by the appropriate wage index. (See example below and Tables IIIa and IIIb in section IX.) The sum of the nonlabor component plus the labor-related component is the adjusted limit applicable to an HHA.

Example—Calculation of Adjusted Occupational Therapy Limit for a Freestanding HHA in Dallas, TX:

| | | |
|---|---|---|
| Labor component (Table I) | | $71.70 |
| Wage index Value (Table III) | × | 0.9917 |
| Labor portion | | 71.10 |
| Special Labor Adjustment for Budget Neutrality | × | 1.059 |
| Adjusted Labor Portion | | 75.30 |
| Nonlabor component (Table I) | + | 16.56 |
| Adjusted occupational therapy limit | | 91.86 |

*B. Adjustment for Reporting Year*

If an HHA has a cost reporting period beginning on or after August 1, 1992, the adjusted per visit limit for each service is revised by a factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the limits become effective.

For example, if an HHA's cost reporting period begins January 1, 1993, as calculated in the example in section VII.A above, the labor-adjusted per visit limit for occupational therapy for this HHA's group is $91.86.

Computation of Revised Limit for Occupational Therapy

| | | |
|---|---|---|
| Adjusted per visit limit | | $91.86 |
| Adjustment factor from Table IV | × | 1.0283 |
| Revised per visit limit | | 94.46 |

In this example, the revised adjusted per visit limit for occupational therapy applicable to this HHA for the cost reporting period beginning January 1, 1993 is $94.46 per visit.

If an HHA uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from the fact that projections are computed to the midpoint of the cost reporting period. For cost reporting periods other than 12 months in duration, the calculation must be made for the midpoint of the specific cost reporting period. In such cases, the intermediary for the HHA must obtain this adjustment factor from HCFA.

*C. Adjustment for Hospital-Based Agencies*

If an HHA participates in the Medicare program as part of a hospital and is required to file Form HCFA–2552 (hospital cost report), and qualifies as hospital-based in accordance with the requirements specified in the schedule of limits published June 5, 1980 (45 FR 38014), the HHA is entitled to an adjustment of the per visit limit to account for higher A&G costs resulting from the Medicare cost allocation requirements. The intermediary will compute the adjusted cost limit as described in the example following Table II.

### VIII. Schedule of Limits

The schedule of limits set forth below applies to cost reporting periods beginning on or after July 1, 1992 and before July 1, 1993. The intermediaries will compute the adjusted limits using the wage index published in Tables IIIa and IIIb of section IX and will notify each HHA they service of its applicable limits.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Durable medical equipment, orthotics, prosthetics, and other medical supplies directly identifiable as services to an individual patient are excluded from the per visit costs and are paid without regard to this schedule of limits. (See Chapter IV of the Home Health Agency Manual (HCFA Pub. 11).)

The intermediary will determine the limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the HHA by the respective per visit cost limit. The sum of these amounts is compared to the HHA's total allowable cost.

Example: HHA X, a free-standing agency located in Richmond, VA, furnishes 5,000 covered skilled nursing visits, 2,000 covered physical therapy visits, and 4,000 covered home health aide visits to Medicare beneficiaries during its 12-month cost reporting period beginning on July 1, 1992.

The aggregate cost limit is determined as follows:

| Type of visit | Visits | Nonlabor portion | Adjusted labor portion | Adjusted limit [1] | Aggregate limit |
|---|---|---|---|---|---|
| Skilled nursing | 5,000 | $17.06 | $75.47 | $92.55 | $462,750 |
| Physical therapy | 2,000 | 16.42 | 72.54 | 88.96 | 177,920 |
| Home health aide | 4,000 | 9.23 | 40.58 | 49.81 | 199,240 |
| Total visits | 11,000 | | | | |
| Aggregate cost limit | | | | | 839,910 |

[1] Includes special labor adjustment for budget neutrality of 1.059 percent.

As noted above in section IV.A. of this preamble, in order to account for OSHA's new universal precaution requirements, we are providing for an additional adjustment to the aggregate cost limit of $.14 per visit for those HHAs that incur costs in complying with these requirements.

In the example above, this adjustment would be calculated as follows:

| | | |
|---|---|---|
| Visits | | 11,000 |
| OSHA Adjustment | × | $.14 |
| | | 1,540 |
| Cost Limit | | 839,910 |
| Adjusted Cost Limit | | 841,450 |

Before the limits are applied during settlement of the cost report, the HHA's actual costs are reduced by the amount of individual items of cost (for example, administrative compensation and contract services) that are found to be

excessive under the Medicare principles of provider payment. That is, the intermediary reviews the various reported costs, taking into account all the Medicare payment principles; for example, the cost guidelines for physical therapy under arrangements (see 42 CFR 413.106) and the limitation on costs that are substantially out of line with those of comparable home health agencies (see 42 CFR 413.9).

TABLE I.—PER VISIT LIMITS FOR HOME HEALTH AGENCIES

| Type of visit | Limit | Labor portion | Nonlabor portion [1] |
|---|---|---|---|
| MSA (NECMA) location: | | | |
| Skilled nursing care | $92.32 | $75.24 | $17.08 |
| Physical therapy | 88.74 | 72.32 | 16.42 |
| Speech pathology | 92.22 | 75.06 | 17.14 |
| Occupational therapy | 88.26 | 71.70 | 16.56 |
| Medical social services | 127.99 | 103.88 | 24.11 |
| Home health aide | 49.69 | 40.46 | 9.23 |
| Non-MSA location: | | | |
| Skilled nursing care | 104.11 | 87.52 | 16.59 |
| Physical therapy | 104.52 | 87.81 | 16.71 |
| Speech pathology | 112.04 | 94.16 | 17.88 |
| Occupational therapy | 112.42 | 94.45 | 17.97 |
| Medical social services | 170.42 | 143.17 | 27.25 |
| Home health aide | 52.41 | 44.09 | 8.32 |

[1] Nonlabor portion of limits for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands are increased by multiplying them by the following cost-of-living adjusment factors:

| Location | Adjustment factor |
|---|---|
| Alaska | 1.250 |
| Hawaii: | |
| Oahu | 1.225 |
| Kauai | 1.175 |
| Maui, Lanai, and Molokai | 1.200 |
| Hawaii (island) | 1.150 |
| Puerto Rico | 1.100 |
| Virgin Islands | 1.125 |

TABLE II.—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES

| Type of visit | A & G Add-on | Labor portion | Nonlabor |
|---|---|---|---|
| MSA (NECMA) location: | | | |
| Skilled nursing care | $12.76 | $10.34 | $2.42 |
| Physical therapy | 10.80 | 8.76 | 2.04 |
| Speech pathology | 11.35 | 9.19 | 2.16 |
| Occupational therapy | 10.85 | 8.79 | 2.09 |
| Medical social services | 17.49 | 14.07 | 3.42 |
| Home health aide | 6.49 | 5.25 | 1.24 |

TABLE II.—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES—Continued

| Type of visit | A & G Add-on | Labor portion | Nonlabor |
|---|---|---|---|
| Non-MSA location: | | | |
| Skilled nursing care | 14.33 | 12.04 | 2.29 |
| Physical therapy | 14.20 | 11.94 | 2.26 |
| Speech pathology | 13.75 | 11.56 | 2.19 |
| Occupational therapy | 13.56 | 11.38 | 2.18 |
| Medical social services | 20.83 | 17.55 | 3.28 |
| Home health aide | 6.83 | 5.74 | 1.09 |

*Example:*

A hospital-based agency in State College, PA, has a wage index value of 1.0197. It provides skilled nursing, physical therapy, and home health aide services. The published limits for that agency are:

| | Limit | | Add-On | |
|---|---|---|---|---|
| | Labor portion | Nonlabor portion | Labor portion | Nonlabor portion |
| Skilled nursing | $75.24 | $17.08 | $10.34 | $2.42 |
| Physical therapy | 72.32 | 16.42 | 8.76 | 2.04 |
| Home health aide | 40.46 | 9.23 | 5.25 | 1.24 |

Calculation of Hospital-Based Limit With Add-On:

| | SN | PT | HHA |
|---|---|---|---|
| Limit labor portion | $75.24 | $72.32 | $40.46 |
| Add-On labor portion | + 10.34 | +8.76 | + 5.25 |

| | SN | PT | HHA |
|---|---|---|---|
| Total labor portion | 85.58 | 81.06 | 45.71 |
| Wage index value | × 1.0197 | ×1.0197 | × 1.0197 |
| Labor portion | 87.27 | 82.66 | 46.61 |
| Special labor adjustment | × 1.059 | ×1.059 | × 1.059 |
| Adjusted labor | 92.42 | 87.56 | 49.36 |
| Limit nonlabor | 17.08 | 16.42 | 9.23 |
| Add-On nonlabor portion | + 2.42 | +2.04 | + 1.24 |
| Adjusted limits | 111.92 | 106.02 | 59.83 |

## IX. Wage Indexes

| | |
|---|---|
| Abilene TX | 0.9153 |
| Taylor, TX | |
| Aguadilla, PR | 0.4908 |
| Aguada, PR | |
| Aguadilla, PR | |
| Isabella, PR | |
| Moca, PR | |
| Akron, OH | 1.0029 |
| Portage, OH | |
| Summit, OH | |
| Albany, GA | 0.8099 |
| Dougherty, GA | |
| Lee, GA | |
| Albany-Schenectady-Troy, NY | 0.9037 |
| Albany, NY | |
| Greene, NY | |
| Montgomery, NY | |
| Rensselaer, NY | |
| Saratoga, NY | |
| Schenectady, NY | |
| Albuquerque, NM | 1.0448 |
| Bernalillo, NM | |
| Alexandria, LA | 0.8578 |
| Rapides, LA | |
| Allentown-Bethlehem, PA-NJ | 1.0258 |
| Warren, NJ | |
| Carbon, PA | |
| Lehigh, PA | |
| Northampton, PA | |
| Altoona, PA | 0.9767 |
| Blair, PA | |
| Amarillo, TX | 0.9030 |
| Potter, TX | |
| Randall, TX | |
| Anaheim-Santa Ana, CA | 1.2281 |
| Orange, CA | |
| Anchorage, AK | 1.4742 |
| Anchorage, AK | |
| Anderson, IN | 0.9589 |
| Madison, IN | |
| Anderson, SC | 0.7633 |
| Anderson, SC | |
| Ann Arbor, MI | 1.1798 |
| Washtenaw, MI | |
| Anniston, AL | 0.8132 |
| Calhoun, AL | |
| Appleton-Oshkosh-Neenah, WI | 0.9880 |
| Calumet, WI | |
| Outagamie, WI | |
| Winnebago, WI | |
| Arecibo, PR | 0.4685 |
| Arecibo, PR | |
| Camuy, PR | |
| Hatillo, PR | |
| Quebradillas, PR | |
| Asheville, NC | 0.8779 |
| Buncombe, NC | |
| Athens, GA | 0.8204 |
| Clarke, GA | |
| Jackson, GA | |
| Madison, GA | |
| Oconee, GA | |
| Atlanta, GA | 0.9624 |
| Barrow, GA | |
| Butts, GA | |
| Cherokee, GA | |
| Clayton, GA | |
| Cobb, GA | |
| Coweta, GA | |
| De Kalb, GA | |
| Douglas, GA | |
| Fayette, GA | |
| Forsyth, GA | |
| Fulton, GA | |
| Gwinnett, GA | |
| Henry, GA | |
| Newton, GA | |
| Paulding, GA | |
| Rockdale, GA | |
| Spalding, GA | |
| Walton, GA | |
| Atlantic City, NJ | 1.0533 |
| Atlantic, NJ | |
| Cape May, NJ | |
| Augusta, GA-SC | 0.9473 |
| Columbia, GA | |
| McDuffie, GA | |
| Richmond, GA | |
| Aiken, SC | |
| Aurora-Elgin, IL | 1.0120 |
| Kane, IL | |
| Kendall, IL | |
| Austin, TX | 1.0131 |
| Hays, TX | |
| Travis, TX | |
| Williamson, TX | |
| Bakersfield, CA | 1.1272 |
| Kern, CA | |
| Baltimore, MD | 1.0493 |
| Anne Arundel, MD | |
| Baltimore, MD | |
| Baltimore City, MD | |
| Carroll, MD | |
| Harford, MD | |
| Howard, MD | |
| Queen Annes, MD | |
| Bangor, ME | 0.9143 |
| Penobscot, ME | |
| Baton Rouge, LA | 0.9340 |
| Ascension, LA | |
| East Baton Rouge, LA | |
| Livingston, LA | |
| West Baton Rouge, LA | |
| Battle Creek, MI | 0.9749 |
| Calhoun, MI | |
| Beaumont-Port Arthur, TX | 0.9769 |
| Hardin, TX | |
| Jefferson, TX | |
| Orange, TX | |
| Beaver County, PA | 1.0422 |
| Beaver, PA | |
| Bellingham, WA | 1.0829 |
| Whatcom, WA | |
| Benton Harbor, MI | 0.8402 |
| Berrien, MI | |
| Bergen-Passaic, NJ | 1.0453 |
| Bergen, NJ | |
| Passaic, NJ | |
| Billings, MT | 0.9631 |
| Yellowstone, MT | |
| Biloxi-Gulfport, MS | 0.8209 |
| Hancock, MS | |
| Harrison, MS | |
| Binghamton, NY | 0.9365 |
| Broome, NY | |
| Tioga, NY | |
| Birmingham, AL | 0.9070 |
| Blount, AL | |
| Jefferson, AL | |
| Saint Clair, AL | |
| Shelby, AL | |
| Walker, AL | |
| Bismarck, ND | 0.8194 |
| Burleigh, ND | |
| Morton, ND | |
| Bloomington, IN | 0.9064 |
| Monroe, IN | |
| Bloomington-Normal, IL | 0.9059 |
| McLean, IL | |
| Boise City, ID | 1.0066 |
| Ada, ID | |
| Boston-Lawrence-Salem-Lowell-Brockton, MA | 1.1733 |
| Essex, MA | |
| Middlesex, MA | |
| Norfolk, MA | |
| Plymouth, MA | |
| Suffolk, MA | |
| Boulder-Longmont, CO | 1.0547 |
| Boulder, CO | |
| Bradenton, FL | 0.9246 |
| Manatee, FL | |
| Brazoria, TX | 0.9044 |
| Brazoria, TX | |
| Bremerton, WA | 0.9634 |
| Kitsap, WA | |
| Bridgeport-Stamford-Norwalk-Danbury | 1.1977 |
| Fairfield, CT | |
| Brownsville-Harlingen, TX | 0.8732 |
| Cameron, TX | |
| Bryan-College Station, TX | 0.9521 |
| Brazos, TX | |
| Buffalo, NY | 0.9506 |
| Erie, NY | |
| Burlington, NC | 0.7971 |
| Alamance, NC | |
| Burlington, VT | 0.9621 |
| Chittenden, VT | |
| Grand Isle, VT | |
| Caguas, PR | 0.5082 |
| Caguas, PR | |
| Gurabo, PR | |
| San Lorenz, PR | |
| Aguas Buenas, PR | |
| Cayey, PR | |
| Cidra, PR | |
| Canton, OH | 0.9239 |
| Carroll, OH | |
| Stark, OH | |
| Casper, WY | 0.9620 |
| Natrona, WY | |
| Cedar Rapids, IA | 0.9335 |
| Linn, IA | |
| Champaign-Urbana-Rantoul, IL | 0.9157 |
| Champaign, IL | |
| Charleston, SC | 0.8530 |
| Berkeley, SC | |
| Charleston, SC | |
| Dorchester, SC | |
| Charleston, WV | 0.9961 |
| Kanawha, WV | |
| Putnam, WV | |
| Charlotte-Gastonia-Rock Hill, NC-SC | 0.9327 |
| Cabarrus, NC | |
| Gaston, NC | |
| Lincoln, NC | |
| Mecklenburg, NC | |
| Rowan, NC | |
| Union, NC | |

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|---|---|
| York, SC | |
| Charlottesville, VA | 0.9531 |
| Albemarle, VA | |
| Charlottesville City, VA | |
| Fluvanna, VA | |
| Greene, VA | |
| Chattanooga, TN-GA | 0.9484 |
| Catoosa, GA | |
| Dade, GA | |
| Walker, GA | |
| Hamilton, TN | |
| Marion, TN | |
| Sequatchie, TN | |
| Cheyenne, WY | 0.8511 |
| Laramie, WY | |
| Chicago, IL | 1.1135 |
| Cook, IL | |
| Du Page, IL | |
| McHenry, IL | |
| Chico, CA | 1.1482 |
| Butte, CA | |
| Cincinnati, OH-KY-IN | 1.0237 |
| Dearborn, IN | |
| Boone, KY | |
| Campbell, KY | |
| Kenton, KY | |
| Clermont, OH | |
| Hamilton, OH | |
| Warren, OH | |
| Clarksville-Hopkinsville, TN-KY | 0.7612 |
| Christian, KY | |
| Montgomery, TN | |
| Cleveland, OH | 1.1020 |
| Cuyahoga, OH | |
| Geauga, OH | |
| Lake, OH | |
| Medina, OH | |
| Colorado Springs, CO | 1.0030 |
| El Paso, CO | |
| Columbia, MO | 1.0017 |
| Boone, MO | |
| Columbia, SC | 0.9021 |
| Lexington, SC | |
| Richland, SC | |
| Columbus, GA-AL | 0.7636 |
| Russell, AL | |
| Chattahoochee, GA | |
| Muscogee, GA | |
| Columbus, OH | 0.9583 |
| Delaware, OH | |
| Fairfield, OH | |
| Franklin, OH | |
| Licking, OH | |
| Madison, OH | |
| Pickaway, OH | |
| Union, OH | |
| Corpus Christi, TX | 0.9034 |
| Nueces, TX | |
| San Patricio, TX | |
| Cumberland, MD-WV | 0.8462 |
| Allegany, MD | |
| Mineral, WV | |
| Dallas, TX | 0.9917 |
| Collin, TX | |
| Dallas, TX | |
| Denton, TX | |
| Ellis, TX | |
| Kaufman, TX | |
| Rockwall, TX | |
| Danville, VA | 0.7704 |
| Danville City, VA | |
| Pittsylvania, VA | |
| Davenport-Rock Island-Moline, IA-IL | 0.9205 |
| Scott, IA | |
| Henry, IL | |
| Rock Island, IL | |
| Dayton-Springfield, OH | 1.0095 |
| Clark, OH | |
| Greene, OH | |
| Miami, OH | |
| Montgomery, OH | |
| Daytona Beach, FL | 0.9014 |
| Volusia, FL | |
| Decatur, AL | 0.7550 |
| Lawrence, AL | |
| Morgan, AL | |
| Decatur, IL | 0.8726 |
| Macon, IL | |
| Denver, CO | 1.1466 |
| Adams, CO | |
| Arapahoe, CO | |
| Denver, CO | |
| Douglas, CO | |
| Jefferson, CO | |
| Des Moines, IA | 0.9538 |
| Dallas, IA | |
| Polk, IA | |
| Warren, IA | |
| Detroit, MI | 1.1131 |
| Lapeer, MI | |
| Livingston, MI | |
| Macomb, MI | |
| Monroe, MI | |
| Oakland, MI | |
| Saint Clair, MI | |
| Wayne, MI | |
| Dothan, AL | 0.7860 |
| Dale, AL | |
| Houston, AL | |
| Dubuque, IA | 0.9118 |
| Dubuque, IA | |
| Duluth, MN-WI | 0.9661 |
| St. Louis, MN | |
| Douglas, WI | |
| Eau Claire, WI | 0.8823 |
| Chippewa, WI | |
| Eau Claire, WI | |
| El Paso, TX | 0.8960 |
| El Paso, TX | |
| Elkhart-Goshen, IN | 0.9186 |
| Elkhart, IN | |
| Elmira, NY | 0.9126 |
| Chemung, NY | |
| Enid, OK | 0.9155 |
| Garfield, OK | |
| Erie, PA | 0.9440 |
| Erie, PA | |
| Eugene-Springfield, OR | 1.0503 |
| Lane, OR | |
| Evansville, IN-KY | 0.9595 |
| Posey, IN | |
| Vanderburgh, IN | |
| Warrick, IN | |
| Henderson, KY | |
| Fargo-Moorhead, ND-MN | 1.0025 |
| Clay, MN | |
| Cass, ND | |
| Fayetteville, NC | 0.8312 |
| Cumberland, NC | |
| Fayetteville-Springdale, AR | 0.6024 |
| Washington, AR | |
| Flint, MI | 1.1737 |
| Genesee, MI | |
| Florence, AL | 0.7754 |
| Colbert, AL | |
| Lauderdale, AL | |
| Florence, SC | 0.8186 |
| Florence, SC | |
| Fort Collins-Loveland, CO | 1.0447 |
| Larimor, CO | |
| Ft. Lauderdale-Hollywood-Pompano Beach, FL | 1.0660 |
| Broward, FL | |
| Fort Myers-Cape Coral, FL | 0.9716 |
| Lee, FL | |
| Fort Pierce, FL | 1.0772 |
| Martin, FL | |
| St. Lucie, FL | |
| Fort Smith, AR-OK | 0.8374 |
| Crawford, AR | |
| Sebastian, AR | |
| Sequoyah, OK | |
| Fort Walton Beach, FL | 0.8666 |
| Okaloosa, FL | |
| Fort Wayne, IN | 0.9129 |
| Allen, IN | |
| De Kalb, IN | |
| Whitley, IN | |
| Fort Worth-Arlington, TX | 0.9803 |
| Johnson, TX | |
| Parker, TX | |
| Tarrant, TX | |
| Fresno, CA | 1.0995 |
| Fresno, CA | |
| Gadsden, AL | 0.8396 |
| Etowah, AL | |
| Gainesville, FL | 0.9085 |
| Alachua, FL | |
| Bradford, FL | |
| Galveston-Texas City, TX | 1.0007 |
| Galveston, TX | |
| Gary-Hammond, IN | 1.0234 |
| Lake, IN | |
| Porter, IN | |
| Glens Falls, NY | 0.9362 |
| Warren, NY | |
| Washington, NY | |
| Grand Forks, ND | 0.9681 |
| Grand Forks, ND | |
| Grand Rapids, MI | 1.0149 |
| Kent, MI | |
| Ottawa, MI | |
| Great Falls, MT | 1.0241 |
| Cascade, MT | |
| Greeley, CO | 0.9832 |
| Weld, CO | |
| Green Bay, WI | 0.9538 |
| Brown, WI | |
| Greensboro-Winston-Salem-High Point, NC | 0.9245 |
| Davidson, NC | |
| Davie, NC | |
| Forsyth, NC | |
| Guilford, NC | |
| Randolph, NC | |
| Stokes, NC | |
| Yadkin, NC | |
| Greenville-Spartanburg, SC | 0.8984 |
| Greenville, SC | |
| Pickens, SC | |
| Spartanburg, SC | |
| Hagerstown, MD | 0.8306 |
| Washington, MD | |
| Hamilton-Middletown, OH | 0.9567 |
| Butler, OH | |
| Harrisburg-Lebanon-Carlisle, PA | 0.9908 |
| Cumberland, PA | |
| Dauphin, PA | |
| Lebanon, PA | |
| Perry, PA | |
| Hartford-Middletown-New Britain-Bristol, CT | 1.1772 |
| Hartford, CT | |
| Middlesex, CT | |
| Tolland, CT | |
| Litchfield, CT | |
| Hickory, NC | 0.8627 |
| Alexander, NC | |
| Burke, NC | |
| Catawba, NC | |
| Honolulu, HI | 1.1735 |
| Honolulu, HI | |
| Houma-Thibodaux, LA | 0.7666 |
| Lafourche, LA | |
| Terrebonne, LA | |
| Houston, TX | 1.0090 |
| Fort Bend, TX | |
| Harris, TX | |
| Liberty, TX | |
| Montgomery, TX | |

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|---|---|
| Waller, TX | |
| Huntington-Ashland, WV-KY-OH | 0.9467 |
| Boyd, KY | |
| Carter, KY | |
| Greenup, KY | |
| Lawrence, OH | |
| Cabell, WV | |
| Wayne, WV | |
| Huntsville, AL | 0.8782 |
| Madison, AL | |
| Indianapolis, IN | 0.9937 |
| Boone, IN | |
| Hamilton, IN | |
| Hancock, IN | |
| Hendricks, IN | |
| Johnson, IN | |
| Marion, IN | |
| Morgan, IN | |
| Shelby, IN | |
| Iowa City, IA | 1.0719 |
| Johnson, IA | |
| Jackson, MI | 0.9850 |
| Jackson, MI | |
| Jackson, MS | 0.8278 |
| Hinds, MS | |
| Madison, MS | |
| Rankin, MS | |
| Jackson, TN | 0.7917 |
| Madison, TN | |
| Jacksonville, FL | 0.9200 |
| Clay, FL | |
| Duval, FL | |
| Nassau, FL | |
| St. Johns, FL | |
| Jacksonville, NC | 0.7429 |
| Onslow, NC | |
| Jamestown-Dunkirk, NY | 0.8001 |
| Chautauqua, NY | |
| Janesville-Beloit, WI | 0.8789 |
| Rock, WI | |
| Jersey City, NJ | 1.0727 |
| Hudson, NJ | |
| Johnson City-Kingsport-Bristol, TN-VA | 0.8656 |
| Carter, TN | |
| Hawkins, TN | |
| Sullivan, TN | |
| Unicoi, TN | |
| Washington, TN | |
| Bristol City, VA | |
| Scott, VA | |
| Washington, VA | |
| Johnstown, PA | 0.9226 |
| Cambria, PA | |
| Somerset, PA | |
| Joliet, IL | 1.0610 |
| Grundy, IL | |
| Will, IL | |
| Joplin, MO | 0.8326 |
| Jasper, MO | |
| Newton, MO | |
| Kalamazoo, MI | 1.1927 |
| Kalamazoo, MI | |
| Kankakee, IL | 0.8834 |
| Kankakee, IL | |
| Kansas City, KS-MO | 0.9951 |
| Johnson, KS | |
| Leavenworth, KS | |
| Miami, KS | |
| Wyandotte, KS | |
| Cass, MO | |
| Clay, MO | |
| Jackson, MO | |
| Lafayette, MO | |
| Platte, MO | |
| Ray, MO | |
| Kenosha, WI | 0.9534 |
| Kenosha, WI | |
| Killeen-Temple, TX | 1.0486 |
| Bell, TX | |
| Coryell, TX | |
| Knoxville, TN | 0.8799 |
| Anderson, TN | |
| Blount, TN | |
| Grainger, TN | |
| Jefferson, TN | |
| Knox, TN | |
| Sevier, TN | |
| Union, TN | |
| Kokomo, IN | 0.9586 |
| Howard, IN | |
| Tipton, IN | |
| LaCrosse, WI | 0.9365 |
| LaCrosse, WI | |
| Lafayette, LA | 0.8861 |
| Lafayette, LA | |
| St. Martin, LA | |
| Lafayette, IN | 0.8681 |
| Tippecanoe, IN | |
| Lake Charles, LA | 0.8933 |
| Calcasieu, LA | |
| Lake County, IL | 1.0548 |
| Lake, IL | |
| Lakeland-Winter Haven, FL | 0.8402 |
| Polk, FL | |
| Lancaster, PA | 0.9643 |
| Lancaster, PA | |
| Lansing-East Lansing, MI | 1.0411 |
| Clinton, MI | |
| Eaton, MI | |
| Ingham, MI | |
| Laredo, TX | 0.7577 |
| Webb, TX | |
| Las Cruces, NM | 0.8200 |
| Dona Ana, NM | |
| Las Vegas, NV | 1.0645 |
| Clark, NV | |
| Lawrence, KS | 0.9357 |
| Douglas, KS | |
| Lawton, OK | 0.8754 |
| Comanche, OK | |
| Lewiston-Auburn, ME | 0.9185 |
| Androscoggin, ME | |
| Lexington-Fayette, KY | 0.8927 |
| Bourbon, KY | |
| Clark, KY | |
| Fayette, KY | |
| Jessamine, KY | |
| Scott, KY | |
| Woodford, KY | |
| Lima, OH | 0.8662 |
| Allen, OH | |
| Auglaize, OH | |
| Lincoln, NE | 0.9213 |
| Lancaster, NE | |
| Little Rock-North Little Rock, AR | 0.9330 |
| Faulkner, AR | |
| Lonoke, AR | |
| Pulaski, AR | |
| Saline, AR | |
| Longview-Marshall, TX | 0.8603 |
| Gregg, TX | |
| Harrison, TX | |
| Lorain-Elyria, OH | 0.9099 |
| Lorain, OH | |
| Los Angeles-Long Beach, CA | 1.2674 |
| Los Angeles, CA | |
| Louisville, KY-IN | 0.9427 |
| Clark, IN | |
| Floyd, IN | |
| Harrison, IN | |
| Bullitt, KY | |
| Jefferson, KY | |
| Oldham, KY | |
| Shelby, KY | |
| Lubbock, TX | 0.9241 |
| Lubbock, TX | |
| Lynchburg, VA | 0.8772 |
| Amherst, VA | |
| Campbell, VA | |
| Lynchburg City, VA | |
| Macon-Warner Robins, GA | 0.8983 |
| Bibb, GA | |
| Huston, GA | |
| Jones, GA | |
| Peach, GA | |
| Madison, WI | 1.0514 |
| Dane, WI | |
| Manchester-Nashua, NH | 1.0039 |
| Hillsborough, NH | |
| Merrimack, NH | |
| Mansfield, OH | 0.8906 |
| Richland, OH | |
| Mayaguez, PR | 0.5095 |
| Anasco, PR | |
| Cabo Rojo, PR | |
| Hormigueros, PR | |
| Mayaguez, PR | |
| San German, PR | |
| McAllen-Edinburg-Mission, TX | 0.7850 |
| Hidalgo, TX | |
| Medford, OR | 1.0155 |
| Jackson, OR | |
| Melbourne-Titusville, FL | 0.9265 |
| Brevard, FL | |
| Memphis, TN-AR-MS | 0.9543 |
| Crittenden, AR | |
| De Soto, MS | |
| Shelby, TN | |
| Tipton, TN | |
| Merced, CA | 1.0925 |
| Merced, CA | |
| Miami-Hialeah, FL | 1.0366 |
| Dade, FL | |
| Middlesex-Somerset-Hunterdon, NJ | 1.0390 |
| Hunterdon, NJ | |
| Middlesex, NJ | |
| Somerset, NJ | |
| Midland, TX | 1.0592 |
| Midland, TX | |
| Milwaukee, WI | 1.0289 |
| Milwaukee, WI | |
| Ozaukee, WI | |
| Washington, WI | |
| Waukesha, WI | |
| Minneapolis-St Paul, MN-WI | 1.1143 |
| Anoka, MN | |
| Carver, MN | |
| Chisago, MN | |
| Dakota, MN | |
| Hennepin, MN | |
| Isanti, MN | |
| Ramsey, MN | |
| Scott, MN | |
| Washington, MN | |
| Wright, MN | |
| St. Croix, WI | |
| Mobile, AL | 0.8527 |
| Baldwin, AL | |
| Mobile, AL | |
| Modesto, CA | 1.1759 |
| Stanislaus, CA | |
| Monmouth-Ocean, NJ | 0.9914 |
| Monmouth, NJ | |
| Ocean, NJ | |
| Monroe, LA | 0.8362 |
| Ouachita, LA | |
| Montgomery, AL | 0.8122 |
| Autauga, AL | |
| Elmore, AL | |
| Montgomery, AL | |
| Muncie, IN | 0.8738 |
| Delaware, IN | |
| Muskegon, MI | 0.9688 |
| Muskegon, MI | |
| Naples, FL | 1.0371 |
| Collier, FL | |
| Nashville, TN | 0.9409 |
| Cheatham, TN | |
| Davidson, TN | |

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| Dickson, TN | |
| Robertson, TN | |
| Rutherford, TN | |
| Sumner, TN | |
| Williamson, TN | |
| Wilson, TN | |
| Nassau-Suffolk, NY | 1.3014 |
| Nassau, NY | |
| Suffolk, NY | |
| New Bedford-Fall River-Attleboro, MA | 0.9939 |
| Bristol, MA | |
| New Haven-Waterbury-Meriden, CT | 1.1829 |
| New Haven, CT | |
| New London, London-Norwich | 1.1422 |
| New London, CT | |
| New Orleans, LA | 0.9054 |
| Jefferson, LA | |
| Orleans, LA | |
| St. Bernard, LA | |
| St. Charles, LA | |
| St. John The Baptist, LA | |
| St. Tammany, LA | |
| New York, NY | 1.3601 |
| Bronx, NY | |
| Kings, NY | |
| New York City, NY | |
| Putnam, NY | |
| Queens, NY | |
| Richmond, NY | |
| Rockland, NY | |
| Westchester, NY | |
| Newark, NJ | 1.1296 |
| Essex, NJ | |
| Morris, NJ | |
| Sussex, NJ | |
| Union, NJ | |
| Niagara Falls, NY | 0.8580 |
| Niagara, NY | |
| Norfolk-Virginia Beach-Newport News, VA | 0.8913 |
| Chesapeake City, VA | |
| Gloucester, VA | |
| Hampton City, VA | |
| James City Co., VA | |
| Newport News City, VA | |
| Norfolk City, VA | |
| Poquoson, VA | |
| Portsmouth City, VA | |
| Suffolk City, VA | |
| Virginia Beach City, VA | |
| Williamsburg City, VA | |
| York, VA | |
| Oakland, CA | 1.4494 |
| Alameda, CA | |
| Contra Costa, CA | |
| Ocala, FL | 0.8660 |
| Marion, FL | |
| Odessa, TX | 1.0424 |
| Ector, TX | |
| Oklahoma City, OK | 0.9745 |
| Canadian, OK | |
| Cleveland, OK | |
| Logan, OK | |
| McClain, OK | |
| Oklahoma, OK | |
| Pottawatomie, OK | |
| Olympia, WA | 1.0937 |
| Thurston, WA | |
| Omaha, NE-IA | 0.9501 |
| Pottawattamie, IA | |
| Douglas, NE | |
| Sarpy, NE | |
| Washington, NE | |
| Orange, County, NY | 0.9540 |
| Orange, NY | |
| Orlando, FL | 0.9815 |
| Orange, FL | |
| Osceola, FL | |
| Seminole, FL | |
| Owensboro, KY | 0.8162 |
| Daviess, KY | |
| Oxnard-Ventura, CA | 1.2497 |
| Ventura, CA | |
| Panama City, FL | 0.8545 |
| Bay, FL | |
| Parkersburg-Marietta, WV-OH | 0.8738 |
| Washington, OH | |
| Wood, WV | |
| Pascagoula, MS | 0.9068 |
| Jackson, MS | |
| Pensacola, FL | 0.8668 |
| Escambia, FL | |
| Santa Rosa, FL | |
| Peoria, IL | 0.9339 |
| Peoria, IL | |
| Tazewell, IL | |
| Woodford, IL | |
| Philadelphia, PA-NJ | 1.1236 |
| Burlington, NJ | |
| Camden, NJ | |
| Gloucester, NJ | |
| Bucks, PA | |
| Chester, PA | |
| Delaware, PA | |
| Montgomery, PA | |
| Philadelphia, PA | |
| Phoenix, AZ | 1.0559 |
| Maricopa, AZ | |
| Pine Bluff, AR | 0.7922 |
| Jefferson, AR | |
| Pittsburgh, PA | 1.0428 |
| Allegheny, PA | |
| Fayette, PA | |
| Washington, PA | |
| Westmoreland, PA | |
| Pittsfield, MA | 1.0610 |
| Berkshire, MA | |
| Ponce, PR | 0.5382 |
| Juana Diaz, PR | |
| Ponce, PR | |
| Portland, ME | 0.9493 |
| Cumberland, ME | |
| Sagadahoc, ME | |
| York, ME | |
| Portland, OR | 1.1747 |
| Clackamas, OR | |
| Multnomah, OR | |
| Washington, OR | |
| Yamhill, OR | |
| Portsmouth-Dover-Rochester, NH | 0.9650 |
| Rockingham, NH | |
| Strafford, NH | |
| Poughkeepsie, NY | 1.0321 |
| Dutchess, NY | |
| Providence-Pawtucket-Woonsocket, RI | 1.0585 |
| Bristol, RI | |
| Kent, RI | |
| Newport, RI | |
| Providence, RI | |
| Washington, RI | |
| Provo-Orem, UT | 1.0112 |
| Utah, UT | |
| Pueblo, CO | 0.9557 |
| Pueblo, CO | |
| Racine, WI | 0.9239 |
| Racine, WI | |
| Raleigh-Durham, NC | 0.9556 |
| Durham, NC | |
| Franklin, NC | |
| Orange, NC | |
| Wake, NC | |
| Rapid City, SD | 0.8613 |
| Pennington, SD | |
| Reading, PA | 0.9297 |
| Berks, PA | |
| Redding, CA | 1.1171 |
| Shasta, CA | |
| Reno, NV | 1.1698 |
| Washoe, NV | |
| Richland-Kennewick, WA | 0.9692 |
| Benton, WA | |
| Franklin, WA | |
| Richmond-Petersburg, VA | 0.9472 |
| Charles City, VA | |
| Chesterfield, VA | |
| Colonial Heights City, VA | |
| Dinwiddie, VA | |
| Goochland, VA | |
| Hanover, VA | |
| Henrico, VA | |
| Hopewell City, VA | |
| New Kent, VA | |
| Petersburg City, VA | |
| Powhatan, VA | |
| Prince George, VA | |
| Richmond City, VA | |
| Riverside-San Bernardino, CA | 1.1619 |
| Riverside, CA | |
| San Bernardino, CA | |
| Roanoke, VA | 0.8527 |
| Botetourt, VA | |
| Roanoke, VA | |
| Roanoke City, VA | |
| Salem City, VA | |
| Rochester, MN | 1.0767 |
| Olmsted, MN | |
| Rochester, NY | 0.9868 |
| Livingston, NY | |
| Monroe, NY | |
| Ontario, NY | |
| Orleans, NY | |
| Wayne, NY | |
| Rockford, IL | 0.8979 |
| Boone, IL | |
| Winnebago, IL | |
| Sacramento, CA | 1.2485 |
| Eldorado, CA | |
| Placer, CA | |
| Sacramento, CA | |
| Yolo, CA | |
| Saginaw-Bay City-Midland, MI | 1.0664 |
| Bay, MI | |
| Midland, MI | |
| Saginaw, MI | |
| St. Cloud, MN | 0.9625 |
| Benton, MN | |
| Sherburne, MN | |
| Stearns, MN | |
| St. Joseph, MO | 0.9444 |
| Buchanan, MO | |
| St. Louis, MO-IL | 0.9674 |
| Clinton, IL | |
| Jersey, IL | |
| Madison, IL | |
| Monroe, IL | |
| St. Clair, IL | |
| Franklin, MO | |
| Jefferson, MO | |
| St. Charles, MO | |
| St. Louis, MO | |
| St. Louis City, MO | |
| Sullivan City, MO | |
| Salem, OR | 1.0627 |
| Marion, OR | |
| Polk, OR | |
| Salinas-Seaside-Monterey, CA | 1.2892 |
| Monterey, CA | |
| Salt Lake City-Ogden, UT | 1.0079 |
| Davis, UT | |
| Salt Lake, UT | |
| Weber, UT | |
| San Angelo, TX | 0.8336 |
| Tom Green, TX | |
| San Antonio, TX | 0.8814 |
| Bexar, TX | |
| Comal, TX | |
| Guadalupe, TX | |
| San Diego, CA | 1.2325 |
| San Diego, CA | |

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|---|---|
| San Francisco, CA | 1.5207 |
| Marin, CA | |
| San Francisco, CA | |
| San Mateo, CA | |
| San Jose, CA | 1.4709 |
| Santa Clara, CA | |
| San Juan, PR | 0.5393 |
| Barceloneta, PR | |
| Bayamon, PR | |
| Canovanas, PR | |
| Carolina, PR | |
| Catano, PR | |
| Corozal, PR | |
| Dorado, PR | |
| Fajardo, PR | |
| Florida, PR | |
| Guaynabo, PR | |
| Humacao, PR | |
| Juncos, PR | |
| Los Piedras, PR | |
| Loiza, PR | |
| Luquillo, PR | |
| Manati, PR | |
| Naranjito, PR | |
| Rio Grande, PR | |
| San Juan, PR | |
| Toa Alta, PR | |
| Toa Baja, PR | |
| Trujillo Alto, PR | |
| Vega Alta, PR | |
| Vega Baja, PR | |
| Santa Barbara-Santa Maria-Lompoc, CA | 1.1793 |
| Santa Barbara, CA | |
| Santa Cruz, CA | 1.2975 |
| Santa Cruz, CA | |
| Santa Fe, NM | 0.9368 |
| Los Alamos, NM | |
| Santa Fe, NM | |
| Santa Rosa-Petaluma, CA | 1.3016 |
| Sonoma, CA | |
| Sarasota, FL | 0.9740 |
| Sarasota, FL | |
| Savannah, GA | 0.8529 |
| Chatham, GA | |
| Effingham, GA | |
| Scranton, Wilkes Barre, PA | 0.9301 |
| Columbia, PA | |
| Lackawanna, PA | |
| Luzerne, PA | |
| Monroe, PA | |
| Wyoming, PA | |
| Seattle, WA | 1.1114 |
| King, WA | |
| Snohomish, WA | |
| Sharon, PA | 0.9296 |
| Mercer, PA | |
| Sheboygan, WI | 0.9215 |
| Sheboygan, WI | |
| Sherman-Denison, TX | 0.8936 |
| Grayson, TX | |
| Shreveport, LA | 0.9410 |
| Bossier, LA | |
| Caddo, LA | |
| Sioux City, IA-NE | 0.9026 |
| Woodbury, IA | |
| Dakota, NE | |
| Sioux Falls, SD | 0.9296 |
| Minnehaha, SD | |
| South Bend-Mishawaka, IN | 1.0090 |
| St. Joseph, IN | |
| Spokane, WA | 1.0987 |
| Spokane, WA | |
| Springfield, IL | 0.9757 |
| Menard, IL | |
| Sangamon, IL | |
| Springfield, MO | 0.8690 |
| Christian, MO | |
| Greene, MO | |
| Springfield, MA | 1.0237 |
| Hampden, MA | |
| Hampshire, MA | |
| State College, PA | 1.0197 |
| Centre, PA | |
| Steubenville-Weirton, OH-WV | 0.9032 |
| Jefferson, OH | |
| Brooke, WV | |
| Hancock, WV | |
| Stockton, CA | 1.2039 |
| San Joaquin, CA | |
| Syracuse, NY | 0.9814 |
| Madison, NY | |
| Onondaga, NY | |
| Oswego, NY | |
| Tacoma, WA | 1.0569 |
| Pierce, WA | |
| Tallahassee, FL | 0.9322 |
| Gadsden, FL | |
| Leon, FL | |
| Tampa-St. Petersburg-Clearwater, FL | 0.9407 |
| Hernando, FL | |
| Hillsborough, FL | |
| Pasco, FL | |
| Pinellas, FL | |
| Terre Haute, IN | 0.8653 |
| Clay, IN | |
| Vigo, IN | |
| Texarkana, TX-AR | 0.8149 |
| Miller, AR | |
| Bowie, TX | |
| Toledo, OH | 1.0520 |
| Fulton, OH | |
| Lucas, OH | |
| Wood, OH | |
| Topeka, KS | 0.9751 |
| 0.9751 | |
| Shawnee, KS | |
| Trenton, NJ | 1.0137 |
| Mercer, NJ | |
| Tucson, AZ | 0.9763 |
| Pima, AZ | |
| Tulsa, OK | 0.9070 |
| Creeks, OK | |
| Osage, OK | |
| Rogers, OK | |
| Tulsa, OK | |
| Wagoner, OK | |
| Tuscaloosa, AL | 0.9077 |
| Tuscaloosa, AL | |
| Tyler, TX | 0.9910 |
| Smith, TX | |
| Utica-Rome, NY | 0.8501 |
| Herkimer, NY | |
| Oneida, NY | |
| Vallejo-Fairfield-Napa, CA | 1.3276 |
| Napa, CA | |
| Solano, CA | |
| Vancouver, WA | 1.1092 |
| Clark, WA | |
| Victoria, TX | 0.8736 |
| Victoria, TX | |
| Vineland-Millville-Bridgeton, NJ | 0.9522 |
| Cumberland, NJ | |
| Visalia-Tulare-Porterville, CA | 1.0482 |
| Tulare, CA | |
| Waco, TX | 0.8254 |
| McLennan, TX | |
| Washington, DC-MD-VA | 1.1269 |
| District of Columbia | |
| Calvert, MD | |
| Charles, MD | |
| Frederick, MD | |
| Montgomery, MD | |
| Prince Georges, MD | |
| Alexandria City, VA | |
| Arlington, VA | |
| Fairfax, VA | |
| Fairfax City, VA | |
| Falls Church City, VA | |
| Loudoun, VA | |
| Manassas City, VA | |
| Manassas Park City, VA | |
| Prince William, VA | |
| Stafford, VA | |
| Waterloo-Cedar Falls, IA | 0.9098 |
| Black Hawk, IA | |
| Bremer, IA | |
| Wausau, WI | 0.9795 |
| Marathon, WI | |
| West Palm Beach-Boca Raton-Delray Beach, FL | 1.0087 |
| Palm Beach, FL | |
| Wheeling, WV-OH | 0.8640 |
| Belmont, OH | |
| Marshall, WV | |
| Ohio, WV | |
| Wichita, KS | 1.0406 |
| Butler, KS | |
| Harvey, KS | |
| Sedgwick, KS | |
| Wichita Falls, TX | 0.8375 |
| Wichita, TX | |
| Williamsport, PA | 0.8980 |
| Lycoming, PA | |
| Wilmington, DE-NJ-MD | 1.0782 |
| New Castle, DE | |
| Cecil, MD | |
| Salem, NJ | |
| Wilmington, NC | 0.9010 |
| New Hanover, NC | |
| Worcester-Fitchburg-Leominster, MA | 1.0581 |
| Worcester, MA | |
| Yakima, WA | 1.0210 |
| Yakima, WA | |
| York, PA | 0.9304 |
| Adams, PA | |
| York, PA | |
| Youngstown-Warren, OH | 1.0077 |
| Mahoning, OH | |
| Trumbull, OH | |
| Yuba City, CA | 1.0271 |
| Sutter, CA | |
| Yuba, CA | |
| Yuma, AZ | 0.9179 |
| Yuma, AZ | |

## TABLE IIIB.—WAGE INDEX FOR RURAL AREAS

| Non-urban areas | Wage index |
|---|---|
| Alabama | 0.7222 |
| Alaska | 1.3955 |
| Arizona | 0.8807 |
| Arkansas | 0.7216 |
| California | 1.0562 |
| Colorado | 0.8719 |
| Connecticut | 1.1431 |
| Delaware | 0.8602 |
| Florida | 0.8764 |
| Georgia | 0.7773 |
| Hawaii | 0.9804 |
| Idaho | 0.9019 |
| Illinois | 0.8110 |
| Indiana | 0.8100 |
| Iowa | 0.7929 |
| Kansas | 0.7796 |
| Kentucky | 0.7879 |
| Louisiana | 0.7795 |
| Maine | 0.8442 |
| Maryland | 0.8304 |
| Massachusetts | 1.1282 |
| Michigan | 0.9078 |
| Minnesota | 0.8473 |
| Mississippi | 0.7210 |
| Missouri | 0.7567 |
| Montana | 0.8559 |

TABLE IIIB.—WAGE INDEX FOR RURAL AREAS—Continued

| Non-urban areas | Wage index |
|---|---|
| Nebraska | 0.7437 |
| Nevada | 1.0074 |
| New Hampshire | 0.9454 |
| New Jersey | [1] |
| New Mexico | 0.8621 |
| New York | 0.8523 |
| North Carolina | 0.7968 |
| North Dakota | 0.8171 |
| Ohio | 0.8674 |
| Oklahoma | 0.7759 |
| Oregon | 1.0004 |
| Pennsylvania | 0.8890 |
| Puerto Rico | [2] 0.4803 |
| Rhode Island | [1] |
| South Carolina | 0.7714 |
| South Dakota | [2] 0.7538 |
| Tennessee | 0.7476 |
| Texas | 0.7742 |
| Utah | 0.9162 |
| Vermont | 0.8992 |
| Virginia | 0.7946 |
| Virgin Islands | [2] 1.000 |
| Washington | 0.9854 |
| West Virginia | 0.8502 |
| Wisconsin | 0.8634 |
| Wyoming | 0.8692 |

[1] All counties within State and classified urban.
[2] Approximate value for area.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTOR[1]

| If the HHA cost reporting period begins | The adjustment factor is |
|---|---|
| August 1, 1992 | 1.0046 |
| September 1, 1992 | 1.0093 |
| October 1, 1992 | 1.0139 |
| November 1, 1992 | 1.0185 |
| December 1, 1992 | 1.0231 |
| January 1, 1993 | 1.0278 |
| February 1, 1993 | 1.0321 |
| March 1, 1993 | 1.0359 |
| April 1, 1993 | 1.0402 |
| May 1, 1993 | 1.0444 |
| June 1, 1993 | 1.0488 |

[1] Based on compounded projected market basket inflation rates of 5.60 percent for 1993 and 5.00 percent for 1994.

These adjustment factors are subject to change based on later estimates of cost increases.

If, for any reason we do not publish a new schedule of limits to be effective on July 1, 1993, or do not announce other changes in the current schedule by that date, the current limits will continue in effect with the last adjustment factor above multiplied by 1.004 once for each month between June 1, 1993 and the month in which the cost reporting period begins, until a new schedule of limits or other provision is issued. For example, if a cost reporting period begins on August 1, 1993, 1.0488 will be multiplied by 1.004 twice and the resulting factor will equal 1.0572 (1.0488 × 1.004 = 1.0572).

## X. Regulatory Impact Statement and Flexibility Analysis

### *A. Executive Order 12291*

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Based on the data available to us, we estimate the new HHA cost limits implemented in this notice with public comment period will have a negligible impact on Medicare expenditures for HHA services in FY 1992 and an impact of $10 million in FY 1993. (The increase in FY 1992 expenditures is negligible because this notice is effective only during the last quarter of FY 1992, a period in which relatively few HHA cost reporting periods begin.) The FY 1993 increase is attributable to a change in the blend of 1982 and 1988 hospital wage data used to develop the HHA cost limits. For cost reporting periods beginning on or after July 1, 1991 and before July 1, 1992, the limits are based on a wage index that is a blend of 67 percent of 1982 wage data and 33 percent 1988 wage data. The limits for cost reporting periods beginning on or after July 1, 1992 and before July 1, 1993 are based on a wage index composed of a blend of 33 percent 1982 wage data and 67 percent 1988 wage data.

Since the projected Medicare program costs do not meet the $100 million threshold criterion of E.O. 12291, or the other criteria of E.O. 12291, a final regulatory impact analysis is not required.

### *B. Regulatory Flexibility Analysis*

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HHAs are treated as small entities.

We are providing a voluntary regulatory flexibility analysis for this notice because of the large number of HHAs that will be affected, even though the economic impact will not be significant. Normally, a regulatory flexibility analysis requires the agency to discuss various alternatives to the provisions in a notice such as this. Here, however, HCFA is merely implementing the provisions of section 1861(v)(1)(L)(iii) of the Act and section 4207(d)(3)(B) of Pub. L. 101–508. Accordingly, no alternatives to the provisions in this notice with comment are available.

As of February 6, 1992 there are 6,009 HHAs. Of that number, approximately 27 percent (1,631) are hospital-based; 18 percent (1082) are State or local government agencies; 9 percent (533) are visiting nurse associations; less than 2 percent (86) are SNF-based; less than 1 percent (52) are combination government and voluntary agencies; less than 1 percent (3) are rehabilitation center-based; and 44 percent (2,622) are classified as other than the classifications provided above.

We do not have sufficient data to predict exactly which HHAs will be most affected by this notice nor the magnitude of the impact upon individual HHAs. However, it is clear that individual HHAs will be affected to a greater or lesser degree depending upon the extent to which their total payment is derived from Medicare. We believe that approximately 28 percent of the HHAs will be affected negatively by the new cost limits (that is, their costs will exceed the cost limits).

### *C. Impact on Small Rural Hospitals*

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the Regulatory Flexibility Act (the RFA) (5 U.S.C. 601 through 612). For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds located outside an MSA.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

## XI. Other Required Information

### *A. Waiver of Proposed Notice*

In adopting notices, such as this, we ordinarily publish a proposed notice in the **Federal Register** with a 60-day

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period for public comment as required under section 1871(b)(1) of the Act.

As we discussed in section IV above, we have used the same methodology to develop the schedule of limits that was used in setting the limits published on December 9, 1991. However, as required by section 4207(d)(3) of Pub. L. 101–508, we are using a wage index based on a specified blend of hospital wage data from 1982 and 1988. The cost limits have been updated to reflect the cost increases occurring between the cost reporting periods for the data contained in the data base and December 31, 1992.

Because the methodology used to develop this schedule of limits was previously published for public comment and because the applicable wage index is mandated by section 4207(d)(3) of Pub. L. 101–508 for cost reporting periods beginning July 1, 1992, we believe that it would be impracticable and unnecessary to request public comment before implementation of these cost limits. To do so would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice.

*B. Waiver of 30-Day Delay in Effective Date*

We normally provide a delay of 30 days in the effective date for documents such as this. However, if adherence to this procedure would be impractical, unnecessary, or contrary to the public interest, we may waive the delay in the effective date.

Section 1861(v)(1)(L)(iii) of the Act requires that the Secretary establish revised HHA cost limits for cost reporting periods beginning on or after July 1, 1991 and annually thereafter. Also, the clear direction of section 4207(d)(3)(B) of Pub. L. 101–508 requires that effective for cost reporting periods beginning on or after July 1, 1992, we use a wage index based on a specified blend of hospital wage data from 1982 and 1988 to determine the HHA cost limits. If HHAs are to receive timely the benefits of the cost limits that are based on the updated wage index, it is necessary that these limits be effective for cost reporting periods beginning on or after July 1, 1992. Thus, we believe that a delay in the effective date of these cost limits would be contrary to the public interest. Therefore, we find good cause to waive the usual 30-day delay in the effective date of this notice with comment period.

*C. Paperwork Reduction Act*

This final notice does not impose information collection requirements. Consequently, it does not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

*D. Public Comments*

Because of the large number of items of correspondence we normally receive on a notice with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments concerning the provisions of this notice that we receive by the date and time specified in the "**DATES**" section of this notice, and, if changes are made in another notice, we will respond to these comments in that notice.

**Authority:** Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)); section 4207(d) of Pub. L. 101–508 (42 U.S.C. 1395x (note)); and 42 CFR 413.30.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: May 20, 1992.

**William Toby,**

*Acting Administrator, Health Care Financing Administration.*

Approved: June 11, 1992.

**Louis W. Sullivan,**

*Secretary.*

[FR Doc. 92–15496 Filed 6–30–92; 8:45 am]

BILLING CODE 4120–01–M

federal register

Wednesday
July 1, 1992

Part VI

# Department of the Treasury

**Office of Foreign Assets Control**

**31 CFR Part 550**
**Libyan Sanctions Regulations; Final Rule**

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**DEPARTMENT OF THE TREASURY**

**Office of Foreign Assets Control**

**31 CFR Part 550**

**Libyan Sanctions Regulations**

**AGENCY:** Office of Foreign Assets Control, Department of the Treasury.

**ACTION:** Final rule; amendments to the list of specially designated nationals of Libya.

**SUMMARY:** The Libyan Sanctions Regulations are being amended to update name and address information for companies previously listed at appendix A, Organizations Determined To Be Within the Term "Government of Libya" (Specially Designated Nationals of Libya), and to add name and address clarifications to the list of individuals at appendix B, Individuals Determined To Be Specially Designated Nationals of the Government of Libya. Appendix A contains the names of companies, banks, and other entities, whether located outside or inside of Libya, which the Director of the Office of Foreign Assets Control ("FAC") has determined to be owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya. Appendix B contains the names of individuals whom the Director of FAC has determined to be acting or purporting to act directly or indirectly on behalf of the Government of Libya. This list may be expanded or amended at any time.

**EFFECTIVE DATE:** July 1, 1992.

**ADDRESSES:** Copies of this list are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** J. Robert McBrien, Chief, International Programs Division, Office of Foreign Assets Control, tel. (202) 622–2420.

**SUPPLEMENTARY INFORMATION:** The Libyan Sanctions Regulations, 31 CFR part 550 (the "Regulations"), were issued by the Treasury Department to implement Executive Orders No. 12543 (51 FR 875, Jan. 9, 1986) and 12544 (51 FR 1235, Jan. 10, 1986), in which the President declared a national emergency with respect to Libya, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and ordering specific measures against the Government of Libya. The Regulations were amended by a final rule published in the **Federal Register** (56 FR 20540, May 6, 1991) which added appendix A, a list of organizations determined to be within the term "Government of Libya." The Regulations were amended again by a final rule published in the **Federal Register** (56 FR 37156, Aug. 5, 1991) which removed the numerical designations from appendix A, merged the separate categories in appendix A, added the names of twelve companies to appendix A, and added a new appendix B, "Individuals Determined To Be Specially Designated Nationals of the Government of Libya," to the end thereof. The Regulations also were amended by a final rule published in the **Federal Register** (56 FR 65993, Dec. 20, 1991) which removed one name from appendix B. The Regulations were amended further by a final rule published in the **Federal Register** (57 FR 10798, Mar. 30, 1992) which provided public notice of the worldwide application of the Regulations to each name listed at appendix A, provided further public notice that the absence of any particular name from the list is not to be construed as evidence that the person does not meet the definition of the "Government of Libya," and provided public notice of 46 additional companies determined to be "specially designated nationals" of the Government of Libya.

Section 550.304 of the Regulations defines the term "Government of Libya" as follows:

(a) The "Government of Libya" includes:

(1) The state and the Government of Libya, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Libya;

(2) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing;

(4) Any other person or organization determined by the Secretary of the Treasury to be included within paragraph (a) of this section.

(b) A person specified in paragraph (a)(2) of this section shall not be deemed to fall within the definition of Government of Libya solely by reason of being located in, organized under the laws of, or having its principal place of business in, Libya.

Determinations that persons fall within the definition of the "Government of Libya" are effective upon the date of determination by the Director of FAC, acting under authority delegated by the Secretary of the Treasury. Public notice is effective upon the date of publication or upon actual notice, whichever is sooner.

This rule amends appendix A to part 550 to provide public notice of additional address information and further clarifications of previous listings of companies determined to be "specially designated nationals" of the Government of Libya. Appendix A consists of organizations determined by the Director of FAC to be owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya. The persons listed in appendix A thus fall within the definition of the "Government of Libya" contained in § 550.304(a) of the Regulations, and are subject to all prohibitions applicable to other components of the Government of Libya. All unlicensed transactions with such persons, or in property in which they have an interest, are prohibited.

This rule also amends appendix B to part 550 to provide public notice of additional address information and further clarifications of previous listings of individuals determined to be "specially designated nationals" of the Government of Libya. Appendix B consists of individuals determined by the Director of FAC to be acting or purporting to act directly or indirectly on behalf of the Government of Libya. The persons listed in appendix B thus fall within the definition of the "Government of Libya" contained in § 550.304(a) of the Regulations, and are subject to all prohibitions applicable to other components of the Government of Libya. All unlicensed transactions with such persons, or in property in which they have an interest, are prohibited.

The list of specially designated nationals is a partial one, since FAC may not be aware of all the agencies and officers of the Government of Libya or of all the persons that might be owned or controlled by the Government of Libya or acting as agents or front organizations for Libya, and which thus qualify as specially designated nationals of the Government of Libya. Therefore, persons engaging in transactions may not rely on the fact that any particular person is not on the specially designated nationals list as evidence that it is not owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya. The Treasury Department regards it as incumbent upon all U.S. persons to take reasonable steps to ascertain for themselves whether persons they enter into transactions with are owned or

controlled by the Government of Libya or are acting or purporting to act on its behalf, or on behalf of other countries subject to blocking or transactional restrictions (at present, Cuba, Haiti, Iraq, North Korea, Vietnam, and Yugoslavia).

Section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1705, provides for civil penalties not to exceed $10,000 per count for violations of the Regulations. Criminal penalties may include fines of up to $250,000 and imprisonment for up to 10 years per count for willful violations of the Regulations by individuals, and fines of up to $500,000 per count for organizations.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

**List of Subjects in 31 CFR Part 550**

Administrative practice and procedure, Banks, Banking, Blocking of assets, Foreign trade, Libya, Penalties, Reporting and recordkeeping requirements, Securities, Specially designated nationals, Travel restrictions.

## PART 550—LIBYAN SANCTIONS REGULATIONS

For the reasons set forth in the preamble, 31 CFR part 550 is amended as set forth below:

1. The authority citation for part 550 continues to read as follows:

**Authority:** 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2349aa–8 & –9; 49 U.S.C. 1514; E.O. 12543, 51 FR 875 (Jan. 9, 1986); E.O. 12544, 51 FR 1235 (Jan. 10, 1986).

2. Appendix A to part 550 is revised to read as follows:

### Appendix A—Organizations Determined To Be Within the Term "Government of Libya" (Specially Designated Nationals of Libya)

The names and addresses listed below are the most complete ones currently known to the Office of Foreign Assets Control. Unless otherwise indicated, listed organizations located in Libya meet the definition of "Government of Libya" not only at their locations inside of Libya, but also at all their other locations worldwide. Listed organizations outside of Libya also meet the definition of "Government of Libya" not only at their cited addresses, but also at all their other locations worldwide. The absence of any particular person from the list of specially designated nationals is not to be construed as evidence that it is not owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya. Please note that name variations and addresses are subject to change over time and that the Office of Foreign Assets Control will update name and address information periodically.

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P.O. Box 17459, Misurata, Libya,
P.O. Box 959, Tripoli, Libya,
P.O. Box 321, Benghazi, Libya,
P.O. Box 20108, Sebha, Libya,
P.O. Box 547, Valletta, Malta,
P.O. Box 15977, Casablanca, Morocco.

Agip North Africa and Middle East Oil Company,
(a.k.a. Agip (N.A.M.E.) Limited),
Adahr, P.O. Box 346, Sciara Giakarta, Tripoli, Libya,
Benghazi Office, P.O. Box 4120, Benghazi, Libya,
(Designation applies only to joint venture located in Libya).

Al Hambra Holding Company,
Madrid, Spain.

Aquitaine Libye,
Omar El Mokhtar Street, P.O. Box 262, Tripoli, Libya,
(Designation applies only to joint venture located in Libya).

Arab Real Estate Company,
(a.k.a. Aresco),
Beirut, Lebanon.

Arabian Gulf Oil Company,
(a.k.a. Agoco),
P.O. Box 263, Al Kish, Benghazi, Libya,
P.O. Box 693–325, Ben Ashour Street, Tripoli, Libya,
Sarir Field, Libya,
Windsor House, 42–50 Victoria Street, London SW1H 0NW, United Kingdom.

Asteris S.A. Industrial & Commercial Corporation,
Athens, Greece.

Azzawiya Oil Refining Company, Inc.,
P.O. Box 1575, Tripoli, Libya,
P.O. Box 6451, Tripoli, Libya,
Benghazi Asphalt Plant Office, Benghazi, Libya.

Banque Arabe Libyenne Burkinabe Pour Le Commerce Exterieur Et Le Developpement,
1336 Avenue Nelson Mandela, Ouagadougou, Burkina Faso.

Banque Arabe Libyenne Malienne Pour Le Commerce Exterieur Et Le Developpement,
(a.k.a. Balima),
P.O. Box 2372, Bamako, Mali.

Banque Arabe Libyenne Mauritanienne Pour Le Commerce Exterieur Et Le Developpement,
(a.k.a. Balm),
Jamal Abdulnasser Street, P.O. Box 262, Nouakchott, Mauritania.

Banque Arabe Libyenne Nigerienne Pour Le Commerce Exterieur Et Le Developpement,
P.O. Box 11383, Niamey, Niger.

Banque Arabe Libyenne Togolaise Du Commerce Exterieur,
(a.k.a. Baltex),
P.O. Box 4874, Lome, Togo.

Banque Arabe Tuniso-Libyenne De Developpement Et De Commerce Exterieur,
(a.k.a. B.T.L),
25 Avenue Khetreddine Pacha, P.O. Box 102, 1002 Le Belvedere, Tunis, Tunisia.

Banque Intercontinentale Arabe,
67, Avenue Franklin Roosevelt, 75008 Paris, France.

Banque Tchado Arabe Libyenne,
P.O. Box 104, N'Djamena, Chad.

Central Bank of Libya,
Al-Fatah Street, P.O. Box 1103, Tripoli, Libya,
Benghazi, Libya,
Sebha, Libya.

Chempetrol,
(a.k.a. Chempetrol International),
145, Flat 9, Tower Road, Sliema, Malta.

Chempetrol International Ltd.,
5th Floor, Quality Court, Chancery Lane, London WC2A 1HP, United Kingdom,
26 Lincoln's Inn Fields, London WC2A 3HH, United Kingdom.

Compagnie Algero-Libyenne De Transport Maritime,
(a.k.a. Caltram),
21 Rue des Freres Bouadou, Birmandreis, Algiers, Algeria.

Corinthia Group of Companies,
Head Office, 22, Europa Centre, Floriana, Malta.

Corinthia Palace Hotel Company Limited,
De Paula Avenue, Attard, Malta.

F.A. Petroli S.P.A.,
Italy.

General Arab African Company,
(a.k.a. GAAC),
(a.k.a. GAAE),
(a.k.a. General Arab African Enterprise),
P.O. Box 8050, 219 Mohammed El Megarief Street, Tripoli, Libya,
Nasser Street, Benghazi, Libya.

General Establishment for Publication Distribution & Advertising,
P.O. Box 113, Beirut, Lebanon.

Holborn Europa Raffinerie GMBH,
(a.k.a. HER),
Rothenbaumchaussee 5, 4th Floor, D–2000 Hamburg 13, Germany,
Moorburger Strasse 16, D–2100 Hamburg 90, Germany.

Holborn European Marketing Company Limited,
(a.k.a. HEMCL),
Miranda Court No. 1, Ipirou Street, P.O. Box 897, Larnaca, Cyprus,
Hofplein 33, 3011 AJ Rotterdam, Netherlands.

Holborn Investment Company Limited,
(a.k.a. HICL),
Miranda Court No. 1, Ipirou Street, P.O. Box 897, Larnaca, Cyprus.

International Holding Company,
Luxembourg Ville, Luxembourg.

Jamahiriya Bank,
(f.k.a. Masraf Al-Gumhouria),

P.O. Box 3224, Martyr Street, Megarief, Tripoli, Libya,
Emhemed Megarief Street, Tripoli, Libya,
P.O. Box 1291, Benghazi, Libya,
(36 local branches in Libya).
Jerma Palace Hotel,
Maarsiancala, Malta.
Joint Oil
(a.k.a. Joint Exploration, Exploitation and Petroleum Services Company),
(a.k.a. Joint Oil Tunisia),
(a.k.a. Libyan-Tunisian Exploration Company),
(a.k.a. Societe De Recherche Et D'Exploitation Commune Et De Service Petroliere),
B.P. 350 Houmt Souk 4180, Djerba Island, Tunisia,
7th of November offshore field, Gulf of Gabes,
Planning & Logistic Group complex, Port of Zarzis, Tunisia.
Joint Turkish Libyan Agricultural Livestock Company,
Ankara, Turkey.
Kaelble-Gmeinder GMBH,
(a.k.a. Kaelble & Gmeinder Company),
Meubacher Strasse 100, Postfach 13 20, W-7150 Backnang, Germany.
Lafi Trade Malta,
14317 Tower Road, Sliema, Malta.
Liberian Libyan Holding Company,
Monrovia, Liberia.
Libyan Agricultural Bank,
(a.k.a. The Agricultural Bank),
(a.k.a. National Agricultural Bank of Libya),
52, Omar El Mokhtar Street, P.O. Box 1100, Tripoli, Libya,
(1 city branch and 27 branches in Libya).
Libyan Arab Airlines,
(a.k.a. LAA),
Shahrah Haiti, P.O. Box 2555, Tripoli, Libya,
P.O. Box 360, Benghazi, Libya,
(Numerous branch offices and facilities abroad).
Libyan Arab Foreign Bank
(a.k.a. LAFB),
Dat El Imad Complex Tower No. 2, P.O. Box 2542, Tripoli, Libya.
Libyan Arab Foreign Investment Company,
(a.k.a. Lafico),
P.O. Box 4538, Maidan Mostf El Baladi, Tripoli, Libya,
Athens, Greece,
Rome, Italy,
Malta.
Libyan Arab Maltese Holding Company Limited,
(a.k.a. Lamhco),
St. Mark House; Cappuchan Street, Floriana, Malta.
Libyan Arab Uganda Bank for Foreign Trade and Development,
P.O. Box 9485, Kampala, Uganda.
Libyan Arab Uganda Holding Company Limited,
(a.k.a. Uganda Libyan Holding Company Limited),
Kampala, Uganda.
Libyan-Greek Investment Company,
Athens, Greece.
Medisan Limited,
Rl 6A, Industrial Estate, Ricasoli, Malta.
Mediterranean Aviation Company, Limited,
(a.k.a. Medavia),
Malta.
Mediterranean Power Electric Company Limited,
A 18B, Industrial Estate, Marsa, Malta
Mediterranean Oil Services GMBH,
(a.k.a. Mediterranean Sea Oil Services GMBH),
(a.k.a. Medoil),
P.O. Box 5001, Immermannstrasse 40, D-4000 Dusseldorf 1,
Germany.
Menil Enstalt Company,
Vaduz, Liechtenstein.
Metrovia,
Switzerland.
National Commercial Bank S.A.L.,
P.O. Box 4647, Shuhada Square, Tripoli, Libya,
P.O. Box 166, Benghazi, Libya,
(22 branches in Libya).
National Company Drilling Chemical & Equipment,
(a.k.a. JOWFE),
NOC Building, Ashjara Square, Benghazi, Libya.
National Company for Field and Terminals Catering,
Airport Road, Km. 3, P.O. Box 491, Tripoli, Libya.
National Company for Oilfield Equipment,
P.O. Box 8707, Tripoli, Libya.
National Drilling Workover Company,
(a.k.a. National Drilling Company)
(a.k.a. National Drilling Company (Libya)),
208 Omar El Mokhtar Street, P.O. Box 1454, Tripoli, Libya.
National Oil Corporation,
(a.k.a. Libyan National Oil Corporation),
(a.k.a. LNOC),
(a.k.a. NOC),
Bashir Saadawi Street, P.O. Box 2655, Tripoli, Libya,
P.O. Box 2978, Benghazi, Libya,
Dahra Gas Projects Office, Dahra Street, P.O. Box 12221, Dahra, Tripoli, Libya,
Petroleum Training and Qualifying Institute, Zawia Road, Km. 9, P.O. Box 6184, Tripoli, Libya,
Petroleum Research Centre, Al Nasser Street, P.O. Box 6431, Tripoli, Libya,
(Subsidiaries and joint ventures in Libya and worldwide).
National Petrochemicals Company,
(a.k.a. Napetco),
(f.k.a. National Methanol Company),
P.O. Box 20812, Marsa Brega, Libya,
P.O. Box 5324, Garden City, Benghazi, Libya,
Dusseldorf, Germany (Office Closed).
Neutron International,
Tripoli, Libya.
Norddeutsche Oeileitungsgesellschaft MBH,
(a.k.a. NDO)
(a.k.a. North German Oil Pipeline),
Moorburger Strasse 16, D-2000 Hamburg-Harburg 90, Germany,
Wilhelmshaven to Hamburg pipeline,
Germany.
North Africa Commercial Bank S.A.L.,
(f.k.a. Arab Libyan Tunisian Bank S.A.L.),
P.O. Box 9575/11, 1st Floor, Piccadily Centre, Hamra Street, Beirut, Lebanon.
Oil Energy France,
France.
Oil Energy Spain,
(a.k.a. Oilinvest Spain),
(a.k.a. Oilinvest Espanola),
Spain.
Oilinvest,
(a.k.a. Foreign Petroleum Investment Corporation),
(a.k.a. Libyan Oil Investments International Company),
(a.k.a. OIIC),
(a.k.a. Oilinvest International N.V.),
Netherlands Antilles,
Tripoli, Libya.
Oilinvest (Netherlands) B.V.,
(a.k.a. Oilinvest Holland B.V.),
Museumpln 11, 1071 Dj Amsterdam, Netherlands.
OS Oilinvest Services A.G.,
Loewenstrasse 60, Zurich, Switzerland.
Pak-Libyan Holding Company Ltd.,
Karachi, Pakistan.
Quality Shoes Company,
UB33, Industrial Estate, San Gwann, Malta.
Raffinerie Du Sud-Ouest,
(a.k.a. RSO),
(a.k.a. Collombey Refinery),
Collombey, Valais, Switzerland.
Ras Lanuf Oil and Gas Processing Company, Ltd.
(a.k.a. Rasco),
P.O. Box 75071, Tripoli, Libya,
Ras Lanuf Complex and Terminal, Ghout El Shaal, Libya,
Benghazi Complex, P.O. Box 1971, Gamel Abdul Nasser Street, Benghazi, Libya.
Sahara Bank,
10 First September Street, P.O. Box 270, Tripoli, Libya,
(22 branches in Libya).
Sirm Holding S.R.L.,
Rome, Italy.
Sirte Oil Company,
(a.k.a. Sirte Oil Co. for Production, Manufacturing of Oil & Gas, Marsa El Brega),
P.O. Box 385, Tripoli, Libya,
P.O. Box 2582, Tripoli, Libya,
Benghazi, Libya,
Sirte Field, Libya,
Marsa El Brega, Libya.
Societe Agricole Togolaise Arabe Libyenne,
Lome, Togo.
Societe Arabe Libyenne Malienne Pour L'Agriculture Et L'Elevage,
(a.k.a. Solima),
Bamako, Mali.
Societe Arabe Libyenne Mauritanienne Des Ressources Maritimes,
(a.k.a. Salimaurem),
Nouadhibou, Mauritania.
Societe Arabe Libyenne-Centrafricaine D'Import-Export,
Bangui, Central African Republic.
Societe Arabe Libyo-Guineenne Pour Le Developpement Agricole Et Agro-Industriel,
(a.k.a. Salguidia),
Conakry, Guinea.
Societe Arabe Libyo-Nigere Pour Le Developpement Et La Commercialisation Des Produits Agricoles,
Niamey, Niger.
Societe Arabe Libyo-Tunisienne De Transport Maritime,
Tunis, Tunisia.

Societe D'Economie Mixte Centre Africaine Libyenne Des Produits Agricoles,
Bangui, Central African Republic.
Societe Libyenne Centre Africaine Des Mines,
Bangui, Central African Republic.
Societe Mixte Rwando Arabe Libyenne Pour Le Developpement Et La Commercialisation Des Produits Agricoles Et D'Elevage,
Kigali, Rwanda.
Societe Mixte Rwando-Arabe Libyenne De Promotion Hoteliere Et Touristique Au Rwanda,
Kigali, Rwanda.
Societe Togolaise Arabe Libyenne De Peche,
Lome, Togo.
Swan Laundry and Dry Cleaning Company, Ltd.,
55, Racecourse Street, Marsa, Malta.
Syrian Libyan Company Industrial & Agricultural Investments,
(a.k.a. Arab Libyan Syrian Industrial & Agricultural Investment Company),
(a.k.a. Sylico),
9 Mazze, Autostrade, Damascus, Syria.
Tamoil Hungaria, Hungary.
Tamoil Italia S.P.A.,
Piazzetta Bossi 3, I–20121 Milan, Italy,
Cremona Refinery, Italy.
Tamoil Petroli Italiana S.P.A.,
Milan, Italy,
(1,977 gasoline retail outlets in Italy).
Tamoil Suisse S.A.,
(a.k.a. Tamoil Switzerland),
(f.k.a. Gatoil Suisse S.A.),
Zug, Switzerland; Geneva, Switzerland,
(330 gasoline retail outlets in Switzerland),
(RSO refinery in Collombey).
Tamoil Trading Ltd.,
Monte Carlo, Monaco,
Zurich, Switzerland,
One, St. Paul's Churchyard, London EC4M 8SH, United Kingdom.
Teknica Petroleum Services Limited
Suite 1100, 736 Sixth Avenue S.W., Calgary, Alberta T2P 3T7, Canada.
Tekxel Limited,
(a.k.a. Jawaby Technical Services Limited),
London, United Kingdom.
Turkish-Libyan Joint Maritime Transport Stock Company,
(a.k.a. Turlib),
Kemeralti Caddesi 99, 80020 Karakoy, Istanbul, Turkey.
UMM Al-Jawaby Oil Service Company, Ltd.,
33 Cavendish Square, London W1M 9HF, United Kingdom.
UMM Al-Jawaby Petroleum Co. S.A.L.,
P.O. Box 693, Tripoli, Libya,
Nafoora Field, Libya.
UMMA Bank S.A.L.,
1 Giaddet Omar Mokhtar, P.O. Box 665, Tripoli, Libya,
(31 branches throughout Libya).
Veba Oil Operations B.V.,
(a.k.a. Veba Oil Libya Gmbh),
(a.k.a. Veba Oil Libyan Branch),
(f.k.a. Mobil Oil Libya, Ltd.),
P.O. Box 2357, Tripoli, Libya,
Al Magharba Street, P.O. Box 690, Tripoli, Libya,
The Hague, Netherlands,
(Designation applies only to joint venture located in Libya and office located in the Netherlands).
Vulcan Oil S.P.A.,
Milano 2, Centro Direz. Pal. Canova, 20090 Segrate, Milan, Italy,
Delta Energy/ERG bunkering service,
Genoa, Italy,
United Kingdom (offshore).
WAHA Oil Company,
Inas Building, Omar El Mokhtar Street, Box 395, Tripoli, Libya,
P.O. Box 221, Benghazi, Libya,
Sidi Issa Street, P.O. Box 915, Tripoli, Libya,
P.O. Box 1075, Tripoli, Libya.
WAHDA Bank,
Jamal Abdulnasser Street, P.O. Box 452, Fadiel Abu Omar Square,
El-Berhka, Benghazi, Libya,
P.O. Box 1320, Benghazi, Libya,
P.O. Box 3427, Tripoli, Libya,
(37 branches throughout Libya).
Zueitina Oil Company,
Zueitina Building "A", Sidi Issa, Dahra,
P.O. Box 2134, Tripoli, Libya,
Mitchell Cotts Building, P.O. Box 2134, Tripoli, Libya,
Plant at Intisar Field A, Tripoli, Libya,
Gas Processing Plants, Tripoli, Libya.

3. Appendix B to part 550 is revised to read as follows:

**Appendix B—Individuals Determined To Be Specially Designated Nationals of the Government of Libya**

Abbott, John G.,
34 Grosvenor Street, London W1X 9FG, United Kingdom.
Abduljawad, Muhammed I.,
(a.k.a. ABDUL JAWAD, Mohammed),
Tripoli, Libya.
Aghil, Yousef I.,
Libya.
Bushwesha, Abdullah,
Libya.
Charalambides, Kypros,
Cyprus.
El Badri, Abdullah Salim,
Tripoli, Libya.
El Ghrabli, Abdudayem,
Libya.
El Huweij, Mohamed A.,
Tripoli, Libya.
Ferjani, A.S.A.,
Tripoli, Libya.
Ghadamsi, Bashir,
Italy.
Layas, Mohammed Hussein,
Tripoli, Libya.
Mana, Salem,
Libya,
Frankfurt, Germany.
Naas, Mahmoud,
Libya.
Paradissiotis, Christoforos Paviou,
Larnaca, Cyprus,
34 Grosvenor Street, London W1X 9FG, United Kingdom.
Riecke, Dr. Hans Guenter,
Hamburg, Germany.
Saudi, Abdullah Ammar,
Manama, Bahrain.
Siala, Mohamed Taher Hammuda,
Tripoli, Libya.
Stavrou, Stavros,
Cyprus.
Ugueto, Luis David (MOROS),
Cyprus.
Yousef, Mohamed T.,
Libya.

Dated: June 25, 1992.

**R. Richard Newcomb,**

*Director Office of Foreign Assets Control.*

Approved: June 29, 1992.

**Peter K. Nunez,**

*Assistant Secretary (Enforcement).*

[FR Doc. 92–15663 Filed 6–30–92; 8:45 am]

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# Reader Aids

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Wednesday, July 1, 1992

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## FEDERAL REGISTER PAGES AND DATES, JULY

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## CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

**S. 756/P.L. 102-307**

Copyright Amendments Act of 1992. (June 26, 1992; 106 Stat. 264; 9 pages) Price: $1.00

**S. 2703/P.L. 102-308**

To authorize the President to appoint General Thomas C. Richards to the Office of Administrator of the Federal Aviation Administration. (June 26, 1992; 106 Stat. 273; 2 pages) Price: $1.00

**Last List June 30, 1992**

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## CFR ISSUANCES 1992
## January—April 1992 Editions and Projected July, 1992 Editions

This list sets out the CFR issuances for the January–April 1992 editions and projects the publication plans for the July, 1992 quarter. A projected schedule that will include the October, 1992 quarter will appear in the first **Federal Register** issue of October.

**For pricing information on available 1991–1992 volumes consult the CFR checklist which appears every Monday in the Federal Register.**

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

### Titles revised as of January 1, 1992 editions:

Title

**CFR Index**
1–199
200–End

**1–2**

**3 (Compilation)**

**4**

**5 Parts:**
1–699
700–1199
1200–End

**6 [Reserved]**

**7 Parts:**
0–26
27–45
46–51
52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1059
1060–1119
1120–1199
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1900–1939
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2000–End

**8**

**9 Parts:**
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200–End

**10 Parts:**
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51–199
200–399 (Cover only)
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**11**

**12 Parts:**
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220–299
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500–599
600–End

**13**

**14 Parts:**
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140–199
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**15 Parts:**
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**16 Parts:**
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**17 Parts:**
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400–End

**19 Parts:**
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200–End

**20 Parts:**
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400–499
500–End

**21 Parts:**
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170–199
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300–499
500–599
600–799
800–1299
1300–End

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**23**

**24 Parts:**
0–199*
200–499
500–699
700–1699*
1700–End

**25**

**26 Parts:**
1 (§§ 1.0–1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.500)*
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.907)*
1 (§§ 1.908–1.1000)*
1 (§§ 1.1001–1.1400)
1 (§ 1.1401–End)
2–29
30–39
40–49
50–299
300–499
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**27 Parts:**
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200–End

### Projected July 1, 1992 editions:

Title

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**29 Parts:**
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500–899
900–1899
1900–1910 (§§ 1901.1–1910.999)
1910 (§§ 1910.1000–End)
1911–1925 (Cover only)
1926
1927–End

**30 Parts:**
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700–End

**31 Parts:**
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**32 Parts:**
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800–End

**33 Parts:**
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125–199
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**34 Parts:**
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**35**

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Chs. 102–200 (Cover only)
Ch. 201–End



## TABLE OF EFFECTIVE DATES AND PERIODS—JULY 1992

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

| DATE OF FR PUBLICATION | 15 DAYS AFTER PUBLICATION | 30 DAYS AFTER PUBLICATION | 45 DAYS AFTER PUBLICATION | 60 DAYS AFTER PUBLICATION | 90 DAYS AFTER PUBLICATION |
|---|---|---|---|---|---|
| July 1 | July 16 | July 31 | August 17 | August 31 | September 29 |
| July 2 | July 17 | August 3 | August 17 | August 31 | September 30 |
| July 6 | July 21 | August 5 | August 20 | September 4 | October 5 |
| July 7 | July 22 | August 6 | August 21 | September 8 | October 5 |
| July 8 | July 23 | August 7 | August 24 | September 8 | October 6 |
| July 9 | July 24 | August 10 | August 24 | September 8 | October 7 |
| July 10 | July 27 | August 10 | August 24 | September 8 | October 8 |
| July 13 | July 28 | August 12 | August 27 | September 11 | October 13 |
| July 14 | July 29 | August 13 | August 28 | September 14 | October 13 |
| July 15 | July 30 | August 14 | August 31 | September 14 | October 13 |
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| July 17 | August 3 | August 17 | August 31 | September 15 | October 15 |
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| July 21 | August 5 | August 20 | September 4 | September 21 | October 19 |
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| July 23 | August 7 | August 24 | September 8 | September 21 | October 21 |
| July 24 | August 10 | August 24 | September 8 | September 22 | October 22 |
| July 27 | August 11 | August 26 | September 10 | September 25 | October 26 |
| July 28 | August 12 | August 27 | September 11 | September 28 | October 26 |
| July 29 | August 13 | August 28 | September 14 | September 28 | October 27 |
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| July 31 | August 17 | August 31 | September 14 | September 29 | October 29 |

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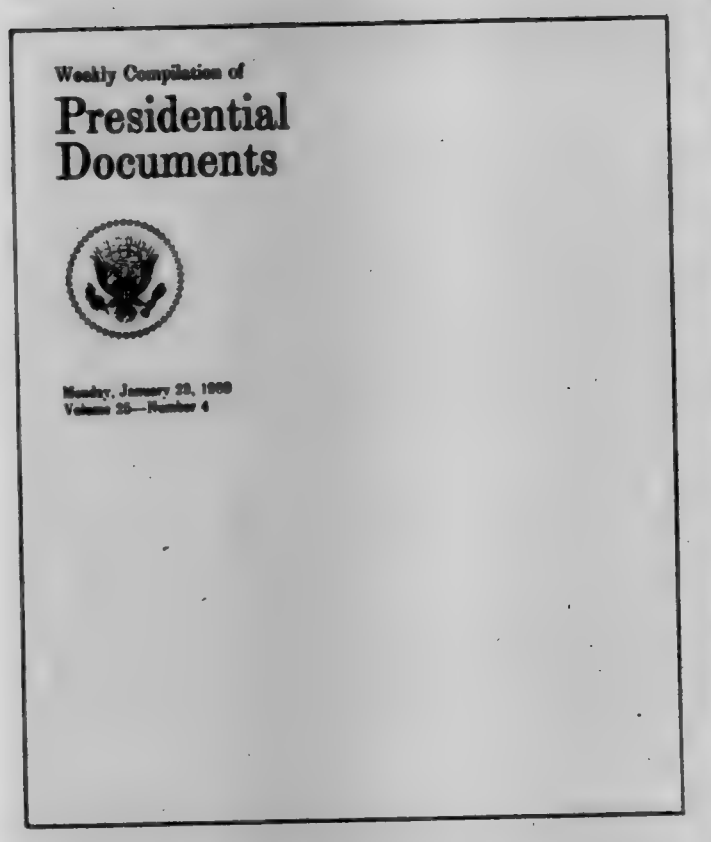


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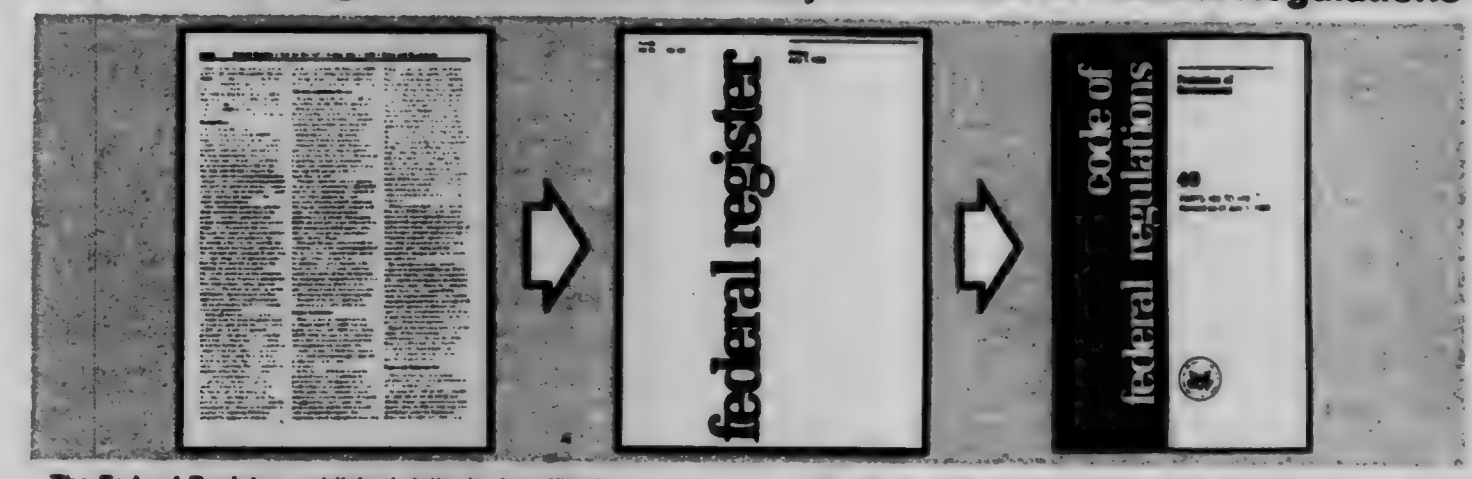


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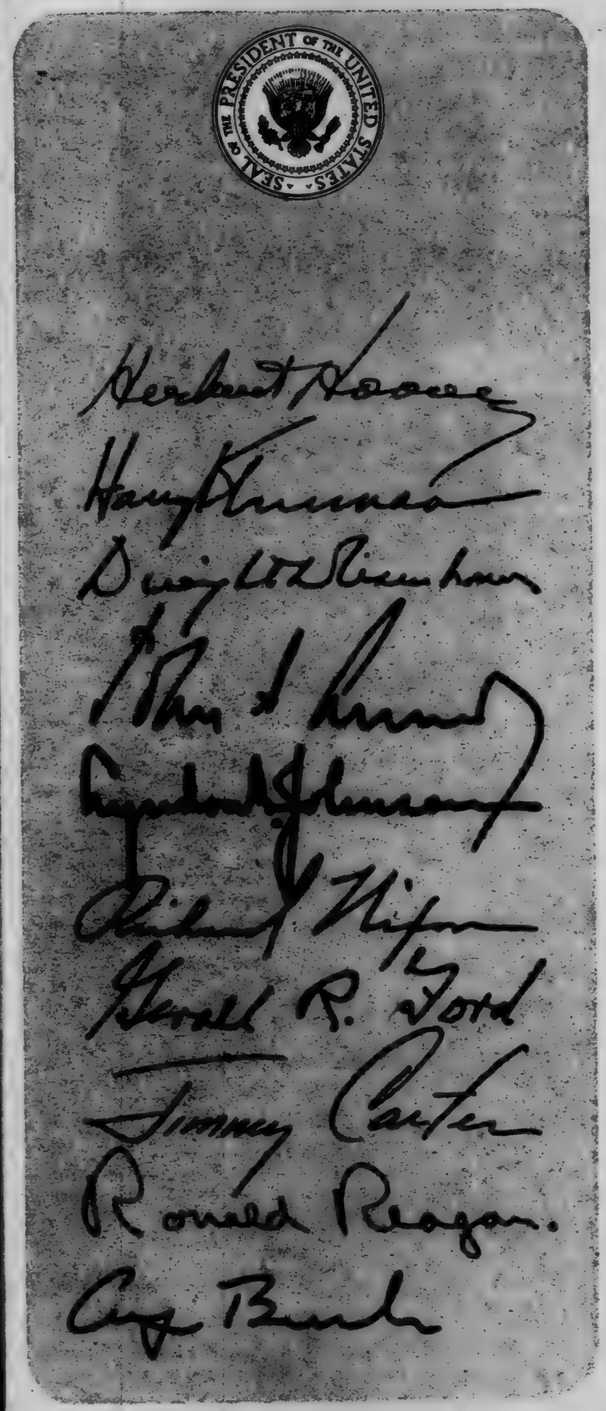


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Federal Register
Vol. 57, No. 128
Thursday, July 2, 1992

# Presidential Documents

Title 3—

## The President

**Proclamation 6452 of June 30, 1992**

## National Spina Bifida Awareness Month, 1992

**By the President of the United States of America**

**A Proclamation**

Approximately one of every 1,000 newborns in the United States is affected by spina bifida, a serious and often debilitating neurological disorder. Spina bifida occurs when a baby's spinal cord develops abnormally while he or she is still in the womb, resulting in nerve damage that can lead to muscle paralysis, loss of sensation in the lower limbs, and bowel and bladder complications. The disorder is often accompanied by hydrocephalus, an excessive and potentially dangerous accumulation of fluid within the brain. While in the past the prognosis was grim for children with spina bifida, currently some 80–90 percent of affected children survive the disorder, thanks to advances in surgery and other forms of intervention and treatment. Heartened by the progress that we have made thus far, our Nation remains firmly committed to the fight against spina bifida.

Through the National Institute of Neurological Disorders and Stroke and through the National Institute of Child Health and Human Development, the Federal Government is working to find better treatments and, ultimately, a cure for spina bifida. Government researchers have been joined in their efforts by physicians and scientists throughout the private sector and by a number of voluntary health associations. In addition to supporting basic and clinical research, many of these associations also work to promote public awareness of spina bifida while providing assistance to patients and their families. This month, we recognize all of the dedicated professionals and volunteers who are striving to overcome spina bifida, and we reaffirm our support of their efforts.

The Congress, by House Joint Resolution 470, has designated September 1992 as "National Spina Bifida Awareness Month" and has requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 1992 as National Spina Bifida Awareness Month. I encourage all Americans to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 30 day of June, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

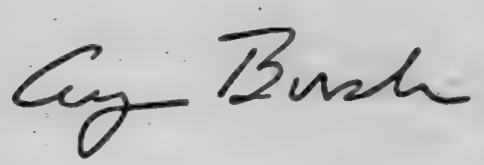

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# Rules

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**DEPARTM**

**Agricultur**

**7 CFR Par**

**[CN-92-00**

**Amendme and Regul**

**AGENCY:** A USDA.

**ACTION:** In for comme

**SUMMARY:** amends th Regulation assessmen tenths of c cotton bal tenths of c cotton bal Beginning year, the a supplemen six-tenths in the sup was recon the Cotton provisions Promotion

**DATES:** Eff Comments

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**SUPPLEME** amendme and Regul

# Rules and Regulations

Federal Register
Vol. 57, No. 128
Thursday, July 2, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1205**

**[CN-92-002]**

## Amendment to the Cotton Board Rules and Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule amends the Cotton Board Rules and Regulations so that the supplemental assessment rate is lowered from six-tenths of one percent of the value of a cotton bale or bale equivalent to five-tenths of one percent of the value of a cotton bale or bale equivalent. Beginning with the 1995–1996 marketing year, the agency intends to change the supplemental assessment rate back to six-tenths of one percent. This reduction in the supplemental assessment rate was recommended to the Department by the Cotton Board in accordance with provisions of the Cotton Research and Promotion Act.

**DATES:** Effective date July 31, 1992. Comments received by August 3, 1992.

**ADDRESSES:** Comments should be sent to Craig Shackelford, Research and Promotion Staff, Cotton Division, AMS, USDA, P. O. Box 96456, Washington, DC 20090–6456. All comments will be made available for public inspection at the office of the docket clerk during regular business hours. All comments should reference the date and page of the **Federal Register** publication.

**FOR FURTHER INFORMATION CONTACT:** Craig Shackelford (202) 720–2259.

**SUPPLEMENTARY INFORMATION:** This amendment to the Cotton Board Rules and Regulations has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a non-major rule under Executive Order 12291 since it does not meet the criteria for a major regulatory action contained in that Order.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of the order or be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry or the ruling.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this action on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

There are an estimated 210,000 producers and 650 collecting handlers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. There are also an estimated 10,000 importers that would become subject to the rules and regulations. The majority of these producers, handlers and importers would be classified as small businesses under the criteria established by the Small Business Administration.

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under subtitle G of title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program. These provisions are: (1) The assessment of imported cotton and cotton products; and (2) termination of the right of producers to demand a refund of assessments. An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991. Proposed rules implementing the amended Order were published in the **Federal Register** on December 17, 1991, 56 FR 65450.

This rule reduces the supplemental assessment rate contained in the implementing regulations from six-tenths of one percent to five-tenths of one percent. Without a reduction in the supplemental assessment rate, average assessments per bale could be expected to be $2.60 to $2.80. Assessments on imported cotton and cotton-containing products would be expected to generate approximately $6.8 to $7.3 million annually. Termination of refunds to cotton producers are expected to generate approximately $14.8 to $15.7 million annually. Therefore, total collections under the program could be approximately $49.7 to $53.5 million annually.

Based on the estimated potential increase in revenue, the Cotton Board as reevaluated the current assessment rate level with the goal of balancing future revenues with anticipated budget requirements for Cotton Research and Promotion activities. The Board voted to recommend to the Department a reduction of the supplemental assessment rate from six-tenths of one percent of the value of each cotton bale assessed, to five-tenths of one percent of the value of each cotton bale assessed for both domestic and imported cotton. The Board further recommended that the supplemental assessment rate should return to six-tenths of one percent beginning with the 1995–96 marketing year.

The agency is implementing the recommendation of the Cotton Board by reducing the supplemental assessment rate from six tenths to five tenths in this rule. Further, the agency intends to implement the recommendation of the Cotton Board by amending the Cotton Board Rules and Regulations for the 1995–96 marketing year to increase the supplemental assessment rate back to

six tenths of one percent of the value of the cotton.

The Cotton Board estimated that if implemented this reduction would result in a reduction of assessment per bale of approximately $0.30. The Board reports that the current average per bale assessment is $2.83. It is the view of the Board that as a result of its proposed reduction assessments would permit the Cotton Board to fund Cotton Research and Promotion activities in the range of $46 to $48 million annually beginning in 1993. Returning the supplemental assessment rate to six-tenths of one percent of the value of the cotton bale in the 1995–96 marketing year would allow an increase in revenues so that Cotton Research and Promotion activities could be funded at a range of $52 to $54 million.

Accordingly, the Administrator of the Agricultural marketing Service has determined that this amendment will not have a significant economic impact on a substantial number of small entities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection and recordkeeping requirements contained in this subpart have been previously approved by OMB and assigned control number 0581–0093.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for making this rule effective on the effective date of the amendments to the Cotton Board Rules and Regulations implementing the amended Cotton Research and Promotion Order because: (1) This rule reduces the rate of supplemental assessment imposed on both domestic and imported cotton; (2) It would be disruptive, costly, and inefficient to start the new assessments on imports using the supplemental rate of six-tenths of one percent and then to reduce such rate within a short period of time; and (3) This interim final rule provides for a comment period.

Paragraph (a)(1) of § 1205.510 is amended by replacing "six-tenths" with "five-tenths" in the last sentence. The dollar per bale figures in the assessment chart in paragraph (a)(1)(ii) of § 1205.510 is revised to reflect the lower assessment rate. Paragraph (b)(1) of § 1205.510 would be amended by replacing "six-tenths" with "five-tenths" in the second sentence. The cents per kilogram figures in the Import Assessment Table in paragraph (b)(3) is revised to reflect the lower assessment rate.

**List of Subjects in 7 CFR Part 1205**

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is amended as follows.

## PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. Section 1205.510 "Levy of Assessments" is revised to read as follows:

**§ 1205.510 Levy of assessments.**

(a) *Producer assessments.* An assessment of $1 per bale for cotton research and promotion is hereby levied on each bale of Upland cotton that is produced from cotton harvested and ginned except cotton consumed by any governmental agency from its own production. Such assessment shall be payable and collected only once on each bale.

(1) A supplemental assessment for cotton research and promotion in addition to the $1 per bale assessment provided for in paragraph (a) of this section, is hereby levied on each bale of Upland cotton harvested and ginned except cotton consumed by any governmental agency from its own production. The supplemental assessment rate shall be levied at the rate of five-tenths of one percent of:

(i) The current value of the cotton multiplied by the number of pounds of lint cotton or;

(ii) The current value of the cotton converted to a fixed amount per bale as reflected in the following assessment chart:

ASSESSMENT CHART [1]

| Current value (cents per pound) | Supplemental Assessment, dollars per bale |
|---|---|
| .00 to 9.99 | 0.15 |
| 10.00 to 19.99 | .40 |
| 20.00 to 29.99 | .65 |
| 30.00 to 39.99 | .90 |
| 40.00 to 49.99 | 1.15 |
| 50.00 to 59.99 | 1.40 |
| 60.00 to 69.99 | 1.65 |
| 70.00 to 79.99 | 1.90 |
| 80.00 to 89.99 | 2.15 |
| 90.00 to 99.99 | 2.40 |
| 100.00 to 109.99 | 2.65 |
| 110.00 to 119.99 | 2.90 |

[1] Assessment is calculated on 5/10 of 1 percent of the midpoint of each 10¢ increment, based on a 500 lb. bale and converted to a fixed amount per bale.

(2) Each marketing year the collecting handler must select one of the two options for collecting the supplemental assessment as provided in paragraph (a)(1) of this section. The handler shall notify the Cotton Board as to the method selected at the time the handler files the first handler report each marketing year.

(b) *Importer assessment.* An assessment for cotton research and promotion of $1 per bale is hereby levied on each bale of cotton, or the bale equivalent thereof for cotton in cotton-containing products identified in the HTS conversion factor table in paragraph (b)(3) of this section and imported into the United States on or after July 31, 1992. The $1 per bale assessment shall be converted to a fixed amount per kilogram to facilitate the U.S. Customs Service in collecting this assessment.

(1) A supplemental assessment for cotton research and promotion in addition to the $1 per bale assessment provided for in paragraph (b) of this section is hereby levied on each bale of cotton or bale equivalent of cotton in cotton-containing products, identified in this subpart, imported into the United States on or after July 31, 1992. The supplemental assessment shall be levied at the rate of five-tenths of one percent of the historical value of cotton as determined by the Secretary and expressed in paragraph (b)(2) of this section. The rate of the supplemental assessment on imported cotton will be the same as that levied on cotton produced within the United States. The supplemental assessment will be calculated as a fixed amount per kilogram and added to the $1 per bale or bale equivalent assessment to facilitate the Customs Service in collecting assessments.

(2) The average of monthly average prices received by U.S. farmers will be calculated annually. Such average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment for the period

January 1, 1992 through December 31, 1992 is $1.384 per kilogram.

(3) The following table contains Harmonized Tariff Schedule (HTS) classification numbers and corresponding conversion factors and assessments. The left column of the table indicates the HTS classifications of imported cotton and cotton-containing products subject to assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS classification. HTS numbers for raw cotton have no conversion factor in the table. The right column indicates the total assessment per kilogram of the article assessed. Any line item entry of cotton appearing on Customs entry documentation in which the value of the cotton contained therein is less than $220.99 will not be subject to assessments as described in this section.

IMPORT ASSESSMENT TABLE

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 5201001000 | | 1.1332 |
| 5201002000 | | 1.1332 |
| 5201002010 | | 1.1332 |
| 5201002020 | | 1.1332 |
| 5201002050 | | 1.1332 |
| 5204110000 | 1.1111 | 1.2591 |
| 5204200000 | 1.1111 | 1.2591 |
| 5205111000 | 1.1111 | 1.2591 |
| 5205121000 | 1.1111 | 1.2591 |
| 5205122000 | 1.1111 | 1.2591 |
| 5205131000 | 1.1111 | 1.2591 |
| 5205141000 | 1.1111 | 1.2591 |
| 5205210000 | 1.1111 | 1.2591 |
| 5205220000 | 1.1111 | 1.2591 |
| 5205230000 | 1.1111 | 1.2591 |
| 5205240000 | 1.1111 | 1.2591 |
| 5205250000 | 1.1111 | 1.2591 |
| 5205310000 | 1.1111 | 1.2591 |
| 5205320000 | 1.1111 | 1.2591 |
| 5205330000 | 1.1111 | 1.2591 |
| 5205340000 | 1.1111 | 1.2591 |
| 5205410000 | 1.1111 | 1.2591 |
| 5205440000 | 1.1111 | 1.2591 |
| 5206120000 | 0.5556 | 0.6296 |
| 5206130000 | 0.5556 | 0.6296 |
| 5206140000 | 0.5556 | 0.6296 |
| 5206230000 | 0.5556 | 0.6296 |
| 5206240000 | 0.5556 | 0.6296 |
| 5206310000 | 0.5556 | 0.6296 |
| 5207100000 | 1.1111 | 1.2591 |
| 5208112020 | 1.1455 | 1.2981 |
| 5208112040 | 1.1455 | 1.2981 |
| 5208112090 | 1.1455 | 1.2981 |
| 5208114020 | 1.1455 | 1.2981 |
| 5208114060 | 1.1455 | 1.2981 |
| 5208114090 | 1.1455 | 1.2981 |
| 5208118090 | 1.1455 | 1.2981 |
| 5208124020 | 1.1455 | 1.2981 |
| 5208124040 | 1.1455 | 1.2981 |
| 5208124090 | 1.1455 | 1.2981 |
| 5208126020 | 1.1455 | 1.2981 |
| 5208126040 | 1.1455 | 1.2981 |
| 5208126060 | 1.1455 | 1.2981 |
| 5208126090 | 1.1455 | 1.2981 |
| 5208128020 | 1.1455 | 1.2981 |
| 5208128090 | 1.1455 | 1.2981 |
| 5208130000 | 1.1455 | 1.2981 |
| 5208192020 | 1.1455 | 1.2981 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 5208192090 | 1.1455 | 1.2981 |
| 5208194020 | 1.1455 | 1.2981 |
| 5208194090 | 1.1455 | 1.2981 |
| 5208196090 | 1.1455 | 1.2981 |
| 5208224040 | 1.1455 | 1.2981 |
| 5208224090 | 1.1455 | 1.2981 |
| 5208226020 | 1.1455 | 1.2981 |
| 5208226060 | 1.1455 | 1.2981 |
| 5208226020 | 1.1455 | 1.2981 |
| 5208230000 | 1.1455 | 1.2981 |
| 5208292020 | 1.1455 | 1.2981 |
| 5208292090 | 1.1455 | 1.2981 |
| 5208294090 | 1.1455 | 1.2981 |
| 5208296090 | 1.1455 | 1.2981 |
| 5208298020 | 1.1455 | 1.2981 |
| 5208312000 | 1.1455 | 1.2981 |
| 5208321000 | 1.1455 | 1.2981 |
| 5208323020 | 1.1455 | 1.2981 |
| 5208323040 | 1.1455 | 1.2981 |
| 5208323090 | 1.1455 | 1.2981 |
| 5208324020 | 1.1455 | 1.2981 |
| 5208324040 | 1.1455 | 1.2981 |
| 5208325020 | 1.1455 | 1.2981 |
| 5208330000 | 1.1455 | 1.2981 |
| 5208392020 | 1.1455 | 1.2981 |
| 5208392090 | 1.1455 | 1.2981 |
| 5208394090 | 1.1455 | 1.2981 |
| 5208396090 | 1.1455 | 1.2981 |
| 5208398020 | 1.1455 | 1.2981 |
| 5208412000 | 1.1455 | 1.2981 |
| 5208416000 | 1.1455 | 1.2981 |
| 5208418000 | 1.1455 | 1.2981 |
| 5208421000 | 1.1455 | 1.2981 |
| 5208423000 | 1.1455 | 1.2981 |
| 5208424000 | 1.1455 | 1.2981 |
| 5208425000 | 1.1455 | 1.2981 |
| 5208430000 | 1.1455 | 1.2981 |
| 5208492000 | 1.1455 | 1.2981 |
| 5208494020 | 1.1455 | 1.2981 |
| 5208494090 | 1.1455 | 1.2981 |
| 5208496010 | 1.1455 | 1.2981 |
| 5208496090 | 1.1455 | 1.2981 |
| 5208498090 | 1.1455 | 1.2981 |
| 5208516060 | 1.1455 | 1.2981 |
| 5208518090 | 1.1455 | 1.2981 |
| 5208523020 | 1.1455 | 1.2981 |
| 5208523040 | 1.1455 | 1.2981 |
| 5208523090 | 1.1455 | 1.2981 |
| 5208524020 | 1.1455 | 1.2981 |
| 5208524040 | 1.1455 | 1.2981 |
| 5208524060 | 1.1455 | 1.2981 |
| 5208525020 | 1.1455 | 1.2981 |
| 5208530000 | 1.1455 | 1.2981 |
| 5208592020 | 1.1455 | 1.2981 |
| 5208592090 | 1.1455 | 1.2981 |
| 5208594090 | 1.1455 | 1.2981 |
| 5208596090 | 1.1455 | 1.2981 |
| 5209110020 | 1.1455 | 1.2981 |
| 5209110030 | 1.1455 | 1.2981 |
| 5209110050 | 1.1455 | 1.2981 |
| 5209110090 | 1.1455 | 1.2981 |
| 5209120020 | 1.1455 | 1.2981 |
| 5209120040 | 1.1455 | 1.2981 |
| 5209190020 | 1.1455 | 1.2981 |
| 5209190040 | 1.1455 | 1.2981 |
| 5209190060 | 1.1455 | 1.2981 |
| 5209190090 | 1.1455 | 1.2981 |
| 5209210090 | 1.1455 | 1.2981 |
| 5209220020 | 1.1455 | 1.2981 |
| 5209290040 | 1.1455 | 1.2981 |
| 5209290090 | 1.1455 | 1.2981 |
| 5209313000 | 1.1455 | 1.2981 |
| 5209316030 | 1.1455 | 1.2981 |
| 5209316050 | 1.1455 | 1.2981 |
| 5209316090 | 1.1455 | 1.2981 |
| 5209320020 | 1.1455 | 1.2981 |
| 5209320040 | 1.1455 | 1.2981 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 5209390020 | 1.1455 | 1.2981 |
| 5209390040 | 1.1455 | 1.2981 |
| 5209390060 | 1.1455 | 1.2981 |
| 5209390080 | 1.1455 | 1.2981 |
| 5209390090 | 1.1455 | 1.2981 |
| 5209413000 | 1.1455 | 1.2981 |
| 5209416020 | 1.1455 | 1.2981 |
| 5209420020 | 1.0309 | 1.1682 |
| 5209420040 | 1.0309 | 1.1682 |
| 5209430020 | 1.1455 | 1.2981 |
| 5209430040 | 1.1455 | 1.2981 |
| 5209490020 | 1.1455 | 1.2981 |
| 5209490090 | 1.1455 | 1.2981 |
| 5209516030 | 1.1455 | 1.2981 |
| 5209516050 | 1.1455 | 1.2981 |
| 5209520020 | 1.1455 | 1.2981 |
| 5209590020 | 1.1455 | 1.2981 |
| 5209590040 | 1.1455 | 1.2981 |
| 5209590090 | 1.1455 | 1.2981 |
| 5210114020 | 0.6873 | 0.7788 |
| 5210114040 | 0.6873 | 0.7788 |
| 5210114090 | 0.6873 | 0.7788 |
| 5210116020 | 0.6873 | 0.7788 |
| 5210116040 | 0.6873 | 0.7788 |
| 5210116060 | 0.6873 | 0.7788 |
| 5210120000 | 0.6873 | 0.7788 |
| 5210192090 | 0.6873 | 0.7788 |
| 5210214040 | 0.6873 | 0.7788 |
| 5210216020 | 0.6873 | 0.7788 |
| 5210216060 | 0.6873 | 0.7788 |
| 5210314020 | 0.6873 | 0.7788 |
| 5210314040 | 0.6873 | 0.7788 |
| 5210316020 | 0.6873 | 0.7788 |
| 5210318020 | 0.6873 | 0.7788 |
| 5210414000 | 0.6873 | 0.7788 |
| 5210416000 | 0.6873 | 0.7788 |
| 5210418000 | 0.6873 | 0.7788 |
| 5210498090 | 0.6873 | 0.7788 |
| 5210514040 | 0.6873 | 0.7788 |
| 5210516020 | 0.6873 | 0.7788 |
| 5210516040 | 0.6873 | 0.7788 |
| 5210516060 | 0.6873 | 0.7788 |
| 5211120020 | 0.6873 | 0.7788 |
| 5211190020 | 0.6873 | 0.7788 |
| 5211190060 | 0.6873 | 0.7788 |
| 5211210030 | 0.4165 | 0.4720 |
| 5211290090 | 0.6873 | 0.7788 |
| 5211320020 | 0.6873 | 0.7788 |
| 5211390040 | 0.6873 | 0.7788 |
| 5211390060 | 0.6873 | 0.7788 |
| 5211490020 | 0.6873 | 0.7788 |
| 5211490090 | 0.6873 | 0.7788 |
| 5211590020 | 0.6873 | 0.7788 |
| 5212116040 | 0.9164 | 1.0385 |
| 5212146090 | 0.9164 | 1.0385 |
| 5212216090 | 0.9164 | 1.0385 |
| 5212236060 | 0.9164 | 1.0385 |
| 5601101000 | 1.1455 | 1.2981 |
| 5601210010 | 1.1455 | 1.2981 |
| 5601210090 | 1.1455 | 1.2981 |
| 5601220090 | 1.0413 | 1.1800 |
| 5601300000 | 1.1455 | 1.2981 |
| 5602109090 | 0.5727 | 0.6490 |
| 5602290000 | 1.1455 | 1.2981 |
| 5602906000 | 0.5260 | 0.5961 |
| 5603009030 | 0.3124 | 0.3540 |
| 5603009070 | 0.3124 | 0.3540 |
| 5603009090 | 0.3124 | 0.3540 |
| 5604900000 | 0.5556 | 0.6296 |
| 5607100000 | 0.8791 | 0.9962 |
| 5607210000 | 0.8791 | 0.9962 |
| 5607290000 | 0.8791 | 0.9962 |
| 5607301000 | 0.8791 | 0.9962 |
| 5607302000 | 0.8791 | 0.9962 |
| 5607491000 | 0.8081 | 0.9157 |
| 5607902000 | 0.8889 | 1.0073 |
| 5608901000 | 1.1111 | 1.2591 |

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IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 5608902000 | 1.1111 | 1.2581 |
| 5609004000 | 0.5556 | 0.6296 |
| 5701102010 | 0.0556 | 0.0630 |
| 5701102090 | 0.1111 | 0.1259 |
| 5701901010 | 1.0444 | 1.1835 |
| 5701902010 | 0.9033 | 1.0576 |
| 5702109020 | 1.1000 | 1.2466 |
| 5702312000 | 0.0778 | 0.0882 |
| 5702411000 | 0.0722 | 0.0818 |
| 5702412000 | 0.0778 | 0.0882 |
| 5702421000 | 0.0778 | 0.0882 |
| 5702422090 | 0.0778 | 0.0882 |
| 5702491010 | 1.0333 | 1.1709 |
| 5702491090 | 1.0333 | 1.1709 |
| 5702913000 | 0.0889 | 0.1007 |
| 5702991010 | 1.1111 | 1.2581 |
| 5702991090 | 1.1111 | 1.2581 |
| 5703100000 | 0.6313 | 0.7154 |
| 5703202010 | 0.0337 | 0.0382 |
| 5703900000 | 0.4439 | 0.5087 |
| 5705002020 | 0.7071 | 0.8013 |
| 5705002030 | 0.0337 | 0.0382 |
| 5801220000 | 1.1455 | 1.2981 |
| 5801230000 | 1.1455 | 1.2981 |
| 5801250010 | 1.1455 | 1.2981 |
| 5801250020 | 1.1455 | 1.2981 |
| 5801250020 | 1.1455 | 1.2981 |
| 5802110000 | 1.1455 | 1.2981 |
| 5802190000 | 1.1455 | 1.2981 |
| 5802300030 | 0.5727 | 0.6490 |
| 5804290020 | 1.1455 | 1.2981 |
| 5806200000 | 0.3534 | 0.4005 |
| 5806210000 | 1.1455 | 1.2981 |
| 5806400000 | 0.4296 | 0.4868 |
| 5808103010 | 0.0527 | 0.6490 |
| 5808900010 | 0.5727 | 0.6490 |
| 5810100000 | 1.1455 | 1.2981 |
| 5810910020 | 1.1455 | 1.2981 |
| 5811002000 | 1.1455 | 1.2981 |
| 6001210000 | 0.8591 | 0.9735 |
| 6001220000 | 0.2864 | 0.3245 |
| 6001910010 | 0.8591 | 0.9735 |
| 6001910020 | 0.8591 | 0.9735 |
| 6001920020 | 0.2864 | 0.3245 |
| 6001920030 | 0.2864 | 0.3245 |
| 6001920040 | 0.2864 | 0.3245 |
| 6002220090 | 0.8681 | 0.9837 |
| 6002306000 | 0.2894 | 0.3279 |
| 6002392000 | 0.9990 | 1.1327 |
| 6002420000 | 0.8681 | 0.9837 |
| 6002430010 | 0.2894 | 0.3279 |
| 6002430050 | 0.2894 | 0.3279 |
| 6002920000 | 1.1574 | 1.3116 |
| 6002930040 | 0.1157 | 0.1311 |
| 6002930060 | 0.1157 | 0.1311 |
| 6101200010 | 1.0094 | 1.1439 |
| 6101302010 | 1.2235 | 1.3865 |
| 6102200010 | 1.0094 | 1.1439 |
| 6102200020 | 1.0094 | 1.1439 |
| 6102302010 | 1.2235 | 1.3865 |
| 6103421020 | 0.8806 | 0.9979 |
| 6103421040 | 0.8806 | 0.9979 |
| 6103421050 | 0.8806 | 0.9979 |
| 6103421070 | 0.8806 | 0.9979 |
| 6103431520 | 0.2516 | 0.2851 |
| 6103431540 | 0.2516 | 0.2851 |
| 6103431550 | 0.2516 | 0.2851 |
| 6104220040 | 0.9002 | 1.0201 |
| 6104220060 | 0.9002 | 1.0201 |
| 6104320000 | 0.9207 | 1.0433 |
| 6104420010 | 0.9002 | 1.0201 |
| 6104420020 | 0.9002 | 1.0201 |
| 6104520010 | 0.9312 | 1.0552 |
| 6104520020 | 0.9312 | 1.0552 |
| 6104622010 | 0.8806 | 0.9979 |
| 6104622015 | 0.8806 | 0.9979 |
| 6104622025 | 0.8806 | 0.9979 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 6104622030 | 0.8806 | 0.9979 |
| 6104622060 | 0.8806 | 0.9979 |
| 6104632010 | 0.3774 | 0.4277 |
| 6104632025 | 0.3774 | 0.4277 |
| 6104632030 | 0.3774 | 0.4277 |
| 6104632060 | 0.3774 | 0.4277 |
| 6105100010 | 0.9850 | 1.1162 |
| 6105100020 | 0.9850 | 1.1162 |
| 6105100030 | 0.9850 | 1.1162 |
| 6105202010 | 0.3078 | 0.3488 |
| 6105202030 | 0.3078 | 0.3488 |
| 6106100010 | 0.9850 | 1.1162 |
| 6106100020 | 0.9850 | 1.1162 |
| 6106100030 | 0.9850 | 1.1162 |
| 6106202010 | 0.3078 | 0.3488 |
| 6106202030 | 0.3078 | 0.3488 |
| 6107110010 | 1.1322 | 1.2830 |
| 6107110020 | 1.1322 | 1.2830 |
| 6107120010 | 0.5032 | 0.5702 |
| 6107210010 | 0.8806 | 0.9979 |
| 6107220025 | 0.3774 | 0.4277 |
| 6107910010 | 1.2581 | 1.4257 |
| 6107910040 | 1.2581 | 1.4257 |
| 6108210010 | 1.2445 | 1.4103 |
| 6108210020 | 1.2445 | 1.4103 |
| 6108220020 | 1.1314 | 1.2821 |
| 6108310010 | 1.1201 | 1.2693 |
| 6108320010 | 0.2489 | 0.2821 |
| 6108320015 | 0.2489 | 0.2821 |
| 6108320025 | 0.2489 | 0.2821 |
| 6108910015 | 1.2445 | 1.4103 |
| 6108910025 | 1.2445 | 1.4103 |
| 6108910030 | 1.2445 | 1.4103 |
| 6108920030 | 0.2489 | 0.2821 |
| 6109100005 | 0.9956 | 1.1282 |
| 6109100007 | 0.9956 | 1.1282 |
| 6109100009 | 0.9956 | 1.1282 |
| 6109100012 | 0.9956 | 1.1282 |
| 6109100014 | 0.9956 | 1.1282 |
| 6109100018 | 0.9956 | 1.1282 |
| 6109100023 | 0.9956 | 1.1282 |
| 6109100027 | 0.9956 | 1.1282 |
| 6109100037 | 0.9956 | 1.1282 |
| 6109100040 | 0.9956 | 1.1282 |
| 6109100045 | 0.9956 | 1.1282 |
| 6109100060 | 0.9956 | 1.1282 |
| 6109100065 | 0.9956 | 1.1282 |
| 6109100070 | 0.9956 | 1.1282 |
| 6109901007 | 0.3111 | 0.3525 |
| 6109901009 | 0.3111 | 0.3525 |
| 6109901025 | 0.3111 | 0.3525 |
| 6109901049 | 0.3111 | 0.3525 |
| 6109901050 | 0.3111 | 0.3525 |
| 6109901060 | 0.3111 | 0.3525 |
| 6109901065 | 0.3111 | 0.3525 |
| 6109901090 | 0.3111 | 0.3525 |
| 6110102010 | 0.8631 | 0.9781 |
| 6110102030 | 0.8631 | 0.9781 |
| 6110202005 | 1.1837 | 1.3414 |
| 6110202010 | 1.1837 | 1.3414 |
| 6110202015 | 1.1837 | 1.3414 |
| 6110202020 | 1.1837 | 1.3414 |
| 6110202025 | 1.1837 | 1.3414 |
| 6110202030 | 1.1837 | 1.3414 |
| 6110202035 | 1.1837 | 1.3414 |
| 6110202040 | 1.1574 | 1.3116 |
| 6110202045 | 1.1574 | 1.3116 |
| 6110202065 | 1.1574 | 1.3116 |
| 6110202075 | 1.1574 | 1.3116 |
| 6110303010 | 0.1850 | 0.2096 |
| 6110303020 | 0.1850 | 0.2096 |
| 6110303040 | 0.1850 | 0.2096 |
| 6110303050 | 0.1850 | 0.2096 |
| 6110303055 | 0.1850 | 0.2096 |
| 6110900022 | 0.2630 | 0.2980 |
| 6110900024 | 0.2630 | 0.2980 |
| 6110900040 | 0.2630 | 0.2980 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 6110900042 | 0.2630 | 0.2980 |
| 6110900060 | 0.2630 | 02980 |
| 6111201000 | 1.2581 | 1.4257 |
| 6111202000 | 1.2581 | 1.4257 |
| 6111203000 | 1.0064 | 1.1405 |
| 6111205000 | 1.0064 | 1.1405 |
| 6111206010 | 1.0064 | 1.1405 |
| 6111206020 | 1.0064 | 1.1405 |
| 6111206030 | 1.0064 | 1.1405 |
| 6111206040 | 1.0064 | 1.1405 |
| 6111304000 | 0.2516 | 0.2851 |
| 6111305010 | 0.2516 | 0.2851 |
| 6111305015 | 0.2516 | 0.2851 |
| 6111305020 | 0.2516 | 0.2851 |
| 6111305030 | 0.2516 | 0.2851 |
| 6111305040 | 0.2516 | 0.2851 |
| 6112110050 | 0.7548 | 0.8553 |
| 6112120010 | 0.2516 | 0.2851 |
| 6112120030 | 0.2516 | 0.2851 |
| 6112120040 | 0.2516 | 0.2851 |
| 6112120050 | 0.2516 | 0.2851 |
| 6112120060 | 0.2516 | 0.2851 |
| 6112390010 | 1.1322 | 1.2830 |
| 6112410010 | 0.1258 | 0.1426 |
| 6112490010 | 0.9435 | 1.0692 |
| 6114200005 | 0.9002 | 1.0201 |
| 6114200010 | 0.9002 | 1.0201 |
| 6114200015 | 0.9002 | 1.0201 |
| 6114200020 | 1.2869 | 1.4573 |
| 6114200040 | 0.9002 | 1.0201 |
| 6114200052 | 0.9002 | 1.0201 |
| 6114200060 | 0.9002 | 1.0201 |
| 6114301010 | 0.2572 | 0.2915 |
| 6114301020 | 0.2572 | 0.2915 |
| 6114303030 | 0.2572 | 0.2915 |
| 6114303050 | 0.2572 | 0.2915 |
| 6115110020 | 1.0522 | 1.1924 |
| 6115190010 | 1.0417 | 1.1805 |
| 6115922000 | 1.0417 | 1.1805 |
| 6115932000 | 0.2315 | 0.2623 |
| 6115932020 | 0.2315 | 0.2623 |
| 6116101510 | 0.3655 | 0.4142 |
| 6116101520 | 0.8528 | 0.9664 |
| 6116103510 | 0.8528 | 0.9664 |
| 6116922010 | 1.0965 | 1.2426 |
| 6116922020 | 1.0965 | 1.2426 |
| 6116922030 | 1.2183 | 1.3806 |
| 6116922040 | 1.0965 | 1.2426 |
| 6116922060 | 1.2183 | 1.3806 |
| 6116922070 | 1.0965 | 1.2426 |
| 6116923000 | 1.0965 | 1.2426 |
| 6116926020 | 1.0965 | 1.2426 |
| 6116926030 | 1.2183 | 1.3806 |
| 6116926040 | 1.0965 | 1.2426 |
| 6116929000 | 1.0965 | 1.2426 |
| 6116932010 | 0.1218 | 0.1380 |
| 6116932011 | 0.1218 | 0.1380 |
| 6116932020 | 0.1218 | 0.1380 |
| 6117800010 | 0.9747 | 1.1045 |
| 6117800035 | 0.3655 | 0.4142 |
| 6201121000 | 0.9460 | 1.0743 |
| 6201122010 | 0.8953 | 1.0146 |
| 6201122050 | 0.6847 | 0.7759 |
| 6201122060 | 0.6847 | 0.7759 |
| 6201134015 | 0.2107 | 0.2388 |
| 6201134030 | 0.2633 | 0.2984 |
| 6201921000 | 0.9267 | 1.0501 |
| 6201921500 | 1.1583 | 1.3126 |
| 6201922010 | 1.0296 | 1.1667 |
| 6201922020 | 1.2871 | 1.4585 |
| 6201922030 | 1.2871 | 1.4585 |
| 6201922040 | 1.2871 | 1.4585 |
| 6201922050 | 1.0296 | 1.1667 |
| 6201922060 | 1.0296 | 1.1667 |
| 6201931000 | 0.3089 | 0.3500 |
| 6201932020 | 0.2574 | 0.2917 |
| 6201933000 | 1.1700 | 1.3258 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 6201933510 | 0.2574 | 0.2917 |
| 6201933520 | 0.2574 | 0.2917 |
| 6202121000 | 0.9372 | 1.0620 |
| 6202122010 | 1.1064 | 1.2538 |
| 6202122025 | 1.3017 | 1.4751 |
| 6202122050 | 0.8461 | 0.9588 |
| 6202122060 | 0.8461 | 0.9588 |
| 6202134005 | 0.2664 | 0.3019 |
| 6202134020 | 0.3330 | 0.3774 |
| 6202134030 | 0.3330 | 0.3774 |
| 6202921000 | 1.0413 | 1.1800 |
| 6202921500 | 1.0413 | 1.1800 |
| 6202922025 | 1.3017 | 1.4751 |
| 6202922060 | 1.0413 | 1.1800 |
| 6202922070 | 1.0413 | 1.1800 |
| 6202931000 | 0.3124 | 0.3540 |
| 6202934500 | 1.1833 | 1.3409 |
| 6202935010 | 0.2603 | 0.2950 |
| 6202935020 | 0.2603 | 0.2950 |
| 6202990060 | 0.2603 | 0.2950 |
| 6203122010 | 0.1302 | 0.1475 |
| 6203191010 | 1.0413 | 1.1800 |
| 6203221000 | 1.3017 | 1.4751 |
| 6203322010 | 1.2366 | 1.4013 |
| 6203322040 | 1.2366 | 1.4013 |
| 6203332010 | 0.1302 | 0.1475 |
| 6203392010 | 1.1715 | 1.3275 |
| 6203394060 | 0.2603 | 0.2950 |
| 6203422010 | 0.9961 | 1.1288 |
| 6203422025 | 0.9961 | 1.1288 |
| 6203422050 | 0.9961 | 1.1288 |
| 6203422090 | 0.9961 | 1.1288 |
| 6203424005 | 1.2451 | 1.4109 |
| 6203424010 | 1.2451 | 1.4109 |
| 6203424015 | 0.9961 | 1.1288 |
| 6203424020 | 1.2451 | 1.4109 |
| 6203424025 | 1.2451 | 1.4109 |
| 6203424030 | 1.2451 | 1.4109 |
| 6203424035 | 1.2451 | 1.4109 |
| 6203424040 | 0.9961 | 1.1288 |
| 6203424045 | 0.9961 | 1.1288 |
| 6203424050 | 0.9238 | 1.0469 |
| 6203424055 | 0.9238 | 1.0469 |
| 6203424060 | 0.9238 | 1.0469 |
| 6203431500 | 0.1245 | 0.1411 |
| 6203434010 | 0.1232 | 0.1396 |
| 6203434020 | 0.1232 | 0.1396 |
| 6203434030 | 0.1232 | 0.1396 |
| 6203434040 | 0.1232 | 0.1396 |
| 6203492010 | 0.1245 | 0.1411 |
| 6203492030 | 0.1245 | 0.1411 |
| 6203493045 | 0.2490 | 0.2822 |
| 6204132010 | 0.1302 | 0.1475 |
| 6204192000 | 0.1302 | 0.1475 |
| 6204193090 | 0.2603 | 0.2950 |
| 6204221000 | 1.3017 | 1.4751 |
| 6204223030 | 1.0413 | 1.1800 |
| 6204223040 | 1.0413 | 1.1800 |
| 6204223050 | 1.0413 | 1.1800 |
| 6204223060 | 1.0413 | 1.1800 |
| 6204223065 | 1.0413 | 1.1800 |
| 6204292015 | 0.3254 | 0.3687 |
| 6204292020 | 0.3254 | 0.3687 |
| 6204292040 | 0.3254 | 0.3687 |
| 6204322010 | 1.2366 | 1.4013 |
| 6204322030 | 1.0413 | 1.1800 |
| 6204322040 | 1.0413 | 1.1800 |
| 6204394060 | 0.2603 | 0.2950 |
| 6204423010 | 1.2728 | 1.4423 |
| 6204423030 | 0.9546 | 1.0818 |
| 6204423040 | 0.9546 | 1.0818 |
| 6204423050 | 0.9546 | 1.0818 |
| 6204423060 | 0.9546 | 1.0818 |
| 6204444010 | 0.4831 | 0.5474 |
| 6204490060 | 0.2603 | 0.2950 |
| 6204510010 | 0.0666 | 0.0755 |
| 6204522010 | 1.2654 | 1.4340 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 6204522030 | 1.2654 | 1.4340 |
| 6204522040 | 1.2654 | 1.4340 |
| 6204522070 | 1.0656 | 1.2075 |
| 6204522080 | 1.0656 | 1.2075 |
| 6204533010 | 0.2664 | 0.3019 |
| 6204594060 | 0.2664 | 0.3019 |
| 6204610010 | 0.0623 | 0.0706 |
| 6204622010 | 0.9961 | 1.1288 |
| 6204622025 | 0.9961 | 1.1288 |
| 6204622050 | 0.9961 | 1.1288 |
| 6204624005 | 1.2451 | 1.4109 |
| 6204624010 | 1.2451 | 1.4109 |
| 6204624020 | 0.9961 | 1.1288 |
| 6204624025 | 1.2451 | 1.4109 |
| 6204624030 | 1.2451 | 1.4109 |
| 6204624035 | 1.2451 | 1.4109 |
| 6204624040 | 1.2451 | 1.4109 |
| 6204624045 | 0.9961 | 1.1288 |
| 6204624050 | 0.9961 | 1.1288 |
| 6204624055 | 0.9854 | 1.1167 |
| 6204624060 | 0.9854 | 1.1167 |
| 6204624065 | 0.9854 | 1.1167 |
| 6204631200 | 0.1245 | 0.1411 |
| 6204633510 | 0.2546 | 0.2885 |
| 6204633530 | 0.2546 | 0.2885 |
| 6204633532 | 0.2437 | 0.2762 |
| 6204633540 | 0.2437 | 0.2762 |
| 6204692510 | 0.2490 | 0.2822 |
| 6204692530 | 0.2490 | 0.2822 |
| 6204692540 | 0.2437 | 0.2762 |
| 6204699040 | 0.2490 | 0.2822 |
| 6204699044 | 0.2490 | 0.2822 |
| 6205202015 | 0.9961 | 1.1288 |
| 6205202020 | 0.9961 | 1.1288 |
| 6205202025 | 0.9961 | 1.1288 |
| 6205202030 | 0.9961 | 1.1288 |
| 6205202035 | 1.1206 | 1.2699 |
| 6205202046 | 0.9961 | 1.1288 |
| 6205002050 | 0.9961 | 1.1288 |
| 6205202060 | 0.9961 | 1.1288 |
| 6205202065 | 0.9961 | 1.1288 |
| 6205202070 | 0.9961 | 1.1288 |
| 6205202075 | 0.9961 | 1.1288 |
| 6205302010 | 0.3113 | 0.3528 |
| 6205302040 | 0.3113 | 0.3528 |
| 6205302050 | 0.3113 | 0.3528 |
| 6205302070 | 0.3113 | 0.3528 |
| 6205302080 | 0.3113 | 0.3528 |
| 6205902040 | 0.1245 | 0.1411 |
| 6206100040 | 0.1245 | 0.1411 |
| 6206303010 | 0.9961 | 1.1288 |
| 6206303020 | 0.9961 | 1.1288 |
| 6206303030 | 0.9961 | 1.1288 |
| 6206303040 | 0.9961 | 1.1288 |
| 6206303050 | 0.9961 | 1.1288 |
| 6206303060 | 0.9961 | 1.1288 |
| 6206403010 | 0.3113 | 0.3528 |
| 6206403030 | 0.3113 | 0.3528 |
| 6206403050 | 0.3113 | 0.3528 |
| 6206900040 | 0.2490 | 0.2822 |
| 6207110000 | 1.0852 | 1.2297 |
| 6207190010 | 0.3617 | 0.4099 |
| 6207210010 | 1.1085 | 1.2562 |
| 6207210030 | 1.1085 | 1.2562 |
| 6207220000 | 0.3695 | 0.4187 |
| 6207911000 | 1.1455 | 1.2981 |
| 6207913000 | 1.1455 | 1.2981 |
| 6207913020 | 1.1456 | 1.2981 |
| 6208210010 | 1.0583 | 1.1993 |
| 6208210020 | 1.0583 | 1.1993 |
| 6208220000 | 0.1245 | 0.1411 |
| 6208911010 | 1.1455 | 1.2981 |
| 6208913010 | 1.1455 | 1.2981 |
| 6208920010 | 0.1273 | 0.1443 |
| 6208920030 | 0.1273 | 0.1443 |
| 6209201000 | 1.1577 | 1.3119 |
| 6209203000 | 0.9749 | 1.1048 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 6209205030 | 0.9749 | 1.1048 |
| 6209205035 | 0.9749 | 1.1048 |
| 6209205040 | 1.2186 | 1.3809 |
| 6209205045 | 0.9749 | 1.1048 |
| 6209205050 | 0.9749 | 1.1048 |
| 6209303010 | 0.2463 | 0.2791 |
| 6209303020 | 0.2463 | 0.2791 |
| 6209303030 | 0.2463 | 0.2791 |
| 6209330340 | 0.2463 | 0.2791 |
| 6210104015 | 0.2291 | 0.2596 |
| 6210301020 | 0.0891 | 0.1010 |
| 6210401010 | 0.0391 | 0.0443 |
| 6210401020 | 0.4556 | 0.5163 |
| 6210401030 | 0.4556 | 0.5163 |
| 6210401050 | 0.4556 | 0.5163 |
| 6210501020 | 0.0911 | 0.1032 |
| 6211111010 | 0.1273 | 0.1443 |
| 6211111020 | 0.1273 | 0.1443 |
| 6211112010 | 1.1455 | 1.2981 |
| 6211112020 | 1.1455 | 1.2981 |
| 6211021535 | 0.2473 | 0.2802 |
| 6211201565 | 0.2473 | 0.2802 |
| 6211320003 | 0.6769 | 0.7671 |
| 6211320005 | 0.8461 | 0.9588 |
| 6211320007 | 0.8461 | 0.9588 |
| 6211320010 | 1.0413 | 1.1800 |
| 6211320015 | 1.0413 | 1.1800 |
| 6211320030 | 0.9763 | 1.1063 |
| 6211320060 | 0.9763 | 1.1063 |
| 6211320070 | 0.9763 | 1.1063 |
| 6211320080 | 0.9763 | 1.1063 |
| 6211330010 | 0.3254 | 0.3687 |
| 6211330030 | 0.3905 | 0.4425 |
| 6211330035 | 0.3905 | 0.4425 |
| 6211330040 | 0.3905 | 0.4425 |
| 6211330050 | 0.3905 | 0.4425 |
| 6211330060 | 0.3905 | 0.4425 |
| 6211420010 | 1.0413 | 1.1800 |
| 6211420020 | 1.0413 | 1.1800 |
| 6211420025 | 1.1715 | 1.3275 |
| 6211420050 | 1.1715 | 1.3275 |
| 6211420060 | 1.0413 | 1.1800 |
| 6211420070 | 1.1715 | 1.3275 |
| 6211420080 | 1.1715 | 1.3275 |
| 6211430010 | 0.2603 | 0.2950 |
| 6211430030 | 0.2603 | 0.2950 |
| 6211430050 | 0.2603 | 0.2950 |
| 6211430060 | 0.2603 | 0.2950 |
| 6211430070 | 0.2603 | 0.2950 |
| 6211430090 | 0.2603 | 0.2950 |
| 6211490020 | 0.2603 | 0.2950 |
| 6212101020 | 0.2412 | 0.2733 |
| 6212102010 | 0.9646 | 1.0931 |
| 6212102020 | 0.2412 | 0.2733 |
| 6212200020 | 0.3014 | 0.3415 |
| 6212900010 | 0.7717 | 0.8745 |
| 6212900030 | 0.1929 | 0.2186 |
| 6213201000 | 1.1809 | 1.3382 |
| 6213202000 | 1.0626 | 1.2044 |
| 6213901000 | 0.4724 | 0.5353 |
| 6214300000 | 0.1206 | 0.1367 |
| 6214400000 | 0.1206 | 0.1367 |
| 6214900010 | 0.9043 | 1.0248 |
| 6216001000 | 0.3617 | 0.4099 |
| 6216001510 | 0.3617 | 0.4099 |
| 6216002540 | 0.1743 | 0.1975 |
| 6216003810 | 1.2451 | 1.4109 |
| 6216003811 | 1.2451 | 1.4109 |
| 6216003820 | 1.2451 | 1.4109 |
| 6216003821 | 1.2451 | 1.4109 |
| 6216003910 | 1.2058 | 1.3664 |
| 6216003920 | 1.2058 | 1.3664 |
| 6217100010 | 1.0182 | 1.1538 |
| 6217100030 | 0.2546 | 0.2885 |
| 6217900075 | 1.0182 | 1.1538 |
| 6301300010 | 0.8765 | 0.9934 |
| 6301300020 | 0.8765 | 0.9934 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS classification | Conversion factor | Cents/kg. |
|---|---|---|
| 6301400010 | 1.0526 | 1.2041 |
| 6302100010 | 1.1689 | 1.3246 |
| 6302211020 | 0.8182 | 0.9272 |
| 6302211040 | 0.8182 | 0.9272 |
| 6302212010 | 1.1689 | 1.3246 |
| 6302212020 | 0.8182 | 0.9272 |
| 6302212030 | 1.1689 | 1.3246 |
| 6302212040 | 0.8182 | 0.9272 |
| 6302212060 | 0.8182 | 0.9272 |
| 6302212090 | 0.8182 | 0.9272 |
| 6302222010 | 0.4091 | 0.4636 |
| 6302222020 | 0.4091 | 0.4636 |
| 6302311060 | 0.8182 | 0.9272 |
| 6302311090 | 0.8182 | 0.9272 |
| 6302312010 | 1.1689 | 1.3246 |
| 6302312020 | 0.8182 | 0.9272 |
| 6302312030 | 1.1689 | 1.3246 |
| 6302312040 | 0.8182 | 0.9272 |
| 6302312050 | 0.8182 | 0.9272 |
| 6302312055 | 0.8182 | 0.9272 |
| 6302312060 | 0.8182 | 0.9272 |
| 6302312090 | 0.8182 | 0.9272 |
| 6302322020 | 0.4091 | 0.4636 |
| 6302322030 | 0.5844 | 0.6622 |
| 6302322040 | 0.4091 | 0.4636 |
| 6302402010 | 0.9935 | 1.1258 |
| 6302511000 | 0.5844 | 0.6622 |
| 6302512000 | 0.8766 | 0.9934 |
| 6302513000 | 0.5844 | 0.6622 |
| 6302514000 | 0.8182 | 0.9272 |
| 6302600010 | 1.1689 | 1.3246 |
| 6302600020 | 1.0520 | 1.1921 |
| 6302600030 | 1.0520 | 1.1921 |
| 6302910005 | 1.0520 | 1.1921 |
| 6302910015 | 1.1689 | 1.3246 |
| 6302910025 | 1.0520 | 1.1921 |
| 6302910035 | 1.0520 | 1.1921 |
| 6302910045 | 1.0520 | 1.1921 |
| 6302910050 | 1.0520 | 1.1921 |
| 6302910060 | 1.0520 | 1.1921 |
| 6303110000 | 0.9448 | 1.0706 |
| 6303910000 | 0.6429 | 0.7285 |
| 6303920000 | 0.2922 | 0.3311 |
| 6304111000 | 1.0829 | 1.2045 |
| 6304190500 | 1.0520 | 1.1921 |
| 6304191000 | 1.1689 | 1.3246 |
| 6304191500 | 0.4091 | 0.4636 |
| 6304192000 | 0.4091 | 0.4636 |
| 6304910020 | 0.9351 | 1.0597 |
| 6304920000 | 0.9351 | 1.0597 |
| 6304930000 | 1.0526 | 1.2041 |

(4) Any entry of cotton that qualifies for informal entry according to regulations issued by the Customs Service will not be subject to the assessment.

(5) Imported textile articles assembled abroad in whole or in part of fabricated components, produced in the United States which:

(i) were exported from the U.S. in condition ready for assembly without further fabrication,

(ii) have not lost their physical identity in such articles by change in form, shape or otherwise, and

(iii) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process shall not be subject to assessments under this subpart. The specific HTS classifications affected under this paragraph are 9802.00.8010, 9802.00.8040, and 9802.00.8060.

(6) Imported cotton and products may be exempted by the Cotton Board from assessment under this paragraph. Such imported cotton and products may include, but are not limited to cotton and the cotton content of products which is U.S. produced cotton, or cotton other than Upland cotton.

(i) A request for such exemption must be submitted to the Cotton Board by the importer, prior to the importation of the cotton product. The Cotton Board will then issue, if deemed appropriate, a numbered exemption certificate valid for 120 days from the date of issue. The exemption number should be entered by the importer on the Customs entry documentation in the appropriate location as determined by the U.S. Customs Service.

(ii) The request for exemption should include:

(A) the name, address, and importer identification number for the importer;

(B) the HTS classification of the imported product;

(C) weight of the product for which the exemption is sought;

(D) estimated date of entry;

(E) commercial invoices of other such documentation indicating the origin or production or type of the cotton fiber used to produce the imported product;

(F) manufacture's description of the imported product.

(7) The exemption number "9999999999" shall be entered on the Customs entry summary document, in the appropriate location as determined by the U.S. Customs Service, by the importer when, based on the importer's own determination, the imported product is identified by a Harmonized Tariff Schedule classification number which is subject to assessment but the particular article contains no cotton.

(8) Articles imported into the United States temporarily and under bond which are classified by the Harmonized Tariff Schedule heading which begins with "9813" shall not be subject to assessment.

(9) Articles imported into the U.S. after being exported from the U.S. for alterations and which are classified by the Harmonized Tariff Schedule subheadings 9802.00.40 and 9802.00.50 shall not be subject to assessment.

Dated: May 14, 1992.

Kenneth C. Clayton,

*Acting Administrator.*

[FR Doc. 92-15364 Filed 6-30-92; 8:45 am]

BILLING CODE 3410-02-M

## 7 CFR Part 1220

[No. LS-91-005]

## Soybean Promotion and Research; Rules and Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts with changes the interim final rule implementing the Soybean Promotion and Research Order, which established a national industry-funded soybean promotion and research program. This rule includes provisions: (1) Detailing the collection and remittance process, (2) establishing a form of certification for exempt transactions, (3) identifying the Qualified State Soybean Boards, (4) providing refund procedures, and (5) establishing procedures for collecting and remitting assessments on forfeited soybeans pledged as collateral for Commodity Credit Corporation loans.

**EFFECTIVE DATE:** This final rule is effective July 2, 1992.

**ADDRESSES:** Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief, Marketing Programs Branch; Livestock and Seed Division; AMS, USDA, Room 2624–S; P.O. Box 96456; Washington, DC 20090–6456. (Telephone: 202/720/1115).

**SUPPLEMENTARY INFORMATION:** Prior documents:

Final Rule—Soybean Promotion and Research Order published July 9, 1991 (56 FR 31043).

Interim Final Rule with request for comments published August 30, 1991 (56 FR 42921).

Interim Final Rule—Soybean Promotion and Research; Rules and Regulations published August 30, 1991 (56 FR 42923).

### Regulatory Impact

This final rule was reviewed in accordance with Executive Order No. 12291 and Departmental Regulation No. 1512–1 and has been classified as a "nonmajor" rule because it does not meet the criteria for a major rule as stated in the Order.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before

parties may file suit in court. Under section 1971 of the Act, a person subject to the Soybean Promotion and Research Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The statute provides that the district court of the United States in any district in which the person who is a petitioner resides or carries on business has jurisdiction to review a ruling on the petition if a complaint for that purpose is filed not later than 20 days after the date of the entry of the ruling.

Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards. The exception provides that to ensure adequate funding of the operations of Qualified State Soybean Boards under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a Qualified State Soybean Board in that State may collect, and which is authorized to be credited under the Act.

This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.).

This rule includes provisions: (1) Detailing the collection and remittance process, (2) establishing a form of certification of exempt transactions, (3) identifying the Qualified State Soybean Boards, (4) providing refund procedures, and (5) establishing procedures for collecting and remitting assessments on forfeited soybeans pledged as collateral for a Commodity Credit Corporation loan.

The most recent available census of agricultural producers indicates that there are 439,093 soybean producers in the United States, an estimated 431,710 of whom would be classified as small businesses under the criteria established by the Small Business Administration (13 CFR 121.2). Soybean producers are required to pay an assessment of one-half of one percent of market value of soybeans marketed. In addition, an estimated 10,000 first purchasers of soybeans are required to collect and remit the assessments. Although the assessments are expected to total approximately $50–$60 million annually, the economic impact of a one-half of one percent of market value assessment on each individual producer, including small producers, will not be significant. Reporting and recordkeeping requirements are imposed on first purchasers of soybeans and on producers processing and marketing soybeans and soybean products of their own production. This burden should average less than 5 hours per year, so its economic impact will not be significant. In addition, the promotion and research program funded by the assessments is expected to benefit the producers and first purchasers by expanding and maintaining new and existing domestic and foreign markets and uses for soybeans and soybean products. Therefore, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) the reporting and recordkeeping requirements included in Part 1220 were previously approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board member nominee information sheets which were assigned OMB No. 0505–0001. There are an estimated 439,093 soybean producers and an estimated 10,000 first purchasers. Information collection requirements contained in this action include a report by persons marketing soybeans, processed soybeans, or soybean products and persons collecting assessments on soybeans (an estimated 10,000 respondents with an estimated average reporting burden of one hour per response); a certification form to claim non-producer status (an estimated 2,000 respondents with an estimated average reporting burden of 0.03 hours per response); and an application for a refund of assessments (an estimated 30,000 respondents with an estimated average reporting burden of 0.08 hours per response).

**Background**

The Soybean Promotion, Research, and Consumer Information Act (Act) approved November 28, 1990, as Subtitle E of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 provides for the establishment of a national program of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace; to maintain and expand existing domestic and foreign markets and uses for soybeans and soybean products; and to develop new markets and uses for soybeans and soybean products. This program will be financed by assessments on soybeans. Pursuant to the Act, a Soybean Promotion and Research Order was issued and assessments began September 1, 1991. The Order requires that first purchasers of soybeans collect an assessment from producers and remit such assessments to the Qualified State Soybean Board in the first purchaser's State or if no Qualified State Soybean Board exists in the State, to the Board.

The Soybean Promotion, Research, and Consumer Information Act authorizes the establishment of a national soybean promotion, research, consumer information, and industry information program. The program will be funded by an assessment of 0.5 of one percent of the net market price of soybeans marketed by soybean producers.

The final Order establishing a soybean promotion and research program was published in the July 9, 1991, issue of the Federal Register (56 FR 31043). The Order requires that the first purchaser remit assessments to the Qualified State Soybean Board or to the Board if the State does not have a Qualified State Soybean Board. The Order further provides that producers participating in such Qualified State Soybean Promotion and Research programs shall be entitled to a credit of up to 0.25 of one percent of the net market value of soybeans marketed for participating in such a program. The remaining portion of the assessment will be forwarded to the Board to fund national promotion and other authorized activities while the portion credited to the Qualified State Soybean Boards will be used for comparable programs at the State level.

The program is administered by a United Soybean Board composed of soybean producers appointed by the Secretary from nominations submitted by industry organizations.

The Board reviewed 29 applications from State soybean promotion entities pursuant to § 1220.228 of the Order. These Qualified State Soybean Boards are listed in § 1220.312 of these rules and regulations. The address of the Board and the addresses of the Qualified State Soybean Boards were published in a separate notice on October 8, 1991 (56 FR 50705), and will be updated as necessary. First purchasers or producers responsible for remitting assessments in the 21 States

which do not have Qualified State Soybean Boards are required by the Order to remit the assessments collected to the Board.

During its meeting on July 21–22, 1991, the Board recommended the adoption of rules and regulations to implement the collection of assessments pursuant to the Order.

The Board sought to clarify the collection of assessments in the marketing situation involving deliveries on futures contracts. In these transactions there could be confusion as to the person responsible for remitting assessments. The Board has determined that the collection and remittance process would be most effective and efficient if the producer is responsible for remitting the assessment.

In addition, these rules and regulations further specify responsibilities relating to assessments for purchases on a contract basis including soybeans purchased for seed stock. Section 1220.223(a)(2) of the Order specifies that "any producer marketing processed soybeans or soybean products of that person's own production shall remit to a Qualified State Soybean Board or to the Board an assessment on such soybeans or soybean products at a rate of one-half of one percent (0.5%) of the net market price of the soybeans involved or the equivalent thereof." The Order did not specify when this assessment obligation would be incurred. It was the intent of the Order that the assessment on such soybeans would be incurred at the time of sale of the processed soybeans or soybean products. The assessment on soybeans forfeited in lieu of repayment of a Commodity Credit Corporation loan shall attach at the time of loan settlement.

These regulations provide procedures for certification of non-producer status for subsequent sales of soybeans.

Producers may obtain refunds of assessments paid prior to the date the results of the continuance referendum as contemplated by the Act are announced. These rules and regulations contain procedures relating to this refund period. Also, a provision concerning the OMB control number is added to subpart B.

In response to a request for comments in an interim final rule published in the **Federal Register** on August 30, 1991 (56 FR 42923), the U.S. Department of Agriculture (USDA) received five written comments. Changes suggested by commenters are discussed below, together with a description of changes made by USDA upon review of the comments. For the reader's convenience, the discussion is organized by topic headings of the interim final rule.

*Section 1220.311. Collection and Remittance of Assessments.*

Regarding section 1220.311(a), one commenter suggested that USDA more clearly define "receipt" as used in the last sentence of the paragraph. The commenter also suggested listing the information that is required on a receipt and specifying that settlement sheets, or other comparable documentation commonly issued to producers by first purchasers as evidence of a transaction, suffice as a receipt. Accordingly, we have added a sentence at the end of the paragraph which describes what constitutes a receipt and referenced § 1220.314(a) of the rule which details the information required on a receipt.

Regarding § 1220.311(b), two commenters suggested that this paragraph be amended to apply only to contracts between producers and integrated livestock and poultry operations. The commenters felt that the use of the term "volume basis" could be misconstrued to apply to "forward contracts" or "price later contracts." It is not practical to specifically address all the different kinds of contracts that the industry utilizes to market soybeans. Therefore, this suggestion is not adopted. However, this section would apply to all contractual agreements including seed stock contracts contained in § 1220.311(c) of the interim rule. The language regarding the timing of collection of the assessments has been modified from "at the time of final settlement" to "at the time of payment to the producer" to reflect industry practice relating to interim payments. Assessments not previously collected would be collected at final settlement. It should be noted that if the net market price is not specified in a contract, the assessment would be based on fair market value as specified in § 1220.311(c).

Regarding § 1220.311(c) in the interim rule, two commenters suggested modification of this section as it relates to the method of calculating a price for soybeans used for seed stock. Most seed companies who contract with soybean growers to purchase soybeans for seed utilize price quotes from local markets within the area in which the soybeans are grown to establish a price. The highest surveyed price is then offered as an election price to the grower. This method of establishing a price appears to comply with provisions of the Act and Order, and it is possible to obtain local market prices for audit purposes. We agree with the intent of this suggestion and it is reflected in 1220.311(b). Section 1220.311(c), pertaining to seed stock, as contained in the interim rule, is deleted. All seed stock sold remains subject to assessment however.

Regarding § 1220.311(d) in the interim rule, one commenter observed that in many States, producers who sell soybeans for seed stock to other farmers remit the assessment to the Qualified State Soybean Board pursuant to the process described in this section. Section 1220.311(d) of the interim rule, now § 1220.311(c), pertains to processed soybeans or soybean products. The assessment on seed stock, like all soybeans sold in bean form, is to be collected by the first purchaser. However, this does not relieve the producer's obligation to remit assessments if the first purchaser fails to collect. Further §§ 1220.311(e), 1220.311(f), and 1220.311(g) have been renumbered as §§ 1220.311(d), 1220.311(e), and 1220.311(f) respectively.

Regarding § 1220.311(g) in interim rule, comments received on this section were generally supportive of the amendment to the Order concerning soybeans pledged as collateral for loans issued by the Commodity Credit Corporation and subsequently forfeited in lieu of loan repayment. Two commenters suggested changes in the billing procedure. These comments are not adopted because of the revision to the collection procedure as described below. One commenter suggested that the Commodity Credit Corporation as first purchaser collect and remit assessments on soybeans forfeited in lieu of loan repayment instead of billing the producer. We find this suggestion to have merit and therefore have decided to adopt it in the final rule to amend the Order. Therefore, this section is amended to conform with that decision.

*Section 1220.312. Remittance of Assessments and Submission of Reports to United Soybean Board or Qualified State Soybean Board.*

Section 1220.312(c). One commenter suggested adding flexibility to this section by allowing first purchasers with multiple facilities to submit a consolidated report to the Qualified State Soybean Board in the State in which the first purchaser's headquarters office is located. Since a headquarters office could include more than one State, we believe that allowing consolidation of reports to include more than one State could cause confusion and make accountability and compliance efforts more difficult. Therefore, this suggestion is not adopted. The commenter also suggested adding, after the first sentence, another sentence which would read "The information required to be submitted on

such forms shall not exceed the information required in § 1220.241." Section 1220.241 does not limit the amount of information that can be required. Therefore, this suggestion is not adopted. The commenter also suggested using the producer's mailing address to determine the State of origin of the soybeans, unless the first purchaser knows or has reason to believe otherwise; for example, soybeans sold in Iowa by a producer whose mailing address is California or in the case of adjoining States where the producer may farm or sell soybeans in more than one State. In these instances the first purchaser is expected to verify the State of origin of the soybeans by asking the producer. We believe that this procedure is consistent with § 1220.223 of the Order and therefore have not addressed it in this final rule.

Additionally, two commenters suggested revising the reporting form to allow first purchasers to provide "net market value of all soybeans purchased" in cases where computer systems are unable to report "number of bushels purchased." This suggested alternative method of reporting purchases appears to provide adequate information to spot check for compliance with reporting requirements of the Act and Order. Therefore, the reporting form will be modified as suggested. First purchasers who have the capability will report the "number of bushels purchased;" those who do not have the capability will report "net market value of all soybeans purchased." One commenter suggested that in rare cases where it is impossible for the first purchaser to provide either the net market value or the number of bushels purchased, the Board should be allowed to waive the monthly reporting requirement and implement a separate procedure. The commenter recommended a procedure in which the first purchaser would, through an independent certified public accountant, submit to the Board on a semiannual basis sufficient documentation that the accounting system utilized by the firm does not provide the information requested on the form. It would also certify that an independent certified public accountant had reviewed the books and records of the first purchaser and had established from that information that all assessments due pursuant to the Act and Order had been collected and remitted. This suggestion is not adopted. First purchasers are required to report either the number of bushels purchased or if they do not have the capability, the net market value of all soybeans purchased.

*Section 1220.315. Certification of Non-Producer Status for Certain Transactions.*

Two commenters suggested that first purchasers be allowed to file certification of non-producer status by sending a letter once each year to the Board. Under this procedure, the Board would be responsible for collecting the certifications, compiling them into an annual catalog or computer diskette and disseminating a list to all first purchasers requesting one. This is suggested as another alternative to the first purchaser completing the form on a transaction-by-transaction basis or annually. The rules already provide that a non-producer status certification form may be used to cover transactions for a period of up to 12 months if approved by the Board. Another commenter wrote that there are State laws or regulations which require grain dealers to either register or become licensed pursuant to procedures within the particular State. The commenter suggested that the rules and regulations provide, as an option to the non-producer status form, a provision to allow Qualified State Soybean Boards to utilize these registration to licensing provisions as evidence of non-producer status. The rules and regulations provide that the Board may approve other methods upon individual request. Therefore, Qualified State Soybean Boards may request the Board to authorize the use of registration or licensing lists. Therefore, this suggestion is not adopted.

**Miscellaneous**

Miscellaneous, nonsubstantive changes have been made for clarity. Two commenters suggested modification to the paperwork burden for first purchasers as reported in the Order and the rules and regulations, asserting that the time reported for recordkeeping is underestimated. We believe that our estimates regarding the paperwork burden under the Order and regulations are correct. The Board and the Department have and will continue to make every effort to minimize the burden imposed herein.

**Effective Date**

Pursuant to 5 U.S.C. 553 it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication of this rule in the Federal Register. This rule implements the assessment provisions of the Soybean Promotion and Research Order which have been in effect since September 1, 1991, and should become effective as soon as possible in order to facilitate the collection of assessments.

**List of Subjects in 7 CFR Part 1220**

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 1220 is amended by revising Subpart B to read as follows:

## PART 1220—SOYBEAN PROMOTION AND RESEARCH

1. The authority citation for part 1220 continues to read as follows:

**Authority:** Title XIX, Public Law 101–624, 104 Stat. 3359, 3881 (7 U.S.C. 6301–6311).

2. Subpart B is revised to read as follows:

**Subpart B—Rules and Regulations**

Sec.

**Definitions**

1220.301 Terms Defined.

**Assessments**

1220.310 Assessments.
1220.311 Collection and Remittance of Assessments.
1220.312 Remittance of Assessment and Submission of Reports to United Soybean Board or Qualified State Soybean Board.
1220.313 Qualified State Soybean Boards.
1220.314 Document Evidencing Payment of Assessments.
1220.315 Certification of Nonproducer Status for Certain Transactions.

**Refund of Assessments**

1220.330 Producer Refund of Assessments.
1220.331 Procedure for Obtaining a Refund.
1220.332 OMB Control Numbers.

**Subpart B—Rules and Regulations**

**Definitions**

*§ 1220.301 Terms defined.*

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms as appears in subpart A of this part.

**Assessments**

*§ 1220.310 Assessments.*

(a) A 0.5 percent of the net market price per bushel assessment on soybeans marketed shall be paid by the producer of the soybeans in the manner designated in § 1220.311.

(b) If more than one producer shares the proceeds received for the soybeans marketed, each such producer is obligated to pay that portion of the

assessments which is equivalent to each producer's proportionate share of the proceeds.

(c) Failure of the first purchaser to collect the assessment on each bushel of soybeans marketed as designated in § 1220.311 shall not relieve the producer of the producer's obligation to pay the assessment to the appropriate Qualified State Soybean Board or the United Soybean Board as required in § 1220.312.

*§ 1220.311 Collection and remittance of assessments.*

(a) Except as otherwise provided in this section, each first purchaser making payment to a producer for soybeans marketed by a producer shall collect from that producer at the time of settlement of that producer's account an assessment at the rate of 0.5 percent of the net market price per bushel of soybeans marketed and shall be responsible for remitting the assessment to the Qualified State Soybean Board or the United Soybean Board as provided in § 1220.312. The first purchaser shall give to the producer a receipt indicating payment of the assessment. The receipt shall be any document issued by the first purchaser that contains the information requested in § 1220.314(a).

(b) A first purchaser who purchases soybeans pursuant to a contract with a producer, either on a volume basis or on a per acre basis, shall be responsible for remitting the assessment due on soybeans purchased as required in § 1220.312. Such assessment shall be based upon 0.5 percent of the net market price specified or established in the contract and shall be collected at the time of payment to the producer. If the net market price is not specified or established in the contract the assessment shall be based on fair market value as specified in paragraph (c) of this section below.

(c) Any producer marketing processed soybeans or soybean products of that producer's own production either directly or through retail or wholesale outlets shall be responsible for remitting to the Qualified State Soybean Board or the United Soybean Board pursuant to § 1220.312, an assessment on the number of bushels of soybeans processed or manufactured into soybean products at the rate 0.5 percent of the net market price of the soybeans involved or the equivalent thereof. The assessment shall attach upon date of sale of the processed soybeans or soybean products and shall be based upon the posted county price for soybeans on the date of the sale as posted at the local ASCS office for the county in which the soybeans are grown. The producer shall remit the assessment in the manner provided in § 1220.312.

(d) Any producer marketing processed soybeans or soybean products of that producer's own production shall be responsible for remitting to the Qualified State Soybean Board or the United Soybean Board pursuant to § 1220.312, an assessment on the number of bushels of soybeans processed or manufactured into soybean products at the rate of 0.5 percent of the net market price of the soybeans involved or the equivalent thereof. The assessment shall attach upon the date of final settlement for such processed soybeans or soybean products and shall be based upon the posted county price for soybeans on the date of final settlement as posted at the local ASCS office for the county in which the soybeans are grown. The producer shall remit the assessment in the manner provided in § 1220.312.

(e) A producer delivering soybeans of the producer's own production against a soybean futures contract shall be responsible for remitting an assessment at the rate of 0.5 percent of net market price as specified in settlement documents. The assessment shall attach at the time of delivery and the producer shall remit the assessment due in accordance with § 1220.312.

(f) A producer who forfeits soybeans of that producer's own production which were pledged as collateral on a loan issued by Commodity Credit Corporation shall pay an assessment. The assessment shall attach upon the date the settlement statement is prepared and issued to the producer by the Commodity Credit Corporation and shall be 0.5 percent of the principal amount of the loan for the soybeans as specified by Commodity Credit Corporation in the settlement statement. The Commodity Credit Corporation shall collect the assessment and then remit the assessment due in accordance with § 1220.312.

*§ 1220.312 Remittance of assessments and submission of reports to United Soybean Board or Qualified State Soybean Board.*

(a) Each first purchaser and each producer responsible for the remittance of assessments shall remit assessments and submit a report of assessments to the Qualified State Soybean Board in the State in which each first purchaser or each producer responsible for the remittance of assessments is located or if there is no Qualified State Soybean Board in such State, then to the United Soybean Board as provided in this section.

(b) First purchasers and producers responsible for remitting assessments shall remit assessments and reports on a monthly or quarterly basis depending on the State or region in which the first purchasers or producers are located. The reporting period for each State and region shall be as follows:

| Monthly | Quarterly |
|---|---|
| Arkansas | Alabama |
| Delaware | Florida |
| Iowa | Georgia |
| Kansas | Illinois |
| Kentucky | Indiana |
| Louisiana | Maryland |
| Michigan | North Dakota |
| Minnesota | Nebraska |
| Missouri | New Jersey |
| Mississippi | Ohio |
| North Carolina | Oklahoma |
| South Carolina | Pennsylvania |
| Tennessee | South Dakota |
| Texas | |
| Virginia | |
| Wisconsin | |
| Eastern Region | |
| Western Region | |

(c) *Reports.* Each first purchaser or producer responsible for remitting assessments shall make reports on forms made available by the United Soybean Board or on Qualified State Soybean Board forms which contain the information required in § 1220.241 and are approved by the Board. A first purchaser with multiple facilities or purchasing locations within a State shall have the option to submit a single, consolidated report specifying the combined volume of soybeans purchased or the net market value of all soybeans purchased from the producers in the State. Reports shall be submitted with assessments due in accordance with the provisions of paragraph (d) of this section.

(d) *Remittances.* Each first purchaser or producer responsible for remitting assessments shall remit all assessments to the Qualified State Soybean Board, its designee, or the United Soybean Board. All assessments shall be remitted in the form of a check or money order payable to the order of the applicable. Qualified State Soybean Board or the United Soybean Board and shall be sent to the designated address not later than the 15th day of the month following the month or quarter in which the soybeans, processed soybeans, or soybean products were marketed and shall be accompanied by the reports required by paragraph (c) of this section. All remittances shall be received subject to collection and payment at par.

(e) *Receipt of Reports and Remittances.* The timeliness of receipt of reports and assessments by the Board or Qualified State Soybean Board shall be based on the applicable postmark

date or the date actually received by the Board or the Qualified State Soybean Board whichever is earlier.

*§ 1220.313 Qualified State Soybean Boards.*

The following State soybean promotion organizations shall be Qualified State Soybean Boards. First purchasers and producers responsible for remitting assessments located in States which have a Qualified State Soybean Board shall remit assessments accompanied by the required reports to the Qualified State Soybean Board in the State in which the first purchaser or producer responsible for remitting assessments is located.

(1) Alabama Soybean Producers Board
(2) Arkansas Soybean Promotion Board
(3) Delaware Soybean Board
(4) Florida Soybean Advisory Council
(5) Georgia Agricultural Commodity Commission for Soybeans
(6) Illinois Soybean Program Operating Board
(7) Iowa Soybean Promotion Board
(8) Indiana Soybean Development Council, Inc.
(9) Kansas Soybean Commission
(10) Kentucky Soybean Promotion Board
(11) Louisiana Soybean Promotion Board
(12) Maryland Soybean Board
(13) Soybean promotion Committee of Michigan
(14) Minnesota Soybean Research and Promotion Council
(15) Mississippi Spybean Promotion Board
(16) Missouri Soybean Merchandising Council
(17) Nebraska Soybean Development, Utilization, and Marketing Board
(18) New Jersey Soybean Board
(19) North Carolina Soybean Producers Association
(20) North Dakota Soybean Council
(21) Ohio Soybean Council Board of Trustees
(22) Oklahoma Soybean Commission
(23) Pennsylvania Soybean Board
(24) South Carolina Soybean Boardl25(25) South Dakota Soybean Research and Promotion Council
(26) Tennessee Soybean Promotion Board
(27) Texas Soybean Producers Board
(28) Virginia Soybean Board
(29) Wisconsin Soybean Marketing Board, Inc.

*§ 1220.314 Document evidencing payment of assessments.*

(a) Each first purchaser responsible for remitting an assessment to a Qualified State Soybean Board or the United Soybean Board is required to give to the producer from whom the first purchaser collected an assessment written evidence of payment of the assessment containing the following information:

(1) Name and address of the first purchaser.

(2) Name of producer who paid assessment.

(3) Number of bushels sold.

(4) Net market price.

(5) Total assessments paid by the producer.

(6) Date.

(7) State in which soybeans were grown.

(b) [Reserved.]

*§ 1220.315 Certification of non-producer status for certain transactions.*

(a) A person marketing soybeans, processed soybeans, or soybean products on which an assessment has been collected may claim non-producer status and shall not be required to pay an assessment if such person certifies to the purchaser that the assessment has been collected and remitted or will be remitted in a timely fashion.

(b) Each person claiming nonproducer status pursuant to this subpart shall provide purchasers with a Statement of Certification of Nonproducer Status on a form approved by the Board and the Secretary. A Statement of Certification of Non-Producer Status form shall be required for each transaction except that one such form, if approved by the Board, may be used to cover all transactions during a specified period not to exceed 12 consecutive months. The Board is authorized to approve a stamp process for providing such certification on invoices or other methods of such certification upon individual written requests. Forms and information on requirements for stamps and other methods of certification can be obtained from the Board.

(c) A copy of the Statement of certification of Non-Producer Status shall be forwarded, upon request, by the subsequent purchasers to the Qualified State Soybean Board or the Board.

**Refund of Assessments**

*§ 1220.330 Producer refund of assessments.*

(a) *Assessments paid prior to continuance referendum.* (1) Any producer from whom an assessment is collected prior to the date the continuance referendum results are announced and remitted to a Qualified State Soybean Board or the United Soybean Board, or who pays an assessment to a Qualified State Soybean Board or to the United Soybean Board, and who is not in favor of supporting the promotion and research program as provided for in this part shall have the right to demand and receive from the Qualified State Soybean Board to which the assessment was paid subject to paragraph (a)(2) of this section, or the Board, a refund of such assessment upon submission of proof satisfactory to the Qualified State Soybean Board or Board that the producer paid the assessment for which a refund is sought.

(2) Contributions by a producer to a Qualified State Soybean Board for which the producer has received credit pursuant to § 1220.223(a)(3) of this part shall not be refunded by a Qualified State Soybean Board unless:

(i) The Qualified State Soybean Board is authorized or required to pay refunds; and

(ii) The producer has requested a refund from the Qualified State Soybean Board in compliance with the State's procedure for refunds.

(3) Producers shall submit refund requests to the Qualified State Soybean Board in the State in which the soybeans were grown. If there is not a Qualified State Soybean Board operating in such State, the producer shall submit refund requests to the United Soybean Board.

(b) *Assessments paid after the conduct of the continuance referendum.* [Reserved.]

*§ 1220.331 Procedure for obtaining a refund.*

(a) Any producer requesting a refund shall mail an application on the prescribed form to the Qualified State Soybean Board in the State in which the soybeans were grown or if there is no qualified State Soybean Board in the State, to the Board within ninety (90) days from the date the assessments were due from such producer.

(b) In order to receive a refund pursuant to this subpart, a producer must attach to the refund application a copy of the document evidencing payment provided by the first purchaser to the producer as required by § 1220.314. Such refund request must be submitted pursuant to §§ 1220.224 and 1220.225 of this part.

(c) In those States in which a Qualified State Soybean Board operates and is required to pay refunds pursuant to State law such refunds will be paid pursuant to such State law. In those States in which refunds are not required by State law, refund requests shall be paid by the qualified State Soybean Board or the United Soybean Board within sixty (60) days of receipt of the refund request by the Qualified State Soybean Board or the United Soybean Board. Refunds shall be paid in a manner consistent with § 1220.224 of this part.

*§ 1220.332 OMB control numbers.*

The control number assigned to the information collection requirements by

the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511, is OMB number 0581-0093, except Board member nominee information sheets are assigned OMB Number 0505-0001.

Done at Washington, DC, June 25, 1992.

Jo Ann R. Smith,

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 92-15552 Filed 7-1-92; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 26901; Amdt. No. 1497]**

### Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase—*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather. Issued in Washington, DC on June 19, 1992.

Thomas C. Accardi,

*Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standards Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

**§§ 97.23 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPS, identified as follows:

* * * *Effective October 15, 1992*

Wheeling, WV, Wheeling Ohio Co., VOR RWY 21, Amdt. 14
Wheeling, WV, Wheeling Ohio Co., ILS RWY 3, Amdt. 20

* * * *Effective August 20, 1992*

Dillingham, AK, Dillingham, LOC/DME RWY 19, Amdt. 4
Dillingham, AK, Dillingham, NDB RWY 1, Orig.
McGrath, AK, McGrath, VOR/DME-C, Orig.
El Monte, CA, El Monte, VOR/DME-B, Amdt. 2
Los Angeles, CA, Los Angeles Intl, ILS RWY 24L, Amdt. 20
Los Angeles, CA, Los Angeles Intl, ILS RWY 25L, Amdt. 3
Los Angeles, CA, Los Angeles Intl, ILS RWY 25R, Amdt. 6
Ontario, CA, Ontario Intl, ILS RWY 8L, Amdt. 7
Riverside, CA Riverside Muni, ILS RWY 9, Amdt. 6
San Diego, CA, Brown Field Muni, VOR-A, Amdt. 3
Santa Monica, CA, Santa Monica Muni, VOR-A, Amdt. 8
Monticello, IA, Monticello Municipal, NDB-A, Amdt. 3
Monticello, IA, Monticello Municipal, VOR/DME RNAV RWY 31, Amdt. 1
Vinton, IA—Vinton Veterans Mem Arpk, NDB RWY 27, Amdt. 3
Washington, IA, Washington Muni, NDB RWY 31, Orig.
Hutchinson, KS, Hutchinson Muni, VOR RWY 3, Amdt. 18
Hutchinson, KS, Hutchinson Muni, VOR/DME RWY 21, Amdt. 5
Hutchinson, KS, Hutchinson Muni, LOC BC RWY 31, Amdt. 13
Hutchinson, KS, Hutchinson Muni, NDB RWY 13, Amdt. 14
Hutchinson, KS, Hutchinson Muni, ILS RWY 13, Amdt. 15
Mankato, MN, Mankato Muni, VOR RWY 33, Amdt. 6
Mankato, MN, Mankato Muni, VOR RWY 15, Amdt. 5
Mankato, MN, Mankato Muni, VOR/DME RWY 15, Amdt. 1, Cancelled
Mankato, MN, Mankato Muni, VOR/DME RWY 33, Amdt. 1, Cancelled
Mankato, MN, Mankato Muni, LOC RWY 33, Amdt 2, Cancelled
Mankato, MN, Mankato Muni, ILS RWY 33, Orig.
Scottsbluff, NE, William B. Heilig Field, VOR/DME RWY 5, Amdt. 3
Scottsbluff, NE, William B. Heilig Field, LOC BC RWY 12, Amdt. 7
Scottsbluff, NE, William B. Heilig Field, NDB RWY 12, Amdt. 7
Scottsbluff, NE, William B. Heilig Field, RNAV RWY 12, Amdt. 3, Cancelled
Scottsbluff, NE, William B. Heilig Field, RNAV RWY 30, Amdt. 3, Cancelled
Newark, NJ, Newark Intl., ILS RWY 22L, Amdt. 8
Stillwater, OK, Stillwater Muni, VOR RWY 17, Amdt. 12
Morgantown, WV, Morgantown Muni—Walter L. Bill Hart Field, VOR/DME RWY 18, Amdt. 6
Morgantown, WV, Morgantown Muni—Walter L. Bill Hart Field, NDB RWY 18, Amdt. 15
Morgantown, WV, Morgantown Muni—Walter L. Bill Hart Field, ILS RWY 18, Amdt. 9

* * * *Effective July 23, 1992*

Indianapolis, IN, Indianapolis Intl, VOR RWY 14, Amdt. 24
Indianapolis, IN, Indianapolis Intl, NDB RWY 5L, Amdt. 20
Indianapolis, IN, Indianapolis Intl, NDB RWY 5R, Amdt. 1
Indianapolis, IN, Indianapolis Intl, NDB RWY 23L, Amdt. 1
Indianapolis, IN, Indianapolis Intl, NDB RWY 32, Amdt. 14
Indianapolis, IN, Indianapolis Intl, ILS RWY 5L, Amdt. 23
Indianapolis, IN, Indianapolis Intl, ILS RWY 5R, Amdt. 1
Indianapolis, IN, Indianapolis Intl, ILS RWY 14, Amdt. 3
Indianapolis, IN, Indianapolis Intl, ILS RWY 23L, Amdt. 1
Indianapolis, IN, Indianapolis Intl, ILS RWY 23R, Amdt. 8
Indianapolis, IN, Indianapolis Intl, ILS RWY 32, Amdt. 17
Indianapolis, IN, Indianapolis Intl, RADAR-1, Amdt. 29
Port Huron, MI, St. Clair County Intl, VOR/DME-A, Amdt. 6
Port Huron, MI, St. Clair County Intl, NDB RWY 4, Amdt. 9, Cancelled
Port Huron, MI, St. Clair County Intl, NDB RWY 4, Orig.
Port Huron, MI, St. Clair County Intl, ILS RWY 4, Orig.
Port Huron, MI, St. Clair County Intl, RNAV RWY 4, Orig., Cancelled
Port Huron, MI, St. Clair County Intl, VOR/DME RNAV RWY 22, Amdt. 1
Portsmouth, NH, Pease Intl Tradeport, VOR/DME or TACAN RWY 16, Orig.
Portsmouth, NH, Pease Intl Tradeport, VOR/DME or TACAN RWY 34, Orig.
Hartford, WI, Hartford Muni, VOR-A, Amdt. 5
Hartford, WI, Hartford Muni, NDB RWY 11, Amdt. 4

[FR Doc. 92-15292 Filed 7-1-92; 8:45 am]
BILLING CODE 4910-13-M

**14 CFR Part 97**

**[Docket No. 26890; Amdt. No. 1496]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs

Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

## The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on June 5, 1992.

Thomas C. Accardi,

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

## §§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

| Effective | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 04/28/92 | KS | Concordia | Blosser Muni | FDC 2/2352 | NDB RWY 17 AMDT 1... |
| 05/21/92 | WV | Charleston | Yeager | FDC 2/2922 | ILS RWY 23 AMDT 27... |
| 05/26/92 | LA | Lake Charles | Lake Charles Regional | FDC 2/2988 | RNAV RWY 23 AMDT 3... |
| 05/26/92 | MD | Baltimore | Baltimore-Washington Intl | FDC 2/2981 | VOR/DME RWY 4 AMDT 1... |
| 05/26/92 | MD | Baltimore | Baltimore-Washington Intl | FDC 2/2982 | RNAV RWY 22 AMDT 6... |
| 05/26/92 | MD | Baltimore | Baltimore-Washington Intl | FDC 2/2984 | VOR RWY 10 AMDT 14... |
| 05/26/92 | MD | Baltimore | Baltimore-Washington Intl | FDC 2/2985 | VOR RWY 28 AMDT 21... |
| 05/26/92 | MD | Baltimore | Baltimore-Washington Intl | FDC 2/2986 | ILS RWY 10 (CAT I AND CAT II) AMDT 14... |
| 05/26/92 | MD | Baltimore | Baltimore-Washington Intl | FDC 2/2987 | ILS RWY 15R AMDT 12... |
| 05/26/92 | MD | Baltimore | Baltimore-Washington Intl | FDC 2/2990 | ILS RWY 33L AMDT 5... |
| 05/28/92 | AK | Homer | Homer | FDC 2/3042 | NDB RWY 3 AMDT 2A... |
| 05/28/92 | AK | Petersburg | Petersburg | FDC 2/3041 | LDA/DME-D AMDT 5A... |

NFDC TRANSMITTAL LETTER—Continued

| Effective | State | City | Airport | FDC No. | IAP |
|---|---|---|---|---|---|
| 05/29/92 | MA | Boston | General Edward Lawrence Logan Intl | FDC 2/3052 | ILS RWY 4R AMDT 7... |
| 05/29/92 | OR | North Bend | North Bend Muni | FDC 2/3054 | ILS RWY 4 AMDT 4... |
| 05/29/92 | SC | Hartsville | Hartsville Muni | FDC 2/3075 | NDB RWY 20 AMDT 3... |
| 06/02/92 | AL | Cullman | Folsom Field | FDC 2/3152 | NDB RWY 19 AMDT 2... |
| 06/02/92 | MD | Baltimore | Baltimore-Washington Intl | FDC 2/3133 | ILS RWY 28 AMDT 7... |
| 06/03/92 | AK | Kotzebue | Kotzebue/Ralph Wein Memorial | FDC 2/3156 | VOR/DME RWY 26 AMDT 1... |
| 06/03/92 | AK | Kotzebue | Kotzebue/Ralph Wein Memorial | FDC 2/3157 | VOR RWY 26 AMDT 2... |
| 06/03/92 | WA | Seattle | Seattle-Tacoma Intl | FDC 2/3140 | ILS RWY 34L AMDT 1... |

**NFDC Transmittal Letter Attachment**

*Petersburg*

Petersburg
Alaska
LDA/DME–D AMDJ 5A...
Effective: 05/28/92
FDC 2/3041/PSG/ FI/P Petersburg, Petersburg, AK. LDA/DME–D AMDT 5A...Change ALTN MINS TO...CATS A/B 2000–4, C 2000–5. ALTN MINS NA WHEN Petersburg Weather not Avbl. This Becomes LDA/DME–D AMDT 5B.

*Homer*

Homer
Alaska
NDB RWY 3 AMDT 2A...
Effective: 05/28/92
FDC 2/3042/HOM/ FI/P Homer, Homer, AK. NDB RWY 3 AMDT 2A...Change ALTN MINS to Read...CATS A/B 1100–2, C/D 1100–3. ALTN MINS NA When Homer Weather not Avbl. This Becomes NDB RWY 3 AMDT 2B.

*Kotzebue*

Kotzebue/Ralph Wein Memorial
Alaska
VOR/DME RWY 26 AMDT 1...
Effective: 06/03/92
FDC 2/3156/OTZ/ FI/P Kotzebue/Ralph Wein Memorial, Kotzebue, AK. VOR/DME RWY 26 AMDT 1...Change RVR to VIS Value...S–26 CAT A/B 1; C/D 1 ¼. This becomes VOR/DME RWY 26 AMDT 1A.

*Kotzebue*

Kotzebue/Ralph Wein Memorial
Alaska
VOR RWY 26 AMDT 2...
Effective: 06/03/92
FDC 2/3157/OTZ/ FI/P Kotzebue/Ralph Wein Memorial, Kotzebue, AK. VOR RWY 26 AMDT 2...Change RVR to vis Value...S–26 CAT A/B 1; DME MIN S–26 CAT A/B 1, C 1 ¼.This becomes VOR RWY 26 AMDT 2A.

*Cullman*

Folsom Field
Alabama
NDB RWY 19 AMDT 2...
Effective: 06/02/92
FDC 2/3132/3A1/ FI/P Folsom Field, Cullman, AL. NDB RWY 19 AMDT 2...Change all references...RWY 1–19 to 2–20. This becomes NDB RWY 20 AMDT 2A.

*Concordia*

Blosser Muni
Kansas
NDB RWY 17 AMDT 1...
Effective: 04/28/92
FDC 2/2352/CNK/ FI/P Blosser Muni, Concordia, KS. NDB RWY 17 AMDT 1...SI–17 MDA/HAT CATS A/B/C 2100/618, VIS CAT C 1 ¾. Circling MDA/HAA CATS A/B/C 2100/614, VIS CAT C 1 ¾. This becomes NDB RWY 17 AMDT 1A.

*Lake Charles*

Lake Charles Regional
Louisiana
RNAV RWY 23 AMDT 3...
Effective: 05/26/92
FDC 2/2988/LCH/ FI/P Lake Charles Regional, Lake Charles, LA. RNAV RWY 23 AMDT 3...Delete ARTEL INT and TRML RTE from ARTEL to FRETO WP. This becomes RNAV RWY 23 AMDT 3A.

*Boston*

General Edward Lawrence Logan Intl
Massachusetts
ILS RWY 4R AMDT 7...
Effective: 05/29/92
FDC 2/3052/BOS/ FI/P General Edward Lawrence Logan Intl Boston, MA. ILS RWY 4R AMDT 7...DELETE NOTE CAT D S–LOC Visibility increased RVR 5000 for inoperative MM. ILS RWY 4R AMDT 7, ILS RWY 4R CAT II AMDT 7, and ILS RWY 4R CAT III AMDT 7...TCH 47 feet. This is ILS RWY 4R, ILS RWY 4R CAT II, and ILS RWY 4R CAT III AMDT 7A.

*Baltimore*

Baltimore-Washington Intl
Maryland
VOR/DME RWY 4 AMDT 1...
Effective: 05/26/92
FDC 2/2981/BWI/ FI/P Baltimore-Washington Intl, Baltimore, MD. VOR/DME RWY 4 AMDT 1...CIRCLING CAT D MDA/HAA 740/594. This becomes VOR/DME RWY 4 AMDT 1A.

*Baltimore*

Baltimore-Washington Intl
Maryland
RNAV RWY 22 AMDT 6...
Effective: 05/26/92
FDC 2/2982/BWI/ FI/P Baltimore-Washington Intl, Baltimore, MD. RNAV RWY 22 AMDT 6...Circling CAT D MDA/HAA 740/594. This becomes RNAV RWY 22 AMDT 6A.

*Baltimore*

Baltimore-Washington Intl
Maryland
VOR RWY 10 AMDT 14...
Effective: 05/26/92
FDC 2/2984/BWI/ FI/P Baltimore-Washington Intl, Baltimore, MD. VOR RWY 10 AMDT 14...DME MINS...Circling CAT D MDA/HAA 740/594. This becomes VOR RWY 10 AMDT 14A.

*Baltimore*

Baltimore-Washington Intl
Maryland
VOR RWY 28 AMDT 21...
Effective: 05/26/92
FDC 2/2985/BWI/ FI/P Baltimore-Washington INTL, Baltimore, MD. VOR RWY 28 AMDT 21...Circling CAT D MDA/HAA 740/594. This becomes VOR RWY 28 AMDT 21A.

*Baltimore*

Baltimore-Washington Intl
Maryland
ILS RWY 10 (CAT 1 AND CAT II) AMDT 14...
Effective: 05/26/92
FDC 2/2986/BWI/ FI/P Baltimore-Washington Intl, Baltimore, MD. ILS RWY 10 (CAT I and CAT II) AMDT 14...Change ILS ALTN MINS to standard. This becomes ILS RWY 10 (CAT I AND CAT II) AMDT 14A.

*Baltimore*

Baltimore-Washington Intl
Maryland
ILS RWY 15R AMDT 12...
Effective: 05/26/92

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FDC 2/2967/BWI/ FI/P Baltimore-Washington Intl, Baltimore, MD. ILS RWY 15R AMDT 12...Change ILS ALTN MINS to standard. This becomes ILS RWY 15R AMDT 12A.

*Baltimore*

Baltimore-Washington Intl
Maryland
ILS RWY 33L AMDT 5...
Effective: 05/26/92

FDC 2/2990/BWI/ FI/P Baltimore-Washington Intl, Baltimore, MD. ILS RWY 33L AMDT 5...Circling CAT D MDA/HAA 740/594. Change ILS ALTN MINS to standard. Delete Notes CAT D...thru...MM. This becomes ILS RWY 33L AMDT 5A.

*Baltimore*

Baltimore-Washington Intl
Maryland
ILS RWY 28 AMDT 7...
Effective: 06/02/92

FDC 2/3133/BWI/ FI/P Baltimore-Washington Intl, Baltimore, MD. ILS RWY 28 AMDT 7...Circling CAT D MDA/HAA 740/594. Change ALTN MIN TO...standard. This becomes ILS RWY 28 AMDT 7A.

*North Bend*

North Bend Muni
Oregon
ILS RWY 4 AMDT 4...
Effective: 05/29/92

FDC 2/3054/OTH/ FI/P North Bend Muni, North Bend, OR. ILS RWY 4 AMDT 4...Change distance FAF TO MAP 2.0 NM. MAP...ILS AT THE DH LOC 2.0 miles after passing Emire LOM. Change missed APCH to read climb to 500 then climbing left turn to 1800 direct Emire LOM and hold (Hold SW LT 043 inbound). This becomes ILS RWY 4 AMDT 4A.

*Hartsville*

Hartsville Muni
South Carolina
NDB RWY 20 AMDT 3...
Effective: 05/29/92

FDC 2/3075/HVS/ FI/P Hartsville Muni, Hartsville, SC. NDB RWY 20 AMDT 3...Change all references RWY 2–20 TO 3–21. This becomes NDB RWY 21 AMDT 3A.

*Seattle*

Seattle-Tacoma Intl
Washington
ILS RWY 34L AMDT 1...
Effective: 06/03/92

FDC 2/3140/SEA/ FI/P Seattle-Tacoma Intl, Seattle, WA. ILS RWY 34L AMDT 1...Delete check INT AS IAF, facts INT /I–TUC 17.1 DME/ becomes IAF MIN ALT at facts INT /I–TUC 17.1 DME/5000. MIN ALT from facts INT /I–TUC 17.1 DME/ TO MILLT INT /I–TUC 11 DME/3000. This becomes ILS RWY 34L AMDT 1A.

*Charleston*

Yeager
West Virginia
ILS RWY 23 AMDT 27...
Effective Date: 05/21/92

FDC 2/2922 CRW/ FI/P Yeager, Charleston, WV. ILS RWY 23 AMDT 27...Delete Notes ... GS UNUSBL beyond 3 DEGS right of LOC CRS and GS UNUSBL BLO 1100 FT. This becomes ILS RWY 23 AMDT 27A.

[FR Doc. 92–15558 Filed 7–1–92; 8:45 am]
BILLING CODE 4910–13–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL–4149–6]

### Utah; Final Authorization of State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Affirmation of immediate final rule.

**SUMMARY:** This document responds to comments received on the immediate final rule published May 15, 1992 (57 FR 20770) and affirms the agency's decision to authorize Utah's revised program for hazardous waste management pursuant to 40 CFR 271.21(b)(3).

**EFFECTIVE DATE:** This decision is effective on July 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Marcella DeVargas, Waste Management Branch, U.S. EPA, 999 18th Street, suite 500, Denver, CO 80202–2405, Phone: 303/293–1670.

**SUPPLEMENTARY INFORMATION:** On May 15, 1992, EPA published an immediate final rule pursuant to 40 CFR 271.21(b)(3) at 57 FR 20770 which announced the agency's decision to authorize Utah's revisions to its hazardous waste program for non-HSWA cluster 4 and portions of HSWA cluster 2. Adverse public comments were received during the public comment period provided by this rulemaking. After considering the comments received, the Regional Administrator has decided to affirm his decision to authorize the State of Utah for the aforementioned program revisions. The following is a summary of the adverse comments received by EPA and the EPA Regional Administrator's response to them.

*Comment:* What is the "functional equivalent" of NEPA and what regulations does the State of Utah need fulfill of the NEPA requirement if RCRA is to be a "functional equivalent" thereof?

*EPA Response:* The National Environmental Policy Act is a federal law that requires federal agencies to incorporate environmental considerations in their planning and decisionmaking. Federal courts have held that the RCRA process is the "functional equivalent" to NEPA and the EIS process. Since the RCRA process is the functional equivalent to NEPA, the State of Utah's RCRA process will also serve as the functional equivalent to NEPA. However, if a hazardous waste facility to be located in Utah requires the approval of a Federal agency (e.g. Bureau of Land Management) then NEPA will apply and an environmental impact statement may be required.

*Comment:* The definition of solid and hazardous waste needs to be the same throughout the region.

*EPA Response:* The Solid Waste Disposal Act, as amended, (section 3006) establishes the basic standards that a State hazardous waste program must meet in order to qualify for authorization. The State program: must be "equivalent to the Federal program; may not impose any requirements "less stringent" than the Federal requirements; and, must be consistent with the Federal program and other State programs. EPA further interpreted these statutory requirements by promulgating regulations at 40 CFR part 271. It is important to note that a State may make its program more stringent than the Federal program and still be eligible for authorization (section 3009), unless in doing so the State's program becomes inconsistent with the Federal program. In this case, the State of Utah definition of solid and hazardous waste meets the standards established by RCRA section 3006.

*Comment:* The risk assessments of RCRA need to be developed in such a way that Utah does not use them as a "checklist".

*EPA Response:* This comment is difficult to address because it does not identify any specific deficiency in the application regarding permitting procedures. This application is not amending any permitting procedures associated with risk assessments.

*Comment:* Engineering documents are reviewed by engineers-in-training. The Department of Environmental Quality has no P.E.

*EPA Response:* The Department of Environmental Quality has three engineers who are licensed professional engineers. One of these three is the manager of the Hazardous Waste Permitting Section. All engineers on the staff have received engineering degrees from approved colleges and universities and are qualified to perform the required engineering responsibilities.

*Comment:* The State of Utah does not have the ability to guarantee that the RCRA requirements will be met. No continuous monitoring of specific compounds is planned which can guarantee or demonstrate compliance with the DRE requirements.

*EPA Response:* EPA has determined that the permitting requirements and procedures in the hazardous waste program including DRE requirements, monitoring, and inspection data in Utah are equivalent to EPA requirements. The agency in its rulemaking on incinerators has determined that continuous emission monitors are effective performance measurement indicators. Such indicators assure day-to-day operation of incinerator destruction technology which is protective of human health and environment.

### Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It merely reaffirms a decision to authorize revisions to Utah's program. This rule, therefore, does not require a regulatory flexibility analysis.

### List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 25, 1992.

**Jack W. McGraw,**

*Acting Regional Administrator.*

[FR Doc. 92–15610 Filed 7–1–92; 8:45 am]
BILLING CODE 6560–50–M



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 630

[Docket No. 910640–1140]

### Atlantic Swordfish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure of the drift gillnet fishery.

**SUMMARY:** NMFS closes the drift gillnet fishery for swordfish from the North Atlantic swordfish stock. NMFS has determined that the quota for swordfish that may be harvested by drift gillnet during the period July 1 through December 31, 1992, will be reached on or before July 7, 1992. This closure is necessary to protect the swordfish resource.

**EFFECTIVE DATES:** Closure is effective July 8, 1992, through December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Stone, 301–713–2347.

**SUPPLEMENTARY INFORMATION:** The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act. The implementing regulations set a swordfish quota that may be harvested by drift gillnet during the semi-annual period July 1 through December 31.

Under 50 CFR 630.25(a)(1), NMFS is required to close the drift gillnet fishery for swordfish when its quota is reached, or is projected to be reached, by publishing a notice in the **Federal Register**. Such closure may not be effective until at least 8 days after the notice is filed with the Office of the Federal Register. NMFS has determined that the drift gillnet swordfish quota will be reached on or before July 7, 1992. Accordingly, the drift gillnet fishery for Atlantic swordfish is closed effective 0001 hours, local time, July 8, 1992, through December 31, 1992. An additional quota becomes available for the drift gillnet fishery on January 1, 1993.

During this closure of the drift gillnet fishery, aboard a vessel using or having aboard a drift gillnet: (1) A person may not fish for swordfish from the North Atlantic swordfish stock; and (2) no more than two swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state. A swordfish in or from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude, may not be transferred at sea.

### Classification

This action is required by 50 CFR 630.25(a)(1) and complies with E.O. 12291.

**Authority:** 16 U.S.C. 1801 *et seq* and 16 U.S.C. 971 *et seq.*

### List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: June 26, 1992.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92–15494 Filed 6–28–92; 4:52 pm]
BILLING CODE 3510–22–M

### 50 CFR Part 658

### Shrimp Fishery of the Gulf of Mexico

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Adjustment of the ending date of the Texas closure.

**SUMMARY:** NMFS announces an adjustment of the ending date of the annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The closure is normally from May 15 to July 15 each year. It began on May 15, 1992, but is scheduled to end early, on July 6, 1992, because initial biological data indicate that brown shrimp leaving the Texas estuaries will have reached the desired size by the date.

**EFFECTIVE DATES:** The EEZ off Texas is closed to trawl fishing from 30 minutes after sunset, May 15, 1992, to 30 minutes after sunset, July 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813–893–3161.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The implementing regulations at 50 CFR part 658 describe the Texas closure and provide for adjustments to the closing and opening dates by the Director, Southeast Region, NMFS, under specified criteria.

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Available information meeting the criteria specified at § 658.25(b)(1) indicates that an early opening of the closure is warranted and desirable. Biological data collected by the Texas Parks and Wildlife Department indicate that an opening on July 6, 1992, will provide adequate protection of small brown shrimp emigrating from the Texas bay systems.

Accordingly, the dates at § 658.25(b) for closure of the area described at § 658.25(a) are adjusted from 30 minutes after sunset, May 15, 1992, to 30 minutes after sunset on July 6, 1992. This area is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom (183-meter) depth contour. The waters of Texas are also closed during this period.

If subsequent data indicate the necessity for further change, the opening date of the Texas closure may be further modified within the constraints of § 658.25(b).

## Classification

This action is authorized by 50 CFR 658.25 and complies with Executive Order 12291.

## List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 29, 1992.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-15804 Filed 7-1-92; 8:45 am]

BILLING CODE 3510-22-M

Propo

This section contains notic proposed issu regulations. T is to give int opportunity to making prior rules.

DEPARTME

Agricultural

7 CFR Part 5

[FV-92-302]

Fresh Fruits Products (In and Standar

AGENCY: Agr USDA.

ACTION: Prop

SUMMARY: T revise the re inspection, c for fresh frui products [1] by for the inspe destination r increases are costs of perf service is au Marketing A

DATES: Comm or courier da 1992.

ADDRESSES: invited to su concerning t must be sent the Branch C Branch, Frui Agricultural Department 96456, room Washington, should make page numbe Register and public inspe during regul

FOR FURTHE Mr. Douglas

SUPPLEMENT action has b Department Departmenta

[1] Among such Raw nuts; Chris and flower bulb

# Proposed Rules

Federal Register
Vol. 57, No. 128
Thursday, July 2, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 51

[FV-92-302]

### Fresh Fruits, Vegetables and Other Products (Inspection, Certification, and Standards)

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed action would revise the regulations governing inspection, certification and standards for fresh fruits, vegetables and other products [1] by revising the fees charged for the inspection of these products at destination markets. The proposed fee increases are needed to recover the costs of performing this inspection service is authorized by the Agricultural Marketing Act (AMA) of 1946.

**DATES:** Comments must be postmarked or courier dated on or before August 3, 1992.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056 South Building, Washington, DC 20090–6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Mr. Douglas Bailey, 202–720–5870.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of the Regulations governing inspection, certification and standards for fresh fruits, vegetables and other products will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

The regulations were last revised in October 1991. The proposed rule reflects fee increases needed to recover the costs of service rendered in accordance with the AMA of 1946.

The AMA authorizes voluntary official inspection, grading, and certification on a user-fee basis, of fresh fruits, vegetables, and other products such as raw nuts, Christmas trees, and flowers. The AMA provides that reasonable fees be collected from the user of the program services to cover as nearly as practicable the costs of services rendered. This proposal would amend the schedule for fees and charges for services rendered to the fresh fruit and vegetable industry at destination markets to reflect the costs currently associated with the program.

AMS regularly reviews these programs to determine if fees are adequate. Since the last fee change on October 30, 1991, (56 FR 55799), program operating costs have increased. The major increase is the result of hiring 20 additional graders, which has increased annual personnel costs by approximately $521,000. These graders were hired due to the industry's repeated emphasis that the program provide faster response to unscheduled requests for inspection services. Because of this increase in personnel costs, the program expects to incur a $490,000 loss in fiscal year 1992. The fiscal year 1992 reserve balance of the program's trust fund is projected to equal less than one month of operating reserve, well below the four-month level considered necessary to ensure the program's financial viability.

Based on the program's low reserve balance and increases in program costs, AMS proposes to increase the fees for destination market inspection services. The following table compares current fees and charges with proposed fees and charges for fresh fruit and vegetable inspection as found in 7 CFR 51.38. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 51.38 are:

| Service | Current | Proposed |
|---|---|---|
| Quality and condition inspections of one to four individual products unloaded directly from the same land or air conveyance: | | |
| Over a half carlot equivalent of each product | $62 | $65 |
| Half carlot equivalent or less of each product | 52 | 57 |
| For each additional lot of a product | 10 | 11 |
| Condition inspections of one to four individual products unloaded directly from the same land or air conveyance: | | |
| Over a half carlot equivalent of each product | 52 | 57 |
| Half carlot equivalent or less of each product | 47 | 52 |
| For each additional lot of a product | 10 | 11 |
| Inspections of five or more individual products unloaded directly from the same land or air conveyance: | | |
| For the first five products | 220 | 242 |
| For each additional product | 10 | 11 |
| For each additional lot of a product | 10 | 11 |
| Dock-side inspections of an individual product unloaded directly from the same ship: | | |
| Minimum charge per individual product | 62 | 68 |
| Inspections performed for other purposes during the grader's regularly scheduled work week: | [1] 31.00 | [1] 34.00 |

[1] Among such other products are the following: Raw nuts; Christmas trees and evergreens; flowers and flower bulbs; and onion sets.

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| Service | Current | Proposed |
|---|---|---|
| Overtime or holiday premium rate for all inspections performed outside the grader's regularly scheduled work week | [1]15.50 | [1]17.00 |

[1] Per hour.

**List of Subjects in 7 CFR Part 51**

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

**PART 51—[AMENDED]**

For the reasons set forth in the preamble, 7 CFR part 51 is proposed to be amended as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

**Authority:** Secs. 203, 205, 60 Stat.1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. Section 51.38 is amended by revising paragraphs (a)(1) (i) through (iii), (a)(2) (i) through (iii), and (a)(3) (i) through (iii) to read as follows:

**§ 51.38 Basis for fees and rates.**

(a) * * *

(1) * * *

(i) $242 for the first five products.

(ii) $11 for each additional product.

(iii) $11 for each additional lot identified on an inspection certificate for any of the products.

(2) * * *

(i) $68 for each over one-half carlot equivalent of an individual product up to a full carlot equivalent.

(ii) $57 for each half-carlot equivalent or less of an individual product.

(iii) $11 for each additional lot identified on an inspection certificate for the same product on or loaded from the same conveyance.

(3) * * *

(i) $57 for each over one-half carlot equivalent of an individual product up to a full carlot equivalent.

(ii) $52 for each half-carlot equivalent or less of an individual product.

(iii) $11 for each additional lot identified on an inspection certificate for the same product on or unloaded from the same conveyance.

* * * * * *

3. In § 51.38, paragraph (b)(1) is amended by revising "$62" to read "$68", paragraph (c) is amended by revising "$31.00" to read "$34.00", and paragraph (d) is amended by revising "$15.50" to read "$17.00".

Dated: June 26, 1992.

**Daniel Haley,**

*Administrator.*

[FR Doc. 92-15544 Filed 7-1-92; 8:45 am]

BILLING CODE 3410-02-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 92-NM-103-AD]**

**Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposed the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737-300, -400, and -500 series airplanes. This proposal would require modification of the engine thrust reverser control system. This proposal is prompted by an analysis by the manufacturer that indicates a high potential for leakage across the piston seal in the thrust reverser actuator. The actions specified by the proposed AD are intended to prevent uncommanded deployment of the thrust reverser.

**DATES:** Comments must be received by August 10, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-103-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen S. Bray, Aerospace Engineer, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2681; fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-103-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-103-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**Discussion**

Results of a recent analysis conducted by the manufacturer indicate that, during reverser stow or during use of the auto-restow system on certain Boeing Model 737 series airplanes, there is a high potential for leakage across the piston seal in the thrust reverser actuator. This leakage could prevent the reverser from stowing and could be sufficient to unlock and deploy a thrust reverser due to a build-up of pressure on the deploy side of the piston. This condition, if not corrected, could result in uncommanded deployment of the thrust reverser.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-78A1055, dated April 2, 1992, that describes procedures for modification of the engine thrust reverser control system. The modification involves reworking the flow control tee in the deploy line on each engine strut by removing poppet valves. In addition, one restrictor check valve is installed in the stow port of each control valve module in the air conditioning bay, and one restrictor check valve is installed in the deploy port of the upper thrust reverser actuator on each thrust reverser half. Installation of the modification will decrease the pressure build-up described previously, holding it to a level that is below that needed to unlock and deploy a thrust reverser.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the engine thrust reverser control system. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 1,174 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 600 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $396,000. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 92-NM-103-AD.

*Applicability:* Model 737-300, -400, and -500 series airplanes; as listed in Boeing Alert Service Bulletin 737-78A1055, dated April 2, 1992; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent uncommanded thrust reverser deployment, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the engine thrust reverser control system, in accordance with Boeing Alert Service Bulletin 737-78A1055, dated April 2, 1992.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 8, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-15545 Filed 7-1-92; 8:45 am]

BILLING CODE 4910-13-M



**14 CFR Part 39**

**[Docket No. 92-NM-27-AD]**

**Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes Equipped With CFM International CFM56-3 Series Engines**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737-300 series airplanes, that currently requires the addition of an operational limitation in the Airplane Flight Manual (AFM) and installation of a placard on the flight compartment instrument panel, both of which are intended to reduce the risk of engine flameout in adverse weather conditions. This action would require modifications of the engine, and would expand the applicability to include Boeing Model 737-400 and -500 series airplanes that were certificated with the same limitations as imposed by the existing AD. This proposal is prompted by the development of engine modifications that eliminate the need for the operational limitations relative to operation in adverse weather. The actions specified by the proposed DA are intended to prevent engine flameout during airplane descent into moderate to severe adverse weather conditions.

**DATES:** Comments must be received by August 12, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-27-AD, 1601 Lind Avenue NW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen S. Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2681; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-27-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-27-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**Discussion**

On December 1, 1988, the FAA issued AD 88-13-51 R1, Amendment 39-6086 (53 FR 49978, December 13, 1988), that is applicable to Boeing Model 737-300 series airplanes equipped with CFM International CFM56-3 series engines. That AD required the addition of an operational limitation in the FAA-approved Airplane Flight Manual (AFM) and the installation of a placard on the flight compartment instrument panel, both of which contain information relative to conducting operations in moderate to heavy rain, hail, or sleet. The operations described are intended to reduce the risk of engine flameout in adverse weather conditions. That action was prompted by three incidents of engine flameouts during descent through moderate to severe adverse weather conditions. Two of the incidents were dual engine flameouts. The requirements of that AD are intended to prevent engine flameout during airplane descent into moderate to severe adverse weather conditions.

Subsequent to the issuance of AD 88-13-51 R1, the Model 737-400 and 737-500 series airplanes were certificated with the same operational limitations that were specified in that AD.

[Additionally, when a fourth engine flameout incident occurred on a Boeing Model 737-300 airplane, the FAA issued AD 89-25-02, Amendment 39-6402 (54 FR 48856, November 28, 1989), to require a modification to the engine idle circuitry on Model 737-300 and 737-400 series airplanes. (The design of the engine idle circuitry on the Model 737-300 is similar in design to that on the Model 737-400.) The modification inhibits the engine's inflight low idle capability. Model 737-500 series airplanes were certificated with this same (modified) engine idle circuitry configuration.]

The manufacturer recently developed a modification that, once installed, eliminates the need for operational limitations relative to adverse weather operation on Model 737-300, -400, and -500 series airplanes.

The FAA has reviewed and approved Boeing Service Bulletin 737-77-1031, Revision 1, dated May 14, 1992, that describes procedures for installing certain modifications on CFM International CFM56-3 series airplanes that eliminate the need for the previously imposed operational limitations, and provides instructions for an interim engine retrofit and use of intermixed engine installations (i.e., operations with one fully-modified engine and one not-completely modified engine). The engine modifications are intended to make the engine more flameout-resistant, and include the installation of a new splitter fairing, 12 VBV panel doors, elliptical spinner, and VBV system modifications. The modification procedures described differ, depending upon whether an airplane's engines are currently fully modified or partially modified. (This service bulletin references Boeing Service Bulletin 737-71-1273, Revision 1, dated May 14, 1992, for additional information.)

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 88-13-51 R1 to require modification of Model 737-300, -400, and -500 series airplanes equipped with CFM International CFM56-3 series engines. This modification action would be required to be accomplished in accordance with the service bulletin described previously. Upon accomplishment of the modification, the operational limitations and placard currently required on Model 737-300 series airplanes by AD 88-13-52 R1 may be removed; the same operational limitations that were included in the AFM when the Models 737-400 and -500 were certificated may also be removed.

There are approximately 961 Boeing Model 737-300, -400, -500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that a total of 474 airplanes of U.S. registry would be affected by this proposed AD. (Of this total, 299 airplanes would be affected by the expanded applicability of this proposed AD action.)

Of the total 474 U.S.-registered airplanes, 407 are referred to (in the applicable Boeing service bulletin) as "Group 1" airplanes. For these airplanes, the FAA estimates that it would take approximately 1 work hour to accomplish the proposed actions, at an average labor rate of $55 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of this AD on U.S. operators of Group 1 airplanes is estimated to be $22,385, or $55 per airplane.

Of the total 474 U.S.-registered airplanes, 67 are referred to (in the applicable Boeing service bulletin) as "Group 2" airplanes. For these airplanes, the FAA estimates that it would take approximately 5 work hours to accomplish the proposed actions, at an average labor rate of $55 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of this AD on U.S. operators of Group 2 airplanes is estimated to be $18,425, or $275 per airplane.

Based on the figures discussed above, the total cost impact of the proposed AD on U.S. operators is estimated to be $40,810. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For reasons discussed above, I certify that this proposed regulation: (1) Is not a

"major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows: Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–6088 (53 FR 49978, December 13, 1988), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 92–NM–27–AD. Supersedes AD 88–13–51 R1, Amendment 39–6088.

*Applicability:* Model 737–300, 737–400, and 737–500 series airplanes; equipped with CFM International CFM56–3 series engines; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent engine flameout during airplane descent into moderate to severe adverse weather conditions, accomplish the following:

(a) For Model 737–300 series airplanes: Within 10 days after December 30, 1988 (the effective date of AD 88–13–51 R1, Amendment 39–6088), accomplish the procedures specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by adding the following instructions. This may be accomplished by inserting a copy of this AD into the AFM. (Where appropriate, remove the previous inserted copy of AD 88–13–51 from the AFM.)

**"Operation in Moderate to Heavy Rain, Hail, or Sleet**

When operating in or in the vicinity of (near) moderate to heavy rain, hail, or sleet, accomplish the following:

(i) Engine start switches—Flight

(ii) Minimum Engine $N_1$–45%

(iii) Auto-throttle—Off

**Note:** Operation in or in the vicinity of (near) moderate to heavy rain, hail, or sleet is to be assumed if indicated by any of the following sources: weather radar, reports, or observations.

**Operating in Thunderstorm Activity**

*Cautionary Note*

Flight operation should be conducted so that operation within 5 miles of thunderstorm activity is avoided."

(2) For operations in known or forecast rain, hail, or sleet, notwithstanding the Minimum Equipment List (MEL), the following items must be operable for dispatch:

(i) Weather radar.

(ii) Engine Ignition System—both left and right engine ignitors.

(3) Install a placard (red base, white lettering) on the instrument panel in clear view of the flight crew and in close proximity of the engines' $N_1$ indication gauges, that reads as follows:

"Maintain At Least 45% $N_1$ When Operating In Or Near Moderate To Heavy Rain, Hail, Or Sleet."

(b) For Model 737–300 series airplanes: Within the next 24 months after the effective date of this AD, accomplish the engine modification described in Boeing Service Bulletin 737–77–1031, Revision 1, dated May 14, 1992. Upon accomplishment of this modification, the AFM revision and placard required by paragraph (a) of this AD may be removed.

(c) For Model 737–400 and 737–500 series airplanes: Within the next 24 months after the effective date of this AD, accomplish the engine modification described in Boeing Service Bulletin 737–77–1031, Revision 1, dated May 14, 1992. Upon accomplishment of this modification, the AFM limitations pertaining to "Operation in Moderate to Heavy Rain, Hail, or Sleet," as well as any related flight compartment instrument panel placard, may be removed.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 1:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

**Note 2:** Alternative methods of compliance previously granted for Amendment 39–6088, AD 88–13–51 R1, continue to be considered as acceptable alternative methods of compliance for paragraph (a) of this amendment.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 12, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–15346 Filed 7–1–92; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 92–NM–111–AD]**

## Airworthiness Directives; Learjet Model 23, 24, 25, 28, 29, 31, 35, and 36 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Learjet Model 23, 24, 25, 28, 29, 31, 35, and 36 series airplanes. This proposal would require modification of the crew oxygen plumbing and map light wires. This proposal is prompted by a report of a malfunction on a Learjet Model 24 series airplane involving chafing of the copilot map light wires, which caused electrical arcing against the oxygen mask tubing and subsequent burn-through and fire. The actions specified by the proposed AD are intended to prevent an in-flight fire.

**DATES:** Comments must be received by August 10, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–111–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Learjet Corporation, Customer Services, P.O. Box 7707, Wichita, Kansas 67277–7707. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. Dale Bleakney, Aerospace Engineer, Systems and Equipment Branch, ACE–130W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent

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Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–111–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–111–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**Discussion**

There has been a report indicating that a Learjet Model 24 series airplane was involved in an accident in which a malfunction involving contact between the copilot map light wires and the crew oxygen mask plumbing occurred. The map light wires chafed through, causing electrical arcing against the oxygen mask tubing and subsequent burn-through and fire. This condition, if not corrected, could result in an in-flight fire.

The FAA has reviewed and approved Learjet Airplane Modification Kit AMK No. 90–5, dated October 11, 1991, that describes procedures for modification of the crew oxygen plumbing and map light wires. This modification involves insulating the map light wires with a sleeve, which will prevent electrical arcing. In addition, the map light wires would be rerouted to prevent any inadvertent contact between electrical wires and the oxygen lines.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the crew oxygen plumbing and map light wires. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 1,482 Learjet Model 23, 24, 25, 28, 29, 31, 35, and 36 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,063 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 25 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $113 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,581,744. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows: Authority: 49 U.S.C. App. 1354(a), 1321 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Learjet (formerly gates learjet):** Docket 92–NM–111–AD.

*Applicability:* Model 23, 24, 25, 28, 29, 31, 35, and 36 series airplanes; as listed in Learjet Airplane Modification Kit No. AMK 90–5, dated October 11, 1991; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent electrical arcing and an in-flight fire, accomplish the following:

(a) Within 30 days after the effective date of this AD, modify the crew oxygen plumbing and map light wires, in accordance with Learjet Airplane Modification Kit AMK No. 90–5, dated October 11, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), ACE–155W, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 9, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–15548 Filed 7–1–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 92–ASW–19]**

**Proposed Establishment of Jet Route J–183, TX**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Jet Route J–183 located in the vicinity of El Paso, TX. Establishment of J–183 would provide an additional route for operation between the El Paso and the Houston, TX, terminal airspace areas. The current congestion between these areas would be relieved by adding a new jet route in an area where aircraft are usually radar vectored. This action would reduce controller workload.

**DATES:** Comments must be received on or before August 25, 1992.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 92–ASW–19, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ASW–19." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish J–183 located in the vicinity of El Paso, TX. The new J–183 would provide an additional route for operations between the El Paso and the Houston, TX, terminal airspace areas. The current congestion between these areas would be relieved by adding a new jet route in an area where aircraft are usually radar vectored. This action would reduce controller workload. Jet routes are published in Section 75.100 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airspace designation for the new jet route proposed in this document would be published subsequently in § 71.607 of the Handbook, if the regulation is promulgated.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Jet routes, Incorporation by reference.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

*Section 71.607 Jet Routes*

* * * * *

J–183 [New]

From El Paso, TX; Pecos, TX; Llano, TX; to College Station, TX.

* * * * *

Issued in Washington, DC, on June 25, 1992.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 92–15549 Filed 7–1–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 92–ANM–4]**

## Proposed Amendment to Sheridan Control Zone; Sheridan, WY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Sheridan Control Zone, Sheridan, Wyoming, from full-time to part-time. A reduction in personnel staffing of the Sheridan Flight Service Station has resulted in weather observations not being available 24 hours a day. This action would bring publications up-to-date giving

continuous information to the aviation public.

**DATES:** Comments must be received on or before August 10, 1992.

**ADDRESSES:** Send comments on the proposal to: Robert Brown, ANM-535, Federal Aviation Administration, Docket No. 92-ANM-4, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Robert Brown, ANM-535, Federal Aviation Administration, Docket No. 92-ANM-4, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2535.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal.

Communications should identify the airspace docket number and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ANM-4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examinations at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, ANM-530, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Sheridan Control Zone, Sheridan, Wyoming, from full-time to part-time. A reduction in personnel staffing at the Sheridan Flight Service Station has resulted in weather observations not being available 24 hours a day, and therefore, full-time control zone services will not be available. The amendment, if adopted, would allow for changes in the hours of effectiveness by issuance of Notices to Airmen when minor variations in time of designation are anticipated. The airspace designation of the Sheridan Control Zone is published in section 71.171 of FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designation for this control zone would be published subsequently in section 71.171 of the Handbook if this proposed rule is promulgated.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones, Incorporation by reference.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

*Section 71.171 Designation*

* * * * *

Sheridan, WY [Revised]

Within a 5-mile radius of the Sheridan County Airport (lat. 44°46'25"N., long. 106°58'15"W.) within 4 miles each side of the Sheridan VORTAC 312° and 327° radials, extending from the 5-mile radius zone to 11.5 miles northwest of the VORTAC; and within 4 miles each side of the Sheridan VORTAC 140° radial extending from the 5-mile radius zone to 24½ miles southeast of the VORTAC. This control zone shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time thereafter, will be continuously published in the airport/facility directory.

* * * * *

Issued in Seattle, Washington, on June 19, 1992.

**Helen M. Parke,**

*Assistant Manager, Air Traffic Division.*

[FR Doc. 92-15547 Filed 7-1-92; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 4

**[Notice No. 744; Ref: Notice No. 739]**

### Labeling of Bulk Process Sparkling Wine (90F167P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This document extends the comment period for a notice of proposed rulemaking (NPRM), published in the Federal Register on May 5, 1992 (57 FR 19267) concerning labeling of bulk process sparkling wine. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the difficult and complex issues addressed in the NPRM.

**DATES:** Written comments must be received on or before August 5, 1992.

**ADDRESSES:** Send written comments to: Chief, Wine and Beer Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091-0221; ATTN: Notice No. 744.

**FOR FURTHER INFORMATION CONTACT:** James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202-927-8230).

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 5, 1992, ATF published Notice No. 739 in the **Federal Register** (57 FR 19267), proposing to amend the regulations in 27 CFR part 4 to permit the use of the phrases "fermented outside the bottle," "secondary fermentation outside the bottle," "not fermented in the bottle," or "not bottle fermented," as alternatives to "bulk process" to further describe sparkling wine produced by fermentation in a large closed container. The term "charmat method" could be used as additional information to describe this process, provided it appeared immediately before or after one of the above mentioned phrases. In addition, ATF proposed to establish a clearer standard with respect to placement and type size requirements applicable to the optional designation on sparkling wine labels.

The comment period for Notice No. 739 was scheduled to close on July 6, 1992. Prior to the close of the comment period ATF received a request to extend the comment period 60 days. The extension was requested by a law firm representing several domestic producers of bulk process sparkling wines.

The law firm stated that it needed additional time to review the relevant scientific, professional, and technical literature relating to champagne-making techniques and evaluations of sparkling wines made by alternative methods. Additional time was also needed to investigate evolving consumer attitudes and perceptions, as well as the changing nature of the champagne market in the United States.

In consideration of the above, ATF finds that an extension of the comment period is warranted. However, the Bureau believes that an extension of an additional 30 days is sufficient and is therefore extending the comment period until August 5, 1992.

**Drafting Information**

The author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 4**

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

**Authority and Issuance**

This noticed is issued under the authority in 27 U.S.C. 205.

Signed: June 24, 1992.

**Daniel R. Black,**

*Acting Director.*

[FR Doc. 92-15579 Filed 7-1-92; 8:45 am]

BILLING CODE 4810-31-M

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 49 CFR Part 396

**[FHWA Docket No. MC-90-7]**

**RIN 2125-AC47**

## Inspection, Repair and Maintenance; Rockwell Disc Brake Inspection; Denial of Petition

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Denial of petition.

**SUMMARY:** The FHWA is denying a petition for rulemaking received from Rockwell-International (Rockwell) requesting that appendix G to the Federal Motor Carrier Safety Regulations, Minimum periodic inspection standards, be amended to allow brake chambers activating the Rockwell disc brake with automatic slack adjuster an additional one-fourth of an inch pushrod stroke over that allowed for similar brake chambers activating drum brakes.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry W. Minor, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Paul Brennan, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:** On May 2, 1990, the FHWA published a notice requesting comment on a petition from Rockwell (55 FR 18355). Rockwell requested that appendix G of subchapter B of chapter III, title 49, Code of Federal Regulations be amended to allow brake chambers activating the Rockwell disc brake with automatic slack adjuster an additional one-fourth of an inch pushrod stroke over the allowed for similar brake chambers activating drum brakes.

The notice of petition included several questions for commenters to consider.

1. Should appendix G to subchapter B be amended to allow the Rockwell petition?

2. If the Rockwell petition is granted allowing the additional one-fourth inch pushrod stroke for disc brakes, do you foresee any problem in enforcement?

3. If the Rockwell petition is granted, do you foresee any problems in maintaining the disc brake assembly, including the automatic slack adjuster, within the requested pushrod stroke?

4. Would there be any enforcement problems created by allowing a different standard between those disc brakes with automatic slack adjusters and those with manual adjusters?

5. Would granting the relief requested have any effect on the braking efficiency as it relates to safe stopping distance?

**Discussion of Comments**

The FHWA received nine comments to the notice of petition from: The American Trucking Associations (ATA); Bendix Heavy Vehicle Systems Group of Allied-Signal, Inc. (Bendix); the Commercial Vehicle Safety Alliance (CVSA); the State of Connecticut, Department of Motor Vehicles; Eaton Corporation; Ford Motor Company; Lucas Automotive, Maine State Police; and the Maryland State Police. All of the commenters were opposed to granting the petition with the exception of Bendix. Bendix "neither endorses nor rejects the Rockwell petition, but [comments] on issues that deserve further consideration."

Bendix believes a new requirement for disc brakes only adds to the inspection procedure complexity. Bendix also expressed concern on "cold parking capability." Bendix states "* * * hot disc brakes require shorter chamber strokes due to rotor expansion. However, with cold disc brakes, the rotor maintains its design thickness, thus requiring adequate clamp load at the longer stroke * * *. An additional ¼ inch in this condition reduces spring force used to develop clamp loads." Bendix also states that "two alternatives that could be considered * * * are the use of long stroke actuators and/or clearance sensing automatic slack adjusters."

The CVSA believes that if the Rockwell request is granted it will lead to confusion and improper inspections. The CVSA said:

> The Rockwell disc brake can be fitted with virtually all manual and automatic slack

adjusters * * * Other manufacturers have stated that their "normal" automatic slack adjuster is acceptable with the Rockwell disc brake * * * Our many discussions with Rockwell concerning this topic leads us to believe that denial of the petition will neither penalize the development of air disc brakes nor cause a great deal more out-of-service citations.

The CVSA also expressed concern about the safety of the Rockwell proposal, citing the lack of support by other brake manufacturers and the information the CVSA received in response to its request for an evaluation of the safety of the Rockwell proposal.

The Maine State Police stated that the present criteria for brake adjustment should be changed to accomodate one manufacturer's product. Such a change would only lead to confusion on the enforcement of the criteria. "The problems relating to identification of the manufacturer of the brake components in a roadside situation would be very difficult, due to dirt, ice, snow etc. that tend to coat brake parts." The Maine State Police also expressed concern about the effect of increased stroke on the parking brake system. It questioned whether the parking brakes, if applied in a hot condition, would be effective when the brake cools.

The ATA believes that the basic issue is a conflict between established practice and procedures. It said:

To help assure proper maintenance, standardizadation of the inspection and repair process is desirable. With many new employees entering the industry as both motor carrier service technicians and law enforcement inspectors, standardization helps speed training and avoid serious errors. Therefore, unless it will completely destroy a new technology, we believe established practice must be retained. We believe new designs should embrace established standards where possible and, therefore, oppose a new set of brake adjustment standards for disc brakes having a special automatic slack adjuster.

The ATA also believes that applying the parking brake with hot rotors and pushrod travel close to one-fourth of an inch beyond the current limit will adversely impact parking brake performance upon rotor cooling. "While Rockwell-International presented material to [the] CVSA indicating this should not be a problem, [Rockwell] only looked at [Rockwell brake] systems." The ATA believes this may be one of the reasons other automatic slack adjuster manufacturers have not asked for the one-fourth of an inch increase in pushrod travel.

Lucas Automotive opposes the Rockwell petition because the additional one-fourth inch stroke requested "reduces cold brake output torque due to reduced input force from the diaphragm brake chambers commonly used." Lucas Automative also stated:

If [the] additional [0.25] inch of brake chamber stroke is allowed, the brake on one side of the axle could produce up to 23.5% less torque than the other side due to variation of automatic adjuster performance from manufacturing tolerances, variation in lining compressibility and caliper stiffness variation all [of] which cause brake-to-brake stroke differences. * * * The fundamental need for stroke inspection and limitation should be based on the output characteristics of the brake chamber, not on a type of brake or adjustment means. The brake chamber characteristics limit the performance of the brakes. Allowing the requested increase in the stroke limit would set [an] undesirable precedent.

The Eaton Corporation expressed concerns and included data similar to that submitted by Lucas Automotive. Eaton adds:

Disc brake designs do not inherently require additional stroke. Provided caliper and chamber mounting bracket are designed with sufficient structure, and the actuator system is of proper mechanical advantage and efficiency, no relaxation of allowable air chamber strokes would be required.

The Ford Motor Company does not believe that the readjustment limits should be revised because there is the possibility of adverse effects on brake performance and the potential for confusion during inspection. Ford indicates that "a typical Type 24 or Type 30 air chamber provides on average up to 11% less force output when operated in a range up to ¼ inch beyond current specifications. Consequently, brake effectiveness at the increased stroke would be reduced, with maximum decrease in effectiveness occurring at times when an operator is attemping the hardest braking." Ford agrees with Rockwell that additional clearance is required between the rotor and disc pad on certain applications, however "the proper way to achieve this clearance is by installing longer stroke chambers on disc-braked vehicles, not redefining the readjustment limits for existing brake chambers."

In response to the comments to this docket, Rockwell indicated that "comments submitted by Rockwell's competitors who do not produce disc brakes, and others, reflect the fact that these commenters apparently did not have the benefit of reviewing the Rockwell test data * * *" Also, Rockwell did not agree with the comments concerning the use of long stroke brake chambers.

Rockwell has been a supporter of the long stroke air chamber and has recommended that recently developed long stroke type 24 chambers be recognized in the Motor Carrier Safety Regulations . . . Rockwell is also on record as supporting the [National Highway Traffic Safety Administration] recommendations to Congress for increased truck safety, which included the development of long stroke chambers. * * * Rockwell does not manufacture air chambers, but relies on chamber manufacturers for these developments. Rockwell began using long stroke type 24 chambers on their disc brakes as soon as they were available. The long stroke type 30 chambers mentioned in several of the comments are not available or developed yet in the U.S. In addition, the commenters that suggested use of long stroke chambers failed to consider the status of the vehicles that have already been placed in service.

In response to commenters suggesting that automatic slack adjusters produced by manufacturers other than Rockwell could be used for the disc brake system, Rockwell stated that "automatic slack adjusters that do not exceed the currently recommended stroke will result in brake drag, reduced lining life and cracked rotors." Rockwell also responded to the concern that introducing separate criteria for air disc brakes will cause confusion during inspections.

[T]he requested change will not create new precedent as increased disc brake stroke was allowed by the out-of-service criteria until 1986. The criteria currently [provide pushrod strokes for the different air chamber sizes]. . . . The Rockwell request can be accomodated with [a] simple chart for air disc brakes, which are measured in the same manner as cam brakes. As long as the air disc brake meets the recommended stroke, CVSA and DOT inspectors need not inquire further.

The FHWA believes that the commenters have presented important information about the safety of allowing an additional one-fourth inch pushrod stroke for Rockwell air disc brake systems which use automatic slack adjusters. In response to Rockwell's statement about the commenters not having the "benefit of reviewing the Rockwell test data," the FHWA acknowledges that through an oversight, a copy of the Rockwell petition, including test data, was not included in the docket file. However the FHWA does not believe that this oversight negates the concerns of the commenters. The FHWA notes that the commenters include three manufacturers of air brake systems. One of the three, Lucas Automotive, currently manufactures air disc brakes (Lucas Automotive's air disc brakes are not available in the United States). Furthermore, interested parties in need of a copy of the petition could have requested the information from the FHWA.

With regard to commenters' concerns about increasing the complexity of the inspection requirements, the FHWA does not believe that the Rockwell request would have led to problems in enforcement. Differentiating between a disc brake and a drum brake should not present a problem to vehicle inspectors. As for distinguishing between automatic and manual slack adjusters, the FHWA does not believe that it is necessary to recognize which slack adjuster is being used. Although the Rockwell petition distinguishes between automatic and manual slack adjusters used with the disc brake, the operating principles of an air brake system do not support the establishment of separate pushrod stroke limits based, in part, on the type of slack adjuster.

FHWA Decision

The FHWA believes that the brake adjustment criteria of appendix G should be based on the output characteristics of the brake chamber, not on the type of air brake or the type of brake adjuster being used. The Rockwell disc brake design uses brake chambers similar if not identical to the brake chambers used with drum brakes. As air pressure is exerted on the diaphragm, the pushrod is extended. The slack adjuster transfers the linear motion of the pushrod into rotational movement of the powershaft of the disc brake. Rotation of the powershaft clamps the brake pads against the disc. As the output force from the brake chamber decreases, the clamping force against the discs decreases.

Brake adjustment (pushrod stroke) greatly affects the amount of torque that can be generated by the brake. Braking effectiveness decreases with increasing stroke. The decrease in braking force begins before the pushrod stroke reaches the current limits and accelerates rapidly as the full stroke or "bottom out" point is reached. The current brake adjustment limits reflect the maximum pushrod stroke before the output force of the brake chamber falls below acceptable levels. The levels used by the FHWA in appendix G are consistent with the recommended limits available from air brake manufacturers.

The FHWA does not believe that an amendment to appendix G is necessary to accommodate the use of air disc brakes. Rockwell has indicated that design considerations for the air disc brake result in the "occasional violation" of the current pushrod stroke limits. The FHWA does not believe that safety standards should be amended because a manufacturer's design results in occasional violations. Rockwell has not shown that disc brakes inherently require additional stroke.

The FHWA is aware that motor carriers operating commercial motor vehicles with Rockwell disc brakes are concerned about the FHWA's decision in this matter. The FHWA strongly encourages motor carriers using Rockwell disc brake systems to continue to do so if the motor carriers monitor and maintain the brakes. The FHWA does not believe that Rockwell disc brakes (operating within the pushrod stroke limits of Appendix G) decrease the safety of operation of commercial motor vehicles. The FHWA does not intend that a denial of the petition adversely impact the use of air disc brake systems.

In consideration of the information provided by the commenters, and the FHWA's concerns about brake performance, the FHWA is denying the Rockwell petition to amend appendix G to subchapter B.

**Authority:** 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

Issued on: June 26, 1992.

**T.D. Larson,**

*Administrator.*

[FR Doc. 92-15629 Filed 7-1-92; 8:45 am]

BILLING CODE 4910-22-M

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**National Highway Traffic Safety Administration**

**49 CFR Part 552**

**Air Brake Systems; Denial of Petition for Rulemaking**

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document announces the agency's decision to deny a petition for rulemaking submitted by Mr. William Washington of the Washington Corporation, requesting that Federal Motor Vehicle Safety Standard No. 121, Air Brake Systems, be amended to require a device that regulates the brake system's air pressure differential between the two wheels on each axle. After conducting its review, the agency determined that the petition should not be granted because there were no test data or other information to substantiate the petitioner's claim that the requested amendment would improve a vehicle's braking performance. Since there was no reasonable possibility that the requested amendment would be issued at the conclusion of a rule making proceeding, the agency decided to deny the petition.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-5274.

**SUPPLEMENTARY INFORMATION:** Federal Motor Vehicle Safety Standard No. 121, Air Brake Systems, establishes performance requirements for braking systems on vehicles equipped with air braked systems. The purpose of the standard is to ensure safe braking performance under normal and emergency braking conditions. The standard applies to vehicles equipped with air brake systems but does not apply to motor vehicle equipment.

On January 8, 1992, Mr. William Washington of the Wasington Corporation (Washington), submitted to petition for rulemaking, requesting that Standard No. 121 be amended to require a device that regulates a brake system's air pressure differential between the two wheels on each axle, i.e., side-to-side differential. According to the petitioner, neither current air brake systems nor Standard No. 121 properly control for the pressure differentials that occur between air brake chambers on a single axle. The petitioner contended that his product, which describes as a differential pressure regulator quick release valve, would correct brake-related problems by equalizing the pressure from side-to-side on the vehicle. Among the problems which the petitioner claimed that his device would alleviate were unbalanced brake adjustments, single wheel lock-up, excessive brake vibration, pulling brakes, excessive stopping distance, and tire blowouts and flat-spotting.

The petitioner's device is an air chamber in which there is a cone shaped rubber diaphragm which acts as a spring. When the brakes are applied, the surge of air through the brake lines causes the rubber diaphragm to compress, allowing the chamber to enlarge and fill with air. The compression of the diaphragm in the expansion chamber and the ensuing enlargement of chamber volume are supposed to absorb air pressure spikes (i.e., rapid increases in air pressure) and pressure waves.

In support of his claim, Mr. Washington stated that there are approximately 5,000 fatal air brake-related crashes each year and many more near miss situations. The petitioner also described several specific crashed that happened in the past that he apparently believed would have been prevented if the requested amendment were adopted. Nevertheless,

aside from anecdotal accounts, Mr. Washington did not provide data supporting his claims.

Independent tests of the petitioner's device or products similar to his device indicate that it would not be in the interest of safety to adopt his requested amendment. For instance, tests at the Aberdeen Proving Ground indicated that a similar product, the BX–100 brake equalizer, was not approved for use on military vehicles (U.S. Army Aberdeen Proving Ground Report No. USACSTA–6635, 1986). Similarly, tests at Southwest Research Institute indicated that vehicles equipped with the petitioner's device needed an average of approximately 0.5 seconds longer to stop because additional time was needed to fill the expansion chamber. These vehicles exhibited a slower stopping time which ranged from 0.4 to 1.0 seconds at 40 miles per hour which would add from 24 to 59 feet to the stopping distance. ("Operating Characteristics of the MXQR–5000 Pressure Regulating Valve for Truck and Tractor—Trailer Air Brake Systems"). Tests also indicate that the petitioner's device does not smooth out pressure spikes as claimed. In fact, it typically would only cause small changes in the pressure curves because of the added volume in the brake system that must be filled with air.

Historically, measurements at VRTC concerning pressure in air brake systems have not revealed peaks in brake pressure. In contrast, to the agency's knowledge, axle-to-axle pressure differentials in combination units are the only type of air pressure differential that contributes to safety problems such as jackknifing and unbalanced braking. The agency has already conducted rulemaking to reduce problems associated with axle-to-axle differentials (see the timing and pressure differential requirements in Docket 85–7, Notice, 56 FR 11150, May 15, 1991).

NHTSA disagrees with the petitioner's claims that his product would prevent crashes. The agency notes that because the crashes cited in the petition were due to out-of-adjusted brakes, it is unlikely that the petitioner's device would have had any effect. More generally, the agency knows of no specific crash that would have been averted or category of crash that would be adverted by installation of the petitioner's device.

Significant costs would have resulted if the petitioner's device were required. The petitioner informed the agency that the unit cost for MSQR–5000 Quick Release/Equalizer would be $149 when sold to aftermarket customers, or $99 when purchased by original equipment manufacturers. Given that 187,000 vehicles are equipped with air brakes each year, the agency estimates that the rulemaking's aggregate cost would range from $18,700,000 to $27,900,000.

Based on the above considerations, NHTSA determined in a May 19, 1992 letter that the petition should not be granted. This decision was based in part on the fact that there are no test data or other information to substantiate the petitioner's claim that the requested amendment would improve a vehicle's braking performance. In addition, the petitioner only submitted anecdotal comments without any conclusive data to support his position.

Notwithstanding the agency's decision denying the petition, the agency notes that neither the requirements of Standard No. 121 nor those of the National Traffic and Motor Vehicle Safety Act, under which the standard was issued, prohibit the installation of the petitioner's product; provided that if it is installed on a vehicle by a vehicle manufacturer, dealer or repair business, neither the act of installation nor the operation of the device renders inoperative any device or element of design installed on that vehicle in compliance with Standard No. 121.

In accordance with 49 CFR part 552, the agency completed its technical review of the petition, determining that there was no reasonable possibility that the requested amendment would have been issued at the conclusion of a rulemaking proceeding. Accordingly the agency denied the petition.

**Authority:** 15 U.S.C. 1410a; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on June 26, 1992.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 92–15550 Filed 7–1–92; 8:45 am]

BILLING CODE 4910–59–M

# Notices

Federal Register
Vol. 57, No. 128
Thursday, July 2, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

June 26, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title of the information collection;
(3) Form number(s), if applicable;
(4) How often the information is requested;
(5) Who will be required or asked to report;
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information;
(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

**Revision**

• Human Nutrition Information Service
Continuing Survey of Food Intakes by Individuals CSFII–1989–92
On occasion
Individuals or households; 225 responses; 338 hours
Loir Borrud (301) 436–8485

• Agricultural Stabilization and Conservation Service
CFR part 1435, Regulations Governing Sugar and Crystalline Fructose Information Reporting Requirements
Recordkeeping; Monthly
Businesses or other for-profit; 1,009 responses; 31,508 hours
Bob Barry (202) 720–3391

• Agricultural Marketing Service
Celery Grown in Florida, M.O. 967
Recordkeeping; On occasion
Farms; Businesses or other for-profit; Small businesses or organizations; 4,003 responses; 217 hours
Mark Hessel (202 720–9920

**Extension**

• Foreign Agricultural Service
Financing Commercial Sales of Agricultural Commodities Under Title I. Public Law 480—Recordkeeping and Reporting Requirements
Recordkeeping; On occasion
Businesses or other for-profit; Small businesses or organizations; 522 responses; 580 hours
James Chase (202) 720–5780

• Food Safety and Inspection Service
Regulations Governing Meat Inspection
Recordkeeping; Quarterly; On occasion
State or local governments; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 3,030,300 responses; 278,103 hours
Roy Purdie (202) 720–5372

• Animal and Plant Health Inspection Service
National Poultry Improvement Plan (NPIP)
VS Forms 9–2, 9–3, 9–4, 9–5, 9–6, 9–7, APHIS 8003
Recordkeeping; On occasion; Annually
State or local governments; Businesses or other for profit; Small businesses or organizations; 43,263 responses; 4,640 hours
Andrew R. Rhorer (301) 436–7768

**Existing Collection**

• Foreign Agricultural Service
List of Commodities by Firm Available for Exporting
Annually
Businesses or other for-profit; 4,500 responses; 1,125 hours
Keith Scearce (202) 720–1533

**New Collection**

• Food Safety and Inspection Service
Nutrition Labeling Survey of Meat and Poultry Firms
One time use survey
Businesses or other for-profit; Small Businesses or organizations; 700 responses; 1820 hours;
Roy Purdie, Jr. (202) 720–5372

Donald E. Hulcher,
*Deputy Departmental Clearance Officer.*

[FR Doc. 92–15553 Filed 7–1–92; 8:45 am]
BILLING CODE 3410–01–M

## Commodity Credit Corporation

### Final Determinations Regarding Support Prices for Wool on Unshorn Lambs and for Mohair for the 1992 Marketing Year

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice of final determinations.

**SUMMARY:** This notice provides the final determinations concerning the price support levels for wool on unshorn lambs and for mohair for the 1992 marketing year. These determinations are required to be made pursuant to the National Wool Act of 1954, as amended.

**EFFECTIVE DATE:** July 2, 1992.

**FOR FURTHER INFORMATION CONTACT:** Janise A. Zygmont, Agriculture Economist, Commodity Analysis Division, USSA–ASCS, room 3756, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 720–6734. A Final Regulatory Impact Analysis has been prepared and is available on request from the above-named individual.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "Major." It has been determined that these determinations will result in an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that the Commodity Credit Corporation (CCC) publish a notice of proposed rulemaking in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental

assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this notice applies are National Wool Act Payments-10.059.

Section 703(a) of the National Wool Act of 1954 ("Wool Act"), as amended, provides that the prices of wool and mohair to producers shall be supported by means of loans, purchases, payments, or other operations. It has been determined that the prices of wool and mohair will be supported for the 1991 through 1995 marketing years by means of payments to producers.

Section 703(b) of the Wool act provides that the level of support for shorn wool for each of the marketing years 1991 through 1995 shall be 77.5 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (i) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (ii) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent.

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, which is determined to maintain normal marketing practices for pulled wool, and which is determined necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported. In order to provide such support on pulled wool, CCC has determined that it will continue to make such support by means of payments on wool on unshorn lambs. It has also been determined that such support for mohair will be at 85 percent of the percentage of parity at which shorn wool is supported. The reason for this is that this percentage of parity provides an adequate level of support.

On December 6, 1991, a notice of proposed determinations was published at 56 FR 63926, requesting comments concerning the method of calculating the price support level for wool on unshorn lambs and the level of price support for mohair for the 1992 marketing year. The notice also indicated that the 1992 shorn wool support price (grease basis) would be $1.96 per pound.

One written comment about mohair was received. The respondent did not endorse a specific price support level and urged that price support for mohair be continued, citing its importance to the producer in times of low market prices. The Department agrees with this comment which, since it is consistent with the proposed determinations, does not require the Department to make any amendments to its consideration.

One telephone comment was received from a mohair producer urging that mohair be supported at a minimum of $4.75 per pound (an amount equivalent to about 88 percent of the wool parity percentage) which approximates the cost of mohair production in his area of Texas. This comment was rejected and mohair will be supported at 85 percent of the wool parity percentage because it provides for the best level of support on a nation-wide basis as opposed to a regional basis.

After consideration of the comments received, the following determinations have been made with respect to the wool and mohair price support programs for the 1992 marketing year. The 1992 support prices shall be $1.97 per pound for shorn wool and $4.613 per pound for mohair. The support rate for wool on unshorn lambs will continue to be calculated as it has been in previous years.

**Final Determinations**

*A. Support Price—Shorn Wool*

The average parity index for the 3-year period 1988–90 is 1217.3. The average parity index for the 3-year period of 1958–60 is 297.3. The ratio of these indices is 4.0945. The result of multiplying 4.0945 by the 1965 support price of $0.62 per pound is $2.5386. Applying the formula indicated in section 703(b) of the Wool Act, 77.5 percent of $2.5386 is $1.97, when rounded to the nearest full cent.

*B. Support Price—Wool on Unshorn Lambs*

The support price for wool on unshorn lambs for the 1992 marketing year cannot be determined until the 1992 national average market price for shorn wool is calculated, which will occur by April 1993. The method for calculating the support price for wool on unshorn lambs shall be as follows: Once the 1992 national average market price for shorn wool is determined, the support price for wool on unshorn lambs will be determined by taking 80 percent of the difference between the 1992 support price for shorn wool and the 1992 national average market price for shorn wool, multiplied by 5 pounds (the amount of wool pulled form the pelt of an average 100-pound unshorn lamb).

*C. Support Price—Mohair*

The support price for mohair for the 1992 marketing year shall be 85 percent of the percentage of parity at which shorn wool is supported, or $4.613 per pound. The calculation is as follows: The October 1991 parity prices for shorn wool and for mohair are $3.35 and $9.23 per pound, respectively. The support price for shorn wool for the 1992 marketing year as calculated in accordance with the formula set forth in section 703(b) of the Wool Act is $1.97 per pound or 58.8 percent of the October 1991 parity price for shorn wool. The price support level for mohair for the 1992 marketing year is equal to 85 percent of 58.8 percent (the percentage of parity at which shorn wool is supported), which is equal to 49.98 percent. Accordingly, 49.98 percent of the October 1991 parity price for mohair results in a support price for mohair for the 1992 marketing year of $4.613 per pound.

The support programs conducted pursuant to the Wool Act are subject to the provisions of the Balanced Budget and Deficit Reduction Act of 1985, as amended. As a result, the program support levels announced in this notice may be recalculated to comply with this Act.

**Authority:** 15 U.S.C. 714b and 714c and 7 U.S.C. 1781–1787.

Signed at Washington, DC, on June 23, 1992.

**Keith D. Bjerke,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 92–15554 Filed 7–1–92; 8:45 am]

BILLING CODE 3410–05–M

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## Food Safety and Inspection Service

**[Docket No. 92–016N]**

## Codex Alimentarius: Public Forum Solicitation of Participants

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of public forum.

**SUMMARY:** The Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA); the Food and Drug Administration (FDA), Health and Human Services; and the Environmental Protection Agency (EPA) are sponsoring a forum to solicit public comments and suggestions on U.S. participation in activities of the Codex Alimentarius Commission and the direction of future activities of such participation. The cosponsors of this public forum recognize the importance of providing interested parties the opportunity to obtain background information on the Codex Alimentarius, to discuss current Codex issues, and to address U.S. participation in the Codex process.

**DATES:** The public forum is scheduled for July 8, 1992, from 9 a.m. to 4 p.m. Written notice to participate in the forum should be filed by July 6, 1992. Written comments regarding the forum will be received until August 8, 1992.

**ADDRESSES:** The public forum will be held at the following location: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

The transcript of the public forum and copies of data and information submitted during the forum will be available for review at the Office of the FSIS Hearing Clerk, Room 3171 South Building, U.S. Department of Agriculture, Washingon, DC., under Docket Number 92–016N.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rhonda S. Nally, Executive Officer for Codex Alimentarius, Contact Point for the United States, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3175–South Building, 14th and Independence Avenue SW., Washington, DC., Telephone: (202) 720–0150; Fax No: (202) 720–5124.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Codex Alimentarius Commission was established in 1962 by two United Nation's organizations, the Food and Agriculture Organizaion (FAO) and the World Health Organization (WHO), as a mechanism for encouraging fair international trade in food while promoting the health and economic interests of consumers. Today, both groups continue to support Codex, with each contributing a portion of the Codex budget.

Codex provides a forum for the world's leading experts to discuss, debate, and reach scientific consensus on the food safety issues that affect trade. There are currently 141 member nations of Codex that work to develop "standards" and "codes" dealing with basic principles, technical specifications for products, and good manufacturing practices.

Within the United States, Codex activities are coordinated by officials from USDA, FDA, and EPA. Dr Alejandro B. Thiermann, Deputy Administrator, International Services, Animal and Plant Health Inspection Service, USDA, serves as the U.S. Coordinator for Codex Alimentarius. Dr. Fred R. Shank, Director, Center for Food Safety and Applied Nutrition, FDA, and Ms. Linda Fisher, Assistant Administrator for Pesticides and Toxic Substances, EPA, are the Assistant U.S. Coordinators for Codex Alimentarius.

**Issues to be Discussed at the Forum**

The following specific issues will be discussed during the public forum:

1. Introduction to Codex.
2. GATT Sanitary and Phytosanitary Measures and the relationship to Codex.
3. Codex Alimentarius in Transition.
4. The Role of the Expert Bodies.

In addition, in order to develop strategy and direction for future Codex activities, we will open the forum for public comment in the following areas:

1. What specific changes should be made in the purpose, activities, and philosophy of Codex?
2. What do you hope to see in the next 5 years in terms of:
   —What Codex accomplishes, and
   —how Codes operates?

Participants are also free to identify other related issues concerning Codex and to provide comments.

The public forum will be open to all interested parties. Representatives from the following categories are encouraged to participate in this public form:

1. Consumer groups.
2. Industry groups.
3. Trade associations and recognized professional groups.
4. Other interested departments or agencies (including State offices).
5. Academia.
6. General public.

All persons wishing to participate in the public forum should submit a written request to Ms. Rhonda S. Nally, Executive Officer for Codex Alimentarius. (See "Addresses").

The written request should contain the following:

(1) participant's name, address, and phone number; and (2) name of company, corporation, organization, or group being represented.

FSIS will prepare a forum schedule showing the persons slated to participate. A schedule of participants will be available before the forum and will also be filed with the FSIS Hearing Clerk. (See **ADDRESSES**).

The agencies are holding this forum to gather information and general comments on Codex Alimentarius. All information and comments presented, along with written comments, will be carefully reviewed and considered.

Done at Washington, DC., on June 26, 1992.

H. Russel Cross,

*Administrator Food Safety and Inspection Service.*

[FR Doc. 92–15505 Filed 7–1–92; 8:45 am]

BILLING CODE 3410–D–M

## Forest Service

### North Lightning Analysis Area; Idaho Panhandle National Forests, Bonner County, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement.

**SUMMARY:** The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to harvest timber, build roads, improve existing stands of trees, and regenerate new stands of trees in Trout Creek, Kirby Creek, Trestle Creek, and Strong Creek drainages, which flow directly into the northern portion of Lake Pend Oreille. The proposed actions also incorporate areas encompassed by the upper Quartz Creek drainage which flows east into Lightning Creek; and upper Trapper Creek, Flume Creek, and Spring Creek drainages which flow west and north into Rapid Lightning Creek. Lightning Creek and Rapid Lightning Creek flow southerly into Lake Pend Oreille. The analysis area consists of approximately 25,000 acres, and is located approximately 10 air miles east of Sandpoint, Idaho.

**DATE:** Written comments concerning the scope of the analysis should be received within 45 days of the date of publication of this Notice in the **Federal Register**. A Public meeting is scheduled for 7:30 p.m. July 30, 1992 in the Conference Room on the Main Floor of the Federal building, 1500 Highway 2, Sandpoint, Idaho.

**ADDRESSES:** Written comments should be sent to: S. Blaise Chanson, Senior Environmental Analyst, BIO/WEST, Inc., 1063 West 1400 North, Logan, Utah 84321.

**FOR FURTHER INFORMATION CONTACT:** Specific questions about the proposed

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action, analysis and EIS should be directed to S. Blaise Chanson, Senior Environmental Analyst, BIO/WEST, Inc., Phone (801) 752-4202; or to Nancy Kertis, District Representative, Sandpoint Ranger District, Phone (208) 263-5111.

**SUPPLEMENTARY INFORMATION:** The North Lightning analysis projects will be administered by the Sandpoint Ranger District of the Idaho Panhandle National Forests, Bonner County, Idaho. Because of the potential for significant impacts resulting from the proposed action (as defined by 40 CFR 1508.27), an Environmental Impact Statement (EIS) will be prepared by an independent consultant, BIO/WEST, Inc., under the specifications of Contract No. 53-0343-1-ID167 with the Idaho Panhandle National Forests. Although not being prepared in-house, the EIS will be a Forest Service document, with the Forest Service acting as the lead agency. As such, the EIS will be subject to all appropriate Forest Service regulations and guidelines. The EIS will tier to the Idaho Panhandle National Forests Forest Plan (August 1987), which provides the overall guidance (Goals, Objectives, Standards and Guidance, and Management Area direction) in achieving the desired future condition for this area. The purpose and goals for the proposed action are to (1) foster forest regulation in the North Lightning analysis area; (2) improve growth and yield of desired species and size; and (3) to provide for North Lightning analysis area's share of the Allowable Sale Quantity (ASQ).

The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Objectives, Standards and Guidelines, and Management Area direction. The potentially affected area is within the following Management Areas:

Management Area 1: Provide for long-term growth and cost effective production of commercially valuable wood products on those lands suitable for timber production.

Management Area 2: Manage identified grizzly bear habitat to support the Forest's share of a recovered grizzly bear population, while providing the production of commercially valuable wood products.

Management Area 9: Manage to maintain and protect existing improvements and resource productive potential with mimimum investments.

Management Area 16: Manage riparian areas to feature riparian-dependent resources (fish, water quality, natural channels, and biotic communities), while producing other resource outputs.

The western boundary of the North Lightning Analysis Area is the administrative Kaniksu Forest boundary as it heads north from the town of East Hope and approximates the eastern shore of Lake Pend Oreille. It follows this boundary approximately five miles upstream on the Pack River, and then continues to follow the administrative forest boundary as it heads east and north for approximately 12 miles to upper Trapper Creek. The northern boundary of the project area heads east for about two miles and is contiguous with the southern boundary of the Mt. Willard/Lake Estelle Roadless Area (#X01173). It stays contiguous with this administrative boundary as the eastern project area boundary turns south along the ridge line to Lunch Peak. The eastern project area boundary continues south following Nosebag Creek downstream to Quartz Creek. The boundary continues south following Quartz Creek upstream to its headwaters, over the divide, and then down Trestle Creek for approximately five miles before following a ridge to Round Top. The eastern project boundary from Quartz Creek to south Round Top is contiguous with the western administrative boundary for the Trestle Peak Roadless Area (#01129). The southeastern boundary of the project area follows the eastern drainage divide of Strong Creek south to East Hope. The geographic scope of the analysis will depend on the resources, and may require analysis beyond the project area boundary.

The Forest Service is seeking information and comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues for the proposal and the area being analyzed. For most effective use, comments should be submitted to BIO/WEST, Inc. within 45 days of publication of this notice in the **Federal Register**. Information received will be used in the preparation of the Draft EIS. This preparation includes the steps:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of issues of minor importance, or those covered by previous relevant environmental analysis.
4. Identification of reasonable alternatives to the proposed action.
5. Identification of the potential environmental effects of the alternatives.

The analysis will consider a range of alternatives developed from the key issues. One of these will be the "No Action" alternative, in which all harvest is deferred. Other alternatives will consider various levels and locations of harvest and regeneration in response to issue and non-timber objectives. Among these alternatives will be a "leave-it-green" approach that will leave at least 50 percent of the existing crown canopy within any unit proposed for harvest. Another alternative will conduct harvest activities with minimal, if any, new road construction.

The analysis will evaluate the environmental effects of each alternative. This analysis will be consistent with the standards and management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for each alternative will be identified and the effectiveness of those mitigation measures will be disclosed.

Agencies and other interested parties are invited to visit the Forest Service officials or BIO/WEST representatives any time during the process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are: (1) During the scoping process (the next 45 days) and, (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and be available for public review in early April 1993. At that time the EPA will publish a notice of availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. To be the most help, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Forest Service believes it is important to give reviewers notice at this early stage of several federal court decisions related to public participation in the environmental review process. First, reviewers of The Draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alters an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Second, environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis, 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

The Final EIS is expected to be released July 23, 1993. The District Ranger who is the responsible official for this EIS will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulation, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: June 23, 1992.

**Claire Lavendel,**

*District Ranger, Sandpoint Ranger District, Idaho Panhandle National Forests.*

[FR Doc. 92-15504 Filed 7-1-92; 8:45 am]

BILLING CODE 3410-11-M



## Cedar Timber Sale, Medicine Bow National Forest, Carbon County, WY

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement to analyze and disclose the environmental effects of a site specific proposal to harvest timber in the Cedar Pass area of the Brush Creek Ranger District, Medicine Bow National Forest, Carbon County, Wyoming. The proposal could have impacts on the Pennock Mountain "roadless area." The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposal.

The Forest Service is seeking comments during the scoping analysis from other Federal, State, and local agencies, and organizations and individuals who may be interested or affected by the decision. The analysis process will include:

1. Identification of the issues to be addressed.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues, issues covered by previous environmental review, and issues not within the scope of this decision.

**DATES:** Comments concerning the scope of the analysis should be received in writing by July 31, 1992.

**ADDRESSES:** Send written comments to Don G. Carroll, District Ranger, Brush Creek Ranger District, P.O. Box 249, Saratoga, Wyoming, 82331.

**FOR FURTHER INFORMATION CONTACT:** Traute Parrie, Environmental Coordinator, P.O. Box 249, Saratoga, Wyoming, 82331, phone 307-326-5258.

**SUPPLEMENTARY INFORMATION:** The Cedar Timber Sale is a site-specific project identified in the Medicine Bow Land and Resource Management Plan (Forest Plan). The proposed timber sale could have impacts on the Pennock Mountain "roadless area." This project was tentatively scheduled during the first ten-year period of the Forest Plan, and is intended to implement the Plan and achieve the desired future condition for the area.

The decisions to be made include how to best manage the Cedar area, and whether to implement the proposed timber sale and other related activities. The related activities could include road construction and reconstruction, treatment of logging residue, site preparation, tree planting and thinning, some road closures, and other restoration projects such as erosion control projects, fisheries rehabilitation projects, gravel pit restoration, and rehabilitation of dispersed camping sites or ATV (All terrain vehicle) trails.

A reasonable range of alternatives, including "no action", which would result in no development of the area, and the "proposed action" will be considered. Other alternatives may be formulated as a result of scoping, and may consider various combinations of development designs for timber harvest, transportation, range, wildlife and fishery habitat activities, and visual and recreation opportunities.

The Deciding Official will be Gerald G. Heath, Forest Supervisor, Medicine Bow National Forest, 2468 Jackson Street, Laramie, Wyoming, 82070-6535.

We expect to publish a draft environmental impact statement (DEIS) in April of 1993, to ask for public comment on the draft material for a period of 45 days, and to complete a final environmental impact statement (FEIS) in September of 1993.

The 45 day public comment period on the DEIS will begin on the day the Environmental Protection Agency publishes a "Notice Of Availability" in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Circ. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.) Please note that comments you make on the draft environmental impact statement will be regarded as public information.

Dated: June 22, 1992.

**Gerald G. Heath,**

*Forest Supervisor.*

[FR Doc. 92-15574 Filed 7-1-92; 8:45 am]

BILLING CODE 3410-11-M

### Newberry National Monument Advisory Council Meeting Notice

**AGENCY:** Forest Service, USDA.

**ACTION:** Newberry National Volcanic Monument Commission Meeting.

**SUMMARY:** The Newberry National Volcanic Monument Advisory Council will meet on July 17, at 6:30 p.m., at the Lava Lands Visitor Center, Deschutes National Forest, 11 miles south of Bend, Oregon. An agenda for the meeting will consist of an orientation to the Monument, planning status, review of Monument legislation, advisory council operation, and future meeting schedules.

Interested members of the public are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Alice Doremus of Greg R. McClarren, Deschutes National Forest, 1645 Highway 20 East, Bend, OR 97701, telephone (503) 383–4703 or 383–5561.

Dated: June 29, 1992.

Sally Collins,

*Deputy Forest Supervisor.*

[FR Doc. 92–15529 Filed 7–1–92; 8:45 am]

BILLING CODE 3410–11–M

## Soil Conservation Service

### Lahaina Watershed, Maui County, Hawaii

**AGENCY:** Soil Conservation Service.

**ACTION:** Notice of a finding of no Significant Impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lahaina Watershed, Maui County, Hawaii.

**FOR FURTHER INFORMATION CONTACT:** Warren M. Lee, State Conservationist, Soil Conservation Service, P.O. Box 50004, Honolulu, Hawaii, 96850, Telephone (808) 541–2600.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Warren M. Lee, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan to provide a 100-year level of flood protection to urban and agricultural properties in the Lahaina Watershed. The planned works of improvement include a flood water diversion that runs between Lahainaluna Road and Kauaula Stream supported by an inlet basin, a water-energy dissipating basin, and three sediment basins. The construction of a debris basin on Kauaula Stream and a channel, with a sediment basin, to a second ocean outlet, 3,600 feet south of Kauaula Stream, are also proposed.

The notice of a finding of no significant impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic information developed during the environmental assessment are on file and may be reviewed by contacting Warren M. Lee, State Conservationist, Soil Conservation Service, P.O. Box 50004, Honolulu, Hawaii, 96850, telephone (808) 541–2600.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(The activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Protection Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: June 10, 1992.

Warren M. Lee,

*State Conservationist.*

[FR Doc. 92–15578 Filed 7–1–92; 8:45 am]

BILLING CODE 3410–16–M

## DEPARTMENT OF COMMERCE

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency*: Patent and Trademark Office (PTO)

*Title*: Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures

*Number*: OMB Number: 0651–0024

*Type of Request*: Extension

*Burden*: 2500 respondents; 625 reporting hours. Average is 15 minutes.

*Needs and Uses*: The use, by biotechnology patent applicants, of a standardized format for the submission, in paper and computer readable form, of sequence information as well as the submission relevant application and computer readable form information, is required by the PTO to permit proper examination and processing of such applications.

*Affected Public*: Individuals; businesses or other for profit organizations, Federal agencies or employees; Non-profit institutions; Small Business or organizations.

*Frequency*: On Occasion

*Respondent's Obligation*: Required to obtain a benefit.

*OMB Desk Officer*: Maya A. Bernstein, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: June 29, 1992.

Edward Michals,

*Department Clearance Officer, Office of Management and Organization.*

[FR Doc. 92-15625 Filed 7-1-92; 8:45 am]

BILLING CODE 3510-CW-M

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Patent and Trademark Office (PTO)

*Title:* Practice Before the Patent and Trademark Office

*Form Number:* Agency: N/A OMB #: 0651–0017

*Type of Request:* Extension

*Burden:* Reporting Requirement: 65 respondents totalling 98 hours. Average reporting time is 90 minutes. Recordkeeping Requirement: 220 recordkeepers totalling 170 hours. Average recordkeeping time is 9 hours annually.

*Needs and Uses:* The PTO Code of Professional Responsibility (37 CFR

10.20 to 10.112) requires that an attorney or agent shall report knowledge of certain violations of the code to PTO. Disciplinary Rule 37 CFR 10.112(c) of the PTO Code requires that an attorney or agent maintain complete records of all funds, securities, and other properties of clients coming into his or her possession and to render appropriate accounts to the client.

*Affected Public:* Individuals, Federal agencies or employees.

*Frequency:* On Occasion.

*Respondent's Obligation:* Required to obtain a benefit.

*OMB Desk Officer:* Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: June 29, 1992.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 92–15626 Filed 7–1–92; 8:45 am]

BILLING CODE 3510-CW-M

## International Trade Administration

**[A–570–007]**

## Barium Chloride From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration/ International Trade Administration Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** On April 27, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 15281) the preliminary results of its administrative review of the antidumping duty order on barium chloride from the People's Republic of China. The review covers one manufacturer/exporter of this merchandise and the period October 1, 1990 through September 30, 1991. The review indicates that there were no shipments of the subject merchandise to the United States during the review period.

Interested parties were given an opportunity to submit oral or written comments. We received no comments and the results are unchanged from the preliminary results.

**EFFECTIVE DATE:** July 2, 1992.

**FOR FURTHER INFORMATION CONTACT:** Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–8312/ 3814.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 27, 1992, the Department published in the **Federal Register** (57 FR 15281) the preliminary results of its administrative review of the antidumping duty order (October 17, 1984, 49 FR 40675). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

### Scope of the Review

Imports covered by the review are shipments of barium chloride, a chemical compound having the formula $BaCl_2$ or $BaCl_2–2H_2O$, currently classifiable under item number 2827.38.00 of the Harmonized Tariff Schedule (HTS). HTS item numbers are provided for convenience and for Customs purposes. The written descriptions remain dispositive.

The review covers one Chinese manufacturer/exporter of this merchandise, China National Chemicals Import and Export Corporation (SinoChem), and the period October 1, 1990 through September 30, 1991.

### Final Results of the Review

We determined that SinoChem had no shipments of the subject merchandise during the period of review. Therefore, we are continuing the deposit rate established in the final results of the last administrative review, published in the **Federal Register** on January 3, 1989 (54 FR 52), 60.84 percent.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be 60.84 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of th merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 7.82 percent. This rate normally represents the highest rate for any firm with shipments in this administrative review, other than those firms receiving a rate based entirely on best information available (BIA). Since the only firm in this review had no shipments, this rate represents the highest non-BIA rate in the most recent review in which such a rate was established, pursuant to new Department practice.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 22, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92–15614 Filed 7–1–92; 8:45 am]

BILLING CODE 3510-DS-M

**[A–588–029]**

## Fishnetting of Man-Made Fibers From Japan; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration. Commerce.

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**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests from certain importers and exporters, the Department is conducting an administrative review of the antidumping duty order on fishnetting of man-made fibers from Japan. The review covers two exporters, Momoi Fishing Net Manufacturing Company, Ltd. (Momoi) and Nippon Kenmo company, Ltd. (Kenmo), and exports of the subject merchandise to the United States during the period from June 1, 1990, through May 31, 1991. As a result of the review, the Department has preliminary determined that dumping margins exist with respect to Kenmo only.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** July 2, 1992.

**FOR FURTHER INFORMATION CONTACT:** Bruce Harsh or Alain Letort, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 30, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 30848) the final results of its last administrative review, covering the period June 1, 1988, through May 31, 1989, of the antidumping finding on fishnetting of man-made fibers from Japan (37 FR 11560–June 9, 1972).

On June 5, 1991, the Department published a Notice of Opportunity to Request an Administrative Review (56 FR 25663) for the period June 1, 1990, through May 31, 1991. The Department received timely requests for an administrative review on June 24, 1991, from an exporter, Nippon Kenmo Co., Ltd. (Kenmo) of Eba, Kuwana, Mie-ken, Japan, and on June 26, 1991, from Seattle Marine Fishing Supply Company of Seattle, Washington, and LFS, Inc. of Bellingham, Washington, both importers of fishnetting of man-made fibers from Japan and purchasers of fishnetting from Momoi Fishing Net Manufacturing Company, Ltd. (Momoi), of Ako, Hyogo-ken, Japan. The Department initiated the review, covering the period June 1, 1990 through May 31, 1991, on July 19, 1991 (56 FR 33251). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

**Scope of the Review**

The products covered by this review are fishnetting of man-made fibers, not including salmon gill netting, from Japan. This merchandise is currently classified under items 5608.11.00 and 5608.90.10 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive.

This review covers entries of the subject merchandise by Momoi and Kenmo during the period from June 1, 1990 through May 31, 1991.

**United States Price**

In accordance with section 772(b) of the Act, the Department based the United States price (USP) on purchase price (PP), because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We used the contract date as the date of sale. We calculated purchase price for Momoi based on c.i.f., packed prices to unrelated purchasers in the United States. We made deductions, where appropriate, for ocean freight, marine insurance, shipping charges, and inland freight.

We solicited specific suggestions on product matches from both Momoi and the petitioners, and used the most detailed product comparison information on the record. We made no adjustment for any differences in the physical characteristics of the merchandise being compared, since there was no information on the record that would have allowed us to make such an adjustment.

**Foreign Market Value**

In accordance with section 773(a) of the Act, the Department calculated foreign market value for Momoi based on f.o.b., delivered prices to unrelated purchasers in the home market. We used the contract date as the date of sale. We adjusted foreign market value for the differences in packing costs between the two markets.

**Use of Best Information Available**

Because Kenmo failed to respond to our requests for information, the Department, in accordance with section 776(c) of the Act, has used the best information otherwise available (BIA) for this company. Section 353.37(b) of the Department's regulations provides that the Department may take into account in determining what is the best information available whether a party fails to provide requested information, as is the case with Kenmo, or otherwise significantly impedes the Department's review. In this case, the Department has used as BIA for Kenmo the highest rate determined for any firm during any segment of this proceeding.

**Preliminary Results of Review**

As a result of our comparison of United States price to foreign market value, the Department preliminarily determines the following weighted-average dumping margins:

| Manufacturer/producer/exporter | Margin (percent) |
|---|---|
| Momoi Fishing Net Mfg. Co., Ltd. | 0.00 |
| Nippon Kenmo Co., Ltd. | 38.26 |

The following deposit requirements shall be effective for all shipment of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after that publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies shall be those rates established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit shall continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate shall be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters shall be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm with shipments in the administrative review, other than those firms receiving a rate based entirely on the BIA.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Public Comment**

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication.



Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of any such written comments or hearing.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: June 22, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92–15618 Filed 7–1–92; 8:45 am]

BILLING CODE 3510–DS–M

**[A–559–802]**

## Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore, Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of Final results of antidumping duty administrative review.

**SUMMARY:** On March 4, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, from Singapore (57 FR 7734). The review covers one manufacturer/exporter of the subject merchandise, Mitsuboshi Belting (Singapore) Pte., Ltd., and the period June 1, 1990 through May 31, 1991.

As a result of the review, the Department has determined to assess antidumping duties based on the best information available.

**EFFECTIVE DATE:** July 2, 1992.

**FOR FURTHER INFORMATION CONTACT:** Millie Mack or Jean C. Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 19, 1991, in accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order (54 FR 25315, June 14, 1989) on industrial belts and components and parts thereof from Singapore for the period June 1, 1990 through May 31, 1991 (56 FR 33251). On March 4, 1992, we published the preliminary results of this administrative review (57 FR 7734). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

**Scope of the Review**

The products covered by this review are shipments of industrial belts and components and parts thereof, whether cured or uncured, from Singapore. The covered merchandise consists of certain industrial V-belts used for power transmission. These include V-belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.*, closed loops) belts, or in belting in lengths or links.

This review excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

During the review period, the merchandise and classifiable under Harmonized Tariff (HTS) subheadings 3926.90.55, 4010.10.10, 4010.10.50, 5910.00.10, 5910.00.90, and 7326.20.00. The HTS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the shipments of one manufacturer/exporter of industrial belts from Singapore to the United States, Mitsuboshi Belting (Singapore) Pte., Ltd. (MBS), and the period June 1, 1990 through May 31, 1991.

**Final Results of the Review**

Because MBS did not respond to our questionnaire, we preliminarily determined to use best information available (BIA). As BIA, we used the rate from the original investigation of sales at less-than-fair-value, which was 31.73 percent. We gave interested parties an opportunity to comment on our preliminary results; we received no comments. Therefore, the antidumping duty margin is 31.73 percent for merchandise produced by MBS entered during the period June 1, 1990 through May 31, 1991.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 31.73 percent. This rate normally represents the highest rate for any firm with shipments in the administrative review, other than those firms receiving a rate based entirely on best information available. Because the only firm in this review received a BIA rate, and there is no previous review in which a non-BIA rate was established, the "all other" rate will be the "all other" rate from the original investigation of sales at less-than-fair-value.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

In addition, this notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in

accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 26, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-15624 Filed 7-1-92; 8:45 am]

BILLING CODE 3510-DS-M

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**[A-507-502]**

## In-Shell Pistachios From Iran; Intent To Revoke Antidumping Duty Order

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping duty order.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on in-shell pistachios from Iran. Interested parties who object to this revocation must submit their comments in writing no later than July 31, 1992.

**EFFECTIVE DATE:** July 2, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 17, 1986, the Department of Commerce ("the Department") published an antidumping duty order on in-shell pistachios from Iran (51 FR 25922). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

### Opportunity to Object

No later than July 31, 1992, interested parties, as defined in section 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by July 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by July 31, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: June 26, 1992.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 92-15615 Filed 7-1-92; 8:45 am]

BILLING CODE 3510-DS-M

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**[A-588-041]**

## Synthetic Methionine From Japan; Intent To Revoke Antidumping Finding

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping finding.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on synthetic methionine from Japan. Interested parties who object to this revocation must submit their comments in writing no later than July 31, 1992.

**EFFECTIVE DATE:** July 2, 1992.

**FOR FURTHER INFORMATION CONTACT:** Dennis Askey or Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-4851.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 10, 1973, the Department of Treasury published an antidumping finding on synthetic methionine from Japan (38 FR 18382). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

### Opportunity to Object

No later than July 31, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by July 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by July 31, 1992, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: June 26, 1992.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 92-15623 Filed 7-1-92; 8:45 am]

BILLING CODE 3510-DS-M

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## National Oceanic and Atmospheric Administration

## Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Advisory Subpanel and Plan Development Team will hold a public meeting on July 14, 1992, beginning at 10:30 a.m. The meeting will be held at the National Marine Fisheries Service, Southwest Regional office, suite 4200, 501 West Ocean Boulevard, Long Beach, CA.

The purpose of this meeting is to review the status and progress on the fishery management plan for coastal pelagic species, (anchovy, Pacific whiting, jacket mackerel and northern anchovy).

For more information contact Patricia Wolf from the California Department of Fish and Game at (213) 590-5117 or Larry Jacobson from the National Marine Fisheries Service at (619) 546-7117. For the information of individuals planning to attend this meeting, there is no public parking in the building; however, public parking is available immediately behind the building on Magnolia Street at a cost of $3.00 per day.

Dated: June 26, 1992.

Richard H. Schaefer,

*Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-15585 Filed 7-1-92; 8:45 am]

BILLING CODE 3510-22-DM

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

June 26, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** July 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 614 is being increased by application of swing. The reduction to the donor category is being done in a separate directive. As a result of the increase, the limit for Category 614, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 55 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

June 26, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 6, 1992, you are directed to amend further the directive dated November 22, 1991, to increase the limit for Category 614 to 10,869,343 square meters [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-15586 Filed 7-1-92; 8:45 am]

BILLING CODE 3510-DR-F

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

June 26, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** June 26, 1992.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 55 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

June 26, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on June 26, 1992, you are directed to amend further the directive dated November 22, 1991, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels not in group | |
| 219 | 1,539,801 square meters. |
| 300/301 | 3,574,863 kilograms. |
| 333 | 53,060 dozen. |
| 341 | 656,673 dozen of which not more than 375,243 dozen shall be in Category 341-Y [2]. |
| 342 | 249,948 dozen. |

[1] The limit has not been adjusted to account for any imports exported after December 31, 1991.

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 345 | 124,019 dozen. |
| 359-V [2] | 775,892 kilograms. |
| 360 | 6,696,633 numbers of which not more than 4,479,525 numbers shall be in Category 360-P [4]. |
| 369-D [5] | 4,306,902 kilograms. |
| 369-H [6] | 4,374,884 kilograms. |
| 410 | 1,939,141 square meters of which not more than 1,554,431 square meters shall be in Category 410-A [7] and not more than 1,554,431 square meters shall be in Category 410-B [8]. |
| 433 | 22,820 dozen. |
| 434 | 13,002 dozen. |
| 436 | 14,859 dozen. |
| 440 | 37,150 dozen of which not more than 21,228 dozen shall be in Category 440-M [9]. |
| 442 | 41,396 dozen. |
| 445/446 | 286,582 dozen. |
| 448 | 21,726 dozen. |
| 607 | 2,780,306 kilograms. |
| 615 | 21,914,861 square meters. |
| 645/646 | 812,892 dozen. |
| 659-C [10] | 371,818 kilograms. |
| 669-P [11] | 1,730,958 kilograms. |
| 833 | 24,228 dozen. |
| 835 | 117,143 dozen. |
| 842 | 242,289 dozen. |
| 845 | 2,347,422 dozen. |
| 863-S [12] | 8,127,108 numbers. |
| Group II 330, 332, 349, 353, 354, 359-O [13], 431, 432, 439, 459, 630, 632, 633, 643, 644, 653, 654 and 659-O [14], as a group. | 120,992,573 square meters equivalent. |
| Group III 201, 220, 222-225, 227, 229, 362, 369-O [15], 400, 414, 464-469, 600, 603, 604-O [16], 606, 618-622, 624-629, 665, 666, 669-O [17] and 670-O [18], as a group. | 327,304,503 square meters equivalent. |
| Group IV 832, 834, 836, 838, 839, 843, 844, 850-852, 858 and 859, as a group. | 25,840,881 square meters equivalent. |
| Sublevel in Group IV 836 | 241,822 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[3] Category 359-V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[4] Category 360-P: only HTS numbers 6302.21.1010, 6302.21.1020, 6302.21.2010, 6302.21.2020, 6302.31.1010, 6302.31.1020, 6302.31.2010 and 6302.31.2020.

[5] Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[6] Category 369-H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[7] Category 410-A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[8] Category 410-B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[9] Category 440-M: only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6205.90.4020 and 6211.31.0030.

[10] Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[11] Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[12] Category 863-S: only HTS number 6307.10.2015.

[13] Category 359-O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359-C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (Category 359-V).

[14] Category 659-O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659-C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659-H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659-S).

[15] Category 369-O: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369-D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369-H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6000 (Category 369-L); and 6307.10.2005 (Category 369-S).

[16] Category 604-O: all HTS numbers except 5509.32.0000 (Category 604-A).

[17] Category 669-O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669-P).

[18] Category 670-O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-15589 Filed 7-1-92; 8:45 am]

BILLING CODE 3510-DR-F

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 92-C0003]**

### Sara's Prints, Inc., a Corporation; Provisional Acceptance of a Consent Order Agreement

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Provisional Acceptance of a Consent Order Agreement under the Flammable Fabrics Act.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Flammable Fabrics Act in the Federal Register in accordance with the terms of 16 CFR 1605.13. Published below is a provisionally-accepted Consent Order Agreement with Sara's Prints, Inc., a corporation.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 17, 1992.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 92-C0003, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Eric L Stone, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0626.

Dated: June 26, 1992.

Sheldon D. Butts,

*Deputy Secretary.*

### Consent Order Agreement

Sara's Prints, Inc., a corporation ("Respondent") enters into this Consent Order Agreement ("Agreement") with the staff of the Consumer Product Safety Commission (the "staff") pursuant to the procedure for Consent Order Agreements contained in § 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR part 1605.

This Agreement and Order are for the sole purpose of settling allegations of

the staff that Respondent sold children's sleepwear that is subject to, but failed to comply with, the Flammable Fabrics Act and the Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X, 16 CFR part 1615 the Flammable Farbrics Act and the Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14, 16 CFR part 1616 (the "Sleepwear Standards") issued thereunder, as more fully set forth in the Complaint accompanying this Agreement.

*Respondent and the Staff Agree:*

1. The Consumer Product Safety Commission has jurisdiction in this matter under the following acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), and Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).

2. Respondent Sara's Prints, Inc. ("Sara's Prints") is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 3018–A Alvarado Street, San Leandro, California.

3. Respondent is engaged in the manufacture, importation and sale of children's wearing apparel.

4. Respondent is now and has been engaged in one or more of the following: The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.*, and the Sleepwear Standards.

5. This Agreement is for settlement purposes only, does not constitute an admission by Respondent that it has violated the law, and becomes effective only upon its final acceptance by the Commission and its service upon the Respondent in accordance with the procedures set forth in 16 CFR 1605.13.

6. Respondent waives any rights to an administrative or judicial hearing and any rights to seek judicial review of or otherwise challenge or contest the validity of the Commission's Order in this matter.

7. Violation of the provisions of the Order may subject Respondent to a civil penalty for each violation as prescribed by law, including penalties under the Federal Trade Commission Act. Section 5(l) of the FTCA, 15 U.S.C. 45(l).

8. Respondent agrees that the Commission may disclose the terms of this Consent Order Agreement to the public.

9. This Agreement may be used in interpreting the Order. No agreement, understanding, representation or interpretation not contained in this Agreement or Order may be used to vary or contradict the terms of the Order.

Upon final acceptance of this Agreement, the Commission shall issue the following Order:

**Order**

*I*

*It is hereby ordered that* Respondent, its successors and assigns, agents, representatives, and employees of the Respondent, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, identical or substantially similar to the following garments that do not meet the flammability requirements of the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X, 16 CFR part 1615; or the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14, 16 CFR part 1616, except to the extent that Respondent imports garments for the sole purpose of repackaging and exporting these garments in compliance with section 15 of the FFA, 15 U.S.C. 1202 and 16 CFR part 1019.

a. A two-piece non-footed garment made with 100% cotton rib knit, covered elastic waist on the bottoms and rib trim at the neck, wrists, and ankles designate as the Style 1000 garment. A photograph of the garment that is the basis for and the subject of this prohibition is appended hereto as "Attachment A" and incorporated herein by reference.

b. A one piece non-footed 100% cotton garment with long raglan sleeves, a short front snap opening, a back elastic waist and a snap crotch designated as the Style 510L garment. A photograph of the garment that is the basis for and the subject of this prohibition is appended hereto as "Attachment B" and incorporated herein by reference.

c. A one piece non-footed 100% cotton garment with short raglan sleeves, a short front snap opening, a back elastic waist and a snap crotch designated as the Style 550L garment. A photograph of the garment that is the basis for and the subject of this prohibition is appended hereto as "Attachment C" and incorporated herein by reference.

*II*

*It is further ordered that* Respondent may sell any Style 1000, 550L, or 510L garments that were in its inventory or ordered prior to August 14, 1991, provided that:

(1) Respondent shall place a label, approved by the Commission staff, on the package for each garment. Such label shall state that the garment does not comply with the Sleepwear Standards and should not be used for sleeping or activities related to sleeping because of their flammability;

(2) Respondent shall inform retailers these garments are not to be promoted for sale as sleepwear;

(3) Respondent shall terminate sales to any retailers that it learns are promoting these garments as sleepwear;

(4) Respondent shall report to the Commission staff in a format acceptable to the Commission staff on a quarterly basis the number of style 1000 garments sold; and

(5) Respondent shall terminate sales of these garments by December 31, 1992 and shall dispose of any remaining inventory in a manner acceptable to the Commission staff.

*III*

*It is further ordered that* Respondent shall permit the Commission staff to conduct inspections; to obtain books, records, papers, and other documents; and to select samples of sleepwear or related articles of clothing in inventory at Respondents' place(s) of business for the purpose of determining compliance with this Order.

*IV*

*It is further ordered that* Respondent shall within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

*V*

*It is further ordered that* for a period of five (5) years from the date this Order becomes final within the meaning of the Federal Trade Commission Act, Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the way Respondent does business which may materially affect its compliance obligations arising out of this Order.

*VI*

In the event that the Commission modifies or amends the Standard for the Flammability of Children's Sleepwear: (Sizes 0 Through 6X), 16 CFR part 1615 the Flammable Fabrics Act and the

Standard for the Flammability of Children's Sleepwear: (Sizes 7 Through 14), 16 CFR part 1616 (the "Sleepwear Standards"), changes its guidance to the industry in a manner that would exempt the garments described in paragraph II above from complying with these Standards or would otherwise allow them to comply with these Standards, or changes its enforcement policies with respect to the kinds of garments that are the subject of this Order, Respondent may apply to the Commission for relief from the obligations imposed by this Consent Agreement and Order. The Commission shall grant such relief if it determines that Respondents have shown that such changes have taken place and that in the interests of fairness to Respondents, relief from the terms of this Order is necessary.

Signed this 27 day of June, 1992.

By: Mike Steber,

*Sara's Prints, Inc., 3018–A Alvarado St., San Leandro, CA 94577.*

By: Eric L. Stone,

*Division of Administrative Litigation.*

Alan H. Schoem,

*Director, Division of Administrative Litigation*

David Schmeltzer,

*Assistant Executive Director Office of Compliance and Enforcement Consumer Product Safety Commission Washington, DC 20207.*

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR § 1605.13, and shall be placed on the public record, and the Secretary is directed to publish the provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register**.

So ordered by the Commission, this 23rd day of June, 1992.

Sadye E. Dunn,

*Secretary Consumer Product Safety Commission.*

**Complaint**

The staff of the Consumer Product Safety Commission contends that Sara's Prints, Inc., a corporation, and Mike Steber, an officer of that corporation (hereinafter "Respondents") are subject to the provisions of the Consumer Product Safety Act, as amended, 15 U.S.C. 2051 *et seq.* (the "CPSA"); the Flammable Fabrics Act, as amended, 15 U.S.C. 1191 *et seq.* (the "FFA"); the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.* (the "FTCA"); the Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X, 16 CFR part 1615, and the Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14, 16 CFR part 1616 (the "Sleepwear Standards"). The staff further contends that the Respondents have violated the Sleepwear Standards.

It appears to the Commission from the information available to its staff that it is in the public interest to issue this Complaint. Therefore, by virtue of the authority vested in the Commission by section 30(b) of the CPSA, 15 U.S.C. 2079(b), Sections 3 and 5 of the FFA, 15 U.S.C. 1192 and 1194, and Section 5 of the FTCA, 15 U.S.C. 45, and in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR part 1025, the Commission hereby issues this Complaint and states the staff's charges as follows:

1. Respondent Sara's Prints, Inc. ("Sara's Prints") is a corporation organized and existing under the laws of the State of California with its principal place of business located at 3018–A Alvarado Street, San Leandro, California.

2. Respondent Mike Steber is the President and Chief Executive Officer of Sara's Prints, Inc. and as such, formulates, directs, and controls the acts, practices, and policies of Respondent corporation.

3. Respondents are now and have been engaged in the manufacture for sale, the sale, or the offering for sale, in commerce, and the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of products that are subject to the requirements of the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.*, and the Sleepwear Standards.

*Count One—Style 1000*

4. Respondents have imported, offered for sale and sold a garment set known as the style 1000. The style 1000 is a two-piece garment set made with the 100% cotton rib knit fabric. The bottoms are non-footed, have covered elastic waists, and rib trim at the ankles. The tops use rib trim at the neck and wrists. Respondents have imported and sold these garments in a variety of print patterns, solids, and stripes in sizes 6 months to 14. A photograph of one of these garments is appended hereto as "Attachment A" and incorporated herein by reference.

5. Because of their design, fabric, print patterns, sizes and other factors, the style 1000 garments are objects of wearing apparel intended to be worn primarily for sleeping or activities related to sleeping. 16 CFR 1615.1(a) and 1616.2(a). These garments are suitable for sleeping and related activities and are likely to be used by children primarily for sleeping or activities related to sleeping in a substantial number of cases.

6. For these reasons, the style 1000 garments are items of childrens sleepwear subject to regulation under the Sleepwear Standards.

7. Respondents have manufactured for sale, sold, or offered for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce the style 1000 garments without complying with the testing, labeling and recordkeeping requirements of the Sleepwear Standards. Therefore, Respondents have engaged in practices that constitute unfair methods of competition and unfair and deceptive practices in commerce for which a cease and desist order may be issued against Respondents pursuant to section 3 of the FFA, 15 U.S.C. 1192 and section 5 of the FTCA, 15 U.S.C. 45.

*Count Two—Style 510L*

8. Respondents have imported, offered for sale and sold a garment known as the style 510L. The style 510L is a one piece non-footed 100% cotton garment with long raglan sleeves, a short front snap opening, a back elastic waist and a snap crotch. The garment was imported and sold in a variety of print patterns and stripes in sizes 6–24 months. A photograph of the style 510L garment is appended hereto as "Attachment B" and incorporated herein by reference.

9. Because of their design, fabric, print patterns, sizes and other factors, the style 510L garments are objects of wearing apparel intended to be worn primarily for sleeping or activities related to sleeping. 16 CFR 1615.1(a) and 1616.2(a). These garments are suitable for sleeping and related activities and are likely to be used by children primarily for sleeping or activities related to sleeping in a substantial number of cases.

10. For these reasons, the style 510L garments are items of childrens sleepwear subject to regulation under the Sleepwear Standards.

11. Respondents have manufactured for sale, sold, or offered for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce the style 510L garments without complying with the testing, labeling and recordkeeping requirements of the Sleepwear Standards. Therefore, Respondents have engaged in practices

that constitute unfair methods of competition and unfair and deceptive practices in commerce for which a cease and desist order may be issued against Respondents pursuant to section 3, of the FFA, 15 U.S.C. 1192 and section 5 of the FTCA, 15 U.S.C. 45.

*Count Three—Style 550L*

12. Respondents have imported, offered for sale and sold a garment known as the style 550L. The style 550L is a one piece non-footed 100% cotton garment with short raglan sleeves, a short front snap opening, a back elastic waist and a snap crotch. The garment was imported and sold in a variety of print patterns and stripes in sizes 6–24 months. A photograph of this garment is appended hereto as "Attachment C" and incorporated herein by reference.

13. Because of their design, fabric, print patterns, sizes and other factors, the style 550L garments are objects of wearing apparel intended to be worn primarily for sleeping or activities related to sleeping. 16 CFR 1615.1(a) and 1616.2(a). These garments are suitable for sleeping and related activities and are likely to be used by children primarily for sleeping or activities related to sleeping in a substantial number of cases.

14. For these reasons, the style 550L garments are items of childrens sleepwear subject to regulation under the Sleepwear Standards.

15. Respondents have manufactured for sale, sold, or offered for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce the style 550L garments without complying with the testing, labeling and recordkeeping requirements of the Sleepwear Standards. Therefore, Respondents have engaged in practices that constitute unfair methods of competition and unfair and deceptive practices in commerce for which a cease and desist order may be issued against Respondents pursuant to section 3 of the FFA, 15 U.S.C. 1192 and section 5 of the FTCA, 15 U.S.C. 45.

16. The Commission staff has tested the Style 1000, 510L and 550L garments and determined that they do not meet the flammability requirements of the Sleepwear Standards.

**Relief Sought**

Wherefore, the staff requests that the Commission issue an order requiring Respondents to cease and desist from the importation and sale of the style 1000, 510L and 550L garments and to cease and desist from future violations of the Sleepwear Standards, and to order such further relief as may be reasonably necessary to insure Respondents' compliance with the Sleepwear Standards.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the 23rd day of June, 1992.

Dated: June 23, 1992.

By direction of the Commission:

**David Schmeltzer,**

*Assistant Executive Director, Office of Compliance and Enforcement.*

[FR Doc. 92–15619 Filed 7–1–92; 8:45 am]

BILLING CODE 6355–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Establishment of the National Security Education Board

**ACTION:** Notice.

**SUMMARY:** Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the National Security Education Board has been established, pursuant to Public Law 102–183, the "National Security Education Act of 1991."

The National Security Education Board will provide advice and recommendations to the Secretary of Defense and Assistant Secretary of Defense for Command, Control, Communications, and Intelligence on policies and programs pertaining to national security educational pursuits, such as, foreign languages, area studies, and international fields. The Education Board will: develop criteria under the National Security Education Act for awarding scholarships, fellowships, and grants to U.S. citizens and institutions; provide for wide dissemination of information regarding the activities assisted under that Act; and, establish qualifications for persons desiring scholarships or fellowships, and for institutions of higher education desiring grants.

The Membership of the Education Board will be diverse and well-balanced in terms of the functions to be performed and the interest groups represented. Federal members are specifically designated in section 803 of the National Security Education Act. Four individuals will be appointed by the President, with the advice and consent of the Senate, who will be experts in the fields of international, language, and area studies education.

For additional information regarding the Education Board, please contact Ed Collier at: 703–693–7717.

Dated: June 26, 1992.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92–15519 Filed 7–1–92; 8:45 am]

BILLING CODE 3810–01–M

### Establishment of the Defense Advisory Committee on Service Academy Athletic Programs

**ACTION:** Notice.

**SUMMARY:** Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Defense Advisory Committee on Service Academy Athletic Programs (DACSAAP) has been established, pursuant to Public Law 102–190, the "National Defense Authorization Act for Fiscal Years 1992 and 1993."

The DACSAAP will provide advice and assistance to the Secretary of Defense and Assistant Secretary of Defense for Force Management and Personnel on matters pertaining to the administration of athletic programs at the three Military Service academies. The Committee shall review all aspects of the athletic programs of the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy on an annual basis; including, the policies related to the administering of these programs, the appropriate balance between the emphasis placed on such athletic programs and academic pursuits, and the extent to which athletes in all sports are treated equitably under the academies' programs.

The members of the DACSAAP will be diverse and well-balanced in terms of the functions to be performed and the interest groups represented. It will be composed of distinguished administrators from institutions of higher learning, members of Congress, members of the boards of visitors from the three academies, and other experts in collegiate athletic programs.

For additional information regarding the DACSAAP, please contact Captain Mark Zamberlan, telephone: 703–697–8444.

June 26, 1992.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92–15518 Filed 7–1–92; 8:45 am]

BILLING CODE 3810–01–M

### Defense Policy Board Task Force on The Future of American Nuclear Forces

**ACTION:** Notice of Task Force Meeting.

**SUMMARY:** The Defense Policy Board Task Force on The Future of American Nuclear Forces will meet in closed session on 20 July 1992 from 0800 to 1700 at the RDA Logicon Facility located at Sequoia Plaza, 2100 Washington Boulevard, Arlington, VA. The mission of the Task Force is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning matters related to U.S. nuclear force policy. At the meeting the Task Force will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-15515 Filed 7-1-92; 8:45 am]

BILLING CODE 3810-01-M

### Women in Services Advisory Committee, Meeting

**AGENCY:** Defense Advisory Committee on Women in the Services (DACOWITS), Defense.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review unresolved resolutions made by the Committee at the DACOWITS 1992 Spring Conference; review the Subcommittee Issue Agenda; review the proposed agenda for the DACOWITS 1992 Fall Conference; and discuss issues relevant to women in the Services. All meeting sessions will be open to the public.

**DATES:** September 14, 1992, 8:30 a.m.-4 p.m.

**ADDRESSES:** SECDEF Conference Room 3E869, The Pentagon, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Captain Branda M. Weidner, Office of the DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, room 3D769, Washington, DC 20301-4000; telephone (703) 697-2122.

Dated: June 26, 1992.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-15520 Filed 7-1-92; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Army

### Environmental Impact Statement (EIS) for Military Joint Training Exercise ROVING SANDS in Texas and New Mexico; Intent

**AGENCY** Headquarters, Department of the Army, DOD.

**SUMMARY:** The Army will prepare a programmatic EIS for proposed Joint Training Exercise ROVING SANDS at Fort Bliss, Texas and New Mexico and White Sands Missile Range, New Mexico. The exercise is to be conducted in Spring 1993 and each spring thereafter for at least the next five years. Where the possibility exists for cumulative impacts from repetitive activities, the National Environmental Policy Act recommends preparation of an EIS to address the entire program.

ROVING SANDS is an annual joint surface-to-air and air-to-air field training exercise sponsored by Forces Command and executed by the 11th Air Defense Artillery Brigade. The exercises would involve the following areas: Fort Bliss, Texas and New Mexico; Biggs Army Air Field, Texas; White Sands Missile Range and Holloman Air Force Base, New Mexico.

Force employment and field training will be approximately two weeks, though some units could start deploying into the exercise area two weeks prior to the exercise start date. Troops on the ground could remain up to one week afterwards. Participants include personnel from the Army, Air Force, Navy, and Marine Corps. Equipment includes fixed and rotary winged aircraft and wheeled vehicles. Most of the ground activity will occur on the Fort Bliss training area. Sites which are environmentally sensitive will be avoided.

Alternatives: (a). No Action. (b). Alternate locations.

Scoping: Scoping meetings will be held to identify alternatives and significant issues related to the conduct of Joint Readiness Exercises at Fort Bliss and White Sands Missile Range. Public notices and news releases will announce the scoping meetings. Persons with questions or comments may telephone Mr. Aver Ferguson, Jr. at (817) 334-3246. Callers should indicate their interest in military exercise ROVING SANDS. Comments, suggestions, and requests to be placed on the mailing list may be forwarded to: U.S. Army Corps of Engineers, Fort Worth District, Attn: CESWF-PL-RE, P.O. Box 17300, Fort Worth, Texas 76102-0300.

**Lewis D. Walker,**

*Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I, L&E).*

[FR Doc. 92-15490 Filed 7-1-92; 8:45 am]

BILLING CODE 3710-08-M

## Corps of Engineers, Department of the Army

### Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for the Proposed Wyoming Valley Levee Raising Project in Luzerne County, PA

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** The Baltimore District, U.S. Army Corps of Engineers is preparing a Phase II General Design memorandum (GDM). The Phase II GDM will evaluate an increased level of protection for the existing flood control system along the Susquehanna River in the Wyoming Valley of Luzerne County in the vicinity of Wilkes-Barre, Pennsylvania. Additionally, the GDM will evaluate the impact of small and infrequent increased flooding due to the proposed project in areas upstream and downstream in Luzerne, Columbia, Montour, and Northumberland Counties. A SEIS will be prepared as part of the Phase II GDM to document changes in the project actions, existing conditions and project effects, which were described in the Final EIS (FEIS) prepared for the Phase I GDM in 1981. The project was authorized under section 401(a) of the 1986 Water Resources Development Act. Luzerne County, with support from the Commonwealth of Pennsylvania, is the non-Federal sponsor for the project.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and SEIS can be addressed to Mr. Edward Palguta, Project Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB-PD-P, P.O. Box 1715, Baltimore, Maryland 21203-1715.

**SUPPLEMENTARY INFORMATION:** 1. The study area is located in northeastern Pennsylvania. The levees proposed to be raised are located in an area known as the Wyoming Valley in Luzerne County.

which extends along the Susquehanna River for approximately 18 miles from the Borough of Pittston southwest to Nanticoke City. The additional areas that may be impacted by the levee raising are located in communities along the Susquehanna and Lackawanna Rivers from Duryea to Sunbury. The Wyoming Valley is heavily developed, primarily by urban residential, commercial, and industrial facilities, along with abandoned and active mining operations. Existing natural areas in the Wyoming Valley include: the Susquehanna River and its corridor (including several river islands), riparian vegetation, parks, and agricultural lands.

2. The study area was plagued with reoccurring floods from the Susquehanna River for many years until a Federally authorized flood control system was constructed in the 1930's, 1940's, and 1950's. The existing flood control system is composed of four projects, which are located in the Boroughs of Kingston and Edwardsville; the Boroughs of Swoyersville and Forty Fort; the Borough of Plymouth; and the Township of Hanover and the City of Wilkes-Barre. There are a variety of flood control structures used in conjunction with the four projects. They include: Levees, floodwalls, closures, landward seepage berms, pumping stations, ponding areas, stone slope protection, and instream stabilization berms.

3. In June 1972, Tropical Storm Agnes, the largest flood of record, overtopped the existing flood control system by four to five feet. In December of 1972, the Baltimore District completed a document titled "Wyoming Valley Flood Control, Susquehanna River, Pennsylvania", which recommended that the existing flood protection system be modified to protect against an Agnes level flood. In 1981, a more detailed Phase I GDM and FEIS were completed which recommended that the existing flood protection system be raised to protect against an Agnes level flood. In 1986, the U.S. Congress authorized the project recommended in the 1981 Phase I GDM. As part of the project implementation, the Phase II GDM will contain reanalysis and refinement of the Phase I GDM recommendations.

4. The Phase II GDM will contain an investigation of two alternatives:

*a. No Action Plan*

This alternative involves no changes to the existing flood protection system.

*b. 1981 Phase I GDM Plan*

This alternative consists of the recommended levee raising plan generally as described in the 1981 Phase I GDM/FEIS and authorized in 1986, which would raise the height of the four existing levee projects to protect against a reoccurrence of Tropical Storm Agnes. The plan would also include modifying closure structures, relocating utilities, providing some new floodwalls and levees to maintain the system's integrity, and removing two railroad bridges. The Congress also authorized (1) raising existing flood projects in Duryea, Brookside, Miners Mill, Danville, and Sunbury; (2) building new levees and floodwalls in Exeter, Wyoming, and West Pittston; (3) relocating or floodproofing structures and constructing a ring levee in Plainsville and Port Blanchard; and (4) removing a railroad bridge in Bloomsburg, all for the purpose of reducing the impacts of increased flooding from the levee raising. Subsequent detailed engineering and economic investigations have identified additional possible methods of addressing the impacts of increased flooding. The availability of utilizing these additional alternative methods, which include but are not limited to (1) no action, (2) structural and non-structural methods, and (3) other forms of economic resource protection, will also be investigated.

5. The Baltimore District is preparing a SEIS which will document changes from the 1981 FEIS, including differences in: the proposed actions; environmental, cultural, social and recreational baseline conditions; hazardous, toxic, and radioactive waste investigation findings; and project effects. The overall public interest will also be addressed. If applicable, the SEIS will also apply guidelines issued by the Environmental Protection Agency, under authority of section 404(b)(1) of the Clean Water Act of 1977 (Public Law 95–217).

6. A notice will be distributed to interested private individuals and organizations, as well as Federal, state, and local agencies, informing them of the Phase II GDM and our intent to prepare a SEIS, and requesting their comments. The Baltimore District invites potentially affected Federal, state,and local agencies and other interested organizations and parties to participate in this study. Agencies that will be involved in the study and SEIS process include, but are not limited to the following: U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; U.S. Geological Survey; U.S. Soil Conservation Service; U.S. National Park Service; Pennsylvania Department of Environmental Resources; Pennsylvania Historical and Museum Commission; Pennsylvania Fish Commission; Pennsylvania Game Commission; Luzerne County, Pennsylvania; and the Susquehanna River Basin Commission. Additional study newsletters, notices and workshops may be included as part of the public involvement program, as needed.

7. The draft SEIS is tentatively scheduled to be available for public review in the fall of 1993.

**Frank R. Finch,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 92-15491 Filed 7-1-92; 8:45 am]

BILLING CODE 3710-41-M

## Department of the Navy

### Intent to Grant Exclusive License

**AGENCY:** Department of the Navy, DOD

**ACTION:** Intent to Grant Exclusive Patent License; John J. Oprandy

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to John J. Oprandy a revocable, nonassignable, exclusive license to practice the Government-owned invention described in U.S. Patent Application Serial No. 07/846,100 filed March 5, 1992, for "Rapid Membrane Based Extraction Method For The Isolation and Purification of Nucleic Acids from Microorganisms In Biological Fluids".

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000.

**FOR FURTHER INFORMATION CONTACT:** Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000, Telephone (703) 696-4001.

Dated: June 24, 1992.

**Wayne T. Baucino**

*Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison.*

[FR Doc. 92-15593 Filed 7-1-92; 8:45 am]

BILLING CODE 3810-AE-F

## DEPARTMENT OF EDUCATION

### National Assessment Governing Board; Teleconference Meeting

**AGENCY:** National Assessment Governing Board; Education.

**ACTION:** Notice of Teleconference Meeting and Partially Closed Meeting.

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**SUMMARY:** This notice sets forth the schedule and proposed agenda of forthcoming teleconference meetings of the Subject Area Committee #1 and the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATES:** July 6, 1992, and July 14, 1992.

**TIME:** July 6, 1992—Subject Area Committee #1—11 a.m. to 12 noon, (EDT). July 14, 1992—Executive Committee—11 a.m. to 12 noon (open); 12 p.m. to 12:30 p.m. (closed).

**LOCATION:** National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, suite 825, Washington, DC., 20002–4233, Telephone: (202) 357–6938.

**SUPPLEMENTARY INFORMATION:** The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (P.L. 100–297), (20 USC 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The Subject Area Committee #1 of the National Assessment Governing Board (the Board) will meet in an open session via telephone conference on July 6, 1992 (EDT). The proposed agenda includes review of the 1994 NAEP U.S. History Framework and Specifications, and the formulation of recommendations to the Executive Committee for final action.

On July 14, 1992, the Board's Executive Committee will conduct a partially closed teleconference meeting. During the open portion of the meeting from 11 a.m. to 12 noon (EDT), the Committee will take final action on the 1994 U.S. History Framework and Specifications. From 12 p.m. to 12:30 p.m., the meeting will be closed to the public to permit the Committee to discuss appointment extensions for two NAGB staff persons. The discussion of appointment extensions for two staff members relates to the internal personnel rules and practices of an agency, and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. Such matters are protected by exemptions (2) and (6) of section 552b(c) of title 5 U.S.C.

Facilities will be provided so the public will have access to the Committees' deliberations for both teleconference meetings. A summary of the activities at the closed session and related matters, which are informative to the public and consistent with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 800 North Capitol Street, NW., Washington, DC., from 8:30 a.m. to 5 p.m.

Date: June 26, 1992.

**Roy Truby,**

*Executive Director, National Assessment Governing Board.*

[FR Doc. 92–15510 Filed 7–1–92; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Noncompetitive Financial Assistance Award

**AGENCY:** Bartlesville Project Office; U.S. Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The U.S. Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (B) and (D) it intends to make a Noncompetitive Financial Assistance (Grant) Award to the Massachusetts Institute of Technology (MIT) for the conduct of a Reservoir Delineation Consortium to develop and advance reservoir delineation concepts and technology. This activity represents an unique idea and a method which would not be eligible for financial assistance under any existing or planned solicitation and, as determined by DOE, a competitive solicitation would be inappropriate. Issuance of this grant award and DOE support of the activity is expected to enhance the benefits to be derived by allowing more thorough coverage of the aspects of reservoir delineation through the cooperative efforts of government and industry.

**SUPPLEMENTRY INFORMATION:**

*Grant No.:* DE–FG22–92BC14867.

*Title:* Reservoir Delineation Consortium.

*Awardee:* Massachusetts Institute of Technology.

*Term:* 60 months.

*Cost:* Total Proposed Cost to DOE, $195,000–$39K/Yr).

*Scope:* A Consortium Agreement has been executed by the Massachusetts Institute of Technology to conduct in-depth studies in theoretical and practical solutions to cross-well seismic data resolution and tomographic inversion. The Reservoir Delineation Consortium is devoted to detailed characterization of the subsurface using seismic waves by focusing on: (1) Theoretical studies of wave propagation in three-dimensional heterogeneous and anisotropic media; (2) tomographic imaging and inversion methods using transmitted and scattered waves; (3) field experiments using the Earth Research Laboratory's (ERL) multi-well test facility in Michigan; and (4) applications of parallel computing at ERL's Geophysical Center for Parallel Processing. The Consortium's efforts are expected to develop and advance reservoir delineation concepts.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: Ms. Donna J. Lebetz, Contract Administrator, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940.

Dated: June 19, 1992.

**Richard D. Rogus,**

*Chief, Contracts Group, Acquisition and Assistance Div.*

[FR Doc. 92–15605 Filed 7–1–92; 8:45 am]

BILLING CODE 6450–01–M

### Award of a Noncompetitive Financial Assistance

**AGENCY:** Nevada Field Office, Department of Energy (DOE).

**ACTION:** Notice of noncompetitive financial assistance.

**SUMMARY:** The DOE Nevada Field Office announces that pursuant to subsection 600.7(b)(2) of the DOE Financial Assistance Rules (10 CFR 600.7(b)(2)), it intends to award a grant on a noncompetitive basis to the National Academy of Sciences (NAS) to support the conduct of work which is relevant to

the activities of the DOE Yucca Mountain Site Characterization Project Office. The work, which will be performed by the U.S. National Committee for Rock Mechanics (USNC/RM), includes a review of the characterization of fracture networks and fluid flow in rock fractures and the development of a report tentatively entitled "Annual Review of U.S. Progress in Rock Mechanics-Fracture Characterization and Fluid Flow."

**SUPPLEMENTARY INFORMATION:** Project Scope: The principal objective of the NAS study is to review, synthesize, and integrate recent research concerning techniques of and approaches to fracture characterization and fluid flow in rock fractures. The work, to be performed by the USNC/RM, a standing committee of the National Research Council, will be co-sponsored by several research groups and federal agencies. DOE intends to provide support as a co-sponsor because the NAS work will provide research and information pertinent to the conditions encountered at the Yucca Mountain, Nevada, candidate site for a high-level nuclear waste repository, and will receive wide dissemination in the affected scientific community. DOE intends to award a grant by July 15, 1992, to provide financial assistance to the NAS in the amount of $15,000.

**FOR FURTHER INFORMATION, CONTACT:** U.S. Department of Energy, Yucca Mountain Site Characterization Project Office, Attn.: Birdie Hamilton-Ray, P.O. Box 98608, Las Vegas, NV 89193-8608.

Issued in Las Vegas, Nevada, on June 22, 1992.

Nick C. Aquilina,

*Manager, NV.*

[FR Doc. 92-15606 Filed 7-1-92; 8:45 am]

BILLING CODE 6450-01-M

## Office of Fossil Energy

**[FE Docket No. 92-50-NG]**

### ProGas U.S.A., Inc., Order Granting Blanket Authorization to Import and Export Natural Gas

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of an Order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ProGas U.S.A., Inc. (ProGas U.S.A.), authorization to import up to 400 Bcf of Canadian natural gas, and export up to 200 Bcf of natural gas to Canada and up to 200 Bcf of natural gas to Mexico, beginning on the date of first delivery after June 30, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 25, 1992.

Charles F. Vacek,

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92-15607 Filed 7-1-92; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Project Nos. 2395-003 et al.]**

### Hydroelectric Applications (Flambeau Paper Corp., et al); Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2395-003.

c. *Date filed:* December 31, 1991.

d. *Applicant:* Flambeau Paper Corporation.

e. *Name of Project:* Pixley.

f. *Location:* On the North Fork Flambeau River near Park Falls in Price County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. James M. McGinnity, 200 North First Avenue, Park Falls, WI 54552, (715) 762-3231.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219-2814.

j. *Deadline Date:* August 10, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) A 25-foot-high earth dikes; (2) a 46-foot-long concrete gated spillway section; (3) a reservoir with a surface area of 193 acres at surface elevation 1,440.7 feet NGVD and a storage area of 1,757 acre-feet; (4) a powerhouse containing two generating units having a total installed capacity of 960 kW; and (5) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 5,948,500 kWh.

m. *Purpose of Project:* Project power would be used by the applicant's paper mill operation.

n. *This notice also consists of the following standard paragraphs:* D1 and E1.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Flambeau Paper Corporation, 200 North First Avenue, Park Falls, WI 54552, or by calling (715) 762-3231.

2. a. *Type of Application:* New License.

b. *Project No.:* 2402-003.

c. *Date Filed:* December 23, 1991.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Prickett Hydro Project.

f. *Location:* On the Sturgeon River in Houghton and Baraga Counties, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Clarence R. Fisher, President, Upper Peninsula Power Company, P.O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931, (906) 487-5000.

i. *FERC Contact:* Ed Lee (202) 219-2809.

j. *Comment Date:* August 14, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The project as licensed consists of the following: (1) An existing earth embankment, approximately 500 feet long with a maximum height of 55 feet, containing a corewall composed of a concrete wall with steel sheet piling underneath; (2) an existing concrete retaining wall, about 200 feet long with a maximum height of 55 feet; (3) a concrete, four bay, multi-arch, buttress dam (109.5 feet long) containing (a) three gate controlled spillway sections, each equipped with a steel radial gate, 24 feet long by 13.5 feet high, and (b) a non-overflow section, 27 feet long; (4) an existing concrete gravity non-overflow section, 41 feet long; (5) an existing spillway apron, 40 feet long, consisting of a rock bottom and sides formed of concrete retaining walls, approximately 20 feet high; (6) an existing fuse plug emergency spillway consisting of a 20 foot long by 13 foot high earth embankment section; (7) an existing reservoir with a surface area of 773 acres and a total storage volume of 13,687 acre-feet at the normal maximum surface elevation of 708.8 feet MSL; (8)

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an existing intake canal, 500 feet long, composed of an earth bottom, minimum width 50 feet, and excavated earth side slopes; (9) an existing concrete intake structure, a gravity section 35.5 feet wide by 47 feet long, consisting of (a) two entrance ways, each 14 feet wide with a gross area of approximately 204 square feet, and (b) two steel radial gates, each approximately 14 feet long by 14 feet high; (10) two existing earth embankments, on either side of the intake structure, a total length of approximately 125 feet, containing a corewall composed of steel sheet piling with a concrete cap; (11) two existing 8 foot diameter wood stave penstocks, each about 80 feet long with a cross sectional area of 50 square feet; (12) an existing brick and concrete powerhouse, 46 feet wide by 38 feet long by 30 feet high, containing (a) two vertical Francis turbines, rated at 1,600 hp each; and (b) two vertical generators, rated at 1,100 kW each, providing a total plant rating of 2,200 kW; and (13) existing appurtenant facilities. No changes are being proposed for this new license. The applicant estimates the average annual generation for this project would be 9.6 GWH. The dam and existing project facilities are owned by the applicant. The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Upper Peninsula Power Company, P.O. Box 130, 600 Lakeshore Drive, Houghton, Michigan, or by calling (906) 487–5000.

3a. *Type of Applications:* New Major License.

b. *Project Nos.:* 2406–002 & 2465–003.

c. *Date filed:* December 20, 1991.

d. *Applicant*: Duke Power Company.

e. *Names of Projects:* Saluda & Hollidays Bridge.

f. *Location:* On the Saluda River in Anderson, Greenville, & Pickens County, South Carolina.

g. *Filed Pursuant to*: Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. John E. Lansche, Duke Power Company, 422 South Church Street, Charlotte, NC 28242–0001, (704) 382–8125.

i. *FERC Contact*: Mr. Surender M. Yepuri, P.E. (202) 219–2847.

j. *Deadline Date:* August 10, 1992.

k. *Status of Environmental Analysis:* These applications are not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Projects*: (A) Saluda Project: The project as proposed for licensing consists of: (1) A 55-foot-high, 460-foot-long concrete dam impounding a 556-acre reservoir; (2) a powerhouse containing four turbine generator units with a total rated capacity of 2.4 MW; and (3) other appurtenant structures. The average annual generation is 5.46 GWh.

(B) Hollidays Bridge Project: The project as proposed for licensing consists of: (1) A 35-foot-high, 644-foot-long concrete dam impounding a 466-acre reservoir; (2) a 950-foot-long intake canal; (3) a powerhouse containing four turbine generator units with a total rated capacity of 3.5 MW; (4) a 3.5-mile-long, 22-kV transmission line; and (5) other appurtenant structures. The average annual generation is 11.87 GWh.

m. *Purpose of Projects*: Power generated from the project is used primarily to help meet peak load demands of customers.

n. *This notice also consists of the following standard paragraphs*: B1 and E1.

o. *Available Locations of Applications:* A copy of the applications, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

4 a. *Type of Application*: New License.

b. *Projects Nos.*: 2407–006 and 2408–007.

c. *Date Filed*: December 17, 1991.

d. *Applicant*: Alabama Power Company.

e. *Name of Project:* Yates and Thurlow Hydro Project.

f. *Location*: On the Tallapoosa River in Tallapoosa and Elmore Counties, Alabama.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. John E. Dorsett, Vice President, Alabama Power Company, P.O. Box 2641, Birmingham, AL 35291, (205) 250–1000.

i. *FERC Contact*: Ed Lee (202) 219–2809.

j. *Comment Date*: August 14, 1992.

k. *Status of Environmental Analysis*: This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project*: The project as licensed consists of the following two developments.

*A. Yates Hydroelectric Project, Ferc No. 2407*

The existing project consists of: (1) A dam composed of (a) a non-overflow concrete gravity section, 126.7 feet in length, which ties the spillway section to the east abutment, with a crest width of 10.0 feet at an elevation of 370.0 feet MD (Martin Datum), (b) an ogee spillway gravity section, 618.19 feet in length, with a crest elevation of 344.0 feet MD, constructed of mass concrete and cyclopean masonry, located between the east gravity section and the headworks section, (c) a headworks gravity section, located between the spillway section and the west gravity section, constructed of reinforced and unreinforced concrete portions, 180 feet in length with nine bays, each 10 feet wide, (d) a non-overflow concrete gravity section, 319.12 feet in length, which ties the headworks section to the west abutment with a crest width ranging from 6.0 feet to 10.0 feet at an elevation of 350.67 feet MD; (2) a reservoir with a surface area of 2,000 acres and a total volume of 53,890 acre-feet at the normal maximum surface elevation of 344.00 feet MD; (3) a powerhouse, 120 feet long, 60 feet wide and 67 feet high, located downstream of the headworks, constructed of brick, steel and concrete, equipped with (a) two vertical shaft Francis turbines with a combined hydraulic capacity of 10,200 cfs, manufactured by I.P. Morris Company and rated at 25,000 hp at 55 feet of net head, (b) two 3-phase, 60-cycle vertical shaft generators, manufactured by General Electric Company and rated at 16,000 kW, (c) a Niles powerhouse crane, 150 ton capacity; (4) a substation with four 13,333 kVa, 6.9–26.2/115 kV oil insulated, water cooled, single phase power transformers (1 spare).

*B. Thurlow Hydroelectric Project, Ferc No. 2408*

The existing project consists of; (1) a dam composed of (a) A non-overflow concrete gravity section, 354.54 feet in length, which ties the spillway section to the east abutment, with a crest width ranging from 6.0 feet to 10.0 feet at an elevation of 305.0 feet MD (Martin Datum), (b) an ogee spillway gravity section, 1,098.0 feet in length, with a crest elevation of 283.85 feet MD,



constructed of mass concrete and cyclopean masonry, surmounted with 36 automatic crest gates, 28 feet wide and 5 feet high, located between the east gravity section and the headworks section, (c) a headworks gravity section, located between the spillway section and the west gravity section, constructed of reinforced and unreinforced concrete portions, 186.3 feet in length with seven bays, each 10 feet wide, (d) a non-overflow concrete gravity section, 288.0 feet in length, which ties the headworks section to the west abutment with a crest width ranging from 6.0 feet to 10.0 feet at an elevation of 305.0 feet MD; (2) a reservoir with a surface area of 574 acres and a total volume of 17,980 acre-feet at the normal maximum surface elevation of 288.00 feet MD; (3) a powerhouse, 186 feet long, 52 feet wide and 67 feet high, located downstream of the headworks, constructed of brick, steel and concrete, equipped with (a) three vertical shaft Francis turbines with a combined hydraulic capacity of 10,600 cfs, two manufactured by I.P. Morris Company, rated at 36,000 hp at 88 feet of net head, and one manufactured by S. Morgan Smith, rated at 12,000 hp at 88 feet of net head, (b) three, 3-phase, 60-cycle vertical shaft generators, two manufactured by Westinghouse Electric Corporation, rated at 25,000 kW, and one manufactured by General Electric Company, rated at 8,000 kW, (c) a 150 ton capacity Cleveland powerhouse crane with a 20 ton auxiliary hook; (4) a susbstation with four 23,333 kVa, 13.2–66.4/115 kV oil insulated, water cooled, single phase power transformers (1 spare).

The applicant proposes the rewinding of the existing generators to increase the project capacity. The applicant estimates the total project capacity would be 103.05 MW and the total average annual generation would be 423.589 GWH. There 9.41 acres of U.S. Federal lands within the Yates Hydro Project No. 2407. The dam and existing project facilities of each development are owned by the applicant. The existing projects would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project*: Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs*: B1 and E1.

o. *Available Location of Application*: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL or by calling (205) 250–1380.

5a. *Type of Application:* New Major License < 5 MW.

b. *Project No.:* 2411–005.

c. *Date Filed:* December 24, 1991.

d. *Applicant:* STS Hydropower, Ltd. and Dan River, Inc.

e. *Name of Project:* Schoolfield Dam Hydroelectric Project.

f. *Location:* On the Dan River in the city of Danville, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Mark J. Sundquist, President, STS Hydropower, Ltd., 111 Pfingsten Road, Northbrook, IL 60062, (708) 272–6520.

i. *FERC Contact:* Mr. Hector Perez, (202) 219–2843.

j. *Comment date:* August 17, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The run-of-river project consists of: (1) A 25-foot-high concrete dam consisting of an 910-foot-long ogee spillway topped with 3-foot-high flashboards; (2) a 67-foot-long fishway; (3) a 90-acre impoundment; (3) a powerhouse containing three generating units with a total installed capacity of 4,550 kW; (4) a transmission line interconnection; and (5) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed.

m. *Purpose of Project:* All energy generated by the project would be sold to Virginia Power.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at STS Hydropower, Ltd., located at 111 Pfingsten Road, Northbrook, Illinois 60062, or by calling Mr. Mark J. Sundquist at (708) 272–6520.

6a. *Type of Application:* Subsequent License.

b. *Project No.:* 2421–003.

c. *Date Filed:* December 31, 1991.

d. *Applicant:* Flambeau Paper Corporation.

e. *Name of Project:* Lower Hydro Project.

f. *Location:* On the North Fork of the Flambeau River in Price and Ashland Counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James M. McGinnity, Vice President, Flambeau Paper Corporation, 200 North First Avenue, Park Falls, WI 54552, (715) 762–3231.

i. *FERC Contact:* Ed Lee (dt) (202) 219–2809.

j. *Comment date:* August 10, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The project as licensed consists of the following: (1) Two existing earth dikes, the first (the "left dike") extends 80 feet and the second (the "right dike") extends 64 feet, each consisting of a sand, gravel and silt mixture with a central concrete corewall; (2) an existing concrete gravity ogee spillway section, approximately 102 feet long, containing four tainter gates, each 20.1 feet long by 13 feet high; (3) an existing concrete log sluice; (4) an existing reservoir with a surface area of approximately 71 acres and a total storage volume of approximately 570 acre-feet at the normal surface elevation of 1468.0 feet NGVD; (5) an existing reinforced concrete and brick powerhouse, 93 feet long by 52 feet wide, containing (a) three vertical AVB turbines with a combined plant hydraulic capacity of 930 cfs, manufactured by Allis Chalmers and rated at 600 hp each, and (b) three generators, manufactured by Allis Chalmers and rated at 400 kW each, providing a total plant rating of 1,200 kW; and (6) existing appurtenant facilities. No changes are being proposed for this subsequent license. The applicant estimates the average annual generation for this project would be 5,920 MWH. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at

941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Flambeau Paper Corporation, 200 North First Avenue, Park Falls, WI (715) 762–3231.

7 a. *Type of Application:* Subsequent License.

b. *Project No.:* 2473–002.

c. *Date Filed:* December 31, 1991.

d. *Applicant:* Flambeau Paper Corporation.

e. *Name of Project:* Crowley Hydro Project.

f. *Location:* On the North Fork of the Flambeau River in Price County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James M. McGinnity, Vice President, Flambeau Paper Corporation, 200 North First Avenue, Park Falls, WI 54552, (715) 762–3231.

i. *FERC Contact:* Ed Lee, (202) 219–2809.

j. *Comment Date:* August 10, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The project as licensed consists of the following: (1) Two existing earth embankments, the first (the "left embankment") extends approximately 133 feet and the second (the "right embankment") extends approximately 255 feet, each embankment contains a reinforced concrete corewall; (2) an existing concrete gated ogee spillway section, approximately 71 feet long, containing (a) two tainter gates, each 20.1 feet long by 12 feet high, (b) two stoplog gates, each 9 feet long by 13 feet high, (c) two submerged sluice gates located under the stoplog gates, each 4 feet long by 4 feet high, and (d) a concrete apron on the downstream side; (3) an existing reservoir with a surface area of 422 acres and a net storage capacity of 3,539 acre-feet at the normal surface elevation of 1,428.0 NGVD; (4) an existing reinforced concrete and brick powerhouse, 54 feet long by 48 feet wide, containing (a) two vertical turbines with a combined hydraulic capacity of 1,480 cfs, manufactured by S. Morgan Smith and rated at 1,600 hp and 720 hp, and (b) two generators, manufactured by Allis-Chalmers and rated at 1,000 kW and 500 kW, providing a total plant rating of 1,500 kW; and (5) existing appurtenant facilities. No changes are being proposed for this subsequent license. The applicant estimates the average annual generation for this project would be 7,423 MWH. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Flambeau Paper Corporation, 200 North First Avenue, Park Falls, WI (715) 762–3231.

8 a. *Type of Application:* New Major License.

b. *Project Nos.:* 2552–007.

c. *Date Filed:* November 26, 1991.

d. *Applicant:* Central Maine Power Company.

e. *Name of Project:* Fort Halifax Project.

f. *Location:* On the Sebasticook River, Kennebec County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gerald C. Poulin, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623–3521.

i. *FERC Contact:* Robert Bell (RB) (202) 219–2806.

j. *Comment Date:* August 14, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The existing project consists of: (1) A concrete Ambursen dam about 552.75 feet long and 29 feet high, having from south to north, (a) a non-overflow abutment section about 80.5 feet long with one 4-foot by 3-foot slide gate; (b) a spillway section about 351.75 feet long controlled by 4-foot-high pin supported flashboards; and (c) an intake/powerhouse section about 120.5 feet long with waterwheel flume; (2) a concrete retaining wall about 30 feet long located adjacent to the powerhouse section; (3) a brick powerhouse containing two turbine-generator units with a total installed capacity of 1500-kW; (4) a tailrace; (5) a transmission line; and (6) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $195,142.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Flambeau Paper Corporation, 200 North First Avenue, Park Falls, WI (715) 762–3231.

9 a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2640–010.

c. *Date filed:* December 27, 1991.

d. *Applicant:* Flambeau Paper Corporation.

e. *Name of Project:* Upper Hydro.

f. *Location:* On the North Fork Flambeau River near Park Falls in Price and Ashland Counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James M. McGinnity, 200 North First Avenue, Park Falls, WI 54552, (715) 762–3231.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* August 10, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) A 44-foot-long earth dam; (2) a reinforced concrete gated spillway; (3) a reservoir with a surface area of 431 acres at surface elevation 1,487.4 feet NGVD and a storage area of 3,280 acre-feet; (4) a 100-foot-wide, 1,300-foot long power canal; (5) a powerhouse containing two generating units each with a rated capacity of 450 kW; and (6) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 5,533,500 kWh.

m. *Purpose of Project:* Project power would be utilized by the applicant for use in its paper mill operation.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.



o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Flambeau Paper Corporation, 200 North First Avenue, Park Falls, WI 54552, or by calling (715) 762–3231.

10a. *Type of Application:* New Major License.

b. *Projects Nos.:* 2671–002.

c. *Date Filed:* December 24, 1991.

d. *Applicant:* Kennebec Water Power Company.

e. *Name of Project:* Moosehead Lake Project.

f. *Location:* On the Kennebec River, Somerset and Piscataquis Counties, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gerald C. Poulin, Kennebec Water Power Company, Edison Drive, Augusta, ME 04336, (207) 623–3521.

i. *FERC Contact:* Robert Bell (RB) (202) 219–2806.

j. *Comment Date:* August 14, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The existing project would consist of: (1) The two existing dams: (a) the 1,004-foot-long earth and concrete East Outlet Dam ranging in height from 15 to 20 feet; and (b) the 830-foot-long, 14-foot-high earth and concrete West Outlet Dam; (2) a reservoir having a surface area of 74,200 acres, with a storage capacity of 544,880 acre-feet, and normal water surface elevation of 1029 feet msl; and appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $255,000.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Kennebec Water Power Company, c/o Central Maine Power Company, 34 Anthony Avenue, Augusta, ME 04330, (207) 623–3521.

11a. *Type of Application:* Minor License.

b. *Project No.:* 11300–000.

c. *Date filed:* June 3, 1992.

d. *Applicant:* Commonwealth Power Company.

e. *Name of Project:* LaBarge Dam Project.

f. *Location:* On the Thornapple River, near Caledonia, Kent County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Commonwealth Power Company, 7310—84th Street, SE., Caledonia, MI 49316, (616) 891–9300.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Comment Date:* August 3, 1992.

k. *Description of Project:* The proposed project would consist of an existing dam 30 feet high; an uncontrolled ogee spillway with a crest length of 116 feet; two tainter gate bays with steel tainter gates each 20 feet wide by 10 feet high; a powerhouse containing two existing turbine-kilowatts; an existing 25-foot, 2,400-kilovolt transmission line; and appurtenant facilities.

l. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

12a. *Type of Application:* New Major License.

b. Projects No.: 2458–009.

c. *Date Filed:* December 17, 1991.

d. *Applicant:* Great Northern Paper, Inc.

e. *Name of Project:* Penobscot Mills Project.

f. *Location:* On the West Branch of the Penobscot River and Millinocket Stream, Penobscot and Piscataquis Counties, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James Carson, Great Northern Paper, Inc., Georgia-Pacific Corporation, Millinocket, ME 04462, (207)— 723–5131.

i. *FERC Contact:* Robert Bell (RB) (202) 219–2806.

j. *Comment Date:* August 21, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The Penobscot Mills Project (Project) consists of four discrete generating facilities, and one storage/pump station development, beginning with the most upstream: the Mullinocket Lake Storage Development (which is located northeast of the North Twin Development and contains a pumping station), the North Twin Development, the Millinocket Development, the Dolby Development, and the East Millinocket Development. For the existing condition, the Project has a total nameplate generator capacity of 55.3 megawatts (MW) and an average annual generation of about 386,400 megawatt-hours (MWH).

The existing Penobscot Mills Project's principal features consists of five dam structures, five impoundments, four powerhouses, and appurtenant facilities. In detail, the existing and proposed project is described as follows:

*Millinocket Lake Storage Development*

The development is strictly used for storage with water being either released through the dam and down the Millinocket Stream, or pumped through a pumping station into the North Twin impoundment for an increase in generation at the North Twin and Millinocket Developments. There are no hydroelectrical generating facilities located at this development. The Storage Development consists of:

(1) A concrete and earth-filled dam, totaling about 635 feet long, having: (a) An earthen embankment, 462 feet long, with a crest elevation of ranging from 485.6 feet (USGS) to 487.0 feet (USGS); (b) two spillway sections, totaling about 115 feet long with a crest elevation of 480.0 feet (USGS), separated by; (c) a 58-foot-long intake section, with four lift gates, 8 feet wide by 9 feet high, and a log sluice gated, 8 feet wide by 10 feet high, protected by trashracks of 3/16-inch steel bars and 1-inch openings;

(2) A concrete, steel, and brick pumping station, about 25 feet wide by 53 feet long, equipped with: (a) Two vertical wet pit pumps, each with a capacity of 122 cubic per second (cfs), driven by; (b) two induction motors, each with a capacity of 250 horsepower (hp), discharging into; (c) two underground 4.5-foot-diameter pipes.

about 544 feet long, that lead to the outlet structure at North Twin impoundment, which has; and (d) two steel gates, about 6 feet high by 6 feet wide;

(3) An impoundment, having: (a) A surface area of about 6,640 acres; (b) a gross storage capacity of 45,370 acre-feet; (c) a useable storage capacity of 45,370 acre-feet; and (d) a normal pool headwater elevation of 480.0 feet (USGS);

(4) And appurtenant facilities.

*North Twin Development*

(1) A concrete gravity and earthfill dam, totaling about 1,051 feet long, with a maximum height of 35 feet, consisting of: (a) Two earth wings with concrete core walls, totaling about 500 feet long, of which 309 feet is topped with a paved roadway and 100 feet is topped with a parapet wall, having crest elevations that vary from 498.60 feet to 494.62 feet (USGS); (b) a 34-foot-long concrete weir fishway with two deep gated log sluice sections; (c) a 114-foot-long by 37-foot-wide intake section, having trashracks of ⅜-inch steel bars with 2-⅝ inches openings; (d) a 117-foot-long concrete spillway, having to Taintor gates, each measuring 27 feet high by 50 feet wide, with an invert elevation of 464.62 feet (USGS); and (e) six auxiliary earth dikes, totaling about 2,530 feet long;

(2) A concrete, steel, and brick powerhouse, integral with the dam, about 90 feet wide by 114 feet long, equipped with: (a) Two vertical Francis turbines and one vertical Kaplan turbines, totaling of 9,350 hp, directly connected to three generators having; (b) a total rated capacity of 9,840 kilowatts (kW); (c) a total hydraulic capacity of 4,500 cfs; (d) a net head of 28 feet, and (e) an average annual generation of 47,300 MWH, discharging into; (f) a tailrace of six bays, each measuring 14 feet wide, and bordered by; (g) a 28-foot-long concrete retaining wall;

(3) An impoundment, about 11.8 miles long, having: (a) A surface area of about 17,790 acres; (b) a gross storage capacity of 346,000 acre-feet; (c) a useable storage capacity of 344,400 acre-feet; and (d) a normal pool headwater elevation of 491.92 feet (USGS) and tailwater elevation of 480.7 ft (USGS);

(4) A 4.2 miles long, 34.5 kilovolt (kV), transmission line;

(5) And appurtenant facilities.

*Millinocket Development*

(1) A concrete gravity and Stone dam, at the outlet of Quakish Lake, totaling about 1,262 feet long, with a maximum height of 27 feet, consisting of: (a) A concrete gravity overflow section, about 300 feet long, having a crest elevation of 458.95 feet (USGS); (b) two concrete gravity sections, totaling about 786 feet long, having a crest elevation of 456.20 feet (USGS), topped with 30-inch-high flashboards, separated by; (c) a 52-foot-long wastegate structure with four steel gates; (d) eight auxiliary earth dikes totaling about 5,769 feet long; and (e) a 124-foot-long headgate section, with ten steel gates, each about 8 feet high by 11 feet wide, and a sluiceway about 10 feet high by 12 feet wide;

(2) An intake section, extending from the headgates, located at the outlet of Quakish Lake, through Ferguson Pond to the intake structure at Ferguson Pond outlet, consisting of: (a) A canal section, measuring about 150 feet wide by 1,400 feet long, separated from the back channel by a concrete gravity section, having a crest elevation of 458.20 feet (USGS), topped with 6-inch-high flashboards; (b) a concrete and wood frame intake structure having (i) six gates, each measuring 12.5 feet wide by 12.5 feet high, which control the flow into six 10-foot-diameter penstocks, 1,007 feet long, leading to the units in the Grinder Room, protected by trashracks of ⅜-inch steel bars with 2⅞ inches openings; and (ii) one gate, measuring 13.5 feet wide by 13.5 feet high, which controls the flow into a 11-foot-diameter penstock, 1,024 feet long, leading to a unit in the Generator Room, protected by a trashrack of ⅜-inch steel bars with 2½ inch openings;

(2) A concrete, steel, and brick powerhouse, about 52 feet wide by 112 feet long, equipped with: (a) Five hydromechanical and three hydroelectrical horizontal Francis turbines, totaling of 49,115 hp, connected to three generators having; (b) a total rated capacity of 9,840 kW; (c) a hydraulic capacity of 4,500 cfs; (d) a net head of 108 feet; and (e) an average annual generation of 203,300 MWH discharging into; (f) a tailrace of seven bays, each measuring 14 feet wide;

(3) An impoundment, having: (a) A surface area of about 1,344 acres; (b) a gross storage capacity of 8,100 acre-feet; (c) a negligible useable storage capacity; and (d) a normal pool headwater elevation of 458.7 feet (USGS) and tailwater elevation of 347.4 ft (USGS); and

(4) A 300-foot-long, 34.5 kilovolt (kV), transmission line;

(5) And appurtenant facilities.

*Dolby Development*

(1) A concrete gravity and earthfill dam, totaling about 1,395 feet long, with a maximum height of 66 feet, consisting of: (a) A concrete gravity spillway section, about 521 feet long, having a crest elevation of 332.2 feet (USGS), topped with 4-foot-high flashboards, separated by; (b) a 76-foot-long wastegate structure with six gates, each about 6 feet by 9 feet, and by (c) a 34-foot-long log sluice section; (d) an earthen dike, with core walls, about 530 feet long topped with a 12-foot-wide travel path; and (e) a 209-foot-long headgate section, with nine gates, protected by 3 sets of trashracks of ⅜ inch steel bars with 1⅝ inch openings and 4 sets of trashracks of ⅜ inch steel bars with 2⅝ inches openings

(2) A concrete, steel, and brick powerhouse, about 115 feet wide by 167 feet long, and an addition of 32 feet wide by 36 feet long, equipped with: (a) Three horizontal Francis, three inclined tube, and one vertical Kaplan turbines, totaling of 28,732 hp, connected to seven operable generators having: (b) a total rated capacity of 20,988 KW; (c) a hydraulic capacity of 6,000 cfs; (d) a net head of 49 feet; and (e) an average annual generation of 98,100 MWH, discharging into (f) a tailrace, with eight discharge bays;

(3) An impoundment, about 11.8 miles long, having: (a) A surface area of about 2,048 acres; (b) a gross storage capacity of 41,956 acre-feet; (c) a negligible useable storage capacity; and (d) a normal pool headwater elevation of 336.2 feet (USGS) and tailwater elevation of 287.2 ft (USGS); and

(4) A 2 miles longs, 34.5 kV, 60 hertz (Hz) and a 6.8 miles long, 33.0 to 34.5 kV, 40 Hz transmission lines;

(5) And appurtenant facilities.

*East Millinocket Development*

(1) A concrete and earthfill gravity dam, totaling about 571 feet long, with a maximum height of 28 feet, consisting of: (a) An earth embankment about 116 feet long with a top elevation of 295.2 ft (USGS); (b) a concrete gravity spillway section, about 300 feet long, having a crest elevation of 283.2 feet (USGS), topped with 4-foot-high flashboards, separated by; (c) a 59-foot-long wastegate structure with two gates, each about 23 feet wide; (d) a 7-foot-long timer cribbed section; and (e) a 146-foot-long intake section, with twelve gates, about 9 feet high by 11 feet wide, protected by trashracks of ⅜-inch steel bars with 1¼ inches openings;

(2) A concrete, steel, and brick powerhouse, about 56 feet wide by 147 feet long, equipped with: (a) Six horizontal Francis turbines and generator units, totaling of 9,300 hp, having; (b) a total rated capacity of 9,600 kW; (c) a hydraulic capacity of 4,200 cfs; (d) a net head of 24 feet; and (e) an average annual generation of 37,700

MWH; discharging into (f) a tailrace, about 1,050 feet long by 110 feet wide, with six discharge bays;

(3) An impoundment, having: (a) A surface area of about 128 acre; (b) a gross storage capacity of 1,950 acre-feet; (c) a negligible useable storage capacity; and (d) a normal pool headwater elevation of 287.2 feet (USGS) and tailwater elevation of 281.5 ft (USGS); and

(4) And appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant owns all the existing project facilities.

Th existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $69,179,901.

m. *Purpose of Project*: Project power would be utilized by the applicant in its paper making plants.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application*: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Great North Paper, Inc. Energy Research Building, 1 Katahdin Avenue, Millinocket, ME 04462 (207) 723–5131.

13a. *Type of Application:* New Major License.

b. *Projects No.*: 2513–003

c. *Dated Filed*: December 26, 1991

d. *Applicant:* Green Mountain Power Company.

e. *Names of Project*: Essex 19 Project.

f. *Location*: On the Winooski River, Chittenden County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Eugene L. Shlatz, Green Mountain Power Company, 25 Green Mountain Drive, P.O. Box 850, South Burlington, VT 05402, (802) 864–5731.

i. *FERC Contact:* Robert Bell (RB) (202) 219–2806.

j. *Comment Date:* August 14, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The existing project consists of: (1) The existing 495-foot-long, 45-foot-high concrete gravity dam; (2) the crest is fitted with 5-foot-high flashbourds with the 84-foot-long top section fitted with 6.5-foot-high flashboards; (3) an impoundment having a surface area of 352 acres with a storage capacity of 1950 acre-feet and normal water surface elevation of 270 feet USGS; (4) the existing intake structure; (5) four 163-foot-long, 9-foot-diameter steel penstocks; (6) the existing 156.5-foot-long, 65-foot-wide powerhouse containing four turbine-generator units having a total installed capacity of 7,200-Kw; (6) the existing tailrace; (7) the existing 300-foot-long, 34.5-Kv transmission line; and (8) appurtenant Facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $3,723,278.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Green Mountain Power Company 25 Green Mountain Drive, P.O. Box 850, South Burlington, VT 05402, (802) 864–5731.

a. *Type of Application:* New Major License.

b. *Projects No.*: 2572–005

c. *Date Filed:* December 17, 1991

d. *Applicant:* Great Northern Paper, Inc.

e. *Name of Project:* Ripogenus Project.

f. *Location:* On the West Branch of the Penobscot River and Millinocket Stream, Piscataquis County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James Carson, Great Northern Paper, Inc., Georgia-Pacific Corporation, Millinocket, ME 04462, (207) 723–5131.

i. *FERC Contact:* Robert Bell (RB) (202) 219–2806.

j. *Comment Date:* August 21, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The Ripogenus Project's principal features consist of an impoundment, a dam, a powerhouse, a bypass reach about 4,730 feet long in the Upper Gorge area, and appurtenant facilities. For the existing condition, the Project has a total nameplate generator capacity of 37.5 megawatts (MW) and an average annual generation of about 234,000 megawatt-hours (MWH). In detail, the existing and proposed project is described as follows:

(1) A concrete gravity dam, totaling about 974 feet long, consisting of: (a) A 658-foot-long ogee spillway section with a crest elevation of 929.6 feet (USGS), at a maximum height of 83 feet, topped with 22 stop-log gates, each about 17 feet wide by 11 feet high, and two crest gates, each about 17 feet wide by 11 feet high; (b) a tunnel intake section, about 37 feet long, having (i) a 16-foot-diameter concrete-lined tunnel about 3,850 feet long, (ii) a surge tank, 44 feet in diameter by 104 feet high, rising about 54 feet above grade, and (iii) three concrete-lined steel penstocks, 10 feet in diameter and ranging about 100 to 136 feet in length, all protected by (iv) trashracks of 3 by ⅝-inch steel bars with 2–⅝-inch openings; (c) a gate section, 179 feet long, with four deep waste gates, each about 14 feet high by 6 feet wide; and (d) a 100-foot-long earth embankment with a crest elevation of 942.6 feet (USGS);

(2) A concrete-steel with brick masonry powerhouse, about 76 feet high by 45 feet wide by 130 feet long, equipped with three vertical shaft generating units totaling: (a) a rated capacity of 51,510 horsepower (hp); (b) 37,530 kilowatts (kW); (c) a hydraulic capacity of 3,500 cubic feet per second (cfs); and (d) a designed head ranging from 165 to 175 feet;

(3) An impoundment of about 20.6 miles long, having: (a) a surface area of about 29,270 acres; (b) a gross storage capacity of 710,000 acre-feet; (c) a useable storage capacity of 688,705 acre-feet; and (c) a normal pool headwater elevation of 941.6 feet (USGS) and tailwater elevation of 758.5 feet (USGS);

(4) A 30.2 miles long, 115 kilovolt (kV), transmission line; and

(5) Appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the expiration of December 31, 1993, the Applicant's

estimated net investment in the project would amount to $30,691,200.

m. *Purpose of Project:* Project power would be utilized by the applicant in its paper making plants.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Great Northern Paper, Inc., Energy Research Building, 1 Katahdin Avenue, Millinocket, ME 04462, (207) 723–5131.

**Standard Paragraphs**

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All findings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: June 29, 1992. Washington, D.C.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–15557 Filed 7–1–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos. FA90–24–001, FA90–25–001]**

## Connecticut Light & Power Co. and Western Massachusetts Electric Co.; Order Establishing Hearing Procedures and Consolidating Proceedings

June 29, 1992.

On February 20, 1992, the Chief Accountant issued separate contested audit reports under delegated authority noting that the Connecticut Light & Power Company (CP&L) and Western Massachusetts Electric Company (WMECO) disagreed with certain of the Division of Audit's recommendations.[1] The Chief Accountant requested that the companies notify the Commission whether they would agree to the disposition of the issues under the shortened procedures provided for by part 41 of the Commission's Regulations. 18 CFR part 41.

The contested matters for CP&L are Tariff Exception Nos. 1 through 4 on Schedule No. 4. The contested matters for WMECO are Tariff Exception Nos. 1 and 2 on Schedule No. 3.

On March 23, 1992, CP&L and WMECO responded that they do not consent to the shortened procedures. Section 41.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing.

Since CP&L and WMECO are companies in the Northeast Utilities system and the contested items all involve fuel clause billings which are computed system-wide, the matters shall be consolidated for hearing.

Any interested person seeking to participate in these dockets shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register.**

It is ordered: (A) Pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Federal Power Act, particularly sections 205, 206 and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedures (18 CFR, Chapter I), a public hearing shall be held concerning the appropriateness of CP&L and WMECO's practices as discussed above.

(B) These proceedings are consolidated for hearing.

(C) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in these proceedings, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(D) This order shall be published in the **Federal Register.**

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–15556 Filed 7–1–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CI92–58–000]**

## J. Aron & Co.; Application for a Blanket Certificate With Pregranted Abandonment

June 26, 1992.

Take notice that on June 18, 1992, J. Aron & Company (Aron) of 85 Broad Street, New York, New York 10004 filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of natural gas from any source (domestic or foreign), and in gaseous or liquid (LNG) form, to the extent such sales would be subject to the Commission's NGA jurisdiction. Aron's application is on file with the Commission and open for public inspection.

To be heard or to protest the application a person must file a petition to intervene or a protest on or before

[1] 58 FERC ¶¶ 62,144 and 62,145, respectively.

July 16, 1992. A person filing a petition to intervene or a protest must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All petitions to intervene or protests must be filed with the Federal Energy Regulatory Commission, Washington, D.C. 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make Protestants parties to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a petition to intervene.

Under the procedure provided for here, unless otherwise advised, Aron will not have to appear or be represented at any hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-15560 Filed 7-1-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. RP92-1-000 and CP92-71-000]**

## Northern Natural Gas Co.; Cancellation and Rescheduling of Informal Settlement Conference

June 26, 1992.

Take notice that the informal settlement conference noticed for July 1, 1992, in the above-referenced dockets is hereby cancelled at the request of the pipeline. In lieu thereof, an informal settlement conference will be convened for the purpose of exploring the possible settlement of the above-referenced dockets. The informal settlement conference will be held on July 16 and 17, 1992, commencing at 10 a.m. at the offices of the Commission, 810 First Street, NE., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information please contact Michael D. Cotleur, (202) 208-1076, or John J. Keating, (202) 208-0762.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-15559 Filed 7-1-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. ER92-576-000]**

## Ridge Generating Station Limited Partnership; Notice of Issuance of Commission Order

June 29, 1992.

Take notice that on June 23, 1992, the Director, Division of Applications, Office of Electric Power Regulation, pursuant to authority delegated under § 375.308 of the Commission's Regulations issued a letter order (Order) in the above-docketed proceeding. The order accepted for filing an agreement involving Ridge Generating Station Limited Partnership (RGSLP) that provides for the sale of capacity and energy from RGSLP's 39.6 MW biomass-fueled qualifying facility to Florida Power Corporation. Waiver of parts 33 and 34 of the Commission's regulations (18 CFR parts 33 and 34), was also granted subject to the same conditions provided for in Commonwealth Atlantic Limited Partnership, 51 FERC ¶ 61,368.

Within thirty (30) days of the date of the June 23, 1992, Order, this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liability by RGSLP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within the aforementioned thirty day period, RGSLP is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security or another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of RGSLP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 23, 1992.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-15555 Filed 7-1-92; 8:45 am]

BILLING CODE 6717-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 4150-4]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Because EPA is requesting expedited review, this notice includes the actual data collection instument. The ICR itself is also available to the public for review and comment. It describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before August 3, 1992.

**FOR FURTHER INFORMATION OR A COPY OF THIS ICR CONTACT:** Sandy Farmer at EPA, (202) 260-2740.

**SUPPLEMENTARY INFORMATION:**

### Office of Solid Waste and Emergency Response

*Title:* Cement Kiln Dust Waste Characterization Information Collection (EPA ICR # 1618-01). This ICR is a new colllection.

*Abstract:* Under section 8002(o) of the Resource Conservation and Recovery Act (RCRA), the Environmental Protection Agency (EPA) is required to prepare and submit a Report to Congress on cement kiln dust waste. In order to fulfill this mandate and prepare the required detailed and comprehensive study, EPA must collect additional information from the public. The information to be collected includes data on: Dust disposal practices; fuel characterization and use; raw material feed and waste dust characterization; site locations and environmental setting. Cement manufacturing facilities with active kilns must complete and submit the information detailed below to the EPA. EPA will use the data to support the 1993 Report to Congress on cement kiln dust.

*Burden Statement:* The estimated average public burden for this collection of information is about 65 hours per response. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering the data needed, reviewing the collection of information, and submitting the information.

*Respondents:* Cement Manufacturing Facilities with Active Kilns.

*Estimated Number of Respondents:* 114.

*Frequency of Collection:* One-time.

*Estimated Number of Responses per Respondent:* 1.

*Expedited Review:* An expedited request is made under the Paperwork Reduction Act (5 CFR 1320.18). To meet the court-ordered schedule requiring completion of the Report to Congress on April 30, 1993, and allow respondents sufficient time to review, complete and submit this information collection request, EPA is requesting an expedited review of this collection. The Agency has requested OMB clearance by July 31, 1992.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: June 26, 1992.

Paul Lapsley,

*Director, Regulatory Management Division.*

*Collection Instrument:* (The data collection instrument is published for the purpose of expedited review and to facilitate public comments.)

Dear Sir:

This letter requests that you provide the U.S. Environmental Protection Agency (EPA) with existing data that the Agency needs to conduct an ongoing study of cement kiln dust. The need for the data and details of the request are described below.

Section 3001(b)(3)(A)(iii) of the Resource Conservation and Recovery Act (RCRA) excludes "cement kiln dust waste" from regulation as hazardous waste under Subtitle C of RCRA, pending completion of a Report to Congress (RTC) and a subsequent determination six months later by the Agency as to whether Subtitle C regulation of cement kiln dust is warranted. In a settlement agreement signed by the parties and awaiting entry of the Court order (*EDF* v. *Reilly*, Civ. No. 89–0598 D.D.C.), EPA has committed to complete the RTC by April 30, 1993.

Data needed by the Agency to prepare the required Report to Congress are being collected by a variety of means, including this letter, which is requesting existing data from your files. This is not a request that you generate any new waste characterization data. Furthermore, if your facility was one of those visited by the Agency during the period from March 14, 1992, to April 10, 1992, EPA is not requesting results of analyses of splits of clinker and cement kiln dust samples that were given to you during that sampling effort. You are asked to respond to this request no later than October 7, 1992.

EPA is requesting that you provide the Agency with available data on facility site location, environmental setting, fuel use and characterization data, the physical and chemical composition of the cement kiln dust generated at your facility, and practices in which kiln dust is sold or given away to be ultimately disposed at off-site locations. EPA needs these data in order to accurately address the study factors required in RCRA Section 8002(o) related to cement kiln dust waste generation and disposal, including present disposal practices, alternatives to current disposal practices, current and potential uses of dust waste, and human health and environmental risks posed by dust disposal.

Specific data needs are listed below. Only data that have not been previously submitted to EPA or collected from your facility by EPA personnel as part of the Agency's recent cement kiln dust and clinker sampling effort, need be submitted in response to this request. Photocopies of pages from your files are acceptable.

The following facility-specific information on kiln dust generated, fuels burned, and environmental setting is to be submitted to the Agency:

(1) The annual quantities, in tons, of kiln dust either sold or given away and removed from your facility property to each of the top five individual recipients (e.g., companies, municipalities, farmers) according to dust weight, for the years 1990 and 1991. Annual quantities of less than one short ton (2000 lbs.) are not to be listed.

(2) The name, address, and telephone number of each of the top five recipients of your kiln dust for the years 1990 and 1991. Recipients of less than one ton of dust annually are not to be listed.

(3) If known, a description of how each recipient listed in response to #2 above uses your kiln dust (e.g., sludge stabilization, soil amendment, fertilizer, hazardous waste stabilization, etc.)

(4) If available, the results of analyses of "as generated" dust (that is, dust in the baghouse or electrostatic precipitator located adjacent to the feed end of the kiln) performed during the month of April, 1992, or the closest month thereto, listing total trace metal concentrations* (mg/kg), trace metal concentrations in TCLP** extracts (mg/liter); the pH of the extracts; total concentrations of radionuclides (e.g., $Ra^{226}$, $U^{238}$, and $Th^{232}$) (mg/kg); the concentrations of PICs* and nonmetals* (mg/kg); and the total concentrations of the following constituents (either as ions or oxides): magnesium, sodium, potassium, chloride, and sulfate (mg/kg).

(5) If available, the results of analyses of dust from your waste pile performed during April, 1992, or the closest month thereto, listing total trace metal concentrations* (mg/kg), trace metal concentrations in TCLP** extracts (mg/liter); the pH of the extracts; total concentrations of radionuclides (e.g., $Ra^{226}$, $U^{238}$, and $Th^{232}$) (mg/kg); the concentrations of PICs* and nonmetals* (mg/kg); and the total concentrations of the following constituents (either as ions or oxides): magnesium, sodium, potassium, chloride, and sulfate (mg/kg).

(6) If available, and not previously submitted to EPA, feed and waste characterization data, (including characterization data for "normal dust" (i.e., dust generated without burning or processing hazardous waste) and the corresponding "upper tolerance limits" (as defined in 56 CFR 42516, August 27, 1991) developed from these data for each metal, nonmetal, and PIC), collected during certification testing, in compliance with the Boiler and Industrial Furnace Rule (56 CFR 7134, February 21, 1991).

(7) If not previously submitted to the Portland Cement Association in response to its December, 1991 survey of the cement industry, a plot of the following features on a topographic map (United States Geological Survey 7.5 minute Quadrangle map or facility plot plan): (1) Facility site boundaries; (2) relevant environmental features such as floodplains, wetlands, endangered species habitats, areas of karst terrain, and active geologic faults; (3) all waste management units, including wastewater treatment plants, cement kiln dust disposal areas, landfills (including those that do *not* contain cement kiln dust), surface impoundments, mines, quarries, or stopes; and (4) all relevant environmental monitoring locations, including National Pollution Discharge Elimination System (NPDES) stations, State Pollution Discharge Elimination System (SPDES) stations, groundwater monitoring wells, surface water monitoring locations, and ambient air monitoring locations.

In order for EPA to properly interpret the data you provide, your response to this request must include the following information for each kiln dust sample analysis:

- Where the sample was collected (e.g., collector discharge port, storage hopper, bypass discharge port, waste pile) and the type of device that collected the dust (e.g., multiclone, baghouse, electrostatic precipitator);
- If waste fuels were being burned at the time the sample was collected, the types of fuel burned (e.g., waste oil, rubber chips, hazardous-waste solvents), its proportional volume relative to the total fuel mix (e.g., 30% waste fuel), the physical form of the fuel (e.g., containerized solid, liquid, pumpable sludge,

* Metals, nonmetals, and PICs (Particles of Incomplete Combustion) are listed in appendices VII and VIII of the Boiler and Industrial Furnace Rule (56 CFR 7234, February 21, 1991).

** The Toxicity Characteristic Leaching Procedure (TCLP) is described in 40 CFR part 261, appendix II.

non-pumpable sludge) and where the fuel was introduced into the system (flame end of the kiln, stage IV of the precalciner, mid-kiln);

- The date the sample was collected;
- The types of fossil fuels that were burned at the time the sample was collected and their volume proportions relative to the total fuel mix (e.g., 40% coal, 60% petroleum coke); and
- The applicable laboratory detection limit for constituents reported as "not detected" or "below detection limits".

If your facility has previously submitted to EPA any or all of the data described in this request, please provide the name and address of the person to whom you provided the data, and the date it was provided.

If you have dust data to provide to EPA in response to this request please submit it in "hard" (paper) copy. In addition, if you have the data in electronic form—that is, stored in a database that utilizes LOTUS, DBASE III PLUS, or ASCII software, please provide the information on a 3.5" or 5.25" diskette along with a brief explanation of the file format. Please provide the information on diskette only if the information is readily available in electronic form and it is convenient to do so. The Agency does not expect any respondent to generate a new electronic database just to comply with this data request.

EPA is requesting this information under authority of section 3007 of RCRA. Failure to respond to this information request within the specified amount of time may lead to penalties under RCRA section 3008(a). In addition, information obtained under RCRA section 3007 must be made public, unless you claim it to be confidential business information (CBI). The treatment of confidential business information is provided for by RCRA section 3007(b) and regulations are contained in 40 CFR part 2. See the enclosed addendum for further information.

Public reporting burden for this collection of information is estimated to average 65 hours per response, including the time for reviewing instructions, reading rules, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503.

If you have any questions about this inquiry, please contact Bob Hall at (703) 308-8412 or Bill Schoenborn at (703) 308-8483. Please send your response to: Bill Schoenborn, U.S. Environmental Protection Agency, Mail Code: OS-323W, 401 M Street, SW., Washington, DC, 20460.

We look forward to your response by October 7, 1992.

Sincerely,

Matthew A. Straus,

*Director Waste Management Division.*

[FR Doc. 92-15611 Filed 7-1-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4149-4]

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 15, 1992 Through June 19, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

### Draft EISs

ERP No. D-BIA-K80029-CA Rating EO2, Campo Band of Mission Indians Reservation Solid Waste Management Project, Construction and Operation, Lease and Sublease Approval, Peninsular Ranges, San Diego County, CA.

*Summary:* EPA expressed environmental objections because the proposed project poses significant potential adverse impacts to water quality. EPA requested additional information in the FEIS on siting criteria, water quality, hydrogeology, current and projected air quality and impacts to resources in Mexico, as well as regulatory enforcement and financing issues under 40 CFR Part 258.

ERP No. D-GSA-G80000-TX Rating LO, Del Rio Border Station Facilities Expansion, Funding, Val Verde County, TX.

*Summary:* EPA had no objections to the proposed project.

### Final EISs

ERP No. F-BOP-G81004-OK, Federal Trans Center (FTC), Construction and Operation, Site Selection, Oklahoma County, OK.

*Summary:* EPA had no objections to the site alternative chosen by Bureau of Prisons for their Federal Transfer Center.

ERP No. F-BPA-L08047-WA, Puget Sound Area Electric Reliability Plan, Power System Problems Resolution, Implementation, section 10 and 404 Permits, Columbia River Basin, Several Counties, WA.

*Summary:* Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the agency.

*ERP No.:* F-COE-G11020-TX, Fort Polk Louisiana Realignment of the 5th Infantry Division (Mechanized) to Fort Hood Texas, Implementation, Bell, Coryell, McClennan, West Bell and Lampasas Counties, TX.

*Summary:* EPA has no objections to the proposed project as described in the final EIS.

ERP No. F-GSA-E81030-GA, Internal Revenue Service, Service Center Annex Consolidation, Construction, Chamblee, GA.

*Summary:* EPA expressed continued concerns about air quality and requested an analysis of mobile source emissions.

ERP No. F-NOA-A64054-00, Summer Flounder Fishery Management Plan Amendment 2, Implementation, Exclusive Economic Zone (EEZ), ME, NH, MA, CO, RI, NY, NJ, PA, DE, MD, VA.

*Summary:* Review of the Final EIS/Regulation has been completed and found to be satisfactory. No formal letter was sent to the agency.

ERP No. F-UAF-G11019-NM, Cannon Air Force Base Realignment, F/EF-111 Basing, Implementation, Curry County, NM.

*Summary:* EPA had no objections to the Air Force's proposed alternative.

Dated: June 29, 1992.

William D. Dickerson,

*Deputy Director, Office of Federal Activities.*

[FR Doc. 92-15616 Filed 7-1-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4149-3]

## Environmental Impact Statements: Notice of Availability

**AGENCY:** Office of Federal Activities, General Informaiton (202) 260-5076 OR (202) 260-5075.

Availability of environmental impact statements filed June 22, 1992 through June 26, 1992 pursuant to 40 CFR 1506.9.

EIS No. 920245, Final EIS, FHW, OR, Sunnyside Road/I-205 Interchange Expansion and Sunnybrook Road Extension, Sunnybrook Road to 108th Avenue or Valley View Terrace, Funding and COE section 404 Permit, Clackamas County, OR, Due: August 03, 1992, Contact: John Gernhauser (503) 399-5749.

EIS No. 920246, Draft EIS, BOP, MS, Yazoo City, Mississippi Federal Correctional Complex, Construction and Operation, Possibly Consisting of a High Security US Penitentiary, Medium Security Federal Correctional Institution and Minimum Security Federal Prison, Site Selection and Possible COE Section 404 Permit, Yazoo City, Yazoo County, MS, Due: August 17, 1992, Contact: Patricia Sledge (212) 514-6470.

EIS No. 920247, Final EIS, BLM, WY, West Rocky Butte (WRB) Tract Coal Lease Application (WYW122586) combined with the existing Rocky Butte Tract (WYW78633) Logical Mining Unit (LMU) Mine Leasing and Land Acquisition, Powder River Basin, Campbell County, WY, Due: August 03, 1992, Contact: Nancy Doelger (307) 261–7627.

EIS No. 920248, Final EIS, FHW, NV, Las Vegas Beltway Southern Segment Construction, US 93/Boulder Highway in the City of Henderson to the intersection of Durango Drive and Tropicana Avenue on the West, Funding, section 10 and 404 Permits, Clark County, NV, Due: August 03, 1992, Contact: Michael A. Cook (702) 687–5320.

EIS No. 920249, FINAL EIS, AFS, AZ, Mt. Lemmon Ski Valley Area, Development and Management, Special Use Permit, Coronado National Forest, Santa Catalina Ranger District, Pima County, AZ, Due: August 03, 1992, Contact: Paula Benefield (602) 749–8700.

EIS No. 920250, Draft EIS, FHW, WA, WA–522 Transportation Improvements, WA–9 near Woodinville to WA–2 in Monroe, Funding, US CGD Permit and Section 10 and 404 Permits, Snohosmish River Bridge, Snohosmish County, WA, Due: August 17, 1992, Contact: Barry F. Morehead (206) 753–2120.

EIS No. 920251, DRAFT SUPPLEMENT, BLM, MT, Flathead National Forest Land and Resource Management Plan Amendment 16, Old-Growth Management Indicator Species Continued Populations Plan, Implementation, Flathead, Lake, Lincoln, Missoula, Powell and Lewis and Clark Counties, MT, Due: August 17, 1992, Contact: Nancy Warren (406) 758–5325.

EIS No. 920252, Draft EIS, FHW, WA, Elliott Bridge No. 3166 Replacement, WA–169/Renton Maple Valley Highway across the bridge to the intersection of 154th Place SE, Funding, US CGD Bridge Permit and section 404 Permit, Cedar River, City of Renton, King County, WA, Due: August 17, 1992, Contact: Barry F. Morehead (206) 753–2120.

EIS No. 920253, Draft EIS, COE, VA, Norfolk and Western Railway Ground Coal Storage Facility, Construction and Operation, Isle of Wright County, VA, Due: August 17, 1992, Contact: Kenneth M. Kimidy (804) 441–7832.

EIS No. 920254, Draft Supplement, TVA, Vector Control Program, Integrated Pest Management Plan, Updated Information, Due: September 15, 1992, Contact: Dale V. Wilhelm (615) 632–6593.

EIS No. 920255, Draft EIS, SFW, OR, South Tongue Point Land Exchange and Marine Industrial Park Development Project, Management, Land Acquisition and Possible COE section 10 and 404 Permits, Lewis and Clark National Wildlife Refuge, Clatsop County, OR, Due: August 17, 1992 Contact: Ben Harrison (503) 231–2231.

EIS No. 920256, Final EIS, BLM, MT, Blackleaf Unit Oil and Gas Exploration and Development, Implementation, Great Falls Resource Area, Rocky Mountain Front, Teton County, MT, Due: August 03, 1992, Contact: Richard Hopkins (406) 727–0503.

EIS No. 920257, Final Supplement, AFS, CO, San Juan National, Land and Resource Management Program, Amendment to the Timber Management Program, Archuleta, Conejos, Hinsdale, La Plata, Mineral, Montezuma, Rio Granda, San Juan and San Miquel Counties, CO, Due: August 03, 1992, Contact: William T. Sexton (303) 247–4874.

**Amended Notices**

EIS No. 920150, Draft EIS, AFS, AK, Alaska Pulp Corporation (APC) Long-Term Timber Sale Contract, Implementation, Southeast Chichagof Project Area, Tongass National Forest, AK, Due: June 29, 1992, Contact: Gordan Anderson (907) 747–6671. Published FR–05–08–92 Review period extended.

EIS No. 920166, Draft EIS, NPS, VT, Appalachian National Scenic Trail Protection, from Deer Leap Mountain to the Mendon-Shrewsbury Town Line, Pico-Killington Section, Implementation, Rutland County, VT, Due: August 01, 1992, Contact: John F Byrne (304) 535–6278. Published FR 05–15–92—Review period extended.

EIS No. 920184, Draft EIS, AFS, NM, Hay Timber Sale, Timber Harvest and Road Construction, Implementation, Lincoln National Forest, Cloudcroft District, Otero County, NM, Due: July 13, 1992, Contact: Max Goodwin (505) 682–2551. Published FR–05–29–92—Review period extended.

EIS No. 920223, Final EIS, COE, CA, Sacramento River Flood Control System and Flood Protection, Phases II-V, Implementation, Red Bluff to Collinsville, CA, Due: August 03, 1992, Contact: Cynthia Adornetto (916) 557–6738.

Published FR–06–19–92—Refiled Due to Completion of Distribution in Accordance of § 1506.9 of the CEQ Regulations for the Filing of EISs.

Dated: June 29, 1992.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 92–15617 Filed 7–1–92, 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Information Collection Submitted to OMB for Review

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

**SUMMARY:** The submission is summarized as follows:

*Type of Review:* Extension of expiration date without any change in substance or method of collection.
*Title:* Reports of Indebtedness of Executive Officers and Principal Shareholders to Correspondent Banks and to Own Bank.
*Form Number:* FFIEC 004.
*OMB Number:* 3064–0023.
*Expiration Date of Current OMB Clearance:* September 30, 1992.
*Frequency of Response:* Annually.
*Respondents:* Insured State nonmember banks and their executive officers and principal shareholders.
*Number of Respondents:* 30,224.
*Number of Responses per Respondent:* 1.
*Total Annual Responses:* 30,224.
*Average Number of Hours per Response:* 2.
*Total Annual Burden Hours:* 60,448.
*OMB Reviewer:* Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0023, Washington, DC 20503.
*FDIC Contact:* Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
*Comments:* Comments on this collection of information are welcome and should be submitted on or before August 31, 1992.

**ADDRESSES:** A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

**SUPPLEMENTARY INFORMATION:** The FDIC is requesting OMB approval to extend the use of form FFIEC 004 which is designed to assist executive officers and principal shareholders of FDIC-supervised banks in meeting statutory reporting requirements as implemented by FDIC regulation 12 CFR part 349. According to 12 CFR part 349, if during any calendar year an executive officer

or principal shareholder of an insured State nonmember bank or a related interest of such a person has outstanding an extension of credit from a correspondent bank, the executive officer or principal shareholder must make a written report to the board of directors of the insured State nonmember bank on or before January 31 of the following year. Also, upon receipt of written request, the bank is required to disclose to the requester the identity of bank insiders whose indebtedness to the bank exceeds certain amounts.

Dated: June 29, 1992.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 92-15569 Filed 7-1-92; 8:45 am]

BILLING CODE 6714-01-M

## Statement of Policy on Foreclosure Consent and Redemption Rights

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Statement of policy.

**SUMMARY:** The Federal Deposit Insurance Corporation (Corporation) has adopted a policy statement concerning 12 U.S.C. 1825(b)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and 28 U.S.C. 2410(c).

The policy statement indicates that where the Corporation's interest in a property is of record, the Corporation in its corporate and receivership capacities reserves the right to require holders of involuntary liens (tax, mechanics' and judgment liens, for example), to obtain the consent of the Corporation prior to foreclosure. With regard to foreclosures by holders of voluntary liens (mortgage liens and deeds of trust, for example), and, where the Corporation's interest in a property is not of record, holders of involuntary liens as well, the Corporation consents to foreclosure pursuant to the policy statement.

The policy statement specifically emphasizes that regardless of providing consent under 12 U.S.C. 1825(b)(2), the Corporation reserves the right to exercise any powers or remedies available to it under the laws of the subject jurisdiction or by contract. With respect to 28 U.S.C. 2410(c), the policy statement provides that the Corporation, in its various capacities, as to any property to which 12 U.S.C. 1825(b)(2) applies, shall not assert any rights it may possess.

The Corporation has received comment concerning the uncertainty the two statutes may cause for recipients of title through foreclosure. The Corporation is promulgating this statement of policy in order to reduce such uncertainty, minimize the impact the statutes have on the secondary mortgage market in general, and promote efficiency in the Corporation's operations.

**EFFECTIVE DATE:** July 2, 1992.

**FOR FURTHER INFORMATION CONTACT:** Gregory Mayfield, Senior Liquidation Specialist, Division of Liquidation (202-898-7368) or Barbara Mutterperl, Counsel (Special Projects), Legal Division (202-736-0133), Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

### Background

12 U.S.C. 1825(b), the codification of section 15(b) of the Federal Deposit Insurance Act (FDIA), was added by section 219 of FIRREA. Section 1825(b) dealt with the immunity from state taxation enjoyed by the FDIC under section 15 of the FDIA applied when the FDIC acted in its receivership capacity. The section also protected receivership property from both involuntary alienation as well as involuntary liens.

Since the passage of FIRREA, the Corporation has received many requests for consent to foreclosure, waivers of the right to consent, interpretation of the scope of section 1825(b)(2) and its applicability, and specific explication of the Corporation's policy. After analysis, the Corporation has determined that in the interests of promoting efficiency in the Corporation's operations, providing certainty as to title upon foreclosure, and minimizing the impact the statute has on the secondary mortgage market in general, with respect to voluntary liens, the Corporation would, pursuant to its statement of policy, grant the consent required pursuant to section 1825(b) and, as to any property to which section 1825(b)(2) applies, state it will not assert any rights to which it may have been entitled pursuant to 28 U.S.C. 2410(c). The Corporation also has determined that it will continue to require holders of involuntary liens to obtain the Corporation's consent prior to foreclosing pursuant to an involuntary lien, provided the interest of the FDIC in the liened property is of record.

### Scope and Applicability

The policy statement applies to the Corporation in its corporate and receivership capacities. It confirms that section 1825(b) applies to all property held by the Corporation acting as receiver or in its corporate capacity, including property of the financial institutions for which the Corporation has been appointed receiver or property which the Corporation holds for liquidation.

The policy statement further confirms that property of the Corporation encompasses any interest in real and personal property held by the Corporation, including security and equity interests. This is consistent with the Corporation's Policy Statement on the Payment of State and Local Property Taxes, which holds that section 1825(b)(2) covers both the Corporation's fee and lien interests in property. The statement of policy also makes clear that section 1825(b)(2) applies to both tax and non-tax liens.

The policy statement does not authorize, and shall not be construed as authorizing the waiver of the prohibitions in 12 U.S.C. 1825(b)(2) against levy, attachment, garnishment, or sale of property of the Corporation, nor does it authorize or shall it be construed as authorizing the attachment of any involuntary lien upon the property of the Corporation.

### Policy and Guidelines

Section 4.a.(ii)(A) of the policy statement provides that where the Corporation holds a lien interest as a result of a mortgage, deed of trust or other similar security instrument, consent is granted to the holder of a consensual security interest which is senior to the Corporation's interest. Similarly, consent is also granted where the Corporation holds a title interest.

Section 4.a.(ii)(B) of the policy statement is a specific case of the general policy set forth in section 4.a.(ii)(A). Subsection (B) does not expand the consent granted under subsection (A), but, in light of the large number of mortgages insured or held by the Federal Housing Administration, the Department of Veterans Affairs, the Farmers Home Administration and the Secretary of Housing and Human Development, the policy specifically refers to these organizations in order to make clear that it applies to interests they hold.

The statement of policy is explicitly limited to the application of 12 U.S.C. 1825(b)(2). The consents granted under the statement of policy do not act to waive or relinquish any rights granted to the Corporation, in any capacity, pursuant to any other applicable law or any agreement or contract. By way of example without limitation, if any local law requires notice to a property owner prior to foreclosure, or if a loan agreement provides notice shall be given, the consent granted under the

policy statement will not act to excuse such requirement to give notice.

**Statement of Policy Regarding 12 U.S.C. 1825(b)(2) and 28 U.S.C. 2410(c)**

*1. Purpose*

To establish a uniform policy for determining when the Federal Deposit Insurance Corporation (the "Corporation"), in its various capacities, will consent, pursuant to 12 U.S.C. 1825(b)(2), to permit third parties to foreclose upon mortgages and other liens where title to the affected property is held by the Corporation or the property is encumbered by a security interest held by the Corporation; to provide the consent of the Corporation pursuant to 12 U.S.C. 1825(b)(2) in certain specified instances; to establish a uniform policy regarding the assertion of the one year right of redemption and other rights which may be applicable to the Corporation, in its various capacities, pursuant to 28 U.S.C. 2410(c); and to modify, to the extent inconsistent herewith, the Corporation's Statement of Policy Regarding the Payment of State and Local Property Taxes.

*2. Scope and Applicability*

This policy addresses the application of 12 U.S.C. 1825(b)(2) to the Corporation in its corporate and receivership capacities, and provides that with regard to foreclosures under *bona fide* mortgages and other security instruments, the Corporation will not assert its rights under that section when acting as conservator, or on behalf of subsidiary corporations of receiverships and conservatorships. This policy also indicates that the Corporation will not assert any rights under 28 U.S.C. 2410(c).

This policy is limited in scope to the right of the Corporation to consent under 12 U.S.C. 1825(b)(2) to permit foreclosure actions, and the rights of the Corporation under 28 U.S.C. 2410(c). This policy shall not be construed as authorizing the waiver of the prohibitions in 12 U.S.C. 1825(b)(2) that no property of the Corporation shall be subject to levy, attachment, or garnishment, or as permitting any sale not specifically authorized in accordance with this policy, without the consent of the Corporation; nor does it authorize waiver of 12 U.S.C. 1825(b)(2)'s prohibition against any involuntary lien attaching upon the property of the Corporation.

*3. Background*

12 U.S.C. 1825(b)(2) provides that no property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation. The Corporation has received many requests for consents to foreclosure, waivers of the right to consent to foreclosure, and specific statements of the Corporation's policy with respect to that provision.

In addition, 28 U.S.C. 2410(c) provides certain protections when a federal lien or mortgage interest in property is to be extinguished through foreclosure, condemnation, partition or quiet title action. In particular, 28 U.S.C. 2410(c) provides that a sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents; and, the United States has a one year right of redemption in the case of any sale of real estate made to satisfy a lien prior to that of the United States.

*4. Policy and Guidelines Regarding 12 U.S.C. 1825(b)(2)*

a. Receivership and Corporate Capacities

(i) *Generally.* The provisions of 12 U.S.C. 1825(b) apply to all property held by the Corporation acting as receiver or in its corporate capacity, including property of the financial institutions for which the Corporation has been appointed receiver. Property of the Corporation encompasses any interest in real and personal property held by the Corporation, including security interests as well as equity interests. Therefore, no property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation.

(ii) *Voluntary Liens Affecting Property Interests of the Corporation.* It is the policy of the Corporation that it will grant its consent to permit foreclosure actions in certain instances as contemplated by 12 U.S.C. 1825(b)(2). The consent of the Corporation is granted in this policy for certain specific matters, and the Corporation will endeavor to consider other appropriate consent requests in a timely manner. More specifically:

(A) *Property Interests.* Where the Corporation has an interest in real or personal property, whether a lien interest as a result of a mortgage, deed of trust or other similar security instrument, or a title interest, the Corporation hereby grants its consent under 12 U.S.C. 1825(b)(2) as to any foreclosure by the holder of a consensual security interest in such property, pursuant to any *bona fide* mortgage, deed of trust, pledge (with respect to personalty) or other similar security instrument which is senior to the Corporation's interest.

(B) *Real Property Encumbered by Government-Related Mortgage.* In accordance with paragraph 4.a.(ii)(A) above, where the Corporation holds title to a single family residence encumbered by a *bona fide* mortgage insured or guaranteed by the Federal Housing Administration, the Department of Veterans Affairs, or the Farmers Home Administration, or a mortgage held by the Secretary of Housing and Urban Development, the Corporation hereby grants its consent under 12 U.S.C. 1825(b)(2) as to any foreclosure by the holder of such mortgage, deed of trust or other similar security instrument which encumbers such property.

(iii) *Involuntary Liens.* This policy does not permit the attachment, garnishment, execution, levy or distraint of property held by the Corporation. In accordance with 12 U.S.C. 1825(b)(2), holders of mechanics' and materialmen's claims, tax liens and other non-consensual, involuntary liens must obtain the consent of the Corporation to permit foreclosure actions affecting property in which the Corporation's interest is of record. If the Corporation's interest is not of record, the Corporation hereby grants its consent under 12 U.S.C. 1825(b)(2) as to any foreclosure by the holder of any *bona fide* lien which encumbers such property.

The consent of the Corporation under 12 U.S.C. 1825(b)(2) may be requested in accordance with the procedures (the "Procedures") set forth in, and as otherwise established by the Director, Division of Liquidation, pursuant to, paragraph 6 below, with the understanding that consent may be granted or withheld in the sole and absolute discretion of the Corporation.

For purposes of this policy, the interest of the Corporation shall be considered "of record" if, as of the notice date (as defined below): First, for real property, such interest appears vested in the Corporation in its corporate capacity or as receiver for a financial institution in the public land records in accordance with local law, or such interest appears vested in a financial institution for which the Corporation has been appointed receiver in the public land records in accordance with local law and the Corporation has published notice in the **Federal Register** that it has been appointed receiver for that financial institution; and second, for personal property, the property is in the possession of the Corporation, or the lien interest has been perfected in

accordance with applicable law. Financial institutions shall include any predecessors identified in the notice published in the **Federal Register**. For purposes of this policy, the "notice date" shall be for judicial foreclosure actions, the date on which service of notice of the foreclosure sale has been perfected on all persons required to be provided with notice in accordance with applicable law, and for nonjudicial foreclosure actions, the date on which notice of the foreclosure sale has been given to all persons required to be provided with notice in accordance with applicable law.

(iv) *Limited Effect.* The effect of consents to foreclosure under 12 U.S.C. 1825(b)(2) as described above, shall be limited solely to the application of 12 U.S.C. 1825(b)(2). Such consents shall not act to waive or relinquish the rights granted to the Corporation, in any capacity, pursuant to any other applicable law (including any rights under local foreclosure statutes), or with respect to (A) any note, indebtedness, claim or other obligation that has been secured by the property, or (B) the terms of any mortgage, guaranty, security agreement or other document relating to any obligation.

Any foreclosure actions by the lienholder must still be effectuated in accordance with all other applicable laws.

Failure to obtain the consent of the Corporation where required shall not render the subject foreclosure action void or voidable, so long as the interest of the Corporation survives and is not extinguished by such foreclosure action.

b. Conservatorships and Subsidiary Corporations

The Corporation will not assert any right to consent under 12 U.S.C. 1825(b)(2) with regard to a foreclosure action relating to any property interest held by a conservatorship or a subsidiary corporation of a receivership or conservatorship. In accordance with this position, when a Corporation conservatorship, or a subsidiary of an institution, has an interest in property, foreclosure actions undertaken in accordance with applicable state law may proceed without the consent of the Corporation. In the event an interest has economic value, conservatorships and subsidiary corporations must take appropriate actions to protect their interest in the property under local foreclosure law.

c. Successors

It is the policy of the Corporation that in no event shall the right to consent under 12 U.S.C. 1825(b)(2) be assigned or transferred to any purchaser of property from the Corporation.

*5. Policy Regarding 28 U.S.C. 2410(c)*

As to any property to which section 1825(b) applies, the Corporation, in its various capacities, shall not assert any rights it might possess under 28 U.S.C. 2410(c). In no event shall any rights under 28 U.S.C. 2410(c) be assigned or transferred to any purchaser of property from the Corporation.

*6. Procedures*

Where the consent of the Corporation is required hereunder, lienholders, or their authorized designee(s), shall submit to the Corporation a written request for the consent of the Corporation to the foreclosure. The request for consent shall be in writing, in the form attached hereto as Exhibit A (as it may be amended from time to time), delivered to the Corporation at the place and address specified in the **Federal Register**, by certified mail or as otherwise specified in the **Federal Register** notice. The place and address specified and the means of delivery may be subject to change from time-to-time. All amendments and changes shall be published in the **Federal Register**. The Director of the Division of Liquidation is hereby authorized and directed to establish and make publicly available such other procedures as the Director deems appropriate to implement this policy.

Consent requests will be ruled upon after the Corporation has gathered the necessary information, analyzed such information, and made a decision as to an appropriate course of action.

If a consent is to be granted, those parties with Power of Attorney may execute the Consent to Foreclosure form. Appearing as Exhibit B is a sample Consent to Foreclosure form for the Corporation acting as receiver. This form should be modified appropriately to reflect the Corporation's capacity or ownership interest.

*7. Limitation of Actions*

Consents to be granted under this policy are to be provided solely at the discretion of the Corporation. No person shall have any right to bring any action to direct or compel the granting of any consent under this policy, or to pursue any claim or cause of action based on the alleged failure of the Corporation or any person acting on its behalf to take any action whatsoever under this policy.

*8. Retroactivity*

Subject to the limitations of paragraph 4.a.(iii) above, the Corporation will not assert any right under either 12 U.S.C. 1825(b)(2) or 28 U.S.C. 2410(c) to which it may have been entitled (in either its receivership or corporate capacity) which it agreed not to assert hereunder, with respect to any foreclosure action completed prior to the effective date of this policy. A nonjudicial foreclosure action shall be considered completed upon recordation of the trustee's deed conveying property to the purchaser at a foreclosure sale. A judicial foreclosure shall be considered completed upon entry of a final, nonappealable judgment.

This policy is not retroactive with respect to any matters in litigation on the date hereof, the continuation of which will be reviewed on a case by case basis.

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of June, 1992.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

**Exhibit A**

**Request and Information Form**

[To accompany Request for Consent to Foreclose]

Instructions: This form is to be used by the holder of an involuntary or nonconsensual lien when requesting consent to foreclose in accordance with 12 U.S.C. 1825(b)(2) and Paragraph 4.a.(iii) of the FDIC Statement of Policy regarding 12 U.S.C. 1825(b)(2) and 28 U.S.C. 2410(c) (the "Policy"). In order for a Request to be valid and proper, all information must be completed (unless the form indicates that the information may be completed as available). All forms must be typewritten.

Name of Requesting Party: _____
Address of Requesting Party: _____
Telephone Number: _____
(Area Code) (Number)
Relationship to Lienholder: _____

The above named Requesting Party hereby requests the consent of the Federal Deposit Insurance Corporation, in the appropriate capacity, to the foreclosure of the property more particularly identified below.

Failed Institution Name: _____
Failed Institution Information:
(Reference Number) _____

_____
(City) (State)
Property Address: _____
(Street)

_____
(City) (County) (State) (Zip Code)
Legal Description of Property: _____
(Use extra sheet if necessary)
Legal Owner of Property: _____

**Lien Information**

Lienholder (Foreclosing Party): _____
Face Amount Lien/Outstanding Amount

_____

Date of Lien

_____

Recording Information
(e.g., Folio and Liber or Instrument Number)
Failed Institution Lien:
Face Amount Lien _____

_____

Date of Mortgage/Deed of Trust

_____

Name of Trustee

_____

Beneficiary

_____

Recording Information (e.g., Folio, Liber or Instrument Number)

**Foreclosure Sale Information (If applicable)**

Date of Sale: _____
Place of Sale: _____
Manner of Sale: _____
Telephone Number of Contact Person: _____
Appraised Value of Property: $ _____
(If Available)
as of _____
Date
Appraiser: _____
Name

_____

ID Number

_____

Address

**For FDIC Use Only**

Date Received: _____
(Month) (Day) (Year)
Assigned Account Officer: _____
Date Response Mailed: _____
Disposition: _____
Approved

_____

Disapproved

_____

Other

Attach copy of response and Consent to Foreclosure (as applicable).

**Exhibit B**

**Consent to Foreclosure**

In accordance with its rights pursuant to 12 U.S.C. 1825(b)(2) and 29 U.S.C. 2410(c), the FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC"), in its capacity as [*insert capacity*] does hereby consent to foreclosures by _____ ("Lienholder"), pursuant to that certain lien dated _____, and recorded at _____ [city/county], among the land records in _____ _____ [state], which encumbers certain real property more particularly described in *Exhibit "A"* attached to and incorporated in this Consent (the "Property").

This consent is limited to the consent to foreclosures set forth above pursuant to the provisions of 12 U.S.C. 1825(b)(2) and 28 U.S.C. 2410(c), only in connection with the above-described foreclosure action. This consent does not affect the rights of the FDIC, in any capacity, pursuant to any other applicable law (including local foreclosure statutes) or with respect to (i) any note, indebtedness, claim or other obligation ("Obligation") which has been secured by the Property or (ii) the terms of any mortgage, guaranty, or agreement or other document relating to any Obligation.

Federal Deposit Insurance Corporation, as [insert capacity]

_____

_____

By: _____
Print Name: _____
Title or Capacity: _____

[Add Appropriate Notarial Acknowledgement]

## Notice of Financial Institutions For Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Listing of Financial Institutions in Liquidation.

**SUMMARY:** The Federal Deposit Insurance Corporation (Corporation) has adopted a policy statement concerning 12 U.S.C. 1825(b)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and 28 U.S.C. 2410(c). The policy, which is published elsewhere in this issue of the **Federal Register**, requires in certain circumstances the consent of the Corporation to permit foreclosure actions affecting property in which the Corporation has an interest.

Where consent of the Corporation is required pursuant to the policy statement, lienholders shall submit a written request for the consent of the Corporation to the foreclosure. The request for consent shall be in the form indicated in the policy statement, and delivered to the Corporation by certified mail at the address indicated below with the envelope marked: "Foreclosure Consent Request". The request shall be sent to the FDIC office that corresponds with the region identified on the following list of financial institutions in liquidation. This list will be updated periodically as appropriate.

Federal Deposit Insurance Corporation
Division of Liquidation

*Regional Offices*

Chicago Regional Office, Federal Deposit Insurance Corporation, 30 South Wacker Drive, 32nd Floor, Chicago, Illinois 60606

*States*

Alabama, Arkansas, Delaware, Dist. of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Virginia, West Virginia, Wisconsin

Dallas Regional Office, Federal Deposit Insurance Corporation, 1910 Pacific Avenue, Suite 1700, Dallas, Texas 75201

*States*

Oklahoma, Texas

New York Regional Office, Federal Deposit Insurance Corporation, 452 5th Avenue, 21st Floor, New York, New York 10018, Telephone: (212) 704–1200

*States*

Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Puerto Rico, Virgin Islands

San Francisco Regional Office, Federal Deposit Insurance Corporation, 25 Ecker Street, Suite 1900, San Francisco, California 94105

*States*

Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming

Assistance Transactions Branch, Federal Deposit Insurance Corporation, 1910 Pacific Avenue, 10th Floor, Dallas, Texas 75201

*States*

Assisted Banks Nationwide



FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION

[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| Acadiana National Bank, Lafayette, LA | 04/19/90, Chicago | 4182 |
| Alaska Continental Bank, Anchorage, AK | 08/03/88, San Francisco | 2888 |
| Alaska National Bank of the North, Fairbanks, AK | 10/22/87, San Francisco | 5915 |
| Alaska Statebank, Anchorage, AK | 02/03/89, San Francisco | 2963 |
| Aledo State Bank, Aledo, TX | 12/07/89, Dallas | 4125 |
| Allen Co Bank and Trust Company, Leo, IN | 11/22/85, Chicago | 2518 |
| Alliance Bancorporation, Anchorage, AK | 03/01/90, San Francisco | 3952 |
| Alliance Bank, Anchorage, AK | 04/21/89, San Francisco | 4009 |
| Alliance Bank, N.A., Austin, TX | 06/14/90, Dallas | 4226 |
| Alliance/Bay Savings Bank, Kenner, LA | 08/23/85, Chicago | 7522 |
| Allied Oklahoma Bank, N.A., Oklahoma City, OK | 04/13/89, Dallas | 4005 |
| Alvarado Bank, Richmond, CA | 01/25/91, San Francisco | 4315 |
| Alvarado National Bank, Alvarado, TX | 11/14/91, Dallas | 4425 |
| Alvord National Bank, Alvord, TX | 03/29/90, Dallas | 4172 |
| American Bank & Trust Co., Shreveport, LA | 04/11/91, Chicago | 4341 |
| American Bank & Trust Company, Baton Rouge, LA | 08/02/90, Chicago | 4254 |
| American Bank & Trust Company, New York, NY | 09/15/76, New York | 6333 |
| American Bank and Trust Company, Lafayette, LA | 09/26/86, Chicago | 2602 |
| American Bank of Arlington, Arlington, TX | 03/22/90, Dallas | 4169 |
| American Bank of Casper, Casper, WY | 01/17/86, San Francisco | 6652 |
| American Bank of Commerce, Denver, CO | 05/06/87, San Francisco | 2680 |
| American Bank of Commerce, Oklahoma City, OK | 05/06/92, Dallas | 4468 |
| American Bank of Commerce, N.A. Del Rio, TX | 08/30/90, Dallas | 4264 |
| American Bank of Muskogee, Muskogee, OK | 09/01/88, Dallas | 2910 |
| American Bank, N.A., Rio Rancho, NM | 01/22/91, San Francisco | 4313 |
| American City Bank, Los Angeles, CA | 02/25/83, San Francisco | 2006 |
| American Diversified, Costa Mesa, CA | 06/06/88, San Francisco | 7576 |
| American Exchange Bank & Trust Co., Norman, OK | 06/20/87, Dallas | 2720 |
| American Federal/Mid 1st, Anadarko, OK | 07/29/88, Dallas | 7580 |
| American Interstate Bank, Newport Beach, CA | 06/12/92, San Francisco | 4490 |
| American National Bank, Tyler, TX | 11/10/88, Dallas | 2932 |
| American National Bank, Elk City, OK | 06/28/90, Dallas | 4239 |
| American National Bank of Afton, Afton, WY | 10/15/87, San Francisco | 5912 |
| American National Bank of Evanston, Evanston, WY | 06/20/87, San Francisco | 5900 |
| American National Bank of Greenville, Greenville, TX | 07/12/90, Dallas | 4247 |
| American National Bank of New York, Larchmont, NY | 01/24/92, New York | 4440 |
| American National Bank of Riverton, Riverton, WY | 06/11/85, San Francisco | 2470 |
| American Savings Bank, White Plains, NY | 06/12/92, New York | 4497 |
| American State Bank, Bradley, IL | 02/12/83, Chicago | 2334 |
| American/FSLA/Colonial, Anderson, IN | 04/29/88, Chicago | 7572 |
| American/New/Charter, Knoxville, TN | 11/16/84, Chicago | 7513 |
| American/Security, Biloxi, MS | 04/03/84, Dallas | 7509 |
| Amoskeag Bank, Manchester, NH | 10/10/91, Assisted Bank | 4411 |
| Antioch/Great American, Antioch, IL | 07/08/83, Chicago | 7504 |
| Arizona Commerce Bank, Tucson, AZ | 04/12/91, San Francisco | 4343 |
| Assured Thrift and Loan Association, San Juan Capistrano, CA | 01/03/92, San Francisco | 4436 |
| Atlantic National Bank, Norfolk, VA | 12/07/89, Chicago | 4126 |
| Atlantic Trust Company, Newington, NH | 01/30/92, New York | 4443 |
| Audubon Financial, New Orleans, LA | 06/20/86, Chicago | 7535 |
| Bacliff Bank, National Association, Bacliff, TX | 06/28/90, Dallas | 4237 |
| Balboa National Bank, National City, CA | 01/14/88, San Francisco | 5922 |
| Banc Texas, Dallas, TX | 01/26/90, Dallas | 4143 |
| Bancfirst—Austin N.A., Austin, TX | 12/10/87, Dallas | 2763 |
| Banco Credito Y Ahorro Ponceno, Ponce, PR | 03/31/78, New York | 2267 |
| Banco de Ahorro, F.S.B., Mayquez, PR | 05/30/86, New York | 2564 |
| Banco Economias, San Juan, PR | 09/02/77, New York | 3259 |
| Banco Nacional, N.A., Hato Rey, PR | 01/24/92, New York | 4441 |
| Bank Five for Savings, Arlington, MA | 09/20/91, New York | 4398 |
| Bank M., Miami, FL | 06/15/90, Chicago | 4231 |
| Bank Meridian, N.A., Hampton, NH | 10/10/91, Assisted Bank | 4406 |
| Bank of Arlington, Arlington, TX | 11/29/90, Dallas | 4285 |
| Bank of Aurora, Aurora, CO | 05/24/89, San Francisco | 5008 |
| Bank of Beverly Hills, Beverly Hills, CA | 04/03/92, San Francisco | 4472 |
| Bank of Brazoria, Brazoria, TX | 07/02/87, Dallas | 2705 |
| Bank of Columbia Falls, Columbia Falls, MT | 05/30/86, San Francisco | 2565 |
| Bank of Commerce, Alexandria, LA | 12/13/90, Chicago | 4301 |
| Bank of Commerce and Trust Company, Tulsa, OK | 05/08/86, Dallas | 2556 |
| Bank of Dallas, Dallas, TX | 02/05/88, Dallas | 2781 |
| Bank of Dixie, Lake Providence, LA | 01/10/86, Chicago | 2529 |
| Bank of East Hartford, East Hartford, CT | 12/13/91, New York | 4431 |
| Bank of East Texas, Tyler, TX | 08/21/90, Dallas | 4233 |
| Bank of Granite, Granite, OK | 07/30/87, Dallas | 6888 |
| Bank of Herington, Herington, KS | 04/02/87, Chicago | 2671 |
| Bank of Irvine, Irvine, CA | 05/18/84, San Francisco | 2359 |
| Bank of Lake Helen, Lake Helen, FL | 01/11/80, Chicago | 6359 |
| Bank of Lockesburg, Lockesburg, AR | 05/31/85, Dallas | 2467 |
| Bank of Mabank, Mabank, TX | 12/17/87, Dallas | 2763 |

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FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION—Continued

[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| Bank of Meeker, Meeker, OK | 03/15/90, Dallas | 4164 |
| Bank of New England, Boston, MA | 01/06/91, Assisted Bank | 4309 |
| Bank of Newcastle, Newcastle, OK | 05/16/85, Dallas | 2463 |
| Bank of North America, Houston, TX | 08/27/87, Dallas | 5901 |
| Bank of Nortonville, Nortonville, KS | 05/01/86, Chicago | 2554 |
| Bank of Odesa, Odesa, TX | 07/26/90, Dallas | 4250 |
| Bank of Oregon, Woodburn, OR | 05/31/85, San Francisco | 3458 |
| Bank of Quitman, Quitman, AR | 11/12/82, Dallas | 2330 |
| Bank of South Palm Beaches, Hypoluxo, FL | 08/09/91, Chicago | 4385 |
| Bank of St. Charles, Saint Rose, LA | 11/02/89, Chicago | 4113 |
| Bank of the Brandywine Valley, West Chester, PA | 02/21/92, New York | 4453 |
| Bank of the Hills, Austin, TX | 01/31/91, Dallas | 4317 |
| Bank of the Northwest, Woodward, OK | 11/10/88, Dallas | 5952 |
| Bank of the South, Baton Rouge, LA | 10/30/91, Chicago | 4420 |
| Bank of the West, Austin, TX | 03/09/89, Dallas | 2970 |
| Bank of Wilson, Wilson, OK | 07/26/90, Dallas | 4249 |
| Bank of Winter Park, Winter Park, CO | 11/10/87, San Francisco | 2746 |
| Bankeast, Manchester, NH | 10/10/91, Assisted Bank | 4409 |
| Banker Trust of Louisiana, N.A., Kenner, LA | 03/10/89, Chicago | 5061 |
| Barnard State Bank, Barnard, KS | 08/03/89, Chicago | 4063 |
| Bay City Bank & Trust Co., Bay City, TX | 08/30/90, Dallas | 4267 |
| Bay Shore Bank of Florida, Miami, FL | 08/07/87, Chicago | 5894 |
| Beacon Co-Operative Bank, Boston, MA | 06/21/91, New York | 4370 |
| Bear Creek National Bank, Houston, TX | 01/29/87, Dallas | 2639 |
| Beaumont Bank-National Assoc., Beaumont, TX | 10/19/89, Dallas | 4104 |
| Bell Savings Bank, Temple, TX | 06/03/85, Dallas | 7520 |
| Bennett National Bank, Bennett, CO | 07/13/89, San Francisco | 5976 |
| Bergen Park National Bank, Evergreen, CO | 04/20/90, San Francisco | 4187 |
| Birmingham Bloomfield Bank, Birmingham, MI | 01/12/71, Chicago | 1119 |
| Blackstone Bank & Trust Company, Boston, MA | 03/15/91, New York | 4333 |
| Bohemian SLA, St. Louis, MO | 12/11/87, Chicago | 7562 |
| Bolevard State Bank, Wichita, KS | 02/05/87, Chicago | 2642 |
| Bossier Bank and Trust Company, Bossier, LA | 06/12/86, Chicago | 2566 |
| Boston Trade Bank, Boston, MA | 05/03/91, New York | 4347 |
| Boundary Waters State Bank, Ely, MN | 11/30/90, Chicago | 4296 |
| Broadway Bank & Trust Company, Paterson, NJ | 03/13/92, New York | 4459 |
| Brookfield Bank, Brookfield, CT | 05/08/92, New York | 4489 |
| Brooklyn Savings Bank, Danielson, CT | 10/19/90, New York | 4295 |
| Brookwood National Bank, Oklahoma City, OK | 06/28/90, Dallas | 4241 |
| Brownfield State Bank & Trust Co., Brownfield, TX | 02/17/84, Dallas | 2375 |
| Brushy Creek National Bank, Round Rock, TX | 07/27/89, Dallas | 4062 |
| Buchel Bank and Trust, Cuero, TX | 08/22/91, Dallas | 4389 |
| Buena Vista Bank and Trust Company, Buena Vista, CO | 08/28/86, San Francisco | 6743 |
| Canyon Lake Bank, Canyon Lake, TX | 12/14/89, Dallas | 4135 |
| Capistrano National, S Juan Capistrano, CA | 04/05/85, San Francisco | 2453 |
| Capital Bank, Dallas, TX | 05/16/91, Dallas | 4355 |
| Capital Bank & Trust, Oklahoma City, OK | 08/16/90, Dallas | 4259 |
| Capital Bank & Trust Company, Baton Rouge, LA | 10/30/87, Chicago | 2744 |
| Capital Bank-Northwest, N.A., San Antonio, TX | 06/15/89, Dallas | 5972 |
| Capital Bank and Trust, N.A. II, Baton Rouge, LA | 04/22/88, Chicago | 5810 |
| Capital National Bank, Bronx, NY | 07/06/90, New York | 4244 |
| Capital National Bank, Fort Worth, TX | 09/15/88, Dallas | 5946 |
| Capitol Bank & Trust Company, Boston, MA | 12/28/90, New York | 4308 |
| Capitol Federal/Midwest Federal, Mt. Pleasant, IA | 05/13/88, Chicago | 7574 |
| Cardinal SB/United Federal, Newport, NC | 05/13/88, Chicago | 7573 |
| Carbank, Dania, FL | 12/08/88, Chicago | 2941 |
| Carver SLA, Escondido, CA | 01/27/89, San Francisco | 6932 |
| Cedar Vale State Bank, Cedar Vale, KS | 01/21/88, Chicago | 2773 |
| Centennial/Citizens Federal, Santa Rosa, CA | 04/24/87, San Francisco | 7557 |
| Center National Bank, Los Angeles, CA | 04/11/86, San Francisco | 2550 |
| Central Arizona Bank, Chandler, AZ | 04/26/90, San Francisco | 4191 |
| Central Arkansas/First FSLA, Conway, AR | 11/17/88, Chicago | 7588 |
| Central Bank, Meriden, CT | 10/18/91, Assisted Bank | 4413 |
| Central Bank and Trust of Tulsa, Tulsa, OK | 09/11/86, Dallas | 2597 |
| Central Dakota Bank, Lehr, ND | 12/01/89, Chicago | 4120 |
| Central Illinois, Virden, IL | 07/25/86, Chicago | 7539 |
| Central National Bank, Dallas, TX | 04/07/88, Dallas | 2603 |
| Central National Bank of New York, New York City, NY | 09/10/87, New York | 5904 |
| Central National Bank of San Angelo, San Angelo, TX | 03/22/90, Dallas | 4171 |
| Centre National Bank-Farmers Bank, Farmers Branch, TX | 06/21/90, Dallas | 4236 |
| Century Bank, Tulsa, OK | 03/24/88, Dallas | 2600 |
| Centruy Bank, Phoenix, AZ | 10/19/89, San Francisco | 4105 |
| Century National Bank, Jacksonville, FL | 09/20/84, Chicago | 2417 |
| Century National Bank, Austin, TX | 06/16/88, Dallas | 2630 |
| Century National Bank, Houston, TX | 10/02/86, Dallas | 5754 |
| Century/Household Bank, Roeland Park, KS | 06/26/85, Chicago | 7519 |
| Champions Point National Bank, Houston, TX | 04/05/90, Dallas | 4178 |

## FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION—Continued

[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| Chancery National Bank, Denver, CO | 05/09/90, San Francisco | 4195 |
| Chas Schreiner Bank, Kerrville, TX | 04/19/90, Dallas | 4186 |
| Cherry Creek National Bank, Denver, CO | 08/16/90, San Francisco | 4261 |
| Chester State Bank, Chester, TX | 11/22/85, Dallas | 2517 |
| Chireno State Bank, Chireno, TX | 05/09/91, Dallas | 4346 |
| Chisholm National Bank, Plano, TX | 06/30/90, Dallas | 4266 |
| Citadel Bank, Willis, TX | 03/21/91, Dallas | 4354 |
| Citizens Bank, Bryan, TX | 07/02/87, Dallas | 2705 |
| Citizens Bank, Galveston, TX | 10/12/89, Dallas | 4101 |
| Citizens Bank, Clarksville, TX | 09/13/90, Dallas | 4271 |
| Citizens Bank, Dallas, GA | 01/10/92, Chicago | 4437 |
| Citizens Bank, Tillar, AR | 06/23/82, Dallas | 6388 |
| Citizens Bank & Trust, Calvert, TX | 03/09/89, Dallas | 2972 |
| Citizens Bank Houston, Houston, TX | 02/09/89, Dallas | 2966 |
| Citizens Bank of Krebs, Krebs, OK | 10/08/87, Dallas | 5910 |
| Citizens Bank of Littleton, Littleton, CO | 09/15/88, San Francisco | 2916 |
| Citizens Bank of Monroe County, Tellico Plains, TN | 04/27/84, Chicago | 2382 |
| Citizens Bank, Houston, Houston, TX | 02/09/89, Dallas | 2964 |
| Citizens National Bank, Denton, TX | 03/07/90, Dallas | 4162 |
| Citizens National Bank, El Campo, TX | 06/30/90, Dallas | 4268 |
| Citizens National Bank, Kerrville, TX | 09/14/90, Dallas | 4275 |
| Citizens National Bank, Limon, CO | 03/29/91, San Francisco | 4338 |
| Citizens National Bank, Oklahoma City, OK | 06/14/88, Dallas | 5737 |
| Citizens National Bank, Colorado Spnngs, CO | 04/21/88, San Francisco | 5909 |
| Citizens National Bank & Trust Co. of CH, Chicago, IL | 01/29/91, Chicago | 4316 |
| Citizens National Bank of Killeen, Killeen, TX | 08/17/89, Dallas | 4067 |
| Citizens National Bank of Walnut Ridge, Walnut Ridge, AR | 02/02/90, Chicago | 4148 |
| Citizens SLA/Freedom Federal, Salem, OR | 01/29/88, San Francisco | 7585 |
| Citizens State Bank, Earth, TX | 01/26/89, Dallas | 2962 |
| Citizens State Bank, Edgerton, WY | 01/04/85, San Francisco | 8531 |
| Citizens State Bank, Brownstown, IN | 04/10/87, Chicago | 5843 |
| Citizens State Bank of El Dorado, El Dorado, KS | 07/25/85, Chicago | 2484 |
| Citizens State Bank of Fulda, Fulda, MN | 02/15/85, Chicago | 8542 |
| Citizens State Bank of Galena, Galena, KS | 11/21/80, Chicago | 8285 |
| Citizens State Bank of St. Francis, St. Francis, KS | 05/15/86, Chicago | 2559 |
| City and County Bank of Anderson County, Lake City, IN | 05/27/83, Chicago | 2250 |
| City and County Bank of Jefferson County, White Pines, TN | 01/20/84, Chicago | 2370 |
| City and County Bank of Knox County, Knoxville, TN | 05/27/83, Chicago | 2246 |
| City and County Bank Roane County, Kingston, TN | 05/27/83, Chicago | 2249 |
| City Bank & Trust Claremont, NH | 03/29/91, New York | 4337 |
| City National Bank, Plainview, TX | 03/06/86, Dallas | 2540 |
| City National Bank, Houston, TX | 08/16/90, Dallas | 4260 |
| City National Bank of Irving, Irving, TX | 09/20/90, Dallas | 4276 |
| City National Bank of Plano, Plano, TX | 11/10/89, Dallas | 4116 |
| City National Bank of Sayre, Sayre, OK | 12/13/89, Dallas | 4133 |
| Citytrust, Bridgeport, CT | 08/09/91, Assisted Bank | 4362 |
| Clifton National Bank, Clifton, TX | 06/07/90, Dallas | 4222 |
| Collin County State Bank, Melissa, TX | 02/25/88, Dallas | 2789 |
| Colonial Thrift & Loan Association, Culver City, CA | 04/15/88, San Francisco | 2906 |
| Colony Savings Bank, Wallingford, CT | 02/28/92, New York | 4456 |
| Columbia Bank, Avondale, AZ | 02/27/92, San Francisco | 4455 |
| Columbine Valley Bank & Trust, Jefferson County, CO | 04/26/91, San Francisco | 4345 |
| Commerce Bank—Plano, Plano, TX | 01/07/88, Dallas | 5820 |
| Commerce Bank of Tampa, Tampa, FL | 02/02/90, Chicago | 4149 |
| Commercial State Bank, Houston, TX | 01/12/89, Dallas | 2963 |
| Commercial State Bank, San Augustine, TX | 09/01/88, Dallas | 5944 |
| Commonwealth Bank, Torrance, CA | 09/25/87, San Francisco | 2731 |
| Commonwealth Bank, Arlington, TX | 10/05/89, Dallas | 5098 |
| Commonwealth National Bank, Dallas, TX | 05/10/90, Dallas | 4196 |
| Community Bank, New Caney, TX | 03/22/90, Dallas | 4166 |
| Community Bank and Trust, Rockdale, TX | 09/22/88, Dallas | 2922 |
| Community Bank, N.A., Decker Prairie, TX | 01/26/89, Dallas | 5956 |
| Community Guardian Bank, Elmwood Park, NJ | 07/19/91, New York | 4377 |
| Community National Bank, Glastonbury, CT | 01/11/91, New York | 4312 |
| Community National Bank, Sherman, TX | 04/18/91, Dallas | 4344 |
| Community National Bank & Trust Co of NY, New York City, NY | 11/08/91, New York | 4423 |
| Community State Bank of Onalaska, Onalaska, TX | 03/01/90, Dallas | 4159 |
| Community/Horizon Financial, Baton Rouge, LA | 06/20/86, Chicago | 7533 |
| Connecticut Bank & Trust Co., N.A., Hartford, CT | 01/06/91, Assisted Bank | 4310 |
| Connecticut Savings Bank, New Haven, CT | 11/14/91, Assisted Bank | 4424 |
| Connecticut Valley Bank, Cromwell, CT | 10/18/91, New York | 4414 |
| Consolidated SB, Irvine, CA | 08/29/86, San Francisco | 7542 |
| Continental Bank, Dallas, TX | 07/26/90, Dallas | 4251 |
| Continental Ill National Bank & Trust C, Chicago, IL | 07/26/84, Chicago | 2402 |
| Continental National Bank, San Antonio, TX | 04/20/89, Dallas | 4008 |
| Coolidge Bank & Trust Company, Boston, MA | 10/25/91, New York | 4417 |
| Coolidge Corner Co-Operative Bank, Brookline, MA | 03/14/91, New York | 4332 |

FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION—Continued

[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| Cordell National Bank, Cordell, OK | 12/05/86, Dallas | 5779 |
| Corinth Deposit National Bank, Corinth, KY | 04/19/90, Chicago | 4181 |
| Cove State Bank, Copperas Cove, TX | 04/19/90, Dallas | 4195 |
| Creditbank, Coral Gables, FL | 01/26/90, Chicago | 4145 |
| Crescent City Bank and Trust Co., New Orleans, LA | 12/15/88, Chicago | 2942 |
| Crescent/Horizon Financial, New Orleans, LA | 06/20/86, Chicago | 7532 |
| Crofton State Bank, Crofton, NE | 12/03/87, Chicago | 2754 |
| Crossland Savings, Brooklyn, NY | 01/24/92, New York | 4442 |
| Crossroads Bank, Victoria, TX | 03/14/91, Dallas | 4331 |
| Crown Bank, National Association, San Antonio, TX | 03/29/90, Dallas | 4174 |
| CY Fair Bank, Houston, TX | 04/14/88, Dallas | 5936 |
| Cypress SA/SECOR Bank, Plantation, FL | 11/10/88, Chicago | 7586 |
| Danbury Bank, Danbury, TX | 08/21/86, Dallas | 2593 |
| Dartmouth Bank, Manchester, NH | 10/10/91, Assisted Bank | 4410 |
| Dollar Dry Dock, White Plains, NY | 02/21/92, Assisted Bank | 4451 |
| Dominion National Bank, Denver, CO | 05/10/90, San Francisco | 4199 |
| Douglas County National Bank, Parker, CO | 12/06/90, San Francisco | 4297 |
| Dripping Springs National Bank, Dripping Springs, TX | 07/12/91, Dallas | 4372 |
| Durham Trust Company, Durham, NH | 11/15/91, New York | 4427 |
| East Tenn/New/Charter, Knoxville, TN | 11/16/84, Chicago | 7512 |
| East Texas Bank & Trust Company, Longview, TX | 06/29/84, Dallas | 2396 |
| East Texas State Bank, Buna, TX | 11/17/88, Dallas | 2934 |
| Eddy County National Bank, Carlsbad, NM | 04/03/86, San Francisco | 2547 |
| Eden State Bank, Eden, TX | 07/28/86, Dallas | 2583 |
| Eliot Savings Bank, Boston, MA | 06/29/90, New York | 4242 |
| Empire, Mesquite, TX | 03/14/84, Dallas | 7508 |
| Empire National Bank, Los Angeles, CA | 07/30/87, San Francisco | 5091 |
| Empire State Bank, New York, NY | 07/28/89, New York | 5080 |
| Enfield National Bank, Enfield, CT | 08/16/91, New York | 4386 |
| Enterprise Bank of Florida, Miami, FL | 03/17/89, Chicago | 2978 |
| Equitable SLA/Empire, San Manteo, CA | 03/27/87, San Francisco | 7553 |
| Eskridge State Bank, Eskridge, KS | 07/18/85, Chicago | 2478 |
| Evermen National Bank of Fort Worth, Fort Worth, TX | 03/30/90, Dallas | 4175 |
| Exchange National Bank of Del City, Del City, OK | 06/14/90, Dallas | 4229 |
| Executive Center Bank, Dallas, TX | 02/14/86, Dallas | 5660 |
| Executive National Bank, San Antonio, TX | 11/16/89, Dallas | 4119 |
| Expressway Bank, Oklahoma City, OK | 03/12/87, Dallas | 2651 |
| Fairfield County Trust Company, Stamford, CT | 04/09/92, New York | 4474 |
| Fallbrook National Bank, Houston, TX | 07/20/89, Dallas | 5978 |
| Far Western Bank, Tustin, CA | 12/14/90, San Francisco | 4307 |
| Farmer's Bank, Trimble, TN | 07/18/86, Chicago | 2579 |
| Farmers & Merchants Bank, Buckeye, AZ | 06/18/90, San Francisco | 4232 |
| Farmers & Merchants Bank, Tryon, OK | 03/19/92, Dallas | 4465 |
| Farmers & Merchants Bank of Huntsville, Huntsville, MO | 03/28/86, Chicago | 5672 |
| Farmers & Merchants State Bank of Rush C, La Crosse, KS | 11/21/85, Chicago | 5630 |
| Farmers and Merchants Bank, Eufaula, OK | 07/23/87, Dallas | 2709 |
| Farmers Bank and Trust, Winchester, TN | 01/06/84, Chicago | 2369 |
| Farmers SLA, Davis, CA | 07/18/88, San Francisco | 7578 |
| Farmers State Bank, Leuders, TX | 12/19/86, Dallas | 2627 |
| Farmers State Bank, Madisonville, TX | 11/29/90, Dallas | 4293 |
| Farmers State Bank, Maddock, ND | 05/08/87, Chicago | 6858 |
| Farmers State Bank of Brookshire, Brookshire, TX | 05/24/90, Dallas | 4204 |
| Farmers State Bank of Dexter, KS, Dexter, KS | 06/20/85, Chicago | 6577 |
| Farmers State Bank of Schulenburg, Schulenburg, TX | 03/08/90, Dallas | 4161 |
| Farmers State Bank of Shiro, Texas, Shiro, TX | 01/25/90, Dallas | 4142 |
| Farmers State Bank of Yuma, Yuma, CO | 08/24/89, San Francisco | 4071 |
| Federal Finance & Mortgage, LTD, Honolulu, HI | 12/13/91, San Francisco | 4435 |
| Federated National Bank, Live Oak, TX | 02/12/87, Dallas | 5810 |
| Fidelity Bank, Scottsdale, AZ | 07/21/89, San Francisco | 4059 |
| Fidelity Bank of Denver, Denver, CO | 03/29/85, San Francisco | 2451 |
| Fidelity Bank, N.A., San Antonio, TX | 01/26/90, Dallas | 4146 |
| Financial Center Bank, N.A., San Francisco, CA | 05/04/92, San Francisco | 4483 |
| First Acadiana Bank, Eunice, LA | 12/14/89, Chicago | 4134 |
| First American Bank, San Antonio, TX | 06/06/89, Dallas | 5971 |
| First American Bank and Trust, West Palm Beach, FL | 12/15/89, Chicago | 4137 |
| First American Bank and Trust of Baytown, Baytown, TX | 03/10/89, Dallas | 2793 |
| First American Bank and Trust of Friends, Friendswood, TX | 03/10/88, Dallas | 5930 |
| First American Bank and Trust of Manvel, Manvel, TX | 03/10/88, Dallas | 5931 |
| First American Bank for Savings, Boston, MA | 10/19/90, New York | 4266 |
| First Bank, Balch Springs, TX | 08/11/88, Dallas | 2891 |
| First Bank, Colorado Springs, CO | 10/06/89, San Francisco | 4100 |
| First Bank & Trust, Bryan, TX | 02/09/89, Dallas | 2965 |
| First Bank & Trust Co., Duncan, OK | 12/08/88, Dallas | 2940 |
| First Bank & Trust Company, Yale, OK | 08/03/89, Dallas | 4064 |
| First Bank & Trust Company, Cedar Hill, TX | 04/05/90, Dallas | 4177 |
| First Bank and Trust, Tomball, TX | 03/31/88, Dallas | 2801 |
| First Bank and Trust Company, Booker, TX | 12/18/86, Dallas | 6782 |



FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION—Continued

[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| First Bank and Trust of Idaho, Malad City, ID | 05/09/86, San Francisco | 2558 |
| First Bank National Association, Cleveland, OH | 03/09/90, Chicago | 4163 |
| First Bank of Plano, Plano, TX | 06/30/90, Dallas | 4262 |
| First Bank of Rowlett, Rowlett, TX | 03/23/89, Dallas | 2979 |
| First Bank Pineville, Pineville, LA | 12/06/89, Chicago | 4131 |
| First Bankers Trust of Bossier City, Bossier City, LA | 09/14/89, Chicago | 5969 |
| First Capitol Bank, West Columbia, TX | 07/26/88, Dallas | 5941 |
| First Citizens Bank, Dallas, TX | 06/06/86, Dallas | 2589 |
| First City Bank, Glendale, CA | 12/20/85, San Francisco | 2526 |
| First City Bank, New Orleans, LA | 05/17/91, Chicago | 4356 |
| First City Bank, N.A., Oklahoma City, OK | 06/21/85, Dallas | 2474 |
| First City-National Bank & Trust Company, New York, NY | 12/20/89, New York | 4138 |
| First Comanche Bank, Comanche, TX | 09/20/90, Dallas | 4278 |
| First Commerce National Bank, Phoenix, AZ | 12/07/89, San Francisco | 4126 |
| First Commercial Bank of Florida, Boca Raton, FL | 12/14/90, Chicago | 4304 |
| First Commercial Bank of Hawkins County, Rogersville, TN | 08/12/83, Chicago | 2358 |
| First Community Bank of Cherokee, Woodstock, GA | 03/31/92, Chicago | 4470 |
| First Consolidated Bank—Buda, N.A., Buda, TX | 10/20/89, Dallas | 4106 |
| First Consolidated Bank—Ferris, Ferris, TX | 10/20/89, Dallas | 4105 |
| First Consolidated Bank—Hillsboro, N.A., Hillsboro, TX | 10/20/89, Dallas | 4107 |
| First Consolidated Bank—Pleasant Run, Lancaster, TX | 10/20/89, Dallas | 4110 |
| First Consolidated Bank—Rosebud, N.A., Rosebud, TX | 10/20/89, Dallas | 4109 |
| First Continental Bk & Tr Co of Del City, Del City, OK | 05/11/84, Dallas | 5478 |
| First Continental National Bank, Houston, TX | 02/15/89, Dallas | 5957 |
| First Eastern Bank and Trust Co., New Orleans, LA | 05/24/89, Chicago | 4022 |
| First Enterprise Bank, Oakland, CA | 04/29/85, San Francisco | 6599 |
| First Exchange Bank of Cape Girardeau, Cape Girardeau, MO | 05/07/92, Chicago | 4484 |
| First Exchange Bank of Madison County, Fredericktown, MO | 05/07/92, Chicago | 4486 |
| First Exchange Bank of North St. Louis C, Florisssant, MO | 05/07/92, Chicago | 4485 |
| First Exchange Bank of St. Louis, St. Louis, MO | 05/07/92, Chicago | 4488 |
| First Federal MD/Columbia 1st, Hagerstown, MD | 03/20/87, Chicago | 7552 |
| First Federal SLA, Shawnee, OK | 04/06/86, Dallas | 7571 |
| First Federal/Home SA, Beloit, KS | 02/27/87, Chicago | 7550 |
| First Financial, New Albany, MS | 01/27/89, Chicago | 6931 |
| First FSLA/Security, Paducah, KY | 03/11/88, Chicago | 7568 |
| First Hanover Bank, Wilmington, NC | 10/25/91, Chicago | 4419 |
| First Houston Bank N.A., Houston, TX | 02/11/88, Dallas | 5926 |
| First Industrial Bank, Rocky Ford, CO | 12/16/88, San Francisco | 2948 |
| First Intercounty BamI Amd Trust Co. of New York City, NY | 03/10/88, New York | 5933 |
| First Interstate Bank of Alaska, Anchorage, AK | 12/11/87, San Francisco | 2766 |
| First Marine Bank of Florida, Palm City, FL | 03/08/91, Chicago | 4329 |
| First Mexia Bank, Mexia, TX | 09/22/91, Dallas | 4366 |
| First Mutual Bank for Savings, Boston, MA | 06/28/91, New York | 4371 |
| First National Bank, Willows, CA | 11/20/86, San Francisco | 2619 |
| First National Bank, Purcell, OK | 07/26/90, Dallas | 4252 |
| First National Bank, Snyder, TX | 05/07/84, Dallas | 5476 |
| First National Bank, Covington, LA | 11/18/88, Chicago | 5953 |
| First National Bank and Trust Company, Blackwell, OK | 08/29/91, Dallas | 4391 |
| First National Bank at Oswego, Oswego, KS | 05/18/89, Chicago | 4019 |
| First National Bank in Center, Center, TX | 12/15/88, Dallas | 2943 |
| First National Bank in Kaufman, Kaufman, TX | 02/07/91, Dallas | 4322 |
| First National Bank of Atascocita, Harris (Humble), TX | 09/01/88, Dallas | 2912 |
| First National Bank of Borger, Borger, TX | 06/19/85, Dallas | 2568 |
| First National Bank of Cedar Hill, Cedar Hill, TX | 05/16/91, Dallas | 4354 |
| First National Bank of Cedar Park, Cedar Park, TX | 01/19/89, Dallas | 2957 |
| First National Bank of Colbert, Colbert, OK | 02/08/90, Dallas | 4150 |
| First National Bank of Corpus Christi, Corpus Christi, TX | 06/09/90, Dallas | 4256 |
| First National Bank of Crosby, Crosby, ND | 09/13/90, Chicago | 4273 |
| First National Bank of Del City, Del City, OK | 03/25/88, Dallas | 5934 |
| First National Bank of Desoto, Desoto, TX | 05/10/90, Dallas | 4198 |
| First National Bank of East Baton Rouge, Baton Rouge, LA | 05/04/89, Chicago | 4013 |
| First National Bank of Frisco, Frisco, TX | 12/07/89, Dallas | 4127 |
| First National Bank of Garland, Garland, TX | 03/29/90, Dallas | 4173 |
| First National Bank of Gaylord, Gaylord, KS | 10/25/84, Chicago | 2428 |
| First National Bank of Grand Saline, Grand Saline, TX | 05/10/90, Dallas | 4197 |
| First National Bank of Jackson, Jackson, TN | 10/25/90, Chicago | 4266 |
| First National Bank of Kennedale, Kennedale, TX | 09/13/90, Dallas | 4270 |
| First National Bank of Kingwood, Kingwood, TX | 05/26/88, Dallas | 2820 |
| First National Bank of Lincoln Co., Ruidoso, NM | 12/13/85, San Francisco | 2522 |
| First National Bank of Miami, Miami, FL | 11/26/91, Chicago | 4426 |
| First National Bank of Nocona, Nocona, TX | 04/06/89, Dallas | 4002 |
| First National Bank of Oak Lawn, Oak Lawn, IL | 04/29/83, Chicago | 2344 |
| First National Bank of Richardson, Richardson, TX | 06/30/89, Dallas | 4031 |
| First National Bank of Rifle, Rifle, CO | 08/21/86, San Francisco | 5741 |
| First National Bank of Rowlett, Rowlett, TX | 12/07/90, Dallas | 4296 |
| First National Bank of Sheridan, Sheridan, WY | 07/17/86, San Francisco | 2577 |
| First National Bank of Teague, Teague, TX | 11/14/85, Dallas | 5629 |

FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION—Continued

[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| First National Bank of Temple, Temple, OK | 11/14/86, Dallas | 5771 |
| First National Bank of Vail, Vail, CO | 10/05/89, San Francisco | 5999 |
| First National Bank of Weslaco, Weslaco, TX | 02/20/87, Dallas | 5815 |
| First National Bank of Bedford, Bedford, TX | 10/24/91, Dallas | 4416 |
| First National Bank of Northeast, Austin, TX | 05/03/90, Dallas | 4192 |
| First National Bank in Cordell, Cordell, OK | 07/02/86, Dallas | 5727 |
| First Pacific Bank, Beverly Hills, CA | 08/10/90, San Francisco | 4258 |
| First Peoples Bank of Washington County, Johnson City, TN | 07/29/83, Chicago | 2355 |
| First Progressive Bank, Metarie, LA | 01/17/86, Chicago | 2530 |
| First Republic Bank, A&M, A&M, TX | 07/29/88, Assisted Bank | 2851 |
| First Republic Bank, Abilene, N.A., Abilene, TX | 07/29/88, Assisted Bank | 2852 |
| First Republic Bank, Austin, N.A., Austin, TX | 07/29/88, Assisted Bank | 2848 |
| First Republic Bank, Brownwood, N.A., Brownwood, TX | 07/29/88, Assisted Bank | 2853 |
| First Republic Bank, Cleburne, N.A., Cleburne, TX | 07/29/88, Assisted Bank | 2854 |
| First Republic Bank, Clifton, (SB), Clifton, TX | 07/29/88, Assisted Bank | 2855 |
| First Republic Bank, Conroe, N.A., Conroe, TX | 07/29/88, Assisted Bank | 2856 |
| First Republic Bank, Corsicana, N.A., Corsicana, TX | 07/29/88, Assisted Bank | 2857 |
| First Republic Bank, Dallas, N.A., Dallas, TX | 07/29/88, Assisted Bank | 2846 |
| First Republic Bank, Denison, N.A., Denison, TX | 07/29/88, Assisted Bank | 2858 |
| First Republic Bank, El Paso, N.A., El Paso, TX | 07/29/88, Assisted Bank | 2859 |
| First Republic Bank, Ennis, N.A., Ennis, TX | 07/29/88, Assisted Bank | 2860 |
| First Republic Bank, Forney (SB), Forney, TX | 07/29/88, Assisted Bank | 2861 |
| First Republic Bank, Fort Worth, N.A., Fort Worth, TX | 07/29/88, Assisted Bank | 2849 |
| First Republic Bank, Galveston, N.A., Galveston, TX | 07/29/88, Assisted Bank | 2863 |
| First Republic Bank, Greenville, N.A., Greenville, TX | 07/29/88, Assisted Bank | 2864 |
| First Republic Bank, Harlingen, N.A., Harlingen, TX | 07/29/88, Assisted Bank | 2865 |
| First Republic Bank, Henderson, N.A., Henderson, TX | 07/29/88, Assisted Bank | 2866 |
| First Republic Bank, Hillsboro (SB), Hillsboro, TX | 07/29/88, Assisted Bank | 2867 |
| First Republic Bank, Houston, N.A., Houston, TX | 07/29/88, Assisted Bank | 2847 |
| First Republic Bank, Jefferson County (SB), Jefferson County, TX | 07/29/88, Assisted Bank | 2868 |
| First Republic Bank, Lubbock, N.A., Lubbock, TX | 07/29/88, Assisted Bank | 2869 |
| First Republic Bank, Lufkin, (SB), Lufkin, TX | 07/29/88, Assisted Bank | 2870 |
| First Republic Bank, Malakoff (SB), Malakoff, TX | 07/29/88, Assisted Bank | 2871 |
| First Republic Bank, Midland, N.A., Midland, TX | 07/29/88, Assisted Bank | 2872 |
| First Republic Bank, Mineral Wells, N.A., Mineral Wells, TX | 07/29/88, Assisted Bank | 2873 |
| First Republic Bank, Mt. Pleasant, N.A., Mt. Pleasant, TX | 07/29/88, Assisted Bank | 2874 |
| First Republic Bank, Odessa, N.A., Odessa, TX | 07/29/88, Assisted Bank | 2875 |
| First Republic Bank, Paris (SB), Paris, TX | 07/29/88, Assisted Bank | 2876 |
| First Republic Bank, Plano, N.A., Plano, TX | 07/29/88, Assisted Bank | 2877 |
| First Republic Bank, Richmond, N.A., Richmond, TX | 07/29/88, Assisted Bank | 2878 |
| First Republic Bank, San Antonio, N.A., San Antonio, TX | 07/29/88, Assisted Bank | 2850 |
| First Republic Bank, Stephenville, N.A., Stephenville, TX | 07/29/88, Assisted Bank | 2879 |
| First Republic Bank, Temple, N.A., Temple, TX | 07/29/88, Assisted Bank | 2880 |
| First Republic Bank, Tyler, N.A., Tyler, TX | 07/29/88, Assisted Bank | 2881 |
| First Republic Bank, Victoria (SB), Victoria, TX | 07/29/88, Assisted Bank | 2882 |
| First Republic Bank, Waco, N.A., Waco, TX | 07/29/88, Assisted Bank | 2883 |
| First Republic Bank, Wichita Falls, N.A., Wichita Falls, TX | 07/29/88, Assisted Bank | 2885 |
| First Republic Bank, Williamson County, Williamson County, TX | 07/29/88, Assisted Bank | 2884 |
| First Republic/NCNB Residual Asset Pool, Addison, TX | 11/06/92, Assisted Bank | 3956 |
| First SA of East Texas, Houston, TX | 01/15/88, Dallas | 7563 |
| First Security Bank, Roanoke, VA | 05/24/91, Chicago | 4361 |
| First Security Bank & Trust Co., Haughton, LA | 10/26/89, Chicago | 4112 |
| First Security Bank of Anaconda, Anaconda, MT | 03/16/92, San Francisco | 4460 |
| First Security Bank of Glendive, Glendive, CO | 12/01/89 San Francisco | 4124 |
| First Security Bank of North Arkansas, Horseshoe Bend, AR | 08/27/82, Dallas | 2318 |
| First Service Bank for Savings, Leominster, MA | 03/31/89, New York | 5963 |
| First Sierra Bank, Bishop, CA | 01/23/87, San Francisco | 6796 |
| First SLA/Colonial, Burkburnett, TX | 01/16/87, Dallas | 7547 |
| First South/Riverside Federal, Pine Bluff, AR | 12/04/86, Chicago | 7545 |
| First Southern/Magnolia, Pascagoula, MS | 03/20/87, Chicago | 7551 |
| First State Bank, White Cloud, KS | 03/27/86, Chicago | 2542 |
| First State Bank, Milford, TX | 06/11/87, Dallas | 2695 |
| First State Bank, Harper, TX | 01/12/89, Dallas | 2950 |
| First State Bank Rogers, TX | 03/23/89, Dallas | 2981 |
| First State Bank, Deanville, TX | 04/20/89, Dallas | 4007 |
| First State Bank, Liberty, TX | 08/17/89, Dallas | 4066 |
| First State Bank, Pflugerville, TX | 08/24/89, Dallas | 4069 |
| First State Bank, Lexington, OK | 12/13/90, Dallas | 4303 |
| First State Bank, Weimar, TX | 04/04/91, Dallas | 4339 |
| First State Bank, Bangs, TX | 01/24/92, Dallas | 4439 |
| First State Bank, Blanchard, OK | 06/13/87, Dallas | 6896 |
| First State Bank and Trust of Edinburg, Edinburg, TX | 5/23/86, Dallas | 2561 |
| First State Bank of Bovina, Bovina, TX | 10/22/87, Dallas | 2740 |
| First State Bank of Crandall, Crandall, TX | 04/19/90, Dallas | 4183 |
| First State Bank of McKinney, McKinney, TX | 08/17/89, Dallas | 4061 |
| First State Bank of Regent, Regent, ND | 02/22/90, Chicago | 4154 |
| First State Bank of Rising Star, Rising Star, TX | 05/20/90, Dallas | 4277 |

## FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION—Continued

[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| First State Bank of Saginaw, Saginaw, TX | 04/16/87, Dallas | 2977 |
| First State Bank of Texas, Duncanville, TX | 01/26/89, Dallas | 2961 |
| First Trust Bank of Lakefield, Lakefield, MN | 05/31/85, Chicago | 6568 |
| First-Taylor National Bank, Taylor, TX | 05/17/90, Dallas | 4201 |
| Florida Center Bank, Orlando, FL | 04/18/86, Chicago | 2551 |
| Florida State Bank, Holiday, FL | 05/24/91, Chicago | 4350 |
| Flower Mound Bank, Flower Mound, TX | 03/03/88, Dallas | 2792 |
| Forestwood National Bank of Dallas, Dallas, TX | 07/27/89, Dallas | 5979 |
| Fort Worth State Bank, Fort Worth, TX | 09/27/90, Dallas | 4279 |
| Fountain Bank, Scottsdale, AZ | 01/31/92, San Francisco | 4445 |
| Freedom National Bank of New York, New York, NY | 11/09/90, New York | 4292 |
| Frontier/1st Federal, Fairbanks, AK | 06/12/87, San Francisco | 7558 |
| Fulshear State Bank, Fulshear, TX | 06/06/89, Dallas | 5969 |
| Future SLA/Williamsburg, Albany, OR | 04/10/87, San Francisco | 7554 |
| Galena Park State Bank, Galena Park, TX | 08/11/88, Dallas | 2990 |
| Garden Community Bank, Garden Grove, CA | 06/01/84, San Francisco | 2392 |
| Gateway National Bank, Phoenix, AZ | 02/15/90, San Francisco | 4153 |
| Gentry County Bank, Albany, MO | 05/24/90, Chicago | 4205 |
| Girod Trust Company, San Juan, PR | 08/16/84, New York | 2407 |
| Global Bank of Miami, Hialeah, FL | 02/12/88, Chicago | 2785 |
| Golden Pacific National Bank, New York, NY | 06/21/85, New York | 5560 |
| Golden Valley Bank, Turlock CA | 03/23/85, San Francisco | 5450 |
| Goldome, Buffalo, NY | 05/31/91, Assisted Bank | 4353 |
| Grand Canyon State Bank, Scottsdale, AZ | 05/19/89, San Francisco | 5967 |
| Granite Co-Operative Bank, Quincy, MA | 12/12/91, New York | 4430 |
| Great Western National Bank, Lewisville, TX | 09/27/90, Dallas | 4280 |
| Greater Texas Bank Leander, Leander, TX | 05/04/89, Dallas | 4014 |
| Greater Texas Bank, North, N.A., Austin, TX | 11/30/89, Dallas | 4121 |
| Greater Texas Bank, Southwest, Austin, TX | 11/30/89, Dallas | 4122 |
| Guaranty Bank, Dallas, TX | 06/02/88, Dallas | 2825 |
| Guaranty Bond State Bank, Red Water, TX | 07/28/82, Dallas | 2315 |
| Guaranty Federal, Casper, NY | 12/12/86, San Francisco | 7546 |
| Guaranty/Guaranty FSLA, Harrison, AR | 12/06/85, Chicago | 7524 |
| Guaranty/Olympic Savings Bank, Longview, WA | 03/21/86, San Francisco | 7528 |
| Guardian Bank, Scottsdale, AZ | 04/26/90, San Francisco | 4190 |
| Guardian Bank N.A., Hempstead, NY | 06/21/89, New York | 5973 |
| Harbor National Bank of Connecticut, Branford, CT | 10/03/91, New York | 4403 |
| Harris County Bank, N.A., Houston, TX | 02/25/88, Dallas | 5927 |
| Hayesville Savings Bank, Hayesville, IA | 03/10/88, Chicago | 5932 |
| Hays State Bank, Hays, KS | 02/04/86, Chicago | 2521 |
| Heights Bank, Harker Heights, TX | 12/07/90, Dallas | 4299 |
| Helotes State Bank, Helots, TX | 05/15/89, Dallas | 4026 |
| Hereford State Bank, Hereford, CO | 08/24/84, San Francisco | 6505 |
| Heritage Bank, Anaheim, CA | 03/16/84, San Francisco | 5403 |
| Heritage Bank and Trust, Salt Lake, UT | 04/28/87, San Francisco | 6852 |
| Heritage National Bank, Richardson, TX | 09/25/86, Dallas | 2601 |
| Heritage National Bank, Austin, TX | 12/10/87, Dallas | 2764 |
| Hidalgo County Bank & Trust, Mercedes, TX | 07/26/89, Dallas | 4060 |
| Hillsborough Bank & Trust Company, Milford, NH | 08/30/91, New York | 4392 |
| Hilton Head Bank & Trust Company, N.A., Hilton Head Island, SC | 08/30/91, Chicago | 4394 |
| Hobby Community Bank, Hobby, TX | 06/29/89, Dallas | 4030 |
| Hohenwald Bank and Trust Company, Hohenwald, TN | 09/03/82, Chicago | 6399 |
| Home National Bank of Milford, Milford, MA | 06/01/90, New York | 4211 |
| Home Savings Bank, Brooklyn, NY | 12/31/85, New York | 5533 |
| Home State Bank, Trent, TX | 04/07/86, Dallas | 5935 |
| Home State Bank, Longton, Kansas, Longton, KS | 06/04/92, Chicago | 4495 |
| Homestead/Midfirst SLA, Woodward, OK | 10/10/86, Dallas | 7544 |
| Houston Commerce Bank, Houston, TX | 01/26/88, Dallas | 5924 |
| Huffman Bank, Huffman, TX | 02/15/90, Dallas | 4151 |
| Hulen National Bank, Fort Worth, TX | 06/07/90, Dallas | 4221 |
| Imperial Bank, Coral Gables, FL | 03/30/90, Chicago | 4176 |
| Independence Bank, Los Angeles, CA | 01/30/92, San Francisco | 4446 |
| Independence Bank, Plano, TX | 03/19/92, Dallas | 4462 |
| Independent Bank—East N.A., Rockwall, TX | 06/30/89, Dallas | 5974 |
| Independent Bank, N.A., Coppell, TX | 07/14/89, Dallas | 5977 |
| Independent National Bank, Phoenix, AZ | 03/15/90, San Francisco | 4166 |
| Independent National Bank, Covina, CA | 10/09/86, San Francisco | 5757 |
| Indian Springs State Bank, Kansas City, KS | 01/27/84, Chicago | 6455 |
| Industrial Bank, Houston, TX | 03/23/89, Dallas | 2980 |
| Ingram State Bank, Ingram, TX | 09/14/90, Dallas | 4274 |
| Intercapital/Great Western, Jacksonville, FL | 02/14/86, Chicago | 7526 |
| Interstate Bank of Commerce, Miami, FL | 03/31/89, Chicago | 5965 |
| Investors SLA/Midwest Fed, El Reno, OK | 03/25/88, Dallas | 7569 |
| Iona Savings Bank, Tilton, NH | 10/11/91, New York | 4405 |
| Iredell State Bank, Iredell, TX | 07/12/90, Dallas | 4240 |
| Island Bank, South Padre Island, TX | 03/16/89, Dallas | 2976 |
| Jackson Exchange Bank and Trust Company, Jackson, MO | 05/07/92, Chicago | 4487 |

FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION—Continued

[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| John Sevier/New/Charter, Sevierville, TN | 11/16/84, Chicago | 7511 |
| Kansas American Bank, Overland Park, KS | 07/25/85, Chicago | 2483 |
| Katy National Bank, Katy, TX | 05/04/89, Dallas | 4012 |
| Kempton State Bank, Kempton, IL | 02/07/92, Chicago | 4447 |
| Key SLA/Commerical Federal, Englewood, CO | 11/18/88, Dallas | 7569 |
| Kirby State Bank, San Antonio, TX | 09/14/89, Dallas | 5991 |
| Knox FSLA/New/Charter, Knoxville, TN | 11/16/84, Chicago | 7517 |
| La Marque Bank, La Marque, Tx | 09/10/87, Dallas | 2723 |
| La Salle State Bank, La Salle, La | 09/07/89, Chicago | 5967 |
| Lago Vista National Bank, Lago Vista, TX | 12/18/86, Dallas | 5781 |
| Lake Austin National Bank, Austin, TX | 05/21/87, Dallas | 2691 |
| Lake Country National Bank, Burnet, TX | 06/08/89, Dallas | 5970 |
| Lakeland State Bank, Pequot Lakes, MN | 12/19/86, Chicago | 2626 |
| Lakeland State Bank, Austin, TX | 06/21/90, Dallas | 4235 |
| Lakeway National Bank, Austin, TX | 03/09/89, Dallas | 2971 |
| Landmark Bank for Savings, Whitman, MA | 06/12/92, New York | 4490 |
| Landmark Bank of Fort Worth, Fort Worth, TX | 02/06/92, Dallas | 4446 |
| Landmark National Bank, Denver, CO | 12/18/86, San Francisco | 2625 |
| Landmark Thrift & Loan Association, San Diego, CA | 07/12/91, San Francisco | 4373 |
| Larue Federal SLA, Hodgenville, KY | 06/03/88, Chicago | 7575 |
| Lexington State Bank, Lexington, TX | 05/11/89, Dallas | 4015 |
| Liberty Bank, Houston, TX | 30/05/87, Dallas | 2655 |
| Liberty Bank, Phoenix, AZ | 09/01/89, San Francisco | 5986 |
| Liberty Bank & Trust Company, Warsaw, IN | 10/03/86, Chicago | 2925 |
| Liberty City State Bank, Kilgore, TX | 03/15/90, Dallas | 4165 |
| Liberty Federal, Raton, NM | 10/07/88, Dallas | 7564 |
| Liberty National Bank, Dallas, TX | 05/25/89, Dallas | 4023 |
| Liberty National Bank, Lovington, NM | 05/23/91, San Francisco | 4359 |
| Liberty SLA, Leesville, LA | 04/24/87, Dallas | 7556 |
| Life Savings/TCF Banking, Beloit, KS | 02/27/87, Chicago | 7549 |
| Livingston Bank, Denham Springs, LA | 03/16/87, Chicago | 2974 |
| Lockhart State Bank, Lockhart, TX | 02/07/91, Dallas | 4321 |
| Lone Star Bank, Baytown, TX | 05/26/88 Dallas | 2819 |
| Lone State National Bank, Dallas, TX | 11/02/90, Dallas | 4291 |
| Louisana Bank and Trust Company, Crowley, LA | 12/10/87, Chicago | 2760 |
| Louisiana Bank and Trust Company, Shreveport, LA | 02/16/89, Chicago | 2967 |
| Love Field National Bank, Dallas, TX | 11/16/98, Dallas | 4118 |
| Lowell Institution for Savings, Lowell, MA | 08/30/91, New York | 4393 |
| Madison National Bank, Washington, DC | 05/10/91, Chicago | 4352 |
| Madison National Bank of Virginia, Mclean, VA | 05/10/91, Chicago | 4353 |
| Maine National Bank, Portland, ME | 01/06/91, Assisted Bank | 4311 |
| Maine Savings Bank, Portland, ME | 02/01/91, Assisted Bank | 4320 |
| Mainland, Houston, TX | 04/04/86, Dallas | 7529 |
| Malden Trust Company Malden, MA | 05/15/92, New York | 4490 |
| Manhattan Beach Savings, Manhatan Beech, CA | 02/10/89, San Francisco | 6933 |
| Manila Bank Los Angeles, CA | 03/08/91, San Francisco | 4330 |
| Manning/St. Paul FSLA, Chicago, IL | 02/03/83, Chicago | 7503 |
| Market National Bank, Denver, Co | 02/05/87, San Francisco | 5806 |
| Martin National Bank, Martin, TX | 05/14/87, Dallas | 2686 |
| Marshall County Bank, Britton, SD | 08/19/88, Chicago | 5843 |
| Mayfair Bank, Chicago, IL | 06/04/92 Chicago | 4494 |
| Mbank—Abilene, Abilene, TX | 03/29/89, Assisted Bank | 5962 |
| Mbank—Alamo, San Antonio, San Antonio, TX | 03/29/89, Assisted Bank | 4000 |
| Mbank—Austin, Austin, TX | 03/29/89, Assisted Bank | 2982 |
| Mbank—Brenham, Brenham, TX | 03/29/89, Assisted Bank | 2983 |
| Mbank—Corsicana, Corsicana, TX | 03/29/89, Assisted Bank | 2984 |
| Mbank—Dallas, Dallas, TX | 03/29/89, Assisted Bank | 2985 |
| Mbank—Denton County, Denton County, TX | 03/29/89, Assisted Bank | 2986 |
| Mbank—Fort Worth, Fort Worth, TX | 03/29/89, Assisted Bank | 2999 |
| Mbank—Greenville, Greenville, TX | 03/29/89, Assisted Bank | 2987 |
| Mbank—Houston, Houston, TX | 03/29/89, Assisted Bank | 2988 |
| Mbank—Jefferson City, Jefferson City, TX | 03/29/89, Assisted Bank | 2989 |
| Mbank—Longview, Longview, TX | 03/29/89, Assisted Bank | 2990 |
| Mbank—Marshall, Marshall, TX | 03/29/89, Assisted Bank | 2991 |
| Mbank—Mid Cities, Mid Cities, TX | 03/29/89, Assisted Bank | 2992 |
| Mbank—Odessa, Odessa, TX | 03/29/89, Assisted Bank | 2993 |
| Mbank—Orange, Orange, TX | 03/29/89, Assisted Bank | 2994 |
| Mbank—Round Rock, Round Rock, TX | 03/29/89, Assisted Bank | 2995 |
| Mbank—Sherman, Sherman, TX | 03/29/89, Assisted Bank | 2996 |
| Mbank—Wichita Falls, Wichita Falls, TX | 03/29/89, Assisted Bank | 2997 |
| Mbank—Woodlands, Woodlands, TX | 03/29/89, Assisted Bank | 2998 |
| McCune State Bank, McCune, KS | 07/23/86, Chicago | 2581 |
| McAllen State Bank, McAllen, TX | 04/19/88, Dallas | 2807 |
| McNulty Banking Company, St. Petersburg, FL | 08/14/87, Chicago | 2719 |
| Mechanics & Farmer Savings Bank, FSB, Bridgeport, CT | 08/09/91, Assisted Bank | 4383 |
| Medcentre Bank, N.A., San Antonio, TX | 09/14/89, Dallas | 5992 |
| Medical Center State Bank, Oklahoma City, OK | 10/27/88, Dallas | 2930 |

## FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION—Continued

[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| Memorial Bank, National Association, Houston, TX | 05/24/90, Dallas | 4207 |
| Mercantile Bank, San Antonio, TX | 06/30/88, Assisted Bank | 2529 |
| Merchant National Bank, Fort Myers, FL | 02/07/92, Chicago | 4449 |
| Merchants Bank of Boston, A Co-operative, Boston, MA | 05/18/90, New York | 4202 |
| Merchants Marine Bank, Port Isabel, TX | 03/16/89, Dallas | 2975 |
| Merchants National Bank, Leominster, MA | 12/13/91, New York | 4432 |
| Merchants State Bank, Dallas, TX | 01/19/89, Dallas | 2956 |
| Merchants Trust & Savings Bank, Kenner, LA | 02/14/91, Chicago | 4323 |
| Metro, Lake Charles, LA | 12/03/83, Dallas | 7507 |
| Metro Bank, Midland, TX | 08/02/83, Dallas | 2295 |
| Metropolitan Bank & Trust Company, Baton Rouge, LA | 11/07/86, Chicago | 2613 |
| Metropolitan Bank and Trust Company, Tampa, FL | 02/12/82, Chicago | 2296 |
| Metropolitan Bank, N.A., Washington, DC | 05/01/92, Chicago | 4460 |
| Metropolitan Industrial Bank, Denver, CO | 04/15/88, San Francisco | 5937 |
| Metropolitan National Bank, McAllen, TX | 10/19/90, Dallas | 4287 |
| Metropolitan National Bank, Farmers Branch, TX | 01/24/91, Dallas | 4314 |
| Miami National Bank, Miami, FL | 03/22/90, Chicago | 4167 |
| Mid State SLA/Kankakee, Champaign, IL | 02/24/89, Chicago | 6935 |
| Mid-Jersey National Bank, Somerville, NJ | 09/20/91, New York | 4399 |
| Midcounty Bank and Trust Company, Norwood, MA | 09/27/91, New York | 4402 |
| Middle Park Bank, Granby, CO | 11/10/87, San Francisco | 2745 |
| Midlothian National Bank, Midlothian, TX | 12/13/89, Dallas | 4132 |
| Midway National Bank, Dallas, TX | 05/24/90, Dallas | 4206 |
| Milford Saving Bank, Milford, MA | 07/06/90, New York | 4245 |
| Mineral Bank of Nevada, Las Vegas, NV | 06/30/83, San Francisco | 6439 |
| Mission Valley Bank, N.A., San Clemente, CA | 10/18/91, San Francisco | 4415 |
| Mission Viejo National Bank, Mission Viejo, CA | 02/28/92, San Francisco | 4454 |
| Missouri Delta Bank Hayti, MO | 09/29/85, Chicago | 2494 |
| Moncor Bank, N.A., Hobbs, NM | 08/30/85, San Francisco | 2495 |
| Moncor Bank, N.A., Roswell, NM | 09/12/85, San Francisco | 2497 |
| Monroe Savings Bank, FSB, Rochester, NY | 01/26/90, New York | 4144 |
| Montana FSB, Kalispell, MT | 08/16/85, San Francisco | 7521 |
| Montgomery County Bank, National Associa, Houston, TX | 01/29/87, Dallas | 2540 |
| Montgomery National Bank, Rocky Hill, NJ | 06/29/90, New York | 4243 |
| Moran National Bank, Moran, TX | 01/14/88, Dallas | 2770 |
| Mountain Ridge State Bank, West Orange, NJ | 10/05/90, New York | 4282 |
| Mt. Pleasant Bank and Trust Company, Mt. Pleasant, IA | 08/06/82, Chicago | 2317 |
| Mt. Whitney/Guardian SLA, Exeter, CA | 02/26/88, San Francisco | 7586 |
| Mt. Zion State Bank, Mt. Zion, IL | 11/04/88, Chicago | 5950 |
| Nashua Trust Company, Nashua, NH | 10/10/91, Assisted Bank | 4407 |
| Nat'l Bank & Trust Co. of Traverse City, Traverse City, MI | 03/09/84, Chicago | 2378 |
| National Bank of Arizona, Scottsdale, AZ | 09/28/89, San Francisco | 5995 |
| National Bank of Commerce of Brownsville, Brownsville, TX | 07/13/89, Dallas | 4033 |
| National Bank of Federick, Federick, OK | 01/22/87, Dallas | 5794 |
| National Bank of Odessa, Odessa, TX | 09/30/83, Dallas | 2363 |
| National Bank of Texas, Houston, TX | 05/19/88, Dallas | 2818 |
| National Bank of Texas, Austin, TX | 07/02/86, Dallas | 5713 |
| National Bank, Fort Sam Houston, Fort Sam Houston, TX | 07/29/88, Assisted Bank | 2862 |
| National City Bank, Coral Springs, FL | 02/21/92, Chicago | 4452 |
| National City Bank of Denver, Denver, CO | 06/14/90, San Francisco | 4230 |
| National Industrial Bank, Meriden, CT | 11/10/89, New York | 4117 |
| NBC Bank-Austin, N.A., Austin, TX | 06/01/90, Dallas | 4212 |
| NBC Bank-Boerne, N.A., Boerne, TX | 06/01/90, Dallas | 4213 |
| NBC Bank-Houston, N.A., Houston, TX | 06/01/90, Dallas | 4215 |
| NBC Bank-Kerrville, N.A., Kerrville, TX | 06/01/90, Dallas | 4216 |
| NBC Bank-Rio Grande Valley, N.A., Mission, TX | 06/01/90, Dallas | 4217 |
| NBC Bank-San Antonio, N.A., San Antonio, TX | 06/01/90, Dallas | 4218 |
| NBC Bank-Seguin, N.A., Seguin, TX | 06/01/90, Dallas | 4219 |
| NBC Bank-South Texas, N.A., Corpus Christi, TX | 06/01/90, Dallas | 4214 |
| NBC Bank-Uvalde, N.A., Uvalde, TX | 06/01/90, Dallas | 4220 |
| New Bank of New England (Bridge Bank), Boston, MA | 07/13/91, Assisted Bank | 4374 |
| New City Bank, Orange, CA | 03/20/87, San Francisco | 2668 |
| New Connecticut Bank & Trust (Bridge Bank), Hartford, CT | 07/13/91, Assisted Bank | 4375 |
| New England Allbank for Savings, Gardner, MA | 12/12/90, New York | 4300 |
| New Hampshire Savings Bank, Concord, NH | 10/10/91, Assisted Bank | 4412 |
| New Heritage Bank, Lawrence, MA | 03/06/92, New York | 4457 |
| New Maine National Bank (Bridge Bank), Portland, ME | 07/13/91, Assisted Bank | 4376 |
| New Mexico National Bank, Albuquerque, NM | 07/17/86, San Francisco | 2570 |
| New Orleans/Horizon Federal, New Orleans, LA | 06/20/86, Chicago | 7526 |
| New Ulm State Bank, New Ulm, TX | 06/29/89, Dallas | 4029 |
| New World National Bank, Pittsburgh, PA | 10/22/87, Chicago | 2741 |
| Norman Bank of Commerce, Norman, OK | 11/20/86, Dallas | 2616 |
| North American National Bank, Littleton, CO | 05/07/87, San Francisco | 5857 |
| North American SLA, Costa Mesa, CO | 06/06/86, San Francisco | 7577 |
| North American Thrift and Loan, Corona Del Mar, CA | 05/29/92, San Francisco | 4490 |
| North Bank, National Assoc., Oklahoma City, OK | 10/12/89, Dallas | 4102 |
| North Central National Bank, Austin, TX | 04/23/87, Dallas | 5851 |

FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION—Continued

[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| North Ridge Bank, Oakland Park, FL | 12/20/91, Chicago | 4433 |
| North Side State Bank, Tulsa, OK | 12/14/89, Dallas | 4136 |
| Northlake/Horizon Fed, Covington, LA | 06/20/86, Chicago | 7534 |
| Northshore Bank, Houston, TX | 11/08/85, Dallas | 2513 |
| Northside Bank, San Antonio, TX | 09/06/90, Dallas | 4269 |
| Northway National Bank, Dallas, TX | 02/15/90, Dallas | 4152 |
| Northwest Bank, White Settlement, TX | 05/23/85, Dallas | 2485 |
| Northwest Bank, Dallas, TX | 01/21/88, Dallas | 5923 |
| Northwest Bank & Trust, Houston, TX | 06/23/88, Dallas | 2834 |
| Northwest Bank, N.A., San Antonio, TX | 06/06/91, Dallas | 4364 |
| Northwest Commercial Bank, N.A., Houston, TX | 06/11/87, Dallas | 2696 |
| Northwest National Bank, Fayetteville, AR | 08/16/91, Chicago | 4367 |
| Norwalk Bank, Norwalk, CT | 04/24/92, New York | 4477 |
| Numerica Savings Bank FSB, Manchester, NH | 10/10/91, Assisted Bank | 4408 |
| Oak Hill National Bank, Austin, TX | 01/12/89, Dallas | 2952 |
| Oak Lawn Bank, N.A., Dallas, TX | 12/01/88, Dallas | 2936 |
| Oak Park Bank, Oak Park Heights, MN | 04/29/88, Chicago | 2811 |
| Oklahoma Consolidated Office, Oklahoma, OK | 09/01/88, Dallas | 3906 |
| Orange Coast Thrift and Loan Association, Los Alamitos, CA | 06/27/86, San Francisco | 2572 |
| Orange State Bank, Miami, FL | 12/08/89, Chicago | 4129 |
| Orlando Consolidated Office, Orlando, FL | 09/01/88, Chicago | 3901 |
| Orleans Bank and Trust Company, New Orleans, LA | 01/12/89, Chicago | 2955 |
| Panhandle Bank and Trust, Borger, TX | 12/04/86, Dallas | 2622 |
| Park Avenue Bank, National Assoc., Oklahoma City, OK | 10/19/89, Dallas | 4103 |
| Park Bank, St. Petersburg, FL | 02/14/86, Chicago | 2536 |
| Park Central Bank, Forth Worth, TX | 08/24/89, Dallas | 5983 |
| Park Forty Five National Bank, Spring, TX | 08/03/89, Dallas | 5981 |
| Park West Bank, N.A., Farmers Branch, TX | 08/15/85, Dallas | 5601 |
| Parkway Bank and Trust, Dallas, TX | 06/09/88, Dallas | 2826 |
| Peninsula Sal/1st Federal, Soldotna, AK | 08/08/86, San Francisco | 7540 |
| Penn Square Bank, N.A., Oklahoma City, OK | 07/07/82, Dallas | 5391 |
| Peoples Bank, Hewitt, TX | 06/13/91, Dallas | 4368 |
| People's National Bank, Caldwell, TX | 06/21/90, Dallas | 4234 |
| Peoples National Bank of Rockland County, Ramapo(Nonsey), NY | 09/13/85, New York | 5610 |
| Peoples SLA/Pioneer FSLA, La Grande, OR | 09/23/88, San Francisco | 7583 |
| Peoples State Bank, Dallas, TX | 12/14/90, Dallas | 4305 |
| Peoples State Bank of Mazeppa, Mazeppa, MN | 08/20/87, Chicago | 6901 |
| Peoples State Bank of Meeker, Meeker, CO | 09/23/88, San Francisco | 5947 |
| Permian Bank, Odessa, TX | 07/18/86, Dallas | 6721 |
| Petrobank, N.A., Houston, TX | 06/12/86, Dallas | 5702 |
| Pisgah Savings Bank, Pisgah, IA | 09/01/88, Chicago | 5945 |
| Placer Bank of Commerce, Roseville, CA | 03/27/92, San Francisco | 4469 |
| Planters Trust & Savings BK of Opelousas, Opelousas, LA | 05/18/84, Dallas | 2388 |
| Plaza Del Oro National Bank, Houston, TX | 01/11/90, Dallas | 4141 |
| Plaza National Bank, Del Rio, TX | 03/12/87, Dallas | 5824 |
| Pontchartrain State Bank, Metairie, LA | 07/19/91, Chicago | 4378 |
| Port City Bank, Houston, TX | 01/28/88, Dallas | 2779 |
| Powder Mill Bank, Morris Plains, NJ | 05/22/92, New York | 4491 |
| Prairie County Bank, Hazen, AR | 03/24/83, Dallas | 6417 |
| Prairie State Bank, Grand Prairie, TX | 09/14/89, Dallas | 5990 |
| Premier Bank, N.A., Dallas, TX | 03/31/89, Dallas | 5964 |
| Presidio FSLA, Porterville, CA | 08/08/86, San Francisco | 7541 |
| Private Bank and Trust, N.A., Coral Gables, FL | 10/25/91, Chicago | 4422 |
| Progressive National Bank of Rayne, Rayne, LA | 03/12/92, Chicago | 4458 |
| Rainsville Bank, Rainsville, AL | 05/09/86, Chicago | 2557 |
| Ramona FSLA/Midwest FSLA, Orange, CA | 02/26/88, San Francisco | 7567 |
| Reagan State Bank, Big Lake, TX | 10/03/91, Dallas | 4404 |
| Red Bird Bank of Dallas, Dallas, TX | 04/09/92, Dallas | 4473 |
| Red Oak State Bank, Red Oak, TX | 07/09/87, Dallas | 2707 |
| Red River National Bank, Clarksville, TX | 03/19/87, Dallas | 2663 |
| Regency SB/Great Lakes, Ann Arbor, MI | 10/14/88, Chicago | 7585 |
| Renda Settlement, New York, NY | 04/24/89, New York | 5966 |
| Republic Bank, Blanchard, LA | 10/31/86, Chicago | 2609 |
| Republic Bank, Oklahoma City, OK | 11/19/87, Dallas | 2749 |
| Republic Bank of Kansas City, Kansas City, MO | 06/18/84, Chicago | 6492 |
| Resource Bank, N.A., Houston, TX | 12/08/88, Dallas | 5955 |
| Richardson National Bank, Richardson, TX | 05/03/90, Dallas | 4193 |
| Richmark Bank, Houston, TX | 06/07/90, Dallas | 4224 |
| River City Bank, Castle Hills, TX | 09/15/88, Dallas | 2917 |
| Riverhead Savings Bank, White Plains, NY | 06/12/92, New York | 4498 |
| Riverside National Bank of Houston, Houston, TX | 08/01/85, Dallas | 2491 |
| Rockport Bank, N.A., AR. County(Rockport), TX | 01/31/91, Dallas | 4316 |
| Rocky Mountain National Bank, Denver, CO | 05/31/90, San Francisco | 4209 |
| Rocky Mountain State Bank, Salt Lake City, UT | 08/28/87, San Francisco | 2722 |
| Rolling Hills State Bank, Piedmont, OK | 01/12/89, Dallas | 2951 |
| Rose Capital Bank, Tyler, TX | 09/21/89, Dallas | 5993 |
| Round Rock National Bank, Round Rock, TX | 10/27/88, Dallas | 5948 |



FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION—Continued

[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| Sabinal Bank, Sabinal, TX | 03/21/91, Dallas | 4325 |
| Saddleback National Bank, Laguna Hills, CA | 05/15/86, San Francisco | 5691 |
| Sam Houston National Bank of Walker City, Huntsville, TX | 01/21/88, Dallas | 2775 |
| San Jose Cons off CP, San Jose, CA | 08/06/85, San Francisco | 3487 |
| San Mario/Home of Tucson, San Marino, CA | 12/07/84, San Francisco | 7514 |
| Sandy State Bank, Sandy, UT | 05/27/88, San Francisco | 2821 |
| Savannah/New/Charter, Savannah, TN | 11/16/84, Chicago | 7510 |
| Saybrook Bank and Trust Co., Old Saybrook, CT | 12/06/91, New York | 4429 |
| Seafirst Bank, Port St. Lucie, FL | 03/08/91, Chicago | 4326 |
| Seapointe/Monterey Park, Carlsbad, CA | 05/30/86, San Francisco | 7531 |
| Search National Bank, Dallas, TX | 03/01/90, Dallas | 4156 |
| Security Bank, Dallas, TX | 10/20/88, Dallas | 2926 |
| Security Bank, Houston, TX | 02/16/89, Dallas | 2968 |
| Security Bank & Trust Co., Wharton, TX | 05/16/89, Dallas | 4016 |
| Security Bank of Aurora, Aurora, CO | 06/02/88, San Francisco | 2823 |
| Security Bank of Denver, N.A., Denver, CO | 03/10/88, San Francisco | 2794 |
| Security Bank of Glenrock, Glenrock, WY | 06/06/86, San Francisco | 6701 |
| Security National Bank, Anchorage, AK | 10/23/86, San Francisco | 2806 |
| Security National Bank, Elgin, TX | 04/19/90, Dallas | 4184 |
| Security National Bank, Austin, TX | 08/30/90, Dallas | 4263 |
| Security National Bank of Lubbock, Lubbock, TX | 04/13/84, Dallas | 5468 |
| Security National Bank of Midland, Midland, TX | 02/12/87, Dallas | 5809 |
| Security National Bank of Shreveport, Shreveport, LA | 11/17/89, Chicago | 4120 |
| Security State Bank, Roosevelt, OK | 08/06/87, Dallas | 2715 |
| Seminole State National Bank, Seminole, TX | 03/16/84, Dallas | 5464 |
| Seminet Bank, Hartford, CT | 01/31/92, New York | 4444 |
| Shelby National Bank of Shelbyville, Shelbyville, IN | 04/19/84, Chicago | 2381 |
| Shore Bank and Trust Company, Lynn, MA | 04/24/92, New York | 4478 |
| Sierra Sla/Nevada Sla, Minden, CA | 10/23/87, San Francisco | 7559 |
| Sierra/Commercial Federal, Denver, CO | 02/26/86, San Francisco | 7527 |
| Signal Sla, Signal Hill, CA | 02/10/89, San Francisco | 6904 |
| Signature Bank, National Association, Dallas, TX | 04/26/90, Dallas | 4189 |
| South Denver National Bank, Denver, CO | 06/24/87, San Francisco | 2702 |
| Southcoast Bank Corporation, West Palm Beach, FL | 08/09/91, Chicago | 4364 |
| Southeast Bank of West Florida, Pensacola, FL | 09/19/91, Chicago | 4401 |
| Southeast Bank, N.A., Miami, FL | 09/19/91, Chicago | 4400 |
| Southern Federal, Thomasville, GA | 01/19/89, Chicago | 6930 |
| Southern National Bank, Birmingham, AL | 06/14/79, Chicago | 2274 |
| Southside National Bank, Nacogdoches, TX | 03/19/92, Dallas | 4463 |
| Southstate Bank for Savings, Brockton, MA | 04/24/92, New York | 4475 |
| Southwest National Bank, Austin, TX | 06/28/90, Dallas | 4240 |
| Southwest National Bank, Albuquerque, NM | 02/21/91, San Francisco | 4325 |
| Southwest National Bank, Houston, TX | 11/03/88, Dallas | 5949 |
| Southwestern Bank, Tucson, AZ | 09/25/81, San Francisco | 6373 |
| Sparta-Sanders State Bank, Sparta, KY | 04/15/83, Chicago | 6421 |
| State Bank of Commerce, Slidell, LA | 12/03/87, Chicago | 2752 |
| State Bank of Farmersville, Farmersville, IL | 09/09/85, Chicago | 2492 |
| State Bank of Greenwald, Greenwald, MN | 10/02/87, Chicago | 5909 |
| State Bank of Herndon, Herndon, KS | 08/14/85, Chicago | 6800 |
| State of Clovis, Clovis, NM | 11/03/83, San Francisco | 7508 |
| State SLA/Sandia FSLA, Salt Lake City, UT | 04/12/85, San Francisco | 7516 |
| State/Freedom Federal, Corvallis, OR | 12/06/85, San Francisco | 7525 |
| Steeplechase National Bank, Houston, TX | 09/17/87, Dallas | 2728 |
| Stockmen's Bank and Trust Company, Gillette, WY | 09/20/87, San Francisco | 5905 |
| Strawn Security Bank, Strawn, TX | 10/05/89, Dallas | 5997 |
| Strong's Bank, Dodgeville, WI | 06/14/85, Chicago | 6578 |
| Suburban National Bank, Hillsborough Township, NJ | 07/26/91, New York | 4380 |
| Suffield Bank, Suffield, CT | 09/06/91, New York | 4395 |
| Summit Bank, San Antonio, TX | 08/24/89, Dallas | 5964 |
| Summit National Bank, Torrington, CT | 04/03/92, New York | 4471 |
| Summit SLA/United SLA, Park City, UT | 04/10/87, San Francisco | 7555 |
| Sun Savings/Flagship Federal, San Diego, CA | 07/18/86, San Francisco | 7537 |
| Sunbelt/Horizon Federal, Lake Providence, LA | 05/02/86, Chicago | 7530 |
| Sunrise/Beach Federal, Boynton Beach, FL | 09/12/86, Chicago | 7543 |
| Sunshine State Bank, South Miami, FL | 05/23/86, Chicago | 6894 |
| Sweeny Bank, Sweeney, TX | 03/19/87, Dallas | 2664 |
| Tab/Amarillo, Amarillo, TX | 07/20/89, Assisted Bank | 4053 |
| Tab/Austin, Austin, TX | 07/20/89, Assisted Bank | 4056 |
| Tab/Breckenridge, Breckenridge, TX | 07/20/89, Assisted Bank | 4045 |
| Tab/Dallas, Dallas, TX | 07/20/89, Assisted Bank | 4042 |
| Tab/Dallas—LBJ, Dallas, TX | 07/20/89, Assisted Bank | 4038 |
| Tab/Dallas—Prestonwood, Dallas, TX | 07/20/89, Assisted Bank | 4035 |
| Tab/Denison, Denison, TX | 07/20/89, Assisted Bank | 4043 |
| Tab/Duncanville, Duncanville, TX | 07/20/89, Assisted Bank | 4040 |
| Tab/Farmers Branch, Farmers Branch, TX | 07/20/89, Assisted Bank | 4046 |
| Tab/Fort Worth, Fort Worth, TX | 07/20/89, Assisted Bank | 4036 |
| Tab/Forum—Arlington, Arlington, TX | 07/20/89, Assisted Bank | 4037 |

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[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| Tab/Fredricksburg, Fredricksburg, TX | 07/20/89, Assisted Bank | 4057 |
| Tab/Greater Southwest, Grand Prairie, TX | 07/20/89, Assisted Bank | 4039 |
| Tab/Houston—Galleria, Houston, TX | 07/20/89, Assisted Bank | 4051 |
| Tab/Levelland, Levelland, TX | 07/20/89, Assisted Bank | 4056 |
| Tab/Longview, Longview, TX | 07/20/89, Assisted Bank | 4049 |
| Tab/McKinney, McKinney, TX | 07/20/89, Assisted Bank | 4044 |
| Tab/Midland, Midland, TX | 07/20/89, Assisted Bank | 4054 |
| Tab/Plano, Plano, TX | 07/20/89, Assisted Bank | 4048 |
| Tab/Richardson, Richardson, TX | 07/20/89, Assisted Bank | 4050 |
| Tab/Southwest, Stafford, TX | 07/20/89, Assisted Bank | 4052 |
| Tab/Temple, Temple, TX | 07/20/89, Assisted Bank | 4055 |
| Tab/Tyler, Tyler, TX | 07/20/89, Assisted Bank | 4047 |
| Tab/Wichita Falls, Wichita Falls, TX | 07/20/89, Assisted Bank | 4041 |
| Tascosa National Bank of Amarillo, Amarillo, TX | 06/13/91, Dallas | 4367 |
| Territory SLA/Commercial, Seminole, OK | 01/29/88, Dallas | 7564 |
| Texana National Bank of Belton, Belton, TX | 12/01/88, Dallas | 5954 |
| Texas Bank & Trust of Temple, Temple, TX | 05/09/91, Dallas | 4349 |
| Texas Bank and Trust Company, Lubbock, TX | 09/19/86, Dallas | 2599 |
| Texas Bank of Plano, Plano, TX | 12/15/88, Dallas | 2945 |
| Texas Independence Bank, Pasadena, TX | 09/18/86, Dallas | 2596 |
| Texas Investment Bank National Associati, Houston, TX | 05/21/87, Dallas | 5866 |
| Texas National Bank, Dallas, TX | 12/15/88, Dallas | 2946 |
| Texas National Bank, El Paso, TX | 06/07/90, Dallas | 4223 |
| Texas National Bank, Austin, TX | 04/21/88, Dallas | 5938 |
| Texas National Bank, Houston, TX | 02/16/89, Dallas | 5959 |
| Texas National Bank—Westheimer, Houston, TX | 05/26/87, Dallas | 5867 |
| Texas Premier Bank of Victoria, N.A., Victoria, TX | 06/13/91, Dallas | 4369 |
| The Alexander State Bank, Alexander, KS | 11/19/87, Chicago | 5918 |
| The American Bank, Palestine, TX | 07/14/88, Dallas | 2840 |
| The American Bank, Alma, WI | 06/20/86, Chicago | 5707 |
| The Aurora Bank, Aurora, CO | 11/01/85, San Francisco | 2511 |
| The Bank for Savings, Malden, MA | 03/20/92, New York | 4461 |
| The Bank Mart, Bridgeport, CT | 12/13/91, Assisted Bank | 4434 |
| The Bank of Bronson, Bronson, KS | 06/23/85, Chicago | 5602 |
| The Bank of Commerce, Chanute, KS | 05/02/85, Chicago | 2459 |
| The Bank of Commerce, Shreveport, LA | 06/12/86, Chicago | 2567 |
| The Bank of Horton, Horton, KS | 06/13/91, Chicago | 4366 |
| The Bank of Kerrville, Kerrville, TX | 11/17/88, Dallas | 2935 |
| The Bank of Louisburg, Louisburg, KS | 02/03/88, Chicago | 2780 |
| The Bank of Park County, Bailey, CO | 07/24/86, San Francisco | 5726 |
| The Bank of Ruidoso, Ruidoso, NM | 02/23/90, San Francisco | 4156 |
| The Bank of Verde Valley, Cottonwood, AZ | 01/16/92, San Francisco | 4438 |
| The Bank of Woodson, Woodson, TX | 03/01/82, Dallas | 5379 |
| The Bazine State Bank, Bazine, KS | 04/12/90, Chicago | 4179 |
| The Benton State Bank, Benton, KS | 06/11/87, Chicago | 2694 |
| The Blueville Bank of Grafton, Grafton, WV | 04/05/91, Chicago | 4340 |
| The Bowery Savings Bank, New York, NY | 10/01/85, New York | 3501 |
| The Bowie County State Bank, Hooks, TX | 07/28/82, Dallas | 2314 |
| The Burr Oak State Bank, Burr Oak, KS | 08/31/89, Chicago | 5985 |
| The Central Savings Bank, Lowell, MA | 02/14/92, New York | 4450 |
| The Citizens Bank, Ogden, UT | 10/18/85, San Francisco | 2509 |
| The Citizens Bank, Drumright, OK | 09/24/87, Dallas | 2730 |
| The Citizens Bank of Pagosa Spring, Pagosa Spring, CO | 10/25/91, San Francisco | 4418 |
| The Citizens State Bank, Donna, TX | 11/06/86, Dallas | 2610 |
| The Citizens State Bank of McCracken, McCracken, KS | 06/05/86, Chicago | 5700 |
| The Commonwealth Bank, Bellaire, TX | 04/12/89, Dallas | 4004 |
| The Corning Bank, Corning, AR | 06/15/84, Dallas | 2396 |
| The Cosmopolitan National Bank of Chicago, Chicago, IL | 05/17/91, Chicago | 4357 |
| The County Bank, Manatee County, FL | 02/13/87, Chicago | 2647 |
| The Dakota Bank, Grand Forks, ND | 08/24/89, Chicago | 5982 |
| The Des Plaines Bank, Des Plaines, IL | 03/14/81, Chicago | 5370 |
| The Douglas State Bank, Kansas City, KS | 09/02/83, Chicago | 2360 |
| The Early Bank, Early, TX | 10/18/85, Dallas | 2507 |
| The Easton State Bank, Leavenworth, KS | 08/08/86, Chicago | 2586 |
| The Energy Bank, National Association, Dallas, TX | 05/16/85, Dallas | 2454 |
| The Fairfield State Bank, Fairfield, NE | 05/31/85, Chicago | 6571 |
| The Family Bank, Allenstown, NH | 09/06/91, New York | 4396 |
| The Farmers & Merchants Bank of Sheyenne, Sheyenne, ND | 10/26/90, Chicago | 4289 |
| The Farmers & Merchants NB of Hennessey, Hennessey, OK | 12/05/85, Dallas | 5638 |
| The Farmers & Merchants State Bank, Ballinger, TX | 03/16/89, Dallas | 2977 |
| The Farmers National Bank of Cordell, Cordell, OK | 12/03/87, Dallas | 2757 |
| The Farmers National Bank of Remington, Remington, IN | 01/29/87, Chicago | 2638 |
| The Farmers State Bank, Selden, KS | 12/20/84, Chicago | 2434 |
| The Farmers State Bank, Bogue, KS | 03/16/89, Chicago | 2973 |
| The First National Bank & Trust Co of El, El Reno, OK | 08/08/86, Dallas | 5732 |
| The First National Bank and Trust Co of, Enid, OK | 11/06/86, Dallas | 5765 |
| The First National Bank and Trust Co of Cushing, OK | 03/10/86, Dallas | 5929 |

## FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION—Continued

[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| The First National Bank and Trust Co of, Oklahoma City, OK | 07/11/86, Dallas | 2574 |
| The First National Bank and Trust Company, Norman, OK | 05/26/92, Dallas | 5997 |
| The First National Bank and Trust of Old, Oklahoma City, OK | 07/14/86, Dallas | 2587 |
| The First National Bank in Humboldt, Humboldt, IA | 04/02/92, Chicago | 2306 |
| The First National Bank of Brush, Brush, CO | 10/08/87, San Francisco | 2737 |
| The First National Bank of Chanute, Chanute, KS | 06/19/86, Chicago | 5706 |
| The First National Bank of Darrouzett, Darrouzett, TX | 07/18/85, Dallas | 5586 |
| The First National Bank of Georgetown, Georgetown, TX | 05/17/90, Dallas | 4200 |
| The First National Bank of Gordon, Gordon, TX | 05/18/89, Dallas | 4017 |
| The First National Bank of Gracemont, Gracemont, OK | 11/10/88, Dallas | 5951 |
| The First National Bank of Harmon, Harmon, OK | 09/03/87, Dallas | 5902 |
| The First National Bank of Jacksonville, Jacksonville, AL | 07/05/85, Chicago | 2477 |
| The First National Bank of Levelland, Levelland, TX | 08/30/90, Dallas | 4265 |
| The First National Bank of Luther, Luther, OK | 08/13/87, Dallas | 2717 |
| The First National Bank of Marlboro, Marlboro, MA | 01/23/87, New York | 5795 |
| The First National Bank of Midland, Midland, TX | 10/14/83, Dallas | 2365 |
| The First National Bank of Navasota, Navasota, TX | 08/13/87, Dallas | 2718 |
| The First National Bank of Onaga, Onaga, KS | 07/23/85, Chicago | 2481 |
| The First National Bank of Poth, Poth, TX | 05/09/91, Dallas | 4350 |
| The First National Bank of Rush, Rush Springs, OK | 01/15/87, Dallas | 5634 |
| The First National Bank of San Marcos, San Marcos, TX | 01/04/90, Dallas | 4140 |
| The First National Bank of Sanger, Sanger, TX | 03/01/90, Dallas | 4157 |
| The First National Bank of St. Joseph, St. Joseph, MO | 10/11/85, Chicago | 2504 |
| The First National Bank of Tipton, Tipton, OK | 09/02/87, Dallas | 5903 |
| The First National Bank of Toms River, Toms River, NJ | 05/22/91, New York | 4358 |
| The First National Bank of White City, White City, KS | 01/09/86, Chicago | 2527 |
| The First National Bank of Yukon, Yukon, OK | 07/29/87, Dallas | 5889 |
| The First State Bank, Frisco, TX | 06/04/87, Dallas | 2693 |
| The First State Bank, Childress, TX | 05/12/88, Dallas | 2816 |
| The First State Bank, Rockwall, TX | 05/26/88, Dallas | 5940 |
| The First State Bank, Abilene, TX | 02/17/89, Dallas | 5960 |
| The Gering National Bank & Trust Company, Gering, NE | 07/28/86, Chicago | 2585 |
| The Home State Bank, Rochester, TX | 06/27/86, Dallas | 2570 |
| The Home State Bank, La Crosse, KS | 09/25/86, Chicago | 2600 |
| The Home State Bank, Russell, KS | 03/03/88, Chicago | 2791 |
| The Home State Bank, Arcadia, KS | 02/16/89, Chicago | 5958 |
| The Housatonic Bank & Trust Company, Ansonia, CT | 07/26/91, New York | 4361 |
| The Hoxie State Bank, Hoxie, KS | 11/13/86, Chicago | 2615 |
| The Huntsville National Bank, Huntsville, TX | 05/31/90, Dallas | 4208 |
| The Kerens Bank, Kerens, TX | 07/26/91, Dallas | 4379 |
| The Landmark Bank, Hartford, CT | 09/28/91, New York | 4330 |
| The Lee State Bank, Browerville, MN | 11/09/89, Chicago | 4114 |
| The Liberty Bank of Seattle, Seattle, WA | 06/17/88, San Francisco | 2831 |
| The Madill Bank and Trust Company, Madill, OK | 03/20/87, Dallas | 2666 |
| The Mayfield State Bank, Mayfield, KS | 09/24/87, Chicago | 5906 |
| The McKinley Bank, Niles, OH | 02/22/91, Chicago | 4326 |
| The Mendon State Bank, Mendon, IL | 06/20/86, Chicago | 2591 |
| The Merchant Bank of California, Beverly Hills, CA | 06/08/90, San Francisco | 4225 |
| The Merchants Bank & Trust Company, Norwalk CT | 02/01/91, New York | 4319 |
| The Mississippi Bank, Jackson, MS | 05/11/84, Chicago | 2386 |
| The Murdock State Bank, Murdock, KS | 09/24/87, Chicago | 5907 |
| The National Bank, Dyersville, IA | 04/10/86, Chicago | 2548 |
| The National Bank of Bossier City, Bossier City, LA | 01/12/89, Chicago | 2956 |
| The National Bank of Carmel, Carmel, CA | 05/08/84, San Francisco | 5470 |
| The National Bank of Washington, Washington, DC | 08/10/90, Chicago | 4257 |
| The National Bank of Wortham, Wortham, TX | 02/14/91, Dallas | 4324 |
| The North American Bank, Phoenix, AZ | 01/08/88, San Francisco | 5921 |
| The Olla State Bank, Olla, LA | 10/05/89, Chicago | 5996 |
| The Peoples Bank, Olive Hill, KY | 12/03/87, Chicago | 2759 |
| The Peoples Bank & Trust Co., Natchitoches, LA | 10/05/90, Chicago | 4283 |
| The Permanent Savings Bank, Niagara Falls, NY | 07/13/90, New York | 4248 |
| The Planters Bank and Trust Company, Hayneeville, LA | 01/19/89, Chicago | 2959 |
| The Red River Bank, Red River, NM | 02/23/90, San Francisco | 4155 |
| The Rexford State Bank, Rexford, KS | 10/10/84, Chicago | 2421 |
| The San Saba National Bank, San Saba, TX | 06/29/91, Dallas | 4390 |
| The Seamen's Bank for Savings, FSB, New York, NY | 04/18/90, New York | 4180 |
| The Security National Bank and Trust Com, Norman, OK | 01/06/87, Dallas | 2631 |
| The Sedan State Bank, Sedan, KS | 09/25/85, Chicago | 5512 |
| The Southwestern Bank, Houston, TX | 04/09/87, Dallas | 2672 |
| The State Bank of Omaha, Omaha, TX | 12/14/90, Dallas | 4305 |
| The State Exchange Bank, Yates Center, KS | 08/14/86, Chicago | 2590 |
| The Strong City State Bank, Strong City, KS | 11/29/84, Chicago | 2430 |
| The Texas Bank & Trust Company, Sweetwater, TX | 07/27/89, Dallas | 4061 |
| The Trust Bank, Hialeah, FL | 01/29/88, Chicago | 5925 |
| The United Bank, Minneapolis, KS | 08/21/86, Chicago | 2592 |
| The Village Bank, Great Falls, MT | 04/22/88, San Francisco | 2900 |
| The Waller Bank, National Association, Waller, TX | 03/22/90, Dallas | 4170 |

FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION—Continued

[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| The Washington Bank of Maryland, Baltimore, MD | 05/10/91, Chicago | 4351 |
| The Wilshire Bank, National Association, Los Angeles, CA | 05/31/90, San Francisco | 4210 |
| The Wimberly Bank, Wimberly, TX | 06/14/90, Dallas | 4227 |
| Theodore Roosevelt National Bank, Washington, DC | 03/26/92, Chicago | 4466 |
| Thousand Oaks National Bank, Pflugerville, TX | 09/07/89, Dallas | 5988 |
| Town and Country Bank, Bixby, OK | 09/15/88, Dallas | 2919 |
| Tracy Collins, SLC, Salt Lake City, UT | 12/30/88, San Francisco | 3950 |
| Travis Bank & Trust, Austin, TX | 04/20/89, Dallas | 4006 |
| Tri Cities Bank & Trust, Glen Heights, TX | 06/23/88, Dallas | 2833 |
| Tri-County SLA, Maple Shade, NJ | 11/13/87, Chicago | 7560 |
| Tri-State National Bank, Belle Fourche, SD | 11/10/87, Chicago | 5016 |
| Trinity National Bank, San Antonio, TX | 09/15/88, Dallas | 2918 |
| Trinity National Bank, Berbrook, TX | 11/02/90, Dallas | 4290 |
| Trinity National Bank of Dallas, Dallas, TX | 04/25/90, Dallas | 4188 |
| Troup Bank & Trust Company, Troup, TX | 06/24/88, Dallas | 4070 |
| Tucker State Bank of Jacksonville, Jacksonville, FL | 05/04/90, Chicago | 4194 |
| Twin City/Secor Bank, West Monroe, LA | 11/10/88, Chicago | 7587 |
| Tyler National Bank, Tyler, TX | 02/01/90, Dallas | 4147 |
| U.S. Savings Bank of America, Seabrook, NH | 07/27/90, New York | 4253 |
| U.S. Bank, Denton, TX | 12/17/87, Dallas | 2768 |
| Ultimate SB/Citizens Federal, Richmond, VA | 09/15/88, Chicago | 7582 |
| Umpqua SLA, Roseburg, OR | 01/16/87, San Francisco | 7548 |
| UN Amer Bank Knoxville, Knoxville, TN | 03/22/83, Chicago | 1123 |
| Union Bank, San Antonio, TX | 10/31/91, Dallas | 4421 |
| Union Bank & Trust, Dallas, TX | 05/05/88, Dallas | 2813 |
| Union Bank and Trust, Bartlesville, OK | 07/21/88, Dallas | 2843 |
| Union Bank and Trust Company, Oklahoma City, OK | 03/31/88, Dallas | 2802 |
| Union Bank of Houston, Houston, TX | 12/01/88, Dallas | 2937 |
| Union County Bank, Maynardville, TN | 04/22/86, Chicago | 6681 |
| Union Deposit Bank, Union, KY | 06/26/86, Chicago | 6706 |
| United American Bank in Hamilton County, Chattanooga, TN | 05/27/83, Chicago | 2348 |
| United Bank—Houston, Houston, TX | 04/30/87, Dallas | 6654 |
| United Bank of Texas, Austin, TX | 06/04/87, Dallas | 6669 |
| United Bank of Waco, National Assoc., Waco, TX | 08/02/90, Dallas | 4255 |
| United Citizens Bank, N.A., College Station, TX | 02/26/91, Dallas | 4327 |
| United Community Bank, Westlake Village, CA | 12/20/89, San Francisco | 4139 |
| United FSLA/Midwest Federal, Durant, OK | 03/25/88, Dallas | 7570 |
| United Mercantile Bank, Shreveport, LA | 01/21/86, Chicago | 2776 |
| United Mercantile Bank & Trust Co., N.A., Pasadena, CA | 05/20/92, San Francisco | 4464 |
| United National Bank of Plano, Plano, TX | 11/10/89, Dallas | 4115 |
| United of American Bank, Chicago, IL | 04/27/84, Chicago | 6471 |
| United Oklahoma Bank, Oklahoma City, OK | 03/17/87, Dallas | 2062 |
| United Peoples Bank, Lampasas, TX | 10/11/90, Dallas | 4264 |
| United Services Bank, Hartshorne, OK | 10/08/87, Dallas | 5911 |
| United Southern Bank of Clarksville, Clarksville, TN | 06/26/83, Chicago | 2359 |
| United Southern Bank of Nashville, Nashville, TN | 05/27/83, Chicago | 2347 |
| United States National Bank, San Diego, CA | 10/18/73, San Francisco | 5305 |
| Universal SA, Chickasha, OK | 07/29/88, Dallas | 7561 |
| University Bank, N.A., Newton, MA | 05/31/91, New York | 4362 |
| University National Bank, San Antonio, TX | 08/03/89, Dallas | 4065 |
| University National Bank of College Stat., College Station, TX | 03/09/90, Dallas | 4160 |
| Utah Firstbank, Salt Lake City, UT | 01/24/86, San Francisco | 2531 |
| Utica National Bank & Trust Co., Tulsa, OK | 07/20/89, Dallas | 4034 |
| Valencia Bank, Santa Ana, CA | 02/07/86, San Francisco | 6657 |
| Valley Bank, White River Junction, VT | 09/13/91, New York | 4397 |
| Valley Commercial Bank, Stockton, CA | 04/24/92, San Francisco | 4479 |
| Valley First/ Home FSLA, El Centro, CA | 01/14/83, San Francisco | 7502 |
| Valley FSB, Dayton, TN | 02/24/89, Chicago | 5936 |
| Valley State Bank, Encino, CA | 09/28/87, San Francisco | 2732 |
| Valley View National Bank, Valley View, TX | 06/29/90, Dallas | 4238 |
| Vanguard Savings Bank, Holyoke, MA | 03/27/92, New York | 4467 |
| Vernon FSLA/Montfort SA, Dallas, TX | 11/19/87, Dallas | 7561 |
| Victor/Cimmaron, Muskogee, OK | 07/29/88, Dallas | 7579 |
| Village Green National Bank, Jersey Village, TX | 05/09/91, Dallas | 4346 |
| Washington County State Bank, Brenham, TX | 12/13/90, Dallas | 4302 |
| Waxahachie Bank and Trust Company, Waxahachie, TX | 09/10/87, Dallas | 2724 |
| West Belt National Bank, Houston, TX | 01/12/89, Dallas | 2954 |
| West Coast Bank, Los Angeles, CA | 04/27/84, San Francisco | 6473 |
| West Houston National Bank, Houston, TX | 08/11/88, Dallas | 2892 |
| West Texas State Bank of Canyon, Canyon, TX | 11/13/87, Dallas | 2747 |
| Western Bank, Midland TX | 09/04/86, Dallas | 2506 |
| Western Bank, El Paso, TX | 03/12/87, Dallas | 2660 |
| Western Bank, Duncanville, TX | 11/15/90, Dallas | 4294 |
| Western Bank-Westwood, Houston, TX | 10/01/87, Dallas | 2736 |
| Western Bank-North Wilcrest National Assoc., Houston, TX | 10/01/87, Dallas | 2735 |
| Western Bank-Westheimer, Houston, TX | 10/01/87, Dallas | 5908 |
| Western Comm/First United El Cerrito, CA | 03/06/85, San Francisco | 7515 |

FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION—Continued

[Alpha Listing (Name)]

| Institution name, city/state | Date closed, region | Ref. # |
|---|---|---|
| Western National Bank, Bryan, TX | 10/22/87, Dallas | 5914 |
| Western National Bank of Louisiana, Kaplan, LA | 10/26/88, Chicago | 4111 |
| Western National Bank of Lovell, Lovell, WY | 06/24/83, San Francisco | 5432 |
| Western National Bank of Texas, Forth Worth, TX | 09/13/90, Dallas | 4272 |
| Western State Bank of Denton, Denton, TX | 09/27/85, Dallas | 2499 |
| Westheimer Memorial Bank N.A., Houston, TX | 12/08/89, Dallas | 4130 |
| Westlake Thrift & Loan Assoc., Westlake Village, CA | 07/29/88, San Francisco | 5842 |
| Westpoint National Bank, San Antonio, TX | 02/16/89, Dallas | 2969 |
| Westside National Bank, Houston, TX | 05/13/88, Dallas | 2817 |
| Westside/Mariner FSLA, Seattle, WA | 08/30/85, San Francisco | 7523 |
| Whitney Bank & Trust, Hamden, CT | 04/12/91, New York | 6342 |
| Willow Bend National Bank, Plano, TX | 09/14/90, Dallas | 4228 |
| Woburn Five Cents Savings Bank, Woburn, MA | 06/07/91, New York | 4365 |
| Woodway Bank & Trust, N.A., Houston, TX | 10/04/90, Dallas | 4281 |
| Workingmen's Co-Operative Bank, Boston, MA | 05/29/92, New York | 4492 |
| Worthington State Bank, Worthington, IN | 11/14/91, Chicago | 4436 |
| Yankee Bank for Finance & Savings F.S.B., Boston, MA | 10/15/87, New York | 5913 |
| Yellowstone State Bank-Lander, Lander, WY | 11/01/85, San Francisco | 6626 |
| 102 Valley Bank, Hopkins, MO | 07/05/89, Chicago | 5075 |

[FR Doc. 92-15357 Filed 7-1-92; 8:45 am]

BILLING CODE 6714-01-M

## FEDERAL MARITIME COMMISSION

### Request for Additional Information

*Agreement No.:* 202-011375.

*Title:* Trans-Atlantic Agreement.

*Parties:*

Atlantic Container Line AB

Compagnie Generale Maritime (CGM)

Nedlloyd Lijnen BV

Hapag Lloyd AG

Sea-Land Service, Inc.

A.P. Moller-Maersk Line

Polish Ocean Line

Mediterranean Shipping Co.

DSR/Senator Joint Service

P&O Containers Limited

Orient Overseas Container Line (UK) Ltd.

Cho Yang Shipping Co.

*Synopsis:* Notice is hereby given that the Federal Maritime Commission pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701-1720) has requested additional information from the parties to the agreement in order to complete the statutory review of Agreement No. 202-011375 as required by the Act. This action extends the review period as provided in section 6(c) of the Act.

Dated: June 26, 1992.

Joseph C. Polking,

*Secretary.*

[FR Doc. 92-15517 Filed 7-1-92; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 92-41]

### Transportation Services, Inc. as Agent For Network Shipping Ltd. v. Federal Container Line, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services, Inc. as agent for Network Shipping Ltd. ("Complainant") against Federal Container Line, Inc. ("Respondent") was served June 26, 1992. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing and refusing to pay charges lawfully assessed pursuant to the applicable tariffs or service contracts on two shipments of paint and extract flavoring from Camden, New Jersey to Puerto Limon, Costa Rica in November, 1991.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by June 28, 1993, and the final decision of the Commission shall be issued by October 26, 1993.

Joseph C. Polking,

*Secretary.*

[FR Doc. 92-15509 Filed 7-1-92; 8:45 am]

BILLING CODE 6730-01-M

### Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Worldwide Transportation Management Company, 1400 Adams Rd., Unit 1, Bensalem, PA 19020, Officers: L. Elena Parsons, President/Director, John R. Parsons, Treasurer, Ralph Droz, Secretary

United World International, Inc., 22777 Harper Ave., St. Clair Shores, MI 48080, Officers: Gary L. Clements, President/Director/Treasurer, Carol Clements, Director/Secretary/V. President, Ron Cherf, Director

Alianza Enterprises, Inc., 4152 Beaune Drive, Kenner, LA 70065, Officers: Miguel A. Martinez, President, Lillia M. Martinez, Vice President

Leex, Inc., 3217 48th Ave., S.W., Seattle, WA 98116, Officer: Tami Lui Lee, President/Director

Sea-Wings International, Inc., 183–W. Fullerton Ave., Glendale Hts., Il 60139, Officers: Lei-Lani Chan, President, Margaret E. James, Vice President/Secretary/Treasurer

Frama Forwarding Corp., 8007 N.W. 64th Street, Miami, FL 33166, Officers: Mariseles Arango, President, Gustavo R. Arango, Vice President

Groskopf Warehouse Consolidations, Inc., 20580 8th Street East, Sonoma, CA 95476, Officers: Ronald S. Groskopf, President/Director, Sharon Smith, Vice President/Director, Doris M. Groskopf, Secretary/Treasurer/Director, Susan L. Kastan, Assistant Vice President

Imex Shipping Group, Inc., 141 N.E. 3rd Ave., Suite 306, Miami, FL 33132, Officers: Hector J. Bologna, President, Sonia Garcia, Director/Secretary/Treasurer

Bon Bini Cargo Services, Inc., 7234 N.W. 31st St., Miami, FL 33122, Officer: Vivian Wever, President

Oceanic Freights, Inc., 523 N. Sam Houston Pkwy., East, Houston, TX 77060, Officers: Prem D. Nasta, President/Director/Secretary, Hansa P. Nasta, Director, Suren Marwaha, Vice President

Carolina Marine Services, 6321–A Airport Parkway, Greensboro, N.C. 27409, Gene Ronald Campbell, Sole Proprietor

USA Carriers, Inc. dba USA Carriers, Intermodal Cargo Express, Inc., 10550 East 54th Ave., Unit "A", Denver, CO 80239, Officers: W. Robert Fawcett, Jr., President, Rosalie H. Kent, Senior Vice President, Terry H. McCasland, Sr., Vice President, Gerald H. Biebuyck, Exec. Vice President/Secr./Tres., Bruce O. Boxberger, Vice President

James Thomas Gibbs, 17451 Hillgate Lane, Huntington Beach, CA 92649, Sole Proprietor

Dated June 26, 1992.

By the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92–15507 Filed 7–1–92; 8:45 am]

BILLING CODE 6730–01–M

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**[Petition No. P3–92]**

## Korean Forwarders & Customs Brokers Association; Conditions Unfavorable to Shipping in the United States/Korea Trade; Filing of Petition for Relief

Notice is given that a petition alleging conditions unfavorable to shipping in the United States/Korea trade ("Trade") has been filed by the Korean Forwarders & Customs Brokers Association of Southern California ("Petitioner" or "KFCBA"), pursuant to section 19(1)(b) of the Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. 876(1)(b), and the Foreign Shipping Practices Act of 1988 ("FSPA"), 46 U.S.C. app. 1710a. Petitioner requests the Commission to grant it relief from certain efforts of the Republic of Korea to establish a transportation operation in the United States.

Section 19 authorizes the Federal Maritime Commission ("Commission" or "FMC") to make rules and regulations affecting shipping in the foreign trade in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade. The FSPA authorizes the Commission to take action against foreign carriers if it finds that conditions adversely affecting the operations of United States carriers in U.S. trade exist as a result of laws, rules or policies of foreign governments which do not exist for foreign carriers of that country in the United States.

In this instance, Petitioner is asking the Commission to remedy a condition or conditions which it alleges will result in irreparable harm to KFCBA members which are customs brokers, non-vessel operating common carriers, international freight forwarders, truckers and warehouse operators located in the Southern California area. Petitioner alleges that a projected Korean Government-impelled consortium of Korean trading companies, carriers, customs brokers, forwarders and other transportation-related firms to establish a transportation operation in the U.S. will result in loss of business by its members which presently handle approximately 50 per cent of the trade between the United States and Korea, as well as causing injury to U.S.-flag carriers operating in the Trade.

The Petition recognizes that there are bilateral discussions of shipping issues scheduled to take place in July between the Governments of the United States and Korea. Failing resolution of the issues raised in its Petition at those talks, Petitioner requests such Commission action on its Petition as the Commission "deems necessary and appropriate."

In view of the pending talks, which Petitioner believes may address the issues it raises, and the indications that the consortium is still an operation more on the drawing board than in reality, the Commission will hold in abeyance any further action on the Petition. The Commission also notes that it has recently announced action it will take in P2–92, Petition of Direct Container Line For Relief Pursuant to Section 19 of the Merchant Marine Act, 1920, to meet or adjust conditions unfavorable to shipping in the Trade created by the laws of the Republic of Korea. This FMC action may affect the activities of the projected consortium.

At present, the Commission does not believe that receipt of comments on this Petition from interested parties would be useful. It is expected that Petitioner, or interested parties, will notify the Commission of any events which warrant imminent action on the Petition, including evidence that the projected consortium, with Korean Government involvement, is undertaking operations in the U.S. which come within the Commission's jurisdiction.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92–15600 Filed 7–1–92; 8:45 am]

BILLING CODE 6730–01–M

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## FEDERAL RESERVE SYSTEM

## Camden National Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the

reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 27, 1992.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

*1. Camden National Corporation*, Camden, Maine; to engage *de novo* through its subsidiary, Camden Appraisal Company, Camden, Maine, in performing appraisals of real estate and tangible personal property, pursuant to § 225.25(b)(13) of the Board's Regulation Y.

**B. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. FNB Banking Company*, Griffin, Georgia; to engage *de novo* in providing loan reviews and internal audit services to Georgia banks, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

**C. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. U.S. Bancorp*, Portland, Oregon; to engage *de novo* through its subsidiary, LenderNet, Inc., Portland, Oregon, in electronic loan origination and data processing, pursuant to §§ 225.25(b)(1) and (7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 26, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-15534 Filed 7-1-92; 8:45 am]

BILLING CODE 6210-01-F

## Central Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 27, 1992.

**A. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Central Bancshares, Inc.*, Cambridge, Nebraska; to acquire Emmett Insurance Agency, Arapahoe, Nebraska, and thereby engage in the sale of general insurance including property and casualty insurance and crop hail insurance, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 26, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-15535 Filed 7-1-92; 8:45 am]

BILLING CODE 6210-01-F

## Community Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 27, 1992.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

*1. Community Bancorp, Inc.*, Monroeville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Community Savings Bank, Monroeville, Pennsylvania.

*2. USBANCORP, Inc.*, Johnstown, Pennsylvania; to acquire 100 percent of the voting shares of Community Bancorp, Inc., Monroeville, Pennsylvania, and thereby indirectly acquire Community Savings Bank, Monroeville, Pennsylvania.

**B. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Independent Bankshares Corporation*, Gallatin, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of First Independent Bank, Gallatin, Tennessee.

**C. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. Sun Banc, Corp.*, Sunray, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Sun Banc Delaware Corp., Dover, Delaware, and Sunray State Bank, Sunray, Texas.

*2. Sun Banc Delaware Corp.*, Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Sunray State Bank, Sunray, Texas.

Board of Governors of the Federal Reserve System, June 26, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-15536 Filed 7-1-92; 8:45 am]

BILLING CODE 6210-01-F

**Rita M. and Dennis I. Meyer; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 22, 1992.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. Rita M. and Dennis I. Meyer,* Alexandria, Virginia; to acquire up to 13.67 percent of the voting shares of United Financial Banking Companies, Inc., Vienna, Virginia, and thereby indirectly acquire The Business Bank, Vienna, Virginia.

Board of Governors of the Federal Reserve System, June 26, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-15537 Filed 7-1-92; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Health Care Policy and Research

**Meeting**

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of July 1992:

*Name:* Low Birthweight in Minority and Low Income Populations PORT (Patient Outcomes Research Team) Advisory Subcommittee.

*Dates and Times:* July 9, 1992, 9 a.m.

*Place:* Marriott Residence Inn, 7335 Wisconsin Avenue, Calvert Room, Bethesda, Maryland 20814.

This meeting will be closed to the public.

*Purpose:* The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR) regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals for a PORT on Low Birthweight in Minority and Low Income Populations.

PORT projects involve multi-site, multi-disciplinary evaluation of the effectiveness of alternative services or procedures for preventing, diagnosing, treating, or managing specific clinical conditions. The purpose of this PORT contract is to: identify and explain variations in the management of pregnancy to prevent low birthweight and related adverse maternal and childhood outcomes, focusing on effective interventions within and across minority groups and low-income populations. Analysis will be provided in terms of relative patient outcomes, resource use, and remaining scientific uncertainties.

*Agenda:* The session of this Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Karen Harris, Office of Management, Management Systems and Services Branch, Agency for Heath Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, suite 601, Rockville, Maryland 20852, (301) 227-8441.

Dated: June 25, 1992.

**J. Jarrett Clinton,**

*Administrator.*

[FR Doc. 92-15538 Filed 7-1-92; 8:45 am]

BILLING CODE 4160-90-M

### Agency for Toxic Substances and Disease Registry

**Workshop to Assist in Developing a Standardized Test Battery for Lung and Respiratory Diseases for Use in Environmental Health Field Studies: Meeting**

The Agency for Toxic Substances and Disease Registry (ATSDR), in association with the University of Iowa College of Medicine, Pulmonary Disease Division (a member of the Association of Occupational and Environmental Clinics), announces the following meeting.

*Name:* Workshop to Assist in Developing a Standardized Test Battery for Lung and Respiratory Diseases for Use in Environmental Health Field Studies.

*Times and Dates:* 8 a.m.–5 p.m., August 12, 1992. 8:30 a.m.–5 p.m., August 13, 1992. 8:30 a.m.–2:30 p.m., August 14, 1992.

*Place:* Days Hotel at Lenox, 3377 Peachtree Road, NE, Atlanta, Georgia 30326.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

*Purpose:* This workshop will assist ATSDR in the selection of standardized testing and evaluation methods for investigating the association between respiratory diseases in humans and exposure to hazardous substances in the environment.

*Matters to be Considered:* Workshop participants will provide comments and individual recommendations to help ATSDR staff in the:

(1) Development of testing and evaluation methods for immediate use in environmental health studies of adults.

(2) Development of testing and evaluation methods for immediate use in environmental health studies of children.

(3) Identification of significant information needs in the implementation of these evaluation methods and criteria for the continuous modification and updating of the standard methods.

*Contact Person for More Information:* Joyce Smith, Division of Health Studies, ATSDR (MS E31), 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639-6200.

Dated: June 25, 1992.

**Elvin Hilyer,**

*Associate Director for Policy Coordination.*

[FR Doc. 92-15528 Filed 7-1-92; 8:45 am]

BILLING CODE 4160-70-M

**Centers for Disease Control**

**[Program Announcement Number 250]**

## Cooperative Agreement for Conducting Fatality Surveillance and Field Investigations at the State Level Using the NIOSH Fatal Accident Circumstances and Epidemiology Model; Availability of Funds for Fiscal Year 1992

### Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for cooperative agreements to build state capacity for conducting traumatic occupational fatality surveillance, targeted investigations and intervention activities through the National Institute for Occupational Safety and Health, NIOSH, Fatal Accident Circumstances and Epidemiology (FACE) model program. The cooperative agreements will significantly strengthen the occupational public health infrastructure by integrating resources for occupational safety and health research and public health prevention programs at the state and local levels. The goal of the project is to show a measurable reduction in traumatic occupational fatalities within states.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

### Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and sections 301 (42 U.S.C. 241) and 317 (42 U.S.C. 247(b)) of the Public Health Service Act, as amended.

### Eligible Applicants

Eligible applicants are state Departments of Health, Departments of Labor, Departments of Industry, and similar organizations located within any state or territory of the United States. Ineligible applicants include those agencies that conduct occupational fatality investigations and, in doing so, are legally responsible for the determination of compliance with occupational safety and health standards. Awards will be limited to those organizations which can exercise public health authority for tactical and strategic intervention into occupational safety and health problems. Additionally, only one application per state will be accepted under this cooperative agreement. Stronger consideration will be given to those states or territories submitting applications demonstrating coordination between other relevant agencies within the state. (States currently participating in the project and that are applying for a continuation award into FY 1993, need not reply to this solicitation.)

### Availability of Funds

Approximately $100,000 is available in FY 1992 to fund up to two awards. It is expected that the average award will be $50,000 ranging from $47,000 to $53,000. It is expected that the awards will begin on or about September 30, 1992, and are usually made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

### Purpose

The purpose of this cooperative agreement is to expand the State-Based FACE project into more states. A pilot study for conducting occupational fatality investigations by state-level personnel using the NIOSH FACE model has demonstrated that such programs can be successfully implemented at the state level. The most immediate products of the state level FACE programs have been accurate and verifiable surveillance systems for detecting traumatic occupational fatality events occurring within the state, fatality investigations that identified potential causal factors for occupational trauma, and subsequent recommendations for developing and implementing successful intervention strategies. By stimulating phased development and growth at the state level, this program will permit the states following the FACE model to structure their surveillance, investigation and intervention activities to more efficiently capture input from other investigating state agencies and departments.

Additionally, states will be able to target traumatic occupational, traumatic injury research and prevention programs based on specific state priority areas. FACE data will be shared with all award recipients. The specific objectives for this cooperative agreement are as follows:

1. Develop a timely, comprehensive, multiple source state-level surveillance system for identifying and recording basic epidemiologic data on all traumatic occupational fatalities occurring within the state.

2. Conduct investigations of selected traumatic occupational fatalities using the NIOSH FACE investigative model.

3. Identify potential risk factors for selected types of traumatic occupational fatalities which will be useful for targeting intervention strategies and prioritizing research efforts.

4. Develop and disseminate preventive recommendations to reduce the risk of fatal occupational injuries within the state.

5. Develop and implement intervention strategies and projects for reducing state incidence of traumatic occupational injuries and fatalities.

6. Develop and implement the statistical capability to show that the state's intervention strategies have produced a measurable reduction in traumatic occupational fatalities.

### Program Requirements

The cooperative agreement recipient shall be responsible for conducting the activities under A., below, and CDC will be responsible for conducting the activities under B., below.

*A. Recipient Activities*

1. Develop a state-based surveillance system for timely identification with collection and recording of epidemiologic (core) data on all traumatic occupational fatalities occurring within the state.

2. Interface the state-based surveillance system with the NIOSH on-line communications network for electronically transmitting FACE data.

3. Conduct in-depth investigations of occupational fatalities resulting from fall-related incidents, electrocutions, and exposure to confined spaces using the NIOSH FACE model for investigation.

4. Develop and submit to CDC a summary report of each fatality investigation which describes the fatal incident and includes recommendations for preventing future occurrences of the specific fatality type.

5. Conduct epidemiologic analysis of common fatal incident circumstances for development of recommendations and information on intervention and prevention techniques, and engineering solutions offering effective remedies.

6. Identify sentinel hazards and contributing circumstances with timely dissemination of recommended solutions to the identified problems through various written media.

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7. Identify deficiencies, limitations, or absences of safety standards when occupational fatalities occur during circumstances outside the purview of regular state or Federal enforcement agencies.

8. Implement and evaluate interventions to reduce traumatic occupational fatalities.

9. Attend annual FACE project investigators training program for 3 days in Morgantown, West Virginia.

*B. CDC Activities*

1. Provide epidemiologic data reporting forms, coding formats, computer software, and state personnel training for electronic transmission of FACE report and epidemiologic data to the NIOSH data base.

2. Provide assistance to awardee staff in establishing traumatic occupational fatality notification networks and for defining roles in providing safety and health referral services.

3. Provide initial training in procedures for conducting on-site fatality investigations using the FACE investigative methodology (including the use of FACE investigative data collection instruments), and provide subsequent on-site technical assistance to state personnel in conducting fatality investigations.

4. Provide assistance in identifying sentinel events resulting from industrial applications of new and emerging technologies.

5. Provide technical assistance in the dissemination of summary reports and other published findings to other state and local health officials, other state and local labor officials, voluntary health groups, workers, management, unions, employers and professional organizations.

6. Provide technical assistance with identifying and evaluating effective intervention strategies.

**Evaluation Criteria**

Application will be reviewed and evaluated according to the following criteria:

1. Overall quality of the state proposal for identifying, recording and investigating traumatic occupational fatalities within the state using the FACE model. (25%)

2. Completeness of the state's plan for implementing and evaluating interventions to reduce traumatic occupational fatalities. (The number of investigations and intervention activities planned by the applicant for the respective budget period must be specified.) (25%)

3. The qualifications and time commitment of the proposed staff, type and quality of facilities and equipment, and administrative support for the state-based FACE program. (15%)

4. Demonstration of the need for developing and implementing a state-based occupational surveillance, field investigation and intervention program based on identification of high risk industries and occupations within the state. (15%)

5. Demonstration of collaborative relationships among various relevant state or territorial agencies in addressing the problem of traumatic occupational fatality surveillance, investigation and intervention. (10%)

6. Relevance of the proposal to the scope and objectives announced in the program announcement. (10%)

7. The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds. (Not Scored)

**Executive Order 12372 Review**

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process.

For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 60 days after the deadline date for new and competing awards. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

**Catalog of Federal Domestic Assistance Number (CFDA)**

The Catalog of Federal Domestic Assistance (CFDA) for this program is 93.283.

**Other Requirements**

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**Application Submission and Deadline**

The original and two copies of the application PHS Form 5161-1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, on or before August 1, 1992.

*1. Deadline*

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing.

*2. Late Applications*

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications, will not be considered in the current competition, and will be returned to the applicant.

**Where to Obtain Additional Information**

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mailstop E-14, room 300, Atlanta, Georgia 30305, (404) 842-6630. Programmatic technical assistance may be obtained from the following contacts: Louis D. Smith, Project Officer, Trauma Investigation Section, Surveillance and Field Investigations Branch, NIOSH/Division of Safety Research, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, (304) 291-4575, or Timothy J. Pizatella, Chief, Surveillance and Field Investigations Branch, NIOSH/Division of Safety Research, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888, (304) 291-4885.

Please refer to Announcement Number 250, when requesting information and submitting an application.



Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1), referenced in the INTRODUCTION, through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: June 26, 1992.

**J. Donald Millar,**

*Director, National Institute for Occupational Safety and Health Centers for Disease Control.*

[FR Doc. 92-15527 Filed 7-1-92; 8:45 am]

BILLING CODE 4160-19-M

## Food and Drug Administration

**[Docket No. 92N-0272]**

## Drug Export; Mentane® (Velnacrine Maleate) Capsules

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Hoechst-Roussel Pharmaceuticals Inc., has filed an application requesting approval for the export of the human drug Mentane® (velnacrine maleate) capsules to the United Kingdom.

**ADDRESSES:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

**SUPPLEMENTARY INFORMATION:** The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Hoechst-Roussel Pharmaceuticals Inc., P.O. Box 2500, Somerville, NJ 08876-1258, has filed an application requesting approval for the export of the human drug Mentane® (velnacrine maleate) capsules to the United Kingdom. This drug is indicated for use in the symptomatic treatment of patients with mild to moderate Alzheimer's disease. The application was received and filed in the Center for Drug Evaluation and Research on June 5, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 13, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 24, 1992.

**Sammie R. Young,**

*Acting Director, Office of Compliance, Center for Drug Evaluation and Research.*

[FR Doc. 92-15539 Filed 7-1-92; 8:45 a.m.]

BILLING CODE 4160-01-F

## Health Resources and Services Administration

## Announcement of Cycle for Rural Health Medical Education Demonstration Projects

The Health Resources and Services Administration (HRSA), in coordination with the Health Care Financing Administration (HCFA), announces that proposals for fiscal year 1992 Rural Health Medical Education Demonstration Projects are being accepted under the authority of section 4038 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) (the Act), as amended by the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239).

Section 4038, as amended, authorizes Rural Health Medical Education Demonstration Projects to assist physicians to develop clinical experience in rural areas using payment for graduate medical education under the Social Security Act and requires the Secretary of Health and Human Services to enter into Agreements with 10 teaching hospitals as sponsors of the demonstration projects. Five demonstration projects are ongoing and five more could be effected under section 4038.

Eligible hospitals are those which currently receive payments for direct and indirect graduate medical education costs as defined under Medicare. These hospitals may be public or private entities, nonprofit or for profit. These projects will be for a 3 year period and are intended to assist resident physicians in developing field experience in rural areas.

Under these agreements, each of the sponsoring hospitals will make arrangements with a small rural hospital to provide for resident rotations for a period of 1 to 3 months for physicians who have completed at least 1 year of residency training in family practice, osteopathic general practice, primary care internal medicine, or primary care pediatrics. The number of physicians and the duration of the rotation is to be a part of the arrangements between the sponsoring hospital and the rural hospital.

For the purposes of these projects, payments made for the indirect costs of graduate medical education, pursuant to section 1886(d)(5)(B) of the Social Security Act and 42 CFR 412.105, for any part of a year that a resident works at a small rural hospital, will be treated as if the resident was working at the sponsoring hospital, and not as if the resident was working in the small rural hospital. All other requirements set forth in 42 CFR 412.105 will apply. In addition, in order to be counted, the resident's time spent in the rural hospital must count toward certification as part of an approved program under 42 CFR 413.86(b).

Medicare's share of the direct graduate medical education costs of the sponsoring hospital will be increased for the duration of the project to meet any reasonable additional direct costs incurred for the education and training

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of resident physicians at the rural site. The sponsoring hospital will be required to account separately for the costs of the demonstration project. Medicare will reimburse the sponsoring hospital for Medicare's share of the additional costs the hospital incurs in connection with the project under the reasonable cost authority methodology described in section 1861(v) of the Act. Reimbursement for these costs will be in addition to the hospital's payment under section 1886(h).

It should be noted that direct costs may be claimed only once and will not be reimbursed under both sections 1886(h) and 1861(v).

In this demonstration an emphasis is being placed on cost effectiveness of the projects. Proposed projects will be evaluated on the reasonableness and cost effectiveness demonstrated in the description of additional costs associated with the project which would be reimbursed under a reasonable cost methodology. These costs are to be estimated for each of the 3 years of the demonstration project. The costs and the cost effectiveness of a proposed project will be considered during the review of proposals.

Additional costs may include arrangements for supervision of the residents at the rural site, housing of the residents, and travel by residents and supervisors from the sponsoring hospital. Any reimbursement request for additional costs will require review by the Medicare intermediaries to determine the accuracy and reasonableness of the claim. Teaching hospitals wishing to apply should note that Medicare will only reimburse the sponsoring hospitals for Medicare's share of the cost. The sponsoring hospital will have to seek reimbursement from other payers for costs of the demonstration related to non-Medicare patients. Sponsoring teaching hospitals should note that residents participating in the project may be counted as "on-site" or "off-site" personnel for purposes of determining direct medical education costs; however, each resident may be counted only once.

It should be noted that there will be no reimbursements directly to rural hospitals. All reimbursements associated with the demonstration projects will be made to the sponsoring hospital.

**Project Criteria**

Agreements for Rural Health Medical Education Demonstration Projects will be entered into only after proposals for participation are received and a review is conducted by the Department. The following project criteria were established in 1989 after receipt of public comments and will be used in FY 1992.

(1) Only residents from family medicine, osteopathic general practice, primary care internal medicine, or primary care pediatric residency programs will be eligible for participation in the demonstration projects. All residents participating in the project must have completed at least 1 year of resident training.

(2) For the purpose of this demonstration, a small rural hospital is defined as a general hospital of 100 or fewer inpatient beds available for the lodging of patients, excluding newborn beds (except those in intensive care units), skilled nursing beds and beds in any distinct part of the hospital not subject to the Medicare prospective payment system, e.g., psychiatric beds and postoperative beds. The hospital must be located in a county that is not included in either a Metropolitan Statistical Area or a New England County Metropolitan Area as determined by the Office of Management and Budget (OMB). The Department considers hospitals of 100 beds or fewer as offering training opportunities significantly different from experience offered at most hospitals which sponsor graduate medical education. To participate in the demonstration, a rural hospital must maintain its "rural" status throughout the demonstration for Medicare payment purposes.

Hospitals interested in entering into an agreement with the Department should notify HRSA. Materials regarding entry into an agreement will be sent only to those programs and hospitals making a request. Requests for proposal instructions and other questions should be directed to: Glenn Taylor, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–04, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6820.

The proposal instructions have been approved by OMB under the Paperwork Reduction Act. The OMB clearance number is 0915–0145.

To receive consideration to enter into an agreement with the Department to conduct a demonstration project, a project proposal should be received by August 31, 1992. Proposals shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for review. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late proposals not accepted for processing will be returned to the applicant.

This program, Rural Health Medical Education Demonstration Projects, is listed at 93.906 in the *Catalog of Federal Domestic Assistance*. The review of proposals under this demonstration are not subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: April 20, 1992.

**John H. Kelso,**

*Acting Administrator.*

[FR Doc. 92–15540 Filed 7–1–92; 8:45 am]

BILLING CODE 4160–15–M

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## National Institutes of Health

### National Center for Research Resources; Meeting of the Research Centers in Minority Institutions Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Centers in Minority Institutions Review Committee, National Center for Research Resources, National Institutes of Health.

This meeting will be open to the public as listed below for a brief staff presentation on the current status of the Research Centers in Minority Institutions Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications submitted to the Research Centers in Minority Institutions Program. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James J. Doherty, Acting Information Officer, National Center for Research Resources, National Institutes of Health, Westwood Building, room

10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Committee members upon request. Other information pertaining to the meeting can be obtained from the Scientific Review Administrator.

*Name of Committee:* Research Centers in Minority Institutions Program.

*Scientific Review Administrator:* Dr. John Lymangrover, Research Centers in Minority Institutions Review Committee, Office of Review, National Center for Research Resources, National Institutes of Health, 5333 Westbard Avenue, room 10A16, Bethesda, Maryland 20892, Telephone: 301/496–4390.

*Date of Meeting:* July 13–14, 1992.

*Place of Meeting:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 7, Bethesda, MD 20892.

*Open:* July 13, 8:30 a.m.–10:30 a.m.

*Agenda:* Report and review of administrative details.

*Closed:* July 13, 10:30 a.m.—Recess, July 14, 8:30 a.m.—Adjournment.

*Closure Reason:* To review grant applications.

(Catalog of Federal Domestic Assistance Program No. 93.389, Research Centers in Minority Institutions, National Institutes of Health)

Dated: June 23, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92–15636 Filed 7–1–92; 8:45 am]

BILLING CODE 4140–01–M

## National Institutes of Health National Cancer Institute

### Meeting (President's Cancer Panel Special Commission on Breast Cancer)

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, July 8, 1992, at the Doubletree Park West Hotel, 1590 LBJ Freeway, Dallas, Texas 75234.

This meeting will be open to the public on July 8, 1992, 9 a.m. to 11:45 a.m. and from 1:30 p.m. to 5 p.m. Attendance will be limited to space available. Agenda items will include remarks by the Chairman, President's Cancer Panel Special Commission on Breast Cancer, presentations on basic breast cancer research and discussion by the Commission members.

In accordance with provisions set forth in secs. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed from 11:45 a.m. to 1:30 p.m. for discussion of professional merits and qualifications of named individuals in order to select presenters for future meetings, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Resumption of the open meeting will begin at 1:30 p.m. and adjourn at 5 p.m.

Ms. Iris Schneider, Acting Executive Secretary, President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, Building 31, room 11A48, National Institutes of Health, Bethesda, Maryland 20892, (301/496–5534) will provide a roster of the Commission members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: June 22, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92–15635 Filed 7–1–92; 8:45 am]

BILLING CODE 4140–01–M

## National Library of Medicine; Special Meeting of the Biomedical Library Review Committee

Pursuant to Public law 92–463, notice is hereby given of a special meeting of the Biomedical Library Review Committee on July 7, 1992, convening at 9 a.m. in the fifth-floor Conference Room of the National Library of Medicine, Lister Hill Center Building, 8600 Rockville Pike, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to 9:15 a.m. for opening remarks and administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and sec. 10(d) of Public law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications from 9:15 a.m. to approximately 4 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Frances E. Johnson, Scientific Review Administrator, and Program Officer, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health)

Dated: June 22, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92–15634 Filed 7–1–92; 8:45 am]

BILLING CODE 4140–01–M

## Division of Research Grants Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

These meetings will be open to the public to discuss administrative details relating to Special Emphasis Panel business for approximately one half hour at the beginning of each meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the areas of the behavioral and neurosciences. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Divisions of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534, will furnish summaries of the meetings and rosters of panel members. Substantive program information may be obtained from each Scientific Review Administration whose telephone number is provided. Since it is necessary to announce meetings well in advance of the actual meeting, it is suggested that anyone planning to attend contact the Scientific Review Administration to confirm the exact date, time and location.

*Meeting to Review Individual Grant Applications in the Areas of the Behavioral and Neurosciences:*

Scientific Review Administrator: Dr. Teresa Levitin, (301) 496–7025

Date of Meeting: July 2, 1992

Place of Meeting: Embassy Suites Hotel, Washington, DC

Time of Meeting: 9 a.m.

*Meeting to Review Individual Grant Applications in the Areas of the Behavioral and Neurosciences:*
Scientific Review Administrator: Dr. Teresa Levitin, (301) 496–7025
Date of Meeting: July 2, 1992
Place of Meeting: Embassy Suites Hotel, Washington, DC
Time of Meeting: 11 a.m.
*Meeting to Review Small Business Innovation Research Program Applications:*
Scientific Review Administrator: Dr. Teresa Levitin, (301) 496–7025
Date of Meeting: July 14, 1992
Place of Meeting: Embassy Suites Hotel, Washington, DC
Time of Meeting: 9 a.m.
*Meeting to Review Small Business Innovation Research Program Applications:*
Scientific Review Administrator: Dr. Peggy McCardle (301) 496–7640
Date of Meeting: July 24, 1992
Place of Meeting: Holiday Inn, Chevy Chase, MD
Time of Meeting: 8:30 a.m.
*Meeting to Review Small Business Innovation Research Program Applications:*
Scientific Review Administrator: Dr. Anita Sostek (301) 496–8814
Date of Meeting: July 13–14, 1992
Place of Meeting: Embassy Suites Hotel, Washington, DC
Time of Meeting: 9 a.m.
*Meeting to Review Individual Grant Applications in the Areas of the Behavioral and Neurosciences:*
Scientific Review Administrator: Dr. Anita Sostek (301) 496–8814
Date of Meeting: July 20, 1992
Place of Meeting: Westwood Bldg., Room 319C, NIH, Bethesda, MD (Telephone Conference)
Time of Meeting: 1 p.m.
*Meeting to Review Individual Grant Applications in the Areas of the Behavioral and Neurosciences:*
Scientific Review Administrator: Dr. Anita Sostek (301) 496–8814
Date of Meeting: July 21, 1992
Place of Meeting: Westwood Bldg., Room 319C, NIH, Bethesda, MD (Telephone Conference)
Time of Meeting: 1 p.m.
*Meeting to Review Small Business Innovation Research Program Applications:*
Scientific Review Administrator: Dr. Joseph Kimm (301) 496–7494
Date of Meeting: July 21, 1992
Place of Meeting: Embassy Suites Hotel, Chevy Chase, MD
Time of Meeting: 9 a.m.
*Meeting to Review Individual Grant Applications in the Areas of the Behavioral and Neurosciences:*
Scientific Review Administrator: Ms. Carol Cambell (301) 496–7109
Date of Meeting: July 15, 1992
Place of Meeting: Westwood Bldg., Room 306B, NIH, Bethesda, MD (Telephone Conference)
Time of Meeting: 2:30 p.m.
*Meeting to Review Small Business Innovation Research Program Applications:*
Scientific Review Administrator: Dr. Jane Hu (301) 496–7550
Date of Meeting: July 17, 1992
Place of Meeting: Holiday Inn, Chevy Chase, MD
Time of Meeting: 9 a.m.
*Meeting to Review Small Business Innovation Research Program Applications:*
Scientific Review Administrator: Dr. Keith Murray (301) 496–7058
Date of Meeting: July 31, 1992
Place of Meeting: Omni Georgetown Hotel, Washington, DC
Time of Meeting: 9 a.m.
*Meeting to Review Small Business Innovation Research Program Applications:*
Scientific Review Administrator: Dr. Leonard Jakubczak
Date of Meeting: July 27, 1992
Place of Meeting: Marriott Hotel, Pooks Hill, Bethesda, MD
Time of Meeting: 9 a.m.
*Meeting to Review Individual Grant Applications in the Areas of the Behavioral and Neurosciences:*
Scientific Review Administrator: Dr. Leonard Jakubczak
Date of Meeting: July 27, 1992
Place of Meeting: Marriott Hotel, Pooks Hill, Bethesda, MD
Time of Meeting: 1 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93–892, 93.893, National Institutes of Health, HHS)

Dated: June 23, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92–15633 Filed 7–1–92; 8:45 am]

BILLING CODE 4140–01–M

## Social Security Administration

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on June 19, 1992.

(Call Reports Clearance Officer on (410) 965–4149 for copies of package)

1. Request for Change in Time/Place of Disability Hearing—0960–0348. The information on form SSA–769 is used by the Social Security Administration (SSA) to provide claimants with a means to request a change in the time or place of their disability hearings. The respondents are claimants who request that the time or place of their disability hearing be changed.

Number of Respondents: 2,414.
Frequency of Response: 1.
Average Burden Per Response: 8 minutes.
Estimated Annual Burden: 322 hours.

2. Beneficiary Recontact Report—0960–0502. The information on form SSA–1588 is used by SSA to recontact mothers, fathers or children in direct payment to determine if they are still entitled. The respondents are beneficiaries who are in the "high risk" area and are, therefore, most prone to overpayments.

Number of Respondents: 241,260.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 20,105 hours.

3. Domestic Service Questionnaire—0960–0047. The information on form SSA–7155 is used to determine if the domestic services performed by an individual in the home of a son or daughter are covered employment under the Social Security Act. The respondents are sons or daughters who employ claimants for benefits as domestics.

Number of Respondents: 20,000.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 10,000 hours.

4. Application for Supplemental Security Income—0960–0444. The information on form SSA–8001 is used by SSA to make a determination of eligibility for Supplemental Security Income payments (SSI). This form is used when only an abbreviated application is necessary. The respondents are applicants for SSI payments who wish formal non-disability determinations on their applications.

Number of Respondents: 1,090,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 181,667 hours.

*OMB Desk Officer:* Laura Oliven.

Written comments and recommendations regarding these

information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: June 25, 1992.

Judy Hasche,

*Acting Reports Clearance Officer, Social Security Administration.*

[FR Doc. 92-15435 Filed 7-1-92; 8:45 am]

BILLING CODE 4160-29-M

## Privacy Act of 1974; Computer Matching Programs—SSA-DVA

**AGENCY:** Social Security Administration (SSA), Department of Health and Human Services (HHS).

**ACTION:** Publication of notice of computer matching to comply with Public Law (Pub. L.) 100-503, the Computer Matching and Privacy Protection Act of 1988.

**SUMMARY:** We are publishing a notice of the computer matching program that SSA conducts with the Supplemental Security Income Record (SSR) and the Department of Veterans Affairs (DVA) records. This matching program is subject to the requirements of Pub. L. 100-503. The purpose of this publication is to meet the reporting and publication requirements of Pub. L. 100-503.

**DATES:** We filed a report of the subject matching program with the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives and Office of Information and Regulatory Affairs, Office of Management and Budget on June 26, 1992. The matching program is effective as indicated in the notice that appears in this publication below.

**ADDRESSES:** Interested parties may comment on this notice by writing to the Associate Commissioner for Supplemental Security Income, 300 Altmeyer Bldg., 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Associate Commissioner for Supplemental Security Income at the address above.

**SUPPLEMENTARY INFORMATION:**

### A. General

Pub. L. 100-503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of Pub. L. 101-508, The Computer Matching and Privacy Protection Amendments of 1990, further amended the Privacy Act regarding protections for such individuals. The Privacy Act regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, and local government records. The amendments require Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;
(2) Provide notification to applicants and beneficiaries that their records are subject to matching;
(3) Verify match findings before reducing, suspending or terminating an individual's benefits or payments;
(4) Furnish detailed reports to Congress and the Office of Management and Budget; and
(5) Establish a Data Integrity Board (DIB) that must approve match agreements.

### B. SSA Computer Matches Subject to Pub. L. 100-503

We have taken action to ensure that all of SSA's computer matching programs which were being conducted prior to enactment of Pub. L. 100-503 comply with the requirements of the Privacy Act. Included below is a brief description of a match that SSA will be conducting as of July 1, 1992 or later. Also included in this publication is a detailed notice of the match.

SSR/DVA Matching Program

Purpose: To enable SSA to determine eligibility for, and entitlement to Supplemental Security Income (SSI) payments by identifying SSI applicants and recipients who received payments form DVA on the basis of their military service and the amount of those payments.

Dated: June 26, 1992.

Gwendolyn S. King,

*Commissioner of Social Security.*

## Notice of Computer Matching Program, Social Security Administration (SSA), Supplemental Security Income Record (SSR) Matching With Department of Veterans Affairs (DVA) Records

### *A. Participating Agencies*

SSA and DVA.

### *B. Purpose of the Matching Program*

Section 1631(e)(1)(B) of the Social Security Act (the Act) requires SSA to verify the allegations of applicants for and recipients of Supplemental Security Income (SSI) payments before making a determination of eligibility or payment amount. Section 1631(f) of the Act requires Federal agencies to furnish SSA with information necessary to verify SSI eligibility. The purpose of this matching program is to identify SSI applicants and recipients who received DVA-administered benefits and the amount of those benefits. SSA will use the information in determining eligibility for, or amount of, SSI payments.

### *C. Authority for Conducting the Match*

Sections 1631(e)(1)(B) and 1631(f) of the Act (42 U.S.C. 1383(e)(1)(B) and 1383(f)) and 5 U.S.C. 552a(b)(3) and routine uses established thereunder.

### *D. Categories of Records and Individuals Covered by the Match*

SSA will match compensation and pension (C&P) information received from the DVA system of records entitled Compensation, Pension, Education, and Rehabilitation Record (last published April 17, 1991, at 56 FR 15667) with SSA's Supplementary Security Income Record (SSR) (last published on April 9, 1992 at 57 FR 12329-12331). The SSA's SSR contains identifying and payment information about individuals applying for payments under the SSI program established under title XVI of the Act. DVA's C&P data consists of information pertaining to benefits paid by DVA on the basis of an individual's military service.

### *E. Inclusive Dates of the Match*

The matching program will begin 30 days after publication in the FR or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

### *F. Address for Receipt of Public Comments or Inquiries*

Individuals wishing to comment on this matching program should submit comments to the Associate Commissioner for Supplemental Security Income, 300 Altmeyer Bldg., 6401 Security Blvd., Baltimore, MD 21235.

[FR Doc. 92-15620 Filed 7-1-92; 8:45 am]

BILLING CODE 4190-29-M

**Privacy Act of 1974; Computer Matching Programs—SSA-RRB**

**AGENCY:** Social Security Administration (SSA), Department of Health and Human Services (HHS).

**ACTION:** Publication of notice of Computer Matching to comply with Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988.

**SUMMARY:** We are publishing a notice of the computer matching program that SSA proposes to conduct with the Supplemental Security Income Record (SSR) and Railroad Retirement Board (RRB) records. This matching program is subject to the requirements of Pub. L. 100–503. The purpose of this publication is to meet the reporting and publication requirements of Pub. L. 100–503. This proposed matching program has been approved by the HHS Data Integrity Board. We note, however, that the proposed matching program has not been approved by the RRB Data Integrity Board. We expect such approval in the near future.

**DATES:** We filed a report of the subject SSA matching program with the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives and Office of Information and Regulatory Affairs, Office of Management and Budget on June 26, 1992. This matching program is effective as indicated in the notice that appears in this publication below.

**ADDRESSES:** Interested parties may comment on this notice by writing to the Associate Commissioner for Supplemental Security Income, 300 Altmeyer Bldg., 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Associate Commissioner for Supplemental Security Income at the address above.

**SUPPLEMENTARY INFORMATION:**

**A. General**

Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of Pub. L. 101–508, The Computer Matching and Privacy Protection Amendments of 1990, further amended the Privacy Act regarding protections for such individuals. The Privacy Act regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, and local government records. The amendments require Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;
(2) Provide notification to applicants and beneficiaries that their records are subject to matching;
(3) Verify match findings before reducing, suspending or terminating an individual's benefits or payments;
(4) Furnish detailed reports to Congress and the Office of Management and Budget; and
(5) Establish a Data Integrity Board (DIB) that must approve match agreements.

**B. SSA Computer Matches Subject to Pub. L. 100–503**

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act. Included below is a brief description of a match that SSA proposes to conduct as of December 1, 1992 or later. Also included in this publication is a detailed notice of the match.

SSR/RRB Matching Program

Purpose: To enable SSA to determine eligibility for, and entitlement to Supplemental Security Income (SSI) payments.

Dated: June 26, 1992.

**Gwendolyn S. King,**

*Commissioner of Social Security.*

**Notice of Computer Matching Program, Social Security Administration (SSA), Supplemental Security Income Record (SSR) Matching With Railroad Retirement Board (RRB) Records**

*A. Participating agencies*

SSA and RRB

*B. Purpose of the matching program*

Section 1631(e)(1)(B) of the Social Security Act (the Act) requires SSA to verify the allegations of applicants for and recipients of Supplemental Security Income (SSI) payments before making a determination of eligibility or payment amount. Section 1631(f) of the Act requires Federal agencies to furnish SSA with information necessary to verify SSI eligibility. The purpose of this matching program is to identify SSI recipients who receive RRB pension payments. SSA will use the information in determining eligibility for, or amount of, SSI payments.

*C. Authority for conducting the match*

Sections 1631(e)(1)(B) and 1631(f) of the Act (42 U.S.C. 1383(e)(1)(B) and 1383(f)).

*D. Categories of records and individuals covered by the match*

SSA will match identifying and pension annuity information received from RRB's system of records entitled Checkwriting Integrated Computer Operation Benefit Payment Master with the Supplementary Security Income Board (SSR) (last published on April 9, 1992 at 57 FR 12329–12331). The SSA's SSR contains identifying and payment information about individuals applying for payments under the title XVI program.

*E. Inclusive dates of the match*

The matching program shall become effective upon the signature of all the parties to this agreement or 30 days after the agreement has been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter.

*F. Address for receipt of public comments or inquiries*

Individuals wishing to comment on this matching program should submit comments to the Associate Commissioner for Supplemental Security Income, 300 Altmeyer Bldg., 6401 Security Blvd., Baltimore, MD 21235.

[FR Doc. 92–15620 Filed 7–1–92; 8:45 am]

BILLING CODE 4190–29–M

**Privacy Act of 1974; Computer Matching Programs—SSA-OPM**

**AGENCY:** Social Security Administration (SSA), Department of Health and Human Services (HHS).

**ACTION:** Publication of notice of computer matching to comply with Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988.

**SUMMARY:** We are publishing notices of some of the computer matching programs that SSA conducts that are subject to the requirements of Pub. L. 100–503. The purpose of this publication is to meet the reporting and publication requirements of Pub. L. 100–503.

**DATES:** We filed a report of the subject SSA matching programs with the Committee on Governmental Affairs of the Senate and the Committee on

Government Operations of the House of Representatives and Office of Information and Regulatory Affairs, Office of Management and Budget on June 26, 1992. The matching programs are effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Bldg., 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Associate Commissioner for Program and Integrity Reviews at the address above.

**SUPPLEMENTARY INFORMATION:**

**A. General**

Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, and local government records. The amendments require Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;
(2) Provide notification to applicants and beneficiaries that their records are subject to matching;
(3) Verify match findings before reducing, suspending or terminating an individual's benefits or payments;
(4) Furnish detailed reports to Congress and the Office of Management and Budget; and
(5) Establish a Data Integrity Board (DIB) that must approve match agreements.

**B. SSA Computer Matches Subject to Pub. L. 100–503**

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of Pub. L. 100–503. Included below is a brief description of several matches that SSA will be conducting as of July 1, 1992 or later. Also included in this publication are detailed notices of each of the matches.

(1) SSA Matching with Office of Personnel Management (OPM)–MBR/OPM Government Pension Offset
Purpose: To identify auxiliary title II RSDI beneficiaries who also are receiving a Federal Government pension benefit, as a retired civil service employee.
(2) SSA Matching with OPM—MBR/OPM Windfall Elimination Provision
Purpose: To identify title II RSDI beneficiaries who also are receiving a Federal Government pension benefit.
(3) SSA Matching with OMP—SSR/OPM
Purpose: To identify SSI recipients with unreported or underreported unearned income from civil service pensions.
(4) SSA Matching with OPM—MBR/OPM Public Disability Offset
Purpose: To identify individuals who are receiving title II DI benefits who are also receiving a Federal Government pension benefit.

Dated: June 26, 1991.

**Gwendolyn S. King,**

*Commissioner of Social Security.*

**Notice of Computer Matching Program, Social Security Administration (SSA), Master Beneficiary Record (MBR) Matching with Office of Personnel Management (OPM) Records, Government Pension Offset (GPO)**

*A. Participating agencies*

SSA and OPM.

*B. Purpose of the matching program*

Section 202 of the Social Security Act (the Act) requires that SSA reduce the Social Security benefits of certain beneficiaries entitled to Social Security spouses' benefits who are also entitled to a government pension based on their own noncovered earnings. This reduction is referred to as the GPO. SSA will match OPM's civil service and payment data with SSA's record of beneficiaries receiving spouses' benefits to determine those who are subject to the GPO. SSA will match the OPM data to verify information provided by the SSA beneficiary at the time he/she initially applies for Social Security benefits and on a continuing basis to ensure that any reduction in Social Security benefits is based on the current pension amount.

*C. Authority for conducting the matching program*

Section 215 of the Social Security Act (42 U.S.C. 415) and 5 U.S.C. 552a(b)(3) and routine uses established thereunder.

*D. Categories of records and individuals covered by the match*

The SSA records involved in the match are payment records maintained in the Master Beneficiary Record (MBR) system (last published in the **Federal Register** (FR) on April 9, 1992 (57 FR 12322, 12326)). The MBR maintains records about individuals who are claimants for, or beneficiaries of, title II Retirement, Survivors, or Disability Insurance benefits. The OPM records consist of benefit and pension data from its system of records entitled OPM/Central—1 Civil Service Retirement and Insurance Record.

*E. Inclusive dates of the match*

The matching program will begin on July 1, 1992 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

*F. Address for receipt of public comments or inquiries*

Individuals wishing to comment on this matching program should submit comments to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Bldg., 6401 Security Boulevard, Baltimore, Maryland 21235.

**Notice of Compute Matching Program, Social Security Administration (SSA), Master Beneficiary Record (MBR) Matching with Office of Personnel Management (OPM) Records Windfall Elimination Provision (WEP)**

*A. Participating agencies*

SSA and OPM

*B. Purpose of the matching program*

Sections 214(a)(7) and 215(d)(3) of the Social Security Act (the Act) provide for a modified benefit computation to be used for certain beneficiaries who are concurrently entitled to both Social Security benefits and a civil service annuity. The purpose of this match is for SSA to obtain OPM civil service annuity data for matching with SSA records pertaining to disabled and retired beneficiaries to identify those beneficiaries who may be dually entitled. The OPM data is necessary to adjudicate properly Social Security claims affected by the WEP. SSA will use the OPM data to verify the pension or annuity information that has or should have been provided directly to SSA by the retirees/annuitants.

*C. Authority for conducting the matching program*

Section 215 of the Act (42 U.S.C. 415) and 5 U.S.C. 552a(b)(3) and routine uses established thereunder.

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*D. Categories of records and individuals covered by the match*

The SSA records involved in the match are payment records maintained in the Master Beneficiary Record (MBR) system (last published in the FR on April 9, 1992 (57 FR 12322, 12326)). The MBR maintains records about indivdiuals who are claimants for, or beneficiaries of, title II Retirement, survivors, or Disability Insurance benefits. The OPM records consist of benefit and pension data from its system of records entitled OPM/Central—1 Civil Service Retirement and Insurance Record.

*E. Inclusive Dates of the Match*

The matching program will begin on July 1, 1992 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

*F. Address for Receipt of Public Comments or Inquiries*

Individuals wishing to comment on this matching program should submit comments to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Bldg., 6401 Security Boulevard, Baltimore, Maryland 21235.

**Notice of Computer Matching Program, Social Security Administration (SSA), Supplemental Security Income Record (SSR) Matching With Office of Personnel Management (OPM) Records**

*A. Participating Agencies*

SSA and OPM

*B. Purpose of the Matching Program*

Section 1631(e)(1)(B) of the Social Security Act (the Act) requires SSA to verify the allegations of applicants and recipients for Supplemental Security Income (SSI) payments before making a determination of eligibility or payment amount. Section 1631(f) of the Act requires Federal agencies to furnish SSA with information necessary to verify SSI eligibility. The purpose of this match is for SSA to obtain OPM data to verify the accuracy of eligibility factors for the SSI program.

*c. Authority for Conducting the Matching Program*

Section 1631(e)(1)(B) and 1631(f) of the Act (42 U.S.C. 1383(e)(1)(B) and 1383(f)).

*D. Categories of Records and Individuals Covered by the Match*

The SSA records consist of SSI payment records maintained in the Supplemental Security Income Record system (last published in the FR on April 9, 1992 (57 FR 12322, 12329–12331)). The OPM records consist of civil service benefit and payment data maintained in the system of records entitled OPM/Central—1 Civil Service Retirement and Insurance Record.

*E. Inclusive Dates of the Match*

The matching program will begin on July 1, 1992 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

*F. Address for Receipt of Public Comments or Inquiries*

Individuals wishing to comment on this matching program should submit comments to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Bldg., 6401 Security Boulevard, Baltimore, Maryland 21235.

**Notice of Computer Matching Program, Social Security Administration (SSA), Master Beneficiary Record (MBR) Matching with Office of Personnel Management (OPM) Records, Public Disability Offset (PDO)**

*A. Participating Agencies*

SSA and OPM

*B. Purpose of the Matching Program*

Section 224 of the Social Security Act (the Act) provides for the reduction of Social Security disability insurance (DI) benefits when the disabled worker is also entitled to a public disability benefit (PDB). This reduction is referred to as the PDB offset. A civil service disability benefit is considered a PDB. Section 224(h)(1) of the Act requires any Federal agency to provide SSA with information in its possession that SSA may require for the purposes of making a timely determination of the amount of reduction under section 224 of the Act.

This matching program is used to obtain OPM records of civil service disability benefits for matching with SSA DI benefits to identify DI beneficiaries whose benefits should be reduced because the disabled worker is receiving a civil service disability annuity benefit. SSA uses the OPM data to verify information which was or should have been provided by the SSA disabled worker at the time of initially applying for Social Security benefits and on a continuing basis to ensure any reduction in Social Security DI benefits is based on the current civil service disability benefit amount.

*C. Authority for Conducting the Matching Program*

Section 224 of the Act (42 U.S.C. 424a)

*D. Categories of Records and Individuals Covered by the Match*

The SSA records involved in the match are DI payment records maintained in the Master Beneficiary Record (MBR) system (last published in the FR on April 9, 1992 (57 FR 12322, 12326)). The MBR maintains records about individuals who are claimants for, or beneficiaries of, title II Retirement, Survivors, or Disability Insurance benefits. The OPM records consist of disability data from the system of records entitled OPM/Central—1 Civil Service Retirement and Insurance Records about Disability Annuitants.

*E. Inclusive Dates of the Match*

The matching program will begin on July 1, 1992 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

*F. Address for Receipt of Public Comments or Inquiries*

Individuals wishing to comment on this matching program should submit comments to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Bldg., 6401 Security Boulevard, Baltimore, Maryland 21235.

[FR Doc. 92–15622 Filed 7–1–92; 8:45 am]
BILLING CODE 4190–29

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

**[Docket No. N–92–1917; FR–2934–N–65]**

### Federal Property Suitable as Facilities to Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.



**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underrutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**ADDRESSES:** For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*,) acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 501–0067; Dept. of Veterans Affairs: Douglas Shinn, Management Analyst, Dept. of Veterans Affairs, room 414 Lafayette Bldg., 811 Vermont Ave. NW., Washington, DC 20420; (202) 233–8474; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; (These are not toll-free numbers).

Dated: June 25, 1992.

**Randall H. Erben,**

*Acting Assistant Secretary.*

*Suitable/Available Properties*

BUILDINGS (by State)

**California**

Bldg. 13, VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979220001
Status: Underutilized
Comment: Portion of 66,165 sq. ft. bldg., needs major rehab, no util., pres. of asbestos, in historic district, potential to be hazardous due to storage of radioactive material nearby.

**Virginia**

Bldg. 49, Fort Myer
Johnson Lane
Ft. Myer Co: Arlington VA 22211–
Landholding Agency: Army
Property Number: 219220616
Status: Unutilized
Comment: 2-story residence, possible asbestos, off-site use only.

Bldg. 52, Fort Myer
Johnson Lane
Ft. Myer Co: Arlington VA 22211
Landholding Agency: Army
Property Number: 219220617
Status: Unutilized
Comment: 8,210 sq. ft., 2-story BOQ bldg., possible asbestos, needs repair, off-site use only.

LAND (by State)

**Colorado**

Lamar Communications Annex
12 miles south of Lamar on Hwys. 287/385
Lamar Co: Prowers CO 81052–
Landholding Agency: GSA
Property Number: 549220010
Status: Excess
Comment: 3.67 acres fee land/36.20 acres easement, 3 bldgs on property—2,332 sq. ft. communications, 336 sq. ft. generator, 96 sq. ft. storage, concrete block.
GSA Number: 7–D–CO–625.

*Suitable/Unavailable Properties*

BUILDINGS (by State)

**California**

Bldg. 205, VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Numbe: 979220002

Status: Underutilized
Comment: Portion of 50,548 sq. ft. concrete bldg., pres. of asbestos, in historic district, potential to be hazardous due to storage of radioactive material nearby.
Bldg. 256, VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979220003
Status: Underutilized
Comment: Portion of 48,861 sq. ft. concrete bldg., pres. of asbestos, in historic district, potential to be hazardous due to radioactive material nearby.
Bldg. 300, VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979220004
Status: Underutilized
Comment: Portion of 66,214 sq. ft. concrete bldg., needs rehab, presence of asbestos, in historic district.

*Unsuitable Properties*

BUILDINGS (by State)

**Arkansas**

Bldg. 295, S. Guinn Residence
Crabtree Cemetery Road
Hot Springs Co: Garland AR 71901–
Landholding Agency: Interior
Property Number: 619220008
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration.

**California**

Whiskeytown Unit
Route 208, Tower House Area
Whiskeytown Co: Shasta CA 96019–
Landholding Agency: Interior
Property Number: 619220009
Status: Unutilized
Reason: Floodway; Other
Comment: Extensive Deterioration.

**Vermont**

Depot Street
Downtown at the Waterfront
Burlington Co: Chittenden VT 05401–5226
Landholding Agency: DOT
Property Number: 879220003
Status: Excess
Reason: Floodway.

[FR Doc. 92–15346 Filed 7–1–92; 8:45 am]
BILLING CODE 4310-25-M

## DEPARTMENT OF THE INTERIOR

### Meeting of the Take Pride in America Advisory Board

**AGENCY:** Take Pride in America, Office of the Secretary, Department of the Interior.

**ACTION:** Notice of meeting of the Take Pride in America Advisory Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Take Pride in America Advisory Board will be held on July 20th and July 22, 1992 in the Secretary of the Interior's Conference Room #5160, 5th Floor of the United States Department of the Interior's Main Building, 1849 C Street, Washington, DC 20240.

The Take Pride in America Advisory Board will convene on Monday, July 20, 1992. The general business session will convene at 2 p.m. and is planned to conclude at 5 p.m. that day. The general business meeting will be held in Room #5160. Prior to the general business session, three of the Take Pride in America Advisory Board's Subcommittee will hold meeting which will begin at 12 noon and conclude at 1:45 p.m. All Subcommittee meeting will be held in the Main Interior Building. The Education Subcommittee will meet in Room 4219; the Outreach Subcommittee will meet in room 5160; and the National Awards Subcommittee will meet in room 5113.

The Advisory Board will reconvene for the second day of meetings on Wednesday, July 22nd at 9:00 a.m. and will meet in rooms 7000 A and B, of the 7th Floor of the Main Interior Building. The general business meeting will begin at 10:20, that meeting will be held in room 5160, Secretary's Conference Room of the Main Interior Building. All meetings will conclude at 12 noon on July 22nd, 1992.

The fourth official meeting of the Take Pride in America Advisory Board will focus on three main topics: Presentations by officials of the Department of the Interior on the status of the Take Pride in America program; Presentation on the Long-Range Strategy for the Take Pride in America program; and Reports by the Board's four subcommittee chairmen. The Advisory Board has the following subcommittees: Long Range Planning; Outreach; Education; and the National Awards Program. Subcommittee reports will include an update of subcommittee activities.

The general business meetings will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-serve basis. Anyone may file with the Advisory Board a written statement concerning matters to be discussed. The Chairman of the Board will allow for public commentary, but may restrict the length of presentations as necessary to allow the board to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Ms. Mary Ann Gomez, Take Pride in America, U.S. Department of the Interior, room 5129, 1849 C Street, NW., Washington, DC 20240, telephone number is (202) 208–3726.

A copy of the minutes of the meeting will be available for public inspection about eight weeks after the meeting, the in the Take Pride in America Office, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

**Mary Ann Gomez,**
*Advisory Board Coordinator.*

[FR Doc. 92–15516 Filed 7–1–92; 8:45 am]
BILLING CODE 4310-10-M

## Bureau of Land Management

**[CO–920–92–4120–12; COC 0125366]**

### Colorado; Notice of Availability of the Draft Environmental Cost Estimate Document for Coal Preference Right Lease Application C–0125366

**ACTION:** Pursuant to the amended court order in the case of *NRDC* v *Berklund* and the Federal Coal Management regulations at 43 CFR 3430.4–3, the Bureau of Land Management has prepared a draft Cost Estimate Document for coal preference right lease application (PRLA) C–0125366. The draft Cost Estimate Document is now available to the public for a sixty (60) day comment and review period.

**SUMMARY:** A draft Cost Estimate Document (CED) for coal PRLA C–0125366 has been prepared and is now available to the public. The draft CED is an independent cost analysis of the expenses a company would incur in mitigating environmental impacts while permitting, mining and reclaiming the PRLA. The draft CED was prepared by the Bureau of Land Management based on the final showing analysis submitted by the PRLA applicants, R.W. Chapman and P.E. Riebold. The PRLA is located in northwest Rio Blanco County, Colorado and encompasses 640 acres of federal coal; 480 acres is federal surface estate and 160 acres is private surface estate

Persons or organizations wishing to review and comment on the draft CED may obtain a copy from the address listed below. Comments on the draft must be submitted in writing to the State Director (CO–923), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215. In order to be most useful, comments should contain specific reference to the part or portions of the draft which the commentor believes to be in error; a concise statement explaining why the draft CED is incorrect; and, if possible, information or data which the commentor believes to be more accurate and the source of that data. Data which commentors believe to be proprietary should be labelled as such.

**DATES:** Comments must be received in writing within sixty (60) days of the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Copies of the draft CED are available on request by writing Colorado State Office (CO–923), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, or by calling Betsy Daniel at (303) 239–3775.

**SUPPLEMENTARY INFORMATION:** Procedures for processing coal PRLA's were published on July 8, 1987 as a rulemaking revising portions of 43 CFR 3430. The rulemaking was the result of more than three years of negotiations with major environmental groups over the detailed procedures for processing the pending applications. As a result of those negotiations, the regulations were intended to allow full public participation throughout the administrative process and to clarify how the Bureau of Land Management (BLM) would comply with the court order in *Natural Resources Defense Council (NRDC)* v. *Berklund*, 458 F. Supp. 925 (D.D.C. 1978), aff'd 609 F.2d 553 (D.C. Cir. 1979). The requirement for preparation and formal public review of a Cost Estimate Document was one of the clarifications and applies only to pending coal PRLA's.

BLM's cost analysis was prepared in consultation with the staff of the Western Support Center of the Office of Surface Mining, Reclamation, and Enforcement under an Interagency Agreement. The draft CED addresses only the costs of environmental mitigation necessary to develop, mine, and reclaim this PRLA in compliance with existing laws and regulations and specific lease stipulations developed by BLM. It was prepared specifically for public review and comment. Following the close of the public comment period, BLM will incorporate substantive comments into a final Cost Estimate Document. BLM's independent environmental protection cost estimates, as well as all other capital and operating costs associated with exploration, development, mining and reclamation of the PRLA, will form the basis for a final decision regarding whether the applicants have demonstrated that there are commercial quantities of coal on the PRLA which would justify a prudent person in the further expenditure of their labor and means with a reasonable prospect of developing a valuable mine.

Dated: June 25, 1992.

Frank A. Salwerowicz,

*Deputy State Director, Mineral Resources.*

[FR Doc. 92–15570 Filed 7–1–92; 8:45 am]

BILLING CODE 4310–JB–M

## DEPARTMENT OF THE INTERIOR

[WY–040–3110–09–K004]

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Preparation of an Environmental Assessment and Mail Out Scoping Notice.

**SUMMARY:** Notice of Intent to Prepare an Environmental Assessment and Conduct Public Scoping. The action is proposed to prepare an environmental assessment (EA) and conduct mail-out scoping on the exchange of 1,280 acres of State of Wyoming land located in the Honeycomb Buttes Wilderness Study Area (WSA) for 2,566.12 acres of federal land administered by the Bureau of Land Management (BLM) located outside of the WSA. The lands proposed for exchange are in Sweetwater and Fremont Counties, Wyoming.

**DATES:** Scoping packets will be distributed by mail on or about June 30, 1992. Responses and comments will be accepted through July 31, 1992.

**ADDRESSES:** Information and scoping mail-out packets for the proposed exchange and the EA can be obtained by writing or visiting the following office: Bureau of Land Management, Green River Resource Area, 1993 Dewar Drive, Rock Springs, Wyoming 82901. Scoping comments should be sent to the above address.

**FOR FURTHER INFORMATION CONTACT:** Bill LeBarron at telephone number (307)–362–6422.

**SUPPLEMENTARY INFORMATION:** The exchange is proposed to facilitate more effective public land management. The primary management objective for the Honeycomb Buttes Area will be to preserve its wilderness values. The State of Wyoming administers trust lands, including inholdings in proposed wilderness areas, for the support of public schools and other public institutions. Both the State and BLM recognize that commercial development of State inholdings in the Honeycomb Buttes WSA could conflict with a wilderness designation and that a wilderness designation will limit the commercial or economic utility of these inholdings to the State. The following issues and concerns have been identified to date:

*State (Offered) Land*

Wilderness values, Oil and gas, Grazing management, Wildlife habitat, Wetland/riparian areas, Sensitive plant potential, Cultural resources (South Pass Historic Landscape), Recreation, Hazardous wastes.

*Federal (Selected) Land*

Oil and gas, Coal withdrawal, Grazing management, Wetland/riparian areas, Sensitive and threatened/endangered species (plant and animal), Cultural resources, Hazardous wastes.

The public is encouraged to present their ideas and views on these and other issues and concerns. All issues and concerns will be considered in preparing the EA.

Pat Wendt,

*Assistant Area Manager.*

[FR Doc. 92–15567 Filed 7–1–92; 8:45 am]

BILLING CODE 4310–22–M

[UT–060–02–4320–02]

## Moab District Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Moab District, Interior.

**ACTION:** Moab District Grazing Advisory Board Meeting.

**SUMMARY:** Notice is hereby given in accordance with Public Law 92–463 that a meeting of the Moab District Grazing Board will be held on August 20, 1992. The meeting will begin at 10 a.m. in the conference room of the Bureau of Land Management's Moab District Office at 82 East Dogwood, Moab, Utah

The agenda for the meeting will include:

1. BLM 2015.
2. Prioritization of Range Improvement Projects for FY 93 and Funding Overview for Fiscal Year 1993.
3. Update on Comb Wash Administrative Hearing.
4. Update on Book Cliffs Initiative and Management Proposals for the Cisco Allotment.

5. Wildlife Initiatives in the Moab District by Utah Division of Wildlife Resources.

6. Briefing on San Rafael Wild Burro Herd Area Management Plan.

7. Briefing on Interdistrict Agreement for Grazing Management Between Moab District and Grand Junction District.

The meeting is open to the public. Interested persons may make oral statements to the Board between 2 p.m. and 3 p.m. on August 26, 1992 or file written statements for the Board's consideration. Anyone wishing to make an oral statement must submit a written summary of their statement to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532, by August 24, 1992. Written statements submitted for the Boards consideration must be received at the above address on or before August 25, 1992. Summary minutes of the Board meeting will be maintained in the District Office and will be available within thirty (30) days following the meeting.

**Roger Zortman,**

*District Manager.*

[FR Doc. 92-15565 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-DQ-M

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**[AZ-040-02-4990-10]**

**Meeting for the Safford District Advisory Council]**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with Public Law 94-579 and 43 CFR part 1780, that a meeting of the Safford District Advisory Council will be held.

**DATES:** Tuesday, August 4, 1992, 10 a.m.-4 p.m.

**ADDRESSES:** BLM Empire Field Station, seven miles north of Sonoita, Arizona on Highway 83.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include:

1. Introduction of new District Manager and Tucson Resource Area Manager.
2. Election of new Chairperson.
3. Management Updates:
   a. San Pedro Land Acquisitions Coordinated Resource Management.
   b. Gila Box Management Plan.
   c. AZCO Mine EIS.
   d. Resource Management Plan Protest Resolution.
4. Tour of Empire-Cienega Resource Conservation Area.

The meeting will be open to the public. Interested persons may make oral statements to the Council between 1 and 2 p.m., or may file written statements for consideration by the Council. Anyone wishing to make an oral statement must notify the District Manager by Monday, August 3, 1992. Depending upon the number of people wishing to make oral statements, a per person time limit may be considered.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection and reproduction (during business hours) within thirty (30) days following the meeting.

**FOR FURTHER INFORMATION CONTACT:** Diane Drobka, Public Affairs Officer, Safford District, 425 E. 4th St., Safford, AZ 85546. Telephone (602) 428-4040.

Dated: June 24, 1992.

**Frank L. Rowley,**

*Acting District Manager.*

[FR Doc. 92-15586 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-32-M

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**Bureau of Land Management**

**AGENCY:** Bureau of Land Management, DOI.

**ACTION:** Notice of Vernal District Advisory Council Tour.

**SUMMARY:** Notice is hereby given in accordance with CFR 43, subpart 1601, section 6-4, part c, that a meeting of the Vernal District Advisory Council is scheduled for Friday, August 7, 1992. The meeting will be in the form of a one-day tour of selected areas of the Diamond Mountain Resource Area, including areas of public concern as determined during the writing of the Draft Diamond Mountain Resource Management Plan.

The tour will include visits to: Red Mountain, Diamond Mountain, Browns Park, and a float trip on the Green River.

Issues to be discussed at appropriate sites include: off-highway-vehicle travel and other recreation activities, potential relict vegetation conflicts, wildlife/livestock and elk issues, and possible big horn sheep introduction; land tracts being considered for potential disposal as a part of the Book Cliffs ranch acquisitions; the proposed "Willow Creek" route for the Browns Park to Dutch John road. At Browns Park, the Council will view recent recreation improvements and discuss future recreation plans. They will also discuss the cooperative management of the Green River and its proposed designation as "Wild and Scenic".

The tour will commence at the Vernal District Office located at 170 South 500 West, at 8 a.m., and will return in the early evening.

Interested members of the public are welcome to accompany the tour, but would need to furnish their own food and river and road transportation. Those interested in addressing the Advisory Council or submitting a written comment to be read to the Council may do so, but would need to make prior arrangements with District Manager David E. Little, no later than close of business Thursday, August 6.

**FOR FURTHER INFORMATION CONTACT:** David E. Little, Vernal District Manager, phone: (801) 789-1362.

**David E. Little,**

*Vernal District Manager.*

[FR Doc. 92-15568 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-DQ-M

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**[CO-030-7122-09-7426; COC53844]**

**Realty Action Non-Competitive Sale of Lands**

**AGENCY:** Department of the Interior, Bureau of Land Management.

**ACTION:** Designation of public lands located in Montrose County, Colorado as being suitable for disposal out of federal ownership by sale.

**SUMMARY:** The following described public lands have been determined to be suitable for disposal by sale utilizing non-competitive procedures, at not less than fair market value as determined by an appraisal completed by a Federal or independent appraiser using the principals contained in the "Uniform Appraisal Standards for Federal Land Acquisitions". Authority for the sale is Section 203 of Public Law 94-597, the Federal Land Policy and Management Act of 1976.

**New Mexico Principal Meridian, Colorado**

T. 49 N., R. 8W.,
Sec. 33: N½S½SW¼SW¼, NW¼SE¼SW¼.

Containing 20 acres.

The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register.**

This land is being offered as a direct non-competitive sale to Union Bank and Trust, A Colorado Banking Corporation. BLM has determined a direct sale is necessary to protect existing equities in the land and to resolve an inadvertent unauthorized occupancy of said land.

In the event of a sale, the mineral interests shall be conveyed simultaneously with the surface interest. The mineral interests being offered for conveyance have no known mineral value. Upon acceptance of a direct sale offer, the purchaser shall be required to

make application for conveyance of those mineral interests.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication.

The patent, when issued, will contain a reservation for a right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

**FOR FURTHER INFORMATION:** Additional information about this sale is available for review at the Bureau of Land Management, Montrose District Office, 2465 South Townsend, Montrose, Colorado 81401. Comments shall be submitted to the Montrose District Manager. Any adverse comments will be reviewed by the District Manager, who may sustain, vacate, or modify this reality action. In the absence of any adverse comments, This realty action will become the final determination of the Department of the Interior.

Dated: June 25, 1992.

**Alan L. Kesterke,**

*District Manager.*

[FR Doc. 92-15566 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-JB-M

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**[ID-060-02-4212-13; IDI-28747]**

## Resource Management Plans, Cascade Resource Area

**AGENCY:** Bureau of Land Management—Interior.

**ACTION:** Amendment of notice of intent to amend Cascade Resource Management Plan.

**SUMMARY:** In notice of intent published April 22, 1992, in Vol. 57, No. 78, page 14735, Item #1 in the third column is hereby amended by adding the following Public Lands:

**Boise Meridian, Idaho**

T. 11 N., R. 4 E.,
  Sec. 20, S½SE¼;
T. 12 N., R. 4 E.,
  Sec. 27, SE¼SE¼,
  Sec. 28, W½NE¼,
  Sec. 34, NE¼NE¼, S½NE¼, SE¼NW¼, NE¼SW¼, SE¼;

The total area of Public Lands should now read 5,116.81.

**DATES:** Interested parties may submit comments regarding these additional lands to the District Manager at the address given in the previous Notice of Intent described above, for a period of 45 days from the date of publication of this notice.

All other information contained in the previous Notice remains the same.

Dated: June 23, 1992.

**Glen E. Cooper,**

*Acting District Manager.*

[FR Doc. 92-15563 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-GG-M

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**[OR-130-4410-08; GP-2-270]**

## Availability of the Proposed Spokane Resource Management Plan Amendment and Final Environmental Impact Statement

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Pursuant to the National Environmental Policy Act of 1969 (40 CFR 1550.2) and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM), Spokane District has prepared the Proposed Spokane Resource Management Plan Amendment and Final Environmental Impact Statement (PRMPA/FEIS). This document is expected to be available to the public for a thirty (30) day protest period on July 17, 1992.

**SUMMARY:** A proposed resource management plan amendment and final environmental impact statement for the Spokane District has been prepared and is now available to the public. This plan will partially replace and supersede the existing land use plan and other related documents for managing BLM-administered lands and mineral resources for the next 10–15 years.

The Bureau of Land Management (BLM) administers 328,000 acres in its Spokane District in eastern Washington which is considered the planning area.

The planning area in this RMP amendment also includes more than 1.15 million acres of Federal mineral estate scattered throughout all counties in Washington State east of the Cascades, lands on which the BLM has oil and gas and/or other mineral leasing authority. These lands include those administered by the BLM, the U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, U.S. Department of Energy, and U.S. Department of Army.

Persons or organizations who participated in this process and believe that approval of the resource management plan would be in error, may protest. Protests must be in writing and should be sent by certified mail, return receipt requested to the Director (760), Bureau of Land Management, 1849 "C" Street NW., Washington, DC 20240. At a minimum, the protest must contain the following:

1. The name, mailing address, telephone number, and interest of the person filing the protest.

2. A statement of the issue or issues being protested.

3. A statement of the part or parts of the Spokane Resource Management Plan Amendment/Final Environmental Impact Statement being protested. To the extent possible, this should be done in reference to specific pages, paragraphs, sections, tables, maps, etc., included in the document.

4. A copy of all documents addressing the issues that you submitted during the process or a reference to the date the issue or issues were discussed by you for the record. Only those persons or organizations who participated in this planning process leading to the RMPA may protest.

5. A concise statement explaining why the Oregon/Washington State Director's decision is believed to be incorrect. As much as possible, reference or cite the planning documents, environmental analysis documents, available planning records (e.g., meeting minutes, correspondence, etc.). A protest that only expresses disagreement with the Oregon/Washington State Director's proposed decision without any supporting data will not be considered.

**DATES:** Protests must be received in writing within thirty (30) days of the date the Environmental Protection Agency publishes the notice of receipt of this final impact statement in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Copies of the PRMPA/FEIS are available upon request by writing to: District Manager, Spokane District, East 4217 Main Avenue, Spokane, Washington 99202 (509) 353–2570; or Area Manager, Wenatchee Resource Area Office, 1133 North Western Avenue, Wenatchee, Washington 98801 (509) 662–4223.

**SUPPLEMENTARY INFORMATION:** The two alternatives of this plan amendment address the leasing of all the Federal Mineral Estate in Eastern Washington except for land administered by the U.S. Forest Service and Indian Lands. Other resource programs addressed in this plan include revisions to the off-road vehicle designations, and special management areas including Areas of Critical Environmental Concern (ACEC). Some administrative changes have also been covered in this plan amendment along with a restatement of the Spokane District's Land Tenure Adjustment Policy.

The two alternatives consist of (1) the Existing Plan, and (2) the Amended Plan.

*Alternative 1 (Existing Plan):* This alternative consists of continued implementation of the RMP without allowing for adjustments in land management decisions (i.e., ORV designations and additional ACEC proposals) based on new information or policy changes. Reconfiguration of management areas is included in this alternative.

Oil and Gas Leasing and Development—This is potentially the least restrictive leasing program the BLM would legally be permitted to implement. Approximately 1.11 million acres of public land and subsurface mineral estate would be open to leasing subject to Standard Leasing Terms and Conditions. Areas of Critical Environmental Concern (ACEC)—The 12 currently designated ACECs would continue to be managed to preclude land uses that could potentially damage special resource values. No new ACECs would be nominated for designation.

Off Road Vehicle (ORV) Designations—ORV designations would remain as described in the 1987 RMP Spokane District Record of Decision. All 21,000 acres of land acquired since completion of the RMP would remain open to ORV use.

*Alternative 2 (Amended Plan):* This alternative addresses BLM's revised guidelines for fluid mineral leasing and development, and also new prescriptions (i.e., ORV designations and additional ACEC nominations) derived from recommendations of BLM staff and the general public.

Oil and Gas Leasing and Development—Oil and gas resources would be leased with Standard Terms and Conditions as well as additional leasing stipulations to protect other resources and values. The new stipulations are derived from two sources: The existing stipulations and stipulations developed during this plan amendment process. The RMP includes mineral resources of lands managed by other Federal surface management agencies. Therefore, any leasing recommendations made by BLM must take into consideration the missions of these agencies, their policies and restrictions on oil and gas activities, existing withdrawals, and limits imposed by regulations and Congress.

Areas of Critical Environmental Concern—Under this alternative five areas (6,350 acres of public land) would be proposed for ACEC designation: Coal Creek, Cowiche Canyon, Little Vulcan Mountain, Yakima River Canyon and Keystone Point.

Coal Creek (710 acres) T. 22 N., R. 35 E., Sections 29, 30, 31, & 32; T. 22 N., R. 34 E., Section 36; to provide protection for Federal candidate plant species, important riparian habitat and cultural values.

Cowiche Canyon (480 acres) T. 13 N., R. 17 E., Sections 12 and 14; T. 13 N., R. 18 E., Section 18; to provide protection for Federal candidate plant species and recreation values.

Little Vulcan Mountain (600 acres) T. 39 N., R. 32 E., Sections 1 and 12; to provide protection for crucial bighorn sheep habitat/lambing ground.

Yakima River Canyon (5,700 acres) T. 17 N., R. 18, Section 26; T. 16 N., R. 18, Section 2; T. 16 N., R. 19 E., Sections 6, 8, 18, 20, & 28; T. 15 N., R. 19 E., Sections 4, 8, 10, 14, 15, 23, 26, 32, 33, 35, & 36; T. 14 N., R. 19 E., Section 4; to provide protection for Federal candidate plant and animal species, important wildlife habitat, recreation and cultural values.

Keystone Point (360 acres) T. 25 N., R. 21 E., Section 30; to provide protection for Federal candidate plan species habitat.

Two existing ACEC designations, Webber Canyon and Roosevelt Slope, would be revoked or rescinded. Webber Canyon ACEC designation would be revoked because evaluations subsequent to its designation by both contact paleontologists and district resource specialists, indicated that there were no significant paleontological resource values at this site, and that returning this area to multiple use would not result in any deterioration of the values that are present. Roosevelt Slope ACEC was designated because it contained habitat for a Bureau sensitive species Astragalus misellus v. pauper. The ACEC designation is being rescinded because subsequent inventories revealed that this species is more common that initially believed, and because there are no existing or proposed land uses that would jeopardize its habitat.

Off Road Vehicle Designations—Most of the ORV designations made in the 1987 Spokane RMP Record of Decision would not be changed. Only those areas where new information indicates that additional restrictions are necessary to protect resource values, would limitations be proposed. The specific changes being proposed are as follows: In the Yakima River Canyon and Upper Crab Creek Management Areas, ORVs are limited to designated roads and trails (23,000 acres); in the Okanogan Management Area North of the Similkameen River, ORVs would be limited to designated roads and trails on another 4,200 acres.

Dated June 25, 1992.

**Joseph K. Buesing,**

*District Manager.*

[FR Doc. 92-15584 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-33-M

[CA-940-92-4730-12]

## Filing of Plats of Survey; CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

**EFFECTIVE DATES:** Filing was effective at 10 a.m. on the date of submission to the Bureau of Land Management (BLM), California State Office, Public Room.

**FOR FURTHER INFORMATION CONTACT:** Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room E-2845, Sacramento, CA 95825, 916-978-4775.

**SUPPLEMENTARY INFORMATION:** The plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

**Humboldt Meridian, California**

T. 4 S., R. 5 E.,—Dependent resurvey, and subdivision of section 15, (Group 936) accepted April 7, 1992, to meet certain administrative needs of the BLM, Ukiah District, Arcata Resource Area.

**Mount Diablo Meridian, California**

T. 15 S., R. 27 E.,—Dependent resurvey of a portion of the north and west boundaries and a portion of the subdivisional lines, and the subdivision of section 6, (Group 1094) accepted April 16, 1992, to meet certain administrative needs of the Bureau of Indian Affairs.

**San Bernardino Meridian, California**

T. 3 S., R. 14 E.,—Dependent resurvey and survey (Sections 19, 20, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 totaling 6,107.89 acres), (Group 1099) accepted April 8, 1992, to meet certain administrative needs of the BLM, California Desert District, Palm Springs-South Coast Resource Area.

T. 3 S., R. 15 E.,—Dependent resurvey, and metes-and-bounds survey, (Group 1099) accepted April 8, 1992, to meet certain administrative needs of the BLM, California Desert District, Palm Springs-South Coast Resource Area.

T. 4 S., R. 14 E.,—Dependent resurvey, survey, and metes-and-bounds survey (Sections 11 and 12 totaling 1,319.74 acres), (Group 1099) accepted April 8, 1992, to meet certain administrative needs of the BLM, California Desert District, Palm Springs-South Coast Resource Area.

T. 4 S., R. 15 E.,—Dependent resurvey, and metes-and-bounds survey, (Group 1099) accepted April 8, 1992, to meet certain administrative needs of the BLM, California Desert District, Palm Springs-South Coast Resource Area.

All of the above listed surveys are now the basic record for describing the lands for all authorized purposes. The surveys will be placed in the open files in the BLM, California State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fee.

Dated: June 23, 1992.

**Clifford A. Robinson,**

*Chief, Branch of Cadastral Survey.*

[FR Doc. 92-15489 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-40-M

**[ES-962-4950-13; ES-045425, Group 8, Tennessee]**

### Filing of Plat of the Great Smoky Mountains National Park

The plat of the retracement of a portion of Tract No. 816, of the boundary of the Great Smoky Mountains National Park in District No. 11, Sevier County, in the State of Tennessee, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on August 20, 1992.

The survey was made upon request submitted by the United States Park Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., August 20, 1992.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $1.75 per copy.

Dated: June 24, 1992.

**Denise P. Meridith,**

*State Director.*

[FR Doc. 92-15571 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-GJ-M

**[ES-962-4950-13; ES-045426, Group 8, Tennessee]**

### Filing of Plat of the Great Smoky Mountains National Park

The plat of the retracement and monumentation of portions of Tracts 471, 474 and 496, of the boundary of the Great Smoky Mountains National Park in District No. 11, Sevier County, in the State of Tennessee, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on August 20, 1992.

The survey was made upon request submitted by the United States Park Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., August 20, 1992.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $1.75 per copy.

Dated: June 24, 1992.

**Denise P. Meridith,**

*State Director.*

[FR Doc. 92-15587 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-GJ-M

## Fish and Wildlife Service

### Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-769005

*Applicant:* George Carden Circus, Int'l Springfield, MO.

The applicant requests a permit to purchase one captive-born male Asian elephant (*Elephas maximus*) in interstate commerce from Cheryl Shawver, Thousand Oaks, California, for the purpose of enhancement of the propagation or survival of the species through education and breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281)

Dated: June 26, 1992.

**Susan Jacobsen,**

*Acting Chief, Branch of Permits Office of Management Authority.*

[FR Doc. 92-15524 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-55-M

### Availability of Draft Recovery Plan for Gila Trout for Review or Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revised recovery plan for the Gila trout (*Oncorhyncus gilae*). The species occurs in small headwater streams on land administered by the U.S. Forest Service as part of the Gila National Forest, New Mexico. A small isolated population also occurs in Gap Creek, Prescott National Forest, Arizona. The Service solicits review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before August 31, 1992 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may examine a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Office, 3530 Pan American Highway NE, Suite D, Albuquerque, New Mexico 87107, telephone (505) 883-7877. Written comments and materials regarding the plan should be addressed to the Field Supervisor. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Gerald L. Burton, U.S. Fish and Wildlife Service, New Mexico Ecological Services Office, 3530 Pan American Highway NE, Suite D, Albuquerque, New Mexico 87107, or telephone (505) 883-7877.

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring an endangered or threatened animal or plant to the point where it is a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site-specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for

implementing needed recovery measures.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Gila trout was listed as endangered on March 11, 1967. This draft recovery plan supersedes the revised recovery plan drafted for the species in 1984. It includes new scientific information about the species gathered since 1984 and provides management procedures for protecting its habitat and expanding its range and abundance to the extent that natural or man-caused disturbance will result in irrevocable losses.

**Public Comments Solicited**

The Service solicits written comments on the described draft recovery plan. All comments received by the time specified above will be considered prior to the approval of the plan.

**Authority:** The Authority for this action is section 4(f) of the Endangered Species Act 16, U.S.C. 1533 (f).

Dated: June 22, 1992.

**James A. Young,**

*Acting Regional Director.*

[FR Doc. 92-15525 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-55-M

## Availability of Draft Recovery Plan for Sonora Chub for Review or Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Sonora chub (*Gila ditaenia*). This fish occurs in the United States in Sycamore Creek, Santa Cruz County, in southwestern Arizona near the international border and in adjacent Sonora, Mexico. The Service solicits review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before August 31, 1992 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3616 West Thomas, Suite 6, Phoenix, Arizona 85019. Written comments and materials regarding the plans should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Debra Bills, Fish and Wildlife Service Biologist; Telephone 602/379-4720 (see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

**Background**

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Sonora chub is a threatened species and all of the existing populations are threatened. This fish inhabits intermittent streams in southwestern Arizona and Sonora, Mexico. Major threats include nonnative fishes and habitat degradation. Channel degradation, siltation, and water pollution caused primarily by the livestock grazing, roads, and mining have also affected the habitat of the Sonora chub.

The Sonora chub draft recovery plan has been extensively reviewed. The plan will be issued as final following incorporation of comments and material received during this comment period.

**Public Comments Solicited**

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

**Authority:** The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 22, 1992.

**James A. Young,**

*Acting Regional Director.*

[FR Doc. 92-15526 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-55-M

## Availability of a Draft Environmental Impact Statement (EIS) on the proposed South Tongue Point Land Exchange and Marine Industrial Park Development Project

**AGENCIES:** U.S. Fish and Wildlife Service (lead agency); U.S. General Services Administration, U.S. Army Corps of Engineers, and Oregon Division of State Lands (cooperating agencies).

**ACTION:** Notice of availability and public meeting.

**SUMMARY:** This notice advises the public that the draft Environmental Impact Statement on the proposed South Tongue Point Land Exchange and Marine Industrial Park Development Project is available for public review. Comments are requested, and a public meeting will be held.

**DATES:** Written comments are requested by September 1, 1992. An "Open House" public meeting will be conducted at the Astoria Public Library, 450 10th Street, Astoria, Oregon, on August 12, 1992, from 5 p.m. to 8 p.m. Agency representatives will be available to answer questions and receive either written or oral comments concerning the draft EIS.

**ADDRESS WRITTEN COMMENTS TO:** Benjamin Harrison, South Tongue Point EIS Team Leader, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, Oregon 97232-4181.

**FOR FURTHER INFORMATION CONTACT:** David Blum, South Tongue Point Project

Coordinator, Oregon Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310.

Individuals wishing copies of this draft EIS for review should immediately contact the U.S. Fish and Wildlife Service (Service) Portland Regional Office. Copies of the draft EIS have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

In 1979, the U.S. Government declared the property known as South Tongue Point near Astoria, Oregon, to be excess to the Federal inventory. In 1981, the State of Oregon contacted the Federal Government regarding a possible exchange of property involving South Tongue Point and State-owned islands in the Columbia River.

In May 1989, the U.S. Navy contacted the Oregon Division of State Lands in regard to the possibility of homeporting mine hunter coastal vessels at South Tongue Point. At the time, the Division was studying the feasibility of acquiring South Tongue Point and developing the site as a marine industrial park in conjunction with the Federal Government's proposal to exchange property with the State of Oregon. The Navy's interest led to the development of a master plan for the marine industrial park at South Tongue Point, with the Navy as the first proposed tenant.

The General Services Administration is proposing to convey approximately 105 acres of land at South Tongue Point near Astoria, Oregon (Section 12, T.8N., R.9W), administered by the U.S. Army Corps of Engineers to the State of Oregon. In exchange for the Federal land, the State is proposing to convey nearby State-owned land of equal appraised value, within the administrative boundary of Lewis and Clark National Wildlife Refuge (Refuge), to the General Services Administration who will in turn transfer those lands to the U.S. Fish and Wildlife Service.

The State is proposing to develop a multitenant shallow draft marine industrial park and moorage facility for the U.S. Navy on the property conveyed to them. Development plans include a 7-acre site to homeport two mine hunter coastal vessels and a variety of water-dependent and general industrial uses. Water-dependent uses would have water access by means of pile-supported piers. General industrial uses would be located in upland areas without water access.

This development activity is intended to create real property assets and associated income for the Common School Fund of the State of Oregon, encourage new industrial employment within the area, and contribute to the economic stability and employment diversification of Clatsop County and the State of Oregon. Under the proposed action, the U.S. Fish and Wildlife Service would gain fee title to lands within the administrative boundary of the Refuge. This would provide the Service with the needed management flexibility to control future expected incompatible uses and enhance wildlife populations and their habitats.

**B. Development of the Draft EIS**

This draft EIS has been developed cooperatively by the U.S. Fish and Wildlife Service, Pacific Division (lead agency); U.S. Army Corps of Engineers, Portland District; U.S. General Services Administration, San Francisco Office; and Oregon Division of State Lands.

In the development of this draft EIS, the U.S. Fish and Wildlife Service has initiated action to assure compliance with the purpose and intent of the National Environmental Policy Act of 1969, as amended. Scoping activities were undertaken preparatory to developing the EIS with a variety of federal, State, and local entities. A notice of intent to prepare the EIS was published in the **Federal Register** on November 4, 1991.

Key issues addressed in this draft EIS are identified as the effects that implementation of various alternatives would have upon (1) threatened and endangered species and their habitats, (2) other wildlife and their habitats, (3) physical environmental factors, and (4) local and regional economy.

**C. Alternatives Analyzed in the Draft EIS**

More than 20 alternatives were considered before limiting the alternatives to be advanced for further study. Alternatives considered but not advanced for detailed analysis included alternative development concepts, alternative sites, and single versus multitenant developments. Alternatives advanced for detailed analysis include (A) the proposed land exchange and development of a multitenant marine industrial development, (B) the proposed land exchange and multitenant marine industrial development with connecting road to North Tongue Point, and (c) a No Action Alternative. Alternative A is the Service's preferred alternative.

Implementation of Alternatives A and B would result in a beneficial situation in terms of meeting the project objectives. Both alternatives would result in some detrimental environmental affects, for the most part, to biological factors. Alternative B would result in greater impacts on biological factors than Alternative A. Impacts under Alternative A can be mitigated to a degree of less than significant whereas impacts under Alternative B cannot be mitigated to a degree of less than significant. Alternative C would not have any impact on biological factors but would not meet the project objectives and would not have the beneficial economic impacts of either Alternative A or B.

Dated: June 17, 1992.

**Marvin L. Plenert,**

*Regional Director.*

[FR Doc. 92-15281 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-55-M

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## National Park Service

### Underground Railroad Advisory Committee

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Underground Railroad Advisory Committee, notice of nominations solicitation.

**SUMMARY:** The Underground Railroad Advisory Committee was established by Public Law 101-628, November 28, 1990. The purpose of the Committee is to advise the Secretary of the Interior on matters relating to the study of the Underground Railroad, its routes and operations in order to preserve and interpret this aspect of American history.

**DATES:** All nominations should be received within 30 days from the date of publication of this notice.

**ADDRESSES:** Nominations should be sent to the Secretary, U.S. Department of the Interior, 1840 C Street, NW, Washington, D.C. 20240.

Nominations should identify the membership category or area of expertise and include a biographical outline with home and business addresses and telephone numbers and professional data as it relates to the proposed membership category.

**FOR FURTHER INFORMATION CONTACT:** Warren Brown, Park Planning and Protection Division, National Park Service, (202) 208-4285 or James Charleton, History Division, National Park Service, (202) 343-3793. A copy of the charter for this Committee is available upon request.

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**SUPPLEMENTARY INFORMATION:** The Committee is to be composed of nine members appointed by the Secretary of the Interior including three with expertise in African American History, two with expertise in historic preservation, one with expertise in American History, and three from the general public. Members of the Committee serve without compensation, but may be reimbursed for expenses incurred in carrying out their responsibilities. Through this notice, the Secretary, U.S. Department of the Interior is soliciting nominations from interested organizations or individuals for any of the above membership categories.

Dated: June 19, 1992.

**Manuel Lujan Jr.,**

*Secretary of the Interior.*

[FR Doc. 92-15503 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-70-M

## Burro Management Plan; Lake Mead National Recreation Area; Intent To prepare an Environmental Impact Statement

**SUMMARY:** The National Park Service will prepare a Burro Management Plan/Environmental Impact Statement (BMP/EIS) for Lake Mead National Recreation Area, Arizona and Nevada, and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22 of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91-150. The BMP/EIS will describe and analyze alternative prescriptions for effective burro management within the recreation area.

Issues to be addressed in the BMP/EIS include, but are not limited to: (1) Burro management; (2) Impacts of burros to park resources and resource programs; (3) public safety; and (4) prevention of range expansion. Alternatives, including a no-action alternative, to address these issues will be developed through the public participation process. Additionally, the EIS process will provide a comprehensive analysis of impacts associated with burro management for each alternative developed.

**SUPPLEMENTARY INFORMATION:** Any one wishing to participate in or comment on this planning process should write the Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, NV 89005, telephone (702) 293-8946.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. Public involvement to begin formulating the BMP/EIS issues and alternatives is expected to commence in fall 1992. This will consist of a series of meetings for which advance notice will be provided. The draft BMP/EIS is expected to be available for public review in spring 1993, and the final plan, environmental statement and record of decision are to be completed about a year later.

Dated: June 13, 1992.

**Lewis S. Albert,**

*Acting, Regional Director, Western Region.*

[FR Doc. 92-15499 Filed 7-01-92; 8:45 am]

BILLING CODE 4310-70-M

## Blue Ridge Parkway; Prescription of Insignia

I hereby prescribe the "Grover Groundhog" symbol which is depicted below as well as the name "Grover Groundhog" as an official insignia and official mascot name of the Blue Ridge Parkway, a unit of the National Park System, United States Department of the Interior.

In making this prescription, I give notice that, under section 701 of Title 18 of the United States Code, whoever manufactures, sells, or possesses any badge, identification card, or other insignia of the design herein prescribed, or any colorable imitation thereof, or photographs, prints or in any other manner makes or executes any engraving, photograph, prints, or impression in the likeness of any such badge, identification card, or other insignia or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined not more than $250 or imprisoned not more than six months, or both.

Notice is given that in order to prevent proliferation of the distinctive Grover Groundhog Insignia and to assure against its use for purposes other than to identify environmental education, ecological awareness, anti-litter campaigns, and other nature oriented efforts and purposes which, in the determination of the National Park Service, are consistent with the purpose for which the parkway was established, the National Park Service will proceed to secure trademark registration under section 1115 of Title 15 of the United States Code for the Grover Groundhog Insignia.

Dated: June 19, 1992.

**C.W. Ogle,**

*Acting Regional Director Southeast Region.*

[FR Doc. 92-15502 Filed 7-1-92; 8:45 am]

BILLING CODE 4310-70-M

## Civil War Sites Advisory Commission; Meetings

**AGENCY:** National Park Service. Department of the Interior.

**ACTION:** Notice of meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on July 18, 1992, and July 20, 1992, at the Fayetteville Hilton, 70 North East Street, Fayetteville, Arkansas, 72701 (501/442-5555).

The July 18, 1992, session (Saturday) will begin at 2 p.m. and conclude not later than 4:30 p.m. The July 20, 1992, session (Monday) will begin at 9 a.m. and conclude not later than 12:30 p.m.

These sessions constitute the eighth meeting of the Commission. The primary focus of the meeting will be on the subject of preserving and protecting Civil War sites. The Commission will welcome input from the public on the subject, especially as it relates to Civil War sites in Arkansas and surrounding states.

Space and facilities to accommodate members of the public may be limited and persons will be accommodated on a first-come, first-served basis. Anyone may file a written statement with the Commission concerning matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements, may contact

Ms. Jan Townsend, Interagency Resources Division, P.O. Box 37127, Washington, D.C. 20013–7127 (telephone 202–343–3936). Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in room 6111, 1100 L Street, NW., Washington, DC.

Dated: June 18, 1992.

**Carol D. Shull,**

*Acting Executive Director and Chief, Interagency Resources Division.*

[FR Doc. 92–15500 Filed 7–1–92; 8:45 am]

BILLING CODE 4310–70–M

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**Weir Farm National Historic Site Ridgefield/Wilton, CT; General Management Plan Intent To Prepare an Environmental Impact Statement and Notice of Public Scoping Meeting**

In accordance with section 102(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) for the General Management Plan (GMP) for Weir Farm National Historic Site, Fairfield County, Ridgefield/Wilton, Connecticut. The GMP/EIS will provide general management direction for the historic site's natural and cultural resources as well as alternatives addressing visitor use and services, treatment of the cultural landscape, maintenance of the historic structures, interpretation and any appropriate boundary adjustments. A no-action alternative will also be presented in the GMP/EIS.

The NPS will hold a public meeting on July 15, 1992, at the Wilton Library, Wilton, Connecticut, beginning at 7 p.m. The purpose of this meeting is to solicit from the public both written and verbal comments concerning possible environmental impact topics for consideration in preparation of the EIS. The NPS has tentatively identified several potential topics including wetlands, the park's relationship to adjacent lands and cultural resources.

Written comments and suggestions concerning impact topics for the EIS must be submitted to the National Park Service by August 15, 1992. A scoping document will be prepared shortly after the close of the scoping period. A draft EIS is expected to be available for public review in the summer of 1993, with the final EIS scheduled for September 1994.

The responsible official for the EIS is Marie Rust, Acting Regional Director, North Atlantic Region, National Park Service. Written comments and requests for information should be directed to Sarah Olson, Superintendent, Weir Farm National Historic Site, 735 Nod Hill Road, Wilton, Connecticut, 06897; (203) 834–1896.

Dated: June 19, 1992.

**Marie Rust,**

*Acting Regional Director.*

[FR Doc. 92–15501 Filed 7–1–92; 8:45 am]

BILLING CODE 4310–70–M

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## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–1 (Sub-No. 235X)]**

**Chicago and North Western Transportation Co.—Abandonment Exemption—In Milwaukee County, WI**

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 1.2-mile line of railroad between milepost 2.54, near Lincoln Avenue, and milepost 1.54, near Washington Street, in the City of Milwaukee, Milwaukee County, WI.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 1, 1992, (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 13, 1992.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed July 22, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: Robert T. Opal, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606–1551.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment 9SEE) will prepare an environmental assessment (EA). SEE will issue the EA by July 13, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 24, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92–15602 Filed 7–1–92; 8:45 am]

BILLING CODE 7035–01–M

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**[Docket No. AB–43 (Sub-No. 164X)]**

**Illinois Central Railroad Co.—Abandonment Exemption—In St. Tammany Parish, LA**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Exemption.

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Illinois Central Railroad Company of a 29.14–mile line of railroad between Milepost NA 38.25 at Colt, LA and Milepost NA 67.39 at Covington, LA, in St. Tammany Parish, LA, subject to employee protective, historic preservation, salvage, and public use conditions.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 3, 1992. Formal expression of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by July 13 1992, petitions to stay must be filed by July 13, 1992, and petitions for reconsideration must be filed by July 22, 1992.

**ADDRESSES:** Send pleadings, referring to Docket No. AB–43 (Sub-No. 154X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and

(2) Petitioner's representative: William C. Sippel, Oppenheimer Wolff & Donnelly, Two Illinois Center, 233 North Michigan Avenue, suite 2400, Chicago, IL 60601.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Felder, (202) 927–5610. (Assistance for the hearing impaired is available through TDD Services (202) 927–5721.)

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Decided: June 17, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Vice Chairman McDonald and Commissioner Simmons dissented with separate expressions.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92–15603 Filed 7–1–92; 8:45 am]

BILLING CODE 7035–01–M

[1] See Exemp. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

**[Finance Docket No. 32061]**

## Union Pacific Railroad Co. and Burlington Northern Railroad Co.—Joint Relocation Project Exemption

Union Pacific Railroad Company (UP) and Burlington Northern Railroad Company (BN), on June 3, 1992, jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad between Dover and Sandpoint, ID. UP and BN currently operate over trackage in the area of Sandpoint. The tracks of the two carriers at Dover are parallel but they separate at a point just west of Sandpoint. From the split at that point, BN's line traverses to the west of Sandpoint while UP's line traverses through Sandpoint. The City of Sandpoint has requested UP to relocate away from the City's populous and business centers to BN's tracks, resulting in UP and BN entering into this joint project.

The joint project involves (1) the acquisition of trackage rights by UP over BN's line between BN milepost 1406.3 near Dover and BN milepost 1402.2 plus 6,000 feet near Sandpoint, a distance of approximately 5.2 miles; (2) the construction by UP of connector tracks from Dover to BN milepost 1406.3 and at Sandpoint at the end of BN's 6,000 feet; and (3) the abandonment of certain segments of UP's existing line from milepost 71.45 near Dover to milepost 75.00 near Sandpoint and from milepost 75.21 to milepost 75.44, a distance of approximately 3.78 miles.

The basic relocation project at issue here was previously exempted in Finance Docket No. 30851, Spokane International Railroad Company and Burlington Northern Railroad Company—Joint Project for Relocation of a Line of Railroad (not printed), served July 25, 1986, and Finance Docket No. 30851 (Sub-No. 1), Spokane International Railroad Company—Construction and Operation Exemption—Sandpoint, ID (not printed), served November 3, 1986. However, the project was never consummated because environmental constraints precluded an economical implementation of the track alignments and trackage connection of the original project. The parties have modified the original agreement and entered into a supplemental agreement which provides for new alignments, refurbishment of existing trackage, trackage to provide for car storage for BN, and freight car interchange between BN and UP.[1]

The shippers of UP will continue to be served without any disruption of service. There will be no expansion into new territory; nor will there be a change in the existing competitive situation.

The joint relocation project will result in the removal of trains from the populous and business areas of Sandpoint, and provide for a more efficient and effective utilization of railroad equipment and resources. The transaction was to have been consummated on or after June 10, 1992.

The Commission will exercise jurisdiction over the abandonment and/or construction component of a relocation project only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN, 4 I.C.C.2d 95 (1987). Under these standards, the abandonment and construction of track under consideration here are not subject to the Commission's jurisdiction. The Commission has determined that line relocations embrace trackage rights transactions such as the one proposed here. See D.T. & I.R.—Trackage Rights, 363 I.C.C. 878 (1981).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980), and as clarified in Wilmington Term. R.R., Inc.—Pur. & Lease—CSX Transp. Inc., 6 I.C.C. 2d 799 (1990), *aff'd sub nom. Railway Labor Executives Ass'n* v. *ICC*, 930 F.2d 511 (6th Cir. 1991).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served upon: Joseph D. Anthofer and Jeanna L. Regier, 1416 Dodge Street, room 830, Omaha, NE 68179.

Dated: June 25, 1992.

[1] UP also requests that, as advised by Commission personnel, Finance Docket No. 30851 and Finance Docket No. 30851 (Sub-No. 1) be "deleted". While the filing of the notice in the Finance Docket No. 32061 proceeding was proper since the content of the joint relocation has changed, it is not necessary to delete the earlier proceedings. The exemptions are permissive only and the parties are under no obligation to consummate them.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 92-15601 Filed 7-1-92; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 17, 1992, a proposed consent decree in *United States* v. *Cannons Engineering Corporation, et al.*, Civil Action No. 88-1786-WF, was lodged with the United States District Court for the District of Massachusetts. The decree resolves claims of the United States against defendant Mark Ostroff ("Settling Defendant") in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at four Superfund sites. The four sites are the Cannons Engineering Superfund Site in Bridgewater, Massachusetts, the Plymouth Superfund Site in Plymouth, Massachusetts, the Gilson Road Superfund Site in Nashua, New Hampshire, and the Tinkham's Garage Superfund Site in Londonderry, New Hampshire (collectively, the "Sites"). In the proposed consent decree the Settling Defendant agrees to pay the United States $74,500.00 in settlement of the United States' claims for past and future response costs incurred and to be incurred by the Environmental Protection Agency at the Sites.

The proposed decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the decree may be obtained in person or by mail from the Document Center. In requesting copies of the decree, please enclose a check for $6.00 (25 cents per page reproduction cost) payable to Consent Decree Library.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cannons Engineering Corporation, et al.*, (DOJ Reference No. 90-11-3-105).

John C. Cruden,

*Chief Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 92-15481 Filed 7-1-92; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that on June 16, 1992, a proposed Consent Decree in *United States* v *Modern Trash Removal of York, Inc.*, Civil Action No. 92-0819 was lodged with the United States District Court for the Middle District of Pennsylvania.

Simultaneously with the lodging of the proposed Consent Decree, the United States filed a complaint in the United States District Court for the Middle District of Pennsylvania alleging that defendant Modern Trash Removal of York, Inc. is liable for response costs incurred and to be incurred by the United States in addressing the release or threat of release of hazardous substances at the Modern Landfill Superfund Site (the "Site"), located about eight miles east of the City of York in Windsor and Lower Windsor Townships, York County, Pennsylvania. Defendent is alleged to be the current owner and operator of the Site, and the owner and operator at the time that some of the alleged disposal of hazardous substances there occurred.

The complaint seeks, *inter alia*, an injunction requiring the defendant to perform a clean-up of the Site in accordance with a remedy that has been selected by EPA pursuant to section 106 of CERCLA, 42 U.S.C. 9606, and a judgment against the defendants for all costs incurred by the United States for response activities related to the Site, pursuant to section 107(a) of CERCLA, 41 U.S.C. 9607(a).

The proposed Consent Decree would settle the allegations made in the complaint. Under the terms of the proposed Consent Decree, the defendant has agreed to reimburse the Hazardous Substance Response Trust Fund in the amount of $235,212.06, representing 100% of response costs incurred by EPA in connection with the Site through May 28, 1991. The proposed Consent Decree further requires the defendant to continue a clean-up of hazardous substances at the Site in accordance with a remedy selected by EPA, and to reimburse the Untied States all costs incurred in overseeing the defendant's performance of the remedy.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v *Modern Trash Removal of York, Inc.*, D.J. No. 90-11-2-722.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Middle District of Pennsylvania, suite 1162, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108 and the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004, 202-347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $28.25 (25 cents per page reproduction costs) payable to "Consent Decree Library."

John C. Cruden,

*Chief Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 92-15487 Filed 7-1-92; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Re-Solve Inc., et al.*, Civil Action No. 90-10490K, was lodged on June 16, 1992, with the United States District Court for the District of Massachusetts. The eight settling defendants are generators who arranged to have hazardous substances sent to Re-Solve, Inc. Superfund Site in North Dartmouth, Massachusetts for treatment. The proposed consent decree requires the defendants to pay the United States approximately $1.2 million.

The Department of Justice will receive, for a period of thirty (30) days

from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Re-Solve, Inc., et al.*, D.J. reference #90-11-2-58 A.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Massachusetts, 1107 J.W. McCormack Building, POCH, Boston, Massachusetts; the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $8.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Barry M. Hartman,**

*Acting Assistant Attorney General, Environmental and Natural Resources Division.*

[FR Doc. 92-15486 Filed 7-1-92; 8:45 am]

BILLING CODE 4410-01-M

## Lodging Final Judgment By Consent Pursuant to the Safe Drinking Water Act

Notice is hereby given that on June 22, 1992, a proposed consent decree in *United States* v. *Ruby Drilling Company, et al.*, Civil Action No. 92CV1020-J, was lodged with the United States District Court for the District of Wyoming. The suit was brought, pursuant to the Safe Drinking Water Act ("SDWA"), 42 U.S.C. 300f *et seq.*, for violations of Section 1414 of the SDWA, 42 U.S.C. 300g-3, and of the National Primary Drinking Water Regulations ("NPDWRs"), 40 CFR part 141, pertaining to a public water system located in the Concho Valley Estates Subdivision, Campbell County, Wyoming.

The proposed consent decree between the United States and the defendants resolves the subject violations by clarifying ownership of the Concho Valley Water System and requiring that the System come into compliance with the SDWA and NPDWRs. The proposed consent decree provides for a $2,000 civil penalty to be paid by defendants Jesse Dale Ruby and Ruby Drilling Company for past violations.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Ruby Drilling Company*, DOJ Ref. No. 90-5-1-1-3633. The proposed consent decree may be examined at the Office of the United States Attorney, District of Wyoming, 110 South Wolcott, room 115, Casper, Wyoming 82601. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $4.50 (25 cents per page reproduction costs) payable to "Consent Decree Library."

**Roger Clegg,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 92-15541 Filed 7-1-92; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 67-92]

## Privacy Act of 1974 as Amended by Computer Matching and Privacy Protection Act of 1988

This notice is published in the **Federal Register** in accordance with the requirements of 5 U.S.C. 552a(3)(12). The Immigration and Naturalization Service (INS), Department of Justice (the source agency), is participating in computer matching programs with the District of Columbia and agencies of four states (all designated as recipient agencies). The matching programs were undertaken to make eligibility determinations under the "Systematic Alien Verification for Entitlements (SAVE)" program which was established pursuant to the Immigration Reform and Control Act (IRCA) of 1986 (Public Law No. 99-603).

Notice of the matching programs was originally published in the **Federal Register** on December 28, 1989 (54 FR 53382); the programs were effective on January 29, 1990. Duration was 18 months plus a one-year extension permitted by the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, (5 U.S.C. 552a(o)(2)(O) and (D)). The one-year extension will expire July 29, 1992. Thus, the following notice represents the approval of new agreements by the Department of Justice Data Integrity Board to continue (on the effective date as indicated below) computer matching activities which will permit the recipient agencies to confirm the immigration status of alien applicants for, or recipients of, Federal benefits assistance as required by section 121 of IRCA. Specially, the matching activities will permit the following eligibility determinations:

(1) The District of Columbia Department of Employment Services; the New York Department of Labor; and the Texas Employment Commission will be able to determine eligibility status for unemployment compensation.

(2) The California State Department of Social Services will be able to determine eligibility status for the Aid to Families with Dependent Children (AFDC) Program, and the Food Stamps Program.

(3) The Colorado Department of Social Services will be able to determine the eligibility status for the Medicaid Program, the AFDC Program, and the Food Stamps Program.

Section 121(c) of IRCA amends section 1137 of the Social Security Act and requires agencies which administer the Federal benefit programs designated within IRCA to use the INS verification system to determine eligibility. Accordingly, through the use of user identification codes and passwords, authorized persons from these agencies may electronically access the data base of an Immigration and Naturalization Service Privacy Act system of records entitled "Alien Status Verification Index, JUSTICE/INS-009." From its automated records system, any aforementioned agency participating in these matching programs may enter electronically into the INS data base the alien registration number of the applicant or recipient. This action will initiate a search of the INS date base for a corresponding alien registration number. Where such number is located, the agency will receive electronically from the INS data base the following data upon which to determine eligibility: Alien registration number; last name; first name; date of birth; country of birth; social security number (if available); date of entry; immigration status data; and employment eligibility data. In accordance with 5 U.S.C. 552a(p), such agencies will provide the alien applicant with 30 days notice and an opportunity to contest any adverse finding before final action is taken against that alien because of ineligible

immigration status as established through the computer match.

Matching activity will be effective 30 days after publication in the **Federal Register** (August 3, 1992), and will continue for a period of 18 months from the effective date unless extended for one year by the Data Integrity Board of the Department of Justice.

The matching agreements and the required report have been provided to the Office of Management and Budget and the Congress in accordance with 5 U.S.C. 552a(o)(2)(A) and (r). Inquiries may be addressed to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530 (Room 1103, CAB Building).

Dated: June 26, 1992.

**Harry H. Flickinger,**

*Assistant Attorney General for Administration.*

[FR Doc. 92-15512 Filed 7-1-92; 8:45 am]

BILLING CODE 4410-10

## Antitrust Division

### Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on May 27, 1992 filed an additional written notification on behalf of Bellcore and Toshiba Corporation, ("Toshiba") simultaneously with the Attorney General and the Federal Trade Commission disclosing certain information. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 14, 1989, Bellcore and Toshiba filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 19, 1990 (55 FR 1882).

Bellcore and Toshiba entered into an Extension Agreement effective March 24, 1992 to collaborate on research to better understand the applications for exchange and exchange access services of devices and equipments for various communications technologies, including asynchronous transfer mode technology for broadband services and wireless technology for radio communications services, including demonstrating the feasibility of research concepts by means of experimental prototypes and experimental systems of such technology.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 92-15562 Filed 7-1-92; 8:45 am]

BILLING CODE 4410-01-M

### Notice Pursuant to the National Cooperative Research Act of 1984—the Frame Relay Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), The Frame Relay Forum ("FRF") on April 10, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

The members of FRF are:

3Com Corporation, Santa Clara, CA;
ADAX, Inc., Berkeley, CA;
Advanced Computer Communications, Cupertino, CA;
AMNET, Inc., Framingham, MA;
Andrew Corporation, Torrance, CA;
AT&T Data Communications Services, Bridgewater, NJ;
AT&T Network Systems, Warren, NJ;
AT&T Paradyne, Largo, FL;
BBN Communications, Cambridge, MA;
Bell Atlantic, Arlington, VA;
Bellcore, Redbank, NJ;
BellSouth Telecommunications, Birmingham, AL;
BT North America, San Jose, CA;
Cable & Wireless Communications, Inc., Vienna, VA;
Cascade Communications, Westford, MA;
Cisco Systems, Inc., Menlo Park, CA;
CompuServe, Inc., Columbus, OH;
Digital Equipment Corporation, Littleton, MA;
Digitech Industries, Inc., Ridgefield, CT;
Dowty Communications, Inc., Cherry Hill, NJ;
Dynatech Communications, Inc., Woodbridge, VA;
EICON Technology, Lachine, PQ, CANADA;
Ericsson Business Comm AB, Sundbyberg, SWEDEN;
FastComm Communications, Sterling, VA;
Fujitsu (FNTS), Richardson, TX;
General DataComm, Inc., Middlebury, CT;
Graphnet, Inc., Teaneck, NJ;
GN Navtel, Markham, ON, CANADA;
Hewlet-Packard/IDACOM, Edmonton, AB, CANADA;
Hughes LAN Systems, Mountain View, CA;
Hughes Network Systems, Germantown, MD;
International Business Machines Corporation, Research Triangle Park, NC;
Infonet, El Segundo, CA;
KDD America, Inc., New York, NY;
LIR Corporation, San Jose, CA;
MCI Communications, McLean, VA;
Microcom, Inc., Norwood, MA;
Motorola Codex, Mansfield, MA;
Multiaccess Computing, Santa Barbara, CA;
NCR, St. Paul, MN;
NEC America, Melville, NY;
Netcomm LTD, Essex, ENGLAND;
Netrix Corporation, Herndon, VA;
Network Equipment Tech., Redwood City, CA;
Network Systems Corporation, Minneapolis, MN;
Newbridge Networks, Inc., Herndon, VA;
Nokia Telecommunications, Helsinki, FINLAND;
Northern Telecom Inc., Richardson, TX;
Novell, San Jose, CA;
NYNEX, White Plains, NY;
Octocom Systems, Inc., Wilmington, MA;
OST, SA, Chantilly, VA;
Pacific Bell, San Ramon, CA;
Proteon, Westboro, MA;
Racal-Datacom, Inc., Ft. Lauderdale, FL;
Scientific Atlanta, Priv Network Bus Div Melbourne, FL;
Siemens Stromberg-Carlson, Boca Raton, FL;
StrataCom, Inc., San Jose, CA;
Sun Microsystems, Mountain View, CA;
Sync Research, Irvine, CA;
SynOptics Communications, Santa Clara, CA;
Tekelec, Calabasas, CA;
Telecom Finland, Tempere, FINLAND;
Telematics International, Inc., Herndon, VA;
Telenex Corporation, Springfield, VA;
Televerket, Telecommunication Services, FARSTA Stockholm, SWEDEN;
TIL Systems, Ltd., Toronto, ON, CANADA;
Timeplex, Inc., Woodcliff Lake, NJ;
Transwitch Corporation, Shelton, CT;
TTC, Germantown, MD;
Ungermann-Bass, Santa Clara, CA;

U S Sprint, Reston, VA;
U S West, Denver, CO;
Vitalink Communications, Fremont, CA;
Wellfleet Communications, Inc., Bedford, MA;
WilTel, Tulsa, OK;
Xyplex, Inc., Boxborough, MA; and;
Zilog, Inc., Campbell, Ca.

FRF was incorporated on May 20, 1991. FRF is a not-for-profit, non-stock membership corporation organized under the laws of the State of California.

The FRF is dedicated to promoting the acceptance and implementation of frame relay technology based on national and international standards. FRF intends to undertake cooperative research, development, formulation and experimentation activities concerning frame relay technology. FRF intends to engage in all necessary activities to accomplish this objective including:

1. Prioritizing needs, defining problems and characterizing solutions related to frame relay technology;
2. Promoting the development of national and international industry standards for frame relay technology;
3. Developing the market for frame relay products, services and applications;
4. Contributing recommendations to standards bodies and attempting to persuade standards bodies;
5. Co-ordinating the development of conformance tests, defining interoperability, and working with testing laboratories to develop baseline tests for frame relay technology;
6. Conducting research and experimentation to identify frame relay applications;
7. Providing educational services and reviews of frame relay course offerings;
8. Promoting worldwide interoperability of frame relay technology;
9. Facilitating "inter-carrier" public frame relay services; and
10. Encouraging technical and marketing issues for the national and international standards bodies.

**Joseph H. Widmar,**
*Director of Operations, Antitrust Division.*
[FR Doc. 89-15564 Filed 7-1-92; 8:45 am]
BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research Act of 1984—Open Software Foundation, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") on April 30, 1992, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On August 8, 1988, OSF and the Open Software Foundation Institute, Inc. (the "Institute") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34594). On November 4, 1988, February 2, 1989, May 3, 1989, July 28, 1989, October 26, 1989, January 22, 1990, April 19, 1990, July 24, 1990, October 22, 1990, January 28, 1991, April 25, 1991, July 25, 1991, October 28, 1991, and February 3, 1992, OSF filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on November 25, 1988 (53 FR 47773), February 23, 1989 (54 FR 7893), August 25, 1989 (54 FR 35407), August 25, 1989 (54 FR 35408), November 29, 1989 (54 FR 49123), April 18, 1990 (55 FR 14493), May 21, 1990 (55 FR 20861), September 27, 1990 (55 FR 39528), December 28, 1990 (55 Fed. Reg. 53368), March 25, 1991 (56 FR 12387), June 13, 1991 (56 FR 27273), August 29, 1991 (56 FR 42757), December 23, 1991 (56 FR 66454), and March 24, 1992 (57 FR 10190), respectively.

Additionally, a correction notice to the June 13, 1991 notice was published on July 11, 1991 (56 FR 31675).

No new voting members have been added as of this filing. The identities of the new, non-voting members of OSF and the dates of their membership are: Nippon Telegraph and Telephone Corp., NTT Network Information Systems Lab., Yokosuka-shi, Kanagaawa-ken 238-03, Japan (2/03/92); Thinking Machines Corporation, Cambridge, MA (2/03/92); IRA, University of Karlsruhe, Karlsruhe 7500, Germany (2/04/92); Imperial College of Science, Technology, Medicine, London SW7 2BZ, England (2/04/92); Lancaster University, Lancaster LAI 47R, England (2/04/92); Montana State University, Bozman, MT (2/04/92); National Tsing Hua University, Hsin chu, Taiwan, China (2/04/92); RWTH-Aachen, Lehrstuhl Informatik, Aachen 5100, Germany (2/04/92); University of Zurich, Zurich CH-8057, Switzerland (2/04/92); Chinese Open Systems Association, Taipei, Taiwan (2/10/92); Lexcel, a Micro Technology, Inc., Company, Fullerton, CA (2/14/92); Office of Information Technology, Washington, D.C. (2/14/92); Ascom Timeplex, Woodcliff Lake, NJ (2/20/92); University Central de Venezuela, Miami, FL (2/20/92); Lotus Development Corporation, Cambridge, MA (2/21/92); Ontario Hydro, Toronto XX M5G 2H1, Canada (2/24/92); GTE Irving, TX (3/12/92); Pyramid Technology, San Jose, CA (3/12/92); Rochester Institute of Technology, Rochester, NY (3/23/92); Software-Industrie Support Zentrum, D-4600 Dortmund 50, Germany (3/24/92); European Telecommunications Informatics Services, 1000 Brussels, Belgium, (3/25/92); Science and Engineering Research Council, Chilton, Didcot, Oxon OX11 00X, England (3/25/92); Argonne National Laboratory, Argonne, IL (3/26/92); Telecom Australia, Clayton, Victoria 3168 Australia (3/26/92); Cabletron Systems, Inc., Rochester, NH (4/09/92); Boole & Babbage, Inc., Sunnyvale, CA (4/10/92); Syracuse University, Syracuse, NY (4/13/92); CSIRO Division of Information Technology, Melbourne 3053, Australia (4/16/92); Novell, Inc., San Jose, CA (4/16/92); Interactive Systems Corporation, Naperville, IL (4/17/92); and Network Managers (UK) Ltd., Guildford, Surrey GB-902 5RF England (4/27/92).

**Joseph H. Widmar,**
*Director of Operations Antitrust Division.*
[FR Doc. 92-15563 Filed 7-1-92; 8:45 a.m.]
BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research Act of 1984—National Storage Industry Consortium

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), National Storage Industry Consortium ("NSIC") on May 22, 1992, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional written notification was filed for the purpose of extending the protections of Section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On June 12, 1991, NSIC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 13, 1991, (56 FR 38465).

The following parties have become members of NSIC:

Amoco Technology, Naperville, Illinois;
Ampex Recording Media Storage, Redwood City, California;

Conner Peripherals Inc., San Jose, California;
Graham Magnetics Inc., Bedford, Texas;
Maxtor Corp., San Jose, California;
Metrum Information Storage, Littleton, Colorado;
Read-Rite Corporation, Milpitas, California;
Recording Physics, San Diego, California; and
Spectral Diode Labs, San Jose, California.

The following colleges and universities have joined NSIC as university associate members:

California Institute of Technology, Pasadena, California;
George Washington University, Washington, D.C.;
Georgia Institute of Technology, Atlanta, Georgia;
Harvey Mudd College, Claremont, California;
Northwestern University, Chicago, Illinois;
Purdue University, West Lafayette, Indiana;
Stevens Institute of Technology, Hoboken, New Jersey;
University of Illinois, Urbana and Chicago, Illinois;
University of Notre Dame, Notre Dame, Indiana; and
University of Pittsburgh, Pittsburgh, Pennsylvania.

NSIC's area of activity remains the sponsorship of research in the area of information storage technology.

**Joseph H. Widmar,**

*Director of Operations Antitrust Division.*

[FR Doc. 92-15561 Filed 7-1-92; 8:45 am]

BILLING CODE 4410-01-M

## Subsea Completed Buoyant Riser Joint Industry Study—Phase 1A

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Aker Omega, Inc. on June 8, 1992, filed written notifications simultaneously with the Attorney General and the Federal Trade Commission of a project entitled, "Subsea Completed Buoyant Riser Joint Industry Study—Phase 1A." The notifications disclose (1) the identities of the parties to the project, and (2) the nature and objectives of the research to be performed in accordance with the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general area of planned activities are given below.

The current parties to the project identified by this notice are: Aker Omega, Inc., Houston, Texas; Amoco Production Company, Houston, Texas; BP Exploration, Houston, Texas; Marathon Oil Company, Houston, Texas; and Statoil, a.s., NORWAY.

The purpose of the project is to perform a conceptual level design of the Subsea Completed Buoyant Riser ("SCBR") system, which consists of up to twenty individual risers, each of which is supported by syntactic foam buoyancy. The SCBR is part of a floating production system for the development of deepwater offshore oil fields. Each riser in the SCBR system is made up of a long rigid section, which extends upwards from a master valve assembly at the mudline to a "crown" elevation approximately 400 feet below the surface, where it terminates in a swab valve assembly ("SVA"). All SVAs are held together at the crown elevation by means of radial arms projecting from a vertically tethered central buoy. A flexible riser droops downward as it leaves the SVA and then extends upwards to the vessel. SCBR designs will be developed for both the Gulf of Mexico and offshore West Africa for 3,000 feet water depths.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 92-15542 Filed 7-1-92; 8:45 am]

BILLING CODE 4410-01-M

## New York 235 Consortium

Notice is hereby given that, on June 18, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Reckitt & Colman filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the parties to the New York 235 Consortium ("Joint Venture"). The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Reckitt & Colman advised that CIBA-GEIGY, Greensboro, NC, and Dragon Corporation, Roanoke, VA, have become parties to the Joint Venture. In addition, Consortium member Fairfield American Corporation, Frenchtown, NJ, has changed its corporate name to Roussel Environmental Health, and Consortium member Prentiss Drug and Chemical Co., Inc., Floral Park, NY, has changed its corporate name to Prentiss Incorporated.

No other changes have been made in either the membership or planned activity of the Joint Venture. Membership in this Joint Venture remains open, and the members intend to file additional written notification disclosing all changes in membership.

On May 20, 1991, the New York 235 Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 20, 1991 (56 FR 28416).

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 92-15543 Filed 7-1-92; 8:45 am]

BILLING CODE 4410-01-M

## NATIONAL COMMISSION ON MIGRANT EDUCATION

**ACTION:** Notice of meeting.

**SUMMARY:** The National Commission on Migrant Education will hold its ninetheenth meeting on thursday, July 16, 1992, during a conference call between Commission members and staff. The Commission was established by Public Law 100-297, April 28, 1988.

**DATE, TIME, AND PLACE:** Thursday, July 16, 1992, 4 to 6 p.m. at 8120 Woodmont Avenue, Fifth Floor, Bethesda, MD 20814.

**STATUS:** Open to the public. Audio equipment provided for public attendance. Limited seating available.

**AGENDA:** Discussion of draft findings and recommendations for final report.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth J. Skiles (303) 492-5336, National Commission on Migrant Education, 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

**Linda Chavez,**

*Chairman.*

[FR Doc. 92-15551 Filed 7-1-92; 8:45 a.m.]

BILLING CODE 6820-DE-M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Biological Sciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), as amended, the National Science Foundation announces the following meeting.

Name: Advisory Committee for Biological Sciences.

Date and Time: July 27-29, 1992.

Place: Rooms 540 and 540b 1800 G Street NW., Washington, DC 20050.

Type of Meeting: Closed.

Contact Person: James L. Edwards, Acting Division Director, Environmental Biology.

Purpose of Meeting: To provide oversight review of the Ecological Studies Cluster.

Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552 b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: June 29, 1992.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 92-15530 Filed 7-1-92; 8:45 am]

BILLING CODE 7555-01-M

## Special Emphasis Panel in Engineering Infrastructure Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: July 20-21, 1992, 8 a.m.-5 p.m.

Place: Holiday Inn, Rhode Island at 17th St., NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Win Aung, Senior Staff Associate, DEID, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 786-9530.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards in the Engineering Education Coalitions program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information individuals associated with the proposals. These matters are exempt udner 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 29, 1992.

M. Rebecca Winkler,

*Committee Manogment Officer.*

[FR Doc. 92-15531 Filed 7-1-92; 8:45 am]

BILLING CODE 7555-01-M

## Special Emphasis Panel in Materials Development, Research and Informal Science Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: July 24-25, 1992; 8:30 a.m. to 5:30 p.m.

Place: ANA Hotel, 2401 M Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Alice J. Moses, Gerhard Salinger, Frank Sutman, Margaret Cozzens, Toni Kring, Donald Humphreys, and Jim Sandefur, MDR, rm. 635-A, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone (202) 357-7066.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Instructional Materials Development proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 29, 1992.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 92-15533 Filed 7-1-92; 8:45 am]

BILLING CODE 7555-01-M

## Special Emphasis Panel in Research Career Development; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meting.

Date and Time: July 29, 1992; 5 p.m. to 8:30 p.m., July 30, 1992; 8 a.m. to 5:30 p.m., July 31, 1992; 8 a.m. to 3 p.m.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Virginia Eaton, Young Scholars Program, EHR, Rm. 1202, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7538.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Young Scholars proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 29, 1992.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 92-15532 Filed 7-1-92; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

## Proposed Generic Communication Supplement 1 to Generic Letter 83-28, "Required Actions Based on Generic Implications of Salem ATWS Events"

**AGENCY:** United States Nuclear Regulatory Commission.

**ACTION:** Notice of opportunity for public comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to issue a supplement to Generic Letter (GL) 83-28. A generic letter is an NRC document that transmits information to and requests that analyses or descriptions of proposed corrective actions or both be submitted by licensees or permit holders or both regarding matters of safety, safeguards, or environmental significance. Occasionally a generic letter requires a written response from licensees or permit holders. In addition, a generic letter is utilized by the NRC to inform licensees or permit holders of changes in NRC policy and requirements approved by the Committee to Review Generic Requirements (CRGR).

This draft supplement to GL 83-28 concludes that the requested licensee's actions specified in items 4.2.3 and 4.2.4 of GL 83-28 are not necessary. The staff reached this conclusion because it determined that the risk from failure of the reactor trip breakers has been sufficiently reduced as a result of the actions already completed in response to GL 83-28 and 10 CFR 50.62.

A differing professional opinion (DPO) was raised by an NRC employee regarding the issues covered by the proposed generic letter supplement. The resolution of the DPO was reviewed by the CRGR when the generic letter supplement was reviewed. The documents related to this can be found in the public document room with the minutes of the 220th meeting of the CRGR.

The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter supplement presented under the Supplementary Information heading. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter

supplement. Should this generic letter supplement be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

**DATES:** Comment period expires August 3, 1992. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

**ADDRESSES:** Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Leonard N. Olshan (301) 504–3018.

**SUPPLEMENTARY INFORMATION:** The proposed generic letter supplement text is given in its entirety below:

**Supplement 1 to Generic Letter 83–28, "Required Actions Based on Generic Implications of Salem ATWS Events"**

*Purpose*

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter supplement to inform licensees that the actions of items 4.2.3 (life testing) and 4.2.4 (periodic replacement of breakers or components) as originally described in the enclosure to Generic Letter (GL) 83–28, "Required Actions Based on Generic Implications of Salem ATWS Events" are no longer needed.

*Background*

On February 22 and 25, 1983, the Salem Nuclear Generating Station experienced anticipated transient without scram (ATWS) events. These events prompted the NRC to issue IE Bulletin 83–01, "Failure of Reactor Trip Breakers (Westinghouse DB–50) to Open on Automatic Trip Signal," to address the short-term corrective actions. The NRC also formed a task force to assess the generic implications of these events. Upon reviewing the findings of the task force, the NRC issued GL 83–28.

In GL 83–28, the staff requested the licensees to implement long-term corrective actions in response to the Salem events. GL 83–28 included two major actions to improve the reliability of the reactor trip system: (1) Install a plant modification that provided for the automatic actuation of the shunt trip attachment of the reactor trip breaker (RTB) following any automatic reactor trip signal, and (2) establish a comprehensive program of preventive maintenance and surveillance testing to ensure reliable RTB operation. In addition, items 4.2.3 and 4.2.4 of GL 83–28 requested licensees to perform life testing of RTBs and periodically to replace the breakers or components in accordance with their demonstrated life.

*The Staff's Revised Position on the Life Testing of Breakers*

The modifications to automatically actuate the shunt trip attachments of RTBs following any automatic reactor trip signal and the program of preventive maintenance and surveillance testing requested by GL 83–28 have been implemented by licensees. However, the life testing and program for periodic replacement of breakers or components requested by items 4.2.3 and 4.2.4 of GL 83–28 have not been fully implemented. The licensees contend that further life testing of the RTBs is not necessary because of their extensive quality assurance, preventive maintenance, and surveillance testing programs. In the process of determining if additional guidance on items 4.2.3 and 4.2.4 was needed, the staff reviewed operating experience for the period 1986 through early 1991 based upon information in the Nuclear Plant Reliability Data System and in Licensee Event Reports. The review revealed that the vast majority of reported failures have been failures to close, rather than failures to open, or degraded conditions detected during planned maintenance, testing, and inspection. Three cases of slow opening were identified, as well as several cases where either the shunt trip or the undervoltage trip attachment, but not both, failed to perform satisfactorily. However, the review identified only one failure of a RTB to open, in which both the undervoltage and the shunt trip attachments failed to cause the breaker to open. Since the staff conducted this review in December 1991, there has been an additional instance in which a RTB failed to fully open on demand during a routine surveillance test. In light of this RTB operating experience, the staff has concluded that the actions already completed pursuant to GL 83–28 have been effective in improving RTB reliability to open and that further actions to address the end-of-life degradation in breaker reliability are not justified. Furthermore, since issuing GL 83–28, the NRC has promulgated the requirements for reducing the risk from ATWS events in 10 CFR 50.62. The hardware and software modifications associated with this regulation further reduce the risk resulting from the failure of RTBs. Therefore, the staff concludes that licensee actions in response to items 4.2.3 and 4.2.4 of GL 83–28 are not necessary.

To the extent that licensees may have made commitments to programs for periodically replacing RTBs or components in responses to GL 83–28, they may review and modify these programs taking into account their plant-specific operating experience, maintenance programs, and root cause determination programs for RTBs.

*Backfit Discussion*

In issuing this generic letter supplement, the staff is relaxing the original positions taken in items 4.2.3 and 4.2.4 of GL 83–28, and hence this generic letter supplement is not considered a backfit. The staff prepared an evaluation of the positions in this generic letter supplement in accordance with the charter of the Committee to Review Generic Requirements (CRGR) and concluded that the public health and safety and common defense and security will be adequately protected, and the proposed changes will not affect the public health and safety. This evaluation will be made available in the public document room with the minutes of the 220th meeting of the CRGR.

This generic letter supplement does not seek to collect any information, and hence, the Paperwork Reduction Act does not apply.

Dated at Rockville, Maryland, this 22nd day of June 1992.

For the Nuclear Regulatory Commission.

**Bruce A. Boger,**

*Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–15595 Filed 7–1–92; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 40–3453]**

**Atlas Corp., Moab Mill**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of intent amend Source Material License SUA–917 for the Moab Mill to Incorporate Reclamation Schedules.

**SUMMARY:** The Nuclear Regulatory Commission is proposing to amend Source Material License SUA–917, Atlas Corporation, Moab Mill, to incorporate a revised reclamation schedule and to add a new license condition.

**DATES:** The comment period expires August 17, 1992.

**ADDRESSES:** Copies of the response from Atlas Corporation and the staff evaluation of the licensee's request are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Golden, CO, and the NRC Public Document Room, 2120 L Street, NW. (lower level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, with a copy to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO 80225.

Comments may be hand-delivered to room P-223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

**FOR FURTHER INFORMATION CONTACT:** Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO. Telephone: 303-231-5800.

**SUPPLEMENTARY INFORMATION:** The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (FR 55434). The MOU requires that the NRC incorporate enforceable reclamation schedules for specific uranium mill sites into the corresponding licenses. The MOU also listed expected dates for completion of placement of a final earthen cover for each site.

The NRC requested by letter dated October 22, 1991, that the licensee submit a proposed schedule for reclamation milestones for NRC review and incorporation into the license. The licensee provided a response on November 21, 1991, with further clarification on completion of the ground-water corrective action program by personnel communication on February 7, 1992.

The proposed schedule calls for placement of the final cover by December 31, 1998, which is the same date as in the MOU for this mill. The NRC staff reviewed the reclamation milestone schedule and concluded that it is reasonable, and adherence to the schedule should assure satisfactory progress toward placement of the final cover by the specified date.

The NRC intends to amend Source Material License SUA-917 to incorporate the schedules proposed by the licensee by adding License Condition No. 55 as follows:

55. The licensee shall complete site reclamation in accordance with an approved reclamation plan. The ground-water corrective action plan shall be conducted as authorized by License Condition No. 17 in accordance with the following schedules.

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile—December 31, 1995.

(2) Placement of the interim cover—April 30, 1994.

(3) Placement of a final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 $pCi/m^2/s$ above background—December 31, 1998.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of appendix A of 10 CFR part 40—December 31, 1999.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—December 31, 1998.

C. Any license amendment request to revise the completion dates specified in section A must demonstrate that compliance was not technologically feasible (including inclement weather, litigation which compels delay to reclamation, or other factors beyond the control of the licensee).

D. Any license amendment request to change the target dates in section B above, must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

Dated at Denver, Colorado, this 23rd day of June 1992.

For the Nuclear Regulatory Commission.

**Ramon E. Hall,**

*Director, Uranium Recovery Field Office.*

[FR Doc. 92-15596 Filed 7-1-92; 8:45 am]

BILLING CODE 7590-01-M

## Nuclear Regulatory Commission

**[Docket Nos. 50-387 and 50-388]**

## Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2); Partial Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request by Pennsylvania Power and Light Company (PP&L) and Allegheny Electric Cooperative, Inc., (the licensees) to withdraw a portion of their August 16, 1991 application, for proposed amendments to Facility Operating Licenses DPR-14 and DPR-22 for the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendments involved changes to the Technical Specification 4.6.1.2a and the associated bases to incorporate an exemption from appendix J of 10 CFR part 50 that removes the requirement that the third Type "A" Overall Integrated Containment Leakage Rate test required in each 10-year service period is to be conducted at the 10-year inservice inspection interval.

On May 29, 1992, the licensee submitted a letter to the NRC requesting withdrawal of a proposed change. PP&L requests that the Technical Specification 4.6.1.2a testing frequency remain 40 ± 10 months.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing which was published in the **Federal Register** on September 4, 1991 (56 FR 43812).

For further details with respect to this action, see the application for amendment dated August 16, 1991 and the licensee's letter dated May 29, 1992, which withdrew this portion of the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 24th day of June 1992.

For the Nuclear Regulatory Commission.

**George F. Maxwell,**

*Acting Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–15597 Filed 7–1–92; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–30857; File No. SR–CBOE–92–10]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Reduced Transaction Charges for Certain Index Option Spread Transactions

June 24, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 20, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE has proposed to extend through August 31, 1992, a pilot program [1] which provides a 50% rebate on transaction and trade match fees for "box" [2] trades by public customers in Standard & Poor's 500 Stock Index options ("SPX"), provided the "box" trade totals 500 or more contracts for the four sides of the trade.[3] The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(a) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The CBOE proposes to extend, through August 31, 1992, a pilot program which provides a 50% rebate on transaction and trade match fees for "box" [4] trades by public customers in SPX options, provided the "box" trade totals 500 or more contracts for the four sides of the trade. The rebate is available to member firms that provide the Exchange with documents evidencing transactions that meet the standards of the pilot program. At the end of each month, member firms must submit their rebate requests to the Exchange's Accounting Department.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and those persons associated with its members.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder.[5] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by July 23, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–15575 Filed 7–1–92; 8:45 am]

BILLING CODE 8010–01–M

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[1] The pilot program was first approved by the Commission on a three-month pilot basis, effective from July 1, 1991, through September 30, 1991. See Securities Exchange Act Release No. 29482 (July 24, 1991), 56 FR 36180. Since then, the pilot has been extended twice, first through December 31, 1991, and most recently through March 31, 1992. See Securities Exchange Act Release Nos. 30025 (December 3, 1991), 56 FR 64537 and 30288 (January 27, 1992), 57 FR 4228.

[2] The CBOE defines a "box trade" as a four-sided SPX option spread composed of (i) a long call and short put at one strike price and (ii) a short call and long put at a different strike price, where all four positions expire in the same month.

[3] Originally, the CBOE requested permanent approval of the pilot program in its filing. On June 1, 1992, however, the CBOE amended its filing to withdraw the request for permanent approval of the pilot and instead proposed an extension of the pilot until August 31, 1992. See File No. SR–CBOE–92–10, Amendment No. 1.

[4] See supra note 2 for the CBOE's definition of "box" trade.

[5] Because the pilot program was last extended until March 31, 1992, and this filing was amended on June 1, 1992, the pilot program was not in effect between April 1, 1992, and May 31, 1992.

[Investment Company Act Rel. No. 18813; International Series Rel. No. 403; 812-8707]

## Aetna Series Fund, Inc., et al.; Notice of Application

June 25, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

**APPLICANTS:** Aetna Series Fund, Inc. and any existing or future series thereof; Aetna Life Insurance and Annuity Company ("ALIAC"); and any registered investment company or series thereof which in the future is advised by ALIAC or any of its affiliates.

**RELEVANT 1940 ACT SECTIONS:** Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 12d3–1.

**SUMMARY OF APPLICATION:** Applicants seek a conditional order permitting them to acquire equity and convertible debt securities of foreign issuers who derived more than 15% of their gross revenue from their activities as a broker, dealer, underwriter or investment adviser in their most recent fiscal year ("Foreign Securities Companies"), in accordance with the conditions of the proposed amendments to rule 12d3–1.

**FILING DATE:** The application was filed on April 20, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 20, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Michael Berenson, Esq., Jorden Schulte & Burchette, suite 400 East, 1025 Thomas Jefferson Street, NW., Washington, DC 20007–0805

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus, Paralegal Specialist, at (202) 272–3023 or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulations).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicants' Representations

1. Aetna Series Fund, Inc. (the "Fund") is registered under the 1940 Act as an open-end management investment company. It is authorized to issue multiple series of shares, each representing a portfolio of investments with different investment objectives, policies and restrictions. ALIAC serves as investment adviser and administrator to each series.

2. Applicants wish to invest in the equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

3. Applicants' proposed acquisition of securities issued by Foreign Securities Companies will satisfy each of the requirements of rule 12d3–1 under the 1940 Act except subparagraph (b)(4) thereof, which provides that "any equity securities of the issuer . . . [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a "margin security" generally must be one which is traded in the United States markets, securities issued by many Foreign Securities Companies would not meet this test. Accordingly, applicants seeks an exemption only from the "margin security" requirements of rule 12d3–1.

4. Applicants seek relief from section 12(d)(3) and rule 12d3–1 thereunder to invest in the equity securities of Foreign Securities Companies to the extent contained in proposed amendments to rule 12d3–1. See Investment Company Release No. 17096 (Aug. 3, 1989).

### Applicants' Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule.

2. Subparagraph (b)(4) of rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." While "margin security" status is generally available only to securities that are traded principally in United States markets, the Board of Governors of the Federal Reserve System amended Regulation T in 1990 to include "foreign margin stock[s]." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are generally more restrictive than the requirements for a "margin security" traded in the United States markets, securities issued by many Foreign Securities Companies are not included in the definition of "foreign margin stocks" under Regulation T. See 12 CFR 220.2 (i) and (q)(6). Accordingly, applicants seek an exemption from the "margin security" requirements of rule 12d3–1.

3. Proposed amended rule 12d3–1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

### Applicants' Condition

Applicants agree to the following condition in connection with the relief requested:

The applicants will comply with the provisions of the proposed amendments to rule 12d3–1 (Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)), and as such amendments may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–15576 Filed 7–1–92; 8:45 am]

BILLING CODE 8010–01–M

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[Rel. No. IC–18810; 811–5892]

## Palm Series Trust; Application for Deregistration

June 25, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Palm Series Trust.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application on Form N–8F was filed on January 30, 1992, and amended on May 26, 1992 and June 12, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 20, 1992 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Federated Investors Tower, Pittsburgh, PA 15222–3779.

**FOR FURTHER INFORMATION CONTACT:** Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. Applicant was organized as a Massachusetts business trust and is registered as an open-end diversified management investment company under the Act. On August 24, 1989, applicant filed a notification of registration on Form N–8A. On August 25, 1992, applicant filed a registration statement pursuant to the Securities Act of 1933 and section 8(b) of the Act. Applicant's registration statement was declared effective on November 1, 1989. Applicant's initial public offering commenced on November 1, 1989.

2. Prior to September 19, 1991, First National in Palm Beach, a division of Southeast Bank, N.A. ("Southeast") was applicant's investment adviser. On September 19, 1991, the Federal Deposit Insurance Corporation placed Southeast into receivership. On September 20, 1991, First Union National Bank of Florida, a subsidiary of First Union Corporation, acquired the assets of Southeast. On September 23, 1991, applicant's board of trustees, in compliance with rule 15a–4 under the Act, appointed First Union National Bank of Florida as applicant's investment adviser.

3. First Union National Bank of North Carolina, also a subsidiary of First Union Corporation, advises the Salem Funds, a series investment company. Two portfolios of the Salem Funds have investment objectives similar to the two portfolios of the Palm Series Trust. Decisions by First Union Corporation to streamline the investment management activities of its subsidiary banks led to the conclusion that advising and making available duplicative mutual funds would not be in the best interest of its customers. As a result, First Union National Bank of Florida exercised its discretion and authority to redeem all of its shares in applicant and moved its accounts to the correlative portfolios of the Salem Funds.[1] The redemptions took place between December 4, 1991 and December 20, 1991. On December 20, 1991, applicant's administrator, Federated Administrative Services ("FAS"), was applicant's sole remaining shareholder.

4. At a meeting held on December 20, 1991, applicant's board of trustees and FAS, in its capacity as applicant's sole shareholder, adopted a plan of liquidation and termination.

5. Unamortized organizational expenses in the amount of $24,707 were absorbed by FAS in its capacity as applicant's administrator.

6. All legal, accounting, and other administrative activities generated by the liquidation were performed by FAS in its capacity as applicant's administrator pursuant to the administrative agreement between FAS and applicant. Accordingly, applicant incurred no liquidation expenses.

7. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has filed a Certification and Resolution of Trustees with the Secretary of State of the Commonwealth of Massachusetts authorizing applicant's termination. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

[1] In a letter to the Division of Investment Management dated June 24, 1992, Federated Administrative Services, applicant's administrator, represented that at the time of redemption, First Union National Bank of Florida "had informed the Fund that it either had pre-existing authority granted under certain account agreements between [the Bank] and its customers to move their accounts to a new fund, or would obtain specific authorization from such customers to move their accounts."

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–15577 Filed 7–1–92; 8:45 am]

BILLING CODE 8010–01–M

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Meeting of the President's Council of Advisors on Science and Technology

**ACTION:** Amended notice of meeting.

**CHANGES:** The President's Council of Advisors on Science and Technology will meet on July 9–10, 1992, in the Conference Room, the Points of Light Foundation, 736 Jackson Place, NW., Washington, DC., rather than the Conference Room, Council on Environmental Quality, as announced in 57 FR 27812 (June 22, 1992). In addition to the change in meeting location, the Hon. William Reilly, Administrator, Environmental Protection Agency, will be unable to make his presentation on the United Nations Conference on Environment and Development during the Thursday morning session. Therefore, the Council discussion regarding the Research-Intensive U.S. Colleges and Universities Project will begin on Thursday morning with the discussion of the draft report on Mathematics and Science Education remaining on the agenda for Thursday afternoon. The Council will go into closed session on Friday, July 10, 1992. Persons wishing to attend the open portion of the meeting are requested to contact Ms. Ann Barnett, (202) 395–4692, prior to 3 p.m. on July 3, 1992.

All other information in this previous Federal Register Notice will remain the same. Parties requiring further information should contact Ms. Ann Barnett, (202) 395–4692.

Dated: June 26, 1992.

**Dr. Vickie V. Sutton,**

*Assistant Director, Office of Science and Technology Policy.*

[FR Doc. 92–15598 Filed 7–1–92; 8:45 am]

BILLING CODE 3170–01–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on June 25, 1992

**AGENCY:** Department of Transportation (DOT), Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on June 25, 1992, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

**FOR FURTHER INFORMATION CONTACT:** John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735, or Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under the Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

#### Information Availability and Comments

Copies of the DOT information collection request submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB official listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

#### Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on June 25, 1992.

*DOT No:* 3626.
*OMB No:* 2127–0046.
*Administration:* National Highway Traffic Safety Administration.
*Title:* 49 CFR part 552, Petitions for Rulemaking, Defect, and Noncompliance Orders.
*Need for Information:* To identify and respond on a timely basis to petitions for rulemaking or defect or noncompliance determination and to inform the public of the procedures to follow in response to such petitions.
*Proposed Use of Information:* This regulation establishes procedures for filing petitions with the agency to commence rulemaking or to make a defect or noncompliance determination.
*Frequency:* On occasion.
*Burden Estimate:* 100 hours.
*Respondents:* Individuals, businesses or small businesses.
*Form(s):* None.
*Average Burden Hours Per Response:* 60 minutes.

*DOT No:* 3627.
*OMB No:* 2127–0025.
*Administration:* National Highway Traffic Safety Administration.
*Title:* 49 CFR part 512, Confidential Business Information.
*Need for Information:* To ensure confidential treatment to motor vehicle manufacturers.
*Proposed Use of Information:* This regulation sets forth the procedures to be followed by vehicle and equipment manufacturers, when they are requesting confidential treatment of information they have submitted to the agency.
*Frequency:* On occasion.
*Burden Estimate:* 600 hours.
*Respondents:* Motor vehicle manufacturers.
*Form(s):* None.
*Average Burden Hours Per Response:* 12 minutes.

*DOT NO:* 3628.
*OMB No:* 2127–0052.
*Administration:* National Highway Traffic Safety Administration.
*Title:* Brake Hose Manufacturing Identification Standard 106.
*Need for Information:* To be able to trace the manufacturer in case a defect is found in the hose.
*Proposed Use of Information:* The purpose of this requirement is to ensure traceability should a noncompliance or safety-related defect be discovered.
*Frequency:* On occasion.
*Burden Estimate:* 30 hours.
*Respondents:* Manufacturers.
*Form(s):* None.
*Average Burden Hours per Response:* 30 minutes.

*DOT No:* 3629.
*OMB No:* 2125–0508.
*Administration:* Federal Highway Administration.
*Title:* Hazardous Materials Instructions and Documents.
*Need for Information:* For FHWA to obtain evidence from motor carriers in complying with the requirements of the regulations for safe transportation of Class A and Class B explosives.
*Proposed Use of Information:* To ensure that drivers have been adequately informed by the motor carriers on the proper driver's conduct for the safe transportation of Class A or B explosives prior to the trip.
*Frequency:* Recordkeeping.
*Burden Estimate:* 3,645 hours.
*Respondents:* Motor carriers.
*Form(s):* None.
*Average Burden Hours Per Response:* 1½ minutes.

*DOT No:* 3630.
*OMB No:* 2120–0036.
*Administration:* Federal Aviation Administration.
*Title:* Notice of Landing Area Proposal.
*Need for Information:* FAR 157 requires that each person who intends to construct, activate, deactivate, or change the status of an airport, runway, or taxiway shall notify the FAA. This information is necessary to help ensure aviation safety.
*Proposed Use of Information:* The information collected is used to determine the effect of the proposal on existing airports and on the safe and efficient use of airspace by aircraft; to prescribe air traffic rules and regulations; to provide data for aeronautical charting; and to provide data for a national airport system plan.
*Frequency:* On occasion.
*Burden Estimate:* 2,506 hours.
*Respondents:* Anyone who intends to construct, activate, deactivate, or change the status of an airport, runway, or taxiway.
*Form(s):* FAA Form 7480–1.
*Average Burden Hours Per Response:* 45 minutes.

*DOT No:* 3631.
*OMB No:* 2130–0520
*Administration:* Federal Railroad Administration.

*Title:* Stenciling Reporting Mark, Car Number, Etc., on Freight Cars.
*Need for Information:* Reporting marks and car numbers are required to be stenciled on freight cars for identification purposes.
*Proposed Use of Information:* The information is used solely to identify freight cars. Federal inspectors utilize the markings to monitor a railroad's compliance with safety regulations.
*Frequency:* Recordkeeping—when freight car is built or rebuilt.
*Burden Estimate:* 23,250 hours.
*Respondents:* Railroads.
*Form(s):* None.
*Average Burden Hours Per Response:* 39 hours.
*DOT No:* 3632.
*OMB No:* 2130–0527.
*Administration:* Federal Railroad Administration.
*Title:* New Locomotive Certification (Noise Compliance Regulations).
*Need for Information:* To obviate the need for additional noise testing by the railroads when purchasing new locomotives.
*Proposed Use of Information:* To ensure compliance with the Environmental Protection Agency noise standards for new locomotives and cars.
*Frequency:* Recordkeeping.
*Burden Estimate:* 160 hours.
*Respondents:* 2 Manufacturers.
*Form(s):* None.
*Average Burden Hours Per Response:* 30 minutes.
*DOT No:* 3633.
*OMB No:* 2127–0047.
*Administration:* National Highway Traffic Safety Administration.
*Title:* 49 CFR Part 580, Odometer Disclosure Statement.
*Need for Information:* To deter odometer roll backs and to accomplish successful litigation.
*Proposed Use of Information:* The Odometer Disclosure Statement which is required by 15 USC 1988 is used by motor vehicle transferors and lessors to determine the mileage and value of the vehicles. The disclosure is made on the title and in certain instances on a secure power of attorney form.
*Frequency:* On occasion.
*Burden Estimate:* 2,586,160 hours.
*Respondents:* Individuals, states, businesses, Federal agencies, non-profit institutions, small businesses.
*Form(s):* None.
*Average Burden Hours Per Response:* 16 seconds.
*DOT No:* 3634.
*OMB No:* 2132–0543.
*Administration:* Federal Transit Administration.
*Title:* Charter Service Operations.
*Need for Information:* FTA needs to require applicants to submit an agreement that the applicant and its recipients will provide charter service only if there is no willing and able private operator or if one of the exceptions to 49 CFR 604.9 is applicable.
*Proposed Use of Information:* The information will be used to determine compliance with regulation.
*Frequency:* Annually, with each application.
*Burden Estimate:* 1,984 hours.
*Respondents:* State or local governments, business or other for-profit, small businesses or organizations.
*Form(s):* None.
*Average Burden Hours Per Response:* 1 hour and 12 minutes.
*DOT No:* 3635.
*OMB No:* 2132–0502.
*Administration:* Federal Transit Administration.
*Title:* Sections 3 and 9 Urbanized Area Capital Assistance Program.
*Need for Information:* The information is needed to determine an applicant's eligibility for funding and to monitor their subsequent programs in implementing projects.
*Proposed Use of Information:* The data is used by FTA to ensure compliance with provisions of the Federal Transit Act, as amended and OMB Circular A–102.
*Frequency:* (varied) annually, on occasion, quarterly, biennially.
*Burden Estimate:* 363,860 hours.
*Respondents:* State and local governments.
*Form(s):* SF–424.
*Average Burden Hours Per Response:* 15 hours.
*DOT No:* 3636.
*OMB No:* 2133–0025.
*Administration:* Maritime Administration.
*Title:* Position Reporting System for Vessels.
*Need for Information:* To maintain a current plot of certain ships.
*Proposed Use of Information:* To facilitate immediate marshalling of ships for national defense purposes.
*Frequency:* Every 48 hours at-sea, arrival and departure, and changes to previous information.
*Burden Estimate:* 127,239 hours.
*Respondents:* 13,400.
*Form(s):* CG–4796–A, CG–4796–A(MA).
*Average Burden Hours Per Response:* 10 minutes.
*DOT No.:* 3637.
*OMB No.:* 2115–0506.
*Administration:* U.S. Coast Guard.
*Title:* Declaration of Inspection.
*Need for Information:* This information collection requirement is needed to ensure compliance with 33 U.S.C. 1221, 1225 and 46 U.S.C. 3703. It provides a method for ensuring that specified procedures are followed and certain conditions are maintained which prevent pollution of U.S. waters or damage to vessels and facilities.
*Proposed Use of Information:* This information will be used to identify potential or actual violations of the regulations. The Declaration of Inspection is used to ensure that procedures have been followed and to determine culpability in spills and accident investigations.
*Frequency:* Weekly.
*Respondents:* Owners and operators of vessels.
*Burden Estimate:* 78,000 hours.
*Form(s):* None.
*Average Burden Hours Per Response:* 9 hours and 51 minutes.
*DOT No.:* 3638.
*OMB No.:* 2115–0120.
*Administration:* U.S. Coast Guard.
*Title:* Transfer Procedures Waste Management Plans.
*Need for Information:* This information is needed to ensure that the provisions of the Port and Tanker Safety Act are complied with concerning oil, hazardous materials and waste transfer procedures from vessels, onshore and offshore facilities.
*Proposed Use of Information:* This information will be used to ensure that equipment, methods and procedures to prevent discharges of oil and hazardous materials from vessels, onshore and offshore facilities are in place.
*Frequency:* On occasion.
*Burden Estimate:* 453,138 hours.
*Respondents:* Vessels and facilities owners/operators.
*Form(s):* None.
*Average Burden Hours Per Response:* 9 hours and 11 minutes.
*DOT No.:* 3639.
*OMB No.:* 2115–0552.
*Administration:* U.S. Coast Guard.
*Title:* Liquefied Natural Gas Waterfront Facilities.
*Need for Information:* This information is needed to ensure that liquefied natural gas (LNG) waterfront facilities comply with the safety standards published by the Coast Guard. This requirement is necessary to prevent or mitigate the results of an accidental release of liquefied natural gas at waterfront facilities.
*Proposed Use of Information:* This information will be used to determine

that other requirements in 33 CFR Part 127 are also being complied with and to determine the suitability of the waterway on which the LNG waterfront facility is located, for LNG marine traffic.
*Frequency:* On occasion.
*Burden Estimate:* 255 hours.
*Respondents:* Owners/Operators of Liquefied Natural Gas Facilities.
*Form(s):* None.
*Average Burden Hours Per Response:* 12 hours and 5 minutes for reporting; and 48 hours and 4 minutes per recordkeeper.

*DOT No.:* 3640.
*OMB No.:* New.
*Administration:* U.S. Coast Guard.
*Title:* Additional Requirements for Prince William Sound, Alaska.
*Need for Information:* This information is needed to ensure that spill response organizations and vessels carrying oil in bulk have oil spill response plans available while operating in Prince William Sound, Alaska.
*Proposed Use of Information:* This information will be used to determine if the response plans provide for propositioned oil spill containment, removal equipment, an oil spill removal organization, training of local residents in oil spill removal, containment techniques, practice exercises, periodic testing and certification of equipment to protect this environmentally sensitive area.
*Frequency:* On occasion.
*Burden Estimate:* 1,880 hours.
*Respondents:* Spill response facilities and tank vessel owners.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 246 hours and 40 minutes for reporting; and 200 hours per recordkeeper.

*DOT No:* 3641.
*OMB No:* New.
*Administration:* U.S. Coast Guard.
*Title:* Vessel Response Plan.
*Needs for Information:* This information is needed by the Coast Guard to ensure that vessels carrying oil in bulk as cargo and operating in waters subject to U.S. jurisdiction, submit written response plans for a worst case discharge oil or hazardous substances.
*Proposed Use of Information:* This information will be used by the Coast Guard to ensure that certain vessels entering U.S. waters are adequately prepared to respond to incidents involving the spill of oil or hazardous substances.
*Frequency:* On occasion.
*Burden Estimate:* 371,050 hours.
*Respondents:* Owners or Operators of vessels carrying oil.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 319 hours and 54 minutes for reporting; and 91hours and 31 minutes for recordkeeper.

*DOT No:* 3642.
*OMB No:* New.
*Administration:* U.S. Coast Guard.
*Title:* Claims Under the Oil Pollution Act of 1990.
*Needs for Information:* This information is needed by the Coast Guard to implement the claims provision of the Oil Pollution Act of 1990 (OPA 90). Coast Guard will ensure that claims submitted to the Oil Spill Liability Trust Fund (Fund) are fully substantiated and that the procedures for advertising and presentation of claims are followed.
*Proposed Use of Information:* Coast Guard will use this information to determine whether claims submitted to the Fund are compensable. This information will also ensure that the correct amount of reimbursement of costs or compensation for damages are made from the Fund.
*Frequency:* Once.
*Burden Estimate:* 94,803 hours.
*Respondents:* Claimants of oil spills and responsible parties of oil spills.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 4 hours for claimants; 1 hour and 3 minutes for responsible parties.

*DOT No:* 3642.
*OMB No:* New.
*Administration:* U.S. Coast Guard.
*Title:* State Access to the Oil Spill Liability Trust Fund for Removal Costs Under the Oil Pollution Act of 1990.
*Needs for Information:* This information collection requirement if needed to implement the requirements of section 1012 of the Oil Pollution Act (OPA 90) and to establish the Oil Spill Liability Trust Fund (the Fund). The Coast Guard shall enter into an agreement with the Governor of any interested State to establish procedures under which the Governor may receive payments from the Fund for oil spill removal costs. Coast Guard will ensure that all expenditures by a State be fully substantiated and that procedures for presentation of those expenditures to the Fund be followed.
*Proposed Use of Information:* This information will be used by the Coast Guard to determine whether expenditures submitted by a State to the Fund are compensable and where compensable ensure that the correct amount is made.
*Frequency:* On occasion.
*Burden Estimate:* 7,650 hours.
*Respondents:* State Governments.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 1 hour and 30 minutes for reporting; and 15 minutes for recordkeeper.

*DOT No:* 3644.
*OMB No:* New.
*Administration:* U.S. Coast Guard.
*Title:* Escorts for Certain Tankers.
*Need for Information:* This information collection is needed by the U.S. Coast Guard to ensure that escort vessels assisting oil tankers in the Prince William Sound, Alaska, or Rosario Strait and Puget Sound areas meet the necessary requirements of 46 U.S.C. 3606(a)(3).
*Proposed Use of Information:* The Coast Guard will use this information to ensure that these escort vessels have measurements and performance characteristics to show their capabilities of assisting single hull tankships over 5,000 gross tons. This requirement will provide local Coast Guard authorities the information to judge the suitability of towing vessels for escort services.
*Frequency:* Once.
*Burden Estimate:* 100 hours.
*Respondents:* Escort Vessel Companies.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 20 hours.

*DOT No:* 3645.
*OMB No:* 2120–0056.
*Administration:* Federal Aviation Administration.
*Title:* Report of Inspection Required by Airworthiness Directives, FAR Part 39.
*Need for Information:* An airworthiness directive (AD) is issued when an unsafe condition is detected on a specific aircraft, engine, propeller, or appliance. If the condition is serious enough and more information is needed to determine if the corrective action was adequate to correct the problem, those aircraft owners/operators are required to report the results of the inspection or modifications required by the AD to provide the FAA with information concerning inspection results and corrective action.
*Proposed Use of Information:* The airworthiness directive (AD) is the medium used by the Administrator to provide notice to aircraft owners and operators that an unsafe condition exists and prescribes the conditions and/or limitations, including inspections, under which the product may continue to be operated.
The aircraft certification office in the FAA directorate initiating the AD will

analyze the results of findings reported and determine if the corrective action called for in the AD has been sufficient to eliminate the unsafe condition, and if not, a new AD to correct the unsafe condition will be issued.
*Frequency:* On occasion.
*Burden Estimate:* 21,250 hours.
*Respondents:* All.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 5 minutes.

*DOT No:* 3646.
*OMB No:* 2127–0542.
*Administration:* National Highway Traffic Safety Administration.
*Title:* 49 CFR Part 543, Petition for Exemption from the Vehicle Theft Prevention Standard.
*Need for Information:* To set procedures to be followed by manufacturers in preparing and submitting and processing petitions for exemption.
*Proposed Use of Information:* Manufacturers of passenger automobiles may petition the Secretary for an exemption from the theft prevention standard if a line/lines of vehicles are equipped with an antitheft device, which is standard equipment and is determined by the Secretary to be as effective as the theft prevention standard.
*Frequency:* One-time only.
*Burden Estimate:* 96 hours.
*Respondents:* Vehicle manufacturers.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 24 minutes.

*DOT No:* 3647.
*OMB No:* 2115–0553.
*Administration:* U.S. Coast Guard.
*Title:* 33 CFR 140.15 Equivalent and Approved Equipment.
*Need for Information:* This information collection is needed by the U.S. Coast Guard to implement the best available and safest technologies concept to comply with the Outer Continental Shelf Lands Act.
*Proposed Use of Information:* This information will be used by the Coast Guard for comparison with existing standards or procedures to ensure that an equivalent level of safety is maintained as provided for in the regulations. Coast Guard will review this information to determine whether certain unspecified equipment or procedures are safe.
*Frequency:* On occasion.
*Burden Estimate:* 100 hours.
*Respondents:* Owners, operators, equipment manufacturers and subcontractors.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 10 hours.

*DOT No:* 3648.
*OMB No:* 2115–0071.
*Administration:* U.S. Coast Guard.
*Title:* Official Logbook.
*Need for Information:* This information collection requirement is needed by the Coast Guard to ensure that commercial shipping companies comply with the commercial vessel safety statutes. Logbooks are needed to keep official records of all foreign and intercoastal voyages as well as load line and testing records.
*Proposed Use of Information:* This information collection will be used by the Coast Guard and various federal maritime casualty investigators of Federal/Civil courts in instances of injury or litigation between a seaman and his shipping company. Coast Guard inspectors will use the information to determine compliance with various laws and to examine incidence of shipboard misconduct.
*Frequency:* On occasion.
*Burden Estimate:* 1,750 hours.
*Respondents:* Shipping Companies and U.S. Merchant Mariners.
*Form(s):* CG 706B.
*Average Burden Hours Per Respondent:* 1 hour.

*DOT No:* 3649.
*OMB No:* 2115–0578.
*Administration:* U.S. Coast Guard.
*Title:* Various Forms and Posting Requirements Under 46 CFR Subchapter T, "Small Passenger Vessels (Under 100 Gross Tons)".
*Need for Information:* This information collection is needed to ensure that inspections of small passenger vessels are conducted for the safety of individuals and property on board. Reporting and posting requirements will be used to ensure the safe operation of these vessels; and in case of an emergency, that proper procedures are followed.
*Proposed Use of Information:* This information will be used to ensure that the Coast Guard is made aware of significant maintenance or repair work done on small passenger vessels. Plan submittals are required for new existing vessels that require significant modifications. Submittal of these plans will ensure that structure, arrangement, stability and outfitting are satisfactory for the intended service.
*Frequency:* On occasion.
*Burden Estimate:* 278,704 hours.
*Respondents:* Small Passenger Vessel Owners.
*Form(s):* CG–841, CG–854, CG–948, CG–949, CG–3752, and CG–5256.
*Average Burden Hours Per Respondent:* 8 hours and 4 minutes for reporting; and 3 hours and 54 minutes per recordkeeper.

*DOT No:* 3650.
*OMB No:* 2130–0534.
*Administration:* Federal Railroad Administration.
*Title:* Grade Crossing Signal System Safety Regulations.
*Need for Information:* To provide accurate data regarding instances of grade crossing activation failure.
*Proposed Use of Information:* This information will be used to craft better solutions to the problems of grade crossing device malfunctions.
*Frequency:* On Occasion, One-Time, Recordkeeping.
*Burden Estimate:* 54,906 hours.
*Respondents:* 605 Railroads.
*Form(s):* FRA–F–6180.83 and FRA–F–6180.87.
*Average Burden Hours Per Respondent:* 90 hours and 45 minutes.

*DOT No:* 3651.
*OMB No:* New.
*Administration:* Federal Railroad Administration.
*Title:* Bridge Worker Safety Rules.
*Need for Information:* To assure protection for those who work on railroad bridges.
*Proposed Use of Information:* To assure that fall protection and personal protective equipment is provided for railroad bridge maintenance workers.
*Frequency:* Recordkeeping.
*Burden Estimate:* 1 hour.
*Respondents:* 575 Railroads.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 28 seconds.

Issued in Washington, DC on June 25, 1992.

**Cynthia C. Rand,**

*Director of Information Resource Management.*

[FR Doc. 92–15572 Filed 7–1–92; 8:45 am]
BILLING CODE 4910–62–M

## Order to Show Cause Establishing Brazil All-Cargo Charter Authorization Procedures

**ACTION:** Issuance of a show-cause order tentatively establishing new procedures for distribution of charter authorizations for U.S.-Brazil all-cargo charter flights: Order 92–6–46, Docket 48219.

**SUMMARY:** U.S. air carriers may operate 350 all-cargo charter flights per year between the United States and Brazil under the existing charter regime. For the recent charter years, the Department has conducted annual show-cause allocation proceedings to award these flights. Based upon its experience allocating flights and various changes in

Brazil all-cargo market and use of the charters, the Department has tentatively decided that more simplified procedures are warranted and will relieve carriers of an unnecessary regulatory burden.

Specifically, the Department has tentatively decided to allot in advance a portion of the charters available for the 1992/93 charter year to incumbents that have operated an average of 20 flights per year over the past two years in the U.S.-Brazil all-cargo charter market. Allotments would be based on the average of each carrier's operations over the past two calendar years. This would result in advance allotments to Arrow Air of 62 flights and Millon Air of 34 flights. Irrespective of operations, the total advance allotments would not exceed 325 flights. The advance allotments would be subject to forfeiture if 40 percent are not used or committed for use by contract after six months.

The flights not subject to advance allotment (254 for the 1992/93 charter year) would be placed in a charter pool for distribution on a first-come, first-served basis. New entrants and *ad hoc* carriers could apply for up to ten flights from the pool each month. After three months, the incumbents could also apply for a similar number of flights. During the last two months of the charter year, there would be no limit as to the number of flights requested. Monthly reports on all charter operations would be required so that the Department can monitor use of the charters.

Because the Department cannot complete this proceeding before the beginning of the charter year on July 1, it decided to permit Arrow and Millon to use a *pro rata* share of the proposed allotments (six flights for Arrow and three for Millon) for operations in the month of July, pending completion of the proceeding instituted in this order. The Department also reserved a *pro rata* share of proposed charter pool flights for operation of charters by other carriers during July.

**DATES:** Objections and comments are due not later than July 10, 1992. Answers are due not later than July 15, 1992.

**ADDRESSES:** Objections and comments should be filed in Docket 48219 addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., room 4107, Washington, DC 20590 and served on all parties on the service list to the order and on Robert Goldner, room 9216.

Dated: June 26, 1992.

**Patrick V. Murphy, Jr.,**

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 92-15497 Filed 7-1-92; 8:45 am]

BILLING CODE 4910-62-M

## Federal Highway Administration

### Intelligent Vehicle Highway Systems; Program Briefing

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Federal Highway Administration (FHWA) is sponsoring an informational briefing on the Intelligent Vehicle Highway Systems (IVHS) Program on July 16, 1992, in Washington, DC. The briefing is open to the public and is designed for industrial firms, engineering services firms, professional organizations, academia, and local, State, and Federal government agencies.

**DATES:** July 16, 1992, from 8:30 a.m. to 3 p.m.

**ADDRESSES:** Federal Aviation Administration, Third Floor Auditorium, 800 Independence Avenue, SW., Washington, DC. Attendance will be limited to the 200 person capacity of the auditorium.

**FOR FURTHER INFORMATION CONTACT:** H. Milton Heywood, HTV-11, FHWA,. room 3123, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2182. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

**SUPPLEMENTARY INFORMATION:** The aim of the Intelligent Vehicle Highway Systems (IVHS) program is to apply advanced concepts and technology from the areas of communications, navigation, and information systems to provide solutions to traffic congestion problems and, at the same time, to improve highway safety and reduce the harm that automobile traffic does to the environment.

The briefing will address the following topics: IVHS AMERICA and IVHS AMERICA's Strategic Plan; the IVHS program, its vision, its functional areas, and their integration; the IVHS programs of FHWA, the National Highway Traffic Safety Administration, and the Federal Transit Administration; FHWA's deployment activities; and the automated highway system.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: June 25, 1992.

**T.D. Larson,**

*Administrator.*

[FR Doc. 92-15630 Filed 7-1-92; 8:45 am]

BILLING CODE 4910-22-M

## Federal Railroad Administration

**[Docket No. RSAD-91-3]**

### Test Program To Evaluate Random Drug Testing Rate

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of extension of test program and request for comments.

**SUMMARY:** FRA is extending an experimental program designed to evaluate the extent to which the rate of random drug testing affects general deterrence. FRA will extend the current conditional waivers an additional 12 months. Conditional waivers were initially granted to three Class I freight railroads and one commuter railroad commencing July 1, 1991. The four railroads will be allowed to continue testing at a 25 percent rate for an additional year, rather than 50 percent. The previously selected control group railroads have agreed to serve for an additional year. These control railroads have similar characteristics to the test railroads and would continue their testing rates at 50 percent as required by FRA's alcohol and drug regulation. Extension of this test program will provide time to compile and analyze the first year's test results and provide additional data to help determine whether the drug testing rate significantly influences the percentages of employees testing positive for prohibited use of one or more controlled substances. This information may support future rulemaking activity.

**DATES:** (1) FRA intends to extend the current conditional waivers for one year effective July 1, 1992.

(2) Written comments should be received by August 1, 1992. Comments filed after this date will be considered to the extent practicable.

**ADDRESSES:** Comments shall be sent to Docket Clerk, Docket No. RSAD-91-3, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., room 8201, Washington, DC 20590. Persons wishing the FRA to acknowledge receipt of their comments should submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. RSAD-91-3."

The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons, between 8:30 a.m. and 6 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Walter C. Rockey, Executive Assistant (RRS–3), Office of Safety, FRA, Washington, DC 20590, (Telephone: (202) 366–0897) or Patricia V. Sun, Trial Attorney (RCC–30), Office of Chief Counsel, FRA, Washington, DC 20590, (Telephone: (202) 366–4002).

**SUPPLEMENTARY INFORMATION:**

**Background**

In February of 1991, the Association of American Railroads (AAR) filed a petition in accordance with 49 CFR 211.51, requesting that FRA implement a test programs that would temporarily suspend compliance with 49 CFR 219.601(b)(2)(ii). This section, first published on November 21, 1988 (53 FR 47103), requires each railroad, in the second year of that railroad's random testing program, to conduct a sufficient number of random tests during the year to equal at least 50 percent of the number of its covered service employees. (Subsequent amendments to the alcohol and drug regulations, which did not affect Section 219.601(b)(2)(ii), were published on December 27, 1989 (54 FR 53238) and June 4, 1990 (55 FR 22791)). The AAR proposal was to permit an experimental group of railroads to test at a 25 percent rate for one year, for comparison against a group of control railroads that would continue to test at a 50 percent rate. Data from the two groups of railroads would then be analyzed to determine the effect of different testing rates on deterrence.

No one requested an opportunity for oral presentation. Written comments were received from four sources concerning the initial year of the proposed test program. All four supported the effort. One suggested including a 10 percent testing rate (a proposal FRA was not able to adopt because of the lack of an adequate population base to support valid findings for a three-tier design), while another suggested a longer test period.

FRA agreed with the AAR that an experimental program would be useful in evaluating the testing rate. FRA granted the four test railroads a waiver from the 50 percent testing requirement effective July 1, 1991. The four test railroads and the four control railroads were required to submit quarterly test data throughout the test year for monitoring by the FRA. For the first three quarters of this period, the test railroads conducted 7579 tests, with 64 positive for a rate of .008. The control railroads performed 12738 tests and had 120 positive for a positive rate of .009. The railroad industry test results for calendar 1991 consisted of 50,436 tests, 447 positive and a rate of .009. Railroad industry post-accident and reasonable cause test results moved to new lows in 1991, 1.5 percent and 2.1 percent, respectively.

On June 15, 1992, the AAR submitted a request that the experimental period be extended for one year. The test and control railroads would continue to test at the previously established rates. The AAR recognized the similar test results for the test and control railroads during the first three quarters of the initial test year. It was suggested that a second test year would permit the FRA/DOT to accumulate further comparative data while considering the cumulative data.

The FRA agrees with the AAR that the test results, thus far, have not demonstrated a marked difference in the deterrent effect of the random testing programs when conducted at the 25 and 50 percent levels and that the accumulation of data over a longer period is desirable. Initial analysis of the data for the first three quarters indicates the deterrent effect of the FRA regulation is being maintained at the 25 percent testing rate on the test railroads.

**Implementation**

In the initial notice on this project, FRA recognized that it may be desirable to extend the test period. Prior to commencing the initial test period, the FRA conducted compliance reviews on the four test railroads and the four control railroads to make certain the railroads were in compliance with regulatory provisions and their testing systems would convey reliable test results. All railroads were found to have acceptable programs. FRA established a protocol covering test conditions and reporting requirements prior to starting the initial test period. All railroads signed the protocols and the quarterly test results have been reported as required. FRA intends to conduct follow-up compliance reviews on all eight railroads in the early months of the second year to be certain all safeguards remain in place. The current quarterly reporting of test results will remain to permit FRA to respond quickly if any significant findings develop.

Because FRA is merely extending a test program that, in its initial notice, it estimated would continue for "at least" four calendar quarters, it does not believe that further opportunity for oral presentation is necessary. However, we are providing a further opportunity for written comment and request that anyone with views on prospects for success or failure of the effort submit information to the docket at the address set forth above.

By letter granting an extension of the test program, the FRA will extend the current conditional waiver for one year. FRA intends for the second year of this experiment to commence on July 1, 1992, and continue for at least four calendar quarters. FRA will actively monitor the quarterly test results and review the cumulative data at the end of the test year.

**Authority:** 45 U.S.C. 431(c), 437; 49 CFR 1.49(m), 211.43, 211.51

**Grady C. Cothen, Jr.,**

*Associated Administrator for Safety.*

[FR Doc. 92–15562 Filed 7–1–92; 8:45 am]

BILLING CODE 4910–06–M

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## National Highway Traffic Safety Administration

## Discretionary Cooperative Agreements to Support Biomechanics Research

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Announcement of Discretionary Cooperative Agreement to Support Biomechanical Research.

**SUMMARY:** The National Highway Traffic Administration (NHTSA) announces a discretionary cooperative agreement program to support research studies to evaluate the biomechanical response of human surrogates to impact and solicits applications for projects under this program.

**DATES:** Applications must be received on or before August 5, 1992.

**ADDRESSES:** Applicants must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Alberta Jones, 400 Seventh Street, SW., room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–92–Y–07339. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

**FOR FURTHER INFORMATION CONTACT:** General administrative questions may be directed to Alberta Jones, Office of Contracts and Procurement, at (202) 366–9566. Programmatic questions relating to this cooperative agreement program

should be directed to Richard M. Morgan, Biomechanics Division (NRD–12), 400 Seventh Street, SW., room 6221B, Washington, DC 20590, at (202) 366–4717.

**SUPPLEMENTARY INFORMATION:**

**Background and Objectives**

The National Highway Traffic Safety Administration is mandated with the responsibility for devising strategies to save lives and reduce injuries from motor vehicle crashes. The purpose of this cooperative agreement program is to promote the improvement of traffic safety for the public through the support of research studies designed to evaluate the biomechanical response of human surrogates to impact as a means of expanding the base of scientific knowledge in this field and to provide for the coordinated exchange of scientific information collected as a result of the studies conducted.

Impact trauma research employs the principles of mechanics to discover the physical response and physiological results of impacts to the human body. Generally, the teams doing the research are comprised of individuals from different disciplines: engineering, physiology, medicine, biology, and anatomy. The team studies the physical response of the body to impact by measuring and recording engineering parameters defining the event, such as force, accelerations, displacements, surface contours, strains, pressure, etc., and observing the physiological consequences in terms of physical or functional alterations to the body.

One of the major research materials used to simulate injury to the living human is the human cadaver (hereinafter referred to as a human surrogate) exposed to impact and detailed response measurement.

The focus of this cooperative research effort is the study of human surrogate response and injury to physical impacts simulating some significant aspect of automotive impact injury, i.e., head, neck, torso, or lower extremity injury produced in drivers and passengers, restrained by various safety devices and exposed to either a frontal, lateral, or rear impact; pedestrian trauma; etc. The specific objectives of this cooperative research effort are to: (1) Delineate the mechanism of injury, (2) develop functional relationships between the measurable engineering parameters and the extent and severity of injury, and (3) quantify the impact response of the body in such a way as to allow the development of mechanical analogs of the human body.

**NHTSA Involvement**

The NHTSA, Biomechanics Division, will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide, on an as-needed basis, one professional staff person, to be designated as the Contracting Officer's Technical Representative (COTR), to participate in the planning and management of the cooperative agreement and coordinate activities between the organization and the NHTSA.
2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR.
3. Provide liaison with other government agencies and organizations as appropriate; and
4. Stimulate the exchange of ideas and problems among cooperative agreement recipients, and, if appropriate NHTSA contracts and other interested parties.

**Period of Support**

The research effort described in this notice will be supported through the award of at least one cooperative agreement. The NHTSA reserves the right to make multiple awards depending upon the merit of the applications received.

Contingent upon the availability of funds and satisfactory performance, a cooperative agreement(s) will be awarded to an eligible organization(s) for project periods of up to five years. No cooperative agreement awarded as a result of this notice shall exceed $550,000 per year or $2,750,000 for five years.

**Eligibility Requirements**

In order to be eligible to participate in this cooperative agreement program, an applicant must be an educational institution or other nonprofit research organization. For profit research organizations may apply; however, no fee or profit will be allowed.

**Application Procedure**

Each applicant must submit one original and two copies of their application package to: Office of Contracts and Procurement (NAD–30), NHTSA, 400 Seventh Street, SW., room 5301, Washington, DC 20590. Only complete application packages received on or before August 5, 1992 shall be considered. Submission of three additional copies will expedite processing but is not required.

**Application Contents**

1. The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and the certified assurances included. While the Form 424–A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which represents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort.
2. Applications shall include a program narrative statement which addresses the following:
   a. The objectives, goals, and anticipated outcomes of the proposed research effort;
   b. The method or methods that will be used;
   c. The source of the human surrogates to be used;
   d. The number and quality of human surrogates (viz human cadavers) the applicant expects to use for this research effort along with documentation (retrospective or prospective) that provides evidence that the applicant has access to the proposed quantity of experimental material;
   e. The proposed program director and other key personnel identified for participation in the proposed research effort, including a description of their qualifications and their respective organizational responsibilities;
   f. A description of the general, as well as specialized impact simulation, test facilities and equipment currently available or to be obtained for use in the conduct of the proposed research effort: and
   g. A description of the applicant's previous experience or on-going research program that is related to this proposed research effort.

**Review Process and Criteria**

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to assure that the application contains all of the information required by the Application Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated using the following criteria:

1. The applicant's understanding of the purpose and unique problems represented by the research objectives of this cooperative agreement program as evidenced in the description of their proposed research effort. Specific

attention shall be placed upon the applicant's stated means for obtaining the quantity of experimental material necessary to conduct the proposed research effort.

2. The potential of the proposed research effort accomplishments to make an innovative and/or significant contribution to the base of biomechanical knowledge as it may be applied to saving lives and reducing injuries resulting from motor vehicle crashes.

3. The technical merit of the proposed research effort, including the feasibility of the approach, planned methodology, and anticipated results.

4. The adequacy of test facilities and equipment identified to accomplish the proposed research effort, including impact simulation.

5. The adequacy of the organizational plan for accomplishing the proposed research effort, including the qualifications and experience of the research team, the various disciplines represented, and the relative level of effort proposed for professional, technical, and support staff.

**Terms and Conditions of the Award**

1. The protection of the rights and welfare of human subjects in NHTSA-sponsored experiments is established in Department of Transportation 49 CFR part 11 and in NHTSA Orders 700–1, 700–3, and 700–4. Any recipient must satisfy the requirements and guidelines of 49 CFR 11 and the NHTSA Orders 700 series prior to award of the cooperative agreement. A copy of 49 CFR 11 and the NHTSA 700 series may be obtained from the programmatic information contact designated in this notice.

2. Prior to award, each recipient must comply with the certification requirements of 49 CFR Part 29—Department of Transportation Government-wide Department and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants), as well as 49 CFR Part 20—Department of Transportation New Restrictions on Lobbying.

3. Reporting Requirements: a. *Data Reports:* The dynamic and other data measured in each human surrogate impact test will be provided by the recipient(s) within four (4) weeks after the test is run. For each and every test performed with a human surrogate, a data package shall be submitted to the COTR. For example, were a human cadaver to be impacted by pendulum to the right femur and later to be impacted by pendulum to the thorax, the two (2) impacts are separate tests even though there was only one (1) human surrogate.

A data package consists of high speed film, paper test report, and magnetic tape complying with the NHTSA Data Tape Reference Guide. The NHTSA, Biomechanics Division, maintains a Biomechanics Data Base which provides information, upon request, to the public, including educational institutions and other research organizations.

To facilitate the input of data as well as the exchange of information, any recipient of a cooperative agreement awarded as a result of this notice must provide the magnetic tape in the format specified in the "NHTSA Data Tape Reference Guide." A copy of this document may be obtained from the programmatic information contact designated in this notice.

b. *Performance Reports:* The recipient shall present one (1) hour semiannual technical performance briefings at the NHTSA headquarters building (at 400 Seventh Street, S. W., Washington, DC 20590) which shall be due 30 days after the reporting period and a final performance report within 90 days after the completion of the research effort. An original and two copies of the final performance report shall be submitted to the COTR.

4. During the effective period of the cooperative agreement(s) awarded as a result of this notice, each agreement shall be subject to the general administrative requirements of OMB Circular A–110, the cost principles of OMB Circular A–21, A–122, or FAR 31.2 as applicable to the recipient, the requirements of 49 CFR parts 20 and 29, and the NHTSA General Provisions for Assistance Agreements.

Issued on: June 25, 1992.

**George L. Parker,**

*Associate Administrator for Research and Development.*

[FR Doc. 92–15498 Filed 7–1–92; 8:45 am]

BILLING CODE 4910-59-M

## Annual List of Nonconforming Vehicles Determined to be Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Annual list of nonconforming vehicles determined to be eligible for importation.

**SUMMARY:** This notice lists all vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards that have been determined under the Imported Vehicle Safety Compliance Act of 1988, as of June 1, 1992, to be eligible for importation into the United States.

**FOR FURTHER INFORMATION CONTACT:** Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

**SUPPLEMENTARY INFORMATION:** Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act, (15 U.S.C. 1381 *et seq.*) (the Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless the Secretary of Transportation has determined:

(I) that the motor vehicle * * * is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards; or (II) where there is no substantially similar United States motor vehicle, * * * that the safety features of the vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards * * *.

Section 108(c)(3)(C)(i) of the Act, 15 U.S.C. 1397(c)(3)(C)(i), authorizes the Secretary of Transportation to make these import eligibility determinations "(I) on the petition of any registered importer or any manufacturer, or (II) on the Secretary's own initiative." The Secretary's authority to make these determinations has been delegated to the Administrator of NHTSA under 49 CFR 1.50(a). Recently, the Administrator redelegated to the Associate Administrator for Enforcement the authority to grant or deny petitions for import eligibility determinations submitted by motor vehicle manufacturers and registered importers (49 CFR 501.8(g)(3)). In the exercise of this authority, the Administrator has made a number of import eligibility determinations on his own initiatives, and NHTSA has granted several petitions for such determinations submitted by registered importers.

Section 108(c)(3)(C)(iv) of the Act, 15 U.S.C. 1397(c)(3)(C)(iv), requires the annual publication in the **Federal Register** of a list of all such determinations. That list is set forth in annex A and is current as of June 1, 1992.

Each vehicle on the list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility determination must write that number on the Form HS–7 accompanying entry to indicate that the

vehicle is eligible for importation. "VSA" eligibility numbers are assigned to vehicles that are determined to be eligible for importation on the initiative of the Administrator, and "VSP" eligibility numbers are assigned to those that are determined to be eligible on the basis of a petition from a manufacturer or registered importer. Vehicles for which eligibility determinations have been made are listed in Annex A alphabetically by make. Eligible models within each make are listed numerically by "VSA" or "VSP" number.

**Authority:** 15 U.S.C. 1397(c)(3)(C)(iv); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 26, 1992.

**William A. Boehly,**

*Associate Administrator for Enforcement.*

## Annex A

### *Vehicles Certified by Their Original Manufacturer as Complying with all Applicable Canadian Motor Vehicle Safety Standards*

VSA#

1 (a) All passenger cars manufactured on and after January 1, 1968, and before September 1, 1989;
(b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1990, which are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208;
(c) All multipurpose passenger vehicles, trucks, and buses manufactured between January 1, 1968, and September 1, 1991;
(d) All multipurpose passenger vehicles, trucks, and buses manufactured on and after September 1, 1991, by their original manufacturer to comply with the requirements of FMVSS No. 202 and 208 to which they would have been subject had they been manufactured for sale in the United States; and
(e) All trailers and motorcycles manufactured on and after January 1, 1968.

### Vehicles Manufactured for Other Than the Canadian Market

| VSA # | Model type | Model year |
|---|---|---|
| | **BMW** | |
| 2 | 1600 | 1968 through 1971. |
| 3 | 2002 | 1968 through 1976. |
| 4 | 2000 and 2000A | 1969. |
| 5 | 2500 and 2500A | 1969 through 1970. |
| 6 | 2800 and 2800A | 1969 through 1971. |
| 7 | 2002A | 1970 through 1976. |
| 8 | 2800CS and 2800CSA. | 1970 through 1971. |
| 9 | 2.8 and 2.8A Baveria. | 1971. |
| 10 | 2002Tii | 1972 through 1974. |
| 11 | 3.0 and 3.0A Baveria. | 1972. |
| 12 | 3.0CSi and 3.0CSiA | 1972 through 1974. |
| 13 | 3.0S and 3.0SA | 1974. |
| 14 | 3.0Si and 3.0SiA | 1975. |
| 15 | 530i and 530iA | 1975 through 1978. |
| 16 | 320, 320i, and 320iA. | 1976 through 1985. |
| 17 | 630CSi 630CSiA | 1977. |
| 18 | 633CSi and 633CSiA. | 1977 through 1984. |
| 19 | 733i and 733iA | 1977 through 1984. |
| 20 | 528i and 528iA | 1979 through 1984. |
| 21 | 528e and 528eA | 1982 through 1988. |
| 22 | 533i and 533iA | 1983 through 1984. |
| 23 | 318i and 318iA | 1981 through 1989. |
| 24 | 325e and 325eA | 1984 through 1987. |
| 25 | 535i and 535iA | 1985 through 1989. |
| 26 | 524tdA | 1985 through 1986. |
| 27 | 635, 635CSi, and 635CSiA. | 1979 through 1989. |
| 28 | 735, 735i, and 735iA. | 1980 through 1989. |
| 29 | L7 | 1986 through 1987. |
| 30 | 325, 325i, 325iA, and 325E. | 1985 through 1989. |
| 31 | 325 is and 325isA | 1987 through 1989. |
| 32 | M6 | 1987 through 1988. |
| 33 | 325iX and 325iXA | 1988 through 1989. |
| 34 | M5 | 1988. |
| 35 | M3 | 1988 through 1989. |
| 66 | 316 | 1978 through 1982. |
| 67 | 323i | 1978 through 1985. |
| 68 | 520 and 520i | 1978 through 1983. |
| 69 | 525 and 525i | 1979 through 1982. |
| 70 | 728 and 728i | 1977 through 1985. |
| 71 | 730, 730i, and 730iA. | 1978 through 1980. |
| 72 | 732i | 1980 through 1984. |
| 73 | 745i | 1980 through 1986. |

| VSP # | Model type | Model year |
|---|---|---|
| | **BMW** | |
| 4 | 518i | 1986. |
| 5 | 525i | 1989. |
| 6 | 730iA | 1988. |

| VSA # | Model type | Model year |
|---|---|---|
| | **Ferrari** | |
| 36 | 308 (all models) | 1974 through 1985. |
| 37 | 328 GTS | 1985 through 1989. |
| 37 | 328 (all other models). | 1985 and 1988 through 1989. |
| 38 | GTO | 1985. |
| 39 | Testarossa | 1987 through 1989. |
| 74 | Mondial (all models) | 1980 through 1989. |
| 76 | 208, 208 Turbo (all models). | 1974 through 1988. |
| | **Jaguar** | |
| 40 | XJS | 1980 through 1987. |
| 41 | XJ6 | 1970 through 1986. |
| | **Mazda** | |
| 42 | RX7 | 1978 through 1981. |

| VSA # | Model type | Model ID | Model year |
|---|---|---|---|
| | **Mercedes Benz** | | |
| 43 | 600 | 100.012 | 1968 through 1981. |
| 43 | 600 Long 4dr | 100.014 | 1968 through 1981. |
| 43 | 600 Landaulet | 100.015 | 1968 through 1981. |
| 43 | 600 Long 6dr | 100.016 | 1968 through 1981. |
| 44 | 280 SLC | 107.022 | 1975 through 1981. |
| 44 | 350 SLC | 107.023 | 1972 through 1979. |
| 44 | 450 SLC | 107.024 | 1973 through 1989. |
| 44 | 380 SLC | 107.025 | 1981 through 1989. |
| 44 | 500 SLC | 107.026 | 1978 through 1981. |
| 44 | 300 SL | 107.041 | 1986 through 1988. |
| 44 | 280 SL | 107.042 | 1989 through 1985. |
| 44 | 350 SL | 107.043 | 1971 through 1978. |
| 44 | 450 SL | 107.044 | 1972 through 1989. |

| | | | |
|---|---|---|---|
| 44 | 380 SL | 107.045 | 1980 through 1989. |
| 44 | 500 SL | 107.046 | 1980 through 1989. |
| 44 | 420 SL | 107.047 | 1986. |
| 44 | 560 SL | 107.048 | 1986 through 1989. |
| 45 | 280 S | 108.016 | 1968 through 1972. |
| 45 | 280 SE | 108.018 | 1968 through 1972. |
| 45 | 280 SEL | 108.019 | 1968 through 1972. |
| 45 | 280 SE (3.5) | 108.057 | 1970 through 1973. |
| 45 | 280 SEL (3.5) | 108.058 | 1972 through 1973. |
| 45 | 280 SE (4.5) | 108.067 | 1970 through 1972. |
| 45 | 280 SEL (4.5) | 108.068 | 1972. |
| 46 | 300 SEL | 109.016 | 1968 through 1972. |
| 46 | 300 SEL (6.3) | 109.018 | 1969 through 1972. |
| 46 | 300 SEL (4.5) | 109.057 | 1972. |
| 47 | 280S E Coupe. | 111.024 | 1966 through 1971. |
| 47 | 280 SE Conv. | 111.025 | 1968 through 1971. |
| 47 | 280 SE 3.5 Cp. | 111.026 | 1971. |
| 47 | 280 SE 3.5 Cv. | 111.026 | 1971. |
| 48 | 230 SL | 113.042 | 1968 through 1971. |
| 48 | 250 SL | 113.043 | 1968 through 1971. |
| 48 | 280 SL | 113.044 | 1968 through 1971. |
| 49 | 230.6 | 114.015 | 1968 through 1976. |
| 49 | 250 | 114.010 | 1968 through 1976. |
| 49 | 250 | 114.011 | 1971 through 1976. |
| 49 | 250 CE | 114.022 | 1970 through 1976. |
| 49 | 250 C | 114.023 | 1970 through 1976. |
| 49 | 280 | 114.060 | 1972 through 1976. |
| 49 | 280 E | 114.062 | 1972 through 1976. |
| 49 | 280 CE | 114.072 | 1972 through 1976. |
| 49 | 280 C | 114.073 | 1972 through 1976. |
| 50 | 200 | 115.015 | 1976. |
| 50 | 230.4 | 115.017 | 1974 through 1976. |
| 50 | 220 D | 115.110 | 1968 through 1976. |
| 50 | 240 D (3.0) | 115.114 | 1974 through 1976. |
| 50 | 240 D | 115.117 | 1974 through 1976. |
| 51 | 280 S | 116.020 | 1973 through 1980. |
| 51 | 280 SE | 116.024 | 1972 through 1980. |
| 51 | 280 SEL | 116.025 | 1972 through 1980. |
| 51 | 350 SE | 116.026 | 1973 through 1980. |
| 51 | 350 SEL | 116.029 | 1972 through 1980. |
| 51 | 450 SE | 116.032 | 1972 through 1980. |
| 51 | 450 SEL | 116.033 | 1972 through 1980. |
| 51 | 450 SEL (6.9) | 116.036 | 1972 through 1980. |
| 52 | 200 | 123.020 | 1976 through 1980. |
| 52 | 230 | 123.023 | 1976 through 1985. |
| 52 | 250 | 123.026 | 1976 through 1985. |
| 52 | 280 | 123.030 | 1976 through 1985. |
| 52 | 280 E | 123.033 | 1976 through 1985. |
| 52 | 230 C | 123.043 | 1978 through 1980. |
| 52 | 280 C | 123.050 | 1977 through 1980. |
| 52 | 280 CE | 123.053 | 1977 through 1985. |
| 52 | 230 T | 123.063 | 1977 through 1985. |
| 52 | 280 TE | 123.093 | 1977 through 1985. |
| 52 | 200 D | 123.120 | 1980 through 1982. |
| 52 | 240 D | 123.123 | 1977 through 1985. |
| 52 | 300 D | 123.130 | 1976 through 1985. |
| 52 | 300 D | 123.133 | 1977 through 1985. |
| 52 | 300 CD | 123.150 | 1978 through 1985. |
| 52 | 240 TD | 123.183 | 1977 through 1985. |
| 52 | 300 TD | 123.193 | 1977 through 1985. |
| 52 | 200 | 123.220 | 1979 through 1985. |
| 52 | 230 E | 123.223 | 1977 through 1985. |
| 52 | 230 CE | 123.243 | 1980 through 1984. |
| 52 | 230 TE | 123.283 | 1977 through 1985. |
| 53 | 280 S | 126.021 | 1980 through 1987. |
| 53 | 280 SE | 126.022 | 1980 through 1985. |
| 53 | 280 SEL | 126.023 | 1980 through 1985. |
| 53 | 300 SE | 126.024 | 1985 through 1989. |
| 53 | 300 SEL | 126.025 | 1986 through 1989. |
| 53 | 380 SE | 126.032 | 1979 through 1989. |
| 53 | 380 SEL | 126.033 | 1980 through 1989. |
| 53 | 420 SE | 126.034 | 1985 through 1989. |
| 53 | 420 SEL | 126.035 | 1986 through 1989. |
| 53 | 500 SE | 126.036 | 1980 through 1988. |
| 53 | 500 SEL | 126.037 | 1980 through 1989. |
| 53 | 560 SEL | 126.039 | 1986 through 1989. |
| 53 | 380 SE | 126.043 | 1982 through 1989. |
| 53 | 500 SEC | 126.044 | 1981 through 1989. |
| 53 | 560 SEC | 126.045 | 1986 through 1989. |
| 53 | 300 SD | 126.120 | 1981 through 1989. |
| 54 | 190 | 201.022 | 1984. |
| 54 | 190 E (2.3) | 201.024 | 1983 through 1989. |
| 54 | 190 E | 201.028 | 1986 through 1989. |
| 54 | 190 E (2.6) | 201.029 | 1986 through 1989. |
| 54 | 190 E 2.3 16 | 201.034 | 1984 through 1989. |

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| VSP # | Model type | Model ID | Model year |
|---|---|---|---|
| | **Mercedes Benz** | | |
| 54 | 190 D (2.2) | 201.122 | 1984 through 1989. |
| 54 | 190 D | 201.126 | 1984 through 1989. |
| 55 | 200 | 124.020 | 1985. |
| 55 | 230 E | 124.023 | 1985 through 1987. |
| 55 | 260 E | 124.026 | 1985 through 1989. |
| 55 | 300 E | 124.030 | 1985 through 1989. |
| 55 | 300 CE | 124.050 | 1988 through 1989. |
| 55 | 230 TE | 124.083 | 1985. |
| 55 | 300 TE | 124.090 | 1986 through 1989. |
| 55 | 300 D | 124.130 | 1985 and 1986. |
| 55 | 300 D Turbo | 124.133 | 1985 through 1989. |
| 55 | 300 TD Turbo | 124.193 | 1986 through 1989. |
| 1 | 230 E | 124.023 | 1988. |
| 2 | 230 TE | 124.083 | 1989. |
| 3 | 200 TE | 124.061 | 1989. |

| VSA # | Model type | Model year |
|---|---|---|
| | **Nissan** | |
| 75 | Z and 280Z | 1973 through 1981. |
| 75 | Fairlady and Fairlady Z. | 1975 through 1979. |
| | **Porsche** | |
| 56 | 911 Coupe | 1968 through 1989. |
| 56 | 911 Targa | 1968 through 1989. |
| 56 | 911 Turbo | 1976 through 1989. |
| 56 | 911 Cabriolet | 1984 through 1989. |
| 56 | 911 Carrera | 1972 through 1989. |
| 57 | 912 Coupe | 1968 through 1969. |
| 57 | 912 Targa | 1968 through 1969. |
| 57 | 912 Karmann | 1968 through 1969. |
| 58 | 914 | 1970 through 1976. |
| 59 | 924 Coupe | 1976 through 1989. |
| 59 | 924 Turbo Coupe | 1979 through 1989. |
| 59 | 924 S | 1987 through 1989. |
| 60 | 928 Coupe | 1976 through 1989. |
| 60 | 928 S Coupe | 1983 through 1989. |
| 60 | 928 S4 | 1979 through 1989. |
| 60 | 928 GT | 1979 through 1989. |
| 61 | 944 Coupe | 1982 through 1989. |
| 61 | 944 Turbo Coupe | 1985 through 1989. |
| 61 | 944 S Coupe | 1987 through 1989. |
| | **Rolls Royce** | |
| 63 | Silver Shadow | 1970 through 1979. |
| | **Toyota** | |
| 63 | Camry | 1987 through 1988. |
| 64 | Celica | 1987 through 1988. |
| 65 | Corolla | 1987 through 1988. |

[FR Doc. 92-15523 Filed 7-1-92; 8:45 am]

BILLING CODE 4910-59-M

## Research and Special Programs Administration

**[Docket No. WPDA-2; Notice No. 92-1]**

## City of New York: Application for Waiver of Preemption Concerning Transportation of Radioactive Materials

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice.

**SUMMARY:** This is a proceeding to consider the application of the City of New York for a waiver of statutory preemption under the Hazardous Materials Transportation Act of the City's ordinance that effectively bans the transportation of certain radioactive materials through City limits. RSPA is giving notice that it will be conducting an additional study on the issue, and will reopen the comment period when the study is available.

**FOR FURTHER INFORMATION CONTACT:** Mary M. Crouter, Special Counsel, Office of the Chief Counsel (DCC-3), Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590-0001, 202-366-4400.

**SUPPLEMENTARY INFORMATION:**

### Background

In 1976, the City of New York adopted an ordinance that effectively bans the transportation of certain radioactive materials, including spent nuclear fuel, through the City.

The City's ordinance is preempted by section 112(a) of the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1811(a)).

The City filed an application with the Department seeking a waiver of that preemption in accordance with 49 App. U.S.C. 1811(d). The Department denied the application, and the City sought judicial review of that decision in the United States District Court for the Southern District of New York. In a December 8, 1988 decision, the Court vacated the Department's decision and remanded the matter to the Department for a new decision.

The Department reopened the record on March 28, 1989 (54 FR 12732), to allow the filing of comments to update and supplement the record. At the City's request, the Department postponed further consideration of the application to allow the City to supplement the record in response to several points raised by the Department in correspondence dated March 23, 1989.

In June 1990, the City filed a response to that correspondence, and on July 16, 1990, the Department invited public comment on the City's new submission (55 FR 28982). The comment period closed August 15, 1990. On September 5, 1990, at the request of the State of Connecticut, RSPA extended the comment period until October 5, 1990.

### Additional Study

In order to fully evaluate the City's application, RSPA undertook a study of the city's safety analysis of preferred routes to be used to transport radioactive material around, instead of through, the City. In doing its analysis, the City used the Department of Transportation's Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials. During the course of RSPA's study of the City's analysis, RSPA discovered an error in the Guidelines. RSPA has published a separate notice in today's **Federal Register**, discussing the error in the Guidelines, and a method for correcting the error.

In addition, since the City's application was originally filed, other developments have occurred that are directly relevant to this matter. In 1990, RSPA amended the Hazardous Materials Regulations, 49 CFR 177.825(b)(2), to provide that a motor vehicle containing highway route controlled quantity (HRCQ) radioactive materials must transport those materials directly from pickup points to preferred routes and directly from preferred routes to delivery points using a shortest distance criterion. 55 FR 19210, May 8, 1990. Section 177.825(b)(2)(ii) provides, with limited exceptions, that for pickup or delivery not over preferred routes, the route selected must be the shortest-distance route from the pickup location to the nearest preferred route entry location and the shortest-distance route to the delivery location from the nearest preferred route exit location.

The City's analysis of its preferred route was conducted prior to the 1990 rule change. RSPA plans to study an alternative preferred route that would be selected in accordance with 49 CFR 177.825(b)(2)(ii). RSPA also observed, in reviewing the City's analysis, that the preferred route analyzed by the City included a segment (Connecticut State Route 2) that was neither an Interstate System highway nor a State-designated route selected by a State routing agency in accordance with 49 CFR 177.825(b)(1).

Accordingly, RSPA plans to conduct an additional study of the City's application for a waiver of preemption to include consideration of these developments. When the study is completed, RSPA will make it available and will reopen the comment period to allow comment on the study and other issues.

Finally, in 1990 the HMTA was amended by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA), Pub. L. 101-615. On February 28, 1991, RSPA amended its regulations to convert its existing procedures for inconsistency rulings and non-preemption determinations to procedures for preemption and waiver of preemption determinations. 56 FR 8616. On May 13, 1992, RSPA further amended its regulations to streamline the procedures for preemption and waiver of preemption determinations by eliminating the right of appeal to the Administrator of RSPA. 57 FR 20424. In place of an appeal, RSPA has provided that a petition for reconsideration may be filed with the Associate Administrator for Hazardous Materials Safety. Because these developments occurred after the 1988 remand of this matter to the Department for a new decision, RSPA intends to apply the new standards and procedures for making waiver of preemption determinations to this proceeding. As a result, this proceeding, previously identified as Docket NPDA-2, is now Docket WPDA-2 (Waiver of Preemption Determination Application No. 2).

The principal concern which gave rise to this matter was HRCQ shipments of radioactive materials being transported from the Brookhaven National Laboratory on Long Island to Idaho. It is RSPA's understanding that, at the present time, there are no HRCQ radioactive materials shipments being made from Brookhaven. Therefore, RSPA does not believe that the additional period of study should have any effect on this situation.

Issued in Washington, DC on June 25, 1992, under authority delegated in 49 CFR 107.219.

**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 92-15581 Filed 7-1-92; 8:45 am]

BILLING CODE 4910-60-M



## Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice.

**SUMMARY:** RSPA has found an error in the methodology used in the DOT publication "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials", DOT/RSPA/OHMT-89/01 (the Guidelines). The equations in the Guidelines used for calculating the public health risk and economic risk are flawed in that they incorporate the length of a route segment twice, leading to overstated risks for long segments relative to shorter segments. Failure to adequately account for this flaw can overstate the comparative risk associated with the transportation of certain types of radioactive materials on highway routes of varying length and population density. RSPA is providing a method to correct this flaw, which is discussed below.

**ADDRESSES:** A revised edition of the Guidelines, incorporating these corrections, is available upon request from the Office of Hazardous Materials Planning and Analysis, room 8106, 400 Seventh St., SW., Washington, DC 20590-0001.

**FOR FURTHER INFORMATION CONTACT:** Joseph S. Nalevanko, Office of Hazardous Materials Planning and Analysis, (202) 366-4484, 400 Seventh Street, SW., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:**

### 1. The Guidelines

Under 49 CFR 173.22 and 177.825, RSPA has established specific highway routing requirements for the transportation of certain radioactive materials. Carriers subject to these requirements must, among other things, follow "preferred routes."

A preferred route is either or both an Interstate System highway for which an alternative route has not been designated by a State routing agency, or a State-designated route selected by a State routing agency. The purpose of the Guidelines is to provide State officials with a set of procedures and a methodology for identifying and evaluating important factors in the analysis of routing alternatives and in designating preferred routes.

The current (1989) edition of the Guidelines is an updated version of a previous DOT publication (DOT/RSPA/MTB-84/22, June 1984) with the same title, and a earlier edition (DOT/RSPA/MTB-81/5, June 1981), with the slightly different title of "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials." The current edition differs from the earlier versions in only a few minor respects (e.g., minor editorial changes to facilitate the analysis and presentation of the data). The error that has been found occurs in the current edition of the Guidelines and the earlier editions.

The error was discovered in the course of a RSPA proceeding to consider the application of the City of New York for a waiver of statutory preemption, under the Hazardous Materials Transportation Act, of the City's ordinance that effectively bans the transportation of certain radioactive materials through the City. (Docket No. NPDA-2). In order to fully evaluate the City's application, RSPA undertook a study of the City's safety analysis of alternative routes that might be used to transport certain radioactive materials around, instead of through, the City. In doing its analysis, the City used DOT's Guidelines. During the course of RSPA's evaluation of the City's routing analysis, RSPA discovered the error.

The responsibilities in 49 App. U.S.C. 1804(b) and (c) have been delegated to the Federal Highway Administration (FHWA). These responsibilities include regulation of the highway routing of hazardous materials, including radioactive materials currently included in 49 CFR 177.825. However, because RSPA was responsible for preparing and issuing the Guidelines, RSPA is correcting the error and regrets any inconvenience caused to the users of the Guidelines.

### 2. Correcting the Guidelines

Both the public health risk and

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economic risk equations as presented in the 1989 Guidelines (and earlier editions) utilize the same methodological approach: A consequence term—either the number of people potentially exposed during an accident, or the land use types potentially exposed during an accident—is multiplied by an accident probability term (accidents per segment), to obtain the risk value. The consequence terms have a serious flaw in that they apply the effect of a single accident to the population and land use along the whole segment length; whereas, in fact, a single accident affects only a specific area that is independent of the length of the segment.

The area potentially affected by an accident is difficult to predict with accuracy, because it is dependent on the particular event scenario and topographical and meteorological conditions at the time and location of the accident. However, since the Guidelines use a comparative risk analysis methodology, the area affected by an accident can be assumed constant for each route, and can be replaced by a surrogate consequence term, such as the linear population density of a segment. These corrected consequence terms are derived by dividing the total segment population and the total segment land use, respectively, by the segment length. The equations that can be used to correct for the flaw in the Guidelines for public health risk (PHR) and economic risk (ER) from accidents are:

$$PHR = [((People_{0\text{-}5\ mi.\ band} \times 0.75) + (People_{5\text{-}10\ mi.\ band} \times 0.25))/\text{segment length}] \times \text{accidents per segment}$$

$$ER = [((\text{Weighted total of land use types}_{0\text{-}5\ mi.\ band}) + (\text{Weighted total of land use types}_{5\text{-}10\ mi.\ band}))/\text{segment length}] \times \text{accidents per segment}$$

### 3. Availability of Revised Edition of the Guidelines

To correct the error, RSPA is preparing a revised edition of the Guidelines. To obtain a copy, contact the person shown in "**FOR FURTHER INFORMATION CONTACT**" or write to the address shown in "**ADDRESSES**".

Issued in Washington, DC on June 25, 1992, under authority delegated in 49 part 106, appendix A.

**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 92–15573 Filed 7–1–92; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: July 24, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0182.
*Form Number:* IRS Form 4782.
*Type of Review:* Extension.
*Title:* Employee Moving Expense Information.
*Description:* 26 CFR 31.6051–1(e) requires employers to give employees a statement showing a detailed breakdown of reimbursements or payments of moving expenses. The information is used by employees to figure their moving expense deduction on their income tax return.
*Respondents:* Individuals or households, State or local governments, Businesses or other for-profit.
*Estimated Number of Respondents/Recordkeepers:* 1,155,000.
*Estimated Burden Hours Per Respondent/Recordkeeper:* 7 hours, 3 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting/Recordkeeping Burden:* 8,142,750 hours.
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports, Management Officer.*

[FR Doc. 92–15508 Filed 7–1–92; 8:45 am]

BILLING CODE 4830-01-M

### Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Trausury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0773.
*Form Number:* None.
*Type of Review:* Extension.
*Title:* Notice Required of Executor or Receiver.
*Description:* Internal Revenue Code Section 6036 requires executors or receivers to advise the district director of their appointment or authorization to act. This information is necessary so that IRS will know of the proceedings and who to contact for delinquent returns or taxes.
*Estimated Number of Respondents:* 50,000.
*Estimated Burden Hours Per Response:* 15 minutes.
*Frequency of Response:* Nonrecurring.
*Estimated Total Reporting Burden:* 12,500 hours.
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW. Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 92–15509 Filed 7–1–92; 8:45 am]

BILLING CODE 4836-01-M

### Public Information Collection Requirements Submitted to OMB for Review

Date: June 25, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0967.
*Form Number:* IRS Form 8453–F.
*Type of Review:* Revision.
*Title:* U.S. Fiduciary Income Tax Declaration and Signature for Electronic and Magnetic Media Filing.
*Description:* This form is used to secure taxpayer signatures and declarations in conjunction with electronic and magnetic media filing of trust and fiduciary income tax returns. This form, together with the electronic and magnetic media transmission, will comprise the taxpayer's income tax return (Form 1041).
*Respondents:* Individuals or households, Businesses or other for-profit.
*Estimated Number of Respondents/Recordkeepers:* 1,000.
*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 7 minutes. |
| Learning about the law or the form. | 4 minutes. |
| Preparing the form | 18 minutes. |
| Copying, assembling, and sending the form to the IRS. | 20 minutes. |

*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 810 hours.
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW. Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

**Dale A. Morgan,**

*Departmental Reports, Management Officer.*

[FR Doc. 92–15511 Filed 7–1–92; 8:45 am]

BILLING CODE 4830-01-M



### Public Information Collection Requirements Submitted to OMB for Review

Date: June 25, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0144.
*Form Number:* IRS Form 2438.
*Type of Review:* Revision.
*Title:* Regulated Investment Company Undistributed Capital Gains Tax Return.
*Description:* form 2438 is used by regulated investment companies to figure capital gains tax on undistributed capital gains designated under IRC section 852(b)(3)(D). IRS uses this information to determine the correct tax.
*Respondents:* Businesses or other for-profit.
*Estimated Number of Respondents/Recordkeepers:* 100.
*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 6 hours, 8 minutes. |
| Learning about the law or the form. | 35 minutes. |
| Preparing and sending the form to the IRS. | 46 minutes. |

*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 948 hours.
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports, Management Officer.*

[FR Doc. 92–15513 Filed 7–1–92; 8:45 am]

BILLING CODE 4830-01-M

## Fiscal Service

### Renogotiation Board Interest Rate; Prompt Payment Interest Rate; Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 92–41). For example, the Contracts Disputes Act of 1978 (Pub. L. 95–563) and the Prompt Payment Act (Pub. L. 97–177) are required to calculate interest due on claims at a rate established by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board. (31 U.S.C. 3902).

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1992 and ending on December 31, 1992, is 7% per centum per annum.

Dated: June 25, 1992.

**Marcus Page,**

*Acting Fiscal Assistant Secretary.*

[FR Doc. 92–15488 Filed 7–1–92; 8:45 am]

BILLING CODE 4810-35-M

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 128
Thursday, July 2, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, June 30, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendations concerning administrative enforcement proceedings.
Request by a financial institution relating to the cross-guaranty provisions of the Federal Deposit Insurance Act.
Matters relating to certain financial institutions.
Matters relating to the Corporation's assistance agreement with an insured bank.
Matters relating to the Corporation's corporate activities.
Personnel matter.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and concurred in by Vice Chairman Andrew C. Hove, Jr., Director Stephen R. Steinbrink (Acting Comptroller of the Currency), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: June 30, 1992.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 92–15772 Filed 6–30–92; 3:54 pm]

BILLING CODE 6714–01–M

**FEDERAL ELECTION COMMISSION**

**DATE AND TIME:** Tuesday, July 7, 1992 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C.

**STATUS:** This Meeting Will Be Closed to the Public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to U.S.C. § 437g, § 438g, § 438(b), and title 28, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

**DATE AND TIME:** Thursday, July 9, 1992 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

**STATUS:** This Meeting Will Be Open to the Public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992–19:
JoAnne Waldum of the Mike Kreidler for Congress Committee
Advisory Opinion 1992–20:
Frederick T. Spahr of ASHA-PAC
Advisory Opinion 1992–20:
Frederick T. Spakr of ASHA–PAC
Advisory Opinion 1992–25:
Clay Newton of Owens for Senate Committee
Draft Final Rule with E&J on Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committee
Revised MCFL Notice of Proposed Rulemaking

**PERSON TO CONTACT FOR INFORMATION:**
Mr. Fred Eiland, Press Officer, Telephone (202) 219–4155.

**Marjorie W. Emmons,**

*Secretary of the Commission.*

[FR Doc. 92–15771 Filed 6–30–92; 3:42 pm]

BILLING CODE 6715–01–M

# Corrections

Federal Register
Vol. 57, No. 128
Thursday, July 2, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF ENERGY

### Inviting Grant Applications for Innovative Concepts Program

*Correction*

In notice document 92-14018 beginning on page 26652 in the issue of Monday, June 15, 1992, make the following corrections:

1. On page 26652, in the third column, the subject heading should read as set forth above.

2. On page 26653, in the second column, under **ADDRESSES AND FURTHER INFORMATION**, in the fifth line, "(202) 553-2166)" should read "(206) 553-2166".

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP92-186-000]

### Texas Gas Transmission Corp.; Petition for Limited Waiver

*Correction*

In notice document 92-14041 appearing on page 26841 in the issue of Tuesday, June 16, 1992, the Docket No. should read as set forth above.

BILLING CODE 1505-01-D

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30695; International Series Release No. 386; File No. SR-NASD-92-18]

### Self-Regulatory Organizations; National Association of Securites Dealers, Inc.; Filing and Order Granting Accelerated Approval to Proposed Rule Change Extending the Informational Linkage With the Stock Exchange of Singapore Ltd. for a 6-Month Period

*Correction*

In notice document 92-11639 beginning on page 21316 in the issue of Tuesday, May 19, 1992, on page 21316, in the second column, after the subject heading insert "May 13, 1992".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Part 214

[FRA Docket No. ROS-2, Notice No. 1]

RIN 2130-AA48

### Bridge Worker Safety Rules

*Correction*

In rule document 92-14566 beginning on page 28116 in the issue of Wednesday, June 24, 1992, make the following correction:

On page 28116, in the first column, in the **EFFECTIVE DATE** paragraph, "August 24, 1992" should read "July 24, 1992".

BILLING CODE 1505-01-D

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Part II

# Securities and Exchange Commission

17 CFR Parts 229, 240 and 249
Regulation of Communications Among Securityholders and Executive Compensation Disclosure; Proposed Rules

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**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 240 and 249**

**Release Number 34-30849; IC-18803 [File No. S7-15-92]**

**RIN 3235-AE12**

## Regulation of Communications Among Securityholders

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Revisions of proposed rules.

**SUMMARY:** The Securities and Exchange Commission is revising its proposals, published June 25, 1991, (56 FR 28987) to amend the proxy rules under section 14(a) of the Securities Exchange Act ("Exchange Act"). As originally proposed, and as reproposed today, these amendments are intended to facilitate shareholder communications and to enhance informed proxy voting, and to reduce the cost of compliance with the proxy rules for all persons engaged in a proxy solicitation. The revised proposals described below are in response to the over 900 comment letters received by the Commission and other public commentary with respect to the June proposals and the proxy voting process.

**DATES:** August 31, 1992.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-15-92. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Stop 6-9, Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** David A. Sirignano, Chief, and Jane K.P. Tam, Attorney, Office of Tender Offers ((202) 272-3097), Catherine T. Dixon, Chief, and Elizabeth M. Murphy, Attorney, Office of Disclosure Policy ((202) 272-2589) Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing amendments to revise Rules 14a-1(*l*), 14a-2(b), 14a-4 (a), (b)(1) and (d), 14a-6 (a), (c)-(f), (i) and (j), 14a-7 and 14a-11(c), 14a-12, 14c-5 and Item 21 of Schedule 14A and Item 5 of Schedule 14C and Forms 10-K and 10-Q under the Exchange Act; to add new Rule 14a-3(f), and Notice Form 14; and to delete Rules 14a-6(b) and 14a-11(d) and (e).

First, proposed exemptive Rule 14a-2(b)(1) has been revised to require public notice of written solicitations made in reliance on the exemption. The categories of persons excluded from the exemption has been expanded to include persons required to file a Schedule 13D, unless they have filed and have not disclosed an intent, or reserved the right, to engage in a control transaction. Second, the Commission is reproposing to amend Rule 14a-6 to eliminate the preliminary filing of all soliciting material other than proxy statements and the form of proxy. Third, the Commission is reproposing to provide that preliminary proxy material and information statements be public upon filing. The reproposal, however, would permit specified proxy and information statements required to comply with Item 14 of Schedule 14A (Mergers, Consolidations, Acquisitions and Similar Matters) to be filed confidentially, unless subject to the Commission's roll-up rules or the going private rule—Rule 13e-3 under the Exchange Act.

Fourth, the Commission is reproposing with significant modifications amendments to Rule 14a-7, the mailing and shareholder list rule. The principal modification is to continue to allow registrants the election to mail soliciting materials, rather than provide a list of shareholders, except in the case of rollups and going private transactions. Disclosure is proposed for the registrant's proxy statement, at the suggestion of several commenters, of denials of shareholder requests for a stockholder list. The reproposal would clarify the registrant's obligation to advise requesting shareholders of the number and costs of mailing to subgroups of shareholders as specified by the requesting shareholder. The registrant would no longer be permitted to delay mailing the shareholder's materials until the registrant is ready to mail its materials. The proposal also has been revised to provide that an issuer that chooses or is required to deliver a list need not solely for the purposes of Rule 14a-7 compile a list of nonobjecting beneficial owners upon the request of a shareholder. Finally, the proposal would require a sworn certification of proper purpose by the requesting shareholder.

The Commission is proposing additional amendments to the proxy and reporting rules to facilitate further shareholder communications and to enhance the efficacy of the shareholder franchise. The Commission is proposing to amend the definition of "solicitation" to make clear that an announcement by a shareholder of how it intends to vote, and why, is not a solicitation.

The Commission is proposing to expand the provisions of the rules that permit a solicitation for an election contest or other specified actions to begin prior to delivery of a proxy statement, to all solicitations. In addition, a soliciting party would be permitted to publish in a newspaper, participate in a broadcast, or give a speech without having to bear the cost of delivering a proxy statement to all shareholders solely on the basis of such action. The obligation to file a proxy statement would not be affected by this proposed revision to the proxy statement delivery rule.

The Commission is proposing to amend the rule governing the form of proxy to require the party soliciting with regard to a group of related proposals, to set out each proposal separately on the form of proxy to allow for a separate vote on each matter. The proposal would not prohibit the soliciting party from conditioning the effectiveness of any proposal on the adoption of one or more other proposals. The Commission is also proposing to amend its definition of "bona fide nominee" to permit shareholders seeking to nominate less than a majority of the board to solicit proxies carrying one or more of management's nominees on the shareholder's form of proxy. This amendment is intended to eliminate a regulatory obstacle to shareholders obtaining minority representation on the board of directors.

Disclosure requirements of Schedule 14A are proposed to be amended to codify the required disclosure of how abstentions will be counted. Forms 10-K and 10-Q are proposed to be amended to require complete disclosure of the results of all shareholder votes.

Finally, the Commission is publishing for public comment a proposal that is the subject of a rulemaking petition submitted by Edward V. Regan, Comptroller of the State of New York, that would permit shareholders holding a specified amount of the company's stock to have included in the registrant's proxy statement a statement of their views regarding the long-term performance of the company and the effectiveness of management and the board of directors in promoting such performance and increasing shareholder values.

## I. Executive Summary

The proposals published today for comment follow upon an extensive examination by the Commission, through dialogue with and comment from issuer, shareholder, academic, legal and other interested groups, with



regard to the effectiveness of the proxy-voting process and its effect on the corporate governance system in this country. Within the ambit of this broad examination, the Commission has focused on the role of its proxy and disclosure rules in impeding shareholder communication and participation in the corporate governance process, in order to further Congress' intent to assure fair, informed and effective shareholder suffrage.

Based on the record compiled by the Commission both prior to and in response to the issuance of its June 1991 proposals,[1] as well as comments made in public forums [2] and congressional hearings, the Commission continues to believe that the Commission's rules create unnecessary regulatory impediments to free and open shareholder communication and effective use of the shareholder franchise, and that change is necessary.

The revised proposals as well as the proposals published for the first time today, are intended to reduce these burdens. The new proposals build upon the revisions to the proxy statement filing and dissemination requirements proposed in June 1991, and are intended to remove regulatory obstacles to widespread, public dissemination of shareholder views and to minimize regulatory interference with the form and content of soliciting communications.

Other proposals—the change to the bona fide nominee rule and the unbundling of related proposals—are aimed at eliminating unnecessary burdens on shareholders' effective use of their franchise. The Commission's proposal includes revisions to clarify and enhance the disclosures provided shareholders in the context of a solicitation as well as in the reporting of voting results.

### *A. Background*

In June 1991, after two years of study of its proxy rules and the proxy voting process, the Commission published four amendments to its proxy rules that would:

1. Permit shareholders and other persons to exchange views or comment on a proxy solicitation undertaken by the company, or any other person, without having to file with the Commission or deliver a proxy statement to solicited shareholders;
2. Eliminate SEC preclearance of all soliciting material other than the proxy statement and form of proxy;
3. Make public all soliciting material filed in preliminary form immediately upon filing, like all other Commission filings; and
4. Condition management's solicitation of proxies on shareholders being given equal access to stockholder list information for purposes of the shareholder's solicitation.

To date the Commission has received more than 900 letters of comment in response to its June 1991 release.[3] Commenters include approximately 600 individual and institutional holders of equity securities in corporations and limited partnerships, more than 210 registrants or registrant organizations, legislators at both the state and federal levels, a number of law and business professors, and lawyers.

The proposals were subject to opposition from the corporate community who argued that the Commission was attempting to fix a system that wasn't broken and indeed was working quite well. These commenters contended that not only were the proposals unnecessary, but that their adoption would "further the disturbing trend toward the determination of the outcome of shareholder voting by secret back-room lobbying of and negotiations with institutional investors, rather than in open and public proxy campaigns." [4] Institutional shareholders, academics and most individual investors, on the other hand, generally commended the Commission's efforts but urged the Commission to go further in reducing what the commenters saw as impediments to effective communication and voting that remained unaddressed by the Commission's proposals—such as the bona fide nominee rule, access to the proxy statement and nomination of directors, executive compensation, confidential voting and independent tabulation.

Aside from those commenters taking the position that there appeared to be no need for a change, commenters generally supported the basic thrust of the proposals with suggested revisions and refinements, a number of which are incorporated in today's reproposals.

### *B. The Revised Proposals*

Of the four proposals published in June 1991, the first—new exemptive Rule 14a-2(b)(1)—drew the most comment. The proposed exemption would have allowed shareholders to comment on an issuer's or another shareholder's proxy solicitation without having to file with the Commission or deliver a proxy statement provided that: (1) the commenting shareholder was not soliciting a proxy authorization, (2) did not have a material economic interest in the subject matter of the solicitation (other than as a shareholder or employee), and (3) was not acting on behalf of such person. Under the proposal, the exempt solicitation would remain subject to the antifraud prohibitions of Rule 14a-9.

In response to concerns raised with respect to the need for public notice of extensive soliciting activity, the revised proposal would provide for such public notice by (1) publication (including issuance of a press release) or broadcast in general media, or (2) submission to the Commission of written soliciting material. Based on concerns for interference with free and open discussion concerning the company or its management, the Commission is not proposing to require that a notice of oral solicitation be submitted to the Commission.

No significant change has been made to the proposal to eliminate preliminary filing of soliciting materials other than proxy statements and the form of proxy. Comment is again solicited as to whether certain additional classes of proxy statements should be excused from SEC preclearance.

The proposal to require all preliminary proxy material and information statements to be public upon filing is being reproposed with one substantive revision. Under the reproposal, a company would be able to obtain confidential treatment of a preliminary proxy and information statements where the filing is subject to Item 14 of Schedule 14A (Mergers, Consolidations, Acquisition and Similar Matters),[5] the transaction has not yet been publicly announced, and the filing is not subject to the Commission's roll-up rules [6] or the Commission's going private rule, Rule 13e-3.[7]

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[1] Exchange Act Release No. 29315 (June 17, 1991).

[2] The Commission sponsored a two-day public forum on these issues on March 18-19, 1992. A transcript of those proceedings has been included in the public file with respect to the June 1991 proposals [S7-22-91].

Prior to publication of the June release, the Commission and staff received more than 50 letters proposing changes to the Commission's proxy and disclosure rules, or commenting on such proposals. More than 500 letters were submitted by individual members of United Shareholders of America, in support of a rulemaking petition submitted by that organization. These letters are included in Public File No. 4-353.

[3] The comment letters and a staff summary of the letters may be inspected and copied at the Commission Public Reference Room (File No. S7-22-91).

[4] Comment letter submitted by The Business Roundtable, dated September 18, 1991, at 2.

[5] 17 CFR 240.14a-101.

[6] 17 CFR 229.901-229.915.

[7] 17 CFR 240.13e-3.

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The Commission's proposed amendments to the shareholder mailing and list rule, Rule 14a–7,[8] are being reproposed with substantive revisions. First, except in the case of roll-ups and going private transactions, registrants will continue to have the ability to mail materials for the soliciting shareholders, rather than provide a shareholder list pursuant to Rule 14a–7. A registrant electing to mail will be required to mail to any subset of shareholders specified by the requesting shareholder. At the suggestion of several commenters who urged continued registrant discretion to mail, however, the registrant will be required to provide disclosure in the proxy statement of a decision to deny access to the list.

Second, the registrant will no longer be permitted to delay mailing the shareholder's materials until the registrant is ready to mail its own materials. Third, where the registrant elects or is required to provide the list, a requestor will be required to provide a certification of proper business purpose in the form of an affidavit, declaration or other sworn statement. Fourth, the amendments will no longer require a registrant to compile a NOBO/COBO list at the request of a shareholder, although a registrant providing a shareholder list will be required to deliver any such list in the registrant's possession and any other beneficial ownership information used by the registrant in its solicitation. Finally, the proposal would make clear that a request for a list will trigger the registrant's Rule 14a–7 obligations.

The Commission is proposing additional amendments to the proxy rules to address concerns raised in the comment letters and ongoing public discussion of the proxy process. The definition of solicitation would be amended to eliminate any doubt that a shareholder can make a public announcement of how it intends to vote and provide the reasons for that decision without having to comply with the proxy rules.

The Commission is proposing to extend to all solicitations the provisions of its rules that permit election contests and other contested solicitations to commence prior to filing and delivery of a proxy statement to a solicited shareholder. As with the current rule, any such pre-proxy statement solicitation would have to include specified disclosures concerning the soliciting party and no form of proxy could be provided until a definitive proxy statement is filed and delivered to the shareholder. Similarly, the Commission is proposing to revise the proxy statement delivery requirements under Rule 14a–3 to permit a soliciting party to publish material in a newspaper or participate in a broadcast, or give a speech, without automatically triggering the obligation to deliver a proxy statement. The obligation to file a proxy statement will be unaffected by the change to Rule 14a–3.

The Commission is proposing to amend Rule 14a–4 to require the form of proxy to set out each matter in a group of related matters separately on the form of proxy to allow for a separate vote on each matter.[9] The purpose of the Commission's proposal is to permit shareholders to communicate to the board of directors their views on each of the matters put to a vote, and not be forced to approve or disapprove a package of items and thus approve matters they might not if presented independently. This approach would eliminate the interpretive uncertainties in determining what matters are properly viewed as related. Since the legal effect of a matter approved by shareholders generally is a question of state law, the proposal would not prohibit the soliciting party from conditioning the effectiveness of any proposal on the adoption of one or more other proposals, if permitted by state law.

The Commission also is proposing to amend its definition of "bona fide nominee" in Rule 14a–4,[10] to permit those seeking to nominate persons representing less than a majority of directors to solicit proxies carrying one or more of management's nominees. The current definition results in an opposing shareholder either having to run a full slate of directors or a short slate that serves to partially disenfranchise shareholders who want to vote for the opposition nominees. This amendment is intended to eliminate an unnecessary regulatory obstacle to shareholders successfully nominating and electing minority representation on the board of directors.

Finally, Commission also is proposing several revisions of its disclosure requirements. Item 21 of Schedule 14A is proposed to be amended to codify the required disclosure with respect to abstentions. Forms 10–K and 10–Q [11] are proposed to be amended to require complete disclosure of the results of all shareholder votes. Thus, for example, an issuer will be required to disclose with respect to an election of directors, the votes for and withheld with respect to each nominee.

In addition, the Commission is publishing for public comment a petition for rulemaking filed by Edward V. Regan that would allow shareholders in specified circumstances to require management to include in its proxy statement relating to the election of directors, a statement expressing views on the long-term performance of the company and the effectiveness of management and the board of directors in achieving such long-term growth and shareholder values.

## II. Discussion

### *A. Exemption For Persons Not Seeking Proxy Authority*

The initiative to exempt from the proxy rules (other than Rule 14a–9) solicitations by persons not seeking proxy authority was undertaken as a result of the substantial concern raised by public commentary and letters to the Commission and its staff, concerns subsequently confirmed in many of the comment letters filed in response to the proposals, that the current rules unnecessarily curtail communications by shareholders on matters related to the company and its management as well as with respect to matters presented by the registrant or a third party for shareholder action.

Of course, compliance with the proxy rules is necessary only if the communication constitutes a proxy solicitation within the meaning of those rules. However, what communications may be deemed to constitute a solicitation is not always clear. Of particular concern is the broad definition of a proxy solicitation to include not only a request for a proxy or request to execute, not execute or revoke a proxy, but also "the furnishing of * * * a communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy." [12] The potential that commentary with respect to the company or its management or board of directors, may be deemed after the fact to constitute a solicitation that required compliance with the proxy rules, including the filing and dissemination of a proxy statement, clearly can have, and has been reported to have had, a substantial chilling effect on the communications of shareholders and others on matters relating to the company. As a result, not only may shareholders be dissuaded from commenting on management initiatives

[8] 17 CFR 240.14a–7.

[9] 17 CFR 240.14a–4 (a) and (b)(1).

[10] 17 CFR 240.14a–4(d).

[11] 17 CFR 249.310 and 249.308a.

[12] 17 CFR 240.14a–1(*l*)(1)(iii).



put before shareholders for a vote but shareholders and others who seek simply to comment on the effectiveness of management in achieving long-term corporate performance and shareholder values also will be silenced. Shareholders would be better served by a regulatory process that encourages and facilitates free and open communications.

Today's reproposal of the exemption is intended to refine the June 1991 proposal in light of the public comment on the proposed exemption.

#### 1. Qualifications

No significant changes have been made to the qualifications for use of the proposed exemption. The exemption under proposed Rule 14a–2(b)(1) would be available to those shareholders and others who undertake to discuss matters that are the subject of the company's or a third party's solicitation, but do not solicit proxy authority from shareholders of the company with respect to the same meeting or engage in a consent solicitation and do not have a material economic interest in the subject matter of the solicitation other than as a shareholder or a rank and file employee. As initially proposed, the Rule 14a–2(b)(1) included a note providing examples of persons who would be excluded under those criteria:

a. An affiliate, officer or director of the issuer or an ineligible party;

b. A competing bidder;

c. An interested person of a registered investment company;

d. A person who receives compensation directly or indirectly from any of the above; and

e. A person acting on behalf of a person soliciting proxy authority or who is otherwise ineligible.

The text of the rule has been rewritten to replace the exemplary note of excluded persons with a specified list of ineligible persons. As proposed, the registrant and officers, directors, or affiliates of the registrant or a person conducting a nonexempt solicitation as well as participants in a nonexempt solicitation would be ineligible.[13]

Persons receiving compensation for rendering advice or services related to the solicitation from an ineligible person would be excluded. The exclusion is limited to compensation related to the solicitation, in response to comments that the initial proposal would disqualify anyone receiving compensation from the registrant or a soliciting party for any reason, including broker-dealers and banks that are reimbursed for forwarding material or providing beneficial ownership information. Comment is requested whether such a standard is subject to abuse and whether, as initially proposed, all persons receiving compensation (other than mandatory reimbursement) from an ineligible party should be deemed to be acting on behalf of that party.[14]

Any person soliciting or planning to solicit tenders in connection with a competing tender offer, or who otherwise is proposing an alternative transaction to which it or one of its affiliates is or will be a party, would not qualify.[15] Similarly, any person required to file a Schedule 13D and who has not filed and any person who has filed a Schedule 13D disclosing an intent to, or reserving the right to, engage in a control transaction, including an election contest, could not rely on the exemption.[16]

Where the registrant is an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], an "interested person" of that investment company would not be entitled to the exemption with respect to solicitation of the registered investment company's shareholders.[17] The language has been revised from the original proposal to make clear that the disqualification does not extend to solicitations with respect to portfolio securities, unless the investment company itself is engaging in a non-exempt solicitation.

The final category of ineligible persons would be persons with a substantial interest in the subject matter of the solicitation, other than as a shareholder or rank and file employee.[18] One common objection to the original proposal was the use of the term "disinterested" to describe the type of person entitled to rely on the exemption, particularly since all shareholders presumably have an economic interest in the subject matter of a vote. The term "disinterested" will no longer be used to describe the exemption. Eligibility will turn upon whether the soliciting party has a substantial interest in the matter to be acted upon, a matter currently required to be disclosed under Item 5 of Schedule 14A, and like that item would not include any ownership interest in securities of the issuer where the shareholder will profit or otherwise benefit from shareholder action only in a manner that is proportionately shared by other shareholders.

The solicitation could not be made on behalf of a person who is seeking proxy authority or who is specifically excluded from the exemption or who has a disqualifying substantial interest.[19]

#### 2. Public Notice of Written Solicitations Under Proposed Rule 14a–2(b)(1)

As originally proposed, the exemption would not have required any public notice of the exempt solicitation. Any regulatory requirement creates a potential chilling effect on shareholder communications and consultations, since attention always must be paid to whether the communication rises to the level of a proxy solicitation, requiring compliance with federal document preparation and filing requirements. Nevertheless, to address the concern raised by commenters with respect to nonpublic solicitations, the Commission is proposing that public notice of the solicitation be provided by persons relying on the exemption in certain circumstances. The type of notice required will turn on the nature of the solicitation. Accordingly, solicitations published in newspapers, magazines and other publications (including press releases) or public broadcast would not be subject to additional notice requirements.[20] These solicitations are inherently public and, when such media are used, the risk of a chilling effect arising from uncertainty whether the communication is a proxy solicitation subject to the Commission's rules is wholly unnecessary. The rule provides guidance on the type of publications that provide adequate public notice, drawing upon concepts used under the Investment Advisers Act of 1940.[21]

Other written solicitation material would be required to be submitted to the Commission to be available to the public.[22] The soliciting material would be submitted under the cover of a simple form, proposed Notice Form 14, identifying the soliciting party, and that party's ownership of the securities of the issuer.

The proposed rules would not require a person who is engaged only in an oral solicitation and who is eligible for the proposed exemption to prepare or submit a written document to the

[13] Proposed Rule 14a–2(b)(1)(i), (ii) and (iii).

[14] Proposed Rule 14a–2(b)(1)(vi).

[15] Proposed Rule 14a–2(b)(1)(iv).

[16] Proposed Rule 14a–2(b)(1)(v).

[17] Proposed Rule 14a–2(b)(1)(vii).

[18] Proposed Rule 14a–2(b)(1)(viii).

[19] Proposed Rule 14a–2(b)(1)(ix). A solicitation would not be deemed to be conducted on behalf of an ineligible person merely because a person encourages securityholders to execute a form of proxy disseminated by such ineligible person

[20] Proposed Rule 14a–6(g)(2).

[21] *See* Section 202(a)(11), 15 U.S.C. 80b–2(a)(11) See also *Lowe* v. *SEC*, 472 U.S. 181, 206 (1985) (exempt publication must be "disinterested" and "offered to the general public on a regular schedule").

[22] Proposed Rule 14a–6(g)(2).

Commission. These persons could not be seeking proxy authorizations or have a disqualifying interest in the company or the subject matter of the solicitation. The Commission has serious reservations about requiring submission of a notice form in such communications. The chilling effect that arises whenever there is a need to discern whether a conversation will be deemed a solicitation is of major concern to the Commission. As noted above, the broad definition of proxy solicitation raises the specter of a shareholder being found after the fact to have violated the proxy rules as a result of a speech commenting on company performance or management's activities, or even a conversation at a dinner attended by more than 10 other shareholders. There can be little shareholder interest served by cutting off such conversations because of the risk of a potential proxy rule violation. It does not appear in shareholders' interests to impose costs on shareholders who do no more than orally communicate opposition to or support for a management or a third party initiative.

Moreover, under the beneficial ownership reporting requirements, shareholders will be provided comprehensive disclosure in those instances where substantial shareholders agree to act together as a group to change or influence control of the company. While the proposed exemption is intended to facilitate free and open communications and consultations among shareholders, it does not excuse shareholders from complying with the reporting requirements pursuant to section 13(d) of the Exchange Act.[23]

The Commission recognizes that some may suggest that the purposes of requiring public notice of exempt written soliciting material would apply as well to exempt oral solicitations and that the burden placed on free and open speech by the ambiguous breadth of the definition of solicitation and the potential chilling effect on discussion concerning the company or its management do not outweigh the need for public notice of some types or all such oral communications. The Commission, therefore, requests comment as to whether it should require a short notice form to be submitted to the Commission for all oral solicitation communications or whether there are particular defined types of oral solicitation that justify a public notice requirement, *e.g.*, a widespread campaign to defeat or support a management or third party initiative.

Copies of the notice and written soliciting material would be submitted or mailed to the Commission and the exchanges on which the security is listed within 10 days of their first use. Defining the submission date in terms of mailing date, parallels the treatment of definitive proxy material. No filing fee would be required. Timely submission of the notice will not be a condition to the exemption. Comment is requested whether the time for mailing the submission to the Commission and the exchange should be extended or reduced.

*B. Preliminary Filing and Staff Review of Soliciting Material*

The Commission originally proposed to amend Rules 14a–6,[24] 14a–11(e) [25] and 14a–12(b) [26] to allow all soliciting materials, whether disseminated prior or subsequent to the dissemination of the written proxy statement, to be filed only in definitive form at the time of dissemination. The proposals would not have rescinded existing preliminary filing requirements in Rule 14a–6(a) relating to the written proxy statement and form of proxy. That approach is being reproposed in substantially the same form.[27] Materials not subject to a preliminary filing requirement would be filed with, or mailed for filing to, the Commission and sent to the exchanges on the same day they are first published, sent or given to shareholders.

The Commission also is considering, and is seeking comment on the advisability of, exempting from Commission preclearance proxy or information statements and related forms of proxy that are not required to comply with Items 11 (Authorization or Issuance of Securities Otherwise than for Exchange), 12 (Modification or Exchange of Securities), 13 (Financial or other Information), 14 (Mergers, Consolidations, Acquisitions and Similar Matters), 16 (Restatement of Accounts), 18 (Matters Not required to be Submitted), 19 (Amendments to Charter, By-laws or other documents), or 20 (other matters). Under such an approach, for example, proxy statements used in election contests by the company or insurgents would not have to be filed in preliminary form and reviewed by the Commission staff.

Schedules 14B, providing detailed identification and background information concerning persons participating in an election contest, currently are required to be filed in definitive form by all participants in an election contest.[28] In the case of insurgents, a Schedule 14B generally must be filed five business days prior to the commencement of the solicitation. Management participants, on the other hand, generally do not have to file Schedules 14B until five business days after commencement of the solicitation by the registrant. In the June 1991 release, the Commission proposed to eliminate the requirement that a Schedule 14B be filed prior to commencement of a solicitation. Specifically, pursuant to the proposed amendments to Rule 14a–11(c), the Schedule 14Bs would be required to be filed by both management and insurgent participants within five business days following the commencement of a Rule 14a–11 solicitation or the filing of the preliminary proxy statement by each party, whichever is earlier.[29] The Commission further sought comment as to whether the requirement for filing a Schedule 14B should be eliminated, with the disclosure called for by that Schedule to appear in the proxy statement.[30]

The Commission is reproposing the amendments to Rule 14a–11(c) in substantially the same form as initially proposed. Filing the Schedule 14B avoids burdening the proxy statement and other soliciting material with detailed disclosure such as employment history and trading in the issuer's securities extending back a number of years, while still making the information publicly available. The reproposal revises slightly the timing of the filing of a Schedule 14B to focus on the dissemination of the proxy statement, rather than the filing of the preliminary proxy statement. Under the reproposal,

[23] 15 U.S.C. 78n(d).

[24] 17 CFR 240.14a–6.

[25] 17 CFR 240.14a–11(e).

[26] 17 CFR 240.14a–12(b).

[27] Rule 14a–6(a) is proposed to be amended to delete the reference to "other soliciting materials" to be disseminated with the proxy statement to clarify that this material is not subject to the preliminary filing requirement.

[28] Rule 14a–11(c), 17 CFR 240.14a–11(c).

[29] A Schedule 14B presently must be on file with the Commission five business days prior to a solicitation by a person other than the registrant, and must be filed by each participant within five business days of a solicitation by the registrant. *Id.*

[30] Some commenters argued that many participants routinely included 14B information in their proxy statements without particular difficulty, whereas others maintained that such inclusion would clutter unduly the proxy statement and thereby render its contents more confusing to securityholders. If the Schedule 14B were retained, many of the commenters falling in the first group believed that the present disparity between the filing requirements for registrants and third parties should be eliminated. Others were unprepared to comment at all on the proposal, without full knowledge of all the proposals that would be prompted by the Commission's proxy review.

the Schedule 14B would be filed by both management and insurgent participants other than the registrant within five business days following each party's commencement of the solicitation or five business days prior to the dissemination of the definitive proxy statement by that party, whichever is earlier. Thus, the Schedule 14B would not need to be filed unless and until the filing party determined to proceed with the solicitation. The Commission requests comment on the continued need for the information currently required by Schedule 14B. Would it be appropriate simply to eliminate the schedule?

*C. Public Access to Preliminary Proxy Materials*

The Commission is reproposing amendments to Rule 14a–6(e) to eliminate the current non-public treatment of materials that would be filed in preliminary form. The proposal would conform the treatment of most preliminary proxy statements to that of a preliminary prospectus and Exchange Act periodic reports, and both expedite shareholder access to material information concerning the subject matter of the solicitation and allow for a more meaningful opportunity to respond to the proposed solicitation.

Commenters raised concerns that the inability to file business combinations or acquisitions on a confidential basis would adversely affect the timing of these transactions and thereby their costs, since they could not obtain Commission review of the offering documents while the participants were preparing for public announcement of the transaction. Accordingly, in response to these comments urging a need for optional confidentiality in the case of business combinations, the Commission is proposing to grant automatically, upon request, confidential treatment of preliminary soliciting materials with respect to transactional filings that are subject to Item 14 of Schedule 14A (Mergers, Consolidations, Acquisitions and Similar Matters), where the transaction had not yet been made public.[31] The transaction would not be entitled to confidential treatment if it were a going private transaction subject to Rule 13e–3,[32] or a roll-up transaction as defined in Rule 901(c) of Regulation S–K.[33] Given the affiliated nature of most of these transactions, the need for confidentiality appears significantly less compelling, and the benefits of disclosure concomitantly greater.

A corresponding amendment to Rule 14c–5(d)[34] is proposed to provide for public availability of preliminary information statements and to allow for confidential treatment of those statements under similar circumstances.

Comment is requested on the need for such a procedure for confidential treatment and whether the requirements for granting such request are adequate or unnecessarily onerous. Are there disclosures made pursuant to specified requirements other than Item 14 of Schedule 14A, that also should be afforded confidential treatment upon request?

*D. Rule 14a–7*

The Commission, after review of the comments on the proposed revision of Rule 14a–7, is modifying its original proposals to narrow those instances in which the registrant would not have the election to mail soliciting materials rather than produce a shareholder list. Under the reproposal, delivery of the list would only be mandated where the registrant had commenced a proxy solicitation subject to the Commission's roll-up rules or going private rule, or such transaction had been disclosed.[35] Based on substantial comment from the corporate community that rights to stockholder lists provided by state law generally provide dissident soliciting shareholders adequate access to the list, and abusive denial of rights to the list were minimal and addressable by the courts, the Commission proposes to continue to allow stockholders to rely principally on their state law rights to obtain the list. Because of the special status under the Commission's rules and investor protection concerns raised by roll-ups and going private transactions, the rule would provide access to the list in those situations. There should be no question of a shareholder's right to a stockholder list for purposes of communicating with other shareholders with respect to such transactions. Comment is requested on the proposed modification of the June 1991 proposal. Is it appropriate to eliminate the registrant's discretion to mail only in the case of roll-up and going private transactions?

Some commenters questioned the Commission's authority to require registrants to provide access to a shareholder list to a shareholder who seeks to oppose a management solicitation. Under Section 14(a) of the Exchange Act, the Commission is authorized to condition the solicitation of proxies upon the soliciting party's compliance with rules and regulations adopted by the Commission as necessary and appropriate in the public interest, a standard applied against the general purposes of the enabling legislation. See *Mourning* v. *Family Publications Services, Inc.*, 411 U.S. 356 (1973); *Touche Ross & Co.* v. *SEC*, 609 F.2d 570 (2d Cir. 1979). While voting rights and the right to vote by proxy generally are determined by state law, federal regulation of the proxy solicitation process serves to make that right meaningful. As the Court of Appeals for the District of Columbia Circuit recently noted in *Roosevelt* v. *Du Pont De Nemours & Co.*, Congress enacted Section 14(a) to "bolster the intelligent exercise of shareholder rights granted by state corporate law."[36] Section 14(a) "shelters use of the proxy solicitation process as a means by which shareholders may become informed about management policies and may communicate with each other."[37] The court in *Roosevelt* determined that the ability "to communicate with other shareholders on matters of major import is a right informational in character, one properly derived from section 14(a) * * *."[38] Both as presently cast and proposed to be revised, Rule 14a–7 similarly is intended to provide eligible shareholders an effective means by which to communicate with other shareholders in the context of a solicitation of proxies by the issuer.[39]

Several of the comment letters cite the *Business Roundtable* decision[40] as holding that the Commission is limited to disclosure matters in promulgating rules under Section 14(a) and assert that mandating delivery of a shareholder list falls within the sphere of corporate governance found to be off limits by the D.C. Circuit. Even though the court stated that "Congress' central concern was with disclosure" in adopting Section 14(a),[41] it also admitted "that

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[31] Proposed Rule 14a–6(e)(2).

[32] 17 CFR 240.13e–3.

[33] 17 CFR 229.901(c).

[34] 17 CFR 240.14c–5(d).

[35] Proposed Rule 14a–7(b).

[36] 958 F.2d 416, 418 (D.C. Cir. 1992). See *Medical Comm. for Human Rights* v. *SEC*, 432 F.2d 659 (D.C. Cir. 1970), vacated as moot, 404 U.S. 403 (1971)("[i]t is obvious to the point of banality . . . that Congress intended by its enactment of Section 14 . . . to give true vitality to the concept of corporate democracy." 432 F.2d at 676); see also *J. I. Case Co.* v. *Borak*, 377 U.S. 426 (1964) ("[Section 14(a)] stemmed from the congressional belief that 'fair corporate suffrage is an important right that should attach to every equity security bought on a public exchange.' H.R. No. 1383, 73d Cong., 2d Sess. 13").

[37] *Roosevelt*, 958 F.2d at 421–22.

[38] *Id.* at 421.

[39] This applies to both an ongoing and intended solicitation.

[40] *The Business Roundtable* v. *SEC*, 905 F.2d 406 (D.C. Cir. 1990).

[41] *Id.* at 410.

disclosure is not necessarily the sole subject of section 14," relying on both Senate and House reports indicating Commission authority to prescribe "the conditions under which proxies may be solicited." The court explained, "Congress acted on the premise that shareholder voting could work, so long as investors secured enough information and, perhaps, the benefit of other procedural protections." [41] Clearly, assuring that a soliciting shareholder has the same ability as management to know to whom to direct their views on a matter that is the subject of a proxy solicitation, is not outside the informational and procedural protections intended by section 14(a).[42]

1. General

The reproposal revises Rule 14a–7 to make clear that either a request for a stockholder list or mailing triggers a registrant's obligation under Rule 14a–7, even where the registrant may elect to mail.[43] The request need not reference Rule 14a–7. Once a request is made, the registrant must promptly advise the stockholder of its election under Rule 14a–7, and if a mailing is elected provide the required information with respect to the number of shareholders and costs of mailing within two business days.[44] Notwithstanding the applicability of Rule 14a–7, the shareholder would also have any rights to access to the list provided under state law or by contract.[45]

Rule 14a–7 would continue to apply only to requests from shareholders entitled to vote on the subject matter of the solicitation or at the meeting; accordingly, beneficial owners who are not entitled to vote under state law on the matter would have to obtain the cooperation of their recordholders. Comment is requested whether beneficial owners, even when not entitled to vote or execute a proxy in their own name, should be entitled to make a request under Rule 14a–7 without the assistance of the recordholder if proper documentation is provided.

2. Registrant's Election to Mail

The reproposal also would clarify that the rule requires the registrant to provide such information for, and undertake mailings to, subsets of shareholders. Thus, for example, a requesting shareholder could request mailing to those shareholders with the largest shareholdings that account for 60% of the outstanding shares eligible to vote.

The registrant will no longer be able to delay mailing the shareholders soliciting materials pursuant to Rule 14a–7 until the earlier of the anniversary date of the mailing of the prior year's proxy statement or the mailing of its own materials, as is currently permitted. The mailing must occur with reasonable promptness after the shareholder has delivered its soliciting materials, along with the necessary packaging and postage.[47]

3. Certification to Obtain Shareholder List

As noted, a requesting shareholder would be required to submit to the registrant, along with its request, a certification by affidavit, declaration, affirmation or other similar document provided for under applicable state law, that the list would not be used for any purposes except to solicit other shareholders with respect to the same subject matter or meeting for which the registrant is soliciting or intends to solicit proxies and that the requestor will treat the information contained in the list as confidential.[48] Certification will not be required where a shareholder requests a mailing, or where the registrant elects to mail.

Any actual use of a list obtained under proposed Rule 14a–7 that is inconsistent with the rule and certification would subject the offending shareholder to a potential Commission enforcement action, including civil injunctive or administrative proceedings and possible fines.

Commenters should address the costs and benefits of the proposed use certification requirement in its entirety, including whether this requirement would serve as an adequate safeguard against list misuse. Specific comment is sought as to whether the certification not only should be provided to the registrant, but also should be filed with the Commission.

Under about 20 state inspection statutes, it is a valid defense to an action for wrongful denial by the requesting shareholder that the latter has sold or misused the list within the previous two to five years from the date of request. Should Rule 14a–7 be amended to include a similar provision to preclude access by shareholders who have been found to have misused a list in the past, for example, five years? Comment further is requested on whether the shareholder should be required to return or destroy the list after a defined period.

4. List of Beneficial Owners and Related Issues

The June 1991 proposal would have revised the requirements with respect to the stockholder list to be provided under the rule to more closely parallel the information available under state law. The list required by current Rule 14a–7 falls far short of the information a shareholder could obtain under the laws and decisions of most states. For example, security holding and beneficial ownership information is commonly required under state law when reasonably available.[49] Improvements to

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[41] 926 F.2d at 410–411.

[42] A number of decisions reflect the "well recognized" principle of conflicts of law that regulation of access to shareholder lists is not a matter subject to the regulation of the internal affairs of the corporation properly left to the control of the chartering state. *Sadler* v. *NCR Corp.*, 928 F.2d 48, 55 (2d Cir. 1991). *See* 17 Fletcher Cyc Corp § 2229, § 8434 (Perm Ed); 19 ALR 3d 869. In *Fleisher Development Corp.* v. *Home Owners Warranty, et al.*, 647 F. Supp. 891, 894 (1986), the D.C. Circuit concluded that "shareholders' or members' rights to inspect corporate books and records do not touch upon the internal affairs of a corporation where such books are within the jurisdiction of the reviewing court." *See also Donné* v. *Abbotts Dairies, Inc.*, 161 A. 3d 13 (1960).

[43] *See In re The Krupp Companies*, Exchange Act Rel. No. 30366 (April 8, 1992). In the *Krupp* order, the Commission also stated that (footnote omitted):

> Where a securityholder is deemed to have requested the list under both state and federal law, the registrant must promptly advise the requesting securityholder as to whether it will mail or provide a list under Rule 14a–7, and must not mislead the securityholder as to whether its rights to a list under state law have been affected by the registrant's actions under Rule 14a–7. Thus, care must be taken not to mislead the securityholder with respect to the comparability of the information to be provided under Rule 14a–7 and state law. Prompt compliance with Rule 14a–7 is required, even if a concurrent request has been presented to the issuer under state law.

[44] Proposed Rule 14a–7(a)(1).

[45] *Id.* This conclusion is amply demonstrated by cases holding that current Rule 14a–7, which grants the registrant the choice whether to deliver a list or mail for the securityholder, does not preempt state law and prevent a state from requiring the registrant to deliver the list upon demand. *First Surety Corp.* v. *Community Bank*, 327 F. Supp. 667, 670 (C.D. Cal. 1971); *Wood, Walker & Co.* v. *Evans*, 300 F. Supp. 171, 173 (D. Colo. 1969), *aff'd* 461 F.2d 662 (10th Cir. 1972).

[47] Proposed Rule 14a–7(a)(2)(i).

[48] Proposed Rule 14a–7(c).

[49] See, *e.g.*, *Sadler* v. *NCR*, 928 F.2d 48 (2d. Cir. 1991) (construing New York law); *Hotleigh Corp.* v. *Lane Bryant*, 428 A.2d 350 (Del. Ch. 1981) (court found that upon showing of a proper purpose, the requesting securityholder was entitled to the same lists and data relating to stockholders as was available to the corporation); *Burlington Industries, Inc.* v. *C.H. Masland & Sons*, No. 88–3295 (E.D. Pa. 1988) (the District Court for the Eastern District of Pennsylvania ordered the registrant to produce, pursuant to the Pennsylvania inspection statute, not only information concerning the beneficial owners of shares held by the central depository systems but also the names and addresses of all beneficial owners that had been identified by the registrant

Continued

the list proposed in June are being reproposed, with one substantive change. Information with respect to beneficial owners will not have to be provided if it is not already in the possession of the registrant at the time of the request and is not otherwise compiled and used by the registrant during the course of its solicitation. In addition, the amended rule would require registrants to provide eligible requesting shareholders with the list information within five business days from the date of request.

A list of nonobjecting beneficial owners (NOBOs) or consenting beneficial owners (COBOs) normally would not include employees of the registrant or its affiliates.[50] Comment is requested whether the rule should be revised to require information concerning employees of the registrant or an affiliate participating in employee benefit plans to be included in the beneficial ownership information provided to the requesting shareholder, regardless of whether the registrant has elected to treat such holdings as exempt employee benefit plan securities.[51] In addition, should shareholders receiving a NOBO/COBO list, as well as the registrant, be permitted to use the list to mail proxy materials directly to beneficial owners, so long as adequate disclosure is provided concerning the need for the recordholder to execute the proxy and proxy materials are sent separately to the recordholder?

A number of commenters expressed opposition to the disclosure of information regarding NOBO and COBO information. Concerns raised by some issuer organizations and other commenters included possible breach of confidentiality of the list, invasion of the beneficial holders' privacy by furnishing to third parties their names, addresses and security position information. A shareholder right of privacy has not been generally recognized by the state courts as a basis for an issuer to resist a proper shareholder list request. Judicial decisions under the laws of Delaware, New York, Nevada and Pennsylvania have specifically recognized a shareholder right of access to the NOBO list.[52]

As noted above, the proposal has been revised to provide that a NOBO/COBO list will be required to be delivered under the revised rule only when it already has been procured by the issuer. Thus, the requestor will not bear any expense of compilation of that list, other than incidental costs in connection with the reproduction and delivery of the list. All other costs incurred in connection with the production of the shareholder list would be borne by the requesting shareholder.[53]

As to the proposed "window period" for issuer list production, the five business-day period reproposed today is consistent with the delivery periods specified in most of the state statutes imposing such a requirement.[54]

As under the current rule, the registrant would be required, at reasonable intervals, to provide requested updated information. However, the proposed rule would not require the registrant to provide the shareholder information more current than holdings as of the record date.[55]

5. Disclosure of Registrant's Denial of Securityholder List Requests

At the suggestion of several commenters, in lieu of eliminating the registrant's option to mail soliciting materials rather than produce the list under Rule 14a–7, as proposed in June 1991, the Commission is proposing to amend the disclosure requirements of Schedule 14A and Schedule 14C to require disclosure of securityholder list requests that have not been satisfied at the time the proxy or information statement is disseminated to securityholders.[56] Those proposing this alternative as a means of preventing abusive denials of shareholder list requests suggest that the proposal will circumscribe management denial of list requests as a tactic to impede proper shareholder communications and will appropriately inform shareholders of management's attempts to preclude shareholder communications.

Under this proposal, the registrant would be required to disclose the name of the requestor, the reasons provided by the requestor for requesting the list, and the registrant's reasons for not complying with the request. To prevent a late list request from delaying the mailing of the registrant's proxy or information statement, only requests received 20 or more business days before the date of the statement need be disclosed in the proxy or information statement. Securityholder lists requests received after that date would be discussed in the next soliciting material provided to securityholders, or if none is disseminated, in the next proxy or information statement disseminated to shareholders by the registrant.

An instruction would provide that disclosure must be provided regardless of whether the list was requested under state, federal or common law or pursuant to contractual provisions. Where the registrant exercises its option under Rule 14a–7 to mail the requesting securityholder's materials in lieu of complying with a list request, that determination must be disclosed. Disclosure would not be required if a court has ruled that the registrant was not under an obligation to produce the list under state law or that the request was not properly made under Rule 14a–7.

Comment is requested on the appropriateness and utility of the proposed disclosure.

*E. Announcements by Shareholders of Voting Decisions*

The obligation to comply with the proxy rules often will turn on whether the communication falls within the definition of "solicitation" under those rules. *See* Rule 14a–1(*l*), 17 CFR § 240.14a–1(*l*). Questions have arisen whether public announcements by shareholders of how they intend to vote along with an explanation for that vote constitute proxy solicitations. Indeed, some fiduciaries believe it appropriate or necessary to disclose to the public and their beneficiaries how the fiduciary will vote the securities on significant issues.

In order to clarify that such announcements are not proxy solicitations subject to the proxy rules.

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pursuant to Rule 14b–1(c)); *Cenergy Corp.* v. *Bryson Oil and Gas P.L.C.*, 662 F. Supp. 1144 (Nev. 1987) (court ordered production of NOBO list and CEDE breakdowns in possession of the corporation and found that if allowed to shield the names of actual owners from other stockholders, management would have an unfair advantage in the proxy solicitation battle).

[50] See Rule 14a–13(b)(3), 17 CFR 240.14a–13(b)(3).

[51] See Rule 14a–1(d), 17 CFR 240.14a–1(d).

[52] See cases discussed *supra* n. 49. Rejecting an issuer's argument that the NOBO list should be withheld to preserve the beneficial owner's interest in confidentiality, the Delaware Chancery Court reasoned that "by allowing their names to appear on the NOBO list, the beneficial owners apparently decided that they would prefer to receive direct communications from the corporation. It is reasonable to assume that they would want the same type of direct contact on corporate matters from other stockholders." *Shamrock Associates* v. *Texas American Energy Corp.*, 517 A. 2d 658 (Del. Ch. 1986).

To the extent banks and broker-dealers are using forms to obtain a customer's preference with respect to disclosure of beneficial ownership that only seek consent to disclose the identity of the customer to the registrant, regardless of whether any revisions to Rule 14a–7 are adopted, the approach already followed by the state courts to this issue should cause those firms to review their forms to ensure that customers are aware that their names, addresses and holdings could be provided to persons other than the issuer.

[53] Proposed Rule 14a–7(e).

[54] *E.g.*, Del. Code Ann. tit. 8, § 220(c), Mich. Comp. Laws Ann. § 450.1487, Pa. Stat. tit. 15 § 1508. *But see* Md. Corps. & Ass'n Code Ann. § 2–513 (20 calendar day period).

[55] Proposed Rule 14a–7(a)(2)(ii).

[56] Proposed Item 6(f) to Schedule 14A.

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the Commission is proposing to amend the definition of solicitation to exclude public announcements by shareholders of how they intend to vote on a particular matter or matters and the shareholder's reasons for that vote. This exclusion from the definition of solicitation would only be applicable if the shareholder was not otherwise soliciting proxies.

*F. Proxy Statement Delivery Requirements—Amendments to Rule 14a–12*

Rule 14a–3(a) [57] provides that no solicitation may be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement. Exemptions to this proxy statement delivery requirement are provided in Rule 14a–11(d) and 14a–12.[58] Rule 14a–11(d) permits the solicitation process in election contests to begin prior to the delivery of a proxy statement, so long as no proxy card is provided, certain background information concerning the participants is disclosed and a proxy statement is provided to shareholders as soon as practicable. There is no restriction on the content of such communications, other than that imposed by the antifraud provisions of Rule 14a–9. Subject to similar requirements, Rule 14a–12 allows for the commencement of a solicitation in non-election contest matters, prior to delivery of a proxy statement to solicited persons, where an opposing solicitation or other publicized activity threatens to frustrate a planned solicitation.

The Commission is proposing to amend Rule 14a–12 to extend the current exceptions to the proxy statement delivery requirements of Rule 14a–3(a) for contested matters to all solicitations, eliminating the exclusion for election contests and the requirement that the solicitation be made in response to an opposing solicitation or other publicized activity that could frustrate a planned solicitation. Rule 14a–11(d) and the filing requirement under Rule 14a–11(e) would be rescinded as no longer necessary in light of the applicability of revised Rule 14a–12 to election contests. The existing requirements of Rule 14a–12 prohibiting delivery of a form of proxy, and mandating disclosure of background information and the delivery of a proxy statement to all persons solicited as soon as practicable will be retained. In addition, as discussed above, soliciting materials disseminated pursuant to revised Rule 14a–12 would not have to be filed in preliminary form and precleared by the Commission staff.

*G. Amendment of Proxy Statement Delivery Requirement To Facilitate General Broadcast or Publication of Soliciting Materials*

Currently, the proxy delivery rule has been interpreted to require delivery of a proxy statement to all shareholders where a soliciting party publishes soliciting material in a newspaper or broadcasts such material. The publication or broadcast is viewed as a solicitation delivered to all shareholders. This application of the proxy statement delivery rule can, because of the prohibitive costs, foreclose use of public media by those financing a solicitation with their own funds. The effect of the rule may in fact be to curtail widespread dissemination of the dissenting shareholder's views. To address this often prohibitive burden on published or broadcast solicitations, the Commission is proposing to amend the proxy statement delivery requirement to provide that a solicitation by means of a speech, publication in newspapers, magazines and other publications (including press releases) or broadcasts would not in and of itself trigger the proxy statement delivery requirement, so long as a definitive proxy statement relating to the solicitation is on file with the Commission [59] at the time the solicitation is published,[60] broadcast or the speech is made and no form of proxy is provided in connection with the speech, publication or broadcast.[61]

Unlike the proposed modifications to Rule 14a–12 which would apply only where the soliciting party has not delivered a form of proxy to shareholders, the proposed modification of the proxy delivery rule would apply throughout the proxy solicitation period. The modification would simply permit a soliciting party to publish in the press or broadcast a solicitation without automatically triggering a proxy statement delivery requirement to every shareholder—the costs of which could run into the hundreds of thousands of dollars. The modification would not diminish the proxy statement delivery requirement where a form of proxy is provided in connection with the speech, publication or broadcast, or where a solicitation is otherwise communicated. The solicitation would continue to be subject to antifraud prohibitions. Delivery of a form of proxy to a shareholder would still have to be accompanied or preceded by delivery of a proxy statement to such shareholder.

*H. Enhanced Disclosure Regarding Voting Results and Vote Tabulation Policies*

1. Voting Results

The Commission is proposing additional amendments designed to enhance disclosure regarding the results of a shareholder vote. Currently, Item 4(c) of Form 10–Q [62] and Form 10–K,[63] respectively, require disclosure of voting results only with respect to contested elections and certain other matters, and, in such instances, disclosure is limited to the number of affirmative and negative votes cast. Since the adoption of Item 4(c) 40 years ago,[64] shareholder interest in more particularized information on voting results has increased, particularly with respect to abstentions and withheld votes.[65] Today, a particular voting decision often is intended to send an explicit message to the registrant's board of directors. For example, certain large institutional shareholders have announced recently a policy of withholding votes on an uncontested management slate and publicizing that fact to express dissatisfaction with management's policies or practices.[66] Information regarding withheld votes may be of particular interest in an uncontested election since, in this instance, withholding a vote may be one of the few means of expressing disagreement

[57] 17 CFR 240.14a–3(a).

[58] 17 CFR 240.14d–11(d) and 17 CFR 240.14a–12.

[59] Proposed Rule 14a–3(f).

[60] Such publication, broadcast or speech could be made without the proxy statement on file pursuant to proposed Rule 14a–12. The Schedule 14B filing requirements under the proposed revisions to Rule 14a–11(c) would also be triggered in an election contest by a solicitation pursuant to proposed Rule 14a–3(f).

[61] Thus, for example, publication of a form of proxy would preclude reliance on the exception as would a broadcast that instructed listeners on how to provide a proxy by telephone, Telex, datagram or other similar means.

[62] 17 CFR 249.308a.

[63] 17 CFR 249.310.

[64] Exchange Act Release No. 4686 (March 17, 1952), originally adopted as Item 14 to Form 8–K, transferred to Form 10–Q in Exchange Act Release No. 13356 (January 13, 1977), and incorporated into Form 10–K in Exchange Act Release No. 18524 (March 3, 1982).

[65] See generally Heard, *Institutional Investors: Active Institutions Sharpen Their Focus for 1992, Insights* at 18 (December 1991); Reed, *The Tabulation of Abstentions in Proxy Voting, Insights* 14 (December 1991); J. Grundfest, "Just Vote No or Just Don't Vote," Presentation before the Fall Meeting of the Council of Institutional Investors (Washington, D.C., November 7, 1990).

[66] See Wharton, *Just Vote No*, Harv. Bus. Rev. 139 (November-December 1991)(Chairman and CEO of America's largest institutional investor, TIAA-CREF, announced adoption of such a policy). CalPERS also has employed this policy (see Heard, *Institutional Investors: Active Institutions Sharpen Their Focus for 1992, Insights* at 18 (December 1991)), as has the California State Controller (see *Director's Monthly* at 11 (March 1992)).



with management. Many corporations themselves have recommended this tactic as an effective means of communicating shareholder concerns to the board.

To provide shareholders with more complete disclosure regarding voting results, Item 4(c) of Forms 10–Q and 10–K would be amended to require disclosure of the number of votes cast for, against or withheld (elections), or as abstentions, as well as non-votes, as to each matter presented for a shareholder vote, including both contested and uncontested elections of directors. The information would have to be provided with respect to each nominee. A specific explanation would be required of how votes falling within each category have been tabulated by the registrant. The item also clarifies that disclosure of the outcome of the vote must be reported in the periodic report covering the period during which the vote was taken. This will facilitate locating such information.

2. Vote Tabulation Policies and Procedures

Given the diverse state law approaches to proxy tabulation, particularly with respect to abstentions and broker non-votes,[67] the Commission also proposes to amend Item 21 of Schedule 14A to clarify the disclosure required of the manner in which proxy votes will be counted, including the treatment and effect of abstentions and non-votes both under state law and registrant charter/by-law provisions.[68] This amendment codifies current Commission interpretation under Item 21. The revised item, however, would be extended to the election of directors, unlike the current requirement. Such disclosure is intended to inform shareholders of the consequences of voting in a particular manner under state law, including where true that an abstention or non-vote could have the same effect as a "no vote" in the tabulation of the proxies.[69] The disclosure of the effect of an abstention or a non-vote must be clearly and concisely set forth, and not obscured by obtuse legalistic boilerplate.

*I. Presentation of Matters on the Form of Proxy*

Rule 14a–4(a) provides that the form of proxy shall identify each matter or "group of related matters" intended to be acted upon. Rule 14a–4(b)(1) requires that the form of proxy provide an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to, each matter or "group of related matters." Where a registrant or other party expressly conditions the adoption of one matter on the approval of other matters, the matters have not been required to be separately set forth on the form of proxy. Such an approach has been viewed as causing shareholders to approve matters they might not if presented independently.

To address the disclosure concerns presented by the practice of bundling related matters, the Commission is proposing to amend Rule 14a–4(a) and 14a–4(b)(1) to require the form of proxy to set out each matter in a group of related matters separately on the form of proxy to allow for a separate vote on each matter.[70] The proposal is intended to permit shareholders to act on each matter to be approved. It furthers the purposes underlying Rule 14a–4(b)(1), to allow shareholders to vote for, against or abstain on each matter presented, and not have the soliciting party determine the shareholder's choices. Since the legal effect of a matter approved by shareholders generally is a question of state law, the proposal would not prohibit the soliciting party from conditioning the effectiveness of any proposal on the adoption of one or more other proposals, if permitted by state law. In such case, appropriate disclosure would be required to advise shareholders that a vote against one proposal could have the effect of a vote against the group of mutually conditioned proposals.

*J. Bona Fide Nominees—Proposed Amendment to Rule 14a–4*

The difficulty experienced by shareholders in gaining a voice in determining the composition of the board of directors has been highlighted by a number of comment letters and proposals, as well as congressional proposals for expanded shareholder access to management proxy statements for the purpose of nominating director candidates. These proposals are based on the perception that currently the board of directors is picked by management and therefore does not allow for truly independent representation of shareholder interests. One answer to complaints about the asserted closed nomination process has been that shareholders are always free to nominate and solicit proxies in favor of their own candidates.

Some have contended that obtaining minority representation on the board allows for a form of "constructive engagement" without necessitating a change of control of the corporation.[71] The proxy rules, it has been asserted, are a principal impediment to shareholders seeking such minority representation. A party seeking to nominate less than a majority of a board where the entire board is up for election and solicits proxies to vote for such nominees is, in effect, running a "short slate." However, shareholders may be unwilling to execute a proxy that does not contain authority to vote for all seats up for election, absent cumulative voting, since the shareholder would not be exercising its full voting power. State law generally provides that a later-dated proxy revokes all prior proxies, at least with respect the same subject matter. Therefore, under state law a shareholder can be prevented from executing both insurgent and management proxies to vote for that mix of board nominees it wishes to serve.[72]

[67] In two instances, a shareholder will be deemed present at the meeting for quorum purposes, but will be deemed not to have voted on a particular matter. First, the shareholder may specifically abstain from the vote by registering an abstention vote. Second, a nominee holding shares for beneficial owners may have voted on certain matters at the meeting pursuant to discretionary authority or instructions from the beneficial owners, but with respect to other matters may not have received instructions from the beneficial owner and may not exercise discretionary voting power. Such unvoted shares are termed "non-votes."

[68] In some states, corporations can alter the state law approach to proxy tabulation by certificate of incorporation or by-law amendment. A recent survey by the Investor Responsibility Research Center indicates that companies vary widely in their treatment of abstentions and broker non-votes when calculating the percentage of the vote that shareholder proposals receive. See Reed, *The Tabulation of Abstentions in Proxy Voting*, Insights (December 1991) at 16.

[69] For example, in states adopting Section 7.25 of the Revised Model Business Corporation Act, there is a statutory presumption that a proposal passes if it receives a majority of votes cast for or against a proposal, so long as a quorum is present at the meeting. See, *e.g.*, Florida (Fla. Stat. Ann. § 607.0727) and New York (N.Y. Bus. Corp. Law § 614). Under this approach, abstentions and non-votes have no effect on the vote. Other states require that a majority of the quorum vote in favor of a proposal for it to pass. See, *e.g.*, Ala. Code § 10–2A–82. Under this approach, abstentions and non-votes have the effect of a vote against a proposal. Delaware has adopted a hybrid of these approaches pursuant to which abstentions are treated as votes against a proposal and non-votes have no effect on the vote. See Del. Code Ann. tit. 8, § 216; *Berlin v. Emerald Partners*, 552 A.2d 482 (Del. 1988).

[70] In addition to providing separate boxes, the form of proxy could afford shareholders an opportunity to mark a single box for, against, or abstain with respect to a specified group of proposals.

[71] See, *e.g.*, Gilson & Kraakman, Reinventing the Outside Director: An Agenda for Institutional Investors, 43 Stan. L. Rev. 401 (1991).

[72] See *Concord Financial* v. *Tri-State Motor Transit Co. of Delaware*, 567 A.2d 1, 8 (Del. Ch. 1989). A well developed body of law examining this area holds that in determining the validity of proxies, inspectors of an election must reject all identical but conflicting proxies when the conflict cannot be resolved from the face of the proxies

[Continued]

To solve this problem, a soliciting shareholder may wish to round out its slate by including the names of persons nominated on management's slate. Here, the Commission's proxy rules erect the unnecessary impediments. Rule 14a–4(d) prohibits the listing on a form of proxy of the names of persons who are not "bona fide nominees," that is, persons who have consented to be named in the proxy statement of the soliciting party and to serve if elected.[73] Rarely, if ever, do management nominees consent to be named by insurgents. That rule has the effect of depriving shareholders of the opportunity to vote for one or more management nominees on an insurgent's card in a short slate situation, since those persons have not consented to be named in the insurgent's proxy statement. Therefore, while a dissident may desire only to have minority representation on the board of directors, the present legal framework makes this extremely difficult and, in fact, encourages an all-or-none approach to election contests.

The Commission is proposing to address this problem by amending the bona fide nominee rule to permit a person soliciting proxies to vote for a minority of the board consisting of non-management nominees to provide shareholders an opportunity to vote for certain or all of management's nominees. This change will permit insurgents to choose management nominees to round out their slates in seeking minority representation. The form of proxy provided by a dissident would be required to list separately management nominees. Where, however, an insurgent seeks to vote proxies for a majority of the board consisting of non-management directors, and thereby obtain control of the board, the requirement for specific nominee consent to be named and serve will continue. For those insurgents seeking control of the board of directors, it does not appear unduly burdensome that they should have to propose a full slate of nominees or bear the obligation to disclose the consequences to shareholders of using the proxy to vote for a short slate.[74]

The proposed amendment to Rule 14a–4(d) would continue to address the apparent underlying concerns of the bona fide nominee rule—that shareholders not be induced to vote for an unnamed nominee or waste their votes on persons, such as a public figure, who may be named by a dissident slate, but who has not consented to serve and would not serve. Furthermore, a management nominee who would not serve if dissidents were elected to the board, even if the latter were to occupy a minority position, could disclose that intention to shareholders. Thereafter, shareholders could assess this information before making a decision whether to vote for that nominee.

### III. Shareholder Analysis of Management Performance

The Commission is publishing for public comment a proposal that is the subject of a petition for rulemaking submitted by Edward V. Regan, Comptroller of the State of New York.[75] The proposal would allow shareholders in specified circumstances to require management to include in its annual proxy statement relating to the election of directors, a statement expressing views on the performance of the company, its management and the board of directors.[76] The procedure would apply to information statements under Section 14(c) of the Exchange Act as well.[77] In publishing the proposal for comment, the Commission has made several revisions in the eligibility and procedural provisions that it believes necessary for public consideration.

Under the proposal, any person or group of persons who has held one-half of a percent or more of the voting power of the stock of the corporation for three or more years would be eligible to submit a statement to be included in the company's proxy statement relating to the election of directors, setting forth their views on long-term company performance and the effectiveness of management in promoting the long-term interests of the corporation and its shareholders.[78] The statement could be submitted by a group of shareholders, so long as each member has held the securities for the requisite three years. There would be no limit on the number of shareholders that could constitute a group for the purpose of meeting the one-half percent ownership requirement. Solicitations of shareholders to support the statement would not be subject to the proxy rules (other than Rule 14a–9). Written material seeking sponsorship would be submitted to the Commission under the cover of a Notice Form 14.[79] Shareholders would not be deemed a section 13(d) group merely on the basis of their sponsorship of the statement.

Under the proposal, the statement would be limited to 700 words, not counting any tables, charts or graphs.[80] There would be no limit on management's response to a submitted statement. The statement would be submitted 120 days prior to the anniversary of the mailing of the registrant's most recent proxy statement relating to an annual meeting.[81] Only three statements received by that date would need to be included; if more than three were submitted, three would be chosen by lot after removing any statements by persons who have had statements included in the last three years.[82] The procedure would not be available in election contests involving two or more opposition nominees.[83]

Comment is requested on the proposal and the appropriateness or necessity for providing access to the company proxy statement for such statements. In view of the size of the investment that would be required under the proposed ½ of 1% standard,[84] comment is specifically

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themselves or from the regular books and records of the corporation.

*Williams* v. *Sterling Oil of Oklahoma, Inc.*, 273 A.2d 284, 285 (Del. 1971) quoted in *Parshalle* v. *Roy*, 567 A.2d 19, 23–24 (Del. Ch. 1989). *See also* Cornwell, Palenchar, Segal & Stevens, "Splitting Votes in Proxy Contests," 25 *Securities & Commodities Regulation* 89 (April 1992); "Corporations: Power of Inspectors of Election Relating to Irregular or Conflicting Proxies," 44 ALR 3d (1943).

Attempts to reconcile multiple proxies in order to "mix and match" slates by providing for "partial revocations" of earlier proxies have proven cumbersome and confusing. *See* Proxy Statement filed by NYCOR, Inc. with respect to Zenith Corp., dated March 11, 1991. The validity of such an approach is generally a question of state law.

[73] Rule 14a–4(d)(4), 17 CFR 240.14a–4(d)(4).

[74] The required disclosure includes whether the remaining seats are likely to be vacant or filled by management nominees (often depending on whether the vote requirement for the election of directors is a plurality or majority of votes cast) and that certain management nominees may not serve if elected to an insurgent-controlled board. In addition, any plan to fill any such vacancies on the board must be disclosed.

[75] Copies of the proposal, submitted under a cover letter from Mr. Regan to Chairman Breeden, dated March 18, 1992, are available for inspection and copying in the Commission's Public Reference Room [(202) 272–7450; File No. S7–22–91].

[76] Proposed Rule 14a–X(a).

[77] 15 U.S.C. 78m (c). *See* Proposed Item 5 to Schedule 14C.

[78] Proposed Rule 14a–X(b). Determinations by the registrant to exclude a statement would be subject to judicial review in an action by the sponsor or in a Commission enforcement action. *See Roosevelt* v. *Du Pont De Nemours & Co.*, 958 F.2d at 418.

[79] Proposed Rule 14a–X(i). The party soliciting support, however, need not meet the eligibility requirements of proposed exemptive Rule 14a–2(b)(1).

[80] Proposed Rule 14a–X(f)(1).

[81] If the proxy statement relates to a special meeting or a consent solicitation for the election of directors, the proposal would require submission of the statement a reasonable time before the solicitation.

[82] Proposed Rule 14a–X(g)(2).

[83] Proposed Rule 14a–X(g)(1).

[84] This standard would require an investment of $376.5 million in Exxon Corporation, $320 million in General Electric, $259 million in IBM, $107.2 million in Ford Motor Company, $12.7 million in CBS, Inc.

sought on the appropriateness of the size requirement for shareholdings. If the proposal were implemented by the Commission, should the requisite holding be lowered, or should there be an alternative dollar threshold, for example $10 million or $100 million? Should the required holding period be changed to one, two or five years?

## IV. Request for Comments

Any interested person wishing to submit written comments on the proposed revisions to the Commission's proxy rules, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse impact on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[85]

## V. Cost-Benefit Analysis

To evaluate the benefits and costs associated with the proposed amendments to Exchange Act Rules 14a–1(*l*), 14a–2(b), 14a–3, 14a–4, 14a–6, 14a–7, 14a–11, 14a–12, 14c–5, Schedules 14A and 14C and Forms 10–K and 10–Q under the Exchange Act, the Commission requests commenters to provide views and data as to the costs and benefits associated with amending the filing and disclosure requirements for proxy soliciting materials and information statements. The proposed exemption for communications with shareholders, the modification of the proxy statement delivery requirements and the elimination of requirements to file proxy soliciting materials in preliminary form in specified circumstances, and the facilitation of short slates should reduce costs significantly for persons who meet the requirements of the amendments. While the Rule 14a–7 requirement to deliver a shareholder list in the case of transactions subject to commission roll-up or going private rules and the enhanced disclosure requirements will impose new minimal costs, those costs should be justified by the benefit of informed decisionmaking by shareholders. The Commission also requests that commenters provide views and data concerning the costs and benefits of amending Rule 14a–7 and the disclosure requirements in Forms 10–K and 10–Q, as well as Schedules 14A and 14C and Notice Form 14.

Comments also are requested on the effects of all the proposals on the costs to be incurred by small entities.

## VI. Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis concerns proposed amendments to provisions of Rules 14a–1(*l*), 14a–2(b), 14a–3, 14a–4, 14a–6, 14a–7, 14a–11, and 14a–12, as well as Schedules 14A and 14C and Forms 10–K and 10–Q. The analysis has been prepared by the Commission in accordance with The Regulatory Flexibility Act.[86]

### *1. Reasons For and Objectives of the Proposed Action*

A proposed amendment to Rule 14a–2(b) would create an exemption for communications with shareholders from the proxy statement filing and delivery requirements of the proxy rules, where the person soliciting is not seeking proxy authority and does not have a substantial interest in the matter subject to a vote and is not acting on behalf of a nonexempt person.[87] No proxy statement will be required to be filed and disseminated; however, public notice of the soliciting activity will be required through publication or the submission of soliciting materials, accompanied by a notice with the Commission containing the information specified in Notice Form 14. The objective of this amendment is to eliminate unnecessary impediments to routine communications and consultations by shareholders with respect to matters presented by the registrant or a third party for shareholder action.

Proposed amendments to Rules 14a–6, 14a–11 and 14a–12 would allow solicitation materials other than the proxy statement and form of proxy, whether disseminated prior to or subsequent to the dissemination of the written proxy statement, to be filed with the Commission in definitive form at the time of dissemination,[88] and to make the preliminary proxy statement available for public inspection when filed except under specified circumstances when confidential treatment is requested.[89] The purpose of these proposed amendments is to reduce the costs and other burdens incurred by persons engaged in non-exempt solicitations, subject to the Rule 14a–9 proscriptions against false and misleading statements. The proposed amendments also are intended to reduce administrative costs incurred by the Commission in processing this material.

A proposed amendment to Rule 14a–7 would require registrants, in the case of transactions subject to the Commission roll-up or going private rules, to provide shareholders, upon written request and satisfaction of certain conditions, copies of its list of shareholder names, addresses and position listings, as well as any list of non-objecting or consenting beneficial owners where in the possession of the registrant.[90] The purpose of this amendment is to facilitate dissemination of material information to shareholders in those situations where there is a well-recognized risk of overreaching of nonaffiliated shareholders. Registrants would be required to disclose if they have denied access to a list, as a means to alert shareholders to possible abusive denials.

A proposed amendment to Rules 14a–11 and 14a–12 and Rule 14a–3 would expand the class of solicitations that can commence prior to the dissemination of the proxy statement [91] and exempt opinions and views conveyed by publication, broadcast or a speech from the proxy statement delivery requirements.[92] These proposals are intended to significantly lower the costs and expedite soliciting efforts by shareholders and registrants alike.

A proposed amendment would enhance disclosure regarding voting results currently contained in Forms 10–K and 10–Q and vote tabulation policies currently disclosed under Item 21 of Schedule 14A.[93] The purpose of this amendment is to alert shareholders to material facts with respect to the results of a shareholder vote and the effect of proxies voted as abstentions, withheld votes, and non-votes.

A proposed amendment to Rule 14a–4(a) and (b)(1) would require that the form of proxy set forth each matter to be voted upon separately to allow shareholders to vote individually on each matter. The purpose of this proposal is to further shareholder understanding of the effect of a proxy vote with respect to a group of related matters and to allow shareholders to express their preference on each matter.

A proposed amendment to Rule 14a–4(d) would allow dissenting shareholders seeking minority

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[85] 15 U.S.C. § 78w(a).

[86] 5 U.S.C. §§ 601 *et seq.*

[87] *See* Section II.A., *supra.*

[88] *See* Section II.B., *supra.*

[89] *See* Section II.C., *supra.*

[90] *See* Section II.D., *supra.*

[91] *See* Section II.F., *supra.*

[92] *See* Section II.G., *supra.*

[93] *See* Section II.H, *supra.*

representation on the board of directors to include names of management nominees on their form of proxy. The purpose of this amendment is to facilitate efforts by shareholders to obtain minority representation on the board of directors.[94]

A proposed amendment to require registrants to include the statement of significant, long-term shareholders on specified subjects in the proxy statement disseminated by the registrant in connection with annual meetings for the election of directors. The purpose of the amendment is to provide better disclosure to shareholders concerning the long-term performance of the company, its management and board of directors.

*2. Legal Basis*

The amendments are being proposed pursuant to sections 3(b), 13(a),[95] 14,[96] and 23(a)[97] of the Exchange Act.

*3. Small Entities Subject to the Rule*

The Commission has adopted definitions of the term "small entity" for the various entities subject to Commission rulemaking. Only two of these definitions are relevant for purposes of the proposed amendment. Rule 0–10[98] under the Exchange Act provides that "small businesses" include an issuer, other than an investment company, that has total assets of $5 million or less as of the end of its most recent fiscal year. As of June 1992, approximately 900 of these entities are registrants subject to the proxy rules. The proposed amendments to the shareholder list requirements and the amended disclosure requirements should not impose any significant new costs on registrants. In addition, proposals to lower the costs of compliance with the proxy rules by persons engaging in non-exempt solicitations, should result in a significant net decrease in regulatory costs.

Since any person who solicits proxies with respect to a registrant's securities also is subject to the proxy rules, a number of persons that are small entities are subject to the rules on this basis. The proposed amendments should result in significant savings from the costs incurred under the current rules for soliciting activities by small entities. Many solicitations by persons other than the registrant will be excepted from all the proxy rules other than the antifraud provisions and will be only required to submit to the Commission all written material used in the solicitation and a Notice Form 14, disclosing an intent to rely on the exception. These persons would not have to prepare, file and disseminate a proxy statement meeting the requirements of Schedule 14A. Other proposed amendments would allow solicitations by any party to commence without requiring the party to concurrently deliver a proxy statement or deliver a proxy statement to all shareholders.

Other parties who are subject to the proxy rules include investment companies. An investment company is a "small business" if it has net assets of $50 million or less as of the end of its most recent fiscal year.[99] By this definition, "small business" investment companies will be subject to the proposed amendments. However, many classes of "plain vanilla" proxy statements may now be filed in definitive form. Therefore, it is believed that few small business investment companies would be directly affected by this rule. For those involved, however, it is believed that the economic burden would be decreased. As with other registrants, these entities should benefit from the relaxation of the proxy statement requirements and the shareholder list and statement requirements should not impose new significant costs.

*4. Reporting, Recordkeeping and Other Compliance Requirements*

The proposed amendments to Rules 14a–1(*l*), 14a–2(b), 14a–3, 14a–4, 14a–6, 14a–7, 14a–11, 14a–12, and 14c–5, Schedule 14A and 14C and Forms 10–K and 10–Q would not result in any significant increase in reporting, recordkeeping or compliance requirements. Proposed amendments to exempt solicitations from the proxy statement delivery requirements, to reduce or eliminate the preliminary filing requirements, and to eliminate non-public filing of all proxy soliciting materials, would result in a net diminution of reporting and other compliance requirements for all entities that qualify for the exclusions.

*5. Overlapping or Conflicting Federal Rules*

The proposed amendment would not overlap or conflict with any existing federal rule provisions.

*6. Significant Alternatives*

Significant alternatives to the proposed amendments to Rules 14a–1(*l*), 14a–2(b), 14a–3, 14a–4, 14a–6, 14a–7, 14a–11, and 14a–12 could include amending the definition of solicitation to exclude a broad class of communications from all provisions of the proxy rules. This approach, however, would result in the antifraud provisions of the proxy rules no longer being applicable to statements that are made with the purpose of influencing shareholder voting. The Commission could also increase the classes of proxy statements that may be filed in definitive form. While the Commission is requesting further comment on this alternative, it has determined to maintain the current preliminary filing requirements, although the public will be granted access to those materials in most instances when they are filed. In addition, as the Commission had previously proposed, persons eligible to use the communication exception for written solicitations could be excepted from all filing requirements. However, many commenters suggested in response to the initial proposal, that absent public notice of these soliciting activities, the registrant, other shareholders and the market could be deprived of material information.

Alternatives to the proposed amendment to the proposed bona fide nominee rule and the required statements on management performance could include greater shareholder access to the registrant's proxy statement, including with respect to nominations and election of directors. Those alternatives would likely impose more significant costs on registrants.

Therefore, the Commission believes that there is no less restrictive alternative to the proposed rule amendments that would serve the purposes of the securities laws. However, the Commission will receive comments on each of the above-mentioned proposals prior to final rulemaking.

*7. Solicitation of Comments*

The Commission encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if the proposed rules are adopted. Persons wishing to submit written comments should file them with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. S7–15–92. All comments received will be available for public inspection and copying in the Commission's Public

[94] *See* section II.J., *supra*.
[95] 15 U.S.C. 78m(a).
[96] 15 U.S.C. 78n.
[97] 15 U.S.C. 78w(a).
[98] 17 CFR 240.0–10.
[99] 17 CFR 170.0–10.

Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**VII. Statutory Basis**

The amendments to the proxy rules are being proposed by the Commission pursuant to sections 3(b), 13, 14 and 23(a) of the Securities Exchange Act of 1934.

**List of Subjects in 17 CFR Parts 240 and 249**

Reporting and recordkeeping requirements, Securities.

**VIII. Text of Proposals**

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

**PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

1. The authority citation for part 240 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 7811(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

2. By amending § 240.14a–1 (Rule 14a–1(l) to revise paragraph (l)(2) thereof to read as follows:

**§ 240.14a–1 Definitions.**

* * * * *

(l) *Solicitation.* * * *

(2) The terms do not apply, however, to:

(i) The furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder;

(ii) The performance by the registrant of acts required by § 240.14a–7;

(iii) The performance by any person of ministerial acts on behalf of a person soliciting a proxy; and

(iv) The public announcement by a security holder not otherwise soliciting a proxy that does no more than state how that security holder intends to vote and the reasons therefor.

3. By amending § 240.14a–2 to revise the introductory text of paragraph (b); to redesignate paragraphs (b)(1) and (b)(2) as paragraphs (b)(2) and (b)(3), respectively; and to add new paragraph (b)(1) to read as follows:

**§ 240.14a–2 Solicitations to which §§ 240.14a–3 to 240.14a–14 apply.**

* * * * *

(b) Sections 240.14a–3 to 240.14a–6 (other than 14a–6(g) as pertinent), 240.14a–8, and 240.14a–10 to 14a–14 do not apply to the following:

(1) Any solicitation by or on behalf of any person who does not seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a security holder and does not furnish or otherwise request, and does not act on behalf of a person who furnishes or requests, a consent or authorization for delivery to the registrant. *Provided, however,* that the exemption set forth in this paragraph shall not apply to:

(i) The registrant, an officer, director, affiliate, or associate of the registrant, or any person serving in a similar capacity;

(ii) An affiliate of a person ineligible to rely on the exemption set forth in this paragraph, and any officer, director or associate of such ineligible person, or any person serving in a similar capacity;

(iii) Any nominee for whose election as a director proxies are solicited;

(iv) Any person soliciting in opposition to a tender offer, merger, recapitalization, reorganization, sale of assets or other extraordinary transaction recommended or approved by the board of directors of the registrant who is proposing or intends to propose an alternative transaction to which such person or one of its affiliates is a party;

(v) Any person who is required to report beneficial ownership of the registrant's equity securities on Schedule 13D [§ 240.13d–101], unless such person has filed a Schedule 13D and has not disclosed pursuant to Item 4 thereto an intent, or reserved the right to, engage in a control transaction, including a contested solicitation for the election of directors;

(vi) Any person who receives compensation from an ineligible person directly or indirectly related to the solicitation of proxies;

(vii) Where the registrant is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), an "interested person" of that investment company, as that term is defined in section 2(a)(19) of the Act (15 U.S.C. 80a–2);

(viii) Any person who, because of a substantial interest in the subject matter of the solicitation, will receive a benefit from a successful solicitation that is not shared pro rata by all other holders of the same class of securities; and

(ix) Any person acting on behalf of any of the foregoing.

* * * * *

4. By amending § 240.14a–3 to add a new paragraph (f) to read as follows:

**§ 240.14a–3 Information to be furnished to security holders.**

* * * * *

(f) The provisions of paragraph (a) of this section shall not apply to a solicitation made solely by means of a speech in a public forum, published or broadcast opinions, statements, and advertisements appearing in a broadcast media, newspaper, magazine and/or business or financial publication of general and regular circulation, provided that:

(1) No form of proxy, consent or authorization or means to execute the same is provided to security holders in connection with the communication; and

(2) At the time the communication is made, a definitive proxy statement is on file with the Commission pursuant to § 240.14a–6(b).

5. By amending § 240.14a–4 to revise the first sentence of each of paragraphs (a)(3) and (b)(1) and to add a new concluding sentence at the end of paragraph (d) to read as follows:

**§ 240.14a–4 Requirements as to proxy.**

* * * * *

(a) * * *

(3) Shall identify clearly and impartially each matter intended to be acted upon, whether or not related or mutually conditioned on the approval of the other matters, and whether proposed by the registrant or by security holders.

* * *

(b)(1) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to, each matter referred to therein as intended to be acted upon, other than elections to office. * * *

(d) * * *

*Provided, however,* that nothing in this paragraph shall prevent any person soliciting in support of nominees who, if elected, would constitute a minority of the board of directors, from providing security holders an opportunity to vote for all or certain of the nominees named in the registrant's proxy statement, so long as the registrant's nominees are clearly distinguished on the form of proxy from nominees who have consented to be named in the proxy statement filed in connection with such opposing solicitation.

* * * * *

6. By amending § 240.14a–6 to revise the first sentence of the introductory text of paragraph (a); to remove paragraphs (b) and (h); to redesignate paragraphs (c) through (g) as paragraphs (b) through (f); to add new paragraph (g); to redesignate paragraphs (i) through (m) as paragraphs (h) through (l); to revise the caption to newly redesignated

paragraph (b); to revise newly redesignated paragraphs (c), (d), and (e); and to add to newly redesignated paragraph (i) a new subparagraph (5), to read as follows:

**§ 240.14a–6 Filing requirements.**

(a) *Preliminary proxy statement.* Five preliminary copies of the proxy statement and form of proxy shall be filed with the Commission at least 10 calendar days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause thereunder. * * *

(b) *Definitive proxy statement and other soliciting materials.* * * *

(c) *Personal solicitation materials.* If the solicitation is to be made in whole or in part by personal solicitation, eight copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is furnished to the persons making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with, or mailed for filing to, the Commission by the person on whose behalf the solicitation is made not later than the date any such material is first sent or given to such individuals.

(d) *Release dates.* All preliminary material filed pursuant to paragraph (a) of this section shall be accompanied by a statement of the date on which definitive copies thereof filed pursuant to paragraph (b) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (b) of this section shall be accompanied by a statement of the date on which copies of such material were released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies thereof were released to the individual who will make the actual solicitation or if not released, the date on which copies thereof are intended to be released.

(e)(1) *Public availability of information.* All copies of preliminary material filed pursuant to paragraph (a) of this section shall be clearly marked "Preliminary Copies," and shall be deemed immediately available for public inspection unless confidential treatment is obtained pursuant to paragraph (e)(2) of this section.

(2) *Confidential treatment.* If action is to be taken with respect to any matter specified in Item 14 of Schedule 14A (§ 240.14a–101) that is nonpublic and is not required to be publicly disclosed under any other provision of law, then all copies of preliminary proxy statement and form of proxy filed pursuant to this section shall be for the information of the Commission only and shall not be deemed available for public inspection until definitive material has been filed with the Commission provided that:

(i) The solicitation does not relate to a matter or proposal subject to § 240.13e–3 or a roll-up transaction as defined in Item 901(c) of Regulation S–K [§ 229.901(c) of this chapter];

(ii) At the time of filing, a separate copy of the materials is sent to the Secretary of the Commission together with a written request for confidential treatment; and

(iii) The filed material is marked "Confidential, For Use of the Commission Only." In any and all cases, such material may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission.

* * * * *

(g) *Solicitations subject to § 240.14a–2(b)(1).*

(1) Any person relying upon the exemption set forth in § 240.14a–2(b)(1), shall furnish or mail to the Commission, within 10 days of the commencement of such solicitation, five copies of a statement containing the information specified in Notice Form 14 [§ 240.14a–103] which statement shall attach as an exhibit any written soliciting materials. Five copies of an amendment to such statement shall be submitted, or mailed to the Commission, in connection with the dissemination of any additional soliciting materials within 10 days following the date such materials are first sent or given to securityholders.

(2) Notwithstanding paragraph (g)(1) of this section, no such submission need be made with respect to solicitations consisting solely of oral communications, speeches in a public forum, published or broadcast opinions, statements, and advertisements appearing in a broadcast media, newspaper, magazine or business or financial publication of general and regular circulation.

(i) *Fees.* * * *

(5) For submissions made pursuant to §§ 240.14a–2(b)(1) and 240.14a–6(g), no fee shall be required.

* * * * *

7. By revising § 240.14a–7 to read as follows:

**§ 240.14a–7 Obligations of registrants to provide a list of, or mail soliciting material to, security holders.**

(a) If the registrant has made or intends to make a proxy solicitation in connection with a security holder meeting or action by consent or authorization, upon the written request by any security holder entitled to vote at the meeting or to execute a consent or authorization, to provide a list of security holders or to mail the requesting security holder's materials, the registrant shall:

(1) Mail or otherwise furnish to the requesting security holder within two business days after receipt of the request:

(i) A statement of the approximate number of record holders and beneficial holders, separated by type of holder and class, owning securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder;

(ii) The estimated cost of mailing a proxy statement, form of proxy or other communication to such holders, including to the extent known or reasonably available, the estimated costs of any bank, broker, and similar person through whom the registrant has solicited or intends to solicit beneficial owners in connection with the security holder meeting or action;

(iii) If applicable, notify the security holder of the registrant's election under paragraph (b) of this section; and

(iv) With respect to security holders requesting the security holder list, a statement indicating whether the registrant has obtained a reasonably current list of beneficial owners pursuant to § 240.14a–13(b) and the date of such a list.

(2) Perform the acts set forth in either paragraphs (a)(2)(i) or (a)(2)(ii) of this section, at the registrant's or requesting security holder's option, as specified in paragraph (b) of this section:

(i) Mail copies of any proxy statement, form of proxy or other soliciting material furnished by the security holder to the record holders, including banks, brokers, and similar entities, designated by the security holder. A sufficient number of copies must be mailed to the banks, brokers and similar entities to enable them to distribute a copy to each beneficial owner to receive one pursuant to the security holder's instructions. The registrant shall mail the security holder material with reasonable promptness

after tender of the material to be mailed, envelopes or other containers therefor, and postage or payment for postage. The registrant shall not be responsible for the content of the material; or

(ii) Furnish the requesting security holder with the following information within five business days of receipt of the request: a reasonably current list of the names, addresses and security positions of the record holders, including banks, brokers and similar entities, owning securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder; a reasonably current list of beneficial owners as specified in § 240.14a–13(b), if such a list is in the possession of the registrant at the time of the security holder's request; and any other information relating to the names, addresses, and security positions of beneficial owners that is in the registrant's possession and that the registrant has used or intends to use to conduct its solicitation in connection with the meeting or action. All security holder list information shall be in the form requested by the security holder to the extent that such form is available to the registrant without undue burden or expense. The registrant shall furnish the security holder with updated record holder information on a daily basis or at other reasonable intervals, *Provided, however,* the registrant need not provide information more current than the record date for the meeting or action.

(b) If the registrant is soliciting with respect to a proposal that is subject to § 240.13e–3 or a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter), the requesting security holder shall have the option set forth in paragraph (a)(2) of this section. With respect to all other requests pursuant to this section, the registrant shall have the option to either mail the security holder's material or furnish the security holder list as set forth in paragraph (a)(2) of this section.

(c) At the time of a list request, the security holder making the request or the beneficial owner for whom the request is made shall provide the registrant with an affidavit, declaration, affirmation or other similar document provided for under applicable state law identifying the proposal that will be the subject of the security holder's solicitation or communication and attesting that:

(1) The security holder will not use the list information for any purpose other than to communicate with or solicit security holders with respect to the same meeting or action by consent or authorization for which the registrant is soliciting or intends to solicit; and

(2) The security holder will not disclose such information to any person other than the beneficial owner for whom the request was made and an employee or agent to the extent necessary to effectuate the communication or solicitation.

(d) The security holder shall not use the information furnished by the registrant pursuant to paragraph (a)(2)(ii) of this section for any purpose other than to communicate with or solicit security holders with respect to the same meeting or action by consent or authorization for which the registrant is soliciting or intends to solicit; or disclose such information to any person other than an employee, agent, or beneficial owner for whom a request was made to the extent necessary to effectuate the communication or solicitation.

(e) The security holder shall defray the reasonable expenses incurred by the registrant in performing the acts requested pursuant to paragraph (a) of this section.

8. By amending § 240.14a–11 to remove paragraph (c)(2) and redesignate paragraphs (c)(3) through (c)(6) as paragraphs (c)(2) through (c)(5), respectively; to revise paragraph (c)(1); in newly redesignated paragraph (c)(3), to remove the reference to "paragraphs (c)(1), (2) and (3)" and in its place add "paragraphs (c)(1) and (c)(2)"; to remove paragraphs (d) and (e) to redesignate paragraphs (f) through (h) as paragraphs (d) through (f), respectively; to remove the last sentence in newly redesignated paragraph (d); and to revise newly redesignated paragraph (e) to read as follows:

**§ 240.14a–11 Special provisions applicable to election contests.**

* * * * *

(c) *Filing of Information Required by Schedule 14B.* (1) No later than five business days following the commencement of a solicitation subject to this section or five business days prior to the filing or mailing for filing of a definitive proxy statement pursuant to § 240.14a–6(b) relating to such a solicitation, whichever is earlier, three copies of a statement containing the information specified by Schedule 14B (§ 240.14a–102) shall be filed with the Commission and with each national securities exchange upon which any security of the registrant is listed and registered, by and on behalf of each participant in such solicitation, other than the registrant.

* * * * *

(e) *Application of § 240.14a–6.* The provisions of paragraphs (b), (c), (d), and (e) of § 240.14a–6 shall apply, to the extent pertinent, to soliciting material subject to paragraphs (d) of this section.

* * * * *

9. By revising § 240.14a–12 to read as follows:

**§ 240.14a–12 Solicitation prior to furnishing required proxy statement.**

(a) Notwithstanding the provisions of § 240.14a–3(a), a solicitation may be made prior to furnishing security holders a written proxy statement meeting the requirements of § 240.14a–3(a) if:

(1) No form of proxy is furnished to security holders prior to the time the written proxy statement is furnished to security holders: *Provided, however,* That this paragraph (a)(1) shall not apply where a written proxy statement then meeting the requirements of § 240.14a–3(a) has been furnished to security holders by or on behalf of the person making the solicitation;

(2) The identity of the person or persons by or on whose behalf the solicitation is made and a description of their interests direct and indirect, by security holdings or otherwise, are set forth in each communication sent or given to security holders in connection with the solicitation; and

(3) A written proxy statement meeting the requirements of this regulation is sent or given to the security holders at the earliest practicable date.

(b) Three copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of a written proxy statement required by § 240.14a–3(a) shall be filed or mailed for filing with the Commission not later than the date copies of such material are first sent or given to security holders.

10. By amending § 240.14a–101 to add a new paragraph (f) to Item 6 of Schedule 14A, to read as follows:

**§ 240.14a–101 Schedule 14A. Information required in proxy statement.**

* * * * *

**Item 6. Voting Securities and Principal Holders Thereof**

* * *

(f) If the registrant has received a request for a security holder list on or before the twentieth calendar day preceding the date of the proxy statement, or later than 20 calendar days prior to the date of the registrant's most recent proxy statement, and the requested list had not been provided by the date of the proxy statement, state the name of the requestor, the reasons given, if any, for requesting the list, and

the registrant's reasons for not providing the list. The information required by this paragraph shall be provided in any additional soliciting material provided to security holders following the dissemination of a proxy statement not containing such information.

*Instruction:* The discussion of requests for a security holder list called for by this item must be provided whether the request was made under federal, state, or common law or contractual provisions. Where a request for a list has been made under Rule 14a–7 and the registrant elects to mail the security holders materials in lieu of providing a list, the discussion called for by this item shall be provided. No such disclosure need be given where a court has held that the registrant need not provide the requested list under state law, or the request was not properly made under Rule 14a–7.

* * * * *

11. By amending § 240.14a–101 to revise Item 21 thereof to read as follows:

**§ 240.14a–101 Schedule 14A. Information required in proxy statement.**

* * * * *

*Item 21. Voting Procedures.* As to each matter which is submitted to a vote of security holders, furnish the following information:

(a) State the vote required for approval, other than for the approval of auditors.

(b) Disclose the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state law as well as registrant charter and by-law provisions.

12. By adding § 240.14a–103 to read as follows:

**§ 240.14a–103 Notice Form 14. Information to be included in statements filed by or on behalf of a person pursuant to § 240.14a–2(b)(1) (Rule 14a–2(b)(1)).**

U.S. Securities and Exchange Commission—Washington, DC 20549

Notice Form 14

1. Name of the Registrant:

_____

2. Name of person relying on exemption:

_____

3. Holdings of voting securities of the Registrant:

_____

Amount of each class of securities of the Registrant entitled to vote on the matter owned beneficially by the person submitting this notice.

4. Written materials. Attach written material required to be submitted pursuant to Rule 14a–6(g)(1).

13. By adding a new section 240.14a–X to read as follows:

**§ 240.14a–X Security holder analysis of management performance.**

(a) *General.* If the solicitation is made on behalf of the registrant and relates to an annual (or special meeting in lieu of the annual) meeting of security holders, or a written consent in lieu of such meeting, at which directors are to be elected, subject to the conditions set forth in this section, each proxy statement furnished pursuant to § 240.14a–3 shall include the statements of security holders who meet the requirements set forth in paragraph (b) of this section with respect to the registrant's long-term economic performance and resultant shareholder value and the ability of the registrant's officers and directors to achieve, in the long term, corporate growth and resulting shareholder gain.

(b) *Eligibility of security holder(s).* (1) At the time he submits his statement, the security holder shall be the beneficial owner of securities entitled to cast at least ½% of the aggregate number of votes which may be cast in the election of directors at the meeting and have been such an owner for at least three years, and he shall continue to be such an owner through the date on which the meeting is held. If the registrant requests documentary support for a security holder's claim that he is the beneficial owner of at least ½% of such voting securities of the registrant and that he has been a beneficial owner of the securities for three or more years, the registrant shall make such request within 14 calendar days after receiving the security holder's statement and the security holder shall furnish appropriate documentation within 21 calendar days after receiving the request. Appropriate documentation of the security holder's claim of beneficial ownership shall include either:

(i) the security holder's affidavit, declaration, affirmation or similar document provided for under applicable state law which shall be supported by:

(A) A copy of such security holder's Schedule 13D, Schedule 13G, Form 13F, Forms 3, 4, and/or 5, filed with the Commission and furnished to the registrant, and all subsequent amendments reporting a change in beneficial ownership, indicating the security holder's beneficial ownership as of or prior to the date on which the relevant three-year period commenced and that beneficial ownership of the registrant's securities has continued to the time the security holder supplied his statement or

(B) In the absence of such filings, other independent evidence of compliance with the eligibility requirements of this rule or

(ii) A written statement by a record owner or by an independent third party (such as a custodian or similar entity); in either case attesting that the security holder was the beneficial owner of securities of the registrant having the right to cast at least ½% of the votes entitled to be cast in the election of directors of the registrant throughout the required three-year period and as of the date of such affidavit, declaration, affirmation, similar document provided for under applicable state law, record holder statement or third party statement, as the case may be, accompanied by the security holder's written statement that the security holder intends to continue to be such an owner through the date on which the meeting is held.

(2) A security holder who is not the beneficial owner of securities entitled to cast at least ½% of the aggregate number of votes which may be cast in the election of directors at the meeting, but who has been a beneficial owner for at least three years may contact other security holders for the purpose of forming a security holder group which, in the aggregate, is the beneficial owner of securities entitled to cast at least ½% of the aggregate number of votes which may be cast in the election of directors at the meeting. Each member of such group must have been a beneficial owner of voting securities of the registrant for at least three years in order for the group to be eligible to submit a statement. If the registrant requests documentary support for a security holder group's claim that it is in the aggregate the beneficial owner of at least ½% of such voting securities of the registrant or that the members of the group have been beneficial owners of the registrant's securities for three or more years, each member of the security holder group shall furnish the appropriate documentation provided for under paragraph (b)(1) of this section. Each member of a security holder group shall provide to the registrant the information required by paragraph (c) of this section. For all other purposes of this section, such security holder group shall be considered a single security holder.

(c) *Security Holder Information.* At the time he submits a statement, a security holder shall provide the registrant in writing with his name; address; the number of registrant's

voting securities that he holds beneficially; the dates upon which he acquired such securities; and his interest, if any, in the outcome of the vote at the meeting or in the registrant other than as a security holder.

(d) *Timeliness.* The security holder shall submit his statement sufficiently far in advance of the meeting so that it is received by the registrant within the following time periods:

(1) A statement to be mailed with a proxy statement relating to an annual meeting shall be received at the registrant's principal executive offices not less than 120 calendar days in advance of the date of the registrant's proxy statement was released to security holders in connection with the previous year's annual meeting of security holders except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date contemplated at the time of the previous year's proxy statement, a statement shall be received by the registrant a reasonable time before the solicitation is made, taking into account other provisions of this section with respect to the times for the taking of actions.

(2) A statement to be mailed with a proxy statement relating to any meeting other than an annual meeting specified in paragraph (d)(1) of this section shall be received a reasonable time before the solicitation is made, taking into account other provisions of this section with respect to times for the taking of actions.

(e) *Number of Statements.* A security holder may not submit more than one statement for mailing with the registrant's proxy statement for a meeting of security holders.

(f) *Contents of the Statement.* (1) The statement shall be limited to the opinion of the security holder with respect to:

(i) The registrant's long-term economic performance and resultant shareholder value and

(ii) The ability of the registrant's officers and directors to achieve, in the long term, corporate growth and resulting shareholder gain and the reasons for such opinions. The statement shall also include the information, for the security holder and for each member of any security holder group, required to be furnished pursuant to paragraph (c) of this section. The statement shall not exceed 700 words excluding any tables, charts or graphs and the information required by the preceding sentence. The registrant shall not be responsible for such statement.

(2) If one or more statements have been submitted by security holders, there shall be set forth in the proxy statement under the caption preceding information with respect to the election of directors the following statement: "Accompanying this proxy statement is a statement(s) submitted by a security holder(s) expressing opinions with respect to the performance of the company." If a statement on behalf of management has been prepared, the following statement shall also be set forth in bold type under such caption: "Also accompanying this proxy statement is a statement authorized by the Board of Directors in response to the statement(s) submitted by the security holder(s)."

(g) *Omission of Statements.* The registrant may omit a statement from the mailing of its proxy statement if any of the following grounds for exclusion apply:

(1) The registrant may omit all statements from the mailing of its proxy statement if any of the registrant's security holders files a Schedule 14B with the Commission, commencing a proxy election contest involving two or more non-management director nominees, by five calendar days prior to the date the statements are expected to be distributed.

(2) The registrant is only required to mail with its proxy statement three statements it receives which satisfy the requirements set forth in this section. In the event that more than three statements are received by the registrant which may not be omitted from the mailing pursuant to paragraph (g)(1) of this section, the registrant's independent accountants shall, after excluding all statements from security holders who within the preceding three years have had a statement mailed by the registrant pursuant to this section, determine by lot the three statements which will be mailed with the registrant's proxy statement.

(h) *Supporting statement.* In the event a registrant determines to omit a statement from the mailing of its proxy statement because such statement was not selected for mailing by the accountants pursuant to paragraph (g)(2) of this section, the registrant shall promptly notify the security holder that his statement will not be mailed with the proxy statement in which case such security holder shall request from the registrant, within seven calendar days after receiving notice that his statement will not be mailed with the registrant's proxy statement, a copy of the statements to be mailed with the proxy statement and the registrant shall furnish appropriate copies to the security holder within seven calendar days after receiving the request. If such security holder decides to support one of the statements to be mailed with the proxy statement, within 10 calendar days after receiving copies of the statements to be mailed with the proxy statement, such security holder shall notify the registrant of the statement he is supporting, and the registrant shall include in such statement a sentence which identifies the statement supported by the security holder, the name and address of the security holder supporting such statement, and the number of shares of voting securities of the registrant held by such security holder.

(i) *Relationship to Other Rules.* For the purpose of § 240.14a–0, any statement of a security holder or a registrant mailed pursuant to this section shall be deemed "solicitation material" and such mailing shall be deemed a "solicitation." A communication with security holders for the purpose of obtaining support for a statement to be submitted to the registrant pursuant to paragraph (b)(2) of this section shall not be subject to § 240.14a–3 or 14a–11. Security holders engaging in such communications shall comply with the notice requirements of § 240.14a–6(g) in connection with any dissemination of the proposed statement and other solicitation materials.

14. By amending § 240.14c–5 to revise paragraph (d), to read as follows:

**§ 240.14c–5 Filing requirements.**

* * * * *

(d)(1) *Public Availability of Information.* All copies of material filed pursuant to paragraph (a) of this section shall be clearly marked "Preliminary Copies," and shall be deemed immediately available for public inspection unless confidential treatment is obtained pursuant to paragraph (d)(2) of this section.

(2) *Confidential Treatment.* If action is to be taken with respect to any matter specified in Item 14 of Schedule 14A (§ 240.14a–101) that is nonpublic and is not required to be publicly disclosed under any other provision of law, then all copies of the preliminary information statement filed pursuant to this section shall be for the information of the Commission only and shall not be deemed available for public inspection until definitive material has been filed with the Commission provided that:

(i) the information statement does not relate to a matter or proposal subject to § 240.13e–3 or a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter);

(ii) at the time of filing, a separate copy of the information statement is sent to the Secretary of the Commission

together with a written request for confidential treatment; and

(iii) the filed material is marked "Confidential, For Use of the Commission Only." In any and all cases, such material may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission.

15. By amending § 240.14c–101, (Schedule 14c) to add a new Item 5 thereto to read as follows:

**§ 240.14c–101 Schedule 14C. Information required in information statement.**

* * * * *

Item 5. *Statements of Security Holders.*

Include all statements of security holders that would have been required to be forwarded to security holders pursuant to Rule 14a–X (§ 240.14a–X) if proxies were to be solicited in connection with the meeting.

**PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934**

16. The authority citation for Part 249 continues to read, as follows:

**Authority:** 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

17. By amending Form 10–Q (§ 249.308a) to revise paragraph (c) and Instruction 4 of Item 4 Part II to read as follows:

**Note—**The text of Form 10–Q does not and this amendment will not appear in the Code of Federal Regulations.

**§ 249.308a Form 10–Q, for quarterly and transition reports under section 13 or 15(d) of the Securities Exchange Act of 1934.**

**Form 10–Q**

* * * * *

**Part II**

* * * * *

*Item 4. Submission of Matters to a Vote of Security Holders*

If any matter has been submitted to a vote of security holders during the period covered by this report, through the solicitation of proxies or otherwise, furnish the following information:

* * * * *

(c) A brief description of each matter voted upon at the meeting and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes, as to each such matter or nominee.

* * * * *

*Instructions*

4. Paragraph (c) must be answered for all matters voted upon at the meeting, with respect to both contested and uncontested elections of directors.

* * * * *

18. By amending Form 10–K (§ 249.310) to revise paragraph (c) and Instruction 4 of Item 4 of Part I to read as follows:

**Note—**The text of Form 10–K does not and this amendment will not appear in the Code of Federal Regulations.

**§ 249.310 Form 10–K, for annual and transition reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.**

**Form 10–K**

* * * * *

**Part I**

* * * * *

*Item 4. Submission of Matters to a Vote of Security Holders*

* * * * *

(c) A brief description of each matter voted upon at the meeting and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes, as to each such matter or nominee.

* * * * *

*Instructions*

4. Paragraph (c) must be answered for all matters voted upon at the meeting including with respect to both contested and uncontested elections of directors.

* * * * *

By the Commission.

Dated: June 23, 1992.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–15252 Filed 7–1–92; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES and EXCHANGE COMMISSION

### 17 CFR Parts 229 and 240

**[Release No. 33–6940; 34–30851; File No. S7–16–92]**

**RIN 3235–AF34**

### Executive Compensation Disclosure

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commission is publishing for comment proposed amendments to the executive compensation disclosure requirements applicable to proxy statements, periodic reports and other filings under the Securities Exchange Act of 1934, and to registration statements under the Securities Act of 1933. The proposed amendments are intended to make disclosure of compensation paid or awarded to executive officers clearer and more concise, and of greater utility to shareholders. New provisions would require a report by the Board Compensation Committee, or in its absence, the Board of Directors, on the bases for its compensation decisions in the last fiscal year with respect to the Chief Executive Officer and the other named executive officers, and the relationship of such compensation to company performance, together with a graph comparing the cumulative return on the company's common stock with the Standard and Poor's 500 Stock Index over at least the last five years, and with the return on either a nationally recognized industry index or a registrant-constructed peer group index. Additional disclosure is proposed, for certain registrants, regarding the relationships of the Compensation Committee members to the registrant.

**DATES:** Comments should be received on or before August 31, 1992.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–16–92. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Catherine T. Dixon at (202) 272–2589, or Gregg W. Corso at (202) 272–3097, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing for comment proposed amendments to the proxy rules [1] and Item 402 [2] of Regulation S–K, as well as Item 10 of Schedule 14A,[3] and Item 11 of Form 10–K.[4] These amendments would modify disclosure of executive compensation in proxy statements and periodic reports under the Securities Exchange Act of 1934 ("Exchange Act"),[5] and registration

[1] 17 CFR 240.14a–1 *et seq.*

[2] 17 CFR 229.402.

[3] 17 CFR 240.14a–101, Item 10.

[4] 17 CFR 249.310, Item 11.

[5] 15 U.S.C. 78a *et seq.*

statements under the Securities Act of 1933 ("Securities Act").[6]

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## I. Executive Summary

The Commission today is proposing substantial revisions to its rules governing disclosure of executive compensation. The proposed amendments are intended to provide shareholders with a clear and concise presentation of compensation paid or awarded to executive officers, and the directors' bases for making such compensation decisions.

To this end, the Commission is proposing to consolidate the requisite disclosure in a series of tables that would set forth in a clear and understandable manner each element of compensation paid, earned or awarded in a given year. General descriptions of most compensation plans no longer would be required. A new Summary Table also would provide an overview of each compensatory item paid to, or earned or received by the Chief Executive Officer ("CEO") and the four other most highly paid executive officers over each of the preceding three years, enabling shareholders to discern clearly any trends in the registrant's approach to compensating its executives, and to compare the registrant's executive pay practices with those of other registrants. Shareholder understanding of this information would be enhanced further by a proposed report by the Board Compensation Committee (or, in its absence, the full Board or other committee performing a similar function) discussing the specific factors upon which each named executive's compensation was based in the last fiscal year, and explaining how each named executive's compensation package relates to corporate performance. Accompanying this report would be a graph comparing the cumulative returns to the company's shareholders over a period of at least the last five years to the return on the Standard and Poor's ("S&P") 500 Stock Index, and the return on either a nationally recognized industry index or a registrant constructed peer group index. The registrant would be free to include additional graphs using other performance measures.

Expanded disclosure of directors' business relationships with the registrant is proposed for registrants that (1) do not have a compensation committee composed entirely of non-employee directors; (2) have interlocking compensation committees or, in the absence of a compensation committee, interlocking directorships; or (3) have repriced or amended outstanding options during the most recent fiscal year. Certain exceptions would be made for small businesses that would be eligible to file on proposed Form 10–KSB.

These proposals are part of the Commission's initiative, announced in February of this year, to enhance the workings of market forces with respect to executive pay. This initiative includes providing shareholders with information about executive compensation that is easier to understand and more relevant to proxy voting and investment decisions, and permitting shareholders greater opportunity to make their views about the board's compensation decisions known to the directors. Effective earlier this year, the Commission staff began to require companies to include shareholder proposals on executive compensation submitted pursuant to Rule 14a–8 [7] in their proxy statements. While these resolutions are advisory in nature, they allow shareholders to provide direct input to the board on its compensation decisions.[8]

[In percent]

| | For | Against | Abstain |
|---|---|---|---|
| Aetna Life & Casualty Co | 7.5 | 85.3 | 12.2 |
| Baltimore Gas & Electric Co | 12.2 | 83.6 | 4.2 |
| Bell Atlantic Corp | 10.9 | 74.6 | 14.5 |
| Black Hills Corp | 36.9 | 47.6 | 15.5 |
| Chrysler Corp | 5.6 | 79.5 | 14.9 |
| Eastman Kodak Co | 15.9 | 67.8 | 16.3 |
| Equimark Corp | 16.5 | 81.4 | 2.1 |
| Int'l Business Machines Corp | 16.7 | 82.3 | * |
| Reebok Inc | 10.2 | 51.9 | 21.9 |

* Not available.

The goals of the Commission initiative are to assure that shareholders are well informed and that all the facts regarding the compensation that the shareholders are paying are out in the open, and to foster better accountability of the board of directors to the shareholders.

## II. Proposed Disclosure Framework

Since adoption of the current compensation disclosure requirements nine years ago, executive compensation design and practice have undergone significant changes. While systems were developed in the 1970s primarily to ensure current pay delivery, the contemporary focus is increasingly on long-term compensation to provide management with incentives to create shareholder value.[9] This trend toward increased use of long-term stock compensation reflects the commonly held view that "real ownership builds commitment and risk on the part of executives and positively influences long-term decision-making." [10] Recently,

[6] 15 U.S.C. 77a *et seq.*

[7] 17 CFR 240.14a–8.

[8] Nine of the proposals that the Commission decided should be included under the new policy have come to a vote. Reported results of the voting on the nine proposals were as follows:

[9] See L. Brindisi, Executive Compensation Links to Shareholder Value Creation, reprinted in Executive Compensation: A Strategic Guide for the 1990's 273 (Foulkes, ed. 1991).

[10] Frederic W. Cook & Co., Long-Term Incentive Grants among the Top 200 Industrial Companies (November 1991).

these changes have accelerated, with long-term incentive compensation overtaking the more traditional fixed salary and bonus to become the largest single component of the total mix of the typical executive pay package.[11] The growing use and multiplicity of these plans have made executive pay packages extremely complex, and have led to reporting of compensation that many shareholders find incomprehensible. While a number of companies have sought to simplify their disclosures and to provide clear tabular presentation of senior executive compensation packages, many have not. The proposals made today are intended to remedy this situation.

*A. Item 402 of Regulation S–K*

The Commission is proposing to revise Item 402 of Regulation S–K and related provisions to improve the quality of current compensation disclosure, in large part by focusing disclosure on compensation paid or awarded in a given fiscal year and eliminating the general description of compensation plans.[12] The proposed rules would mandate the presentation of material pay-related information in a series of tables and charts. A new requirement that the compensation committee of the registrant's board of directors discuss and analyze the bases for the compensation paid or awarded to the Chief Executive Officer ("CEO") and the other four most highly paid executives is intended to provide a clear, specific and concise explanation from the responsible directors of their compensation determinations, and the relationship of each named executive's compensation to corporate performance. A graphic presentation of registrant shareholder return compared to the return on the S&P 500 Stock Index and either a nationally recognized industry index or a registrant-constructed peer group would be required to assist shareholders in assessing the company's performance.

Commenters are invited to provide suggestions or recommendations for streamlining and simplifying the presentation of executive compensation disclosure. Are there alternative means of presenting material executive pay information in a more clear, concise and comprehensible manner?

1. Designation of Named Executives and Executive Group

Except as necessary to assure inclusion of the CEO or other person serving in this capacity, the Commission does not propose to alter the range of executives subject to individual disclosure of executive compensation, or to modify the executive group reporting requirement. However, the proposal will raise the present disclosure threshold of $60,000 annual compensation with respect to individual executive officers other than the CEO, to $100,000. The Commission requests comment on the appropriateness of increasing the disclosure threshold from $60,000 to $100,000 to reflect generally inflation since the rule was last revised. Should the threshold be higher or lower?

Unlike the current rules, individual disclosure of CEO compensation will be required regardless of the nature and amount of such compensation. In determining the four other most highly paid executive officers to be subject to individual disclosure, the aggregated compensation reported in the Annual Compensation section of the proposed Summary Table would be used.

Some commenters have suggested that the number of executive officers subject to individual disclosure could be reduced from five to three. Others maintain that the number of named executives instead should be increased to provide individualized pay information for all executives serving as directors, regardless of whether they are among the five most highly compensated. Comment is requested concerning such proposals to decrease or increase the number of executive officers subject to individualized disclosure under Item 402.

The proposed rules continue to remind registrants that an officer of a subsidiary with policy making functions may be an executive officer of the registrant and, if one of the four highest paid aside from the CEO, must be the subject of individualized pay disclosure. Subsidiary officers who may be executive officers of the registrant and subject to individual pay disclosure are the same individuals who must be disclosed as executive officers of the registrant for purposes of all periodic reports under the Exchange Act.[13]

Finally, the Commission is proposing to require, for any executive officer as to whom individual pay information otherwise is required, disclosure on an individualized basis of compensation attributable to that portion of the fiscal year in which that executive did not serve as an executive officer.

As noted, the proposal continues the current requirements for disclosure of compensation paid or awarded to all executive officers as a group, with the number of persons in the group to be stated without naming the officers. Comment is requested whether group disclosure continues to be necessary in each of the proposed tables discussed below.

2. Summary Table

To provide shareholders a concise, comprehensive overview of compensation awarded, earned or paid in the reporting period, registrants will be required to present a summary of all such compensation in tabular form. This new Summary Table will replace the cash compensation table now required,[14] and include information for the named executives individually, and in the aggregate for the executive group, for each of the last three fiscal years. Data would be furnished for the three years for the individual executive and group members designated for the last fiscal year. As under the current rule, the proposed rule is intended to require disclosure of all forms of executive compensation [15] received from the registrant (and its subsidiaries), whether pursuant to a plan [16] or otherwise,[17] or through a third party.[18] At the same

[11] See W. James, Reality and Perception of Executive Compensation, reprinted in Performance and Compensation: An Issue of Corporate Governance 32–33 (Jan. 13, 1992, J.L. Kellogg Graduate School of Management, Northwestern University). See also T. Jaenicke, Issues in Corporate Governance: Executive Compensation, Investor Responsibility Research Center (1991).

[12] Foreign issuers reporting on Form 20–F, which contains its own compensation disclosure requirements, would be unaffected by these proposed changes to Item 402.

[13] See Rule 3b–7 under the Exchange Act [17 CFR 240.3b–7].

[14] See Item 402(a) of Regulation S–K (17 CFR 229.402(a)).

[15] An instruction to the proposed Summary Table makes clear that compensation reported in the Summary Table in a prior year need not be included in compensation reported in the table for a later year.

[16] For purposes of the revised provision, the Commission is retaining the present comprehensive definition of the term "plan." Instruction 3 to S–K Item 402(b) (and Instruction to proposed Item 402(a)(2)) provides that, [t]he term "plan" includes, but is not limited to the following: any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock, phantom stock, stock options, stock appreciation rights, stock options in tandem with stock appreciation rights, warrants, convertible securities, performance units and performance shares. A plan may be applicable to one person.

[17] No change is proposed to the current requirement in Item 402(c) (17 CFR 229.402(c)) that any compensation paid other than in cash or pursuant to a plan, as defined *supra* in n.15, must be disclosed if in excess of the lesser of $25,000 or 10% of cash compensation. (Proposed 402(b)(2)(C)).

[18] The Commission is retaining (but redesignating as proposed Item 402, General Instruction 2) current General Instruction 2 to Item 402, which brings within the scope of the Item "transactions between the registrant and a third party where the primary purpose of the transaction is to furnish

Continued

time, an instruction will make clear that, if a registrant has not paid or awarded executive compensation in a form prescribed by a particular column over the last three years, that column may be omitted.

A three-year, annualized look-back is being proposed to enable shareholders to discern trends in the registrant's compensation of its senior executives, and to compare the registrant's pay practices with those of other registrants. Comment is invited on the necessity or appropriateness of the proposed three-year disclosure. Should the Summary Table instead cover the preceding two fiscal years, or be limited to the last fiscal year?

The proposed table is set forth below, followed by an explanation of the types of compensation included in each column.

SUMMARY COMPENSATION TABLE

| Year | Name and principal position or number in group | Annual Compensation | | | Long term compensation | | | | | Other ($) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Salary ($) | Bonus ($) | Other compensation ($) | Restricted stock award(s) ($) | Accrued dividends on restricted stock ($) | Long-term incentive payouts ($) | Stock options (#) | SARs (#) | |
| _____ | CEO | | | | | | | | | |
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a. *Salary and bonus.* Now permitted to be aggregated in the cash compensation table, base salary and annual bonus will be broken out in separate columns in the new Summary Table. Shareholders and others who rely on executive compensation information have expressed substantial interest in analyzing bonuses apart from salary.[19] The single figure in the bonus column will reflect both cash and noncash payments, including stock bonuses.

Compensation earned in a given year but deferred will be reported in the column containing the category of compensation to which it corresponds, regardless of how the award eventually will be paid (in cash, stock, or other securities or property). For example, salary deductions pursuant to a registrant thrift plan would be included in the column for salary.

Some company plans permit an executive to receive options or restricted stock in lieu of a portion of the executive's salary or bonus. In such a case, the executive would report the options or restricted stock received pursuant to such election under the option or restricted stock column, and footnote the election under the salary or bonus column. Although the dollar amount forgone need not be included in the salary or bonus column, this amount still will be used to determine the four most highly paid executive officers who, together with the CEO, will be subject to individualized reporting under the proposal.

Comment is sought on the proposed allocation of salary and bonus information in two separate columns. Commenters also should address the proposed method of reporting of deferred compensation.

b. *Other annual compensation.* All additional forms of current cash and non-cash compensation paid, awarded or earned during each of the three prior fiscal years will be reported in the "Other Annual Compensation" column. Such items will include the registrant's annual contributions, payments or accruals on behalf of each named executive and the executive group, both to tax-qualified and to non-tax-qualified retirement plans. Also combined in this aggregate figure will be the cash value of significant perquisites and other personal, non-plan benefits now required to be disclosed pursuant to existing Item 402(c). Finally, this column will include the value of amounts paid, allocated or accrued in respect of deferred compensation plans, including premiums paid annually by the registrant on insurance-funded deferred compensation arrangements. Dividends paid on restricted stock will be reportable under this column when such dividends are not subject to restriction.

(1) Personal benefits or perquisites. Other than requiring inclusion of their aggregate value in the Summary Table, the proposal will not change existing requirements established by current Item 402(c) for reporting perquisites and other non-cash, non-plan benefits paid or distributed to the named executives and the executive group. Each of these benefits must be included in the "Other Annual Compensation" column and identified (by type and dollar amount) in

compensation to any named individual [executive] or the [executive] group . . . [unless] the transaction has been reported in response to Item 404 of Regulation S–K."

[19] A corporate executive's base salary reportedly is fixed primarily on the basis of position, rather than corporate or other performance measures, while bonus and other annual incentive pay levels often are linked to achievement of performance-related goals or targets. *See* Joint Study of the American Compensation Association and KPMG Peat Marwick, *Executive Pay and Company Performance* 20–23, 36–31 (1991). Separate salary and bonus information thus would enable shareholders to determine how much of an executive's annual pay is performance-sensitive.

a footnote to the Summary Table for each named executive and the executive group, but only if the aggregate amount is equal to or exceeds the lesser of either $25,000 or 10% of the total compensation reported in the sum of the Salary and Bonus columns for the individual executive or the group.[20] Dollar amounts assigned to perks and other personal benefits will continue to be calculated on the basis of the aggregate incremental cost to the registrant and its subsidiaries.

As under the current item, payments under group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate in scope, terms or other operation in favor of executive officers and directors, and that are available generally to all salaried employees, need not be reported.

(2) Annual registrant contributions to pension and other retirement plans. Registrants commonly make contributions to pension, profit-sharing, stock bonus and other retirement plans on behalf of executive participants during their terms of employment. Some of the plans in which senior executives participate may be "nondiscriminatory," or open at a minimum to all salaried employees,[21] whereas other such plans are "discriminatory," in that coverage is restricted to top executives and directors.[22] Registrants currently must disclose all contributions to plans in both categories that either are made or credited to the named executives and, in the aggregate, to the executive group, provided the executive's interest in the accrued benefits has vested. These amounts are reportable regardless of the cash or non-cash form of an annual contribution, payment, or accrual. No change in this obligation is proposed, except to mandate inclusion of these amounts in the new Summary Table. Comment is request as to the appropriateness of deleting the exception for payments where the accrued benefits are not vested.

Comment is requested as to the need for any additional information with respect to these retirement-related employer contributions, payments, or accruals on behalf of executive officers. As proposed, the information will be included within the single dollar amount reported under Other Annual Compensation, but not identified further in a footnote. Is there a need to disclose these payments separately by footnote?

(3) Amounts paid, allocated or accrued annually under deferred compensation plans. Amounts paid, allocated or accrued during the fiscal year under deferred compensation plans, or pursuant to any other long-term incentive arrangement (other than dividends on restricted stock that are accrued rather than actually paid to the executive, which amounts will be disclosed in a separate column) will be included in the "Other Annual Compensation" column, and identified by amount, type and/or rate in a footnote to the Summary Table. This sum would include not only amounts allocated or paid annually by the registrant pursuant to deferred compensation arrangements, but also interest or dividends accruing or paid on such amounts.

Because significant amounts of deferred compensation often accumulate in the compensatory accounts of top executives of public companies, the interest and/or dividends allocated to or accruing on such accounts alone has come to represent a significant component of post-retirement replacement income for some senior executives. Therefore, the proposal would delete the current provision permitting exclusion of interest on deferred compensation where the rate did not exceed prevailing market rates either when the underlying plan was established or the interest accrued.[23] This revision would also address concerns that have been raised with respect to the interest levels that some registrants have deemed to be at the market rate so as to justify nondisclosure. Where interest or dividends payable on deferred compensation is variable depending on factors such as period of employment, the amount includable should be calculated assuming all contingencies to receiving interest or dividends at the highest rate will be met. The footnote disclosing the rate will list the contingencies, and may disclose the rate and amount payable if the contingencies are not met.

(4) Annual premiums on insurance-funded deferred compensation arrangements. Another form of executive compensation that will be reported in the "Other Annual Compensation" column and identified by type and amount in an accompanying footnote involves registrant-paid premiums on executive insurance policies, which are used by some companies to fund deferred compensation for executives. In some cases, the policies are initially owned and paid for by the company, with higher premiums payable in the early years. At retirement or some other time when the premiums are low and the policy has a significant cash surrender value, the policy is transferred, or "rolled out," to the executive, often for nominal consideration. Under other, so-called "split dollar" insurance arrangements, the registrant and the executive each pay part of the premium either concurrently or in consecutive years, with the executive to receive deferred compensation in the form of the cash surrender value of the policy (or equivalent value) at the close of the deferral period. The "Other Annual Compensation" column will include the annual premiums paid by the employer during the executive's tenure, if there is any arrangement or understanding, whether formal or informal, that a future roll-out or other payment to, or on behalf of, the executive will be made.

c. *Restricted stock.* Registrants currently are required to disclose restricted stock awards, but may choose to provide disclosure either in the year of grant or the year of vesting. The proposed Summary Table will require reporting in the year of grant. The amount reportable will be the aggregate market value of the registrant's unrestricted common shares at the date(s) of grant. Restricted stock awarded in lieu of salary or bonus at the election of the executive will be reported in this column, rather than as salary or bonus.

d. *Accrued dividends on restricted stock.* Currently, disclosure of dividends paid or earned on restricted stock is not required unless that class of stock is available only to certain employees o discriminatory basis. With the rece

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[20] This test parallels current Item S–K 402(c), but deletes references to cash.

[21] Employer contributions may be made in respect of executive officers to such broad-based plans; for example, to tax-qualified profit sharing plans conforming to the requirements of Internal Revenue Code Section 401(k) [26 U.S.C. 401(k)]. Both these contributions and any executive contributions in the form of salary, bonus or other compensation deferrals are now, and will continue to be disclosed.

[22] Such plans include "excess benefit plans," which provide retirement benefits to an executive equal to the amount by which his or her annual contributions and/or benefits under a tax-qualified plan exceed dollar limitations imposed by the federal tax code (*see* Internal Revenue Code Section 415 [26 U.S.C. 415]), and supplemental executive retirement plans, or "SERPs," which term encompasses any formal, informal or individually negotiated arrangement providing supplemental retirement benefits to selected executives beyond those available under the employer's qualified retirement plans. Any employer contributions and executive deferrals in respect to plans falling in either category must be reported under current Regulation S–K Item 402(a) and (b), and will continue to be reported under the proposals.

[23] *See* General Instruction 3 to Item 402. No such limitations currently apply (*see id.*), or will apply under the proposed revisions, with respect to dividends payable on any form of deferred stock or stock-based compensation other than restricted stock.

increase in large grants of restricted stock to top executives, often of the same class of common stock widely held by the public, the amount of dividends accrued on such grants, particularly when combined with dividends on previously awarded restricted stock, may be quite substantial. As proposed, the Summary Table therefore will require such dividends to be disclosed in a separate column.

Commenters should discuss the appropriateness of separate columnar disclosure of accrued restricted stock dividends. Should dividends actually paid to the executive on unrealized restricted shareholdings be reported here, rather than in the "Other Annual Compensation" column of the Summary Table, as proposed?

e. *Pay-outs under long-term incentive plans.* The aggregate value of all payouts under long-term incentive plans made or credited during the fiscal year to the named executive officers and executive group will be required to be disclosed in the Summary Table. These plans frequently include performance units or shares payable in cash, stock, or some combination thereof, if market-based and/or company performance targets are met by the end of a specified period. Settlements or earn-outs upon maturation of stock-based instruments, other than restricted stock, stock options and stock appreciation rights ("SARs") payable in stock,[24] will be reported in this column regardless of whether actually paid, or earned but deferred.

Disclosure of pay-outs or settlements of awards under long-term incentive plans, or plans under which compensation will not be received until after a period of more than one year, currently is required. However, this information has been particularly difficult to analyze because it frequently is provided in a discursive narrative form. The Summary Table will require no new information with respect to the value of cash and cash-equivalents received or credited upon settlement or maturation of performance units or shares.[25] As required today, the reported figure will include amounts credited and payable to an executive recipient during or at the end of the plan's performance measurement period.

f. *Stock options and SARs.* As proposed, the number of stock options and non-tandem, or freestanding SARs payable in stock [26] awarded in each of the preceding three fiscal years will be reported in separate columns in the Summary Table. While the Commission has considered requiring valuation of options granted for purposes of reporting in the Summary Table, shareholders may be better served by disclosure of a range of potential realizable values based on various assumed stock appreciation rates.[27] Thus, the proposal includes a companion table to the Summary Table as follows:

VALUES BASED ON ASSUMED RATES OF STOCK PRICE APPRECIATION FOR OPTIONS GRANTED IN LAST FISCAL YEAR

| Name | Strike price above market price at grant N% ($) | 50% ($) | 100% ($) | 200% ($) |
|---|---|---|---|---|
| CEO | | | | |
| #1 | | | | |
| #2 | | | | |
| #3 | | | | |
| #4 | | | | |
| Group | | | | |

The proposed table will disclose, for the CEO and other named executives and the executive group, the gain or "spread" that would be realized if options or freestanding SARs (payable in stock) were exercised when the registrant's stock price had appreciated by the specified percentage levels from the market price on the date of grant.[28] The first appreciation column is proposed for use by those registrants that have established minimum stock price appreciation levels, sometimes referred to as "hurdles," or any other performance benchmark that must be reached before all or part of a particular grant becomes exercisable. A stock price appreciation rate would be used that would demonstrate the effect of the premium strike price.

Each tranche of an option grant with a differing hurdle or other performance threshold should be treated as a separate grant for purposes of this table. Depending on the number of these so-called "premium" or "performance-based" grants made in the last fiscal year, or the number of tranches within a single such grant, additional columns, with percentage levels at each of the hurdles substituted for the "N%," in the above table will be used to show the range of values for each such grant or tranche.

Illustration

To illustrate this use of the first column, suppose a company made two 50,000-share option awards during a given fiscal year to its CEO, one award with an exercise price fixed at fair market value at the date of grant of $20.00, and the other award with two 25,000-option tranches, each exercisable at a strike prices at specified percentage levels of 25% ($25) and 40% ($28), above the fair market value of the stock at the time of grant. Under the proposal, the company would substitute two columns for the single (N%) column depicted above to reflect the potential gain on each one-half increment of the grant if a particular hurdle were to be achieved, resulting in a total of five columns in the table. Potential gain on the 50,000 premium priced options, as well as the other 50,000 options exercisable at fair market value, then will be disclosed as for any other grant run through the hypothetical scenarios reflected in the remaining columns.

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[24] For purposes of this disclosure, SARs payable in stock or cash at the election of the registrant or the executive-recipient would be deemed payable in stock.

[25] A more detailed presentation of award and settlement information for the prior fiscal year will be contained in separate tables, discussed *infra*.

[26] For purposes of this disclosure, SARs payable in stock or cash at the election of the registrant or executive-recipient will be deemed payable in stock.

[27] The Financial Accounting Standards Board ("FASB") is currently considering the accounting for stock options and other similar awards. The Commission's Chief Accountant is currently engaged in a study of the issues and the Commission has reached no conclusions on the appropriate accounting for stock options. The disclosure requirements proposed herein do not reflect any judgment with respect to the issues currently being addressed in the FASB project.

[28] With respect to the designated range of possible stock price appreciation levels in the last three columns of the proposed table—(50%–200%)—it should be noted that, between 1925 and 1991, the geometric average annual capital appreciation rate for the S&P 500 Stock Index was 5.4 percent, which would result in a 10-year capital appreciation of 70%. See R. Ibbotson, Stock, Bonds, Bills and Inflation Yearbook (1991).

VALUES BASED ON ASSUMED RATES OF STOCK PRICE APPRECIATION FOR OPTIONS GRANTED IN LAST FISCAL YEAR

| Name | Grant | 25% | 40% | 50% | 100% | 200% |
|---|---|---|---|---|---|---|
| | (number) | (dollars) | (dollars) | (dollars) | (dollars) | (dollars) |
| CEO | [1] 50,000 | $250,000 | $400,000 | $500,000 | $1,000,000 | $2,000,000 |
| | [2] 25,000 | | 75,000 | 125,000 | 375,000 | 875,000 |
| | [3] 25,000 | | | 50,000 | 300,000 | 800,000 |

[1] Strike price $20.
[2] Strike price $25.
[3] Strike price $28.

Commenters are invited to discuss the costs and benefits of the proposed tabular approach. Will the information proposed to be included in this table provide meaningful disclosure regarding the potential realizable value of options and SARs? Will disclosure of gains at various stock price appreciation rates provide a reasonable means of making inter-company comparisons? Comment is requested on the appropriateness of the assumed stock price appreciation rates proposed. Commenters are invited to suggest alternative rates. Are such comparisons necessary or appropriate to an understanding of the registrant's option compensation scheme? Or would Commission-mandated use of a specific option pricing methodology, such as the modified Black-Scholes model commonly used in the pay consulting industry,[29] result in more meaningful disclosure? Commenters recommending alternative means of furnishing valuation information should describe in full the methodology and supporting rationale.

Should certain classes of issuers be exempted from one or more of the columnar disclosure requirements based on size (*e.g.*, pursuant to an asset or market capital test, proposed "small business" issuer [30] definition, nature of trading market, trading history) or other appropriate criteria?

Registrants whose compensation committees or boards of directors must furnish a signed report explaining the basis for any repricing or other material amendment of outstanding executive stock options and non-tandem SARs (whether payable in stock or cash),[31] will be required to add another column reflecting the number of replacement or amended options or freestanding SARs under the heading "Repriced or Amended Options." Comment is sought on the appropriateness of requiring this columnar disclosure.

g. *Other compensation.* All compensation awarded or paid to, or earned by, the named executive officers and executive group during a given fiscal year is to be reported in the Summary Table. It is anticipated that generally all such compensation will be reportable under the preceding columns. Where, however, an executive officer earned, or is paid or awarded compensation that the registrant believes is not properly reported under these columns, and such compensation is not permitted specifically to be excluded, the value of the compensation should be reported in the "Other" column with a footnote disclosing the nature and terms of the compensation.

This column also will be used to report termination or severance awards in excess of $60,000, including golden parachutes, made or distributed to a named executive officer or member of the executive officer group during the three fiscal years covered by the Summary Table. In a change from current requirements, this information will be required even if paid after the executive ceased being an executive officer, but during a fiscal year covered by the Summary Table.

3. Components of Compensation

a. *Proposed stock option and SAR tables.* Compensatory stock options represent one of the most rapidly growing areas of executive compensation. Recent studies indicate that more than 90% of the leading 200 American industrial and service corporations, respectively, compensate their executives through awards of stock options.[32]

Under current requirements, registrants must disclose certain aggregate information with respect to options (alone or with tandem SARs) and freestanding SARs granted during the last fiscal year, including the total number of options/SARs granted, the average exercise price and realized gain (spread) on exercise. Unless the exercise price is less than the stock price at grant, registrants are under no obligation to assign any value to the options or SARs on grant date, or to break out individual grant and exercise information as to price and amount that might serve to reveal repricings or "swaps," [33] certain types of reloads,[34] and other risk-diminishing mechanisms. Nor do current disclosure standards call for particularized information on risk-enhancing option features now supported by many shareholders, such as awards of options with strike prices indexed to broader market indices or performance-based vesting requirements.

Under the proposed rules a general description of option and SAR plans no longer will be required. Disclosure instead will focus on the extent of the company's use of options, individualized grant and exercise information, option repricings, and unexercised options and non-tandem SARs payable in stock [35]

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[29] See Hewitt Associates, Overview of Long-Term Incentive Valuations 3 (1991).

[30] Recently defined by the Commission, in proposing streamlined reporting requirements for small business issuers, as an issuer that meets all of the following criteria:

(1) Had revenues of less than $15 million during its last fiscal year;

(2) Is not a foreign private issuer or a foreign government;

(3) Is not an investment company; and

(4) Is not a wholly owned subsidiary of a non small-business issuer.

Securities Act Release No. 6824 (March 11, 1992) [57 FR 9768].

[31] See section II.A.7., *infra* (discussing this report).

[32] Frederic W. Cook & Co., Long-Term Incentive Grants Among the Top 200 Industrial Companies 2 (Nov. 1991); Frederic W. Cook & Co., Long-Term Incentive Grants Among the Top 200 Service Companies 2 (Nov. 1991).

[33] An option "swap" is a repricing or replacement of an old option, resulting in an option bearing an exercise price at, or closer to, the current, more favorable market value of the underlying common stock. For example, if an executive is given an option to purchase company stock at $25 while the stock is trading at or near that price, and the stock price subsequently drops to $15, the option is not likely to be very valuable. In some cases, a company will cancel an executive's old option with an exercise price of $25 and replace it with a new option with a $15 exercise price.

[34] As generally understood, a "reload" is an option feature under some compensatory plans providing for the grant of a new option upon the exercise of all or part of the original option before expiration of its term, thereby allowing an executive to benefit several times under a single option award for any rise in the stock price. Depending on the terms of the particular plan, the exercise price may be paid in stock or cash.

[35] For purposes of all tables described in Section II.3.a. of this Release, the terms "SAR" and "SAR

Continued

held by executive officers at year end. To facilitate shareholder understanding, a tabular format for these disclosures will be required. For further information on the general provisions or operation of a plan, shareholders can look to the underlying plan document filed as an exhibit to the Form 10–K reporting on the year the plan was adopted or materially amended.[36]

Comment is requested on the proposed elimination of general plan description, and the proposed reliance on the plans filed as exhibits as a source of such information. Should a summary description of the terms and operation of the plan continue to be required, either as part of the Form 10–K, or part of an exhibit with the plan?

(1) Option and SAR Report. Under the proposed rules, registrants will be required for the first time to provide in capsulized form the extent of their use of options, alone or in combination with tandem SARs and non-tandem SARs (payable in stock or cash) for compensation at all levels of the company and for executive compensation. The required capsule information must be set forth in the following table:

**Option and SAR Summary Report**

| | |
|---|---|
| Total Number of Common Shares Outstanding at Fiscal Year-end | _____ |
| Total Number of Common Shares Authorized To Be Granted as Options or SARs | _____ |
| Percentage of Total Common Shares Outstanding Authorized | _____ |
| Total Number of Options or SARs Granted To Date Under Current Authorization | _____ |
| Percentage of Total Authorizations | _____ |
| Total Number of Options or SARs Granted in Fiscal Year | _____ |
| Total Number of Options or SARs Granted to Named Executives in Last Fiscal Year | _____ |
| Percentage of Total Number of Options or SARs Granted to Named Executive Officers | _____ |
| Total Number of Options or SARs Granted to CEO in Last Fiscal Year | _____ |
| Percentage of Total Number of Options or SARs Granted to CEO in Last Fiscal Year | _____ |
| Total Number of Options or SARs Granted to Executive Group in Last Fiscal Year | _____ |
| Percentage of Total Options or SARs Granted to Executive Group in Fiscal Year | _____ |

Comment is requested on the utility of the proposed presentation. Is there additional information that should be required, such as the number of options granted to all non-executive employees and/or non-employee directors?

(2) Option and SAR grants. By contrast with current requirements, which permit aggregation and use of annual weighted average exercise price and narrative disclosure,[37] the proposed rules will require a tabular presentation of individual grants of options and non-tandem SARs payable in stock,[38] that were made during the preceding fiscal year to each of the named executives and the executive group.[39] Through this itemization of awards made to senior executives in a particular year, shareholders will be able to ascertain the precise relationship between the exercise price and the market price on the date of each grant, the number and size of awards made that year, and the expiration date of these instruments. This move to grant-specific presentations is proposed in response to comment that aggregated data has not been sufficiently informative to shareholders.

The proposed tabular format for presentation of information regarding individualized grants of options, alone or in tandem with SARs, or freestanding SARs payable in stock, follows:

INDIVIDUAL GRANTS IN THE LAST FISCAL YEAR

| Name | Date [1] | Options granted (#) | SARs granted (#) | Exercise or base price ($/Sh) | Market price at grant ($/Sh) | Unconditional vesting date [2] | Expiration date |
|---|---|---|---|---|---|---|---|
| CEO | (1) | | | | | | |
| | (2) | | | | | | |
| | (3) | | | | | | |
| #1 | (1) | | | | | | |
| | (2) | | | | | | |
| | (3) | | | | | | |
| #2 | (1) | | | | | | |
| | (2) | | | | | | |
| | (3) | | | | | | |
| #3 | (1) | | | | | | |
| | (2) | | | | | | |
| | (3) | | | | | | |
| #4 | (1) | | | | | | |
| | (2) | | | | | | |
| | (3) | | | | | | |
| Group. | | | | | | | |

[1] Three grants per named executive are shown for illustrative purposes only.
[2] Continued employment is not deemed a condition of vesting for purposes of this disclosure.

Options granted at the same time but with different terms—such as hurdle rates, other performance-based conditions to exercisability, or staggered vesting periods—shall be treated as separate grants. Additional terms of the options awarded, including tandem SARs and performance-based conditions to vesting of all or part of an option award, will be disclosed in a footnote to the table. Shareholders and others have expressed concern with respect to various methods used to minimize or reduce executive risk with respect to option compensation, thereby misaligning managerial and shareholder interests, and have suggested that "reloads" and other risk-minimizing

payable in stock" both will refer to SARs payable in stock, or in stock or cash at the election of the registrant or the executive-recipient.

[36] *See* Form 10–K, Item 14(c); Item 601(b)(10)(iii)(A) of Regulation S–K.

[37] Schedule 14A, Item 10.

[38] For purposes of this disclosure, non-tandem SARs payable in either stock or cash at the election of the registrant or the executive-recipient will be deemed to be payable in stock.

[39] Replacement grants made in connection with option repricing transactions should not be included in this table, but will be disclosed in the Summary Table (see Section II.A.2., *supra*), and the new Compensation Committee Report on Option Repricing discussed *infra*, at Section II.A.7.

features of options be disclosed. Reload option grants, depending upon how they are structured, can reduce or eliminate the risk of option exercise options when stock prices have not reached maximum appreciation levels by automatically granting a new option to replace all, or a part, of the old option. Similarly, tax reimbursement mechanisms providing for registrant funding of all or a portion of an executive's exercise tax are of substantial interest to shareholders. The proposed rules will require risk diminishing or tax reimbursement arrangements to be disclosed in a footnote to the grants to which they apply. Finally, options and SARs granted in connection with the repricing or similar amendment or adjustment of a material option or SAR term would not be reported here, but instead in a separate, more detailed table illustrating a ten-year history of such transactions.[40]

The Commission requests comment on the need for, and utility of, individualized grant information. Is grant-specific data necessary in view of other option information proposed to be required? Should the table cover more than the last fiscal year? Are there other features of option or non-tandem SAR awards that should be disclosed in the grant table or footnote thereto? Should option or SAR repricings or similar transactions be included in this table, as well as the Summary Table and separate Ten-Year Option/SAR Repricing Table? Is there information required that is unnecessary or unduly burdensome?

(3) Option and SAR exercises. Option and freestanding (stock only) SAR exercise data likewise will be disclosed in tabular form, on a transaction-by-transaction basis, for the named executives and the executive group. Two items have been added to information now required with respect to option exercise. First, registrants will have to disclose at what point in the term of the options an executive chose to exercise. Commenters contend that how soon options are exercised is important in assessing how effectively these compensatory devices are linked to long-term company performance. Second, at the suggestion of some corporate commenters, the table includes a column reflecting annualization, from grant to exercise, of the gain realized.

INDIVIDUAL EXERCISES IN THE LAST FISCAL YEAR

| Name | Shares acquired on exercise (number) [1] | Year granted | Year of expiration | Annualized gain (dollars) | Total gain realized (dollars) |
|---|---|---|---|---|---|
| CEO | | | | | |
| #1 | | | | | |
| #2 | | | | | |
| #3 | | | | | |
| #4 | | | | | |
| Group | | | | | |

[1] Lines reflective of three exercises per executive have been added solely for illustrative purposes.

Comment is requested as to the need for individualized exercise information. Is any of the information proposed unnecessary? Or are there additional items that should be included? Should the table cover more than the last fiscal year?

(4) Options (and SARs) held at fiscal year-end. Finally, the proposed rule would require a report of the total number of options held by executive officers at year end, distinguishing between vested and unvested, and the aggregate amount by which the market value of shares subject to options and SARs exceeds the exercise price of in-the-money options and freestanding SARs (payable only in stock) at the end of the fiscal year.

The proposed table is depicted below:

UNEXERCISED OPTIONS HELD AT FY-END [1]

| Name | Total number unexercised options held at FY-end | | Value of unexercised, in-the-money options at FY-end (dollars) | |
|---|---|---|---|---|
| | Vested | Unvested | Vested | Unvested |
| CEO | | | | |
| #1 | | | | |
| #2 | | | | |
| #3 | | | | |
| #4 | | | | |
| Group | | | | |

[1] For purposes of this table, the term options includes freestanding SARs payable only in stock, or freestanding SARs payable in stock or cash at the election of the registrant or the executive-recipient.

As proposed, the disclosed unrealized "spread" information would disregard underwater options, and freestanding SARs whose base price exceeds the stock's market price, in calculating the total number of outstanding options or rights. To do otherwise would erroneously suggest that such out-of-the-money rights would have an effect on the amount realized with respect to other options/SARs.

Commenters should address whether, as part of the table or a footnote thereto, disclosure should be required of the weighted average strike prices for vested and unvested options, as well as

[40] See Section II.A.7., *infra*.

for in-the-money or out-of-the-money options.

b. *Restricted stock.* The proposed rules include a required table with respect to restricted stock that will show the specifics of grants made during the year, the restricted period and the total number of restricted shares held by executive officers, with other applicable restrictions or conditions on vesting to be disclosed by footnote. Aggregated grant information for each named executive and the group will be sufficient, although individualized grant information will be required if the terms—*e.g.*, restricted period or other conditions for vesting—vary among grants to the same executive officers. Footnote disclosure will be required if the board or compensation committee reserves the right to eliminate or reduce a restriction or condition. Should the table cover grants made in the last three fiscal years? Is additional information necessary or appropriate? Is any of the proposed information unnecessary or unduly burdensome?

The proposed table follows:

RESTRICTED STOCK TABLE

| Name | Restricted shares granted in last fiscal year | Length of restricted period | Total number restricted shares held at FY-end | Aggregate market value restricted shares at FY-end (dollars) |
|---|---|---|---|---|
| CEO | | | | |
| #1 | | | | |
| #2 | | | | |
| #3 | | | | |
| #4 | | | | |
| Group | | | | |

c. *Long-term incentive compensation.* Perhaps the most complex and confusing of executive compensation disclosure elicited by current requirements is that related to long-term incentive ("LTI") plans. The difficulties of presenting clear and concise information with respect to these plans are exacerbated greatly where there is a multiplicity of such plans. The proposed rules seek to address this concern by requiring a formatted presentation that focuses principally on the terms of instruments awarded, paid or earned under LTI plans during the registrant's last fiscal year.

A. STOCK PRICE BASED PLANS—LAST FISCAL YEAR

| Name | Awards | | | Payouts |
|---|---|---|---|---|
| | No. of shares, units or other rights | Grant-date value, if determinable | Performance or other period until maturation or payout | (Dollars or dollar value stock) |
| CEO | | | | |
| #1 | | | | |
| #2 | | | | |
| #3 | | | | |
| #4 | | | | |
| Group | | | | |

B. NON-STOCK PRICE BASED PLANS—LAST FISCAL YEAR

| Name | Awards | | | | Payouts |
|---|---|---|---|---|---|
| | Target value(s) (max./min./actual) | | | | |
| | Award ($/units) | Cash denominated ($) (max./min./actual) | Stock denominated (#) (max./min./actual) | Performance or other period until maturation or payout | ($ or $ value of stock) |
| CEO | | | | | |
| #1 | | | | | |
| #2 | | | | | |
| #3 | | | | | |
| #4 | | | | | |
| Group | | | | | |

Table A is designed to elicit information as to each award and payout made to the named executives, and all such awards or payouts made to the group, pursuant to long-term incentive arrangements under which the measurement of benefits to be received by the executive after a period of more than one year is a function of movements in the market price of the underlying registrant security. Among the diverse arrangements meeting this broad standard would be plans under which grants are made of phantom stock (in "shares" or options), freestanding, cash-only SARs, restricted stock units or dividend equivalents. Likewise reportable in this table would be performance shares payable solely on the basis of stock price performance, and not dependent on achievement of any corporate or other non-stock price performance hurdle. Similar information for other LTI instruments tied to stock price appreciation in the form of options and freestanding SARs payable solely in stock will be reported elsewhere, in the tabular option/SAR series, and therefore will not be included in this table.

Each award and earn-out or settlement under LTI plans based on criteria other than market price will be set forth in Table B individually for the named executives and, in the aggregate, for the group. Coverage therefore will extend, but not be limited to, performance-based plans linked directly or indirectly to corporate financial measures, or payments or settlements under deferred compensation arrangements. For example, the cash value of insurance-funded deferred compensation upon "roll-out" to the executive will be reported as a payout. Absent a fixed target award, registrants could include an amount, or high or low range of amounts, respectively, that potentially might be payable, or simply indicate in the table the absence of any calculable range of potential values. The table will identify plans under which actual or deferred cash or cash-equivalent settlements or payouts were made during the latest fiscal year and reported in the proposed Summary Table. Material performance-related or other governing criteria, including the time period over which the measure of benefits will be determined, will be listed in one or more footnotes to the table. The description of these criteria need not include specific performance targets.

The following hypothetical illustrates the use of these tables:

Illustration

Registrant ABC has established an omnibus long-term incentive plan for its top executives under which several instruments tied to stock price appreciation or financial performance measures are available. Awards and pay-outs of stock-related incentives to the CEO are disclosed in the first of the following tables, or Table A, while other long-term incentive awards and payouts to the CEO are disclosed in Table B.

As reflected in column (b) of Table A below, grants of cash-only SARs and restricted stock units ("RSUs") were made to the CEO in ABC's last fiscal year. A $2 million cash payment upon realization of previously awarded, cash-only SARs is shown in column (e) of the table.

STOCK PRICE BASED PLANS—LAST FISCAL YEAR

| (a) | Awards | | | Payouts |
|---|---|---|---|---|
| | (b) | (c) | (d) | (e) |
| Name | Number of shares, units or other rights | Grant date value if determinable | Performance or other period until maturation or payout | Dollars or dollar value stock. |
| CEO | 100,000 cash only SARs, at $65.00/share. | | 2 years | $2,000,000 net value from realized cash-only SARs. |
| | 20,000 RSUs | $1,300,000 | 5 years. | |

Under the performance unit provisions of ABC's omnibus plan, realization of cash-denominated units awarded thereunder is contingent upon the attainment of a minimum average annual compound growth in earnings per share ("EPS") of common stock of 20% over a three-year performance cycle. To permit evaluation of performance against this performance target at the end of the three year period, the value of each unit is established at the beginning of this cycle. The target value of $60 per unit is based on reaching 100% of the EPS goal, with a minimum value of $20.00/unit at 90% of the target and a maximum value of $120/unit at 130% of the target. If the 90% benchmark is not reached, the executive-recipient receives nothing. As reflected in column (b) of the table below, the CEO of Registrant ABC was granted 100,000 performance units in the last fiscal year, at a 100% target value of $60.00 per unit, resulting in a potential total value of $600,000. Consistent with the proposal, the footnote to this column does not disclose the specific EPS target, but simply explains the range of target values reflected in column (c) of the table. During the last fiscal year, as shown in the payout column (f), the CEO also earned a cash payment of $350,000 upon maturation of a performance unit award made three years ago.

NON-STOCK BASED PLANS—LAST FISCAL YEAR

| (a) | Awards | | | | Payouts |
|---|---|---|---|---|---|
| | (b) | Target value(s) (max./min./actual) | | | (f) |
| | | (c) | (d) | (e) | |
| Name | Award [1] ($/units) | Cash denominated ($) (max./min./actual) | Stock denominated (#) (max./min./actual) | Performance or other period until maturation or payout | (Dollars or dollar value of stock) |
| CEO | $600,000/100,000 units | $120/20/60 | | 3 years | $350,000 |

[1] The value shown in column (b) reflects the potential value of the 100,000 performance units granted to the CEO in the last fiscal year under ABC's Long-Term Performance Plan at a target value of $60 per unit, payable at the end of the three-year performance period if 100% of the targeted cumulative earnings per share growth rate is achieved at that time.
[2] Received upon settlement of 50,000 performance units granted in fiscal year 1989.

Commenters should discuss whether the proposed tables are preferable to narrative textual disclosure of awards and earn-outs paid or deferred under long term incentive plans. Are there alternative formats that would provide clearer and more concise disclosure? Is the information proposed to be required necessary, or can the data be streamlined further without depriving shareholders of material pay-related information? Is any additional

information necessary? For example, should the registrant disclose *both* the maximum possible performance target payout as well as the minimum level of corporate or other performance necessary to satisfy the requirements under a particular performance-based plan? Should the tables cover more than the latest fiscal year?

d. *Disclosure of pension and other retirement compensation.* The Commission is proposing rule changes that will streamline substantially the currently prescribed disclosure of pension and other retirement benefits. Of the plan-related information now required to be disclosed under Item 402, only annual registrant contributions, payments or accruals on behalf of a named executive or the executive group, and potentially payable benefits if determinable, will continue to be required. Annual amounts contributed or paid by registrants to retirement plans on behalf of senior executives will be reported in the proposed Summary Table. Estimates of accrued or potential post-retirement benefits, whether payable under defined contribution or defined benefit or actuarial plans, will continue to be disclosed in tabular or narrative form in accordance with existing provisions of Item 402(b).

The Commission wishes to remind registrants of their obligation under current Item 402(b)(1) to identify the entire pensionable compensation base, and to include all prospective benefits in the table, whether payable under qualified or non-qualified employee benefit plans. The requirements have been revised to make clear that all compensation included by the registrant in the pensionable compensation base under its pension plan must be disclosed.

The Commission also is proposing to eliminate now-mandated disclosure of information on the terms of broad-based, nondiscriminatory plans that are qualified under the federal tax code and meet applicable standards of the Employee Retirement Income Security Act of 1974 ("ERISA").[41] Since retirement benefits are computed under the same plan formula for all employees, from the CEO to the hourly worker, there appears to be little need for detailed disclosure beyond the registrant contributions and the annualized stream of estimated post-retirement benefits that would continue to be disclosed for each of the named executives pursuant to the pension table or alternative disclosure formats presently required.[42] Discriminatory plans pursuant to which otherwise disclosed benefits are to be paid or accrued exclusively for senior executives, such as excess benefit and supplemental executive retirement plans, will continue to be available for review as exhibits to the Form 10–K for the year in which they were adopted or materially amended.

Commenters' views on the relative costs and benefits of the new streamlined disclosure scheme are solicited. In particular, commenters should discuss whether any of the plan information proposed to be eliminated should be retained. Comments also are invited with respect to additional improvements that could be made in the presentation of retirement benefits.

4. *Enhanced beneficial ownership information.* Many corporate and shareholder commenters alike have stated that the most effective means of assessing the alignment of stockholder and management interests is by examining the nature and extent of management equity ownership in the company. Existing rules, however, call merely for disclosure of security ownership by executive officers only as a group with directors and nominees, unless a particular executive is a member of the registrant's board of directors or owns more than five percent of the registrant's outstanding stock.[43] The Commission therefore has proposed, at the suggestion of these commenters, a new table reporting senior executives' equity-based holdings as follows:

TOTAL COMMON EQUITY BASED HOLDINGS

| Name | Unrestricted stock beneficially owned, excluding options/SARs | Option shares (#) | Restricted stock (number) |
|---|---|---|---|
| CEO | | | |
| #1 | | | |
| #2 | | | |
| #3 | | | |
| #4 | | | |
| Group | | | |

SARs payable only in stock, or in stock or cash at the election of the registrant or the executive-recipient, will be included in option shares.

Comment is requested on the need for such a table in view of the other information proposed to be required. Should the Commission simply require disclosure of senior executive officers' beneficial ownership of stock?

Some proponents of such a table have included as equity-based holdings cash payable, stock-based incentives such as cash-only SARs and certain phantom stock units. The Commission specifically requests comment as to whether inclusion of such instruments in the table would be appropriate and if so, how it would be fairly measured and described.

5. *Board compensation committee report on executive compensation.* Boards of directors are obligated, as state-law fiduciaries, to protect the interests of shareholders through effective monitoring of senior executive performance. An important aspect of this duty, frequently discharged by the board through a compensation committee, is determining the level and structure of compensation that is appropriate for senior executives. Shareholders who ultimately fund executive compensation packages are entitled to know the basis for the board's compensation decisions. Accordingly, the Commission is proposing to require the compensation committee or, in its absence, the entire board of directors, to provide a signed report disclosing its specific rationale for compensation paid to each of the named executives officers in the last fiscal year ("Compensation Committee Report") and the relationship of compensation paid to company performance. Along with a clear understanding of the actual compensation package, this report will provide shareholders a sounder basis for assessing how well directors are representing their interests. Thus informed, shareholders can vote as they deem warranted when called upon either to return the incumbent directors to office, or to approve executive and director compensation plans subject to a shareholder vote.

The proposal will add a new requirement for a compensation committee report on the executive compensation policies and practices applied specifically to awards made to the CEO and the remaining four most highly paid executives during the preceding fiscal year. If the registrant has no standing compensation committee, the report must be furnished by the board of directors or any other board committee to which responsibility for executive compensation decisions has been delegated or assigned. Like the currently required management's

[41] Public Law No. 93–406, 88 Stat. 829 (1974), as amended (29 U.S.C. 1001 *et seq.*).

[42] *See* Item 402(b)(2) of Regulation S–K.

[43] Item 403(b) (incorporated in 14A Item 6(d)).

discussion and analysis ("MD&A"),[44] this report is intended to bring shareholders into the compensation committee or board meeting room and permit them to see and understand the specific decisions made through the eyes of the directors. In particular, disclosure will be mandated of the committee's (or board's or other committee's) consideration of the relationship of each senior executive's compensation to the registrant's performance for that particular year, including a description of the specific elements of performance (*e.g.*, earnings, quality rate, market share) relied on in making the award to the particular executive.

As with the MD&A, to which the Compensation Committee Report is an analogue, the new requirements are intended to result in a very specific discussion, particularized both with respect to the company and to each of the individual named executives. A generalized discussion of compensation practice or policy thus would not comply with the proposed requirements. Boilerplate disclosure that could apply registrant-to-registrant, or year-to-year for the same registrant, likewise would be totally unresponsive to the requirements.

6. *Performance presentation.* To complement the discussion by the compensation committee (or board or other committee) of the relationship of executive compensation to corporate performance in a given fiscal year, registrants will be required to provide a line graph in the form prescribed comparing cumulative total shareholder return with a performance indicator of the overall stock market, the S&P 500 Stock Index, and either a nationally recognized industry index or a registrant-constructed peer group index [45] over a minimum term of five years.[46] Registrants would be free to use a longer time frame. To illustrate:

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[44] *See* Item 303 of Regulation S-K [17 CFR 229.303].

[45] Total shareholder return in a given year equals total dividends paid out and the year-end stock price less the previous year-end stock price (adjusted as necessary for stock dividends and splits) divided by the previous year-end stock price. After converting the earliest year into a base amount, and showing each subsequent year relative to that base, registrants then would compare return against the "market" by charting in the same graph the total shareholder return of the S&P 500 Stock Index and the industry index using the same base.

Cumulative return in a given year equals cumulative dividends paid out since the base year, plus the year-end stock price (adjusted as necessary for stock dividends and splits since the base year), less the base year price, divided by the base year price.

Thus, for example, computing cumulative return for each year of the five year period ending December 31, 1991, would require that for 1987 the closing stock price on December 31, 1987, be added to dividends paid in 1987, minus the stock price on December 31, 1986 (the "base year"), divided by the base year price. For 1988, the closing stock price on December 31, 1988, would be added to the cumulative dividends from the base year through December 31, 1988, minus the base year price, divided by the base year price. To the extent a 2 for 1 stock split occurred in 1988, the closing stock price on December 31, 1988 would be multiplied by two with a corresponding adjustment in the dividends paid. This process would continue through and including 1991.

Returns may be presented either on a reinvested or noninvested dividend basis. Published figures for total return for the S&P 500 are calculated on a reinvested dividend basis; *i.e.*, dividends are used to purchase more stock. However, registrants may calculate total return for the S&P 500 without assuming reinvested dividends by dividing the sum of the change in the price level of the index and the dividends paid by the index's opening price at the beginning of the fiscal year. Such data may be obtained directly from Standard & Poor's or from a library subscribing to S&P publications. S&P also publishes various industry indices, which are publicly available. In order to preserve comparability between the total return figures, registrants must calculate the return on the S&P 500 Stock Index, any other industry index and the return on its own stock in the same manner.

[46] Academic research suggests a positive significant relationship between annual changes in executive compensation and annual changes in corporate performance. See Jensen & Murphy, Performance Pay and Top-Management Incentives, 98 J. Pol. Econ. 225, 226–27 (1990); R. Lambert D. Larcker, Executive Compensation, Corporate Decision Making, and Shareholder Wealth, reprinted in Executive Compensation: A Strategic Guide for the 1990s 112 (F. Foulkes, ed. 1991). Commentators caution, however, that "[s]uch findings should not be taken to imply that American corporations have attained the optimum in incentive compensation. In fact, the coefficients measuring the correlation between [executive] compensation and shareholder returns, although statistically significant, are rather small." Lambert & Larchner at 112.

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## ILLUSTRATIVE EXAMPLE

### COMPARISON OF FIVE YEAR CUMULATIVE TOTAL RETURN*
### JLC CORP, S&P 500 INDEX & RECOGNIZED INDUSTRY INDEX

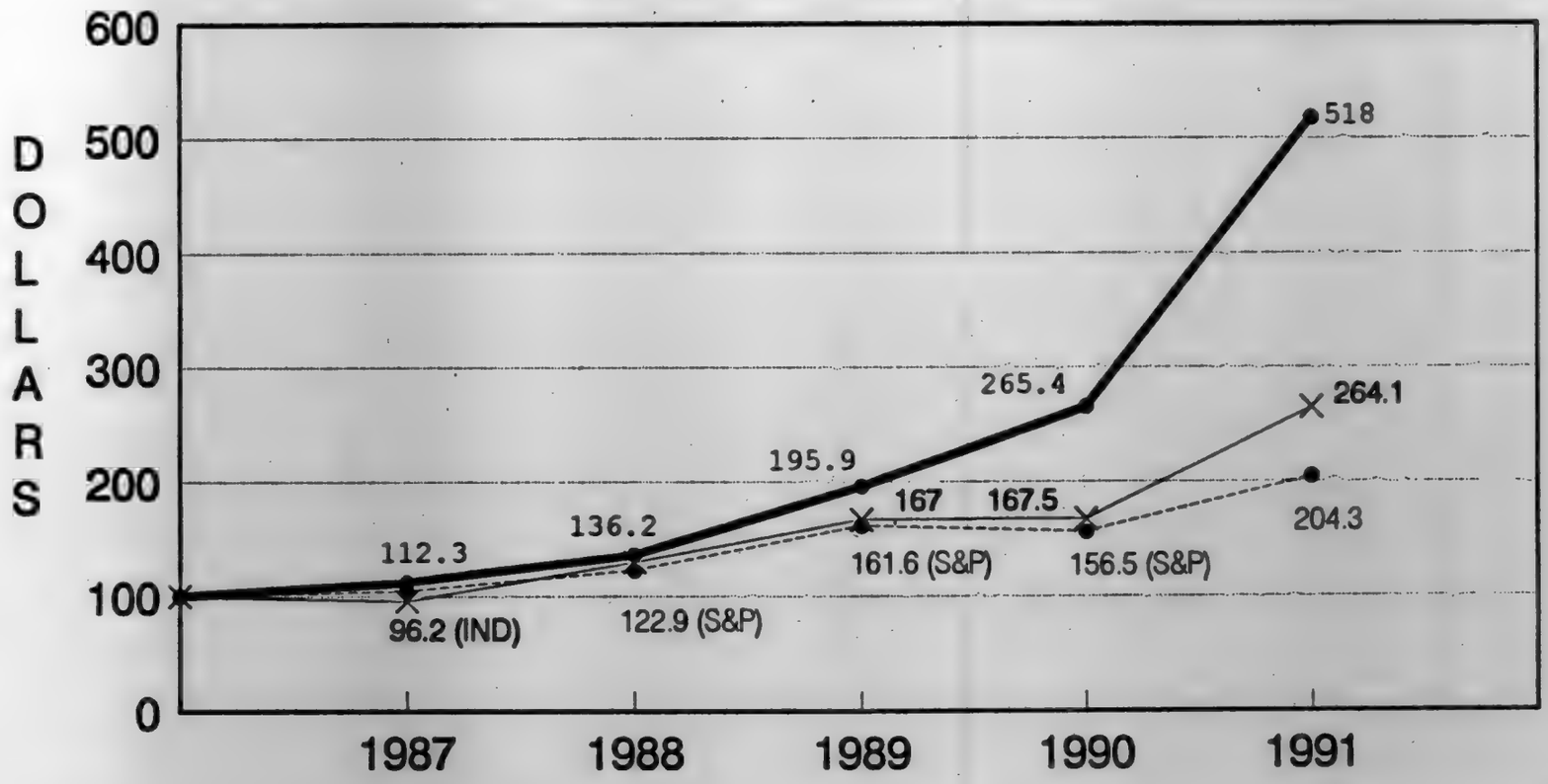


ASSUMES $100 INVESTED ON DECEMBER 31,1986
IN JLC COMMON STOCK, S&P 500 INDEX & RECOGNIZED
INDUSTRY INDEX

* TOTAL RETURN ASSUMES REINVESTMENT OF DIVIDENDS

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As noted, registrants would be required to include comparisons to returns on peer group companies. Disclosure would be required of the companies included in the peer group, unless the registrant is using a recognized industry index. In such case, the registrant simply would identify the index used. If the registrant chooses to construct its own peer group index, the returns of each of the component companies must be weighted according to the respective companies' market capitalization. While the proposed rules give registrants flexibility in determining whether to calculate total return with or without the reinvestment of dividends, commenters should address whether registrants should be required to calculate return on a reinvested dividends basis.

Registrants would be free to provide additional presentations using other measures of performance for comparable periods. For example, where the Compensation Committee Report indicates reliance on specified corporate performance criteria in formulating senior executive compensation awards, the registrant may choose to include graphs based on such criteria.

Comment is requested on the proposed comparative presentation of the return to shareholders. Should the Commission require additional presentations of performance; *e.g.*, return on equity?

7. *Report on option repricing.* One of the current compensation practices that has been subject to substantial criticism is the repricing of options to lower the exercise price following a decline in the market value of the shares after grant. These repricings can be done by amendment of the option directly, or indirectly; for example, through option or SAR swaps—the grant of a new option with an exercise price reflecting the lower market value and the cancellation of the underwater option or SAR. Critics of repricing have complained that the practice:

—Permits executives to benefit from stock price declines while shareholders incur real losses;
—Effectively eliminates whatever risk stock options may have; and
—Undermines the long-term nature of stock options and the link to long-term performance.

If the company has repriced options or freestanding SARs payable in either stock or cash, or otherwise reduced the terms of exercise through amendment, cancellation and replacement grants or otherwise, the compensation committee (or board or other functionally equivalent committee) will be required to provide a signed report discussing in detail the reasons for such adjustments. As noted above, shareholders have substantial reservations about repricing of options, and clearly are interested in the reasons underlying such action. As part of this report, extensive information concerning repricing practices in the prior 10 years also would be required. While repricing transactions effected before publication of these proposals will not trigger the mandated disclosure, subsequent repricing action will result in the 10-year look back, and thus require disclosure of all repricing of options or SAR's held for executive officers, including repricings prior to publication of this release.

The required tables are set forth below.

**Summary of Executive Option Repricing or Other Adjustment**

| | |
|---|---|
| Total Number of Options Outstanding Over 10-Year Period | |
| 10-Year Cumulative Percentage of Outstanding Options Held by CEO that Were Repriced or Otherwise Adjusted or Amended | |
| 10-Year Cumulative Percentage of Outstanding Options Held by Executive Officers that Were Repriced or Otherwise Adjusted or Amended | |
| 10-Year Cumulative Percentage of Outstanding Options Held by Other Employees that Were Repriced or Otherwise Adjusted or Amended | |

TEN-YEAR OPTION/SAR REPRICING

| Name | Date | Number of options/ SAR repriced or amended | Market price of stock at time of repricing or amendment ($) | Exercise price at time of repricing or amendment ($) | New exercise price (#) | Length of original option term remaining at date of repricing or amendment |
|---|---|---|---|---|---|---|
| | | | | | | |

Comment is solicited on the report and information required. Is additional information required? Are there similar transactions that warrant comparable treatment?

8. *Report on relationships of compensation committee or board members with registrant.* Additional information concerning the relationships between compensation committee members (or all members of the board or other functionally equivalent committee, in the absence of a compensation committee) and the registrant and related entities will be required in those situations in which shareholders may have greater concerns about the independence of the compensation setting process. This additional information is proposed to be required where (1) the company (other than a small business issuer) [47] does not have a compensation committee comprised entirely of outside directors; (2) any executive officer of the registrant serves on the compensation committee of a company of which a member of the registrant's compensation committee is an executive officer, or in the absence of a compensation committee (if registrant is not a small business issuer), a member of the board, is an executive officer of a registrant whose compensation committee (or, if none, board) includes executive officers of the registrant; or (3) the company has repriced options or SARs to lower or otherwise reduce terms of exercise in the last fiscal year. For this purpose, the term "outside director" refers to a director who is not an employee of the registrant or its affiliates. In such circumstances, extensive information bearing on the independence of the committee or board members will be required.

Comment is requested as to whether there are additional situations that should require the enhanced disclosure of committee (or board) members relationships with the registrant. Should such disclosure be required, for example, where the registrant's CEO sits on the board of another company, the CEO of which is a member of the registrant's compensation committee?

The Commission is proposing to except small businesses from the heightened disclosure of relationships where triggered by the absence of a

[47] For the applicable definition of this term, see n. 29, *supra*.



compensation committee composed entirely of non-employee directors, or cross-board membership where there is no compensation committee. The proposed exception reflects a recognition that small businesses frequently do not have outside directors to the same degree as larger companies. Comment is requested as to the appropriateness or necessity of such exceptions for small business issuers, and the appropriateness of the definition of small business issuer.

Comment is also requested as to whether the term "outside director" should be defined to exclude directors that would not meet the standard of independence set by the New York Stock Exchange for membership on listed companies' audit committees.[48] Are there other relationships that should fall outside the scope of the term "outside director"?

The proposed disclosure of relationships would be required under the title of relationships of compensation committee members with the registrant. The information proposed to be required would include:

Identification of all interlocking compensation committee (or board) memberships

For the previous three fiscal years, all contracts, loans, fees, awards, or financial interests, direct or indirect (whether contingent or fixed), in excess of an aggregate amount of $60,000 between the registrant or any of its affiliates and the committee (or board) member.

A description of any means by which, directly or indirectly, each member of the compensation committee (or board) could benefit from actions of the registrant or any of its executive officers.

A description of all discussions between any senior executive officer of the registrant and each member of the compensation committee (or board) with an interlocking relationship concerning compensation matters pertaining to either company or entity.

[48] See section 303.00 of the New York Stock Exchange Manual, requiring:

[A]n Audit Committee comprised solely of directors independent of management and free from any relationship that, in the opinion of its Board of Directors, would interfere with the exercise of independent judgment as a committee member. Directors who are affiliates of the company or officers or employees of the company or its subsidiaries would not be qualified for Audit Committee membership. A Director who was formerly an officer of the company or any of its subsidiaries may qualify for membership even though he may be receiving pension or deferred compensation payments from the company if, in the opinion of the Board of Directors, such person will exercise independent judgment and will materially assist the function of the committee. However, a majority of the Audit Committee shall be directors who were not formerly officers of the company or any of its subsidiaries.

9. *Director compensation.* No change to director compensation disclosure requirements is proposed. Comment is requested, however, whether separate tables should be mandated for specific items of director compensation, or whether directors should be included with executive officers in the various proposed tables. Should directors who are also employees of the company be included in addition to the CEO and the four most highly compensated executive officers, regardless of whether their annual compensation exceeds the threshold for individualized disclosure? Is additional information with respect to director compensation necessary?

Questions have arisen under the current rules as to their application in the case of "charitable award" or "director legacy" programs.[49] Under such programs, registrants typically agree to make a future donation to one or more charitable institutions in a participating director's name, payable by the registrant upon the director's death or retirement, or some other designated event. Funding vehicles for these programs commonly take the form of corporate-owned insurance policies on the lives of participating directors.

Companies have maintained that these arrangements need not be disclosed, since the directors are not receiving value through the arrangement. Others argue, however, that such arrangements should be disclosed to shareholders since the arrangements clearly are made with the directors in consideration of their board service, the premiums can be considerable, particularly relative to amounts paid annually to directors, and are material in assessing the relationship of directors to the registrant. Based on these considerations, such arrangements in the future will be required to be disclosed pursuant to the requirements of item 402(d). The Commission requests comment on the appropriateness of requiring disclosure of such arrangements. Should Item 402(d) be amended to add a specific requirement for disclosure of any other arrangement entered into with the director in consideration of board service?

10. *Information required in connection with shareholder approval of a compensation plan.* The disclosure to be included in the proxy statement if shareholder action is to be taken with respect to any compensation plan is prescribed by Item 10 to Schedule 14A. In addition to extensive disclosure concerning the plan subject to approval, the current requirements require substantial disclosure with respect to all existing compensation plans, and compensation paid thereunder in the prior three fiscal years.

No substantive change is proposed to be made to the information required with respect to the plan to be approved, other than to mandate tabular presentation of amounts that (depending on their determinability) will be paid in the future, or would have been paid in the past. Registrants would indicate in a footnote whether benefits were computed as having been paid hypothetically in the last year, or estimated as payable in the future, in accordance with the plan formula or other criteria.

Under the proposal, the requirements with respect to disclosure of plans other than the plan(s) subject to a shareholder vote will be eliminated. Similarly, given the proposed revision of Item 402 compensation disclosure requirements, the additional requirements under Item 10 with respect to compensation awarded, paid or accrued in the past three years is proposed to be eliminated. Those commenters who believe that the three-year data on all existing plans that will be presented in the proposed Summary Table would not suffice to meet shareholders' informational needs when solicited to vote on a plan should indicate what other compensation information is necessary to disclose on a three-year basis, or what additional plan information is appropriate. Would it be necessary or appropriate, for example, that Item 10 mandate that each table required under Item 402 cover the last three years, when a new benefit plan is to be voted upon?

If the plan to be acted upon is set forth in a written document, existing Item 10 requires that three copies of this document be filed with the preliminary proxy statement and form of proxy. Comment is requested as to whether the Commission should revise this requirement to mandate filing of the written plan document with the definitive proxy statement, thus making the plan more readily available to the public.

*B. Form 10–K Compensation Disclosure*

No change is proposed to the Item 11—Executive Compensation of Form 10–K, other than a technical revision to reflect the proposed amendment to Item 10 of Schedule 14A. However, with the proposed deletion of the mandatory plan descriptions from existing Item 402, the Commission requests comment as to whether the Item should be amended to require an itemization of all benefit

[49] See "Lure of Legacies Perks Up Directors," Wall St. J., Sept. 28, 1992, at B1, B7.

plans required to be filed as exhibits, and identification of the Commission filing with which a particular plan has filed in exhibit form. Should the Item be amended to require a summary of all employee benefit plans that are not broad-based? Should registrants be required to refile the entire plan in the case of material amendments? Are other revisions necessary or appropriate in view of the proposed amendments to Item 402 of Regulation S–K and Item 10 of Schedule 14A?

### III. General Request for Comment

Any interested persons wishing to submit written comments on the proposed amendments to Item 402 of Regulation S–K and related rules and regulations, as well as on other matters that might have an impact on the proposals set out in this release, are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. Comment is requested as to the potential impact of the proposals on such matters as tax planning and regulatory burdens from the viewpoint of the public, as well as the entities or persons making filings with the Commission. These comments will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act.[50] The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the Exchange Act. Comments responsive to this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[51] Comment letters should refer to File No. S7–16–92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

### IV. Cost-Benefit Analysis

As an aid in the evaluation of the costs and benefits of these proposals, the Commission requests the views and other supporting information from the public. It appears to the Commission that the benefit to be gained by amending existing compensation disclosure requirements to require registrants to provide clear and useful information to shareholders outweighs the costs associated with implementing these proposals.

[50] 15 U.S.C. 77s(a)
[51] 15 U.S.C. 78w(a)

### V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed revisions. A copy of the Analysis may be obtained from Catherine Dixon, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

The analysis notes that the proposed rules may have an impact on small entities. However, the Commission notes that proposed Regulation S–B, applicable to small business issuers,[52] may not incorporate the changes proposed for Regulation S–K. As part of the effort to facilitate capital creation by small businesses and reduce compliance burdens under the federal securities laws, the Commission proposed earlier this year, among other initiatives, Regulation S–B, a simplified regulatory scheme for "small business issuer[s]." Proposed Regulation S–B adopts the current disclosure scheme of Form S–18, which essentially mirrors present Item 402 of Regulation S–K. Comment is requested on whether the proposals should extend to issuers falling within the proposed definition of small business issuer. Should the definition be expanded solely for purposes of the proposed Item 402 and Schedule 14A revisions to exempt a broader class of issuers, or instead to limit any such exemption to the smallest issuers, as defined by an asset or market capitalization test?

Comment is solicited on the impact of the proposed revisions on small entities. Should the proposed disclosure revisions be modified in any way to address the needs of small businesses, however defined?

### VI. Statutory Basis

The amendments contained herein are being proposed pursuant to sections 3(b), 6, 7, 8, 10, and 19(a) of the Securities Act and sections 12, 13, 14(a), 15(d), and 23(a) of the Exchange Act.

### List of Subjects in 17 CFR Parts 229 and 240

Reporting and recordkeeping requirements, Securities.

### Text of Proposed Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations, is proposed to be amended as follows:

[52] *See* Securities Act Rel. No. 6924 (March 11, 1992) [57 FR 9768], *supra* n.29.

## PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for part 229 continues to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 80a–8, 80a–29, 80a–30, 80a–37, and 80b–11, unless otherwise noted.

2. By revising § 229.402 to read as follows:

**§ 229.402 (Item 402) Executive compensation.**

(a) *General.* (1) All information disclosed pursuant to this section shall be presented in a clear, concise and understandable fashion.

(2) This section requires disclosure of all plan and non-plan compensation awarded or paid to, or earned by, the named executive officers and executive group designated under paragraph (a)(3) of this section, whether by or on behalf of the registrant and its subsidiaries, during the applicable fiscal year(s).

**Instruction to Item 402(a)(2)**

The term "plan" includes, but is not limited to, the following: any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock, phantom stock, stock options, stock appreciation rights, stock options in tandem with stock appreciation rights ("SARs"), warrants, convertible securities, performance units and performance shares. A plan may be applicable to one person. Registrants may omit information regarding group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate in scope, terms or operation, in favor of officers or directors of the registrant and that are available generally to all salaried employees.

(3) *Persons covered.* Disclosure shall be provided pursuant to this section for:

(i) The registrant's Chief Executive Officer ("CEO"), or any individual acting in a similar capacity, and each of the registrant's other four most highly compensated executive officers, whose annual compensation computed in accordance with paragraph (b)(2)(ii) of this section exceeds $100,000 (the "named executive officer"); *provided, however,* that information with respect to the registrant's CEO or any individual

acting in a similar capacity shall be included without regard to the specified threshold; and

(ii) all executive officers as a group (the "executive group").

**Instructions to Item 402(a)(3)**

1. Registrants are reminded that it may be appropriate in certain circumstances to include an executive officer of a subsidiary in the disclosure required by this section. *See* Rule 3b–7 under the Exchange Act [17 CFR 240.3b–7.]

2. In certain circumstances, it may be appropriate for a registrant not to include in the disclosure required by this section, an individual, other than its Chief Executive Officer, who is one of the registrant's five most highly compensated executive officers. Among the factors that should be considered in determining not to name an individual is the distribution or accrual of an unusually large amount of compensation (such as bonus or commission) that is not part of a recurring arrangement and is unlikely to continue.

3. Provide information on compensation awarded, paid, earned or distributed for the entire fiscal year, even if an individual covered by this paragraph is an executive officer only during a portion of a covered fiscal year. With respect to an individual who becomes for the first time an executive officer whose compensation is to be reported pursuant to this section, it is not necessary to report compensation for prior years that would have been reported pursuant to this section had the individual been included in prior years.

(b) *Summary Table.* (1) *General.* The information specified in paragraph (b)(2) of this section, concerning the compensation awarded or paid to, or earned by, each of the named executives individually and the executive group in the aggregate, during each of the registrant's last three fiscal years shall be provided in a Summary Compensation Table, in the tabular format specified below. All compensation awarded or paid to, or earned by the named executive officers and the executive group during such period shall be included, unless specifically permitted to be excluded by this section.

SUMMARY COMPENSATION TABLE

| Year | Name and principal position or number in group | Annual compensation | | | Long term compensation | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Salary ($) | Bonus ($) | Other compensation ($) | Restricted stock award(s) $ | Accrued dividends on restricted stock ($) | Long-term incentive payouts ($) | Stock options (#) | SARs (#) | Other ($) |
| | (a) | (b) | (c) | (d) | (e) | (f) | (g) | (h) | (i) | (j) |
| | CEO | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | Group | | | | | | | | | |

(2) The following information shall be provided in the Table:

(i) Name and principal position of each named executive and number of persons in the executive group (column (a));

(ii) Annual compensation (columns (b), (c) and (d)), including:

(A) Dollar value of base salary either paid, or earned but deferred (column (b));

(B) Dollar value of cash and non-cash bonus either paid, or earned but deferred, including bonus stock (column (c)); and

**Instructions to Item 402(b)(2)(ii)(A) and (B)**

1. Dollar value of annual compensation that a named executive elects to forego in exchange for long-term compensation in the form of restricted stock or stock options need not be included in annual compensation totals, and should be reported as long-term compensation in column (e) or (h), as appropriate. However, a footnote to the appropriate annual compensation column should explain that election and the amount foregone. However, for purposes of determining the most highly paid executive officers pursuant to paragraph (a)(3) of this section, the foregone amount is considered a component of annual compensation for that fiscal year.

2. For non-cash compensation, disclose the fair market value at the time the compensation is awarded, paid or earned.

(C) The dollar value of all other annual compensation, including all forms of cash and non-cash compensation related solely to the covered fiscal year and not properly categorized as salary or bonus (column (d)). Such compensation shall include the dollar value of:

(*1*) Perquisites and other personal benefits, or securities or property paid or earned during the fiscal year other than pursuant to a plan, unless:

(*i*) With respect to any named executive officer, the aggregate amount of such compensation is the lesser of $25,000 or 10% of the annual salary and bonus reported for such person in columns (b) and (c), and a statement to that effect is included in a footnote to column (d); or

(*ii*) With respect to the executive group, the aggregate amount of such compensation is the lesser of $25,000 times the number of persons in the group or 10% of the annual salary and bonus reported in columns (b) and (c) for the group, and a statement to that effect is included in a footnote to column (d);

(*2*) Annual registrant contributions, payments, or other allocations to vested pension and other retirement plans;

(*3*) Amounts earned, allocated or accrued in the last fiscal year under deferred compensation plans or any other long-term incentive arrangement, including but not limited to dividends or interest during the fiscal year on deferred cash and stock or stock-based compensation (including amounts actually earned with respect to restricted stock, less the amounts reported as earned but deferred in column (f)); and

(*4*) Annual premiums paid or allocated, in whole or part, by the registrant on insurance-funded or any similar deferred compensation arrangement used to compensate a named executive or any member of the executive group.

**Instructions to Item 402(b)(2)(ii)(C)**

1. All components of the aggregated amounts set forth in column (d), except annual registrant contributions, payments or other allocations to vested pension or other retirement plans, should be identified by type, amount and/or rate in a footnote to the column.

2. With respect to perquisites and other personal benefits, if the amount of specified compensation reported for a named executive officer or the executive group exceeds the established threshold, the entire amount and each type(s) of such other compensation must be disclosed in a footnote pursuant to this paragraph. This compensation shall be valued on the basis of the aggregate incremental cost to the registrant and its subsidiaries.

3. Annual insurance premiums paid in whole or part by, or on behalf of, the registrant should be disclosed if there is any arrangement or understanding, whether formal or informal, that a future transfer of the underlying policy or other related payment to the executive will be made.

(iii) Long-term compensation (columns (e), (f), (g), (h) and (i)), including:

(A) Dollar value of any restricted stock award (calculated by multiplying the closing stock price on the date of grant by the number of shares awarded) without regard to the contingent nature of the grant (column (e));

(B) Dollar value of dividends earned on restricted stock, but deferred or reinvested (column (f));

(C) Dollar value of all long-term incentive payouts under plans tying compensation to the market price of a security of the registrant, the performance of the registrant or its subsidiaries, or any other performance measure or criterion (column (g));

**Instruction to Item 402(b)(2)(iii)(C)**

For purposes of column (g), the term "long-term incentive payouts" means any compensation earned, paid, distributed, made or credited, whether in cash or stock, under any plan providing incentives for performance, whether measured by reference to financial performance of the registrant or an affiliate, the performance of the registrant's stock price, or any other measure, over more than one year, other than amounts reportable as restricted stock, options or SARs.

(D) The number of stock options granted, with or without tandem SARs (column (h)); and

(E) The number of freestanding SARs, payable in stock, or payable in stock or cash at the election of the registrant or the executive(s) (column (i)).

**Instruction to Item 402(b)(iii)(D) and (E)**

If at any time during the last fiscal year, the registrant has adjusted or amended any material term of stock options or freestanding SARs, whether payable in stock or cash, previously awarded to any of the named executive officers or any member of the executive group, whether to lower the original exercise price or otherwise so as to require the registrant to provide the additional disclosure prescribed by Item 402(j)(2)(iii) of this section, the registrant shall add a separate column to the Summary Table, to be entitled "Amended or Repriced Options/SARs," setting out the number of options or freestanding SARs repriced or amended.

(iv) Any other compensation awarded, paid or earned that the registrant believes cannot be reported properly in any other column of the Summary Compensation Table (column (j)).

(A) Any compensation reported in this column should be identified and quantified in a footnote.

(B) Include in this column, and identify in an accompanying footnote, any payments made or credited to any named executive by the registrant or any other person, if any such payment, including all periodic payments or installments, exceeds $60,000, and is made or credited pursuant to a plan or arrangement that results or will result from:

(*1*) The resignation, retirement or any other termination of such individual executive's employment with the registrant and its subsidiaries; or

(*2*) A change in control of the registrant or a change in the executive's responsibilities following a change in control.

**General Instruction to Item 402(b)**

1. Any form of compensation reported in the Summary Table in a previous fiscal year may be omitted from this table in a later fiscal year.

2. If the registrant has not awarded, paid or distributed any form of compensation covered by a particular column(s), that column may be omitted.

(c) *Option Values Based on Assumed Rates of Common Stock Price Appreciation.* (1) The information specified in paragraph (c)(2) of this section, concerning the potential realizable dollar value of grants of options and freestanding SARs made in the registrant's last fiscal year, shall be provided in the tabular format specified below:

VALUES BASED ON ASSUMED RATES OF STOCK PRICE APPRECIATION FOR OPTIONS GRANTED IN LAST FISCAL YEAR

| Name | Strike price above market price at grant N% ($) | 50% ($) | 100% ($) | 200% ($) |
|---|---|---|---|---|
| (a) | (b) | (c) | (d) | (e) |
| CEO | | | | |
| #1 | | | | |
| #2 | | | | |
| #3 | | | | |
| #4 | | | | |
| Group | | | | |

(2) The option valuation table should include the potential realizable value of options and freestanding SARs granted in the last fiscal year to each named executive, and of all such grants to the executive group in the aggregate, assuming that the market price of the underlying security appreciates in value, from the date of grant to the end of the option or SAR term, at the following rates:

(i) Where options or freestanding SARs were granted with strike prices above the prevailing market price of the underlying security at the date of grant, N%, the percentage by which the strike price exceeded the market price at grant (column (b)). Where the option grant included multiple tranches with strike prices exceeding market price by varying degrees, include an additional column for each additional tranche.

(ii) 50% (column (c));

(iii) 100% (column (d)); and

(iv) 200% (column (e)).

**Instructions to Item 402(c)**

1. The potential realizable dollar value of each option or SAR grant for each of columns (b), (c), (d) and (e), shall be the product of: (a) the difference between (x) the product of the per-share market price at the time of the grant and the sum of 1 plus the stock price appreciation rate (N%, 50%, 100% or 200% for each of the columns (b), (c), (d) and (e), respectively) ("the stock price appreciation rate") applicable to each such column (expressed as a decimal), and (y) the per-share exercise price of the option; and (b), the number of underlying securities at fiscal year end.

2. Potential dollar value information may be provided on an aggregated basis under columns (c)–(e) for all grants made during the fiscal year, at each of the specified stock price appreciation rates.

3. For purposes of this paragraph, the term "SAR" refers to any SAR payable

in stock, or payable in cash or stock at the election of the registrant or the executive(s).

(d) *Stock Option and Stock Appreciation Right Awards.*—(1) *Option/SAR Summary Report.*

(i) The information specified in paragraph (d)(1)(ii) of this section, concerning option (with or without tandem SARs) and freestanding SARs shall be provided in the tabular format specified below, with respect to the registrant's last fiscal year:

OPTION/SAR SUMMARY REPORT

| | |
|---|---|
| Total Number of Common Shares Outstanding at Fiscal Year-end | |
| Total Number of Common Shares Authorized To Be Granted as Options or SARs | |
| Percentage of Total Common Shares Outstanding Authorized | |
| Total Number of Options or SARs Granted To Date Under Current Authorization | |
| Percentage of Total Authorizations | |
| Total Number of Options or SARs Granted in Fiscal Year | |
| Total Number of Options or SARs Granted to Named Executives in Last Fiscal Year | |
| Percentage of Total Number of Options or SARs Granted to Named Executive Officers | |
| Total Number of Options or SARs Granted to CEO in Last Fiscal Year | |
| Percentage of Total Number of Options or SARs Granted to CEO in Last Fiscal Year | |
| Total Number of Options or SARs Granted to Executive Group in Last Fiscal Year | |
| Percentage of Total Options or SARs Granted to Executive Group in Fiscal Year | |

(ii) The Table shall include, for each type of security underlying options and freestanding SARs granted as executive compensation in the registrant's last fiscal year:

(A) The number of securities outstanding at the end of the prior fiscal year;

(B) The number of securities authorized to be granted as options or freestanding SARs;

(C) The percentage of outstanding securities authorized to be granted as options or freestanding SARs;

(D) The number of options or freestanding SARs granted as of the prior fiscal year under the current authorization;

(E) The percentage of authorized options or freestanding SARs granted as of the end of the registrant's last fiscal year;

(F) The number of options or freestanding SARs granted in the prior fiscal year;

(G) The number of options or freestanding SARs granted to the named executives in the prior fiscal year;

(H) The percentage of the prior fiscal year's options or freestanding SARs granted to the named executives;

(I) The number of options or freestanding SARs granted to the CEO or any executive with a comparable position in the prior fiscal year;

(J) The percentage of the prior fiscal year's options or freestanding SARs granted to the CEO or any executive with a comparable position;

(K) The number of options or freestanding SARs granted to the executive group; and

(L) The percentage of the prior fiscal year's options or freestanding SARs granted to the executive group.

**Instruction to Item 402(d)**

For purposes of this paragraph, the term "SAR" refers to any SAR payable in stock, or payable either in stock or cash at the election of the registrant or the executive-recipient.

(2) *Individual Option and SAR Grants.*

(i) The information specified in paragraph (d)(2)(ii) of this section, concerning individual grants of stock options, whether alone or in tandem with SARs, and freestanding SARs, made during the prior fiscal year to each of the named executives, with aggregated grant information to be provided for the executive group, shall be provided in the tabular format specified below:

INDIVIDUAL GRANTS IN THE LAST FISCAL YEAR

| Name (a) | Date (b) | Options granted (#) (c) | SARs granted (#) (d) | Exercise or base price ($/sh) (e) | Market price at grant ($/sh) (f) | Unconditional vesting date (g) | Expiration date (h) |
|---|---|---|---|---|---|---|---|
| CEO | (1) | | | | | | |
| | (2) | | | | | | |
| | (3) | | | | | | |
| #1 | (1) | | | | | | |
| | (2) | | | | | | |
| | (3) | | | | | | |
| #2 | (1) | | | | | | |
| | (2) | | | | | | |
| | (3) | | | | | | |
| #3 | (1) | | | | | | |
| | (2) | | | | | | |
| | (3) | | | | | | |
| #4 | (1) | | | | | | |
| | (2) | | | | | | |
| | (3) | | | | | | |
| Group | | | | | | | |

(ii) The Table shall include, with respect to each grant to a named executive and aggregated grants to the executive group:

(A) The name of the executive, or number in the group (column (a));

(B) The date of each grant (column (b));

(C) The number of options granted, specifying the title of the security subject to each grant in a footnote (column (c));

(D) The number of freestanding SARs granted, specifying the title of the securities subject to each grant in a footnote (column (d));

(E) The per share exercise or base price of the option or freestanding SAR granted (column (e));

(F) The closing market price per share of the underlying security on the date of grant (column (f));

(G) The date at which the option or freestanding SAR vests unconditionally (column (g)); and

(H) The expiration date of the option or freestanding SAR (column (h)).

**Instructions to Item 402(d)(2)**

1. A footnote to the table should describe any additional terms of the grant, such as SARs granted in tandem with options, or performance-based conditions to exercisability.

2. For purposes of this paragraph, the term "SAR" refers to any SAR payable solely in stock, or payable in either stock or cash at the election of the registrant or the executive-recipient.

3. A description should be included in a footnote to the table of any risk-diminishing features or tax reimbursement arrangements relating to a particular grant.

4. If more than one grant of options or freestanding SARs is made to a named executive during the fiscal year, a separate line(s) should be added to assure disclosure of each such grant.

5. This table should not include any options granted in connection with a option repricing transaction disclosed pursuant to Paragraph (j)(2)(iii) of this Item.

6. For purposes of determining the grant-date market price of the security underlying options or freestanding SARs, where that security either is not traded or is thinly traded, registrants should use book value for non-traded securities and, for thinly traded securities, the market price as of the most recent available date, with an explanatory footnote if the registrant believes this price is not representative of the value of the security.

7. Continued employment with the registrant shall not be deemed a condition of vesting for purposes of the vesting date disclosure required in column (g).

(3) *Individual Option and SAR Exercises.* (i) The information specified in paragraph (d)(3)(ii) of this section, for each individual exercise of stock options, alone or in tandem with SARs, and freestanding SARS, made during the most recent fiscal year by each of the named executives, with aggregated information for the executive group, shall be provided in the tabular format specified below:

INDIVIDUAL EXERCISES IN THE LAST FISCAL YEAR

| Name (a) | Shares acquired on exercise (#) (b) | Year granted (c) | Year of expiration (d) | Annualized gain ($) (e) | Total gain realized ($) (f) |
|---|---|---|---|---|---|
| CEO | | | | | |
| #1 | | | | | |
| #2 | | | | | |
| #3 | | | | | |
| #4 | | | | | |
| Group | | | | | |

(ii) The Table shall include:

(A) The name of the executive officer, or number in the group (column (a));

(B) The number of securities received upon exercise (column (b));

(C) The year the options or freestanding SARs were granted (column (c));

(D) The year the options or freestanding SARs would have expired (column (d));

(E) The annualized aggregate dollar value of gain upon exercise (column (e)); and

(F) The total aggregate dollar value of gain realized upon exercise (column (f)).

**Instructions to Item 402(d)(3)**

1. Annualized gain for purposes of column (e) may be determined by dividing the total aggregate dollar gain realized by the number of years the option was outstanding. For the purposes of this paragraph, an option should be considered outstanding for a full year in the year of grant and in the year of exercise.

2. For purposes of this paragraph, the term "SAR" refers to any SAR payable solely in stock, or any SAR payable in either stock or cash at the election of the registrant or the executive(s).

3. If a named executive exercises options or freestanding SARs on more than one occasion during the fiscal year, a separate line(s) should be added to assure separate disclosure of each such exercise.

(4) *Unexercised Options (and SARs) Held at Fiscal Year-End.* (i) The information specified in paragraph (d)(4)(ii) of this section concerning all unexercised options and freestanding SARs held at the end of the fiscal year shall be provided in the tabular format specified below:

UNEXERCISED OPTIONS HELD AT FY-END

| (a) | (b) | | (c) | |
|---|---|---|---|---|
| Name | Total number unexercised options held at FY-end | | Value of unexercised, in-the-money options at FY-end ($) | |
| | Vested | Unvested | Vested | Unvested |
| CEO | | | | |
| #1 | | | | |
| #2 | | | | |
| #3 | | | | |
| #4 | | | | |
| Group | | | | |

(ii) The Table shall include:

(A) The name of the executive officer or number in the group (column (a));

(B) The total number of unexercised options or freestanding SARs held at the end of the fiscal year, separately identifying the vested and unvested securities (column (b)); and

(C) The aggregate dollar value of in-the-money, unexercised options or freestanding SARs at the end of the

fiscal year, separately identifying vested and unvested (column (c)).

**Instructions to Item 402(d)(4)**

1. In-the-money options are options for which the fair market value of the underlying securities exceeds the strike or base price of the option or SAR. Dollar value is calculated by determining the difference between the fair market value of the securities underlying the options and the strike or base price of the options or SARs at fiscal year-end.

2. For purposes of this paragraph, the term "SAR" refers to any SAR payable solely in stock, or any SAR payable in either stock or cash at the election of the registrant or the executive(s).

(e) *Restricted Stock Awards.* (1) The information specified in paragraph (e)(2) of this section, concerning grants of restricted stock made to the named executives and the executive group during the registrant's most recent fiscal year, shall be provided in the tabular format specified below:

RESTRICTED STOCK TABLE

| (a) | (b) | (c) | (d) | (e) |
|---|---|---|---|---|
| Name | Restricted shares granted in last fiscal year | Length of restricted period | Total number restricted shares held at FY-end | Aggregate market value restricted shares at FY-end ($) |
| CEO | | | | |
| #1 | | | | |
| #2 | | | | |
| #3 | | | | |
| #4 | | | | |
| Group | | | | |

(2) The Table shall include:

(i) The name of the executive officer or the number in the group (column (a));

(ii) The total number of restricted shares granted (column (b));

(iii) The length of the period during which the granted shares are subject to restrictions or conditions on vesting (column (c));

(iv) The total number of restricted shares held at fiscal year-end (column (d)); and

(v) The aggregate value of the restricted shares held at fiscal year-end (column (e)).

**Instructions to Item 402(e)**

1. Any applicable restriction or condition on vesting of restricted shares other than the length of the restricted period, including any performance-related conditions, shall be disclosed in a footnote to the table.

2. Information may be provided on an aggregated basis for multiple grants made during the fiscal year to each of the named executives; however, separate disclosure must be made for each such grant, accompanied by an explanatory footnote to the column, if: (a) the terms of two or more grants made to the executive within the fiscal year differ with respect to the restricted period or any other restriction or condition to vesting; or (b) the board of directors or its compensation committee has reserved the right to eliminate or reduce a restriction or condition to a particular award or awards.

3. For purposes of column (e), "aggregate market value" shall be equal to the market value of the unrestricted shares.

(f) *Long-Term Incentive Compensation.*—(1) *Stock Price-Based Plans.*

(i) The information specified in paragraph (f)(1)(ii) of this section, regarding each compensation award or payment to a named executive officer made, or earned or matured but deferred, in the last fiscal year under any long-term incentive compensation plan pursuant to which the measurement of benefits to be received is a function of the market price of the registrant's common stock, with aggregate information provided for the executive group, shall be provided in the tabular format specified below:

STOCK PRICE BASED PLANS—LAST FISCAL YEAR

| (a) | Awards | | | Payouts |
|---|---|---|---|---|
| | (b) | (c) | (d) | (e) |
| Name | No. of shares, units or other rights [1] | Grant-date value, if determinable | Performance or other period until maturation or payout | (Dollar or dollar value stock) |
| CEO | | | | |
| #1 | | | | |
| #2 | | | | |
| #3 | | | | |
| #4 | | | | |
| Group | | | | |

(ii) The Table shall include:

(A) The name of the executive officer or the number in the group (column (a));

(B) The number of units or other instruments granted and, if applicable, the number of shares underlying these units (column (b));

(C) The grant-date value of the units or instruments granted, if determinable (column (c));

(D) The time period until maturation or payout of the award (column (d)); and

(E) The dollar value or amounts paid or distributed, or earned but deferred (column (e)).

**Instructions to Item 402(f)(1)**

1. Types of plans covered by this paragraph include, but are not limited to, those awarding phantom stock, freestanding, cash-only SARs, restricted stock units, dividend equivalents and performance share units payable solely on the basis of the registrant's stock price performance.

2. Describe in a footnote the material terms of any award not otherwise disclosed in the table, including any performance-based formula or measure.

3. Separate disclosure shall be provided in the table for each award or payout, whether made or deferred, to a named executive, accompanied by an explanatory footnote for each award if required by Instruction 2 to this paragraph.

4. Any amount reported as earned but deferred in a prior fiscal year need not be reported again in the fiscal year in which such amount is actually paid out.

(2) *Non-Stock Price Based Plans.* (i) The information specified in paragraph (f)(2)(ii) of this section, regarding each award or payout of long-term compensation not covered by paragraph (f)(1)(i) of this section, made to a named executive officer in the prior fiscal year, with aggregated information provided for the executive group, shall be set forth in the tabular format specified below:

NON-STOCK PRICE BASED PLANS—LAST FISCAL YEAR

| (a) | Awards | | | | Payouts |
|---|---|---|---|---|---|
| | (b) | Target value(s) (Max./min./actual) | | (e) | (f) |
| | | (c) | (d) | | |
| Name | Award ($/units) | Cash denominated ($) (max./min./actual) | Stock denominated (#) (max./min./actual) | Performance or other period until maturation or payout | (Dollar or dollar value of stock) |
| CEO | | | | | |
| #1 | | | | | |
| #2 | | | | | |
| #3 | | | | | |
| #4 | | | | | |
| Group | | | | | |

(ii) The Table shall include:

(A) The name of the executive officer or the number in the group (column (a));

(B) The amount of each award in dollars or units (column (b));

(C) The dollar value of the potential payout or range of potential payouts under the awards (maximum, minimum or actual target amount) for cash-denominated award (column (c)).

(D) The dollar value of the potential payout or range of potential payouts under the awards (maximum, minimum or actual target amount) for each stock-denominated award (column (d));

(E) The time period until maturation or payout of the award (column (e)); and

(F) The dollar value of amounts paid or distributed, or earned but deferred (column (f)).

**Instructions to Item 402(f)(2)**

1. Describe in a footnote to the column the material terms of any award, including a general description of the formula or criteria to be applied in determining the amounts payable. If such amount is not reasonably determinable, so indicate by footnote.

2. Separate disclosure shall be provided in the table for each award or payout, whether made or deferred, to a named executive, accompanied by an explanatory footnote as specified in Instruction 1 to this paragraph.

3. Any amount reported as earned but deferred in a prior fiscal year need not be reported again in the fiscal year in which such amount is actually paid out.

(g) *Pension and Other Retirement Plans.*—(1) *Pension Table.* (i) Registrants with one or more defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, shall include a separate Pension Table showing estimated annual benefits payable upon retirement (including amounts attributable to any supplementary or excess pension plans) in specified compensation and years of service combinations in the format specified below:

PENSION TABLE

| Remuneration | Years of service | | | | |
|---|---|---|---|---|---|
| | 15 | 20 | 25 | 30 | 35 |
| 125,000 | | | | | |
| 150,000 | | | | | |
| 175,000 | | | | | |
| 200,000 | | | | | |
| 225,000 | | | | | |
| 250,000 | | | | | |
| 300,000 | | | | | |

PENSION TABLE—Continued

| Remuneration | Years of service | | | | |
|---|---|---|---|---|---|
| | 15 | 20 | 25 | 30 | 35 |
| 350,000 | | | | | |
| 400,000 | | | | | |
| 450,000 | | | | | |
| 500,000 | | | | | |

(ii) Immediately following the table, registrants should disclose:

(A) The compensation covered by the plan, including the relationship of such covered compensation to the compensation reported in columns (b) through (d) of the Summary Table required by paragraph (b)(2) of this section, and state the current compensation covered by the plan for any named executive whose covered compensation differs substantially (by more than 10%) from that set forth in columns (b) through (d) of the Summary Table;

(B) The estimated credited years of service for each of the named executives; and

(C) A statement as to the basis upon which benefits are computed (*e.g.*, straight-life annuity amounts), and whether or not the benefits listed in the

Pension Table are subject to any deduction for Social Security or other offset amounts.

(2) *Alternative Pension or Other Retirement Plan Disclosure.* In furnishing the information with respect to defined benefit, actuarial, or any other retirement plan under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, including but not limited to defined contribution plans, state in clear and concise narrative form:

(i) The formula by which benefits are determined; and

(ii) The estimated annual benefits payable upon retirement at normal retirement age for each of the named executives or, if such estimated annual benefits are not reasonably determinable, the amounts accrued pursuant to the plan for the accounts of the named executives and the executive group during the last fiscal year, the distribution or unconditional vesting of which are not subject to future events.

(h) *Enhanced Beneficial Ownership Table.* (1) The beneficial ownership information specified in paragraph (h)(2) of this section shall be provided in the tabular format specified below:

TOTAL COMMON EQUITY BASED HOLDINGS

| (a) | (b) | (c) | (d) |
|---|---|---|---|
| Name | Unrestricted stock beneficially owned, excluding options/SARs | Option shares (#) | Restricted stock (#) |
| CEO | | | |
| #1 | | | |
| #2 | | | |
| #3 | | | |
| #4 | | | |
| Group | | | |

(2) The Table shall include:

(i) The name of the executive officer or the number of persons in the group (column (a));

(ii) The number of shares of unrestricted stock beneficially owned, excluding options and SARs (column (b));

(iii) The number of shares subject to options and freestanding SARs, whether or not immediately exercisable (column (c)); and

(iv) The number of shares held subject to restricted stock (column (d)).

**Instructions to Item 402(h)**

1. Other stock-based instruments that are not convertible into shares of the registrant's common equity are not considered shares beneficially owned for the purposes of this paragraph.

2. Beneficial ownership of unrestricted stock for purposes of column (b) shall be determined in accordance with Rule 13d–3 under the Exchange Act (§ 240.13d–3 of this chapter).

3. For purposes of this paragraph, the term "SAR" shall be deemed to refer to SARs payable only in stock, and SARs payable in stock or cash at the election of the registrant or the executive.

(i) *Compensation of Directors.*—(1) *Standard Arrangements.* The registrant shall describe any standard arrangement, stating amounts, pursuant to which directors of the registrant are compensated for all services as directors, including any additional amounts payable for committee participation or special assignments.

(2) *Other Arrangements.* The registrant shall describe any other arrangements pursuant to which any director of the registrant was compensated during the registrant's last fiscal year for services as a director, stating the amount paid and the name of the director.

(j) *Board Compensation Committee Report on Executive Compensation.* (1) The compensation committee of the registrant's board of directors or, in its absence, a committee performing equivalent functions or the board of directors in its entirety, shall provide a clear and concise statement setting forth the specific factors, criteria and goals underlying the committee's decisions on, or approval of, awards and payments of cash and non-cash compensation disclosed under this section as having been granted or paid to, or earned by, each of the named executives in the last fiscal year.

(i) Include a reasonably detailed discussion of the committee's consideration, if any, of how the registrant's performance related to each named executive's compensation for the last fiscal year, describing each element or measure of performance (*e.g.*, earnings, quality rates, market share) that the committee relied upon in deciding upon or approving each such award or payment.

(ii) If the registrant's performance was not a substantial factor in the committee's decision with respect to compensation paid or awarded to a named executive in the last fiscal year, the committee shall so state and identify those factors, criteria or goals that led to or resulted in such decision or approval.

(iii) The required statement shall be made over the name and signature of each member of the compensation committee, or, in its absence, the name and signature of each member of a board committee performing equivalent functions or each member of the entire board of directors.

**Instruction to Item 402(j)**

The requirements of paragraph (j) of this section in its entirety shall not apply to registration statements filed under the Securities Act of 1933, or to registration statements filed on Form 10 under the Exchange Act.

**Instructions to Item 402(j)(1)**

1. Registrants should avoid boilerplate language in describing factors, criteria or goals underlying awards or payments of executive compensation.

i. Target levels with respect to the specific quantitative or qualitative performance-related factors considered may, but need not, be disclosed. Registrants are not required to disclose any factors or criteria involving confidential commercial or business information, disclosure of which would result in an adverse effect on the registrant's competitive position.

ii. Non-financial performance measures, including but not limited to shareholder value creation or market share, must be described in reasonable detail.

(2) *Additional Information To Be Furnished by Certain Registrants.* (i) The information specified in paragraph (j)(2)(ii) of this section must be provided by a registrant where:

(A) The registrant did not have a compensation committee comprised entirely of outside directors during the last fiscal year, unless the registrant is a small business issuer;

(B) The registrant's compensation committee includes one or more executive officers of another registrant or other entity upon whose compensation committee (or in the absence of a compensation committee, or board committee performing equivalent functions or the entire board of directors) executive officer(s) of the registrant sit; or, where there is no compensation committee, and the registrant is not a small business issuer, the registrant's board of directors includes one or more executive officers of another registrant or other entity upon whose compensation committee (or in the absence of a compensation committee, a board committee performing equivalent functions or the entire board of directors) executive officers of the registrant sit; or

(C) The registrant during the last three fiscal years has adjusted or amended any material term of stock options or freestanding SARs (payable in stock or

cash) previously awarded to any of the named executives or any member of the executive group, in which case the information specified in paragraph (j)(2)(iii) of this section also must be provided.

**Instruction to Item 402(j)(2)**

1. For purposes of this paragraph, an "outside" director is a director who does not have an employment or consulting arrangement with the registrant or any of its affiliates, and who is not employed by an entity where an employee of the registrant serves as a member of a committee establishing that entity's compensation policy.

2. For purposes of this paragraph, the term "small business issuer" refers to an issuer that: (i) had revenues of less than $15 million during its last fiscal year; (ii) is not a foreign private issuer or a foreign government; (iii) is not an investment company; and (iv) is not a wholly owned subsidiary of a non small business issuer.

(ii) *Relationships of Compensation Committee Members with Registrant.* The registrant shall:

(A) Disclose any cross-compensation committee or board membership of any of the registrant's executive officers;

(B) Disclose, for the previous three fiscal years, all contracts, loans, fees, awards, or financial interests, direct or indirect (whether contingent or fixed) in excess of an aggregate of $60,000 between the registrant or any of its affiliates and the committee member, or any company or other entity of which the compensation committee member is an officer, director, partner, employee or owner of more than 10% of the common equity of the registrant;

(C) State any means by which, directly or indirectly, each member of the compensation committee (or board) could benefit from actions of the registrant or any of its executive officers; and

(D) Describe all discussions between any of the named executives or any member of the registrant's compensation committee (or board) with an interlocking relationship concerning compensation matters pertaining to either company or entity.

(iii) *Adjustment of Material Terms of Outstanding Options or SARs.* If at any time during the last three fiscal years, the registrant has adjusted or amended any material term of stock options or freestanding SARs (payable in stock or cash) previously awarded to any of the named executives or any member of the executive group, whether to lower the original exercise price when such price exceeded the market price of the underlying securities, or otherwise to reduce the terms of exercise through amendment, cancellation and replacement grants, or any other means:

(A)The compensation committee (or, in the absence of a compensation committee, a board committee performing equivalent functions or the entire board of directors) shall explain in reasonable detail all such adjustments of options and freestanding SARs held by executive officers in the prior 10 years, as well as the basis for any such adjustments.

(B) The information specified in paragraph (j)(2)(iii)(C) of this section, concerning adjustments in the last fiscal year, shall be provided in the tabular format specified below:

OPTION REPRICING OR OTHER MATERIAL ADJUSTMENT OR AMENDMENT

| Name and principal position or number in group (a) | Date (b) | No. of options repriced or amended (c) | Market price of stock at time of repricing or amendment ($) (d) | Exercise price at time of repricing or amendment ($) (e) | New exercise price ($) (f) | Length of original option term remaining at date of repricing or amendment (g) |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

(C) The Table shall include, with respect to each repricing, adjustment or amendment:

(*1*) The name and position of the executive officer (column (a));

(*2*) The date of the transaction (column (b));

(*3*) The number of replacement or amended options or freestanding SARs (column (c));

(*4*) The per share market price of the underlying security at the time of replacement or amendment (column (d));

(*5*) The original strike or base price of the cancelled or amended options or freestanding SARs (column (e));

(*6*) The per share strike or base price of the replacement options or freestanding SARs (column (f)); and

(*7*)The amount of time remaining before the replaced or amended option or SAR would have expired (column (g)).

**Instruction to Item 402(j)(2)(iii)(C)**

1. A replacement grant is any grant of options reasonably related to any prior option or SAR cancellation, whether by an exchange of existing options or SARs for options or SARs with new terms, or by repricing previously granted options or SARs. If a corresponding original grant was cancelled in a prior year, information about such grant must nevertheless be disclosed pursuant to this paragraph.

2. If the replacement grant is not made at the current market price, describe the terms of the grant in a footnote to the table.

(D) The information specified in paragraph (j)(2)(iii)(E) of this section, regarding any adjustment or amendment of a material term of an option or freestanding SAR, including but not limited to any repricing or cancellation of options and option replacement grant, made during the previous ten fiscal years, shall be provided in the tabular format specified below:

SUMMARY OF EXECUTIVE OPTION REPRICING OR OTHER ADJUSTMENT

| | |
|---|---|
| Total Number of Options Outstanding Over 10–Year Period | |
| 10-Year Cumulative Percentage of Outstanding Options Held by CEO that Were Repriced or Otherwise Adjusted or Amended | |

SUMMARY OF EXECUTIVE OPTION REPRICING OR OTHER ADJUSTMENT—Continued

| | |
|---|---|
| 10-Year Cumulative Percentage of Outstanding Options Held by Executive Officers that Were Repriced or Otherwise Adjusted or Amended..... | ..... |
| 10-Year Cumulative Percentage of Outstanding Options Held by Other Employees that Were Repriced or Otherwise Adjusted or Amended..... | ..... |

(E) The Summary shall include:

(*1*) The total number of options outstanding and issued over the previous ten fiscal years;

(*2*) The ten-year cumulative percentage of outstanding options held by the registrant's CEO that were repriced or otherwise amended or adjusted;

(*3*) The ten-year cumulative percentage of outstanding options held by all executive officers as a group that were repriced or otherwise amended or adjusted; and

(*4*) The ten-year cumulative percentage of outstanding options held by all other employees that were repriced or otherwise amended or adjusted.

**Instructions to Item 402(j)(2)(iii)(E)**

1. Percentages should be calculated for a ten-year period regardless of whether the same individual or individuals have served continuously throughout that period.

2. The registrant shall state briefly the type of adjustment or amendment made to the option immediately following the number of options repriced or otherwise amended or adjusted.

3. The term "option" as used in the Summary shall include both stock options and freestanding SARs payable in stock or cash.

(k) *Registrant Performance Presentation.* Provide a line graph comparing the yearly percentage change in a registrant's cumulative total shareholder return (as measured by dividing (a) the sum of (x) the cumulative amount of dividends declared from the base date until the end of the measurement period (assuming no reinvestment of dividends) and (y) the difference between the issuer's share price at the end of the measurement period and at the base date; by (b) the share price at the base date) against the cumulative total return of the S&P's 500 Stock Index and either a nationally recognized industry index or a registrant constructed peer group index for a comparable time period. The graph shall provide a comparison for a minimum of five fiscal years, or, if the class of securities has been registered under section 12 of the Securities Exchange Act of 1934 for a shorter period of time, the period covered by the chart may correspond to that time period.

**Instructions to Item 402(k)**

1. Registrants should make appropriate adjustments to share prices for splits, stock dividends, and spin-offs.

2. Registrants may graph cumulative total return with or without the reinvestment of dividends. Assuming the reinvestment of dividend would require the appropriate adjustments to the above specified formula. However, to preserve comparability, return data for the registrant, the S&P 500 Stock Index, a national recognized industry index or a registrant constructed peer group and any other benchmark must use the same method of presentation.

3. In constructing the graph, (i) the closing price of the day preceding the beginning of the earliest fiscal year graphed should be converted into a base amount, with cumulative returns for each subsequent fiscal year should be measured as a change from that base and (ii) each fiscal year should be plotted with points showing the cumulative total return as of that period.

4. Registrants must compare total shareholder return against additional performance benchmarks, including either a nationally recognized index for the registrant's principal industry, or a peer group of comparable companies competing in similar lines of business and sharing other business characteristics, constructed by the registrant. If the registrant constructs its own peer group, the identity of those issuers should be disclosed and the returns of each component company of the index must be weighted according to the respective company's stock market capitalization.

5. Registrants may include performance measures in addition to total return, such as return on average common shareholders' equity, so long as the registrant's board compensation committee (or in its absence, a board committee performing equivalent functions or the entire board of directors) describes the link between that measure and the level of executive compensation established in the statement required by paragraph (j)(1) of this Item.

6. This paragraph (k) shall not apply to registration statements filed under the Securities Act of 1933 or to registration statements filed on Form 10 under the Exchange Act.

**General Instructions to Item 402**

1. *Foreign Private Issuers.* A foreign private issuer may respond to all of Item 402 by reporting the aggregate payments or benefits paid or to be paid to all executive officers as a group. Such registrant shall, however, provide more detailed information if otherwise made publicly available.

2. *Transactions With Third Parties.* This section includes transactions between the registrant and a third party where the primary purpose of the transaction is to furnish compensation to a named executive officer or the executive group. No information need be given in response to any paragraph of this section as to any such transaction if the transaction has been reported in response to Item 404 of Regulation S–K.

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–37, 80b–3, 80b–4 and 80b–11 unless otherwise noted.

4. By amending § 240.14a–101 by revising Item 10 of Schedule 14A to read as follows:

**§ 240.14a–101 Schedule 14A. Information required in proxy statement.**

* * * * *

*Item 10. Compensation Plans*

If action is to be taken with respect to any plan pursuant to which cash or noncash compensation may be paid or distributed, furnish the following information:

(a) *Plans Subject to Securityholder Action.* (1) Describe briefly the material features of the plan being acted upon, identify each class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class and state the basis of such participation.

(2)(i) In the tabular format specified below, disclose the benefits or amounts that will be received by or allocated to each of the following under the plan being acted upon, if such benefits or amounts are determinable:

NEW PLAN BENEFITS

| Name and position | Plan name | |
|---|---|---|
| | Dollar value ($) | Number of units |
| CEO | | |
| #2 | | |
| #3 | | |
| #4 | | |
| #5 | | |
| Executive Group | | |
| Non-Executive Director Group | | |
| Non-Executive Officer Employee Group | | |

(ii) The table required by paragraph (a)(2)(i) of this Item shall provide information as to the following persons:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S–K (§ 229.402 of this chapter);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

**Instruction to New Plan Benefits Table**

Additional columns should be added for each plan with respect to which securityholder action is to be taken.

(iii) If the benefits or amounts specified in paragraph (a)(2)(i) of this Item are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last fiscal year if the plan had been in effect, if such benefits or amounts may be determined in table specified in paragraph (a)(2)(i) of this Item:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S–K (§ 229.402 of this chapter);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

(3) If the plan to be acted upon can be amended, otherwise than by a vote of securityholders, to increase the cost thereof to the registrant or to alter the allocation of the benefits as between the persons and groups specified in paragraph (2)(iii)(A)-(D) of this paragraph, state the nature of the amendments which can be so made.

(b) *Additional Information Regarding Specific Plans Subject to Securityholder Action.* (1) With respect to any pension or retirement plan submitted for securityholder action, state:

(i) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; and

(ii) The estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this Item may be furnished in the format specified by paragraph (g)(1) of Item 402 of Regulation S–K (§ 229.402 of this chapter).

(2)(i) With respect to any plan authorizing grants of options, warrants or rights submitted for security holder action, state:

(A) The title and amount of securities underlying such options, warrants or rights;

(B) The prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised;

(C) The consideration received or to be received by the registrant or subsidiary for the granting or extension of the options, warrants or rights;

(D) The market value of the securities underlying the options, warrants or rights as of the latest practicable date; and

(E) In the case of options, the federal income tax consequences of the issuance and exercise of such options to the recipient and the registrant; and

(ii) State separately the amount of such options received or to be received by the following persons if such benefits or amounts are determinable:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S–K (§ 229.402 of this chapter);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group;

(D) Each nominee for election as a director;

(E) Each associate of any of such directors, executive officer or nominees;

(F) Each other person who received or is to receive 5 percent of such options, warrants or rights; and

(G) All employees, including all current officers who are not executive officers, as a group.

**Instructions**

1. The term "plan" as used in this Item means any plan as defined in paragraph (a)(2) of Item 402 of Regulation S–K (§ 229.402 of this chapter).

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the Commission at the time copies of the proxy statement and form of proxy are filed pursuant to paragraph (c) of Rule 14a–6 (§ 229.14a–6 of this chapter).

4. Paragraphs (b)(2)(ii) do not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

5. The Commission should be informed, as supplemental information, when the proxy statement is first filed, as to when the options, warrants or rights and the shares called for thereby will be registered under the Securities Act or, if such registration is not contemplated, the section of the Securities Act or rule of the Commission under which exemption from such registration is claimed and the facts relied upon to make the exemption available.

By the Commission.

Dated: June 23, 1992.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–15250 Filed 7–1–92 8:45 am]

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Part III

# Office of Management and Budget

## Budget Rescissions and Deferrals; Notice

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## OFFICE OF MANAGEMENT AND BUDGET

### Budget Rescissions and Deferrals to The Congress of the United States

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report two revised deferrals, now totaling $2.2 billion in budgetary resources. Including the revised deferrals, funds withheld in FY 1992 now total $5.7 billion.

The deferrals affect Funds Appropriated to the President and the Department of Agriculture. The details of the deferrals are contained in the attached reports.

George Bush.

The White House,
June 25, 1992.

BILLING CODE 3110-01-M

Deferra
No.
D92-8A
D92-11A

**CONTENTS OF SPECIAL MESSAGE**
(in thousands of dollars)

| Deferral No. | Item | Budget Authority |
|---|---|---|
| | Funds Appropriated to the President: | |
| | International Security Assistance: | |
| D92-8A | Foreign military financing..... | 2,001,098 |
| | Department of Agriculture: | |
| | Forest Service: | |
| D92-11A | Timber salvage sales..... | 181,549 |
| | Total, deferrals..... | 2,182,646 |

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Deferral No. 92-8A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. 92-8, which was transmitted to the Congress on December 19, 1991.

This revision to a deferral of the Foreign military financing account, International Security Assistance program, of the Funds Appropriated to the President, increases the amount previously reported as deferred from $1,908,000,000 to $2,001,097,900. Funds made available by P.L. 102-266 were deferred. Some of the funds that were available prior to March 31, 1992, were released. The net change is $93,097,900.

Deferral No. 92–8A

## DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

| | |
|---|---|
| **AGENCY:** Funds Appropriated to the President | New budget authority..... $ 4,100,000,000 (P.L. 102–266)* |
| **BUREAU:** International Security Assistance | Other budgetary resources. $ –81,602,100 * |
| **Appropriation title and symbol:** Foreign military financing 1/ 1121082 | Total budgetary resources.. $ 4,018,397,900 * |
| | **Amount to be deferred:** Part of year..... $ 2,001,097,900 * |
| | Entire year..... _____ |
| **OMB identification code:** 11–1082–0–1–152 | **Legal authority (in addition to sec. 1013):** [X] Antideficiency Act |
| **Grant program:** [X] Yes [ ] No | [ ] Other _____ |
| **Type of account or fund:** [X] Annual [ ] Multi–year _____ (expiration date) [ ] No–Year | **Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____ |

JUSTIFICATION: The President is authorized by the Arms Export Control Act to sell or finance by grant, credit, or guarantee articles and defense services to friendly countries to facilitate the common defense. Further, the President is authorized by the International Narcotics Control Act of 1989 to provide military and law enforcement assistance to counter illegal narcotics. Under Section 2 of the Arms Export Act, the Secretary of State, under the direction of the President, is responsible for sales made under the Act, including determining whether there shall be a sale to a country and the amount thereof. Executive Order 11958 further requires the Secretary of State to obtain prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding standards and criteria for credit transactions that are based upon national security and financial policies. These funds have been deferred pending the approval of the Departments of State, Defense, and Treasury for the specific sales to eligible countries. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security, and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

ESTIMATED PROGRAM EFFECT: None.

OUTLAY EFFECT: None.

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1/ This account was the subject of a similar deferral in FY 1991 (D91–8).

* Revised from previous report.

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Deferral No. 92-11A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. 92-11, which was transmitted to the Congress on February 19, 1992.

This revision to a deferral of Timber salvage sales of the Forest Service, Department of Agriculture, increases the amount previously reported as deferred from $131,548,574 to $181,548,574. The increase of $50,000,000 reflects the deferral requirements for potential salvage opportunities.

Deferral No. 92–11A

## DEFERRAL OF BUDGET AUTHORITY
### Report Pursuant to Section 1013 of P.L. 93–344

| | |
|---|---|
| **AGENCY:** Department of Agriculture | New budget authority..... $ 120,385,000 (P.L. 94–588 & 101–512) |
| **BUREAU:** Forest Service | Other budgetary resources. $ 181,548,574 |
| **Appropriation title and symbol:** Timber salvage sales 1/ 12X5204 | Total budgetary resources.. $ 301,933,574 |
| | **Amount to be deferred:** Part of year..... $ _____ Entire year..... 181,548,574 * 2/ |
| **OMB identification code:** 12–9922–0–2–302 | **Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____ |
| **Grant program:** [ ] Yes [X] No | |
| **Type of account or fund:** [ ] Annual [ ] Multi–year _____ (expiration date) [X] No–Year | **Type of budget authority:** [X] Appropriation [ ] Contract authority. [ ] Other _____ |

JUSTIFICATION: The Timber Salvage Sales fund was established under the provisions of the National Forest Management Act of 1976 to enable harvesting of dead and dying trees when required by market conditions or catastrophes. Purchasers of dead, damaged, insect–infested, or downed timber are required to make monetary deposits into this fund to cover the preparation costs for future salvage sales.

* The salvage sales program is part of the timber sales program and has specific timber volume targets assigned. Specific timber volume targets are assigned based on current information on salvage opportunities. The Forest Service is pursuing a program to achieve maximum salvage volumes while protecting the full range of environmental values. Approximately 1.8 billion board feet of new and existing salvage sales is planned for FY 1992. This program will require $120 million in FY 1992. The deposits becoming available in the current year are estimated and the related preparation costs are planned for the following year. Efficient program planning is facilitated by operating a stable program well within the funds available in any one year for this purpose. Funds are deferred pursuant to the Antideficiency Act (31 U.S.C. 1512).

ESTIMATED PROGRAM EFFECT: None.

OUTLAY EFFECT: None.

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1/ This account was the subject of a similar deferral in FY 1991 (D91–10).

2/ The deferral amount has been reduced to $151,548,574 due to subsequent releases.

* Revised from previous report.

[FR Doc. 92–15551 Filed 7–01–92; 8:45 am]
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Part IV

# Department of Defense

Office of the Secretary

32 CFR Part 165

**Recoupment of Nonrecurring Costs on Sales or Licensing of U.S. Items; Proposed Rule and Interim Rule**

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 165**

**Recoupment of Nonrecurring Costs on Sales or Licensing of U.S. Items**

**AGENCY:** Office of the Secretary of Defense, Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would further reduce the financial and administrative burden on contractors making direct commercial sales to non-U.S. Government parties. It would eliminate the requirement to recoup nonrecurring costs on those sales. This proposed rule constitutes a step towards the desired goal of completely eliminating all nonrecurring cost recoupments. Culmination of the goal should assist the U.S. defense industry to be more competitive on a global basis by reducing contracting costs through resulting synergies, economies of scale, pricing and performance incentives, and reduced administrative burdens.

**DATES:** Comments should be received by August 3, 1992.

**ADDRESSES:** Forward comments to: Office of the DoD Comptroller, Attn: Director for Accounting Policy, The Pentagon, room 3A882, Washington, D.C. 20301-1100.

**FOR FURTHER INFORMATION CONTACT:** Mr. R. Florence, 703-697-0585.

**SUPPLEMENTARY INFORMATION:** Today, the Department of Defense published an interim rule, 32 CFR part 165, to implement revised nonrecurring cost recoupment policies. This proposed rule would amend certain sections of the interim rule that would result in the elimination of recoupment of nonrecurring costs of all direct commercial sales.

**Executive Order 12291**

On November 26, 1991, the Office of Management and Budget advised that this rule was considered to be a major rule under Executive Order 12291. The regulatory impact analysis provided in response to that determination still applies.

The Comptroller, Department of Defense has determined that this rule does not impose paperwork requirements or other regulatory burdens of the type Executive Order 12291 and the Regulatory Flexibility Act were intended to minimize. In fact, the economic impact of this rule is a reduction of amounts due to the U.S. Government and a reduction in work load—both paperwork and accounting efforts—to both the Department of Defense and defense contractors.

**Paperwork Reduction Act Information**

The final rule contains no new information collection requirements requiring the approval of OMB under 44 U.S.C. 3501 et seq.

**List of Subjects in 32 CFR Part 165**

Armed forces, Commercial sales, foreign military sales, Foreign trade.

Accordingly, 32 CFR part 165 is proposed to be amended as follows:

## PART 165—RECOUPMENT OF NONRECURRING COSTS ON SALES OR LICENSING OF U.S. ITEMS

1. The authority for 32 CFR Part 165 continues to read as follows:

**Authority:** 31 U.S.C. 9701

**§ 165.2 [Amended]**

2. Section 165.2 is proposed to be amended in paragraph (b) by removing the words, "and contractually to DoD contractors who sell or license defense items developed with DoD appropriations or funds (and in special cases, customer funds)"

**§ 165.3 [Amended]**

3. Section 165.3 is proposed to be amended by removing paragraph (b) and redesignating paragraphs "(c) through (n)" as "(b) through (m)".

**§ 165.5 [Amended]**

4. Section 165.5 is proposed to be amended in paragraph (c)(3) by removing the words, "or direct commercial sales" and by removing paragraph (e)(4), redesignating paragraphs "(e)(5) through (e)(7)" as "(e)(4) through (e)(6)".

**§ 165.6 [Amended]**

5. Section 165.6 is proposed to be amended in paragraph (c) by adding a period in the second sentence after the word "agreements" and removing the remainder of that sentence and the third sentence.

6. Section 165.6 is proposed to be amended by removing paragraph (g).

**§ 165.7 [Amended]**

7. Section 165.7 is proposed to be amended in paragraph (a) by removing the last sentence, and in paragraph (d) by removing the last two sentences.

Dated: June 29, 1992.

**L.M. Bynum,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 92-15631 Filed 6-30-92; 11:25 am]

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 165**

**Recoupment of Nonrecurring Costs on Sales or Licensing of U.S. Items**

**AGENCY:** Office of the Secretary of Defense, Department of Defense.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule recognizes that requiring contractors to pay to fee to the Government for products and technologies sold to non-U.S. Government parties unnecessarily imposes a financial and administrative burden on U.S. industry. The planned elimination of all such fees is being pursued. This interim rule constitutes a step towards the desired goal. Culmination of the goal should assist the U.S. defense industry to be more competitive on a global basis by reducing contracting costs through economies of scale, pricing incentives, and reduced administrative burdens.

As such, the interim rule provides for a change in the Department of Defense's guidance to all Heads of DoD Components on the recoupment of nonrecurring costs when products or technology developed with appropriate funds are sold. Recoupment charges will be made only on articles that are Major Defense Equipment which are sold for military purposes. By administrative action, the Department of Defense will immediately abolish recoupment fees on all products other than major defense equipment exported for military uses. This action will eliminate recoupment fees on all non-military products, including spinoffs and derivatives of military products. It will also eliminate recoupment on military products that are either not classified as major defense equipment or not exported for military uses. The Department's action will eliminate recoupment under all new non-major defense equipment contracts as well.

A Major Defense Equipment is any item of significant military equipment on the United States Munitions List having a nonrecurring research, development, test and evaluation cost of more than $50 million or a total production cost of more than $200 million. The definition of Major Defense Equipment is included in the Arms Export Control Act.

In addition to the changes being effected by this interim rule, in a proposed rule published elsewhere in this issue, the Department of Defense proposes to eliminate recoupment charges on items of Major Defense Equipment sold via direct commercial sales, in a subsequent final rule to be issued within 120 days. Public comment is being solicited on this proposal during the 30 day period following the date of this interim rule. During the 120 days between the interim and final rules, the President's Export Council will monitor progress under the interim rule and provide recommendations on the subsequent final rule.

In addition, the Administration will work with Congress to achieve the elimination of recoupment fees on major defense equipment exported for military uses. The Arms Export Control Act currently requires the Department of Defense to collect recoupment fees on sales of major defense equipment through the Foreign Military Sales programs, which accounts for most major defense equipment sales. The Administration will work with Congress to lift this requirement. Any lifting of that requirement would be likely to result in a final rule which would eliminate recoupment in its entirety.

**EFFECTIVE DATE:** June 26, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. R. Florence, 703–697–0585.

**SUPPLEMENTARY INFORMATION:** On October 25, 1991, the Department of Defense published a proposed rule, for public comments, of 32 CFR part 165. Numerous comments were received and considered. The DoD contractual language to implement the nonrecurring cost recoupment policies are incorporated into acquisition regulations, which are also published in the **Federal Register** for public comment. The term, "acquisition regulation," refers to the Defense Acquisition Regulation, the Federal Acquisition Regulation (FAR) and the DoD FAR Supplement. The interim rule for DoD recoupment policy is to be incorporated into the DoD FAR Supplement and will be published in the **Federal Register** 48 CFR parts 215, 252, and 270.

**Executive Order 12291**

On November 26, 1991, the Office of Management and Budget advised that this rule was considered to be a major rule under Executive Order 12291. The information set forth below constitutes the regulatory impact analysis for purposes of Executive Order 12291 and regulatory flexibility analysis for purposes of the Regulatory Flexibility Act (5 U.S.C. 601).

Accordingly, and in response to the Office of Management and Budget's determination, the purpose of this rule is to limit the categories of equipment for which a recoupment charge is applicable and to eliminate recoupment on items sold for non-military purposes. Previously, a recoupment charge was applicable to "major defense equipment," "non-major defense equipment," and to all commercial derivatives of such equipment. Now, a recoupment charge shall be applicable only to "major defense equipment."

The Comptroller, and Chief Financial Officer, Department of Defense has determined that this rule does not impose paperwork requirements or other regulatory burdens of the type Executive Order 12291 and the Regulatory Flexibility Act were intended to minimize. In fact, the economic impact of this rule is a reduction of amounts due to the U.S. Government and a reduction in work load—both paperwork and accounting efforts—to both the Department of Defense and defense contractors. The reductions would occur due to a lessening of payment requirements and reduced administrative burden costs. These reductions will not have an unreasonable impact on defense contractors or the Department of Defense. The Comptroller, and Chief Financial Officer, Department of Defense has determined that this rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Such entities generally make commercial sales for only small defense articles to foreign or domestic customers and the Department of Defense will recoup on only major defense equipment.

At this point, specific data is not available to quantify the economic impact on the Federal receipts due to the reductions as a result of this rule. However, this rule would have a favorable impact on a substantial number of defense contractors who pay recoupment charges since this rule would (a) eliminate recoupment charges on lower dollar value investment items (non-major defense equipment) and eliminate recoupment on items used for non-military purposes; (b) decrease the number of contracts involved (a recoupment clause would be inserted only in contracts exceeding $10 million versus in the current policy of being included in contracts over $1 million); and (c) eliminate recoupment on derivative items.

**Paperwork Reduction Act Information**

The rule contains no new information collection requirements requiring the approval of OMB under 44 U.S.C. 3501 et seq.

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**List of Subjects in 32 CFR Part 165**

Armed Forces, Commercial Sales, Foreign Military Sales, Foreign trade.

Accordingly, title 32 of the Code of Federal Regulations, chapter I, subchapter E, is amended by adding a new part 165, to read as follows:

## PART 165—RECOUPMENT OF NONRECURRING COSTS ON SALES OR LICENSING OF U.S. ITEMS

Sec.
165.1 Purpose.
165.2 Applicability and scope.
165.3 Definitions.
165.4 Policy.
165.5 Responsibilities.
165.6 Procedures.
165.7 Waivers (including reductions).

Authority: 31 U.S.C. 9701.

### § 165.1 Purpose.

This part updates policy to conform with Public Law 90–629, "Arms Export Control Act," October 22, 1968, as amended, nonrecurring cost recoupment charges on sales or licensing of items developed for or by the Department of Defense to non-U.S. Government customers.

### § 165.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

(b) The provisions of this part shall be applied to those receiving DoD technical data packages from the Department of Defense and contractually to DoD contractors who sell or license defense items developed with DoD appropriations or funds (and, in special cases, customer funds) or use technical data packages to manufacture items sold commercially to a foreign government, international organization, foreign commercial firm, or private party for military purposes.

(c) The provisions of this part do not apply to sales of excess property when accountability has been transferred to property disposal activities and the property is sold in open competition to the highest bidder.

(d) The policies and procedures provided for in this part shall apply to all prospective sales and shall entirely supersede application thresholds and charges previously established. Previously established nonrecurring cost recoupment thresholds and charges shall be eliminated or revised in accordance with this part on all future sales. Existing contracts encompassing items for which recoupment charges are applicable, other than major defense equipment sold for military purposes, may, upon request by a contractor, be renegotiated to reduce the nonrecurring cost recoupment to the extent permitted by law.

### § 165.3 Definitions.

(a) *Cost Pool.* Represents the total cost to be distributed across the specific number of units. The nonrecurring research, development, test, and evaluation cost pool comprises the costs described in paragraph (k) of this section. The nonrecurring production cost pool comprises costs described in paragraph (j) of this section.

(b) *Direct Commercial Sale.* A commercial sale, for military use, to a customer by a defense contractor of items, technology, materiel, services, and development or production techniques that originally were developed, improved, or produced using DoD appropriations or funds.

(c) *Foreign Military Sales.* A sale by the U.S. Government of defense items or defense services to a foreign government or international organization under authority of the "Arms Export Control Act," Public Law No. 90–629 (1968), as amended.

(d) *Government Sale.* A sale of items or services, or both, to non-U.S. Government customers by any DoD Component under appropriate statutes.

(e) *License.* The legal right to use technical data with or without compensation and with or without restrictions.

(f) *Major Defense Equipment.* Any item of significant military equipment on the United States Munitions List having a nonrecurring research, development, test, and evaluation cost of more than 50 million dollars or a total production cost of more than 200 million dollars. The determination of whether an item meets the major defense equipment dollar threshold for research, development, test, and evaluation shall be based on DoD obligations recorded to the date the equipment is offered for sale. Production costs shall include costs incurred by the Department of Defense. Production costs for the foreign military sales program and known direct commercial sales production are excluded.

(g) *Model.* A basic alpha-numeric designation in a weapon system series; e.g., a ship hull series, an equipment or system series, an airframe series, or a vehicle series. For example, the F5A and the F5F are different models in the same F–5 system series.

(h) *Non-U.S. Contractor.* A contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

(i) *Nonrecurring Production Costs.* Those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run. Those nonrecurring cost include DoD expenditures for preproduction engineering; rate and special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing, and evaluation. That includes costs of any engineering change proposals initiated before the date of calculations of the nonrecurring costs recoupment charge. Nonrecurring production costs do not include DoD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made or waived in accordance with the DoD FAR Supplement.

(j) *Nonrecurring Research, Development, Test, and Evaluation Costs.* Those costs funded by a research, development, test, and evaluation appropriation to develop or improve the product or technology under consideration either through contract or in-house DoD effort. This includes costs of any engineering change proposal started before the date of calculation of the nonrecurring cost recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either procurement or operation and maintenance appropriations.

(k) *Pro Rata Recovery of Nonrecurring Costs.* Equal distribution (proration) of a pool of nonrecurring cost to a specific number of units that benefit from the investment so that a DoD Component shall collect from a customer a fair (pro rata) share of the investment in the product being sold. The production quantity base used to determine the pro rata calculation of major defense equipment includes total production.

(l) *Significant Change in Nonrecurring Cost Recoupment Charge.* A significant change occurs as follows:

(1) A new calculation shows a change of 30 percent of the current system nonrecurring cost charge.

(2) The nonrecurring cost unit charge increases or decreases by 50,000 dollars or more; or

(3) Where the potential for a 5 million dollars change in recoupment exists. The total collections may be estimated based on the projected sales quantities. When potential collections increase or

decrease by 5 million dollars, a significant change occurs.

(m) *Special Research, Development, Test, and Evaluation and Nonrecurring Production Costs.* Costs incurred at the request of, or for the benefit of, a foreign customer to develop a special feature or unique or joint requirement. Those costs must be paid by the customer as they are incurred.

(n) *Technical Data Package.* The technical data package normally includes technical design and manufacturing information sufficient to enable the construction or manufacture of a defense item or component modification, or to enable the performance of certain maintenance or production processes. It may include blueprints, drawings, plans, or instructions that can be used or adapted for use in the design, production, manufacture, or maintenance of the defense items.

**§ 165.4 Policy.**

It is DoD policy that:

(a) A nonrecurring cost recoupment charge shall be imposed on sales to non-U.S. Government purchasers of major defense equipment developed with U.S. Government funds, and for the licensing of others to produce major defense equipment, unless a nonrecurring cost recoupment charge exemption is available as provided in § 165.6(c), a waiver has been approved by the Under Secretary of Defense for Policy pursuant to § 165.7, or the item is to be used for non-military purposes.

(b) Nonrecurring cost charges shall be based on the amount of the DoD nonrecurring investment in an item.

**§ 165.5 Responsibilities.**

(a) The Comptroller of the Department of Defense shall:

(1) Provide necessary financial management guidance.

(2) Ensure publication of a listing of items developed for or by the Department of Defense to which nonrecurring cost recoupment charges are applicable.

(b) The Under Secretary of Defense (Acquisition) shall take appropriate action to revise the DoD Federal Acquisition Regulation Supplement in accordance with this part.

(c) The Under Secretary of Defense for Policy shall:

(1) Monitor the application of this part.

(2) Exercise control over foreign sales of items developed for or by the Department of Defense and use of technical data packages by non-U.S. contractors pursuant to a Foreign Military Sales case or other government-to-government agreement.

(3) Review and approve nonrecurring cost recoupment charges and nonrecurring cost recoupment charge waive requests received from foreign countries and international organizations for Foreign Military Sales or direct commercial sales.

(4) Provide notification of approved nonrecurring cost recoupment charges to the Defense Finance and Accounting Service.

(e) The Secretaries of the Military Departments and the Directors of the Defense Agencies shall:

(1) Determine the DoD nonrecurring investment in items developed for or by the Department of Defense and perform required pro rata calculations in accordance with this part and financial management guidance from the Comptroller of the Department of Defense.

(2) Validate and provide recommended charges to the Defense Security Assistance Agency. Supporting documentation will be retained until the item has been eliminated from the nonrecurring cost recoupment charge listing.

(3) Review approved nonrecurring cost recoupment charges on a biennial basis to determine if there has been a change in factors or assumptions used to compute a nonrecurring cost recoupment charge and if there is a significant change in a nonrecurring cost recoupment charge, provide a recommended change to the Defense Security Assistance Agency.

(4) Insert prescribed Department of Defense Federal Acquisition Regulation Supplement clauses in contracts.

(5) Collect charges on foreign military sales in accordance with DoD 7290.3–M1[1], "Foreign Military Sales Finance and Accounting Manual;" on other sales in accordance with DoD 7220.9–M[2], "DoD Accounting Manual."

(6) Deposit collections to accounts prescribed by the Comptroller, DoD.

(7) Request guidance from the Defense Security Assistance Agency, within 90 days, if an issue concerning a recoupment charge cannot be resolved.

**§ 165.6 Procedures.**

(a) The nonrecurring cost recoupment charge to be reimbursed for non-U.S. Government purchases shall be a pro rata recovery of nonrecurring cost for any major defense equipment. Recovery of nonrecurring cost recoupment charges shall cease upon the recovery of the DoD costs. Such charges shall be based on a cost pool as defined in § 165.3. For a system that includes more than one component, a "building block" approach (i.e., the sum of nonrecurring cost recoupment charges for individual components) shall be used to determine the nonrecurring cost recoupment charge for the sale of the entire system.

(b) For major defense equipment, purchasers of the applicable DoD technical data package shall pay the established nonrecurring cost recoupment charge when the major defense equipment is manufactured by a non-U.S. contractor for non-U.S. Government purchases.

(c) A nonrecurring cost recoupment charge shall not apply when a waiver has been approved by the Under Secretary of Defense for Policy in accordance with § 165.7 or when sales are financed with U.S. Government funds made available on a nonrepayable basis. Approved revised nonrecurring cost recoupment charges shall not be applied retroactively to accepted foreign military sales agreements or to direct commercial sales that were entered into before the date of approval of the revised nonrecurring cost recoupment charge. If a direct commercial sale was not notified in accordance with the clause in the Department of Defense Federal Acquisition Regulation Supplement, a nonrecurring cost charge shall be retroactively applied to such sale.

(d) When major defense equipment are sold at a reduced price due to age or condition, the nonrecurring cost recoupment charge shall be reduced by the same percentage reduction.

(e) The full amount of "special" research, development, test, and evaluation and nonrecurring production costs incurred for the benefit of particular customers shall be paid by those customers. However, when a subsequent purchaser requests the same specialized features that resulted from the added "special" research, development, test, and evaluation and nonrecurring production costs, a pro rata share of those costs may be paid by the subsequent purchaser and transferred to the original customer if those special nonrecurring cost exceed 50 million dollars. The pro rata share may be a unit charge determined by the DoD Component as a result of distribution of the total costs divided by the total production. Such reimbursements shall not be collected after 10 years have elapsed since

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[1] Forward written requests to Defense Institute for Security Assistance Management, ATTN: DISAM–DRP, Wright-Patterson Air Force Base, Ohio 45433.

[2] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

acceptance of DD Form 1513, "U.S. DoD Offer and Acceptance," by the original customer, unless otherwise authorized by the Defense Security Assistance Agency. The U.S. Government shall not be charged any nonrecurring costs recoupment charge if it adopts the features for its own use or provides equipment with such features under a U.S. Grant Aid or similar program.

(f) For coproduction, codevelopment and cooperative development, or cooperative production DoD agreements, the policy set forth in this part generally shall determine the allocation basis for recouping from the third party purchasers the investment costs of the participants. Such DoD agreements shall provide for the application of the policies in this part to sales to third parties by any of the parties to the agreement and for the distribution of recoupments among the parties to the agreement.

(g) A contractor as the seller or licenser of the item to be used for military purposes to any customer other than the U.S. Government is responsible for payment of the recoupment charge to the Department of Defense. In the event, the Department of Defense is the licenser, the non-U.S. licensee is responsible for the payment of the recoupment charge to the Department of Defense. To avoid double payment of a recoupment charge, the seller may request the Defense Security Assistance Agency to deduct from the recoupment charge a charge paid by another contractor as a first tier subcontractor.

### § 165.7 Waivers (including reductions).

(a) The "Arms Export Control Act," Public Law No. 90–629, as amended, requires the recoupment of a proportionate amount of nonrecurring cost of major defense equipment from foreign military sales customers but authorizes consideration of reductions or waivers for particular sales which, if made, significantly advance U.S. Government interests and the furtherance of mutual defense treaties between the United States and certain countries. Waiver for direct commercial sales to foreign purchasers shall be based upon the same considerations.

(b) Requests for waivers should originate with the foreign government and shall provide information on the extent of standardization to be derived as a result of the waiver and other benefits that would accrue to the U.S. Government as a result of that sale. That request shall contain a summary statement of the facts on the program, benefits expected and justification thereto, and any calculations necessary to quantify the waiver and the benefits to the U.S. Government.

(c) Blanket waiver requests shall not be submitted nor considered. The term "blanket waiver" refers to a nonrecurring cost recoupment charge waiver that is not related to a particular sale; for example, waivers for all sales to a country or all sales of a weapon system.

(d) A waiver request shall not be approved for a sale that was accepted without an nonrecurring cost recoupment charge waiver, unless the acceptance was conditional on consideration of the waiver request. A waiver shall not be granted for a direct commercial sale if such a waiver could not have been granted legally in connection with a sale made under the foreign military sales program. Any waiver approved for a direct commercial sale shall be contingent on the benefit of the waiver being passed on to the customer by the contractor.

(e) Requests for waivers shall be processed expeditiously, and a decision normally made to either approve or disapprove the request within 60 days after receipt. A waiver in whole or in part of the recoupment charge or a denial of the request shall be provided in writing to the appropriate DoD Component.

Dated: June 29, 1992.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92–15632 Filed 6–30–92; 11:28 am]

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Part V

# The President

**Proclamation 6453—National Awareness Week for Lifesaving Techniques, 1992**

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# Presidential Documents

Title 3—

The President

Proclamation 6453 of June 30, 1992

## National Awareness Week for Lifesaving Techniques, 1992

By the President of the United States of America

A Proclamation

Prompt, effective assistance can mean the difference between life and death for victims of accidents and other emergencies, which is why each of us should be prepared to respond accordingly. Citizens who have knowledge of and training in lifesaving techniques such as cardiopulmonary resuscitation (CPR) and the control of bleeding and shock can play a vital role in providing needed first aid during the critical minutes before professional help is available.

The National Center for Health Statistics reports that in 1989, the most recent year for which final figures are available, 296 out of every 100,000 deaths in the United States were caused by heart disease. More than 4,000 Americans died from drowning and submersion, and 3,578 of our citizens either suffocated or choked to death. A significant number of these tragic deaths could have been prevented if bystanders were trained in basic lifesaving techniques taught by the American Red Cross, the Young Men's and Women's Christian Associations, the American Heart Association, and other national and local organizations. Indeed, it is estimated that the help of knowledgeable bystanders could save as many as 50 percent of those injured, compared to accidents and emergencies in which care is unavailable until medical personnel arrive on the scene.

Since cardiopulmonary resuscitation was first introduced in the early 1960s, instruction and learning in this and other lifesaving measures have moved beyond the realm of the medical community and into the public at large. Today, Americans of all backgrounds have opportunities to learn CPR, the abdominal thrust, the Heimlich maneuver, and so forth. More and more of our citizens must take advantage of these opportunities if we are to reduce the number of preventable deaths caused by accidents and heart disease.

In recognition of the importance of education in first aid and other lifesaving techniques, the Congress, by Public Law 102–305, has designated the week of July 5 through July 11, 1992, as "National Awareness Week for Lifesaving Techniques" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate the week of July 5 through July 11, 1992, as National Awareness Week for Lifesaving Techniques. I call on local and State governments, the relevant Federal agencies, and the people of the United States to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of June, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 92-15791
Filed 7-1-92; 10:10 am]
Billing code 3195-01-M

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Part VI

# Department of Commerce

**International Trade Administration**

## Solicitation of Comments on Machine Tool Special Issue License Request; Notice

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Solicitation of Comments on Machine Tool Special Issue License Request**

**AGENCY:** International Trade Administration, Commerce.

**SUMMARY:** The Department of Commerce hereby announces its review of a request for special issue licenses under Paragraph 9 of the Understanding Between the Coordination Council for North American Affairs and the American Institute in Taiwan Concerning Trade in Certain Machine Tools, and requests comments from the public related to that review. This agreement is in effect from January 1, 1992, through December 3, 1993.

**FOR FURTHER INFORMATION CONTACT:** Holy A. Kuga, Director of the Office of Agreements Compliance, International Trade Administration, Department of Commerce, Washington, DC 20230, at (202) 377–4506.

**SUPPLEMENTARY INFORMATION:** Paragraph 9 of the Understanding Between the Coordination Council for North American Affairs and the American Institute in Taiwan Concerning Trade in Certain Machine Tools provides for the authorization of special issue licenses. Such licenses may be authorized for the importation of machine tools in excess of the export limit when we determine that approval would serve a unique national security need, approval would directly lead to an increase in U.S. machine tool manufacturing capacity, and/or comparable tools are not available from U.S. manufacturers or suppliers. Special issue licenses are granted for a limited time period and for a specified number of machines, on a product-by-product basis.

We have received a request for 400–450 units of cast iron frames for machining centers from Taiwan without numerical controls for the life of the voluntary restraint agreement (VRA). Because the first six-month period of the program has already elapsed, the Department will consider the request on a prorated basis, i.e., 300–337 machines for the remainder of the VRA, 100–112 machines per period. Also requested for the second VRA period, July 1, 1992, through December 31, 1992, are 50 machining centers without numerical controls. The Department will analyze this request on a six-month basis.

The Department of Commerce therefore affords the opportunity for public comment on this request, in particular regarding the domestic availability of the items described above, and any effects that the proposed additional imports of these items would have upon domestic machine tool manufacturers.

Any person who submits information may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the special issue license determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record.

Interested parties wishing to comment upon this review must send written comments not later than July 6, 1992, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than July 10, 1992. All documents submitted to the Secretary shall be accompanied by four copies.

The public record concerning this request will be maintained in the International Trade Administration's Central Records Unit, Room B099, Import Administration, U.S. Department of Commerce, Washington, DC, 20230. The records in this facility may be inspected and copied in accordance with regulations published in part 4 of title of the Code of Federal Regulations.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92–15827 Filed 7–1–92; 12:29 pm]

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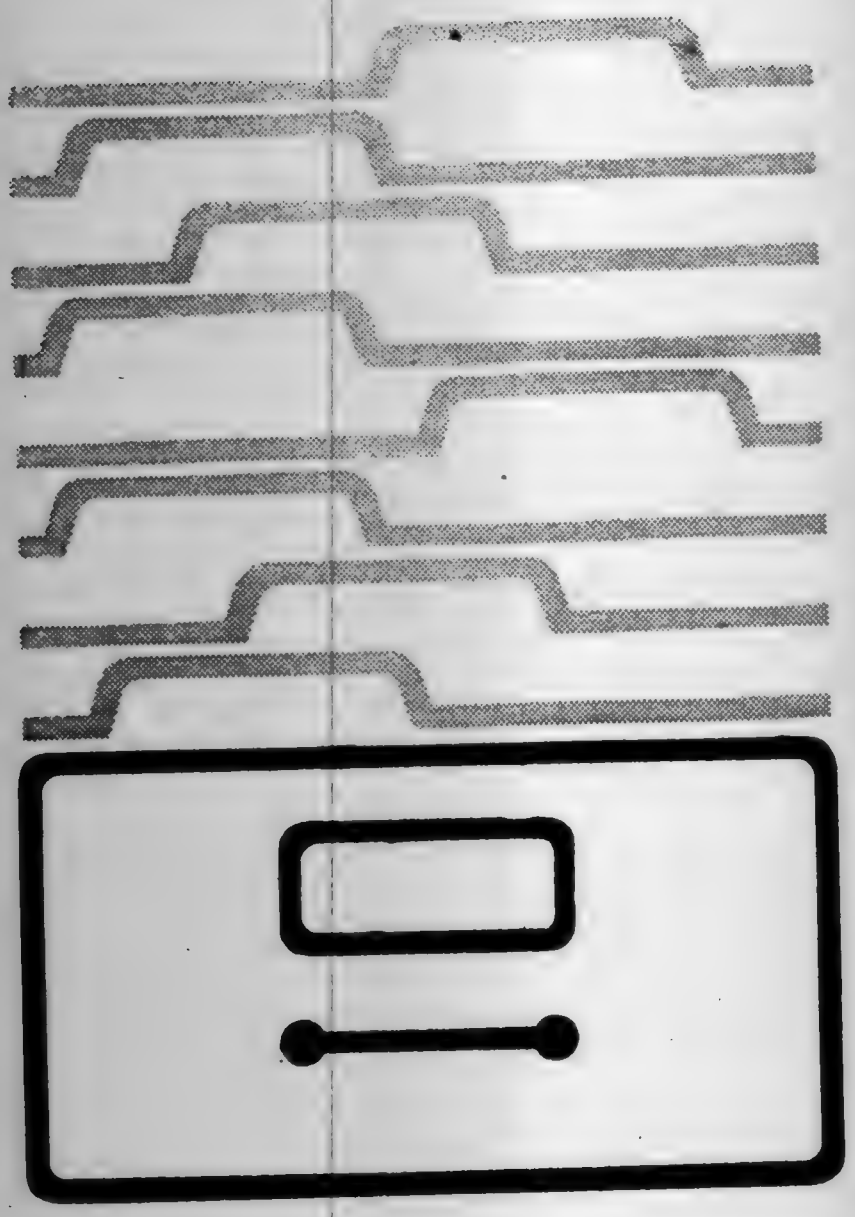

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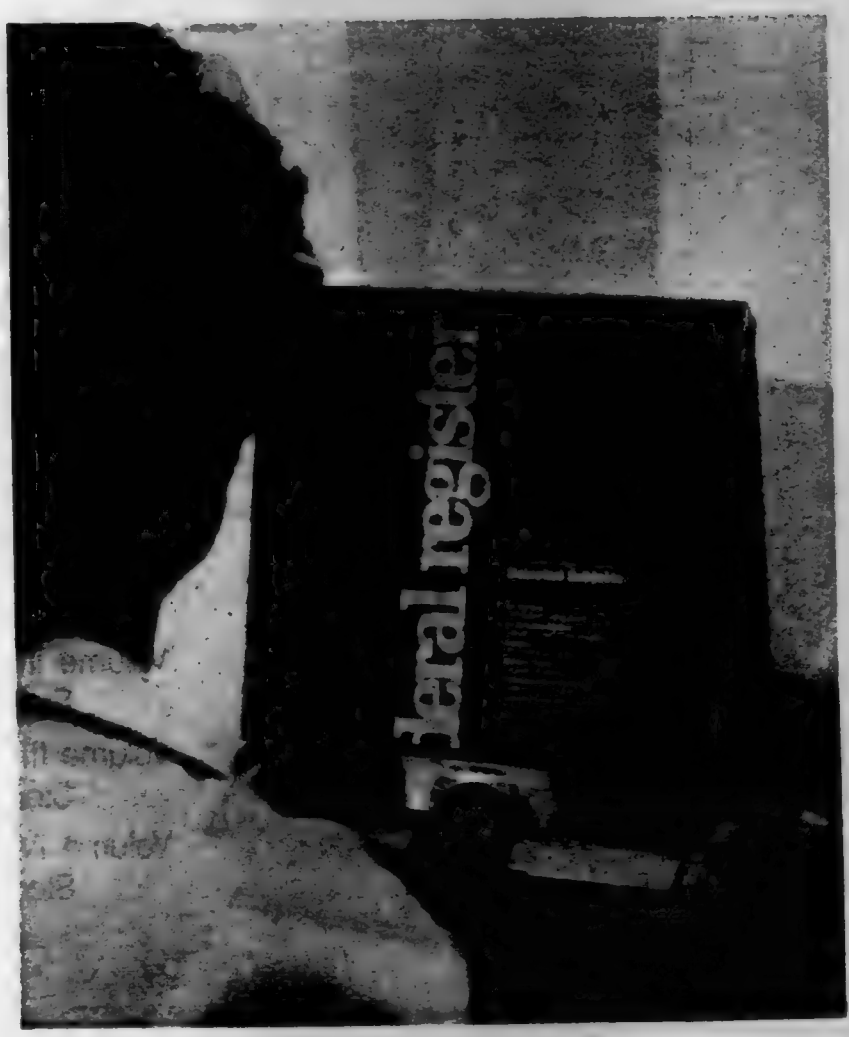


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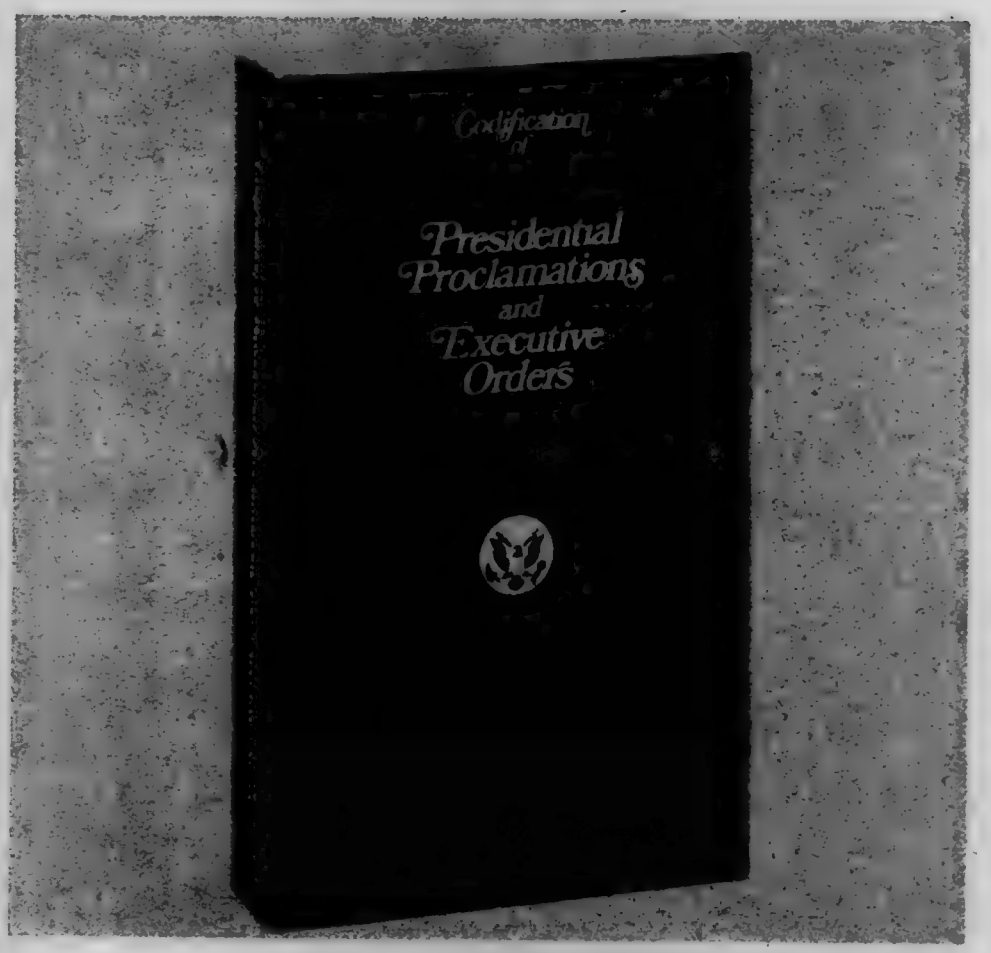


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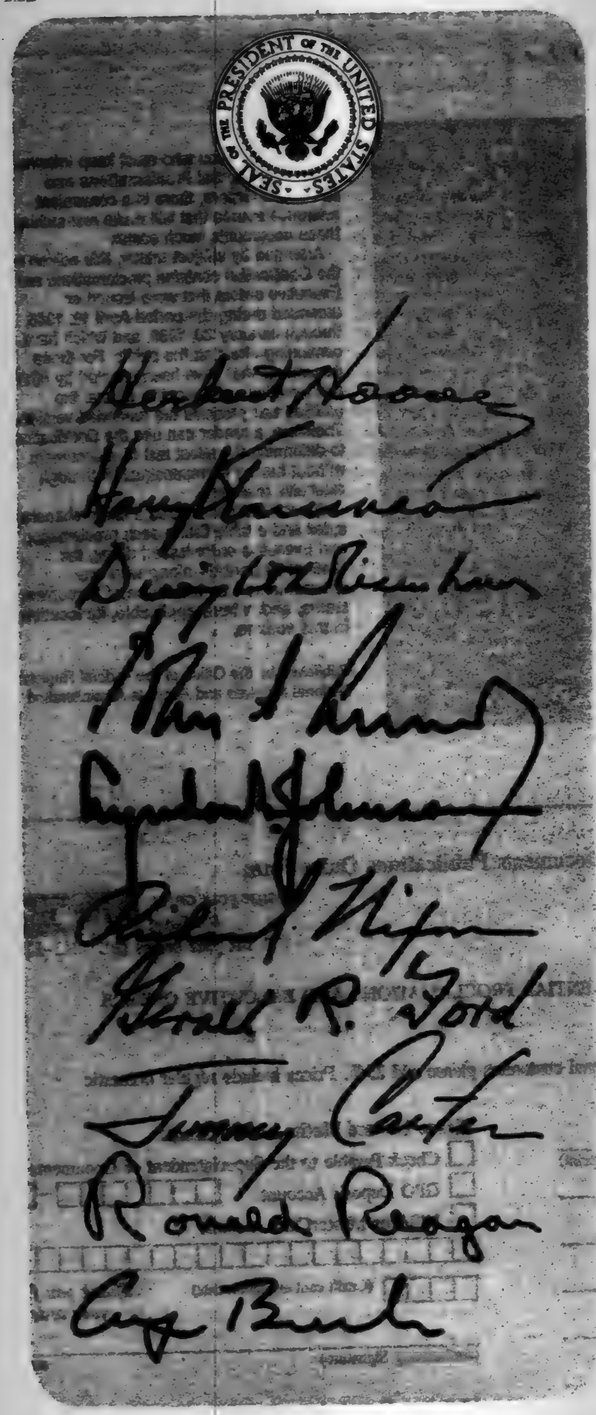

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# Presidential Documents

Title 3—

The President

**Proclamation 6454 of July 1, 1992**

## National Literacy Day, 1992

**By the President of the United States of America**

**A Proclamation**

Literacy not only constitutes a fundamental set of skills in a world where so much depends on the ability to read and to comprehend the written word—from city maps and children's school reports to job applications and tax forms—it also provides an inexhaustible source of opportunity and enrichment. Literacy gives us access to the great books and to other works that contain the creative genius and acquired wisdom of the ages. It also enables us to exercise more fully our rights and responsibilities as citizens, helping us to be more informed voters and more effective parents and teachers of our children. More than the ability to read and write, literacy is the priceless legacy of families who foster a love of learning and a commitment to education in each generation. It is also the vital tool of a work force that must have the knowledge and skills, including the technical skills, that are needed to excel in an increasingly competitive global environment.

On this occasion, we reaffirm the importance of literacy to the social and economic advancement of individuals and to the continued productivity and prosperity of our Nation. We also recognize all those who are working to promote literacy—among adults, as well as youth. In addition to thousands of dedicated teachers, this includes countless volunteers who serve as tutors and mentors, businesses and community associations that support libraries and literacy programs, and, of course, millions of parents who read together with their children and who take an active interest in their homework and in their progress in school.

As part of our America 2000 campaign, the Federal Government has been working to achieve our National Education Goal of full literacy for all Americans. In 1990, I established a Task Force on Literacy to coordinate Federal literacy policies and programs and to spur efforts to improve literacy in the United States. Last year I was pleased to sign the National Literacy Act of 1991, which provides for greater coordination of literacy programs, an historic step toward a more literate America.

The Congress, by House Joint Resolution 499, has designated July 2, 1992, as "National Literacy Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim July 2, 1992, as National Literacy Day. I call on all Americans to observe this day with appropriate programs and activities in recognition of the importance of literacy to individuals and to our Nation. I urge parents, especially, to recognize the importance of reading with their children and to encourage them, through word and example, to discover the rewards of lifelong learning.

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IN WITNESS WHEREOF, I have hereunto set my hand this first day of July, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 92-15889
Filed 7-1-92; 4:11 pm]
Billing code 3195-01-M



# Rules and Regulations

Federal Register
Vol. 57, No. 129
Monday, July 6, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 157

[Docket No. RM92-4-001; Order No. 542-A]

### Deletion of Certain Outdated or Nonessential Regulations Pertaining to the Commission's Jurisdiction Over Natural Gas; Order Denying Rehearing

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; order denying rehearing.

**SUMMARY:** On May 1, 1992, the Commission issued Order No. 542 (III FERC Stats. and Regs. ¶ 30,945, 57 FR 21891 (May 26, 1992)) which deleted certain outdated or nonessential regulations that pertained to the Commission's jurisdiction over natural gas. A request for rehearing was filed by Northwest Natural Gas Company (Northwest Natural) on May 28, 1992. This order denies Northwest Natural's request for rehearing.

**EFFECTIVE DATE:** June 29, 1992.

**FOR FURTHER INFORMATION CONTACT:** James Whitfield, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0119.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

On May 1, 1992, the Commission issued Order No. 542,[1] which deleted certain outdated or nonessential regulations that pertained to the Commission's jurisdiction over natural gas. On May 28, 1992, Northwest Natural Gas Company (Northwest Natural) filed a request for rehearing of Order No. 542. In particular, Northwest Natural's request for rehearing pertains to the deletion of § 157.7(d) of the Commission's regulations. For the reasons discussed below, the Commission will deny Northwest Natural's request for rehearing.

### Background

Northwest Natural, which is exempt from Commission jurisdiction under section 1(c) of the Natural Gas Act (Hinshaw amendment),[2] purchases, sells, and transports natural gas to customers in the states of Oregon and Washington. Northwest Pipeline Corporation (Northwest Pipeline), an interstate natural gas pipeline,[3] supplies most of this gas to Northwest Natural.

In Order No. 542, the Commission stated that certain of its regulations pertaining to natural gas matters were either outdated or served no useful purpose.[4] Accordingly, those regulations were deleted. The deleted regulations were included in 18 CFR parts 2, 154, 155, 157, 159, 160, 260,.281, and 375. The regulations deleted under part 157 are of concern here.

The Commission deleted §§ 157.7(b)–(g) and § 157.42 of part 157. Sections 157.7(b)–(g) set out rules for budget-type certificates for gas supply facilities, miscellaneous rearrangements of facilities, storage facilities, direct sales service and facilities, and field compression facilities. In deleting these sections, the Commission stated that the transactions covered by these sections are covered under subpart F of part 157 of the Commission's regulations.

In its request for rehearing, Northwest Natural opposes only the deletion of § 157.7(d). Basically § 157.7(d) provided for the submission of an abbreviated application for a budget-type certificate authorizing the construction and operation of natural gas pipeline and compression facilities for the testing and development of underground reservoirs for the possible storage of gas up to maximum of three-years, subject to certain volumetric and expenditure limitations.

### Northwest Natural's Request for Rehearing

Northwest Natural states that during the 1970's it undertook a program of drilling in Oregon for the purpose of developing underground storage. According to Northwest Natural, its effort resulted in the discovery of commercially producible gas reserves in the Mist field. Northwest Natural also states that it believes that the Mist field has additional formations that may be feasible for storage development. Northwest Natural adds that it is considering the development of these

[1] Deletion of Certain Outdated or Nonessential Regulations Pertaining to the Commission's Jurisdiction Over Natural Gas, 50 FERC ¶ 61,123 (1992).

[2] 15 U.S.C. 717(c).

[3] By order issued May 20, 1992, the Commission announced, consistent with Order No. 636, its intent to terminate certificates issued to Northwest Pipeline Corporation, among others, that authorized certain firm and interruptible storage services on a self-implementing basis. 59 FERC ¶ 61,205 (1992).

[4] Contemporaneously with the issuance of Order No. 542, the Commission issued two additional orders that, among other things, deleted certain outdated or obsolete regulations pertaining to the Commission's jurisdiction over electric and hydroelectric power. See Order No. 540, Modification of Hydro Electric Procedural Regulations, Including the Deletion of Certain Outdated or Non-Essential Regulations, 50 FERC ¶ 61,124 (1992); and Order No. 541, Deletions of Certain Outdated or Nonessential Regulations Pertaining to the Commission's Jurisdiction Under Parts II and III of the Federal Power Act, the Public Utility Regulatory Policies Act of 1978, the Pacific Northwest Electric Power Planning and Conservation Act and Delegations from the Secretary of Energy, 59 FERC ¶ 61,122 (1992).

formations for use in interstate commerce with services provided through the Northwest Pipeline system and other pipeline systems. If feasible, according to Northwest Natural, interstate storage service could be provided by Northwest Natural's subsidiaries and affiliates, which would be subject to the Commission's Natural Gas Act jurisdiction.

Northwest Natural also asserts that § 157.7(d) allowed the certificate holder to evaluate the economic, physical, and financial viability of a storage project and contemplated that certificate applications would be filed, if justified based on that evaluation, to provide interstate services under other sections of the Commission's regulations. Northwest Natural contends that the § 157.7(d) budget-type certification authorization would be valuable for non-jurisdictional companies. Northwest Natural argues that the deletion of § 157.7(d) prevents it from evaluating storage development.

Northwest Natural argues that § 157.7(d) is needed and should be retained. Northwest Natural also argues that by eliminating § 157.7(d), the Commission discriminates against non-interstate pipelines in establishing a *de facto* preference for interstate pipelines in testing and developing storage projects for interstate service. Additionally, Northwest Natural asserts that the Commission erred (1) in failing to conclude that Order No. 636 [5] supports retention of § 157.7(d); (2) in finding that the authorization under § 157.7(d) is covered by sections in subpart F of part 157 of the Commission's regulations; (3) by not providing notice and an opportunity to comment on the deletion of § 157.7(d); and (4) in making the rule effective upon issuance.

## Discussion

The Commission is unpersuaded by the arguments made in Northwest Natural's request for rehearing. Northwest Natural's arguments are grounded on two flawed premises: (1) That the budget-type authorizations under former § 157.7 of the Commission's regulations were still permitted after Order No. 234, and (2) that budget-type storage authorizations formerly available under § 157.7(d) also applied to non-interstate pipelines. Both premises are incorrect.

In Order No. 234,[6] which amended part 157 by adding subpart F to provide for interstate pipeline blanket certificate and abandonment authorization for certain activities, the Commission stated:

> [T]he Commission will not accept any new applications for budget-type certificates. It is expected that the blanket certificate eventually will replace the budget-type certificate.[7]

Furthermore, in Order No. 234–A, the Commission stated:

> The blanket certificate program is meant to supersede the budget-type authorizations previously available under § 157.7 of the regulations.[8]

Nothing could be more clear to show that budget-type authorizations were no longer being granted, and that § 157.7(d) was a remnant of a former regulatory era that was appropriately deleted.

Moreover, the Commission's regulations obviously apply only to pipelines regulated by the Commission. Thus, non-jurisdictional pipelines are not subject to the requirements of part 157 of the regulations, and the budget-type authorizations under § 157.7 have never been available to non-jurisdictional pipelines, including Northwest Natural,[9] even prior to their supersession by Order No. 234. Accordingly, Northwest Natural's premise that the budget-type authorization under § 157.7(d) was available to non-jurisdictional pipelines is wrong.

Inasmuch as the budget-type authorizations under § 157.7(d) were never available to intrastate pipelines, there is no merit to Northwest Natural's argument that the Commission, by eliminating § 157.7(d), discriminates against non-interstate pipelines, or establishes a *de facto* preference for interstate pipelines in the testing and development storage projects.

The Commission also finds unpersuasive Northwest Natural's argument that the Commission erred in finding that the former authorization under § 157.7(d) is now covered by subpart F of part 157. Order No. 234 stated clearly that the blanket certificate program provided for under subpart F of part 157 was meant to supersede the budget-type authorizations previously available under § 157.7.[10]

Northwest Natural's procedural argument that the Commission erred by not issuing notice and providing an opportunity for comments prior to the issuance of Order No. 542 is also based on the same illusory premise that the deleted regulation was still in use. Since, as indicated above, neither Northwest Natural nor any other pipeline could file for budget-type authorization under § 157.7 at the time it was rescinded, issuance of Order No. 542 could not alter any person's substantive rights or interests. In these circumstances, the Administrative Procedure Act does not require prior notice and comment.[11]

The Commission also rejects Northwest Natural's related procedural argument that it erred by making its rule effective immediately upon issuance. Since Order No. 542 did not affect the substantive rights or interests of any party, but merely deleted regulations that were no longer pertinent, there was no reason to provide for a period of time between issuance of the rule and its effectiveness.

In sum, the Commission finds no merit in Northwest Natural's argument that Order No. 636 supports retention of § 157.7(d). Order No. 234 concluded long ago that no new applications for budget-type certificates would be accepted, nor did Order No. 636 resurrect the budget-type certificate program. In any event, as will be discussed below, the deletion of § 157.7(d) does not forestall Northwest Natural from developing and testing storage projects if it so wishes.

If Northwest Natural wants to be involved in interstate activity, it must apply to the Commission for certificate authorization. Northwest Natural has two choices. First, if wants to maintain its non-jurisdictional status, and has storage capacity in excess of its existing intrastate requirements, it can apply for a limited jurisdiction blanket certificate under § 284.224 of the Commission's regulations to provide storage service that is subject to the Commission's jurisdiction under the Natural Gas Act. On the other hand, Northwest Natural can file for a stand-alone certificate to construct and operate facilities for interstate storage service.[12] However,

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[5] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under part 284 of the Commission's Regulations and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol. 57 FR 13267 (April 16, 1992), III FERC Stat. & Regs. ¶ 30,939 (1992).

[6] Order No. 234, 47 FR 24286 (June 4, 1982), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,368 (1982), *reh'g granted in part and denied in part*, Order No. 234–A, 47 FR 38877 (September 3, 1982) FERC Stats. and Regs. [Regulations Preambles 1982–1985] ¶ 30,389 (1982).

[7] FERC Statutes and Regulations ¶ 30,368, at p. 30,203 (1982).

[8] FERC Statutes and Regulations ¶ 30,389, at p. 30,266 (1982).

[9] Northwest Natural never filed an application for budget-type authorization.

[10] FERC Statutes and Regulations ¶ 30,389, at p. 30,266 (1982).

[11] 5 U.S.C. 553(b).

[12] If Northwest Natural chooses to pursue this second option, it is encouraged to do so by establishing a separate entity to provide the jurisdictional storage service.

any certificate issued for service provided through those facilities would not be case-specific, but would be an open access blanket transportation certificate.[13]

*The Commission orders:* Northwest Natural's request for rehearing is denied.

By the Commission

**Lois D. Cashell,**
*Secretary.*

[FR Doc. 92-15664 Filed 7-2-92; 8:45 am]
BILLING CODE 6717-01-M

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**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 4**

**[T.D. 92-61]**

## Addition of Finland to the Pleasure-Vessel List of Countries Entitled to Reciprocal Cruising Licenses

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by adding Finland to the list of countries whose pleasure vessels may be issued U.S. cruising licenses. Customs has been duly informed that yachts used and employed exclusively as pleasure vessels belonging to any U.S. resident are allowed to arrive at and depart from Finnish ports and cruise in the waters of Finland without being subjected to formal entry and clearance procedures. Therefore, Customs is extending reciprocal entry and clearance privileges to Finnish-flag pleasure vessels.

**EFFECTIVE DATE:** This amendment is effective July 6, 1992. These reciprocal privileges became effective for Finland on March 19, 1992.

**FOR FURTHER INFORMATION CONTACT:** B. James Fritz, Carrier Rulings Branch (202) 566-5706.

[13] See Blue Lake Gas Storage Company, *et al.*, 59 FERC ¶ 61,118 (1992) (*Blue Lake*). In *Blue Lake*, the Commission, among other things, denied Blue Lake's request for case-specific certificate authority to provide storage service to ANR Pipeline Company, granted Blue Lake a blanket transportation certificate under part 284, subpart G, and announced that it will no longer grant case-specific storage certificates. The granting of case-specific storage certificates, is no longer warranted because of the role played by open access transportation in today's market, and because the granting of such certificates would conflict with the Commission's open access transportation policy to add major new facilities to the interstate system that are not now subject to open access.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4.94(a), Customs Regulations (19 CFR 4.94(a)), provides that U.S.-documented vessels with a recreational endorsement, that are used exclusively for pleasure and not engaged in any trade and that do not violate the U.S. Customs or navigation laws, may proceed from port to port in the U.S. or to foreign ports without entering and clearing, provided they have not visited a hovering vessel. However, when returning from a foreign port or place, such pleasure vessels are required to report their arrival pursuant to § 4.2, Customs Regulations (19 CFR 4.2).

Foreign-flag yachts entering the U.S. are generally required to comply with the laws applicable to foreign vessels arriving at, departing from, and proceeding between ports of the U.S. See, for example Sections 433 and 1435, Tariff Act of 1930, as amended (19 U.S.C 1433 and 1435). However, § 4.94(b), Customs Regulations (19 CFR 4.94(b)), provides that pleasure vessels from certain countries found to exempt U.S. pleasure vessels from certain formal Customs procedures may be issued cruising licenses that reciprocally exempt them from similar, U.S. formal entry and clearance procedures (*e.g.*, filing manifests, obtaining permits to proceed, and paying entry and clearance fees). Then, upon arrival at each U.S. port of entry, the masters of such licensed vessels simply report the fact of arrival to the appropriate Customs office. Also, yachts or pleasure vessels not carrying passengers or merchandise in trade are exempt from paying tonnage tax and light money pursuant to § 4.21(b)(5), Customs Regulations (19 CFR 4.21(b)(5)). The list of such countries that have been granted reciprocal customs privileges is set forth at § 4.94(b).

By diplomatic note dated March 16, 1992, the Finnish Embassy in Washington, DC, informed the Department of State that Finland allows U.S. yachts and other pleasure boats to arrive at and depart from Finnish ports and to cruise without payment of import duties or taxes and free of import prohibitions and restrictions, subject to re-exportation and certain other conditions. By letter dated March 19, 1992, the Department of State advised the Chief, Carrier Rulings Branch, U.S. Customs Service, that the Finnish treatment of U.S. pleasure vessels in Finnish waters appeared to satisfy the conditions for reciprocal customs privileges and recommended that Finland be added to the list of countries under the provisions of 19 CFR 4.94(b). The Chief, Carrier Rulings Branch, is of the opinion that satisfactory evidence had been furnished to grant the reciprocal privileges allowed under § 4.94(b), effective March 19, 1992, and requested that Finland be added to the list of countries enumerated at § 4.94(b).

Authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

### Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, The Regulatory Flexibility Act, and Executive Order 12291

Because this amendment merely reflects a statutory requirement that confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are not required. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "major rule" as defined in E.O. 12291; therefore, a regulatory impact analysis is not required.

### Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations and Disclosure Law Branch.

### List of Subjects in 19 CFR Part 4

Customs duties and inspection, Maritime carriers, Vessels, Yachts.

### Amendment to the Regulations

To reflect the reciprocal privileges granted to vessels registered in Finland, Part 4, Customs Regulations (19 CFR part 4), is amended as set forth below:

**PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES**

1. The authority citation for part 4 continues to read in part as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * *

Section 4.94 also issued under 19 U.S.C. 1433, 1434, 1435, 1441, 46 U.S.C. App. 91, 104, 313, 314;

* * * * *

**§ 4.94 [Amended]**

2. In § 4.94, paragraph (b) is amended by inserting, in appropriate alphabetical order, "Finland" in the list of countries whose yachts may be issued U.S. cruising licenses.

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Dated: June 26, 1992.

Kathryn C. Peterson,

*Chief, Regulations and Disclosure Law Branch.*

[FR Doc. 92-15590 Filed 7-2-92; 8:45 am]

BILLING CODE 4820-02-M

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**19 CFR Part 4**

**[T.D. 92-62]**

## Addition of St. Vincent and the Grenadines to the Coastwise-Trade List of Nations Entitled to Certain Reciprocal Vessel Privileges

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by adding St. Vincent and the Grenadines to the list of nations whose vessels are entitled to certain reciprocal coastwise trade privileges relating to the transport of empty cargo vans, empty lift vans, and empty shipping tanks between points in the U.S. Customs has been duly informed that the Government of St. Vincent and the Grenadines places no restrictions on the carriage of empty cargo vans, empty lift vans, empty shipping tanks, and stevedoring equipment by U.S. vessels between its ports. Therefore, Customs is extending reciprocal coastwise trade privileges to St. Vincent and Grenadine-flag vessels.

**DATES:** This amendment is effective July 6, 1992. These reciprocal privileges for vessels registered in St. Vincent and the Grenadines became effective on January 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** B. James Fritz, Carrier Rulings Branch (202) 566-5706.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883), referred to as the Jones Act, provides generally that no merchandise shall be transported by water, or by land and water, between points in the U.S. except in vessels built in and documented under the laws of the U.S. and owned by U.S. citizens. However, the sixth proviso, as amended, states that, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the U.S., reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the U.S. will not apply to its vessels.

The regulations implementing these reciprocal coastwise transportation privilege provisions are found at § 4.93, Customs Regulations (19 CFR 4.93). Section 4.93(a)(1) provides for the exemption for certain nations' vessels transporting empty cargo vans, empty lift vans, and empty shipping tanks, and § 4.93(b)(1) enumerates those nations found to extend reciprocal privileges to U.S. vessels in this regard. Section 4.93(a)(2) provides for a similar exemption relating to stevedoring equipment and material, and § 4.93(b)(2) similarly enumerates those nations found to extend similar reciprocal privileges to U.S. vessels in this regard.

Based on diplomatic notes from the Government of St. Vincent and the Grenadines to the Department of State, on January 14, 1992, the Department of State advised the Chief, Carrier Rulings Branch, U.S. Customs Service, that the evidence of the St. Vincent and the Grenadines' treatment of U.S. vessels on the carriage of empty cargo vans, empty lift vans, empty shipping tanks, and stevedoring equipment between its ports appeared to satisfy the conditions for reciprocal privileges and recommended that St. Vincent and the Grenadines be added to the list of nations under the provisions of 19 CFR 4.93(b) (1) and (2). The Chief, Carrier Rulings Branch, is of the opinion that satisfactory evidence had been furnished to grant the reciprocal privileges allowed under § 4.93, effective January 14, 1992, and requested that St. Vincent and the Grenadines be added to the list of nations enumerated at § 4.93(b)(1) and (2).

Authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

### Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12291

Because this amendment merely reflects a statutory requirement that confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are not required. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "major rule" as defined in E.O. 12291; therefore, a regulatory impact analysis is not required.

### Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations and Disclosure Law Branch.

### List of Subjects in 19 CFR Part 4

Customs duties and inspection, Maritime carriers, Vessels, Coastwise trade.

### Amendment to the Regulations

To reflect the reciprocal privileges granted to vessels registered in St. Vincent and the Grenadines, part 4, Customs Regulations (19 CFR part 4), is amended as set forth below:

## PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * *

Section 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. App. 883;

* * * * *

**§ 4.93 [Amended]**

2. In § 4.93, paragraphs (b) (1) and (2) are amended by inserting, in appropriate alphabetical order, "St. Vincent and the Grenadines" in the list of nations entitled to reciprocal privileges.

Dated: June 26, 1992.

Kathryn C. Peterson,

*Chief, Regulations and Disclosure Law Branch.*

[FR Doc. 92-15591 Filed 7-2-92; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**Patent and Trademark Office**

**37 CFR Parts 1, 2 and 3**

**[Docket No. 910246-2140]**

**RIN 0651-AA43**

## Changes in Patent and Trademark Assignment Practice

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Patent and Trademark Office (Office) is amending the rules of practice regarding assignments in patent and trademark cases to improve and clarify the rules, to codify changes in practice and to consolidate the rules. The Office has combined the assignment

rules currently in parts 1 and 2 into a new part 3 directed to assignments.

**EFFECTIVE DATE:** September 4, 1992. These rules will be applicable to all documents filed with the Office on or after the effective date.

**FOR FURTHER INFORMATION CONTACT:** Trademark related matters: Lynne Beresford by telephone at (703) 305–9464 or by mail marked to her attention addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231. Patent related matters: Jeffrey V. Nase by telephone at (703) 305–9282 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box DAC, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** In a Notice of Proposed Rulemaking published in the **Federal Register** on May 10, 1991 at 56 FR 21641 and in the Patent and Trademark Office "Official Gazette" of June 4, 1991 at 1127 O.G. 8–16, the Office proposed to amend the rules of practice in patent and trademark cases to revise, simplify, remove, or clarify existing assignment rules or to codify certain practices currently in effect. Changes were proposed for rules relating to the documents that will be recorded, to the requirements for recording a document, to the effect of recording, to new cover sheet requirements, to the appointment of domestic representatives; and to prosecution by assignees and issuance to assignees. While the existing rules do not require a cover sheet to accompany each document submitted for recording, typically a cover letter is submitted to ensure proper processing of the document.

The Office has encouraged the public to use a cover letter containing specific information concerning the document being submitted with each document submitted for recording. See "Helpful Hints", 1114 Official Gazette 77 (May 29, 1990). The public has adopted the suggested procedure to such an extent that most documents now submitted for recordation are accompanied by a cover letter which contains the suggested data. Documents submitted with these cover letters have enabled the Office to greatly improve the quality and efficiency of the recording process. To better ensure that the correct data is captured in recordation and recorded promptly, the Office is making a cover sheet mandatory.

The cover sheet will contain all the information necessary for the Assignment Branch to properly and promptly process the document.

Written comments were submitted by 12 firms, 2 individuals, 4 corporations and 1 organization. No one testified at the oral hearing held on July 17, 1991.

The following includes a brief discussion of the rules being changed and the reasons for those changes, a detailed section-by-section analysis of the final rules, and an analysis of the comments received in response to the notice of proposed rulemaking.

### Specific Rules To Be Deleted or Added

The existing rules of practice in parts 1 and 2 of title 37 of the Code of Federal Regulations which are deleted are §§ 1.32, 1.331, 1.332, 1.333, 1.334, 2.185, 2.186 and 2.187. These rules are deleted in their entirety and rewritten and renumbered under a new part 3. Table 1 is provided to assist readers in correlating previous rules with the new rules.

TABLE 1

| Old section | New section |
|---|---|
| 1.32 | 3.71 and 3.73. |
| 1.331(a) | 3.11. |
| 1.331(b) | 3.26. |
| 1.331(c) | 3.21. |
| 1.332 | 3.51. |
| 1.333 | 3.56. |
| 1.334 | 3.81. |
| 2.185(a) | 3.11. |
| 2.185(a)(1) | 3.31. |
| 2.185(a)(2) | 3.26. |
| 2.185(a)(3) | 3.41. |
| 2.185(a)(4) | 3.61. |
| 2.185(b) | 3.31(b). |
| 2.185(c) | 3.51. |
| 2.186 | 3.71 and 3.73. |
| 2.187 | 3.85. |

Consideration was given to moving § 1.12 (Assignment records open to public inspection.) to part 3. However, since this section primarily relates to records maintained by the Office and procedures for accessing those records, and no comments were received regarding the placement of § 1.12, this section remains under the general heading "Records and Files" of the Patent and Trademark Office.

### Discussion of Specific Sections To Be Changed or Added

Section 1.12(a) is revised to reflect the fact that all assignment records related to pre-1955 trademark records and pre-1957 patent records were transferred to the National Archives and Records Administration (NARA) during 1990. All assignments recorded on or after January 1, 1955, for trademarks and May 1, 1957, for patents continue to be maintained by the Office. The pre-1955/1957 records have been transferred to NARA to allow for greater accessibility to the public, improvement of file integrity for the older records, and preservation of these materials. The pre-1955/1957 assignment cards, digest books, and libers were stored in four locations: The Assignment Search Room (ASR) at the Office, the Federal Records Center in Suitland, Maryland, the National Archives in downtown Washington, DC, and the National Archives location in Alexandria, Virginia. Storage of information in these various locations made searching of old assignment records difficult. The materials located at the Federal Records Center could be ordered from the ASR. However, many times it took months to receive the materials.

All assignment records from 1837 to December 31, 1954, for trademarks and from 1837 to April 30, 1957, for patents are now maintained and are open for public inspection in the National Archives Research Room located at the Washington National Records Center Building, 4205 Suitland Road, Suitland, Maryland 20746. Assignments recorded before 1837 are maintained at the National Archives and Records Administration, 841 South Pickett Street, Alexandria, Virginia 22304.

All requests for abstracts of title continue to be provided by the Office upon request and payment of fees set forth in §§ 1.19 and 2.6. Requests for copies and certified copies of the pre-1955 records for trademarks and pre-1957 records for patents should be directed to NARA since those records are not maintained by the Office. Since these records are maintained by NARA, it is more expeditious to request copies directly from NARA, rather than the Office, which would then have to route the requests to NARA. Payment of the fees required by NARA should accompany all requests for copies.

Another change makes clear that separate assignment records are kept for patents and trademarks, and that an extra charge will be imposed by the Office on requests for copies of recorded assignments if the correct reel and frame number are not identified.

Sections 1.17 and 1.46 are amended to make reference to § 3.81, which replaces § 1.334, and delete reference to § 1.334. The amount of the fee for recording a document is not affected by this rule change.

Section 1.104(e) is amended to make reference to part 3, which replaces § 1.331, and delete reference to § 1.331.

Section 3.1 is added to set out definitions of terms used in part 3. Terms which are defined include "application," "assignment," "document," "Office" (meaning Patent and Trademark Office), "recorded document," and "registration."

Definitions are provided to make clear the intended meanings of the terms used in part 3. These definitions are intended to be applicable only to part 3. For example, the term "application" is defined, for the purpose of part 3, to mean a national application for patent, an international application for patent that designates the United States of America, or an application to register a trademark, unless otherwise indicated.

Section 3.11 replaces and modifies the practice set forth in §§ 1.331(a) and 2.185(a), which specify the documents the Office will record. This section specifies that assignments of patents and registrations will be recorded, as well as other documents which affect title to applications, registrations and patents. Section 3.11 requires that a completed cover sheet as specified in §§ 3.28 and 3.31 be submitted with the document to be recorded.

Section 3.16 is added to incorporate the limitation set out in 15 U.S.C. 1060 proscribing the assignment of an intent-to-use trademark application prior to the filing of a statement of use, except as a part of the sale of an on-going business. Because the rules in part 3 are intended to address all rules relating to assignments, it is appropriate to refer to the statutory requirements of an assignment of an intent-to-use trademark application.

Section 3.21 replaces and modifies the practice of § 1.331(c). Section 3.21 sets forth requirements for the identification of patents or patent applications in documents submitted for recording. An assignment relating to a patent must identify the patent by number. The name of the inventor, the issue date, and title of the invention as stated in the patent may also be given in the assignment to provide additional information on the patent being assigned. An assignment relating to a national patent application must identify the national patent application by application number (consisting of the series code and the serial number, e.g., 07/123,456) or serial number and filing date. An assignment relating to an international patent application which designates the United States of America must identify the international application number (e.g., PCT/US90/01234). The name of the inventor, date of filing, and title of the invention as stated in the patent application may also be given in the assignment. If an assignment is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by its date of execution, name of each inventor, and title of the invention so that there can be no mistake as to the patent application intended. Assignments submitted for recording that do not identify the patent or patent application as required by this section will not be recorded, but will be returned to the correspondence address that is required to be provided on the cover sheet by § 3.31(e).

Section 3.24 is added to set out formal document requirements to facilitate and expedite the recording process. This section requires that documents, either the original or a true copy of the original, submitted for recording be legible, using only one side of each page. The paper used should be flexible, white, durable, and preferably no larger than 21.6 × 33.1 cm. (8½ × 14 inches), with a 2.5 cm. (one-inch) margin on all sides. Documents submitted in this form are camera-ready and can be recorded expeditiously with little additional handling required. Documents that fail to meet the legibility and single-sided paper requirements of this section will be returned as set forth in § 3.51.

Section 3.26 replaces and modifies the practice of §§ 1.331(b) and 2.185(a)(2). Section 3.26 provides that the Office will accept and record non-English documents provided they are accompanied by a verified English translation signed by the translator. Documents submitted that fail to meet the requirements of this section will be returned as set forth in § 3.51.

Section 3.27 is added to set out how documents submitted for recording should be addressed to the Office. To ensure prompt and proper processing, documents and their cover sheets should be addressed to the Commissioner of Patents and Trademarks, Box Assignments, Washington, DC 20231, unless they are filed together with new applications or with a petition under § 3.81(b). Petitions under § 3.81(b) should be addressed to the Commissioner of Patents and Trademarks, Box DAC, Washington, DC 20231. New applications and other petitions should be addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

Section 3.28 is added to set out the requirement that all documents submitted to the Office for recording be accompanied by at least one cover sheet referring either to the patent applications and patents or to the trademark applications and registrations against which the document is to be recorded. Only one set of documents and cover sheets to be recorded should be filed. If a document to be recorded includes interests in, or transactions involving, both patents and trademarks, separate patent and trademark cover sheets must be submitted. If a document to be recorded is not accompanied by a completed cover sheet, the document and any incomplete cover sheet will be returned to the correspondence address for proper completion of the cover sheet and resubmission of the cover sheet and document. While the previous rules did not require a cover sheet to accompany each document submitted for recording, typically a cover letter is submitted to ensure proper processing of the document. The Office is making a cover sheet mandatory in order to better ensure prompt and proper processing of all documents submitted for recording. The cover sheet contains all the information necessary for the Office to process the document.

Section 3.31 is added to set out the formal requirements of the cover sheet. Section 3.31 requires that each patent or trademark cover sheet must contain (1) the name of the party conveying the interest; (2) the name and address of the party receiving the interest; (3) a brief description of the interest conveyed or transaction to be recorded (e.g., assignment, license, change of name, merger, security agreement, etc.); (4) each application number, patent number or registration number against which the document is to be recorded, or an indication that the document is filed together with a patent application; (5) the name and address of the party to whom correspondence concerning the document to be recorded should be mailed; (6) the number of applications, patents or registrations identified in the cover sheet and the total fee; (7) the date the document was executed; (8) an indication that the assignee of a trademark application or registration who is not domiciled in the United States has designated a domestic representative; (9) a statement by the party submitting the document that to the best of the person's knowledge and belief, the information contained on the cover sheet is true and correct, and (10) the signature of the party submitting the document. The term "party" as used in this rule means the person whose name appears on the documents to be recorded, that person's attorney or registered agent, or a corporate officer where a corporation's name appears on the document. Sample cover sheets for patent documents and for trademark documents are shown in appendices A and B.

Section 3.34 is added to set out the procedure to correct obvious errors in a recorded cover sheet. This section requires that if a recorded cover sheet contains an error that is apparent when

the cover sheet is compared with the recorded document, the error will be corrected only if a corrected cover sheet is filed for recordation. The corrected cover sheet must be accompanied by the originally recorded document or a copy of the originally recorded document and by a new assignment recording fee in the appropriate amount.

Section 3.41 replaces and consolidates practice under §§ 1.331(a) and 2.185(a)(3) regarding recording fees. Section 3.41 requires that all requests to record documents be accompanied by the appropriate fee. A fee is charged for each application, patent and registration identified in the cover sheet. The recording fee for patents and patent applications is specified in § 1.21(h). The recording fee for trademark registrations and applications is specified in § 2.6(q).

Section 3.51 replaces and modifies the practice of §§ 1.332 and 2.185(c). Section 3.51 sets the date of recording of a document as the date the document meeting the requirements for recording set forth in this Part is filed in the Office. A document which does not comply with the identification requirements of § 3.21 will not be recorded. For documents not accepted for recording, parties can petition under 37 CFR §§ 1.181 and 2.146(a). Other documents not meeting the requirements for recording, for example, a document submitted without a completed cover sheet, without the required fee, or without any required translation, will be returned for correction to the sender when a return address is available. The returned papers, stamped with the official date of receipt in the Office, will be accompanied by a letter indicating that if the returned papers are corrected and resubmitted to the Office within the time specified in the letter, the Office will consider the original date of filing of the papers as the date of recording of the papers. Submitters can use the certificate procedure under either § 1.8 or § 1.10 for resubmissions of returned papers if they desire to have the benefit of the date of deposit in the United States Postal Service. If the returned papers are not corrected and resubmitted within the specified period, the date of filing of the corrected papers will be considered to be the date of recording of the papers. Extensions of time will not be available to extend the specified period to resubmit the returned papers.

Section 3.54 is added to set out the effect of recording a document. This section states that the recording of a document is not a determination by the Office of the validity of the document or the effect that document has on the title to an application, a patent, or a registration. The Office will determine, when necessary, what effect a document has, including whether a party has the authority to take an action in a matter pending before the Office. Examples of when the Office will need to determine whether a party has the authority to take an action in a matter pending before the Office include: (1) Prosecution by the assignee as in § 3.71; (2) consent of an assignee to the filing of a reissue application as provided in § 1.172; and (3) execution of a disclaimer under § 1.321 by an assignee.

Section 3.56 replaces and modifies the practice of § 1.333. Section 3.56 provides that an assignment, which at the time of its execution is conditional on a given act or event, will be treated by the Office as an absolute assignment. This section serves as notification as to how a conditional assignment will be treated by the Office in any proceeding requiring a determination of the owner of an application, patent or registration. Since the Office will not determine whether a condition has been fulfilled, the Office will treat the submission of such an assignment for recordation as signifying that the act or event has occurred.

Section 3.61 replaces and modifies the practice of § 2.185(a)(4). Section 3.61 sets forth that an assignee of a trademark application or registration not domiciled in the United States must designate a domestic representative in writing to the Office. Assignees of patent applications or patents may designate domestic representatives if the assignee is not residing in the United States. 35 U.S.C. 293. The designation is required to state the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the application, patent or registration or rights thereunder.

Section 3.71 replaces and modifies the practice of §§ 1.32 and 2.186. Section 3.71 sets forth that the assignee of record of the entire right, title and interest in an application for patent is entitled to conduct the prosecution of the patent application to the exclusion of the named inventor. Similarly, the assignee of an application for registration is entitled to conduct the prosecution of the trademark application to the exclusion of the applicant.

Section 3.73 is added to set out the procedure by which an assignee can establish the right to take action in an application, patent or registration. The inventor is presumed to be the original owner of a patent application and any patent that may issue therefrom, unless there is an assignment. The original applicant is presumed to be the original owner of a trademark application and any registration that may issue therefrom, unless there is an assignment. Any action before the Office with respect to an assigned patent application, patent, or reexamination may be taken by the assignee of the entire right, title, and interest, provided ownership is established to the satisfaction of the Commissioner. The assignee may establish ownership by submitting to the Office documentary evidence of a chain of title from the original owner to the assignee or by specifying (e.g., reel and frame number, etc.) where such evidence is recorded in the Office. Additionally, when a patent assignee is not represented by an attorney or registered agent, a statement signed by the assignee must also be submitted stating the evidence has been reviewed and certifying that, to the best of the party's knowledge and belief, title is in the party seeking to take the action. Documents submitted to establish ownership may be required to be recorded in the Office as a condition to permitting the requesting party to take action in a matter pending before the Office. Any action before the Office with respect to an assigned trademark registration, application or post-registration matter, may be taken by the assignee provided ownership is established to the satisfaction of the Commissioner by recording an assignment to the assignee or by submitting other proof of the assignment.

Section 3.81 replaces and modifies the practice of § 1.334. Section 3.81 sets forth the procedure for issuance of a patent to an assignee. If an assignment of the entire right, title, and interest is recorded before the issue fee is paid for a patent application, the patent may issue in the name of the assignee. If the assignee holds an undivided part interest, the patent may issue jointly to the inventor and the assignee. At the time the issue fee is paid, the name of the assignee must be provided if the patent is to issue solely or jointly to that assignee. If the assignment is submitted for recording after the date of payment of the issue fee, but prior to issuance of the patent, the assignee may petition that the patent issue to the assignee. Any such petition must be accompanied by the fee set forth in § 1.17(i)(1).

Section 3.85 replaces and modifies the practice of § 2.187. Section 3.85 sets forth the procedure for issuance of a registration to an assignee. The certificate of registration may be issued to the assignee of the applicant, or in a

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new name of the applicant, provided that the party files a written request in the trademark application record by the time the application is being prepared for issuance of the certificate of registration, and an appropriate document is recorded in the Office. If the assignment or name change document has not been recorded in the Office, then the written request must state that the document has been filed for recordation. The address of the assignee must be made of record in the trademark application file.

**Response to Comments on the Rules**

The comments received in response to the notice of proposed rulemaking have been given careful consideration and a number of the suggested modifications have been adopted. The comments and responses are discussed below.

In this discussion, "Patent and Trademark Office" is abbreviated as "Office" or "PTO."

*Comment:* Two comments were received addressed to the overall rule package. One comment expressed concern over the potential confusion of instituting a new part 3. It was suggested that parts 1 and 2 be amended to contain the necessary changes. Another comment was concerned that the rules and specifically the new cover sheet requirement would impede promptness and accuracy of the recordation process.

*Response:* The Office has determined that the new rules will result in greater efficiency and accuracy in the recordation process and improve the integrity of the records maintained by the PTO. Further, the PTO believes that a new part 3, containing all rules relating to assignments, will be beneficial to the majority of patent and trademark system users.

*Comment:* Section 3.1 was proposed to define "application" as an application for patent or an application to register a trademark. One comment questioned whether international applications filed under the Patent Cooperation Treaty were included in the definition of the word "application."

Two comments were received concerning the definition of "assignment." As proposed, § 3.1 defines "assignment" of a trademark in terms of a "trademark application" or "registration." The comments suggested that because Section 10 of the Trademark Act, 15 U.S.C. 1060, speaks in terms of a "registered mark" or a "mark for which application to register has been filed," which was reflected in previous trademark rule 2.168, the different terminology may be construed to permit assignment of a trademark without assignment of the underlying goodwill.

*Response:* The wording of § 3.1 has been changed to include both national applications for patent and international applications that designate the United States in the term "application."

Also to avoid any potential confusion over the definition of a trademark assignment, the Office adopted the suggestion to reflect Section 10 of the Trademark Act and to refer to a "registered mark" or a "mark for which application to register has been filed" in its definition of assignment.

*Comment:* As proposed, § 3.16 provides that an application to register a mark under 15 U.S.C. 1051(b) cannot be assigned before a statement of use is filed except to a successor to an ongoing business of the original applicant. One comment suggested § 3.16 be further amended to correct a legislative oversight and permit assignment of the application after an amendment of allege use is filed.

One other comment suggested the PTO define the statutory language "successor to the business of the applicant."

*Response:* As proposed, Rule 3.16 merely restates the statute. To permit the filing of an assignment to a successor to an on-going business before an amendment to allege use has been filed would make the rule inconsistent with the statute.

As to the definition of "successor to the business of the applicant," it has been determined that in the absence of any statutory definition, it is better left to case law to establish the meaning. A business, or portion thereof, can be transferred or assigned in a variety of ways, and the question of valid ownership might arise in a variety of circumstances. For the PTO to define what constitutes a successor may be unduly restrictive.

Accordingly, the suggested modifications have not been adopted.

*Comment:* Section 3.21, as proposed, provides that an assignment of a patent or patent application must be identified by number. One comment requested a further amendment to allow the filing of a patent assignment after filing an application for patent but before knowing the application number by allowing identification by the execution date, inventors and title of the invention instead of the application number.

Another comment suggested that assignments relating to trademark applications and registrations should also be required to have the identifying serial and registration numbers within the body of the assignment document.

One comment questioned whether the patent identification number was required in the document or whether the number could just appear on the cover sheet.

*Response:* Providing the identifying number in the assignment document allows for greater efficiency and accuracy in recording assignments. However, unlike patents, trademarks can have an indefinite life. Assignments may be recorded years after an assignment has occurred to clear up the chain of title. It may not be possible to execute a new assignment to include identifying numbers in the document years later. Accordingly, it is preferable for the PTO to be more flexible in recording trademark assignments which may contain the identifying number in the cover sheet rather than in the document itself. Because of the nature of a patent, less flexibility is permitted. Patent rights, unlike trademark rights, do not exist apart from the issued patent. Accordingly, when an interest in a patent is transferred, the patent identifying number must be in the assignment document. This requirement only applies to assignments, not to documents other than assignments.

The PTO makes every effort to provide applicants with the application numbers for newly-filed patent applications as soon as possible. It is suggested, however, that assignment documents may be written to allow entry of the identifying number after the execution of the assignment. An example of acceptable wording is: "I hereby authorize and request my attorney, (Insert name), of (Insert address), to insert here in parentheses (Application number _____, filed _____) the filing date and application number of said application when known."

Accordingly, the suggested modifications have not been adopted.

*Comment:* Section 3.24, as proposed, provides the formal requirements for the documents which are to be recorded and the cover sheet. Three comments stated that the one-side only requirement was unreasonable in light of PTO's issuance of two-sided patent and trademark copies and of the practices of other governments and corporations over which the submitter would have no control.

One comment requested clarification of "bond weight paper" and suggested the language used in the rules setting out drawing requirements be adopted.

One comment stated that the document size requirements should only pertain to documents prepared and executed by parties who wish to convey title.



Two comments questioned whether the PTO would permit the filing of copies or true copies in lieu of the original documents for recording.

*Response:* The formal requirements set out in § 3.24 are related to PTO's ability to capture on film papers filed with the PTO. The requirements are not related to the other printing or photocopying services PTO provides. Micrographics reproduction requires that only one side of each page be used for efficiency. If the original document is two-sided or the wrong size, the practitioner can comply with this requirement by providing a true copy of the original document using only one side of each page on the correct size paper. The language in § 3.24 has been changed to clarify that true copies or originals are acceptable. Further, the language describing the type of paper to be used has been changed to be consistent with the drawing requirement rules.

*Comment:* Section 3.28, as proposed, provides that all requests to record a document must be accompanied by the document to be recorded and at least one cover sheet. One comment expressed confusion over whether the document must be accompanied by a cover letter as well as a request for recording. One comment stated the requirement for a cover sheet did not help the PTO with the documents which are filed with applications and the commenter did not see the need for an additional paper included among the papers for a new application.

*Response:* The first sentence has been rewritten to clarify that only the document and a cover sheet(s) must be submitted. A separate request for recording is not required or needed. Because the cover sheet provides all pertinent information in one place, it will greatly assist the processing of assignments by the PTO. For those applications which are filed with an assignment, the additional cover sheet required for the assignment aids the processing of the assignment.

*Comment:* Numerous comments were received on the proposed cover sheet requirements of § 3.31. One comment questions whether the form or the contents of the form are being required and cautioned that the cover sheet should not become a technical obstacle to recordation.

Two comments claimed the cover sheet requirement would be burdensome and the documents recorded should speak for themselves.

Two comments objected to the requirement for the characterization of the interest being conveyed. One of the commentors indicated it was not the best evidence of what the interest is and may be misleading while the second commentor was concerned practitioners would be subject to malpractice claims and be made parties to litigation involving the transfer.

One comment stated that requiring the assignee's address was burdensome and excessive. Three comments questioned the lack of consistency between proposed subsections (a) and (b) of § 3.31 which requires only the name of the conveyor but both the name and address of the receiver.

Two comments stated that the language of the rule was unclear as to whether the list of properties within the assignment document should be retyped on the cover sheet, which would be burdensome and fraught with potential errors.

One comment was received suggesting that properties be identified with as much information as possible (i.e., serial number, patent number, filing date, inventors, etc.).

Four comments stated that the requirement for an execution date of the document is excessive and burdensome. One of the comments stated that the execution date may not be as important as the effective date of the document. One suggested the effective date would be more accurate and another suggested the document should speak for itself. One additional comment stated that a nunc pro tunc assignment of the substantive rights of an assignee or assignor may be unduly affected by the requirement for recitation of the execution date.

Nine comments were received objecting to the language of the proposed verification. Some comments recommended that the verification statement be deleted. Other comments recommended that the verification statement be based on "information and belief." The comments indicated (1) practitioners did not want to be held responsible for the information entered on the cover sheet, (2) there was no purpose served by signing the cover sheet because the documents should speak for themselves and (3) under 37 CFR 10.18, a registered practitioner's signature indicates that the filing is correct.

One comment suggested that proposed § 3.31(i) does not recognize the right of some non-lawyers to practice in trademark matters before the PTO.

Additionally, many comments and suggestions were received on the layout of the sample cover sheets.

*Response:* The proposed purpose of the cover sheet is to provide a synopsis of the vital information contained in a recorded document. The cover sheet form itself is not required, only the information outlined in § 3.31 is required. Use of the sample cover sheet formats appearing as Appendices A and B to the rule package is encouraged. The Office will make paper copies of the sample cover sheets available for customer use. Persons wishing to obtain paper copies of the sample cover sheets should contact the Public Service Center at (703) 305–HELP. Questions regarding the sample cover sheets should be directed to the Assignment and Certification Services Division at (703) 308–9700.

As indicated in the proposed rule package, a majority of documents presently filed for recording are accompanied by a cover letter containing much of the information required in § 3.31. The PTO does not believe standardization of the information submitted is an undue burden. Standardization ensures easy reference to all critical information. Further, the parties or their representatives are in a better position to know or ascertain the nature of the interest involved than the PTO. The document will always speak for itself. However, a characterization assists in putting others on notice as to the nature of the transaction.

It was determined that a verification is not required. The language has been changed to a statement on the cover sheet based on "information and belief." Further, § 3.31(i) has been divided into two paragraphs, one for the statement that is required and one for the signature.

The address of the assignee or receiving party is vital information for maintaining complete assignment records. The original owner is the applicant, for which the Office has the address of record. Each subsequent assignee address is then obtained under this requirement and is of record if the PTO or public needs to contact the present assignee. The execution date is required to determine whether an assignment has been recorded within three months provided in 35 U.S.C. 261 and 15 U.S.C. 1060.

When there is a listing of properties contained within a document, any listing may be copied and attached to the cover sheet to reduce the amount of typing necessary. A notation of this attachment can be made in lieu of entering every property identification number on the cover sheet. Should submitters provide information in addition to that required by § 3.31, it is always welcome, but not required.

The comments received on the layout of the sample cover sheets have all been considered and some modifications have been made. However, the sample cover sheet is not required and it is not part of the rules.

*Comment:* Section 3.34, as proposed, provides for correction of errors in a recorded cover sheet when the error is apparent by comparing the information on the cover sheet with the recorded document itself. One comment received expressed confusion regarding the correction procedure. Another comment suggested that corrections should not be limited to apparent errors.

*Response:* The PTO will not compare the cover sheet with the original documents during the recording process except to assure that application and patent numbers are present in patent assignments. Otherwise, it will only check to see that the cover sheet is complete. When a submitter discovers an obvious error on the recorded cover sheet, the PTO will consider a request to correct it when it receives: (1) the original recorded document (or a copy); (2) a corrected cover sheet; and (3) the appropriate fee for each property to be corrected. The PTO will then compare the cover sheet with the document to determine whether the error is apparent on its face. If the error is obvious, the corrected cover sheet will be recorded and the respective Office records corrected. If the error is not obvious, the procedure set forth in the Manual of Patent Examining Procedure, MPEP § 323 will govern for patents and the procedure set forth in *In re Abacab International Computers Ltd.* (Assignee of IHEC, Ltd.), 21 USPQ2d 1078 (Comm'r Pats. 1987), on reconsideration, 21 USPQ2d 1079 (Comm'r Pats. 1988) will govern for trademarks. Submitters may also petition under § 1.183 or § 2.146 for other corrections. Typographical errors made by the Office will be corrected without charge when brought to our attention.

Accordingly, the suggested modification has not been adopted. The rule has only been changed to correct a cross reference.

*Comment:* As proposed, § 3.51 provides that the date of recording is the date all of the required information is filed in the Office. Incomplete documents will be returned. If the returned documents are resubmitted timely, the document will retain the date on which it was received as incomplete. Two comments were received regarding the time period to be set by the PTO. One comment indicated that any delay may affect the requirements of 15 U.S.C. 1060. It was therefore recommended that the PTO make some type of "conditional entry" in the records indicating an assignment has been submitted so interested members of the public could ascertain that there may be an effective recording date. The other comment suggested the time period for resubmission be long enough to allow communication with foreign parties, but it should be no longer than six months.

*Response:* After a review of the proposed rule, it was determined that the language of § 3.51 should be clarified to reflect that the originally-submitted papers with the official Office date stamp indicating the original receipt date in the Office must be returned in order to retain the original date. It is the intent of the PTO to set the time for response at one month from the date of mailing of the returned documents from the PTO. It is believed that most correctable errors will involve an incomplete cover sheet or the amount of the fee submitted, both of which can be corrected within one month.

Further, it is the policy of the PTO to make of record only those documents which meet the requirements for recording. It is not beneficial to cloud title to properties with potential transfers.

*Comment:* Section 3.56, as proposed, is a restatement of former § 1.333 and is made applicable to trademarks. It provides that an assignment which is made conditional upon a condition subsequent will be regarded by the Office as an absolute assignment. One comment was received inquiring as to whether § 3.56 applied to security interests, another was received requesting a reference in the rules to recording of security agreements.

*Response:* Section 3.56 is applicable only to assignments, as they are defined by § 3.1, that is, a transfer of right, title and interest in a patent or a trademark. A security interest or a security agreement is in the nature of a lien, not an assignment. Accordingly, § 3.56 would not apply to security interests or security agreements which are also recordable. It applies to conditional assignments because the Office has no way of determining whether and when conditions are satisfied and therefore must address this type of assignment in a uniform manner. The reference to the recordability of security agreements is referred to here in the final rule package.

*Comment:* The second sentence of § 3.71, as proposed, provides: "(t)he assignee of record of the entire right title and interest in a trademark application or registration is entitled to conduct the prosecution of the trademark application or registration to the exclusion of the original applicant or previous assignee." One comment suggested, as had been recommended for the definitions in § 3.1, that language be adopted consistent with section 10 of the Trademark Act, 15 U.S.C. 1060, so there be no confusion as to what can be assigned in the trademark area and further, that the language requiring "entire right, title and interest" be deleted.

*Response:* As was the case with the PTO's review of § 3.1, the language in § 3.71 has also been modified to eliminate any confusion. Accordingly, § 3.71 now provides for assignments of registered marks or a mark for which an application for registration has been filed, making it consistent with § 3.1. While this change cannot prevent assignments from being made without the underlying goodwill, it may eliminate some confusion.

*Comment:* Section 3.73, as proposed, provided that a full assignee could take any action before the Office with respect to the assigned application, patent, or registration provided ownership is established to the satisfaction of the Commissioner. The rule further provided that ownership could be established by providing documentary evidence of the chain of title to the assignee. The assignee was also required to submit a verified statement stating the evidence had been reviewed and certifying to the best of the party's belief, title is in the party seeking to take the action. The Office reserved the right to require recordation of any ownership documents. One comment suggested the procedure was too "elaborate" and "confusing" to permit the submitting party to act rapidly. Another comment suggested the Office use the language of former § 2.186 which only required "the assignment has been recorded or that proof of the assignment has been submitted" to enable action by the assignee.

Another comment suggested that a simple statement identifying the documents thought to place ownership in a party should be sufficient. It was believed that no additional benefit accrued by having the party state that they believed they were entitled to take the action because whether or not a party can act is a determination the PTO must make.

Two comments suggested that a literal reading of the rule would require every paper filed on behalf of an assignee be accompanied by a proof of ownership. One comment suggested it was too harsh to preclude a party from taking action in a trademark matter until proof of ownership is established to the satisfaction of the Commissioner. Rather, it was suggested that a party be permitted to take action once documents establishing ownership are filed.

One comment received pointed to the proposed language of § 3.73 providing the statement must be signed by the party or its attorney or agent of record which was a greater requirement than § 1.34(a), if that was intended.

Another comment suggested that the proposed language be changed by deleting the provision that ownership must be established to the satisfaction of the Commissioner and substituting therefore "provided the assignee is owner of the entire right, title, and interest in the patent application, patent, registered mark or mark for which an application for registration has been filed."

One final comment suggested that § 3.73 be changed to specifically set forth that it applied to secure Office acceptance of a Section 8 or 15 affidavit or a section 9 application, 15 U.S.C. 1058, 1059, for trademark filings, and requested examples of the types of documents necessary to establish ownership.

*Response:* Ownership need only be established the first time the new party wants to act in patent and trademark cases, provided the appropriate documents are recorded. Section 3.73(b) is modified to provide that a statement of ownership need only be provided when a patent assignee wishes to act on a matter. For patents, the PTO believes it is appropriate for the patent assignee to review the documents it believes establishes its ownership prior to filing a paper signed by that assignee. Additionally, the statement will certify that to the best of the assignee's knowledge and belief, title is in that assignee. This will establish, to the satisfaction of the Commissioner, that the assignee knows of no other document establishing title in someone other than the assignee. The PTO will still make the determination of whether the assignee is entitled to take action after a review of the documents.

For trademarks the action sought to be taken can be submitted simultaneously by the party. The action will be examined as will the claim of ownership and the party will be notified whether it is satisfactory. As in the past, "any action" refers to post-registration documents as well.

**Other Considerations**

The rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these rule changes will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these changes is to require that a cover sheet accompany each document submitted for recording. The rule change includes no additional or increased fees. Substantive rights to use trademarks and patents are not adversely affected.

The Office has determined that these rule changes are not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. Because most of the changes reduce procedural burdens, there will be no major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These rule changes contain a collection-of-information requirement subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The rule changes add a requirement for a cover sheet to be submitted with each document to be recorded that will expedite the recording process and improve quality. This collection of information requirement is cleared under OMB Control No. 0651–0011. The public reporting burden for this requirement is estimated to be one-half hour per filing, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

**List of Subjects**

*37 CFR Part 1*

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

*37 CFR Part 2*

Administrative practice and procedure, Courts, Lawyers, Trademarks.

*37 CFR Part 3*

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements, Trademarks.

For the reasons set out in the preamble and pursuant to the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 6, parts 1, 2 and 3 of title 37 of the Code of Federal Regulations are amended as set forth below.

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

**Authority:** 35 U.S.C. 6, unless otherwise noted.

2. Section 1.12 paragraphs (a) and (d) are revised to read as follows:

**§ 1.12 Assignment records open to public inspection.**

(a) (1) Separate assignment records are maintained in the Patent and Trademark Office for patents and trademarks. The assignment records, relating to original or reissue patents, including digests and indexes, for assignments recorded on or after May 1, 1957, and assignment records relating to pending or abandoned trademark applications and to trademark registrations, for assignments recorded on or after January 1, 1955, are open to public inspection at the Patent and Trademark Office, and copies of those assignment records may be obtained upon request and payment of the fee set forth in §§ 1.19 and 2.6 of this chapter.

(2) All records of assignments of patents recorded before May 1, 1957, and all records of trademark assignments recorded before January 1, 1955, are maintained by the National Archives and Records Administration (NARA). The records are open to public inspection. Certified and uncertified copies of those assignment records are provided by NARA upon request and payment of the fees required by NARA.

* * * * *

(d) An order for a copy of an assignment or other document should identify the reel and frame number where the assignment or document is recorded. If a document is identified without specifying its correct reel and frame, an extra charge as set forth in § 1.21(j) will be made for the time consumed in making a search for such assignment.

3. Section 1.17 is amended by revising paragraph (i) (1) to read as follows:

**§ 1.17 Patent application processing fees.**

* * * * *

(i) (1) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—$130.00.

§ 1.12—for access to an assignment record.
§ 1.14—for access to an application.
§ 1.53—to accord a filing date.
§ 1.55—for entry of late priority papers.
§ 1.60—to accord a filing date.
§ 1.62—to accord a filing date.
§ 1.103—to suspend action in application.
§ 1.177—for divisional reissues to issue separately.
§ 1.312—for amendment after payment of issue fee.
§ 1.313—to withdraw an application from issue.
§ 1.314—to defer issuance of a patent.
§ 1.666(b)—for access to interference settlement agreement.
§ 3.81—for patent to issue to assignee, assignment submitted after payment of the issue fee.

* * * * *

**§ 1.32 [Reserved]**

4. Section 1.32 is removed and reserved.

5. Section 1.46 is revised to read as follows:

**§ 1.46 Assigned inventions and patents.**

In case the whole or a part interest in the invention or in the patent to be issued is assigned, the application must still be made or authorized to be made, and an oath or declaration signed, by the inventor or one of the persons mentioned in §§ 1.42, 1.43, or 1.47. However, the patent may be issued to the assignee or jointly to the inventor and the assignee as provided in § 3.81.

6. Section 1.104 is amended by revising paragraph (e) to read as follows:

**§ 1.104 Nature of examination; examiner's action.**

* * * * *

(e) Co-pending applications will be considered by the examiner to be owned by, or subject to an obligation of assignment to, the same person if:

(1) The application files refer to assignments recorded in the Patent and Trademark Office in accordance with part 3 of this chapter which convey the entire rights in the applications to the same person or organization; or

(2) Copies of unrecorded assignments which convey the entire rights in the applications to the same person or organization are filed in each of the applications; or

(3) An affidavit or declaration by the common owner is filed which states that there is common ownership and states facts which explain why the affiant or declarant believes there is common ownership; or

(4) Other evidence is submitted which establishes common ownership of the applications.

In circumstances where the common owner is a corporation or other organization, an affidavit or declaration may be signed by an official of the corporation or organization empowered to act on behalf of the corporation or organization.

7. The undesignated centerhead above § 1.331 is revised to read as follows:

Arbitration Awards

**1.331-1.334 [Reserved]**

8. Sections 1.331 through 1.334 are removed and reserved.

## PART 2—RULES OF PRACTICE IN TRADEMARK CASES

9. The authority citation for 37 CFR part 2 continues to read as follows:

**Authority:** 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

10. The undesignated centerhead above § 2.185 is removed.

**§ 2.185-2.187 [Reserved]**

11. Sections 2.185 through 2.187 are removed and reserved.

12. Part 3 is added to read as follows:

## PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

Sec.
3.1 Definitions.

**Documents Eligible for Recording**

3.11 Documents which will be recorded.
3.16 Assignability of trademarks prior to filing of use statements.

**Requirements for Recording**

3.21 Identification of patents and patent applications.
3.24 Formal requirements for documents and cover sheets.
3.26 English language requirement.
3.27 Mailing address for submitting documents to be recorded.
3.28 Requests for recording.

**Cover Sheet Requirements**

3.31 Cover sheet content.
3.34 Correction of cover sheet errors.

**Fees**

3.41 Recording fees.

**Date and Effect of Recording**

3.51 Recording date.
3.54 Effect of recording.
3.56 Conditional assignments.

**Domestic Representative**

3.61 Domestic representative.

**Prosecution by Assignee**

3.71 Prosecution by assignee.
3.73 Establishing right of assignee to prosecute.

**Issuance to Assignee**

3.81 Issue of patent to assignee.
3.85 Issue of registration to assignee.

**Authority:** 15 U.S.C. 1123; 35 U.S.C. 6.

**§ 3.1 Definitions.**

For purposes of this part, the following definitions shall apply:

*Application* means a national application for patent, an international application that designates the United States of America, or an application to register a trademark unless otherwise indicated.

*Assignment* means a transfer by a party of all or part of its right, title and interest in a patent or patent application, or a transfer of its entire right, title and interest in a registered mark or a mark for which an application to register has been filed.

*Document* means a document which a party requests to be recorded in the Office pursuant to § 3.11 and which affects some interest in an application, patent, or registration.

*Office* means the Patent and Trademark Office.

*Recorded document* means a document which has been recorded in the Office pursuant to § 3.11.

*Registration* means a trademark registration issued by the Office.

**Documents Eligible for Recording**

**§ 3.11 Documents which will be recorded.**

Assignments of applications, patents, and registrations, accompanied by completed cover sheets as specified in §§ 3.28 and 3.31, will be recorded in the Office. Other documents, accompanied by completed cover sheets as specified in §§ 3.28 and 3.31, affecting title to applications, patents, or registrations, will be recorded as provided in this part or at the discretion of the Commissioner.

**§ 3.16 Assignability of trademarks prior to filing of use statements.**

No application to register a mark under 15 U.S.C. 1051(b) is assignable prior to the filing of the verified statement of use under 15 U.S.C. 1051(d) except to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing.

**Requirements for Recording**

**§ 3.21 Identification of patents and patent applications.**

An assignment relating to a patent must identify the patent by the patent number. An assignment relating to a national patent application must identify the national patent application by the application number (consisting of the series code and the serial number, e.g., 07/123,456) or the serial number and filing date. An assignment relating to an international patent application which designates the United States of America must identify the international application by the international application number (e.g., PCT/US90/01234). If an assignment is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by its date of execution, name of each inventor, and title of the invention so that there can be no mistake as to the patent application intended.

**§ 3.24 Formal requirements for documents and cover sheets.**

The document and cover sheet must be legible. Either the original document or a true copy of the original document, may be submitted for recording. Only one side of each page shall be used. The paper used should be flexible, strong, white, non-shiny, durable, and preferably no larger than 21.6 x 33.1 cm. (8½ x 14 inches) with a 2.5 cm. (one-inch) margin on all sides.

**§ 3.26 English language requirement.**

The Office will accept and record non-English language documents only if accompanied by a verified English translation signed by the individual making the translation.

**§ 3.27 Mailing address for submitting documents to be recorded.**

Documents and cover sheets to be recorded should be addressed to the Commissioner of Patents and Trademarks, Box Assignments, Washington, DC 20231, unless they are filed together with new applications or with a petition under § 3.81(b).

**§ 3.28 Requests for recording.**

Each document submitted to the Office for recording must be accompanied by at least one cover sheet as specified in § 3.31 referring either to those patent applications and patents, or to those trademark applications and registrations, against which the document is to be recorded. If a document to be recorded includes interests in, or transactions involving, both patents and trademarks, separate patent and trademark cover sheets must be submitted. Only one set of documents and cover sheets to be recorded should be filed. If a document to be recorded is not accompanied by a completed cover sheet, the document and any incomplete cover sheet will be returned pursuant to § 3.51 for proper completion of a cover sheet and resubmission of the document and a completed cover sheet.

**Cover Sheet Requirements**

**§ 3.31 Cover sheet content.**

(a) Each patent or trademark cover sheet required by § 3.28 must contain:

(1) The name of the party conveying the interest;

(2) The name and address of the party receiving the interest;

(3) A description of the interest conveyed or transaction to be recorded;

(4) Each application number, patent number or registration number against which the document is to be recorded, or an indication that the document is filed together with a patent application;

(5) The name and address of the party to whom correspondence concerning the request to record the document should be mailed;

(6) The number of applications, patents or registrations identified in the cover sheet and the total fee;

(7) The date the document was executed;

(8) An indication that the assignee of a trademark application or registration who is not domiciled in the United States has designated a domestic representative (see § 3.61); and

(9) A statement by the party submitting the document that to the best of the person's knowledge and belief, the information contained on the cover sheet is true and correct and any copy submitted is a true copy of the original document; and

(10) The signature of the party submitting the document.

(b) A cover sheet may not refer to both patents and trademarks.

**§ 3.34 Correction of cover sheet errors.**

(a) An error in a cover sheet recorded pursuant to § 3.11 will be corrected only if:

(1) The error is apparent when the cover sheet is compared with the recorded document to which it pertains, and

(2) A corrected cover sheet is filed for recordation.

(b) The corrected cover sheet must be accompanied by the originally recorded document or a copy of the originally recorded document and by the recording fee as set forth in § 3.41.

**Fees**

**§ 3.41 Recording fees.**

All requests to record documents must be accompanied by the appropriate fee. A fee is required for each application, patent and registration against which the document is recorded as identified in the cover sheet. The recording fee is set in § 1.21(h) of this chapter for patents and in § 2.6(q) of this chapter for trademarks.

*Date and Effect of Recording*

**§ 3.51 Recording date.**

The date of recording of a document is the date the document meeting the requirements for recording set forth in this part is filed in the Office. A document which does not comply with the identification requirements of § 3.21 will not be recorded. Documents not meeting the other requirements for recording, for example, a document submitted without a completed cover sheet or without the required fee, will be returned for correction to the sender where a correspondence address is available. The returned papers, stamped with the original date of receipt by the Office, will be accompanied by a letter which will indicate that if the returned papers are corrected and resubmitted to the Office within the time specified in the letter, the Office will consider the original date of filing of the papers as the date of recording of the document. The certification procedure under either § 1.8 or § 1.10 of this chapter may be used for resubmissions of returned papers to have the benefit of the date of deposit in the United States Postal Service. If the returned papers are not corrected and resubmitted within the specified period, the date of filing of the corrected papers will be considered to be the date of recording of the document. The specified period to resubmit the returned papers will not be extended.

**§ 3.54 Effect of recording.**

The recording of a document pursuant to § 3.11 is not a determination by the Office of the validity of the document or the effect that document has on the title

to an application, a patent, or a registration. When necessary, the Office will determine what effect a document has, including whether a party has the authority to take an action in a matter pending before the Office.

**§ 3.56 Conditional assignments.**

Assignments which are made conditional on the performance of certain acts or events, such as the payment of money or other condition subsequent, if recorded in the Office, are regarded as absolute assignments for Office purposes until cancelled with the written consent of all parties or by the decree of a court of competent jurisdiction. The Office does not determine whether such conditions have been fulfilled.

**Domestic Representative**

**§ 3.61 Domestic representative.**

If the assignee of a trademark application or registration is not domiciled in the United States, the assignee must designate, in writing to the Office, a domestic representative. An assignee of a patent application or patent may designate a domestic representative if the assignee is not residing in the United States. The designation shall state the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the application, patent or registration or rights thereunder.

**Prosecution by Assignee**

**§ 3.71 Prosecution by assignee.**

The assignee of record of the entire right, title and interest in an application for patent is entitled to conduct the prosecution of the patent application to the exclusion of the named inventor or previous assignee. The assignee of a registered trademark or a trademark for which an application to register has been filed is entitled to conduct the prosecution of the trademark application or registration to the exclusion of the original applicant or previous assignee.

**§ 3.73 Establishing right of assignee to prosecute.**

(a) The inventor is presumed to be the owner of a patent application, and any patent that may issue therefrom, unless there is an assignment. The original applicant is presumed to be the owner of a trademark application unless there is an assignment.

(b) When the assignee of the entire right, title and interest seeks to take action in a matter before the Office with respect to a patent application, trademark application, patent, registration, or reexamination proceeding, the assignee must establish its ownership of the property to the satisfaction of the Commissioner. Ownership is established by submitting to the Office documentary evidence of a chain of title from the original owner to the assignee or by specifying (e.g. reel and frame number, etc.) where such evidence is recorded in the Office. Documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. In addition, the assignee of a patent application or patent must submit a statement specifying that the evidentiary documents have been reviewed and certifying that, to the best of assignee's knowledge and belief, title is in the assignee seeking to take the action.

**Issuance to Assignee**

**§ 3.81 Issue of patent to assignee.**

(a) For a patent application, if an assignment of the entire right, title, and interest is recorded before the issue fee is paid, the patent may issue in the name of the assignee. If the assignee holds an undivided part interest, the patent may issue jointly to the inventor and the assignee. At the time the issue fee is paid, the name of the assignee must be provided if the patent is to issue solely or jointly to that assignee.

(b) If the assignment is submitted for recording after the date of payment of the issue fee, but prior to issuance of the patent, the assignee may petition that the patent issue to the assignee. Any such petition must be accompanied by the fee set forth in § 1.17(i)(1) of this chapter.

**§ 3.85 Issue of registration to assignee.**

The certificate of registration may be issued to the assignee of the applicant, or in a new name of the applicant, provided that the party files a written request in the trademark application by the time the application is being prepared for issuance of the certificate of registration, and the appropriate document is recorded in the Office. If the assignment or name change document has not been recorded in the Office, then the written request must state that the document has been filed for recordation. The address of the assignee must be made of record in the application file.

Dated: June 24, 1992.

**Douglas B. Comer,**

*Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks*

BILLING CODE 3510-16-M

Appendix A

Note--The following appendix will not appear in the Code of Federal Regulations

FORM PTO-1594
1-31-92

RECORDATION FORM COVER SHEET
**TRADEMARKS ONLY**

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Tab settings ⇨⇨⇨ ▼ ▼ ▼ ▼ ▼ ▼ ▼

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

❑ Individual(s) ❑ Association
❑ General Partnership ❑ Limited Partnership
❑ Corporation-State
❑ Other _____

Additional name(s) of conveying party(ies) attached? ❑ Yes ❑ No

2. Name and address of receiving party(ies):

Name: _____

Internal Address: _____

Street Address: _____

City: _____ State: ____ ZIP: _____

❑ Individual(s) citizenship _____
❑ Association _____
❑ General Partnership _____
❑ Limited Partnership _____
❑ Corporation-State _____
❑ Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: ❑ Yes ❑ No
(Designations must be a separate document from Assignment)
Additional name(s) & address(es) attached? ❑ Yes ❑ No

3. Nature of conveyance:

❑ Assignment ❑ Merger
❑ Security Agreement ❑ Change of Name
❑ Other _____

Execution Date: _____

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark registration No.(s)

Additional numbers attached? ❑ Yes ❑ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: _____

Internal Address: _____

_____

_____

Street Address: _____

_____

City: _____ State: ____ ZIP: _____

6. Total number of applications and registrations involved: _____ [ ]

7. Total fee (37 CFR 3.41):..... $ _____

❑ Enclosed

❑ Authorized to be charged to deposit account

8. Deposit account number:

_____

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.
*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

_____ _____ _____
Name of Person Signing Signature Date

Total number of pages comprising cover sheet: [ ]

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

**Commissioner of Patents and Trademarks**
**Box Assignments**
**Washington, D.C. 20231**

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

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## Guidelines for Completing Trademarks Cover Sheets

Cover Sheet information must be submitted with each document to be recorded. If the document to be recorded concerns both patents and trademarks, separate patent and trademark cover sheets, including any attached pages for continuing information, must accompany the document. All pages of the cover sheet should be numbered consecutively, for example, if both a patent and trademark cover sheet is used, and information is continued on one additional page for both patents and trademarks, the pages of the cover sheet would be numbered from 1 to 4.

**Item 1. Name of Conveying Party(ies).**

Enter the full name of the party(ies) conveying the interest. If there is more than one conveying party, enter a check mark in the "Yes" box to indicate that additional information is attached. The name of the second and any subsequent conveying party(ies) should be placed on an attached page clearly identified as a continuation of the information in Item 1. Enter a check mark in the "No" box, if no information is contained on an attached page.

**Item 2. Name and Address of Receiving Party(ies).**

Enter the name and full address of the first party receiving the interest. If there is more than one party receiving the interest, enter a check mark in the "Yes" to indicate that additional information is attached. An entity type must be indicated for each receiving party, and the citizenship of individuals must be indicated. If the receiving party is an assignee not domiciled in the United States, a designation of domestic representative is required. A designation of domestic representative must be contained in a document separate from the assignment document. Place a check mark in appropriate box to indicate whether or not a designation of domestic representative is attached. Enter a check mark in the "No" box, if no information is contained on an attached page.

**Item 3. Nature of Conveyance.**

Place a check mark in the appropriate box describing the nature of the conveying assignment document. If the "Other" box is checked, specify the nature of the conveyance. Enter the execution date of the document. It is preferable to use the name of the month, or an abbreviation of that name, in order that confusion over dates is minimized.

**Item 4. Application Number(s) or Registration number(s).**

Indicate the application number(s) including series code and serial number, and/or registration number(s) against which the document is to be recorded. Enter a check mark in the appropriate box: "Yes" or "No" if additional numbers appear on attached pages. Be sure to identify numbers included on attached pages as the continuation of Item 4.

**Item 5. Name and Address of Party to whom correspondence concerning the document should be mailed.**

Enter the name and full address of the party to whom correspondence is to be mailed.

**Item 6. Total Applications and Registration Involved.**

Enter the total number of applications and trademarks identified for recordation. Be sure to include all applications and registrations identified on the cover sheet and on additional pages.

**Block 7. Total Fee Enclosed.**

Enter the total fee enclosed or authorized to be charged. A fee is required for each application and registration against which the document is recorded.

**Item 8. Deposit Account Number.**

Enter the deposit account number to authorize charges. Attach a duplicate copy of cover sheet to be used for the deposit charge account transaction.

**Item 9. Statement and Signature.**

Enter the name of the person submitting the document. The submitter must sign and date the cover sheet, confirming that to the best of the persons knowledge and belief, the information contained on the cover sheet is correct and that any copy of the document is a true copy of the original document. Enter the total number of pages contained in the cover sheet package, including any attached pages containing information continued from items on the cover sheet.

Appendix B

Note—The following appendix will not appear in the Code of Federal Regulations

FORM PTO-1595
1-31-92

RECORDATION FORM COVER SHEET
**PATENTS ONLY**

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Additional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

2. Name and address of receiving party(ies):

Name: _____

Internal Address: _____

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Street Address: _____

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City: _____ State: _____ ZIP: _____

Additional name(s) & address(es) attached? ☐ Yes ☐ No

3. Nature of conveyance:

☐ Assignment ☐ Merger

☐ Security Agreement ☐ Change of Name

☐ Other _____

Execution Date: _____

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: _____

Internal Address: _____

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Street Address: _____

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City: _____ State: _____ ZIP: _____

6. Total number of applications and patents involved: ☐

7. Total fee (37 CFR 3.41)..... $ _____

☐ Enclosed

☐ Authorized to be charged to deposit account

8. Deposit account number:

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(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

_____ _____ _____

Name of Person Signing Signature Date

Total number of pages comprising cover sheet: ☐

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

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## Guidelines for Completing Patents Cover Sheets

Cover Sheet information must be submitted with each document to be recorded. If the document to be recorded concerns both patents and trademarks, separate patent and trademark cover sheets, including any attached pages for continuing information, must accompany the document. All pages of the cover sheet should be numbered consecutively, for example, if both a patent and trademark cover sheet is used, and information is continued on one additional page for both patents and trademarks, the pages of the cover sheet would be numbered from 1 to 4.

**Item 1. Name of Conveying Party(ies).**

Enter the full name of the party(ies) conveying the interest. If there is insufficient space, enter a check mark in the "Yes" box to indicate that additional information is attached. The name of the additional conveying party(ies) should be placed on an attached page clearly identified as a continuation of the information in Item 1. Enter a check mark in the "No" box, if no information is contained on an attached page.

**Item 2. Name and Address of Receiving Party(ies).**

Enter the name and full address of the first party receiving the interest. If there is more than one party receiving the interest, enter a check mark in the "Yes" box to indicate that additional information is attached. Enter a check mark in the "No" box, if no information is contained on an attached page.

**Item 3. Nature of Conveyance.**

Place a check mark in the appropriate box describing the nature of the conveying document. If the "Other" box is checked, specify the nature of the conveyance. Enter the execution date of the document. It is preferable to use the name of the month, or an abbreviation of that name, in order that confusion over dates is minimized.

**Item 4. Application Number(s) or Patent number(s).**

Indicate the application number(s), and/or patent number(s) against which the document is to be recorded. National application numbers must include both the series code and the serial number; and international application numbers must be complete, e.g., 07/123,456 for national application numbers, and PCT/US91/12345 for international application numbers. Enter a check mark in the appropriate box: "Yes" or "No" if additional numbers appear on attached pages. Be sure to identify numbers included on attached pages as the continuation of Item 4.

**Item 5. Name and Address of Party to whom correspondence concerning the document should be mailed.**

Enter the name and full address of the party to whom correspondence is to be mailed.

**Item 6. Total Applications and Patents Involved.**

Enter the total number of applications and patents identified for recordation. Be sure to include all applications and patents identified on the cover sheet and on additional pages.

**Block 7. Total Fee Enclosed.**

Enter the total fee enclosed or authorized to be charged. A fee is required for each application and patent against which the document is recorded.

**Item 8. Deposit Account Number.**

Enter the deposit account number to authorize charges. Attach a duplicate copy of cover sheet to be used for the deposit charge account transaction.

**Item 9. Statement and Signature.**

Enter the name of the person submitting the document. The submitter must sign and date the cover sheet, confirming that to the best of the persons knowledge and belief, the information contained on the cover sheet is correct and that any copy of the document is a true copy of the original document. Enter the total number of pages contained in the cover sheet, including any attached pages containing information continued from items on the cover sheet.

[FR Doc. 92-15378 Filed 7-2-92; 8:45 am]
BILLING CODE 3510-16-C

ENVIRONME
AGENCY

40 CFR Parts

[FRL-4150-81

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 60 and 61**

**[FRL-4150-6]**

## Standards of Performance for New Stationary Sources; National Emission Standards for Hazardous Air Pollutants

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Informational notice.

**SUMMARY:** On July 15, 1991, the Western North Carolina Regional Air Pollution Control Agency (WNCRAPCA) requested delegation of authority for the implementation and enforcement of the National Emission Standards for Hazardous Air Pollutants (NESHAPS) and the New Source Performance Standards (NSPS). On February 25, 1992, EPA granted delegation of authority as requested. On April 22, 1992, EPA notified the WNCRAPCA that the February 25, 1992, action included the authority to administer certain NSPS and NESHAPS that had not been adopted into the Rules and Regulations of the WNCRAPCA. Since these Rules and Regulations have not been adopted, the February 25, 1992, action cannot include the delegation of authority to administer them.

**EFFECTIVE DATE:** The effective date is April 22, 1992.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Western North Carolina Regional Air Pollution Control Agency, Buncombe County Courthouse, Asheville, North Carolina 28801-3569.

North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Management, Air Quality Section, P.O. Box 29535, Raleigh, North Carolina 27616-0535.

**FOR FURTHER INFORMATION CONTACT:** Michelle Patmon, Air Programs Branch, EPA Region IV, 345 Courtland Street NE. Atlanta, Georgia 30365, and telephone number (404) 347-2864.

**SUPPLEMENTARY INFORMATION:** Sections 301, in conjunction with sections 110, 111(c)(1), and 112(d)(1) of the Clean Air Act as amended, authorizes the Administrator to delegate his authority to implement and enforce the NSPS and NESHAPS to any State which has submitted adequate implementation and enforcement procedures. On July 15, 1991, the WNCRAPCA requested delegation of authority to administer NSPS and NESHAPS. On February 25, 1992, Region IV granted the request. This delegation of authority included the following NSPS and NESHAPS subparts:

**40 CFR Part 60**

Subpart Dc—Small-Industrial-Commercial-Institutional Steam Generating Units except § 60.48c(a)(4)
Subpart Ea—Municipal Waste Combustors
Subpart DDD—VOC Emissions from the Polymer Manufacturing Industry except § 60.562-2(c)
Subpart NNN—VOC Emissions from SOCMI Distillation Operations except § 60.663(e)

**40 CFR Part 61**

Subpart BB—Benzene Emissions From Benzene Transfer Operations

However, the above NSPS and NESHAPS subparts have not been adopted into the Rules and Regulations of the WNCRAPCA. Therefore, as stated in our April 22, 1992, letter, our February 25, 1992, action cannot include the delegation of authority to administer them.

This notice is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 74121, 7412, and 7601).

Dated: June 18, 1992.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 92-15742 Filed 7-2-92; 8:45 am]

BILLING CODE 6560-01-M

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**40 CFR Part 61**

**[FRL-4150-8]**

## National Emission Standards for Hazardous Air Pollutants Supplemental Delegation of Authority to Nashville-Davidson County

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Informational notice.

**SUMMARY:** On April 1, 1992, the Nashville-Davidson County Metropolitan Health Department of the State of Tennessee requested delegation of authority for the implementation and enforcement of an additional category of the National Emission Standards for Hazardous Air Pollutants (NESHAPS). EPA's review of Nashville-Davidson County's laws, rules, and regulations showed them to be adequate for the implementation and enforcement of this federal standard. EPA granted the delegation as requested.

**EFFECTIVE DATE:** The effective date of the delegation of authority is May 11, 1992.

**ADDRESSES:** Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, Customs House, 4th Floor, Nashville, Tennessee 37243-1531.

Metropolitan Health Department, Nashville-Davidson County, 311 23rd Avenue, North, Nashville, Tennessee 37203.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly delegated standards should not be submitted to the Region IV office, but should instead be submitted to the following address: Paul J. Bontrager, P.E., Director, Bureau of Environmental Health Services, Metropolitan Health Department, Nashville-Davidson County, 311 23rd Avenue, North, Nashville, Tennessee 37203.

**FOR FURTHER INFORMATION CONTACT:** Andrew Fischer, Air Programs Branch, EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, and telephone number (404) 347-2864.

**SUPPLEMENTARY INFORMATION:** Section 301, in conjunction with sections 110, 111(c)(1), and 112(d)(1) of the Clean Air Act as amended November 15, 1990 authorize the Administrator to delegate his authority to implement and enforce the standards set out in 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS).

After a thorough review of the category requested for delegation, the Regional Administrator determined that such delegation was appropriate for this source category with the conditions set forth in the initial delegation letter of August 5, 1975, and subsequent delegation letters of March 29, 1982, April 5, 1985; June 2, 1987; December 2, 1988; and February 20, 1991.

EPA, thereby, delegated its authority for 40 CFR part 61 subpart M, National Emission Standard for Asbestos, except § 61.149(c)(2), § 61.150(a)(4), § 61.151(c), § 61.152(b)(3), § 61.154(d), § 61.155(a).

The Administrator retains the exclusive right to approve equivalent

and alternative test methods, continuous monitoring procedures, and reporting requirements. Therefore, the sections mentioned above of 40 CFR part 61, subpart M are among the sections which may not be delegated.

The EPA hereby notifies the public that it has delegated the authority over certain NESHAP subparts to Nashville-Davidson County of the State of Tennessee.

The Office of Management and Budget exempted this rule from the requirements of section 3 of Executive Order 12291.

This notice is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 74121, 7412, and 7601).

Dated: June 16, 1992.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 92-15741 Filed 7-2-92; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Part 3260

[WO-610-4141-24 1A; Circular No. 2636]

RIN 1004-AB90

### Geothermal Resources Operations

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations governing appeals of decisions relating to geothermal resources operations to allow an authorized officer's decision to remain in effect during the pendency of an appeal. The amendment allows the Interior Board of Land Appeals (IBLA) to determine whether the issues involved in an appeal warrant a stay of geothermal resources operations and the accompanying delays and economic consequences.

**EFFECTIVE DATE:** August 5, 1992.

**ADDRESSES:** Inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Erick Kaarlela, (202) 653-2127.

**SUPPLEMENTARY INFORMATION:** This rule amends the "Appeals" section at 43 CFR 3266.1 to provide that a decision of the authorized officer remains in full force and effect during the pendency of an appeal, unless otherwise determined by the IBLA, and to state how petitions for stay of decisions may be filed. The amendment provides the IBLA the opportunity to determine whether the issues raised in an appeal, especially with regard to the environmental sensitivity of the area affected and the potential for significant environmental or public health and safety impact, warrant a stay of the approval until the IBLA rules on the appeal.

A proposed rule to amend 43 CFR part 3260 to allow decisions on geothermal resources operations to be placed in full force and effect pending appeal was published in the **Federal Register** on November 25, 1991. Public comments were invited for 60 days, until January 24, 1992. The Bureau of Land Management (BLM) received 9 letters concerning the proposed rule during the 60-day public comment period. Five of the letters came from corporations, 2 from attorneys, 1 from an association, and 1 from an office of a Federal agency. All of the comments supported the proposed rule.

Only one comment letter suggested amending the proposed rule. This comment urged the BLM to "require the appellant to serve the stay request on the geothermal operator whose activities are subject to the appeal," and to provide the operator "with an opportunity to oppose the stay." Finally, it suggested that a deadline "be established within which a stay request must be filed by the appellant." These amendments are not necessary to accomplish the purposes put forward by the correspondent, because they are covered in 43 CFR part 4. Existing regulations at 43 CFR 4.22(b) and 4.413 require that a "copy of each document filed in a proceeding before the Office of Hearings and Appeals must be served by the filing party on the other party or parties in the case," except for documents requesting limitation of disclosure of confidential documents. Existing regulations at 43 CFR 4.414 provide the operator or any party served with a notice of appeal opportunity to participate in the appeal by filing an answer to the appeal. Section 4.411 allows the appellant 30 days to file the appeal. Petitions for stay, to be of any use to the appellant, would normally be filed at the same time as the appeal, if the appellant's purpose is to prevent or stop the operation before the damage alleged by the appellant occurs. For an appellant to delay filing a petition for stay would defeat the purpose as well as create equitable arguments against the petition. The suggestions in the comment are not adopted in the final rule.

The regulatory language in § 3266.1(b) has been expanded somewhat from the proposed rule to state clearly the standards that need to be met before a stay of a decision can be obtained, and also to make clear that the IBLA has been delegated the authority to determine whether a stay is warranted.

The principal author of this final rule is Douglas Koza, Division of Fluid Mineral Lease and Reservoir Management, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the rule does not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. While this rule is expected to have a favorable effect on geothermal operators, such benefits will not approach the $100 million threshold, and should have only a favorable effect on costs to consumers and others, and only favorable effects on competition, employment, investment, productivity, innovation, or on the ability of United

States-based enterprises to compete with foreign-based enterprises. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this final rule does not represent a government action capable of interference with constitutionally protected property rights. No provision in the rule relates to a taking of property or interests in property. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

**List of Subjects for 43 CFR Part 3260**

Environmental protection, Geothermal energy, Government contracts, Public lands–mineral resources, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, and under the authorities cited below, part 3260, group 3200, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below.

**PART 3260—GEOTHERMAL RESOURCES OPERATIONS**

1. The Authority citation for 43 CFR part 3260 is revised to read as follows:

Authority: 30 U.S.C. 1001–1025.

**Subpart 3266—Appeals**

2. Section 3266.1 is revised to read as follows:

**§ 3266.1 Appeals.**

(a) A party adversely affected by a decision of the authorized officer may appeal that decision to the Interior Board of Land Appeals as set forth in part 4 of this title.

(b) All decisions or approvals of the authorized officer under this part shall remain effective pending appeal unless the Interior Board of Land Appeals determines otherwise upon consideration of the standards stated in this paragraph. The provisions of 43 CFR 4.21(a) shall not apply to any decision or approval of the authorized officer under this subpart. A petition for a stay of a decision or approval of the authorized officer shall be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, Department of the Interior, and shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied;

(2) The likelihood of the appellant's success on the merits;

(3) The likelihood of irreparable harm to the appellant or resources if the stay is not granted; and

(4) Whether the public interest favors granting the stay.

Dated: June 4, 1992.

Richard Roldan,

*Deputy Assistant Secretary of the Interior.*

[FR Doc. 92-15627 Filed 7-2-92; 8:45 am]

BILLING CODE 4310-84-M

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**43 CFR Part 4700**

**[WO-250-4370-02-24 1A; Circular No. 2637]**

**RIN 1004-AB57**

## Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Prohibited Acts, Administrative Remedies, and Penalties; Administrative Remedies

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule allows the authorized officer of the Bureau of Land Management (BLM) to place in full force and effect, pending appeal, decisions to remove excess wild free-roaming horses and burros from public or private land. The timely removal of excess animals will maintain appropriate management levels, prevent injury to, or death of, wild horses and burros, reduce damage to public land resources, and reduce future costs associated with removal and disposition.

**EFFECTIVE DATE:** August 5, 1992.

**ADDRESSES:** Suggestions or inquiries should be sent to Director (250), Bureau of Land Management, 1849 C Street NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Vernon R. Schulze, (202) 653–9215.

**SUPPLEMENTARY INFORMATION:** A proposed rule to amend 43 CFR part 4700 to allow decisions on gathering excess wild free-roaming horses and burros from public or private lands to be placed in full force and effect pending appeal was published in the **Federal Register** on July 2, 1991. Public comments were invited for 30 days, until August 1, 1991. The BLM received 15 letters concerning the proposed rule during the 30-day public comment period. Three of the letters came from private individuals, nine from associations, and three from State government agencies. Of the 15 letters received, 8 expressed opposition and 5 expressed support for the proposed rule. The remaining two letters contained no comments addressing provisions of the proposed rule. The specific comments contained in these letters and the responses to the comments are provided below.

Two comments suggested that the proposed rule is in conflict with the Wild Free-Roaming Horse and Burro Act (the Act). Neither comment indicated in what way the rule was inconsistent with the Act. Therefore, it is difficult to respond directly to these comments. However, the Act states: "Where the Secretary determines * * * that an overpopulation exists on a given area of public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels." The rule provides a mechanism for complying with this section of the Act by assuring that excess animals can be removed immediately when that action is needed to protect individual excess animals or the habitat of the remaining population.

Several comments suggested that the BLM already has the authority to expedite the removal of excess animals, when needed, under provisions of 43 CFR 4.21(a). This section of the Code of Federal Regulations (CFR) states "a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. However, when the public interest requires, the Director (Office of Hearings and Appeals) or an Appeals Board may provide that a decision or any part of it shall be in full force and effect immediately." Although this provision allows the Director of the Office of Hearings and Appeals, or the IBLA, to place a decision to remove animals in full force and effect, the time needed to file a brief explaining the need for an expedited decision and receiving a decision from the Director or the IBLA normally exceeds 2 months. In emergency situations, a delay of 2 months or more could cause severe or permanent injury to the animals and/or the habitat. In addition, the authority for determining the need for placing a decision in full force and effect should rest with the BLM field official who is accountable for the action and is in the best position to judge the need for immediate action to remove excess animals to protect the health of both the

removed and remaining animals and to maintain a thriving ecological balance. For these reasons, the provisions of 43 CFR 4.21(a) are not an adequate substitute for the proposed regulations. The comment is not adopted in the final rule.

Several comments suggested the proposed rule would invalidate or inhibit the appeals process. The proposed rule would in no way reduce the public's opportunity to file an appeal nor would it increase the appellant's burden of proof to show why the agency's action was incorrect. Nonetheless, unless the appellant is granted a stay of the agency's decision, the excess animals would normally be removed prior to a ruling on the merits of the appeal by the Interior Board of Land Appeals (IBLA). If, upon appeal, the IBLA were to subsequently rule that a BLM removal action was incorrect, there are at least two courses of action for mitigating the effects of erroneously removing animals. First, a similar number of animals from another herd area could be moved to the area where animals were removed in error. Second, as suggested by the IBLA in its decision in Animal Protection Institute of America, et al, 118 IBLA 63 (1991), future removals could be deferred until the herd size increases through normal reproduction and population levels again are consistent with maintenance of a thriving natural ecological balance. Thus even if a BLM full force and effect removal action was invalidated by the IBLA, an appellant would still receive the full benefit from filing an appeal.

However, even if an appeal is given expedited review, an IBLA ruling in favor of the BLM can come 6 months after the BLM removal decision is issued. In such cases, BLM's removal of the excess animals may not be completed before another generation of foals is added to the wild horse population. Resulting delays increase the Government's cost to remove the excess animals and allow an additional season of overgrazing to occur before corrective action can be taken to re-establish a thriving natural ecological balance. Such costs cannot be recovered, and the damages can only be mitigated at great additional cost.

Two comments suggested that the proposed rule will require an appellant to file a Petition for a Stay of Decision with the IBLA whenever the appellant wishes to prevent removal of animals after the BLM has placed a decision to remove excess wild horses or burros in full force and effect. We agree that the proposed rule would require filing a Petition for Stay of a removal decision if the appellant wished to stop a planned removal action prior to the IBLA's final decision on the merits of the appeal. Because the damage to the animals or their habitat and the extra cost to the Government caused by a delay in removing excess animals far outweigh the costs of filing a Petition for Stay, requiring the appellant to file a Petition for Stay of a removal decision with the IBLA is both reasonable and in the public interest.

Another comment stated that, because IBLA rules do not provide for expedited consideration of a Petition for a Stay of Decision, most removal actions would be completed before a Stay could be issued. We agree that this is a possibility. However, even if the IBLA were to ultimately find the BLM removal decision to be incorrect, animals that were removed in error could either be replaced with animals from another herd area having excess animals or the herd could be allowed to increase through normal reproduction until the population again reached a thriving natural ecological balance. Consequently, no permanent or significant damage would result from failure of the IBLA to hear a Petition for Stay of a Decision prior to completion of a removal action. Nonetheless, if a Petition for Stay were denied by the IBLA, the appellant could request a judicial review of the BLM's removal action in Federal court.

Three of the comments suggested that the proposed rule would encourage the BLM to remove animals without proper data and justification. In 1988 and 1989, several BLM wild horse and burro removal plans in Nevada were appealed to the IBLA. In their two rulings partially overturning the BLM removal decisions, the IBLA concluded that BLM has "not established that removal is warranted in order to restore the range to a thriving natural ecological balance and prevent a deterioration of the range threatened by an overpopulation of wild horses." Animal Protection Institute of America, 109 IBLA 112, 115 (1989), and Animal Protection Institute of America, 116 IBLA 239, 243 (1990). The IBLA rulings outlined the requirements the BLM must satisfy for proper justification of removal decisions. The requirements outlined in these two rulings have been incorporated in BLM policy and all subsequent BLM decisions have been consistent with this policy. In addition, the IBLA has upheld all of the BLM removal decisions on which appeals have been filed since November 1990. As a result, we believe the present policy requiring current resource data be used to support removal decisions is sound and in full compliance with the Act. This policy will continue to be applied for all removal decisions whether or not the decisions are placed in full force and effect. For that reason, we disagree with the comments suggesting that the proposed rule will encourage removal of wild horses and burros without data and justification.

One comment suggested that the proposed rule should include a requirement to conduct inventories and monitoring. The present regulations state at 43 CFR 4720.1, "Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately in the following order. * * *" Consequently, the suggested requirement exists in the current regulations. We agree that data collection is needed to determine if a thriving natural ecological balance is being maintained and if there are excess wild horses or burros. Because of its importance, this requirement is being further defined and expanded in the proposed revision of the BLM Management Considerations Manual Section 4710. Thus, there is no need to incorporate further requirements for data collection in this final rule.

Another comment suggested adding a requirement that full force and effect wild horse or burro removal decisions be issued as multiple-use decisions incorporating all other grazing uses such livestock and wildlife found in an area. We agree to a certain extent. When decisions about forage and habitat usage are being made for a herd area, a single multiple-use decision addressing all proposed forage and habitat changes for each major species should be issued rather than individual decisions for each grazing species. Guidance concerning this process is included in the latest revision of the BLM Management Considerations Manual, section 4710. Under this guidance, decisions that propose changes in the forage or habitat use of more than one species will almost always be issued as multiple-use decisions. However, in many circumstances where full force and effect decisions are contemplated, a multiple-use decision would not be appropriate. The BLM expects that many wild horse or burro removal decisions placed in full force and effect will be issued in response to emergency situations such as sudden habitat loss (fire, deep snow, drought), when other grazing species are not using the area, or when data indicate that removal of only wild horses or burros is needed to re-

establish a thriving natural ecological balance. Therefore, the final rule does not require wild horse or burro removal decisions placed in full force and effect to be issued as multiple-use decisions.

Three comments suggested that the final rule should incorporate criteria developed by the BLM Nevada State Office for declaring an emergency, which would require placing decisions for removal of wild horses or burros in full force and effect. We agree criteria should be established for designation of emergency conditions. However, these criteria are more appropriate for inclusion in the BLM's Manuals and Handbooks. For that reason, the final rule contains no criteria for declaring an emergency. While the Nevada State Office guidelines for declaring an emergency are very good, they are not all-inclusive and do not include criteria for placing decisions in full force and effect when no emergency exists. As indicated in the preamble to the proposed rule, the BLM intends to place decisions to remove wild horses or burros in full force and effect in situations where damage to public or private land is expected to be significant or when failure to remove animals expeditiously will cause an unacceptable expenditure of public funds. The criteria for assessing the need for immediate removal of excess animals under these circumstances or emergency conditions will be issued as a draft policy prior to being incorporated in the BLM directive system. Nonetheless, it is not possible to anticipate all conditions that may require immediate removal of wild horses or burros. Therefore, after the final guidance has been issued, local managers will have the authority to determine the need for placing in full force and effect decisions to remove excess wild horses or burros.

Two comments suggested that the increased cost of removals associated with delays caused by appeals to removal plans is not sufficient reason for implementation of the proposed rule. The ability to remove excess wild horses and burros quickly, in accordance with the proposed rule, provides the public at least the following major benefits: (1) Protects the health and welfare of wild horses, (2) protects the habitat from damage caused by overgrazing, (3) reduces the cost of removal and placement of excess wild horses. At the present rate of appeals being filed and funding capability the proposed rule could prevent delays in removal of over 5,000 animals annually. Assuming that an appeal can be resolved in one year or less, the cost of removal of 5,000 animals would increase by at least $277,000 due to the increased number of animals that would have to be removed the following year. In addition to the increased cost of removal, the Government would be faced with an increased number of animals to prepare for adoption, ship to adoption centers, adopt, and convey title. Using the average adoption cost in fiscal year 1991, placing the additional animals would cost at least $660,000. A Government savings of almost $1,000,000 annually is a major benefit resulting from implementation of the proposed regulations. If resolution of an appeal required more than one year, savings would be substantially large. While the cost savings may by themselves not be sufficient justification for the proposed rule, they are certainly a major benefit or implementing the rule.

Two comments suggested amendments of the proposed rule to clarify the Secretary's authority concerning removal of wild horses or burros from private lands. One comment suggested that full force and effect removal decisions be limited to situations when the "owner(s) of these private lands have requested removal of horses from their lands pursuant to section 4 of Public Law 92–195, and have stated in writing that they are in agreement with the removal decision, if removal is required by applicable law or to preserve or maintain a thriving ecological balance and multiple use relationship as determined in the Land Use Plan." Requiring the Secretary to obtain a written agreement from the landowner prior to removal of wild horses or burros from private land would be contrary to the Act which gives the Secretary sole authority to manage wild horses and burros. However, if removal operations require entry upon private lands, the BLM will first secure the landowner's permission.

On the other hand, the second comment suggested that authority to remove wild horses or burros from private land was not needed because the present regulation (Section 4720.2–1) "grants the Secretary the authority to immediately remove horses from private lands." We agree that the Secretary has the authority to remove wild horses and burros from private lands. The proposed rule was written to state clearly that decisions could be placed in full force and effect to remove animals from private lands when necessary to protect the animals or to maintain a thriving natural ecological balance on the public lands without the landowner's permission or a written request to remove wild horses or burros. Such removals would be accomplished without entry of private land by helicopter herding. As stated in the previous paragraph, if transporting the animals or conducting capture operations requires BLM presence on private land, BLM will first obtain permission from the landowner.

An editorial change has been made in paragraph (c) added in the proposed rule to make it clear that the criteria stated in the paragraph relate to removal of horses and burros rather than to placing such removal in full force and effect pending appeal. Also, a new § 4700.0–9 is added in the final rule to contain the information formerly stated in the "Note" at the beginning of part 4700. This addition is nonsubstantive and does not add any regulatory requirements.

The principal author of this final rule is Vernon R. Schulze of the BLM Division of Wild Horses and Burros, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the rule would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment,

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productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Reducing delays in removals of excess animals will result in smaller numbers of animals requiring removal and adoption, and concomitant savings by both the United States and members of the adopting public. Based on average delays and associated population increases, and average annual removals of 5,000 animals, annual savings would be at least $1,000,000. In no case could the effect on the economy approach $100,000,000. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. No private property would be affected without permission. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not because a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* However, the collections of information contained in Group 4700 have been approved by the OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0042.

**List of Subjects in 43 CFR Part 4700**

Advisory committees, Aircraft, Animal welfare, Intergovernmental relations, Penalties, Public lands, Range management, Reporting and recordkeeping requirements, Wild horses and burros, Wildlife.

For the reasons stated in the preamble, and under the authorities cited below, part 4700, subchapter D, chapter II, title 43 of the Code of Federal Regulations is amended as set forth below.

## PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

1. The authority citation for part 4700 is revised to read as follows:

**Authority:** 16 U.S.C. 1331–1340, 43 U.S.C. 1701 *et seq.*, 16 U.S.C. 47, 43 U.S.C. 315.

2. Section 4700.0–9 is added to read as follows:

**§ 4700.0–9 Collections of information.**

(a) The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0042. The information will be used to permit the authorized officer to remove wild horses and burros from private lands and to determine whether an application for adoption of and title to wild horses or burros should be granted. Response is required to obtain benefits under 16 U.S.C. 1333 and 1334.

(b) Public reporting burden for this information is estimated to average 0.1652 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0042, Washington, DC 20503.

3. Section 4770.3 is amended by adding paragraph (c) to read as follows:

**§ 4770.3 Administrative remedies.**

* * * * *

(c) The authorized officer may place in full force and effect decisions to remove wild horses or burros from public or private lands if removal is required by applicable law or to preserve or maintain a thriving ecological balance and multiple use relationship. Full force and effect decisions shall take effect on the date specified, regardless of an appeal. Appeals and petitions for stay of decisions shall be filed with the Interior Board of Land Appeals as specified in this part.

Dated: June 5, 1992.

**Dave O'Neal,**

*Assistant Secretary of the Interior.*

[FR Doc. 92–15628 Filed 7–2–92; 8:45 am]

BILLING CODE 4310–84–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 92–56; RM–7551]**

**Radio Broadcasting Services; Bay City and Edna, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 269C1 for Channel 241C2 at Bay City, Texas, and modifies the construction permit of Station KXGJ, Bay City, Texas, to specify operation on Channel 269C1. In order to accommodate this upgrade, this document also substitutes Channel 241A for Channel 269A at Edna, Texas. See 57 FR 11058, published April 1, 1992. The reference coordinates for the Channel 269C1 allotment at Bay City, Texas are 28–45–58 and 96–04–11. The reference coordinates for the Channel 241A allotment at Edna, Texas are 28–58–42 and 96–38–48. With this action, this proceeding is terminated.

**DATES:** *Effective:* August 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 92–56, adopted June 17, 1992, and released June 29, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

## PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 241C2 and adding Channel 269C1 at Bay City, and removing Channel 269A and adding Channel 241A at Edna.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92-15637 Filed 7-2-92; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 89-469; RM-6815, RM-7513]**

## Radio Broadcasting Services; Naples Park, Solona, and Cypress Lake, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 288C3 for Channel 288A at Naples Park, Florida, and modifies the license of Station WIXI, Naples Park, Florida to specify operation on Channel 288C3. In order to accommodate this upgrade, this document also substitutes Channel 285A for Channel 287A at Solana, Florida, and modifies the construction permit of Station WMMY, Solana, Florida, to specify operation on Channel 285A. See 54 FR 46633, published November 6, 1989. Both of these actions are conditioned on the final outcome of the judicial appeal in *Edens Broadcasting, Inc.* v. *FCC,* Case No. 91-1387 (D.C. Cir.). Finally, this document dismisses a counterproposal by FW Communications, Inc. for a Channel 285A allotment at Cypress Lake, Florida, and denies a counterproposal by West Florida Media, Inc. for a Channel 285C3 substitution at Solana, Florida. The reference coordinates for Channel 288C3 at Naples Park, Florida, are 26-13-56 and 81-45-10. The reference coordinates for the Channel 285A allotment at Solana, Florida, are 26-50-41 and 82-02-15. With this action, the proceeding is terminated.

**DATES:** Effective August 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-469, adopted June 17, 1992, and released June 29, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 288A and adding Channel 288C3 at Naples Park, and removing Channel 287A and adding Channel 285A at Solana.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92-15639 Filed 7-2-92; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 90-164; RM-6814, RM-6926, RM-7706, RM-7707]**

## Radio Broadcasting Services; St. Augustine, St. Augustine Beach, and Gainesville, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule..

**SUMMARY:** This document allots Channel 288A to St. Augustine Beach, Florida, as the community's first local FM service. At the request of WSOS-FM, this document also substitutes Channel 231C3 for Channel 288A at St. Augustine, Florida. See 55 FR 12390, April 3, 1990, and Supplemental Information, *Infra.*

**DATES:** *Effective* August 13, 1992, the window period for filing applications at St. Augustine Beach, Florida, will open on August 14, 1992, and close on September 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-164, adopted June 12, 1992, and released June 29, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

Channel 288A can be allotted to St. Augustine Beach in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 288A at St. Augustine Beach are North Latitude 29-50-52 and West Longitude 81-19-42. Channel 231C3 can be allotted to St. Augustine in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.6 kilometers (4.7 miles) west-northwest. The coordinates for St. Augustine are North Latitude 29-55-05 and West Longitude 81-23-26. This document also denies a petition for rule making seeking the allotment of Channel 231A to St. Augustine Beach, Florida (RM-6926), it denies the petition for rule making requesting the allotment of Channel 231C3 to St. Augustine Beach, Florida (RM-7706), and the petition for rule making requesting the substitution of Channel 288C3 for Channel 288A at St. Augustine, and the substitution of Channel 287A for Channel 288A at Gainesville, Florida (RM-7707). With this action, this proceeding is terminated.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding St. Augustine Beach, Channel 288A, and by removing Channel 288A and adding Channel 231C3 at St. Augustine.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92-15638 Filed 7-2-92; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

## 50 CFR Part 285

**[Docket No. 910102-1312]**

## Atlantic Tuna Fisheries; Bluefin Tuna

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

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**ACTION:** Closure of the longline component of the Incidental Catch category.

**SUMMARY:** NMFS issues this notice to close the fishery for Atlantic bluefin tuna conducted by longline vessels permitted in the Incidental Catch category and operating in all parts of the Regulatory Area. Closure of this fishery is necessary because the total annual quota of 132 mt of Atlantic bluefin tuna allocated for this category has been attained. The intent of this action is to prevent overharvest of the quota established for this fishery.

**EFFECTIVE DATES:** The closure is effective 0001 hours local time July 8, 1992 through December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Stone, 301–713–2347.

**SUPPLEMENTARY INFORMATION:** Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Section 285.22(f)(1) of the regulations provides for an annual quota of 132 mt of Atlantic bluefin tuna to be harvested from the Regulatory Area by longline vessels permitted in the Incidental Catch category. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by those fishing in the category subject to the quota when the catch of tuna equals the quota established under § 285.22. The Assistant Administrator has determined, based on the reported catch, that the annual quota of Atlantic bluefin tuna for longline vessels fishing in the Regulatory Area will be attained by July 8, 1992. Fishing for, and retention of, any Atlantic bluefin tuna harvested under § 285.22(f)(1) must cease at 0001 local time on July 8, 1992.

### Classification

This action is required by 50 CFR 285.20(b)(1) and complies with E.O. 12291.

**Authority:** 16 U.S.C. 971 *et seq.*

### List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 29, 1992.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92–15662 Filed 6–29–92; 4:59 pm]

BILLING CODE 3510–22–M

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**50 CFR Part 675**

**[Docket No. 911172–2021]**

## Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of the shortraker/rougheye species group (SRRE) in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands Management Area (BSAI) and is requiring that incidental catches of SRRE be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the total allowable catch (TAC) for SRRE in the AI has been reached.

**DATES:** Effective 12 noon, Alaska local time (A.l.t.), June 29, 1992, through 12 midnight, A.l.t., December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1992 TAC for SRRE in the AI was established by the final notice of specifications (57 FR 3952, February 3, 1992) as 1,037 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the TAC for SRRE in the AI has been reached. Therefore, NMFS is requiring that SRRE be treated as prohibited species. Under § 675.20(c), NMFS is prohibiting retention of SRRE in the AI effective from 12 noon, Alaska local time (A.l.t.), June 29, 1992, through 12 midnight, A.l.t., December 31, 1992.

### Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

### List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 29, 1992.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92–15660 Filed 6–29–92; 4:59 pm]

BILLING CODE 3510–22–M

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**50 CFR Part 675**

**[Docket No. 911172–2021]**

## Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for yellowfin sole by vessels using trawl gear in Herring Savings Areas of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 1992 prohibited species catch (PSC) bycatch allowance of Pacific herring for the yellowfin sole fishery in the BSAI has been caught.

**DATES:** Effective 12 noon, Alaska local time (A.l.t.), June 29, 1992, through 12 noon, A.l.t., March 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** David R. Cormany, Resource Management Specialist, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The prohibited species trawl bycatch allowance of Pacific herring for the BSAI yellowfin sole fishery, which is defined at § 675.21(g)(4)(ii)(A), was established by emergency rule (57 FR 11433, April 3, 1992) as 134 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.21(h)(2), that U.S. fishing vessels in the BSAI have caught the 1992 bycatch allowance of Pacific herring for the yellowfin sole fishery. Therefore, NMFS is prohibiting directed fishing for yellowfin sole by vessels using trawl gear in the Herring Savings Areas of the BSAI, which are defined at § 675.2, from 12 noon, A.l.t., June 29, 1992, until 12 noon, A.l.t., March 1, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

**Classification**

This action is taken under 50 CFR 675.21 and is in compliance with E.O. 12291.

**List of Subjects in 50 CFR Part 675**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

**Dated:** June 29, 1992.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-15661 Filed 6-29-92; 4:59 pm]

BILLING CODE 3510-22-M

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# Proposed Rules

Federal Register
Vol. 57, No. 129
Monday, July 6, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 12

### Highly Erodible Land and Wetland Conservation

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes amendments to the highly erodible land and wetland conservation regulations issued pursuant to the Food Security Act of 1985, as amended (the 1985 Act), 16 U.S.C. 3801 *et seq.*, which are contained in 7 CFR 12.5 and 12.33. The proposed changes are consistent with the authorizing legislation and will provide more flexibility for producers on the use of wetlands that were manipulated prior to December 23, 1985, and either converted by a drainage district or were used for crop production, but not planted to an agricultural commodity. Specifically, this rule proposes: (1) Revising 7 CFR 12.5 to provide that in the event that a drainage district project converts a wetland that was formerly a wetland that had been altered to some degree and used to produce an agricultural commodity, a so called "farmed wetland", a producer assessed for the project may be considered not to have converted the converted farmed wetland and, thus, will not be subject to the new "conversion" trigger, so long as the producer does not produce an annually-tilled crop or sugar-cane on the farmed wetland; and (2) revising 7 CFR 12.33 to provide that any crop production on a prior converted wetland may be considered as proof of intent not to abandon the converted wetland regardless of whether the crop production involves an annually-tilled crop or sugar-cane.

**DATES:** Comments on the proposed amendment in this rule must be received before July 21, 1992, in order to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments to: Director, Cotton, Grain, and Rice Price Support Division, USDA, ASCS, P.O. Box 2415, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra J. Penn, Deputy Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013, telephone 202–720–3463.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been reviewed under United States Department of Agriculture (the "Department" or "USDA") procedures established in accordance with provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified as "not major." It has been determined that this proposed amendment to the current regulations will not have an annual effect on the economy of $100 million or more. The collection of information for these regulations was previously approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980. The Office of Management and Budget assigned number for those requirements of the current regulations is OMB No. 0004, effective through June 30, 1994. The public reporting burden for these collections is estimated to vary from 5 to 15 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0004), Washington, DC 20503.

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052; Emergency Conservation Program—10.054; Emergency Loans—10.404; Farm Operating Loans—10.406; Farm Ownership Loans—10.407; Feed Grain Production Stabilization—10.055; Storage Facilities Equipment Loans—10.056; Wheat Production Stabilization—10.058; National Wool Act payments—10.059; Rice Production Stabilization—10.065; Federal Crop Insurance—10.450; Soil and Water Loans—10.416; Loans to Indian Tribes and Tribal Corporations—10.421; Watershed Protection and Flood Prevention loans and cost share payments—10.904; Great Plains Conservation Program cost share payments—10.900; Agricultural Conservation Program cost share payments—10.063; Disaster Assistance payments—10.052, 10.058, 10.065, and 10.440; Conservation Reserve Program payments—10.069; payments under the Agricultural Credit Act—10.054; and payments under the Agricultural Water Quality Incentives Program and the Environmental Easement Program authorized by the Food Security Act of 1985, as amended (these programs are not in the catalog at this time).

This rule is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1981).

On the basis of an environmental evaluation, it has been determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment. The environment assessment and Finding of No Significant Impact (FONSI) that was prepared during the promulgation of the current regulations in 7 CFR part 12 has been reviewed to assess the effect of the changes in the reguiations that are the subject of this proposed rule. The Department has determined that the implementation of this rule by the agencies of the Department will: (1) Not cause any measurable adverse environmental effects; (2) not diminish the long term environmental productivity of the Nation's resources; and (3) not cause any irretrievable commitments of natural resources. Therefore, under the provisions of National Environmental Policy Act and related regulations, neither an additional environmental assessment nor a detailed environmental impact statement are required. Requests for copies of the environmental assessment

and FONSI may be sent to the previously mentioned contact.

Other than as indicated, implementation of this proposed rule would not have any known effect on any existing Federal law or regulation.

This proposed rule implements two changes to the existing regulations in 7 CFR part 12. Those regulations implement the wetland conservation provisions in the 1985 Act.

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive and do not preempt State laws. Before any judicial action may be brought with respect to determinations made by the Agricultural Stabilization and Conservation Service, administrative remedies at 7 CFR part 780 must be exhausted. Similarly, before any judicial action may be brought with respect to determinations made by the Soil Conservation Service, administrative remedies at 7 CFR part 614 must be exhausted.

**"Farmed Wetlands" Converted by a Drainage District Project**

Amendments to the 1985 Act enacted in 1990 provide that, in the event a person converts a wetland so as to make production of an "agricultural commodity" possible, that person would be considered to be ineligible for USDA benefits thereafter until the wetland is restored. Prior to 1990, a wetland conservation violation did not occur until the producer actually planted an "agricultural commodity" An "agricultural commodity " is defined to be a commodity produced by annual tilling or sugarcane. Under 7 CFR 12.5, the activities of a drainage district were considered to be the action of all persons assessed for the project. With the new conversion "trigger", the prior attribution rule with respect to drainage districts would have meant that all such assessed persons would be considered converters of wetland, regardless of planting, for any project in which they were assessed to pay for the project. This would have been the case even if the producer were not in control of the project.

To address that problem, rules issued after the 1990 amendments provided that the actions of the district would not be attributed to a person to the extent that the activities of the district or entity were beyond the control of the person and the wetlands converted are not used by the person for the production of an agricultural commodity or forage crop for harvest by mechanical means. However, there remained a potential problem. Some wetlands affected by drainage districts may have been "farmed wetlands"—wetlands with a cropping history that had been previously manipulated, but still met wetland criteria. Producers generally are permitted, under the rules in part 12, to use "farmed wetlands" for all crop production so long as drainage is not enhanced. For "farmed wetlands", however, the new 1990 rule left the producer more restricted as to the use of the land if there were an action by the drainage district that converted the "farmed wetland." That was the case because, before the project, the land could have been used for crop production as weather allowed, but the rules allowed only forage use of the "farmed wetland" following the project.

This handling of drainage projects appears to be unnecessarily restrictive and potentially unfair. Accordingly, this rule proposes revising section 12.5(b)(1)(iv)(D). The revision would allow the producer of "farmed wetland" converted by a drainage district to use the land to produce forage or to produce a crop other than an "agricultural commodity." This would mean, for example, that the land could be used for hay production. This should mitigate whatever unfairness may have resulted from the current rule yet avoid providing an incentive to producers to encourage new drainage projects since the production of an "agricultural commodity" would still be prohibited. This amendment would not affect the situation where the conversion of a wetland is a private undertaking of the producer. In those situations, the new "conversion" trigger will render the person ineligible for benefits regardless of whether an agricultural commodity is planted.

**Abandonment**

Under the 1985 Act, wetlands converted before December 23, 1985, were exempt from wetland conservation sanctions. Section 12.33 contains a provision that permits a wetland to be considered "abandoned", thereby losing its "prior converted" status, if the land had not been cropped in the preceding five years. The existing rule specifies that the abandonment would be considered to occur where there is a cessation of activities related to the production of "agricultural commodities." Agricultural commodities are sugar cane or crops that are produced by annual tilling of the soil. Distinctions between "agricultural commodities" and other crops, such as perennial crops, are unnecessarily limiting in the context of abandonment. Accordingly, it is proposed that § 12.33 be revised to remove the reference to "agricultural commodities." The revised rule would permit the continuation of any crop production including production, for example, of perennial crops, to be considered as evidence of intent not to abandon the converted wetland. A special provision has been included, however, to treat land as abandoned when, in certain instances, it has been used only as pasture land.

**Shortened Comment Period**

It has been determined that it is in the public interest to reduce the comment period so that the proposed revisions, if adopted, may be made effective as quickly as possible in order to avoid undue limitations on producers.

**List of Subjects in 7 CFR Part 12**

Highly erodible land, Wetland, Conservation, Price support programs, Federal crop insurance, Farmers Home Administration loans, Incorporation by reference, Loan programs, Agriculture, Environmental protection.

Accordingly, title 7, Code of Federal Regulations, part 12, is proposed to be amended as follows:

## PART 12—HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

1. The authority citation for part 12 continues to read as follows:

Authority: 16 U.S.C. 3801 et seq.

2. Paragraph (b)(1)(iv)(D) of § 12.5 is amended by adding the following clause before the period in the last sentence:

**§ 12.5 Exemptions.**

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(D) * * *, except that production of a forage crop for harvest by mechanical means will be permitted if, prior to the conversion by a drainage district or similar entity, the land was a wetland area as described in § 12.32(a)(3) and was cropped.

* * * * *

**§ 12.33 [Amended]**

3. Section 12.33(b) is amended by adding the phrase "or other crop production, including pasture production," after the word "commodities" in the fourth sentence, and inserting the phrase "or, in instances of pasture production, invading woody vegetation is 5 years old or older," after the word "production" in the fifth sentence.

Signed this 25th day of June 1992 in Washington, DC.

Edward Madigan,

*Secretary of Agriculture.*

[FR Doc. 92-15666 Filed 7-2-92; 8:45 am]

BILLING CODE 3410-05-M

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**Agricultural Marketing Service**

**7 CFR Parts 55, 56, 59, and 70**

**[Docket No. PY-92-002]**

**RIN 0581-AA72**

## Increase in Fees and Charges for Egg Products Inspection and Egg, Poultry, and Rabbit Grading

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) proposes to increase the fees and charges for Federal voluntary egg products inspection; voluntary egg, poultry, and rabbit grading; mandatory egg products inspection overtime and appeal services; and laboratory services. These fees and charges need to be increased to cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

**DATES:** Comments must be received on or before August 5, 1992.

**ADDRESSES:** Send written comments, in duplicate, to Janice L. Lockard, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 3944-South, P.O. Box 96456, Washington, DC 20090-6456. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. State that your comments refer to Docket No. PY-92-002.

**FOR FURTHER INFORMATION CONTACT:** Larry W. Robinson, Chief, Grading Branch, 202-720-3271.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Department Regulation 1512-1 and has been classified a "non-major" rule under the criteria contained therein. It (i) will have an annual effect on the economy of less than $100 million; (ii) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or (iii) will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule. The AMS Administrator has determined that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because (i) the fees and charges merely reflect, on a cost-per-unit-graded/inspected basis, a minimal increase in the costs currently borne by those entities utilizing the services and (ii) competitive effects are offset under the major voluntary programs (resident shell egg and poultry grading) through administrative charges based on the volume of product handled; i.e., the cost to users increases in proportion to increased volume.

The information collection requirements that appear in §§ 56.52(a)(4), 59.126, and 70.77(a)(4) to be amended by the proposed rule have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581-0128, No. 0581-0113 and No. 0581-0127, respectively, under the Paperwork Reduction Act of 1980.

### Background and Proposed Changes

The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing voluntary egg products inspection; voluntary egg, poultry, and rabbit grading; and laboratory services. Likewise, the Egg Products Inspection Act requires the collection of fees to cover costs of overtime, holiday, and appeal inspection services. Each fiscal year, these fees undergo a cost analysis to determine if they are adequate to recover the cost of providing the services. Grading and inspection fees were last increased effective May 1, 1991, while laboratory fees were last increased effective June 1, 1989.

Projected operating costs are expected to increase in 1992. Federal employees' salaries increased by 4.2 percent in January 1992. Also, the cost of life insurance, health benefits, and Medicare increased by about 8 percent, Federal employee retirement fringe costs increased 8 percent, and salaries and fringe benefits of federally licensed State employees increased by about 8 percent.

Resident fees would be increased about 5.5 percent. Resident fees cover Federal and State salaries, fringe benefits, relief, and other service-related costs.

Administrative service charges apply to the costs of supervision and other overhead and administrative costs and are assessed on each case of shell eggs and each pound of poultry handled in plants using resident grading service. In 1991, these unit rates were established at $0.031 per case of shell eggs and $0.00031 per pound of poultry, with a minimum of $155 and maximum of $1,550 per monthly billing period for each official plant. In order to better reflect the costs of supervision and other administrative overhead costs associated with plants ranging in size and complexity, the unit rates would be decreased and the monthly minimum and maximum rates increased. The charges per case of shell eggs and pound of poultry would be changed to $0.030 and $0.00025, respectively, with a monthly minimum charge of $175 and a maximum of $1,750. Depending on the number of graders in a plant and the volume of product handled, the combined impact of these rate changes would range from a net decrease of 2 percent to an increase of 7.6 percent.

The hourly rate for nonresident voluntary grading and inspection service would be increased from $28.64 to $30.12. The hourly rate for such services performed on Saturdays, Sundays, or holidays would be increased from $29.68 to $30.52. The hourly rate for voluntary appeal gradings or inspections would be increased from $24.48 to $25.44. The hourly rates for mandatory egg products inspection services would be increased from $21.68 to $22.72 for overtime inspection and from $24.48 to $25.44 for certain appeal inspections.

Administrative charges for resident voluntary rabbit grading, resident voluntary egg products inspection, and nonresident voluntary continuous poultry and egg grading will continue to be based on 25 percent of the grader's or inspector's total salary costs. The minimum charge per monthly billing period for these programs would be increased from $155 to $175 per official plant.

The hourly rate for laboratory analyses for other than individual tests would be increased from $30.52 to $32.11.

**Timing of Any Fee Increase**

It is contemplated that any fees that might be implemented as a result of this action would be implemented on an expedited basis in order to minimize that period of time between the effective date of the Federal pay increase and the effective date of any fee increase. Accordingly, it is anticipated that the fee increases, if adopted, would become effective upon publication or very soon after publication of the final rule in the **Federal Register** and that postponing the effective date of the final rule until 30 days after publication in the **Federal Register** would not occur. An approximate effective date would be June 1, 1992.

**List of Subjects**

*7 CFR Parts 55 and 56*

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

*7 CFR Part 59*

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Polychlorinated biphenyls (PCB's), Reporting and recordkeeping requirements.

*7 CFR Part 70*

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that title 7, Code of Federal Regulations, parts 55, 56, 59, and 70 be amended as follows.

## PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

1. The authority citation for part 55 continues to read as follows:

**Authority:** Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

2. Section 55.510 is amended by revising paragraphs (b), (c), and (d) to read as follows:

**§ 55.510 Fees and charges for services other than on a continuous resident basis.**

* * * * *

(b) Fees for product inspection and sampling for laboratory analysis will be based on the time required to perform the services. The hourly charge shall be $30.12 and shall include the time actually required to perform the sampling and inspection, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $30.52 per hour. Information on legal holidays is available from the Supervisor.

(d) The cost of an appeal grading, inspection, laboratory analysis, or review of a grader's or inspector's decision shall be borne by the appellant at an hourly rate of $25.44 for time spent performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, inspection, laboratory analysis, or review of a grader's or inspector's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

3. Section 55.550 is revised to read as follows:

**§ 55.550 Laboratory analysis fees.**

(a) The fees listed for the following individual laboratory analyses cover costs involved in the preparation and analysis of the product, certificate issuance, and personnel and overhead costs other than the expenses listed in § 55.530.

| | Fee |
|---|---|
| Solids | $16.05 |
| Fat | 32.11 |
| Bacteriological plate count | 16.05 |
| Bacteriological direct count | 32.11 |
| Coliforms:[1] | |
| Step 1 | 24.08 |
| Step 2 | 24.08 |
| E. coli (presumptive):[2] | |
| In addition to coliform analysis— | |
| Step 1 | (3) |
| Step 2 | 24.08 |
| Without coliform analysis— | |
| Step 1 | 24.08 |
| Step 2 | 24.08 |
| Yeast and mold count | 16.05 |
| Sugar | 40.13 |
| Salt | 40.13 |
| Color: | |
| NEPA | 24.08 |
| B-Carotene | 32.11 |
| Whipping test | 16.05 |
| Whipping test plus bleeding | 24.08 |
| Fat film test | 40.13 |
| Oxygen | 16.05 |
| Glucose: | |
| Quantitative | 32.11 |
| Qualitative | 24.08 |
| Palatability and odor: | |
| First sample | 16.05 |
| Each additional sample | 8.03 |
| Staphylococcus | 48.16 |
| Salmonella:[4] | |
| Step I | 32.11 |
| Step 2 | 16.05 |
| Step 3 | 32.11 |

[1] Coliform test may be in two steps as follows: Step 1—presumptive test through lauryl sulfate tryptose broth; Step 2—confirmatory test through brilliant green lactose bile broth.

[2] E. coli test may be in two steps as follows: Step I— presumptive coliform test through lauryl sulfate tryptose broth; Step 2—presumptive E. coli test through eosin-methlyne blue agar.

[3] No charge.

[4] Salmonella test may be in three steps as follows: Step I—growth through differential agars; Step 2—growth and testing through triple-sugar-iron and lysine-iron agars; Step 3—confirmatory test through biochemicals.

(b) The fee charge for any laboratory analysis not listed in paragraph (a) of this section, or for any other applicable services rendered in the laboratory, shall be based on the time required to perform such analysis or render such service. The hourly rate shall be $32.11.

4. Section 55.560 is amended by revising paragraph (a) (3) to read as follows:

**§ 55.560 Charges for continuous inspection and grading service on a resident basis.**

* * * * *

(a) * * *

(3) An administrative service charge equal to 25 percent of the grader's or inspector's total salary costs. A minimum charge of $175 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

## PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

5. The authority citation for Part 56 continues to read as follows:

**Authority:** Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

6. Section 56.46 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 56.46 On a fee basis.**

* * * * *

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $30.12 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $30.52 per hour. Information on legal holidays is available from the Supervisor.

7. Section 56.47 is revised to read as follows:

**§ 56.47 Fees for appeal grading or review of a grader's decision.**

The cost of an appeal grading or review of a grader's decision shall be borne by the appellant at an hourly rate of $25.44 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading or review of a grader's decision discloses that a material error was made

in the original determination, no fee or expenses will be charged.

8. Section 56.52 is amended by revising paragraph (a)(4) to read as follows:

**§ 56.52 Continuous grading performed on a resident basis.**

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $0.030, except that the minimum charge per billing period shall be $175 and the maximum charge shall be $1,750. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

9. Section 56.54 is amended by revising paragraph (a)(2) to read as follows:

**§ 56.54 Charges for continuous grading performed on a nonresident basis.**

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $175 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

## PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

10. The authority citation for part 59 continues to read as follows:

**Authority:** Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056).

11. Section 59.126 is revised to read as follows:

**§ 59.126 Overtime inspection service.**

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant shall give reasonable advance notice to the inspector of any overtime service necessary and shall pay the Service for such overtime at an hourly rate of $22.72 to cover the cost thereof.

12. Section 59.370 is amended by revising paragraph (b) to read as follows:

**§ 59.370 Cost of appeals.**

* * * * *

(b) The costs of an appeal shall be borne by the appellant at an hourly rate of $25.44, including travel time and expenses if the appeal was frivolous, including but not being limited to the following: The appeal inspection discloses that no material error was made in the original inspection, the condition of the product has undergone a material change since the original inspection, the original lot has changed in some manner, or the Act or these regulations have not been complied with.

## PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

13. The authority citation for part 70 continues to read as follows:

**Authority:** Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

14. Section 70.71 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 70.71 On a fee basis.**

* * * * *

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $30.12 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $30.52 per hour. Information on legal holidays is available from the Supervisor.

15. Section 70.72 is revised to read as follows:

**§ 70.72 Fees for appeal grading, laboratory analysis, or examination or review of a grader's decision.**

The costs of an appeal grading, laboratory analysis, or examination or review of a grader's decision will be borne by the appellant at an hourly rate of $25.44 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, laboratory analysis, or examination or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

16. Section 70.76 is amended by revising paragraph (a)(2) to read as follows:

**§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.**

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $175 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

17. Section 70.77 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

**§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.**

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00025, except that the minimum charge per billing period shall be $175 and the maximum charge shall be $1,750. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) For rabbit grading: An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $175 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: June 29, 1992.

**Kenneth C. Clayton,**

*Acting Administrator.*

[FR Doc. 92–15665 Filed 7–2–92; 8:45 am]

BILLING CODE 3410-02-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

**12 CFR Parts 308 and 325**

**RIN 3064–AA37**

**Prompt Corrective Action**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Proposed Rule.

**SUMMARY:** The FDIC is proposing to amend parts 308 and 325 of its regulations to implement section 38 of the Federal Deposit Insurance Act (FDI Act), as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Section 38 requires or permits the FDIC and other Federal banking agencies to take certain supervisory actions when FDIC-insured institutions fall within one of five specifically enumerated capital categories. It also restricts or prohibits certain activities and requires the submission of a capital restoration plan when insured institutions become undercapitalized. These proposed amendments are necessary to establish the capital levels at which insured institutions will be deemed to come within the five capital categories. The proposed amendments also establish procedures for issuing and contesting prompt corrective action directives including directives requiring the dismissal of directors and senior executive officers.

**DATES:** Comments must be received no later than August 20, 1992.

**ADDRESSES:** All comments should be submitted to Hoyle L. Robinson, Executive Secretary, Attention: Room F–400, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429 or delivered to room F–400, 1776 F Street, NW., between the hours of 9 a.m. and 5 p.m. on business days. [FAX number: (202) 898–3838]. Comments will be available for inspection and photocopying during normal business hours at the 1776 F Street address.

**FOR FURTHER INFORMATION CONTACT:** Daniel M. Gautsch, Examination Specialist (202–898–6912), Stephen G. Pfeifer, Examination Specialist (202–898–8904), Division of Supervision; Claude A. Rollin, Counsel (202–898–3985), Legal Division, Federal Deposit Insurance Corporation.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 131 of FDICIA created a new statutory framework that applies to every insured depository institution a system of supervisory actions indexed to the capital level of the individual institution. The stated purpose of this statutory provision is to "resolve the problems of insured depository institutions at the least possible long-term loss to the deposit insurance fund." The new framework is contained in section 38 of the FDI Act. This framework and the authority it confers on the federal banking agencies are meant to supplement the existing supervisory authority vested in the agencies, and do not limit in any way their existing authority under other statutes or regulations to initiate supervisory actions to address capital deficiencies, unsafe or unsound conduct, practices, or conditions, or violations of law.

Section 38 requires the federal banking agencies, within 9 months of the enactment of FDICIA, to promulgate final regulations necessary to carry out the purposes of that section. Under the statute, these regulations must become effective within one year after the date of enactment of FDICIA, or no later than December 19, 1992.

It is the goal of the Board of Governors of the Federal Reserve System (Federal Reserve Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) to promulgate uniform regulations to the extent feasible in implementing the prompt corrective action framework of section 38. The agencies believe that a uniform approach to capital definitions and capital categories would simplify the tasks facing bank and thrift management of monitoring and maintaining the capital levels of insured depository institutions, and would remove any competitive distortions that might arise if different standards were applied to competing institutions.

In order to implement the provisions of section 38, the agencies have proposed regulations that have uniform provisions. The agencies propose to define in the same manner the capital measures and capital thresholds for each of the five capital categories established in the statute. The agencies also propose to establish a uniform schedule for filing and review of capital restoration plans. In addition, the agencies propose to adopt identical provisions clarifying certain aspects of the capital guarantee required to be made by companies that control an undercapitalized institution as part of an acceptable capital plan, including the limit on the liability of such companies.

The agencies' proposal establishes a procedure under which institutions are provided advance notice of a proposed agency action under section 38 and provided an opportunity to respond to the proposed action. A separate procedure is proposed that governs decisions by the appropriate Federal banking agency to change the capital category to which the institution is assigned after review of supervisory factors other than capital. Finally, the proposal implements the statutory requirement that officers and directors who are subject to dismissal as a result of an agency order issued under section 38 be afforded agency review of the dismissal.

Many of the provisions of section 38 apply without the need for agency action, or impose requirements or limitations on an agency in the exercise of its discretion. These provisions have not been repeated in the proposed regulation. The proposal implements only those portions of section 38 that the agencies believe require regulatory specification or clarification.

Where procedures have not been established in this proposal, such as procedures for review of a stock redemption or an expansion proposal by an undercapitalized institution, each agency will implement a procedure governing agency review. Such procedures will be established by regulation or through instructions to its appropriate field offices and examiners and to the institutions involved. In several instances, procedures governing agency review have already been established in other agency regulations.

The agencies request comment on all aspects of this proposal, including the specific numbered questions presented below. In addition, the agencies request comment on whether other provisions of section 38 require clarification or should be implemented by regulation. The agencies stress that comments may address any aspect of the proposal and need not be confined to the numbered questions set out below. Commenters are invited to submit comments to any or all of the federal banking agencies.

## II. Summary of Statutory Framework

The following is a brief summary of the supervisory framework established by section 38. This summary has been prepared in order to give context to the agency proposal and request for comment. The summary is not intended to be a complete description of the requirements of section 38, and commenters may find it useful to consult the provisions of section 38, contained at 12 U.S.C. 1831o, in preparing their comments.

Section 38 provides a framework of supervisory actions based on the capital level of an insured depository institution. Section 38 establishes five capital categories: well-capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. The statute deems an insured depository institution to be:

"Well capitalized" if the institution significantly exceeds the required minimum level for each relevant capital measure;

"Adequately capitalized" if the institution meets the required minimum level for each relevant capital measure;

"Undercapitalized" if the institution fails to meet the required minimum level for any relevant capital measure;

"Significantly undercapitalized" if the institution is significantly below the required minimum level for any relevant capital measure; or,

"Critically undercapitalized" if the institution has a ratio of tangible equity to total assets of 2 percent or less, or otherwise fails to meet the critical capital level established pursuant to section 38(c)(3)(A).

The applicability of supervisory actions provided in section 38 to an individual institution depends on the institution's classification within one of these five categories.

*A. Provisions Applicable to All Institutions*

Section 38 prohibits an insured depository institution from declaring any dividends, making any other capital distribution or paying a management fee to a controlling person if, following the distribution or payment, the institution would be within any of the three undercapitalized categories. The statute provides a limited exception to this prohibition for stock redemptions that do not result in any decrease in an institution's capital and would improve the institution's financial condition provided that the redemption has been approved by the institution's appropriate Federal banking agency after consultation with the FDIC.

*B. Provisions Applicable to Undercapitalized Institutions*

Institutions that are classified as undercapitalized are subject to a number of additional mandatory supervisory actions. These include:

- Increased monitoring by the appropriate Federal banking agency for the institution and periodic review of the institution's efforts to restore its capital;
- A requirement that the institution submit, generally within 45 days, a capital restoration plan acceptable to the appropriate Federal banking agency for the institution and implement that plan;
- A restriction on growth of the institution's total assets; and
- A limitation on the institution's ability to make any acquisition, open any new branch offices, or engage in any new line of business without the prior approval of the appropriate Federal banking agency for the institution.

Seciton 38 also provides that the appropriate Federal banking agency for an undercapitalized institution may take any of a number of discretionary supervisory actions if the agency determines that any of these actions is necessary to resolve the problems of the institution at the least possible long-term cost to the deposit insurance fund. These discretionary supervisory actions include: requiring the institution to raise additional capital; restricting transactions with affiliates; restricting interest rates paid by the institution on deposits; requiring replacement of senior executive officers and directors; restricting the activities of the institution and its affiliates; requiring divestiture of the institution or the sale of the institution to a willing purchaser; and any other supervisory action that the agency deems appropriate. Because these discretionary actions are also applicable to significantly undercapitalized institutions (as well as to critically undercapitalized institutions), these actions are described more fully in the next section.

*C. Provisions Applicable to Significantly Undercapitalized Institutions*

Section 38 provides that significantly undercapitalized institutions are subject to the four mandatory provisions listed above that are applicable to undercapitalized institutions. Section 38 also provides that a significantly undercapitalized institution must restrict the payment of bonuses and raises to senior executive officers of the institution.

In addition to these mandatory requirements, section 38 specifies that the appropriate Federal banking agency for the institution shall impose one or more restrictions on an institution that is significantly undercapitalized. These discretionary actions include:

- Requiring the institution to sell enough additional capital, including voting shares, so that the institution would be adequately capitalized after the sale;
- Restricting transactions between the institution and its affiliates, including transactions with its insured depository institution affiliates;
- Restricting the interest rates paid on deposits collected by the institution to the prevailing rates in the region where the institution is located;
- Restricting the institution's asset growth or requiring the institution to reduce its total assets;
- Requiring the institution or any subsidiary of the institution to terminate, reduce or alter any activity that the agency determines poses excessive risk to the institution;
- Requiring the institution to hold a new election of its board of directors;
- Requiring the institution to dismiss any director or senior executive officer who had held office at the institution for more than 180 days immediately before the institution became undercapitalized, if the agency deems such dismissal to be appropriate, and to employ new officers;
- Prohibiting the institution from accepting deposits from correspondent depository institutions;
- Prohibiting any bank holding company that controls the institution from making any dividend payment without prior approval of the Federal Reserve Board;
- Requiring the institution to accept an offer to be acquired by another institution or company, or requiring any company that controls the institution to divest the institution;
- Requiring the institution to divest or liquidate any subsidiary that is in danger of becoming insolvent and poses a significant risk to the institution, or that is likely to cause significant dissipation of the institution's assets or earnings;
- Requiring any company that controls the institution to divest or liquidate any affiliate of the institution (other than another insured depository institution) if the appropriate Federal banking agency for the holding company determines that the affiliate is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause significant dissipation of the institution's assets or earnings; and
- Requiring the institution to take any other action that the agency determines would better carry out the purposes of section 38.

While the statute generally provides the agency with discretion to determine whether these actions are appropriate in connection with a particular institution, the statute establishes certain presumptions and requirements with respect to the agency's consideration of these actions. Section 38 requires that the agency take at least one of the above discretionary supervisory actions in connection with every institution that is significantly undercapitalized or critically undercapitalized. The statute also establishes a presumption that the agency require each significantly undercapitalized or critically undercapitalized institution to (1) be acquired by another institution or company or sell sufficient shares to restore the institution's capital to at least the minimum acceptable capital level, (2) restrict transactions with affiliates of the institution, including transactions with depository institution affiliates, and (3) restrict interest rates paid by the institution on deposits. The agency must impose each of these three actions unless the agency determines that the action would not further the purpose of section 38.

As discussed above, each of the discretionary actions listed above may also be taken in connection with undercapitalized institutions if a finding is made by the agency that the action is necessary to carry out the purposes of section 38. In addition, these discretionary actions may be taken in connection with any undercapitalized

institution that fails to submit or materially implement a capital restoration plan, as if the institution were a significantly undercapitalized institution.

In addition to the discretionary actions discussed above, section 38 also provides that the appropriate Federal banking agency may require a significantly undercapitalized institution or an undercapitalized institution that has failed to submit or implement an acceptable capital restoration plan to comply with one or more of the restrictions established by the FDIC on the activities of critically undercapitalized institutions.

*D. Provisions Applicable to Critically Undercapitalized Institutions*

Section 38 requires that an insured depository institution that is critically undercapitalized be placed in conservatorship or receivership within 90 days, unless the appropriate Federal banking agency for the institution and the FDIC concur that other action would better achieve the purposes of section 38. A determination by the agency to defer placing a critically undercapitalized institution in receivership or conservatorship must be reviewed every 90 days and must document the reasons the agency believes other action would better achieve the purposes of section 38.

The statute requires that the institution be placed in receivership if the institution continues to be critically undercapitalized on average during the fourth quarter after the institution initially became critically undercapitalized, unless certain specific statutory requirements are met. To be eligible for the exception, the institution must: (1) Have positive net worth, (2) be in substantial compliance with an approved capital restoration plan, (3) be profitable or have an upward trend in earnings, and (4) have reduced its ratio of nonperforming loans to total loans. In addition, the head of the appropriate Federal banking agency for the institution and the Chairperson of the FDIC must both certify that the institution is viable and not expected to fail.

Critically undercapitalized institutions are also prohibited, beginning 60 days after becoming critically undercapitalized, from making any payment of principal or interest on subordinated debt issued by the institution without the prior approval of the FDIC. Section 38 does not prevent unpaid interest from accruing on subordinated debt under the terms of the debt instrument.

Section 38(i) of the FDI Act also provides that the FDIC, by regulation or order, must restrict the activities of critically undercapitalized institutions. At a minimum, the FDIC must prohibit critically undercapitalized institutions from doing any of the following without the prior written approval of the FDIC:

- Entering into any material transaction other than in the usual course of business. Such activities include any investment, expansion, acquisition, sale of assets or other similar action where the institution would have to notify its appropriate Federal banking agency;
- Extending credit for any highly leveraged transaction;
- Amending its charter or bylaws unless required to do so in order to carry out any other requirement of any law, regulation or order;
- Making any material change in its accounting methods;
- Engaging in any "covered transactions" within the meaning of section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c), which concerns affiliate transactions;
- Paying excessive compensation or bonuses; and
- Paying interest on new or renewed liabilities at a rate which would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates in the institutions's normal market areas.

Pursuant to section 38(j) of the FDI Act, none of these restrictions apply to institutions in conservatorship or to any bridge bank that is wholly owned by the FDIC or the RTC.

It should also be noted that, pursuant to section 38(o)(2) of the FDI Act, none of these restrictions shall apply, before July 1, 1994, to any insured savings association if:

(a) The savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii));

(b) The Director of OTS had accepted the plan; and

(c) The savings association remains in compliance with the plan or is operating under a written agreement with the appropriate Federal banking agency.

The FDIC proposes to rely on existing industry or regulatory guidance, to the extent possible, when evaluating and applying each of the above restrictive provisions and to continue to coordinate closely with the primary Federal and/or State banking regulators. The interagency procedures implemented will be similar to those already in place at both the Federal agency and state banking department levels. For example, prior to imposing any order restricting or prohibiting an institution from engaging in any of the activities that can be restricted, the FDIC would consult with the appropriate Federal banking agency and State banking agency, as appropriate.

## III. Proposal and Request for Comment

*A. Capital Measures*

For purposes of defining each of the five capital categories (except for the critically undercapitalized category), section 38(c) requires the agencies to prescribe capital standards that include a leverage limit and a risk-based capital requirement. The agencies may establish additional capital measures for these categories if additional capital measures would serve the purpose of section 38. In addition, section 38 permits the agencies to rescind the leverage limit or the risk-based capital measure if the Federal banking agencies concur that either measure is no longer an appropriate means for carrying out the purposes of section 38.

The agencies are proposing to adopt the leverage limit and the total risk-based capital measure in defining the capital categories other than the critically undercapitalized category. In addition, the agencies propose to adopt the Tier 1 risk-based ratio as a capital measure in defining these capital categories. These measures are generally used by the Federal banking agencies in determining the adequacy of capital of insured depository institutions.

*Comment 1.* The agencies request comment on whether adoption of these three capital measures is appropriate to carry out the purpose of section 38.

The agencies note that the capital requirements applicable to insured depository institutions may be affected by section 305 of FDICIA, which amends section 18 of the Federal Deposit Insurance Act ("FDI Act") to require the agencies to revise their risk-based capital standards to take into account interest rate risk, concentration of credit risk, and the risks of nontraditional activities. The statutory deadline for implementation of these revisions is June 19, 1993.

As the revisions required under section 18 of the FDI Act are implemented, it might prove necessary or appropriate to review the capital measures and thresholds specified for the various capital categories. In particular, the agencies note that one of the rationales for retaining a leverage ratio after the risk-based capital measure was introduced was that the risk-based capital measure is focused on credit-related risk, and does not

explicitly factor in other risks, particularly interest rate risk.

The agencies intend to lower or eliminate the leverage capital component from the definitions of "well capitalized," "adequately capitalized" and "undercapitalized" after the risk-based capital standards have been revised by each federal banking agency to take into account interest rate risk as required by section 305 of FDICIA, and after experience has been gained with such standards. The agencies acknowledge the requirements of section 38(c) of the FDI Act and would comply with those requirements, to the extent they apply, before taking any such action.[1]

*B. Definition of Capital Terms*

The agencies propose to adopt the same definitions of capital terms for purposes of the prompt corrective action provisions of section 38 as are currently used under the capital adequacy guidelines and regulations adopted by the agencies. The definition of the risk-based and leverage capital ratios for purposes of the prompt corrective action subpart would refer to the definitions of Tier 1 capital, total capital, total risk-weighted assets, and total assets as those terms are defined in the agencies' current capital adequacy guidelines and regulations. This proposal attempts to reduce complexity that could result from the use of new or modified capital definitions, and to minimize confusion and the possibility that an institution may be uncertain regarding its capital levels for purposes of section 38.

*Comment 2.* The agencies request public comment regarding whether this approach is appropriate or whether the agencies should modify the existing capital definitions for purposes of applying section 38. If adjustments or modifications to the capital definitions currently used are deemed to be appropriate, the agencies request comment on what type of adjustments or modifications should be made.

*Comment 3.* The agencies also request comment regarding the appropriate period for calculation of capital levels. Under current agency practice and requirements, the level of capital of an institution is calculated on the basis of the amount of capital held by the institution on a given day as a ratio of the most recent quarterly average of total assets or quarter-end risk-weighted assets for the institution. A daily calculation of both capital and assets may facilitate prompt action under section 38. However, the agencies note that insured depository institutions are not currently required to make daily calculations of capital, and such a requirement would increase the reporting burden on many institutions. In addition, a daily calculation may distort capital calculations by focusing on individual daily events (such as a decline in the market value of certain investments on a given day) rather than on related actions taken during a given period or remedial actions that are readily available to the institution (such as a decline in market value in one investment followed by a gain realized on the sale of another investment).

*Comment 4.* The agencies request comment on whether, for purposes of applying the prompt corrective action requirements of section 38, the use of quarterly average total assets or quarter-end risk-weighted assets in calculating capital levels is appropriate, or whether the capital calculations for an institution should be based on an actual daily measure or quarter-end measure of the institution's capital and assets.

*Comment 5.* The agencies also request comment on whether a daily calculation of total assets and risk-weighted assets is feasible, and whether a requirement that an institution make daily calculations would impose significant added burden on insured depository institutions.

*C. Specific Capital Levels for Five Capital Categories*

Section 38 requires the agencies to establish specific capital thresholds for each capital category and sets general standards, as described above, for each of these categories. Under these standards, an institution is adequately capitalized if it meets the required minimum level for each relevant capital measure. Thus, capital levels set for the adequately capitalized category generally would be the same as the minimum ratios established under the existing minimum capital adequacy rules and guidelines adopted by the agencies. These minimums are 8 percent for the total risk-based capital ratio, 4 percent for the Tier 1 risk-based capital ratio, and 4 percent for the Tier 1 leverage ratio (3 percent for composite 1-rated banks and savings associations, subject to the appropriate Federal banking agency's guidelines). An institution would have to meet all these minimums in order to be deemed adequately capitalized.

The statute also provides specific guidance as to the capital level for defining a critically undercapitalized institution. Section 38 requires that a critically undercapitalized institution be defined by reference to the institution's ratio of tangible equity to total assets. The statute requires the agencies to establish the threshold ratio for defining a critically undercapitalized institution at no less than 2 percent. As discussed below, the agencies are proposing that a critically undercapitalized institution be defined as any institution that has a Tier 1 leverage ratio of 2 percent or less.

Taking the capital levels for the adequately capitalized and critically undercapitalized categories as benchmarks, the agencies are proposing that the capital levels for the undercapitalized category be defined as any level under 8 percent for the total risk-based capital ratio, under 4 percent for the Tier 1 risk-based capital ratio, or under 4 percent for the Tier 1 leverage ratio (under 3 percent for composite 1-rated banks and savings associations, subject to the appropriate Federal banking agency's guidelines). An institution would be considered undercapitalized if it were below the specified capital level for any of the three capital measures.

Further, the capital levels for significantly undercapitalized institutions would be defined as any level under 6 percent for the total risk-based capital ratio, under 3 percent for the Tier 1 risk-based capital ratio, or under 3 percent for the Tier 1 leverage ratio. An institution would be considered significantly undercapitalized if it were below the specified capital level for any of the three capital measures. Under the proposed definitions, an institution that is significantly undercapitalized also would be deemed to be undercapitalized. Similarly, an institution that is critically undercapitalized also would be deemed to be significantly undercapitalized and undercapitalized. The overlap between these categories is contemplated by the statute and has the effect of applying to significantly undercapitalized institutions and to critically undercapitalized institutions any provisions of section 38 that are applicable to undercapitalized institutions.

[1] Section 38(c) of the FDI Act requires that the capital standards prescribed under that section by each appropriate Federal banking agency shall include a leverage limit and a risk-based capital requirement, as well as any other additional relevant capital measures needed to carry out the purpose of section 38 and implemented by regulation. However, an appropriate Federal banking agency may, by regulation, rescind any relevant capital measure required by section 38, upon determining (with the concurrence of the other Federal banking agencies) that the measure is no longer an appropriate means for carrying out the purpose of section 38.

The agencies are proposing to establish the minimum total risk-based capital level for the well capitalized category at 10 percent and to set the minimum leverage capital level for this category at 5 percent. To emphasize the importance the agencies place on Tier 1 capital, it is proposed that for the well capitalized category the minimum level for the Tier 1 risk-based capital ratio be set at 6 percent. The specifications of the minimum ratios for the well capitalized category are proposed at levels that are 25 percent to 50 percent higher than the minimum for the adequately capitalized category to promote safe and sound banking conditions, giving due consideration to the international capital standards to which the United States and other G–10 countries have agreed, and to the competitive pressures faced by U.S. banks operating in international markets with foreign banks adhering to these standards.

Capital ratios alone, of course, are not fully indicative of the capital strength of an institution. In particular, in proposing these minimum capital levels, the agencies are aware that some poorly-related depository institutions have capital ratios above the specified minimums for the well capitalized and adequately capitalized categories. One reason that some poorly-rated institutions qualify as well capitalized for prompt corrective action purposes is that capital is a lagging indicator of problems of insured depository institutions.

Some of these institutions are subject to a written order or directive [2] that establishes a higher capital level for the institution. The agencies are proposing that for an institution to be well capitalized, it must not be subject to any written capital order or directive. This proposal reflects the view that an institution that is subject to a written capital directive from the appropriate Federal banking agency does not have capital that significantly exceeds the required minimum level for the relevant capital measures.

The agencies also intend to assess carefully all aspects of a troubled institution's condition, and to exercise their reclassification authority under section 38(g) of FDICIA. Section 38(g) gives the agencies discretion to downgrade, where appropriate, a "well capitalized" institution by one category and require an "adequately capitalized" or "undercapitalized" institution to comply with supervisory actions as if it were in the next lower category if that institution has received a less-than-satisfactory examination rating for asset quality, management, earnings, or liquidity without correcting the deficiency. Any institution would be subject to downgrading on the basis of the components of the institution's examination rating, including an institution that has been deemed not to be within the "well capitalized" category because the institution is subject to a written capital order or directive.

It is also important to emphasize that while the prompt corrective action framework constitutes an additional supervisory tool, the Federal banking agencies continue to have available all supervisory tools traditionally used to supervise institutions. The agencies also fully intend to use these tools as appropriate in supervising institutions. These include appropriate enforcement actions and supervisory follow-up measures based upon the institution's overall condition and the existence of any financial, operational, or other supervisory weaknesses, irrespective of the organization's capital category for purposes of the prompt corrective action provisions of section 38.

Accordingly, the assignment of an institution to a particular capital category—including the well capitalized category—does not prevent the appropriate Federal banking agency from taking other supervisory action that the agency deems to be appropriate. It is with this fact in mind that the agencies are proposing by regulation to limit the ability of an insured depository institution to advertise its capital category under section 38 unless authorized by the appropriate Federal banking agency for the institution or otherwise required by statute or regulations.

*Comment 6.* The agencies invite comment on this proposal.

Traditionally, examiners have reached judgments so an institution's capital needs by also taking into account a range of factors such as interest rate risk and concentration risk. The agencies have initiatives under way mandated by FDICIA to review their risk-based capital standard to ensure that they take adequate account of such risks, and also have been engaged in a project under the Federal Financial Institutions Examination Council ("FFIEC") to refine and improve procedures for assessing the reserving policies and practices of individual institutions. After those projects have been completed and improvements implemented and assessed, the agencies intend to revisit the question of how the specifications for the well capitalized category may need to be modified or adjusted.

*Comment 7.* The agencies request comment on all aspects of the capital levels proposed in the draft regulation.

*Comment 8.* In particular, the agencies seek comment on whether the specific levels set for each capital category are appropriate, as well as whether it is appropriate to require that well-capitalized institutions not be subject to a capital order or directive.

*D. Critically Undercapitalized Institutions*

The statute requires that the critically undercapitalized category be based on the ratio of tangible equity to total assets of the institution. Section 38 requires that the minimum ratio for this category be established at a level of tangible equity that is no less than 2 percent of the institution's total assets, and that is no higher than the ratio equal to 65 percent of the required minimum level of capital under the leverage limit. The agencies may, by regulation, specify additional capital measures (such as a risk-based capital ratio) in defining the critically undercapitalized category. Any such measures may not, without the concurrence of the FDIC, be set at a level lower than the level specified by the FDIC for insured state-chartered banks that are not members of the Federal Reserve System.

The agencies are proposing to define critically undercapitalized institutions as institutions that have a ratio of Tier 1 capital to total assets of 2.0 percent or less. The agencies do not at this time propose to establish any additional capital measures for the critically undercapitalized category.

Under this proposal, the agencies would define tangible equity to be Tier 1 capital as defined under the agencies' existing capital adequacy guidelines or regulations. The use of the Tier 1 capital definition has been proposed for several reasons. The definition of Tier 1 capital requires a deduction from equity capital for most intangible assets, including goodwill. The use of Tier 1 capital also focuses primarily on common equity rather than other forms of equity and, therefore, represents the most secure form of equity available to absorb losses that may be incurred by an insured depository institution.

In addition, because Tier 1 capital is an element of the existing capital adequacy guidelines and is included in

[2] The FDIC proposes to define the term "order or directive" to include any written agreement or order issued pursuant to section 8 of the FDI Act and any capital directive or prompt corrective action directive issued pursuant to part 325 of the FDIC's regulations.

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the definition of the other capital measures proposed under section 38, use of the Tier 1 capital definition would promote consistency and simplicity and, therefore, minimize the potential for confusion in the capital computations required to be made by insured depository institutions. It would also reduce the potential for distortion in the capital raising efforts of insured depository institutions and for anomalies in the classification of institutions under section 38 that might result from use of a substantially different definition of capital for the critically undercapitalized category than is used for the other capital categories.

*Comment 9.* The agencies request public comment on this definition.

*Comment 10.* The agencies also request comment on whether the definition of tangible equity should reflect additional adjustments to deduct intangible assets. If such an adjustment is appropriate for defining the critically undercapitalized category, the agencies request comment on whether tangible equity should be defined to exclude purchased mortgage servicing rights. The agencies note that section 475 of FDICIA requires the Federal banking agencies to determine whether a portion of certain purchased mortgage servicing rights should be included in the calculation of tangible capital. The agencies also recently sought public comment on a proposal to permit insured depository institutions to include a portion of certain purchased credit-card relationships in the calculation of tangible capital for purposes of meeting applicable minimum capital adequacy standards.

*Comment 11.* The agencies request comment on whether purchased mortgage servicing rights and purchased credit-card relationships should be counted in the definition of tangible equity for purposes of section 38.

Similarly, investments in certain types of subsidiaries, which savings associations are required to deduct for purposes of their general capital calculations, represent realizable assets which buffer the exposure of the deposit insurance funds.

*Comment 12.* The agencies request comment on whether these investments should be deducted in computing the relevant capital ratio for purposes of determining whether an institution is critically undercapitalized.

*Comment 13.* In addition, the agencies request comment on whether tangible equity should be defined to take into account broader forms of equity beyond those included in the definition of Tier 1 capital.

*Comment 14.* In particular, the agencies request comment on whether cumulative perpetual preferred stock should be included in determining whether an institution is critically undercapitalized.

*Comment 15.* Because the agencies are not proposing to include this form of equity in determining whether an institution is critically undercapitalized, the agencies also request comment on whether a transition period should be permitted for institutions that are permitted to rely on cumulative perpetual preferred stock under currently outstanding agency orders.

*Comment 16.* The agencies also request comment on whether a higher threshold should be established than the proposed 2 percent leverage limit. By statute, this ratio may not exceed 65 percent of the minimum leverage ratio established by the agencies.

*Comment 17.* Finally, the agencies request comment on whether it is appropriate to establish additional capital measures for the critically undercapitalized category. As noted above, section 38 permits the agencies to establish additional capital measures in defining the critically undercapitalized category. The agencies are proposing to use the total risk-based capital measure and the Tier 1 risk-based capital measure for all other categories, but are not proposing to use these capital measures in defining critically undercapitalized institutions.

### *E. Calculation of Capital Levels and Notice of Capital Levels*

Under the proposal, an institution would be expected to monitor its capital levels continually and to notify the appropriate Federal banking agency promptly if the institution's capital levels fall into a lower capital category. In addition, capital levels would be periodically determined on the basis of information filed by each insured depository institution in its quarterly Consolidated Report of Condition and Income (Call Report), or on the basis of information obtained in an examination or inspection of the institution. Capital levels may also be determined by the appropriate Federal banking agency for an institution on the basis of other information obtained by the agency from any source. This information may include data provided by the institution to the agency on a voluntary basis, information obtained in connection with an application, calculations based on a report that the institution must file other than a Call Report, or adjustments that are appropriate based on publicly announced events that may affect the institution's capital.

Under the proposal, an institution would be deemed to be aware of information that it files in a Call Report as of the date that the Call Report is required to be filed. Similarly, the institution would be deemed to be notified of capital levels calculated in the examination or inspection process as of the date that the examination report or inspection report is provided to the institution. In the event that the agency determines the capital levels of the institution on the basis of other information, the agencies are proposing to notify the institution in writing of the calculation and the information used as a basis for the capital calculation.

The agencies are concerned that, while the proposed arrangement for calculating the capital levels of an institution on the basis of Call Reports and reports of examination and inspection may be reliable and in most instances timely, this procedure may not always lead to a prompt calculation of capital levels for a given institution. For example, an institution may become aware of information that affects its capital calculation between the time that Call Reports are required to be filed and when an examination is not in process or another report may not be required. This could result in delay in application of the supervisory requirements of section 38, including the provisions that are mandated by the statute.

In order to address changes in capital promptly, the agencies propose to require insured depository institutions to notify the appropriate Federal banking agency within 5 days of any event that would cause the institution to be assigned to a different capital category than the category assigned on the basis of the most recent Call Report or report of examination or inspection. The institution would be deemed to be aware of a necessary adjustment when its senior management determines that the adjustment is appropriate, even if the adjustment is not required to be reported in an official report or otherwise disclosed for some period of time. Under the proposal, the agency would review the information provided by the institution, along with any explanation provided by the institution, to determine whether the institution should be assigned to a different capital category for purposes of the provisions of section 38. This procedure would apply to both upward and downward adjustments to capital that occur between the filing of Call Reports or examinations.



*Comment 18.* The agencies invite public comment on all aspects of this approach to the capital calculations.

*Comment 19.* In particular, the agencies request comment on the use of Call Reports and examination reports as the primary bases for capital calculations.

*Comment 20.* In addition, the agencies request comment on the procedures that have been proposed for self-monitoring and agency notification of changes in capital levels, including comment on the burden associated with this procedure and comment on whether any other procedure to permit the timely monitoring of an institution's capital levels is appropriate.

### *F. Reclassification Based on Supervisory Criteria Other Than Capital Standards*

Section 38 provides that a federal banking agency may, under certain circumstances, reclassify a well capitalized insured depository institution as adequately capitalized and require an adequately capitalized or undercapitalized institution to comply with supervisory actions as if it were in the next lower category (but not treat a significantly undercapitalized institution as if it were critically undercapitalized) based on supervisory information other than the capital levels of the institution. (Reclassification to the adequately capitalized category and treatment of an institution as if it were in the next lower capital category are referred to collectively herein as a "reclassification.") The statute permits the agency to reclassify an institution where the agency has determined, after notice and opportunity for hearing, that the institution is in unsafe or unsound condition. Section 38 also provides that an institution may be reclassified if the agency deems the institution to be engaged in an unsafe or unsound practice under section 8(b)(8) of the FDI Act. 12 U.S.C. 1818(b)(8). Section 8(b)(8) of the FDI Act was amended by FDICIA to provide that an institution may be deemed to be engaged in an unsafe or unsound practice if the institution has received a less-than-satisfactory rating in its most recent examination report in any of the categories for assets, management, earnings, or liquidity, and the institution has not corrected the deficiency.

Under the proposed rule, an institution would be reclassified on any of these supervisory grounds only after receiving prior written notice of the proposed reclassification from the agency and having an opportunity to respond to the proposed reclassification. In the case of a proposed reclassification based on a determination that the institution is in unsafe or unsound condition, the agencies also propose, pursuant to section 38, to accord the institution an opportunity for an informal hearing prior to the reclassification.

Because section 38 expressly provides for notice and opportunity for hearing in connection with a reclassification on the grounds of unsafe and unsound condition but does not with respect to a reclassification based on examination ratings, the agencies are not proposing to provide an opportunity for an oral hearing prior to reclassification based on an institution's examination rating. In the case of a reclassification proposed on the basis of an examination rating of the institution, the agencies are proposing to provide the institution an opportunity to present written arguments and information prior to the agency's reclassification of the institution.

Under the proposal, the appropriate Federal banking agency would provide an institution with written notice of the agency's intention to reclassify the institution. The institution would be provided at least 14 days to respond to the proposed reclassification unless the agency determines that the condition of the institution warrants a shorter time period for response. In its response, the institution should set forth any reasons why the proposed reclassification would not be appropriate, and provide the agency with any information that the institution believes supports its position on the reclassification. The agency would consider the response in deciding whether to proceed with the reclassification.

*Comment 21.* The agencies invite comment on all aspects of these procedures for reclassifying institutions based on supervisory criteria other than capital.

### *G. Timing of Mandatory Provisions*

Under section 38, an institution becomes subject to certain mandatory provisions on the basis of the capital levels of the institution. These mandatory provisions apply immediately without agency action. As noted above, an undercapitalized institution is immediately subject to a restriction on the payment of dividends and management fees, a limitation on asset growth, and an obligation to file an acceptable capital restoration plan. In addition to these requirements, an institution that is significantly undercapitalized is subject to a limitation on the payment of bonuses or raises to senior executive officers.

Under the proposal, once an institution is deemed to have notice of its capital levels and category or is given actual notice by the agency of the institution's capital category, the institution is deemed immediately to be subject to the mandatory provisions that apply to institutions within the corresponding capital category without any further action by the appropriate Federal banking agency for the institution. As explained above, the agencies propose to deem an institution to have notice of its capital category whenever a Call Report is due to be filed by the institution, or an examination report or report of inspection has been provided to the institution. The agencies will provide actual notice to the institution of its capital categorization if the category is based on an adjustment to capital between the filing of Call Reports or examinations, the agency determines the capital levels of the institution based on information other than information contained in the Call Reports or an examination report, or the agency determines to reclassify the institution based on supervisory criteria other than capital.

### *H. Procedures for Prompt Corrective Action Directives*

Section 38 also provides the agencies with discretion to impose other requirements or restrictions on an insured institution that is undercapitalized, significantly undercapitalized or critically undercapitalized, as well as on any company that controls such an institution. These discretionary supervisory actions are described above.

Because these provisions rely on an agency determination that certain action is appropriate, the agencies are proposing a procedure under which a Federal banking agency would issue a written directive whenever the agency has determined that a discretionary supervisory action is appropriate. The agencies propose to provide written notice to an institution prior to issuing any directive to take an action committed by section 38 to the agency's discretion. The notice would describe the action contemplated by the agency and would provide the institution or company with 14 calendar days to respond to the proposed agency action, unless the agency determines that a shorter response period is appropriate in light of the condition of the institution.

Under the proposal, the institution or company would be permitted to submit written arguments regarding whether

the directive is an appropriate exercise of the agency's discretion, along with any information or evidence supporting the respondent's position. Failure to file a timely response would constitute consent to the issuance of the directive and a waiver of the opportunity to appeal. The agency would consider the institution's response prior to issuing a final directive to take action under section 38.

The agencies are also proposing to permit the appropriate Federal banking agency to issue a final directive without notice or opportunity to respond where immediate supervisory action is appropriate. In cases where immediate action is necessary, the agencies propose to provide the institution with an opportunity to appeal the action to the agency and request modification or rescission of the agency action following issuance of the directive. An institution that seeks to appeal an immediately effective directive would be required to file a written appeal with the agency within 14 calendar days of the effective date of the directive. The agency would be required to consider and take action regarding a timely appeal within 60 days of receiving the appeal. The agencies believe that these procedures will afford banks an adequate and fair opportunity to obtain agency review of the agencies' action. See, e.g., *FDIC* V. *Mallen*, 486 U.S. 230 (1988) (upholding post-deprivation hearing in case of suspension or removal of a bank officer charged with a felony); *Federal Deposit Ins. Corp.* v. *Bank of Coushatta*, 930 F.2d 1122 (5th Cir. 1991), *cert. denied*, 112 S. Ct. 170 (1992) (affirming procedures for issuance of capital directives).

In proposing these procedures, the agencies have attempted to adhere to the mandate of section 38 that the agencies take prompt corrective action to resolve the problems of insured depository institutions at the least possible long-term loss to the deposit insurance fund while providing institutions with an opportunity for agency review of disputed factual claims. These procedures generally permit an institution advance notice of a proposed directive and an opportunity to present written information and argument to the agency prior to final agency action regarding the directive.

It should be added, however, that the agencies would not be required to follow these procedures, and the respective time periods would not apply, if an institution consented to the action to be taken by the agency either as initially proposed by the agencies or as modified by mutual agreement. Actions taken with such consent would have the same legal affect and be enforceable to the same extent and by the same means as action taken upon exhaustion of these procedures.

The agencies are not proposing an oral hearing in connection with the issuance of a prompt corrective action directive for several reasons. First, the terms and legislative history of section 38 indicate that Congress intended agency action under section 38 to be taken as promptly as possible. 12 U.S.C. 1831o(a)(2); see also S. Rep. No. 102–167, 102d Cong., 1st Sess. 32–38 (1991) ("The prompt corrective action system will require regulators to act at the first sign of trouble."). Second, Congress clearly indicated several occasions when it believed that a hearing was appropriate in connection with actions taken under section 38, such as orders requiring dismissal of a director or senior executive officer. Congress gave no indication in either the statutory language or legislative history that it intended to provide for an agency hearing in connection with supervisory actions committed to agency discretion under section 38. Third, a requirement that an agency hold a hearing in each case involving action committed to agency discretion under section 38 would cause the prompt corrective action provisions of section 38 largely to duplicate the existing cease-and-desist authority granted to the agencies under section 8(b) of the FDI Act (12 U.S.C. 1818(b)).

*Comment 22.* The agencies request comment on all aspects of the proposal to issue prompt corrective action directives where the agency determines to apply the provisions of section 38 committed to the discretion of the agency.

*Comment 23.* In particular, the agencies request comment on the sufficiency of the proposal to provide notice and opportunity for written response in connection with these directives.

*Comment 24.* The agencies also request comment on ways that these procedures can be improved to give an institution or company that is subject to a prompt corrective action directive a fair opportunity to contest such a directive, while at the same time adhering to the statutory mandate to take prompt action to resolve the problems of inadequately capitalized institutions.

*I. Enforcement of Directives*

Section 8 of the FDI Act, as amended by FDICIA, includes prompt corrective action directives issued pursuant to section 38 among the orders that may be enforced in the courts pursuant to section 8(i)(1), and also makes any depository institution, company, or institution-affiliated party that violates such a directive subject to civil money penalties pursuant to section 8(i)(2)(A). 12 U.S.C. 1818(i)(2)(A). The proposed regulation makes clear that failure of a depository institution to implement a capital restoration plan or the failure of a company having control of a depository institution to fulfill a guarantee that the company has given in connection with a capital plan accepted by the appropriate Federal banking agency will subject responsible parties to civil money penalties.

*J. Dismissal of Directors or Senior Executive Officers*

Section 38 provides that a director or senior executive officer dismissed by an insured depository institution in compliance with an agency directive under section 38 may obtain review of the dismissal by filing with the appropriate Federal banking agency a petition for reinstatement. The statute also provides that the petitioner shall have the opportunity to submit written materials in support of the petition and to appear at a hearing before members(s) or designated employee(s) of the agency. The hearing shall occur within 30 days of the filing of the petition unless the petitioner requests a later date. The agency decision shall be issued within 60 days of the date of the closing of the hearing record.

The statute appears to envision a post-dismissal hearing procedure, as it refers to the appeal as a "petition for reinstatement" and sets a short time for agency decision. Accordingly, the proposed regulation contemplates that an institution ordered to dismiss a senior executive officer or director will take that action immediately upon receiving a final directive requiring that action. The agencies are proposing that any officer or director that is dismissed in compliance with an agency directive under section 38 be provided an opportunity to petition the appropriate Federal banking agency for reinstatement within the statutorily prescribed period.

The proposed regulation permits the affected officer or director an opportunity for an informal agency hearing. The agency will designate a presiding officer(s) to conduct the hearing. The petitioner will have the right to appear at the hearing, with counsel, and to submit written materials and present oral argument. The petitioner may present oral testimony or witnesses only with the consent of the presiding officer(s).

The proposed regulation incorporates the statutory burdens of proof imposed upon an officer or director seeking reinstatement. When the dismissal order is based upon an institution's capital category or its failure to submit or implement a capital restoration plan, the petitioner must prove that his or her continued employment would materially strengthen the institution's ability to become adequately capitalized. When the dismissal order is based upon a reclassification of an institution on grounds of unsafe or unsound condition or practice, the petitioner must prove that his or her continued employment would materially strengthen the institution's ability to correct the condition or practice. The agencies propose to restrict the ability of an officer or director seeking reinstatement to challenge the capital category to which the institution has been assigned.

*Comment 25.* The agencies seek comment on these procedures.

*K. Capital Restoration Plans*

1. Information Required

Section 38 requires an institution that is undercapitalized, significantly undercapitalized, or critically undercapitalized to submit a plan to the appropriate Federal banking agency to restore the institution's capital at least to the minimum capital levels required for adequately capitalized institutions. The statute requires that this capital restoration plan be submitted in writing and specify:

(1) The steps the institution will take to become adequately capitalized,

(2) The levels of capital the institution expects to attain in each year that the plan is in effect,

(3) How the institution will comply with the restrictions and requirements imposed on the institution under section 38,

(4) The types and levels of activities in which the institution will engage, and

(5) Any other information required by the appropriate Federal banking agency.

The agencies do not propose at this time to require by regulation any additional information in a capital restoration plan submitted under section 38. The agencies may, in individual cases, require an institution to provide additional information based on particular circumstances.

*Comment 26.* The agencies request comment on whether and what additional information should be required by regulation for all capital restoration plans submitted under section 38.

2. Schedule for Submission and Review of Capital Plans

The statute requires the agencies to establish by regulation deadlines for the submission and review of capital restoration plans. The agencies propose to adopt the schedule generally established in the statute. Under this schedule, an institution would generally be required to submit a capital restoration plan within 45 days of receiving notice or having been deemed to have notice that the institution is undercapitalized, significantly undercapitalized or critically undercapitalized. As discussed above, an institution is deemed to have been notified of its capital category on the date that it is required to file its Call Report, the date that the institution receives its final report of examination or inspection, or the date that the appropriate Federal banking agency notifies the institution of the institution's capital category (based on an adjustment to capital reported by the institution or on other information obtained by the agency). Under the proposal, the appropriate Federal banking agency may change this period in individual cases, in which case the agency would notify the institution that a different schedule has been adopted.

The proposed schedule would require the appropriate Federal banking agency to review each capital restoration plan within 60 days of submission of the plan unless the agency extends the time for review. The agencies propose to provide written notice to the institution regarding whether the agency has approved or rejected the capital restoration plan. The agency would also provide a copy of each acceptable capital restoration plan, or amendments thereto, to the FDIC within 45 days of accepting the plan.

*Comment 27.* The agencies request comment on the proposed time schedules for submission and review of a capital restoration plan.

3. Failure to Submit or Implement an Acceptable Capital Plan

In the event that the appropriate Federal banking agency has disapproved an institution's capital restoration plan, the proposal would require the institution to submit a new capital restoration plan within a time specified by the appropriate Federal banking agency. During the period following notice of such disapproval and prior to approval by the agency of a new or revised capital plan, the institution would be subject to all of the provisions in section 38 that apply to undercapitalized institutions that have failed to submit and implement in any material respect an acceptable capital restoration plan.

The proposed regulation incorporates the provision of section 38 that makes any insured depository institution that is undercapitalized and fails to submit or implement a capital restoration plan within the required time subject to the provisions applicable to significantly undercapitalized institutions. Under the proposal, these provisions apply immediately upon expiration of the time for submission of a capital restoration plan. Accordingly, under the proposal, an undercapitalized institution that fails to submit a capital restoration plan within the required time would, upon the expiration of that period, become subject to the mandatory and discretionary provisions of section 38 outlined above that are applicable to significantly undercapitalized institutions, including limitations on the compensation paid to senior executive officers. An undercapitalized institution that fails to implement, in any material respect, its capital restoration plan would immediately be subject to these same provisions upon the institution's failure to implement the plan.

*Comment 28.* The agencies invite comment on each of these aspects of the proposed rule.

4. Content of Capital Restoration Plans

Section 38 provides that the appropriate Federal banking agency may not accept a capital restoration plan unless the plan:

(1) Contains the information required by statute,

(2) Is based on realistic assumptions and is likely to succeed in restoring the institution's capital, and

(3) Would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the institution is exposed.

The statute also provides that the appropriate Federal banking agency may not approve a capital restoration plan unless each company that controls the institution guarantees the institution's compliance with the plan until the institution has been adequately capitalized for each of four consecutive calendar quarters, and provides appropriate assurances of performance. This guarantee by any controlling company is independent of any liability of affiliates of the depository institution pursuant to the cross-guarantee provision of the FDI Act.

5. Capital Plan Performance Guarantee

The agencies propose to implement the performance guarantee provision,

contained in section 38(e)(2)(E), by requiring each company to submit a written guarantee of any capital plan submitted by an undercapitalized, significantly undercapitalized, or critically undercapitalized institution controlled by the company. This guarantee would include assurance that the institution would fulfill any commitments to raise capital made in the plan. Each company that provides the guarantee would be jointly and severally liable for fulfillment of the guarantee. Liability could extend to the amount necessary (up to the statutory limit of liability) to restore the institution to applicable capital standards. Failure of any company that controls an undercapitalized institution to provide the required guarantee causes the institution to become subject to the provisions of section 38 applicable to significantly undercapitalized institutions.

*Comment 29.* The agencies request comment on whether the rule should provide greater detail regarding the content and form of the guarantee.

*Comment 30.* In addition, the agencies request comment on what assurances the agencies should find to be "appropriate assurances of performance" of the capital plan and guarantee. Section 38 appears to permit the agencies to determine the appropriateness of assurances in connection with the agency's review of the capital restoration plan.

*Comment 31.* The agencies seek comment on whether there are particular assurances that the agencies should require by regulation in all cases. For example, should the agencies require guarantors to demonstrate that they have sufficient financial resources to honor the guarantee?

The statute limits the aggregate liability under the capital performance guarantee of all companies that control a given insured depository institution to the lesser of:

(1) an amount equal to 5 percent of the institution's total assets at the time the institution became undercapitalized, or

(2) the amount necessary (or that would be necessary) to bring the institution into compliance with all capital standards applicable with respect to such institution as of the time the institution fails to comply with its capital restoration plan.

In incorporating this provision into the regulation, the agencies propose to adopt the same definition of total assets for purposes of computing the first component of the limit on liability as would be used in determining the capital category of the institution.

*Comment 32.* Accordingly, as discussed above in connection with the definition of capital categories, the agencies request comment on whether the definition of total assets should be based on a period average of total assets (as proposed above) or should be based on a daily report of the institution's total assets.

The agencies also propose that the second component of the limit on liability refers to the amount necessary to restore the capital of the institution to the applicable minimum capital levels as those levels were defined at the time that the institution initially failed to comply with its capital plan.

The amount of a capital guarantee would not change if the minimum capital adequacy requirements change after the time the institution initially failed to comply with its capital restoration plan.

*Comment 33.* The agencies request comment on this clarification of the statutory provision.

The proposed rule also implements the statutory provision that limits the duration of a guarantee of a capital plan. Under the proposal, the appropriate Federal banking agency would provide notice to the company that the guarantee has expired once the depository institution has remained adequately capitalized for four consecutive calendar quarters. The proposal makes clear that expiration of a guarantee or fulfillment of a guarantee given by a company in connection with one capital restoration plan does not relieve the company from the obligation to guarantee another capital restoration plan that may be required at a future date for the same institution if it again becomes undercapitalized. Similarly, the fact that a company has, at one time, fulfilled a guarantee by providing resources to an institution up to the statutory limit would not reduce the amount of any guarantee of a future capital plan for the same institution. Moreover, the provision or fulfillment by a company of a guarantee for one institution does not affect the obligation of that company to guarantee a capital plan in connection with any other insured depository institution.

*Comment 34.* The agencies request comment on these provisions of the proposal.

*Comment 35.* The agencies also request comment on whether the agencies should establish by regulation a time for computing the limit on liability, and, if so, when that calculation should be made.

*Comment 36.* In addition, the agencies request comment on whether any additional regulatory clarifications of the holding company guarantee are necessary.

6. Priority in Bankruptcy

It should be noted that the FDIC will have a priority claim in any bankruptcy proceedings of a holding company that has guaranteed an institution's compliance with a capital restoration plan. The FDIC's claim against a holding company's estate would have priority over the claims of unsecured creditors and is provided for in section 507(a)(8) of Title 11 of the United States Code (11 U.S.C. 507(a)(8)), as amended by the Crime Control Act of 1990, Public Law 101–647, 104 Stat. 4789. Sections 365(o) and 523(a)(12) of Title 11 of the United States Code (11 U.S.C. 365(o) and 523(a)(12)), as amended by the Crime Control Act of 1990, also provide special protections for the FDIC.

7. Submission of Plans by Reclassified Institutions

Section 38(g) provides that an institution that has been reclassified to a different capital category as a result of an agency determination that the institution is in an unsafe or unsound condition or is engaged in an unsafe or unsound practice must describe the steps the institution will take to address these deficiencies. Section 38(g) also provides that an institution that nominally has adequate capital but has been reclassified to the undercapitalized category because of its condition or practices is not required to submit a capital restoration plan. The portions of the proposed regulation regarding capital restoration plans reflect these provisions.

*Comment 37.* While section 38 does not require an institution that nominally has adequate capital but has been reclassified to the undercapitalized category to file a capital restoration plan, the agencies request comment regarding whether it is appropriate for the agencies to exercise their general supervisory authority to require such an institution to submit a description of the steps the institution will take to address the deficiencies in the institution's condition.

8. Revised Capital Restoration Plans

Under the proposal, an insured depository institution that is operating under a capital restoration plan that has been approved by the appropriate Federal banking agency would not generally be required to submit an additional or a revised capital restoration plan if the institution's capital category changes, unless the agency notifies the institution that a new or revised capital restoration plan is required. Under this proposal, for example, an undercapitalized institution

that is implementing an approved capital restoration plan would not be required to submit a second or revised capital restoration plan if the institution experienced further declines in its capital levels unless the appropriate Federal banking agency determined that a new plan was appropriate in light of the particular circumstances.

*Comment 38.* The agencies request comment on this approach and on whether the agencies should, by regulation, require each insured depository institution to file a new or revised capital restoration plan in the event that the institution's capital category has changed.

*L. Other Matters*

1. Definition of "Management Fee"

Section 38 of the FDI Act prohibits any institution from paying management fees to a controlling person if, following the payment of those fees, the institution would be undercapitalized. The statute does not provide a definition of management fees. The agencies have proposed to define management fees to include any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice other than compensation paid to an individual in the individual's capacity as an officer or employee of the institution. This definition covers all companies, including consulting firms, companies owned by the principal shareholder of an institution, and servicing corporations owned by bank holding companies. Under the proposal, compensation for duties performed by an officer or employee of the institution would not be deemed to be a management fee for purposes of section 38.

*Comment 39.* The agencies request comment on the proposal's provisions regarding management fees and compensation in light of the purpose of section 38 of limiting losses to the deposit insurance funds that might result from the payment of dividends or the payment of management fees by an undercapitalized institution or an institution that would be undercapitalized after the payment.

2. Definition of "Control"

Certain provisions of section 38 apply to companies that "control" an insured depository institution. Section 38 of the FDI Act does not define the term "control". However, section 3 of the FDI Act adopts the definition of "control" contained in section 2 of the Bank Holding Company Act ("BHC Act") (12 U.S.C. 1841(a)(2)). Under the BHC Act, a company controls an institution if: (1) The company owns or controls 25 percent or more of any class of voting securities of that institution; (2) the company controls in any manner the election of a majority of the board of directors of the institution; or (3) the agency determines, after notice and opportunity for hearing, that the company exercises a controlling influence over the management or policies of the institution.

Other provisions of the BHC Act exclude certain types of share ownership from the provisions of the BHC Act, including shares acquired by a company in satisfaction of a debt previously contracted (DPC) or shares held by a company in a fiduciary capacity.

*Comment 40.* The agencies request comment on whether it would be appropriate under section 38 to provide, by regulation, an exception from the definition of "control" for shares acquired in satisfaction of DPC or shares held in a fiduciary capacity.

*Comment 41.* In particular, the agencies request comment on whether the agencies should by regulation adopt the DPC and fiduciary ownership exceptions contained in section 2(a)(5) of the Bank Holding Company Act. Section 2(a)(5) of the BHC Act (12 U.S.C. 1841(a)(5)) permits a company to hold shares of a depository institution acquired DPC without becoming subject to the restrictions of that Act provided that the company disposes of the shares within two years (with the possibility of three one-year extensions). Section 2(a)(5) also permits a company to hold shares of a depository institution in a fiduciary capacity without becoming subject to the restrictions of the BHC Act provided that the company does not retain sole right to vote the shares.

*Comment 42.* Finally, in the event that an exception for shares acquired DPC is included in the regulations implementing section 38, the agencies request comment on whether the exception should include conditions similar to those contained in the DPC exception to section 5 of the FDI Act (12 U.S.C. 1815(e)), which imposes cross-guarantee requirements on affiliated institutions. Section 5 of the FDI Act contains an exception for the acquisition by an insured depository institution of shares of another depository institution in satisfaction of a debt previously contracted. That exception is conditioned on the requirement that all transactions between the controlling institution or any affiliate of the controlling institution and the subsidiary institution comply with the restrictions contained in sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1).

3. Applicability of Capital Categories to Bank Holding Companies and Savings and Loan Holding Companies

Section 38 applies capital-based prompt corrective action to insured depository institutions but not to holding companies that control such institutions. However, various provisions of section 38 apply to companies that control insured depository institutions. These provisions appear to apply to holding companies regardless of the capital level of those holding companies.

The Federal Reserve Board and the Office of Thrift Supervision do not propose to adopt a parallel framework of capital categories for holding companies. Instead, the Federal Reserve intends to consult with the Federal banking agency for each insured depository institution subsidiary of the holding company to monitor supervisory actions required under section 38, and, in the supervision of the holding company, to take appropriate action at the holding company level based on an assessment of these developments. In supervising savings and loan holding companies, the OTS will also take appropriate action at the holding company level based on an assessment of the actions taken under section 38 regarding its savings association subsidiaries.

*Comment 43.* The agencies request comment on whether it is appropriate for the agencies to exercise their supervisory authority under other provisions of law to establish a framework of supervisory actions for bank holding companies and savings and loan holding companies similar to those established in section 38 for insured depository institutions.

4. Restrictions on Activities of Critically Undercapitalized Institutions

Section 38(i) of the FDI Act provides that the FDIC must, by regulations or order, restrict the activities of critically undercapitalized institutions. The activities that must be restricted are described above. FDICIA does not provide specific guidance on how to interpret and implement each of the restrictive provisions of section 38(i). Consequently, the FDIC is considering a number of options.

The prohibition on entering into "any material transaction other than in the usual course of business" can be interpreted in a general fashion relying on outstanding case law in the area of securities disclosures. The concept of materiality also could be defined from

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an accounting perspective by establishing specific limits for determining materiality. For example, the FDIC could, by regulation, require that any prospective transaction other than one that is in the usual course of business that results or could result in a 5 percent change in an institution's tangible equity capital account or net income account would automatically be considered a material transaction requiring the FDIC's prior approval. Other transactions could be defined as material on a case by case basis.

*Comment 44.* The FDIC solicits comment on how to define the terms "material" and "usual course of business" as well as what specific guidance, if any, should be provided by the FDIC to the banking industry.

The FDIC proposes to define the term "highly leveraged transaction" by utilizing the currently outstanding interagency definition published in the **Federal Register** (57 FR 5040, February 11, 1992). The FDIC proposes to rely on existing generally accepted accounting principles when interpreting the restriction on making any "material change in accounting methods."

Section 39(c) of the FDI Act requires the federal banking agencies to prescribe standards for determining when compensation paid to employees, directors and principal shareholders of insured depository institutions is excessive. An advance notice of proposed rulemaking is expected to be published in the **Federal Register** in the near future. The FDIC intends to interpret the restrictive provision involving the payment of excessive compensation or bonuses in a manner that is consistent with the FDIC's actions in fulfilling the requirements of section 39(c) of the FDI Act.

The provision that restricts "paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas" contains terms that relate to the changes mandated by section 301 of FDICIA and the revisions of § 337.6 of the FDIC's regulations (12 CFR 337.6) as recently implemented by the FDIC. Specifically, the FDIC proposes to interpret the phrase "significantly exceeding the prevailing rates" the same as defined in § 337.6. The prevailing effective yields of interest are the effective yields on insured deposits of comparable maturities offered by other insured depository institutions in the market area in which deposits are being solicited. A rate of interest on a deposit with an odd maturity will be considered excessive if it is more than 75 basis points higher than the yield calculated by interpolating between the yields offered by other depository institutions on deposits of the next longer and shorter maturities offered in the market. A market area is any readily defined geographic area in which the rates offered by any one insured depository institution operating in the area may affect the rates offered by other institutions operating in the same area.

*Comment 45.* The FDIC invites comments on all aspects of these proposed interpretations.

5. Application of Prompt Corrective Action to Insured Branches

Section 38(a)(2) of the FDI Act, as added by section 121 of FDICIA, provides that each appropriate Federal banking agency and the FDIC (acting in the FDIC's capacity as the insurer of depository institutions) shall take prompt corrective action to resolve the problems of insured depository institutions.

Section 3(c)(2) of the FDI Act defines the term "insured depository institution" as "any bank or savings association the deposits of which are insured by the [FDIC] pursuant to [the FDI Act]." 12 U.S.C. 1813(c)(2). The term "bank" is defined, in section 3(a)(1) of the FDI Act, to include, *inter alia*, any "insured branch." 12 U.S.C. 1813(a)(1). Section 3(s)(3) defines the term "insured branch" to mean "any branch (as defined in section 1(b)(3) of the International Banking Act of 1978) of a foreign bank any deposits in which are insured pursuant to [the FDI Act]." 12 U.S.C. 1813(s)(3).

The plain language of these statutory provisions requires the application of the prompt corrective action provisions to insured branches of foreign banks, including insured federal branches. Insured branches, however, are not required to maintain minimum capital levels under the FDIC's capital maintenance regulations, 12 CFR part 325. In fact, they are expressly excluded from the definition of "insured depository institution" which is used in the FDIC's capital maintenance regulations. 12 CFR 325.2(f). Insured branches, however, are required to maintain a pledge of assets, pursuant to 12 CFR 346.19, and a certain volume of eligible assets, pursuant to 12 CFR 346.20.

Insured federal branches, likewise, are not required to maintain minimum capital levels under the OCC's capital maintenance regulations, 12 CFR part 3. See 50 FR 10215 (March 14, 1985). In addition to the asset pledge and asset maintenance requirements to which all insured branches are subject, all federal branches are required by section 4 of the International Banking Act of 1978 to establish capital equivalency deposits which generally must equal at least 5 percent of the branch's third party liabilities. Federal branches also may be required by the OCC to maintain a certain quantity of specified assets in the states in which they operate.

In an effort to promote competitive equality between insured federal and state branches of foreign banks, the OCC and the FDIC are proposing a uniform definition of capital categories for all insured branches of foreign banks based upon the FDIC's asset pledge and asset maintenance requirements which apply to all insured branches.

The OCC and the FDIC recognize that the eligible assets and, more particularly, the pledge of assets are not perfect substitutes for capital. Nonetheless, the FDIC has long taken the position that the asset maintenance requirement is analogous to a domestic bank's required capital. Therefore, the OCC and the FDIC are proposing to utilize FDIC's regulations governing the pledge of assets and the level of eligible assets to determine an insured branch's capital category.

For prompt corrective action purposes, the OCC and the FDIC are proposing a framework under which an insured branch, including an insured federal branch would be deemed:

"Well capitalized" if it:

1. Maintains the pledge of assets required under 12 CFR 346.19; and

2. Maintains the eligible assets prescribed under 12 CFR 346.20 at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

3. Has not received written notification from (1) the OCC to increase its capital equivalency deposit pursuant to 12 CFR 28.6(a), or to comply with the asset maintenance requirements pursuant to 12 CFR 28.9 or (2) the FDIC to pledge additional assets pursuant to 12 CFR 346.19 or to maintain a higher ratio of eligible assets pursuant to 12 CFR 346.20.

"Adequately capitalized" if it:

1. Maintains the pledge of assets required under 12 CFR 346.19;

2. Maintains the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilitie and

3. Does not meet the definition o. "well capitalized" insured branch.

"Undercapitalized" if it:

1. Fails to maintain the pledge of assets required under 12 CFR 346.19; or

2. Fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

"Significantly undercapitalized" if it fails to maintain the eligible assets prescribed under 12 CFR 346.20 to 104 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

"Critically undercapitalized" if it fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 102 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

Section 38 of the FDI Act enumerates the corrective measures that the appropriate Federal banking agency may or must take against, and what restrictions apply to, institutions in each of the five capital categories. Some of the prescribed measures and applicable restrictions may not be practical or appropriate in dealing with insured branches of foreign banks.

Therefore, it is the intent of the OCC and the FDIC to apply to insured branches as many of the prompt corrective measures and restrictions as practical and appropriate, given the unique characteristics of insured branches.

*Comment 46.* The FDIC and the OCC specifically request comments on this proposed approach as well as the proposed manner in which insured branches would be deemed to fall within one of the five capital categories.

Finally, it is the intent of the OCC and the FDIC to define capital levels for insured branches in a manner which is comparable to those for domestic banks.

*Comment 47.* Therefore, the OCC and the FDIC solicit comments on the extent to which the proposed levels for insured branches are comparable to those for domestic banks.

**Regulatory Flexibility Act Statement**

The Board of Directors has concluded after reviewing the proposed amendments that, if adopted, they will not impose a significant economic hardship on small institutions. The proposal does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. The Board of Directors therefore hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

**List of Subjects**

*12 CFR Part 308*

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Penalties.

*12 CFR Part 325*

Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, State nonmember banks, Savings associations.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to amend parts 308 and 325 of title 12 of the Code of Federal Regulations as follows:

## PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 is revised to read as follows:

**Authority:** 5 U.S.C. 504; 5 U.S.C. 554–557; 12 U.S.C. 1815(e), 1817(a) and 1818(j), 1818, 1820, 1828(j), 1829, 1831i, 1831o; 15 U.S.C. 781(h), 78m, 78n(a), 78n(c), 78n(d), 78n(f), 78o, 78o–4(c)(5), 78p, 78q, 78q–1, 78s.

2. Part 308 is amended by adding a new subpart Q to read as follows:

**Subpart Q—Issuance and Review of Orders Pursuant to Prompt Corrective Action**

Sec.

308.200 Scope.
308.201 Directives to take prompt corrective action.
308.202 Procedures for reclassifying a bank based on criteria other than capital.
308.203 Order to dismiss a director or senior executive officer.
308.204 Enforcement of directives.

### Subpart Q—Issuance and Review of Orders Pursuant to Prompt Corrective Action

**§ 308.200 Scope.**

The rules and procedures set forth in this subpart apply to banks and senior executive officers and directors of banks that are subject to the provisions of section 38 of the Federal Deposit Insurance Act (section 38) (12 U.S.C. 1831o) and subpart B of part 325 of this chapter.

**§ 308.201 Directives to take prompt corrective action.**

(a) *Notice of intent to issue a directive*—(1) *In general.* The FDIC will provide an undercapitalized, significantly undercapitalized, or critically undercapitalized bank prior written notice of the FDIC's intention to issue a directive requiring such bank to take actions or to follow proscriptions described in section 38 that are within the FDIC's discretion to require or impose under section 38(e)(5), (f)(2), (f)(3), or (f)(5) of the FDI Act.

(2) *Immediate issuance of final directive.* If the FDIC finds it necessary in order to carry out the purposes of section 38 of the FDI Act, the FDIC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue a directive requiring a bank to immediately take actions or follow proscriptions described in section 38 that are within the FDIC's discretion to require or impose under section 38(e)(5), (f)(2), (f)(3), or (f)(5) of the FDI Act. A bank that is subject to such an immediately effective directive may submit a written appeal of the directive to the FDIC. Such an appeal must be received by the FDIC within 14 calendar days of the issuance of the directive. The FDIC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the directive shall remain in effect unless the FDIC, in its sole discretion, stays the effectiveness of the directive.

(b) *Contents of notice.* A notice of intention to issue a directive shall include:

(1) A statement of the bank's capital measures and capital levels;

(2) A description of the restrictions, prohibitions or affirmative actions that the FDIC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of such affirmative actions; and

(4) The date by which the bank subject to the directive may file with the FDIC a written response to the notice.

(c) *Response to notice.*—(1) *Time for response.* A bank may file a written response to a notice of intent to issue a directive within the time period set by the FDIC. The date shall be at least 14 calendar days from the date of the notice unless the FDIC determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(2) *Content of response.* The response should include:

(i) An explanation why the action proposed by the FDIC is not an appropriate exercise of discretion under section 38;

(ii) Any recommended modification of the proposed directive; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the proposed directive.

(d) *Failure to file agency response.* Failure by a bank to file with the FDIC, within the specified time period, a written response to a proposed directive shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the directive.

(e) *FDIC consideration of response.* After considering the response, the FDIC may:

(1) Issue the directive as proposed or in modified form;

(2) Determine not to issue the directive and so notify the bank; or

(3) Seek additional information or clarification of the response from the bank or any other relevant source.

(f) *Request for modification or rescission of directive.* Any bank that is subject to a directive under this subpart may, upon a change in circumstances, request in writing that the FDIC reconsider the terms of the directive, and may propose that the directive be rescinded or modified. Unless otherwise ordered by the FDIC, the directive shall continue in place while such request is pending before the FDIC.

**§ 308.202 Procedures for reclassifying a bank base on criteria other than capital.**

(a) *Classification of a bank based on unsafe or unsound condition—(1) Issuance of notice of proposed reclassification.* If the FDIC determines to reclassify a well capitalized bank as adequately capitalized, or to require an adequately capitalized or undercapitalized bank to comply with supervisory actions as if it was in the next lower capital category pursuant to section 38(g) of the FDI Act and § 325.103(d)(1) of this chapter because the FDIC deems the bank to be in an unsafe or unsound condition (each of the foregoing referred to hereinafter as a "reclassification"), the FDIC will issue and serve on the bank a written notice of the FDIC's intention to reclassify the bank.

(2) *Contents of notice.* A notice of intention to reclassify a bank based on unsafe or unsound condition will include:

(i) A statement of the bank's capital measures and capital levels and the category to which the bank would be reclassified;

(ii) The reasons for reclassification of the bank;

(iii) The date by which the bank subject to the notice of reclassification may file with the FDIC a written appeal of the proposed reclassification and a request for a hearing, which shall be at least 14 calendar days from the date of service of the notice unless the FDIC determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(3) *Response to notice of proposed reclassification.* A bank may file a written response to a notice of proposed reclassification within the time period set by the FDIC. The response should include:

(i) An explanation of why the bank is not in an unsafe or unsound condition or otherwise should not be reclassified; and

(ii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the reclassification.

(4) *Failure to file response.* Failure by a bank to file, within the specified time period, a written response with the FDIC to a notice of proposed reclassification shall constitute a waiver of the opportunity to respond and shall consent to the reclassification.

(5) *Request for hearing and presentation or oral testimony or witnesses.* The response may include a request for an informal hearing before the FDIC under this section. If the bank desires to present oral testimony or witnesses at the hearing, the bank must include a request to do so with the request for an informal hearing. A request to present oral testimony or witnesses shall specify the name of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing, and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right to present oral testimony or witnesses.

(6) *Order for informal hearing.* Upon receipt of a timely written request including a request for a hearing, the FDIC shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the bank requests a later date. The hearing shall be held in Washington, DC or at such other place as may be designated by the FDIC, before a presiding officer(s) designated by the FDIC to conduct the hearing.

(7) *Hearing procedures.* (i) The bank shall have the right to introduce relevant written materials and to present oral argument at the hearing. The bank may introduce oral testimony and present witnesses only if expressly authorized by the FDIC or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in this part apply to an informal hearing under this section unless the FDIC orders that such procedures shall apply.

(ii) The informal hearing shall be recorded, and a transcript shall be furnished to the bank upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(iii) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(8) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the FDIC on the reclassification.

(9) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the FDIC will decide whether to reclassify the bank and notify the bank of the FDIC's decision.

(b) *Procedures for reclassifying a bank based on unsafe or unsound practice—(1) Issuance of notice of proposed reclassification.* If the FDIC determines to reclassify a well capitalized bank as adequately capitalized or to require an adequately capitalized or undercapitalized bank to comply with supervisory actions as if it was in the next lower capital category pursuant to section 38(g) of the FDI Act and § 325.103(d)(2) of this chapter because the FDIC deems the bank to be engaging in an unsafe and unsound practice (each of the foregoing referred to hereinafter as a "reclassification"), the FDIC will issue and serve on the bank a written notice of the FDIC's intention to reclassify the bank.

(2) *Contents of notice.* A notice of intention to reclassify a bank will include:

(i) A statement of the bank's capital measures and capital levels and the category to which the bank would be reclassified;

(ii) The reasons for reclassification of the bank; and

(iii) The date by which the bank subject to the notice of reclassification may file with the FDIC a written appeal of the proposed reclassification, which

shall be at least 14 calendar days from the date of service of the notice unless the FDIC determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(3) *Response to notice of proposed reclassification based on unsafe and unsound practice.* A bank may file a written response to a notice of proposed reclassification issued under this paragraph (b) within the time period set by the FDIC. The response should include:

(i) An explanation of the steps taken by the bank to address the deficiency described in the notice of proposed reclassification or of the reasons that the reclassification is not otherwise appropriate; and

(ii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the reclassification.

(4) *Failure to file response.* Failure by a bank to file, within the specified time period, a written response with the FDIC to a notice of proposed reclassification under this paragraph (b) shall constitute a waiver of the opportunity to respond and shall constitute consent to the reclassification.

(5) *FDIC consideration of response.* After considering the response, the FDIC may:

(i) Issue a written order to the bank reclassifying the bank to a different capital category as provided in section 38(g) of the FDI Act;

(ii) Determine not to reclassify the bank and so notify the bank; or

(iii) Seek additional information or clarification of the response from the bank, or any other relevant source.

(c) *Request for rescission of reclassification.* Any bank that has been reclassified under this section, may, upon a change in circumstances, request in writing that the FDIC reconsider the reclassification, and may propose that the reclassification be rescinded and that any directives issued in connection with that reclassification be modified, rescinded, or removed. Unless otherwise ordered by the FDIC, the bank shall remain subject to the reclassification and to any directives issued in connection with that reclassification while such request is pending before the FDIC.

**§ 308.203 Order to dismiss a director or senior executive officer.**

(a) *Service of notice.* When the FDIC issues and serves a directive on a bank pursuant to § 308.201 of this part requiring the bank to dismiss from office any director or senior executive officer under section 38(f)(2)(F)(ii) of the FDI Act, the FDIC will also serve a copy of the directive, or the relevant portions of the directive where appropriate, upon the person to be dismissed.

(b) *Response to directive.* A director or senior executive officer who has been served with a directive under paragraph (a) of this section (Respondent) may file a written request for reinstatement. The request for reinstatement must be filed within 10 calendar days of the receipt of the directive by the Respondent, unless further time is allowed by the FDIC at the request of the Respondent. The request for reinstatement should include reasons why the Respondent should be reinstated, and may request an informal hearing before the FDIC or its designee under this section. If the Respondent desires to present oral testimony or witnesses at the hearing, the Respondent must include a request to do so with the request for an informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right or opportunity to present oral testimony or witnesses. Unless otherwise ordered by the FDIC, the dismissal shall remain in effect while a request for reinstatement made under this section is pending.

(c) *Order for informal hearing.* Upon receipt of a timely written request from a Respondent for an informal hearing on the portion of a directive requiring a bank to dismiss from office any director or senior executive officer, the FDIC shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the Respondent requests a later date. The hearing shall be held in Washington, DC, or at such other place as may be designated by the FDIC, before a presiding officer(s) designated by the FDIC to conduct the hearing.

(d) *Hearing procedures.* (1) A Respondent may appear at the hearing personally or through counsel. A Respondent shall have the right to introduce relevant written materials and to present oral argument. A Respondent may introduce oral testimony and present witnesses only if expressly authorized by the FDIC or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in this part apply to an informal hearing under this section unless the FDIC orders that such procedures shall apply.

(2) The informal hearing shall be recorded, and a transcript shall be furnished to the Respondent upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(3) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(e) *Standard for review.* A Respondent shall bear the burden of demonstrating that his or her continued employment by or service with the bank would materially strengthen the bank's ability:

(1) To become adequately capitalized, to the extent that the directive was issued as a result of the bank's capital level or failure to submit or implement a capital restoration plan; and

(2) To correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the directive was issued as a result of classification of the bank based on supervisory criteria other than capital, pursuant to section 38(g) of the FDI Act.

(f) *Limitation on scope of review.* The level of capital or the capital category assigned to the bank with which a Respondent is associated shall not be subject to review in any proceeding under this section.

(g) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the FDIC concerning the Respondent's request for reinstatement with the bank.

(h) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing has been requested, the FDIC shall grant or deny the request for reinstatement and notify the Respondent of the FDIC's decision. If the FDIC denies the request for reinstatement, the FDIC shall set forth in the notification the reasons for the FDIC's action.

**§ 308.204 Enforcement of directives.**

(a) *Judicial remedies.* Whenever a bank fails to comply with a directive issued under section 38, the FDIC may seek enforcement of the directive in the appropriate United States district court

pursuant to section 8(i)(1) of the FDI Act (12 U.S.C. 1818(i)(1)).

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act, the FDIC may assess a civil money penalty against any bank that violates or otherwise fails to comply with any final directive issued under section 38 and against any institution-affiliated party who participates in such violation or noncompliance. The failure of a bank to implement a capital restoration plan required under section 38, or subpart B of part 325 of this chapter, or the failure of a company having control of a bank to fulfill a guarantee of a capital restoration plan made pursuant to section 38(e)(2) of the FDI Act shall be deemed a violation of a written agreement between the bank and the FDIC and subject to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the FDIC may seek enforcement of the provisions of section 38 or subpart B of part 325 of this chapter through any other judicial or administrative proceeding authorized by law.

## PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 is revised to read as follows:

**Authority:** 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 3907, 3909; Pub. L. 102–233, 105 Stat. 1761, 1790 (12 U.S.C. 1831n note); Pub. L. No. 102–242, 105 Stat. 2236, 2386 (12 U.S.C. 1828 note).

2. Part 325 is amended by designating §§ 325.1 through 325.6 as subpart A and adding the subpart heading to read as follows:

### Subpart A—Minimum Capital Requirements

3. Appendixes A and B to Part 325 are redesignated as appendixes A and B to subpart A of Part 325 and the appendix headings are revised to read as follows:

**Appendix A to Subpart A of Part 325—Statement of Policy on Risk-Based Capital**

**Appendix B to Subpart A of Part 325—Statement of Policy on Capital Adequacy**

4. Section 325.2 is amended by redesignating paragraphs (h), (i), (j), (k), (l), (m), (n), and (o) as paragraphs (j), (k), (l), (m), (o), (q), (s), and (u), respectively, and by adding new paragraphs (h), (i), (n), (p), (r), and (t) to read as follows:

**§ 325.2 Definitions.**

* * * * *

(h) *Leverage ratio* means the ratio of Tier 1 capital to total assets, as calculated under this part.

(i) *Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the bank, other than compensation to an individual in the individual's capacity as an officer or employee of the bank.

* * * * *

(n) *Risk-weighted assets* means total risk-weighted assets, as calculated in accordance with the FDIC's Statement of Policy on Risk-Based Capital (Appendix A to subpart A of part 325).

* * * * *

(p) *Tangible equity* means the amount of Tier 1 capital as calculated under this part.

* * * * *

(r) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to risk-weighted assets, as calculated in accordance with the FDIC's Statement of Policy on Risk-Based Capital (Appendix A to subpart A of part 325).

* * * * *

(t) *Total risk-based capital ratio* means the ratio of qualifying total capital to risk-weighted assets, as calculated in accordance with the FDIC's Statement of Policy on Risk-Based Capital (Appendix A to subpart A of part 325).

* * * * *

5. Part 325 is amended by adding a new subpart B to read as follows:

### Subpart B—Prompt Corrective Action

Sec.

325.101 Authority, purpose, applicability and other supervisory authority.
325.102 Financial data calculations and notice of capital category.
325.103 Capital measures and capital category definitions.
325.104 Capital restoration plans.
325.105 Mandatory and discretionary supervisory actions under section 38.

### Subpart B—Prompt Corrective Action

**§ 325.101 Authority, purpose, applicability and other supervisory authority.**

(a) *Authority.* This subpart is issued by the FDIC pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act), as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. No. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this subpart is to define, for FDIC-insured state-chartered nonmember banks, the capital measures and levels, and for insured branches of foreign banks, comparable asset-based measures and levels, that are used for determining the supervisory actions authorized under section 8 of the FDI Act. This subpart also establishes procedures for submission and review of capital restoration plans and for issuance and review of orders pursuant to that section.

(c) *Applicability.* This subpart implements the provisions of section 38 of the FDI Act as they apply to FDIC-insured state-chartered nonmember banks and insured branches of foreign banks for which the FDIC is the appropriate Federal banking agency. Certain of these provisions also apply to officers, directors and employees of those insured institutions.

(d) *Other supervisory authority.* Neither section 38 nor this subpart in any way limits the authority of the FDIC under any other provision of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law, unsafe or unsound conditions, or other practices. Action under section 38 of the FDI Act and this subpart may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the FDIC, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(e) *Limited scope of capital categories.* The assignment of a bank or insured branch under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38 and, unless permitted by the FDIC or otherwise required by law, may not be used by, for, or on behalf of a bank for any other purpose.

**§ 325.102 Financial data calculations and notice of capital category.**

(a) *Effective data of determination of capital category.* A bank shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this subpart as of the date the bank is notified of, or is deemed to have notice of, its capital category, pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A bank shall be deemed to have notice of its capital levels and its capital category as of the most recent of:

(1) The date a Report of Condition and Income (Call Report) is required to be filed with the FDIC;

(2) The date a final report of examination of report of inspection is delivered to the bank;

(3) The date that the FDIC provides written notice to the bank that the bank's capital category has changed as provided in paragraph (c) of this section;

(4) The date that the FDIC provides written notice to the bank of its capital levels and its capital category for purposes of section 38 of the FDI Act and this subpart; or,

(5) The date any written notice is served on the bank that the bank's capital category has been changed pursuant to § 325.103(d).

(c) *Adjustments to reported capital levels and category.*—(1) *Notice of adjustment to be provided by bank.* A bank shall provide the appropriate FDIC regional director with written notice that an adjustment to the bank's capital category may have occurred no later than 5 calendar days following the earlier of the date that the bank:

(i) Reports, or has determined to report, any event that would cause the bank to be placed in a different capital category from the category assigned to the bank for purposes of section 38 and this subpart on the basis of the bank's most recent Call Report or report of examination; or

(ii) Determines that any event has occurred that would cause the bank to be placed in a different capital category from the category assigned to the bank for purposes of section 38 and this subpart on the basis of the bank's most recent Call Report or report of examination.

(2) *Determination to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the FDIC shall determine whether the capital category of the bank should be changed and shall notify the bank of the FDIC's determination.

**§ 325.103 Capital measures and capital category definitions.**

(a) *Capital measures.* For purposes of section 38 and this subpart, the relevant capital measures shall be:

(1) The total risk-based capital ratio;

(2) The Tier 1 risk-based capital ratio; and

(3) The leverage ratio.

(b) *Capital categories.* For purposes of the provisions of section 38 and this subpart, a bank shall be deemed to be:

(1) *Well capitalized* if the bank:

(i) Has a total risk-based capital ratio of 10.0 percent or greater;

(ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater;

(iii) Has a leverage ratio of 5.0 percent or greater; and

(iv) Is not subject to any order or final capital directive by the FDIC to meet and maintain a specific capital level for any capital measure.

(2) *Adequately capitalized* if the bank:

(i) Has a total risk-based capital ratio of 8.0 percent or greater;

(ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater;

(iii) Has:

(A) A leverage ratio of 4.0 percent or greater; or

(B) A leverage ratio of 3.0 percent or greater if the bank is rated composite 1 under the CAMEL rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth; and

(iv) Does not meet the definition of a *well capitalized* bank.

(3) *Undercapitalized* if the bank—

(i) Has a total risk-based capital ratio that is less than 8.0 percent; or

(ii) Has a Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(iii)(A) Except as provided in paragraph (b)(3)(iii)(B) of this section, has a leverage ratio that is less than 4.0 percent; or

(B) If the bank is rated composite 1 under the CAMEL rating system in the most recent examination of the bank, has a leverage ratio that is less than 3.0 percent.

(4) *Significantly undercapitalized* if the bank has:

(i) A total risk-based capital ratio that is less than 6.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or

(iii) A leverage ratio that is less than 3.0 percent.

(5) *Critically undercapitalized* if the insured depository institution has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Capital categories for insured branches of foreign banks.* For purposes of the provisions of section 38 and this subpart, a insured branch of a foreign bank shall be deemed to be:

(1) *Well capitalized* if the insured branch:

(i) Maintains the pledge of assets required under 12 CFR 346.19; and

(ii) Maintains the eligible assets prescribed under 12 CFR 346.20 at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Has not received written notification from:

(A) The OCC to increase its capital equivalency deposit pursuant to 12 CFR 28.6(a), or to comply with asset maintenance requirements pursuant to 12 CFR 28.9; or

(B) The FDIC to pledge additional assets pursuant to 12 CFR 346.19 or to maintain a higher ratio of eligible assets pursuant to 12 CFR 346.20.

(2) *Adequately capitalized* if the insured branch:

(i) Maintains the pledge of assets required under 12 CFR 346.19;

(ii) Maintains the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Does not meet the definition of a *well capitalized* insured branch.

(3) *Undercapitalized* if the insured branch:

(i) Fails to maintain the pledge of assets required under 12 CFR 346.19; or

(ii) Fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(4) *Significantly undercapitalized* if it fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 104 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(5) *Critically undercapitalized* if the insured depository institution fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 102 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(d) *Classification based on supervisory criteria other than capital.* The FDIC may reclassify a well capitalized bank as adequately capitalized and may require an adequately capitalized bank or an undercapitalized bank to comply with supervisory actions as if it was in the next lower capital category (except that the FDIC may not reclassify a significantly undercapitalized bank as critically undercapitalized) in the following circumstances:

(1) *Unsafe or unsound condition.* The FDIC has determined, after notice and opportunity for hearing pursuant to § 308.202(a) of this chapter, that the bank is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The FDIC has determined, after notice and opportunity for response pursuant to § 308.202(b) of this chapter, that the bank has received, and not corrected, a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity in

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the most recent examination or inspection of the bank.

**§ 325.104 Capital restoration plans.**

(a) *Schedule for filing plan*—(1) *In general.* A bank must file a written capital restoration plan with the appropriate FDIC regional director within 45 days of the date that the bank receives notice or is deemed to have notice that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the FDIC notifies the bank in writing that the plan must be filed within a different period. A bank that has been reclassified as undercapitalized pursuant to § 325.103(d) of this subpart is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* Notwithstanding paragraph (a)(1) of this section, a bank that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures unless the FDIC notifies the bank that it must submit a new or revised capital plan. A bank that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the appropriate FDIC regional director within 45 days of receiving such notice unless the FDIC notifies the bank in writing that the plan must be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan must be prepared in accordance with the instructions provided on the Call Report, unless the FDIC instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act, including any performance guarantee required to be executed under section 38(e)(2)(C) of that Act by each company that controls the bank. A bank that is required to submit a capital restoration plan as a result of a reclassification of the bank pursuant to § 325.103(d) of this subpart shall include a description of the steps the bank will take to correct the unsafe and unsound condition or practice.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this subpart, the FDIC will provide written notice to the bank of whether the plan has been approved. The FDIC may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital plan.* If a capital restoration plan is not approved by the FDIC, the bank must submit a revised capital restoration plan within the time specified by the FDIC. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized bank (as defined in § 325.103(b) of this subpart) shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as a new or revised capital restoration plan submitted by the bank has been approved by the FDIC.

(e) *Failure to submit a capital restoration plan.* A bank that is undercapitalized (as defined in § 325.103(b) of this subpart) and that fails to submit a written capital restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(f) *Failure to implement a capital restoration plan.* Any undercapitalized bank that fails in any material respect to implement a capital restoration plan shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(g) *Amendment of capital plan.* A bank that has filed an approved capital restoration plan may, after prior written notice to and approval by the FDIC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the capital restoration plan as approved prior to the proposed amendment.

(h) *Performance guarantee by companies that control a bank*—(1) *Limitation on liability*—(i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this subpart for all companies that control a specific bank that is required to submit a capital restoration plan under this subpart shall be limited to the lesser of:

(A) An amount equal to 5.0 percent of the bank's total assets at the time the bank was notified or deemed to have notice that the bank was undercapitalized; or

(B) The amount necessary to restore the relevant capital measures of the bank to the levels required for the bank to be classified as adequately capitalized, as those capital measures and levels are defined at the time that the bank initially fails to comply with a capital restoration plan under this subpart.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 and this subpart shall expire after the FDIC notifies the bank that it has remained adequately capitalized for each of four consecutive calendar quarters. The expiration or fulfillment by a company of a guarantee of a capital restoration plan shall not limit the liability of the company under any guarantee required or provided in connection with any capital restoration plan filed by the same bank after expiration of the first guarantee.

(iii) *Collection on guarantee.* Each company that controls a given bank shall be jointly and severally liable for the guarantee for such bank as required under section 38 and this subpart, and the FDIC may require and collect payment of the full amount of that guarantee from any or all of the companies issuing the guarantee.

(2) *Failure to provide guarantee.* In the event that a bank that is controlled by any company submits a capital restoration plan that does not contain the guarantee required under section 38(e)(2) of the FDI Act, the bank shall, upon submission of the plan, be subject to the provisions of section 38 and this subpart that are applicable to banks that have not submitted an approved capital restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls a bank to perform fully its guarantee of any capital plan shall constitute a material failure to implement the plan for purposes of section 38(f) of the FDI Act. Upon such failure, the bank shall be subject to the provisions of section 38 and this subpart that are applicable to banks that have failed in a material respect to implement a capital restoration plan.

**§ 325.105 Mandatory and discretionary supervisory actions under section 38.**

(a) *Mandatory supervisory actions.*—(1) *Provisions applicable to all banks.* All banks are subject to the restrictions contained in section 38(d) of the FDI Act on payment of capital distributions and management fees.

(2) *Provisions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized banks.* Immediately upon receiving notice or being deemed to have notice, as provided in § 325.102 of this subpart, that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, the bank shall become

subject to the provisions of section 38 of the FDI Act:

(i) Restricting payment of capital distributions and management fees (section 38(d));

(ii) Requiring that the FDIC monitor the condition of the bank (section 38(e)(1));

(iii) Requiring submission of a capital restoration plan within the schedule established in this subpart (section 38(e)(2));

(iv) Restricting the growth of the bank's assets (section 38(e)(3)); and

(v) Requiring prior approval of certain expansion proposals (section 38(e)(4)).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 325.102 of this subpart, that the bank is significantly undercapitalized, or critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized institutions.* In addition to the provisions of section 38 of the FDI Act described in paragraphs (a)(2) and (a)(3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 325.102 of this subpart, that the insured depository institution is critically undercapitalized, the institution is prohibited from doing any of the following without the FDIC's prior written approval:

(i) Entering into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the depository institution is required to provide notice to the appropriate Federal banking agency;

(ii) Extending credit for any highly leverage transaction;

(iii) Amending the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order;

(iv) Making any material change in accounting methods;

(v) Engaging in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c(b));

(vi) Paying excessive compensation or bonuses;

(vii) Paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas; and

(viii) Making any principal or interest payment on subordinated debt beginning 60 days after becoming critically undercapitalized except that this restriction shall not apply, until July 15, 1996, with respect to any subordinated debt outstanding on July 15, 1991, and not extended or otherwise renegotiated after July 15, 1991.

In addition, the FDIC may further restrict the activities of any critically undercapitalized institution to carry out the purposes of section 38 of the FDI Act.

(5) *Exception for certain savings associations.* The restrictions in paragraph (a)(4) of this section shall not apply, before July 1, 1994, to any insured savings association if:

(i) The savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owners' Loan Act prior to December 19, 1991;

(ii) The Director of OTS had accepted the plan prior to December 19, 1991; and

(iii) The savings association remains in compliance with the plan or is operating under a written agreement with the appropriate Federal banking agency.

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the FDIC's discretion to take in connection with an insured depository institution that is deemed to be undercapitalized, significantly undercapitalized or critically undercapitalized, or with an officer or director of such institution, the FDIC will follow the procedures for issuing directives under §§ 308.201 and 308.203 of this chapter, unless otherwise provided in section 38 or this subpart.

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of June, 1992.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 92-15613 Filed 6-30-92; 10:45 am]

BILLING CODE 6714-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 92-NM-100-AD]**

## Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes, Equipped with Garrett Auxiliary Power Unit (APU) GTCP36-300[A]

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 series airplanes, that currently requires a revision to the Limitations Section of the Airplane Flight Manual (AFM) and the installation of a placard in the cockpit prohibiting the use of the APU during flight or on the ground until the installation of an external secondary turbine containment shield has been accomplished. This action would require replacement of the currently-installed external secondary turbine containment shield assembly with an assembly of an improved design. This proposal is prompted by a recent report of an APU turbine rotor that separated and several fragments were not contained. The actions specified by the proposed AD are intended to prevent potential damage to the fuselage and flight controls, and subsequently, reduced controllability of the airplane.

**DATES:** Comments must be received by August 12, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-100-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Garrett Auxiliary Power Division, 2739 East Washington Square, P.O. Box 5227, Phoenix, Arizona 85010. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Greg Holt, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056;

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telephone (206) 227–2140; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–100–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–100–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**Discussion**

On June 5, 1990, the FAA issued AD 90–11–51 R1, Amendment 39–6635 (55 FR 24073, June 14, 1990), to require a revision to the Limitations Section of the Airplane Flight Manual (AFM) and the installation of a placard in the cockpit prohibiting the use of the APU during flight, except during an emergency, and prohibiting the use of the APU on the ground, until the installation of an external secondary turbine containment shield has been accomplished. That action was prompted by a report of an APU turbine rotor that separated during development testing. A number of secondary fragments emerged from the turbine plenum with enough force to dent a control panel in the test cell. Preliminary results from the investigation indicated that the thickness of the turbine plenum needed to be increased to provide an acceptable level of protection. That condition, if not corrected, could result in potential damage to the fuselage and horizontal control surfaces, and subsequently, reduced controllability of the airplane.

Since the issuance of that AD, there has been another incident of separation of an APU turbine rotor, in which several fragments were not contained. Garrett Auxiliary Power Division has developed improved extended external secondary turbine containment shield halves that will provide additional protection against the escape of secondary fragments, in the event of the turbine rotor separation.

The FAA has reviewed and approved Garrett Service Bulletin GTCP36–49–6549, dated February 28, 1992, which describes procedures for removal of the currently installed external secondary turbine containment shield assembly and replacement with the containment shield assembly of improved design. (The new assembly also improves maintainability of the fuel atomizer.) The service bulletin also specifies that certain APU's of the GTCP36–300[A] series, beginning at Serial Number R–477, were manufactured with a thicker wall plenum; for this reason, installation of the improved assembly on these APU's is not necessary.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 90–11–51 R1 to limit the applicability to include only airplanes equipped with APU's having certain serial numbers; and would require replacement of the currently-installed external secondary turbine containment shield assembly with an assembly of improved design. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 32 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no charge to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,280, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–6635 (55 FR 24073, June 14, 1990), and by adding a new airworthiness directive (AD), to read as follows:

**Airbus Industrie:** Docket 92–NM–100–AD. Supersedes AD 90–11–51 R1, Amendment 39–6635.

*Applicability:* Model A320 series airplanes; equipped with Garrett Auxiliary Power Unit (APU) GTCP36–300[A], Part No. 3800278–2; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent potential damage to the fuselage and flight controls, and subsequently, reduced controllability of the airplane, accomplish the following:

(a) For airplanes equipped with Garrett APU GTCP36-300[A], Part No. 3800278-2, all serial numbers: Within 72 hours (clock hours, not flight hours) after July 2, 1990 (the effective date of AD 90-11-51 R1, Amendment 39-6635), accomplish the procedures specified in paragraphs (a)(1) and (a)(2) of this AD:

(1) Revise the Limitations Section in the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM Limitations Section.

"Operation of the APU on the ground is prohibited, and operation of the APU during flight is prohibited, except during an emergency."

(2) Install a placard next to the APU start switch in the cockpit to state:

"Operation of the APU on the ground is prohibited, and operation of the APU during flight is prohibited, except during an emergency."

(b) For airplanes equipped with Garrett APU GTCP36-300[A], Part No. 3800278-2, all serial numbers: Within 30 days after July 2, 1990 (the effective date of AD 90-11-51 R1, Amendment 39-6635), install an external secondary turbine containment shield, Part Number 3615644-1, in accordance with Garrett Auxiliary Power Division Alert Service Bulletin GTCP36-49-A5973, dated May 17, 1990, or Revision 1, dated May 22, 1990. Installation of this containment shield constitutes terminating action for the requirements of paragraph (a) of this AD.

(c) For airplanes equipped with Garrett APU GTCP36-300[A], Part No. 3800278-2, all serial numbers prior to R-477, excluding P-453 and P-454: Within 24 months after the effective date of this AD, remove the external secondary turbine containment shield assembly, Part No. 3615644-1, and install a new external secondary turbine containment shield halves assembly, Part Numbers 3615898-1 and 3615899-1, in accordance with Garrett Auxiliary Power Division Service Bulletin GTCP36-49-6540, dated February 28, 1992.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 12, 1992.

Bill R. Boxwell,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-15680 Filed 7-2-92; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

**[Docket No. 91-ASW-18]**

## Airworthiness Directives: Bell Helicopter Textron, Inc., Model 214B and 214B-1 Series Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc., (BHTI), Model 214B and 214B-1 helicopters. this proposal would reduce the retirement life of the main rotor yoke assembly from 5,000 to 3,750 hours' time in service. This proposal is prompted by a recent analysis that revealed a deterioration of residual compressive stresses in the yoke with increased time in service. The actions specified by the proposed AD are intended to prevent failure of the yoke assembly, which could result in loss of the main rotor and loss of the helicopter.

**DATES:** Comments must be received by August 20, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ASW-18, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tom K. Henry, Rotorcraft Directorate, Rotorcraft Certification Office, ASW-170, FAA, Southwest Region, Fort Worth, Texas 76193-0170, telephone (817) 624-5169; fax (817) 740-5394.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments, as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-ASW-18." The postcard will be date stamped and returned to the commenter.

### Availability of Notice of Proposed Rulemaking (NPRM)

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ASW-18, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007.

### Discussion

A study was conducted by the manufacturer to consider the structural effects imposed on the Bell helicopter Textron, Inc., Model 214B and 214B-1 main rotor (M/R) yoke due to the M/R flapping under high wind conditions when the helicopter was parked and the M/R blade was unsecured. Tests showed a deterioration of residual compressive stresses allowing potential tensile stresses that could result in fatigue failure. As a result of this study, the manufacturer has issued Bell Alert Service Bulletin No. 214-87-37, Revision A, dated September 10, 1987.

The FAA has carefully reviewed the manufacturer's analysis and test results and has determined that a reduction in retirement life of the model 214B and 214B-1 M/R yoke assembly from 5,000

to 3,750 hours' time in service and that revised airspeed versus altitude limitation are necessary to assure the continued airworthiness of this aircraft. Failure of the yoke assembly could result in loss of the helicopter's main rotor.

Since this condition described in likely to exist or develop on other helicopters of this same type design, the proposed AD would require reduction of the retirement life of the M/R yoke assembly, part number (P/N) 214–010–105–001, from 5,000 to 3,750 hours' time in service. This AD would also require initial and repetitive inspections of the M/R yoke and revise the airspeed versus altitude decals on the affected helicopters.

The FAA estimates that 54 helicopters of U.S. registry would be affected by this proposed AD, that it would take 17 work hours per helicopter per year to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $13,250 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $765,990.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reason discussed above. I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

**List of Subjects in 14 CFR Part 39**

Air Transportation, Aircraft, Aviation Safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39–AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new Airworthiness Directive (AD):

**Bell Helicopter Textron, Inc.:** Docket No. 91–ASW–18.

*Applicability:* Bell Helicopter Textron, Inc., Model 214B and 214B–1 helicopters, serial numbers (S/N's) 28001 through 28070, certificated in any category, equipped with main rotor yoke assembly, part number (P/N) 214–010–105–001.

*Compliance:* Required as indicated, unless already accomplished.

To prevent failure of the main rotor yoke assembly, which could result in loss of the main rotor and loss of control of the helicopter, accomplish the following:

(a) For yoke assemblies that have 3,700 or less hours' time in service on the effective date of this AD, replace the yoke assembly not later than 3,750 hours' time in service. For yoke assemblies that have more than 3,700 hours' time in service on the effective date of this AD, replace the yoke assembly within the next 50 hours' time in service.

(b) Within 50 hours' time in service after the effective date of this AD, install new airspeed versus altitude decals, P/N 214–075–256–105 for BHTI Model 214B–1 and P/N 214–075–256–107 for Model 214B helicopters.

(c) Within 50 hours' time in service after the effective date of this AD and thereafter at each 1,200 hours' time in service, inspect the yoke for straightness in accordance with the applicable maintenance manual.

**Note:** BHTI Alert Service Bulletin No. 214–87–37, Rev. A, dated September 10, 1987, pertains to this AD.

(d) An alternative method of compliance or adjustment of the compliance times, which provide an acceptance level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW–170, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76193–0170. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive if any, may be obtained from the Manager, Rotorcraft Certification Office.

(e) Special fight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on April 22, 1992.

**A.J. Merrill,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 92–15676 Filed 7–2–92; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 92–NM–81–AD]**

## Airworthiness Directives; de Havilland, Inc., Model DHC–7, DHC–8–100, and DHC–8–300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Model DHC–7, DHC–8–100 and DHC–8–300 series airplanes. This proposal would require modification or replacement of both quantity limiting valves (QLV) in the inboard nacelles. This proposal is prompted by a report of corrosion found on the QLV valve assembly, which prevented the piston from stopping a discharge of hydraulic fluid. The actions specified by the proposed AD are intended to prevent the loss of both hydraulic systems due to depletion of hydraulic fluid.

**DATES:** Comments must be received by August 12, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–81–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

**FOR FURTHER INFORMATION CONTACT:** Mr. Danko Kramar, Systems and Equipment Branch, ANE–173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202,

Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–81–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–81–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**Discussion**

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–7, DHC–8–100 and DHC–8–300 series airplanes. Transport Canada Aviation advises that a case has been reported of a fractured in-service brake pressure pipeline downstream from the quantity limiting valves (QLV), which resulted in No. 1 hydraulic system fluid discharging overboard on a Model DHC–8 series airplane. In this incident, the QLV did not stop the discharge of hydraulic fluid, which resulted in the loss of the No. 1 hydraulic system. Attempts to use the emergency brakes also started depletion of fluid in the No. 2 hydraulic system. Investigation of the QLV revealed corrosion of the magnesium piston of the QLV sub-assembly, which prevented the piston from moving freely to stop the flow of hydraulic fluid. This condition, if not corrected, could result in the loss of both hydraulic systems due to depletion of hydraulic fluid.

The QLV installed on Model DHC–7 series airplanes is identical to the QLV installed on Model DHC–8 series airplanes; therefore, the problems related to corrosion potentially could exist on either model of airplane.

De Havilland, Inc., has issued Service Bulletins 7–29–20 (for Model DHC–7 series airplanes) and 8–29–21 (for Model DHC–8 series airplanes), both dated March 20, 1992, which describe procedures for modification or replacement of both QLV in the inboard nacelles. This modification involves the installation of a new valve sub-assembly with an aluminum piston in place of the currently installed magnesium piston. This change of material will eliminate electrolytic potential and the probability of corrosion. Transport Canada Aviation classified these service bulletins as mandatory and issued Canadian Airworthiness Directives CF–92–08 and CF–92–09, in order to assure the continued airworthiness of these airplanes in Canada.

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification or replacement of the QLV in the inboard nacelles. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 131 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $57 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $43,492. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**De Havilland, Inc.:** Docket 92–NM–81–AD. *Applicability:* Model DHC–7 series airplanes, serial numbers 003 through 113, inclusive; Model DHC–8–102 and –103 series airplanes, serial numbers 003 through 321, inclusive; and Model DHC–8–301 and –311

series airplanes, serial numbers 100 through 320, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the loss of both hydraulic systems due to depletion of hydraulic fluid, accomplish the following:

(a) For Model DHC–7 series airplanes: Prior to the accumulation of 1,000 hours time-in-service after the effective date of this AD, or within 6 months after the effective date of this AD, whichever occurs first, remove the existing Quantity Limiting Valves (QLV), from the left- and right-hand inboard nacelles; and modify or replace them with new QLV, Modification 7/2610; in accordance with de Havilland Service Bulletin 7–29–20, dated March 20, 1992.

(b) For Model DHC–8–102 and –103 series airplanes and Model DHC–8–301 and –311 series airplanes that have accumulated 6,700 total hours time-in-service or more as of the effective date of this AD, or if 50 months or more have passed since the airplane was manufactured as of the effective date of this AD: Prior to the accumulation of 1,000 hours time-in-service after the effective date of this AD or, within 6 months after the effective date of this AD, whichever occurs first, remove the existing QLV from the left- and right-hand inboard nacelles; and modify or replace them with new QLV, Modification 8/1803; in accordance with de Havilland Service Bulletin 8–29–21, dated March 20, 1992.

(c) For Model DHC–8–102 and –103 series airplanes and Model DHC–8–301 and –311 series airplanes that have accumulated less than 6,700 total hours time-in-service as of the effective date of this AD *and* if less than 50 months have passed since the airplane was manufactured as of the effective date of this AD: Prior to the accumulation of 7,700 hours time-in-service since the airplane was manufactured or, within 12 months after the effective date of this AD, whichever occurs first, remove the existing QLV from the left- and right-hand inboard nacelles; and modify or replace them with new QLV, Modification 8/1803; in accordance with de Havilland Service Bulletin 8–29–21, dated March 20, 1992.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 12, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–15681 Filed 7–2–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 92–ANM–3]**

## Proposed Alteration of Jet Routes; OR

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to reflect the change of the name and identification of three VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) within the legal description of five jet routes located in the State of Oregon. A navigational aid (NAVAID) with the same name as the airport should be located on the airport, except in existing situations where the NAVAID is located off the airport. This action proposes to reflect the name changes, where necessary, of the NAVAID's that are not located on the airport with which they are associated.

**DATES:** Comments must be received on or before August 24, 1992.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 92–ANM–3, Federal Aviation Administration, 1601 Lind Avenue, Southwest, Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9250.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ANM–3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to reflect the change of the names of three VORTAC's (Medford to Rogue Valley, Redmond to Deschutes, and The Dalles to Klickitat) within the legal description of five jet routes located in the State of Oregon. FAA Handbook 7400.2C states that a NAVAID with the same name as the associated airport should be located on the airport; therefore, the names of the NAVAID's associated with the airport that are not located on the

airport surface or are not the primary NAVAID's located off the airport surface for that airport are proposed to be changed accordingly. The airspace designations for existing jet routes listed in this document are published in § 75.100 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designations for these jet routes proposed in this document would be published subsequently in § 71.607 of the Handbook, if this regulation is promulgated.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Incorporation by reference, Jet routes.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

*Section 71.607 Jet Routes*

* * * * *

**J-1 [Revised]**

From the INT of the United States/Mexican Border with the direct course between the Mission Bay, CA, VORTAC and the Tijuana, Mexico, VOR, via Mission Bay; Oceanside, CA; Los Angeles, CA; Fillmore, CA; Avenal, CA; Oakland, CA; Red Bluff, CA; Rogue Valley, OR; Battle Ground, WA; to Seattle, WA.

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**J-126 [Revised]**

From Los Angeles, CA, via San Marcus, CA; Salinas, CA; Sacramento, CA; Red Bluff, CA; Rogue Valley, OR; Eugene, OR; Newberg, OR; Olympia, WA; to Vancouver, BC, Canada. That portion outside the United States is excluded.

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**J-143 [Revised]**

From Point Reyes, CA, via Mendocino, CA; Roseburg, OR; Eugene, OR; Klickitat, OR; to Spokane, WA.

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**J-150 [Revised]**

From Battle Ground, WA; to Deschutes, OR.

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**J-501 [Revised]**

From San Marcus, CA, via Big Sur, CA; Point Reyes, CA, via Rogue Valley, OR; Hoquiam, WA; INT Hoquiam 354° and Tatoosh, WA, 162° radials; Tatoosh; Cape Scott, BC, Canada, RBN; Sandspit, BC, Canada; Biorka Island, AK; Yakutat, AK; Johnstone Point, AK; Anchorage, AK; Sparrevohn, AK; Bethel, AK; to the INT of the Bethel 258° radial and the Anchorage Oceanic CTA/FIR boundary, excluding the airspace within Canada.

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Issued in Washington, DC, on June 25, 1992.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 92-15879 Filed 7-2-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 92-ANM-2]**

**Proposed Alteration of VOR Federal Airways**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to reflect the change of the name and identification of four VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) within the legal description of VOR Federal airways and reporting points located in the States of Oregon and Idaho. A navigational aid (NAVAID) with the same name as the airport should be located on the airport, except in existing situations where the NAVAID is located off the airport. This action proposes to reflect the name changes, where necessary, of the NAVAID's that are not located on the airport with which they are associated.

**DATES:** Comments must be received on or before August 24, 1992.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500 Docket No. 92-ANM-2, Federal Aviation Administration, 1601 Lind Avenue, Southwest, Renton, WA 98055-4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ANM-2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both

before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to reflect the change of the names of four VORTAC's within the legal description of VOR Federal airways and reporting points located in the States of Oregon and Idaho. FAA Handbook 7400.2C states that a NAVAID with the same name as the associated airport should be located on the airport; therefore, the names of the NAVAID's associated with that airport that are not located on the airport surface or are not the primary NAVAID's located off the airport surface for that airport are proposed to be changed accordingly. The airspace designations for existing VOR Federal airways and reporting points listed in this document are published in §§ 71.123, 71.203, and 71.207 or Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designations for these airways and the reporting points proposed in this document would be published subsequently in §§ 71.123, 71.203, and 71.207 of the Handbook, if this regulation is promulgated.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Incorporation by reference, Reporting points, VOR Federal airways.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

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**V–23 [Revised]**

From Mission Bay, CA; Oceanside, CA; 24 miles, 6 miles wide, Seal Beach, CA; 6 miles wide, INT Seal Beach 287° and Los Angeles, CA, 138° radials; Los Angeles; Gorman, CA; Shafter, CA; Clovis, CA; 53 miles, 6 miles wide, Linden, CA; Sacramento, CA; INT Sacramento 346° and Red Bluff, CA, 158° radials; Red Bluff; 58 miles, 95 MSL, Fort Jones, CA; Rogue Valley, OR; Eugene, OR; Battle Ground, WA; INT Battle Ground 350° and Seattle, WA, 197° radials; 21 miles, 45 MSL, Seattle; Paine, WA; Bellingham, WA; via INT Bellingham 290° radial to the United States/Canadian border.

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**V–25 [Revised]**

From Mission Bay, CA, via Los Angeles, CA; INT Los Angeles 261° and Ventura, CA, 144° radials; 6 miles wide, Ventura; San Marcus, CA; Paso Robles, CA; Salinas, CA; INT Salinas 310° and Woodside, CA, 158° radials; Woodside; San Francisco, CA; INT San Francisco 304° and Point Reyes, CA, 161° radials; Point Reyes; INT Point Reyes 352° and Mendocino, CA, 147° radials; 28 miles, 24 miles, 85 MSL, 18 miles, 75 MSL, Red Bluff, CA; 53 miles, 95 MSL, INT Red Bluff 015° and Klamath Falls, OR, 181° radials; 19 miles, 95 MSL, Klamath Falls; 21 miles, 77 miles, 90 MSL, Deschutes, OR; Klickitat, OR; Yakima, WA; Ellensburg, WA; Wenatchee, WA. The airspace below 2,000 feet MSL outside the United States and the airspace more than 3 miles NE of the airway centerline between Seal Beach and INT of Seal Beach 287° and Los Angeles 138° radials is excluded. The airspace within R–2511 and W–289 is excluded. The airspace within R–2519 more than 3 statute miles west of the airway centerline, and the airspace within R–2519 below 5,000 feet MSL is excluded. The portion outside the United States has no upper limit.

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**V–112 [Revised]**

From Hoquiam, WA; INT Hoquiam 182° and Astoria, OR, 309° radials; Astoria; 44 miles, 15 miles, 6 miles wide, Battle Ground, WA; Klickitat, OR; INT of Klickitat 101° and Pendleton, OR; 254° radials; Pendelton; 53 miles, 28 miles, 45 MSL, Spokane, WA; 47 miles, 105 MSL, Cranbrook, BC, Canada, excluding the portion within Canada.

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**V–121 [Revised]**

From Fort Jones, CA, via INT Fort Jones 340° and Rogue Valley, OR, 200° radials; Rogue Valley; INT Rogue Valley 352° and Roseburg, OR, 127° radials; Roseburg; North Bend, OR; Eugene, OR; Deschutes, OR; Kimberly, OR; Baker, OR; Donnelly, ID; Salmon, ID; to Dillon, MT.

**V–122 [Revised]**

From Crescent City, CA; Rogue Valley, OR; 22 miles, 75 MSL, INT Rogue Valley 117° and Klamath Falls, OR, 282° radials; 6 miles, 75 MSL, Klamath Falls; 21 miles, 90 MSL, Lakeview, OR; to Rome, OR.

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**V–165 [Revised]**

From Mission Bay, CA; INT Mission Bay 270° and Oceanside, CA, 177° radials; Oceanside; 24 miles, 6 miles wide, Seal Beach, CA; 6 miles wide, INT Seal beach 287° and Los Angeles, CA, 138° radials; Los Angeles; INT Los Angeles 357° and Lake Hughes, CA, 154° radials; Lake Hughes; INT Lake Hughes 344° and Shafter, CA, 137° radials; Shafter; Porterville, CA; INT Porterville 339° and Clovis, CA, 139° radials; Clovis; 68 miles, 50 miles, 131 MSL, Mustang, NV; 40 miles, 12 AGL, 7 miles, 115 MSL, 54 miles, 135 MSL, 81 miles, 12 AGL, Lakeview, OR; 5 miles, 72 miles, 90 MSL, Deschutes, OR; 16 miles, 19 miles, 95 MSL, 24 miles, 75 MSL, 12 miles, 65 MSL, Newberg, OR; 32 miles, 45 MSL, INT Newberg 355° and Olympia, WA, 195° radials; Olympia; INT Olympia 010° and Seattle, WA, 249° radials; Seattle.

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**V–182 [Revised]**

From North Bend, OR, via Newport, OR; Newberg, OR; INT Newberg 089° and Battle Ground, WA, 196° radials; Battle Ground; Klickitat, OR; Baker, OR; INT of Baker 345° and Nez Perce, ID, 220° radials; Nez Perce.

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**V–187 [Revised]**

From Socorro, NM, via INT Socorro 015° and Albuquerque, NM, 160° radials; Albuquerque; Farmington, NM; 50 miles, 62

miles, 115 MSL, Grand Junction, CO; 75 miles, 50 miles, 112 MSL, Rock Springs, WY; 20 miles, 37 miles, 95 MSL, INT Rock Springs 026° and Riverton, WY, 180° radials; Riverton; Boysen Reservoir, WY; 9 miles, 78 miles, 105 MSL, Billings, MT; INT Billings 317° and Great Falls, MT, 122° radials; Great Falls; Missoula, MT; Nez Perce, ID; Pasco, WA; INT Pasco 321° and Ellensburg, WA, 107° radials; Ellensburg; INT Ellensburg 274° and McChord, WA, 096° radials; McChord; INT McChord 275° and Olympia, WA, 031° radials; Olympia; to Astoria, OR.

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**V–258 [Revised]**

From Lucin, UT; 14 miles, 90 MSL, 19 miles, 105 MSL, Twin Falls, ID; Boise, ID; 42 miles, 99 MSL, Donnelly, ID; 11 miles, 99 MSL, 33 miles, 115 MSL, Nez Perce, ID; Pullman, WA; Spokane, WA.

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**V–269 [Revised]**

From Ely, NV; 125 MSL, INT Ely 007° and Bonneville, UT, 272° radials; Wells, NV; Twin Falls, ID; Burley, ID; Pocatello, ID; Salmon, ID; Donnelly, ID; Wildhorse, OR; Deschutes, OR; INT Deschutes 281° and Eugene, OR, 069° radials; to Eugene.

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**V–287 [Revised]**

From Fort Jones, CA, via INT Fort Jones 041° and Rogue Valley, OR, 157° radials; Rogue Valley; North Bend, OR; Newberg, OR; Battle Ground, WA; 20 miles, 51 miles, 45 MSL, Olympia, WA; INT Olympia 010° and Paine, WA, 254° radials; Paine; INT Paine 329° and Bellingham, WA, 191° radials; Bellingham; to Paine.

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**V–448 [Revised]**

From Rogue Valley, OR, via Roseburg, OR; INT Roseburg 003° and Eugene, OR, 187° radials; Eugene; INT Eugene 030° and Battle Ground, WA, 180° radials; Battle Ground; Yakima, WA; Moses Lake, WA; Spokane, WA; 45 miles, 12 AGL, 21 miles, 75 MSL, 20 miles, 80 MSL, 59 miles, 12 AGL; to Kalispell, MT.

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**V–497 [Revised]**

From Rome, OR, via Wildhorse, OR; Kimberly, OR; 49 miles, 65 MSL, Klickitat, OR; INT Klickitat 053° and Moses Lake, WA 206° radials; Moses Lake; to Ephrata, WA.

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**V–520 [Revised]**

From Battle Ground, WA, via INT Battle Ground 110° and Klickitat, OR, 255° radials; Klickitat; Pasco, WA; Walla Walla, WA; Nez Perce, ID; Salmon, ID; Dubois, ID; to Jackson, WY.

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**V–536 [Revised]**

From North Bend, OR; INT North Bend 023° and Corvallis, OR, 235° radials; Corvallis; Deschutes, OR; 32 miles, 58 miles, 71 MSL, Pendleton, OR; Walla Walla, WA; Pullman, WA; 27 miles, 85 MSL, Mullan Pass, ID; 5 miles, 34 miles, 95 MSL, Kalispell, MT; 20 miles, 41 miles, 115 MSL, Great Falls, MT. From Sheridan, WY; Gillette, WY; New Castle, WY; to Rapid City, SD.

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*Section 71.203 Domestic Low Altitude Reporting Points*

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**Medford, OR [Removed]**

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**Rogue Valley, OR [New]**

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**The Dalles, OR [Removed]**

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**Klickitat, OR [New]**

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**Redmond, OR [Removed]**

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**Deschutes, OR [New]**

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*Section 71.207 Domestic High Altitude Reporting Points*

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**Medford, OR [Removed]**

* * * * *

**Rogue Valley, OR [New]**

* * * * *

Issued in Washington, DC, on June 25, 1992.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 92–15677 Filed 7–2–92; 8:45 am]

BILLING CODE 4910–13–M

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## Federal Highway Administration

### 23 CFR Part 650

**[FHWA Docket No. 91–13]**

**RIN 2125–AC73**

## Highway Bridge Replacement and Rehabilitation Program

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** The FHWA is withdrawing a June 4, 1991, notice of proposed rulemaking that would revise the procedures for evaluating existing highway bridges for eligibility under the Highway Bridge Replacement and Rehabilitation Program (HBRRP). The proposal would have discontinued the present Sufficiency Rating, described in 23 CFR 650.409, for determining eligibility under the program and implemented a level-of-service criteria for this purpose. This decision is based on a further evaluation of the proposed criteria in the light of docket comments and consideration of changes in the bridge program as a result of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel S. O'Connor, Bridge Management Branch, Bridge Division, Office of Engineering, (202) 366–1567; or Ms. Vivian Philbin, Office of Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:**

### Background

In 1978, Congress established the HBRRP under 23 U.S.C. 144. This program provides funds for the replacement and rehabilitation of bridges on all public roads. Section 144 directs the Secretary, in consultation with the States, to (1) inventory all highway bridges on public roads; (2) classify them according to serviceability, safety and essentiality for public use; (3) based on the classification, assign each a priority for replacement or rehabilitation; and (4) determine the cost of replacing each such bridge with a comparable facility or of rehabilitating such bridge. Section 144 further directs the Secretary to determine the eligibility of highway bridges for replacement or rehabilitation based upon the unsafe highway bridges in each State, and to give consideration to those projects which will remove from service those bridges most in danger of failure.

Since the early 1970's, the FHWA has employed a needs index known as the Sufficiency Rating to classify bridges according to their safety, serviceability, and essentiality for public use. This Sufficiency Rating together with a "deficient bridge definition" are currently used to establish funding eligibility under the HBRRP based on data that States submit annually to the National Bridge Inventory (NBI).

The deficient bridge definition uses NBI condition and appraisal ratings to determine whether a bridge is deficient. The Sufficiency Rating rates a bridge on a scale of 0 to 100, where a rating of 100 represents an entirely sufficient bridge. The current eligibility criteria specifies that deficient bridges having Sufficiency Ratings of less than or equal to 80 are eligible for rehabilitation, and those bridges with Sufficiency Ratings of less

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than 50 are eligible for replacement (or rehabilitation). Bridges with Sufficiency Ratings above 80 are not eligible.

The NPRM in the Federal Register on June 4, 1991 (56 FR 25392), proposed a level-of-service approach to determining eligibility in lieu of the deficient bridge definition and the Sufficiency Rating. The proposed approach would evaluate the need to replace or rehabilitate a bridge based on four main bridge characteristics: Load capacity, clear deck width, vertical overclearance, and vertical underclearance. The primary reason for the proposed change to a level-of-service approach was to establish a more objective basis for assessing bridge needs from State to State. The level-of-service approach would rely more on bridge characteristics that are directly measurable and less on subjective condition and appraisal ratings, as compared to the current system.

**Requests for Time Extensions**

The Advocates for Auto and Highway Safety requested a 30 day extension of the original 60 day comment period to allow additional time for review. The FHWA extended the comment period to September 5, 1991 (56 FR 38121), as a result of this request. The American Road and Transportation Builders Association and 10 affiliates subsequently requested a 90 day time extension beyond the September 5, 1991, date. The basis of the request was to provide additional review time. Also, in their view, the FHWA lacked statutory authority for the rulemaking. These latter time extension requests were denied, although the requesting associations were advised that comments received beyond the comment period would be considered to the extent practical.

**Assessment of Comments**

A total of 178 comments were received in response to the NPRM issued on June 4, 1991. Comments were received from 31 State transportation departments, 112 local governmental agencies, 18 associations involving counties, county engineers, townships and towns, 3 construction industry associations, 5 engineering consulting firms, 1 civil engineering department of a university, 3 members of Congress, 1 metropolitan planning organization, 1 safety organization, 1 consulting engineers association, and 2 private citizens.

**State Transportation Departments**

Of the 31 States which commented, 8 supported the proposal and 13 opposed it. The remaining 10 States raised questions but did not indicate a position either for or against the proposal. Eighteen States thought the criteria should consider additional factors. Most frequently mentioned were condition ratings (12 States), waterway adequacy (9 States), scour susceptibility (7 States), and seismic vulnerability (4 States). Nine States indicated the level-of-service thresholds for load capacity needed to be increased in the lower ranges, 3 thought that the load capacity criteria should be based on an inventory rating rather than an operating rating, 6 indicated the proposed width values needed adjustment and some made specific suggestions for changes, 4 objected to the narrow approach roadway exclusion, and 3 indicated a need to increase the vertical clearance values for the Interstate.

Regarding the use of surrogates for reported operating ratings, 9 States indicated that they were not comfortable with the assumptions used in determining these ratings, 4 indicated the States should be given the opportunity to review substitutions, 2 indicated the use of surrogates should not be considered a long term remedy, and 2 indicated the FHWA should require reliable operating ratings in the NBI.

Several States expressed concern about the impact of the proposal on their programs. Three States mentioned adverse impacts on 5-year program schedules, and 3 indicated that the proposal reduces their ability to meet critical bridge needs.

Miscellaneous State comments included concern that reductions in the number of eligible bridges would reduce the State's flexibility to select projects, that the proposal does not correct inequities in apportionments because of unit cost variations, that subjectivity is not eliminated because load ratings are often very subjective, that load ratings do not reflect deck condition or substructure capacity, that the rulemaking did not consider State-level economic impacts, that the FHWA lacks authority for the rulemaking, and that more detailed information is needed to adequately evaluate the proposal.

*Local Governmental Agencies and Associations*

Of the 112 local governmental agencies that commented, 107 opposed the rulemaking. The comments focused mainly on two items: (1) that the proposal did not give adequate consideration for the size and weight of vehicles using local roads, and (2) that potential loss of Federal funding for bridges would leave many local governments without sufficient resources to make needed bridge improvements. The 16 associations that submitted comments opposed the rulemaking for the same reasons.

*Other Organizations and Individuals*

Of the 17 remaining commenters, 8 indicated opposition to the rulemaking. The reasons for opposition are largely encompassed by the preceding summaries.

**Assessment of Comments**

Although a number of States indicated a clear preference for level-of-service approach over the present system, the majority of States that commented do not favor switching to level-of-service. In addition, most local governmental agencies indicated a strong preference for keeping the current system.

The major reason for opposition to the proposal appears to be the limited scope of the level-of-service criteria (i.e., consideration of just four bridge characteristics). The comments indicate that a majority of agencies would prefer criteria that are broader and more flexible in terms of the types of problems or conditions that qualify bridges for eligibility and funding.

An additional item affecting this rulemaking is the enactment of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, which took effect on December 18, 1991. The ISTEA, in part, addresses the issue of flexibility in the use of bridge funds. While not altering the laws by which program eligibility and apportionments must be made, the Act has established a new funding transfer provision that allows States, at their option, to transfer a part of their apportioned bridge funds to programs that are not subject to bridge program eligibility rules. The ISTEA also contains provisions for equity adjustment that would tend to mitigate the economic impacts of changed apportionments. The FHWA has not fully assessed the impact of the ISTEA on this rulemaking proposal.

**Conclusion**

The FHWA has decided to withdraw its rulemaking because:

1. On the basis of the comments, further study is required to establish appropriate minimum level-of-service criteria for the various functional classes of highways, and

2. With the enactment of the ISTEA of 1991, there is a need to evaluate the economic impact as well as justification for the rulemaking in the light of equity adjustment and bridge funding transfer provisions of the Act.

In consideration of the foregoing, the FHWA hereby withdraws the notice of proposed rulemaking, FHWA Docket No. 91–13, published on June 4, 1991 (56 FR 25392).

**List of Subjects in 23 CFR Part 650**

Bridges, Highways and roads, Grant programs—transportation, Reporting and recordkeeping requirements.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: June 26, 1992.

**T.D. Larson,**

*Administrator.*

[FR Doc. 92–15689 Filed 7–2–92; 8:45 am]

BILLING CODE 4910-22-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 92–138; RM–8003]**

**Radio Broadcasting Services; Winlock, WA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Premier Broadcasters, Inc. seeking the allotment of Channel 236A at Winlock, Washington, as the community's first local aural transmission service. Channel 236A can be allotted to Winlock in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 236A at Winlock are North Latitude 46–29–30 and West longitude 122–56–12. Since Winlock is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been requested.

**DATES:** Comments must be filed on or before August 20, 1992, and reply comments on or before September 4, 1992.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Meredith S. Senter, Jr., Esq., Leventhal, Senter & Lerman, Suite 600, 2000 K Street, NW., Washington, DC 20006 (Counsel for Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–138, adopted June 17, 1992, and released June 29, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly E. McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92–15640 Filed 7–2–92; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 92–127, RM–7917]**

**Radio Broadcasting Service; Germantown, TN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Omni Broadcasting Corporation, permittee of Channel 298A, Germantown, Tennessee, proposing the substitution of Channel 298C3 for Channel 298A and modification of its authorization accordingly. Channel 298C3 can be allotted to Germantown in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.6 kilometers (11.6 miles) southeast to accommodate Omni's desired site. The coordinates for Channel 298C3 at Germantown are 34-56-28 and 89-42-29. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 293C3 at Germantown or require the petitioner to demonstrate the availability of an additional equivalent class channel.

**DATES:** Comments must be filed on or before August 13, 1992, and reply comments on or before August 28, 1992.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harold K. McCombs, Jr., Esq., Holland & Knight, 888 17th Street NW., suite 900, Washington, DC 20006–3939 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–127, adopted June 10, 1992, and released June 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92–15641 Filed 7–2–92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

50 CFR Parts 611 and 685

**Pelagic Fisheries of the Western Pacific Region**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of a fishery management plan amendment and request for comments.

**SUMMARY:** NMFS issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 6 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) for Secretarial review, and is requesting comments from the public. Copies of Amendment 6 may be obtained from the Council (see **ADDRESSES**).

**DATES:** Comments on the amendment should be submitted on or before August 28, 1992.

**ADDRESSES:** All comments should be sent to E.C. Fullerton, Regional Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Copies of the amendment and incorporated environmental assessment (EA) are available from the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813, (808–541–1974).

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (310–514–6660) or Alvin Katekaru, Southwest Region, NMFS, Pacific Area Office, Honolulu, Hawaii (808–955–8831).

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider all public comments submitted during the comment period in determining whether to approve the plan or amendment.

Amendment 6 proposes to include species of tuna in the fishery management unit and to establish a number of new controls on foreign purse seine and baitboat fishing for tuna and other pelagic species in the exclusive economic zone (EEZ) around Hawaii, Guam, American Samoa, the Northern Mariana Islands, and U.S. island possessions in the Pacific. These measures include permit, reporting, and observer requirements that are applicable to all foreign fishing vessels in the EEZ, and area closures to prevent conflicts between foreign and domestic fishing vessels. The amendment provides a basis for legal foreign tuna fishing in the EEZ. No new regulations are proposed to apply to domestic fisheries for tuna and other pelagic species. The Council will consider the need for additional domestic fishery regulations as it proceeds with future amendments to the FMP.

The existing FMP objectives and definition of optimum yield (OY) are suitable for the added tuna and related species. Amendment 6 defines overfishing for tunas; a tuna stock would be overfished when its Spawning Potential Ratio (SPR) is equal to or less than 0.2. This definition of overfishing is consistent with other definitions of overfishing for other pelagic species (billfishes, oceanic sharks, mahimahi, and wahoo). The SPR is a measure of the current reproductive capacity of the stock or stock complex relative to the reproductive capacity of the unexploited stock over the entire range of the stock. Given the high reproductive capacity and the resiliency of tuna populations to fishing pressure through density-dependent responses, the Council concluded that an overfishing definition based on an SPR higher than 0.2 would be unnecessarily conservative. Although tuna species may have higher rates of growth, reproduction, and mortality than most billfish and associated pelagic species, the Council believes that selecting a lower SPR (e.g., 0.1) at this time would not be prudent. A detailed description of the SPR definition, discussion of various ways to measure SPR, and development of the OY definition are found in Amendment 1 to the FMP, which is available from the Council (see **ADDRESSES**).

An EA is incorporated into the plan amendment document. A regulatory impact review also is incorporated into the amendment document. All are available for public review (see **ADDRESSES**).

Proposed regulations to implement Amendment 6 are scheduled to be filed with the Office of the **Federal Register** within 15 days.

Dated: June 29, 1992.

**Richard H. Schaefer,**

*Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92–15727 Filed 6–30–92; 3:21 pm]

BILLING CODE 3510-22-M

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# Notices

Federal Register
Vol. 57, No. 129
Monday, July 6, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Adjudication Notice of Change of Time for Public Meetings

**AGENCY:** Administrative Conference of the United States.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a change in time of meetings of the Committee on Adjudication of the Administrative Conference of the United States.

The Committee will continue its discussion of a draft report on the federal administrative judiciary. Copies of the draft report are available from the Conference.

The meetings were originally scheduled to begin at 1:30 at the dates listed below. The starting time has been changed to 12 noon on the same dates.

**DATES:** Wednesday, July 15, 1992 at 12 noon; Tuesday, August 4, 1992 at 12 noon; Tuesday, August 18, 1992 at 12 noon.

**LOCATION:** Library of the Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

**PUBLIC PARTICIPATION:** The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meetings. Minutes of the meeting will be available on request.

**FOR FURTHER INFORMATION CONTACT:** Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Dated: June 10, 1992.

**Jeffrey S. Lubbers,**

*Research Director.*

[FR Doc. 92–15754 Filed 7–2–02 8:45 am]

BILLING CODE 6110-01-M

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### Meeting of the Board

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of meeting.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, July 14–15, 1992 at the times and location noted below.

**DATES:** The schedule of events is as follows:

*Tuesday, July 14, 1992*

9 a.m.–12 p.m. Title II Working Group (closed).

1:30 p.m.–4:30 p.m. Committee of the Whole (closed).

*Wednesday, July 15, 1992*

9 a.m.–10:30 a.m. Technical Programs Committee.

10:30 a.m.–12 p.m. Planning and Budget Committee.

1:30 p.m.–2:30 p.m. Executive Committee.

3 p.m.–5 p.m. Board Meeting.

**ADDRESSES:** The meetings will be held at: Embassy Suites Hotel, Consulate Room, 1250 22d Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 13 (voice/TDD).

**SUPPLEMENTARY INFORMATION:** At its business meeting, the Board will consider the following agenda items:

- Approval of the Minutes of the May 13, 1992 Board Meeting.
- Executive Director's Report.
- Committee Reports.
- Report on Use of Extraordinary Work.
- Directive on Reasonable Job and Travel Accommodations.
- Directive on Access to Meetings and Information For The Public.
- Directive on Communications With The Public During Rulemaking.
- Complaint Status Report.
- Status of Technical Program Projects.
- Update on AT&T Text Telephones.
- Technical Publications Distribution Plan Concepts.
- **Federal Register** Notice on the Board's Research Agenda.
- Fiscal Year 1992 Budget Status.
- Fiscal Year 1994 Budget Objectives and Priorities.
- Automatic Teller Machines Petition (closed).
- Vehicle Door Height Petition (closed).
- Title II Notice of Proposed Rulemaking (closed).

Some meetings or items may be closed to the public as indicated above. All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

**Lawrence W. Roffee,**

*Executive Director.*

[FR Doc. 92–15728 Filed 7–2–02; 8:45 am]

BILLING CODE 8150-01-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 92–092–1]**

### Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that 12 environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or

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desseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

**ADDRESSES:** Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foundin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340 (referred to below at the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of gentically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of a significant impact, which are based on data submitted by the applicants and a review of other relevant literature, provide the public with documentation of APHIS review and analysis of the environmental impacts associated with conducting the field test.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following gentically engineered organisms:

| Permit No. | Permittee | Date issued | Organisms | Field test location |
|---|---|---|---|---|
| 92-077-01 | Pioneer Hi-Bred, International, Incorporated. | 06-01-92 | Corn plants genetically engineered to express wheat germ agglutinin for resistance to European corn borer. | Kauai County, Hawaii. |
| 92-037-02 | Monsanto, Agricultural Company | 06-03-92 | Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate. | Bertie and Wayne Counties, North Carolina. |
| 92-060-04, renewal of permit 91-074-01, issued on 06-15-91. | Upjohn Company | 06-03-92 | Corn plants genetically engineered to express tolerance to the herbicide glufosinate. | Kalamazoo County, Michigan. |
| 92-066-01 | Holden's Foundation Seeds, Incorporated. | 06-04-92 | Corn plants genetically engineered to express a phosphinothricin acetyl transferase (PAT) gene for tolerance to the herbicide glufosinate. | Maui County, Hawaii; Iowa County, Iowa. |
| 92-043-01 | Hoechst-Roussel, Agri-Vet Company. | 06-05-92 | Corn plants genetically engineered to express the phosphinothricin N-acetyltransferase (PAT) gene, for tolerance to the herbicide glufosinate. | Freeborn and Goodhue Counties, Minnesota. |
| 92-049-02 | InterMountain, Canola Company | 06-05-92 | Rapeseed plants genetically engineered to express tolerance to the herbicide glyphosate. | Fremont County, Idaho. |
| 92-062-01, renewal of permit 91-035-06, issued on 05-10-92. | Campbell, Research and Development. | 06-05-92 | Tomato plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki* strain HD-73 for resistance to lepidopteran insects. | Yolo County, California. |
| 92-064-01, renewal of permit 91-039-01, issued on 05-22-91. | U.S. Department of Agriculture, Agricultural Research Service. | 06-05-92 | Potato plants genetically engineered to express a marker gene. | Bingham County, Idaho. |
| 92-097-01 | Stine Seeds, Incorporated | 06-05-92 | Soybean plants genetically engineered to express genes from a non-phathogenic source organism. | Dallas County, Iowa. |
| 92-105-01, renewal of permit 91-107-06, issued on 06-18-91. | Calgene, Incorporated | 06-09-92 | Cotton plants genetically engineered to express a nitrilase enzyme for tolerance to the herbicide bromoxynil. | Washington County, Mississippi. |

| Permit No. | Permittee | Date issued | Organisms | Field test; location |
|---|---|---|---|---|
| 92-108-01 | Monsanto Agricultural Company | 06-09-92 | Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shiki-mate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate. | Kalamazoo County, Michigan. |
| 92-113-01, renewal of permit 90-135-01, issued on 09-04-90. | University of Wisconsin-Madison | 06-09-92 | *Pseudomonas syringae* genetically engineered to be avirulent through the use of Tn5. | Columbia County, Wisconsin. |

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 30th day of June 1992.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92-15712 Filed 7-2-92; 8:45 am]

BILLING CODE 3410-34-M

**[Docket No. 92-099-1]**

## Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that three environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

**ADDRESSES:** Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, 20250, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the Untied States. The regulations set forth the procedures for obtaining a permit for the importation or interstate

movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

| Permit number | Permittee | Date issued | Organisms | Field test location |
|---|---|---|---|---|
| 92-090-03 | Upjohn Company | 06-10-92 | Tomato plants genetically engineered to express the coat protein genes of tobacco mosaic virus (TMV) and/or cucumber mosaic virus (CMV) for resistance to TMV and/or CMV. | Kalamazoo County, Michigan. |
| 92-133-01, renewal of permit 91-123-01, issued on 06-20-92. | Amoco Technology Corporation | 06-11-92 | Tobacco plants genetically engineered to express a eukaryotic gene for primary metabolism and a kanamycin resistance gene. | Fayette County, Kentucky. |
| 92-065-01 | Agritope, Incorporated | 06-12-92 | Tomato plants genetically engineered to express a S-adenosylmethionine hydrolase (SAMase) gene to delay ripening. | Umatilla County, Oregon. |

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 30th day of June 1992.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92-15706 Filed 7-2-92; 8:45 am]

BILLING CODE 3410-34-M

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**[Docket No. 92-100-1]**

## Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that three applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

**ADDRESSES:** Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of these documents by writing to the person listed under **"FOR FURTHER INFORMATION CONTACT."**

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

| Application No. | Applicant | Date received | Organisms | Field test location |
|---|---|---|---|---|
| 92-163-01, renewal of permit 91-205-01, issued on 10-22-91. | Calgene, Incorporated | 06-11-92 | Rapeseed plants genetically engineered to express an oil modification gene. | Yolo and Imperial Counties, California. |

| Application No. | Applicant | Date received | Organisms | Field test location |
|---|---|---|---|---|
| 92-164-01 | DeKalb Plant Genetics | 06-12-92 | Corn plants genetically engineered to express the enzyme 5-enolpyruvyl shikinate-3-phosphate synthase (EPSPS) and the *bar* gene for tolerance to the herbicide bialaphos. | Maui County, Hawaii. |
| 92-164-02 | Michigan State University | 06-12-92 | Melon plants genetically engineered to express the coat protein genes of zucchini yellow mosaic virus (ZYMV) and tobacco etch virus (TEV) for resistance to ZYMV and TEV. | Ingham County, Michigan. |

Done in Washington, DC, this 30th day of June 1992.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92-15707 Filed 7-2-92; 8:45 am]

BILLING CODE 3410-34-M

**[Docket No. 92-091-1]**

## Receipt of Permit Application for Release into the Environment of Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

**ADDRESSES:** Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of the document by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is receiving the following application for a permit to release genetically engineered organisms into the environment:

| Application no. | Applicant | Date received | Organisms | Field test location |
|---|---|---|---|---|
| 92-156-01 | Calgene, Inc | 06-04-92. | Rapeseed plants genetically engineered to express sense or antisense desaturase genes, a thioesterase gene, and a reductase gene, for oil modification. | Baker, Clay, Cook, Sumter, Washington, and Wayne Counties, GA. |

Done in Washington, DC, this 30th day of June 1992.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92-15711 Filed 7-2-92; 8:45 am]

BILLING CODE 3410-34-M

## Food and Nutrition Service

## Food Distribution Program; Value of Donated Foods From July 1, 1992 to June 30, 1993

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the value of donated foods, or where applicable, cash in lieu thereof to be provided in the 1993 school year for each lunch served by schools participating in the National School Lunch Program (NSLP) or by commodity schools and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program.

This notice also announces that the value of agricultural commodities and other foods provided to States during the past school year met the level of assistance authorized under the National School Lunch Act. Thus, there will be no shortfall cash payments to States for the NSLP for the 1992 school year. The annually programmed level of assistance was met in food donations by June 30, 1992.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Philip K. Cohen, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302-1594 or telephone (703) 305-2660.

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**SUPPLEMENTARY INFORMATION:**

**Classification**

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.550, 10.555, 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

**National Average Minimum Value of Donated Foods for the Period July 1, 1992 through June 30, 1993**

This notice implements mandatory provisions of sections 6(e), 14(f) and 17(h) of the National School Lunch Act (the Act) (42 U.S.C. 1755(e), 1762a(f), and 1766(h)). Section 6(e) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. This amount is subject to annual adjustments as of July 1 of each year to reflect changes in the Price Index for Food Used in Schools and Institutions. Section 17(h) of the Act provides that the same value of assistance in donated foods for school lunches shall also be established for lunches and suppers served in the Child and Adult Care Food Programs. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under NSLP (7 CFR part 210) and per lunch and supper under the Child and Adult Care Food Program (7 CFR part 226) shall be 14.00 cents for the period July 1, 1992 through June 30, 1993.

The Price Index for Food Used in Schools and Institutions is computed on the basis of five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oil). Each component is assigned a proportional value using the appropriate relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month simple average value of this Price Index for March, April and May. The three-month average of the Price Index decreased by 0.50 percent from 121.95 for March, April and May of 1991 to 121.34 for the same three months in 1992. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 1992 through June 30, 1993 will be 14.00 cents per meal. This is the same as the rate in effect for the past school year.

Section 14(f) of the Act provides that commodity schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(e) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents of this value in cash for processing and handling expenses related to the use of such foods.

Commodity schools are defined in section 12(d)(7) of the Act (42 U.S.C. 1760(d)(7)) as "schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs."

For the 1993 school year, commodity schools shall be eligible to receive donated-food assistance valued at 30.25 cents for each lunch served. This amount is based on the sum of the section 6(e) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 1993. The section 4 factor for commodity schools does not include the two cents per lunch increase for schools where 60 percent of the lunches were served in the second preceding year free or at reduced prices, since that increase is applicable only to schools participating in the National School Lunch Program.

**Cash in Lieu Payments—Value of Donated Commodities for School Year 1991–1992**

Section 6(b) of the Act, as amended, (42 U.S.C. 1755(b)) and the regulations governing cash in lieu of donated foods (7 CFR part 240) require the Secretary of Agriculture by June 1 of each school year to estimate the value of agricultural commodities and other foods that will be delivered to States during that school year. Under the food distribution regulations (7 CFR part 250), these foods are used by schools participating in NSLP. If the estimated value is less than the total level of commodity assistance authorized under section 6(e) of the Act, the Secretary is required by July 1 of that school year to pay to each State educational agency funds equal to the difference between the value of programmed deliveries and the total level of authorized assistance for each State.

During the past school year the adjusted minimum national average value of donated foods or payments of cash in lieu thereof per lunch was 14.00 cents. In accordance with section 6(e) of the Act, the mandated level of commodity assistance was $558,065,472 for school year 1992. The Secretary has determined that at least that amount was available for delivery nationally by June 30, 1992 to meet the mandated level of assistance.

Notice is hereby given, therefore, that no shortfall cash payments will be made for the school year ending June 30, 1992.

Dated: June 25, 1992.

**Betty Jo Nelsen,**

*Administrator.*

[FR Doc. 92–15701 Filed 7–2–92; 8:45 am]

BILLING CODE 3410–30–M

## Forest Service

### Spruce Creek Timber Sale, Boise National Forest, Valley County, ID; Intent To Prepare an Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement (EIS) for a timber sale located within the Needles inventoried roadless area (IRA), on the Cascade Ranger District, Boise National Forest. The project area, within the Gold Fork River Drainage, is approximately 27 road miles north and east of Cascade, Idaho, and about 110 road miles north of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision.

**DATES:** The proposal will be scoped by two public meetings from 7 to 9 p.m. on July 7, 1992, in Cascade at the high school, and on July 9, 1992, in Boise at the Boise National Forest Supervisor's Office. In addition, the Cascade Ranger District will mail an informational letter and request for comments in late June 1992 to people who may be interested or affected by the decision. Legal notices inviting comment will also be published in local newspapers. Comments received from these meetings and request for comments will be incorporated into the analysis process.

Additional written comments concerning the proposal are encouraged. To be considered in the draft environmental impact statement (DEIS), comments should be submitted on or before August 5, 1992.

**ADDRESSES:** Submit written comments to: District Ranger, Cascade Ranger District, Boise National Forest, P.O. Box 696, Cascade, ID 83611.

**FOR FURTHER INFORMATION CONTACT:** Steve Patterson, District Resource Operations Manager, Cascade Ranger District, 208–382–4271.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the proposed action is to help achieve the desired future condition of a healthy, diverse forest in which important resource values, including healthy timber stands, are sustained. The action is also needed to help meet the goals and objectives established by the Boise National Forest Land and Resource Management Plan (Forest Plan) and to provide raw sawlogs to help sustain local sawmills and maintain local economies. Secondary purposes of the proposed action are to improve the forage/cover distribution of elk habitat, provide access for fire suppression activities and future stand treatments, create parking facilities for the Gold Fork trailhead (#4113), minimize visual contrasts of existing roads and plantations, reduce sediment delivery from the 4021 and 497 roads, provide fish passage upstream of the 402 road crossing of Spruce Creek and the South Fork Gold Fork River, and rehabilitate sediment sources and areas not naturally regenerating within the 1989 Spruce Creek fire.

The proposed action is to harvest approximately 10 million board feet (MMBF) of sawtimber from an estimated 1,400 acres, using tractor yarding systems on approximately 50 percent of the area, with the remainder being cable and helicopter yarded. Selection and commercial thin silvicultural prescriptions would be implemented on approximately 62 percent of the area, clearcut on 30 percent, and the remainder seed tree and overstory removal. Openings of 15 to 20 acres would be created where necessary to achieve stand health and growth objectives. Due to the generally unroaded nature of the area, the proposed action would require construction of about 6 miles and reconstructing 2 miles of road to access the area.

Alternatives to the proposal will consider various amounts and combinations of activities. The most significant differences between alternatives will be: (1) The volume of timber harvest, (2) the transportation system constructed, (3) silvicultural systems used, (4) the amount of sediment produced, (5) impacts to management indicator species, and (6) the economic viability of each alternative. A "no action" (i.e., the project will not occur) alternative will also be considered in the analysis.

The Forest Service will analyze and document direct, indirect, and cumulative environmental effects of the alternatives. Each alternative will include mitigation measures and monitoring requirements. The EIS will tier to the 1990 Boise Forest Final Environmental Impact Statement (FEIS) and the accompanying Boise Forest Plan for programmatic direction the project area. The project area is located in the Gold Fork/Clear Creek Management Area 53 of the Forest Plan. Direction for this area emphasizes protection of scenic qualities in visually sensitive corridors. In areas of low visual sensitivity, timber and range management activities are intensified to maintain or increase the production of these resources. Nonpoint source pollution to Cascade Reservoir is minimized.

Preliminary issues for the proposal include the following:

—Effects on the wilderness characteristics of the Needles IRA;
—Effects on species dependent upon old-growth habitat;
—Effects on plant and animal species diversity; and
—Effects of sedimentation on water quality and fish habitat.

The scoping process for this project is intended to further define these and other preliminary issues.

Federal, State, and local agencies, potential purchasers, and other organizations and individuals who may be interested in or affected by the decision are invited to participate in the scoping process. This process includes identifying major issues, determining potential cooperating agencies, and identifying groups or individuals interested or affected by the decision.

The analysis is expected to take approximately 6 months. The DEIS is scheduled to be completed and available for public review in December 1992. The FEIS and Record of Decision are scheduled to be completed by May 1993.

The Forest Supervisor, Boise National Forest, is the responsible official.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 [1978]). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the FEIS (*City of Angoon* v. *Hodel*, Ninth Circuit, 1986; and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

Dated: June 23, 1992.

**Stephen R. Mealey,**

*Forest Supervisor.*

[FR Doc. 92–15644 Filed 7–2–92; 8:45 am]

BILLING CODE 3410–11–M



## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* 1992 National Census Test II.

*Form Number:* Agency—DB–IB; OMB—None.

*Type of Request:* New Collection.

*Burden:* 50,000 respondents; 9,167 reporting hours.

*Average Hours Per Response:* 11 minutes.

*Needs and Uses:* This survey is the second National census test to improve the mail response rates of the 2000 Census. The first test, the 1992 National Census Test, was designed to determine if an abbreviated, respondent-administered census questionnaire,

received and returned by mail, yields a higher response rate than does a form of greater length. Results from the test are being analyzed and prepared for dissemination. This second test will compare response rates to three variably applied mailing treatments of a single respondent-administered questionnaire. The three components of the mailing treatments are a pre notice letter, return envelope, and reminder postcard. These components will be variably applied to mailings to eight groups of test respondents. The goal of the second test is to maximize response to the census by identifying the optimum cost-effective mailing approach for gathering basic census data.

*Affected Public:* Individuals or households.

*Frequency:* One-time.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated June 29, 1992.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 92–15733 Filed 7–2–92; 8:45 am]

BILLING CODE 3510–07–M

## Bureau of Export Administration

### MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held July 22, 1992, 9:30 a.m., in the Herbert C. Hoover Building, room 1617 M–2, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

**Agenda**

*General Session*

1. Opening Remarks by the Chairman.
2. Introduction of Members of Visitors.
3. Presentation of Papers or Comments by the Public.
4. Working Group Report on Nuclear Non-Proliferation Controls.
5. Working Group Report on Export Control Policy Guidelines.
6. Discussion of Consolidating Control Lists and MCTL.
7. Presentation on Implementation of EPCI Regulations.

*Executive Session*

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: TAC Unit/EA/BXA, Room 1621, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 28, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call 202–377–4959.

Dated: June 29, 1992.

**Betty A. Ferrell,**

*Director, Technical Advisory Committee Unit, Office of the Deputy, Assistant Secretary for Export Administration.*

[FR Doc. 92–15740 Filed 7–2–92; 8:45 am]

BILLING CODE 3510–DT–M

## International Trade Administration

**[A–427–801, et al.]**

### Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Initiation of Antidumping Administrative Reviews and Request for Revocation of Order (in Part)

**AGENCY:** Import Administration/ International Trade Administration Department of Commerce.

**ACTION:** Notice of initiation of antidumping administrative reviews and notice of request for revocation of order (in part)

**SUMMARY:**

In the matter of A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–549–801, A–412–801.

The Department of Commerce has received requests to conduct administrative reviews of antidumping duty orders concerning antifriction bearings (other than tapered roller bearings) and parts thereof from the France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom. In accordance with 19 CFR 353.22(c), we are initiating those administrative reviews for the period May 1, 1991, through April 30, 1992. We have also received a request to revoke the order covering cylindrical roller bearings and parts thereof from the United Kingdom with respect to sales of this merchandise manufactured by Cooper Roller Bearings Co., Ltd.

**EFFECTIVE DATE:** July 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Roland L. MacDonald, Director, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230: telephone (202) 377–2104.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department of Commerce (the Department) has received timely requests, in accordance with 19 CFR 353.22(a), for administrative reviews of antidumping duty orders covering antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The orders cover three classes or kinds of merchandise: ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). We have also received a request, in accordance with 19 CFR 353.25(b), to revoke the order covering CRBs from the

United Kingdom with respect to Cooper Roller Bearings Co., Ltd. The request was accompanied by Cooper's certification that it has not sold CRBs at less than foreign market value during the period from the date of the original investigation through the present and will not do so in the future.

**Initiation of Reviews**

In accordance with 19 CFR 353.22(c), we are initiating administrative reviews of the following antidumping duty orders. We intend to issue the final results of these reviews no later than May 31, 1993.

| Firms | Class or kind | | |
|---|---|---|---|
| France: A–427–801: | | | |
| Dassault Industries (including all relevant affiliates) | BBs | CRBs | SPBs |
| Eurocopter Deutschland GmbH (formerly Messerschmitt-Boelkow-Blohm (MBB)) | BBs | CRBs | SPBs |
| Eurocopter France (formerly Aerospatiale Division Helicopterers (ADH) | BBs | CRBs | SPBs |
| ITT Jabsco | BBs | CRBs | |
| SKF France (including all relevant affiliates) | BBs | CRBs | SPBs |
| SNFA | BBs | CRBs | |
| Societe Nouvelle de Roulements (SNR) | BBs | CRBs | |
| Societe Nationale d'Etude et de Construction de Moteurs d'Aviation (SNECMA) | BBs | CRBs | |
| Turbomeca | BBs | CRBs | SPBs |
| Valeo S.A. BBs | | | |
| Germany: A–428–801: | | | |
| Durbal GmbH & Co. | BBs | CRBs | SPBs |
| Eurocopter Deutschland GmbH (formerly Messerschmitt-Boelkow-Blohm (MBB)) | BBs | CRBs | SPBs |
| Eurocopter France (formerly Aerospatiale Division Helicopteres (ADH)) | BBs | CRBs | SPBs |
| FAG Kugelfischer George Schaefer KGaA | BBs | CRBs | SPBs |
| Fichtel & Sachs AG | BBs | | |
| Georg Meuller Numberg, AG (GMN) | BBs | | |
| INA Walzlager Schaeffler KG | BBs | CRBs | SPBs |
| ITT Jabsco | BBs | CRBs | |
| Kugelfabrik Schute GmbH & Co | BBs | | |
| Neuweg Fertigung GmbH (NWG) | BBs | | |
| NTN Kugellagerfabrik (Deutschland) GmbH | BBs | CRBs | SPBs |
| SKF GmbH (including all relevant affiliates) | BBs | CRBs | SPBs |
| Societe Nouvelle de Roulements (SNR) | BBs | CRBs | |
| Universal-Kugellager-Fabrik GmbH | BBs | | |
| Volkswagen AG | BBs | CRBs | |
| Italy: A–475–801: | | | |
| Eurocopter France (formerly Aerospatiale Division Helicopterers (ADH)) | BBs | CRBs | |
| ITT Jabsco | BBs | CRBs | |
| FAG Cuscinetti S.p.A | BBs | CRBs | |
| Meter S.p.A | BBs | CRBs | |
| O.M.C.G. s.r.l | BBs | CRBs | |
| SKF-Industrie S.p.A. (including all relevant affiliates) | BBs | CRBs | |
| Societe Nationale d'Etude et de Construction de Moteurs d'Aviation (SNECMA) | BBs | CRBs | |
| Japan: A–588–804: | | | |
| Asahi Seiko Co. Ltd | BBs | | |
| Eurocopter Deutschland GmbH (formerly Messerschmitt-Boelkow-Blohm (MBB)) | BBs | CRBs | SPBs |
| Fujino Iron Works Co. Ltd | BBs | | |
| Honda Motor Co. Ltd | BBs | CRBs | SPBs |
| Inoue Jikuuke Kogyo Co. Ltd | BBs | CRBs | |
| Izumoto Seiko Co. Ltd | BBs | | |
| Koyo Seiko Company Ltd | BBs | CRBs | SPBs |
| Nachi-Fujikoshi Corporation | BBs | CRBs | |
| Nakai Bearing Co. Ltd | BBs | | |
| Nankai Seiko Co. Ltd | BBs | | |
| Nippon Pillow Block Sales Company Ltd | BBs | | |
| Nippon Seiko K.K | BBs | CRBs | SPBs |
| NTN Corp | BBs | CRBs | SPBs |
| Osaka Pump Co. Ltd | BBs | | |
| Showa Pillow Block Mfg. Ltd | BBs | | |
| Takeshita Seiko Co | BBs | | |
| Tottori Yamakai Bearing Seisakusho Ltd | BBs | | |
| Romania: A–485–801: | | | |
| Tehnoimportexport | BBs | | |
| Singapore: A–559–801: | | | |
| NMB Singapore/Pelmec Ind | BBs | | |
| Sweden: A–401–801: | | | |
| ITT Jabsco | BBs | CRBs | |
| SKF Sverige (including all relevant affiliates) | BBs | CRBs | |
| Thailand: A–549–801: | | | |
| NMB Thai/Pelmec Thai Ltd | BBs | | |
| United Kingdom: A–412–801: | | | |
| Barden Corporation | BBs | | |
| Cooper Bearings Ltd | | CRBs | |
| FAG (U.K.) Ltd | BBs | CRBs | |
| ITT Jabsco | BBs | CRBs | |
| RHP Bearings Ltd | BBs | CRBs | |
| Societe Nouvelle de Roulements (SNR) | BBs | CRBs | |
| SKF (UK) Ltd. (including all relevant affiliates) | BBs | CRBs | |

Interested parties must submit applications for administrative protective orders in accordance with 19 CFR 353.34(b). However, due to the large number of parties to this proceeding, we strongly recommend that parties submit their APO applications as soon as possible, and we will process them on a first-come, first-served basis.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1991).

Dated: June 30, 1992.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 92-15739 Filed 7-2-92; 8:45 am]

BILLING CODE 3510-DS-M

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**[A-549-807]**

## Antidumping Duty Order; Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Michelle Frederick, Office of Antidumping Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 377-0816.

### Order

*Scope of Order*

The product covered by this order is certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished from. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the harmonized tariff schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

*Antidumping Duty Order*

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on May 11, 1992, the Department of Commerce (the Department) made its final determination that certain carbon steel butt-weld pipe fittings (collectively "pipe fittings") from Thailand are being sold at less than fair value (57 FR 21065, May 18, 1992). On June 24, 1992, in accordance with section 735(d) of the Act, the International Trade Commission notified the Department that an industry in the United States is threatened with material injury by reason of such imports. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act that, but for the suspension of liquidation of entries of pipe fittings from Thailand, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, all unliquidated entries or warehouse withdrawals, for consumption of pipe fittings from Thailand, with the exception of AST, whose margin is *de minimis*, made on or after June 24, 1992, the date on which the ITC issued its final affirmative determination of threat of material injury, will be liable for the assessment of antidumping duties. The Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries entered, or withdrawn from warehouse, for consumption before June 24, 1992, and to release any bond or other security, and refund any cash deposit, posted to secure the payment or estimated antidumping duties with respect to these entries.

The Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of pipe fittings from Thailand, with the exception of AST. These antidumping duties will be assessed on all entries of pipe fittings from Thailand, entered or withdrawn from warehouse, for consumption on or after the date on which the ITC issued its final affirmative determination of threat of material injury. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the cash deposits equal to the estimated weighted-average antidumping duty margins as noted below:

| Producer/manufacturer/exporter | Margin percentage |
|---|---|
| TTU Industrial Corp., Ltd. | 10.58 |
| Awaji Sangyo (Thailand) Co., Ltd | 1.22 |
| Thai Benkan Co | 50.84 |
| All others | 39.10 |

[1] De minimis.

This notice constitutes the antidumping duty order with respect to pipe fittings from Thailand, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 28, 1992.

**Francis J. Sailer,**

*Acting Assistant Secretary.*

[FR Doc. 92-15736 Filed 7-2-92; 8:45 am]

BILLING CODE 3510-DS-M

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**[A-570-814]**

## Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Steve Alley or Lori Way, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5288 or (202) 377-0656, respectively.

### Amended Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on May 11, 1992, the Department made its final determination that certain carbon steel butt-weld pipe fittings ("pipe fittings") from the People's Republic of China (PRC) are being sold in the United States at less than fair value (57 FR 21058, May 18, 1992).

After publication of our final determination, respondents China North Industries Corporation, Jilin Provincial Machinery & Equipment Import & Export Corporation, Liaoning Machinery & Equipment Import & Export Corporation, Liaoning Metals & Minerals Import & Export Corporation, Shandong Metals & Minerals Import & Export Corporation,

and Shenyang Machinery & Equipment Import & Export Corporation (collectively "China Chamber") alleged that the Department committed certain ministerial errors in calculating the final determination margins. We have determined that a ministerial error was committed in calculating the surrogate value for profit and are correcting the final determination accordingly for the cooperative respondents only. (*See* memorandum from Richard W. Moreland to Francis J. Sailer, dated June 1, 1992, item 3.) Although Shenyang Billiongold Pipe Fittings Co., Ltd. (Billiongold) did not allege that the Department committed ministerial errors in calculating its final margin, the nature of the ministerial error regarding profit is such that it applies to all cooperative respondents, and we have, therefore, corrected the final determination for Billiongold as well. The correct cash deposit rates are listed in the "Antidumping Duty Order" section of this notice.

**Scope of Order**

The products covered by this order are carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods ( *e.g.*, threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

**Antidumping Duty Order**

In accordance with section 735(a) of the Tariff Act of 1930, as amended, (the Act), on May 11, 1992, the Department of Commerce (the Department) made its final determination that pipe fittings from the PRC are being sold at less than fair value (57 FR 21058, May 18, 1992). On June 24, 1992, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that an industry in the United States is threatened with material injury by reason of such imports. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act that, but for the suspension of liquidation of entries of pipe fittings from the PRC, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, all unliquidated entries or warehouse withdrawals, for consumption of pipe fittings from the PRC made on or after June 24, 1992, the date on which the ITC issued its final affirmative determination of threat of material injury, will be liable for the assessment of antidumping duties. The Department will direct U.S. customs officers to terminate the suspension of liquidation for entries entered, or withdrawn from warehouse, for consumption before June 24, 1992, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

The Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of pipe fittings from the PRC. These antidumping duties will be assessed on all entries of pipe fitttings from the PRC, entered or withdrawn from warehouse, for consumption on or after the date on which the ITC issued its final affirmative determination of threat of material injury. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average andtidumping duty margins as noted below:

| Manufacturer/producer/exporter | Weighted average margin percentage |
|---|---|
| China North Industries Corporation | 154.72 |
| Jilin Provincial Machinery & Equipment Import & Export Corporation | 75.23 |
| Liaoning Machinery & Equipment Import & Export Corporation | 134.79 |
| Liaoning Metals & Minerals Import & Export Corporation | 103.70 |
| Shenyang Billiongold Pipe Fittings Co. Ltd. | 110.39 |
| Shandong Metals & Minerals Import & Export Corporation | 35.06 |
| Shenyang Machinery & Equipment Import & Export Corporation; Liaoning Metals; Shenzhen Machinery Industry Corporation; and all others | 182.90 |

This notice constitutes an antidumping duty order with respect to pipe fittings from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 29, 1992.

**Francis J. Sailer,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 92-15737 Filed 7-2-92; 8:45 am]

BILLING CODE 3510-DS-M

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**[A-351-813]**

## Initiation of Antidumping Duty Investigation: Certain Alloy and Carbon Hot Rolled Bars, Rods and Semifinished Products of Special Bar Quality Engineered Steel From Brazil

**AGENCY:** Import Administration, Interantional Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Linda Pasden or Richard Weible, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0194 or (202) 377-0159, respectively.

**Initiation**

*The Petition*

On June 9, 1992, we received a petition filed in proper form by The Timken Company and Republic Engineered Steels, Inc. In accordance with 19 CFR 353.12, petitioners allege that imports of certain alloy and carbon hot rolled bars, rods, and semifinished products of special bar quality engineered steel, (referred to as SBQ bars and rods) from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that an industry in the United States is being materially injured, or is threatened with material injury, by reason of those imports.

Petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and because they filed the petition on behalf of the U.S. industry producing the products that are subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification

with the Assistant Secretary for Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

*United States Price and Foreign Market Value*

Petitioners provided multiple methodologies for calculating United States price (USP) and foreign market value (FMV). We have analyzed only the price-to-price allegations. If necessary at a later date, we will analyze petitioners' allegations involving constructed value.

Petitioners estimate of USP is based on both actual price quotes to U.S. customers on a delivered basis and IM 145 import statistics. We relied only on the actual price quotes as a basis for the calculation of USP, because for selected comparisons, the IM 145 import statistics were not contemporaneous with home market prices. Delivered prices were adjusted to reflect a FOB port-or-origin basis. No further adjustments to U.S. price were made.

Petitioners' estimate of FMV is based on actual invoices and price quotations to Brazilian customers on an ex-works basis, and home market price lists. Because of the hyperinflation that exists in Brazil, we excluded comparisons based on invoice prices, certain price quotes, and list prices, because petitioners did not submit contemporaneous U.S. prices. We made comparisons only on the basis of contemporaneous price quotes in the U.S. and home markets. Petitioners deducted the ICMS state value-added tax from all domestic price quotations. Price quotations were reported exclusive of all other taxes.

Based on the 1992 price-to-price comparisons of USP and FMV, petitioners allege dumping margins ranging from 17 to 18 percent.

*Initiation of Investigation*

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioners supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of SBQ bars and rods from Brazil are being, or are likely to be, sold in the United States at less than fair value. If the investigation proceeds normally, we will make our preliminary determination by November 16, 1992.

*Scope of Investigation*

The products covered by this investigation are certain hot-finished carbon and alloy (other than stainless, high speed, silico-manganese, and tool steel) steel bars and rods, other than forged, which have a uniform solid cross-section along their whole length and are in the shape of circles, segments of circles, ovals, rectangles, triangles, or other convex polygons, and do not conform to the definitions for semi-finished steel, flat-rolled products, hot-rolled bars and rods in irregularly wound coils, reinforcing bars and rods, and wire. The subject bars and rods are of special bar quality engineered steel that are described in Society of Automotive Engineers (SAE) J403, J404, J411, J1081, J1249, J1268, and modifications thereof, whether they be domestic or foreign, of other than merchant quality grades M 1000 through M 1044, not containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, as classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTS): 7214.30.0000, 7214.40.0010, 7214.40.0030, 7214.40.0050, 7214.50.0010, 7214.50.0030, 7214.50.0050, 7214.60.0010, 7214.60.0030, 7214.60.0050, 7228.30.8005, and 7228.30.8050.

Also included in the scope of this investigation are certain alloy ingots (other than stainless steel, high-speed steel, silico-manganese steel, tool steel, and high-nickel alloy steel), and semi-finished products of carbon and alloy (other than stainless steel, high-speed steel, silico-manganese steel, tool steel, and high-nickel alloy steel) steel, of circular or rectangular (including square) cross-section with a width measuring less than four times thickness, of special bar quality engineered steel that are described in Society of Automotive Engineers (SAE) J403, J404, J411, J1081, J1249, J1268, and modifications thereof, whether they be domestic or foreign, not containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, as classifiable under the following subheadings of the HTS: 7207.11.0000, 7207.12.0010, 7207.19.0030, 7207.20.0025, 7207.20.0075, 7224.10.0075, 7224.90.0045, and 7224.90.0065.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

*Class of Kind Issue*

The Department has accepted, for purposes of this initiation, petitioner's claim that the subject merchandise comprises one class or kind of merchandise. However, given (1) the clear distrinction normally maintained in the steel trade between semifinished products and finished products such as bars and rods, and (2) an examination of the criteria used to evaluate Class or kind of merchandise, established in *Diversified Products* v. *United States*, 6 CIT 155 (1983), we question petitioners' assertion that the subject merchandise comprises one class or kind of merchandise. Therefore, we are requesting all interested parties to comment on the scope of these proceedings, particularly whether the subject merchandise in this case comprises one class or kind of merchandise or more. Comments should be submitted to the Assistant Secretary for Import Administration, Room B-099, at the above address within 14 days of the publication of this notice.

*ITC Notification*

Section 732(d) of the Act requires us to notify the ITC of these actions and we have done so.

*Preliminary Determination by ITC*

The ITC will determine by July 24, 1992, whether there is a reasonable indication that imports of SBQ bars and rods, and SBQ semifinished products from Brazil, are materially injuring, or threaten material injury to, a U.S. industry. If the ITC determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 29, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-15738 Filed 7-2-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-815]

## Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mary Jenkins or Brian Smith, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 377-1756 and (202) 377-1766, respectively.

### Final Determination

The Department of Commerce ("the Department") determines that sulfanilic acid from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673d). The Department also determines that critical circumstances do not exist. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

*Period of Investigation*

The period of investigation ("POI") is May 1, 1991, through October 31, 1991.

*Case History*

Since the publication of our preliminary determination on March 18, 1992 (57 FR 9409), the following events have occurred.

On March 20, 1992, respondent, China National Chemicals Import & Export Corporation, Hebei branch ("Sinochem Hebei"), requested a 30 day postponement of the final determination and also requested a public hearing. On March 20, 1992, respondent also requested that the Department reissue its preliminary determination to correct alleged double counting of delivery costs to the factories for certain material and non-material inputs used to produce the subject merchandise. On March 26, 1992, we denied respondent's request to reissue the preliminary determination. However, we informed respondent that for the final determination, we would confirm whether all input prices included delivery to the factories.

Respondent alleged that the sulfanilic acid industry is a fully market-oriented industry ("MOI"). Based on the standard enunciated in the Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China 57 FR 9409, 9410, (March 18, 1992)) (*"Sulfanilic Acid"*), we sent an MOI questionnaire to respondent and the PRC government on March 26, 1992. On March 27, 1991, the PRC government submitted, through the U.S. embassy in Beijing, quantity and value data for inputs used to produce sulfanilic acid.

On April 3, 1992, we published a notice postponing the final determination until no later than June 26, 1992 (57 FR 11466). On April 9, 1992, Sinochem Hebei submitted its response to our MOI questionnaire. From April 20 through April 30, 1992, we conducted verification at Sinochem Hebei, Baoding No. 3 factory, and Xinyu factory at Shijiazhuang, Baoding, and Beijing, PRC. We also examined the sales information of Sinochem U.S.A. in New York, New York on April 23, 1992. On May 22, 1992, we issued verification reports of our findings.

On June 5, 1992, respondent and petitioner submitted their briefs. On June 10, 1992, respondent and petitioner submitted their rebuttal briefs. On June 11, 1992, we requested that respondent re-submit its brief because it contained new factual information in contravention to 19 CFR 353.31(a)(1)(i). On June 11, 1992, respondent re-submitted its brief. On June 12, 1992, respondent was instructed again to re-submit its brief because it still contained new factual information.

A public hearing was held on June 12, 1992. On June 12, 1992, we requested for a third time that respondent re-submit revisions to its brief to delete new factual information. To finally delete all new factual information from its briefs, respondent submitted revisions to its brief on June 12, and June 16, 1992. However, both submissions still contained new factual information. Therefore, on June 23, 1992, pursuant to 19 CFR 353.31(a)(3), we removed the new factual information in question from the record.

*Separate Rates*

In our preliminary determination, we stated that we would not make a final decision as to whether Sinochem Hebei should receive a company-specific rate until we examined the trading company's claims at verification.

Based on our findings at verification, we have determined that Sinochem Hebei has demonstrated, pursuant to the test enunciated in the Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (*"Sparklers"*), that it is entitled to a separate rate. (For further discussion, see DOC Position to Comment 6 below).

Unless a respondent demonstrates entitlement to a separate, company-specific rate pursuant to the test enunciated in *Sparklers*, we will presume that they are subject to a single rate. (See, *e.g.*, Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, 56 FR 66831 (December 26, 1991) (*"Butt-weld Pipe Fittings"*)). Since Sinochem Hebei was the only party to respond to our questionnaire, we will not issue company-specific rates to other PRC exporters of the subject merchandise because these exporters did not fully cooperate or provide all requested information in response to our questionnaire. Margins for the non-responding exporters will be determined based on application of the best information available ("BIA"), pursuant to section 776(c) of the Act. In determining what rate to use as BIA, we have followed the two-tiered methodology, outlined in *Sulfanilic Acid*.

Therefore, as BIA, the dumping margin for all other exporters who did not cooperate in this investigation is the rate set forth in the petition.

*Scope of the Investigation*

The products covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powers.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24.20 of the Harmonized Tariff Schedule of the United States ("HTS"), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the HTS subheading 2921.42.24.20, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate), classifiable under the HTS subheading 2921.42.70, is a granular or

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crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

*Fair Value Comparisons*

To determine whether sales of sulfanilic acid from the PRC to the United States were made at less than fair value, we compared the United States price to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

*United States Price*

We based United States price on purchase price for sales made directly to unrelated parties prior to the date of importation into the United States, in accordance with section 772(b) of the Act. Also, in accordance with section 772(b) of the Act, we considered sales made by Sinochem Hebei to Sinochem U.S.A. to be purchase price transactions. We used purchase price as defined in section 772 of the Act, because sulfanilic acid was sold to related purchasers in the United States prior to importation into the United States, and because exporter's sales price ("ESP") methodology was not indicated by other circumstances.

We calculated purchase price based on packed, c.i.f. port or undelivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, and marine insurance. At verification, we determined that respondent reported amounts for ocean freight and marine insurance based on services provided by shipping companies based in the PRC. Since surrogate country information was not available for these expenses, we used the reported U.S. dollar chargers for these expenses as BIA, pursuant to section 776(c)(1) of the Act. (See, *Butt-weld Pipe Fittings*, 56 FR at 66833.)

*Foreign Market Value*

Section 773(c)(1) of the Act provides that the Department shall determine FMV using a factors of production methodology if (1) the merchandise is exported from a non-market economy country ("NMEA"), and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value under section 773(a)(2) of the Act.

The Department treated the PRC as an NME for purposes of the preliminary determination. Since no party to this proceeding has disputed this presumption, and given that there is no information on the record of this proceeding to support a different determination, the Department has treated the PRC as an NME for purposes of the final determination.

Respondent in this investigation has claimed that all of the manufacturer's material and non-material inputs used to produce sulfanilic acid were purchased at market-driven prices during the POI. Accordingly, respondent deems it appropriate for the Department to use the PRC prices for material and non-material inputs for valuing the inputs used to produce sulfanilic acid.

In the preliminary determination in this investigation, the Department announded that the following criteria would be used for determining whether an MOI exists in an economy which will otherwise be considered non-market:

- For merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced. For example, state-required production of the merchandise, whether for export or domestic consumption in the non-market economy country would be an almost insuperable barrier to finding a market-oriented industry.
- The industry producing the merchandise under investigation should be characterized by private or collective ownership. There may be state-owned enterprises in the industry but substantial state ownership would weigh heavily against finding a market-oriented industry.
- Market-determined prices must be paid for all significant inputs, whether material or non-material, and for an all but insignificant proportion of all the inputs accounting for the total value of the merchandise under investigation. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation pay a state-set price for the input or if the input is supplied to the producers at government direction. Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant.

If these conditions are not met, pursuant to 19 CFR 353.52, the producers of the merchandise under investigation will be treated as non-market economy producers, and the foreign market value will be calculated by using prices and costs from a surrogate country, in accordance with section 773(c)(3) & (4) of the Act.

Shortly after we stated the criteria for determining an MOI in an NME in our preliminary determination, we sent an MOI questionnaire to respondent and the PRC government to determine if there was the absence of government control and market forces were at work with respect to the price of inputs used to produce the subject merchandise. In its April 9, 1992, response to that questionnaire, Sinochem Hebei claimed that the prices and costs for all and not some of the material and non-material inputs used to produce sulfanilic acid were market-driven and that none of the four factories' suppliers produced any of the inputs for in-plan production. Specifically, respondent claimed that none of the factories producing the subject merchandise for Sinochem Hebei purchased their material or non-material inputs from suppliers that also produced the same inputs for in-plan factories producing the subject merchandise or other types of merchandise that were designated for in-plan production.

In applying the MOI criteria to the sulfanilic acid industry in the PRC, we find that aniline is a significant material input used to produce sulfanilic acid. We have also found that aniline is a derivative of oil, which is a category one product centrally-controlled by the PRC government. Without the use of aniline, sulfanilic acid cannot be produced. We were told at verification that aniline is subject to state-required production. Because we requested but did not receive quantificable data from the PRC government which might have established the extent of state-required production for this input, we lack the information necessary to evaluate whether or not the aniline prices are market-determined in the PRC. (For further discussion, see DOC position to Comment 4 below).

Since we find that a significant material input may not be purchased at market-determined prices, we do not need to consider whether (1) the prices of other material or non-material inputs are market-determined; (2) whether there is state-required production of the subject merchandise and (3) whether there is substantial state ownership in the sulfanilic acid industry. See, Final Negative Countervailing Duty Determinations: Oscillating and Ceiling Fans from the PRC, 57 FR 24018, 24019 (June 5, 1992). Therefore, we have determined that the criteria outlined in the the preliminary determination has not been met. Based on this finding, we have used surrogate values in calculating FMV, as discussed below. (See, Comment 4 for a complete discussion of this issue).

*Surrogate Country*

Section 773(c) of the Act requires the Department to value the factors of



production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country, and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are the most comparable to the PRC in terms of overall economic development, based on per capita gross national product ("GNP"), the national distribution of labor, and growth rate in per capita GNP. (See memorandum from the Office of Policy to David L. Binder, dated December 4, 1991.) Because India fulfills both requirements outlined in the statute, India is the preferred surrogate country for purposes of calculating the factors of production used in producing the subject merchandise. Since Pakistan is not a producer of sulfanilic acid, we have resorted to Pakistan for surrogate values only if Indian values were not obtainable.

We have used the values for the factors of production, as appropriate, from both countries. In our preliminary Determination, data for valuing the factors of production were obtained from the U.S. embassy in India and the U.S. consulate in Pakistan. Subsequent to our preliminary determination, a hierarchy for preferred input values was set forth in the notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992) (Comment 4) (*"Butt-weld Pipe Fittings, Final"*). Accordingly, in those instances in which petitioner or respondent questioned the validity of the input values used in the preliminary determination, specifically the values for aniline, coal and electricity, we have obtained and relied upon published, publicly available information. Where neither petitioner nor respondent questioned a value used in the preliminary determination, we continued to use that value.

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for respondent Sinochem Hebei. The factors used to produced sulfanilic acid include materials, labor, and energy. We verified the production information of two of the four factories which submitted information on behalf of Sinochem Hebei. At verification, we found that the two factories we chose to verify did not incur costs for water used in the production process for the subject merchandise (see, Verification Report for Baoding and Xinyu factories, both dated May 22, 1992).

To value aniline, we used published, publicly available information from the Monthly Statistics of the Foreign Trade of India (September 1990). (See, Comment 1 for a complete discussion of this issue).

To value sulfuric acid and activated carbon, we used POI price quotes provided by the U.S. consulate in Pakistan, a producer of comparable merchandise, because the U.S. embassy in India could not obtain values for these inputs. We adjusted the factor values to the POI using wholesale price indices published by the International Monetary Fund.

To value coal, we used the published source, Monthly Statistics of the Foreign Trade of India (September 1990), and a 1990 Indian coal price as published in *OECD IEA Statistics*. We calculated an average undelivered f.o.b. coal price because the coal price from the OECD source differed greatly from the calculated import value for coal using Indian foreign trade statistics. (*See*, Comment 2 for a complete discussion of this issue).

To value electricity, we used the *OECD IEA Statistics's* published, publicly available Indian electricity rate for 1985 and adjusted the value for the POI by using wholesale price indices published by the International Monetary Fund.

To value labor rates, we used unskilled and skilled labor rates, including benefits, obtained from the U.S. embassy in India. We adjusted the unskilled wage rate to account for the number of hours in an Indian work week based on information contained in the published source, Country Reports on Human Rights Practices for 1990. Baoding, one of the factories examined, was a medium size plant. Therefore, we applied the unskilled labor rate provided by the U.S. embassy in India that was applicable for a medium size plant operation. For the other three factories, we applied the unskilled labor rate provided by the U.S. embassy in India for a small size plant operation. We used the same skilled labor rate for all factories.

We received cables from the U.S. embassy in India on January 30, and March 5, 1992, and the U.S. consulate in Pakistan on March 25, 1992, stating with the exception of plastic bags, all input prices used to value the factors of production were undelivered prices during the POI in each respective country.

To calculate FMV, the reported factors of production were multiplied by the appropriate India and Pakistani values for the various components. With the exception of plastic bags, we added an amount for the delivery of inputs to the factory to arrive at a delivered cost of materials. In our preliminary determination, freight rates based on distance and weight with not available. Therefore, we calculated freight rates based on weight in the preliminary determination. However, for our final determination, we used a June 1992 truck freight rate based on weight and distance obtained from the U.S. embassy in India. We also used a December 1989 train freight rate based on weight and distance. We adjusted these factor values to the POI using wholesale price indices published by the International Monetary Fund.

We used an average percentage for factory overhead, based on Indian producers' experience, which we obtained from the U.S. embassy in India. Pursuant to section 773(e)(1)(B), we then added an amount higher than the statutory ten percent minimum for selling, general and administrative expenses, and an amount higher than the statutory eight percent minimum for profit, based on Indian producers' experience, which was obtained from the U.S. embassy in India. We also added, where appropriate, an amount for packing labor based on the appropriate Indian unskilled wage rate, and an amount for packing materials based on Indian prices to arrive at a constructed FMV for one metric ton of sulfanilic acid. We made no adjustments for selling expenses. (For a complete analysis of surrogate values, see our concurrence memorandum dated June 22, 1992.)

*Critical Circumstances*

Petitioner alleged that "critical circumstances" existed with repect to imports of sulfanilic acid from the PRC. Section 773(e)(1) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of investigation at less than its fair value, and (B) there have been massive imports of the merchandise which is the subject of the investigation at over a relatively short period.

Pursuant to section 773(e)(1)(B) of the Act, we generally consider the following factors in determining whether imports have been masive over a short period of time: (1) The volume and value of the

imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. (See, *e.g.*, Final Determiniation of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan, 53 FR 12552 (April 15, 1988)). To determine whether imports have been massive, we normally compare the export volume for the base period, which is a period of not less than three months beginning with the month the petition was filed, with a previous period of the same length. Since the petition was filed on October 3, 1991, we compared shipments for Sinochem Hebei, during the six month period from the filing of the petition, October 1991 through March 1992, to shipments during the six month period prior to the month in which the petition was filed, April through September 1991.

On February 24, 1992, respondent submitted quantity figures for exports of sulfanilic acid to the United States during the relevant months of 1991 and 1992. At verification, we found that the quantity figures contained in the February 24, 1992, response included amounts exported to their country designations as well as the United States. At verification, we did obtain accurate quantity figures of sulfanilic acid which Sinochem Hebei exported to the United States during the relevant months of 1991 and 1992.

Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports "massive." Based on our analysis of the data collected at vereification, we find that imports of the subject merchandise from the PRC during the period subsequent to receipt of the petition have not been massive. The other PRC exporters of the subject merchandise accounted for a minimal amount of total PRC exports of the subject merchandise to the United States.

Since we do not find that there have been massive imports, pursuant to section 733(e)(1)(B) of the Act, we do not need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value.

Therefore, we have determined that critical circumstances do not exist with respect to imports of sulfanilic acid from the PRC.

*Currency Conversion*

When calculating foreign market value, we made currency conversions in accordance with 19 CFR 353.60(a).

*Verification*

Pursuant to section 776(b) of the Act, we verified information used in reaching our final determination. We used standard vertification procedures, including examination of relevant accounting records and orginal source documents provided by respondents.

*Interested Party Comments*

*Comment 1:* Petitioner argues that the Department should use the domestic price of aniline in India instead of the Indian import price for aniline for calculating FMV. Petitioner maintains that the Department cannot use the import price because this price is based on imports of aniline sourced from Eastern Europe. Petitioner argues that in previous investigations, the Department has presumed that the countries of Eastern Europe are non-market economy countries, unless such countries successfully rebutted this presumption. Furthermore, the Department has stated in previous investigations that factor values should be based on prices of inputs produced in the selected surrogate market economy. Therefore, the Department cannot use the price of an input from a non-market economy in order to value the same input in a market economy country. Petitioner cites to Final Results of Certain Iron Construction Castings from the People's Republic of China, 57 FR 10644 (June 8, 1992), in support of its argument.

Respondent argues that the Department should not use the Indian domestic price aniline because the price is substantially greater than the U.S. price and also does not reflect a world market price for the input. Furthermore, respondent argues that even though the Indian import price is more reflective of a world price for aniline, the Department should not use this price either because the import price is also distortive of the actual cost of PRC producers. Respondent points out the PRC is an oil producer, whereas India is not, and because aniline is a derivative of oil, the Department should use an aniline price from a country, such as Mexico, where the cost of aniline would better reflect the costs PRC producers incur for using aniline.

*DOC Position:* As described above under the "Surrogate Country" section, when a particular surrogate value used in the preliminary determination was disputed by respondent or petitioner, we sought and employed published, publicly available information in accordance with the hierarchy enunciated in *Butt-Weld Pipe Fittings, Final.* Therefore, since the value for aniline has been placed in dispute, we have used published and publicly available information to value aniline. We considered whether to use the domestic or import price for aniline at the preliminary determination. We determined that the import price was appropriate because imported aniline is used by Indian producers in manufacturing sulfanilic acid for exportation. Therefore, for aniline we used the Monthly Statistics of the Foreign Trade of India (September 1990)

*Comment 2:* Respondent argues that the Department should use the 1990 Indian coal price as published in *OECD IEA Statistics* rather than the Pakistani price for coal as contained in the U.S. cable because the Indian price reflects the price of coal in the PRC.

Petitioner argue that we should not use the Indian coal price information which respondent submitted in its brief because that information is new factual information which was untimely submitted to the Department.

*DOC Position:* Since the value for coal was placed in dispute, the Department first examined the 1990 Indian price for coal as published in *OECD IEA Statistics.* In addition, the Department independently obtained another published, publicly available Indian import price from the source, Monthly Statistics of the Foreign Trade of India (September 1990). These prices differed significantly. Since we have no information indicating which of the two prices is more accurate, we calculated and used a simple average of the published Indian coal prices to value coal for the POI. We adjusted the factor values to the POI using wholesale price indices published by the International Monetary Fund.

*Comment 3:* Petitioner argues that because the Department chose not to verify two of the four PRC producers of sulfanilic acid, the results of the two verified factories' information must be applied to the other verified producers. Otherwise, petitioner argues that the Department should disregard the information provided by the non-verified producers. Petitioner cites to section 776(b) of the Act in support of its argument and the recent decision reached in the Remand of *Sparklers.*

Respondent argues that the Department must accept as accurate the factors data of the two factories not chosen for verification because the Department elected not to verify that information.

*DOC Position:* We disagree with petitioner's contention. The purpose of verification is to spot-check the respondent's questionnaire response and is not intended to be an exhaustive

examination of the response. See, *Monsanto Company* v. *United States*, 698 F. Supp. 285 (CIT 1988). In this investigation, to determine factors of production, we selected two of the four factories as representative of subject merchandise produced in the PRC (see, memorandum to the file, April 6, 1992). At verification, we found that each factory is unique in its factors of production. We found no major discrepancies in the factors verified that would warrant disregarding the response for any of the four factories. However, we have adjusted our calculation to account for any unique factors that may be applicable to each of the factories.

*Comment 4:* Petitioner argues that since the People's Republic of China ("PRC") is an NME, the sulfanilic acid industry in the PRC cannot be an MOI. Petitioner maintains that respondent has not demonstrated that the prices for all inputs used to produce the subject merchandise are market-determined. Furthermore, petitioner maintains that even if the Department found the input prices to be market-determined in the PRC, it is not reasonable to convert these prices denominated in remninbi Yun (an alleged non-convertible currency) to a hard currency. Therefore, the Department must resort to surrogate values in calculating the FMV.

Respondent argues that the sulfanilic acid industry in the PRC is sufficiently market-oriented and that the PRC prices for all inputs used to produce the subject merchandise should be used to calculate the FMV. Respondent maintains that the Department should find that the PRC prices for inputs used to produce sulfanilic acid are market-oriented and an insignificant amount of the inputs are subject to mandatory in-plan production. In addition, respondent argues that the input prices are freely negotiated between the factories that use the inputs to produce sulfanilic acid and the suppliers that provide the inputs to the sulfanilic acid factories. Therefore, the Department should find that the sulfanilic acid industry in the PRC is sufficiently market-oriented, and, as a result, the Department should use the PRC prices instead of the surrogate values for calculating FMV.

*DOC Position:* We disagree with respondent. Prior to verification, and at verification, we requested information from the PRC government regarding the quantity of aniline subject to state required production. We were told at verification that the amount of aniline subject to state-required mandatory in-plan production was insignificant. However, the PRC government officials with whom we met did not provide us with quantifiable data to support such a statement. We deem such information crucial for determining whether the sulfanilic acid industry in the PRC is an MOI, especially since aniline is a derivative of oil and oil is a commodity centrally controlled by the PRC government.

Without the requested information, we are unable to establish the amount of state-required production of this significant material input. Therefore, we cannot analyze the extent to which, aniline prices may be distorted by such state control over production.

As a result, in this investigation, respondent did not overcome the presumption that a significant material input (aniline) is subject to significant state required production. Therefore, respondent has not met the MOI criteria as set forth in the preliminary determination of *Sulfanilic Acid* for determining whether or not the sulfanilic acid industry is an MOI.

*Comment 5:* Respondent argues that even if the Department finds that some of the inputs do not meet the MOI criteria, the Department should still use the PRC prices for those inputs which the Department finds are not subject to the state plan and for which market prices are paid. Respondent maintains that the Department should restrict its analysis to only determining the proper unit price to use (*i.e.*, surrogate value or NME value) on an input by input basis, and that the Department should not ignore the price of a particular input found to be market-determined simply because a price for another input is found not to be market-determined.

*DOC Position:* We disagree with respondent. If, as we have found here, an industry does not qualify as an MOI, the Department is obligated to apply section 773(c) of the Act. (See, "Foreign Market Value" section of this notice). Under this provision, the Department must use factor values from a market economy country. Thus, it cannot use the NME domestic price for any inputs.

*Comment 6:* Petitioner argues that the Department should assign one dumping margin to all PRC producers and resellers of the subject merchandise.

Respondent argues that a separate, company-specific rate should be calculated in this investigation for Sinochem Hebei. Respondent maintains that the only relationship between Sinochem Hebei and the other trading companies of China National Chemicals Import & Export Corporation, Beijing ("Sinochem China"), is in the production and sale of oil, a category one product which is under state control but not subject to this investigation. Respondent contends that Sinochem Hebei is an independent entity regarding the production and sale of sulfanilic acid and all other chemical products which are category three products and are not under or subject to government control.

*DOC Position:* As stated in *Sparklers*, we will issue separate rates if a respondent can demonstrate both a *de jure* and *de facto* absence of central control. Evidence supporting, though not requiring, a finding of *de jure* absence of central control would include: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments devolving central control of export trading companies; or (3) any other formal measures by the government decentralizing control of companies. Evidence supporting a finding of *de facto* absence of central control with respect to exports would include: (1) Whether each exporter sets its own export prices independently of the government and other exporters; and (2) whether each exporter can keep the proceeds from its sales.

We have determined that Sinochem Hebei is independently controlled and entitled to its own rate. At verification, we examined information on company ownership and relationships, sources of inputs, manufacturing processes, distribution channels, involvement of trading companies, controls on external trade, profit retention, and other facets of the production and sale of sulfanilic acid.

To support its argument of *de jure* absence of central control, respondent referenced State Council Directive No. 12 of 1988 as evidence that Sinochem China and its branches were separated. Pursuant to that regulation, the central government and Sinochem China were divested of the managerial and financial control over former Sinochem China branches. According to information supplied by company officials, due to the government mandated reorganization, the only relationship between Sinochem China and Sinochem Hebei is Sinochem Hebei's involvement in the sale of oil, which is a centrally controlled product. Otherwise, Sinochem Hebei has been an independent legal entity since 1988 and has neither financial, managerial, nor any other non-oil responsibilities to Sinochem China. At verification, our examination of the business and export licenses revealed no restrictive stipulations on the export of sulfanilic acid.

In support of respondent's argument of *de facto* absence of central control, we found no evidence that prices for the subject merchandise are set by either the government entities, Sinochem China or by any of its related entities. Also, we found at verification that Sinochem Hebei's sales proceeds were deposited to its own account and that bank records revealed no payments to the PRC government or to Sinochem China. We found no evidence of any control exercised by Sinochem China over Sinochem Hebei's non-oil accounts. Moreover, based on our findings at verification, we have determined that Sinochem Hebei is required by PRC law to report its proceeds from the sale of oil to Sinochem China and prepare separate financial statements for its oil proceeds. We have also determined that Sinochem Hebei retains its proceeds from the sale of the subject merchandise and is a separate and financially independent entity with the exception of the oil relationship with Sinochem China.

Accordingly, in applying the above-referenced criteria, the evidence submitted on the record submitted by respondent demonstrates *de jure* and *de facto* absence of central control. Therefore, we have determined that Sinochem Hebei is independent and entitled to its own rate.

*Suspension of Liquidation*

We are directing the U.S. Customs Service to continue suspension of liquidation of all entries of sulfanilic acid from the PRC, as defined in the "Scope of Investigation" section of this notice that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

| Weighted-average manufacturer/producer/exporter | Margin percent |
|---|---|
| China National Chemicals Import & Export Corporation, Hebei Branch | 19.14 |
| All others | 85.20 |

*ITC Notification*

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and (19 CFR 353.20(a)(4)).

Dated: June 25, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-15735 Filed 7-2-92; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

### Marine Mammals

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Issuance of permit modification (P466).

On April 9, 1992, notice was published in the **Federal Register** (57 FR 12294) that a request had been filed by Scott D. Kraus, Edgerton Research Laboratory, New England Aquarium, Central Wharf, Boston, MA 02110-3399, to modify Permit No. 716 to include collection of biopsy samples from up to 50 right whales annually; exportation to Canada, England, and Australia of up to 100 right whales tissues samples annually; and annual importation of up to 50 right whale tissues samples taken from animals that have stranded in foreign countries.

Notice is hereby given that on June 23, 1992, and as authorized the provisions of the Marine Mammal Protection Act of 1992 (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a modification for the above taking subject to certain conditions set forth therein.

Issuance of this modified Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act, and on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; (3) and is consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973.

Documents submitted in connection with this modification and the environmental assessment conducted on the impact of these activities on right whales are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Room 7324, Silver Spring, MD 20910 (301/713-2289); Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893-3141); and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200).

Dated: June 23, 1992.

**Nancy Foster,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 92-15656 Filed 7-2-92; 8:45 am]

BILLING CODE 3510-22-M

### Marine Mammals

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Issuance of Permit No. 787 (P444A).

**SUMMARY:** On January 2, 1992, notice was published in the **Federal Register** (57 FR 49) that an application had been filed by Center for Coastal Studies, Box 826, Provincetown, MA 02657, for a permit to inadvertently harass annually, over a three-year period, up to three hundred (300) North Atlantic humpback whales (*Megaptera novaeangliae*), during photo-identification and biopsy collection activities, and to biopsy sample up to 200 of those 300 animals. The application also requested authorization to import and export humpback whale samples.

Notice is hereby given that on June 23, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Act. This Permit was also issued in accordance with and is subject to parts 220-222 of the National Marine Fisheries Service regulations governing endangered fish and wildlife permits.

Documents submitted in connection with this permit and the environmental assessment conducted on the impact of these activities on humpback whales are available, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries

Service, 1335 East–West Highway, room 7324, Silver Spring, MD 20910;

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702(813/893–3141).

Dated: June 23, 1992.

**Nancy Foster,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 92–15657 Filed 7–2–92; 8:45 am]

BILLING CODE 3510–22–M

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**Marine Mammals**

**AGENCY:** National Marine Fisheries Service.

**ACTION:** Issuance of Modification to Permit No. 496 (P79D).

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Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 496 issued to Center for Coastal Marine Studies, University of California at Santa Cruz, Santa Cruz, California 95064, is modified to extend the authority to take elephant seals (*Mirounga angustirostris* ) for scientific research purposes until October 31, 1992.

This modification becomes effective on July 1, 1992.

The Permit, as modified, is available for review by appointment in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4015).

Dated: June 26, 1992.

**Nancy Foster,**

*Director, Office of Protected Resources.*

[FR Doc. 92–15658 Filed 7–2–92; 8:45 am]

BILLING CODE 3510–22–M

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**Marine Mammals**

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Issuance of Marine Mammal Permit Modification (P501).

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Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 780 issued to Dr. Raymond J. Tarpley, Assistant Professor, Department of Veterinary Anatomy, Texas A&M University, College Station, TX 77843, to collect tissue samples from up to 30 bowhead whales (*Balaena mysticetus*) taken during the Alaskan Eskimo subsistence harvest, import tissue samples from 50 beluga whales (*Delphinapterus leucas*) taken for subsistence purposes by the Inuit in Canada, and import tissue samples from harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*) and killer whales (*Orcinus orca*) found dead as a result of stranding, on May 13, 1992 (57 FR 21396) has been modified. The modification authorizes the collection of tissue samples from up to 40 beluga whales taken in the Alaskan Eskimo subsistence harvest and the importation of samples collected from up to 10 beluga whales from Canada.

This modification becomes effective upon signature.

Documents submitted in connection with this permit, as modified, are available for review, by appointment, in the Permit Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Bldg., 709 W. 9th Street, Juneau, AK 99802 (907/586–7221).

Dated: June 26, 1992.

**Charles Karnella,**

*Deputy Director, Office of Protected Resources.*

[FR Doc. 92–15659 Filed 7–2–92; 8:45 am]

BILLING CODE 3510–22–M

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Amendment of an Import Limit and Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

June 30, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit and guaranteed access level.

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**EFFECTIVE DATE:** July 8, 1992.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has agreed to increase the 1992 designated consultation level and guaranteed access level for Categories 352/652.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 60097, published on November 27, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

June 30, 1992.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 21, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 8, 1992, you are directed to amend the November 21, 1991 directive to increase the current limit for Categories 352/652 to 1,500,000 dozen [1].

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1991.

Also effective on July 8, 1992, you are directed to increase the current guaranteed access level for Categories 352/652 to 6,000,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-15734 Filed 7-2-92; 8:45 am]

BILLING CODE 3510-DR-F

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List; Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** August 5, 1992.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On April 17 and May 15, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 13715 and 20813) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity or services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity or services.

3. The action will result in authorizing small entities to furnish the commodity or services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity or services proposed for addition to the Procurment List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

**Commodity**

*Necktab, Women's Shirt*

8445-01-242-1009

**Services**

*Grounds Maintenance*

U.S. Naval Home Gulfport, Mississippi

*Janitorial/Custodial*

U.S. Army Reserve Center, Corrine Drive, Orlando, Florida

*Janitorial/Custodial*

Paul B. Dunbar Building, 1141 W. Central Parkway, Cincinnati, Ohio

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 92-15731 Filed 7-2-92; 8:45 am]

BILLING CODE 6820-33-M

### Procurement List; Proposed Additions and Deletion

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to and deletion from Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** August 5, 1992.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman. (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

**Additions**

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following services to the Procurement List:

*Services*

Commissary Shelf Stocking and Custodial, Naval Construction Battalion Center, Gulfport, Mississippi.

Nonprofit Agency: Goodwill Industries of South Mississippi, Inc., Gulfport Mississippi.

Food Service Attendant, Davis-Monthan Air Force Base, Arizona.

Nonprofit Agency: Tempe Center for Habilitation, Inc., Tempe, Arizona.

Janitorial/Custodial, Portsmouth Naval Shipyard, Buildings 153 and 170, Kittery, Maine.

Nonprofit Agency: Easter Seal Society of New Hampshire/Vermont, Inc., Manchester, New Hampshire.

*Deletion*

It is proposed to delete the following commodity from the Procurement List:
Mat, Floor, 7220–00–224–6487.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 92–15729 Filed 7–2–92; 8:45 am]

BILLING CODE 8820–33–M

## Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** August 5, 1992.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will result in authorizing small entities to furnish the commodities and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and service to the Procurement List:

*Commodities*

Tag, Cattle Ear
9905–00–NSH–0027
9905–00–NSH–0028
9905–00–NSH–0029

(Requirements for the Department of Agriculture, Minneapolis, Minnesota)
Nonprofit Agency: Constructive Workshops, Inc. New Britain, Connecticut.

*Service*

Convert Documents to Braille, Internal Revenue Service, Washington, DC.

(20% of the Government's Requirement)
Nonprofit Agency: Lighthouse for the Blind, New Orleans, Louisiana.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 92–15729 Filed 7–2–92; 8:45 am]

BILLING CODE 8820–33–M

## COMMODITY FUTURES TRADING COMMISSION

### Financial Products Advisory Committee

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting in the Lower Level Hearing Room (B1) at the Commission's Washington, DC headquarters located at 2033 K Street, NW., Washington, DC 20581, on July 23, 1992, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of :

**Agenda**

1. Briefings on and discussion of surveys being conducted of off-exchange derivatives: their purpose, status and scope.

2. Review and discussion of third party custodial account requirements under Section 17(f) of the Investment Company Act as they relate to the use of futures and options on futures by registered investment companies.

3. Interim Report of the Hedging Working Group: discussion of possible modifications to the hedging definition and revisions to CFTC Rule 4.5.

4. Report from the Office of General Counsel on *Salomon Forex Inc.* v. *Tauber*, Civ. No. 91–1415 (E.D. Va. June 1, 1992).

5. Report from the Division of Trading and Markets on the status of proposed rule changes dealing with trade options.

6. Follow-up reports from the March 1992 meeting: progress on proposed Rule 4.7 and recent filing by the CME to establish large lot execution procedures in foreign currencies futures.

7. Status report on reauthorization.

8. Development of agenda items and timing of next meeting, other Committee business.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on the assessment of issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 25, 1991 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, CFTC Commissioner Sheila C. Bair, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Susan Milligan, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Milligan in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits. For an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on June 29, 1992.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 92–15888 Filed 7–2–92; 8:45 am]

BILLING CODE 6351–01–M

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## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

### Intent to Prepare Draft Supplemental Environmental Impact Statement (SEIS) for Flood Control Project; Lower Mission Creek, Santa Barbara County, CA

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of Intent to Prepare a Draft Supplemental Environmental Impact Statement (SEIS).

**SUMMARY:** In 1986, the U.S. Army Corps of Engineers, Los Angeles District, published a Feasibilty Report and Environmental Impact Statement (EIS) entitled, "Lower Mission Creek Interim, Santa Barbara County Streams, California." This report analyzed the flood and associated problems along Mission Creek, and considered various alternative solutions to these problems. The Lower Mission Creek Plan (Carrillo Inlet Plan) was selected as the recommended plan. This project would include construction of a 1.2 mile-long, rectangular, concrete channel in Lower Mission Creek, from a point near Carrillo Street to the Pacific Ocean. It would join with an exising concrete channel that now terminates just downstream from Carrillo Street. The proposed plan for flood control would provide 100-year level of protection to the urban community surrounding Lower Mission Creek. Mitigation measures, including the creation of 1.6 acres of riparian oak woodland habitat and 1.0 acre of estuarine soft-bottom habitat, were determined to be necessary to the implementation of this alternative.

As directed by the Office of the Assistant Secretary of the Army (Civil Works), the Corps of Engineers is undertaking further evalution of the approved mitigation plan. Certain environmental issues, including the possibility of onsite mitigation, will be reviewed. Due to the time lapse between the Feasibility and Preconstruction Engineering and Design (PED) stages of the project, it is important to ensure that all possible environmental effects of both the project and the required mitigation have been adequately addressed. A supplemental EIS will be prepared to resolve the outstanding concerns, and update all environmental issues. Santa Barbara County, the City of Santa Barbara and the Corps of Engineers are working together to produce a joint document that will satisfy both federal and state environmental requirements.

#### Alternatives

In addition to the "no action" alternative, various structural and nonstructural plans for flood control were considered in the 1986 EIS, described above. These alternatives include construction or expansion of debris basins, and various channelization alternatives. The SEIS will examine new alternatives, not fully discussed in the original document.

Several alternative mitigation sites are also available for review. There is the potential of exploring at least one riparian mitigation alternative on the project site, dependent upon its meeting engineering, economic and environmental criteria. All potential mitigation sites will be further discussed in the SEIS.

#### Scoping Process

A public meeting will be held to assess public needs and desires relative to flood protection and mitigation concerns. The public meeting will be held in Santa Barbara. Participation in the public meeting by Federal, State, and local agencies, and other interested private organizations and parties is encouraged. Significant issues to be addressed in these public meetings include: potential impacts to biological resources (including endangered and threatened species), cultural resources, land use, water quality, and air quality.

#### Time and Location of Scoping Meeting

The public scoping meeting is scheduled for July 24th, 9:00 am, in the Santa Barbara City Hall, Council Chambers. City Hall is located at 735 Anacapa St., in De la Guerra Plaza.

#### Availability of the SEIS

The Draft SEIS is anticipated to be circulated for public review in Fall 1992.

**ADDRESS:** Comments and questions regarding the project may be addressed to U.S. Army Corps of Engineers, Los Angeles District, ATTN: Ms. Hayley Lovan, CESPL-PD-RQ, P.O. Box 2711, Los Angeles, California 90053-2325, (213) 894-0237.

Dated: June 13, 1992.

**Charles S. Thomas,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 92-15763 Filed 7-2-92; 8:45 am]

BILLING CODE 3710-KF-M

## DEPARTMENT OF EDUCATION

### Business and Education Standards Program

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed priority for fiscal year (FY) 1993.

**SUMMARY:** The Secretary proposes to establish a priority for FY 1993 under the Business and Education Standards Program. Under the proposed priority, the Secretary would fund projects that develop skill standards so that workers and trainees are aware of the skills that are required to perform a job well in national and international labor markets. The Secretary takes this action in an effort to help meet the needs of business, industry, and educational institutions that educate and train workers. This proposed priority is intended to result in competent entry-level workers who have attained national skill standards.

**DATES:** Comments must be received on or before August 5, 1992.

**ADDRESSES:** All comments concerning this proposed priority should be addressed to Debra J. Nolan, U.S. Department of Education, 400 Maryland Ave., SW., room 4512, Switzer Building, Washington, DC 20202-7242.

**FOR FURTHER INFORMATION CONTACT:** Debra J. Nolan. Telephone: 202-205-9650. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time).

**SUPPLEMENTARY INFORMATION:** The Business and Education Standards Program is authorized by section 416 of the Carl D. Perkins Vocational and Applied Technology Act, as amended by Public Law 101-392, 104 Stat. 756, 818 (1990). Under this proposed priority the Secretary would fund projects that will organize and operate business-labor-education technical committees to develop national skill standards and skill certificates for competencies in industries and trades. The following entities are eligible for an award under this program: Industrial trade associations, labor organizations, national joint apprenticeship committees, and comparable national organizations, such as educational associations, industry councils, business and industry organizations, and associations of private or national research organizations.

The Secretary encourages applicants, in meeting the proposed priority, to replicate standards or adapt methods used in this country and abroad. In the United States, for example, the automotive industry is notable in the development of skill standards and the certification of individuals who have

completed vocational-technical education programs. The work of the Vocational-Technical Education Consortium of States is notable in converting job analysis information into curriculum objectives and methods for assessing student achievement.

Other organizations that have attempted to define and measure employability and workplace competencies include the National Occupational Competency Testing Institute, the Educational Testing Service, the American College Testing Service, the American Society for Training and Development, the Secretary of Labor's Commission on Achieving Necessary Skills, and the National Occupational Information Coordinating Committee.

Other countries, such as Canada, the Netherlands, and Scotland, have done considerable work in developing national industry-based skill standards. These countries have been successful in establishing industry-occupational platform committees with strong representation from management, labor, education, and government.

The Netherlands has developed a computerized interactive curriculum information system for entering job analysis data and using artificial intelligence methods to convert those data into skill standards and vocational curricular objectives. The Netherlands has invited the United States to make use of this system, and the Secretary encourages interested applicants to do this. Applicants may obtain an abstract that describes the Netherlands system from the National Occupational Information Coordinating Committee in Washington, DC (Telephone: 202–653–5665).

The Assistant Secretary for Vocational and Adult Education has consulted with the Assistant Secretary of Labor for Employment and Training regarding the Business and Education Standards Program. Both Departments will be involved in reviewing applications under this competition and will continue meeting throughout the operation of the program.

The Business and Education Standards Program directly supports National Educational Goal 5—to ensure that every adult American possesses the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program is also an important element of AMERICA 2000, the President's strategy to help America achieve the National Education Goals. Specifically, it addresses Track III of the AMERICA 2000 strategy—transforming America into "A Nation of Students"—by establishing standards for job skills and knowledge through a cooperative effort by business, industry, labor, and education groups, so that workers can see what skills are needed to perform a job and can evaluate their own grasp of those skills.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

**Note:** This notice of proposed priority does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

*Priority:* Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute perference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Projects that propose to carry out all of the following activities:

(1) Develop a coalition—of employers, labor organizations, associations, vocational educators and others—who will participate in the development of skill standards that will serve as a basis for a certification process. The coalition must broadly represent entities associated with a majority of the persons employed in a particular industry or industry cluster.

(2) Develop standards that include job-specific, academic, and reasoning skills along with a basis for certification process that show promise of being maintained and updated after termination of the project.

(3) Devlop methods for using skill standards as the basis for the development of curricula in vocational-technical education and for certification.

(4) Propose procedures for testing the validity of the skill standards to ensure nondiscrimination on the basis of race, color, national origin, gender, age, or disability.

(5) Develop a method for determining whether certified personnel are better performers than non-certified personnel.

(6) Propose procedures for identifying and accommodating probable future skill standards at the national and world class levels for business and industry.

*Intergovernmental Review:* This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order to to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

*Invitation to Comment:* Interested persons are invited to submit comments and recommendations regarding this proposed absolute priority. All comments submitted in response to this notice will be available for public inspection, during and after the comment period in room 4518, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

*Applicable Program Regulations:* 34 CFR part 421.

*Program Authority:* 20 U.S.C. 2410.

(Catalog of Federal Domestic Assistance Number 84.244, Business and Education Standards Program)

Dated: May 12, 1992.

**Lamar Alexander,**

*Secretary of Education.*

[FR Doc. 92–15669 Filed 7–2–92; 8:45 am]

BILLING CODE 4000–01–M

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**[CFDA No.: 84.252]**

## Urban Community Service Program; Notice Extending the Closing Date for Transmittal of Applications for New Awards for Fiscal Year (FY) 1992

*Deadline For Transmittal of Applications:* On June 2, 1992, a notice was published that established the closing date for transmittal of applications for the FY 1992 competition under the Urban Community Service Program (57 FR 23276). The purpose of this notice is to extend the closing date for transmittal of applications. This action is taken as a result of the unavailability of applications until June 5, 1992. The closing date for applications is extended from July 17, 1992 to July 20, 1992.

*For Applications or Information Contact:* Mr. W. Stanley Kruger, Director, Division of Higher Education Incentive Programs, U.S. Department of Education, 400 Maryland Avenue, SW.,

room 3022, ROB–3, Washington, DC 20202–5251. Telephone: (202) 708–7389. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

**Program Authority:** 20 U.S.C. 1137–1138b.

Dated: June 29, 1992.

**Carolynn Reid-Wallace,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 92–15667 Filed 7–2–92; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Notice of Solicitation for Financial Assistance

**AGENCY:** Idaho Field Office, U.S. Department of Energy.

**ACTION:** Notice of solicitation for financial assistance award(s).

**SUMMARY:** The U.S. Department of Energy (DOE) Idaho Field Office (ID), requests financial assistance applications on the basis of open competition, for cost sharing of new technology for the direct use of geothermal energy. The statutory authority for this action is the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93–577) and the Geothermal Energy Research Development Act (Pub. L. 93–410), which authorized DOE to conduct a program of research, development, and demonstration designed to promote geothermal technologies to commercial feasibility. This announcement is the complete solicitation document and no other document for this work is available. The objective of this program is to execute one or more cooperative agreements to support project(s) which use new technology for the direct use of geothermal energy in the research and development of smaller scale applications of byproduct heat from geothermal fluids, especially for applications in areas with rich geothermal resources, such as Hawaii. Award of one or more cooperative agreements is anticipated.

**DATES:** Five Copies of each application and a signed original are due by 4 p.m., Mountain Standard Time, September 4, 1992. late applications will be handled in accordance with 10 CFR 600.13.

**ADDRESSES:** Information regarding loan availability, eligibility criteria, and how to apply may be obtained from: U.S. Department of Energy, San Francisco Field Office, Attn: Minority Loan Program Office, (415) 273–6403, 1333 Broadway, Oakland, California 94612.

**FOR FURTHER INFORMATION CONTACT:** Dallas L. Hoffer, Contracts Management Division, U.S. Department of Energy, Idaho Field Office, 785 DOE Place, Idaho Falls, Idaho 83401–1562, (208) 526–0014.

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 600.202, DOE and/or DOE Contractors shall be substantially involved in the project(s). This involvement shall include shared responsibility by DOE and the participant for the direction of the project. DOE and the participant shall jointly determine what special tests, if any, shall be conducted; the content and format for reports, the type of data that shall be taken; and what equipment shall be procured. DOE shall also have the right to intervene in the conduct or performance of the project activities for programmatic reasons. Intervention shall include the interruption or modification of the conduct or performance of the project activities as necessary to meet DOE programmatic goals. A statement of substantial involvement further specifying the anticipated involvement of DOE during performance shall be negotiated and incorporated within the award instrument.

The projects(s) shall be cost shared by DOE and the participant. The project duration shall not exceed one year. No fee or profit shall be paid to the recipients of the award(s). DOE has obligated $700,000 for support of activities during the one year project period, and no other funds are currently available. Negotiation, award, and administration shall be in accordance with DOE Financial Assistance Regulations (10 CFR part 600). The Catalog of Federal Assistance number for this program is 81.087.

Application submitted in response to this solicitation shall provide detailed program, management, personnel, technology, site, environmental, cost share and budget information as further specified in this solicitation.

In the period since the enactment of the enabling legislation (Pub. L. 93–410) the DOE has supported an ongoing program supporting the development of commercially viable geothermal technologies. Optimization of new technologies for the direct use of geothermal energy in the research and development of smaller scale applications of byproduct heat from geothermal fluids, especially for applications in areas with rich natural resources is part of this program. New technologies for the direct use of geothermal energy can be used in systems for resorts and baths; fish farming; space heating; district heating; industrial processes; greenhouses; enhanced oil recovery; and, other similar applications.

New technologies for the direct use of geothermal energy may require entire new systems or retrofits to existing systems.

The project(s) is expected to test a new technology for the direct use of geothermal energy which is not currently used. The test is to be of a size which can be related to performance of a full scale unit. This does not mean that the test must be of full scale unit, but that the results of the experiment (e.g., equipment, cost, performance) can readily be extrapolated to full scale. The results shall be presented in a form which shall illustrate the benefit of the new direct use of geothermal energy technology.

A final report shall be required at the completion of the project which details the technical merit and economic benefits of the system. This report shall be prepared when sufficient data are available to actually demonstrate the conclusion, e.g., if the project involves a prototype or full scale system, this would be after sufficient operating time had elapsed to give indication of mature system performance and economic benefit. The report shall be of a form which can be disseminated to the geothermal industry to show the economic benefit of the proposed direct use technology.

The applicant shall include a concise but definitive statement of objectives for inclusion into any resulting agreement. The individual key tasks are to be defined and listed in logical sequence. It is the responsibility of the applicant to include all items in the statement of objectives that are required to accomplish the stated purpose of the project. Each task shall be priced separately.

The application shall be broken down into categories. The following is a list of the categories with a brief description of each. The application shall address each category.

(a) *Program and Management Plan:* The applicant shall submit a plan detailing the program objectives and how it plans to accomplish these objectives. This shall include where applicable, a discussion of all facilities to be constructed and/or retrofitted during the project duration. The applicant shall submit detailed plans that shall include where applicable, site location, engineering, construction, testing, operation and other relevant information which will assist DOE in

evaluating the project. A financial plan shall be included with proposed costs, manhours, and duration (with schedule and milestones) of the total project. In addition, the plan shall document internal support and shall detail the organization of the proposed team; communication plans; points of contact internally and externally; team organization fit/connection within the applying organization.

(b) *Key personnel:* The applicant shall submit a list of key personnel that will comprise the team. The list shall include education and prior experience in operations and maintenance, program/project management and testing and evaluation of geothermal systems. It shall be submitted in matrix form with resumes documenting claimed experience.

(c) *Data collection and reports:* There shall be a section in the application that details the participant's data plan and report submission to ensure accurate data and timely submission of progress reports and the final report. This includes the applicant's quality assurance plan. Plan for the final report shall be detailed. The method of extrapolating the results reported to operation of a full scale unit shall be included (if the project is smaller than full scale).

(d) *Direct use technology:* The applicant shall provide documentation to illustrate that the proposed direct use technology is new, viable and capable of being implemented into a test project. This description shall include a discussion of the improvement which will be exploited to achieve the economic benefit; evidence of the direct use technology feasibility; and, estimates of the economic benefit in terms of projected energy savings.

(e) *Site applicability:* The applicant shall provide documentation that demonstrate the geothermal resources is adequate and compatible with the proposed direct use technology in addition to the likelihood that the geothermal fluid will be available for the duration of the project. The ability to provide fluid can be demonstrated by inclusion of data such as documented well flow tests, multi-well interference tests, temperature logs, brine chemistry, pre-existence of production and injection wells (and documentation of their characteristics), and other suitable date. Site applicability shall also discuss the commercial and legal status of the site, including factors such as permitting, commercial arrangements, and environmental sensitivities. If the proposer does not control the resources, letter of intent or other documents establishing the right of the applicant to utilize the resource from the resource provider shall be included. In addition, sources of ancillary items such as electrical power shall be discussed if these resources are required as part of the proposed project.

(f) *Environmental impact:* The applicant shall include a listing, discussion and existing documentation if the project/activity has the possibility of involving, generating or resulting in changes to any of the following: (1) Air Pollutants—released or discharged into the atmosphere through point or fugitive sources; (2) Liquid Effluent—any waste stream discharged; (3) Solid Waste—nonradioactive, nonhazardous solid waste; (4) Radioactive Waste—waste containing >2 nCi/g; (5) Hazardous Waste—RCRA hazardous per 40 CFR 261.3 and polychlorinated biphenyls (PCBs); (6) Mixed Waste—combination of radioactive and hazardous waste; (7) Chemical Storage/Use—define species, uses and estimated volumes; (8) Petroleum Products Storage—define product, volume, use and type of storage; (9) Asbestos Waste—define friability, estimated volume, and if project is renovation or demolition; (10) Water Use/Diversion—withdrawal of groundwater or diversion or withdrawal of surface water; (11) Sewage System—all pipes, tanks, treatment structures, disposal areas, etc. for collection, treatment, and disposal of sewage; (12) Clearing/Excavation—removal of surface debris, vegetation, and other changes in soil surface features; (13) Construction/Renovation; (14) Excess Noise Levels—ambient noise level near proposed project/activity; (15) Pesticide Use—identify pesticide name, target organism, use area, application rate, method, and applicator; (16) Radiation Exposures—radiation levels at or near the proposed project/activity.

The discussion shall also address the following questions. Will this action contribute to cumulative impact with on-going activities? Is this action related to a proposed action with potentially significant impacts? Will the project create uncertain, unique, or unknown risks? Will the project require siting, construction, or expansion of a waste facility? Will the project impact a RCRA-regulated unit or facility? Will the project threaten or violate any statute, regulation, or DOE Order? Will the project require any federal, state, or local permits, approvals, etc.? Has this action/area been previously assessed under NEPA? Will the action take place in an area of previous or on-going disturbance? Will the action have any socioeconomic concerns? Will the project adversely affect any of the following environmentally sensitive resources? (1) Threatened/Endangered Species; (2) Wildlife/Vegetation; (3) Soils/Erosion; (4) Cultural/Historical; (5) Wilderness/Scenic Areas; (6) Prime/Unique Farmland; (7) Wild/Scenic Rivers; (8) Lakes/Floodplains/Wetlands; (9) Domestic/Groundwater; (10) Air Resources/Quality.

Discussions shall include how all environmental impacts will be mitigated. If an environmental impact cannot be mitigated, what are the direct and indirect, short term and long term adverse effects that can not be avoided?

(g) *Cost share:* The applicant shall include their proposed cost share for the cost of purchasing, installing, testing and operating equipment to test a new technology for the direct use of geothermal energy and preparing reports. A complete cost breakdown shall be provided to show how the cost share was determined.

**Evaluation Criteria**

All timely applications received shall be evaluated and point scored in accordance with the 10 CFR part 600, as amended October 13, 1989, and the subsequent published procedure issued May 31, 1990, for the Objective Merit Review of Discretionary Financial Applications and the technical evaluation criteria listed below.

The Technical Evaluation Criteria are weighted in the following manner: Criterion A.1 is weighed one-half of the total weight assigned to Criterion A. Criterion A.2 is weighed one-third of the total weight assigned to Criterion A. Criterion A.3 is weighed one-sixth of the total weight assigned to Criterion A. Criterion B is weighed five-sixths of Criterion A. Criterion C is weighed one-half of Criterion A. Criterion C, D and E are equally weighed.

*Criterion A: Program and Management Plan, Key Personnel and Data Collection and Reports*

(1) The Program and Management Plan shall be evaluated to determine the objectives of the applicant, the proposed methods of achieving these objectives and the schedule to achieve these objectives. In addition, it shall be evaluated to assess the quality of the provisions for technical, quality and administrative controls and to assure appropriate project maintenance and overall management.

(2) Key Personnel shall be evaluated as to their capabilities in project management, operation and maintenance, and testing and evaluating geothermal systems as demonstrated by education and past work experience.

(3) The Data Collection and Reports section of the application shall be evaluated to determine the adequacy of method(s) used to determine the economic benefits of the new direct use technology, extrapolate the results to a full size unit (if proposal is not a full scale unit), and extrapolate results to different resource conditions and, the method(s) for insuring the accuracy and timeliness of reports and data.

*Criterion B: Direct Use Technology*

(1) The Direct Use Technology shall be evaluated on the technical merit of the proposed direct use technology. The evaluation shall determine if the direct use technology is new; is based on sound scientific/engineering principles; the general applicability and timeliness of the direct use technology; the proposed reduction in use of energy compared to existing technology; the probability of implementing the direct use technology into a test project successfully.

*Criterion C: Site Applicability*

(1) The Site Applicability shall be evaluated on the compatibility of the proposed resource characteristics with the temperature, flow rate and flow duration requirements of the proposed direct use technology; site availability (commercial and legal status of the site); and, the availability of ancillary support services.

*Criterion D: Environmental Impact*

(1) Environmental impact shall be evaluated on the impact to the proposed project site and the impact (negative or positive) on the implementation of the proposed technology at other sites.

*Criterion E: Cost Share*

(1) Cost share shall be evaluated on the apparent cost share advantage to the Government.

Applications shall be responsive to all the above criteria. Total cost considerations will not be point scored or adjectivally rated. In making the selection decision, the apparent advantages of individual technical applications will be weighed against the evaluated probable total cost to the Government (including cost sharing) to determine whether technically superior applications, are worth the evaluated probable total cost differentials over other applications. If applications are very closely ranked and the Selecting Official determines that the superiority in the technical aspects of the higher rated application(s) is not meaningful when viewed in relationship to lower rated applications, evaluated probable total costs to the Government may form the basis for selection; therefore, a complete cost proposal shall be provided, detailing the cost elements i.e. direct labor, fringe benefit, equipment, supplies, materials, travel, overhead, indirect, etc. The application(s) determined by the Selecting Official to be in the overall best interest of the Government based upon the evaluation criteria contained in this solicitation and the programmatic goals identified in the enabling statute will be selected for negotiation and award.

Award will not be made until all environmental requirements are completed. In conducting the application evaluations, the Government may use assistance and advice from non-government personnel. Applicants are therefore requested to state on the application cover sheet if they do not consent to use of non-government personnel. Applicants are further advised that DOE may be unable to give full consideration to an application submitted without such consent. Information contained in the applications shall be treated in accordance with the policies and procedures set forth in 10 CFR 600.18.

DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to the solicitation. DOE may require applications to be clarified or supplemented to the extent considered necessary, either through additional written submissions or oral presentations; however, the award may be made solely on the information contained in the application. DOE is under no obligation to pay for any costs associated with preparation or submission of applications if an award is not made. If an award is made, such costs may be allowable as provided in applicable cost principles.

**Instructions and Other Information**

For-Profit, Not-For-Profit, Institutions of Higher Learning and State and Local Governments are eligible to submit applications in response to this solicitation. Application will reference the number of the Federal Register Solicitation, which is DE–PS07–ID13203. For-Profits shall include in their applications/proposals a certified copy of their most current calendar year financial statements. A–95 clearance is not required. Proposals from federal agencies and/or laboratories owned and operated, or under the direction of the Federal Government will also be accepted; however, any awards made to such entities may not be subject to 10 CFR 600. Applications anticipating participation of a federal laboratory through subcontract, use agreement, or other arrangement must include satisfactory evidence of specific authorization from the cognizant federal agency.

In accordance with the intellectual property prescriptions of the Department of Energy's 10 CFR part 600 Regulations (dated 1/1/91) for Financial Assistance Awards, the following provisions apply to this solicitation:

1. 600.33(b)(1), Patent Rights (Small Business Firm or Nonprofit Organization);
2. 600.207(b)(2), Patent Rights (Long Form);
3. 600.207(b)(3), Rights in Technical (Long Form);
4. 600.207(b)(4), Additional Technical Data Requirements;
5. 600.207(b)(5), Patent Indemnity;
6. 600.207(b)(7), Authorization and Consent;
7. 600.207(b)(8), Notice and Assistance; and;
8. 600.207(b)(9), Reporting of Royalties.

Note: 600.107(b)(2), Patent (Long Form) is applicable unless the applicant/proposer is a domestic small business or a domestic not-for-profit organization, in which case 600.33(b)(1), Patent Rights (Small Business Firm or Nonprofit Organization is applicable).

In accordance with the intellectual property prescription of the Department of Energy's Acquisition Regulation (DEAR), the following clauses apply to this solicitation:

1. 952.227–80, Technical Data Certification;
2. 952.227–82, Right to Proposal Data;
3. 952.227–83, Rights in Technical Data Solicitation representations; and
4. 952.227–84, Notice of Right to Request Waiver (DOE's 10 CFR 600 Regulation Provisions, 33(b)(1), Patent Rights (Small Business Firm or Nonprofit Organization) should be substituted where DEAR Clause 952.227–71 is referenced in DEAR Clause 952.227–84.

**Notice of Possible Availability of Loans for Bid Proposal Preparation by Minority Business Enterprises Seeking DOE Contracts and Assistance**

Section 212(e)(1) of the DOE Act (Pub. L. 95–91 as amended by Public Law 95–619) authorizes the Department of Energy (DOE) to provide financial assistance to minority business enterprises to assist them in their efforts to participate in DOE acquisition and assistance programs. Financial assistance is in the form of direct loans to enable the preparation of bids or proposals for DOE contracts and assistance awards, subcontracts with DOE operating contractors, and contracts with subcontracts of DOE

operating contractors. The loans are limited to 75 percent of the costs involved. Availability of these loans is subject to annual appropriation of funds and the remaining availability of funds from such appropriations under CFDA number XX.XXX. DOE does not warrant that such assistance can be made available in sufficient time to prepare an application for this solicitation. DOE does point out that the program includes provisions for a preliminary review in advance of a specific loan request.

Each application in response to this solicitation should be prepared in one volume. One original and five copies of each application are required. Applications shall exclude material not essential to evaluation of the proposal. The application is to be prepared for the complete project.

Applications shall be as short as possible consistent with completeness, clearly and concisely written and neat and logically assembled. The importance of supplying full and completely responsive information for each of the evaluation criteria cannot be overemphasized. If the offer is submitted under a joint venture arrangement, this fact mut be clearly set forth. The cost principles that shall apply will depend on the type of awardee(s): FAR 31.2 and DEAR 931.2 shall apply to commercial organizations, OMB Circular A–21 shall apply to institutions of higher education, OMB Circular A–87 shall apply to state and local governments; and OMB circular A–122 shall apply to nonprofit organizations. Reporting under any agreement awarded will be in accordance with DOE Order 1332.2 "Uniform Reporting System for Federal Assistance." The awardee(s) must have an accounting system capable of accumulating costs by project. All applicants are required to provide in their proposal the nine-digit Taxpayer Identification Number (TIN) assigned by the U.S. Internal Revenue Service. Applications must include completed Standard Forms 424 "Application for Federal Assistance," 424A "Budget Information," 424B "Assurances-Non-Construction Programs," and DOE Form 1600.5 "Nondiscrimination in Federally Assisted Programs," and include certifications for Drug-Free Workplace, Lobbying and Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions. These may be obtained from the DOE contact person named below. The specific reporting requirements, prepared in accordance with DOE Order 1332.2 "Uniform Reporting System for Federal Assistance," are also obtainable from the DOE Contact Person. Applications should be submitted to the DOE contact given below.

Prospective applicants intending to submit an application in response to this solicitation should notify the Contact Person below of their intent in writing within 30 days after the date of this publication. Questions regarding this solicitation should also be submitted to the Contact Person in writing by August 10, 1992. Questions and answers will be issued in writing by amendment to this solicitation. Copies of all amendments to this solicitation will be sent only to those notifying the Contact Person of their intent to submit an application. Selection is expected to be made on or about November 10, 1992, and the earliest award(s) is expected to be made February 12, 1993. Unsuccessful applications will not be returned to the applicants and may be retained by DOE.

Dated: June 24, 1992.

**Dolores J. Ferri,**

*Director, Contracts Management Division.*

[FR Doc. 92–15722 Filed 7–2–92; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. ER92–459–000, et al.]**

### PacifiCorp, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

**1. PacifiCorp**

[Docket No. ER92–459–000]

June 24, 1992

Take notice that June 17, 1992, PacifiCorp tendered for filing an amendment to its original filing filed in this docket on April 14, 1992.

*Comment date:* July 8, 1992, in accordance with Standard Paragraph E at the end of this notice.

**2. Gordonsville Energy, L.P. (Unit II)**

[Docket No. QF92–167–000]

June 24, 1992

On June 19, 1992, Gordonsville Energy, L.P. of 12500 Fair Lakes Circle, Suite 420, Fairfax, Virginia 22033, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near Gordonsville, Virginia and will consist of a combustion turbine generator, a supplementary fired heat recovery boiler and an extraction/condensing steam turbine generator (STG). Steam recovered from the STG will be used by Liberty Fabrics in fabric dyeing and drying process. The maximum net electric power production capacity of the facility will be approximately 128 MW. The primary energy source will be natural gas. Construction of the facility is expected to commence in the latter part of 1992.

*Comment date:* August 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

**3. Florida Power & Light Co.**

[Docket No. ER92–648–000]

June 24, 1992

Take notice that on June 17, 1992, Florida Power & Light Company (FPL) tendered for filing the Contract for Purchases and Sales of Scheduled Power and Energy Between FPL and City of Lake Worth, Florida. FPL requests an effective date of July 1, 1992.

*Comment date:* July 8, 1992, in accordance with Standard Paragraph E at the end of this notice.

**4. Northern Indiana Public Service Co.**

[Docket No. ER92–649–000]

June 24, 1992

Take notice that on June 17, 1992, Northern Indiana Public Service Company tendered for filing Modification No. 1 to the Service Agreement with IMPA and affected changes to its FERC Electric Service Tariff—Fourth Revised Volume No. 1.

Modification No. 1 covers new Service Schedules G, H, I, J, and K. A new delivery point is provided for IMPA in Supplement B.

The proposed effective date of service under this Modification No. 1 and the proposed service map is August 1, 1992.

Copies of this filing have been served upon all of the parties and the Indiana Utility Regulatory Commission.

*Comment date:* July 8, 1992, in accordance with Standard Paragraph E end of this notice.

**5. Green Mountain Power Co.**

[Docket No. ER92–330–001]

June 24, 1992

Take notice that on June 5, 1992, Green Mountain Power Company (Green Mountain) tendered for filing its compliance filing in the above-referenced docket.

*Comment date:* July 8, 1992, in accordance with Standard Paragraph E at the end of this notice.

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**6. Mid-Continent Area Power Pool**

[Docket No. ER92-483-000]

June 24, 1992

Take notice that on June 15, 1992, Mid-Continent Power Pool (MAPP) tendered for filing an amendment to its original filing filed on April 27, 1992 in the above-referenced docket.

*Comment date:* July 8, 1992, in accordance with Standard Paragraph E at the end of this notice.

**7. Idaho Power Co.**

[Docket No. ER92-408-000]

June 25, 1992

Take notice that on June 1, 1992, Idaho Power Company (IPC) tendered for filing an amendment to the rate schedule filing in the above referenced docket regarding a firm energy sale to Oregon Trail electric Consumers Cooperative, Inc.

Idaho Power has renewed its request for an effective date of January 1, 1992, for the Service Agreement and Letter Agreement dated December 24, 1991.

*Comment date:* July 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

**8. Public Service Company of New Hampshire**

[Docket Nos. ER92-32-000 and ER92-73-000]

June 25, 1992

Take notice that on June 9, 1992, Public Service Company of New Hampshire (PSNH) tendered for filing supplemental information regarding the above-referenced dockets.

*Comment date:* July 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

**9. Iowa Southern Utilities Co.**

[Docket No. ES92-43-000]

June 26, 1992

Take notice that on June 18, 1992, Iowa southern Utilities Company (Iowa Southern) filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act requesting authorization to issue not more than $50 million of First Mortgage Bonds, over a two-year period. Also, Iowa Southern requests exemption from the Commission's competitive bidding regulations.

*Comment date:* July 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

**10. Gordonsville Energy, L.P. (Unit I)**

[Docket No. QF92-166-000]

June 26, 1992

On June 19, 1992, Gordonsville energy, L.P. of 12500 Fair Lakes Circle, Suite 420, Fairfax, Virginia 22033 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Louisa County, near Gordonsville, Virginia and will consist of a combustion turbine generator, a supplementary fired heat recovery boiler, and an extraction/condensing steam turbine generator (STG). Steam recovered from the STG will be used by Liberty Fabrics in fabric dyeing and drying process. The maximum net electric power production capacity will be approximately 128 MW. The primary energy source will be natural gas. Construction of the facility is expected to commence in the latter part of 1992.

*Comment date:* August 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-15708 Filed 7-2-92; 8:45 am]

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**Hydroelectric Applications (City of Tacoma, Washington, et al.); Notice of Applications**

[Project Nos. 1862-009 et al.]

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* New License.

b. *Project No.* 1862-009.

c. *Date filed*: December 26, 1991.

d. *Applicant*: City of Tacoma, Washington.

e. *Name of Project*: Nisqually Hydroelectric Project.

f. *Location*: On the Nisqually River in Pierce, Thurston, and Lewis Counties, Washington, near the town of Eatonville. The project occupies lands within the Mt. Baker-Snoqualmie National Forest. Willamette Meridian.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*:
Garth Jackson, P.E., Resource Development Coordinator, City of Tacoma, Dept. of Public Utilities, Light Division, P.O. Box 11007, Tacoma, WA 98411, (206) 593-8298.
Ms. Pamela Klatt, Project Manager, Harza Northwest, Inc., P.O. Box C-98009, Bellevue, WA 98009, (206) 882-2455.

i. *FERC Contact*: Ms. Deborah Frazier-Stutely (202) 219-2842.

j. *Comment Date*: August 27, 1992.

k. *Description of Project*: The existing project would consist of two Developments. The Adler Development would consist of: (1) The 285-foot-high, 1,600-foot-long concrete arch Alder dam; impounding, (2) the 3,065 acre Alder reservoir with a storage capacity of 161,457 acre-feet with a surface elevation of 1,140 feet msl; (3) a reinforced concrete spillway channel consisting of four 32-foot-wide spillway gates; (4) two 10-foot-diameter steel penstocks located within the dam, each with four removable trashracks; (5) a 130-foot-long, 53-foot-wide reinforced concrete powerhouse, located at the base of Alder Dam, containing two vertical shaft hydraulic-turbine driven generators with a combined capacity of 50,000 kW; (6) a switchyard; (7) two 115-kV, 3-mile-long transmission lines terminating at a Tacoma Public Utilities line.

The average annual energy generation at the Alder Development is 228,000,000 kWh.

The LaGrande Development would consist of: (1) The 192-foot-high, 710-foot-long concrete gravity LaGrande Dam at elevation 942 feet msl, 1.5 miles downstream of the Alder Development; impounding, (2) the 45 acre LaGrande Reservoir with a storage capacity of 2,700 acre-feet with a surface elevation of 935 feet msl; (3) a 164-foot-long-spillway consisting of four 23-foot-high, 32-foot-long radial gates; (4) a 78-inch-diameter overflow pipe with a 66-inch Howell-Bunger valve; (5) a 14.5-foot-diameter, 6,400-foot-long underground tunnel; (6) a surge tank at end of tunnel; (7) a 13.5-foot-diameter steel pipe; ending at (8) a 10-foot-diameter manifold branching into (9) four 5-foot-diameter penstocks; (10) a 11.5-foot-diameter penstock; (11) powerhouse containing five generating units with a combined

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capacity of 69,000 kW; (12) a tailrace; (13) a 115-kV switchyard; (14) two 115-kV, 26.2-mile-long transmission line terminating at the Cowlitz Substation.

The average annual generation at the LaGrande Development is 345,000,000 kWh.

m. *Purpose of Project:* Project power would be sold to a local utility.

n. *This notice also consists of the following standard paragraphs:* B1, E.

o. *Available Locations of Applications:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

2a. *Type of Application:* New Major License.

b. *Project No.:* 2376–001.

c. *Date filed:* December 13, 1991.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Reusens Hydroelectric Project.

f. *Location:* On the James River in the city of Lynchburg, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contract:* Mr. B. H. Bennett, Assistant Vice President, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223–2930.

i. *FERC Contact:* Mr. Hector Perez, (202) 219–2843.

j. *Comment Date:* August 17, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The run-of-river project consists of: (1) A 25-foot-high, 416-foot-long concrete dam and spillway section topped with eight 16¾-foot-high flood gates; (2) a 25-foot-high, 125-foot-long curved auxiliary spillway section topped with 7¼-foot-high flashboards; (3) a 500-acre impoundment; (3) two powerhouses, one containing three generating units with a total installed capacity of 7,500 kW, and one containing two generating units with a total installed capacity of 5,000 kW; and (4) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The average annual generation for the project is 37,280 MWh.

m. *Purpose of Project:* All energy generated by the project would be utilized by the customers of the Appalachian Power Company.

n. *This notice also consists of the following standard paragraphs:* B1 and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Appalachian Power Company, located at 40 Franklin Road, Roanoke, Virginia 24022, or by calling Mr. B. H. Bennett at (614) 223–2930.

3a. *Type of Application:* New Major License.

b. *Project No.:* 2420–001.

c. *Date filed:* December 23, 1991.

d. *Applicant:* PacifiCorp Electric Operations.

e. *Name of Project:* Cutler Hydroelectric Project.

f. *Location:* On the Bear River near the city of Logan, in Cache and Box Elder Counties, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Stanley A. deSousa, Director, Hydro Resources, PacifiCorp Electric Operations, 920 SW., Sixth Avenue, Portland, Oregon 97204, (503) 464–5343.

i. *FERC Contact:* Mr. Hector Perez, (202) 219–2843.

j. *Comment Date:* August 17, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* This project consists of: (1) A 109-foot-high, 545-foot-long concrete gravity arch dam; (2) a 5,459-acre reservoir; (3) a 1,160-foot-long, 18-foot-diameter flowline; (4) two 120-foot-long, 14-foot-diameter steel penstocks extending from a bifurcation in the flowline to a powerhouse; (5) the powerhouse containing two generating units with a total installed capacity of 30 MW; (6) step-up transformers connecting to transmission facilities; and (7) appurtenant facilities.

The Applicant is not proposing any changes to the existing project facilities as licensed. The estimated average annual generation for the Cutler project is 106,014 MWh.

m. *Purpose of Project:* All energy generated by the project would be utilized by the customers of PacifiCorp Electric Operations.

n. *This notice also consists of the following standard paragraphs:* B1 and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the office of PacifiCorp Electric Operations, located at 920 SW. Sixth Avenue, Portland, Oregon 97204, or by calling Mr. Stanley A. deSousa at (503) 464–5343.

4a. *Type of Application:* New Major License.

b. *Project No.:* 2422–004.

c. *Date Filed:* October 11, 1991.

d. *Applicant:* James River-New Hampshire Electric, Inc..

e. *Name of Project:* Sawmill Project.

f. *Location:* On the Androscoggin River, Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contract:* Mr. George W. Hill, James River-New Hampshire Electric, Inc., 650 Main Street, Berlin, NH 03570–2489, (603) 752–4600.

i. *FERC Contact:* Mary Golato (tag) (202) 219–2804.

j. *Deadline Date:* Comments due August 21, 1992. Reply comments due October 5, 1992. .

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The proposed project's principal features consists of the following: (1) An existing 720-foot-long dam; (2) an existing impoundment with a surface area of about 72.5 acres, a storage capacity of about 620 acre-feet, and a normal pool elevation of 1,094.5 feet mean sea level (msl); (3) an existing powerhouse equipped with four turbine-generators having a total rated capacity of 3,174 kilowatts; (4) an existing tailrace channel; (5) an existing transmission line of about 1,800 feet long; and (6) appurtenant facilities. The owner of the dam is the James River-New Hampshire Electric Company.

The applicant is not proposing any changes to the existing projects works as licensed. The applicant estimates the average annual generation would be 17.85 gigawatthours and owns all existing project facilities.

The existing project would be subject to Federal takeover under section 14 and 15 of the Federal Power Act. Based on the license expiration of December 31, 1993, the applicant's estimated net investment in the project would amount to $2,158,000.00.

m. *Purpose of Project:* All project energy generated would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. George W. Hill, James River-New Hampshire Electric, Inc., 650 Main Street, Berline, NH 03570–2469, (603) 752–4600.

5a. *Type of Application:* New Major License.

b. *Project No.:* 2446–011.

c. *Date filed:* December 19, 1991.

d. *Applicant:* Consumers Power Company.

e. *Name of Project:* Mio.

f. *Location::* On the Au Sable River within the Huron National Forest near Mentor and Big Creek in Oscoda County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Stan Martin, 1945 Parnall Road, Jackson, MI 49201, (517) 788–1270.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* August 28, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) A 2,120-foot-long earth embankment dam; (2) a 30-foot-long reinforced concrete spillway; (3) a reservoir with a surface area of 661 acres at surface elevation 962.6 feet m.s.l. and a storage area of 6,061 acre-feet; (4) a powerhouse containing two generating units each with a rated capacity of 2,480 kW; (5) a concrete tailrace; and (6) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 15,396 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Consumers Power Company, 1945 Parnall Road, Jackson, Mi 49201, or by calling (517) 788–1270.

6a. *Type of Application:* New Major License.

b. *Project No.:* 2449–007.

c. *Date filed:* December 19, 1991.

d. *Applicant:* Consumers Power Company.

e. *Name of Project:* Loud.

f. *Location:* On the Au Sable River within the Huron National Forest near Plainfield and Oscoda in Iosco County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Stan Martin, 1945 Parnall Road, Jackson, MI 49201, (517) 788–1270.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* August 28, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) A 2,000-foot-long earth embankment dam; (2) a 90-foot-long reinforced concrete spillway; (3) a reservoir with a surface area of 743 acres at surface elevation 742.6 feet m.s.l. and a storage area of 6,987 acre-feet; (4) a powerhouse containing two generating units each with a rated capacity of 2,000 kW; (5) a concrete tailrace; and (6) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 18, 964 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy if also available for inspection and reproduction at Consumers Power Company, 1945 Parnall Road, Jackson, MI 49201, or by calling (517) 788–1270.

7a. *Type of Application:* New Major License.

b. *Project No.:* 2514–003.

c. *Date filed:* December 16, 1991.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Byllesby/Bucks Hydroelectric Project.

f. *Location:* On the New River near the city of Galax, in Carroll County, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. B. H. Bennett, Assistant Vice President, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223–2930.

i. *FERC Contact:* Mr. Hector Perez, (202) 219–2843.

j. *Comment Date:* August 17, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* This project consists of two developments. The first, the Byllesby development, consists of: (1) A 44-foot-high, 528-foot-long concrete dam and spillway section topped with nine 9-foot-high flashboards; (2) a 239-acre impoundment; (3) a powerhouse containing four generating units with a total installed capacity of 21,600 kW; and (4) appurtenant facilities.

The second, the Buck development, consists of: (1) A 44-foot-high, 352-foot-long concrete dam; (2) a 1,005-foot-long, 19-foot-high spillway section topped with twenty-two 9-foot-high flashboards; (3) a 66-acre impoundment; (4) a powerhouse containing three generating units with a total installed capacity of 10,505 kW; and (5) appurtenant facilities.

The Applicant is not proposing any changes to the existing project facilities as licensed. The estimated average annual generation for the Byllesby and Buck developments are 64,000 MWh and 42,000 MWh, respectively.

m. *Purpose of Project:* All energy generated by the project would be utilized by the customers of the Appalachian Power Company.

n. *This notice also consists of the following standard paragraphs:* B1 and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104,

Washington, DC 20426, or by calling (202) 208–1371. A copy if also available for inspection and reproduction at the Appalachian Power Company, located at 40 Franklin Road, Roanoke, Virginia 24022, or by calling Mr. B. H. Bennett at (614) 223–2930.

8a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11285–000.

c. *Date Filed:* May 1, 1992.

d. *Applicant:* Casitas Municipal Water District.

e. *Name of Project:* Casitas Dam Hydroelectric.

f. *Location:* On land owned by Bureau of Reclamation; on Lake Casitas in Ventura County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John J. Johnson, Casitas Municipal Water District, 1055 Ventura Avenue, P.O. Box 37, Oak View, CA 93022, (805) 649–2251.

i. *FERC Contact: Mr. Surender M. Yepuri, P.E., (202) 219–2847.*

j. *Comment Date:* August 20, 1992.

k. *Description of Project:* The applicant would utilize the existing dam owned by the Bureau of Reclamation. Water for the project would be taken from the dam's existing outlet works and then discharged into the applicant's proposed water treatment plant. The proposed project would consist of a 34-foot-wide, 60-foot-long powerhouse containing two turbine generator units with a total rated capacity of 1,000 kW. The applicant estimates an average annual generation of 2.47 GWh and the cost of the work to be performed under the permit to be $120,000.

l. *Purpose of Project:* Project power would be utilized by the applicant to operate its water treatment plant and pumping station.

m. *This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.*

9a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11290–000.

c. *Date Filed:* May 11, 1992.

d. *Applicant:* Taiya Inlet Hydro.

e. *Name of Project:* Taiya Inlet Hydro Power.

f. *Location:* Within Tongass National Forest, on Dayebas Creek, Haines Borough, near Haines, Alaska (Sections 1–12, 14–17, 21, 22, 26, 27, 28, and 32–35; T29S and T30S; R60E).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Earle V. Ausman, 1503 W. 33rd Avenue, Anchorage, AK 99503, (907) 258–2420.

i. *FERC Contact: Mr. Surender M. Yepuri, P.E. (202) 219–2847.*

j. *Comment Date:* August 27, 1992.

k. *Description of Project:* The proposed project would consist of: (1) A 9.5-foot-high, 80-foot-long timber buttress dam; (2) a reservoir at elevation 509.5 feet with a surface area of 2 acres; (3) a 30-inch-diameter, 1400-foot-long steel penstock; (4) a 24-foot-wide, 30-foot-long powerhouse containing a turbine-generator unit with a rated capacity of 2 MW; (5) a short tailrace; (6) a 3-mile-long, 14.4-kV/24.9-kV transmission line (submerged cable); and (7) appurtenant structures.

The applicant estimates an average annual generation of 13.87 GWh and the cost of the work to be performed under the permit to be $45,000.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. *This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.*

10a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11292–000.

c. *Date filed:* May 20, 1992.

d. *Applicant:* Dunkirk Dam Lake District.

e. *Name of Project:* Dunkirk Dam Hydroelectric Project.

f. *Location:* On the Yahara River, Town of Dunkirk, Dane County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Joseph Campbell, Chair, P.O. Box 83, Stoughton, Wisconsin 53589, (608) 873–0993.

i. *FERC Contact:* Mary Golato (202) 219–2804.

j. *Comment Date:* August 28, 1992.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing dam consisting of a fixed crest overflow spillway, two stop-log bays, tainter gate bays and gates, and earthern embankments; (2) a reservoir with a surface area of 70 acres at a storage capacity of 260 acre-feet; (3) a proposed powerhouse containing two vertical shaft turbine units at an installed capacity of 345 kilowatts; (4) an existing transmission line; and (5) appurtenant facilities. The dam is owned by the Wisconsin Edison Corporation. The average annual generation would be 1,000,000 kilowatthours. The estimated cost of the studies under permit would be $20,000.

m. *This notice also consist of the following standard paragraphs:* A3, A7, A9, A10, B, C, and D2.

11a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11294–000.

c. *Date filed:* May 22, 1992.

d. *Applicant:* Racehorse Company.

e. *Name of Project:* Racehorse Creek.

f. *Location:* On Racehorse Creek, in Whatcom county Washington. Township 39 N, Range 5 E, Sections 10, 11, 13, 17, and 18.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. William L. Devine, P.O. Box 68, Maple Falls, WA 98266, (202) 599–2927.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* August 27, 1992.

k. *Description of Project:* The proposed project would consist of: (1) A 10-foot-high diversion dam; (2) 30-inch-diameter, 15,000-foot-long penstock; (3) a powerhouse containing a generating unit with a capacity of 4.5 MW and an average annual generation of 17.0 GWh; and (5) a 9,100-foot-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $20,000.

l. *Purpose of Project:* Project power would be sold.

m. *This notice also consist of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

12a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11299–000.

c. *Date filed:* June 2, 1992.

d. *Applicant:* Peak Power Corporation.

e. *Name of Project:* West Mesa Modular Pumped Storage Project.

f. *Location:* On lands administered by the Bureau of Land Management in the Fish Creek Mountains, approximately 23 miles northwest of El Centro, California. Sections 4, 6, 7, 8, and 9 in T14S, R10W.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Rick S. Koebbe, Peak Power Corporation, 10 Lombard Street, Suite 410, San Francisco, CA 94111, (415) 362–0887.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* August 22, 1992.

l. *Description of Project:* The proposed pumped storage project would consists of: (1) A 60-foot-high concrete dam and 61-acre upper reservoir; (2) a 118-inch-diameter, 8,000-foot-long penstock connecting the upper reservoir with a lower reservoir; (3) a 120-foot-high concrete dam and 30-acre lower reservoir; (4) an underground powerhouse containing two 50-MW generating units; (5) a 13,000-foot-long transmission line interconnecting with an existing Imperial Irrigation District transmission line; and (6) appurtenant facilities.

No new access roads will be needed to conduct the studies. The approximate cost of the studies would be $1,00,000.

m. *This notice also consist of the following standard paragraphs*: A5, A7, A9, A10, B, C, and D2.

**Standard Paragraphs**

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a dvelopment application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (August 21, 1992 for P–2422–004).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and

conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters in the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 19 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: June 30, 1992, Washington, DC.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-15709 Filed 7-2-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. JD92-07395T Oklahoma-23]

## State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 29, 1992.

Take notice that on June 25, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Medrano Formation underlying a protion of Grady County qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area consists of Sections 7, 18 and 19, Township 5 North, Range 6 West; Sections 3, 4, 5, 9 and 10, Township 4 North, Range 7 West and Sections 8 through 17, 20 through 29 and 32 through 35, Township 5 North, Range 7 West.

The notice of determination also contains Oklahoma's findings that the referenced portion of the Medrano Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-15714 Filed 7-2-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. JD92-07394T Oklahoma-22]

## State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 29, 1992.

Take notice that on June 25, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Cherokee Group Formation underlying a portion of Roger Mills County qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area consists of Sections 7, 15, 16, 17 and 18, Township 15 North, Range 21 West and Sections 12 and 13, Township 15 North, Range 22 West.

The notice of determination also contains Oklahoma's findings that the referenced portion of the Cherokee Group Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and

275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell

*Secretary.*

[FR Doc. 92-15715 Filed 7-2-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. CP92-537-000, et al.]

**Viking Gas Transmission Company, et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

**1. Viking Gas Transmission Co.**

[Docket No. CP92-537-000]

June 24, 1992.

Take notice that on June 16, 1992, Viking Gas Transmission Company (Viking), 1010 Milam Street, Houston, Texas 77002, filed in Docket No. CP92-537-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish a new delivery point for service to Northern States Power Company (NSP), an existing transportation customer, under Viking's blanket certificate issued in Docket No. CP82-414-000 [1], all as more fully described in the request which is on file with the Commission and open to public inspection.

Viking requests authorization to add the new delivery point on its system in Chippewa County, Wisconsin. It is stated that Viking transports natural gas for NSP on an interruptible basis under the terms of its IT-2 Rate Schedule and that Viking and NSP are parties to a transportation agreement dated October 30, 1990. It is asserted that Viking would deliver up to 26,400 Mcf of natural gas per day to NSP at the additional delivery point. It is further asserted that this volume is within NSP's currently authorized entitlement from Viking. It is explained that NSP will reimburse Viking for the cost of new facilities required. This cost is estimated at $275,000. It is stated that Viking has sufficient capacity to accomplish deliveries at the new delivery point without detriment or disadvantage to its other customers.

*Comment date:* August 10, 1992, in accordance with Standard Paragraph G at the end of this notice.

**2. United Gas Pipe Line Co.**

[Docket No. CP92-553-000]

June 26, 1992

Take notice that on June 25, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-5390, filed in Docket No. CP92-553-000, a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a two-inch delivery tap, meter station and flow computer on the existing Hayes 12-inch line to provide a delivery point on behalf of Endevco Oil & Gas Company (Endevco) to serve Strohs' Brewery, under the authorization issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that these facilities are required to comply with the terms of an interruptible transportation agreement between Endevco and United to deliver an estimated daily volume of 2,500 MMBtu per day to Strohs' Brewery. United states that the facilities will be located in Marshall Mann Survey (A0256), Gregg County, Texas. It is estimated that the cost for the proposed facilities is $21,365, and Endevco will reimburse United for the costs resulting from the proposal.

United states that installation of facilities for Endevco will not have an impact on United's curtailment plan because the proposed service is interruptible in nature. Additionally, it is stated that the service will remain with the current certificated level of service.

*Comment date:* August 10, 1992, in accordance with Standard Paragraph G at the end of this notice.

**3. Panhandle Eastern Pipe Line Co. and Trunkline Gas Co.**

[Docket No. CP92-539-000]

June 25, 1992

Take notice that on June 16, 1992, Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline) referred to herein as "Applicants", P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-539-000 a joint application pursuant to section 7(b) of the Natural Gas Act requesting permission and approval to abandon their interruptible transportation service provided to Central Illinois Public Service Company (CIPSCO), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicants state that by Commission order issued July 22, 1981, in Docket No. CP81-100-000 (16 FERC ¶ 62,084), they were authorized to provide a transportation and exchange service on behalf of CIPSCO pursuant to a Transportation and Exchange Agreement (Agreement) among the parties dated September 30, 1980. This Agreement is currently designated as Panhandle's Rate Schedule TE-4 and Trunkline's Rate Schedule TE-8 in their respective FERC Gas Tariffs, Original Volume No. 2. Further, Applicants state that in accordance with this Agreement: (1) During the Summer Period (April through October) CIPSCO could designate up to 4,000 Mcf/d to be transported on an interruptible basis from a point of interconnection between the facilities of CIPSCO and Trunkline at CIPSCO's Hoopeston System in Vermilion County, Illinois to Panhandle for redelivery at the point of interconnection between the facilities of Panhandle and CIPSCO for storage by CIPSCO in Pike, Fulton or Edgar County, Illinois; and (2) during the Winter Period (November through March) CIPSCO could request up to 8,000 Mcf/d to be transported by Panhandle from Pike, Fulton or Edgar Counties, Illinois to Trunkline for redelivery to CIPSCO at the Hoopeston System.

Applicants state that in accordance with Article VI the Agreement any party may terminate the Agreement by giving six months prior written notice and that such notice was provided to CIPSCO by Panhandle's letter dated April 30, 1992. Therefore, Panhandle and Trunkline request that the abandonment authorization be effective October 30, 1992. Upon approval of the abandonment authorization requested herein, Applicants will modify their existing tariffs to reflect the abandonment of Rate Schedules TE-4 and TE-8.

*Comment date:* July 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

**4. K N Energy, Inc.**

[Docket No. CP92-545-000]

June 25, 1992

Take notice that on June 22, 1992, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado, 80228, filed in Docket No. CP92-454-000 a request pursuant to Section 157.205(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps for the delivery of gas to end users under blanket certificate issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

K N states that it requests authorization to construct and operate sales taps to various end users located

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[1] Issued to Midwestern Gas Transmission Company, Viking's predecessor.

along its jurisdictional pipelines. K N also states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on its peak day and annual deliveries.

*Comment date:* August 10, 1992, in accordance with Standard Paragraph G at the end of this notice.

**5. Northern Natural Gas Co.**

[Docket No. CP92-544-000]

June 25, 1992

Take notice that on June 19, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-544-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point to accommodate deliveries of natural gas to Interstate Power Company (Interstate Power) and Iowa Electric Light and Power Company (Iowa Electric), both jurisdictional sales customers, under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully described in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate the new delivery point in Kossuth County, Iowa, in response to requests from Interstate Power and Iowa Electric. It is stated that the 2 customers require the delivery point as a result of expansion of their distribution systems into new areas and that the gas would be used in the communities of Ledyard, Swea City and Armstrong, Iowa, for residential, commercial and industrial end uses. It is explained that Northern makes sales of natural gas to the 2 customers under the following rate schedules: CD-1, SS-1, WPS-1, FT-1 and IT-1. It is asserted that the volumes delivered at the proposed delivery point would total 1,483 Mcf on a peak day and 155,580 on an annual basis. It is further asserted that these volumes would be within currently authorized entitlements.

*Comment date:* August 10, 1992, in accordance with Standard Paragraph G at the end of this notice.

**6. United Gas Pipe Line Co.**

[Docket No. CP92-550-000]

June 25, 1992.

Take notice that on June 22, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP92-550-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a one-inch tap and related facilities on the 8-inch Lafourche Line to serve South Coast Gas Company's (South Coast) residential customers on the existing Bayou Blue Station Location under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the proposed facilities are required to comply with the terms of an open access transportation agreement between South Coast and United to deliver an estimated daily volume of 851 MMBtu to South Coast. United further states that it would install the facilities in Lafourche Parish, Louisiana at an estimated cost of $1,840. It is indicated that South Coast would reimburse United for all costs resulting from the proposed installation.

It is stated that United and South Coast would execute a new interruptible transportation agreement, which would contain the delivery point proposed herein prior to the commencement of gas flow. It is further stated that this interruptible transportation service would be provided to South Coast pursuant to United's blanket certificate issued in Docket No. CP88-6-000 and under United's ITS Rate Schedule.

*Comment date:* August 10, 1992, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-15713 Filed 7-2-92; 8:45 am]

BILLING CODE 6717-01-M

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## Office of Energy Research

### Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* Basic Energy Sciences Advisory Committee (BESAC)

*Date and Time:* August 10, 1992—9 a.m.-5 p.m., August 11, 1992—8:30 a.m.-4:30 p.m.

*Place:* Argonne National Laboratory, Building 201, Room 275, 9700 South Cass Avenue, Argonne, Illinois 60439.

*Contact:* Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER-10), Office of Energy Research, Washington, DC 20585, Telephone: 301-903-3081.

*Purpose of the Committee:* To provide advice on a continuing basis to the Department of Energy (DOE) on the many complex scientific and technical issues that arise in the planning, management, and

implementation of the research program for the Office of Basic Energy Sciences (BES).

*Tentative Agenda:* Briefings and discussions of:

*August 10, 1992*

- Status of BES Program.
- Argonne Research Briefings.
- Argonne Facility Briefings.
- Public Comment (10 Minute Rule).

*August 11, 1992*

- Argonne Research Briefings.
- Argonne Facility Briefings.
- Public Comment (10 Minute Rule).

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Transcripts:* The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 29, 1992.

**Marcia L. Morris,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 92–15716 Filed 7–2–92; 8:45 am]

BILLING CODE 6450–01–M

## Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC)

*Date and Time:* August 6, 1992—9 a.m.–5 p.m.; August 7, 1992—8:30 a.m.–4:30 p.m.

*Place:* Lawrence Berkeley Laboratory, Building 50A, Room 5132, One Cyclotron Road, Berkeley, California 94720.

*Contact:* Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER–10), Office of Energy Research, Washington, D.C. 20585, Telephone: 301–903–3081.

*Purpose of the Committee:* To provide advice on a continuing basis to the Department of Energy (DOE) on the many complex scientific and technical issues that arise in the planning, management, and implementation of the research program for the Office of Basic Energy Sciences (BES).

*Tentative Agenda:* Briefings and discussion of:

*August 6, 1992*

- Status of BES Program
- Lawrence Berkeley Research Briefings.
- Lawrence Berkeley Facility Briefings.
- Public Comment (10 Minute Rule).

*August 7, 1992*

- Lawrence Berkeley Research Briefings.
- Lawrence Berkeley Facility Briefings.
- Public Comment (10 Minute Rule).

*Public Participation;* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Transcripts:* The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 29, 1992.

**Marcia L. Morris,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 92–15717 Filed 7–2–92; 8:45 am]

BILLING CODE 6450–01–M

## Basic Energy Sciences Advisory Committee; Notice of Open Meeting

Pursuant to the Provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* Basic Energy Sciences Advisory Committee (BESAC)

*Date and Time:* August 3, 1992—9 a.m.–5 p.m.; August 4, 1992—8:30 a.m.–4:30 p.m.

*Place:* Oak Ridge National Laboratory, Cafeteria, Bethel Valley Road, Oak Ridge, Tennessee 37831.

*Contact:* Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER–10), Office of Energy Research, Washington, DC 20585, Telephone: 301–903–3081.

*Purpose of the Committee:* To provide advice on a continuing basis to the Department of Energy (DOE) on the many complex scientific and technical issues that arise in the planning, management, and implementation of the research program for the Office of Basic Energy Sciences (BES).

*Tentative Agenda:* Briefings and discussions of:

*August 3, 1992*

- Status of BES Program.
- Oak Ridge Research Briefings.
- Oak Ridge Facility Briefings.
- Public Comment (10 Minute Rule).

*August 4, 1992*

- Oak Ridge Research Briefings.
- Oak Ridge Facility Briefings.
- Public Comment (10 Minute Rule).

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Transcripts:* The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 29, 1992.

**Marcia L. Morris,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 92–15720 Filed 7–2–92; 8:45 am]

BILLING CODE 6450–01–M

## Office of Fossil Energy

**[FE Docket No. 92–57–NG]**

## ARCO Products Co., Division of Atlantic Richfield Co.; Application for Blanket Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on April 29, 1992, as revised on May 19, 1992, of an application filed by ARCO Products Company, Division of Atlantic Richfield Company (ARCO), requesting blanket authorization to import from Canada up to 25 Bcf of natural gas over a two-year

term beginning with the date of first import after September 19, 1992. ARCO would use existing pipeline facilities and would provide DOE with quarterly reports detailing each import transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no lafer than 4:30 p.m., eastern time, August 5, 1992.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION:**

Yvonne Gabbay, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4587.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** ARCO is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Los Angeles, California. ARCO is, among other things, a refiner and marketer of petroleum products.

In relation to this filing, ARCO owns and operates a 185,000 barrel per day oil refinery in Blaine, Washington. The sole source of natural gas for this refinery is from Canada. ARCO states that any imports of gas would be based on the specific needs of ARCO's refinery and would reflect market conditions existing at the time of negotiation of the short-term purchase agreements. ARCO proposes to import the gas at any existing point on the United States/Canadian border.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties should comment on the issue of competitiveness as set forth in those guidelines. ARCO asserts that its proposal is in the public interest and that the proposed arrangement is competitive. Parties opposing ARCO's application bear the burden of overcoming these assertions.

**NEPA Compliance**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ARCO's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 29, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92–15720 Filed 7–2–92; 8:45 am]

BILLING CODE 6450–01–M

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**[FE Docket No. 92–31–NG]**

## ARCO Natural Gas Marketing Inc.; Order Granting Blanket Authorization to Import and Export Natural Gas, Including Liquefied Natural Gas, From and to Canada, Mexico and Other Countries

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ARCO Natural Gas Marketing Inc. blanket authorization to import and export up to 120 Bcf of natural gas from and to Canada, Mexico and other countries over a two-year term beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 29, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92–15721 Filed 7–2–92; 8:45 am]

BILLING CODE 6450–01–M

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[FE Docket No. 92-39-NG]

**Arco Oil and Gas Co., Division of Atlantic Richfield Co.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and To Canada, Mexico and Other Countries**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of Order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ARCO Oil and Gas Company, Division of Atlantic Richfield Company, blanket authorization to import and export up to 120 Bcf of natural gas from and to Canada, Mexico and other countries over a two-year term beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 29, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92-15724 Filed 7-2-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-16-NG]

**Northwest Natural Gas Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada and Granting Intervention**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of an order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northwest Natural Gas Company blanket authorization to import up to 5 Bcf of natural gas from Canada over a two-year term beginning on the date of the first import. The order also grants intervention to Northwest Pipeline Corporation.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 29, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92-15723 Filed 7-2-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-43-NG]

**Tenaska Gas Co.; Application for Long-Term Authorization to Import Natural Gas from Canada**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on March 31, 1992, by Tenaska Gas Co. (Tenaska) for authorization to import near Sumas, Washington, up to 18,000 MMBtu (approximately 18,000 Mcf) per day of Canadian natural gas from BP Resources Canada, Limited (BP). This imported gas would be sold by Tenaska to its affiliate, Tenaska Washington, Inc. (TWI), and used for fuel in a 245 megawatt, combined cycle, cogeneration facility to be built in Ferndale, Washington, and owned by TWI. The term of the proposed import authorization would begin on the date of the first deliveries to the TWI cogeneration plant and continue through December 31, 2011. The gas would be transported from Sumas by Cascade Natural Gas Corporation (Cascade). Cascade would be required to construct additional pipeline facilities to deliver the gas.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time August 5, 1992.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

**FOR FURTHER INFORMATION CONTACT:**

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9482.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** Tenaska is a Nebraska Corporation with its principal office in Omaha, Nebraska. The imported gas would be purchased by TWI from Tenaska to generate electricity that would be sold to Puget Sound Power and Light Company. TWI does not at this time have a contract to sell thermal energy from the plant. The cogeneration facility would be operated as a "qualifying facility" under section 201 of the Public Utility Regulatory Policies Act.

The term of the gas purchase agreement between Tenaska and BP, dated March 31, 1992, extends until the earlier of December 31 of the seventeenth year after TWI's proposed cogeneration facility begins commercial operation, or December 31, 2011. Commercial operation is expected to begin by October 1, 1993. The agreement includes a take-or-pay provision requiring Tenaska to take the daily contract quantity (18,000 MMBtu) times the number of days in the month.

Tenaska would pay a monthly contract price equal to the index value for San Juan Basin gas sold into El Paso Natural Gas Company's pipeline system, as published each month in Inside FERC's Gas Market Report. For any deficiencies in the required monthly takes, Tenaska would pay either 10 percent of the contract price or the difference between the contract price and a reference price reflecting the spot market prices for Canadian gas delivered into Northwest Pipeline Corporation's system as published in Inside FERC's Gas Market Report, whichever is greater. Tenaska would not be responsible for specific payment of Canadian transportation charges, but instead would pay only a commodity charge for actual deliveries.

Two related applications by Tenaska for authority to import gas from Canada needed to serve the proposed TWI cogeneration facility are currently pending before FE in Docket Nos. 91-59-NG and 91-102-NG. In this regard, Tenaska has executed contracts with Husky Oil Operations Ltd. and Petro-Canada to import 13,000 MMBtu per day and 15,000 MMBtu per day, respectively. See 56 FR 66863 (December 26, 1991) and 57 FR 6021 (February 19, 1992). On May 4, 1992, FE issued DOE/FE Opinion and Order No. 614 conditionally authorizing Tenaska to import the volumes from Petro-Canada (not yet published in the Federal Energy Guidelines). This authorization was conditioned upon the issuance of a final order after DOE assesses the potential environmental

impacts of both the construction and operation of the additional pipeline facilities required by Cascade to transport the gas on behalf of Tenaska and TWI's proposed cogeneration facility which is directly related to Tenaska's import project.

In support of the application in this docket, Tenaska asserts that the price of the imported gas would be competitive since it is tied directly to spot market prices in the San Juan Basin. Tenaska also asserts that the gas is needed to supply part of the gas requirements of TWI's cogeneration plant and that security of supply is assured by BP's proven reserves in British Columbia, Canada, totalling about 255 Bcf of natural gas, and by a BP contractual guaranty to deliver the daily contract quantity or reimburse Tenaska for costs incurred in obtaining alternate supplies of fuel to replace the delivery shortfall.

The decision on Tenaska's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters will be considered in making a public interest determination, including need for the natural gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. Tenaska asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the proposed import arrangement bear the burden of overcoming these assertions.

### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. Cascade has an application pending before the Federal Energy Regulatory Commission (FERC) for a Presidential Permit and authorization under section 3 of the NGA to construct, operate, and maintain various natural gas pipeline facilities at the international border near Sumas, Washington that would be used to import the volumes proposed by Tenaska. (*See* FERC Docket No. CP91–2650–000.) FERC has the lead in preparing an environmental analysis to assess the potential impact of Cascade's facilities. DOE is a cooperating agency in this environmental review process. We will independently examine the results of the FERC evaluation in the course of making our own environmental determination. Furthermore, DOE is obligated to consider the environmental consequences of TWI's proposed cogeneration facility. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Tenaska's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., June 29, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92–15725 Filed 7–2–92; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[FLR–4150–9]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before August 5, 1992.

**FOR FURTHER INFORMATION OR A COPY OF THIS ICR CONTACT:** Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

*Title:* Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System (EPA No. 0801.09; OMB No. 2050–0039). This ICR is a renewal of an existing information collection.

*Abstract:* Under Section 3002(a)(5) of the Resource Conservation and Recovery Act (RCRA), EPA has established a hazardous waste manifesting system to assure that hazardous waste is designated for and arrives at a treatment, storage or

disposal facility (TSDF) permitted under RCRA Subtitle C. The information collected in this system includes the completion, submission, and recordkeeping of the manifest itself, completion and submission of discrepancy and exception reports, notification of hazardous waste discharges in the event of an accident, and primary exporter manifest requirements. This information will be collected from large quantity and small quantity generators of hazardous waste, hazardous waste transporters, and owner/operators of treatment, storage and disposal facilities.

The information will be used to: (1) Provide notice to hazardous waste transporters and waste management facility workers on the risks posed by the wastes being handled; (2) track shipments from generator to facility; (3) assist emergency response personnel in determining appropriate responses to accidents; and (4) compliment facility inspections to determine compliance.

*Burden Statement:* The public reporting burden for this collection of information is estimated to average 46 minutes to 1.3 hours per hazardous waste shipment for generators, 16 minutes to 1.6 hours per shipment for transporters, and 17 minutes to 6.5 hours per shipment for TSDFs. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering the data needed, reviewing the collection of information, and submitting the information.

*Respondents:* Generators, Transporters and Handlers of Hazardous Waste.

*Estimated Number of Respondents:* 223,173.

*Estimated Number of Responses Per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 434,944.

*Frequency of Collection:* As needed.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M. Street, SW., Washington, DC 20460, and Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: June 29, 1992.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 92–15743 Filed 7–2–92; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

[Announcement Number 209]

### Fiscal year 1992 Regional Training and Demonstration Centers for the Early Detection and Control of Breast and Cervical Cancer; Amendment

A notice announcing the availability of Fiscal Year 1992 funds for cooperative agreements for Regional Training and Demonstration Centers for the Early Detection and Control of Breast and Cervical Cancer was published in the **Federal Register** on May 19, 1992, (57 FR 21294). The notice is amended as follows:

On page 21295, first column, under the heading "Eligible Applicants," the paragraph should read: "Eligible applicants are the official public health agencies of any of the states of the United States, the District of Columbia, Commonwealth of Puerto Rico, and any territory or possession of the United States; or any bona fide agent or instrumentality of a state government."

All other information and requirements of the May 19, 1992, **Federal Register** notice remain the same.

Dated: June 26, 1992

**Robert L. Foster,**

*Acting Associate Director for Management and Operations, Centers for Disease Control.*

[FR Doc. 92–15672 Filed 7–2–92; 8:45 am]

BILLING CODE 4160–18–M

### Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 57 FR 8678, dated March 13, 1992) is amended to reflect the following organizational changes within the Centers for Disease Control and the National Center for Environmental Health and Injury Control: (1) Establishment of the National Center for Injury Prevention and Control, and (2) title change for the National Center for Environmental Health and Injury Control.

*Section HC–B, Organization and Functions,* is hereby amended as follows:

1. After the functional statement for the *National Institute for Occupational Safety and Health (HCC),* insert the following:

*National Center for Injury Prevention and Control (HCE).* The National Center for Injury Prevention and Control plans, directs, and coordinates a national program to maintain and improve the health of the American people by preventing premature death and disability and reducing human suffering and medical costs caused by nonoccupational injury, addressing both intentional injuries that result from violent and abusive behavior and unintentional injuries. The national program encompasses the prevention of nonoccupational injuries, and applied research and evaluations in acute care and rehabilitation of injured persons. The Center will address injury prevention and control through an orderly sequence of activities beginning with research on causes, circumstances, and risk factors; progressing through research on interventions and their impact on defined populations. These activities then lead to the broad, systematic applications of interventions that are soundly based scientifically.

In carrying out this mission, the Center: (1) Provides leadership in developing and executing a national program for nonoccupational injury prevention and control with Federal, State and local agencies, voluntary and private sector organizations; (2) proposes goals and objectives for national injury prevention and control programs, monitors progress toward these goals and objectives, and recommends priority prevention and control activities and develops guidelines for these activities; facilitates similar activities by other Federal, state, and local agencies, academic institutions, and private and other public organizations; (3) plans, directs, conducts, and supports research focused on development and evaluation of strategies to prevent and control injuries, including research in biomechanics, epidemiology and prevention, and the treatment and rehabilitation of the injured; (4) plans, establishes, and evaluates surveillance systems to monitor national trends in morbidity, mortality, disabilities, and costs of injuries and facilitates the development of surveillance systems by State and local agencies; (5) develops, implements, directs, and evaluates demonstration programs to prevent and control injuries; (6) serves as the primary Federal health resource for technical assistance and management expertise in the epidemiology, statistics, prevention, and control of nonoccupational injuries; (7) assists in

increasing the capacity of States and localities to prevent and control injuries by providing financial assistance and technical and management consultation and assistance in assessing the problem of injuries, conducting surveillance, planning injury prevention and control programs, and evaluating injury prevention and control activities; (8) serves as the principal focus for training programs to increase the number and competence of personnel engaged in injury prevention and control research or practice; (9) supports the dissemination of research findings and the transfer of injury prevention and control technologies to Federal, State, and local agencies, private organizations, and other national and international groups; (10) in carrying out the above functions, collaborates with other CDC Centers/Institute/Offices, PHS agencies, and National Highway Traffic Safety Administration, Consumer Product Safety Commission and other Federal Departments and Agencies, and private organizations, as appropriate.

*Office of the Director (HCE1).* (1) Manages, directs, coordinates and evaluates the activities of the National Center for Injury Prevention and Control (NCIPC); (2) develops goals and objectives and provides leadership, policy formation, scientific oversight, and guidance in program planning and development; (3) coordinates NCIPC program activities with other CDC components, other PHS regional offices, other Federal agencies, State and local health departments, community-based organizations, business and industry; (4) consults and coordinates activities with medical, engineering, and other scientific and professional organizations interested in injury prevention and control; (5) provides administrative support, program management and fiscal services to the Center; (6) supports the activities of the Secretary's Advisory Committee for Injury Prevention and Control; (7) coordinates technical assistance to other nations and international organizations in establishing and implementing injury prevention and control programs; (8) directs and coordinates information resources management activities, the production and distribution of technical and nontechnical injury prevention and control publications and information, and the conduct of health education and health promotion activities; (9) provides overall guidance and support for center-wide grant activities.

2. Change the title for the *National Center for Environmental Health and Injury Control (HCN)* to the *National Center for Environmental Health (HCN).*

*Section HC–D, Delegations of Authority*

All delegations and redelegations of authority to any officers or employees which were in effect immediately prior to this reorganization and which are consistent with this reorganization shall continue in effect pending further redelegation.

Effective Date: June 25, 1992.

Louis W. Sullivan,

*Secretary.*

[FR Doc. 92–15685 Filed 7–2–92; 8:45 am]

BILLING CODE 4160–18–M

## Food and Drug Administration

[Docket No. 92D–0176]

## Compliance Policy Guides for Issuing Orders for Post-Approval Record Reviews; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide (CPG) 7132c.07 entitled "Orders for Post-Approval Record Review." The CPG states FDA policy and guidance for issuing orders to manufacturers to conduct and report post-approval record reviews for approved new drug products for human and animal use pursuant to certain sections of the Federal Food, Drug, and Cosmetic Act (the act) and the current good manufacturing practice regulations for drugs. FDA developed the CPG to provide internal policy and guidance for requiring firms to conduct such reviews. In addition, CPG's 7125.34 (Veterinary Drugs) and 7126.27 (Animal Feed) are being made available to provide reference to the guidance that is contained in CPG 7132c.07.

**ADDRESSES:** CPG's 7132c.07, 7125.34, and 7126.27 may be ordered as a single set from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB-183250 and include payment of $12.50 (A02) (papercopy) or $9.00 (A01) (microfiche) for each set. Payment may be made by check, money order, charge card (American Express, VISA, or Mastercard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650. CPG's 7132c.07, 7125.34, and 7126.27 are available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Motise, Division of Manufacturing and Product Quality (HFD–323), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8069 or, Edward J. Ballitch, Division of Compliance (HFV–230), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8726.

**SUPPLEMENTARY INFORMATION:** FDA is issuing CPG 7132c.07 to provide internal policy and guidance for FDA to issue an order requiring a records review and report pursuant to sections 505(e), 505(k), 512(e), 512(l), 512(m)(4), 512(m)(5), 701(a), and 704(a) of the act (21 U.S.C. 355(e), 355(k), 360b(e), 360b(l), 360b(m)(4), 360b(m)(5), 371(a), and 374(a)) and the current good manufacturing practice regulations for drugs that are enforceable under section 501(a)(2)(B) of the act (21 U.S.C. 351(a)(2)(B)). FDA developed the CPG to provide internal policy and guidance for requiring firms to conduct such reviews where there are questions about the safety or effectiveness of approved drugs or about the truth or falsity of information submitted in support of the original application; for example, where omissions, inconsistencies, untrue statements of material facts, or fraud were found in records submitted to support the approval of new drug products, or where there has been noncompliance with approved manufacturing procedures. The purpose of the records review and report is to determine whether there is or may be ground to withdraw approval of the drug application(s) under sections 505(e), 512(e), and/or 512(m)(4) of the act.

The statements made herein are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Dated: June 25, 1992.

Gary Dykstra,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 92–15686 Filed 7–2–92; 8:45 a.m.]

BILLING CODE 4160–01–F

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**Advisory Committee Meeting; Amendment of Notice**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an amendment to the agenda of a meeting of the Drug Abuse Advisory Committee which is scheduled for July 14 and 15, 1992. This meeting was announced in the **Federal Register** of June 23, 1992 (57 FR 27982). The change is being made to add additional items for discussion. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 23, 1992 (57 FR 27982), FDA announced that a meeting of the Drug Abuse Advisory Committee would be held on July 14 and 15, 1992. On page 27982, in the second column, the agenda for this meeting is amended to read as follows:

*Open committee discussion.* On July 14, 1992, the committee will discuss the rationale for changes in the recommendations for indications, contraindications, warnings, precautions, and pregnancy for nicotine substitution products. A copy of the "Discussion Paper: Nicotine Substitution Products" may be obtained before the meeting by visiting the FDA Medical Library, Parklawn Bldg., Rm. 11B–40, 5600 Fishers Lane, Rockville, MD after July 1, 1992. Copies will also be available at the meeting on July 14. After the meeting, the document can be requested through FDA's Freedom of Information Staff. The committee will also discuss serious post-marketing adverse reaction reports received by FDA and a citizen petition from the Health Research Group of the Public Citizen Foundation calling for a box warning in the labeling. Also on July 14, the committee will discuss data on the abuse and epidemiology of dextromethorphan in order to assess public health problems reported to FDA and other Government agencies. On July 15, 1992, the committee will discuss procedures and policies for, and approaches to, the study of hallucinogenic drugs.

Dated: June 29, 1992.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 92–15667 Filed 7–2–92; 8:45 a.m.]

BILLING CODE 4160–01–F

**[Docket No. 79D–0183]**

**Lead in Ceramic Foodware; Revised Compliance Policy Guide; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide (CPG) 7117.07 "Pottery (Ceramics); Imported and Domestic—Lead Contamination." This CPG has been revised to lower the lead release guidelines for ceramic foodware. In addition, specific lead release levels are included for cups and mugs as well as for pitchers because these articles are frequently used under conditions that may enhance lead leaching. The lead release levels are guides to when the agency may regard the ceramic foodware as adulterated within the meaning of section 402(a)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(2)(C)).

**ADDRESSES:** Submit written requests for single copies of revised CPG 7117.07, "Pottery (Ceramics); Imported and Domestic—Lead Contamination" to the Regulations and Industry Activities Branch, Industry Activities Section (HFF–326), Food and Drug Administration, rm. 5425B, 200 C Street SW., Washington, DC 20204. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on revised CPG 7117.07 "Pottery (Ceramics); Imported and Domestic—Lead Contamination" to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of CPG 7117.07, "Pottery (Ceramics); Imported and Domestic—Lead Contamination" and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–205–5229.

**SUPPLEMENTARY INFORMATION:** Lead is frequently used as a component of the glazes and decorations used in the manufacture of ceramic foodware such as pottery, earthenware, and bone china. Lead glazes are used to impart a smooth and lustrous coating on ceramic foodware. Through the ages, the nonporous and easily cleaned glazed surfaces have facilitated good sanitation in food service. If a glaze is improperly applied, or if the ware is improperly fired during the manufacturing process, large quantities of lead may be left on the ware that can leach from the glaze into food that is placed in the vessel. Even in properly glazed and fired ceramicware, some lead may migrate to food in contact with the ware; however, the amounts will be much lower than in poorly made ware.

Since the 1930's, FDA has taken action to protect the public from the hazards associated with excessive exposure to lead in food. These efforts have focused on lead from sources such as agricultural chemicals, glazes for ceramicware, enamelware, pewter, silver-plated holloware, and lead-soldered cans. In May 1971, FDA initiated a formal compliance program for foreign and domestic pottery. The program was designed to enforce a limit of 7 parts per million on lead migration into a special leaching solution. The guidelines were revised in 1979 by reducing the levels. (See 44 FR 47162, August 10, 1979.)

Although lead has long been recognized as a toxic substance, evidence that lead is responsible for behavioral and performance deficiencies in children exposed to lead levels below those that produce clinical effects did not begin to appear in the scientific literature until the late 1970's (Ref. 1). Additional studies published during the 1980's have shown that adverse effects in children, including deficits in intelligence and stature, occur at blood lead levels well below those suggested by the initial studies of subclinical effects of exposure to lead (Refs. 2 through 4). Recent research has also shown that in utero exposure to low levels of lead in maternal blood can affect fetal neurobehavioral development, gestational age, and birth weight (Refs. 3 and 4). In light of the public health concerns raised by these findings, i.e., concern over the effects of exposure to very low levels of lead by pregnant women, infants, and children, the agency is undertaking a comprehensive effort to further reduce consumers' exposure to lead. (For example, toward this end, FDA, in accordance with a 1987 memorandum of

understanding with the U.S. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms (BATF) (Ref. 10), evaluated the potential health effects of the levels of lead found in alcoholic beverages, and, in 1991, informed BATF that it believes that available evidence will support enforcement actions against table wines containing lead at levels greater than 300 parts per billion (Refs. 11 through 15).)

In this notice, FDA is announcing the availability of revised CPG 7117.07, "Pottery (Ceramics); Imported and Domestic—Lead Contamination," issued to FDA regional and district field offices on November 5, 1991. The purposes of revising CPG 7117.07 were to lower the guidelines for lead leaching from ceramic foodwares (as measured by the standard regulatory test procedure (Ref. 5)) and to create two new categories of ceramic foodwares with specific lead release guidelines: (1) Cups and mugs and (2) pitchers. The guidelines in the revised CPG state lead release levels at which the agency may take enforcement action against ceramic foodware under the act.

The lead release levels in the previous CPG 7117.07 were:

(1) Flatware—an average exceeding 7.0 micrograms (μg) of lead (Pb) per milliliter (Ml) of leaching solution from six units examined,

(2) Small hollowware—a level exceeding 5.0 μg Pb/Ml in any one of six units examined, and

(3) Large hollowware—a level exceeding 2.5 μg Pb/Ml in any one of six units examined.

The revised policy addresses five categories of ceramic foodware and their lead release levels. These are:

(1) Flatware—an average exceeding 3.0 μg Pb/Ml from six units examined,

(2) Small hollowware—a level exceeding 2.0 μg Pb/Ml in any of six units examined,

(3) Large hollowware—a level exceeding 1.0 μg Pb/Ml in any of six units examined,

(4) Cups and mugs—a level exceeding 0.5 μg Pb/Ml in any of six units examined, and

(5) Pitchers—a level exceeding 0.5 μg Pb/Ml in any of six units examined.

In the Federal Register of June 1, 1989 (54 FR 23485), the agency requested comments on a variety of concerns regarding ceramic foodware, including the leachability of lead under various conditions, the lowest leachable lead levels routinely attainable for various types of ceramic foodware, and the amount of lead that leaches from ceramic foodware under the normal range of actual conditions of use as compared to the amount that leaches during the standard test procedure, wherein lead is leached into a 4-percent acetic acid solution at 22 °C over a 24-hour period and then is measured in the test solution. The agency has reviewed data submitted in response to this request as well as other data on the leachability of lead including data in the published scientific literature (Refs. 6 through 9).

On the basis of its review of the data, the agency has lowered its lead release guidelines for all types of ceramic foodware. However, the agency has identified ceramic cups and mugs and pitchers as foodware that are generally used under conditions that may be more conducive to the leaching of lead than is the case for other ceramic foodware. These vessels are generally used to hold acidic beverages, such as citrus juices in the case of pitchers and coffee or tea in the case of cups and mugs. In addition, the beverages placed in cups and mugs are generally hot, and this fact, together with the acidic nature of the beverage, enhances the rate of lead leaching.

The agency's review shows that the amount of lead that leaches into the acetic acid leaching solution may frequently be about 5 times higher than the amount of lead that leaches into orange juice during 24 hours of refrigerated storage and about 2.5 to 5 times higher than the amount of lead that leaches into hot coffee during 15 to 30 minutes. Lead leaching into food from other types of ceramic foodware typically occurs at levels much lower relative to the acetic acid leaching solution. Because of the greater relative potential for lead to leach into food from cups and mugs and pitchers under normal use, the agency is separating them from the more general categories of large and small hollowware, and it is setting out lead release guidelines that are lower than those for the other types of hollowware.

The lead release levels assigned to the categories of foodware are not substantive rules. Rather, they constitute guides that FDA will use in its discretion when considering whether the agency will regard the article as adulterated within the meaning of section 402(a)(2)(C) of the act. This CPG does not limit the agency's enforcement discretion on whether to initiate regulatory action after an evaluation of all the relevant facts.

This notice does not constitute final action on FDA's proposal of June 1, 1989, to establish a legally binding regulatory limit for lead leaching from ceramic pitchers, nor does it preclude the agency from initiating any new rulemaking on ceramicware. The agency chose to revise CPG 7117.07 on ceramicware to reflect its concerns about the ongoing need to reduce human exposure to lead from foods. The agency is interested in receiving comments on the guidelines in revised CPG 7117.07.

## I. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

## II. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Needleman, H.L. et al., "Deficits in Psychologic[al] and Classroom Performance of Children with Elevated Dentine Lead Levels," *New England Journal of Medicine*, 300(13), pp. 689–695, 1979.

2. Air Quality Criteria for Lead, U.S. Environmental Protection Agency, Research Triangle Park, NC, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, EPA Report No. EPA–600/8–83/028aF–Df.4V, 1986.

3. "The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress," part 3, Ch. IV, Agency for Toxic Substances and Disease Registry, U.S. Department of Health and Human Services, Public Health Service, Atlanta, GA, 1988.

4. Needleman, H.L., "The Persistent Threat of Lead: A Singular Opportunity," *American Journal of Public Health*, 79(5), pp. 643–645, 1989.

5. *Official Methods of Analysis of the Association of Official Analytical Chemists*, 15th ed., section 973.32, 1990. Division of Regulatory Guidance (HFF–312), dated August 21, 1991.

7. Memorandum from Food and Color Additives Review Section (HFF–415) to Division of Regulatory Guidance (HFF–312), dated July 7, 1987.

8. Comments of the Coalition for Safe Ceramicware—Phase I Report, November 30, 1989, in Docket No. 89N–0014.

9. Comments of the Coalition for Safe Ceramicware Relative to the Adequacy of the Current Action Levels for Leachable Lead in Ceramic Tableware Other than Pitchers, Phase II Report, February 28, 1991, in Docket No. 89N–0014.

10. Memorandum of Understanding between the Food and Drug Administration and the Bureau of Alcohol, Tobacco and Firearms, November 1987.

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11. Department of the Treasury, BATF, "Report of Analyses of Wines and Related Products to Determine Lead Content," Washington, DC, June 1991.
12. Letter to L. Robert Lake, Director, Office of Compliance, Center for Food Safety and Applied Nutrition (CFSAN), FDA, from Terry L. Cates, Chief, Industry Compliance Division, BATF, dated August 2, 1991.
13. Letter to Daniel Black, Deputy Director, BATF, from L. Robert Lake, Director, Office of Compliance, CFSAN, FDA, dated September 9, 1991.
14. Health Hazard Evaluation No. 2663, CFSAN, FDA, August 16, 1991.
15. HHS NEWS, dated September 9, 1991.

Dated: June 29, 1992.

**Gary Dykstra,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 92-15647 Filed 7-2-92; 8:45 am]

BILLING CODE 4160-01-M

## Indian Health Service

### Indian Health Service Research Program Grants Application Announcement

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice of final funding emphases for competitive grant applications for the Indian Health Service (IHS) Research Program.

**SUMMARY:** The IHS announces the final funding emphases for fiscal year (FY) 1993 IHS Research Program authorized by section 208 of the Indian Health Care Improvement Act, as amended, 25 U.S.C. 1621g. There will be only one funding cycle during FY 1993. Grants shall be administered in accordance with applicable Office of Management and budget (OMB) Circulars and HHS policies.

This program is described at 93.905 in the Catalog of Federal Domestic Assistance. Executive Order 12372 requiring intergovernmental review is not applicable to this program.

**General Program Goals**

1. To support practice- and community-based research projects likely to improve the health of American Indians and Alaska Natives (AI/AN) served by the IHS.

2. To develop research skills among IHS and tribal health professionals. The applicant, as the direct and primary recipient of IHS funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party, or to provide funds to another party.

3. These grants will be awarded and administered in accordance with the published program announcement in the Federal Register of May 14, 1992 (57 20696) and the Indian Health Care Improvement Act, as amended, 25 U.S.C. 1621g.

**Research Funding Emphases**

Proposed funding emphases were published in the Federal Register of May 14, 1992 (57 FR 20696) for public comment. No comments were received during the 30-day comment period. Therefore, as proposed the following funding emphases will be retained as listed below.

1. Studies of documented high priority in the community in which the research is to be done.

2. Studies with high relevance for the AI/AN populations. (The series "The Research Agenda for Indian Health" in the IHS Primary Care Provider, lists many relevant research subjects. Reprints are available from the IHS Research Program and the Area Research Offices.)

3. For studies that involve problems that are both social and medical (e.g., dysfunctional families), research about factors that enable the community or individuals to overcome the problems.

4. Competing continuations of previously-funded research projects.

**Review Process**

Applications meeting eligibility requirements that are complete and conform to the published program announcement in the Federal Register of May 14, 1992 (57 FR 20696) will be reviewed in accordance with the following process.

*1. Review by Authorized Institutional Review Boards (IRB)*

All applications involving human subjects will be reviewed by the authorized Area or National IRBs in the IHS for compliance with requirements to protect human subjects contained in 45 CFR part 46. Any applications involving investigators from institutions with IRBs with Multiple Project Assurance and involving human subjects must also be reviewed by the IRBs of the respective institution(s). No research project can be funded by IHS unless it has been approved by, and has met the conditions of, all applicable IRBs.

*2. Review by the Indian Health Research Study Section (IHRSS)*

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by the IHRSS appointed by the IHS to review these applications. The IHRSS review will be conducted in accordance with the IHS objective review procedures. The technical review process ensures selection of quality research projects in a national competition for limited funding. The IHRSS will include at least 60 percent non-IHS, Federal or non-Federal, individuals, all experts in research. The IHRSS will review each application against established criteria, and will assign a numerical score to each application. The members of the IHRSS will use the following criteria and weights to make the score.

*Weights*

(Criteria "a" through "f" refer to section I. Research Plan.)

*4a. Specific Aims: statement of study question(s) and objective(s).* (Are the study questions stated clearly and precisely? Does the rest of the Research Plan follow logically from the study questions?)

*10b. Background to the study.* (Does the background review include the important existing research and knowledge relevant to the study question(s), and pilot data (if applicable)? Do the conclusions follow from the review?)

*4c. Progress Report (for competing continuation studies only).* (What is the progress to date? Is the report timely? Does the progress report demonstrate that investigators will achieve the objective(s) of the research?)

*15d. Research design and methods to be used.* (Does the Research Plan adequately describe the research design? Is the proposed approach appropriate for the objective(s) of the research? Does the Plan adequately describe: The population to be studied; the inclusion and exclusion criteria, and how the investigators will determine inclusion and exclusion; the sampling techniques; selection of controls (if any); the definition of the independent and dependent variables (if any) and how to measure them; the interventions (if any) and how to assure that they are done in fact; and the definition of the expected outcomes or effects (if any) and how to measure them? Are these methods appropriate to achieve the objective(s) of the research? Are sample size calculations included, if needed? Is the projected sample size achievable, and sufficient to achieve the objective(s) of the research? Does the Plan adequately account for alternative explanations of expected findings? Is the application's timeline, with completion dates of all major tasks, appropriate and feasible?)

*10e. Data sources, management, quality control, and analysis.* (Does the Research Plan adequately describe: The data to be collected, by whom, and at what time; the data sources, and how access to the sources will be attained; the procedures to collect, receive, code, and prepare for analysis of the data; the contents of interviews (if they are to be done), and the connection between the interview question and the variables to be studied; how the data will be made secure; how completeness of the data will be assured and low response rates dealt with; how accuracy of the data will be measured and assured; the plan for analysis; the statistical analyses to be done (if any); and the non-statistical analyses to be done (if any)? Are these plans appropriate and adequate for the research questions?)

*4f. Originality.* (Will this research likely develop *new* methods, or directly lead to *new* information, useful for research *in general*?)

(Criteria "g" through "k" refer to search *J. Priority and Utility.*)

*10g. Priority of the health problem(s) for the community(ies) involved.* (Are the health problems addressed by the research project a high priority in the community(ies) involved?)

*9h. Priority of the health problem(s) for all AI/AN people and the IHS Area.* (Are the health problems addressed by the research project a high priority in all or major segments of AI/AN people, and in the IHS Area?)

*4i. Setting of the study.* (Should the research be done only, or be done best, in an AI/AN population, and in the proposed community(ies)?)

*10j. Utility of the product and experience to the community(ies) and SU(s) involved.* (Does the research project have a high expected utility of the product (e.g., *new* information) or of the experience (e.g., *new* research skills, capabilities, resources, or liaisons to do practice-based or community-based research) to the community(ies) and/or SU(s) involved?)

*5k. Utility of the product and experience to the IHS and other AI/AN people.* (Does the research project have a high expected utility of the product (e.g., *new* information) or of the experience (e.g., *new* research skills, capabilities, resources, or liaisons to do practice-based or community-based research) to the IHS, to the IHS Area, and/or to other AI/An people?)

*5l. Budget.* (This criterion refers to section *G. Budget.*) (Is the proposed budget sufficient to do the project? Is the proposed budget excessive? If the research project is a competing continuation, are the additional years necessary? Is the cost justified by the expected benefit?)

*10m. Key Personnel and Research Team.* (This criterion refers to section *H. Key Personnel and Research Team.*) (Does the principal investigator have the training, experience, and time necessary to do and to manage the proposed research project? Does the research team have the capabilities to carry out and complete the project successfully?)

**FOR FURTHER INFORMATION, CONTACT:** William L. Freeman, M.D., Director, IHS Research Program or Donna Pexa, Research Program Coordinator, Office of Health Program Research and Development, 7900 South J. Stock Road, Tucson, AZ 85746-9352, (602) 670-6310.

Dated: June 26, 1992.

**Everett R. Rhoades,**

*Assistant Surgeon General Director.*

[FR Doc. 92-15685 Filed 7-2-92; 8:45 am]

BILLING CODE 4160-16-M



## National Institutes of Health

### Director's Strategic Planning Retreat; Meeting

Notice is hereby given that the National Institutes of Health will convene the NIH Director's Strategic Planning Retreat to advance the strategic planning initiative of the Agency and to synthesize and summarize input received thus far on the *Framework for Discussion of Strategies for NIH* from the National Advisory Councils, five public meetings, written public testimony received subsequent to the public meetings, and recommendations of the ad hoc National Task Force on the NIH Strategic Plan. Retreat participants will consist of the directors of the institutes, centers, and divisions, as well as the directors of the research institutes of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA); principal members of the Office of the Director staff; and members of the extramural community and other advisors meeting as an ad hoc group of consultants to the Advisory Committee to the Director, NIH. The outcome of the Retreat will be the development of a document that will contain the major elements of the NIH strategic plan. The meeting will be held at NIH, Shannon Building, Wilson Hall, 9000 Rockville Pike, Bethesda, Maryland 20892. The Retreat will begin at 6:30 p.m. on July 15, and end on July 16, 1992.

Due to meeting space limitations, observers will be accommodated as space is available.

If you plan to attend the meeting as an observer, or, if you wish additional information, please contact Ms. Mary Demory, National Institutes of Health, Shannon Building, room 218, 9000 Rockville Pike, Bethesda, Maryland 20892, (301) 496-1454, by July 9.

Dated: June 25, 1992.

**Bernadine Healy,**

*Director, NIH.*

[FR Doc. 92-15648 Filed 7-2-92; 8:45 am]

BILLING CODE 4140-01-M

### National Cancer Institute; Meeting of the Cancer Center Support Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, on August 7, 1992, Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815.

This meeting will be open to the public on August 7 from 8 a.m. to 8:30 a.m., to review administrative details and other cancer center review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on August 7 from approximately 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and the roster of committee members, upon request.

Dr. David E. Maslow, Scientific Review Administrator, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496-2330) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.197, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: June 22, 1992.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 92-15649 Filed 7-2-92; 8:45 am]

BILLING CODE 4140-01-M

**National Institute of Environmental Health Sciences; Meeting of Environmental Health Sciences Review Committee**

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on July 27-28, 1992 at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina. The meeting will be open to the public on July 27 from 9 a.m. to approximately 12 Noon for general discussion. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public July 27, from approximately 1 p.m. to adjournment on July 28, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun, Carol Shreffler or Donald McRee, Scientific Review Administrators, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919-541-7826), will provide summaries of meeting and rosters of committee members.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: June 23, 1992.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 92-15650 Filed 7-2-92; 8:45 am]

BILLING CODE 4140-01-M

**National Heart, Lung, and Blood Institute; Meetings**

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one half hour at the beginning of the first session of each meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung, and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7548, will furnish summaries of the meetings and rosters of panel members. Substantive program information may be obtained from each Scientific Review Administrator whose telephone number is provided. Since it is necessary to schedule meetings well in advance, it is suggested that anyone planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

*Name of Panel:* NHLBI SEP on RFA for Alzheimer's Amyloid Beta Protein in Hemostasis and Thrombosis

*Scientific Review Administrator:* Dr. Carl A. Ohata, 301-496-8184.

*Dates of Meeting:* July 26-27, 1992.

*Place of Meeting:* Holiday Inn Bethesda, Bethesda, MD.

*Time of Meeting:* 8 p.m.

*Name of Panel:* NHLBI SEP on RFA for the Collaborative Studies on the Genetics of Asthma

*Scientific Review Administrator:* Dr. Dennis R. Lang, 301-496-8818.

*Dates of Meeting:* July 27, 1992.

*Place of Meeting:* Holiday Inn, Bethesda, MD.

*Time of Meeting:* 9 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: June 23, 1992.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 92-15651 Filed 7-2-92; 8:45 am]

BILLING CODE 4140-01-M

**National Cancer Institute; Notice of Meeting of the Cancer Biology-Immunology Contracts Review Subcommittee C**

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contracts Review Subcommittee C, National Cancer Institute, National Institutes of Health, July 17, 1992, National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Bethesda, MD 20815.

This meeting will be open to the public on July 17 from 8:30 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on July 17 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasions of personal privacy.

The Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Lalita D. Palekar, Scientific Review Administrator, Cancer Biology-Immunology Contracts Review SubCommittee C, 5333 Westbard Avenue, room 805, Bethesda, Maryland 20892 (301/496-7575) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: June 22, 1992.
**Susan K. Feldman,**
*Committee Management Officer, NIH.*
[FR Doc. 92-15652 Filed 7-2-92; 8:45 am]
BILLING CODE 4140-01-M

**National Center for Nursing Research; Meeting: Nursing Science Review Committee**

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Nursing Science Review Committe, National Center for Nursing Research, July 15-17, 1992, Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on July 15 from 8:30 to 10 a.m. Agenda items to be discussed will include a Report from the Director, NCNR; and an Administrative Report by the Scientific Review Administrator, Nursing Science Review Section. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d)) of Public Law 92-463, the meeting will be closed to the public on July 15 from 10 a.m. to adjournment on July 17 for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Mary Stephens, Scientific Review Administrator, Nursing Science Review Section, National Center for Nursing Research, National Institutes of Health, Building 31, room 5B25, Bethesda, Maryland 20892, (301) 496-0472, will provide a summary of the meeting, and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: June 22, 1992.
**Susan K. Feldman,**
*Committee Management Officer, NIH.*
[FR Doc. 92-15633 Filed 7-2-92 8:45 am]
BILLING CODE 4140-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Fair Housing and Equal Opportunity

**[Docket No. N-91-3243; FR-2954-N-02]**

### Announcement of Funding Awards for Fair Housing Initiatives Program

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards made under the Fair Housing Initiatives Program (FHIP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn J. Shelton, Director, Office of Fair Housing Assistance and Voluntary Programs, room 5234, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone number (202) 708-0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708-1425. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-19 (The Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

The FHIP has three funding categories: the Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative.

In a Notice of Funding Availability (NOFA) published in the **Federal Register** on April 24, 1991 (56 FR 16954), the Department announced the availability of approximately $5.8 million in funds for FHIP. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded 60 applications.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing details concerning the recipients of these awards, by Initiative category, as follows:

FAIR HOUSING ENFORCEMENT INITIATIVE—PRIVATE ENFORCEMENT GRANTEES (TESTING)

| | | | |
|---|---|---|---|
| Interfaith Housing Center of the Northern Suburbs. | 1140 Wilmette Avenue, Wilmette, IL 60091 | Ms. Barbara Boyts | $82,590 |
| Oregon Legal Services | 516 SE Morrison, Portland, OR 97214 | Mr. Ira Zarov | 99,997 |
| Heartland Human Relations Association | 7435 University Avenue, La Mesa, CA 92041 | Ms. Clara Hams | 69,846 |
| Housing Opportunities Made Equal of Buffalo, Inc. | 700 Main Street, Buffalo, NY 14202 | Mr. Scott Gehl | 46,500 |
| Fair Housing Council of Greater Washington, Inc. | 1400 Eye Street, NW., Washington, DC 20005 | Ms. Ellen Shogan | 186,795 |
| Toledo Fair Housing Center | 1900 Monroe Street, Toledo, OH | Ms. Lisa Rice | 114,970 |
| Civic League of Greater New Brunswick | 47-49 Throop Avenue, New Brunswick, NJ 08901. | Mr. Roy Epps | 75,917 |
| Westchester Residential Opportunities, Inc | 470 Mamaroneck Avenue, White Plains, NY 10605. | Ms. Blossom Blum | 79,940 |

FAIR HOUSING ENFORCEMENT INITIATIVE—PRIVATE ENFORCEMENT GRANTEES (TESTING)—Continued

| | | | |
|---|---|---|---|
| Access Living Center | 310 Peoria, Chicago, IL 60607 | Mr. James Charlton | 158,610 |
| Project Sentinel | 430 Sherman Avenue, Palo Alto, CA 94306 | Ms. Ann Marquart | 163,298 |
| Lawyer's Committee for Civil Rights Under Law of the Boston Bar Association. | 294 Washington Street, Boston, MA 02108 | Ms. Barbara W. Rabin | 277,408 |
| Metropolitan Milwaukee Fair Housing Council | 1442 N. Farwell Avenue, Milwaukee, WI 53202 | Mr. William Tisdale | 155,254 |
| Marin Housing Center | 88 Belvedere Street, San Rafael, CA 94901 | Ms. Nancy Kenyon | 58,500 |
| Fair Housing Council of Northern New Jersey | 345 Union Street, Hackensack, NJ 07601 | Ms. Lee Porter | 134,910 |
| Housing Discrimination Project | 380 High Street, Holyoke, MA 01040 | Ms. Margaret Maisel | 149,530 |
| HOPE, Inc | 154 South Main Street, Lombard, IL 60091 | Mr. Bernard J. Klein | 68,000 |
| Housing Opportunities Made Equal of Richmond, Inc. | 503 East Main Street, Richmond, VA 23219 | Ms. Constance K. Chamberlain | 87,566 |
| Housing Opportunities Corporation | 147 Jefferson, Memphis, TN 38103 | Ms. Carol Gish | 221,567 |
| Fair Housing Center for Metropolitan Detroit | 1249 Washington Blvd., Detroit, MI 48226 | Mr. Clifford C. Schrupp | 166,810 |
| Leadership Council for Metropolitan Open Communities. | 401 South State Street, Chicago, IL 60605 | Mr. Kale Williams | 93,932 |
| Open Housing Center, Inc | 594 Broadway, New York, NY 10012 | Ms. Phyllis Spiro | 224,184 |
| Fair Housing Congress of Southern California | 6565 Sunset Blvd., Los Angeles, CA 90028 | Ms. Michelle White | 57,076 |
| Fair Housing Council of Delaware County, Inc | P.O. Box 161, Drexel Hill, Delaware County, PA 19026. | Ms. Naomi Marcus | 99,340 |
| Housing Opportunities Project for Excellence, Inc. | 19 West Flagler Street, Miami, FL 33130 | Mr. William Thompson | 77,376 |
| South Suburban Housing Center | 2057 Ridge Road, Homewood, IL 60430 | Mr. George Cole | 55,000 |

PRIVATE ENFORCEMENT GRANTEES (NON-TESTING)

| | | | |
|---|---|---|---|
| Lawyer's Committee for Civil Rights Under Law, DC | 1400 Eye Street, Washington, DC 20005 | Mr. Thomas J. Henderson | $200,000 |
| Operational Sentinel | 430 Sherman Avenue, Palo Alto, CA | Ms. Ann Marquart | 31,808 |
| Chicago Lawyer's Committee | 185 North Wabash Avenue, Chicago, IL 60601. | Ms. Roselyn C. Lieb | 91,316 |
| Lawyer's Committee for Civil Rights Under Law of the Boston Bar Association. | 284 Washington Street, Boston, MA 02108 | Ms. Barbara W. Rabin | 325,000 |
| New York Lawyers for the Public Interest | 30 West 21 Street, New York, NY 10010 | Ms. Ruth Lowenkron | 46,000 |
| Mental Health Law Project | 2021 L Street, NW., Washington, DC 20036 | Mr. Leonard S. Rubenstein | 90,000 |

FAIR HOUSING INITIATIVE—EDUCATION AND OUTREACH GRANTEES (REGIONAL, STATE AND LOCAL)

| | | | |
|---|---|---|---|
| Fair Housing Council of Oregon, Inc | 2600 SE Belmont Street, Portland, OR 97214 | Ms. Donna Butler | $75,000 |
| Office Fair Employment Practices | 158 Trinity Avenue, SW., Atlanta, GA 30303 | Ms. Carla Ford | 75,000 |
| Providence Housing Authority | 100 Broad Street, Providence, RI 20903 | Ms. Marcia Sullivan | 37,115 |
| Housing Help Inc | 91-101 Broadway, Greenlawn, NY 11740 | L. Von Kuhen | 34,930 |
| National Fair Housing Alliance | 1400 Eye Street, NW., Washington, DC 20005. | Ms. Shanna Smith | 75,000 |
| South Carolina Human Affairs Commission | P.O. Box 4490, 2611 Forest Drive, Columbia, SC 29240. | Mr. James Clyburn | 75,000 |
| Community Action Inc | 25 Locust Street, Haverhill, MA 01826 | Mr. Gerald Goldman | 49,741 |
| Open Housing Center | 594 Broadway, New York, NY 10012 | Ms. Sylvia Kramer | 75,000 |
| Fair Housing Council of Greater Washington | 1400 Eye Street, NW., Washington, DC 20005. | Ms. Susan Weiss | 75,000 |
| City of Dallas, Office of Community Development, Fair Housing Office. | 1500 Marilla Street, Dallas, TX 75201 | Ms. Holly Malloy | 75,000 |
| Tenants' Action Group of Philadelphia | 311 South Juniper Street, Philadelphia, PA 19107. | Ms. Eve Gladstein | 75,000 |
| Housing for all, The Metro Denver Fair Housing Center | 3800 York Street, Denver, CO 80205 | Ms. Kathie Cheever | 39,396 |
| Northern Bergen County CHRB | 345 Union Street, Hackensack, NJ 07601 | Ms. Lee Porter | 58,000 |
| Fair Housing Congress of Southern California | 6565 Sunset Blvd., Los Angeles, CA 90028 | Ms. Michelle White | 75,000 |
| Austin Tenants' Council, Inc | 1619 East First Street, Austin, TX 78702 | Ms. Katherine Stark | 43,500 |
| Long Island Housing Services, Inc | 550 Smithtown Bypass, Long Island, NY 11787. | Mr. David Berenbaum | 75,000 |
| Arkansas Delta Housing Development Corporation | 2080 South Washington, Forrest City, AR 72335-1410. | Mr. Clarence Wright | 75,000 |
| Maine Human Rights Commission | State House Station 51, Augusta, ME 04333 | Ms. Patricia Ryan | 75,000 |
| Leadership Council for Metropolitan Open Communities | 401 South State Street, Chicago, IL 60605 | Mr. Kale Williams | 60,000 |
| Alaska State Commission for Human Rights | 800 "A" Street, Anchorage, AK 99501 | Ms. Paula Haley | 75,000 |
| Cuyahoga Plan of Ohio, Inc | 1101 Euclid Avenue, Cleveland, OH 44115 | Ms. Susie Rivers | 75,000 |
| Kentucky Fair Housing Council | 835 West Jefferson Street, Louisville, KY 40202. | Mr. Galen Martin | 27,116 |

FAIR HOUSING INITIATIVES—EDUCATION AND OUTREACH GRANTEES (NATIONAL)

| | | | |
|---|---|---|---|
| National Fair Housing Alliance | 1400 Eye Street, NW., Washington, DC 20005. | Ms. Shanna Smith | $25,000 |
| National Federation for Neighborhood Diversity | 1612 "K" Street, NW., Washington, DC 20006. | Mr. John Taylor | 89,140 |
| Kentucky Fair Housing Council | 835 West Jefferson Street, Louisville, KY 40202. | Mr. Galen Martin | 20,000 |
| Howard University | 2900 Van Ness Street, NW., Washington, DC 20008. | Ms. Jean McRae | 99,573 |
| Massachusetts Rehabilitation Commission | 27-34 Wormwood Street, Boston, MA 02210 | Mr. John Chappell | 156,267 |
| International Association of Official Human Rights Agencies. | 444 North Capitol St., NW, Washington, DC 20001. | Ms. Anthea Boarman | 40,000 |
| NAACP Special Contribution Fund, Department of Housing. | 4805 Mount Hope Drive, Baltimore, MD 21215. | Ms. Beverly Cole | 40,000 |

Dated: June 28, 1992.

**Gordon H. Mansfield,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 92-15692 Filed 7-2-92; 8:45 am]

BILLING CODE 4210-28-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT-930-4111-09]**

### Blackleaf Oil and Gas Field Development, Montana

**AGENCY:** Bureau of Land Management, Interior

**ACTION:** Notice of Availability of Final Environmental Impact Statement

**SUMMARY:** In accordance with section 102(2) (c) of the National Environmental Policy Act of 1969, a Final Environmental Impact Statement (FEIS) for the Blackleaf Field Development Project has been prepared. It is the result of an interagency effort led by the Bureau of Land Management (BLM), with the Forest Service (FS) and Montana Department of Fish, Wildlife and Parks (MDFWP) as cooperating agencies.

Th EIS areas encompasses approximately 58,503 surface acres managed by the BLM, FS, MDFWP, and various private land owners. The area includes 40,327 acres of Federal mineral estate administered by the BLM. The EIS area is located in Teton County, approximately 25 miles northwest of Choteau, Montana.

The FEIS documents the issues and impacts, including cumulative effects, associated with reasonably foreseeable oil and gas activities in the Blackleaf Unit and surrounding area. It explores alternative ways of integrating oil and gas activities with management of the area's other valuable natural resources. It also assesses a wide range of mitigation measures which can be used to reduce impacts.

Under the authority of the Mineral Leasing Act of 1920 and subsequent amendments, the BLM is responsible for approval of oil and gas operations on federal minerals. This includes responsibility for approving the Drilling Plan, Hydrogen Sulfide Drilling Operations Plan, and if applicable, the Public Protection Plan for Applications for Permit to Drill (APD) on federal minerals where the surface is managed by the FS, MDFWP, or is privately owned.

**PUBLIC PARTICIPATION:** The Draft EIS (DEIS) was available for public review from April 20, 1990, to July 20, 1990. Approximately 700 copies of the DEIS was distributed. During the review period, 5 information meetings were held with 120 members of the public attending. Approximately 123 cards and letters were received. All comments were considered during preparation of the FEIS.

Copies of the FEIS are available for review at the Great Falls, East Glacier, and Choteau, Montana, public libraries. Copies are also available from the Lewistown District Office, Airport Road, Lewistown, Montana 59457, telephone (406) 538-7461; and the Great Falls Resources Area Office, 812 14th Street North, Great Falls, Montana 59401, telephone (406) 727-0503.

**DECISIONMAKING AND ADMINISTRATIVE REVIEW:** No decision is being made at this time regarding development of the Blackleaf Field. However, a decision will be issued following receipt of the first proposal for oil and gas activity within the EIS area. Proposals may be submitted at any time in the form of APDs, Sundry Notices, or by other appropriate means. Such proposals may be approved, denied, or approved with modification, based on the results of agency review.

The Blackleaf FEIS will be used as a basis for making future decisions. Additional analysis and documentation will be completed at the time development activities are proposed. Such analysis will evaluate the site-specific impacts associated with wellsites, roads, pipelines, and related facilities, and will assure full compliance with all applicable laws, regulations, and guidelines. Any additional environmental analysis and documentation will be tiered to the Blackleaf FEIS. Public notification and opportunities for administrative review of decisions will be provided.

**FOR FURTHER INFORMATION CONTACT:** Tad Day, BLM, Great Falls Resource Area, 812 14th Street North, Great Falls, Montana 59401, telephone (406) 727-0503.

**SUPPLEMENTARY INFORMATION:** The Blackleaf FEIS addresses a variety of issues associated with potential oil and gas activities in the Blackleaf area. These issues involve direct, indirect, and cumulative effects on wildlife (including grizzly bears, elk, mule deer, bighorn sheep, Rocky Mountain goats, and raptors); scenic values; the nearby Bob Marshall Wilderness; social and economic conditions; local landowner concerns; human health and safety; and tourism and recreation.

The FEIS analyzes four alternatives which place varying degrees of emphasis on surface resource protection and energy resource production. Under Alternative 1, the no action alternative, four existing wells in the area would remain active, although storage facilities would be removed and the wellsites would be partially rehabilitated. Gas would be piped to a central gas processing facility, and wells would be remotely monitored. No other development activity would be allowed and future APDs in the EIS area would be denied. Only 2 of the 25 federal leases in the EIS area would be developed under this alternative.

Under Alternative 2, which emphasizes energy resource production, the development scenario includes nine

step-out wells and six exploration wells. Production facilities, including storage tanks, would be located onsite, and gas would be piped to an existing facility outside of the EIS area. Periodic removal of condensate from onsite production facilities would be necessary. This alternative would require 15.6 miles of new road construction and 15.4 miles of new pipeline. Thirteen federal leases would be developed under this alternative.

Alternative 3, which emphasizes protection of surface resources while permitting additional oil and gas development, addresses the effects of allowing two step-out wells and two exploration wells to be drilled. Production facilities would be centralized at an offsite location, and wells would be remotely monitored. This alternative would require 2.1 miles of new road construction and 4.9 miles of new pipeline. Seven federal leases would be developed under this alternative.

Alterntive 4, the preferred alternative, combines elements of Alternatives 2 and 3. The development scenario for Alternative 4 includes seven step-out wells and six exploration wells. Production facilities would be centralized at an offsite location, and wells would be remotely monitored. This alternative would require 12.5 miles of new road construction and 15.1 miles of new pipeline. Twelve federal leases would be developed under this alternative.

Dated June 29, 1992.

**Richard Hopkins,**

*Area Manager, Great Falls Resource Area.*

[FR Doc. 92-15697 Filed 7-2-92; 8:45 am]

BILLING CODE 4310-DN-M

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**[NV-060-4370-10]**

## Battle Mountain District Advisory Council Meeting in Battle Mountain, NV

**SUMMARY:** Notice is hereby given in accordance with Public Law 94-579 and CFR part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Thursday, July 30, 1992. The meeting will convene at 9 a.m. at the Battle Mountain District Office.

**SUPPLEMENTARY INFORMATION:** The agenda will include:

1. Discussion on the Bureau's restructuring plan, 2015
2. Update on the Tonopah R.A. Resource Management Plan
3. Discussion and tour of Mill Creek Showcase Riparian Project

The meeting is open to the public. Interested persons may make statements beginning at 11:30 a.m. If you wish to make an oral statement, please contact James D. Currivan by July 27, 1992.

**FOR FURTHER INFORMATION CONTACT:** James D. Currivan, District Manager, P.O. Box 1420, Battle Mountain, Nevada, 89820 or phone (702) 635-4000.

Dated: June 23, 1992.

**Peter J. Keenan,**

*Acting District Manager, Battle Mountain District.*

[FR Doc. 92-15643 Filed 7-2-92; 8:45 am]

BILLING CODE 4310-HC-M

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**[MT-020-02-4320-02]**

## Montana; Notice of Meeting

**AGENCY:** Bureau of Land Management, Miles City District Office, Interior.

**ACTION:** Notice of Meeting.

**SUMMARY:** The Miles City District Advisory Council will meet August 10 and 11, 1992. New council members will meet at 1 p.m. Monday, August 10, for an orientation. The Council will meet at 8 a.m. on Tuesday, August 11. The meeting will be held in the District Office Conference Room on Garryowen Road. Specific agenda items to be discussed are the District budget and updates on the Brewer Ranch, Cherry Creek Dam, the weed control program, wild horse management, Pompeys Pillar, Fort Meade, guides and outfitters, effects of land exchanges and purchases on school taxation, and discussion of additional Council generated topics.

The meeting is open to the public. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

**FOR FURTHER INFORMATION CONTACT:** District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301 or phone (406) 232-4331.

**Arnold E. Dougan,**

*Acting Associate District Manager.*

[FR Doc. 92-15670 Filed 7-2-92; 8:45 am]

BILLING CODE 4310-DN-M

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**[NV-940-02-4212-22]**

## Filing of Plats of Survey; Nevada

June 24, 1992.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

**EFFECTIVE DATES:** Filing was effective at 10 a.m. on June 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-785-6543.

**SUPPLEMENTARY INFORMATION:** The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on June 15, 1992:

**Mount Diablo Meridian, Nevada**

T. 49 N., R. 61 E.—Supplemental Plat of Sections 7 and 16.
T. 15 N., R. 19 E.—Dependent Resurvey and Survey.

These surveys were accepted May 29, 1992, and were executed to meet certain administrative needs of the Bureau of Land Management and the Forest Service.

The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

**Alan J. Dunton,**

*Acting Deputy State Director, Operations.*

[FR Doc. 92-15642 Filed 7-2-92; 8:45 am]

BILLING CODE 4310-HC-M

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## INTERSTATE COMMERCE COMMISSION

## Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling

operations as authorized in 49 U.S.C. 10524(b).

Parent Corporation: Maytag Corporation, 403 W. 4th St. N., Newton, IA 50208.

Wholly-Owned Subsidiaries: (i) Dixie-Narco, Inc.—West Virginia Corp., (ii) Holland Distributors, Inc.—Delaware Corp., (iii) The Hoover Company—Delaware Corp.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 92-15699 Filed 7-2-92; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States of America Against Certain Property Owned by Salomon Brothers Inc

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of New York in *United States of America against Certain Property Owned by Salomon Brothers Inc,* Civil Action No. 92-3700.

The Complaint in this case alleges that in or about June and July, 1991, Salomon Brothers Inc and certain unnamed co-conspirators engaged in a combination and conspiracy to coordinate their trading activities in the two-year notes issued by the United States Treasury on May 31, 1991, in order to limit the supply of the notes in the secondary market (in which persons buy and sell the securities) and the financing market (in which owners of the notes lend them in exchange for cash), in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

Pursuant to section 6 of the Sherman Act, 15 U.S.C. 6, the proposed Final Judgment requires Salomon Brothers Inc to forfeit $27.5 million to the United States Department of Justice.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Richard L. Rosen, Acting Chief, Communications & Finance Section, Department of Justice, Antitrust Division, room 8104, 555 4th Street, NW., Washington, DC 20001 (202-514-5622).

Joseph H. Widmar,

*Director of Operations, Antitrust Division.*

*United States District Court*

*Southern District of New York*

United States of America, Plaintiff, against Certain Property Owned By Salomon Brothers Inc., Defendant, Salomon Brothers Inc., Real Party in Interest.

Civil Action No. 92 Civ. 3700.

Filed: May 20, 1992.

### Stipulation

It is stipulated by and between the undersigned, by their respective attorneys, that:

1. The United States and Salomon Brothers Inc consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either of them or upon the Court's own motion, as soon as is practicable after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any person or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Salomon Brothers Inc and by filing that notice with the Court.

2. Salomon Brothers Inc has agreed to certain forfeitures under 15 U.S.C. 6 to plaintiff pursuant to a certain Civil Settlement Agreement Between Salomon Inc, Salomon Brothers Inc and the United States Department of Justice dated May 20, 1992.

3. Salomon Brothers Inc further agrees to waive forever any present or future right to bring any suit against the United States and any of its agencies, officers, employees, and agents for any cause of action related to the forfeiture action based upon the underlying facts of this claim.

4. Plaintiff and Salomon Brothers Inc agree that, upon entry of the Final Judgment, the forfeiture action under 15 U.S.C. 6 shall be dismissed with prejudice.

5. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever, and the making of this Stipulation shall be without prejudice to any person in this or any other proceeding.

Dated: May 20, 1992.

For the United States:

Hays Gorey, Jr.

*Attorney, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, 555 Fourth Street, NW., Washington, DC 20001, (202) 514-9602.*

For Salomon Brothers Inc:

Frederick A.O. Schwarz, Jr.,

*Cravath, Swaine & Moore, 825 Eighth Avenue, New York, New York 10019, (212) 474-1444.*

So Ordered: 5/20/92

*United States District Court*

*Southern District of New York*

United States of America, Plaintiff, against Certain Property Owned By Salomon Brothers Inc. Defendant, Salomon Brothers Inc, Real Party in Interest.

Filed: May 20, 1992.

Civil Action No. 92 CIV. 3700.

### Final Judgment

Plaintiff, United States of America, filed its Complaint on May 20, 1992, Plaintiff and Salomon Brothers Inc, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence or admission by any person with respect to any issue of fact or law. Before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon the consent of the United States and Salomon Brothers Inc, it is hereby,

*Ordered, Adjudged, and Decreed:*

1. This Court has jurisdiction over the defendent property by virtue of 28 U.S.C. 1345 and 1355. Venue exists in this Court pursuant to 28 U.S.C. 1395(b). The complaint states a claim upon which relief may be granted under sections 1 and 6 of the Sherman Act, 15 U.S.C. 1, 6.

2. The defendent property is hereby forfeited to the United States. Salomon Brothers Inc shall pay $27,500,000.00 plus the Additional Amount defined in the Civil Settlement Agreement between Salomon Inc, Salomon Brothers Inc and the United States Department of Justice dated May 20, 1992, within three (3) business days. Such amount is that portion of the $55,000,000.00 payment forfeited to the Department of Justice Asset Forfeiture Fund which represents the amount of the forfeiture pursuant to 15 U.S.C. 6.

3. This civil forfeiture action is hereby dismissed with prejudice.

4. Entry of this Final Judgment is in the public interest.

DATED: ____

United States District Judge

*United States District Court*

*Southern District of New York*

United States of America, Plaintiff,-against-Certain Property Owned by Salomon Brothers Inc, Defendant, Salomon Brothers Inc, Real Party in Interest.

92 Civ. 3700.

Filed June 18, 1992.

**Competitive Impact Statement**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgement submitted for entry in this civil antitrust forfeiture proceeding.

**I.**

*Nature and Purpose of the Proceeding*

On May 20, 1992, the United States filed a civil antitrust forfeiture complaint alleging that Salomon Brothers Inc ("Salomon") and others had conspired to restrain competition in markets for United States Treasury securities, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The complaint seeks forfeiture of property owned by Salomon pursuant to the alleged conspiracy under section 6 of the Sherman Act, 15 U.S.C. 6.

The complaint alleges that, beginning in or about June 1991 and continuing at least into July 1991, Salomon and its co-conspirators violated section 1 of the Sherman Act by agreeing to coordinate their actions in trading their positions in the two-year Treasury notes issued by the Treasury of the United States on May 31, 1991 ("May two-year notes"). The alleged conspiracy affected the price of the notes in the secondary market (the post-auction market for purchase and sale of the securities), and the interest rate paid by persons, such as Salomon, that lent the notes in exchange for cash.

The United States and Salomon have stipulated to the entry of a proposed Final Judgement, which will grant the relief sought in the complaint and terminate action.

**II.**

**Description of the Practices Involved in the Alleged Violation**

The Treasury finances the debt of the United States by issuing Treasury securities in the form of bonds, notes and bills. Purchasers of Treasury bonds (with maturities in excess of ten years) and notes (with maturities of two to ten years) receive the right to semi-annual payments of interest at a specific rate (the "coupon rate") and repayment of the principal at maturity. Purchasers of Treasury bills (with maturities of less than two years) buy them at a discount off the principal, and receive the principal at maturity.

Treasury bonds, notes and bills ("Treasury securities") are sold by the Treasury through periodic auctions conducted mainly by and through the Federal Reserve System, especially the Federal Reserve bank of New York ("New York Fed"). At each such auction, the Treasury awards securities to the bidders willing to accept the lowest yield levels (effectively, interest rates) on their cash.

Several days before an auction, the Treasury announces the size of the issue to be auctioned. Trading in the when-issued market for that issue begins immediately thereafter, and continues until the day, generally one week after the action, when the Treasury settles with successful bidders, transmitting to them the new issue in exchange for payment. After settlement, trading in the issued Treasury security continues in the secondary market until the maturity date, when the issue is redeemed.

In every when-issued trade, there is a seller and a buyer. The seller agrees to deliver a specified quantity of Treasury securities of a particular issue to the buyer on settlement day (in this case May 31, 1991). The seller is said to be "short" the issue, and the buyer "long." On settlement day, the buyer must pay for its purchase and the seller must deliver the securities it is short. The seller may obtain the securities it is required to deliver either by purchasing them (at the Treasury auction or in a when-issued trade) or by borrowing them in the financing market, generally through a "repo" transaction, and delivering the borrowed securities to the buyer.[1]

Buyers of Treasury securities frequently engage in repo transactions to finance their purchases, in effect, borrowing cash and using the Treasury securities as collateral. When there is no "specific" demand for the issue a buyer owns, the buyer will borrow the cash it needs to finance its position at the "general collateral rate." When there is a specific demand for an issue because short sellers need to borrow the issue in order to deliver it to persons who have bought the security, owners can lend the issue in exchange for cash at a "special rate." The issue generally is said to be "on special" when the interest rate that owners (such as Salomon, in the case of the May two-year notes) are required to pay to borrow cash against the issue is significantly lower than the general collateral rate.[2] The lower the rate at which an owner finances its position in an issue, the greater its daily "positive carry." [3]

Each Treasury security of a particular issue is unique and bears an identification number (known as a "CUSIP number") which distinguishes it from all other securities. In this case, all May 1993 two-year notes (all of which were issued on the same date, May 31, 1991) bore the same CUSIP number. Persons who sell short an issue in the when-issued market must deliver that issue to the purchaser at settlement; they cannot substitute another Treasury issue. As a result, when short sellers do not purchase sufficient securities at the Treasury auction to cover their short sales, there can be an unusually heavy demand for a particular issue at and after the time of settlement, causing the price of the issue, relative to Treasury securities of comparable maturities, to increase in the secondary market. In this case, there was a substantial short position in the issue that short sellers did not cover at the auction.

Likewise, if the supply of an issue is artificially constricted by agreement among the holders of the issue, or among firms holding long positions, the cost of borrowing the security to make delivery increases.[4] When the cost of

[1] Repurchase agreements ("repos") are used to finance positions in Treasury securities. Under these standard-form agreements, the holder, or owner, of a security agrees to sell the security to the buyer, or borrower, and to buy it back the next day or within a short time. In a repo transaction, possession of Treasury securities is transferred by one party to another with a simultaneous agreement that the second party will later return the securities to the first party. The following are types of repo transactions: (a) a repurchase agreement ("repo"); (b) a reverse repurchase agreement ("reverse repo"); and (c) a borrow vs. pledge.

[2] A Treasury security may trade "on special" in the collateral markets for various reasons. Special rates could be the result of ordinary market forces, but could also be induced by persons acting together to distort normal market forces. A technique well known to Salomon at the time was for a trader to withhold a portion of its position in the security from the "specials" market in order to constrict supply and to drive up the price of the security in that market. When this is done, the remainder of the position is financed at "general" collateral rates. Potentially, if the holders of an issue withhold enough of it from the "special" market, some percentage of the issue might be financed at interest rates approaching zero.

[3] "Positive carry" is the difference between the coupon on the security and cost of financing the security. For example, an owner of a 7% Treasury bond who borrows money at 6% to pay for it is enjoying positive carry of 1%, or 100 basis points. This phenomenon is due to the existence of the repo market, which enables buyers to string together a series of low-interest overnight loans, rather than to take out a loan for the entire anticipated term of the investment at a higher interest rate.

[4] Due to the manner in which this market works, the increased cost of borrowing the security occurs when short sellers earn *lower* interest rates on money they lend to holders in order to borrow the

Continued

purchasing an issue in the secondary market or the cost of borrowing it through a financing transaction is significantly different than the cost of buying or borrowing securities of comparable maturities, a "squeeze" is said to occur.

Absent the conspiracy alleged in the complaint, Salomon would have had to compete with its co-conspirators in the financing market to finance its long position in the May two-year notes. Likewise, absent the conspiracy alleged, Salomon would have been required to compete against them in the when-issued and secondary markets to sell the issue. Instead, as a result of the conspiracy, competition between and among Salomon and its co-conspirators was reduced or eliminated.

As charged in the complaint, in or about June 1991, Salomon and its co-conspirators agreed on a scheme to coordinate their transactions in the May 1991 notes. This scheme had the effect of limiting the supply of May two-year notes available in the secondary and financing markets, thereby ensuring that persons who had sold May two-year notes short in the when-issued market could obtain such notes only by purchasing them at artificially high and non-competitive prices in the secondary market or by borrowing them in exchange for cash at artificially low and non-competitive special rates in the financing market. This course of conduct continued for a period of time during which Salomon and its co-conspirators earned supracompetitive rates on transactions in the notes that are the subject of this action.

Through purchases at the auction and in the when-issued market, Salomon and its co-conspirators obtained substantial positions in the May two-year notes. Indeed, during June and part of July, 1991, Salomon and its co-conspirators controlled essentially 100% of the lendable securities of the May two-year notes potentially available to satisfy the security-specific delivery obligations of the short sellers.

As part of the alleged scheme, Salomon and its co-conspirators agreed to coordinate their financing efforts by limiting the supply of May two-year notes made available for financing. The effect of this agreement, as noted earlier, was substantially to reduce or eliminate competition among the co-conspirators to lend May two-year notes in financing transactions.

As part of the alleged scheme, Salomon and its co-conspirators communicated frequently on the subject of their activities or planned activities with respect to May two-year notes. The co-conspirators assured each other that they: (a) Would continue to maintain substantial long positions in the May two-year notes and (b) would limit the supply of May two-year notes they would make available to the secondary and financing markets from the positions they controlled.

In addition to causing substantial monetary injury to short sellers, it is likely that the conspiracy harmed the United States. As noted in the Joint Report on the Government Securities Market issued by the Treasury, the SEC and the Federal Reserve Board, an acute, protracted squeeze resulting from illegal coordinated conduct, such as the one alleged here, "can cause lasting damage to the marketplace, especially if market participants attribute the shortage to market manipulation. Dealers may be more reluctant to establish short positions in the future, which could reduce liquidity and make it marginally more difficult for the Treasury to distribute its securities without disruption." [8]

## III.

*Explanation of the Proposed Final Judgment*

The United States and Salomon have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence or admission by any party with respect to any issue of fact or law. Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Paragraph 4 of the proposed Final Judgment sets forth such a finding. The Proposed Final Judgment also provides for dismissal of the action with prejudice.

The Department believes that the proposed Final Judgment is in the public interest. The proposed Final Judgment provides an adequate remedy for the alleged violation. It provides for asset forfeiture in an amount tied to the profits from the alleged conspiracy and will provide appropriate deterrence for future illegal conduct.

Pursuant to the proposed Final Judgment, Salomon will pay $27.5 million (plus interest accruing at a rate of 3.875% from May 20, 1992 to the date of payment) to the United States within three business days of the entry of the Final Judgment. This payment reflects a cash settlement in lieu of forfeiture of the actual securities held pursuant to the alleged conspiracy.

On the same date that this action was filed, the Department of Justice and the Securities and Exchange Commission ("SEC") reached a global settlement with Salomon to resolves the firm's liability under the securities laws, the False Claims Act, the antitrust laws (with one exception), and the common law for certain specified conduct. The terms of that settlement provide that Salomon pay $290 million—$190 million in fines and forfeitures (including the forfeiture in this action) and establish a $100 million fund to be used to compensate victims of its misconduct. In addition, Salomon and the SEC agreed to a Final Judgment providing equitable relief under the securities laws. The settlement with the Department is attached as Exhibit A.

The Department believes that the proposed Final Judgment serves the cause of deterrence. The asset forfeiture proposed is itself substantial in amount and should serve as a warning of the possible consequences to others who might be inclined to emulate the behavior. Moreover, potential antitrust violators will be deterred from engaging in the kind of anticompetitive conduct charged here because the complaint describes with particularity the unlawful activity subject to the enforcement action.

## IV.

*Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Pursuant to the Settlement Agreement between Salomon and the United States, Salomon will pay $100 million into a fund to be available for damages claims from private parties that have been injured by its conduct. Entry of the proposed Final Judgment itself will neither impair nor assist the

security overnight or for a short term. The cost of borrowing the securities increases when short sellers—who must borrow the security to avoid a default (failure to deliver or "fail") on their contractual obligations—receive, say, only 4.25% on the money they lend when, if the issue were not "on special," they would have been able to borrow the securities in the repo market and earn a higher interest rate, say, 5.75%.

[8] *See* Department of the Treasury, Securities and Exchange Commission, Board of Governors of the Federal Reserve System: *Joint Report on the Government Securities Market* at 10 (January 1992).

bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against Salomon in this matter.

V.

*Procedures Available for Modification of the Proposed Final Judgment*

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Constance K. Robinson, Chief, Communications and Finance Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., room 8104, Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI.

*Alternatives to the Proposed Final Judgment*

The proposed Final Judgment provides the relief that the United States sought in its complaint and, thus, there is no need for litigation on the basis of this complaint.

The Department has authority to seek equitable relief under section 4 of the Sherman Act, 15 U.S.C. 4. The Department, however, concluded that the public interest would not be served by injunctive relief in this particular case. The Department considered injunctive relief which would have prohibited Salomon from agreeing with, requesting, or directing another person to withhold securities from either the financing or secondary markets or disclosing to any other person its plan, or that of anyone else, to do so, and from entering into certain relationships with other holders of an issue in circumstances in which the quantity of the issue available for repo transactions could be limited by agreement between Salomon and other holders.

Given the fact that Salomon and other similarly situated firms serve not only as primary dealers, but also as market-makers, traders and brokers, it would have been extremely difficult to specify prohibited conduct without interposing a long list of caveats, exceptions and provisos to avoid undue inhibition of legitimate transactions. Such an injunction could very well have taken on an excessively regulatory character, placing the Court and the Department in the role of regulators of the Government Securities Market. Because participants in the Government Securities Market are subject to extensive regulation by other expert agencies, the Department determined that interposing an additional form of regulation in the context of an antitrust injunction could have had unintended consequences. Moreover, after considering the circumstances—including Salomon's extensive cooperation in the investigation and the extraordinary steps it has taken to prevent recurrence of the violation—the Department concluded that injunctive relief would not have served any important purpose. Salomon undertook significant changes in its business operations, including dismissing government traders and personnel and replacing the Chairman and Vice Chairman.

In making this determination, the Department consulted with and considered the views of experts in the Government securities field, including the United States Department of the Treasury, the United States Securities and Exchange Commission, the Board of Governors of the Federal Reserve System and the New York Fed. These agencies exercise to varying degrees authority over the critical function of marketing debt obligations of the United States government.

The Department believes that the $27.5 million, plus interest, in Section 6 relief it obtained in this case is a satisfactory resolution. If approved, this amount would represent the largest forfeiture or other penalty ever paid to the government by a defendant in an antitrust case. In addition, the Department decided that the substantial asset forfeiture provided for in the Final Judgment would provide a substantial deterrent to future anticompetitive conduct in the Treasury securities market.

VII.

*Determinative Materials and Documents*

Although it was not determinative in the Department's deliberations in the sense specified in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), the Department is attaching as Exhibit B a letter to Attorney General William P. Barr from Secretary of the Treasury Nicholas F. Brady, Federal Reserve Board Chairman Alan Greenspan, Securities and Exchange Commission Chairman Richard C. Breeden and New York Fed President E. Gerald Corrigan.

Respectfully submitted,

Geoffrey Swaebe, Jr., Attorney,
*U.S. Department of Justice, Antitrust Division, room 3630, 26 Federal Plaza, New York, NY 10278-0140, (212) 264-0652.*

*Certificate of Service*

I, Geoffrey Swaebe, Jr., an attorney in the Department of Justice Antitrust Division, certify that on this date I have caused to be served by hand the attached Competitive Impact Statement upon the following counsel for Salomon Brothers Inc. listed below, in the matter of *United States* v. *Certain Property Owned by Salomon Brothers Inc.* (92 Civ. 3700).

Frederick A.O. Schwartz, Esq.,
*Cravath, Swaine & Moore, Worldwide Plaza, 825 Eighth Avenue, New York, NY 10019-7415.*

Geoffrey Swaebe, Jr.

June 18, 1992.

**Exhibit A—Civil Settlement Agreement Between Salomon Inc., Salomon Brothers Inc., and the United States Department of Justice**

This Settlement Agreement ("Agreement"), dated May 20, 1992, is entered into between the United States Department of Justice (the "Department of Justice"), Salomon Inc and Salomon Brothers Inc ("SBA"). The terms of this Agreement are as follows:

1. Contemporaneously with the effective date of this Agreement, the Department of Justice and the United States Securities and Exchange Commission (the "SEC") are filing against one or both of Salomon Inc and SBI civil complaints seeking penalties, fines, forfeitures, damages and injunctive relief.

2. Salomon Inc or SBI shall, at the time specified in paragraph 10, pay the sum of $290 million as follows:

$190 million shall be paid to the United States of America. Of this amount, $55 million shall be forfeited to the Department of Justice Asset Forfeiture Fund pursuant to 15 U.S.C. § 6 and 18 U.S.C. § 981(a)(1)(c) and $135 million shall be paid to the United States in respect of claims of the Department of Justice under 31 U.S.C. § 3729 and under common law and claims of the SEC set forth in the complaint filed by it referred to above. Payment of such $135 million shall be made as directed by the Department of Justice and the SEC.

$100 million shall be paid into an escrow account established by court order pursuant to *Securities and Exchange Commission* v. *Salomon Inc and Salomon Brothers Inc*, upon

terms designated by and with an Administrator designated by the SEC, and approved by the Court. This escrow amount shall be administered and used as set forth in Final Judgment of Permanent Injunction and Other Relief as To Salomon Inc and Salomon Brothers Inc in *Securities and Exchange Commission* v. *Salomon Inc and Salomon Brothers Inc.*

Any portion of such $190 million not imposed by the Court in *United States of America* v. *Salomon Brothers Inc* and *Securities and Exchange Commission* v. *Salomon Inc and Salomon Brothers Inc* shall be paid to the United States pursuant to the foregoing terms of this Agreement. It is further understood that under no circumstances shall Salomon be entitled to any refund of any monies paid pursuant to the terms of this Agreement; provided that the foregoing shall not preclude reimbursement of Salomon from the escrow fund, in accordance with the procedures governing such fund, in respect of third-party claims paid directly by Salomon.

3. Except as set forth in paragraph 4, (i) the payments described in paragraph 2 above shall be in full and complete settlement of all civil claims, charges, demands, causes of action, obligations, fines, forfeitures, damages, and liabilities against Salomon based upon or arising out of any matters set forth in Annex A and (ii) upon the initial payment pursuant to paragraph 10 of amounts set forth in paragraph 2, the Department of Justice, on its own behalf and on behalf of the Department of the Treasury of the United States, fully releases Salomon from all such civil claims, charges, demands, causes of action, obligations, fines, forfeitures, damages, and liabilities, including, without limitation, such of the foregoing as may rise under the antitrust laws, the False Claims Act, 31 U.S.C. § 3729, *et seq.*, or common law.

4. (a) Salomon understands that there is an on-going, industry-wide Antitrust Division investigation of whether there have been pre-auction conversations and related conduct among primary dealers and others ("Pre-Auction Conduct") that violated the antitrust laws of the United States. The parties agree that the conduct described in the Antitrust Complaint and, to the extent not so described, the communications referred to in paragraph A(1)(b) of Annex A (collectively, the "Covered Conduct") is included within the scope of this Agreement and the releases herein of claims under the federal antitrust laws for damages, fines, penalties, forfeitures or other remedies. Except to the extent that claims contemplated by paragraph 4(b) are possible, the Department of Justice may not make additional claims for damages, fines, penalties, forfeitures or other remedies that arise from the Covered Conduct; said claims have been settled by this Agreement. Nothing herein is, however, intended to prevent reference by the Department of Justice to the Covered Conduct in a subsequent proceeding, if any, relating to Pre-Auction Conduct, insofar as the Covered Conduct may be relevant to such a proceeding.

(b) The parties further agree that specifically excluded from the terms of this Agreement and the releases herein are all disputes and claims, if any, arising under the Internal Revenue Code, Title 26 U.S.C.

(c) The parties agree that the release pursuant to paragraph 3 of "REFCO Claims", as defined below, shall become effective only at such time, if any, as there shall have been obtained any consent or authorization from Resolution Funding Corporation necessary to effect such release, and the parties hereto (other than Salomon Inc and SBI) will use their good offices to obtain any such required consent or authorization. For purposes hereof, "REFCO Claims" shall mean claims, if any, of Resolution Funding Corporation for damages, fines penalties, forfeitures or other remedies arising under federal statutes or common law which may be asserted by Resolution Funding Corporation, or on behalf of Resolution Funding Corporation by the Department of Justice, and which are based upon or arise out of matters specified in Annex A relating to auctions of bonds issued by Resolution Funding Corporation. REFCO Claims shall not in any event include claims of the Department of the Treasury relating to such auctions, all of which are included in the release set forth in paragraph 3 hereof.

5. It is further understood that this Agreement is being entered into only with the Department of Justice and, except as specifically set forth in paragraph 3, the Department of Justice makes no agreements herein on behalf of any other federal, state, or local governmental authorities, although the Antitrust Division of the Department of Justice and the Office of the United States Attorney for the Southern District of New York agree, however, to bring the terms of this Agreement and the cooperation of Salomon to the attention of other federal, state or local governmental or other authorities, if requested by Salomon.

6. Simultaneously with the filing of the complaints referred to in paragraph 1 above, the Department of Justice and Salomon Inc and SBI will stipulate to the entry of an order of dismissal (the "Annex B Order") in the form set forth in Annex, B and the SEC and Salomon Inc and SBI will enter into a stipulated order (the "Annex C Order") in the form set forth in Annex C. By entering into this Agreement and the Annex B Order and the Annex C Order (the "Orders"), Salomon does not admit or deny any of the factual allegations pertaining to the matters described in Annex A, whether or not those allegations are described in any complaints filed by the Department of Justice or the SEC, nor does Salomon admit or deny any legal liability arising therefrom. Nothing in this Agreement or the Orders will constitute a finding of fact or conclusion of law or otherwise provide any basis for establishing such liability.

7. SBI undertakes and agrees for a period of 36 months from the date of this Agreement, subject to the attorney-client and attorney work product privileges, to continue to cooperate with the Department of Justice and to make available to the Department of Justice truthful and accurate information with respect to its activities, the activities of its present and former officers, agents and employees and the activities of others about which the Department of Justice may inquire in connection with the Department of Justice's current inquiries and investigations and such inquiries or investigations as arise therefrom or relate thereto. This cooperation will include, but not be limited to, production of documents as are reasonably requested by the Department of Justice, the use of SBI's best efforts to make available its employees to the Department of Justice for interviews and non-expert testimony requested by the Department of Justice, the use of its best efforts to encourage and facilitate such interviews and non-expert testimony of employees and SBI's preparation of analyses and reports reasonably requested by the Department of Justice relating to SBI's operations or information (including transactional data) in its possession. In entering into and performing these undertakings, SBI reserves all its rights and privileges concerning third parties in connection with discovery, evidentiary proceedings or related matters.

8. Nothing in this Agreement or the Orders will constitute a pretrial diversion or a similar program.

9. The term "Salomon" as used in this Agreement shall include Salomon Inc, SBI and any and all subsidiaries that are directly or indirectly more than 50 percent owned by, and are directly or indirectly controlled by, SBI or Salomon Inc on the date hereof.

10. This Agreement shall be effective upon the filing of the civil complaints described in paragraph 1 above. Salomon Inc and SBI will endeavor with the SEC to have the Annex C Order entered by the Court within two business days after the date of such filing. SBI or Salomon Inc will make the payment described in paragraph 2 above within three business days of the Court's entry of the Annex C Order; provided, however, that payment of that portion of the $55 million payment to be forfeited to the Department of Justice Asset Forfeiture Fund which represents the amount of the forfeiture pursuant to 15 U.S.C. § 6 (the "Deferred Payment") shall be deferred and made by Salomon Inc or SBI at the time specified below. The Department of Justice and Salomon recognize that the Court may enter the Annex B Order only after complying with the procedures set forth in 15 U.S.C. § 16(b) through (g). The Department of Justice and Salomon will each use best efforts to comply with such procedures so that the Annex B Order is entered by the Court at the earliest practicable date. Salomon Inc or SBI shall make payment of the Deferred Payment plus the "Additional Amount," as defined below, within three business days of the Court's entry of the Annex B Order or such other order as represents a final disposition of the antitrust action. The "Additional Amount" shall mean an amount representing interest on the Deferred Payment, computed on the basis of a 365 day year, at a rate per annum of 3.875%, from and including the date of the initial payment under paragraph 2 to but excluding the date on which the Deferred Payment is made. To the extent the Court does not impose any portion of the Deferred Payment or the Additional Amount, such portion shall nonetheless be paid at such time to the United States pursuant to paragraph E.

11. Salomon Inc and SBI hereby waive any rights they might have as a result of this Agreement or the settlement arrangements contemplated hereby under the United States Supreme Court's decision in *United States* v. *Halper*, 490 U.S. 435, 109 S.Ct. 1892 (1989), or in respect of the subject matter of that case or under any other existing or future decision relating to that subject matter.

12. This Agreement, and all the terms and provisions hereof, will be binding on the parties hereto and their respective successors and assigns, and will inure only to the benefit of the parties hereto, and other entities specifically released pursuant to paragraph 3, and their respective successors and assigns, and no other person shall be entitled to any benefits hereunder.

13. No additional understandings, promises, agreements and/or conditions have been entered into by the parties hereto with respect to the matters set forth in this Agreement other than those set forth herein and none will be entered into unless in writing and signed by all parties.

14. This Agreement may be executed in multiple counterparts, each of which shall constitute an original but all of which when taken together shall constitute but one agreement.

15. This Agreement shall be deemed to have been fully executed and delivered when both the Department of Justice, on the one hand, and Salomon Inc and SBI, on the other hand, have received counterparts hereof executed on behalf of the other party or parties, as the case may be, by each of the signatories for such other party or parties set forth on the signature pages hereof.

Agreed to:
UNITED STATES DEPARTMENT OF JUSTICE
Date: May 20, 1992
Otto G. Obermaier
*United States Attorney*
*Southern District of New York*
Date: May 20, 1992
Stuart M. Gerson
*Assistant Attorney General*
*Civil Division*
Date: May 20, 1992
Charles A. James
*Acting Assistant Attorney General*
*Antitrust Division*
SALOMON INC
by
Date: May 20, 1992
Robert E. Denham by RLO
*General Counsel*
SALOMON BROTHERS INC
by
Date: May 20, 1992
Robert E. Denham by FAOS
*Managing Director & Secretary*

This Annex A is the "Annex A" referred to in paragraphs 3, 4 and 6 of the Civil Settlement Agreement dated May 20, 1992 (the "Agreement") among the United States Department of Justice, Salomon Inc and Salomon Brothers Inc. It is understood that (i) this Annex simply sets forth certain matters to which the settlement and releases set forth in paragraph 3 of the Agreement relate and shall not itself operate as a release or settlement separate from that granted by paragraph 3 and (ii) neither paragraph 3 nor the description of matters set forth in this Annex shall effect any release or settlement to the extent such lease or settlement is excluded from the Agreement pursuant to paragraph 4 thereof.

*A. Treasury Auction Related Matters*

1. (a) Salomon Brothers Inc's ("SBI's") conduct or communications from January 1, 1989, through August 9, 1991, related to (i) bidding for itself and others in all auctions for United States Treasury bills, notes and bonds (and Resolution Funding Corporation ("REFCORP") bonds), from January 1, 1989 through August 9, 1991, (ii) trading and financing on its own behalf or on behalf of others of all such United States Treasury and REFCORP securities and (iii) post-auction communications concerning the bidding, trading and financing of all such Treasury and REFCORP securities. (b) SBI's communications with others prior to the August 10, 1989, auction of the United States Treasury cash management bill maturing on April 17, 1990, and prior to the May 22, 1991 auction of United States Treasury 2-year notes, to the extent such communications relate to those two Treasury securities.

2. Salomon Inc's ("Salomon's") (i) registration statements filed pursuant to the Securities Act of 1933 and the offer, distribution and sale of Salomon securities offered pursuant thereto by Salomon and SBI, and (ii) periodic reports filed pursuant to the Securities Exchange Act of 1934, in each case from January 1, 1989 through August 14, 1991 (hereinafter collectively referred to as the "SEC Filings"). Salomon's public statements, other than the SEC Filings, from January 1, 1989, through August 14, 1991, including the Salomon press releases dated August 9, 1991, and August 14, 1991.

3. SBI's and Salomon's supervision of, and compliance procedures governing, their employees' activities relating to SBI's bidding activities on SBI's behalf or on behalf of others at auctions for United States Treasury bills, notes and bonds (and REFCORP bonds), and SBI's trading and financing activities in all such United States Treasury and REFCORP securities from January 1, 1989, through August 9, 1991.

4. SBI's and Salomon's books and records reflecting the activities set forth in paragraph 1.

*B. Tax Trades*

5. SBI's conduct and activities, if any, relating to prearranged tax trades, if any, in United States Treasury securities from the 1980 through 1991 tax years; Salomon's and SBI's payments of taxes to the United States in respect of those tax years; and Salomon's and SBI's

books and records reflecting any such conduct, activities or payments.

*C. Corporate Medium Term Notes*

6. SBI's activities, prior to the date of this Agreement, relating to the initial distribution of corporate medium term notes, and SBI's books and records reflecting those activities.

**Annex B**

*United States District Court Southern District of New York*

United States of America, Plaintiff, — against—Certain Property Owned by Salomon Brothers Inc., Defendant, Salomon Brothers Inc., Real Party in Interest. Civil Action No. 92 CIV. 3700.

**Final Judgment**

Plaintiff, United States of America, filed its Complaint on May 20, 1992. Plaintiff and Salomon Brothers Inc, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence or admission by any person with respect to any issue of fact or law. Before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon the consent of the United States and Salomon Brothers Inc, it is hereby,

*Ordered, Adjudged, and Decreed:*

1. This Court has jurisdiction over the defendent property by virtue of 28 U.S.C. 1345 and 1355. Venue exists in this Court pursuant to 28 U.S.C. 1395(b). The complaint states a claim upon which relief may be granted under sections 1 and 6 of the Sherman Act, 15 U.S.C. 1, 6.

2. The defendent property is hereby forfeited to the United States. Salomon Brothers Inc shall pay $27,500,000.00 plus the Additional Amount defined in the Civil Settlement Agreement between Salomon Inc, Salomon Brothers Inc and the United States Department of Justice dated May 20, 1992, within three (3) business days. Such amount is that portion of the $55,000,000.00 payment forfeited to the Department of Justice Asset Forfeiture Fund which represents the amount of the forfeiture pursuant to 15 U.S.C. 6.

3. This civil forfeiture action is hereby dismissed with prejudice.

4. Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

**Annex C**

*United States District Court, Southern District of New York*

Securities and Exchange Commission, Plaintiff, v. Salomon Inc. and Salomon Brothers Inc. Defendants. 92 Civ. No. 3691 (RPP).

**Final Judgment of Permanent Injunction and Other Relief as to Salomon Inc. and Salomon Brothers Inc**

Plaintiff Securities and Exchange Commission ("Commission") having filed a complaint for permanent injunction and other relief ("Complaint"), and Defendants Salomon Inc, Salomon Brothers Inc, and their successors and assigns, if any (collectively referred to as "Salomon"), in the attached Consent and Undertakings of Salomon Inc and Salomon Brothers Inc ("Consent"), the terms of which are expressly incorporated herein, having entered a general appearance, having admitted the jurisdiction of the Court over each of them and over the subject matter of this action, having waived the filing of an answer to the Complaint, having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and, without admitting or denying any of the allegations of the Complaint, and prior to trial, presentation of evidence, argument or adjudication of any issue of law or fact, having consented to the entry of this Final Judgment of Permanent Injunction and Other Relief as to Salomon Inc and Salomon Brothers Inc ("Final Judgment"), and it further appearing that this Court has jurisdiction over the parties and the subject matter hereof, and the Court being fully advised in the premises:

I.

*It is Hereby Ordered, Adjudged and Decreed* that Salomon, its officers, agents, servants, employees and attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this FINAL JUDGMENT by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from directly or indirectly violating, or aiding and abetting a violation of section 17(a) of the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77q(a)) by, in the offer or sale of any securities, using any means or instruments of transportation or communication in interstate commerce, or using the mails, directly or indirectly;

(a) To employ any device, scheme, or artifice to defraud;

(b) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

*It is Further Ordered, Adjudged and Decreed* that SALOMON, its officers, agents, servants, employees and attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this FINAL JUDGMENT by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, violating or aiding and abetting a violation of section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78j(b)) or Rule 10b–5 promulgated thereunder (17 CFR 240.10b–5) by, directly or indirectly, using any means or instrumentality of interstate commerce, or of the mails, or of any facility of a national securities exchange:

(a) To employ any device, scheme, or artifice to defraud;

(b ) To make any untrue statement of a material fact or to omit to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,
in connection with the purchase or sale of any security.

III.

*It is Further Ordered, Adjudged and Decreed* that Salomon Brothers Inc, its officers, agents, servants, employees and attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this FINAL JUDGMENT by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from directly or indirectly violating, or aiding and abetting a violation of section 15(c)(1) of the Exchange Act (15 U.S.C. 78o(c)(1)) or Rule 15cl–2 promulgated thereunder (17 CFR § 240.15cl–2) by making use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any

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security (other than commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which SALOMON BROTHERS INC is a member, by means of any manipulative, deceptive, or other fraudulent device or contrivance, including any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, or any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements, made, in the light of the circumstances under which they are made, not misleading, which statement or omission is made with knowledge or reasonable grounds to believe that it is untrue or misleading.

IV.

*It is Further Ordered, Adjudged and Decreed* that Salomon Brothers Inc, its officers, agents, servants, employees and attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this FINAL JUDGMENT by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, violating or aiding and abetting a violation of section 17(a)(1) of the Exchange Act (15 U.S.C. 78q(a)(1)) or Rules 17a–3 and 17a–4 promulgated thereunder (17 CFR 240.17a–3 and 240.17a–4) by failing or causing a failure to make and keep the records required by such section and the rules thereunder for the prescribed periods, to furnish such copies thereof, and to make, disseminate and file the reports required by such section and the rules thereunder, which set forth requirements concerning records and reports required to be made and preserved by certain exchange members, brokers and dealers.

V.

*Definition of "Salmon-Related Activities"*

For purposes of this Final Judgment, the term "Salomon-Related Activities" shall mean (i) the activities of SALOMON in connection with the allegations of the Complaint or (ii) the activities of Salomon relating to U.S. Treasury or government securities sold at auction during the period January 1, 1989 through August 9, 1991, including without limitation, auction, financing and trading activities, or relating to disclosure or nondisclosure by SALOMON of matters referred to in clauses (i) and (ii) above.

VI.

*Payments by Salomon*

*It Is Further Ordered, Adjudged and Decreed* that Salomon shall pay within three (3) business days of the entry of this Final Judgment the aggregate sum of $290,000,000 ("the Aggregate Payment"). The Aggregate Payment shall be allocated and paid as set forth in paragraphs A and B below.

*A. Payment to the United States*

*It Is Further Ordered, Adjudged and Decreed* that $122,000,000 of the Aggregate Payment shall represent payment of civil penalties under the Securities Enforcement Remedies and Penny Stock Reform Act of 1990. Public Law 101–429. In addition, $50,000,000 of the Aggregate Payment shall represent a forfeiture to the Department of Justice Asset Forfeiture Fund pursuant to 15 U.S.C. 6 and 18 U.S.C. 981(a)(1)(c) and $18,000,000 represents a payment to the United States in respect of potential claims of the Department of Justice under 31 U.S.C. 3729 and under common law, in each case pursuant to the Settlement Agreement with the Untied States Department of Justice. The amounts required to be paid pursuant to this paragraph shall be paid by wire transfer to the Untied States Treasury.

*B. The Civil Claims Fund*

*It Is Further Ordered, Adjudged and Decreed* that $100,000,000 of the Aggregate Payment, which represents a fund for civil claims against SALOMON, shall be paid into the Court's registry through the Court Registry Investment System ("C.R.I.S."), to be administered by the Fund Administrator appointed by the Court pursuant to paragraph 4.a below. The monies required to be paid pursuant to this paragraph, together with income generated through the investment of such monies, is hereinafter referred to as the "Fund."

1. Uses of the Fund

*It Is Further Ordered, Adjudged and Decreed* that the Fund is to be utilized for payment as follows:

a. *First,* to pay C.R.I.S. and court administrative fees, taxes on the income earned on the Fund, and the fees and expenses (including attorney's fees) of the Fund Administrator appointed pursuant to paragraph 4.a below incurred in connection with and incidental to the performance of the Fund Administrator's duties hereunder and under the Fund Administration Agreement (as defined in paragraph 4.a below), including amounts referred to in paragraph 9.b below;

b. *Second,* (i) in accordance with paragraphs 5 and 6 below, to pay "valid claims," as defined in paragraph 2 below or (ii) if Salomon has made, after the effective date of the Final Judgment, a payment in good faith to a person or persons to resolve a claim that the Fund Administrator determines to be a valid claim, then Salomon, solely for the purposes of receiving reimbursement from the Fund, shall be deemed to be subrogated to the rights of the person or persons who received such payment from Salomon and shall be entitled as a subrogee to reimbursement from the Fund; and

c. *Third,* six (6) years from the effective date of this Final Judgment, or at such other time as the parties may agree, the Fund (less appropriate reserves for the payments referred to in paragraph a.1 above) shall be closed out by paying to the Treasury of the United States any monies remaining in the Fund that are not to be distributed pursuant to a Commission plan of distribution.

2. Valid Claims

*It Is Further Ordered, Adjudged and Decreed* that a "valid claim," as that term is used herein, is each of the following: (a) Any claim for compensatory damages that Salomon is required to pay in good faith as a result of any non-appealable final judgment against it arising out of Salomon-Related Activities; (b) amounts that Salomon agrees in good faith to pay in *bona fide* settlement of any claim for compensatory damages arising out of Salomon-Related Activities; and (c) such other claims for compensatory damages against Salomon arising out of Salomon-Related Activities, as are identified by the Commission in its plan or plans of distribution described in paragraph 6 below. The order in which various classes of claims are described above shall not be construed as according or denying priority to any class of valid claim.

3. Restriction on Payment

*It Is Further Ordered, Adjudged and Decreed* that:

a. Payments shall not be made directly or indirectly from the Fund to:

(i) Salomon, except as expressly provided in paragraph 1.b above;

(ii) any person or entity who the Fund Administrator determines, after consultation with the Commission, has been: (A) Convicted of any crime substantially related to Salomon-Related Activities; (B) found by a court or a department or agency of the United States to have violated a federal statute or regulation for any conduct substantially related to Salomon-Related Activities; (C) named as a defendant in a pending federal criminal proceeding or in a pending federal civil or administrative proceeding instituted by a department or agency of the United States, for any alleged conduct substantially related to Salomon-Related Activities if the Fund Administrator determines that such alleged conduct is substantially related to the conduct underlying the claim asserted on the Fund and that it would therefore be inappropriate to consider such claim for payment until the conclusion of the federal criminal, civil or administrative proceeding; or

(iii) Any person or entity who is, or whose immediate family member is, a current or former officer, managing director, employee or stockholder of Salomon, or a corporation, partnership, trust or other entity in which such officer, managing director, employee or stockholder is or was a stockholder, partner, trustee or beneficiary or otherwise holds or held an interest, where the Fund Administrator finds, after consultation with the Commission, that by reason of such person's participation in Salomon-Related Activities or such person's failure to supervise such activities, it would be inequitable or otherwise inconsistent with the purposes of this Final Judgment to permit such person or entity to receive payments from the Fund.

b. Except as expressly provided in paragraph 1.a above, no part of the Fund may be used to pay attorneys' fees, costs or disbursements.

4. Appointment of Fund Administrator

a. *It is Further Ordered, Adjudged and Decreed* that, after consultation with Salomon, the Commission shall recommend to the Court and the Court shall appoint a Fund Administrator. Within sixty (60) days of the entry of this Final Judgment, the Fund Administrator shall enter into an agreement (the "Fund Administration Agreement") with the Commission that is consistent with the terms of this Final Judgment and that has been approved by Salomon, whose approval shall not be unreasonably withheld. The Fund Administration Agreement shall govern the conservation, investment and disbursement of monies in the Fund. At the request of the Commission, the Fund Administrator shall also assist the Commission in the formulation and implementation of the plan or plans of distribution described in paragraph 6 below, and determine the validity of claims for payment from the Fund in accordance with this Section VI. The Fund Administration Agreement shall be submitted to this Court for approval and shall be set forth in a supplemental order in this matter.

b. At the request of the Commission, the Fund Administrator may at any time be removed by the Court and, after consultation with Salomon, replaced with a successor recommended to the Court by the Commission and approved by the Court. In the event the Fund Administrator decides to resign, the Fund Administrator shall first give sixty (60) days written notice to the Commission, Salomon and the Court of such intention to resign, and such resignation shall not become effective until the Fund Administrator has submitted its resignation in writing to the Commission, Salomon and the Court, and the Court has appointed a successor who has accepted such appointment in writing.

c. The Fund Administrator, or any law firm of which the Fund Administrator is a member, shall not, during the term of the Fund Administration Agreement and for a period of five (5) years thereafter, enter into any employment, consulting or attorney-client relationship with Salomon, or any of its present or former directors, officers, employees or agents acting in their capacity as such.

5. Application for Payment of Bona Fide Judgments and Settlements

*It is Further Ordered, Adjudged and Decreed* that Salomon may make written application to the Fund Administrator for the payment to claimants of valid claims as defined in clauses (a), (b) and (c) of paragraph 2 above and for reimbursement to Salomon pursuant to paragraph 1.b (ii) above. Copies of any such application shall be provided to the Court and to the Commission. Upon receipt of the application for payment to claimants or reimbursement to Salomon pursuant to paragraph 1.b (ii) above, the Fund Administrator, after consultation with the Commission, shall make a written determination as to whether the claim is eligible to be paid under paragraphs 1, 2 and 3 above.

Within thirty (30) days (ten (10) days in the case of a paragraph 2, clause (a) claim) of receipt of any such application, the Fund Administrator shall send a written notice to Salomon, the Commission and the Court setting forth its decision regarding the application for payment of the claim. In the event that the application is denied, the Fund Administrator shall set forth the reasons for the denial in the notice. Salomon or the Commission may appeal any such denial to the Court, which shall determine whether payment of all or part of the claim is consistent with the terms and purposes of this Final Judgment. In the event that the application is approved by the Fund Administrator, the Commission may object, in writing, within thirty (30) days thereafter (ten (10) days in the case of a paragraph 2, clause (a) claim), on the grounds that such approval is inconsistent with the terms or purposes of this Final Judgment. Copies of any such written objection shall be provided to the Fund Administrator, Salomon and the Court. In the event of such objection by the Commission, the Court shall determine whether payment of all or part of the claim is inconsistent with the terms or purposes of this Final Judgment. If the Commission does not object in writing within thirty (30) days (ten (10) days in the case of a paragraph 2, clause (a) claim), the Court shall order the Fund Administrator to pay the claims in the amount previously approved by the Fund Administrator.

6. Plan or Plans of Distribution of the Civil Claims Fund

*It is Further Ordered, Adjudged and Decreed* that, after five (5) years following the effective date of this Final Judgment, or at such other time as the parties may agree or the Court may order, the Commission shall file with the Court and serve upon counsel for Salomon a proposed plan for the distribution of all or a portion of the remaining monies in the Fund, consistent with the terms of this Final Judgment. Such plan may provide that any monies remaining in the Fund shall be distributed to the United States Treasury. If requested by the Commission, the Fund Administrator shall assist the Commission in the formulation of such plan of distribution and shall assist the Court in its determination whether particular claims are eligible for payment from the Fund pursuant to such plan. Within such time after the submission by the Commission of a proposed plan as the Court may determine, the Court may convene a hearing upon said plan and shall determine the appropriate disposition of that portion of the Fund encompassed within said plan. Salomon shall have the right to be heard with respect to the Court's consideration of any proposed plan of distribution.

7. Taxes

*It is Further Ordered, Adjudged and Decreed* that the parties and the Fund Administrator, on behalf of the Fund, shall take all necessary steps to enable the Fund to be a taxable "Settlement Fund" within the context of Internal Revenue Code § 468B and the

regulations, whether proposed, temporary or final or pronouncements thereunder. Such steps include the timely filing of elections and statements as set forth in Internal Revenue Code section 468B(d)(2)(D) and as expanded in applicable regulations or pronouncements providing guidance. The elections and statements to be filed include those required pursuant to proposed Treasury Regulations §§ 1.468B–0 through 1.468B–5 for all taxable years of the Fund beginning with the date of its establishment, including the election made pursuant to proposed Treasury Regulations § 1.468B–5(c)(2). The Fund Administrator, on behalf of the Fund, shall file on a timely basis all Federal, State and local tax returns. The Fund Administrator shall cause the Fund to pay taxes in a manner consistent with treatment of the Fund as a "qualified settlement fund" as provided in proposed Treasury Regulations § 1.468B–2. Any reference herein to Treasury Regulations shall mean Proposed Treasury Regulations § 1.468B issued on February 14, 1992, or any regulations or pronouncements which supersede them, whether in proposed, temporary or final form.

8. Stay of Proceedings Against the Civil Claims Fund

*It is Further Ordered, Adjudged and Decreed* that all creditors or claimants of SALOMON, and other persons and others acting on behalf of such creditors or claimants or other persons, including sheriffs, marshals, other officers, deputies, servants, agents, employees and attorneys, be and the same hereby are restrained and enjoined during the pendency of the existence of the Fund from:

a. Commencing, prosecuting, continuing or enforcing any suit or proceeding against the Fund Administrator or the Fund;

b. Using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any property owned by or in the possession of or to be transferred to the Fund, or the Fund Administrator pursuant to this Final Judgment, wheresoever situated; and

c. Doing any act or thing whatsoever to interfere with the taking control, possession or management by the Fund Administrator appointed herein of the property and assets owned, controlled or in the possession of SALOMON that are or may be transferred to the Fund, or in any way to interfere with or harass said Fund Administrator, or to interfere in any manner with the exclusive jurisdiction of this Court over the Fund.

9. Duties of Salomon to the Fund Administrator

*It is Further Ordered, Adjudged and Decreed* that Salomon shall:

a. Take such actions, provide such non-privileged information and documents and execute and deliver such documents as the Fund Administrator may request, at any time and from time to time, to enable the Fund Administrator to perform its duties under this Final Judgment and the Fund Administrator Agreement;

b. Indemnify and hold harmless the Fund Administrator from and against any liabilities, if and to the extent the Fund is insufficient, including costs and expenses of defending claims, for which it may become liable or which it may incur by reason of any act or omission to act in the course of performing its duties, except upon a finding by this Court of gross negligence or willful failure of the Fund Administrator to comply with the terms of this Final Judgment, the Fund Administration Agreement or any other order of this Court. This provision for indemnity shall apply to claims based on conduct during the term of the Fund Administration Agreement, even if such claims are filed after the termination of the Fund Administration Agreement.

VII.

*It is Further Ordered, Adjudged and Decreed* that the annexed CONSENT be, and the same hereby is, incorporated herein with the same force and effect as if fully set forth herein and that SALOMON shall comply with all of the undertakings and agreements incorporated herein.

VIII.

*It is Further Ordered, Adjudged and Decreed that* all notices hereunder shall be in writing and be deemed to have been duly given when delivered personally or by facsimile transmission, confirmed by mail, to the parties at the following addresses (or at such other address for a party as shall be designated by like notice):

If to the Commission:

Securities and Exchange Commission, Attention: Director, Division of Enforcement, Mail Stop 4–1, 450 Fifth Street, NW., Washington, DC 20549

If to Salomon:

Salomon Inc., Seven World Trade Center, New York, New York 10048, Attention: General Counsel

*It Is Further Ordered, Adjudged and Decreed* that this Court shall retain jurisdiction of this action for all purposes, including implementation and enforcement of this Final Judgment.

X.

Except as explicitly provided in this Final Judgment and the Consent, nothing herein is intended to or shall be construed to have created, compromised, settled or adjudicated any claims, causes of action, or rights of any person or entity whomsoever, other than as between the Commission, Salomon Inc and Salomon Brothers Inc. This Final Judgment does not create any rights, either express or implied, with respect to any person other than the Fund Administrator and the parties hereto.

Robert P. Patterson, Jr.
*United States District Judge.*

Dated: May 20, 1992.
New York, New York
United States District Court
Southern District of New York
*SECURITIES AND EXCHANGE COMMISSION*, Plaintiff, v. *SALOMON INC and SALOMON BROTHERS INC*, Defendants. 92 Civ. No.

**Consent and Undertakings of Salomon Inc and Salomon Brothers Inc**

1. Defendants Salomon Inc, SALOMON BROTHERS INC and their successors and assigns, if any (collectively referred to as "Salomon"), having been served with the Complaint for Permanent Injunction and Other Relief ("Complaint") of Plaintiff Securities and Exchange Commission ("Commission") in this action, and having entered a general appearance, admit the service of the Complaint upon each of them and consent to the jurisdiction of this Court over each of them and over the subject matter of this action.

2. Salomon, without a hearing presentation of any evidence or findings of fact pursuant to Rule 52 of the Federal Rules of Civil Procedure and without admitting or denying any of the allegations of the Complaint, except as to jurisdiction which it admits, and consistent with the provisions of 17 CFR 202.5(e), hereby consents, solely for the purposes of this action, or any other proceeding brought by or on behalf of the Commission or to which the Commission is a party, and without adjudication of any issue of fact or law with respect to the Complaint, to the entry of a Final Judgment of Permanent Injunction and Other Relief as to Salomon Inc and Salomon Brothers Inc in the form annexed hereto ("Final Judgment"), among other things,

restraining and enjoining Salomon Inc or Salomon Brothers Inc, as applicable, from engaging in transactions, acts, practices and courses of business which constitute or would constitute violations of, or which aid or abet or would aid and abet violations of, section 17(a) of the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77q(a)), section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78j(b)) and Rule 10b–5 (17 CFR 240.10b–5) promulgated thereunder, section 15(c)(1) of the Exchange Act (15 U.S.C. 78o(c)(1)) and Rule 15cl–2 promulgated thereunder (17 CFR 240.15cl–2), and section 17(a) of the Exchange Act (15 U.S.C. 78q(a)) and Rules 17a–3 and 240.17a–4 promulgated thereunder (17 CFR 240.17a–3 and 240.17a–4).

3. Salomon waives the filing of an answer and waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

4. Salomon waives any right it may have to appear from the entry of the annexed Final Judgment.

5. Salomon enters this Consent and Undertakings ("CONSENT") voluntarily and of its own accord and represents that no promise or threat of any kind has been made by the Commission or any member, employee, officer, agent, or representative thereof to induce it to enter this Consent.

6. Salomon undertakes and agrees to cooperate with the Commission and truthfully disclose all information, other than information protected by the attorney-client privilege or the work product doctrine, with respect to its activities and the activities of others about which the Commission or its staff may inquire in connection with the Commission's current investigation giving rise to the Complaint in this matter and such inquires, investigations and litigation that arise therefrom or relate thereto.

7. Salomon undertakes and agrees not to employ any person: (i) convicted of any crime substantially related to Salomon-Related Activities, as that term is defined in the Final Judgment herein ("Salomon-Related Activities"); (ii) found by a court or a department or agency of the United States, in an action instituted by a department or agency of the United States, to have violated a federal statute or regulation for any conduct substantially related to Salomon-Related Activities; or (iii) named as a defendant in a pending federal criminal, civil or administrative proceeding instituted by a department or agency of the United States, until the conclusion of such proceeding, for any alleged conduct substantially related to Salomon-Related Activities.

8. Salomon agrees that the provisions of this Consent shall be incorporated by reference in the Final Judgment as if fully set forth therein.

9. Salomon agrees that this Court shall retain jurisdiction of this matter for the purpose of enforcing the terms and conditions of the Final Judgment and for all other purposes.

Salomon Inc
By: /s/ Robert E. Denham
*Title: General Counsel*

On this *20th* day of *May*, 1992, *Robert E. Denham*, being known to me and who executed the foregoing consent and undertakings of Salomon Inc and Salomon Brothers Inc personally appeared before me and did duly acknowledge to me that he was authorized to execute the same on behalf of Salomon Inc.

Linda Staiti
*Notary Public*
Approved as to form:
/s/ Ronald L. Olson
*Attorney for SALOMON INC*
Salomon Brothers Inc
By: Robert E. Denham
*Title: Managing Director and Secretary*

On this 20th day of May, 1992, Robert E. Denham, being known to me and who executed the foregoing Consent and Undertakings of Salomon Inc and Salomon Brothers Inc personally appeared before me and did duly acknowledge to me that he was authorized to execute the same on behalf of Salomon Brothers Inc.

Linda Staiti,
*Notary Public.*
Approved as to form:
Ronald L. Olson
*Attorney for Salomon Brothers Inc*

**Exhibit B**

May 20, 1992

The Honorable William P. Barr, Attorney General, U.S. Department of Justice, Washington, DC 20530.

Dear Attorney General Barr: You have asked for our views on the impact to the U.S. government securities market as a whole of an injunctive order proposed in settlement of an antitrust complaint against Salomon Brothers. Based upon our understanding of the facts in this case, we believe that an order of this type could create a less efficient, more costly market for U.S. Government securities.

It could also create unnecessary, duplicative regulation of the securities market, especially if extensive new types of private civil litigation result, without any counterbalancing benefit to the Government, the overall economy or the investing public.

We note that the amount to be paid by Salomon in settlement of the overall case will not be affected by the inclusion or exclusion of an antitrust complaint, and that in this case the Government is obtaining extensive injunctive relief and civil damages without the novel application of antitrust remedies to this extensively regulated market.

Sincerely,

Nicholas F. Brady,
*Secretary of the Treasury.*
Richard C. Breeden,
*Chairman, Securities and Exchange Commission.*
Alan Greenspan,
*Chairman, Federal Reserve Board.*
E. Gerald Corrigan,
*President, Federal Reserve Bank of New York.*

[FR Doc. 92–15654 Filed 7–2–92; 8:45 am]
BILLING CODE 4410–01–M

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the

specified classes engaged on contract work of the character and in the localities described therein.Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

**New General Wage Determination Decisions**

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

*VOLUME II*

| | |
|---|---|
| INDIANA, *IN91–16 | p.352a p.352b |
| KANSAS, KS91–15 | p.ALL |

*This new general wage determination is applicable to building construction in Pike County, previously in IN91–3.

**Modifications to General Wage Determinations Decisions**

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*VOLUME I*

| | |
|---|---|
| CONNECTICUT: | |
| CT91–1 (Feb. 22, 1991) | p.63 pp.64–69, 73–74 |
| CT91–3 (Feb. 22, 1991) | p.78a pp.78b–78d |
| CT91–4 (Feb. 22, 1991) | p.78g pp.78h–78j |
| DISTRICT OF COLUMBIA: | |
| DC91–1 (Feb. 22, 1991) | p.79 pp.80–90 |
| DC91–2 (Feb. 22, 1991) | p.ALL |
| FLORIDA, FL91–1 (Feb. 22, 1991). | p.ALL |
| GEORGIA, GA91–31 (Feb. 22, 1991). | p.ALL |
| KENTUCKY, KY91–7 (Feb. 22, 1991). | p.ALL |
| NEW JERSEY, NJ91–2 (Feb. 22, 1991). | p.701 pp.705, 707–717 |
| PENNSYLVANIA: | |
| PA91–5 (Feb. 22, 1991) | p.995 pp.996–998 |
| PA91–6 (Feb. 22, 1991) | p.1007 pp.1008–1010 |
| PA91–7 (Feb. 22, 1991) | p.1019 pp.1020–1022 |
| PA91–8 (Feb. 22, 1991) | p.1029 pp.1030–1032 |
| PA91–9 (Feb. 22, 1991) | p.1039 pp.1040–1042 |
| PA91–10 (Feb. 22, 1991) | p.1047 pp.1048–1049 |
| PA91–12 (Feb. 22, 1991) | p.1057 pp.1058–1060 |
| PA91–19 (Feb. 22, 1991) | p.1093 pp.1096–1097 |
| PA91–21 (Feb. 22, 1991) | p.1107 pp.1108–1109 |
| PA91–23 (Feb. 22, 1991) | p.1123 pp.1124–1125 |
| PA91–24 (Feb. 22, 1991) | p.1129 pp.1131–1132 |
| PA91–26 (Feb. 22, 1991) | p.1137 pp.1138–1139 |

*VOLUME II*

| | |
|---|---|
| ILLINOIS: | |
| IL91–1 (Feb. 22, 1991) | p.69 pp.79–80 |
| IL91–2 (Feb. 22, 1991) | p.97 pp.103–104, 114a |
| IL91–6 (Feb. 22, 1991) | p.133 p.135 |
| IL91–9 (Feb. 22, 1991) | p.153 pp.158–160 |
| IL91–11 (Feb. 22, 1991) | p.163 pp.168, 169 |
| IL91–12 (Feb. 22, 1991) | p.171 pp.172–182 |
| IL91–13 (Feb. 22, 1991) | p.183 p.186 |
| INDIANA, IN91–2 (Feb. 22, 1991). | p.259 pp.260–276b |
| KANSAS, KS91–10 (Feb. 22, 1991). | p.ALL |
| MICHIGAN, MI91–17 (Feb. 22, 1991). | p.ALL |
| MINNESOTA: | |
| MN91–5 (Feb. 22, 1991) | p.577 pp.578–581 |
| MN91–7 (Feb. 22, 1991) | p.587 pp.599–604 |
| MN91–8 (Feb. 22, 1991) | p.607 pp.617–616 |
| MN91–12 (Feb. 22, 1991) | p.629 p.630 |
| MISSOURI, MO91–2 (Feb. 22, 1991). | p.673 p.676 |

*VOLUME III*

| | |
|---|---|
| ARIZONA, AZ91–2 (Feb. 22, 1991). | p.ALL |
| CALIFORNIA: | |
| CA91–1 (Feb. 22, 1991) | p.ALL |
| CA91–2 (Feb. 22, 1991) | p.ALL |
| CA91–4 (Feb. 22, 1991) | p.ALL |
| COLORADO, CO91–6 (Feb. 22, 1991). | p.179 p.180 |

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 26th day of June 1992.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 92–15480 Filed 7–2–92; 8:45 am]

BILLING CODE 4510–27–M

## Employment and Training Administration

[TA-W-26,827]

### Amerada Hess Corp.; Houston, TX; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice on petition TA-W-26,827 which was published in the Federal Register on April 20, 1992 (57 FR 14435) in FR Document 92-9093. A printing error appears on the 10th line in the first column under TA-W-26,837. The line should read "have not" instead of "have".

The sentence should read "Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Signed in Washington, DC, this 26th day of June 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-15704 Filed 7-2-92; 8:45 am]

BILLING CODE 4510-30-M

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 16, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 16, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of June 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petition number | Articles produced |
|---|---|---|---|---|---|
| Atlas Bradford (workers) | Houston, TX | 06/22/92 | 06/11/92 | 27,398 | Oilfield Equipment. |
| Spartus Corp. (workers) | Louisville, MS | 06/22/92 | 06/10/92 | 27,399 | Clocks. |
| Ballet Makers, Inc. (Co.) | Fairlawn, NJ | 06/22/92 | 06/04/92 | 27,400 | Soft Ballet and Point Shoes. |
| Mayville Metal Products (IAMAW) | Mayville, WI | 06/22/92 | 06/04/92 | 27,401 | Contract Metal Fabrication. |
| Kenney Shoe Corp. (workers) | Fairfield, PA | 06/22/92 | 06/09/92 | 27,402 | Shoes. |
| Pennzoil E & P Co. (workers) | Houston, TX | 06/22/92 | 05/29/92 | 27,403 | Oil and Natural Gas. |
| General Semiconductor Industries (Co.) | Tempe, AZ | 06/22/92 | 06/10/92 | 27,404 | Semiconductors. |
| Atlantic Pacific Marine Corp. (Co.) | Houma, LA | 06/22/92 | 06/09/92 | 27,405 | Oil, Gas Drilling. |
| Smith International, Inc. (workers) | Ponca City, OK | 06/22/92 | 05/05/92 | 27,406 | Oilfield Equipment. |
| Trojan Yacht Co. (IAMAW) | Lancaster, PA | 06/22/92 | 06/10/92 | 27,407 | Luxury Yachts. |
| Cluett, Peabody & Co., Inc. (Co.) | Atlanta, GA | 06/22/92 | 06/09/92 | 27,408 | Men's, Boys' Dress Shirts. |
| Ultramatic Embroidery Machine Co. (workers) | North Haven, CT | 06/22/92 | 05/18/92 | 27,409 | Portable Sewing Machines. |
| Mitchell Energy Corp. (Co.) | Denver, CO | 06/22/92 | 06/09/92 | 27,410 | Oil, Gas Exploration, Production. |
| Mitchell Energy Corp. (Co.) | Oklahoma City, OK | 06/22/92 | 06/09/92 | 27,411 | Oil, Gas Exploration, Production. |
| Mitchell Energy Corp. (Co.) | Woodlands, TX | 06/22/92 | 06/09/92 | 27,412 | Oil, Gas Exploration, Production. |
| Sun Pipe Line Co. (workers) | Longview, TX | 06/22/92 | 06/15/92 | 27,413 | Transports Crude Oil. |
| Di-Anne Manufacturing Co. (workers) | Lebanon, PA | 06/22/92 | 06/08/92 | 27,414 | Ladies' Lingerie & Sportswear. |
| GP/Sorensen (UAW) | Glasgow, KY | 06/22/92 | 04/13/92 | 27,415 | Distributs Auto Parts. |
| Rogge Forest Products, Inc. (workers) | Bandon, OR | 06/22/92 | 06/10/92 | 27,416 | Lumber. |
| Schwitzer US, Inc. (Co.) | Rolla, MO | 06/22/92 | 06/01/92 | 27,417 | Engine Cooling Fans. |
| Tobin-Hamilton (workers) | Mansfield, MO | 06/22/92 | 06/11/92 | 27,418 | Children's Athletic Shoes. |
| A.C. Lawrence Leather Co., Inc. (Co.) | Danvers, MA | 06/22/92 | 06/15/92 | 27,419 | Sole Leather. |
| Shepard Niles, Inc. (IAMAW) | Montour Falls, NY | 06/22/92 | 06/09/92 | 27,420 | Cranes and Hoists. |
| Marshall Exploration, Inc. (workers) | Marshall, TX | 06/22/92 | 06/09/92 | 27,421 | Oil, Gas Exploration. |

[FR Doc. 92-15702 Filed 7-2-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25, 538]

### North Star Steel Co., Milton, PA; Negative Determination on Reconsideration

By order dated March 13, 1992, the United States Court of International Trade (USCIT) in *Former Employees of North Star Steel,* v. *Secretary of Labor* (USCIT) 91-09-00648 remanded this case to the Department for further investigation.

The workers at North Star in Milton, Pennsylvania produced rebars (concrete reinforcing bars) and round bars mainly for the northeast area of the U.S. The findings show that scrap was melted and hot rolled into rebars. Round bars accounted for only five percent of 1990 sales.

The initial investigation found that the Milton facility ceased operations in February 1991. However, the workers did not meet the increased import criterion of the Group Eligibility Requirements of the Trade Act of 1974. U.S. imports of rebars decreased absolutely and relative to domestic shipments in 1989 compared to 1988 and

in 1990 compared to 1989. U.S. imports of hot rolled steel bar declined absolutely and relative to domestic shipments in 1990 compared to 1989. This was further stressed in the Department's Notice of Negative Determination Regarding Application for Reconsideration issued on July 9, 1991 and published in the Federal Register on July 16, 1991 (56 FR 32448).

Reconsideration findings on remand show that the Milton facility had increased sales and production of rebars and rounds immediately before the facility ceased operations. Sales and production of rebars and rounds increased at Milton in 1990 compared to 1989. Other findings show that the transformer, needed for the three electric arc furnaces, became permanently disabled on February 21, 1991, causing the shutdown at Milton. Accordingly, the dominant cause for the Milton plant's closure was the transformer failure.

The union stated that the rebar markets are often regional and import statistics for the entire U.S. may not accurately reflect the situation at Milton.

Findings on remand show that U.S. imports of rebars (concrete reinforcing bars) declined in the Northeast in 1990 compared to 1989. Other findings on remand show that the eleven customers whose names were submitted by the union, and if taken as a group, had increased purchases from Milton in 1990 compared to 1989 and accounted for a substantial percent of Milton's 1989 and 1990 sales. Only four of the eleven customers had declining purchases from North Star in 1990 compared to 1989. The sales decline of these customers accounted for an inconsequential percentage of Milton's 1990 sales.

The Department conducted a survey of the four customers with declining purchases in 1990 from North Star Steel. None of the four imported rounds or rebars in 1989 or 1990. Comments by several of those surveyed indicated that they work mainly on State Highway and Federal projects which contain domestic clauses precluding the purchase of imported rebars.

**Conclusion**

After reconsideration, I affirm the original notice of negative determination to apply for adjustment assistance to former workers of North Star Steel Company in Milton, Pennsylvania.

Signed at Washington, DC, this 23rd day of June 1992.

**Robert O. Deslongchamps,**

*Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.*

[FR Doc. 92-15703 Filed 7-2-92; 8:45 am]

BILLING CODE 4510-30-M

## Emergency Unemployment Compensation Program; Changes in Emergency Unemployment Compensation Periods

This notice announces recent changes in benefit period durations under the Emergency Unemployment Compensation Program.

**Background**

Under the Emergency Unemployment Compensation (EUC) Act of 1991 (Pub. L. 102-164), as amended by Public Law 102-244, for initial claims filed after June 13, 1992, and before July 5, 1992, the maximum number of EUC weeks payable will decrease to either 13 or 20 weeks, depending on the level of unemployment in the State. For claimants filing initial claims from February 9, 1992 through June 13, 1992, the maximum number of EUC weeks payable was 26 or 33 weeks. Exhaustees of regular State program benefits after July 4, 1992 are not eligible for EUC benefits.

Weeks of benefits were decreased from 33 weeks to 20 weeks for the week beginning June 14, 1992, in Alaska, California, Connecticut, Idaho, Maine, Massachusetts, Michigan, New Jersey, New York, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Washington, and West Virginia; and from 26 weeks to 13 weeks in Alabama, Arizona, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virgin Islands, Virginia, Wisconsin, and Wyoming. Arkansas and Montana went from 33-week benefit periods to 13-week benefit periods beginning June 14, 1992 as a result of their triggers dropping below the threshold necessary to keep them at the higher number of weeks and the law providing 13-week benefit period durations for States below the threshold for those filing initial claims after June 13, 1992.

In addition, since publication of the last notice regarding States' EUC status, Nevada triggered to a 26 week benefit period on June 7, 1992.

**Information for Claimants**

The duration of benefits payable in the Emergency Unemployment Compensation Period, and the terms and conditions on which they are payable, are governed by the Act and the operating instructions issued to the States by the U.S. Department of Labor. The State employment security agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EUC benefits (20 CFR 615.13(c)).

Persons who believe they may be entitled to EUC benefits, or who wish to inquire about their rights under the program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on June 25, 1992.

**Roberts T. Jones,**

*Assistant Secretary of Labor.*

[FR Doc. 92-15705 Filed 7-2-92; 8:45 am]

BILLING CODE 4510-30-M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50-334 and 50-412]**

## Duquesne Light Co.; Ohio Edison Co.; Pennsylvania Power Co.,The Cleveland Electric Illuminating Co.; The Toledo Edison Co.; Beaver Valley Power Station, Units Nos. 1 and 2; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approving the use of a certain type of respirator as an emergency device at the Beaver Valley Power Station, Units 1 and 2. The approval would be granted pursuant to the provisions of 10 CFR 20.103(e) and 10 CFR 20.103(f). The Beaver Valley Power Station is located in Beaver County, Pennsylvania.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would approve the use of the BioPak 240P respirator for respiratory protection during fire fighting activities at the Beaver Valley Power Station, Units 1 and 2.

*The Need for the Proposed Action*

The BioPak 240P is a NIOSH approved, positive-pressure closed-

circuit self-contained breathing apparatus. The apparatus provides oxygen-enriched (greater than 30%) breathing gas to the user. NIOSH has not certified the BioPak 240P for use during fire fighting.

Duquesne Light Company uses the BioPak 240P for respiratory protection during containment entries when the building pressure is subatmospheric (normally 9.2 to 9.5 psia).

The Commission's regulations provide that "Where equipment of a particular type has not been tested and certified, or had certification extended, by NIOSH/MSHA * * * the licensee shall not make allowance [in estimating exposure of the individual] for this equipment without specific authorization by the Commission (cf. 10 CFR 20.103(e))". The Commission's regulations (10 CFR 20.103(f)) provide further that "Only equipment that has been specifically certified or had certification extended for emergency use by NIOSH/MSHA shall be used as emergency devices."

Thus, while the BioPak 240P is acceptable for use during normal activities, it may not be used during fire fighting without specific NRC authorization. Duquesne Light Company requested authorization for the use of the BioPak 240P during fire fighting related activities inside the containment buildings at Unit 1 and 2 in a letter dated December 13, 1991.

*Environmental Impacts of the Proposed Action*

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability of accidents would not be increased by the authorization to use the BioPak 240P respirator during fire fighting activities at the Beaver Valley Power Station, and that post-accident radiological release would not be greater than previously determined. Further, the Commission has determined that the proposed approval would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed approval would not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed approval of the BioPak 240P respirator.

*Alternative to the Proposed Action*

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested approval. This would not reduce the environmental impact attributable to this facility, and potentially could result in greater radiological exposure for fire fighting personnel because the currently authorized equipment provides lesser protection against airborne radioactive material.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in the Final Environmental Statement Related to Operation of the Beaver Valley Power Station, Unit 1, dated July 1973, and the Final Environmental Statement Related to Operation of the Beaver Valley Power Station, Unit 2, dated September 1985.

*Agencies and Persons Consulted*

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the request for approval dated December 13, 1991, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 25th day of June 1992.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

*Assistant Director for Region I Reactors, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92-15719 Filed 7-2-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286]

**Power Authority of the State of New York; Denial of Amendment to Facility Operating License and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Power Authority of the State of New York (the licensee) for an amendment to Facility Operating License No. DPR-64, issued to the licensee for operation of the Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York. The Notice of Consideration of Issuance of this amendment was published in the Federal Register on October 3, 1990 (55 FR 40471).

The purpose of the licensee's amendment request was to revise Technical Specification 3.7.B.1 to increase the emergency diesel generator allowed outage time from 72 hours to 7 days.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated June 25, 1992.

By August 5, 1992, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated July 10, 1990, as supplemented August 24, 1990, and (2) the Commission's letter to the licensee dated June 25, 1992.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear

Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 25th day of June 1992.

For the Nuclear Regulatory Commission.

**Robert A. Capra,**

*Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–15716 Filed 7–2–92; 8:45 am]

BILLING CODE 7590–01–M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ended June 26, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 48212.
*Date filed:* June 24, 1992.
*Parties:* Members of the International Air Transport Association.
*Subject:* Comp Meet/P 0195 dated June 23, 1992. Report—Resolution 015n Meeting. Comp Fares 0689 dated June 23, 1992—USA Add-On Amounts.
*Proposed Effective Date:* August 1, 1992.

*Docket Number:* 48213.
*Date filed:* June 24, 1992.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC12 Reso/P 1429 dated June 16, 1992. Mid Atlantic Expedited Resos 002L (R–1) & 204C (R–2).
*Proposed Effective Date:* August 1, 1992.

*Docket Number:* 48214.
*Date filed:* June 24, 1992.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC23 Reso/C 0208 dated May 22, 1992. Europe-South Asian Subcontinent Expedited Resos (r-1 to r-5) TC23 Meet/C 0048 dated June 12, 1992—Minutes.
*Proposed Effective Date:* August 1, 1992.

*Docket Number:* 48221.
*Date filed:* June 26, 1992.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC31 Reso/P 0931 dated June 19, 1992. South Pacific Resos R-1—0155 & r-2—015v. TC31 Meet/P 0208 dated June 19, 1992—Minutes.
*Proposed Effective Effective Date:* October 1, 1992.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 92–15690 Filed 7–2–92; 8:45 am]

BILLING CODE 4910–62–M

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended June 26, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 48211.
*Date filed:* June 24, 1992.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 22, 1992.

*Description:* Application of Taino Air Lines, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit, authorizing it to engage in scheduled foreign air transportation of property and mail between points in the Dominican Republic and New York, New York; Miami, Florida; San Juan, Puerto Rico; and Aquadilla, Puerto Rico, with all flights to the United States originating or terminating in the Dominican Republic.

*Docket Number:* 48217.
*Date filed:* June 25, 1992.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 23, 1992.

*Description:* Application of Morris Air Transport, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of Regulations authorizing interstate and overseas scheduled air transportation of persons, property and mail: Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 92–15691 Filed 7–2–92; 8:45 am]

BILLING CODE 4910–62–M

## Federal Aviation Administration

### RTCA, Inc., Special Committee 176, Airborne Loran-C Area Navigation Equipment; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for the first meeting of Special Committee 176 to be held July 23–24, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the summary of the third meeting of Ad Hoc Group 5: (3) FAA briefing on CDI test; (4) Review terms of reference, RTCA paper no. 417–92/SC176–1; (5) Review status of change no. 1 to RTCA/DO–194; (6) Manufacturers' report status of IFR approach certification; (7) Establish work program and schedule; (8) Assignment of tasks; (9) Other business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 26, 1992.

**Joyce J. Gillen,**

*Designated Officer.*

[FR Doc. 92–15682 Filed 7–2–92; 8:45 am]

BILLING CODE 4910–13–M

### RTCA, Inc., Special Committee 175, Minimum General Specification For Ground-Based Electronic Equipment in the National Airspace System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for the third meeting of Special Committee 175 to be held July 22–24, 1992, at the Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, New Jersey 08405, commencing at 9 a.m.

The agenda for this meeting is as follows: (1) Tour of FAA Technical Center, July 22 at 9 a.m.; (2) Working Groups 1 and 2 work sessions, July 22 at 1 p.m.; (3) Chairman's introductory remarks July 23 at 9 a.m.; (4) Approval of

the summary from the second meeting; (5) Presentations/discussion by Working Groups 1 and 2; (6) Wrap up and discussion of action items for next meeting; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 26, 1992.

**Joyce J. Gillen,**

*Designated Officer.*

[FR Doc. 92–15683 Filed 7–2–92; 8:45 am]

BILLING CODE 4910–13–M

## RTCA, Inc., Special Committee 170, Minimum Operational Performance Standards For Automatic Dependend Surveillance (ADS); Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for the fifth meeting of Special Committee 170 to be held July 20–22, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of minutes of the fourth meeting held on January 22–24, 1992, RTCA paper no. 113–92/SC170–27; (3) Complete definition of test procedures; (4) Conduct final review of draft MOPS; (5) Action to recommend RTCA adoption of MOPS; (6) Other business; (7) Date and place of next meeting (no further meetings anticipated).

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 26, 1992.

**Joyce J. Gillen,**

*Designated Officer.*

[FR Doc. 92–15684 Filed 7–2–92; 8:45 am]

BILLING CODE 4910–13–M

## Federal Highway Administration

## Environmental Impact Statement, Morgan County, West Virginia

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway improvement project in Morgan County, West Virginia.

**FOR FURTHER INFORMATION CONTACT:** Billy R. Higginbotham, Division Administrator, Federal Highway Administration, 550 Eagan Street, Suite 300, Charleston, WV 25301, Telephone: (304) 347–5928 or Mr. Ben Hark, West Virginia Department of Transportation, Division of Highways, Building 5, room A839, 1900 Kanawha Boulevard, East Charleston, WV 25305–0341.

**SUPPLEMENTARY INFORMATION:** The FHWA in cooperation with the West Virginia Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Route 522 in Morgan County, West Virginia. The proposed improvement will provide a divided, four-lane highway with partial control of access on US 522, a distance of approximately 18 miles.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include (1) no action; (2) using alternate travel modes; (3) widening the existing two lane highway to four lanes on the present alignment; and (4) constructing a four lane, limited access highway on a new location. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public meeting will be held in Berkeley Springs after the draft EIS is available. In addition, a public hearing will be held. Public notice will be given of the time and place to the meeting and hearing. The draft EIS will be available for public and agency review and comment prior to the public meeting. A scoping meeting will be scheduled after this notice is published.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the WVDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

**Billy R. Higginbotham,**

*Division Administrator, Charleston, West Virginia.*

[FR Doc. 92–15645 Filed 7–2–92; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF THE TREASURY

## Public Information Collection Requirements Submitted to OMB for Review

Date: June 25, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

### Internal Revenue Service

*OMB Number:* 1545–0975

*Form Number:* IRS Form 1120–W

*Type of Review:* Extension

*Title:* Corporation Estimated Tax

*Description:* Form 1120–W is used by corporations to figure estimated income tax liability and the amount of each installment payment. Form 1120–W is a worksheet only. It is not to be filed with the Internal Revenue Service.

*Respondents:* Businesses or other for-profit, Small businesses or organizations

*Estimated Number of Respondents/ Recordkeepers:* 900,000

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| Form | Recordkeeping | Learning about the law or the form | Preparing the form |
|---|---|---|---|
| 1120-W | 6 hr., 56 min | 1 hr., 12 min | 1 hr., 21 min. |
| Sch. A (Pt. I) | 11 hr., 43 min | 6 min | 17 min. |
| Sch. A (Pt. II) | 24 hr., 23 min | | 24 min. |
| Sch. A (Pt. III) | 5 hr., 16 min | | 5 min. |

*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 8,594,108 hours
Clearance Officer: Garrick Shear (202) 535-4297 Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

**Dale A. Morgan,**
*Departmental Reports Management Officer.*
[FR Doc. 92-15693 Filed 7-2-92; 8:45 am]
BILLING CODE 4830-01-M

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TIME AND July 30, 19

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 129
Monday, July 6, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:30 a.m., Friday, July 10, 1992.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A Webb, 254–6314.

**Jean A. Webb,**
*Secretary of the Commission.*
[FR Doc. 92–15862 Filed 7–1–92; 2:42 pm]
BILLING CODE 6351–01–M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 2:00 p.m., Monday, July 27, 1992.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**
*Secretary of the Commission.*
[FR Doc. 92–15863 Filed 7–1–92; 2:42 pm]
BILLING CODE 6351–01–M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 2:30 p.m., Monday, July 27, 1992.

**PLACE:** 2033 K St., N.W., Washington, D.C., 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Enforcement Review.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**
*Secretary of the Commission.*
[FR Doc. 92–15864 Filed 7–1–92; 2:42 pm]
BILLING CODE 6351–01–M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 10:00 a.m., Thursday, July 30, 1992.

**PLACE:** 2033 K St., NW., Washington, DC., Lower Lobby Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

Application of the Chicago Board of Trade for contract designation in Canadian Government Bond options.

Exemption for Commodity Pool Operators and Commodity Trading Advisors for Offerings to Qualified Eligible Participants, final rules (4.7).

Third Quarter Program Review.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**
*Secretary of the Commission.*
[FR 92–15865 Filed 7–1–92; 2:42 pm]
BILLING CODE 6351–01–M

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

**TIME AND DATE:** 10:00 a.m., Tuesday, July 7, 1992.

**PLACE:** Room 600, 1730 K Street, NW., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. *LJ's Coal Corporation*, Docket No. KENT 90–400 (Issues include whether the judge erred in concluding that LJ's violation of 30 C.F.R. § 75.220 was not of a significant and substantial nature.)

2. *Secretary of Labor for Price & Vacha and UMWA v. Jim Walter Resources, Inc.*, Docket No. SE 87–128–D (Issues include whether the judge erred in concluding that Jim Walter's discharge of Price & Vacha under its substance abuse program violated their rights under section 105 (c) of the Mine Act, 30 U.S.C. § 815(c).

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e)

**CONTACT PERSON FOR MORE INFO:** Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: June 30, 1992.

**Jean H. Ellen,**
*Agenda Clerk.*
[FR Doc. 92–15874 Filed 7–1–92; 3:33 pm]
BILLING CODE 6735–01–M

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.**

**TIME AND DATE:** 10:00 a.m., Wednesday, July 8, 1992.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Publication for comment of proposals to implement section 308 of the Federal Deposit Insurance Corporation Improvement Act of 1991 regarding the interbank liability provisions.

2. Any items carried forward from a previously announced meeting.

**Note:** This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 1, 1992.

**Jennifer J. Johnson,**
*Associate Secretary of the Board.*
[FR Doc. 92–15801 Filed 7–1–92; 11:03 am]
BILLING CODE 6210–01–M

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** Approximately 11:00 a.m., Wednesday, July 8, 1992, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded

announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 1, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-15802 Filed 7-1-92; 11:03 am]

BILLING CODE 6210-01-M

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**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

**TIME AND DATE:** 10:00 a.m.–July 20, 1992.

**PLACE:** 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of the minutes of the June 15, 1992, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of Peat Marwick audit report, "Pension and Welfare Benefits Administration Review of Backup, Recovery, and Contingency Planning of the Thrift Savings Plan at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

**CONTACT PERSON FOR MORE INFORMATION:** Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: July 1, 1992.

**Francis X. Cavanaugh,**

*Executive Director, Federal Retirement Thrift Investment Board.*

[FR Doc. 92-15875 Filed 7-1-92; 3:34 pm]

BILLING CODE 6760-01-M

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**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 6, 1992.

A closed meeting will be held on Thursday, July 9, 1992, at 3:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, July 9, 1992, at 3:00 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bian Lane at (202) 727–2400.

Dated: June 30, 1992.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-15855 Filed 7-1-92; 2:36 pm]

BILLING CODE 8010-01-M

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**UNITED STATES INSTITUTE OF PEACE**

**DATE/TIME:** Thursday, July 9, 1992; 9:00 a.m. to 5:30 p.m.

**LOCATION:** 1550 M street, NW. (conference room, first floor), Washington, D.C.

**STATUS:** (Open Session)—portions may be closed pursuant to Subsection (c) of Section 552(B) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub Law. 98–525).

**AGENDA:** Approval of minutes of the Forty-third meeting of the Board of Directors; Chairmans Report: Presidents Report; Program reports; Review of Spring Cycle of un-Solicited Grants.

**CONTACT:** Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: 202/457–1700.

Dated: June 30, 1992.

**Ms. Bernice J. Carney,**

*Director, Office the of Administration, United States Institute of Peace.*

[FR Doc. 92-15784 Filed 7-1-92; 10:26 am]

BILLING CODE 3155-01-M

# Corrections

Federal Register
Vol. 57, No. 129
Monday, July 6, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Child Support Enforcement

**45 CFR Part 303**

**RIN 0970-AA78**

### Child Support Enforcement Program; Federal Parent Locator Service Fees

*Correction*

In rule document 92-14780 beginning on page 28103 in the issue of Wednesday, June 24, 1992, make the following correction:

**§ 303.3 [Corrected]**

On page 28110, in the third column, in amendatory instruction 2., second line, "receiving" should read "removing".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA-060-02-4212-13; CA-29832]**

### Exchange of Public and Private Lands Riverside and San Diego Counties, CA

*Correction*

In notice document 92-14533 appearing on page 27789 in the issue of Monday, June 22, 1992, make the following correction:

In the first column, in the third paragraph, "for Tom Maxwell" should read "from Tom Maxwell".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco, and Firearms

**27 CFR Part 20**

**[No. P8-15; Notice No. 743]**

### Specially Denatured Spirits; Miscellaneous Amendments

*Correction*

In proposed rule document 92-14441 beginning on page 27956 in the issue of June 23, 1992, make the following corrections:

1. On page 27956:

a. In the second column, in the **SUMMARY**, in the sixth line, "persons" should read "person".

b. In the third column, in the eighth line, "file" should read "filed".

c. In the third column, in the last paragraph, "AFT" should read "ATF" each time it appears.

2. On page 27957:

a. In the first column, in the first paragraph, in the first line, "AFT" should read "ATF".

b. In the 1st column, in the 1st paragraph, in the 14th line, "and 20." should read "and/or 20."

c. In the third column, in the last paragraph, in the second line, "§ § 20.63, 20.63," should read "§ § 20.63,".

**§ 20.11 [Corrected]**

3. In the second column, in § 20.11, in the fifth line, after "spirits" insert "in accordance with this part. The term does not include a person who only buys and sells specially denatured spirits".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Customs Service

### Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

*Correction*

In notice document 92-14925 beginning on page 28547 in the issue of Thursday, June 25, 1992, make the following correction:

On page 28548, in the first column, in the last full paragraph, in the third line, "payments" should read "overpayments".

BILLING CODE 1505-01-D

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federal register

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Part II

# Department of Education

**National Institute on Disability and Rehabilitation Research; Proposed Funding Priorities for Fiscal Years 1993 and 1994 for Certain Rehabilitation Research and Training Centers; Notice**

## DEPARTMENT OF EDUCATION

### National Institute on Disability and Rehabilitation Research; Proposed Funding Priorities

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed funding priorities for Fiscal Years 1993 and 1994 for certain Rehabilitation Research and Training Centers.

**SUMMARY:** The Secretary proposes funding priorities for several Rehabilitation Research and Training Centers (RRTC) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1993–1994. The Secretary takes this action to focus research attention on areas of national need identified through NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

**DATES:** Comments must be received on or before August 5, 1992.

**ADDRESSES:** All comments concerning these proposed priorities should be addressed to Betty Jo Berland, U.S. Department of Education, 400 Maryland Avenue, SW., room 3422, Switzer Building, Washington, DC 20202–2601.

**FOR FURTHER INFORMATION CONTACT:** Betty Jo Berland. Telephone: (202) 205–9739. Deaf and hearing-impaired individuals may call (202) 205–5516 for TDD services.

**SUPPLEMENTARY INFORMATION:** This notice contains 12 proposed priorities under the RRTC program. Four of the priorities are in various aspects of spinal cord injury; three cover aspects of traumatic brain injury; and there is one priority each in the areas of stroke, neuromuscular diseases, multiple sclerosis, arthritis, and functional assessment. NIDRR intends to propose additional priorities for other RRTCs and other programs for fiscal years 1993–1994 at a later date. Authority for the RRTC program of NIDRR is contained in section 204(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762).

Under this program, the Secretary makes awards to public agencies and to nonprofit and for-profit private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. The statute provides that RRTCs must be operated in collaboration with institutions of higher education.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

### Description of the Rehabilitation Research and Training Center Program

RRTCs are established to conduct coordinated and advanced programs of rehabilitation research on designated rehabilitation problem areas and to provide training to researchers, service providers, and consumers. Each Center must disseminate and encourage the use of new rehabilitation knowledge and publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

The statute requires that each Center conduct training for providers of rehabilitation services at various levels, which may include undergraduate, in-service, and postgraduate education. Each RRTC also must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. NIDRR encourages all Centers to involve individuals with disabilities and minorities in clinical and research training.

Each Center must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers—including vocational rehabilitation service providers—in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

The Secretary expects each RRTC to conduct a multifaceted program of research to develop solutions to problems confronting individuals with disabilities in order to achieve the goals specified in the priority. Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) require that applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The regulations also require applicants to present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department of Education is particularly interested in assuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

NIDRR is in the process of developing a revised long-range plan focused on achieving six goals for individuals with disabilities: (1) Full integration into the community, (2) full employment, (3) independence and empowerment, (4) maximum human functioning and health, (5) improved vocational rehabilitation services, and (6) the translation of new knowledge and technology into practice. The priorities proposed in this notice are derived from the long-range planning process and are intended to achieve one or more of these six outcomes.

The Secretary will announce the final funding priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

**Note:** This notice of proposed priorities does *not* solicit applications, and application materials are not available. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

*Priorities:* Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this

competition only applications that meet one of these absolute priorities:

**Proposed Priority 1—Rehabilitation in Neuromuscular Diseases**

*Background*

Neuromuscular diseases (NMDs) of all types affect approximately 500,000 children and adults in the United States. NMDs affect all the components of the neuromuscular organ system, and most of the NMDs are slowly progressive or even static over a relatively normal lifespan. However, some NMDs can produce severe physical disabilities in young children, result in wheelchair use by age 10, and even (as in the case of Duchenne muscular dystrophy) lead to early mortality (REHAB BRIEF, Vol. XI, No. 9, 1988).

NMDs can also strike productive adults without warning in mid-life, cause physical incapacities and seriously impair health, physical and cognitive functioning, ability to work, and family life. Individuals with NMD incur muscular weakness and atrophy, limb contractures, spinal deformity, restrictive lung disease, cardiovascular complications, and cognitive and psychosocial impairments in various degrees and combinations. The rates of progression may vary among diseases and among individuals.

Rehabilitation is necessary to inhibit deformity, prolong locomotive functions, preserve and enhance manipulation skills, maximize independent functional skills, and assist the individual to maintain and enhance a normal social, behavioral, and vocational profile (Goodgold, General Principles of Management and Evaluation of Neuromuscular Disease, PM&R: State of the Art Reviews, Vol. 2, No. 4, 1988). Rehabilitation should consider the individual's total needs, and include attention to pulmonary, cardiovascular, and other complications, as well as musculoskeletal and psychosocial care. The relatively high incidence of cognitive impairment in certain neuromuscular diseases has important implications for educational and vocational planning (Fowler, Johnson, Yang, 1988).

Individuals with NMDs have significant needs for vocational rehabilitation services to enable them to maintain or regain appropriate employment. Research at the University of California at Davis indicates that many service providers underestimate the vocational potential of individuals with NMDs, focusing instead on the life-threatening implications of some NMDs. As a result, the vocational rehabilitation service system needs additional strategies and training to optimize services to this population.

*Priority*

An RRTC in NMD rehabilitation shall focus on developing interventions to improve the lives of individuals with NMDs, and, to accomplish this, shall—

- Develop and validate quantitative measures and techniques to assess functioning, including measures of endurance, mobility, strength, and cognitive performance, and use these measures to both document the natural course of NMDs and to evaluate rehabilitation interventions;
- Develop and evaluate rehabilitation interventions, including technological aids and devices and exercise training, among others, to preserve maximum physical functioning, longevity, and independence, and assist individuals with NMDs to attain and maintain employment;
- Develop and evaluate techniques to restore and enhance psychosocial and cognitive functioning;
- Develop and evaluate strategies to improve vocational rehabilitation services and vocational outcomes for this population;
- Develop and evaluate strategies to assist individuals and their families to adjust to the impact of NMDs and to maintain quality of life; and
- Develop and evaluate new strategies to address life-long needs for health care, rehabilitation, psychosocial well-being, employment, and independent living for individuals with NMDs and their families.

**Proposed Priority 2—Rehabilitation and Multiple Sclerosis Background**

Multiple Sclerosis (MS) is an adult-onset neurological disease that affects the message-carrying nerve fibers of the central nervous system. Some of the common symptoms include fatigue, loss of coordination, numbness, vision problems, muscle weakness, difficulty walking, spasticity, and urinary and bowel problems. There are widely varying combinations of symptoms and rates of exacerbation among individuals. Some have few symptoms, which remain fairly consistent over time, while a small number rapidly develop severe disabilities. Most cases fall between the extremes, and are characterized by exacerbations followed by periods of remission.

Multiple sclerosis is a frequent cause of disability in the young adult population. The total population of individuals with MS in the United States is probably 250,000–500,000 (Baum and Rothschild, Annals of Neurology, 1981, v. 10), and, since a substantial number may incur severe disability over several decades, MS is a disease that has considerable social and economic impact. The age of onset is usually between 20 and 45 years—with a mean age of onset of 33—and most of those affected are women. Because MS strikes individuals in their most productive years, just when they are assuming major family and career responsibilities, its impact is often significant (Scheinberg, Multiple Sclerosis: A Guide for Patients and Their Families, 1983). And because MS has only a slight impact on longevity, an individual can expect to live approximately 30 years after the onset of MS.

The aim of MS rehabilitation is to optimize independent functioning and quality of life for people with the disease and for their families. Rehabilitation has been associated with the diagnosis and treatment of functional limitations, with emphasis on the functional assessment of motor, sensory, and cognitive problems and treatment aimed at enhancing function and altering behavior (Halstead, L.S., Grabois, M., Medical Rehabilitation, 1985). Because there is no available cure, individuals with MS must have "a coordinated continuum of preventive, diagnostic, therapeutic, rehabilitative, supportive, and maintenance services that address the health, social and personal needs of individuals with multiple sclerosis and their families" (National MS Society, Long-term Care Issues in Multiple Sclerosis, 1990).

*Priority*

An RRTC in the rehabilitation of individuals with multiple sclerosis shall—

- Develop and evaluate new clinical interventions to improve human functioning, which may include early intervention, as well as techniques to improve motor, sensory, cognitive, alimentary, and sexual functioning of individuals with MS;
- Develop and evaluate new rehabilitation strategies, including technology and assistive devices, to assist individuals with MS to attain or maintain employment;
- Develop and evaluate new rehabilitation strategies to promote the maintenance of effective psychosocial and family functioning; and
- Develop and evaluate new models for long-term care in the community.

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**Proposed Priority 3—Functional Assessment and Evaluation of Rehabilitation Outcomes**

*Background*

Improving rehabilitation practices and outcomes requires an ability to assess functional status and changes in status in many areas, including motor function, cognitive function, emotional and interpersonal function, and sensory function, among others. Both rehabilitation practitioners and researchers need better methods and protocols to measure and assess the various elements of impairment, disability, and handicap.

Functional assessment data are useful to the clinician in selecting and monitoring treatments and in determining whether or not treatment goals have been achieved (Fuhrer and Halpern, 1984). Accurate functional assessment data are important to researchers in studies of the incidence and prevalence of specific physical impairments and their associated limitations and disabilities (Kaufert, 1983) and in studies predicting post-rehabilitation functioning. Functional assessment is also a basic component of the evaluation of rehabilitation interventions and services.

A common classification scheme of impairment, disability, and handicap, comparable to the World Health Organization's (WHO's) International Classification of Diseases, 9th edition, is fundamental to the development of an assessment system. The WHO trial International Classification of Impairments, Disabilities, and Handicaps may be a useful starting point in developing a common language for describing rehabilitation outcomes. The Functional Independence Measure (FIM) (Granger and Hamilton, 1987), a descriptive, criterion-referenced scale, has gained some acceptance as a measurement system and is another useful starting point to be considered in the development of an assessment system.

There are numerous tools to measure specific components of human performance; e.g., strength, endurance, energy expenditure, range of motion, muscle activity, and sensory function. However, these assessments often are based on subjective observation or on locally unique applications of assessment technology, so that it is difficult to make comparisons of clinical data between rehabilitation settings. Furthermore, most assessment tools are based on single body systems and have not been incorporated into an integrated, multidimensional analysis that would provide meaningful measures of outcomes after rehabilitation. A common measurement system would permit meaningful comparisons of the effects of the same intervention administered in different amounts or levels of intensity, as well as comparisons across various types of interventions and rehabilitation settings.

There has been less research in developing measures of handicap. Handicap refers to limitations in social role performance and work productivity. While measures of remunerative activity are available, tools for assessing social role performance (e.g., parenting or spousal relationships) are lacking, as are tools to measure the individual's integration into the community. There is also a dearth of measures to examine the effect of environmental factors—such as physical barriers, communication barriers, and policy or attitudinal barriers—in creating handicaps. Because ultimate outcomes of rehabilitation should be holistic, researchers and clinicians need common measures of the extent of handicap and the effect of rehabilitation in ameliorating handicap.

Rehabilitation practice uses a diverse array of therapeutic techniques, devices, and modalities. While precise measurement of a specific intervention and its outcome is often difficult, it is a prerequisite to determining efficacy and cost benefit. Standardized measures of such interventions as physical, vocational, and psychosocial rehabilitation, family involvement, and community integration are also needed, as is a system to characterize and evaluate the different rehabilitation programs and service delivery settings in which interventions are applied.

*Priority:*

An RRTC in functional assessment and evaluation of rehabilitation outcomes shall enhance the capacity of the rehabilitation field to apply appropriate rehabilitation interventions and assess their outcomes. To achieve these objectives, the Center shall—

- Develop and evaluate quantitative measurement systems for assessing functional abilities, clinical interventions, and rehabilitation outcomes resulting from changes in functional status;
- Develop and evaluate measures of handicap and well-being—including such areas as quality of life, employment, and community integration—and evaluate the utility of these measures for assessing the effect of various rehabilitation interventions on level of handicap; and
- Identify valid and reliable measures of social and environmental factors that affect rehabilitation success and test the usefulness of these measures.

In addition, the Center shall—

- Work with a broad spectrum of rehabilitation researchers and clinicians throughout the Nation to apprise them of the ongoing work, obtain their inputs, and provide professional education on the issues and methods of functional assessment and evaluation of rehabilitation outcomes;
- Work closely with other relevant RRTCs and Rehabilitation Engineering Centers to assure the broadest utility and acceptability for the assessment systems and the appropriate use of new measurement devices and technologies;
- Coordinate with any efforts in functional assessment and evaluation of rehabilitation outcomes by the new National Center for Medical Rehabilitation Research of the National Institutes of Health and other relevant research entities; and
- Involve individuals with disabilities in the selection and definition of outcome measures.

**Proposed Priority 4—Arthritis Rehabilitation**

*Background*

The term "arthritis" encompasses a large group of rheumatic diseases that affect the joints and connective tissues that support the skeleton and the body—such as muscles, tendons, and ligaments—and that protect and cover internal organs. Although the overall prevalence of rheumatic diseases increases with age, many young adults and children also are affected. About one in seven Americans, or as many as 37 million, suffer from some form of rheumatic disease, and the annual economic impact of arthritis alone is estimated at $9 billion (1990 Annual Report, Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee).

This priority focuses on three types of arthritis that account for the most disability:

(1) Degenerative joint disease or osteoarthritis (OA) is the most common form of arthritis and is most likely to cause disability through impairments in the knees, hips, and spine. Certain occupations that require frequent knee bending may lead to osteoarthritis.

(2) A chronic inflammatory disease of unknown cause, *rheumatoid arthritis (RA)* afflicts more than two million Americans, and it affects at least twice as many women as men. This disorder causes inflammation, pain, and swelling in the linings of the joints, and also can produce such general symptoms as

weakness, fatigue, and loss of appetite. The disease tends to be both chronic and irregular and is frequently disabling.

(3) More than 200,000 American children are afflicted with some form of arthritis. One of these diseases, *juvenile rheumatoid arthritis* (JRA), accounts for about 5,000 new cases each year and resembles adult RA in that it is a chronic inflammatory disease of unknown cause that is characterized by joint pain and related symptoms and apparent defects in regulation of the immune system (1990 Annual Report, Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee).

Arthritis is a degenerative condition in that exacerbations lead to further impairments and limitations. Individuals who have arthritis often exhibit symptoms of fatigue, depression, sleeplessness, and intense chronic pain. Their lives may be marked by inactivity, unemployment, and psychosocial withdrawal.

Researchers and clinicians have begun to investigate rehabilitation solutions such as pain management techniques, exercise regimens, endurance training, job modifications, and new approaches to social and community participation. Service delivery methods, such as team care, care in the local community, family involvement, and the use of assistive technology, appear to lead to more favorable rehabilitation outcomes. However, major modifications in rehabilitation await conclusive evidence of the efficacy of these promising interventions.

*Priority:*

An RRTC in rehabilitation of individuals with arthritis shall—

- Develop and evaluate improved rehabilitation treatment techniques that maintain and restore physical, psychological, and vocational functioning and reduce chronic pain;
- Develop and evaluate new rehabilitation strategies, including technology and assistive devices, that will aid individuals with arthritis to attain or maintain employment;
- Develop early interventions, including family strategies, that will prevent or ameliorate psychosocial and educational problems often associated with JRA; and
- Develop acceptable measures to assess function, quantify rehabilitation interventions, and assess outcomes in human functioning, employment, and community integration.

**Proposed Priority 5—Stroke Rehabilitation**

*Background*

Stroke is a major cause of disability leading to institutionalization for elderly persons. In 1986 the American Heart Association estimated that approximately 350,000 Americans survived strokes, adding to the total of over two million stroke survivors, many of whom required chronic care (Wolf, 1989). About two thirds of stroke survivors have permanent disabilities. An estimated 40 percent of all medical rehabilitation patients are stroke survivors, presenting a major challenge to the rehabilitation field. The recommendations of a 1989 NIDRR-funded conference on Methodologic Issues in Stroke Outcome Research, were published by the American Heart Association in the September, 1990 Supplement to Stroke: A Journal of Cerebral Circulation and are one foundation for this priority.

The impact of residual impairments of stroke is profound, requiring prolonged therapy and adjustment to the likelihood of long-term significant disability. Many stroke survivors are dependent on others for assistance with self-care and mobility, and survivors are often limited in their options for social interaction and community participation. The physical, social, and vocational functioning of stroke survivors in the community is significantly poorer than that of age-matched persons in control groups. While the incidence of stroke is lower in the working age population, strokes can have devastating consequences for return to work or other employment outcomes.

Approximately half of all individuals who survive a stroke are disabled by neurological impairments such as muscular weakness or paralysis, impaired cognition, communication disorders, visual field loss, perceptual deficits, incontinence, or depression. Yet, rehabilitation practitioners have demonstrated the potential to assist these individuals to function with a significant degree of independence.

Stroke rehabilitation research is specifically concerned with the large number of stroke survivors and their residual impairments and disabilities. Providers of rehabilitation services, payers, and individuals and their families need assurances that rehabilitation interventions are appropriate and cost-effective. This, in turn, requires validated knowledge of the basic determinants and parameters of disability and the efficacy of rehabilitation interventions (Gresham, 1986).

A key to both improved research and better care for individuals is a valid classification system based on clear descriptions of the variety of natural histories and prognoses (Basmajian, 1989). Stroke rehabilitation outcome research must be concerned with a range of issues, including prevention of recurrence and of secondary complications, restoration and maximization of remaining function, and psychosocial factors that facilitate living and working in the community.

*Priority*

An RRTC on stroke rehabilitation shall develop approaches that will improve the outcomes of rehabilitation for individuals who have had strokes, and shall—

- Document the natural course of stroke recovery;
- Develop valid classification schemes to measure and describe stroke and the concomitant impairments and disabilities;
- Develop and evaluate rehabilitation interventions to improve communication, cognition, neuromotor functioning, and emotional, family, vocational, or community adjustment;
- Develop valid measures to assess rehabilitation outcomes after stroke, including long-term outcomes in the community and the workplace; and
- Develop and assess rehabilitation and health care service delivery models, including self-contained stroke rehabilitation units, coordinated team care, and vocational rehabilitation services.

**Proposed Priorities 6–8—Rehabilitation in Traumatic Brain Injury**

*Background*

Traumatic brain injury (TBI) is defined as brain damage from externally inflicted trauma to the head that results in significant impairment to an individual's physical, psychosocial, or cognitive functional abilities. It is characterized by altered consciousness (coma or post-trauma amnesia) during the acute phase after injury, the duration of which varies greatly among individuals, usually depending on the severity of the injury.

The peak incidence of TBI is between the ages of 15 and 24, and it is two to three times more common in males than females. Most persons with TBI are single and are likely to have limited education and employment experience. A significant number have histories of alcohol or drug use, or have undergone psychiatric care prior to their head injuries (Kraus *et al.*, 1983).

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The National Head Injury Foundation reports that every year 30,000 to 50,000 of the 400,000 to 600,000 people who sustain TBIs are left with noticeable physical, social, and cognitive deficits severe enough to prevent them from returning to their former levels of function. The number of survivors requiring comprehensive and extended periods of rehabilitation has also increased dramatically since the introduction of sophisticated emergency care and trauma centers.

The residual deficits that result from TBI may be grouped as follows: (1) *Physical impairments*—impairments of gait, limb spasticity, labored speech, vision difficulties, poor balance, and potential for seizure disorders; (2) *Cognitive impairments*—loss of alertness, attention, concentration, learning and memory, abstraction, conceptualization, and problem-solving; (3) *Executive impairments*—loss of ability to plan, organize, and carry out goal-directed activity; inability to modulate, monitor, evaluate, regulate, and self-correct on-going behavior; and (4) *Psychosocial impairments*—tendency toward social inappropriateness, inability to control emotions, and inability to form and maintain relationships.

Prevention and treatment of the many secondary medical, psychological, and cognitive complications will enable many survivors of TBI to progress purposefully through acute rehabilitation and, after discharge, to remain in the home and community without frequent return to the hospital or rehabilitation facility to remediate the problems. Because brain injury research and service programs are relatively recent developments, there have been to date few definitive solutions to the complex rehabilitation problems of TBI. Frequently, service delivery methods from developmental disabilities, correctional rehabilitation, and mental health models have been transferred or modified for rehabilitation purposes.

Individuals with TBIs frequently need interventions in the areas of education, vocational education, and vocational rehabilitation to enable them to obtain and retain appropriate employment. Because TBI may involve a lasting combination of cognitive and neurobehavioral impairments, and sometimes motor and communications impairments as well, these individuals require individualized rehabilitation strategies, often long-term.

The scope and severity of the disabilities and the opportunity to improve outcomes indicate a need for a substantial body of programmatic research to provide information and understanding of the many diagnostic, evaluative, therapeutic, and community reintegration issues related to TBI. Thus, the Secretary is proposing priorities for three Centers in various aspects of head trauma research.

**Priority 6—Rehabilitation Interventions in TBI**

An RRTC on the prevention of secondary complications and the development of interventions to improve functioning of individuals with TBI shall—

- Develop a valid methodology to measure and describe the course of brain injury recovery and clinical sequelae;
- Develop and test prognostic indicators of rehabilitation outcome including early predictors of functional outcomes for all age groups;
- Develop and evaluate new methods of prevention and treatment of the secondary medical, psychological, and neurobehavioral complications of TBI;
- Develop approaches to the special rehabilitative needs of individuals with concomitant brain and spinal cord injuries;
- Identify individual characteristics and environmental barriers that contribute to the development and exacerbation of secondary complications, and develop interventions to address them; and
- Develop and evaluate new rehabilitation interventions for community-based rehabilitation to improve the medical neurobehavioral, psychological, and social functioning of persons with moderate to severe TBI.

**Priority 7—Community Integration and TBI**

An RRTC to advance the outcomes of independent living and community integration for individuals with TBI shall—

- Develop and evaluate valid measures of community integration for the TBI population;
- Develop and evaluate effective models of community integration;
- Develop and evaluate successful models for optimizing support to and from families during rehabilitation and community integration;
- Develop and evaluate treatment strategies to enhance neurobehavioral functioning and cognition, especially as related to employment and community integration;
- Delineate the types of services needed in the community to meet the rehabilitation needs of persons with TBI and evaluate treatment programs;
- Develop and evaluate models for the prevention and treatment of substance abuse among individuals with TBI; and
- Develop and evaluate innovative approaches to enhance neurobehavioral function and psychological adjustment.

**Priority 8—Vocational Rehabilitation and Employment in TBI**

An RRTC to improve vocational rehabilitation services for individuals with TBI and enhance their long-term employment outcomes shall—

- Develop and evaluate new strategies of vocational rehabilitation, job placement, and work adjustment services, including models for competitive employment;
- Identify and demonstrate effective transition models from school to work for school-age TBI survivors;
- Develop and evaluate improved programs of vocational education and vocational training for this population;
- Identify types of job accommodations that will enable TBI survivors to work productively; and
- Develop community-based support services to provide ongoing supports needed to maintain employment for the long term.

**Proposed Priorities 9–12—Rehabilitation of Spinal Cord Injury**

*Background*

Spinal Cord Injury (SCI) results from trauma to the lower central nervous system that has a catastrophic effect on physical functioning and major effects on psychosocial and vocational functioning as well. The primary effects are loss of motor function and loss of sensation below the level of injury. Because of the nature of the injury, the survivor is vulnerable to a myriad of debilitating and costly medical and social complications. While SCIs are relatively uncommon, they are always costly in terms of hospitalization and rehabilitation expenditures, loss of income and assets, and effects on the quality of life.

Kraus, *et al.* (1983) estimated the annual incidence of acute SCI in the United States to be approximately 50 per million population. Vehicular accidents are the primary cause of these injuries. SCI often occurs in a young population that will incur major lifetime medical costs if rehabilitation is not successful. The SCI typically occurs to males between the ages of 15 and 24. They are likely to be single, have limited educational levels, and not be established in careers or even long-term employment. The recent scientific literature indicates that many of these young men have learning disabilities or

problems with alcohol and substance abuse which place them at high risk for trauma and interfere with rehabilitation success after injury.

The Secretary is proposing priorities for four RRTCs to develop solutions to problems in the rehabilitation of individuals with SCIs. Each of these RRTCs must coordinate with the Spinal Cord Injury Special Demonstration projects, also funded by NIDRR, to ensure the timely transfer of new rehabilitation knowledge to the demonstration projects.

**Priority 9—Secondary Complications and Neural Recovery in SCI**

*Background*

Preventing or treating costly secondary medical complications enhances the health status, employability, and potential for independent functioning of individuals with SCI. Many individuals with SCI remain in acute care hospitals or nursing facilities for extended lengths of stay because of decubitus ulcers, urinary tract infection, mass reflex spasticity, deep vein thromboses, and other secondary complications.

Significant progress has been made in the prevention and treatment of secondary complications of SCI such as urinary tract infections (Lloyd, 1989; Nanninga, 1980; Montgomery, 1985), deep vein thrombosis (Green, 1986, 1987, 1991; Merli, 1990), and other circulatory disorders and respiratory complications (Stover, *et al.*, 1984).

Another area of investigation with high potential cost benefit is the study of neural mechanisms of recovery, including natural recovery and that assisted by rehabilitation modalities and adaptive technology (Herbison, 1986; Waters, 1990). To date, these neurologic mechanisms, including the phenomenon of spinal shock after injury, are not well understood.

*Priority*

An RRTC on secondary complications and neural recovery must focus on improving the functioning of individuals with SCI by developing new clinical methods and service delivery techniques that will prevent or ameliorate secondary complications and enhance neural recovery of function. The Center shall—

- Define the clinical course of SCI and the development and exacerbation of debilitating complications;
- Develop and evaluate techniques to reduce the incidence of secondary complications and minimize the debilitating and costly consequences of both frequent hospitalization and lengthy medical treatment;
- Develop and evaluate interventions to optimize individual functioning and neural recovery in individuals with SCI; and
- Validate methods to involve family members in the rehabilitation process and to maximize consumer self-management of the rehabilitation process.

**Proposed Priority 10—Community Integration for Individuals with Spinal Cord Injury**

*Background*

The literature on spinal cord injury suggests that post-injury life expectancy is now as high as 30–40 years (REHAB BRIEF, Vol. IX, No. 12). These can be productive years of work, study, family life, independent living, leisure activities, and community participation. However, there are many obstacles that must be addressed if these objectives are to be realized. These include problems in maintaining health status; disincentives to work, marriage, and family life; high costs and unavailability of quality health care; and restrictions caused by mobility limitations and inaccessibility.

*Priority*

An RRTC in community integration for individuals with SCI shall develop and disseminate new knowledge and techniques to—

- Improve personal and psychosocial adjustment after SCI;
- Enhance family life, including involvement of family members in rehabilitation, and options for marriage, sexuality, reproduction, and parenting;
- Enhance participation in community life;
- Improve techniques for maintaining health status; and
- Improve systems for long-term care in the community.

**Proposed Priority 11—Vocational Rehabilitation and Employment for Individuals with Spinal Cord Injury**

*Background:*

Data indicate that at least 70 percent of individuals with SCI are unemployed at five years post-injury, and more than 60 percent are unemployed at ten years post-injury (Menter, R.R., in Apple, D.F. and L.M. Hudson, eds., *Spinal Cord Injury: The Model,* 1991). Individuals who have sustained SCI are capable of productive work in many fields and at many levels, but there appear to be a number of obstacles to realizing this employment potential.

While continuing health maintenance problems, limited functional capacities, and incomplete community integration may contribute to this problem, unacceptably high unemployment persists even among those in whom acute rehabilitation and physical restoration have been quite successful. Obstacles that have been identified include: financial disincentives in public policy, inadequate vocational rehabilitation services, disincentives in employee benefit plans, environmental and transportation barriers, barriers to personal assistance services at the job site, and concomitant disabilities such as learning disabilities or substance abuse.

*Priority*

An RRTC on vocational rehabilitation and employment for individuals with SCI shall develop techniques to—

- Increase the incidence and duration of employment and the level and quality of work life for individuals with SCIs;
- Improve the quantity and appropriateness of vocational rehabilitation services to individuals with SCI;
- Maximize the incentive to work at an optimum level with improved cost-benefit ratios to society;
- Improve educational and vocational training programs for individuals with SCI; and
- Reduce physical and attitudinal barriers to employment and provide work-related supports to enhance the likelihood of successful employment.

**Proposed Priority 12—Aging with Spinal Cord Injury**

*Background*

The increased post-injury life expectancy has resulted in a new phenomenon that is not well understood—a population aging with SCIs. Initial studies of this phenomenon indicate that significant changes in function, equipment needs, and costs of care occur as individuals get older (Menter, *op. cit.*).

Observers have noted that the patterns of problems related to aging differ along three major dimensions of injury: the type of neurological injury (e.g., high or low, complete or incomplete), age at onset of the injury, and the historical era in which the injury occurred. Most individuals experience declines in functional capacities as they age. However, normal declines in muscle strength, range of motion of the joints, or pulmonary or cardiovascular capacity may significantly interfere with the SCI individual's ability to function or

to compensate for other limitations, may lead to increased disability and hospitalization, and may even be life-threatening.

These physiological changes are often accompanied by changes in the social support systems, such as changes in family composition; diminished resources brought on by loss or aging of parents or spouse, or retirement; and changes in housing or community programs. There is also a major increase in costs of care when the individual requires more frequent hospitalization, more personal assistance, and more assistive technological devices.

*Priority*

An RRTC to address the problems of aging with SCI shall—

- Develop a better understanding of the natural course of SCI as persons age;
- Develop techniques for individuals aging with SCI to maintain functional capabilities and to cope with additional functional losses;
- Develop regimens for nutrition, exercise, stress management, health maintenance, and self-care to minimize the impacts of aging with SCI; and
- Develop methods to maintain community integration, employment, family life, and independent living for individuals aging with SCI.

*Invitation To Comment:* Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3423, Mary Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays.

*Applicable Program Regulations:* 34 CFR Parts 350 and 352.

**Program Authority:** 29 U.S.C. 760–762

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Dated: April 29, 1992.

**Lamar Alexander,**

*Secretary of Education.*

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Part III

# Department of Housing and Urban Development

**Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention**

**Notice of Funding Availability for Lead-Based Paint Abatement in Low- and Moderate-Income Private Housing**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N-92-3447; FR 363-N-01]

### NOFA for Lead-Based Paint Abatement in Low- and Moderate-Income Private Housing

**AGENCY:** Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

**ACTION:** Notice of funding availability.

**SUMMARY:** This notice announces the availability of up to $47,700,000 for the grant program for lead-based paint abatement in low- and moderate-income private housing. Approximately 10–15 grants of $1 million–$6 million will be awarded. This document includes information concerning the following:

(a) The purpose of the NOFA, eligibility, available amounts, and selection criteria;

(b) Application processing, including how to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

The appendix to the NOFA identifies relevant regulations and guidelines referenced throughout the NOFA.

**DATES:** A preapplication conference to answer any questions arising from this NOFA will be held on Monday, August 3, 1992, in Washington, DC. Persons interested in attending this conference should contact the Office of Lead-Based Paint Abatement and Poisoning Prevention after publication of this NOFA, at the telephone numbers listed below, for precise scheduling information. To be considered for funding, an original and two copies of the completed application must be received at the Office of Lead-Based Paint Abatement and Poisoning Prevention (OLBPAPP), at the address listed below, no later than 3:00 p.m. (Eastern Time), on Monday, September 21, 1992. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Please see section III, Checklist of Application Submission Requirements, in this NOFA for further information on what constitutes proper submission of an application.

**ADDRESSES:** Application kits may be obtained from the Office of Lead-Based Paint Abatement and Poisoning Prevention, room B–133, 451 Seventh Street, SW., Washington, DC 20410, or by phoning (202) 755–1822 (not a toll-free number). Complete applications should be submitted to this same address.

**FOR FURTHER INFORMATION CONTACT:** Ellis G. Goldman, Director, Program Management Division, Office of Lead-Based Paint Abatement and Poisoning Prevention, room B–133, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–1822 (not a toll-free number); TDD numbers for the hearing-impaired are: (202) 708–9300 (not a toll-free number), or 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C 3501–3520), and assigned OMB control number 2539–0001.

#### I. Purpose and Substantive Description

*A. Statutory Background and Authority*

Lead is a powerful toxicant that attacks the central nervous system and is particularly damaging to the neurological development of young children. Pregnant women can transfer lead through the placenta to the fetus. Lead-based paint (LBP) is one of the major sources of lead in the environment. In addition to paint, lead may be found in dust, soil, drinking water, food, emissions from leaded gasoline combustion, and industrial emissions. Human exposure to lead is found by testing blood for the presence of lead.

HUD has been actively engaged in a number of activities relating to lead-based paint as a result of the Lead-Based Paint Poisoning Prevention Act (LBPPPA) and certain amendments to the LBPPPA in 1987 and 1988. (See the Appendix for a list identifying relevant Federal regulations and guidelines referred to in this NOFA.) These amendments required HUD to: (1) Develop comprehensive and workable plans for the inspection and abatement of lead-based paint in public and privately owned housing; (2) estimate the extent of lead-based paint hazards in the nation's housing stock; (3) carry out a major, multi-city demonstration to identify the most cost-efficient methods for LBP-hazard abatement; (4) examine lead-hazard testing technology; and (5) develop interim technical guidelines for testing and abating LBP hazards in public housing.

Based upon a national survey conducted in 1990, approximately 57 million privately owned and occupied housing units built before 1980 have some lead-based paint inside or outside the dwelling. An estimated 9.9 million of these units are occupied by families with children under the age of seven, who are most at risk. Of these, only about 3.8 million units have priority hazards, such as peeling lead-based paint, excessive amounts of lead dust, or both. Approximately half of these units are occupied by families with incomes higher than the national median. Lead-based paint is found most often in houses built before 1940.

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102–139, approved October 28, 1991) (Appropriations Act), established an Office of Lead-Based Paint Abatement and Poisoning Prevention in the Office of the Secretary (105 Stat. 753). This Office is responsible for the Department's lead-based paint abatement and poisoning prevention activities.

*B. Allocation Amounts*

Included in the Department's FY 1992 appropriations for assisted housing is $50,000,000 for grants to States and units of general local government for the abatement of significant lead-based paint and lead dust hazards in low- and moderate-income owner-occupied units and privately owned low-income rental units. This amount has been reduced by a percentage applied across the board to programs in the same account because the Department has recaptured less money than anticipated in its FY 1992 appropriations. Therefore, $47,700,000 remains available for award under this NOFA.

Because lead-based paint is a national problem, it is critical that these funds be used in a manner that maximizes the number of housing units in which lead hazards are abated, and that stimulates cost-effective State and local approaches that can be replicated in as many settings as possible. HUD expects to award 10–15 grants of $1 million—$6 million each, which is consistent with the intent of Congress as evidenced by the Senate Committee Report on the Department's appropriations. (See, S. Rpt. 102–107, at 54. Because the Senate Committee expressed concern about

diluting the benefits of this demonstration program, the Department has also adopted a 50,000 population requirement for eligible applicants. The Department believes that smaller communities can best be served by State applicants.)

*C. Eligibility*

The Appropriations Act (see 105 Stat. 746) specifies the following eligibility requirements for participation in this grant program to abate lead-based paint hazards in housing:

(1) The grants shall be for the abatement of significant LBP and lead dust hazards in low- and moderate-income owner-occupied units and privately owned low-income rental units;

(2) Applicants shall be States or units of general local government;

(3) Funds shall be available only for projects conducted by contractors certified and workers trained through a federally or State-accredited program; and

(4) Applicants must demonstrate the capability to identify housing units with significant LBP hazards, to oversee the safe and effective conduct of the abatement, and to assure the future availability of abated units to low- and moderate-income persons.

*D. Definitions*

The following definitions apply to this grant program:

*Abatement*—A comprehensive process of eliminating exposure to lead-based paint and lead dust which includes testing; replacement, enclosure, encapsulation, or removal of the lead-based paint hazard; as well as measures for worker protection, containment of dust and debris, cleanup and proper disposal of waste, and clearance testing.

*Applicant*—A State, or a unit of general local government above 50,000 population.

*Certified Contractor*—An individual who has successfully completed a State-accredited lead-based paint training program and who will conduct abatement work in accordance with that training.

*Encapsulation*—A method of abatement that involves the coating and sealing of surfaces with durable, surface coatings specifically formulated to be elastic, long-lasting, and resilient to cracking, peeling, algae, and fungus, so as to prevent chalking or flaking lead-containing substances from becoming part of house dust or accessible to children. Paint is not an encapsulant.

*Enclosure*—The resurfacing or covering of surfaces, and sealing or caulking with durable materials so as to prevent or control chalking, flaking, lead-containing substances from becoming part of house dust or accessible to children.

*HEPA* (High efficiency particulate accumulator)—A vacuum cleaner fitted with a filter capable of filtering out particles of 0.3 microns or greater from a body of air at 99.97 percent efficiency or more.

*Low/Moderate-Income*—Low-income means an individual, household or family earning a maximum of 80 percent of the area median income as determined by HUD. Moderate-income means an individual, household, or family earning a maximum of 95 percent of the area median. HUD may establish income ceilings higher or lower than 80 percent or 95 percent of the area median income on the basis of HUD findings that such variations are necessary.

*Replacement*—A strategy of abatement that entails removing components such as windows, doors, and trim that have lead-based painted surfaces, and installing new or de-leaded components free of lead-based paint.

*State-Accredited Program*—A State-approved certification or licensing program conducted in accordance with State statutes or regulations that establish minimum education, training, and experience requirements for lead-based paint abatement contractors, workers, and inspectors. (HUD advises States that are establishing or revising these programs that the Environmental Protection Agency (EPA) is developing standards for the training and certification of contractors and workers involved in lead-based paint abatement activities. See, the EPA's Appropriation Act for FY 1992, at 105 Stat. 765. HUD urges these States to watch for the EPA's publication of standards in the **Federal Register**, because HUD funding of lead-based paint abatement activities beyond this current funding cycle is expected to be based on final EPA standards. For further information on the EPA standards, or guidance on the development of a State certification or licensing program, applicants may contact the EPA Division of Environmental Assistance at the telephone number listed in the Appendix to this NOFA, or HUD's Office of Lead-Based Paint Abatement and Poisoning Prevention at the telephone numbers listed at the beginning of this NOFA.)

*Substrate*—The material to which a coating such as paint is applied. Residential substrates are usually wood, plaster, masonry, gypsum board, or metal, including components such as door frames, window trim, walls, ceilings, baseboards.

*Surface*—The outer or topmost boundary of a substrate.

*Testing*—The measurement of lead in painted surfaces by Federal- or State-certified personnel using a portable X-ray fluorescence analyzer, laboratory analysis of paint samples, or other methods approved by HUD.

*Trained Worker*—A worker who has successfully completed a State-accredited lead-based paint training program.

*E. Program Objectives and Requirements*

(1) Objectives

The grant program is designed to accomplish three major objectives:

(a) Encourage State and local governments to initiate or expand lead-based paint inspection, abatement, and training certification programs in order to reduce the health hazards associated with exposure to lead-based paint and lead dust, especially as these hazards affect young children in low- and moderate-income households;

(b) Encourage State and local governments to plan and implement cost-effective testing, abatement, and financing programs, including the testing of innovations that can serve as models for other jurisdictions interested in addressing this problem. Because of the high costs of eliminating lead-based paint hazards, particular encouragement is offered for programs that can safely reduce average per-unit abatement costs; and

(c) Document the health effects of lead-based paint abatement activity by testing blood-lead levels of young children before and after abatement has taken place.

(2) Number of Grants To Be Awarded

Approximately 10–15 grants will be awarded, ranging between $1 million and $6 million.

(3) *Funding.* Grantees shall be reimbursed, in accordance with a schedule to be included with the applicant's proposal and approved by HUD. (See Section V, Administrative Provisions, of this NOFA.)

(4) Limitations on the Use of Assistance

(a) These lead-based paint grant funds are to be used for testing and abatement activities in residential units constructed prior to 1978. These units must be either the principal residence of owner-occupants whose incomes fall within the low/moderate-income definition set forth in section I.D of this NOFA, or private rental housing occupied or available for occupancy only by families or individuals whose incomes fall within

the low-income definition set forth in section I.D of this NOFA.

(b) Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3501), grant funds may not be used for properties located in the Coastal Barriers Resources System.

(c) Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), grant funds may not be used to abate lead-based paint by means of removal and replacement, enclosure, or encapsulation on properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with the regulations thereunder (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding such hazards; and

(ii) Flood insurance on the property is obtained in accordance with section 102(a) of the Flood Disaster Protection Act. Applicants are responsible for assuring that flood insurance is obtained and maintained for the appropriate amount and term.

(d) The National Historic Preservation Act of 1966 (NHPA) (16 U.S.C. 470) and the regulations at 36 CFR part 800 apply to the abatement activities that are to be undertaken pursuant to this NOFA. HUD is responsible for satisfying the obligations to make a historic preservation finding under section 106 of the NHPA and the regulations. Recipients are to assist HUD in making the required findings by providing information to support the determination. This information includes the address of the property, and either a complete description of the activities to be carried out or an indication that no external changes are proposed and the property is not listed on the National Register of Historic Places or eligible for inclusion on the National Register as required by section 106 of the NHPA. In the alternative, the recipients may provide evidence of consultation with the State Historic Preservation Officer (SHPO).

(5) Eligible Activities

The following activities are eligible for support under the grant program:

(a) *Direct project elements.* (i) Inspection of housing constructed prior to 1978 to determine the presence of lead-based paint or lead dust through the use of portable X-ray fluorescence analyzers or approved laboratory analyses.

(ii) Abatement of lead-based paint hazards by means of removal, enclosure, encapsulation, or replacement methods.

(iii) Less-than-full-abatement techniques for programs that apply a differentiated set of resources to each unit, dependent upon conditions of the unit and the extent of hazards.

(iv) Temporary relocation of families and individuals during the period in which abatement is conducted and until the time the affected unit receives clearance for reoccupancy.

(v) Blood testing of children under the age of seven residing in units undergoing inspection or abatement.

(vi) Housing rehabilitation activities that are specifically required to carry out effective abatement and without which the abatement could not be effected.

(vii) Engineering and architectural costs that are necessary to, and in direct support of, abatement.

(viii) Liability insurance.

(ix) Data collection and documentation.

(b) *Support elements.* (i) Administrative costs (maximum of 10 percent).

(ii) Program planning.

(iii) Establishment of State certification programs for testing and abatement contractors and worker training.

(iv) Establishment of State certification or licensing of local government inspection processes to verify proper abatement and worker protection.

(v) Establishment of funding mechanisms to assist testing and abatement efforts, with particular emphasis on assistance to low- and moderate-income owners and renters.

(vi) Establishment of a community education program on lead hazards.

(6) Project Design Standards and Requirements

Grantees will be afforded considerable latitude in designing and implementing the methods of LBP hazard reduction to be employed in their jurisdictions. HUD is interested in promoting innovative and creative approaches that result in the reduction of this health threat for the maximum number of low- and moderate-income residents, and that demonstrate replicable techniques that are better, faster, less expensive, or more effective than current practices. Flexibility will be allowed within the parameters established below. It is critical that procedures for all phases of testing and abatement be clearly established in writing and adhered to by all applicants, recipients, and their contractors. It is only in this manner that research and evaluation of the cost-effectiveness of the methods employed can be undertaken. Grantees will be required to collect the data necessary to document the various methods employed in order to determine the relative cost and effectiveness of these methods in reducing lead-based paint hazards. Pre- and post-abatement blood testing of children under the age of seven shall be a major determinant of effectiveness. The following is provided to guide applicants:

(a) *Thresholds for abatement.* While the Department's Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (see Appendix) employ two abatement thresholds, one milligram per square centimeter (1.0 mg/cm$^2$) or 0.5 percent by weight, applicants may utilize other thresholds, provided that the alternative threshold, with adequate justification, is accepted by HUD. The justification must state why the applicant believes the proposed approach will provide satisfactory health protection for occupants and discuss cost savings and benefits expected to result from using the proposed approach. HUD's review of alternative thresholds or methods will be made after grant award, in a separate approval process.

(b) *Surfaces to be abated.* While HUD's Interim Guidelines require the abatement of all leaded interior and exterior surfaces, the applicant may choose to abate fewer surfaces or apply any other partial abatement techniques, provided that an adequate justification is established and accepted by HUD. The justification must state why the applicant believes the proposed approach will provide satisfactory health protection for occupants and discuss cost-savings and benefits expected to result from using the proposed approach. HUD's review of alternative techniques will be made after grant award, in a separate approval process.

(c) *Clean-up.* The applicant may employ post-abatement clean-up procedures that differ from the procedures in the HUD Interim Guidelines, provided that an adequate justification is established and accepted by HUD. The justification must state why the applicant believes the proposed approach will provide satisfactory health protection for occupants and discuss cost savings and benefits expected to result from using the proposed approach. HUD's review of alternative procedures will be made after grant award, in a separate approval process.

(d) *Waste disposal.* The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*) (RCRA), administered by the Environmental Protection Agency (EPA), shall govern all waste disposal resulting from abatement.

(e) *Worker protection.* The applicant shall observe the procedures for worker protection established in the Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing, published by HUD in September 1990 (see Appendix).

(f) *Uniform Relocation Act.* (i) The applicant shall comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655). These policies are described in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

(ii) No displacement (permanent, involuntary move) is anticipated. However, to preclude avoidable claims for relocation assistance, all occupants (owner and tenants) shall, as soon as feasible, be notified in writing that they will not be displaced by the lead-based paint abatement program.

(iii) Residential occupants who will not be required to move permanently may be required to relocate temporarily to permit the lead-based paint abatement program to be carried out. All conditions of the temporary relocation must be reasonable. At a minimum, the tenant shall be provided:

(*a*) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs at that housing; and

(*b*) Appropriate advisory services, including reasonable advance written notice of the date and approximate duration of the temporary relocation; the address of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period; and the reimbursement provisions of subparagraph (*a*) of this paragraph.

(iv) The policy regarding temporary relocation costs for owner-occupants who elect to participate in abatement is a matter of grantee discretion.

(g) *Post-abatement clearance.* Grantees shall be required to meet the post-abatement wipe test clearance thresholds contained in the HUD Interim Guidelines (see Appendix). Wipe tests shall be conducted by an independent, accredited laboratory. Units shall not be reoccupied until acceptable clearance levels are achieved.

(h) *Prohibited abatement methods.* Abatement methods that will not be allowed are open-flame burning, uncontrolled abrasive blasting, or machine sanding without HEPA attachments. The applicant is cautioned that methods that generate high levels of lead dust, such as abrasive sanding, shall be undertaken only with requisite worker protection, containment of dust and debris, and increased clean-up.

*F. Environmental Review*

Because at the time of application submission only neighborhoods or other locators of the housing to be abated will be known, rather than specific properties, the Department has determined that it will perform an environmental review in accordance with 24 CFR part 50 at the time each property is proposed for abatement under the grant, rather than before HUD approval of the grant.

HUD's environmental review will be limited to satisfying its obligation to make an historic preservation finding under section 106 of NHPA and the implementing regulations. HUD has determined that lead-based paint abatement falls within a categorical exclusion (see 24 CFR 50.20(c)) from review under the National Environmental Policy Act and is not subject to the remaining authorities listed in 24 CFR 50.4, with the exception of the funding limitations under the Coastal Barrier Resources Act and the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. The applicant is responsible for compliance with these funding limitations and flood insurance purchase requirements, as discussed in section I.E(4), Limitations on the Use of Assistance, of this NOFA.

*G. Rating Factors*

HUD will use the following criteria to rate and rank applications received in response to this NOFA. The rating factors are listed in the order of their relative importance, and will also be used to rate applications considered under the special, large-volume category discussed below in Section I.H of this NOFA ("special volume category"). The total number of points is 100.

(1) *Strategy. (40 points)*—The quality of the proposed lead-based paint testing and abatement strategy. Strategies that promote new or innovative cost-effective methods will be awarded a higher number of quality rating points than those of otherwise equal quality that propose only conventional testing and abatement techniques. The strategy should include:

(a) The identification of pre-1978 housing to be inspected, tested and abated;

(b) Blood screening of young children;

(c) The abatement program, including financing, community education, temporary relocation, and the degree to which the strategy focuses upon high-hazard units occupied by low- and moderate-income owners and low-income renters with children under the age of seven; and

(d) The methodology for documenting the testing and abatement methods to be used and their costs.

(2) *Applicant capacity. (35 points)*—The ability of the applicant to initiate and carry out the lead-based paint testing and abatement program successfully. Elements to be considered include:

(a) Demonstrated knowledge and experience of the proposed project manager in planning and managing large and complex interdisciplinary programs involving housing rehabilitation, public health, and evironmental management.

(b) Demonstrated knowledge and experience of the staff in carrying out these undertakings.

(c) The ability of the applicant to have completed the necessary planning, site selection, and participant selection to commence the actual on-site testing and abatement activity within 6 months (12 months for special volume category) of the date of grant award and to complete abatement activity within 24 months (36 months for special volume category) of the date of grant award. However, for applicants in States proposing to enact within 12 months legislative authority to accredit programs for contractor certification and worker training, HUD shall allow testing and abatement to be commenced within 6 months (12 months for special volume category), and abatement to be completed within 24 months (36 months for special volume category), of the date State enabling legislation is enacted (unless a local government applicant is allowed additional time under section II.B(6)(b)(ii) of this NOFA).

(d) The extent of cooperation among the applicant's housing, health and environmental agencies, especially with regard to medical referrals of children with elevated blood-lead levels.

(e) The willingness of the jurisdiction to cooperate fully with any health-related research or evaluation associated with this grant program.

(3) *Resource Coordination. (10 points)*—The degree to which the requested grant would be augmented by obtaining additional fiscal or programmatic resources through

coordination and integration with other housing or health programs, using both public and private sources. The applicant will be rated according to the information it provides on the amounts and sources of these additional resources. Funds from other Federal programs may be included in the analysis of additional resources.

(4) *Local Contribution. (10 points)*—The extent of local contribution, in either cash or in-kind services. The applicant will be rated according to its identification of sources and inclusion of letters or other evidence of commitment from donors. The costs of blood testing and medical follow-up are eligible for inclusion in the computation of the local contribution. Community Development Block Grant funds will be considered local funds for purposes of this program. Other Federal resources will be excluded from the computation of the local contribution.

(5) *Community Participation. (5 points)*—The degree to which the applicant proposes to enlist the active participation of community- or neighborhood-based groups or organizations, including local businesses, through consultation, employment, or other activities. The applicant will be rated according to the information it provides on the names and proposed role of local participants.

*H. Special Rating Category: Volume Production For LBP Abatement*

The Department is especially interested in considering new or innovative ways to abate large numbers of units on an expedited basis. The magnitude of the lead-based paint hazard makes it imperative that cost-effective strategies that eliminate or mitigate this hazard in large numbers of units be actively encouraged. The Department expects that volume production, utilizing similar cost-effective abatement methods and techniques, represents the best opportunity to demonstrate a firm unit-cost basis for particular abatement strategies. Accordingly, any proposals that emphasize cost-effective, large-scale abatement, i.e., a minimum of 300 units within a 24-month period, will be considered in a separate funding category. These proposals will be scored on the basis of rating factors (1)–(5) in section I.G. of this NOFA, except that in factor (2) commencement of testing and abatement shall be within 12 months, and completion of abatement shall be within 36 months, of a grant award (or enactment of legislation, where necessary, as provided in section I.G(2)(c) of this NOFA; a local government applicant may be allowed additional time under section II.B(6)(b)(ii) of this NOFA). Because of the potential costs of volume-production proposals, a maximum of four grants will be made under this special volume category.

## II. Application Process

*A. Submitting Applications*

To be considered for funding, an original and two copies of the application must be physically received in the Office of Lead-Based Paint Abatement and Poisoning Prevention (OLBPAPP), Department of Housing and Urban Development, room B–133, 451 Seventh Street, SW., Washington, DC 20410, no later than 3 p.m. (Eastern Time), on September 21, 1992.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

HUD will review each application to determine whether it meets all of the threshold criteria established under Section II.B of this NOFA. Non-responsive applications will be declared ineligible for further consideration. Applications that meet all of the threshold criteria will be eligible to be scored and ranked, based on the total number of points allocated for each of the rating factors in Section I.G of this NOFA.

HUD intends to fund the highest ranked applications within the limits of funding availability, but reserves the right to advance other eligible applicants in funding rank if necessary to assure geographic diversity or enhance data reliability.

*B. Application Threshold Requirements*

(1) *Purpose.* The application must be for funds to be used for the abatement of significant LBP and lead dust hazards in low- and moderate-income owner-occupied units and low-income privately owned rental units.

(2) *Eligibility to receive assistance.* The applicant must demonstrate that it is a State or a unit of general local government with a population of more than 50,000.

(3) *Financial responsibility.* For purposes of this program, HUD has determined that all governmental entities are deemed to meet the requirements for accounting and financial responsibility. The applicant shall be responsible for the performance of all consortium members, partners, contractors, and joint venture participants.

(4) *Identification of significant hazard housing.* The applicant must demonstrate capability to identify housing units with significant lead-based paint hazards, as provided in the application kit.

(5) *Safe and effective conduct of the abatement.* The applicant must demonstrate capability to oversee the safe and effective conduct of the abatement work, as provided in the application kit.

(6) *Contractor certification program requirement.* Each applicant shall demonstrate that it will carry out its abatement program under an operational State-accredited certification/training program.

(a) Applicants utilizing contractors certified and workers trained within a State that currently has a LBP certification/training program shall furnish citations for enabling statutes and regulations, as well as other appropriate documentation (e.g., certificates and licenses), as proof thereof.

(b) For other applicants, the following provisions shall apply: (i) An applicant shall furnish at the time of application, letters of intent to establish a certification program that shall be enacted within 12 months and have completed initial training sessions within 18 months from date of grant award. Letters of intent shall be from the Governor of the State and an authorized representative of the legislative body in the State, setting forth their plans to make a good faith effort to enact within 12 months of the grant award enabling legislation that would establish an appropriate department or office, to put an operating staff in place, and to promulgate appropriate regulations and complete the initial training sessions within 18 months of the grant award.

(ii) Local government applicants in States that have furnished letters of intent and have made a good faith effort to carry out that intent, but have been unable to enact legislation within 12 months, or complete initial training sessions within 18 months, from the date of award shall, in either of these events, have the option of using workers and contractors certified or licensed under accredited programs of other States. Upon the occurrence of the first of these events, the local government applicant shall have an additional 6 months from the expiration of the grace period (12

months for enactment of legislation, or 18 months to complete the initial training sessions) to commence the actual on-site testing and abatement activity.

(iii) Except as provided in subparagraph (ii) of this paragraph, if the commitment to establish a certification/training program is not fulfilled within the stated time, the grant agreement shall immediately terminate.

(7) Units in which lead hazards have been abated under this program shall be occupied by and continue to be available to low- and moderate-income residents as specified in the Appropriations Act. Accordingly, the grantee shall target neighborhoods where:

(i) The median income is at or below 95 percent of the area median income;

(ii) Rents for standard units are at or below the Section 8 Fair Market Rents; and

(iii) The character of the neighborhood is such that the rents are likely to remain at or below section 8 (42 U.S.C. 1437f) Fair Market Rents for at least 5 years. Furthermore, owners of rental property receiving funds under this grant program shall agree to continue the occupancy, or availability for occupancy, of abated units by low- or moderate-income tenants for a minimum of 5 years.

## III. Checklist of Application Submission Requirements

*A. Applicant Data*

Applicants must complete and submit applications in accordance with the instructions contained in the application kit. The following is a checklist of the application contents that will be specified in the application kit:

(1) The name, mailing address, telephone number, and principal contact person of the applicant. If the applicant has consortium associates, partners, major subcontractors, or joint venture participants contributing resources to the project, similar information shall also be provided for each of them.

(2) Proof of State accreditation requirements for LBP certification/training programs applicable to the contractors and workers that will be used by the applicant, or letters of intent from both the Governor and an authorized representative of the legislative body stating that a good faith effort will be made to have a certification/training program authorized within 12 months, and operational within 18 months, of the grant award (see Section II.B(6)(b)(i) of this NOFA regarding this requirement).

(3) Evidence of the applicant's commitment to eliminating significant lead-based paint hazards in housing.

(4) A management and budget plan that details the proposed costs and schedules for starting and completing each set of project activities.

(5) Evidence of a continuing capacity of the applicant to undertake a lead-based paint testing and abatement program safely and effectively.

(6) Information itemizing what constitutes the local contribution, including values placed on donated in-kind services and letters or other evidence of commitment from donors, and the amounts and sources of coordinated resources.

(7) Information on the names and proposed roles of local participating community- or neighborhood-based groups or organizations, including local businesses.

(8) A completed Form HUD–2880, Applicant/Recipient Disclosure/Update Report, where applicable (see section VI.D of this NOFA).

*B. Proposed Activities*

(1) Affected Population To Be Served

The applicant shall describe the size and general characteristics of the pre-1978 housing stock within its jurisdiction, including a description of the housing's location, condition, and occupants, and a current estimate of the number of children under the age of seven in these units. Maps should be included. (Priority shall be given to units constructed before 1978 that are occupied by children under the age of seven and that have deteriorating lead-based paint or excessive levels of lead dust.) In addition, the applicant shall provide information on the number of children diagnosed as being lead poisoned within the previous five years and the remedial measures taken to respond to these diagnoses.

(2) Description of LBP Activities

The applicant shall describe the proposed activities, including, but not be limited to, information on the following:

(a) Overall strategy, including priority setting;

(b) Specific neighborhood, area, community, or other locator of the housing units targeted for abatement (area and local maps shall be included);

(c) Inspection and testing of housing;

(d) Blood testing of children under the age of seven, and medical referral for children found to have elevated blood-lead levels;

(e) Abatement methods;

(f) Community education;

(g) Relocation;

(h) Coordination with public health and housing programs;

(i) Data collection and documentation; and

(j) Mechanisms that the applicant proposes to employ to provide financial assistance to low- and moderate-income owners and low-income renters under this grant program for abatement.

*C. Certifications and Assurances*

(1) The application shall contain an assurance that the applicant will comply with the environmental laws and authorities at 24 CFR 50.4, and that it will:

(a) Supply information necessary for HUD to perform any required environmental review of each property;

(b) Carry out mitigating measures required by HUD or select alternate eligible property; and

(c) Not commit to or carry out any program activities for any property until HUD approval is received.

(2) The application shall contain a certification that the applicant will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; implementing regulations at 49 CFR part 24; and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

(3) The application must be in compliance with Federal civil rights laws and requirements.

(4) The application shall contain assurances that the applicant will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–19), Executive Order 11063, and title VI of the Civil Rights Act of 1964, pertaining to equal opportunity and nondiscrimination in housing, and to all regulations issued in accordance with these authorities.

(5) The application shall include assurances of nondiscrimination on the basis of age or handicap, in compliance with the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and all regulations issued pursuant to these authorities.

(6) The applicant shall assure that it will conduct dust-wipe testing in all units in which lead hazards are abated both prior to and immediately after the abatement, and that the applicant will conduct dust wipe testing at 6- and 12-months after abatement, in conjunction with the blood-lead testing of the resident children.

(7) The applicant shall assure that it will test and record the blood-lead level of all children under the age of seven occupying affected units prior to abatement. The applicant shall also

assure that it will test and record blood-lead levels of affected children at six months and at one year after abatement is completed. Abatement of a unit shall not commence until blood-lead tests have been administered to children under the age of seven occupying the unit. Children determined to have elevated blood-lead levels, using the Center for Disease Control October 1991 Guidelines (see Appendix to this NOFA), shall be provided appropriate medical treatment as set forth by the Centers for Disease Control. (The costs of blood testing and medical follow-up are eligible for inclusion in the computation of the local contribution.)

(8) The applicant shall assure that it will cooperate with any federally sponsored or endorsed monitoring or evaluation efforts carried out in conjunction with the grantee's lead-based paint activities under this program. This includes providing documentation of all testing, inspection, and abatement.

(9) The applicant shall assure that assistance provided under this grant program shall not be used to supplant other resources designated for the proposed project. For purposes of this clause, "other resources" means resources provided from any source other than the HUD Office of Lead-Based Paint Abatement and Poisoning Prevention.

(10) The application will contain any other assurances as HUD shall include under this NOFA.

## IV. Corrections to Deficient Applications

HUD will notify an applicant, in writing, shortly after the expiration of the NOFA response deadline, of any technical deficiencies in the application. In order to receive further consideration for assistance, the applicant must submit corrections to the Office of Lead-Based Paint Abatement and Poisoning Prevention within 14 calendar days from the postmark date of HUD's letter notifying the applicant of any technical deficiencies. Corrections to technical deficiencies will be accepted within the 14-day time limit.

Applicants will only be permitted to correct those deficiencies determined to be technical, e.g., a missing certification or missing signature. Deficiencies determined to be substantive may not be corrected.

## V. Administrative Provisions

*(1) Obligation of Funds*

Funding shall be provided on a cost-reimbursable basis not to exceed the amount of the grant, except as otherwise provided in this paragraph. After a grant agreement has been executed with a grantee that is subject to existing State program accreditation requirements, HUD may, upon written request, provide to a grantee a cash advance that shall not exceed 10 percent of the grant amount and shall be limited to the minimum amount needed for the actual, immediate cash requirements of the grantee in carrying out the purposes of this NOFA. Those grantees whose awards are conditioned upon proof of newly executed executive or legislative authority to carry out the requirements of this NOFA may request a one-time advance of funds, not to exceed 5 percent of the grant amount, for purposes of implementing certification or licensing requirements.

HUD will not make additional payments from the amount awarded to a grantee until the grantee's contractors and workers have met the certification and training requirements of a State-accredited program. All additional payments will be made on a cost-reimbursable basis, except that a 10 percent final payment shall be made upon completion of all tasks and delivery of an acceptable final report.

*(2) Increases*

After the signing of the grant agreement and initial obligation of funds, HUD will not increase the grant sum or the total amount to be obligated based upon the original scope of work. Amounts awarded may only be increased as provided in paragraph (3), Deobligation, of this section.

*(3) Deobligation*

(a) HUD may deobligate amounts for the advance or grant if proposed activities are not initiated or completed within the required time after selection.

(b) The grant agreement will set forth in detail other circumstances under which funds may be deobligated and other sanctions imposed.

(c) HUD may undertake any one, or a combination, of the following actions:

(i) Readvertise the availability of funds that have been deobligated under this section in a new NOFA;

(ii) Reconsider applications that were submitted in response to the most recently published NOFA and select additional applications for funding with deobligated funds. These selections will be made in accordance with the selection process described in the applicable NOFA;

(iii) Consider supplemental applications from existing grantees for the performance of expanded scopes of work that may be of benefit to the overall program; and

(iv) For deobligated funds that total less than a minimum grant amount ($1 million), consider issuing an RFP for a contract to provide technical assistance or other program support services.

## VI. Other Matters

*A. Environmental Review*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The finding of no significant impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., room 10276, Washington, DC 20410.

*B. Federalism Executive Order*

The General Counsel, as the Designated Official under section 8(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or the distribution of power and responsibilities among the various levels of government. Under this NOFA grants will be made for the abatement of significant lead-based paint and lead-dust hazards in low- and moderate-income owner-occupied units and privately owned low-income rental units. Although the Department encourages States and local governments to initiate or expand LBP certification, testing, abatement, and financing programs, any action by a State or local government in these areas is voluntary. Because action is not mandatory, the NOFA does not impinge upon the relationships between the Federal government and State and local governments, and the notice is not subject to review under the Order.

*C. Family Executive Order*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this document will likely have a beneficial impact on family formation, maintenance and general well-being. This NOFA, insofar as it funds repairs to privately owned housing, will assist in preserving decent housing stock for resident families. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

*b. Section 102 of the HUD Reform Act—Documentation and Public Access Requirements—Applicant/Recipient Disclosures*

(1) Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

(2) Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

*E. Prohibition Against Lobbying Activities*

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no Federl funds have been or will be spent on lobbying activities in connection with the assistance.

*F. Prohibition Against Lobbying of HUD Personnel*

Section 112 of the Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) (Reform Act) added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 contains two provisions concerning efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 29912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of that rule.

Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

*G. Prohibition Against Advance Information on Funding Decisions*

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing Section 103 is codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of Section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics: (202) 708–3815 (TDD/Voice). (This is not a toll-free number.)

The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters Counsel for the program to which the question pertains.

**Authority:** 42 U.S.C. 4821–4846; 42 U.S.C. 3535(d).

Dated: June 29, 1992.

**Arthur S. Newburg,**

*Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.*

**Appendix—Relevant Federal Regulations and Guidelines**

To Secure Any Of The Documents Listed, Call The Listed Telephone Number (generally not toll-free).

Regulations

1. Worker Protection: General Industry Lead Standard, 29 CFR 1910.1025 (OSHA regulations); phone (202) 755–1822.
2. Waste Disposal: 40 CFR parts 260–268 (EPA regulations); phone 1–800–424–9346.

Guidelines

1. Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; HUD, September 1990 (phone (202) 755–1822):

*Post Abatement Clearance, No More Than:*

200 Micrograms/Sq. Ft. (Floors)
500 Micrograms/Sq. Ft. (Window Sills)
800 Micrograms/Sq. Ft. (Window Wells)

2. HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition; phone (202) 708–0336.
3. Preventing Lead Poisoning In Young Children; Centers for Disease Control, October 1991 (phone (404) 488–4880.

Information on Content of State-Accredited Contractor Certification and Worker Training Programs

Contact: EPA Office of Pollution Prevention and Toxics, Division of Environmental Assistance; phone (202) 260–3790.

*CDC Classes of Blood Levels in Children:*

| Class | Concentration (ug/dL) | Comment |
|---|---|---|
| I | <9 | Child is not considered to be lead-poisoned. |
| IIA | 10–14 | Large number or proportion of children with blood lead levels in this range should trigger community-wide childhood lead poisoning prevention activities. Children in this range may need to be rescreened more frequently. |
| IIB | 15–19 | Child should receive nutritional and educational interventions and more frequent screening. If the blood lead level persists, environmental investigation and intervention should be done. |
| III | 20–44 | Child should receive environmental evaluation and remediation and a medical evaluation; may need pharmacologic treatment of lead poisoning. |
| IV | 45–69 | Child will need both medical and environmental interventions, including chelation therapy. |
| V | >70 | Child is a medical emergency. Medical and environmental management must begin immediately. |

[FR Doc. 92–15698 Filed 7–2–92; 8:45 am]

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**H.J. Res. 470/P.L. 102-309**

To designate the month of September 1992 as "National Spina Bifida Awareness Month"l. (June 30, 1992; 106 Stat. 275; 1 page) Price: $1.00

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600-End .....

13.....

## CFR CHECKLIST

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

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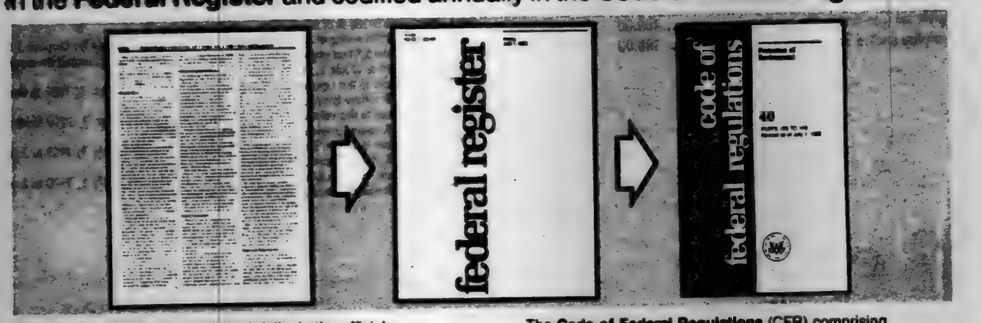


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# federal register

Tuesday
July 7, 1992

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**WHERE:** Federal Building and U.S. Courthouse, Conference Room 7209-A, 450 Golden Gate Avenue, San Francisco, CA
**RESERVATIONS:** Federal Information Center, 1-800-726-4995

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**WHEN:** July 23, at 1:00 pm
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**RESERVATIONS:** Federal Information Center, 1-800-726-4995

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# Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206-AE87

### Prevailing Rate Systems

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final rule to amend the criteria that are considered when defining Federal Wage System wage area boundaries by combining economic communities or political units. The final regulations clarify that the criteria in the regulations will be applied generally in the order listed.

**EFFECTIVE DATE:** August 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Allan K. Summers, (202) 606–2848.

**SUPPLEMENTARY INFORMATION:** On April 6, 1992, OPM published a proposed rule to define certain policies, practices, and criteria for fixing and administering the pay of prevailing rate employees (57 FR 11586). OPM received no comments during the 30-day comment period. The proposed rule, therefore, is being adopted as a final rule.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under § 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

**Constance Berry Newman,**

*Director.*

Accordingly, OPM is amending 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for 5 CFR part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

2. In § 532.211, paragraph (d)(2) is redesignated as (d)(3) and a new paragraph (d)(2) is added to read as follows:

**§ 532.211 Criteria for establishing appropriated fund wage areas.**

* * * * *

(d) * * *

(2) Generally, the criteria listed in paragraph (d)(1) of this section are considered in the order listed.

* * * * *

3. In § 532.219, paragraph (c) is revised to read as follows:

**§ 532.219 Criteria for establishing nonappropriated fund wage areas.**

* * * * *

(c)(1) Two or more counties may be combined to constitute a single wage area through consideration of:

(i) Proximity of largest activity in each county;

(ii) Transportation facilities and commuting patterns; and

(iii) Similarities of the counties in:

(A) Overall population;

(B) Private employment in major industry categories; and

(C) Kinds and sizes of private industrial establishments.

(2) Generally, the criteria listed in paragraph (c)(1) of this section are considered in the order listed.

* * * * *

[FR Doc. 92–15762 Filed 7–6–92; 8:45 am]
BILLING CODE 6325-01-M

## 5 CFR Parts 831, 843, and 870

RIN 3206–AE69

### Payment of Lump-Sum Death Benefits Under CSRS, FERS and FEGLI

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Civil Service Retirement System (CSRS), Federal Employees Retirement System (FERS), and Federal Employees' Group Life Insurance (FEGLI) regulations to clarify that when a lump-sum death benefit is payable to the estate of a deceased employee or annuitant and no administrator or other fiduciary has been appointed by a court of appropriate jurisdiction, payment may be made to an individual qualifying under "small estate" procedures of the State of domicile, to assure that lump-sum death benefits are paid in a manner consistent with legislative intent.

**EFFECTIVE DATE:** August 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Eugene R. Littleford, (202) 606–0299.

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking was published in the **Federal Register** on October 24, 1991 (56 FR 55099) to amend parts 831, 843, and 870 of title 5, Code of Federal Regulations, to provide procedures under which the Office of Personnel Management (OPM) and the Office of Federal Employees' Group Life Insurance would honor claims made for lump-sum death benefits under CSRS, FERS, and FEGLI under State small-estate procedures.

One comment was received. The commenter was an employee organization. The comment was supportive of OPM's proposed regulatory amendments.

Consequently, OPM is amending parts 831, 843, and 870 of title 5, Code of Federal Regulations, as proposed.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities because they primarily affect Federal

employees, annuitants, and their family members.

**List of Subjects**

*5 CFR Part 831*

Administrative practice and procedure, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

*5 CFR Part 843*

Air traffic controllers, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

*5 CFR Part 870*

Administrative practice and procedure, Government employees, Life insurance, Retirement.

U.S. Office of Personnel Management.

**Constance Berry Newman,**

*Director.*

Accordingly, parts 831, 843, and 870 of title 5 of the Code of Federal Regulations are amended as follows:

## PART 831—RETIREMENT

1. The authority citation for part 831 continues to read in part as follows:

**Authority:** 5 U.S.C. 8347 * * *

2. § 831.2001 is amended by adding the following definition alphabetically as set forth below.

**§ 831.2001 Definitions.**

* * * * *

*Duly appointed representative of the deceased employee's, separated employee's, retiree's, survivor's or Member's estate* means an individual named in an order of a court having jurisdiction over the estate of the deceased which grants the individual the authority to receive, or the right to possess, the property of the deceased; and also means, where the law of the domicile of the deceased has provided for the administration of estates through alternative procedures which dispense with the need for a court order, an individual who demonstrates that he or she is entitled to receive, or possess, the property of the deceased under the terms of those alternative procedures.

* * * * *

3. § 831.2003 is amended by adding a sentence at the end of paragraph (a) to read as follows:

**§ 831.2003 Eligibility for lump-sum payment upon death or retirement.**

(a) * * * If a deceased employee, separated employee, retiree or Member provided in a valid designation of beneficiary that the lump sum proceeds shall be payable to the deceased's estate, or to the Executor, Administrator, or other representative of the deceased's estate, or if the proceeds would otherwise be properly payable to the duly appointed representative of the deceased's estate under the order of precedence specified in 5 U.S.C. 8342(c), payment of the proceeds to the duly appointed representative of the deceased's estate will bar recovery by any other person.

* * * * *

## PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

4. The authority citation for part 843 continues to read in part as follows:

**Authority:** 5 U.S.C. 8461; * * *.

5. § 843.102 is amended by adding the following definition alphabetically as set forth below.

**§ 843.102 Definitions.**

* * * * *

*Duly appointed representative of the deceased employee's, separated employee's, retiree's, survivor's or Member's estate* means an individual named in an order of a court having jurisdiction over the estate of the deceased which grants the individual the authority to receive, or the right to possess, the property of the deceased; and also means, where the law of the domicile of the deceased has provided for the administration of estates through alternative procedures which dispense with the need for a court order, an individual who demonstrates that he or she is entitled to receive, or possess, the property of the deceased under the terms of those alternative procedures.

* * * * *

6. § 843.203 is amended by designating the current paragraph as (a) and adding a new paragraph (b) to read as follows:

**§ 843.203 Eligibility for a one-time payment upon death of an employee, separated employee, or retiree if no one is eligible for an annuity.**

* * * * *

(b) If a deceased employee, separated employee, retiree or Member provided in a valid designation of beneficiary that the lump sum proceeds shall be payable to the deceased's estate, or to the Executor, Administrator, or other representative of the deceased's estate, or if the proceeds would otherwise be properly payable to the duly appointed representative of the deceased's estate under the order of precedence specified in 5 U.S.C. 8424(d), payment of the proceeds to the duly appointed representative of the deceased's estate will bar recovery by any other person.

## PART 870—BASIC LIFE INSURANCE

7. The authority citation for Part 870 continues to read as follows:

**Authority:** 5 U.S.C. 8716.

8. § 870.901 is amended by adding paragraphs (a)(4) and (b) to read as follows:

**§ 870.901 Order of precedence.**

(a) * * *

(4) *Duly appointed representative of the insured's estate* means an individual named in an order of a court having jurisdiction over the estate of the insured which grants the individual the authority to receive, or the right to possess, the property of the insured; and also means, where the law of the domicile of the insured has provided for the administration of estates through alternative procedures which dispense with the need for a court order, an individual who demonstrates that he or she is entitled to receive, or possess, the property of the insured under the terms of those alternative procedures.

(b) If an insured provided in a valid designation of beneficiary that the proceeds of the insurance shall be payable to the insured's estate, or to the Executor, Administrator, or other representative of the insured's estate, or if the proceeds would otherwise be properly payable to the duly appointed representative of the insured's estate under the order of precedence specified in 5 U.S.C. 8705(a), payment of the proceeds to the duly appointed representative of the insured's estate will bar recovery by any other person.

[FR Doc. 92-15755 Filed 7-6-92; 8:45 am]

BILLING CODE 8325-01-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 96

**[Docket No. 92-060-1**

### Restriction of Importations of Foreign Animal Casings Offered for Entry Into the United States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning restriction of importations of foreign animal casings

offered for entry into the United States by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing certain references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so that the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

**EFFECTIVE DATE:** July 7, 1992.

**FOR FURTHER INFORMATION CONTACT:** Dr. Harvey A. Kryder, Senior Staff Veterinarian, VS, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR part 96 concern the restriction of importations of foreign animal casings offered for entry into the United States. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Service (APHIS) was the official responsible for various decisions under these regulations. We are revising 9 CFR part 96 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. Those revisions will be published in separate **Federal Register** documents. Delegations of authority within the agency are contained in 7 CFR part 371.

We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and are removing certain references to "Veterinary Services," "inspector of Veterinary Services," and Veterinary Services inspector" and replacing them with references to "Animal and Plant Health Inspection Service" and "APHIS inspector." We are also adding definitions of "Administrator," "Animal and Plant Health Inspection Service," and "APHIS representative."

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

**Paperwork Reduction Act**

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

**List of Subjects in 9 CFR Part 96**

Imports, Livestock.

Accordingly, we are amending 9 CFR part 96 as follows:

## PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

1. The authority citation for part 96 continues to read as follows:

**Authority:** 21 U.S.C. 111; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 96.1 [Amended]**

2. In § 96.1, definitions of "Administrator," "Animal and Plant Health Inspection Service," and "APHIS representative" are added, in alphabetical order, to read as follows:

*Administrator.* The Administrator, Animal and Plant Health Inspector Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service).

*APHIS representative.* An individual employed by APHIS who is authorized to perform the function involved.

**§§ 96.3 and 96.4 [Amended]**

3. In 9 CFR part 96, remove the word "Deputy" from the following places:

(a) Section 96.3; and

(b) Section 96.4, paragraph (c)(2), first sentence.

4. In 9 CFR part 96, remove the words "Veterinary Services" and add, in their place, the words "Animal and Plant Health Inspection Service (APHIS)" in the following places:

(a) Section 96.3; and

(b) Section 96.4; paragraph (c)(2), first sentence.

**§§ 96.4, 96.5, 96.7, 96.8, and 96.10 [Amended]**

5. In 9 CFR part 96, remove the words "of Veterinary Services" and add the word "APHIS" immediately before the word "inspector" in the following places:

(a) Section 96.4, paragraph (b);

(b) Section 96.5, paragraph (a); paragraph (b), both times they appear; paragraph (c), each of the three times they appear; and paragraph (d), second sentence;

(c) Section 96.7;

(d) Section 96.8, paragraph (b), first sentence; and

(e) Section 96.10.

**§§ 96.9 and 96.13 [Amended]**

6. In 9 CFR part 96, remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

(a) Section 96.9, paragraph (a); and

(b) Section 96.13, second sentence.

**§ 96.12 [Amended]**

7. In § 96.12, introductory text, remove the words "a Veterinary Services" and add the words "an APHIS" in their place.

Done in Washington, DC, this 29th day of June 1992.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92–15710 Filed 7–6–92; 8:45 am]

BILLING CODE 3410–34–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 91–CE–97–AD; Amendment 39–8309; AD 92–15–15]**

### Airworthiness Directives; Piper Aircraft Corporation Models PA–36–300 and PA–36–375 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Piper Aircraft Corporation (Piper) Models PA-36-300 and PA-36-375 airplanes. This action requires repetitive inspections of the engine mount structure for cracks at the engine mount attach points until gusset attachments are installed, and the mandatory installation of gusset attachments if cracks are found. The Federal Aviation Administration (FAA) has received several reports of cracking at the forward fuselage weld clusters at the engine mount attach areas on the affected airplanes. The actions specified by this AD are intended to prevent separation of the engine from the airplane because of cracks at the engine mount attach points.

**DATES:** Effective August 24, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 24, 1992.

**ADDRESSES:** Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Perry, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910; Facsimile (404) 991-3606.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Piper Models PA-36-300 and PA-36-375 airplanes was published in the Federal Register on March 3, 1992 (57 FR 7560). The action proposed repetitive inspections of the engine mount structure for cracks at the engine mount attach points until gusset attachments are installed, and the mandatory installation of gusset attachments if cracks are found. The proposed actions would be accomplished in accordance with Piper Service Bulletin No. 828, dated April 7, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 308 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 16 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $271,040.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39— AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

**92-15-15 Piper Aircraft Corporation:** Amendment 39-8309; Docket No. 91-CE-97-AD.

*Applicability:* Model PA-36-300 airplanes (serial numbers 36-7760001 through 36-8160023) and Model PA-36-375 airplanes (serial numbers 36-7802001 through 36-8302025), certificated in any category.

*Compliance:* Required as indicated, unless already accomplished.

To prevent separation of the engine from the airplane because of cracks at the engine mount attach points, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the welds and areas adjacent to the welds at each engine mount attach point for cracks in accordance with the "INSTRUCTIONS: Inspection" section of Piper Service Bulletin (SB) No. 828, dated April 7, 1986.

(1) If cracks are found, prior to further flight, install gusset attachments in accordance with the "INSTRUCTIONS: Repair" section of Piper SB No. 828, dated April 7, 1986.

(2) If cracks are not found, reinstall the forward side panels and reinspect at intervals not to exceed 100 hours TIS.

**Note 1:** The compliance times referenced in this AD take precedence over those cited in the referenced service information.

(b) The installation described in paragraph (a)(1) of this AD may be accomplished at any time as terminating action for the repetitive inspections required by this AD.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) The inspections and possible installation required by this AD shall be done in accordance with Piper Service Bulletin No. 828, dated April 7, 1986. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(f) This amendment (39-8309) becomes effective on August 24, 1992.

Issued in Kansas City, Missouri, on June 29, 1992.

**Barry D. Clements,**

*Manager, Small Airplane Directorate Aircraft Certification Service.*

[FR Doc. 92-15785 Filed 7-6-92; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Parts 47 and 179

**[T.D. ATF-325; No. 89-11]**

### Importation of Arms, Ammunition and Implements of War and Machineguns, Destructive Devices, and Certain Other Firearms

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Final rule (Treasury Decision).

**SUMMARY:** ATF is amending regulations to extend the term of import permits for certain firearms and defense articles from six-months to one year. The additional time will allow importers sufficient time to complete the importation of the authorized commodity. In addition, it will eliminate the need for the importer to submit a new import application, ATF Form 6, because the importation was not completed within the six-month period.

**EFFECTIVE DATE:** July 7, 1992.

**FOR FURTHER INFORMATION CONTACT:** A. Virginia Alford or Ernestine O'Neal, Specialists, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202) 927-8320.

**SUPPLEMENTARY INFORMATION:** The regulations in part 47 relate to that portion of section 38 of the Arms Export Control Act of 1976, as amended, which is concerned with the importation of defense articles and defense services. It includes procedural and substantive requirements relating to the issuance of permits to import such articles and services. In this regard, 27 CFR 47.43(a) provides that permits to import defense articles and services, including firearms, are valid for six-months from their date of issuance unless a different period is stated on the permit. In addition, § 47.43(b) provides that if shipment cannot be completed during the validity of the permit, another application must be submitted to request additional time to complete the shipment.

The regulations in part 179 contain the procedural and substantive requirements relating to, among other things, the importation of machineguns, destructive devices and certain other firearms under the provisions of the National Firearms Act (NFA), 26 U.S.C. chapter 53. In this regard, 27 CFR 179.111(a) provides that an approved permit to import an NFA firearm into the United States terminates at the expiration of six-months from the date of its approval unless, upon request, it is extended.

In many instances, the importation cannot be completed within the prescribed six-month period and a new import permit must be obtained by the importer. Thus, in order to reduce the paperwork burden on the industry, and to increase the efficiency of ATF in processing requests for importation, ATF is amending the regulations in parts 47 and 179 to increase the term of import permits to one year.

### Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or foreign markets.

### Administrative Procedure Act

Because this final rule amending 27 CFR part 179 merely extends the term of a permit to import certain firearms from 6 months to a year, it is found unnecessary to issue this Treasury Decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation in 5 U.S.C. 553(d).

### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required by 5 U.S.C. 553 or any other law, the provisions of the Regulatory Flexibility Act do not apply.

### Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no reporting or recordkeeping requirements.

### Drafting Information

The principal authors of this Treasury decision are A. Virginia Alford and Ernestine O'Neal, Specialists, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms.

### Lists of Subjects

*27 CFR Part 47*

Administrative Practice and Procedure, Arms Control, Arms and Munitions, Authority Delegations, Customs Duties and Inspection, Imports, Penalties, Reporting and Recordkeeping Requirements, Seizures and forfeitures.

*27 CFR Part 179*

Administrative Practice and Procedure, Arms and Munitions, Authority Delegation, Customs Duties and Inspection, Excise taxes, Exports, Imports, Military Personnel, Penalties, Reporting Requirements, Research, Seizures and Forfeitures, Transportation.

### Authority and Issuance

Accordingly, 27 CFR part 47, Importation of Arms, Ammunition and Implements of War, and 27 CFR part 179, Machineguns, Destructive Devices and Certain Other Firearms, are amended as follows:

## PART 47—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

**Paragraph 1.** The authority citation for part 47 is revised to read as follows:

**Authority:** 22 U.S.C. 2778.

**Par. 2.** Section 47.43(a) is amended by revising paragraph (a) to read as follows:

**§ 47.43 Terms of Permit.**

(a) Import permits issued under this subpart are valid for one year from their issuance date unless a different period of validity is stated thereon. They are not transferable.

* * * * *

## PART 179—MACHINEGUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

**Par. 3.** The authority citation for 27 CFR part 179 is revised to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 4.** Section 179.111(a) is amended by removing the phrase "six (6) months" from the seventh sentence following

paragraph (a)(3) and adding in its place the phrase "one year".

Signed: February 12, 1992.

**Stephen E. Higgins,**

*Director.*

Approved:

**Peter K. Nunez,**

*Assistant Secretary (Enforcement).*

[FR Doc. 92-15817 Filed 7-6-92; 8:45 am]

BILLING CODE 4310-31-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 946

### Virginia Regulatory Program; Revegetation Standards for Success, Roads, Impoundments and Siltation Structures, Prime Farmland, Coal Preparation Plants, and Incidental Coal Extraction Exemption

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is announcing the approval of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Virginia proposes to amend its rules in various areas including revegetation, roads, impoundments, the exemption for coal extraction incidental to the extraction of other minerals removed for purposes of commercial use or sale, prime farmlands and coal preparation plants not located within the permit area of a mine. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, and to clarify and correct inconsistencies in Virginia's rules.

**EFFECTIVE DATE:** July 7, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Big Store Gap, Virginia 24219; Telephone (703) 523-4303.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Virginia Program
II. Submission of Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

## I. Background on the Virginia Program

The Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

## II. Submission of Amendments

By letter dated October 1, 1990 (Administrative Record No. VA 786), Virginia submitted a proposed amendment to its permanent program which was intended to respond to two 30 CFR 732.17 notifications (Administrative Record Nos. VA 743 and VA 749) and other changes to its program. Virginia proposes to revise its program in the areas of revegetation standards for success, siltation structures and impoundments, termination of jurisdiction, roads and support facilities, coal exploration, probable hydrologic consequences determination, permitting obligations relative to reclamation, exemption for coal extraction incidental to the extraction of other minerals removed for purposes of commercial use or sale, prime farmland, and coal preparation plants not located within the permit area of a mine.

OSM announced receipt of the proposed amendment in the October 31, 1990, **Federal Register** (55 FR 45611), and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on November 30, 1990.

By letter dated April 18, 1991 (Administrative Record No. VA 793), Virginia submitted additional information to both support and modify its proposed amendment. The additional information was submitted in response to an issue letter dated March 20, 1991, from OSM (Administrative Record No. VA 792). OSM announced receipt of the revisions to the previously proposed amendment in the May 23, 1991, **Federal Register** (56 FR 23664) and in the same notice, reopened the public comment period. The comment period closed on June 24, 1991.

Subsequently, OSM determined that in announcing receipt of the April 18, 1991, revisions to the State's original proposed amendment, OSM failed to identify revisions made to the State program at VR 480-03-19.773.16 (c)(4)(ii) and (c)(7). OSM then reopened and extended the comment period in the June 28, 1991, **Federal Register** (56 FR 29607). The comment period closed on July 15, 1991.

By letter dated May 12, 1992 (Administrative Record No. VA-818), Virginia submitted a request to withdraw portions of the October 1, 1990, submission and the April 18, 1991, resubmission in order to reconsider various proposals. The withdrawal covered the following sections of Virginia's regulations: VR 480-03-19.773.16 (c)(4)(ii) and (c)(7), VR 480-03-19.816.49 (a)(3)(ii) and 817.49 (a)(3)(ii), VR 480-03-19.816.116(b)(3)(v)(A) and 817.116(b)(3)(v)(A), normal husbandry practices submitted in connection with VR 480-03-19.816.116(c)(3) and 817.116(c)(3), VR 480-03-19.816.151(b) (1) through (4) and 817.151(b) (1) through (4), and VR 480-03-19.816.152 and 817.152.

## III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the Virginia program.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

### *A. Revisions to Virginia's Regulations That Are Substantively Identical to the Corresponding Federal Regulations*

| State regulations (VR 480-03-19) | Subject | Federal counterpart (30 CFR) |
|---|---|---|
| 700.5 | Definition of Road | 701.5. |
| 700.5 | Deletion of Support Facility | 701.5. |
| 700.11(a)(4) | Applicability | 700.11(a)(4). |
| 700.11(d) | Applicability | 700.11(d). |
| 701.11(a) | Applicability | 701.11(a). |
| 701.11(b) | Applicability | 701.11(b). |

| State regulations (VR 480–03–19) | Subject | Federal counterpart (30 CFR) |
|---|---|---|
| 701.11(c) | Applicability | 701.11(d). |
| 702.5 | Incidental Coal Extraction | 702.5. |
| 702.11 | Incidental Coal Extraction | 702.11. |
| 702.12 | Incidental Coal Extraction | 702.12. |
| 702.13 | Incidental Coal Extraction | 702.13. |
| 702.14 | Incidental Coal Extraction | 702.14. |
| 702.15 | Incidental Coal Extraction | 702.15. |
| 702.16 | Incidental Coal Extraction | 702.16. |
| 702.17 | Incidental Coal Extraction | 702.17. |
| 702.18 | Incidental Coal Extraction | 702.18. |
| 740.13(a)(1) | Federal Lands Permits | 740.13(a)(1). |
| 772.11(a) | Coal Exploration | 772.11(a). |
| 772.11(b)(3) | Coal Exploration | 772.11(b)(3). |
| 772.12(a) | Coal Exploration | 772.12(a). |
| 772.12(b)(3) | Coal Exploration | 772.12(b)(3). |
| 772.12(d) | Coal Exploration | 772.12(d). |
| 772.14(a) | Coal Exploration | 772.14(a). |
| 772.14(b) | Coal Exploration | 772.14(b). |
| 773.11(a) | Permits and Permit Processing | 773.11(a). |
| 780.25(c)(1) | Reclamation and Operation Plan | 780.25(c)(1). |
| 780.25(c)(2) | Reclamation and Operation Plan | 780.25(c)(2). |
| 780.37(a) | Reclamation and Operation Plan | 780.37(a). |
| 780.37(b) | Reclamation and Operation Plan | 780.37(b). |
| 780.38 | Reclamation and Operation Plan | 780.38. |
| 784.16(c)(1) | Reclamation and Operation Plan | 784.16(c)(1). |
| 784.16(c)(2) | Reclamation and Operation Plan | 784.16(c)(2). |
| 784.24(a) | Reclamation and Operation Plan | 784.24(a). |
| 784.24(b) | Reclamation and Operation Plan | 784.24(b). |
| 784.30 | Reclamation and Operation Plan | 784.30. |
| 785.17(e)(5) | Prime Farmlands | 785.17(e)(5). |
| 785.21(a) | Coal Preparation Plants | 785.21(a). |
| 800.60(b) | Bonding and Insurance | 800.60(b). |
| 815.2 | Coal Exploration | 815.2. |
| 815.15(b) | Coal Exploration | 815.15(b). |
| 816.46(c)(2) (except (c)(2)(i)(B)) | Performance Standards | 816.46(c)(2) (except (c)(2)(i)(B)). |
| 816.49(a)(1) | Performance Standards | 816.49(a)(1). |
| 816.49(a)(3)(i) | Performance Standards | 816.49(a)(3)(i). |
| 816.49(a)(5) | Performance Standards | 816.49(a)(5). |
| 816.49(a)(8) (except (a)(8)(i)(B)) | Performance Standards | 816.49(a)(8) (except (a)(8)(i)(B)). |
| 816.49(a)(9) | Performance Standards | 816.49(a)(10). |
| 816.49(a)(9)(ii) | Performance Standards | 816.49(a)(10)(ii). |
| 816.49(c)(2) | Performance Standards | 816.49(c)(2). |
| 816.8(b)(2) | Performance Standards | 816.84(b)(2). |
| 816.84(f) | Performance Standards | 816.84(f). |
| 816.116(b)(3)(i) | Performance Standards | 816.116(b)(3)(i). |
| 816.116(b)(3)(ii) | Performance Standards | 816.116(b)(3)(ii). |
| 816.116(c)(2) | Performance Standards | 816.116(c)(2). |
| 816.150(a) | Performance Standards | 816.150(a). |
| 816.150(b) | Performance Standards | 816.150(b). |
| 816.150(c) | Performance Standards | 816.150(c). |
| 816.150(d) | Performance Standards | 816.150(d). |
| 816.150(e) | Performance Standards | 816.150(e). |
| 816.150(f)(1) | Performance Standards | 816.150(f)(1). |
| 816.151(a)(1) | Performance Standards | 816.151(a)(1). |
| 816.151(c) | Performance Standards | 816.151(c). |
| 816.151(d)(1), (2), (4), (5) and (6) | Performance Standards | 816.151(d)(1), (2) (4), (5) and (6). |
| 817.46(c)(2) (except (c)(2)(i)(B)) | Performance Standards | 817.46(c)(2) (except (c)(2)(i)(B)). |
| 817.49(a)(1) | Performance Standards | 817.49(a)(1). |
| 817.49(a)(3)(i) | Performance Standards | 817.49(a)(3)(i). |
| 817.49(a)(5) | Performance Standards | 817.49(a)(5). |
| 817.49(a)(8) (except (a)(8)(i)(B)) | Performance Standards | 817.49(a)(8) (except (a)(8)(i)(B)). |
| 817.49(a)(9) | Performance Standards | 817.49(a)(10). |
| 817.49(a)(9)(ii) | Performance Standards | 817.49(a)(10)(ii). |
| 817.49(c)(2) | Performance Standards | 817.49(c)(2). |
| 817.84(b)(2) | Performance Standards | 817.84(b)(2). |
| 817.84(f) | Performance Standards | 817.84(f). |
| 817.116(b)(3)(i) | Performance Standards | 817.116(b)(3)(i). |
| 817.116(b)(3)(ii) | Performance Standards | 817.116(b)(3)(ii). |
| 817.116(c)(2) | Performance Standards | 817.116(c)(2). |
| 817.150(a) | Performance Standards | 817.150(a). |
| 817.150(b) | Performance Standards | 817.150(b). |
| 817.150(c) | Performance Standards | 817.150(c). |
| 817.150(d) | Performance Standards | 817.150(d). |
| 817.150(e) | Performance Standards | 817.150(e). |
| 817.150(f)(1) | Performance Standards | 817.150(f)(1). |
| 817.151(a)(1) | Performance Standards | 817.151(a)(1). |
| 817.151(c) | Performance Standards | 817.151(c). |
| 817.151(d)(1), (2), (4), (5) and (6) | Performance Standards | 817.151(d)(1), (2), (4), (5) and (6). |
| 823.11(b) | Prime Farmland | 823.11(b). |
| 823.12(c)(2) | Prime Farmland | 823.12(c)(2). |
| 823.14(d) | Prime Farmland | 823.14(d). |
| 827.1 | Coal Preparation Plants | 827.1. |

| State regulations (VR 480-03-19) | Subject | Federal counterpart (30 CFR) |
|---|---|---|
| 843.11(a)(2) | State Enforcement | 843.11(a)(2). |

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Virginia's proposed rules are no less effective than the Federal rules.

In response to a request from OSM (Administrative Record No. VA 743), Virginia has provided assurance (Administrative Record No. VA 768) that the State's rules governing the probable hydrologic consequences (PHC) determination will be interpreted identically with OSM's revised preamble to the final Federal rules at 30 CFR 780.21(f) and 784.14(e) (53 FR 36394, September 19, 1988). Specifically, the PHC determination must address all proposed mining within the permit area, not just those activities expected to occur during the term of the permit.

*B. Revisions to Virginia's Regulations With No Corresponding Federal Regulations*

1. Revegetation Standards for Success

The State proposes to revise section 480-03-19.816.116 and 817.116 by adding subsections (b)(3)(iv)(C) and (b)(3)(v)(C) which provide for an average of at least 40 wildlife food-producing shrubs per acre where commercial forest land is the approved post-mining land use, and where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land. In response to a request from OSM (Administrative Record No. VA 792), the State indicated that these additions are the result of the consultation and approval process for minimum stocking and planting arrangements by the Virginia Department of Game and Inland Fisheries and the Department of Forestry (Administrative Record No. VA 793). While there is no direct Federal counterpart, the proposed rule is not inconsistent with the revegetation standards for success contained in the Federal regulations at 30 CFR 816.116 and 817.116. The Federal rules at 30 CFR 816.116(b)(3) and 817.116(b)(3) require consultation with and approval by the State agencies responsible for administration of forestry and wildlife programs. Virginia has met this requirement. Therefore, the Director finds the proposal to be no less effective than the Federal rules.

2. Permanent and Temporary Impoundments

a. Virginia proposes to revise subsections 480-03-19.816.49(b)(7) and 817.49(b)(7) by deleting all references to specific design precipitation events contained in those subsections. The State took this action in response to a letter dated March 20, 1991, from OSM (Administrative Record No. VA 792) requesting the State to amend those subsections to make them no less effective than the Federal rules. Virginia stated (Administrative Record No. VA 793) that the revision to 480-03-19.816.49(b)(7) and 817.49(b)(7) was made to eliminate the spillway design storm criteria for permanent impoundments.

The Director finds that the deletions at 480-03-19.816.49(b)(7) and 817.49(b)(7), which required a 50 year, 6 hour design precipitation event for permanent impoundments, do not render the States rules less effective than the Federal regulations because such precipitation events were deleted in the Federal rules.

b. Virginia proposes to revise subsections 480-03-19.816.46(c)(2)(i)(B) and 817.46(c)(2)(i)(B), and to add subsections 480-03-19.816.49(a)(8)(i)(B) and 817.49(a)(8)(i)(B), in order to limit the use of closed-conduit type spillways only to temporary ponds that do not meet the size or other criteria of 30 CFR 77.216(a) and that are located where failure would not be expected to cause loss of life or serious property damage. While there is no Federal counterpart, the Director finds that, within the restrictions imposed by Virginia, the proposal will not render the State rules less effective than the Federal regulations.

3. Roads

a. Virginia proposes to revise sections 480-03-19.780.37 and 784.24 by deleting subsections (c), (d) and (e). The subsections proposed for deletion, for which there are no Federal counterparts, identified descriptions and plans to be included in the permit application in connection with the road systems for the permit area. The Director finds that the removal of these sections will not render the State rules less effective than the Federal regulations.

b. Virginia proposes to delete subsections 480-03-19.816.150(f)(1)(vii) and 817.150(f)(1)(vii) which provide for the removal and disposal of road surfacing material, if required by the Division. Since the State is adding a requirement at 480-03-19.816.150(f)(1)(iii) and 817.150(f)(1)(iii) for the removal and disposal of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements, the Director finds the proposed deletion will not render the State rules less effective than the Federal regulations.

c. Virginia proposes to delete subsections 480-03-19.816.151(a)(2) and 817.151(a)(2) which set forth required design data to be submitted as part of the permit application. Since the State is adding requirements at 480-03-19.780.37(a) (1) through (6) and 784.24(a)(1) through (6) which set forth the plans and drawings to be submitted by each permit applicant, consistent with the Federal requirements at 30 CFR 780.37(a) (1) through (6) and 784.24(a) (1) through (6), the Director finds the proposed deletion will not render the State rules less effective than the Federal regulations.

## IV. Summary and Disposition of Comments

*Public Comments*

The public comment period and opportunity to request a public hearing announced in the October 31, 1990, **Federal Register** (55 FR 45811) ended November 30, 1990. Extended comment periods announced in the May 23, 1991, **Federal Register** (56 FR 23664) and the June 28, 1991, **Federal Register** (56 FR 29607) ended June 24, 1991, and July 15, 1991, respectively. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

*Agency Comments*

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Virginia program.

The U.S. Soil Conservation Service concurred without comment. The U.S. Mine Safety and Health Administration (MSHA) offered comments regarding the State's regulations dealing with permanent and temporary impoundments. MSHA commented on two specific areas covered by the

State's proposed regulations, both of which are consistent with OSM's regulations. The comments can be summarized as follows:

(1) The State regulations at 480–03–19.816.49(a)(3) and 817.49(a)(3), as well as the Federal counterpart, require a minimum static safety factor of 1.5 for a normal pool, in connection with impoundments meeting the size or other criteria of 30 CFR 77.216(a). MSHA indicates that current, prudent practice requires a 1.5 static safety factor for a maximum pool.

(2) The State regulations at 480–03–19.816.49(c)(2)(A), and Federal regulations, provide that impoundments meeting the size or other criteria of 30 CFR 77.216(a), shall be designed to control the precipitation of the probable maximum precipitation of 6-hour event, or greater event as specified by the Regulatory Authority. MSHA only requires probable maximum precipitation storm design for "high hazard" dams. Not all dams that meet their size criteria would be "high hazard".

It should be noted that pursuant to section 702(a) of SMCRA, nothing in the Act can be construed as superseding, amending, modifying or repealing the authority of MSHA to require more stringent design or construction standards. The more stringent standards would be applicable to the design and construction of the impoundment. The proposed Virginia regulations set forth the minimum requirements that the regulatory authority will accept.

More specifically, MSHA's first comment pertains to the 1.5 minimum static safety factor prescribed for a *normal* pool for steady state saturation conditions. This standard was adopted by OSM based upon engineering practices prescribed in literature, particularly the U.S. Department of Agriculture—Soil Conservation Service's publication Earth Dams and Reservoirs Technical Release No. 60, June 1976. The MSHA regulations at 30 CFR 77.216 do not specify a minimum safety factor but instead at 30 CFR 77.216–2(a)(17) require certification by a registered engineer that the design of the impoundment structure is in accordance with current, prudent engineering practices for the maximum volume of water. The MSHA comment suggested that Virginia adopt a more stringent requirement, namely, achieving a 1.5 static safety factor at *maximum* pool conditions. While Virginia's proposed standard meets the test of being no less effective than, and substantively identical to the Federal regulation at 30 CFR 816/817.49(a)(3), it would not preclude MSHA from enforcing a more rigorous standard in order to protect the safety of the miners.

The essence of the second MSHA comment is that the proposed State amendment is more stringent than MSHA's requirements regarding certain "high hazard" dams. However, the Director has determined that the proposed State regulations are no less effective than the Federal regulations at 30 CFR 816.49(c)(2)(A) and, therefore, no further action by the State is required.

Other issues raised by MSHA relate to sections of Virginia's regulations which are not being revised and, therefore, are not pertinent to the currently proposed program amendment, and are not being addressed herein.

The Director has determined that, in the areas raised by MSHA, the State's proposed regulations are no less effective than their Federal counterparts and, therefore, no charges need be made by the State.

## V. Director's Decision

Based on the above findings, the Director is approving the proposed program amendment submitted by Virginia on October 1, 1990, and modified on April 18, 1991, and May 12, 1992.

The Federal regulations at 30 CFR part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. The Director is approving these proposed rules with the understanding that they be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

### *Environmental Protection Agency (EPA) Concurrence*

In accordance with 30 CFR 732.17(h)(11)(ii), OSM solicited EPA's concurrence in the approval of Virginia's program. EPA concurred (Administrative Record No. VA–617) in the State's proposed amendments based on the understanding that Virginia's surface mining regulations will be implemented consistent with applicable Clean Water Act (CWA) requirements.

While concurring in the proposed amendments, EPA pointed out sections in Virginia's regulations which allow surface mining activities and the placement of (1) sedimentation ponds, (2) diversions, (3) roads, and (4) fords, in perennial or intermittent streams. EPA cited these provisions in order to emphasize their interpretation that "waters of the United States" (40 CFR 122.2) include perennial, intermittent, and ephemeral streams, and that all discharges of pollutants (including waste and fill material) to these waters must be in compliance with sections 402 and 404 of the CWA. In addition EPA pointed out that creation of any impoundments or sedimentation ponds in waters of the United States, whether new or existing, permanent or temporary, does not remove those waters from the definition of waters of the United States under the CWA. EPA also indicated that the Virginia rules only require that discharges *from* structures such as impoundments or sedimentation ponds meet applicable CWA requirements, whereas under EPA rules, discharges into such structures must meet all CWA permitting requirements where appropriate.

The Director acknowledges EPA's concerns, but notes that neither the Virginia regulations nor their Federal counterparts can be construed as superseding, amending or repealing the CWA because to do so is prohibited by section 702 of SMCRA. Furthermore, the Director is approving Virginia's proposed amendments with the understanding and on the basis that they do not supersede applicable CWA requirements.

Finally, EPA identified what they considered a potential inconsistency between VR 480–03–19.816.46(b)(5) and VR 816.116(b)(3)(ii). In EPA's view, the inconsistency results from the two growing seasons restriction in 816.46(b)(5) on the removal of siltation structures, and the requirement in 816.116(b)(3)(ii) for demonstrating tree and shrub success. In order to ensure against potential water quality degradation at the time of bond release, EPA suggested that the time frame set forth in 816.46(b)(5) be changed from two growing seasons to three years. Inasmuch as 816.46(b)(5) is not part of the current program amendment as submitted by Virginia, the Director is not addressing EPA's concern at this time.

## VI. Procedural Determinations

### *National Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

*Executive Order No. 12291 and the Regulatory Flexibility Act*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

*Executive Order 12778*

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined, to the extent allowed by law, that this rule meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR part 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

*Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 946**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 3, 1992.

**Jeffrey D. Jarrett,**

*Acting Assistant Director, Eastern Support Center.*

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 946—VIRGINIA**

1. The authority citation for part 946 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. In § 946.15, a new paragraph (ff) is added to read as follows:

**§ 946.15 Approval of regulatory program amendments.**

* * * * *

(ff) The following amendments submitted to OSM on October 1, 1990, and modified and resubmitted on April 18, 1991, are approved effective July 7, 1992. The amendment consist of the following modifications to the Virginia program: Revision of the following provisions of the Virginia Coal Surface Mining Reclamation Regulations:

| | |
|---|---|
| 700.5 | General; Revision of definition of "Road"; Deletion of definition of "Support Facilities" |
| 700.11(a)(4) | General; Applicability |
| 700.11(d) | General; Applicability |
| 701.11(a) | Permanent Regulatory Program Applicability; Applicability |
| 701.11(b) | Permanent Regulatory Program Applicability; Applicability |
| 701.11(c) | Permanent Regulatory Program Applicability; Applicability |
| 702.5 | Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; Definitions |
| 702.11 | Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; Application Requirements and Procedures |
| 702.12 | Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; Contents for Application for Exemption |
| 702.13 | Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; Public Availability of Information |
| 702.14 | Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; Requirements for Exemption |
| 702.15 | Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; Conditions of Exemption and Right of Inspection and Entry |
| 702.16 | Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; Stockpiling of Minerals |
| 702.17 | Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; Revocation and Enforcement |
| 702.18 | Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; Reporting Requirements |
| 740.13(a)(1) | General Requirements for Surface Coal Mining and Reclamation Operations on Federal Lands; Federal Lands Permits |
| 772.11(a) | Requirements for Coal Exploration; Notice Requirements for Exploration Removing 250 Tons of Coal or Less |
| 772.11(b)(3) | Requirements for Coal Exploration; Notice Requirements for Exploration Removing 250 Tons of Coal or Less |
| 772.12(a) | Requirements for Coal Exploration; Permit Requirements for Exploration Removing More Than 250 Tons of Coal, or Occurring on Lands Designated as Unsuitable for Surface Coal Mining Operations |
| 772.12(b)(3) | Requirements for Coal Exploration; Permit Requirements for Exploration Removing More Than 250 Tons of Coal, or Occurring on Lands Designated as Unsuitable for Surface Coal Mining Operations |
| 772.12(d) | Requirements for Coal Exploration; Permit Requirements for Exploration Removing More Than 250 Tons of Coal, or Occurring on Lands Designated as Unsuitable for Surface Coal Mining Operations |
| 772.14(a) | Requirements for Coal Exploration; Commercial Use or Sale |
| 772.14(b) | Requirements for Coal Exploration; Commercial Use or Sale |
| 773.11(a) | Requirements for Permits and Permit Processing; Requirements to Obtain Permits |
| 780.25(c) | Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; Reclamation Plan; Ponds, Impoundments, Banks, Dams, and Embankments |
| 780.37(a) | Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; Road Systems |
| 780.37(b) | Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; Road Systems |
| 780.37(c)—Deletion | Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; Road Systems |
| 780.37(d)—Deletion | Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; Road Systems |
| 780.37(e)—Deletion | Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; Road Systems |
| 780.38 | Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; Support Facilities |

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| 784.16(c) | Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments |
| 784.24(a) | Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; Road Systems |
| 784.24(b) | Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; Road Systems |
| 784.24(c)—Deletion | Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; Road Systems |
| 784.24(d)—Deletion | Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; Road Systems |
| 784.24(e)—Deletion | Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; Road Systems |
| 784.30 | Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; Support Facilities |
| 785.17(e)(5) | Requirements for Permits for Special Categories of Mining; Prime Farmland |
| 785.21(a) | Requirements for Permits for Special Categories of Mining; Coal Preparation Plants Not Located Within the Permit Area of a Mine |
| 800.60(b) | Bonding and Insurance Requirements; Terms and Conditions for Liability Insurance |
| 815.2 | Permanent Program Performance Standards—Coal Exploration; Permitting Information |
| 815.15(b) | Permanent Program Performance Standards—Coal Exploration; Performance Standards for Coal Exploration |
| 816.46(c)(2) | Permanent Program Performance Standards—Surface Mining Activities; Hydrologic Balance: Siltation Structures |
| 816.49(a)(1) | Permanent Program Performance Standards—Surface Mining Activities; Impoundments |
| 816.49(a)(3)(i) | Permanent Program Performance Standards—Surface Mining Activities; Impoundments |
| 816.49(a)(5) | Permanent Program Performance Standards—Surface Mining Activities; Impoundments |
| 816.49(a)(8) | Permanent Program Performance Standards—Surface Mining Activities; Impoundments |
| 816.49(a)(9) | Permanent Program Performance Standards—Surface Mining Activities; Impoundments |
| 816.49(b)(7) | Permanent Program Performance Standards—Surface Mining Activities; Impoundments |
| 816.49(c)(2) | Permanent Program Performance Standards—Surface Mining Activities; Impoundments |
| 816.84(b)(2) | Permanent Program Performance Standards—Surface Mining Activities; Coal Mine Waste; Impounding Structures |
| 816.84(f) | Permanent Program Performance Standards—Surface Mining Activities; Coal Mine Waste; Impounding Structures |
| 816.116(b)(3)(i) | Permanent Program Performance Standards—Surface Mining Activities; Revegetation; Standards for Success |
| 816.116(b)(3)(ii) | Permanent Program Performance Standards—Surface Mining Activities; Revegetation; Standards for Success |
| 816.116(b)(3)(iv)(C) | Permanent Program Performance Standards—Surface Mining Activities; Revegetation; Standards for Success |
| 816.116(c)(2) | Permanent Program Performance Standards—Surface Mining Activities; Revegetation; Standards for Success |
| 816.150(a) | Permanent Program Performance Standards—Surface Mining Activities; Roads: General |
| 816.150(b) | Permanent Program Performance Standards—Surface Mining Activities; Roads: General |
| 816.150(c) | Permanent Program Performance Standards—Surface Mining Activities; Roads: General |
| 816.150(d) | Permanent Program Performance Standards—Surface Mining Activities; Roads: General |
| 816.150(e) | Permanent Program Performance Standards—Surface Mining Activities; Roads: General |
| 816.150(f)(1) | Permanent Program Performance Standards—Surface Mining Activities; Roads: General |
| 816.151(a) (1) & (2) | Permanent Program Performance Standards—Surface Mining Activities; Primary Roads |
| 816.151(c) | Permanent Program Performance Standards—Surface Mining Activities; Primary Roads |
| 816.151(d) (1), (2), (4), (5) and (6). | Permanent Program Performance Standards—Surface Mining Activities; Primary Roads |
| 817.46(c)(2) | Permanent Program Performance Standards—Underground Mining Activities; Hydrologic Balance: Siltation Structures |
| 817.49(a)(1) | Permanent Program Performance Standards—Underground Mining Activities; Impoundments |
| 817.49(a)(3)(i) | Permanent Program Performance Standards—Underground Mining Activities; Impoundments |
| 817.49(a)(5) | Permanent Program Performance Standards—Underground Mining Activities; Impoundments |
| 817.49(a)(8) | Permanent Program Performance Standards—Underground Mining Activities; Impoundments |
| 817.49(a)(9) | Permanent Program Performance Standards—Underground Mining Activities; Impoundments |
| 817.49(b)(7) | Permanent Program Performance Standards—Underground Mining Activities; Impoundments |
| 817.49(c)(2) | Permanent Program Performance Standards—Underground Mining Activities; Impoundments |
| 817.84(b)(2) | Permanent Program Performance Standards—Underground Mining Activities; Coal Mine Waste; Impounding Structures |
| 817.84(f) | Permanent Program Performance Standards—Underground Mining Activities; Coal Mine Waste; Impounding Structures |
| 817.116(b)(3)(i) | Permanent Program Performance Standards—Underground Mining Activities; Revegetation; Standards for Success |
| 817.116(b)(3)(ii) | Permanent Program Performance Standards—Underground Mining Activities; Revegetation; Standards for Success |
| 817.116(b)(3)(iv)(C) | Permanent Program Performance Standards—Underground Mining Activities; Revegetation; Standards for Success |
| 817.116(c)(2) | Permanent Program Performance Standards—Underground Mining Activities; Revegetation; Standards for Success |
| 817.150(a) | Permanent Program Performance Standards—Underground Mining Activities; Roads: General |
| 817.150(b) | Permanent Program Performance Standards—Underground Mining Activities; Roads: General |
| 817.150(c) | Permanent Program Performance Standards—Underground Mining Activities; Roads: General |
| 817.150(d) | Permanent Program Performance Standards—Underground Mining Activities; Roads: General |
| 817.150(e) | Permanent Program Performance Standards—Underground Mining Activities; Roads: General |
| 817.150(f)(1) | Permanent Program Performance Standards—Underground Mining Activities; Roads: General |
| 817.151(a) (1) & (2) | Permanent Program Performance Standards—Underground Mining Activities; Primary Roads |

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|---|---|
| 817.151(c) | Permanent Program Performance Standards—Underground Mining Activities; Primary Roads |
| 817.151(d) (1), (2), (4), (5) and (6). | Permanent Program Performance Standards—Underground Mining Activities; Primary Roads |
| 823.11(b) | Special Permanent Program Performance Standards—Operations on Prime Farmland; Applicability |
| 823.12(c)(2) | Special Permanent Program Performance Standards—Operations on Prime Farmland; Soil Removal and Stockpiling |
| 823.14(d) | Special Permanent Program Performance Standards—Operations on Prime Farmland; Soil Replacement |
| 827.1 | Permanent Program Performance Standards—Coal Preparation Plants Not Located Within The Permit Area of a Mine; Scope |
| 843.11(a)(2) | Enforcement Procedures; Cessation Orders |

[FR Doc. 92-15793 Filed 7-6-92; 8:45 am]

BILLING CODE 4310-05-M

## National Park Service

**36 CFR Part 7**

**RIN: 1024-AC11**

## Advertising at Rock Creek Park Tennis Center

**AGENCY:** National Park Service, Interior.

**ACTION:** Final Rule.

**SUMMARY:** On March 31, 1992, the National Park Service published in the **Federal Register** (57 FR 10850) a proposed rule allowing advertising at Rock Creek Tennis Center for tennis events at Rock Creek Park, Washington, DC. This final rule establishes a process for the issuance of a permit for advertising by and recognition of tennis tournament sponsors at the Rock Creek Tennis Center in Rock Creek Park. This final rule recognizes the unique characteristics of the Rock Creek Tennis Center and authorizes the issuance of a permit for commercial advertising for the two main tennis tournaments sponsored at the Tennis Center each year.

**EFFECTIVE DATE:** July 7, 1992.

**FOR FURTHER INFORMATION CONTACT:** Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, DC 20240, telephone: (202) 208-4338.

**SUPPLEMENTARY INFORMATION:**

### Background

Rock Creek Park, located in the District of Columbia, is a unique natural area in an urban environment that was established by Congress in 1890 as "a public park or pleasure ground for the benefit and enjoyment of the people of the United States". The park contains significant historic and natural resources, and provides a great variety of important recreational opportunities for visitors and residents of the Washington metropolitan area. In conjunction with providing recreational activities, the National Park Service (NPS), since 1971, has operated and maintained the Rock Creek Tennis Center (the "Tennis Center") through a concessions contract.

The Tennis Center is located west of 16th Street NW. at the intersection of Kennedy Street and Morrow Drive, within the District of Columbia, and on lands under the jurisdiction and administration of the National Park Service. The NPS has determined that it is in the public interest to continue to foster and support tennis programs at the Tennis Center, including, but not limited to, tennis instructional programs and professional tennis tournaments conducted by agreement between the NPS and the Washington Tennis Foundation, Inc. (the "Foundation"). The Foundation, founded in 1955, derives most of the funds necessary to operate its programs from the proceeds of two (one men's and one women's) professional tournaments, each now held annually at the Tennis Center.

Because of this unique arrangement, and the public interest in providing continued recreational opportunities through this important tennis program, it is necessary to clarify through regulation the role that may be played by the Foundation in publicly recognizing sponsors, donors, and supporters of the annual men's and women's professional tennis tournaments.

### Purpose for Regulation

Existing regulations at 36 CFR 5.1 prohibit the display of "commercial notices or advertisements" of any "goods, services, or facilities" that are not available within a park area. Sponsors or donors for the two tennis tournaments held each year at the Tennis Center are generally companies or corporations that do not provide "goods, services, or facilities within the park area". Consequently, there has been a concern on how to recognize contributions to the Foundation to assist with the tennis tournaments.

It has become an accepted practice in many NPS areas to allow a simple recognition of donors to NPS programs or special events. For example, businesses or corporations that donate funds or services to a particular park project—such as the development of a film about a park area—may be given credit by the publishing of their corporate name in the film credits. This simple recognition of significant corporate support in furthering specific park goals has not generally been seen as "advertising", or the promotion of a particular product. Consequently, in the past, signs and banners have been allowed inside the tennis stadium during tennis tournaments that identify a corporation as a primary sponsor of a tournament. This has been and will continue to be an accepted practice for these tournaments. Past practice and these final regulations require these activities to be conducted only pursuant to a written permit from the park superintendent.

The purpose of this final rulemaking is to partially exempt the Tennis Center from the general regulations on advertising found at 36 CFR 5.1 and to address under what conditions recognition for sponsors of the two annual professional tennis tournaments may be permitted. This final regulation will allow the superintendent of Rock Creek Park to permit advertising and recognition activities in conjunction with the two annual tennis tournaments that are appropriate to park values and consistent with the protection of park resources.

### Summary of Comments

On March 31, 1992, the NPS published in the **Federal Register** (57 FR 10850) the proposed rule with a thirty day comment period, which ended on April 30, 1992. The NPS received a total of 48 comments on the proposed rule. Of these, 4 comments were received from Governmental authorities, 16 comments were received from 14 different organizations (two organizations responded twice), and 28 comments were received from 27 individuals (one individual responded twice).

All of the comments were opposed to the proposed rule, and can be categorized into four groupings: (1) Those generally opposed to any advertising in Rock Creek or on park lands as an inappropriate activity for the National Park Service to allow; (2) those that felt that this was only a first step in a larger effort to allow commercial advertising and other commercial activities within parks; (3) those opposed because they felt that the regulations are not categorically exempt from the National Environmental Policy

Act (NEPA) procedures, and conflicted with the ongoing NEPA process regarding the overall operation of the Tennis Center; (4) and those opposed because they felt the proposed regulations place impermissible restrictions on commercial speech. There was also one commenter that specifically addressed the language of the proposed regulation and offered suggested amendments.

**Analysis of Public Comments**

There were 32 commenters who specifically mentioned their general opposition to allowing any advertising within Rock Creek Park or within parks in general. Of these, comments were received from 21 private individuals and 11 public entities. Those opposing the regulation in general had, among other concerns, the following examples of concerns: (1) The regulation would "allow the intrusion of advertising and billboards"; (2) that in Rock Creek Park, "an advertisement [would] stand out" compared to an individual advertising in the "weekly billboard jungle throughout metropolitan Washington, DC"; (3) allowing advertising within Rock Creek Park "cheapens the entire U.S. Government and its many fine civil servants to the status of mere carnival barkers for industry"; (4) the advertising exemption criteria "do not establish that no construction of new billboards would be involved"; (5) a request to "[D]on't drive the peace and quiet of the park away so that Corporations can extend their marketing intrusion further into my life"; (6) a request to "[L]eave them [parks] as a statement of nature's priorities, not man's"; (7) a statement that "[O]ur parks aren't broke. And this regulation wouldn't help if they were."; (8) a representation for area residents that "[F]irst and foremost, residents object to the encroachment of a major commercial event on their beautiful, and otherwise, quiet residential neighborhoods."; (9) a belief that "support of commercial enterprise has never been a contributing value to policies guiding Federal use of park, open space, historic, or recreational lands."; and (10) a question of "the appropriateness of the National Park Service abrogating longstanding and important values simply to assist one of its permittees in defraying the costly construction and operating expenses of a commercial sports enterprise."

The NPS understands many of these concerns and agrees with the general tenant of avoiding the commercialization of park areas. The NPS still supports the general policy of strictly limiting commercialization in the national park system. The NPS views national park areas as special places of high public value where people can recreate and learn about their natural and cultural heritage free from undue commercial distractions.

To address some of the specific concerns of commenters, this regulation does not allow the placement of billboards, banners, or other intrusive commercial activities. Any permitted advertising activities shall be directed only at those visitors choosing to attend a tennis tournament, and shall prohibit any activity that is readily visible from 16th Street or from any local residences. A park visitor passing by the area with no intent of paying admission to the tennis stadium may notice extra vehicular or pedestrian traffic related to a tennis event, but will not notice a permitted advertising activity such as billboards or signs.

The NPS is promulgating this special regulation for Rock Creek Tennis Center only to address a particular and unique situation regarding tennis tournaments and tennis sponsorship in this park area. If at some future date professional tennis tournaments are no longer to be held at the Rock Creek Tennis Center, these regulations exempting the Tennis Center from 36 CFR 5.1 shall be immediately withdrawn in a separate rulemaking.

Several commenters in their general opposition to the proposed regulation also suggested that the proposed regulation is a significant departure from Service policy, and questioned the statutory authority the NPS has to allow such a departure. While the regulation does exempt the Tennis Center from servicewide regulations, the overall policy regarding commercialism and advertising for the Service has not changed, nor is it the intent of the regulation to do so. As recognized by commenters, the management of advertising in parks is NPS policy made at the discretion of management pursuant to enabling legislation. The exception to servicewide regulations made by this final regulation for the unique area and situation of the Tennis Center does not constitute "a major policy change".

One commenter also expressed concern that although the proposed regulation spoke specifically of tennis tournaments, that eventually this regulation would also apply to events other than tennis. The proposed and final regulation are meant to address only tennis tournaments, specifically the two major tennis tournaments held each year at the Tennis Center in Rock Creek Park. The preamble and the final regulation text has been changed to make clear this limitation.

There were also 19 commenters (8 private individuals and 11 public entities) that specifically addressed a concern that allowing limited advertising at the Tennis Center was only a first step into generally allowing similar activities in all park areas or in urban parks particularly. Some commenters were concerned that this regulation would set a precedent either for allowing increased commercialism and advertising in other National Park areas, or for allowing increased commercialism in other "urban" park areas, and that Rock Creek Park is being treated differently because it is an "urban" park. As one commenter expressed his concern, "the National Park Service potentially intends to allow formal advertising, signs, posters, stages etc. to appear in some specially selected urbanized parks. I strongly express my objection to this concept."

It is not the reason or the intent of the National Park Service in promulgating this regulation to distinguish between urban and "non-urban" park areas. Urban parks administered by the National Park Service are, indeed, a part of the National Park System and deserve the same high degree of protection as other areas in the System, consistent with specific enabling legislation. The unique aspect in Rock Creek Park relative to the promulgation of this regulation is the fact that a Tennis Center involved in the sponsoring of two professional tennis tournaments a year is located on park lands. The proposed regulation did not distinguish between urban and rural park areas, nor does this final regulation.

This regulation should also not be seen as establishing precedent for the increase of commercialism or advertising in other National Parks. The unique situation regarding the Rock Creek Tennis Center is just that, and these final regulations are very specific to the approved operations in that stadium alone. Their purpose, and the intent of the NPS, is not to open up parks to increased commercialism. Instead, it has been determined that it is in the public interest at Rock Creek to continue to foster and support tennis programs at the Tennis Center, including, but not limited to, tennis instructional programs and professional tennis tournaments.

Regarding concerns about the National Environmental Policy Act (NEPA) process, 6 public entities and 1 private individual commenter indicated they believed that the NPS was required to complete NEPA documentation prior

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to proceeding with these proposed regulations.

The NPS has reexamined this matter in light of these public comments and has again concluded that this rulemaking is categorically excluded from the requirements of NEPA by Department of the Interior guidelines in 516 DM 6 (49 FR 214238).

The NPS also consulted with the Council on Environmental Quality on this matter and has been advised by counsel for the Council that the NPS actions are not improper under the council's interpretation of NEPA and its implementing regulations. Accordingly, the NPS has found that neither an Environmental Assessment nor an Environmental Impact Statement (EIS) is required for these proposed or final regulations.

However, the NPS has committed to completing a full EIS on all aspects of operations at the Rock Creek Tennis Center. This EIS is well underway and is expected to be completed by the end of the year. Following the completion of this EIS, the NPS will reexamine this rulemaking in light of the findings contained in the EIS and will undertake such regulatory revisions as are necessary to properly reflect the concerns, impacts and alternatives addressed in the final EIS.

Four commenters felt the proposed regulations place impermissible restrictions on commercial speech. These commenters believe that limiting the proposed exemption to activities "appropriate to park values and consistent with the protection of park resources" (57 FR 10852) amounts to an unconstitutional restriction on commercial speech.

The NPS respectfully disagrees with this position. We believe that while the operative case law recognizes that the First Amendment to the Constitution affords a limited measure of protection to commercial speech, the NPS is free to impose reasonable restrictions on commercial speech activities in order to further park purposes. Commenters specifically indicated that the position of the NPS as articulated in the prefatory statement to the proposed regulations relative to tobacco advertising was unreasonable and unconstitutional. In this regard, the NPS remains committed to the position that no tobacco products may be advertised at the Tennis Center and that no tobacco companies or products may be listed as official sponsors of Tennis Center events.

Events at the center are specifically sanctioned under the authority of the NPS and as such amount to officially cosponsored NPS events. The NPS believes that it has a special responsibility to assure that activities which enjoy NPS sponsorship must not promote or encourage conduct detrimental to the very purposes for which the event is sponsored. While the NPS, in permitting advertisers at the Tennis Center, is not endorsing any particular product or company, the NPS will not permit the sanctioning of any specific advertising to detract or diminish the core park values underlying the event.

In sanctioning the Tennis Center tournaments, the NPS is attempting to encourage a healthful physical activity and to promote tennis as an appropriate recreational activity. The promotion of tobacco products is inconsistent with encouraging such healthful activities. While the NPS does not at this time envision other categories of advertising that would not be allowed within the Tennis Center, it will reserve the right to review the permitted advertising to make sure that it will not detract from the park values and resources which sustain the event.

Finally, the Washington Tennis Foundation was the only commenter that submitted specific comments suggesting changes to the regulatory text itself. The Foundation suggested that the word "shall" be substituted for the word "may" in the proposed 36 CFR 7.96(k), paragraph (1). Notwithstanding the Foundation's concern, the specific intent of this language is that the Superintendent shall have discretion to approve or deny advertising consistent with his or her responsibility in protecting park resources or values. The word "may" remains in this final regulation.

In addition, the Foundation also recommended that paragraphs (1) and (3) of the proposed regulations be amended by adding after the word "tournaments" the words "and other authorized or permitted events." The specific intent of the proposed regulation was to only allow advertising at the two professional tennis tournaments held annually at the stadium. This is still the intent of the NPS and the Department of the Interior, and is reflected in the final regulations.

Finally, the Foundation recommended that paragraph (3) be amended to remove the proposed language identifying the physical limits of advertising, and substitute the words "the area available to ticket holders." The proposed regulation allowed advertising for tennis events, but set physical boundaries for advertising displays specifically to assure that advertising activities would not be readily visible by local residents or other park users. Advertising for tennis events is to be displayed so as to be directed only at those visitors attending a tennis tournament while they are at the tournament. All of the park area is available to "ticket holders". However, the final regulation has been amended to also authorize advertising within the tented events held on Parking Lot A. We believe this will adequately satisfy the needs of the Foundation while at the same time assure that advertising is not visible outside the tournament area.

Several commenters also expressed a variety of concerns other than about the proposed regulation, including comments on the overall tennis program of the Foundation, discussions of the fiscal matters of the Foundation, speculation on the role and intent of advertisers in general, and questions regarding the construction of the tennis stadium. These and other comments were reviewed but have not been analyzed here because they are not directly related to the proposed regulation.

**Summary of Final Regulations and Required Permit Criteria**

If the superintendent determines that certain products, services, or companies, relative to a request for commercial advertising, may be seen as controversial or inappropriate to the values of the park, the superintendent may prohibit these types of advertisements. Any advertisement that could be seen as in conflict with the protection of park resources and park values may not be permitted.

Other criteria by which a permit may be issued shall require approved advertising activities to be limited to the confines and immediate vicinity of the tennis stadium, meaning the paved plaza and sidewalk area immediately contiguous to the tennis stadium structure. This means that no advertising activities will take place on the paved parking lot (except inside tents on Parking Lot A), on the grass fields to the north of the tennis stadium, along the roadway entering the park area, or on or near the sidewalks along 16th Street, NW. This criteria is specifically to assure that advertising activities shall not be readily visible by local residents or other park users. Any permit issued shall specifically exclude these areas, and assure by permit criteria that all activities shall be displayed so as to be directed only at those visitors attending a tennis tournament.

For similar reasons, all permits issued shall include criteria that will prohibit banners, balloons, flags or similar displays from being flown or spotlights being shown above the top of the stadium's scoreboard. Notwithstanding these or any other criteria, any advertising display that is readily visible from 16th Street or from local residences will be prohibited.

Permits shall be issued only for those periods during which the two tennis tournaments occur, provided that a reasonable time shall be allowed for the set up and dismantling of displays, such time to be specified in the permit. Permits shall not be issued, nor do these final regulations authorize the issuing of permits, for any activities other than two professional tennis matches annually. Any other activities approved for the Tennis Center or its environs shall be regulated under 36 CFR 5.1, and other applicable regulations, relative to advertising and commercial operations.

For the purposes of this special regulation only, the definitions published in the proposed rulemaking (57 FR 10850) shall be used in administering the permit requirement imposed by this final regulation.

These final regulations apply only to the Rock Creek Tennis Center and are not applicable to any other park area, within or outside of the District of Columbia or the National Capital Region. The NPS views national park areas as special places of high public value where people can recreate and learn about their natural and cultural heritage free from undue commercial distraction. It has long been the general policy of the NPS to prohibit billboards, posters, advertising flyers, brochures, or other commercial distractions in park areas.

As stated above, the NPS still supports this general policy of strictly limiting commercialization in the national park system, and is promulgating this special regulation for Rock Creek Tennis Center only to address a particular and unique situation regarding tennis tournaments and tennis sponsorship at the Tennis Center. If tennis tournaments are no longer held in the future at Rock Creek Tennis Center, or, upon the completion of the EIS the NPS determines it necessary to amend or modify these regulations, the NPS shall immediately undertake such a separate rulemaking.

**Effective Date**

This final regulation is effective on the date of publication in the **Federal Register**. In accordance with the provisions of 5 U.S.C. 553(d), publication 30 days in advance of the effective date is not required because this rule grants an exception and relieves a restriction on advertising in Rock Creek Park, and because good cause exists to exempt this rule from the 30 day requirement in order for the rule to be effective for and benefit the men's tennis tournament scheduled for July 11–19, 1992.

**Paperwork Reduction Act**

The collection of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026. The information will be used to identify potential sponsors to assure they are made aware of advertising criteria pursuant to a permit. Response is required to obtain a benefit in accordance with 16 U.S.C. 3.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 1100 L Street NW., Washington, DC 20013; and the Office of Management and Budget, Paperwork Reduction Project (0026), Washington, DC 20503.

**Compliance With Other Laws**

The National Park Service has determined that this document is not a "major rule" under Executive Order 12291 (February 19, 1981), 46 FR 13193. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which became effective January 1, 1981, the NPS has determined that these proposed regulations will not have a significant economic effect on a substantial number of small entities, nor does it require a preparation of a regulatory analysis.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this final rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

**List of Subjects in 36 CFR Part 7**

National Parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR chapter I, part 7 is amended as follows:

## PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. In section 7.96, paragraph (l) is redesignated as paragraph (m) and a new paragraph (l) is added to read as follows:

**§ 7.96 National capital region parks.**

* * * * *

(l) Rock Creek Park.

(1) Notwithstanding the provisions of 36 CFR 5.1, the Superintendent of Rock Creek Park may permit the recognition of and the advertising by the primary sponsor or sponsors of not more than two professional tennis tournaments per year at the Rock Creek Tennis Center.

(2) All activities conducted under this paragraph shall be appropriate to park values and consistent with the protection of park resources and shall comply with criteria specified in a written permit.

(3) Any permit issued under this paragraph shall be valid only for those periods of time during which a professional tennis tournament is being held, and shall limit all advertising and recognition to the confines of the tennis stadium structure and the contiguous paved plaza, not to include any of the fields or paved parking lots except within the interior of permitted tents on Parking Lot A. These areas shall be marked on a map available in the Superintendent's office.

(4) No advertising or recognition activities may take place without a written permit as specified in this paragraph. Any person who violates a provision of this paragraph is subject to the penalty provisions of 36 CFR 1.3 and

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revocation of the permit if a permit exists.

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Dated: June 16, 1992.

Jennifer A. Salisbury,

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 92-15732 Filed 7-6-92; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Part 21**

**RIN 2900-AE46**

### Veterans Education; the Veterans Education and Employment Amendments of 1989 and Dependents' Educational Assistance

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final regulations.

**SUMMARY:** The Veterans Education and Employment Amendments of 1989 contain several provisions which affect Dependents' Educational Assistance. These include an increase in the amount of the monthly benefit and authorization for Dependents' Educational Assistance recipients to participate in the Department of Veterans Affairs (VA's) work-study program. In addition, there are several provisions which affect more than one of the other educational programs which VA administers. These include changes in the way a student's enrollment is measured and inclusion of flight training in both the Montgomery GI Bill—Active Duty and the Montgomery GI Bill—Selected Reserve. These amended regulations will acquaint the public with the way in which VA intends to implement these provisions of law.

**EFFECTIVE DATE:** These amended regulations are effective retroactively on the same date as the provisions of law they implement. Consequently, the amendments to §§ 21.3045, 21.3046, 21.3333 and 21.4137 are retroactively effective on January 1, 1990. The new section, § 21.3145, is retroactively effective on May 1, 1990. The amendments to §§ 21.4201 and 21.4263 are retroactively effective on September 30, 1990. All other amendments to the regulations included here are retroactively effective on December 18, 1989.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2092.

**SUPPLEMENTARY INFORMATION:** On pages 51861 through 51868 of the **Federal Register** of October 16, 1991, there was published a Notice of Intent to amend 38 CFR Part 21 in order to implement certain provisions of the Veterans Education and Employment Amendments of 1989. Interested people were given 30 days to submit comments, suggestions and objections. VA received no comments, suggestions or corrections. Accordingly, the department is making the proposed regulations final. However, the authority citations printed in the proposal of October 16, 1991, reflected the way in which the sections of title 38, U.S.C. were numbered before the enactment of Public Law 102-83. Since Public Law 102-83 renumbered those cited sections, the authority citations reflect the numbering system introduced by that law.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because most of the amendments to these regulations affect only individuals. The amendments to § 21.4263 will affect flight schools which wish to have their flight courses approved for VA training. Some flight schools would qualify as small entities. However, these amended regulations are required by amendments to the provisions of law upon which they are based. They will not, of themselves, have a significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA finds that good cause exists for making the amendments to §§ 21.3045, 21.3046 and 21.3333 and 21.4137, like the provision of law they implement, retroactively effective on January 1, 1990. VA finds that good cause exists for making the proposed new section § 21.3145, like the provisions of law it implements, retroactively effective on May 1, 1990. VA finds that good cause exists for making the amendments to §§ 21.4201 and 21.4263, like the provisions of law they implement, retroactively effective on September 30, 1990. VA finds that good cause exists for making the effective dates for all other amendments in this proposal, like the provisions of law they implement, retroactively effective on December 18, 1989. These provisions are intended to achieve a benefit for the individual. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.117, 64.124 and 12.609.

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 15, 1992.

Edward J. Derwinski,

*Secretary of Veterans Affairs.*

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart C—Survivors' and Dependents' Educational Assistance under 38 U.S.C. Chapter 35

For the reasons set out in the preamble, 38 CFR part 21, subparts C and D are amended as set forth below.

1. The authority citation for part 21, subpart C continues to read as follows:

Authority: 72 Stat. 1114, 1193, as amended, (38 U.S.C. 501(a), 3500-3566)

2. In § 21.3022, paragraphs (g) and (h) are revised and paragraph (i) is added and the authority citation for the section is revised to read as follows:

**§ 21.3022 Nonduplication—programs administered by VA.**

* * * * *



(g) Section 903 of the Department of Defense Authorization Act, 1981,

(h) The Hostage Relief Act of 1980, and

(i) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 38 U.S.C. 3681)

3. Section 21.3045 is amended by revising paragraphs (g) (7) and (8); paragraph (g)(9) is added; and the authority citation for paragraph (g) is revised to read as follows:

**§ 21.3045 Entitlement charges.**

* * * * *

(g) Entitlement charge for correspondence courses. * * *

(7) $342 paid after December 31, 1980, and before October 1, 1984,

(8) $376 paid after September 30, 1984 and before January 1, 1990, and

(9) $404 paid after December 31, 1989.

(Authority: 38 U.S.C. 3686(a))

* * * * *

4. In § 21.3046 paragraph (d)(4)(ii) and its authority citation are revised to read as follows:

**§ 21.3046 Periods of eligibility; spouses and surviving spouses.**

* * * * *

(d) *Extension to ending date.* * * *

(4) * * *

(ii) The total additional amount of instruction that $1,131 will provide.

(Authority: 38 U.S.C. 3511(b))

* * * * *

5. A center heading and § 21.3145 are added to read as follows:

**Payments**

**§ 21.3145. Work-study allowance.**

(a) *Eligibility.* An eligible person is eligible to receive a work-study allowance when—

(1) The eligible person is pursuing a program of education on at least a three-quarter-time basis,

(2) The eligible person is pursuing a program of education in a State, and

(3) The eligible person is not pursuing a program of special restorative training.

(Authority: 38 U.S.C. 3537)

(b) *Selection criteria.* When feasible VA will give priority in selection for this allowance to veterans with service-connected disabilities rated at 30 percent or more. VA shall consider the following additional selection criteria:

(1) Need of the eligible person to augment his or her dependents' educational assistance;

(2) Availability to the eligible person of transportation to the place where his or her services are to be performed;

(3) Motivation of the eligible person; and

(4) Compatibility of the work assignment to the eligible person's physical condition.

(Authority: 38 U.S.C. 3485, 3537)

(c) *Utilization.* Work-study services may be utilized in connection with—

(1) Outreach services programs as carried out under the supervision of a VA employee;

(2) Preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of VA;

(3) Hospital and domiciliary care and medical treatment at VA facilities; and

(4) Any other appropriate activity of VA.

(Authority: 38 U.S.C. 3485, 3537)

(d) *Rate of payment.* (1) In return for the eligible person's agreement to perform services for VA totaling 25 hours times the number of weeks contained in the eligible person's enrollment period, VA will pay an allowance in an amount equal to the higher of—

(i) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times the number of hours the eligible person has agreed to work, or

(ii) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the eligible person has agreed to work.

(2) VA will pay proportionately less to eligible persons who agree to perform a lesser number of hours of services.

(Authority: 38 U.S.C. 3485, 3537)

(e) *Payment in advance.* VA will pay in advance an amount equal to 40 percent of the total amount payable under the contract.

(Authority: 38 U.S.C. 3485, 3537)

(f) *Eligible person reduces rate of training.* In the event the eligible person reduces his or her training to less than three-quarter time before completing an agreement, the eligible person, with the approval of the Director of the VA field station, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter or semester in which the eligible person ceases to be a three-quarter-time student.

(Authority: 38 U.S.C. 3485, 3537)

(g) *Eligible person terminates training.* (1) If the eligible person terminates all training before completing an agreement, the Director of the VA field station or designee—

(i) May permit him or her to complete the portion of the agreement represented by the money VA has advanced the eligible person for which he or she has performed no service, but

(ii) Will not permit him or her to complete that portion of an agreement for which no advance has been made.

(2) The eligible person must complete the portion of an agreement in the same or immediately following term, quarter or semester in which the eligible person terminates training.

(Authority: 38 U.S.C. 3485, 3537)

(h) *Indebtedness for unperformed service.* (1) If the eligible person has received an advance for hours of unperformed service, and VA has evidence that he or she does not intend to perform that service, the advance—

(i) Will be a debt due the United States, and

(ii) Will be subject to recovery the same as any other debt due the United States.

(2) The amount of indebtedness for each hour of unperformed service shall equal the hourly wage that formed the basis for the contract.

(Authority: 38 U.S.C. 3485, 3537)

(i) *Survey.* VA will conduct an annual survey of its regional offices to determine the number of eligible persons whose services can be utilized effectively.

(Authority: 38 U.S.C. 3485, 3537)

6. Section 21.3333 is amended by revising paragraph (a) and adding its authority citation; paragraph (b)(1) is revised and the authority citation for paragraph (b) is revised to read as follows:

**§ 21.3333 Rates.**

(a) *Rates.* Special training allowance is payable at the following monthly rate effective January 1, 1990 except as provided in paragraph (c) of this section.

| Course | Monthly rate | Accelerated charges |
|---|---|---|
| Special restorative training. | $404 | If costs for tuition and fees average in excess of $127 per month, rate may be increased by such amount in excess of $127. |

(Authority: 38 U.S.C. 3542)

(b) *Accelerated charges.* (1) Effective January 1, 1990 VA may pay the additional monthly rate if the parent or guardian concurs in having the eligible child's period of entitlement reduced by 1 day for each $13.46 that the special

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training allowance exceeds the basic monthly rate of $404.

* * * * *

(Authority: 38 U.S.C. 3542)

* * * * *

**Subpart D—[Amended]**

7. The authority citation for part 21, subpart D is revised to read as follows.

(Authority: 38 U.S.C. 501(a).

8. In § 21.4020 paragraphs (a) (6) and (7) are revised and paragraph (a)(8) is added; the authority citation for paragraph (a) is revised to read as follows:

**§ 21.4020 Two or more programs.**

(a) *Limit on training under two or more programs.* * * *

(6) Section 903 of the Department of Defense Authorization Act, 1981,

(7) The Hostage Relief Act of 1980, and

(8) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 38 U.S.C. 3695(a))

* * * * *

9. In § 21.4022 paragraphs (a)(7) through (a)(9) and the authority citation for paragraph (a) are revised to read as follows:

**§ 21.4022 Nonduplication—programs administered by VA.**

(a) *Election.* * * *

(7) Section 903 of the Department of Defense Authorization Act, 1981

(8) The Hostage Relief Act of 1980, or

(9) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 38 U.S.C. 3681)

* * * * *

10. In § 21.4135 paragraph (g) is revised, and its authority citation is added to read as follows:

**§ 21.4135 Discontinuance dates.**

* * * * *

(g) *Unsatisfactory progress, conduct or attendance § 21.4277.* The date the veteran's or eligible person's enrollment is discontinued by the school or the date determined under § 21.4277, whichever is earlier.

(Authority: 38 U.S.C. 3474, 3524)

* * * * *

11. In § 21.4136 paragraph (e) the introductory text is revised and its authority is added at the end of the table to read as follows:

**§ 21.4136 Rates; educational assistance allowance; 38 U. S. C. chapter 34.**

* * * * *

(e) *Excessive absences.* Other than for apprenticeships and on-job training, when enrollment is in a course which does not lead to a standard college degree, absences which occur before December 18, 1989, and which exceed the maximum number allowable will cause a reduction in the education assistance allowance payable for the month in which such absences occurred. The rate of reduction will be determined by the following table: * * *

(Authority: 38 U.S.C. 3680(a))

* * * * *

12. In § 21.4137 paragraph (a) and the authority citation following its chart are revised to read as follows:

**§ 21.4137 Rates—educational assistance allowance—38 U.S.C. Chapter 35.**

(a) *Rates.* Educational assistance allowance is payable at the following rates effective January 1, 1990.

| Type of courses | Monthly rate |
|---|---|
| Institutional: | |
| Full time | $404 |
| ¾ time | 304 |
| ½ time | 202 |
| Less than ½ but more than ¼ time [3]. | 202 |
| ¼ time or less [3] | 101 |
| Cooperative (other than farm cooperative) (full time only). | 327 |
| Apprentice or On-Job (full time only, but see footnote [1] below) Payment designated Training Assistance Allowance: | |
| 1st 6 months | 294 |
| 2nd 6 months | 220 |
| 3rd 6 months | 146 |
| 4th 6 months | 73 |
| Farm Cooperative: | |
| Full time | 327 |
| ¾ time | 245 |
| ½ time | 163 |
| Correspondence | 55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and service by the school [2]—Allowance paid quarterly. |

[1] See footnote 5 of § 21.4270(c) of this part for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month.

[2] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible spouse or surviving spouse whichever is the lesser. Eligible spouses or surviving spouses who enroll before September 2, 1990 will receive 90 percent of the established charges, provided the student remains continuously enrolled in his or her program. Those spouses and surviving spouses who are not entitled to 90 percent of the established charges will receive 70 percent of the established charges for all lessons they complete and submit to the educational institution before October 1, 1991. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of lessons.

[3] If an eligible person under chapter 35 receiving benefits under paragraph (n) of this section completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $202 or $101 as appropriate, per month, if the maximum allowance is not initially authorized.

(Authority: 38 U.S.C. 3532, 3686)

(Authority: Pub. L. 97-35, section 2004(b)).

(Authority: 38 U.S.C. 3532(c)(3), 3686)

* * * * *

13. In § 21.4200 paragraphs (g)(1) and (g)(2) and the authority citation for paragraph (g) are revised to read as follows:

**§ 21.4200 Definitions.**

* * * * *

(g) Standard class session. * * *

(1) For enrollments and reenrollments which begin before May 20, 1988, a standard class session is not less than 1 hour (or 50-minute period) of academic instruction, 2 hours of laboratory instruction, or 3 hours (or, effective December 18, 1989, three 50-minute periods) of workshop training.

(2) For enrollments and reenrollments which begin after May 19, 1988, a standard class session is not less than 1 hour (or 50-minute period) of academic instruction, 2 hours (or two 50-minute periods) of laboratory instruction, or 3 hours (or, effective December 18, 1989, three 50-minute periods) of workshop training.

(Authority: 38 U.S.C. 3688(c))

* * * * *

14. In § 21.4201 paragraphs (e)(3)(ii)(B) and (C) are revised, and paragraphs (3)(e)(ii) (D) and (E) are added; the authority citation for paragraph (e) is added to read as follows:

**§ 21.4201 Restrictions on enrollment, percentage of students receiving financial support.**

* * * * *

(e) *Computing the 85–15 percent ratio.* * * *

(3) * * *

(ii) * * *

(B) For solo flying hours in all courses shall be excluded;

(C) For preflight briefings and postflight critiques which precede or follow solo flying hours shall be excluded;

(D) For students enrolled in courses approved under 14 CFR part 141, (the FAA regulations) shall be actual hours of logged instructional flight time or charges; and

(E) For students enrolled in courses not approved under 14 CFR part 141, such as in courses for navigator or flight engineer, shall include ground training time in addition to actual logged instructional flight time or charges.



(Authority: 38 U.S.C. 3473(d), 3034(d), 10 U.S.C. 2136(c))

* * * * *

15. In § 21.4203 the paragraph title and the introductory text to paragraph (h) and its authority citation and paragraph (h)(2) and its authority citation are revised to read as follows:

**§ 21.4203 Reports—requirements.**

* * * * *

(h) *Unsatisfactory progress, conduct or attendance.* At times the unsatisfactory progress, conduct or attendance of a veteran or eligible person is caused by or results in his or her interruption or termination of training. If this occurs, the interruption or termination shall be reported in accordance with paragraph (d) of this section. If the veteran or eligible person continues in training despite unsatisfactory progress, conduct, or despite having failed to meet the regularly prescribed standards of attendance at the school, the school must report the fact of his or her unsatisfactory progress, conduct or attendance to VA within the time limit allowed by paragraph (h) (1) and (2) of this section.

(Authority: 38 U.S.C. 3474, 3524)

* * * * *

(2) If the unsatisfactory progress, conduct or attendance of the veteran or eligible person is caused by any factors other than the grades which he or she receives, the school shall report the unsatisfactory progress, conduct or attendance to VA in time for VA to receive it within 30 days of the date on which the progress, conduct or attendance of the veteran or eligible person becomes unsatisfactory. See also § 21.4277.

(Authority: 38 U.S.C. 3474, 3524)

* * * * *

16. In § 21.4205 the introductory text and its authority are revised, paragraph (a) is revised and its authority citation is added, the introductory text to paragraph (b) is revised and its authority citation is added; paragraph (c)(1) (i) (ii), (iii) and (iv) are revised, and an authority citation is added to the end of paragraph (c)(1) to read as follows:

**§ 21.4205 Absences.**

Absences which occur before December 18, 1989, must be reported on the monthly certification of pursuit of a course which does not lead to a standard college degree.

(Authority: 38 U.S.C. 3684(a))

(a) *General.* Absence will be charged for a full day when the veteran or eligible person did not attend any scheduled class on any day that occurred before December 18, 1989. Tardiness will be charged when the veteran or eligible person was late for the start of the school day that occurred before December 18, 1989. A partial day of absence will be charged for any period of absence during or at the end of a day which occurred before December 18, 1989.

(Authority: 38 U.S.C. 3680(a))

(b) *Maximum allowable absences.* VA will determine maximum allowable absences as provided in this paragraph only for all absences which occur before December 18, 1989. There is no limit on the number of absences which the veteran or eligible person may incur after December 17, 1989; however, he or she must meet the regularly prescribed standards of attendance at the school he or she is attending.

(Authority: 38 U.S.C. 3680(a))

* * * * *

(c) *Reporting.* * * *

(1) * * *

(i) Each day of absence from scheduled attendance before December 18, 1989—including Saturday and Sunday if classes are normally scheduled for those days.

(ii) Days before December 18, 1989, when the school is closed for local and school holidays.

(iii) If reported enrollment is on an ordinary school year basis, intervals between terms, quarters or semesters (no interval or portion of an interval need be reported if it occurs after December 17, 1989), and

(iv) Days of nonattendance in a farm cooperative course which occur during the prescheduled classroom instruction and occur before December 18, 1989.

(Authority: 38 U.S.C. 3680(a))

* * * * *

17. In § 21.4251 paragraph (a)(6)(iii) is revised and its authority citation is added to read as follows:

**§ 21.4251 Period of operation of course.**

(a) General. * * *

(6) * * *

(iii) Available only to active duty military personnel or their dependents or both, and members of the Selected Reserve of the Ready Reserve eligible for educational assistance under chapter 106, title 10, U.S. Code, and

(Authority: 38 U.S.C. 3689(b)(6)(B))

* * * * *

18. In § 21.4263 its section heading and paragraphs (a) and (b) are revised, authority citations for paragraphs (a) and (b) are added; paragraph (c) is removed; paragraph (d) is redesignated paragraph (c); the introductory text to newly redesignated (c) and its authority citation are revised; paragraph (e) is redesignated as paragraph (d), and newly redesignated paragraph (d)(3) and the authority citation to newly redesignated paragraph (d) are revised; paragraph (f) is redesignated paragraph (e) and newly redesignated (e) and its authority citation are revised; paragraph (g) is redesignated paragraph (f); newly redesignated (f) and its authority citation are revised; paragraph (h) is redesignated paragraph (g) and newly redesignated (g)(3)(vi) (A), (B), (C), (D), (E), (F) and the authority citation for newly redesignated paragraph (g) are revised; paragraph (i) is redesignated paragraph (h); and newly redesignated (h) and its authority citation are revised; paragraph (j) is redesignated paragraph (i) and the newly redesignated introductory paragraph (i), (i) (3) and (4) are revised and authority citations are added to newly redesignated paragraphs (i) (3) and (4), and newly redesignated paragraph (i)(5) and its authority citation are removed; paragraph (k) is redesignated paragraph (j) and newly redesignated (j) and its authority citation are revised; and paragraph (l) is redesignated paragraph (k) to read as follows:

**§ 21.4263. Flight training—38 U.S.C. chapter 30 and 10 U.S.C. chapter 106.**

(a) *Eligibility.* Veterans, servicemembers and reservists who are basically eligible to receive educational assistance allowance under the provisions of either chapter 30, title 38 United States Code, or chapter 106, title 10, United States Code, may receive educational assistance for flight training provided that the individual also:

(1) Possesses a valid private pilot's certificate, except for flight training under paragraph (b)(2) of this section, but if the individual possesses a valid higher license, such as commercial pilot's license, he or she will be deemed to meet this requirement, and

(2) Meets the medical requirements of a commercial pilot's license, except the individual training in a course specified under paragraph (b)(2) of this section. A student pursuing an ATP (Airline Transport Pilot) course must have a first-class medical certificate. Students training in a course specified under paragraph (b)(2) of this section shall possess the medical certificate required by the educational institution granting the degree. In all other courses at least a second-class medical certificate is required. The certificate shall be approved by the FAA (Federal Aviation Administration) and a copy shall be maintained by the school. VA will

consider any benefits paid during a period after a medical certificate expires to be an overpayment subject to recovery.

(Authority: 38 U.S.C. 3032(d), 10 U.S.C. 2136(c))

(b) *Objective—general.* Pursuit of flight training may be approved if the training is:

(1) Generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation, or

(2) Given by an educational institution of higher learning for credit toward a standard college degree which the individual is pursuing.

(Authority: 38 U.S.C. 3032(d), 10 U.S.C. 2136(c))

(c) *Optional ratings.* Educational assistance may be paid for glider, free balloon or aerobatic flight training leading to a vocational objective. If a veteran, reservist or servicemember requests a commercial pilot's program in gliders or free balloons in order to add one of those ratings to an existing commercial pilot's certificate or wishes to pursue an approved special curriculum in aerobatics, he or she must establish that the purpose in taking the course is vocational rather than recreational or avocational. Evidence submitted by the student may include, but is not limited to, statements from the flight school or from a prospective employer of the student.

* * * * *

(Authority: 38 U.S.C. 3032(d), 10 U.S.C. 2136(c))

(d) *Combined flight courses.* * * *

(3) If the school does not include all of the instrument training in the commercial pilot's course, the student, upon completion of the FAA practical tests, will receive a commercial pilot's certificate with cross-country and night-flight limitations. The separate instrument course of revised appendix C, 14 CFR part 141, may still be approved for veterans, reservists and servicemembers who completed the commercial pilot's course under old 14 CFR part 141 which was effective before November 1, 1974, or who received a limited commercial pilot's certificate under revised 14 CFR part 141.

(Authority: 38 U.S.C. 3032(d), 10 U.S.C. 2136(c))

(e) *Application.* An individual applying for a course of training consisting exclusively of flight training must include on the application all courses generally accepted as necessary to reach the objective of the student. Although more than one course may be included in a program, the courses may be taken sequentially only. The applicant must complete a commercial pilot's course before enrolling in any other flight course.

(Authority: (38 U.S.C. 3032(d), 10 U.S.C. 2136(c))

(f) *Prior training.* (1) A flight school must grant appropriate credit for all previous training and shorten the veteran's, reservist's or servicemember's flight course proportionately for VA purposes even when an FAA regulation indicates that it does not have to do so. The flight school to which the veteran, reservist or servicemember transfers will determine the amount of credit to be granted.

(2) Although the law does not define "appropriate credit," a pattern of not granting adequate credit is a violation of 38 U.S.C. 3675(b) or 3676(c)(4). If any school consistently abuses its discretion in this respect, VA will refer the matter to the appropriate State approving agency.

(3) An eligible veteran, reservist or servicemember holding a commercial pilot's certificate (rotorcraft) may pursue training to qualify for a general commercial pilot's certificate, including fixed-wing aircraft, by either enrolling in a regular commercial pilot's course (airplane) or in the special add-on course to qualify for an airplane rating. If he or she enrolls in a regular commercial pilot's course (airplane), the school must grant appropriate credit and shorten the course accordingly. Although credit is granted, this method usually requires more hours and is, therefore, more expensive than enrolling in a special add-on course for the rating. In a like manner, a person with a fixed-wing rating may pursue training to qualify for a rotorcraft rating. If a school offers an approved add-on course for commercial pilots in which an eligible veteran, servicemember or reservist may enroll to reach the objective, VA will pay educational assistance only for the less expensive alternative, either an enrollment in the add-on course or an enrollment in the regular course after credit is allowed for prior training.

(4) A former military pilot with the equivalent of a commercial pilot's certificate and instrument rating may obtain an FAA commercial pilot's certificate and instrument rating without flight examination within 12 months after release from active duty flying status. If he or she does not apply within the 12-month period, he or she may need refresher training before taking the flight examination. No VA benefits may be paid for any such refresher training taken within the 12 months immediately following discharge, since the person qualifies for the commercial pilot's certificate and instrument rating without a flight examination. However, such a person may be paid for refresher training if the refresher training takes place more than 12 months after discharge and meets the requirements of paragraph (f)(4)(ii) of this section.

(i) The FAA does not give instructor and ATP ratings on the basis of military experience only, but requires a flight examination. Therefore, former military pilots may be enrolled in approved flight instructor and ATP training courses, for such enrollment is not considered refresher training. Flight schools must grant appropriate credit to former military pilots.

(ii) A veteran or reservist who held an FAA certificate before or during active duty service (such certificate having been canceled or surrendered) may receive educational assistance for refresher training to again qualify for the same grade certificate. Such refresher training must meet the requirement of updating the veteran's or reservist's knowledge and skill in order to cope with technological advances while he or she was on active duty service, and must be necessary to enable the individual to pursue an approved program of education (See § 21.7020(b)(26)(ii)). The veteran or reservist may receive the equivalent of the number of months of educational assistance necessary for the veteran to complete the course which will qualify him or her for the same grade certificate. A reservist is not eligible for refresher training unless he or she has had prior active duty.

(Authority: 38 U.S.C. 3032(d); Pub. L. 101-237)

(g) *Requirements for approval* * * *

(3) * * *

(vi) * * *

(A) A copy of the private pilot's license of each eligible veteran, servicemember or reservist,

(B) Evidence that each eligible veteran, servicemember or reservist has completed any prior training which may be a prerequisite for the course,

(C) A copy of the medical certificate required by paragraph (a)(2) of this section for the course being pursued by each eligible veteran, servicemember or reservist as well as copies of all medical certificates (expired or otherwise) needed to support all periods of prior instruction.

(D) Each eligible veteran's, servicemember's or reservist's daily flight log or copy thereof,

(E) Each eligible veteran's, servicemember's or reservist's permanent ground school record,

(F) A progress log for each eligible veteran, servicemember or reservist,

* * * * *

(Authority: 38 U.S.C. 3032(d), 10 U.S.C. 2136(c))

* * * * *

(h) *Hourly limitations.* A flight course approved pursuant to paragraph (g)(3) of this section shall be approved only for those hours of instruction generally considered necessary for a student to obtain an identified vocational objective. This requirement is met only if the number of hours approved does not exceed the maximum set forth in paragraph (h)(1) through (3) of this section. Flight instruction may never be substituted for ground training.

(Authority: 38 U.S.C. 3002, 3452(b), 10 U.S.C. 2136(c))

(1) *Flight instruction.* (i) Except as provided in paragraphs (h)(1)(ii) and paragraph (h)(4) of this section, the maximum number of hours of flight instruction which may be approved for a flight course shall not exceed the lesser of—

(A) The number of hours in the course outline approved by the FAA exclusive of solo flying hours, or

(B) 120% of the minimum number of hours required for the course as established in 14 CFR part 141 exclusive of solo flying hours. No solo flying hours may be approved.

(ii) If a school has obtained from the FAA an exemption from the requirements of 14 CFR parts 61 and 141 for a course because the course requires the use of flight simulators, the number of hours of flight or flight simulator instruction which may be approved in the course may not exceed the number of hours in the course outline approved by the FAA exclusive of solo flying hours.

(Authority: 38 U.S.C. 3032(f), 10 U.S.C. 2131(g))

(2) *Ground school.* The ground training portion of a flight course may include two forms of ground training instruction, ground school and preflight briefings and postflight critiques. The minimum hours for ground training, as specified in 14 CFR part 141, appendixes C through H refer only to ground school and not to preflight briefings and postflight critiques. If the ground school training consists of units using kits containing audiovisual equipment, quizzes and examinations, the maximum number of units approved shall not exceed the number on the course outline approved by the FAA. For all other ground school training, the number of hours of training shall not exceed the number of hours on the course outline approved by the FAA.

(Authority: 38 U.S.C. 3034(d), 10 U.S.C. 2136(c))

(3) *Preflight briefings and postflight critiques.* Hours spent in preflight briefings and postflight critiques need not be approved by the FAA.

(i) If these hours are on the FAA-approved outline, the maximum number of hours of preflight briefings and postflight critiques which may be approved shall not exceed the number of hours on the outline exclusive of preflight briefings and postflight critiques attributable to solo flying hours.

(ii) If these hours are not on the FAA-approved outline, they may not be approved unless the State approving agency finds that the briefings and critiques are an integral part of the course and do not precede or follow solo flying hours. The maximum number of hours of preflight briefings and postflight critiques which may be approved for these courses may not, when added together, exceed 25 percent of the approved hours of flight instruction.

(Authority: 38 U.S.C. 3002, 3452(b), 10 U.S.C. 2131)

(4) *Waiver of limitation in approvable course hours.* (i) Flight schools which wish to have a greater number of hours approved than are permitted by paragraph (h)(1) of this section, may seek an administrative review of their approval by the Director, Education Service. Requests for such a review should be made in writing to the Director of the VA facility having jurisdiction over the flight school. The request should—

(A) State the reasons why the flight school believes that the approval should extend to a greater number of hours, and

(B) Include any evidence tending to show that the greater number of hours should be approved.

(ii) The Director, Education Service shall base her or his decision upon the evidence submitted, the recommendation of the Director of the VA facility, and, if appropriate, the recommendation of the State approving agency having jurisdiction over the flight school.

(Authority: 38 U.S.C. 3032(f), 10 U.S.C. 2131(g))

(i) *Charges.* The appropriate State approving agency shall approve charges for tuition and fees for each flight course exclusive of charges for tuition and fees for solo flying hours and for preflight briefings and postflight critiques which precede or follow solo flying hours.

(Authority: 38 U.S.C. 3672)

* * * * *

(3) A veteran, servicemember or reservist or group (all or part of whom are veterans, servicemembers or reservists) owning an airplane may lease it to an approved flight school and have exclusive use of the aircraft for flight training. The aircraft should meet the requirements prescribed for all airplanes to be used in the course, and should be shown in the approval by the State approving agency. The leasing arrangement should not result in charges for flight instruction for those owning the airplane greater than charges made to others not leasing an aircraft to the school.

(Authority: 38 U.S.C. 3034(d), 10 U.S.C. 2136(c))

(4) If membership in a flight club entitles a veteran, servicemember or reservist to flight training at less than the standard rate, his or her educational allowance will be based on the reduced rate. No payments will be made for the cost of joining the flight club, since it is not a charge for the flight course.

(Authority: 38 U.S.C. 3034(d), 10 U.S.C. 2136(c))

(j) *Substitute aircraft.* Except for minor substitutions a veteran, servicemember or reservist enrolled in a flight course may train only in the aircraft approved for that course. If a particular aircraft is not available for some compelling reason, the veteran, servicemember or reservist may be permitted to train in an aircraft different from that approved for the particular course, provided the aircraft substituted will adequately meet the training requirements for this particular phase of the course. Substitutions should be explained on the monthly certifications of flight training. If this shows that the charge for the substituted aircraft is different from the charge approved for the regular aircraft, the reimbursement will be based on the lesser charge. When substitution becomes the practice rather than the exception, VA will suspend payments and notify the veterans, servicemembers, reservists and the school. VA will refer the matter to the State approving agency for appropriate action.

(Authority: 38 U.S.C. 3034(d), 10 U.S.C. 2136(c))

* * * * *

19. In § 21.4270 paragraph (a), footnote 1 of the table and the authority citation for footnote 1 in paragraph (a) are revised, the title for paragraph (b), paragraphs (b)(1)(ii), (2), (3), (4), (5) and the authority citation for paragraph (b)

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are revised; and paragraphs (b) (6) and (7) are added to read as follows:

**§ 21.4270 Measurement of courses.**

(a) * * *

[1] An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter- or semester-hour basis as indicated for collegiate undergraduate courses in paragraph (c) of this section for an enrollment or reenrollment which begins before May 20, 1988, provided (1) the academic portions of such courses require outside preparation and are measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses are measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit, and (3) the shop portions of such courses are measured on a minimum of 3 hours or, after December 17, 1989, three 50-minute periods of attendance per week for each quarter or semester hour of credit. An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter- or semester-hour basis as indicated for collegiate undergraduate courses in paragraph (c) of this section for an enrollment or reenrollment which begins after May 19, 1988, provided: (1) the academic portions of such courses require outside preparation and are measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses are measured on a minimum of 2 hours (or two 50-minute periods) of attendance per week for each quarter or semester hour of credit, and (3) the shop portions of such courses are measured on a minimum of 3 hours (or three 50-minute hours) of attendance per week for each quarter or semester hour of credit. In no event shall such courses be considered a full-time course when less than 22 hours per week of attendance is required. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full time courses; 1½ hours for three-quarter-time courses of 16–21 clock hours; 1 hour for one-half-time courses of 11–15 clock hours; or ½ hour for less than half-time courses of 6–10 clock hours; no rest period shall be allowed for courses of less than 6 clock hours of attendance.

(Authority: 38 U.S.C. 3688)

* * * * *

(b) *Mixed credit-hour and clock-hour measurement conversion to equivalent clock hours.*

(1) * * *

(ii) The institution of higher learning requires as part of the veteran's or eligible person's program of education one or more unit subjects for which credit is granted toward a standard college degree.

(2) When measuring a veteran's or eligible person's enrollment during a semester or quarter when he or she is pursuing one or more courses which the educational institution measures on a credit-hour basis, VA will convert the credit hours to equivalent clock hours as provided in paragraph (b)(3) of this section.

(3) VA shall—

(i) Determine the equivalent clock hour factor by dividing the number of clock hours which constitute full time for the enrollment as stated in paragraph (a) of this section by the number of credit hours which constitute a full time undergraduate enrollment at the educational institution as stated in paragraph (c) of this section, and

(ii) Except as provided in paragraph (b)(5) and (b)(6) of this section, multiply the number of credit hours in which the veteran or eligible person is enrolled by the equivalent clock hour factor as determined by paragraph (b)(3)(i) of this section. This will result in the number of equivalent clock hours in which the veteran or eligible person is enrolled.

(4) VA will add the number of clock hours in which the veteran or eligible person is enrolled to the number of equivalent clock hours in which he or she is enrolled. The result will be compared to paragraph (a) to determine the veteran's or eligible person's training time.

(5) When the number of class sessions per credit hour is so low that § 21.4272(f)(2)(ii) or (3) would control the way in which VA would measure those credit hours, VA will make the calculations required by paragraph (b)(3)(ii) of this section by multiplying the number of class sessions determined by § 21.4272(f)(2) by the equivalent clock hour factor.

(6) When the veteran or eligible person is attending a nonstandard term, 40 VA will make the calculations required by paragraph (b)(3)(ii) of this section by determining the equivalent credit hours in which the veteran or eligible person is enrolled as provided in § 21.4272(g), and multiplying the equivalent credit hours by the equivalent clock hour factor.

(7) In calculations required by this paragraph, fractions of an equivalent clock hour will be dropped.

(Authority: 38 U.S.C. 3688(e))

* * * * *

20. In § 21.4277 the section heading is revised and paragraph (c) is added before the authority citation to read as follows:

**§ 21.4277 Discontinuance: unsatisfactory progress, conduct and attendance.**

* * * * *

(c) *Satisfactory attendance.* Entitlement to benefits for a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory attendance in accordance with the regularly prescribed standards and practices of the institution in which he or she is enrolled. If the veteran or eligible person will no longer be retained as a student or will not be readmitted as a student by the institution in which he or she is enrolled, educational benefits will be discontinued.

(Authority: 38 U.S.C. 3474, 3524)

* * * * *

21. In § 21.4278 paragraph (a) is revised and its authority citation is added to read as follows:

**§ 21.4278 Reentrance after discontinuance.**

(a) *Conditions permitting reentrance after discontinuance.* A veteran or eligible person may be reentered following discontinuance because of unsatisfactory conduct, progress or attendance only when either of the following sets of conditions exist:

(1) The veteran or eligible person is resuming enrollment at the same educational institution in the same program of education and the educational institution has—

(i) Approved the veteran's or eligible person's reenrollment, and

(ii) Certified it to the Department of Veterans Affairs; or

(2) All of the following exist:

(i) The cause of unsatisfactory conduct, progress or attendance has been removed,

(ii) VA determines that the program which the veteran or eligible person now proposes to pursue is suitable to his or her aptitudes, interests and abilities, and

(iii) If a proposed change of program is involved, the change meets the requirements for approval under §§ 21.4234, 21.5232, 21.7114 and 21.7614 of this part.

(Authority: 38 U.S.C. 3474 and 3524)

* * * * *

[FR Doc. 92–15673 Filed 7–6–92; 8:45 am]

BILLING CODE 8320–01–M

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101–45

**[FPMR Amendment H–184]**

### Sale of Personal Property

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Final rule.



**SUMMARY:** This regulation establishes new criteria and dollar thresholds for requiring approval of an agency reviewing authority prior to the sale of personal property. The criteria and dollar thresholds were formerly based on the acquisition cost of the property being sold, with the exception of scrap material, rather than the fair market value of the property. This amendment requires approval of the reviewing authority based on contract value (actual or estimated based on fair market value) of the property being sold.

**EFFECTIVE DATE:** July 7, 1992.

**FOR FURTHER INFORMATION CONTACT:** Lester D. Gray, Director, Property Management Division (703–305–7240).

**SUPPLEMENTARY INFORMATION:** The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumer or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

**List of Subjects in 41 CFR Part 101–45**

Government property management, Reporting and recordkeeping requirements, Surplus government property.

**PART 101–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY**

1. The authority citation for Part 101–45 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

**Subpart 101–45.3—Sale of Personal Property**

2. Section 101–45.304–6 is revised or read as follows:

**§ 101–45.304–6 Reviewing authority.**

Approval by a reviewing authority of the agency effecting the sale shall be required for each proposed award when the contract value (actual or estimated based on fair market value) for property other than scrap exceeds the dollar thresholds listed below by method of sale:

(a) Negotiated sale of surplus property—$15,000 or more;

(b) Negotiated sale at fixed price of surplus or exchange/sale property—$25,000 or more; and

(c) Competitive bid sale—$100,000 or more.

Dated: June 10, 1992.

**Richard G. Austin,**

*Administrator of General Services.*

[FR Doc. 92–15762 Filed 7–6–92; 8:45 am]

BILLING CODE 6820–24–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 92–65; RM–7938]**

### Radio Broadcasting Services; Gladwin, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document removes vacant Channel 280A from Gladwin, Michigan, in response to a petition filed by Michigan Radio Group, Inc.

**EFFECTIVE DATE:** August 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 92–65, adopted June 17, 1992, and released June 30, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452–1422.

**List of Subjects in 47 CFR Part 73**

Radio Broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 280A, Gladwin.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92–15746 Filed 7–6–92; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 73

**[MM Docket No. 92–12; RM–7883]**

### Radio Broadcasting Service; Belle Fourche, SD

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Lovcom, Inc., substitutes Channel 240C1 for Channel 240A at Belle Fourche, South Dakota, and modifies the construction permit of Station KBFS-FM to specify operation on the higher class channel. *See* 57 FR 4179, February 4, 1992. Channel 240C1 can be allotted to Belle Fourche in compliance with the Commission's minimum distance separation requirements with a site restriction of 38.4 kilometers (23.8 miles) south to accommodate petitioner's desired transmitter site, at coordinates North Latitude 44–19–35 and West Longitude 103–50–15. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** August 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 92–12, adopted June 17, 1992, and released June 30, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio Broadcasting

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under South Dakota , is

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amended by removing Channel 240A and adding Channel 240C1 at Belle Fourche.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92-15747 Filed 7-6-92; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 92-46; RM-7915]**

## Radio Broadcasting Services; Cloquet, MN

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 243C3 for Channel 243A at Cloquet, Minnesota, and modifies the construction permit for Station WKLK-FM to specify operation on Channel 243C3 in response to a petition filed by WKLK, Inc. *See* 57 FR 9530, March 19, 1992. On May 12, 1992, the Commission granted an assignment of the construction permit for Station WKLK-FM to QB Broadcasting Ltd. Canadian concurrence has been received for the allotment of Channel 243C3 at coordinates 46-43-20 and 92-25-15. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** August 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 92-46, adopted June 18, 1992, and released June 30, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 243A and adding Channel 243C3 at Cloquet.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92-15748 Filed 7-6-92; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

## 50 CFR Part 672

**[Docket No. 911176-2018]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of the shortraker/rougheye species group (SRRE) in the Eastern Regulatory Area of the Gulf of Alaska (GOA) and is requiring that incidental catches of SRRE be treated in the same manner as prohibited species and discarded at sea with minimum of injury. This action is necessary because the total allowable catch (TAC) for SRRE in the Eastern Regulatory Area has been reached.

**EFFECTIVE DATE:** Effective 12 noon, Alaska local time (A.l.t.), July 1, 1992, through 12 midnight, A.l.t., December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GAO (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The 1992 TAC for SRRE in the Eastern Regulatory Area was established by the final notice of specifications (57 FR 2844, January 24, 1992) as 570 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for SRRE in the Eastern Regulatory Area has been reached. Therefore, NMFS is requiring that SRRE be treated as prohibited species. Under § 672.20(e), NMFS is prohibiting retention of SRRE in the Eastern Regulatory Area effective from 12 noon, A.l.t., July 1, 1992, through 12 midnight, A.l.t., December 31, 1992.

**Classification**

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

**List of Subjects in 50 CFR Part 672**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 1, 1992.

**Richard H. Schaefer,**

*Director of Office of Fisheries Conservation and Management National Marine Fisheries Service.*

[FR Doc. 92-15846 Filed 7-1-92; 2:28 pm]

BILLING CODE 3510-22-M

## 50 CFR Part 675

**[Docket No. 911172-2021]**

## Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for rock sole and "other flatfish" by vessels using trawl gear in Zones 1 and 2H of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 1992 primary bycatch allowance of Pacific halibut for the rock sole and "other flatfish" trawl fishery in the BSAI has been caught.

**EFFECTIVE DATE:** Effective 12 noon, Alaska local time (A.l.t.), July 1, 1992 through 12 midnight, A.l.t., December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** David R. Cormany, Resource Management Specialist, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.



The 1992 primary bycatch allowance of Pacific halibut to the rock sole and "other flatfish" fishery, which is defined at § 675.21(g)(4)(ii)(B), was established by emergency rule (57 FR 11433, April 3, 1992) as 660 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.21(h)(1)(iii), that U.S. fishing vessels in the BSAI have caught the 1992 primary bycatch allowance of Pacific halibut specified for the rock sole and "other flatfish" fishery. Therefore, NMFS is prohibiting directed fishing for rock sole and "other flatfish" in the aggregate by vessels using trawl gear in Zones 1 and 2H of the BSAI from 12 noon, A.l.t., July 1, 1992, until 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

**Classification**

This action is taken under 50 CFR 675.21 and is in compliance with Exwcutive Order 12291.

**List of Subjects in 50 CFR Part 675**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 1, 1992.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-15845 Filed 7-1-92; 2:21 pm]

BILLING CODE 3510-22-M

## 50 CFR Part 675

**[Docket No. 911172-2021]**

## Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of the 'other rockfish' species category in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands Management Area (BSAI) and is requiring that incidental catches of the 'other rockfish' species category be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the total allowable catch (TAC) for the 'other rockfish' species category in the BS has been reached.

**EFFECTIVE DATES:** Effective 12 noon, Alaska local time (A.l.t.), July 1, 1992, through 12 midnight, A.l.t., December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1992 TAC for 'other rockfish' in the BS was established by the final notice of specifications (57 FR 3952, February 3, 1992) as 340 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the TAC for 'other rockfish' in the BS has been reached. Therefore, NMFS is requiring that 'other rockfish' be treated as prohibited species. Under § 675.20(c), NMFS is prohibiting retention of 'other rockfish' in the BS effective from 12 noon, A.l.t., July 1, 1992, through 12 midnight, A.l.t., December 31, 1992.

**Classification**

This action is taken under 50 CFR 675.20 and is in compliance with Executive Order 12291.

**List of Subjects in 50 CFR Part 675**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 1, 1992.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-15847 Filed 7-1-92; 8:45 am]

BILLING CODE 3510-22-M

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# Proposed Rules

Federal Register
Vol. 57, No. 130
Tuesday, July 7, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Parts 6 and 19

[Docket No. 92-10]

### Prompt Corrective Action

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is proposing regulations to implement section 38 of the Federal Deposit Insurance Act (FDI Act), as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Section 38 requires or permits the OCC and other Federal banking agencies to take certain supervisory actions when federally insured institutions fall within one of five specifically enumerated capital categories. It also restricts or prohibits certain activities and requires submission of a capital restoration plan when insured institutions become undercapitalized.

These proposed amendments are necessary to establish the capital levels at which insured national banks and insured federal branches will be deemed to come within the five capital categories. The proposed amendments also establish procedures for issuing and contesting prompt corrective action directives, including directives requiring the dismissal of directors and senior executive officers.

**DATES:** Comments must be submitted on or before August 21, 1992.

**ADDRESSES:** Comments should be directed to: Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Attention: Docket No. [92-10]. Comments will be available for inspection and photocopying at the same location.

**FOR FURTHER INFORMATION CONTACT:** Kevin J. Bailey, Executive Assistant, Senior Deputy Comptroller for Bank Supervision Operations, (202) 874-5030; Daniel Berkland, National Bank Examiner, Special Supervision, (202) 874-4450; or Beth Kirby, Senior Attorney, Legal Advisory Services Division.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 131 of FDICIA (Pub. L. 102-242, 105 stat. 2236) created a new statutory framework that applies to every insured depository institution a system of supervisory actions indexed to the capital level of the individual institution. The stated purpose of this statutory provision is to resolve the problems of insured depository institutions at the least possible long-term loss to the deposit insurance fund. The new framework is contained in section 38 of the FDI Act. This framework and the authority it confers on the Federal banking agencies are meant to supplement the existing supervisory authority vested in the agencies, and do not limit in any way their existing authority under other statutes or regulations to initiate supervisory actions to address capital deficiencies, unsafe or unsound conduct, practices, or conditions, or violations of law.

Section 38 requires the Federal banking agencies, within 9 months of the enactment of FDICIA, to promulgate final regulations necessary to carry out the purposes of that section. Under the statute, these regulations must become effective within one year after the date of enactment of FDICIA, or no later than December 19, 1992.

It is the goal of the Board of Governors of the Federal Reserve System (Federal Reserve Board), the Federal Deposit Insurance Corporation (FDIC), the OCC, and the Office of Thrift Supervision (OTS) to promulgate uniform regulations to the extent feasible in implementing the prompt corrective action framework of section 38. The agencies believe that a uniform approach to capital definitions and capital categories would simplify the tasks facing bank and thrift management of monitoring and maintaining the capital levels of insured depository institutions, and would remove any competitive distortions that might arise if different standards were applied to competing institutions.

In order to implement the provisions of section 38, the agencies have proposed regulations that have uniform provisions. The agencies propose to define in the same manner the capital measures and capital thresholds for each of the five capital categories established in the statute. The agencies also propose to establish a uniform schedule for filing and reviewing of capital restoration plans. In addition, the agencies propose to adopt identical provisions clarifying certain aspects of the capital guarantee required to be made by companies that control an undercapitalized institution as part of an acceptable capital plan, including the limit on the liability of such companies.

The agencies' proposal establishes a procedure under which institutions are provided advance notice of a proposed agency action under section 38 and are provided an opportunity to respond to the proposed action. A separate procedure is proposed that governs decisions by the appropriate Federal banking agency to change the capital category to which the institution is assigned after review of supervisory factors other than capital. Finally, the proposal implements the statutory requirement that officers and directors who are subject to dismissal as a result of an agency order issued under section 38 be afforded agency review of the dismissal.

Many of the provisions of section 38 apply without the need for agency action, or impose requirements or limitations on an agency in the exercise of its discretion. These provisions have not been repeated in the proposed regulation. The proposal implements only those portions of section 38 that the agencies believe require regulatory specification or clarification.

Where procedures have not been established in this proposal, such as procedures for review of a stock redemption or an expansion proposal by an undercapitalized institution, each agency will implement a procedure governing agency review. Such procedures will be established by regulation or through agency instructions to appropriate field offices or examiners and to the institutions involved. In several instances, procedures governing agency review



have already been established in other agency regulations.

The agencies request comment on all aspects of this proposal, including the specific numbered questions presented below. In addition, the agencies request comment on whether other provisions of section 38 require clarification or should be implemented by regulation. The agencies stress that comments may address any aspect of the proposal and need not be confined to the numbered questions set out below. Commenters are invited to submit comments to any or all of the Federal banking agencies.

## II. Summary of Statutory Framework

The following is a brief summary of the supervisory framework established by section 38. This summary has been prepared in order to give context to the agency proposal and request for comment. The summary is not intended to be a complete description of the requirements of section 38, and commenters may find it useful to consult the provisions of section 38, contained at 12 U.S.C. 1831o, in preparing their comments.

Section 38 provides a framework of supervisory actions based on the capital level of an insured depository institution. Section 38 establishes five capital categories: Well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. The statute deems an insured depository institution to be:

"Well capitalized" if the institution significantly exceeds the required minimum level for each relevant capital measure;

"Adequately capitalized" if the institution meets the required minimum level for each relevant capital measure;

"Undercapitalized" if the institution fails to meet the required minimum level for any relevant capital measure;

"Significantly undercapitalized" if the institution is significantly below the required minimum level for any relevant capital measure; or,

"Critically undercapitalized" if the institution has a ratio of tangible equity to total assets of 2 percent or less, or otherwise fails to meet the critical capital level established pursuant to section 38(c)(3)(A).

The applicability of supervisory actions provided in section 38 to an individual institution depends on the institution's classification within one of these five categories.

### *A. Provisions Applicable to All Institutions*

Section 38 prohibits an insured depository institution from declaring any dividends, making any other capital distribution or paying a management fee to a controlling person if, following the distribution or payment, the institution would be within any of the three undercapitalized categories. The statute provides a limited exception to this prohibition for stock redemptions that do not result in any decrease in an institution's capital and would improve the institution's financial condition provided that the redemption has been approved by the institution's appropriate Federal banking agency after consultation with the FDIC.

### *B. Provisions Applicable to Undercapitalized Institutions*

Institutions that are classified as undercapitalized are subject to a number of additional mandatory supervisory actions. These include:

- Increased monitoring by the appropriate Federal banking agency for the institution and periodic review of the institution's efforts to restore its capital;
- A requirement that the institution submit, generally within 45 days, a capital restoration plan acceptable to the appropriate Federal banking agency for the institution and implement that plan;
- A restriction on growth of the institution's total assets; and
- A limitation on the institution's ability to make any acquisition, open any new branch offices, or engage in any new line of business without the prior approval of the appropriate Federal banking agency for the institution.

Section 38 also provides that the appropriate Federal banking agency for an undercapitalized institution may take any of a number of discretionary supervisory actions if the agency determines that any of these actions is necessary to resolve the problems of the institution at the least possible long-term cost to the deposit insurance fund. These discretionary supervisory actions include requiring the institution to raise additional capital, restricting transactions with affiliates, restricting interest rates paid by the institution on deposits, requiring replacement of senior executive officers and directors, restricting the activities of the institution and its affiliates, requiring divestiture of the institution or the sale of the institution to a willing purchaser, and any other supervisory action that the agency deems appropriate. Because these discretionary actions are also applicable to significantly undercapitalized institutions (as well as to critically undercapitalized institutions), these actions are described more fully in the next section.

### *C. Provisions Applicable to Significantly Undercapitalized Institutions*

Section 38 provides that significantly undercapitalized institutions are subject to the four mandatory provisions listed above that are applicable to undercapitalized institutions. Section 38 also provides that a significantly undercapitalized institution must restrict the payment of bonuses and raises to senior executive officers of the institution.

In addition to these mandatory requirements, section 38 specifies restrictions that the appropriate Federal banking agency for the institution may impose one or more restrictions on an institution that is significantly undercapitalized. These discretionary actions include:

- Requiring the institution to sell enough additional capital, including voting shares, so that the institution would be adequately capitalized after the sale;
- Restricting transactions between the institution and its affiliates, including transactions with its insured depository institution affiliates;
- Restricting the interest rates paid on deposits collected by the institution to the prevailing rates in the region where the institution is located;
- Restricting the institution's asset growth or requiring the institution to reduce its total assets;
- Requiring the institution or any subsidiary of the institution to terminate, reduce or alter any activity that the agency determines poses excessive risk to the institution;
- Requiring the institution to hold a new election of its board of directors;
- Requiring the institution to dismiss any director or senior executive officer who had held office at the institution for more than 180 days immediately before the institution became undercapitalized if the agency deems such dismissal to be appropriate, and to employ new officers who may be subject to approval by the agency;
- Prohibiting the institution from accepting deposits from correspondent depository institutions;
- Prohibiting any bank holding company that controls the institution from making any dividend payment without prior approval of the Federal Reserve Board;
- Requiring the institution to accept an offer to be acquired by another institution or company, or requiring any company that controls the institution to divest the institution;
- Requiring the institution to divest or liquidate any subsidiary that is in danger of becoming insolvent and poses a significant risk to the institution, or that is likely to cause significant dissipation of the institution's assets or earnings;
- Requiring any company that controls the institution to divest or liquidate any affiliate of the institution (other than another insured depository institution) if the appropriate Federal banking agency for the holding company determines that the affiliate is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause significant dissipation of the institution's assets or earnings; and

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• Requiring the institution to take any other action that the agency determines would better carry out the purposes of section 38.

While the statute generally provides the agency with discretion to determine whether these actions are appropriate in connection with a particular institution, the statute establishes certain presumptions and requirements with respect to the agency's consideration of these actions. Section 38 requires that the agency take at least one of the above discretionary supervisory actions in connection with every institution that is significantly undercapitalized or critically undercapitalized. The statute also establishes a presumption that the agency require each significantly undercapitalized or critically undercapitalized institution to (1) be acquired by another institution or company or sell sufficient shares to restore the institution's capital to at least the minimum acceptable capital level, (2) restrict transactions with affiliates of the institution, including transactions with depository institution affiliates, and (3) restrict interest rates paid by the institution on deposits. The agency must impose each of these three actions unless the agency determines that the action would not further the purpose of section 38.

As discussed above, each of the discretionary actions listed above may also be taken in connection with undercapitalized institutions if a finding is made by the agency that the action is necessary to carry out the purposes of section 38. In addition, these discretionary actions may be taken in connection with any undercapitalized institution that fails to submit or materially implement a capital restoration plan, as if the institution were a significantly undercapitalized institution.

In addition to the discretionary actions discussed above, section 38 also provides that the appropriate Federal banking agency may require a significantly undercapitalized institution or an undercapitalized institution that has failed to submit or implement an acceptable capital restoration plan to comply with one or more of the restrictions established by the FDIC on the activities of critically undercapitalized institutions.

*D. Provisions Applicable to Critically Undercapitalized Institutions*

Section 38 requires that an insured depository institution that is critically undercapitalized be placed in conservatorship or receivership within 90 days, unless the appropriate Federal banking agency for the institution and the FDIC concur that other action would better achieve the purposes of section 38. A determination by the agency to defer placing a critically undercapitalized institution in receivership or conservatorship must be reviewed every 90 days and must document the reasons the agency believes other action would better achieve the purposes of section 38.

The statute requires that the institution be placed in receivership if the institution continues to be critically undercapitalized on average during the fourth quarter after the institution initially became critically undercapitalized, unless certain specific statutory requirements are met. To be eligible for the exception, the institution must (1) have positive net worth, (2) be in substantial compliance with an approved capital restoration plan, (3) be profitable or have an upward trend in earnings, and (4) have reduced its ratio of nonperforming loans to total loans. In addition, the head of the appropriate Federal banking agency for the institution and the Chairperson of the FDIC must both certify that the institution is viable and not expected to fail.

Critically undercapitalized institutions are also prohibited, beginning 60 days after becoming critically undercapitalized, from making any payment of principal or interest on subordinated debt issued by the institution without the prior approval of the FDIC. Section 38 does not prevent unpaid interest from accruing on subordinated debt under the terms of the debt instrument.

Section 38(i) of the FDI Act also provides that the FDIC, by regulation or order, must restrict the activities of critically undercapitalized institutions. At a minimum, the FDIC must prohibit critically undercapitalized institutions from doing any of the following without the prior written approval of the FDIC:

• Entering into any material transaction other than in the usual course of business. Such activities include any investment, expansion, acquisition, sale of assets or other similar action where the institution would have to notify its appropriate Federal banking agency;

• Extending credit for any highly leveraged transaction;

• Amending its charter or bylaws unless required to do so in order to carry out any other requirement of any law, regulation or order;

• Making any material change in its accounting methods;

• Engaging in any "covered transactions" within the meaning of Section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c), which concerns affiliate transactions;

• Paying excessive compensation or bonuses;

• Paying interest on new or renewed liabilities at a rate which would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates in the institution's normal market areas.

Pursuant to section 38(j) of the FDI Act, none of these restrictions apply to institutions in conservatorship or to any bridge bank that is wholly owned by the FDIC or the RTC.

It should also be noted that, pursuant to section 38(o)(2) of the FDI Act, none of these restrictions shall apply, before July 1, 1994, to any insured savings association if:

(a) The savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owner's Act;

(b) The Director of OTS has accepted the plan; and

(c) The savings association remains in compliance with the plan or is operating under a written agreement with the appropriate Federal banking agency.

## III. Proposal and Request for Comment

*A. Capital Measures*

For purposes of defining each of the five capital categories (except for the critically undercapitalized category), section 38(c) requires the agencies to prescribe capital standards that include a leverage limit and a risk-based capital requirement. The agencies may establish additional capital measures for these categories if additional capital measures would serve the purposes of section 38. In addition, section 38 permits the agencies to rescind the leverage limit or the risk-based capital measure if the Federal banking agencies concur that either measure is no longer an appropriate means for carrying out the purposes of section 38.

The agencies are proposing to adopt the leverage limit and the total risk-based capital measure in defining the capital categories other than the critically undercapitalized category. In addition, the agencies propose to adopt the Tier 1 risk-based capital ratio as a capital measure in defining these capital categories. These measures are generally used by the Federal banking agencies in determining the adequacy of capital of insured depository institutions.

*Comment 1.* The agencies request comment on whether adoption of these three capital measures is appropriate to carry out the purpose of section 38.

The agencies note that the capital requirements applicable to insured depository institutions may be affected by section 305 of FDICIA, which amends

section 18 of the FDI Act to require the agencies to revise their risk-based capital standards to take into account interest rate risk, concentration of credit risk, and the risks of nontraditional activities. The statutory deadline for implementation of these revisions is in June 1993.

As the revisions required under section 18 of the FDI Act are implemented, it might prove necessary or appropriate to review the capital measures and thresholds specified for the various capital categories. In particular, the agencies note that one of the rationales for retaining a leverage ratio after the risk-based capital measure was introduced was that the risk-based capital measure is focused on credit-related risk, and does not explicitly factor in other risks, particularly interest rate risk. The agencies intend to lower or eliminate the leverage capital component from the definitions of "well capitalized,""adequately capitalized," and "undercapitalized" after the risk-based capital standards have been revised by each Federal banking agency to take into account interest rate risk as required by section 305 of FDICIA, and after experience has been gained with such standards. The agencies acknowledge the requirements of section 38(c) of the FDI Act and would comply with those requirements, to the extent they apply, before taking any such action.[1]

*B. Definition of Capital Terms*

The agencies propose to adopt the same definitions of capital terms for purposes of the prompt corrective action provisions of section 38 as are currently used under the capital adequacy guidelines or regulations adopted by the agencies. The definition of the risk-based and leverage capital ratios for purposes of the prompt corrective action regulation would refer to the definitions of Tier 1 capital, total capital, total risk-weighted assets, and total assets as those terms are defined in the agencies' current capital adequacy guidelines and regulations. This proposal attempts to reduce complexity that could result from the use of new or modified capital definitions, and to minimize confusion and the possibility that an institution may be uncertain regarding its capital levels for purposes of section 38.

*Comment 2.* The agencies request public comment regarding whether this approach is appropriate or whether the agencies should modify the existing capital definitions for purposes of applying section 38. If adjustments or modifications to the capital definitions currently used are deemed to be appropriate, the agencies request comment on what type of adjustments or modifications should be made.

*Comment 3.* The agencies also request comment regarding the appropriate period for calculation of capital levels. Under current agency practice and requirements, the level of capital of an institution is calculated on the basis of the amount of capital held by the institution on a given day as a ratio of the most recent quarterly average of total assets or quarter-end risk-weighted assets for the institution.[2] A daily calculation of both capital and assets may facilitate prompt action under section 38.

However, the agencies note that insured depository institutions are not currently required to make daily calculations of capital and such a requirement would increase the reporting burden on many institutions. In addition, a daily calculation may distort capital calculations by focusing on individual daily events (such as a decline in the market value of certain investments on a given day) rather than on related actions taken during a given period or remedial actions that are readily available to the institution (such as a decline in market value in one investment followed by a gain realized on the sale of another investment).

*Comment 4.* The agencies request comment on whether, for purposes of applying the prompt corrective action requirements of section 38, the use of quarterly average total assets or quarter-end risk-weighted assets in calculating capital levels is appropriate, or whether the capital calculations for an institution should be based on an actual daily measure or quarter end measure of the institution's capital and assets.

*Comment 5.* The agencies also request comment on whether a daily calculation of total assets and risk-weighted assets is feasible, and whether a requirement that an institution make daily calculations would impose significant added burden on insured depository institutions.

*C. Specific Capital Levels for Five Capital Categories*

Section 38 requires the agencies to establish specific capital thresholds for each capital category and sets general standards, as described above, for each of these categories. Under these standards, an institution is adequately capitalized if it meets the required minimum level for each relevant capital measure. Thus, capital levels set for the adequately capitalized category generally would be the same as the minimum ratios established under the existing minimum capital adequacy rules and guidelines adopted by the agencies. These minimums are 8 percent for the total risk-based capital ratio, 4 percent for the Tier 1 risk-based capital ratio, and 4 percent for the Tier 1 leverage ratio (3 percent for composite 1-rated banks and savings associations, subject to appropriate Federal banking agency guidelines). An institution would have to meet all these minimums in order to be deemed adequately capitalized.

The statute also provides specific guidance as to the capital level for defining a critically undercapitalized institution. Section 38 requires that a critically undercapitalized institution be defined by reference to the institution's ratio of tangible equity to total assets. The statute requires the agencies to establish the threshold ratio for defining a critically undercapitalized institution at no less than 2 percent. As discussed below, the agencies are proposing that a critically undercapitalized institution be defined as any institution that has a Tier I leverage ratio of 2 percent or less.

Taking the capital levels for the adequately capitalized and critically undercapitalized categories as benchmarks, the agencies are proposing that the capital levels for the undercapitalized category be defined as any level under 8 percent for the total risk-based capital ratio, under 4 percent for the Tier 1 risk-based capital ratio, or under 4 percent for the Tier 1 leverage ratio (under 3 percent for composite 1-rated banks and savings associations, subject to appropriate Federal banking agency guidelines). An institution would be considered undercapitalized if it were below the specified capital level for any of the three capital measures.

Further, the capital levels for significantly undercapitalized institutions would be defined as any level under 6 percent for the total risk-

[1] Section 38(c) of the FDI Act requires that the capital standards prescribed under that section by each appropriate Federal banking agency shall include a leverage limit and a risk-based capital requirement, as well as any other additional relevant capital measures needed to carry out the purpose of section 38 and implemented by regulation. However, an appropriate Federal banking agency may, by regulation, rescind any relevant capital measure required by section 38, upon determining (with the concurrence of the other Federal banking agencies) that the measure is no longer an appropriate means for carrying out the purpose of section 38.

[2] The OCC, in its regulations establishing minimum capital ratios, expressly reserves the right to require a bank to compute and maintain its capital ratios on the basis of actual, rather than average, total assets. *See* 12 CFR 3.2(2).

based capital ratio, under 3 percent for the Tier 1 risk-based capital ratio, or under 3 percent for the Tier 1 leverage ratio. An institution would be considered significantly undercapitalized if it were below the specified capital level for any of the three capital measures. Under the proposed definitions, an institution that is significantly undercapitalized also would be deemed to be undercapitalized. Similarly, an institution that is critically undercapitalized also would be deemed to be significantly undercapitalized and undercapitalized. The overlap between these categories is contemplated by the statute and has the effect of applying to significantly undercapitalized institutions and to critically undercapitalized institutions any provisions of section 38 that are applicable to undercapitalized institutions.

The agencies are proposing to establish the minimum total risk-based capital level for the well capitalized category at 10 percent and to set the minimum leverage capital level for this category at 5 percent. To emphasize the importance the agencies place on Tier 1 capital, it is proposed that for the well capitalized category the minimum level for the Tier 1 risk-based capital ratio be set at 6 percent. The specifications of the minimum ratios for the well capitalized category are proposed at levels that are 25 percent to 50 percent higher than the minimum for the adequately capitalized category to promote safe and sound banking conditions, giving due consideration to the international capital standards to which the United States and other G–10 countries have agreed, and to the competitive pressures faced by U.S. banks operating in international markets with foreign banks adhering to these standards.

Capital ratios alone, of course, are not fully indicative of the capital strength of an institution. In particular, in proposing these minimum capital levels, the agencies are aware that some poorly-rated depository institutions have capital ratios above the specified minimums for the well capitalized and adequately capitalized categories. One reason that some poorly-rated institutions qualify as well capitalized for prompt corrective action purposes is that capital is a lagging indicator of problems of insured depository institutions.

Some of these institutions are subject to a written order or directive that establishes a higher capital level for the institution.[3] The agencies are proposing that for an institution to be well capitalized, it must not be subject to any written capital order or directive. This proposal reflects the view that an institution that is subject to a written capital directive from the appropriate Federal banking agency does not have capital that significantly exceeds the required minimum level for the relevant capital measures.

The agencies also intend to assess carefully all aspects of a troubled institution's condition, and to exercise their reclassification authority under section 38(g) of the FDIC Improvement Act. Section 38(g) gives the agencies discretion to downgrade, where appropriate, a "well capitalized" institution by one category and require an "adequately capitalized" or "undercapitalized" institution to comply with supervisory actions as if it were in the next lower capital category if that institution has received a less-than-satisfactory examination rating for asset quality, management, earnings, or liquidity without correcting the deficiency. Any institution would be subject to downgrading on the basis of the components of the institution's examination rating, including an institution that has been deemed not to be within the "well capitalized" category because the institution is subject to a written capital order or directive.

While the prompt corrective action framework constitutes an additional supervisory tool, the Federal banking agencies continue to have available all supervisory tools traditionally used to supervise institutions. The agencies also fully intend to use these tools as appropriate in supervising institutions. These include appropriate enforcement actions and supervisory follow-up measures based upon the institution's overall condition and the existence of any financial, operational, or other supervisory weaknesses, irrespective of the organization's capital category for purposes of the prompt corrective action provisions of section 38. Accordingly, the assignment of an institution to a particular capital category—including the well capitalized category—does not prevent the appropriate federal banking agency from taking other supervisory action that the agency deems appropriate.

Moreover, in light of the intended limited purpose of a capital category designation, the agencies are proposing to limit a given insured depository institution's use of its capital category, except when permitted by the appropriate Federal banking agency or otherwise required by law or regulation. This provision is intended to limit the ability of insured depository institutions to advertise their capital category.

*Comment 6.* The agencies invite comment on this proposal.

Traditionally, examiners have reached judgments on an institution's capital needs by also taking into account a range of factors such as interest rate risk and concentration risk. The agencies have initiatives under way mandated by FDICIA to review their risk-based capital standards to ensure that they take more adequate account of such risks, and also have been engaged in a project under the Federal Financial Institutions Examination Council ("FFIEC") to refine and improve procedures for assessing the reserving policies and practices of individual institutions. After those projects have been completed and improvements implemented and assessed, the agencies intend to revisit the question of how the specifications for the well capitalized category may need to be modified or adjusted.

*Comment 7.* The agencies request comment on all aspects of the capital levels proposed in the draft regulation.

*Comment 8.* In particular, the agencies seek comment on whether the specific levels set for each capital category are appropriate, as well as whether it is appropriate to require that well capitalized institutions not be subject to a capital order or directive.

### *D. Critical Undercapitalized Institutions*

The statute requires that the critically undercapitalized category be based on the ratio of tangible equity to total assets of the institution. Section 38 requires that the minimum ratio for this category be established at a level of tangible equity that is no less than 2 percent of the institution's total assets, and that is no higher than the ratio equal to 65 percent of the required minimum level of capital under the leverage limit. The agencies may, by regulation, specify additional capital measures (such as a risk-based capital ratio) in defining the critically undercapitalized category. Any such measures may not, without the concurrence of the FDIC, be set at a level lower than the level specified by the FDIC for insured state-chartered banks that are not members of the Federal Reserve System.

The agencies are proposing to define critically undercapitalized institutions as institutions that have a ratio of Tier 1 capital to total assets of 2 percent or

[3] The OCC proposes that this include formal agreements, orders to cease and desist and capital directives.

less. The agencies do not at this time propose to establish any additional capital measures for the critically undercapitalized category.

Under this proposal, the agencies would define tangible equity to be Tier 1 capital as defined under the agencies' existing capital adequacy guidelines or regulations. The use of the Tier 1 capital definition has been proposed for several reasons. The definition of Tier 1 capital requires a deduction from equity capital for most intangible assets, including goodwill. The use of Tier 1 capital also focuses primarily on common equity rather than other forms of equity and, therefore, represents the most secure form of equity available to absorb losses that may be incurred by an insured depository institution.

In addition, because Tier 1 capital is an element of the existing capital adequacy guidelines and is included in the definition of the other capital measures proposed under section 38, use of the Tier 1 capital definition would promote consistency and simplicity and, therefore, minimize the potential for confusion in the capital computations required to be made by insured depository institutions. It would also reduce the potential for distortion in the capital raising efforts of insured depository institutions and for anomalies in the classification of institutions under section 38 that might result from use of a substantially different definition of capital for the critically undercapitalized category than is used for the other capital categories.

*Comment 9.* The agencies request public comment on this definition.

*Comment 10.* The agencies also request comment on whether the definition of tangible equity should reflect additional adjustments to deduct intangible assets. If such an adjustment is appropriate for defining the critically undercapitalized category, the agencies request comment on whether tangible equity should be defined to exclude purchased mortgage servicing rights. The agencies note that section 475 of FDICIA requires the Federal banking agencies to determine whether a portion of certain purchased mortgage servicing rights should be included in the calculation of tangible capital. The agencies also recently sought public comment on a proposal to permit insured depository institutions to include a portion of certain credit-card relationships in the calculation of tangible capital for purposes of meeting applicable minimum capital adequacy standards.

*Comment 11.* The agencies request comment on whether purchased mortgage servicing rights and credit-card relationships should be counted in the definition of tangible equity for purposes of section 38.

Similarly, investments in certain types of subsidiaries, which savings associations are required to deduct for purposes of their general capital calculations, represent realizable assets which buffer the exposure of the deposit insurance funds.

*Comment 12.* The agencies request comment on whether these investments should be deducted in computing the relevant capital ratio for purposes of determining whether an institution is critically undercapitalized.

*Comment 13.* In addition, the agencies request comment on whether tangible equity should be defined to take into account broader forms of equity beyond those included in the definition of Tier 1 capital.

*Comment 14.* In particular, the agencies request comment on whether cumulative perpetual preferred stock should be included in determining whether an institution is critically undercapitalized

*Comment 15.* Because the agencies are not proposing to include this form of equity in determining whether an institution is critically undercapitalized, the agencies also request comment on whether a transition period should be permitted for institutions that are permitted to rely on cumulative perpetual preferred stock under currently outstanding agency orders.

*Comment 16.* The agencies also request comment on whether a higher threshold should be established than the proposed 2 percent leverage limit. By statute, this ratio may not exceed 65 percent of the minimum leverage ratio established by the agencies.

*Comment 17.* Finally, the agencies request comment on whether it is appropriate to establish additional capital measures for the critically undercapitalized category. As noted above, section 38 permits the agencies to establish additional capital measures in defining the critically undercapitalized category. The agencies are proposing to use the total risk-based capital measure and the Tier 1 risk-based capital measure for all other categories, but are not proposing to use these capital measures in defining critically undercapitalized institutions.

### *E. Calculation of Capital Levels and Notice of Capital Levels*

Under the proposal, an institution would be expected to monitor its capital levels continually and to notify the appropriate Federal banking agency promptly if the institution's capital levels fall into a lower capital category. In addition, capital levels would be periodically determined on the basis of information filed by each insured depository institution in its quarterly Consolidated Report of Condition and Income ("Call Report"), or on the basis of information obtained in an examination or inspection of the institution. Capital levels may also be determined by the appropriate Federal banking agency for an institution on the basis of other information obtained by the agency from any source. This information may include data provided by the institution to the agency on a voluntary basis, information obtained in connection with an application, calculations based on a report that the institution must file other than a Call Report, or adjustments that are appropriate based on publicly announced events that may affect the institution's capital.

Under the proposal, an institution would be deemed to be aware of information that it files in a Call Report as of the date that the Call Report is required to be filed. Similarly, the institution would be deemed to be notified of capital levels calculated in the examination or inspection process as of the date that the examination report or inspection report is provided to the institution. In the event that the agency determines the capital levels of the institution on the basis of other information, the agencies are proposing to notify the institution in writing of the calculation and the information used as a basis for the capital calculation.

The agencies are concerned that, while the proposed arrangement for calculating the capital levels of an institution on the basis of Call Reports and reports of examination and inspection may be reliable and in most instances timely, this procedure may not always lead to a prompt calculation of capital levels for a given institution. For example, an institution may become aware of information that affects its capital calculation between the time that Call Reports are required to be filed and when an examination is not in process or another report may not be required. This could result in delay in application of the supervisory requirements of section 38, including the provisions that are mandated by the statute.

In order to address changes in capital promptly, the agencies propose to require insured depository institutions to notify the appropriate Federal banking agency within 5 days of any event that would cause the institution to be assigned to a capital category that is different from the category assigned on

the basis of the most recent Call Report or report of examination or inspection. The institution would be deemed to be aware of a necessary adjustment when its senior management determines that the adjustment is appropriate, even if the adjustment is not required to be reported in an official report or otherwise disclosed for some period of time. Under the proposal, the agency would review the information provided by the institution; along with any explanation provided by the institution, to determine whether the institution should be assigned to a different capital category for purposes of the provisions of section 38. This procedure would apply to both upward and downward adjustments to capital that occur between the filing of Call Reports or examinations.

*Comment 18.* The agencies invite public comment on all aspects of this approach to the capital calculations.

*Comment 19.* In particular, the agencies request comment on the use of Call Reports and examination reports as the primary bases for capital calculations.

*Comment 20.* In addition, the agencies request comment on the procedures that have been proposed for self-monitoring and agency notification of changes in capital levels, including comment on the burden associated with this procedure and comment on whether any other procedure to permit the timely monitoring of an institution's capital levels is appropriate.

*F. Reclassification Based on Supervisory Criteria Other Than Capital*

Section 38 provides that a Federal banking agency may, under certain circumstances, reclassify a well capitalized insured depository institution as adequately capitalized and require an adequately capitalized or undercapitalized institution to comply with supervisory actions as if it were in the next lower category (except that the agency may not reclassify a significantly undercapitalized institution as critically undercapitalized) based on supervisory information other than the capital levels of the institution. (Reclassification to the adequately capitalized category and treatment of an institution as if it were in the next lower capital category are referred to collectively herein as a "reclassification"). The statute permits the agency to reclassify an institution where the agency has determined, after notice and opportunity for hearing, that the institution is in unsafe or unsound condition. Section 38 also provides that an institution may be reclassified if the agency deems the institution to be engaged in an unsafe or unsound practice under section 8(b)(8) of the FDI Act. 12 U.S.C. 1818 (b)(8). Section 8(b)(8) of the FDI Act was amended by FDICIA to provide that an institution may be deemed to be engaged in an unsafe or unsound practice if the institution has received a less-than-satisfactory rating in its most recent examination report in any of the categories for assets, management, earnings, or liquidity, and the institution has not corrected the deficiency.

Under the proposed rule, an institution would be reclassified on any of these supervisory grounds only after receiving prior written notice of the proposed reclassification from the agency and having an opportunity to respond to the proposed reclassification. In the case of a proposed reclassification based on a determination that the institution is in unsafe or unsound condition, the agencies also propose, pursuant to section 38, to accord the institution an opportunity for an informal oral hearing prior to the reclassification.

Because section 38 expressly provides for notice and opportunity for hearing in connection with a reclassification on the grounds of unsafe and unsound condition but does not with respect to a reclassification based on examination ratings, the agencies are not proposing to provide an opportunity for an oral hearing prior to reclassification based on an institution's examination rating. In the case of a reclassification proposed on the basis of an examination rating of the institution, the agencies are proposing to provide the institution an opportunity to present written arguments and information prior to the agency's reclassification of the institution.

Under the proposal, the appropriate Federal banking agency would provide an institution with written notice of the agency's intention to reclassify the institution. The institution would be provided at least 14 days to respond to the proposed reclassification unless the agency determines that the condition of the institution warrants a shorter time period for response. In its response, the institution should set forth any reasons why the proposed reclassification would not be appropriate, and provide the agency with any information that the institution believes supports its position on the reclassification. The agency would consider the response in deciding whether to proceed with the reclassification.

*Comment 21.* The agencies invite comment on all aspects of these procedures for reclassifying institutions based on supervisory criteria other than capital.

*G. Timing of Mandatory Provisions*

Under section 38, an institution becomes subject to certain mandatory provisions on the basis of the capital levels of the institution. These mandatory provisions apply immediately without agency action. As noted above, an undercapitalized institution is immediately subject to a restriction on the payment of dividends and management fees, a limitation on asset growth, and an obligation to file an acceptable capital restoration plan. In addition to these requirements, an institution that is significantly undercapitalized or critically undercapitalized is subject to a limitation on the payment of bonuses or raises to senior executive officers.

Under the proposal, once an institution is deemed to have notice of its capital levels and category or is given actual notice by the agency of the institution's capital category, the institution is deemed immediately to be subject to the mandatory provisions that apply to institutions within the corresponding capital category without any further action by the appropriate Federal banking agency for the institution. As explained above, the agencies propose to deem an institution to have notice of its capital category whenever a Call Report is due to be filed by the institution, or an examination report or report of inspection has been provided to the institution. The agencies will provide actual notice to the institution of its capital categorization if the category is based on an adjustment to capital between the filing of Call Reports or examinations; if the agency determines the capital levels of the institution based on information other than information contained in the Call Reports or an examination report; or if the agency determines to reclassify the institution based on supervisory criteria other than capital.

*H. Procedures for Prompt Corrective Action Directives*

Section 38 also provides the agencies with discretion to impose other requirements or restrictions on an insured institution that is undercapitalized, significantly undercapitalized or critically undercapitalized, as well as on any company that controls such an institution. These discretionary supervisory actions are described above.



Because these provisions rely on an agency determination that certain action is appropriate, the agencies are proposing a procedure under which a Federal banking agency would issue a written directive whenever the agency has determined that a discretionary supervisory action is appropriate. The agencies propose to provide written notice to an institution prior to issuing any directive to take an action committed by section 38 to the agency's discretion. The notice would describe the action contemplated by the agency and would provide the institution or company with 14 calendar days to respond to the proposed agency action, unless the agency determines that a shorter response period is appropriate in light of the condition of the institution.

Under the proposal, the institution or company would be permitted to submit written arguments regarding whether the directive is an appropriate exercise of the agency's discretion, along with any information or evidence supporting the respondent's position. Failure to file a timely response would constitute consent to the issuance of the directive and a waiver of the opportunity to appeal. The agency would consider the institution's response prior to issuing a final directive to take action under section 38.

The agencies are also proposing to permit the appropriate Federal banking agency to issue a final directive without notice or opportunity to respond where immediate supervisory action is appropriate. In cases where immediate action is necessary, the agencies propose to provide the institution with an opportunity to appeal the action to the agency and request modification or rescission of the agency action following issuance of the directive. An institution that seeks to appeal an immediately effective directive would be required to file a written appeal with the agency within 14 calendar days of the effective date of the directive. The agency would be required to consider and take action regarding a timely appeal within 60 days of receiving the appeal.

The agencies believe these procedures will afford banks an adequate and fair opportunity to obtain agency review of the action. See, e.g., *FDIC* v. *Mallen*, 486 U.S. 230 (1988) (upholding post-deprivation hearing in case of suspension or removal of a bank officer charged with a felony); *Federal Deposit Ins. Corp.* v. *Bank of Coushatta*, 930 F.2d 1122 (5th Cir. 1991), *cert. denied*, 112 S. Ct. 170 (1992) (affirming procedures for issuance of capital directives).

In proposing these procedures, the agencies have attempted to adhere to the mandate of section 38 that the agencies take prompt corrective action to resolve the problems of insured depository institutions at the least possible long-term loss to the deposit insurance fund while providing institutions with an opportunity for agency review of disputed factual claims. These procedures generally permit an institution advance notice of a proposed directive and an opportunity to present written information and argument to the agency prior to final agency action regarding the directive.

It should be added, however, that the agencies would not be required to follow these procedures, and the respective time periods would not apply, if an institution consented to the action to be taken by the agency either as initially proposed by the agencies or as modified by mutual agreement. Actions taken with such consent would have the same legal affect and be enforceable to the same extent and by the same means as actions taken upon exhaustion of these procedures.

The agencies are not proposing an oral hearing in connection with the issuance of a prompt corrective action directive for several reasons. First, the terms and legislative history of section 38 indicate that Congress intended agency action under section 38 to be taken as promptly as possible. 12 U.S.C. 1831o(a)(2); see also S. Rep. No. 102–167, 102d Cong., 1st Sess. 32–38 (1991) ("The prompt corrective action system will require regulators to act at the first sign of trouble."). Second, Congress clearly indicated several occasions when it believed that a hearing was appropriate in connection with actions taken under section 38, such as orders requiring dismissal of a director or senior executive officer. Congress gave no indication in either the statutory language or legislative history that it intended to provide for an agency hearing in connection with supervisory actions committed to agency discretion under section 38. Third, a requirement that an agency hold a hearing in each case involving action committed to agency discretion under section 38 would cause the prompt corrective action provisions of section 38 largely to duplicate the existing cease-and-desist authority granted to the agencies under section 8(b) of the FDI Act.

*Comment 22.* The agencies request comment on all aspects of the proposal to issue prompt corrective action directives where the agency determines to apply the provisions of section 38 committed to the discretion of the agency.

*Comment 23.* In particular, the agencies request comment on the sufficiency of the proposal to provide notice and opportunity for written response in connection with these directives.

*Comment 24.* The agencies also request comment on ways that these procedures can be improved to give an institution or company that is subject to a prompt corrective action directive a fair opportunity to contest such a directive, while at the same time adhering to the statutory mandate to take prompt action to resolve the problems of inadequately capitalized institutions.

*I. Enforcement of Directives*

Section 8 of the FDI Act, as amended by FDICIA, includes prompt corrective action directives issued pursuant to section 38 among the orders that may be enforced in the courts pursuant to section 8(i)(1), and also makes any depository institution, company, or institution-affiliated party that violates such a directive subject to civil money penalties pursuant to section 8(i)(2)(A). 12 U.S.C. 1818(i). The proposed regulation makes clear that failure of a depository institution to implement a capital restoration plan or the failure of a company having control of a depository institution to fulfill a guarantee that the company has given in connection with a capital plan accepted by the appropriate Federal banking agency will subject responsible parties to civil money penalties.

*J. Dismissal of Directors or Senior Executive Officers*

Section 38 provides that a director or senior executive officer dismissed by an insured depository institution in compliance with an agency directive under section 38 may obtain review of the dismissal by filing with the appropriate Federal banking agency a petition for reinstatement. The statute also provides that the petitioner shall have the opportunity to submit written materials in support of the petition and to appear at a hearing before member(s) or designated employee(s) of the agency. The hearing shall occur within 30 days of the filing of the petition unless the petitioner requests a later date. The agency decision shall be issued within 60 days of the date of the closing of the hearing record.

The statute appears to envision a post-dismissal hearing procedure, as it refers to the appeal as a "petition for reinstatement" and sets a short time for agency decision. Accordingly, the proposed regulation contemplates that an institution ordered to dismiss a senior executive officer or director will take that action immediately upon

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receiving a final directive requiring that action. The agencies are proposing that any officer or director that is dismissed in compliance with an agency directive under section 38 be provided an opportunity to petition the appropriate Federal banking agency for reinstatement within the statutorily-prescribed period.

The proposed regulation permits the affected officer or director an opportunity for an informal agency hearing. The agency will designate a presiding officer(s) to conduct the hearing. The petitioner will have the right to appear at the hearing, with counsel, and to submit written materials and present oral argument. The petitioner may present oral testimony or witnesses only with the consent of the presiding officer(s).

The proposed regulation incorporates the statutory burdens of proof imposed upon an officer or director seeking reinstatement. When the dismissal order is based upon an institution's capital category or its failure to submit or implement a capital restoration plan, the petitioner must prove that his or her continued employment would materially strengthen the institution's ability to become adequately capitalized. When the dismissal order is based upon a reclassification of an institution on grounds of unsafe or unsound condition or practice, the petitioner must prove that his or her continued employment would materially strengthen the institution's ability to correct the condition or practice. The agencies propose to restrict the ability of an officer or director seeking reinstatement to challenge the capital category to which the institution has been assigned.

*Comment 25.* The agencies seek comment on these procedures.

*K. Capital Restoration Plans*

1. Information Required

Section 38 requires an institution that is undercapitalized, significantly undercapitalized, or critically undercapitalized to submit a plan to the appropriate Federal banking agency to restore the institution's capital at least to the minimum capital levels required for adequately capitalized institutions. The statute requires that this capital restoration plan be submitted in writing and specify:

(1) The steps the institution will take to become adequately capitalized,

(2) The levels of capital the institution expects to attain in each year that the plan is in effect,

(3) How the institution will comply with the restrictions and requirements imposed on the institution under section 38,

(4) The types and levels of activities in which the institution will engage, and

(5) Any other information required by the appropriate Federal banking agency.

The agencies do not propose at this time to require by regulation any additional information in a capital restoration plan submitted under section 38. The agencies may, in individual cases, require an institution to provide additional information based on particular circumstances.

*Comment 26.* The agencies request comment on whether and what additional information should be required by regulation for all capital restoration plans submitted under section 38.

2. Schedule for Submission and Review of Capital Plans

The statute requires the agencies to establish by regulation deadlines for the submission and review of capital restoration plans. The agencies propose to adopt the schedule generally established in the statute. Under this schedule, an institution would generally be required to submit a capital restoration plan within 45 days of receiving notice or having been deemed to have notice that the institution is undercapitalized, significantly undercapitalized or critically undercapitalized. As discussed above, an institution is deemed to have been notified of its capital category on the date that it is required to file its Call Report, the date that the institution receives its final report of examination or inspection, or the date that the appropriate Federal banking agency notifies the institution of the institution's capital category (based on an adjustment to capital reported by the institution or on other information obtained by the agency). Under the proposal, the appropriate Federal banking agency may change this period in individual cases, in which case the agency would notify the institution that a different schedule has been adopted.

The proposed schedule would require the appropriate Federal banking agency to review each capital restoration plan within 60 days of submission of the plan unless the agency extends the time for review. The agencies propose to provide written notice to the institution regarding whether the agency has approved or rejected the capital plan. The agency would also provide a copy of each acceptable capital restoration plan, or amendments thereto, to the FDIC within 45 days of accepting the plan.

*Comment 27.* The agencies request comment on the proposed time schedules for submission and review of a capital restoration plan.

3. Failure To Submit or Implement an Acceptable Capital Plan

In the event that the appropriate Federal banking agency has disapproved an institution's capital restoration plan, the proposal would require the institution to submit a new capital restoration plan within a time specified by the appropriate Federal banking agency. During the period following notice of such disapproval and prior to approval by the agency of a new or revised capital plan, the institution would be subject to all of the provisions in section 38 that apply to undercapitalized institutions that have failed to submit and implement, in any material respect, an acceptable capital restoration plan.

The proposed regulation incorporates the provision of section 38 that makes any insured depository institution that is undercapitalized and fails to submit or implement a capital restoration plan within the required time subject to the provisions applicable to significantly undercapitalized institutions. Under the proposal, these provisions apply immediately upon expiration of the time for submission of a capital restoration plan. Accordingly, under the proposal, an undercapitalized institution that fails to submit a capital restoration plan within the required time would, upon the expiration of that period, become subject to the mandatory and discretionary provisions of section 38 outlined above that are applicable to significantly undercapitalized institutions, including limitations on the compensation paid to senior executive officers. An undercapitalized institution that fails to implement, in any material respect, its capital restoration plan would immediately be subject to these same provisions upon the institution's failure to implement the plan.

*Comment 28.* The agencies invite comment on each of these aspects of the proposed rule.

4. Content of Capital Restoration Plans

Section 38 provides that the appropriate Federal banking agency may not accept a capital restoration plan unless the plan:

(1) Contains the information required by statute,

(2) Is based on realistic assumptions and is likely to succeed in restoring the institution's capital, and

(3) Would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the institution is exposed.



The statute also provides that the appropriate Federal banking agency may not approve a capital restoration plan unless each company that controls the institution guarantees the institution's compliance with the plan until the institution has been adequately capitalized for each of four consecutive calendar quarters, and provides appropriate assurances of performance. This guarantee by any controlling company is independent of any liability of affiliates of the depository institution pursuant to the cross-guarantee provision of the FDI Act.

5. Capital Plan Performance Guarantee

The agencies propose to implement the performance guarantee provision, contained in section 38(e)(2)(E), by requiring each company to submit a written guarantee of any capital plan submitted by an undercapitalized, significantly undercapitalized, or critically undercapitalized institution controlled by the company. This guarantee would include assurance that the institution would fulfill any commitments to raise capital made in the plan. Each company that provides the guarantee would be jointly and severally liable for fulfillment of the guarantee. Liability could extend to the amount necessary (up to the statutory limit of liability) to restore the institution to applicable capital standards. Failure of any company that controls an undercapitalized institution to provide the required guarantee causes the institution to become subject to the provisions of section 38 applicable to significantly undercapitalized institutions.

*Comment 29.* The agencies request comment on whether the rule should provide greater detail regarding the content and form of the guarantee.

*Comment 30.* In addition, the agencies request comment on what assurances the agencies should find to be "appropriate assurances of performance" of the capital plan and guarantee. Section 38 appears to permit the agencies to determine the appropriateness of assurances in connection with the agency's review of the capital restoration plan.

*Comment 31.* The agencies seek comment on whether there are particular assurances that the agencies should require by regulation in all cases. For example, should the agencies require a guarantor to demonstrate that it has sufficient financial resources to honor the guarantee.

The statute limits the aggregate liability under the capital performance guarantee of all companies that control a given insured depository institution to the lesser of:

(1) An amount equal to 5 percent of the institution's total assets at the time the institution became undercapitalized, or

(2) The amount necessary (or that would be necessary) to bring the institution into compliance with all capital standards applicable with respect to such institution as of the time the institution fails to comply with its capital restoration plan.

In incorporating this provision into the regulation, the agencies propose to adopt the same definition of total assets for purposes of computing the first component of the limit on liability as would be used in determining the capital category of the institution.

*Comment 32.* Accordingly, as discussed above in connection with the definition of capital categories, the agencies request comment on whether the definition of total assets should be based on a period average of total assets (as proposed above) or should be based on a daily report of the institution's total assets.

The agencies also propose that the second component of the limit on liability refers to the amount necessary to restore the capital of the institution to the applicable minimum capital levels as those levels were defined at the time that the institution initially failed to comply with its capital plan. The amount of a capital guarantee would not change if the minimum capital adequacy requirements change after the time the institution initially failed to comply with its capital restoration plan.

*Comment 33.* The agencies request comment on this clarification of the statutory provision.

The proposed rule also implements the statutory provision that limits the duration of a guarantee of a capital plan. Under the proposal, the appropriate Federal banking agency would provide notice to the company that the guarantee has expired once the depository institution has remained adequately capitalized for four consecutive calendar quarters. The proposal makes clear that expiration of a guarantee or fulfillment of a guarantee given by a company in connection with one capital restoration plan does not relieve the company from the obligation to guarantee another capital restoration plan that may be required at a future date for the same institution if it again becomes undercapitalized. Similarly, the fact that a company has, at one time, fulfilled a guarantee by providing resources to an institution up to the statutory limit would not reduce the amount of any guarantee of a future capital plan for the same institution. Moreover, the provision or fulfillment by a company of a guarantee for one institution does not affect the obligation of that company to guarantee a capital plan in connection with any other insured depository institution.

*Comment 34.* The agencies request comment on these provisions of the proposal.

*Comment 35.* The agencies also request comment on whether the agencies should establish by regulation a time for computing the limit on liability, and, if so, when that calculation should be made.

*Comment 36.* In addition, the agencies request comment on whether any additional regulatory clarifications of the holding company guarantee are necessary.

6. Priority in Bankruptcy

It should be noted that the FDIC will have a priority claim in any bankruptcy proceedings of a holding company that has guaranteed an institution's compliance with a capital restoration plan. The FDIC's claim against a holding company's estate would have priority over the claims of unsecured creditors and is provided for in section 507(a)(8) of title 11 of the United States Code, as amended by the Crime Control Act of 1990, Public Law No. 101-647, 104 Stat. 4789. Sections 365(o) and 523(a)(12) of title 11 of the United States Code, as amended by the Crime Control Act of 1990, also provide special protections for the FDIC.

7. Submission of Plans by Reclassified Institutions

Section 38(g) provides that an institution that has been reclassified to a different capital category as a result of an agency determination that the institution is in an unsafe or unsound condition or is engaged in an unsafe or unsound practice must describe the steps the institution will take to address these deficiencies. Section 38(g) also provides that an institution that nominally has adequate capital but has been reclassified to the undercapitalized category because of its condition or practices is not required to submit a capital restoration plan. The portions of the proposed regulation regarding capital restoration plans reflect these provisions.

*Comment 37.* While section 38 does not require an institution that nominally has adequate capital but has been reclassified to the undercapitalized category to file a capital restoration plan, the agencies request comment regarding whether it is appropriate for the agencies to exercise their general supervisory authority to require such an

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institution to submit a description of the steps the institution will take to address the deficiencies in the institution's condition.

8. Revised Capital Restoration Plans

Under the proposal, an insured depository institution that is operating under a capital restoration plan that has been approved by the appropriate Federal banking agency would not generally be required to submit an additional or a revised capital restoration plan if the institution's capital classification changes, unless the agency notifies the institution that a new or revised capital restoration plan is required. Under this proposal, for example, an undercapitalized institution that is implementing an approved capital restoration plan would not be required to submit a second or revised capital restoration plan if the institution experienced further declines in its capital levels unless the appropriate Federal banking agency determined that a new plan was appropriate in light of the particular circumstances.

*Comment 38.* The agencies request comment on this approach and on whether the agencies should, by regulation, require each insured depository institution to file a new or revised capital restoration plan in the event that the institution's capital category has changed.

*L. Other Matters*

1. Definition of "Management Fee"

Section 38 of the FDI Act prohibits any institution from paying management fees to a controlling person if, following the payment of those fees, the institution would be undercapitalized. The statute does not provide a definition of management fees. The agencies have proposed to define management fees to include any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice other than compensation paid to an individual in the individual's capacity as an officer or employee of the institution. This definition covers all companies, including consulting firms, companies owned by a principal shareholder of an institution, and servicing corporations owned by bank holding companies. Under the proposal, compensation for duties performed by an officer or employee of the institution would not be deemed to be a management fee for purposes of section 38.

*Comment 39.* The agencies request comment on the proposal's provisions regarding management fees and compensation in light of the purpose of section 38 of limiting losses to the deposit insurance funds that might result from the payment of dividends or the payment of management fees by an undercapitalized institution or an institution that would be undercapitalized after the payment.

2. Definition of "Control"

Certain provisions of section 38 apply to companies that "control" an insured depository institution. Section 38 of the FDI Act does not define the term "control". However, section 3 of the FDI Act adopts the definition of "control" contained in section 2 of the Bank Holding Company Act ("BHC Act") (12 U.S.C. 1841(a)(2)). Under the BHC Act, a company controls an institution if (1) the company owns or controls 25 percent or more of any class of voting securities of that institution; (2) the company controls in any manner the election of a majority of the board of directors of the institution; or (3) the agency determines, after notice and opportunity for hearing, that the company exercises a controlling influence over the management or policies of the institution.

Other provisions of the BHC Act exclude certain types of share ownership from the provisions of the BHC Act, including shares acquired by a company in satisfaction of a debt previously contracted ("DPC") or shares held by a company in a fiduciary capacity.

*Comment 40.* The agencies request comment on whether it would be appropriate under section 38 to provide, by regulation, an exception from the definition of "control" for shares acquired DPC or shares held in a fiduciary capacity.

*Comment 41.* In particular, the agencies request comment on whether the agencies should by regulation adopt the DPC and fiduciary ownership exceptions contained in section 2(a)(5) of the Bank Holding Company Act. Section 2(a)(5) of the BHC Act (12 U.S.C. 1841(a)(5)) permits a company to hold shares of a depository institution acquired DPC without becoming subject to the restrictions of that Act provided that the company disposes of the shares within two years (with the possibility of three one-year extensions). Section 2(a)(5) also permits a company to hold shares of a depository institution in a fiduciary capacity without becoming subject to the restrictions of the BHC Act provided that the company does not retain sole right to vote the shares.

*Comment 42.* Finally, in the event that an exception for shares acquired DPC is included in the regulations implementing section 38, the agencies request comment on whether the exception should include conditions similar to those contained in the DPC exception to section 5 of the FDI Act (12 U.S.C. 1815(e)), which imposes cross-guarantee requirements on affiliated institutions. Section 5 of the FDI Act contains an exception for the acquisition by an insured depository institution of shares of another depository institution in satisfaction of a debt previously contracted. That exception is conditioned on the requirement that all transactions between the controlling institution or any affiliate of the controlling institution and the subsidiary institution comply with the restrictions contained in sections 23A and 23B of the Federal Reserve Act.

3. Applicability of Capital Categories to Bank Holding Companies and Savings and Loan Holding Companies

Section 38 applies capital-based prompt corrective action to insured depository institutions but not to holding companies that control such institutions. However, various provisions of section 38 apply to companies that control insured depository institutions. These provisions appear to apply to holding companies regardless of the capital level of those holding companies.

The Federal Reserve Board and the OTS do not propose to adopt a parallel framework of capital categories for holding companies. Instead, the Federal Reserve intends to consult with the Federal banking agency for each insured depository institution subsidiary of the holding company to monitor supervisory actions required under section 38, and, in the supervision of the holding company, to take appropriate action at the holding company level based on an assessment of these developments. In supervising savings and loan holding companies, the OTS will also take appropriate action at the holding company level based on an assessment of actions taken under section 38 regarding its savings association subsidiaries.

*Comment 43.* The agencies request comment on whether it is appropriate for the agencies to exercise their supervisory authority under other provisions of law to establish a framework of supervisory actions for bank holding companies and savings and loan holding companies similar to those established in section 38 for insured depository institutions.

4. Restrictions on Activities of Critically Undercapitalized Banks

Section 38(i) of the FDI Act provides that the FDIC must, by order or regulation, restrict the activities of



critically undercapitalized institutions. The activities that must be restricted are described above. The FDIC proposes to rely on existing industry or regulatory guidance, to the extent possible, when evaluating and applying each of the restrictive provisions of section 38(i) and to continue to coordinate closely with the primary Federal and/or State banking regulators. The interagency procedures implemented will be similar to those already in place at both the Federal agency and state banking department levels. For example, prior to imposing any order restricting or prohibiting an institution from engaging in any of the activities that can be restricted, the FDIC would consult with the appropriate Federal banking agency and State banking agency, as appropriate.

FDICIA does not provide specific guidance on how to interpret and implement each of the above restrictive provisions. Consequently, the FDIC is considering a number of options.

The prohibition on entering into "any material transaction other than in the usual course of business" can be interpreted in a general fashion relying on outstanding case law in the area of securities disclosures. The concept of materiality also could be defined from an accounting perspective by establishing specific limits for determining materiality. For example, the FDIC could, by regulation, require that any prospective transaction other than one that is in the usual course of business that results or could result in a 5 percent change in an institution's tangible equity capital account or net income account would automatically be considered a material transaction requiring the FDIC's prior approval. Other transactions could be defined as material on a case by case basis.

*Comment 44.* The FDIC solicits comment on how to define the terms "material" and "usual course of business" as well as what specific guidance, if any, should be provided by the FDIC to the banking industry.

The FDIC proposes to define the term "highly leveraged transaction" by utilizing the currently outstanding interagency definition published in the **Federal Register** (57 FR 5040, February 11, 1992). The FDIC proposes to rely on existing generally accepted accounting principles when interpreting the restriction on making any "material change in accounting methods".

Section 39(c) of the FDI Act requires the Federal banking agencies to prescribe standards for determining when compensation paid to employees, directors and principal shareholders of insured depository institutions is excessive. An advance notice of proposed rulemaking is expected to be published in the **Federal Register** in the near future. The FDIC proposes to interpret the restrictive provision involving the payment of excessive compensation or bonuses in a manner that is consistent with the FDIC's actions in fulfilling the requirements of section 39(c) of the FDI Act.

The provision that restricts "paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas" contains terms that relate to the changes mandated by section 301 of FDICIA and the revisions of section 337.6 of the FDIC's regulations as recently implemented by the FDIC. Specifically, the FDIC proposes to interpret the phrase "significantly exceeding the prevailing rates" in the same manner as defined in section 337.6. The prevailing effective yields of interest are the effective yields on insured deposits of comparable maturities offered by other insured depository institutions in the market area in which deposits are being solicited. A rate of interest on a deposit with an odd maturity will be considered excessive if it is more than 75 basis points higher than the yield calculated by interpolating between the yields offered by other depository institutions on deposits of the next longer and shorter maturities offered in the market.

A market area is any readily defined geographic area in which the rates offered by any one insured depository institution operating in the area may affect the rates offered by other institutions operating in the same area.

*Comment 45.* The FDIC invites comments on all aspects of these proposed interpretations.

5. Application of Prompt Corrective Action To Insured Branches

Section 38(a)(2) of the FDI Act, as added by section 131 of FDICIA, provides that each appropriate Federal banking agency and the FDIC (acting in the FDIC's capacity as the insurer of depository institutions) shall take prompt corrective action to resolve the problems of insured depository institutions.

Section 3(c)(2) of the FDI Act defines the term "insured depository institution" as "any bank or savings association the deposits of which are insured by the [FDIC] pursuant to (the FDI Act)." 12 U.S.C. 1813(c)(2). The term "bank" is defined, in section 3(a)(1) of the FDI Act, to include, *inter alia*, any "insured branch." 12 U.S.C. 1813 (a)(1). Section 3(s)(3) defines the term "insured branch" to mean "any branch (as defined in section 1(b)(3) of the International Banking Act of 1978) of a foreign bank any deposits in which are insured pursuant to (the FDI Act)." 12 U.S.C. 1813 (s)(3).

The plain language of these statutory provisions requires application of the prompt corrective action provisions to insured branches of foreign banks, including insured federal branches. Insured branches, however, are not required to maintain minimum capital levels under the FDIC's capital maintenance regulations, 12 CFR part 325. In fact, they are expressly excluded from the definition of "insured depository institution" which is used in the FDIC's capital maintenance regulations. 12 CFR 325.2(f). Insured branches, however, are required to maintain a pledge of assets, pursuant to 12 CFR 346.19, and a certain volume of eligible assets, pursuant to 12 CFR 346.20.

Insured federal branches, likewise, are not required to maintain minimum capital levels under the OCC's capital maintenance regulations, 12 CFR part 3. See 50 FR 10215 (March 14, 1985). In addition to the asset pledge and asset maintenance requirements to which all insured branches are subject, all federal branches are required by section 4 of the International Banking Act of 1978 to establish capital equivalency deposits which generally must equal at least 5 percent of the branch's third party liabilities. Federal branches also may be required by the OCC to maintain a certain quantity of specified assets in the states in which they operate.

In an effort to promote competitive equality between insured federal and state branches of foreign banks, the OCC and the FDIC are proposing a uniform definition of capital categories for all insured branches of foreign banks based upon the FDIC's asset pledge and asset maintenance requirements which apply to all insured branches.

The OCC and the FDIC recognize that the eligible assets and, more particularly, the pledge of assets are not perfect substitutes for capital. Nonetheless, the FDIC has long taken the position that the asset pledge and maintenance requirements are analogous to a domestic bank's required capital. Therefore, the OCC and the FDIC are proposing to utilize FDIC's regulations governing the pledge of assets and the level of eligible assets to determine an insured branch's capital category.

For prompt corrective action purposes, the OCC and the FDIC are proposing a framework under which an insured branch, including an insured federal branch, would be deemed:

"Well capitalized" if it:

1. maintains the pledge of assets required under 12 CFR 346.19; and

2. maintains the eligible assets prescribed under 12 CFR 346.20 at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

3. has not received written notification from (1) the OCC to increase its capital equivalency deposit pursuant to 12 CFR 28.6(a), or to comply with asset maintenance requirements pursuant to 12 CFR 28.9 or (2) the FDIC to pledge additional assets pursuant to 12 CFR 346.19 or to maintain a higher ratio of eligible assets pursuant to 12 CFR 346.20.

"Adequately capitalized" if it:

1. maintains the pledge of assets prescribed under 12 CFR 346.19;

2. maintains the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and,

3. does not meet the definition of a "well capitalized" insured branch.

"Undercapitalized" if it:

1. fails to maintain the pledge of assets required under 12 CFR 346.19; or

2. fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

"Significantly undercapitalized" if it fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 104 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

"Critically undercapitalized" if it fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 102 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

Section 38 of the FDI Act enumerates the corrective measures that the appropriate Federal banking agency may or must take against and what restrictions apply to institutions in each of the five capital categories. Some of the prescribed measures and applicable restrictions may not be practical or appropriate in dealing with insured branches of foreign banks.

Therefore, it is the intent of the FDIC and the OCC to apply to insured branches as many of the prompt corrective action measures and restrictions as practical or appropriate, given the unique characteristics of insured branches.

*Comment 46.* The FDIC and the OCC specifically request comments on this proposed approach as well as the proposed manner in which insured branches would be deemed to fall within one of the five capital categories.

Finally, it is the intent of the FDIC and the OCC to define capital levels for insured branches in a manner which is comparable to those for domestic banks.

*Comment 47.* Therefore, the FDIC and the OCC solicit comments on the extent to which the proposed levels for insured branches are comparable to those for domestic banks.

## Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant impact on a substantial number of small entities.

This proposed rule implements the prompt corrective action provisions of section 131 of FDICIA for all insured national banks and insured federal branches. The proposed rule would affect all insured national banks and insured federal branches, regardless of size, and would not disproportionately affect a substantial number of small banks.

This proposed rule establishes capital requirements for insured national banks and insured federal branches within statutorily prescribed requirements. In addition, it adopts statutorily recommended time frames for filing and approving required capital restoration plans. Finally, it establishes procedures to afford insured national banks an opportunity to comment on agency actions taken pursuant to section 38.

## Executive Order 12291

The OCC has determined that this proposed rule is not a major regulation as defined in Executive Order 12291. The proposed rule implements section 131 of FDICIA which established a new statutory framework for resolving the problems of insured depository institutions at the least long-term cost to the FDIC.

Any economic or other consequences of the Prompt Corrective Action system flow from section 131 of FDICIA, not the proposed implementing regulation.

## List of Subjects

*12 CFR Part 6*

Banks, banking, Capital adequacy, National banks.

*12 CFR Part 19*

Administrative practice and procedure, Crime, Dismissals, Investigations, National banks, Penalties, Reclassification, Securities.

## Authority and Issuance

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. Part 6 is added to read as follows:

# PART 6—PROMPT CORRECTIVE ACTION

## Subpart A—Capital Categories

Sec.

6.1 Authority, purpose, scope and other supervisory authority.
6.2 Definitions.
6.3 Notification of capital category.
6.4 Capital measures and capital categories.
6.5 Capital restoration plans.
6.6 Mandatory and discretionary supervisory actions under section 38.

## Subpart B—Directives to take Prompt Corrective Action

6.20 Scope.
6.21 Notice of intent to issue a directive.
6.22 Response to notice.
6.23 Decision and issuance of a prompt corrective action directive.
6.24 Enforcement of directive.

**Authority:** 12 U.S.C. 93a, 1831o.

## Subpart A—Capital Categories

### § 6.1 Authority, purpose, scope and other supervisory authority.

(a) *Authority.* This subpart is issued by the Office of the Comptroller of the Currency (OCC) pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act), as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. No. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o.)

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this subpart is to define, for insured national banks, the capital measures and capital levels, and for insured federal branches, comparable asset-based measures and levels, that are used for determining the supervisory actions authorized under section 38 of the FDI Act. This subpart also establishes procedures for submission and review of capital restoration plans and for issuance and review of orders.

(c) *Scope.* This subpart implements the provisions of section 38 of the FDI Act as they apply to insured national banks and insured federal branches.

Certain of these provisions also apply to officers, directors and employees of these insured institutions.

(d) *Other supervisory authority.* Neither section 38 nor this subpart in any way limits the authority of the OCC under any other provision of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law or regulation, unsafe or unsound conditions, or other practices. Action under section 38 of the FDI Act and this subpart may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the OCC, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(e) *Limited scope of capital categories.* The assignment of an insured national bank or insured federal branch under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38 and, unless permitted by the OCC or otherwise required by law or regulation, may not be used by, for, or on behalf of an insured national bank or insured federal branch for any other purpose.

**§ 6.2 Definitions.**

For purposes of section 38 and this part, the definitions related to capital in part 3 of this chapter shall apply. In addition, except as modified in this section or unless the context otherwise requires, the terms used in this subpart have the same meanings as set forth in sections 38 and 3 of the FDI Act.

*Bank* means all insured national banks and all insured federal branches, except where otherwise provided in this subpart.

*Leverage ratio* means the ratio of Tier 1 capital to adjusted total assets, as calculated in accordance with the OCC's Minimum Capital Ratios in part 3 of this chapter.

*Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the bank, other than compensation to an individual in the individual's capacity as an officer or employee of the bank.

*Risk-weighted assets* means total risk-weighted assets, as calculated in accordance with the OCC's Minimum Capital Ratios in part 3 of this chapter.

*Tangible equity* means the amount of Tier 1 capital as calculated in accordance with the OCC's Minimum Capital Ratios in part 3 of this chapter.

*Tier 1 capital* means the amount of Tier 1 capital as defined in the OCC's Minimum Capital Ratios in part 3 of this chapter.

*Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to risk-weighted assets, as calculated in accordance with the OCC's Minimum Capital Ratios in part 3 of this chapter.

*Total assets* means adjusted total assets as calculated in accordance with the OCC's Minimum Capital Ratios in part 3 of this chapter.

*Total risk-based capital ratio* means the ratio of qualifying total capital to risk-weighted assets, as calculated in accordance with the OCC's Minimum Capital Ratios in part 3 of this chapter.

**§ 6.3 Notification of capital category.**

(a) *Effective date of determination of capital category.* A bank shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this subpart as of the date the bank is notified of, or is deemed to have notice of, its capital category pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A bank shall be deemed to have notice of its capital levels and its capital category as of the most recent of:

(1) The date a Report of Condition and Income (Call Report) is required to be filed with the OCC;

(2) The date a final report of examination is delivered to the bank;

(3) The date that the OCC provides written notice to the bank that the bank's capital category has changed as provided in paragraph (c) of this section;

(4) The date that the OCC provides written notice to the bank of its capital levels and its capital category for purposes of section 38 of the FDI Act and this subpart; or

(5) The date any written notice is served on the bank that the bank's capital category has been changed pursuant to § 6.4 of this subpart and part 19 of this chapter.

(c) *Adjustments to reported capital levels and capital category*—(1) *Notice of adjustment to be provided by bank.* A bank shall provide the OCC with written notice that an adjustment to the bank's capital category may have occurred no later than 5 calendar days following the earlier of the date that the bank:

(i) Reports, or has determined to report, any event that would cause the bank to be placed in a different capital category from the category assigned to the bank for purposes of section 38 and this subpart on the basis of the bank's most recent Call Report or report of examination; or

(ii) Determines that any event has occurred that would cause the bank to be placed in a different capital category from the category assigned to the bank for purposes of section 38 and this subpart on the basis of the bank's most recent Call Report or report of examination.

(2) Determination to change capital category. After receiving notice pursuant to paragraph (c)(1) of this section, the OCC shall determine whether the capital category of the bank should be changed and shall notify the bank of the OCC's determination.

**§ 6.4 Capital measures and capital categories.**

(a) *Capital measures.* For purposes of section 38 and this part, the relevant capital measures shall be:

(1) The total risk-based capital ratio;

(2) The Tier 1 risk-based capital ratio; and,

(3) The leverage ratio.

(b) *Capital categories.* For purposes of the provisions of section 38 and this subpart, a bank shall be deemed to be:

(1) *Well capitalized* if the bank:

(i) Has a total risk-based capital ratio of 10.0 percent or greater;

(ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater;

(iii) Has a leverage ratio of 5.0 percent or greater; and

(iv) Is not subject to any order or written directive by the OCC to meet and maintain a specific capital level for any capital measure.

(2) *Adequately capitalized* if the bank:

(i) Has a total risk-based capital ratio of 8.0 percent or greater;

(ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater; and

(iii) Has:

(A) A leverage ratio of 4.0 percent or greater; or

(B) A leverage ratio of 3.0 percent or greater if the bank is rated composite 1 under the CAMEL rating system in the most recent examination of the bank; and

(iv) Does not meet the definition of a "well capitalized" bank.

(3) *Undercapitalized* if the bank:

(i) Has a total risk-based capital ratio that is less than 8.0 percent; or

(ii) Has a Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(iii)(A) Except as provided in paragraph (b)(3)(iii)(B) of this section, has a leverage ratio that is less than 4.0 percent; or

(B) If the bank is rated composite 1 under the CAMEL rating system in the most recent examination of the bank, has a leverage ratio that is less than 3.0 percent.

(4) *Significantly undercapitalized* if the bank has:

(i) A total risk-based capital ratio that is less than 6.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or

(iii) A leverage ratio that is less than 3.0 percent.

(5) *Critically undercapitalized* if the bank has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Capital categories for insured federal branches:* For purposes of the provisions of section 38 of the FDI Act and this part, an insured federal branch shall be deemed to be:

(1) *Well-capitalized* if the insured federal branch:

(i) Maintains the pledge of assets required under 12 CFR 346.19; and

(ii) Maintains the eligible assets prescribed under 12 CFR 346.20 at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Has not received written notification from:

(A) The OCC to increase its capital equivalency deposit pursuant to § 28.6(a) of this chapter, or to comply with asset maintenance requirements pursuant to § 28.9 of this chapter; or

(B) The FDIC to pledge additional assets pursuant to 12 CFR 346.19 or to maintain a higher ratio of eligible assets pursuant to 12 CFR 346.20.

(2) *Adequately Capitalized* if the insured federal branch:

(i) Maintains the pledge of assets prescribed under 12 CFR 346.19;

(ii) Maintains the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Does not meet the definition of a "well capitalized" insured federal branch.

(3) *Undercapitalized* if the insured federal branch:

(i) Fails to maintain the pledge of assets required under 12 CFR 346.19; or

(ii) Fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(4) *Significantly Undercapitalized* if it fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 104 percent or more of the preceding quarter's average book value of the insured federal branch's third-party liabilities.

(5) *Critically undercapitalized* if it fails to maintain the eligible assets prescribed under 12 CFR 346.20 at 102 percent or more of the preceding quarter's average book value of the insured federal branch's third-party liabilities.

(d) *Classification based on supervisory criteria other than capital.* The OCC may reclassify a well capitalized bank as adequately capitalized and may require an adequately capitalized or undercapitalized bank to comply with supervisory actions as if it were in the next lower capital category (except that the OCC may not reclassify a significantly undercapitalized bank as critically undercapitalized) in the following circumstances:

(1) *Unsafe or unsound condition.* The OCC has determined, after notice and opportunity for hearing pursuant to subpart M of part 19 of this chapter, that the bank is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The OCC has determined, after notice and opportunity for response pursuant to subpart M of part 19 of this chapter, that the bank has received, and not corrected, a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity in the most recent examination of the bank.

**§ 6.5 ' Capital restoration plans.**

(a) *Schedule for filing plan*—(1) *In general.* A bank must file a written capital restoration plan with the OCC within 45 days of the date that the bank receives notice or is deemed to have notice that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the OCC notifies the bank in writing that the plan must be filed within a different period. A bank that has been reclassified as undercapitalized pursuant to § 6.4 of this subpart and subpart M of part 19 of this chapter, is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* Notwithstanding paragraph (a)(1) of this section, a bank that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures unless the OCC notifies the bank that it must submit a new or revised capital plan. A bank that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the OCC within 45 days of receiving such notice, unless the OCC notifies the bank in writing that the plan must be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan must be prepared in accordance with the instructions provided on the Call Report, unless the OCC instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act, including any performance guarantee required to be executed under section 38(e)(2)(C) of that Act by each company that controls the bank. A bank that is required to submit a capital restoration plan as the result of a reclassification of the bank, pursuant to § 6.4 of this subpart and subpart M of part 19 of this chapter, shall include a description of the steps the bank will take to correct the unsafe or unsound condition or practice.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this subpart, the OCC will provide written notice to the bank of whether the plan has been approved. The OCC may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital restoration plan.* If a capital restoration plan is not approved by the OCC, the bank must submit a revised capital restoration plan within the time specified by the OCC. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized bank (as defined in § 6.4) shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as a new or revised capital restoration plan submitted by the bank has been approved by the OCC.

(e) *Failure to submit a capital restoration plan.* A bank that is undercapitalized (as defined in § 6.4) and that fails to submit a written capital restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized banks.

(f) *Failure to implement a capital restoration plan.* Any undercapitalized bank that fails in any material respect to implement a capital restoration plan shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized banks.

(g) *Amendment of capital restoration plan.* A bank that has submitted an approved capital restoration plan may, after prior written notice to and approval by the OCC, amend the plan to reflect a change in circumstance. Until

such time as a proposed amendment has been approved, the bank shall implement the capital restoration plan as approved prior to the proposed amendment.

(h) *Notice to FDIC.* Within 45 days of the effective date of OCC approval of a capital restoration plan, or any amendment to a capital restoration plan, the OCC will provide a copy of such plan or amendment to the Federal Deposit Insurance Corporation.

(i) *Performance guarantee by companies that control a bank*—(1) *Limitation on liability*—(i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this subpart for all companies that control a specific bank that is required to submit a capital restoration plan under this subpart shall be limited to the lesser of:

(A) An amount equal to 5.0 percent of the bank's total assets at the time the bank was notified or deemed to have notice that the bank was undercapitalized; or

(B) The amount necessary to restore the relevant capital measures of the bank to the levels required for the bank to be classified as adequately capitalized, as those capital measures and levels are defined at the time that the bank initially fails to comply with a capital restoration plan under this subpart.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 and this subpart shall expire after the OCC notifies the bank that it has remained adequately capitalized for each of four consecutive calendar quarters. The expiration or fulfillment by a company of a guarantee of a capital restoration plan shall not limit the liability of the company under any guarantee required or provided in connection with any capital restoration plan filed by the same bank after expiration of the first guarantee.

(iii) *Collection on guarantee.* Each company that controls a given bank shall be jointly and severally liable for the guarantee for such bank as required under section 38 and this subpart, and the OCC may require payment of the full amount of that guarantee from any or all of the companies issuing the guarantee.

(2) *Failure to provide guarantee.* In the event that a bank that is controlled by any company submits a capital restoration plan that does not contain the guarantee required under section 38(e)(2) of the FDI Act, the bank shall, upon submission of the plan, be subject to the provisions of section 38 and this subpart that are applicable to banks that have not submitted an approved capital restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls a bank to perform fully its guarantee of any capital plan shall constitute a material failure to implement the plan for purposes of section 38(f) of the FDI Act. Upon such failure, the bank shall be subject to the provisions of section 38 and this subpart that are applicable to banks that have failed in a material respect to implement a capital restoration plan.

(j) *Enforcement of capital restoration plan.* The failure of a bank to implement, in any material respect, a capital restoration plan required under section 38 and this section shall subject the bank to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

### § 6.6 Mandatory and discretionary supervisory actions under section 38.

(a) *Mandatory supervisory actions*—(1) *Provisions applicable to all banks.* All banks are subject to the restrictions contained in section 38(d) of the FDI Act on payment of capital distributions and management fees.

(2) *Provisions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized banks.* Immediately upon receiving notice or being deemed to have notice, as provided in § 6.3 of this subpart, that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act—

(i) Restricting payment of capital distributions and management fees (section 38(d));

(ii) Requiring that the OCC monitor the condition of the bank (section 38(e)(1));

(iii) Requiring submission of a capital restoration plan within the schedule established in this subpart (section 38(e)(2));

(iv) Restricting the growth of the bank's assets (section 38(e)(3)); and,

(v) Requiring prior approval of certain expansion proposals (section 38(e)(4)).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in this part, that the bank is significantly undercapitalized, or critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraphs (a) (2) and (3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 6.3 of this subpart, that the bank is critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act—

(i) Restricting the activities of the bank (section 38(h)(1)); and

(ii) Restricting payments on subordinated debt of the bank (section 38(h)(2)).

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the OCC's discretion to take in connection with a bank that is deemed to be undercapitalized, significantly undercapitalized or critically undercapitalized, an officer or director of such bank, or a company that controls such bank, the OCC will follow the procedures for issuing directives under subpart B of this part, unless otherwise provided in section 38 or this subpart.

## Subpart B—Directives to Take Prompt Corrective Action

### § 6.20 Scope.

The rules and procedures set forth in this subpart apply to insured national banks, insured federal branches and senior executive officers and directors of banks that are subject to the provisions of section 38 of the Federal Deposit Insurance Act (section 38) and subpart A of this part.

### § 6.21 Notice of intent to issue a directive.

(a) *Notice of intent to issue a directive*—(1) *In general.* The OCC will provide an undercapitalized, significantly undercapitalized, or critically undercapitalized bank prior written notice of the OCC's intention to issue a directive requiring such bank or company to take actions or to follow proscriptions described in section 38 that are within the OCC's discretion to require or impose under section 38(e)(5), (f)(2), (f)(3), or (f)(5) of the FDI Act.

(2) *Immediate issuance of final directive.* If the OCC finds it necessary in order to carry out the purposes of section 38 of the FDI Act, the OCC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue a directive requiring a bank immediately to take actions or to follow proscriptions described in section 38 that are within the OCC's discretion to require or

impose under section 38(e)(5), (f)(2), (f)(3), or (f)(5) of the FDI Act. A bank that is subject to such an immediately effective directive may submit a written appeal of the directive to the OCC. Such an appeal must be received by the OCC within 14 calendar days of the issuance of the directive. The OCC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the directive shall remain in effect unless the OCC, in its sole discretion, stays the effectiveness of the directive.

(b) *Contents of notice.* A notice of intention to issue a directive shall include:

(1) A statement of the bank's capital measures and capital levels;

(2) A description of the restrictions, prohibitions or affirmative actions that the OCC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of such affirmative actions; and

(4) The date by which the bank subject to the directive may file with the OCC a written response to the notice.

**§ 6.22 Response to notice.**

(a) *Time for response.* A bank may file a written response to a notice of intent to issue a directive within the time period set by the OCC. The date shall be at least 14 calendar days from the date of the notice unless the OCC determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(b) *Content of response.* The response should include:

(1) An explanation why the action proposed by the OCC is not an appropriate exercise of discretion under section 38;

(2) Any recommended modification of the proposed directive; and

(3) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the proposed directive.

(c) *Failure to file response.* Failure by a bank to file with the OCC, within the specified time period, a written response to a proposed directive shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the directive.

**§ 6.23 Decision and issuance of a prompt corrective action directive.**

(a) *OCC consideration of response.* After considering the response, the OCC may:

(1) Issue the directive as proposed or in modified form;

(2) Determine not to issue the directive and so notify the bank; or

(3) Seek additional information or clarification of the response from the bank, or any other relevant source.

(b) *Request for modification or rescission of directive.* Any bank that is subject to a directive under this subpart may, upon a change in circumstances, request in writing that the OCC reconsider the terms of the directive, and may propose that the directive be rescinded or modified. Unless otherwise ordered by the OCC, the directive shall continue in place while such request is pending before the OCC.

**§ 6.24 Enforcement of directive.**

(a) *Judicial remedies.* Whenever a bank fails to comply with a directive issued under section 38, the OCC may seek enforcement of the directive in the appropriate United States district court pursuant to section 8(i) (I) of the FDI Act.

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act, the OCC may assess a civil money penalty against any bank that violates or otherwise fails to comply with any final directive issued under section 38 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraph (a) and (b) of this section, the OCC may seek enforcement of the provisions of section 38 or subpart A or B of this part through any other judicial or administrative proceeding authorized by law.

## PART 19—[AMENDED]

2. The authority citation for part 19 of this chapter is revised to read as follows:

**Authority:** 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), and 3909; 15 U.S.C. 78(h) and (i), 78o-4(c), 78o-5, 78q-1, 78u, 78u-2, 78u-3, and 78w; and 31 U.S.C. 330.

3. Part 19 is amended by adding subparts M and N to read as follows:

**Subpart M—Procedures for Reclassifying a Bank Based on Criteria Other than Capital**

Sec.

19.220 Scope.
19.221 Classification of a bank based on unsafe or unsound condition.
19.222 Procedures for reclassifying a bank based on unsafe or unsound practice.
19.223 Request for rescission of reclassification.

**Subpart N—Order to Dismiss a Director or Senior Executive Officer**

19.230 Scope.
19.231 Order to dismiss a director or senior executive officer.

## Subpart M—Procedures for Reclassifying a Bank Based on Criteria Other than Capital

**§ 19.220 Scope.**

This subpart applies to the procedures afforded to any bank that has been reclassified to a lower capital category by a notice or order issued by the OCC pursuant to section 38 of the Federal Deposit Insurance Act and part 6 of this chapter.

**§ 19.221 Classification of a bank based on unsafe or unsound condition.**

(a) *Issuance of notice of proposed reclassification.* If the OCC determines to reclassify a bank to a well capitalized bank as adequately capitalized or to require an adequately capitalized or undercapitalized bank to comply with supervisory actions as if it were in the next lower capital category pursuant to section 38(g) of the FDI Act and subpart A of part 6 of this Chapter because the OCC deems the bank to be in unsafe or unsound condition (each of the foregoing referred to hereinafter as a "reclassification"), the OCC will issue and serve on the bank a written notice of the OCC's intention to reclassify the bank.

(b) *Contents of notice.* A notice of intention to reclassify a bank based on unsafe or unsound condition will include:

(1) A statement of the bank's capital measures and capital levels and the category to which the bank would be reclassified;

(2) The reasons for reclassification of the bank;

(3) The date by which the bank subject to the notice of reclassification may file with the OCC a written appeal of the proposed reclassification and a request for a hearing, which shall be at least 14 calendar days from the date of service of the notice unless the OCC determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(c) *Response to notice of proposed reclassification.* A bank may file a written response to a notice of proposed reclassification within the time period set by the OCC. The response should include:

(1) An explanation of why the bank is not in unsafe or unsound condition or otherwise should not be reclassified;

(2) Any other relevant information, mitigating circumstances, documentation, or other evidence in

support of the position of the bank or company regarding the reclassification.

(d) *Failure to file response.* Failure by a bank to file, within the specified time period, a written response with the OCC to a notice of proposed reclassification shall constitute a waiver of the opportunity to respond and shall constitute consent to the reclassification.

(e) *Request for hearing and presentation of oral testimony or witnesses.* The response may include a request for an informal hearing before the OCC under this section. If the bank desires to present oral testimony or witnesses at the hearing, the bank must include a request to do so with the request for an informal hearing. A request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing, and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right to present oral testimony or witnesses.

(f) *Order for informal hearing.* Upon receipt of a timely written request including a request for a hearing, the OCC shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the bank requests a later date. The hearing shall be held in Washington, DC or at such other place as may be designated by the OCC, before a presiding officer(s) designated by the OCC to conduct the hearing.

(g) *Hearing procedures.* (1) The bank shall have the right to introduce relevant written materials and to present oral argument at the hearing. The bank may introduce oral testimony and present witnesses only if expressly authorized by the OCC or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in subpart A of this part apply to an informal hearing under this section unless the OCC orders that such procedures shall apply.

(2) The informal hearing shall be recorded, and a transcript furnished to the bank upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(3) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(h) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the OCC on the reclassification.

(i) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the OCC will decide whether to reclassify the bank and notify the bank of the OCC's decision.

**§ 19.222 Procedure for reclassifying a bank based on unsafe or unsound practice.**

(a) *Issuance of notice of proposed reclassification.* If the OCC determines to reclassify a well capitalized bank as adequately capitalized or to require an adequately capitalized or undercapitalized bank to comply with supervisory actions as if it were in the next lower capital category (each of the foregoing referred to hereinafter as a "reclassification") pursuant to section 38(g) of the FDI Act and Subpart A of Part 6 of this Chapter because the OCC deems the bank to be engaging in an unsafe and unsound practice, the OCC will issue and serve on the bank a written notice of the OCC's intention to reclassify the bank.

(b) *Contents of notice.* A notice of intention to reclassify a bank will include:

(1) A statement of the bank's capital measures and capital levels and the category to which the bank would be reclassified;

(2) The reasons for reclassification of the bank;

(3) The date by which the bank subject to the notice of reclassification may file with the OCC a written appeal of the proposed reclassification, which shall be at least 14 calendar days from the date of service of the notice unless the OCC determines that a shorter period is appropriate in light of the financial condition of the bank or other relevant circumstances.

(c) *Response to notice of proposed reclassification based on unsafe and unsound practice.* A bank may file a written response to a notice of proposed reclassification issued under this subsection within the time period set by the OCC. The response should include:

(1) An explanation of the steps taken by the bank to address the deficiency described in the notice of proposed reclassification or of the reasons that the reclassification is not otherwise appropriate;

(2) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank or company regarding the reclassification.

(d) *Failure to file response.* Failure by a bank to file, within the specified time period, a written response with the OCC to a notice of proposed reclassification under this subsection shall constitute a waiver of the opportunity to respond and shall constitute consent to the reclassification.

(e) *OCC consideration of response.* After considering the response, the OCC may:

(1) Issue a written order to the bank reclassifying the bank to a different capital category as provided in section 38(g) of the FDI Act;

(2) Determine not to reclassify the bank and so notify the bank; or

(3) Seek additional information or clarification of the response from the bank or company, or any other relevant source.

**§ 19.223 Request for rescission of reclassification.**

Any bank that has been reclassified under this subpart, may, upon a change in circumstances, request in writing that the OCC reconsider the reclassification, and may propose that the reclassification be rescinded and that any directives issued in connection with that reclassification be modified, rescinded, or removed. Unless otherwise ordered by the OCC, the bank shall remain subject to the reclassification and to any directives issued in connection with that reclassification while such request is pending before the OCC.

## Subpart N—Order to Dismiss a Director or Senior Executive Officer

**§ 19.230 Scope.**

This subpart applies to informal hearings afforded to any director or senior executive officer dismissed pursuant to an order issued under 12 U.S.C. 1831o and part 6 of this chapter.

**§ 19.231 Order to dismiss a director or senior executive officer.**

(a) *Service of notice.* When the OCC issues and serves a directive on a bank pursuant to subpart B of part 6 of this chapter requiring the bank to dismiss from office any director or senior executive officer under section 38(f)(2)(F)(ii) of the FDI Act, the OCC will also serve a copy of the directive, or the relevant portions of the directive where appropriate, upon the person to be dismissed.

(b) *Response to directive.* A director or senior executive officer who has been served with a directive under paragraph (a) of this section (Respondent) may file a written request for reinstatement. The request for reinstatement must be filed within 10 calendar days of the receipt of the directive by the Respondent, unless further time is allowed by the OCC at the request of the Respondent. The request for reinstatement should include reasons why the Respondent should be reinstated, and may request an informal hearing before the OCC or its designee under this section. If the Respondent desires to present oral testimony or witnesses at the hearing, the Respondent must include a request to do so with the request for an informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right or opportunity to present oral testimony or witnesses. Unless otherwise ordered by the OCC, the dismissal shall remain in effect while a request for reinstatement made under this section is pending.

(c) *Order for informal hearing.* Upon receipt of a timely written request from a Respondent for an informal hearing on the portion of a directive requiring a bank to dismiss from office any director or senior executive officer, the OCC shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the Respondent requests a later date. The hearing shall be held in Washington, DC, or at such other place as may be designated by the OCC, before a presiding officer(s) designated by the OCC to conduct the hearing.

(d) *Hearing procedures.* (1) A Respondent may appear at the hearing personally or through counsel. A Respondent shall have the right to introduce relevant written materials and to present oral argument. A Respondent may introduce oral testimony and present witnesses only if expressly authorized by the OCC or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in subpart A of this part apply to an informal hearing under this section unless the OCC orders that such procedures shall apply.

(2) The informal hearing shall be recorded, and a transcript furnished to the Respondent upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(3) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(e) *Standard for review.* A Respondent shall bear the burden of demonstrating that his or her continued employment by or service with the bank would materially strengthen the bank's ability—

(1) To become adequately capitalized, to the extent that the directive was issued as a result of the bank's capital level or failure to submit or implement a capital restoration plan; and

(2) To correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the directive was issued as a result of classification of the bank based on supervisory criteria other than capital, pursuant to section 38(g) of the FDI Act.

(f) *Limitation on scope of review.* The level of capital or the capital category assigned to the bank with which a Respondent is associated shall not be subject to review in any proceeding under this section.

(g) *Recommendation of presiding officer.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the OCC concerning the Respondent's request for reinstatement with the bank.

(h) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing has been requested, the OCC shall grant or deny the request for reinstatement and notify the Respondent of the OCC's decision. If the OCC denies the request for reinstatement, the OCC shall set forth in the notification the reasons for the OCC's action.

Dated: June 30, 1992.

**Stephen R. Steinbrink,**

*Acting Comptroller of the Currency.*

[FR Doc. 92–15700 Filed 7–1–92; 10:55 am]

BILLING CODE 4810–33–M

## Office of Thrift Supervision

**12 CFR Part 565**

**[No. 92–282]**

**RIN 1550–AA57**

## Regulatory Capital; Prompt Corrective Action

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Thrift Supervision (OTS) is proposing regulations to implement section 38 of the Federal Deposit Issuance Act (FDI Act), as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Section 38 requires or permits the OTS and the other federal banking agencies to take certain supervisory actions when FDIC-insured institutions fall within one of five specifically enumerated capital categories. It also restricts or prohibits certain activities and requires the submission of a capital restoration plan when insured institutions become undercapitalized. This proposed addition is necessary to establish the capital levels at which insured institutions will be deemed to come within the five capital categories. The proposed amendments also establish procedures for issuing and contesting prompt corrective action directives including directives requiring the dismissal of directors and senior executive officers.

**DATES:** Comments must be submitted on or before August 20, 1992.

**ADDRESSES:** Send Comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention Docket No. [92–282]. These submissions may be hand delivered to 1700 G Street NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7753 or (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for public inspection at 1776 G Street NW., Street Level.

**FOR FURTHER INFORMATION CONTACT:** John Connolly, Program Manager, (202) 906–6465, Policy; Lorraine E. Waller, Senior Attorney, (202) 906–6458, Deborah Dakin, Assistant Chief Counsel, (202) 906–6445, Regulations & Legislation Division, Office of Thrift

Supervision, 1700 G Street NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 131 of FDICIA created a new statutory framework that applies to every insured depository institution a system of supervisory actions indexed to the capital level of the individual institution. The stated purpose of this statutory provision is to "resolve the problems of insured depository institutions at the least possible long-term loss to the deposit insurance fund." The new framework is contained in section 38 of the FDI Act (12 U.S.C. 1831o) (section 38). This framework and the authority it confers on the federal banking agencies are meant to supplement the existing supervisory authority vested in the agencies, and do not limit in any way their existing authority under other statutes or regulations to initiate supervisory actions to address capital deficiencies, unsafe or unsound conduct, practices, or conditions, or violations of law.

Section 38 requires the federal banking agencies, within nine months of the enactment of the FDICIA, to promulgate final regulations necessary to carry out the purposes of that section. Under the statute, these regulations must become effective within one year after the date of enactment of the FDICIA, or no later than December 19, 1992.

It is the goal of the Board of Governors of the Federal Reserve System (Federal Reserve Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the OTS to promulgate uniform regulations to the extent feasible in implementing the prompt corrective action framework of section 38. The agencies believe that a uniform approach to capital definitions and capital categories would simplify the tasks facing bank and thrift management of monitoring and maintaining the capital levels of insured depository institutions, and would remove any competitive distortions that might arise if different standards were applied to competing institutions.

In order to implement the provisions of section 38, the agencies have proposed regulations that have uniform provisions. The agencies propose to define in the same manner the capital measures and capital thresholds for each of the five capital categories established in the statute. The agencies also propose to establish a uniform schedule for filing and review of capital restoration plans. In addition, the agencies propose to adopt identical provisions clarifying certain aspects of the capital guarantee required to be made by companies that control an undercapitalized institution as part of an acceptable capital plan, including the limit on the liability of such companies.

The agencies' proposal establishes a procedure under which institutions are provided advance notice of a proposed agency action under section 38 and provided an opportunity to respond to the proposed action. A separate procedure is proposed that governs decisions by the appropriate federal banking agency to change the capital category to which the institution is assigned after review of supervisory factors other than capital. Finally, the proposal implements the statutory requirement that officers and directors who are subject to dismissal as a result of an agency order issued under section 38 be afforded agency review of the dismissal.

Many of the provisions of section 38 apply without the need for agency action, or impose requirements or limitations on an agency in the exercise of its discretion. These provisions have not been repeated in the proposed regulation. The proposal implements only those portions of section 38 that the agencies believe require regulatory specification or clarification.

Where procedures have not been established in this proposal, such as procedures for review of a stock redemption or an expansion proposal by an undercapitalized institution, each agency will implement a procedure governing agency review. Such procedures will be established by regulation or through instructions to its appropriate field office or staff and to the institutions involved. In several instances, procedures governing agency review have already been established in other agency regulations.

The agencies request comment on all aspects of this proposal, including the specific numbered questions presented below. In addition, the agencies request comment on whether other provisions of section 38 require clarification or should be implemented by regulation. The agencies stress that comments may address any aspect of the proposal and need not be confined to the numbered questions set out below. Commenters are invited to submit comments to any or all of the federal banking agencies.

## II. Summary of Statutory Framework

The following is a brief summary of the supervisory framework established by section 38. This summary has been prepared in order to give context to the agency proposal and request for comment. The summary is not intended to be a complete description of the requirements of section 38, and commenters may find it useful to consult the provisions of section 38, contained at 12 U.S.C. 1831o, in preparing their comments.

Section 38 provides a framework of supervisory actions based on the capital level of an insured depository institution. Section 38 establishes five categories of capital classification: well-capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. The statute deems an insured depository institution to be:

"Well capitalized" if the institution significantly exceeds the required minimum level for each relevant capital measure;

"Adequately capitalized" if the institution meets the required minimum level for each relevant capital measure;

"Undercapitalized" if the institution fails to meet the required minimum level for any relevant capital measure;

"Significantly undercapitalized" if the institution is significantly below the required minimum level for any relevant capital measure; or,

"Critically undercapitalized" if the institution has a ratio of tangible equity to total assets of 2 percent or less, or otherwise fails to meet the critical capital level established pursuant to section 38(c)(3)(A).

The applicability of supervisory actions provided in section 38 to an individual institution depends on the institution's classification within one of these five categories.[1]

### *A. Provisions Applicable to All Institutions*

Section 38 prohibits an insured depository institution from declaring any dividends, making any other capital distribution or paying a management fee to a controlling person if, following the distribution or payment, the institution would be within any of the three undercapitalized categories. The statute provides a limited exception to this prohibition for stock redemptions that do not result in any decrease in an institution's capital and would improve the institution's financial condition provided that the redemption has been approved by the institution's

[1] A savings association operating in accordance with a capital plan approved by the OTS before December 19, 1991, is subject to certain exceptions from provisions of section 38 (12 U.S.C. 1831o(o)(2)). However, neither section 38 nor the proposed regulation in any way limits the authority of the OTS under any other provisions of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law or regulation, unsafe or unsound conditions or other practices.

appropriate federal banking agency after consultation with the FDIC.

*B. Provisions Applicable to Undercapitalized Institutions*

Institutions that are classified as undercapitalized are subject to a number of additional mandatory supervisory actions. These include:

- Increased monitoring by the appropriate federal banking agency for the institution and periodic review of the institution's efforts to restore its capital;
- A requirement that the institution submit, generally within 45 days, a capital restoration plan acceptable to the appropriate federal banking agency for the institution and implement that plan;
- A restriction on growth of the institution's total assets; and
- A limitation on the institution's ability to make any acquisition, open any new branch offices, or engage in any new line of business without the prior approval of the appropriate federal banking agency for the institution.

Section 38 also provides that the appropriate federal banking agency for an undercapitalized institution may take any of a number of discretionary supervisory actions if the agency determines that any of these actions is necessary to resolve the problems of the institution at the least possible long-term cost to the deposit insurance fund. These discretionary supervisory actions include requiring the institution to raise additional capital, restricting transactions with affiliates, restricting interest rates paid by the institution on deposits, requiring replacement of senior executive officers and directors, restricting the activities of the institution and its affiliates, requiring divestiture of the institution or the sale of the institution to a willing purchaser, and any other supervisory action that the agency deems appropriate. Because these discretionary actions are also applicable to significantly undercapitalized institutions (as well as to critically undercapitalized institutions), these actions are described more fully in the next section.

*C. Provisions Applicable to Significantly Undercapitalized Institutions*

Section 38 provides that significantly undercapitalized institutions are subject to the four mandatory provisions listed above that are applicable to undercapitalized institutions. Section 38 also provides that a significantly undercapitalized institution must restrict the payment of bonuses and raises to senior executive officers of the institution.

In addition to these mandatory requirements, section 38 specifies that the appropriate federal banking agency for the institution may impose one or more restrictions on an institution that is significantly undercapitalized. These discretionary actions include:

- Requiring the institution to sell enough additional capital, including voting shares, so that the institution would be adequately capitalized after the sale;
- Restricting transactions between the institution and its affiliates, including transactions with its insured depository institution affiliates;
- Restricting the interest rates paid on deposits collected by the institution to the prevailing rates in the region where the institution is located;[8]
- Restricting the institution's asset growth or requiring the institution to reduce its total assets;
- Requiring the institution or any subsidiary of the institution to terminate, reduce or alter any activity that the agency determines poses excessive risk to the institution;
- Requiring the institution to hold a new election of its board of directors;
- Requiring the institution to dismiss any director or senior executive officer who had held office at the institution for more than 180 days immediately before the institution became undercapitalized, if the agency deems such a dismissal to be appropriate, and to employ new officers who may be subject to agency approval;
- Prohibiting the institution from accepting deposits from correspondent depository institutions;
- Prohibiting any bank holding company that controls the institution from making any dividend payment without prior approval of the Federal Reserve Board;
- Requiring the institution to accept an offer to be acquired by another institution or company, and requiring any company that controls the institution to divest the institution;
- Requiring the institution to divest or liquidate any subsidiary that is in danger of becoming insolvent and poses a significant risk to the institution, or that is likely to cause significant dissipation of the institution's assets or earnings;
- Requiring any company that controls the institution to divest or liquidate any affiliate of the institution (other than another insured depository institution) if the appropriate federal banking agency for the holding company determines that the affiliate is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause significant dissipation of the institution's assets or earnings; and
- Requiring the institution to take any other action that the agency determines would better carry out the purposes of section 38.

While the statute generally provides the agency with discretion to determine whether these actions are appropriate in connection with a particular institution, the statute establishes certain presumptions and requirements with respect to the agency's consideration of these actions. Section 38 requires that the agency take at least one of the above discretionary supervisory actions in connection with every institution that is significantly undercapitalized or critically undercapitalized. The statute also establishes a presumption that the agency require each significantly undercapitalized or critically undercapitalized institution to (1) be acquired by another institution or company or sell sufficient shares to restore the institution's capital to at least the minimum acceptable capital level, (2) restrict transactions with affiliates of the institution, including transactions with depository institution affiliates, and (3) restrict interest rates paid by the institution on deposits. The agency must impose each of these three actions unless the agency determines that the action would not further the purpose of section 38.

As discussed above, each of the discretionary actions listed above may also be taken in connection with undercapitalized institutions if a finding is made by the agency that the action is necessary to carry out the purposes of section 38. In addition, these discretionary actions may be taken in connection with any undercapitalized institution that fails to submit or materially implement a capital restoration plan, as if the institution were a significantly undercapitalized institution.

In addition to the discretionary actions discussed above, section 38 also provides that the appropriate federal banking agency may require a significantly undercapitalized institution or an undercapitalized institution that has failed to submit or implement an acceptable capital restoration plan to comply with one or more of the restrictions established by the FDIC on the activities of critically undercapitalized institutions.

[8] The OTS intends to apply this regional standard in a manner consistent with the application of the "normal market area" standard under section 38(i)(2)(G) and the limitations on brokered deposits imposed under section 29 of the FDI Act.

*D. Provisions Applicable to Critically Undercapitalized Institutions*

Section 38 requires that an insured depository institution that is critically undercapitalized be placed in conservatorship or receivership within 90 days, unless the appropriate federal banking agency for the institution and the FDIC concur that other action would better achieve the purposes of section 38. A determination by the agency to defer placing a critically undercapitalized institution in receivership or conservatorship must be reviewed every 90 days and must document the reasons the agency believes other action would better achieve the purposes of section 38.

The statute requires that the institution be placed in receivership if the institution continues to be critically undercapitalized on average during the fourth quarter after the institution initially became critically undercapitalized, unless certain specific statutory requirements are met. To be eligible for the exception, the institution must (1) have positive net worth, (2) be in substantial compliance with an approved capital restoration plan, (3) be profitable or have an upward trend in earnings, and (4) have reduced its ratio of nonperforming loans to total loans. In addition, the head of the appropriate federal banking agency for the institution and the Chairperson of the FDIC must both certify that the institution is viable and not expected to fail.

Critically undercapitalized institutions are also prohibited from making any payment of principal or interest on subordinated debt issued by the institution without the prior approval of the FDIC. Section 38 does not prevent unpaid interest from accruing on subordinated debt under the terms of the debt instrument.

Section 38(i) of the FDI Act also provides that the FDIC, by regulation or order, must restrict the activities of critically undercapitalized institutions. At a minimum, the FDIC must prohibit critically undercapitalized institutions from doing any of the following without the prior written approval of the FDIC:

- Entering into any material transaction other than in the usual course of business. Such activities include any investment, expansion, acquisition, sale of assets or other similar action where the institution would have to notify its appropriate federal banking agency;
- Extending credit for any highly leveraged transaction;
- Amending its charter or bylaws unless required to do so in order to carry out any other requirement of any law, regulation or order;
- Making any material change in its accounting methods;
- Engaging in any "covered transactions" within the meaning of section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c), which concerns affiliate transactions;
- Paying excessive compensation or bonuses; and
- Paying interest on new or renewed liabilities at a rate which would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates in the institution's normal market areas.

Pursuant to section 38(j) of the FDI Act, none of these restrictions apply to institutions in conservatorship or to any bridge bank that is wholly owned by the FDIC or the RTC.

It should also be noted that, pursuant to section 38(o)(2) of the FDI Act, none of these restrictions shall apply, before July 1, 1994, to any insured savings association if:

(a) The savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owners' Loan Act;

(b) The Director of the OTS had accepted the plan; and

(c) The savings association remains in complaince with the plan or is operating under a written agreement with the appropriate federal banking agency.[5]

## III. Proposal and Request for Comment

*A. Capital Measures*

For purposes of defining each of the five capital categories (except for the critically undercapitalized category), section 38(c) requires the agencies to prescribe capital standards that include a leverage limit and a risk-based capital requirement. The agencies may establish additional capital measures for these categories if additional capital measures would serve the purposes of section 38. In addition, section 38 permits the agencies to rescind the leverage limit or the risk-based capital measured if the federal banking agencies concur that either measure is no longer an appropriate means for carrying out the purposes of section 38.

The agencies are proposing to adopt the leverage limit and the total risk-based capital measure in defining the capital categories other than the critically undercapitalized category. In addition, the agencies propose to adopt the Tier 1 [6] risk-based capital ratio as a capital measure in defining these capital categories. These measures are generally used by the federal banking agencies in determining the adequacy of capital of insured depository institutions.

*Comment 1.* The agencies request comment on whether adoption of these three capital measures is appropriate to carry out the purpose of section 38.

The agencies note that the capital requirements applicable to insured depository institutions may be affected by section 305 of the FDICIA, which amends section 18 of the FDI Act to require the agencies to revise their risk-based capital standards to take into account interest rate risk, concentration of credit risk, and the risks of nontraditional activities. The statutory deadline for implementation of these revisions is in June 1993.

As the revisions required under section 18 of the FDI Act are implemented, it might prove necessary or appropriate to review the capital measures and thresholds specified for the various capital categories. In particular, the agencies note that one of the rationales for retaining a leverage ratio after the risk-based capital measure was introduced was that the risk-based capital measure is focused on credit-related risk, and does not explicitly factor in other risks, particularly interest rate risk. The agencies intend to lower or eliminate the leverage capital component from the definitions of well capitalized, adequately capitalized, and undercapitalized, after the risk based capital standards have been revised by each federal banking agency to take into account interest rate risk as required by section 305 of FDICIA, and after experience has been gained with such standards.[7] The agencies acknowledge the requirements of section 38(c) of the FDI Act and would comply with those requirements, to the extent they apply, before taking any such action.[8]

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[5] See note 1, supra.

[6] For savings associations, all references to Tier 1 capital should be read as core capital, as defined in Part 567 of the OTS's regulations, which is the thrift capital measure comparable to Tier 1 capital.

[7] The OTS expects to promulgate a final rule integrating interest rate risk with the existing capital rules by early 1993 that will become effective in early 1994. During the period between promulgation and the effective date of the final rule, the OTS intends to use the approach adopted, for supervisory purposes, on a case-by-case basis. The OTS further intends to reduce or eliminate the leverage ratio once the interest rate risk component becomes effective.

[8] Section 38(c) of the FDI Act requires that the capital standards prescribed under that section by each appropriate federal banking agency shall include a leverage limit and a risk-based capital requirement, as well as any other additional relevant capital measures needed to carry out the

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*B. Definition of Capital Terms*

The agencies propose to adopt the same definitions of capital terms for purposes of the prompt corrective action provisions of section 38 as are currently used under the capital adequacy guidelines or regulations adopted by the agencies. The definition of the risk-based and leverage capital ratios for purposes of the prompt corrective action regulation would refer to the definitions of Tier 1 capital, total capital, total risk-weighted assets, adjusted total assets, and total assets as those terms are defined in the agencies' current capital adequacy guidelines and regulations. This proposal attempts to reduce complexity that could result from the use of new or modified capital definitions, and to minimize confusion and the possibility that an institution may be uncertain regarding its capital levels for purposes of section 38.

*Comment 2.* The agencies request public comment regarding whether this approach is appropriate or whether the agencies should modify the existing capital definitions for purposes of applying section 38. If adjustments or modifications to the capital definitions currently used are deemed to be appropriate, the agencies request comment on what type of adjustments or modifications should be made.

*Comment 3.* The agencies also request comment regarding the appropriate period for calculation of capital levels. Under current practice and requirements, the level of capital of an institution is calculated on the basis of the amount of capital held by the institution on a given day as a ratio of the most recent quarterly average of total assets or quarter-end risk-weighted assets for the institution.[7] A daily calculation of both capital and assets may facilitate prompt action under section 38. However, the agencies note that insured depository institutions are not currently required to make daily calculations of capital, and such a requirement would increase the reporting burden on many institutions. In addition, a daily calculation may distort capital calculations by focusing on individual daily events (such as a decline in the market value of certain investments on a given day) rather than on related actions taken during a given period or remedial actions that are readily available to the institution (such as a decline in market value in one investment followed by a gain realized on the sale of another investment).

*Comment 4.* The agencies request comment on whether, for purposes of applying the prompt corrective action requirements of section 38, the use of quarterly average total assets or quarter-end risk-weighted assets in calculating capital levels is appropriate, or whether the capital calculations for an institution should be based on an actual daily measure or quarter-end measure of the institution's capital and assets.[8]

*Comment 5.* The agencies also request comment on whether a daily calculation of total assets and risk-weighted assets is feasible, and whether a requirement that an institution make daily calculations would impose significant added burden on insured depository institutions.

*C. Specific Capital Levels for Five Capital Categories*

Section 38 requires the agencies to establish specific capital thresholds for each capital category and sets general standards, as described above, for each of these categories. Under these standards, an institution is adequately capitalized if it meets the required minimum level for each relevant capital measure. Thus, capital levels set for the adequately capitalized category generally would be the same as the minimum ratios established under the existing minimum capital adequacy rules and guidelines adopted by the agencies. These minimums are 8 percent for the total risk-based capital ratio, 4 percent of the Tier 1 risk-based capital ratio, and 4 percent for the Tier 1 leverage ratio (3 percent for composite 1-rated banks and savings associations, subject to appropriate federal banking agency guidelines). An institution would have to meet all these minimums in order to be deemed adequately capitalized.

The statute also provides specific guidance as to the capital level for defining a critically undercapitalized institution. Section 38 requires that a critically undercapitalized institution be defined by reference to the institution's ratio of tangible equity to total assets. The statute requires the agencies to establish the threshold ratio for defining a critically undercapitalized institution at no lower than 2 percent. As discussed below, the agencies are proposing that a critically undercapitalized institution be defined as any institution that has a Tier 1 leverage ratio of 2 percent or less.

Taking the capital levels for the adequately capitalized and critically undercapitalized categories as benchmarks, the agencies are proposing that the capital levels for the undercapitalized category be defined as any level under 8 percent for the total risk-based capital ratio, under 4 percent of the Tier 1 risk-based capital ratio, or under 4 percent for the Tier 1 leverage ratio (under 3 percent for composite 1-rated banks and savings associations, subject to appropriate federal banking agency guidelines). An institution would be considered undercapitalized if it were below the specified capital level for any of the three capital measures.

Further, the capital levels for significantly undercapitalized institutions would be defined as any level under 6 percent for the total risk-based capital ratio, under 3 percent for the Tier 1 risk-based capital ratio, or under 3 percent for the Tier 1 leverage ratio. An institution would be considered significantly undercapitalized if it were below the specified capital level for any of the three capital measures. Under the proposed definitions, an institution that is significantly undercapitalized also would be deemed to be undercapitalized. Similarly, an institution that is critically undercapitalized also would be deemed to be significantly undercapitalized and undercapitalized. The overlap between these categories is contemplated by the statute and has the effect of applying to significantly undercapitalized institutions and to critically undercapitalized institutions any provisions of section 38that are applicable to undercapitalized institutions.

The agencies are proposing to establish the minimum total risk-based capital level for the well capitalized category at 10 percent and to set the minimum leverage capital level for this category at 5 percent. To emphasize the importance the agencies place on Tier 1 capital, it is proposed that for the well capitalized category the minimum level for the Tier 1 risk-based capital ratio be set at 6 percent. The specifications of the minimum ratios for the well capitalized category are proposed at levels that are 25 percent to 50 percent higher than the minimum for the adequately capitalized category to promote safe and sound banking

purpose of section 38 and implemented by regulation. However, an appropriate federal banking agency may, by regulation, rescind any relevant capital measure required by section 38, upon determining (with the concurrence of the other federal banking agencies) that the measure is no longer an appropriate means for carrying out the purpose of section 38.

[7] Savings associations report their capital amounts on their Thrift Financial Reports ("TFR") based on end of the quarter total assets and total risk-weighted assets.

[8] For savings associations, the OTS proposes to use quarter-end total assets and total risk-weighted assets as reported in the TFR for prompt corrective action purposes.



conditions, giving due consideration to the international capital standards to which the United States and other G–10 countries have agree, and to the competitive pressures faced by U.S. banks operating in international markets with foreign banks adhering to these standards.

Capital ratios alone, of course, are not fully indicative of the capital strength of an institution. In particular, in proposing these minimum capital levels, the agencies are aware that some poorly-rated depository institutions have capital ratios above the specified minimums for the well capitalized and adequately capitalized categories. One reason that some poorly-rated institutions qualify as well capitalized for prompt corrective action purposes is that capital is a lagging indicator of problems of insured depository institutions.

Some institutions are subject to a written order or directive that establishes a higher capital level for the institution. The agencies are proposing that for an institution to be well capitalized, it must not be subject to any written capital order or directive.[9] This proposal reflects the view that an institution that is subject to a written capital directive from the appropriate federal banking agency does not have capital that significantly exceeds the required minimum level for the relevant capital measures.

The agencies also intend to assess carefully all aspects of a troubled institution's condition, and to exercise their reclassification authority under section 38(g) of the FDICIA. Section 38(g) gives the agencies discretion to downgrade, where appropriate, a "well capitalized" institution by one category and require an "adequately capitalized" or "undercapitalized" institution to comply with supervisory actions as if it were in the next lower category, if that institution has received a less-than-satisfactory examination rating for asset quality, management, earnings, or liquidity[10] and has not corrected the deficiency. Any institution would be subject to downgrading on the basis of the components of the institution's examination rating, including an institution that has been deemed not to be within the well capitalized category because the institution is subject to a written capital order or directive.

While the prompt corrective action framework constitutes an additional supervisory tool, the federal banking agencies continue to have available all supervisory tools traditionally used to supervise institutions. The agencies also fully intend to use these tools as appropriate in supervising institutions. These include appropriate enforcement actions and supervisory follow-up measures based upon the institution's overall condition and the existence of any financial, operational, or other supervisory weaknesses, irrespective of the organization's capital category for purposes of the prompt corrective action provisions of section 38.

Accordingly, the assignment of an institution to a particular capital category—including the well capitalized category—does not prevent the appropriate federal banking agency from taking other supervisory action that the agency deems to be appropriate. Moreover, in light of the intended limited purpose of a capital category designation, the agencies are proposing to limit a given insured depository institution's use of its capital category, except when permitted by the appropriate federal banking agency or otherwise provided by statute or regulation. This is intended to prohibit insured depository institutions from advertising their capital category.

*Comment 6.* The agencies invite comment on this proposal.

Traditionally, examiners have reached judgments on an institution's capital needs by also taking into account a range of factors such as interest rate risk and concentration risk. The agencies have initiatives under way mandated by the FDICIA to review their risk-based capital standards to ensure that they take adequate account of such risks, and also have been engaged in a project under the Federal Financial Institutions Examination Council (FFIEC) to refine and improve procedures for assessing the reserving policies and practices of individual institutions. After those projects have been completed and improvements implemented and assessed, the agencies intend to revisit the question of how the specifications for the well capitalized category may need to be modified or adjusted.

*Comment 7.* The agencies request comment on all aspects of the capital levels proposed in the draft regulation.

*Comment 8.* In particular, the agencies seek comment on whether the specific levels set for each capital category are appropriate, as well as whether it is appropriate to require that well capitalized institutions not be subject to a capital order or directive.

*D. Critically Undercapitalized Institutions*

The statute requires that the critically undercapitalized category be based on the ratio of tangible equity to total assets of the institution. Section 38 requires that the minimum ratio for this category be established at a level of tangible equity that is no less than 2 percent of the institution's total assets, and that is no higher than the ratio equal to 65 percent of the required minimum level of capital under the leverage limit. The agencies may, by regulation, specify additional capital measures (such as a risk-based capital ratio) in defining the critically undercapitalized category. Any such measures may not, without the concurrence of the FDIC, be set at a level lower than the level specified by the FDIC for insured state banks that are not members of the Federal Reserve System.

The agencies are proposing to define critically undercapitalized institutions as institutions that have a ratio of Tier 1 capital to total assets of 2.0 percent or less. The agencies do not at this time propose to establish any additional capital measures for the critically undercapitalized category.

Under this proposal, the agencies would define tangible equity to be Tier 1 capital as defined under the agencies' existing capital adequacy guidelines or regulations.[11] The use of the Tier 1 capital definition has been proposed for several reasons. The definition of Tier 1 capital requires a deduction from equity capital for most intangible assets, including goodwill. The use of Tier 1 capital focuses primarily on common equity rather than other forms of equity and, therefore, represents the most secure form of equity available to absorb losses that may be incurred by an insured depository institution.

In addition, because Tier 1 capital is an element of the existing capital adequacy guidelines and is included in the definition of the other capital measures proposed under section 38, use of the Tier 1 capital definition would promote consistency and simplicity and, therefore, minimize the potential for confusion in the capital computations required to be made by insured depository institutions. It would also reduce the potential for distortion in the capital raising efforts of insured depository institutions and for anomalies in the classification of

[9] The OTS envisions that this would include capital orders, capital directives, and cease and desist orders related to capital. Commenters are specifically requested to address whether individual minimum capital requirements should be included in this category.

[10] For savings associations, the equivalent categories are the management, assets, risk, and operations components of the MACRO rating.

[11] *See* note 4, *supra.*

institutions under section 38 that might result from use of a substantially different definition of capital for the critically undercapitalized category than is used for the other capital categories.

*Comment 9.* The agencies request public comment on this definition.

*Comment 10.* The agencies also request comment on whether the definition of tangible equity should reflect additional adjustments to deduct intangible assets. If such an adjustment is appropriate for defining the critically undercapitalized category, the agencies request comment on whether tangible equity should be defined to exclude purchased mortgage servicing rights. The agencies note that section 475 of the FDICIA requires the federal banking agencies to determine whether a portion of certain purchased mortgage servicing rights should be included in the calculation of tangible capital. The agencies also recently sought public comment on a proposal to permit insured depository institutions to include a portion of certain credit-card relationships in the calculation of tangible Tier 1 capital for purposes of meeting applicable minimum capital adequacy standards.

*Comment 11.* The agencies request comment on whether purchased mortgage servicing rights and credit-card relationships should be counted in the definition of tangible equity for purposes of section 38.

Similarly, investments in certain types of subsidiaries, which savings associations are required to deduct for purposes of their general capital calculations, represent realizable assets which buffer the exposure of the deposit insurance funds.

*Comment 12.* The agencies request comment on whether these investments should be deducted in computing the relevant capital ratio for purposes of determining whether an institution is critically undercapitalized.

*Comment 13.* In addition, the agencies request comment on whether tangible equity should be defined to take into account broader forms of equity beyond those included in the definition of Tier 1 capital.

*Comment 14.* In particular, the agencies request comment on whether cumulative perpetual preferred stock should be included in determining whether an institution is critically undercapitalized.

*Comment 15.* Because the agencies are not proposing to include this form of equity in determining whether an institution is critically undercapitalized, the agencies also request comment on whether a transition period should be permitted for institutions that are permitted to rely on cumulative perpetual preferred stock under currently outstanding agency orders.

*Comment 16.* The agencies also request comment on whether a higher threshold should be established than the proposed 2 percent leverage limit. By statute, this ratio may not exceed 65 percent of the minimum leverage ratio established by the agencies.

*Comment 17.* Finally, the agencies request comment on whether it is appropriate to establish additional capital measures for the critically undercapitalized category. As noted above, section 38 permits the agencies to establish additional capital measures in defining the critically undercapitalized category. The agencies are proposing to use the total risk-based capital measure and the Tier 1 risk-based capital measure for all other categories, but are not proposing to use these capital measures in defining critically undercapitalized institutions.

### *E. Calculation of Capital Levels and Notice of Capital Levels*

Under the proposal, an institution would be expected to monitor its capital levels continually and to notify the appropriate federal banking agency promptly if the institution's capital levels fall into a lower capital category. In addition, capital levels would be periodically determined on the basis of information filed by each insured depository institution in its quarterly Consolidated Report of Income and Condition (Call Report),[12] or on the basis of information obtained in an examination or inspection of the institution. Capital levels may also be determined by the appropriate federal banking agency for an institution on the basis of other information obtained by the agency from any source. This information may include data provided by the institution to the agency on a voluntary basis, information obtained in connection with an application, calculations based on a report that the institution must file other than a Call Report, or adjustments that are appropriate based on publicly announced events that may affect the institution's capital.

Under the proposal, an institution would be deemed to be aware of information that it files in a Call Report as of the date that the Call Report is required to be filed. Similarly, the institution would be deemed to be notified of capital levels calculated in the examination or inspection process as of the date that the examination report or inspection report is provided to the institution. In the event that the agency determines the capital levels of the institution on the basis of other information, the agencies are proposing to notify the institution in writing of the calculation and the information used as a basis for the capital calculation.

The agencies are concerned that, while the proposed arrangement for calculating the capital levels of an institution on the basis of Call Reports and reports of examination and inspection may be reliable and in most instances timely, this procedure may not always lead to a prompt calculation of capital levels for a given institution. For example, an institution may become aware of information that affects its capital calculation between the time that Call Reports are required to be filed and when an examination is not in process or another report may not be required. This could result in delay in application of the supervisory requirements of section 38, including the provisions that are mandated by the statute.

In order to address changes in capital promptly, the agencies propose to require insured depository institutions to notify the appropriate federal banking agency within 5 days of any event that would cause the institution to be assigned to a different capital category than the category assigned on the basis of the most recent Call Report or report of examination or inspection. The institution would be deemed to be aware of a necessary adjustment when its senior management determines that the adjustment is appropriate, even if the adjustment is not required to be reported in an official report or otherwise disclosed for some period of time. Under the proposal, the agency would review the information provided by the institution, along with any explanation provided by the institution, to determine whether the institution should be assigned to a different capital category for purposes of the provisions of section 38. This procedure would apply to both upward and downward adjustments to capital that occur between the filing of Call Reports or examinations.

*Comment 18.* The agencies invite public comment on all aspects of this approach to the capital calculations.

*Comment 19.* In particular, the agencies request comment on the use of Call Reports and examination reports as the primary bases for capital calculations.

*Comment 20.* In addition, the agencies request comment on the procedures that have been proposed for self-monitoring

[12] For savings associations, references to "Call Report" refer to the TFR.

and agency notification of changes in capital levels, including comment on the burden associated with this procedure and comment on whether any other procedure to permit the timely monitoring of an institution's capital levels is appropriate.

*F. Reclassification Based on Supervisory Criteria Other Than Capital Standards*

Section 38 provides that a federal banking agency may, under certain circumstances, reclassify a well capitalized insured depository institution as adequately capitalized and require an adequately capitalized or undercapitalized institution to comply with supervisory actions as if it were in the next lower category (but not treat a significantly undercapitalized institution as if it were critically undercapitalized) based on supervisory information other than the capital levels of the institution. (Reclassification to the adequately capitalized category and treatment of an institution as if it were in the next lowest capital category are referrred to collectively herein as a "reclassification.") The statute permits the agency to reclassify an institution where the agency has determined, after notice and opportunity for hearing, that the institution is in an unsafe or unsound condition. Section 38 also provides that an institution may be reclassified if the agency deems the institution to be engaged in an unsafe or unsound practice under section 8(b)(8) of the FDI Act. 12 U.S.C. 1818(b)(8). Section 8(b)(8) of the FDI Act was amended by the FDICIA to provide that an institution may be deemed to be engaged in an unsafe or unsound practice if the institution has received a less-than-satisfactory rating in its most recent examination report in any of the categories for assets, management, earnings, or liquidity, and the institution has not corrected the deficiency.

Under the proposed rule, an institution would be reclassified on any of these supervisory grounds only after receiving prior written notice of the proposed reclassification from the agency and having an opportunity to respond to the proposed reclassification. In the case of a proposed reclassification based on a determination that the institution is in an unsafe or unsound condition, the agencies also propose, pursuant to section 38, to accord the institution an opportunity for an informal oral hearing prior to the reclassification.

Because section 38 expressly provides for notice and opportunity for hearing in connection with a reclassification on the grounds of unsafe and unsound condition but does not with respect to a reclassification based on examination ratings, the agencies are not proposing to provide an opportunity for an oral hearing prior to reclassification based on an institution's examination rating. In the case of a reclassification proposed on the basis of an examination rating of the institution, the agencies are proposing to provide the institution an opportunity to present written arguments and information prior to the agency's reclassification of the institution.

Under the proposal, the appropriate federal banking agency would provide an institution with written notice of the agency's intention to reclassify the institution. The institution would be provided at least 14 days to respond to the proposed reclassification unless the agency determines that the condition of the institution warrants a shorter time period for response. In its response, the institution should set forth any reasons why the proposed reclassification would not be appropriate, and provide the agency with any information that the institution believes supports its position on the reclassification. The agency would consider the response in deciding whether to proceed with the reclassification.

*Comment 21.* The agencies invite comment on all aspects of these procedures for reclassifying institutions based on supervisory criteria other than capital.

*G. Timing of Mandatory Provisions*

Under section 38, an institution becomes subject to certain mandatory provisions on the basis of the capital levels of the institution. These mandatory provisions apply immediately without agency action. As noted above, an undercapitalized institution is immediately subject to restriction on the payment of dividends and management fees, a limitation on asset growth, and an obligation to file an acceptable capital restoration plan. In addition to these requirements, an institution that is significantly undercapitalized or critically undercapitalized is subject to a limitation on the payment of bonuses or raises to senior executive officers.

Under the proposal, once an institution is deemed to have notice of its capital levels and category or is given actual notice by the agency of the institution's capital category, the institution is deemed immediately to be subject to the mandatory provisions that apply to institutions within the corresponding capital category without any further action by the appropriate federal banking agency for the institution. As explained above, the agencies proposes to deem an institution to have notice of its capital category whenever a Call Report is due to be filed by the institution, or an examination report or report of inspection has been provided to the institution. The agencies will provide actual notice to the institution of its capital categorization if the category is based on an adjustment to capital between the filing of Call Reports or examinations; if the agency determines the capital levels of the institution based on information other than information contained in the Call Reports or an examination report; or if the agency determines to reclassify the institution based on supervisory criteria other than capital.

*H. Procedures for Prompt Corrective Action Directives*

Section 38 also provides the agencies with discretion to impose other requirements or restrictions on an insured institution that is undercapitalized, significantly undercapitalized or critically undercapitalized, as well as on any company that controls such an institution. These discretionary supervisory actions are described above.

Because these provisions rely on an agency determination that certain action is appropriate, the agencies are proposing a procedure under which a federal banking agency would issue a written directive whenever the agency has determined that a discretionary supervisory action is appropriate. The agencies propose to provide written notice to an institution prior to issuing any directive to take an action committed by section 38 to the agency's discretion. The notice would describe the action contemplated by the agency and would provide the institution or company with 14 calendar days to respond to the proposed agency action, unless the agency determines that a shorter response period is appropriate in light of the condition of the institution.

Under the proposal, the institution or company would be permitted to submit written arguments regarding whether the directive is an appropriate exercise of the agency's discretion, along with any information or evidence supporting the respondent's position. Failure to file a timely response would constitute consent to the issuance of the directive and a waiver of the opportunity to appeal. The agency would consider the institution's response prior to issuing a final directive to take action under section 38.

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The agencies are also proposing to permit the appropriate federal banking agency to issue a final directive without notice or opportunity to respond where immediate supervisory action is appropriate. In cases where immediate action is necessary, the agencies propose to provide the institution with an opporutnity to appeal the action to the agency and request modification or rescission of the agency action following issuance of the directive. An institution that seeks to appeal an immediately effective directive would be required to file a written appeal with the agency within 14 calendar days of the effective date of the directive. The agency would be required to consider and take action regarding a timely appeal within 60 days of receiving the appeal. The agencies believe that these procedures will afford institutions an adequate and fair opportunity to obtain agency review of the agency's action. See e.g., *FDIC* v. *Mallen*, 486 U.S. 230 (1988) (upholding post-deprivation hearing in case of suspension or removal of a bank officer charged with a felony); *Federal Deposit Ins. Corp.* v. *Bank of Coushatta*, 930 F.2d 1122 (5th Cir. 1991), cert. denied, 112 S. Ct. 170 (1992) (affirming procedures for issuance of capital directives).

In proposing these procedures, the agencies have attempted to adhere to the mandate of section 38 that the agencies take prompt corrective action to resolve the problems of insured depository institutions at the least possible long-term loss to the deposit insurance fund while providing institutions with an opportunity for agency review for disputed factual claims. These procedures generally permit an institution advance notice of a proposed directive and an opportunity to present written information and argument to the agency prior to final agency action regarding the directive.

It should be added, however, that the agencies would not be required to follow these procedures, and the respective time periods would not apply, if an institution consented to the action to be taken by the agency either as initially proposed by the agency or as modified by mutual agreement. Actions taken with such consent would have the same legal effect and be enforceable to the same extent and by the same means as action taken upon exhaustion of these procedures.

The agencies are not proposing an oral hearing in connection with the issuance of a prompt corrective action directive for several reasons. First, the terms and legislative history of section 38 indicate that Congress intended agency action under section 38 to be taken as promptly as possible. 12 U.S.C. 1831o(a)(2); see also S. Rep. No. 102-167, 102d Cong., 1st Sess. 32-38 (1991) ("The prompt corrective action system will require regulators to act at the first sign of trouble."). Second, Congress clearly indicated several occasions when it believed that a hearing was appropriate in connection with actions taken under section 38, such as orders requiring dismissal of a director or senior executive officer. Congress gave no indication in either the statutory language or legislative history that it intended to provide for an agency hearing in connection with supervisory actions committed to agency discretion under section 38. Third, a requirement that an agency hold a hearing in each case involving action committed to agency discretion under section 38 would cause the prompt corrective action provisions of section 38 largely to duplicate the existing cease-and-desist authority granted to the agencies under section 8(b) of the FDI Act.

*Comment 22.* The agencies request comment on all aspects of the proposal to issue prompt corrective action directives where the agency determines to apply the provisions of section 38 committed to the discretion of the agency.

*Comment 23.* In particular, the agencies request comment on the sufficiency of the proposal to provide notice and opportunity for written response in connection with these directives.

*Comment 24.* The agencies also request comment on ways that these procedures can be improved to give an institution or company that is subject to a prompt corrective action directive a fair opportunity to contest such a directive, while at the same time adhering to the statutory mandate to take prompt action to resolve the problems of inadequately capitalized institutions.

*I. Enforcement of Directives*

Section 8 of the FDI Act, as amended by the FDICIA, includes prompt corrective action directives issued pursuant to section 38 among the orders that may be enforced in the courts pursuant to section 8(i)(1), and also makes any depository institution, company, or institution-affiliated party that violates such a directive subject to civil money penalties pursuant to section 8(i)(2)(A). 12 U.S.C. 1818(i). The proposed regulation makes clear that failure of a depository institution to implement a capital restoration plan or the failure of a company having control of a depository institution to fulfill a guarantee that the company has given in connection with a capital plan accepted by the appropriate federal banking agency will subject responsible parties to civil money penalties.

*J. Dismissal of Directors or Senior Executive Officers*

Section 38 provides that a director or senior executive officer dismissed by an insured depository institution in compliance with an agency directive under section 38 may obtain review of the dismissal by filing with the appropriate federal banking agency a petition for reinstatement. The statute also provides that the petitioner shall have the opportunity to submit written materials in support of the petition and to appear at a hearing before member(s) or designated employee(s) of the agency. The hearing shall occur within 30 days of the filing of the petition unless the petitioner requests a later date. The agency decision shall issue within 60 days of the date of the closing of the hearing record.

The statue appears to envision a post-dismissal hearing procedure, as it refers to the appeal as a "petition for reinstatement" and sets a short time for agency decision. Accordingly, the proposed regulation contemplates that an institution ordered to dismiss a senior executive officer or director will take that action immediately upon receiving a final directive requiring that action. The agencies are proposing that any officer or director that is dismissed in compliance with an agency directive under section 38 be provided an opportunity to petition the appropriate federal banking agency for reinstatement within the statutorily-prescribed period.

The proposed regulation permits the affected officer or director an opportunity for an informal agency hearing. The agency will designate a presiding officer(s) to conduct the hearing. The petitioner will have the right to appear at the hearing, with counsel, and to submit written materials and present oral argument. The petitioner may present oral testimony or witnesses only with the consent of the presiding officer(s).

The proposed regulation incorporates the statutory burdens of proof imposed upon an officer or director seeking reinstatement. When the dismissal order is based upon an institution's capital category or its failure to submit or implement a capital restoration plan, the petitioner must prove that his or her continued employment would materially strengthen the institution's ability to become adequately capitalized. When the dismissal order is based upon a reclassification of an institution on grounds of unsafe or unsound condition or practice, the petitioner must prove that his or her continued employment would materially strengthen the institution's ability to correct the condition or practice. The agencies propose to restrict the ability of an officer or director seeking reinstatement to challenge the capital category to which the institution has been assigned.

*Comment 25.* The agencies seek comment on these procedures.

*K. Capital Restoration Plans*

1. Information Required

Section 38 requires an institution that is undercapitalized, significantly undercapitalized, or critically undercapitalized to submit a plan to the appropriate federal banking agency to restore the institution's capital at least to the minimum capital levels required for adequately capitalized institutions. The statute requires that this capital restoration plan be submitted in writing and specify:

(1) The steps the institution will take to become adequately capitalized,

(2) The levels of capital the institution expects to attain in each year that the plan is in effect,

(3) How the institution will comply with the restrictions and requirements imposed on the institution under section 38,

(4) The types and levels of activities in which the institution will engage, and

(5) Any other information required by the appropriate federal banking agency.

The agencies do not propose at this time to require by regulation any additional information in a capital restoration plan submitted under section 38. The agencies may, in individual cases, require an institution to provide additional information based on particular circumstances.

*Comment 26.* The agencies request comment on whether and what additional information should be required by regulation for all capital restoration plans submitted under section 38.

2. Schedule for Submission and Review of Capital Plans

The statute requires the agencies to establish by regulation deadlines for the submission and review of capital restoration plans. The agencies propose to adopt the schedule generally established in the statute. Under this schedule, an institution would generally be required to submit a capital restoration plan within 45 days of receiving notice or having been deemed to have notice that the institution is undercapitalized, significantly undercapitalized or critically undercapitalized. As discussed above, an institution is deemed to have been notified of its capital category on the date that it is required to file its Call Report, the date that the institution receives its final report of examination or inspection, or the date that the appropriate federal banking agency notifies the institution of the institutions's capital category (based on an adjustment to capital reported by the institution or on other information obtained by the agency). Under the proposal, the appropriate federal banking agency may change this period in individual cases, in which case the agency would notify the institution that a different schedule has been adopted.

The proposed schedule would require the appropriate federal banking agency to review each capital restoration plan within 60 days of submission of the plan unless the agency extends the time for review. The agencies propose to provide written notice to the institution regarding whether the agency has approved or rejected the capital plan. The agency would also provide a copy of each acceptable capital restoration plan, or amendments thereto, to the FDIC within 45 days of accepting the plan.

*Comment 27.* The agencies request comment on the proposed time schedules for submission and review of a capital restoration plan.

3. Failure to Submit or Implement an Acceptable Capital Plan

In the event that the appropriate federal banking agency has disapproved an institution's capital restoration plan, the proposal would require the institution to submit a new capital restoration plan within a time specified by the appropriate federal banking agency. During the period following notice of such disappoval and prior to approval by the agency of a new or revised capital plan, the institution would be subject to all of the provisions in section 38 that apply to undercapitalized institutions that have failed to submit and implement, in any material respect, and acceptable capital restoration plan.

The proposed regulation incorporates the provision of section 38 that makes any insured depository institution that is undercapitalized and fails to submit or implement a capital restoration plan within the required time subject to the provisions applicable to significantly undercapitalized institutions. Under the proposal, these provisions apply immediately upon expiration of the time for submission of a capital restoration plan. Accordingly, under the proposal, an undercapitalized institution that fails to submit a capital restoration plan within the required time would, upon the expiration of that period, become subject to the mandatory and discretionary provisions of section 38 outlined above that are applicable to significantly undercapitalzied institutions, including limitations on the compensation paid to senior executive officers. An undercapitalized institution that fails to implement, in any material respect, its capital restoration plan would immediately be subject to these same provisions upon the institution's failure to implement the plan.

Comment 28. The agencies invite comment on each of these aspects of the proposed rule.

4. Content of Capital Restoration Plans

Section 38 provides that the appropriate federal banking agency may not accept a capital restoration plan unless the plan:

(1) Contains the information required by statute;

(2) Is based on realistic assumptions and is likely to succeed in restoring the institution's capital; and

(3) Would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the institution is exposed.

The statute also provides that the appropriate federal banking agency may not approve a capital restoration plan unless each company that controls the institution guarantees the institution's compliance with the plan until the institution has been adequately capitalized for each of four consecutive calendar quarters, and provides appropriate assurances of performance. This guarantee by any controlling company is independent of any liability of affiliates of the depository institution pursuant to the cross-guarantee provision of the FDI Act.

5. Capital Plan Performance Guarantee

The agencies proposed to implement the performance guarantee provision, contained in section 38(e)(2)(E), by requiring each company to submit a written guarantee of any capital plan submitted by an undercapitalized, significantly undercapitalized, or critically undercapitalzied institution contolled by the company. This guarantee would include assurance that the institution would fulfill any commitments to raise capital made in the plan. Each company that provides the guarantee would be jointly and severally liable for fulfillment of the guarantee. Liability could extend to the

amount necessary (up to the statutory limit of liability) to restore the institution to applicable capital standards. Failure of any company that controls an undercapitalized institution to provide the required guarantee causes the institution to become subject to the provision of section 38 applicable to significantly undercapitalized institutions.

*Comment 29.* The agencies request comment on whether the rule should provide greater detal regarding the content and form of the guarantee.

*Comment 30.* In addition, the agencies request comment on what assurances the agencies should find to be "appropriate assurances of performance" of the capital plan and guarantee. Section 38 appears to permit the agencies to determine the appropriateness of assurances in connection with the agency's review of the capital restoration plan.

*Comment 31.* The agencies seek comment on whether there are particular assurances that the agencies should require by regulation in all cases. For example, should the agencies require a guarantor to demonstrate that it has sufficient financial resources to honor the guarantee.

The statute limits the aggregate liability under the capital performance guarantee of all companies that control a given insured depository institution to the lesser of:

(1) An amount equal to 5 percent of the institution's total assets at the time the institution became undercapitalized, or

(2) The amount necessary (or that would be necessary) to bring the institution into compliance with all capital standards applicable with respect to such institution as of the time the institution fails to comply with its capital restoration plan.

In incorporating this provision into the regulation, the agencies propose to adopt the same definition of total assets for purposes of computing the first component of the limit on liability as would be used in determining the capital category of the institution.

*Comment 32.* Accordingly, as discussed above in connection with the definition of capital categories, the agencies request comment on whether the definition of total assets should be based on a period average of total assets (as proposed above) or should be based on a daily report of the institution's total assets.

The agencies also propose that the second component of the limit on liability refer to the amount necessary to restore the capital of the institution to the applicable minimum capital levels as those levels were defined at the time that the institution initially failed to comply with its capital plan. The amount of a capital guarantee would not change if the minimum capital adequacy requirements change after the time the instituton initially failed to comply with its capital restoration plan.[13]

*Comment 33.* The agencies request comment on this clarification of the stautory provision.

The proposed rule also implements the statutory provision that limits the duration of a guarantee of a capital plan. Under the proposal, the appropriate federal banking agency would provide notice to the company that the guarantee has expired once the depository institution has remained adequately capitalized for four consecutive calendar quarters. The proposal makes clear that expiration of a guarantee or fulfillment of a guarantee given by a company in connection with one capital restoration plan does not relieve the company from the obligation to guarantee another capital restoration plan that may be required at a future date for the same institution if it again becomes undercapitalized. Similarly, the fact that a company has, at one time, fulfilled a guarantee by providing resources to an institution up to the statutory limit would not reduce the amount of any guarantee of a future capital plan for the same institution. Moreover, the provision or fulfillment by a company of a gurantee for one institution does not affect the obligation of that company to guarantee a capital plan in connection with any other insured depository institution.

*Comment 34.* The agencies request comment on these provisions of the proposal.

*Comment 35.* The agencies also request comment on whether the agencies should establish by regulation a time for computing the limit on liability, and, if so, when that calculation should be made.

*Comment 36.* In addition, the agencies request comment on whether any additional regulatory clarifications of the holding company guarantee are necessary.[14]

[13] Any modification of the minimum capital requirement for savings associations, required by FIRREA's transition schedules, is not a change of the minimum capital adequacy requirements for purposes of section 38 and this part.

[14] In this regard, the OTS specifically requests comment on the application of this guarantee in the context of the capital transition schedules imposed by FIRREA for capital compliance by savings associations (e.g., deduction of investments in impermissible subsidiaries).

6. Priority in Bankruptcy

It should be noted that the FDIC will have a priority claim in any bankruptcy proceedings of a holding company that has guaranteed an institution's compliance with a capital restoration plan. The FDIC's claim against a holding company's estate would have priority over the claims of unsecured creditors and is provided for in section 507(a)(8) of title 11 of the United States Code, as amended by the Crime Control Act of 1990, Public Law 101-647, 104 Stat. 4789. Sections 365(o) and 523(a)(12) of title 11 of the United States Code, as amended by the Crime Control Act of 1990, also provide special protections for the FDIC.

7. Submission of Plans by Reclassified Institutions

Section 38(g) provides that an institution that has been reclassified to a different capital category as a result of an agency determination that the institution is in an unsafe or unsound condition or is engaged in an unsafe or unsound practice must describe the steps the institution will take to address these deficiencies. Section 38(g) also provides that an institution that nominally has adequate capital but has been reclassified to the undercapitalized category because of its condition or practices is not required to submit a capital restoration plan. The portions of the proposed regulation regarding capital restoration plans reflect these provisions.

*Comment 37.* While section 38 does not require an institution that nominally has adequate capital but has been reclassified to the undercapitalized category to file a capital restoration plan, the agencies request comment regarding whether it is appropriate for the agencies to exercise their general supervisory authority to require such an institution to submit a description of the steps the institution will take to address the deficiencies in the institution's condition.

8. Revised Capital Restoration Plans

Under the proposal, an insured depository institution that is operating under a capital restoration plan that has been approved by the appropriate federal banking agency would not generally be required to submit an additional or a revised capital restoration plan if the institution's capital category changes, unless the agency notifies the institution that a new or revised capital restoration plan is required. Under this proposal, for example, an undercapitalized institution that is implementing an approved capital restoration plan would not be required to submit a second or revised capital restoration plan if the institution experienced further declines in its capital levels unless the appropriate federal banking agency determined that a new plan was appropriate in light of the particular circumstances.

*Comment 38.* The agencies request comment on this approach and on whether the agencies should, by regualtion, require each insured depository institution to file a new or revised capital restoration plan in the event that the institution's capital category has changed.

*L. Other Matters*

1. Definition of Management Fees

Section 38 of the FDI Act prohibits any institution from paying management fees to a controlling person if, following the payment of those fees, the institution would be undercapitalized. The statute does not provide a definition of management fees. The agencies have proposed to define management fees to include any payment of money or provision of any other thing of value to a comapny or individual for the provision of management services or advice other than compensation paid to an individual in the individual's capacity as an officer or employee of the institution. This definition covers all companies, including consulting firms, companies owned by a principal shareholder of an institution, and servicing corporations owned by holding companies. Under the proposal, compensation for duties performed by an officer or employee of the institution would not be deemed to be a management fee for purposes of section 38.

*Comment 39.* The agencies request comment on the proposal's provisions regarding management fees and compensation in light of the purpose of section 38 of limiting losses to the deposit insurance funds that might result from the payment of dividends or the payment of management fees by an undercapitalized institution or an institution that would be undercapitalized after the payment.

2. Definition of Control

Certain provisions of section 38 apply to companies that "control" an insured depository institution. Section 38 of the FDI Act does not define the term "control". However, section 3 of the FDI ACT adopts the definition of "control" contained in section 2 of the Bank Holding Company Act (BHC Act) (12 U.S.C. 1841(a)(2)). Under the BHC Act, a company controls an institution if (1) the company owns or controls 25 percent or more of any class of voting securities of that institution; (2) the company controls in any manner the election of a majority of the board of directors of the institution; or (3) the agency determines, after notice and opportunity for hearing, that the company exercises a controlling influence over the management or policies of the institution.

Other provisions of the BHC Act exclude certain types of share ownership from the provisions of the BHC Act, including shares acquired by a company in satisfaction of a debt previously contracted (DPC) or shares held by a company in a fiduciary capacity.

*Comment 40.* The agencies request comment on whether it would be appropriate under section 38 to provide, by regulation, an exception from the definition of "control" for shares acquired DPC or shares held in a fiduciary capacity.

*Comment 41.* In particular, the agencies request comment on whether the agencies should by regulation adopt the DPC and fiduciary ownership exceptions contained in section 2(a)(5) of the BHC Act. Section 2(a)(5) of the BHC Act (12 U.S.C. 1841(a)(5)) permits a company to hold shares of a depository institution acquired DPC without becoming subject to the restrictions of that Act provided that the company disposes of the shares within two years (with the possibility of three one-year extensions). Section 2(a)(5) also permits a company to hold shares of a depository institution in a fiduciary capacity without becoming subject to the restrictions of the BHC Act provided that the company does not retain sole right to vote the shares.

*Comment 42.* Finally, in the event that an exception for shares acquired DPC is included in the regulations implementing section 38, the agencies request comment on whether the exception should include conditions similar to those contained in the DPC exception to section 5 of the FDI Act (12 U.S.C. 1815(e)), which imposes cross-guarantee requirements on affiliated institutions. Section 5 of the FDI Act contains an exception for the acquisition DPC by an insured depository institution of shares of another depository institution. That exception is conditioned on the requirement that all transactions between the controlling institution or any affiliate of the controlling institution and the subsidiary institution comply with the restrictions contained in sections 23A and 23B of the Federal Reserve Act.

3. Applicability of Capital Categories to Bank Holding Companies and Savings and Loan Holding Companies

Section 38 applies capital-based prompt corrective action to insured depository institutions but not to holding companies that control such institutions. However, various provisions of section 38 apply to companies that control insured depository institutions. These provisions appear to apply to holding companies regardless of the capital level of those holding companies.

The Federal Reserve Board and the OTS do not propose to adopt a parallel framework of capital categories for holding companies. Instead, the Federal Reserve Board intends to consult with the federal banking agency for each insured depository institution subsidiary of the holding company to monitor supervisory actions required under section 38, and, in the supervision of the holding company, to take appropriate action at the holding company level based on an assessment of these developments. In supervising savings and loan holding companies, the OTS will also take appropriate action at the holding company level based on an assessment of the actions taken under section 38 regarding savings association subsidiaries.

*Comment 43.* The agencies request comment on whether it is appropriate for the agencies to exercise their supervisory authority under other provisions of law to establish a framework of supervisory actions for bank holding companies and savings and loan holding companies similar to those established in section 38 for insured depository institutions.

4. Restrictions on Activities of Critically Undercapitalized Institutions

Section 38(i) of the FDI Act provides that the FDIC must by regulation or order restrict the activities of critically undercapitalized institutions. The activities that must be restricted are described above.

The FDIC proposes to rely on existing industry or regulatory guidance, to the extent possible, when evaluating and applying each of the restrictive provisions of section 38(i) and to continue to coordinate closely with the primary federal and/or state banking regulators. The interagency procedures implemented will be similar to those already in place at both the federal agency and state banking department levels. For example, prior to imposing any order restricting or prohibiting an institution from engaging in any of the activities that can be restricted, the

FDIC would consult with the approriate federal banking agency and state banking agency, as appropriate.

FDICIA does not provide specific guidance on how to interpret and implement each of the above restrictive provisions. Consequently, the FDIC is considering a number of options. The prohibition on entering into "any material transaction other than in the usual course of business" can be interpreted in a general fashion relying on outstanding case law in the area of securities disclosures. The concept of materiality also could be defined from an accounting perspective by establishing specific limits for determining materiality. For example, the FDIC could, by regulation, require that any prospective transaction other than one that is in the usual course of business that results or could result in a 5 percent change in an institution's tangible equity capital account or net income account would automatically be considered a material transaction requiring the FDIC's prior approval. Other transactions could be defined as material on a case by case basis. The FDIC solicits comment on how to define the terms "material" and "usual course of business" as well as what specific guidance, if any, should be provided by the FDIC to the banking industry.

The FDIC intends to define the term "highly leveraged transaction" by utilizing the currently outstanding interagency definition published in the **Federal Register** (57 FR 5040 (February 11, 1992)). The FDIC proposes to rely on existing generally accepted accounting principles when interpreting the restriction on making any "material change in accounting methods."

Section 39(c) of the FDI Act requires the federal banking agencies to prescribe standards for determining when compensation paid to employees, directors and principal shareholders of insured depository institutions is excessive. An advance notice of proposed rulemaking is expected to be published in the **Federal Register** in the near future. The FDIC intends to interpret the restrictive provision involving the payment of excessive compensation or bonuses in a manner that is consistent with the FDIC's actions in fulfilling the requirements of section 39(c) of the FDI Act.

The provision that restricts "paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas" contains terms that relate to the changes mandated by section 301 of FDICIA and the revisions of § 337.6 of the FDIC's regulations as recently implemented by the FDIC. Specifically, the FDIC proposes to interpret the phrase "significantly exceeding the prevailing rates" in the same manner as defined in § 337.6. The prevailing effective yields of interest are the effective yields on insured deposits of comparable maturities offered by other insured depository institutions in the market area in which deposits are being solicited. A rate of interest on a deposit with an odd maturity will be considered excessive if it is more than 75 basis points higher than the yield calculated by interpolating between the yields offered by other depository institutions on deposits of the next longer and shorter maturities offered in the market. A market area is any readily defined geographic area in which the rates offered by any one insured depository institution operating in the area may affect the rates offered by other institutions operating in the same area.

The FDIC invites comments on all aspects of these proposed interpretations.

### Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this proposed rule, if adopted as a final rule, will not have a significant impact on a substantial number of small savings associations.

This proposed rule implements the prompt corrective action provisions of section 131 of FDICIA for all insured savings associations. The proposed rule would affect all insured savings associations, regardless of size, and would not disproportionately affect a substantial number of small associations.

This proposed rule establishes capital requirements for insured savings associations within statutorily prescribed requirements. In addition, it adopts statutorily recommended time frames for filing and approving required capital restoration plans. Finally, it establishes procedures to afford insured savings associations an opportunity to comment on agency actions taken pursuant to section 38.

### Executive Order 12291

The Director of the OTS has determined that this proposed regulation is not a "major rule" as defined in Executive Order 12291. The proposed regulation implements section 131 of FDICIA which established a new statutory framework for resolving the problems of insured depository institutions at the least long-term cost to the FDIC. Any economic or other consequences of the Prompt Corrective Action system are a direct result of section 131 of FDICIA, not the proposed implementing regulation.

### List of Subjects in 12 CFR Part 565

Administrative practice and procedure, Capital, Savings associations.

Accordingly, the Office of Thrift Supervision hereby proposes to amend subchapter D, chapter V, title 12, Code of Federal Regulations, by adding part 565 as set forth below.

**Subchapter D—Regulations Applicable to All Savings Associations**

1. A new part 565 is added to read as follows:

## PART 565—PROMPT CORRECTIVE ACTION

Sec.

565.1 Authority, purpose, applicability and other supervisory authority.
565.2 Definitions.
565.3 Financial data calculations and notice of capital category.
565.4 Capital measures and capital category definitions.
565.5 Capital restoration plans.
565.6 Mandatory and discretionary supervisory actions under section 38.
565.7 Directives to take prompt corrective action.
565.8 Procedures for reclassifying a savings association based on criteria other than capital.
565.9 Order to dismiss a director or senior executive officer.
565.10 Enforcement of directives.

Authority: 12 U.S.C. 1831o.

### § 565.1 Authority, purpose, applicability and other supervisory authority.

(a) *Authority.* This part is issued by the OTS pursuant to section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act), as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. No. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose.* Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized. The principal purpose of this part is to define, for savings associations, the capital measures and capital levels that are used for determining the supervisory actions authorized under section 38 of the FDI Act. This part also establishes procedures for submission and review of capital restoration plans and for issuance and review of orders pursuant to section 38 of the FDIA.

(c) *Applicability.* This part implements the provisions of section 38 of the FDI Act as they apply to savings associations. Certain of these provisions also apply to officers, directors and employees of savings associations. Other provisions apply to any company or person that controls a savings association and to the affiliates of a savings association.

(d) *Other supervisory authority.* Neither section 38 nor this part in any way limits the authority of the OTS under any other provision of law to take supervisory actions to address unsafe or unsound practices, deficient capital levels, violations of law or regulation, unsafe or unsound conditions, or other practices. Action under section 38 of the FDI Act and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the OTS, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(e) *Limited scope of capital categories.* The assignment of a savings association under this part within a particular capital category is for purposes of implementing and applying the provisions of section 38 and, unless permitted by the OTS or otherwise required by law or regulation, may not be used by, for, or on behalf of a savings association for any other purpose.

**§ 565.2 Definitions.**

For purposes of this part, except as modified in this section or unless the context otherwise requires, the terms used in this part have the same meanings as set forth in sections 38 and 3 of the FDI Act.

(a) *Leverage ratio* means the ratio of Tier 1 capital to adjusted total assets, as calculated in accordance with part 567 of this subchapter.

(b) *Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the savings association, other than compensation to an individual in the individual's capacity as an officer or employee of the savings association.

(c) *Risk-weighted assets* means total risk-weighted assets, as calculated in accordance with part 567 of this subchapter.

(d) *Tangible equity* means the amount of a savings association's Tier 1 capital as defined in part 567 of this subchapter.

(e) *Tier 1 capital* means the amount of core capital as defined in part 567 of this subchapter.

(f) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to risk-weighted assets, as calculated in accordance with part 567 of this subchapter.

(g) Total assets means total assets as calculated in accordance with part 567 of this subchapter.

(h) *Total risk-based capital ratio* means the ratio of total capital to risk-weighted assets, as calculated in accordance with part 567 of this subchapter.

**§ 565.3 Financial data calculations and notice of capital category.**

(a) *Effective date of determination of capital category.* A savings association shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this part as of the date the savings association is notified of, or is deemed to have notice of, its capital category, pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A savings association shall be deemed to have notice of its capital levels and its capital category as of the most recent of:

(1) The date a Thrift Financial Report (TFR) is required to be filed with the OTS;

(2) The date a final report of examination or report of inspection is delivered to the savings association;

(3) The date that the OTS provides written notice to the savings association that the savings association's capital category has changed as provided in paragraph (c) of this section.

(4) The date that the OTS provides written notice to the savings association of its capital levels and its capital category for purposes of section 38 of the FDI Act and this part; or

(5) The date any written notice is served on the savings association that the savings association's capital category has been changed pursuant to § 565.3(c) of this part.

(c) *Adjustments to reported capital levels and category*—(1) *Notice of adjustment to be provided by savings association.* A savings association shall provide the OTS with written notice that an adjustment to the savings association's capital category may have occurred no later than 5 calendar days following the earlier of the date that the savings association:

(i) Reports, or has determined to report, any event that would cause the savings association to be placed in a different capital category from the category assigned to the savings association for purposes of section 38 and this part on the basis of the savings association's most recent TFR or report of examination; or

(ii) Determines that any event has occurred that would cause the savings association to be placed in a different capital category from the category assigned to the savings association for purposes of section 38 and this part on the basis of the savings association's most recent TFR or report of examination.

(2) *Determination to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the OTS shall determine whether the capital category of the savings association shall be changed and shall notify the savings association of the OTS's determination.

**§ 565.4 Capital measures and capital category definitions.**

(a) *Capital measures.* For purposes of section 38 and this part, the relevant capital measures shall be:

(1) The total risk-based capital ratio;

(2) The Tier 1 risk-based capital ratio; and

(3) The leverage ratio.

(b) *Capital categories.* For purposes of the provisions of section 38 and this part, a savings association shall be deemed to be:

(1) *Well capitalized* if the savings association:

(i) Has a total risk-based capital ratio of 10.0 percent or greater.

(ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater;

(iii) Has a leverage ratio of 5.0 percent or greater; and

(iv) Is not subject to any order or written directive by the OTS to meet and maintain a specific capital level for any capital measure.

(2) *Adequately capitalized* if the savings association:

(i) Has a total risk-based capital ratio of 8.0 percent or greater;

(ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater;

(iii) Has:

(A) A leverage ratio of 4.0 percent or greater;

or

(B) A leverage ratio of 3.0 percent or greater if the savings association is rated composite 1 under the MACRO rating system in the most recent examination of the savings association; and

(iv) Does not meet the definition of a *well capitalized* savings association.

(3) *Undercapitalized* if the savings association—

(i) Has a total risk-based capital ratio that is less than 8.0 percent; or

(ii) Has a Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(iii) (A) Except as provided in paragraph (b)(3)(iii)(B) of this section, has a leverage ratio that is less than 4.0 percent; or

(B) If the savings association is rated composite 1 under the MACRO rating system in the most recent examination of the savings association, has a leverage ratio that is less than 3.0 percent.

(4) Significantly undercapitalized if the savings association has—

(i) A total risk-based capital ratio that is less than 6.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or

(iii) A leverage ratio that is less than 3.0 percent.

(5) *Critically undercapitalized* if the savings association has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Classification based on supervisory criteria other than capital.* The OTS may reclassify a well capitalized savings association as adequately capitalized and may require an adequately capitalized or undercapitalized savings association to comply with supervisory actions as if it were in the next lower capital category (except that the OTS may not reclassify a significantly undercapitalized savings association as critically undercapitalized) in the following circumstances:

(1) *Unsafe or unsound condition.* The OTS has determined, after notice and opportunity for hearing pursuant to § 565.8(a) of this part, that the savings association is in an unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The OTS has determined, after notice and opportunity for response pursuant to § 565.8(b) of this part, that the savings association has received, and not corrected, a less-than-satisfactory rating for any of the equivalent MACRO rating categories for asset quality, management, earnings, or liquidity in the most recent examination of the savings association.

### § 565.5 Capital restoration plans.

(a) *Schedule for filing plan*—(1) *In general.* A savings association must file a written capital restoration plan with the appropriate Regional Office within 45 days of the date that the savings association receives notice or is deemed to have notice that the savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the OTS notifies the savings association is writing that the plan must be filed within a different period. A savings association that has been reclassified as undercapitalized pursuant to § 565.4(c) of this part is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* Notwithstanding paragraph (a)(1) of this section, a savings association that has already submitted and is operating under a capital restoration plan approved under section 38 and this part is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures unless the OTS notifies in writing the savings association that it must submit a new or revised capital plan. A savings association that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the appropriate Regional Office within 45 days of receiving such notice that a new or revised plan is required, unless the OTS notifies the savings association in writing that the plan is to be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan must be prepared in accordance with the instructions provided on the TFR, unless the OTS instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act, including any performance guarantee required to be executed under section 38(e)(2)C) of that Act by each company that controls the savings association. A savings association that the OTS requires to submit a new or revised capital restoration plan as the result of a reclassification of the savings association pursuant to § 565.4(c) of this part shall include a description of th steps the savings association will take to correct the unsafe or unsound condition or practice.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this part, the OTS will provide written notice to the savings association of whether the plan has been approved. The OTS may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital plan.* If a capital restoration plan is not approved by the OTS, the savings association must submit a revised capital restoration plan, when directed to do so, within the time specified by the OTS. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized savings association (as defined in § 565.4(b)(3)) shall be subject to all of the provisions of section 38 and this part applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as a new or revised capital restoration plan submitted by the savings association has been approved by the OTS.

(e) *Failure to submit a capital restoration plan.* A savings association that is undercapitalized (as defined in § 565.4(b)(3) of this part) and that fails to submit a written capital restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this part applicable to significantly undercapitalized institutions.

(f) *Failure to implement a capital restoration plan.* Any undercapitalized savings association that fails in any material respect to implement a capital restoration plan shall be subject to all of the provisions of section 38 and this part applicable to significantly undercapitalized institutions.

(g) *Amendment of capital plan.* A savings association that has filed an approved capital restoration plan may, after prior written notice to and approval by the OTS, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the savings association shall implement the capital restoration plan as approved prior to the proposed amendment.

(h) *Notice to FDIC.* Within 45 days of the effective date of approval of a capital restoration plan, or any amendment to a capital restoration plan, the OTS will provide a copy of such plan or amendment to the FDIC.

(i) *Performance guarantee by companies that control a savings association*—(1) *Limitation on liability*—(i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this part for all companies that control a specific savings association that is required to submit a capital restoration plan under this part shall be limited to the lesser of:

(A) An amount equal to 5.0 percent of the savings association's total assets at the time the savings association was notified or deemed to have notice that the savings association was undercapitalized; or

(B) The amount necessary to restore the relevant capital measures of the savings association to the levels required for the savings association to be classified as adequately capitalized, as those capital measures and levels are defined at the time that the savings association initially fails to comply with a capital restoration plan under this part.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 and this part shall expire after the OTS notifies the savings association that it has remained adequately capitalized for each of four consecutive calendar quarters. The expiration or fulfillment by a company of a guarantee of a capital restoration plan shall not limit the liability of the company under any guarantee required or provided in connection with any capital restoration plan filed by the same savings association after expiration of the first grarantee.

(iii) *Collection on guarantee.* Each company that controls a given savings association shall be jointly and severally liable for the guarantee for such savings association as required under section 38 and this part, and the OTS may require and collect payment of the full amount of that guarantee from any or all of the companies issuing the guarantee.

(2) *Failure to provide guarantee.* In the event that a savings association that is controlled by any company submits a capital restoration plan that does not contain the guarantee required under section 38(e)(2) of the FDI Act, the savings association shall, upon submission of the plan, be subject to the provisions of section 38 and this part that are applicable to savings associations that have not submitted an approved capital restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls a savings association to perform fully its guarantee of any capital plan shall constitute a material failure to implement the plan for purposes of section 38(f) of the FDI Act. Upon such failure, the savings association shall be subject to the provisions of section 38 and this part that are applicable to savings associations that have failed in a material respect to implement a capital restoration plan.

**§ 565.6 Mandatory and discretionary supervisory actions under section 38.**

(a) *Mandatory supervisory actions—*(1) *Provisions applicable to all savings associations.* All savings associations are subject to the restrictions contained in section 38(d) of the FDI Act on payment of capital distributions and management fees.

(2) *Provisions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized savings associations.* Immediately upon receiving notice or being deemed to have notice, as provided in § 565.3 or § 565.5 of this part, that the savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized, the savings association shall become subject to the provisions of section 38 of the FDI Act—

(i) Restricting payment of capital distributions and management fees (section 38(d));

(ii) Requiring that the OTS monitor the condition of the savings association (section 38(e)(1));

(iii) Requiring submission of a capital restoration plan within the schedule established in this part (section 38(e)(2));

(iv) Restricting the growth of the savings association's assets (section 38(e)(3)); and

(v) Requiring prior approval of certain expansion proposals (section 38(e)(4)).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized savings associations.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 565.3 or § 565.5 of this part, that the savings association is significantly undercapitalized, or critically undercapitalized, the savings association shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized savings associations.* In addition to the provisions of section 38 of the FDI Act described in paragraphs (a)(2) and (3) of this part immediately upon receiving notice or being deemed to have notice, as provided in § 565.3 or § 565.5 of this part, that the savings association is critically undercapitalized, the savings association shall become subject to the provisions of section 38 of the FDI Act—

(i) Restricting the activities of the savings association (section 38(h)(1)); and

(ii) Restricting payments on subordinated debt of the savings association (section 38(h)(2)).

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the OTS's discretion to take in connection with a savings association that is deemed to be undercapitalized, significantly undercapitalized or critically undercapitalized, an officer or director of such savings association, or a company that controls such savings association, the OTS will follow the procedures for issuing directives under §§ 565.7 and 565.9 of this chapter, unless otherwise provided in section 38 or this part.

**§ 565.7 Directives to take prompt corrective action.**

(a) *Notice of intent to issue a directive.—(1) In general.* The OTS will provide an undercapitalized, significantly undercapitalized, or critically undercapitalized savings association or, where appropriate, any company that controls the savings association, prior written notice of the OTS's intention to issue a directive requiring such savings association or company to take actions or to follow proscriptions described in section 38 that are within the OTS's discretion to require or impose under section 38(e)(5), (f)(2), (f)(3), or (f)(5) of the FDI Act.

(2) *Immediate issuance of final directive.* If the OTS finds it necessary in order to carry out the purposes of section 38 of the FDI Act, the OTS may, without providing the notice prescribed in paragraph (a)(1) of this section issue a directive requiring a savings association or any company that controls a savings association immediately to take actions or to follow proscriptions described in section 38 that are within the OTS's discretion to require or impose under section 38(e)(5), (f)(2), (f)(3), or (f)(5) of the FDI Act. A savings association or company that is subject to such an immediately effective directive may submit a written appeal of the directive to the OTS. Such an appeal must be received by the OTS within 14 calendar days of the issuance of the directive. The OTS shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the directive shall remain in effect unless the OTS, in its sole discretion, stays the effectiveness of the directive.

(b) *Contents of notice.* A notice of intention to issue a directive shall include:

(1) A statement of the savings association's capital measures and capital levels;

(2) A description of the restrictions, prohibitions or affirmative actions that the OTS proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of such affirmative actions; and

(4) The date by which the savings association or company subject to the directive may file with the OTS a written response to the notice.

(c) *Response to notice—*(1) *Time for response.* A savings association or company may file a written response to a notice of intent to issue a directive within the time period set by the OTS. The date shall be at least 14 calendar

days from the date of the notice unless the OTS determines that a shorter period is appropriate in light of the financial condition of the savings association or other relevant circumstances.

(2) *Content of response.* The response should include:

(i) An explanation why the action proposed by the OTS is not an appropriate exercise of discretion under section 38;

(ii) Any recommended modification of the proposed directive; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the savings association or company regarding the proposed directive.

(d) *Failure to file response.* Failure by a savings association or company to file with the OTS, within the specified time period, a written response to a proposed directive shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the directive.

(e) *OTS consideration of response.* After considering the response, the OTS may:

(1) Issue the directive as proposed or in modified form;

(2) Determine not to issue the directive and so notify the savings association or company; or

(3) Seek additional information or clarification of the response from the savings association or company, or any other relevant source.

(f) *Request for modification or rescission of directive.* Any savings association or company that is subject to a directive under this part may, upon a change in circumstances, request in writing that the OTS reconsider the terms of the directive, and may propose that the directive be rescinded or modified. Unless otherwise ordered by the OTS, the directive shall continue in place while such request is pending before the OTS.

**§ 565.8 Procedures for reclassifying a savings association based on criteria other than capital.**

(a) *Classification of a savings association based on unsafe or unsound condition.*—(1) *Issuance of notice of proposed reclassification.* If the OTS determines to reclassify a well capitalized savings association as adequately capitalized, or to require an adequately capitalized or undercapitalized savings association to comply with supervisory actions as if it were in the next lower capital category pursuant to section 38(g) of the FDI Act and § 565.4(c)(1) of this part because the OTS deems the savings association to be in an unsafe or unsound condition, (each of the foregoing referred to hereinafter as a "reclassification") the OTS will issue and serve on the savings association a written notice of the OTS's intention to reclassify the savings association.

(2) *Contents of notice.* A notice of intention to reclassify a savings association based on unsafe or unsound condition will include:

(i) A statement of the savings association's capital measures and capital levels and the category to which the savings association would be reclassified;

(ii) The reasons for reclassification of the savings association;

(iii) The date by which the savings association subject to the notice of reclassification may file with the OTS a written appeal of the proposed reclassification and a request for a hearing, which shall be at least 14 calendar days from the date of service of the notice unless the OTS determines that a shorter period is appropriate in light of the financial condition of the savings association or other relevant circumstances.

(3) *Response to notice of proposed reclassification.* A savings association may file a written response to a notice of proposed reclassification within the time period set by the OTS. The response should include:

(i) An explanation of why the savings association is not in an unsafe or unsound condition or otherwise should not be reclassified;

(ii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the savings association or company regarding the reclassification.

(4) *Failure to file response.* Failure by a savings association to file, within the specified time period, a written response with the OTS to a notice of proposed reclassification shall constitute a waiver of the opportunity to respond and shall constitute consent to the reclassification.

(5) *Request for hearing and presentation of oral testimony or witnesses.* The response may include a request for an informal hearing before the OTS or its designee under this section. If the savings association desires to present oral testimony or witnesses at the hearing, the savings association must include a request to do so with the request for an informal hearing. A request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing, and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right to present oral testimony or witnesses.

(6) *Order for informal hearing.* Upon receipt of a timely written request including a request for a hearing, the OTS shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the savings association requests a later date. The hearing shall be held in Washington, D.C. or at such other place as may be designated by the OTS, before a presiding officer(s) designated by the OTS to conduct the hearing.

(7) *Hearing procedures.* (i) The savings association shall have the right to introduce relevant written materials and to present oral argument at the hearing. The savings association may introduce oral testimony and present witnesses only if expressly authorized by the OTS or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor part 509 of this chapter apply to an informal hearing under this section unless the OTS orders that such procedures shall apply.

(ii) The informal hearing shall be recorded and a transcript furnished to the savings association upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(iii) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(8) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the OTS on the reclassification.

(9) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the OTS will decide whether to reclassify the savings association and notify the savings association of the OTS's decision.

(b) *Procedures for reclassifying a savings association based on unsafe or*

*unsound practice.*—(1) *Issuance of notice of proposed reclassification.* If the OTS determines to reclassify a well capitalized savings association as adequately capitalized or to require an adequately capitalized or undercapitalized savings association to comply with supervisory actions as if it were in the next lower capital category pursuant to section 38(g) of the FDI Act and § 565.4(c)(2) because the OTS deems the savings association to be engaging in an unsafe or unsound practice, (each of the foregoing referred to hereinafter as a "reclassification") the OTS will issue and serve on the savings association a written notice of the OTS's intention to reclassify the savings association.

(2) *Contents of notice.* A notice of intention to reclassify a savings association will include:

(i) A statement of the savings association's capital measures and capital levels and the category to which the savings association would be reclassified;

(ii) The reasons for reclassification of the savings association;

(iii) The date by which the savings association subject to the notice of reclassification may file with the OTS a written appeal of the proposed reclassification, which shall be at least 14 calendar days from the date of service of the notice unless the OTS determines that a shorter period is appropriate in light of the financial condition of the savings association or other relevant circumstances.

(3) *Response to notice of proposed reclassification based on unsafe and unsound practice.* A savings association may file a written response to a notice of proposed reclassification issued under this subsection within the time period set by the OTS. The response should include:

(i) An explanation of the steps taken by the savings association to address the deficiency described in the notice of proposed reclassification or of the reasons that the reclassification is not otherwise appropriate;

(ii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the savings association or company regarding the reclassification.

(4) *Failure to file response.* Failure by a savings association to file, within the specified time period, a written response with the OTS to a notice of proposed reclassification under this subsection shall constitute a waiver of the opportunity to respond and shall constitute consent to the reclassification.

(5) *OTS consideration of response.* After considering the response, the OTS may:

(i) Issue a written order to the savings association reclassifying the savings association to a different capital category as provided in section 38(g) of the FDI Act;

(ii) Determine not to reclassify the savings association and so notify the savings association; or

(iii) Seek additional information or clarification of the response from the savings association or company, or any other relevant source.

(c) *Request for rescission of reclassification.* Any savings association that has been reclassified under this section, may, upon a change in circumstances, request in writing that the OTS reconsider the reclassification, and may propose that the reclassification be rescinded and that any directives issued in connection with that reclassification be modified, rescinded, or removed. Unless otherwise ordered by the OTS, the savings association shall remain subject to the reclassification and to any directives issued in connection with that reclassification while such request is pending before the OTS.

**§ 565.9 Order to dismiss a director or senior executive officer.**

(a) *Service of notice.* When the OTS issues and serves a directive on a savings association pursuant to section 565.8 requiring the savings association to dismiss any director or senior executive officer under section 38(f)(2)(F)(ii) of the FDI Act, the OTS will also serve a copy of the directive, or the relevant portions of the directive where appropriate, upon the person to be dismissed.

(b) *Response to directive.* A director or senior executive officer who has been served with a directive under paragraph (a) of this section (Respondent) may file a written request for reinstatement. The request for reinstatement must be filed within 10 calendar days of the receipt of the directive by the Respondent, unless further time is allowed by the OTS at the request of the Respondent. The request for reinstatement should include reasons why the Respondent should be reinstated, and may request an informal hearing before the OTS or its designee under this section. If the Respondent desires to present oral testimony or witnesses at the hearing, the Respondent must include a request to do so with the request for an informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right or opportunity to present oral testimony or witnesses. Unless otherwise ordered by the OTS, the dismissal shall remain in effect while a request for reinstatement made under this section is pending.

(c) *Order for informal hearing.* Upon receipt of a timely written request from a Respondent for an informal hearing on the portion of a directive requiring a savings association to dismiss from office any director or senior executive officer, the OTS shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the Respondent requests a later date. The hearing shall be held in Washington, D.C., or at such other place as may be designated by the OTS, before a presiding officer(s) designated by the OTS to conduct the hearing.

(d) *Hearing procedures.* (1) A Respondent may appear at the hearing personally or through counsel. A Respondent shall have the right to introduce relevant written materials and to present oral argument. A Respondent may introduce oral testimony and present witnesses only if expressly authorized by the OTS or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor part 509 of this chapter apply to an informal hearing under this section unless the OTS orders that such procedures shall apply.

(2) The informal hearing shall be recorded and a transcript furnished to the Respondent upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(3) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(e) *Standard for review.* A Respondent shall bear the burden of demonstrating that his or her continued employment by or service with the savings association would materially strengthen the savings association's ability—

(1) to become adequately capitalized, to the extent that the directive was issued as a result of the savings

association's capital level or failure to submit or implement a capital restoration plan; and

(2) To correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the directive was issued as a result of classification of the savings association based on supervisory criteria other than capital, pursuant to section 38(g) of the FDI Act.

(f) *Limitation on scope of review.* The level of capital or the capital category assigned to the savings association with which a Respondent is associated shall not be subject to review in any proceeding under this section.

(g) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the OTS concerning the Respondent's request for reinstatement with the savings association.

(h) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing has been requested, the OTS shall grant or deny the request for reinstatement and notify the Respondent of the OTS's decision. If the OTS denies the request for reinstatement, the OTS shall set forth in the notification the reasons for the OTS's action.

**§ 565.10 Enforcement of directives.**

(a) *Judicial remedies.* Whenever a savings association or company that controls a savings association fails to comply with a directive issued under section 38, the OTS may seek enforcement of the directive in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act, the OTS may assess a civil money penalty against any savings association or company that controls a savings association that violates or otherwise fails to comply with any final directive issued under section 38 and against any institution-affiliated party who participates in such violation or noncompliance. The failure of a savings association to implement a capital restoration plan required under section 38, or this part, or the failure of a company having control of a savings association to fulfill a guarantee of a capital restoration plan made pursuant to section 38(e)(2) of the FDI Act shall be deemed a violation of a written agreement between the savings association or company and the OTS and subject to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OTS may seek enforcement of the provisions of section 38 or this part through any other judicial or administrative proceeding authorized by law.

Dated: June 26, 1992.

By the Office of Thrift Supervision.

**Timothy Ryan,**

*Director.*

[FR Doc. 92-15790 Filed 7-1-92; 2:22 pm]

BILLING CODE 6720-01-M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 92-NM-80-AD]**

## Airworthiness Directives; Gulfstream Model G-1159 (GII), G-1159A (GIII), and G-1159B (GIIB) Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Gulfstream Model GII, GIIB, and GIII series airplanes. This proposal would require inspections to detect cracks in the forward and aft fail-safe channels and splice fittings between buttock line (BL) 135 and 156, and repair or replacement of cracked parts. This proposal is prompted by reports of cracks found in the fail-safe channels and splice fittings on the wings of several Model GII and GIII series airplanes. The actions specified by the proposed AD are intended to prevent progressive structural degradation at BL 145 wing spanwise splice and possible loss of fail-safe strength capability.

**DATES:** Comments must be received by August 24, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-80-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D-10, Savannah, Georgia 31402-9980. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Flanagan, Aerospace Engineer, Airframe Branch, ACE-120A, FAA, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991-2910; fax (404) 991-3606.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-80-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-80-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

### Discussion

During recent inspections of the wings on 29 Gulfstream Model G-1159 (GII) and G-1159A (GIII) series airplanes, cracks due to stress corrosion were

found in the fail-safe channels and splice fittings at the lower wing plank splices between rib stations 135.5 and 156 on 17 of these airplanes. Cracks in these areas, if not detected and corrected, could result in progressive structural degradation at buttock line (BL) 145 wing spanwise splice and possible loss of fail-safe strength capability.

Gulfstream has prepared an analysis of the fail-safe channel and affected structure. Results of the analysis revealed that the structure is capable of carrying limit (fail-safe) loads with a totally failed flange in the fail-safe channel. In considering a totally failed channel, the margin of safety (MS) for fail-safe loads remains significant (MS = 0.34). Since the nature of the crack is to run parallel to the load line in the radius of the fail-safe member, it can carry its total ultimate tension load. Further analysis revealed that the part can carry the total ultimate compression load if the crack length past the splice is equal to or less than three inches.

Gulfstream has also prepared an analysis of the splice fitting at BL 145. There have been reports of cracks located just above the radius in the flange and cracks in the vicinity of the fastener holes. The analysis disclosed that the original MS of the fail-safe splice fitting is not affected, provided the unsupported length of each crack is less than 4 inches. Since analysis has proven that there is still ultimate load carrying capability with cracks present, reasonable time may be granted to allow for inspection.

Both of the analyses cited above are predicated upon a crack having grown in a horizontal (spanwise) direction, parallel to the direction of loading. A crack growing in a vertical direction would indicate a problem different from that addressed in this action and would require immediate repair.

The FAA has reviewed and approved Gulfstream Customer Bulletin No. 400A (for Model GII series airplanes), No. 403A (for Model GIIB series airplanes), and No. 114A (for Model GIII series airplanes), all dated April 27, 1992, that describe procedures for inspections to detect cracks in the forward and aft fail-safe channels and splice fittings between BL 135 and 156, ensuring that any cracks found have not transitioned from the typical horizontal orientation toward a vertical orientation; and repair or replacement of cracked parts. [These customer bulletins reference Gulfstream Aircraft Service Change No. 438A (for Model GII series airplanes), No. 446A (for Model GIIB series airplanes), and No. 243A (for Model GIII series airplanes), all dated March 30, 1992, as additional service information sources.]

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspections to detect cracks in the forward and aft fail-safe channels and splice fittings between BL 135 and 156, and repair or replacement of cracked parts. The actions would be required to be accomplished in accordance with the customer bulletins described previously.

Additionally, operators would be required to submit a report to the FAA of any cracks detected during the proposed inspections.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

There are approximately 445 Model GII, GIIB, and GIII series airplanes of the affected design in the worldwide fleet. The FAA estimates that 345 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions (excluding preparation and close-up time), and that the average labor rate is $55 per work hour. Parts required to perform the inspections proposed by this AD would cost approximately $2,300 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $831,450. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Gulfstream Aerospace Corporation:** Docket 92-NM-80-AD.

*Applicability:* All Model G-1159 (GII), G-1159A (GIII), and G-1159B (GIIB) series airplanes; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent progressive structural degradation at buttock line (BL) 145 wing spanwise splice and possible loss of fail-safe strength capability, accomplish the following:

(a) Within 150 hours time-in-service after the effective date of this AD, or within 90 days after the effective date of this AD, whichever occurs first, inspect the forward and aft lower plank splice fail-safe channels and flanges and splice fittings between wing BL 135 and 156 to detect cracks, in accordance with Gulfstream Customer Bulletin No. 400A, dated April 27, 1992 (for Model GII series airplanes); Gulfstream Customer Service Bulletin No. 403A, dated April 27, 1992 (for Model GIIB series airplanes); or Gulfstream Customer Service Bulletin No. 114A, dated April 27, 1992 (for Model GIII series airplanes); as applicable.

**Note:** Inspections of the same type as those required by paragraph (a) of this AD that were accomplished prior to the effective date of this AD in accordance with Gulfstream Customer Service Bulletin No. 400, dated March 16, 1992 (for Model GII series airplanes); Gulfstream Customer Service Bulletin No. 403, dated March 16, 1992 (for Model GIIB series airplanes); or Gulfstream Customer Service Bulletin No. 114, dated March 16, 1992 (for Model GIII series airplanes); are considered in compliance with the requirements of paragraph (a) of this AD.

(1) If no cracks are found, no further action is required.

(2) If cracks are found in the fail-safe channels or splice fittings, and the cracks

meet the conditions and are within the limits specified in the applicable customer bulletin:

(i) Flight is permitted provided that repetitive inspections of the same type as the inspections required by paragraph (a) of this AD are accomplished at intervals not to exceed 6 months, in accordance with the applicable customer bulletin.

(ii) Repair cracked fail-safe channels and replace cracked splice fittings no later than the next regularly scheduled 18-month wing tank interior inspection, in accordance with the applicable customer bulletin.

(iii) Accomplishment of the repair and replacement procedures required by paragraph (a)(2)(ii) of this AD constitutes terminating action for the repetitive inspections required by paragraph (a)(2)(i) of this AD.

(3) If cracks are found as a result of the initial or repetitive inspections required by paragraph (a) or (a)(2)(i) of this AD, and the cracks do not meet the conditions and are outside the limits specified in the applicable customer bulletin: Prior to further flight, repair cracked fail-safe channels and replace cracked splice fittings, in accordance with the applicable customer bulletin.

(4) Within 10 days after the detection of cracks as a result of the initial and repetitive inspections required by paragraphs (a) and (a)(2)(i) of this AD, submit a report of crack damage to the Manager, Atlanta Aircraft Certification Office (ACO), ACE-115A, FAA, Small Airplane Directorate. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), ACE-115A, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 22, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-15794 Filed 7-6-92; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 92-NM-113-AD]**

## Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require modification of the high pressure (HP) bleed air shut-off valve circuit breakers. This proposal is prompted by a report that the selection of the "ESS+EMERG PWR ONLY" switch during an emergency situation disconnects the temperature modulating and shut-off valves and the overpressure shut-off valves of the bleed air systems from electrical power. This condition, if not corrected, could result in the inability to evacuate smoke from the cabin.

**DATES:** Comments must be received by August 17, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-113-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-113-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-113-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

### Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that, as a result of an incident in December 1989 in which severe smoke was generated in the flight deck of a Model F28 Mark 0100 series airplane, the manufacturer conducted a re-evaluation of the function of the "ESS+EMERG PWR ONLY" switch. The results of this re-evaluation revealed that the selection of "ESS+EMERG PWR ONLY" during an emergency situation disconnects the high pressure (HP) bleed temperature modulating and shut-off valves (TMSOV 1 and 2) and the overpressure shut-off valves (OPSOV 1 and 2) of the bleed air systems from electrical power. In an emergency situation, especially when smoke is present in the flight compartment, it is necessary that these valves remain electrically powered.

When "ESS+EMERG PWR ONLY" is selected, the HP temperature modulating and shut-off valves, as well as the shut-off modulating valves of the airframe anti-ice system, would automatically close, resulting in the loss of airframe ice protection. In addition, ventilation,

pressurization, and engine ice protection would depend upon low pressure (LP) bleed air delivery, which might become insufficient in low engine power settings. This condition, if not corrected, could result in the inability to evacuate smoke from the cabin.

Fokker has issued Service Bulletin SBF100–24–024, dated March 3, 1992, which describes procedures for modification of the HP bleed air shut-off valve circuit breakers. These procedures involve removing the circuit breakers from circuit breaker panels 1 and 3, modifying the airplane wiring, and installing the circuit breakers in the emergency power supply box and circuit breaker panel 2. Once this modification is accomplished, smoke evacuation would be available in the event the "ESS+EMERG PWR ONLY" switch is selected. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA No. 92–033 in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the high pressure (HP) bleed air shut-off valve circuit breakers. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 48 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $350 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $30,000. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows: Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker: Docket 92–NM–113–AD.**

*Applicability:* Model F28 Mark 0100 series airplanes; serial numbers 11244 to 11371, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the inability to evacuate smoke from the cabin, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the high pressure (HP) bleed air shut-off valve circuit breakers, in accordance with Fokker Service Bulletin SBF100–24–024, dated March 3, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 17, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–15796 Filed 7–6–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 91–NM–246–AD]**

## Airworthiness Directives; Canadair, Ltd., Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A) Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to certain Canadair Model CL–600–2A12 and CL–600–2B16 series airplanes, that would have required modification of the sensing line in the aft equipment bay. That proposal was prompted by the development of a modification which, if installed, eliminates the need for repetitive visual inspections prior to and after each refuelling of the tail cone fuel tank. This action revises the proposed rule by adding requirements to install a bonding jumper assembly on the fuel sensing line and to perform an electrical bonding test in accordance with the latest service information. The actions specified by this proposed AD are intended to prevent the presence of fuel vapors in the aft equipment bay, resulting in a potential risk of an in-flight fire in the event of a lightning strike or other ignition source in the area.

**DATES:** Comments must be received by August 8, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–246–AD, 1601 Lind Avenue SW., Renton,

Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Fiesel, Aerospace Engineer, Propulsion Branch, ANE–174, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–7421; fax (516) 791–9024.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–248–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–248–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**Discussion**

A proposal to amend part 39 of the Federal Aviation Regulations to supersede an existing airworthiness directive (AD), applicable to certain Canadair Model CL–600–2A12 and CL–600–2B16 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 2, 1992 (57 FR 21). That NPRM would have required modification of the sensing line in the aft equipment bay. That NPRM was prompted by the development of a modification which, if installed, eliminates the need for repetitive visual inspections of the sensing line prior to and after each refueling of the tail cone fuel tank.

Since the issuance of the NPRM, Canadair has issued Revision 2 to Alert Service Bulletin A601–0381, dated January 27, 1992, which describes procedures to install a bonding jumper assembly on the fuel sensing line as part of the required fuel sensing line modification. The service bulletin also describes procedures to perform an electrical bonding and resistance test to ensure that bonding requirements are met. Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, classified this revised service bulletin as mandatory and issued Canadian Airworthiness Directive CF–91–22R1 in order to assure the continued airworthiness of these airplanes in Canada.

The FAA has examined the findings of TCA, reviewed the new service information, and has determined that the proposed rule must be revised to add requirements to install a bonding jumper assembly and to perform an electrical bonding and resistance test in accordance with the revised service bulletin described previously. Paragraph (c) of the proposal has been revised accordingly.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

In addition, one commenter to the NPRM requests that the applicability statement of the proposal be clarified by specifying that the AD applies only to those Canadair Model CL–600–2A12 and CL–600–2B16 series airplanes that are equipped with a tail cone fuel tank installed in accordance with the Original Issue, Revision 1, or Revision 2 of Canadair Service Bulletin 601–0262. The FAA concurs. The applicability statement of the proposed rule has been revised accordingly.

Paragraph (e) of the AD has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

The economic analysis paragraph, below, has been revised to include the time necessary to accomplish the additional actions that are proposed in this supplemental notice. The number of work hours cited has been increased from 33 (as was noted in the preamble to the notice) to 34 in order to account for the one additional work hour that would be needed to accomplish the additional proposed actions.

The FAA estimates that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 34 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $52,360. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**CANADAIR, LTD.:** Docket 91–NM–246–AD.

*Applicability:* Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A) series airplanes; equipped with a tail cone fuel tank installed in accordance with the Original Issue, Revision 1, or Revision 2 of Canadair Service Bulletin 601–0262; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the presence of fuel vapors in the aft equipment bay, resulting in a potential risk of an in-flight fire in the event of a lightning strike or other ignition source in the area, accomplish the following:

(a) Within 5 days after August 28, 1991 (the effective date of AD 91–17–02, Amendment 39–8000), or prior to refuelling of the tail cone fuel tank, whichever occurs later, perform a visual inspection of the unshrouded portion of the sensing line in the aft equipment bay to detect any damage or deformation, in accordance with Canadair Alert Wire TA601–0381–003, dated June 11, 1991. Thereafter, repeat the inspection prior to each refuelling. If damage or deformation of the sensing line is found as a result of the visual inspection, accomplish either subparagraph (a)(1) or (a)(2) of this AD, in accordance with the alert wire:

(1) Prior to further flight, drain the tail cone fuel tank, and continue flight operations with no fuel in the tail cone fuel tank; or

(2) Prior to further flight, drain the tail cone fuel tank, replace the level control valve sensing line, and continue flight operations with fuel in the tail cone fuel tank.

(b) After each refuelling of the tail cone fuel tank, inspect for any signs of leakage from the fuel sensing line in the aft equipment bay and at the fuel shroud drain, in accordance with Canadair Alert Wire TA601–0381–003, dated June 11, 1991. If leakage is found, prior to further flight, either drain the tail cone fuel tank, or replace the tail cone fuel tank level control valve sensing line, in accordance with the alert wire.

(c) Within 6 months after the effective date of this AD, modify the sensing line; perform functional tests of the refuel/defuel line, tail tank fuel shroud, and tail tank sensing line; and perform an electrical bonding and resistance test on all fuel lines installed during this modification; in accordance with Canadair Alert Service Bulletin A601–0381, Revision 2, dated January 27, 1992.

(d) Modification of the sensing line, as required by paragraph (c) of this AD, constitutes terminating action for the repetitive inspections required by paragraphs (a) and (b) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 23, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–15795 Filed 7–6–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 92–NM–51–AD]**

## Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes. This proposal would require visual inspections to detect voids and excessive thickness of the polymer coating applied to the structure surrounding the wing center section fuel tank; and repair of any discrepancies found. This proposal is prompted by reports of voids in the fuel and fume proof polymer coating applied to the structure surrounding the center section fuel tank. The actions specified by the proposed AD are intended to prevent fuel seepage into a passenger compartment, in the event of a wing center section fuel tank leak, which could result in fire or explosion.

**DATES:** Comments must be received by August 17, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–51–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–51–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–51–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**Discussion**

The Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model 146–100A, –200A, and –300A series airplanes. The Civil Aviation Authority advises that cases have been reported of voids in the fuel and fume proof polymer coating applied to the structure surrounding the wing center section fuel tank. Voids are defined as areas where the coating has not completely covered the underlying epoxide primer on the structure. Structural areas may also have been coated too thickly to allow a visual inspection of the underlying structure. If uncorrected, this condition could result in fuel seepage into a passenger compartment, in the event of a wing center section fuel tank leak, which could result in fire or explosion.

British Aerospace has issued BAe 146 Service Bulletin SB 28–18, dated March 12, 1991, which describes procedures for visual inspections to detect voids and excessive thickness of the polymer coating applied to the structure surrounding the center section fuel tank; and repair of such discrepancies if found. The Civil Aviation Authority classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA informed of the situation described above. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require visual inspections to detect voids and excessive thickness of the polymer coating applied to the structure surrounding the center section fuel tank; and repair of any discrepancies found. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA has established a proposed compliance time of 6 months for operators to perform the initial cursory visual inspection of certain frames in the vicinity of the center section of the wing to detect the discrepancies in the polymer coating. If any discrepancies are found, operators then must perform a more detailed visual inspection of an expanded area, which would include the wing center section fuel tank, within 12 months. If any voids or excessive thickness of the polymer coating are found as a result of this inspection, they must be repaired prior to further flight. The FAA recognizes that the expanded inspection and any necessary repair of the polymer coating would necessitate considerable airplane downtime, since operators would need to gain access to a large inspection area inside the airplane. The 12-month compliance time for accomplishment of the expanded inspection would allow operators to perform this extensive inspection (and any necessary repair) during normally scheduled major maintenance, thus avoiding disruption of operations.

The FAA also recognizes that there is a low probability of fuel leakage from the tank, and therefore, a low probability that the polymer coating will be used to halt fuel seepage. In view of this, the FAA considers that the proposed compliance timeframe for inspection(s) and repairs, which may encompass a total of 18 months for some operators, is reasonable.

The FAA estimates that 70 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 43 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $165,550. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**BRITISH AEROSPACE: Docket 92–NM–51–AD.**

*Applicability:* Model BAe 146–100A, –200A, and –300A series airplanes; as listed in British Aerospace BAe 146 Service Bulletin SB 28–18, dated March 12, 1991; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously. To prevent fuel seepage into a passenger compartment, in the event of a wing center section fuel tank leak, which could result in fire or explosion, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a visual inspection of the polymer coating applied to frames 26 and 29 in the center section of the wing, to detect voids and excessive thickness of the polymer coating that will not permit a visual inspection of the underlying structure, in accordance with British Aerospace BAe 146 Service Bulletin SB 28–18, dated March 12, 1991.

(b) If no voids are found and if the polymer coating is of sufficient thickness so as to allow a visual inspection of underlying structure, no further action is necessary.

(c) If any voids are found, or if the polymer coating is found to be excessively thick: Within 12 months after the completion of the inspection required by paragraph (a) of this AD, perform a visual inspection of the

polymer coating applied to the wing center section fuel tank and to frames 28 and 29, to detect additional voids or excessive thickness, in accordance with British Aerospace BAe 146 Service Bulletin SB 28-18, dated March 12, 1991.

(1) Prior to further flight, repair all voids detected, in accordance with paragraph 2.B.(3) of the Service Bulletin.

(2) Prior to further flight, repair all excessively thick polymer coating areas detected, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 17, 1992.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-15797 Filed 7-6-92; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[INTL-0079-91]

RIN 1545-AQ06

### Information Returns Required of United States Persons With Respect to Certain Foreign Corporations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed income tax regulations relating to information returns required of United States persons with respect to annual accounting periods of certain foreign corporations. These regulations would clarify certain requirements of §§ 1.6035-1, 1.6038-2, and 1.6046-1 of the Income Tax Regulations relating to Form 5471 and would affect controlled foreign corporations and their United States shareholders.

**DATES:** Comments and requests for a public hearing must be received by September 8, 1992.

**ADDRESSES:** Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL-0079-91), room 5228, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL-0079-91) (202-566-6645, not a toll free call).

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction Act

The collection of information contained in this Notice of Proposed Rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP. Washington, DC 20224.

The collection of information in these regulations is in §§ 1.6035-1, 1.6038-2, and 1.6046-1. This information is required by the Internal Revenue Service pursuant to section 6035, section 6038, and section 6046 of the Internal Revenue Code.

Estimates of the reporting burden in this Notice of Proposed Rulemaking will be reflected in the burden of Form 5471.

#### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 6035, 6038, and 6046 of the Internal Revenue Code of 1986 (Code). These amendments are proposed to clarify the requirements of §§ 1.6035-1, 1.6038-2, and 1.6046-1 of the Income Tax Regulations relating to Form 5471.

#### Explanation of Provisions

These proposed regulations would make four amendments to § 1.6038-2 of the regulations. First, paragraph (e) would be amended to include the sentence "In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period." This amendment conforms the regulation to section 6038(e)(2) of the Code, the second sentence of which was added by section 11701(f) of Public Law 101-508. Also, the third sentence of paragraph (e) would be amended to update its citation to section 902(c)(2), now section 902(c)(5). Second, paragraph (f)(10) would be amended to include new paragraph (v), which would conform this paragraph to section 6038(a)(1)(B) of the Internal Revenue Code as amended by section 1202(c) of Public Law 99-514. Third, paragraph (g) would be amended to clarify the authority of the Service to make changes to the format in which information specified in the statute and regulation is presented. It has been suggested that the present language of that paragraph can be interpreted to conflict with the Service's changes to the instructions for Form 5471 (October 1990 rev.). See Announcement 91-34, 1991-10 I.R.B. 29 (March 11, 1991) (second paragraph).

Fourth, paragraph (h) would be amended to provide that financial statement information furnished under paragraph (g) be expressed in United States dollars translated in conformity with United States generally accepted accounting principles and also, with respect to the profit and loss statement required by paragraph (g)(1), in functional currency. Comments are requested regarding whether this or some other translation rule would be less burdensome than the weighted average rate presently required by Form 5471. In addition, paragraph (h) would be amended to permit functional currency reporting of certain earnings and profits amounts, to require translation of foreign taxes in accordance with section 986, and to provide a uniform translation convention for related party transactions reportable on Schedule M of Form 5471. The Service believes that the proposed changes in the translation conventions will ease compliance burdens and provide more useful information than the current rules. Accordingly, these changes are proposed to be effective for taxable years ending after December 15, 1991. However, taxpayers will not be required to comply with these new rules until after the regulations have been finalized and 60 days have elapsed since the release of a 1992 revision of the Form 5471 reflecting these rules. Comments are requested on these effective dates.

The Service is also contemplating amending the regulations to require reporting of earnings and profits in each section 904 (d) separate limitation category. Comments and suggestions are

invited on this and other format changes to Form 5471. Specifically, the Service is considering the deletion of Schedules D (Cost of Goods Sold) and G (Analysis of Unappropriated Retained Earnings per Books) of the October 1990 revision of Form 5471.

Conforming changes would be made also to §§ 1.6035–1 and 1.6046–1 regarding the taxable year of specified foreign corporations under section 898 and the reporting and translation of financial information. Finally, changes are proposed to § 1.6038–2 (d) to reflect changes made by the Tax Reform Act of 1986 relating to possessions corporations and bona fide residents of United States possessions.

**Special Analyses**

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Comments and Request for a Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

**List of Subjects in 26 CFR §§ 1.6031–1 Through 1.6060–1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendment to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

**Paragraph 1.** The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.6035–1 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

**§ 1.6035–1 Returns of U.S. officers, directors and 10-percent shareholders of foreign personal holding companies for taxable years beginning after September 3, 1982.**

(a) * * *

(1) * * * In the case of a foreign personal holding company which is a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period.

* * * * *

**Par. 3.** Section 1.6038–2 is amended as follows:

1. Paragraph (d) is amended by adding new paragraph (d)(5) as set forth below.

2. Paragraph (e) is amended by removing the third sentence and adding two new sentences in its place as set forth below.

3. Paragraph (f)(10) is amended by removing the word "and" immediately after the semicolon in paragraph (f)(10)(iii) and by adding new paragraph (f)(10)(v) to read as set forth below.

4. The introductory text of paragraph (g) is amended by adding a parenthetical sentence immediately before the colon to read as set forth below.

5. Paragraph (h) is amended by removing the first sentence thereof and adding in its place new text to read as set forth below.

**§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.**

* * * * *

(d) * * *

(5) For taxable years ending after December 31, 1987, with respect to a corporation organized under the laws of American Samoa, the term does not include an individual who is a bona fide resident of American Samoa, provided—

(i) 80 percent or more of the gross income of the corporation for the 3-year period ending at the close of the taxable year (or for such part of such period as such corporation or any predecessor has been in existence) was derived from sources within such possession or was effectively connected with the conduct of a trade or business in such possession; and

(ii) 50 percent or more of the gross income of which for such period (or part) was derived from the conduct of an active trade or business within such possession.

* * * * *

(e) * * * In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period. The term "annual accounting period" may refer to a period of less than one year, where, for example, the foreign income, war profits, and excess profits taxes are determined on the basis of an accounting period of less than one year as described in section 902(c)(5). * * *

* * * * *

(f) * * *

(10) * * *

(v) (For Forms 5471 filed for tax years ending after December 15, 1990) post-1986 accumulated earnings and profits, pre-1987 accumulated earnings and profits, total accumulated earnings and profits, and previously taxed earnings and profits described in section 959(c); and

* * * * *

(g) *Financial statements.* * * * (Forms 5471 filed after September 30, 1991, shall contain this information in such form or manner as the form shall prescribe with respect to each foreign corporation.)

* * *

* * * * *

(h) *Method of reporting.* Except as provided below, all amounts furnished under paragraphs (f) and (g) of this section shall be expressed in United States dollars with a statement of the exchange rates used. The following rules shall apply for tax years ending after December 15, 1991. All amounts furnished under paragraph (g) of this section shall be expressed in United States dollars computed and translated in conformity with United States generally accepted accounting principles. Amounts furnished under paragraph (g)(1) of this section shall also be furnished in the foreign corporation's functional currency as required on the form. Earnings and profits amounts furnished under paragraph (f)(10) (i), (iii), (iv) and (v) of this section shall be expressed in the foreign corporation's functional currency except to the extent the form requires specific items to be translated into United States dollars.

Tax amounts furnished under paragraph (f)(10)(i) of this section shall be furnished in the foreign corporation's functional currency and in United States dollars translated in accordance with section 986(a). All amounts furnished under paragraph (f)(11) of this section shall be expressed in U.S. dollars translated from functional currency at the weighted average exchange rate for the year as defined in § 1.989(b)–1. The foreign corporation's functional currency is determined under section 985. * * *

* * * * *

Par. 4. Section 1.6046–1 is amended as follows:

1. Paragraph (f) is amended by adding new paragraph (f)(5) to read as set forth below.

2. Paragraph (g) is amended by adding three sentences at the end as set forth below.

**§ 1.6046–1 Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock, on or after January 1, 1963.**

* * * * *

(f) * * *

(5) *Accounting period and taxable year.* In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period.

(g) * * * For tax years ending after December 15, 1991, all amounts furnished under paragraph (b) or (c) of this section shall be expressed in United States dollars computed and translated in conformity with United States generally accepted accounting principles. Amounts furnished under paragraphs (b)(10)(i) and (c)(3)(i) of this section shall also be furnished in the foreign corporation's functional currency as required on the form. For tax years ending after December 15, 1991, information described in paragraphs (b)(10) and (c)(3) of this section shall be submitted in such form or manner as the form shall prescribe.

* * * * *

**Shirley D. Peterson,**

*Commissioner of Internal Revenue.*

[FR Doc. 92–15492 Filed 7–6–92; 8:45 am]

BILLING CODE 4830–01–M

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Parts 48, 75, and 77**

**RIN 1219–AA55**

**Training and Retraining of Miners**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice of public hearings; close of record.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) will hold public hearings on its September 24, 1991, proposed rule amending its training requirements for miners in 30 CFR part 48. The hearings will be held in Arlington, Virginia, and Denver, Colorado.

**DATES:** All requests to make oral presentations for the record should be submitted at least 5 days before the hearing date. Immediately before the hearing, any unallotted time will be made available to persons making later requests. The public hearings will be held Tuesday, July 21, 1992, in Arlington, Virginia, and Thursday, July 23, 1992, in Denver, Colorado. All hearings will begin at 9 a.m.

The record for this rulemaking will close on August 21, 1992.

**ADDRESSES:** The hearings will be held at the following locations: Ramada Renaissance Hotel, Gallery II Room, Ballston Metro Center, 950 North Stafford Street, Arlington, Virginia, 22203; and Westin Hotel, Tabor Center, Lawrence Room, 1672 Lawrence Street, Denver, Colorado, 80202.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia, 22203.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA (703) 235–1910.

**SUPPLEMENTARY INFORMATION:** On September 24, 1991, MSHA published a proposed rule to amend its training requirements for miners in 30 CFR part 48 (56 FR 48376). The Agency initially scheduled the written comment period for the proposed rule to close on November 25, 1991. In response to requests from the mining community, on November 25, 1991, MSHA extended the comment period to January 24, 1992 (56 FR 59235). The proposed rule would revise the definition of "miner" to include all supervisory personnel. It would revise the definition of "experienced miner" to mean a miner who has had one year of mining experience and, for miners hired after October 13, 1978, "experienced miner" would mean those who have completed new miner training. In addition, the proposal would strengthen the training for experienced miners, including supervisory personnel, by adding course requirements. MSHA also proposed to remove or revise certain coal mine training requirements in 30 CFR parts 75 and 77 that would be covered by part 48.

In addition to making comments on the Agency's proposed changes to part 48, several commenters recommended that MSHA expand its revision of part 48 and suggested revisions beyond the scope of those proposed. MSHA has considered these comments and has determined that these additional issues raised would best be addressed in a separate rulemaking. As a result, the public hearings announced in this notice will address only the specific changes to part 48 contained in the September 1991 proposal.

The purpose of the public hearings is to receive relevant comments and respond to questions about the proposed standard. The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence or cross examination will not apply, the presiding MSHA official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. In the interests of conducting a productive hearing, MSHA will schedule speakers in a manner that allows all points of view to be heard as effectively as possible.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. Copies of the hearing transcripts will be made available to the public for review.

To allow for the submission of any post-hearing comments and final remakes, the record will remain open until Monday, August, 24, 1992.

VOL 57 ISS 130 JL 7 1992 UMI



Dated: June 30, 1992.

William J. Tattersall,

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 92-15807 Filed 7-6-92; 8:45 am]

BILLING CODE 4510-43-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**44 CFR Part 206**

**RIN 3067-AB97**

## Disaster Assistance; Public Elementary and Secondary School Facilities

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Proposed rule.

**SUMMARY:** FEMA proposes to provide an exception to its general practice of deferring to the authority of another Federal agency when both FEMA and the other agency have authority to grant assistance in response to a declared major disaster. This exception is being provided for public elementary and secondary school facilities which are eligible for assistance from FEMA and from the Department of Education (ED). This will allow FEMA to grant assistance to public schools in major disasters without having to make a special exception for each case. This transfer of responsibility to FEMA from ED will eliminate the overlap of the two programs and the confusion resulting from that overlap.

**DATES:** Comments from the public are encouraged and will be accepted until September 8, 1992.

**ADDRESSES:** Send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Charles B. Stuart, Disaster Assistance Programs, room 714, 500 C Street SW., Washington, DC 20472,(202) 646-3691.

**SUPPLEMENTARY INFORMATION:** An evaluation of the response to Hurricane Hugo and the Loma Prieta Earthquake by FEMA identified difficulties resulting from overlapping authorities for disaster assistance to local school districts between the FEMA and the Department of Education (ED). When public school facilities are damaged by a major disaster, ED is authorized to grant assistance for the repair of the academic facilities. Other facilities at the same school are eligible only for FEMA assistance. The result causes confusion among local officials as to how much assistance is coming from which agency.

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (Stafford Act), which authorizes the President to grant disaster assistance, FEMA may grant assistance to local governmental agencies, including school districts, for repair of all facilities owned by an agency. Because of the possible confusion mentioned above, the two agencies determined that to the extent possible all disaster assistance for public elementary and secondary schools would be consolidated under one agency. ED has removed funds for disaster assistance for public primary and secondary schools from its 1992 budget request. Therefore, in fiscal year 1992 and thereafter, FEMA intends to consider all facilities of such schools among those governmental facilities eligible for FEMA assistance.

Although FEMA has broad authority under the Stafford Act to grant assistance for the repair and restoration of facilities damaged or destroyed by a major disaster, FEMA regulations provide that FEMA will generally defer to another Federal agency authority's as follows:

*Section 206.226(a) Assistance Under Other Federal Agency (OFA) Programs*

Generally, disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.

On the basis of the understanding reached between FEMA and ED, FEMA proposes to make public elementary and secondary school facilities an exception to the deferral to an OFA authority.

One specific type of assistance would remain the responsibility of ED. The payment of increased current operating expenses and replacement of lost revenuea is authorized by 20 U.S.C. 241-1(a), and is implemented by 34 CFR 219.14. The Stafford Act contains no authority to replace directly lost revenues and thus that form of assistance is not available from FEMA. This type of assistance was seldom granted by ED in the past.

No change in the amount of assistance granted is proposed because all of the assistance formerly granted by ED is eligible under FEMA's program, with the exception noted above. Each applicant should receive the same total amount of assistance from one agency instead of two. The change also will cause no problems to FEMA personnel or local officials in the field. School district officials will be instructed to submit their applications for all assistance to the State emergency management agency, an office they already work with for FEMA assistance.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

**Paperwork Reduction Act**

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 206**

Administrative practice and procedure, Community facilities, Disaster assistance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 206 is proposed to be amended as follows:

## PART 206—[AMENDED]

1. The authority citation for part 206 continues to read as follows:

**Authority:** 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12148, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 3 CFR, 1989 Comp., p. 214.

2. Section 206.226 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 206.226 Restoration of damaged facilities.**

* * * * *

*(a) Assistance under other Federal agency (OFA) programs.*

(1) Generally, disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.

(2) An exception to the policy described in the preceding paragraph exists for public elementary and secondary school facilities which are otherwise eligible for assistance from the Department of Education (ED) under Pub. L. 81–815 and 20 U.S.C. 241–1. Such facilities are also eligible for assistance from FEMA under the Stafford Act, and grantees shall accept applications from local educational agencies for assistance under the Stafford Act.

(3) The exception does not cover payment of increased current operating expenses or replacement of lost revenues as provided in 20 U.S.C. 241–1(a) and implemented by 34 CFR 219.14. Such assistance shall continue to be granted and administered by the Department of Education.

* * * * *

Dated: June 18, 1992.

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support.*

[FR Doc. 92–15814 Filed 7–6–92; 8:45 am]

BILLING CODE 6718–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**(MM Docket No. 92–140, RM–8015)**

### Radio Broadcasting Services; Grants, NM

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Don R. Davis seeking the substitution of Channel 264C2 for Channel 265C2 at Grants, New Mexico, and the modification of Station KZNM's license accordingly. The Table of FM Allotments has not been editorially amended to reflect the downgrade of Channel 265 to Class A pursuant to the licensing of Station KZNM on March 4, 1992. Channel 264C2 can be allotted to Grants in compliance with the Commission's minimum distance separation requirements at Station KZNM's licensed transmitter site, at coordinates North Latitude 35–07–09 and West Longitude 107–54–08. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Grants or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

**DATES:** Comments must be filed on or before August 21, 1992, and reply comments on or before September 8, 1992.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Don R. Davis, 733 Roosevelt, Grants, New Mexico 87020 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–140, adopted June 18, 1992, and released June 30, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92–15749 Filed 7–6–92; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 73

**(MM Docket No. 92–139, RM–8000)**

### Radio Broadcasting Services; Rogers City, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Ives Broadcasting Company proposing the allotment of Channel 260C2 to Rogers City, Michigan, as that community's second FM broadcast service. Canadian concurrence will be requested for this allotment at coordinates 45–25–17 and 83–49–06, without a site restriction.

**DATES:** Comments must be filed on or before August 21, 1992, and reply comments on or before September 8, 1992.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gregg P. Skall, Neal J. Friedman, Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–139, adopted June 18, 1992, and released June 30, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92–15745 Filed 7–6–92; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 16**

**RIN 1018-AB13**

**Injurious Wildlife: Importation of Fish or Fish Eggs**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule amends rules first published in 1968 and revised in 1973 (50 CFR 16). A "Notice of Intent to Revise" rules in 50 CFR 16 relating to reducing the risk of spreading fish pathogens through the importation of certain fish or fish eggs was published in August 1989. The comments received made it clear that changes in 50 CFR 16 are needed. The proposed rule incorporates many of the recommendations received from that solicitation. The proposed rule simplifies the importation of eviscerated fish destined for human consumption, removes restrictions on whirling disease caused by *Myxobolus cerebralis*, adds specific requirements for pre-importation egg disinfection, and describes in detail specific sampling, sample processing, and laboratory methods required for the detection of *Oncorhynchus masou* virus and the viruses causing infectious pancreatic necrosis, infectious hematopoietic necrosis, and viral hemorrhagic septicemia in fish of the family Salmonidae. Other editorial changes have been made for clarity.

**DATES:** Comments must be submitted on or before August 21, 1992.

**ADDRESSES:** Comments must be sent to: Chief, Division of Fish Hatcheries, ARLSQ 820, U.S. Fish and Wildlife Service, Department of the Interior, 1849 C Street, NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** John Nickum, Telephone 703–358–1878; Faxform FTS–921–2210 or 703–358–2210.

**SUPPLEMENTARY INFORMATION:**

**Background**

In August 1989, the U.S. Fish and Wildlife Service published in the **Federal Register** a "Notice of Intent to Revise" regulations (50 CFR 16) pertaining to the importation of salmonid fish, fish eggs, and fish products for the purpose of preventing the introduction of the virus causing viral hemorrhagic septicemia or the protozoan parasite (*Myxobolus cerebralis*) causing whirling disease. The comments received have been thoroughly reviewed and strong support for certain changes in 50 CFR 16 was clear. Some recommendations were broad in nature and could only be addressed through the developlent of a comprehensive national fish health program. Due to technological advances, serious weaknesses exist in the current regulations. Consequently, it is necessary to both modify these rules and develop a more comprehensive program that serves the interests of the Nation's natural resources and those of aquaculture.

**Highlights of Proposed Changes**

The proposed rule is patterned after the original rule. Numerous minor editorial changes have been made for easier reading and clarity. Substantive changes include the following:

1. There is no longer any requirement for fish disease inspections on dead fish "when such fish have been eviscerated (all internal organs removed) or filetted or when such fish or eggs have been processed by canning, pickling, or otherwise prepared in a manner whereby. . ." the four listed viruses have been killed.

*Comment:* No evidence has been found to indicate that the importation of eviscerated fish or fish products have contributed to the spread of fish diseases into the United States. For this reason and because of the burden these regulations had placed on commerce and upon ports of entry, the Service agreed with recommendations to make this change. In addition, provisions that "Any fish caught in the wild in North America under a valid sport or commercial fishing license shall be exempt from the requirements for sampling and certification and from the filing of the Declaration for Importation of Wildlife" remain in effect.

2. A requirement has been added for iodophor (polyvinylpyrrolidone iodine) disinfection of fish eggs within the 24 hours prior to shipment into the United States and for holding disinfected eggs in pathogen-free water prior to packing and shipment.

*Comment:* Both the benefits and limitations of iodophor disinfection are understood. Effective egg disinfection vastly reduces the incidence of infectious hematopoietic necrosis (IHN) associated with transferring infected broodstock eggs. However, iodophor egg disinfection cannot be relied upon to halt the spread of infectious pancreatic necrosis virus (IPN) or Renibacterium salmoninarum, the causative agent of bacterial kidney disease. Nonetheless, there were numerous recommendations for adding egg disinfection provisions to 50 CFR 16.

3. Whirling disease, caused by Myxobolus cerebralis, has been dropped from the regulation.

*Comment:* Much has been learned in recent years about the life cycle of the protozoan parasite causing whirling disease. This information has contributed to a better understanding of the factors controlling the spread of the disease and the severity of outbreaks. Disease management can involve control of the intermediate host, Tubificid worms that live in stream or pond bottoms. Strong recommendations were made to remove whirling disease from 50 CFR 16 becuase the disease can be effectively managed.

4. Oncorhynchus masou virus and the viruses causing IHN and IPN have been added to the already listed viral hemorrhagic septicemia (VHS) virus for a total of four viruses.

*Comment:* Viral diseases are essentially untreatable. IPN and others can kill high percentages of infected fish. Some can be shipped with eggs over great distances in a matter of hours. Egg transmission has been responsible for IHN outbreaks in the United States and may have been involved in spreading the IHN virus from North America to Europe and Japan. Oncorhynchus masou virus occurs in salmonids in Japan but has not been detected in North America. A new strain of VHS virus has been isolated from spawning salmon in the Pacific Northwest but outbreaks have been prevented in hatchery fish. The laboratory procedures to detect the four viruses listed are similar. Therefore, one set of sampling, sample processing, and laboratory procedures can effectively screen for all four disease agents. This simplifies laboratory work and enhances fish health protection for both natural resources and aquaculture.

5. The proposed regulation replaces outdated technical procedures published in U.S. Fish and Wildlife Service Fish Disease Leaflet No. 9 with modern procedures described in the regulation detailing sampling, sample processing, cell culture procedures, and virus identification methods.

*Comment:* The technical procedures required by 50 CFR 16, prior to this revision, have been outdated for more than 15 years. Significant technical advances in sampling, processing samples, and detecting and identifying viruses have been made in that time. The procedures described in the proposed regulation reflect these advances and represent the current technical standard.

**General Information**

All interested parties are hereby notified that the U.S. Fish and Wildlife Service proposes to revise 50 CFR 16 and invites public comment. No public meetings have been scheduled. Written comment should be mailed to: Chief, Division of Fish Hatcheries, ARLSQ 820, U.S. Fish and Wildlife Service, Department of the Interior, 1849 C Street, NW., Washington, DC 20240. This proposed rule is not a major rule for the purposes of E.O. 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small business entities. The proposed rule will ease the movement of fresh dressed or fully processed fishery products from foreign countries into the United States. The quantity is already governed by competitive processes among and between the aquaculture and capture fishery industries. The current regulations do not measurably restrict the movement of these products. The proposed changes would lessen any remaining effects.

**Required Determinations**

Any takings implications these regulatory changes may have are excluded by provisions in E.O. 12630 because they relate to criminal proceedings in law enforcement actions involving the seizure of property, for forfeiture or as evidence, for violation of law. The proposed regulation does not have significant federalism effects or sufficient implications to warrant preparation of a Federalism Assessment under E.O. 12812. The Service has determined that this proposal is a categorical exclusion as provided by 516 DM 6 Appendix 1.

**Information Collection Requirements**

The information collection requirements contained in 50 CFR Part 16 has been approved by the office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0078. The information is being collected to inform U.S. Customs and Service inspectors of the contents, origin, routing, and destination of fish and egg shipments and to certify that the fish lots were inspected for listed pathogens. The information will be used to protect the health of the fishery resource. Response is required to obtain a benefit.

Primary author is Dr. John Nickum, Division of Fish Hatcheries.

**List of Subjects in 50 CFR Part 16**

Fish, Imports, Reporting and recordkeeping requirements, Transportation, and Wildlife.

For the reasons set out in the preamble, title 50 part 16 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 16 continues to read as follows:

**Authority:** 16 U.S.C. 42.

2. Section 16.13 is proposed to be revised as follows:

**§ 16.13 Importation of live or dead fish, mollusks, and crustaceans, or their eggs.**

(a) Upon filing of a written declaration with the District Director of Customs at the port of entry as required under § 14.61, live or dead fish, mollusks, and crustaceans, or parts thereof, or their eggs, may be imported, transported, and possessed in captivity without a permit except as follows:

(1) No such live fish, mollusks, crustacean, or any progeny or eggs thereof may be released into the wild except by the State Wildlife conservation agency having jurisdiction over the area of release or by persons having prior written permission from such agency.

(2) The importation, transportation, or acquisition of any live fish or viable eggs of the walking catfish, family Clariidae, and live crustaceans or viable eggs of mitten crabs, genus *Eriocheir*, is prohibited except as provided under the terms and conditions set forth in § 16.22.

(3) Live or dead uneviscerated salmonid fish (family Salmonidae) and live fertilized fish eggs or gametes of salmonid fish are prohibited entry into the United States for any purpose except by direct shipment accompanied by a certification that: as defined in § 16.13(d)(1), the fish lots, from which the shipments originated, have been sampled; virus assays have been conducted on the samples according to methods described in § 16.13(d)(2 through 4); and the fish stocks have been found to be free of *Oncorhynchus masou* virus and the viruses causing viral hemorrhagic septicemia, infectious hematopoietic necrosis, and infectious pancreatic necrosis. This provision does not affect authorities of Federal agencies in § 16.32.

(4) All live fish eggs of salmonid fish must be disinfected within 24 hours prior to shipment to the United States. Disinfection shall be accomplished by immersion for 15 minutes in a 75 part per million (titratable active iodine) non-detergent solution of polyvinylpyrrolidone iodine (iodophor) buffered to a pH of 6.0 to 7.0. Following disinfection, the eggs shall be rinsed and maintained in water free of fish pathogens until packed and shipped.

(b)(1) The certification to accompany importations as required by this section shall consist of a statement in the English language, printed or typewritten, stating that this shipment of dead uneviscerated salmonid fish, live salmonid fish, or live, disinfected fertilized eggs or gametes of salmonid fish has been determined, by the methods outlined in § 16.13, to be free of the listed viruses. The certification shall be signed in the country of origin by a qualified fish pathologist designated as a certifying official by the Director.

(2) The certification must contain (i) the date and port of export in the country of origin and the anticipated date of arrival in the United States and port of entry; (ii) surface vessel name or number or air carrier and flight number; (iii) bill of lading number or airway bill number; (iv) the date and location where fish, tissue, or fluid samples were collected; (v) the date and location where virus assays were completed; and, (vi) the handwritten signature, in ink, of the authorized certifying officer and his or her address and telephone number.

(3) Certification may be substantially in the following form:

I,_____, approved by the Director of the U.S. Fish and Wildlife Service on _____(date), as a certifying official for _____ (country), as required by Title 50, CFR 16.13, do hereby certify that the fish lot(s) of origin for this shipment of _____(weight in kilograms) dead uneviscerated salmonid fish, live salmonid fish, live salmonid fish eggs disinfected as described in § 16.13, or live salmonid gametes to be shipped under _____ (bill of lading number or airway bill number), were sampled at _____ (location of fish facility) on _____ (sampling date) and the required viral assays were completed on _____ (date assays were completed) at _____ (location where assays were conducted) using the methodology described in § 16.13. I further certify that the results of the viral assays indicate that the fish lot(s) of origin is (are) free of *Oncorhynchus masou* virus and the viruses causing viral hemorrhagic septicemia, infectious hematopoietic necrosis, and infectious pancreatic necrosis.

The shipment is scheduled to depart _____ (city and country) on _____ (date), via _____ (name of carrier) with anticipated arrival at the port of _____ (city), U.S.A., on _____ (date).

_____

(Signature in ink of certifying official)

Date:

Organization employing certifying official: —

_____

Mailing address: _____

City: _____
State/Province: _____
Zip Code/Mail Code: _____
Country: _____
Office telephone number: International code:
Telephone number: _____
Fax number: _____

(c) Nothing in this part shall restrict the importation and transportation of dead salmonid fish when such fish have been eviscerated (all internal organs removed) or filetted or when such fish or eggs have been processed by canning, pickling, smoking, or otherwise prepared in a manner whereby the *Oncorhynchus masou* virus and the viruses causing viral hemorrhagic septicemia, infectious hematopoietic necrosis, and infectious pancreatic necrosis have been killed. Any fish caught in the wild in North America under a valid sport or commercial fishing license shall be exempt from sampling and certification requirements and from filing the Declaration for Importation of wildlife.

(d) Fish sampling requirements, sample processing, and methods for virus assays.

(1) *Fish sampling requirements.* (i) Sampling for virus assays required by this section must be conducted within the six (6) months prior to the date of shipment of dead uneviscerated salmonid fish, live salmonid fish, live salmonid eggs, or salmonid gametes to the United States. Sampling shall be on a lot-by-lot basis with the samples from each lot distinctively marked, maintained, and processed for virus assay separately. A fish lot is defined as a group of fish of the same species and age that originated from the same discrete spawning population and that always have shared a common water supply. In the case of adult broodstock, various age groups of the same fish species may be sampled as a single lot, provided they meet the other conditions previously stated and have shared the same container(s) for at least 1 year prior to the sampling date.

(ii) In a sample, or sub-sample of a given lot, collection of 10 or more moribund fish shall be given first preference. The remainder of fish required for collection shall be randomly selected live fish from all containers occupied by the lot being sampled. Moribund fish shall be collected and processed separately from randomly selected fish. In the event the sample is taken from adult broodstock of different ages which share the same container, first preference shall be given to collecting samples from the older fish.

(iii) The minimum sample numbers collected from each lot must be in accordance with a plan that provides 95 percent confidence that at least one fish, with a detectable level of infection, will be collected and will be present int he sample if the assumed minimum prevalence of infection equals or exceeds 2 percent. A total of 150 fish collected proportionately from among all containers shared by the lot usually meets this requirement.

(iv) Fish must be alive when collected and processed within 48 hours after collection. Tissue and fluid samples shall be stored in sealed, aseptic containers and kept at 4° Centigrade (C.) or on ice but not frozen.

(v) Tissue collection shall be as follows:

(A) Sac fry and fry to 4 centimeter (cm): Assay entire fish. If present, remove the yolk sac.

(B) Fish 4–6 cm: Assay entire visceral mass including kidney.

(C) Fish longer than 6 cm: Assay kidney and spleen in approximately equal weight proportions.

(D) Spawning adult broodstock: Assay ovarian fluid from females. Assay kidney and spleen tissues from males. Both sexes should be sampled in equal numbers in approximately equal sample volume or weight proportions.

(2) *General sample processing requirements.* (i) Ovarian fluid samples shall be collected from each spawning female separately. All samples from individual fish shall be measured to ensure that similar quantities from each fish are combined if samples are pooled. Ovarian fluid samples from no more than five fish may be combined to form a pool.

(ii) Whole fry (less yolk sacs), viscera, and kidney and spleen tissues from no more than five fish may be similarly pooled.

(iii) Antibiotics and antifungal agents may be added to ovarian fluid or tissue samples to control microbial contaminant growth at the time of sample collection. Final concentrations shall not exceed 200–500 micrograms/milliliter (μg/ml) of Gentamycin, 800 international unis/milliliter (IU/ml) of penicillin, or 800 μg/ml of streptomycin. Antifungal agent concentrations should not exceed 200 IU/ml of mycostatin (Nystatin) or 20 μg/ml of amphotericin B (Fungizone).

(iv) Sample temperature must be maintained between 4 and 15 °C. during processng. Use separate sets of sterile homogenization and processing equipment to process fluids or tissues from each fish lot sampled. Processing equipment need not be sterilized between samples within a single lot.

(v) Homogenized tissue samples may be diluted 1:10 with buffered cell culture medium (pH 7.4–7.8) contining antibiotics and antifungal agents not exceeding the concentrations described in (iii) above. Centrifuge tissue suspensions and ovarian fluid samples 4 °C. at 2,500 x gravity (g) (relative centrifugal force) for 15 minutes. Resulting supernatant solutions can be stored overnight at 4 °/C.

(vi) Pellets from the centrifugation of ovarian fluid samples shall be re-suspended in buffered cell culture medium, containing antibiotics and antifungal agents not exceeding the concentrations described in (iii) above, equal to one-tenth of the original ovarian fluid volume from which the pellet was obtained. The pellet suspension shall be sonicated at 75–100 watts for 10 seconds. This prepartion aids in the detection of the infectious pancreatic necrosis virus; therefore, pellet suspensions shall be processed for virus assay as an additional batch of samples in the same manner as ovarian fluids.

(vii) Prior to inoculation onto cell cultures, total dilution of processed tissue samples must not exceed 1:100 ((volume to volume) (v/v)) and total dilution of ovarian fluid supernatant samples or samples from resuspended and sonicated ovarian fluid pellets must not exceed 1:20 (v/v). In samples inoculated into cell cultures, the final antibiotic concentration shall not exceed 100 μg/ml of Gentamicin, 100 IU/ml of penicillin, or 100 μg/ml of streptomycin and antifungal agent concentrations should not exceed 25 IU/ml of mycostatin (Nystatin) or 2.5 μg/ml of amphotericin B (Fungizone).

(3) *Cell culture procedures.* (i) Both epithelioma papulosum cyprini (EPC) and chinook salmon embryo (CHSE–214) cell lines must be maintained and used in all virus assays. Susceptible, normal appearing, and rapidly dividing cell cultures shall be selected. Penicillin (100 IU/ml), streptomycin (100 μg/ml), and antifungal agents, such as mycostatin/Nystatin (25 IU/ml) or amphotericin B/Fungizone (2.5 μg/ml), are permitted in media used for cell culture and virus assay work.

(ii) Cell cultures shall be seeded and grown, at optimum temperatures, to 80–90 percent confluence in 24–well plates for virus assay work.

(iii) Decant the medium from a 24-well plate of each cell line and inoculate four wells per plate with .10 ml of processed sample per well. When all wells have been inoculated, tilt plates to spread the inocula evenly. Incubate inoculated plates for 1 hour at 15 °C. for sample contact. After the 1 hour contact time, aspirate or decant the inocula, and add cell culture medium. Medium shall be buffered or cells incubated so that a pH

between 7.4 and 7.8 is maintained. All cell culture assays shall be incubated, without overlays, at 15 °C. for 21 days.

(4) *Virus identification by serological methods.* All cell cultures showing cytopathic effects (CPE) must be sub-cultured onto fresh cell cultures. If CPE is observed, determine the presence and identity the virus by serum neutralization, dot blot, enzyme-linked immunosorbent assay, or other equivalent serological technique.

(e) Information concerning the importation requirements of § 16.13 and appliation requirements for designation as a certifying official for § 16.13 purposes may be obtained by contacting: U.S. Department of the Interior, U.S. Fish and Wildlife Service, Division of Fish Hatcheries (820 Arlington Square), 1849 C Street, NW., Washington, DC 20240. Telephone 705–358–1878.

(f) Information collection requirements (Reserved).

Dated: September 17, 1991.

**Richard N. Smith,**

*Acting Director, U.S. Fish and Wildlife Service.*

**Note:** Document received in the Office of the Federal Register on June 30, 1992.

[FR Doc. 92–15744 Filed 7–6–92; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 611 and 678

**[Docket No. 920409–2109]**

**RIN 0648–AD12**

## Fishery Conservation and Management; Foreign Fishing; Atlantic Sharks; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule; correction.

**SUMMARY:** NMFS corrects the closing date for receiving comments on the proposed rule to implement the proposed Fishery Management Plan for Sharks of the Atlantic Ocean that was published June 8, 1992 (57 FR 24222).

**DATES:** The comment period on the proposed rule published June 8, 1992, at 57 FR 24222 is extended to July 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813–893–3161.

**SUPPLEMENTARY INFORMATION:** In rule document 92–13351, in the issue of Monday, June 8, 1992, make the following correction: On page 24223, in the first column, after the **DATES** caption, in the second line, the date should read "July 23, 1992".

Dated: June 30, 1992.

**Samuel W. McKeen,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 92–15833 Filed 7–6–92; 8:45 am]

BILLING CODE 3510–22–M

VOL 57 ISS 130 JL 7 1992 UMI



# Notices

Federal Register
Vol. 57, No. 130
Tuesday, July 7, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Rulemaking; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of the meeting of the Committee on Rulemaking of the Administrative Conference of the United States.

**Committee on Rulemaking**

Date: Monday, July 13, 1992.

Time: 3:30 p.m.

Location: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).

Agenda: The Committee will meet to discuss: (1) Past Conference recommendations that have originated from the Committee on Rulemaking, and (2) preliminary plans for future Committee projects.

Contact: Kevin L. Jessar, 202–254–7020.

Attendance at the committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request. The contact person's mailing address is: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: 202–254–7020.

Dated: July 1, 1992.

**Jeffrey S. Lubbers,**

*Research Director.*

[FR Doc. 92–15483 Filed 7–6–92; 8:45 am]

BILLING CODE 6110–01–M

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Meat Import Limitations; Third Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Public Law 96–177, Public Law 100–418, and Public Law 100–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 2004.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"). In the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1992 by section 2(c) as adjusted under section 2(d) of the Act.

As announced in the notice published in the **Federal Register** on January 7, 1992 (57 FR 553), the estimated aggregate quantity of meat articles other than products of Canada prescribed by section 2(c) as adjusted by section 2(d) of the Act for calendar year 1992 is 1,192 million pounds.

In accordance with the requirements of the Act, I have determined that the third quarterly estimate of the aggregate of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1992 is 1,311.1 million pounds.

Done at Washington, DC, this 1st day of July 1992.

**Edward Madigan,**

*Secretary of Agriculture.*

[FR Doc. 92–15989 Filed 7–6–92; 8:45 am]

BILLING CODE 3410–10–M

## Forest Service

### Establishment of Athens Purchase Unit, OH

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of establishment of a purchase unit.

**SUMMARY:** The Secretary of Agriculture has created the Athens Purchase Unit. This purchase unit comprises 900 acres, more or less, within Athens County, Ohio. A copy of the Secretary's establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

**DATES:** The effective date of this purchase unit was June 8, 1992.

**ADDRESSES:** A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, Washington, DC 20090–6090.

**FOR FURTHER INFORMATION CONTACT:** Ralph Bauman, Lands Staff, 4 South, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1248.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority vested in the Secretary of Agriculture under section 17, National Forest Management Act of 1976, Public Law 94–588 (90 Stat. 2949), the Secretary has created this purchase unit.

Dated: June 26, 1992.

**James C. Overbay,**

*Deputy Chief.*

**Establishment of Athens Purchase Unit**

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94–588 (90 Stat. 2949) the Athens Purchase Unit is being established and is described as follows:

**Athens County, Ohio, Ohio River Survey**

T. 13 N., R. 16 W.

Fractional section 1: All the part lying north and west of the exisitng state

highway 13 which is identified as proposed on the attached map;

Fractional section 11: All the part lying north and west of the existing state highway 13 which is identified as proposed on the attached map;

T. 7 N., R. 16 W.

Fractional section 11: Part of the Northwest Quarter lying north of the Conrail railroad tracks;

T. 10 N., R. 14 W.

Section 16: All the part lying north and west of the existing state highway 13 which is identified as proposed on the attached map, and also part of the Southwest Corner of the Southwest Quarter of the Southwest Quarter;

Section 17: All the part lying west of the existing state highway 13 which is identified as proposed on the attached map.

The area described contains 900 acres, more or less, and is adjacent to the Wayne National Forest.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: June 8, 1992.

**John H. Beuter,**

*Acting Assistant Secretary, Natural Resources and Environment.*

[FR Doc. 92–15750 Filed 7–6–92; 8:45 am]

BILLING CODE 3410–11–M

## Establishment of Dolly Sods North Purchase Unit, WV

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of establishment of a purchase unit.

**SUMMARY:** The Secretary of Agriculture has created the Dolly Sods North Purchase Unit. This purchase unit comprises 6,168 acres, more or less, within Tucker County, West Virginia. A copy of the Secretary's establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

**DATE:** The effective date of this purchase unit was June 8, 1992.

**ADDRESS:** A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, Washington, DC 20090–6090.

**FOR FURTHER INFORMATION CONTACT:** Ralph Bauman, Lands Staff, 4 South, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 (202) 205–1248.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority vested in the Secretary of Agriculture under section 17, National Forest Management Act of 1976, Public Law 94–588 (90 Stat. 2949), the Secretary has created this purchase unit.

Dated: June 26, 1992.

**James C. Overbay,**

*Deputy Chief.*

### Establishment of Dolly Sods North Purchase Unit, Tucker County, WV

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94–588 (90 Stat. 2949) the Dolly Sods North Purchase Unit is being created in Tucker County, West Virginia. The lands within the purchase unit are described in Exhibit A attached hereto and contain 6,168 acres more or less. The purchase unit is adjacent to the Monongahela National Forest.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: June 8, 1992.

**John H. Beuter,**

*Acting Assistant Secretary, Natural Resources and Environment.*

### Dolly Sods North Purchase Unit

A tract of land situated in Dry Fork District, Tucker County, West Virginia, about 12 miles northwest of the town of Petersburg, north of and adjoining the Dolly Sods Wilderness Area of the Monongahela National Forest, on the waters of Red Creek, a tributary of the Dry Fork of the Cheat River, being a portion of a tract of 18, 557 acres conveyed to Western Pocahontas Properties Limited Partnership by deed dated December 31, 1986 and recorded in the Office of the County Clerk, Tucker County, West Virginia, in Deed Book 118 at page 634, more particularly bounded and described as follows:

Beginning at Corner 1 of U.S. Tract 38 (Parsons Pulp and Lumber Co.), being a point on line between Corner 75A and Corner 1 of U.S. Tract 21 (Bridges Estate).

Thence one line with U.S. Tract 21:

*N 58°07'25" W 17,113.28* feet to Corner 1 of U.S. Tract 21.

Thence five lines with Allegheny Properties Inc. (DB 83/54, DB 102/353, DB 93/52):

*N 49°58'49" E 3206.84* feet;
*N 24°06'30" E 1654.64* feet;
*N 28°26'31" E 1532.91* feet to a point on the west side of Cabin Mountain;
*N 36°59'21" E 2618.02* feet to a point on the west side of Cabin Mountain;
*N 40°06'22" E 3789.30* feet to a point on top of Cabin Mountain;

Thence one line, in part with Allegheny Properties, Inc. (DB 93/52) and in part with Monongahela Power Co. (DB 79/408):

*N 20°31'37" E 1740.17* feet to a point 200 feet west of the top of Cabin Mountain, being a point on line of Monongahela Power Co.

Thence seven lines with Western Pocahontas Properties Limited Partnership (DB 118/634) as reserved:

*S 75°33'38" E 1820.56* feet;
*S 66°46'37" E 1741.38* feet;
*S 52°44'12" E 2093.78* feet;
*N 86°11'24" E 7582.40* feet;
*S 62°01'23" E 1737.54* feet to a point on the brow of a ridge near the County Line;
*N 51°07'08" E 3459.43* feet to a point on the high part of a ridge;
*S 60°47'40" E 382.67* feet to a point on line between Western Pocahontas Properties Limited Partnership and Virginia Electric & Power Company (DB 72/338).

Thence one line, in part with Virginia Electric & Power Co. and in part with U.S. Tract 38:

*S 29°12'40" W 22,732.82* feet to the point of beginning, containing 6168 acres more or less.

[FR Doc. 92–15751 Filed 7–6–92; 8:45 am]

BILLING CODE 3410–11–M

## Elk Creek/Squeezer Creek Land Exchange, Flathead National Forest—Lake and Missoula Counties, Montana

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent to Prepare Environmental Impact Statement.

**SUMMARY:** The Department of Agriculture, Forest Service, Flathead National Forest, will prepare an Environmental Impact Statement (EIS) for a proposal to exchange National Forest System (NFS) land for Plum Creek Timber Company, L.P. (PCTC) land. The project area consists of NFS and PCTC lands located in the Swan Valley. The 2 sections of NFS land are approximately 40 air miles southeast of Kalispell. The 3 sections of PCTC land are approximately 60 air miles southeast of Kalispell. The Statement of Intent to exchange these tracts of land was signed on July 16, 1991. This exchange is proposed pursuant to the General Exchange Act, 16 U.S.C. 485–486; as amended, and the Federal Land Policy Management Act, 43 U.S.C. 1715–1716.

**DATES:** Comments concerning the scope of the analysis must be received in writing by August 10, 1992, so they may be considered in the Draft Environmental Impact Statement (DEIS).

**ADDRESSES:** Send written comments concerning the analysis to Joel D. Holtrop, Forest Supervisor, Flathead National Forest, Supervisor's Office, 1935 3rd. Ave. E., Kalispell, MT 59901.

**FOR FURTHER INFORMATION CONTACT:** Gary E. Howard, Project Coordinator,

Flathead National Forest, Supervisor's Office, 1935 3rd. Ave. E., Kalispell, MT, Telephone (406) 755–5401.

**PURPOSE AND NEED:** The primary purpose of the proposed land exchange is to protect the threatened and endangered wildlife and fisheries. The area to be acquired has been identified, through integrated analysis, to be one of the most critical spawning areas for bull trout (Salvelinus confluentus) in the Swan River drainage. Pursuant to the Endangered Species Act, a status review is currently being conducted for bull trout to determine the appropriateness of listing the species. The Elk Creek drainage also contains significant habitat for the grizzly bear (Ursus arctos) and the northern Rocky Mountain gray wolf (Canis lupus irremotus) as identified in the Flathead Land and Resource Management Plan (LRMP).

**SUPPLEMENTARY INFORMATION:**

**Non-Federal Land (Elk Creek Area)**

Property that PCTC will consider exchanging:

T. 20 N., R. 17 W., P.M., MT., Missoula County
Sec. 17, all;
Sec. 19, all/fractional.
T. 20 N., R. 18 W., P.M., MT., Missoula County
Sec. 13, all/fractional

These lands were granted to the Northern Pacific Railroad Company under the Act of July 2, 1864, on June 27, 1904, and January 11, 1924. The PCTC lands contain 1,895.35 acres, more or less.

These sections are in the Upper Swan Geographic Unit of the LRMP. This unit consists of a narrow, 12-mile long valley bordered by the Mission Mountain Wilderness to the west and the Swan Range and the Bob Marshall Wilderness to the east. Administered by the Swan Lake Ranger District, the area consists of intermingled, checkerboard ownership between PCTC and NFS lands. All NFS and PCTC lands proposed for exchange are included within recovery areas for the grizzly bear and gray wolf. These lands also provide habitat for big game and sensitive wildlife species.

**Section 13**

This section is surrounded on all sides by NFS land. The NFS sections to the north and the east are Management Area 15 (lands suitable for cost-efficient timber production with roads). The west and south boundaries of section 13 adjoin the Mission Mountain Wilderness. Elk Creek flows through the section. This section is currently unroaded and has not been logged. The section ranges in elevation from approximately 4,400 to 5,760 feet.

**Section 17**

All of section 17 is encompassed by NFS land. The NFS sections to the north, west and south are Management Area 15 while the section to the east is Management Area 15C (lands allocated to cost-efficient timber production with special consideration for whitetailed deer summer range). The NFS is interested in acquiring all of section 17. Elk Creek flows through the south one-half of the section. The north one-half is accessed by Forest Road 9597 and has been managed for timber production, while the south one-half is roadless and relatively inaccessible.

**Section 19**

This section is surrounded on all sides by NFS land. The west and southern boundary form the Mission Mountain Wilderness. The NFS sections to the north and east are Management Area 15. A tributary of Elk Creek flows through the section. This section is also presently unroaded.

Information gathered during a 1982–1985 micro-hydroelectric study and subsequent monitoring results suggest that Elk Creek is the most important bull trout spawning stream in the Swan Valley (Inter Office Memorandum of the Montana Department of Fish, Wildlife and Parks by Scott Rumsey dated November 12, 1991). In late 1989, PCTC had expanded timber harvest activities into undeveloped parcels of the Swan Valley. In the fall of 1989, PCTC indicated they would consider exchanging portions of their Elk Creek sections for NFS lands of equal value. They also requested permits to cross NFS lands to access their sections if a land exchange is not consummated.

The upper Elk Creek valley is flanked by extensive glacial trough walls with steep slopes and erodible soils. A large area of natural slope failure (mass waste) is found in the eastern part of one exchange parcel (Section 13). Spawning gravels in Elk Creek are relatively high in sediment content because of the large natural sediment loads originating from these landtypes. Consequently, even small increases in sediment from development activities, especially road construction, could seriously degrade spawning gravels.

**Federal Land (Goat-Squeezer Creek Area)**

Property that the FS will consider exchanging:

T. 23 N., R. 17 W., P.M., MT., Lake County
Sec. 14, All.
Sec. 24, All.

These lands were reserved from the Public Domain by Presidential Proclamation dated February 22, 1897. The Federal lands contain 1,280 acres, more or less.

These sections located on the Swan Lake Ranger District are shown in the Lower Swan Geographic Unit of the Flathead LRMP. The area is bordered by the Mission Mountains to the west, the Swan Range to the east, private land to the north, and the southern portion of the Swan River State Forest to the south. This part of the Swan Lake Ranger District contains checkerboard ownership involving the State of Montana, PCTC and NFS lands. The sections proposed for exchange are all included within identified recovery areas for the grizzly bear and grey wolf and provide habitat for big game and sensitive wildlife species.

**Section 14**

This section is surrounded on all sides by PCTC land. This section involves steep lands ranging in elevation from approximately 4,100 to 6,300 feet in the Goat Creek watershed. The east section line is 3 miles from the Bob Marshall Wilderness boundary. The east half is Management Area 15. The west half is Management Area 13 (suitable for mule deer and elk winter range). The section is not roaded and has never been logged.

**Section 24**

Section 24 is bounded on the north, west and south by PCTC lands. The east side is bounded by NFS land. This section consists of break lands and highlands above Squeezer Creek. It ranges in elevations from 6,280 to 7,280 feet. The west side is comprised of steep slopes and the east side is a high ridge. The west half is Management Area 15 while the east half is Management Area 1 (maintain present conditions). The east section line is 2 miles from the Bob Marshall Wilderness boundary. The east line of section 24 forms the west boundary of the proposed Baucus-Burns Senate Wilderness Bill (S.B. 1696) for addition to the Bob Marshall Wilderness. Section 24 is also included in the Forest Plan inventoried roadless area and has never been logged.

Much of the upper Goat Creek drainage and most of the Squeezer Creek drainage is unroaded, and is characterized by a variety of topographic landtypes that range from steep rugged slopes to lush riparian creek and river bottoms. Much of this area burned in large forest fires in the early part of the century and is covered by dense lodgepole pine stands while

those portions of the drainage which have not experienced catastrophic fire support virgin stands of cedar, white pine, western larch and Douglas-fir.

Sections 14 and 24 are not well connected hydrologically to Goat and Squeezer Creeks. The parcels are dissected by intermittent channels which do not deliver surface water (or sediment) to the creeks below. Runoff water dissipates into the glacial tills found in the lateral moraines on the valley floor. Most of the landtypes found here are suited to road construction and timber harvest.

The Goat-Squeezer drainage supports about 35 percent of the spawning that occurs in the major bull trout spawning streams of the Swan Valley. However, the proposed exchange parcels have no perennial streams flowing through them. Although the perennial streams which could be affected by the exchange parcels also support resident cutthroat trout, brook trout, mountain whitefish, and sculpins, bull trout are by far the most significant fishery resource.

The "original" Statement of Intent to exchange lands was signed by NFS and PCTC on July 16, 1991. The initial agreement included 1,575.35 acres of PCTC land and 1,280 acres of FNF land located within two geographic areas of the FNF. The proposal was widely advertised in local newspapers; The Daily Interlake (Kalispell, MT) on October 13, 20, 27 and November 3; The Bigfork Eagle (Bigfork, MT) on October 16, 23 and 30, and November 6; the Seeley/Swan Pathfinder (Seeley Lake, MT) on October 17, 24, 31, and November 7. On June 15, 1992, the FNF and PCTC agreed to include all of the PCTC ownership in section 17 instead of just the south one-half. Total PCTC land proposed for exchange is now 1,895.35 acres, more or less. This change had been discussed and was disclosed in preliminary scoping efforts with the public as a possible change in the proposed land exchange.

The EIS will evaluate the public issues and management concerns associated with this proposal. Preliminary Issues based on comments received are:

- How will old growth timber be affected?
- How will fish and wildlife be affected?
- How will threatened and endangered species be affected?
- Will water quality be affected?
- How will Federal ownership of wetlands and floodplains be affected?

Based on these preliminary public concerns, NFS and PCTC began negotiations to identify a specific exchange proposal. All lands were prioritized by both parties as to desirability for inclusion in the exchange. A joint timber cruising contract has been completed to help identify a proposal which would result in an equal value exchange.

A range of alternatives will be considered, including a no action alternative. Based on the issues identified through scoping, all action alternatives will vary in the number of acres to be exchanged, the location of the acres to be exchanged, and the kind of mitigation measures. Issues will drive the formulation of feasible alternatives. Each alternative will have specific management objectives which are responsive to implementing the LRMP and which address the issues.

The NFS is seeking information, comments, and assistance from other agencies, organizations or individuals who may be interested in or affected by the proposed exchange. Input on the proposed action, as identified by the legal descriptions listed in this notice, will be accepted until August 10, 1992. Alternatives to the proposed action will be developed from this information and included in a DEIS, which is anticipated to be published in September, 1992.

The Final Environment Impact Statement (FEIS) is expected to be available in January, 1993.

The NFS believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the FS at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the FS in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternative formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

Dated: June 30, 1992

**Joel D. Holtrop,**

*Forest Supervisor, Flathead National Forest.*

[FR Doc. 92-15780 Filed 7-6-92; 8:45 am]

BILLING CODE 3410-11-M

## Soil Conservation Service

### Camp Three Meadows Recreation Improvements Resource Conservation and Development (RC&D) Measure; Clearwater County, ID

**AGENCY:** Soil Conservation Service, United States Department of Agriculture.

**ACTION:** Notice of a Finding of No Significant Impact.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, room 124, Boise, Idaho, 83705, telephone (208) 334-1601.

**NOTICE:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Camp Three Meadows Recreation Improvement RC&D Measure, Clearwater County, Idaho.

The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul H. Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

The Camp Three Meadows Recreation Improvement RC&D Measure will upgrade an existing activity field, swimming area and camp parking areas. These measures will reduce safety and congestion problems currently occurring in the existing campground.

This Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Paul H.

Calverley. The FONSI has been sent to various federal, state and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

No administrative action on the proposal will be initiated until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local Officials.)

Dated: June 23, 1992.

**Paul H. Calverley,**

*State Conservationist.*

[FR Doc. 92-15789 Filed 7-6-92; 8:45 am]

BILLING CODE 3410-16-M

## Lahaina Watershed, Maui County, HI

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; The Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lahaina Watershed, Maui County, Hawaii.

**FOR FURTHER INFORMATION CONTACT:** Warren M. Lee, State Conservationist, Soil Conservation Service, P.O. Box 50004, Honolulu, Hawaii, 96850, Telephone (808) 541-2600.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Warren M. Lee, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan to provide a 100-year level of flood protection to urban and agricultural properties in the Lahaina Watershed. The planned works of improvement include a flood water diversion that runs between Lahainaluna Road and Kaunala Stream supported by an inlet basin, a water-energy dissipating basin, and three sediment basins. The construction of a debris basin on Kauaula Stream and a channel, with a sediment basin, to a second ocean outlet, 3,600 feet south of Kauaula Stream, are also proposed.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic information developed during the environmental assessment are on file and may be reviewed by contacting Warren M. Lee, State Conservationist, Soil Conservation Service, P.O. Box 50004, Honolulu, Hawaii, 96850, telephone (808) 541-2600.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

"(This activity is listed in the catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Protection Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local Officials.)"

Dated: June 19, 1992.

**Warren M. Lee,**

*State Conservationist.*

[FR Doc. 92-15788 Filed 7-6-92; 8:45 am]

BILLING CODE 3410-16-M

## COMMISSION ON CIVIL RIGHTS

### Florida Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Tuesday, July 21, 1992, at the Omni Jacksonville Hotel, 245 Water Street, Jacksonville, Florida 32805. The purpose of the meeting is to (1) discuss the status of the Commission; (2) discuss civil rights problems and/or progress in the State and Nation; and (3) discuss the current project. In addition, the committee will receive information from community leaders on racial tensions in Florida (Jacksonville).

Persons desiring additional information, or planning a presentation to the Committee should contact Florida Chairperson Bradford Brown 305/361-4991 or Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730-2476, TDD 404/730-2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 29, 1992.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 92-15809 Filed 7-6-92; 8:45 am]

BILLING CODE 6335-01-M

### South Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will be held from 1:30 p.m. until 4 p.m. on Monday, August 3, 1992, at the Hilton Hotel, 445 Mt. Rushmore, in Rapid City. The purpose of this meeting is to provide orientation for new members and review the status of current projects and discuss current civil rights issues in South Dakota.

Persons desiring additional information should contact Committee Chairperson, Rae Burnette, or William F. Muldrow, Director of the Rocky Mountain Regional Division, (303) 866-1040 (TDD 303-866-1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., June 29, 1992.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 92-15810 Filed 7-6-92; 8:45 am]

BILLING CODE 6335-01-M

### Utah Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will be held from 6:30 p.m. until 8:30 p.m. on Wednesday, July 29, 1992, at the Hilton Inn Airport Hotel, 5151 Wiley Post Way, in Salt Lake City. The purpose of this meeting is to brief Advisory Committee members on Commission and regional activities, and approve plans and the

schedule for the Committee's project on Discrimination Against Minorities and Women in Worker's Compensation.

Persons desiring additional information should contact Committee Chairperson, Robert E. Riggs, or William F. Muldrow, Director of the Rocky Mountain Regional Division, (303) 866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., June 29, 1992.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 92–15811 Filed 7–6–92; 8:45 am]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### U.S. & Foreign Commercial Service Export Promotion Resources Product User Fees

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The U.S. and Foreign Commercial Service (US&FCS), U.S. Department of Commerce, is establishing new user fees for its Customized Sales Survey (CSS), formerly named the Comparison Shopping Service (CSS).

**EFFECTIVE DATE:** July 7, 1992.

**SUPPLEMENTARY INFORMATION:** The Customized Sales Survey provides a custom market survey for a U.S. firm's specific product in a selected country market. A CSS covers a single product in a single country market and answers nine basic questions relating to the marketability of the product, key competitors, comparative prices, customary distribution and promotion practices, trade barriers and other factors. The following user-fee schedule will take effect as of the date of publication in this **Federal Register.**

User Fee Schedule for the Customized Sales Survey

| | |
|---|---|
| Argentina | $1700 |
| Australia | 1300 |
| Austria | 1600 |
| Belgium | 2000 |
| Brazil | 1500 |
| Canada | 1500 |
| Chile | 1300 |
| China | 1500 |
| Colombia | 500 |
| Costa Rica | 800 |
| Czech & Slovak Fed. Rep. | 1300 |
| Denmark | 1300 |
| Dominican Republic | 1200 |
| Ecuador | 700 |
| Egypt | 1200 |
| Finland | 1200 |
| France | 2500 |
| Germany | 3000 |
| Greece | 1400 |
| Guatemala | 700 |
| Honduras | 500 |
| Hong Kong | 2000 |
| Hungary | 1400 |
| India | 1000 |
| Indonesia | 1500 |
| Ireland | 1500 |
| Israel | 900 |
| Italy | 2000 |
| Ivory Coast | 1000 |
| Jamaica | 1000 |
| Japan | 3500 |
| Kenya | 900 |
| Korea | 1500 |
| Malaysia | 800 |
| Mexico | 2000 |
| Morocco | 700 |
| Netherlands | 1000 |
| New Zealand | 1200 |
| Nigeria | 900 |
| Norway | 1300 |
| Pakistan | 1200 |
| Panama | 1100 |
| Peru | 800 |
| Philippines | 800 |
| Poland | 1200 |
| Portugal | 800 |
| Romania | 600 |
| Saudi Arabia | 800 |
| Singapore | 1400 |
| South Africa | 1000 |
| Spain | 1500 |
| Sweden | 1200 |
| Switzerland | 1800 |
| Thailand | 1800 |
| Taiwan | 1800 |
| Turkey | 1000 |
| United Arab Emirates | 2500 |
| United Kingdom | 1800 |
| Venezuela | 1500 |

**Note:** Special conditions apply in some countries. Please check with CSS Product Manager: 202–377–8972.

**FOR FURTHER INFORMATION, CONTACT:** Jean Coffman, Director of International Market Research Division, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Telephone (202) 377–3363.

**Note:** These prices will remain in effect until May 31, 1993.

**Note:** Other countries may be added to this list at a later date.

Although the Department of commerce is not legally required to issue this notice under 15 U.S.C. 1525, this notice is being issued as a matter of general policy.

**Authority:** 15 U.S.C. 175 and 15 U.S.C. 1525, and 22 U.S.C. 2455(f).

Dated: June 12, 1992.

**Susan C. Schwab,**

*Assistant Secretary and Director General of the U.S. and Foreign Commercial Service.*

[FR Doc. 92–15674 Filed 7–6–92; 8:45 am]

BILLING CODE 3510–FP–M

## National Oceanic and Atmospheric Administration

### Pacific Coast Groundfish Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of receipt of an application for an experimental fishing permit and request for comments.

**SUMMARY:** This notice announces receipt of an application for an experimental fishing permit (EFP) to harvest shortbelly rockfish in the Monterey and Conception Management Subareas off the coast of California. If granted, this permit would allow fishing that otherwise would be prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations.

**DATES:** Comments must be received by August 5, 1992.

**ADDRESSES:** Send comments to E. C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213.

**FOR FURTHER INFORMATION CONTACT:** Rodney McInnis, (310) 980–4030, or James Morgan (310) 980–4036.

**SUPPLEMENTARY INFORMATION:** The FMP and implementing regulations at 50 CFR part 663 specify that EFPs may be issued to authorize fishing that otherwise would be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at 50 CFR 663.10.

An EFP application has been reviewed by the Southwest Regional Director, who has made a preliminary determination that the application contains all of the required information and constitutes a valid experimental program appropriate for further consideration. Copies have been forwarded to the Pacific Fishery Management Council (Council), the U.S. Coast Guard, and the directors of the fishery management agencies for the

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States of California, Oregon, Washington, and Idaho.

The applicant proposes to harvest shortbelly rockfish off the coast of California in the Monterey and Conception Management Subareas. Fishing operations would take place before the end of 1992 with pelagic trawl gear incorporating double-wall codends with 1-inch mesh size, which are not consistent with present regulations. This application was originally submitted in February, and a notice was published in the Federal Register on April 3, 1992 (57 FR 11466) requesting public comments. The Council reviewed the application at its April meeting and recommended that a permit be denied, because the proposal did not explain why midwater and non-midwater gear was necessary and why 1-inch mesh was needed when larger mesh has been successful in harvesting shortbelly rockfish. Subsequently, NMFS denied the application. The applicant has supplemented his application with a more extensive explanation of the necessity for the requested gear and has resubmitted his proposal for review.

The revised application will be discussed at the July 7–10, 1992, public meeting of the Council, which will be held at the Sheraton Hotel at the airport in Portland, Oregon. The decision on whether to issue an EFP and determinations on appropriate permit conditions will be based on a number of considerations, including recommendations made by the Council and comments received from the public. A copy of the application is available for review at the NMFS Southwest Regional Office (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 1, 1992.

**Richard H. Schaefer,**

*Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92–15848 Filed 7–6–92; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Amendment of the Coverage of Part-Categories for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Various Countries

June 30, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs amending coverage of certain part-categories.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

**SUPPLEMENTARY INFORMATION:**

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate the implementation of existing bilateral textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after July 1, 1992, regardless of the date of export, certain HTS classification numbers for part-Categories 438–W and 659–V are being changed on all visa and certification arrangements and all import controls for countries with these part-categories. The changes contained below are being published in the first supplement to the 1992 Harmonized Tariff Schedule.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

June 30, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, all import control directives issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which include wool and man-made fiber textile products in part-Categories 438–W and 659–V, produced or manufactured in various countries and entered in the United States for consumption on and after July 1, 1992, regardless of the date of export.

Also, this directive amends, but does not cancel, all directives issued to you which establish visa arrangements for part-Categories 438–W and 659–V for all countries for which visa arrangements are in place with the United States Government.

Effective on July 1, 1992, you are directed to make the changes shown below in the aforementioned directives for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after July 1, 1992, regardless of the date of export:

| Category | Obsolete number | New number |
|---|---|---|
| 438–W | | 6109.90.2035 |
| 659–V | 6211.33.0050 | 6211.33.0054 |

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92–15787 Filed 7–6–92; 8:45 am]

BILLING CODE 3510-DR-F

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Board of Trade Proposed Option Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity futures option contract.

**SUMMARY:** The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in options on clean air futures. The Director of the Divsion of Econimic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the veiws of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** Comments must be received on or before August 6, 1992.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT clean air option contract.

**FOR FURTHER INFORMATION CONTACT:** Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

**SUPPLEMENTARY INFORMATION:** Copies of the terms and conditions will be available for inspection at the Office of

the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secrearist by mail at the above address or by phone at 202–254–6314.

Other materials submitted by the CBT in support of the applicaiton for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on June 30, 1992.

**Gerald Gay,**

*Director.*

[FR Doc. 92–15766 Filed 7–6–92; 8:45 am]

BILLING CODE 6351-01-M

## MidAmerica Commodity Exchange Proposed Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity futures contract.

**SUMMARY:** The MidAmerica Commodity Exchange (MCE or Exchange) has applied for designation as a contract market in U.S. Dollar Index Composite futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** Comments must be received on or before August 6, 1992.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the MidAmerica Commodity Exchange U.S. Dollar Index Composite futures contract.

**FOR FURTHER INFORMATION CONTACT:** Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

**SUPPLEMENTARY INFORMATION:** Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at 202–254–6314.

Other materials submitted by the MCE in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contract, or with respect to other materials submitted by the MCE in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC on June 30, 1992.

**Gerald Gay,**

*Director.*

[FR Doc. 92–15765 Filed 7–6–92; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

### DOD Advisory Panel on Streamlining and Codifying Acquisition Laws

**AGENCY:** Defense Systems Management College, DOD.

**ACTION:** Notice of Meeting.

**SUMMARY:** At 9 a.m. on Friday, July 31, 1992 the Socio-Economic Working Group of the DOD Advisory Panel on Streamlining and Codifying Acquisition Law will hold a public hearing in room 2212 of the Rayburn House Office Building, Washington, DC. The purpose of the hearing is to provide the opportunity for public comments on the recommendations currently being drafted by the working group in the following areas: Environmental protection; labor; small business and minority contracting; preferences and source restrictions; and revised definitions of commercial products, companies, and services. A speakers' agenda is being prepared, and interested parties are requested to contact Ms. Linda Snellings, Acquisition Law Task Force at 703–355–2662 for further information. The proposals currently being drafted by the working group are also available through this number.

Dated: July 1, 1992.

**P.H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92–15823 Filed 7–6–92; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF ENERGY

### Financial Assistance to School District No. 12, Adams County

**AGENCY:** DOE, Rocky Flats Office.

**ACTION:** Notice of acceptance of unsolicited financial assistance application for a grant award.

**SUMMARY:** Based upon a determination made in accordance with 10 CFR 600.14(e)(1), the Department of Energy, Rocky Flats Office, gives notice of its intent to award a grant to School District No. 12, Adams County, for approximately $86,000. The pending award is in response to an unsolicited proposal submitted by the School District for the purpose of requesting DOE financial support in the development of an advanced level Applied Technology Education Program. This award will be part of the Educational Outreach Program initiated by the DOE Office of Technology Development. The purpose of the laboratory is to provide high school students with hands-on experience in the latest computer technologies impacting career fields in the areas of manufacturing, construction, power, energy and transportation, communication, and related

technologies including environmental planning and waste management, air and water quality, conservation management, and water and land management. DOE will provide funding for modular learning stations and computer equipment and the School District will be providing the balance of the resources required to establish the lab and operate the program.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Gross, Contract Specialist, U.S. DOE, Rocky Flats Office, Contracts and Services Division, P.O. Box 928, Golden, CO 80402–0928, Purchase Requisition Number: DE–FG34–92RF00206.

Issued at Golden Colorado, June 25, 1992.

**Terry A. Vaeth,**

*Manager.*

[FR Doc. 92–15853 Filed 7–6–92; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. ER92–509–000; ER92–115–001]**

### Fale-Safe, Inc., Portland General Electric Company; Issuance of Commission Order

June 30, 1992.

Take notice that on June 26, 1992, the Federal Energy Regulatory Commission issued an Order Accepting Rates For Filing, Granting Requests For Waivers And Late Intervention and Dismissing Requests For Rehearing. On April 30, 1992, Fale-Safe, Inc. (Fale-Safe) an Oregon Corporation, made an initial rate filing in Docket No. ER92–509–000, concerning Fale-Safe's sale and transmission of electricity to San Diego Gas and Electric Company (San Diego). In addition to requesting that the Commission accept the rates and find them just and reasonable, Fale-Safe also requested waiver of the 60-day prior notice requirement and certain other provisions of the Commission's regulations. In particular, Fale-Safe also requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Fale-Safe.

The Commission's June 29, 1992 order in Ordering Paragraphs (D) (E) and (F) reads as follows:

(D) Within thirty (30) days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuance of securities or assumptions of liability of Fale-Safe should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

(E) Absent a request for hearing within the period set forth in Ordering Paragraph (D) above, Fale-Safe is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person, provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Fale-Safe's issuances of securities or assumption of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 29, 1992.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol St., NW., Washington, DC 20426.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92–15773 Filed 7–6–92; 8:45 am]

BILLING CODE 6717–01–M

## Office of Fossil Energy

**[FE Docket No. 92–54–NG]**

### SEMO Energy Services, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting SEMCO Energy Services, Inc. (SEMCO) blanket authorization to import up to 800 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery after June 30, 1992, the date which SEMCO's current import authorization expires. *See* DOE/ERA Opinion and Order No. 401, 1 FE ¶ 70,328 (June 20, 1990).

A copy of this order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

Issued in Washington, D.C., June 30, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92–15854 Filed 7–6–92; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–59943; FRL 4077–5]**

### Certain Chemicals; Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 4 such PMN(s) and provides a summary of each.

**DATES:** Close of review periods:

| | |
|---|---|
| *Y 92–148,* | July 6, 1992. |
| *Y 92–149,* | July 8, 1992. |
| *Y 92–150,* | July 13, 1992. |
| *Y 92–151,* | July 14, 1992. |

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-148

*Manufacturer.* Reichhold Chemicals, Inc.

*Chemical.* (G) Unsaturated polyester resin.

*Use/Production.* (S) Resin for compression and injection molding compound. Prod. range: .

Y 92-149

*Manufacturer.* Confidential.

*Chemical.* (G) Rubber modified polyamide.

*Use/Production.* (S) Extrudoble, molddoble parts. Prod. range: Confidential.

Y 92-150

*Manufacturer.* Mace Adhesives & Coating Co., Inc.

*Chemical.* (G) Aliphatic polyurethane.

*Use/Production.* (S) Polymeric binder for industrial coatings. Prod. range: 6,000–12,000 kg/yr.

Y 92-151

*Manufacturer.* Confidential.

*Chemical.* (G) Condensation polymer of glycols and organic acids.

*Use/Production.* (G) Paint resin. Prod. range: Confidential.

Dated: June 30, 1992.

**Steven Newburg-Rinn,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.* .

[FR Doc. 92-15829 Filed 7-6-92; 8:45 am]

BILLING CODE 6560-50-F

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[OPPTS-51799; FRL 4077-6]

## Certain Chemicals; Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 36 such PMNs and provides a summary of each.

**DATES:** Close of review periods:

P 92-1066, September 8, 1992.

P 92-1075, 92-1076, 92-1077, 92-1078, September 9, 1992.

P 92-1079, 92-1080, 92-1081, 92-1082, September 12, 1992.

P 92-1083, 92-1084, 92-1085, 92-1086, 92-1087, 92-1088, 92-1089, 92-1090, 92-1091, 92-1092, 92-1093, 92-1094, 92-1095, September 13, 1992.

P 92-1096, September 14, 1992.

P 92-1097, 92-1098, September 13, 1992.

P 92-1099, 92-1100, September 15, 1992.

P 92-1101, September 16, 1992.

P 92-1102, September 19, 1992.

P 92-1103, September 21, 1992.

P 92-1104, September 19, 1992.

P 92-1109, 92-1110, 92-1112, September 20, 1992.

P 92-1113, 92-1114, September 25, 1992.

Written comments by:

P 92-1066, August 9, 1992.

P 92-1075, 92-1076, 92-1077, 92-1078, August 10, 1992.

P 92-1079, 92-1080, 92-1081, 92-1082, August 13, 1992.

P 92-1083, 92-1084, 92-1085, 92-1086, 92-1087, 92-1088, 92-1089, 92-1090, 92-1091, 92-1092, 92-1093, 92-1094, 92-1095, August 14, 1992.

P 92-1096, August 15, 1992.

P 92-1097, 92-1098, August 14, 1992.

P 92-1099, 92-1100, August 16, 1992.

P 92-1101, August 17, 1992.

P 92-1102, August 20, 1992.

P 92-1103, August 22, 1992.

P 92-1104, August 20, 1992.

P 92-1109, 92-1110, 92-1112, August 21, 1992.

P 92-1113, 92-1114, August 26, 1992.

**ADDRESSES:** Written comments, identified by the document control number "(OPPTS-51799)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. 201ET, Washington, DC, 20460, (202) 260-1532.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92-1066

*Manufacturer.* Confidential.

*Chemical.* (G) Substituted cyclic alkyl silane.

*Use/Production.* (G) Destructive use. Prod. range: Confidential.

P 92-1075

*Importer.* Confidential.

*Chemical.* (G) Polyimide resin.

*Use/Import.* (G) Coating. Import range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 7,000 mg/kg species (rat). Acute dermal toxicity: LD50 8,000 mg/kg species (rabbit). Eye irritation: none species (rabbit).

P 92-1076

*Manufacturer.* Confidential.

*Chemical.* (G) Sulfonated fatty acid salt.

*Use/Production.* (G) Additive for clearing agent. Prod. range: Confidential.

P 92-1077

*Manufacturer.* Confidential.

*Chemical.* (G) Sulfonated fatty acid salt.

*Use/Production.* (G) Additive for clearing agent. Prod. range: Confidential.

P 92-1078

*Importer.* Confidential.

*Chemical.* (G) Crosslinked acrylic urethane polymer.

*Use/Import.* (S) Wetting agent for automotive interior coatings. Import range: 1,000-10,000 kg/yr.

*Toxicity Data.* Mutagenicity: negative.

P 92-1079

*Manufacturer.* Hercules Incorporated.

*Chemical.* (G) Tall-oil pitch, potassium salt.

*Use/Production.* (S) Dust control agent for roads. Prod. range: Confidential.

P 92-1080

*Importer.* Hoechst Celanese Corporation.

*Chemical.* (G) Vinyl toluene methacrylate resin.

*Use/Import.* (S) binder for paints. Import range: 20,000-35,000 kg/yr.

P 92-1081

*Manufacturer.* Confidential.

*Chemical.* (G) Epoxy silicone.

*Use/Production.* (S) Component of release coatings. Prod. range: Confidential.

P 92-1082

*Manufacturer.* Confidential.

*Chemical.* (G) Epoxy modified silicone.

*Use/Production.* (S) Component of release coating. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 64 ml/kg species (rat). Acute dermal toxicity: LD50 > 16 ml/kg species (rabbit). Eye irritation: none species (rabbit). Mutagenicity: negative. Skin irritation: negligible species (rabbit).

**P 92-1083**

*Manufacturer.* Conoco Inc.

*Chemical.* (G) Nitrole substituted ethylene copolymer in aromatic hydrocarbon solvent.

*Use/Production.* (G) Crude oil additive. Prod. range: Confidential.

*Toxicity Data.* Skin irritation: strong species (rabbit).

**P 92-1084**

*Manufacturer.* E.I. Du Pont De Nemours & Company.

*Chemical.* (G) Photo sensitive poly(amiz acid) resin.

*Use/Production.* (G) Open, nondispersive. Prod. range: Confidential.

**P 92-1085**

*Importer.* Daicolor-Pope Inc.

*Chemical.* (G) C.I. pigment yellow 167. C.I. 11737 monazo arylide yellow pigment.

*Use/Import.* (G) Pigmentary colorant. Import range: Confidential.

**P 92-1086**

*Manufacturer.* Aldrich Chemical Company.

*Chemical.* (S) Octanoic hydrazide.

*Use/Production.* (G) Destructive use. Prod. range: Confidential.

**P 92-1087**

*Manufacturer.* Dow Chemical Company.

*Chemical.* (G) Partial alkali salt of amminomethylene phosphonic acid manganese complex.

*Use/Production.* (G) Corrosion and scale inhibitor. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 4,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit).

**P 92-1088**

*Manufacturer.* Dow Chemical Company.

*Chemical.* (G) Partial alkali salt of aminomethylene phosphonic acid . manganese complex.

*Use/Production.* (G) Corrosion and scale inhibitor. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 4,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit).

**P 92-1089**

*Manufacturer.* Dow Chemical Company.

*Chemical.* (G) Partial alkali salt of aminomethylene pjosphonic acid manganese complex.

*Use/Production.* (G) Corrosion and scale inhibitor. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 4,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit).

**P 92-1090**

*Importer.* Confidential.

*Chemical.* (G) Perfluoroalkylethylacrylate copolymer.

*Use/Import.* (S) Textile finish. Import range: Confidential.

*Toxicity Data.* Mutagenicity: negative.

**P 92-1091**

*Importer.* Rhone-Poulenc, Inc.

*Chemical.* (G) Acrylated aliphatic urethane polymer.

*Use/Import.* (G) Crosslinked for coatings. Import range: Confidential.

**P 92-1092**

*Manufacturer.* Rhone-Poulenc, Inc.

*Chemical.* (G) Functional, styrenated, (meth) acrylic copolymer solution.

*Use/Production.* (G) Polymer for use in coating. Prod. range: Confidential.

**P 92-1093**

*Importer.* Rhone-Poulenc, Inc.

*Chemical.* (G) Functional methacrylic copolymer solution.

*Use/Import.* (G) Acrylic polymer for use in coatings. Import range: Confidential.

**P 92-1094**

*Manufacturer.* Rhone-Poulenc, Inc.

*Chemical.* (G) Functional (meth) acrylic copolymer solution.

*Use/Production.* (G) Acrylic polymer for use in coatings. Prod. range: Confidential.

**P 92-1095**

*Manufacturer.* Confidential.

*Chemical.* (G) Butanedioic acid, (alkenyl)-, dimetal salt.

*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 < 5.0 mg/kg species (rat). Static acute toxicity: time LC50 48H.37g/l species (Cerioduphnis dubia). Eye irritation: moderate species (rabbit). Skin irritation: moderate species (rabbit).

**P 92-1096**

*Manufacturer.* Texaco Chemical Company.

*Chemical.* (G) Poly(oxyalkylene) diamine.

*Use/Production.* (G) Polymer intermediate. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 3,000 mg/kg species (rabbit). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: positive. Skin sensitization: negative species (guinea pig).

**P 92-1097**

*Manufacturer.* Basf Corporation.

*Chemical.* (G) Poly(acrylonitrile-co-styrene).

*Use/Production.* (S) Polyurethane foams. Prod. range: Confidential.

**P 92-1098**

*Importer.* Daicolor-Pope Inc.

*Chemical.* (G) Chloro copper phthalocyanine, alkylaminomethyl derivative.

*Use/Import.* (G) Pigment additive. Import range: Confidential.

**P 92-1099**

*Manufacturer.* Confidential.

*Chemical.* (S) Rubber modified polyamide.

*Use/Production.* (S) Extrudable, moldable parts. Prod. range: Confidential.

**P 92-1100**

*Importer.* Confidential.

*Chemical.* (G) Polyester polycarbonate.

*Use/Import.* (G) Open, nondispersive. Import range: Confidential.

**P 92-1101**

*Importer.* Hercules Incorporation.

*Chemical.* (G) Halogenated organotungsten catalyst.

*Use/Import.* (S) Polymerization catalyst. Import range: Confidential.

**P 92-1102**

*Importer.* Hoechst Celanese Corporation.

*Chemical.* (G) Polymeric ammonium compound.

*Use/Import.* (S) Charge controlling agent. Import range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Static acute toxicity: LC50 .22 - .5 mg/L 96h species (zebra fish). Eye irritation: minimal species (rabbit). Skin irritation: none species (rabbit). Mutagenicity: negative.

**P 92-1103**

*Importer.* Rembrandtin U.S.A., Inc.

*Chemical.* (G) Water soluble phenolic modified alkyd.

*Use/Import.* (S) Varnish intermediate for electrical grade steel. Import range: Confidential.

**P 92-1104**

*Manufacturer.* Confidential.

*Chemical.* (S) 1,2-Propanediol monocarbamate.

*Use/Production.* (S) Accelerator for phenolic resin to be used in plywood adhesive. Prod. range: Confidential.

**P 92-1109**

*Manufacturer.* Sherex Chemical, Company, Inc.

*Chemical.* (G) Thermoplastic polyamide resin.

*Use/Production.* (S) Hot melt adhesive. Prod. range: Confidential.

**P 92-1110**

*Manufacturer.* Huls America Inc,.

*Chemical.* (S) Triisopropylorthoformate.

*Use/Production.* (S) Intermediate. Import range: Confidential.

*Toxicity Data.* Eye irritation: severe species (rabbit). Skin irritation: severe species (rabbit).

**P 92-1112**

*Manufacturer.* The Virkler company.

*Chemical.* (G) Sodlphosuccinate and phosphonosuccinate monoester with $C_{10}$, $C_{12-C15}$ alcohols and ethylene.

*Use/Production.* (G) Fiber processing aid. Prod. range: Confidential.

**P 92-1113**

*Manufacturer.* The Virkler Company.

*Chemical.* (G) Sulphosuccinate and phosphonosuccinate monoester with $C_{10}$, $C_{12-C15}$ alcohols and ethylene oxide; $C_{12-C15}$ alcohols.

*Use/Production.* (G) Fiber processing aid. Prod. range: Confidential.

**P 92-1114**

*Manufacturer.* The Virkler Company.

*Chemical.* (G) Hexamethylolmelamine condensate with alcohols and their ethoxylates, stearamide and polyester.

*Use/Production.* (G) Fiber processing aid. Prod. range: Confidential.

**Dated: June 30, 1992.**

**Steven Newburg-Rinn,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 92-15830 Filed 7-6-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL Number 4151-1]

## Comprehensive State Ground Water Protection Program Documents—Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** Today's action provides notice that two documents relating to Comprehensive State Ground Water Protection Programs (CSGWPPs) are available to the public. One of the documents is draft guidance to States on how to develop and implement CSGWPPs to adequately protect ground water resources. This document is now available for public review and comment. The other document is a final handbook for State ground water managers on how to use EPA ground water-related grants to support CSGWPPs. There is no new policy or guidance in this document; it is now available for distribution to the public.

Copies of the documents identified in this notice may be obtained by making written request to the U.S. Environmental Protection Agency at the address provided below.

**FOR FURTHER INFORMATION CONTACT:** Please mail requests for "Draft Comprehensive State Ground Water Protection Program Guidance" to Roy Simon. Comments on this document should be mailed to Roy Simon by September 7, 1992. Mail requests for "A Handbook for State Ground Water Managers: Using EPA Ground Water-Related Grants to Support the Development and Implementation of Comprehensive State Ground Water Protection Programs" to Steve Ainsworth.

The address for these documents is: U.S. Environmental Protection Agency, Ground Water Protection Division (WH-550G), 401 M Street, SW., Washington, DC 20460. Copies of these documents may also be obtained by telephoning the Safe Drinking Water Hotline (1-800-426-4791).

**SUPPLEMENTARY INFORMATION:** The CSGWPP approach is a key part of EPA's new ground water policy, presented in EPA's Ground-Water Task Force Report "Protecting the Nation's Ground Water: EPA's Strategy for the 1990s", released July, 1991.

The draft CSGWPP guidance discusses the strategic activities and the criteria that a CSGWPP should address in order to receive EPA's concurrence on its adequacy for protecting the State's ground water. The guidance also discusses the benefits of the CSGWPP approach. For instance, the CSGWPP requirement to demonstrate how current Federal, State, tribal, and local ground water protection programs and activities will be coordinated to avoid unnecessary duplication of effort should result in more effective protection of the resource. The draft CSGWPP guidance was developed by EPA's Ground Water Policy Committee in consultation with the States.

During the 60-day comment period on the draft CSGWPP guidance that ends on September 7, 1992, EPA will hold meetings with national associations, environmental organizations, and States to obtain additional comments on this document. The Agency will then revise the draft CSGWPP guidance based on the comments and issue an interim final CSGWPP guidance in late November, 1992.

The EPA grants handbook was compiled to assist State and tribal ground water managers in identifying existing EPA ground water-related grants that may support the development and implementation of CSGWPPs. The handbook includes summaries of 15 EPA grant programs. It describes how each of these grants can be used to support one or more of the CSGWPP strategic activities and the restrictions on using the grants to support these activities.

Dated: May 22, 1992.

**Martha G. Prothro,**

*Deputy Assistant Administrator, Office of Water.*

[FR Doc. 92-15831 Filed 7-6-92; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-946-DR]

## Minnesota; Notice of Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**EFFECTIVE DATE:** June 26, 1992.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA-946-DR), dated June 26, 1992, and related determinations.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

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**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated June 26, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from severe storms, flooding, and tornadoes on June 16, 1992 through June 20, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. David A. Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster:

The counties of Lac Qui Parle, Lyon, Murray, Redwood, Renville, Wright, Yellow Medicine, Chippewa, and Kandiyohi for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Wallace E. Stickney,**

*Director.*

[FR Doc. 92-15815 Filed 7-6-92; 8:45 am]

BILLING CODE 6718-02-M

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**[FEMA-944-DR]**

## Virginia; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA-944-DR), dated May 19, 1992, and related determinations.

**EFFECTIVE DATE:** June 25, 1992.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the Commonwealth of Virginia, dated May 19, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 1992:

Bath County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 92-15816 Filed 7-6-92; 8:45 am]

BILLING CODE 6718-02-M

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## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224-200681.

*Title:* Port Authority of New York and New Jersey/Maersk, Inc. Terminal Agreement.

*Parties:*

Port Authority of New York and New Jersey ("Port Authority"), Maersk, Inc. ("Carrier").

*Synopsis:* The Agreement provides for the Port Authority, under its Container Incentive Program, to pay the Carrier $20 per import and $40 per export container with cargo, loaded or unloaded at the port and shipped by rail to or from points more than 260 miles from the port.

*Agreement No.:* 224-200682.

*Title:* Port Authority of New York & New Jersey/Hanjin Terminal Agreement.

*Parties:*

Port Authority of New York & New Jersey ("Port") Hanjin Shipping Co. ("Carrier").

*Synopsis:* The Agreement provides that the Port will pay the Carrier $20/import container and $40/export container for each container with cargo loaded or unloaded from the Carrier's vessels at the Port's marine terminals provided the container moves to or from the Port via rail carriage. The Agreement will terminate on December 31, 1992.

*Agreement No.:* 202-010689-050.

*Title:* Transpacific Westbound Rate Agreement.

*Parties:*

American President Lines, Ltd.
Kawasaki Kisen Kaisha Ltd.
A.P. Moller-Maersk Lines
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
Orient Overseas Container Line, Inc.

*Synopsis:* The proposed amendment will increase the security deposit and maximum damages under the Agreement from $40,000 to $100,000.

Dated: June 30, 1992.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92-15767 Filed 7-6-92; 8:45 am]

BILLING CODE 6730-01-M

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## FEDERAL RESERVE SYSTEM

### Denmark Bancshares, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 31, 1992.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Denmark Bancshares, Inc.*, Denmark, Wisconsin; to engage *de novo* from its subsidiary, Denmark State Bank, Denmark, Wisconsin, in purchasing mortgages, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

*2. Northern Trust Corporation*, Chicago, Illinois; to engage *de novo* in making debt and equity investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services or jobs for residents, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Norwest Corporation*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Norwest Credit, Inc., Minneapolis, Minnesota, in making, acquiring or servicing loans for the company's own account or the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 30, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-15799 Filed 7-6-92; 8:45 am]

BILLING CODE 6210-01-F

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### First Tennessee National Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 31, 1992.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. First Tennessee National Corporation*, Memphis, Tennessee; to acquire Home Financial Corporation, Johnson City, Tennessee, and thereby engage in owning, controlling or operating a savings association, if the savings association engages only in deposit-taking activities and lending and other activities that are permissible for bank holding companies, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 30, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-15800 Filed 7-6-92; 8:45 am]

BILLING CODE 6210-01-F

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### Mr. Gordon A. Lauer, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 27, 1992.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Mr. Gordon A. Lauer*, West Union, Iowa; to acquire 28.40 percent of the voting shares of BJS, Inc., West Union, Iowa, and thereby indirectly acquire Farmers Savings Bank, West Union, Iowa.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. Georgia A. Baker*, Granbury, Texas; to acquire an additional 16.06 percent, for a total of 33.16 percent, of the voting shares of Community Bankers, Inc., Granbury, Texas, and thereby indirectly acquire Community Bank, Cleburne, Texas, Community Bank, Granbury, Texas, and Community Bank, Rockwall, Texas.

Board of Governors of the Federal Reserve System, June 30, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-15803 Filed 7-6-92; 8:45 am]

BILLING CODE 6210-01-F

**Ohio Valley Banc Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 31, 1992.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. Ohio Valley Banc Corp.*, Gallipolis, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Ohio Valley Bank Co., Gallipolis, Ohio.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. First State Bancorp of Princeton, Illinois, Inc.*, Princeton, Illinois; to acquire 100 percent of the voting shares of Ashton Bancorporation, Inc., Ashton, Illinois, and thereby indirectly acquire Ashton Bank and Trust Company, Ashton, Illinois.

*2. Security Chicago Corporation*, Chicago, Illinois; to acquire 100 percent of the voting shares of Ashton Bancorporation, Inc., Ashton, Illinois, and thereby indirectly acquire Ashton Bank and Trust Company, Ashton, Illinois.

**C. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Fourth Financial Corporation*, Wichita, Kansas; to merge with Mission Hills Bancshares, Inc., Mission Woods, Kansas, and thereby acquire control of Mission Hills Bank, N.A., Mission Woods, Kansas.

Board of Governors of the Federal Reserve System, June 30, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-15804 Filed 7-6-92; 8:45 am]

BILLING CODE 6210-01-F

**R. Banking Partnership, Limited; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company**

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 31, 1992.

**A. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. R. Banking Partnership, Limited*, Oklahoma City, Oklahoma; to become a bank holding company by acquiring 58.28 percent of the voting shares of BancFirst Corporation, Oklahoma City, parent of BancFirst, both of Oklahoma City, Oklahoma; 42.71 percent of the voting shares of Buffalo Bancshares, Inc., parent of Oklahoma State Bank, both of Buffalo, Oklahoma; 45.94 percent of the voting shares of Commerce Bancorporation, Inc., parent of Bank of Commerce, both of McCloud, Oklahoma; 100 percent of the voting shares of Coweta Bancshares, Inc., parent of Security Bank, both of Coweta, Oklahoma; 13.7 percent of the voting shares of Dewey County Bancorporation, Taloga, parent of Dewey County State Bank, both of Taloga, Oklahoma; 66.01 percent of the voting shares of Erick Bancorporation Inc., parent of First American Bank, both of Erick, Oklahoma; 98.36 percent of the voting shares of First State Bank, Stroud, Oklahoma; 88.22 percent of the voting shares of First Stratford Bancorporation, Inc., parent of First American Bank, both of Stratford, Oklahoma; 46.69 percent of the voting shares of Johnston County Bancshares, Inc., parent of Bank of Johnston County, both of Tishomingo, Oklahoma; 6.91 percent of the voting shares of Midwest National Bancshares, Inc., parent of Midwest National Bank, both of Midwest City, Oklahoma; 34.32 percent of the voting shares of Weatherford Bancorporation, parent of United Community Bank, both of Weatherford, Oklahoma; and 29.44 percent of the voting shares of Wilburton State Bancshares, Inc., parent of Wilburton State Bank, both of Wilburton, Oklahoma.

In connection with this application, Applicant also proposes to acquire Citibank Insurance Agency, Inc., Oklahoma City, Oklahoma, BancFirst Service Corp., Oklahoma City, Oklahoma, United Community Banks, Inc., Oklahoma City, Oklahoma (all subsidiaries of BancFirst Corporation), Johnston County Insurance Agency, Inc., Tishomingo, Oklahoma (subsidiary of Johnston County Bancshares, Inc.), and United Community Agency, Inc., Weatherford, Oklahoma (subsidiary of Weatherford Bancorporation, Inc.), and thereby engage in the sale of credit-

related life insurance, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 30, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-15805 Filed 7-6-92; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboraories That Have Withdrawn From the Program

**AGENCY:** National Institute on Drug Abuse, ADAMHA, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

**FOR FURTHER INFORMATION CONTACT:** Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301) 443-6014.

**SUPPLEMENTARY INFORMATION:** Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are *not* to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratories, 427 Fifth Avenue, N.W., P.O. Box 770, Attalla, AL 35954-0770, 205-538-0012/800-247-3893.

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615-331-5300.

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800-541-4931/205-263-5745.

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817-282-2257.

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 168, Fairfax, VA 22030. 703-691-9100.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119-5412, 702-733-7866.

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787.

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414-355-4444/800-877-7016.

Bellin Hospital—Toxicology Laboratory, 215 N. Webster Ave., Green Bay, WI 54301, 414-433-7485.

(Address and phone number change)

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617-547-8900.

California Toxicology Services, 1925 East Dakota Avenue, Suite 206, Fresno, CA 93726, 209-221-5655/800-448-7600.

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810.

Center for Human Toxicology, 417 Wakara Way, Room 290, University Research Park, Salt Lake City, UT 84108, 801-581-5117.

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500.

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917.

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263/800-833-3984.

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263.

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800-876-3652/417-836-3093.

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800-638-1100.

(name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214-929-0535

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904-787-9006.

Drug Labs of Texas, 15201 I-10 East, Suite 125, Channelview, TX 77530, 713-457-3784.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310.

Eagle Forensic Laboratory, Inc., 950 North Federal Highway, Suite 308, Pompano Beach, FL 33062, 305-946-4324.

Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516-625-4800.

ElSohly Laboratories, Inc., 1215-1/2 Jackson Ave., Oxford, MS 38655, 601-236-2609.

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800-627-8200.

(name change: formerly Alpha Medical Laboratory, Inc.)

Forensic Toxicology Laboratory, Baptist Medical Center, 9601 I-630, Exit 7, Little Rock, AR 72205-7299 501-227-2783.

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-6267.

Harris Medical Laboratory, 7606 Pebble Drive, Fort Worth, TX 76118, 817-595-0294.

Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800-725-3784/915-687-6877.

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800-328-4142 (inside MI)/800-225-9414 (outside MI).

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713-793-6060.

IHC Laboratory Services Forensic Toxicology, 930 North 500 West, Suite E, Provo, UT 84604, 800-967-9766.

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672.

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Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7961.

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715-389-3734.

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507-284-3631.

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412-931-7200.

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901-795-1515.

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 9176 Independence Avenue, Chatsworth, CA 91311, 818-718-0115/800-331-6670.

(outside CA)/800-464-7061 (inside CA)

(name changed: formerly Laboratory Specialists, Inc., Abused Drug Labomtories)

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 2350 North Lincoln Avenue, Chicago, IL 60614, 312-880-3900.

(name changed: formerly Bio-Analytical Technologies)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800-832-3244/612-636-7466.

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317-929-3587.

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800-752-1835/309-671-5199.

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708-595-3888.

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201-393-5000.

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800-492-0800/818-343-8191.

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410-536-1485.

(name changed: formerly Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800-749-3784.

(name changed: formerly Med Arts Lab)

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103-6710, 919-760-4620/800-334-8627.

(outside NC)/800-642-0894 (inside NC)

National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016-2843, 908-272-2511.

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A-15, Nashville, TN 37217, 615-360-3992/800-800-4522.

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703-742-3100/800-572-3734.

(inside VA)/800-336-0391 (outside VA)

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800-251-9492.

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805-322-4250.

Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800-446-4728/619-694-5050.

(name changed: formerly Nichols Institute)

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361.

Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504-465-0751.

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440-0972, 503-687-2134.

Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708-480-4680.

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509-926-2400.

PDLA, Inc. (Precision), 5 Industrial Park Drive, Oxford, MS 38655, 601-236-5800/800-237-7352.

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908-769-8500/800-237-7352.

PharmChem Laboratories, Inc., 1505-A O'Brien Drive, Menlo Park, CA 94025, 415-328-6200/800-446-5177.

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619-279-2600.

Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite 150, San Antonio, TX 78216, 512-493-3211.

Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601-264-3856/800-844-8378.

Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206-882-3400.

Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803-233-5639.

Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205-581-4170.

Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404-939-4811.

Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601-342-1286.

Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919-361-7770.

Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800-437-4986.

Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800-749-3788.

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505-848-8800.

Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800-648-5472.

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818-376-2520.

SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404-934-9205.

(name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708-885-2010.

(name changed: formerly International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314-567-3905.

SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800-523-5447.

(name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-638-1301.

(name changed: formerly SmithKline Bio-Science Laboratories)

South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219-234-4176.

Southgate Medical Services, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137-3054, 800-338-0166 (outside OH)/800-362-8913

(inside OH) (name changed: formerly Southgate Medical Laboratory)

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405-272-7052.

St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314-577-8628.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314-882-1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305-593-2260.

The following laboratories voluntarily withdrew from the National Laboratory Certification Program:

Alletess Medical Laboratory, Inc., 529 Beacon Parkway West #102, Birmingham, AL 35209, 800-221-0335.

Continental Bio-Clinical Laboratory Service, Inc., A MetPath Laboratory, 2740 28th Street, SW., Grand Rapids, MI 49509, 800-777-0706/616-538-6700.

**Richard A. Millstein,**

*Acting Director, National Institute on Drug Abuse.*

[FR Doc. 92-15856 Filed 07-06-92; 8:45 am]

BILLING CODE 4160-20-M



## Centers for Disease Control

[Announcement Number 267]

## Resident Research Associateship Program; Notice of Availability of Funds for Fiscal Year 1992

### Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for a cooperative agreement for the Resident Research Associateship Program with the National Academy of Sciences.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infections Diseases. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information).

### Authority

This program is authorized under Section 301 of the Public Health Service Act, (42 U.S.C. 241), as amended.

### Eligible Applicant

Assistance will be provided only to the National Academy of Sciences. No other applications are solicited.

The National Academy of Sciences, National Research Council (NAS/NRC) is a unique institution because of its ability to assemble the best scientific talent in the country and to apply study procedures that ensure objectivity and maximal credibility. Created by a Congressional charter in 1863, the National Academy of Sciences is a private honorary society dedicated to the furtherance and use of science for the general welfare.

The Academy established the National Research Council (NRC) in 1916 as a means for securing the active participation of specialists from universities, industry, and the government in the Academy's work. The NRC is charged with the administration of the Resident Research Associateship Program (RRAP).

Because of the unique abilities of NAS/NRC as an unbiased source of technical and scientific expertise in the fields of public health sciences and public health, it is the only organization capable of carrying out the activities of this cooperative agreement.

### Availability of Funds

Approximately $1,000,000 is available in FY 1992 to fund this award. It is expected that the award will begin on or about September 28, 1992, and is usually made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds.

### Purpose

The purpose of this cooperative agreement is to assist the NAS/NRC in the continuation of a postdoctoral research associateship program which emphasizes molecular biology related to infectious disease prevention and control. Areas of investigation may include: nosocomial infections, acquired immunodeficiency syndrome, bacterial meningitis, influenza, food-borne diseases, hepatitis B, malaria, and other diseases in the disciplines of bacteriology, virology, parasitology, mycology, immunology, hematology, and pathology. NAS/NRC will provide support for postdoctoral scientists of unusual ability and promise or proven achievement by giving them an opportunity to conduct applied and operational research on significant public health problems identified with the research interests of CDC.

### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. General Activities

The NRC conducts a postdoctoral research program in molecular biology to support development of new approaches, methodologies, and knowledge in infectious disease prevention and control. The NRC is responsible for identifying and approving new laboratories and new programs and for the periodic review of existing programs. Accordingly, the NRC requests data from the CDC pertinent to areas of investigation to be included in the program. These data are used by the NRC site visitors to assure that intellectually stimulating postdoctoral experiences are available and that operating standards in the CDC laboratories conform to guidelines enunciated by the NRC.

2. Specific Activities

a. Review the qualifications of the CDC research advisers before they are appointed.

b. In consultation with CDC, prepare, print, and distribute announcements of the Resident Research Associateships available in the approved laboratories of CDC. Copies for such announcements or descriptive booklets, whether to be printed by CDC or by the NRC, will be approved by both parties before release.

c. Distribute announcements to appropriate sectors of the technical and scientific research community.

d. Distribute application materials to potential applicants with complete instructions for submitting applications.

e. Consult with all participating research organizations on the closing date for receipt of completed applications. The date will be set by mutual agreement between the NRC and sponsors of the several Associateship programs, including CDC.

f. Submit research proposals of applicants to CDC for assessment as to whether the proposals possess intrinsic scientific merit. In addition, determine whether space and facilities are available to support the proposal.

g. Receive approved applications from CDC for evaluation by special panels of scientists appointed by the NRC.

h. Make awards to recipients of the Resident Research Associateship Program in order of review panel rankings.

i. Inform successful applicants of their appointments as Resident Research Associates and obtain commitments from candidates for this program.

j. Provide administrative support to the Associates during tenure, including the payment of a stipend, reimbursement of relocation costs, and reimbursement of expenses for professional travel up to an allowed amount in accordance with NRC policy.

k. Conduct site visits for the periodic review of existing programs.

B. Centers for Disease Control Activities

1. General Activities

As a participating institution, CDC shall propose and/or provide the following to the NRC and to the Program: relevant areas for research investigations, scientific advisers, CDC facilities, equipment and supplies. These activities shall be coordinated for the Director of CDC by the Associateship Program Coordinator, and shall receive support from the CDC Laboratory Program Committees through each participating CDC site.

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2. Specific Activities

a. Review and approve all announcements of the program before release.

b. Provide the necessary facilities, equipment, and support services for the approved research programs of the Associates.

c. Recommend scientific advisers for approval by NRC.

d. Ensure that the appropriate NRC clearance/review procedures are applied to publications and presentations resulting from the Associateship program research investigations.

e. Review potential applicant's proposals and provide comments and/or suggested changes in the scope or method of the research. This review will assess whether the proposals possess intrinsic scientific merit of the highest quality, whether the research plan is compatible with the ongoing research programs of the laboratory, and whether space and facilities are (or can be made) available to support the proposal.

f. Establish and maintain a Laboratory Program Committee which will:

(1) Review proposed new areas of investigation and proposed new scientific advisers. The areas should be such as to provide scope for independent investigation. Each description will outline an area of general interest to CDC and should indicate the facilities available for investigation in that area. The area should be one in which the proposed scientific adviser is competent.

(2) Submit the curriculum vitae and list of scientific publications of a newly proposed scientific adviser to the NRC for review and approval.

(3) Revise annually the descriptions of current research in the laboratory.

(4) Review the termination reports written by each Associate and the independent brief report written by the scientific adviser. The committee should add such comments as deemed appropriate before forwarding copies of both reports to the Associateship Office of the NRC.

(5) Inform the NRC of recommendations for appointments, renewals, leaves, and terminations of Research Associates.

**Evaluation Criteria**

The application will be reviewed and evaluated based on the following weighted criteria:

1. The extent of past experience and history of staff and program. (20)

2. The quality of the review process for the selection of candidates. (20)

3. The quality of the review process for selection of proposed research studies. (20)

4. The quality of the process for selection and approval of participating laboratories. (20)

5. The quality of the process for monitoring scientific progress. (20)

6. The overall cost of the project relative to the work proposed. (not weighted)

Continuation awards within the approved project period will be made on the basis of availability of funds and documented progress toward the achievement of established objectives.

**Funding Priorities**

In addition to the evaluation criteria, consideration will be given to the following:

1. The significance of the proposed program to the research program of CDC.

2. National needs and Associateship Program balance.

3. Policy and budgetary considerations.

**Executive Order 12372 Review**

Applications are not subject to review as governed by Executive Order 12372 (45 CFR part 100), "Intergovernmental Review of Federal Programs."

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance Number is 93.283.

**Application Submission and Deadline**

The National Academy of Science must submit an original and two copies of the application PHS Form 5161–1 to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, on or before August 7, 1992.

**Where to Obtain Additional Information**

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6804. Programmatic technical assistance may be obtained from Joseph E. McDade, Ph.D., Assistant Director for Laboratory Science, National Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333, (404) 639–3967.

Please refer to Announcement Number 267 when requesting information regarding this program.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the INTRODUCTION may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: June 30, 1992.

**Robert L. Foster,**

*Acting Associate Director for Management and Operations, Centers for Disease Control.*

[FR Doc. 92–15782 Filed 7–6–92; 8:45 am]

BILLING CODE 4160–18–M

## National Institutes of Health

### Notice of Meeting, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Public Law 92–463, notice is hereby given of a teleconference meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases on July 29, 1992, to be held at the National Institutes of Health, Building 31, Conference Room 4C32, Bethesda, Maryland. The meeting will be open to the public on Thursday, July 29, from 9:30 a.m. until 11:45 a.m. and from 2:30 p.m. until 4 p.m.

The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available.

Ms. Geraldine B. Pollen, Executive Director, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting her office.

Dated: June 30, 1992.

**Susan K. Feldman,**

*NIH Committee Management Officer.*

[FR Doc. 92–15757 Filed 7–6–92; 8:45 am]

BILLING CODE 4140–01–M

## Statement of Organizations, Functions and Delegations of Authority

Part H, chapter HN (National Institutes of Health) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 57 FR 24282/3, June 8, 1992), is amended to reflect the following change within the National Center for Human Genome Research (NCHGR): (1) Establish the Ethical, Legal and Social Implications (ELSI) Branch within the NCHGR. This substructure currently exists as an independent program within the Research Grants Branch, NCHGR. The establishment of the ELSI Branch will allow the NCHGR to specifically define the responsibilities of this organizational component and its role in carrying out the mission of the NCHGR as a whole, and clarify lines of supervisory control.

*Section HN-B, Organization and Functions,* is amended as follows:

Under the heading *National Center for Human Genome Research (HN4),* insert the following:

*Ethical, Legal and Social Implications Branch (HN44).* (1) Provides expert advice to the Director and Deputy Director, NCHGR, regarding the ethical, legal and social implications of various aspects of the Human Genome Program and represents them at meetings where ethical concerns are discussed;

(2) Plans and directs a program dealing with the ethical, legal and social implications (ELSI) of the Human Genome Project to develop recommendations, guidelines, and policy options for the orderly introduction of information generated by human genome research into biomedical practice;

(3) Manages a portfolio of grants in the area of ELSI and develops RFAs and Program Announcements which focus on the ethical, legal and social implications of the human genome initiative;

(4) Provides staff support for the Ethics Working Group of the Program Advisory Committee on the Human Genome;

(5) Coordinates ELSI policy-development activities with the Science Policy Studies Center (SPSC) within the Office of Science Policy and Legislation of the Office of the Director of the National Institutes of Health;

(6) Coordinates grant awarding activities with agencies such as the National Endowment for the Humanities, the National Science Foundation, and the Department of Energy to avoid duplication of effort; and

(7) Provides consultation to other NIH programs regarding the ethical, legal and social dimensions of human genetics research.

Dated: June 11, 1992.

**Bernadine Healy,**

*Director, NIH.*

[FR Doc. 92–15759 Filed 7–6–92; 8:45 am]

BILLING CODE 4140–01–M

## Prospective Grant of Exclusive License: Recombinant Pseudomonas Exotoxin Specifically Directed Against ErbB–2

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice in accordance with 15 U.S.C. 209(c)(91) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Numbers 07/341,361 entitled "Recombinant Antibody-Toxin Fusion Protein" (co-owned by Protein Design Labs, Inc.), 07/459,635 entitled "Target-Specific, Cytotoxic Recombinant Pseudomonas Exotoxin" and 07/522,563 entitled "Target Specific, Cytotoxic Recombinant Pseudomonas Exotoxin", to Molecular Oncology, Inc. having a place of business in Gaithersburg, MD. The license will be to modify Pseudomonas Exotoxin for targeting the erbB–2 Protein. The patent rights in the 07/459,635 and 07/522,563 inventions have been assigned to the United States of America. The patent rights in the 07/341,361 invention have been assigned to the United States of America and Protein Design Labs, Inc.; the limited field of use exclusive license to this invention is for the Government rights only.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present inventions relate to modifications of recombinant Pseudomonas exotoxins with insertion of various targeting molecules specific for a given target site. The modified exotoxins of these inventions may prove to be a valuable cancer therapeutic when fused to various target-specific cell recognition proteins. The modifications result in reduced non-specific cytotoxicity while increasing target specific cytotoxicity.

Requests for a copy of these patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Daniel R. Passeri, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220

Dated: June 17, 1992.

**Reid G. Adler,**

*Director, Office of Technology Transfer.*

[FR Doc. 92–15758 Filed 7–6–92; 8:45 am]

BILLING CODE 4140–01–M

## Social Security Administration

### Privacy Act of 1974; Report of New System of Records

**AGENCY:** Social Security Administration (SSA), Department of Health and Human Services (HHS).

**ACTION:** New system of records.

**SUMMARY:** In accordance with the Privacy Act (5 U.S.C. 552(e)(4)), we are issuing public notice of our intent to establish a new system of records. The proposed system of records is entitled "Telephone Call Receipt System, HHS/SSA/DCO, 09–60–0223." We are proposing to establish the system to maintain information about receipts issued during the Teleservice Center (TSC) telephone accountability demonstration project mandated by section 5108 of the Omnibus Budget Reconciliation Act (OBRA) of 1990. We are also proposing to establish routine uses of the information which will be maintained in the system. We invite public comment on this publication.

**DATES:** We filed a report of the proposed system with the Chairman, Committee on Government Operations of the House of Representatives, the Chairman, Committee on Governmental Affairs of the Senate, and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 29, 1992. We have requested OMB to waive the 60-day advance notice period for this system. If OMB does not agree to waive the advance notice period, the proposed system, including the proposed routine uses, will become effective on August 28, 1992, unless we receive comments on or before that date which would result in a contrary determination.

**ADDRESSES:** Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–D–1 Operations Building, 6401 Security

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Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanley Hanna, Social Insurance Specialist, Confidentiality and Disclosure Branch, Division of Technical Documents and Privacy, Office of Regulations, Office of Policy, Social Security Administration, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–966–7077.

**SUPPLEMENTARY INFORMATION:**

**I. Discussion of the Proposed System**

Section 5108 of OBRA 1990 requires SSA to conduct demonstration projects to issue receipts confirming the date and nature of the telephone calls of persons who contact Teleservice Centers (TSCs) and provide adequate identifying information. SSA will issue receipts whenever issues of benefit eligibility or entitlement arise during the telephone conversation. At least three TSCs are required to participate in the demonstration projects.

The legislation further mandates that the caller receipt should provide:

- The name of the caller;
- The name of the SSA representative who spoke with the caller;
- The date of the call;
- A description of the nature of the call;
- A description of any action that the representative said would be taken in response to the call; and
- A description of any advice or information that the caller was given.

A record of the receipts will be maintained electronically and used if necessary to respond to further contacts from callers. SSA will also use the record to analyze the results of the demonstration project. If misinformation is alleged, a copy of the receipt in question will be printed and placed in the affected individual's claims folder.

We are proposing to establish the Telephone Call Receipt System to fulfill these purposes.

**II. Collection and Maintenance of Data in the Proposed System**

The data will consist of the telephone call receipts, which are generated by an automated system based on information provided by individuals calling three of SSA's TSCs to inquire about SSA programs. The data will be stored in magnetic media.

**III. Proposed Routine Use Disclosures of Data in the System**

We are proposing the following routine uses to disclose information from the proposed system.

A. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which is subject to the disclosure provisions of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

The proposed routine use will permit disclosure of information from the proposed system with SSA components and/or employees are involved in litigation. The routine use also will permit disclosure in cases in which SSA brings suit or another party brings suit and SSA has an interest in the litigation.

B. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We contemplate disclosing information under this routine use only in situations in which the individual to whom the information pertains asks his or her congressional representative to intercede with SSA on his or her behalf.

C. To the Office of the President for responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We contemplate disclosing information under this routine use only in situations in which the individual to whom the information pertains asks the Office of the President to intercede with SSA on his or her behalf.

D. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904 with promulgating standards, procedures and guidelines pertaining to records management and the conduct of record management studies. Section 2906 provides that GSA and NARA shall have access to Federal agencies' records and that agencies shall cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use would facilitate disclosure.

**IV. Compatibility of the Proposed Routine Uses**

The Privacy Act (5 U.S.C. 552a(a)(7) and 5 U.S.C. 552a(b)(3)) and our disclosure regulation (20 CFR part 401) permit us to disclose data for a routine use, i.e., a use serving a purpose which is compatible with the purpose for which we collected the information. Section 401.310 of the regulation permits us to disclose information under a routine use for administering our programs. The proposed routine uses identified in III.A, B and C above meet this criterion. We also consider disclosures required by Federal law as disclosures for compatible purposes. The routine use to GSA and NARA identified in III.D above reflects disclosure that is required by 44 U.S.C. 2904 and 2906 and thus also meets our criteria.

**V. Safeguards**

We will employ a number of security measures which are designed to minimize the risk of unauthorized access to, and disclosure of, personal data in the proposed system. This includes using passwords and access codes to enter the computer system which will maintain the records and maintaining data in secured storage areas which are accessible only to employees who require the information to perform their assigned duties. SSA employees who have access to the data will be notified of the criminal penalties dealing with unauthorized access to, or disclosure of, information which will be maintained in the system.

**VI. Effects of the Proposed System of Records on Individual Rights**

The main purposes of the proposed system are to facilitate SSA's response to followup contacts by individuals who have called the TSCs, and to assist SSA's analysis of the demonstration

project. Thus, we do not believe that the proposed system will have any unwarranted adverse effect on individual rights.

Dated: June 29, 1992.

Gwendolyn S. King,

*Commissioner of Social Security.*

09-60-0223

SYSTEM NAME:

Telephone Call Receipt System, HHS/SSA/DCO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The system database will be available by direct electronic access by Social Security field offices (FO), program service centers and teleservice centers (TSC) Addresses of these offices can be found in local telephone directories under "United States Department of Health and Human Services, Social Security Administration" or under "Social Security Administration."

The database is housed at the: National Computer Center, Social Security Administration, 6201 Security Boulevard, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information about telephone calls to the Auburn (Washington), East Brunswick (New Jersey) and Kansas City (Missouri) TSCs between July 20, 1992 and July 20, 1993. These TSCs are involved in a telephone accountability demonstration project in which receipts are sent to callers to confirm the content of their conversations with TSC representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data in this system consist of copies of the telephone call receipts which are sent to callers. Each receipt includes:

- The name and address of the caller;
- The Social Security and claim numbers of the caller, if provided;
- The name of the individual on whose behalf the call was made (if different from the caller), and that individual's Social Security number (if provided);
- The date of the call;
- A summary of the business discussed; and
- The name of the SSA representative who spoke with the caller.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 5108 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508).

PURPOSES:

Information maintained in this system will enable SSA employees to review the contents of telephone call receipts in response to later inquiries or followups from the callers. It will also be used by SSA to study the course of the pilot project for analyses and reporting.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed for routine uses as indicated below.

1. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which is subject to the disclosure provisions of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. to the Office of the President for responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

4. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be stored in magnetic media (e.g., magnetic tape and disc).

RETRIEVABILITY:

Data will be retrieved from the system by the name and Social Security number (SSN) of the caller or of the individual on whose behalf the call was made. If the SSN is unknown, data will be retrieved by the name and ZIP code of the individual.

SAFEGUARDS (ACCESS CONTROLS):

Safeguards for automated data have been established in accordance with the HHS Informaiton Resources Management Manual, Part 6, Automated Information Systems Security Program Handbook. Magnetic tapes are in secured storage areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

The magnetic media are updated periodically. The records will be retained for 5 years after the termination of the project on July 20, 1993.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of 800 Number Operations, 6401 Security Boulevard, Baltimore, Md 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by contacting any Social Security FO.

When requesting notification, the individual should provide his/her name and SSN. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and avoid delay.)

An individual requesting notification of records in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, drivers license or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth and address in order to establish identity. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the information they are seeking. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

**CONTESTING RECORD PROCEDURES:**

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b;

**RECORD SOURCE CATEGORIES:**

Information in this sytem is obtained from individuals calling Social Security to inquire about SSA programs for themselves or for others.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 92-15806 Filed 7-6-92; 8:45 am]

BILLING CODE 4190-29

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO-920-02-4120-14; COC 53510]**

### Coal Lease Offering By Sealed Bid; COC 53510

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of competitive coal lease sale.

**SUMMARY:** Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Gunnison County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

**DATES:** The lease sale will be held at 2 p.m., Thursday, July 30, 1992. Sealed bids must be submitted no later than 1 p.m., Thursday, July 30, 1992.

**ADDRESSES:** The lease sale will be held in the West Conference Rooms, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colordao State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

**FOR FURTHER INFORMATION CONTACT:** Karen Purvis at (303) 239-3795.

**SUPPLEMENTARY INFORMATION:** The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale. COAL OFFERED: The coal resource to be offered is limited to coal recoverable by underground mining methods in the following lands:

**Sixth Principal Meridian**

T. 13 S., R. 90 W.,
- Sec. 1, lots 14 to 19, inclusive;
- Sec. 2, lots 13 to 20, inclusive;
- Sec. 3, lots 13, 14, 17, and 18;
- Sec. 10, lots 1 and 2, and NE¼SE¼;
- Sec. 11, lots 1 to 8, inclusive;
- Sec. 12, lots 2 to 4, inclusive, SW¼NW¼, and those portions of SW¼NE¼ and SE¼NW¼ lying north of the North Fork of the Gunnison River.

The land described contains 1339.56 acres, more of less.

Total recoverable reserves are estimated to be 10,260,000 tons. The underground minable coal is ranked as high volatile B bituminous coal. The estimated coal quality for the B and C seams on an as-received basis is as follows:

| | B Seam | C Seam |
|---|---|---|
| Btu | 12,586 Btu/lb. | 13,006 Btu/lb. |
| Moisture | 3.20% | 3.20% |
| Sulfur Content. | 0.77% | 0.55% |
| Ash Content. | 10.00% | 7.10% |

Rental and Royalty: The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

Notice of Availability: Bidding instructions for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: June 26, 1992.

**Richard D. Tate,**

*Chief, Mining Law and Solid Minerals, Adjudication Section.*

[FR Doc. 92-15761 Filed 7-6-92; 8:45 am]

BILLING COD 4310-JB-M

**[G-010-5101-09-YGKI/G2-0116; NMNM 81378 Amendment #6]**

### Notice of Right-of-Way Application; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** An application, serialized as NMNM 81378, was received for a 12 mile right-of-way for a 30 inch diameter pipeline.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 USC 185), as amended by the Act of November 16, 1973, (37 Stat. 576), Williams Field Service Pipeline Company has applied for a right-of-way serialized as NM NM 81378 to construct 12 miles of 30 inch diameter natural gas pipeline across public land in San Juan County, New Mexico. This is part of a project that will loop the existing line to help alleviate current natural gas flow, which is now to capacity in the existing line and also help in handling projected volumes. The proposed line crosses the following lands in San Juan County.

**New Mexico Principal Meridian**

T. 30 N., R. 9 W.,
- Sec. 23, SE¼SE¼;
- Sec. 24, Lot 7, SE¼SW¼, SW¼SW¼;
- Sec. 26, NE¼NE¼, NW¼NE¼, NE¼NW¼, SE¼NW¼, SW¼NW¼;
- Sec. 27, SE¼NE¼, NE¼SE¼, NW¼SE¼, SW¼SE¼, SE¼SW¼, SW¼SW¼, NW¼NW¼;
- Sec. 33, NE¼NE¼, NW¼NE¼, SW¼NW¼.

T. 29 N., R. 10 W.,
- Sec. 1, Lots 7, 8, 9;
- Sec. 3, Lots 18, 19, 20;
- Sec. 7, Lots 17, 18, 19, 20;
- Sec. 8, Lots 13, 14, 15, 16;
- Sec. 9, Lots 8, 9, 10, 11, 12, 13;
- Sec. 10, Lots 3, 4, 5.

T. 29 N., R. 11 W.,
- Sec. 12, SE¼SE¼;
- Sec. 13, NE¼NE¼.

The purpose of this notice is to inform the public that the Bureau will be deciding whether the right-of-way should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 435 Montano Road, NE., Albuquerque, New Mexico 87107.

Dated: June 24, 1992.

**John Phillips,**

*Assistant Area Manager.*

[FR Doc. 92-15885 Filed 7-6-92; 8:45 am]

BILLING CODE 4310-FB-M

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**[ID-942-02-4730-12]**

### Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., June 26, 1992.

The plat representing the dependent resurvey of a portion of the subdivisional lines and subdivision of sections 3 and 4, T. 36 N., R. 1 E., Boise Meridian, Idaho, Group No. 818, was accepted, June 25, 1992.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, T. 36 N., R. 2 E., Boise Meridian, Idaho, Group No. 818, was accepted, June 25, 1992.

These surveys were executed to meet certain administrative needs of the Bureau of Indian Afairs, North Idaho Agency and the Nez Perce Tribe.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: June 26, 1992.

**Gary T Oviatt,**

*Acting Chief Cadastral Surveyor for Idaho.*

[FR Doc. 92-15646 Filed 7-6-92; 8:45 am]

BILLING CODE 4310-GG-M

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**[ES-962-4950-13-4377; ES-045427, Group 140, Wisconsin]**

### Filing of Plat of Dependent Resurvey and Subdivision of Section 13

The plat of the dependent resurvey of a portion of the east boundary; a portion of the subdivisional lines, and the survey of the subdivision of section 13, in Township 40 North, Range 5 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on August 20, 1992.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., August 20, 1992.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $1.75 per copy.

Dated: June 25, 1992.

**Larry Hamilton,**

*Acting State Director.*

[FR Doc. 92-15761 Filed 7-6-92; 8:45 am]

BILLING CODE 4310-GJ-M

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## Fish and Wildlife Service

### Availability of Draft Maps of California Areas Under Consideration for Inclusion in the Coastal Barrier Resources System

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of section 6 of the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3503), the Secretary of the Interior is required to provide to Congress maps identifying the boundaries of those undeveloped coastal barriers of the United States bordering the Pacific Ocean south of 49 degrees north latitude which the Secretary and the appropriate Governor consider to be appropriate for inclusion in the Coastal Barrier Resources System. Recommendations made by the Secretary will be advisory only; any changes to the Coastal Barrier Resources System will require an act of Congress. This notice is to announce the availability of draft California maps with supporting delineation criteria and a report to Congress for public review and comments. Appendix A of this notice lists the proposed Coastal Barrier Resources System Units along California.

**DATES:** Comments should be received no later than October 2, 1992.

**ADDRESSES:** H. Dale Hall, Assistant Regional Director—Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232-4181.

**FOR FURTHER INFORMATION CONTACT:** Dennis D. Peters, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232-4181, (503) 231-6154.

**SUPPLEMENTARY INFORMATION:** On October 18, 1982, President Reagan signed the Coastal Barrier Resources Act (CBRA) into law (Pub. L. 97-348). Section 4 of CBRA establishes the Coastal Barrier Resources System (System) as referred to and adopted by Congress, and sections 5 and 6 prohibit all new Federal expenditures and financial assistance within the units of that System unless specifically excepted by the Act. These provisions of the Act became effective immediately. The statutory ban on the sale of new Federal flood insurance for new construction or substantial improvements within the System went into effect on October 1, 1983.

On November 16, 1990, President Bush signed the Coastal Barrier Improvement Act of 1990 (CBIA). Section 6 of the CBIA directs the Secretary of the Interior to prepare a study which examines the need for protecting undeveloped coastal barriers along the Pacific coast of the United States and to prepare maps identifying undeveloped coastal barriers bordering the Pacific Ocean south of 49 degrees north latitude which the Secretary and the appropriate Governor consider to be appropriate for inclusion in the System. In addition, Congress has directed the Secretary to prepare a report which examines the need for protecting undeveloped coastal barriers along the Pacific coast.

An existing 1988 report, Report to Congress: Coastal Barrier Resources System, Coastal Barriers of the Pacific Coast: Summary Report, by Dr. Joel W. Hedgpeth, will be reviewed and revised as necessary.

The criteria used to map the undeveloped coastal barriers along the Pacific coast are described in this notice. Draft maps, as well as the report, will be provided upon request (See Addresses provided above.) The maps may be inspected at, and hand delivered comments may be taken to, Regional Office, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, 4th Floor East, Portland, Oregon. Copies of the maps may be inspected, during normal business hours, at the following locations:

California Coastal Commission, 45 Fremont St., suite 2000, San Francisco, California 94105-2219, (415) 904-5291.

U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008, (619) 431-9440.

U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, RM. E-1803, Sacramento, California 95825, (916) 978-4613.

U.S. Fish and Wildlife Service, Ventura Field Office, 2140 Eastman Avenue, suite 100, Ventura, California 93003, (805) 644-1766.

### Definition of Coastal Barriers for Purposes of the Study

This section presents a statement of definitions used to identify undeveloped coastal barriers for purposes of the

Report to Congress required by section 6 of the CBIA. The study's definition is based on guidance provided by section 3(1) of CBRA.

*A. General Definition*

Based on the definition of a coastal barrier contained in section 3(1) of the CBRA, a coastal barrier is a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that:

- Is subject to wave, tidal, and wind energies, and
- Protects landward aquatic habitats including adjacent wetlands, marshes, estuaries, inlets, and nearshore waters.

*B. Types of Coastal Barriers*

Coastal barriers may be described generally, as in the CBRA definition, with respect to their relationship to the mainland as bay barriers, tombolos, barrier spits, and barrier islands. The "mainland" includes the continental landmass as well as large islands. The accepted scientific classification is:

1. Bay Barriers—coastal barriers that connect two headlands, and enclose a pond, marsh, or other aquatic habitat.

2. Tombolos—sand or gravel beaches that connect one or more offshore islands to each other or to the mainland.

3. Barrier Spits—coastal barriers that extend into open water and are attached to the mainland at only one end. They can develop into bay barriers if they grow completely across a bay or other aquatic habitat. On the other hand, bay barriers can become spits if an inlet is created.

4. Barrier Islands—coastal barriers completely detached from the mainland. Barrier spits may become barrier islands if their connection to the mainland is severed by creation of a permanent inlet. The barrier island represents a broadened barrier beach, commonly sufficient above high tide to have dunes, vegetated zones, and wetland areas.

*C. Composition of Coastal Barriers*

Generally, coastal barriers consist entirely of unconsolidated sediment, composed of sand or gravel, but sometimes include silt, cobbles, or large rocks.

*D. Factors That Shape Coastal Barriers*

Wind, waves, and tides are the immediate forces that maintain and modify coastal barriers. The action of wind, wave (directly and by creating littoral, onshore-offshore or other currents), and tidal energy on unconsolidated sedimentary materials generally results in continuous linear or curvilinear features—a beach ridge or berm located along the unprotected side of the coastal barrier.

Where a suitable sediment source and sufficient wind, wave and tidal energy exist, secondary coastal barriers occasionally develop on the mainland side of large bays or lagoons behind coastal barrier systems. These secondary coastal barriers are included in the inventory.

*E. Associated Aquatic Habitat*

Associated aquatic habitat includes adjacent wetlands, marshes, estuaries, inlets, and nearshore waters.

**Definition of "Undeveloped"**

A coastal barrier is considered undeveloped if it contains less than one (1) structure per five (5) acres that is "roofed and walled" and covers at least 200 square feet and constructed in conformance with Federal, State, or local legal requirements. However, units containing fewer than roughly one structure per five acres of fastland, can be considered developed when geomorphic and ecological processes are altered to the extent that the long-term perpetuation of the coastal barrier is threatened by one or more of the following:

(a) Extensive shoreline manipulation or stabilization;

(b) Pervasive canal construction and maintenance;

(c) Major dredging projects and resulting sedimentary deposits;

(d) Intensive capitalization development projects which effectively establish a commitment to stabilize an area, even though there are few actual structures.

The Act does not require an entire coastal barrier to be included, and specifically allows for inclusion of undeveloped portions of coastal barriers. An undeveloped portion of a coastal barrier is included if there exists a minimum of approximately one-quarter mile of shoreline on the unprotected (seaward) side of the coastal barrier. Each unit must include an undeveloped area extending through the fastland from the beach to the associated landward aquatic habitat, and must independently satisfy the definitional criteria in section 3(1)(A) of the Act.

**Delineation of Coastal Barrier Units**

Undeveloped coastal barriers of at least one-quarter mile in shoreline length and their associated aquatic habitats were delineated using aerial photography, U.S. Fish and Wildlife Service National Wetlands Inventory maps and U.S. Geological Survey 7.5' quadrangle maps.

*A. Delineation of the Landward Boundary*

The coastal barrier unit boundary is a line drawn perpendicular to the unprotected (seaward) side of the fastland and extends landward to include the associated aquatic habitat. For partially developed coastal barriers, the boundary was drawn at the edge of the development. The entire associated aquatic habitat was included in cases where the coastal barrier is 50 percent or more *undeveloped*, as determined by the perpendicular projection of developed versus undeveloped portions of the unprotected shoreline. Isolated clusters of approximately 10 or more structures were excluded from units where the impact of the development on geological and ecological processes is local and confined primarily to the fastland on which the structures are located. A boundary is drawn around the cluster of development to exclude it from the unit.

The landward boundary is a continuous line that follows the interface between the aquatic habitat and the mainland. In areas with aquatic habitats extending for many miles inland, geologic features such as the next dune line or natural constrictions in aquatic habitats and man-made features such as highways, dikes and levees were used to determine landward boundaries. In addition the landward boundary was normally drawn not to exceed an elevation of 20 feet above the mean high water level of the system. The maximum extent of the landward boundary was 5 miles for wetlands (exposed or vegetated portions of bays, freshwater wetlands) and was measured from the high water line on the unprotected (seaward) side of the coastal barrier. For open water (subtidal bays, large lakes) the maximum landward extent was one mile and was measured either from the farthest landward extent of wetlands on the protected side of the barrier or from the mean high water line on the unprotected side of the barrier.

*B. Delineation of Seaward Side*

The unit contains the entire sand-sharing system, including the beach, shoreface, and offshore bars. The sand-sharing system of coastal barriers is normally defined by the 30-foot bathymetric contour. In large coastal embayments the sand-sharing system is more limited in extent. In these cases, the sand-sharing system is defined by the 20-foot bathymetric contour or a line approximately one mile seaward of the shoreline, whichever is nearer the coastal barrier.

## Appendix A—Proposed California Coastal Barrier Resources System Units

### California Coast Barrier Resources System Units

| County | Unit no. | Unit name | Appropriate unit location | Quadrangle map name (1) |
|---|---|---|---|---|
| Del Norte | CA-01-91 | Smith River/Lake Earl | Mouth of Smith River to Point St. George. | Smith River and Crescent City. |
| Del Norte | CA-02-91 | Whaler Island | South of Whaler Island | Sister rocks. |
| Del Norte | CA-03-91 | Klamath River | Mouth of Klamath River | Requa. |
| Humboldt | CA-04-91 | Fern Canyon | 7 mi. north of Orick | Fern Canyon. |
| Humboldt | CA-05-91 | Gold Bluffs | 2 mi. west of Prairie Creek | Orick. |
| Humboldt | CA-06-91 | Redwood Creek | Mouth of Redwood Creek | Orick. |
| Humboldt | CA-07-91 | Freshwater Lagoon | 2 mi. southwest of Orick | Orick. |
| Humboldt | CA-08-91 | Stone Lagoon | 3 mi. southwest of Orick | Orick and Rodgers Peak/Trinidad. |
| Humboldt | CA-09-91 | Dry Lagoon | 7 mi. southwest of Orick | Rodgers Peak/Trinidad. |
| Humboldt | CA-10-91 | Big Lagoon | 6 mi. North of Trinidad | Rogers Peak/Trinidad. |
| Humboldt | CA-11-91 | Little River | Mouth of Little River | Crannell. |
| Humboldt | CA-12-91 | Clam beach/Mad River | Mouth of Mad River | Tyee City/Arcata north. |
| Humboldt | CA-13-91 | Samoa Peninsula | Manila | Tyee City/Arcata north and Eureka. |
| Humboldt | CA-14-91 | South Spit | South Humboldt Bay | Eureka, Fields Landing & Cannibal Island. |
| Humboldt | CA-15-91 | Eel River | Eel River Delta | Cannibal Island and Ferndale. |
| Humboldt | CA-16-91 | Mattole Beach | Mouth of Mattole River | Petrolia. |
| Mendocino | CA-17-91 | Usal Creek | 4 mi. west of Hales Grove | Hales Grove. |
| Mendocino | CA-18-91 | Inglenook | ½ mi. west of Inglenook | Inglenook. |
| Mendocino | CA-19-91 | Navarro River | Mouth of Navarro River | Albion. |
| Mendocino | CA-20-91 | Alder Creek | 2 mi. north of Manchester | Mallo Pass Creek. |
| Mendocino | CA-21-91 | Manchester Beach S.P. (north) | 1¼ mi. northwest of Manchester | Point Arena. |
| Mendocino | CA-22-91 | Manchester Beach S.P. (center) | 1½ mi. west of Manchester | Point Arena. |
| Mendocino | CA-23-91 | Manchester Beach S.P. (south) | 2 mi southwest of Manchester | Point Arena. |
| Mendocino/Sonoma | CA-24-91 | Gualala River | Gualala | Gualala. |
| Sonoma | CA-25-91 | Russian River | Mouth of Russian River | Duncan Mills/Arched Rock. |
| Sonoma | CA-26-91 | Salmon Creek Beach | Salmon Creek | Bodega Head. |
| Marin | CA-27-91 | Abbotts Lagoon | 7 mi. north of Point Reyes | Drakes Bay/Tomales/Inverness. |
| Marin | CA-28-91 | Drakes Estero | Drakes Bay | Drakes Bay/Tomales/Inverness. |
| Marin | CA-29-91 | Rodeo Cove | 1 mi. north of Point Bonita | Point Bonita. |
| San Mateo | CA-30-91 | Laguna Salada | Pacifica | San Francisco south/Montara Mountain. |
| San Mateo | CA-31-91 | Elmar Beach | 1 mi. north of Half Moon Bay | Halfmoon Bay. |
| San Mateo | CA-32-91 | Pescadero Creek | Mouth of Pescadero Creek | San Gregorio. |
| Santa Cruz | CA-33-91 | Waddell Creek | 4 mi. south of Point Ano Nuevo | Ano Nuevo. |
| Santa Cruz | CA-34-91 | Scott Creek | 1 mi. north of Davenport Landing | Davenport. |
| Santa Cruz | CA-35-91 | Sunset State Beach | 2 mi. north of Pajaro River | Watsonville West. |
| Santa Cruz/Monterey | CA-36-91 | Zmudowski Beach S.P. | Pajaro River to Moss Landing | Moss Landing. |
| Monterey | CA-37-91 | Moss Landing | South of Moss Landing | Moss Landing. |
| Monterey | CA-38-91 | Salinas River | Mouth of Salinas River | Moss Landing and Marina. |
| Monterey | CA-39-91 | Little River | 2 mi. north of Point Sur | Point Sur. |
| Monterey | CA-40-91 | La Cruz Rock | 3 mi. north of Point Piedras Blancas | Piedras Blancas. |
| San Luis Obispo | CA-41-91 | Morro Bay S.P. | Morro Bay | Morro Bay south. |
| San Luis Obispo | CA-42-91 | Pismo State Beach (north) | Grover City | Oceano. |
| San Luis Obispo | CA-43-91 | Pismo State Beach (south) | 1 mi. south of Grover City | Oceano. |
| San Luis Obispo | CA-44-91 | Oso Flaco Lake | 6 mi. south of Grover City | Oceano. |
| San Luis Obispo/Santa Barbara. | CA-45-91 | Santa Maria River | 4.5 mi. west of Guadalupe | Point Sal. |
| Santa Barbara | CA-46-91 | Santa Ynez River | Vandenberg Air Force Base | Surf. |
| Santa Barbara | CA-47-91 | Goleta Beach County Park | 1 mi. south of Goleta | Goleta. |
| Ventura | CA-48-91 | Santa Clara River | 1 mi. south of Ventura | Oxnard. |
| Ventura | CA-49-91 | Mograth Lake | 4 mi. west of Oxnard | Oxnard. |
| Ventura | CA-50-91 | Ormond Beach | ½ mi. south Port Hueneme | Oxnard. |
| Ventura | CA-51-91 | Mugu Lagoon | Mugu Lagoon | Point Mugu. |
| Los Angeles | CA-52-91 | Malibu Point | Malibu Beach | Malibu Beach. |
| San Diego | CA-53-91 | San Mateo Point | 1½ mi. south of San Clemente | San Clemente. |
| San Diego | CA-54-91 | Las Flores Creek | 6 mi. north of Oceanside | Las Pulgas Canyon. |
| San Diego | CA-55-91 | Santa Margarita River | 2 mi. north of Oceanside | Oceanside. |
| San Diego | CA-56-91 | Agua Hedionda | Carlsbad | San Luis Rey. |
| San Diego | CA-57-91 | Batiquitos Lagoon | ½ mi. north of Leucadia | Encinitas. |
| San Diego | CA-58-91 | Torrey Pines State Reserve | 1 mi. south of Delmar | Delmar. |
| San Diego | CA-59-91 | Silverstrand | 1 mi. south Coronado | Point Loma. |
| San Diego | CA-60-91 | Tijuana Slough | Imperial Beach to U.S./Mexico Border. | Imperial Beach |

(1) Several units cover portions of 2 or more maps.

Dated: June 26, 1992.

William E. Martin,

*Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 92-15671 Filed 7-6-92; 8:45 am]

BILLING CODE 4310-55-M

## National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 27, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the

National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 22, 1992.

Antoinette J. Lee,

*Acting Chief of Registration, National Register.*

ARKANSAS

Ashley County

*Naff House*, Jct. of 3rd Ave. and Fir St., NW corner, Portland, 92000957

Chicot County

*Anderson, Dr. A. G., House*, Jct. of Duncan and Main Sts., Eudora, 92000929

Columbia County

*Couch—Marshall House*, 505 W. Monroe St., Magnolia, 92000955

Faulkner County

*Frauenthal & Schwarz Building*, 824 Front St., Conway, 92000956

Greene County

*Jackson—Herget House*, 206 S. 4th St., Paragould, 92000907

Hot Spring County

*Gatewood House*, 235 Pine Bluff St., Malvern, 92000928

Lonoke County

*Sears House*, SE of jct. of AR 38 and AR 391, Austin vicinity, 92000952

Miller County

*Averitt House*, US 71 W side, 6 mi. S of Texarkana, Mount Pleasant vicinity, 92000958

California

Los Angeles County

*Hangar One*, 5701 W. Imperial Hwy., Los Angeles, 92000959

Connecticut

Fairfield County

*Lambert, David, House*, 150 Danbury Rd., Wilton, 92000908

Hartford County

*Congress Street Historic District (Boundary Increase)*, 54, 56 and 58 Maple Ave., Hartford, 92000903

*Southwest District School*, 430 Simsbury Rd., Bloomfield, 92000904

Litchfield County

*Old Riverton Inn*, 436 E. River Rd., Barkhamsted, 92000906

Tolland County

*Mansfield Center Cemetery*, Jct. of Storrs and Cemetery Rds., Mansfield, 92000905

Windham County

*Main Street Historic District (Boundary Increase)*, 32, 50 and 54 North St., Windham, 92000902

IOWA

Jackson County

*Bassnett—Nickerson House (Limestone Architecture of Jackson County MPS)*, 116 S. Vermont, Maquoketa, 92000914

*Butterworth, Nathaniel, House (Limestone Architecture of Jackson County MPS)*, E side of IA 62 N of Andrew, Andrew vicinity, 92000909

*Central School (Limestone Architecture of Jackson County MPS)*, Jct. of Bellevue—Canton and Dubuque—Canton Rds., Canton vicinity, 92000920

*DeFries House, Barn and Carpenter Shop (Limestone Architecture of Jackson County MPS)*, E side of Co. Rd. (232 Ave) W of jct. with IA 62, Andrew vicinity, 92000910

*Dominy, John S., House (Limestone Architecture of Jackson County MPS)*, 605 Pearl St., Sabula, 92000922

*Godard, Milton, House (Limestone Architecture of Jackson County MPS)*, S side Co. Rd. (7 St.) SW of Maquoketa, Maquoketa vicinity, 92000915

*Harris Wagon and Carriage Shop (Limestone Architecture of Jackson County MPS)*, Jct. of Main and Pine Sts., LaMotte, 92000917

*Insane Asylum at the County Poor Farm (Limestone Architecture of Jackson County MPS)*, E side Co. Rd. Y61 (250th Ave.) N of Andrew, Andrew vicinity, 92000918

*Lubben, Henry, House, Smokehouse and Springhouse (Limestone Architecture of Jackson County MPS)*, W side of Co. Rd. Y34 N of Baldwin, Baldwin vicinity, 92000919

*Mill Rock School (Limestone Architecture of Jackson County MPS)*, W side of Co. Rd. (153 Ave.) S of Baldwin, Baldwin vicinity, 92000913

*Sieben, Mrs. Margaret, House (Limestone Architecture of Jackson County MPS)*, .3 mi. E of Co. Rd. Y34, N of Baldwin, Baldwin vicinity, 92000916

*Slye, Thomas, House (Limestone Architecture of Jackson County MPS)*, S side of Co. Rd. (184 St.) E of jct. with IA 62, Andrew vicinity, 92000911

*St. Lawrence Catholic Church (Limestone Architecture of Jackson County MPS)*, Bellevue—Cascade Rd. (Co. Rd. D61) W of jct. with US 61, Otter Creek vicinity, 92000912

*St. Patrick's Church—Garryowen (Limestone Architecture of Jackson County MPS)*, W. Bellevue—Cascade Rd. (Co. Rd. D61) W of Garryowen, Garryowen vicinity, 92000921

Linn County

*First Presbyterian Church of Marion, Iowa*, 802 12th St., Marion, 92000924

Pottawattamie County

*St. Peter's Church and Rectory*, 1 Bluff St., Council Bluffs, 92000923

MASSACHUSETTS

Franklin County

*East Hawley Center Historic District*, East Hawley, Plainfield, Buckland and Ashfield Rds., Hawley, 92000951

Middlesex County

*Spot Pond Archeological District (Stoneham MRA)*, Address Restricted, Stoneham vicinity, 92000925

Plymouth County

*Chubbuck, Thomas, Jr., House*, 1191 Main St., Hingham, 92000954

NEW JERSEY

Burlington County

*Collins, Isaac, House*, 201 Broad St., Burlington, 92000926

NEW YORK

Tompkins County

*Groton High School*, 177 Main St., Groton, 92000953

PENNSYLVANIA

Berks County

*Boyer—Mertz Farm (Agriculture in Berks County MPS)*, Jct. of Noble St. and Bastian Rd., Maxatawny Township, Kutztown, 92000937

*Grand View Dairy Farm (Agriculture in Berks County MPS)*, Preston Rd. S of Wernersville, South Heidelberg Township, Wernersville vicinity, 92000933

*Kissling Farm (Agriculture in Berks County MPS)*, Brownsville Rd. E of Robesonia, Heidelberg Township, Robesonia vicinity, 92000934

*Knorr—Bare Farm (Agriculture in Berks County MPS)*, 4995 Penn Ave., Lower Heidelberg Township, Sinking Spring, 92000935

*Leiby, Jacob, Farm (Agriculture in Berks County MPS)*, PA 143, Perry Township, Virginville, 92000936

*Rieser—Shoemaker Farm (Agriculture in Berks County MPS)*, Cross Keys Rd., Bern Township, Leesport, 92000939

*Schlegel, Christian, Farm (Agriculture in Berks County MPS)*, Fleetwood—Lyons Rd., Richmond Township, Fleetwood, 92000938

*Stupp—Oxenrider Farm (Agriculture in Berks County MPS)*, Dundore Rd. NW of Robesonia, North Heidelberg Township, Robesonia vicinity, 92000932

Blair County

*Downtown Altoona Historic District*, Roughly bounded by 11th Ave., 11th St., 15th Ave. and 13th St., also 700–1000 Lexington and 900–1000 Howard Aves., Altoona, 92000946

Bucks County

*Ridge Valley Rural Historic District*, Roughly, all of Sheep Hole Rd. and parts of Headquarters, Geigel Hill, Red Hill, Tabor and Bunker Hill Rds., Tinicum Twp, Ottsville, 92000944

Cambria County

*Downtown Johnstown Historic District*, Bounded by Washington, Clinton, Bedford, Vine, Market, Locust and Walnut Sts., Johnstown, 92000941

**Cumberland County**

*Given, James, Tavern,* 1180 Walnut Bottom Rd., S. Middleton Township, Carlisle, 92000943

*Trimble, George, House,* 50 Pleasant Grove Rd., Silver Spring Township, Mechanicsburg, 92000945

**Elk County**

*Weidenboerner, John E., House,* 20 N. Michael St., St. Mary's, 92000931

**Huntingdon County**

*Woodvale Historic District (Industrial Resources of Huntingdon County MPS),* Roughly bounded by Ash, High, North, Fulton and Broad Sts., Wood, Wells and Broad Top Townships, Woodvale, 92000942

**Lancaster County**

*Bird-in-Hand Hotel,* 2695 Old Philadelphia Pike (PA 340), East Lampeter Township, Bird-in-Hand, 92000950

**Philadelphia County**

*German Society of Pennsylvania,* 611 Spring Garden St., Philadelphia, 92000947

**Somerset County**

*Miller's Store* Jct. of PA 3029 and PA 3033, Middlecreek Township, Trent, 92000948

**York County**

*Diamond Silk Mill,* Jct. of Ridge Ave. and Hay St., East York, 92000949

**TENNESSEE**

**Hamilton County**

*Market and Main Streets Historic District,* Roughly bounded by Cowart, King, Market and Main Sts., Chattanooga, 92000927

**Rutherford County**

*Rutherford Health Department,* 303 N. Church St., Murfreesboro, 92000960

**WYOMING**

**Laramie County**

*Union Pacific Roundhouse, Turntable and Machine Shop,* 121 W. 15th St., Cheyenne, 92000930

[FR Doc. 92-15798 Filed 7-6-92; 8:45 am]

BILLING CODE 4310-70-M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337-TA-324]**

### Certain Acid-Washed Denim Garments and Accessories; Commission Hearing

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Commission has determined to hold a public hearing in the above-captioned investigation to allow parties to present oral argument on the patent issues that are being reviewed by the Commission, and on remedy, the public interest, and bonding.

**FOR FURTHER INFORMATION CONTACT:** William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)-205-3116. Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)-205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202)-205-1810.

**SUPPLEMENTARY INFORMATION:** On January 2, 1991, Greater Texas Finishing Corporation and Golden Trade S.r.L. filed a complaint alleging a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation, sale for importation, or sale after importation of acid-washed denim products by reason of infringement of claims 6 and 14 of U.S. Letters Patent 4,740,213. The Commission voted to institute an investigation of the complaint on January 28, 1991, and published notice of institution of the investigation in the **Federal Register.** 56 FR 4851 (Feb. 6, 1991).

On April 6, 1992, the presiding administrative law judge (ALJ) issued a final initial determination (ID) finding claim 6 of the '213 patent to be invalid as anticipated and obvious. Claim 14 had previously been withdrawn from the investigation. The Commission determined to review those portions of the ID that found the patent claim in controversy to be invalid. Specifically, the Commission determined to review the ID's conclusion that claim 6 of the '213 patent was not entitled to a foreign priority filing date pursuant to 35 U.S.C. 119. The Commission determined not to review the remainder of the ID.

In its **Federal Register** notice announcing review, the Commission encouraged parties to request a hearing to present oral argument on the issues under review and on remedy, the public interest, and bonding. 57 FR 22484 (May 28, 1992). On June 5, 1992, complainants, respondent Rio Sportswear and four other respondents affiliated with Rio, requested oral argument.

*Commission Hearing*

The Commission will hold a public hearing on July 8, 1992, in the Commission's main hearing room, 500 E Street, SW., Washington, DC, 20436, beginning at 10 a.m. Parties are encouraged to focus primarily on the issue of patent validity under review, but may also address the issues of remedy, the public interest, and bonding.

The order and time limits for parties' presentations shall be as follows:

- Complainants—40 minutes
- Commission investigative attorney—30 minutes
- Respondents (taken together)—60 minutes.

These time limits shall be exclusive of the time consumed by questioning by the Commission. Complainants and the Commission investigative attorney may set aside part of their time for rebuttal. Parties are reminded that arguments directed to the patent validity issue under review must be based upon the evidentiary record certified to the Commission by the ALJ. During the course of the hearing, parties may be asked to file posthearing submissions.

*Notice of Appearance*

Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by July 6, 1992. The Commission anticipates that the hearing will be open to the public. Any requests for closure of a portion of the hearing must demonstrate good cause and must be filed together with a party's request to appear at the hearing

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.56 (19 CFR 210.56).

By order of the Commission.

Issued: July 8, 1992.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 92-15931 Filed 7-6-92; 8:45 am]

BILLING CODE 7020-02-M

**[Investigation No. 337-TA-334]**

### Commission Decision to Extend Deadline for Determination of Whether to Review an Initial Determination

In the Matter of Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Commission has extended until July 6, 1992, the deadline by which it must determine whether to review an initial determination (ID) granting a motion for summary determination.

**FOR FURTHER INFORMATION CONTACT:** Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098.

**SUPPLEMENTARY INFORMATION:** On April 14, 1992, the presiding administrative law judge (ALJ) issued an ID granting a motion for summary determination, thereby terminating the investigation on the basis of no violation of section 337 of the Tariff Act of 1930. Under Commission interim rule 210.53(h), the ID would have become the determination of the Commission on June 15, 1992, unless review was ordered or the review deadline extended.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 201.53(h), (19 CFR 210.53(h)).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1010.

Issued: June 30, 1992.

By order of the Commission

Kenneth R. Mason,

*Secretary.*

[FR Doc. 92–15780 Filed 7–6–92; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 731–TA–538 (Final)]**

## Sulfanilic Acid From the People's Republic of China; Commission Determination to Conduct a Portion of The Hearing in Camera

**AGENCY:** International Trade Commission.

**ACTION:** Closure of a portion of a Commission hearing to the public.

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**SUMMARY:** Upon request of respondents in the above-captioned final investigation, the Commission has [unanimously or specify each Commissioner's vote] determined to conduct a portion of its hearing scheduled for June 30, 1992, *in camera*. See Commission rules 207.23(a), 201.13, and 201.35 through 201.39 (19 CFR 207.23(a), 201.13, and 201.35 through 201.39). The remainder of the hearing will be open to the public. The Commission [unanimously or by majority] has determined that the 10-day advance notice of the change to a meeting was not possible. See Commission rules 201.35(c)(1) and 201.37(b) (19 CFR 201.35(c)(1) and 201.37(b)).

**FOR FURTHER INFORMATION CONTACT:** Anjali K. Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3117. Hearing impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission believes that good cause exists in this investigation to hold a short portion of the hearing *in camera*. The *in camera* portion of the hearing will be for the purpose of reviewing and discussing commercial information specifically relating to the foreign producers' production process, which is business proprietary information (BPI), and therefore properly the subject of an *in camera* hearing pursuant to Commission rule 201.36(b)(4) (19 CFR 201.36(b)(4)). In making this decision, the Commission nevertheless reaffirms its belief that wherever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and respondents, with questions from the Commission. After respondents' public presentation, the Commission will hold an *in camera* session, during which time respondents will present a videotape of the Chinese producers' sulfanilic acid production process, followed by questioning by the Commissioners regarding such process. For the *in camera* portion of the hearing, the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO), and who are included on the Commission's APO service list in this investigation. In addition, representatives of the foreign producers may also be granted access to the closed session. See Commission rule 201.35(b) (19 CFR 201.35(b)). All those planning to attend the *in camera* portion of the hearing should be prepared to present proper identification.

**Authority:** The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Sulfanilic Acid from the People's Republic of China, Inv. No. 731–TA–538 (Final), may be closed to the public to prevent the disclosure of business proprietary information.

Issued: June 30, 1992.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 92–15840 Filed 7–6–92; 8:45 am]

BILLING CODE 7020–02–M

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## Notice of Appointment of Individuals to Serve as Members of Performance Review Boards

**AGENCY:** United States International Trade Commission.

**ACTION:** Appointment of Individuals to serve as members of Performance Review Boards.

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**EFFECTIVE DATE:** June 25, 1992.

**FOR FURTHER INFORMATION CONTACT:** Micheal J. Hillier, Director of Personnel, U.S. International Trade Commission (202) 205–2651.

**SUPPLEMENTARY INFORMATION:** The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB).

Chairman of PRB—Vice Chairman Peter S. Watson
Member—Commissioner David B. Rohr
Member—Commissioner Anne E. Brunsdale
Member—Commissioner Carol T. Crawford
Member—Commissioner Janet A. Nuzum
Member—Charles W. Ervin
Member—William L. Featherstone, Jr.
Member—Lorin L. Goodrich
Member—Lynn I. Levine
Member—Robert A. Rogowsky
Member—Eugene A. Rosengarden
Member—Lyn M. Schlitt
Member—Marion L. Simpson, Jr.
Member—John W. Suomela

Notice of these appointments is being published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order the Chairman:

Kenneth R. Mason,

*Secretary.*

Issued: June 30, 1992.

[FR Doc. 92–15839 Filed 7–6–92; 8:45 am]

BILLING CODE 7020–02–M

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Advisory Committee on Actuarial Examinations Invitation for Membership on Advisory Committee

The Joint Board for the Enrollment of Actuaries (Joint Board) established under the Employee Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The term of the current Advisory Committee will expire on November 1, 1992, and the Joint Board proposes to renew its charter for a further two year period. This notice describes the Advisory Committee and invites applications from those interested in service on it.

1. *General.* To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and must satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be satisfied by successful completion of Joint Board examinations in basic actuarial mathematics and methodology, and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, in cooperation with the Society of Actuaries and the American Society of Pension Actuaries, jointly administer examinations acceptable to the Joint Board for enrollment purposes and acceptable to those actuarial organizations as part of their respective examination programs.

2. *Purposes.* The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations which will enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The purpose of the Advisory Committee, as renewed, will remain that of assisting the Joint Board in fulfilling this responsibility. The Advisory Committee will discuss the philosophy of such examinations, will review topics appropriately covered in them, and will make recommendations relative thereto. It also will recommend to the Joint Board proposed examination questions. The Joint Board will maintain liaison with the Advisory Committee in this process to ensure that its views on examination content are understood.

3. *Function.* The manner in which the Advisory Committee functions in preparing examination questions is intertwined with the jointly administered examination program. Under that program, the participating actuarial organizations draft questions and submit them to the Advisory Committee for its consideration. After review of the draft questions, the Advisory Committee selects appropriate questions, modifies them as it deems desirable, and then prepares one or more drafts of actuarial examinations to be recommended to the Joint Board. (In addition to revisions of the draft questions, it may be necessary for the Advisory Committee to originate questions and include them in what is recommended.)

4. *Membership.* The Joint Board will take steps to ensure maximum practicable representation on the Advisory Committee of points of view regarding the Joint Board's actuarial examinations extant in the community of actuaries. In this regard, appointment will be made from the actuarial community at large and from nominees provided by the actuarial organizations. Since the members of the actuarial organizations comprise a large segment of the actuarial profession, this appointive process ensures expression of a broad spectrum of viewpoints. All members of the Advisory Committee will be expected to act in the public interest, that is, to produce examinations which will help ensure a level of competence among those who will be accorded enrollment to perform actuarial services under ERISA.

Membership normally will be limited to actuaries previously enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. The Advisory Committee will be comprised of not more than nine members.

The Advisory Committee will meet about four times a year. Advisory Committee members should be prepared to devote from 100 to 150 hours, including meeting time, to the work of the Advisory Committee over the course of a year. Members will be reimbursed for Advisory Committee travel, meals and lodging expenses incurred in accordance with applicable government regulations.

Actuaries interested in serving on the Advisory Committee should express their interest and fully state their qualifications in a letter addressed to: Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Any questions may be directed to the Joint Board's Executive Director at 202–376–1421.

The deadline for accepting applications is September 17, 1992.

Dated: July 1, 1992.

**Leslie S. Shapiro,**

*Executive Director, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 92–15852 Filed 7–6–92; 8:45 am]

BILLING CODE 4810–25–M

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/

JMB/5031 CAB, Department of Justice, Washington, DC 20530.

**Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection**

(1) Application of Temporary Replacement Card.
(2) Form I–895. Immigration and Naturalization Service.
(3) Other. One time only.
(4) Individuals or households. Form I–895 is used by aliens to apply for replacement of a temporary resident card. This form is also used to request a new card when the previously issued card was destroyed, lost or stolen.
(5) 100,000 annual responses at .166 hours per response.
(6) 16,600 annual burden hours.
(7) Not applicable under 3504(h).
(1) Notice of Naturalization Oath Ceremony.
(2) Form N–445. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form N–445 is completed by applicants for naturalization. This information refers only to what may have happened to the applicant after the preliminary interview and prior to the taking of the oath. The information enables the INS examiner to make and render an appropriate decision on the application.
(5) 350,000 annual responses at .083 hours per response.
(6) 29,050 annual burden hours.
(7) Not applicable under 3504(h).
(1) Application for Certificate of Citizenship.
(2) Form N–600. Immigration and Naturalization Service.
(3) On Occasion.
(4) Individuals or households. Form N–600 is used to determine the eligibility for issuance of a Certificate of Citizenship to a person who claims to have derived U.S. citizenship under Section 341 of the I&N Act.
(5) 30,000 annual responses at 1.0 hour per response.
(6) 30,000 annual burden hours.
(7) Not applicable under 3504(h).

**New Collections**

(1) Preliminary Application for Special Agent Position.
(2) FD–646. Federal Bureau of Investigation.
(3) One time response.
(4) Individuals or households. Form FD–646 will be completed by applicants who apply for Special Agent positions with the FBI. The information will be used to determine qualifications, suitability and availability of applicants.
(5) 66,000 annual responses at 1.0 hour per response.
(6) 66,100 annual burden hours.
(7) Not applicable under 3504(h).
(1) Preliminary Application for Technical Support Position.
(2) FD–646b. Federal Bureau of Investigation.
(3) One time response.
(4) Individuals or households. Form FD–646b will be completed by applicants who apply for Technical Support positions with the FBI. The information will be used to determine qualifications, suitability and availability of applicants.
(5) 10,800 annual responses at 1.0 hour per response.
(6) 10,900 annual burden hours.
(7) Not applicable under 3504(h).
(1) Preliminary Application for Language Specialist Position.
(2) FD–658. Federal Bureau of Investigation.
(3) One time response.
(4) Individuals or households. Form FD–658 will be completed by applicants who apply for Language Specialist position with the FBI. The information will be used to determine qualifications, suitability and availability of applicants.
(5) 6,000 annual responses at 1.0 hour per response.
(6) 6,100 annual burden hours.
(7) Not applicable under 3504(h).
(1) Application for Employment.
(2) FD–140. Federal Bureau of Investigation.
(3) One time response.
(4) Individuals or households. Form FD–140 will be completed by applicants who apply for a position with the FBI. The information will be used to determine qualifications, suitability and availability of applicants.
(5) 124,000 annual responses at 24.0 hours per response.
(6) 2,976,100 annual burden hours.
(7) Not applicable under 3504(h).
Public comment on these items is encouraged.

Dated: July 1, 1992.

**Don Wolfrey,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 92–15779 Filed 7–6–92; 8:45 am]

BILLING CODE 4410–18–M

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**[AAG/A Order No. 68–92]**

**Privacy Act of 1974 as Amended by Computer Matching and Privacy Protection Act of 1988**

This notice is published in the **Federal Register** in accordance with the requirements of 5 U.S.C. 552a(e)(12). The Immigration and Naturalization Service (INS), Department of Justice (the source agency), is participating in computer matching programs with agencies of two states (designated as recipient agencies). The matching programs were undertaken to make eligibility determinations under the "Systematic Alien Verification for Entitlements (SAVE)" program which was established pursuant to the Immigration Reform and Control Act (IRCA) of 1986 (Public Law No. 99–603).

Notice of the matching programs was originally published in the **Federal Register** on December 28, 1989 (54 FR 53382); the programs were effective on January 29, 1990. Duration was 18 months plus a one-year extension permitted by the Privacy Act of 1974, as amended by the Computer Matching and Privacy Act of 1988, (5 U.S.C. 552a(o)(2)(O) and (D)). The one-year extension will expire July 29, 1992. Thus, the following notice represents the approval of new agreements by the Department of Justice Data Integrity Board to continue (on effective date as indicated below) computer matching activities which will permit the recipient agencies to confirm the immigration status of alien applicants for, or recipients of, Federal benefits assistance as required by section 121 of IRCA. Specifically, the matching activities will permit the following eligibility determinations:

(1) The New Jersey Department of Labor will be able to determine eligibility status for unemployment compensation.

(2) The California State Department of Health Services will be able to determine eligibility status for the Medicaid Program.

Section 121(c) of IRCA amends section 1137 of the Social Security Act and requires agencies which administer the Federal benefit programs designated within IRCA to use the INS verification system to determine eligibility. Accordingly, through the use of user identification codes and passwords, authorized persons from these agencies may electronically access the data base of an Immigration and Naturalization Service Privacy Act system of records entitled "Alien Status Verification Index, JUSTICE/INS–009." From its automated records system, any aforementioned agency participating in these matching programs may enter electronically into the INS data base the alien registration number of the applicant or recipient. This action will initiate a search of the INS data base for a corresponding alien registration number. Where such number is located, the agency will receive electronically

from the INS data base the following data upon which to determine eligibility: alien registration number; last name; first name; date of birth; country of birth; social security number (if available); date of entry; immigration status data; and employment eligibility data. In accordance with 5 U.S.C. 552a(p), such agencies will provide the alien applicant with 30 days notice and an opportunity to contest any adverse finding before final action is taken against that alien because of ineligible immigration status as established through the computer match.

Matching activity will be effective 30 days after publication in the **Federal Register** and will continue for a period of 18 months from the effective date unless extended for one year by the Data Integrity Board of the Department of Justice.

The matching agreements and the required report have been provided to the Office of Management and Budget and the Congress in accordance with 5 U.S.C. 552a(o)(2)(A) and (r). Inquiries may be addressed to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530 (Room 1103, CAB Building).

Dated: July 1, 1992

**Harry H. Flickinger,**

*Assistant Attorney General for Administration.*

[FR Doc. 92-15930 Filed 7-6-92; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No. D-8919, et al.]**

### Proposed Exemptions; Aetna Life Insurance Company, et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days form the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

### Aetna Life Insurance Company (Aetna) Located in Hartford, Connecticut

[Application No. D-8919]

### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed purchase or sale by an employee benefit plan to which Aetna or an affiliate is a party in interest (the Plan) of shares of an open-end investment company registered under the Investment Company Act of 1940 (the Fund), where the Fund is also a party in interest with respect to the Plan as a result of Aetna or its affiliates owning 50% or more of the Fund's outstanding shares at the time of the transaction; provided that the following conditions are met:

(a) Neither Aetna nor any affiliate has discretionary authority or control for the investment of the Plan's assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) for those assets.

(b) The price paid by the Plan for shares of the Fund is the net asset value per share at the time of the transaction and is the same price which would be paid for the shares by any other investor at that time.

(c) The Plan does not pay a sales commission in connection with the purchase or sale of shares of the Fund.

(d) The Plan does not pay a redemption fee in connection with the sale by the Plan to the Fund of such shares unless (1) the redemption fee is paid only to the Fund and such fee is reasonable, and (2) the existence of the redemption fee is disclosed in the Fund prospectus in effect both at the time of the purchase of such shares and at the time of the sale.

(e) A fiduciary for the Plan who is independent of and unrelated to Aetna and its affiliates (an Independent Fiduciary), receives full written disclosure of information concerning the Fund (including a current prospectus for

the Fund and a statement of additional information which describes, among other things, the relationship of Aetna and its affiliates to the Fund and the fee structure for such Fund). For purposes of this proposed exemption, such fiduciary will not be deemed to be an Independent Fiduciary with respect to Aetna and its affiliates if:

(1) The Fiduciary directly or indirectly controls, is controlled by, or is under common control with Aetna or any affiliate;

(2) The fiduciary, or any officer, director, partner, employee or relative of such fiduciary, is an officer, director, partner, or employee of Aetna or any affiliate (or is a relative of such persons); or

(3) The fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of Aetna or any affiliate (or a relative of such persons) is a director of such fiduciary, and if he or she abstains from participation in any such purchase or sale between the Plan and the Fund, then section (e)(2) shall not apply.

(f) On the basis of the information referred to in section (e), the Independent Fiduciary decides whether to purchase or sell shares of the Fund consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(g) The combined total of all fees received by Aetna and its affiliates for the provision of services to the Plan, and in connection with the provision of services to the Funds in which the Plan may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(h) Immediately following the acquisition by a Fund of any securities that are issued by Aetna and its affiliates, the percentage of that Fund's net assets invested in such securities will not exceed one percent.

(i) Aetna maintains for a period of six years the records necessary to enable the persons described below in section (j) to determine whether the conditions of this proposed exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Aetna or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Aetna shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by section (j) below.

(j)(1) Except as provided in paragraph (2) of this section and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in section (i) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Plan who has authority to acquire or dispose of shares of the Funds owned by the Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in section (j)(1)(ii) and (iii) shall be authorized to examine trade secrets of Aetna, any of its affiliates, or commercial or financial information which is privileged or confidential.

**Definitions**

For purposes of this proposed exemption,

(a) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "net asset value" means the amount computed by dividing the total value of the Fund's securities (as described in the prospectus and statement of additional information for such Fund) plus any cash or other assets (including dividends accrued but not collected) less all liabilities (including accrued expenses), by the number of shares outstanding.

(d) The term "Fund" means an open-end investment company registered under the Investment Company Act of 1940 for which Aetna or an affiliate serves as the principal underwriter and/or investment adviser.

(e) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

**Summary of Facts and Representations**

1. Aetna is a life insurance company organized under the laws of the State of Connecticut with total assets of approximately $36 billion. Aetna is a wholly-owned subsidiary of Aetna Life and Casualty Company (ALCC) and a leading provider of insurance contracts and financial services to institutional investors, including several thousand employee benefit plans. In this regard, Aetna offers a variety of group annuity contracts to employee benefit plans which are issued in connection with both Aetna's general account and various separate accounts. Aetna also provides actuarial services, record-keeping and other administrative services to employee benefit plans.

Aetna Capital Management, Inc. (ACM), a wholly-owned subsidiary of Aetna, is an investment adviser registered under the Investment Advisers Act of 1940 and a broker-dealer registered under the Securities Exchange Act of 1934. ACM serves as the distributor for Aetna's group annuity contracts and other funding agreements. ACM also acts as an investment manager and investment adviser for various employee benefit plans.

Aetna Life Insurance and Annuity Company (ALIAC), A wholly-owned subsidiary of ALCC, is a life insurance company organized under the laws of Connecticut. ALIAC is also an investment adviser registered under the Investment Advisers Act of 1940 and a broker-dealer registered under the Securities Exchange Act of 1934. ALIAC markets and services individual and group annuity contracts which offer funding and distribution options for employee benefit plans.

2. The proposed transactions involve the establishment by Aetna and its affiliates of several Funds, which will be registered under the Investment Company Act of 1940 and will be incorporated in the State of Maryland.

The applicant has identified the existing Funds as being part of the Aetna Series Fund, Inc. (the Aetna Series Fund). The Aetna Series Fund is a diversified, open-end management investment company which offers a series of five Funds, each representing a portfolio of investments with different objectives and policies. The existing Funds are identified as follows: (1) the Aetna Money Market Fund, a liquid money market fund; (2) the Aetna Bond Fund, a diversified portfolio primarily of corporate and government bonds; (3) the

Aetna Fund, a flexible portfolio fund investing in common stocks, bonds and money market instruments; (4) the Aetna Growth and Income Fund, a diversified common stock fund; and (5) the Aetna International Growth Fund, a diversified fund investing in international equities. The investment objectives, policies, and restrictions of each Fund are described in the prospectus and the statement of additional information for the Aetna Series Fund.[1] All Funds in the Aetna Series Fund are no-load Funds. Therefore, investors do not pay any sales charges or commissions in connection with the purchase of shares of the Funds. In addition, there are no separate fees for distribution expenses, pursuant to Rule 12b–1 under the Investment Company Act of 1940, charged to investors with respect to Fund shares. However, fund shares are subject to various investment management and advisory fees, as well as administrative fees and other expenses, which are calculated as a specified percentage of the average daily net assets of each Fund (see Item 5 below). The applicant anticipates establishing additional Funds within the Aetna Series Fund, as well as other groups of Funds similar to the Aetna Series Fund, in the future.

The Riggs National Bank of Washington, DC, serves as custodian for assets of all existing Funds of the Aetna Series Fund, except for the Aetna International Growth Fund which uses Brown Brothers Harriman and Company of Boston, Massachusetts. The transfer and dividend disbursing agent for the Aetna Series Fund is First Wisconsin Trust Company of Milwaukee, Wisconsin.

3. ACM will serve as the principal underwriter and distributor for shares of the Funds. ALIAC will serve as the investment adviser and administrator for the Funds. ALIAC may also sub-contract certain investment advisory services to other affiliated companies, such as Aetna Capital Management International, Ltd. (ACMI).

Initially, Aetna, ALCC, ALIAC, or other affiliates, will purchase substantial amounts of the shares of the Funds. The applicant represents that, for a potentially significant period of time, the Funds will be parties in interest with respect to the Plans because Aetna and its affiliates will own 50% or more of the outstanding shares of the Funds. Thus, the applicant states that the purchase or sale of shares of the Funds by the Plans would be prohibited transactions under the Act.[2]

ACM will market shares of the Funds to employee benefit plans to which Aetna and its affiliates currently provide services (i.e. the Plans), to employee benefit plans to which Aetna and its affiliates have no pre-existing relationship, and to other investors. ACM will also market shares of the Funds to employee benefit plans for which Aetna, ACM, ALIAC, or another affiliate, is a fiduciary as an investment manager or investment adviser (the Client Plans) as well as to such plans covering only employees of Aetna and its affiliates (the Aetna Plans).[3] The Funds will be marketed either on a stand-alone basis, as an investment option along with Aetna's general and separate accounts, or as part of Aetna's other financial and administrative services.

4. The applicant represents that neither Aetna, ALIAC, ACM, nor any other affiliate of Aetna will make the decision to invest assets of the Plans in the Funds or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) for any assets of the Plans involved in transactions which are subject to the proposed exemption. In each such instance, an Independent Fiduciary will receive a current prospectus and a statement of additional information for the Funds which describes the fee structure for each Fund, prior to making any decision to invest in the Funds. This information will provide a complete and detailed disclosure of the entities involved in the operation of the Funds, including Aetna and its affiliates. In addition, the status of Aetna, ALIAC, ACM, or other affiliates as significant shareholders in the Funds will be disclosed. Finally, the information will describe the types of securities and other instruments in which the Fund may invest, the investment policies and strategies that the Fund may utilize, and the risks involved with those investment, policies and strategies. On the basis of such information, the Independent Fiduciary will decide whether to purchase or sell any shares of the Funds, based on a determination that such transactions would be in the best interests of the Plan and consistent with the fiduciary responsibility provisions of Part 4 of Title I of the Act.[4]

Shares of the Funds will be sold by ACM employees who are registered representatives of ACM in compliance with the requirements of the National Association of Securities Dealers, Inc. Each Fund will pay fees to ALIAC for investment advisory and administrative services either monthly or quarterly, as described in the Fund prospectus, based on the average daily net assets of the Fund for such period. In some instances, ALIAC will then pay a sub-contracted Aetna affiliate (such as ACMI) for certain investment advisory services provided by such affiliate to a particular Fund. Aetna or ALIAC will also reimburse ACM for certain expenses

[1] Because a Fund is not precluded from investing in securities that are issued by Aetna or its affiliates, Aetna represents that, as a limitation, the percentage of any Fund's net assets invested in these securities will never exceed one percent.

[2] The applicant notes that Prohibited Transaction Exemption 84–24 (PTE 84–24, 49 FR 13208, April 3, 1984) provides, among other things, an exemption for the purchase by a plan of securities issued by an investment company from, or the sale of such securities to, the investment company or the investment company principal underwriter when the investment company, principal underwriter, or the investment company investment adviser is a fiduciary or service provider to the plan solely because it either is the sponsor of a master or prototype plan or provides nondiscretionary trust services to the plan. However, the applicant states that since the Funds would be parties in interest to the Plans by virtue of the significant direct or indirect holdings in the Funds by Aetna and its affiliates, the purchase of shares of the Funds by the Plans would not be covered by PTE 84–24 because such Funds would be parties in interest with respect to the Plans for reasons other than as described therein (see Section III(f) of PTE 84–24).

[3] The Department is not proposing any exemptive relief herein for transactions with the Funds by either the Client Plans, regarding assets for which Aetna or an affiliate is a fiduciary, or the Aetna Plans. In this regard, the applicant states that the Client Plans may purchase or sell shares of the Funds pursuant to Prohibited Transaction Exemption 77–4 (PTE 77–4, 42 FR 16732, April 8, 1977). PTE 77–4 permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided certain conditions are met. In addition, the applicant states that the Aetna Plans may purchase or sell shares of the Funds pursuant to Prohibited Transaction Exemption 77–3 (PTE 77–3, 42 FR 16734, April 8, 1977). PTE 77–3 permits the purchase or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department is expressing no opinion in this proposed exemption regarding whether any transactions with the Funds under the circumstances described herein would be covered by either PTE 77–4 or PTE 77–3.

[4] The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

that ACM incurs in connection with the distribution of shares of the Funds.

5. Aetna and its affiliates may perform a variety of financial services for the Plans and receive fees from the Plans for those services. However, the applicant states that the combined total of all fees received by Aetna and its affiliates for the provision of services to a Plan, as well as fees received by ALIAC or any other Aetna affiliate in connection with the provision of services to the Funds in which a Plan may invest, will not be in excess of reasonable compensation for such services.[5]

All decisions concerning fees to be paid by a Fund will be made by the Board of Directors of the Fund (the Fund Directors). The Fund Directors must review the amount and fairness of all fees relative to the services provided to the Fund and the industry averages for similar services. The applicant states that any fees paid by a Fund to ALIAC or any other Aetna affiliate must be approved by a majority of the Fund Directors who are unrelated to Aetna and its affiliates. In addition, the Funds will not effect any brokerage transactions in portfolio securities of such Funds with ALIAC or any other Aetna affiliate.

The prospectus for the Aetna Series Fund states that the total investment advisory fees and administrative fees paid to ALIAC for each of the existing Funds are as follows: (1) .65% of the average daily net assets of the Aetna Money Market Fund; (2) .75% of the average daily net assets of the Aetna Bond Fund; (3) 1.05% of the average daily net assets of the Aetna Fund; (4) .95% of the average daily net assets of the Aetna Growth and Income Fund; and (5) 1.10% of the average daily net assets of the Aetna International Growth Fund.

6. The applicant represents that the price paid by a Plan for shares of any Fund will be the net asset value per share of such Fund and will be the same price which would be paid for such shares by any other investor at the time of the transaction.

The net asset value of a Fund share will be the amount computed by dividing the total value of the Fund's securities (based on either market quotations or, where appropriate, the amortized cost of such securities), plus any cash or other assets (including dividends accrued by not collected) less all liabilities (including accrued expenses), by the number of shares outstanding. With respect to any Fund that is a money market fund, all securities or other assets held by the Fund will be valued by an amortized cost method of valuation, as described in the prospectus and statement of additional information for such Fund. The applicant states that this method involves valuing an instrument, such as a short-term debt security, at its cost and thereafter assuming a constant amortization of premium or increase of discount. The applicant states further that the use of an amortized cost valuation for such a Fund allows the Fund to maintain a constant net asset value of $1.00 per share.

With respect to the existing Funds of the Aetna Series Fund other than the Aetna Money Market Fund, portfolio securities are valued by ALIAC or ACMI primarily on the basis of market quotations. Equity securities of a Fund which are traded on a registered securities exchange are valued at the last sale price or, if there has been no sale that day, at the mean of the last bid and asked price on the exchange where the security is principally traded. Securities traded over the counter (including long-term debt securities) are valued at the mean of the last bid and asked price if current market quotations are readily available. Short-term debt securities which have a maturity date of more than sixty days are valued at the mean of the last bid and asked price obtained from principal market makers. Short-term debt securities maturing in sixty days or less at the date of purchase, and all securities in the Aetna Money Market Fund, are valued using the amortized cost method of valuation. Long-term debt securities traded on a national securities exchange are valued at the mean of the last bid and asked price of such securities obtained from a broker who is a market-maker in the securities or a service providing quotations based upon the assessment of market-makers in those securities. All other assets, including securities for which market quotations are not readily available, are valued at fair market value as determined by, or under the authority of, the Fund Directors. The applicant states that neither ALIAC nor ACMI is inclined to invest assets of any Fund in securities which are illiquid or thinly traded and that such occurrences would be very rare. However, when securities for which market quotations are not available are acquired by a Fund, ALIAC or ACMI generally will value such securities by reference to the price offered by existing market makers for the securities and, where appropriate, the price of a similar security of the same issuer. If a security acquired by a Fund poses unexpected valuation problems, ALIAC will consult with Fund management and, if necessary, with the Fund Directors, who will provide guidance and directions for pricing the securities.

7. The applicant states that no commissions will be charged to the Plans for the purchase or sale of shares of a Fund. In addition, the Plans will not pay any redemption fees for the sale of such shares to the Fund unless (1) the redemption fee is paid only to the Fund and such fee is reasonable, and (2) the existence of the redemption fee is disclosed in the Fund prospectus in effect both at the time of the purchase of such shares and at the time of the sale.

8. In summary, the applicant represents that the proposed transactions will meet the statutory criteria of section 408(a) of the Act because: (a) Aetna and its affiliates will not have any discretionary authority or control with respect to the assets of the Plans involved in the purchase or sale of shares of the Funds and will not render any investment advice to the Plans as a fiduciary for such assets; (b) the price paid by the Plans for shares of the Funds will be the net asset value per share of such Fund and will be the same price which would be paid by unrelated investors at the time of the transaction; (c) no commissions will be charged in connection with the purchase or sale of shares of the Funds; and (d) an Independent Fiduciary for a Plan will receive full written disclosure of information concerning the Funds prior to the transaction and, on the basis of such information, will decide whether to purchase or sell any shares of the Funds

**FOR FURTHER INFORMATION CONTACT:** Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

**Ralston Purina Company Savings Investment Plan (the Plan) Located in St. Louis, Missouri**

[Application No. D–9042]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the code, by reason of section 4975(c)(1)(A)

[5] The Department is not proposing any exemptive relief herein for fees paid by the Plans directly to Aetna or any affiliate for the provision of services to the Plans (see section 408(b)(2) of the Act and section 2550.408b–2 of the regulations).

through (E) of the Code, shall not apply to the advance of funds (the Advances) to the Plan by the Ralston Purina Company (Ralston), a party in interest with respect to the Plan, and a return of such funds with interest to Ralston upon the Plan's receipt of payments under two guaranteed investment contracts (the GICs) issued by Executive Life Insurance Company (ELIC), provided the following conditions are satisfied: (a) All of the terms of the transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party; (b) the Advances and interest thereon will be repaid only out of amounts paid to the Plan by ELIC, its successors, or any other responsible third party; (c) interest will be credited at the GIC Market Rate (as defined herein) to each GIC after its stated maturity date; (d) Ralston will make the Advances at the Loan Rate (as defined herein) from the date the Advances are made through the date they are repaid; (e) the Plan's liability to Ralston resulting from the transaction will in no event exceed the amounts paid to the Plan by or on behalf of ELIC, its successors or any other third party with respect to ELIC's obligations under the GICs; and (f) repayment of the Advances will be waived to the extent the Plan receives less from the disposition of the GICs than the total amount of the Advances, plus interest at the Loan Rate.

**EFFECTIVE DATE:** If the proposed exemption is granted, the exemption will be effective June 30, 1992.

**Summary of Facts and Representations**

1. The Plan is a defined contribution plan sponsored by Ralston. The Plan was established on January 1, 1992 as the surviving plan following a merger of two plans sponsored by Ralston. As of January 1, 1992, there were 15,385 participants in the Plan, and the Plan's assets totalled $735,277,204. Of the total assets in the Plan, approximately 2% will be involved in the subject transaction. The trustee of the Plan is Boatmen's Trust Company (the Trustee). Investment decisions are made on behalf of the Plan by Ralston's Employee Benefit Asset Investment Committee (EBIAC). The EBIAC is appointed by Ralston's Chairman of the Board of Directors and Chief Executive Officer and is currently comprised entirely of Ralston employees.

2. The Plan has established five Investment Funds in which participants may elect to direct portions of their accounts. Among the Investment Funds is a Fixed Income Fund which may be invested in a variety of assets, some of which are intended to provide a fixed income. Currently, the Fixed Income Fund is invested primarily in guaranteed investment contracts. For purposes of determining the rate of interest credited to the participants' accounts invested in the Fixed Income Fund, a blended interest rate is computed by combining all investments held in the Fixed Income Fund.

3. The Plan's assets include two GICs issued by ELIC. The GICs provide guaranteed rates of interest and are identified as follows: (a) Contract No. CG011903A issued by ELIC on January 7, 1987 at 9.12% compound interest, maturity on June 30, 1992; and (b) Contract No. CG0127003A issued by ELIC on January 4, 1988 at 8.70% net simple interest, maturity on December 31, 1992. The GIC's provide for withdrawals to be made without penalty to fund benefit payments, including participant loans and hardship withdrawals, and participant-directed transfers among investment options.

4. On April 11, 1991, a California court appointed the Insurance Commissioner of the State of California as conservator of ELIC.[6] Pursuant to this action, payouts on ELIC's GICs were suspended. Accordingly, for an indeterminate time period, no withdrawals may be made from the GICs, notwithstanding the Plan's need for such withdrawals for the payment of benefits to participants and their beneficiaries, including participant loans and hardship withdrawals, and to accommodate participant-directed investment re-allocations to other investment funds.

5. Ralston proposes to make the Advances in a series of payments beginning after June 30, 1992, the earlier stated maturity date of the two GICs. Each Advance will equal the amount necessary (which would have been withdrawn from the GICs if such withdrawals were still permitted) for the payment of benefits to the Plan's participants and their beneficiaries including participant loans and hardship withdrawals, and to accommodate participant-directed investment re-allocations.

6. Interest will be credited at the contract rate for each GIC until it stated maturity date. After its stated maturity date, interest will be credited at the "GIC Market Rate". The GIC Market Rate credited for any calendar quarter after a GIC's stated maturity date will equal the average of the interest rates credited on two-year Treasury Notes and three-year Treasury Notes (determined as of the 15th day of the last month of the preceding calendar quarter) plus 32 basis points. Interest to the Plan will be accrued daily. Ralston represents that the GIC Market Rate was determined based on an independent analysis of GIC rates reported in the Wall Street Journal. The applicant represents that this rate was selected because it very closely approximates the interest rate which an insurance company would credit on new money deposited under a GIC contract.

7. Ralston will make the Advances charging interest at the "Loan Rate" from the date the Advances are made through the date they are repaid. The Loan Rate will be a floating rate equal to the GIC Market Rate reduced by 32 basis points. The Advances will continue until such time as ELIC, the successor to the business of ELIC or any other third party has made payments to the Plan in respect of the GICs (Maturity Payments) in a cumulative amount equal to the accumulated book value of the GICs or if earlier, until all participant accounts have been distributed or transferred out of the Fixed Income Fund. The accumulated book value of each GIC is defined as The GIC's issue price, less any distributions or other amounts actually paid out of the GIC (including any Advances made to the Plan because of the inability of ELIC to make payments under the GIC), plus interest at the contract rate until the GIC's stated maturity and at the GIC Market Rate after the GIC's stated maturity date.

8. The applicant represents that the Advances and any interest thereon will be unsecured and may be repaid only out of payments received from ELIC and other responsible third parties. The applicant represents that since the GIC Loan Rate is equal to the GIC Market Rate less 32 basis points, Ralston will receive with respect to the Advances on objectively-determined, below-market rate of interest, which will always be less than the rate of interest paid by Ralston to the Plan on such funds.

9. Ralston proposes that interest will accrue on the Advances for the following reasons. First, Ralston has made a commitment to make the Plan whole with respect to the GICs. Under the terms of the proposed transaction, the Plan will be credited with interest approximately equal to that which it would have received if the GICs had performed as intended (see rep. 6, above). Such interest will be allocated to Plan participants who have investments in the Fixed Income Fund. It

[6] The Department notes that the decisions to invest in the GICs are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GICs.

was not Ralston's intent to put the Plan and its participants in a better position than they would have occupied had the GICs performed as intended. If, however, no interest accrues on the Advances, and, in addition to the Advances, the Plan receives funds from ELIC or any other party for the payment of obligations under the GICs, the Plan could receive a windfall in the form of a double allocation of interest. Second, under the terms of the proposed transaction, payment of interest on the advanced funds at the proposed below-market rate will compensate Ralston, but only in part, for its loss of the use of the funds from the date they are advanced through the date they are repaid.

10. Ralston represents that interest will be paid on the Advances only from funds received from ELIC and other responsible third parties. In addition, no repayment of the Advances or payment of interest will be made to Ralston until the Plan has received (from All sources, including ELIC, other responsible third parties, and Ralston) the full amount due under the GICs pursuant to paragraph 6, above. After the Plan has received the full amount due under the GICs, any additional Maturity Payments received from ELIC or any other third party shall be used to repay Ralston the Advances plus interest at the Loan Rate. If the additional Maturity Payments so received are less than the Advances plus interest at the Loan Rate, Ralston will bear the loss, having no recourse against any other of the Plan's assets. In the event that such additional Maturity Payments exceed the amount necessary to repay the Advances plus interest, the excess will be allocated to Plan participants as contributions in the Plan year in which such excess amounts are received.

11. Vanguard Fiduciary Trust Company (Vanguard) of Valley Forge, Pennsylvania, has been appointed the Plan's independent fiduciary with respect to the subject transaction. Vanguard represents that it has reviewed the terms of the subject transaction and has made a determination that the transaction as described herein is appropriate for the Plan and in the best interests of the Plan's participants. In addition, Vanguard will monitor all aspects of the proposed transaction, including the timing and the amount of Advances plus interest. Records of all transactions relating to the Advances will be maintained by Ralston for a period of seven years after the Plan has received all payments due under the ELIC GICs and repaid all Advances made by Ralston as a result of the subject transaction. Such records will be open for inspection at all times by Vanguard, the Department, the Internal Revenue Service or any Plan participant.

12. The applicant represents that the Plan will not incur any expenses with respect to the proposed transaction and the Plan will sustain no losses as a result of the proposed transaction. Participants will received substantially the same benefits to which they would have been entitled under the Plan if the GICs had been paid out in accordance with their terms. The applicant further represents that the Plan will comply with section 415 of the Code with respect to the transaction, including any waiver of repayment of the Advance and interest thereon to the Plan by Ralston.

13. In summary, the applicant represents that the subject transaction satisfies the criteria of section 408(a) of the Act because: (1) Participants will receive substantially the benefits to which they would have been entitled under the Plan if the GICs had been paid out in accordance with their terms; (2) the transaction will preserve the Plan's ability to timely fund participants' benefits, including participant loans, hardship withdrawals and participant-directed investment re-allocations; (3) the Advances and interest thereon may be repaid only out of amounts paid to the Plan by ELIC, its successor, or any other third party in excess of the accumulated book value of the GICs; (4) in the event that the total payments received from ELIC and other responsible third parties exceed the full amount due under the GICs pursuant to paragraph 6, above, and the amount necessary to repay the Advances plus interest, the excess will be allocated to Plan participants; (5) the Plan will not incur any expenses with respect to the transaction; (6) Vanguard, an independent fiduciary on behalf of the Plan, has determined that the transaction is appropriate for the Plan and in the best interests of its participants; (7) Vanguard will monitor the transaction, including the timing and amount of Advances made to the Plan by Ralston, and the repayment to Ralston of the Advances plus interest; and (8) the Plan will comply with section 415 of the Code with respect to the transaction, including any waiver of repayment of the Advances made to the Plan by Ralston.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 523–8861. (This is not a toll–free number.)

## Merit Reporting, Inc., dba Merit College of Court Reporting Reporting, Inc. Profit Sharing Plan (the Plan) Located in Rancho Mirage, California

[Application No. D–8867]

### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale of 25 units (the Units) of MLH Income Realty Partnership IV (the Partnership) from the Plan to M. William Gumpert and Virginia L. Gumpert (the Gumperts), parties in interest with respect to the Plan, provided the sale price is not less than the greater of (a) the fair market value of the Units as of the proposed sale date, or (b) the Plan's aggregate cost of acquiring and holding the Units.

### Summary of Facts and Representations

1. The Plan is a profit sharing plan with 21 participants as of October 8, 1991. Contributions to the Plan terminated effective April 29, 1988, when the Gumperts sold Merit College (the employer of the participants in the Plan and the sponsor of the Plan), and the new owners were unwilling to continue contributing to the Plan. However, the Plan's assets (including the Units), which totalled $51,396 as of October 31, 1990, have not yet been distributed to the Plan participants and beneficiaries. The Gumperts are the trustees of the Plan and are the only persons having investment discretion over the assets affected by the proposed transaction.

2. The Units were purchased for the Plan on May 31, 1984 for $25,000.00 from a broker at Merrill Lynch (ML). Neither the broker nor ML is a party in interest with respect to the Plan as defined in section 3(14) of the Act. The Partnership is a real estate limited partnership managed by ML as general partner. The applicant states that the Units were acquired as a Plan investment on the basis of: The wide dispersion of the Partnership's real estate holdings as to geographic location; the diversification of these holdings with respect to office buildings, industrial buildings, and residential properties; the historical profitability of the previous MLH Inc. Realty Partnerships, I, II, and III;

representations by the broker that the Units were expected to be cashed out with investments and final profits returned within five to seven years, thus not interfering with the Plan's liquidity and cash-flow requirements; and ML recommendations.

3. The applicant states that the Plan has incurred no other costs with respect to the Units. On June 30, 1988, the Partnership returned $3,375.00 of principal to the Plan, resulting in a cost basis of the Units to the Plan of $21,625.00. In addition, the Plan has received income of $8,516.25 from the Partnership's operations through January 31, 1991.

4. In an undated letter (stamped "Received July 8, 1991"), Ronald M. Millspaugh, Financial Consultant at ML, states that the only known willing buyer of the Units is Liquidity Fund Investment Corporation (LFIC), represented by Susan Gillett, Acquisitions Associate at LFIC. LFIC's business involves, among other things, research and analysis of real estate, including non-traded real-estate securities (i.e., limited partnerships in the secondary market), as well as traded real-estate equity securities, and making markets, matching buyers and sellers, in the trading of mature limited partnerships (including real-estate and non-real-estate limited partnerships). LFIC represents that in 1990, its real-estate limited partnership acquisitions totalled $40 million and that it has handled 20,000 real-estate limited partnership acquisitions since 1980 (which have increased since then at the rate of 50% per year) including 4,000 in 1990.

The applicant represents that neither of the Gumperts have any relationship with Susan Gillett or LFIC and that LFIC has no relationship to the general partner of the Partnership. By letter dated June 26, 1991, Susan Gillett, or LFIC, offered to purchase the Units for a total price of $6,500.00 ($260.00 per Unit × 25 Units). Further, a Statement of Security Account issued by ML to the Plan as a unit holder indicated that the Units had a fair market value of $13,700.00 ($548.00 per Unit × 25 Units) as of February 28, 1992.

5. The applicant represents that the sale of the Units at the price offered by LFIC would result in an approximate loss of 30% of benefits for the Plan participants. The applicant state that the Gumperts are not Plan participants but wish to avoid reducing the participants' benefits. Therefore, the Gumperts wish to purchase the Units from the Plan for the greater of their fair market value as of the date of the purchase or the Plan's cost basis in the Units ($21,625.00: see 3. above). If the fair market value of the Units is less than $21,625.00, the Gumperts will deposit $21,625.00 in cash into the trust which holds the Plan's assets and, as Plan trustees, will assign the Units to themselves, with the consent of the Partnership's general partner. The applicant states that no transfer fees or other expenses will be paid by the Plan in effecting the transfer of the Units from the Plan to the Gumperts, who will pay all such expenses.

6. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sale price will equal the greater of (i) the fair market value of the Units as of the proposed sale date, or (ii) the Plan's aggregate cost of acquiring and holding the Units; (c) no transfer fees or other expenses will be paid by the Plan in effecting the transfer of the Units from the Plan to the Gumperts, who will pay all such expenses; and (d) the proposed sale will enable the Plan trustees to distribute the assets of the Plan to its participants without reducing their benefits.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Mariam Freund of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

### Gerber Childrenswear, Inc. Salaried Investment Plan (the Plan) Located in Greenville, South Carolina

[Application No. D–9058]

### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b))2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed extension of credit (the Loan) to the Plan by Gerber Childrenswear, Inc. (the Employer), the sponsor of the Plan, with respect to group annuity contract number GA–CG0121503A (the E.L. GAC) issued by Executive Life Insurance Company of California (Executive Life) and group annuity contract number GA–5244 (the M.B. GAC; together, the GACs) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the potential repayment of the Loan (the Repayments) by the Plan; provided that the following conditions are satisfied:

(a) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party;

(b) No interest and/or expenses are paid by the Plan;

(c) The Loan is made only in lieu of payments due from Executive Life and Mutual Benefit with respect to the GACs;

(d) The Repayments shall not exceed the amount of the Loan;

(e) The Repayments shall not exceed the amounts actually received by the Plan from Executive Life, Mutual Benefit, and other responsible third party payors with respect to the GACs; and

(f) The Repayment of the Loan shall be waived to the extent that the amount of the Loan exceeds the amounts recovered by the Plan with respect to the GACs from Executive Life, Mutual Benefit, or any other source.

### Summary of Facts and Representations

1. The Plan is a defined contribution retirement plan with approximately 1,218 participants as of April 20, 1992 and total assets of approximately $6,381,123 as of December 31, 1991. The Employer is a Delaware corporation engaged in the manufacture and sale of infants' and children's clothing, with its headquarters in Greenville, South Carolina. The Employer is a wholly-owned subsidiary of Gerber Products Company, headquartered in Fremont, Michigan, and was formerly named Soft Care Apparel, Inc. The assets of the Plan are held and invested under the Soft Care Apparel, Inc. Investment Plan Trust, which bears the Plan's previous name, by State Street Bank and Trust Company (the Trustee), a Massachusetts trust company with its principal offices in Boston, Massachusetts.

2. The Plan provides for individual participant accounts (the Accounts) and for participant-directed investment of the Accounts. Investment of the Accounts may be directed to one of two investment funds: The Index Fund, which invests in common stock, and in the Selection Fund, which invests in guaranteed-return instruments, such as guaranteed investment contracts issued by insurance companies. The Selection Fund is maintained by the Trustee as a collective investment fund on behalf of a pool of ERISA plans which retain the Trustee as investment manager. Among the Plan's investments in the Selection Fund is the E.L. GAC and an interest in the M. GAC.

3. *The E.L. GAC:* On or about April 30, 1987, the Trustee executed the E.L. GAC with Executive Life, exclusively on behalf of the Plan. The Plan does not share any interests in the E.L. GAC with any other parties in the Selection Fund. The E.L. GAC is a benefit-responsive group annuity contract which provides a guaranteed interest rate (the Contract Rate) of 8.6 percent, compounded annually over six years, with a deposit limit of $3 million and a maturity date of January 28, 1993. The terms of the E.L. GAC provide for pre-maturity withdrawals of Account balances invested therein as necessary to satisfy Plan obligations relating to payment of termination benefits, in-service withdrawals, and transfers of Accounts to other investment funds (collectively, the Withdrawal Events).

On April 11, 1991, Executive Life was placed in conservatorship by the Commissioner of Insurance of the State of California.[7] Since that date, payments have been suspended on Executive Life's contracts, such as the E.L. GAC, and the Trustee has received no payments from Executive Life with respect to the E.L. GAC. As a result, the portion of each Account invested in the Selection Fund that is attributable to the E.L. GAC has been, and remains, unavailable to fund Withdrawal Events. The Employer represents that as of December 31, 1991, the E.L. GAC had a book value of $1,126,445.42, representing total principal deposits, plus accrued interest at the Contract Rate, less previous withdrawals.

*The M.B. GAC:* On or about December 1, 1990, the Trustee executed the M.B. GAC with Mutual Benefit on behalf of the plan and 17 other ERISA plans participating in the Selection Fund. The M.B. GAC is a benefit-responsive group annuity contract which provides a Contract Rate of 8 percent compounded annually over 21 months, and a maturity date of September 30, 1992. The M.B. GAC provided a six-month deposit period during which new and additional Account investments into the Selection Fund were invested as principal in the M.B. GAC. The Plan owns a 3 percent interest in the M.B. GAC, which is determined by dividing the Plan's total principal investment in the M.B. GAC by the total amount of Selection Fund assets invested in the M.B. GAC.

On July 17, 1991, Mutual Benefit was placed in conservatorship by a Superior Court for the State of New Jersey.[8] Since that date, payments have been suspended on Mutual Benefit's contracts, such as the M.B. GAC, and the Trustee has received no payments from Mutual Benefit with respect to the M.B. GAC. As a result, the portion of each Account invested in the Selection Fund that is attributable to the M.B. GAC has been, and remains, unavailable to fund Withdrawal Events. The Employer represents that as of December 31, 1991, the book value of the Plan's interest in the M.B. GAC was $1,005,659.60, representing the Plan's total principal deposits, plus accrued interest at the Contract Rate, less previous withdrawals.

The book value of the E.L. GAC, plus the book value of the Plan's interests in the M.B. GAC, as of December 31, 991 constituted approximately 49 percent of the plan's total investments in the Selection Fund and approximately 33 percent of the Plan's total assets. The Trustee represents that since the suspensions of payments on the GACs, the Selection Fund's funding of Withdrawal Events has been restricted to assets other than the E.L. GAC and the M.B. GAC. The Trustee states that Plan participants who have become entitled to termination distributions since the suspension of GAC payments have received distributions representing only the portion of their Account balances invested in assets other than the E.L. GAC and the M.B. GAC. Similarly, since the suspension of GAC payments, Plan participants whose Accounts are invested in the Selection Fund have been prevented from loans, in-service withdrawals and investment transfers with respect to the portion of their Accounts attributable to investments in the E.L. GAC and the M.B. GAC.

The Employer represents that under the prevailing circumstances, it is uncertain whether, or to what extent, Executive Life and/or Mutual Benefit will be able to make any payments of principal or interest due the Plan under the terms of the GACs for Withdrawal Events and upon maturity dates. The Employer maintains that the uncertainties surrounding the situations of Executive Life and Mutual Benefit have caused substantial concern and anxiety among Plan participants. In order to relieve the affected participants' concerns, to protect the Accounts which are invested in the GACs, and to restore to the Plan the ability to fulfill obligations with respect to Withdrawal Events involving amounts invested in the GACs, the Employer proposes to provide the Selection Fund with cash in the amount of the Plan's investments in and accrued earnings under the GACs as of the date of the Loan. Accordingly, the Employer proposes the Loan to achieve these objectives, and is requesting an exemption for the Loan, and the potential Repayments, under the terms and conditions described herein.

4. The Employer's proposal is embodied in an agreement (the Agreement) between the Employer and the Trustee, under which the Employer agrees to make the Loan in a lump-sum amount (the Loan Amount) representing the "Current Value" of the E.L. GAC, plus the Plan's interest in the "Current Value" of the M.B. GAC, as of the date (Payment Date) of the Loan. The Agreement defines the Current Value of each GAC as the sum of the total principal deposits thereunder, plus accrued interest at the Contract Rate, less previous withdrawals. The Loan amount is further reduced by any proceeds with respect to the GACs which are received by the Plan before the Payment Date. The Payment Date of the Loan will be the later of (a) July 1, 1992, (b) the date authorized and directed for the Loan by the Employer's Board of Directors, or (c) the earliest date permitted by the Internal Revenue Service and the Department. The Employer represents that its intention is to make the Loan as soon as possible after the publication of the requested exemption, if granted, in the **Federal Register.**

In return for the Loan, the Trustee agrees to make the Repayments as specified in the Agreement. The Agreement provides that whenever the Trustee receives any amounts due the Plan under or with respect to the E.L. GAC or the M.B. GAC (the GAC Proceeds), the Trustee shall pay such amounts to the Employer until the loan is repaid in full. The GAC Proceeds include any amounts received by the Trustee with respect to the GACs, whether such payment is made directly by one of the GAC issuers or by one or more state guaranty associations, by any successor in interest to the GAC issuers, or by any other source. No interest will be charged on the Loan Amount. The Repayments are restricted solely to the GAC Proceeds and the

[7] The Department notes that the decisions to acquire and hold the E.L. GAC are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the E.L. GAC.

[8] The Department notes that the decisions to acquire and hold the M.B. GAC are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the M.B. GAC.

Agreement prohibits repayment of the Loan from any other Plan assets. The Agreement provides that if the total amount of GAC Proceeds is less than the Loan Amount, then the Employer will forgive repayment of the deficiency and will treat the forgiven amount in accordance with IRS Revenue Procedure 92–16 (26 CFR 601.202).

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will be relieved of any further risk or uncertainty with respect to payments due from Executive Life and Mutual Benefit under the GACs; (2) The proposed transaction will enable the Plan to resume full funding of Withdrawal Events involving Accounts invested in the Selection Fund; (3) The Plan will receive the full book values of the E.L. GAC and the Plan's interest in the M.B. GAC as of the date of the Loan, representing total principal deposits plus accrued interest at the Contract Rates less previous withdrawals; (4) The Plan will incur no interest or expenses for the Loan; (5) The Repayments will be restricted to the GAC Proceeds; and (6) The Repayments will be waived to the extent the loan exceeds the GAC Proceeds.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**The General Motors Hourly-Rate Employees' Pension Plan (the GM Hourly Plan); The General Motors Retirement Program for Salaried Employees (the GM Salaried Plan; together, the GM Plans); The AT&T Pension Plan; and The AT&T Management Pension Plan (the AT&T Management Plan; together, the AT&T Plans; all four plans collectively, the Plans) Located in Detroit, Michigan (the GM Plans) and in New York, New York (the AT&T Plans)**

[Application Nos. D–9027 through D–9030]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to (1) the proposed granting to The Industrial Bank of Japan, Limited, New York Branch (IBJ), as the representative of lenders (the Lenders) participating in a credit facility (the Facility), of security interests in limited partnership interests in The Morgan Stanley Real Estate Fund, L.P. (the Partnership) owned by the Plans with respect to which some of the Lenders are parties in interest; and (2) the proposed agreements by the Plans to honor capital calls made by IBJ in lieu of the Partnership's general partner; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; and (b) the decisions on behalf of each Plan to invest in the Partnership and to execute such grants and agreements in favor of IBJ are made by a fiduciary which is not included among, and is independent of, the Lenders and IBJ.

**Summary of Facts and Representations**

1. The Partnership is a Delaware limited partnership the general partner of which is Morgan Stanley Real Estate Fund, Inc. (the General Partner), a Delaware corporation which is wholly owned by Morgan Stanley Group, Inc. or one or more of its affiliates. The Partnership is organized under an agreement (the Agreement) dated March 28, 1991. The Partnership has a term expiring on December 31, 2000, subject to extension by the General Partner for up to three successive one-year terms. The Partnership has been organized to make investments, including leveraged equity investments, in undervalued or inappropriately capitalized real estate assets and portfolios, and corporate real estate. Proceeds from the sale of refinancing of properties generally will not be reinvested, but will be distributed to the limited partners, so that the Partnership will be self-liquidating.

2. After execution of the Agreement, the General Partner sought capital commitments through private placement and has obtained, as a result, irrevocable, unconditional capital commitments totalling $482,241,773 from 10 purchasers of limited partnership units (the Limited Partners). The Agreement requires Limited Partners to make capital contributions upon receipt of notice from the General Partner. Under the Agreement, the General Partner may make a call for cash contributions, also known as a "drawdown", up to the total amount of the Limited Partner's capital commitment upon 15 days notice, with some limitations. The Partners' capital commitments are structured as irrevocable, unconditional and binding commitments to contribute equity when capital calls are made by the General Partner. The obligation of each Limited Partner to contribute the full amount of its capital commitment is secured by a security interest granted to the Partnership in the Limited Partner's partnership interest.

3. In the ordinary course of its business operations, it is contemplated that the Partnership will incur indebtedness in connection with many of its investments. This on-going need for credit will be provided by the Facility, a three-year arrangement for $150 million in revolving credit which will enable the Partnership to consummate investments quickly without the delay of separate arrangements for interim or permanent financing for each investment. The Facility is funded by the Lenders, represented by IBJ, which is also a participating Lender. IBJ serves as administrative agent for the Facility. The Facility is a non-recourse obligation of the Partnership which matures February 28, 1995 and which is secured by a security interest in the Limited Partners' capital commitments, the General Partner's right to make drawdowns and the Partnership's lien and security interest in each Limited Partner's partnership interest. As additional security, the Facility will require each Limited Partner to execute an agreement (the Security Agreement) granting to IBJ, for the benefit of each Lender, a security interest and lien in the Limited Partner's partnership interest, and covenanting with IBJ, for the benefit of the Lenders, that such Limited Partner will unconditionally honor any drawdown made by IBJ in accordance with the Agreement in lieu of the General Partner to the full extent of the Limited Partner's unfunded capital commitment.

4. The trusts which hold assets of the Plans (the Trusts) own limited partnership interests as Limited Partners in the Partnership. Some of the Lenders may be parties in interest with respect to some of the Plans in the Trusts by virtue of such Lenders' (or their affiliates') provisions of fiduciary services to such Plans with respect to Trust assets other than the Partnership interests. IBJ is requesting an exemption to permit the Trusts to enter into the Security Agreements under the terms and conditions described herein. The Plans and the other Limited Partners whose interests constitute over 95% of the Partnership interests and the extent of their respective capital commitments to the Partnership are described as follows:

(a) The GM Hourly Plan, a defined benefit plan with 662,588 participants as of September 30, 1991, and assets with a total value of approximately 17.8 billion dollars on that date. Assets of the GM Hourly Plan are held in the Third Plaza Trust (the TP Trust), of which Mellon Bank, N.A. is the trustee. The TP Trust has undertaken a total capital commitment of $80,250,000 to the Partnership.

(b) The GM Salaried Plan, a defined benefit pension plan with 218,712 participants as of September 30, 1991, and assets with a total value of approximately 16.2 billion dollars as of that date. Assets of the GM Salaried Plan are held in the Fourth Plaza Trust (the FP Trust), of which Mellon Bank, N.A. is the trustee. The FP Trust has undertaken a total capital commitment of $69,750,000 to the Partnership. The fiduciary responsible for authorizing and overseeing the GM Plans' investment in the Partnership and, subsequently, for monitoring such investment, is the Pension Investment Committee (the Committee) of General Motors Corporation. The Committee acted and does act upon the advice of the professional investment staff of General Motors Investment Management Corporation rendered in accordance with guidelines established by the Committee.

(c) The AT&T Pension Plan, a defined benefit pension plan with 282,179 participants as of December 31, 1990, and with assets of approximately 16.1 billion dollars as of that date, and the AT&T Management Plan, with 175,398 participants as of December 31, 1990 and with assets of approximately 15.9 billion dollars as of that date. Assets of the AT&T Plans are held in the AT&T Master Pension Trust (the AT&T Trust), of which State Street Bank and Trust Company is the trustee. The AT&T Trust has undertaken a total capital commitment of $150,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the AT&T Plans is David Feldman, Corporate Vice President, American Telephone & Telegraph Company Investment Management Organization.

(d) Limited Partners which are not ERISA-covered plans:

(i) Institutional Holdings Corporation, which has undertaken a total capital commitment of $85,000,000.

(ii) Allstate Insurance Company, which has undertaken a total capital commitment of $30,000,000.

(iii) Morgan Stanley Real Estate Holdings, Inc., which has undertaken a total capital commitment of $27,418,355.

(iv) Morstar Realty, N.V., which was undertaken a total capital commitment of $15,000,000.

5. IBJ represents that the Partnership has obtained an opinion of counsel that the Partnership will constitute an "operating company" under the Department's plan asset regulations [29 CFR 2510.3–101(c)] if the Partnership is operated in accordance with the Agreement and the offering memorandum (the Offering) distributed in connection with the private placement of the limited partnership interests.[*]

6. IBJ represents that the Security Agreement constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships, wherein the financing institutions do not obtain security interests in the real property assets of the partnership. IBJ also represents that the obligatory execution of the Security Agreement by the Limited Partners for the benefit of the Lenders was fully disclosed in the Offering as a requisite condition of investment in the Partnership during the private placement of the limited partnership interests. IBJ represents that the only direct relationship between any of the Limited Partners and any of the Lenders is the execution of the Security Agreements. All other aspects of the transaction, including the negotiation of all terms of the Facility, are exclusively between the Lenders and the Partnership. IBJ represents that the proposed executions of the Security Agreements will not affect the abilities of the Trusts to withdraw from investment and participation in the Partnership. The only Plan assets to be affected by the proposed transaction are each Plan's limited partnership interests in the Partnership and the related Plan obligations as Limited Partners to respond to drawdowns up to the total amount of each Plan's capital commitment to the Partnership.

7. IBJ represents that neither it nor any Lender acts or has acted in any fiduciary capacity with respect to any Trust's investment in the Partnership and that IBJ is independent of and unrelated to those fiduciaries (the trust Fiduciaries) responsible for authorizing and overseeing the Trusts' investments in the Partnership. Each Trust Fiduciary represents independently that its authorization of Trust investment in the Partnership was free of any influence, authority or control by the Lenders. The Trust Fiduciaries represent that the Trust's investments in and capital commitments to the Partnership were made with the knowledge that each Limited Partner would be required subsequently to grant a security interest in the Partnership to the Lenders and to honor drawdowns made on behalf of the Lenders without recourse to any defenses against the General Partner. Each Trust Fiduciary individually represents that it is independent of and unrelated to IBJ and the Lenders and that the investment by the Trust for which that Trust Fiduciary is responsible continues to constitute a favorable investment for the Plans participating in that Trust and that the execution of the Security Agreement is in the best interests and protective of the participants and beneficiaries of such Plans.

8. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Plans' investments in the Partnership were authorized and are overseen by the Trust Fiduciaries, which are independent of the Lenders; (2) None of the Lenders have any influence, authority or control with respect to the Plans' investments in the Partnership or the Plans' executions of the Security Agreements; and (3) The Trust Fiduciaries invested in the Partnership on behalf of the Plans with the knowledge that the Security Agreements are required of all Limited Partners investing in the Partnership.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate

[*] The Department expresses no opinion herein as to whether the Partnership will constitute an operating company under the regulations at 29 CFR 2510.3–101.

for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of June 1992.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 92-15818 Filed 7-6-92; 8:45 am]

BILLING CODE 4510-29-M

## Pension and Welfare Benefits Administration

**[Exemption Application Nos. D-7807, D-7808 and D-7809]**

## Withdrawal of Notice of Proposed Exemption Involving the Cumberland Farms Profit Sharing Retirement Plan, the Cumberland Farms Supplemental Profit Sharing Plan, and the Cumberland Farms Transferred Employees Pension Plan (collectively the Plans) Located in Canton, Massachusetts

In the **Federal Register**, dated February 8, 1990 (55 FR 4491) the Department published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption involved loans by the Plans to Cumberland Farms, Inc., a party in interest with respect to the Plans.

By letter dated June 17, 1992, the applicant requested that the exemption application be withdrawn.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, the 30th day of June 1992.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 92-15819 Filed 7-6-92; 8:45 am]

BILLING CODE 4510-29-M

## Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 92-48; Exemption Application No. D-8715, et al.]**

## Grant of Individual Exemptions; Signet Trust Company, et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### Signet Trust Company (Signet Trust) Located In Richmond, Virginia

[Prohibited Transaction Exemption 92-48; Exemption Application No. D-8715]

### Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(F) of the Code, shall not apply to the proposed receipt of fees by Signet Asset Management (SAM), an affiliate of Signet Trust, from the SBK Select Series (the Funds), an open-end investment company registered under the Investment Company Act of 1940, for acting as the investment adviser for the Funds, in connection with the investment by certain individual retirement accounts (IRAs) to which Signet Trust serves as a trustee with investment management responsibility, provided that the following conditions are met:

(a) No sales commissions are paid by the IRAs for the purchase of sales of shares of the Funds and no redemption fees are paid for the sale of shares by the IRAs to the Funds;

(b) Each IRA receives a rebate from Signet Trust, either through cash or the purchase of additional shares of the Funds pursuant to an annual election made by the IRA grantor, of such IRA's proportionate share of all investment advisory fees charged to the Funds by SAM within no more than two business days of the receipt of such fees by SAM;

(c) The grantor of the IRA, as a second fiduciary (the Second Fiduciary) who is independent of Signet Trust and its affiliates, receives full written disclosure of information concerning the Funds (including a current prospectus for the Funds and a statement describing the fee structure) and, on the basis of such

information, authorizes in writing the investment of assets of the IRA in the Funds, the fees to be paid by the Funds to SAM, and the purchase of additional shares of the Funds by the IRA with the fees rebated to the IRA by Signet Trust;

(d) The authorization referred to in paragraph (c) is terminable at will by the Second Fiduciary, without penalty to the IRA, upon receipt by Signet Trust of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (c) with instructions on the use of the form must supplied to the Second Fiduciary no less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the IRA, without penalty to the IRA, upon receipt by Signet Trust of written notice from the Second Fiduciary; and

(2) Failure to return the form will result in continued authorization of Signet Trust to engage in the transactions described in paragraph (c) on behalf of the IRA;

(e) All dealings between the IRAs and the Funds are on a basis no less favorable to the IRAs than dealings with other shareholders of the Funds;

(f) Signet Trust maintains for a period of six years the records necessary to enable the persons described below in section (g) to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Signet Trust or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(g) (1) Except as provided in paragraph (2) of this section (g), the records referred to in section (f) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service, and

(ii) Any individual establishing or maintaining such IRAs or a duly authorized representative of such individual;

(2) None of the persons described in section (g)(1)(ii) shall be authorized to examine trade secrets of Signet Trust, any of its affiliates, or commercial or financial information which is privileged or confidential.

For a more complete statement of the facts and representations supporting the Departments's decision to grant this exemption, refer to the notice of proposed exemption published on May 8, 1992. at 57 FR 19939.

**FOR FURTHER INFORMATION CONTACT:** Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

### Equitable Life Assurance Society of the United States (Equitable) Located in New York New York

[Prohibited Transaction Exemption 92–49; Exemption Application No. D–8358]

#### Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to: (1) The reallocation of joint venture ownership interest in the One Market Plaza Complex (the One Market Plaza Joint Venture) in San Francisco, California, from Equitable's general account to Separate Account No. 178, a newly-formed single customer separate account to be maintained by Equitable, under a group annuity contract, on behalf of the International Business Machines Corporation Retirement Plan (the Plan); an (2) the lease by Separate Account No. 178 of 14,797 square feet of office space in One Market Plaza to Equitable's real estate investment management subsidiary, Equitable Real Estate Investment Management, Inc., for the period of time between March 30, 1990 through April 30, 1991, provided that: (a) the terms of the transactions were negotiated at arm's-length; (b) the transactions were initiated by the Plan based on its own revieew of investment needs; (c) the Plan retained Jackson-/Cross to act as independent fiduciary with respect to the transactions; (d) Jackson Cross concluded that the transactions were in the best interest of the Plan; and (e) the terms and conditions of the transactions were at least as favorable to the Plan as those between unrelated parties.

Effective Date: This exemption will be effective March 30, 1990.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 10, 1992 at 57 FR 12525.

For Further Information Contact: Ms. Jean Anderson of the Department, telephone (202) 523–8971. This is not a toll–free number.)

### Mountain States Bank Common Trust Fund "A" (the Fund) Located in Denver, Colorado

[Prohibited Transaction Exemption 92–50; Exemption Application No. D–8758]

#### Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Fund to Mountain States Bank (the Bank), a party in interest with respect to the retirement plans participating in the Fund, of six promissory notes (the Notes) in order to facilitate the Fund's liquidation, provided (a) the sales price is not less than the fair market value of the Notes on the date of the sale, and (b) no investment management fee, advisory fee, underwriting fee, sales commission, or similar compensation is paid to the Bank in connection with said sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 17, 1992 at 57 FR 13706.

#### Written comments

The Department received no requests for a hearing but did receive one comment. The comment was from the applicant and stated that in compliance with the requirements of the Federal Deposit Insurance Corporation (and in accordance with subparagraph (b) of paragraph 8 in the Summary of Facts and Representations in the notice of proposed exemption), all 23 participants in the Fund were notified of the proposed transaction and have signed approval acknowledgments.

After giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption.

All comments submitted to the Department are included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephine (202) 523–8194. (This is not a toll-free number.)

**Bricklayers, Masons and Plasterers Local Union #4 Pension Fund; Cambia County Pension Plan; Retirement Plan for Employees of Conemaugh Valley Memorial Hospital; United States National Bank Pension Plan; United States National Bank Profit Sharing Plan; Revised Pension Plan for Employees of Lee Hospital; and Retirement Plan for Employees of Windber Hospital and Whealing Clinic (collectively, the Plans) Located in Pittsburgh, Johnstown, and Windber, PA**

[Prohibited Transaction Exemption 92–51; Application Nos. D–8729 through D–8732]

**Exemption**

The restrictions of section 406 (a), (b)(1), and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to a transaction involving the sale by the Plans of their participation interests in a secured second mortgage note, as amended, (the Amended Second Mortgage Note) to the United States National Bank (the Bank); provided that: (a) Independent fiduciaries of the Plans determine that the terms of the transaction are no less favorable to the Plans than those obtainable by unrelated third parties in similar circumstances; and (b) the purchase price paid by the Bank is the greater of the amounts indicated in paragraph number six of the Summary of Facts and Representations, as published in the Notice of Proposed Exemption (the Notice), or the fair market value of the Plans' interests in the Amended Second Mortgage Note as determined by an independent qualified appraiser on the date the sale is executed.[1]

**Written Comments**

The Department received no requests for hearing, but did received eight written comments from interested persons. Five commentators expressed concern over the affect, if any, of the transaction on their pension benefits or questioned whether the exemption would change the amount of their benefits. Two of the commentators expressed concern about the prudence of the original investment by the Plans in the original second motgage note (the Original Second Mortgage) and the continued holding of the Amended Second Mortgage Note. The Department notes that the decisions by the Bank, on behalf of the Plans, with respect to the investment in participation interests in the Original Second Mortgage and the continued holding of the Amended Second Mortgage Note are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department is not, herein, proposing relief for any violations of part 4 of the Act which may have arisen as a result of the Bank's decisions. One commentator indicated that the chief executive officer of the Conemaugh Hospital also serves as a member of the board of directors of the Bank. In this regard, the applicant has represented that Mr. William Casey, the president and CEO of Conemaugh Valley Memorial Hospital is not a fiduciary with respect to the Retirement Plan for Employees of Conemaugh Valley Memorial Hospital.

In addition, the Department notes certain typographical errors appeared in the Notice, and accordingly, wishes to correct the following: (a) The title, Summary of Facts and Representatives, wherever it appears in the Notice should be Summary of Facts and Representations; (b) in paragraph 6 of the Notice the word, "too," in line 7 should be "two"; (c) in paragraph 6, on line 36 the word, "at" should be inserted before "maturity"; and (d) in paragraph 7 of the Notice, the spelling of Lufkin in the name of the firm, Donaldson, Lufkin, and Jenrette Securities Corporation, was incorrectly printed as Luftkin.

After giving full consideration to the entire record, including the written comments, and because, among other reasons, the transaction will permit the Plans to liquidate an unproductive asset and to receive in cash no less than the fair market value of the Amended Second Mortgage Note in the sale to the Bank, the Department has decided to grant the exemption.

All comments submitted to the Department are included as part of the public record of the exemption applications. The complete application files, including all supplemental submissions recieved by the Department are made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on May 8, 1992, at 57 FR 19942.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number).

**British Gas Exploration and Production, Inc. Savings and Investment Plan (the Plan) Located in Houston, Texas**

[Prohibited Transaction Exemption 92–52; Exemption Application No. D–8046]

**Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to an interest-free extension of credit to the Plan (the Advances) by British Gas Exploration and Production, Inc., the Plan sponsor and a party in interest with respect to the Plan, provided the following conditions are satisified: (a) No interest and/or expenses are paid by the Plan; (b) the proceeds of the Advances are used only in lieu of payments due with respect to Guaranteed Investment Contract Number GA–CG01333A3A (the GIC), issued by the Executive Life Insurance Company (ELIC); (c) the repayment of the Advances will be restricted to cash proceeds paid to the Plan by or on behalf of ELIC with respect to ELIC's obligations under the GIC; and (d) repayment of the Advances will be waived to the extent the Plan receives less from the disposition of the GIC than the total amount of the Advances.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 8, 1992 at 57 FR 19954.

Effective Date: This exemption is effective June 1, 1992.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 406(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a

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[1] For purposes of this exemption references to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

The Department wishes to point out that the exemptive relief being granted herein extends only to those sections of the Act as described above. Also, it is represented that the Bank is a national bank which is subject to the authority of the Office of the Comptroller of the Currency. In this regard, the Office of the Comptroller of the Currency has informed the Department that a transaction that may be prohibited under the Act also may be a violation of the National Bank Act or constitute an unsafe or unsound banking practice, and that the exemption does not address the safety and soundness or the legality of the transaction under the National Bank. Accordingly, the Bank should satisfy itself that the transaction does not violate the National Bank Act or constitute an unsafe or unsound banking practice.

fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of June, 1992.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 92-15820 Filed 7-6-92; 8:45 a.m.]

BILLING CODE 4510-29-M

## NUCLEAR REGULATORY COMMISSION

### Document Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC)

**ACTION:** Notice of the OMB review of information collection.

**SUMMARY:** The NRC has recently submitted to the OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Revision.
2. The title of the information collection: Operator Licensing Examination Data.
3. The form number if applicable: NRC Form 536.
4. How often the collection is required: Annually.
5. Who will be required or asked to report: All power reactor licensees and applicants for an operating license.
6. An estimate of the number of responses: 80 annually.
7. An estimate of average burden per response: 2 hours.
8. An estimate of the total number of hours needed to complete the requirement or request: 60.
9. An indication of whether Section 3504(h), Public Law 96-511 applies: Not applicable.
10. Abstract: Each year, the NRC requests nuclear power plant licensees to provide (1) the estimated number of candidates and dates for operator licensing initial examinations, (2) the anticipated dates on which the facilities will conduct their requalification examinations, and (3) the estimated number of individuals that will participate in the Generic Fundamentals Examination (GFE) for that fiscal year. Except for the GFE this information is requested for four fiscal years, commencing with the upcoming fiscal year. This information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the nuclear industry.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150-0131), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 26th day of June 1992.

For the Nuclear Regulatory Commission.

**Gerald F. Cranford,**

*Designated Senior Official for Information Resources Management.*

[FR Doc. 92-15838 Filed 7-6-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286]

### Power Authority of the State of New York; Indian Point Nuclear Generating Unit No. 3; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-64 issued to the Power Authority of the State of New York (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York.

**Summary of Environmental Assessment**

*Identification of Proposed Action*

The amendment would consist of a change to the Indian Point Nuclear Generating Unit No. 3 Facility Operating License No. DPR-64 to extend the expiration date of the operating license from August 13, 2009, to December 12, 2015. These dates represent 40 years from the dates of issuance of the construction permit and the operating license, respectively. The license amendment is in response to the licensee's application dated June 11, 1990, as supplemented June 18, 1991, February 11, 1992, and May 13, 1992. The Commission's staff has prepared an environmental assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in the Expiration Date of Facility Operating License No. DPR-64, Power Authority of the State of New York, Indian Point Nuclear Generating Unit No. 3, Docket No. 50-286, Dated June 25, 1992."

The NRC staff has reviewed the potential environmental impact of the proposed change in the expiration date of the operating license for Indian Point Nuclear Generating Unit No. 3. The staff reviewed the "Final Environmental Statement Related to Operation of Indian Point Nuclear Generating Plant Unit No. 3," dated February 1975, and additional information provided by the licensee in its license amendment submittal, as supplemented, to determine if any significant environmental impacts, other than those

previously considered, would be associated with the proposed license extension.

*Radiological Impact*

The NRC staff concludes that, although the population in the vicinity of Indian Point 3 has increased, it is much lower than projections provided in the Final Environmental Statement (FES). Therefore, the existing FES is expected to remain bounding to the year 2015.

Station radiological effluents to unrestricted areas during normal operation have been well within Commission regulations regarding "as low as is reasonably achievable" (ALARA) limits and are expected to remain within ALARA limits. Based on the continued operation of existing liquid and gaseous radwaste treatment systems coupled with the current radiological monitoring program, the NRC staff anticipates liquid and gaseous effluent doses during the period covered by the requested amendment will remain a fraction of the 10 CFR part 50, apendix I, limits and will not adversely impact the environment.

With regard to normal plant operation, occupational radiation exposures to personnel have decreased as a result of recent plant improvements. Further reductions in radiation dose rates are expected as a result of the ongoing ALARA program.

Accordingly, the NRC staff concludes, that as a result of the license extension, the radiological impact on the general public would not increase over that previously evaluated in the FES and the occupational exposures will be consistent with the industry average and in accordance with 10 CFR part 20.

The NRC staff has in the past concluded that the environmental impacts associated with the uranium fuel cycle are very small when compared with the dose commitments resulting from natural background sources.

The environmental impacts attributable to transportation of fuel and waste to and from Indian Point Nuclear Generating Unit No. 3, with respect to normal conditions of transport and possible accidents in transport, would be bounded as set forth in Summary Table S–4 of 10 CFR 51.52, and the values in Table S–4 would continue to represent the contribution of transportation to the environmental costs associated with reactor operation.

*Nonradiological Impacts*

The NRC staff has concluded that the proposed extension would not cause a significant increase in the nonradiological impact to the environment and would not change any conclusions previously reached by the NRC staff.

*Alternate Use of Resources*

This action does not involve the use of resources not previously considered in the FES.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and contacted the New York State Energy Office, which had no objection to the proposed license extension.

**Finding of No Significant Impact**

The NRC staff has reviewed the proposed change to the expiration date of the Indian Point Nuclear Generating Unit No. 3 Facility Operating License relative to the requirements set forth in 10 CFR part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated June 11, 1990, as supplemented June 18, 1991, February 11, 1992, and May 13, 1992; (2) the final Environmental Statement Related to Operation of Indian Point Nuclear Generating Plant No. 3 issued February 1975; and (3) the Environmental Assessment dated June 25, 1992.

These documents are available for public inspection at the Commission's Public Document Room 2120 L Street, NW., Washington, DC 20555 and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 25th day of June 1992.

For the Nuclear Regulatory Commission.

Robert A. Capra,

*Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–15837 Filed 7–6–92; 8:45 am]

BILLING CODE 7590–01–M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

**Haddam Neck Plant; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61 issued to Connecticut Yankee Atomic Power Company for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment to Technical Specification 3/4.6.1 would provide a temporary relaxation of the containment integrity specification to allow the service water side of the No. 4 containment air recirculation (CAR) fan heat exchanger and motor heat exchanger to be cleaned while the plant remains at power.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration because the change would not:

**1. Involve a significant increase in the probability or consequences of an accident previously evaluated**

A design basis accident (DBA) [loss-of-coolant accident] LOCA or steam line rupture coincident with a failure of one of the three operable CAR units could result in insufficient cooling of containment. Thus, containment design pressure and/or temperature could potentially be exceeded. The Haddam Neck Plant Technical Specifications (3/4.6.2) require that four CAR units be operable whenever the reactor is in

Modes 1–4. This technical specification states that with only three CAR units operable, the fourth unit must be restored to operable status within 72 hours or be in at least hot standby within the next six hours and in cold shutdown within the following 30 hours. The unavailability of the CAR system due to the cleaning of the CAR cooling coils or the motor cooling coils is equivalent to the unavailability already permitted by the technical specifications. The unavailability of the No. 4 CAR unit will cause the plant to enter the ACTION statement of Technical Specification 3/4.6.2. However, CYAPCO will be able to complete the necessary cleaning evolutions and return the CAR fan back to operability well before the 72-hour ACTION Statement expires. In addition, the evaluations confirm that four service water pumps and the other three operable CAR units are adequate to meet all service water cooling requirements, including containment cooling with service water temperature up to 90 °F. Therefore, the consequences of a [design basis accident] DBA will not be significantly increased by the removal of the single CAR unit from service for cleaning.

By opening up the service water piping inside containment, containment integrity will be technically relaxed. If a DBA LOCA were to occur coincident with a loss of containment, the allowable offsite dose could be exceeded absent compensatory measures. To ensure that an adequate containment will be in place at all times during the CAR fan heat exchanger and motor heat exchanger cleaning activities, special precautions will be implemented as compensatory measures.

The special precautions implemented during the fan heat exchanger and motor heat exchanger cleaning activities are:

The service water supply manual valve (outside containment) will be closed and a blank installed between existing mating flanges upstream of the service water return manual valve (also outside containment) priot to the service water piping outside containment being opened. Pressure above the maximum post-accident containment pressure will be maintained on the closed inlet valve to prevent containment leakage. The outlet blank flange will be leak tested. The return piping outside containment between the containment penetration and the discharge throttle valve is carbon seamless A53 grade A schedule 40. This piping was designed and constructed in accordance with the requirements of ANSI B31.1 1955 Edition. A seismic review performed at that time determined that this piping is capable of sustaining at least a 0.03g earthquake without loss of function. Therefore this piping is considered to have some degree of seismic integrity. (An accident concurrent with a seismic event is beyond the Haddam Neck Plant design basis.) In addition, all work in this area of piping will be administratively restricted during these evolutions. Therefore, the compensatory measures will ensure that no significant increase in radiological consequences following an accident will occur as a result of this change. During the allowable maximum of 16 hours that the service water piping may be open, the containment barrier will be the manual valve and seismically qualified piping on the CAR unit supply and the blank flange and associated piping on the return side.

The proposed change would not affect the probability of a DBA LOCA or a steam line rupture. As stated earlier, technical specifications currently allow a single CAR unit to be removed from service for up to 72 hours. Therefore, the probability of failing the CAR fan system will not be significantly affected.

The special procedure regarding isolation of service water supply to the CAR fan heat exchanger and motor heat exchanger unit will not impact service water system availability to other components.

The purpose of the proposed change is to clean the No. 4 CAR fan heat exchanger and the motor heat exchanger. In so doing, service water flow through the heat exchanger will increase. This increase in heat removal capacity is necessary to restore the CAR unit No. 4 performance to that assumed in the updated Final Safety Analysis Report (FSAR ) for the design service water temperature. The net effect of the change will be to improve CAR unit cooling system performance, specifically by ensuring proper cooling.

**2. Create the possibility of a new or different kind of accident from any previously evaluated.**

The possibility for an accident or malfunction of a different type than any evaluated previously in the FSAR is not created since the change and/or failure modes associated with the change do not modify the plant response to the point where it can be considered a new design basis accident. There are no new failure modes associated with the proposed change which could represent a new unanalyzed accident.

In addition, our plant-specific Probabilistic Safety Study was utilized to gain additional insight regarding this criterion of the no significant hazards consideration determination.

The compensatory measures, combined with the short duration of containment integrity relaxation, result in an increase in the probability of failure of containment isolation of $2 \times 10^{-5}$ when averaged over a year. This low probability, coupled with the low probability of accidents resulting in a release of significant radioactivity into the containment, is judged to be negligible and need not be considered for this maintenance evolution. The basis for this determination is that containment isolation failure in the current configuration has some finite probability, and the incremental increase resulting from the proposed change would be insignificantly small.

In addition, a qualitative assessment of the core melt frequency risk associated with a seismic event and a loss of containment integrity during the 16-hour period was performed. Using the Millstone Unit No. 3 seismic hazard curves and the seismic experience data base on inherent seismic capacity of ANSI B31.1 supported piping, it may be shown that the probability of pipe rupture during the 16-hour period as a result of a seismic initiating event is of the same order of magnitude as the probability of a core melt accident (nonseismic) concurrent with loss of containment integrity reported above.

The proposed change does not create a new unanalyzed event based on compensatory measures which will be in effect. As described above, the proposed change does not increase the probability of an accident to the point where it should be considered within the design basis of the plant.

**3. Involve a significant reduction in a margin of safety**

The proposed change does not impact the consequences of an accident on the fuel or reactor coolant system protective boundaries. The impacts on containment integrity and offsite public dose are sufficiently low as to be considered beyond the design basis of the plant.

The proposed change will allow the opening of the service water piping inside containment for a relatively short period of time. This piping serves as the containment boundary. The relaxation of containment integrity does not represent a significant reduction in the margin of safety. As noted above, the compensatory measures which will be implemented provide reasonable assurance that the containment boundary will be maintained and that the allowable offsite dose limit will not be exceeded.

Based on the above discussion, the proposed change will not decrease the margin of safety because of:

a. The compensatory measures to maintain the containment boundary.
b. The relatively short duration when the service water piping inside containment is open.
c. The unavailability of the CAR fan is bounded by that allowed by the technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920

Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 6, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1)The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the procededing, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at lease one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator shall be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and the telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3494, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Comission, the president officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 25, 1992, which

is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 29 day of June 1992.

For The Nuclear Regulatory Commission.

Alan B. Wang,

*Project Manager, Project Directorate I–4 Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92-15835 Filed 7-6-92; 8:45 a.m.]

BILLING CODE 7590-01-M

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[Docket No. 50–423]

## Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3 located in New London County, Connecticut.

The proposed amendment would revise the Technical Specifications to increase the surveillance test interval, allowed outage time, and channel bypass times for certain instrumentation in the reactor trip system (RTS) and Engineered Safety Features Actuation System. Also, it removes the requirement to perform the RTS analog channel operational test on a staggered basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 6, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence an cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(o)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the

completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 3, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 30th day of June 1992.

For the Nuclear Regulatory Commission.

**Ronald W. Hernan,**

*Acting Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–15834 Filed 7–6–92; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–433]**

**Public Service Company of New Hampshire; Withdrawal of Application for Amendment to Facility Operating License**

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Public Service Company of New Hampshire (the licensee) to withdrawn its March 23, 1992 application for proposed amendment to Facility Operating License No. NPF–86 for the Seabrook Station, located in Seabrook Township, Rockingham County, New Hampshire.

The proposed amendment would have revised Technical Specification Surveillance Requirement 4.6.1.2.a to maintain the 40 plus or minus 10 month testing interval for Type A Containment Integrated Leak Rate Tests, but eliminate the requirement to perform three Type A tests in each 10 year service period. The requested amendment also proposed to decouple every third Type A Containment Integrated Leak Rate Test in a 10 year service period from the 10 year plant inservice inspection shutdown.

However, by letter dated June 1, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 23, 1992, and the licensee's letter, dated June 1, 1992, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the local public document room in the Exeter Public Library, Founders Park, Exeter, New Hampshire, 03833.

Dated at Rockville, Maryland, this 30th day of June, 1992.

For the Nuclear Regulatory Commission.

**Gordon Edison,**

*Senior Project Manager, Project Directorate I–3, Division of Reactor Projects I–II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–15836 Filed 7–6–92; 8:45 am]

BILLING CODE 7590–01–M

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## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed under Schedule C in the excepted service in positions above the GS–15, or equivalent, grade level.

**FOR FURTHER INFORMATION CONTACT:** Neal Harwood, (202) 606–1610.

**SUPPLEMENTARY INFORMATION:** The listing below contains all occupied Schedule C positions above the GS–15, or equivalent, grade level, as of March 31, 1992, including positions under the senior-level (SL) and Executive Schedule (EX) pay plans, as well as positions with administratively determined (AD) rates of pay. Schedule C authorities are automatically revoked whenever the positions are vacated.

The senior-level pay system was established under section 5376 of title 5, U.S. Code, by the Federal Employees' Pay Comparability Act of 1990 (FEPCA) (Pub. L. 101–509 of November 5, 1990). The senior-level system includes certain positions that were formerly at grades GS–16, 17, and 18 of the General Schedule. Those grades were abolished by FEPCA. A number of the positions at those grades had been in the Executive Assignment System (EAS) under part 9 of the Civil Service Rules. Part 9 was rescinded and the EAS was abolished by Executive Order 12748 of February 1, 1991.

Interim regulations were published on April 23, 1991 (56 FR 18658) implementing the establishment of the senior-level system and the abolishment of the EAS. The interim regulations at 5 CFR 319.103(c)(2)(ii) provided that individuals who formerly held noncareer executive assignments in the EAS would convert to Schedule C appointments in the excepted service under the senior-level system.

Executive Schedule positions and positions where the rate of pay is administratively determined are also listed in order to provide a consolidated listing of all Schedule C positions above grade GS–15 or equivalent.

Future notices of positions above GS–15, or equivalent, placed under Schedule C will be published, as required by civil service rule VI, Exceptions from the Competitive Service, on the fourth Tuesday of each month, or as soon as possible thereafter, as part of the monthly general notice of all new Schedule C positions. A consolidated listing of all Schedule C positions will be published as of June 30, 1992.

**Schedule C**

*African Development Foundation*

Vice President.

*Export-Import Bank*

Vice President for Congressional and External Affairs.
General Counsel.
Vice President for Public Affairs and Publications.
Executive Vice President.

*Farm Credit Administration*

Director, Congressional and Public Affairs.

*Federal Deposit Insurance Corporation*

General Counsel.
Director, Office of Corporate Communication.
Deputy Director, Office of Legislative Affairs.

*Inter-American Foundation*

President.
Executive Vice President for Operations.

*National Credit Union Administration*

Executive Director.

*National Endowment for the Arts*

Executive Director, President's Committee on the Arts and Humanities.

*Pension Benefit Guaranty Corporation*

Executive Director.
Deputy Executive Director and Chief Negotiator.
Deputy Executive Director and Chief Financial Officer.

*Department of the Treasury, Office of Thrift Supervision*

Associate Director, Resolution Trust Corporation.
Associate Director, Congressional Relations.

Associate Director, Communications. Chief Counsel.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp. p. 218.

Office of Personnel Management.

Constance Berry Newman,

*Director.*

[FR Doc. 92–15756 Filed 7–6–92; 8:45 am]

BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–30859/International Series Release No. 404]**

## List of Foreign Issuers Which Have Submitted Information Required by the Exemption Relating to Certain Foreign Securities

June 26, 1992.

Foreign private issuers with total assets in excess of $5,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more shareholders reside in the United States, are subject to the registration and reporting provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*, as amended by Pub. L. No. 94–29 (June 4, 1975)) (the "Act").[1]

Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) provides an exemption from registration under section 12(g) of the Act for a foreign private issuer which submits on a current basis material specified in the Rule to the Commission. Such required material includes that information about which investors ought reasonably to be informed with respect to the issuer and its subsidiaries and which the issuer (1) has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (2) has filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange and/or (3) has distributed or is required to distribute to its security holders.

On October 6, 1983, the Commission revised Rule 12g3–2(b) by terminating the availability of the exemptive rule for certain foreign issuers with securities quoted on NASDAQ.[2] Securities of non-Canadian issuers in compliance with the information-supplying exemption as of October 6, 1983 and quoted in NASDAQ on that date were grandfathered indefinitely.[3] However, the exemption was extended to Canadian securities only until January 1986.

When it adopted Rule 12g3–2 and other rules relating to foreign securities,[4] the Commission indicated that from time to time it would issue lists showing those foreign issuers that have claimed exemptions from the registration provisions of section 12(g) of the Act.[5] The purpose of the present release is to call to the attention of brokers, dealers and investors that some form of relatively current information concerning the foreign issuers included on the following list is available in the public files of the Commission.[6] The Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning foreign issuers may not necessarily be available in the United States.[7] The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending these securities to their customers.[8] Any questions regarding Rule 12g3–2 or the list included herein should be directed to Angela Yeats, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC 20549 ((202) 272–3246). Requests for copies of the documents in the files should be directed to the Public Reference Room, Securities and Exchange Commission, Washington, DC 20549 ((202) 272–7450).

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Dated: June 26, 1992.

Margaret H. McFarland,

*Deputy Secretary.*

| Company | File No. | Country |
|---|---|---|
| Abbey National PLC | 82–2898 | United Kingdom. |
| Ace Developments Ltd. | 82–2383 | Canada. |
| Acheron Resources Ltd. | 82–3025 | Canada. |
| Adagio Investments Inc. | 82–2060 | Canada. |
| Adastral Resources Ltd. | 82–2124 | Canada. |
| Adonos Resources Inc. | 82–2292 | Canada. |
| Advanced Info Service Ltd. | 82–3236 | Thailand. |
| Aerovias de Mexico. S.A. | 82–3195 | Mexico. |
| Afmin Holdings Ltd. | 82–1853 | South Africa. |
| Afrikander Lease. Ltd., The | 82–245 | South Africa. |
| Agarwal Resources Ltd. | 82–2562 | Canada. |
| Agen Ltd. | 82–2330 | Australia. |
| Air Canada | 82–2548 | Canada. |
| Akiko-Lori Gold Resources Ltd. | 82–2927 | Canada. |
| Alaskon Resources Ltd. | 82–1868 | Canada. |
| Alben Exploration Ltd. | 82–1941 | Canada. |
| Albany Resources Ltd. | 82–3093 | Canada. |
| Albert Fisher Group PLC, The | 82–1020 | United Kingdom. |
| Alcatel N.V. | 82–3059 | Netherlands. |
| Alcatel Alsthom Compagnie Generale d'Electricite | 82–2926 | France. |
| Alfa-Laval AB | 82–2765 | Sweden. |

[1] Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements by reason of having registered securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*, as amended by Pub. L. No. 94–29 (June 4, 1975)].

[2] Securities Exchange Act Release No. 20264 (October 6, 1983).

[3] If, however, the securities are delisted from NASDAQ or the issuer fails to maintain or otherwise meet the requirements of the exemption, the grandfather provision will cease to apply.

[4] Securities Exchange Act Release No. 8066 (April 28, 1967).

[5] The last such list was contained in Securities Exchange Act Release No. 28869 (February 15, 1991).

[6] Inclusion of an issuer on the following list is not an affirmation by the Commission that the issuer has complied or is complying with all the conditions of the exemption provided by Rule 12g3–2(b). The list does identify those issuers that both have claimed the exemption and have submitted relatively current information to the Commission as of May 31, 1992.

[7] Paragraph (a)(4) of Rule 15c2–11 (17 CFR 240.15c2–11) requires a broker-dealer initiating a quotation for securities of a foreign private issuer to maintain in its files, and to make reasonably available upon request, the information furnished to the Commission pursuant to Rule 12g3–2(b) since the beginning of the issuer's last fiscal year.

[8] *See, e.g., Hanly v. SEC*, 415 F. 2d 589 (2nd Cir. 1969) (broker-dealer cannot recommend a security unless an adequate and reasonable basis exists for such recommendation).

| Company | File No. | Country |
|---|---|---|
| All North Resources Ltd. | 82-1646 | Canada. |
| Allied Lyons PLC | 82-878 | United Kingdom. |
| Almaden Resources Corp. | 82-2116 | Canada. |
| Alpargatas, S.A.I.C. | 82-3122 | Argentina. |
| Alta Explorations Ltd. | 82-695 | Canada. |
| Altrack Ltd. | 82-3104 | Australia. |
| AMB AMRO Holding N.V. | 82-3246 | Netherlands. |
| Amcorp Industries Inc. | 82-2991 | Canada. |
| Amera Industries Corp. | 82-3283 | Canada. |
| Ampol Exploration Ltd. | 82-3076 | Australia. |
| Anglo American Corp. of South Africa Ltd. | 82-97 | South Africa. |
| Anglo American Gold Investment Co. | 82-146 | South Africa. |
| Antrine Resources Inc. | 82-3210 | Canada. |
| Apasco, S.A. de C.V. | 82-3103 | Mexico. |
| Apollo Development Inc. | 82-3171 | Canada. |
| Applied International Holding Ltd. | 82-1867 | Hong Kong. |
| Approach Resources Inc. | 82-2406 | Canada. |
| Aqua 1 Beverage Co. Inc. | 82-2315 | Canada. |
| Aquiline Resources Inc. | 82-2957 | Canada. |
| Aramis Ventures Inc. | 82-2993 | Canada. |
| Arapohoe Mining Corp. | 82-1450 | Canada. |
| Ares Serono S.A. | 82-1768 | Luxembourg. |
| Asea, AB | 82-736 | Sweden. |
| Ashgrove Resources Ltd. | 82-2535 | Canada. |
| Asia Fiber Co. Ltd. | 82-282 | Thailand. |
| Atacama Resources Ltd. | 82-2050 | Canada. |
| Athabaska Gold Resources Ltd. | 82-1906 | Canada. |
| Athena Gold Corp. | 82-2226 | Canada. |
| Atlas Copco AB | 82-812 | Sweden. |
| Attwood Gold Corp. | 82-1920 | Canada. |
| Aurochs Mining Exploration Inc. | 82-3041 | Canada. |
| Aurtec Mining Development Inc. | 82-3090 | Canada. |
| Auspex Gold Ltd. | 82-2778 | Canada. |
| Australian Consolidated Press Group Ltd. | 82-3278 | Australia. |
| Automated Security (Holdings) PLC | 82-2352 | United Kingdom. |
| Bahn Foods Inc. | 82-3186 | Canada. |
| Banbury Gold Mines Ltd. | 82-826 | Canada. |
| Banco Espanol de Credito, S.A. | 82-2614 | Spain. |
| Bank of Fukuoka, The | 82-1117 | Japan. |
| Bank of Montreal | 82-126 | Canada. |
| Bank of Nova Scotia | 82-132 | Canada. |
| Banque Indosuez | 82-3262 | France. |
| Barrack Mines Ltd. | 82-1362 | Australia. |
| Barrier Technology Inc. | 82-1999 | Canada. |
| Barytex Resources Corp. | 82-1104 | Canada. |
| B.A.T. Industries Ltd. | 82-33 | United Kingdom. |
| BBC Brown Boveri Ltd. | 82-2671 | Switzerland. |
| Beatrix Mines Ltd. | 82-1054 | South Africa. |
| Beaufield Resources Inc. | 82-1557 | Canada. |
| Bema Gold Corp. | 82-1070 | Canada. |
| Benz Gold Equities Ltd. | 82-2491 | Canada. |
| Bergesen d.y. A/S | 82-1697 | Norway. |
| Berkeley Govett & Co. Ltd. | 82-3154 | Channel Islands. |
| Biron Bay Resources Limited | 82-3239 | Canada. |
| Black Cliff Mines Ltd. | 82-2950 | Canada. |
| Blenheim Exhibitions Group PLC | 82-2750 | United Kingdom. |
| Blue Circle Industries PLC | 82-927 | United Kingdom. |
| Blue Gold Resources Ltd. | 82-3091 | Canada. |
| Blyvooruitzicht Gold Mining Co. Ltd. | 82-89 | South Africa. |
| Booker PLC | 82-1531 | United Kingdom. |
| Borealis Exploration Ltd. | 82-1656 | Canada. |
| Bougainville Copper Ltd. | 82-1133 | New Guinea. |
| Boulder Gold N.L. | 82-1650 | Australia. |
| Bowater Industries PLC | 82-3 | United Kingdom. |
| Bracken Mines Ltd. | 82-219 | South Africa. |
| Braiden Resources Ltd. | 82-2121 | Canada. |
| Bramalea Ltd. | 82-3126 | Canada. |
| Brascan, Ltd. | 82-4 | Canada. |
| Bravo Resources Inc. | 82-2560 | Canada. |
| Bre-x Minerals Ltd. | 82-2750 | Canada. |
| Brent Walker Group PLC, The | 82-2941 | United Kingdom. |
| Breese Resources Ltd. | 82-1377 | Canada. |
| Briana Bio-Tech Inc. | 82-3073 | Canada. |
| Bridgestone Corp. | 82-1264 | Japan. |
| Britannia Gold Corp. | 82-733 | Canada. |
| Brockton Resources Inc. | 82-2686 | Canada. |
| Brooks Resources Ltd. | 82-3170 | Canada. |
| Brunswick Mining and Smelting Corp. Ltd. | 82-2627 | Canada. |
| Brunswick N.L. | 82-410 | Australia. |
| BSN Groupe | 82-3002 | France. |
| BTR, PLC | 82-696 | United Kingdom. |
| Buffelsfontein Gold Mining Co., Ltd. | 82-302 | South Africa. |

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| Company | File No. | Country |
|---|---|---|
| Burmah Castrol PLC, The | 82-5 | Australia. |
| Burns Philip & Co. Ltd. | 82-1565 | Australia. |
| Burton Group PLC, The | 82-1498 | United Kingdom. |
| Butter Rock Resources Inc. | 82-3165 | Canada. |
| B.Y.G. Natural Resources Inc. | 82-2038 | Canada. |
| C.A. Venezolana de Pulpa y Papel S.A. de C.A. | 82-3202 | Venezuela. |
| Cactus West Explorations Ltd. | 82-3268 | Canada. |
| Caldera Resources Ltd. | 82-3117 | Canada. |
| Calneva Resources Ltd. | 82-2738 | Canada. |
| Camas Resources Ltd. | 82-3044 | Canada. |
| Camfrey Resources Ltd. | 82-1700 | Canada. |
| Canada Tungsten Mining Corp. Ltd. | 82-290 | Canada. |
| Canadian Comstock Exploration Ltd. | 82-3283 | Canada. |
| Canadian Conquest Explorations Inc. | 82-2473 | Canada. |
| Canadian Eagle Explorations Inc. | 82-603 | Canada. |
| Canadian Frobischer Resources | 82-3254 | Canada. |
| Canadian Imperial Bank of Commerce | 82-103 | Canada. |
| Canadian Pioneer Energy Inc. | 82-3072 | Canada. |
| Canadian Water Corp. | 82-3206 | Canada. |
| Canadian West Resources Inc. | 82-3229 | Canada. |
| Canal + | 82-2270 | France. |
| Can Dorado Mines Ltd. | 82-3232 | Canada. |
| Canguard Health Technologies Inc. | 82-1184 | Canada. |
| Canin Industrial Group Inc., The | 82-3119 | Canada. |
| Canmark International Resource Inc. | 82-2269 | Canada. |
| Cantrell Resources Ltd. | 82-3218 | Canada. |
| Capilano International Inc. | 82-3094 | Canada. |
| Carlin Gold Co. Inc. | 82-1770 | Canada. |
| Casa Grande Energy & Mines Ltd. | 82-3259 | Canada. |
| Castle Capital Inc. | 82-3216 | Canada. |
| Cathay Pacific Airlines Ltd. | 82-1390 | Hong Kong. |
| Cathedral Gold Corp. | 82-1990 | Canada. |
| CCL Industries Inc. | 82-2549 | Canada. |
| Celanese Canada Ltd. | 82-171 | Canada. |
| Celtic Resources Ltd. | 82-3204 | Canada. |
| Celulosa Argentina S.A. | 82-3222 | Argentina. |
| Cemex, S.A. | 82-2744 | Mexico. |
| Centenary Holdings S.A. | 82-3070 | Luxembourg. |
| Central Crude Ltd. | 82-1933 | Canada. |
| Central Pacific Minerals N.L. | 82-354 | Australia. |
| Ceramica Carabobo, C.A. | 82-3097 | Venezuela. |
| Charlemagne Resources Ltd. | 82-912 | Canada. |
| Charoen Pokphand Feedmill Co. Ltd. | 82-3169 | Thailand. |
| Charter Consolidated PLC | 82-233 | United Kingdom. |
| Chase Resource Corp. | 82-1976 | Canada. |
| China Light & Power Co. Ltd. | 82-1197 | Taiwan. |
| China Steel Corp. | 82-3296 | China. |
| CIBA-GEIGY Ltd. | 82-2918 | Switzerland. |
| Circa Telecommunications Inc. | 82-3138 | Canada. |
| Circumpacific Energy Corp. | 82-3102 | Canada |
| Citation Gold Corp. | 82-2990 | Canada. |
| Clarins | 82-2960 | France. |
| Clipper Minerals Ltd. | 82-2803 | Canada. |
| CML Microsystems PLC | 82-3176 | United Kingdom. |
| Coats Viyella PLC | 82-1751 | United Kingdom. |
| Coca-Cola Amatil Ltd. | 82-2994 | Australia. |
| Colby Resources Corp. | 82-417 | Canada. |
| Colony Pacific Explorations Ltd. | 82-1115 | Canada. |
| Comac Food Group Inc. | 82-2456 | Canada. |
| Comalco Ltd. | 82-1092 | Australia. |
| Cominco, Ltd. | 82-107 | Canada. |
| Commerzbank Aktiengesellschaft | 82-2520 | Germany. |
| Commonwealth Richmond Properties Inc. | 82-2215 | Canada. |
| Compagnie Financiere de Suez | 82-2946 | France. |
| Compania Sevillana de Electricidad S.A. | 82-3111 | Spain. |
| Concordia Bau und Boden AG | 82-3282 | Germany. |
| Connecticut Development Corp. | 82-3238 | Canada. |
| Consolidated Boulder Mountain Resources Ltd. | 82-1139 | Canada. |
| Consolidated Cyll Industries Ltd. | 82-1663 | Canada. |
| Consolidated Del Norte Ventures Ltd. | 82-1584 | Canada. |
| Consolidated Ewing Industries Inc. | 82-3068 | Canada. |
| Consolidated Keld'Or Resources Ltd. | 82-3155 | Canada. |
| Consolidated Nirvana Industries Ltd. | 82-1079 | Canada. |
| Consolidated Parklane Resources Inc. | 82-3179 | Canada. |
| Consolidated Pine Channel Gold Corp. | 82-2563 | Canada. |
| Consolidated Thermo Tech International | 82-1114 | Canada. |
| Consumer General Inc. | 82-2445 | Canada. |
| Continental AG | 82-1357 | Germany. |
| Continental Caretech Corp. | 82-3056 | Canada. |
| Controladora Comercial Mexicana S.A. de C.V. | 82-3177 | Mexico. |
| Corimon C.A., S.A. C.A. | 82-3162 | Venezuela. |
| Corporacion Industrial Santuis S.A. | 82-2867 | Mexico. |

| Company | File No. | Country |
|---|---|---|
| Corporacion Mexicana de Aviacion S.A. de C.V. | 82-3053 | Mexico. |
| Corporacion Mapfre S.A. | 82-1987 | Spain. |
| C.P. Pokphand Co. Ltd. | 82-3260 | Bermuda. |
| CRA Ltd. | 82-1101 | Australia. |
| Credito Italiano S.P.A. | 82-3185 | Italy. |
| Crisan Resources Ltd. | 82-2597 | Canada. |
| Cross Canada Resources Inc. | 82-2095 | Canada. |
| Cross Lake Minerals Ltd. | 82-2636 | Canada. |
| Cross Roads Oil Group PLC | 82-3162 | United Kingdom. |
| CSK Corp. | 82-781 | Japan. |
| CSR Limited | 82-2692 | Australia. |
| Cuda Consolidated Inc. | 82-1572 | Canada. |
| Cultor Ltd. | 82-1543 | Finland. |
| Cumulus Technology Ltd. | 82-1553 | Canada. |
| Curlew Lake Resources Inc. | 82-1978 | Canada. |
| Current Technology Corp. | 82-2404 | Canada. |
| Cycle & Carriage Ltd. | 82-3163 | Singapore. |
| Czar Resources Ltd. | 82-3136 | Canada. |
| Dab Investments Ltd. | 82-1245 | South Africa. |
| Dai'ei Inc., The | 82-230 | Japan. |
| Daiwa Danchi Co., Ltd. | 82-1218 | Japan. |
| Danisco A/S | 82-3156 | Denmark. |
| Dasserat Developments Corp. | 82-3074 | Canada. |
| Data Tracker International Inc. | 82-1252 | Canada. |
| Davy Corporation PLC | 82-2558 | United Kingdom. |
| De Beers Centenary AG | 82-3069 | Switzerland. |
| De Beers Consolidated Mines, Ltd. | 82-91 | South Africa. |
| Deelkraal Gold Mining Co. Ltd. | 82-246 | South Africa. |
| Deep Basin Petroleum Corp. | 82-2611 | Canada. |
| Delta Gold N.L. | 82-1221 | Australia. |
| Den Danske Bank af 1871 Aktieselskab | 82-1263 | Denmark. |
| Denehurst Ltd. | 82-2334 | Australia. |
| Dentonia Resources Ltd. | 82-827 | Canada. |
| Derlan Industries Ltd. | 82-2959 | Canada. |
| DESC, Sociedad de Fomento Industrial | 82-3166 | Mexico. |
| Dessir Resources Ltd. | 82-3105 | Canada. |
| Deutsche Bank A.G. | 82-334 | Germany. |
| Development Bank of Singapore, The | 82-3172 | Singapore. |
| Dia Met Minerals Ltd. | 82-3234 | Canada. |
| Diamond International Industries Inc. | 82-1314 | Canada. |
| Diamond Robinson Equities | 82-3106 | Canada. |
| Diasyn Technologies Ltd. | 82-2295 | Canada. |
| Discovery Distribution Corp. | 82-3148 | Canada. |
| Dofasco Ltd. | 82-3226 | Canada. |
| Dominion Mining Ltd. | 82-433 | Australia. |
| Doornfontein Gold Mining Co. Ltd. | 82-213 | South Africa. |
| Dorel Industries Inc. | 82-2800 | Canada. |
| Doromin Resources Ltd. | 82-2566 | Canada. |
| Dragoon Resources Ltd. | 82-1658 | Canada. |
| DRC Resources Corp. | 82-713 | Canada. |
| Dresdner Bank A.G. | 82-329 | Germany. |
| Driefontein Consolidated Ltd. | 82-124 | South Africa. |
| DSM, N.V. | 82-3120 | Netherlands. |
| Dupont Canada Inc. | 82-19 | Canada. |
| East Midlands Electricity PLC | 82-3029 | United Kingdom. |
| East Rand Gold & Uranium Co. Ltd. | 82-269 | South Africa. |
| East Rand Proprietary Mines, Ltd. | 82-239 | United Kingdom. |
| East West Resources Corp. | 82-787 | Canada. |
| Eastern Electricity PLC | 82-3040 | United Kingdom. |
| Eastfield Resources Ltd. | 82-1929 | Canada. |
| Ecstall Mining Corp. | 82-2647 | Canada. |
| El Condor Resources Ltd. | 82-2751 | Canada. |
| Eldon Resources Ltd. | 82-3191 | Canada. |
| Elite Industries Ltd. | 82-2958 | Israel. |
| Elsburg Gold Mining Co. Ltd. | 82-269 | South Africa. |
| Elsevier N.V. | 82-3049 | Netherlands. |
| Email Limited | 82-2951 | Australia. |
| Emerald Isle Resources Inc. | 82-1479 | Canada. |
| Empaques Ponderosa, S.A. de C.V. | 82-3151 | Mexico. |
| Emperor Mines Ltd. | 82-969 | Australia. |
| Encor Inc. | 82-2561 | Canada. |
| Enerchem International Inc. | 82-2982 | Canada. |
| Enterprise Gold Mines N.L. | 82-1807 | Australia. |
| Enterprise Oil PLC | 82-3004 | United Kingdom. |
| Environmental Technologies Inc. | 82-3019 | Canada. |
| Envirowaste Industries Inc. | 82-1399 | Canada. |
| Eridania Z.N., S.P.A. | 82-802 | Italy. |
| Eros Financial Investments Inc. | 82-1931 | Canada. |
| ESC Environtech Systems Corp. | 82-3231 | Canada. |
| Espirito Santo Financial Holding S.A. | 82-2883 | Luxembourg. |
| Essette AB | 82-1355 | Sweden. |
| Estec Systems Corp. | 82-677 | Canada. |

| Company | File No. | Country |
|---|---|---|
| Etruscan Enterprises Ltd. | 82-1578 | Canada. |
| Euro Disneyland S.C.A. | 82-2907 | France. |
| Eurotunnel PLC | 82-3000 | United Kingdom. |
| Eurotunnel S.A. | 82-2999 | France. |
| Even Resources Ltd. | 82-3493 | Canada. |
| EVN Energie-Versorgung Niederoesterreich Aktiengesellschaft | 82-3178 | Austria. |
| Exol Industries Inc. | 82-1342 | Canada. |
| Exor Data Inc. | 82-2733 | Canada. |
| Explorations Terrenex Inc. | 82-3211 | Canada. |
| Fairfield Minerals Ltd. | 82-1784 | Canada. |
| Fairhaven International Ltd. | 82-650 | Bermuda. |
| Fairlane Transportation Inc. | 82-3279 | Canada. |
| Falcon Point Resources Ltd. | 82-1713 | Canada. |
| Faraway Gold Mines Ltd. | 82-1426 | Canada. |
| Fargo Resource Ltd. | 82-2061 | Canada. |
| Farm Energy Corp. | 82-3188 | Canada. |
| FCA International Ltd. | 82-1310 | Canada. |
| Federation Resources N.L. | 82-931 | Australia. |
| First Guardian Petroleum Corp. | 82-2354 | Canada. |
| First Pacific Co. Ltd. | 82-636 | Hong Kong. |
| Fisons PLC | 82-202 | United Kingdom. |
| Fletcher Challenge Ltd. | 82-1430 | New Zealand. |
| FNI Fashion Network | 82-2511 | Canada. |
| Fomento Economico Mexicano | 82-3009 | Mexico. |
| Forbes Resources Ltd. | 82-3139 | Canada. |
| Formation Capital Corp. | 82-2783 | Canada. |
| Fort Point Resources Ltd. | 82-3245 | Canada. |
| Fortress Resources Inc. | 82-2611 | Canada. |
| Foseco Minsep PLC | 82-952 | United Kingdom. |
| Foster's Brewing Co. Ltd. | 82-1711 | United Kingdom. |
| Founder Resources Inc. | 82-3264 | Canada. |
| Franz Capital Corp. | 82-2574 | Canada. |
| Free State Consolidated Gold Mines | 82-44 | South Africa. |
| Free State Development and Investment Corp. Ltd. | 82-286 | South Africa. |
| Freegold Recovery Inc. | 82-1225 | Canada. |
| Frobisher Resources Ltd. | 82-2844 | Canada. |
| Fuji Photo Film Co., Ltd. | 82-78 | Japan. |
| G.B. Holdings Ltd. | 82-2192 | Singapore. |
| Gegen Gold Corp. | 82-3129 | Canada. |
| Galico Resources Inc. | 82-2700 | Canada. |
| Galleon Mining Ltd. | 82-3258 | Canada. |
| Genbel Investments Ltd. | 82-235 | South Africa. |
| General Electric Company PLC, The | 82-3121 | United Kingdom. |
| Gencor Ltd. | 82-311 | South Africa. |
| Geo-Data International Ltd. | 82-2115 | Canada. |
| Gerle Gold Ltd. | 82-1209 | Canada. |
| GKN PLC | 82-1042 | United Kingdom. |
| Glencairn Explorations Ltd. | 82-2640 | Canada. |
| Glider Developments Inc. | 82-2596 | Canada. |
| Globe Group S.A. | 82-3159 | Greece. |
| GLS Global Listing Service Ltd. | 82-1644 | Canada. |
| Golconda Resources Ltd. | 82-3167 | Canada. |
| Gold Canyon Resources Inc. | 82-3065 | Canada. |
| Gold and Mineral Explorations N.L. | 82-849 | Australia. |
| Gold Fields of South Africa Ltd. | 82-204 | South Africa. |
| Gold Fields Property Co., Ltd. | 82-214 | South Africa. |
| Gold Greenlees Trott PLC | 82-2884 | United Kingdom. |
| Gold Mines of Kalgoorlie Ltd. | 82-2076 | Australia. |
| Gold Part Resources Ltd. | 82-2755 | Canada. |
| Goldbank Ventures Ltd. | 82-2843 | Canada. |
| Goldcliff Resources Corp. | 82-2748 | Canada. |
| Golden Adit Resources Ltd. | 82-1632 | Canada. |
| Golden Eagle Mines Ltd. | 82-3174 | Canada. |
| Golden Sky Resources Inc. | 82-3046 | Canada. |
| Golden Trump Resources Ltd. | 82-707 | Canada. |
| Goldpac Investments Ltd. | 82-1167 | Canada. |
| Goldways Resources Inc. | 82-2345 | Canada. |
| Goodman Fielder Wattle Ltd. | 82-2009 | Australia. |
| Govett Strategic Investment Trust PLC | 82-287 | United Kingdom. |
| Graham Gold Mining Corp. | 82-2979 | Canada. |
| Grand National Resources Inc. | 82-1100 | Canada. |
| Grandma Lees Inc. | 82-542 | Canada. |
| Granduc Mines Ltd. | 82-3124 | Canada. |
| Greater Lenora Resources Corp. | 82-837 | Canada. |
| Grootviel Proprietary Mines Ltd. | 82-222 | South Africa. |
| Grupo Carso, S.A. de C.V. | 82-3175 | Mexico. |
| Grupo Financiero Bancomer, S.A. de C.V. | 82-3273 | Mexico. |
| Grupo Gigante, S.A. de C.V. | 82-3142 | Mexico. |
| Grupo Industrial Maseca, S.A. de C.V. | 82-3215 | Mexico. |
| Grupo Posadas, S.A. de C.V. | 82-3274 | Mexico. |
| Grupo Simec, S.A. de C.V. | 82-3132 | Mexico. |
| Grupo Situr, S.A. de C.V. | 82-3187 | Mexico. |

| Company | File No. | Country |
|---|---|---|
| Grupo Synkro, S.A. de C.V. | 82-2847 | Mexico. |
| Grupo Televisa, S.A. de C.V. | 82-3213 | Mexico. |
| Grupo Video Visa, S.A. de C.V. | 82-3193 | Mexico. |
| Guinness PLC | 82-1478 | United Kingdom. |
| Gwalia Resources Ltd. | 82-2126 | Australia. |
| Gwen Resources Ltd. | 82-3276 | Canada. |
| Habsburg Resources Inc. | 82-891 | Canada. |
| Hang Lung Development Co. Ltd. | 82-1439 | Hong Kong. |
| Hanna Pacific Steel Co. Ltd. | 82-2435 | Canada. |
| Harmony Gold Mining Co. Ltd. | 82-238 | South Africa. |
| Harvard Capital Corp. | 82-2415 | Canada. |
| Hawkwood Industries Inc. | 82-2981 | Canada. |
| Helikopter Service A.S. | 82-3135 | Norway. |
| Henderson Land Development Co. Ltd. | 82-1561 | Hong Kong. |
| Highveld Steel & Vanadium Corp. Ltd. | 82-596 | South Africa. |
| Hillsdown Holdings PLC | 82-1407 | United Kingdom. |
| Hino Motors Ltd. | 82-1388 | Japan. |
| Hollinger Inc. | 82-117 | Canada. |
| Hong Kong & China Gas Co. Ltd. | 82-1543 | Hong Kong. |
| Hopewell Holdings Ltd. | 82-1547 | Hong Kong. |
| Hoyts Entertainment Ltd. | 82-2851 | Australia. |
| HSBC Holdings PLC | 82-683 | United Kingdom. |
| Huhtamaki Oy | 82-2925 | Finland. |
| Huron Star Resources Ltd. | 82-2218 | Canada. |
| Hysan Development Co. Ltd. | 82-1617 | Hong Kong. |
| Iatco Industries Inc. | 82-2793 | Canada. |
| Idaho Consolidated Metals Corp. | 82-3166 | Canada. |
| IFM Food Management Canada Ltd. | 82-2985 | Canada. |
| Imasco Ltd. | 82-116 | United Kingdom. |
| I.M.P.A.C.T Minerals Inc. | 82-3233 | Canada. |
| Imperial Metals Corp. | 82-1032 | Canada. |
| Inca Gold Ltd. | 82-3268 | Canada. |
| Incentive Aktiebolag | 82-3149 | Sweden. |
| Independent Resources Ltd. | 82-1417 | Australia. |
| Insulpro Industries Inc. | 82-3381 | Canada. |
| Integrated Resources | 82-2576 | Canada. |
| Interactive Communications Corp. | 82-3054 | Canada. |
| Internacionale de Ceramica S.A. de C.V. | 82-2673 | Mexico. |
| International Capri Resources Ltd. | 82-3460 | Canada. |
| International Kengate Ventures Inc. | 82-3119 | Canada. |
| International Mining Corp. | 82-613 | Australia. |
| International Petroleum Corp. | 82-3684 | Canada. |
| International Spectair Resources Inc. | 82-3061 | Canada. |
| International Tower Hill Mines Ltd. | 82-3248 | Canada. |
| Irish Life PLC | 82-3134 | Ireland. |
| Iron River Resources Ltd. | 82-1672 | Canada. |
| Island Arc Resources Corp. | 82-3075 | Canada. |
| International Bio Waste Systems Inc. | 82-3256 | Canada. |
| ITP Thermal Packaging Inc. | 82-1164 | Canada. |
| Ivana Capital Corp. | 82-3096 | Canada. |
| Izone International Ltd. | 82-782 | Canada. |
| J. Sainsbury PLC | 82-913 | United Kingdom. |
| James Hardie Industries Ltd. | 82-972 | Australia. |
| Japan Airlines Company Ltd. | 82-122 | Japan. |
| Jardine Matheson Holdings | 82-2963 | Hong Kong. |
| Jardine Strategic Holdings Ltd. | 82-3085 | Bermuda. |
| Jefferson Smurfit Group PLC. | 82-1311 | Ireland. |
| Jilbey Exploration Ltd. | 82-1629 | Canada. |
| Jingellic Minerals N.L. | 82-1808 | Australia. |
| John Boutari & Sons S.A. | 82-2968 | Greece. |
| John Labatt Ltd. | 82-1103 | Canada. |
| Johnson Electric Holdings Ltd. | 82-2415 | Canada. |
| Jonpol Explorations Ltd. | 82-1989 | Canada. |
| Jordex Resources Inc. | 82-3200 | Canada. |
| Joutel Resources Ltd. | 82-502 | Canada. |
| Julia Mines N.L. | 82-1666 | Australia. |
| Kap Resources Ltd. | 82-2319 | Canada. |
| Kettle River Resources Ltd. | 82-666 | Canada. |
| Key Anacon Mines Ltd. | 82-23 | Canada. |
| Key Largo Resources Ltd. | 82-2769 | Canada. |
| Kia Motors Corp. | 82-3205 | Korea. |
| Kidston Gold Mines Ltd. | 82-2351 | Canada. |
| Kingfisher PLC | 82-966 | United Kingdom. |
| Kinross Mines Ltd. | 82-220 | South Africa. |
| Kirin Brewery Brewery Co., Ltd. | 82-166 | Japan. |
| Kloof Gold Mining Co., Ltd. | 82-205 | South Africa. |
| Koninklijke Ahold N.V. | 82-2575 | Netherlands. |
| Koninklijke Wessanen N.V. | 82-1306 | Netherlands. |
| Kopel (Drive Yourselves) Ltd. | 82-3137 | Israel. |
| Ladbroke Group PLC. | 82-1571 | United Kingdom. |
| Landmark Corp. | 82-176 | Canada. |
| LASMO Canada Inc. | 82-3224 | Canada. |

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| Company | File No. | Country |
|---|---|---|
| Lauder Air Luftfahrt Aktiengesellschaft | 82-3242 | Austria. |
| Laura Ashley Holdings PLC | 82-1356 | United Kingdom. |
| Lazer Maze Industries Inc. | 82-873 | Canada. |
| Legion Resources Ltd. | 82-2556 | Canada. |
| Lenzing AG | 82-3207 | Austria. |
| Leslie Gold Mines Ltd. | 82-223 | South Africa. |
| Link Resources Inc. | 82-2024 | Canada. |
| LMX Resources Ltd. | 82-2139 | Canada. |
| Lode Resources Corp. | 82-1004 | Canada. |
| Lodestar Explorations Inc. | 82-3110 | Canada. |
| London & Scottish Marine Oil PLC (LASMO) | 82-2571 | United Kingdom. |
| London Electricity PLC | 82-3037 | United Kingdom. |
| Lonrho PLC | 82-191 | United Kingdom. |
| Loumic Resources Ltd. | 82-2570 | Canada. |
| Lucas Gold Resources Corp. | 82-2297 | Canada. |
| Luken Resources Ltd. | 82-2929 | Canada. |
| Lydenburg Platinum Ltd. | 82-312 | South Africa. |
| M L Cass Petroleum Corp. | 82-2848 | Canada. |
| Magenta Development Corp. | 82-1422 | Canada. |
| Magnetron International Corp. | 82-2975 | Canada. |
| Mai, PLC | 82-1940 | United Kingdom. |
| Major General Resources Ltd. | 82-2906 | Canada. |
| Malayan United Industries Berhad of Malaysia | 82-2566 | Malaysia. |
| Mandarin Oriental International Ltd. | 82-2955 | Hong Kong. |
| Mango Resources Ltd. | 82-2454 | Canada. |
| Mantex S.A.I.C.A.-S.A.C.A. | 82-3241 | Venezuela. |
| Manweb PLC | 82-3036 | United Kingdom. |
| Marathon Telecom Corp. | 82-1877 | Canada. |
| Marks and Spencer PLC | 82-1961 | United Kingdom. |
| Maruberi Corp. | 82-616 | Japan. |
| Matrix Telecommunications Ltd. | 82-1109 | Australia. |
| Maximusic North American Corporation | 82-2140 | Canada. |
| Melinga Resources Ltd. | 82-2745 | Canada. |
| Merit Technologies Ltd. | 82-1414 | Canada. |
| Metana Minerals N.L. | 82-2175 | Australia. |
| Metra Corp. | 82-833 | Finland. |
| Microfuel Systems Inc. | 82-3244 | Canada. |
| Midlands Electricity PLC | 82-3035 | United Kingdom. |
| Mill City Gold Mining Corp. | 82-3076 | Canada. |
| MIM Holdings Ltd. | 82-173 | Australia. |
| Minefinders Corp. Ltd. | 82-2227 | Canada. |
| Mineral Park Mining Corp. | 82-1021 | Canada. |
| Minerex Resources, Ltd. | 82-946 | Canada. |
| Minerva Gold Mines Ltd. | 82-3275 | Canada. |
| Minorco | 82-208 | Bermuda. |
| Miramar Mining Corp. | 82-1566 | Canada. |
| Mirror Group Newspapers PLC | 82-3114 | United Kingdom. |
| Mishibishu Gold Corp. | 82-2682 | Canada. |
| Mitsubishi Kasei Corp. | 82-1191 | Japan. |
| Mitsui Taiyo Kobe Bank Ltd., The | 82-3055 | Japan. |
| Molinos Rio de la Plata S.A. | 82-3180 | Argentina. |
| Molson Companies Ltd. | 82-2954 | Canada. |
| Monac International Corp. | 82-3057 | Canada. |
| Mondavi Resources Ltd. | 82-1993 | Canada. |
| Moraga Resources Ltd. | 82-2913 | Canada. |
| Mortcorp Enterprises Inc. | 82-3255 | Canada. |
| Motion Works Corp. | 82-3250 | Canada. |
| Mount Burgess Gold Mining Co. N.L. | 82-1215 | Australia. |
| Mountain West Resources Inc. | 82-1201 | Canada. |
| Mt. Grant Mines Ltd. | 82-1782 | Canada. |
| Multiplex Resources Ltd. | 82-2937 | Canada. |
| Mutual Resources Ltd. | 82-1171 | Canada. |
| Naneco Resources Ltd. | 82-2618 | Canada. |
| National Power PLC | 82-3060 | United Kingdom. |
| National Quick Lube Ltd. | 82-2052 | Canada. |
| Nautilus Resources Ltd. | 82-3197 | Canada. |
| Nevada Star Resources Corp. | 82-3068 | Canada. |
| Navarra Resources Corp. | 82-3077 | Canada. |
| Nesmont Industrial Corp., The | 82-2346 | Canada. |
| Nestle S.A. | 82-1252 | Switzerland. |
| Nevada North Resources Inc. | 82-1665 | Canada. |
| New Alster Energy Ltd. | 82-960 | Canada. |
| New Charter Minerals Inc. | 82-936 | Canada. |
| New World Developments Co. Ltd. | 82-2971 | Hong Kong. |
| Newcrest Mining Ltd. | 82-3267 | Australia. |
| Newhawk Gold Mines Ltd. | 82-739 | Canada. |
| Nextwave Software Corp. | 82-1451 | Canada. |
| Nintendo Co. Ltd. | 82-2544 | Japan. |
| Nissan Motor Co., Ltd. | 82-207 | Japan. |
| Niugini Mining Ltd. | 82-1230 | New Guinea. |
| Nixdorf Computer AG | 82-1730 | Germany. |
| Noble Metal Group Inc. | 82-3220 | Canada. |

| Company | File No. | Country |
|---|---|---|
| Nora Industrier A.S. | 82-1613 | Norway. |
| Noranda Forest Inc. | 82-3172 | Canada. |
| Noranda Inc. | 82-158 | Canada. |
| Normandy Resources N.L. | 82-1975 | Australia. |
| Norra Corp. | 82-2590 | Canada. |
| North American Gold Corp. | 82-2606 | Canada. |
| North American Nippon Technologies Corp. | 82-3046 | Canada. |
| North American Scientific Inc. | 82-2609 | Canada. |
| North American Ventures Ltd. | 82-2205 | Canada. |
| North Broken Hill Peko Ltd. | 82-2531 | Australia. |
| North West Water Group PLC | 82-2813 | United Kingdom. |
| Northern Orion Explorations Ltd. | 82-3153 | Canada. |
| Northern Reef Exploration Ltd. | 82-2861 | Canada. |
| Northfork Ventures Ltd. | 82-3062 | Canada. |
| Nu-Crown Resources | 82-2071 | Canada. |
| Nucell Energy Canada Inc. | 82-2165 | Canada. |
| Nucore Resources Ltd. | 82-2537 | Canada. |
| N.V. Amev | 82-3118 | Netherlands. |
| N.V. Koninklijke Nederlandse Vliegtuigenfabriek Fokker | 82-3014 | Netherlands. |
| Oil City Lubricants Ltd. | 82-1260 | Canada. |
| Omron Corp. | 82-1170 | Japan. |
| OMV Aktiengesellschaft | 82-3209 | Austria. |
| Onword Learning Systems Inc. | 82-2930 | Canada. |
| Opact Resources Ltd. | 82-2003 | Canada. |
| Orange Free State Investments Ltd. | 82-1220 | South Africa. |
| Orbit Oil and Gas Ltd. | 82-3107 | Canada. |
| Orbital Engine Corporation Ltd. | 82-1515 | Australia. |
| Orenda Forest Products Ltd. | 82-934 | Canada. |
| Osea Resources Inc. | 82-3058 | Canada. |
| Pacific Century Explorations Ltd. | 82-2120 | Canada. |
| Pacific Copperfields Inc. | 82-3235 | Canada. |
| Pacific Summa Capital Corp. | 82-1268 | Canada. |
| Pacific Talc Ltd. | 82-3159 | Canada. |
| Pacific Unicorn Resources Ltd. | 82-3089 | Canada. |
| Pact Resources N.L. | 82-1386 | Australia. |
| Pan Canadian Petroleum Ltd. | 82-285 | Canada. |
| Pan Pacific Petroleum Inc. | 82-2320 | Canada. |
| PanContinental Mining Ltd. | 82-1366 | Canada. |
| Pantan Resources Ltd. | 82-2195 | Canada. |
| Panterra Energy Inc. | 82-333 | Canada. |
| Paragon Resources N.L. | 82-1963 | United Kingdom. |
| Parallax Development Corp. | 82-1854 | Canada. |
| Park Meditech Inc. | 82-3249 | Canada. |
| PC Ventures Ltd. | 82-1568 | Canada. |
| PEC Energy Corp. | 82-2724 | Canada. |
| Pelsart Resources N.L. | 82-464 | Australia. |
| Peninsular and Oriental Steam Navigation Co. | 82-2083 | United Kingdom. |
| Pentos PLC | 82-2592 | United Kingdom. |
| Petro Canada | 82-3125 | Canada. |
| Petro Plus Inc. | 82-2432 | Canada. |
| PIC Prospectors International Corp. | 82-2039 | Canada. |
| Pioneer International Ltd. | 82-2701 | Australia. |
| Placer Pacific Ltd. | 82-1952 | Australia. |
| Platinova Resources Ltd. | 82-2758 | Canada. |
| Playmates International Holdings Ltd. | 82-2979 | Hong Kong. |
| PLC Systems Inc. | 82-3101 | Canada. |
| Ponderosa Industrial S.A. de C.V. | 82-3880 | Mexico. |
| Poplar Resources Ltd. | 82-1489 | Canada. |
| Poseidon Gold Ltd. | 82-2875 | Australia. |
| Positive Energy Products Inc. | 82-2512 | Canada. |
| Power Corp. of Canada | 82-137 | Canada. |
| Power Financial Corp. | 82-1716 | Canada. |
| PowerGen PLC | 82-3066 | United Kingdom. |
| Premier Consolidated Oilfields PLC | 82-2617 | United Kingdom. |
| Promark Software Corp. | 82-1504 | Canada. |
| Prosperex Mineral Corp. | 82-3150 | Canada. |
| Providence Innovations Inc. | 82-2753 | Canada. |
| Provigo Inc. | 82-2570 | Canada. |
| Prudential Corporation PLC | 82-1477 | United Kingdom. |
| P.T. Gadjah Tunggal | 82-3201 | Indonesia. |
| P.T. Indah Kiat Pulp & Paper Co. | 82-3064 | Indonesia. |
| P.T. Indocement Tunggal Prakarsa | 82-3063 | Indonesia. |
| P.T. Inti Indorayon Utama | 82-3016 | Indonesia. |
| P.T. Pabrik Kertas Tjiwi Kimia | 82-3096 | Indonesia. |
| PWA Corp. | 82-3203 | Canada. |
| Pyng Technologies Corp. | 82-2173 | Canada. |
| Quadrum S.A. de C.V. | 82-2963 | Mexico. |
| Quattro Resources Ltd. | 82-2625 | Canada. |
| Queenstake Resources Ltd. | 82-585 | Canada. |
| Quinto Mining Corp. | 82-475 | Canada. |
| Ranchmen's Resources Ltd. | 82-2615 | Canada. |
| Rand Mines Ltd. | 82-304 | South Africa. |

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| Company | File No. | Country |
|---|---|---|
| Randex Ltd. | 82-224 | United Kingdom. |
| Randfontein Estates Gold Mining Co., Witwatersrand Ltd. | 82-267 | South Africa. |
| Rank Organisation Ltd., The | 82-17 | United Kingdom. |
| Rapid Canadian Resource Corp. | 82-3223 | Canada. |
| Reach Ventures Inc. | 82-2807 | Canada. |
| Reako Explorations Ltd. | 82-1296 | Canada. |
| Redding Gold Corp. | 82-2757 | Canada. |
| Redland PLC | 82-2156 | United Kingdom. |
| Rembrandt Gold Mines Ltd. | 82-1762 | Canada. |
| Repola Ltd. | 82-3161 | Finland. |
| Republic Aircraft Manufacturing Inc. | 82-2633 | Canada. |
| Resolute Resources Ltd. | 82-2169 | Canada. |
| Resorts World Berhad | 82-3229 | Malaysia. |
| Rich Mineral Corp. | 82-3832 | Canada. |
| Richland Mines Inc. | 82-3192 | Canada. |
| Richmont Mines Inc. | 82-2940 | Canada. |
| Riva Petroleum Inc. | 82-2945 | Canada. |
| RJK Minerals Corp. | 82-2629 | Canada. |
| Rockford Technology Corp. | 82-2223 | Canada. |
| Rolls-Royce PLC | 82-2921 | United Kingdom. |
| Rosenthal A.G. | 82-1646 | Germany. |
| Rothmans International Ltd. | 82-64 | United Kingdom. |
| Royal Bank of Canada | 82-786 | Canada. |
| Rustenburg Platinum Holdings Ltd. | 82-241 | South Africa. |
| Ryde Industries Inc. | 82-3326 | Canada. |
| S.A. Brewing Holdings Ltd. | 82-2692 | Australia. |
| Sabre Marketing Corp. | 82-3214 | Canada. |
| Safari International Resources Inc. | 82-2995 | Canada. |
| Safeguard Ventures Inc. | 82-3071 | Canada. |
| Saga Petroleum A.S. | 82-2869 | Norway. |
| Saint Helena Gold Mines Ltd. | 82-232 | South Africa. |
| Samantha Explorations N.L. | 82-323 | Australia. |
| Samoth Capital Corp. | 82-2931 | Canada. |
| Samsung Co. Ltd. | 82-3045 | Korea. |
| Samsung Electronics Co. Ltd. | 82-3109 | Korea. |
| San Miguel Corp. | 82-306 | Philippines. |
| Sanctuary Woods Multimedia Corp. | 82-3266 | Canada. |
| Sandoz Ltd. Basle | 82-3156 | Switzerland. |
| Sandvik AB | 82-1463 | Sweden. |
| Santos Ltd. | 82-34 | Australia. |
| Sanyo Electric Co. Ltd. | 82-264 | Japan. |
| Sanyo Securities Co. Ltd. | 82-1857 | Japan. |
| Sapphire Mines N.L. | 82-319 | Australia. |
| Sasol Ltd. | 82-431 | South Africa. |
| Save-On Automotive Industries Corp. | 82-1985 | Canada. |
| Schreiber Resources Ltd. | 82-3143 | Canada. |
| Scottish Hydro-Electric PLC | 82-3099 | Scotland. |
| Scottish Power PLC | 82-3100 | Scotland. |
| Sears Roebuck de Mexico S.A. de C.V. | 82-3261 | Mexico. |
| Sechura Inc. | 82-1276 | Canada. |
| Seeboard PLC | 82-3033 | United Kingdom. |
| Semo D'Or Inc. | 82-2178 | Canada. |
| Severide Resources Inc. | 82-3181 | Canada. |
| Sharp Corp. | 82-1116 | Japan. |
| Sherritt Gordon Mines Ltd. | 82-29 | Canada. |
| Shinawatra Computer Co. Ltd. | 82-3140 | Thailand. |
| Siderurgica Venezolana "Sivensa" S.A.I.C.A.—S.A.C.A. | 82-3060 | Venezuela. |
| Siemens Aktiengesellschaft | 82-72 | Germany. |
| Sierra Madre Resources Inc. | 82-2350 | Canada. |
| Sikarman Gold Resources Ltd. | 82-1651 | Canada. |
| Silver Drake Resources Ltd. | 82-2616 | Canada. |
| Silver Glance Resources Inc. | 82-478 | Canada. |
| Silver Ridge Resources | 82-3012 | Canada. |
| Silver Spur Resources Ltd. | 82-2914 | Canada. |
| Silver Standard Resources Inc. | 82-3190 | Canada. |
| Silver Talon Mines Ltd. | 82-3051 | Canada. |
| Simint SpA | 82-3270 | Italy. |
| Singapore Land Ltd. | 82-2194 | Singapore. |
| Sino Land Co. Ltd. | 82-1856 | Hong Kong. |
| Slumber Magic Adjustable Bed | 82-2057 | Canada. |
| SoCal Capital Corp. | 82-3296 | Canada. |
| Solvay & Cie S.A. | 82-3591 | Belgium. |
| Sons of Gwalia N.L. | 82-1039 | Australia. |
| Sorata Developments Inc. | 82-3206 | Canada. |
| South African Breweries Ltd. | 82-303 | South Africa. |
| South African Land & Exploration Co., Ltd. | 82-59 | South Africa. |
| South American Goldfields Inc. | 82-3092 | Canada. |
| South Roodepoort Main Reefs Area Ltd. | 82-830 | South Africa. |
| South Wales Electricity PLC | 82-3031 | United Kingdom. |
| South Western Electricity PLC | 82-3030 | United Kingdom. |
| Southern Electric PLC | 82-3032 | United Kingdom. |
| Southern Goldfields Ltd. | 82-852 | Australia. |

| Company | File No. | Country |
|---|---|---|
| Southern Pacific Petroleum N.L. | 82-353 | Australia. |
| Southern Water PLC | 82-2797 | United Kingdom. |
| Southvaal Holdings Ltd. | 82-197 | South Africa. |
| Southward Energy Ltd. | 82-3005 | Canada. |
| Spargos Mining N.L. | 82-1441 | Australia. |
| St. Philips Resources Inc. | 82-3152 | Canada. |
| Stag Holdings Ltd. | 82-3130 | Canada. |
| Star Valley Resources Corp. | 82-2416 | Canada. |
| Stelway Food Services Inc. | 82-2955 | Canada. |
| STET Societa Finanziaria Telefonica PA | 82-1073 | Italy. |
| Stilfontein Gold Mining Co. Ltd. | 82-301 | South Africa. |
| Stina Resources Ltd. | 82-2062 | Canada. |
| Stratcomm Media Ltd. | 82-1778 | Canada. |
| Strategic Technologies Inc. | 82-1548 | Canada. |
| Summit Resources Ltd. | 82-2922 | Canada. |
| Sun Free Enterprises Ltd. | 82-2822 | Canada. |
| Sun Hung Kai Properties Ltd. | 82-1755 | Hong Kong. |
| Sun River Gold Corp. | 82-1349 | Canada. |
| Suncor Inc. | 82-3257 | Canada. |
| Sundance Resources Ltd. | 82-1412 | Canada. |
| Super Twins Resources Ltd. | 82-3164 | Canada. |
| Swan Resources Ltd. | 82-477 | Australia. |
| Swire Pacific Ltd. | 82-2184 | Hong Kong. |
| Synex International Inc. | 82-982 | Canada. |
| T&H Resources Ltd. | 82-2669 | Canada. |
| T&N PLC | 82-1011 | United Kingdom. |
| T.E.N. Private Cable Systems Inc. | 82-1563 | Canada. |
| Tam Pure Technology Corp. | 82-1145 | Canada. |
| Taro-Vit Industries Ltd. | 82-210 | Israel. |
| Tate & Lyle PLC | 82-905 | United Kingdom. |
| Technologia Systems Corp. | 82-3097 | Canada. |
| Teijin Seiki Co. Ltd. | 82-1493 | Japan. |
| Telecom Argentina—Stet France Telecom | 82-3259 | Argentina. |
| Telefonica de Argentina S.A. | 82-3227 | Argentina. |
| Television Broadcasts Ltd. | 82-1072 | Hong Kong. |
| Tenajon Silver Corp. | 82-2032 | Canada. |
| Teollisuuden Voima Oy | 82-2973 | Finland. |
| Tesco PLC | 82-3277 | United Kingdom. |
| Teuton Resources Corp. | 82-1394 | Canada. |
| Thios Resources Inc. | 82-1909 | Canada. |
| Thorco Resources Inc. | 82-3144 | Canada. |
| Thorn EMI Ltd. | 82-373 | United Kingdom. |
| Thrust Resources Inc. | 82-3293 | Canada. |
| TI Group PLC | 82-2697 | United Kingdom. |
| Titan Diversified Holdings Ltd. | 82-2817 | Canada. |
| TME Resources Inc. | 82-1200 | Canada. |
| Toba Gold Resources | 82-2958 | Canada. |
| Toodoggne Gold Inc. | 82-3115 | Canada. |
| Topper Gold Corp. | 82-2694 | Canada. |
| Toronto Dominion Bank | 82-142 | Canada. |
| Torvalon Corp. | 82-2314 | Canada. |
| Toyobo Co., Ltd. | 82-1172 | Japan. |
| Toyota Motor Co., Ltd. | 82-208 | Japan. |
| Tracker Explorations Ltd. | 82-1864 | Canada. |
| Trafalgar House PLC | 82-1894 | United Kingdom. |
| Transportacion Maritima Mexicana S.A. de C.V. | 82-3184 | Mexico. |
| Triad Minerals NL | 82-1595 | Australia. |
| Trilogy Resource Corp. | 82-3131 | Canada. |
| Trimark Resources Inc. | 82-1464 | Canada. |
| Trimel Corp. | 82-3106 | Canada. |
| Trimin Resources Inc. | 82-1633 | Canada. |
| Trinity International Holdings PLC | 82-3043 | United Kingdom. |
| Trinity Resources Ltd. | 82-610 | Canada. |
| Trio Gold Corp. | 82-2127 | Canada. |
| Triple Force Industries Inc. | 82-2892 | Canada. |
| Triumph Resources Ltd. | 82-2975 | Canada. |
| Trove Investment Corp. | 82-2476 | Canada. |
| Trust Company of Australia Ltd. | 82-1443 | Australia. |
| TSC Shannock Corp. | 82-1782 | Canada. |
| TTC/Truck Tech Corp. | 82-2787 | Canada. |
| Tulloch Resources Inc. | 82-3194 | Canada. |
| Twin Star Energy Corp. | 82-2213 | Canada. |
| Ultramar PLC | 82-871 | United Kingdom. |
| UNI Storebrand A.S. | 82-3141 | Norway. |
| Unisel Gold Mines Ltd. | 82-236 | South Africa. |
| Unitech PLC | 82-2412 | United Kingdom. |
| United Biscuit PLC | 82-3079 | United Kingdom. |
| United Keno Hill Mines Ltd. | 82-61 | Canada. |
| United Overseas Bank | 82-2947 | Singapore. |
| United Overseas Land Ltd. | 82-2180 | Singapore. |
| Unitrol Data Protection Systems Inc. | 82-3251 | Canada. |
| Universal Trident Industries Ltd. | 82-3025 | Canada. |

| Company | File No. | Country |
|---|---|---|
| Upton Resources Inc. | 82-3290 | Canada. |
| U.S.A. Video Corp. | 82-1601 | Canada. |
| Vaal Reefs Exploration & Mining Co. Ltd. | 82-56 | South Africa. |
| Valley Oil & Gas Corp. | 82-1991 | Canada. |
| Van City Cultured Marble | 82-3052 | Canada. |
| Vananda Gold Ltd. | 82-1883 | Canada. |
| Vangold Resources Inc. | 82-2891 | Canada. |
| Velcro Industries, N.V. | 82-145 | Netherlands Antilles. |
| Venezolana de Prerreducidos Caroni "Venprecar" C.A. | 82-3212 | Venezuela. |
| Venterspost Gold Mining Co. Ltd. | 82-216 | South Africa. |
| Venturecom Communications Inc. | 82-876 | Canada. |
| Vera Cruz Minerals Corp. | 82-2640 | Canada. |
| Victoria Petroleum N.L. | 82-322 | Australia. |
| Vidatron Enterprises Ltd. | 82-2086 | Canada. |
| Videogram International Corp. | 82-3042 | Canada. |
| Vinta Explorations Ltd. | 82-2325 | Canada. |
| Vlakfontein Gold Mining Co. Ltd. | 82-217 | South Africa. |
| Volkswagen AG | 82-2188 | Germany. |
| Vortex Energy Systems | 82-3219 | Canada. |
| VSM Exploration Inc. | 82-3067 | Canada. |
| Wace Group PLC | 82-2369 | United Kingdom. |
| War Eagle Mining Co. Ltd. | 82-2008 | Canada. |
| WCN Investments | 82-1592 | Canada. |
| Welkom Gold Holdings Ltd. | 82-57 | South Africa. |
| Wessex Water PLC | 82-2820 | United Kingdom. |
| West Rand Consolidated Mines Ltd. | 82-314 | South Africa. |
| Westerex Energy Corp. | 82-3199 | Canada. |
| Western Areas Gold Mining Co. Ltd. | 82-266 | South Africa. |
| Western Capital Ltd. | 82-2959 | Australia. |
| Western Deep Levels, Ltd. | 82-58 | South Africa. |
| Westgroup Corporations Inc. | 82-2833 | Canada. |
| Westpine Metals Ltd. | 82-3116 | Canada. |
| Westward Explorations Ltd. | 82-3027 | Canada. |
| White Knight Resources Ltd. | 82-2850 | Canada. |
| Wilanour Resources Ltd. | 82-83 | Canada. |
| Wild Rose Resources Ltd. | 82-2356 | Canada. |
| Williams Creek Explorations Ltd. | 82-3146 | Canada. |
| Williams Holdings PLC | 82-1889 | United Kingdom. |
| Windarra Minerals Ltd. | 82-561 | Canada. |
| Winkelhaak Mines Ltd. | 82-221 | South Africa. |
| Wolters Kluwer N.V. | 82-2688 | Netherlands. |
| Woodside Petroleum Ltd. | 82-2280 | Australia. |
| Worthing Industries Inc. | 82-3253 | Canada. |
| Yellowjack Resources Ltd. | 82-1765 | Canada. |
| York Centre Corp. | 82-2816 | Canada. |
| Yorkshire Electricity Group PLC | 82-3034 | United Kingdom. |
| Yorkshire Water PLC | 82-2782 | United Kingdom. |
| Young-Shannon Gold Mines Ltd. | 82-2928 | Canada. |
| Your Host Foods Inc. | 82-2042 | Canada. |
| Yuma Gold Mines Ltd. | 82-3050 | Canada. |
| Yunko Resources Ltd. | 82-3147 | Canada. |
| Zapopan N.L. | 82-2997 | Australia. |
| Zodiac Hurricane Marine Inc. | 82-1261 | Canada. |
| 007 Precious Metals Inc. | 82-2679 | Canada. |

[FR Doc. 92-15768 Filed 7-6-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-18815; 811-5660]**

## Hawaii Pacific Fund, Inc.; Application

June 29, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

**APPLICANT:** Hawaii Pacific Fund, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on May 15, 1992 and amended on June 22, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 27, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 188 Bishop Street, suite 1201, Honolulu, Hawaii 96813.

**FOR FURTHER INFORMATION CONTACT:** James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

*Applicant's Representations*

1. Applicant, an Hawaii corporation, is an open-end, diversified management investment company. On September 19, 1988, applicant filed a notification of registration pursuant to section 8(a) of the Act. A registration statement pursuant to the Securities Act of 1933 was filed on February 13, 1989. Applicant's registration statement was declared effective on July 25, 1989, and its initial public offering commenced on September 5, 1989.

2. On March 10, 1992, applicant's Board of Directors voted unanimously to return all of applicant's assets to its shareholders and dissolve applicant. Hawaii law did not require shareholder approval in order to liquidate applicant.

3. Between March 10, 1992 and April 30, 1992, the portfolio securities comprising applicant's assets were liquidated at market price for listed securities, and prevailing bid price for non-listed securities. Sales commissions in the amount of $324.27 were paid to brokers during the liquidation period. On April 30, 1992, applicant distributed all of its assets, totaling $380,073.96, or $8.72 per share, to its shareholders on a *pro rata* basis.

4. All expenses incurred in the liquidation, totaling $738, were personally borne by applicant's president and secretary. The remaining unamortized organizational expenses of applicant, totaling $2,340, were borne by applicant's investment adviser.

5. Applicant has no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-15844 Filed 7-6-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-18814; 812-7938]**

## Kemper Target Maturity Income Fund, et al.; Notice of Application

June 29, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

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**APPLICANTS:** Kemper Target Maturity Income Fund (the "Trust") and its initial series, Series November 1997 (the "Fund"), any subsequent series of the Trust, Kemper Financial Services, Inc. ("KFS") (the Trust's investment adviser and principal underwriter), and any other open-end registered investment company established in the future that is advised or distributed by KFS, with the same sales charge structure as the Fund.

**RELEVANT ACT SECTIONS:** Exemption requested under section 6(c) of the Act from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order of the SEC permitting them to impose a contingent deferred sales charge ("CDSC") on certain redemptions of their shares.

**FILING DATE:** The application was filed on June 5, 1992. Applicants' counsel has stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 23, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 120 South LaSalle Street, Chicago, Illinois 60603.

**FOR FURTHER INFORMATION CONTACT:** James M. Curtis, Staff Attorney, at (202) 504-2406 or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicants' Representations

1. The Trust is an open-end management investment company. The Fund will enter into an Investment Management Agreement with KFS pursuant to which KFS, subject to the general supervision of the Board of Trustees, will provide investment advisory and management services. The fund will also enter into a Distribution Services Agreement with KFS pursuant to which KFS will act as principal underwriter for the Fund.

2. The Fund's investment objectives are to return the initial investments to investors on or shortly before maturity and to provide a high level of current income. The maturity date for the Fund is November 30, 1997. The Fund will seek to achieve its objectives by investing in high quality debt securities—primarily mortgage-backed securities—and by actively managing the Fund's assets in relation to market conditions, interest rate changes and the remaining terms of the Fund.

3. The Fund will be liquidated on its maturity date in 1997. The Fund's shares will be offered for a limited period ending on a date to be established (the "Offering Date"). Thereafter, redemptions will be permitted, but no additional shares will be sold. The Fund will pay KFS a rule 12b-1 fee of .65% for distribution services and an administrative services fee of .25%. Commencing one year after the Offering Date, KFS will pay these fees to financial services firms.

4. KFS will pay financial services firms commissions and transaction fees of 1.0% at the time of the sale of Fund shares and may pay additional concessions to those firms selling certain minimum numbers of shares as described in the Fund's prospectus. KFS is in turn to be compensated over the five year life of the Fund for its marketing effort, including its out-of-pocket commission and transaction fee and distribution fee expenses, by means of a rule 12b-1 distribution service fee periodically paid by the Fund. Since "early" redemptions of shares (*i.e.*, those occurring less than one year after the date of purchase) could preclude KFS from receiving sufficient revenue under the distribution plan to justify the expense of the initial sale, the Fund proposes to deduct a CDSC of 1.0% from the proceeds of such "early" redemption and pay that charge to KFS.

5. The 1.0% CDSC will not be imposed either upon redemptions of shares that were purchased longer than one year before the corresponding redemptions or upon redemption of reinvestment dividends or appreciation of shares.

6. Applicants will not eliminate, reduce, or waive the 1.0% CDSC.

### Applicants' Legal Analysis

1. Applicants seek an exemption under section 6(c) of the Act from sections 2(a)(32), 2(a)(35), 22(c), and

22(d) of the Act and rule 22c-1 thereunder to the extent necessary to permit the assessment of the CDSC. Applicants submit that the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The CDSC permits shareholders to have the advantage of more investment dollars working for them from the time of their purchase of shares of the Fund than if a sales charge were imposed at the time of purchase. Furthermore, the CDSC described above is fair to shareholders because it applies only to amounts representing purchase payments and does not apply to amounts representing reinvested dividends or appreciation of shares.

**Applicants' Condition**

Applicants understand that any order granted hereunder pursuant to section 6(c) of the Act is conditioned on the representations contained herein and on the undertaking that Applicants will comply with the provisions of rule 6c-10 under the Act as currently proposed and as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-15769 Filed 7-6-92; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 35-25563]**

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

June 26, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 20, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Kenetech Corp (31-862)**

Kenetech Corporation ("Kenetech"), 500 Sansome Street, Suite 600, San Francisco, California 94111, and its wholly owned subsidiary company, U.S. Windpower, Inc. ("Windpower"), 6952 Preston Avenue, Livermore, California 94550, have filed an application for an order granting them an exemption under section 3(a)(5) from all provisions of the Act, except section 9(a)(2).

Kenetech is a Delaware corporation engaged, directly and indirectly, in the design, development, financing, construction, ownership and operation of cogeneration and other independent power projects. Windpower, also a Delaware corporation, engages in the design, development, financing, construction, ownership and operation of wind turbine electric generation facilities ("Windplants") in the United States and abroad. All of the United States cogeneration and other independent power projects in which Kenetech has a direct or indirect interest, including the Windplants, are "qualifying small power production facilities" or "qualifying cogeneration facilities" within the meaning of sections 3(17)(C) and 3(18)(B) of the Federal Power Act, and within the meaning of sections 203 (a) and (b) of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). Neither the applicants nor any company owned or controlled by them is a "public-utility company," a "holding company" or an "affiliate" of a holding company within the meaning of the Act.

Kenetech through a to-be-formed subsidiary company is developing the Alberta Windplant, a nine megawatt Windplant to be built and operated in Alberta, Canada ("Canadian Project"). Kenetech will hold indirectly a 100% interest in the completed Canadian Project. Windpower is participating in a joint venture that is developing a Windplant in Spain ("Spanish Project"). On completion of the Spanish Project, Windpower will hold an indirect interest of approximately 12.5% in the Project and it will own 50% of the company that will operate the Project.

Upon the sale of test power from the Spanish Project, Windpower will become a "holding company" as defined by section 2(a)(7)(A) of the Act and will thus be subject to regulation under the Act, unless an exemption is obtained.[1] Kenetech will become a "holding company" upon the earlier of the sale of test power from the Canadian Project or from the Spanish Project.

The applicants assert that they will qualify for exemption under section 3(a)(5) of the Act. Neither applicant nor any of its subsidiary companies will become a company the principal business of which within the United States is that of a public-utility company, and neither applicant will derive any part of its income, directly or indirectly, from any one or more subsidiary companies the principal business of which within the United States is that of a public utility.

**Seagull Energy Corp. (31-867)**

Seagull Energy Corporation ("Seagull"), 1700 First City Tower, 1001 Fannin St., Houston, Texas 77002, a Texas oil and gas exploration and production company and a statutory public-utility company, has filed an application in connection with a proposed acquisition of 10% or more in one or more to-be-formed Argentine public-utility subsidiary companies (each, an "Argentine Utility Company"). Seagull requests an order under section 3(b) of the Act granting an unqualified exemption for each acquired Argentine Utility Company and for certain subsidiaries organized under Argentine law to hold Seagull's interest in each Argentine Utility Company, as described below. Alternatively, Seagull requests an order under section 3(a)(5) granting it, and its subsidiaries that would be holding companies as a result of the proposed transactions, exemptions from all provisions of the Act, except section 9(a)(2).

Seagull is engaged, through subsidiaries and operating divisions, in the exploration, production, transportation, supply, marketing and distribution of natural gas. Seagull conducts its exploration and production activities in the Gulf of Mexico and in areas of Oklahoma and Texas. Seagull is a "public-utility company" within the meaning of the Act as a result of gas distribution operations, described below, which Seagull conducts through

[1] The Projects, located outside the United States, will not be exempted from the definition of "public-utility company" under PURPA.

ENSTAR Natural Gas Company ("ENG"), a division of Seagull. Neither Seagull nor any corporation owned or controlled by Seagull currently is a "holding company" or an "affiliate" of a holding company within the meaning of the Act.

ENG serves approximately 85,000 customers in the greater Anchorage metropolitan area in south central Alaska. As of December 31, 1991, Seagull had total assets of $618.6 million, of which approximately $91.6 million were ENG's gas distribution assets. Total revenues in 1991 were $248.5 million, of which $129.6 million were attributable to ENG's gas distribution activities.

Seagull proposes to acquire 10% or more of the voting securities of each of up to three Argentine Utility Companies that will be created by the Argentine government as part of the privatization of its state-owned gas-utility company, Gas del Estado. It is anticipated that the distribution system of Gas del Estado will be divided into eight distribution systems, two in the City of Buenos Aires, two in northern Argentina and two in southern Argentina. A separate distribution company will be established for each region.

Each Argentine Utility Company will be organized under the laws of Argentina and will have no foreign operations or assets outside of Argentina. Foreign investors will bid for a 60% ownership interest in each company, and the Argentina government and employees of Gas del Estado will retain a 30% and 10% ownership interest, respectively, in each company.[1]

The precise ownership interest(s) that Seagull would acquire and the ownership structure through which Seagull would hold its interest(s) have not yet been determined. Seagull expects to bid with one or more participants, including Argentine participants. The bidding consortium would organize an Argentine corporation ("X Corp.") to hold the respective ownership interests in each Argentine Utility Company. Seagull expects to hold its interest in X Corp. through a direct or indirect wholly owned subsidiary ("Newco"). It is expected that Newco would hold 20–50% of the voting securities of X Corp.

Seagull currently intends to invest not more than $40 million to effect the acquisition of the Argentine Utility Companies. Seagull states that the proposed investment represents approximately 6.5% of its total assets. Seagull states it intends to fund its investment with internally generated funds and available credit facilities, although it may elect to fund all or a portion of such investment by arranging new credit facilities. Seagull represents that it will not make any special distribution of funds from ENG for the purpose of funding the investment in X Corp. or any Argentine Utility Company's operations and it will not directly or indirectly provide any guaranty or other form of financial support with respect to any indebtedness that may be incurred by Newco, X Corp. or any Argentine Utility Company.

It is anticipated that Newco will enter into a management agreement to operate each Argentine Utility Company. Seagull would provide management and technical services to Newco in the carrying out of any management agreement. In connection with any services provided by ENG agreement. In connection with any services provided by ENG personnel, there are accounting procedures in place, subject to review by the Alaska Public Utilities Commission, that would account for any services provided to any Argentine Utility Company by employees of Seagull's Alaskan utility operations.

Seagull requests an order under section 3(b) of the Act exempting each Argentine Utility Company, Newco and X Corp. from all provisions of the Act. Seagull states that none of the Argentine Utility Companies, or Newco or X Corp., will derive any part of its income, directly or indirectly, from sources within the United States. In addition, no Argentine Utility Company, or Newco or X Corp., will be, or have any subsidiary company which is, a public-utility company operating in the United States. Seagull asserts that rule 10(a)(1) will provide an exemption for itself, Newco and X Corp. as parent entities of the Argentine Utility Companies insofar as they are holding companies. Further, Seagull asserts that rule 11(b)(1), together with rule 10(a)(1), will provide an exemption from the prior approval requirements of sections 9(a)(2) and 10 to which Seagull would otherwise be subject. Alternatively, Seagull requests orders granting exemptions under section 3(a)(5) to itself and its subsidiaries that would be holding companies as a result of the proposed transactions.

[1] The application states that the Argentine government will eventually sell its interest in each local distribution company in a public offering in Argentina.

**Consolidated Natural Gas Co., et al. (70–7225)**

Consolidated Natural Gas Company ("Consolidated"), 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, and its wholly-owned non-utility subsidiary company, CNG Trading Company ("Trading"), One Park Ridge Center, Pittsburgh, Pennsylvania 15244–0746, have filed a post effective amendment under sections 9(a) and 10 of the Act to their application-declaration originally filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43 and 45 thereunder.

By Order dated February 27, 1987 (HCAR No. 24329) ("1987 Order"), the Commission authorized Consolidated to form Trading, to engage in the business of marketing low-cost, non-regulated natural gas. However, the 1987 Order restricted the revenues Trading could earn from off-system, non-associated local distribution companies ("LDCs") and their end-users ("Off-System Revenues") to an amount not in excess of its earnings from on-system, associated and non-associated LDCs and their respective end-users. By order dated December 6, 1991 (HCAR No. 25421), the Commission extended the expiration date of the 1987 Order to December 31, 1996 and retained the restriction on Off-System Revenues.

Consolidated now seeks, pursuant to section 2(b) of the Gas Related Activities Act of 1990, to remove the restriction on Trading's Off-System Revenues.

**Entergy Corp. 70–7801**

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company has filed a post-effective amendment to its application-declaration under sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

By order dated November 27, 1990 (HCAR No. 25195) ("Order"), the Commission authorized Entergy to acquire shares of its common stock ("Common Stock"), not to exceed 18,575,009 shares, in negotiated or open market transactions or through tender offers from time-to-time through December 31, 1992. The Commission further authorized that all Common Stock repurchased will be cancelled and returned to the status of authorized but unissued.

By subsequent order dated April 2, 1992 (HCAR No. 25508), the Commission, among other things, authorized Entergy to solicit proxies and obtain a vote from shareholders approving an amendment to Entergy's charter ("Amendment") that would permit Entergy to hold reacquired shares of its Common Stock as treasury shares, as an alternative to cancellation of such

shares. The shareholders approved the Amendment on May 15, 1992.

Entergy now proposes that any shares of Common Stock acquired by it pursuant to the Order after the effectiveness of the proposed charter amendment either be canceled and returned to the status of authorized but unissued shares or, in the alternative, held by Entergy as treasury shares for later reissuance.

**Ohio Valley Electric Corp. (70–7989)**

Ohio Valley Electric Corporation ("OVEC"), P.O. Box 468, Piketon, Ohio 45661, an electric public-utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application-declaration under sections 6(b) and 12(c) of the Act and Rule 42.

OVEC proposes to issue and sell short-term notes ("Notes") to various banks, through December 31, 1994, in aggregate principal amounts not to exceed $25 million outstanding at any one time. The Notes will mature not more than 270 days after the date of issuance or renewal, provided that none will mature later than June 30, 1995. They will bear interest at an annual rate not greater than the lending bank's prime commercial rate in effect from time-to-time.

The Notes will be sold under various lines of credit with different terms, including rates at prime. OVEC may be required to maintain separate or additional compensating balances of up to 20% of amounts available under the lines of credit and fees of up to ⅛ of 1% per annum of such amounts. No line of credit will exceed an effective cost of borrowing of 125% of the prime commercial rate in effect from time-to-time, or not more than 8.125% based on a prime rate of 6.5%.

The proceeds of the short-term debt incurred by OVEC will be added to its general funds and used to pay its general obligations, including expenditures incurred in connection with payments for purchased power from Indiana-Kentucky Electric Corporation ("IKEC"), including IKEC's program to comply with Clean Air Act Amendments of 1990, and for other corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–15770 Filed 7–6–92; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

[Public Notice 1646]

### Public Information Collection Requirements Submitted to OMB for Review

**AGENCY:** Department of State.

**ACTION:** The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**SUMMARY:** Operation of a motor vehicle in the United States by foreign diplomatic personnel is a benefit under the Foreign Missions Act. Administration of this benefit requires the Department of State to register, title, and issue license plates to motor vehicles owned by foreign diplomatic personnel and missions, and to collect information regarding the insurance of motor vehicles owned by foreign diplomatic personnel and official representatives of foreign governments to international organizations in the United States. The following summarizes the information collection proposal submitted to OMB:

*Type of request*—Reinstatement.
*Originating Office*—Office of Foreign Missions.
*Title of Information Collections*—
—Application for Registration (Mission Vehicle).
—Application for Registration (Personal Vehicle).
—Application for Title.
—Application for Replacement Plates.
*Frequency*—On occasion and annually.
*Form Numbers*—DSP–100, 101, 102, 104.
*Respondents*—Foreign government representatives.
*Estimated Number of Respondents*—18,488.
*Average Hours Per Response*—15 minutes.
*Total Estimated Burden Hours*—6,933.

Section 3504(h) of Public Law 96–511 does not apply.

**ADDITIONAL INFORMATION OR COMMENTS:** Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Lin Liu (202) 395–7340.

Dated: June 23, 1992.

**Sheldon J. Krys,**

*Assistant Secretary for Diplomatic Security.*

[FR Doc. 92–15812 Filed 7–6–92; 8:45 am]

BILLING CODE 4710–43–M

## Bureau of Politico-Military Affairs

[Public Notice 1647]

### Imposition of Missile Proliferation Sanctions Against North Korean and Syrian Entities

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The Under Secretary of State for International Security Affairs has determined that two North Korean entities and two Syrian entities have engaged in missile technology proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979, as amended by the National Defense Authorization Act for Fiscal Year 1991, and the National Defense Authorization Act for Fiscal Year 1992 and 1993.

**EFFECTIVE DATE:** June 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mark Pekala, Office of Weapons Proliferation Policy, Bureau of Politico-Military Affairs, Department of State (202–647–4930).

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 73(A)(1) of the Arms Export Control Act (22 U.S.C. 2797(a)(1)), section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2410B(b)(1)), and Sections 1702 and 1703 of the National Defense Authorization Act for fiscal year 1990–91 (Pub. L. 101–510), and the President's Memorandum Delegation of Authority of June 25, 1991, the Under Secretary of State for International Security Affairs determined on June 23, 1992, that the following foreign persons have engaged in missile technology proliferation activities that warrant the sanctions described in Sections 73(a)(2)(b) and 73(a)(2)(c) of the Arms Export Control Act (22 U.S.C. 2797(a)(2)(b) and 2797(a)(2)(c)) and sections 11B(B)(1)(b)(ii) and 11B(B)(1)(b)(iii) of the Export Administration Act of 1979 (50 U.S.C. App. 2410B(B)(1)(b)(ii) and 2410(B)(1)(b)(iii)):

1. Lyongaksan Machineries & Equipment Export Corporation (North Korea).
2. Changgwang Credit Corporation (North Korea).
3. Syrian Scientific Research Center a/k/a Centre d'Estudes et Recherches Scientifique (Syria).
4. Ministry of Defense (Syria).

In the case of sanctions to be applied pursuant to the Arms Export Control

Act, section 74(8)(B) of that act, as amended, requires that, because of North Korea's status as a country with a non-market economy that is not a former member of the Warsaw Pact, sanctions must be applied, not only to the entities cited above, but to all activities of the North Korean government relating to missile development or production, as well as all activities of that government affecting development or production of electronics, space systems or equipment, and military aircraft.

Accordingly, the following measures have been imposed: (a) Licenses for export to the entities described above of items controlled pursuant to the Export Administration Act of 1979 will be denied for two years; (b) licenses for export to the entities and North Korean government activities described above, of items controlled pursuant to the Arms Export Control Act, will be denied for two years; (c) no U.S. government contracts involving the entities or North Korean government activities described above will be entered into for two years; and (d) no products produced by the entities or the North Korean government activities described above may be imported into the United States for two years.

These measures shall be implemented by the responsible agencies as provided in the President's Memorandum Delegation of Authority of June 25, 1991.

Dated: June 26, 1992.

**Richard A. Clarke,**

*Assistant Secretary of State for Politico-Military Affairs.*

[FR Doc. 92-15775 Filed 7-6-92; 8:45 am]

BILLING CODE 4710-25-M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. RSEQ-91-1 and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before August 13, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual waiver petitions are as follows:

*The Lake Terminal Railroad Company; (Waiver Petition Docket No. RSEQ-91-1)*

The Lake Terminal Railroad Company (LT) seeks a permanent waiver of compliance from the provisions of Qualification Standards for Locomotive Engineers (49 CFR part 240). The railroad operates on trackage within the confines of the United States Steel and Encoat Steel plants in Lorain, Ohio.

*McKeesport Connecting Railroad Company; (Waiver Petition Docket Number RSEQ-91-2)*

The McKeesport Connecting Railroad Company (MKC) seeks a permanent waiver of compliance from the provisions of Qualification Standards for Locomotive Engineers (49 CFR part 240). The railroad operates on trackage within the confines of the United States Steel plant in Monroeville, PA.

*South Buffalo Railway Company; (Waiver Petition Docket Number RSEQ-91-3)*

The South Buffalo Railway Company (SB) seeks a permanent waiver of compliance from the provisions of Qualifications Standards for Locomotive Engineers (49 CFR part 240). The railroad operates on trackage within the confines of Bethlehem Steel Corporation in Lackawanna, PA.

*Philadelphia Bethlehem and New England Railroad; (Waiver Petition Docket Number RSEQ-91-4)*

The Philadelphia Bethlehem and New England Railroad (PBNE) seeks a permanent waiver of compliance from the provisions of Qualification Standards for Locomotive Engineers (40 CFR part 240). The railroad operates on trackage within the confines of Bethlehem Steel Corporation in Bethlehem, PA.

*Conemaugh and Black Lick Railroad; (Waiver Petition Docket Number RSEQ-91-5)*

The Conemaugh and Black Lick Railroad Company (CBL) seeks a permanent waiver of compliance from the provisions of Qualification Standards for Locomotive Engineers (49 CFR part 240). The railroad operates on trackage within the confines of Bethlehem Steel Corporation plant in Johnstown, PA.

*Patapsco and Back Rivers Railroad; (Waiver Petition Docket Number RSEQ-91-6)*

The Patapsco and Black Rivers Railroad Company (PBR) seeks a permanent waiver of compliance from the provisions of Qualification Standards for Locomotive Engineers (49 CFR part 240). The railroad operates on trackage within the confines of the Bethlehem Steel Corporation plant in Sparrows Point, MD.

*Steelton and Highspire Railroad Company; (Waiver Petition Docket Number RSEQ-91-7)*

The Steelton and Highspire Railroad Company seeks a permanent waiver from the provisions of Qualification Standards for Locomotive engineers (49 CFR part 240). The railroad operates on trackage within the confines of Bethlehem Steel Corporation plant in Steelton, PA.

*Cambria and Indiana Railroad Company; (Waiver Petition Docket Number RSEQ-91-8)*

The Cambria and Indiana Railroad Company (CI) seeks a permanent waiver of compliance from the provisions of Qualification Standards for Locomotive Engineers (49 CFR part 240). The railroad operates 33 miles of tracks in the area of Ebensburg, PA primary to transport coal.

*Port Authority Trans-Hudson Corporation; (Waiver Petition Docket Number RSEQ-91-9)*

The Port Authority Trans-Hudson Corporation (PATH) seeks a permanent waiver from certain provisions of Qualification Standards for Locomotive Engineers (49 CFR part 240). The railroad operates a 13.9 rapid transit system in the New York City, NY area. The petitioner seeks relief from those

portions of part 240 relating to the existence of operating speed indicators.

Issued in Washington, DC, on June 29, 1992.

Phil Olekszyk,

*Deputy Associate Administrator for Safety.*

[FR Doc. 92-15777 Filed 7-6-92; 8:45 am]

BILLING CODE 4910-06-M

## Petition for Waivers of Compliance

In accordance with 49 CFR § 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the South Central Florida Railroad a request for waivers of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

### South Central Florida Railroad

[Docket Number RSFC-92-2]

The South Central Florida Railroad (SCFE) seeks a waiver of compliance from certain sections of 49 CFR part 215, Railroad Freight Car Safety Standards. SCFE is requesting a permanent waiver of the provisions of 49 CFR 215.5(d)(2)(i) requiring that dedicated service cars are not operated at speeds of more than 15 miles per hour. SCFE proposes to operate the cards at a maximum speed of 25 miles per hour. The cars are owned by U.S. Sugar Corporation of Clewiston, Florida, and are specially built and used for raw cane sugar hauling.

The cars are moved by SCFE trains from the U.S. Sugar mill to U.S. Sugar owned sidetracks adjacent to SCFE right of way. The cars are loaded and returned to the U.S. Sugar mill. The distance travelled from the mill to the farthest siding is (14) fourteen miles. The cars are used in this service from late October to April of each year.

The cars are jointly inspected each year for mechanical defects. Inspections are made in accordance with the provisions of the "Power Brake Law" before each departure from U.S. Sugar.

The SCFE states they have invested approximately $500,000 for track rehabilitation in the area in which these cars are moved in order to bring the track up to FRA Class II standards. The SCFE moves regular freight trains which consist primarily of loaded 100-ton covered hopper cards over this trackage at the maximum allowable speed. The SCFE also stated that there has not been a reportable derailment in this section of track since the track was upgraded. The movement of the cane cars at a maximum speed of 15 miles per hour in compliance with 49 CFR 215.5 is causing a hardship on the SCFE due to the greater expenditure of overtime of crews and train scheduling conflicts which ultimately greatly effects the operating budget.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number -RSFC-92-2 and must be submitted in triplicate to the Docket Clerk, Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before August 13, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on June 29, 1992.

Phil Olekszyk,

*Deputy Associate Administrator for Safety.*

[FR Doc. 92-15778 Filed 7-6-92; 8:45 am]

BILLING CODE 4910-60-M

## National Highway Traffic Safety Administration

[Docket No. 92-32; Notice 1]

## Receipt of Petition for Determination That Nonconforming 1990—1992 Citroen XM Passenger Cars are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Request for comments on petition for determination that nonconforming 1990-1992 Citroen XM passenger cars are eligible for importation.

**SUMMARY:** This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that 1990-1992 Citroen XM passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being modified to comply with, all such standards.

**DATES:** The closing date for comments on the petition is August 7, 1992.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.).

**FOR FURTHER INFORMATION CONTACT:** Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

**SUPPLEMENTARY INFORMATION:**

### Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards; or

(II) where there is no substantially similar United States motor vehicle * * * the safety features of the vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as [NHTSA] determines to be adequate.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Automotive Research and Design, Inc., T/A CXA, of Middlesex, New

Jersey (Registered Importer No. R-92-012) has petitioned NHTSA to determine whether 1990-1992 Citroen XM passenger cars are eligible for importation into the United States. CXA contends that this vehicle is eligible for importation under section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II), because it has safety features that comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that the 1990-1992 Citroen XM has safety features that comply with Standard Nos. 101 *Controls and Displays* (based on visual inspection and operation), 102 *Transmission Shift Lever Sequence* * * * (based on visual inspection and operation), 103 *Defrosting and Defogging Systems* (based on documented testing), 104 *Windshield Wiping and Washing Systems* (based on undocumented testing), 105 *Hydraulic Brake Systems* (based on visual inspection and documented testing performed on nonsubject vehicle alleged to contain a similar brake system), 106 *Brake Hoses* (based on visual inspection of equipment and markings), 107 *Reflecting Surfaces* (based on visual inspection), 108 *Lamps, Reflective Devices and Associated Equipment* (based on visual inspection and operation), 109 *New Pneumatic Tires* (based on visual inspection of equipment and markings), 110 *Tire Selection and Rims* (based on visual inspection of equipment and markings), 111 *Rearview Mirrors* (based on visual inspection and undocumented testing), 113 *Hood Latch Systems* (based on visual inspection and operation), 114 *Theft Protection* (based on operation), 115 *Vehicle Identification Number* (based on visual inspection), 116 *Brake Fluids* (based on visual inspection of markings), 118 *Power-Operated Window Systems* (based on operation and schematic diagram of power window electrical system), 124 *Accelerator Control Systems* (based on visual inspection and documented testing), 201 *Occupant Protection in Interior Impact* (based on visual inspection and documented Standard No. 208 testing), 202 *Head Restraints* (based on visual inspection and partially documented testing), 203 *Impact Protection for the Driver From the Steering Control System* (based on documented testing), 204 *Steering Control Rearward Displacement* (based on documented testing), 205 *Glazing Materials* (based on visual inspection of markings), 206 *Door Locks and Door Retention Components* (based on visual inspection, operation, and schematic diagram of power lock electrical system), 207 *Seating Systems* (based on undocumented testing), 208 *Occupant Crash Protection* (based on documented testing, visual inspection of equipment and labels, operation of equipment, and schematic diagram of seat belt warning electrical system), 209 *Seat Belt Assemblies* (based on visual inspection of equipment and labels), 210 *Seat Belt Assembly Anchorages* (based on undocumented testing), 211 *Wheel Nuts, Wheel Discs and Hubcaps* (based on visual inspection), 212 *Windshield Retention* (based on documented testing), 214 *Side Door Stretch* (based on documented testing), 216 *Roof Crush Resistance* (based on opinion drawn from documented testing showing a failure), 219 *Windshield Zone Intrusion* (based on documented testing), 301 *Fuel System Integrity* (based on documented testing), and 302 *Flammability of Interior Materials* (based on unsupported opinion).

The petitioner also contends that the 1990-1992 Citroen XM complies with the Bumper Standard, 49 CFR part 581 (based on visual inspection and undocumented testing to an allegedly identical European standard).

NHTSA has requested the petitioner to supply further explanation and documentation to support its claims that the vehicles that it seeks to import comply with Standard Nos. 104, 105, 106, 109, 110, 111, 201, 202, 203, 207, 208, 210, 216, and 302, and with 49 CFR 581. The petitioner has been requested to furnish this information by July 17, 1992. When it receives the petitioner's response, NHTSA will place all information for which confidentiality has not been requested in the public docket so that it may be reviewed by anyone wishing to comment on this petition.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies by submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Based on the additional information it has requested from the petitioner, and any comments it receives, NHTSA will determine whether there is a need to solicit further comments before taking final action on the petition. Notice of final action will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: August 7, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 599.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 30, 1992.

William A. Boehly,

*Associate Administrator for Enforcement.*

[FR Doc. 92-15778 Filed 7-6-92; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

[CUSIP No. 912827 F3 8]

### Department Circular—Public Debt Series—NO. 22-92; Treasury Notes of July 15, 1999, Series G-1999

Washington, July 1, 1992.

**1. Invitation for Tenders**

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

**2. Description of Securities**

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and

multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR Part 357), apply to the Notes offered in this circular.

**3. Sale Procedures**

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in Section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to Section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair



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determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10:00 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

**4. Reservations**

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any of all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

**5. Payment and Delivery**

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not over-due as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

**6. General Provisions**

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

Gerald Murphy,

*Fiscal Assistant Secretary.*

**Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in all Treasury Security Auctions**

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries*—A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches*—A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches*—A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and subsidiaries*—A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families*—A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is *not* permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is not recognized as a separate bidder.)

(6) *Partnerships*—Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

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(9) *Political Subdivisions*—(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers*—An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—A pension fund (includes all funds that comprise it, whether or not separately administered).

**Notes:** The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219-3350).

## Auction of $9,750 Million of 7-Year Notes

The Treasury will auction $9,750 million of 7-year notes to refund $8,108 million of 7-year notes maturing July 15, 1992, and to raise about $3,650 million new cash. The $8,108 million of maturing 7-year notes are those held by the public, including $484 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities.

The $9,750 million is being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average price of accepted competitive tenders.

In addition to the public holdings, Federal Reserve Banks for their own accounts hold $191 million of the maturing securities that may be refunded by issuing additional amounts of the new notes at the average price of accepted competitive tenders.

Details about the new security are given in the attached highlights of the offering and in the official offering circular.

## Highlights of Treasury Offering to the Public of 7-Year Notes to be Issued July 15, 1992

July 1, 1992.

*Amount Offered*

To the public—$9,750 million

*Description of Security*

Term and type of security—7 year notes.

Series and CUSIP designation—G-1999 (CUSIP No. 912827 F9 8).

Maturity date—July 15, 1999.

Interest rate—To be determined based on the average of accepted bids.

Investment yield—To be determined at auction.

Premium or discount—To be determined after auction.

Interest payment dates—January 15 and July 15.

Minimum denomination available—$1,000.

*Terms of Sale*

Method of sale—Yield auction.

Competitive tenders—Must be expressed as an annual yield, with two decimals, e.g., 7.10%.

Noncompetitive tenders—Accepted in full at the average price up to $5,000,000.

Accrued interest payable by investor—None.

*Key Dates*

Receipt of tenders—Wednesday, July 8, 1992.

(a) noncompetitive—prior to 12:00 noon, EDST.

(b) competitive—prior to 1:00 p.m., EDST.

Settlement (final payment due from institutions)

(a) funds immediately available to the Treasury—Wednesday, July 15, 1992.

(b) readily-collectible check—Monday, July 13, 1992.

[FR Doc. 92-15896 Filed 7-1-92; 8:45 am]

BILLING CODE 4810-40-M

## Public Information Collection Requirements Submitted to OMB for Review

Dated: June 30, 1992

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

### Internal Revenue Service

*OMB Number:* 1545-0099.
*Form Number:* IRS Form 1065, Schedule D (Form 1065), and Schedule K-1 (Form 1065).
*Type of Review:* Revision.
*Title:* U.S. Partnership Return of Income (Form 1065). Capital Gains and Losses (Schedule D). Partner's Share of Income, Credits, Deductions, etc. (Schedule K-1).
*Description:* Internal Revenue Code (IRC) section 6031 requires partnerships to file returns that show gross income items, allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used to verify correct reporting of partnership items and general statistics.
*Respondents:* Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents/ Recordkeepers:* 2,033,000.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

| | Form 1065 | Schedule D | Schedule K-1 |
|---|---|---|---|
| Recordkeeping | 38 hr., 53 min. | 5 hr., 44 min. | 24 hr., 52 min. |
| Learning about the law or the form | 17 hr., 47 min. | 1 hr., 12 min. | 8 hr., 21 min. |
| Preparing the form | 30 hr., 32 min. | 1 hr., 20 min. | 9 hr., 7 min. |
| Copying, assembling and sending the form to the IRS | 34 hr., 13 min. | | |

*Frequency of Response:* Annually.
*Estimated Total Reporting/ Recordkeeping Burden:* 996,303,611 hours.
*OMB Number:* 1545-0130.
*Form Number:* IRS Form 1120S, Schedule D (Form 1120S), Schedule K-1 (Form 1120S).
*Types of Review:* Revision.
*Title:* U.S. Income Tax Return for an S Corporation (Form 1120S) Capital Gains and Losses and Built-In Gains (Schedule D) Shareholder's Share of Income, Credits, Deductions, etc. (Schedule K-1).
*Description:* Form 1120S, Schedule D (Form 1120S), and Schedule K-1 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through its shareholders. Schedule K-1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc. IRS uses the information to determine the correct tax for the S corporation and its shareholders.
*Respondents:* Farms, Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents/ Recordkeepers:* 1,389,600.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPERS

| | Form 1120S | Schedule D | Schedule K-1 |
|---|---|---|---|
| Recordkeeping | 63 hr., 8 min. | 8 hr., 51 min. | 14 hr., 35 min. |
| Learning about the law or the form | 17 hr., 56 min. | 4 hr., 20 min. | 9 hr., 37 min. |
| Preparing the form | 33 hr., 43 min. | 9 hr., 19 min. | 14 hr., 1 min. |
| Copying, assembling, and sending the form to the IRS | 4 hr., 1 min. | 1 hr., 20 min. | 1 hr., 4 min. |

*Frequency of Response:* Annually.
*Estimated Total Reporting/ Recordkeeping Burden:* 295,931,722 hours.
*OMB Number:* 1545-0770.
*Regulation ID Number:* FI-182-78 NPRM.
*Type of Review:* Extension.
*Title:* Transfers of Securities Under Certain Agreements.
*Description:* Section 1058 of the Internal Revenue Code provides taxfree treatment for security lending transactions. A written agreement is necessary to verify the existence of such lending agreement. Lenders of securities are affected.
*Respondents:* Individuals or households, Businesses of other for-profit, Non-profit institutions.
*Estimated Number of Respondents:* 1.
*Estimated Burden Hours Per Respondent:* 1 hour.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 1 hour.
*OMB Number:* 1545-1018.
*Regulation ID Numbers:* FI-61-91 (NPRM) and FI-27-89 (TEMP and Final).
*Type of Review:* Extension.
*Title:* Notice of Allocation of Allocable Investment Expense (FI-61-91 NPRM). Real Estate Mortgage Investment conduits; Reporting Requirements and Other Administrative Matters (FI-27-89 TEMP and Final)
*Description:* The temporary regulations and the notice of proposed rulemaking by cross-reference notice prescribe the manner in which an entity elects to be taxed as a real estate mortgage investment conduit (REMIC) and the filing requirements for REMICs and certain brokers.
*Respondents:* Business of other for-profit.
*Estimated Number of Respondents:* 655.
*Estimated Burden Hours Per Respondent:* 10 minutes.
*Frequency of Response:* Quarterly, Annually.
*Estimated Total Reporting Burden:* 978 hours.

### Estimated Total Reporting/ Recordkeeping Burden:

| | |
|---|---|
| Recordkeeping | 104 hours, 16 minutes. |
| Learning about the law or the form. | 33 hours, 47 minutes. |
| Preparing the form | 55 hours, 35 minutes. |
| Copying, assembling, and sending the form to the IRS. | 5 hours, 22 minutes. |

*Frequency of Response:* Annually.
*Estimated Total Reporting/ Recordkeeping Burden:* 1,492,500 hours.
*OMB Number:* 1545-1147.
*Regulation ID Numbers:* IA-52-89 (TEMP) and IA-52-89 (Cross-Reference NPRM).
*Type of Review:* Extension.
*Title:* Limitation on the Use of the Cash Receipts and Disbursements Method of Accounting.
*Description:* The information will be used to monitor untimely changes from the cash method under section 448, and to insure that taxpayers are adhering to the terms and conditions imposed by the Commissioner in order to effectuate such changes. The affected public generally will be large C corporations, partnerships with a C corporation partner, and tax shelters.
*Respondents:* Businesses of other for-profit.
*Estimated Number of Respondents:* 100.
*Estimated Burden Hours Per Respondent:* 1 hour.
*Frequency of Response:* Other (one-time selection).
*Estimated Total Reporting Burden:* 978 hours.

*Clearance Officer:* Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*

[FR Doc. 92-15832 Filed 7-6-92; 8:45 am]

BILLING CODE 4830-01-M

## Office of the Comptroller of the Currency

**[Docket No. 92-14]**

## Privacy Act of 1974, as Amended; System of Records

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of amendment to five privacy act systems of records.

**SUMMARY:** The Office of the Comptroller of the Currency ("OCC") gives notice of a number of changes to the following systems of records, all of which are subject to the Privacy Act of 1974, 5 U.S.C. 552a: The Consumer Complaint Information System (CCIS), Treasury/ Comptroller .004; the Investigative Files/ Employee Reference File System, Treasury/Comptroller .014; the Litigation Information System (LIS), Treasury/Comptroller .016; the Professional Qualification Records for Municipal Securities Principals and Municipal Securities Representatives System, Treasury/Comptroller .221; and the Administrative Personnel System,

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Treasury/Comptroller .300. This action is required by the Privacy Act of 1974. These system notices were last published in their respective entireties in the **Federal Register** on April 17, 1992.

**DATES:** Comments must be received no later than August 6, 1992. These changes will be adopted without further publication in the **Federal Register** on August 6, 1992, unless modified by a subsequent notice to incorporate comments received from the public.

**ADDRESSES:** Comments should be sent to: Disclosure Officer, Docket No. 92–14, Communications Division, Office of the Comptroller of the Currency, 250 E St., SW., Washington, DC 20219. Comments will be available for inspection and photocopying at this address.

**FOR FURTHER INFORMATION CONTACT:** Frank D. Vance, Jr., Disclosure Office, Freedom of Information and Privacy, Communications Division, (202) 874–4700, Office of the Comptroller of the Currency; Scott R. Pratt, Attorney, Legal Advisory Services Division, (202) 874–5330, Office of the Comptroller of the Currency.

**SUPPLEMENTARY INFORMATION:** In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury reviewed all Privacy Act Systems of Records and published (57 FR 13900) all system notices on April 17, 1992. This notice affects only the five systems cited in **"SUMMARY"** above. Interested persons may submit comments as described in **"DATES"** and **"ADDRESSES"** above.

A recent review of these systems revealed that certain descriptions required updating. The specific changes the OCC is making alter the following system elements: The names of certain systems; the categories of individuals covered by certain systems; the categories of records in certain systems; the authority for maintaining various systems; the storage associated with certain systems; the retrievability element of certain systems; the safeguards for certain systems; the retention and disposal procedures for certain systems; the system manager and address of a number of systems; the record access procedures of several systems; the contesting record procedures for certain systems; and the record source category of certain systems. The particular alterations to individual systems are described in detail below.

**Consumer Complaint Information System (CCIS), Treasury/Comptroller .004**

The system name is changed to Consumer Complaint and Inquiry Information System (CCIIS) in order to better describe the system. The OCC is modifying the description of this system to more accurately reflect its uses. Inquiries from numerous sources regarding banks and banking issues that are not related to a specific problem or complaint are often received by the OCC. This system is being changed to cover these types of inquiries as well as complaints. The descriptions of the categories of individuals covered by the system, the categories of records in the system, and the record source categories are being changed to reflect the additional types of inquiries received. The authority for the maintenance of the system is changed to include 15 U.S.C. 41 *et seq.* as additional authority. The record access procedures element is changed to reflect that the Disclosure Officer, Communications Division, is the appropriate contact for these purposes. Finally, the system manager element is changed to indicate that Compliance Management is the system manager.

**Investigative Files/Employee Reference File System, Treasury/Comptroller .014**

The OCC is making changes involving the elements of system name, categories of individuals covered by the system, and categories of records in the system to indicate that applicants for employment with the OCC will now be covered by this system. Because of this change, the title of the system is changed to Personnel Security/Investigation Files/Employee/Applicant Reference File in order to better describe this system.

In addition, the modifications reflect a greater need for updated security for personnel files as required by the Office of Personnel Management. Therefore, the storage and safeguards elements are changed. The authority for the maintenance of the system is changed to include 5 U.S.C. 5522, Executive Order 10450, and Executive Order 12356 as additional authority. Finally, the elements of record access procedures and contesting record procedures are changed to reflect that the Disclosure Officer, Communications Division, is the appropriate contact for these purposes.

**Litigation Information System (LIS), Treasury/Comptroller .016**

The OCC is changing the description of categories of individuals covered by the system and categories of records in the system to indicate that requests from individuals for testimony and/or production of documents pursuant to 12 CFR 4.19 will be covered by the system. The elements of record access procedures and contesting record procedures are changed to reflect that the Disclosure Officer, Communications Division, is the appropriate contact for these purposes.

**Professional Qualification Records for Municipal Securities Principals and Municipal Securities Representatives System, Treasury/Comptroller .221**

The description of this system is changed to indicate that the categories of individuals covered and the record source categories of this system will now include U.S. Government Securities Representatives. Further, the OCC is changing the method of retrievability element to reflect use of a numerical identifier for these individuals. In order to more accurately describe this system, the system's title is changed to Professional Qualifications Records for Municipal Securities Principals, Municipal Securities Representatives, and U.S. Government Securities Associated Persons.

The authority for the maintenance of the system is changed to include 15 U.S.C. 78o–5(a)(1)(B)(ii) as additional authority. Finally, the system manager is now Compliance Management.

**Administrative Personnel System, Treasury/Comptroller .300**

This system will be amended to include additional users and uses of the OCC's facilities and systems. Therefore, the elements of categories of individuals covered by the system and categories of records in the system are changed. The elements of authority for the maintenance of the system, record access procedures, and retention and disposal are changed to reflect that the Disclosure Officer, Communications Division, is the appropriate contact for these purposes.

The amendments described above are as follows:

**Treasury/Comptroller .004**

**SYSTEM NAME:**

Consumer Complaint and Inquiry Information System (CCIIS)—Treasury/Comptroller.

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**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons who file complaints against banks either directly or through second parties—e.g. attorneys, congressional staffers, members of Congress—and others who make inquiries about banks or banking issues.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The records are maintained in three general categories: correspondence, computer tapes, and hard copies of computer generated reports. Data contained in these records are: the name and address of the writer or their representative; the name and charter number of the bank; the date of the incoming letter; the date letter was received by the OCC; the numerical codes identifying the nature of the complaint and the type of resolution; the identification of the district and the person assigned to examine the complaint; the resolution date; and, if appropriate, the amount of reimbursement.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

12 U.S.C. 1 *et seq.*; 5 U.S.C. 301; 15 U.S.C. 41 *et seq.*

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**SYSTEM MANAGER(S) AND ADDRESS:**

Compliance Management, Office of the Comptroller of the Currency, 250 E St., SW, Washington, DC 20219.

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**RECORD ACCESS PROCEDURES:**

Access to a record can be requested by writing to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E St., SW, Washington, DC 20219.

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**RECORD SOURCE CATEGORIES:**

The initial source of records is the person filing a complaint against a national bank, or the person making an inquiry about a bank or banking issue. Subsequent sources are from bank correspondence, bank files, or from reports based on on-site investigations.

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**Treasury/Comptroller .014**

**SYSTEM NAME:**

Personnel Security/Investigation Files/Employee/Applicant Reference File—Treasury/Comptroller.

* * * * *

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Applicants for employment with and employees of the Office of the Comptroller of the Currency.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Compilation of material for a determination regarding employability and/or Security Clearance.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

12 U.S.C. 1 and 9; 5 U.S.C. 301; and Executive Orders 10450 and 12356.

* * * * *



**STORAGE:**

Locked steel file cabinets located in a room secured with a key lock.

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**SAFEGUARDS:**

Locked steel file cabinets located in a room secured with a key lock. Only the security officer within the Human Resources area has access.

* * * * *

**RECORD ACCESS PROCEDURES:**

Contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E St., SW, Washington, DC 20219.

**CONTESTING RECORD PROCEDURES:**

Submit requests to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E St., SW, Washington, DC 20219.

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**Treasury/Comptroller .016**

**SYSTEM NAME:**

Litigation Information System (LIS)—Treasury/Comptroller.

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**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

LIS covers: (a) Individuals who file administrative or judicial claims against the OCC and/or officials or employees of the OCC in their capacity as such, against whom the OCC files claims, or who are parties to claims in which the OCC participates, but is not a party; (b) all other individuals, including actual or potential witnesses, involved in litigation brought by or against the OCC or in which the OCC participates as a nonparty; and (c) persons submitting requests for testimony and/or production of documents pursuant to 12 CFR 4.19.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

All records generated in connection with the litigation including evidentiary material, transcripts of testimony, documents prepared for administrative or judicial proceedings, correspondence, requests for information pursuant to 12 CFR 4.19, and staff memoranda.

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**RECORD ACCESS PROCEDURES:**

Contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E St., SW, Washington, DC 20219.

**CONTESTING RECORD PROCEDURES:**

Submit comments to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E St., SW, Washington, DC 20219.

* * * * *

**Treasury/Comptroller .221**

**SYSTEM NAME:**

Professional Qualification Record for Municipal Securities Principals, Municipal Securities Representatives, and U.S. Government Securities Associated Persons—Treasury/Comptroller.

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**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons who are or seek to be associated with a municipal securities dealer or a government securities broker/dealer which is a national or District of Columbia bank, or a department, division, or subsidiary of any such bank, in the capacity of municipal securities principals, municipal securities representatives, or government securities associated persons.

* * * * *

**AUTHORITY:**

Section 15B(c), 17, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(5), 78o–5(a)(1)(B)(ii), 78q, and 78w); and the general authority of the National Bank Act, 12 U.S.C. 1 *et seq.*

* * * * *

**RETRIEVABILITY:**

Records are indexed by name of individual, and by a numerical identifier assigned by the National Association of Securities Dealers.

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**SYSTEM MANAGER(S) AND ADDRESS:**

Compliance Management, Office of the Comptroller of the Currency, 250 E St., SW, Washington, DC 20219.

* * * * *

**RECORD SOURCE CATEGORIES:**

Those individuals, and municipal and U.S. government securities dealers described in the section entitled "Categories of Individuals Covered by the System" provide the bulk of the information in the system. Additional input is provided by Federal, State, local, and foreign governmental authorities, and by the self-regulatory organizations that regulate the securities industry.

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Treasury/Comptroller .300

SYSTEM NAME:

Administrative Personnel System—Treasury/Comptroller.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and contractual users of agency facilities and systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment related administrative records. This system contains internal control type information about employees and contractual users of agency facilities and systems. The type of records found within this system are: Lists of individuals who are issued building passes, credit or identification cards, parking permits, accountable property and travel documents; lists of individuals who perform specialized duties (building wardens, relocation teams, safety officers, and civil defense officers); reports about individuals who are involved in accidents while employed; and authorization codes for use of internal computer systems.

AUTHORITY:

General authority—12 U.S.C. 1 and 9; 5 U.S.C. 301. Additional specific authority is derived from a number of laws, regulations and Executive Orders. Individuals wishing to obtain more detailed information should write to the Disclosure Officer, Communications Division, 250 E St., SW, Washington, DC 20219.

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RETENTION AND DISPOSAL:

Personnel-type records in this system are retained for thirty (30) days after termination. All other records are retained and destroyed in accordance with published disposition and record retention schedules. Individuals wishing more detailed information should write to the Disclosure Officer, Communications Division, 250 E St., SW, Washington, DC 20219.

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RECORD ACCESS PROCEDURES:

Contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E St., SW, Washington, DC 20219.

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Dated: June 26, 1992.

Deborah M. Witchey,

*Acting Assistant Secretary.*

[FR Doc. 92-15694 Filed 7-6-92; 8:45 am]

BILLING CODE 4810-33-M

## Customs Service

[T.D. 92-66]

## Determination That Merchandise Imported From the People's Republic of China, Manufactured by Beijing Qinghe Hosiery Factory, Is Being Produced by Convict, Forced or Indentured Labor

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Determination that merchandise is subject to 19 U.S.C. 1307.

SUMMARY: This document advises that the Commissioner of Customs, with the approval of the Secretary for the Treasury, has determined that certain child or infant and adult socks, possibly identified and/or marketed under the "Golden Double Horse" brand-name, which are being, or are likely to be imported into the United States from the People's Republic of China (PRC), are being manufactured by the Beijing Qinghe Hosiery Factory, with the use of convict labor and/or forced labor and/or indentured labor. The Commissioner of Customs, pursuant to 19 CFR 12.42(f) has determined, on the basis of a Customs investigation, that such merchandise is being, or is likely to be imported into the United States in violation of Section 307 of the Tariff Act of 1930, as amended. As such importations of the aforementioned socks shall be considered and treated as prohibited by Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307), unless pursuant to CFR 12.42(g), the importer establishes by satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified herein.

DATES: This determination shall take effect on or before July 13, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph R. Willey, Senior Special Agent, Office of Enforcement, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229, (202) 566-6188.

SUPPLEMENTARY INFORMATION:

### Background

Section 307, Tariff Act of 1930, as amended, (19 U.S.C. 1307), provides in pertinent part:

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.

"Forced labor" is defined to mean:

All work or service which is extracted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. See, 19 U.S.C. 1307.

Pursuant to section 307, the Secretary of the Treasury promulgated implementing regulations found at 19 CFR 12.42, *et seq.* These regulations set forth the procedure for the Commissioner of Customs to make a finding that an article is being, or is likely to be imported into the United States which is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions so as to come within the purview of 19 U.S.C. 1307.

Paragraph (f) of Section 12.42, Customs Regulations (19 CFR 12.42(f)), provides that if the Commissioner of Customs finds that merchandise within the purview of 19 U.S.C. 1307 is being, or is likely to be, imported, [s]he will, with the approval of the Secretary of the Treasury, publish a finding to that effect in a weekly issue of the Customs Bulletin and in the Federal Register.

### Finding

Pursuant to § 12.42(f), Customs Regulations (19 CFR 12.42(f)), it is hereby determined that certain articles of the People's Republic of China are being, or likely to be, imported into the United States, which are being mined, produced or manufactured with the use of convict, forced, or indentured labor.

Accordingly, merchandise, subject to this finding and indicated below, shall be denied entry, at all ports of entry and/or release from warehouse for consumption shall be prohibited. Based upon this finding, Customs officers shall withhold release of any of these articles from the People's Republic of China, otherwise than for exportation.

| Articles | Item No. from the Harmonized Tariff Schedule (19 U.S.C. 1202) |
|---|---|
| Child or infant socks | 6115.93.20209 (Textile Category 632) |
| Adult socks (manufactured by the Beijing Qinghe Hosiery Factory). | 6115.92.20004 (Textile Category 332) |

Dated: April 9, 1992.

**Carol Hallett,**

*Commissioner of Customs.*

Approved: June 2, 1992.

**Dennis M. O'Connell,**

*Acting Assistant Secretary (Enforcement).*

[FR Doc. 92-15821 Filed 7-6-92; 8:45 am]

BILLING CODE 4820-02-M

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**[T.D. 92-67]**

## Determination That Merchandise Imported From the People's Republic of China, Produced by Red Star Tea Farm, is Being Produced by Convict, Forced or Indentured Labor

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Determination that Merchandise is Subject to 19 U.S.C. 1307.

**SUMMARY:** This document advises that the Commissioner of Customs, with the approval of the Secretary of the Treasury, has determined that tea, possibly identified and/or marketed under Red Star brand, Red Star Tea Farm brand and other brandnames, which is being, or is likely to be imported into the United States from the People's Republic of China (PRC), is being produced by the Red Star Tea Farm with the use of convict labor and/or forced labor and/or indentured labor. The Commissioner of Customs, pursuant to 19 CFR 12.42(f) has determined, on the basis of a Customs investigation, that such merchandise is being, or is likely to be imported into the United States in violation of section 307 of the Tariff Act of 1930, as amended. As such importations of the aforementioned tea shall be considered and treated as prohibited by section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307), unless pursuant to 19 CFR 12.42(g), 12.43, and 12.44, the importer establishes by satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified herein.

**DATES:** This determination shall take effect July 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ronald R. Kresock, Senior Special Agent, Office of Enforcement, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202) 566-6188.

**SUPPLEMENTAL INFORMATION:**

### Background

Section 307, Tariff Act of 1930, as amended, (19 U.S.C. 1307), provides in pertinent part:

> All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.

"Forced labor" is defined to mean:

> all work or service which is extracted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. *See*, 19 U.S.C. 1307.

Pursuant to section 307, the Secretary of the Treasury promulgated implementing regulations found at 19 CFR 12.42, *et seq.* These regulations set forth the procedure for the Commissioner of Customs to make a finding that an article is being, or is likely to be imported into the United States which is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions so as to come within the purview of 19 U.S.C. 1307.

Paragraph (f) of Section 12.42, Customs Regulations (19 CFR 12.42(f)), provides that if the Commissioner of Customs finds that merchandise within the purview of 19 U.S.C. 1307 is being, or is likely to be, imported, (s)he will, with the approval of the Secretary of the Treasury, publish a finding to that effect in a weekly issue of the Customs Bulletin and in the Federal Register.

### Finding

Pursuant to § 12.42(f), Customs Regulations (19 CFR 12.42(f)), it is hereby determined that certain articles of the People's Republic of China are being, or likely to be, imported into the United States, which are being mined, produced, or manufactured with the use of convict, forced, or indentured labor.

Accordingly, based upon this finding, Customs officers shall continue to withhold from release any of these articles from the People's Republic of China. Such articles may be exported only.

| Articles | Item No. from the Harmonized Tariff Schedule (19 U.S.C. 1202) |
|---|---|
| Tea (produced by RED STAR TEA FARM). | 0902.10.00<br>0902.30.00 |

Approved: June 2, 1992.

**Carol Hallett,**

*Commissioner of Customs.*

**Dennis M. O'Connell,**

*Acting Assistant Secretary (Enforcement).*

[FR Doc. 92-15822 Filed 7-6-92; 8:45 am]

BILLING CODE 4820-02-M

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 130
Tuesday, July 7, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**U.S. CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m., Tuesday, July 7, 1992.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:**

*1. Pride in Public Service Award*

The Commission will present the Pride in Public service award to July's recipient.

*2. FY 94 Budget*

The staff will brief the Commission on issues related to the Budget for fiscal year 1994.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: June 30, 1992.

**Sheldon D. Butts,**

*Deputy Secretary.*

[FR Doc. 92–15981 Filed 7–2–92; 3:13 pm]

BILLING CODE 6355–01–M

**U.S. CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m., Wednesday, July 8, 1992.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:**

*Section 15 & 37, CPSA*

The Commission will consider amendments to the Commission's rules interpreting Section 15 of the CPSA and a rule interpreting Section 37 of the CPSA.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: June 30, 1992.

**Sheldon D. Butts,**

*Deputy Secretary.*

[FR Doc. 92–15982 Filed 7–2–92; 3:13 pm]

BILLING CODE 6355–01–M

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 10:00 a.m., Monday, July 13, 1992.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 2, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92–16003 Filed 7–2–92; 3:13 pm]

BILLING CODE 6210–01–M

**LEGAL SERVICES CORPORATION BOARD OF DIRECTORS**

**TIME AND DATE:** A meeting of the Board of Directors will be held on July 14, 1992. The meeting will commence at 9:00 a.m.

**PLACE:** The Drake University, Drake University Law School, The Neal and Bea Smith Law Center, 2400 University Avenue, The Law Library, Des Moines, Iowa 50311-(515) 271–3851.

**STATUS OF MEETING:** *Open* except that a portion of the meeting may be closed if a majority of the Board of Directors votes to hold an executive session. At the closed session, pursuant to receipt of the aforementioned vote, the Board of Directors will consider and vote on approval of the draft minutes of the executive session held on May 18, 1992. In addition, the Board of Directors will hear and consider the report of the General Counsel on litigation to which the Corporation is a party. The Board of Directors will also receive and consider a status report on several investigations from the Inspector General. Finally, the Board of Directors will receive and consider reports from the Corporation President and the Inspector General concerning activities of their respective offices over the past twelve-month period, as well as the activities planned for the next twelve-month period. These reports will be rendered to the Board of Directors as part of the Board of Directors' two-phase performance assessment processes being conducted regarding the Corporation President and Inspector General. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552(b)(2), (6), (7) and (10)], the corresponding regulation of the Legal Services Corporation [45 C.F.R. Sections 1622.5(a), (e), (f) and (h)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its two reception areas, and will otherwise be available upon request.

**MATTERS TO BE CONSIDERED:**

**OPEN SESSION:**

1. Approval of Agenda
2. Approval of Minutes of May 18, 1992 Meeting
3. Comments by a Representative of the Polk County Bar Association Regarding the Private Attorney Involvement Effort in the State of Iowa
4. Chairman's and Members' Reports
   a. Consideration of Report on the June 23, 1992 Senate Reauthorization Hearing.
   b. Consideration of Motion to Conduct Board Meetings on Weekdays
5. Election of a Vice Chairman
6. Presentation of the Honorable Terry E. Branstad, Governor of the State of Iowa
7. President's Report
   a. Legislative Report
   b. Report of Migrant Ombudsman/Proteus Seminar Proposal
   c. Report on Staff Compensation Schedule
   d. Report on Board Travel Policies

**OPEN SESSION:** (Continued)

[1] As to the Board's consideration and approval of the draft minutes of the executive session held on May 18, 1992, the closing is authorized as noted in the *Federal Register* notice corresponding to that Board meeting.

8. Inspector General's Report
9. Consideration of Operations and Regulations Committee Report
10. Consideration of Provisions for the Delivery of Legal Services Committee Report

**CLOSED SESSION:** [4]

11. Approval of Minutes of Executive Session Held on May 18, 1992
12. Consideration of Status Report by the Inspector General on Several On-going Investigations Involving Allegations of Criminal Laws
13. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is a Party
14. Consideration of Reports on Activities Undertaken in the Past Twelve-Month Period and Planned Activities for the Next Twelve-Month Period, Said Reports Being Presented, In Connection with Phase One of the Board's Two-Phase Performance Assessment Processes, by the:
    a. Corporation President; and
    b. Inspector General.

**OPEN SESSION:** (Resumed)

15. Consideration of and Action on Proposed Motions Indemnifying Certain Corporation Officials in the Matters of *Singh vs. the Legal Services Corporation, et al* and *Williams vs. the Legal Services Corporation, et al.*
16. Consideration of Audit and Appropriations Committee Report
17. Consideration of Office of the Inspector General Oversight Committee Report
18. Consideration of Other Business

**CONTACT PERSON FOR INFORMATION:** Patricia D. Batie, Executive Office, (202) 336–8896.

[4] It is anticipated that the executive session will conclude at approximately 1:45 p.m. The open session will reconvene immediately thereafter.

Date Issued: July 2, 1992.

**Patricia D. Batie,**

*Corporate Secretary.*

[FR Doc. 92–16001 Filed 7–2–92; 3:14 p.m.]

BILLING CODE 7050–01–M

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**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of July 6, 13, 20, and 27, 1992.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of July 6**

*Wednesday, July 8*

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of July 13—Tentative**

*Tuesday, July 14*

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of July 20—Tentative**

*Monday, July 20*

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of July 27—Tentative**

*Wednesday, July 29*

9:30 a.m.
Periodic Briefing on EEO Program (Public Meeting) (Contact: William Kerr, 301–492–4065)

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

1:00 p.m.
Briefing on National Research Council Report: Nuclear Power—Technical and Institutional Options for the Future (Public Meeting)

3:00 p.m.
Discussion of Litigative and Related Matters (Closed—Ex. 9B and 10)

*Thursday, July 30*

2:00 p.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: Raymond Fraley, 301–492–8049)

*Friday, July 31*

10:00 a.m.
Periodic Meeting with Advisory Committee on Medical Uses of Isotopes (Public Meeting) (Contact: Larry Camper, 301–504–3417)

**ADDITIONAL INFORMATION:** By a vote of 4–0 (Chairman Selin not present) on July 2, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Safety Light Corporation—Licensing Board Order Consolidating Proceedings on License Denials and on Decontamination Order" (Public Meeting) be held on July 2 and on less than one week's notice to the public.

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 504–1661.

Dated: July 2, 1992.

**William M. Hill, Jr.,**

*Office of the Secretary.*

[FR Doc. 92–16002 Filed 7–2–92; 3:15 pm]

BILLING CODE 7590–01–M

# Corrections

Federal Register
Vol. 57, No. 130
Tuesday, July 7, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## FEDERAL DEPOSIT INSURANCE CORPORATION

**12 CFR Part 327**

**RIN 3064-AB14**

**Assessments**

*Correction*

In proposed rule document 92-15196 beginning on page 28810 in the issue of Monday, June 29, 1992, make the following correction:

**§ 327.13 [Corrected]**

On page 28814, in the first column, in § 327.3(d), the table should have appeared as set forth below:

| Semi-annual period | Target reserve ratio (percent) |
|---|---|
| 1991.2 | −0.36 |
| 1992.1 | −0.43 |
| 1992.2 | −0.49 |
| 1993.1 | −0.55 |
| 1993.2 | −0.60 |
| 1994.1 | −0.64 |
| 1994.2 | −0.67 |
| 1995.1 | −0.63 |
| 1995.2 | −0.58 |
| 1996.1 | −0.52 |
| 1996.2 | −0.45 |
| 1997.1 | −0.37 |
| 1997.2 | −0.29 |
| 1998.1 | −0.22 |
| 1998.2 | −0.15 |
| 1999.1 | −0.08 |
| 1999.2 | −0.00 |
| 2000.1 | 0.09 |
| 2000.2 | 0.18 |
| 2001.1 | 0.26 |
| 2001.2 | 0.34 |
| 2002.1 | 0.43 |
| 2002.2 | 0.51 |
| 2003.1 | 0.60 |
| 2003.2 | 0.68 |
| 2004.1 | 0.78 |
| 2004.2 | 0.87 |
| 2005.1 | 0.97 |
| 2005.2 | 1.06 |
| 2006.1 | 1.16 |
| 2006.2 | 1.25 |

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

**Bureau of Land Management**

**[AZ-020-02-4212-12; AZA 26587]**

**Realty Action: Exchange of Public Lands; Arizona**

*Correction*

In notice document 92-10896 appearing on page 19929 in the issue of Friday, May 8, 1992, make the following correction:

In the third column, under Pinal County, the first description should read:

T. 4 S., R. 8 E.,
Sec. 13, NE¼, W½SE¼SW¼, SE¼SE¼SW¼, N½SE¼, SW¼SE¼, SE¼SE¼, SW¼SE¼SE¼.

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

**Bureau of Land Management**

**[CA-010-02-4212-13; CACA-26683]**

**Realty Action; Correction to Proposed Land Exchange in Madera, Mariposa, Merced, Monterey, Fresno, and San Benito Counties**

*Correction*

In notice document 92-9537 beginning on page 15097, in the issue of Friday, April 24, 1992, make the following correction:

1. On page 15097, in the second column, the docket number was printed incorrectly and should appear as set forth above.

2. On the same page, in the 3d column:

a. In the 2d land description, in the 23d line, "SE¼E¼" should read "SE¼SE¼".

b. In the same land description, in the 34th line, "S½NS¼" should read "S½NE¼".

c. In the same land description, in the 42d line, "NE¼SE¼" should read "NE¼SW¼".

3. On page 15098, in the 1st column, in the 3d line, "N½W¼" should read "N½SW¼".

4. On the same page, in the same column, in the 18th line, "NE½NE¼" should read "N½NE¼".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

**Bureau of Land Management**

**[AZ-040-4212-13]**

**Realty Action for the Exchange of Public Lands, Case Number AZA 26565**

*Correction*

In notice document 92-10146 appearing on page 18903 in the issue of Friday, May 1, 1992, make the following correction:

1. In the 1st column, in the 1st land description, in the 10th line, delete "Sec. 9, SE¼;".

2. In the second column, in the seventh line, "71–20" should read "17–20".

BILLING CODE 1505-01-D

## DEPARTMENT OF LABOR

**Pension and Welfare Benefits Administration**

**[Application No. D-8337]**

**Amendment to Prohibited Transaction Exemption (PTE) 77-8 Involving the Transfer of Individual Life Insurance Contracts and Annuities From Employee Benefit Plans To Plan Participants, Certain Beneficiaries of Plan Participants, Employers and Other Employee Benefit Plans**

*Correction*

In notice document 92-3348 beginning on page 5189 in the issue of Wednesday, February 12, 1992, make the following correction:

On page 5190, in the first column, in the second line from the bottom, insert "participant" following "particular".

BILLING CODE 1505-01-D

federal register

Tuesday
July 7, 1992

Part II

# Environmental Protection Agency

**40 CFR Parts 72 and 73**
**Acid Rain Allowance Allocations and Reserves; Proposed Rules**

VOL 57 ISS 130 JL 7 1992 UMI

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 72 and 73**

**[FRL-4145-4]**

## Acid Rain Allowance Allocations and Reserves

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Title IV of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (42 U.S.C. 7651, et seq.) (the "Act"), directs the Environmental Protection Agency ("EPA") to establish an acid rain program to reduce the adverse effects of acidic deposition. The centerpiece of this control program is the allocation of allowances, or authorizations to emit $SO_2$, which are distributed by the Administrator in limited quantities to existing utility units and which eventually must be held by all affected units to cover their $SO_2$ emissions. To set the foundation of this program, EPA must publish: (1) A list of initial allocations of allowances for affected utility units that must comply with Acid Rain emissions requirements beginning in the year 2000 (Phase II of the program), (2) allowance allocations for those affected units covered by the Acid Rain emissions requirements from 1995 to 1999 (Phase I), (3) three allowance reserves (for Phase I extension allowances, energy conservation and renewable energy allowances, and the Special Allowance Reserve for auctions and sales), and (4) the set-aside for additional allowances to be allocated to units which repower in accordance with section 409 of the Act.

In addition to the allowance allocations proposed today, EPA is also proposing: (1) Procedures for small diesel refineries to receive allowances as provided by section 410(h) of the Act, (2) expansion of and revision to the applicability provisions of the proposed Acid Rain permits rule, 56 FR 63106 (to be codified at 40 CFR 72.7) (proposed December 3, 1991), and (3) criteria for exempting qualifying facilities and independent power production facilities from title IV, under section 405(g)(6) of the Act.

Today's proposal also includes a procedure for utility owners and Governors with the opportunity to make elections or to revise elections previously made to receive allowances under sections 404(h), 405, and 406(a) of the Act.

Also published today elsewhere in the Federal Register is the notice of Availability of the final National Allowance Data Base (version 2.1) (NADB V 2.1), which supports the allocation of allowances under the Acid Rain Program.

**DATES:** All comments on today's proposal must be submitted in writing and in triplicate to EPA Air Docket No. A-92-06, 401 M Street, SW., Washington, DC 20460 by September 8, 1992. All elections and election revisions under sections 404(h), 405 and 406 must also be submitted in triplicate to the Air Docket, by September 8, 1992. The Agency will hold a public hearing on today's proposal. The hearing is scheduled for Wednesday, July 15, 1992, from 9-11 a.m. in Washington, DC. It will be held at EPA Headquarters, Waterside Mall, 401 M Street SW., Washington, DC 20460, in the Washington Information Center (WIC) Conference room 3 North.

**ADDRESSES:** The Technical Documentation for Proposed Phase II Allowance Allocations and the Phase I Extension Reserve Report are available from the Acid Rain Hotline at (617) 641-5377. Comments received on this proposal will be available for reviewing and copying from 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays, in room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Acid Rain Hotline, (617) 641-5377 or T. Larry Montgomery, Acid Rain Division, telephone (202) 233-9170. The mailing address is U.S. EPA, (6204J), 401 M Street, SW, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** The contents of this preamble are as follows:

A. Background
B. Guiding Policies for Interpretations under Title IV
C. Summary of Phase I Allocation Provisions
D. Phase II Applicability
E. Explanation of Information Used for Phase II Allocations
F. Summary of Basic Phase II Allocation Provisions
G. Summary of Bonus Phase II Allocation Provisions
H. Summary of Other Phase II Allocation Provisions
I. Proposed Phase II Allocations and Proposed Method for 1998 Revisions
J. Summary of Reserves
K. Allocations for Small Diesel Refineries
L. Summary of Proposed Rules
M. Regulatory Impact Analysis
N. Regulatory Flexibility Act
O. Paperwork Reduction Act

### A. Background

The term "acid rain" encompasses a complex set of phenomena that begins with emissions from electric and steam generating plants and certain industrial processes, includes the transport and transformation of those emissions through the atmosphere, and ends with the effects of those emissions and their resulting transformation products on the environment. Specifically, the burning of fossil fuels, particularly coal and oil, releases emissions of sulfur dioxide ($SO_2$) and nitrogen oxides ($NO_x$) into the atmosphere. Combustion of wood and other biomass materials also emit $SO_2$. In the atmosphere, $SO_2$ and $NO_x$ may undergo various chemical reactions, resulting in their transformation into chemical products such as sulfates, nitrates, sulfuric acid, and nitric acid. These compounds can fall to earth near the source or be transported hundreds of miles. They may be deposited during any stage of their transformation, returning to earth as dry deposition in the form of gases, aerosols, and particles as well as wet deposition through precipitation such as rain, fog, or snow. The presence of these emissions and their transformation products in the atmosphere contributes to reduced visibility and is suspected of posing a threat to human health at current levels. The acidic deposition resulting from $SO_2$ and $NO_x$ emissions and their byproducts damages both ecosystems and human-made materials.

Title IV of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990, directs EPA to establish the Acid Rain Program to reduce the adverse effects of acidic deposition. Because electric utilities account for over two-thirds of $SO_2$ emissions and over one-third of $NO_x$ emissions in the United States, the Act targets the electric-generating industry for emissions reductions. Specifically, the Act mandates a national cap of 8.95 million tons per year on electric utility $SO_2$ emissions (just over half of the 1985 electric utility $SO_2$ emissions), to be achieved in two phases. In Phase I, which begins in 1995, the 110 largest, highest-emitting utility plants, located in 21 States, must collectively meet an intermediate $SO_2$ emissions limitation requirement. By 2000, the start of Phase II, virtually all utility units in the 48 contiguous States and the District of Columbia will be required to collectively meet more stringent emissions limitations. As a result, total annual $SO_2$ emissions will be reduced by 10 million tons below 1980 levels. In addition, $SO_2$-emitting sources not otherwise affected by Phase II requirements (*e.g.*, non-utility power plants and industrial sources of $SO_2$) may elect to participate by "opting-in" to the acid rain program. Also, title IV requires that certain coal-

fired units reduce their emissions of $NO_x$ to a level achievable through installation of low-$NO_x$ burner technology at the same time that they are required to comply with $SO_2$ emission limitations.

In order to enable electric utilities to comply efficiently with their $SO_2$ emissions limitations, the statute provides that EPA will give affected units "allowances" to emit $SO_2$. One allowance provides a unit with the authority to emit one ton of $SO_2$. To be in compliance with the Act, affected units may not emit more tons of $SO_2$ than they hold in allowances. The Act provides a method for EPA to allocate allowances to units, although not all units will be allocated allowances. Through an innovative market approach, these allowances are transferable, allowing market forces to govern their ultimate use.

To implement the statutory mandate, the Acid Rain Program requirements will eventually be codified in several regulations. Four rules were proposed on December 3, 1991: [1] regulations regarding Acid Rain permits (to be codified at 40 CFR part 72), allowance trading and tracking (to be codified at 40 CFR part 73), emissions monitoring (to be codified at 40 CFR part 75), and excess emissions penalties and offset requirements (to be codified at 40 CFR part 77). On December 17, 1991 (56 FR 65592) final regulations were published for the auction and direct sale of allowances (40 CFR part 73, subpart E). Today's proposed rule addresses allowance allocations for utility units, three allowance reserves provided for in the Act, procedural requirements for small diesel refineries to be allocated allowances, and criteria for exempting qualifying facilities and new independent power production facilities from the Acid Rain Program requirements. Regulations to be proposed at a later date include the nitrogen oxides ($NO_x$) control program, pursuant to section 407 of the Act, and requirements for sources that elect to participate by "opting-in" to the Acid Rain Program, pursuant to section 410 of the Act.

The allowance allocations and reserves proposed today will be codified in 40 CFR part 73, subpart B. Subpart A of part 73 was proposed on December 3, 1991 and contains general provisions for the part. Subpart C was proposed on December 3, 1991 and provides for the establishment of an allowance tracking system and unit (and non-unit) accounts within that system. Subpart D was also proposed on December 3rd and would establish the mechanism for allowance transfers.

Special allowance allocations under various Acid Rain compliance options authorized by the Act will be made pursuant to the Acid Rain permits rule (to be codified at 40 CFR part 72, proposed December 3, 1991), including distributions from the Phase I extension allowance reserve.

### B. Guiding Policies for Interpretations Under Title IV

*1. Administrative Efficiency*

In order to facilitate the market system established by Congress in the Acid Rain Program, the regulations and implementation of the program must maximize administrative efficiency. The hallmark of the Acid Rain Program is that utilities are to have the maximum flexibility to determine the most economical means of complying with $SO_2$ emissions reduction requirements. Therefore, utilities must know as early in the compliance planning process as possible which units will be subject to emissions reduction requirements and the number of allowances that will be allocated to each unit.

The issue of applicability, or which units are subject to the title IV requirements, was introduced in the proposed Acid Rain permits rule (see proposed 40 CFR 72.7, 56 FR 63106). Because of the multitude of issues addressed in the December core rules package, the close timing of this proposed rule, and the need to investigate several issues in more depth, EPA decided to include an expanded discussion of applicability under Phase II in this proposed rulemaking (see part D of this preamble). EPA intends all units to be aware of their status (as affected or not) by the final promulgation of 40 CFR 72.7. EPA will reserve those pieces of 40 CFR 72.7 proposed today when promulgating the final part 72 rule; today's re-proposed portions will be promulgated with the final allowance allocation rule. Also, to provide additional clarity and ease of regulation use, EPA may consolidate all definitions for the Acid Rain Program at 40 CFR part 72. Therefore, definitions proposed for part 73 may be promulgated into part 72.

EPA believes that in order to effectively implement the Acid Rain Program, once a unit is determined to be affected, that unit will remain affected until it is retired (with the possible exception of a unit which opts in to this program under section 410 (rule to be proposed at a later date). Also, in the event of changes in operation or configuration, units that were unaffected at the time of enactment may become affected. (The operational or configuration changes that could trigger a status change are discussed in the Applicability section D. below and in the proposed Acid Rain permits rule.) Such provisions ensure that the emissions reductions foreseen by Congress are achieved. To reduce the regulatory burden, EPA proposes no requirement for any unaffected units to submit continuing proof of such status. It is the duty of the unit's owner and operator to meet the requirements of the Acid Rain Program when and if that unit is determined to be affected.

EPA's goal is to set clearly defined rules that assure certainty for the affected units. Wherever possible in this rule, EPA is proposing make up-front delineations and minimize the need for case-by-case determinations, which would lead to uncertainty.

*2. Consistency Between Calculation of Allowance Allocations and Measurement of Emissions*

As stated in section 412 of the Act, proposed at 40 CFR part 75, continuous emission monitoring will measure all emission gases in the exhaust stack regardless of source. Therefore, today's proposal calculates allowances based on all sources of emissions for the appropriate parameter from the appropriate baseline period.

### C. Summary of Phase I Allocation Provisions

Units affected in Phase I of the Acid Rain Program include all units listed in section 404(a)(1) Table A of the Act (also listed in Table 1 of this proposed rulemaking), as well as substitution, compensating units, control units, and opt-in sources. Allowance allocations for substitution units, compensating units, and Phase I extension control units will be made pursuant to the part 72 rules. Substitution units are existing Phase II units that become affected in Phase I by accepting the emission reduction obligation of a Table A unit according to procedures proposed at 40 CFR 72.41 (56 FR 63112). A compensating unit is a unit that would not otherwise be affected in Phase I, which accepts a shift in generation from a Phase I affected unit and, so, becomes subject to the Phase I emissions limitation as well, under proposed 40 CFR 72.43 (56 FR 63117). Also, a unit that is affected under Phase I as a

[1] These rules are called the Acid Rain core rules, 56 FR 63002 (proposed December 3, 1991). Future citations to the Federal Register will be omitted unless a specific page will be of assistance. All references in this preamble to the December 3 proposal or proposed Acid Rain rules are to the rules proposed at 56 FR 63002.

substitution or compensating unit may become a Phase I extension control unit by installing qualifying Phase I technology and assuming a Table A unit's emission reduction obligations, as proposed at 40 CFR 72.42 (56 FR 63114). Allowance allocations for substitution, compensating, and Phase I extension control units will be made according to the procedures set forth under 40 CFR part 72. Allowances for opt-in units will be allocated according to regulation to be developed at 40 CFR part 74.

Most Phase I allowance allocations are stipulated by the Clean Air Act in Table A of section 404. A few modifications to this table are required by sections 404 (a)(3) and (h) and 416(b)(1) of the Act and by the Act's definition of a unit as a "combustion device," or boiler, in section 402(15). These modifications to Table A (discussed in sections C-1., C-2., and C-3. below) would allocate additional allowances under section 404(a)(3) for eligible units in Illinois, Indiana, and Ohio, modify allowances for units electing an optional baseline under section 404(h), deduct allowances for the auction and sale reserve under section 416 (discussed under part J.3. of this preamble), and modify Table A to reflect allocations to boilers rather than electric generators.

*1. Section 404(a)(1)—Table A of the Act*

Table A lists Phase I allowances according to generators at each affected source. Section 402(15), however, defines a unit as a fossil fuel combustion device (that is, a boiler). Because allowances are allocated and compliance obligations of the program flow to units rather than generators (see, for example, sections 403(a)(1), 404(a)(1), 405(a)(1)), allowances must be allocated on a boiler basis. In addition, the source of emissions is the boiler, not the generator, and emissions will be monitored at the boiler stack (see proposed monitoring rule, 40 CFR part 75). Consequently, EPA is proposing an allowance allocation for each boiler.

The number of generators in Table A of the Act is 261, and the corresponding number of boilers is 267, with six multi-header situations. To translate allowances allocated to a generator to allowances for each boiler serving a generator, EPA used the boiler/generator pairings found in NADB V 2.1 (see Notice of Availability issued elsewhere today) and made a pro rata assignment of allowances to each pair. EPA then summed the allocations for each boiler to ensure that the number of allowances allocated to a source is equal to that found in Table A, minus the necessary adjustments for reserves.

*2. Additional Allowances and Special Provisions*

a. Section 404(a)(3)—Three-State Midwest Special Allocation

Under section 404(a)(3) of the Act, EPA is to distribute an additional 200,000 allowances, beyond allowances found in Table A, to units listed in Table A that are located in Illinois, Indiana, and Ohio (except for the Kyger Creek, Clifty Creek, and Joppa Steam units). These 200,000 allowances are allocated in the following manner: the total number of Table A allowances allocated to Ohio, Indiana, and Illinois are summed; the allowances for units at Kyger Creek, Clifty Creek, and Joppa Steam are subtracted from this pool to calculate the adjusted total; and then the 200,000 allowances are allocated among the remaining units pro rata, according to the percentage each unit's Table A allocation represents of the adjusted total. EPA is proposing the allowance allocations pursuant to section 404(a)(3) using the modified Table A allocation discussed above.

b. Section 404(e)—Early Reduction Credits

i. *Summary.* Certain Phase I and Phase II units may receive additional allowances under section 404(e) for $SO_2$ emissions reductions accomplished in years before they are required to reduce their emissions under the applicable section of the Acid Rain Title. Phase I units are eligible for voluntary emission reductions made after enactment (November 15, 1990) and before January 1, 1995. Phase II units are eligible for voluntary emissions reductions made between January 1, 1995 and January 1, 2000 (see part H.1 of this preamble for discussion of Phase II early reduction credits.)

ii. *Eligibility for Phase I Affected Units.* Section 404(e) of the Act sets forth the following requirements for Phase I sources to be eligible for this early reduction credit ("ERC") provision:

1. The Governor of the state in which the unit is located must have authorized the unit to reduce emissions prior to calendar year 1995.

2. The total coal-fired electric generation of the utility system as a percentage of the total system generation decreased by more than 20% between January 1, 1980 and December 31, 1985.

3. The weighted capacity factor of all coal-fired units within the utility system, averaged from January 1, 1985 to December 31, 1987, was less than 50%.

4. The emission reductions must be achieved by physical changes or changes in methods of operation made after the date of enactment, including changing the type or quality of fuel being burned.

5. Emission reductions must be due to changes made after enactment (November 15, 1990) and must occur prior to January 1, 1995.

EPA is proposing today to allow only units listed in Table 1 (as proposed in 40 CFR part 73, which is analogous to Table A of the Act) to be eligible for this provision under Phase I. This interpretation would exclude units affected under Phase II or not otherwise affected by the Acid Rain provisions from seeking eligibility for this provision by becoming affected in Phase I as substitution, compensating, or opt-in units. EPA believes that this interpretation best implements the intent of section 404(e) of the Act. First, compensating and opt-in units are not "affected units under this section" a prerequisite under section 404(e)(1). Moreover, section 404(e)(2) limits the allowances allocated under this provision by reference to Table A allowances, thus, implicitly excluding units not listed in Table A from receiving allowances under this provision during Phase I.

EPA is proposing today to interpret "utility system" to mean all units operated by a particular utility company which operates the unit for which early reduction credits are being sought. However, for the purposes of the early reduction credits provisions only, the utility system includes all electrical generators operated by that company that are producing electricity for sale to the grid regardless of energy production process, including, for example, fossil fuel-fired, nuclear, and hydroelectric. EPA proposes this interpretation because reductions in coal-fired generation under this provision is compared to total system generation regardless of generator technology. EPA believes the provision was designed to benefit utilities that shifted generation from fossil fuel-fired combustion to sources without $SO_2$ emissions.

Also, for the purposes of allocations, EPA has interpreted "coal-fired" to mean units whose primary fuel is coal or coal-derived, as listed in the NADB, under the "PRIMFUEL" field.

EPA is proposing today that "weighted capacity factor" be defined to mean "weighted average capacity factor", that is, the total actual generation, as reported to EIA on Form EIA-759, divided by the total possible generation, determined by multiplying the "nameplate capacity", as listed on EIA Form EIA-860, by 8760 (the number of hours in a non-leap year). "Total" is

defined as the sum over all of the generators, regardless of energy production type (i.e., fossil fuel-fired, nuclear, hydroelectric, etc.), in the utility system applying for early reduction credits.

Because of the statutory eligibility requirements based on limited coal-fired generation, EPA believes that the early reduction credit provision of the Act is designed to compensate those utility systems that shifted their electrical generation from coal-fired units to non-fossil fired sources during the 1980's. By reducing their coal-fired unit utilization and therefore their $SO_2$ emissions, these systems qualify for fewer allowances than they would have had they not shifted their generation. Early reduction credits provide these systems with some additional allowances if they achieve further emission reductions before they are required to under title IV.

Section 404(e)(2) makes clear that the early reduction credit program is designed to benefit facilities "* * * only for emission reductions achieved as a result of physical changes or changes in the method of operation made after the date of enactment * * *." Therefore only actual reductions of $SO_2$, made after enactment and before either Phase I or Phase II begins, will be offset by allowances awarded under this program. Based on the wording of the statute, EPA interprets this provision not to reward decreased utilization as a way of gaining emissions reductions.

EPA is proposing to interpret the statement in section 404(e)(2) that "the allowances allocated under this subsection for early reductions in any prior year may not exceed the amount * * *." as a cap, not an entitlement. The alternative interpretation would allow eligible Phase I units to calculate their emissions reductions for a "prior year" by using the unit's allowable $SO_2$ emissions rate as the starting point for the emission reductions, even if the unit was operating below its allowable $SO_2$ emissions rate in 1990. EPA is not proposing this approach because credit would be given for reductions that did not in fact occur. Under EPA's proposal, a unit also will not be allowed to compare its emission reduction against an emission rate that exceeds its allowable $SO_2$ emissions rate.

EPA has considered two options for determining eligible emission reductions under this provision. Under the first option, the total tonnage approach, emission reductions are determined based on a reduction in the unit's actual tons of $SO_2$ emitted. However, this would permit early reduction credits for changes in utilization, not just in operation as required by section 404(e). In particular, this approach might tend to encourage utilities with increased demand for power to increase the utilization of non-early reduction credit (non-ERC) units with higher emission rates while limiting the utilization of cleaner units in order to qualify for the maximum number of early reduction credits. Such action by a utility would result in greater emissions of $SO_2$ into the atmosphere. Such a result is contrary to the goal of the program.

Under the second option, the emission rate approach, emission reductions are determined based on a reduction in the unit's emission rate. This approach allows a qualifying utility potentially to receive allowances even where the utility system has overall increased emissions due to increased utilization of all fossil fuel-fired units within the utility system. Allowances would only be awarded under this circumstance if the system applying for the early reduction credits could demonstrate that, if non-ERC units were the cleaner emitters, it had not increased the utilization of its higher-emitting early reduction credit (ERC) units above the system average utilization.

This would ensure that a utility could not shift its electrical generation from a unit with a lower emission rate to the unit applying for early reduction credits (which may have a higher emission rate), and in the process receive credit for a shift that resulted in higher emissions. If, however, the emission rate for the ERC unit is lower than that of other units in the utility system, EPA encourages the shift of utilization from higher emission rate units to the ERC unit.

For the purpose of calculating early reduction credits, EPA compares utilization and emissions rates for ERC units and non- ERC units. While ERC units are units in the utility system eligible for the early reduction credits, non-ERC units are fossil fuel-fired units within the system that are not eligible for the credits. Once eligibility is established, EPA is proposing that non-fossil fuel fired unit and generator operations do not impact the calculation of early reduction credits.

EPA is proposing the use of the emission rate approach today, but invites comments on the merits of both this approach and the total tonnage approach.

For the purpose of determining the "year prior to enactment" when calculating a unit's emissions two interpretations are possible: (1) November 15, 1989, to November 15, 1990, or (2) January 1, 1990, to December 31, 1990. EPA prefers and is proposing to use calendar year 1990, since utility data is collected on a yearly basis and historical data for 1990 already exists. Comments on the use of either of these options are invited.

iii. *Procedures for Certification of Unit Eligibility and Requesting Allowances.* Under 40 CFR 73.16 proposed today, the designated representative of a unit that is believed to qualify for allowances under this provision may seek certification of unit eligibility prior to a request for allowances, or at the same time. A completed application for this certification must include the following:

1. A letter from the Governor of the State in which the unit is located indicating that the Governor authorizes the early reductions.

2. A listing of all units in the utility system, each fossil fuel-fired unit's fuel consumption and fuel heat content for calendar year 1990, and each generator's total electrical generation for calendar years 1990 and 1985 (regardless of energy source).

At the same time or after a unit has submitted its application for certification of eligibility (which will include a submission for certification for the designated representative for the unit), the designated representative may request allowances by submitting the following information:

1. The year for which early reduction credits are requested and the actual $SO_2$ emissions (in tons), and fuel usage (in mmBtu), during that calendar year. EPA is proposing to use the $SO_2$ continuous emissions monitoring reports for the prior year as submitted by the utility under the continuous emissions monitoring requirements proposed at 40 CFR part 75. In the case of a unit applying for credit for a reduction in emission rate made prior to receiving certification of a unit's monitoring system, fuel use and quality (sulfur content) information as reported on Form EIA-767 must be submitted. Since this is a voluntary program, in no case will EPA accept alternate data on emissions after the date by which certified monitoring systems are required under part 75.

2. Documentation that reductions were due to physical changes to the plant or were a result of a change in the method of operating the plant, including but not limited to changing the type or quality of fuel being burned. This documentation shall consist of a demonstration that the total annual electrical generation for the unit was greater than or equal to the total annual electrical generation in calendar year 1990 and a statement as to the change that occurred that precipitated the $SO_2$

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emission rate reduction. If this demonstration cannot be made to the satisfaction of the Administrator, EPA will not allocate early reduction credits.

The application petition must be submitted by the designated representative (under proposed 40 CFR part 72, subpart B, 56 FR 63108) no later than March 1 of the calendar year following the year of reductions. Because the monitoring data will be submitted to EPA within 30 days after the end of the last calendar quarter (based on the proposed continuous emissions monitoring rules), and because EIA forms are submitted 45 days after the close of the calendar year, EPA is proposing that 60 days is sufficient time for the unit to compile the necessary data.

Allowances for Phase I units eligible for early reduction credits under this section 404(e) will be allocated for use in the unit's 1995 future year subaccount because 1995 is the first compliance year for Phase I and the first subaccount for the unit in the Acid Rain Data System.

The proposed rule also contains provisions for submitting documentation and for appeals procedures.

c. Section 404(h)—Optional Baseline

i. *Summary.* Section 404(h) of the 1990 Clean Air Act allows units subject to emissions limitations under section 404 (units listed in Table A of the Act and substitution units) and meeting the eligibility criteria summarized in the following paragraph below to elect a different baseline than that provided in section 402(4) of the Act. The baseline elected in section 404(h) will be used to calculate the unit's allowance allocations for both Phase I and Phase II. This alternative baseline is beneficial to units whose 1985–1987 baseline reflected utilization at less than the 60 percent capacity level. If an eligible unit fails to make an election, the baseline provided in section 402(4) will be used to calculate the unit's allowance allocations for Phase II and Table A will be used for Phase I allowances.

ii. *Eligibility.* Units listed in Table A are eligible for the section 404(h) election if, as of the date of enactment of the Clean Air Act Amendments of 1990, the unit:

(A) Had an actual $SO_2$ emission rate below 1.0 lb/mmBtu,

(B) Had decreased its actual $SO_2$ emissions rate by 60 percent or more since 1980, and

(C) Is part of a utility system which had a weighted average $SO_2$ emission rate for all fossil fuel-fired units below 1.0 lb/mmBtu.

EPA is proposing that the term "as of the date of enactment of the Clean Air Act Amendments of 1990" be read, in the context of this provision, as referring to the annual average for 1990 for calculating the "emissions rate" and "weighted average $SO_2$ emissions rate." EPA recognizes that there may be several acceptable ways to compute the emission rate and weighted average $SO_2$ emission rate that would be consistent with the intent of the Act. However, EPA believes that 1990 calendar year data is appropriate due to (1) data availability (such data are reported on a monthly basis, but not daily or weekly) and (2) the annual nature of the Acid Rain Program.

The term "weighted average $SO_2$ emissions rate" should be calculated as the sum of each fossil fuel-fired unit's $SO_2$ emissions for the year divided by the total fuel consumed (in million Btu) by fossil fuel-fired units in the system.

The term "utility system" has been proposed to be defined as "a unit or units controlled by the same utility operating company as reported in the Acid Rain data system." (See proposed 40 CFR 72.2, 56 FR 63104). This term means that a utility system is composed of all units that have a common operating company as listed in the National Allowance Data Base version 2.1. EPA is proposing this definition for allowance allocation determinations under sections 404 and 405.

iii. *Calculation of baseline.* Under section 402(4) of the Act, the baseline for a unit that was in commercial operation prior to January 1, 1985 and that filed Form EIA–767 is the average quantity of mmBtus consumed in fuel during calendar years 1985, 1986, and 1987, as recorded on Form EIA–767. The alternative baseline provided in section 404(h)(1)(ii) is the unit's average annual fuel consumption at a 60% capacity factor, as listed in the NADB as "HEAT60."

iv. *Procedure.* The Act requires units desiring the optional baseline to have made their election by March 1, 1991. To facilitate this choice, EPA developed guidance and an accompanying form. This proposal is consistent with the guidance that EPA released on February 22, 1991. One unit desiring to use the optional baseline provided in section 404(h)(1)(ii) submitted the completed form to EPA by March 1, 1991. As stated below in part E.3. of this preamble, this election may be changed if such a change were based upon changes in the NADB.

*3. Final Phase I Allowance Allocations*

Phase I allowances are reduced by 150,000 to create the Special Allowance Reserve, as discussed below in section J.3. of this preamble. The final Phase I allowance allocations, as adjusted for the Reserve and other provisions discussed in this section, are listed in Table 1 of this proposed rule. As part of the implementation of the Acid Rain Program, allowances granted for early reductions will be awarded under today's proposed § 73.10. Allowances under substitution, compensating, and extension unit plans will be allocated by EPA under 40 CFR part 72.

**D. Phase II Applicability**

Unlike Phase I, which affects only 110 plants, Phase II affects a broad group of utility units. Approximately 2200 existing utility units are affected, and most new utility units will be affected when they commence commercial operation. (See proposed 40 CFR 72.203(c)).

Phase II applicability provisions were proposed in the Acid Rain permits rule. Upon further consideration, EPA has decided to revise certain provisions in that proposal and to add others. The provisions being revised in today's proposal will be deleted from the final part 72 rule (later this year) and, together with those being added today, will be incorporated into part 72 when this rulemaking becomes final.

*1. Solid Waste Incinerators*

Section 129(h)(4) of the Clean Air Act (section 305 of the Clean Air Act Amendments of 1990) specifies that solid waste incinerators are exempt from title IV if more than 80 percent (on a Btu basis) of the annual fuel consumed at such units is other than fossil fuels. This provision requires that the Administrator determine a baseline period in which to measure this average fuel consumption. Because section 129(h)(4) relates only to the Acid Rain Program, EPA believes that the most consistent approach would be to use the same time frame (that is, 1985–1987) as is used to determine baselines for allocation of allowances in section 402(4) of the Act. Thus, for solid waste incinerators that began operation before January 1, 1985, EPA is proposing to use the average annual fuel consumption for 1985 through 1987.

For solid waste incinerators that began operation after January 1, 1985, EPA has considered two options. First, EPA considered allowing these units to average their annual fuel consumption for the first three years of operation. EPA developed this option based on the baseline definition. Second, EPA considered using the unit's average annual fuel consumption for the first full year of operation, which would provide more immediate opportunity for



determinations of eligibility for very new units. However, EPA also believes that the three year averaging would provide more representative data, and is proposing a three year averaging period in today's rule.

However, EPA is concerned that an exemption based solely on historical data could allow solid waste incinerators to increase consumption of fossil fuels without needing to comply with the Acid Rain regulations. Therefore, EPA is proposing that, should a solid waste incinerator during any year in Phase II of the Acid Rain Program burn twenty percent or more (on a Btu basis) of fossil fuel, the incinerator will be considered affected under the Acid Rain regulations but will not be allocated allowances. This proposal is similar to that proposed in the Acid Rain permits rule for units serving generators under 25 MW (see proposed 40 CFR 72.7). However, EPA is aware that it may be overly stringent to make an incinerator affected if it burns 21% fossil fuels in a single year. Therefore, EPA requests comment on averaging fossil fuel consumption over a two-year period, or other means to address minor, infrequent deviations from the 20% standard.

*2. Cogeneration*

The definition of "utility unit" excludes certain units that cogenerate steam and electricity. Under section 402(17)(C) of the Act, a unit that cogenerates steam and electricity and that was in operation or commenced construction on or before November 15, 1990 is exempt from the Acid Rain Program if it was constructed for the purpose of supplying one-third or less of its potential electric output capacity or 25 MW or less electrical output to any utility power distribution system for sale. Likewise, a unit that cogenerates steam and electricity and that commenced construction after November 15, 1990 is exempt if it supplies one-third or less of its potential electric output capacity or 25 MW or less electrical output to any utility power distribution system for sale.

EPA proposed in 40 CFR 72.7 an exclusion using the statutory language. Since that time, EPA has determined that some issues need clarification and is re-proposing that language today. Also, several parties commented on the proposed rule and requested clarification.

First, EPA has considered whether it should define "cogeneration." The Federal Energy Regulatory Commission (FERC) has defined the term "cogeneration facility" as "equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating or cooling purposes, through the sequential use of energy." (18 CFR 292.202) EPA believes that the FERC definition is adequate and sufficiently understood and is proposing to adopt it verbatim, although EPA is proposing to use the term "source" rather than "facility" because "source" has been defined for the Acid Rain Program.

One commenter on the December proposal suggested that a cogenerator be defined as a unit that uses a minimum of 35 to 50 percent of total heat input for steam. Such a definition would only serve to confuse the standard for applicability, of one-third potential electrical output and 25 MW.

A more significant issue has arisen with interpreting the language regarding cogeneration units in operation or that had commenced construction on or before November 15, 1990. The first concern raised is the phrase "is constructed for the purpose of supplying * * * " The verb tense used is incorrect (given that existing units are the subject). EPA believes that Congress meant the unit "was constructed" for the stated purpose.

A related problem is how EPA would determine what the purpose, at the time of construction, was for these various units. EPA notes that many of these units are older and may not have records regarding such a purpose. One commenter on the December proposal also made this suggestion. Also, operating data from the early years of operation may not exist. EPA has considered if, in the absence of information regarding the purpose of the facility, the Agency should presume that operations from 1985 through 1987 would be representative. EPA is proposing use of 1985–1987 data due to availability of such data and its correspondence with the 1985–1987 baseline. However, data such as that included on Form EIA–867 listing the maximum number of megawatts a unit is designed to provide to the grid will be considered conclusive. Comments are sought on whether EPA should use this or another method to determine what was the purpose of construction of these cogeneration units.

EPA has considered when measurements of electrical output need to be made for cogenerators. If the measurement of electrical output need only be made upon commencement of operation, the environmental integrity of the program could be compromised, as a unit could later increase its electrical output. EPA believes the present tense verb use in this provision requires such sources to comply with the Acid Rain Program requirements if they do not continue to meet the exclusion. Should a cogeneration source sell more than the one-third of its potential electrical output and 25 MW for a calendar year, that source would be treated as a new utility unit subject to the Acid Rain provisions and yet allocated no allowances. Comments are sought regarding this proposal. However, as with the solid waste incinerator exemption above, EPA requests comments on a two-year averaging for evaluation of the one-third and 25 MW provision.

EPA has also noted that determination of the one-third of potential electrical output capacity could be ambiguous. For part 73, EPA is proposing a definition of "potential electrical output capacity" similar to the definition provided in 40 CFR 60.41a (subpart Da). EPA hopes the proposed definition is more useable than that provided in subpart Da.

In addition, electrical output is not measured in megawatts but in megawatt-hours. Thus, 25 megawatts equates to 219000 megawatt-hours (25 MW times 8760 hours per year). EPA is proposing this 219000 MW-hr value in place of 25 MW.

*3. Qualifying Facilities and Independent Power Production Facilities*

Section 405(g)(6)(A) of the Act states:

> Unless the Administrator has approved designation of such facility under section 410, the provisions of this title shall not apply to a "qualifying small power production facility" or "qualifying cogeneration facility" (within the meaning of section 3(17)(C) or 3(18)(B) of the Federal Power Act) or to a "new independent power production facility" as defined in section 416 except that clause (iii) of such definition in section 416 shall not apply for the purposes of this paragraph if, as of the date of enactment,
>
> (i) an applicable power sales agreement has been executed;
>
> (ii) the facility is the subject of a State regulatory authority order requiring an electric utility to enter into a power sales agreement with, purchase capacity from, or (for the purposes of establishing terms and conditions of the electric utility's purchase of power) enter into arbitration concerning the facility;
>
> (iii) an electric utility has issued a letter of intent or similar instrument committing to purchase power from the facility at a previously offered or lower price and a power sales agreement is executed within a reasonable period of time; or
>
> (iv) the facility has been selected as a winning bidder in a utility competitive bid solicitation.

As with co-generators, EPA used language very similar to that found in

the statute regarding this exclusion in the proposed Acid Rain permits rule. Due to the number of issues raised, and the desire to provide explicit direction to sources regarding their status under the Acid Rain Program, EPA is re-proposing those provisions today. As with cogenerators, EPA is proposing to use the terms "qualifying sources" and "independent power production sources" to be consistent with other Acid Rain Program terms.

The following issues have been raised regarding this provision and the legislative history concerning qualifying sources and independent power production sources:

(1) Whether the provisions listed at section 405(g)(6)(A) (i)–(iv) apply to qualifying sources;

(2) Whether independent power production sources that commenced commercial operation prior to November 15, 1990 are eligible for this exemption;

(3) How section 405(g)(6)(A) (i)–(iv) should be interpreted; and

(4) Whether procedures should be adopted to notify a qualifying source or independent power production source if it is exempt or not.

a. Application of Section 405(g)(6)(A) (i)–(iv) to Qualifying Sources

EPA believes, given the legislative history, that the criteria listed in clauses (i)–(iv) are designed to apply to both qualifying sources (both small power production and cogeneration) ("QS"s) and independent power production sources ("IPPS"s). Although there is no specific legislative history regarding this issue, EPA notes that the QS exemption was passed as an amendment to the Senate bill on March 22, 1990 and was also part of the House bill (May 23, 1990). The drafted exemption included provisions very similar to those included in clauses (i)–(iv) of section 405(g)(6)(A). The IPPS provisions were added later. Apparently, in an attempt to simplify the language, QS and IPPS provisions were merged, and because there is no other definition for IPPS, the reference to 416 was added. Thus, we believe both IPPSs and QSs are subject to clauses (i)–(iv).

EPA has considered that this exemption could provide a loophole by which publicly owned utilities could have sold existing units to private interests or industrial sources only to buy back the power through power sales agreements. EPA believes that the legislative history makes clear that section 405(g)(6) was not designed to exempt such dealings. EPA believes such close dealings provide adequate ability for the private interest or industry to arrange a pass through of compliance costs. Therefore, EPA is proposing that existing units owned or operated by a publicly owned utility prior to enactment are not eligible for this exemption. For the purpose of this provision, EPA is defining "publicly owned utility" to mean utilities subject to regulation by utility commissions, other publicly owned utilities, Federally operated utilities (such as Tennessee Valley Authority), rural electrical cooperatives, and municipal electrical services.

b. Effect on Existing Independent Power Production Sources

Another issue is whether only "new" independent power production sources are exempt from title IV due to the use of the term "new independent power production facility" in section 405(g)(6)(A). In referring to the definition of "new independent power production facility", section 405(g)(6) states that clause "(iii)" of the definition in section 416(a)(2) does not apply for the purposes of section 405(g)(6). Section 416(a)(2) does not, however, have a clause (iii). In the codification of the 1990 Clean Air Act Amendments (see "Compilation of Selected Acts within Jurisdiction of the Committee on Energy and Commerce," April, 1991), the codifiers noted that the reference to clause (iii) "probably" refers to clause (C) of section 416(a)(2). However, there is nothing in the language of the statute, or of the House and Senate bills that preceded it, to indicate that this was the case. EPA thus has considered whether the reference to clause (iii) could be read to mean clause (D) of section 416(a)(2).

In order to determine the best reading, EPA first considered the purpose of the exemption for IPPSs. Congress understood that IPPSs generally operate under long-term fixed contracts for supply of power at a given price. To apply the Acid Rain Program to IPPSs would be an undue burden because such IPPSs could not pass through increased operating expenses unless the IPPS rejects or withdraws from the arrangement.

EPA then considered the applicability of clause (C) of section 416(a)(2) to the IPPS exemption provision of section 405(g)(6). Clause (C) is concerned with the IPP's ability to obtain allowances from the affiliate rather than having to buy allowances on the open market. If a IPPS can obtain allowances from an affiliate, the affiliate is not likely to be operating under fixed-price contracts and thus may have the opportunity to pass through and thereby recover the costs of such allowances. Therefore, since there would be no basis for exempting such a IPPS, clause C is a logical requirement for an exemption.

EPA then evaluated the applicability of clause (D) of section 416(a)(2) to section 405(g)(6). Clause (D) requires a IPPS to be a "new unit required to hold allowances under this title." In turn, a "new unit" is defined at section 402(10) of the Act as "a unit that commences operation on or after the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990]." If only "new" IPPSs (NIPPSs) are eligible for exemption under section 405(g)(6)(A), IPPSs that commenced operation before November 15, 1990 would be affected units subject to title IV, even if they met the requirements of section 405(g)(6)(A) (i)–(iv). Only IPPSs that commenced operation on or after November 15, 1990 and that meet the requirements of section 405(g)(6)(A) (i)–(iv) would be exempt. This result would be illogical; the very units that are also the most likely to be bound by fixed-price contracts would not be exempted. EPA does not believe this result was intended. As stated by Senator Wirth, "Grandfathering these units [i.e., QSs and IPPSs covered by section 405(g)(6)] is fair because these units are under contract or have accepted price bids," (Congressional Record, March 22, 1990, S3027).

For these reasons, EPA is proposing to read "clause (iii)" to refer to clause (D) of section 416(a)(2), so that section 405(g)(6) exempts IPPSs meeting section 416(a)(2) (A)–(C) and meeting any one of clauses (i)–(iv) of section 405(g)(6)(A). EPA is open to comment on this issue.

c. Interpretation of section 405(g)(6)(A) (i)–(iv)

Another significant issue raised by section 405(g)(6) involves the criteria set forth in clauses (i)–(iv). As discussed by Senator Wirth when offering the IPPS amendments (see Congressional Record, March 22, 1990, S3027), the basic requirement of these provisions is that the source has already committed to generate electricity at a fixed price and is unable to pass through to the purchaser the costs of compliance with title IV. In today's rule, EPA is providing clear criteria by which such sources can determine whether they are affected units under title IV and what changes to the source project could result in the facility being treated as affected.

i. *Level of commitment.* EPA is aware of proposed sources that have a number of purchasers of power, with the likelihood that none of those purchasers would buy more than one-half of the potential power. In order to establish an objective program that exempts those projects that are unable to pass through compliance costs because of significant

sales commitments made prior to enactment of title IV, EPA is proposing that, to qualify for an exemption, a source have committed a minimum percent of planned power production through any of the methods set forth in clauses (i)–(iv) by the time of enactment. Because the signing of a power sales agreement represents a higher level of commitment, with little room for negotiation by the parties, than the other three conditions, EPA is proposing that a lower threshold should be required as the minimum percentage of planned power production covered by signed power sales agreements. EPA consulted representatives of the independent power and qualifying facility industry and analyzed projects potentially affected by this provision. Of the 32 projects under development which EPA has determined signed power sales agreements by November 15, 1990, five had agreements for sales less than 100%, with the lowest level of commitment equal to 33%. However, several sources known to be under development could not be reached to determine the level of commitment as of November 15, 1990. Thus, EPA feels that a level of commitment less than 33% may be necessary to allow exemption of these sources which have been known to be under development. EPA has considered a range of percentages between 10 and 50. From information on the IPPS and QS industry, EPA believes that a 30% threshold ensures that the source will be unable to pass through the additional costs of compliance with the Acid Rain Program.

Where a source is the subject of appropriate letters of intent, winning bidder selection, or State regulatory order, EPA believes a larger percentage of planned power production should be committed prior to enactment. Several sources could fall under this exemption; however, EPA is unsure of the level of commitment of these sources. EPA considered a range of 20 to 100%. While a 20% level seemed inadequate to demonstrate that the project would be unable to pass through the costs of compliance with the Acid Rain Program, a 100% level seemed too demanding. EPA is proposing a 50% threshold as a reasonable minimum level of planned power production to be committed prior to November 15, 1990. This commitment may be to multiple purchasers, as long as the total of the commitments is at least equal to 50% of the source's planned power production.

EPA requests comments from IPPSs and QSs regarding these proposed levels of commitment.

ii. *Defining the source.* EPA has been questioned as to whether only a portion of a source would be exempted, perhaps depending upon the extent of power production committed prior to enactment. For administrative efficiency, EPA will not exempt portions of a unit. While the Acid Rain Program is implemented on a unit (or boiler) basis, the section 405(g)(6) exemption is on a source basis. EPA proposes to read "source" to include all units in the QS or IPPS designed for a common purpose and constructed for the generation of the electrical capacity proposed in the power purchase commitment. However, EPA understands from the IPPS and QS industry that the actual electrical capacity constructed may vary up to 20 percent beyond the potential described in the power purchase commitments. If the necessary level of commitment is exceeded by the source, all units in the source will be exempt from the program, so long as the installed electrical capacity is within 20% of the planned capacity. However, EPA notes that units added to the source at a later time will be required to comply with the Acid Rain Program.

iii. *Deadline for execution of power sales agreement.* The phrase "within a reasonable period of time," describing the interval between the letter of intent and execution of the power sales agreement, in clause (iii) also requires interpretation. Often the letter of intent will include a deadline for the execution of the power sales agreement, and EPA proposes to consider this deadline reasonable unless it extends beyond November 15, 1992 (2 years after enactment). If the letter of intent does not include a deadline, then EPA proposes to consider a deadline of November 15, 1992 adequate. From IPPS industry information, EPA understands that a reasonable negotiating period to achieve a power sales agreement is two years.

iv. *Project modification.* It has been brought to EPA's attention that projects may be altered in many ways, even after the signing of a power sales agreement. For example, partners may be added, the exact site of the source may be changed, or the size of the units may be increased or decreased. EPA believes that exempt status should be forfeited if a project becomes majority owned by a publicly owned utility (or utilities). The purpose of this disqualification is to make sources which are included in a utility's rate-base affected by the Acid Rain Program because the cost of compliance could then be passed through to the rate-payers.

d. Procedures

EPA has considered whether regulatory procedures for certification of exemption under section 405(g)(6) would be beneficial. EPA believes that clear, objective criteria provide sufficient notice to all units. Therefore, EPA does not believe there is sufficient need for regulatory certification procedures and is not proposing such procedures today.

**E. Explanation of Information Used for Phase II Allocations**

*1. National Allowance Data Base, Version 2.1*

Under the definition of baseline in section 402(4) of the Act, the Administrator is provided the opportunity to develop a corrected data base and to use that data base for the allocation of allowances. That data base is the National Allowance Data Base version 2.1 (NADB V 2.1), made final today elsewhere in the Federal Register. This data base has undergone public review and comment procedures, analogous to an informal rulemaking (see 56 FR 33278, July 19, 1991). The final NADB V 2.1, in conjunction with all previous elections and notifications, has been used to determine the allowance allocations for each existing affected unit for Phase II. Two sets of draft allocations are proposed today, one for calendar years 2000 through 2009, and the other for 2010 and all years beyond. Both sets of allocations will be finalized by December 31, 1992 and revised in 1998 (see section I of this preamble).

Section 402(4)(C) does not require the Administrator to follow rulemaking procedures in correcting the data base and provides that corrected data is not subject to judicial review. As stated by Senator Levin:

> There are a number of data bases and forms that the Federal Energy Regulatory Commission and the Agency require utilities to file on each of their units' heat input, sulfur dioxide content of their fuel, and sulfur dioxide emitted. Given the complexity of the calculations involved and the possibility that errors can occur in transposing numbers, I think it is fair to allow the affected utilities to have a mechanism by which their position can be reevaluated by EPA * * * (Congressional Record, March 22, 1990, S2888).

EPA agrees with Senator Levin's concern and has attempted to develop the most accurate and fair data base by providing public review and comment on the National Allowance Data Base. EPA received over 200 documents in response to the data base but only one comment on its procedures. That comment recommended that EPA

contact each utility individually and obtain its agreement to all data in the data base. Such a procedure would clearly be unreasonable given the statutory deadline for completion of the data base and would not be required even if the Act required EPA to use rulemaking procedures.

Additional comments were received in response to the notice of the draft NADB which suggested changes to methodologies related to allowance calculations and legal interpretations. In this preamble discussion regarding Phase II allowance allocations, any discussion of commenters is related to the comments received on the draft NADB Notice, unless otherwise noted.

In addition to permitting data corrections in the NADB, section 402(4)(C) authorizes the Administrator to supplement the data base with "data needed in support of this title." Sections 404 and 405 of the Act include a number of provisions that require data, in addition to that in the NADB, in order for the Administrator to make certain allowance allocations. For example, section 405(c)(3) requires data on the number of electrical customers served. The additional data is contained in the Supplemental Data File (see the Notice regarding the NADB) and, along with data in the NADB, is "corrected data" for the purposes of section 402(4)(C).

Section 402(4)(C) also expressly precludes judicial review of "(s)uch corrections" of, or "failure * * * to correct," data. EPA believes that this preclusion of judicial review, by its terms, applies to all "corrected data * * * used for the purposes of issuing allowances." This includes data in the NADB, the Supplemental Data File, and the Adjunct Data File. While it is possible to read the preclusion to cover only corrected data in the NADB, EPA rejects that narrow interpretation as inconsistent with Congressional intent. The preclusion of judicial review is clearly designed to expedite the process by which EPA will allocate allowances and to avoid court involvement in highly technical issues. (For example, see Report of House Committee on Energy & Commerce, May 17, 1990, p. 371.) Consistent with this statutory purpose, EPA's reading of section 402(4)(C) would prevent piecemeal and protracted review of all the relevant data, thus permitting the allowance allocations process to continue on schedule, providing certainty to the parties involved as to their future allowance allocations and, thereby, allowing utility planning and the development of an allowance market.

*2. Discussion of Data Elements*

For technical information regarding all data elements in NADB V 2.1, see today's **Federal Register** Notice on the NADB V 2.1 and the Technical Support Document for NADB V 2.1. The discussion in this section relates key terms of the statute to the parameters contained in NADB V 2.1.

a. Boiler-Generator Pairs

Although the statute refers to "units" (boilers, in general) as affected, many of the equations for allowances depend upon boiler and generator information. Where one boiler feeds one generator, this is a simple determination. However, a number of facilities include one or more boilers feeding one or more generators (called "multi-headers"). Thus, for the purposes of allowance calculations, in NADB V 2.1, each boiler-generator pair has data. Allowance calculations are performed on each boiler- generator pair. However, allowances are summed (boiler-generator pairs with common boilers) and allocated to the boiler (or other fossil fuel-fired device) as that device will be the device with actual emissions.

b. Emissions Limitation Annualization Factor

In calculating allowances from equations which involve the 1985 allowable $SO_2$ emissions rate, EPA will use the 1985 Annualized Boiler $SO_2$ Emission Limit (ANNLIM85) from the NADB V 2.1. This limit was calculated by multiplying the 1985 allowable $SO_2$ emissions limitation by the annualization factor, both supplied in the NADB V 2.1. EPA is proposing to use annualized emission limits for all equations requiring 1985 allowable $SO_2$ emissions rates but is proposing to use un-annualized allowable $SO_2$ emissions rates for equations requiring allowable $SO_2$ emissions rates for years other than 1985. Should public comment result in EPA choosing to use annualized allowable $SO_2$ emissions rates for all years, EPA would multiply the most stringent federally enforceable emissions limitation by the appropriate annualization factor from the NADB V 2.1. EPA's reasoning for its proposal is discussed below.

Section 402(18) of the Act, the definition of "allowable 1985 emissions rate", requires the Administrator to calculate the annual equivalent of the emissions limitation if that emissions limitation is not expressed on an annual basis. This process of annualization is in keeping with the underlying philosophy of the Acid Rain Program, which limits annual $SO_2$ emissions (see comments of Senator Baucus, Congressional Record, October 26, 1990, S17242).[2] Section 402(18) also requires the Administrator to convert all emissions limitations that are not expressed in pounds per million British thermal units (lb/mmBtu) to lb/mmBtu. Thus, section 402(18) requires both dimensional conversion and annualization.

A number of commenters on the data base interpreted section 402(18) to allow the Administrator to annualize emissions limitations only if those limitations are not expressed in lbs/mmBtu. This reading runs contrary to the statutory language. Section 402(18) provides that, "[w]here the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of emissions limitation is not expressed on an annual basis," an annual lb/mmBtu rate must be calculated. An interpretation limiting the calculation of an annualized rate only to emission limitations that are not in lb/mmBtu render superfluous the portion of section 402(18) referencing cases where an annual averaging period is not used.

Moreover, the commenter's reading of section 402(18) mixes two different processes to achieve an inequitable result. To follow the commenters' reasoning, for example, a unit with a permit limitation expressed in pounds of sulfur per ton of coal on a weekly basis would have that limitation converted to lbs/mmBtu and annualized (for a yearly basis) whereas a unit with its limitation expressed in lbs/mmBtu on a weekly basis would not have such a limitation annualized. EPA questions why, once a unit's limitation is converted to lbs/mmBtu, that unit would be treated differently from a unit whose limitation was initially expressed in lbs/mmBtu. There is no evidence in the statute of an intent to treat such units differently, and to do so would be unfair. EPA believes that all emissions limitations not expressed on an annual basis must be annualized, thereby placing every affected unit on an equal footing in determining the lesser of a unit's actual or allowable annual emissions rates.

A number of commenters also expressed concern that EPA will use these annualization factors as a method of determining compliance with

[2] Senator Baucus: "Now keep in mind that emissions limitations in permits are often not expressed in annual terms. Because the whole acid rain allowance system is based on limiting annual $SO_2$ emissions, we included in the calculation of these two allowable emissions rates ["allowable 1985 emissions rate" and "allowable sulfur dioxide emission rate"] an 'annualization' requirement * * *."

emission limitations. EPA has no such purpose in mind. The allowable emissions rate is multiplied by the appropriate annualization factor, and that annualized allowable emissions limitation is then inserted into the appropriate calculation to allocate allowances.

A number of commenters requested that EPA not annualize any emissions rates because the result is to reduce allowances to certain units. However, EPA is obligated by Congress' direction as contained in the language of section 402(18) to annualize all emissions rates not expressed on an annual basis. In addition, annualization is appropriate in order to compare the actual annual emissions rate to the allowable emissions rate.

One commenter suggested that the annualization factors only be applied to units which violated their emissions limitation and that, for units which did not violate their emissions limitations, the annualization factor be adjusted on an individual basis. The Act does not specify the method to be used for annualizing, and instead, leaves this technical matter to the Administrator. The commenter's proposal for individualized treatment of certain units' emissions limitations lacks a rational basis. The commenter seeks individualized adjustment of the annualization factor presumably because that would increase the allocated allowances for the units involved. However, the mere fact that a unit violated an emission limitation applicable before commencement of the Acid Rain Program provides no rationale for penalizing that unit through the use of an "adjusted" annualization factor for future allocations. Such a system the commenters proposed for individualized treatment for emissions limitations is also not practicable.

However, EPA has considered whether non-1985 emission limits should be annualized. EPA received comments that suggested that the Agency lacked authority to annualize non-1985 emission limits because section 402(18) allegedly discusses only 1985 emission limits (and "replacement" limits when 1985 emission limits are not available). Also, sections 405(g) (3) and (4) include the clause "converted, if necessary, to pounds per mmBtu," which, due to the omission of the term annualization, can be read to prevent such annualization. EPA believes that, because sections 405(g) (3) and (4) do not authorize annualization of non-1985 emission limits, the Agency should not annualize them, but requests comment on this issue.

c. Date of Commencement of Operation

A number of clauses in the Acid Rain provisions are dependent upon the date a unit commences operation (for example, the term "existing unit", sections 405 (d)(4) and (g)). The term "commenced commercial operation" is defined as having "begun to generate electricity for sale" (section 402(22)). However, the generation of electricity occurs at the generator. Most often, we presume that the unit has commenced operation at about the same time as the generator. But, the Agency knows of several instances where an existing boiler had a generator replaced or an existing generator had a boiler replaced. Thus, EPA proposes to interpret the date the boiler commenced operation to mean the date on which the first generator served by the unit began to sell electricity. Thus, the oldest generator associated with a boiler determines the boiler's on-line date.

d. Baseline and Baseline Adjustment

For utility units that commenced commercial operation prior to January 1, 1985, the baseline is the average annual quantity of fuel consumed during 1985, 1986, and 1987, as reported on Department of Energy Form EIA–767, expressed in mmBtu (see section 402(4)(A)). If a utility unit did not file Form EIA–767, the Act directs EPA to use the baseline specified in either: (1) The 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory (version 2), National Utility Reference File (NURF), or (2) a corrected data base established by the Administrator (the National Allowance Data Base (version 2.1)).

EPA determined that for units that commenced commercial operation after January 1, 1985 and before December 31, 1987, a methodology should be developed for calculating a corrected baseline for these units in support of title IV. Statutory support for this correction to the data base is provided at section 402(4)(C), which provides that the Administrator may supplement or correct data from which affected units' baselines are calculated. In developing the needed methodology, EPA recognized that units that commenced commercial operation during the 1985–87 baseline period do not have heat input data for the entire three-year period. Therefore, EPA developed an adjustment factor to convert the existing data to a representative average heat input or baseline for such units. The adjusted baseline was produced by multiplying the actual annual average 1985–1987 baseline value by the following adjustment factor: 36 months (the number of months in the 1985–1987 baseline period) divided by the number of remaining months in the baseline period (after initial operation) including the month the unit came on-line. As a hypothetical example, a unit that came on-line in March, 1986 would receive an adjustment factor of 36/22 or 1.64, which is then multiplied by the unit's actual annual average fuel consumption for the baseline period. Such a baseline adjustment produces an annual average based only on the operational months and must not be confused with outage adjustments as discussed in the FR Notice for the final NADB V 2.1.

EPA is proposing that baseline adjustments for forced or planned outages that are greater than 2,920 hours as reported in the NADB V 2.1 will be made using the following approach:

Adjusted baseline = 1985–1987 Baseline × (26,280/(26,280—outage hours)) The number 26,280 is the number of hours during the baseline period (365 × 24 × 3). If a unit was not operating for the entire baseline period, EPA has placed a representative baseline in the 1985–1987 baseline field and included the outage hours in the outage hours field. For these units, EPA is not further adjusting the baseline.

EPA is aware that there are cases where the boiler-generator combination must be looked at more closely. Depending on whether a generator or boiler was brought on-line during the baseline period, some clarification is required as to when this adjustment is appropriate. The key factor is the date when the boiler came on-line. For affected units (boilers) that commenced operation on or after January 1, 1986 and meeting certain criteria presented in section 405(g) (1)–(5), no adjusted baseline is required because allowances are calculated based on the unit's annual fuel consumption calculated at a 65% capacity factor, instead of the historical 1985–87 fuel consumption.

*3. Effect of Elections*

"Elections" are choices to be made by utilities, operating companies, and state Governors to utilize certain allowance calculation algorithms under Phase II. Utility elections are required for calculations to be performed under sections 404(h), 405(d)(3), 405(d)(4), and 405(g)(2). EPA published guidance for section 405 elections in the **Federal Register** (56 FR 10427, March 12, 1990). Certain states must also make an election to receive allowances under section 406(a), for which EPA also established guidance in the **Federal Register** (56 FR 28691, June 25, 1991).

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In the previous notices, EPA indicated that it would consider only those elections postmarked by a certain deadline. The section 404(h) elections were required to be postmarked by March 1, 1991; section 405 elections were required to be postmarked by March 31, 1991; and section 406 elections were required to be postmarked by June 30, 1991. In some cases, EPA received elections for ineligible units. The section 404(h) elections are discussed above in section C.2.c. of this preamble. Table i lists elections received under section 405. Elections received under section 4 06 are discussed at section G.3. of this preamble.

TABLE i.—ELECTIONS RECEIVED BY EPA UNDER SECTION 405

| State | Plant | Unit(s) | Subsection of section 405 for election | | | | |
|---|---|---|---|---|---|---|---|
| | | | (d)(1)/(2) | (d)(3) | (d)(4) | (g)(2) | (g)(3)/(4) |
| AL | Charles R. Lowman | 2, 3 | X | | | | |
| AL | James Miller | 1 | | X | | | |
| AL | James Miller | 2 | | | X | | |
| AL | James Miller | 4 | | | | X | |
| AL | Barry | 1–5 | | X | | | |
| AZ | Navajo | 1–3 | X | | | | |
| AR | Flint Creek | 1 | X | | | | |
| AR | Independence | 1, 2 | | | X | | |
| AR | White Bluff | 1, 2 | X | | | | |
| CO | Craig | C1, C2, C3 | X | | | | |
| CO | Hayden | 1, 2 | X | | | | |
| CO | Rawhide | 101 | X | | | | |
| FL | Big Bend | BB04 | | | X | | |
| FL | C.D. McIntosh | 3 | | | X | | |
| FL | Smith | 1, 2 | X | | | | |
| GA | Scherer | 1, 2 | | | X | | |
| IL | Crawford | 7, 8 | | X | | | |
| IL | Duck Creek | 1 | | X | | | |
| IL | Fisk | 19 | | X | | | |
| IL | Joliet 9 | 5 | | X | | | |
| IL | Joliet 29 | 71, 72, 81, 82 | | X | | | |
| IL | Havana | 9 | | X | | | |
| IL | Newton | 1 | X | | | | |
| IL | Newton | 2 | | | X | | |
| IL | Powerton | 51, 52, 61, 62 | | X | | | |
| IL | R.S. Wallace | 9, 10 | | X | | | |
| IL | Waukegan | 7, 8, 17 | | X | | | |
| IL | Will County | 1–4 | | X | | | |
| IL | Wood River | 5 | | X | | | |
| IN | Dean H. Mitchell | 4–6, 11 | | X | | | |
| IN | Gibson | 5 | | | X | | |
| IN | Mareen | 1SG1, 2SG1 | | | X | | |
| IN | Petersburg | 4 | | | X | | |
| IN | R.M. Schahfer | 14, 15 | | X | | | |
| IN | R.M. Schahfer | 17 | | | X | | |
| IN | Rockport | MB1 | | | X | | |
| IN | State Line | 3, 4 | | X | | | |
| IN | Tanners Creek | U1, U2, U3 | | X | | | |
| IA | Lansing | 4 | | X | | | |
| IA | Louisa | 101 | | | X | | |
| IA | Ottumwa | 1 | | | X | | |
| KS | Holcomb | SGU1 | | | X | | |
| KS | LaCygne | 2 | X | | | | |
| KY | Cane Run | 4, 6 | | X | | | |
| KY | D.B. Wilson | W1 | | | X | | |
| KY | East Bend | 2 | X | | | | |
| KY | Ghent | 2 | | X | | | |
| KY | Ghent | 3, 4 | | | X | | |
| KY | Green River | 1, 2 | | X | | | |
| KY | H.L. Spurlock | 2 | X | | | | |
| KY | R.D. Green | G1, G2 | X | | | | |
| LA | Big Cajun 2 | 2B1, 2B2, 2B3 | | | X | | |
| LA | R.S. Nelson | 6 | X | | | | |
| MI | Belle River | 1, 2 | | | X | | |
| MI | Classers Creek | 15–16 | | X | | | |
| MI | Endicott Generating | 1 | | | X | | |
| MI | Harbor Beach | 1 | | X | | | |
| MI | J.B. Sims | 3 | | | X | | |
| MI | J.H. Campbell | 3 | X | | | | |
| MI | River Rouge | 3 | | X | | | |
| MI | St. Clair | 1–4, 6 | | X | | | |
| MI | Shiras | 3 | | | X | | |
| MI | Trenton Channel | 16–19 | | X | | | |
| MS | V.J. Daniel, Jr | 1 | | X | | | |
| MS | V.J. Daniel, Jr | 2 | | | X | | |
| MO | Iatan | 1 | X | | | | |
| MO | Sikeston | 1 | | | X | | |
| MO | Southwest | 1 | | X | | | |
| MO | Thomas Hill | MB3 | | | X | | |

| State | |
|---|---|
| MT | C |
| MT | L |
| NE | G |
| NE | G |
| NE | H |
| NE | H |
| NE | N |
| NE | N |
| NE | P |
| NE | S |
| NV | M |
| NV | N |
| NV | R |
| NM | S |
| NY | D |
| NY | S |
| NC | B |
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| ND | C |
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| OK | G |
| OK | H |
| OK | M |
| OK | M |
| OK | S |
| PA | B |
| PA | C |
| PA | E |
| PA | E |
| PA | F |
| SC | C |
| SC | C |
| SC | W |
| SC | W |
| TX | M |
| TX | M |
| TX | P |
| TX | S |
| TX | T |
| TX | T |
| TX | T |
| TX | W |
| TX | W |
| VA | C |
| VA | C |
| WI | E |
| WI | C |
| WI | J. |
| WI | P |
| WI | W |
| WV | J. |
| WV | M |
| WY | L |

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TABLE I.—ELECTIONS RECEIVED BY EPA UNDER SECTION 405—Continued

| State | Plant | Unit(s) | Subsection of section 405 for election | | | | |
|---|---|---|---|---|---|---|---|
| | | | (d)(1)/(2) | (d)(3) | (d)(4) | (g)(2) | (g)(3)/(4) |
| MT | Colstrip | 1–3 | X | | | | |
| MT | Lewis & Clark | B1 | X | | | | |
| NE | Gerald Gentleman | 1 | | X | | | |
| NE | Gerald Gentleman | 2 | | | X | | |
| NE | Harold Kramer | 1–3 | | X | | | |
| NE | Hastings Energy Ctr | 1 | | | X | | |
| NE | North Omaha | 1–4 | | X | | | |
| NE | Nebraska City | 1 | | X | | | |
| NE | Platte | 1 | | | X | | |
| NE | Sheldon | 1 | | X | | | |
| NV | Mohave | 1, 2 | X | | | | |
| NV | North Valmy | 1, 2 | | | X | | |
| NV | Reid Gardner | 1–4 | X | | | | |
| NM | San Juan | 1–4 | X | | | | |
| NY | Danskammer | 3, 4 | | X | | | |
| NY | Somerset | 1 | X | | | | |
| NC | Buck | 5–7 | | X | | | |
| NC | Cliffside | 1, 2 | | X | | | |
| NC | Dan River | 2 | | X | | | |
| ND | Antelope Valley | B1, B2 | X | | | | |
| ND | Coal Creek | 1, 2 | X | | | | |
| ND | Coyote | B1 | X | | | | |
| ND | Stanton | 10 | X | | | | |
| OH | Acme | 16, 91, 92 | | X | | | |
| OH | Acme (incl TOPR) | 13, 14, 15 | | X | | | |
| OH | Conesville | 5, 6 | | X | | | |
| OH | Killen Station | 2 | | | X | | |
| OH | Lakeshore | 18 | | X | | | |
| OH | Miami Fort | 8 | X | | | | |
| OH | O.H. Hutchings | 1–6 | | X | | | |
| OH | W.H. Zimmer | 1 | | | | X | |
| OK | GRDA | 1 | | | X | | |
| OK | Hugo | 1 | | | X | | |
| OK | Muskogee | 4, 5 | X | | | | |
| OK | Muskogee | 6 | | | X | | |
| OK | Sooner | 1, 2 | X | | | | |
| PA | Bruce Mansfield | 1–3 | X | | | | |
| PA | Cromby | 1 | | X | | | |
| PA | Eddystone | 1, 2 | | X | | | |
| PA | Elrama | 1–4 | | X | | | |
| PA | F.R. Phillips | 1–6 | | X | | | |
| SC | Cross | 1 | | | | X | |
| SC | Cross | 2 | | X | | | |
| SC | Winyah | 2, 3 | | X | | | |
| SC | Winyah | 4 | | | X | | |
| TX | Martin Lake | 1–3 | X | | | | |
| TX | Monticello | 3 | X | | | | |
| TX | Pirkey | 1 | | | X | | |
| TX | Sandow | 4 | X | | | | |
| TX | TNP One | U1 | | X | | | |
| TX | Twin Oak | 1 | | | | X | |
| TX | Twin Oak | 2 | | | | | X |
| TX | Welsh | 1, 2 | X | | | | |
| TX | Welsh | 3 | | | X | | |
| VA | Clinch River | 1–3 | X | | | | |
| VA | Clover | 1, 2 | | | | X | |
| WI | Edgewater | 5 | | | X | | |
| WI | Columbia | 2 | X | | | | |
| WI | J.P. Madgett | B1 | | X | | | |
| WI | Pleasant Prairie | 2 | | | X | | |
| WI | Weston | 3 | | | X | | |
| WV | John Amos | 1–3 | X | | | | |
| WV | Mountaineer | 1 | X | | | | |
| WY | Laramie River | 1–3 | X | | | | |

If an eligible utility or State failed to make an election (or a valid election) under section 405 or 406, EPA is required by section 403(a)(1) of the Act to determine which calculation method would be most beneficial to that utility or State. Most beneficial was defined as the greatest total number of allowances allocated for the affected unit, utility system, or state, depending on the nature of the applicable election. For section 405(d)(3), EPA will determine whether sections 405(d)(1) and (2) or section 405(d)(3) would provide the greatest number of allowances for the utility system, regardless of whether an individual unit may receive fewer allowances. Similarly, under section 406, EPA must determine whether bonuses under section 406 or under section 405 would provide the greatest number of allowances for all units in the state.

After reviewing all elections received, EPA determined the allowance allocations for the eligible units. In order to give meaning to the elections, EPA is proposing to follow the elections

specified by the unit, utility system, or state, as appropriate, even if they do not result in the optimum (largest) number of allowances allocated. Elections made prior to today's proposal may be revised if changes in the NADB (from version 2.0, published July 19, 1991, to the final published today) or EPA policy warrant (as in the case of section 405(d)(3) as discussed at section G.2. below).

In determining which states were eligible for the "clean states" election under section 406, using NADB V 2.0, as published in the June 25, 1991 **Federal Register** Notice, an error was made and the state of Rhode Island was inadvertently not included in the list of states expected to be eligible.

As was noted in the guidance and transmittal letters regarding the clean states election under section 406, EPA offered the Governors an opportunity to affirmatively defer their election until publication of the final data base. Also, EPA determined that if changes in the data base would significantly affect the Governors' decisions, then EPA would offer an opportunity for states to change their election based upon publication of the final data base. EPA believed that data, that was still subject to change, should not be the basis for binding decisions. Therefore, today EPA is providing notice to state Governors eligible under Section 406 that during the comment period of this proposed rule EPA will accept elections for: (1) Rhode Island; (2) those states that deferred their elections (California, Nebraska, Texas, and Vermont); and (3) revised elections provided that such revisions are based on changes to the NADB or changes in EPA policy. Table II summarizes the states qualifying for the clean state election and their election status.

EPA notes that Nebraska and Oregon were listed in Clean States Election Notice but are not eligible for the provision based on changes in the state-wide emission rates calculated from NADB V 2.1.

TABLE II.—STATES ELIGIBLE TO ELECT CLEAN STATES OPTION UNDER SECTION 406

| State | Elected § 405 | Elected § 406 | Deferred | No notification |
|---|---|---|---|---|
| Arizona | | X | | |
| Arkansas | | X | | |
| California | | | X | |
| Colorado | | X | | |
| Louisiana | | X | | |
| Montana | | X | | |
| Nevada | | X | | |
| New Mexico | | X | | |
| Oklahoma | | | | X |
| Rhode Island | | | X | |
| Texas | | X | | |
| Utah | | | X | |
| Vermont | | X | | |
| Wyoming | | | | |

## F. Summary of Basic Phase II Allocation Provisions

### *1. Introduction*

As provided in section 403(a)(1) of the Act, EPA is publishing the proposed allocations for Phase II allowances. These allocations consist of the basic allowances, bonus allowances, and other miscellaneous allocations provided for by the Act and are being proposed in part 73, subpart B. Two allocations are specified for each existing affected unit: one for the years 2000 through 2009, the other beginning in the year 2010.

Basic allowances are allocated beginning in calendar year 2000 and continuing potentially forever, or until Congress modifies or ends the allowance program. In order to permanently control $SO_2$ emissions, Congress limited the number of basic allowances EPA may allocate to 8.9 million per year. Congress was aware that the various calculations for basic allowances could result in EPA allocating more than 8.9 million allowances, and, therefore, Congress mandated that EPA subsequently reduce each unit's allowances on a pro rata (proportional) basis to a nationwide total of 8.9 million. (See section 403(a)(1) of the Act.) In addition to basic allowances, 50,000 allowances are allocated to units in certain States beginning in calendar year 2000 and continuing forever. EPA refers to these 50,000 allowances, along with the basic allowances, as permanent allowances.

The Act also provides for bonus allowances which are available only for calendar years 2000 through 2009. Congress mandated that EPA not allocate more than 530,000 bonus allowances, under section 405(a)(2).

Section 403(a)(1) requires EPA to publish final Phase II allowance allocations, which consist of both permanent and bonus allocations, no later than December 31, 1992. However, EPA will revise these allowance allocations by June 1, 1998, as provided in section 403(a)(1), to accommodate the actual number of allowances necessary for the repowering allowances under section 409 of the Act. In addition, as discussed in section I.2. of this preamble, EPA will accommodate allowance allocations for units which commence commercial operation before January 1, 1996 under section 405(g)(4).

Phase II allowances are calculated using 28 different equations in the statute. Of these equations, 23 calculate basic allowances and 5 calculate bonus allowances. Most of these equations and the eligibility requirements for them are straightforward. EPA has prepared a report, "Technical Documentation for Proposed Phase II Allowance Allocations," which lists the statutory eligibility requirements for each equation and explains the equation. The Technical Documentation also includes the summary tables for the proposed allowance allocations and is available from the Acid Rain Hotline listed at the beginning of this Proposal. Issues of general interpretation relating to more than one calculation are discussed in this section of the preamble.

### a. Standard Interpretations for Basic Allocations

A number of terms are used repeatedly in section 405 of the Act. In order to simplify discussion of EPA's proposed interpretations, common terms are discussed in this section.

*i. "Existing Utility Unit"*

An "existing utility unit" is a unit that meets the definition of utility unit and that commenced commercial operation before enactment, November 15, 1990. If a boiler has an on-line date of November, 1990 or earlier in the NADB V 2.1, it will be considered by EPA to have commenced commercial operation prior to enactment for the purposes of the Acid Rain Program. EIA data is reported on a monthly basis, therefore EPA cannot feasibly determine the actual day on which a unit commenced commercial operation. Thus, EPA had to choose between specifying the entire month of November (thus treating the date of enactment as November 30, 1990) or deeming October to be adequate (thus treating date of enactment as October 30, 1990) as the threshold for determining whether a unit is existing or new. EPA believes that the Act should err on the side of treating, as existing units, all units that began operations in November, 1990, and so, is proposing to treat all units with an on-line date of November, 1990 in the NADB V 2.1 as existing units.

In general, utility units that were retired before 1985 are not affected by the Acid Rain Program. However, EPA has received comments concerning units that retired or remained inactive for some years but later repowered. EPA believes that units that retired before 1985 but returned to operation later should be treated as distinctly different units if substantial physical changes were made. Thus, applicability rules and eligibility for allowances will be based upon that renewed unit's characteristics and the unit's date of returning to operation. For example, the Tidd plant in Ohio had been reported as retired, then was repowered through a Clean Coal Technology project, and came on-line in October, 1990. Because the repowered plant came on-line before November, 1990, EPA is proposing that the repowered Tidd plant be considered an existing unit as of October, 1990, eligible for allowances under section 405(g)(3) of the Act.

However, if a unit that was retired or inactive prior to 1985 returns to operation without substantial modification, EPA believes that the unit should be treated as an existing unit with its original on-line date. Thus, for a unit retired prior to 1985 and returned to operation after 1987, in general, no allowances would be allocated. EPA believes such treatment is necessary to prevent inactive higher-emitting units from being returned to operation in the early 1990s and receiving allowances under section 405(g) of the Act. While EPA acknowledges that utility operating companies may find reactivation of older units economically efficient, EPA believes allocations to such units would be a windfall and not envisioned in the Act.

EPA believes that the statute is clear regarding existing units (not retired before 1985) that were or will be repowered and brought back on-line after November 15, 1990. The definition of "existing unit" (at section 402(8) of the Act) states that an existing unit that was modified, reconstructed, or repowered after November 15, 1990 would continue to be considered an existing unit.

*ii. "As of Enactment"*

Both the terms "as of enactment" and "as of enactment of the Clean Air Act Amendments of 1990" are used in the Acid Rain provisions and are equivalent. For the purpose of section 405(g)(6) (IPPS and QS exemption), EPA believes that the term means the calendar day of enactment (November 15, 1990) because they apply to activities completed as of a particular day. However, for sections 404(h)(1), 405(c)(5), and 405(i)(2), the date-dependent terms are generally calculated on an annual basis and, therefore, EPA believes this term should mean the calendar year 1990.

*iii. "Utility System"*

The statute uses a variety of similar terms to convey similar meanings. Section 405(f)(2) of the Act refers to "utility;" sections 404 (e) and (h) refer to "utility system;" sections 405(c)(1)–(3) refer to "utility operating company;" while section 405(i)(2) refers to "company-wide." EPA is proposing that, for the purposes of part 73, "utility system" mean all units that have a common utility operating company as listed in the Acid Rain Data System, which will include information from National Allowance Data Base version 2.1. EPA interprets the various terms above ("utility," "utility system," "utility operating company," and "company-wide") to have the same meaning as "utility system," for the purposes of allocating allowances.

b. Rules of Categorization of Units

EPA has proposed to categorize "units" by the boiler-generator pair, for the purposes of Phase II allowance allocations. This is necessary because some eligibility criteria are boiler-based whereas others are generator-based. Thus, for multi-header units, individual boiler-generator pairs may be eligible for different provisions.

Although most categories under section 405 are mutually exclusive, it is possible for one unit to be eligible for more than one section (for example, a number of units are eligible for both sections 405 (c)(1) and (c)(5)). In such cases, EPA is proposing to apply whichever section would result in the unit receiving the most allowances.

In order to calculate most of the allowance allocations for individual units, EPA must determine (1) the size of the unit based on nameplate capacity found in NADB V 2.1, (2) its primary fuel (coal or oil and gas units) using the PRIMFUEL variable in NADB V 2.1, and (3) the 1985 actual $SO_2$ emission rate, found in the NADB V 2.1.

*2. Section 404(h)—Optional Baseline*

In addition to the optional baseline provision discussed in section C.3.d. of this preamble, under the Phase I allocations, section 404(h) also provides that an eligible unit that elects the optional baseline will have its Phase II allowances calculated based upon that selected baseline and the lesser of the "average annual emission rate for such unit in 1989" or 1.0 lb/mmBtu.

*3. Section 405(b)(4)—Converted to Coal*

a. Summary

Section 405(b)(4) provides basic allowances in addition to those provided in section 405(b)(1) to certain units that were required in the early 1980s to switch from oil to coal.

b. Eligibility

A unit eligible for this provision must meet all of the following requirements:

i. Be an existing utility unit serving a generator with a nameplate capacity equal to or greater than 75 MW;

ii. Have a 1985 actual emission rate equal to or greater than 1.2 lb/mmBtu, as stated in the NADB V 2.1;

iii. Have been required by state prohibition order or proposed order to convert from oil to coal and to have done so between January 1, 1980 and December 31, 1985; and

iv. Be located in a state with an installed generating capacity of more than 30 gigawatts in 1988, as stated in the Supplemental Data Base.

*4. Section 405(c)(3)—Small, Higher-Emitting Units Operational By 12/31/85 and Serving Fewer than 78,000 Customers*

a. Summary

Section 405(c)(3) provides a special transitional allowance calculation for 2000 through 2009 for smaller, older units that serve smaller communities. In the

year 2010, these units are allocated allowances according to the "standard" calculation (1.2 lb/mmBtu times baseline). These allowances are "basic", and are therefore subject to the 8.9 million cap under section 403(a)(1) of the Act.

b. Eligibility

To be eligible for these allowances, a unit must meet the following requirements:

i. Be an existing utility unit;

ii. Have a nameplate capacity, as stated in the NADB V 2.1, of less than 75 MW;

iii. Have a 1985 actual emission rate equal to or greater than 1.2 lb/mmBtu, as stated in the NADB V 2.1;

iv. Have commenced operation on or before December 31, 1965, as stated in the NADB V 2.1;

v. Be owned by a utility operating company with, as of December 31, 1989, total fossil capacity greater than 250 MW and less than 450 MW (as stated in the NADB V 2.1) and that served fewer than 78,000 customers as of November 15, 1990 (as listed in the Supplemental Data File).

*5. Section 405(c)(5)—Existing Flue Gas Desulfurization*

a. Summary

Section 405(c)(5) provides transitional allowances to smaller, higher-emitting units within an electric utility system that already has flue gas desulfurization ("scrubbers") on some of its units.

b. Eligibility

To be eligible for these allowances, a unit must meet the following requirements:

i. Be an existing utility unit;

ii. Have nameplate capacity less than 75 MW, as listed in the NADB V 2.1;

iii. Have a 1985 actual $SO_2$ emission rate equal to or greater than 1.2 lb/mmBtu, as listed in the NADB V 2.1;

iv. Be part of an electric utility system that, for calendar year 1990, had at least 20% of its fossil capacity scrubbed (calculated from NADB V 2.1 field "SCRUBBER"), had at least 10% of its fossil capacity consisting of coal-fired units less than 75 MW, and had unscrubbed coal units greater than 400 MW that all were difficult to scrub (according to the Emissions and FGD Retrofit Feasibility at the 200 Top Emitting Generating Stations, prepared for EPA on January 10, 1988).

EPA notes that the statutory language reflected above talks about "units" of a certain megawattage. Because the generator is the electricity producing device, such terms must refer to units (boilers) which serve generators of the stated nameplate capacity.

c. Interpretations

Based upon EPA's general definition of "utility system," no units would be eligible for this provision. Therefore, EPA believes that Congress must have intended that "electric utility system" referred to in section 405(c)(5) must have a broader meaning that EPA has proposed for "utility system." EPA is proposing, then, to define "electric utility system" to include all units operated by a utility operating company (as listed in the NADB V 2.1) and units operated by any wholly owned subsidiary of that utility operating company.

*6. Section 405(d)(4)—Coal Units Subject to New Source Performance Standards*

a. Summary

Section 405(d)(4) provides for a different method of calculating allowance allocations for "clean" coal-fired units that commenced commercial operation in 1981 through 1985 and that were subject to and in compliance with New Source Performance Standards. The unit's owner or operator must have made the election by March 31, 1991 (subject to additional opportunity provided today, as discussed in section E.3. of this preamble). This election will affect the calculation of allowances for each year, beginning with 2000. A unit that elects to have allowances calculated under section 405(d)(4) is not eligible for bonus allowances under section 405(d)(3). If the owner or operator fails to make the election, EPA will apply the section that would provide more allowances to the unit.

b. Eligibility

An existing coal-fired (see NADB V 2.1 field "PRIMFUEL"—primary fuel, code for coal=1) utility unit is eligible for the section 405(d)(4) election if:

i. The unit's actual or allowable 1985 $SO_2$ emission rate (whichever figure is less) is less than 1.2 lbs/mmBtu, and

ii. The unit commenced commercial operation on or after January 1, 1981 and before December 31, 1985, and

iii. The unit was subject to and in compliance with section 111 of the Act (New Source Performance Standards).

c. Calculation of Basic Allowances

A unit electing to have its basic allowances calculated using section 405(d)(4) will be precluded from receiving section 405(d)(3) bonus allowances, regardless of an election made under section 405(d)(3) by the unit's operating company. However, an election under this subsection does not affect an operating company's election under section 405(d)(3) for units that have not elected this subsection.

EPA believes this interpretation is necessary to properly implement section 405(d)(4) according to its terms. That subsection clearly states that an election for allowance allocations under it will be in lieu of allowance allocations elsewhere in section 405(d).

If the unit's owner or operator failed to make an election under this paragraph, EPA must allocate allowances based on which option would most benefit the unit. Thus, units eligible for sections 405(d)(1) and 405(d)(4) will be allocated allowances based on the most beneficial equation in those two sections. If the unit's operating company would be benefitted by the bonus allocations in section 405(d)(3)(A), those bonuses may also be allocated if the unit would be benefitted by having its allowances calculated under section 405(d)(1). However, as noted above, a unit will not be allocated allowances under both sections 405(d)(4) and 405(d)(3)(A). An identical situation exists for units eligible for sections 405 (d)(2) and (d)(4) and 405(d)(3)(B). For further discussion of these sections, see the Technical Documentation for Phase II Allowance Allocations.

*7. Section 405(g)(1)—Units Commencing Operation 1/1/86–9/30/90*

a. Summary

Section 405(g)(1) provides allowances based upon the unit's fuel consumption at 65 percent capacity for units that commenced operation on or after January 1, 1986 but not later than September 30, 1990. These units are all subject to New Source Performance Standards (40 CFR part 60) and thus are lower emitting units. Also, this section serves to ameliorate any disadvantage these units would face by not having been in operation for the entire 1985–1987 baseline period.

b. Interpretations

The allowance calculation uses the unit's 1985 allowable emission rate. If the unit had no 1985 federally enforceable emission limit, the earliest (most likely to be related to the first year of operation) federally enforceable emission limit for the unit will be used. Because such emission limit will be in place of a 1985 allowable emission rate, the limit will be annualized pursuant to section 402(18).

*8. Section 405(g)(2)—Table B Units*

a. Summary

Section 405(g)(2) of the Act contains Table B, which lists a specific number of allowances for each of the eleven units listed in the table. However, these units may elect to have their basic allowance allocations calculated as provided in the other paragraphs in sections 405(g) for which they are eligible. EPA does not believe that any of the units listed in Table B are eligible under sections 405(g)(5) or (6), nor did any Table B units elect for such provisions. Units that did not make an election are allocated allowances today according to the provision in section 405(g) that will most benefit them, as determined by EPA.

b. Eligibility

Units listed in Table B may elect to have their basic allowance allocations calculated according to sections 405(g)(1), (3), or (4), provided they are eligible.

*9. Sections 405(g)(3) & (4)—Units Commencing Operation 10/1/90–12/31/95*

a. Eligibility for 405(g)(3)

To be eligible for allowances under section 405(g)(3), a unit need only have commenced commercial operation on or after October 30, 1990 and no later than December 31, 1992.

b. Eligibility for 405(g)(4)

To be eligible for allowances under section 405(g)(4), a unit must have commenced construction before December 31, 1990 and must commence commercial operation between January 1, 1993 and December 31, 1995. Section 402(21) of the Act states that "[t]he term 'commenced' as applied to construction of any new electric utility unit means the owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction." Based on future utility on-line dates as reported to the Energy Information Administration, EPA contacted units expected to be eligible for this provision, requesting that these units provide documentation regarding when construction commenced on these projects in order to estimate allowances that may be allocated under this section. EPA has used the information received to date to estimate the allowance allocations under this section for the purpose of calculating Phase II basic allowances as adjusted by the 8.9 million cap.

For those units which believe they are eligible for this provision, but which have not yet provided documentation regarding construction dates, EPA is proposing to require the certified official to submit documentation by December 31, 1995 that construction was commenced before December 31, 1990. The proposed allocations for these units are zero. However, upon adequate submittal of documentation for eligibility and upon revision of allowance allocations in 1998, these units will be allocated appropriate allowances.

c. Calculation of Allowance Allocations

Allowances under these subsections are based on the unit's fuel consumption at a 65 percent capacity factor and the lesser of 0.3 lb/mmBtu and the unit's allowable $SO_2$ emissions rate. For the purposes of sections 405(g)(3) and (4), the "unit's allowable $SO_2$ emissions rate" will be the unit's most stringent Federally enforceable $SO_2$ emissions limitation for the first year of operation. As discussed in section E.2.c. of this preamble, EPA is proposing to not annualize these emission limitations.

*10. Section 405(i)(1)—High Growth States*

a. Summary

Section 405(i)(1) provides additional basic allowances, limited to 40,000, to units in "high growth states." "High growth states" are those that experienced over 25 percent population growth between 1980 and 1988 and had an installed electric generating capacity of more than 30 gigawatts in 1988. Based upon information in the Supplementary Data File (made available today with the Notice of Availability for the NADB V 2.1), only units in the state of Florida are eligible for these allowances.

b. Interpretations

Although the language of section 405(i)(1) called for an election by each eligible unit as to which three consecutive years between 1980 and 1989 to utilize for the allowance calculation, EPA had sufficient information from the Energy Information Administration to administer this provision. Thus, each eligible unit has already had its highest three consecutive years of fuel use calculated, and these data are included in NADB V 2.1.

c. Calculation of Allowances

A few utilities eligible for this provision requested baseline outage adjustments to their highest three consecutive years of fuel consumption during 1980–1989. EPA proposes not to make any adjustments to the NADB V 2.1 field "Maximum of the Average Heat Inputs for any Combination of Three Consecutive Years from 1980–1989" (MXBS8089). First, EPA does not believe that the Agency has the authority to make such adjustment. Section 405(i)(1) does itself not authorize any adjustments. Section 402(4) authorizes outage adjustments in the Administrator's discretion for baselines. However, the highest three consecutive years of fuel consumption are not a baseline within the meaning of section 402(4). Second, units are already given the flexibility to choose their highest period of fuel consumption during 1980–1989, and there is no basis for further flexibility to adjust the period used to calculate allowances.

The additional allowances generated for qualified units by this provision are reduced on a pro rata basis to 40,000 allowances based on the allowances that would be allocated under this provision only.

*11. Section 405(i)(2)—Reduced Actual or Allowable Emissions*

a. Summary

This section provides additional basic allowances to certain units that reduced their 1990 actual or allowable emissions rate, as compared to their 1980 emissions rate.

b. Eligibility

A unit is eligible for allowances under section 405(i)(2) if it meets the following requirements:

i. Its 1990 emissions rate is at least 50 percent less than the lesser of its 1980 actual or allowable emissions rate;

ii. Its calendar year 1999 actual emission rate is less than 1.2 lb/mmBtu;

iii. It commenced operation after January 1, 1970;

iv. It is owned by a utility company whose combined commercial and industrial kilowatt-hour sales increased more than 20 percent between calendar years 1980 and the date of enactment of the Clean Air Act Amendments of 1990;

v. It is owned by a utility company whose company-wide fossil-fuel $SO_2$ emissions rate declined 40 percent or more from 1980 to 1988.

c. Interpretations

Once again, EPA considered whether to annualize units' 1980 and 1990 allowable emissions rates to determine eligibility. In this case, EPA determined that all potentially eligible units have the same averaging period for their 1980 and 1990 emission limits, making annualization unnecessary.

Another issue raised by this section regards the use of calendar year 1999 actual emission rates. Under section 403(a)(1) of the Act, EPA is required to finalize Phase II allowances by June 1, 1998. Accurate allocation of these allowances is particularly necessary as these are basic allowances, affecting the 8.9 million allowance cap. In order to finalize the allocation in 1998, EPA will not be able to evaluate calendar year 1999 actual emissions data. Therefore, EPA believes that it should use the actual emissions data for the calendar year latest in time that still enables the Agency to revise allowances in 1998. EPA is therefore proposing to use calendar year 1997 actual emissions rates instead of 1999.

Finally, as in the case of alternative baselines under section 404(h) of the Act, EPA proposes to evaluate whether commercial and industrial kilowatt-hour sales increased more than 20 percent based on calendar year 1990 (rather than only until November 15, 1990).

**G. Summary of Bonus Phase II Allocation Provisions**

*1. Introduction*

Bonus allowances under section 405 are allocated for only four groups of utility units: (1) Under section 405(b)(2), existing utility units that serve generators with capacity equal to or above 75 MW and that have an actual 1985 emission rate between 1.2 and 2.5 lb/mmBtu and a baseline capacity factor of less than 60 percent; (2) under section 405(c)(4), coal or oil-fired existing utility units that serve generators of less than 75 MW, have actual 1985 emission rates equal to or greater than 1.2 lb/mmBtu, are owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is at least 250 MW as of December 31, 1989, and have a baseline capacity factor of less than 60 percent; (3) under section 405(d)(3), existing coal-fired utility units for which the lesser of the actual or allowable 1985 emission rates is less than 1.2 lb/mmBtu; and (4) under section 405(h), oil and gas-fired units whose average annual fuel consumption during 1980 to 1989 exceeded 90 percent in the form of natural gas. Bonus allowances are also available for utility units in "clean" states under section 406.

The discussion below focuses on allocations provided under sections 405(d)(3) and 406 and the limitation in section 405(a)(2) on the number of bonus allowances that may be allocated. The provisions for bonus allowances under sections 405 (b)(2), (c)(4), and (h) are relatively straightforward and are discussed in the Technical Documentation for Proposed Phase II Allowance Allocations.

*2. Section 405(d)(3)*

a. Summary

Section 405(d)(3) of the Act provides for bonus allowances for "clean" coal-fired units subject to allowance allocations and emissions limitations under sections 405(d) (1) and (2). The utility system must decide, for all its affected units, whether to elect only the basic allowances under sections 405(d) (1) and (2) or to elect the basic allowances in sections 405(d) (1) and (2) and the bonus allowances provided in sections 405(d)(3) (A) and (B). Because the decision is made for all units and because of the possibility (discussed below) of negative bonus allowances, some units may receive more allowances under one provision while others may benefit under the other. The unit's utility system election is effective beginning in 2000 and ending in 2009. If a utility system failed to make an election, EPA must determine the amount of allowances based on which option would best benefit the utility system as a whole.

b. Eligibility

Pursuant to section 405(d)(3)(C), a utility system's election under sections 405(d)(3) (A) or (B) will apply to all eligible units within the company.

An existing coal-fired utility unit is eligible for the section 405(d)(3)(A) election if the lesser of that unit's actual or allowable 1985 $SO_2$ emission rate is less than 0.6 lbs/mmBtu.

An existing coal-fired utility unit is eligible for the section 405(d)(3)(B) election if the lesser of that unit's 1985 actual or allowable $SO_2$ emissions rate is equal to, or greater than, 0.6 lbs/mmBtu and is less than 1.20 lbs/mmBtu.

c. Calculation of Bonus

Sections 405(d)(3) (A) and (B) provide for the bonus allowances to be calculated as an increment above the basic allowance allocations, which are provided in sections 405(d) (1) and (2), respectively. EPA is proposing to interpret the Act to require the bonus allowances to be calculated using the number of allowances allocated under sections 405(d) (1) or (2), as appropriate, unadjusted by the 8.9 million ton proration required by section 403(a)(1) with regard to basic Phase II allowance allocations. While sections 405(d)(3) (A) and (B) refer to section 403(a)(1), EPA believes that this reference is related to the fact that section 405 does not explicitly allocate allowances; section 403(a)(1) provides that EPA shall allocate allowances in amounts equal to the emissions limitations requirements in section 405.

It is possible, in some cases, to read the calculations in sections 405(d)(3) (A) and (B) to yield a negative number. EPA previously published guidance endorsing that interpretation (56 FR 10427, March 12, 1991). However, both equations under section 405(d)(3) calculate a number of bonus allowances that "exceeds" the basic allowances and provide that bonus allowances are to be allocated "[i]n addition to the basic allowances." Moreover, EPA has received requests to treat as zero any negative values under section 405(d)(3). EPA now believes that the interpretation permitting negative bonus allowances would run contrary to the language of sections 405(d)(3) (A) and (B) and should be rejected. EPA is now proposing to allocate allowances under section 405(d)(3) so that all negative values are set equal to zero and is requesting further comment on this issue.

d. Procedures

In order to be consistent with the scheme developed in section 405(d)(3)(C), if a utility system failed to make an election under section 405(d)(3)(C) for its eligible units, EPA will determine whether to make such an election based on the benefit to the company as a whole. EPA cannot, under this provision, make different elections for different units within one operating company.

As stated in section E.3. of this preamble, EPA will allow operating companies that made elections prior to March 31, 1991 to reconsider their elections based upon this change in interpretation and submit revised elections by the close of the comment period.

*3. Section 406*

a. Summary

Section 406(a) provides for special bonus allowances, in lieu of the bonus allowances provided in section 405, for units in certain states with low emission rates. Instead of the bonus allowances under section 405, the Governor of such a state may elect to have units within the state allocated special bonus allowances under section 406. This election was to have been made by June 30, 1991. However, because publication of the final data base upon which an election needed to be made did not occur before June 30, EPA provided Governors with the opportunity to give notice that they were deferring their

election until publication of the final data base.

b. Eligibility

Eligibility is based on the 1985 statewide $SO_2$ emissions rate for affected units. This calculation is made by averaging the 1985 $SO_2$ emission rates for all fossil fuel-fired utility steam generating units in the state. If the average is equal to or less than 0.8 lbs/mmBtu, the Governor may elect to have all such units' bonus allowances based on section 406(a) rather than applicable paragraphs in section 405.

EPA proposes to interpret the term, "fossil fuel-fired utility steam generating unit," to be equivalent to the term "utility unit," as defined in section 402(17) of the Act, except that utility units that were not in commercial operation in 1985 are excluded under section 406(a). The basis of this interpretation is that, under section 402(15) of the Act, a "unit" is defined as being fossil fuel-fired and, under section 402(17), a "utility unit" is defined as a unit that serves a generator. Although section 406(a) does not state explicitly that the unit must have commenced commercial operation by 1985, this requirement is implicit in the use of 1985 actual emission rates and the calculation of allowances based upon 1985 electricity generation.

Section 406(a) does not state whether the average should be an arithmetic average or weighted by heat input. EPA is proposing to interpret this average to be a weighted average because an arithmetic average would potentially yield a much less accurate measure of the level of a given state's emissions. Also, the other provision in title IV that determines eligibility for an allowance allocation by using an average over a group of units uses a weighted average (section 404(h)).

c. Calculation of Bonus

Each year, for the years 2000 through 2009, a total of 125,000 bonus allowances are available under this section. Moreover, the bonus allowances are to be allocated based on a "unit's pro rata share of electricity generated in calendar year 1985" in all the states eligible to make the election. Consequently, utility units that did not generate electricity in 1985 will not receive any bonus allowances under this section. Therefore, EPA proposes to interpret section 406(a) to provide the Agency with no discretion to adjust the actual 1985 data for $SO_2$ emissions, fuel consumption, and generation.

Any election made under section 406 by the Governor of an eligible state will apply to all utility units in the state. This is due to section 406(a), which mandates that the Administrator make allocations to all units in the state pursuant to such an election. Furthermore, EPA interprets elections under section 406 to override elections by utilities for bonus allowances made under section 405(d)(3).

In the absence of a Governor's election or notice of deferral by June 30, 1991 (collectively referred to as "notification"), EPA must make a determination as to how bonus allowances will be allocated for that state.

Two provisions in the statute appear to conflict in their directions on the action that the Agency is to take in the absence of an election by a Governor. In the absence of a Governor's notification, section 406(b) would have EPA allocate bonus allowances according to section 405, while section 403(a)(1) explicitly requires EPA to make the election under section 406 that would provide the greatest benefit for the units in the state, i.e., if it results in the highest total number of allowances for all units in the state. EPA is proposing to apply section 403(a)(1) rather than section 406(b) in order to best serve the purpose of the statute because it better serves the intent of section 406 by preventing a state from losing by default the benefit of extra allowances available under section 406. This approach is also consistent with the requirement in section 403(a)(1) that EPA take similar action with regard to other types of elections under section 405.

d. Procedures

The statute provides that the election by the eligible states' Governors was to be made by June 30, 1991. However, as of that date, EPA was unable to determine with complete certainty which states were eligible for the election or the effect of such an election on units within a state because the NADB was not complete. With the completion of the NADB V 2.1, states that deferred their election must now decide whether to make an election, and states that made elections may change their elections if the change is based upon changes in the NADB. Elections must be received by the end of the comment period.

*4. Limit of 530,000 Allowances*

Section 405(a)(2) of the Act allows EPA to allocate up to 530,000 bonus allowances annually for the years 2000 through 2009. However, this section provides no direction, as section 403(a)(1) does for the basic allowances, as to how the Agency is to allocate allowances if the number of bonus allowances otherwise would exceed 530,000. Congress clearly assumed that 530,000 would not be exceeded. Since the proposed calculations of bonus allowance allocations slightly exceed that 530,000 level, today the Agency proposes provisions to deal with this exceedance.

First, EPA is authorized to allocate only 530,000 bonus allowances. Should the final bonus allowance allocation equations also result in a higher number, EPA is proposing that a pro rata reduction, similar to that required for basic allowances under section 403(a)(1), as the most appropriate action for the Agency to take. However, the pro rata reduction for bonus allowances is only between 1 and 2 percent.

The Agency considered and dismissed two other options. First, EPA could simply allocate allowances in excess of 530,000 annually. This action would explicitly contradict the bonus allowance ceiling in section 405(a)(2), and therefore, the Agency is dismissing this option as illegal and beyond EPA's authority. Second, the Agency could develop criteria, other than a pro rata reduction, for reducing the number of bonus allowances allocated to certain units. However, the Agency dismissed this option because a pro rata reduction would yield the most equitable results.

EPA also considered whether bonus allowances under section 406 should be treated differently from bonus allowances under section 405. Clean state bonuses under section 406 are clearly allotted up to 125,000 allowances, but these allowances are in lieu of bonuses under section 405 and, under section 405(a)(2), are a portion of the 530,000 available bonus allowances. Therefore, if section 406 bonuses were not subject to the pro rata reduction, the result would be a windfall to units in clean states. Thus, EPA believes that a pro rata reduction of all bonus allowances would be fairer to all units. Comments are sought on this issue.

**H. Summary of Other Phase II Allocation Provisions**

*1. Section 404(e)—Early Reduction Credits*

As discussed in section C.2.b. of this preamble, early reduction credits are available for both Phase I and Phase II. The eligibility requirements for each Phase is the same except that, in addition to the requirements under Phase I, Phase II units are limited to those that were not affected under Phase I. The other significant difference in the two phases is that the prior years

for Phase II are 1995 through 1999, inclusive.

Also, the discussion of the limit on allowances as specified in Table A is not applicable to sources seeking Phase II early reduction credits; for Phase II sources the limit is the amount by which (1) unit's fuel consumption (in mmBtu) multiplied by either its emission limitation (in lb/mmBtu) or 2.5 lb/mmBtu, whichever is smaller, exceeds (2) the unit's actual emissions in the prior year.

Reductions in the emission rate are to be made relative to the unit's $SO_2$ emission rate in the year prior to enactment of title IV. As discussed in the Phase I early reduction credits section, EPA is proposing to use calendar year 1990.

In addition, by 1995, all Phase II units must have certified monitors, therefore EPA is proposing to use monitoring data developed under proposed 40 CFR part 75 for the documentation of actual emissions for the prior years.

*2. Section 405(a)(3)—10-State Midwest Extras*

a. Summary

Section 405(a)(3) provides 50,000 Phase II permanent allowances (not subject to the 8.9 million cap) for units in Table A (Phase I units) located in 10 states. The ten states are: Alabama, Georgia, Illinois, Indiana, Kentucky, Missouri, Ohio, Pennsylvania, Tennessee, and West Virginia. However, three facilities in these states are excluded: Kyger Creek, Clifty Creek, and Joppa Steam.

b. Calculation of Allowances

Each eligible unit will receive a pro rata share of the 50,000 allowances based on its share of total number of basic Phase II allowances allocated for all units listed in Table A. EPA proposes to interpret a unit's pro rata share as equal to the proportion of that unit's basic Phase II allowances when compared to the sum of all eligible units' basic Phase II allowances. Although section 405(a)(3), read literally, requires that the proportion be calculated based on the allowances of "all units listed in Table A," (other than the three excluded facilities), such a calculation would result in the allocation of far fewer than 50,000 allowances. Thus, EPA believes that Congress used that phrase as shorthand to refer only to the Table A units in these ten states, minus the three excluded facilities.

*3. Section 409—Repowering*

Utilities considering repowering under section 409 of the Act were required to notify EPA by March 31, 1990. "Repowering" involves the installation of certain clean coal technology. Repowering is defined at section 402(12) of the Act and is discussed in the proposed Acid Rain permits rule (56 FR 63024). Section 409 is designed, through additional allowance allocations (repowering extension allowances), to encourage higher-emitting coal plants to meet their Acid Rain emissions limitations through repowering. Under section 409, repowering extension allowances are available to each eligible unit from January 1, 2000 through December 31, 2003. In the final list of allocations to be provided by December 31, 1992, EPA is to withhold allowances from Phase II basic allowances equal to the number of repowering extension allowances estimated to be necessary only for the year 2000, in accordance with section 405(a)(2). Repowering extension allowances for calendar years 2001 through 2003 are not withheld from Phase II basic allowances and are additional allowance allocations. Prior to June 1, 1998, EPA is to publish a revised final list of allowance allocations.

EPA proposed the procedures for applying for the repowering program, the methods the Agency would use in allocating allowances, and the actions the Agency would take in cases of failure of such projects as part of the proposed Acid Rain permits rule. Today's proposal would amend that proposal to locate the allocation portion of the program in subpart B of part 73, but does not amend the procedures the Agency proposed in December, 1991.

This approach is needed for two reasons. First, the allocation of allowances under section 409 directly impacts the basic allowance allocations for Phase II units for the year 2000 through 2009 (through the repowering set-aside discussed below at section J.4.), which EPA is to revise in 1998. Second, EPA believes that the allocations made to units after repowering are also subject to the 8.9 million restriction contained in section 403(a)(1) of the Act.

To accommodate the interpretation that basic allowance allocations made to repowering units are subject to the 8.9 million annual limitation, EPA is proposing to split the allocation of allowances to repowering units into two parts: (1) A basic allocation based on the unit's baseline times a rate of 1.2 lb/mmBtu, and (2) an incremental allocation of the unit's baseline times the unit's 1995 SIP or Federally enforceable emission limitation or its actual emissions (whichever is lesser), minus the basic allocation. The actual number of allowances granted during the extension period is equivalent to that provided for in section 409(c)(1), but would provide for fewer basic allowances after the extension period than the scheme proposed by EPA on December 3, 1991. However, this new method, as discussed below, contains critical features necessary for the operation of the allowance reserves and the 1998 revision to the allowances.

One clarification the Agency is proposing today is that the basic allowances allocated to the repowered unit are subject to the 8.9 million limitation in section 403(a)(1). Two statements in section 409 are relevant. Subsection (c)(2) specifically provides that the repowered unit shall be subject to the requirements of Section 405 upon repowering, and section 409(c)(4) states that allowances allocated under section 409 are in lieu of allowances otherwise allocated. Moreover, the applicability of the cap is further demonstrated by section 409(c)(5) which states that the cap in section 403(a)(1) applies even during the extension period, but that during the extension period, repowering units will be treated as holding allowances based upon the baseline and 1.2 lb/mmBtu. While section 403(a)(1) does state "[e]xcept as provided in section * * * 409" that the Administrator is not to allocate more than 8.9 million allowances for any calendar year, the Agency believes that the reference to section 409 means to exclude the repowering extension allowances, which are excluded from the cap by section 409(c)(5). To interpret the basic allowances under section 409 as not subject to the 8.9 million cap would make title IV's goal of a 10 million ton reduction in emissions of $SO_2$ meaningless. Also, deductions for the Special Allowance Reserve and the Conservation and Renewable Energy Reserve must be made from these units in order to achieve the reserve allocation required by sections 404(g) and 416 of the Act.

EPA is proposing the following allocation scheme for allocating allowances to units eligible for repowering:

a. The proposed allocations and final allocations as of December 31, 1992 will allocate allowances under appropriate section 405 equations to all eligible units.

b. The allowance allocations will be revised in 1998 to account for units which have been granted repowering extensions under 40 CFR 72.44. Repowering units would be allocated revised basic allowances based upon their baseline times 1.2, subject to the

8.9 million allowances cap and the various reserves.

c. In addition to the basic allowances allocated to the repowering units in 1998, these units would be allocated repowering extension allowances under section 409(c)(1) of the Act (based upon their baseline times the lesser of the 1995 State Implementation Plan limit or actual emissions), in the amount in excess of their basic allowances.

d. 40 CFR 72.44, as proposed, would allow repowering units to rescind their repowering plan by December 31, 1999. In such case, the repowering extension allowances would be withdrawn from that unit and returned to the donating Phase II units on a pro rata basis.

The allocation of the basic allowances at the 1.2 lb/mmBtu level would not be changed, in order to prevent further changes to all other Phase II units' basic allowances, due to the 8.9 million cap.

**I. Proposed Phase II Allocations and Proposed Method for 1998 Revisions**

*1. Proposed Allocations*

Table 2 in § 73.10 proposed today would provide the proposed allocations for existing affected units for Phase II of the program.

*2. Method for Revising Final Phase II Allocations*

Section 403(a)(1) requires the Administrator to publish, no later than June 1, 1998, a revised final statement of allowance allocations which includes the set-aside for repowering extension allowances and allowances for repowering units.

Today's proposed rule would establish the method that the Agency will use in publishing the revised list, which will need to incorporate the following revisions:

a. The actual number of repowering extension allowances allocated for the year 2000;

b. The actual number of allowances allocated under section 405(g)(4), to be implemented at 40 CFR 73.18 (for new units commencing commercial operation before December 31, 1995, see section F.9 of the preamble); and

c. The actual number of allowances allocated under section 405(i)(2), to be implemented at 40 CFR 73.19 (for units significantly reducing their emissions from 1980 levels, see section F.11 of the preamble).

The proposed allocations contain a set-aside for repowering extensions granted, which is approximately 50,000 for each of the years 2000 through 2009. This set-aside is discussed further in section J.4. below.

**J. Summary of Reserves**

*1. Section 404(a)(2)—Phase I Extension Allowances*

Up to 3.5 million allowances are to be available for Phase I extensions, under section 404(a)(2). The size of the reserve may not exceed 3.5 million and is calculated by considering what the emissions from all Phase I units would have been absent the enactment of title IV. All estimates of the reserve would exceed 3.5 million, therefore, the reserve is established as 3.5 million allowances (see Technical Documentation of the Phase I Extension Reserve, available today by contacting the hotline, listed in ADDRESSES). Regulations for the distribution of these allowances were proposed as part of the Acid Rain permit rule.

*2. Section 404(g)—Conservation and Renewable Energy*

A total of 300,000 allowances are provided for the conservation and renewable energy reserve under section 404(g) of the Act by reducing each Phase II unit's basic allowances by that unit's pro rata share of 300,000 allowances for each year beginning in 2000 and ending in 2009. The distribution of these allowances has been proposed as part of the Allowance rule (40 CFR part 73, subpart F).

*3. Section 416(b)—Special Allowance Reserve*

The Special Allowance Reserve provides allowances for EPA's annual auctions and sales, specified in 40 CFR part 73, subpart E (56 FR 65592, December 17, 1991).

a. Deductions for Auction and Sale Reserve

Under section 416 of the Act, EPA is to establish an allowance reserve that equals 2.8 percent of the allowances allocated to all units. This reserve is to be created by reducing the amount of each unit's Phase I and basic Phase II allocations by 2.8 percent. For Phase I (1995–1999), exactly 150,000 allowances each year are withheld, which is slightly less than 2.8 percent. These allowances are to be deducted on a pro rata basis from each Phase 1 unit's total allowance allocation [Table A, as adjusted by sections 404(a)(3) and (h)]. For Phase II, 250,000 allowances are allocated for the reserve; however 250,000 is slightly more than the 2.8 percent. EPA is proposing to deduct exactly 250,000 allowances from Phase II basic allowances to create this reserve. The Special Allowance Reserve is then divided into two subaccounts, the Direct Sale Subaccount and the Auction Subaccount.

b. Reallocation of Proceeds

Under section 416 provisions are made to sell allowances from the reserve. The final rules (56 FR 65592, December 17, 1991) provide that allowances left unsold in the Direct Sale Subaccount are rolled into the Auction Subaccount. Any allowances left unsold in the Auction Subaccount are redistributed, pro-rata (based on original allowance allocations), to the units from which allowances were withheld for that particular year's auction. All monetary proceeds from both the sales and the auctions are distributed pro-rata (based on original allowance allocations) to the units from which allowances were withheld for that particular year's auctions and sales.

c. Redistribution Procedure

Today, EPA is proposing the method that the Agency or its delegated authority will use to calculate the redistribution of unsold allowances and monetary proceeds from the auctions and sales. The equations proposed represent a simple prorating of proceeds or remaining allowances based upon the number of allowances the unit had contributed to the reserve.

Because EPA will only allocate whole allowances and distribute proceeds by whole dollars, EPA is proposing to round the values to the nearest whole. Also, the exact number of allowances and proceeds must be distributed. Rounding will often result in a distribution not being exactly equal to the available number of allowances or dollars. EPA is proposing a method by which the percentage impact on any one unit is minimized.

*4. Section 409—Repowering Set-Aside*

The estimate that the Agency chooses to use for withholding allowances otherwise allocated to affected units is important because of its effect in the 1998 revision to the Phase II allowances. Because the allowances allocated for repowering are in excess of the 8.9 million limit on basic allowances, section 405(a)(2) provides a method to recapture some of the allowances from Phase II units' basic allowances. Section 405(a)(2) provides that for repowering extension allowances granted for calendar year 2000, one-tenth of that total will be taken from Phase II units' basic allowances for calendar years 2000 through 2009. If the Agency overestimates the number of allowances necessary to apply to the repowering projects, Phase II facilities would receive back any excess allowances as part of the 1998 revision of allowance allocations.

EPA published guidance on allowance allocations for repowering units and for notification of EPA in a Federal Register notice on March 26, 1990 (56 FR 12529). Thirty-seven utilities responded to the notice, some listing specific units that may be repowered, and other utilities stating that they are considering repowering for all their units. All told, the utilities reported that approximately 190 units are being considered for repowering, totalling approximately 25 gigawatts of generation (see discussion in the Technical Documentation for Phase II Allowance Allocations).

Developing an estimate for repowering is complicated by the fact that the definition of qualifying repowering technology has not been promulgated by the Agency. Because of this, the Agency's analysis focused on the types of plants likely to repower rather than all the technologies that may or may not be available once repowering is defined.

The Agency reviewed the Regulatory Impact Analysis (RIA) in support of the proposed core acid rain rules, which estimated a range for repowering of 3 to 13 gigawatts. Repowering candidates were assumed to include only those unscrubbed coal units greater than 75 MW and less than 400 MW, since repowering would be the most economic and feasible for such units. The range in the resulting figures depends on the extent of market penetration of repowering.

In addition to the RIA analysis, EPA also conducted further evaluations to determine potential repowering candidates by evaluating five key characteristics that would be considered in making decisions to repower specific units. These characteristics were: age of the unit, size, heat rate, current emission rate, and a factor as a proxy for the relative cost of repowering. In conducting the analysis, several types of units were excluded, such as those units already planning to install scrubber technology in Phase I. The resulting estimates ranged from 15 to 23 gigawatts, which is still less than the total amount estimated from the non-binding utility submissions received.

Given the wide range of estimates of the amount of repowering expected to occur, and the uncertainties associated with them, the Agency is proposing to use a repowering estimate of approximately 10 gigawatts. The Agency believes that this figure is reasonable given that all the units making submissions are unlikely to repower.

Based on the 10 gigawatt estimate, EPA is proposing to hold a total of 496,300 allowances in reserve, resulting in a pro-rata reduction of approximately 49,630 each year from 2000 through 2009 from basic Phase II allowances.

### K. Allocations for Small Diesel Refineries

*1. Summary*

Section 410(h) of the Act provides opportunities for owners or operators of small diesel refineries who produce low sulfur diesel fuel after October 1, 1993, to receive allowances provided they meet the eligibility requirements of section 410(h) and the requirements of section 211(i) of the Act. Section 211(i) requires that, as of October 1, 1993, no person "manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle [on-road] diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40."

These allowances are available from October 1, 1993 until December 31, 1999. Section 410(h) was intended to assist small refiners to defray the costs associated with the desulfurization equipment needed to comply with Section 211(i) of the Act.

Additionally, section 410(h) provides incentives for the desulfurization of off-road diesel fuel, as well as on-road diesel fuel, because section 211(i) does not require desulfurization of off-road diesel fuel.

The small refiners are not affected units under the Acid Rain program and so do not need allowances for compliance with title IV. However, once allocated, these allowances can be sold and traded in accordance with the general allowance trading provisions of proposed 40 CFR part 73, subparts C and D. Requirements for small refiners to apply for allowances are contained in proposed 40 CFR 73.90.

The total number of allowances available in a given year to eligible refineries is 35,000, and each individual refinery source is limited to no more than 1,500 allowances annually. EPA estimates 80 to 85 refiners may meet the eligibility requirements of this section, based on information from the Department of Energy and the National Petroleum Refiners' Association.

*2. Eligibility*

Section 410(h) defines an eligible "small refinery" as a "refinery or portion of a refinery" that, as of November 15, 1990, (1) has bona fide crude oil throughput of less than 18,250,000 barrels per year and (2) that is "owned or controlled by" a refiner whose total combined bona fide crude oil throughput is less than 50,187,500 barrels per year, as reported to the Department of Energy (Form EIA–810). To be eligible for allowances, the refiners must desulfurize both on- and off-road diesel fuel.

EPA is proposing to define two important terms as follows: "portion of a refinery" as that portion of a petroleum distilling refinery that produces diesel fuel; and "owned or controlled by" as limiting eligibility based on the total throughput of all crude oil by each refiner. Those refineries that are wholly owned or controlled subsidiaries of larger holding or parent companies are eligible only if the total of all crude oil throughput of those holding companies' operations meet the eligibility requirements.

EPA proposes to limit eligibility to small refineries located in the contiguous United States. Although section 410(h) is silent on this point, title IV is limited to the 48 contiguous states and the District of Columbia. Also, section 211(i) states that refineries in Alaska and Hawaii need not comply with on-road diesel fuel sulfur limitations.

The legislative history concerning section 410(h) indicates that Congress intended to allow small refiners operated under joint or cooperative agreements between two or more refiners to qualify for allowances. Senator Simpson, speaking during final consideration of the bill stated, "the conference believed two or more refineries could jointly operate a single desulfurization facility provided that diesel fuel was exclusively derived from crude oil processed at those refineries and that all process and desulfurization facilities are solely owned and controlled by the same small refiners." (Congressional Record, S16960, October 27, 1990) However, the 1,500 allowance-per-refinery limitation still applies. Under proposed 40 CFR 73.90, refineries undertaking joint ventures are subject to both the usual individual application procedures, as well as several procedures detailing the joint operations.

By allowing such joint ventures, the EPA hopes to promote the highest level of economic efficiency possible within the regulated community while maintaining the required desulfurization standard spelled out in the Act. Further, this interpretation is faithful to the specific purpose of the program: to assist small refiners in defraying the costs of installing the required desulfurization equipment.

*3. Calculation of Allowances*

Section 410(h)(2) provides that allowances are to be limited to the tons of $SO_2$ attributable to the desulfurization of diesel fuel at the refinery. Section 211(i)(1) of the Act requires that on-road diesel fuel meet a sulfur concentration limit of 0.05 percent (by weight). Section 410(h)(2) provides that the amount of desulfurization shall be considered to be the difference between 0.274 percent by weight and 0.05 percent by weight.

EPA proposes to define "desulfurization" as referring to various procedures whereby sulfur is actually removed from petroleum during or apart from the refining process. For purposes of this rulemaking, desulfurization cannot be achieved through such processes as dilution or blending. Again, Senator Simpson addressed this issue during final consideration of the bill by noting that "the conference did not intend for facilities to earn allowances if distillate is brought in from outside sources and blended or finished to the 0.05 percent standard." (Congressional Record, S16960, October 27, 1990).

This indicates that section 410(h)(2) is designed to assist only those eligible small refiners that undertake (or have undertaken) the cost of installing desulfurization equipment. To allow participation by refiners who utilize blending or similar techniques would run contrary to Congressional intent and would reduce the number of allowances available to refiners that actually install the required equipment.

*4. Procedures*

Under today's proposed rules, diesel refineries and portions of refineries seeking these allowances will have to demonstrate, by application, to EPA that the eligibility requirements are met. EPA proposes to require submittal of data on crude oil throughput for the applicant refinery itself and the total for all refineries owned or controlled by the company that owns or controls the applicant refinery. This data requirement can be satisfied by submittal of copies of Form EIA–810 for such refineries for each of the 12 months of calendar year 1990 to EPA, along with a written certification that the forms are exact duplicates of those filed with the Department of Energy during 1990.

This data, along with a cover letter requesting certification of eligibility for the program, can be filed with EPA upon finalization of this rule. EPA will verify the information and, upon finding the refinery is eligible, will send a letter certifying the refinery's eligibility for allowances for the period, October 1993 to December 31, 1999. After this period, the allocations for small refineries ends. EPA will enclose its Allowance Tracking System New Account/New Authorized Account Representative Forms with the certification. In order for a refiner to be allocated allowances it is necessary to have an account in EPA's Acid Rain Data System and to have an Authorized Account Representative in accordance with proposed 40 CFR 73.33 (56 FR 63269). These forms need to be completed and returned to EPA at the same time the refiner's initial application for allowances is submitted.

The refiners will be required to provide annually appropriate documentation to EPA as to the refinery's yield of diesel fuel meeting the requirements of section 211(i). In 1993, only throughput from October 1, 1993, until December 31, 1993, will be eligible for allowances; for the years 1994 through 1999, all throughput will qualify.

Each refiner must submit certified copies of Form EIA–810 for each of the 12 months in the previous calendar year, as well as its allowance calculations according to the formula in the proposed rule. For those refineries participating in joint or cooperative operating agreements, it will be necessary for each refiner to file individually, showing its individual and joint allowance calculations separately. Each application should detail the throughput applicable to the joint agreement and the allowances allocated to each refinery. It should be noted that all applications related to the joint agreement must allocate the allowances in the same manner or all involved applications will be considered void for purposes of the joint agreement (the individual operations will not be affected).

As proposed, the documentation must be submitted to the EPA between March 1 and April 1 of the year following the year of production (e.g., March 1, 1994 through April 1, 1994, for 1993 throughput). EPA believes that this timeframe is the most effective because refiners are required to finalize their data with the Department of Energy no later than March 1 of any given year. By requiring finalized data, both EPA and the eligible refiners are assured of the best possible data being used to make allowance calculations. EPA will verify the information and calculations as the applications are received and will allocate the allowances promptly after the April 1 deadline. Comments are sought on this timeframe. Appeals procedures available are the same as available to units requesting early reduction credits, discussed at section C.2.b. of this preamble.

Applications that are incomplete or incorrect will be returned as they are determined to be deficient. However, where applications related to joint agreements fail to allocate allowances in the same manner, only the sections of the applications that details the joint desulfurization would be rejected. Although a refiner has the option of resubmitting before the deadline (if possible), the refiner's chances of receiving allowances are sharply decreased if a first-come, first-served system of allocation is chosen (see discussion below).

EPA believes that the allowance program for small diesel refineries could be oversubscribed. EPA has two options for allocating allowances: on a pro rata basis, or a first-come, first-served basis. Although the Act itself does not specify a method of allocation, Senator Simpson, during final legislative debate on the Act, noted that, "If the amount of $SO_2$ small refiners remove per year exceeds 35,000 tons, the conference believes a proration of these allowances would be appropriate." (Congressional Record, October 27, 1990, S16960). Under a pro rata system of allocation, EPA would accept applications received by a specific date (proposed as April 1) during the calendar year following eligible production of diesel fuel. Then EPA would verify the total requested number of allowances and allocate to each refinery its share of the 35,000 allowances available based upon that refinery's percentage of requested allowances.

Because allowances are allocated annually under this program, it is also well suited to the first-come, first-served approach. With this approach, as of January 1 of the year following the year for which $SO_2$ reductions are claimed, EPA could receive applications for allowances. Each refinery would be allocated its eligible amount, up to the statutory cap of 1,500 allowances. After the pool of 35,000 allowances are allocated, EPA would simply reject all further applications.

EPA believes that pro rata basis is fair to all eligible refineries and facilitates the distribution of these allowances. It was the intent of Congress to help this entire category of businesses and a pro-rata distribution ensures that Congressional intent is upheld. Such a system ensures that, in the event of oversubscription, all who comply and apply will be allocated at least a portion of what they have earned. The pro rata distribution system also increases the possibility of allocating a significant number of allowances to several refineries acting "as one." However,

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EPA seeks comment on which system of allocating the allowances is preferred.

**L. Summary of Proposed Rules**

*a. Part 72 Subpart A—Acid Rain Permit Program General Provisions*

Section 72.2 proposes new definitions for the terms "cogeneration unit," "Qualifying Source," "Independent Power Production Source," "output capacity," "potential electrical output capacity," "publicly owned utility," and "solid waste incinerator" for the purposes of determining applicability.

Section 72.7 proposes applicability requirements for cogenerators, certain Qualifying Sources and Independent Power Producers, and proposes exemptions for solid waste incineration units.

EPA notes that the definition of "power sales agreement" has already been promulgated at part 73 (56 FR 65592, December 17, 1991). The December 17 promulgation addressed written guarantees for new independent power producers. EPA expects to apply the already promulgated definition of power sales agreement to the QS and IPPS exemption provision.

*b. Part 73 Subpart A—Background and Summary*

Section 73.3 proposes definitions for the terms "Acid Rain Data System," "actual $SO_2$ emission rate," "allowable $SO_2$ emissions rate," "baseline," "coal-fired," "desulfurization," "existing utility unit," "National Allowance Data Base," "small diesel refinery," and "utility system."

The definition of "New Independent Power Production Facility" is also proposed to be changed to refer to "New Independent Power Production Source" (NIPPS) and to be defined as an IPPS (proposed to be defined in part 72) that commenced commercial operation on or after November 15, 1990. This change would simplify the rules and maintain the distinction between the IPPS exemption and the NIPPS allowance guarantee program.

*c. Part 73 Subpart B—Allowance Allocations*

Section 73.10 proposes initial allocations of allowances for Phase I and Phase II affected units.

Section 73.11 proposes a number of procedures for the revising and adjusting of allowance allocations no later than June 1, 1998. Included in this section is the proposal for the repowering adjustment.

Section 73.12 describes the proposed procedure for rounding allocations.

Section 73.13 provides the address for submittal of material by the designated representatives and sets out the appeals procedure for the allocations rule.

Section 73.16 proposes the Phase I early reduction credits program. This proposal includes unit eligibility requirements, emissions reduction requirements, initial certification of eligibility procedures, and certification requirements. Additionally, the proposal outlines procedures for requesting and being allocated allowances under the provisions of this section.

Section 73.18 proposes the eligibility requirements for units commencing operations between January 1, 1993, and December 31, 1995, to receive allowances.

Section 73.19 proposes the eligibility and application procedures for receipt of allowances by certain units with decreasing $SO_2$ rates.

Section 73.20 proposes the Phase II early reduction credits program. This proposal includes unit eligibility requirements, emissions reduction requirements, initial certification of eligibility procedures, and certification requirements. Additionally, the proposal outlines procedures for requesting and being allocated allowances under the provisions of this section.

Section 73.25 proposes the establishment of the Phase I extension reserve. Section 72.42 proposes the allocation procedures for allowances in this reserve.

Section 73.26 proposes establishment of the conservation and renewable energy reserve.

Section 73.27 proposes the establishment of the special allowance reserve. Also proposed are mechanisms for the distribution of proceeds and the reallocation of allowances.

*d. Part 73 Subpart G—Small Diesel Refineries*

Section 73.90 proposes the small diesel refiners program. The proposal includes refinery eligibility and data submittal requirements, procedures by which refiners may request allowances, and allocation procedures.

**M. Regulatory Impact Analysis**

A Regulatory Impact Analysis was prepared for the entire Acid Rain Program and made available with the December 3, 1991, proposed rules. There are no specific costs associated with today's proposed rule.

**N. Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." A Regulatory Flexibility Analysis was prepared for the entire Acid Rain Program and made available with the December 3, 1991, proposed rules. Today's proposed rule does not add any requirements that would burden small entities.

**O. Paperwork Reduction Act**

The information collection requirements of this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. An Information Collection Request has been prepared by EPA (ICR No. 1584.04) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW, (PM–223Y), Washington, DC 20460 or by calling (202) 260–2740.

This proposed rule minimizes the reporting burden upon the affected industry. A small reporting burden is on the operators of fossil fuel-fired electric utility units which commence operation in the early 1990s. The estimated total burden is 80 hours based on 20 eligible units. The reporting burden is estimated to average 4 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

A small reporting burden is also imposed on the voluntary small diesel refiners program. The estimated total burden is based on 80–85 total potentially eligible refiners. The reporting burden is estimated to be 270 hours for the entire industry, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information.

Comments regarding the Information Collection Request and this burden estimate, including suggestions for reducing this burden, may be sent to Chief, Information Policy Branch, PM–223Y, EPA, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The Final Rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

**List of Subjects in 40 CFR Parts 72 and 73**

Administrative practice and procedure, Air pollution control, Coal, Electric power plants, Natural Gas, Petroleum, Sulfur dioxide, Reporting and recordkeeping requirements.



Dated: June 12, 1992.

**F. Henry Habicht II,**

*Acting Administrator.*

For the reasons set out in the preamble, parts 72 and 73 are proposed to be amended as set forth below.

**PART 72—[AMENDED]**

1. The authority citation for part 72 (as proposed December 3, 1991, 56 FR 63002) continues to read as follows:

**Authority: 42 U.S.C. 7651.**

2. Section 72.2 (as proposed December 3, 1991, 56 FR 63002) is proposed to be amended by adding the following definitions and by revising the definitions of *Actual 1985 emissions rate, Allowable 1985 emissions rate, Baseline, Coal-fired,* and *Utility system* to read as follows:

**§ 72.2 Definitions.**

* * * * *

*Actual $SO_2$ emissions rate* means the annual average sulfur dioxide emissions rate for the unit measured in pounds per million Btu (lbs/mmBtu) for the specified calendar year; *provided* that the "1985 actual $SO_2$ emissions rate" for the unit shall be the rate specified by the Administrator in the National Allowance Data Base (NADB).

* * * * *

*Allowable $SO_2$ emissions rate* means the most stringent federally enforceable emissions limitation for sulfur dioxide (in lbs/mmBtu) applicable to the unit for the specified calendar year, or for such subsequent calendar year as determined by the Administrator where such a limitation does not exist for the specified year; *provided* that the "1985 allowable $SO_2$ emissions rate" for the unit shall be the rate specified by the Administrator in the National Allowance Data Base (NADB) under the data field "1985 annualized boiler $SO_2$ emission limit."

* * * * *

*Baseline* means the annual average quantity of fossil fuel consumed by a unit, measured in millions of British Thermal Units (mmBtu). In the event that a unit is listed in the NADB, the baseline will be as provided in the National Allowance Data Base (NADB) pursuant to section 402(4) of the Act, as adjusted by the outage hours listed in the NADB.

* * * * *

*Coal-fired* means, for the purposes of subpart B of this part, a unit that is listed in the NADB as using coal or coal-derived fuel under the data field "primary fuel indicator." Cogeneration unit means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating or cooling purposes, through the sequential use of energy.

* * * * *

*Independent Power Production Source (IPPS)* means a source that:

(1) Is nonrecourse project financed, as defined by the Secretary of Energy at 10 CFR part 715;

(2) Is used for the generation of electricity, eighty percent or more of which is sold at wholesale;

(3) Does not generate electric energy sold to any affiliate (as defined in section 2(a)(11) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79b(a)(11)) of the source's owner or operator unless the operator or operator of the source demonstrates that it cannot obtain allowances from the affiliate; and

(4) Is owned by any publicly owned utility or combination of publicly owned utilities in an amount less than 50 percent.

* * * * *

*Output capacity* means the full-load continuous rating of a generator under specific conditions as designed by the manufacturer.

* * * * *

*Potential electrical output capacity* means the total electrical output (in MWe) over a specified period of time resulting from operation of the unit at 33 percent of its maximum design heat input.

* * * * *

*Publicly owned utility* is a utility that is subject to regulation by a state utility regulatory authority, is publicly owned, is Federally operated, is owned by a municipality, or is a cooperative.

* * * * *

*Qualifying source* means a "qualifying small power production facility" within the meaning of section 3(17)(C) of the Federal Power Act or a "qualifying cogeneration facility" within the meaning of section 3(18)(B) of the Federal Power Act.

* * * * *

*Solid Waste Incinerator* means a source as defined in section 129(g)(1) of the Act.

* * * * *

*Utility System or system* means the totality of interconnected units and other generators controlled by the same utility operating company, as reported in the Acid Rain Data System.

* * * * *

3. Section 72.7 (as proposed December 3, 1991, 56 FR 63002) is proposed to be amended by revising paragraphs (a)(5), (b)(4), (b)(5), and (b)(8) and by adding paragraphs (a)(8) and (b)(7) to read as follows:

**§ 72.7 Applicability.**

(a) * * *

(5) Each source that includes a unit that cogenerates steam and electricity and (i) For a unit which commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying more than one-third its potential electrical output capacity and more than 219000 MW-hrs electric output on an annual basis to any utility power distribution system for sale. If the purpose of construction is not known, the Administrator will presume that actual operation from 1985 through 1987 is consistent with such purpose; or

(ii) For units which commenced construction after November 15, 1990, supplies more than one-third its potential electrical output capacity and more than 219000 MW-hrs electric output on an annual basis to any utility power distribution system for sale.

* * * * *

(8) Existing units that were owned or operated by a publicly owned utility prior to November 15, 1990 are not eligible for exemption as qualifying sources in paragraph (b)(5) of this section or independent power production sources in paragraph (b)(6) of this section.

(b) * * *

(4) A unit that cogenerates steam and electricity unless that unit meets paragraph (a)(5) of this section.

(5) A qualifying source, as certified by FERC under the Federal Power Act, that meets the criteria in paragraph (b)(6) (i) or (ii) of this section. Such a source includes such units as were covered by such certificate as of November 15, 1990; or (6) An independent power production source (consisting of unit(s) with steam capacity necessary to serve the generator output capacity and up to an additional 20% of output capacity where such output capacity, for an existing source, is as constructed on November 15, 1990 or, for new sources, as specified in the power sales agreement or other power purchase commitment as of November 15, 1990) if:

(i) As of November 15, 1990, one or more power sales agreements has been executed that are applicable to the source with respect to one or more purchasers of power to the extent that 30 percent of the projected annual electrical generation or output capacity of the source is committed; or

(ii) As of November 15, 1990, any one of the following criteria are met by the facility with respect to one or more purchasers of power to the extent that 50 percent of the projected annual electrical generation or output capacity of the source:

(A) The source is the subject of a State regulatory authority order requiring a utility to enter into a:

(*1*) Power sales agreement with the source,

(*2*) Purchase output capacity from the source, or

(*3*) Enter into arbitration concerning the source, for the purposes of establishing terms and conditions of the utility's purchase of power; or

(B) A utility has issued a letter of intent or similar instrument committing to purchase power (electrical generation or output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source is executed within the timeframe established by the terms of the letter of intent but no later than November 15, 1992 or, where the letter of intent does not specify a timeframe, a power sales agreement applicable to the source is executed on or before November 15, 1992; or

(C) The source has been selected as a winning bidder in a utility competitive bid solicitation.

(7) A solid waste incinerator if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerators which began operation before January 1, 1985, the average annual fuel consumption of non-fossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of non-fossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, for calendar year 2000 or any year thereafter, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will not be exempt from the Acid Rain Program and be an affected source.

* * * * *

## PART 73—[AMENDED]

4. The authority citation for part 73 continues to read as follows:

**Authority:** 42 U.S.C. 7651.

5. Section 73.1 is proposed to be amended by reserving paragraphs (a) through (f) and by adding paragraph (g) to read as follows:

### § 73.1 Purpose.

* * * * *

(g) The application for, and distribution of, allowances for desulfurization of fuel by small diesel refineries.

6. Section 73.3 is proposed to be amended by revising the introductory text, by removing the definition of *New Independent Power Production Facility*, and by adding definitions to read as follows:

### § 73.3 Definitions.

For purposes of this part, terms shall have the meaning given in the Act, in 40 CFR parts 72 and 74–78, and in this section, as follows:

* * * * *

*Acid Rain Data System* means the management information system supporting the Acid Rain Program operations, including the NADB.

*Actual $SO_2$ emissions rate* means the annual average sulfur dioxide emissions rate for the unit measured in pounds per million Btu (lbs/mmBtu) for the specified calendar year; provided that the "1985 actual $SO_2$ emissions rate" for the unit shall be the rate specified by the Administrator in the National Allowance Data Base (NADB).

* * * * *

*Allowable $SO_2$ emissions rate* means the most stringent federally enforceable emissions limitation for sulfur dioxide (in lbs/mmBtu) applicable to the unit for the specified calendar year, or for such subsequent calendar year as determined by the Administrator where such a limitation does not exist for the specified year; provided that the "1985 allowable $SO_2$ emissions rate" for the unit shall be the rate specified by the Administrator in the National Allowance Data Base (NADB) under the data field "1985 annualized boiler $SO_2$ emission limit."

* * * * *

*Baseline* means the annual average quantity of fossil fuel consumed by a unit, measured in millions of British Thermal Units (mmBtu). In the event that a unit is listed in the NADB, the baseline will be as provided in the National Allowance Data Base (NADB) pursuant to section 402(4) of the Act, as adjusted by the outage hours listed in the NADB.

* * * * *

*Coal-fired* means, for the purposes of subpart B of this part, a unit that is listed in the NADB as using coal or coal-derived fuel under the data field "primary fuel indicator."

* * * * *

*Desulfurization* refers to various procedures whereby sulfur is removed from petroleum during or apart from the refining process. "Desulfurization" does not include such processes as dilution or blending of diesel fuel.

* * * * *

*Existing Utility Unit* means a utility unit that is an existing unit.

* * * * *

*National Allowance Data Base or NADB* means the data base established by the Administrator under section 402(4)(c) of the Act.

*New Independent Power Production Source (NIPPS)* means an IPPS that commences commercial operation on or after November 15, 1990.

* * * * *

*Small Diesel Refinery* means a refinery or portion of a refinery if, as of calendar year 1990 and as reported to the Department of Energy on Form 810, bona fide crude oil throughput of a refinery or portion of a refinery was less than 18,250,000 barrels per year and the refinery, or portion of a petroleum distilling refinery which produces diesel fuel, is owned or controlled by a refiner with a total combined bona fide crude oil throughput of less than 50,167,500 barrels per year.

* * * * *

*Utility System or system* means the totality of interconnected units and other generators controlled by the same utility operating company, as reported in the Acid Rain Data System.

*§§ 73.70 and 73.72 [Amended]*

6a. Subpart E is proposed to be amended by redesignating Table 1 of § 73.70 as Table 3 and by redesignating Table 2 of § 73.72 as Table 4.

7. Subpart B of part 73 is proposed to be added to read as follows:

### Subpart B—Allowance Allocations

Sec.

73.10 Initial Allocations for Phase I and II.
73.11 Revision of Allocations.
73.12 Rounding Procedures.
73.13 Procedures for Submittals.
73.14 [Reserved]
73.15 [Reserved]
73.16 Phase I Early Reduction Credits.
73.17 [Reserved]
73.18 Submittal Procedures for Units Commencing Commercial Operation During the Period From January 1, 1993 through December 31, 1995.
73.19 Certain Units with Declining $SO_2$ Rates.
73.20 Phase II Early Reduction Credits.
73.21 Phase II Repowering Allowances.
73.22 [Reserved]

Sec.
73.23 [Reserved]
73.24 [Reserved]
73.25 Phase I Extension Reserve.
73.26 Conservation and Renewable Energy Reserve.
73.27 Special Allowance Reserve.

## Subpart B—Allowance Allocations

### § 73.10 Initial Allocations for Phase I and II.

(a) *Phase I Allowances.* The Administrator will allocate allowances to the unit account for each unit listed in Table 1 of this part in the amount listed in Column A to be held in each future year subaccount for the years 1995 through 1999.

TABLE 1.—PROPOSED PHASE I ALLOWANCE ALLOCATIONS

| State name | Plant name | Boiler | Column A final phase 1 allocation | Column B auction and sales reserve |
|---|---|---|---|---|
| Alabama | Colbert | 1 | 13213 | 357 |
| | | 2 | 14907 | 403 |
| | | 3 | 14996 | 405 |
| | | 4 | 15005 | 405 |
| | | 5 | 36202 | 978 |
| | E. C. Gaston | 1 | 17624 | 476 |
| | | 2 | 18052 | 488 |
| | | 3 | 17626 | 482 |
| | | 4 | 18773 | 507 |
| | | 5 | 58265 | 1575 |
| Florida | Big Bend | BB01 | 27662 | 748 |
| | | BB02 | 26367 | 713 |
| | | BB03 | 26036 | 704 |
| | Crist | 6 | 18695 | 505 |
| | | 7 | 30846 | 834 |
| Georgia | Bowen | 1BLR | 54836 | 1482 |
| | | 2BLR | 53329 | 1441 |
| | | 3BLR | 69862 | 1888 |
| | | 4BLR | 69852 | 1888 |
| | Hammond | 1 | 8549 | 231 |
| | | 2 | 8977 | 243 |
| | | 3 | 8676 | 234 |
| | | 4 | 36650 | 990 |
| | Jack McDonough | MB1 | 19396 | 524 |
| | | MB2 | 20058 | 542 |
| | Wansley | 1 | 68906 | 1862 |
| | | 2 | 63706 | 1722 |
| | Yates | Y1BR | 7020 | 190 |
| | | Y2BR | 6855 | 185 |
| | | Y3BR | 6767 | 183 |
| | | Y4BR | 8676 | 234 |
| | | Y5BR | 9162 | 248 |
| | | Y6BR | 24108 | 652 |
| | | Y7BR | 20915 | 565 |
| Illinois | Baldwin | 1 | 46052 | 1245 |
| | | 2 | 48695 | 1316 |
| | | 3 | 46644 | 1261 |
| | Coffeen | 01 | 12925 | 349 |
| | | 02 | 39102 | 1057 |
| | Grand Tower | 09 | 6479 | 175 |
| | Hennepin | 2 | 20182 | 545 |
| | Joppa Steam | 1 | 12259 | 331 |
| | | 2 | 10487 | 283 |
| | | 3 | 11947 | 323 |
| | | 4 | 11061 | 298 |
| | | 5 | 11119 | 301 |
| | | 6 | 10341 | 279 |
| | Kincaid | 1 | 34564 | 934 |
| | | 2 | 37063 | 1002 |
| | Meredosia | 05 | 15227 | 411 |
| | Vermilion | 2 | 9735 | 263 |
| Indiana | Bailly | 7 | 12256 | 331 |
| | | 8 | 17134 | 463 |
| | Breed | 1 | 20280 | 548 |
| | Cayuga | 1 | 36581 | 989 |
| | | 2 | 37415 | 1011 |
| | Clifty Creek | 1 | 19620 | 530 |
| | | 2 | 19299 | 521 |
| | | 3 | 19873 | 537 |
| | | 4 | 19552 | 528 |
| | | 5 | 18851 | 509 |
| | | 6 | 19944 | 536 |
| | Elmer W. Stout | 50 | 4253 | 115 |
| | | 60 | 5229 | 141 |
| | | 70 | 25883 | 699 |
| | F. B. Culley | 2 | 4703 | 127 |
| | | 3 | 18603 | 503 |

TABLE 1.—PROPOSED PHASE I ALLOWANCE ALLOCATIONS—Continued

| State name | Plant name | Boiler | Column A final phase 1 allocation | Column B auction and sales reserve |
|---|---|---|---|---|
| | Frank E. Ratts | 1SG1 | 9131 | 247 |
| | | 2SG1 | 9296 | 251 |
| | Gibson | 1 | 44288 | 1197 |
| | | 2 | 44956 | 1215 |
| | | 3 | 45033 | 1217 |
| | | 4 | 44200 | 1195 |
| | H. T. Pritchard | 6 | 6325 | 171 |
| | Michigan City | 12 | 25553 | 691 |
| | Petersburg | 1 | 18011 | 487 |
| | | 2 | 35496 | 959 |
| | R. Gallagher | 1 | 7115 | 192 |
| | | 2 | 7960 | 216 |
| | | 3 | 7159 | 193 |
| | | 4 | 8386 | 227 |
| | Tanners Creek | U4 | 27209 | 735 |
| | Wabash River | 1 | 4385 | 118 |
| | | 3 | 3135 | 85 |
| | | 3 | 4111 | 111 |
| | | 5 | 4023 | 109 |
| | | 5 | 13462 | 364 |
| | Warrick | 4 | 28577 | 799 |
| Iowa | Burlington | 1 | 10428 | 282 |
| | Des Moines | 11 | 2259 | 61 |
| | George Neal | 1 | 2571 | 69 |
| | Milton L. Kapp | 2 | 13437 | 363 |
| | Prairie Creek | 4 | 7965 | 215 |
| | Riverside | 9 | 3885 | 105 |
| Kansas | Quindaro | 2 | 4109 | 111 |
| Kentucky | Coleman | C1 | 10954 | 296 |
| | | C2 | 12502 | 338 |
| | | C3 | 12015 | 325 |
| | Cooper | 1 | 7254 | 196 |
| | | 2 | 14917 | 403 |
| | E. W. Brown | 1 | 6923 | 187 |
| | | 2 | 10623 | 287 |
| | | 3 | 25413 | 687 |
| | Elmer Smith | 1 | 6348 | 172 |
| | | 2 | 14031 | 379 |
| | Ghent | 1 | 27662 | 748 |
| | Green River | 5 | 7614 | 206 |
| | H. L. Spurlock | 1 | 22161 | 599 |
| | HMP&L Station 2 | H1 | 12989 | 351 |
| | | H2 | 11986 | 324 |
| | Paradise | 3 | 57613 | 1557 |
| | Shawnee | 10 | 9902 | 268 |
| Maryland | C. P. Crane | 1 | 10056 | 272 |
| | | 2 | 8987 | 243 |
| | Chalk Point | 1 | 21333 | 577 |
| | | 2 | 23690 | 640 |
| | Morgantown | 1 | 34332 | 928 |
| | | 2 | 37467 | 1013 |
| Michigan | J. H. Campbell | 1 | 18773 | 507 |
| | | 2 | 22453 | 607 |
| Minnesota | High Bridge | 6 | 4158 | 112 |
| Mississippi | Jack Watson | 4 | 17439 | 471 |
| | | 5 | 35734 | 966 |
| Missouri | Asbury | 1 | 15764 | 426 |
| | James River | 5 | 4722 | 128 |
| | Labadie | 1 | 39055 | 1055 |
| | | 2 | 36718 | 992 |
| | | 3 | 39249 | 1061 |
| | DH | 34094 | 946 | |
| | Montrose | 1 | 7196 | 194 |
| | | 2 | 7984 | 216 |
| | | 3 | 9824 | 266 |
| | New Madrid | 1 | 27497 | 743 |
| | | 2 | 31625 | 855 |
| | Sibley | 3 | 15170 | 410 |
| | Sioux | 1 | 21976 | 594 |
| | | 2 | 23067 | 623 |
| | Thomas Hill | MB1 | 9960 | 270 |
| | | MB2 | 18880 | 510 |
| New Hampshire | Merrimack | 1 | 9922 | 268 |
| | | 2 | 21421 | 579 |
| New Jersey | B. L. England | 1 | 8822 | 238 |
| | | 2 | 11412 | 308 |
| New York | Dunkirk | 3 | 12260 | 332 |
| | | 4 | 13690 | 370 |

TABLE 1.—PROPOSED PHASE I ALLOWANCE ALLOCATIONS—Continued

| State name | Plant name | Boiler | Column A final phase 1 allocation | Column B auction and sales reserve |
|---|---|---|---|---|
| | Greenidge | 6 | 7342 | 198 |
| | Milliken | 1 | 10876 | 294 |
| | | 2 | 12063 | 327 |
| | Northport | 1 | 19289 | 521 |
| | | 2 | 23479 | 634 |
| | | 3 | 25783 | 697 |
| | Port Jefferson | 3 | 10194 | 276 |
| | | 4 | 12005 | 324 |
| | Ashtabula | 7 | 16351 | 606 |
| Ohio | Avon Lake | 11 | 12771 | 345 |
| | | 12 | 33413 | 903 |
| | Cardinal | 1 | 37568 | 1015 |
| | | 2 | 42008 | 1135 |
| | Conesville | 1 | 4615 | 125 |
| | | 2 | 5380 | 145 |
| | | 3 | 6029 | 163 |
| | | 4 | 53483 | 1445 |
| | Eastlake | 1 | 8551 | 231 |
| | | 2 | 9471 | 256 |
| | | 3 | 10984 | 297 |
| | | 4 | 15906 | 430 |
| | | 5 | 37349 | 1009 |
| | Edgewater | 13 | 5536 | 150 |
| | Gen. J. M. Gavin | 1 | 86690 | 2343 |
| | | 2 | 88312 | 2387 |
| | Kyger Creek | 1 | 18773 | 507 |
| | | 2 | 16072 | 466 |
| | | 3 | 17439 | 471 |
| | | 4 | 16216 | 492 |
| | | 5 | 18247 | 493 |
| | Miami Fort | 5-1 | 417 | 11 |
| | | 5-2 | 417 | 11 |
| | | 6 | 12475 | 337 |
| | | 7 | 42216 | 1141 |
| | Muskingum River | 1 | 16312 | 441 |
| | | 2 | 15533 | 420 |
| | | 3 | 15293 | 413 |
| | | 4 | 12914 | 349 |
| | | 5 | 44364 | 1199 |
| | Niles | 1 | 7608 | 206 |
| | | 2 | 9975 | 270 |
| | Picway | 9 | 5404 | 146 |
| | R. E. Burger | 5 | 3371 | 91 |
| | | 6 | 3371 | 91 |
| | | 7 | 11818 | 319 |
| | | 8 | 13626 | 368 |
| | W. H. Sammis | 5 | 26496 | 716 |
| | | 6 | 43773 | 1183 |
| | | 7 | 47380 | 1280 |
| | Walter C. Beckjord | 5 | 9811 | 265 |
| | | 6 | 25235 | 682 |
| Pennsylvania | Armstrong | 1 | 14031 | 379 |
| | | 2 | 15024 | 406 |
| | Brunner Island | 1 | 27030 | 730 |
| | | 2 | 30262 | 818 |
| | | 3 | 52404 | 1416 |
| | Cheswick | 1 | 36139 | 1031 |
| | Conemaugh | 1 | 58217 | 1573 |
| | | 2 | 64701 | 1749 |
| | Hatfield's Ferry | 1 | 36835 | 995 |
| | | 2 | 36336 | 982 |
| | | 3 | 39210 | 1060 |
| | Martins Creek | 1 | 12327 | 333 |
| | | 2 | 12483 | 337 |
| | Portland | 1 | 5784 | 156 |
| | | 2 | 9961 | 269 |
| | Shawville | 1 | 10048 | 272 |
| | | 2 | 10048 | 272 |
| | | 3 | 13846 | 374 |
| | | 4 | 13700 | 370 |
| | Sunbury | 1A | 1706 | 46 |
| | | 1B | 1706 | 46 |
| | | 2A | 1706 | 46 |
| | | 2B | 1706 | 46 |
| | | 3 | 1706 | 46 |
| | | 4 | 11149 | 301 |
| Tennessee | Allen | 1 | 14917 | 403 |
| | | 2 | 16329 | 441 |

TABLE 1.—PROPOSED PHASE I ALLOWANCE ALLOCATIONS—Continued

| State name | Plant name | Boiler | Column A final phase 1 allocation | Column B auction and sales reserve |
|---|---|---|---|---|
| | | 3 | 15258 | 412 |
| | Cumberland | 1 | 84419 | 2281 |
| | | 2 | 92344 | 2496 |
| | Gallatin | 1 | 17400 | 470 |
| | | 2 | 16855 | 455 |
| | | 3 | 19493 | 527 |
| | | 4 | 20701 | 559 |
| | Johnsonville | 1 | 7585 | 205 |
| | | 10 | 7351 | 199 |
| | | 2 | 7825 | 212 |
| | | 3 | 8189 | 221 |
| | | 4 | 7780 | 210 |
| | | 5 | 8023 | 217 |
| | | 6 | 7682 | 208 |
| | | 7 | 8744 | 236 |
| | | 8 | 8471 | 229 |
| | | 9 | 6894 | 186 |
| West Virginia | Albright | 3 | 11684 | 316 |
| | Fort Martin | 1 | 40496 | 1094 |
| | | 2 | 40116 | 1084 |
| | Harrison | 1 | 47341 | 1279 |
| | | 2 | 44936 | 1214 |
| | | 3 | 40408 | 1092 |
| | Kammer | 1 | 18247 | 493 |
| | | 2 | 18948 | 512 |
| | | 3 | 16932 | 458 |
| | Mitchell | 1 | 42823 | 1157 |
| | | 2 | 44312 | 1198 |
| | Mt. Storm | 1 | 42570 | 1150 |
| | | 2 | 34644 | 936 |
| | | 3 | 41314 | 1116 |
| | | 4 | 24099 | 651 |
| Wisconsin | Edgewater | 1 | 22103 | 597 |
| | Genoa | 1 | 5852 | 158 |
| | Nelson Dewey | 2 | 6504 | 176 |
| | North Oak Creek | 1 | 5083 | 137 |
| | | 2 | 5006 | 135 |
| | | 3 | 5229 | 141 |
| | | 4 | 6154 | 166 |
| | Pulliam | 8 | 7312 | 198 |
| | South Oak Creek | 5 | 9416 | 254 |
| | | 6 | 11723 | 317 |
| | | 7 | 15754 | 426 |
| | | 8 | 15375 | 415 |

(b) *Phase II Allowances.* (1) The Administrator will allocate allowances to the unit account for each unit listed in Table 2 of this part in the amount specified in the Table 2 Column E to be held in the future year subaccounts representing calendar years 2000 through 2009.

(2) The Administrator will allocate allowances to the unit account for each unit listed in Table 2 of this part in the amount specified in the Table 2 Column I to be held in the future year subaccounts representing calendar years 2010 and each year thereafter.

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Alabama | Barry | 1 | 4,437 | 113 | 0 | 0 | 3,874 | 4,437 | 113 | 0 | 3,900 |
| Alabama | Barry | 2 | 4,904 | 125 | 0 | 0 | 4,282 | 4,904 | 125 | 0 | 4,311 |
| Alabama | Barry | 3 | 10,069 | 256 | 0 | 0 | 8,792 | 10,069 | 256 | 0 | 8,851 |
| Alabama | Barry | 4 | 11,486 | 293 | 0 | 0 | 10,029 | 11,486 | 292 | 0 | 10,097 |
| Alabama | Barry | 5 | 28,381 | 723 | 0 | 0 | 24,782 | 28,381 | 721 | 0 | 24,950 |
| Alabama | Charles R Lowman. | 1 | 1,350 | 34 | 0 | 663 | 1,842 | 1,350 | 34 | 0 | 1,187 |
| Alabama | Charles R Lowman. | 2 | 8,028 | 205 | 0 | 0 | 7,009 | 8,028 | 204 | 0 | 7,057 |
| Alabama | Charles R Lowman. | 3 | 6,737 | 171 | 0 | 0 | 5,883 | 6,737 | 171 | 0 | 5,923 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Alabama | Chickasaw | 110 | 126 | 3 | 0 | 0 | 110 | 126 | 3 | 0 | 111 |
| Alabama | Colbert | 1 | 6,515 | 166 | 151 | 0 | 5,840 | 6,515 | 166 | 151 | 5,878 |
| Alabama | Colbert | 2 | 7,348 | 187 | 171 | 0 | 6,587 | 7,348 | 187 | 171 | 6,630 |
| Alabama | Colbert | 3 | 7,393 | 188 | 172 | 0 | 6,628 | 7,393 | 188 | 172 | 6,671 |
| Alabama | Colbert | 4 | 7,399 | 188 | 172 | 0 | 6,633 | 7,399 | 188 | 172 | 6,676 |
| Alabama | Colbert | 5 | 17,846 | 454 | 415 | 0 | 15,998 | 17,846 | 453 | 415 | 16,104 |
| Alabama | E C Gaston | 1 | 8,687 | 222 | 202 | 0 | 7,767 | 8,687 | 221 | 202 | 7,836 |
| Alabama | E C Gaston | 2 | 8,900 | 227 | 207 | 0 | 7,978 | 8,900 | 226 | 207 | 8,031 |
| Alabama | E C Gaston | 3 | 8,799 | 224 | 204 | 0 | 7,878 | 8,799 | 223 | 204 | 7,931 |
| Alabama | E C Gaston | 4 | 9,254 | 236 | 215 | 0 | 8,295 | 9,254 | 235 | 215 | 8,350 |
| Alabama | E C Gaston | 5 | 28,724 | 732 | 668 | 0 | 25,749 | 28,724 | 730 | 668 | 25,919 |
| Alabama | Future Fossil | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alabama | Gadsden | 1 | 2,237 | 57 | 0 | 0 | 1,953 | 2,237 | 57 | 0 | 1,966 |
| Alabama | Gadsden | 2 | 2,313 | 59 | 0 | 0 | 2,019 | 2,313 | 59 | 0 | 2,033 |
| Alabama | Gorgas | 5 | 1,427 | 36 | 0 | 501 | 1,747 | 1,427 | 36 | 0 | 1,255 |
| Alabama | Gorgas | 6 | 2,547 | 65 | 0 | 799 | 3,023 | 2,547 | 65 | 0 | 2,239 |
| Alabama | Gorgas | 7 | 2,852 | 73 | 0 | 636 | 3,126 | 2,852 | 72 | 0 | 2,508 |
| Alabama | Gorgas | 8 | 5,369 | 136 | 0 | 59 | 4,747 | 5,369 | 136 | 0 | 4,720 |
| Alabama | Gorgas | 9 | 5,307 | 135 | 0 | 102 | 4,736 | 5,307 | 135 | 0 | 4,665 |
| Alabama | Gorgas | 10 | 25,647 | 653 | 0 | 0 | 22,395 | 25,647 | 652 | 0 | 22,546 |
| Alabama | Greene County | 1 | 9,699 | 247 | 0 | 0 | 8,469 | 9,699 | 246 | 0 | 8,527 |
| Alabama | Greene County | 2 | 9,054 | 231 | 0 | 0 | 7,906 | 9,054 | 230 | 0 | 7,958 |
| Alabama | James H Miller Jr. | 1 | 13,827 | 352 | 0 | 2,092 | 14,166 | 13,827 | 351 | 0 | 12,156 |
| Alabama | James H Miller Jr. | 2 | 20,304 | 517 | 0 | 0 | 17,729 | 20,304 | 516 | 0 | 17,849 |
| Alabama | James H Miller Jr. | 3 | 19,908 | 507 | 0 | 0 | 17,383 | 19,908 | 506 | 0 | 17,501 |
| Alabama | James H Miller Jr. | 4 | 9,197 | 234 | 0 | 0 | 8,030 | 9,197 | 234 | 0 | 8,080 |
| Alabama | McIntosh-Caes | **1 | 1,071 | 27 | 0 | 0 | 935 | 1,071 | 27 | 0 | 942 |
| Alabama | McIntosh-Caes | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alabama | McWilliams | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alabama | McWilliams | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alabama | McWilliams | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alabama | McWilliams | **4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alabama | McWilliams | **CT1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alabama | McWilliams | **CT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alabama | McWilliams | **CT3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alabama | Widows Creek | 1 | 2,757 | 71 | 0 | 916 | 3,323 | 2,757 | 70 | 0 | 2,424 |
| Alabama | Widows Creek | 2 | 2,416 | 61 | 0 | 1,064 | 3,194 | 2,416 | 61 | 0 | 2,124 |
| Alabama | Widows Creek | 3 | 2,803 | 71 | 0 | 892 | 3,340 | 2,803 | 71 | 0 | 2,454 |
| Alabama | Widows Creek | 4 | 3,064 | 78 | 0 | 764 | 3,439 | 3,064 | 78 | 0 | 2,693 |
| Alabama | Widows Creek | 5 | 3,360 | 86 | 0 | 617 | 3,551 | 3,360 | 85 | 0 | 2,954 |
| Alabama | Widows Creek | 6 | 2,601 | 66 | 0 | 991 | 3,262 | 2,601 | 66 | 0 | 2,287 |
| Alabama | Widows Creek | 7 | 6,357 | 161 | 0 | 2,215 | 7,766 | 6,357 | 162 | 0 | 5,586 |
| Alabama | Widows Creek | 8 | 6,035 | 154 | 0 | 2,153 | 7,422 | 6,035 | 153 | 0 | 5,306 |
| Arizona | Agua Fria | 1 | 1 | 0 | 0 | 52 | 53 | 39 | 1 | 0 | 34 |
| Arizona | Agua Fria | 2 | 1 | 0 | 0 | 63 | 64 | 44 | 1 | 0 | 39 |
| Arizona | Agua Fria | 3 | 1 | 0 | 0 | 75 | 76 | 77 | 2 | 0 | 66 |
| Arizona | Apache Station | 1 | 379 | 10 | 0 | 0 | 331 | 379 | 10 | 0 | 333 |
| Arizona | Apache Station | 2 | 1,620 | 41 | 0 | 169 | 1,604 | 1,620 | 41 | 0 | 1,424 |
| Arizona | Apache Station | 3 | 3,235 | 83 | 0 | 178 | 3,002 | 3,235 | 82 | 0 | 2,844 |
| Arizona | Cholla | 1 | 2,321 | 59 | 0 | 190 | 2,217 | 2,321 | 59 | 0 | 2,049 |
| Arizona | Cholla | 2 | 5,779 | 147 | 0 | 382 | 5,428 | 5,779 | 147 | 0 | 5,060 |
| Arizona | Cholla | 3 | 5,541 | 141 | 0 | 295 | 5,133 | 5,541 | 141 | 0 | 4,871 |
| Arizona | Cholla | 4 | 8,879 | 226 | 0 | 556 | 8,309 | 8,879 | 226 | 0 | 7,905 |
| Arizona | Cholla | **5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | Coronado | U1B | 5,930 | 151 | 0 | 536 | 5,716 | 5,930 | 151 | 0 | 5,213 |
| Arizona | Coronado | U2B | 6,234 | 158 | 0 | 442 | 5,686 | 6,234 | 158 | 0 | 5,481 |
| Arizona | Crosscut | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | Crosscut | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | Crosscut | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | Crosscut | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | Crosscut | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | Crosscut | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | De Moss Petrie | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | De Moss Petrie | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | De Moss Petrie | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | De Moss Petrie | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | Gila Bend | GT1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | Gila Bend | GT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | Gila Bend | GT3 | | | | | | | | | |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(3)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 0 | 0 | 0 | 0 | 0 | 0 | 0 | | | | | |
| 0 | 0 | | | | | | | | | | |
| Arizona | Gila Bend | GT4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | Irvington | 1 | 0 | 0 | 0 | 16 | 16 | 15 | 0 | 0 | 14 |
| Arizona | Irvington | 2 | 1 | 0 | 0 | 27 | 28 | 45 | 1 | 0 | 40 |
| Arizona | Irvington | 3 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| Arizona | Irvington | 4 | 3,200 | 81 | 0 | 53 | 2,848 | 3,200 | 81 | 0 | 2,813 |
| Arizona | Kyrene | K–1 | 6 | 0 | 0 | 2 | 7 | 8 | 0 | 0 | 7 |
| Arizona | Kyrene | K–2 | 8 | 0 | 0 | 11 | 18 | 18 | 0 | 0 | 16 |
| Arizona | Navajo | 1 | 28,462 | 725 | 0 | 1,300 | 26,152 | 26,462 | 723 | 0 | 25,021 |
| Arizona | Navajo | 2 | 26,641 | 679 | 0 | 937 | 24,199 | 26,641 | 677 | 0 | 23,420 |
| Arizona | Navajo | 3 | 27,028 | 689 | 0 | 1,374 | 24,974 | 27,028 | 687 | 0 | 23,760 |
| Arizona | Ocotillo | 1 | 10 | 0 | 0 | 45 | 55 | 46 | 1 | 0 | 41 |
| Arizona | Ocotillo | 2 | 113 | 3 | 0 | 33 | 131 | 147 | 4 | 0 | 129 |
| Arizona | Saguaro | 1 | 215 | 5 | 0 | 18 | 204 | 215 | 5 | 0 | 169 |
| Arizona | Saguaro | 2 | 5 | 0 | 0 | 20 | 25 | 26 | 1 | 0 | 23 |
| Arizona | Springerville | 1 | 6,957 | 178 | 0 | 472 | 6,546 | 6,957 | 177 | 0 | 6,116 |
| Arizona | Springerville | 2 | 6,577 | 168 | 0 | 0 | 5,743 | 6,577 | 167 | 0 | 5,782 |
| Arizona | Springerville | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | West Phoenix | 4 | 8 | 0 | 0 | 4 | 11 | 10 | 0 | 0 | 9 |
| Arizona | West Phoenix | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | West Phoenix | 6 | 14 | 0 | 0 | 9 | 22 | 17 | 0 | 0 | 15 |
| Arizona | Yuma Axis | 1 | 1 | 0 | 0 | 41 | 42 | 45 | 1 | 0 | 40 |
| Arkansas | Carl Bailey | 01 | 9 | 0 | 0 | 2 | 10 | 9 | 0 | 0 | 8 |
| Arkansas | Cecil Lynch | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arkansas | Cecil Lynch | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arkansas | Cecil Lynch | 3 | 0 | 0 | 0 | 3 | 3 | 0 | 0 | 0 | 0 |
| Arkansas | Flint Creek | 1 | 16,604 | 423 | 0 | 654 | 15,152 | 16,604 | 422 | 0 | 14,596 |
| Arkansas | Hamilton Moses. | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arkansas | Hamilton Moses. | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arkansas | Harvey Couch | 1 | 0 | 0 | 0 | 7 | 7 | 3 | 0 | 0 | 3 |
| Arkansas | Harvey Couch | 2 | 9 | 0 | 0 | 103 | 111 | 129 | 3 | 0 | 114 |
| Arkansas | Independence | 1 | 19,533 | 498 | 0 | 1,051 | 18,107 | 19,533 | 496 | 0 | 17,172 |
| Arkansas | Independence | 2 | 19,554 | 498 | 0 | 1,275 | 18,349 | 19,554 | 497 | 0 | 17,190 |
| Arkansas | Lake Catherine | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arkansas | Lake Catherine | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arkansas | Lake Catherine | 3 | 4 | 0 | 0 | 4 | 8 | 7 | 0 | 0 | 6 |
| Arkansas | Lake Catherine | 4 | 130 | 3 | 0 | 42 | 156 | 385 | 10 | 0 | 338 |
| Arkansas | McClellan | 01 | 14 | 0 | 0 | 2 | 15 | 14 | 0 | 0 | 13 |
| Arkansas | NA2—7246 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arkansas | Robert E Ritchie. | 1 | 7 | 0 | 0 | 46 | 52 | 76 | 2 | 0 | 67 |
| Arkansas | Robert E Ritchie. | 2 | 2,439 | 62 | 0 | 13 | 2,143 | 2,439 | 62 | 0 | 2,144 |
| Arkansas | Thomas Fitzhugh. | 1 | 0 | 0 | 0 | 1 | 1 | 1 | 0 | 0 | 1 |
| Arkansas | White Bluff | 1 | 22,946 | 585 | 0 | 850 | 20,685 | 22,946 | 583 | 0 | 20,172 |
| Arkansas | White Bluff | 2 | 25,201 | 642 | 0 | 872 | 22,877 | 25,201 | 640 | 0 | 22,154 |
| California | Alamitos | 1 | 3,083 | 79 | 0 | 75 | 2,767 | 3,083 | 78 | 0 | 2,711 |
| California | Alamitos | 2 | 3 | 0 | 0 | 101 | 104 | 19 | 0 | 0 | 17 |
| California | Alamitos | 3 | 15 | 1 | 0 | 273 | 286 | 92 | 2 | 0 | 81 |
| California | Alamitos | 4 | 616 | 16 | 0 | 276 | 815 | 618 | 16 | 0 | 543 |
| California | Alamitos | 5 | 4,410 | 112 | 0 | 383 | 4,214 | 4,410 | 112 | 0 | 3,877 |
| California | Alamitos | 6 | 1,068 | 27 | 0 | 543 | 1,475 | 1,068 | 27 | 0 | 939 |
| California | Avon | 1 | 0 | 0 | 0 | 6 | 6 | 15 | 0 | 0 | 14 |
| California | Avon | 2 | 0 | 0 | 0 | 0 | 0 | 16 | 0 | 0 | 14 |
| California | Avon | 3 | 0 | 0 | 0 | 0 | 0 | 16 | 0 | 0 | 14 |
| California | Broadway | B1 | 142 | 4 | 0 | 3 | 127 | 142 | 4 | 0 | 124 |
| California | Broadway | B2 | 176 | 5 | 0 | 10 | 164 | 176 | 4 | 0 | 155 |
| California | Broadway | B3 | 12 | 0 | 0 | 62 | 73 | 81 | 2 | 0 | 71 |
| California | Contra Costa | 1 | 1 | 0 | 0 | 123 | 124 | 17 | 0 | 0 | 16 |
| California | Contra Costa | 2 | 2 | 0 | 0 | 0 | 2 | 26 | 0 | 0 | 23 |
| California | Contra Costa | 3 | 0 | 0 | 0 | 0 | 0 | 23 | 0 | 0 | 20 |
| California | Contra Costa | 4 | 0 | 0 | 0 | 0 | 0 | 16 | 0 | 0 | 15 |
| California | Contra Costa | 5 | 0 | 0 | 0 | 0 | 0 | 17 | 0 | 0 | 16 |
| California | Contra Costa | 6 | 0 | 0 | 0 | 0 | 0 | 14 | 0 | 0 | 13 |
| California | Contra Costa | 7 | 3 | 0 | 0 | 25 | 28 | 32 | 1 | 0 | 28 |
| California | Contra Costa | 8 | 1 | 0 | 0 | 51 | 52 | 46 | 1 | 0 | 41 |
| California | Contra Costa | 9 | 20 | 1 | 0 | 336 | 353 | 346 | 8 | 0 | 304 |
| California | Contra Costa | 10 | 4,538 | 115 | 0 | 311 | 4,274 | 4,538 | 115 | 0 | 3,990 |
| California | Cool Water | 1 | 2 | 0 | 0 | 1 | 10 | 12 | 0 | 0 | 11 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| California | Cool Water | 2 | 1 | 0 | 0 | 5 | 6 | 9 | 0 | 0 | 9 |
| California | El Centro | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | El Centro | 2 | 312 | 7 | 0 | 15 | 288 | 312 | 8 | 0 | 274 |
| California | El Centro | 3 | 661 | 17 | 0 | 36 | 613 | 661 | 17 | 0 | 581 |
| California | El Centro | 4 | 609 | 16 | 0 | 27 | 585 | 639 | 16 | 0 | 562 |
| California | El Segundo | 1 | 407 | 11 | 0 | 82 | 437 | 407 | 10 | 0 | 358 |
| California | El Segundo | 2 | 13 | 0 | 0 | 77 | 89 | 71 | 2 | 0 | 62 |
| California | El Segundo | 3 | 35 | 1 | 0 | 149 | 180 | 195 | 5 | 0 | 171 |
| California | El Segundo | 4 | 74 | 1 | 0 | 301 | 366 | 414 | 11 | 0 | 393 |
| California | Encina | 1 | 509 | 13 | 0 | 45 | 490 | 509 | 13 | 0 | 447 |
| California | Encina | 2 | 1,188 | 30 | 0 | 91 | 1,128 | 1,188 | 30 | 0 | 1,045 |
| California | Encina | 3 | 776 | 20 | 0 | 57 | 735 | 776 | 20 | 0 | 682 |
| California | Encina | 4 | 2,071 | 53 | 0 | 132 | 1,940 | 2,071 | 53 | 0 | 1,820 |
| California | Encina | 5 | 2,736 | 70 | 0 | 100 | 2,489 | 2,736 | 70 | 0 | 2,405 |
| California | Etiwanda | 1 | 107 | 3 | 0 | 23 | 116 | 107 | 3 | 0 | 94 |
| California | Etiwanda | 2 | 3 | 0 | 0 | 26 | 29 | 20 | 1 | 0 | 17 |
| California | Etiwanda | 3 | 1,334 | 34 | 0 | 203 | 1,368 | 1,334 | 34 | 0 | 1,173 |
| California | Etiwanda | 4 | 53 | 2 | 0 | 212 | 258 | 309 | 8 | 0 | 271 |
| California | Glenarm | 14 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Glenarm | 15 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Glenarm | 16 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Glenarm | 17 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Grayson | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Grayson | 4 | 100 | 2 | 0 | 15 | 103 | 100 | 3 | 0 | 87 |
| California | Grayson | 5 | 36 | 1 | 0 | 14 | 37 | 48 | 1 | 0 | 42 |
| California | Harbor Gen Station. | 1 | 70 | 1 | 0 | 7 | 66 | 70 | 2 | 0 | 61 |
| California | Harbor Gen Station. | 2 | 122 | 3 | 0 | 14 | 121 | 122 | 3 | 0 | 107 |
| California | Harbor Gen Station. | 3 | 98 | 2 | 0 | 8 | 94 | 98 | 2 | 0 | 87 |
| California | Harbor Gen Station. | 4 | 112 | 3 | 0 | 6 | 104 | 112 | 3 | 0 | 98 |
| California | Harbor Gen Station. | 5 | 175 | 5 | 0 | 18 | 171 | 175 | 4 | 0 | 154 |
| California | Harbor Gen Station. | **10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Harbor Gen Station. | **10A | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Harbor Gen Station. | **10B | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Haynes Gen Station. | 1 | 552 | 17 | 0 | 110 | 679 | 652 | 17 | 0 | 573 |
| California | Haynes Gen Station. | 2 | 374 | 10 | 0 | 10 | 336 | 374 | 8 | 0 | 329 |
| California | Haynes Gen Station. | 3 | 1,291 | 33 | 0 | 114 | 1,242 | 1,291 | 33 | 0 | 1,135 |
| California | Haynes Gen Station. | 4 | 971 | 25 | 0 | 151 | 998 | 971 | 25 | 0 | 853 |
| California | Haynes Gen Station. | 5 | 1,375 | 35 | 0 | 196 | 1,397 | 1,375 | 35 | 0 | 1,209 |
| California | Haynes Gen Station. | 6 | 1,449 | 37 | 0 | 258 | 1,521 | 1,449 | 37 | 0 | 1,274 |
| California | Highgrove | 1 | 3 | 0 | 0 | 1 | 4 | 3 | 0 | 0 | 3 |
| California | Highgrove | 2 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| California | Highgrove | 3 | 0 | 0 | 0 | 1 | 1 | 1 | 0 | 0 | 1 |
| California | Highgrove | 4 | 1 | 0 | 0 | 2 | 3 | 3 | 0 | 0 | 3 |
| California | Humboldt Bay | 1 | 389 | 10 | 0 | 18 | 358 | 389 | 10 | 0 | 342 |
| California | Humboldt Bay | 2 | 2 | 0 | 0 | 22 | 24 | 30 | 1 | 0 | 26 |
| California | Hunters Point | 3 | 5 | 0 | 0 | 70 | 75 | 53 | 1 | 0 | 47 |
| California | Hunters Point | 4 | 5 | 0 | 0 | 0 | 5 | 54 | 1 | 0 | 48 |
| California | Hunters Point | 5 | 2 | 0 | 0 | 71 | 73 | 48 | 1 | 0 | 42 |
| California | Hunters Point | 6 | 1 | 0 | 0 | 0 | 1 | 42 | 1 | 0 | 37 |
| California | Hunters Point | 7 | 9 | 0 | 0 | 182 | 190 | 194 | 5 | 0 | 170 |
| California | Huntington Beach. | 1 | 1,315 | 33 | 0 | 172 | 1,320 | 1,315 | 33 | 0 | 1,156 |
| California | Huntington Beach. | 2 | 1,106 | 28 | 0 | 164 | 1,130 | 1,106 | 28 | 0 | 972 |
| California | Huntington Beach. | 3 | 23 | 1 | 0 | 109 | 159 | 71 | 2 | 0 | 62 |
| California | Huntington Beach. | 4 | 28 | 1 | 0 | 150 | 174 | 87 | 2 | 0 | 77 |
| California | Kern | 1 | 0 | 0 | 0 | 3 | 3 | 2 | 0 | 0 | 2 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| California | Kern | 2 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 3 |
| California | Kern | 3 | 0 | 0 | 0 | 13 | 13 | 3 | 0 | 0 | 3 |
| California | Kern | 4 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 3 |
| California | Magnolia | M3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Magnolia | M4 | 36 | 1 | 0 | 4 | 37 | 38 | 1 | 0 | 33 |
| California | Mandalay | 1 | 1,321 | 33 | 0 | 220 | 1,374 | 1,321 | 34 | 0 | 1,161 |
| California | Mandalay | 2 | 1,243 | 32 | 0 | 202 | 1,287 | 1,243 | 32 | 0 | 1,092 |
| California | Martinez | 1 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 |
| California | Martinez | 2 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 |
| California | Martinez | 3 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 |
| California | Morro Bay | 1 | 1,609 | 41 | 0 | 151 | 1,556 | 1,609 | 41 | 0 | 1,414 |
| California | Morro Bay | 2 | 4 | 0 | 0 | 133 | 137 | 112 | 3 | 0 | 98 |
| California | Morro Bay | 3 | 3,966 | 102 | 0 | 326 | 3,810 | 3,988 | 101 | 0 | 3,506 |
| California | Morro Bay | 4 | 3,289 | 83 | 0 | 172 | 3,044 | 3,289 | 84 | 0 | 2,891 |
| California | Moss Landing | 1 | 0 | 0 | 0 | 122 | 122 | 18 | 0 | 0 | 17 |
| California | Moss Landing | 2 | 0 | 0 | 0 | 0 | 0 | 16 | 0 | 0 | 15 |
| California | Moss Landing | 3 | 0 | 0 | 0 | 0 | 0 | 21 | 0 | 0 | 19 |
| California | Moss Landing | 4 | 0 | 0 | 0 | 0 | 0 | 23 | 0 | 0 | 21 |
| California | Moss Landing | 5 | 0 | 0 | 0 | 0 | 0 | 22 | 0 | 0 | 21 |
| California | Moss Landing | 6 | 0 | 0 | 0 | 0 | 0 | 15 | 0 | 0 | 14 |
| California | Moss Landing | 7 | 5 | 0 | 0 | 73 | 78 | 59 | 1 | 0 | 52 |
| California | Moss Landing | 8 | 497 | 13 | 0 | 32 | 456 | 497 | 13 | 0 | 437 |
| California | Moss Landing | 6-1 | 9,268 | 236 | 0 | 804 | 8,897 | 9,268 | 235 | 0 | 8,148 |
| California | Moss Landing | 7-1 | 68 | 1 | 0 | 906 | 966 | 792 | 20 | 0 | 696 |
| California | Oleum | 1 | 140 | 2 | 0 | 4 | 126 | 140 | 4 | 0 | 122 |
| California | Oleum | 2 | 158 | 4 | 0 | 0 | 138 | 156 | 4 | 0 | 135 |
| California | Oleum | 3 | 278 | 8 | 0 | 0 | 242 | 278 | 8 | 0 | 244 |
| California | Oleum | 4 | 116 | 4 | 0 | 0 | 102 | 116 | 2 | 0 | 102 |
| California | Oleum | 5 | 200 | 4 | 0 | 0 | 176 | 200 | 6 | 0 | 174 |
| California | Oleum | 6 | 232 | 6 | 0 | 0 | 202 | 232 | 6 | 0 | 204 |
| California | Olive | 01 | 137 | 4 | 0 | 12 | 131 | 137 | 3 | 0 | 121 |
| California | Olive | 02 | 10 | 0 | 0 | 16 | 25 | 59 | 1 | 0 | 47 |
| California | Ormond Beach | 1 | 4,317 | 110 | 0 | 734 | 4,503 | 4,317 | 110 | 0 | 3,795 |
| California | Ormond Beach | 2 | 4,668 | 119 | 0 | 494 | 4,570 | 4,688 | 119 | 0 | 4,103 |
| California | Pittsburg | 1 | 1,704 | 43 | 0 | 147 | 1,635 | 1,704 | 43 | 0 | 1,498 |
| California | Pittsburg | 2 | 1,401 | 36 | 0 | 129 | 1,346 | 1,401 | 36 | 0 | 1,231 |
| California | Pittsburg | 3 | 1,646 | 42 | 0 | 144 | 1,582 | 1,646 | 42 | 0 | 1,447 |
| California | Pittsburg | 4 | 1,656 | 43 | 0 | 130 | 1,576 | 1,656 | 42 | 0 | 1,456 |
| California | Pittsburg | 5 | 10 | 0 | 0 | 273 | 282 | 326 | 8 | 0 | 289 |
| California | Pittsburg | 6 | 4,081 | 104 | 0 | 181 | 3,744 | 4,081 | 104 | 0 | 3,587 |
| California | Pittsburg | 7 | 26 | 1 | 0 | 711 | 734 | 713 | 18 | 0 | 627 |
| California | Potrero | 3-1 | 16 | 1 | 0 | 303 | 317 | 304 | 8 | 0 | 267 |
| California | Redondo Beach | 5 | 13 | 0 | 0 | 57 | 70 | 144 | 4 | 0 | 126 |
| California | Redondo Beach | 6 | 11 | 0 | 0 | 94 | 104 | 117 | 3 | 0 | 103 |
| California | Redondo Beach | 7 | 49 | 2 | 0 | 505 | 548 | 551 | 14 | 0 | 484 |
| California | Redondo Beach | 8 | 50 | 2 | 0 | 547 | 590 | 565 | 14 | 0 | 497 |
| California | Redondo Beach | 11 | 0 | 0 | 0 | 36 | 36 | 4 | 0 | 0 | 4 |
| California | Redondo Beach | 12 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| California | Redondo Beach | 13 | 0 | 0 | 0 | 0 | 0 | 4 | 0 | 0 | 4 |
| California | Redondo Beach | 14 | 0 | 0 | 0 | 0 | 0 | 4 | 0 | 0 | 4 |
| California | Redondo Beach | 15 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 3 |
| California | Redondo Beach | 16 | 0 | 0 | 0 | 0 | 0 | 5 | 0 | 0 | 5 |
| California | Redondo Beach | 17 | 0 | 0 | 0 | 0 | 0 | 6 | 0 | 0 | 6 |
| California | San Bernardino | 1 | 120 | 3 | 0 | 13 | 118 | 120 | 3 | 0 | 106 |
| California | San Bernardino | 2 | 7 | 0 | 0 | 11 | 17 | 22 | 1 | 0 | 19 |
| California | Scattergood Gen Sta | 1 | 732 | 19 | 0 | 111 | 750 | 732 | 19 | 0 | 643 |
| California | Scattergood Gen Sta | 2 | 652 | 17 | 0 | 87 | 656 | 652 | 17 | 0 | 573 |
| California | Scattergood Gen Sta | 3 | 4 | 0 | 0 | 255 | 259 | 265 | 7 | 0 | 251 |
| California | Silver Gate | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| California | Silver Gate | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Silver Gate | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Silver Gate | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Silver Gate | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Silver Gate | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | South Bay | 1 | 2,627 | 67 | 0 | 191 | 2,485 | 2,627 | 67 | 0 | 2,309 |
| California | South Bay | 2 | 1,920 | 48 | 0 | 94 | 1,771 | 1,920 | 49 | 0 | 1,688 |
| California | South Bay | 3 | 2,309 | 59 | 0 | 155 | 2,171 | 2,309 | 59 | 0 | 2,029 |
| California | South Bay | 4 | 632 | 16 | 0 | 49 | 601 | 632 | 16 | 0 | 550 |
| California | Station B | **HT | 0 | 0 | 0 | 0 | 0 | 5 | 0 | 0 | 5 |
| California | Valley Gen Station. | 1 | 115 | 3 | 0 | 21 | 121 | 115 | 3 | 0 | 101 |
| California | Valley Gen Station. | 2 | 136 | 4 | 0 | 21 | 139 | 136 | 3 | 0 | 120 |
| California | Valley Gen Station. | 3 | 444 | 11 | 0 | 0 | 388 | 444 | 11 | 0 | 391 |
| California | Valley Gen Station. | 4 | 337 | 8 | 0 | 56 | 351 | 337 | 8 | 0 | 286 |
| Colorado | Alamosa | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Alamosa | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Alamosa | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Alamosa | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Arapahoe | 1 | 237 | 6 | 0 | 14 | 221 | 237 | 6 | 0 | 206 |
| Colorado | Arapahoe | 2 | 262 | 7 | 0 | 18 | 247 | 262 | 7 | 0 | 230 |
| Colorado | Arapahoe | 3 | 196 | 5 | 0 | 10 | 181 | 196 | 5 | 0 | 172 |
| Colorado | Arapahoe | 4 | 2,086 | 53 | 0 | 100 | 1,921 | 2,086 | 53 | 0 | 1,834 |
| Colorado | Cameo | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Cameo | 2 | 972 | 25 | 0 | 53 | 901 | 972 | 25 | 0 | 854 |
| Colorado | Cherokee | 1 | 2,322 | 59 | 0 | 105 | 2,132 | 2,322 | 59 | 0 | 2,041 |
| Colorado | Cherokee | 2 | 3,105 | 79 | 0 | 119 | 2,830 | 3,105 | 79 | 0 | 2,729 |
| Colorado | Cherokee | 3 | 4,063 | 103 | 0 | 204 | 3,752 | 4,063 | 103 | 0 | 3,572 |
| Colorado | Cherokee | 4 | 8,135 | 207 | 0 | 411 | 7,514 | 8,135 | 207 | 0 | 7,151 |
| Colorado | Comanche | 1 | 8,399 | 214 | 0 | 344 | 7,678 | 8,399 | 213 | 0 | 7,364 |
| Colorado | Comanche | 2 | 7,357 | 187 | 0 | 470 | 6,894 | 7,357 | 187 | 0 | 6,467 |
| Colorado | Craig | C1 | 8,758 | 223 | 0 | 548 | 8,195 | 8,758 | 223 | 0 | 7,699 |
| Colorado | Craig | C2 | 8,387 | 214 | 0 | 501 | 7,824 | 8,387 | 213 | 0 | 7,373 |
| Colorado | Craig | C3 | 2,451 | 62 | 0 | 451 | 2,591 | 2,451 | 62 | 0 | 2,155 |
| Colorado | George Birdsall | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | George Birdsall | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | George Birdsall | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Hayden | H1 | 6,569 | 166 | 0 | 253 | 6,047 | 6,569 | 167 | 0 | 5,799 |
| Colorado | Hayden | H2 | 10,050 | 256 | 0 | 430 | 9,205 | 10,050 | 255 | 0 | 8,835 |
| Colorado | Lamar | 4 | 0 | 0 | 0 | 0 | 0 | 14 | 0 | 0 | 13 |
| Colorado | Martin Drake | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Martin Drake | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Martin Drake | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Martin Drake | 5 | 1,242 | 32 | 0 | 62 | 1,146 | 1,242 | 32 | 0 | 1,091 |
| Colorado | Martin Drake | 6 | 2,160 | 55 | 0 | 121 | 2,025 | 2,160 | 55 | 0 | 1,917 |
| Colorado | Martin Drake | 7 | 3,471 | 89 | 0 | 160 | 3,210 | 3,471 | 88 | 0 | 3,052 |
| Colorado | Nixon | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Nucla | 1 | 1,282 | 33 | 0 | 0 | 1,118 | 1,282 | 34 | 0 | 1,125 |
| Colorado | Pawnee | 1 | 15,698 | 400 | 0 | 697 | 14,404 | 15,698 | 399 | 0 | 13,800 |
| Colorado | Pawnee | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Pueblo | 22 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 3 |
| Colorado | Pueblo | 41 | 0 | 0 | 0 | 0 | 0 | 6 | 0 | 0 | 5 |
| Colorado | Pueblo | 49 | 0 | 0 | 0 | 0 | 0 | 25 | 1 | 0 | 22 |
| Colorado | Rawhide | 101 | 1,542 | 39 | 0 | 446 | 1,782 | 1,542 | 39 | 0 | 1,356 |
| Colorado | Ray D Nixon | 1 | 4,811 | 123 | 0 | 264 | 4,464 | 4,811 | 122 | 0 | 4,230 |
| Colorado | Rocky Ford | **1 | 0 | 0 | 0 | 0 | 0 | 13 | 0 | 0 | 12 |
| Colorado | Trinidad | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Trinidad | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Valmont | 5 | 3,403 | 86 | 0 | 156 | 3,128 | 3,403 | 86 | 0 | 2,992 |
| Colorado | Valmont | 11 | 0 | 0 | 0 | 4 | 4 | 0 | 0 | 0 | 0 |
| Colorado | Valmont | 12 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Valmont | 13 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Valmont | 14 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Valmont | 21 | 20 | 0 | 0 | 0 | 20 | 20 | 0 | 0 | 20 |
| Colorado | Valmont | 22 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Valmont | 23 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Valmont | 24 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | W N Clark | 55 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | W N Clark | 59 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Zuni | 1 | 389 | 10 | 0 | 0 | 340 | 389 | 10 | 0 | 342 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [3] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Colorado | Zuni | 2 | 0 | 0 | 0 | 0 | 0 | 7 | 0 | 0 | 6 |
| Colorado | Zuni | 3 | 1 | 0 | 0 | 2 | 5 | 10 | 0 | 0 | 9 |
| Connecticut | Bridgeport Harbor. | BHB1 | 2,375 | 61 | 0 | 0 | 2,074 | 2,375 | 60 | 0 | 2,068 |
| Connecticut | Bridgeport Harbor. | BHB2 | 5,401 | 137 | 0 | 0 | 4,716 | 5,401 | 137 | 0 | 4,748 |
| Connecticut | Bridgeport Harbor. | BHB3 | 13,119 | 335 | 0 | 0 | 11,455 | 13,119 | 333 | 0 | 11,533 |
| Connecticut | Devon | 3 | 1,119 | 29 | 0 | 0 | 977 | 1,119 | 28 | 0 | 964 |
| Connecticut | Devon | 6 | 1,026 | 26 | 0 | 0 | 896 | 1,026 | 26 | 0 | 902 |
| Connecticut | Devon | 7 | 3,208 | 82 | 0 | 0 | 2,801 | 3,208 | 82 | 0 | 2,820 |
| Connecticut | Devon | 8 | 3,431 | 87 | 0 | 0 | 2,996 | 3,431 | 87 | 0 | 3,016 |
| Connecticut | Devon | 4A | 195 | 5 | 0 | 0 | 170 | 195 | 5 | 0 | 171 |
| Connecticut | Devon | 4B | 196 | 5 | 0 | 0 | 171 | 196 | 5 | 0 | 172 |
| Connecticut | Devon | 5A | 177 | 5 | 0 | 0 | 154 | 177 | 4 | 0 | 156 |
| Connecticut | Devon | 5B | 177 | 5 | 0 | 0 | 154 | 177 | 4 | 0 | 156 |
| Connecticut | English | EB13 | 129 | 3 | 0 | 0 | 113 | 129 | 3 | 0 | 114 |
| Connecticut | English | EB14 | 180 | 5 | 0 | 0 | 157 | 180 | 5 | 0 | 158 |
| Connecticut | Middletown | 1 | 527 | 14 | 0 | 0 | 460 | 527 | 13 | 0 | 464 |
| Connecticut | Middletown | 2 | 1,519 | 39 | 0 | 0 | 1,326 | 1,519 | 39 | 0 | 1,335 |
| Connecticut | Middletown | 3 | 3,816 | 97 | 0 | 0 | 3,332 | 3,816 | 97 | 0 | 3,355 |
| Connecticut | Middletown | 4 | 2,730 | 70 | 0 | 0 | 2,383 | 2,730 | 69 | 0 | 2,400 |
| Connecticut | Montville | 5 | 1,380 | 35 | 0 | 0 | 1,205 | 1,380 | 35 | 0 | 1,213 |
| Connecticut | Montville | 6 | 6,486 | 165 | 0 | 0 | 5,663 | 6,486 | 165 | 0 | 5,702 |
| Connecticut | New Haven Harbor. | NHB1 | 14,934 | 381 | 0 | 0 | 13,039 | 14,934 | 379 | 0 | 13,129 |
| Connecticut | Norwalk Harbor | 1 | 5,875 | 149 | 0 | 0 | 5,130 | 5,875 | 149 | 0 | 5,165 |
| Connecticut | Norwalk Harbor | 2 | 6,236 | 158 | 0 | 0 | 5,446 | 6,236 | 158 | 0 | 5,482 |
| Connecticut | Pierce | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Connecticut | Pierce | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Connecticut | Pierce | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Connecticut | South Meadow | 11 | 508 | 14 | 0 | 0 | 442 | 508 | 13 | 0 | 446 |
| Connecticut | South Meadow | 12 | 466 | 12 | 0 | 0 | 406 | 466 | 12 | 0 | 410 |
| Connecticut | South Meadow | 13 | 812 | 22 | 0 | 0 | 708 | 812 | 20 | 0 | 714 |
| Delaware | Delaware City | B1 | 2,593 | 66 | 0 | 0 | 2,264 | 2,593 | 66 | 0 | 2,279 |
| Delaware | Delaware City | B2 | 2,530 | 65 | 0 | 0 | 2,209 | 2,530 | 65 | 0 | 2,223 |
| Delaware | Delaware City | B3 | 2,619 | 67 | 0 | 0 | 2,287 | 2,619 | 67 | 0 | 2,302 |
| Delaware | Delaware City | B4 | 1,410 | 36 | 0 | 0 | 1,232 | 1,410 | 36 | 0 | 1,239 |
| Delaware | Edge Moor | 3 | 4,065 | 104 | 0 | 0 | 3,549 | 4,065 | 103 | 0 | 3,574 |
| Delaware | Edge Moor | 4 | 7,194 | 184 | 0 | 0 | 6,281 | 7,194 | 183 | 0 | 6,324 |
| Delaware | Edge Moor | 5 | 7,384 | 188 | 0 | 0 | 6,447 | 7,384 | 186 | 0 | 6,491 |
| Delaware | Hay Road | **3 | 161 | 5 | 0 | 0 | 156 | 181 | 5 | 0 | 159 |
| Delaware | Hay Road | **4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Delaware | Indian River | 1 | 3,425 | 87 | 0 | 0 | 2,991 | 3,425 | 87 | 0 | 3,011 |
| Delaware | Indian River | 2 | 3,636 | 93 | 0 | 0 | 3,175 | 3,636 | 92 | 0 | 3,197 |
| Delaware | Indian River | 3 | 6,218 | 159 | 0 | 0 | 5,429 | 6,218 | 158 | 0 | 5,466 |
| Delaware | Indian River | 4 | 15,328 | 391 | 0 | 0 | 13,384 | 15,328 | 389 | 0 | 13,475 |
| Delaware | McKee Run | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Delaware | McKee Run | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Delaware | McKee Run | 3 | 2,110 | 54 | 0 | 730 | 2,572 | 2,110 | 54 | 0 | 1,854 |
| Delaware | Vansant | **11 | 157 | 4 | 0 | 0 | 137 | 157 | 4 | 0 | 138 |
| District of Columbia | Benning | 15 | 591 | 15 | 0 | 0 | 516 | 591 | 15 | 0 | 520 |
| District of Columbia | Benning | 16 | 978 | 25 | 0 | 0 | 854 | 978 | 25 | 0 | 860 |
| Florida | Anclote | 1 | 11,747 | 300 | 0 | 2,712 | 12,069 | 11,747 | 298 | 0 | 10,327 |
| Florida | Anclote | 2 | 12,429 | 316 | 0 | 2,051 | 12,904 | 12,429 | 316 | 0 | 10,926 |
| Florida | Arvah B Hopkins. | 1 | 52 | 2 | 0 | 35 | 80 | 87 | 2 | 0 | 77 |
| Florida | Arvah B Hopkins. | 2 | 6,311 | 161 | 0 | 0 | 5,511 | 6,311 | 160 | 0 | 5,548 |
| Florida | Avon Park | 2 | 565 | 14 | 0 | 0 | 493 | 565 | 14 | 0 | 497 |
| Florida | Big Bend | BB01 | 13,866 | 354 | 0 | 0 | 12,107 | 13,866 | 352 | 0 | 12,190 |
| Florida | Big Bend | BB02 | 13,941 | 355 | 0 | 0 | 12,173 | 13,941 | 354 | 0 | 12,256 |
| Florida | Big Bend | BB03 | 13,062 | 333 | 0 | 0 | 11,423 | 13,062 | 332 | 0 | 11,501 |
| Florida | Big Bend | BB04 | 10,037 | 256 | 0 | 0 | 8,764 | 10,037 | 255 | 0 | 8,823 |
| Florida | C D McIntosh Jr. | 1 | 1,035 | 27 | 0 | 0 | 903 | 1,035 | 26 | 0 | 910 |
| Florida | C D McIntosh Jr. | 2 | 1,176 | 29 | 0 | 0 | 1,027 | 1,176 | 30 | 0 | 1,034 |
| Florida | C D McIntosh Jr. | 3 | 11,348 | 289 | 0 | 0 | 9,909 | 11,348 | 288 | 0 | 9,976 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Florida | Cape Canaveral | PCC1 | 4,628 | 123 | 0 | 0 | 4,216 | 4,628 | 123 | 0 | 4,244 |
| Florida | Cape Canaveral | PCC2 | 5,671 | 144 | 0 | 0 | 4,952 | 5,671 | 144 | 0 | 4,965 |
| Florida | Combined Cycle 1 | **STG | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Crist | 1 | 40 | 1 | 0 | 0 | 35 | 40 | 1 | 0 | 35 |
| Florida | Crist | 2 | 0 | 0 | 0 | 3 | 3 | 3 | 0 | 0 | 3 |
| Florida | Crist | 3 | 0 | 0 | 0 | 4 | 4 | 4 | 0 | 0 | 4 |
| Florida | Crist | 4 | 2,820 | 72 | 0 | 0 | 2,462 | 2,820 | 72 | 0 | 2,478 |
| Florida | Crist | 5 | 2,777 | 70 | 0 | 0 | 2,425 | 2,777 | 71 | 0 | 2,441 |
| Florida | Crist | 5 | 9,598 | 244 | 0 | 0 | 8,361 | 9,596 | 244 | 0 | 8,437 |
| Florida | Crist | 7 | 14,312 | 365 | 0 | 0 | 12,496 | 14,312 | 364 | 0 | 12,561 |
| Florida | Crystal River | 1 | 14,202 | 362 | 0 | 0 | 12,401 | 14,202 | 361 | 0 | 12,455 |
| Florida | Crystal River | 2 | 16,335 | 416 | 0 | 0 | 14,263 | 16,335 | 415 | 0 | 14,360 |
| Florida | Crystal River | 4 | 27,035 | 688 | 0 | 0 | 23,606 | 27,035 | 687 | 0 | 23,706 |
| Florida | Crystal River | 5 | 28,864 | 734 | 0 | 0 | 25,200 | 28,864 | 734 | 0 | 25,373 |
| Florida | CT | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | CT | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | CT | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | CT | **4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Cutler | PCU5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Cutler | PCU6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Debary | **7 | 805 | 20 | 0 | 0 | 703 | 805 | 20 | 0 | 706 |
| Florida | Debary | **8 | 805 | 20 | 0 | 0 | 703 | 805 | 20 | 0 | 706 |
| Florida | Debary | **9 | 805 | 20 | 0 | 0 | 703 | 805 | 20 | 0 | 706 |
| Florida | Debary | **10 | 805 | 20 | 0 | 0 | 703 | 805 | 20 | 0 | 706 |
| Florida | Deerhaven | B1 | 44 | 1 | 0 | 58 | 97 | 100 | 3 | 0 | 97 |
| Florida | Deerhaven | B2 | 9,451 | 240 | 0 | 0 | 8,253 | 9,451 | 240 | 0 | 8,306 |
| Florida | Deerhaven | **NA1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Deerhaven | **NA2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | F J Gannon | GB01 | 3,830 | 96 | 0 | 484 | 3,828 | 3,830 | 97 | 0 | 3,367 |
| Florida | F J Gannon | GB02 | 4,733 | 121 | 0 | 260 | 4,413 | 4,733 | 120 | 0 | 4,161 |
| Florida | F J Gannon | GB03 | 6,473 | 164 | 0 | 0 | 5,652 | 6,473 | 164 | 0 | 5,691 |
| Florida | F J Gannon | GB04 | 7,057 | 180 | 0 | 48 | 6,211 | 7,057 | 178 | 0 | 6,204 |
| Florida | F J Gannon | GB05 | 7,473 | 190 | 0 | 0 | 6,525 | 7,473 | 190 | 0 | 6,569 |
| Florida | F J Gannon | GB06 | 11,522 | 294 | 0 | 0 | 10,061 | 11,522 | 293 | 0 | 10,129 |
| Florida | Fort Myers | PFM1 | 3,645 | 92 | 0 | 0 | 3,183 | 3,645 | 93 | 0 | 3,204 |
| Florida | Fort Myers | PFM2 | 10,809 | 275 | 0 | 0 | 9,436 | 10,809 | 276 | 0 | 9,502 |
| Florida | G E Turner | 2 | 93 | 2 | 0 | 456 | 537 | 93 | 2 | 0 | 92 |
| Florida | G E Turner | 3 | 821 | 21 | 0 | 0 | 716 | 821 | 21 | 0 | 722 |
| Florida | G E Turner | 4 | 696 | 17 | 0 | 0 | 610 | 696 | 18 | 0 | 613 |
| Florida | G W Ivey | **22 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Henry D King | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Henry D King | 7 | 64 | 1 | 0 | 7 | 63 | 71 | 1 | 0 | 62 |
| Florida | Henry D King | 8 | 6 | 0 | 0 | 21 | 26 | 27 | 1 | 0 | 23 |
| Florida | Higgins | 1 | 482 | 12 | 0 | 0 | 421 | 482 | 12 | 0 | 424 |
| Florida | Higgins | 2 | 543 | 14 | 0 | 0 | 474 | 543 | 14 | 0 | 477 |
| Florida | Higgins | 3 | 496 | 13 | 0 | 530 | 963 | 496 | 13 | 0 | 436 |
| Florida | Hookers Point | HB01 | 201 | 6 | 0 | 0 | 174 | 201 | 4 | 0 | 177 |
| Florida | Hookers Point | HB02 | 233 | 6 | 0 | 0 | 203 | 233 | 5 | 0 | 206 |
| Florida | Hookers Point | HB03 | 533 | 14 | 0 | 0 | 465 | 533 | 13 | 0 | 469 |
| Florida | Hookers Point | HB04 | 803 | 19 | 0 | 0 | 701 | 803 | 20 | 0 | 706 |
| Florida | Hookers Point | HB05 | 1,430 | 36 | 0 | 0 | 1,250 | 1,430 | 36 | 0 | 1,258 |
| Florida | Hookers Point | HB06 | 547 | 14 | 0 | 0 | 478 | 547 | 14 | 0 | 481 |
| Florida | Indian River | 1 | 1,362 | 35 | 0 | 0 | 1,189 | 1,362 | 35 | 0 | 1,197 |
| Florida | Indian River | 2 | 1,793 | 45 | 0 | 0 | 1,566 | 1,793 | 46 | 0 | 1,576 |
| Florida | Indian River | 3 | 4,167 | 106 | 0 | 0 | 3,638 | 4,167 | 106 | 0 | 3,663 |
| Florida | Indian River | **C | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Indian River | **D | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Intercession City | **7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Intercession City | **9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Intercession City | **9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Intercession City | **10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | J D Kennedy | 8 | 224 | 6 | 0 | 0 | 195 | 224 | 6 | 0 | 197 |
| Florida | J D Kennedy | 9 | 631 | 16 | 0 | 0 | 551 | 631 | 16 | 0 | 555 |
| Florida | J D Kennedy | 10 | 2,256 | 56 | 0 | 0 | 1,971 | 2,256 | 57 | 0 | 1,985 |
| Florida | J R Kelly | JRK6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | J R Kelly | JRK7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

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TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(3)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Florida | J R Kelly | JRK8 | 44 | 1 | 0 | 19 | 58 | 64 | 2 | 0 | 56 |
| Florida | Key West | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Key West | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Key West | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Key West | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Key West | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Larsen Memorial | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Larsen Memorial | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Larsen Memorial | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Larsen Memorial | 7 | 351 | 9 | 0 | 0 | 306 | 351 | 9 | 0 | 308 |
| Florida | Larsen Memorial | **8 | 759 | 19 | 0 | 0 | 663 | 759 | 19 | 0 | 668 |
| Florida | Larsen Memorial | **9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Lauderdale | PFL4 | 897 | 23 | 0 | 0 | 783 | 897 | 23 | 0 | 788 |
| Florida | Lauderdale | PFL5 | 919 | 24 | 0 | 0 | 802 | 919 | 23 | 0 | 806 |
| Florida | Lauderdale | **4GT1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Lauderdale | **4GT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Lauderdale | **5GT1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Lauderdale | **5GT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Manatee | PMT1 | 15,742 | 401 | 0 | 0 | 13,745 | 15,742 | 400 | 0 | 13,839 |
| Florida | Manatee | PMT2 | 14,510 | 369 | 0 | 0 | 12,670 | 14,510 | 369 | 0 | 12,755 |
| Florida | Martin | PMR1 | 5,821 | 148 | 0 | 0 | 5,083 | 5,821 | 148 | 0 | 5,117 |
| Florida | Martin | PMR2 | 6,902 | 176 | 0 | 0 | 6,026 | 6,902 | 175 | 0 | 6,068 |
| Florida | Martin | **3ST | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Martin | **4ST | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Martin | **3GT1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Martin | **3GT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Martin | **4GT1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Martin | **4GT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | NA 1–7236 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Northside | 1 | 5,588 | 143 | 0 | 1,316 | 6,197 | 5,586 | 142 | 0 | 4,912 |
| Florida | Northside | 2 | 1,197 | 30 | 0 | 5,158 | 6,203 | 1,197 | 30 | 0 | 1,053 |
| Florida | Northside | 3 | 7,596 | 193 | 0 | 4,425 | 11,058 | 7,596 | 193 | 0 | 6,678 |
| Florida | P L Bartow | 1 | 2,801 | 71 | 0 | 351 | 2,797 | 2,801 | 71 | 0 | 2,463 |
| Florida | P L Bartow | 2 | 2,774 | 70 | 0 | 528 | 2,950 | 2,774 | 70 | 0 | 2,439 |
| Florida | P L Bartow | 3 | 5,204 | 158 | 0 | 0 | 5,418 | 5,204 | 158 | 0 | 5,454 |
| Florida | Port Everglades | PPE1 | 2,674 | 68 | 0 | 0 | 2,335 | 2,674 | 68 | 0 | 2,351 |
| Florida | Port Everglades | PPE2 | 2,757 | 71 | 0 | 0 | 2,407 | 2,757 | 70 | 0 | 2,424 |
| Florida | Port Everglades | PPE3 | 6,721 | 171 | 0 | 0 | 5,868 | 6,721 | 171 | 0 | 5,908 |
| Florida | Port Everglades | PPE4 | 6,814 | 174 | 0 | 0 | 5,950 | 6,814 | 173 | 0 | 5,990 |
| Florida | Putnam | HRSG11 | 7 | 0 | 0 | 127 | 123 | 137 | 3 | 0 | 121 |
| Florida | Putnam | HRSG12 | 7 | 0 | 0 | 127 | 133 | 137 | 3 | 0 | 121 |
| Florida | Putnam | HRSG21 | 4 | 0 | 0 | 115 | 119 | 120 | 3 | 0 | 106 |
| Florida | Putnam | HRSG22 | 4 | 0 | 0 | 115 | 119 | 120 | 3 | 0 | 106 |
| Florida | Riviera | PRV2 | 107 | 3 | 0 | 0 | 93 | 107 | 3 | 0 | 94 |
| Florida | Riviera | PRV3 | 4,084 | 104 | 0 | 0 | 3,566 | 4,084 | 104 | 0 | 3,590 |
| Florida | Riviera | PRV4 | 4,051 | 103 | 0 | 0 | 3,537 | 4,051 | 103 | 0 | 3,561 |
| Florida | S O Purdom | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | S O Purdom | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | S O Purdom | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | S O Purdom | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | S O Purdom | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | S O Purdom | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | S O Purdom | 7 | 507 | 13 | 0 | 0 | 443 | 507 | 13 | 0 | 446 |
| Florida | Sanford | PSN3 | 1,240 | 32 | 0 | 0 | 1,082 | 1,240 | 32 | 0 | 1,090 |
| Florida | Sanford | PSN4 | 3,797 | 97 | 0 | 5,227 | 8,542 | 3,797 | 96 | 0 | 3,335 |
| Florida | Sanford | PSN5 | 3,679 | 94 | 0 | 0 | 3,212 | 3,679 | 93 | 0 | 3,235 |
| Florida | Schotz | 1 | 2,239 | 57 | 0 | 0 | 1,955 | 2,239 | 57 | 0 | 1,966 |
| Florida | Schotz | 2 | 2,343 | 60 | 0 | 0 | 2,046 | 2,343 | 60 | 0 | 2,059 |
| Florida | Sebring Dinner | 9693 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 3 |
| Florida | Seminole | 1 | 21,011 | 536 | 0 | 0 | 18,346 | 21,011 | 534 | 0 | 18,470 |
| Florida | Seminole | 2 | 21,011 | 536 | 0 | 0 | 18,346 | 21,011 | 534 | 0 | 18,470 |
| Florida | Smith | 1 | 7,403 | 189 | 0 | 0 | 6,464 | 7,403 | 188 | 0 | 6,508 |
| Florida | Smith | 2 | 8,688 | 222 | 0 | 0 | 7,586 | 8,688 | 221 | 0 | 7,637 |
| Florida | Southside | 1 | 1,063 | 27 | 0 | 0 | 928 | 1,063 | 27 | 0 | 934 |
| Florida | Southside | 2 | 1,100 | 28 | 0 | 0 | 960 | 1,100 | 28 | 0 | 967 |
| Florida | Southside | 3 | 260 | 7 | 0 | 0 | 227 | 260 | 7 | 0 | 228 |
| Florida | Southside | 4 | 704 | 18 | 0 | 0 | 614 | 704 | 18 | 0 | 618 |
| Florida | Southside | 5 | 2,070 | 53 | 0 | 0 | 1,807 | 2,070 | 53 | 0 | 1,819 |
| Florida | St Johns River Power | 1 | 13,238 | 336 | 0 | 0 | 11,559 | 13,238 | 336 | 0 | 11,638 |
| Florida | St Johns River Power | 2 | 12,998 | 332 | 0 | 0 | 11,349 | 12,996 | 330 | 0 | 11,427 |
| Florida | Stanton Energy | 1 | 12,906 | 326 | 0 | 0 | 11,270 | 12,906 | 326 | 0 | 11,345 |
| Florida | Stanton Energy | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Stock Island | 1 | 2,940 | 75 | 0 | 0 | 2,567 | 2,940 | 75 | 0 | 2,584 |
| Florida | Stock Island D1 | **NA1 | 114 | 3 | 0 | 0 | 99 | 114 | 3 | 0 | 100 |
| Florida | Stock Island D2 | **NA2 | 114 | 3 | 0 | 0 | 99 | 114 | 3 | 0 | 100 |
| Florida | Suwannee River | 1 | 290 | 8 | 0 | 0 | 253 | 290 | 7 | 0 | 255 |
| Florida | Suwannee River | 2 | 289 | 8 | 0 | 0 | 252 | 285 | 7 | 0 | 254 |
| Florida | Suwannee River | 3 | 741 | 19 | 0 | 0 | 647 | 741 | 18 | 0 | 651 |
| Florida | Tom G Smith | S-1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Tom G Smith | S-2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Tom G Smith | S-3 | 1 | 0 | 0 | 8 | 9 | 1 | 0 | 0 | 8 |
| Florida | Tom G Smith | S-4 | 75 | 2 | 0 | 14 | 79 | 89 | 2 | 0 | 79 |
| Florida | Turkey Point | PTP1 | 6,707 | 171 | 0 | 0 | 5,857 | 6,707 | 170 | 0 | 5,896 |
| Florida | Turkey Point | PTP2 | 6,757 | 172 | 0 | 0 | 5,900 | 6,757 | 172 | 0 | 5,940 |
| Florida | Vero Beach Municipal | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Vero Beach Municipal | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Vero Beach Municipal | 3 | 356 | 9 | 0 | 0 | 313 | 356 | 9 | 0 | 315 |
| Florida | Vero Beach Municipal | 4 | 97 | 2 | 0 | 21 | 106 | 117 | 3 | 0 | 103 |
| Florida | Vero Beach Municipal | **5 | 362 | 9 | 0 | 0 | 316 | 362 | 9 | 0 | 318 |
| Georgia | Arkwright | 1 | 1,472 | 37 | 0 | 155 | 1,444 | 1,472 | 37 | 0 | 1,294 |
| Georgia | Arkwright | 2 | 1,544 | 39 | 0 | 116 | 1,486 | 1,544 | 39 | 0 | 1,358 |
| Georgia | Arkwright | 3 | 1,759 | 45 | 0 | 0 | 1,536 | 1,759 | 45 | 0 | 1,546 |
| Georgia | Arkwright | 4 | 1,433 | 36 | 0 | 0 | 1,251 | 1,433 | 36 | 0 | 1,260 |
| Georgia | Atkinson | A2 | 1 | 0 | 0 | 3 | 4 | 4 | 0 | 0 | 4 |
| Georgia | Atkinson | A3 | 2 | 0 | 0 | 4 | 6 | 6 | 0 | 0 | 5 |
| Georgia | Atkinson | A4 | 2 | 0 | 0 | 3 | 5 | 5 | 0 | 0 | 5 |
| Georgia | Atkinson | A1A | 1 | 0 | 0 | 1 | 2 | 2 | 0 | 0 | 2 |
| Georgia | Atkinson | A1B | 1 | 0 | 0 | 1 | 2 | 2 | 0 | 0 | 2 |
| Georgia | Bowen | 1BLR | 26,288 | 670 | 611 | 0 | 23,565 | 26,288 | 666 | 611 | 23,721 |
| Georgia | Bowen | 2BLR | 27,036 | 689 | 628 | 0 | 24,235 | 27,006 | 687 | 626 | 24,395 |
| Georgia | Bowen | 3BLR | 34,442 | 878 | 800 | 0 | 30,871 | 34,442 | 876 | 801 | 31,076 |
| Georgia | Bowen | 4BLR | 34,434 | 877 | 800 | 0 | 30,865 | 34,434 | 876 | 800 | 31,070 |
| Georgia | Crisp | ST | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | Hammond | 1 | 4,215 | 108 | 98 | 0 | 3,778 | 4,215 | 107 | 98 | 3,803 |
| Georgia | Hammond | 2 | 4,424 | 113 | 103 | 0 | 3,965 | 4,424 | 112 | 103 | 3,993 |
| Georgia | Hammond | 3 | 4,277 | 109 | 99 | 0 | 3,833 | 4,277 | 109 | 99 | 3,859 |
| Georgia | Hammond | 4 | 18,068 | 460 | 420 | 0 | 16,196 | 18,068 | 459 | 420 | 16,304 |
| Georgia | Harllee Branch | 1 | 11,265 | 287 | 0 | 0 | 9,837 | 11,265 | 286 | 0 | 9,903 |
| Georgia | Harllee Branch | 2 | 13,325 | 339 | 0 | 0 | 11,635 | 13,325 | 338 | 0 | 11,713 |
| Georgia | Harllee Branch | 3 | 18,333 | 467 | 0 | 0 | 16,006 | 18,303 | 466 | 0 | 16,116 |
| Georgia | Harllee Branch | 4 | 18,193 | 463 | 0 | 0 | 15,886 | 18,193 | 462 | 0 | 15,994 |
| Georgia | Jack McDonough | MB1 | 9,556 | 243 | 222 | 0 | 8,566 | 9,556 | 243 | 222 | 8,622 |
| Georgia | Jack McDonough | MB2 | 9,890 | 252 | 230 | 0 | 8,866 | 9,890 | 251 | 230 | 8,925 |
| Georgia | McIntosh | 1 | 6,348 | 161 | 0 | 0 | 5,543 | 6,348 | 161 | 0 | 5,581 |
| Georgia | McManus | 1 | 102 | 2 | 0 | 746 | 835 | 102 | 3 | 0 | 86 |
| Georgia | McManus | 2 | 226 | 6 | 0 | 1,069 | 1,266 | 226 | 6 | 0 | 196 |
| Georgia | Mitchell | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | Mitchell | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | Mitchell | 3 | 5,242 | 159 | 0 | 0 | 5,450 | 5,242 | 159 | 0 | 5,467 |
| Georgia | Port Wentworth | 1 | 1,748 | 45 | 0 | 0 | 1,526 | 1,748 | 44 | 0 | 1,537 |
| Georgia | Port Wentworth | 2 | 1,672 | 42 | 0 | 45 | 1,505 | 1,672 | 42 | 0 | 1,476 |
| Georgia | Port Wentworth | 3 | 3,386 | 87 | 0 | 1 | 2,957 | 3,386 | 86 | 0 | 2,977 |



TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(3)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Florida | J R Kelly | JRK8 | 44 | 1 | 0 | 19 | 58 | 64 | 2 | 0 | 56 |
| Florida | Key West | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Key West | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Key West | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Key West | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Key West | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Larsen Memorial | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Larsen Memorial | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Larsen Memorial | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Larsen Memorial | 7 | 351 | 9 | 0 | 0 | 306 | 351 | 9 | 0 | 308 |
| Florida | Larsen Memorial | **8 | 759 | 19 | 0 | 0 | 663 | 759 | 19 | 0 | 668 |
| Florida | Larsen Memorial | **9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Lauderdale | PFL4 | 897 | 23 | 0 | 0 | 783 | 897 | 23 | 0 | 788 |
| Florida | Lauderdale | PFL5 | 919 | 24 | 0 | 0 | 802 | 919 | 23 | 0 | 806 |
| Florida | Lauderdale | **4GT1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Lauderdale | **4GT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Lauderdale | **5GT1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Lauderdale | **5GT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Manatee | PMT1 | 15,742 | 401 | 0 | 0 | 13,745 | 15,742 | 400 | 0 | 13,839 |
| Florida | Manatee | PMT2 | 14,510 | 369 | 0 | 0 | 12,670 | 14,510 | 369 | 0 | 12,755 |
| Florida | Martin | PMR1 | 5,821 | 148 | 0 | 0 | 5,083 | 5,821 | 148 | 0 | 5,117 |
| Florida | Martin | PMR2 | 6,902 | 176 | 0 | 0 | 6,026 | 6,902 | 175 | 0 | 6,068 |
| Florida | Martin | **3ST | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Martin | **4ST | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Martin | **3GT1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Martin | **3GT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Martin | **4GT1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Martin | **4GT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | NA 1–7236 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Northside | 1 | 5,588 | 143 | 0 | 1,316 | 6,197 | 5,586 | 142 | 0 | 4,912 |
| Florida | Northside | 2 | 1,197 | 30 | 0 | 5,158 | 6,203 | 1,197 | 30 | 0 | 1,053 |
| Florida | Northside | 3 | 7,596 | 193 | 0 | 4,425 | 11,058 | 7,596 | 193 | 0 | 6,678 |
| Florida | P L Bartow | 1 | 2,801 | 71 | 0 | 351 | 2,797 | 2,801 | 71 | 0 | 2,463 |
| Florida | P L Bartow | 2 | 2,774 | 70 | 0 | 528 | 2,950 | 2,774 | 70 | 0 | 2,439 |
| Florida | P L Bartow | 3 | 5,204 | 158 | 0 | 0 | 5,418 | 5,204 | 158 | 0 | 5,454 |
| Florida | Port Everglades | PPE1 | 2,674 | 68 | 0 | 0 | 2,335 | 2,674 | 68 | 0 | 2,351 |
| Florida | Port Everglades | PPE2 | 2,757 | 71 | 0 | 0 | 2,407 | 2,757 | 70 | 0 | 2,424 |
| Florida | Port Everglades | PPE3 | 6,721 | 171 | 0 | 0 | 5,868 | 6,721 | 171 | 0 | 5,908 |
| Florida | Port Everglades | PPE4 | 6,814 | 174 | 0 | 0 | 5,950 | 6,814 | 173 | 0 | 5,990 |
| Florida | Putnam | HRSG11 | 7 | 0 | 0 | 127 | 123 | 137 | 3 | 0 | 121 |
| Florida | Putnam | HRSG12 | 7 | 0 | 0 | 127 | 133 | 137 | 3 | 0 | 121 |
| Florida | Putnam | HRSG21 | 4 | 0 | 0 | 115 | 119 | 120 | 3 | 0 | 106 |
| Florida | Putnam | HRSG22 | 4 | 0 | 0 | 115 | 119 | 120 | 3 | 0 | 106 |
| Florida | Riviera | PRV2 | 107 | 3 | 0 | 0 | 93 | 107 | 3 | 0 | 94 |
| Florida | Riviera | PRV3 | 4,084 | 104 | 0 | 0 | 3,566 | 4,084 | 104 | 0 | 3,590 |
| Florida | Riviera | PRV4 | 4,051 | 103 | 0 | 0 | 3,537 | 4,051 | 103 | 0 | 3,561 |
| Florida | S O Purdom | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | S O Purdom | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | S O Purdom | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | S O Purdom | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | S O Purdom | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | S O Purdom | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | S O Purdom | 7 | 507 | 13 | 0 | 0 | 443 | 507 | 13 | 0 | 446 |
| Florida | Sanford | PSN3 | 1,240 | 32 | 0 | 0 | 1,082 | 1,240 | 32 | 0 | 1,090 |
| Florida | Sanford | PSN4 | 3,797 | 97 | 0 | 5,227 | 8,542 | 3,797 | 96 | 0 | 3,335 |
| Florida | Sanford | PSN5 | 3,679 | 94 | 0 | 0 | 3,212 | 3,679 | 93 | 0 | 3,235 |
| Florida | Schotz | 1 | 2,239 | 57 | 0 | 0 | 1,955 | 2,239 | 57 | 0 | 1,966 |
| Florida | Schotz | 2 | 2,343 | 60 | 0 | 0 | 2,046 | 2,343 | 60 | 0 | 2,059 |
| Florida | Sebring Dinner | 9693 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 3 |
| Florida | Seminole | 1 | 21,011 | 536 | 0 | 0 | 18,346 | 21,011 | 534 | 0 | 18,470 |
| Florida | Seminole | 2 | 21,011 | 536 | 0 | 0 | 18,346 | 21,011 | 534 | 0 | 18,470 |
| Florida | Smith | 1 | 7,403 | 189 | 0 | 0 | 6,464 | 7,403 | 188 | 0 | 6,508 |
| Florida | Smith | 2 | 8,688 | 222 | 0 | 0 | 7,586 | 8,688 | 221 | 0 | 7,637 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(3)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Georgia | Port Wentworth | 4 | 499 | 13 | 0 | 0 | 435 | 499 | 13 | 0 | 435 |
| Georgia | Riverside | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | Riverside | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | Riverside | 12 | 5 | 0 | 0 | 0 | 5 | 5 | 0 | 0 | 5 |
| Georgia | Scherer | 1 | 24,092 | 614 | 0 | 0 | 21,037 | 24,092 | 612 | 0 | 21,179 |
| Georgia | Scherer | 2 | 24,263 | 618 | 0 | 0 | 21,186 | 24,263 | 616 | 0 | 21,330 |
| Georgia | Scherer | 3 | 24,302 | 619 | 0 | 0 | 21,220 | 24,302 | 617 | 0 | 21,364 |
| Georgia | Scherer | 4 | 24,274 | 618 | 0 | 0 | 21,196 | 24,274 | 617 | 0 | 21,339 |
| Georgia | Wansley | 1 | 33,969 | 865 | 789 | 0 | 30,448 | 33,969 | 864 | 790 | 30,651 |
| Georgia | Wansley | 2 | 31,404 | 799 | 730 | 0 | 28,150 | 31,404 | 799 | 730 | 28,336 |
| Georgia | Yates | Y1BR | 3,459 | 88 | 80 | 0 | 3,100 | 3,459 | 88 | 80 | 3,121 |
| Georgia | Yates | Y2BR | 3,379 | 86 | 79 | 0 | 3,030 | 3,379 | 86 | 79 | 3,049 |
| Georgia | Yates | Y3BR | 3,337 | 85 | 78 | 0 | 2,992 | 3,337 | 85 | 78 | 3,011 |
| Georgia | Yates | Y4BR | 4,276 | 109 | 99 | 0 | 3,834 | 4,278 | 109 | 99 | 3,859 |
| Georgia | Yates | Y5BR | 4,515 | 115 | 105 | 0 | 4,047 | 4,515 | 115 | 105 | 4,074 |
| Georgia | Yates | Y6BR | 11,885 | 303 | 276 | 0 | 10,654 | 11,885 | 302 | 276 | 10,724 |
| Georgia | Yates | Y7BR | 11,691 | 298 | 272 | 0 | 10,480 | 11,691 | 297 | 272 | 10,550 |
| Illinois | Baldwin | 1 | 20,165 | 513 | 469 | 0 | 18,077 | 20,165 | 512 | 469 | 18,196 |
| Illinois | Baldwin | 2 | 21,320 | 543 | 496 | 0 | 19,112 | 21,320 | 542 | 496 | 19,238 |
| Illinois | Baldwin | 3 | 20,425 | 520 | 475 | 0 | 18,309 | 20,425 | 519 | 475 | 18,430 |
| Illinois | Breese | **ST1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Breese | **ST2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Carlyle | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Coffeen | 01 | 5,660 | 144 | 132 | 0 | 5,074 | 5,660 | 144 | 132 | 5,107 |
| Illinois | Coffeen | 202 | 17,119 | 436 | 398 | 0 | 15,346 | 17,119 | 435 | 398 | 15,447 |
| Illinois | Collins | 1 | 1,516 | 39 | 0 | 0 | 1,324 | 1,516 | 39 | 0 | 1,332 |
| Illinois | Collins | 2 | 1,295 | 32 | 0 | 0 | 1,131 | 1,295 | 33 | 0 | 1,138 |
| Illinois | Collins | 3 | 2,286 | 58 | 0 | 0 | 1,996 | 2,286 | 58 | 0 | 2,010 |
| Illinois | Collins | 4 | 1,866 | 48 | 0 | 0 | 1,629 | 1,866 | 47 | 0 | 1,641 |
| Illinois | Collins | 5 | 2,067 | 52 | 0 | 0 | 1,805 | 2,067 | 53 | 0 | 1,817 |
| Illinois | Crawford | 7 | 4,126 | 106 | 0 | 3,584 | 7,186 | 4,126 | 105 | 0 | 3,627 |
| Illinois | Crawford | 8 | 6,390 | 163 | 0 | 4,206 | 9,785 | 6,390 | 162 | 0 | 5,618 |
| Illinois | Dallman | 31 | 1,583 | 40 | 0 | 0 | 1,382 | 1,583 | 40 | 0 | 1,392 |
| Illinois | Dallman | 32 | 1,791 | 45 | 0 | 0 | 1,564 | 1,791 | 46 | 0 | 1,574 |
| Illinois | Dallman | 33 | 5,941 | 152 | 0 | 0 | 5,187 | 5,941 | 151 | 0 | 5,223 |
| Illinois | Duck Creek | 1 | 12,799 | 326 | 0 | 0 | 11,176 | 12,799 | 325 | 0 | 11,252 |
| Illinois | E D Edwards | 1 | 2,754 | 70 | 0 | 483 | 2,888 | 2,754 | 70 | 0 | 2,421 |
| Illinois | E D Edwards | 2 | 7,711 | 196 | 0 | 166 | 6,899 | 7,711 | 196 | 0 | 6,779 |
| Illinois | E D Edwards | 3 | 9,882 | 252 | 0 | 471 | 9,100 | 9,882 | 251 | 0 | 8,687 |
| Illinois | Fairfield | **4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Fisk | 19 | 4,109 | 105 | 0 | 6,360 | 9,948 | 4,109 | 104 | 0 | 3,613 |
| Illinois | Grand Tower | 07 | 283 | 8 | 0 | 0 | 247 | 283 | 7 | 0 | 249 |
| Illinois | Grand Tower | 08 | 269 | 7 | 0 | 0 | 235 | 269 | 7 | 0 | 236 |
| Illinois | Grand Tower | 09 | 2,835 | 72 | 66 | 0 | 2,542 | 2,835 | 72 | 66 | 2,558 |
| Illinois | Havana | 1 | 40 | 0 | 0 | 0 | 35 | 40 | 0 | 0 | 35 |
| Illinois | Havana | 2 | 50 | 0 | 0 | 0 | 45 | 50 | 0 | 0 | 45 |
| Illinois | Havana | 3 | 40 | 0 | 0 | 0 | 35 | 40 | 0 | 0 | 35 |
| Illinois | Havana | 4 | 40 | 0 | 0 | 0 | 35 | 40 | 0 | 0 | 35 |
| Illinois | Havana | 5 | 40 | 0 | 0 | 0 | 35 | 40 | 0 | 0 | 35 |
| Illinois | Havana | 6 | 40 | 0 | 0 | 0 | 35 | 40 | 0 | 0 | 35 |
| Illinois | Havana | 7 | 40 | 0 | 0 | 0 | 35 | 40 | 0 | 0 | 35 |
| Illinois | Havana | 8 | 40 | 0 | 0 | 0 | 35 | 40 | 0 | 0 | 35 |
| Illinois | Havana | 9 | 7,679 | 196 | 0 | 2,061 | 8,766 | 7,679 | 195 | 0 | 6,751 |
| Illinois | Hennepin | 1 | 2,307 | 58 | 0 | 0 | 2,015 | 2,307 | 59 | 0 | 2,028 |
| Illinois | Hennepin | 2 | 8,837 | 225 | 205 | 0 | 7,921 | 8,837 | 225 | 205 | 7,973 |
| Illinois | Hutsonville | 05 | 2,540 | 64 | 0 | 0 | 2,218 | 2,540 | 65 | 0 | 2,232 |
| Illinois | Hutsonville | 06 | 2,631 | 67 | 0 | 0 | 2,298 | 2,631 | 67 | 0 | 2,313 |
| Illinois | Joliet 29 | 71 | 6,659 | 170 | 0 | 1,732 | 7,546 | 6,659 | 169 | 0 | 5,854 |
| Illinois | Joliet 29 | 72 | 5,427 | 138 | 0 | 1,411 | 6,150 | 5,427 | 138 | 0 | 4,771 |
| Illinois | Joliet 29 | 81 | 6,241 | 159 | 0 | 1,813 | 7,262 | 6,241 | 159 | 0 | 5,486 |
| Illinois | Joliet 29 | 82 | 6,466 | 165 | 0 | 1,878 | 7,524 | 6,466 | 164 | 0 | 5,684 |
| Illinois | Joliet 9 | 5 | 6,714 | 171 | 0 | 2,767 | 8,630 | 6,714 | 171 | 0 | 5,902 |
| Illinois | Joppa Steam | 1 | 6,042 | 154 | 0 | 0 | 5,276 | 6,042 | 154 | 0 | 5,311 |
| Illinois | Joppa Steam | 2 | 5,168 | 132 | 0 | 0 | 4,512 | 5,168 | 131 | 0 | 4,543 |
| Illinois | Joppa Steam | 3 | 5,888 | 150 | 0 | 0 | 5,141 | 5,888 | 150 | 0 | 5,176 |
| Illinois | Joppa Steam | 4 | 5,454 | 139 | 0 | 0 | 4,762 | 5,454 | 139 | 0 | 4,794 |
| Illinois | Joppa Steam | 5 | 5,479 | 140 | 0 | 0 | 4,784 | 5,479 | 139 | 0 | 4,817 |
| Illinois | Joppa Steam | 6 | 5,096 | 130 | 0 | 0 | 4,450 | 5,096 | 129 | 0 | 4,480 |
| Illinois | Kincaid | 1 | 15,134 | 385 | 352 | 0 | 13,567 | 15,134 | 385 | 352 | 13,656 |
| Illinois | Kincaid | 2 | 16,676 | 425 | 388 | 0 | 14,949 | 16,676 | 424 | 388 | 15,047 |
| Illinois | Lakeside | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Lakeside | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Lakeside | 7 | 722 | 18 | 0 | 0 | 631 | 722 | 18 | 0 | 635 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Illinois | Lakeside | 5 | 371 | 8 | 0 | 0 | 324 | 371 | 9 | 0 | 327 |
| Illinois | Lakeside | GT1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Lakeside | GT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Marion | 1 | 534 | 14 | 0 | 0 | 466 | 534 | 14 | 0 | 469 |
| Illinois | Marion | 2 | 547 | 14 | 0 | 0 | 478 | 547 | 14 | 0 | 481 |
| Illinois | Marion | 3 | 593 | 15 | 0 | 0 | 518 | 593 | 15 | 0 | 521 |
| Illinois | Marion | 4 | 7,817 | 200 | 0 | 0 | 6,825 | 7,817 | 199 | 0 | 6,871 |
| Illinois | Meredosia | 01 | 341 | 8 | 0 | 0 | 296 | 341 | 9 | 0 | 299 |
| Illinois | Meredosia | 02 | 367 | 9 | 0 | 0 | 321 | 367 | 9 | 0 | 323 |
| Illinois | Meredosia | 03 | 320 | 8 | 0 | 0 | 279 | 320 | 8 | 0 | 281 |
| Illinois | Meredosia | 04 | 291 | 8 | 0 | 0 | 254 | 291 | 7 | 0 | 256 |
| Illinois | Meredosia | 05 | 6,668 | 170 | 155 | 0 | 5,977 | 6,666 | 169 | 155 | 6,017 |
| Illinois | Meredosia | 06 | 52 | 2 | 0 | 0 | 45 | 52 | 1 | 0 | 46 |
| Illinois | Moline | 22 | 0 | 0 | 0 | 0 | 0 | 6 | 0 | 0 | 5 |
| Illinois | Moline | 23 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| Illinois | Newton | 1 | 17,854 | 455 | 0 | 0 | 15,589 | 17,854 | 454 | 0 | 15,695 |
| Illinois | Newton | 2 | 15,919 | 406 | 0 | 0 | 13,900 | 15,919 | 404 | 0 | 13,995 |
| Illinois | Pearl Station | 1A | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Peru | **4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Powerton | 51 | 9,631 | 245 | 0 | 2,249 | 10,659 | 9,631 | 245 | 0 | 9,486 |
| Illinois | Powerton | 52 | 9,515 | 243 | 0 | 2,221 | 10,529 | 9,515 | 242 | 0 | 9,364 |
| Illinois | Powerton | 61 | 9,787 | 250 | 0 | 1,928 | 10,473 | 9,787 | 248 | 0 | 9,603 |
| Illinois | Powerton | 62 | 9,864 | 251 | 0 | 1,943 | 10,556 | 9,864 | 251 | 0 | 9,671 |
| Illinois | R S Wallace | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | R S Wallace | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | R S Wallace | 7 | 0 | 0 | 0 | 369 | 369 | 0 | 0 | 0 | 0 |
| Illinois | R S Wallace | 8 | 0 | 0 | 0 | 369 | 369 | 0 | 0 | 0 | 0 |
| Illinois | R S Wallace | 9 | 70 | 1 | 0 | 830 | 891 | 70 | 2 | 0 | 61 |
| Illinois | R S Wallace | 10 | 202 | 5 | 0 | 2,229 | 2,405 | 202 | 5 | 0 | 178 |
| Illinois | South Main Street | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | South Main Street | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Venice | 1 | 5 | 0 | 0 | 0 | 5 | 5 | 0 | 0 | 5 |
| Illinois | Venice | 2 | 2 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 2 |
| Illinois | Venice | 3 | 19 | 0 | 0 | 0 | 17 | 19 | 0 | 0 | 17 |
| Illinois | Venice | 4 | 16 | 0 | 0 | 0 | 14 | 16 | 0 | 0 | 14 |
| Illinois | Venice | 5 | 11 | 0 | 0 | 0 | 10 | 11 | 0 | 0 | 10 |
| Illinois | Venice | 6 | 10 | 0 | 0 | 0 | 10 | 10 | 0 | 0 | 10 |
| Illinois | Venice | 7 | 2 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 2 |
| Illinois | Venice | 8 | 2 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 2 |
| Illinois | Vermilion | 1 | 3,239 | 83 | 0 | 0 | 2,826 | 3,239 | 82 | 0 | 2,848 |
| Illinois | Vermilion | 2 | 4,264 | 108 | 99 | 0 | 3,822 | 4,264 | 108 | 99 | 3,848 |
| Illinois | Waukegan | 7 | 7,203 | 184 | 0 | 1,889 | 8,178 | 7,203 | 183 | 0 | 8,332 |
| Illinois | Waukegan | 8 | 5,710 | 146 | 0 | 2,810 | 7,796 | 5,710 | 145 | 0 | 5,020 |
| Illinois | Waukegan | 17 | 1,712 | 43 | 0 | 1,586 | 3,081 | 1,712 | 44 | 0 | 1,505 |
| Illinois | Will County | 1 | 2,914 | 74 | 0 | 2,740 | 5,254 | 2,914 | 74 | 0 | 2,562 |
| Illinois | Will County | 2 | 2,857 | 73 | 0 | 2,024 | 4,819 | 2,857 | 73 | 0 | 2,511 |
| Illinois | Will County | 3 | 5,926 | 151 | 0 | 1,786 | 6,962 | 5,925 | 151 | 0 | 5,211 |
| Illinois | Will County | 4 | 10,418 | 265 | 0 | 4,631 | 13,728 | 10,418 | 265 | 0 | 9,158 |
| Illinois | Winnetka | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Winnetka | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Winnetka | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Winnetka | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Winnetka | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Wood River | 1 | 0 | 0 | 0 | 3 | 3 | 3 | 0 | 0 | 3 |
| Illinois | Wood River | 2 | 0 | 0 | 0 | 3 | 3 | 3 | 0 | 0 | 3 |
| Illinois | Wood River | 3 | 0 | 0 | 0 | 3 | 3 | 3 | 0 | 0 | 3 |
| Illinois | Wood River | 4 | 2,009 | 51 | 0 | 495 | 2,250 | 2,009 | 51 | 0 | 1,766 |
| Illinois | Wood River | 5 | 10,834 | 276 | 0 | 0 | 9,460 | 10,834 | 275 | 0 | 9,524 |
| Indiana | A B Brown | 1 | 6,123 | 156 | 0 | 0 | 5,346 | 6,123 | 156 | 0 | 5,382 |
| Indiana | A B Brown | 2 | 5,176 | 132 | 0 | 0 | 4,519 | 5,176 | 132 | 0 | 4,550 |
| Indiana | A B Brown | **4 | 730 | 19 | 0 | 0 | 637 | 730 | 19 | 0 | 641 |
| Indiana | Bailly | 7 | 5,355 | 137 | 124 | 0 | 4,800 | 5,355 | 136 | 124 | 4,832 |
| Indiana | Bailly | 8 | 7,648 | 195 | 178 | 0 | 6,856 | 7,648 | 194 | 178 | 6,902 |
| Indiana | Breed | 1 | 8,878 | 226 | 206 | 0 | 7,958 | 8,878 | 226 | 206 | 8,010 |
| Indiana | Cayuga | 1 | 16,018 | 408 | 372 | 0 | 14,356 | 16,018 | 407 | 372 | 14,453 |
| Indiana | Cayuga | 2 | 16,380 | 417 | 381 | 0 | 14,684 | 16,380 | 416 | 381 | 14,781 |
| Indiana | Clifty Creek | 1 | 9,673 | 247 | 0 | 0 | 8,446 | 9,673 | 246 | 0 | 8,503 |
| Indiana | Clifty Creek | 2 | 9,511 | 242 | 0 | 0 | 8,305 | 9,511 | 242 | 0 | 8,361 |
| Indiana | Clifty Creek | 3 | 9,797 | 250 | 0 | 0 | 8,554 | 9,797 | 249 | 0 | 8,612 |
| Indiana | Clifty Creek | 4 | 9,638 | 246 | 0 | 0 | 8,415 | 9,636 | 245 | 0 | 8,473 |
| Indiana | Clifty Creek | 5 | 9,292 | 237 | 0 | 0 | 8,114 | 9,292 | 236 | 0 | 8,169 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Indiana | Clifty Creek | 6 | 9,781 | 249 | 0 | 0 | 8,541 | 9,781 | 249 | 0 | 8,598 |
| Indiana | Crawfordsville | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Crawfordsville | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Dean H Mitchell | 4 | 1,681 | 42 | 0 | 1,625 | 3,094 | 1,681 | 43 | 0 | 1,477 |
| Indiana | Dean H Mitchell | 5 | 2,122 | 54 | 0 | 1,147 | 3,009 | 2,122 | 54 | 0 | 1,865 |
| Indiana | Dean H Mitchell | 6 | 1,907 | 49 | 0 | 1,286 | 2,951 | 1,907 | 46 | 0 | 1,677 |
| Indiana | Dean H Mitchell | 11 | 1,397 | 36 | 0 | 1,418 | 2,638 | 1,397 | 36 | 0 | 1,228 |
| Indiana | Edwardsport | 6–1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Edwardsport | 7–1 | 397 | 9 | 0 | 0 | 347 | 397 | 10 | 0 | 350 |
| Indiana | Edwardsport | 7–2 | 404 | 10 | 0 | 0 | 353 | 404 | 10 | 0 | 355 |
| Indiana | Edwardsport | 8–1 | 429 | 10 | 0 | 0 | 376 | 429 | 11 | 0 | 377 |
| Indiana | Elmer W Stout | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Elmer W Stout | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Elmer W Stout | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Elmer W Stout | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Elmer W Stout | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Elmer W Stout | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Elmer W Stout | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Elmer W Stout | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Elmer W Stout | 9 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 |
| Indiana | Elmer W Stout | 10 | 2 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 2 |
| Indiana | Elmer W Stout | 50 | 1,864 | 48 | 43 | 0 | 1,670 | 1,864 | 47 | 43 | 1,682 |
| Indiana | Elmer W Stout | 69 | 2,291 | 58 | 53 | 0 | 2,053 | 2,291 | 58 | 53 | 2,067 |
| Indiana | Elmer W Stout | 70 | 11,332 | 289 | 263 | 0 | 10,157 | 11,332 | 286 | 263 | 10,225 |
| Indiana | F B Culley | 1 | 945 | 24 | 0 | 0 | 825 | 945 | 24 | 0 | 831 |
| Indiana | F B Culley | 2 | 1,958 | 50 | 45 | 0 | 1,754 | 1,958 | 50 | 46 | 1,767 |
| Indiana | F B Culley | 3 | 8,146 | 208 | 189 | 0 | 7,301 | 8,146 | 207 | 189 | 7,350 |
| Indiana | Frank E Ratts | 1SG1 | 4,000 | 102 | 93 | 0 | 3,586 | 4,000 | 102 | 93 | 3,609 |
| Indiana | Frank E Ratts | 2SG1 | 4,073 | 104 | 95 | 0 | 3,651 | 4,073 | 103 | 95 | 3,676 |
| Indiana | Gibson | 1 | 19,390 | 494 | 451 | 0 | 17,382 | 19,390 | 493 | 451 | 17,496 |
| Indiana | Gibson | 2 | 19,683 | 501 | 457 | 0 | 17,644 | 19,663 | 500 | 457 | 17,760 |
| Indiana | Gibson | 3 | 19,717 | 502 | 458 | 0 | 17,674 | 19,717 | 501 | 458 | 17,791 |
| Indiana | Gibson | 4 | 19,355 | 493 | 450 | 0 | 17,350 | 19,355 | 492 | 450 | 17,465 |
| Indiana | Gibson | 5 | 20,781 | 529 | 0 | 0 | 18,145 | 20,781 | 526 | 0 | 18,258 |
| Indiana | H T Pritchard | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | H T Pritchard | 2 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 |
| Indiana | H T Pritchard | 3 | 274 | 7 | 0 | 0 | 239 | 274 | 7 | 0 | 241 |
| Indiana | H T Pritchard | 4 | 609 | 15 | 0 | 0 | 532 | 609 | 15 | 0 | 536 |
| Indiana | H T Pritchard | 5 | 681 | 17 | 0 | 0 | 594 | 681 | 17 | 0 | 599 |
| Indiana | H T Pritchard | 6 | 2,769 | 71 | 64 | 0 | 2,482 | 2,769 | 70 | 64 | 2,499 |
| Indiana | Jasper 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Logansport | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Logansport | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Merom | 1SG1 | 17,055 | 435 | 0 | 0 | 14,892 | 17,055 | 433 | 0 | 14,993 |
| Indiana | Merom | 2SG1 | 16,939 | 432 | 0 | 0 | 14,791 | 16,939 | 430 | 0 | 14,891 |
| Indiana | Michigan City | 4 | 1,039 | 26 | 0 | 0 | 907 | 1,039 | 26 | 0 | 914 |
| Indiana | Michigan City | 5 | 1,154 | 29 | 0 | 0 | 1,007 | 1,154 | 29 | 0 | 1,015 |
| Indiana | Michigan City | 6 | 1,165 | 31 | 0 | 0 | 1,017 | 1,165 | 30 | 0 | 1,023 |
| Indiana | Michigan City | 12 | 11,189 | 285 | 260 | 0 | 10,030 | 11,189 | 284 | 260 | 10,096 |
| Indiana | NA 1-7221 | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | NA 1-7221 | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | NA 1-7221 | ** 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | NA 1-7221 | ** 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | NA 1-7228 | ** 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | NA 1-7228 | ** 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | NA 1-7228 | ** 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | NA 1-7228 | ** 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | NA 1-7228 | ** 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Noblesville | 1 | 75 | 3 | 0 | 0 | 65 | 75 | 2 | 0 | 66 |
| Indiana | Noblesville | 2 | 62 | 2 | 0 | 0 | 55 | 62 | 2 | 0 | 54 |
| Indiana | Noblesville | 3 | 46 | 2 | 0 | 0 | 39 | 46 | 1 | 0 | 40 |
| Indiana | Perry K | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Perry K | 12 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Perry K | 13 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Perry K | 14 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Perry K | 15 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Perry K | 16 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Perry K | 17 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Perry K | 18 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [3] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(2)) | Total annual phase II |
| Indiana | Perry W | 17 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Perry W | 18 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Peru | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Peru | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Petersburg | 1 | 7,889 | 201 | 183 | 0 | 7,071 | 7,889 | 200 | 183 | 7,119 |
| Indiana | Petersburg | 2 | 15,544 | 396 | 361 | 0 | 13,934 | 15,544 | 395 | 361 | 14,026 |
| Indiana | Petersburg | 3 | 19,296 | 491 | 0 | 0 | 16,849 | 19,296 | 490 | 0 | 16,963 |
| Indiana | Petersburg | 4 | 15,384 | 392 | 0 | 0 | 13,439 | 15,384 | 391 | 0 | 13,524 |
| Indiana | R Gallagher | 1 | 3,238 | 83 | 75 | 0 | 2,902 | 3,238 | 82 | 75 | 2,922 |
| Indiana | R Gallagher | 2 | 3,494 | 89 | 81 | 0 | 3,132 | 3,494 | 89 | 81 | 3,152 |
| Indiana | R Gallagher | 3 | 3,134 | 80 | 73 | 0 | 2,810 | 3,134 | 80 | 73 | 2,828 |
| Indiana | R Gallagher | 4 | 3,265 | 84 | 76 | 0 | 2,927 | 3,265 | 83 | 76 | 2,948 |
| Indiana | R M Schahfer | 14 | 5,559 | 141 | 0 | 5,433 | 10,282 | 5,553 | 141 | 0 | 4,882 |
| Indiana | R M Schahfer | 15 | 5,069 | 130 | 0 | 6,165 | 10,608 | 5,069 | 129 | 0 | 4,474 |
| Indiana | R M Schahfer | 17 | 5,969 | 152 | 0 | 0 | 5,212 | 5,969 | 152 | 0 | 5,247 |
| Indiana | R M Schahfer | 18 | 5,930 | 151 | 0 | 0 | 5,178 | 5,930 | 151 | 0 | 5,213 |
| Indiana | Rockport | MB1 | 37,716 | 961 | 0 | 0 | 32,930 | 37,716 | 959 | 0 | 33,154 |
| Indiana | Rockport | MB2 | 37,716 | 961 | 0 | 0 | 32,930 | 37,716 | 959 | 0 | 33,154 |
| Indiana | State Line | 3 | 3,938 | 100 | 0 | 1,265 | 4,704 | 3,938 | 100 | 0 | 3,462 |
| Indiana | State Line | 4 | 6,882 | 175 | 0 | 892 | 6,901 | 6,882 | 175 | 0 | 6,050 |
| Indiana | Tanners Creek | U1 | 2,324 | 59 | 0 | 733 | 2,782 | 2,324 | 59 | 0 | 2,043 |
| Indiana | Tanners Creek | U2 | 2,439 | 62 | 0 | 655 | 2,785 | 2,439 | 62 | 0 | 2,144 |
| Indiana | Tanners Creek | U3 | 2,609 | 67 | 0 | 1,776 | 4,054 | 2,609 | 66 | 0 | 2,294 |
| Indiana | Tanners Creek | U4 | 11,915 | 303 | 277 | 0 | 10,881 | 11,915 | 303 | 277 | 10,751 |
| Indiana | Wabash River | 1 | 1,918 | 48 | 45 | 0 | 1,720 | 1,918 | 49 | 45 | 1,731 |
| Indiana | Wabash River | 2 | 1,549 | 39 | 36 | 0 | 1,389 | 1,549 | 39 | 36 | 1,396 |
| Indiana | Wabash River | 3 | 1,799 | 45 | 42 | 0 | 1,613 | 1,799 | 46 | 42 | 1,623 |
| Indiana | Wabash River | 4 | 1,750 | 45 | 0 | 0 | 1,528 | 1,750 | 44 | 0 | 1,539 |
| Indiana | Wabash River | 5 | 1,761 | 45 | 41 | 0 | 1,579 | 1,761 | 45 | 41 | 1,589 |
| Indiana | Wabash River | 6 | 5,894 | 150 | 137 | 0 | 5,293 | 5,894 | 150 | 137 | 5,318 |
| Indiana | Warrick | 4 | 11,698 | 298 | 272 | 0 | 10,486 | 11,698 | 297 | 272 | 10,556 |
| Indiana | Whitewater Valley | 1 | 2,557 | 65 | 0 | 0 | 2,233 | 2,557 | 65 | 0 | 2,248 |
| Indiana | Whitewater Valley | 2 | 7,650 | 195 | 0 | 0 | 6,680 | 7,650 | 194 | 0 | 6,725 |
| Iowa | Ames | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Ames | 7 | 460 | 11 | 0 | 0 | 402 | 460 | 12 | 0 | 404 |
| Iowa | Ames | 8 | 2,095 | 53 | 0 | 0 | 1,830 | 2,095 | 53 | 0 | 1,842 |
| Iowa | Atlantic | ** 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Atlantic | ** 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Boone | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Burlington | 1 | 5,141 | 131 | 0 | 0 | 4,489 | 5,141 | 131 | 0 | 4,519 |
| Iowa | Council Bluffs | 1 | 745 | 19 | 0 | 453 | 1,104 | 745 | 19 | 0 | 655 |
| Iowa | Council Bluffs | 2 | 1,059 | 27 | 0 | 716 | 1,640 | 1,059 | 27 | 0 | 931 |
| Iowa | Council Bluffs | 3 | 18,234 | 464 | 0 | 0 | 15,922 | 18,234 | 463 | 0 | 16,009 |
| Iowa | Denison | ** 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Des Moines | 10 | 187 | 4 | 0 | 0 | 164 | 187 | 5 | 0 | 164 |
| Iowa | Des Moines | 11 | 279 | 7 | 0 | 0 | 244 | 279 | 7 | 0 | 245 |
| Iowa | Des Moines | ** 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Debuque | 1 | 1,279 | 33 | 0 | 0 | 1,117 | 1,279 | 32 | 0 | 1,125 |
| Iowa | Debuque | 5 | 349 | 9 | 0 | 0 | 304 | 349 | 9 | 0 | 307 |
| Iowa | Debuque | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Earl F Wisdom | 1 | 433 | 11 | 0 | 0 | 378 | 433 | 11 | 0 | 381 |
| Iowa | Fair Station | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Fair Station | 2 | 6,370 | 162 | 0 | 0 | 5,562 | 6,370 | 162 | 0 | 5,600 |
| Iowa | George Neal | 1 | 2,640 | 66 | 0 | 0 | 2,305 | 2,640 | 67 | 0 | 2,321 |
| Iowa | George Neal | 2 | 5,025 | 128 | 0 | 4,629 | 9,016 | 5,025 | 128 | 0 | 4,417 |
| Iowa | George Neal | 3 | 9,760 | 249 | 0 | 3,710 | 12,232 | 9,760 | 248 | 0 | 8,580 |
| Iowa | George Neal | 4 | 17,305 | 441 | 0 | 0 | 15,110 | 17,305 | 440 | 0 | 15,212 |
| Iowa | Graettinger | ** 5 | 11 | 0 | 0 | 0 | 10 | 11 | 0 | 0 | 10 |
| Iowa | Grinnell | ** 2 | 217 | 5 | 0 | 0 | 190 | 217 | 5 | 0 | 190 |
| Iowa | Humboldt | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Humboldt | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Humboldt | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Humboldt | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Iowa Falls | ** 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Lansing | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Lansing | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Lansing | 3 | 547 | 14 | 0 | 0 | 478 | 547 | 14 | 0 | 461 |
| Iowa | Lansing | 4 | 4,956 | 126 | 0 | 289 | 4,617 | 4,956 | 126 | 0 | 4,357 |
| Iowa | Lime Creek | ** 1 | 291 | 8 | 0 | 0 | 254 | 291 | 7 | 0 | 256 |
| Iowa | Lime Creek | ** 2 | 291 | 8 | 0 | 0 | 254 | 291 | 7 | 0 | 256 |
| Iowa | Louisa | 101 | 17,817 | 453 | 0 | 0 | 15,558 | 17,817 | 453 | 0 | 15,662 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(3)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Iowa | Maynard Station | 1 | 35 | 1 | 0 | 0 | 31 | 35 | 1 | 0 | 31 |
| Iowa | Milton L Kapp | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Milton L Kapp | 2 | 5,622 | 168 | 0 | 0 | 5,783 | 5,622 | 168 | 0 | 5,822 |
| Iowa | Mt Pleasant | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Mt Pleasant | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Muscatine | 5 | 0 | 0 | 0 | 0 | 0 | (1) | 0 | 0 | (1) |
| Iowa | Muscatine | 6 | 0 | 0 | 0 | 0 | 0 | (7) | 0 | 0 | (5) |
| Iowa | Muscatine | 7 | 0 | 0 | 0 | 0 | 0 | (516) | (13) | 0 | (454) |
| Iowa | Muscatine | 8 | 1,556 | 39 | 0 | 0 | 1,359 | 1,556 | 40 | 0 | 1,367 |
| Iowa | Muscatine | 9 | 2,316 | 59 | 0 | 0 | 2,022 | 2,316 | 59 | 0 | 2,036 |
| Iowa | NA 1–7230 | ** 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | NA 1–7230 | ** 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Ottumwa | 1 | 21,819 | 556 | 0 | 0 | 19,051 | 21,819 | 554 | 0 | 19,181 |
| Iowa | Pella | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Pella | 6 | 756 | 19 | 0 | 0 | 660 | 756 | 19 | 0 | 665 |
| Iowa | Pella | 7 | 975 | 24 | 0 | 0 | 852 | 975 | 25 | 0 | 857 |
| Iowa | Pella | 8 | 26 | 1 | 0 | 44 | 69 | 26 | 1 | 0 | 25 |
| Iowa | Prairie Creek | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Prairie Creek | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Prairie Creek | 3 | 829 | 21 | 0 | 0 | 724 | 829 | 21 | 0 | 729 |
| Iowa | Prairie Creek | 4 | 3,924 | 100 | 0 | 0 | 3,428 | 3,924 | 100 | 0 | 3,449 |
| Iowa | Riverside | 6 | 462 | 11 | 0 | 0 | 404 | 462 | 12 | 0 | 405 |
| Iowa | Riverside | 7 | 560 | 14 | 0 | 0 | 489 | 560 | 14 | 0 | 492 |
| Iowa | Riverside | 8 | 461 | 11 | 0 | 0 | 403 | 461 | 11 | 0 | 406 |
| Iowa | Riverside | 9 | 1,975 | 50 | 0 | 0 | 1,725 | 1,975 | 50 | 0 | 1,736 |
| Iowa | Sixth Street | 1 | 930 | 25 | 0 | 0 | 811 | 930 | 24 | 0 | 816 |
| Iowa | Sixth Street | 2 | 201 | 5 | 0 | 0 | 177 | 201 | 6 | 0 | 177 |
| Iowa | Sixth Street | 3 | 177 | 5 | 0 | 0 | 154 | 177 | 6 | 0 | 154 |
| Iowa | Sixth Street | 4 | 85 | 3 | 0 | 0 | 75 | 85 | 1 | 0 | 77 |
| Iowa | Sixth Street | 5 | 352 | 8 | 0 | 0 | 308 | 352 | 10 | 0 | 308 |
| Iowa | Streeter Station | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Streeter Station | 7 | 633 | 16 | 0 | 0 | 553 | 633 | 16 | 0 | 557 |
| Iowa | Sutherland | 1 | 228 | 6 | 0 | 0 | 199 | 228 | 6 | 0 | 200 |
| Iowa | Sutherland | 2 | 429 | 11 | 0 | 0 | 375 | 429 | 11 | 0 | 377 |
| Iowa | Sutherland | 3 | 2,505 | 64 | 0 | 0 | 2,187 | 2,505 | 64 | 0 | 2,202 |
| Kansas | Abilene | ** 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Abilene | ** ST1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Arthur Mullergren | 3 | 0 | 0 | 0 | 1 | 1 | 1 | 0 | 0 | 1 |
| Kansas | Chanute 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Chanute 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Chanute 1 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Chanute 1 | ** 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Chanute 1 | ** 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Cimarron River | 1 | 0 | 0 | 0 | 12 | 12 | 12 | 0 | 0 | 11 |
| Kansas | Clay Center | ** 4 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Kansas | Clay Center | ** 5 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| Kansas | Clay Center | ** 6 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 3 |
| Kansas | Coffeyville | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Coffeyville | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Coffeyville | 4 | 1 | 0 | 0 | 10 | 11 | 11 | 0 | 0 | 10 |
| Kansas | Colby | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Colby | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | East 12th St | 4 | 1 | 0 | 0 | 9 | 10 | 9 | 0 | 0 | 8 |
| Kansas | Garden City | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Garden City | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Garden City | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Garden City | S–2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Gordon Evans | 1 | 1 | 0 | 0 | 62 | 63 | 64 | 2 | 0 | 56 |
| Kansas | Gordon Evans | 2 | 1 | 0 | 0 | 24 | 25 | 24 | 1 | 0 | 21 |
| Kansas | Hays | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Hays | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Holcomb | SGU1 | 4,583 | 117 | 0 | 0 | 4,002 | 4,583 | 116 | 0 | 4,029 |
| Kansas | Hutchinson | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Hutchinson | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Hutchinson | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Hutchinson | 4 | 0 | 0 | 0 | 18 | 18 | 18 | 0 | 0 | 16 |
| Kansas | Iola | 15552 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Kansas | Iola | 19505 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Kansas | Iola | W7952 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Jeffrey Energy Centr. | 1 | 19,555 | 498 | 0 | 0 | 17,075 | 19,555 | 497 | 0 | 17,191 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Kansas | Jeffrey Energy Centr. | 2 | 20,668 | 525 | 0 | 0 | 18,047 | 20,668 | 525 | 0 | 18,169 |
| Kansas | Jeffrey Energy Centr. | 3 | 23,580 | 601 | 0 | 0 | 20,589 | 23,580 | 599 | 0 | 20,729 |
| Kansas | Judson Large | 4 | 1 | 0 | 0 | 38 | 39 | 39 | 1 | 0 | 34 |
| Kansas | Kaw | 1 | 900 | 23 | 0 | 0 | 786 | 900 | 23 | 0 | 791 |
| Kansas | Kaw | 2 | 707 | 18 | 0 | 0 | 617 | 707 | 18 | 0 | 621 |
| Kansas | Kaw | 3 | 590 | 15 | 0 | 0 | 515 | 590 | 15 | 0 | 519 |
| Kansas | Kingman | ** 9 | 58 | 2 | 0 | 0 | 51 | 58 | 1 | 0 | 51 |
| Kansas | La Cygne | 1 | 16,432 | 419 | 0 | 3,525 | 17,873 | 16,432 | 417 | 0 | 14,445 |
| Kansas | La Cygne | 2 | 17,210 | 438 | 0 | 0 | 15,027 | 17,210 | 437 | 0 | 15,129 |
| Kansas | Larned | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Larned | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Larned | 3 | 0 | 0 | 0 | 0 | 0 | 4 | 0 | 0 | 4 |
| Kansas | Lawrence | 2 | 2 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 2 |
| Kansas | Lawrence | 3 | 713 | 18 | 0 | 1,506 | 2,129 | 713 | 16 | 0 | 627 |
| Kansas | Lawrence | 4 | 1,061 | 27 | 0 | 662 | 1,806 | 1,061 | 27 | 0 | 951 |
| Kansas | Lawrence | 5 | 4,279 | 109 | 0 | 1,614 | 5,350 | 4,279 | 108 | 0 | 3,761 |
| Kansas | McPherson 1 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | McPherson 2 | 1 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 |
| Kansas | Mulvane | ** 7 | 6 | 0 | 0 | 0 | 5 | 6 | 0 | 0 | 5 |
| Kansas | Mulvane | ** 8 | 6 | 0 | 0 | 0 | 5 | 6 | 0 | 0 | 5 |
| Kansas | Murray Gill | 1 | 0 | 0 | 0 | 1 | 1 | 1 | 0 | 0 | 1 |
| Kansas | Murray Gill | 2 | 0 | 0 | 0 | 5 | 5 | 5 | 0 | 0 | 5 |
| Kansas | Murray Gill | 3 | 1 | 0 | 0 | 48 | 49 | 50 | 1 | 0 | 44 |
| Kansas | Murray Gill | 4 | 1 | 0 | 0 | 60 | 61 | 62 | 2 | 0 | 54 |
| Kansas | Nearman Creek | N1 | 7,919 | 202 | 0 | 0 | 6,915 | 7,919 | 201 | 0 | 6,982 |
| Kansas | Neosho | 7 | 14 | 0 | 0 | 0 | 13 | 14 | 0 | 0 | 13 |
| Kansas | Ottawa | ** ST2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Pratt | 3 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| Kansas | Pratt | 4 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| Kansas | Pratt | 5 | 0 | 0 | 0 | 0 | 0 | 10 | 0 | 0 | 9 |
| Kansas | Quindaro | 1 | 2,322 | 59 | 0 | 0 | 2,027 | 2,322 | 59 | 0 | 2,041 |
| Kansas | Quindaro | 2 | 2,375 | 61 | 0 | 0 | 2,074 | 2,375 | 60 | 0 | 2,088 |
| Kansas | Ripley | ** 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Ripley | ** 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Ripley | ** 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Riverton | 39 | 1,187 | 30 | 0 | 0 | 1,036 | 1,187 | 30 | 0 | 1,044 |
| Kansas | Riverton | 40 | 2,015 | 52 | 0 | 0 | 1,759 | 2,015 | 51 | 0 | 1,772 |
| Kansas | Riverton | 41 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Riverton | LP | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Ross Beach | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Ross Beach | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Russell | ** 11 | 35 | 1 | 0 | 0 | 31 | 35 | 1 | 0 | 31 |
| Kansas | Russell | ** 12 | 34 | 1 | 0 | 0 | 30 | 34 | 1 | 0 | 30 |
| Kansas | Tecumseh | 9 | 1,051 | 26 | 0 | 1,320 | 2,238 | 1,051 | 27 | 0 | 924 |
| Kansas | Tecumseh | 10 | 1,677 | 42 | 0 | 2,421 | 3,886 | 1,677 | 43 | 0 | 1,474 |
| Kansas | Wamego | ** NA1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Wellington | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Wellington | 4 | 0 | 0 | 0 | 0 | 0 | 4 | 0 | 0 | 4 |
| Kansas | West 14th St. | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | West 14th St. | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | West 14th St. | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Wichita | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kansas | Wichita | **4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kentucky | Big Sandy | BSU1 | 7,347 | 187 | 0 | 0 | 6,415 | 7,347 | 187 | 0 | 6,458 |
| Kentucky | Big Sandy | BSU2 | 21,199 | 540 | 0 | 1,153 | 19,663 | 21,199 | 539 | 0 | 18,606 |
| Kentucky | Cane Run | 1 | 0 | 0 | 0 | 2,552 | 2,552 | 0 | 0 | 0 | 0 |
| Kentucky | Cane Run | 2 | 0 | 0 | 0 | 2,552 | 2,552 | 0 | 0 | 0 | 0 |
| Kentucky | Cane Run | 3 | 44 | 1 | 0 | 0 | 39 | 44 | 1 | 0 | 39 |
| Kentucky | Cane Run | 4 | 3,110 | 79 | 0 | 1,779 | 4,495 | 3,110 | 79 | 0 | 2,734 |
| Kentucky | Cane Run | 5 | 4,939 | 126 | 0 | 18 | 4,330 | 4,939 | 125 | 0 | 4,342 |
| Kentucky | Cane Run | 6 | 6,201 | 158 | 0 | 72 | 5,487 | 6,201 | 156 | 0 | 5,451 |
| Kentucky | Cane Run | **12 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kentucky | Cane Run | **13 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kentucky | Coleman | C1 | 5,402 | 137 | 126 | 0 | 4,843 | 5,402 | 137 | 126 | 4,875 |
| Kentucky | Coleman | C2 | 6,162 | 157 | 143 | 0 | 5,523 | 6,162 | 157 | 143 | 5,560 |
| Kentucky | Coleman | C3 | 5,925 | 151 | 136 | 0 | 5,312 | 5,925 | 151 | 136 | 5,346 |
| Kentucky | Cooper | 1 | 3,574 | 91 | 83 | 0 | 3,204 | 3,574 | 91 | 83 | 3,225 |
| Kentucky | Cooper | 2 | 7,355 | 187 | 171 | 0 | 6,593 | 7,355 | 187 | 171 | 6,637 |
| Kentucky | D B Wilson | W1 | 14,244 | 362 | 0 | 0 | 12,438 | 14,244 | 362 | 0 | 12,522 |
| Kentucky | Dale | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kentucky | Dale | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Kentucky | Dale | 3 | 1,931 | 49 | 0 | 291 | 1,977 | 1,931 | 49 | 0 | 1,696 |
| Kentucky | Dale | 4 | 1,596 | 41 | 0 | 446 | 1,839 | 1,596 | 41 | 0 | 1,403 |
| Kentucky | E W Brown | 1 | 3,413 | 87 | 79 | 0 | 3,059 | 3,413 | 87 | 79 | 3,079 |
| Kentucky | E W Brown | 2 | 5,465 | 165 | 150 | 0 | 5,795 | 5,465 | 164 | 150 | 5,834 |
| Kentucky | E W Brown | 3 | 12,526 | 319 | 291 | 0 | 11,228 | 12,526 | 318 | 291 | 11,303 |
| Kentucky | East Bend | 2 | 20,936 | 533 | 0 | 0 | 18,281 | 20,936 | 532 | 0 | 18,405 |
| Kentucky | Elmer Smith | 1 | 3,122 | 80 | 73 | 0 | 2,799 | 3,122 | 79 | 73 | 2,818 |
| Kentucky | Elmer Smith | 2 | 6,916 | 176 | 161 | 0 | 6,200 | 6,916 | 176 | 161 | 6,241 |
| Kentucky | Ghent | 1 | 13,638 | 347 | 317 | 0 | 12,225 | 13,638 | 347 | 317 | 12,306 |
| Kentucky | Ghent | 2 | 11,450 | 292 | 0 | 2,685 | 12,682 | 11,450 | 291 | 0 | 10,066 |
| Kentucky | Ghent | 3 | 15,953 | 407 | 0 | 0 | 13,929 | 15,953 | 405 | 0 | 14,024 |
| Kentucky | Ghent | 4 | 15,675 | 399 | 0 | 0 | 13,687 | 15,675 | 398 | 0 | 13,780 |
| Kentucky | Green River | 1 | 2 | 0 | 0 | 125 | 129 | 2 | 0 | 0 | 2 |
| Kentucky | Green River | 2 | 17 | 1 | 0 | 825 | 840 | 17 | 0 | 0 | 16 |
| Kentucky | Green River | 3 | 14 | 0 | 0 | 723 | 736 | 14 | 0 | 0 | 13 |
| Kentucky | Green River | 4 | 3,229 | 82 | 0 | 0 | 2,820 | 3,229 | 82 | 0 | 2,839 |
| Kentucky | Green River | 5 | 3,753 | 96 | 87 | 0 | 3,364 | 3,753 | 95 | 87 | 3,387 |
| Kentucky | H L Spurlock | 1 | 10,935 | 278 | 254 | 0 | 9,802 | 10,935 | 276 | 254 | 9,867 |
| Kentucky | H L Spurlock | 2 | 18,959 | 483 | 0 | 0 | 16,554 | 18,959 | 482 | 0 | 16,666 |
| Kentucky | Henderson I | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kentucky | Henderson I | 6 | 926 | 23 | 0 | 0 | 809 | 926 | 24 | 0 | 814 |
| Kentucky | HMP&L Station 2 | H1 | 6,410 | 163 | 149 | 0 | 5,746 | 6,410 | 163 | 149 | 5,784 |
| Kentucky | HMP&L Station 2 | H2 | 6,607 | 168 | 154 | 0 | 5,923 | 6,607 | 168 | 154 | 5,962 |
| Kentucky | J K Smith | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kentucky | Mill Creek | 1 | 8,778 | 224 | 0 | 396 | 8,060 | 8,778 | 223 | 0 | 7,717 |
| Kentucky | Mill Creek | 2 | 8,960 | 228 | 0 | 297 | 8,121 | 8,960 | 228 | 0 | 7,876 |
| Kentucky | Mill Creek | 3 | 12,549 | 319 | 0 | 0 | 10,856 | 12,549 | 319 | 0 | 11,032 |
| Kentucky | Mill Creek | 4 | 15,565 | 397 | 0 | 0 | 13,591 | 15,565 | 395 | 0 | 13,684 |
| Kentucky | NA 1-7220 | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kentucky | NA 1-7220 | **4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kentucky | NA 1-7220 | **5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kentucky | Paradise | 1 | 12,366 | 315 | 0 | 0 | 10,798 | 12,366 | 314 | 0 | 10,871 |
| Kentucky | Paradise | 2 | 14,060 | 358 | 0 | 0 | 12,277 | 14,060 | 357 | 0 | 12,360 |
| Kentucky | Paradise | 3 | 28,401 | 724 | 660 | 0 | 25,459 | 28,401 | 722 | 660 | 25,627 |
| Kentucky | Pineville | 3 | 483 | 12 | 0 | 485 | 907 | 483 | 12 | 0 | 425 |
| Kentucky | R D Green | G1 | 6,049 | 154 | 0 | 0 | 5,292 | 6,049 | 154 | 0 | 5,317 |
| Kentucky | R D Green | G2 | 7,288 | 186 | 0 | 0 | 6,363 | 7,288 | 185 | 0 | 6,407 |
| Kentucky | Robert Reid | R1 | 1,076 | 27 | 0 | 0 | 940 | 1,076 | 27 | 0 | 946 |
| Kentucky | Shawnee | 1 | 2,991 | 76 | 0 | 1,014 | 3,826 | 2,991 | 76 | 0 | 2,829 |
| Kentucky | Shawnee | 2 | 3,082 | 79 | 0 | 964 | 3,855 | 3,082 | 78 | 0 | 2,710 |
| Kentucky | Shawnee | 3 | 3,471 | 89 | 0 | 663 | 3,893 | 3,471 | 88 | 0 | 3,052 |
| Kentucky | Shawnee | 4 | 3,450 | 88 | 0 | 569 | 3,581 | 3,450 | 88 | 0 | 3,033 |
| Kentucky | Shawnee | 5 | 3,369 | 86 | 0 | 868 | 3,810 | 3,369 | 86 | 0 | 2,961 |
| Kentucky | Shawnee | 6 | 3,699 | 94 | 0 | 469 | 3,699 | 3,699 | 94 | 0 | 3,252 |
| Kentucky | Shawnee | 7 | 4,085 | 104 | 0 | 64 | 3,631 | 4,085 | 104 | 0 | 3,591 |
| Kentucky | Shawnee | 8 | 3,909 | 99 | 0 | 148 | 3,562 | 3,909 | 99 | 0 | 3,437 |
| Kentucky | Shawnee | 9 | 4,189 | 107 | 0 | 0 | 3,657 | 4,189 | 106 | 0 | 3,683 |
| Kentucky | Shawnee | 10 | 5,448 | 139 | 127 | 0 | 4,884 | 5,448 | 138 | 127 | 4,917 |
| Kentucky | Trimble County | 1 | 11,009 | 281 | 0 | 0 | 9,612 | 11,009 | 280 | 0 | 9,678 |
| Kentucky | Tyrone | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kentucky | Tyrone | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kentucky | Tyrone | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kentucky | Tyrone | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Kentucky | Tyrone | 5 | 771 | 20 | 0 | 1,026 | 1,699 | 771 | 20 | 0 | 677 |
| Louisiana | A B Paterson | 3 | 0 | 0 | 0 | 7 | 7 | 4 | 0 | 0 | 4 |
| Louisiana | A B Paterson | 4 | 0 | 0 | 0 | 8 | 8 | 7 | 0 | 0 | 6 |
| Louisiana | Arsenal Hill | 5A | 0 | 0 | 0 | 30 | 30 | 21 | 1 | 0 | 18 |
| Louisiana | Big Cajun 1 | 1B1 | 8 | 0 | 0 | 20 | 27 | 42 | 1 | 0 | 37 |
| Louisiana | Big Cajun 1 | 1B2 | 8 | 0 | 0 | 20 | 27 | 39 | 1 | 0 | 34 |
| Louisiana | Big Cajun 2 | 2B1 | 16,337 | 416 | 0 | 565 | 14,830 | 16,337 | 415 | 0 | 14,362 |
| Louisiana | Big Cajun 2 | 2B2 | 16,132 | 411 | 0 | 517 | 14,603 | 16,132 | 410 | 0 | 14,181 |
| Louisiana | Big Cajun 2 | 2B3 | 16,091 | 409 | 0 | 568 | 14,619 | 16,091 | 409 | 0 | 14,145 |
| Louisiana | Coughlin | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Coughlin | 6 | 0 | 0 | 0 | 45 | 45 | 39 | 1 | 0 | 34 |
| Louisiana | Coughlin | 7 | 2 | 0 | 0 | 125 | 127 | 159 | 4 | 0 | 140 |
| Louisiana | D G Hunter | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Louisiana | D G Hunter | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | D G Hunter | 3 | 0 | 0 | 0 | 0 | 0 | 10 | 0 | 0 | 9 |
| Louisiana | D G Hunter | 4 | 1 | 0 | 0 | 32 | 33 | 28 | 1 | 0 | 24 |
| Louisiana | Doc Bonin | 1 | 4 | 0 | 0 | 8 | 12 | 19 | 0 | 0 | 17 |
| Louisiana | Doc Bonin | 2 | 1 | 0 | 0 | 23 | 24 | 34 | 1 | 0 | 30 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000-2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Louisiana | Doc Bonin | 3 | 1 | 0 | 0 | 43 | 44 | 102 | 3 | 0 | 89 |
| Louisiana | Dolet Hills | 1 | 23,424 | 597 | 0 | 3 | 20,456 | 23,424 | 585 | 0 | 20,592 |
| Louisiana | Houma | 14 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| Louisiana | Houma | 15 | 1 | 0 | 0 | 9 | 10 | 15 | 0 | 0 | 14 |
| Louisiana | Houma | 16 | 0 | 0 | 0 | 14 | 14 | 32 | 1 | 0 | 28 |
| Louisiana | Lieberman | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Lieberman | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Lieberman | 3 | 2 | 0 | 0 | 83 | 85 | 96 | 2 | 0 | 85 |
| Louisiana | Lieberman | 4 | 1 | 0 | 0 | 70 | 71 | 72 | 2 | 0 | 63 |
| Louisiana | Little Gypsy | 1 | 47 | 2 | 0 | 202 | 243 | 254 | 6 | 0 | 224 |
| Louisiana | Little Gypsy | 2 | 77 | 2 | 0 | 306 | 373 | 400 | 10 | 0 | 352 |
| Louisiana | Little Gypsy | 3 | 102 | 2 | 0 | 449 | 538 | 540 | 14 | 0 | 474 |
| Louisiana | Louisiana 1 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Louisiana 1 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Louisiana 1 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Louisiana 1 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Louisiana 1 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Louisiana 1 | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Louisiana 1 | 9 | 0 | 0 | 0 | 0 | 0 | 4 | 0 | 0 | 4 |
| Louisiana | Louisiana 1 | 1A | 2 | 0 | 0 | 112 | 114 | 19 | 0 | 0 | 17 |
| Louisiana | Louisiana 1 | 2A | 2 | 0 | 0 | 0 | 2 | 19 | 0 | 0 | 17 |
| Louisiana | Louisiana 1 | 3A | 2 | 0 | 0 | 0 | 2 | 19 | 0 | 0 | 17 |
| Louisiana | Louisiana 2 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Louisiana 2 | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Louisiana 2 | 12 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Michoud | 1 | 2 | 0 | 0 | 68 | 70 | 94 | 2 | 0 | 83 |
| Louisiana | Michoud | 2 | 2 | 0 | 0 | 104 | 106 | 157 | 4 | 0 | 138 |
| Louisiana | Michoud | 3 | 52 | 2 | 0 | 441 | 486 | 532 | 14 | 0 | 467 |
| Louisiana | Minden | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Minden | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Monroe | 10 | 0 | 0 | 0 | 0 | 0 | 8 | 0 | 0 | 7 |
| Louisiana | Monroe | 11 | 2 | 0 | 0 | 11 | 13 | 13 | 0 | 0 | 12 |
| Louisiana | Monroe | 12 | 7 | 0 | 0 | 39 | 45 | 43 | 1 | 0 | 38 |
| Louisiana | Morgan City | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Morgan City | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Morgan City | 3 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| Louisiana | Morgan City | 4 | 1 | 0 | 0 | 4 | 5 | 6 | 0 | 0 | 5 |
| Louisiana | Natchitoches | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Natchitoches | 9 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Louisiana | Natchitoches | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Ninemile Point | 1 | 25 | 1 | 0 | 40 | 62 | 74 | 2 | 0 | 65 |
| Louisiana | Ninemile Point | 2 | 30 | 1 | 0 | 85 | 111 | 116 | 3 | 0 | 104 |
| Louisiana | Ninemile Point | 3 | 27 | 1 | 0 | 72 | 95 | 99 | 3 | 0 | 87 |
| Louisiana | Ninemile Point | 4 | 134 | 4 | 0 | 566 | 683 | 697 | 18 | 0 | 612 |
| Louisiana | Ninemile Point | 5 | 173 | 5 | 0 | 770 | 921 | 925 | 24 | 0 | 813 |
| Louisiana | Opelousas | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Opelousas | 10 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 |
| Louisiana | Plaquemine | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Plaquemine | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | R S Nelson | 1 | 2 | 0 | 0 | 28 | 30 | 39 | 1 | 0 | 34 |
| Louisiana | R S Nelson | 2 | 1 | 0 | 0 | 32 | 33 | 37 | 1 | 0 | 32 |
| Louisiana | R S Nelson | 3 | 1 | 0 | 0 | 38 | 39 | 30 | 1 | 0 | 26 |
| Louisiana | R S Nelson | 4 | 5 | 0 | 0 | 117 | 122 | 316 | 8 | 0 | 280 |
| Louisiana | R S Nelson | 6 | 21,332 | 543 | 0 | 691 | 19,518 | 21,332 | 542 | 0 | 18,753 |
| Louisiana | Rodemacher | 1 | 3,284 | 86 | 0 | 275 | 3,239 | 3,394 | 86 | 0 | 2,984 |
| Louisiana | Rodemacher | 2 | 18,462 | 470 | 0 | 721 | 16,841 | 18,462 | 469 | 0 | 16,230 |
| Louisiana | Rodemacher | 3 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Louisiana | Rodemacher | 4 | 0 | 0 | 0 | 0 | 0 | 4 | 0 | 0 | 4 |
| Louisiana | Ruston | 1 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| Louisiana | Ruston | 2 | 1 | 0 | 0 | 3 | 4 | 7 | 0 | 0 | 6 |
| Louisiana | Ruston | 3 | 0 | 0 | 0 | 5 | 5 | 26 | 1 | 0 | 23 |
| Louisiana | Sterlington | 10 | 43 | 1 | 0 | 134 | 172 | 178 | 5 | 0 | 156 |
| Louisiana | Sterlington | 7AB | 15 | 1 | 0 | 57 | 70 | 82 | 2 | 0 | 72 |
| Louisiana | Teche | 1 | 0 | 0 | 0 | 0 | 0 | 7 | 0 | 0 | 6 |
| Louisiana | Teche | 2 | 0 | 0 | 0 | 27 | 27 | 25 | 1 | 0 | 22 |
| Louisiana | Teche | 3 | 5 | 0 | 0 | 437 | 442 | 420 | 11 | 0 | 369 |
| Louisiana | Thibodaux | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Waterford 1 & 2 | 1 | 4,869 | 124 | 0 | 291 | 4,542 | 4,869 | 124 | 0 | 4,280 |
| Louisiana | Waterford 1 & 2 | 2 | 3,760 | 96 | 0 | 225 | 3,526 | 3,760 | 96 | 0 | 3,323 |
| Louisiana | Willow Glen | 1 | 2 | 0 | 0 | 96 | 98 | 100 | 3 | 0 | 87 |
| Louisiana | Willow Glen | 2 | 0 | 0 | 0 | 26 | 26 | 23 | 1 | 0 | 20 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(3)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Louisiana | Willow Glen | 3 | 0 | 0 | 0 | 92 | 92 | 37 | 1 | 0 | 32 |
| Louisiana | Willow Glen | 4 | 4 | 0 | 0 | 284 | 288 | 307 | 9 | 0 | 296 |
| Louisiana | Willow Glen | 5 | 26 | 1 | 0 | 431 | 454 | 499 | 13 | 0 | 436 |
| Maine | Caribou | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Caribou | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Graham Station | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Graham Station | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Graham Station | 5 | 393 | 10 | 0 | 0 | 343 | 393 | 10 | 0 | 345 |
| Maine | Mason Steam | 3 | 2 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 2 |
| Maine | Mason Steam | 4 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 |
| Maine | Mason Steam | 5 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 |
| Maine | Mason Steam | 1A | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Mason Steam | 1B | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Mason Steam | 2A | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Mason Steam | 2B | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | William F Wyman. | 1 | 532 | 14 | 0 | 686 | 1,150 | 532 | 14 | 0 | 467 |
| Maine | William F Wyman. | 2 | 626 | 16 | 0 | 605 | 1,153 | 626 | 16 | 0 | 550 |
| Maine | William F Wyman. | 3 | 3,072 | 78 | 0 | 254 | 2,937 | 3,072 | 78 | 0 | 2,701 |
| Maine | William F Wyman. | 4 | 7,169 | 183 | 0 | 0 | 6,260 | 7,169 | 182 | 0 | 6,302 |
| Maryland | Brandon Shores. | 1 | 21,151 | 539 | 0 | 0 | 18,469 | 21,151 | 537 | 0 | 18,594 |
| Maryland | Brandon Shores. | 2 | 8,907 | 227 | 0 | 0 | 7,777 | 8,907 | 226 | 0 | 7,830 |
| Maryland | C P Crane | 1 | 4,969 | 127 | 0 | 0 | 4,339 | 4,969 | 126 | 0 | 4,366 |
| Maryland | C P Crane | 2 | 4,619 | 118 | 0 | 0 | 4,033 | 4,619 | 117 | 0 | 4,061 |
| Maryland | Chalk Point | 1 | 10,515 | 268 | 0 | 0 | 9,182 | 10,515 | 267 | 0 | 9,244 |
| Maryland | Chalk Point | 2 | 11,677 | 297 | 0 | 0 | 10,196 | 11,677 | 297 | 0 | 10,265 |
| Maryland | Chalk Point | 3 | 5,965 | 152 | 0 | 7,196 | 12,405 | 5,965 | 152 | 0 | 5,243 |
| Maryland | Chalk Point | 4 | 2,971 | 76 | 0 | 0 | 2,594 | 2,971 | 75 | 0 | 2,612 |
| Maryland | Chalk Point | **GT3 | 808 | 20 | 0 | 0 | 706 | 808 | 21 | 0 | 710 |
| Maryland | Chalk Point | **GT4 | 808 | 20 | 0 | 0 | 706 | 808 | 21 | 0 | 710 |
| Maryland | Chalk Point | **GT5 | 1,022 | 26 | 0 | 0 | 893 | 1,022 | 26 | 0 | 898 |
| Maryland | Chalk Point | **GT6 | 1,022 | 26 | 0 | 0 | 893 | 1,022 | 26 | 0 | 898 |
| Maryland | Coal Gas CC 1 | **CT1 | 1,236 | 32 | 0 | 0 | 1,079 | 1,236 | 31 | 0 | 1,087 |
| Maryland | Coal Gas CC 1 | **CT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Coal Gas CC 1 | **CW1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Coal Gas CC 2 | **CT3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Coal Gas CC 2 | **CT4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Dickerson | 1 | 6,683 | 170 | 0 | 0 | 5,836 | 6,683 | 170 | 0 | 5,875 |
| Maryland | Dickerson | 2 | 6,295 | 160 | 0 | 0 | 5,496 | 6,295 | 160 | 0 | 5,525 |
| Maryland | Dickerson | 3 | 6,680 | 170 | 0 | 0 | 5,833 | 5,660 | 170 | 0 | 5,872 |
| Maryland | Easton 2 | **25 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Easton 2 | **26 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Easton 2 | **27 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Gould Street | 3 | 939 | 24 | 0 | 0 | 819 | 939 | 24 | 0 | 825 |
| Maryland | Hagerstown | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Hagerstown | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Hagerstown | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Hagerstown | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Hagerstown | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Hagerstown | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Hagerstown | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Herbert A Wagner. | 1 | 1,474 | 38 | 0 | 0 | 1,287 | 1,474 | 37 | 0 | 1,296 |
| Maryland | Herbert A Wagner. | 2 | 1,485 | 39 | 0 | 0 | 1,297 | 1,485 | 38 | 0 | 1,305 |
| Maryland | Herbert A Wagner. | 3 | 9,577 | 244 | 0 | 0 | 8,362 | 9,577 | 243 | 0 | 8,419 |
| Maryland | Herbert A Wagner. | 4 | 1,737 | 44 | 0 | 0 | 1,517 | 1,737 | 44 | 0 | 1,527 |
| Maryland | Morgantown | 1 | 19,348 | 493 | 0 | 0 | 16,894 | 19,348 | 492 | 0 | 17,008 |
| Maryland | Morgantown | 2 | 18,498 | 471 | 0 | 0 | 16,152 | 18,498 | 470 | 0 | 16,261 |
| Maryland | Nanticoke | **ST1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Perryman | **51 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Perryman | **52 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Perryman | **61 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Perryman | **62 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | R P Smith | 9 | 386 | 10 | 0 | 0 | 337 | 386 | 10 | 0 | 339 |
| Maryland | R P Smith | 11 | 2,592 | 66 | 0 | 45 | 2,308 | 2,592 | 66 | 0 | 2,278 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Maryland | Riverside | 1 | 216 | 5 | 0 | 0 | 189 | 216 | 5 | 0 | 190 |
| Maryland | Riverside | 2 | 196 | 5 | 0 | 0 | 171 | 196 | 5 | 0 | 172 |
| Maryland | Riverside | 3 | 404 | 11 | 0 | 0 | 352 | 404 | 10 | 0 | 355 |
| Maryland | Riverside | 4 | 520 | 13 | 0 | 0 | 455 | 520 | 13 | 0 | 457 |
| Maryland | Riverside | 5 | 337 | 8 | 0 | 0 | 295 | 337 | 9 | 0 | 296 |
| Maryland | Vienna | 6 | 2,075 | 53 | 0 | 1,608 | 3,620 | 2,075 | 53 | 0 | 1,624 |
| Maryland | Westport | 3 | 213 | 5 | 0 | 0 | 186 | 213 | 5 | 0 | 188 |
| Maryland | Westport | 4 | 295 | 8 | 0 | 0 | 257 | 295 | 7 | 0 | 260 |
| Massachusetts | Blackstone Street. | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Blackstone Street. | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Blackstone Street. | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Blackstone Street. | 12 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Brayton Point | 1 | 9,692 | 246 | 0 | 0 | 8,463 | 9,692 | 246 | 0 | 8,520 |
| Massachusetts | Brayton Point | 2 | 10,182 | 259 | 0 | 0 | 8,891 | 10,182 | 259 | 0 | 8,951 |
| Massachusetts | Brayton Point | 3 | 21,283 | 542 | 0 | 0 | 18,583 | 21,260 | 541 | 0 | 18,709 |
| Massachusetts | Brayton Point | 4 | 13,256 | 337 | 0 | 532 | 12,107 | 13,256 | 337 | 0 | 11,653 |
| Massachusetts | Cabot-Holyoke | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Cabot-Holyoke | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Cabot-Holyoke | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Cabot-Holyoke | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Canal | 1 | 14,061 | 358 | 0 | 819 | 13,197 | 14,061 | 357 | 0 | 12,361 |
| Massachusetts | Canal | 2 | 20,568 | 524 | 0 | 0 | 17,959 | 20,568 | 523 | 0 | 18,081 |
| Massachusetts | Cannon Street | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Cannon Street | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Cannon Street | 3 | 427 | 11 | 0 | 0 | 373 | 427 | 11 | 0 | 375 |
| Massachusetts | Cleary Flood | 8 | 163 | 4 | 0 | 0 | 143 | 163 | 4 | 0 | 143 |
| Massachusetts | Cleary Flood | 9 | 1,799 | 45 | 0 | 1,092 | 2,663 | 1,799 | 46 | 0 | 1,581 |
| Massachusetts | Kendall Square | 1 | 225 | 6 | 0 | 0 | 196 | 225 | 5 | 0 | 199 |
| Massachusetts | Kendall Square | 2 | 237 | 6 | 0 | 0 | 207 | 237 | 5 | 0 | 209 |
| Massachusetts | Kendall Square | 3 | 481 | 13 | 0 | 0 | 420 | 481 | 12 | 0 | 422 |
| Massachusetts | Mount Tom | 1 | 6,412 | 163 | 0 | 0 | 5,599 | 6,412 | 163 | 0 | 5,637 |
| Massachusetts | Mystic | 4 | 2,979 | 76 | 0 | 0 | 2,601 | 2,979 | 76 | 0 | 2,619 |
| Massachusetts | Mystic | 5 | 3,534 | 90 | 0 | 0 | 3,085 | 3,534 | 90 | 0 | 3,107 |
| Massachusetts | Mystic | 6 | 3,515 | 89 | 0 | 0 | 3,069 | 3,515 | 89 | 0 | 3,090 |
| Massachusetts | Mystic | 7 | 19,704 | 502 | 0 | 0 | 17,205 | 19,704 | 501 | 0 | 17,321 |
| Massachusetts | New Boston | 1 | 7,037 | 179 | 0 | 0 | 6,145 | 7,037 | 179 | 0 | 6,186 |
| Massachusetts | New Boston | 2 | 7,226 | 184 | 0 | 0 | 6,309 | 7,226 | 184 | 0 | 6,352 |
| Massachusetts | Salem Harbor | 1 | 3,816 | 97 | 0 | 0 | 3,332 | 3,816 | 97 | 0 | 3,355 |
| Massachusetts | Salem Harbor | 2 | 3,895 | 99 | 0 | 0 | 3,401 | 3,895 | 99 | 0 | 3,424 |
| Massachusetts | Salem Harbor | 3 | 5,240 | 159 | 0 | 0 | 5,448 | 5,240 | 159 | 0 | 5,485 |
| Massachusetts | Salem Harbor | 4 | 14,083 | 359 | 0 | 243 | 12,540 | 14,063 | 358 | 0 | 12,380 |
| Massachusetts | Somerset | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Somerset | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Somerset | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Somerset | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Somerset | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Somerset | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Somerset | 7 | 3,160 | 80 | 0 | 0 | 2,759 | 3,160 | 80 | 0 | 2,778 |
| Massachusetts | Somerset | 8 | 4,554 | 116 | 0 | 0 | 3,976 | 4,554 | 116 | 0 | 4,003 |
| Massachusetts | Waters River | **2 | 282 | 7 | 0 | 0 | 247 | 282 | 7 | 0 | 248 |
| Massachusetts | West Springfield. | 1 | 432 | 11 | 0 | 0 | 377 | 432 | 11 | 0 | 380 |
| Massachusetts | West Springfield. | 2 | 406 | 11 | 0 | 0 | 354 | 406 | 10 | 0 | 357 |
| Massachusetts | West Springfield. | 3 | 3,441 | 88 | 0 | 0 | 3,004 | 3,441 | 87 | 0 | 3,025 |
| Michigan | 491 E. 48th Street. | **7 | 341 | 8 | 0 | 0 | 298 | 341 | 9 | 0 | 299 |
| Michigan | 491 E. 48th Street. | **8 | 341 | 8 | 0 | 0 | 298 | 341 | 8 | 0 | 299 |
| Michigan | Advance | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Advance | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Advance | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | B C Cobb | 1 | 504 | 13 | 0 | 882 | 1,131 | 504 | 13 | 0 | 513 |
| Michigan | B C Cobb | 2 | 542 | 14 | 0 | 746 | 1,219 | 542 | 14 | 0 | 476 |
| Michigan | B C Cobb | 3 | 599 | 15 | 0 | 743 | 1,213 | 599 | 13 | 0 | 475 |
| Michigan | B C Cobb | 4 | 5,236 | 134 | 0 | 0 | 4,563 | 5,226 | 133 | 0 | 4,594 |
| Michigan | B C Cobb | 5 | 5,364 | 136 | 0 | 0 | 4,684 | 5,364 | 136 | 0 | 4,716 |
| Michigan | Bayside | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(3)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Michigan | Bayside | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Bayside | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Bayside | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Beacon Heating | 1 | 0 | 0 | 0 | 0 | 0 | 10 | 0 | 0 | 9 |
| Michigan | Beacon Heating | 2 | 0 | 0 | 0 | 0 | 0 | 5 | 0 | 0 | 5 |
| Michigan | Beacon Heating | 3 | 0 | 0 | 0 | 0 | 0 | 35 | 1 | 0 | 31 |
| Michigan | Beacon Heating | 4 | 0 | 0 | 0 | 0 | 0 | 7 | 0 | 0 | 6 |
| Michigan | Beacon Heating | 5 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 3 |
| Michigan | Beacon Heating | ** 32 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Belle River | 1 | 21,145 | 538 | 0 | 0 | 18,463 | 21,145 | 537 | 0 | 18,569 |
| Michigan | Belle River | 2 | 21,446 | 545 | 0 | 0 | 18,726 | 21,446 | 545 | 0 | 18,853 |
| Michigan | Coldwater | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Coldwater | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Conners Creek | 15 | 672 | 18 | 0 | 3,655 | 4,241 | 672 | 17 | 0 | 591 |
| Michigan | Conners Creek | 16 | 662 | 17 | 0 | 3,657 | 4,236 | 662 | 17 | 0 | 581 |
| Michigan | Conners Creek | 17 | 631 | 16 | 0 | 3,441 | 3,992 | 631 | 15 | 0 | 557 |
| Michigan | Conners Creek | 18 | 512 | 13 | 0 | 2,871 | 3,318 | 512 | 13 | 0 | 450 |
| Michigan | Dan E Karn | 1 | 8,926 | 228 | 0 | 0 | 7,794 | 8,926 | 227 | 0 | 7,847 |
| Michigan | Dan E Karn | 2 | 9,789 | 250 | 0 | 0 | 8,547 | 9,789 | 249 | 0 | 8,605 |
| Michigan | Dan E Karn | 3 | 1,167 | 30 | 0 | 0 | 1,019 | 1,167 | 30 | 0 | 1,026 |
| Michigan | Dan E Karn | 4 | 1,082 | 27 | 0 | 0 | 945 | 1,082 | 27 | 0 | 952 |
| Michigan | Delray | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Delray | 8 | 0 | 0 | 0 | 12 | 12 | 14 | 0 | 0 | 12 |
| Michigan | Delray | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Delray | 10 | 0 | 0 | 0 | 14 | 14 | 16 | 0 | 0 | 14 |
| Michigan | Delray | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Delray | 12 | 0 | 0 | 0 | 14 | 14 | 14 | 0 | 0 | 12 |
| Michigan | Eckert Station | 1 | 1,341 | 34 | 0 | 123 | 1,294 | 1,341 | 34 | 0 | 1,179 |
| Michigan | Eckert Station | 2 | 1,397 | 36 | 0 | 129 | 1,349 | 1,397 | 36 | 0 | 1,228 |
| Michigan | Eckert Station | 3 | 1,273 | 33 | 0 | 211 | 1,322 | 1,273 | 32 | 0 | 1,119 |
| Michigan | Eckert Station | 4 | 2,540 | 64 | 0 | 0 | 2,218 | 2,540 | 65 | 0 | 2,232 |
| Michigan | Eckert Station | 5 | 3,046 | 77 | 0 | 0 | 2,660 | 3,046 | 77 | 0 | 2,678 |
| Michigan | Eckert Station | 6 | 2,677 | 68 | 0 | 0 | 2,337 | 2,677 | 68 | 0 | 2,353 |
| Michigan | Endicott Generating | 1 | 2,069 | 52 | 0 | 0 | 1,807 | 2,069 | 53 | 0 | 1,818 |
| Michigan | Erickson | 1 | 7,595 | 193 | 0 | 0 | 6,632 | 7,595 | 193 | 0 | 6,677 |
| Michigan | Escanaba | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Escanaba | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Greenwood | 1 | 617 | 16 | 0 | 0 | 536 | 617 | 16 | 0 | 542 |
| Michigan | Harbor Beach | 1 | 1,627 | 42 | 0 | 2,072 | 3,492 | 1,627 | 41 | 0 | 1,431 |
| Michigan | J B Sims | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | J B Sims | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | J B Sims | 3 | 1,696 | 43 | 0 | 0 | 1,481 | 1,696 | 43 | 0 | 1,491 |
| Michigan | J C Weadock | 7 | 5,423 | 138 | 0 | 0 | 4,735 | 5,423 | 138 | 0 | 4,767 |
| Michigan | J C Weadock | 8 | 5,360 | 137 | 0 | 0 | 4,680 | 5,360 | 136 | 0 | 4,712 |
| Michigan | J H Campbell | 1 | 9,254 | 236 | 0 | 0 | 8,080 | 9,254 | 235 | 0 | 8,135 |
| Michigan | J H Campbell | 2 | 11,067 | 282 | 0 | 0 | 9,663 | 11,067 | 281 | 0 | 9,729 |
| Michigan | J H Campbell | 3 | 31,405 | 799 | 0 | 0 | 27,421 | 31,405 | 799 | 0 | 27,607 |
| Michigan | J R Whiting | 1 | 3,899 | 99 | 0 | 0 | 3,404 | 3,899 | 99 | 0 | 3,428 |
| Michigan | J R Whiting | 2 | 3,992 | 102 | 0 | 0 | 3,486 | 3,992 | 101 | 0 | 3,510 |
| Michigan | J R Whiting | 3 | 5,107 | 131 | 0 | 0 | 4,459 | 5,107 | 130 | 0 | 4,489 |
| Michigan | James De Young | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | James De Young | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | James De Young | 5 | 1,197 | 30 | 0 | 0 | 1,045 | 1,197 | 30 | 0 | 1,053 |
| Michigan | John H Warden | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Marysville | 9 | 640 | 16 | 0 | 1,064 | 1,624 | 640 | 16 | 0 | 563 |
| Michigan | Marysville | 10 | 493 | 11 | 0 | 822 | 1,254 | 493 | 13 | 0 | 432 |
| Michigan | Marysville | 11 | 514 | 11 | 0 | 857 | 1,307 | 514 | 13 | 0 | 453 |
| Michigan | Marysville | 12 | 414 | 10 | 0 | 691 | 1,054 | 414 | 11 | 0 | 363 |
| Michigan | Mistersky | 5 | 293 | 8 | 0 | 0 | 256 | 293 | 7 | 0 | 258 |
| Michigan | Mistersky | 6 | 500 | 13 | 0 | 0 | 436 | 500 | 13 | 0 | 439 |
| Michigan | Mistersky | 7 | 555 | 14 | 0 | 0 | 484 | 555 | 14 | 0 | 488 |
| Michigan | Monroe | 1 | 27,243 | 694 | 0 | 0 | 23,788 | 27,243 | 692 | 0 | 23,949 |
| Michigan | Monroe | 2 | 28,273 | 721 | 0 | 0 | 24,687 | 28,273 | 718 | 0 | 24,855 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Michigan | Monroe | 3 | 26,466 | 674 | 0 | 0 | 23,109 | 26,466 | 672 | 0 | 23,267 |
| Michigan | Monroe | 4 | 29,065 | 739 | 0 | 0 | 25,378 | 29,065 | 739 | 0 | 25,550 |
| Michigan | Ottawa Street | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Ottawa Street | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Ottawa Street | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Pennsalt | 21 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Pennsalt | 22 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Pennsalt | 23 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Pennsalt | 24 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Port Huron | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Port Huron | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Port Huron | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Port Huron | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Port Huron | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Presque Isle | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Presque Isle | 2 | 280 | 7 | 0 | 387 | 632 | 280 | 7 | 0 | 646 |
| Michigan | Presque Isle | 3 | 2,179 | 55 | 0 | 0 | 1,903 | 2,179 | 55 | 0 | 1,916 |
| Michigan | Presque Isle | 4 | 1,908 | 49 | 0 | 7 | 1,673 | 1,908 | 48 | 0 | 1,678 |
| Michigan | Presque Isle | 5 | 3,352 | 86 | 0 | 0 | 2,926 | 3,352 | 85 | 0 | 2,947 |
| Michigan | Presque Isle | 6 | 3,360 | 86 | 0 | 0 | 2,934 | 3,360 | 85 | 0 | 2,954 |
| Michigan | Presque Isle | 7 | 2,479 | 63 | 0 | 46 | 2,211 | 2,479 | 63 | 0 | 2,179 |
| Michigan | Presque Isle | 8 | 2,338 | 60 | 0 | 143 | 2,184 | 2,338 | 59 | 0 | 2,056 |
| Michigan | Presque Isle | 9 | 1,724 | 44 | 0 | 827 | 2,332 | 1,724 | 44 | 0 | 1,515 |
| Michigan | River Rouge | 1 | 90 | 2 | 0 | 0 | 79 | 90 | 2 | 0 | 79 |
| Michigan | River Rouge | 2 | 7,075 | 181 | 0 | 130 | 6,207 | 7,075 | 180 | 0 | 5,219 |
| Michigan | River Rouge | 3 | 10,402 | 265 | 0 | 0 | 9,083 | 10,402 | 264 | 0 | 9,145 |
| Michigan | Shiras | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Shiras | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Shiras | 3 | 572 | 14 | 0 | 0 | 500 | 572 | 15 | 0 | 502 |
| Michigan | St Clair | 1 | 4,189 | 107 | 0 | 0 | 3,657 | 4,189 | 106 | 0 | 3,663 |
| Michigan | St Clair | 2 | 4,049 | 103 | 0 | 0 | 3,535 | 4,049 | 103 | 0 | 3,559 |
| Michigan | St Clair | 3 | 4,027 | 102 | 0 | 0 | 3,516 | 4,027 | 102 | 0 | 3,540 |
| Michigan | St Clair | 4 | 3,880 | 99 | 0 | 0 | 3,386 | 3,880 | 99 | 0 | 3,410 |
| Michigan | St Clair | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | St Clair | 6 | 8,390 | 214 | 0 | 0 | 7,326 | 8,390 | 213 | 0 | 7,376 |
| Michigan | St Clair | 7 | 15,379 | 391 | 0 | 0 | 13,429 | 15,379 | 391 | 0 | 13,519 |
| Michigan | Trenton Channel | 16 | 2,619 | 66 | 0 | 988 | 3,275 | 2,619 | 67 | 0 | 2,302 |
| Michigan | Trenton Channel | 17 | 810 | 16 | 0 | 290 | 764 | 810 | 16 | 0 | 536 |
| Michigan | Trenton Channel | 18 | 2,835 | 72 | 0 | 1,070 | 3,546 | 2,835 | 72 | 0 | 2,492 |
| Michigan | Trenton Channel | 19 | 556 | 14 | 0 | 209 | 695 | 556 | 14 | 0 | 488 |
| Michigan | Trenton Channel | 9A | 16,577 | 423 | 0 | 0 | 14,474 | 16,577 | 421 | 0 | 14,573 |
| Michigan | Wyandotte | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Wyandotte | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Wyandotte | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Wyandotte | 7 | 1,435 | 36 | 0 | 0 | 1,253 | 1,435 | 36 | 0 | 1,262 |
| Minnesota | Allen S King | 1 | 17,857 | 455 | 0 | 0 | 15,592 | 17,857 | 454 | 0 | 15,688 |
| Minnesota | Austin-DT | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Black Dog | 1 | 378 | 10 | 0 | 1,565 | 1,895 | 378 | 10 | 0 | 332 |
| Minnesota | Black Dog | 2 | 522 | 14 | 0 | 3,188 | 3,643 | 522 | 13 | 0 | 459 |
| Minnesota | Black Dog | 3 | 1,129 | 29 | 0 | 1,272 | 2,258 | 1,129 | 29 | 0 | 992 |
| Minnesota | Black Dog | 4 | 2,430 | 62 | 0 | 1,907 | 4,026 | 2,430 | 62 | 0 | 2,136 |
| Minnesota | Blue Earth | ** 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Clay Boswell | 1 | 1,424 | 36 | 0 | 573 | 1,816 | 1,424 | 36 | 0 | 1,252 |
| Minnesota | Clay Boswell | 2 | 1,355 | 35 | 0 | 807 | 1,790 | 1,355 | 34 | 0 | 1,192 |
| Minnesota | Clay Boswell | 3 | 11,273 | 286 | 0 | 0 | 9,843 | 11,273 | 286 | 0 | 9,910 |
| Minnesota | Clay Boswell | 4 | 11,797 | 300 | 0 | 0 | 10,301 | 11,797 | 300 | 0 | 10,370 |
| Minnesota | Elk River | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Elk River | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Elk River | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Fairmont | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Fairmont | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Fairmont | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Fairmont | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Fox Lake | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Fox Lake | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Fox Lake | 3 | 1,218 | 31 | 0 | 991 | 2,054 | 1,218 | 31 | 0 | 1,071 |
| Minnesota | Future Base | ** 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Hibbing | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(3)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Minnesota | Hibbing | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Hibbing | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | High Bridge | 3 | 907 | 23 | 0 | 0 | 792 | 907 | 23 | 0 | 797 |
| Minnesota | High Bridge | 4 | 701 | 18 | 0 | 0 | 612 | 701 | 18 | 0 | 615 |
| Minnesota | High Bridge | 5 | 1,240 | 32 | 0 | 1,096 | 2,178 | 1,240 | 32 | 0 | 1,090 |
| Minnesota | High Bridge | 6 | 2,116 | 54 | 0 | 0 | 1,848 | 2,116 | 54 | 0 | 1,860 |
| Minnesota | Hoot Lake | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Hoot Lake | 2 | 354 | 9 | 0 | 921 | 1,230 | 354 | 9 | 0 | 311 |
| Minnesota | Hoot Lake | 3 | 1,229 | 31 | 0 | 892 | 1,965 | 1,229 | 31 | 0 | 1,081 |
| Minnesota | Litchfield | **ST1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Luverne | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | M L Hibbard | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | M L Hibbard | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | M L Hibbard | 3 | 34 | 1 | 0 | 946 | 975 | 34 | 1 | 0 | 30 |
| Minnesota | M L Hibbard | 4 | 11 | 0 | 0 | 1,071 | 1,081 | 11 | 0 | 0 | 10 |
| Minnesota | Minnesota Valley. | 3 | 71 | 1 | 0 | 866 | 928 | 71 | 2 | 0 | 62 |
| Minnesota | Moorhead | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | NA 1—7237 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | NA 1—7237 | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | New Ulm | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | New Ulm | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | New Ulm | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Northeast Station. | NEPP | 1,203 | 30 | 0 | 0 | 1,051 | 1,203 | 31 | 0 | 1,057 |
| Minnesota | Owatonna | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Owatonna | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Red Wing | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Red Wing | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Riverside | 6 | 260 | 6 | 0 | 2,815 | 3,041 | 260 | 7 | 0 | 227 |
| Minnesota | Riverside | 7 | 103 | 2 | 0 | 1,234 | 1,324 | 103 | 3 | 0 | 90 |
| Minnesota | Riverside | 8 | 4,310 | 110 | 0 | 1,281 | 5,044 | 4,310 | 109 | 0 | 3,789 |
| Minnesota | Sherburne County. | 1 | 14,960 | 381 | 0 | 0 | 13,063 | 14,960 | 380 | 0 | 13,151 |
| Minnesota | Sherburne County. | 2 | 15,065 | 384 | 0 | 0 | 13,154 | 15,065 | 383 | 0 | 13,243 |
| Minnesota | Sherburne County. | 3 | 14,805 | 377 | 0 | 0 | 12,927 | 14,805 | 376 | 0 | 13,015 |
| Minnesota | Silver Lake | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Silver Lake | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Silver Lake | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Silver Lake | 4 | 3,580 | 91 | 0 | 0 | 3,126 | 3,580 | 91 | 0 | 3,147 |
| Minnesota | Sleepy Eye | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Sleepy Eye | **4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Springfield | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Springfield | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Syl Laskin | 1 | 366 | 9 | 0 | 1,355 | 1,675 | 366 | 9 | 0 | 322 |
| Minnesota | Syl Laskin | 2 | 158 | 4 | 0 | 1,492 | 1,630 | 158 | 4 | 0 | 139 |
| Minnesota | Two Harbors | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Virginia | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Virginia | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Virginia | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Virginia | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Virginia | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Willmar | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Willmar | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Willmar | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Wilmarth | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Wilmarth | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Baxter Wilson | 1 | 53 | 2 | 0 | 309 | 355 | 366 | 9 | 0 | 322 |
| Mississippi | Baxter Wilson | 2 | 4,072 | 104 | 0 | 0 | 3,555 | 4,072 | 103 | 0 | 3,580 |
| Mississippi | Delta | 1 | 19 | 1 | 0 | 9 | 25 | 28 | 1 | 0 | 24 |
| Mississippi | Delta | 2 | 33 | 1 | 0 | 21 | 50 | 54 | 1 | 0 | 46 |
| Mississippi | Eaton | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Eaton | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Eaton | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Gerald Andrus | 1 | 3,750 | 96 | 0 | 0 | 3,274 | 3,750 | 95 | 0 | 3,297 |
| Mississippi | Henderson | H1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Henderson | H3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Jack Watson | 1 | 197 | 5 | 0 | 0 | 172 | 197 | 5 | 0 | 173 |
| Mississippi | Jack Watson | 2 | 206 | 5 | 0 | 0 | 180 | 206 | 5 | 0 | 181 |
| Mississippi | Jack Watson | 3 | 312 | 7 | 0 | 0 | 273 | 312 | 8 | 0 | 274 |
| Mississippi | Jack Watson | 4 | 8,596 | 219 | 0 | 0 | 7,507 | 8,596 | 218 | 0 | 7,559 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(e)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(e)(3)) | Total annual phase II |
| Mississippi | Jack Watson | 5 | 17,615 | 449 | 0 | 0 | 15,380 | 17,615 | 448 | 0 | 15,485 |
| Mississippi | Moselle | 1 | 16 | 1 | 0 | 21 | 35 | 36 | 1 | 0 | 33 |
| Mississippi | Moselle | 2 | 39 | 1 | 0 | 42 | 75 | 80 | 2 | 0 | 70 |
| Mississippi | Moselle | 3 | 10 | 0 | 0 | 33 | 42 | 43 | 1 | 0 | 36 |
| Mississippi | Moselle | **4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Moselle | **5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Moselle | **6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Moselle | **7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Natchez | 1 | 2 | 0 | 0 | 0 | 2 | 3 | 0 | 0 | 3 |
| Mississippi | R D Morrow | 1 | 5,485 | 139 | 0 | 0 | 4,790 | 5,485 | 139 | 0 | 4,822 |
| Mississippi | R D Morrow | 2 | 6,003 | 153 | 0 | 0 | 5,241 | 6,003 | 153 | 0 | 5,277 |
| Mississippi | Rex Brown | 3 | 6 | 0 | 0 | 34 | 41 | 42 | 1 | 0 | 37 |
| Mississippi | Rex Brown | 4 | 2 | 0 | 0 | 155 | 157 | 159 | 4 | 0 | 140 |
| Mississippi | Rex Brown | 1A | 0 | 0 | 0 | 6 | 6 | 6 | 0 | 0 | 5 |
| Mississippi | Rex Brown | 1B | 0 | 0 | 0 | 6 | 6 | 6 | 0 | 0 | 5 |
| Mississippi | Sweatt | 1 | 89 | 2 | 0 | 0 | 78 | 89 | 2 | 0 | 79 |
| Mississippi | Sweatt | 2 | 88 | 2 | 0 | 0 | 86 | 88 | 2 | 0 | 87 |
| Mississippi | Third Street | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Third Street | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Victor J Daniel Jr. | 1 | 11,312 | 288 | 0 | 1,313 | 11,190 | 11,312 | 287 | 0 | 9,945 |
| Mississippi | Victor J Daniel Jr. | 2 | 16,315 | 416 | 0 | 0 | 14,246 | 16,315 | 415 | 0 | 14,342 |
| Mississippi | Wilkins | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Wilkins | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Wright | W1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Wright | W2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Wright | W3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Wright | W4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Yazoo | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Yazoo | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Asbury | 1 | 7,770 | 198 | 175 | 0 | 6,960 | 7,770 | 197 | 175 | 7,008 |
| Missouri | Blue Valley | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Blue Valley | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Blue Valley | 3 | 5,336 | 136 | 0 | 0 | 4,659 | 5,336 | 136 | 0 | 4,690 |
| Missouri | Chamois | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Chamois | 2 | 6,235 | 158 | 0 | 0 | 5,445 | 6,235 | 158 | 0 | 5,482 |
| Missouri | Chillicothe | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Chillicothe | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Columbia | 6 | 1,033 | 27 | 0 | 0 | 902 | 1,033 | 26 | 0 | 906 |
| Missouri | Columbia | 7 | 4,149 | 106 | 0 | 0 | 3,622 | 4,149 | 105 | 0 | 3,646 |
| Missouri | Columbia | 8 | 142 | 5 | 0 | 0 | 123 | 142 | 3 | 0 | 125 |
| Missouri | Combustion Turbine 1. | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Combustion Turbine 1. | **NA4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Combustion Turbine 1. | **NA5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Combustion Turbine 1. | **NA6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Combustion Turbine 1. | **NA7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Combustion Turbine 2. | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Combustion Turbine 3. | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | E P Coleman | 1 | 0 | 0 | 0 | 0 | 0 | [3] | 0 | 0 | [3] |
| Missouri | Edmond Street | 16 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Edmond Street | 17 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Edmond Street | 18 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Edmond Street | 19 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Edmond Street | 21 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Empire Energy Center. | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Empire Energy Center. | **4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Empire Energy Center. | **NA2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Empire Energy Center. | **NA3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Grand Avenue | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Grand Avenue | **5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Grand Avenue | **7 | 12 | 0 | 0 | 0 | 11 | 12 | 0 | 0 | 11 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Missouri | Grand Avenue | **9 | 14 | 0 | 0 | 0 | 13 | 14 | 0 | 0 | 13 |
| Missouri | Hawthorn | 5 | 14,041 | 358 | 0 | 479 | 12,739 | 14,041 | 357 | 0 | 12,343 |
| Missouri | Iatan | 1 | 18,520 | 472 | 0 | 0 | 16,171 | 18,520 | 471 | 0 | 16,280 |
| Missouri | Iatan | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | James River | 1 | 0 | 0 | 0 | 0 | 0 | (855) | (22) | 0 | (751) |
| Missouri | James River | 2 | 0 | 0 | 0 | 0 | 0 | (710) | (18) | 0 | (624) |
| Missouri | James River | 3 | 3,802 | 97 | 0 | 0 | 3,319 | 777 | 20 | 0 | 683 |
| Missouri | James River | 4 | 6,828 | 174 | 0 | 0 | 5,962 | 1,429 | 36 | 0 | 1,257 |
| Missouri | James River | 5 | 2,374 | 61 | 55 | 0 | 2,128 | 2,374 | 60 | 55 | 2,142 |
| Missouri | James River | **GT2 | 691 | 17 | 0 | 0 | 604 | 691 | 18 | 0 | 607 |
| Missouri | Jim Hill | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Labadie | 1 | 19,538 | 497 | 454 | 0 | 17,514 | 19,538 | 496 | 454 | 17,630 |
| Missouri | Labadie | 2 | 18,213 | 464 | 423 | 0 | 16,326 | 18,213 | 463 | 423 | 16,434 |
| Missouri | Labadie | 3 | 19,464 | 496 | 452 | 0 | 17,447 | 19,464 | 495 | 452 | 17,562 |
| Missouri | Labadie | 4 | 17,346 | 442 | 403 | 0 | 15,549 | 17,346 | 441 | 403 | 15,651 |
| Missouri | Lake Road | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Lake Road | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Lake Road | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Lake Road | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Lake Road | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Lake Road | 6 | 692 | 17 | 0 | 0 | 604 | 692 | 18 | 0 | 608 |
| Missouri | Lake Road | **8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Marshall | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Marshall | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Marshall | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Meramec | 1 | 1,174 | 29 | 0 | 1,608 | 2,724 | 1,174 | 30 | 0 | 1,032 |
| Missouri | Meramec | 2 | 1,261 | 32 | 0 | 1,656 | 2,757 | 1,261 | 32 | 0 | 1,109 |
| Missouri | Meramec | 3 | 2,694 | 68 | 0 | 3,656 | 6,009 | 2,694 | 68 | 0 | 2,369 |
| Missouri | Meramec | 4 | 2,914 | 74 | 0 | 4,570 | 7,114 | 2,914 | 74 | 0 | 2,562 |
| Missouri | Missouri City | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Missouri City | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Montrose | 1 | 3,549 | 90 | 82 | 0 | 3,181 | 3,549 | 90 | 82 | 3,202 |
| Missouri | Montrose | 2 | 3,935 | 100 | 91 | 0 | 3,527 | 3,935 | 100 | 91 | 3,550 |
| Missouri | Montrose | 3 | 4,841 | 124 | 113 | 0 | 4,340 | 4,841 | 123 | 113 | 4,369 |
| Missouri | NA 1-7223 | ** 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | NA 1-7223 | ** 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | NA 1-7223 | ** 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | NA 1-7228 | ** 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | New Madrid | 1 | 13,554 | 345 | 315 | 0 | 12,150 | 13,554 | 344 | 315 | 12,231 |
| Missouri | New Madrid | 2 | 15,593 | 397 | 362 | 0 | 13,977 | 15,593 | 396 | 362 | 14,070 |
| Missouri | RG1 & 2 | ** 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | RG1 & 2 | ** 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Missouri | Rush Island | 1 | 15,856 | 403 | 0 | 1,070 | 14,915 | 15,856 | 403 | 0 | 13,939 |
| Missouri | Rush Island | 2 | 17,702 | 450 | 0 | 158 | 15,615 | 17,702 | 450 | 0 | 15,561 |
| Missouri | Sibley | 1 | 593 | 15 | 0 | 0 | 518 | 593 | 15 | 0 | 521 |
| Missouri | Sibley | 2 | 728 | 18 | 0 | 0 | 636 | 728 | 18 | 0 | 640 |
| Missouri | Sibley | 3 | 8,498 | 216 | 198 | 0 | 7,619 | 8,498 | 216 | 197 | 7,667 |
| Missouri | Sikeston | 1 | 7,760 | 196 | 0 | 0 | 6,775 | 7,760 | 197 | 0 | 6,822 |
| Missouri | Sioux | 1 | 12,048 | 307 | 280 | 0 | 10,800 | 12,048 | 306 | 280 | 10,871 |
| Missouri | Sioux | 2 | 10,565 | 269 | 246 | 0 | 9,471 | 10,565 | 268 | 246 | 9,534 |
| Missouri | Southwest | 1 | 4,707 | 120 | 0 | 63 | 4,173 | 4,707 | 120 | 0 | 4,137 |
| Missouri | Thomas Hill | MB1 | 4,921 | 125 | 114 | 0 | 4,411 | 4,921 | 125 | 114 | 4,440 |
| Missouri | Thomas Hill | MB2 | 8,272 | 211 | 192 | 0 | 7,415 | 8,272 | 210 | 192 | 7,464 |
| Missouri | Thomas Hill | MB3 | 20,862 | 532 | 0 | 0 | 18,216 | 20,862 | 530 | 0 | 18,340 |
| Montana | Colstrip | 1 | 8,409 | 214 | 0 | 494 | 7,837 | 8,409 | 214 | 0 | 7,392 |
| Montana | Colstrip | 2 | 8,383 | 214 | 0 | 530 | 7,849 | 8,383 | 213 | 0 | 7,369 |
| Montana | Colstrip | 3 | 4,195 | 107 | 0 | 725 | 4,388 | 4,195 | 107 | 0 | 3,687 |
| Montana | Colstrip | 4 | 3,334 | 85 | 0 | 0 | 2,911 | 3,334 | 85 | 0 | 2,931 |
| Montana | Frank Bird | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Montana | Glendive | ** 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Montana | Glendive | ** 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Montana | J E Corette | 2 | 5,571 | 142 | 0 | 184 | 5,049 | 5,571 | 142 | 0 | 4,897 |
| Montana | Lewis & Clark | B1 | 1,601 | 41 | 0 | 42 | 1,440 | 1,601 | 41 | 0 | 1,407 |
| Nebraska | Alliance | ** 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | Bluffs | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | Bluffs | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | Bluffs | 4 | 21 | 1 | 0 | 0 | 18 | 21 | 1 | 0 | 18 |
| Nebraska | C W Burdick | B-1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | C W Burdick | B-2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | C W Burdick | B-3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | Canaday | 1 | 183 | 5 | 0 | 0 | 160 | 183 | 5 | 0 | 161 |
| Nebraska | Fairbury | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(2)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Nebraska | Gerald Gentleman Sta. | 1 | 10,221 | 260 | 0 | 1,638 | 10,783 | 10,221 | 260 | 0 | 9,965 |
| Nebraska | Gerald Gentleman Sta. | 2 | 20,080 | 511 | 0 | 0 | 17,534 | 20,080 | 510 | 0 | 17,852 |
| Nebraska | Harold Kramer | 1 | 3 | 0 | 0 | 35 | 38 | 3 | 0 | 0 | 3 |
| Nebraska | Harold Kramer | 2 | 3 | 0 | 0 | 37 | 40 | 3 | 0 | 0 | 3 |
| Nebraska | Harold Kramer | 3 | 191 | 6 | 0 | 874 | 1,040 | 191 | 5 | 0 | 186 |
| Nebraska | Harold Kramer | 4 | 225 | 6 | 0 | 1,859 | 2,055 | 225 | 6 | 0 | 196 |
| Nebraska | Hastings Energy Ctr. | 1 | 2,668 | 66 | 0 | 0 | 2,329 | 2,668 | 68 | 0 | 2,346 |
| Nebraska | Jones Street | 26 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | Jones Street | 27 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | Lon Wright | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | Lon Wright | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | Lon Wright | 8 | 1,350 | 34 | 0 | 852 | 2,031 | 1,350 | 34 | 0 | 1,187 |
| Nebraska | NA 1-7019 | ** NA1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | NA 1-7019 | ** NA2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | Nebraska City | 1 | 15,077 | 384 | 0 | 0 | 13,165 | 15,077 | 383 | 0 | 13,254 |
| Nebraska | North Denver | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | North Denver | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | North Omaha | 1 | 1,192 | 30 | 0 | 1,329 | 2,370 | 1,192 | 30 | 0 | 1,048 |
| Nebraska | North Omaha | 2 | 1,841 | 47 | 0 | 1,657 | 3,264 | 1,841 | 47 | 0 | 1,618 |
| Nebraska | North Omaha | 3 | 2,167 | 55 | 0 | 1,297 | 3,189 | 2,167 | 55 | 0 | 1,966 |
| Nebraska | North Omaha | 4 | 2,869 | 73 | 0 | 1,323 | 3,828 | 2,869 | 73 | 0 | 2,522 |
| Nebraska | North Omaha | 5 | 3,471 | 89 | 0 | 1,591 | 4,821 | 3,471 | 88 | 0 | 3,052 |
| Nebraska | Platte | 1 | 3,345 | 85 | 0 | 0 | 2,921 | 3,345 | 85 | 0 | 2,941 |
| Nebraska | Schuyler Plant | ** 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | Schuyler Plant | ** 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | Sheldon | 1 | 904 | 23 | 0 | 1,361 | 2,151 | 904 | 23 | 0 | 795 |
| Nebraska | Sheldon | 2 | 954 | 24 | 0 | 1,419 | 2,261 | 954 | 24 | 0 | 846 |
| Nevada | Clark | 1 | 18 | 1 | 0 | 6 | 20 | 26 | 1 | 0 | 23 |
| Nevada | Clark | 2 | 298 | 8 | 0 | 13 | 272 | 298 | 8 | 0 | 262 |
| Nevada | Clark | 3 | 1 | 0 | 0 | 17 | 18 | 16 | 0 | 0 | 16 |
| Nevada | Clark | ** 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Clark | ** 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Fort Churchill | 1 | 406 | 11 | 0 | 15 | 369 | 406 | 10 | 0 | 357 |
| Nevada | Fort Churchill | 2 | 621 | 16 | 0 | 34 | 576 | 621 | 16 | 0 | 548 |
| Nevada | Harry Allen | ** 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Harry Allen | ** 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Harry Allen | ** 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Harry Allen | ** 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Harry Allen | ** GT1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Harry Allen | ** GT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Harry Allen | ** GT3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Harry Allen | ** GT4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Mohave | 1 | 29,849 | 759 | 0 | 536 | 26,599 | 29,849 | 759 | 0 | 26,239 |
| Nevada | Mohave | 2 | 29,728 | 756 | 0 | 538 | 25,495 | 29,728 | 756 | 0 | 26,130 |
| Nevada | North Valmy | 1 | 7,493 | 191 | 0 | 398 | 6,940 | 7,493 | 190 | 0 | 6,587 |
| Nevada | North Valmy | 2 | 4,524 | 115 | 0 | 300 | 4,250 | 4,524 | 115 | 0 | 3,977 |
| Nevada | Reid Gardner | 1 | 2,264 | 58 | 0 | 190 | 2,167 | 2,264 | 58 | 0 | 1,998 |
| Nevada | Reid Gardner | 2 | 2,311 | 59 | 0 | 178 | 2,186 | 2,311 | 59 | 0 | 2,031 |
| Nevada | Reid Gardner | 3 | 2,245 | 57 | 0 | 159 | 2,120 | 2,245 | 57 | 0 | 1,974 |
| Nevada | Reid Gardner | 4 | 2,672 | 68 | 0 | 471 | 2,804 | 2,672 | 68 | 0 | 2,349 |
| Nevada | Sunrise | 1 | 29 | 1 | 0 | 25 | 50 | 60 | 2 | 0 | 52 |
| Nevada | Tracy | 1 | 15 | 1 | 0 | 1 | 14 | 15 | 0 | 0 | 14 |
| Nevada | Tracy | 2 | 46 | 2 | 0 | 4 | 46 | 48 | 1 | 0 | 42 |
| Nevada | Tracy | 3 | 347 | 9 | 0 | 10 | 313 | 347 | 9 | 0 | 305 |
| New Hampshire | Merrimack | 1 | 4,900 | 125 | 0 | 0 | 4,278 | 4,900 | 124 | 0 | 4,308 |
| New Hampshire | Merrimack | 2 | 10,560 | 269 | 0 | 0 | 9,220 | 10,560 | 268 | 0 | 9,284 |
| New Hampshire | Newington | 1 | 12,107 | 309 | 0 | 1,056 | 11,627 | 12,107 | 306 | 0 | 10,643 |
| New Hampshire | Schiller | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Hampshire | Schiller | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Hampshire | Schiller | 4 | 1,643 | 42 | 0 | 75 | 1,510 | 1,643 | 42 | 0 | 1,444 |
| New Hampshire | Schiller | 5 | 1,481 | 38 | 0 | 160 | 1,453 | 1,481 | 38 | 0 | 1,392 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(3)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| New Hampshire | Schiller | 6 | 1,678 | 48 | 0 | 0 | 1,640 | 1,678 | 48 | 0 | 1,651 |
| New Jersey | B L England | 1 | 4,355 | 111 | 0 | 0 | 3,603 | 4,355 | 111 | 0 | 3,826 |
| New Jersey | B L England | 2 | 5,634 | 143 | 0 | 0 | 4,920 | 5,634 | 143 | 0 | 4,953 |
| New Jersey | B L England | 3 | 2,765 | 71 | 0 | 0 | 2,414 | 2,765 | 70 | 0 | 2,431 |
| New Jersey | Bergen | 1 | 2,260 | 58 | 0 | 0 | 1,973 | 2,260 | 57 | 0 | 1,987 |
| New Jersey | Bergen | 2 | 2,335 | 59 | 0 | 0 | 2,039 | 2,335 | 59 | 0 | 2,053 |
| New Jersey | Burlington | 7 | 641 | 17 | 0 | 0 | 559 | 641 | 16 | 0 | 564 |
| New Jersey | Butler | ** 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Butler | ** 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Butler | ** 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Deepwater | 1 | 1,330 | 34 | 0 | 0 | 1,161 | 1,330 | 34 | 0 | 1,169 |
| New Jersey | Deepwater | 3 | 12 | 0 | 0 | 0 | 11 | 12 | 0 | 0 | 11 |
| New Jersey | Deepwater | 4 | 67 | 1 | 0 | 0 | 59 | 67 | 2 | 0 | 59 |
| New Jersey | Deepwater | 5 | 5 | 0 | 0 | 0 | 5 | 6 | 0 | 0 | 5 |
| New Jersey | Deepwater | 6 | 67 | 1 | 0 | 0 | 59 | 67 | 2 | 0 | 59 |
| New Jersey | Deepwater | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Deepwater | 8 | 3,137 | 80 | 0 | 0 | 2,735 | 3,137 | 80 | 0 | 2,757 |
| New Jersey | Deepwater | 9 | 2,073 | 53 | 0 | 0 | 1,810 | 2,073 | 53 | 0 | 1,822 |
| New Jersey | Gilbert | 01 | 69 | 2 | 0 | 0 | 61 | 69 | 2 | 0 | 60 |
| New Jersey | Gilbert | 02 | 43 | 2 | 0 | 0 | 37 | 43 | 2 | 0 | 37 |
| New Jersey | Gilbert | 03 | 799 | 21 | 0 | 0 | 697 | 799 | 20 | 0 | 703 |
| New Jersey | Gilbert | 04 | 685 | 17 | 0 | 0 | 598 | 665 | 17 | 0 | 603 |
| New Jersey | Gilbert | 05 | 681 | 17 | 0 | 0 | 594 | 681 | 17 | 0 | 599 |
| New Jersey | Gilbert | 06 | 677 | 16 | 0 | 0 | 591 | 677 | 17 | 0 | 595 |
| New Jersey | Gilbert | 07 | 692 | 17 | 0 | 0 | 604 | 692 | 16 | 0 | 608 |
| New Jersey | Howard Down | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Howard Down | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Howard Down | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Howard Down | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Howard Down | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Hudson | 1 | 1,368 | 35 | 0 | 0 | 1,194 | 1,368 | 35 | 0 | 1,202 |
| New Jersey | Hudson | 2 | 17,350 | 442 | 0 | 779 | 15,928 | 17,350 | 441 | 0 | 15,252 |
| New Jersey | Kearny | 7 | 166 | 5 | 0 | 0 | 145 | 166 | 4 | 0 | 146 |
| New Jersey | Kearny | 8 | 175 | 5 | 0 | 0 | 153 | 175 | 4 | 0 | 154 |
| New Jersey | Linden | 2 | 736 | 19 | 0 | 0 | 642 | 736 | 18 | 0 | 647 |
| New Jersey | Linden | 4 | 482 | 12 | 0 | 0 | 421 | 482 | 12 | 0 | 424 |
| New Jersey | Linden | 11 | 1,106 | 28 | 0 | 0 | 966 | 1,106 | 28 | 0 | 972 |
| New Jersey | Linden | 12 | 759 | 19 | 0 | 0 | 663 | 759 | 19 | 0 | 668 |
| New Jersey | Linden | 13 | 1,002 | 26 | 0 | 0 | 875 | 1,002 | 25 | 0 | 881 |
| New Jersey | Mercer | 1 | 8,686 | 222 | 0 | 79 | 7,685 | 8,088 | 221 | 0 | 7,637 |
| New Jersey | Mercer | 2 | 7,992 | 203 | 0 | 440 | 7,419 | 7,992 | 203 | 0 | 7,026 |
| New Jersey | NA 1–7139 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | NA 2–7140 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | NA 3–7141 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | NA 3–7141 | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | NA 4–7142 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | NA 5–7217 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | NA 5–7217 | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | NA 6–7218 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | NA 6–7218 | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Sayreville | 02 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Sayreville | 03 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Sayreville | 05 | 46 | 2 | 0 | 0 | 40 | 46 | 0 | 0 | 41 |
| New Jersey | Sayreville | 06 | 42 | 2 | 0 | 0 | 37 | 42 | 0 | 0 | 39 |
| New Jersey | Sayreville | 07 | 875 | 22 | 0 | 0 | 764 | 875 | 22 | 0 | 769 |
| New Jersey | Sayreville | 08 | 1,019 | 26 | 0 | 0 | 890 | 1,019 | 26 | 0 | 896 |
| New Jersey | Sewaren | 1 | 133 | 3 | 0 | 0 | 117 | 133 | 3 | 0 | 117 |
| New Jersey | Sewaren | 2 | 389 | 10 | 0 | 0 | 340 | 389 | 10 | 0 | 342 |
| New Jersey | Sewaren | 3 | 290 | 8 | 0 | 0 | 253 | 290 | 7 | 0 | 255 |
| New Jersey | Sewaren | 4 | 656 | 17 | 0 | 0 | 573 | 656 | 17 | 0 | 576 |
| New Jersey | Sewaren | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Werner | 04 | 223 | 5 | 0 | 0 | 195 | 223 | 5 | 0 | 196 |
| New Mexico | Algodones | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Algodones | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Algodones | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Animas | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Animas | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Animas | 3 | 0 | 0 | 0 | 0 | 0 | 5 | 0 | 0 | 5 |
| New Mexico | Animas | 4 | 0 | 0 | 0 | 0 | 0 | 4 | 0 | 0 | 4 |
| New Mexico | Cunningham | 1218 | 2 | 0 | 0 | 40 | 42 | 50 | 1 | 0 | 44 |
| New Mexico | Cunningham | 1225 | 4 | 0 | 0 | 263 | 267 | 232 | 6 | 0 | 204 |
| New Mexico | Escalante | 1 | 1,672 | 42 | 0 | 405 | 1,865 | 1,672 | 42 | 0 | 1,470 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| New Mexico | Escalante | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Four Corners | 1 | 3,790 | 96 | 0 | 274 | 3,584 | 3,790 | 96 | 0 | 3,694 |
| New Mexico | Four Corners | 2 | 3,791 | 96 | 0 | 269 | 3,580 | 3,791 | 96 | 0 | 3,333 |
| New Mexico | Four Corners | 3 | 4,747 | 120 | 0 | 319 | 4,464 | 4,747 | 121 | 0 | 4,173 |
| New Mexico | Four Corners | 4 | 13,552 | 345 | 0 | 639 | 12,472 | 13,552 | 344 | 0 | 11,914 |
| New Mexico | Four Corners | 5 | 14,037 | 357 | 0 | 979 | 13,235 | 14,037 | 357 | 0 | 12,339 |
| New Mexico | Lordsburg | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Lordsburg | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Lordsburg | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Maddox | **3 | 97 | 2 | 0 | 0 | 85 | 97 | 2 | 0 | 86 |
| New Mexico | Maddox | 0515 | 2 | 0 | 0 | 166 | 168 | 140 | 4 | 0 | 123 |
| New Mexico | North Lovington | S1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | North Lovington | S2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Person | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Person | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Person | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Person | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Raton | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Raton | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Reeves | 1 | 0 | 0 | 0 | 4 | 4 | 7 | 0 | 0 | 6 |
| New Mexico | Reeves | 2 | 0 | 0 | 0 | 7 | 7 | 5 | 0 | 0 | 5 |
| New Mexico | Reeves | 3 | 104 | 2 | 0 | 13 | 104 | 115 | 3 | 0 | 101 |
| New Mexico | Rio Grande | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Rio Grande | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Rio Grande | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Rio Grande | 5 | 0 | 0 | 0 | 3 | 3 | 5 | 0 | 0 | 5 |
| New Mexico | Rio Grande | 7 | 0 | 0 | 0 | 1 | 1 | 1 | 0 | 0 | 1 |
| New Mexico | Rio Grande | 8 | 1 | 0 | 0 | 78 | 79 | 71 | 2 | 0 | 62 |
| New Mexico | San Juan | 1 | 8,423 | 215 | 0 | 564 | 7,919 | 8,423 | 214 | 0 | 7,405 |
| New Mexico | San Juan | 2 | 6,171 | 157 | 0 | 516 | 5,905 | 6,171 | 157 | 0 | 5,425 |
| New Mexico | San Juan | 3 | 14,832 | 378 | 0 | 886 | 13,839 | 14,832 | 377 | 0 | 13,039 |
| New Mexico | San Juan | 4 | 13,917 | 354 | 0 | 856 | 13,010 | 13,917 | 354 | 0 | 12,234 |
| New Mexico | Santa Fe | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | Santa Fe | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Mexico | TA 3 | 1 | 0 | 0 | 0 | 0 | 0 | 16 | 0 | 0 | 15 |
| New Mexico | TA 3 | 2 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| New Mexico | TA 3 | 3 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| New York | 59th Street | 110 | 73 | 1 | 0 | 0 | 64 | 73 | 2 | 0 | 64 |
| New York | 59th Street | 111 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | 59th Street | 112 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | 59th Street | 113 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | 59th Street | 114 | 449 | 11 | 0 | 0 | 392 | 449 | 11 | 0 | 395 |
| New York | 59th Street | 115 | 429 | 11 | 0 | 0 | 375 | 429 | 11 | 0 | 377 |
| New York | 74th Street | 120 | 511 | 13 | 0 | 0 | 447 | 511 | 13 | 0 | 450 |
| New York | 74th Street | 121 | 513 | 13 | 0 | 0 | 449 | 513 | 13 | 0 | 451 |
| New York | 74th Street | 122 | 511 | 13 | 0 | 0 | 447 | 511 | 13 | 0 | 450 |
| New York | Albany | 1 | 2,057 | 52 | 0 | 0 | 1,796 | 2,057 | 52 | 0 | 1,809 |
| New York | Albany | 2 | 1,777 | 46 | 0 | 0 | 1,551 | 1,777 | 45 | 0 | 1,562 |
| New York | Albany | 3 | 1,821 | 46 | 0 | 0 | 1,590 | 1,821 | 46 | 0 | 1,601 |
| New York | Albany | 4 | 1,928 | 49 | 0 | 0 | 1,683 | 1,928 | 49 | 0 | 1,695 |
| New York | Arthur Kill | 20 | 1,691 | 43 | 0 | 0 | 1,476 | 1,691 | 43 | 0 | 1,487 |
| New York | Arthur Kill | 30 | 2,707 | 69 | 0 | 0 | 2,364 | 2,707 | 69 | 0 | 2,379 |
| New York | Astoria | 10 | 1,391 | 36 | 0 | 0 | 1,214 | 1,391 | 35 | 0 | 1,223 |
| New York | Astoria | 20 | 1,776 | 46 | 0 | 0 | 1,550 | 1,776 | 45 | 0 | 1,561 |
| New York | Astoria | 30 | 3,458 | 88 | 0 | 0 | 3,020 | 3,458 | 88 | 0 | 3,040 |
| New York | Astoria | 40 | 2,718 | 69 | 0 | 0 | 2,374 | 2,718 | 69 | 0 | 2,389 |
| New York | Astoria | 50 | 3,088 | 79 | 0 | 0 | 2,696 | 3,088 | 78 | 0 | 2,715 |
| New York | Bowline Point | 1 | 4,845 | 124 | 0 | 0 | 4,230 | 4,845 | 123 | 0 | 4,259 |
| New York | Bowline Point | 2 | 4,846 | 124 | 0 | 0 | 4,231 | 4,846 | 123 | 0 | 4,260 |
| New York | Bronxville | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | C R Huntley | 63 | 2,812 | 71 | 0 | 194 | 2,650 | 2,812 | 71 | 0 | 2,472 |
| New York | C R Huntley | 64 | 2,993 | 77 | 0 | 44 | 2,657 | 2,993 | 76 | 0 | 2,631 |
| New York | C R Huntley | 65 | 3,077 | 78 | 0 | 0 | 2,687 | 3,077 | 78 | 0 | 2,705 |
| New York | C R Huntley | 66 | 3,118 | 80 | 0 | 0 | 2,722 | 3,118 | 79 | 0 | 2,741 |
| New York | C R Huntley | 67 | 6,599 | 168 | 0 | 0 | 5,762 | 6,599 | 168 | 0 | 5,691 |
| New York | C R Huntley | 68 | 6,149 | 157 | 0 | 0 | 5,369 | 6,149 | 156 | 0 | 5,406 |
| New York | Charles Poletti | 001 | 7,357 | 187 | 0 | 0 | 6,424 | 7,357 | 187 | 0 | 6,467 |
| New York | Danskammer | 1 | 1,083 | 27 | 0 | 0 | 946 | 1,083 | 28 | 0 | 952 |
| New York | Danskammer | 2 | 1,051 | 26 | 0 | 0 | 918 | 1,051 | 27 | 0 | 924 |
| New York | Danskammer | 3 | 3,576 | 91 | 0 | 0 | 3,123 | 3,576 | 91 | 0 | 3,143 |
| New York | Danskammer | 4 | 6,891 | 175 | 0 | 0 | 6,017 | 6,891 | 175 | 0 | 6,055 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(3)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| New York | Dunkirk | 1 | 3,248 | 83 | 0 | 0 | 2,836 | 3,248 | 83 | 0 | 2,855 |
| New York | Dunkirk | 2 | 3,690 | 94 | 0 | 0 | 3,222 | 3,690 | 94 | 0 | 3,244 |
| New York | Dunkirk | 3 | 6,046 | 154 | 0 | 0 | 5,279 | 6,046 | 154 | 0 | 5,315 |
| New York | Dunkirk | 4 | 6,749 | 172 | 0 | 0 | 5,893 | 6,749 | 171 | 0 | 5,933 |
| New York | E F Barrett | 10 | 2,710 | 69 | 0 | 0 | 2,366 | 2,710 | 69 | 0 | 2,382 |
| New York | E F Barrett | 20 | 2,671 | 68 | 0 | 0 | 2,332 | 2,671 | 68 | 0 | 2,348 |
| New York | East River | 50 | 1,598 | 41 | 0 | 0 | 1,395 | 1,598 | 41 | 0 | 1,404 |
| New York | East River | 60 | 1,634 | 42 | 0 | 0 | 1,427 | 1,634 | 42 | 0 | 1,436 |
| New York | East River | 70 | 1,182 | 30 | 0 | 0 | 1,032 | 1,182 | 30 | 0 | 1,039 |
| New York | Far Rockaway | 40 | 537 | 14 | 0 | 0 | 469 | 537 | 14 | 0 | 472 |
| New York | Glenwood | 40 | 1,072 | 27 | 0 | 0 | 936 | 1,072 | 27 | 0 | 943 |
| New York | Glenwood | 50 | 1,032 | 27 | 0 | 0 | 901 | 1,032 | 26 | 0 | 907 |
| New York | Goudey | 11 | 905 | 23 | 0 | 0 | 791 | 905 | 23 | 0 | 796 |
| New York | Goudey | 12 | 892 | 23 | 0 | 0 | 779 | 892 | 23 | 0 | 784 |
| New York | Goudey | 13 | 3,756 | 96 | 0 | 0 | 3,280 | 3,756 | 95 | 0 | 3,302 |
| New York | Greenidge | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Greenidge | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Greenidge | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Greenidge | 4 | 1,121 | 29 | 0 | 0 | 978 | 1,121 | 28 | 0 | 986 |
| New York | Greenidge | 5 | 1,119 | 29 | 0 | 0 | 977 | 1,119 | 28 | 0 | 984 |
| New York | Greenidge | 6 | 3,639 | 92 | 0 | 0 | 3,178 | 3,639 | 92 | 0 | 3,199 |
| New York | Hickling | 1 | 808 | 20 | 0 | 16 | 724 | 808 | 21 | 0 | 710 |
| New York | Hickling | 2 | 808 | 20 | 0 | 16 | 724 | 808 | 21 | 0 | 710 |
| New York | Hickling | 3 | 969 | 25 | 0 | 46 | 892 | 969 | 25 | 0 | 851 |
| New York | Hickling | 4 | 1,010 | 26 | 0 | 46 | 930 | 1,010 | 26 | 0 | 888 |
| New York | Hudson Avenue | 71 | 181 | 4 | 0 | 0 | 159 | 181 | 5 | 0 | 159 |
| New York | Hudson Avenue | 72 | 176 | 5 | 0 | 0 | 154 | 176 | 4 | 0 | 156 |
| New York | Hudson Avenue | 73 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Hudson Avenue | 74 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Hudson Avenue | 81 | 269 | 7 | 0 | 0 | 235 | 269 | 7 | 0 | 237 |
| New York | Hudson Avenue | 82 | 55 | 2 | 0 | 0 | 48 | 55 | 2 | 0 | 48 |
| New York | Hudson Avenue | 83 | 4 | 0 | 0 | 0 | 4 | 4 | 0 | 0 | 4 |
| New York | Hudson Avenue | 84 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Hudson Avenue | 100 | 2,040 | 52 | 0 | 0 | 1,781 | 2,040 | 52 | 0 | 1,793 |
| New York | Jennison | 1 | 684 | 17 | 0 | 50 | 647 | 684 | 17 | 0 | 602 |
| New York | Jennison | 2 | 712 | 18 | 0 | 52 | 674 | 712 | 18 | 0 | 626 |
| New York | Jennison | 3 | 714 | 18 | 0 | 98 | 721 | 714 | 18 | 0 | 628 |
| New York | Jennison | 4 | 714 | 18 | 0 | 98 | 721 | 714 | 18 | 0 | 628 |
| New York | Lovett | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Lovett | 2 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| New York | Lovett | 3 | 258 | 7 | 0 | 0 | 225 | 258 | 7 | 0 | 226 |
| New York | Lovett | 4 | 5,222 | 133 | 0 | 0 | 4,560 | 5,222 | 133 | 0 | 4,590 |
| New York | Lovett | 5 | 5,700 | 145 | 0 | 0 | 4,977 | 5,700 | 145 | 0 | 5,011 |
| New York | Milliken | 1 | 5,631 | 143 | 0 | 0 | 4,917 | 5,631 | 143 | 0 | 4,950 |
| New York | Milliken | 2 | 5,959 | 152 | 0 | 0 | 5,203 | 5,959 | 151 | 0 | 5,239 |
| New York | Mitchel Gardens | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Mitchel Gardens | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Northport | 1 | 9,510 | 242 | 0 | 0 | 8,304 | 9,510 | 242 | 0 | 8,360 |
| New York | Northport | 2 | 11,575 | 295 | 0 | 0 | 10,107 | 11,575 | 294 | 0 | 10,176 |
| New York | Northport | 3 | 12,710 | 324 | 0 | 0 | 11,098 | 12,710 | 323 | 0 | 11,173 |
| New York | Northport | 4 | 6,620 | 168 | 0 | 0 | 5,781 | 6,620 | 168 | 0 | 5,820 |
| New York | Oswego | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Oswego | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Oswego | 3 | 103 | 2 | 0 | 0 | 90 | 103 | 3 | 0 | 90 |
| New York | Oswego | 4 | 455 | 11 | 0 | 0 | 398 | 455 | 12 | 0 | 400 |
| New York | Oswego | 5 | 9,499 | 242 | 0 | 8,824 | 17,118 | 9,499 | 241 | 0 | 8,351 |
| New York | Oswego | 6 | 5,494 | 140 | 0 | 0 | 4,797 | 5,494 | 140 | 0 | 4,829 |
| New York | Port Jefferson | 1 | 543 | 14 | 0 | 0 | 497 | 569 | 14 | 0 | 477 |
| New York | Port Jefferson | 2 | 569 | 14 | 0 | 0 | 497 | 569 | 14 | 0 | 501 |
| New York | Port Jefferson | 3 | 5,025 | 128 | 0 | 0 | 4,387 | 5,025 | 128 | 0 | 4,417 |
| New York | Port Jefferson | 4 | 5,920 | 151 | 0 | 0 | 5,169 | 5,920 | 150 | 0 | 5,205 |
| New York | Ravenswood | 10 | 3,620 | 93 | 0 | 0 | 3,160 | 3,620 | 92 | 0 | 3,182 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| New York | Ravenswood | 20 | 3,063 | 78 | 0 | 0 | 2,674 | 3,063 | 78 | 0 | 2,692 |
| New York | Ravenswood | 30 | 5,706 | 146 | 0 | 0 | 4,964 | 5,706 | 145 | 0 | 5,018 |
| New York | Rochester 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Rochester 3 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Rochester 3 | 3 | 2 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 2 |
| New York | Rochester 3 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Rochester 3 | 7 | 71 | 1 | 0 | 137 | 199 | 71 | 2 | 0 | 62 |
| New York | Rochester 3 | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Rochester 3 | 12 | 2,593 | 66 | 0 | 0 | 2,264 | 2,593 | 66 | 0 | 2,279 |
| New York | Rochester 7 | 1 | 1,249 | 32 | 0 | 0 | 1,091 | 1,249 | 32 | 0 | 1,098 |
| New York | Rochester 7 | 2 | 1,858 | 47 | 0 | 0 | 1,623 | 1,858 | 47 | 0 | 1,634 |
| New York | Rochester 7 | 3 | 1,813 | 46 | 0 | 0 | 1,583 | 1,813 | 46 | 0 | 1,594 |
| New York | Rochester 7 | 4 | 2,529 | 64 | 0 | 0 | 2,208 | 2,529 | 64 | 0 | 2,223 |
| New York | Roseton | 1 | 16,577 | 423 | 0 | 1,064 | 15,536 | 16,577 | 421 | 0 | 14,573 |
| New York | Roseton | 2 | 14,786 | 377 | 0 | 1,949 | 14,859 | 14,786 | 376 | 0 | 12,996 |
| New York | S A Carlson | 9 | 759 | 19 | 0 | 0 | 664 | 759 | 19 | 0 | 666 |
| New York | S A Carlson | 10 | 768 | 20 | 0 | 0 | 670 | 768 | 19 | 0 | 675 |
| New York | S A Carlson | 11 | 486 | 13 | 0 | 0 | 424 | 486 | 13 | 0 | 426 |
| New York | S A Carlson | 12 | 1,457 | 37 | 0 | 0 | 1,272 | 1,457 | 37 | 0 | 1,280 |
| New York | Somerset | 1 | 15,871 | 404 | 0 | 0 | 13,858 | 15,871 | 403 | 0 | 13,952 |
| New York | Waterside | 41 | 52 | 1 | 0 | 0 | 46 | 52 | 1 | 0 | 46 |
| New York | Waterside | 42 | 50 | 1 | 0 | 0 | 44 | 50 | 1 | 0 | 44 |
| New York | Waterside | 51 | 119 | 4 | 0 | 0 | 103 | 119 | 4 | 0 | 104 |
| New York | Waterside | 52 | 122 | 4 | 0 | 0 | 106 | 122 | 4 | 0 | 107 |
| New York | Waterside | 61 | 98 | 1 | 0 | 0 | 87 | 98 | 2 | 0 | 87 |
| New York | Waterside | 62 | 152 | 4 | 0 | 0 | 132 | 152 | 4 | 0 | 133 |
| New York | Waterside | 80 | 444 | 12 | 0 | 0 | 386 | 444 | 11 | 0 | 391 |
| New York | Waterside | 90 | 459 | 13 | 0 | 0 | 400 | 459 | 11 | 0 | 404 |
| North Carolina | Asheville | 1 | 7,567 | 193 | 0 | 0 | 6,607 | 7,567 | 192 | 0 | 6,652 |
| North Carolina | Asheville | 2 | 6,012 | 153 | 0 | 0 | 5,249 | 6,012 | 153 | 0 | 5,285 |
| North Carolina | Belews Creek | 1 | 35,325 | 899 | 0 | 0 | 30,843 | 35,325 | 896 | 0 | 31,052 |
| North Carolina | Belews Creek | 2 | 37,208 | 948 | 0 | 0 | 32,486 | 37,208 | 946 | 0 | 32,708 |
| North Carolina | Buck | 5 | 2 | 0 | 0 | 1,017 | 1,019 | 2 | 0 | 0 | 2 |
| North Carolina | Buck | 6 | 1 | 0 | 0 | 581 | 582 | 1 | 0 | 0 | 1 |
| North Carolina | Buck | 7 | 393 | 10 | 0 | 706 | 1,049 | 393 | 10 | 0 | 345 |
| North Carolina | Buck | 8 | 666 | 17 | 0 | 1,701 | 2,300 | 666 | 17 | 0 | 603 |
| North Carolina | BUCK | 9 | 2,074 | 53 | 0 | 1,044 | 2,855 | 2,074 | 53 | 0 | 1,823 |
| North Carolina | Cape Fear | 3 | 0 | 0 | 0 | 592 | 592 | 0 | 0 | 0 | 0 |
| North Carolina | Cape Fear | 4 | 0 | 0 | 0 | 592 | 592 | 0 | 0 | 0 | 0 |
| North Carolina | Cape Fear | 5 | 3,303 | 84 | 0 | 488 | 3,370 | 3,303 | 84 | 0 | 2,904 |
| North Carolina | Cape Fear | 6 | 3,378 | 86 | 0 | 946 | 3,896 | 3,378 | 86 | 0 | 2,969 |
| North Carolina | Cliffside | 1 | 1 | 0 | 0 | 887 | 888 | 1 | 0 | 0 | 1 |
| North Carolina | Cliffside | 2 | 1 | 0 | 0 | 861 | 862 | 1 | 0 | 0 | 1 |
| North Carolina | Cliffside | 3 | 24 | 1 | 0 | 1,255 | 1,276 | 24 | 1 | 0 | 21 |
| North Carolina | Cliffside | 4 | 20 | 1 | 0 | 1,273 | 1,290 | 20 | 1 | 0 | 17 |
| North Carolina | Cliffside | 5 | 13,530 | 344 | 0 | 2,173 | 13,987 | 13,530 | 344 | 0 | 11,884 |
| North Carolina | Dan River | 1 | 415 | 11 | 0 | 1,528 | 1,890 | 415 | 11 | 0 | 364 |
| North Carolina | Dan River | 2 | 381 | 10 | 0 | 2,418 | 2,750 | 381 | 10 | 0 | 335 |
| North Carolina | Dan River | 3 | 661 | 17 | 0 | 2,170 | 2,764 | 661 | 17 | 0 | 599 |
| North Carolina | G G Allen | 1 | 35 | 1 | 0 | 2,366 | 2,399 | 35 | 1 | 0 | 31 |
| North Carolina | G G Allen | 2 | 39 | 1 | 0 | 2,747 | 2,781 | 39 | 1 | 0 | 34 |
| North Carolina | G G Allen | 3 | 5,123 | 130 | 0 | 1,619 | 6,092 | 5,123 | 130 | 0 | 4,504 |
| North Carolina | G G Allen | 4 | 3,659 | 93 | 0 | 2,512 | 5,707 | 3,659 | 93 | 0 | 3,217 |
| North Carolina | G G Allen | 5 | 4,432 | 113 | 0 | 2,069 | 5,939 | 4,432 | 113 | 0 | 3,896 |
| North Carolina | L V Sutton | 1 | 824 | 21 | 0 | 1,315 | 2,034 | 824 | 21 | 0 | 724 |
| North Carolina | L V Sutton | 2 | 1,360 | 35 | 0 | 1,067 | 2,254 | 1,360 | 35 | 0 | 1,195 |
| North Carolina | L V Sutton | 3 | 5,831 | 149 | 0 | 3,158 | 8,249 | 5,831 | 148 | 0 | 5,125 |
| North Carolina | Lee | 1 | 741 | 19 | 0 | 976 | 1,623 | 741 | 19 | 0 | 651 |
| North Carolina | Lee | 2 | 948 | 24 | 0 | 845 | 1,673 | 948 | 24 | 0 | 833 |
| North Carolina | Lee | 3 | 5,538 | 141 | 0 | 907 | 5,743 | 5,538 | 141 | 0 | 4,868 |
| North Carolina | Marshall | 1 | 8,225 | 209 | 0 | 1,549 | 8,731 | 8,225 | 209 | 0 | 7,231 |
| North Carolina | Marshall | 2 | 9,292 | 237 | 0 | 1,120 | 9,234 | 9,292 | 236 | 0 | 8,169 |
| North Carolina | Marshall | 3 | 17,013 | 433 | 0 | 965 | 15,621 | 17,013 | 432 | 0 | 14,956 |
| North Carolina | Marshall | 4 | 15,255 | 388 | 0 | 1,764 | 15,085 | 15,255 | 386 | 0 | 13,410 |
| North Carolina | Mayo | 1A | 14,609 | 372 | 0 | 0 | 12,756 | 14,609 | 371 | 0 | 12,843 |
| North Carolina | Mayo | 1B | 14,609 | 372 | 0 | 0 | 12,756 | 14,609 | 371 | 0 | 12,843 |
| North Carolina | Riverbend | 7 | 1,509 | 40 | 0 | 796 | 2,139 | 1,539 | 39 | 0 | 1,353 |
| North Carolina | Riverbend | 8 | 1,420 | 36 | 0 | 860 | 2,100 | 1,420 | 36 | 0 | 1,246 |
| North Carolina | Riverbend | 9 | 406 | 11 | 0 | 1,889 | 2,243 | 406 | 10 | 0 | 357 |
| North Carolina | Riverbend | 10 | 1,339 | 34 | 0 | 1,437 | 2,606 | 1,339 | 34 | 0 | 1,177 |
| North Carolina | Roxboro | 1 | 12,671 | 323 | 0 | 0 | 11,063 | 12,671 | 322 | 0 | 11,139 |
| North Carolina | Roxboro | 2 | 22,445 | 572 | 0 | 0 | 19,598 | 22,445 | 570 | 0 | 19,732 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(3)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| North Carolina | Roxboro | 3A | 10,154 | 259 | 0 | 208 | 9,074 | 10,154 | 258 | 0 | 8,926 |
| North Carolina | Roxboro | 3B | 10,154 | 259 | 0 | 208 | 9,074 | 10,154 | 258 | 0 | 8,926 |
| North Carolina | Roxboro | 4A | 11,892 | 303 | 0 | 0 | 10,384 | 11,892 | 302 | 0 | 10,454 |
| North Carolina | Roxboro | 4B | 11,892 | 303 | 0 | 0 | 10,384 | 11,892 | 302 | 0 | 10,454 |
| North Carolina | W H Weatherspoon. | 1 | 533 | 14 | 0 | 648 | 1,113 | 533 | 14 | 0 | 465 |
| North Carolina | W H Weatherspoon. | 2 | 540 | 14 | 0 | 645 | 1,117 | 540 | 14 | 0 | 474 |
| North Carolina | W H Weatherspoon. | 3 | 1,069 | 27 | 0 | 682 | 1,615 | 1,069 | 27 | 0 | 940 |
| North Dakota | Antelope Valley | B1 | 10,675 | 272 | 0 | 0 | 9,321 | 10,675 | 271 | 0 | 9,385 |
| North Dakota | Antelope Valley | B2 | 12,720 | 324 | 0 | 0 | 11,107 | 12,720 | 323 | 0 | 11,182 |
| North Dakota | Beulah | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Dakota | Beulah | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Dakota | Beulah | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Dakota | Beulah | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Dakota | Beulah | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Dakota | Coal Creek | 1 | 26,637 | 679 | 0 | 0 | 23,258 | 26,637 | 677 | 0 | 23,416 |
| North Dakota | Coal Creek | 2 | 24,212 | 617 | 0 | 0 | 21,141 | 24,212 | 615 | 0 | 21,285 |
| North Dakota | Coyote | B1 | 18,490 | 471 | 0 | 0 | 16,145 | 18,490 | 470 | 0 | 16,254 |
| North Dakota | Dakotas | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Dakota | G F Wood | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Dakota | G F Wood | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Dakota | Leland Olds | 1 | 10,404 | 265 | 0 | 0 | 9,085 | 10,404 | 264 | 0 | 9,146 |
| North Dakota | Leland Olds | 2 | 30,171 | 767 | 0 | 0 | 26,344 | 30,171 | 766 | 0 | 26,522 |
| North Dakota | Milton R Young | B1 | 14,799 | 377 | 0 | 0 | 12,922 | 14,799 | 376 | 0 | 13,010 |
| North Dakota | Milton R Young | B2 | 18,152 | 460 | 0 | 0 | 15,849 | 18,152 | 461 | 0 | 15,957 |
| North Dakota | R M Heskett | B1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Dakota | R M Heskett | B2 | 3,659 | 93 | 0 | 0 | 3,195 | 3,659 | 93 | 0 | 3,217 |
| North Dakota | Stanton | 1 | 8,510 | 217 | 0 | 0 | 7,430 | 8,510 | 216 | 0 | 7,481 |
| North Dakota | Stanton | 10 | 1,525 | 39 | 0 | 0 | 1,332 | 1,525 | 39 | 0 | 1,340 |
| North Dakota | William J Neal | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Dakota | William J Neal | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Dakota | Williston | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Acme | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Acme | 11 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 |
| Ohio | Acme | 13 | 10 | 0 | 0 | 1,816 | 1,825 | 10 | 0 | 0 | 9 |
| Ohio | Acme | 14 | 15 | 0 | 0 | 2,476 | 2,490 | 15 | 0 | 0 | 14 |
| Ohio | Acme | 15 | 21 | 1 | 0 | 3,307 | 3,325 | 21 | 0 | 0 | 19 |
| Ohio | Acme | 16 | 2,316 | 59 | 0 | 389 | 2,411 | 2,316 | 59 | 0 | 2,036 |
| Ohio | Acme | 91 | 888 | 23 | 0 | 1,222 | 1,997 | 888 | 23 | 0 | 780 |
| Ohio | Acme | 92 | 794 | 21 | 0 | 1,092 | 1,785 | 794 | 20 | 0 | 698 |
| Ohio | Ashtabula | 7 | 8,036 | 205 | 167 | 0 | 7,204 | 8,036 | 204 | 167 | 7,252 |
| Ohio | Ashtabula | 8 | 2,669 | 68 | 0 | 0 | 2,331 | 2,669 | 67 | 0 | 2,347 |
| Ohio | Ashtabula | 9 | 2,276 | 57 | 0 | 0 | 1,986 | 2,276 | 58 | 0 | 2,000 |
| Ohio | Ashtabula | 10 | 2,054 | 53 | 0 | 0 | 1,794 | 2,054 | 53 | 0 | 1,804 |
| Ohio | Ashtabula | 11 | 2,160 | 55 | 0 | 0 | 1,887 | 2,160 | 54 | 0 | 1,899 |
| Ohio | Avon Lake | 9 | 2,933 | 75 | 0 | 0 | 2,561 | 2,933 | 75 | 0 | 2,578 |
| Ohio | Avon Lake | 10 | 2,575 | 65 | 0 | 0 | 2,249 | 2,575 | 65 | 0 | 2,264 |
| Ohio | Avon Lake | 11 | 5,594 | 143 | 130 | 0 | 5,014 | 5,594 | 142 | 130 | 5,048 |
| Ohio | Avon Lake | 12 | 16,916 | 431 | 393 | 0 | 15,165 | 16,916 | 430 | 393 | 15,265 |
| Ohio | Bay Shore | 1 | 5,392 | 137 | 0 | 0 | 4,708 | 5,392 | 137 | 0 | 4,740 |
| Ohio | Bay Shore | 2 | 5,136 | 130 | 0 | 0 | 4,485 | 5,136 | 131 | 0 | 4,515 |
| Ohio | Bay Shore | 3 | 4,887 | 124 | 0 | 0 | 4,267 | 4,887 | 124 | 0 | 4,296 |
| Ohio | Bay Shore | 4 | 8,042 | 205 | 0 | 0 | 7,022 | 8,042 | 204 | 0 | 7,070 |
| Ohio | Cardinal | 1 | 16,449 | 419 | 382 | 0 | 14,745 | 16,449 | 418 | 382 | 14,842 |
| Ohio | Cardinal | 2 | 18,395 | 469 | 428 | 0 | 16,490 | 18,395 | 467 | 428 | 16,599 |
| Ohio | Cardinal | 3 | 19,104 | 487 | 0 | 576 | 17,257 | 19,104 | 485 | 0 | 16,795 |
| Ohio | Columbus | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Columbus | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Columbus | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Conesville | 1 | 2,019 | 52 | 47 | 0 | 1,810 | 2,019 | 51 | 47 | 1,822 |
| Ohio | Conesville | 2 | 2,349 | 60 | 55 | 0 | 2,106 | 2,349 | 60 | 55 | 2,120 |
| Ohio | Conesville | 3 | 2,638 | 68 | 61 | 0 | 2,364 | 2,638 | 67 | 61 | 2,380 |
| Ohio | Conesville | 4 | 23,410 | 596 | 544 | 0 | 20,985 | 23,410 | 595 | 544 | 21,123 |
| Ohio | Conesville | 5 | 8,190 | 209 | 0 | 1,836 | 8,967 | 8,190 | 208 | 0 | 7,200 |
| Ohio | Conesville | 6 | 9,070 | 231 | 0 | 1,440 | 9,359 | 9,070 | 230 | 0 | 7,974 |
| Ohio | Dover | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Dover | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Dover | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) | |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II | |
| Ohio | Dover | **6 | 175 | 5 | 0 | 0 | 153 | 175 | 4 | 0 | 154 | 8,926 |
| Ohio | Dover | **7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8,926 |
| Ohio | Eastlake | 1 | 3,746 | 96 | 87 | 0 | 3,358 | 3,746 | 95 | 87 | 3,380 | 10,454 |
| Ohio | Eastlake | 2 | 4,146 | 105 | 96 | 0 | 3,716 | 4,146 | 105 | 96 | 3,741 | 10,454 |
| Ohio | Eastlake | 3 | 4,808 | 122 | 112 | 0 | 4,311 | 4,808 | 122 | 112 | 4,339 | 468 |
| Ohio | Eastlake | 4 | 6,966 | 177 | 162 | 0 | 6,244 | 6,966 | 177 | 162 | 6,286 | |
| Ohio | Eastlake | 5 | 16,483 | 471 | 430 | 0 | 16,569 | 16,483 | 470 | 430 | 16,678 | |
| Ohio | Edgewater | 11 | 1,003 | 26 | 0 | 0 | 875 | 481 | 12 | 0 | 425 | 474 |
| Ohio | Edgewater | 12 | 1,081 | 27 | 0 | 0 | 944 | 519 | 13 | 0 | 456 | |
| Ohio | Edgewater | 13 | 2,426 | 61 | 56 | 0 | 2,175 | 2,426 | 62 | 56 | 2,188 | |
| Ohio | Frank M Tait | 4 | 0 | 0 | 0 | 2,166 | 2,166 | 0 | 0 | 0 | 0 | 940 |
| Ohio | Frank M Tait | 5 | 0 | 0 | 0 | 2,166 | 2,166 | 0 | 0 | 0 | 0 | |
| Ohio | Frank M Tait | 7-1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Ohio | Frank M Tait | 7-2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 9,365 |
| Ohio | Frank M Tait | 8-1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 11,182 |
| Ohio | Frank M Tait | 8-2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Gen J M Gavin | 1 | 37,957 | 987 | 882 | 0 | 34,023 | 37,957 | 985 | 882 | 34,048 | 0 |
| Ohio | Gen J M Gavin | 2 | 38,668 | 995 | 899 | 0 | 34,660 | 38,668 | 993 | 899 | 34,696 | 0 |
| Ohio | Gorge | 25 | 1,711 | 43 | 0 | 0 | 1,494 | 821 | 21 | 0 | 722 | 0 |
| Ohio | Gorge | 26 | 1,917 | 48 | 0 | 0 | 1,674 | 920 | 23 | 0 | 809 | 0 |
| Ohio | Hamilton | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 23,416 |
| Ohio | Hamilton | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 21,295 |
| Ohio | Hamilton | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 16,254 |
| Ohio | Hamilton | 7 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 | 0 |
| Ohio | Hamilton | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Hamilton | 9 | 1,326 | 34 | 0 | 499 | 1,656 | 1,326 | 34 | 0 | 1,165 | 0 |
| Ohio | J M Stuart | 1 | 22,433 | 571 | 0 | 0 | 19,588 | 22,433 | 570 | 0 | 19,721 | 9,146 |
| Ohio | J M Stuart | 2 | 21,267 | 541 | 0 | 0 | 18,570 | 21,267 | 540 | 0 | 18,696 | 26,522 |
| Ohio | J M Stuart | 3 | 21,087 | 537 | 0 | 0 | 18,413 | 21,087 | 536 | 0 | 18,537 | 13,010 |
| Ohio | J M Stuart | 4 | 22,287 | 567 | 0 | 0 | 19,461 | 22,287 | 566 | 0 | 19,593 | 15,957 |
| Ohio | Killen Station | 2 | 19,344 | 493 | 0 | 0 | 16,890 | 19,344 | 491 | 0 | 17,006 | 0 |
| Ohio | Kyger Creek | 1 | 9,256 | 236 | 0 | 0 | 8,082 | 9,256 | 235 | 0 | 8,137 | 3,217 |
| Ohio | Kyger Creek | 2 | 8,909 | 227 | 0 | 0 | 7,779 | 8,909 | 226 | 0 | 7,832 | 7,481 |
| Ohio | Kyger Creek | 3 | 8,597 | 219 | 0 | 0 | 7,506 | 8,597 | 218 | 0 | 7,550 | 1,340 |
| Ohio | Kyger Creek | 4 | 8,981 | 229 | 0 | 0 | 7,842 | 8,981 | 228 | 0 | 7,895 | 0 |
| Ohio | Kyger Creek | 5 | 8,997 | 229 | 0 | 0 | 7,856 | 8,997 | 229 | 0 | 7,909 | 0 |
| Ohio | Lake Road | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Lake Road | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Lake Road | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Lake Road | 6 | 0 | 0 | 0 | 1,324 | 1,324 | 0 | 0 | 0 | 0 | 1 |
| Ohio | Lake Shore | 18 | 5,720 | 146 | 0 | 1,015 | 5,010 | 5,720 | 145 | 0 | 5,029 | 9 |
| Ohio | Lake Shore | 91 | 53 | 2 | 0 | 0 | 46 | 53 | 1 | 0 | 47 | 14 |
| Ohio | Lake Shore | 92 | 95 | 2 | 0 | 0 | 83 | 95 | 2 | 0 | 84 | 19 |
| Ohio | Lake Shore | 93 | 74 | 1 | 0 | 0 | 65 | 74 | 2 | 0 | 65 | 2,036 |
| Ohio | Lake Shore | 94 | 122 | 3 | 0 | 0 | 107 | 122 | 3 | 0 | 107 | 780 |
| Ohio | Mad River | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 686 |
| Ohio | Mad River | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 7,252 |
| Ohio | Miami Fort | 6 | 5,464 | 140 | 127 | 0 | 4,898 | 5,464 | 139 | 127 | 4,930 | 2,347 |
| Ohio | Miami Fort | 7 | 16,485 | 471 | 430 | 0 | 16,570 | 16,485 | 470 | 430 | 16,590 | 2,000 |
| Ohio | Miami Fort | 8 | 20,834 | 531 | 0 | 0 | 18,191 | 20,834 | 529 | 0 | 18,315 | 1,804 |
| Ohio | Miami Fort | 5-1 | 159 | 4 | 4 | 0 | 143 | 159 | 4 | 4 | 144 | 1,899 |
| Ohio | Miami Fort | 5-2 | 159 | 4 | 4 | 0 | 143 | 159 | 4 | 4 | 144 | 2,578 |
| Ohio | Muskingum River | 1 | 7,140 | 182 | 166 | 0 | 6,400 | 7,140 | 181 | 166 | 6,443 | 2,264 |
| Ohio | Muskingum River | 2 | 6,800 | 173 | 158 | 0 | 6,096 | 6,800 | 173 | 158 | 6,136 | 5,048 |
| Ohio | Muskingum River | 3 | 6,698 | 171 | 156 | 0 | 6,004 | 6,698 | 170 | 156 | 6,044 | 15,265 |
| Ohio | Muskingum River | 4 | 5,653 | 144 | 131 | 0 | 5,067 | 5,653 | 144 | 131 | 5,100 | 4,740 |
| Ohio | Muskingum River | 5 | 19,423 | 494 | 451 | 0 | 17,411 | 19,423 | 493 | 451 | 17,526 | 4,515 |
| Ohio | Niles | 1 | 3,333 | 85 | 77 | 0 | 2,987 | 3,333 | 85 | 77 | 3,007 | 4,295 |
| Ohio | Niles | 2 | 4,367 | 112 | 102 | 0 | 3,915 | 4,367 | 111 | 101 | 3,940 | 7,070 |
| Ohio | O H Hutchings | H-1 | 453 | 11 | 0 | 1,323 | 1,719 | 453 | 12 | 0 | 396 | 14,842 |
| Ohio | O H Hutchings | H-2 | 353 | 9 | 0 | 1,348 | 1,654 | 353 | 9 | 0 | 310 | 16,599 |
| Ohio | O H Hutchings | H-3 | 667 | 17 | 0 | 1,007 | 1,590 | 667 | 17 | 0 | 586 | 16,795 |
| Ohio | O H Hutchings | H-4 | 732 | 19 | 0 | 972 | 1,811 | 732 | 19 | 0 | 643 | 0 |
| Ohio | O H Hutchings | H-5 | 586 | 15 | 0 | 1,105 | 1,616 | 586 | 15 | 0 | 515 | 0 |
| Ohio | O H Hutchings | H-6 | 424 | 11 | 0 | 1,274 | 1,644 | 424 | 11 | 0 | 373 | 0 |
| Ohio | Orrville | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,822 |
| Ohio | Orrville | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2,120 |
| Ohio | Orrville | 12 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2,360 |
| | | | | | | | | | | | | 21,123 |
| | | | | | | | | | | | | 7,200 |
| | | | | | | | | | | | | 7,974 |
| | | | | | | | | | | | | 0 |
| | | | | | | | | | | | | 0 |
| | | | | | | | | | | | | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(3)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Ohio | Orrville | 13 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Painesville | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Painesville | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Painesville | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Picway | 9 | 2,368 | 61 | 55 | 0 | 2,122 | 2,368 | 60 | 55 | 2,137 |
| Ohio | Piqua | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Piqua | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Piqua | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Poston | 1 | 900 | 23 | 0 | 0 | 786 | 800 | 23 | 0 | 791 |
| Ohio | Poston | 2 | 836 | 21 | 0 | 0 | 730 | 836 | 21 | 0 | 735 |
| Ohio | Poston | 3 | 1,093 | 26 | 0 | 0 | 954 | 1,093 | 26 | 0 | 961 |
| Ohio | Poston | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | R E Burger | 1 | 1,409 | 36 | 0 | 0 | 1,231 | 676 | 17 | 0 | 594 |
| Ohio | R E Burger | 2 | 1,378 | 35 | 0 | 0 | 1,204 | 661 | 17 | 0 | 581 |
| Ohio | R E Burger | 3 | 1,423 | 36 | 0 | 0 | 1,242 | 683 | 17 | 0 | 601 |
| Ohio | R E Burger | 4 | 1,457 | 37 | 0 | 0 | 1,272 | 700 | 18 | 0 | 615 |
| Ohio | R E Burger | 5 | 1,479 | 38 | 34 | 0 | 1,325 | 1,479 | 38 | 34 | 1,334 |
| Ohio | R E Burger | 6 | 1,474 | 38 | 34 | 0 | 1,321 | 1,474 | 37 | 34 | 1,330 |
| Ohio | R E Burger | 7 | 5,174 | 132 | 120 | 0 | 4,636 | 5,174 | 131 | 120 | 4,669 |
| Ohio | R E Burger | 8 | 5,967 | 152 | 139 | 0 | 5,350 | 5,967 | 152 | 139 | 5,384 |
| Ohio | Refuse & Coal | 001 | 486 | 12 | 0 | 0 | 426 | 486 | 12 | 0 | 429 |
| Ohio | Refuse & Coal | 002 | 435 | 12 | 0 | 0 | 378 | 435 | 12 | 0 | 381 |
| Ohio | Refuse & Coal | 003 | 459 | 12 | 0 | 0 | 402 | 459 | 12 | 0 | 402 |
| Ohio | Refuse & Coal | 004 | 501 | 15 | 0 | 0 | 435 | 501 | 12 | 0 | 441 |
| Ohio | Refuse & Coal | 005 | 429 | 12 | 0 | 0 | 375 | 429 | 12 | 0 | 375 |
| Ohio | Refuse & Coal | 006 | 417 | 12 | 0 | 0 | 363 | 417 | 12 | 0 | 366 |
| Ohio | Richard Gorsuch | 1 | 952 | 24 | 0 | 0 | 832 | 952 | 24 | 0 | 836 |
| Ohio | Richard Gorsuch | 2 | 784 | 20 | 0 | 0 | 684 | 784 | 20 | 0 | 690 |
| Ohio | Richard Gorsuch | 3 | 1,064 | 26 | 0 | 0 | 928 | 1,064 | 26 | 0 | 934 |
| Ohio | Richard Gorsuch | 4 | 218 | 6 | 0 | 0 | 190 | 218 | 6 | 0 | 192 |
| Ohio | Shelby Munic Lgt Plt. | 1 | 0 | 0 | 0 | 0 | -0 | 0 | 0 | 0 | 0 |
| Ohio | Shelby Munic Lgt Plt. | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Shelby Munic Lgt Plt. | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Shelby Munic Lgt Plt. | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | St Marys | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | St Marys | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | St Marys | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Tidd | **1 | 816 | 20 | 0 | 0 | 713 | 816 | 21 | 0 | 717 |
| Ohio | Toronto | 9 | 2,140 | 54 | 0 | 0 | 1,868 | 1,027 | 26 | 0 | 902 |
| Ohio | Toronto | 10 | 3,820 | 99 | 0 | 0 | 3,334 | 1,834 | 47 | 0 | 1,612 |
| Ohio | Toronto | 11 | 4,128 | 104 | 0 | 0 | 3,605 | 1,982 | 51 | 0 | 1,741 |
| Ohio | W H Sammis | 1 | 7,130 | 181 | 0 | 0 | 6,226 | 7,130 | 181 | 0 | 6,268 |
| Ohio | W H Sammis | 2 | 6,253 | 159 | 0 | 0 | 5,460 | 6,253 | 159 | 0 | 5,497 |
| Ohio | W H Sammis | 3 | 7,129 | 181 | 0 | 0 | 6,225 | 7,129 | 181 | 0 | 6,267 |
| Ohio | W H Sammis | 4 | 6,317 | 161 | 0 | 0 | 5,516 | 6,317 | 161 | 0 | 5,553 |
| Ohio | W H Sammis | 5 | 11,600 | 296 | 270 | 0 | 10,398 | 11,600 | 295 | 270 | 10,467 |
| Ohio | W H Sammis | 6 | 22,210 | 566 | 516 | 0 | 19,909 | 22,210 | 564 | 516 | 20,041 |
| Ohio | W H Sammis | 7 | 20,747 | 529 | 482 | 0 | 18,597 | 20,747 | 527 | 482 | 18,721 |
| Ohio | W H Zimmer | 1 | 18,458 | 470 | 0 | 0 | 16,117 | 18,458 | 469 | 0 | 16,226 |
| Ohio | Walter C Beckjord | 1 | 539 | 14 | 0 | 1,347 | 1,818 | 539 | 14 | 0 | 474 |
| Ohio | Walter C Beckjord | 2 | 812 | 20 | 0 | 1,135 | 1,844 | 812 | 21 | 0 | 713 |
| Ohio | Walter C Beckjord | 3 | 1,228 | 31 | 0 | 1,438 | 2,510 | 1,228 | 31 | 0 | 1,080 |
| Ohio | Walter C Beckjord | 4 | 2,442 | 62 | 0 | 1,112 | 3,244 | 2,442 | 62 | 0 | 2,147 |
| Ohio | Walter C Beckjord | 5 | 4,294 | 109 | 100 | 0 | 3,850 | 4,294 | 109 | 100 | 3,875 |
| Ohio | Walter C Beckjord | 6 | 11,048 | 281 | 257 | 0 | 9,904 | 11,048 | 281 | 257 | 9,969 |
| Ohio | Woodsdale | **GT1 | 576 | 14 | 0 | 0 | 505 | 576 | 15 | 0 | 506 |
| Ohio | Woodsdale | **GT2 | 576 | 14 | 0 | 0 | 505 | 576 | 15 | 0 | 506 |
| Ohio | Woodsdale | **GT3 | 576 | 14 | 0 | 0 | 505 | 576 | 15 | 0 | 506 |
| Ohio | Woodsdale | **GT4 | 576 | 14 | 0 | 0 | 505 | 576 | 15 | 0 | 506 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(e)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(e)(3)) | Total annual phase II |
| Ohio | Woodsdale | **GT5 | 578 | 14 | 0 | 0 | 505 | 578 | 15 | 0 | 508 |
| Ohio | Woodsdale | **GT6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Woodsdale | **GT7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Woodsdale | **GT8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Woodsdale | **GT9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Woodsdale | **GT10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Woodsdale | **GT11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Woodsdale | **GT12 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | Anadarko | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | Anadarko | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | Anadarko | 3 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Oklahoma | Arbuckle | AR8 | 1 | 0 | 0 | 43 | 44 | 56 | 1 | 0 | 50 |
| Oklahoma | Boomer Lake | 1 | 0 | 0 | 0 | 0 | 0 | 11 | 0 | 0 | 10 |
| Oklahoma | Boomer Lake | 2 | 0 | 0 | 0 | 0 | 0 | 16 | 0 | 0 | 14 |
| Oklahoma | Comanche | 7251 | 2 | 0 | 0 | 327 | 329 | 164 | 4 | 0 | 144 |
| Oklahoma | Comanche | 7252 | 2 | 0 | 0 | 0 | 2 | 164 | 4 | 0 | 144 |
| Oklahoma | Conoco | **1 | 253 | 6 | 0 | 0 | 221 | 253 | 8 | 0 | 223 |
| Oklahoma | Conoco | **2 | 253 | 6 | 0 | 0 | 221 | 253 | 8 | 0 | 223 |
| Oklahoma | Grda | 1 | 15,939 | 406 | 0 | 667 | 14,605 | 15,939 | 405 | 0 | 14,012 |
| Oklahoma | Grda | 2 | 9,550 | 244 | 0 | 38 | 8,378 | 9,550 | 243 | 0 | 8,395 |
| Oklahoma | Horseshoe Lake. | 6 | 4 | 0 | 0 | 167 | 171 | 180 | 5 | 0 | 161 |
| Oklahoma | Horseshoe Lake. | 7 | 5 | 0 | 0 | 223 | 228 | 236 | 6 | 0 | 207 |
| Oklahoma | Horseshoe Lake. | 8 | 8 | 0 | 0 | 302 | 309 | 408 | 10 | 0 | 368 |
| Oklahoma | Hugo | 1 | 13,090 | 334 | 0 | 416 | 11,845 | 13,090 | 333 | 0 | 11,807 |
| Oklahoma | Inola | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | Mooreland | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Oklahoma | Mooreland | 2 | 1 | 0 | 0 | 42 | 43 | 65 | 2 | 0 | 57 |
| Oklahoma | Mooreland | 3 | 0 | 0 | 0 | 7 | 7 | 18 | 0 | 0 | 17 |
| Oklahoma | Muskogee | 3 | 3 | 0 | 0 | 136 | 139 | 156 | 4 | 0 | 137 |
| Oklahoma | Muskogee | 4 | 10,130 | 258 | 0 | 441 | 9,286 | 10,130 | 257 | 0 | 8,906 |
| Oklahoma | Muskogee | 5 | 8,937 | 227 | 0 | 451 | 8,255 | 8,937 | 227 | 0 | 7,857 |
| Oklahoma | Muskogee | 6 | 15,892 | 405 | 0 | 511 | 14,367 | 15,892 | 404 | 0 | 13,970 |
| Oklahoma | Mustang | 1 | 1 | 0 | 0 | 31 | 32 | 30 | 1 | 0 | 26 |
| Oklahoma | Mustang | 2 | 1 | 0 | 0 | 25 | 26 | 29 | 1 | 0 | 25 |
| Oklahoma | Mustang | 3 | 1 | 0 | 0 | 0 | 1 | 92 | 2 | 0 | 81 |
| Oklahoma | Mustang | 4 | 5 | 0 | 0 | 156 | 161 | 218 | 6 | 0 | 191 |
| Oklahoma | Na 1–5030 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | Na 1–5030 | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | NA 1–5030 | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | Northeastern | 3301 | 1,878 | 46 | 0 | 98 | 1,736 | 1,878 | 46 | 0 | 1,651 |
| Oklahoma | Northeastern | 3302 | 6,363 | 162 | 0 | 363 | 5,919 | 6,363 | 162 | 0 | 5,593 |
| Oklahoma | Northeastern | 3313 | 15,113 | 385 | 0 | 902 | 13,798 | 15,113 | 384 | 0 | 13,286 |
| Oklahoma | Northeastern | 3314 | 16,354 | 416 | 0 | 565 | 14,845 | 16,354 | 415 | 0 | 14,376 |
| Oklahoma | Ponca | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | Ponca | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | Riverside | 1501 | 6 | 0 | 0 | 506 | 513 | 476 | 12 | 0 | 419 |
| Oklahoma | Riverside | 1502 | 5 | 0 | 0 | 278 | 283 | 382 | 10 | 0 | 336 |
| Oklahoma | Seminole | 1 | 14 | 0 | 0 | 395 | 408 | 437 | 11 | 0 | 384 |
| Oklahoma | Seminole | 2 | 6 | 0 | 0 | 442 | 448 | 492 | 12 | 0 | 433 |
| Oklahoma | Seminole | 3 | 44 | 1 | 0 | 451 | 490 | 577 | 15 | 0 | 507 |
| Oklahoma | Sooner | 1 | 11,336 | 289 | 0 | 545 | 10,443 | 11,336 | 288 | 0 | 9,966 |
| Oklahoma | Sooner | 2 | 10,781 | 275 | 0 | 540 | 9,954 | 10,781 | 274 | 0 | 9,477 |
| Oklahoma | Southwestern | 6002 | 0 | 0 | 0 | 15 | 15 | 20 | 1 | 0 | 17 |
| Oklahoma | Southwestern | 6003 | 3 | 0 | 0 | 159 | 162 | 198 | 5 | 0 | 185 |
| Oklahoma | Southwestern | 6013N | 0 | 0 | 0 | 3 | 3 | 5 | 0 | 0 | 5 |
| Oklahoma | Southwestern | 6013S | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 3 |
| Oklahoma | Tulsa | 1402 | 0 | 0 | 0 | 97 | 97 | 51 | 1 | 0 | 45 |
| Oklahoma | Tulsa | 1403 | 0 | 0 | 0 | 4 | 4 | 3 | 0 | 0 | 3 |
| Oklahoma | Tulsa | 1404 | 1 | 0 | 0 | 56 | 57 | 73 | 2 | 0 | 64 |
| Oregon | Boardman | 1SG | 1,233 | 34 | 0 | 10,307 | 11,471 | 1,233 | 34 | 0 | 1,172 |
| Pennsylvania | Armstrong | 1 | 6,918 | 176 | 161 | 0 | 6,202 | 6,918 | 176 | 161 | 6,242 |
| Pennsylvania | Armstrong | 2 | 7,407 | 189 | 172 | 0 | 6,639 | 7,407 | 188 | 172 | 6,684 |
| Pennsylvania | Bruce Mansfield. | 1 | 14,532 | 370 | 0 | 0 | 12,689 | 14,532 | 369 | 0 | 12,775 |
| Pennsylvania | Bruce Mansfield. | 2 | 16,077 | 410 | 0 | 0 | 14,036 | 16,077 | 408 | 0 | 14,134 |
| Pennsylvania | Bruce Mansfield. | 3 | 16,538 | 421 | 0 | 0 | 14,441 | 16,538 | 420 | 0 | 14,539 |
| Pennsylvania | Brunner Island | 1 | 13,326 | 340 | 310 | 0 | 11,945 | 13,326 | 339 | 310 | 12,024 |
| Pennsylvania | Brunner Island | 2 | 14,930 | 380 | 347 | 0 | 13,384 | 14,930 | 379 | 347 | 13,472 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Pennsylvania | Brunner Island | 3 | 25,836 | 658 | 600 | 0 | 23,159 | 25,836 | 656 | 600 | 23,313 |
| Pennsylvania | Cheswick | 1 | 16,800 | 478 | 437 | 0 | 16,853 | 16,800 | 478 | 437 | 16,964 |
| Pennsylvania | Conemaugh | 1 | 26,874 | 735 | 671 | 0 | 25,882 | 26,874 | 735 | 671 | 26,053 |
| Pennsylvania | Conemaugh | 2 | 32,005 | 815 | 744 | 0 | 28,688 | 32,005 | 814 | 744 | 28,879 |
| Pennsylvania | Cromby | 1 | 2,518 | 65 | 0 | 0 | 2,198 | 2,518 | 64 | 0 | 2,214 |
| Pennsylvania | Cromby | 2 | 2,411 | 61 | 0 | 0 | 2,105 | 2,411 | 61 | 0 | 2,120 |
| Pennsylvania | Delaware | 71 | 850 | 22 | 0 | 0 | 742 | 850 | 22 | 0 | 747 |
| Pennsylvania | Delaware | 81 | 614 | 16 | 0 | 0 | 536 | 614 | 16 | 0 | 539 |
| Pennsylvania | Eddystone | 1 | 2,920 | 74 | 0 | 287 | 2,837 | 2,920 | 74 | 0 | 2,567 |
| Pennsylvania | Eddystone | 2 | 2,856 | 73 | 0 | 500 | 2,994 | 2,856 | 73 | 0 | 2,510 |
| Pennsylvania | Eddystone | 3 | 2,166 | 55 | 0 | 0 | 1,891 | 2,166 | 55 | 0 | 1,904 |
| Pennsylvania | Eddystone | 4 | 2,298 | 58 | 0 | 0 | 2,007 | 2,298 | 58 | 0 | 2,021 |
| Pennsylvania | Elrama | 1 | 812 | 20 | 0 | 928 | 1,637 | 812 | 21 | 0 | 713 |
| Pennsylvania | Elrama | 2 | 755 | 19 | 0 | 544 | 1,604 | 755 | 19 | 0 | 654 |
| Pennsylvania | Elrama | 3 | 1,743 | 45 | 0 | 42 | 1,563 | 1,743 | 44 | 0 | 1,533 |
| Pennsylvania | Elrama | 4 | 2,948 | 75 | 0 | 0 | 2,574 | 2,948 | 75 | 0 | 2,591 |
| Pennsylvania | F R Phillips | 1 | 164 | 6 | 0 | 512 | 654 | 164 | 3 | 0 | 145 |
| Pennsylvania | F R Phillips | 2 | 125 | 4 | 0 | 389 | 499 | 125 | 3 | 0 | 110 |
| Pennsylvania | F R Phillips | 3 | 290 | 6 | 0 | 901 | 1,155 | 290 | 6 | 0 | 255 |
| Pennsylvania | F R Phillips | 4 | 276 | 6 | 0 | 860 | 1,101 | 276 | 7 | 0 | 242 |
| Pennsylvania | F R Phillips | 5 | 261 | 6 | 0 | 874 | 1,120 | 261 | 7 | 0 | 247 |
| Pennsylvania | F R Phillips | 6 | 1,265 | 32 | 0 | 804 | 2,009 | 1,265 | 32 | 0 | 1,112 |
| Pennsylvania | Front Street | 7 | 337 | 8 | 0 | 0 | 295 | 337 | 9 | 0 | 296 |
| Pennsylvania | Front Street | 8 | 337 | 8 | 0 | 0 | 295 | 337 | 9 | 0 | 296 |
| Pennsylvania | Front Street | 9 | 1,344 | 32 | 0 | 0 | 1,176 | 1,344 | 36 | 0 | 1,180 |
| Pennsylvania | Front Street | 10 | 1,344 | 32 | 0 | 0 | 1,176 | 1,344 | 36 | 0 | 1,180 |
| Pennsylvania | Hatfield's Ferry | 1 | 18,157 | 463 | 422 | 0 | 16,276 | 18,157 | 461 | 422 | 16,394 |
| Pennsylvania | Hatfield's Ferry | 2 | 17,915 | 457 | 416 | 0 | 16,056 | 17,915 | 455 | 416 | 16,165 |
| Pennsylvania | Hatfield's Ferry | 3 | 19,029 | 492 | 449 | 0 | 17,327 | 19,329 | 491 | 449 | 17,441 |
| Pennsylvania | Holtwood | 17 | 3,867 | 99 | 0 | 0 | 3,376 | 3,867 | 98 | 0 | 3,400 |
| Pennsylvania | Homer City | 1 | 20,293 | 517 | 0 | 0 | 17,719 | 20,293 | 516 | 0 | 17,839 |
| Pennsylvania | Homer City | 2 | 17,613 | 449 | 0 | 891 | 16,270 | 17,613 | 447 | 0 | 15,484 |
| Pennsylvania | Homer City | 3 | 31,573 | 803 | 0 | 0 | 27,568 | 31,573 | 803 | 0 | 27,755 |
| Pennsylvania | Hunlock Power | 6 | 2,579 | 66 | 0 | 0 | 2,252 | 2,579 | 66 | 0 | 2,267 |
| Pennsylvania | Keystone | 1 | 32,247 | 821 | 0 | 0 | 28,155 | 32,247 | 820 | 0 | 28,347 |
| Pennsylvania | Keystone | 2 | 34,335 | 874 | 0 | 0 | 29,978 | 34,335 | 873 | 0 | 30,183 |
| Pennsylvania | Marcus Hook Refinery | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Martins Creek | 1 | 6,075 | 155 | 141 | 0 | 5,446 | 6,075 | 154 | 141 | 5,482 |
| Pennsylvania | Martins Creek | 2 | 6,154 | 157 | 143 | 0 | 5,516 | 6,154 | 156 | 143 | 5,553 |
| Pennsylvania | Martins Creek | 3 | 15,064 | 384 | 0 | 0 | 13,153 | 15,064 | 383 | 0 | 13,242 |
| Pennsylvania | Martins Creek | 4 | 13,857 | 353 | 0 | 0 | 12,100 | 13,857 | 352 | 0 | 12,182 |
| Pennsylvania | Mitchell | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Mitchell | 2 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 |
| Pennsylvania | Mitchell | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Mitchell | 33 | 3,540 | 90 | 0 | 426 | 3,517 | 3,540 | 90 | 0 | 3,112 |
| Pennsylvania | Montour | 1 | 27,398 | 698 | 0 | 212 | 24,135 | 27,398 | 696 | 0 | 24,085 |
| Pennsylvania | Montour | 2 | 28,204 | 718 | 0 | 0 | 24,627 | 28,204 | 717 | 0 | 24,794 |
| Pennsylvania | New Castle | 1 | 1,476 | 38 | 0 | 0 | 1,288 | 709 | 18 | 0 | 623 |
| Pennsylvania | New Castle | 2 | 1,643 | 43 | 0 | 0 | 1,434 | 789 | 20 | 0 | 693 |
| Pennsylvania | New Castle | 3 | 3,248 | 83 | 0 | 0 | 2,836 | 3,248 | 83 | 0 | 2,855 |
| Pennsylvania | New Castle | 4 | 2,973 | 76 | 0 | 212 | 2,808 | 2,973 | 76 | 0 | 2,613 |
| Pennsylvania | New Castle | 5 | 5,159 | 131 | 0 | 0 | 4,505 | 5,159 | 131 | 0 | 4,535 |
| Pennsylvania | Portland | 1 | 2,850 | 73 | 66 | 0 | 2,554 | 2,850 | 72 | 66 | 2,572 |
| Pennsylvania | Portland | 2 | 4,913 | 125 | 114 | 0 | 4,404 | 4,913 | 125 | 114 | 4,433 |
| Pennsylvania | Richmond | 63 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Richmond | 64 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Schuylkill | 1 | 654 | 17 | 0 | 0 | 571 | 654 | 17 | 0 | 575 |
| Pennsylvania | Seward | 12 | 1,253 | 32 | 0 | 0 | 1,094 | 1,253 | 32 | 0 | 1,101 |
| Pennsylvania | Seward | 14 | 1,253 | 32 | 0 | 0 | 1,094 | 1,253 | 32 | 0 | 1,101 |
| Pennsylvania | Seward | 15 | 5,715 | 146 | 0 | 0 | 4,990 | 5,715 | 145 | 0 | 5,024 |
| Pennsylvania | Shawville | 1 | 4,930 | 126 | 115 | 0 | 4,419 | 4,930 | 125 | 115 | 4,449 |
| Pennsylvania | Shawville | 2 | 4,960 | 127 | 115 | 0 | 4,445 | 4,960 | 126 | 115 | 4,475 |
| Pennsylvania | Shawville | 3 | 6,803 | 173 | 158 | 0 | 5,099 | 6,803 | 173 | 158 | 6,138 |
| Pennsylvania | Shawville | 4 | 6,757 | 172 | 157 | 0 | 6,057 | 6,757 | 172 | 157 | 6,097 |
| Pennsylvania | Southwark | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Southwark | 12 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Southwark | 21 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Southwark | 22 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Springdale | 77 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Springdale | 88 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Sunbury | 3 | 4,554 | 116 | 43 | 0 | 4,020 | 4,554 | 116 | 43 | 4,046 |
| Pennsylvania | Sunbury | 4 | 5,844 | 149 | 136 | 0 | 5,239 | 5,844 | 148 | 136 | 5,274 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(2)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Pennsylvania | Sunbury | 1A | 2,077 | 52 | 20 | 0 | 1,835 | 2,077 | 52 | 20 | 1,846 |
| Pennsylvania | Sunbury | 1B | 2,076 | 52 | 20 | 0 | 1,834 | 2,076 | 52 | 20 | 1,846 |
| Pennsylvania | Sunbury | 2A | 2,077 | 52 | 20 | 0 | 1,835 | 2,077 | 52 | 20 | 1,846 |
| Pennsylvania | Sunbury | 2B | 2,077 | 52 | 20 | 0 | 1,835 | 2,077 | 52 | 20 | 1,846 |
| Pennsylvania | Titus | 1 | 2,169 | 55 | 0 | 249 | 2,143 | 2,169 | 55 | 0 | 1,907 |
| Pennsylvania | Titus | 2 | 2,486 | 63 | 0 | 96 | 2,267 | 2,486 | 63 | 0 | 2,196 |
| Pennsylvania | Titus | 3 | 2,275 | 58 | 0 | 202 | 2,169 | 2,275 | 58 | 0 | 2,000 |
| Pennsylvania | Warren | 1 | 823 | 21 | 0 | 0 | 716 | 823 | 21 | 0 | 723 |
| Pennsylvania | Warren | 2 | 823 | 21 | 0 | 0 | 716 | 823 | 21 | 0 | 723 |
| Pennsylvania | Warren | 3 | 845 | 21 | 0 | 0 | 738 | 845 | 21 | 0 | 743 |
| Pennsylvania | Warren | 4 | 845 | 21 | 0 | 0 | 738 | 845 | 21 | 0 | 743 |
| Pennsylvania | Williamsburg | 11 | 1,066 | 27 | 0 | 0 | 932 | 1,066 | 27 | 0 | 939 |
| Rhode Island | Manchester Street | 6 | 749 | 19 | 0 | 37 | 691 | 749 | 19 | 0 | 658 |
| Rhode Island | Manchester Street | 7 | 497 | 13 | 0 | 24 | 456 | 497 | 13 | 0 | 437 |
| Rhode Island | Manchester Street | 12 | 553 | 15 | 0 | 28 | 510 | 553 | 14 | 0 | 486 |
| Rhode Island | South Street | 121 | 1,195 | 31 | 0 | 41 | 1,063 | 1,195 | 30 | 0 | 1,051 |
| Rhode Island | South Street | 122 | 1,063 | 28 | 0 | 0 | 945 | 1,063 | 26 | 0 | 951 |
| South Carolina | Canadys Steam | CAN1 | 3,350 | 86 | 0 | 312 | 3,237 | 3,350 | 85 | 0 | 2,945 |
| South Carolina | Canadys Steam | CAN2 | 2,634 | 67 | 0 | 666 | 2,966 | 2,634 | 67 | 0 | 2,315 |
| South Carolina | Canadys Steam | CAN3 | 3,542 | 90 | 0 | 1,111 | 4,204 | 3,542 | 90 | 0 | 3,114 |
| South Carolina | Cross | 1 | 6,401 | 163 | 0 | 0 | 5,589 | 6,401 | 163 | 0 | 5,627 |
| South Carolina | Cross | 2 | 10,216 | 260 | 0 | 0 | 8,920 | 10,216 | 260 | 0 | 8,980 |
| South Carolina | Dolphus M Grainger | 1 | 3,558 | 90 | 0 | 0 | 3,107 | 3,558 | 90 | 0 | 3,128 |
| South Carolina | Dolphus M Grainger | 2 | 316 | 8 | 0 | 0 | 276 | 316 | 8 | 0 | 278 |
| South Carolina | H B Robinson | 1 | 3,317 | 84 | 0 | 901 | 3,798 | 3,317 | 84 | 0 | 2,916 |
| South Carolina | Hagood | **4 | 1,084 | 27 | 0 | 0 | 947 | 1,084 | 26 | 0 | 952 |
| South Carolina | Hagood | HAG1 | 3 | 0 | 0 | 0 | 3 | 3 | 0 | 0 | 3 |
| South Carolina | Hagood | HAG2 | 2 | 0 | 0 | 444 | 446 | 2 | 0 | 0 | 2 |
| South Carolina | Hagood | HAG3 | 7 | 0 | 0 | 772 | 776 | 7 | 0 | 0 | 5 |
| South Carolina | Jefferies | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Carolina | Jefferies | 2 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 |
| South Carolina | Jefferies | 3 | 3,854 | 98 | 0 | 506 | 3,674 | 3,854 | 98 | 0 | 3,388 |
| South Carolina | Jefferies | 4 | 3,599 | 92 | 0 | 586 | 3,726 | 3,599 | 91 | 0 | 3,164 |
| South Carolina | McMeekin | MCM1 | 4,662 | 119 | 0 | 0 | 4,070 | 4,662 | 118 | 0 | 4,099 |
| South Carolina | McMeekin | MCM2 | 4,614 | 118 | 0 | 0 | 4,029 | 4,614 | 117 | 0 | 4,056 |
| South Carolina | NA 1-7106 | **GT1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Carolina | NA 2-7107 | **GT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Carolina | NA 3-7108 | **GT3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Carolina | NA 4-7210 | **ST1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Carolina | Urquhart | URQ1 | 2,509 | 64 | 0 | 0 | 2,191 | 2,509 | 64 | 0 | 2,205 |
| South Carolina | Urquhart | URQ2 | 1,922 | 49 | 0 | 242 | 1,920 | 1,922 | 49 | 0 | 1,689 |
| South Carolina | Urquhart | URQ3 | 3,329 | 85 | 0 | 0 | 2,907 | 3,329 | 85 | 0 | 2,926 |
| South Carolina | W S Lee | 1 | 1,027 | 26 | 0 | 1,220 | 2,117 | 1,027 | 26 | 0 | 903 |
| South Carolina | W S Lee | 2 | 1,292 | 33 | 0 | 1,134 | 2,263 | 1,292 | 33 | 0 | 1,136 |
| South Carolina | W S Lee | 3 | 2,022 | 52 | 0 | 1,655 | 3,420 | 2,022 | 51 | 0 | 1,778 |
| South Carolina | Wateree | WAT1 | 11,104 | 283 | 0 | 0 | 9,696 | 11,104 | 282 | 0 | 9,762 |
| South Carolina | Wateree | WAT2 | 10,292 | 263 | 0 | 280 | 9,246 | 10,292 | 261 | 0 | 9,048 |
| South Carolina | Williams | WIL1 | 18,079 | 460 | 0 | 0 | 15,786 | 18,079 | 459 | 0 | 15,893 |
| South Carolina | Winyah | 1 | 8,655 | 221 | 0 | 0 | 7,557 | 8,655 | 220 | 0 | 7,606 |
| South Carolina | Winyah | 2 | 5,849 | 149 | 0 | 1,102 | 6,210 | 5,849 | 149 | 0 | 5,141 |
| South Carolina | Winyah | 3 | 2,862 | 73 | 0 | 1,090 | 3,592 | 2,862 | 73 | 0 | 2,516 |
| South Carolina | Winyah | 4 | 3,916 | 100 | 0 | 0 | 3,419 | 3,916 | 99 | 0 | 3,443 |
| South Dakota | Ben French | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Dakota | Big Stone | 1 | 14,799 | 377 | 0 | 755 | 13,677 | 14,799 | 376 | 0 | 13,010 |
| South Dakota | CT | **5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Dakota | Huron | **2A | 91 | 2 | 0 | 0 | 80 | 91 | 2 | 0 | 80 |
| South Dakota | Huron | **2B | 117 | 3 | 0 | 0 | 102 | 117 | 3 | 0 | 103 |
| South Dakota | Kirk | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Dakota | Kirk | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Dakota | Kirk | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Dakota | Kirk | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Dakota | Mobile | **2 | 20 | 1 | 0 | 0 | 17 | 20 | 1 | 0 | 17 |
| South Dakota | Pathfinder | 11 | 12 | 0 | 0 | 0 | 11 | 12 | 0 | 0 | 11 |
| South Dakota | Pathfinder | 12 | 2 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 2 |
| South Dakota | Pathfinder | 13 | 2 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 2 |
| Tennessee | Allen | 1 | 7,355 | 187 | 171 | 0 | 6,593 | 7,355 | 187 | 171 | 6,837 |
| Tennessee | Allen | 2 | 8,049 | 205 | 187 | 0 | 7,215 | 8,049 | 204 | 187 | 7,283 |
| Tennessee | Allen | 3 | 7,520 | 192 | 175 | 0 | 6,741 | 7,520 | 191 | 175 | 6,766 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(2)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(2)) | Total annual phase II |
| Tennessee | Bull Run | 1 | 26,623 | 729 | 0 | 0 | 24,993 | 26,623 | 727 | 0 | 25,163 |
| Tennessee | Cumberland | 1 | 41,616 | 1,060 | 967 | 0 | 37,302 | 41,616 | 1,058 | 967 | 37,550 |
| Tennessee | Cumberland | 2 | 45,523 | 1,160 | 1,058 | 0 | 40,805 | 45,523 | 1,156 | 1,057 | 41,074 |
| Tennessee | Gallatin | 1 | 8,455 | 215 | 197 | 0 | 7,589 | 8,465 | 215 | 197 | 7,639 |
| Tennessee | Gallatin | 2 | 8,308 | 212 | 193 | 0 | 7,447 | 8,308 | 211 | 193 | 7,497 |
| Tennessee | Gallatin | 3 | 9,611 | 245 | 223 | 0 | 8,615 | 9,611 | 244 | 223 | 8,672 |
| Tennessee | Gallatin | 4 | 10,204 | 260 | 237 | 0 | 9,147 | 10,204 | 259 | 237 | 9,208 |
| Tennessee | John Sevier | 1 | 7,268 | 185 | 0 | 0 | 6,346 | 7,268 | 185 | 0 | 6,389 |
| Tennessee | John Sevier | 2 | 7,265 | 185 | 0 | 0 | 6,344 | 7,265 | 185 | 0 | 6,386 |
| Tennessee | John Sevier | 3 | 7,450 | 190 | 0 | 0 | 6,505 | 7,450 | 189 | 0 | 6,550 |
| Tennessee | John Sevier | 4 | 7,620 | 194 | 0 | 0 | 6,653 | 7,620 | 194 | 0 | 6,696 |
| Tennessee | Johnsonville | 1 | 3,736 | 96 | 87 | 0 | 3,350 | 3,736 | 95 | 87 | 3,373 |
| Tennessee | Johnsonville | 2 | 3,857 | 99 | 90 | 0 | 3,457 | 3,857 | 98 | 90 | 3,481 |
| Tennessee | Johnsonville | 3 | 4,037 | 103 | 94 | 0 | 3,619 | 4,037 | 103 | 94 | 3,642 |
| Tennessee | Johnsonville | 4 | 3,833 | 98 | 89 | 0 | 3,436 | 3,833 | 97 | 89 | 3,459 |
| Tennessee | Johnsonville | 5 | 3,954 | 101 | 92 | 0 | 3,544 | 3,954 | 100 | 92 | 3,568 |
| Tennessee | Johnsonville | 6 | 3,789 | 96 | 88 | 0 | 3,397 | 3,789 | 96 | 88 | 3,419 |
| Tennessee | Johnsonville | 7 | 4,309 | 110 | 100 | 0 | 3,862 | 4,309 | 109 | 100 | 3,886 |
| Tennessee | Johnsonville | 8 | 4,178 | 106 | 97 | 0 | 3,745 | 4,178 | 106 | 97 | 3,770 |
| Tennessee | Johnsonville | 9 | 3,397 | 86 | 79 | 0 | 3,045 | 3,397 | 86 | 79 | 3,066 |
| Tennessee | Johnsonville | 10 | 3,625 | 93 | 84 | 0 | 3,249 | 3,625 | 92 | 84 | 3,271 |
| Tennessee | Kingston | 1 | 4,743 | 121 | 0 | 0 | 4,142 | 4,743 | 121 | 0 | 4,169 |
| Tennessee | Kingston | 2 | 4,524 | 115 | 0 | 33 | 3,983 | 4,524 | 115 | 0 | 3,977 |
| Tennessee | Kingston | 3 | 5,430 | 138 | 0 | 0 | 4,742 | 5,430 | 136 | 0 | 4,773 |
| Tennessee | Kingston | 4 | 5,761 | 146 | 0 | 0 | 5,031 | 5,761 | 146 | 0 | 5,065 |
| Tennessee | Kingston | 5 | 7,079 | 181 | 0 | 0 | 6,181 | 7,079 | 180 | 0 | 6,223 |
| Tennessee | Kingston | 6 | 7,253 | 185 | 0 | 0 | 6,333 | 7,253 | 184 | 0 | 6,376 |
| Tennessee | Kingston | 7 | 7,072 | 181 | 0 | 0 | 6,175 | 7,072 | 180 | 0 | 6,217 |
| Tennessee | Kingston | 8 | 6,609 | 168 | 0 | 0 | 5,771 | 6,609 | 168 | 0 | 5,810 |
| Tennessee | Kingston | 9 | 7,319 | 187 | 0 | 0 | 6,391 | 7,319 | 186 | 0 | 6,434 |
| Tennessee | Watts Bar | A | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Tennessee | Watts Bar | B | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Tennessee | Watts Bar | C | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Tennessee | Watts Bar | D | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Abilene | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Abilene | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Abilene | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Barney M Davis | 1 | 29 | 1 | 0 | 466 | 491 | 470 | 12 | 0 | 413 |
| Texas | Barney M Davis | 2 | 26 | 1 | 0 | 373 | 398 | 428 | 11 | 0 | 385 |
| Texas | Big Brown | 1 | 22,996 | 585 | 0 | 849 | 20,931 | 22,996 | 584 | 0 | 20,216 |
| Texas | Big Brown | 2 | 21,999 | 561 | 0 | 619 | 19,826 | 21,999 | 559 | 0 | 19,329 |
| Texas | Bryan | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Bryan | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Bryan | 5 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| Texas | Bryan | 6 | 14 | 0 | 0 | 6 | 19 | 26 | 1 | 0 | 23 |
| Texas | C E Newman | BW3 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Texas | C E Newman | BW4 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Texas | C E Newman | BW5 | 0 | 0 | 0 | 3 | 3 | 4 | 0 | 0 | 4 |
| Texas | C E Newman | CE1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | C E Newman | CE2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Cedar Bayou | CBY1 | 16 | 1 | 0 | 791 | 805 | 991 | 20 | 0 | 705 |
| Texas | Cedar Bayou | CBY2 | 6 | 0 | 0 | 906 | 911 | 975 | 25 | 0 | 860 |
| Texas | Cedar Bayou | CBY3 | 17 | 1 | 0 | 703 | 717 | 806 | 20 | 0 | 709 |
| Texas | Coleto Creek | 1 | 15,750 | 401 | 0 | 928 | 14,680 | 15,750 | 400 | 0 | 13,846 |
| Texas | Coleto Creek | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Collin | 1 | 54 | 2 | 0 | 43 | 90 | 107 | 3 | 0 | 94 |
| Texas | Concho | 2 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| Texas | Concho | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Concho | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Concho | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Concho | 7 | 8 | 0 | 0 | 0 | 7 | 14 | 0 | 0 | 13 |
| Texas | Dallas | 3 | 7 | 0 | 0 | 21 | 27 | 27 | 1 | 0 | 25 |
| Texas | Dallas | 9 | 8 | 0 | 0 | 19 | 26 | 29 | 1 | 0 | 25 |
| Texas | Dansby | 1 | 34 | 1 | 0 | 63 | 93 | 181 | 3 | 0 | 106 |
| Texas | Decker Creek | 1 | 2 | 0 | 0 | 125 | 127 | 171 | 4 | 0 | 151 |
| Texas | Decker Creek | 2 | 2 | 0 | 0 | 191 | 193 | 306 | 5 | 0 | 181 |
| Texas | Decordova | 1 | 29 | 1 | 0 | 961 | 1,006 | 1,004 | 26 | 0 | 882 |
| Texas | Deepwater | DWP1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Deepwater | DWP2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Deepwater | DWP3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Texas | Deepwater | DWP4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Deepwater | DWP5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Deepwater | DWP6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Deepwater | DWP9 | 1 | 0 | 0 | 27 | 28 | 42 | 1 | 0 | 37 |
| Texas | E S Joslin | 1 | 2 | 0 | 0 | 255 | 257 | 239 | 6 | 0 | 210 |
| Texas | Eagle Mountain | 1 | 7 | 0 | 0 | 45 | 51 | 49 | 1 | 0 | 43 |
| Texas | Eagle Mountain | 2 | 24 | 1 | 0 | 116 | 139 | 132 | 3 | 0 | 116 |
| Texas | Eagle Mountain | 3 | 2 | 0 | 0 | 97 | 99 | 124 | 3 | 0 | 109 |
| Texas | Forest Grove | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Fort Phantom | 1 | 6 | 0 | 0 | 118 | 125 | 147 | 4 | 0 | 129 |
| Texas | Fort Phantom | 2 | 37 | 1 | 0 | 153 | 186 | 220 | 6 | 0 | 193 |
| Texas | Generic Stat | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Generic Stat | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Gibbons Creek | 1 | 15,861 | 404 | 0 | 526 | 14,377 | 15,861 | 403 | 0 | 13,943 |
| Texas | Graham | 1 | 4 | 0 | 0 | 228 | 232 | 222 | 6 | 0 | 195 |
| Texas | Graham | 2 | 44 | 1 | 0 | 452 | 491 | 463 | 12 | 0 | 407 |
| Texas | Greens Bayou | GBY1 | 0 | 0 | 0 | 1 | 1 | 3 | 0 | 0 | 3 |
| Texas | Greens Bayou | GBY2 | 0 | 0 | 0 | 2 | 2 | 3 | 0 | 0 | 3 |
| Texas | Greens Bayou | GBY3 | 0 | 0 | 0 | 0 | 0 | 7 | 0 | 0 | 6 |
| Texas | Greens Bayou | GBY4 | 0 | 0 | 0 | 0 | 0 | 9 | 0 | 0 | 8 |
| Texas | Greens Bayou | GBY5 | 31 | 1 | 0 | 321 | 348 | 352 | 9 | 0 | 309 |
| Texas | GT 98 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | GT 98 | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | GT 99 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | GT 99 | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | GT 99 | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Handley | 2 | 0 | 0 | 0 | 21 | 21 | 17 | 0 | 0 | 15 |
| Texas | Handley | 3 | 21 | 1 | 0 | 400 | 418 | 448 | 11 | 0 | 394 |
| Texas | Handley | 4 | 16 | 1 | 0 | 103 | 117 | 128 | 3 | 0 | 113 |
| Texas | Handley | 5 | 22 | 1 | 0 | 116 | 135 | 145 | 4 | 0 | 127 |
| Texas | Handley | 1A | 0 | 0 | 0 | 7 | 7 | 3 | 0 | 0 | 3 |
| Texas | Handley | 1B | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 3 |
| Texas | Harrington Station. | 0618 | 8,796 | 224 | 0 | 530 | 8,211 | 8,796 | 223 | 0 | 7,733 |
| Texas | Harrington Station. | 0628 | 9,350 | 238 | 0 | 532 | 8,696 | 9,350 | 236 | 0 | 8,219 |
| Texas | Harrington Station. | 0638 | 9,971 | 254 | 0 | 537 | 9,243 | 9,971 | 253 | 0 | 8,766 |
| Texas | Hiram Clarke | HOC1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Hiram Clarke | HOC2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Hiram Clarke | HOC3 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| Texas | Hiram Clarke | HOC4 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Texas | Holly Ave | 1 | 1 | 0 | 0 | 57 | 58 | 81 | 2 | 0 | 71 |
| Texas | Holly Ave | 2 | 1 | 0 | 0 | 70 | 71 | 87 | 2 | 0 | 77 |
| Texas | Holly Street | 1 | 0 | 0 | 0 | 48 | 48 | 19 | 0 | 0 | 17 |
| Texas | Holly Street | 2 | 0 | 0 | 0 | 31 | 31 | 21 | 1 | 0 | 18 |
| Texas | Holly Street | 3 | 1 | 0 | 0 | 66 | 67 | 75 | 2 | 0 | 66 |
| Texas | Holly Street | 4 | 2 | 0 | 0 | 41 | 43 | 93 | 2 | 0 | 82 |
| Texas | J K Spruce | **1 | 7,647 | 195 | 0 | 0 | 6,677 | 7,647 | 194 | 0 | 6,723 |
| Texas | J K Spruce | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | J L Bates | 1 | 1 | 0 | 0 | 46 | 47 | 52 | 1 | 0 | 46 |
| Texas | J L Bates | 2 | 2 | 0 | 0 | 121 | 123 | 115 | 3 | 0 | 101 |
| Texas | J T Deely | 1 | 14,039 | 366 | 0 | 581 | 13,101 | 14,339 | 364 | 0 | 12,606 |
| Texas | J T Deely | 2 | 14,958 | 381 | 0 | 609 | 13,670 | 14,958 | 380 | 0 | 13,150 |
| Texas | Jones Station | 1518 | 2 | 0 | 0 | 122 | 124 | 94 | 2 | 0 | 74 |
| Texas | Jones Station | 1528 | 4 | 0 | 0 | 88 | 92 | 77 | 2 | 0 | 68 |
| Texas | Knox Lee | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Knox Lee | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Knox Lee | 3 | 0 | 0 | 0 | 5 | 5 | 2 | 0 | 0 | 2 |
| Texas | Knox Lee | 4 | 0 | 0 | 0 | 29 | 29 | 14 | 0 | 0 | 13 |
| Texas | Knox Lee | 5 | 2 | 0 | 0 | 246 | 248 | 170 | 4 | 0 | 150 |
| Texas | La Palma | 5 | 0 | 0 | 0 | 0 | 0 | 6 | 0 | 0 | 5 |
| Texas | La Palma | 6 | 0 | 0 | 0 | 0 | 0 | 7 | 0 | 0 | 6 |
| Texas | La Palma | 7 | 2 | 0 | 0 | 174 | 176 | 174 | 4 | 0 | 153 |
| Texas | Lake Creek | 1 | 1 | 0 | 0 | 36 | 39 | 33 | 1 | 0 | 29 |
| Texas | Lake Creek | 2 | 4 | 0 | 0 | 185 | 189 | 161 | 4 | 0 | 142 |
| Texas | Lake Hubbard | 1 | 25 | 1 | 0 | 146 | 166 | 229 | 6 | 0 | 201 |
| Texas | Lake Hubbard | 2 | 93 | 2 | 0 | 516 | 597 | 660 | 17 | 0 | 580 |
| Texas | Lake Pauline | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Lake Pauline | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Lake Pauline | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Lake Pauline | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Laredo | 1 | 0 | 0 | 0 | 15 | 15 | 16 | 0 | 0 | 16 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Texas | Laredo | 2 | 0 | 0 | 0 | 14 | 14 | 16 | 0 | 0 | 14 |
| Texas | Laredo | 3 | 8 | 0 | 0 | 79 | 84 | 132 | 3 | 0 | 116 |
| Texas | Leon Creek | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Leon Creek | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Leon Creek | 3 | 0 | 0 | 0 | 2 | 2 | 2 | 0 | 0 | 2 |
| Texas | Leon Creek | 4 | 0 | 0 | 0 | 10 | 10 | 9 | 0 | 0 | 8 |
| Texas | Lewis Creek | 1 | 4 | 0 | 0 | 310 | 314 | 301 | 8 | 0 | 264 |
| Texas | Lewis Creek | 2 | 4 | 0 | 0 | 264 | 268 | 293 | 7 | 0 | 256 |
| Texas | Limestone | LIM1 | 27,065 | 589 | 0 | 101 | 23,733 | 27,065 | 688 | 0 | 23,792 |
| Texas | Limestone | LIM2 | 16,178 | 412 | 0 | 0 | 14,126 | 16,178 | 411 | 0 | 14,222 |
| Texas | Lon C Hill | 1 | 0 | 0 | 0 | 8 | 8 | 8 | 0 | 0 | 7 |
| Texas | Lon C Hill | 2 | 0 | 0 | 0 | 10 | 10 | 8 | 0 | 0 | 7 |
| Texas | Lon C Hill | 3 | 2 | 0 | 0 | 175 | 177 | 104 | 3 | 0 | 91 |
| Texas | Lon C Hill | 4 | 4 | 0 | 0 | 191 | 195 | 272 | 7 | 0 | 239 |
| Texas | Lone Star | 1 | 0 | 0 | 0 | 0 | 0 | 11 | 0 | 0 | 10 |
| Texas | Malakoff | **1 | 1,759 | 45 | 0 | 0 | 1,536 | 1,759 | 45 | 0 | 1,546 |
| Texas | Malakoff | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Martin Lake | 1 | 36,736 | 936 | 0 | 1,072 | 33,147 | 36,736 | 934 | 0 | 32,293 |
| Texas | Martin Lake | 2 | 35,617 | 907 | 0 | 1,067 | 32,185 | 35,617 | 906 | 0 | 31,309 |
| Texas | Martin Lake | 3 | 36,094 | 942 | 0 | 1,053 | 33,353 | 36,994 | 941 | 0 | 32,519 |
| Texas | Mission Road | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Mission Road | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Mission Road | 3 | 0 | 0 | 0 | 3 | 3 | 8 | 0 | 0 | 8 |
| Texas | Monticello | 1 | 25,964 | 661 | 0 | 909 | 23,580 | 25,964 | 660 | 0 | 22,824 |
| Texas | Monticello | 2 | 25,166 | 641 | 0 | 905 | 22,879 | 25,166 | 639 | 0 | 22,124 |
| Texas | Monticello | 3 | 38,836 | 989 | 0 | 1,236 | 35,145 | 38,836 | 988 | 0 | 34,138 |
| Texas | Morgan Creek | 2 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 3 |
| Texas | Morgan Creek | 3 | 0 | 0 | 0 | 8 | 8 | 7 | 0 | 0 | 6 |
| Texas | Morgan Creek | 4 | 13 | 0 | 0 | 59 | 71 | 64 | 2 | 0 | 56 |
| Texas | Morgan Creek | 5 | 17 | 1 | 0 | 137 | 151 | 187 | 5 | 0 | 164 |
| Texas | Morgan Creek | 6 | 218 | 5 | 0 | 636 | 829 | 806 | 22 | 0 | 779 |
| Texas | Mountain Creek | 2 | 1 | 0 | 0 | 3 | 4 | 3 | 0 | 0 | 3 |
| Texas | Mountain Creek | 6 | 22 | 1 | 0 | 43 | 62 | 84 | 2 | 0 | 74 |
| Texas | Mountain Creek | 7 | 4 | 0 | 0 | 57 | 61 | 67 | 2 | 0 | 59 |
| Texas | Mountain Creek | 8 | 59 | 2 | 0 | 469 | 520 | 610 | 16 | 0 | 536 |
| Texas | Mountain Creek | 3A | 2 | 0 | 0 | 9 | 11 | 5 | 0 | 0 | 5 |
| Texas | Mountain Creek | 3B | 2 | 0 | 0 | 0 | 2 | 5 | 0 | 0 | 5 |
| Texas | NA 1-7216 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | NA 1-7216 | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | NA 1-7219 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | NA 1-7219 | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | NA 2-4274 | **NA1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Neches | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Neches | 13 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Neches | 15 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Neches | 18 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Newman | 1 | 0 | 0 | 0 | 14 | 14 | 21 | 1 | 0 | 18 |
| Texas | Newman | 2 | 1 | 0 | 0 | 28 | 29 | 47 | 1 | 0 | 42 |
| Texas | Newman | 3 | 1 | 0 | 0 | 56 | 57 | 107 | 3 | 0 | 94 |
| Texas | Newman | **4 | 2 | 0 | 0 | 96 | 98 | 157 | 4 | 0 | 136 |
| Texas | Nichols Station | 141B | 1 | 0 | 0 | 75 | 76 | 93 | 2 | 0 | 82 |
| Texas | Nichols Station | 142B | 1 | 0 | 0 | 84 | 85 | 87 | 2 | 0 | 77 |
| Texas | Nichols Station | 143B | 0 | 0 | 0 | 48 | 48 | 36 | 1 | 0 | 32 |
| Texas | North Lake | 1 | 45 | 2 | 0 | 90 | 129 | 148 | 4 | 0 | 130 |
| Texas | North Lake | 2 | 40 | 1 | 0 | 111 | 149 | 161 | 4 | 0 | 142 |
| Texas | North Lake | 3 | 64 | 1 | 0 | 235 | 291 | 291 | 7 | 0 | 256 |
| Texas | North Main | 4 | 6 | 0 | 0 | 34 | 42 | 40 | 1 | 0 | 35 |
| Texas | North Texas | 1 | 0 | 0 | 0 | 0 | 0 | 4 | 0 | 0 | 4 |
| Texas | North Texas | 2 | 0 | 0 | 0 | 0 | 0 | 4 | 0 | 0 | 4 |
| Texas | North Texas | 3 | 0 | 0 | 0 | 13 | 13 | 9 | 0 | 0 | 8 |
| Texas | Nueces Bay | 5 | 0 | 0 | 0 | 1 | 1 | 1 | 0 | 0 | 1 |
| Texas | Nueces Bay | 6 | 2 | 0 | 0 | 136 | 138 | 130 | 3 | 0 | 115 |
| Texas | Nueces Bay | 7 | 7 | 0 | 0 | 484 | 490 | 491 | 12 | 0 | 432 |
| Texas | O W Sommers | 1 | 83 | 2 | 0 | 400 | 472 | 544 | 14 | 0 | 478 |
| Texas | O W Sommers | 2 | 4 | 0 | 0 | 182 | 186 | 367 | 9 | 0 | 323 |
| Texas | Oak Creek | 1 | 15 | 1 | 0 | 91 | 105 | 122 | 3 | 0 | 107 |
| Texas | Oklaunion | 1 | 8,980 | 229 | 0 | 0 | 7,841 | 8,980 | 228 | 0 | 7,894 |
| Texas | P H Robinson | PHR1 | 6 | 0 | 0 | 633 | 636 | 497 | 13 | 0 | 437 |
| Texas | P H Robinson | PHR2 | 7 | 0 | 0 | 482 | 486 | 560 | 14 | 0 | 493 |
| Texas | P H Robinson | PHR3 | 7 | 0 | 0 | 671 | 677 | 578 | 15 | 0 | 508 |
| Texas | P H Robinson | PHR4 | 19 | 1 | 0 | 771 | 787 | 707 | 16 | 0 | -621 |
| Texas | Paint Creek | 1 | 3 | 0 | 0 | 8 | 11 | 11 | 0 | 0 | 10 |
| Texas | Paint Creek | 2 | 3 | 0 | 0 | 8 | 11 | 12 | 0 | 0 | 11 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Texas | Paint Creek | 3 | 21 | 1 | 0 | 10 | 28 | 61 | 2 | 0 | 53 |
| Texas | Paint Creek | 4 | 1 | 0 | 0 | 103 | 104 | 118 | 3 | 0 | 104 |
| Texas | Parkdale | 1 | 11 | 0 | 0 | 24 | 34 | 41 | 1 | 0 | 36 |
| Texas | Parkdale | 2 | 18 | 1 | 0 | 47 | 61 | 75 | 2 | 0 | 66 |
| Texas | Parkdale | 3 | 21 | 1 | 0 | 42 | 60 | 87 | 2 | 0 | 77 |
| Texas | Pearsall | 1 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 3 |
| Texas | Pearsall | 2 | 0 | 0 | 0 | 0 | 0 | 4 | 0 | 0 | 4 |
| Texas | Pearsall | 3 | 0 | 0 | 0 | 0 | 0 | 5 | 0 | 0 | 5 |
| Texas | Permian Basin | 5 | 2 | 0 | 0 | 100 | 102 | 120 | 3 | 0 | 106 |
| Texas | Permian Basin | 6 | 316 | 5 | 0 | 521 | 797 | 945 | 24 | 0 | 891 |
| Texas | Pirkey | 1 | 22,013 | 560 | 0 | 748 | 19,970 | 22,013 | 558 | 0 | 18,352 |
| Texas | Plant 2 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Plant 2 | 4 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Texas | Plant 2 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Plant 2 | 6 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Texas | Plant 2 | 7 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Texas | Plant X | 111B | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Plant X | 112B | 0 | 0 | 0 | 2 | 2 | 1 | 0 | 0 | 1 |
| Texas | Plant X | 113B | 0 | 0 | 0 | 89 | 89 | 34 | 1 | 0 | 30 |
| Texas | Plant X | 114B | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 3 |
| Texas | Powerlane Plant. | 1 | 0 | 0 | 0 | 0 | 0 | 11 | 0 | 0 | 10 |
| Texas | Powerlane Plant. | 2 | 522 | 14 | 0 | 2 | 457 | 533 | 14 | 0 | 466 |
| Texas | Powerlane Plant. | 3 | 39 | 1 | 0 | 3 | 37 | 43 | 1 | 0 | 38 |
| Texas | R W Miller | 1 | 2 | 0 | 0 | 52 | 54 | 62 | 2 | 0 | 54 |
| Texas | R W Miller | 2 | 0 | 0 | 0 | 97 | 97 | 112 | 3 | 0 | 96 |
| Texas | R W Miller | 3 | 1 | 0 | 0 | 214 | 215 | 206 | 5 | 0 | 181 |
| Texas | R W Miller | **4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | R W Miller | **5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Ray Olinger | BW2 | 5 | 0 | 0 | 54 | 59 | 60 | 2 | 0 | 52 |
| Texas | Ray Olinger | BW3 | 9 | 0 | 0 | 70 | 78 | 96 | 2 | 0 | 87 |
| Texas | Ray Olinger | CE1 | 9 | 0 | 0 | 34 | 42 | 38 | 1 | 0 | 33 |
| Texas | Rio Pecos | 5 | 1 | 0 | 0 | 62 | 63 | 79 | 2 | 0 | 69 |
| Texas | Rio Pecos | 6 | 2 | 0 | 0 | 175 | 177 | 196 | 5 | 0 | 172 |
| Texas | River Crest | 1 | 32 | 1 | 0 | 33 | 61 | 80 | 2 | 0 | 70 |
| Texas | Sabine | 1 | 3 | 0 | 0 | 147 | 150 | 233 | 6 | 0 | 205 |
| Texas | Sabine | 2 | 2 | 0 | 0 | 160 | 162 | 225 | 6 | 0 | 196 |
| Texas | Sabine | 3 | 7 | 0 | 0 | 563 | 569 | 574 | 15 | 0 | 504 |
| Texas | Sabine | 4 | 8 | 0 | 0 | 491 | 498 | 714 | 18 | 0 | 626 |
| Texas | Sabine | 5 | 4 | 0 | 0 | 315 | 319 | 447 | 11 | 0 | 393 |
| Texas | Sam Bertron | SRB1 | 0 | 0 | 0 | 56 | 56 | 55 | 1 | 0 | 49 |
| Texas | Sam Bertron | SRB2 | 0 | 0 | 0 | 18 | 18 | 38 | 1 | 0 | 33 |
| Texas | Sam Bertron | SRB3 | 7 | 0 | 0 | 113 | 118 | 103 | 3 | 0 | 90 |
| Texas | Sam Bertron | SRB4 | 3 | 0 | 0 | 75 | 78 | 90 | 2 | 0 | 79 |
| Texas | Sam Rayburn | 3 | 0 | 0 | 0 | 0 | 0 | 9 | 0 | 0 | 8 |
| Texas | Sam Seymour | 1 | 17,210 | 438 | 0 | 840 | 15,867 | 17,210 | 437 | 0 | 15,129 |
| Texas | Sam Seymour | 2 | 18,748 | 478 | 0 | 978 | 17,348 | 18,748 | 476 | 0 | 16,482 |
| Texas | Sam Seymour | 3 | 11,992 | 305 | 0 | 0 | 10,471 | 11,992 | 305 | 0 | 10,542 |
| Texas | San Angelo | 2 | 2 | 0 | 0 | 157 | 159 | 167 | 5 | 0 | 164 |
| Texas | San Miguel | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | San Miguel | SM-1 | 18,994 | 484 | 0 | 587 | 17,172 | 18,994 | 483 | 0 | 16,607 |
| Texas | Sandow | 4 | 26,423 | 724 | 0 | 817 | 25,635 | 26,423 | 722 | 0 | 24,907 |
| Texas | Seaholm | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Seaholm | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Seaholm | 7 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| Texas | Seaholm | 8 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 |
| Texas | Seaholm | 9 | 1 | 0 | 0 | 3 | 4 | 3 | 0 | 0 | 3 |
| Texas | Si Ray | SR5 | 0 | 0 | 0 | 0 | 0 | 5 | 0 | 0 | 5 |
| Texas | Si Ray | SR6 | 0 | 0 | 0 | 0 | 0 | 11 | 0 | 0 | 10 |
| Texas | Sim Gideon | 1 | 1 | 0 | 0 | 45 | 46 | 58 | 1 | 0 | 51 |
| Texas | Sim Gideon | 2 | 1 | 0 | 0 | 54 | 55 | 66 | 2 | 0 | 58 |
| Texas | Sim Gideon | 3 | 7 | 0 | 0 | 269 | 275 | 366 | 9 | 0 | 322 |
| Texas | Spencer | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Spencer | 2 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Texas | Spencer | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Spencer | 4 | 8 | 0 | 0 | 12 | 19 | 20 | 1 | 0 | 17 |
| Texas | Spencer | 5 | 11 | 0 | 0 | 13 | 23 | 26 | 1 | 0 | 23 |
| Texas | Stryker Creek | 1 | 19 | 1 | 0 | 151 | 167 | 157 | 4 | 0 | 136 |
| Texas | Stryker Creek | 2 | 25 | 1 | 0 | 497 | 519 | 642 | 16 | 0 | 565 |
| Texas | T C Ferguson | 1 | 3 | 0 | 0 | 247 | 250 | 289 | 7 | 0 | 254 |
| Texas | T H Wharton | THW1 | 0 | 0 | 0 | 7 | 7 | 6 | 0 | 0 | 5 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Texas | T H Wharton | THW2 | 5 | 0 | 0 | 91 | 96 | 93 | 2 | 0 | 82 |
| Texas | Tnp One | U1 | 2,426 | 61 | 0 | 0 | 2,119 | 2,426 | 62 | 0 | 2,132 |
| Texas | Tnp One | U2 | 4,000 | 102 | 0 | 0 | 3,493 | 4,000 | 102 | 0 | 3,516 |
| Texas | Tnp One | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Tnp One | **4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Tolk Station | 171B | 16,035 | 409 | 0 | 740 | 14,741 | 16,035 | 407 | 0 | 14,097 |
| Texas | Tolk Station | 172B | 15,884 | 404 | 0 | 537 | 14,407 | 15,884 | 404 | 0 | 13,960 |
| Texas | Tradinghouse | 1 | 19 | 1 | 0 | 569 | 585 | 589 | 15 | 0 | 518 |
| Texas | Tradinghouse | 2 | 45 | 2 | 0 | 944 | 983 | 1,000 | 26 | 0 | 906 |
| Texas | Trinidad | 7 | 1 | 0 | 0 | 5 | 6 | 4 | 0 | 0 | 4 |
| Texas | Trinidad | 8 | 1 | 0 | 0 | 0 | 1 | 3 | 0 | 0 | 3 |
| Texas | Trinidad | 9 | 2 | 0 | 0 | 132 | 134 | 131 | 3 | 0 | 115 |
| Texas | Twin Oak | 1 | 9,156 | 234 | 0 | 0 | 7,096 | 9,158 | 233 | 0 | 8,050 |
| Texas | Twin Oak | 2 | 1,760 | 45 | 0 | 0 | 1,537 | 1,760 | 45 | 0 | 1,547 |
| Texas | V H Braunig | 1 | 2 | 0 | 0 | 75 | 77 | 140 | 4 | 0 | 123 |
| Texas | V H Braunig | 2 | 3 | 0 | 0 | 117 | 120 | 160 | 4 | 0 | 141 |
| Texas | V H Braunig | 3 | 5 | 0 | 0 | 406 | 411 | 447 | 11 | 0 | 393 |
| Texas | Valley | 1 | 7 | 0 | 0 | 70 | 76 | 111 | 3 | 0 | 97 |
| Texas | Valley | 2 | 48 | 2 | 0 | 471 | 513 | 616 | 16 | 0 | 541 |
| Texas | Valley | 3 | 2 | 0 | 0 | 121 | 123 | 148 | 4 | 0 | 130 |
| Texas | Victoria | 5 | 7 | 0 | 0 | 0 | 6 | 7 | 0 | 0 | 6 |
| Texas | Victoria | 6 | 0 | 0 | 0 | 8 | 8 | 4 | 0 | 0 | 4 |
| Texas | Victoria | 7 | 1 | 0 | 0 | 108 | 109 | 116 | 3 | 0 | 102 |
| Texas | Victoria | 8 | 3 | 0 | 0 | 232 | 235 | 255 | 6 | 0 | 225 |
| Texas | W A Parish | WAP1 | 826 | 21 | 0 | 56 | 777 | 826 | 21 | 0 | 726 |
| Texas | W A Parish | WAP2 | 729 | 18 | 0 | 0 | 637 | 729 | 19 | 0 | 640 |
| Texas | W A Parish | WAP3 | 2,601 | 66 | 0 | 242 | 2,513 | 2,601 | 66 | 0 | 2,287 |
| Texas | W A Parish | WAP4 | 8,295 | 212 | 0 | 546 | 7,789 | 8,295 | 211 | 0 | 7,292 |
| Texas | W A Parish | WAP5 | 24,960 | 635 | 0 | 1,025 | 22,820 | 24,960 | 634 | 0 | 21,942 |
| Texas | W A Parish | WAP6 | 22,569 | 576 | 0 | 981 | 20,705 | 22,569 | 574 | 0 | 19,656 |
| Texas | W A Parish | WAP7 | 16,366 | 417 | 0 | 794 | 15,102 | 16,366 | 416 | 0 | 14,405 |
| Texas | W A Parish | WAP8 | 7,325 | 187 | 0 | 857 | 7,263 | 7,325 | 186 | 0 | 6,439 |
| Texas | W B Tuttle | 1 | 0 | 0 | 0 | 2 | 2 | 3 | 0 | 0 | 3 |
| Texas | W B Tuttle | 2 | 0 | 0 | 0 | 19 | 19 | 20 | 1 | 0 | 17 |
| Texas | W B Tuttle | 3 | 0 | 0 | 0 | 11 | 11 | 15 | 0 | 0 | 14 |
| Texas | W B Tuttle | 4 | 1 | 0 | 0 | 46 | 47 | 60 | 2 | 0 | 52 |
| Texas | W R Poage | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Webster | WEB1 | 0 | 0 | 0 | 0 | 0 | 6 | 0 | 0 | 5 |
| Texas | Webster | WEB2 | 0 | 0 | 0 | 17 | 17 | 8 | 0 | 0 | 7 |
| Texas | Webster | WEB3 | 4 | 0 | 0 | 335 | 339 | 365 | 9 | 0 | 321 |
| Texas | Welsh | 1 | 14,569 | 371 | 0 | 573 | 13,294 | 14,569 | 370 | 0 | 12,808 |
| Texas | Welsh | 2 | 14,069 | 358 | 0 | 528 | 12,813 | 14,069 | 357 | 0 | 12,368 |
| Texas | Welsh | 3 | 16,560 | 422 | 0 | 719 | 15,179 | 16,560 | 421 | 0 | 14,558 |
| Texas | Wilkes | 1 | 6 | 0 | 0 | 23 | 30 | 66 | 2 | 0 | 58 |
| Texas | Wilkes | 2 | 1 | 0 | 0 | 116 | 117 | 106 | 3 | 0 | 93 |
| Texas | Wilkes | 3 | 1 | 0 | 0 | 127 | 128 | 84 | 2 | 0 | 74 |
| Utah | Bonanza | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Utah | Bonanza | 1–1 | 10,059 | 256 | 0 | 14 | 9,797 | 10,059 | 256 | 0 | 8,842 |
| Utah | Carbon | 1 | 2,186 | 55 | 0 | 60 | 1,969 | 2,186 | 56 | 0 | 1,921 |
| Utah | Carbon | 2 | 2,855 | 73 | 0 | 53 | 2,548 | 2,855 | 73 | 0 | 2,500 |
| Utah | Cedar | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Utah | Gadsby | 1 | 28 | 1 | 0 | 2 | 25 | 28 | 1 | 0 | 24 |
| Utah | Gadsby | 2 | 466 | 12 | 0 | 47 | 454 | 466 | 12 | 0 | 409 |
| Utah | Gadsby | 3 | 1,734 | 44 | 0 | 83 | 1,597 | 1,734 | 44 | 0 | 1,524 |
| Utah | Hale | 1 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 |
| Utah | Hunter (Emery) | 1 | 8,517 | 217 | 0 | 547 | 7,984 | 8,517 | 216 | 0 | 7,486 |
| Utah | Hunter (Emery) | 2 | 9,096 | 231 | 0 | 379 | 8,322 | 9,096 | 231 | 0 | 7,996 |
| Utah | Hunter (Emery) | 3 | 12,859 | 328 | 0 | 707 | 11,935 | 12,859 | 327 | 0 | 11,304 |
| Utah | Huntington | 1 | 9,057 | 231 | 0 | 522 | 8,530 | 9,057 | 230 | 0 | 7,962 |
| Utah | Huntington | 2 | 11,145 | 284 | 0 | 514 | 10,346 | 11,145 | 283 | 0 | 9,798 |
| Utah | Intermountain | 1SGA | 3,285 | 83 | 0 | 0 | 2,869 | 3,285 | 83 | 0 | 2,886 |
| Utah | Intermountain | 2SGA | 3,308 | 84 | 0 | 0 | 2,889 | 3,308 | 84 | 0 | 2,908 |
| Utah | Jordan | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Utah | Provo | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Utah | Provo | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vermont | J C McNeil | 1 | 43 | 1 | 0 | 65 | 103 | 43 | 1 | 0 | 38 |
| Vermont | J Edward Moran | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vermont | J Edward Moran | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vermont | J Edward Moran | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vermont | Milton | **ST1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Virginia | Bremo Bluff | 3 | 2,017 | 52 | 0 | 261 | 2,022 | 2,017 | 51 | 0 | 1,773 |
| Virginia | Bremo Bluff | 4 | 5,697 | 150 | 0 | 0 | 5,149 | 5,697 | 150 | 0 | 5,184 |
| Virginia | Chesapeake | 1 | 871 | 22 | 0 | 1,339 | 2,100 | 871 | 22 | 0 | 766 |
| Virginia | Chesapeake | 2 | 1,141 | 29 | 0 | 1,197 | 2,184 | 1,141 | 29 | 0 | 1,003 |
| Virginia | Chesapeake | 3 | 5,210 | 133 | 0 | 0 | 4,549 | 5,210 | 132 | 0 | 4,580 |
| Virginia | Chesapeake | 4 | 6,685 | 171 | 0 | 22 | 5,859 | 6,685 | 170 | 0 | 5,877 |
| Virginia | Chesterfield | 3 | 2,118 | 54 | 0 | 699 | 2,549 | 2,118 | 54 | 0 | 1,862 |
| Virginia | Chesterfield | 4 | 5,336 | 136 | 0 | 0 | 4,659 | 5,336 | 136 | 0 | 4,690 |
| Virginia | Chesterfield | 5 | 10,474 | 267 | 0 | 0 | 9,145 | 10,474 | 266 | 0 | 9,208 |
| Virginia | Chesterfield | 6 | 18,788 | 479 | 0 | 889 | 17,094 | 18,788 | 477 | 0 | 16,517 |
| Virginia | Chesterfield | **8A | 1,585 | 40 | 0 | 0 | 1,384 | 1,585 | 40 | 0 | 1,394 |
| Virginia | Chesterfield | **8B | 471 | 12 | 0 | 0 | 411 | 471 | 12 | 0 | 414 |
| Virginia | Clinch River | 1 | 6,046 | 154 | 0 | 0 | 5,281 | 6,046 | 154 | 0 | 5,316 |
| Virginia | Clinch River | 2 | 6,985 | 178 | 0 | 0 | 6,099 | 6,985 | 177 | 0 | 6,141 |
| Virginia | Clinch River | 3 | 6,458 | 165 | 0 | 0 | 5,639 | 6,458 | 164 | 0 | 5,677 |
| Virginia | Clover | 1 | 2,796 | 71 | 0 | 0 | 2,441 | 2,796 | 71 | 0 | 2,456 |
| Virginia | Clover | 2 | 2,796 | 71 | 0 | 0 | 2,441 | 2,796 | 71 | 0 | 2,456 |
| Virginia | East Chandler | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Glen Lyn | 6 | 5,990 | 152 | 0 | 290 | 5,520 | 5,900 | 152 | 0 | 5,266 |
| Virginia | Glen Lyn | 51 | 930 | 23 | 0 | 335 | 1,147 | 930 | 24 | 0 | 817 |
| Virginia | Glen Lyn | 52 | 896 | 23 | 0 | 324 | 1,106 | 896 | 23 | 0 | 789 |
| Virginia | Possum Point | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Possum Point | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Possum Point | 3 | 2,570 | 65 | 0 | 393 | 2,637 | 2,570 | 65 | 0 | 2,260 |
| Virginia | Possum Point | 4 | 7,684 | 196 | 0 | 0 | 5,709 | 7,684 | 195 | 0 | 5,755 |
| Virginia | Possum Point | 5 | 4,955 | 126 | 0 | 0 | 4,327 | 4,955 | 126 | 0 | 4,356 |
| Virginia | Potomac River | 1 | 1,883 | 48 | 0 | 679 | 2,323 | 1,883 | 48 | 0 | 1,655 |
| Virginia | Potomac River | 2 | 1,912 | 48 | 0 | 629 | 2,299 | 1,912 | 49 | 0 | 1,680 |
| Virginia | Potomac River | 3 | 3,150 | 80 | 0 | 0 | 2,750 | 3,150 | 80 | 0 | 2,769 |
| Virginia | Potomac River | 4 | 3,471 | 89 | 0 | 0 | 3,030 | 3,471 | 88 | 0 | 3,052 |
| Virginia | Potomac River | 5 | 3,328 | 85 | 0 | 0 | 2,906 | 3,328 | 85 | 0 | 2,925 |
| Virginia | Yorktown | 1 | 5,337 | 136 | 0 | 0 | 4,660 | 5,337 | 136 | 0 | 4,691 |
| Virginia | Yorktown | 2 | 5,137 | 131 | 0 | 176 | 4,661 | 5,137 | 131 | 0 | 4,515 |
| Virginia | Yorktown | 3 | 7,205 | 184 | 0 | 0 | 6,291 | 7,205 | 183 | 0 | 6,334 |
| Washington | Centralia | BW21 | 21,797 | 555 | 0 | 0 | 19,033 | 21,797 | 554 | 0 | 19,161 |
| Washington | Centralia | BW22 | 23,240 | 591 | 0 | 0 | 20,293 | 23,240 | 590 | 0 | 20,431 |
| Washington | Kettle Falls | 1 | 1 | 0 | 0 | 94 | 95 | 96 | 2 | 0 | 85 |
| Washington | Lake Union | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Lake Union | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Lake Union | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Lake Union | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Lake Union | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Lake Union | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Lake Union | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Lake Union | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Lake Union | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Lake Union | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Lake Union | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Lake Union | 12 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Lake Union | 13 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Lake Union | 14 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Shuffleton | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Shuffleton | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Shuffleton | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Steam Plant 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Steam Plant 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| West Virginia | Albright | 1 | 2,256 | 58 | 0 | 0 | 1,970 | 2,256 | 57 | 0 | 1,984 |
| West Virginia | Albright | 2 | 2,347 | 60 | 0 | 0 | 2,049 | 2,347 | 60 | 0 | 2,065 |
| West Virginia | Albright | 3 | 5,119 | 130 | 119 | 0 | 4,589 | 5,119 | 130 | 119 | 4,619 |
| West Virginia | Fort Martin | 1 | 19,963 | 508 | 464 | 0 | 17,896 | 19,963 | 507 | 464 | 18,014 |
| West Virginia | Fort Martin | 2 | 19,776 | 504 | 460 | 0 | 17,728 | 19,776 | 502 | 460 | 17,845 |
| West Virginia | Harrison | 1 | 23,337 | 595 | 542 | 0 | 20,919 | 23,337 | 593 | 542 | 21,057 |
| West Virginia | Harrison | 2 | 22,152 | 564 | 515 | 0 | 19,857 | 22,152 | 563 | 515 | 19,968 |
| West Virginia | Harrison | 3 | 19,922 | 507 | 463 | 0 | 17,858 | 19,922 | 506 | 463 | 17,976 |
| West Virginia | John E Amos | 1 | 25,814 | 658 | 0 | 0 | 22,540 | 25,814 | 656 | 0 | 22,690 |
| West Virginia | John E Amos | 2 | 29,597 | 753 | 0 | 0 | 25,842 | 29,597 | 753 | 0 | 26,017 |
| West Virginia | John E Amos | 3 | 47,438 | 1,208 | 0 | 0 | 41,420 | 47,438 | 1,206 | 0 | 41,701 |
| West Virginia | Kammer | 1 | 8,995 | 229 | 209 | 0 | 8,064 | 8,995 | 228 | 209 | 8,117 |
| West Virginia | Kammer | 2 | 9,339 | 238 | 217 | 0 | 8,371 | 9,339 | 237 | 217 | 8,427 |
| West Virginia | Kammer | 3 | 8,347 | 212 | 194 | 0 | 7,483 | 8,347 | 212 | 194 | 7,532 |
| West Virginia | Kanawha River | 1 | 4,541 | 116 | 0 | 482 | 4,447 | 4,541 | 115 | 0 | 3,992 |
| West Virginia | Kanawha River | 2 | 4,043 | 103 | 0 | 744 | 4,274 | 4,043 | 103 | 0 | 3,554 |
| West Virginia | Mitchell | 1 | 21,108 | 538 | 491 | 0 | 18,922 | 21,108 | 536 | 491 | 19,047 |

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TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(3)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| West Virginia | Mitchell | 2 | 21,842 | 557 | 508 | 0 | 19,579 | 21,842 | 555 | 508 | 19,709 |
| West Virginia | Mountaineer (1301). | 1 | 40,253 | 1,025 | 0 | 0 | 35,146 | 40,253 | 1,024 | 0 | 35,384 |
| West Virginia | Mt Storm | 1 | 20,987 | 535 | 488 | 0 | 18,813 | 20,987 | 533 | 488 | 18,938 |
| West Virginia | Mt Storm | 2 | 19,889 | 501 | 458 | 0 | 17,650 | 19,889 | 500 | 458 | 17,767 |
| West Virginia | Mt Storm | 3 | 20,365 | 519 | 473 | 0 | 18,255 | 20,365 | 517 | 473 | 18,376 |
| West Virginia | Phil Sporn | 11 | 2,776 | 70 | 0 | 692 | 3,116 | 2,776 | 71 | 0 | 2,440 |
| West Virginia | Phil Sporn | 21 | 2,336 | 59 | 0 | 909 | 2,949 | 2,336 | 59 | 0 | 2,054 |
| West Virginia | Phil Sporn | 31 | 3,345 | 85 | 0 | 392 | 3,303 | 3,345 | 85 | 0 | 2,941 |
| West Virginia | Phil Sporn | 41 | 2,626 | 67 | 0 | 746 | 3,038 | 2,626 | 67 | 0 | 2,308 |
| West Virginia | Phil Sporn | 51 | 11,999 | 306 | 0 | 116 | 10,583 | 11,999 | 305 | 0 | 10,546 |
| West Virginia | Pleasants | 1 | 20,115 | 513 | 0 | 0 | 17,563 | 20,115 | 511 | 0 | 17,683 |
| West Virginia | Pleasants | 2 | 23,076 | 588 | 0 | 0 | 20,149 | 23,076 | 586 | 0 | 20,286 |
| West Virginia | Rivesville | 7 | 794 | 21 | 0 | 536 | 1,229 | 794 | 20 | 0 | 698 |
| West Virginia | Rivesville | 8 | 2,379 | 61 | 0 | 441 | 2,518 | 2,379 | 60 | 0 | 2,092 |
| West Virginia | Willow Island | 1 | 1,097 | 28 | 0 | 530 | 1,488 | 1,097 | 28 | 0 | 964 |
| West Virginia | Willow Island | 2 | 4,595 | 117 | 0 | 655 | 4,668 | 4,595 | 117 | 0 | 4,039 |
| Wisconsin | Alma | B1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Alma | B2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Alma | B3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Alma | B4 | 1,363 | 35 | 0 | 0 | 1,190 | 1,363 | 35 | 0 | 1,198 |
| Wisconsin | Alma | B5 | 2,178 | 55 | 0 | 0 | 1,902 | 2,178 | 55 | 0 | 1,915 |
| Wisconsin | Bay Front | 1 | 583 | 16 | 0 | 531 | 1,040 | 583 | 14 | 0 | 513 |
| Wisconsin | Bay Front | 2 | 606 | 16 | 0 | 0 | 529 | 606 | 16 | 0 | 533 |
| Wisconsin | Bay Front | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Bay Front | 4 | 17 | 0 | 0 | 17 | 33 | 17 | 0 | 0 | 16 |
| Wisconsin | Bay Front | 5 | 155 | 5 | 0 | 142 | 277 | 155 | 4 | 0 | 137 |
| Wisconsin | Blackhawk | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Blackhawk | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Blount Street | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Blount Street | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Blount Street | 3 | 6 | 0 | 0 | 0 | 6 | 6 | 0 | 0 | 6 |
| Wisconsin | Blount Street | 5 | 7 | 0 | 0 | 0 | 7 | 7 | 0 | 0 | 7 |
| Wisconsin | Blount Street | 6 | 7 | 0 | 0 | 0 | 7 | 7 | 0 | 0 | 7 |
| Wisconsin | Blount Street | 7 | 130 | 4 | 0 | 0 | 113 | 130 | 4 | 0 | 114 |
| Wisconsin | Blount Street | 8 | 812 | 20 | 0 | 0 | 709 | 812 | 21 | 0 | 713 |
| Wisconsin | Blount Street | 9 | 1,042 | 27 | 0 | 0 | 910 | 1,042 | 26 | 0 | 915 |
| Wisconsin | Blount Street | 11 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 |
| Wisconsin | Columbia | 1 | 17,694 | 450 | 0 | 0 | 15,450 | 17,694 | 450 | 0 | 15,554 |
| Wisconsin | Columbia | 2 | 10,007 | 255 | 0 | 0 | 8,736 | 10,007 | 254 | 0 | 8,797 |
| Wisconsin | Combustion Turbine. | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Combustion Turbine. | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Commerce | 25 | 2 | 0 | 0 | 2 | 4 | 4 | 0 | 0 | 4 |
| Wisconsin | Concord | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Concord | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Concord | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Concord | **4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Edgewater | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Edgewater | 3 | 1,413 | 36 | 0 | 0 | 1,234 | 1,413 | 36 | 0 | 1,242 |
| Wisconsin | Edgewater | 4 | 11,880 | 303 | 0 | 0 | 10,373 | 11,880 | 302 | 0 | 10,443 |
| Wisconsin | Edgewater | 5 | 13,094 | 334 | 0 | 0 | 11,433 | 13,094 | 333 | 0 | 11,511 |
| Wisconsin | French Island | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | French Island | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Genoa | 1 | 9,164 | 234 | 0 | 0 | 8,001 | 9,164 | 233 | 0 | 8,056 |
| Wisconsin | Genoa | B1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Genoa | B2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Genoa | B3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Genoa | B4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | J P Madgett | B1 | 8,235 | 210 | 0 | 225 | 7,416 | 8,235 | 209 | 0 | 7,240 |
| Wisconsin | Manitowoc | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Manitowoc | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Manitowoc | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Manitowoc | 6 | 630 | 15 | 0 | 0 | 551 | 630 | 16 | 0 | 553 |
| Wisconsin | Manitowoc | 7 | 816 | 21 | 0 | 0 | 712 | 816 | 20 | 0 | 718 |
| Wisconsin | Manitowoc | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Manitowoc | **9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Menasha | B21 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Menasha | B22 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Menasha | B23 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Menasha | B24 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Muscoda | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |



TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 (A) Unadjusted basic | (B) Special allowance reserve deduction | (C) Additional basic (§ 405(a)(3)) | (D) Adjusted bonus | (E) Total annual phase II | Allowances for years 2010 and thereafter (F) Unadjusted basic | (G) Special allowance reserve deduction | (H) Additional basic (§ 405(a)(3)) | (I) Total annual phase II |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Wisconsin | NA-7222 | **1 | 146 | 4 | 0 | 0 | 127 | 146 | 4 | 0 | 128 |
| Wisconsin | NA 1-7203 | **CT1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | NA 1-7203 | **CT2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | NA 1-7203 | **CT3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | NA 1-7203 | **CT4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | NA 1-7205 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | NA 1-7205 | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | NA 1-7205 | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | NA2 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | NA3 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | NA4 | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Nelson Dewey | 1 | 2,664 | 74 | 0 | 0 | 2,516 | 2,664 | 73 | 0 | 2,536 |
| Wisconsin | Nelson Dewey | 2 | 2,908 | 82 | 0 | 0 | 2,801 | 2,908 | 82 | 0 | 2,820 |
| Wisconsin | North Oak Creek. | 1 | 2,420 | 61 | 0 | 0 | 2,113 | 2,420 | 61 | 0 | 2,128 |
| Wisconsin | North Oak Creek. | 2 | 2,377 | 61 | 0 | 0 | 2,075 | 2,377 | 60 | 0 | 2,090 |
| Wisconsin | North Oak Creek. | 3 | 2,434 | 62 | 0 | 0 | 2,125 | 2,434 | 62 | 0 | 2,140 |
| Wisconsin | North Oak Creek. | 4 | 2,837 | 72 | 0 | 0 | 2,477 | 2,837 | 72 | 0 | 2,494 |
| Wisconsin | Paris | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Paris | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Paris | **3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Paris | **4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Pleasant Prairie | 1 | 13,486 | 344 | 0 | 0 | 11,775 | 13,486 | 343 | 0 | 11,855 |
| Wisconsin | Pleasant Prairie | 2 | 19,060 | 485 | 0 | 0 | 16,642 | 19,060 | 484 | 0 | 16,756 |
| Wisconsin | Port Washington. | 1 | 604 | 15 | 0 | 0 | 528 | 604 | 15 | 0 | 521 |
| Wisconsin | Port Washington. | 2 | 1,179 | 30 | 0 | 0 | 1,029 | 1,179 | 30 | 0 | 1,036 |
| Wisconsin | Port Washington. | 3 | 981 | 25 | 0 | 0 | 857 | 981 | 25 | 0 | 862 |
| Wisconsin | Port Washington. | 4 | 919 | 24 | 0 | 0 | 802 | 919 | 23 | 0 | 808 |
| Wisconsin | Port Washington. | 5 | 1,213 | 31 | 0 | 0 | 1,059 | 1,213 | 31 | 0 | 1,066 |
| Wisconsin | Pulliam | 3 | 159 | 4 | 0 | 0 | 139 | 159 | 4 | 0 | 140 |
| Wisconsin | Pulliam | 4 | 238 | 6 | 0 | 0 | 208 | 238 | 6 | 0 | 209 |
| Wisconsin | Pulliam | 5 | 694 | 17 | 0 | 0 | 606 | 694 | 18 | 0 | 610 |
| Wisconsin | Pulliam | 6 | 904 | 23 | 0 | 0 | 790 | 904 | 23 | 0 | 795 |
| Wisconsin | Pulliam | 7 | 2,326 | 59 | 0 | 0 | 2,031 | 2,326 | 59 | 0 | 2,045 |
| Wisconsin | Pulliam | 8 | 3,603 | 92 | 0 | 0 | 3,146 | 3,600 | 92 | 0 | 3,167 |
| Wisconsin | Richland Center. | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Richland Center. | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Richland Center. | **1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Richland Center. | **2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Rock River | 1 | 1,782 | 46 | 0 | 0 | 1,556 | 1,782 | 45 | 0 | 1,567 |
| Wisconsin | Rock River | 2 | 1,693 | 43 | 0 | 0 | 1,478 | 1,693 | 43 | 0 | 1,488 |
| Wisconsin | South Oak Creek. | 5 | 4,440 | 113 | 0 | 0 | 3,877 | 4,440 | 113 | 0 | 3,903 |
| Wisconsin | South Oak Creek. | 6 | 5,555 | 142 | 0 | 0 | 4,850 | 5,555 | 141 | 0 | 4,883 |
| Wisconsin | South Oak Creek. | 7 | 7,433 | 190 | 0 | 0 | 6,490 | 7,433 | 189 | 0 | 6,534 |
| Wisconsin | South Oak Creek. | 8 | 7,303 | 186 | 0 | 0 | 6,377 | 7,303 | 186 | 0 | 6,420 |
| Wisconsin | Stoneman | B1 | 202 | 5 | 0 | 0 | 176 | 202 | 5 | 0 | 177 |
| Wisconsin | Stoneman | B2 | 255 | 7 | 0 | 0 | 223 | 255 | 6 | 0 | 224 |
| Wisconsin | Valley | 1 | 1,790 | 45 | 0 | 235 | 1,798 | 1,790 | 45 | 0 | 1,574 |
| Wisconsin | Valley | 2 | 1,809 | 46 | 0 | 238 | 1,817 | 1,809 | 46 | 0 | 1,590 |
| Wisconsin | Valley | 3 | 1,658 | 43 | 0 | 497 | 1,944 | 1,658 | 42 | 0 | 1,458 |
| Wisconsin | Valley | 4 | 1,613 | 41 | 0 | 483 | 1,892 | 1,613 | 41 | 0 | 1,418 |
| Wisconsin | West Marinette | **33 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Weston | 1 | 871 | 22 | 0 | 0 | 761 | 871 | 22 | 0 | 766 |
| Wisconsin | Weston | 2 | 2,068 | 52 | 0 | 0 | 1,806 | 2,068 | 53 | 0 | 1,818 |
| Wisconsin | Weston | 3 | 11,089 | 282 | 0 | 0 | 9,683 | 11,089 | 282 | 0 | 9,748 |
| Wisconsin | Wildwood | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Wildwood | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Wisconsin | Wildwood | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Wildwood | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Winslow | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Winslow | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wyoming | Dave Johnston | BW41 | 5,155 | 131 | 0 | 193 | 4,694 | 5,155 | 131 | 0 | 4,532 |
| Wyoming | Dave Johnston | BW42 | 5,015 | 127 | 0 | 181 | 4,569 | 5,015 | 127 | 0 | 4,409 |
| Wyoming | Dave Johnston | BW43 | 9,711 | 247 | 0 | 326 | 8,807 | 9,711 | 247 | 0 | 8,537 |
| Wyoming | Dave Johnston | BW44 | 7,278 | 185 | 0 | 430 | 6,785 | 7,278 | 185 | 0 | 6,386 |
| Wyoming | Jim Bridger | BW71 | 22,967 | 585 | 0 | 805 | 20,859 | 22,967 | 584 | 0 | 20,190 |
| Wyoming | Jim Bridger | BW72 | 22,486 | 573 | 0 | 763 | 20,417 | 22,486 | 571 | 0 | 19,758 |
| Wyoming | Jim Bridger | BW73 | 21,533 | 548 | 0 | 738 | 19,540 | 21,533 | 547 | 0 | 18,930 |
| Wyoming | Jim Bridger | BW74 | 3,797 | 97 | 0 | 733 | 4,048 | 3,797 | 96 | 0 | 3,336 |
| Wyoming | Laramie River | 1 | 4,823 | 123 | 0 | 882 | 5,093 | 4,823 | 123 | 0 | 4,239 |
| Wyoming | Laramie River | 2 | 4,095 | 105 | 0 | 711 | 4,286 | 4,095 | 104 | 0 | 3,600 |
| Wyoming | Laram e River | 3 | 3,660 | 93 | 0 | 614 | 3,810 | 3,660 | 93 | 0 | 3,217 |
| Wyoming | Naughton | 1 | 5,672 | 144 | 0 | 236 | 5,188 | 5,672 | 144 | 0 | 4,985 |
| Wyoming | Naughton | 2 | 7,301 | 186 | 0 | 349 | 6,724 | 7,301 | 186 | 0 | 6,418 |
| Wyoming | Naughton | 3 | 5,566 | 142 | 0 | 342 | 5,202 | 5,566 | 141 | 0 | 4,893 |
| Wyoming | Neil Simpson | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wyoming | Osage | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wyoming | Osage | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wyoming | Osage | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wyoming | Wyodak | BW91 | 16,855 | 429 | 0 | 810 | 15,327 | 16,855 | 428 | 0 | 14,817 |
| (ADF Begins Here) | | | | | | | | | | | |
| Alabama | Alabama River Pulp C. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alabama | Courtland Mill | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alabama | Mobile Mill | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alabama | Riverdale Mill | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alabama | Scott Mobile | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alabama | Union Camp Corporati. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arizona | Snowflake, Arizona. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arkansas | Ashdown | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arkansas | Crossett Paper | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Arkansas | IPC–Pine Bluff Mil. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | A.C.E. Cogeneration. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Aes Placerita Inc. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Agnews Cogeneration. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Arco Wilmington Calc. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | B M C P Partner. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Badger Creek Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | BAF Energy American. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Bear Mountain Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | BKK Landfill Power P. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Burney Forest Produc. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Calexico Energy Reco. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | California Institute. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Carver Greenfield. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Coalinga Cogeneratio. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Coso–BLM | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Coso—Navy I | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Coso—Navy II | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Del Ranch | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| California | Delano Energy Compan. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | East Third Street PO. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Erie Energy Associat. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Foster Wheeler Marti. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Gilroy Energy Compan. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Granite Road Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Hanford | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | HL Power Plant.. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Humboldt Pulp Mill. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | J.J. Elmore | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | J.M. Leathers | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | JRW Associates, L P. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Kern-Gen | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Kingsburg Cogenerati. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Madera Power Plant. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | McKittrick Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Mecca Plant | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Mendota Biomass Powe. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | North County Recycli. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | O'Brien California. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | O'Brien Cogen—Anti. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | O'Brien Cogen—Sant. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Plant No. 1 | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Plant No. 2 | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Ples I | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Puente Hills Energy. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Redding Power | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Richmond Cogeneratio. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Rio Bravo Jasmin. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Rio Bravo Poso | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Salinas River Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Salton Sea III | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Santa Fe Geothermal. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Santa Ynez Facility. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Sargent Canyon Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | SCTV Power Pak. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | SEGS II | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | SEGS III | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | SEGS IV | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | SEGS IX | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | SEGS V | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | SEGS VI | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | SEGS VII | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | SEGS VIII | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | SEGS X | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | SEGS XI | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| California | SEGS XII | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | SEGS XIII | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Southeast Resource R. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Stockton Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Sunnyside Cogenerati. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Surprise Valley Gect. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Texaco Lap 23MW Coge. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | UCLA South Campus CE. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Ultrapower Chinese S. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Ultrapower-Malaga FR. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Ultrapower-Rocklin. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Unocal Chemicals and. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | VIE-DEL II | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Vulcan | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Wadham Energy Projec. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Watson Cogen | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| California | Woodland Biomass POW. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | American Alles #1 CO. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Brush Power Prjct. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Brush Power Project. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Cimarron Chemical. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Columbine Power Proj. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Ft Lupton | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Thermo Carbonic Inc. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | Thermo Industries In. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Connecticut | AES Thames, Inc.. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Connecticut | Bio-Gen Torrington W. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Connecticut | Bridgeport Resco Com. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Connecticut | Capitol District ENE. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Connecticut | Exeter Energy Projec. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Connecticut | KES Naugatuck | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Connecticut | Killingly Wood Power. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Connecticut | O'Brien Cogen—Hart. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Connecticut | Southeast | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | AES Cedar Bay | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Agrico Chemical Co. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Cargill Fertilizer | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | CCA/JSC | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Central Power and Li. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | CFI, Plant City Phos. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Drifton CFL | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
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TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Florida | Farmland Industries. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Hardee Power Station. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Havana | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Hillsborough County. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | IMC Fertilizer Inc N. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Indiantown Cogenerat. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Lee County Resource. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Lee County Solid Was. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Metro-Dade County Re. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | North County Regiona. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Palatka Operations. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Pasco County Solid W. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Pensacola, Florida. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Pinellas County Reso. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Piney Point | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Seminole Fertilizer. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Seminole Kraft Corpo. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Suwannee River Chemi. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | U.S. Agri-Chem. Corp. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Wheelabrator North B. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | Wheelabrator South B. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | Brunswick Pulp & Pap. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | Cedar Springs | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | Flint | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | Inland-Rome, Inc.. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | ITT Rayonier Inc.- J. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | Savannah River Mill. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | Southeast Paper Manu. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | Stone Savannah River. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | Union Camp | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Georgia | Yuba City Cogenerati. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Idaho | ARCO Generation, Inc. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Idaho | Billings Generation. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Idaho | Kootenai Company. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Idaho | Lewiston, ID—Potla. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Idaho | Muskegon Generation. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | ARC Cogeneration Fac. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Clinton | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Illinois | Co-Generation Facil. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Decatur | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Decatur Plant Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | IIT Cogeneration Fac. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Indeck Olsan Energy. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | O'Brien—Riverdale. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | Robbins Resource Rec. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Illinois | South Works | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | 4 AC Station | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Burns Harbor Plant. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Gary Works | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | LTV Steel—Indiana. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Warrick | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Indiana | Whiting Refinery. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Iowa | Cedar Rapids | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Baton Rouge Turbine. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Citgo Refinery Power. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Dendider Mill | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Hodge, Louisiana. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Louisiana Mill | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Mansfield Mill | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Nelson Industrial St. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Pineville Mill | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Plant 31 (Paper Mill. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Port Hudson Pulp & P. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | Power and Utilities. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | PPG—Riverside. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Louisiana | PPG-Powerhouse C. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | AES Hamman Cove. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Androscoggin Mill. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Babcock-Ultrapower J. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Babcock-Ultrapower W. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Beaver Wood—Ashlan. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Beaver Wood—E. Fra. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Beaver Wood—Ft. Ka. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Beaver Wood—Houlto. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Beaver Wood—Medway. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Maine | Beaver Wood—Millin. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Beaver Wood Livermor. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Bucksport, Maine. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Fairfield Energy Ven. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Northern Division. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Penobscot Energy Rec. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Rumford Cogeneration. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | S.D. Warren Company. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Somerset Plant.. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Stratton Energy Asso. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maine | Woodland Pulp & Pape. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | AES Warrior Run, Inc. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Armstrong Energy. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Baltimore Refuse To. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Luke Mill | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Montgomery County Re. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | Sparrows Point... | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Altresco Pittsfield,. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Bellingham Cogenerat. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Dartmouth Power. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | East Bridgewater. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | EC Tech. One | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | EC Tech. Two | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Energy New Bedford. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Massachusetts Refuse. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Masspower, Inc.. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Millbury Facility.. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | O'Brien Cogen—Have. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | O'Brien Cogen—So.. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Ohe Haverhill Mass B. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Saugus Refuse Energy. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Semass Resource Reco. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Sterling Power, L.P.. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | Ventron Cogeneration. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | West Lynn Cogenerati. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Escanaba Paper Compa. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Grayling Generating. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Greater Detroit Reso. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Michigan | Midland Cogeneration. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Oakland County WTE F. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Quinnesec, Michigan. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Rouge Powerhouse #1. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | S. D. Warren Company. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Southeastern Oakland. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | T. B. Simon Power Pl. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | T.E.S. Filer City St. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | The Dow Chemical Com. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Michigan | Wers of Alpena | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Bemidji Facility | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Cyprus Silver Bay PO. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Dakota County Resour. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | Hennepin Energy Reso. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Minnesota | LTV Steel Mining Co. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Columbus, MS | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Leaf River | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Monticello Paper. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Natchez Mill | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mississippi | Vicksburg Mill | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Montana | Colstrip Energy Ltd. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Caithness Dixie Vall. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Dixie Valley | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Las Vegas Cogenerati. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Moapa Energy Project. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | Steamboat Hills Gact. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Hampshire. | Pinetree Power Tamwo. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Bayonne Cogen Plant. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Bayonne Cogeneration. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Bergen County | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Camden Cogeneration. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Camden Resource Reco. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Chambers Works Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Clark Cogeneration F. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | CNG Lakewood. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Eagle Point Cogenera. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Essex | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Hudson County Resour. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

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TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| New Jersey | Hunterdon Energy. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Keystone Cogeneratio. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Linden Cogen Plant. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Mercer County Resour. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Monmouth County Reso. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Newark Bay Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | O'Brien Cogen—Newa. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | O'Brien Cogen—Parl. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Paulsboro Refinery. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Pedricktown Cogenera. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Ridgefield Cogenerat. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Sayreville Cogenerat. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Tamal Tinton Falls. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Thorofare | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New Jersey | Union County Resourc. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Adirondack Resource. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Ag-Energy Cogenerati. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Allegany Cogen | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Anitec Cogeneration. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Brookhaven Energy Ce. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Canton | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Chateaugay Energy. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Cogen Energy Technol. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Colonie Cogeneration. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Dunkirk Cogen Plant. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | East Syracuse Cogene. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Encogen IV Partners. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Fort Drum Cogenerati. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Fulton Cogeneration. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Gunlocks Cogeneratio. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Hudson Power-Rensse. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Halfmoon Cogeneratio. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Hempstead | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Hudson River Mill. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Huntington Resource. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Indeck-Corinth Energ. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Indeck-Ilion Energy. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000-2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| New York | Indeck-Kirkwood Ener. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Kamine Beaver Falls. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Kamine Carthage Coge. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Kamine Natural Dam C. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Kamine South Glens F. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Kamine Syracuse Coge. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Kennedy Internationa. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Kodak Park Site. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Lederle Laboratories. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | LFG Energy Inc | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Lockport Cogeneratio. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Long Falls Cogenerat. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Long Island Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Lowville | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Mid-County Energy Ce. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Mitchell Field Compl. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Montefiore Medical C. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | North Tonawanda Coge. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Northeast Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | O'Shanter Resources. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Oceanside Landfill. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Oneida Energy Facili. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Onondaga Cogeneratio. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Onondaga County Reso. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Oyster Bay | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Pilgrim Energy Cente. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Rome Energy Company. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Salt City Energy Ven. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Selkirk Cogen Partne. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Silver Springs Energ. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Smithtown Energy Cen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | South Corning Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Stony Brook Cogenera. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Ticonderoga Mill. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | UDG Cogen Project. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Wallkill Generation. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| New York | Warrior | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Westchester Resco Co. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Wind Watch Energy Ce. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| New York | Yonkers Energy Cente. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | Cogentrix Elizabetht. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | Cogentrix Kenansvill. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | Cogentrix Lumberton | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | Cogentrix Roxboro. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | Cogentrix Southport. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | Craven County Wood E. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | Duplin | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | Dwayne Collier Battl. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | Gatson County Waste-. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | Panda-Rosemary Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | Plymouth, NC | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | Roanoke Valley Proje. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | Tobaccoville Utility. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | Texasgulf Inc | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Bowling Green Facil. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ohio | Mead-Fine Paper Div. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | AES Shady Point, Inc. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | Ardmore Refinery. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | Black Mesa Facility. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | Mid-Continent Power. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | Muskogee Mill | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | Powersmith Cogen Pro. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oklahoma | Valliant, OK | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | AES BV Partners Beav. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Cambria Cogen | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Chester Operations. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Colver Power Plant. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Continental Energy A. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Delaware County Reso. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Ebensburg Power Comp. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Erie Municipal Waste. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Fairless Works | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Foster Wheeler MT. C. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Frackville Energy Fa. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | G.F. Weston Power St. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Pennsylvania | John B. Rich Memorial. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Kline Township Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Lancaster County Res. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Minersville | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Mon Valley Energy Co. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Mon Valley Works. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Morgantown Clean Coa. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | North Branch Energy. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Northampton Energy C. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | P. H. Glatfelter Co.. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Palmer Energy Prodec. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Panther Creek Energy. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Piney Creek Project. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Pottstown Gas Recove. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Schuylkill Station. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Scrubgrass Generatin. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | Westwood Energy Prop. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pennsylvania | York City Resource Re. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Rhode Island | Johnston Resource Re. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Rhode Island | Ocean State Power. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Rhode Island | Pawtucket Power Asso. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Carolina | Eastover Facility. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Carolina | Florence, South Caro. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Carolina | Georgetown Mill. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Tennessee | Bowater Inc., Southe. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Tennessee | Packaging Corporatio. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | AES Deepwater, Inc.. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Battlegrand Plant. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Beaumont Refinery. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Borger Plant | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | C.R. Wing Cogenerati. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Celanese | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Chocolate Bayou Plan. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Clear Lake Cogenerat. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Cogenron, Inc. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Deer Park Manufactur. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Encogen One Cogenera. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Enterprise Products. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Texas | Inland-Orange, Inc.. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Lynchburg Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Petrolia Development. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Phibro Refining—Te. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Phibro Refining Inc. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Power Station #4. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Pulp & Paperboard Di. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Rio Grande Cogen. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Sandow | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Sheldon, Texas | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Tenaska III Texas Pa. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Texarkana Mill | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Texas Petrochemicals. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | The Dow Chemical Com. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Univ of TX at Austin. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Texas | Valero Refinery | UK [3] | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Utah | Escalante Micro-Ener. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Utah | Geneva Steel | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Utah | Pangultch Micro Ener. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Utah | Sunnyside Cogenerati. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vermont | Arrowhead Cogenerati. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vermont | Cabot Cogeneration F. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vermont | East Georgia Cogener. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vermont | Hinesburg Cogen Faci. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vermont | Ryegate Wood Energy. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vermont | St. Albans Cogen. Fa. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Chesapeake Corporati. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Cogentrix Hopewell. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Cogentrix of Richmon. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Cogentrix Portsmouth. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Commonwealth Atlanti. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Covington Facility. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Doswell Combined Cyc. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Franklin Fine Paper. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Greensville County G. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Hadson Power 11—So. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 2.—PROPOSED PHASE II ALLOWANCE ALLOCATIONS [1]—Continued

| State | Plant name | Boiler [2] | Allowances for years 2000–2009 | | | | | Allowances for years 2010 and thereafter | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) | (I) |
| | | | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Adjusted bonus | Total annual phase II | Unadjusted basic | Special allowance reserve deduction | Additional basic (§ 405(a)(3)) | Total annual phase II |
| Virginia | Hadson Power 12—Al. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Hadson Power 13—Ho. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Hadson Power 14—Bu. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Hopewell Cogeneratio. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Hopewell, Virginia. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | I–95 Energy/ Resource. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Mecklenburg Plant. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Multitrade Industria. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Multitrade Pittsbyva. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Multitrade Tulles Fa. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | Richmond Plant. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | VTPS I | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Longview, Wa | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Spokane Facility. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Washington | Spokane Regional Was. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| West Virginia | Alloy Steam Station. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| West Virginia | Grant Town Cogenerat. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| West Virginia | Morgantown Energy Fa. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| West Virginia | Natrium Plant | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| West Virginia | North Branch Power P. | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Green Bay Mill | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Kraft Division | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wisconsin | Nekoosa Mill | UK | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

[1] For further information, see *Technical Documentation for Proposed Phase II Allowance Allocations.*
[2] "*" • "*" in the boiler identifier denotes a planned unit or a unit for which the boiler number is unavailable. "UK" denotes that the boiler ID is unknown for units in the Adjunct Data File (ADF).

**§ 73.11 Revision of Allocations.**

No later than June 1, 1998, the Administrator will revise the allocations by:

(a) The Administrator will calculate unadjusted basic allowances for units eligible for allowances under § 73.18 of this part according to § 73.18(c), instead of unadjusted basic allowances listed in Table 2 Columns A and F.

(b) The Administrator will calculate unadjusted additional basic allowances for units eligible for allowances under § 73.19 of this part according to § 73.19(c) and add such calculated unadjusted additional basic allowances to the units' unadjusted basic allowances listed in Table 2 Columns A and F.

(c) The Administrator will calculate unadjusted basic allowances for units with approved compliance plans under § 72.44 of this chapter according to the following equation, instead of unadjusted basic allowances listed in Table 2 Columns A and F: Unit's Unadjusted Basic Allowances = Baseline × 1.2/2000.

(d) *Adjustment of Basic Allowances.* The Administrator will adjust each unit's unadjusted basic allowances as listed in Table 2 Columns A and F, and as stated in paragraphs (a), (b), and (c) of this section, as follows:

$$\text{Unit's adjusted basic allowances} = \text{Unit's unadjusted basic allowances} \times \frac{8{,}900{,}000}{\text{Sum of all units' unadjusted basic allowances}}$$

(e) *Repowering Adjustment.* The Administrator will calculate a repowering deduction for each unit in Table 2 according to the following equations:

$$\text{Repowering deduction} = \text{Annual set aside} \times \frac{\text{Units' adjusted basic allowances (yr 2000)}}{8{,}900{,}000}$$

where:

Set Aside = Sum of all repowering allowances for the year 2000 under 40 CFR 73.21.

Annual Set Aside = Set Aside/10.

(f) *Special Allowance Reserve Deduction.* The Administrator will calculate a Special Allowance Deduction for each unit listed Table 2 according to the following equation:

$$\text{Special allowance deduction} = 250{,}000 \times \frac{\text{Units' adjusted basic allowances}}{8{,}900{,}000}$$

(g) *Conservation and Renewable Energy Reserve.* The Administrator will calculate the Conservation Deduction for each unit listed in Table 2 according to the following equation:

$$\text{Conservation deduction} = 30{,}000 \times \frac{\text{Units' adjusted basic allowances}}{8{,}900{,}000}$$

(h) *Final Allowance Allocations.*

(1) Not later than June 1, 1998, according to paragraphs (a) through (g) of this section, the Administrator will revise the allowances allocated to each unit listed in Table 2 and will allocate to each unit's subaccount representing calendar years 2000 through 2009 Final Revised Phase II Allowances according the following equation.

$$\text{Unit's final revised phase II allowances (year 2000)} = \text{Unit's adjusted basic allowances + number for unit in table 2 column C} - \text{repowering deduction} - \text{conservation deduction} - \text{special allowance deduction + number for unit in table 2 column D}$$

(2) If, as of January 1, 1998, both the auction and sales under subpart E of this part are terminated as provided for in subpart E, instead of allowances under paragraph (h)(1) of this section, the Administrator will revise the allowances allocated to each unit in Table 2 and will allocate to each unit's subaccount representing calendar years 2000 through 2008 Final Revised Phase II Allowances according the following equation:

$$\text{Unit's final revised phase II allowances (year 2000)} = \text{Unit's adjusted basic allowances + number for unit in table 2 column C} - \text{repowering deduction} - \text{conservation deduction + number for unit in table 2 column D}$$

(3) As of January 1, 1998, the Administrator will revise the allowances allocated to each unit account listed in Table 2 and will allocate allowances to each unit's subaccount representing calendar years 2010 and each year thereafter according to the following equation:

$$\text{Unit's allowances (year 2010)} = \text{Unit's adjusted basic allowances + number for unit in table 2 column C} - \text{special allowance deduction}$$

allowances per year, or the sum of the deductions for the special allowance reserve exceeds 250,000, then the Administrator will withdraw one allowance from each unit, beginning with the unit receiving the largest number of allowances, in descending order, until the allocated allowances balance with the number allowances available.

(2) If the sum of adjusted basic allowances is less than 8,900,000, the sum of the deductions for the repowering annual set aside is less than the annual set aside, the sum of the deductions for the Energy Conservation and Renewable Energy Reserve is less than 30,000 allowances per year, or the sum of the deductions for the special allowance reserve is less than 250,000, then the Administrator will distribute one allowance for each unit, beginning with the unit receiving the largest number of allowances, in descending order, until the allocated allowances balance with the number of allowances required.

### § 73.12 Rounding procedures.

(a) *Calculation Rounding.* All allowances under this part and part 72 of this chapter shall be allocated as whole allowances. All calculations for such allowances shall be rounded down for decimals less than .5 and up for decimals of .5 or greater.

(b) *Achieving Exact Allowance Reserves and Allowance Totals.*

(1) If the sum of adjusted basic allowances exceeds 8,900,000, the sum of the deductions for the repowering annual set aside exceeds the annual set aside, the sum of the deductions for the Energy Conservation and Renewable Energy Reserve exceeds 30,000

### § 73.13 Procedures for submittals.

(a) *Address for Submittal.* All submittals under this subpart shall be made by the designated representative to the Director, Acid Rain Division, (6204J), 401 M Street, SW., Washington, DC 20460 and shall meet the requirements specified in 40 CFR § 72.9(a).

(b) *Appeals Procedures.* The designated representative may appeal the decision as to eligibility or allocation of allowances under §§ 73.16, 73.18, 73.19, and 73.20 of this part, using the appeals procedures of part 72 subpart H of this chapter.

### § 73.14 [Reserved]

### § 73.15 [Reserved]

### § 73.16 Phase I early reduction credits.

(a) *Unit Eligibility.* Units listed in Table 1 of this part are eligible to receive allowance allocations under this section if:

(1) The unit is authorized by the Governor of the state in which the unit is located to make reductions in emissions of sulfur dioxide prior to calendar year 1995; and

(2) The unit is part of a utility system (which, for the purposes of this section only, includes all electrical generators operated by a utility, including those that are not fossil fuel fired) has decreased its total coal-fired generation, as a percentage of total system

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generation, by more than twenty percent between January 1, 1980 and December 31, 1985; and

(3) The unit is part of a utility system that during calendar years 1985 through 1987 had a weighted capacity factor for all coal-fired units in the system of less than fifty percent. The weighted capacity factor is equal to:

$$\text{Weighted capacity factor} = \frac{\text{Sum of actual generation of all coal-fired units in utility system}}{\text{Sum of all generators' nameplate capacity} \times 8760}$$

(b) *Emissions Reductions Eligibility.* Sulfur dioxide emissions reductions eligible for allowance allocations shall:

(1) Be made no earlier than calendar year 1991 and no later than calendar year 1994; and

(2) Be due to physical changes to the plant or are a result of a change in the method of operating the plant including but not limited to changing the type or quality of fuel being burned.

(c) *Initial Certification of Eligibility.* The designated representative for a unit listed in Table 1 of this part may seek certification of unit eligibility prior to a request for allowances under this provision. A completed application for this certification shall include the following:

(1) A letter from the Governor of the state in which the unit is located authorizing the unit to make reductions in emissions of sulfur dioxide prior to calendar year 1995;

(2) A report listing of all units in the utility system, each fossil fuel-fired unit's fuel consumption and fuel heat content for calendar year 1980, and each generator's total electrical generation for calendar years 1980 and 1985 (including all generators whether fossil fuel-fired, nuclear, hydroelectric, or other.)

(d) *Request for Allowances.* Prior to, or accompanying, the request for allowances, the designated representative for the requesting unit shall submit the application for certification of eligibility in paragraph (c) of this section. The request for allowances shall include the following information:

(1) The calendar year for which credits for reductions are requested and the actual $SO_2$ emissions and fuel consumption in that year. For units which have not installed and received certification of their $SO_2$ continuous emission monitoring system prior to the calendar year(s) for which credits for reductions are requested, the designated representative shall submit photocopies of the units' Form EIA–767 for the calendar year of the requested reductions in emissions; and

(2) A letter signed by the designated representative:

(i) Stating and documenting the specific physical changes to the plant or changes in the method of operating the plant (including but not limited to changing the type or quality of fuel being burned) which resulted in the reduction of emissions; and

(ii) Certifying that all photocopies are exact duplicates.

(3) The designated representative shall submit any request for allowances no later than March 1 of the calendar year following the year in which the reductions were made.

(e) *Allowance Allocation.* The Administrator will allocate allowances to the eligible unit upon satisfactory submittal of information under paragraphs (c) and (d) of this section in the amount calculated by the following equations. Such allowances will be allocated to the eligible unit's 1995 future year subaccount. The following provisions shall apply to the allocation:

(1) "Prior year" means a single calendar year selected by the eligible unit from 1991 to 1994 inclusive.

(2) One "credit" equals one ton of eligible $SO_2$ emissions reductions.

(3) "ERC units" are units eligible for early reduction credits, and "non-ERC units" are fossil fuel-fired units which are part of the same utility system, but are not eligible for early reduction credits.

(4) Calendar year 1990 data will be used as the basis against which early reduction credits are determined.

(5) Early reduction credits will be calculated at the unit level, subject to the restrictions in paragraph (e)(6) of this section.

(6) The number of credits for eligible Phase I units will be calculated as follows:

(i) Comparison of the prior year utilization of ERC units to the 1990 utilization, as a percentage of system utilization.

A unit's prior year utilization shall be restricted if system-wide prior year ERC utilization exceeds system-wide 1990 utilization of ERC units on a percentage basis. If the following equation is true,

$$\frac{\text{Sum of prior year heat input for all ERC units (in mmBtu)}}{\text{Sum of prior year heat input for all system units (in mmBtu)}} > \frac{\text{Sum of 1990 heat input all ERC units (in mmBtu)}}{\text{Sum of 1990 heat input for all system units (in mmBtu)}}$$

then the restrictions of paragraphs (e)(6)(ii) and (iii), of this section, may apply. If not, the ERC units are eligible to receive the early reduction credits as calculated in paragraph (e)(6)(v) of this section.

(ii) Comparison of the prior year average emission rate of all ERC units to the prior year average emission rate of all the non-ERC units.

A unit's prior year utilization will be restricted if the system-wide average $SO_2$ emission rate of ERC units exceeds that of the non-ERC units. If the relationship below is true,

$$\frac{\text{Sum of prior year } SO_2 \text{ emissions for all ERC units (in pounds)}}{\text{Sum of prior year heat input for all ERC units (in mmBtu)}} > \frac{\text{Sum of prior year } SO_2 \text{ emissions for all non-ERC units (in pounds)}}{\text{Sum of prior year heat input for all non-ERC units (in mmBtu)}}$$

the restriction in paragraph (iv) of this section applies.

(iii) Comparison of the emission rate of the non-ERC units in the prior year to the emission rate of the non-ERC units in 1990.

A unit's prior year utilization will be restricted if the prior year system average non-ERC $SO_2$ emission rate increases above the 1990 system average non-ERC $SO_2$ emission rate. If the relationship below is true,

$$\frac{\text{Sum of prior year } SO_2 \text{ emissions for all non-ERC units (in pounds)}}{\text{Sum of prior year heat input for all non-ERC units (in mmBtu)}} > \frac{\text{Sum of 1990 } SO_2 \text{ emissions for all non-ERC units (in pounds)}}{\text{Sum of 1990 heat input for all non-ERC units (in mmBtu)}}$$

then the restriction in paragraph (e)(6)(iv) of this section applies. If the prior year $SO_2$ emission rate is less than the 1990 $SO_2$ emission rate, the ERC units are eligible to receive the early reduction credits calculated in paragraph (e)(6)(v) of this section.

(iv) Calculation of the utilization limit for restricted units.

The limit on utilization for each unit eligible for early reduction credits subject to paragraphs (e)(6) (ii) and (iii), of this section, will be calculated as follows:



$$\text{ERC unit's prior year heat input (in mmBtu)} \times \frac{\text{Sum of 1990 heat input for all ERC units (in mmBtu)}}{\text{Sum of 1990 heat input for all units in system (in mmBtu)}} \times \frac{\text{Sum of prior year heat input for all ERC units (in mmBtu)}}{\text{Sum of prior year heat input for all units in system (in mmBtu)}}$$

This result, expressed in million Btus, is the restricted utilization of the ERC unit to be used in the calculation of early reduction credits in paragraph (e)(6)(v) of this section.

(v) Calculation of the unit's early reduction credit.

(A) The early reduction credits will be calculated as follows:

$$\left[\text{ERC unit's 1990 actual } SO_2 \text{ emission rate (in lb/mmBtu)} - \text{ERC unit's prior year actual } SO_2 \text{ emission rate (in lb/mmBtu)}\right] \times \text{the lesser of the prior year heat input or the restricted heat input from (iv) above (in mmBtu)} / 2{,}000$$

(B) Section 404(e)(2) restricts the early reduction credits as follows:

$$\left[\text{ERC unit's 1985 actual } SO_2 \text{ emission rate (in lb/mmBtu)} \times \text{baseline (in mmBtu)} / 2{,}000\right] - \text{Allowances from Table A of the Act (in tons)}$$

(7) The Administrator will allocate to the ERC unit allowances equal to the lesser of the number of credits calculated by paragraphs (e) (6)(v)(A) and (6)(v)(B) of this section.

**§ 73.17 [Reserved]**

**§ 73.18 Submittal procedures for units commencing commercial operation during the period from January 1, 1993 through December 31, 1995.**

(a) *Eligibility.* To be eligible for allowances under this section, a unit shall commence commercial operation between January 1, 1993 and December 31, 1995 and have commenced construction before December 31, 1990.

(b) *Application for Allowances.* No later than December 31, 1993, a certifying official for a unit expected to be eligible under this provision must submit a photocopy of a signed contract for the construction of the unit.

(c) *Commencement of Commercial Operation.* The Administrator will use EIA information submitted by the utility for the boiler on-line date as commencement of commercial operation.

(d) *Allowance Allocation.* Upon adequate submittal of information under paragraph (b) of this section, the Administrator will calculate unadjusted basic allowances, instead of those listed in Table 2 Columns A and F, as follows:

Unit's Unadjusted Basic Allowances = Unit's HEAT60 × 65 ÷ 60 × Lesser of .3 or / 2000 Unit's 1985 $SO_2$ Allowable Emissions Rate

Where: HEAT60 is listed in the NADB 2.1

**§ 73.19 Certain units with declining $SO_2$ rates.**

(a) *Eligibility.* A unit is eligible for allowance allocations under this section if it meets the following requirements:

(1) Is an existing unit that is a utility unit;

(2) Serves a generator with nameplate capacity equal to or greater than 75 MW;

(3) Its 1985 actual $SO_2$ emissions rate was equal to or greater than 1.2 lb/mmBtu;

(4) Its 1990 actual $SO_2$ emissions rate is 50 percent or more less than the lesser of its 1980 actual or allowable $SO_2$ emissions rate;

(5) Its 1997 actual $SO_2$ emission rate is less than 1.2 lb/mmBtu;

(6) It commenced commercial operation after January 1, 1970;

(7) It is part of a utility system whose combined commercial and industrial kilowatt-hour sales increased more than 20 percent between calendar years 1980 and 1990; and

(8) It is part of a utility system whose company-wide fossil-fuel $SO_2$ emissions rate declined 40 percent or more from 1980 to 1988.

(b) *Submittal Procedures.* Not later than March 1, 1998, in order to be eligible for allowance allocations under this section, the designated representative for the unit must submit a photocopy of the unit's 1997 Form EIA–767 and a letter certifying that the photocopy is a true copy.

(c) *Allowance Allocation.* Upon submittal of adequate information under paragraph (b) of this section, the Administrator will calculate unadjusted additional basic allowances according to the following equations:

(1) Unit's Calculated Allowances = Unit's Max × 1.2 Baseline − Unit's Baseline × 1.2

Where: Max baseline = the maximum average annual fuel consumption in any consecutive three year period during 1980–89 (as specified in the NADB), or baseline, whichever is larger.

(2) Unit's Unadjusted Additional Basic Allowances = Unit's Calculated Allowances × 5000/Sum of All Unit's Calculated Allowances

(3) The unadjusted additional basic allowances in paragraph (c)(2) of this section will be added to the unit's unadjusted basic allowances from Table 2 Columns A and F.

**§ 73.20 Phase II early reduction credits.**

(a) *Unit Eligibility.* Units listed in Table 2 of this part are eligible for allowances under this section if:

(1) The unit is not a unit subject to emissions limitation requirements of Phase I;

(2) The unit is authorized by the Governor of the state in which the unit is located;

(3) The unit is part of a utility system (which, for the purposes of this section only, includes all generators operated by a single utility, including generators that are not fossil fuel-fired) has decreased its total coal-fired generation, as a percentage of total system generation, by more than twenty percent between January 1, 1980 and December 31, 1985; and

(4) The unit is part of a utility system that during calendar years 1985 through 1987 had a weighted capacity factor for all coal-fired units in the system of less than fifty percent. The weighted capacity factor is equal to:

Weighted Capacity Factor = Sum of actual generation of all coal-fired units in utility system ÷ Sum of all generators' nameplate capacity × 8760

(b) *Emissions Reductions Eligibility.* Sulfur dioxide emissions reductions eligible for allowance credits at units eligible under paragraph (a) of this section must meet the following requirements:

(1) Be made no earlier than calendar year 1995 and no later than calendar year 1999; and

(2) Be due to physical changes to the plant or are a result of a change in the method of operating the plant including but not limited to changing the type or quality of fuel being burned.

(c) *Initial Certification of Eligibility.* The owner or operator of a unit that is believed to qualify for allowances under paragraph (a) of this section may seek certification of unit eligibility prior to a request for allowances under this provision. A completed application for this certification shall include the following:

(1) a letter from the Governor of the state in which the unit is located authorizing the unit to make reductions in sulfur dioxide emissions; and

(2) a report listing all units in the utility system, each fossil fuel-fired unit's fuel consumption and fuel heat content for calendar year 1980, and each generator's total electrical generation for calendar years 1980 and 1985 (including all generators, whether fossil fuel-fired, nuclear, hydroelectric or other).

(d) *Request for Allowances.*

(1) Prior to, or accompanying, the request for allowances, the designated representative of the requesting unit shall submit the application for certification of eligibility in paragraph (c) of this section.

(2) The request for allowances shall include the following information:

(i) The calendar year for which credits for reductions are requested and the actual $SO_2$ emissions and fuel consumption in that year;

(ii) A letter signed by the designated representative stating and documenting the specific physical changes to the plant or changes in the method of operating the plant (including but not limited to changing the type or quality of fuel being burned) which resulted in the reduction of emissions; and

(iii) A letter signed by the designated representative certifying that all photocopies are exact duplicates.

(3) The designated representative must submit each request for allowances no later than March 1 of the calendar year following the year in which the reductions were made.

(e) The Administrator shall allocate allowances to the eligible unit upon satisfactory submittal of information under paragraphs (c) and (d) of this section in the amount calculated by the following equations. Such allowances will be allocated to the unit's 2000 future year subaccount.

(1) "Prior year" means a single calendar year selected by the eligible unit from 1995 to 1999 inclusive.

(2) One "credit" equals one ton of eligible $SO_2$ emissions reductions.

(3) "ERC units" are units eligible for early reduction credits, and "non-ERC units" are fossil fuel-fired units which are part of the same operating system, but are not eligible for early reduction credits.

(4) Calendar year 1990 data will be used as the basis against which early reduction credits are determined.

(5) Early reduction credits will be calculated at the unit level, subject to the restrictions in paragraph (e)(6) of this section.

(6) The number of credits for eligible Phase II units will be calculated as follows:

(i) Comparison of the prior year utilization of ERC units to the 1990 utilization, as a percentage of system utilization.

A unit's prior year utilization will be restricted if system-wide prior year ERC utilization exceeds system-wide 1990 utilization of ERC units on a percentage basis. If the following equation is true,

$$\frac{\text{sum of prior year heat input for all ERC units (in mmBtu)}}{\text{sum of prior year heat input for all system units (in mmBtu)}} > \frac{\text{sum of 1990 heat input for all ERC units (in mmBtu)}}{\text{sum of 1990 heat input for all system units (in mmBtu)}}$$

then the restrictions of paragraphs (e)(6)(ii) and (iii), of this section may apply. If not, the ERC units are eligible to receive the early reduction credits calculated in paragraph (e)(6)(v) of this section.

(ii) Comparison of the prior year average emission rate of all ERC units to the prior year average emission rate of all the non-ERC units.

A unit's prior year utilization will be restricted if the system-wide average $SO_2$ emission rate of ERC units exceeds that of the non-ERC units. If the relationship below is true,

$$\frac{\text{sum of prior year } SO_2 \text{ emissions for all ERC units (in pounds)}}{\text{sum of prior year heat input for all ERC units (in mmBtu)}} > \frac{\text{sum of prior year } SO_2 \text{ emissions for all non-ERC units (in pounds)}}{\text{sum of prior year heat input for all non-ERC units (in mmBtu)}}$$

the restriction in paragraph (e)(6)(iv) of this section applies.

(iii) Comparison of the emission rate of the non-ERC units in the prior year to the emission rate of the non-ERC units in 1990.

A unit's prior year utilization will be restricted if the prior year system average non-ERC $SO_2$ emission rate increases above the 1990 system average non-ERC $SO_2$ emission rate. If the relationship below is true,

$$\frac{\text{sum of prior year } SO_2 \text{ emissions for all non-ERC units (in pounds)}}{\text{sum of prior year heat input for all non-ERC units (in mmBtu)}} > \frac{\text{sum of 1990 } SO_2 \text{ emissions for all non-ERC units (in pounds)}}{\text{sum of 1990 heat input for all non-ERC units (in mmBtu)}}$$

then the restriction in paragraph (e)(6)(iv) of this section applies. If the prior year $SO_2$ emission rate is less than the 1990 actual $SO_2$ emission rate, the ERC units are eligible to receive the early reduction credits calculated in paragraph (e)(6)(v) of this section.

(iv) Calculate the utilization limit for restricted units.

The limit on utilization for each unit eligible for early reduction credits in the system is calculated as follows:

$$\text{ERC unit's prior year heat input (in mmBtu)} \times \frac{\text{sum of 1990 heat input for all ERC units (in mmBtu)}}{\text{sum of 1990 heat input for all units in system (in mmBtu)}} \Big/ \frac{\text{sum of prior year heat input for all ERC units (in mmBtu)}}{\text{sum of prior year heat input for all units in system (in mmBtu)}}$$

This result, expressed in million Btus, is the restricted utilization of the ERC unit to be used in the calculation of early reduction credits in paragraph (e)(6)(v) of this section.

(v) Calculation of the unit's early reduction credit.

(A) The early reduction credits will be calculated as follows:

$$\left[\text{ERC unit's 1990 actual } SO_2 \text{ emission rate (in lb/mmBtu)} - \text{ERC unit's prior year actual } SO_2 \text{ emission rate (in lb/mmBtu)}\right] \times \text{the lesser of the prior year heat input or the restricted heat input from (iv) above (in mmBtu)} / 2{,}000$$

(B) Section 404(e)(2) restricts the early reduction credits as follows:

$$\text{ERC unit's prior year heat input (in mmbtu)} \times \text{the lesser of 2.50 or the most stringent SIP emission limit (in lb/mmBtu)} / 2000 - \text{ERC unit's prior year } SO_2 \text{ emissions (in tons)}$$

(B) Section 404(e)(2) restricts the early reduction credits as follows:

(7) The Administrator will allocate to the ERC unit allowances equal to the lesser of the number of credits calculated by paragraphs (e)(6)(v)(A) and (e)(6)(v)(B) of this section.

**§ 73.21 Phase II repowering allowances.**

(a) *Repowering Allowances.* In addition to allowances allocated under § 73.11 of this chapter, the Administrator will allocate, to each unit with an approved compliance plan which includes repowering, allowances for use during the repowering extension period approved under § 72.44 of this chapter (including a prorated allocation for any fraction of a year) equal to:

$$\text{Unit's Repowering/ Allowances} = \frac{\text{Unit's baseline} \times (\text{lesser of 95 SIP or 95 E.R.})}{2000} - \text{Unit's Adjusted Basic Allowances}$$

Where: 95 SIP = Most stringent federally enforceable state implementation plan $SO_2$ emissions limitation for 1995

95 E.R. = 1995 actual $SO_2$ emissions rate

Unit's Adjusted Basic Allowances = Unit's Year 2000 Adjusted Basic Allowances as calculated at § 73.11(d)

(b) If the designated representative for a repowering unit terminates the repowering extension plan in accordance with § 72.44(e)(3)(iv) of this chapter, the repowering allowances

allocated to that unit by paragraph (a) of this section will be deducted from that unit's accounts and reallocated to all Table 2 units' years 2000 through 2009 subaccounts in the following manner:

$$\text{Reallocation} = \frac{\text{Forfeited Repowering Allowances}}{10} \times \frac{\text{Unit's Repowering Deduction}}{\text{Sum of All Table 2 Units' Repowering Deductions}}$$

**§ 73.22 [Reserved]**

**§ 73.23 [Reserved]**

**§ 73.24 [Reserved]**

**§ 73.25 Phase I extension reserve.**

The Administrator will initially allocate 3.5 million allowances to the Phase I Extension Reserve account of the Allowance Tracking System. Allowances from this Reserve will be allocated to units under § 72.42 of this chapter. Allowances remaining in the Phase I Extension Reserve account following allocation of all extension allowances under § 72.42 of this chapter will remain in the Reserve.

**§ 73.26 Conservation and renewable energy reserve.**

The Administrator will allocate 300,000 allowances to the Conservation and Renewable Energy Reserve subaccount of the Acid Rain Data System. Allowances from this Reserve will be allocated to units under subpart F of this part. Termination of this Reserve and reallocation of allowances will be made under § 73.80(c) of this part.

**§ 73.27 Special allowance reserve.**

(a) *Establishment of reserve.* (1) The Administrator will allocate 150,000 allowances annually for calendar years 1995 through 1999 to the Auction Subaccount of the Special Allowance Reserve.

(2) The Administrator will allocate 200,000 allowances annually for calendar years 2000 and each year thereafter to the Auction Subaccount of the Special Allowance Reserve.

(3) The Administrator will allocate 50,000 allowances annually for calendar years 2000 and each year thereafter to the Direct Sale Subaccount of the Special Allowance Reserve.

(b) *Distribution of proceeds.* (1) Monetary proceeds from the auctions and sales of allowances from the Special Allowance Reserve (under subpart E of this part) for use in calendar years 1995 through 1999 will be distributed to the designated representative of the unit according to the following equation:

Unit proceeds = (Column B of Table 1/150,000)* total proceeds

(2) Monetary proceeds from the auctions and sales of allowances from the Special Allowance Reserve (under subpart E of this part) for use in calendar years 2000 through 2009 will be distributed to the designated representative of the unit according to the following equation:

Unit proceeds = (Column B of Table 2/250,000)* total proceeds

(3) Monetary proceeds from the auctions and sales of allowances from the Special Allowance Reserve (under subpart E of this part) for use in calendar years 2010 and thereafter will be distributed to the designated representative of the unit according to the following equation:

Unit proceeds = (Column G of Table 2/250,000)* total proceeds

(c) *Reallocation of allowances.* (1) Allowances remaining in the Special Allowance Reserve following the annual auctions and sales (under subpart E of this part) for use in calendar years 1995 through 1999 will be reallocated to the unit's Allowance Tracking System Account according to the following equation:

Unit allowances = (Column B of Table 1/150,000)* Allowances remaining

(2) Allowances remaining in the Special Allowance Reserve following the annual auctions and sales (under subpart E of this part) for use in calendar years 2000 through 2009 will be reallocated to the unit's Allowance Tracking System Account according to the following equation:

Unit allowances = (Column B of Table 2/250,000)* Allowances remaining

(3) Allowances remaining in the Special Allowance Reserve following the annual auctions and sales (under subpart E of this part) for use in calendar years 2010 and thereafter will be reallocated to the unit's Allowance Tracking System Account according to the following equation:

Unit allowances = (Column G of Table 2/250,000)* Allowances remaining

(d) *Calculation rounding.* All proceeds under this section shall be distributed as whole dollars. All calculations for such allowances shall be rounded down for decimals less than .5 and up for decimals of .5 or greater.

(e) *Achieving exact totals.* (1) If the sum of the proceeds to be distributed under paragraph (b) of this section exceeds the total proceeds or the allowances to be reallocated under paragraph (c) of this section exceeds the allowances remaining, then the Administrator will withdraw one dollar or allowance from each unit, beginning with the unit receiving the largest number of dollars or allowances, in descending order, until the distribution balances with the proceeds and the reallocated allowances balance with the remaining allowances.

(2) If the sum of the proceeds to be distributed under paragraph (b) of this section is less than the total proceeds or the allowances to be reallocated under paragraph (c) of this section is less than the allowances remaining, then EPA will distribute one dollar or allowance for each unit, beginning with the unit receiving the largest number of dollars or allowances, in descending order, until the distribution balances with the proceeds and the reallocated allowances balance with the remaining allowances.

8–9. Subpart G of part 73 is proposed to be added to read:

## Subpart G—Small Diesel Refineries

**§ 73.90 Allowance allocations for small diesel refineries.**

(a) *Initial Certification of Eligibility.* The owner or operator of a refinery, or portion of a petroleum distilling refinery which produces diesel fuel, that is eligible under this section may seek certification of its facility eligibility prior to a request for allowances under paragraph (d) of this section. A completed application for certification, submitted to the address under § 72.13 of this chapter, for this certification shall include following:

(1) Photocopies of Form EIA–810 for each month of calendar year 1990 for the refinery;

(2) Photocopies of Form EIA–810 for each month of calendar year 1990 for each refinery, or portion of a petroleum distilling refinery which produces diesel fuel, that is owned or controlled by the refiner which owns or controls the refinery seeking certification; and

(3) A letter certified by the certifying official that the submitted photocopies are exact duplicates of those forms filed with the Department of Energy for 1990.

(b) *Request for Allowances.* Prior to, or accompanying, the request for allowances,

(1) The certifying official for the refinery or portion of the refinery shall submit the application for certification of eligibility under paragraph (a) of this section and an Allowance Tracking System New Account/New Authorized Account Representative Form.

(2) The request for allowances shall include the following information:

(i) Certification that all motor fuel produced by the refinery for which allowances are claimed shall have met the requirements of subsection 211(i) of the Clean Air Act;

(ii) For calendar year 1993 desulfurized diesel fuel, photocopies of October, November and December 1993 Form 810s;

(iii) For calendar years 1994 through 1999, inclusive, photocopies of Form 810 for each month in the respective calendar year.

(3) For joint ventures, each eligible refinery shall submit a separate application under paragraph (b)(2) of this section. Each application must include the diesel fuel throughput applicable to the joint agreement and the requested dispersement of allowances that would be allocated to the joint agreement. If the applications for refineries involved in the joint agreement disagree as to the throughput of diesel fuel applicable to the joint agreement or as to the distribution of the allowances, all involved applications will be considered void for purposes of the joint agreement.

(4) The certifying official shall submit all requests for allowances by April 1 of the calendar year following the year in which the diesel fuel was desulfurized to the Director, Acid Rain Division, under the procedures set forth in § 73.12 of this part.

(c) *Allowance Allocation.* The Administrator will allocate allowances to the eligible refinery upon satisfactory submittal of information under paragraphs (a) and (b) of this section in the amount calculated by the following equations. Such allowances will be allocated to the refinery's non-unit subaccount for the calendar year in which the application is made.

(1) Allowances allocated under this section to any eligible refinery or portion of a refinery will be limited to the tons of $SO_2$ attributable to the desulfurization of diesel fuel at the refinery.

(2) The refinery or portion of a refinery will be allocated allowances for a calendar year and, in the case of 1993, for the period October 1 through December 31, calculated from the following equation, but not to exceed 1500 for any calendar year:

$$\frac{\underset{a}{(\text{diesel fuel production})}\underset{b}{(302)}\underset{c}{(0.00224)}\underset{d}{(2)}}{\underset{e}{2000}} = \text{Allowances Requested}$$

Where:
- a = diesel fuel in barrels for the year (or for October 1 through December 31 for 1993)
- b = lbs per barrel of diesel
- c = lbs of sulfur per lbs of diesel
- d = lbs of $SO_2$ per lbs of sulfur
- e = lbs per short ton

(3) If allowance request applications for a given year exceed requests for 35,000 allowances, the Administrator will allocate allowances equal to:

Refinery Allowances = Allowances Requested* Total Allowances Requested/35,000 so long as the allowances requested do not exceed 1500 for any one refinery. If so the allowances requested by that refinery will be set at 1500.

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# federal register

Part III

## Environmental Protection Agency

Acid Rain Provisions; Notice of Availability

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4145-5]

### Acid Rain Provisions

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** This notice is to inform the public and interested utilities that the United States Environmental Protection Agency (EPA) is making available the final version of the National Allowance Data Base (NADB) and accompanying technical support documents. The Administrator is authorized to issue this final version of the NADB under section 402(4)(C) of the Clean Air Act ("the Act," "CAA") to support the Acid Rain program, 42 U.S.C. 7651(a)(4)(C).

Section 402(4) of the CAA authorizes EPA to supplement data needed to support title IV of the CAA and to correct data, as necessary, that is used for the purposes of allocating allowances to affected units during Phase II of the Acid Rain program. On July 19, 1991 (56 FR 33278) EPA published NADB version 2.0 (NADB V 2.0) for public review and comment. Today's final version of NADB (NADB V 2.1) incorporates EPA's decisions on the comments received, with one exception. In order to promulgate the allowance allocations required to be completed by the statutory deadline of December 31, 1992, and consistent with the previous notice on the data base (56 FR 33278, July 19, 1991), EPA will not be able to accept any further petitions to modify the information contained in the NADB.

EPA is proposing today a categorization of outage requests received in response to the NADB V 2.0. Although additional outage requests will not be accepted, EPA is requesting comment regarding its categorization of the outages. Comment is also requested regarding EPA's proposed definitions of the terms "accident" and "prolonged" (used to classify outages) and which outage categories are to be included in the outage hour field of the NADB.

Today's notice also announces the availability for public review and comment two additional data files that will be used in calculating allowances under the provisions in the CAA. These files are called the Supplemental Data File (SDF) and the Adjunct Data File (ADF). The SDF compiles information needed to classify eligible units and to calculate allowances under section 404(h) and various special provisions of section 405. Any facilities which believe they are eligible for the provisions for which the SDF was created, are invited to submit appropriate values and documentation by the dates identified below in the DATES section of this notice to the EPA Air Docket within the comment period specified. The ADF lists certain non-traditional utility units that have been identified from Energy Information Administration Form EIA-867 as potentially affected units under the CAA. Units identified in these files can review the data and may make appropriate documented comments to the EPA Air Docket at the address identified below in the DATES section.

At this time, EPA does not foresee use of the NADB other than for allowance allocations and the operation of the Acid Rain program. Inclusion of a unit within either the data base or any of the associated data files does not imply that the unit is or is not affected under this title of the Act, although the data on such units will be used, in part, to determine whether the unit is affected.

**DATES:** All comments on the ADF and SDF data files and EPA's proposed policy for the treatment of outages must be submitted in writing and be identified with the document control number "A-92-07" and be submitted in triplicate to the EPA Air Docket [LE-131], Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Comments received in response to this notice will be available for reviewing and copying from 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m. Monday through Friday, excluding legal holidays, in the EPA Air Docket room M-1500, first floor Waterside Mall at the address given in the previous paragraph.

Comments on the ADF, SDF, and the proposed handling of outage categories must be received on or before September 8, 1992. No extension of the comment period will be granted.

**ADDRESSES:** Copies of the final data base, the two additional data files, and supporting documents may be obtained from the Acid Rain Hotline at (617) 641-5377 or from any of the following sources: U.S. Environmental Protection Agency, Acid Rain Division, 6204J, 401 M Street, SW., Washington, DC 20460.

Serving Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut: U.S. Environmental Protection Agency, Region 1 (APS), J.F. Kennedy Federal Bldg., room 2203, Boston, MA 02203, Attn: Ian Cohen.

Serving New York and New Jersey: U.S. Environmental Protection Agency, Region 2 (2AWM-AP), Jacob Javitz Federal Bldg., 26 Federal Plaza, New York, NY 10278, Attn: Gerry DeGaetano.

Serving Pennsylvania, Delaware, Maryland, West Virginia, the District of Columbia, and Virginia: U.S. Environmental Protection Agency, Region 3 (3AT11), 841 Chestnut Bldg., Philadelphia, PA 19107, Attn: James Topsale.

Serving Kentucky, North Carolina, Tennessee, South Carolina, Georgia, Alabama, Mississippi, and Florida: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, GA 30365, Attn: Beverly Hudson.

Serving Michigan, Wisconsin, Minnesota, Ohio, Indiana, and Illinois: U.S. Environmental Protection Agency, Region 5 (5-AE-17J), 77 West Jackson Blvd., Chicago, IL 60604, Attn: David Schulz.

Serving Arkansas, Oklahoma, Louisiana, Texas, and New Mexico: U.S. Environmental Protection Agency, Region 6 (6T-AN), First Interstate Bank Tower, 1445 Ross Avenue, suite 1200, Dallas, TX 75202-2733, Attn: Joe Winkler.

Serving Iowa, Nebraska, Missouri, and Kansas: U.S. Environmental Protection Agency, Region 7, 726 Minnesota Avenue, Kansas City, KS 66101, Attn: Jon Knodel.

Serving North Dakota, South Dakota, Montana, Wyoming, Colorado, and Utah: U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, CO 80202-2405, Attn: Larry Svoboda.

Serving Nevada, California, and Arizona: U.S. Environmental Protection Agency, Region 9 (A-2-3), 75 Hawthorne Street, San Francisco, CA 94105, Attn: Michael Stenburg.

Serving Idaho, Washington, and Oregon: U.S. Environmental Protection Agency, Region 10 (AT082), 1200 Sixth Avenue, Seattle, WA 98101, Attn: Sharon Wilson.

For their members:

American Public Power Association, 2301 M Street, NW., 3rd floor, Washington, DC 20037, Attn: Barry Mansueti.

Edison Electric Institute, 701 Pennsylvania Avenue, NW., 5th floor, Washington, DC 20004, Attn: John Kinsman.

National Coal Association, 1130 17th Street, NW., Washington, DC 20036, Attn: Jerry Karaganis.

National Rural Electric Cooperatives Association, 1800 Massachusetts Avenue, NW., Washington, DC 20036, Attn: Rae Cronmiller, Environmental Counsel.

State and Territorial Air Pollution Program Administrators/ Association of Local Air Pollution Control Officials (STAPPA/ ALAPCO), 444 North Capitol Street,

NW., Washington, DC 20001, Attn: William Becker.
Utility Air Regulatory Group, 2000 Pennsylvania Avenue, NW., Suite 9000, Washington, DC 20036, Attn: Lynn Johnson.

**FOR FURTHER INFORMATION CONTACT:** T. Larry Montgomery, Acid Rain Division; telephone (202) 233–9142, (FTS) 233–9142, or Janice Wagner, Acid Rain Division, telephone (202) 233–9172, (FTS) 233–9172; or Bryan Bloomer, Acid Rain Division, telephone (202) 233–9078, (FTS) 233–9078. The mailing address is US EPA, Acid Rain Division (6204J), 401 M Street, SW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

## A. Background

### *1. What is Acid Rain?*

Acid rain is the accepted term which encompasses a complex set of phenomena that begins with emissions from the combustion of fossil fuel, includes the transport and transformation of those emissions through the atmosphere, and ends with the effects of those emissions and their resulting transformation products on the environment. Specifically, the burning of fossil fuels, particularly coal and oil, releases emissions of sulfur dioxide ($SO_2$) and nitrogen oxides ($NO_x$) into the atmosphere. In the atmosphere, $SO_2$ and $NO_x$ may undergo various chemical reactions, resulting in the transformation of the emissions into chemical products including sulfates, nitrates, sulfuric acid, and nitric acid. These compounds can fall to earth near the source or be transported hundreds of miles. They may be deposited during any stage of their transformation, returning to earth as dry deposition in the form of gases, aerosols, and particles of these emissions, and the presence of their transformation products in the atmosphere contributes to reduced visibility and is suspected of posing a threat to human health at current levels. The acidic deposition resulting from $SO_2$ and $NO_x$ emissions and their byproducts damages both ecosystems and human-made materials. Of the approximately 23 million tons of $SO_2$ and 19 million tons of $NO_x$ emitted annually from all sources in the United States in 1985, about 16 million tons of $SO_2$ and 7 million tons of $NO_x$ were emitted by electric utilities.

### *2. Title IV of the CAA*

Title IV, which sets forth the Acid Rain program of the CAA, establishes a national cap on utility $SO_2$ emissions of 8.95 million tons per year (aside from up to a maximum of 530,000 tons of additional emissions authorized for each year between 2000 and 2009). This cap will result in an estimated $SO_2$ emissions reduction of ten million tons from 1980 levels, which will be achieved in two phases. Phase I will begin in 1995 and mainly affects large, high-emitting coal-fired utility plants which are listed specifically in the statute. Phase II will begin in 2000 and affects virtually all existing utility units with output capacity greater than 25 megawatts, and new utility units of any size. In addition, $SO_2$ sources not explicitly affected by Phase II requirements (e.g., industrial facilities) may choose to become affected by opting into the allowance trading program. All sources subject to the requirements of title IV are considered "affected" sources; and units of the sources are required to have "allowances" to cover their $SO_2$ emissions.

A system of marketable allowances is the centerpiece of the Acid Rain program. An allowance authorizes the emission of up to one ton of $SO_2$ in one year. The Act explicitly requires affected units (most utility units) to meet an annual sulfur dioxide emissions tonnage limitation expressed for each unit in the language of title IV. The Act requires the Administrator to allocate annually for each affected unit allowances to emit sulfur dioxide in a number equal in tons to the unit's prescribed statutory emissions limitation requirement. Once allowances are allocated, the Act requires that a unit's total annual $SO_2$ emissions be less than, or equal to, the number of allowances held for use by that unit. Allowances may be transferred to and from affected units and to and from any person. Allowances not used for compliance in the year in which they are allocated may be banked for future use. As a result, each unit may meet its $SO_2$ emissions limitation requirement by the most economically efficient means possible, either by selecting the most cost-effective method of controlling emissions or by purchasing allowances from other units that can reduce emissions less expensively. In addition, the marketable nature of allowances creates an incentive for units to achieve greater reductions than required through the ability to sell the "extra" allowances, or to achieve reductions through improved or innovative methods.

### *3. Purpose of the National Allowance Data Base*

For Phase II of the program, the Act defines a number of calculations which must be used to determine an affected unit's initial allowance allocations. In general, the Phase II allowance calculations are to be based upon historical data for the time period 1985 through 1987. Section 402(4)(C) of the Act authorizes the EPA to supplement data needed in support of the Acid Rain program and to correct factual errors. EPA has done this by developing the NADB V 2.1 to supplement and correct data needed to perform the various allowance calculations required by Title IV.

## B. Development of NADB V 2.1

### *1. Primary Sources*

The NADB was developed from information collected or assembled by EPA. The primary sources for this information were the National Utility Reference File (NURF) which is a subset of the National Acid Precipitation Assessment Program (NAPAP) Report Version 2 and Department of Energy (DOE), Energy Information Administration (EIA) forms. Additional information was obtained from both public and private sources. Information on outage hours was obtained from the North American Electric Reliability Council (NERC) Generating Availability Data System (GADS) and EIA information on file. Information on federally enforceable emissions limitations was originally obtained from a data base of power plant emission limits developed for EPA with input from state and regional officials. A detailed history of the development of NADB information can be found in the Notice of Availability of NADB V 2.0 (56 FR 33278, July 19, 1991).

### *2. Public Comments Received*

In response to the July 19, 1991 Notice of Availability and subsequent review of NADB V 2.0 by interested parties, approximately 200 comment documents were received. Most of these documents included requests for data changes. EPA's responses are available for public viewing at the EPA Air Docket.

## C. NADB V 2.1

### *1. Baseline Issues*

The term "baseline," for affected units under the Acid Rain program, is defined at section 402(4), and refers to the average annual fossil-fuel consumption, measured in millions of British thermal units (mmBtu), where the average is over the years 1985, 1986, and 1987. This information, in the NADB, was compiled primarily from Form EIA–767. Since information is reported separately by fuel type and usage on the EIA form, it is possible for EPA to differentiate with respect to fuel type and usage when

calculating baseline heat input values for units contained in the NADB.

Under the Acid Rain program, all $SO_2$ emitted from a stack used by an affected unit will be registered in the unit's emissions monitoring system, regardless of the fuel type and location of the combustion causing that emission. EPA acknowledges that when the Acid Rain program emission reduction obligations go into effect (1995 for Phase I units and 2000 for Phase II units), each unit's total actual $SO_2$ emissions will be compared to their allowances held, regardless of the type of fuel burned. Thus, both the heating values and emissions from all fuel used by the unit as described in subsections a., b., and c. (immediately following) are included in the relevant data elements for the units affected under title IV of the CAA.

a. Scrubber Reheat Fuel

Some units with scrubbers use additional fuel to heat the exhaust gases that leave the scrubber in order to enhance plume rise and dispersion and to protect equipment from corrosion. Some comments have been submitted suggesting that the Btu's associated with the additional fuel should be included in the unit's baseline. To be consistent with the decision to capture all fuel burned that will result in monitored $SO_2$ emissions, regardless of the fuel type and location of combustion, EPA has included supplementary fuel consumption information in the NADB. Because the burning of this fuel is necessary for the scrubber's operation, EPA believes that the scrubber reheater fuel heating value should be included in the appropriate fuel usage data fields of the NADB V 2.1.

b. Combined Cycle Turbines

The NADB V 2.0 contained 13 combined cycle units with supplementary firing (defined as additional fuel burned in the duct or in an auxiliary heat recovery boiler). NADB V 2.0 included only the fuel consumed in an auxiliary boiler, while the fuel consumed by the gas turbine or fuel used for duct firing was not included. As a result the NADB did not state all of the fuel consumed by these units. Since certain plants have duct firing as opposed to boiler firing, the NADB V 2.0 indicated that these units used no fuel. This was incorrect because fuel was used for the turbine and in the duct. To be consistent with the decision to capture all fuel burned that will result in monitored $SO_2$ emissions regardless of the fuel type and location of combustion, EPA has included supplementary fuel consumption information in the NADB.

c. Alternative Fuels

A number of units burned, as a portion of their total fuel consumed, a type of fuel that is not generally considered to be fossil fuel (e.g., wood chips). EPA is proposing, elsewhere in today's **Federal Register**, that these units be affected units because a majority of their fuel is, or the potential exists for a majority of their fuel to be what is commonly considered a fossil fuel (such as coal, oil, or natural gas.) To be consistent with the decision to capture all fuel burned that will result in monitored $SO_2$ emissions regardless of the fuel type and location of combustion, EPA has included supplementary fuel consumption information in the NADB. Alternative fuels are included in the baseline heat input field of the NADB V 2.1 (to the extent they were identified on EIA forms already on file, primarily Form EIA–767).

*2. Outage Hours*

a. Background

Section 402(4)(A) provides that the Administrator may adjust a unit's baseline by excluding periods during which the unit was shut down for a continuous period of four months or longer or for prolonged outages due to accidents. This outage time must have occurred between January 1, 1985 and December 31, 1987. Because EPA provided for a comment period following the July **Federal Register** notice and because of the statutory deadline to finalize allocations by December 31, 1992, EPA will not accept any further petitions or comments to modify the NADB. This includes those petitions that would adjust a unit's baseline or outage hour data fields. EPA is, however, soliciting comment on the policy used to evaluate the "additional requests" for adjustments due to outages as outlined in the section entitled EPA's Handling of Outages. Comments must be submitted to the docket prior to the deadline specified above in the DATES section of this notice.

b. EPA's Proposed Handling of Outages

In the July 19, 1991 notice, EPA noted that the Administrator has the discretion to adjust baselines for units with outages over four months in duration. In exercising this discretion, however, the Agency proposed to use defined criteria in order to ensure that baselines would be adjusted in a consistent manner for all affected units. This is particularly important because any adjustments will result in reallocation of the 8.95 million allowances allocated annually under Phase II of the Acid Rain program.

The criteria proposed by EPA in the July notice was that the outage had to occur for a continuous period lasting more than 2,920 hours and that the outage must be forced or planned for non-routine maintenance purposes. EPA proposed that outages of similar length that were caused by economic factors (such as using electric power that was cheaper to purchase from other sources, or lack of demand for the power during the baseline period), not be included in the adjustment for outages.

EPA received requests for adjustments due to outages in response to the July 19, 1991 notice in the **Federal Register**. A number of these adjustment requests did not meet the criteria specified in the July notice for qualifying outages. These "additional requests" were evaluated based upon their individual merits.

The agency developed six categories within which these additional requests fell. The categories are summarized in Table 1.

TABLE 1.—BASELINE ADJUSTMENT CLASSIFICATION CATEGORIES

| Category | Outage/request type | Proposal |
|---|---|---|
| I | Forced/planned non-routine maintenance and accidents, greater than or equal to 4 months. | Allow. |
| II | Discontinuous but related outages for forced/planned non-routine maintenance and accidents, where total duration was 4 months or greater. | Allow. |
| III | Outages less than 4 months | Disallow. |
| IV | Outages greater than or equal to 4 months that were economic outages and other outages not classified as forced/planned non-routine maintenance or accidents. | Disallow. |
| V | Request for alternate baseline years—(i.e. other than 1985–1987). | Disallow. |
| VI | Request for an allowance calculation formula different from what is specified in the appropriate title IV section. | Disallow. |

c. Comments and Responses

Several commenters requested adjustments for outages which were less than four months long (Category III). EPA proposes that no adjustments for such outages be made. Section 402(4)(A) of the Act does not provide EPA with the authority to make such outage adjustments. Also, EPA is proposing to define for the purposes of classifying the outage requests received to date that a "prolonged" outage, due to an accident, be four months or longer. Thus,

accidents resulting in outages of less than four months that occurred during the baseline period are proposed to be disallowed.

Some commenters argued for EPA to include adjustments to the baseline for any outage period longer than four months (that is, to include Category IV outages). Specifically, they stated that the Agency should not distinguish between outages caused by equipment failure and those caused by economic factors. Some commenters want EPA to grant adjustments based on economic outages of all types. Others believe that EPA should grant adjustments for outages made to purchase cheaper power from other sources, and continue to deny adjustments for those outages caused by a lack of demand for power. A few requests were made for outages resulting from routine maintenance. EPA believes that routine maintenance is comparable to an economic outage in that it is simply a cost of doing business and that routine maintenance outages are part of a unit's normal operations.

EPA continues to believe that the policy to follow in making adjustments to baselines that is most consistent with statutory intent is to grant them only to units with planned or forced outages due to non-routine maintenance or for accidents that lasted four months or longer (Category I). However, the Agency is persuaded it is appropriate to adjust baselines for those few units that experienced forced or non-routine maintenance outages greater than four months that were interrupted briefly by a few hours of operation and were clearly related to the same repair activity (Category II outages). EPA feels the inclusion is warranted because during the course of repair operations it is sometimes necessary to burn fuel in the boiler either to secure the safety of the plant for the repair operations, to evaluate a repair or the extent of damage, or because unforeseen problems relating to the repair are evident as the unit is being brought on-line. As a point of clarification, EPA is not including hours, in the outage hour field of the NADB, during which fuel was burned for any reason, for example hours when fuel was burned as part of the repair activity.

Although Congress expressly left the authority to adjust baselines to the Administrator's sole discretion, EPA believes that this discretion is not unbridled. The Agency believes that such authority should be exercised in accordance with Congressional intent. With regard to the criteria to use in granting outage requests, the Joint Explanatory Statement of the Committee of Conference states that "the Administrator shall adjust the baseline to account for forced and planned outages of four months or more between 1985 and 1987 * * *" (Conference Report to accompany S1630, p. 342). Other than the Joint Explanatory Statement there is little legislative history regarding the general intent of this provision. The Senate Committee Report stated that, "In applying this provision the Administrator should exercise discretion in choosing whether to include or exclude such periods so as to reflect the unit's normal operation." (Report of the Committee on Environment and Public Works, United States Senate, Report 101–228, p. 308).

EPA continues to believe that the policy proposed with the July 19, 1991 Notice is consistent with legislative history and is fair and equitable. EPA believes that it would be inappropriate to reward, by adjusting their baselines, utilities that chose not to operate units during the baseline period. Economically motivated outages during the baseline period (1985 through 1987) were "normal" operation for these units, and adjustments could result in allocations based on adjusted baselines for units with economic outages and a corresponding "double allocation" for the units that actually produced the power. Finally, EPA believes that a policy whereby adjustments are made to baselines for economic reasons would subject the allocation provisions of the Act to arbitrary treatment and would result in allocation windfalls, unintended by Congress, to some units at the expense of others.

Section 402(4)(A) also permits the Agency to adjust baselines due to "accidents that caused prolonged outages." EPA received one request to adjust the baseline for a unit which was shut down after it was damaged by a tornado. EPA believes that the request is reasonable in light of the language of the Act and the legislative history (see colloquy between Senators Baucus and Harkin; Congressional Record S3524–25 March 29, 1991). Furthermore, the request is consistent with the policy of making adjustments for outages which occurred for non-routine maintenance purposes and which could not be avoided. EPA proposes, for the purposes of classifying the requests received during the comment period of the NADB V 2.0, to define an "accident" to be the occurrence of a natural phenomenon, such as a tornado, or an incident unrelated to the operation of the unit that is unpreventable, unforeseeable, and not caused by worker error, which forces the unit to go off-line. EPA also proposes, as stated in the first paragraph of this section, to define "prolonged" outages to be of a continuous duration greater than 4 months (2920 hours), which is consistent with that used for the non-routine maintenance outages and Congressional intent.

One utility requested the use of a baseline that was used for the purposes of modeling the unit's emissions instead of the actual historical data and associated outage time (Category V). This request is not possible for EPA to grant under its authority in the Act. Furthermore, the baseline heat input value used for the purposes of modeling that unit's emissions under the Prevention of Significant Deterioration program does not apply to and is not appropriate to use in the Acid Rain program.

One unit requested the use of alternative data and allowance calculations other than what is specified in the applicable (to that unit) section of the Act (Category VI outage). EPA is proposing to not grant this request because it has no legal authority under the Act to do so.

Table 2 lists the units with outage requests that did not meet the original criteria outlined by EPA as qualifying outages (Category I outages). This list is based on comments received upon the NADB V 2.0. The Additional Basic Allowances column specified in the following table is the calculated result, based upon NADB V 2.1, of the requested number of outage hours. This amount affects all units that are to receive basic allowances through the prorated reduction of basic allowances back to a national total of 8.9 million.

Category I and II outages have been incorporated into the NADB V 2.1 outage hour field. Because the NADB is finalized today, no new requests (i.e. requests that were not received prior to the close of the comment period for the NADB V 2.0) for outage hours will be added to the NADB outage hour field. EPA is only soliciting comment on the categorization of the requests and the policy used to evaluate these additional requests for adjustments due to outages. These comments should be submitted to the docket, prior to the deadline, specified in the **DATES** section above.

TABLE 2.—SUMMARY OF ADDITIONAL REQUEST RECOMMENDATIONS

| Operating utility | Plant name(s) | Number of BLR/GEN requests | Additional basic allowances | Classification | Proposed EPA action |
|---|---|---|---|---|---|
| Commonwealth Edison Co | Collins, Joliet 9 | 2 | 366 | II | Allow. |
| Iowa Public Service Co | George Neal | 1 | 898 | II | Allow. |
| Taunton, City of | Cleary Flood | 1 | 255 | II | Allow. |
| Jamestown, City of | S A Carlson | 2 | 121 | II | Allow. |
| Cleveland Electric Illum Co | Avon Lake, Bay Shore, Eastlake | 3 | 2,369 | II | Allow. |
| Pennsylvania Power & Light Co | Holtwood | 1 | 13 | II | Allow. |
| Century Power Corp | Springerville | 1 | 1070 | III | Disallow. |
| Key West, City of | Stock Island | 1 | 121 | III | Disallow. |
| Commonwealth Edison Co | Collins | 1 | 54 | III | Disallow. |
| Southern Indiana Gas & Elec. Co | F B Culley | 1 | 297 | III | Disallow. |
| Central Louisiana Elec. Co. Inc | Rodemacher | 1 | 2,209 | III | Disallow. |
| Lansing, City of | Eckert Station | 1 | 331 | III | Disallow. |
| Texas Municipal Power Agency | Gibbons Creek | 1 | 871 | III | Disallow. |
| Arizona Electric Pwr. Coop. Inc | Apache Station | 1 | 1,742 | IV | Disallow. |
| Connecticut Light & Power Co | Devon | 6 | 948 | IV | Disallow. |
| Tampa Electric Co | Hookers Point | 21 | 764 | IV | Disallow. |
| Southern Indiana Gas & Elec. Co | F B Culley | 1 | 297 | IV | Disallow. |
| Corn Belt Power Coop | Earl F. Wisdom | 1 | 2,055 | IV | Disallow. |
| Cedar Falls, City of | Streeter Station | 1 | 2,842 | IV | Disallow. |
| Wisconsin Electric Power Co | Presque Isle | 2 | 547 | IV | Disallow. |
| Otter Tail Power Co | Hoot Lake | 1 | 369 | IV | Disallow. |
| Central Nebraska Pub P&I Dist | Canaday | 1 | 536 | IV | Disallow. |
| Duke Power Co | Buck, Cliffside, Dan River, G G Allen, Riverbend | 15 | 14,348 | IV | Disallow. |
| Portland General Electric Co | Boardman | 1 | 8,265 | IV | Disallow. |
| Pacificorp | Centralia | 1 | 2,776 | IV | Disallow. |
| Wisconsin Electric Power Co | Port Washington | 4 | 1,893 | V | Disallow. |
| Plains Elec. Gen. & Trans. Coop. Inc | Escalante | 1 | 1,151 | VI | Disallow. |

*3. Heat Input at 60 Percent Capacity*

EPA received many comments related to the NADB data element "heat input at 60% capacity" (HT60). This data element is intended to be representative of the heat input value of the unit when operating at 60 percent capacity. Heat input at a 60% capacity factor is used in the bonus allowance calculations prescribed in sections 405(b)(2), 405(c)(4), 405(d)(3)(A), and 405(d)(3)(B), and in calculating basic permanent allowances pursuant to certain provisions in sections 404 and 405 of the Act.

a. Summer Capability and Full Load Heat Rate

Two of the variables in the NADB, 1989 summer net dependable capability and 1989 full load heat rate, were used to calculate the unit's heat input at 60% capacity (HT60). Three main issues were raised by commenters in objection to the method of determining HT60. First, the commenters argued that some affected units may have a higher net dependable capability in the winter than in the summer. Second, units that had not been declared commercial and turned over to the dispatcher or which had documentable problems that delayed full load commercial operation may not have attained their full load capability by the summer of 1989. In both cases the commenters believe that the proposed data base underestimated the two variables. Third, using the full load heat rate to arrive at a 60% capacity factor for a unit requires the assumption that this capacity factor is achieved by operating the unit at full load for 60% of the time. Some commenters argued that a higher average heat rate should be used.

EPA used summer net dependable capability and full load heat rate to determine HT60 in the NADB V 2.0 because, as was noted in the notice (56 FR 33278, July 19, 1991), the most accurate method of determining this parameter would require the use of each unit's operating curve (heat input versus generation). This information is not available in a form that does not place an unreasonable burden upon both the sources to provide, and the agency to obtain and analyze. EPA is constrained to relying on readily available information in the determination of heat input at a 60% capacity factor in order to meet the statutory deadline for promulgating Phase II allowance allocations. Therefore, EPA modified the methodology explained in the FR notice for the NADB V 2.0 to account for unavailable summer net dependable capability information. EPA substituted in the calculation, according to the type of unit, a percentage of nameplate capacity for the summer net dependable capability for units coming on-line in 1990 or later, and units for which no reliable information is available about the summer net dependable capability. Using the results of an analysis conducted by EIA for EPA, the factors applied were 85% of nameplate capacity for combustion and combined cycle turbines and 94% for steam turbines (see NADB TSD for others).

However, if a number for the summer net dependable capability which exceeds the value derived from use of the above factors was provided by any of the units coming on-line after 1990, or by the units for which no reliable information was previously available about the summer net dependable capability, and if that number was determined to be reliable, it was included in the NADB V 2.1.

This approach responds to the comments that newer units may not have achieved their full-load capacity and are entitled to some form of adjustment. Additionally, this solution uses available information, avoiding significant delay in publication of a final data base and associated allowance allocations by abrogating the need to collect, verify and assess data for over 2,000 units' heat input versus load curves to determine the heat input at 60% capacity value.

b. Units that Cogenerate Steam

EPA identified an additional issue based upon the public comments received on the HT60 data element. The issue concerns whether or not to include

the additional equivalent electrical generating capacity of units that cogenerate steam used for purposes other than to drive a generator turbine in a unit's summer net dependable capability data element. This steam is commonly used for heating purposes in building complexes.

EPA has decided to include the total amount of fuel in a unit's baseline, whether it was burned for the purposes of making direct steam (steam that is not used for electrical generation) or steam to produce electrical generation. To adjust the summer net dependable capability data element, EPA calculated a multiplier factor for units that cogenerate steam and electricity. Since this method is more accurately representative of emissions and by including the additional capacity in a unit's summer net dependable capability data element, EPA is being consistent with the methodology for compiling similar data elements such as average annual baseline heat input for the years 1985, 1986, and 1987.

*4. Emission Limit Averaging Periods and Associated Annualization Factors*

In NADB V 2.0 EPA specified, where possible, the averaging period associated with each unit's emissions limit. EPA relied upon available, existing records of the historical emission limits and their associated averaging periods.

EPA received many comments on individual units' averaging periods. These comments were individually reviewed to ensure that the emission limits and the associated averaging periods were correct for the year 1985. The comments fell into several broad comment categories and each is addressed individually in the sections that follow.

a. 1985 Averaging Periods in the NADB

EPA received 11 comments related to the averaging period in 1985 for units subject to New Source Performance Standards (NSPS), 40 CFR part 60 subpart D, for the year 1985. EPA has determined, for the purpose of assigning allowances only, that the averaging period for a unit located in a state with an approved State Implementation Plan (SIP) is the averaging period indicated in the SIP for the NSPS unit. If the averaging period is not explicitly stated, then the averaging period of three hours indicated in 40 CFR part 60, subpart D, § 60.45(g)(2)(i) will be used for units that were scrubbed in 1985. For unscrubbed units (in 1985), no averaging period is specified in the CFR; therefore the period in the NADB will be designated as "unspecified" and the default annualization factor will be used.

EPA received comments requesting that state enforcement practices be used in determining averaging times. However, it is EPA's determination that the Agency must evaluate the 1985 federally enforceable limit to determine an annual allowable emission limitation for 1985, regardless of how a state enforced the limit.

In the case of comments received regarding one midwestern state's SIP limit averaging period in 1985, EPA had proposed to disapprove the 30-day averaging period proposed by that state for its SIP, but EPA later withdrew its proposal. No further actions were taken by EPA regarding this state's proposed averaging period. Therefore, for the purposes of assigning an annualization factor to this state's coal-burning units EPA considers, for the purposes of assigning allowances only, the 1985 federally enforceable emission limit to have an averaging period of 30 days.

Other commenters argued in general for a 30-day averaging period as well, but for different reasons. One commenter argued that the stack test method used for NSPS subpart D units, with a three-hour averaging time, is equivalent to a 30-day rolling average using a CEM. EPA rejects this argument because a three-hour average is not indicative of the average emissions over a rolling 30-day period, due in part, to statistical variability of emissions. Furthermore, the equipment used to perform a stack test and that used in a number of the commercially available CEM systems does not differ enough to imply equivalence at such greatly different averaging times. To be fair and consistent EPA is, where possible, relying on the numbers specified in the federally enforceable emission limitation for each unit in determining its emission limit and associated averaging period.

Several of the commenters also disagreed with the default period associated with unspecified averaging periods used for the purposes of assigning an annualization factor. EPA is not persuaded to change its position. Therefore, the default annualization factor for unspecified averaging periods shall remain the one associated with all periods of 24 hours and less. The primary reason, for this value to be used as a default is that if a number is specified it may be considered to be applicable at any time a measurement may be made and modern technologies, available in 1985, allow accurate measurements with averaging periods far less than 24 hours.

b. Comments on Development of Annualized $SO_2$ Emission Conversion Factors

Two comments were received related to the methodology used to determine emission limit annualization factors. One commenter alleged that data from unscrubbed low sulfur coal units was not included in the analysis that was performed to determine the annualization factors. This is not correct. The analysis did in fact include data for six unscrubbed low sulfur coal units. The second comment mentioned that EPA's annualization method did not account for facilities which employ strategies to ensure compliance, such as requiring their coal suppliers to deliver only coal with sulfur levels that will ensure compliance. EPA does not have information on the compliance strategies of all utilities and does not have sufficient resources to collect such information. Furthermore, the time and resources needed to collect, verify and analyze this information within the statutory deadline would have posed an excessive burden on the Agency and affected sources. The annualization factor analysis attempted to treat all utilities the same and used information that was readily available to EPA.

*5. Boiler/Generator On-line Dates*

NADB V 2.0 included only the generator on-line date. Accurate on-line dates for both the boiler and the generator are required in order to:

1. Classify a boiler-generator combination for the purpose of calculating allowances allocated to the boiler (section 403(a)(1)); and

2. Determine whether units that came on-line during 1985–87 should be assigned, prior to calculating allowances, either (a) an adjusted baseline heat input or (b) a heat input based on a 65% capacity factor (§ 405(g)(1)).

EPA has decided, in responding to comments, to include the on-line dates for both the boiler and the generator for each boiler-generator combination in the NADB. (For a discussion of the allocation issues regarding boiler-generator combinations and their resolution see the proposed allowance allocations rule published elsewhere in today's **Federal Register**.) The boiler on-line dates published in the data base were compiled from EIA information reported by the utilities on the appropriate form for a particular unit (*e.g.*, EIA–767). This methodology is consistent with other utility data contained in the NADB V 2.1. As with all data in the NADB, the boiler on-line

dates are final and will not be subject to revision.

*6. Total $SO_2$ Emissions for 1985*

During the comment period for NADB V 2.0 there were a substantial number of data change requests submitted with reference to units' total $SO_2$ emissions during 1985. This value was derived from one of three sources: 1. unit CEM data, 2. Sate emission inventory data, or 3. EIA–767 fuel use and quality data in conjunction with the appropriate emission factor obtained from the Compilation of Air Pollutant Emission Factors (AP–42) developed by EPA. AP–42 emission factors are used to account for sulfur retention in the bottom ash when the fuel used was coal and for the effect of density on sulfur variability if the fuel used was oil.

Some commenters requested that EPA use the results of studies performed on their individual units in place of AP–42 factors. However, to maintain consistency and to avoid the administrative burden that would be imposed to verify and analyze the tremendous numbers of studies on sulfur retention and variability for all of the applicable units in the NADB and on those sources where no such studies had yet been done, EPA used AP–42 universally for all units where $SO_2$ is calculated from EIA–767 data except for the fluidized bed combustion units that were operating in 1985, since no AP–42 factor existed for this type of unit.

**D. Adjunct Data File (ADF)**

In the course of finalizing the NADB V 2.1, the Energy Information Administration identified a number of potentially affected units for Phase II of the Acid Rain program in their data files which were not included in the NADB V 2.0. These units submitted information to EIA on Form EIA–867, the "Annual Non-Utility Power Producer Report." Generally, these units are not owned by traditional utilities, but do possibly produce power for sale to the public and may, therefore, be utility units as that term is defined in title IV.

The Act defines a "utility unit" at section 402(17)(A) as "a unit that serves a generator in any State that produces electricity for sale". At section 402(9), the Act defines a "generator" as "a device that produces electricity and which is reported as a generating unit pursuant to Department of Energy Form 860." Although the identified units did not, in fact, submit Form EIA–860, the reporting requirements of Form EIA–860 apply to persons who "* * * own and/or operate facilities in the U.S. for the generation, transmission, distribution, or sale of electric energy * * *". A traditional utility unit is a unit that is owned or operated by a company regulated by a utility commission, that is publicly owned, or that is owned by a municipality or cooperative. By contrast, a non-traditional utility unit is most commonly a unit that is generating electricity for its own use but also sells a portion of the electricity generated to the grid. This second type of unit is potentially affected by title IV; see the applicability section in today's proposed rule (published today in the **Federal Register**) that pertains to cogeneration units.

In order to treat all sources fairly, EPA has created an Adjunct Data File (ADF) which contains the same data fields, for these potentially affected sources, as are contained in the NADB. (See 40 CFR part 72, proposed on December 3, 1991 for a discussion of applicability; see also the proposed allocations rule published elsewhere in today's **Federal Register**.) The ADF comprises a list of existing generating units not contained in the NADB which are greater than 25 megawatts and are potentially connected to an electric utility system distribution grid. The list also includes existing, new, and planned fossil-fuel fired steam units, new and planned gas turbine and internal combustion units. The inclusion of planned units is consistent with the methodology used to compile the universe of units in the NADB.

The ADF does not differentiate between "qualifying" and "non-qualifying" facilities according to the Public Utilities Regulatory Policy Act (PURPA), since the reported information on units' QF status was not determinant. Qualifying facilities which meet the requirements of section 405(g)(6) of the Act are not affected by title IV, and therefore do not need to take any action in response to this notice.

Also, the ADF does not differentiate between cogeneration facilities which can potentially sell more than one–third of their power to the grid. Cogenerators which sell more than one-third of their gross generation to electric utilities may be affected under section 402(17)(C).

Some of the data on Form EIA–867 was reported confidentially and EPA cannot violate that confidentiality. Therefore, the ADF contains only non-confidential data reported on the 1990 EIA–867 for 304 non-traditional utilities, covering 475 facilities at which 793 generators are located. The non-confidential data items are: "Utility" code, "utility" name, plant code, plant name, state, and generator ID.

Inclusion in the ADF does not necessarily mean that the unit is an affected unit under the Acid Rain program, nor does the omission of a non-traditional utility unit from the ADF indicate that the unit is not affected. If a unit may be affected now or in the future, the owner or operator should provide to EPA the data elements required for determining allowance allocations. EPA is providing notice today that sources which do not provide data to EPA within the comment period listed at the front of this notice will not be allocated allowances for Phase II of the Acid Rain program. In the event units at those sources are determined to be affected units, they will have to obtain allowances on the open market to cover their $SO_2$ emissions during Phase II.

**E. Supplemental Data File (SDF)**

*1. General Information*

In order to determine which units qualify for certain special provisions of title IV, and to calculate allowances for those units, additional information is required beyond that contained in the NADB. The SDF is used to determine which units qualify for the special allocation provisions in sections 404 and 405. These provisions are listed in Table 4. Since the additional information is not required for all units, the Supplemental Data File (SDF) is used in conjunction with the NADB to perform final allowance allocation calculations.

The SDF contains several identification variables that are also contained in the NADB V 2.1, allowing the two files to be easily cross-referenced. These variables, discussed in the NADB V 2.1 Technical Support Document, are: NADB 2.1 sequence number (SEQNUM), State (STATNAM), plant name (PNAME), boiler ID (BLRID), generator ID (GENID), DOE ORIS plant code (ORISPL), operating utility code (UCODE), and utility name (UTILNAME). Since the NADB V 2.1 is final and no longer subject to comment, no changes will be allowed to these variables.

Additional data fields required to determine a unit's eligibility for title IV special provisions contain data provided by EIA or collected from other sources (as discussed in the Supplementary Data File Technical Support Document). Calculated fields contain information computed using the values in other NADB and SDF fields. Flag fields are used to indicate whether a unit or utility meets a certain condition based on the special provisions. All SDF fields are listed in alphabetical order in Table 3 below. The applicable provision in title IV of the CAA for which the field is needed is also provided.

TABLE 3.—ALPHABETICAL LIST OF SUPPLEMENTAL DATA FIELDS

[Excluding Fields Contained in NADB V 2.1]

| Field | Description |
|---|---|
| ATTAIN | § 405(b)(3): States With no Nonattainment Areas (Flag field). |
| BIGUHARD | § 405(c)(5): "System" with big, hard to scrub units (Flag field). |
| CCTGRNT | § 405(d)(5): Oil/Gas unit awarded CCT Grant (Flag field). |
| CMIN80 | § 405(i)(2): 1980 Utility Commercial/Industrial Sales (mWh). |
| CMIN90 | § 405(i)(2): 1990 Utility Commercial/Industrial Sales (mWh). |
| CONSTYR | § 405(g)(4): Construction Start Year (Year—four digits). |
| CONTAUTH | § 405(f)(2): State Authority serving contiguous area (Flag field). |
| CONTUTIL | § 405(f)(2): Utility serving contiguous area (Flag field). |
| G2C8587 | § 405(g)(5): Units converting from gas to coal, 1/85–12/87 (Flag field). |
| LIGNTPCT | § 405(b)(3): Unit fuel use, 1985–87 Lignite share (Percentage, 0 to 100). |
| O2C8085 | § 405(b)(4): Units converting from oil to coal, 1/80–12/85 (Flag field). |
| PROHIB_O | § 405(b)(4): Units issued prohibition order from burning oil (Flag field). |
| PROPIFUA | § 405(g)(5): Units received proposed or final prohibition order (Flag field). |
| SMCOPCT | § 405(c)(5): Utility % of capacity as coal units <75MW (Percentage, 0 to 100). |
| SO22000 | § 405(i)(2): $SO_2$ Emissions rate as of 1/1/2000 (lbs/mmBtu). |
| SO2LIM80 | § 405(i)(2): 1980 $SO_2$ Limit (lbs/mmBtu). |
| SO2LIM87 | § 405(g)(5): 1987 $SO_2$ Limit (lbs/mmBtu). |
| SO2LIM90 | § 405(i)(2): 1990 $SO_2$ Limit (lbs/mmBtu). |
| SO2RTE80 | § 404(h) & 405(i)(2): 1980 $SO_2$ Rate (lbs/mmBtu). |
| SO2RTE89 | § 404(h): 1989 $SO_2$ Rate (lbs/mmBtu). |

TABLE 3.—ALPHABETICAL LIST OF SUPPLEMENTAL DATA FIELDS—Continued

[Excluding Fields Contained in NADB V 2.1]

| Field | Description |
|---|---|
| SO2RTE90 | § 404(h) & 405(i)(2): 1990 $SO_2$ Rate (lbs/mmBtu). |
| SO2SYS80 | § 405(i)(2): 1980 "System" $SO_2$ Rate (lbs/mmBtu). |
| SO2SYS88 | § 404(i)(2): 1988 "System" $SO_2$ Rate (lbs/mmBtu). |
| SO2SYS90 | § 404(h): 1990 "System" $SO_2$ Rate (lbs/mmBtu). |
| SPECMULT | Flag: boiler serving < = 25MW generator that also serves a >25MW generator (Flag field). |
| SPOP8088 | § 405(i)(1): State Population Change, 1980–88 (Percentage). |
| STCAP88 | § 405(b)(4) & (i)(1): State generating capacity, 1988 (MW). |
| UCUST90 | § 405(c)(3): Utility Customers Served, 1990. |
| UPCTSCRB | § 405(c)(5): Utility Percentage Scrubbed (Percentage, 0 to 100). |
| UTILSYS | Utility "System" Name. |

*2. Submitting Revised Information*

Those facilities listed in the NADB which believe they qualify under a special allocation provision of title IV should review the data contained in the SDF. If a member of the public believes that information in the SDF is incorrect, that person should submit comments to the docket listed at the front of this notice, providing in detail the following information: Data field in question, current value, proposed value, supporting calculations if applicable, and all background information which documents why the proposed value is correct. No revisions will be made to the calculated or flag fields; changes to these fields can be made only by correcting the supporting data fields used in the calculations. No revisions will be made to fields that are also contained in NADB V 2.1. To provide additional information for the SDF, a member of the public should submit such data and documentation to the docket within the specified 60-day comment period stated in the **DATES** section at the front of this notice.

**III. Regulatory Impact Analysis**

There is no regulatory impact, per se, from this data base. Economic impacts arise upon the allocation of allowances. A regulatory impact analysis has been prepared for the entire Acid Rain program, including the allowance system.

**IV. Regulatory Flexibility Act**

This data base has no effect, per se, on small entities and small communities. Moreover existing small utility units (i.e. units that only serve generators of 25 megawatts capacity or less) are not affected units under Title IV, unless they specifically choose to become affected units under section 410 of the Act.

**V. Paperwork Reduction Act**

Although the initial list of units included in the Adjunct Data File is long, EPA believes that only seven are likely affected by Title IV and therefore need to submit information. Therefore, the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, does not apply and no Information Collection Request was prepared.

Dated: June 12, 1992.

**F. Henry Habicht II,**

*Acting Administrator.*

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Part IV

# Environmental Protection Agency

**40 CFR Part 86**

**Motor Vehicle and Engine Compliance Program Fees for: Light-Duty Vehicles and Trucks; Heavy-Duty Vehicles and Engines; and Motorcycles; Rule**

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-4145-8]

RIN 2060-AD35

# Motor Vehicle and Engine Compliance Program Fees for: Light-Duty Vehicles; Light-Duty Trucks; Heavy-Duty Vehicles and Engines; and Motorcycles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule establishes provisions for the EPA to collect fees to recover Agency costs incurred for activities associated with the Motor Vehicle and Engine Compliance Program (MVECP). The MVECP includes all compliance and enforcement activities performed by EPA which are associated with certification, fuel economy, Selective Enforcement Auditing (SEA), and in-use compliance activities. The fees will recover those compliance costs which the government incurs in providing manufacturers or Independent Commercial Importers (ICIs) with Certificates of Conformity, compliance monitoring, fuel economy labels, and Corporate Average Fuel Economy (CAFE) calculations necessary to market vehicles in the U.S. and to meet requirements otherwise imposed by statute. This program will apply to all manufacturers and ICIs of light-duty vehicles (LDVs), light-duty trucks (LDTs), heavy-duty vehicles (HDVs), heavy-duty engines (HDEs), and motorcycles (MCs).

EFFECTIVE DATE: The final rule is effective August 6, 1992.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A-91-15. The docket is located at The Air Docket, 401 M Street SW., Washington, DC 20460 and may be viewed in Room M-1500 from 8 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: Daniel L. Harrison or Cheryl Adelman, Certification Division, U.S. EPA, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone (313) 668-4281.

SUPPLEMENTARY INFORMATION:

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## I. Introduction

On July 1, 1991, EPA published (56 FR 30230) a Notice of Proposed Rulemaking (NPRM) proposing regulations to establish fees to recover all reasonable costs associated with the MVECP.

On July 23, 1991, EPA held a public hearing concerning the proposed regulations. Comments from that hearing and written comments were considered in developing this final rule and are included in the public docket.

This final rule amends 40 CFR part 86 to add provisions which will authorize EPA to collect fees for certain activities required of the Agency pursuant to the Clean Air Act (CAA) (42 U.S.C. 7401 *et seq.*), as amended by Public Law 101-549, the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6201 *et seq.*), and the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001 *et seq.*). Authority to collect fees for the MVECP is provided by the Independent Offices Appropriations Act (IOAA) (31 U.S.C. 9701), and section 217 of the CAA, as amended.

Today's action will establish a fee program to recover those costs incurred by EPA in administering the MVECP, including manufacturer [1] certification, SEA, certification compliance audits and investigations, in-use compliance monitoring, fuel economy labeling, and CAFE calculations. This fee program will be based on all recoverable direct and indirect costs associated with administering these activities.

The event which triggers EPA costs is the certification request.[2] Certification requests can be divided into three types corresponding to the three major divisions of regulated mobile sources: LDVs and LDTs; HDVs and HDEs; and MCs. Within each certification request type, all activities associated with the MVECP (certification, fuel economy, SEA, and in-use compliance programs) can be grouped together. By determining the costs and events associated with the MVECP, a fee has been calculated for each certification request type.

A fair and equitable method of calculating costs is to determine the average cost to EPA of responding to each type of certification request, including all related activities. Today's regulation will make the MVECP self-sustaining to the extent possible. Those manufacturers benefiting from the services provided will bear the government's cost of administering the program on their behalf.

## II. Background

### *A. Legal Authority*

EPA is authorized under section 217 of the CAA, as amended by Pub. L. 101-549, section 225, to establish fees for specific services it provides to vehicle manufacturers. The CAA provides in pertinent part:

Consistent with section 9701 of title 31, United States Code, the Administrator may promulgate * * * regulations establishing fees to recover all reasonable costs to the Administrator associated with—

(1) New vehicle or engine certification under section 206(a) or part C,

(2) New vehicle or engine compliance monitoring and testing under section 206(b) or part C,[3] and

---

[1] Manufacturer, as used in this NPRM, means all entities or individuals requesting certification, including, but not limited to, Original Equipment Manufacturers (OEMs) and ICIs.

[2] A certification request is defined as a manufacturer's request for certification evidenced by the submission of an application for certification, engine system information data sheet, or ICI Carry-Over data sheet.

[3] Part C of the CAA, as amended, pertains to Clean Fuel Vehicles.

(3) In-use vehicle or engine compliance monitoring and testing under section 207(c) or part C.

The Omnibus Budget Reconciliation Act (OBRA) of 1990, Public Law 101–508, section 6501, requires EPA to assess and collect fees for services and activities carried out pursuant to laws administered by the EPA. OBRA also requires that EPA collect, in aggregate, fees of not less than $38,000,000 in fiscal years 1992, 1993, 1994, and 1995. The MVECP fees will represent part of the aggregate EPA fees collected in each of these fiscal years.

EPA as an independent regulatory agency, is also authorized under the IOAA to establish fees for other services and benefits it provides. This provision, originally designated as 31 U.S.C. 483(a), was codified into law on September 13, 1982, at 31 U.S.C. 9701. This provision encourages federal regulatory agencies to recover, to the fullest extent possible, costs for services provided to identifiable recipients. The relevant text states:

It is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible. The head of an agency may prescribe regulations establishing the charge for a service or thing of value provided by the agency. * * * Each charge shall be fair and based on costs to the Government, the value of the service or thing to the recipient, and other relevant facts.

*B. Motor Vehicle and Engine Compliance Program Description*

The CAA requires that motor vehicles, prior to being distributed or offered for sale in the U.S., be covered by a Certificate of Conformity indicating compliance with the emission standards set forth in the Act. Each model year (MY), EPA receives approximately 575 certification requests for LDVs/LDTs engine-system combinations, 135 for heavy-duty (HD) engine-system combinations, and 85 for MC engine-system combinations. EPA processes these applications and makes a determination of conformance with the CAA and related regulations. If the vehicle or engine satisfies the prescribed emission standards, EPA issues a Certificate of Conformity for the relevant engine-system combination.[4]

The certification process includes, but is not limited to, application for certification review, durability justification review, emission-data vehicle approval and processing, and certification request processing and computer support. Other activities related to the certification process include auditing the applicant's testing and data collection procedures, laboratory correlation, and EPA confirmatory testing and compliance inspections and investigations related to certification.

EPA further ensures compliance with the CAA through activities such as investigations to prevent the sale of uncertified new vehicles and engines; ICI review, processing and approval for final importation of vehicles and engines; and SEA and in-use compliance programs. SEA activities include the selection and testing of vehicles and engines off the assembly line at various production plants around the world to determine compliance with emission standards. In-use compliance activities ensure that vehicles and engines continue to meet emission standards throughout their useful life.[5]

Based on the above activities, EPA determines whether a manufacturer meets the CAA requirements, issues a Certificate of Conformity, and ensures compliance. A manufacturer is thereby permitted to market vehicles for sale in the U.S.

*C. Fuel Economy Program Description*

For LDVs/LDTs, EPA also administers several aspects of the fuel economy program, including fuel economy labeling requirements and CAFE calculations. These activities require EPA to do confirmatory testing of vehicles; review and audit manufacturers' vehicle and engine tests, calculations, and labels; furnish computer processing and computer programming support; and calculate fuel economy values.

Fuel economy labeling activities provide fuel economy values and other labeling information. These labels are used by automotive manufacturers both to market their product and meet the requirements of the EPCA, 42 U.S.C. 6201. EPA also oversees CAFE testing and calculations which are used to determine each manufacturer's compliance with the corporate average fuel economy standards specified in EPCA. Annually, EPA processes approximately 1,250 fuel economy label requests and 500 CAFE calculations.

The fuel economy program is intertwined with the certification process of the MVECP for LDVs and LDTs. EPCA itself requires that fuel economy testing be conducted using CAA certification test procedures to the extent possible. 15 U.S.C. 2003(d)(1). The program's interrelationship in practice is demonstrated by the fact that both programs collect fuel economy and emissions data. Emission-data vehicles provide both emissions and fuel economy data.

Further, fuel economy-data vehicles are tested for emissions and must comply with the emission standards. Only then can the fuel economy data be used in the fuel economy program. Thus, each program generates data to support the other and to support decisions on both certification and fuel economy calculations. This interrelationship has allowed EPA to streamline the certification program and procedures, thereby minimizing costs directly incurred by the industry as well as by EPA.

*D. Combined Certification and Fuel Economy Program Fee*

Since EPA costs for fuel economy are interrelated with those of certification, EPA has combined the costs per certificate and costs per fuel economy basic engine [6] and will assess a fee only on a certification request basis. The fee encompasses the costs from both the certification and fuel economy activities associated with the request for certification.

A combined fee for certification and fuel economy activities is also justified by the process which leads to EPA activities and cost. Certification requests are made by a manufacturer for each engine-system combination. The certification request initiates EPA activities for both the certification and fuel economy programs. If a manufacturer does not request certification, neither the certification activities nor the fuel economy activities are undertaken and EPA avoids costs incurred in administering these programs.

Even though there is a combined fee, the fuel economy portion of the fee will go to the general fund of the U.S. Treasury, while the certification portion of the fee will go to a special fund as required by the CAA. These Treasury

[4] As defined in 40 CFR 86.082–2, "engine-system combination" means an engine family-exhaust emission control system combination.

[5] Definitions of vehicle and engine useful life are included in sections 202 and 207 of the CAA, as amended.

[6] A fuel economy basic engine is a unique combination of manufacturer, engine displacement, number of cylinders, fuel system, catalyst usage, and other characteristics specified by the Administrator. It differs from an engine-system combination as used to distinguish designs for certification purposes in that the engine-system combination may include more than one engine displacement but only one emission control system, while a fuel economy basic engine may include more than one emission control system but only one engine displacement.

funds are described later, in the section on fee collection.

## III. Fee System Requirements

### *A. Activity Costs To Be Recovered Through This Rule*

The fees established by this rule recover all allowable direct and indirect costs incurred for the MVECP. The direct costs associated with the MVECP involve numerous activities related to certification, fuel economy, SEA, and in-use compliance. These activities include pre-production certification; testing; confirmatory testing; certification compliance audits and investigations; laboratory correlation; in-use monitoring; fuel economy selection, testing, and labeling; CAFE calculations; and fee administration. The indirect costs associated with the MVECP include costs for facilities and supporting services.

### *B. Activity Costs Not Recovered Through This Rule*

EPA conducts numerous activities related to certification and mobile source air pollution control, in general, for which it is not proposing to charge a fee at this time. These activities include: Regulation development, emission factor testing, air quality assessment, and inspection and maintenance programs development and oversight. Although these activities benefit manufacturers by indirectly facilitating the MVECP, EPA is still evaluating whether the costs are sufficiently "associated" with the programs specified in CAA section 217, or provide a sufficient special benefit, to be recoverable.

### *C. Cost Determination*

EPA conducted an in-depth analysis of the resources expended on the MVECP. This analysis details all direct and indirect costs incurred by EPA to operate the MVECP. EPA calculated costs for activities which are to be included in or excluded from the fee program.

The EPA Cost Analysis, "Motor Vehicle and Engine Compliance Program Fees Cost Analysis," is available in the Docket for this rulemaking.

### *D. Testing Authority Retained*

In keeping with section 217(d) of the CAA, as amended, nothing in the fees regulations will restrict the Administrator's authority to require testing. The Administrator retains authority to require testing under all provisions of the CAA, including sections 206 and 208.

As section 217(d) makes clear, the fee program in section 217 does not limit EPA's authority to require manufacturer testing as provided in section 206. In the case of the in-use testing and the SEA programs, the fees set under section 217 are intended to cover the base program. The base program includes testing which EPA has anticipated (at the time fees are set for a given MY) and which are covered by the fee charges to manufacturers for a given MY.

### *E. Fee Schedule*

#### 1. Event Which Triggers EPA Costs

The event which triggers EPA costs related to the MVECP is the certification request. By seeking certification, a manufacturer potentially becomes involved in a number of EPA activities, including those related to certification, fuel economy, SEA, and in-use compliance. The fee structure will recover EPA costs for the activities associated with the MVECP, as proposed.

#### 2. Types of Certification Requests

Three types of certification requests initiate EPA activities:

(a) LDV/LDT
(b) HDE/HDV
(c) MCs

#### 3. Division of Costs Within Certification Request Type

The fee for each certification request type includes the costs related to that type, as proposed. For all certification request types, the fee schedule separates the costs for federal and California-only certificates,[7] and signed and unsigned certificates.[8] Further, for the HD certification request type, the fee schedule also separates the costs for HDV evaporative certificates.

#### 4. Fee Schedule

The fee schedule for each certification request type is as follows:

| Certification request type | Fee |
|---|---|
| LDV/LDT: | |
| Fed signed | $23,731 |
| Cal-only signed | 9,127 |
| Fed unsigned | 2,190 |
| Cal-only unsigned | 2,190 |
| HDE/HDV: | |
| Fed signed | 12,594 |
| Cal-only signed | 12,594 |
| Fed unsigned | 12,594 |
| Cal-only unsigned | 12,594 |
| All evaporative-only | 12,594 |
| MCs: | |
| Fed signed | 840 |
| Cal-only signed | 840 |
| Fed unsigned | 840 |
| Cal-only unsigned | 840 |

#### 5. Special Cases

Two special cases exist which warrant additional clarification. First, in the same MY, fees will not be collected for certification requests made for an engine-system combination which is not unique. This occurs upon receipt of a certification request which represents a previously certified engine-system combination of the same MY with either a new evaporative emission family or corrections to a previously submitted certification request for running changes or averaging. For the reasons given later in this notice, an engine-system combination which is carried-over to a new MY or carried-across from another engine-system combination is unique and will be subject to a fee.

Second, California-only certification requests will be treated as a unique engine-system combination. As such, a separate fee will be charged. As noted above, the California-only fee will be lower since it does not require EPA to incur SEA and in-use compliance costs.

### *F. Fee Collection*

#### 1. Procedure for Paying Fees

The following procedure will be used for payment of fees. For each certification request, evidenced by an Engine System Information (ESI) form or an application for certification, manufacturers will submit a MVECP Fee Filing Form (filing form) and the appropriate fee in the form of a corporate check, money order, bank draft, certified check, or electronic funds transfer, payable in U.S. dollars, to the order of the U.S. Environmental Protection Agency. The filing form and accompanying fee will be sent to the address designated on the filing form. EPA will not be responsible for fees received in other than the designated location. Applicants will continue to submit the ESI and/or the application for certification to the Motor Vehicle Emission Laboratory in Ann Arbor, Michigan.

To ensure proper identification and handling, the check or electronic funds transfer and the accompanying filing form will indicate the manufacturer's

[7] "California-only certificate" is a Certificate of Conformity issued by EPA which signifies compliance with only the emission standards established by California. A "federal certificate" is a Certificate of Conformity issued by EPA which signifies compliance with emission requirements in 40 CFR 86 subpart A.

[8] An unsigned certificate means a certification request which does not result in a signed Certificate of Conformity because it is either voluntarily withdrawn by the manufacturer or does not receive approval from the EPA.

corporate name, the EPA standardized engine family name, and the engine system number that identifies unique engine-system combinations. Further, to expedite the payment procedure, the ESI or application for certification will contain a place for each manufacturer to indicate when the filing form and fee were submitted and the amount paid.

The full fee is to accompany the filing form. Partial payments or installment payments will not be permitted. If a filing form is submitted with an insufficient remittance, the applicant will be notified and given the opportunity to either submit the difference or withdraw the application and receive a refund of the amount paid.

2. Fee Refund

Instances may occur in which an applicant submits a filing form with the appropriate fee, has an engine-system combination undergo the certification process, but then fails to receive a signed certificate. Where a certificate is not issued, the applicant will be eligible to receive, upon request, a refund of that portion of the fee attributable to the final level of certification and to SEA and in-use compliance. The refund for each certification request type will be the percentage of the fee payment attributable to the final stages of the certification process, SEA and in-use compliance as follows:

| Certification request type | Percentage of the fee payment to be refunded | |
|---|---|---|
| | Federal | California-only [1] |
| LDV/LDT | 80.8 | 78.0 |
| HDE/HDV | 83.0 | 0 |
| HD-Evaporative only | 0 | 0 |
| MC | 0 | 0 |

[1] The California-only fee refund percentage is lower than the Federal fee refund percentage because the portion of the full fee attributable to SEA and in-use compliance for a California-only certificate request is zero.

3. Deposit of Fees: Special and General Treasury Funds

All fees which are collected will be deposited in the U.S. Treasury. Specifically, in accordance with section 217(b) of the CAA, all fees which are collected for services specified in section 217(a) of the CAA "shall be deposited in a special fund in the United States Treasury." The OBRA also provides authority to deposit funds collected pursuant to that authority in a special fund. The "special" fund will be used to carry out the programs for which the fee is collected. Fees for services which are imposed solely pursuant to the IOAA, such as fuel economy labeling, will be deposited in the General Treasury Fund. For the LDV/LDT certification request type, this will mean that 19.6% [9] of each LDV/LDT fee collected will be deposited in the General Treasury Fund. The HD and MC certification request types do not involve fuel economy costs and as such the entire fee for these types will go into the special treasury fund.

*G. Implementation Schedule*

When this final rule becomes effective, some applicants will have already submitted certification requests for MY93. Applicants will not be required to pay a fee nor submit a filing form for MY93 or later certificates issued prior to the effective date. A fee will be required and a filing form must be submitted for all MY93 and later certification requests submitted after the effective date of this rule.

EPA recognizes that since an applicant has no control over when EPA may issue a certificate, it may not be fair to charge a fee for certificates not issued prior to the effective date. Therefore, where an applicant has submitted a complete application for certification, without errors, prior to the effective date, a fee will not be charged and the applicant need not submit a filing form nor pay a fee.

Normally, a fee will be paid by a manufacturer with the submission of a certification request. However, on the date this rule becomes effective, some active certification requests may have been submitted to EPA for which certificates have not yet been issued. In such cases, applicants will be required to submit a filing form and the appropriate fee prior to receiving a certificate.

To summarize:

1. A fee will not be required for certificates issued prior to the effective date of the final rule.

2. A fee will not be required where a complete application for certification, without errors, has been submitted to EPA prior to the effective date of the final rule.

3. A fee will be required for all active MY93 and later certification requests submitted to EPA prior to the effective date of the final rule, where a certificate has not been issued and a complete application for certification has not been submitted to EPA.

4. A fee will be required for all MY93 and later certification requests submitted after the effective date of the final rule.

*H. Fee Phase-In*

EPA will phase-in, over two years, recovery of the total cost associated with the MVECP. This phase-in will allow industry a period to plan and budget for the payment of fees. The amount of the total fee recovered in each of the first two years of the fee program will be as follows:

MY93 50%

MY94 100%

*I. Waiver or Adjustment of Fees*

To obtain a hardship waiver of a portion of the fee, an applicant will need to demonstrate that:

1. The certificate is to be used for sale of vehicles or engines within the U.S.; and

2. The full fee for a certification request for a MY exceeds 1% of the retail sales value of all vehicles or, where applicable, all engines covered by that certificate. The retail sales value will be based on projected sales of all vehicles under a certificate, including vehicles modified under the modification and test option in 40 CFR 85.1508. The applicant will be expected to demonstrate the basis of its claimed projected sales through various factors, such as prior actual sales and previous waiver requests.

As stated in the NPRM, the purpose of this hardship waiver is to alleviate the severe economic hardship that the payment of the full fee could impose on small manufacturers and ICIs without undercutting the fundamental objective of section 217 of the Clean Air Act—reimbursing the government for services provided. EPA believes that the 1% waiver achieves the appropriate balance between these two factors. As only entities that have fewer than approximately 100 vehicles of average retail sales value per certificate will be able to benefit from the waiver, only those small entities that would be severely affected by the full certification fee are potentially covered by it and the overall fees received by the government will not be reduced significantly. Moreover, because applicants will have to submit a fee of either 1% of the retail sales value of the vehicles covered by a certificate or the full certification fee, whichever is less, the benefits of the waiver to applicants will decrease as the aggregate value of the vehicles covered by a certificate increases, thereby ensuring that only those who would be the most severely affected by the full fee will benefit the most from the

[9] The percentage of LDV/LDT costs attributable to fuel economy is calculated by removing the fuel economy costs shown in the cost study from the total LDV/LDT costs.

waiver. The public comment received supported the 1% value proposed by EPA in the NPRM, while opposing other parts of the proposed waiver provision that as discussed in the section on public participation later in this document, have been modified in response to those comments.

A request for a waiver must be submitted to EPA prior to the certification request. The applicant will have the burden of providing all documentation which will be necessary for EPA to verify that the requirements are satisfied.

If sufficient documentation is presented and a waiver granted, the fee to be paid by the applicant will be 1% of the retail sales value of the vehicles to be covered by the certification request. The fee paid will be based on projected sales for the MY for which certification is requested.

For vehicles imported under an ICI certificate, the retail sales value will be based on the vehicle's average retail value listed in the applicable National Automobile Dealer's Association (NADA) appraisal guide. Where the NADA price guide does not provide the retail value of the vehicle, or the applicant believes the NADA values is not appropriate, the applicant for waiver must demonstrate, to the satisfaction of the Administrator, the actual market value of the vehicle in the U.S. at the time of final importation.

Applicants that are granted a waiver and subsequently fail to receive a certificate pursuant to that request will be eligible to receive a partial refund. The refund will be the same percent as that allowed for manufacturers which pay the full fee (see prior Fee Refund section).

Once a waiver is approved by EPA, the applicant is required to submit a filing form with the appropriate waiver fee based upon the applicant's projections. When the sales projection and/or market value changes for a certificate and/or the certificate expires which is under a fee waiver, the applicant is required to submit a revised filing form indicating the appropriate adjustment to the waiver fee along with payment or refund request. The total waiver fee shall not exceed the full fee amount for the applicable certification request type.

*J. Fee Updating Procedure*

EPA will make adjustments to the fee schedule through two updating procedures. First, fees will be adjusted automatically every year by the same percentage as the percent change in the Consumer Price Index (CPI). When automatic adjustments are made, based on the CPI, the new fee schedule will be published in the Federal Register as a technical amendment to these regulations to become effective 30 days or more after publication, as specified in the rule.

Second, the fee schedule will be revisited approximately every two years to determine whether it accurately reflects the (1) level of EPA's MVECP activities being provided at the time of review, (2) costs of conducting the MVECP, and (3) number of certification requests. Any changes based on such periodic reviews will be promulgated through notice and comment rulemaking.

## IV. Public Participation

EPA published an NPRM on the MVECP fee program on July 1, 1991. On July 23, 1991, a public hearing was held on the proposal. The period for the submission of written comments closed on August 22, 1991, but EPA accepted comments submitted after that date. The comments received were from manufacturers and their associations and from state agencies. The following sections briefly summarize comments on the major issues. For the complete response to comments, see the "Response to Comments on the MVECP Fees." Copies of this document and all comments are available from the public docket (see **ADDRESSES**).

## Discussion of Comments and Issues

*A. Fee Phase-In and Implementation Schedule*

*Summary of Proposal.* EPA proposed that fees be collected beginning in late 1991 for certification of all vehicle and engine MYs 1993 and beyond. The amount of the total fee proposed to be recovered was 50% for MY93 and 100% for each MY thereafter.

In the NPRM, EPA also stated that, if the final rule does not become effective until January 1, 1992, or later, manufacturers would not be required to pay a fee for MY93 certificates issued prior to the effective date of the rule. If an applicant submitted an incomplete application prior to the time the final rule becomes effective, the applicant would be billed subsequent to submitting the complete certification request and would be expected to pay the fee prior to receiving a signed certificate.

*Summary of Comments.* EPA received only two comments that requested a delay in the implementation schedule. The commenters stated that such a delay is needed to avoid budgetary and planning problems.

*EPA Response.* EPA believes that manufacturers have had adequate time to budget for the fee program. Section 217 of the CAA, which provides the specific authority to collect MVECP fees, was enacted in November 1990. Although section 217 does not itself specify an effective date for the fee program, manufacturers have long been award of EPA's intent to implement a fee program expeditiously. The NPRM was published on July 1, 1991, more than seven months ago. Moreover, in December 1990, as part of the CAAA Project Summaries, EPA notified manufacturers of its intent to implement a fee program as early as May 1991. Thus, for at least the past thirteen months, manufacturers were aware of the likelihood that a fee program would be implemented and should have allocated funds for the MVECP. Nevertheless, to assist manufacturers in planning and budgeting for fees, EPA is providing a two year phase-in for recovery of the costs associated with the MVECP.

The proposed implementation schedule was intended to establish the method by which EPA would impose fees during the initial implementation period which would occur during the 1993 MY, rather than at the beginning of the 1994 MY. This was necessary as some MY93 certification requests would be submitted and some issued prior to the effective date of the final rule.

As provided in the NPRM, certificates for MY93 issued prior to the date the final rule becomes effective will not be charged a fee. EPA recognizes, however, that an applicant does not always have control over the date on which a certificate is issued. As a result, it could, in some cases, be inequitable to charge a fee for certificates requested but not issued prior to the date the final rule becomes effective. Therefore, a fee will not be imposed where an applicant has submitted a complete application, without errors, prior to the date the final rule becomes effective. If a complete application has not been received by EPA prior to the effective date of the final rule, an applicant will be required to file a filing form and the applicable fee before a certificate will be issued.

*B. Recovery of Costs Not Included in Fee Program*

*Summary of Proposal.* EPA requested comment on whether it should recover, as part of the MVECP fees, costs for various activities it conducts related to certification and mobile source air pollution control, including regulation development, emission factor testing, air quality assessment, and inspection and maintenance activities.

*Summary of Comments.* EPA received several comments on whether it should recover, as part of the MVECP fee, the costs for certain activities which it conducts. The Association of International Automobile Manufacturers (AIAM), the Engine Manufacturers Association (EMA) and two manufacturers commented that the costs associated with regulation development, emission factor testing, air quality assessment, and inspection and maintenance should not be included in the fee program. They provided two reasons for their position.

First, they claimed that recovery of costs for the MVECP is limited to the programs cited in section 217 of the CAA, i.e. certification, in-use compliance monitoring, and SEA. Activities such as regulation development, emission factor testing, air quality assessment, and inspection and maintenance programs are not recoverable since they are not sufficiently associated with these programs.

Second, the commenters argued that these activities do not provide a private benefit to identifiable individuals and as a result, the costs associated with them are not recoverable under the IOAA. Mitsubishi acknowledged, however, that these programs partly benefit manufacturers by indirectly facilitating the MVECP. Nevertheless, Mitsubishi concluded that EPA should minimize cost burdens on manufacturers and not charge for these activities.

The Colorado Department of Health (CDH) requested that the fee schedule be amended to include the costs associated with high altitude in-use compliance testing. In the past, monies for this program were provided by the CDH and the federal government through funding that is outside the normal EPA budget process. To assure the continuation of this activity, CDH requested that the cost of maintaining this program be recognized as an integral part of the proposed fee structure and be factored into the fee schedule for LDVs/LDTs.

*EPA Response.* EPA has decided not to include the costs associated with regulation development, emission factor testing, air quality assessment, and inspection and maintenance activities in this final rule. Although, as Mitsubishi acknowledged, these activities benefit manufacturers by indirectly facilitating the MVECP, EPA has not made a final determination as to whether the costs of these activities are either sufficiently associated with the programs specified in CAA section 217 or provide a special benefit to an identifiable recipient to be recoverable. Such a determination may be made in the future when the fee schedule is revisited.

In the case of high altitude in-use testing conducted by Colorado, EPA considers the federal government portion of these costs to be recoverable as part of the MVECP. However, these costs were not included in the MVECP Cost Analysis as the funding has been outside the normal EPA budget process. In future years, it is expected that EPA will directly fund the federal government portion of these costs. Therefore, when the fee schedule is revisited and updated in the future EPA will propose to include the costs associated with high altitude in-use testing.

### C. Fee Updating Procedure

*Summary of Proposal.* To assure that fees continue to reflect the cost of providing certification services, the NPRM provided that the fee schedule would be adjusted through two updating procedures. First, to reflect changes in operating costs, fees would be adjusted automatically every year by the same percentage as the percent change in the CPI. Second, the fee schedule would be revisited approximately every two years to determine whether it accurately reflects the (1) level of EPA's MVECP activities being provided at the time of review, (2) costs of conducting the MVECP, and (3) number of certification requests. Changes which result from this periodic review would be subject to public comment.

*Summary of Comments.* EPA received two comments on the fee updating procedure. Mercedes Benz of North America (MBNA) commented that the proposed rule does not contain a provision to adjust fees annually in response to changes in certain variables, such as an increased number of certification requests. If EPA's services do not increase in proportion to the number of certification requests, MBNA believes that manufacturers could end up paying more than the MVECP costs. The second commenter expressed concern over having sufficient lead time to budget for any potential cost increases in advance of their effective date.

*EPA Response.* Based on prior experience, EPA does not expect that there will be a significant change in the number of certification requests during any approximately two-year period. EPA does expect, however, the costs associated with the MVECP to increase over the next several years as the requirements of the CAAA are implemented. As a result, an annual update of the fee schedule is not necessary, since fees should not decrease over the next several years.

Further, revising the fee schedule annually, as suggested by MBNA, would impose a significant administrative burden on EPA. EPA believes that such a burden is unwarranted, particularly since the proposed approximately biennial adjustment may result in a savings to manufacturers. This is due to the fact that an adjustment to the fee schedule every two years or more would result in manufacturers paying for potential cost increases, as a result of expanded CAA motor vehicle compliance requirements, on a less frequent basis than they would with an annual adjustment.

In addition, the recently enacted Chief Financial Officers Act, 31 U.S.C. 101 *et seq.*, requires EPA's Chief Financial Officer to "review, on a biennial basis, the fees * * * imposed by the agency for services and things of value it provides, and make recommendations on revising those changes to reflect costs incurred by it in providing those services and things of value." This should ensure that the EPA does not recover more than the allowable MVECP costs. If, as a result of the review, EPA determines that there has been a significant change in the MVECP costs without a corresponding change in the number of certification requests, a proposal to revise the fee schedule will be published in the **Federal Register**. If the fees collected prior to the review exceed recoverable costs, such amount will be factored into the revised fee schedule.

EPA also believes that manufacturers will have sufficient lead time to budget for any increases which may occur in the fee schedule. Based on economic projections, manufacturers can reasonably estimate, in advance, the extent of annual adjustments in the fee schedule due to changes in the CPI. As for increases in the fee schedule which may result from other changes, such as the extent of EPA's MVECP activities, the number of certification requests, and the costs of conducting the MVECP, EPA would promulgate these revisions through notice and comment rulemaking that would take into account manufacturers' lead-time concerns. Further, manufacturers are generally aware of the extent of EPA's MVECP activities and changes in the number of their own certification requests. This should be of assistance to them in preparing that portion of their budgets attributable to fees.

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*D. Preparation of an Annual Report by EPA*

*Summary of Proposal.* The NPRM did not address the issue of EPA preparing an annual report to be distributed to the Office of Management and Budget (OMB), manufacturers or the public.

*Summary of Comments.* The Motor Vehicle Manufacturers Association (MVMA) submitted the only comment which requested that EPA prepare an annual report of the MVECP. According to MVMA, EPA should make available (1) an annual report to each manufacturer that details the engine families and fees collected and allows manufacturers the opportunity to resolve any discrepancies, and (2) an annual summary of the MVECP to the public. MVMA asserted that the lack of such a formal annual review is a serious deficiency, since without it there would be no assurance to the manufacturers, the Treasury, or the public that the fees were properly assessed and paid. In support of its position, MVMA stated that OMB Circular A–25 "appears to require an annual review and revision of the fee schedule to assure that the fee is no higher than necessary to recover the cost to the Agency."

*EPA Response.* The submission of an annual report to OMB by federal agencies that collect fees was a requirement of OMB Circular A–25 (September 23, 1959) and OMB Transmittal Memorandum No. 1 (October 22, 1963). That requirement, however, was rescinded by OMB Transmittal Memorandum No. 2 (April 18, 1974). Transmittal Memorandum No. 2 also stated that the data provided by the annual report "will be obtained in the future through the Budget review process or special studies." Moreover, as previously discussed, EPA will be reviewing the program periodically. Thus, OMB can still monitor EPA's assessment and collection of MVECP fees.

*E. Electronic Transfer of Funds*

*Summary of Proposal.* The NPRM did not address the issue of manufacturers making fee payments by the electronic transfer of funds.

*Summary of Comments.* Jaguar, Toyota, and AIAM submitted comments which suggested that EPA allow manufacturers to pay fees through the electronic transfer of funds. They indicated that this option was especially important for manufacturers that make payments from overseas, and would enhance the speed, accuracy, and security of the payment system.

*EPA Response.* EPA agrees with the commenters that the electronic transfer of funds would provide an efficient and effective method for the payment of fees. Therefore, the final regulations contain a provision which allows this method of payment.

*F. Omnibus Budget Reconciliation Act*

*Summary of Proposal.* The NPRM stated that OBRA requires EPA to assess and collect fees of not less than $38 million in fiscal years 1992 through 1995 for services and activities carried out pursuant to laws administered by the EPA. The proposed MVECP fees would represent part of the aggregate EPA fees collected in each of these fiscal years. In addition, EPA recognized that OBRA neither increases nor diminishes its authority to promulgate regulations pursuant to the IOAA.

*Summary of Comments.* EMA and MVMA submitted comments on the relationship between the MVECP and OBRA. They stated that section 6501 of OBRA confers general authority on EPA to collect fees for services carried out pursuant to the laws it administers, such as the CAA. OBRA does not, however, provide independent or additional authority for the EPA to recover MVECP fees. Therefore, they asserted that EPA cannot rely on OBRA as a basis for expanding its authority, either today or in the future. Moreover, nothing in OBRA specifically requires EPA to collect any fees from the MVECP or contemplates that this program will contribute to the mandated sum.

*EPA Response.* EPA is not relying on OBRA as additional authority to assess fees for compliance activities which it conducts. Such authority is derived from the IOAA and the CAA. Further, EPA acknowledges that (1) OBRA neither increases or diminishes its authority to promulgate regulations pursuant to the IOAA and (2) nothing in OBRA expressly requires EPA to collect fees from the MVECP, although OBRA does refer to sums specifically authorized by the CAA, or states that this program will contribute to the $38 million mandated sum. As the NPRM indicated, the MVECP fees will be part of the $38 million that OBRA directs EPA to collect from all of its services and activities carried out pursuant to laws administered by the EPA in fiscal years 1992 through 1995.

*G. Heavy-duty Fee*

*Summary of Proposal.* EPA proposed that the costs for conducting HD activities be separated from the costs of LDVs/LDTs and Mcs, and the fee schedule determined accordingly. In this manner, the fee for HDV/HDE certification recovers only the costs incurred by EPA to administer HD compliance activities. Further, it satisfies section 217(c) of the CAA that "In the case of heavy duty engines and vehicle manufacturers, such fees shall not exceed a reasonable amount to recover an appropriate portion of such reasonable costs."

*Summary of Comments.* The only comments submitted on the issue of appropriate fees for HD manufacturers were from EMA and Mack Truck, which stated it was in concurrence with EMA's comment. EMA requested that EPA reduce the fee schedule for HD manufacturers to an "appropriate portion" of reasonable costs.

Citing the language in section 217(c), EMA acknowledged that there is no documented legislative history on the applicable portion of this provision. It stated, however, that the reasons Congress included such a provision were quite obvious. According to EMA, these reasons include the sales volume, income, and compliance cost differences between the LDV and HDE industries. EMA also stated that economic factors would make it unreasonable to require HDE manufacturers to bear the total costs of compliance.

EMA then stated that by dividing its costs between the light-duty (LD) and HD programs, EPA was meeting its general obligations under the CAA to recover only "reasonable costs" based on equitable and nondiscriminatory factors. This division, however, only meets the requirement imposed by the IOAA to "allocate specific expenses of the cost basis of the fee to the smallest practical unit," and not charge HD manufacturers for LD activities. EMA charged that EPA has failed to address the additional limitation on recovery from HD engine and vehicle manufacturers. In other words, EPA has not further reduced those "reasonable costs" so that its recovery from HD manufacturers represents only an "appropriate portion"of those costs.

EMA then stated that EPA must place the same relative burden on LD and HD manufacturers. This could be done, it stated, by adjusting the fees so that both LD and HD manufacturers' fees represent the same percentage of income earned by the industry.

*EPA Response.* In calculating the proposed HD fee, EPA went through a process that it believes is consistent with that part of section 217(c) of the CAA which provides that "In the case of heavy duty engines and vehicle manufacturers, such fees shall not exceed a reasonable amount to recover an appropriate portion of such reasonable costs." Therefore, the HD fee is promulgated as proposed. (A detailed discussion of the issue of the HD fee is contained in the Response to Comments for this rulemaking which has been placed in the public docket.)



*H. Waiver*

*Summary of Proposal.* The NPRM included a provision that would allow manufacturers to obtain a waiver or adjustment of a fee if they are able to demonstrate that: (1) The certificate is to be used for sale of vehicles or engines in the U.S.; (2) the worldwide aggregate sales for all vehicles and engines produced by the applicant, including all affiliates, were less than 10,000 units for the most recent MY for which sales data are available preceding the MY for which certification is requested; and (3) the full fee for a certification request for a MY exceeds 1% of the retail sales value of all vehicles or, where applicable, all engines covered by the certificate. If the waiver is granted, the fee to be paid by the applicant would be 1% of the retail sales value of the vehicles to be covered by the certification request for the relevant MY. The fee paid would be based on projected sales for the MY for which certification is requested. However, in no case would the fee be less than 25% of the full fee required for the applicable certification request type.

*Summary of Comments.* EPA received several comments on the proposed waiver provision. Generally, these comments indicated that the proposed waiver provision was insufficient and unworkable for several reasons. First, the waiver requirement that a manufacturer's worldwide aggregate sales for all vehicles and engines produced by the applicant be less than 10,000 units per MY would exclude most manufacturers. Second, some manufacturers, who do not meet the 10,000 unit waiver prerequisite, produce numerous engine families, with each family having a small sales volume. These manufacturers would be required to pay the full applicable fee for each small engine family. As a result, they would "bear the brunt of the MVECP fees." Third, for small manufacturers and ICIs, the waiver does not reduce the certificate fees to a level necessary to prevent an undue economic burden. Fourth, since the Agency will not recoup the revenue lost through the waiver program from higher fees to large volume manufacturers, the waiver provision does not meet the Congressional objective to reimburse fully the Agency for funds spent on the MVECP.

The commenters suggested several alternatives to the proposed waiver provision. These suggestions included (1) having EPA adopt its old regulations on the qualification of small-volume certification procedures of 2,000 units or less in lieu of worldwide sales of 10,000 units as one of the qualifying criteria, and (2) eliminating the need for a waiver provision by basing the fee schedule on units produced or sold.

One ICI stated that the waiver provision does not apply to ICIs since they do not conduct retail sales and have no means of predicting what cars will be brought to them for modification. Another ICI requested that EPA conduct a Regulatory Flexibility Analysis (RFA) to determine the impact of the proposed regulation on small entities.

*EPA Response.* The proposed waiver provision was intended to fulfill the requirements of the IOAA by enabling the Agency to "be self-sustaining to the extent possible," while alleviating the economic hardship that the fee program would impose on certain manufacturers. For these reasons, the provision was narrowly drawn. After reviewing the comments, however, EPA believes the proposed waiver criteria may be too restrictive, in that they could fail to alleviate an undue economic hardship on some manufacturers. This is due to the fact that they may have excluded small manufacturers that would have needed a waiver provision to remain competitive.

Therefore, EPA is eliminating the proposed (1) waiver requirement that a manufacturer's worldwide sales must be less than 10,000 units, and (2) limitation that in no case would the fee be less than 25% of the full fee required for the applicable certification request type. Instead, any manufacturer that is granted a waiver will not be required to pay a fee which is more than 1% of the retail sales value of all vehicles or engines covered by a certificate, including vehicles imported under the modification and test option. These changes should alleviate undue economic hardship by allowing both additional small manufacturers and manufacturers with numerous engine families that have small sales volumes to potentially qualify for a waiver.

EPA is concerned, however, that the revised waiver requirements could, in two circumstances, result in manufacturers requesting waivers for engine-system combinations that should be subject to the full applicable fee. First, a manufacturer may request a waiver for a back-up engine-system combination. Manufacturers use such back-up engine-system combinations as alternatives should their primary engine-system combination fail to meet emission or performance objectives. Second, a manufacturer may intend to use EPA's Certificate of Conformity to meet its certification requirements in another country.

EPA does not believe that the U.S. government should absorb the costs for such "certification strategies" which are the result of either a manufacturer's obligation to another government or to meet a manufacturer's emission or performance objectives. Therefore, in determining whether an applicant qualifies for a waiver, EPA will consider all sales directly or indirectly associated with the relevant engine-system combination. Manufacturers will be required to demonstrate that a waiver request is not for either a back-up engine-system combination for an engine-system combination which does not qualify for a waiver or an engine-system combination that will be sold outside the U.S. with the Certificate of Conformity being used as the basis for certification in another country.

EPA determined it cannot, as suggested in the comments, base the fee schedule on the number of vehicles produced or sold. Factors such as a recipient's sales or production volume are not permitted to be a part of the fee calculation unless there is a reasonable relationship between those factors and the costs being recovered. See *National Cable Television Ass'n* v. *Federal Communications Comm'n*, 554 F.2d 1094, 1107–08 (D.C. Cir. 1976); *Electronic Industries Ass'n* v. *Federal Communications Comm'n*, 554 F.2d 1109, 1115 n.13, 1116 (D.C. Cir. 1976). Such a relationship does not exist in this case as the MVECP costs being recovered are unrelated to the number of vehicles covered by a certificate. It would also be inappropriate to excuse some manufacturers from paying the SEA and in-use testing portions of the fees, since every manufacturer is potentially subject to the same level of EPA scrutiny.

EPA recognizes that the use of a waiver provision may prevent it from being fully reimbursed for the costs of the MVECP. However, EPA does not believe that the waiver provision is contrary to Congress' objective expressed in the IOAA that an agency be "self-sustaining to the extent possible." Rather, it alleviates the economic burden on small entities by reducing the fee for these entities to an acceptable level. Such provisions are in accord with prior Congressional legislation aimed at protecting small businesses from undue economic hardship.

EPA does not believe that an RFA is required for this regulation, since it does

not have a significant impact on a substantial number of small entities. Further, the revised waiver provision reduces the fee that ICIs will pay to a level which should prevent undue economic hardship.

The fact that ICIs do not conduct retail sales does not mean the waiver provision does not apply to them. In place of retail sales, ICIs will project the number of vehicles to be admitted to the U.S. (including vehicles admitted under the modification and test option) under a waiver certificate.

*I. Recoverable Costs*

*Summary of Proposal.* EPA proposed to recover through fees the direct and indirect costs associated with certain MVECP activities, including certification, fuel economy, SEA, and in-use compliance.

*Summary of Comments.* Several manufacturers and associations commented on EPA's authority to recover through fees the costs of certification, SEA, and in-use testing. Volkswagen (VW) acknowledged that EPA may promulgate regulations establishing fees to recover all reasonable costs associated with these activities. Generally, however, commenters asserted that SEA and in-use testing are not recoverable under the CAA and the IOAA because they do not confer private benefits, but rather accrue to the benefit of the public.

MVMA and EMA stated that the EPA is authorized by section 217 of the CAA to establish fees for specific services it provides to vehicle manufacturers. However, section 217 stipulates that regulations establishing such fees be consistent with the IOAA. Therefore, the IOAA requirement that fees be for a "service or thing of value" controls the validity of the proposed fees. Further, in accordance with OMB Circular A-25 and the courts, a service must provide a special benefit to an identifiable recipient before a fee may be assessed.

In addition, EMA stated that a fee which recovers the costs of SEA and in-use testing would be inconsistent with Congressional intent. In support of this assertion, EMA cited the House Committee Report, which states that the Administrator's authority to impose compliance program fees "must be carefully exercised so as to avoid proceeding with gold-plated compliance programs." H.R. Rep. No. 3030, 101st Cong., 2d Sess. 311 (1990).

*EPA Response.* EPA disagrees with the contention that it does not have the statutory authority to collect the proposed fees for the costs of the MVECP because the activities involved do not provide a private benefit as required by the IOAA. As explained in the NPRM, all of the MVECP activities for which EPA seeks to recover fees provide special benefits to identifiable beneficiaries and the full costs of those activities are therefore recoverable under the IOAA. (A detailed discussion of the issue of recoverable costs is contained in the Response to Comments for this rulemaking which has been placed in the public docket.)

A further problem with the commenters' arguments that EPA cannot recover fees for MVECP activities because the recovery of such fees violates the IOAA is that the arguments violate a fundamental principle of statutory construction. According to the commenters' view of the IOAA, the phrase of section 217 referring to consistency with the IOAA would negate any effect of the remainder of section 217, which specifically authorizes EPA to collect fees for the MVECP programs, including compliance activities. If the collection of fees for the specified portions of the MVECP was inconsistent with the IOAA, it is inconceivable that Congress would have, on the other hand, required consistency with the IOAA, and, on the other hand, expressly authorized EPA to collect those fees. Such a view renders section 217 useless. But, as the District of Columbia Circuit Court of Appeals has stated in the context of a decision construing another provision of title II of the CAA, "It is axiomatic that a statute must be construed to avoid that result so that no provision will be inoperative or superfluous." *Motor and Equipment Manufacturers Ass'n* v. *Environmental Protection Agency*, 627 F.2d 1095, 1108 (D.C. Cir. 1978), *cert. denied sub nom. General Motors* v. *Costle*, 446 U.S. 952 (1980). Thus, even if the commenters' view of the application of the IOAA criteria to the MVECP fees were correct, which EPA does not believe to be the case, EPA does not believe that the phrase in section 217 referring to consistency with the IOAA should be interpreted in such a way as to render the remainder of section 217 inoperative. Rather, both portions of section 217 should be interpreted so as to give effect to all the language in the provision. This can be done by interpreting the phrase "consistent with the IOAA" to mean that the fees specifically authorized by section 217 must satisfy the established IOAA criteria that the fees be reasonable and that the fees not exceed the cost to EPA of undertaking the activities. This interpretation comports with the rules of statutory construction and does not render any part of section 217 superfluous.

EPA further notes that, as stated in the NPRM, Congress may constitutionally authorize agencies to recover the total cost of administering a program from those regulated under the normal delegation standards. *Skinner* v. *Mid-Atlantic Pipeline Co.*, 490 U.S. 212 (1989). Thus, Congress may authorize an Agency to recover through the imposition of fees the costs of services it provides even if such fees appear to be a tax to the recipient or the services fail to provide a private benefit. Therefore, there is no constitutional problem with EPA's assessment of fees for the services specifically authorized by Congress—certification, SEA, and in-use testing—even if such services do not confer a special benefit on manufacturers.

EMA also stated that EPA could not recover through fees the costs of SEA and in-use testing since to do so would violate Congressional intent in that it would "gold-plate" the compliance program. EPA believes, however, that EMA's interpretation of Congress' intent is incorrect. Congress required that fees be "consistent with IOAA" so that EPA would not "gold-plate" its compliance program by recovering fees for services it does not provide and then using such fees to expand the MVECP. Further, since Congress determines the MVECP appropriation, it can control "gold-plating." In other words, EPA cannot unilaterally expand the MVECP and then collect additional fees to cover the expansion of services.

*J. Cost Analysis*

*Summary of Proposal.* The NPRM noted that EPA had prepared a Cost Analysis that sets forth the direct and indirect costs used to calculate the fee schedule.

*Summary of Comments.* The only comment received on the Cost Analysis was from EMA which stated that the Analysis did not provide sufficient justification of the proposed fees. In particular, EMA asserted that EPA failed to calculate the cost basis for each fee assessed. EMA also asserted that the Cost Analysis provides an insufficient explanation of the criteria used in eliminating certain costs and retaining others.

Last, EMA asserted that the Cost Analysis deprives manufacturers of their constitutional rights of due process, since it is drafted in a manner that does not allow for a meaningful response. For this reason, as well as its failure to meet IOAA requirements, EMA stated that the Cost Analysis must be revised and republished for public comment.

*EPA Response.* The Cost Analysis prepared by EPA sets forth in detail the costs associated with the MVECP and the calculations which form the cost basis for each fee. Direct and indirect costs for each certification request type are identified. Specific activities that were included or excluded are identified in the preamble and the costs of such activities are shown as recoverable or unrecoverable. Further, the calculations used by EPA to determine fees are reasonable and comport with the requirements of the IOAA. As a result, the Cost Analysis is neither deficient nor deprives EMA of its constitutional rights of due process. Therefore, EPA has determined that it is unnecessary to revise and republish the Cost Analysis. (A more detailed discussion of the issue of the Cost Analysis is contained in the Response to Comments for this rulemaking which has been placed in the public docket.)

*K. Carryover*

*Summary of Proposal.* EPA proposed that the fee for a carryover engine-system combination be the same as that for a new engine-system combination.

*Summary of Comments.* AIAM and five manufacturers submitted comments on carryover. All of the comments supported a reduction of the fee for carryover vehicle certification.

Manufacturers stated that a reduction for carryover models was warranted since the only effort required by EPA for carryover certification is reviewing the application to ensure it is the same as the application for the previous year. They asserted that such a review involves minimal time. Further, no testing is necessary for carryover models.

*EPA Response.* Contrary to the comments of the manufacturers, a certification request for a carryover engine-system combination does not result in lower costs than a certification request for a new engine-system combination. When a manufacturer elects to carryover test data from a previous MY, its certification effort may be reduced. Further, such carryover test data may reduce certain EPA efforts. However, such potential reductions are offset by additional activities necessitated by the carryover request. The application for a carryover certification request is usually not an exact duplicate of the MY being carried-over. For example, carryovers may involve changes (e.g., additional test weight and horsepower) which could change the test fleet selection. In such cases, EPA must conduct additional review of carryover requests to ensure that they meet EPA requirements and that the test fleets were properly selected for the carryover. Further, EPA must develop and maintain extensive computer procedures, programs and data storage to facilitate the carryover process. EPA must also review a carryover to determine the applicability of the regulations for the new MY compared to the carryover MY.

In addition, while a carryover engine-system combination may not require confirmatory testing, it does require all of the other activities involved in processing a non-carryover certification request, including: review and audit of the application; review of the selection of test fleets by the manufacturer; fuel economy calculations, processing the certification request; review of running changes and related testing.

EPA must ensure compliance of a carryover engine-system combination in the same manner as a new certification request. Carryover engine-system combinations are subject to in-use and SEA testing. In fact, in-use or SEA testing is sometimes not conducted on an engine-system combination until it has been carried over. Further, in-use or SEA testing may be indicated for a carryover engine-system combination based on test results from an earlier MY.

Thus, the costs that EPA may incur in certifying a carryover engine-system combination do not differ substantially from those that EPA may incur in certifying a new engine-system combination. As a result, the fee schedule will remain as proposed with the fee for carryover certification requests being the same as that for new certification requests.

*L. Fee Basis*

*Summary of Proposal.* EPA proposed that the fee be based on the certification request, the event which triggers the costs related to the MVECP.

*Summary of Comments.* EPA received 14 comments on the issue of the appropriate basis for fees. Three manufacturers and two associations submitted comments in support of EPA's proposal to base fees on the certification request. In support of their position they noted that it is equitable and efficient to base fees on the certification request since (1) EPA's certification costs are similar for all families and (2) each family is exposed to audit costs. In other words, it would be inequitable to charge recipients of essentially the same service different fees depending on their size, sales volume or income. Other reasons cited were that (1) It allows manufacturers to budget for compliance fees in advance, (2) MVECP activities are largely independent of the number of vehicles produced, and (3) other alternatives would add administrative overhead and cost to the program without improving equity.

Five manufacturers commented that the fee should be based on the number of vehicles and engines produced or sold. These manufacturers provided several reasons for their position. First, they cited that portion of section 217 which provides that EPA may base the fee schedule on "such factors as the Administrator finds appropriate and equitable and nondiscriminatory, including the number of engines produced under a Certificate of Conformity." This language and the requirement that fees be consistent with the IOAA clearly contemplate that EPA will link the compliance fee schedule to vehicle sales volume.

Second, a fee based on certification requests does not comply with the IOAA authorization criteria, since the process of application for certification is a matter of public policy. Further, only after sales does an identifiable benefit exist for the recipient, and the larger the sales volume the greater the value to the recipient.

Third, the proposed basis is anti-competitive. It places small manufacturers at a competitive disadvantage since their per engine expense is greater than that of larger manufacturers.

*EPA Response.* A fee based on the number of vehicles produced or sold is neither consistent with the IOAA nor equitable. Fees imposed under the IOAA must represent the value conferred by an agency on a recipient, i.e., the Agency's costs and not the value derived by the recipient. Factors such as a recipient's sales volume or production volume, which are relevant to the value derived by the recipient, are not permitted to be a part of the fee calculation unless there is a reasonable relationship between those factors and the costs being recovered. See *National Cable Television Ass'n* v. *Federal Communications Comm'n*, 554 F.2d 1094, 1107–08 (D.C. Cir. 1976); *Electronic Industries Ass'n* v. *Federal Communications Comm'n*, 554 F.2d 1109, 1115 n.13, 1116 (D.C. Cir. 1976). No such relationship exists between sales or production volumes and the costs being recovered.

Further, a fee based on certification requests is more equitable than a sales-based fee in that it reflects the way in which EPA incurs costs for providing MVECP services. Such costs are basically the same for each type of certification request and are unrelated to the number of vehicles a manufacturer produces or sells. Thus, it

would be inequitable to charge a manufacturer who requests two federal signed LDV certificates and sells 150 vehicles less than a manufacturer who requests one certificate and sells 1,000 vehicles. (A detailed discussion of the issue of the appropriate fee basis is contained in the Response to Comments for this rulemaking which has been placed in the public docket.)

*M. Time of Payment*

*Summary of Proposal.* EPA proposed that manufacturers submit payment to the Treasury at the time the application for certification or ESI is submitted to EPA. EPA would process the application after it was notified by the Treasury that it had received payment. This would ensure that EPA would receive payment for the services that it provides.

*Summary of Comments.* EPA received comments from seven manufacturers and three associations which requested that EPA change the time of payment. The majority of commenters stated that EPA's proposal to require payment at the time of the certification request would create an unnecessary paperwork burden for manufacturers, the Treasury, and EPA. Further, it has the potential to cause unnecessary delays in the certification process resulting in wasted resources and increased production costs. Therefore, they recommended that EPA implement a tracking and billing system whereby manufacturers would receive an invoice on a regular basis, preferably annually at the completion of the certification period for each MY. Several manufacturers and associations indicated that EPA's concern regarding nonpayment is unfounded. Manufacturers are responsible ongoing businesses that are unlikely to jeopardize current or future certification status by withholding or delaying payment of fees. They stated that if EPA is concerned about nonpayment it could add provisions to the rule which would establish either a penalty system or special payment requirements for companies that have poor payment records.

*EPA Response.* The comments received by EPA in support of a periodic invoice system do not outweigh the benefits of collecting the fees in advance. An invoice system would increase EPA's cost of administering the fee program due to the work and costs associated with establishing a billing system, increased paperwork, payment collection, and tracking delinquent payments. Further, these additional costs would ultimately be borne by the fee payer through increased fees in the future. It is also consistent with EPA practice and policy in Agency fee programs to collect the fee prior to services being rendered and costs being incurred. For example, the Pesticides Program requires that a fee accompany each petition or request for the establishment of a new tolerance for a pesticide under the Federal Food, Drug, and Cosmetic Act. Similarly, the Toxic Substances Program collects fees from manufacturers, importers and processors at the time they submit notices and applications to EPA under section 5 of the Toxic Substances Control Act (15 U.S.C. 2604).

In most cases, EPA anticipates that the fee will be paid in a timely manner, even if advance payment is not required. However, by requiring payment of the fee in advance of providing services, EPA will be certain to collect a fee for the services it renders.

Therefore, manufacturers will be required to submit a filing form and payment, as proposed. To allay manufacturer concerns regarding a potential delay in the certification process from unforeseen circumstances, EPA may initiate and continue providing certification services for up to 15 days following the submission of an application for certification or an ESI for applicants with a timely payment record.

## V. Economic Impact

*A. Cost to Industry*

This rule will not have a significant impact on the majority of vehicle and engine manufacturers. The cost to industry will be a relatively small value per unit manufactured for most engine-system combinations.

EPA expects to collect about 5 to 15 million dollars annually. This averages out to approximately one dollar per vehicle or engine sold annually. However, for engine. System combinations with low annual sales volume, the cost per unit could be higher. To remove the possibility of serious financial harm on companies producing only low sales volume designs, the regulations adopted today include a waiver provision which is based solely on economic hardship. This provision should alleviate concerns about undue economic hardship on small volume manufacturers and ICIs which could result from payment of the full fee required to obtain a certificate.

*B. Cost to the Government*

The cost to the government will be the extra cost of administering the fee program and occasional revision of these regulations. The administration costs will be recovered as part of the fee.

## VI. Other Statutory Requirements

*A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement that a Regulatory Impact Analysis (RIA) be prepared. The Agency has determined that this regulation is not "major" because it does not meet any of the criteria set forth and defined in section 1(b) of the Order. In fact, this proposal is concerned with recompensation to the government of a portion of the benefits received by private parties.

Also, in accordance with Executive Order 12291, this rule was submitted to OMB for review. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

*B. Paperwork Reduction Act*

The information collection requirements in this final rule have been approved by OMB and assigned clearance number 2060-0104, under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 783.17) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM-223Y); Washington, DC 20460 or by calling (202) 382-2740.

Public reporting burden for this collection request is estimated to vary from 5 to 30 minutes per response with an average of 24 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (PM-223Y); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." No OMB or public comments were received on the information collection requirements contained in the NPRM for this rule.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of

these entities, agencies are required to perform a RFA. EPA has determined that the regulations adopted today will not have a significant impact on a substantial number of small entities. This regulation will affect manufacturers of motor vehicles and motor vehicle engines, a group which does not contain a substantial number of small entities.

In the case of small manufacturers or ICIs, this regulation includes a waiver provision. In cases of economic hardship, this waiver provision will limit the fee imposed based on the number of vehicles or engines covered by a Certificate of Conformity. This inclusion should alleviate the concerns about impacts on small business as expressed in the Regulatory Flexibility Act.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* I certify that this regulation does not have a significant impact on a substantial number of small entities.

**List of Subjects in 40 CFR Part 86**

Administrative practice and procedure, confidential business information, Labeling, Motor vehicle pollution, Reporting and record keeping requirements.

Dated: June 5, 1992.

**F. Henry Habicht,**

*Acting Administrator.*

Therefore, part 86 of title 40 of the Code of Federal Regulations is amended by adding subpart J as follows:

**PART 86—[AMENDED]**

1. The authority citation for part 86 is revised to read as follows:

**Authority:** Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301 of the Clean Air Act, as amended 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552 and 7601; and Sec. 9701 of the Independent Offices Appropriations Act (31 U.S.C. 9701).

2. Part 86 is amended by adding subpart J to read as follows:

**Subpart J—Fees for the Motor Vehicle and Engine Compliance Program**

Sec.


86.901–93 Abbreviations.
86.902–93 Definitions.
86.903–93 Applicability.
86.904–93 Section numbering; construction.
86.905–93 Purpose.
86.906–93 MVEPC certification request types.
86.907–93 Fee amounts.
86.908–93 Waivers and refunds.
86.909–93 Payment.
86.910–93 Deficiencies.
86.911–93 Adjustment of fees.


**Subpart J—Fees for the Motor Vehicle and Engine Compliance Program**

**§ 86.901–93 Abbreviations.**

The abbreviations in this section apply to this subpart and have the following meanings:

CAFE—Corporate Average Fuel Economy, Cal—California, CPI—Consumer Price Index, ESI—Engine System Information, EPA—U.S. Environmental Protection Agency, Fed—Federal, HDE—Heavy-duty engine, HDV—Heavy-duty vehicle, ICI—Independent Commercial Importer, LDV—Light-duty vehicle, LDT—Light-duty truck, MC—Motorcycle, MVEPC—Motor Vehicle and Engine Compliance Program, MY—Model Year, OEM—Original equipment manufacturer, SEA—Selective Enforcement Auditing.

**§ 86.902–93 Definitions.**

*California-only certificate* is a Certificate of Conformity issued by EPA which only signifies compliance with the emission standards established by California.

*Certification request* means a manufacturer's request for certification evidence by the submission of an application for certification, ESI data sheet, or ICI Carryover data sheet.

*Engine-system combination* as defined in 40 CFR 86.082–2, means an engine family-exhaust emission control system combination.

*Federal certificate* is a Certificate of Conformity issued by EPA which signifies compliance with emission standards in 40 CFR part 86, subpart A.

*Fuel economy basic engine* means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system, catalyst usage, and other characteristics specified by the Administrator.

*Filing form* means the MVECP Fee Filing Form to be sent with payment of the MVECP fee.

*Signed* means a certification request which results in a signed Certificate of Conformity.

*Unsigned* means a certification request which does not result in a signed Certificate of Conformity because it is either voluntarily withdrawn by the manufacturer or does not receive approval from the EPA.

**§ 86.903–93 Applicability.**

This subpart prescribes fees to be charged for the MVECP for 1993 and later Mys. The fees charged will apply to all manufacturers' and ICIs' LDVs, LDTs, HDVs, HDEs, and MCs. Nothing in this subpart shall be construed to limit the Administrator's authority to require manufacturer or confirmatory testing as provided in the Clean Air Act, including authority to require manufacturer in-use testing as provided in section 208 of the Clean Air Act.

**§ 86.904–93 Section numbering; construction.**

(a)(1) The MY of initial applicability is indicated by the section number. The two digits following the hyphen designate the first MY for which a section is effective. A section remains effective until superseded.

(2) *Example.* Section 86.901–93 applies to the 1993 and subsequent MYs until superseded. If § 86.901–96 is promulgated, it will take effect beginning with the 1996 MY; § 86.901–93 will apply to MYs 1993 through 1995.

(b)(1) A section reference without a MY suffix refers to the section applicable for the appropriate MY.

(2) *Example.* For a reference to § 86.901, one would refer to § 86.901–xx where xx is the last two digits of the model year in question.

**§ 86.905–93 Purpose.**

The MVECP includes all compliance, enforcement, and related activities performed by EPA which are associated with certification, fuel economy, SEA, and in-use compliance programs. The fee will recover those compliance, investigation and review costs which the EPA incurs in providing vehicle and engine manufacturers or ICIs with Certificates of Conformity, fuel economy labels, CAFE calculations, and ICI review necessary to market vehicles in the U.S. and to meet requirements otherwise imposed by statute.

**§ 86.906–93 MVEPC certification request types.**

Certification requests are grouped into three types corresponding to the three major divisions of regulated mobile sources: LDVs/LDTs; HDVs/HDEs; and MCs.

**§ 86.907–93 Fee amounts.**

The fee for each certification request type is:

| | MY 1993 | MY 1994 (and later) |
|---|---|---|
| LDV/LDT | | |
| Fed Signed | $11,865 | $23,731 |
| Cal-only Signed | 4,563 | 9,127 |
| Fed Unsigned | 1,095 | 2,190 |
| Cal-only Unsigned | 1,095 | 2,190 |
| HDE/HDV | | |
| Fed Signed | 6,292 | 12,584 |
| Cal-only Signed | 1,072 | 2,145 |
| Fed Unsigned | 1,072 | 2,145 |

| | MY 1993 | MY 1994 (and later) |
|---|---|---|
| Cal-only Unsigned | 1,072 | 2,145 |
| All Evaporative-only MCs | 1,072 | 2,145 |
| Fed Signed | 420 | 840 |
| Cal-only Signed | 420 | 840 |
| Fed Unsigned | 420 | 840 |
| Cal-only Unsigned | 420 | 840 |

**§ 86.908–93 Waivers and refunds.**

(a) *Request for waiver.* The Administrator may waive part of any fee imposed by § 86.907 of this subpart.

(1) A waiver will be granted to an applicant if the Administrator determines that:

(i) The certificate is to be used for sale of vehicles or engines within the United States; and

(ii) The full fee for a certification request for a MY exceeds 1% of the aggregate projected retail sales price of all vehicles covered by that certificate.

(2) The request for waiver must be submitted prior to the payment of any fee and shall include evidence, such as prior actual sales, retail sales price, and previous waiver requests, clearly showing that the applicant satisfies the two waiver criteria. The retail sales price will be based on the total projected sales of all vehicles under a certificate, including vehicles modified under the modification and test option in 40 CFR 85.1509. For an ICI certificate, the retail sales price shall be based on the applicable National Automobile Dealer's Association (NADA) appraisal guide and/or other evidence of the actual market value.

(3) If a waiver is granted, the fee to be paid by the applicant shall be 1% of the aggregate projected retail sales price of the vehicles or engines to be covered by the certification request.

(4) The waiver request will be reviewed by EPA.

(i) EPA or its designee will analyze each waiver request to determine whether the applicant has met the standards for a waiver and then will notify the applicant of its grant or denial.

(ii) If the request is denied, the applicant will have 30 days from the date of notification of the denial to submit the appropriate fee to EPA or appeal the denial.

(5) Whenever the aggregate projected retail sales price of the vehicles or engines to be covered by the certification request changes and/or the certificate which is under a fee waiver expires, the applicant, as appropriate:

(i) Shall submit a filing form with payment of the additional waiver fee; or

(ii) May submit a request for a refund.

(6) The total waiver fee shall not exceed the full fee amount for the applicable certification request type.

(b) *Request for refund.* The Administrator may refund a specified part of any fee imposed by § 86.907 of this subpart if the applicant fails to obtain a signed certificate and requests a refund.

(1) That portion of the total fee to be refunded will be as follows:

| | Federal (percent) | California only (percent) |
|---|---|---|
| LDV/LDT | 90.8 | 76.0 |
| HDE/HDV | 83.0 | 0 |
| HD-Evaporative only | 0 | 0 |
| MC | 0 | 0 |

(2) For a refund of a portion of a waiver payment due to a decrease in the projected retail sales price of the vehicles or engines to be covered by the certification request the applicant should submit documentation to EPA detailing the waiver fee adjustment.

(c) *Waiver and refund address.* A request for a waiver or refund of part of a fee shall be submitted in writing by the applicant to the Environmental Protection Agency, Motor Vehicle and Engine Compliance Program, Certification Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

**§ 86.909–93 Payment.**

(a) All fees required by this section shall be paid by money order, bank draft, certified check, corporate check, or electronic funds transfer payable in U.S. dollars to the order of the Environmental Protection Agency.

(b) All fees shall be forwarded with the filing form to the EPA to the address designated on the filing form.

(c) An application for which a partial waiver of the fee has been requested will not be accepted for processing until the appropriate fee has been determined and the balance waived or, if the waiver has been denied, the proper fee is submitted after notice of denial.

**§ 86.910–93 Deficiencies.**

(a) Any filing pursuant to § 86.909 of this subpart that is not accompanied by the appropriate filing fee is deficient.

(b) The Administrator will inform any person who submits a deficient filing that:

(1) Such filing will be rejected and the amount paid refunded, unless the appropriate fee is submitted within a specified time;

(2) EPA will not process any filing that is deficient under this section; and

(3) The date of filing will be deemed the date on which EPA receives the appropriate fee.

**§ 86.911–93 Adjustments of fees.**

(a) The fee schedule will be changed annually by the same percentage as the percent change in the CPI for all urban consumers.

(b) This annual change will occur within 60 days following release of the final estimates of the annual average for the CPI for all urban consumers by the Department of Labor.

(c) MVECP costs and fees will periodically be reviewed and changes will be made to the schedule as necessary.

(d) When automatic adjustments are made, based on the CPI, the new fee will be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the final rule.

(e) When changes are made based on periodic reviews, the changes will be subject to public comment.

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federal register

Tuesday,
July 7, 1992

Part V

# Department of Transportation

**Coast Guard**

**33 CFR Part 168**

**Escort Vessels for Certain Oil Tankers; Proposed Rule**

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 168

[CGD 91-202]

RIN: 2115-AE10

## Escort Vessels for Certain Oil Tankers

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulations are designed to implement the provision of the Oil Pollution Act of 1990 (OPA 90) that requires the Secretary to define the areas where two escort vessels would be required for single hulled tankers over 5,000 gross tons (GT) transporting oil in bulk. Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington (including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia subject to United States jurisdiction) are required to be included in the areas. This proposed rulemaking will implement OPA 90 only in these two statutorily required areas. In addition to defining the areas where escort vessels are required, the proposed rules would provide for Coast Guard review of the capabilities of the escort vessels and a pre-escort conference between the master of the tanker, pilots employed, and the operator of each of the escort vessels. This action should reduce the likelihood of groundings and collisions involving oil tankers and help protect the environment from large oil spills.

This rulemaking is limited to the requirements for escorts for single hull tankers over 5,000 GT in the above two areas. The Secretary is authorized under OPA 90 to require two escort vessels for similar tankers in other areas; and, under the Ports and Waterway Safety Act of 1972, as amended by the Port and Tanker Safety Act of 1978 (PWSA/PTSA), the Secretary is authorized to require escorts for any type of vessel. Although any such additional action taken would be done under a separate rulemaking, the public is invited to nominate other areas around the country where the risk to the environment merits a two escort requirement for this type of tanker, or escorts in any number for any type of vessel carrying oil or other hazards materials as cargo.

DATES: Comments must be received on or before September 8, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-202), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Vekert, Project Counsel, (202) 267-6220.

SUPPLEMENTARY INFORMATION:

### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91-202) and the specified section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under ADDRESSES. If it determines that the opportunity for oral presentation will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a letter notice in the Federal Register.

### Drafting Information

The principal persons involved in drafting this document are LCDR T.C. Healey, Project Manager, and Mr. Charles Vekert, Project Counsel, OPA 90 Staff, Coast Guard Headquarters.

### Background and Purpose

This proposed regulation is made pursuant to section 4116(c) of the Oil Pollution Act of 1990 (Pub. L. 101-380; 46 U.S.C. 3703) (OPA 90). Escorts for oil tankers in Prince William Sound, Alaska and in the Strait of Juan de Fuca and Puget Sound, Washington, will reduce the risk to the environment posed by moving large amounts of oil through these waters. Although there have been significant improvements in tanker navigation safety during the past decade, unacceptable risk to the environment remains. As cargo capacities of tankers have increased, so has the potential for environmental harm should major hull damage occur. As it is unusual for more than 10 to 15 percent of spilled oil to be recovered from a large marine spill, the best method of protection of the environment is the prevention of tanker groundings and collisions.

Parts of the areas being considered by this rulemaking are also subject to local Vessel Traffic Service (VTS) regulations and Traffic Separation Schemes (TSS), which also reduce the risk of accidents. The VTS and TSS manage vessel movements and traffic to reduce the likelihood of a collision. They do not protect against the loss of vessel control caused by steering or propulsion system failures. These proposed rules complement the VTS and TSS systems.

On May 22, 1990, a notice requesting public comment and announcing a public hearing on tanker safety initiatives in the Puget Sound area was published in the Federal Register (55 FR 21044). The Coast Guard requested comments from interested parties concerning the need to enhance pollution prevention through increased vessel and navigation safety measures for tankers in the vicinity of Puget Sound, Washington.

The public was asked to comment upon several tanker safety initiatives, including tug escorts, emergency towing plans, tanker speed limits, and to suggest alternatives.

A public hearing was held in Seattle, Washington, on June 22, 1990, to receive comments and suggestions. Approximately 150 individuals attended the public hearing; 25 presented oral statements on the merits of the navigation safety proposals. During the comment period, 42 written comments were submitted. These written and oral comments are addressed at appropriate points in the discussion section of this notice.

### Discussion

*(a) Present State Requirements Compared to OPA 90*

The State of Washington has had a tanker escort requirement since 1975 ("State of Washington Tanker Law," Chapter 125, Laws of Washington, 1975, First Extraordinary Session, Wash. Rev.

Code section 88.16.170 *et seq.*). It requires loaded oil tankers that—

(1) Do not have double bottoms and twin screws;

(2) Are 40,000 to 125,000 deadweight tons (DWT); and

(3) Are underway east of a line extending from Discovery Island Light south to New Dungeness Light to be escorted by one or more towing vessels with an aggregate shaft horsepower equivalent to 5 percent of the tanker's deadweight tonnage.

The requirements in OPA 90, section 4116(c), differ from the Washington State escort requirements by lowering the minimum size of tankers to be escorted from 40,000 DWT to 5,000 GT. (It should be noted that deadweight tons and gross tons are very different methods of measurement. Therefore, the differences in the sizes of tankers are not as dramatic as the difference in numbers alone would suggest.) This lowered threshold would affect approximately 350 tanker transits per year.

The Washington State law applies to tankers that do not have double bottoms and twin screws. The Coast Guard interprets the OPA 90 requirement to apply to any tanker that does not meet the standards for a double hull tanker. Under a separate rulemaking, double hull tankers will be required to have double sides as well as double bottoms. Therefore, a tanker with only double bottoms is considered to be a single hull tanker and is subject to these proposed rules.

OPA 90 requires two escort vessels. Under current Washington State law, only one towing vessel escort is required if the escort meets the shaft horsepower to deadweight tonnage ratio. Washington State imposes a shaft horsepower to deadweight tonnage percentage as the only qualification for suitability of the escort(s). Under this rulemaking, the master of the tanker must select suitable escort vessels after considering escort vessel criteria that have been reviewed by the Coast Guard Captain of the Port (COTP).

OPA 90 requires escorts in waters "east of Port Angeles." As defined in these proposed regulations, the western boundary of the escort area is approximately 11 nautical miles west of the existing escort area boundary under Washington State law. The proposed rule does, though, contain an exception for tankers traveling east to, or west from, the anchorage area immediately south-southeast of Ediz Hook. This anchorage area is east of Port Angeles but west of the area where escorts are required under Washington State law.

Washington State requires an escort for double bottom tankers that do not have twin screws. OPA 90 requires only single hull tankers to be escorted, regardless of whether they have a single screw or twin screws.

As stated above, this is a limited rulemaking, applying only to single hull tankers in the defined areas. Therefore, double hull tankers with only a single screw will still have to comply with the Washington State escort requirements. Single hull tankers over 5,000 GT, including those with double bottoms, will have to comply with these proposed regulations. To the degree, if any, that State law is contrary to Federal law or regulations, the Federal requirements prevail. The only identified potential for direct conflict with Washington State law would be when suitable escort vessels under these regulations do not have an aggregate shaft horsepower equivalent to 5 percent of the tanker's deadweight tonnage. Recognizing Washington State's interest in protecting its citizens, industry, and environment from pollution, the Coast Guard intends to cooperate with Washington State in this matter.

The State of Alaska requires special care to be exercised by the Alyeska Pipeline Service Company (Alyeska) in their operation of the Trans-Alaskan Pipeline tanker loading facility in Valdez, Alaska. This special care is reflected in Alyeska's Prince William Sound Tanker Spill Prevention and Response Plan that requires all outboard tankers transporting crude oil from the Port of Valdez, Alaska, to use two escorting vessels comprised of a conventional towing vessel and an Escort/Response Vessel (ERV) for the tanker's transit out of Prince William Sound. The procedures have been in place since mid-1989. For single hull tankers, the escorting vessels will have to meet the suitability criteria of these proposed regulations.

*(b) Proposed Section 168.3, Definitions*

(1) Escort Vessel

The type of vessel that is suitable for escort service has generally been considered to be a towing vessel. Towing vessels, however, come in a wide variety of forms. Wide variations exist in hull configurations, construction standards, hull material, propulsion plant components, drive systems, power, fixed towing equipment, size, draft, hull speed, steering systems, and so on. Section 4116(c) of OPA 90 states that affected tankers must be escorted by at least two towing vessels, as the term "towing vessel" is defined under 46 U.S.C. 2101. Section 4116(c) also gives the Secretary discretion to allow "other vessels considered appropriate" to be used as escort vessels.

Under 46 U.S.C. 2101, a towing vessel is a "commercial vessel engaged in or intending to engage in the service of pulling, pushing, or hauling along side, or any combination of pulling, pushing, or hauling along side." This is a very broad definition and includes vessels other than conventional tug boats.

It is clear that the intended purpose of requiring two escort vessels is that they be on hand to "* * * assist a tanker to maneuver or provide a tow in the case of mechanical difficulties * * *" that in turn would prevent or minimize the effect of a grounding or collision. (House Conf. Rep. No. 101–653, Page 143.)

In this rule, therefore, "other vessels considered appropriate" is not defined, since any ship that can perform the tasks required meets the definition of a towing vessel.

(2) Transporting Oil in Bulk

Tankers do not always travel full to capacity or entirely empty. A tanker, after discharging its oil, will have oil residue, unless it is stripped, scrubbed, and cleaned. The proposed rules will require two escort vessels for all tankers over 5,000 GT transporting oil in bulk in their cargo tanks. This will include partial loads ("part cargoes"). The proposed rules do not require escorts for tankers that have discharged their oil cargo but still carry some clingage in their tanks. Requiring tanks to be completely cleaned in order to operate without escorts would create a substantial cost with little or no benefit.

(3) Single Hull Tanker

This proposed rulemaking does not include a definition of single hull tanker. It is intended that any tanker that does not meet the definition of double hull tanker in the rulemaking being published under docket CGD 90–051 will be a single hull tanker for purposes of this rule. Single hull tankers will include tankers that may have either double sides or double bottoms but not both.

*(c) Proposed Sections 168.1301 and 168.1701*

OPA 90 requires that the Secretary define those areas, "* * * including Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington (including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia subject to United States jurisdiction)," where this regulation will apply.

(1) Puget Sound

The boundary line for escort vessels is placed at Port Angeles, Washington, at longitude 123°24.5' West. (See § 168.1301(a) of the proposed regulations.) All areas within northwestern Washington State, subject to United States jurisdiction east of the line are included. There is an exemption from the escort requirement for tankers traveling east to, or west from, the anchorage area immediately south—southeast of Ediz Hook.

An alternative would be to extend the line westward, to encompass more, or the whole, of the Strait of Juan de Fuca. There were many comments at the public hearing for and against this idea. The Coast Guard has not adopted these proposals in this notice. The area is not believed to be so fraught with danger to tankers that immediate assistance is necessary. The additional costs and safety concerns associated with requiring the escort further west do not appear to be justified by the potential benefits.

Comments are specifically requested on the location of the boundary lines and exemption for the limited purpose of going to or leaving the anchorage area immediately south-southeast of Ediz Hook.

(2) Prince William Sound

An escort is required whenever a tanker transporting oil in bulk is north of a line from Cape Hinchinbrook Light to Seal Rocks Light thence to Montague Island at 60°14.6'N and 146°59'W, or inside Montague Strait. This area includes all of Prince William Sound. The Coast Guard recognizes the severe operating conditions and heavy weather in the greater Prince William Sound area and shares concern for the safety of the escort vessels and their crews. The line, as drawn, includes the whole Sound and Hinchinbrook Entrance.

Comments are requested on whether escorts should be required out to Seal Rocks. Comments are also requested on applying the proposed rules to all of Prince William Sound or only those areas near land.

(3) Additional Areas

(i) *OPA 90.* The Coast Guard may require two escorts in other territorial waters of the United States. This notice does not propose additional areas. Any additional areas proposed will be included in a notice of proposed rulemaking and the public will be afforded an opportunity to comment.

Comments are requested suggesting additional areas where the two escort rule should be applied.

(ii) *PWSA/PTSA.* The Coast Guard has significantly broader authority under the PWSA/PTSA. Where operating conditions are determined to be hazardous, the Coast Guard may require any number of escort vessels for any type of vessel, considering the risk involved, vessel size and the traffic characteristics, port and waterway configurations and environmental factors as well as other pertinent factors. For example, a narrow channel might only allow one escort to be utilized at the stern of the ship. In another place, the danger caused by crowding of the sea lane might outweigh the benefit of a second escort. The unavailability of large tug boats in a locality could mean that three escorts might be necessary.

The Coast Guard intends to consider another rulemaking, based upon the PWSA/PTSA. In the meantime, comments are requested concerning whether there should be another rulemaking, what it might include, areas where there should be an escort requirement, and what type of vessels should be escorted.

Matters pertaining to safety and environmental pollution are inextricably intertwined. The PWSA/PTSA is primarily a safety act, and the Coast Guard clearly has the authority under PWSA/PTSA to preempt State law, even though an escort requirement is both a safety and antipollution measure. Nevertheless, when and if there is another rulemaking, the Coast Guard will solicit advice from the States that may be affected by the rule. Recognizing States have a profound interest in protecting their citizens, industry, and environment from pollution, the Coast Guard intends to follow its policy of close cooperation with State governments in matters pertaining to environmental protection.

*(d) Suitability of Escort Vessels*

The Coast Guard is proposing criteria that must be considered by tanker masters in determining whether particular escort vessels may reasonably be expected to be able to perform their tasks. The tanker master makes the final suitability decision. Many variables are involved including among other things: Wind speed or direction changes, or both; gusting versus steady winds; localized storm cells; wide variations in loading (from 1% to 99%); and size and maneuvering characteristics of the tanker. Tanker masters must exercise professional judgment and knowledge in this as in other matters pertaining to the safety of their ships. This proposed rule attempts to ensure that the tankers masters will have the necessary information to make an informed decision.

The main alternative to suitability criteria would be to set fixed rules that must be followed exactly. In general, these rules would encompass the same factors that are described in paragraph (e) of this portion of the preamble. They could specify exactly the speed of the tanker and escorts, the ratio of the deadweight tonnage (DWT) of tankers to shaft horsepower (SHP) specification for escort vessels, distance from escort to tanker during escort, and so forth. This alternative was rejected because it could lead either to simplistic rules that would not apply properly to many situations or establish an unworkably complex set of rules attempting to encompass all the variables involved in the safe navigation of a modern tanker and its escorts.

The public is specifically invited to comment upon the proposed suitability criteria and the alternative of fixed rules.

*(e) Criteria for Determining Suitability of Proposed Escort Vessels*

Suitability for escort service cannot be determined by the presence of any single characteristic or design feature of the escort vessel. Suitability is also influenced by the characteristics of the escorted vessel, operational factors and weather conditions. Therefore, several factors that are key elements in this determination are discussed below.

Washington State, for example, requires that towing vessel escorts have an aggregate shaft horsepower equivalent to 5 percent of the deadweight tonnage of the escorted tanker. The "5 percent rule" is recognized as one of several possible escort vessel suitability criteria. However, this rule would not be universally suitable as a national standard because propulsion system configuration, weather patterns, and other factors also affect suitability, as explained below.

The "Final Report of the States/British Columbia Oil Spill Task Force," issued on October 16, 1990, recommended that the deadweight tonnage (DWT) to shaft horsepower (SHP) ratio specification for escort vessel requirements be reviewed for possible reduction. A copy of this report is filed in the docket.

Another simple criteria would be to specify required bollard pull (listed in pounds with an ahead or astern reference). This is frequently listed as the strength measurement for towing vessels. The Norwegian classification society, Det Norske Veritas, in consultation with some of the largest

European towing vessel owners, has formulated a test that will measure bollard pull. Other organizations, including the American Bureau of Shipping and Lloyds Registry, have performed similar tests and proposed their own rules for strength measurement.

A single means of measuring a towing vessel's ability to assist a loaded tankship is not universally applicable or recognized. Despite the lack of universally accepted standards, both bollard pull and shaft horsepower ratings can be useful indicators of a towing vessel's capabilities and should be considered by a tanker master. They are not by themselves conclusive evidence of suitability. For example, there may be circumstances where a 4,000 SHP towing vessel with one type of propulsion system may be suitable for escort service for a particular tanker, but another 4,000 SHP towing vessel with a different propulsion arrangement may not. Bollard pull data is irrelevant if the assisting arrangements used by the tanker and towing vessel require direct hull-to-hull contact and pushing only. Because of circumstances such as these, the Coast Guard believes that neither bollard pull nor shaft horsepower are sufficient criterion by themselves.

Some comments resulting from the notice of May 22, 1990, (see "Background and Purpose") questioned whether conventional or tractor tugs are more effective escort vessels. Escort vessels having either type of propulsion may be determined to be suitable by the tanker master under proposed §§ 168.10 and 168.20.

Two comments suggested that single propulsion tankers present a greater risk of grounding in the event of a propulsion system failure as compared to the risk posed by a similar vessel with a secondary means of propulsion. However, the requirements of OPA 90, section 4116(c), are specifically aimed at hull structure standards (double hull versus single hull) not propulsion systems. A double-hull tanker is more able to withstand damages from a low energy grounding or collision than a comparable single-hull tanker.

In addition, the Coast Guard does not believe that a vessel configured with a single propeller or shaft is a high risk if it has redundancy in its propulsion system. The reliability of components of marine propulsion shaft and propeller systems makes a shaft or propeller failure very unusual.

Regulations already require redundancy in fuel and power distribution systems, which are highly reliable, to reduce the risk of total propulsion loss. (See 46 CFR 58.01–35.)

One comment suggested that the Coast Guard should ensure the adequacy of towing equipment aboard the tanker and escort vessel to sustain the stress of a high speed assist. It would be difficult or impossible to list equipment that would be sufficient for every possible contingency. However, the Coast Guard proposes to address the issue by requiring that information about towing equipment be included in the information provided to the tanker master that forms the basis of his or her judgment about the suitability of the escort vessels.

Many comments were received about speed limits. Fifteen comments supported speed restrictions for tankers under escort in northwestern Washington waters. Seven comments opposed the establishment of a speed restriction in Puget Sound, Strait of Juan d Fuca, and Rosario Strait.

One comment stated that most tankers transiting Rosario Strait proceed at a speed of 11 knots. The Port Angeles Pilots Association established a voluntary transit speed of 11 knots for that area. Before this voluntary speed reduction, tankers reportedly transited Rosario Strait at speeds up to 15 knots.

One comment stated that 11 knots is an excessive speed for escort vessels while in confined waters. However, other comments held that 11 knots is the minimum speed for tankers necessary to maintain adequate steerage, particularly in confined waters.

By comparison, Prince William Sound Vessel Traffic Service regulations (33 CFR part 161) restrict tankers to six knots while transiting the three and four-tenths mile, straight portion of Valdez Narrows between Middle Rock and Potato Point. Vessels that transit this short, deep channel at six knots have done so without any reported critical degradation of steering capability.

The "Final Report of the States/British Columbia Oil Spill Task Force," recommended the establishment of regional speed limits based on towing vessel escort limitations for all tank vessels in inland waters and their critical approaches. This proposed rulemaking considered their recommendation on the matter.

One comment said that escort vessels would be placed in danger if tanker speeds exceed eight knots (for conventional tugs) or ten knots (for tractor tugs). The Coast Guard agrees that the ability of an escort vessel to assist a disabled tanker is affected by tanker speeds. A tugboat can be damaged or capsized if it makes up to a tanker moving too fast through the water. However, this critical speed is not the same for all escort vessels. The decision to come along side or attach must be based on the professional knowledge and experience of the persons involved. The abilities of the escort vessels to keep pace and make up are limiting factors in determining tanker transit speeds.

In § 168.30, the Coast Guard proposes speed factors to be considered in determining the suitability of escort vessels. The Coast Guard believes that a fixed speed limit is not in the best interests of navigation safety or environmental protection. Conflicting needs, such as sufficient speed to control the tanker's movement in a seaway versus speeds that permit the attending escort vessels to be effective, can be weighed and a determination made on the spot.

This proposed regulation is based on the premise that in order to prevent a grounding or collision, escort vessels should be capable of controlling a tanker's movement soon after the tanker experiences a loss of steering, or propulsion, or both. How quickly an escort can respond to help a stricken tanker depends upon many factors, including tanker speed, escort speed, relative location of the escort vessels to the tanker, time needed for the escort vessels to make up to the tanker, weather and tidal conditions. Escort vessel characteristics must be known and considered in light of the tanker's hull configuration (which determines where an escort vessel can push or pull on the tanker safely) tanker drift, impact of wind, channel configuration, proximity to hazards, and other factors.

Interested parties are invited to comment on the proposed criteria for determining the suitability of proposed escort vessels.

*(f) Written Information on Escort Vessel Capabilities*

Twenty-one comments from the June 1990 public hearing were in support of an emergency towing plan for tankers and escort vessels. Many of these comments are relevant to the proposed written information on escort vessel capabilities.

One comment stated that emergency towing plans are commonly found on most Trans-Alaskan Pipeline System (TAPS) tankers.

Another comment was that escort plans should remain a voluntary industry practice. However, the Coast Guard believes that it will be useful to require certain information to be readily available prior to the start of an escort. This information will aid the tanker master, operators of the escort vessels,

and pilots in the performance of their duties.

Proposed § 168.30 prescribes written information to be submitted to the Coast Guard concerning the suitability of a particular escort vessel that intends to engage in the business of providing tanker escort service. The cognizant U.S. Coast Guard Captain of the Port (COTP) would review and determine the acceptability of the written information on escort vessel capabilities. The Coast Guard has considered several alternatives concerning the contents of written escort vessel information and procedures for determining its acceptability.

One alternative was to require prior approval of a written plan each time vessels were engaged in providing an escort under this rule. The advantage of the approach is that it allows for the monitoring of escorts on a continual basis in order to ensure that the escort vessels will be adequate for the purposes intended. However, the disadvantages outweigh this advantage. This requirement is too burdensome on both industry and the Coast Guard. There could be delays in transit while waiting for plan approval. There is no evidence at this time to support the need for individual approval of each tanker transit.

Another possibility would be to mandate that the preparation of an escort plan be the responsibility of the tanker master. This would be logical because the safety of the tanker is ultimately the tanker master's responsibility. Preparing an escort plan would present no problem for the tanker masters that regularly travel through areas in which escorts are required, but it would create a problem for masters of tankers that do not regularly pass through those waters. This is particularly true for first-time port calls and foreign tankers whose masters would be unfamiliar with the rule.

Another alternative that the Coast Guard considered was to require no written plan and rely instead upon the exchange of needed information at a pre-escort conference. The chief advantage to this alternative is that it places no paperwork burden on either the public or the Coast Guard. In addition, the alternative recognizes limitations in the level of planning that can be done before an escort. No written plan prepared in advance can state what each vessel should do in response to every change of circumstances. This is a matter of seamanship and inevitably must depend upon the judgment of the tanker master, the pilots, and the operators of the escort vessels.

The no-plan alternative suffers from the fault that suitability of escorts is not monitored. The suitability determination would only be reviewed by the Coast Guard after the occurrence of an incident. Further, the Coast Guard believes that, to the extent that it is possible, it is better to plan in advance for an escort. Written information and a pre-escort conference cause the parties to prepare for reasonably foreseeable contingencies. It must be stressed, however, that no plan can replace the seamanship of the master of the vessel. The written information and the conference are intended to aid, not replace, the master's judgment.

The final alternative, which is the one proposed, requires submittal of written information that includes operational scenarios based on a range of considerations and a description of the capabilities of the escort vessels and their equipment. This information would be used during the required pre-escort conference. The procedures to be followed during the transit, as agreed upon between the tanker master, pilot(s) (if required), and escort vessel operators would have to be within the bounds of the escort vessel capabilities. This approach solves the problem noted in the tanker master plan preparation alternative because vessels used in escort service tend to remain within a given area for an extended time. The Coast Guard expects that the written information on escort vessel capabilities will most likely be generated by owners or operators of proposed escort vessels in consultation with the customers (i.e. tanker owners or operators), local pilot associations, other concerned parties, and the local U.S. Coast Guard Captain of the Port (COTP).

This alternative balances the need for a reasonable level of oversight by the Coast Guard with the need to keep from overburdening the public with paperwork requirements. The Coast Guard's acceptance of the written information on escort vessel capabilities would help prevent the use of unsuitable escort vessels. The master of the tanker, in determining the suitability of the escort vessels, would be in possession of necessary information and be guided by the limitations and parameters of the Coast Guard-accepted written information. The effect of such written information would be to give the master a range or umbrella of operational considerations within which he must conduct the required escort.

There is no intention that the stated capabilities of the escort vessels replace the judgment of the persons on the scene at the time of the escort. It is intended to assist the tanker master during the pre-escort conference by presenting information in a convenient format. Requiring Coast Guard acceptance of the written information only slightly limits the authority of the tanker master to choose any escort vessel. It does not reduce the master's responsibility for the safety of his or her ship, its crew, and cargo. It should have the effect of causing the parties to think through and resolve specific issues difficult to address when masters, pilots, and escort vessel operators begin to confer at sea during a transit.

Interested parties are invited to comment upon this proposal.

*(g) Delivery of Written Information on Escort Vessel Capabilities*

One problem considered by the Coast Guard is how the master, pilot(s) (where required), and the escort vessel operators may obtain a copy of the written information on escort vessel capabilities. Since marine associations and industry will be involved in the preparation of the written information on escort vessel capabilities, it is anticipated that most tanker masters, pilots, and escort vessel operators would have copies of the written information readily available.

As to foreign ships that do not regularly travel in an area where two escorts are required, there should still be little problem. The written information can be sent by facsimile, provided by the vessel's agent, the pilot, or the escort vessel operators.

Even if the master should receive the written information immediately before the pre-escort conference, there will be sufficient opportunity to review the portions applicable to that tanker. The information will include pertinent equipment specifications that the master must know to make an informed decision. It will be easier to read these specifications than to try to listen to the same information over voice radio.

Comments on the question of delivering the written information are specifically requested.

**Regulatory Evaluation**

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979).

A draft Regulatory Evaluation is available in the docket for inspection or copying where indicated under "ADDRESSES." The impact of the proposed rules was compared to existing practice in Puget Sound and

Prince William Sound using 1990 transit data. Due to the different vessels covered and the enlargement of the area in which escorts are required, approximately 1,119 tanker transits per year in Puget Sound will be affected. Because of the similarity to existing requirements, only about 6 tanker transits per year will be affected in Prince William Sound. First year costs are estimated to be $21 million. The escort costs will fall to zero when single hull tankers are phased out by 2015. The number of entities affected are approximately thirty (20 in Washington, 10 in Alaska). The total cost will be distributed over all of them, based on the number of vessel transits made. The more transits, the greater the costs. The approximate annualized average cost is $18,795 per transit.

A copy of the draft Regulatory Evaluation is also placed in a separate docket (CGD 91-207) that has been established to facilitate review of the programmatic Regulatory Impact Analysis for titles IV and V of OPA 90.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard has determined that most of the tankships that would be affected by the proposed regulation in Prince William Sound and Puget Sound are owned either by oil companies or large shipping corporations. Because it expects the impact of the proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

**Collection of Information**

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

This proposal contains collection of information requirements in §§ 168.30 and 168.40.

The reporting and recordkeeping requirements associated with this rule are being submitted to the OMB for approval in accordance with 44 U.S.C. chapter 35. The following particulars apply:

*DOT No.:* 2115; *OMB Control No.:*
*Administration:* U.S. Coast Guard.
*Title:* Information on Escort Vessel Capabilities.
*Need for Information:* This information collection requirement is necessary to implement the proposed requirement that written information on escort vessel capabilities be made available to masters of single hull tankships, operators of escort vessels, and pilots and that this information be provided to the Coast Guard for review. The Prince William Sound and Puget Sound areas are environmentally sensitive areas. Spills in these two areas because of a tanker steering or propulsion failure could have an environmentally damaging impact.
*Proposed Use:* The requirement for this information collection will allow the involvement of the Coast Guard in the review of written information on escort vessel capabilities and will reduce the likelihood of unsuitable vessels being used for escort service. This written information must be made available to the master of each tanker, operator of each escort vessel, and pilot (when employed) during the required pre-escort conference. The Coast Guard expects that each tankship and escort vessel will keep a copy of the written information on board when conducting required escorts. The Coast Guard expects that the written information will most likely be generated by owners or operators of escort vessels in consultation with the customers (i.e. tanker owners or operators), local pilot associations, other concerned parties, and the local U.S. Coast Guard Captain of the Port (COTP). This approach balances the need for a reasonable level of oversight by the Coast Guard with the need to keep from overburdening the public with paperwork requirements.
*Frequency:* Once. If equipment or circumstances described in the written information change, respondent may need to resubmit.
*Burden Estimate:* 100 hours.
*Respondents:* 5.
*Average Burden Hours Per Respondent:* 20 hours.
*Recordkeepers:* 150.

For further information contact: The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20503, (202) 395-7340.

**Federalism**

This proposed rule has been analyzed in accordance with Executive Order No. 12612 on Federalism (October 26, 1987), which requires Executive departments and agencies to be guided by certain fundamental federalism principles in formulating and implementing policies. These policies have been fully considered in the development of the proposed regulation.

The authority of the Coast Guard to issue regulations pertaining to escort vessels for tankers is based upon two Acts. The first is PWSA/PTSA (33 U.S.C. 1221 *et seq.*) and the second is OPA 90 (Pub.L. 101-380). The federalism implications are different under each of these Acts. Under OPA 90, there appears to be minimal impact upon the rights of the States to exercise their police powers to regulate escorts of tankers on waters subject to their control. Section 1018 of OPA 90 clearly indicates that State authority is preserved in regard to imposing liability for the discharge of oil, maintaining separate State funds to pay for costs or damages arising out of oil pollution, or to impose fines or penalties relating to the discharge of oil. Although located in title I of OPA 90, "Oil Pollution Liability and Compensation," section 1018 refers to "this Act" rather than "this title" and, in addition to the clear reference to liability, funding, and penalties, refers to additional "requirements." Similarly, the conference report refers to "additional liability or other requirements;" however, the report also states "The Conference substitute does not disturb the Supreme Court's decision in *Ray* v. *Atlantic Richfield Company*, 435 U.S. 151 (1978)."

In *Ray* v. *Atlantic Richfield Company* (435 U.S. 151, 98 S.C. 988, 55 L.Ed.2d 179 (1978)) the Supreme Court had the opportunity to consider whether the Ports & Waterways Safety Act of 1972 (PWSA) affected the rights of Washington State to have tug escorts in Puget Sound. That Act, now 33 U.S.C. 1223(a)(4)(C) under the PWSA/PTSA, provides that the Coast Guard may establish vessel size, speed, and operating conditions. At that time, there was a Washington State requirement for one tug escort for oil tankers. There was no Federal requirement for escorts for any tankers.

The Court stated:

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The relevant inquiry under Title I [of the PWSA] with respect to the State's power to impose a tug-escort rule is thus whether the Secretary [of the Department of Transportation] has either promulgated his own tug requirement for Puget Sound tanker navigation or has decided that no such requirement should be imposed at all. (435 U.S. at 171, 98 S.Ct. at 1001)

The proposed rule implements the two escort vessel requirements for single hull tankers in the areas mandated by Congress. Because the proposed rules are limited to implementing the requirements of section 4116(c) of OPA 90, only for Prince William Sound, Alaska and Rosario Strait and Puget Sound, Washington, the preemptive effect of this rulemaking is limited to escort requirements for single hull tankers in these areas. The Coast Guard does not intend this rulemaking to preempt escort requirements for double hull tankers or single hull tankers under 5,000 GT. Alaska and Washington may not, of course, have any escort rules that are in direct conflict with Federal law or any final rules adopted as a result of this rulemaking. As noted previously, there does not appear to be any substantial conflict.

If the Coast Guard proceeds with a rulemaking that affects other areas, or requires escorts for vessels other than single hull tankers over 5,000 GT, the preemption issue and the effect of Federal preemption will be fully considered in that rulemaking. Interested parties that are submitting comments recommending further rulemaking are requested to address this issue in their comments.

*Environment*

The Coast Guard has considered the environmental impact of this proposal and concluded that the preparation of an environmental impact statement is not necessary. An Environmental Assessment and a draft Finding of No Significant Impact are available in the docket for inspection or copying where indicated under "ADDRESSES."

The main effect of the proposed regulation will be a reduction in the probability of oil spills in Puget and Prince William Sounds. The only other impact will be an insignificant increase in the number of ships (escort vessels) moving through Puget and Prince William Sounds.

**List of Subjects in 33 CFR Part 168**

Marine safety, Navigation (water), Oil pollution, Reporting and recordkeeping requirements, Water pollution control, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to add 33 CFR Part 168 to read as follows:

## PART 168—SPECIAL REQUIREMENTS FOR TANKER TRAFFIC MANAGEMENT

### Subpart A—General

Sec.

168.1 Purpose and applicability.
168.3 Definitions.
168.10 Escorts required.
168.20 Pre-escort conference.
168.30 Written information on escort vessel capabilities.
168.40 Criteria for acceptability of written information.

### Subpart B—Designated Escort Areas

168.1301 Northwestern Washington State.
168.1701 Prince William Sound, Alaska.

Authority: 46 U.S.C. 3703(a); 33 U.S.C. 1223.

### Subpart A—General

**§ 168.1 Purpose and applicability.**

(a) This part prescribes regulations to implement section 4116(c) of the Oil Pollution Act of 1990 (OPA 90) (Pub.L. 101–380). The regulations will reduce the risk of oil spills from single hull tankers over 5,000 gross tons (GT) transporting oil in bulk by requiring that these tankers be escorted by at least two suitable escort vessels. The escort vessels will be available to influence the tankers' speed and direction of travel in the event of a casualty or failure of the tankers' steering or propulsion, thereby reducing the possibility of groundings or collisions.

(b) Unless otherwise stated, the requirements of this part apply to single hull tankers over 5,000 GT transporting oil in bulk when underway on waters specified in this part.

**§ 168.3 Definitions.**

As used in this part—

*Escort vessel* means any vessel that is accepted by the tanker master to escort a tanker transiting waters where an escort is required under this part.

*Static bollard pull* means the force, in pounds, that a towing vessel is capable of exerting against a stationary object. Astern force is the force applied when the towing vessel is pushing backwards or pulling astern; ahead force is the force applied when the towing vessel is pushing or pulling ahead.

*Transporting oil in bulk* means the carriage of oil in cargo tanks, not in packaged form, by a vessel subject to these rules. This term does not include residue or clingage remaining in the cargo tanks after the cargo oil has been discharged.

**§ 168.10 Escorts required.**

(a) No tanker subject to this part may transit the waters described in subpart B of this part unless escorted by two escort vessels that have been determined by the tanker master to be suitable. Escort vessels are suitable if the escort vessels will be available in close proximity to the tanker at all times during the escort and are capable of providing sufficient maneuvering forces to substantially influence the speed and direction of travel of the tanker.

(b) An escort vessel is not suitable while engaged in the escort of another tanker.

(c) When making the determination of the suitability of escort vessels, the tanker master shall consider all the factors listed in the written information required under § 168.30 and discussed at the pre-escort conference required under § 168.20. The selection of escort vessels and conduct of the escort must be within the limitations defined in the written information on escort vessel capabilities as accepted by the Coast Guard under § 168.40.

(d) The speed or speeds selected for the transit must permit stationing the escort vessels in close proximity to the tanker and allow the escort vessels to effectively influence the tanker's movement in the event of a casualty.

(e) In an emergency, the tanker master may deviate from the rules in this part to the extent necessary to avoid endangering persons, property, or the environment and shall report the deviation to the cognizant Coast Guard Captain of the Port (COTP) as soon as possible.

(f) The tanker master remains responsible for the safe navigation and maneuvering of the vessel in all circumstances. These escort requirements are in addition to, and not a limitation of, any other responsibilities created by custom, law, or regulation.

**§ 168.20 Pre-escort conference.**

(a) Except as provided in paragraph (b) of this section, before commencing an escort, the tanker master shall confer with each pilot and the operators of each of the escort vessels regarding the requirements of this section. The pre-escort conference must not begin until the pilot or pilots are in the wheelhouse of the tanker, if a pilot or pilots are required or employed at the time the escort begins.

(b) If no pilot is required or employed at the time the escort begins, then at any time a pilot is employed subsequently and boards the tanker, the tanker master shall brief the pilot regarding the escort operation in progress.



(c) During the conference, the tanker master shall determine the suitability of the escort vessels for their intended purposes and plan operations consistent with the escort vessels' capabilities.

(d) The conference may be conducted by voice radio communication.

(e) A copy of the written information described in § 168.30 must be available to the tanker master, pilot or pilots to be employed, if any, and operators of the escort vessels at the time of the pre-escort conference.

(f) At the pre-escort conference, the tanker master shall consider all available information that a reasonable, prudent master would use when deciding whether the escort vessels will be able to perform their tasks if called on to do so. At a minimum, the following topics must be addressed during the pre-escort conference:

(1) The destination, route, planned speed, traffic, weather, tide, and sea conditions.

(2) The type and operational status of communications, towing, steering, and propulsion equipment on the tanker and escort vessels.

(3) Information provided by the pilot(s), by the escort vessel operators, and in the written information on escort vessel capabilities.

**§ 168.30 Written information on escort vessel capabilities.**

(a) The written information shall be prepared by the owner/operator and must describe the capabilities of each escort vessel to provide assistance to a tanker in the case of failure of the tanker's steering, or propulsion, or both.

(b) The information must be submitted to the cognizant COTP for review under § 168.40.

(c) The written information must include at a minimum the following:

(1) The name (both legal and trade name, if any), business address, and phone number of the owner or operator of each escort vessel. If the owner or operator is a corporation, the information must include the date of incorporation and names and business addresses of the officers of the corporation.

(2) For each route where escorts are required, a matrix that identifies the escort vessels that will be used—

(i) For tankers—

(A) 5,000 to less than 40,000 GT;

(B) 40,000 to less than 80,000 GT; and

(C) 80,000 GT and larger; and

(ii) In wind conditions—

(A) Beaufort Force 0 to Force 4;

(B) Beaufort Force 5 to Force 8; and

(C) Beaufort Force 9 to 12.

(3) For each escort vessel—

(i) The vessel's name, official number, length, beam, normal and deep drafts, and gross and deadweight tonnages;

(ii) The vessel's shaft horsepower rating, and its static bollard pull, both ahead and astern;

(iii) A description of the vessel's propulsion and steering systems;

(iv) A description of the range of tankers based on gross tonnage, deadweight tonnage, length, draft, and beam for which the escort vessel will be used;

(v) The highest speed of a tanker through the water at which the vessel can safely make up to the tanker to be escorted, both at the bow and stern;

(vi) The worst conditions, expressed in Beaufort Scale, in which the vessel would be expected to safely make up to the tanker and provide effective assistance;

(vii) The maximum sustainable cruising speed of the vessel through the water;

(viii) The towing equipment installed or available on the vessel for assisting the tanker including, as a minimum, bollards, winches, bitts, fendering, and lines; and

(ix) The areas or routes in which the vessel will be used for escort service.

(d) Before being used as a basis for determination of an escort vessel's suitability, the written information must be accepted by the Coast Guard COTP having jurisdiction on the waters to be transited.

**§ 168.40 Criteria for acceptability of written information.**

(a) The COTP reviews the written information submitted to determine whether the stated escort vessel capabilities appear reasonable and that the proposed matrix of escort vessels to be used, based on tanker size and weather conditions, will yield a combination of escort vessels that may reasonably be expected to substantially influence the speed and direction of travel of the tanker in the event of a steering failure or loss of propulsion on the tanker.

(b) If the COTP does not find the written information acceptable, the COTP provides a written explanation for the decision to the person who submitted the information.

(c) If any of the written information is in dispute, the submitter may present evidence to substantiate the claimed capabilities of the escort vessels or to establish that the escort vessels may reasonably be expected to substantially influence the speed and direction of travel of a tanker under the circumstances for which they are proposed to be used.

(d) Persons aggrieved by a decision of the COTP may appeal the decision under § 160.7 of this chapter.

### Subpart B—Designated Escort Areas

**§ 168.1301 Northwestern Washington State.**

(a) Except as provided in paragraph (b) of this section, the escort of tankers subject to this part is required on the navigable waters of the United States and Washington State east of longitude 123°24.5' West and north of latitude 47° North. This area includes all the navigable waters of the United States within Haro Strait, Rosario Strait, the Strait of Georgia, Puget Sound, and Hood Canal, as well as that portion of the Strait of Juan de Fuca east of the line drawn at 123°24.5' West longitude.

(b) Tankers transiting east of 123°24.5' West longitude directly to the anchorage south-southeast of Ediz Hook or leaving that anchorage transiting west do not require escorts.

(c) The Coast Guard Captain of the Port (COTP) having jurisdiction over the waters described in paragraph (a) of this section is COTP, Puget Sound. The COTP may be reached via the Commanding Officer, Marine Safety Office, Puget Sound, or the Vessel Traffic Service Puget Sound (VTSPS).

**§ 168.1701 Prince William Sound, Alaska.**

(a) The escort of tankers subject to this part is required on the navigable waters of the United States within Prince William Sound, Alaska, and the adjoining tributaries, bays, harbors, and ports, including the navigable waters of the United States within a line drawn from Cape Hinchinbrook Light, to Seal Rocks Light, to a point on Montague Island at 60°14.6' North, 146°59' West, and the waters of Montague Strait east of a line between Cape Puget and Cape Cleare.

(b) The Coast Guard Captain of the Port (COTP) having jurisdiction over the waters described in paragraph (a) of this section is COTP, Valdez. The COTP may be reached via the Commanding Officer, Marine Safety Office, Valdez, or the Vessel Traffic Service Prince William Sound (VTSPWS).

Dated: July 1, 1992.

W.J. Ecker,

*Chief, Office of Navigation Safety and Waterway Services.*

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Part VI

# The President

Proclamation 6455—To Implement the Andean Trade Preference Act and To Designate Colombia as a Beneficiary Country and for Other Purposes

Proclamation 6456—To Designate Bolivia as a Beneficiary Country for Purposes of the Andean Trade Preference Act

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# Presidential Documents

Title 3—

## The President

**Proclamation 6455 of July 2, 1992**

## To Implement the Andean Trade Preference Act and To Designate Colombia as a Beneficiary Country and for Other Purposes

**By the President of the United States of America**

**A Proclamation**

1. Sections 202 and 204 of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3201 and 3203) confer authority upon the President to proclaim duty-free treatment for all eligible articles, and duty reductions for certain other articles, that are the product of any country designated as a "beneficiary country" in accordance with the provisions of section 203 of the ATPA (19 U.S.C. 3202).

2. Pursuant to section 203(b)(2) of the ATPA (19 U.S.C. 3202(b)(2)), I have notified the House of Representatives and the Senate of my intention to designate Colombia as a beneficiary country for purposes of the ATPA, together with the considerations entering into such decision.

3. In order to implement the tariff treatment provided under the ATPA, it is necessary to modify the Harmonized Tariff Schedule of the United States (HTS), thus incorporating the substance of relevant provisions of the ATPA, pursuant to section 604 of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2483).

4. In order to implement the tariff treatment provided for in the Caribbean Basin Economic Recovery Act, as amended (CBERA) (19 U.S.C. 2701, *et seq.*), I have determined that it is necessary and appropriate to correct the designation in the HTS of certain articles with respect to their eligibility under the CBERA.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to the ATPA, the CBERA, and section 604 of the Trade Act, do proclaim that:

(1) A modification to general note 3(c)(i)(A) and a new general note 3(c)(ix), as set forth in sections (a)(1) and (2) of the Annex to this proclamation, are inserted in numerical sequence in the general notes to the HTS.

(2) Colombia is hereby designated as a beneficiary country under the ATPA.

(3) In order to afford duty-free entry to eligible products of designated beneficiary countries under the ATPA, the HTS is modified as set forth in sections (a)(3) and (4) of the Annex to this proclamation.

(4) In order to afford duty-free entry to eligible products of designated beneficiary countries under the ATPA and to implement the tariff treatment provided for in the CBERA, the HTS is modified as set forth in sections (a)(5), (6), (7), (8), and (9) of the Annex to this proclamation.

(5) In order to afford staged duty reductions to certain other products of designated beneficiary countries under the ATPA, the HTS is further modified as set forth in section (b) of the Annex to this proclamation.

(6) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(7)(a) The modifications made by paragraphs (1), (2), (3), and (4) of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the Federal Register.

(b) The modifications made by paragraph (5) to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in section (b) of the Annex to this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of July, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

**Editorial note:** For the President's message to Congressional leaders on trade with Colombia, see issue 27 of the *Weekly Compilation of Presidential Documents*.

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Annex

DESIGNATION OF BENEFICIARY COUNTRY AND
IMPLEMENTATION OF DUTY-FREE ENTRY FOR CERTAIN GOODS

Section (a). Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the Federal Register.

(1) General note 3(c)(i)(A) to the Harmonized Tariff Schedule of the United States (HTS) is modified by inserting at the end of such subdivision the following:

"Andean Trade Preference Act ..... J or J*"

(2) The following new subdivision (ix) is added to general note 3(c) to the HTS:

"(ix) Products of Countries Designated as Beneficiary Countries for Purposes of the Andean Trade Preference Act (ATPA).

(A) The following countries or successor political entities are designated beneficiary countries for purposes of the ATPA, pursuant to section 203 of that Act (19 U.S.C. 3202):

Colombia

(B) (1) Unless otherwise excluded from eligibility by the provisions of subdivisions (c)(ix)(D) or (c)(ix)(E) of this note, any article which is the growth, product, or manufacture of a beneficiary country shall be eligible for duty-free treatment if that article is provided for in a provision for which a rate of duty of "Free" appears in the "Special" subcolumn followed by the symbol "J" or "J*" in parentheses, and if--

(I) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(II) the sum of (A) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries (under the ATPA or the CBERA), plus (B) the direct costs of processing operations performed in a beneficiary country or countries (under the ATPA or the CBERA) is not less than 35 percent of the appraised value of such article at the time it is entered. For purposes of determining the percentage referred to in (II)(B) above, the term "beneficiary country" includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which subdivision (c)(ix) applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in (II)(B) above.

(2) Pursuant to subsection 204(a)(2) of the ATPA, the Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out subdivision (c)(ix) of this note including, but not

Section (a)(2) (con.):

limited to, regulations providing that, in order to be eligible for duty-free treatment under the ATPA, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone--

(I) simple combining or packaging operations, or

(II) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) As used in subdivision (c)(ix)(B) of this note, the phrase "direct costs of processing operations" includes, but is not limited to--

(I) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(II) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as (I) profit, and (II) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, interest, and salesmen's salaries, commissions or expenses.

(C) Articles provided for in a provision for which a rate of duty of "Free" appears in the "Special" subcolumn followed by the symbol "J" or "J*" in parentheses are eligible articles for purposes of the ATPA pursuant to section 204 of that Act. Whenever an eligible article is imported into the customs territory of the United States in accordance with the provisions of subdivision (c)(ix)(B) of this note from a country listed in subdivision (c)(ix)(A) of this note, it shall be eligible for duty-free treatment set forth in the "Special" subcolumn, unless excluded from such treatment by subdivision (c)(ix)(D) of this note. Whenever a rate of duty other than "Free" appears in the "Special" subcolumn followed by the symbol "J" in parentheses, articles imported into the customs territory of the United States in accordance with the provisions of subdivision (c)(ix)(B) of this note from a country listed in subdivision (c)(ix)(A) of this note shall be eligible for such rate in lieu of the rates of duty set forth in the "General" subcolumn.

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(D) Articles provided for in a provision for which a rate of duty of "Free" appears in the "Special" subcolumn followed by the symbol "J*" in parentheses shall be eligible for the duty-free treatment provided for in subdivision (e)(ix) of this note, except--

(1) textile and apparel articles which are subject to textile agreements;

(2) footwear not designated at the time of the effective date of the Andean Trade Preference Act as eligible for the purposes of the generalized system of preferences under title V of the Trade Act of 1974;

(3) tuna, prepared or preserved in any manner, in airtight containers;

(4) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

(5) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which the product of any country with respect to which the HTS column 2 rates of duty apply;

(6) articles to which reduced rates of duty apply under subdivision (c)(ix)(E) of this note;

(7) sugars, syrups, and molasses provided for in subheadings 1701.11.03, 1701.12.02, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12 of the HTS; or

(8) rum and tafia provided for in subheading 2208.40.00 of the HTS.

(E) Handbags, luggage, flat goods, work gloves, and leather wearing apparel, the product of any beneficiary country, and not designated on August 5, 1983, as eligible articles for purposes of the GSP, are dutiable at the rates set forth in the "Special" subcolumn followed by the symbol "J" in parentheses."

(3) For the following HTS provisions, in the Rates of Duty I-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "J" in alphabetical order:

| | | | | |
|---|---|---|---|---|
| 0101.20.20 | 0201.30.20 | 0204.10.00 | 0207.21.00 | 0210.11.00 |
| 0101.20.40 | 0201.30.40 | 0204.21.00 | 0207.22.20 | 0210.12.00 |
| 0102.90.40 | 0201.30.60 | 0204.22.20 | 0207.22.40 | 0210.19.00 |
| 0104.20.00 | 0202.10.00 | 0204.22.40 | 0207.23.00 | 0210.20.00 |
| 0105.11.00 | 0202.20.20 | 0204.23.20 | 0207.31.00 | 0210.90.20 |
| 0105.19.00 | 0202.20.40 | 0204.23.40 | 0207.39.00 | 0210.90.40 |
| 0105.91.00 | 0202.20.60 | 0204.30.00 | 0207.41.00 | 0302.22.00 |
| 0105.99.00 | 0202.30.20 | 0204.41.00 | 0207.42.00 | 0302.23.00 |
| 0106.00.10 | 0202.30.40 | 0204.42.20 | 0207.43.00 | 0302.29.00 |
| 0106.00.30 | 0202.30.60 | 0204.42.40 | 0207.50.00 | 0302.61.00 |
| 0201.10.00 | 0203.12.10 | 0204.43.20 | 0208.10.00 | 0302.65.00 |
| 0201.20.20 | 0203.19.20 | 0204.43.40 | 0208.90.30 | 0302.69.10 |
| 0201.20.40 | 0203.22.10 | 0207.10.20 | 0208.90.40 | 0302.69.40 |
| 0201.20.60 | 0203.29.20 | 0207.10.40 | 0209.00.00 | 0302.70.20 |

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Section (a)(3) (con.):

0303.32.00
0303.33.00
0303.39.00
0303.71.00
0303.75.00
0303.77.00
0303.79.40
0303.80.20
0304.10.10
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0304.20.50
0304.90.90
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0305.41.00
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0305.51.00
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0305.63.20
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0305.69.20
0305.69.40
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0305.69.60
0306.14.20
0306.24.20
0307.60.00
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0408.19.00
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0509.00.00
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0805.90.00
0806.10.20

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0806.10.6
0806.20.1
0806.20.2
0806.20.9
0807.10.1
0807.10.2
0807.10.3
0807.10.4
0807.10.5
0807.10.6
0807.10.7
0807.10.8
0807.20.0
0808.20.4
0809.10.0
0809.30.2
0809.40.4
0810.10.2
0810.10.4
0810.20.1
0810.90.4
0811.10.0
0811.20.2
0811.20.4
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0812.10.0
0812.20.0
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0813.10.0
0813.20.1
0813.20.2
0813.30.0
0813.40.1
0813.40.1
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0813.40.3
0813.40.4
0813.40.8
0813.40.9
0813.50.0
0814.00.9
0901.40.0
0904.20.2
0904.20.4
0904.20.6
0904.20.7
0908.20.2
0910.10.4
0910.40.3
0910.40.4

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Section (a)(3) (con.):

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|---|---|---|---|---|
| 0806.10.60 | 0910.91.00 | 1209.24.00 | 1515.50.00 | 1604.14.40 |
| 0806.20.10 | 0910.99.40 | 1209.25.00 | 1515.60.00 | 1604.14.50 |
| 0806.20.20 | 0910.99.60 | 1209.30.00 | 1515.90.40 | 1604.14.70 |
| 0806.20.90 | 1001.10.00 | 1209.91.10 | 1516.10.00 | 1604.14.80 |
| 0807.10.10 | 1001.90.10 | 1209.91.50 | 1516.20.10 | 1604.15.00 |
| 0807.10.20 | 1001.90.20 | 1209.91.80 | 1516.20.90 | 1604.16.10 |
| 0807.10.30 | 1003.00.20 | 1209.99.40 | 1517.10.00 | 1604.16.30 |
| 0807.10.40 | 1003.00.40 | 1210.10.00 | 1517.90.10 | 1604.16.40 |
| 0807.10.50 | 1005.90.20 | 1210.20.00 | 1517.90.20 | 1604.19.10 |
| 0807.10.60 | 1005.90.40 | 1211.90.40 | 1517.90.40 | 1604.19.20 |
| 0807.10.70 | 1006.10.00 | 1211.90.60 | 1518.00.20 | 1604.19.25 |
| 0807.10.80 | 1006.20.20 | 1212.30.00 | 1518.00.40 | 1604.19.30 |
| 0807.20.00 | 1006.20.40 | 1212.91.00 | 1519.11.00 | 1604.19.40 |
| 0808.20.40 | 1006.30.10 | 1212.92.00 | 1519.12.00 | 1604.19.50 |
| 0809.10.00 | 1006.30.90 | 1214.10.00 | 1519.13.00 | 1604.19.80 |
| 0809.30.20 | 1006.40.00 | 1301.90.40 | 1519.19.20 | 1604.20.05 |
| 0809.40.40 | 1007.00.00 | 1302.12.00 | 1519.19.40 | 1604.20.15 |
| 0810.10.20 | 1008.20.00 | 1302.13.00 | 1519.20.00 | 1604.20.25 |
| 0810.10.40 | 1008.30.00 | 1302.19.40 | 1519.30.20 | 1604.20.30 |
| 0810.20.10 | 1008.90.00 | 1302.20.00 | 1519.30.40 | 1604.20.40 |
| 0810.90.40 | 1101.00.00 | 1302.31.00 | 1519.30.60 | 1604.20.50 |
| 0811.10.00 | 1102.10.00 | 1302.39.00 | 1520.10.00 | 1604.20.60 |
| 0811.20.20 | 1102.20.00 | 1401.20.40 | 1520.90.00 | 1604.30.20 |
| 0811.20.40 | 1102.30.00 | 1401.90.20 | 1521.90.20 | 1604.30.30 |
| 0811.90.10 | 1102.90.30 | 1401.90.40 | 1522.00.00 | 1605.10.05 |
| 0811.90.22 | 1102.90.60 | 1402.91.00 | 1601.00.20 | 1605.10.20 |
| 0811.90.25 | 1103.11.00 | 1403.10.00 | 1601.00.40 | 1605.10.40 |
| 0811.90.35 | 1103.12.00 | 1403.90.40 | 1601.00.60 | 1605.20.05 |
| 0811.90.40 | 1103.13.00 | 1501.00.00 | 1602.10.00 | 1605.30.05 |
| 0811.90.50 | 1103.14.00 | 1502.00.00 | 1602.20.20 | 1605.40.05 |
| 0811.90.52 | 1103.19.00 | 1503.00.00 | 1602.20.40 | 1605.90.05 |
| 0811.90.55 | 1104.11.00 | 1504.10.40 | 1602.31.00 | 1605.90.06 |
| 0811.90.80 | 1104.12.00 | 1504.20.40 | 1602.39.00 | 1605.90.10 |
| 0812.10.00 | 1104.19.00 | 1504.20.60 | 1602.41.10 | 1605.90.20 |
| 0812.20.00 | 1104.21.00 | 1504.30.00 | 1602.41.20 | 1605.90.50 |
| 0812.90.10 | 1104.22.00 | 1505.10.00 | 1602.41.90 | 1605.90.55 |
| 0812.90.20 | 1104.23.00 | 1505.90.00 | 1602.42.20 | 1701.11.01 |
| 0812.90.30 | 1104.29.00 | 1506.00.00 | 1602.42.40 | 1701.11.02 |
| 0812.90.40 | 1104.30.00 | 1507.10.00 | 1602.49.10 | 1701.12.01 |
| 0812.90.90 | 1105.10.00 | 1507.90.20 | 1602.49.20 | 1701.91.21 |
| 0813.10.00 | 1105.20.00 | 1507.90.40 | 1602.49.40 | 1701.91.22 |
| 0813.20.10 | 1106.10.00 | 1508.10.00 | 1602.49.60 | 1701.91.40 |
| 0813.20.20 | 1106.30.20 | 1508.90.00 | 1602.49.90 | 1701.99.01 |
| 0813.30.00 | 1106.30.40 | 1509.10.20 | 1602.50.05 | 1702.10.00 |
| 0813.40.10 | 1107.10.00 | 1509.10.40 | 1602.50.09 | 1702.20.20 |
| 0813.40.15 | 1107.20.00 | 1509.90.20 | 1602.50.10 | 1702.30.20 |
| 0813.40.20 | 1108.11.00 | 1509.90.40 | 1602.50.20 | 1702.30.40 |
| 0813.40.30 | 1108.12.00 | 1510.00.40 | 1602.50.60 | 1702.40.00 |
| 0813.40.40 | 1108.13.00 | 1510.00.60 | 1602.50.90 | 1702.50.00 |
| 0813.40.80 | 1108.20.00 | 1512.11.00 | 1602.90.10 | 1702.60.00 |
| 0813.40.90 | 1109.00.10 | 1512.19.00 | 1602.90.90 | 1702.90.31 |
| 0813.50.00 | 1109.00.90 | 1512.21.00 | 1603.00.10 | 1702.90.35 |
| 0814.00.90 | 1202.10.00 | 1512.29.00 | 1604.11.20 | 1702.90.40 |
| 0901.40.00 | 1202.20.00 | 1514.10.90 | 1604.11.40 | 1702.90.50 |
| 0904.20.20 | 1204.00.00 | 1514.90.50 | 1604.12.20 | 1703.10.30 |
| 0904.20.40 | 1205.00.00 | 1514.90.90 | 1604.12.40 | 1703.10.50 |
| 0904.20.60 | 1207.20.00 | 1515.11.00 | 1604.13.10 | 1703.90.30 |
| 0904.20.70 | 1207.91.00 | 1515.19.00 | 1604.13.20 | 1703.90.50 |
| 0908.20.20 | 1208.10.00 | 1515.21.00 | 1604.13.30 | 1704.10.00 |
| 0910.10.40 | 1208.90.00 | 1515.29.00 | 1604.13.40 | 1704.90.10 |
| 0910.40.30 | 1209.21.00 | 1515.30.20 | 1604.13.45 | 1704.90.20 |
| 0910.40.40 | 1209.22.20 | 1515.30.40 | 1604.13.50 | 1704.90.40 |

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Section (a)(3) (con.):

1704.90.60
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2403.91.40
2403.99.00
2504.10.10
2507.00.00
2508.10.00
2508.20.00
2508.30.00

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Section (a)(3) (con.):

| | | | | |
|---|---|---|---|---|
| 2508.40.00 | 2804.69.50 | 2827.39.10 | 2836.60.00 | 2901.29.10 |
| 2508.60.00 | 2805.11.00 | 2827.39.20 | 2836.70.00 | 2901.29.50 |
| 2509.00.20 | 2805.19.00 | 2827.39.30 | 2836.91.00 | 2902.11.00 |
| 2511.10.10 | 2805.21.00 | 2827.39.40 | 2836.92.00 | 2902.19.00 |
| 2511.10.50 | 2805.22.10 | 2827.39.50 | 2836.93.00 | 2902.50.00 |
| 2511.20.00 | 2805.30.00 | 2827.41.00 | 2836.99.10 | 2902.60.00 |
| 2513.19.00 | 2805.40.00 | 2827.49.10 | 2836.99.50 | 2902.90.30 |
| 2513.29.00 | 2806.20.00 | 2827.49.50 | 2837.20.10 | 2902.90.40 |
| 2514.00.00 | 2810.00.00 | 2827.51.10 | 2837.20.50 | 2902.90.80 |
| 2515.11.00 | 2811.19.10 | 2827.51.20 | 2838.00.00 | 2903.11.00 |
| 2515.12.10 | 2811.19.50 | 2827.59.05 | 2839.11.00 | 2903.12.00 |
| 2515.12.20 | 2811.21.00 | 2827.59.30 | 2839.19.00 | 2903.13.00 |
| 2515.20.00 | 2811.22.10 | 2827.59.50 | 2839.20.00 | 2903.14.00 |
| 2516.12.00 | 2811.23.00 | 2827.60.20 | 2839.90.00 | 2903.15.00 |
| 2516.22.00 | 2811.29.50 | 2827.60.50 | 2840.11.00 | 2903.16.00 |
| 2516.90.00 | 2812.10.50 | 2828.10.00 | 2840.19.00 | 2903.19.10 |
| 2517.20.00 | 2812.90.00 | 2828.90.00 | 2840.20.00 | 2903.19.50 |
| 2517.30.00 | 2813.10.00 | 2829.19.00 | 2840.30.00 | 2903.21.00 |
| 2518.20.00 | 2813.90.50 | 2829.90.10 | 2841.10.00 | 2903.22.00 |
| 2518.30.00 | 2815.30.00 | 2829.90.50 | 2841.20.00 | 2903.23.00 |
| 2519.90.10 | 2816.10.00 | 2830.10.00 | 2841.30.00 | 2903.29.00 |
| 2519.90.20 | 2816.20.00 | 2830.20.00 | 2841.40.00 | 2903.30.05 |
| 2520.20.00 | 2816.30.00 | 2830.30.00 | 2841.50.00 | 2903.30.15 |
| 2523.21.00 | 2818.10.20 | 2830.90.00 | 2841.60.00 | 2903.30.20 |
| 2525.20.00 | 2819.10.00 | 2831.10.00 | 2841.70.10 | 2903.40.00 |
| 2526.10.00 | 2819.90.00 | 2831.90.00 | 2841.70.50 | 2903.51.00 |
| 2526.20.00 | 2820.10.00 | 2832.10.00 | 2841.80.00 | 2903.59.05 |
| 2529.21.00 | 2820.90.00 | 2832.20.00 | 2841.90.10 | 2903.59.10 |
| 2529.22.00 | 2821.10.00 | 2832.30.10 | 2841.90.20 | 2903.59.15 |
| 2530.20.20 | 2821.20.00 | 2832.30.50 | 2841.90.30 | 2903.59.20 |
| 2530.40.00 | 2822.00.00 | 2833.11.50 | 2841.90.50 | 2903.59.30 |
| 2603.00.00 | 2823.00.00 | 2833.21.00 | 2842.10.00 | 2903.59.40 |
| 2607.00.00 | 2824.10.00 | 2833.23.00 | 2842.90.00 | 2903.59.50 |
| 2608.00.00 | 2824.20.00 | 2833.24.00 | 2843.10.00 | 2903.61.10 |
| 2611.00.00 | 2824.90.10 | 2833.25.00 | 2843.21.00 | 2903.61.20 |
| 2613.10.00 | 2824.90.50 | 2833.26.00 | 2843.29.00 | 2903.61.30 |
| 2613.90.00 | 2825.10.00 | 2833.27.00 | 2843.30.00 | 2903.62.00 |
| 2614.00.30 | 2825.20.00 | 2833.29.10 | 2843.90.00 | 2903.69.05 |
| 2616.10.00 | 2825.30.00 | 2833.29.30 | 2844.10.10 | 2903.69.10 |
| 2616.90.00 | 2825.50.10 | 2833.29.50 | 2844.10.50 | 2903.69.20 |
| 2619.00.30 | 2825.50.20 | 2833.30.00 | 2844.30.10 | 2903.69.25 |
| 2620.11.00 | 2825.50.30 | 2833.40.10 | 2844.30.50 | 2903.69.30 |
| 2620.19.30 | 2825.60.00 | 2833.40.20 | 2846.10.00 | 2903.69.60 |
| 2620.19.60 | 2825.70.00 | 2833.40.50 | 2846.90.50 | 2904.10.04 |
| 2620.20.00 | 2825.90.10 | 2834.10.10 | 2847.00.00 | 2904.10.08 |
| 2620.30.00 | 2825.90.15 | 2834.10.50 | 2848.10.00 | 2904.10.10 |
| 2620.90.20 | 2825.90.20 | 2834.22.00 | 2849.10.00 | 2904.10.15 |
| 2620.90.90 | 2825.90.30 | 2834.29.20 | 2849.20.20 | 2904.10.32 |
| 2707.60.00 | 2825.90.60 | 2834.29.50 | 2849.90.10 | 2904.10.37 |
| 2707.99.30 | 2826.11.10 | 2835.10.00 | 2849.90.20 | 2904.10.50 |
| 2707.99.40 | 2826.11.50 | 2835.21.00 | 2849.90.30 | 2904.20.10 |
| 2710.00.60 | 2826.19.00 | 2835.22.00 | 2849.90.50 | 2904.20.15 |
| 2713.12.00 | 2826.20.00 | 2835.23.00 | 2850.00.07 | 2904.20.30 |
| 2801.30.10 | 2826.90.00 | 2835.24.00 | 2850.00.10 | 2904.20.35 |
| 2801.30.20 | 2827.10.00 | 2835.29.50 | 2850.00.20 | 2904.20.40 |
| 2804.10.00 | 2827.31.00 | 2835.31.00 | 2850.00.50 | 2904.20.45 |
| 2804.21.00 | 2827.33.00 | 2835.39.10 | 2851.00.00 | 2904.20.50 |
| 2804.29.00 | 2827.34.00 | 2835.39.50 | 2901.10.30 | 2904.90.04 |
| 2804.30.00 | 2827.35.00 | 2836.10.00 | 2901.10.40 | 2904.90.08 |
| 2804.40.00 | 2827.36.00 | 2836.20.00 | 2901.10.50 | 2904.90.15 |
| 2804.61.00 | 2827.37.00 | 2836.40.10 | 2901.24.20 | 2904.90.20 |
| 2804.69.10 | 2827.38.00 | 2836.40.20 | 2901.24.50 | 2904.90.30 |

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|---|---|---|---|---|
| 2904.90.35 | 2908.10.20 | 2912.30.10 | 2915.50.10 | 2917.34.00 |
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| 2904.90.47 | 2908.10.35 | 2912.30.50 | 2915.50.50 | 2917.36.00 |
| 2904.90.50 | 2908.10.50 | 2912.41.00 | 2915.60.10 | 2917.37.00 |
| 2905.11.20 | 2908.20.04 | 2912.42.00 | 2915.60.50 | 2917.39.10 |
| 2905.12.00 | 2908.20.08 | 2912.49.10 | 2915.70.00 | 2917.39.15 |
| 2905.13.00 | 2908.20.15 | 2912.49.20 | 2915.90.10 | 2917.39.17 |
| 2905.14.00 | 2908.20.20 | 2912.49.50 | 2915.90.14 | 2917.39.20 |
| 2905.15.00 | 2908.20.60 | 2912.50.00 | 2915.90.18 | 2917.39.30 |
| 2905.16.00 | 2908.90.04 | 2912.60.00 | 2915.90.20 | 2917.39.50 |
| 2905.17.00 | 2908.90.08 | 2913.00.10 | 2915.90.50 | 2918.11.10 |
| 2905.19.00 | 2908.90.24 | 2913.00.50 | 2916.11.00 | 2918.11.50 |
| 2905.21.00 | 2908.90.28 | 2914.11.10 | 2916.12.10 | 2918.12.00 |
| 2905.22.10 | 2908.90.30 | 2914.12.00 | 2916.12.50 | 2918.13.10 |
| 2905.22.20 | 2908.90.40 | 2914.13.00 | 2916.13.00 | 2918.13.20 |
| 2905.22.50 | 2908.90.50 | 2914.19.00 | 2916.14.00 | 2918.13.30 |
| 2905.29.00 | 2909.11.00 | 2914.21.20 | 2916.15.10 | 2918.13.50 |
| 2905.31.00 | 2909.19.10 | 2914.22.10 | 2916.15.50 | 2918.14.00 |
| 2905.32.00 | 2909.19.50 | 2914.22.20 | 2916.19.10 | 2918.15.10 |
| 2905.39.10 | 2909.20.00 | 2914.23.00 | 2916.19.20 | 2918.15.50 |
| 2905.39.20 | 2909.30.05 | 2914.29.10 | 2916.19.30 | 2918.16.10 |
| 2905.39.50 | 2909.30.07 | 2914.29.50 | 2916.19.50 | 2918.16.50 |
| 2905.41.00 | 2909.30.10 | 2914.30.00 | 2916.20.00 | 2918.17.10 |
| 2905.42.00 | 2909.30.20 | 2914.41.00 | 2916.31.10 | 2918.17.50 |
| 2905.43.00 | 2909.30.30 | 2914.49.20 | 2916.31.20 | 2918.19.10 |
| 2905.44.00 | 2909.30.40 | 2914.49.40 | 2916.31.30 | 2918.19.20 |
| 2905.49.10 | 2909.30.50 | 2914.49.50 | 2916.31.50 | 2918.19.30 |
| 2905.49.20 | 2909.41.00 | 2914.50.20 | 2916.32.10 | 2918.19.60 |
| 2905.49.50 | 2909.42.00 | 2914.50.50 | 2916.32.20 | 2918.19.90 |
| 2905.50.10 | 2909.43.00 | 2914.61.00 | 2916.33.10 | 2918.21.10 |
| 2905.50.50 | 2909.44.00 | 2914.69.10 | 2916.33.20 | 2918.21.50 |
| 2906.11.00 | 2909.49.05 | 2914.69.20 | 2916.33.30 | 2918.22.10 |
| 2906.12.00 | 2909.49.10 | 2914.69.50 | 2916.33.50 | 2918.22.50 |
| 2906.13.10 | 2909.49.15 | 2914.70.10 | 2916.39.04 | 2918.23.10 |
| 2906.13.50 | 2909.49.20 | 2914.70.20 | 2916.39.06 | 2918.23.20 |
| 2906.14.00 | 2909.49.50 | 2914.70.50 | 2916.39.08 | 2918.23.30 |
| 2906.19.00 | 2909.50.10 | 2915.11.00 | 2916.39.12 | 2918.23.50 |
| 2906.21.00 | 2909.50.20 | 2915.12.00 | 2916.39.15 | 2918.29.10 |
| 2906.29.10 | 2909.50.40 | 2915.13.10 | 2916.39.16 | 2918.29.20 |
| 2906.29.20 | 2909.50.45 | 2915.13.50 | 2916.39.20 | 2918.29.22 |
| 2906.29.50 | 2909.50.50 | 2915.21.00 | 2916.39.40 | 2918.29.25 |
| 2907.11.00 | 2909.60.10 | 2915.22.00 | 2916.39.70 | 2918.29.30 |
| 2907.12.00 | 2909.60.20 | 2915.23.00 | 2917.11.00 | 2918.29.40 |
| 2907.13.00 | 2909.60.50 | 2915.24.00 | 2917.12.10 | 2918.29.80 |
| 2907.15.10 | 2910.10.00 | 2915.29.00 | 2917.12.20 | 2918.30.10 |
| 2907.15.30 | 2910.20.00 | 2915.31.00 | 2917.12.50 | 2918.30.20 |
| 2907.15.60 | 2910.30.00 | 2915.32.00 | 2917.13.00 | 2918.30.30 |
| 2907.19.10 | 2910.90.10 | 2915.33.00 | 2917.14.10 | 2918.30.50 |
| 2907.19.20 | 2910.90.20 | 2915.34.00 | 2917.14.50 | 2918.90.05 |
| 2907.19.40 | 2910.90.50 | 2915.35.00 | 2917.19.10 | 2918.90.10 |
| 2907.19.50 | 2911.00.00 | 2915.39.10 | 2917.19.15 | 2918.90.20 |
| 2907.21.00 | 2912.11.00 | 2915.39.20 | 2917.19.17 | 2918.90.30 |
| 2907.22.10 | 2912.12.00 | 2915.39.30 | 2917.19.20 | 2918.90.35 |
| 2907.22.50 | 2912.13.00 | 2915.39.35 | 2917.19.23 | 2918.90.40 |
| 2907.23.00 | 2912.19.10 | 2915.39.40 | 2917.19.27 | 2918.90.45 |
| 2907.29.10 | 2912.19.20 | 2915.39.45 | 2917.19.30 | 2918.90.50 |
| 2907.29.20 | 2912.19.30 | 2915.39.47 | 2917.19.40 | 2919.00.10 |
| 2907.29.30 | 2912.19.40 | 2915.39.50 | 2917.19.50 | 2919.00.30 |
| 2907.29.60 | 2912.19.50 | 2915.40.10 | 2917.20.00 | 2919.00.50 |
| 2907.30.00 | 2912.21.00 | 2915.40.20 | 2917.31.00 | 2920.10.10 |
| 2908.10.10 | 2912.29.10 | 2915.40.30 | 2917.32.00 | 2920.10.20 |
| 2908.10.15 | 2912.29.50 | 2915.40.50 | 2917.33.00 | 2920.10.50 |

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|---|
| 2920.90.10 |
| 2920.90.20 |
| 2920.90.50 |
| 2921.11.00 |
| 2921.12.00 |
| 2921.19.10 |
| 2921.19.50 |
| 2921.21.00 |
| 2921.22.05 |
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| 2921.42.75 |
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| 2921.43.15 |
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| 2921.51.30 |
| 2921.51.50 |
| 2921.59.10 |
| 2921.59.20 |
| 2921.59.30 |
| 2921.59.40 |
| 2921.59.50 |
| 2922.11.00 |
| 2922.12.00 |
| 2922.13.00 |
| 2922.19.10 |
| 2922.19.12 |
| 2922.19.15 |
| 2922.19.20 |
| 2922.19.30 |
| 2922.19.40 |

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Section (a)(3) (con.):

| | | | | |
|---|---|---|---|---|
| 2920.90.10 | 2922.19.50 | 2924.29.19 | 2931.00.22 | 2933.51.30 |
| 2920.90.20 | 2922.21.10 | 2924.29.25 | 2931.00.25 | 2933.51.60 |
| 2920.90.50 | 2922.21.20 | 2924.29.35 | 2931.00.27 | 2933.59.10 |
| 2921.11.00 | 2922.21.50 | 2924.29.39 | 2931.00.30 | 2933.59.15 |
| 2921.12.00 | 2922.22.10 | 2924.29.42 | 2931.00.40 | 2933.59.18 |
| 2921.19.10 | 2922.22.20 | 2924.29.44 | 2931.00.50 | 2933.59.20 |
| 2921.19.50 | 2922.22.50 | 2924.29.46 | 2932.11.00 | 2933.59.23 |
| 2921.21.00 | 2922.29.10 | 2924.29.50 | 2932.13.00 | 2933.59.25 |
| 2921.22.05 | 2922.29.15 | 2925.11.00 | 2932.19.10 | 2933.59.31 |
| 2921.22.10 | 2922.29.20 | 2925.19.10 | 2932.19.50 | 2933.59.32 |
| 2921.22.50 | 2922.29.23 | 2925.19.20 | 2932.21.00 | 2933.59.36 |
| 2921.29.00 | 2922.29.25 | 2925.19.50 | 2932.29.10 | 2933.59.45 |
| 2921.30.10 | 2922.29.27 | 2925.20.10 | 2932.29.20 | 2933.59.55 |
| 2921.30.20 | 2922.29.29 | 2925.20.15 | 2932.29.25 | 2933.59.59 |
| 2921.30.50 | 2922.29.35 | 2925.20.20 | 2932.29.30 | 2933.59.70 |
| 2921.41.10 | 2922.29.50 | 2925.20.40 | 2932.29.45 | 2933.59.80 |
| 2921.41.20 | 2922.30.10 | 2925.20.50 | 2932.29.50 | 2933.59.90 |
| 2921.42.10 | 2922.30.14 | 2926.10.00 | 2932.90.10 | 2933.61.00 |
| 2921.42.15 | 2922.30.18 | 2926.90.04 | 2932.90.20 | 2933.69.00 |
| 2921.42.20 | 2922.30.25 | 2926.90.08 | 2932.90.30 | 2933.71.00 |
| 2921.42.23 | 2922.30.35 | 2926.90.14 | 2932.90.35 | 2933.79.10 |
| 2921.42.24 | 2922.30.50 | 2926.90.17 | 2932.90.37 | 2933.79.15 |
| 2921.42.25 | 2922.41.00 | 2926.90.21 | 2932.90.39 | 2933.79.20 |
| 2921.42.30 | 2922.42.10 | 2926.90.23 | 2932.90.41 | 2933.79.30 |
| 2921.42.75 | 2922.42.50 | 2926.90.25 | 2932.90.45 | 2933.79.50 |
| 2921.43.10 | 2922.49.10 | 2926.90.27 | 2932.90.50 | 2933.90.10 |
| 2921.43.15 | 2922.49.15 | 2926.90.44 | 2933.11.00 | 2933.90.15 |
| 2921.43.18 | 2922.49.25 | 2926.90.48 | 2933.19.10 | 2933.90.18 |
| 2921.43.20 | 2922.49.30 | 2927.00.10 | 2933.19.25 | 2933.90.20 |
| 2921.43.60 | 2922.49.35 | 2927.00.15 | 2933.19.30 | 2933.90.25 |
| 2921.44.10 | 2922.49.40 | 2927.00.20 | 2933.19.35 | 2933.90.26 |
| 2921.44.20 | 2922.49.50 | 2927.00.30 | 2933.19.40 | 2933.90.41 |
| 2921.44.50 | 2922.50.05 | 2927.00.40 | 2933.19.42 | 2933.90.44 |
| 2921.45.10 | 2922.50.10 | 2927.00.50 | 2933.19.45 | 2933.90.46 |
| 2921.45.20 | 2922.50.13 | 2928.00.10 | 2933.19.50 | 2933.90.51 |
| 2921.45.30 | 2922.50.16 | 2928.00.20 | 2933.21.00 | 2933.90.53 |
| 2921.45.50 | 2922.50.17 | 2928.00.30 | 2933.29.10 | 2933.90.55 |
| 2921.49.10 | 2922.50.19 | 2928.00.50 | 2933.29.20 | 2933.90.57 |
| 2921.49.20 | 2922.50.25 | 2929.10.10 | 2933.29.30 | 2933.90.59 |
| 2921.49.30 | 2922.50.30 | 2929.10.15 | 2933.29.40 | 2933.90.61 |
| 2921.49.35 | 2922.50.40 | 2929.10.20 | 2933.29.45 | 2933.90.65 |
| 2921.49.40 | 2922.50.50 | 2929.10.30 | 2933.29.50 | 2933.90.70 |
| 2921.49.45 | 2923.10.00 | 2929.10.40 | 2933.39.15 | 2933.90.75 |
| 2921.49.50 | 2923.20.00 | 2929.10.60 | 2933.39.20 | 2933.90.80 |
| 2921.51.10 | 2923.90.00 | 2929.90.10 | 2933.39.21 | 2933.90.83 |
| 2921.51.20 | 2924.10.10 | 2929.90.20 | 2933.39.23 | 2933.90.85 |
| 2921.51.30 | 2924.10.50 | 2929.90.50 | 2933.39.25 | 2933.90.87 |
| 2921.51.50 | 2924.21.10 | 2930.10.00 | 2933.39.27 | 2933.90.90 |
| 2921.59.10 | 2924.21.15 | 2930.20.10 | 2933.39.30 | 2933.90.95 |
| 2921.59.20 | 2924.21.18 | 2930.20.20 | 2933.39.37 | 2934.10.10 |
| 2921.59.30 | 2924.21.20 | 2930.20.50 | 2933.39.47 | 2934.10.20 |
| 2921.59.40 | 2924.21.45 | 2930.30.00 | 2933.39.50 | 2934.10.50 |
| 2921.59.50 | 2924.21.50 | 2930.40.00 | 2933.40.04 | 2934.20.05 |
| 2922.11.00 | 2924.29.02 | 2930.90.10 | 2933.40.08 | 2934.20.10 |
| 2922.12.00 | 2924.29.04 | 2930.90.24 | 2933.40.10 | 2934.20.15 |
| 2922.13.00 | 2924.29.05 | 2930.90.28 | 2933.40.15 | 2934.20.20 |
| 2922.19.10 | 2924.29.07 | 2930.90.30 | 2933.40.20 | 2934.20.30 |
| 2922.19.12 | 2924.29.09 | 2930.90.40 | 2933.40.27 | 2934.20.35 |
| 2922.19.15 | 2924.29.11 | 2930.90.45 | 2933.40.30 | 2934.20.40 |
| 2922.19.20 | 2924.29.13 | 2930.90.50 | 2933.40.45 | 2934.20.60 |
| 2922.19.30 | 2924.29.14 | 2931.00.10 | 2933.40.70 | 2934.30.04 |
| 2922.19.40 | 2924.29.15 | 2931.00.15 | 2933.51.10 | 2934.30.08 |

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| | | | | |
|---|---|---|---|---|
| 2934.30.15 | 2938.10.00 | 3201.90.10 | 3206.50.00 | 3402.12.10 |
| 2934.30.25 | 2938.90.00 | 3201.90.50 | 3207.10.00 | 3402.12.50 |
| 2934.30.30 | 2939.10.10 | 3202.10.10 | 3207.20.00 | 3402.13.10 |
| 2934.30.40 | 2939.10.20 | 3202.10.50 | 3207.30.00 | 3402.13.20 |
| 2934.30.50 | 2939.10.50 | 3202.90.50 | 3207.40.10 | 3402.13.50 |
| 2934.90.05 | 2939.30.00 | 3203.00.50 | 3207.40.50 | 3402.19.10 |
| 2934.90.06 | 2939.40.10 | 3204.11.10 | 3208.10.00 | 3402.19.50 |
| 2934.90.08 | 2939.40.50 | 3204.11.15 | 3208.20.00 | 3402.20.10 |
| 2934.90.10 | 2939.50.00 | 3204.11.20 | 3208.90.00 | 3402.90.10 |
| 2934.90.12 | 2939.60.00 | 3204.11.50 | 3209.10.00 | 3402.90.30 |
| 2934.90.14 | 2939.70.00 | 3204.12.10 | 3209.90.00 | 3402.90.50 |
| 2934.90.16 | 2939.90.10 | 3204.12.20 | 3210.00.00 | 3403.11.20 |
| 2934.90.18 | 2939.90.50 | 3204.12.30 | 3211.00.00 | 3403.11.40 |
| 2934.90.20 | 2940.00.00 | 3204.12.40 | 3212.10.00 | 3403.11.50 |
| 2934.90.25 | 2941.10.10 | 3204.12.50 | 3212.90.00 | 3403.19.10 |
| 2934.90.40 | 2941.10.20 | 3204.13.10 | 3213.10.00 | 3403.19.50 |
| 2934.90.44 | 2941.10.30 | 3204.13.20 | 3213.90.00 | 3403.91.10 |
| 2934.90.47 | 2941.10.50 | 3204.13.25 | 3214.10.00 | 3403.91.50 |
| 2934.90.50 | 2941.20.00 | 3204.13.30 | 3214.90.50 | 3403.99.00 |
| 2935.00.05 | 2941.30.00 | 3204.13.50 | 3215.11.00 | 3404.20.00 |
| 2935.00.10 | 2941.40.00 | 3204.14.10 | 3215.19.00 | 3404.90.10 |
| 2935.00.15 | 2941.50.00 | 3204.14.20 | 3215.90.10 | 3405.10.00 |
| 2935.00.20 | 2941.90.10 | 3204.14.25 | 3215.90.50 | 3405.20.00 |
| 2935.00.30 | 2941.90.30 | 3204.14.30 | 3301.12.00 | 3405.30.00 |
| 2935.00.31 | 2941.90.50 | 3204.14.50 | 3301.13.00 | 3405.40.00 |
| 2935.00.33 | 2942.00.05 | 3204.15.10 | 3301.19.10 | 3405.90.00 |
| 2935.00.35 | 2942.00.10 | 3204.15.20 | 3301.24.00 | 3406.00.00 |
| 2935.00.37 | 2942.00.20 | 3204.15.30 | 3301.29.10 | 3407.00.20 |
| 2935.00.39 | 2942.00.50 | 3204.15.35 | 3301.29.20 | 3407.00.40 |
| 2935.00.43 | 3001.10.00 | 3204.15.40 | 3301.30.10 | 3501.10.10 |
| 2935.00.44 | 3001.20.00 | 3204.15.50 | 3302.10.10 | 3501.90.20 |
| 2935.00.53 | 3002.90.10 | 3204.16.10 | 3302.10.20 | 3501.90.50 |
| 2935.00.57 | 3003.10.00 | 3204.16.20 | 3302.10.30 | 3502.10.10 |
| 2935.00.70 | 3003.20.00 | 3204.16.30 | 3302.90.10 | 3502.10.50 |
| 2935.00.90 | 3003.31.00 | 3204.16.50 | 3302.90.20 | 3503.00.10 |
| 2936.10.00 | 3003.39.10 | 3204.17.10 | 3303.00.20 | 3503.00.20 |
| 2936.21.00 | 3003.39.50 | 3204.17.20 | 3303.00.30 | 3503.00.40 |
| 2936.22.00 | 3003.40.00 | 3204.17.30 | 3304.10.00 | 3503.00.55 |
| 2936.23.00 | 3003.90.00 | 3204.17.50 | 3304.20.00 | 3504.00.10 |
| 2936.24.00 | 3004.10.10 | 3204.19.11 | 3304.30.00 | 3504.00.50 |
| 2936.25.00 | 3004.10.50 | 3204.19.15 | 3304.91.00 | 3505.10.00 |
| 2936.26.00 | 3004.20.00 | 3204.19.19 | 3304.99.00 | 3505.20.00 |
| 2936.27.00 | 3004.31.00 | 3204.19.30 | 3305.10.00 | 3506.10.10 |
| 2936.28.00 | 3004.32.00 | 3204.19.35 | 3305.20.00 | 3506.10.50 |
| 2936.29.10 | 3004.39.00 | 3204.19.40 | 3305.30.00 | 3506.91.00 |
| 2936.29.15 | 3004.40.00 | 3204.19.50 | 3305.90.00 | 3506.99.00 |
| 2936.29.20 | 3004.50.10 | 3204.20.10 | 3306.10.00 | 3507.90.00 |
| 2936.29.50 | 3004.50.20 | 3204.20.50 | 3306.90.00 | 3601.00.00 |
| 2936.90.00 | 3004.50.30 | 3204.90.00 | 3307.10.10 | 3603.00.30 |
| 2937.10.00 | 3004.50.40 | 3205.00.20 | 3307.10.20 | 3603.00.60 |
| 2937.21.00 | 3004.50.50 | 3205.00.40 | 3307.20.00 | 3603.00.90 |
| 2937.22.00 | 3004.90.30 | 3205.00.50 | 3307.30.10 | 3604.10.00 |
| 2937.29.00 | 3004.90.60 | 3206.10.00 | 3307.30.50 | 3604.90.00 |
| 2937.91.00 | 3005.10.10 | 3206.20.00 | 3307.41.00 | 3606.90.30 |
| 2937.92.10 | 3005.10.50 | 3206.30.00 | 3307.49.00 | 3606.90.60 |
| 2937.92.20 | 3005.90.10 | 3206.41.00 | 3307.90.00 | 3701.10.00 |
| 2937.92.40 | 3005.90.50 | 3206.42.00 | 3401.11.10 | 3701.20.00 |
| 2937.92.80 | 3006.10.00 | 3206.43.00 | 3401.11.50 | 3701.30.00 |
| 2937.99.20 | 3006.30.50 | 3206.49.10 | 3401.19.00 | 3701.91.00 |
| 2937.99.40 | 3006.40.00 | 3206.49.20 | 3401.20.00 | 3701.99.30 |
| 2937.99.60 | 3006.50.00 | 3206.49.30 | 3402.11.10 | 3701.99.60 |
| 2937.99.80 | 3006.60.00 | 3206.49.50 | 3402.11.50 | 3702.10.00 |

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| | | | | |
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| 3702.20.00 | 3809.99.50 | 3903.19.00 | 3917.22.00 | 3922.90.00 |
| 3702.31.00 | 3810.10.00 | 3903.20.00 | 3917.23.00 | 3923.10.00 |
| 3702.32.00 | 3810.90.10 | 3903.30.00 | 3917.29.00 | 3923.21.00 |
| 3702.39.00 | 3810.90.50 | 3903.90.10 | 3917.31.00 | 3923.29.00 |
| 3702.41.00 | 3811.11.10 | 3903.90.50 | 3917.32.00 | 3923.30.00 |
| 3702.42.00 | 3811.11.50 | 3904.10.00 | 3917.33.00 | 3923.40.00 |
| 3702.43.00 | 3811.19.00 | 3904.21.00 | 3917.39.00 | 3923.50.00 |
| 3702.44.00 | 3811.21.00 | 3904.22.00 | 3917.40.00 | 3923.90.00 |
| 3702.51.00 | 3811.29.00 | 3904.30.00 | 3918.10.10 | 3924.10.10 |
| 3702.52.00 | 3811.90.00 | 3904.40.00 | 3918.10.20 | 3924.10.20 |
| 3702.53.00 | 3812.10.10 | 3904.50.00 | 3918.10.31 | 3924.10.30 |
| 3702.54.00 | 3812.10.50 | 3904.61.00 | 3918.10.40 | 3924.10.50 |
| 3702.91.00 | 3812.20.10 | 3904.69.50 | 3918.10.50 | 3924.90.10 |
| 3702.92.00 | 3812.20.50 | 3904.90.50 | 3918.90.10 | 3924.90.20 |
| 3702.93.00 | 3812.30.20 | 3905.11.00 | 3918.90.30 | 3924.90.50 |
| 3702.95.00 | 3812.30.40 | 3905.19.00 | 3918.90.50 | 3925.10.00 |
| 3703.10.30 | 3812.30.50 | 3905.20.00 | 3919.10.10 | 3925.20.00 |
| 3703.10.60 | 3813.00.50 | 3905.90.10 | 3919.10.20 | 3925.30.10 |
| 3703.20.30 | 3814.00.10 | 3905.90.50 | 3919.90.10 | 3925.30.50 |
| 3703.20.60 | 3814.00.20 | 3906.10.00 | 3919.90.50 | 3925.90.00 |
| 3703.90.30 | 3814.00.50 | 3906.90.20 | 3920.10.00 | 3926.10.00 |
| 3703.90.60 | 3815.90.10 | 3906.90.50 | 3920.20.00 | 3926.20.10 |
| 3706.10.30 | 3815.90.20 | 3907.10.00 | 3920.30.00 | 3926.20.20 |
| 3707.10.00 | 3815.90.50 | 3907.20.00 | 3920.41.00 | 3926.20.30 |
| 3707.90.30 | 3816.00.00 | 3907.30.00 | 3920.42.10 | 3926.20.40 |
| 3707.90.60 | 3817.10.10 | 3907.40.00 | 3920.42.50 | 3926.20.50 |
| 3801.10.10 | 3817.10.50 | 3907.50.00 | 3920.51.10 | 3926.30.10 |
| 3801.30.00 | 3817.20.00 | 3907.60.00 | 3920.51.50 | 3926.30.50 |
| 3801.90.00 | 3819.00.00 | 3907.91.10 | 3920.59.10 | 3926.40.00 |
| 3802.10.00 | 3820.00.00 | 3907.91.50 | 3920.59.50 | 3926.90.10 |
| 3802.90.10 | 3821.00.00 | 3907.99.00 | 3920.61.00 | 3926.90.15 |
| 3802.90.20 | 3822.00.50 | 3908.10.00 | 3920.62.00 | 3926.90.20 |
| 3802.90.50 | 3823.10.00 | 3908.90.00 | 3920.63.10 | 3926.90.25 |
| 3804.00.50 | 3823.20.00 | 3909.10.00 | 3920.63.20 | 3926.90.30 |
| 3805.10.00 | 3823.30.00 | 3909.20.00 | 3920.69.00 | 3926.90.33 |
| 3805.90.00 | 3823.40.10 | 3909.30.00 | 3920.71.00 | 3926.90.35 |
| 3806.10.00 | 3823.40.50 | 3909.40.00 | 3920.72.00 | 3926.90.40 |
| 3806.20.00 | 3823.60.00 | 3909.50.20 | 3920.73.00 | 3926.90.45 |
| 3806.30.00 | 3823.90.19 | 3909.50.50 | 3920.79.10 | 3926.90.50 |
| 3806.90.00 | 3823.90.22 | 3910.00.00 | 3920.79.50 | 3926.90.55 |
| 3807.00.00 | 3823.90.25 | 3911.10.00 | 3920.91.00 | 3926.90.56 |
| 3808.10.10 | 3823.90.27 | 3911.90.20 | 3920.92.00 | 3926.90.57 |
| 3808.10.20 | 3823.90.31 | 3911.90.30 | 3920.93.00 | 3926.90.59 |
| 3808.10.30 | 3823.90.32 | 3911.90.50 | 3920.94.00 | 3926.90.60 |
| 3808.10.50 | 3823.90.33 | 3912.11.00 | 3920.99.10 | 3926.90.65 |
| 3808.20.10 | 3823.90.34 | 3912.12.00 | 3920.99.20 | 3926.90.70 |
| 3808.20.20 | 3823.90.35 | 3912.20.00 | 3920.99.50 | 3926.90.75 |
| 3808.20.30 | 3823.90.36 | 3912.31.00 | 3921.11.00 | 3926.90.77 |
| 3808.20.50 | 3823.90.40 | 3912.39.00 | 3921.12.11 | 3926.90.83 |
| 3808.30.10 | 3823.90.45 | 3912.90.00 | 3921.12.15 | 3926.90.85 |
| 3808.30.20 | 3823.90.46 | 3913.10.00 | 3921.12.19 | 3926.90.87 |
| 3808.30.50 | 3823.90.47 | 3913.90.20 | 3921.12.50 | 3926.90.90 |
| 3808.40.10 | 3823.90.50 | 3913.90.50 | 3921.13.11 | 4006.10.00 |
| 3808.40.50 | 3901.10.00 | 3914.00.00 | 3921.13.15 | 4006.90.10 |
| 3808.90.10 | 3901.20.00 | 3916.10.00 | 3921.13.50 | 4006.90.50 |
| 3808.90.20 | 3901.30.00 | 3916.20.00 | 3921.14.00 | 4007.00.00 |
| 3808.90.50 | 3901.90.50 | 3916.90.10 | 3921.19.00 | 4008.11.10 |
| 3809.10.00 | 3902.10.00 | 3916.90.20 | 3921.90.11 | 4008.11.50 |
| 3809.91.00 | 3902.20.50 | 3916.90.50 | 3921.90.40 | 4008.19.10 |
| 3809.92.10 | 3902.30.00 | 3917.10.10 | 3921.90.50 | 4008.19.50 |
| 3809.92.50 | 3902.90.00 | 3917.10.50 | 3922.10.00 | 4008.21.00 |
| 3809.99.10 | 3903.11.00 | 3917.21.00 | 3922.20.00 | 4008.29.00 |

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4009.10.00
4009.20.00
4009.30.00
4009.40.00
4009.50.00
4010.10.10
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4817.20.40
4817.30.00
4818.10.00

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| | | | | |
|---|---|---|---|---|
| 4818.20.00 | 5101.11.50 | 5701.10.13 | 6307.90.60 | 6802.92.00 |
| 4818.30.00 | 5101.11.60 | 5702.10.10 | 6307.90.85 | 6802.93.00 |
| 4818.40.40 | 5101.19.20 | 5702.20.10 | 6307.90.94 | 6802.99.00 |
| 4818.50.00 | 5101.19.40 | 5702.39.10 | 6402.20.00 | 6803.00.10 |
| 4818.90.00 | 5101.19.50 | 5702.49.15 | 6405.90.20 | 6803.00.50 |
| 4819.10.00 | 5101.19.60 | 5702.91.20 | 6406.10.60 | 6804.21.00 |
| 4819.20.00 | 5101.21.15 | 5702.99.20 | 6406.10.65 | 6804.22.10 |
| 4819.30.00 | 5101.21.30 | 5703.90.00 | 6406.10.72 | 6804.22.40 |
| 4819.40.00 | 5101.21.35 | 5805.00.20 | 6406.10.85 | 6804.22.60 |
| 4819.50.20 | 5101.21.40 | 5903.10.10 | 6406.20.00 | 6805.10.00 |
| 4819.50.30 | 5101.29.15 | 5903.10.15 | 6406.91.00 | 6805.20.00 |
| 4819.50.40 | 5101.29.30 | 5903.10.20 | 6406.99.30 | 6805.30.10 |
| 4819.60.00 | 5101.29.35 | 5903.20.15 | 6406.99.60 | 6806.10.00 |
| 4820.10.20 | 5101.29.40 | 5903.20.20 | 6406.99.90 | 6806.20.00 |
| 4820.30.00 | 5101.30.10 | 5903.90.10 | 6501.00.30 | 6806.90.00 |
| 4820.40.00 | 5101.30.15 | 5903.90.15 | 6501.00.60 | 6807.10.00 |
| 4820.50.00 | 5101.30.30 | 5903.90.20 | 6502.00.20 | 6807.90.00 |
| 4820.90.00 | 5101.30.40 | 5904.10.00 | 6502.00.40 | 6809.11.00 |
| 4821.10.20 | 5102.10.20 | 5904.91.00 | 6502.00.60 | 6809.19.00 |
| 4821.10.40 | 5102.10.40 | 5904.92.00 | 6503.00.30 | 6809.90.00 |
| 4821.90.20 | 5102.10.60 | 5906.10.00 | 6503.00.60 | 6810.11.00 |
| 4821.90.40 | 5103.10.00 | 5906.91.20 | 6504.00.30 | 6810.19.12 |
| 4822.10.00 | 5103.20.00 | 5906.99.20 | 6504.00.60 | 6810.19.14 |
| 4822.90.00 | 5103.30.00 | 5910.00.10 | 6505.10.00 | 6810.19.50 |
| 4823.11.00 | 5104.00.00 | 5911.40.00 | 6506.10.30 | 6810.20.00 |
| 4823.19.00 | 5105.40.00 | 6116.10.08 | 6506.10.60 | 6810.91.00 |
| 4823.20.10 | 5110.00.00 | 6116.10.13 | 6506.91.00 | 6810.99.00 |
| 4823.20.90 | 5113.00.00 | 6116.92.08 | 6506.92.00 | 6811.30.00 |
| 4823.30.00 | 52Q1.00.20 | 6116.93.08 | 6506.99.00 | 6812.50.10 |
| 4823.40.00 | 5201.00.50 | 6116.99.35 | 6507.00.00 | 6812.50.50 |
| 4823.51.00 | 5202.91.00 | 6117.10.40 | 6601.10.00 | 6814.10.00 |
| 4823.59.20 | 5203.00.00 | 6204.39.60 | 6601.91.00 | 6814.90.00 |
| 4823.59.40 | 5208.31.20 | 6204.42.10 | 6601.99.00 | 6815.10.00 |
| 4823.60.00 | 5208.32.10 | 6204.43.10 | 6602.00.00 | 6815.91.00 |
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| 4823.90.40 | 5208.42.10 | 6204.49.10 | 6603.20.30 | 6901.00.00 |
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| 4823.90.65 | 5209.31.30 | 6204.59.10 | 6701.00.00 | 6902.90.50 |
| 4823.90.70 | 5209.41.30 | 6204.62.30 | 6702.10.20 | 6903.10.00 |
| 4823.90.80 | 5209.51.30 | 6204.63.20 | 6702.10.40 | 6903.20.00 |
| 4823.90.85 | 5301.21.00 | 6205.10.10 | 6702.90.10 | 6903.90.00 |
| 4902.90.10 | 5301.29.00 | 6205.20.10 | 6702.90.35 | 6904.90.00 |
| 4905.10.00 | 5307.10.00 | 6205.30.10 | 6702.90.65 | 6905.10.00 |
| 4908.10.00 | 5307.20.00 | 6206.20.10 | 6703.00.30 | 6905.90.00 |
| 4908.90.00 | 5308.30.00 | 6206.30.10 | 6703.00.60 | 6906.00.00 |
| 4909.00.20 | 5309.11.00 | 6206.40.10 | 6704.11.00 | 6907.10.00 |
| 4909.00.40 | 5309.19.00 | 6210.10.20 | 6704.19.00 | 6907.90.00 |
| 4910.00.40 | 5310.90.00 | 6213.10.10 | 6704.20.00 | 6908.10.10 |
| 4910.00.60 | 5311.00.60 | 6214.10.10 | 6704.90.00 | 6908.10.20 |
| 4911.91.20 | 5404.10.10 | 6216.00.08 | 6801.00.00 | 6908.10.50 |
| 4911.91.40 | 5404.10.40 | 6216.00.13 | 6802.10.00 | 6908.90.00 |
| 4911.99.60 | 5404.90.00 | 6216.00.35 | 6802.21.10 | 6909.11.20 |
| 4911.99.80 | 5405.00.60 | 6216.00.46 | 6802.21.50 | 6909.11.40 |
| 5003.90.00 | 5607.10.00 | 6302.99.10 | 6802.22.00 | 6909.19.10 |
| 5004.00.00 | 5607.29.00 | 6304.99.10 | 6802.23.00 | 6909.19.50 |
| 5006.00.10 | 5607.30.20 | 6304.99.25 | 6802.29.00 | 6909.90.00 |
| 5007.10.30 | 5607.41.10 | 6304.99.40 | 6802.91.05 | 6910.10.00 |
| 5007.20.00 | 5607.49.10 | 6306.22.10 | 6802.91.15 | 6910.90.00 |
| 5007.90.30 | 5608.90.23 | 6306.31.00 | 6802.91.20 | 6911.10.10 |
| 5101.11.20 | 5608.90.30 | 6306.39.00 | 6802.91.25 | 6911.10.20 |
| 5101.11.40 | 5609.00.20 | 6306.49.00 | 6802.91.30 | 6911.10.35 |

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| | | | | |
|---|---|---|---|---|
| 6911.10.39 | 7007.21.10 | 7015.10.00 | 7114.11.45 | 7208.22.10 |
| 6911.10.41 | 7007.21.50 | 7015.90.10 | 7114.11.50 | 7208.22.50 |
| 6911.10.45 | 7007.29.00 | 7015.90.20 | 7114.11.60 | 7208.23.10 |
| 6911.10.49 | 7008.00.00 | 7015.90.50 | 7114.11.70 | 7208.23.50 |
| 6911.10.60 | 7009.10.00 | 7016.10.00 | 7114.19.00 | 7208.24.10 |
| 6911.10.80 | 7009.91.10 | 7016.90.10 | 7114.20.00 | 7208.24.50 |
| 6911.90.00 | 7009.91.50 | 7016.90.50 | 7115.10.00 | 7208.31.00 |
| 6912.00.10 | 7009.92.10 | 7017.10.00 | 7115.90.10 | 7208.32.00 |
| 6912.00.20 | 7009.92.50 | 7017.20.00 | 7115.90.20 | 7208.33.10 |
| 6912.00.35 | 7010.10.00 | 7017.90.00 | 7115.90.50 | 7208.33.50 |
| 6912.00.39 | 7010.90.20 | 7018.10.10 | 7116.10.10 | 7208.34.10 |
| 6912.00.41 | 7010.90.30 | 7018.10.20 | 7116.10.15 | 7208.34.50 |
| 6912.00.44 | 7011.10.10 | 7018.10.50 | 7116.10.20 | 7208.35.10 |
| 6912.00.45 | 7011.10.50 | 7018.20.00 | 7116.20.10 | 7208.35.50 |
| 6912.00.46 | 7011.20.00 | 7018.90.10 | 7116.20.20 | 7208.41.00 |
| 6912.00.48 | 7011.90.00 | 7018.90.50 | 7116.20.50 | 7208.42.00 |
| 6912.00.50 | 7012.00.00 | 7019.10.30 | 7117.11.00 | 7208.43.00 |
| 6913.10.10 | 7013.10.10 | 7019.10.40 | 7117.19.10 | 7208.44.00 |
| 6913.10.20 | 7013.10.50 | 7019.31.00 | 7117.19.20 | 7208.45.00 |
| 6913.10.50 | 7013.21.10 | 7019.32.00 | 7117.19.30 | 7208.90.00 |
| 6913.90.10 | 7013.21.20 | 7019.39.10 | 7117.19.50 | 7209.11.00 |
| 6913.90.20 | 7013.21.30 | 7019.39.50 | 7117.90.20 | 7209.12.00 |
| 6913.90.30 | 7013.21.50 | 7019.90.50 | 7117.90.30 | 7209.13.00 |
| 6913.90.50 | 7013.29.05 | 7020.00.00 | 7117.90.40 | 7209.14.00 |
| 6914.10.00 | 7013.29.10 | 7101.21.00 | 7117.90.50 | 7209.21.00 |
| 6914.90.00 | 7013.29.20 | 7101.22.00 | 7201.40.00 | 7209.22.00 |
| 7001.00.10 | 7013.29.30 | 7102.21.30 | 7202.11.10 | 7209.23.00 |
| 7001.00.20 | 7013.29.40 | 7103.10.40 | 7202.11.50 | 7209.24.10 |
| 7002.10.10 | 7013.29.50 | 7103.99.10 | 7202.19.10 | 7209.24.50 |
| 7002.10.20 | 7013.29.60 | 7103.99.50 | 7202.19.50 | 7209.31.00 |
| 7002.20.10 | 7013.31.10 | 7104.10.00 | 7202.21.10 | 7209.32.00 |
| 7002.20.50 | 7013.31.20 | 7104.20.00 | 7202.21.50 | 7209.33.00 |
| 7002.31.00 | 7013.31.30 | 7104.90.10 | 7202.21.75 | 7209.34.00 |
| 7002.32.00 | 7013.31.50 | 7104.90.50 | 7202.21.90 | 7209.41.00 |
| 7002.39.00 | 7013.32.10 | 7105.90.00 | 7202.30.00 | 7209.42.00 |
| 7003.11.00 | 7013.32.20 | 7106.91.50 | 7202.41.00 | 7209.43.00 |
| 7003.19.00 | 7013.32.30 | 7106.92.00 | 7202.49.10 | 7209.44.00 |
| 7003.20.00 | 7013.32.40 | 7107.00.00 | 7202.49.50 | 7209.90.00 |
| 7003.30.00 | 7013.39.10 | 7108.12.50 | 7202.50.00 | 7210.11.00 |
| 7004.10.10 | 7013.39.20 | 7108.13.10 | 7202.70.00 | 7210.12.00 |
| 7004.10.20 | 7013.39.30 | 7108.13.50 | 7202.80.00 | 7210.20.00 |
| 7004.10.50 | 7013.39.40 | 7109.00.00 | 7202.91.00 | 7210.31.00 |
| 7004.90.05 | 7013.39.50 | 7111.00.00 | 7202.92.00 | 7210.39.00 |
| 7004.90.10 | 7013.39.60 | 7113.11.10 | 7202.93.00 | 7210.41.00 |
| 7004.90.15 | 7013.91.10 | 7113.11.20 | 7202.99.10 | 7210.49.00 |
| 7004.90.20 | 7013.91.20 | 7113.11.50 | 7202.99.50 | 7210.50.00 |
| 7004.90.25 | 7013.91.30 | 7113.19.10 | 7205.10.00 | 7210.60.00 |
| 7004.90.30 | 7013.91.50 | 7113.19.21 | 7205.21.00 | 7210.70.30 |
| 7004.90.40 | 7013.99.10 | 7113.19.25 | 7206.10.00 | 7210.70.60 |
| 7004.90.50 | 7013.99.20 | 7113.19.29 | 7206.90.00 | 7210.90.10 |
| 7005.10.00 | 7013.99.30 | 7113.19.30 | 7207.11.00 | 7210.90.60 |
| 7005.21.10 | 7013.99.35 | 7113.19.50 | 7207.12.00 | 7210.90.90 |
| 7005.21.20 | 7013.99.40 | 7113.20.10 | 7207.19.00 | 7211.11.00 |
| 7005.29.05 | 7013.99.50 | 7113.20.21 | 7207.20.00 | 7211.12.00 |
| 7005.29.15 | 7013.99.60 | 7113.20.25 | 7208.11.00 | 7211.19.10 |
| 7005.29.25 | 7013.99.70 | 7113.20.29 | 7208.12.00 | 7211.19.50 |
| 7005.30.00 | 7013.99.80 | 7113.20.30 | 7208.13.10 | 7211.21.00 |
| 7006.00.10 | 7013.99.90 | 7113.20.50 | 7208.13.50 | 7211.22.00 |
| 7006.00.20 | 7014.00.10 | 7114.11.10 | 7208.14.10 | 7211.29.10 |
| 7006.00.40 | 7014.00.20 | 7114.11.20 | 7208.14.50 | 7211.29.30 |
| 7007.11.00 | 7014.00.30 | 7114.11.30 | 7208.21.10 | 7211.29.50 |
| 7007.19.00 | 7014.00.50 | 7114.11.40 | 7208.21.50 | 7211.29.70 |

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| 7211.30.10 | 7217.12.70 | 7225.20.00 | 7303.00.00 | 7306.60.70 |
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| 7211.30.50 | 7217.13.30 | 7225.30.30 | 7304.10.50 | 7306.90.50 |
| 7211.41.10 | 7217.13.50 | 7225.30.50 | 7304.20.10 | 7307.11.00 |
| 7211.41.30 | 7217.13.70 | 7225.30.70 | 7304.20.20 | 7307.19.30 |
| 7211.41.50 | 7217.19.10 | 7225.40.10 | 7304.20.30 | 7307.19.90 |
| 7211.41.70 | 7217.19.50 | 7225.40.30 | 7304.20.40 | 7307.21.10 |
| 7211.49.10 | 7217.21.10 | 7225.40.50 | 7304.20.50 | 7307.21.50 |
| 7211.49.30 | 7217.21.30 | 7225.40.70 | 7304.20.60 | 7307.22.10 |
| 7211.49.50 | 7217.21.50 | 7225.50.10 | 7304.20.70 | 7307.22.50 |
| 7211.90.00 | 7217.22.10 | 7225.50.60 | 7304.20.80 | 7307.23.00 |
| 7212.10.00 | 7217.22.50 | 7225.50.70 | 7304.31.30 | 7307.29.00 |
| 7212.21.00 | 7217.23.10 | 7225.50.80 | 7304.31.60 | 7307.91.10 |
| 7212.29.00 | 7217.23.50 | 7225.90.00 | 7304.39.00 | 7307.91.30 |
| 7212.30.10 | 7217.29.10 | 7226.10.10 | 7304.41.00 | 7307.91.50 |
| 7212.30.30 | 7217.29.50 | 7226.10.50 | 7304.49.00 | 7307.92.30 |
| 7212.30.50 | 7217.31.10 | 7226.20.00 | 7304.51.10 | 7307.92.90 |
| 7212.40.10 | 7217.31.30 | 7226.91.15 | 7304.51.50 | 7307.93.30 |
| 7212.40.50 | 7217.31.50 | 7226.91.25 | 7304.59.10 | 7307.93.60 |
| 7212.50.00 | 7217.32.10 | 7226.91.50 | 7304.59.20 | 7307.93.90 |
| 7212.60.00 | 7217.32.50 | 7226.91.70 | 7304.59.60 | 7307.99.10 |
| 7213.10.00 | 7217.33.10 | 7226.91.80 | 7304.59.80 | 7307.99.30 |
| 7213.20.00 | 7217.33.50 | 7226.92.10 | 7304.90.10 | 7307.99.50 |
| 7213.31.30 | 7217.39.10 | 7226.92.30 | 7304.90.30 | 7308.10.00 |
| 7213.31.60 | 7217.39.50 | 7226.92.50 | 7304.90.50 | 7308.20.00 |
| 7213.39.00 | 7218.10.00 | 7226.92.70 | 7304.90.70 | 7308.30.10 |
| 7213.41.30 | 7218.90.00 | 7226.92.80 | 7305.11.10 | 7308.30.50 |
| 7213.41.60 | 7219.11.00 | 7226.99.00 | 7305.11.50 | 7308.40.00 |
| 7213.49.00 | 7219.12.00 | 7227.10.00 | 7305.12.10 | 7308.90.30 |
| 7213.50.00 | 7219.13.00 | 7227.20.00 | 7305.12.50 | 7308.90.60 |
| 7214.10.00 | 7219.14.00 | 7227.90.10 | 7305.19.10 | 7308.90.90 |
| 7214.20.00 | 7219.21.00 | 7227.90.20 | 7305.19.50 | 7309.00.00 |
| 7214.30.00 | 7219.22.00 | 7227.90.60 | 7305.20.20 | 7311.00.00 |
| 7214.40.00 | 7219.23.00 | 7228.10.00 | 7305.20.40 | 7312.10.05 |
| 7214.50.00 | 7219.24.00 | 7228.20.10 | 7305.20.60 | 7312.10.10 |
| 7214.60.00 | 7219.31.00 | 7228.20.50 | 7305.20.80 | 7312.10.20 |
| 7215.10.00 | 7219.32.00 | 7228.30.20 | 7305.31.20 | 7312.10.30 |
| 7215.20.00 | 7219.33.00 | 7228.30.60 | 7305.31.40 | 7312.10.50 |
| 7215.30.00 | 7219.34.00 | 7228.30.80 | 7305.31.60 | 7312.10.60 |
| 7215.40.00 | 7219.35.00 | 7228.40.00 | 7305.39.10 | 7312.10.70 |
| 7215.90.10 | 7219.90.00 | 7228.50.10 | 7305.39.50 | 7312.10.80 |
| 7215.90.30 | 7220.11.00 | 7228.50.50 | 7305.90.10 | 7312.10.90 |
| 7215.90.50 | 7220.12.10 | 7228.60.10 | 7305.90.50 | 7312.90.00 |
| 7216.10.00 | 7220.12.50 | 7228.60.60 | 7306.10.10 | 7314.11.10 |
| 7216.21.00 | 7220.20.10 | 7228.60.80 | 7306.10.50 | 7314.11.20 |
| 7216.22.00 | 7220.20.60 | 7228.70.30 | 7306.20.10 | 7314.11.60 |
| 7216.31.00 | 7220.20.70 | 7228.70.60 | 7306.20.20 | 7314.11.90 |
| 7216.32.00 | 7220.20.80 | 7228.80.00 | 7306.20.30 | 7314.19.00 |
| 7216.33.00 | 7220.20.90 | 7229.10.00 | 7306.20.40 | 7314.20.00 |
| 7216.40.00 | 7220.90.00 | 7229.20.00 | 7306.20.60 | 7314.30.10 |
| 7216.50.00 | 7221.00.00 | 7229.90.10 | 7306.20.80 | 7314.30.50 |
| 7216.60.00 | 7222.10.00 | 7229.90.50 | 7306.30.10 | 7314.41.00 |
| 7216.90.00 | 7222.20.00 | 7229.90.90 | 7306.30.30 | 7314.42.00 |
| 7217.11.10 | 7222.30.00 | 7301.10.00 | 7306.30.50 | 7314.49.30 |
| 7217.11.20 | 7222.40.30 | 7301.20.10 | 7306.40.10 | 7314.49.60 |
| 7217.11.30 | 7222.40.60 | 7301.20.50 | 7306.40.50 | 7314.50.00 |
| 7217.11.50 | 7223.00.10 | 7302.10.10 | 7306.50.10 | 7315.11.00 |
| 7217.11.70 | 7223.00.50 | 7302.10.50 | 7306.50.30 | 7315.12.00 |
| 7217.11.90 | 7223.00.90 | 7302.20.00 | 7306.50.50 | 7315.19.00 |
| 7217.12.10 | 7224.10.00 | 7302.30.00 | 7306.60.10 | 7315.20.10 |
| 7217.12.30 | 7224.90.00 | 7302.40.00 | 7306.60.30 | 7315.82.10 |
| 7217.12.50 | 7225.10.00 | 7302.90.00 | 7306.60.50 | 7315.82.50 |

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Section (a)(3) (con.):

| | | | | |
|---|---|---|---|---|
| 7315.89.10 | 7324.90.00 | 7410.12.00 | 7601.20.60 | 7804.19.00 |
| 7315.89.50 | 7325.91.00 | 7410.21.30 | 7603.10.00 | 7804.20.00 |
| 7315.90.00 | 7325.99.10 | 7410.21.60 | 7603.20.00 | 7805.00.00 |
| 7316.00.00 | 7325.99.50 | 7410.22.00 | 7604.10.10 | 7806.00.00 |
| 7317.00.10 | 7326.11.00 | 7411.10.10 | 7604.10.30 | 7901.11.00 |
| 7317.00.30 | 7326.19.00 | 7411.10.50 | 7604.10.50 | 7901.12.10 |
| 7317.00.55 | 7326.20.00 | 7411.21.10 | 7604.21.00 | 7901.12.50 |
| 7317.00.65 | 7326.90.10 | 7411.21.50 | 7604.29.10 | 7901.20.00 |
| 7317.00.75 | 7326.90.30 | 7411.22.00 | 7604.29.30 | 7902.00.00 |
| 7318.11.00 | 7326.90.60 | 7411.29.10 | 7604.29.50 | 7903.10.00 |
| 7318.12.00 | 7326.90.90 | 7411.29.50 | 7605.11.00 | 7903.90.30 |
| 7318.13.00 | 7401.10.00 | 7412.10.00 | 7605.19.00 | 7903.90.60 |
| 7318.14.10 | 7401.20.00 | 7412.20.00 | 7605.21.00 | 7904.00.00 |
| 7318.14.50 | 7402.00.00 | 7413.00.10 | 7605.29.00 | 7905.00.00 |
| 7318.15.20 | 7403.11.00 | 7413.00.50 | 7606.11.30 | 7906.00.00 |
| 7318.15.40 | 7403.12.00 | 7413.00.90 | 7606.11.60 | 7907.10.00 |
| 7318.15.50 | 7403.13.00 | 7414.10.60 | 7606.12.30 | 7907.90.30 |
| 7318.15.60 | 7403.19.00 | 7414.10.90 | 7606.12.60 | 7907.90.60 |
| 7318.15.80 | 7403.21.00 | 7414.90.00 | 7606.91.30 | 8003.00.00 |
| 7318.16.00 | 7403.22.00 | 7415.10.00 | 7606.91.60 | 8004.00.00 |
| 7318.19.00 | 7403.23.00 | 7415.21.00 | 7606.92.30 | 8005.10.00 |
| 7318.21.00 | 7403.29.00 | 7415.29.00 | 7606.92.60 | 8005.20.00 |
| 7318.23.00 | 7405.00.10 | 7415.31.00 | 7607.11.30 | 8006.00.00 |
| 7318.24.00 | 7405.00.60 | 7415.32.10 | 7607.11.60 | 8007.00.10 |
| 7318.29.00 | 7406.10.00 | 7415.32.50 | 7607.11.90 | 8007.00.50 |
| 7319.20.00 | 7406.20.00 | 7415.32.90 | 7607.19.10 | 8101.10.00 |
| 7319.30.10 | 7407.10.10 | 7415.39.00 | 7607.19.30 | 8101.91.10 |
| 7319.30.50 | 7407.10.50 | 7416.00.00 | 7607.19.60 | 8101.91.50 |
| 7319.90.00 | 7407.21.10 | 7417.00.00 | 7607.20.10 | 8101.92.00 |
| 7320.10.00 | 7407.21.50 | 7418.10.10 | 7608.10.00 | 8101.93.00 |
| 7320.20.10 | 7407.21.70 | 7418.10.20 | 7608.20.00 | 8101.99.00 |
| 7320.20.50 | 7407.21.90 | 7418.10.50 | 7609.00.00 | 8102.10.00 |
| 7320.90.10 | 7407.22.10 | 7418.20.10 | 7610.10.00 | 8102.91.10 |
| 7320.90.50 | 7407.22.50 | 7418.20.50 | 7610.90.00 | 8102.92.00 |
| 7321.11.10 | 7407.29.10 | 7419.10.00 | 7611.00.00 | 8102.93.00 |
| 7321.11.30 | 7407.29.50 | 7419.91.00 | 7612.10.00 | 8102.99.00 |
| 7321.11.60 | 7408.11.30 | 7419.99.15 | 7612.90.10 | 8103.10.60 |
| 7321.12.00 | 7408.11.60 | 7419.99.30 | 7613.00.00 | 8103.90.00 |
| 7321.13.00 | 7408.19.00 | 7419.99.50 | 7614.10.10 | 8104.11.00 |
| 7321.81.10 | 7408.21.00 | 7505.11.10 | 7614.10.50 | 8104.19.00 |
| 7321.81.50 | 7408.22.10 | 7505.11.30 | 7614.90.20 | 8104.30.00 |
| 7321.82.10 | 7408.22.50 | 7505.11.50 | 7614.90.40 | 8104.90.00 |
| 7321.82.50 | 7408.29.10 | 7505.12.10 | 7614.90.50 | 8105.10.30 |
| 7321.83.00 | 7408.29.50 | 7505.12.30 | 7615.10.10 | 8105.90.00 |
| 7321.90.30 | 7409.11.10 | 7505.12.50 | 7615.10.30 | 8107.90.00 |
| 7321.90.60 | 7409.11.50 | 7505.21.10 | 7615.10.50 | 8108.10.50 |
| 7322.11.00 | 7409.19.10 | 7505.21.50 | 7615.10.70 | 8108.90.30 |
| 7322.19.00 | 7409.19.50 | 7505.22.10 | 7615.10.90 | 8108.90.60 |
| 7322.90.00 | 7409.19.90 | 7505.22.50 | 7615.20.00 | 8109.10.60 |
| 7323.10.00 | 7409.21.00 | 7506.10.10 | 7616.10.10 | 8109.90.00 |
| 7323.91.50 | 7409.29.00 | 7506.10.30 | 7616.10.30 | 8111.00.45 |
| 7323.92.00 | 7409.31.10 | 7506.10.50 | 7616.10.50 | 8111.00.60 |
| 7323.93.00 | 7409.31.50 | 7506.20.10 | 7616.10.70 | 8112.11.60 |
| 7323.94.00 | 7409.31.90 | 7506.20.30 | 7616.10.90 | 8112.19.00 |
| 7323.99.10 | 7409.39.10 | 7506.20.50 | 7616.90.00 | 8112.20.60 |
| 7323.99.30 | 7409.39.50 | 7507.11.00 | 7801.10.00 | 8112.30.60 |
| 7323.99.50 | 7409.39.90 | 7507.12.00 | 7801.91.00 | 8112.30.90 |
| 7323.99.70 | 7409.40.00 | 7507.20.00 | 7801.99.30 | 8112.40.60 |
| 7323.99.90 | 7409.90.10 | 7508.00.10 | 7801.99.90 | 8112.91.10 |
| 7324.10.00 | 7409.90.50 | 7508.00.50 | 7802.00.00 | 8112.91.40 |
| 7324.21.50 | 7409.90.90 | 7601.10.30 | 7803.00.00 | 8112.91.50 |
| 7324.29.00 | 7410.11.00 | 7601.20.30 | 7804.11.00 | 8112.91.60 |

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| | | | | |
|---|---|---|---|---|
| 8112.99.00 | 8207.50.60 | 8215.99.40 | 8402.11.00 | 8413.30.10 |
| 8113.00.00 | 8207.50.80 | 8215.99.45 | 8402.12.00 | 8413.30.90 |
| 8201.10.00 | 8207.60.00 | 8215.99.50 | 8402.19.00 | 8413.40.00 |
| 8201.20.00 | 8207.70.30 | 8301.10.20 | 8402.20.00 | 8413.50.00 |
| 8201.30.00 | 8207.70.60 | 8301.10.40 | 8402.90.00 | 8413.60.00 |
| 8201.40.60 | 8207.80.30 | 8301.10.50 | 8403.10.00 | 8413.70.20 |
| 8201.50.00 | 8207.80.60 | 8301.10.60 | 8403.90.00 | 8413.81.00 |
| 8201.60.00 | 8207.90.15 | 8301.10.80 | 8404.10.00 | 8413.82.00 |
| 8201.90.30 | 8207.90.30 | 8301.10.90 | 8404.20.00 | 8413.91.10 |
| 8202.20.00 | 8207.90.45 | 8301.20.00 | 8404.90.00 | 8413.91.90 |
| 8202.31.00 | 8207.90.60 | 8301.30.00 | 8405.10.00 | 8413.92.00 |
| 8202.32.00 | 8207.90.75 | 8301.40.30 | 8405.90.00 | 8414.10.00 |
| 8202.40.30 | 8208.10.00 | 8301.40.60 | 8406.11.10 | 8414.20.00 |
| 8202.40.60 | 8208.20.00 | 8301.50.00 | 8406.11.90 | 8414.30.40 |
| 8202.91.30 | 8208.30.00 | 8301.60.00 | 8406.19.10 | 8414.30.80 |
| 8202.91.60 | 8208.40.30 | 8301.70.00 | 8406.19.90 | 8414.40.00 |
| 8203.10.30 | 8208.90.60 | 8302.10.30 | 8406.90.10 | 8414.51.00 |
| 8203.10.60 | 8209.00.00 | 8302.10.60 | 8406.90.90 | 8414.59.80 |
| 8203.10.90 | 8210.00.00 | 8302.10.90 | 8407.32.20 | 8414.60.00 |
| 8203.20.20 | 8211.10.00 | 8302.20.00 | 8407.33.20 | 8414.80.10 |
| 8203.20.40 | 8211.91.10 | 8302.30.30 | 8407.34.20 | 8414.80.20 |
| 8203.20.60 | 8211.91.20 | 8302.30.60 | 8408.10.00 | 8414.80.90 |
| 8203.20.80 | 8211.91.25 | 8302.41.30 | 8408.20.20 | 8414.90.10 |
| 8203.30.00 | 8211.91.30 | 8302.41.60 | 8408.20.90 | 8414.90.20 |
| 8203.40.30 | 8211.91.40 | 8302.41.90 | 8408.90.90 | 8414.90.90 |
| 8203.40.60 | 8211.91.50 | 8302.42.30 | 8409.91.91 | 8415.10.00 |
| 8204.11.00 | 8211.91.60 | 8302.42.60 | 8409.91.92 | 8415.81.00 |
| 8204.12.00 | 8211.92.20 | 8302.49.20 | 8409.91.99 | 8415.82.00 |
| 8204.20.00 | 8211.92.40 | 8302.49.40 | 8409.99.91 | 8415.83.00 |
| 8205.10.00 | 8211.92.60 | 8302.49.60 | 8409.99.92 | 8415.90.00 |
| 8205.20.30 | 8211.92.80 | 8302.49.80 | 8409.99.99 | 8416.10.00 |
| 8205.20.60 | 8211.93.00 | 8302.50.00 | 8410.11.00 | 8416.20.00 |
| 8205.30.30 | 8211.94.10 | 8302.60.30 | 8410.12.00 | 8416.30.00 |
| 8205.30.60 | 8211.94.50 | 8302.60.90 | 8410.13.00 | 8416.90.00 |
| 8205.40.00 | 8212.10.00 | 8303.00.00 | 8410.90.00 | 8417.10.00 |
| 8205.51.15 | 8212.20.00 | 8304.00.00 | 8411.11.40 | 8417.20.00 |
| 8205.51.30 | 8212.90.00 | 8305.10.00 | 8411.11.80 | 8417.80.00 |
| 8205.51.45 | 8213.00.30 | 8305.20.00 | 8411.12.40 | 8417.90.00 |
| 8205.51.60 | 8213.00.60 | 8305.90.30 | 8411.12.80 | 8418.10.00 |
| 8205.51.75 | 8213.00.90 | 8305.90.60 | 8411.21.40 | 8418.21.00 |
| 8205.59.10 | 8214.10.00 | 8306.10.00 | 8411.21.80 | 8418.22.00 |
| 8205.59.30 | 8214.20.30 | 8306.21.00 | 8411.22.40 | 8418.29.00 |
| 8205.59.45 | 8214.20.60 | 8306.29.00 | 8411.22.80 | 8418.30.00 |
| 8205.59.55 | 8214.20.90 | 8306.30.00 | 8411.81.40 | 8418.40.00 |
| 8205.59.60 | 8214.90.30 | 8307.10.30 | 8411.81.80 | 8418.50.00 |
| 8205.59.70 | 8214.90.60 | 8307.10.60 | 8411.82.40 | 8418.61.00 |
| 8205.59.80 | 8214.90.90 | 8307.90.30 | 8411.82.80 | 8418.69.00 |
| 8205.60.00 | 8215.10.00 | 8307.90.60 | 8411.91.90 | 8418.91.00 |
| 8205.70.00 | 8215.20.00 | 8308.10.00 | 8411.99.90 | 8418.99.00 |
| 8205.80.00 | 8215.91.30 | 8308.20.30 | 8412.10.00 | 8419.11.00 |
| 8205.90.00 | 8215.91.60 | 8308.20.60 | 8412.21.00 | 8419.19.00 |
| 8206.00.00 | 8215.91.90 | 8308.90.30 | 8412.29.40 | 8419.20.00 |
| 8207.11.00 | 8215.99.01 | 8308.90.60 | 8412.29.80 | 8419.31.00 |
| 8207.12.30 | 8215.99.05 | 8308.90.90 | 8412.31.00 | 8419.32.10 |
| 8207.12.60 | 8215.99.10 | 8309.10.00 | 8412.39.00 | 8419.32.50 |
| 8207.20.00 | 8215.99.15 | 8309.90.00 | 8412.80.10 | 8419.39.00 |
| 8207.30.30 | 8215.99.20 | 8310.00.00 | 8412.80.90 | 8419.40.00 |
| 8207.30.60 | 8215.99.22 | 8311.30.30 | 8412.90.10 | 8419.50.00 |
| 8207.40.30 | 8215.99.24 | 8401.10.00 | 8412.90.90 | 8419.60.00 |
| 8207.40.60 | 8215.99.26 | 8401.20.00 | 8413.11.00 | 8419.81.10 |
| 8207.50.20 | 8215.99.30 | 8401.30.00 | 8413.19.00 | 8419.81.90 |
| 8207.50.40 | 8215.99.35 | 8401.40.00 | 8413.20.00 | 8419.89.10 |

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| | | | | |
|---|---|---|---|---|
| 8419.89.50 | 8426.41.00 | 8439.99.50 | 8448.51.50 | 8460.21.00 |
| 8419.90.10 | 8426.49.00 | 8440.10.00 | 8448.59.10 | 8460.29.00 |
| 8419.90.20 | 8426.91.00 | 8440.90.00 | 8448.59.50 | 8460.31.00 |
| 8419.90.30 | 8426.99.00 | 8441.10.00 | 8449.00.10 | 8460.39.00 |
| 8419.90.90 | 8428.10.00 | 8441.20.00 | 8449.00.50 | 8460.40.00 |
| 8420.10.10 | 8428.20.00 | 8441.30.00 | 8450.11.00 | 8460.90.00 |
| 8420.10.90 | 8428.31.00 | 8441.40.00 | 8450.12.00 | 8461.10.00 |
| 8420.91.10 | 8428.32.00 | 8441.80.00 | 8450.19.00 | 8461.20.00 |
| 8420.91.90 | 8428.33.00 | 8441.90.00 | 8450.20.00 | 8461.30.00 |
| 8420.99.10 | 8428.39.00 | 8442.50.90 | 8450.90.00 | 8461.40.10 |
| 8420.99.90 | 8428.40.00 | 8443.11.00 | 8451.10.00 | 8461.40.50 |
| 8421.11.00 | 8428.50.00 | 8443.12.00 | 8451.21.00 | 8461.50.00 |
| 8421.12.00 | 8428.60.00 | 8443.19.10 | 8451.29.00 | 8461.90.00 |
| 8421.19.00 | 8428.90.00 | 8443.19.50 | 8451.30.00 | 8462.10.00 |
| 8421.21.00 | 8429.11.00 | 8443.19.90 | 8451.40.00 | 8462.21.00 |
| 8421.22.00 | 8429.19.00 | 8443.21.00 | 8451.50.00 | 8462.29.00 |
| 8421.23.00 | 8429.20.00 | 8443.29.00 | 8451.80.00 | 8462.31.00 |
| 8421.29.00 | 8429.30.00 | 8443.30.00 | 8451.90.00 | 8462.39.00 |
| 8421.31.00 | 8429.40.00 | 8443.40.00 | 8452.10.00 | 8462.41.00 |
| 8421.39.00 | 8429.51.10 | 8443.50.10 | 8452.21.90 | 8462.49.00 |
| 8421.91.00 | 8429.51.50 | 8443.50.50 | 8452.29.90 | 8462.91.00 |
| 8421.99.00 | 8429.52.10 | 8443.60.00 | 8452.30.00 | 8462.99.00 |
| 8422.11.00 | 8429.52.50 | 8443.90.10 | 8452.40.00 | 8463.10.00 |
| 8422.19.00 | 8429.59.10 | 8443.90.50 | 8452.90.00 | 8463.20.00 |
| 8422.20.00 | 8429.59.50 | 8444.00.00 | 8453.10.00 | 8463.30.00 |
| 8422.30.10 | 8430.10.00 | 8445.11.00 | 8453.80.00 | 8463.90.00 |
| 8422.30.90 | 8430.20.00 | 8445.12.00 | 8453.90.50 | 8464.10.00 |
| 8422.40.10 | 8430.31.00 | 8445.13.00 | 8455.10.00 | 8464.20.00 |
| 8422.40.90 | 8430.39.00 | 8445.19.00 | 8455.21.00 | 8464.90.00 |
| 8422.90.05 | 8430.41.00 | 8445.20.00 | 8455.22.00 | 8465.10.00 |
| 8422.90.10 | 8430.49.40 | 8445.30.00 | 8455.30.00 | 8465.91.00 |
| 8422.90.20 | 8430.49.80 | 8445.40.00 | 8455.90.00 | 8465.92.00 |
| 8422.90.90 | 8430.50.50 | 8445.90.00 | 8456.10.10 | 8465.93.00 |
| 8423.10.00 | 8430.61.00 | 8446.10.00 | 8456.10.50 | 8465.94.00 |
| 8423.20.00 | 8430.62.00 | 8446.21.00 | 8456.20.10 | 8465.95.00 |
| 8423.30.00 | 8430.69.00 | 8446.29.00 | 8456.20.50 | 8465.96.00 |
| 8423.81.00 | 8431.10.00 | 8446.30.00 | 8456.30.10 | 8465.99.00 |
| 8423.82.00 | 8431.31.00 | 8447.11.10 | 8456.30.50 | 8466.10.00 |
| 8423.89.00 | 8431.39.00 | 8447.11.90 | 8456.90.10 | 8466.20.10 |
| 8423.90.00 | 8431.41.00 | 8447.12.10 | 8456.90.50 | 8466.20.90 |
| 8424.10.00 | 8431.42.00 | 8447.12.90 | 8457.10.00 | 8466.30.10 |
| 8424.20.10 | 8431.43.40 | 8447.20.10 | 8457.20.00 | 8466.30.30 |
| 8424.20.90 | 8431.43.80 | 8447.20.60 | 8457.30.00 | 8466.30.50 |
| 8424.30.90 | 8431.49.10 | 8447.90.10 | 8458.11.00 | 8466.91.50 |
| 8424.81.90 | 8431.49.90 | 8447.90.50 | 8458.19.00 | 8466.92.50 |
| 8424.89.00 | 8433.11.00 | 8447.90.90 | 8458.91.10 | 8466.93.50 |
| 8424.90.05 | 8433.19.00 | 8448.11.00 | 8458.91.50 | 8466.93.70 |
| 8424.90.10 | 8433.90.10 | 8448.19.00 | 8458.99.10 | 8466.94.50 |
| 8424.90.90 | 8435.10.00 | 8448.20.10 | 8458.99.50 | 8467.11.10 |
| 8425.11.00 | 8435.90.00 | 8448.20.50 | 8459.10.00 | 8467.11.50 |
| 8425.19.00 | 8437.10.00 | 8448.31.00 | 8459.21.00 | 8467.19.10 |
| 8425.20.00 | 8437.80.00 | 8448.32.00 | 8459.29.00 | 8467.19.50 |
| 8425.31.00 | 8437.90.00 | 8448.33.00 | 8459.31.00 | 8467.81.00 |
| 8425.39.00 | 8438.10.00 | 8448.39.10 | 8459.39.00 | 8467.89.10 |
| 8425.41.00 | 8438.20.00 | 8448.39.50 | 8459.40.00 | 8467.89.50 |
| 8425.42.00 | 8438.40.00 | 8448.39.90 | 8459.51.00 | 8467.91.00 |
| 8425.49.00 | 8438.50.00 | 8448.41.00 | 8459.59.00 | 8467.92.00 |
| 8426.11.00 | 8438.60.00 | 8448.42.00 | 8459.61.00 | 8467.99.00 |
| 8426.12.00 | 8438.80.00 | 8448.49.00 | 8459.69.00 | 8468.10.00 |
| 8426.19.00 | 8438.90.90 | 8448.51.10 | 8459.70.00 | 8468.20.10 |
| 8426.20.00 | 8439.30.00 | 8448.51.20 | 8460.11.00 | 8468.80.10 |
| 8426.30.00 | 8439.91.10 | 8448.51.30 | 8460.19.00 | 8468.90.10 |



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Section (a)(3) (con.):

| | | | | |
|---|---|---|---|---|
| 8469.10.00 | 8479.89.20 | 8483.90.70 | 8505.11.00 | 8514.20.00 |
| 8470.10.00 | 8479.89.30 | 8483.90.80 | 8505.19.00 | 8514.30.00 |
| 8470.21.00 | 8479.89.60 | 8484.10.00 | 8505.20.00 | 8514.40.00 |
| 8470.29.00 | 8479.89.70 | 8484.90.00 | 8505.30.00 | 8514.90.00 |
| 8470.30.00 | 8479.89.90 | 8485.10.00 | 8505.90.40 | 8515.11.00 |
| 8470.40.00 | 8479.90.40 | 8485.90.00 | 8505.90.80 | 8515.19.00 |
| 8470.90.00 | 8479.90.80 | 8501.10.20 | 8506.11.00 | 8515.21.00 |
| 8471.10.00 | 8480.10.00 | 8501.10.40 | 8506.12.00 | 8515.29.00 |
| 8471.20.00 | 8480.20.00 | 8501.10.60 | 8506.13.00 | 8515.31.00 |
| 8471.91.00 | 8480.30.00 | 8501.20.20 | 8506.19.00 | 8515.39.00 |
| 8471.92.10 | 8480.41.00 | 8501.20.40 | 8506.20.00 | 8515.80.00 |
| 8471.92.40 | 8480.49.00 | 8501.20.50 | 8506.90.00 | 8515.90.20 |
| 8471.92.65 | 8480.50.00 | 8501.20.60 | 8507.10.00 | 8515.90.40 |
| 8471.92.90 | 8480.60.00 | 8501.31.20 | 8507.20.00 | 8516.10.00 |
| 8471.93.20 | 8480.71.90 | 8501.31.40 | 8507.30.00 | 8516.21.00 |
| 8471.93.40 | 8480.79.90 | 8501.31.50 | 8507.40.00 | 8516.29.00 |
| 8471.93.60 | 8481.10.00 | 8501.31.60 | 8507.80.00 | 8516.31.00 |
| 8471.99.34 | 8481.20.00 | 8501.31.80 | 8507.90.40 | 8516.32.00 |
| 8471.99.90 | 8481.30.10 | 8501.32.20 | 8507.90.80 | 8516.33.00 |
| 8472.10.00 | 8481.30.20 | 8501.32.60 | 8508.10.00 | 8516.40.20 |
| 8472.20.00 | 8481.30.90 | 8501.33.30 | 8508.20.00 | 8516.40.40 |
| 8472.30.00 | 8481.40.00 | 8501.33.40 | 8508.80.00 | 8516.50.00 |
| 8472.90.20 | 8481.80.10 | 8501.33.60 | 8508.90.00 | 8516.60.60 |
| 8472.90.40 | 8481.80.30 | 8501.34.30 | 8509.10.00 | 8516.71.00 |
| 8472.90.80 | 8481.80.50 | 8501.34.60 | 8509.20.00 | 8516.72.00 |
| 8473.10.00 | 8481.80.90 | 8501.40.20 | 8509.30.00 | 8516.79.00 |
| 8473.21.00 | 8481.90.10 | 8501.40.40 | 8509.40.00 | 8516.80.40 |
| 8473.29.00 | 8481.90.30 | 8501.40.50 | 8509.80.00 | 8516.80.80 |
| 8473.30.80 | 8481.90.50 | 8501.40.60 | 8509.90.20 | 8516.90.40 |
| 8473.40.20 | 8481.90.90 | 8501.51.20 | 8509.90.30 | 8516.90.60 |
| 8473.40.40 | 8482.10.10 | 8501.51.40 | 8509.90.40 | 8517.10.00 |
| 8474.10.00 | 8482.10.50 | 8501.51.50 | 8510.10.00 | 8517.20.00 |
| 8474.20.00 | 8482.20.00 | 8501.51.60 | 8510.20.00 | 8517.30.15 |
| 8474.31.00 | 8482.30.00 | 8501.52.40 | 8510.90.10 | 8517.30.20 |
| 8474.32.00 | 8482.40.00 | 8501.53.60 | 8510.90.20 | 8517.30.25 |
| 8474.39.00 | 8482.50.00 | 8501.53.80 | 8510.90.30 | 8517.30.30 |
| 8474.80.00 | 8482.80.00 | 8501.61.00 | 8511.10.00 | 8517.30.50 |
| 8474.90.00 | 8482.91.00 | 8501.62.00 | 8511.20.00 | 8517.40.10 |
| 8475.10.00 | 8482.99.10 | 8501.63.00 | 8511.30.00 | 8517.40.50 |
| 8475.20.00 | 8482.99.30 | 8501.64.00 | 8511.40.00 | 8517.40.70 |
| 8475.90.10 | 8482.99.50 | 8502.11.00 | 8511.50.00 | 8517.81.00 |
| 8475.90.90 | 8482.99.70 | 8502.12.00 | 8511.80.20 | 8517.82.00 |
| 8476.11.00 | 8483.10.10 | 8502.13.00 | 8511.80.40 | 8517.90.05 |
| 8476.19.00 | 8483.10.30 | 8502.20.00 | 8511.80.60 | 8517.90.10 |
| 8476.90.00 | 8483.10.50 | 8502.30.00 | 8511.90.20 | 8517.90.15 |
| 8477.10.60 | 8483.20.40 | 8502.40.00 | 8511.90.40 | 8517.90.30 |
| 8477.20.00 | 8483.20.80 | 8503.00.20 | 8511.90.60 | 8517.90.35 |
| 8477.30.00 | 8483.30.40 | 8503.00.40 | 8512.10.20 | 8517.90.40 |
| 8477.40.00 | 8483.30.80 | 8503.00.60 | 8512.10.40 | 8517.90.55 |
| 8477.51.00 | 8483.40.10 | 8504.10.00 | 8512.20.40 | 8517.90.60 |
| 8477.59.00 | 8483.40.50 | 8504.21.00 | 8512.30.00 | 8517.90.70 |
| 8477.80.00 | 8483.40.70 | 8504.22.00 | 8512.40.20 | 8517.90.80 |
| 8477.90.00 | 8483.40.80 | 8504.23.00 | 8512.40.40 | 8518.10.00 |
| 8478.10.00 | 8483.40.90 | 8504.31.20 | 8512.90.20 | 8518.21.00 |
| 8478.90.00 | 8483.50.40 | 8504.31.40 | 8512.90.40 | 8518.22.00 |
| 8479.10.00 | 8483.50.80 | 8504.31.60 | 8512.90.70 | 8518.29.00 |
| 8479.20.00 | 8483.60.40 | 8504.32.00 | 8512.90.90 | 8518.30.10 |
| 8479.30.00 | 8483.60.80 | 8504.33.00 | 8513.10.20 | 8518.30.20 |
| 8479.40.00 | 8483.90.10 | 8504.34.00 | 8513.10.40 | 8518.40.10 |
| 8479.81.00 | 8483.90.20 | 8504.40.00 | 8513.90.20 | 8518.40.20 |
| 8479.82.00 | 8483.90.30 | 8504.50.00 | 8513.90.40 | 8518.50.00 |
| 8479.89.10 | 8483.90.50 | 8504.90.00 | 8514.10.00 | 8518.90.10 |

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| | | | | |
|---|---|---|---|---|
| 8518.90.30 | 8528.10.40 | 8539.29.20 | 8547.90.00 | 8706.00.25 |
| 8519.10.00 | 8528.10.80 | 8539.29.40 | 8548.00.00 | 8706.00.50 |
| 8519.21.00 | 8528.20.00 | 8539.31.00 | 8601.10.00 | 8707.10.00 |
| 8519.29.00 | 8529.10.20 | 8539.39.00 | 8601.20.00 | 8707.90.50 |
| 8519.31.00 | 8529.10.40 | 8539.40.40 | 8602.10.00 | 8708.10.00 |
| 8519.39.00 | 8529.10.60 | 8539.40.80 | 8602.90.00 | 8708.21.00 |
| 8519.40.00 | 8529.90.10 | 8539.90.00 | 8603.10.00 | 8708.29.00 |
| 8519.91.00 | 8529.90.15 | 8540.11.00 | 8603.90.00 | 8708.31.50 |
| 8519.99.00 | 8529.90.20 | 8540.12.40 | 8604.00.00 | 8708.39.50 |
| 8520.10.00 | 8529.90.30 | 8540.12.80 | 8605.00.00 | 8708.40.10 |
| 8520.20.00 | 8529.90.35 | 8540.20.20 | 8606.10.00 | 8708.40.20 |
| 8520.31.00 | 8529.90.40 | 8540.20.40 | 8606.20.00 | 8708.40.50 |
| 8520.39.00 | 8529.90.45 | 8540.30.00 | 8606.30.00 | 8708.50.30 |
| 8520.90.00 | 8529.90.50 | 8540.41.40 | 8606.91.00 | 8708.50.50 |
| 8521.10.00 | 8530.10.00 | 8540.42.00 | 8606.92.00 | 8708.50.80 |
| 8521.90.00 | 8530.80.00 | 8540.49.00 | 8606.99.00 | 8708.60.30 |
| 8522.10.00 | 8530.90.00 | 8540.81.00 | 8607.11.00 | 8708.60.50 |
| 8522.90.40 | 8531.10.00 | 8540.89.00 | 8607.12.00 | 8708.60.80 |
| 8522.90.60 | 8531.20.00 | 8540.91.20 | 8607.19.10 | 8708.70.30 |
| 8522.90.90 | 8531.80.00 | 8540.91.40 | 8607.19.30 | 8708.70.80 |
| 8523.11.00 | 8531.90.00 | 8540.99.00 | 8607.19.90 | 8708.80.50 |
| 8523.12.00 | 8532.10.00 | 8541.40.20 | 8607.21.10 | 8708.91.50 |
| 8523.13.00 | 8532.21.00 | 8541.40.80 | 8607.21.50 | 8708.92.50 |
| 8523.20.00 | 8532.22.00 | 8541.40.95 | 8607.29.10 | 8708.93.50 |
| 8523.90.00 | 8532.23.00 | 8541.50.00 | 8607.29.50 | 8708.94.50 |
| 8524.10.00 | 8532.24.00 | 8541.60.00 | 8607.30.10 | 8708.99.20 |
| 8524.21.30 | 8532.25.00 | 8542.80.00 | 8607.30.50 | 8708.99.50 |
| 8524.22.10 | 8532.29.00 | 8543.10.00 | 8607.91.00 | 8711.10.00 |
| 8524.22.20 | 8532.30.00 | 8543.20.00 | 8607.99.10 | 8711.20.00 |
| 8524.23.10 | 8532.90.00 | 8543.30.00 | 8607.99.50 | 8711.30.00 |
| 8524.23.20 | 8533.10.00 | 8543.80.40 | 8608.00.00 | 8711.40.30 |
| 8524.90.30 | 8533.21.00 | 8543.80.60 | 8701.20.00 | 8711.40.60 |
| 8524.90.40 | 8533.29.00 | 8543.80.70 | 8701.30.50 | 8711.50.00 |
| 8525.10.20 | 8533.31.00 | 8543.80.90 | 8701.90.50 | 8711.90.00 |
| 8525.10.60 | 8533.39.00 | 8543.90.40 | 8702.10.00 | 8712.00.15 |
| 8525.10.80 | 8533.40.00 | 8543.90.80 | 8702.90.00 | 8712.00.25 |
| 8525.20.05 | 8533.90.00 | 8544.11.00 | 8703.10.10 | 8712.00.35 |
| 8525.20.15 | 8534.00.00 | 8544.19.00 | 8703.10.50 | 8712.00.40 |
| 8525.20.20 | 8535.10.00 | 8544.20.00 | 8703.21.00 | 8712.00.50 |
| 8525.20.30 | 8535.21.00 | 8544.30.00 | 8703.22.00 | 8713.10.00 |
| 8525.20.50 | 8535.29.00 | 8544.41.00 | 8703.23.00 | 8713.90.00 |
| 8525.20.60 | 8535.30.00 | 8544.49.00 | 8703.24.00 | 8714.11.00 |
| 8525.30.00 | 8535.40.00 | 8544.51.40 | 8703.31.00 | 8714.19.00 |
| 8526.10.00 | 8535.90.00 | 8544.51.80 | 8703.32.00 | 8714.20.00 |
| 8526.91.00 | 8536.10.00 | 8544.59.20 | 8703.33.00 | 8714.91.20 |
| 8526.92.00 | 8536.20.00 | 8544.59.40 | 8703.90.00 | 8714.91.30 |
| 8527.11.11 | 8536.30.00 | 8544.60.20 | 8704.10.10 | 8714.91.50 |
| 8527.11.20 | 8536.41.00 | 8544.60.40 | 8704.10.50 | 8714.91.90 |
| 8527.11.40 | 8536.49.00 | 8544.60.60 | 8704.21.00 | 8714.92.10 |
| 8527.11.60 | 8536.50.00 | 8544.70.00 | 8704.22.10 | 8714.92.50 |
| 8527.19.00 | 8536.61.00 | 8545.11.00 | 8704.22.50 | 8714.93.10 |
| 8527.21.10 | 8536.69.00 | 8545.19.20 | 8704.23.00 | 8714.93.20 |
| 8527.21.40 | 8536.90.00 | 8545.19.40 | 8704.31.00 | 8714.93.30 |
| 8527.29.00 | 8537.10.00 | 8545.20.00 | 8704.32.00 | 8714.93.60 |
| 8527.31.05 | 8537.20.00 | 8545.90.20 | 8704.90.00 | 8714.93.80 |
| 8527.31.40 | 8538.10.00 | 8545.90.40 | 8705.10.00 | 8714.94.10 |
| 8527.31.50 | 8538.90.00 | 8546.10.00 | 8705.20.00 | 8714.94.15 |
| 8527.31.60 | 8539.10.00 | 8546.20.00 | 8705.30.00 | 8714.94.25 |
| 8527.32.00 | 8539.21.40 | 8546.90.00 | 8705.40.00 | 8714.94.40 |
| 8527.39.00 | 8539.22.40 | 8547.10.40 | 8705.90.00 | 8714.94.60 |
| 8527.90.40 | 8539.22.80 | 8547.10.80 | 8706.00.10 | 8714.95.00 |
| 8527.90.80 | 8539.29.10 | 8547.20.00 | 8706.00.15 | 8714.96.10 |

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| | | | | |
|---|---|---|---|---|
| 8714.96.50 | 9006.20.00 | 9013.10.40 | 9019.10.60 | 9027.50.80 |
| 8714.96.90 | 9006.30.00 | 9013.20.00 | 9019.20.00 | 9027.80.40 |
| 8714.99.10 | 9006.40.40 | 9013.80.20 | 9020.00.60 | 9027.80.80 |
| 8714.99.50 | 9006.40.60 | 9013.80.40 | 9020.00.90 | 9027.90.20 |
| 8714.99.90 | 9006.40.90 | 9013.80.60 | 9021.11.00 | 9027.90.42 |
| 8715.00.00 | 9006.51.00 | 9013.90.20 | 9021.19.40 | 9027.90.44 |
| 8716.10.00 | 9006.52.10 | 9013.90.40 | 9021.19.80 | 9027.90.60 |
| 8716.20.00 | 9006.52.30 | 9014.10.10 | 9021.21.40 | 9027.90.80 |
| 8716.31.00 | 9006.52.50 | 9014.10.60 | 9021.21.80 | 9028.10.00 |
| 8716.39.00 | 9006.52.60 | 9014.10.70 | 9021.29.40 | 9028.20.00 |
| 8716.40.00 | 9006.52.90 | 9014.10.90 | 9021.29.80 | 9028.30.00 |
| 8716.80.50 | 9006.53.00 | 9014.20.20 | 9021.30.00 | 9028.90.00 |
| 8716.90.30 | 9006.59.40 | 9014.20.40 | 9021.40.00 | 9029.10.40 |
| 8716.90.50 | 9006.59.60 | 9014.20.60 | 9021.50.00 | 9029.20.20 |
| 8801.10.00 | 9006.59.90 | 9014.80.10 | 9021.90.40 | 9029.20.60 |
| 8801.90.00 | 9006.61.00 | 9014.80.20 | 9021.90.80 | 9029.90.20 |
| 8802.11.00 | 9006.62.00 | 9014.80.40 | 9022.11.00 | 9029.90.40 |
| 8802.12.00 | 9006.69.00 | 9014.90.10 | 9022.19.00 | 9029.90.60 |
| 8802.20.00 | 9006.91.00 | 9014.90.60 | 9022.21.00 | 9030.10.00 |
| 8802.30.00 | 9006.99.00 | 9015.10.40 | 9022.29.40 | 9030.20.00 |
| 8802.40.00 | 9007.11.00 | 9015.10.80 | 9022.29.80 | 9030.31.00 |
| 8802.50.90 | 9007.19.00 | 9015.20.40 | 9022.30.00 | 9030.39.00 |
| 8804.00.00 | 9007.21.40 | 9015.20.80 | 9022.90.20 | 9030.40.00 |
| 8805.10.00 | 9007.21.80 | 9015.30.40 | 9022.90.40 | 9030.81.00 |
| 8903.10.00 | 9007.29.40 | 9015.30.80 | 9022.90.60 | 9030.89.00 |
| 8903.91.00 | 9007.29.80 | 9015.40.40 | 9022.90.70 | 9030.90.40 |
| 8903.92.00 | 9007.91.40 | 9015.40.80 | 9022.90.90 | 9030.90.80 |
| 8903.99.15 | 9007.91.80 | 9015.80.20 | 9024.10.00 | 9031.10.00 |
| 8903.99.20 | 9007.92.00 | 9015.80.60 | 9024.80.00 | 9031.20.00 |
| 8903.99.90 | 9008.10.00 | 9015.80.80 | 9024.90.00 | 9031.30.00 |
| 8905.90.10 | 9008.20.40 | 9015.90.00 | 9025.11.20 | 9031.40.00 |
| 8906.00.10 | 9008.20.80 | 9016.00.20 | 9025.11.40 | 9031.80.00 |
| 8907.10.00 | 9008.30.00 | 9016.00.40 | 9025.19.00 | 9031.90.20 |
| 8907.90.00 | 9008.40.00 | 9016.00.60 | 9025.20.40 | 9031.90.40 |
| 9001.10.00 | 9008.90.40 | 9017.10.00 | 9025.20.80 | 9031.90.60 |
| 9001.20.00 | 9008.90.80 | 9017.20.40 | 9025.80.10 | 9032.10.00 |
| 9001.30.00 | 9009.11.00 | 9017.20.80 | 9025.80.20 | 9032.20.00 |
| 9001.40.00 | 9009.12.00 | 9017.30.40 | 9025.80.30 | 9032.81.00 |
| 9001.50.00 | 9009.21.00 | 9017.30.80 | 9025.80.40 | 9032.89.20 |
| 9001.90.40 | 9009.22.00 | 9017.80.00 | 9025.80.50 | 9032.89.40 |
| 9001.90.50 | 9009.30.00 | 9017.90.00 | 9025.90.00 | 9032.89.60 |
| 9001.90.60 | 9009.90.00 | 9018.11.00 | 9026.10.20 | 9032.90.20 |
| 9001.90.80 | 9010.10.00 | 9018.19.40 | 9026.10.40 | 9032.90.40 |
| 9001.90.90 | 9010.20.10 | 9018.19.80 | 9026.10.60 | 9032.90.60 |
| 9002.11.40 | 9010.20.20 | 9018.20.00 | 9026.20.40 | 9033.00.00 |
| 9002.11.80 | 9010.20.30 | 9018.31.00 | 9026.20.80 | 9101.11.40 |
| 9002.19.00 | 9010.20.40 | 9018.32.00 | 9026.80.20 | 9101.11.80 |
| 9002.20.40 | 9010.20.50 | 9018.39.00 | 9026.80.40 | 9101.12.20 |
| 9002.20.80 | 9010.20.60 | 9018.41.00 | 9026.80.60 | 9101.12.40 |
| 9002.90.20 | 9010.30.00 | 9018.49.40 | 9026.90.20 | 9101.12.80 |
| 9002.90.40 | 9010.90.40 | 9018.49.80 | 9026.90.40 | 9101.19.40 |
| 9002.90.70 | 9010.90.80 | 9018.50.00 | 9026.90.60 | 9101.19.80 |
| 9002.90.90 | 9011.10.40 | 9018.90.10 | 9027.10.20 | 9101.21.10 |
| 9003.11.00 | 9011.10.80 | 9018.90.20 | 9027.10.40 | 9101.21.30 |
| 9003.19.00 | 9011.20.40 | 9018.90.30 | 9027.10.60 | 9101.21.50 |
| 9003.90.00 | 9011.20.80 | 9018.90.40 | 9027.20.42 | 9101.21.80 |
| 9004.10.00 | 9011.80.00 | 9018.90.50 | 9027.20.44 | 9101.29.10 |
| 9004.90.00 | 9011.90.00 | 9018.90.60 | 9027.20.80 | 9101.29.20 |
| 9005.80.40 | 9012.10.00 | 9018.90.70 | 9027.30.40 | 9101.29.30 |
| 9005.80.60 | 9012.90.00 | 9018.90.80 | 9027.30.80 | 9101.29.40 |
| 9005.90.00 | 9013.10.10 | 9019.10.20 | 9027.40.00 | 9101.29.50 |
| 9006.10.00 | 9013.10.30 | 9019.10.40 | 9027.50.40 | 9101.29.70 |

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| | | | | |
|---|---|---|---|---|
| 9101.29.80 | 9104.00.60 | 9110.90.60 | 9209.94.80 | 9401.90.50 |
| 9101.29.90 | 9105.11.40 | 9111.10.00 | 9209.99.10 | 9402.10.00 |
| 9101.91.20 | 9105.11.80 | 9111.20.20 | 9209.99.40 | 9402.90.00 |
| 9101.91.40 | 9105.19.10 | 9111.20.40 | 9209.99.60 | 9403.10.00 |
| 9101.91.80 | 9105.19.20 | 9111.80.00 | 9209.99.80 | 9403.20.00 |
| 9101.99.20 | 9105.19.30 | 9111.90.40 | 9301.00.30 | 9403.30.40 |
| 9101.99.40 | 9105.19.40 | 9111.90.50 | 9301.00.60 | 9403.30.80 |
| 9101.99.60 | 9105.19.50 | 9111.90.70 | 9301.00.90 | 9403.40.40 |
| 9101.99.80 | 9105.21.40 | 9112.10.00 | 9302.00.00 | 9403.40.60 |
| 9102.11.10 | 9105.21.80 | 9112.80.00 | 9303.20.00 | 9403.40.90 |
| 9102.11.25 | 9105.29.10 | 9112.90.00 | 9303.30.40 | 9403.50.40 |
| 9102.11.30 | 9105.29.20 | 9113.10.00 | 9303.30.80 | 9403.50.60 |
| 9102.11.45 | 9105.29.30 | 9113.20.20 | 9303.90.40 | 9403.50.90 |
| 9102.11.50 | 9105.29.40 | 9113.20.40 | 9303.90.80 | 9403.60.40 |
| 9102.11.65 | 9105.29.50 | 9113.20.60 | 9304.00.20 | 9403.60.80 |
| 9102.11.70 | 9105.91.40 | 9113.20.90 | 9304.00.40 | 9403.70.40 |
| 9102.11.95 | 9105.91.80 | 9113.90.40 | 9304.00.60 | 9403.70.80 |
| 9102.12.20 | 9105.99.10 | 9113.90.80 | 9305.10.20 | 9403.80.30 |
| 9102.12.40 | 9105.99.20 | 9114.10.40 | 9305.10.40 | 9403.80.60 |
| 9102.12.80 | 9105.99.30 | 9114.10.80 | 9305.10.80 | 9403.90.10 |
| 9102.19.20 | 9105.99.40 | 9114.30.40 | 9305.21.80 | 9403.90.25 |
| 9102.19.40 | 9105.99.50 | 9114.30.80 | 9305.29.10 | 9403.90.40 |
| 9102.19.60 | 9105.99.60 | 9114.40.20 | 9305.29.20 | 9403.90.50 |
| 9102.19.80 | 9106.10.00 | 9114.40.40 | 9305.29.40 | 9403.90.60 |
| 9102.21.10 | 9106.20.00 | 9114.40.60 | 9305.29.50 | 9403.90.70 |
| 9102.21.25 | 9106.90.40 | 9114.40.80 | 9305.90.10 | 9403.90.80 |
| 9102.21.30 | 9106.90.80 | 9114.90.15 | 9305.90.20 | 9404.10.00 |
| 9102.21.50 | 9107.00.40 | 9114.90.30 | 9305.90.30 | 9404.21.00 |
| 9102.21.70 | 9107.00.80 | 9114.90.40 | 9305.90.40 | 9404.29.10 |
| 9102.21.90 | 9108.11.40 | 9114.90.50 | 9305.90.50 | 9404.29.90 |
| 9102.29.02 | 9108.11.80 | 9201.10.00 | 9305.90.60 | 9404.30.40 |
| 9102.29.04 | 9108.12.00 | 9201.20.00 | 9306.10.00 | 9404.30.80 |
| 9102.29.10 | 9108.19.40 | 9201.90.00 | 9306.21.00 | 9404.90.20 |
| 9102.29.15 | 9108.19.80 | 9202.10.00 | 9306.29.00 | 9405.10.40 |
| 9102.29.20 | 9108.20.40 | 9202.90.20 | 9306.30.40 | 9405.10.60 |
| 9102.29.25 | 9108.20.80 | 9202.90.40 | 9306.30.80 | 9405.10.80 |
| 9102.29.30 | 9108.91.10 | 9202.90.60 | 9306.90.00 | 9405.20.40 |
| 9102.29.35 | 9108.91.20 | 9203.00.80 | 9307.00.00 | 9405.20.60 |
| 9102.29.40 | 9108.91.30 | 9204.10.40 | 9401.10.40 | 9405.20.80 |
| 9102.29.45 | 9108.91.40 | 9204.10.80 | 9401.10.80 | 9405.30.00 |
| 9102.29.50 | 9108.91.50 | 9204.20.00 | 9401.20.00 | 9405.40.40 |
| 9102.29.55 | 9108.91.60 | 9205.10.00 | 9401.30.40 | 9405.40.60 |
| 9102.29.60 | 9108.99.20 | 9205.90.40 | 9401.30.80 | 9405.40.80 |
| 9102.91.20 | 9108.99.40 | 9205.90.60 | 9401.40.00 | 9405.50.20 |
| 9102.91.40 | 9108.99.60 | 9206.00.20 | 9401.50.00 | 9405.50.30 |
| 9102.91.80 | 9108.99.80 | 9206.00.60 | 9401.61.20 | 9405.50.40 |
| 9102.99.20 | 9109.11.10 | 9206.00.80 | 9401.61.40 | 9405.60.20 |
| 9102.99.40 | 9109.11.20 | 9207.10.00 | 9401.61.60 | 9405.60.40 |
| 9102.99.60 | 9109.11.40 | 9207.90.00 | 9401.69.20 | 9405.60.60 |
| 9102.99.80 | 9109.11.60 | 9208.10.00 | 9401.69.40 | 9405.91.10 |
| 9103.10.20 | 9109.19.10 | 9208.90.00 | 9401.69.60 | 9405.91.30 |
| 9103.10.40 | 9109.19.20 | 9209.10.00 | 9401.69.80 | 9405.91.40 |
| 9103.10.80 | 9109.19.40 | 9209.20.00 | 9401.71.00 | 9405.91.60 |
| 9103.90.00 | 9109.19.60 | 9209.30.00 | 9401.79.00 | 9405.92.00 |
| 9104.00.05 | 9109.90.20 | 9209.91.40 | 9401.80.20 | 9405.99.20 |
| 9104.00.10 | 9109.90.40 | 9209.91.80 | 9401.80.40 | 9405.99.40 |
| 9104.00.20 | 9109.90.60 | 9209.92.20 | 9401.80.60 | 9406.00.40 |
| 9104.00.25 | 9110.11.00 | 9209.92.40 | 9401.90.10 | 9406.00.80 |
| 9104.00.30 | 9110.12.00 | 9209.92.60 | 9401.90.15 | 9501.00.40 |
| 9104.00.40 | 9110.19.00 | 9209.92.80 | 9401.90.25 | 9501.00.60 |
| 9104.00.45 | 9110.90.20 | 9209.93.80 | 9401.90.35 | 9502.10.20 |
| 9104.00.50 | 9110.90.40 | 9209.94.40 | 9401.90.40 | 9502.10.40 |



Annex (con.)
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Section (a)(3) (con.):

| | | | | |
|---|---|---|---|---|
| 9502.10.60 | 9505.10.30 | 9506.99.30 | 9603.40.20 | 9612.20.00 |
| 9502.10.80 | 9505.10.40 | 9506.99.45 | 9603.40.40 | 9613.10.00 |
| 9502.91.00 | 9505.10.50 | 9506.99.50 | 9603.50.00 | 9613.20.00 |
| 9502.99.10 | 9505.90.20 | 9506.99.55 | 9603.90.40 | 9613.30.00 |
| 9502.99.20 | 9505.90.40 | 9506.99.60 | 9603.90.80 | 9613.80.20 |
| 9502.99.30 | 9505.90.60 | 9507.10.00 | 9604.00.00 | 9613.80.40 |
| 9503.10.00 | 9506.11.20 | 9507.20.40 | 9605.00.00 | 9613.80.60 |
| 9503.20.00 | 9506.11.40 | 9507.20.80 | 9606.10.40 | 9613.80.80 |
| 9503.30.40 | 9506.11.60 | 9507.30.20 | 9606.10.80 | 9613.90.40 |
| 9503.30.80 | 9506.12.40 | 9507.30.40 | 9606.21.20 | 9613.90.80 |
| 9503.41.10 | 9506.12.80 | 9507.30.60 | 9606.21.40 | 9614.20.40 |
| 9503.41.20 | 9506.19.40 | 9507.30.80 | 9606.21.60 | 9614.20.60 |
| 9503.41.30 | 9506.19.80 | 9507.90.20 | 9606.22.00 | 9614.20.80 |
| 9503.49.00 | 9506.21.40 | 9507.90.40 | 9606.29.20 | 9614.90.40 |
| 9503.50.00 | 9506.21.80 | 9507.90.60 | 9606.29.40 | 9614.90.80 |
| 9503.60.20 | 9506.29.00 | 9507.90.70 | 9606.29.60 | 9615.11.10 |
| 9503.70.60 | 9506.31.00 | 9507.90.80 | 9606.30.80 | 9615.11.20 |
| 9503.70.80 | 9506.32.00 | 9508.00.00 | 9607.11.00 | 9615.11.30 |
| 9503.80.20 | 9506.39.00 | 9601.10.00 | 9607.19.00 | 9615.11.40 |
| 9503.80.40 | 9506.40.00 | 9601.90.20 | 9607.20.00 | 9615.11.50 |
| 9503.80.60 | 9506.51.20 | 9601.90.40 | 9608.10.00 | 9615.19.20 |
| 9503.80.80 | 9506.51.40 | 9601.90.80 | 9608.20.00 | 9615.19.40 |
| 9503.90.20 | 9506.51.60 | 9602.00.10 | 9608.31.00 | 9615.19.60 |
| 9503.90.50 | 9506.59.40 | 9602.00.40 | 9608.39.00 | 9615.90.20 |
| 9503.90.60 | 9506.59.80 | 9602.00.50 | 9608.40.40 | 9615.90.30 |
| 9503.90.70 | 9506.61.00 | 9603.10.10 | 9608.40.80 | 9615.90.40 |
| 9504.10.00 | 9506.62.80 | 9603.10.25 | 9608.50.00 | 9615.90.60 |
| 9504.20.20 | 9506.69.20 | 9603.10.30 | 9608.60.00 | 9616.10.00 |
| 9504.20.60 | 9506.69.40 | 9603.10.40 | 9608.99.20 | 9616.20.00 |
| 9504.20.80 | 9506.69.60 | 9603.10.50 | 9608.99.30 | 9617.00.10 |
| 9504.30.00 | 9506.70.40 | 9603.10.60 | 9608.99.40 | 9617.00.30 |
| 9504.40.00 | 9506.70.60 | 9603.10.90 | 9608.99.60 | 9617.00.40 |
| 9504.90.40 | 9506.91.00 | 9603.21.00 | 9609.10.00 | 9617.00.60 |
| 9504.90.60 | 9506.99.05 | 9603.29.40 | 9609.20.40 | 9618.00.00 |
| 9504.90.90 | 9506.99.08 | 9603.29.80 | 9609.90.80 | |
| 9505.10.10 | 9506.99.12 | 9603.30.20 | 9610.00.00 | |
| 9505.10.15 | 9506.99.15 | 9603.30.40 | 9611.00.00 | |
| 9505.10.25 | 9506.99.20 | 9603.30.60 | 9612.10.10 | |

(4) For the following HTS provisions, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "J*" in alphabetical order:

| | | | | |
|---|---|---|---|---|
| 3921.13.19 | 5604.90.00 | 5804.29.00 | 5901.10.20 | 5911.90.00 |
| 3921.90.19 | 5606.00.00 | 5804.30.00 | 5901.90.40 | 6001.10.60 |
| 3921.90.29 | 5607.90.20 | 5805.00.40 | 5903.10.30 | 6001.29.00 |
| 5005.00.00 | 5608.90.10 | 5806.10.30 | 5903.20.30 | 6001.99.00 |
| 5006.00.90 | 5609.00.40 | 5806.20.00 | 5903.90.30 | 6002.10.80 |
| 5007.10.60 | 5701.90.10 | 5806.39.20 | 5905.00.90 | 6002.20.90 |
| 5007.90.60 | 5701.90.20 | 5806.39.30 | 5906.91.30 | 6002.30.20 |
| 5306.10.00 | 5702.10.90 | 5806.40.00 | 5906.99.30 | 6002.30.90 |
| 5306.20.00 | 5702.39.20 | 5807.10.10 | 5907.00.90 | 6002.49.00 |
| 5308.20.00 | 5702.49.20 | 5807.10.20 | 5908.00.00 | 6002.99.00 |
| 5308.90.00 | 5702.59.20 | 5807.90.10 | 5909.00.10 | 6101.90.00 |
| 5309.21.30 | 5705.00.20 | 5807.90.20 | 5909.00.20 | 6102.90.00 |
| 5309.21.40 | 5801.90.10 | 5808.10.20 | 5910.00.90 | 6103.19.40 |
| 5309.29.30 | 5801.90.20 | 5808.10.30 | 5911.10.10 | 6103.29.20 |
| 5309.29.40 | 5802.20.00 | 5808.90.00 | 5911.10.20 | 6103.39.20 |
| 5311.00.30 | 5802.30.00 | 5809.00.00 | 5911.20.10 | 6103.49.30 |
| 5311.00.40 | 5803.90.20 | 5810.10.00 | 5911.20.30 | 6104.19.20 |
| 5601.10.20 | 5803.90.40 | 5810.99.00 | 5911.31.00 | 6104.29.20 |
| 5601.29.00 | 5804.10.00 | 5811.00.40 | 5911.32.00 | 6104.39.20 |

Section (a)(4) (con.):

| | | | | |
|---|---|---|---|---|
| 6104.49.00 | 6117.10.60 | 6208.29.00 | 6213.90.20 | 6304.99.60 |
| 6104.59.20 | 6117.20.00 | 6208.99.60 | 6214.10.20 | 6305.90.00 |
| 6104.69.30 | 6117.80.00 | 6208.99.80 | 6214.90.00 | 6306.19.00 |
| 6105.90.30 | 6117.90.00 | 6209.90.40 | 6215.10.00 | 6306.29.00 |
| 6106.90.20 | 6201.19.00 | 6210.10.40 | 6215.90.00 | 6306.99.00 |
| 6106.90.30 | 6201.99.00 | 6210.20.20 | 6216.00.32 | 6307.10.20 |
| 6107.19.00 | 6202.19.00 | 6210.30.20 | 6216.00.90 | 6307.20.00 |
| 6107.29.40 | 6202.99.00 | 6210.40.20 | 6217.10.00 | 6307.90.30 |
| 6107.99.40 | 6203.19.40 | 6210.50.20 | 6217.90.00 | 6307.90.40 |
| 6108.19.00 | 6203.29.30 | 6211.11.20 | 6301.10.00 | 6307.90.50 |
| 6108.29.00 | 6203.39.40 | 6211.12.30 | 6301.90.00 | 6307.90.70 |
| 6108.39.20 | 6203.49.30 | 6211.20.10 | 6302.10.00 | 6307.90.75 |
| 6108.99.40 | 6204.19.30 | 6211.20.15 | 6302.29.00 | 6307.90.86 |
| 6109.90.20 | 6204.29.40 | 6211.20.20 | 6302.39.00 | 6308.00.00 |
| 6110.90.00 | 6204.39.80 | 6211.20.30 | 6302.40.10 | 6309.00.00 |
| 6111.90.60 | 6204.49.50 | 6211.20.40 | 6302.40.20 | 6406.10.90 |
| 6112.19.20 | 6204.59.40 | 6211.20.50 | 6302.52.10 | 6502.00.90 |
| 6112.20.20 | 6204.69.30 | 6211.20.60 | 6302.52.20 | 6504.00.90 |
| 6112.39.00 | 6204.69.90 | 6211.20.70 | 6302.59.00 | 6505.90.15 |
| 6112.49.00 | 6205.90.20 | 6211.39.00 | 6302.92.00 | 6505.90.20 |
| 6113.00.00 | 6205.90.40 | 6211.49.00 | 6302.99.20 | 6505.90.25 |
| 6114.90.00 | 6206.10.00 | 6212.10.10 | 6303.19.00 | 6505.90.90 |
| 6115.19.00 | 6206.90.00 | 6212.10.20 | 6303.99.00 | 9404.90.80 |
| 6115.20.00 | 6207.19.00 | 6212.20.00 | 6304.11.30 | 9404.90.90 |
| 6115.99.20 | 6207.29.00 | 6212.30.00 | 6304.19.30 | |
| 6116.10.90 | 6207.99.60 | 6212.90.00 | 6304.91.00 | |
| 6116.99.80 | 6208.19.40 | 6213.10.20 | 6304.99.35 | |

(5) Additional U.S. note 1 to chapter 11 of the HTS is deleted and the following inserted in lieu thereof:

"1. Notwithstanding the rates of duty set forth in this chapter, mixtures of the products classifiable in heading 1101, 1102, 1103 or 1104 (except mixtures classified in subheading 1102.90.30) are dutiable at the rate of 20% (Except in the case of products eligible for special tariff treatment under general note 3(c) the following rates of duty shall apply: Free (E,IL,J); 12% (CA))."

(6) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, insert the rate of duty of "Free" followed by the symbols "E,J" in parentheses:

| | |
|---|---|
| 3916.90.30 | 3918.90.20 |
| 3918.10.32 | 7019.90.10 |

(7) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, insert the rate of duty of "Free" followed by the symbols "E*,J*" in parentheses:

| | |
|---|---|
| 3921.90.21 | 6406.99.15 |
| 3921.90.25 | 7019.10.60 |
| 5605.00.00 | 9612.10.90 |
| 5903.20.10 | |

(8) For the following HTS provisions, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "E" in alphabetical order:

| | |
|---|---|
| 3403.11.20 | 9404.29.10 |
| 3403.19.10 | 9404.30.80 |

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Section (a) (con.):

(9) For the following HTS provisions, in the Rates of Duty 1-Special subcolumn, delete the symbol "E*" and insert the symbol "E" in lieu thereof:

| | | |
|---|---|---|
| 3918.10.40 | 4010.10.10 | 6204.39.60 |
| 3918.90.30 | 4010.91.19 | 6204.49.10 |
| 3926.20.50 | 4010.99.19 | 9612.20.00 |
| 3926.90.59 | 4015.90.00 | |
| 4008.21.00 | 4304.00.00 | |

Section (b). Effective with respect to articles which are the product of any beneficiary country under the ATPA which are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following HTS subheadings, the Rates of Duty 1-Special subcolumn is modified (a) by inserting on the 15th day after the date of publication of this proclamation in the Federal Register, the rate of duty specified for such HTS subheading in the following tabulation for 1992, followed by the symbol "J" in parentheses, and (b) on January 1 of each of the following years in the following tabulation, the duty rate followed by the symbol "J" in parentheses is deleted and the following rates of duty inserted in lieu thereof.

| HTS Subheading | 1992 | 1993 | 1994 | 1995 | 1996 |
|---|---|---|---|---|---|
| 4202.11.00 | 7.7% | 7.4% | 7% | 6.7% | 6.4% |
| 4202.12.20 | 19.5% | 19% | 18.5% | 18% | 17.5% |
| 4202.12.40 | 6.9% | 6.6% | 6.3% | 6% | 5.8% |
| 4202.12.60 | 6.2% | 6% | 5.7% | 5.5% | 5.2% |
| 4202.12.80 | 19.5% | 19% | 18.5% | 18% | 17.5% |
| 4202.19.00 | 19.5% | 19% | 18.5% | 18% | 17.5% |
| 4202.21.30 | 5.1% | 4.9% | 4.7% | 4.5% | 4.2% |
| 4202.21.60 | 9.6% | 9.2% | 8.8% | 8.4% | 8% |
| 4202.21.90 | 8.7% | 8.3% | 7.9% | 7.6% | 7.2% |
| 4202.22.15 | 19.5% | 19% | 18.5% | 18% | 17.5% |
| 4202.22.40 | 8.1% | 7.7% | 7.4% | 7.1% | 6.7% |
| 4202.22.45 | 6.9% | 6.6% | 6.3% | 6% | 5.8% |
| 4202.22.60 | 6.2% | 6% | 5.7% | 5.5% | 5.2% |
| 4202.22.80 | 19.5% | 19% | 18.5% | 18% | 17.5% |
| 4202.29.00 | 19.5% | 19% | 18.5% | 18% | 17.5% |
| 4202.31.60 | 7.7% | 7.4% | 7% | 6.7% | 6.4% |
| 4202.32.40 | 6.9% | 6.6% | 6.3% | 6% | 5.8% |
| 4202.32.95 | 19.5% | 19% | 18.5% | 18% | 17.5% |
| 4202.91.00 | 6.5% | 6.3% | 6% | 5.7% | 5.4% |
| 4202.92.15 | 6.9% | 6.6% | 6.3% | 6% | 5.8% |
| 4202.92.20 | 6.2% | 6% | 5.7% | 5.5% | 5.2% |
| 4202.92.30 | 19.5% | 19% | 18.5% | 18% | 17.5% |
| 4202.92.45 | 19.5% | 19% | 18.5% | 18% | 17.5% |
| 4202.92.60 | 6.9% | 6.6% | 6.3% | 6% | 5.8% |
| 4202.92.90 | 19.5% | 19% | 18.5% | 18% | 17.5% |
| 4202.99.00 | 19.5% | 19% | 18.5% | 18% | 17.5% |
| 4203.10.40 | 5.8% | 5.5% | 5.3% | 5% | 4.8% |
| 4203.29.08 | 13.5% | 13% | 12.5% | 12% | 11.5% |
| 4203.29.18 | 13.5% | 13% | 12.5% | 12% | 11.5% |
| 4602.10.21 | 12% | 11.5% | 11% | 10.5% | 10% |
| 4602.10.22 | 5.6% | 5.3% | 5.1% | 4.9% | 4.6% |
| 4602.10.25 | 17.5% | 17% | 16.5% | 16% | 15.5% |
| 4602.10.29 | 5.1% | 4.9% | 4.7% | 4.5% | 4.2% |
| 6116.10.17 | 24.5% | 24% | 23.5% | 23% | 22.5% |

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Section (b) (con.):

| HTS Subheading | 1992 | 1993 | 1994 | 1995 | 1996 |
|---|---|---|---|---|---|
| 6116.10.45 | 19.3% | 18.8% | 18.3% | 17.8% | 17.3% |
| 6116.10.70 | 13.5% | 13% | 12.5% | 12% | 11.5% |
| 6116.92.64 | 24.5% | 24% | 23.5% | 23% | 22.5% |
| 6116.92.88 | 9.6% | 9.2% | 8.8% | 8.4% | 8% |
| 6116.93.64 | 33.1¢/kg + 7.1% | 33.1¢/kg + 6.8% | 33.1¢/kg + 6.5% | 33.1¢/kg + 6.2% | 33.1¢/kg + 5.9% |
| 6116.93.88 | 19.3% | 18.8% | 18.3% | 17.8% | 17.3% |
| 6116.99.48 | 19.5% | 19% | 18.5% | 18% | 17.5% |
| 6216.00.17 | 24.5% | 24% | 23.5% | 23% | 22.5% |
| 6216.00.18 | 22¢/kg + 10.6% | 22¢/kg + 10.1% | 22¢/kg + 9.7% | 22¢/kg + 9.2% | 22¢/kg + 8.8% |
| 6216.00.28 | 13.5% | 13% | 12.5% | 12% | 11.5% |
| 6216.00.38 | 24.5% | 24% | 23.5% | 23% | 22.5% |
| 6216.00.54 | 22¢/kg + 10.6% | 22¢/kg + 10.1% | 22¢/kg + 9.7% | 22¢/kg + 9.2% | 22¢/kg + 8.8% |

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Filed 7-6-92:
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## Presidential Documents

**Proclamation 6456 of July 2, 1992**

# To Designate Bolivia as a Beneficiary Country for Purposes of the Andean Trade Preference Act

**By the President of the United States of America**

**A Proclamation**

1. Sections 202 and 204 of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3201 and 3203) confer authority upon the President to proclaim duty-free treatment for all eligible articles, and duty reductions for certain other articles, that are the product of any country designated as a "beneficiary country" in accordance with the provisions of section 203 of the ATPA (19 U.S.C. 3202).

2. Pursuant to section 203(b)(2) of the ATPA (19 U.S.C. 3202(b)(2)), I have notified the House of Representatives and the Senate of my intention to designate Bolivia as a beneficiary country for purposes of the ATPA, together with the considerations entering into such decision.

3. In order to make this designation under the ATPA, it is necessary to modify general note 3(c)(ix) to the Harmonized Tariff Schedule of the United States (HTS), thus incorporating the substance of this designation under the ATPA, pursuant to section 604 of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2483).

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to the ATPA and section 604 of the Trade Act, do proclaim that:

(1) General note 3(c)(ix)(A) to the HTS is modified by inserting in alphabetical sequence "Bolivia", which is hereby designated as a beneficiary country under the ATPA.

(2) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(3) The modifications made by this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of July, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

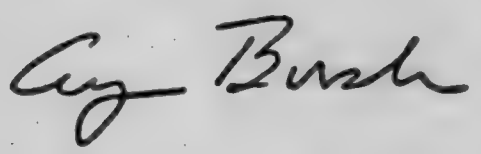

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**Editorial note:** For the President's letter to Congressional leaders on trade with Bolivia, see issue 27 of the *Weekly Compilation of Presidential Documents*.

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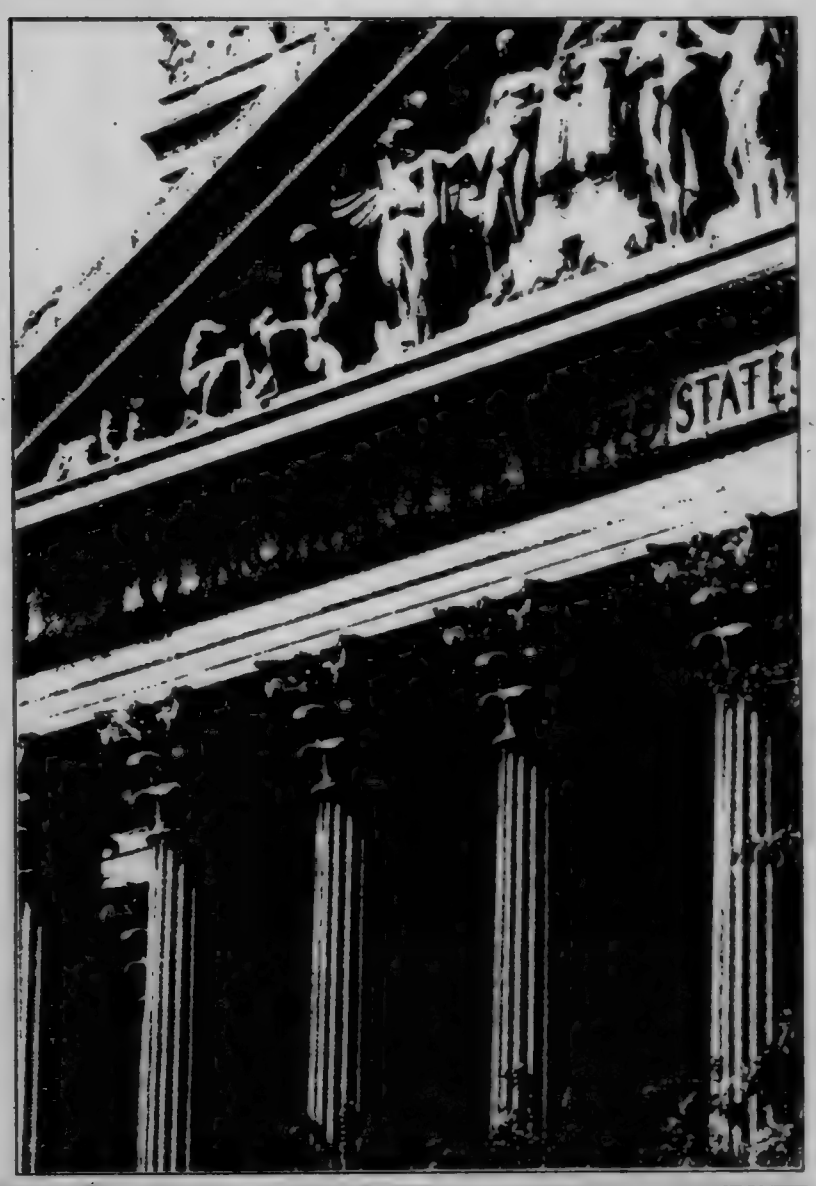


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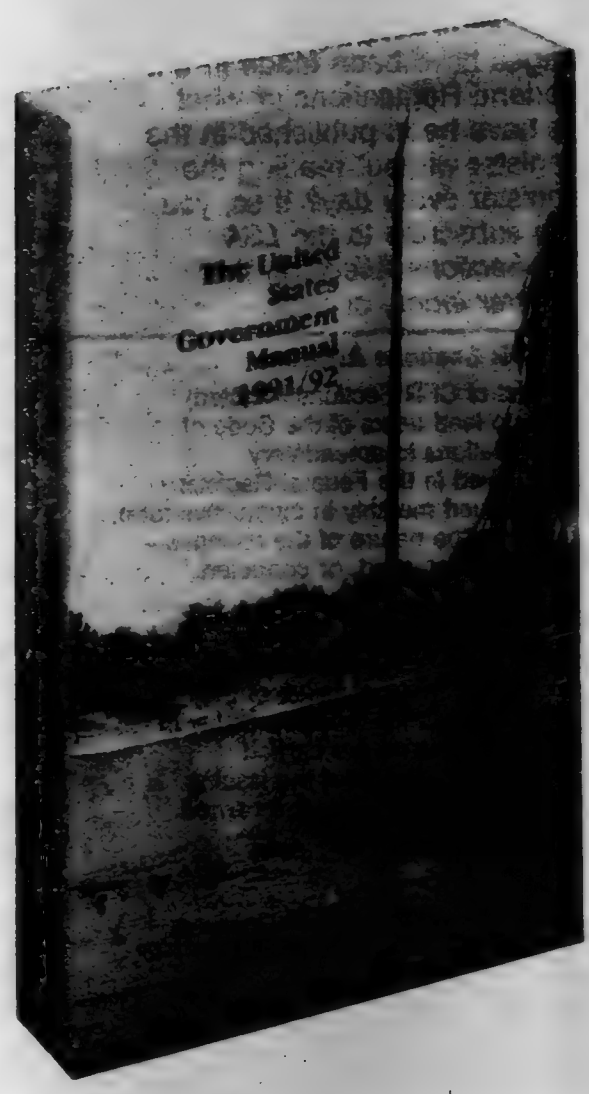


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# Presidential Documents

Title 3—

## The President

### Presidential Determination No. 92–34 of June 22, 1992

### Determination Under Section 405(a) of the Trade Act of 1974, as Amended—Romania

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act"), I determine, pursuant to section 405(a) of the Trade Act (19 U.S.C. 2435(a)), that the "Agreement on Trade Relations Between the Government of the United States of America and the Government of Romania" will promote the purposes of the Trade Act and is in the national interest.

You are authorized and directed to transmit copies of this determination to the appropriate Members of Congress and to publish it in the **Federal Register**.

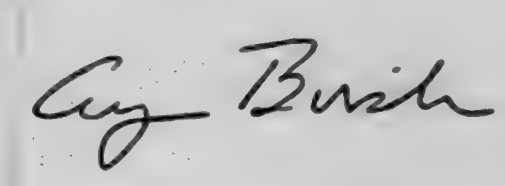

THE WHITE HOUSE,
*Washington, June 22, 1992.*

[FR Doc. 92–16170
Filed 7–6–92; 3:04 pm]
Billing code 3195–01–M

**Editorial note:** For the President's letter to Congressional leaders on trade with Romania, see p. 1128 of the *Weekly Compilation of Presidential Documents*.

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# Rules

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# Rules and Regulations

Federal Register
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Wednesday, July 8, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

**1 CFR Part 305**

### Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

**AGENCY:** Administrative Conference of the United States.

**ACTION:** Recommendations.

**SUMMARY:** The Administrative Conference of the United States adopted six recommendations at its Forty-Fifth Plenary Session addressing: (1) The procedural and practice rule exemption from the APA notice-and-comment rulemaking requirements; (2) agency policy statements; (3) enforcement procedures under the Fair Housing Act; (4) coordination of migrant and seasonal farmworker service programs; (5) streamlining attorney's fee litigation under the Equal Access to Justice Act; and (6) implementation of the Noise Control Act.

The Administrative Conference of the United States is a federal agency established to study the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and to make recommendations for improvements.

Recommendations of the Administrative Conference are published in full text in the **Federal Register** upon adoption. Complete lists of recommendations, together with the texts of those deemed to be of continuing interest, are published in the Code of Federal Regulations (1 CFR part 305).

**DATES:** These recommendations were adopted June 18–19, 1992, and issued June 30, 1992.

**FOR FURTHER INFORMATION CONTACT:** Renee Barnow, Information Officer, or Jeffrey S. Lubbers, Research Director (202–254–7020).

**SUPPLEMENTARY INFORMATION:** The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

At its Forty-Fifth Plenary Session, held June 18–19, 1992, the Assembly of the Administrative Conference of the United States adopted six recommendations.#

Recommendation 92–1, The Procedural and Practice Rule Exemption from the APA Notice-and-Comment Rulemaking Requirements, encourages agencies to voluntarily use notice-and-comment procedures in promulgating rules of procedure and practice except in situations in which the costs of such procedures will outweigh the benefits of having public input. The recommendation also proposes that a rule should be found to fall within the statutory exception only when it both (a) relates solely to agency methods of internal operations or of interacting with regulated parties or the public, and (b) does not (i) significantly affect conduct, activity, or a substantive interest that is the subject of agency jurisdiction, or (ii) affect the standards for eligibility for a government program. The Conference urges OMB to refrain from exercising jurisdiction under Executive Order 12,291 with respect to rules relating to procedure and practice that an agency voluntarily publishes for comment.

Recommendation 92–2, Agency Policy Statements, advises agencies to not issue statements of general applicability that are intended to impose binding substantive standards or obligations upon affected persons without using legislative procedures (normally including notice-and-comment). Agencies should not attempt to bind affected persons through policy statements.

Recommendation 92–3, Enforcement Procedures Under the Fair Housing Act, deals with the Department of Housing and Urban Development's implementation of the 1988 amendments to the Fair Housing Act. The Conference recommends that changes be made to ensure that complainant's litigation interests are protected, that HUD continue to study the reasons why parties are choosing to go to court rather than taking advantage of the administrative remedy, and that it take a number of actions to ensure that the enforcement program remains effective.

Recommendation 92–4, Coordination of Migrant and Seasonal Farmworker Service Programs, urges establishment by executive order of an Interagency Coordinating Council on migrant and seasonal farmworker programs. The recommendation suggests that the Council be charged with identifying specific coordination tasks, giving particular attention to gaps in services and unjustified overlap. In most instances, primary responsibility should be given to an appropriately chosen lead agency. The recommendation also calls for development of a reliable and comprehensive migrant and seasonal farmworker population census system, independent of any existing specific programs.

Recommendation 92–5, Streamlining Attorney's Fee Litigation Under the Equal Access to Justice Act, suggest ways in which Congress should amend the Equal Access to Justice Act, a statue providing for the award of attorney's fees to certain individuals and entities who prevail over the United States in court and administrative litigation. The Conference recommends that the Act be amended to reduce collateral litigation over the amount of awardable fees and encourage settlement of fee petitions. In addition, the recommendation proposes that the standard for award of attorney's fees in cases involving individual benefit claims (such as Social Security disability claims) be changed by eliminating the proviso that the United States need not pay fees if its position was substantially justified. The Conference also urges Congress to resolve difficulties concerning the timeliness of fee applications when cases are remanded to agencies and to consider whether certain administrative and Article I court proceedings not now covered by the Equal Access to Justice Act should be included within its coverage.

Recommendation 92–6, Implementation of the Noise Control

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Act, responds to a request by the Environmental Protection Agency to assist it in addressing procedural concerns arising in connection with the absence of funding for EPA's responsibilities under the Noise Control Act. The recommendation advises EPA to analyze the preemptive impact of its existing regulations under the Act, taking into account a number of related issues. The recommendation suggests that the analysis be followed by appropriate congressional action, either to repeal the Noise Control Act or to fund whatever responsibilities may be delegated by Congress to EPA under the Act.

The full texts of the recommendations are set out below. The recommendations will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session is available for public inspection at the Conference's offices at suite 500, 2120 L Street NW., Washington, DC.

**List of Subjects 1 CFR Part 305**

Administrative practices and procedure, attorney's fees, the Equal Access to Justice Act, fair housing law enforcement, informal rulemaking procedure, migrant and seasonal farmworker programs, the Notice Control Act, and policy statements.

## PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for part 305 continues to read as follows:

**Authority:** 5 U.S.C. 571–576.

2. The table of contents to part 305 of title 1 CFR is amended to add the following new sections:

Sec.

305.92–1 The Procedural and Practice Rule Exemption from the APA Notice-and-Comment Rulemaking Requirements (Recommendation No. 92–1).
305.92–2 Agency Policy Statements (Recommendation No. 92–2).
305.92–3 Enforcement Procedures Under the Fair Housing Act (Recommendation No. 92–3).
305.92–4 Coordination of Migrant and Seasonal Farmworker Service Programs (Recommendation No. 92–4).
305.92–5 Streamlining Attorney's Fee Litigation Under the Equal Access to Justice Act (Recommendation No. 92–5).
305.92–6 Implementation of the Noise Control Act (Recommendation No. 92–6).

3. New §§ 305.92–1 through 305.92–6 are added part 305, to read as follows:

### § 305.92–1 The procedural and practice rule exemption from the APA notice-and-comment rulemaking requirements (Recommendation No. 92–1).

The Administrative Procedure Act, 5 U.S.C. 553, establishes the procedural requirements for notice-and-comment rulemaking. It requires that an agency generally publish notice and provide opportunity for public comment before adopting a rule. The section also provides for a number of specific exemptions. One of these exemptions in subsection (b)(A), provides that the requirements for notice and comment do not apply to "rules of agency organization, procedure, or practice * * *."[1]

The scope of APA exceptions has been described as "enshrouded in considerable smog,"[2] and the question of what is a procedural or practice rule has no clear answer.[3] The issues is in a state of flux.[4] Although courts have used a number of different tests to determine whether a rule was one of procedure or practice, none has been particularly satisfactory. Over the years the Conference has addressed the scope of most of the other exceptions to the APA rulemaking requirements.[5] Because the procedural rule exception is a subject of increasing controversy, it is appropriate for the Conference to fill this gap.

The Conference has long advocated the value of notice and comment in rulemaking,[6] and this recommendation encourages agencies to use such processes voluntarily in promulgating rules of procedure or practice. Notice and comment can provide the agency with valuable input from the public as well as furnish enhanced public acceptance of the rules. On the other hand, there can be costs to the agency in using notice-and-comment procedures, including the time and effort of agency personnel, the cost of Federal Register publication, and the additional delay in implementation that results from seeking public comments and responding to them. For significant procedural rule changes, the benefits seem likely to outweigh the costs; but this may not be the case for minor procedural amendments. Thus, unless the costs outweigh the benefits, we strongly encourage agencies voluntarily to use notice and comment even where an APA exemption applies.

The Conference believes, however, that the procedural and practice rule exemption can in appropriate circumstances serve a legitimate governmental purpose, and that Congress intended it to be available in such cases. Where such rules are truly procedural, rather than substantive in a procedural mask, the statutory exemption should be available. The Conference therefore recommends, as a guide to agencies in determining when a rule is procedural, that agencies should establish first that the rule relates to an agency's internal operations[7] methods of interacting with the public and second that the rule has no substantive impact because it neither significantly affects conduct, activity or a substantive interest that is the subject of agency regulation, nor affects the standards for eligibility for government programs.[8]

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[1] The term procedural rule will be used herein to refer to rules of agency practice and procedure. Other exemptions from notice-and-comment rulemaking requirements cover interpretive rules, policy statements, and situations where good cause exists. See section 553(b). Section 553(a) completely exempts from notice-and-comment rulemaking rules involving military or foreign affairs, agency management or personnel, grants, loans, benefits, or contracts.

[2] *Noel* v. *Chapman*, 508 F.2d 1023, 1030 (2d Cir. 1975); *see also Community Nutrition Institute* v. *Young*, 818 F. 2d 943, 946 (D.C. Cir. 1987).

[3] There has been less debate about what are rules of agency organization.

[4] *Air Transport Association* v. *Department of Transportation*, 900 F.2d 369 (D.C. Cir. 1990), *cert. granted*, 111 S. Ct. 669 (1991), *judgment acated and remanded*, 111 S. Ct. 944 (1991), *opinion vacated and petition dismissed on mootness grounds*, 933 F.2d 1043 (D.C. Cir. 1991), has recently focused attention on the scope of the exemption.

[5] Recommendation 69–8, "Elimination of Certain Exemptions from the APA Rulemaking Requirements, 1 CFR 305.69–8; Recommendation 73–5, "Elimination of the 'Military or Foreign Affairs Function' Exemption From APA Rulemaking Requirements," 1 CFR 305.73–5; Recommendation 76–5, "Interpretive Rules of General Applicability and Statements of General Policy," 1 CFR 305.76–5; Recommendation 83–2, "The 'Good Cause' Exemption from APA Rulemaking Requirements," 1 CFR 305.83–2.

[6] See, eg., Recommendation 69–8, supra n.5.

[7] It is likely that some rules relating to agency internal operations will also fall within a category of rules exempt from all of section 553's requirements (including publication of a statement of basis and purpose and delayed effective date) as a "matter relating to agency management or personnel." 5 U.S.C. 553(a)(2).

[8] The term "program" is meant to be interpreted broadly to include, among others, those involving benefits, contracts, licenses, permits, and loan guarantees. In this connection, it should be noted that many agencies, following Recommendation 69–8, have voluntarily waived the exemption from notice-and-comment rulemaking for matters relating to loans, grants, benefits, or contracts.

Only if the proposed rule meets both parts of this test, should it be considered as being within the exemption from notice-and-comment requirements as a rule of practice or procedure. Examples of rules that would be procedural under this standard include rules governing conduct of formal hearings or appeals, ex parte rules, and rules concerning the business hours of the agency. Examples of nonexempt rules include rules relating to the criteria for determining the severity of enforcement sanctions, levels of civil money penalties, or application requirements that serve to limit eligibility for a government benefit program.

In order to encourage agencies voluntarily to use notice and comment, the Conference also recommends that the Office of Management and Budget refrain from exercing its jurisdiction to review rules fitting within the definition of rules relating to an agency's procedure or practice when an agency voluntarily publishes them.

**Recommendation**

1. Federal agencies should exercise restraint in invoking the Administrative Procedure Act's statutory exceptions to the notice-and-comment rulemaking procedures. Thus, the Administrative Conference has consistently urged agencies voluntarily to use notice-and-comment procedures when issuing rules that fall within the terms of most of the exemptions under 5 U.S.C. 553.[9]

2. For rules falling within the "procedure or practice" exception in 5 U.S.C. 553(b)(A), agencies should use notice-and-comment procedures voluntarily except in situations in which the costs of such procedures will outweigh the benefits of having public input and information on the scope and impact of the rules, and of the enhanced public acceptance of the rules that would derive from public comment.

3. In determining whether a proposed rule falls within the statutory exception for rules of agency "procedure or practice," agencies should apply the following standard: A rule is within the terms of the exception when it both (a) relates solely to agency methods of internal operations or of interacting with regulated parties or the public, and (b) does not (i) significantly affect conduct, activity, or a substantive interest that is the subject of agency jurisdiction, or (ii) affect the standards for eligibility for a government program.[10]

4. To assist agencies in implementing this recommendation, the Office of Management and Budget should refrain from exercising jurisdiction under Executive Order 12291 with respect to rules relating to an agency's procedure or practice that an agency voluntarily publishes for notice and comment.

**§ 305.92-2 Agency policy statements (Recommendation No. 92-2).**

This recommendation addresses use of agency policy statements. Policy statements fall within the category of agency actions that are "rules" within the Administrative Procedure Act's definition because they constitute "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or describe law or policy," 5 U.S.C. 551(4). "Rules" include (a) legislative rules, which have been promulgated through use of legislative rulemaking procedures, usually including the notice-and-comment procedures of the Administrative Procedure Act, 5 U.S.C. 553, and (b) nonlegislative rules—that is, interpretive rules and policy statements—which fall within the above definition of "rules" but which are not required to be promulgated through use of legislative rulemaking procedures. Thus, policy statements include all substantive nonlegislative rules to the extent that they are not limited to interpreting existing law. They come with a variety of labels and include guidances, guidelines, manuals, staff instructions, opinion letters, press releases or other informal captions.

Policy statements that inform agency staff and the public regarding agency policy are beneficial to both. While they do not have the force of law (as do legislative rules) and therefore can be challenged within the agency, they nonetheless are important tools for guiding administration and enforcement of agency statutes and for advising the public of agency policy.

The Conference is concerned, however, about situations where agencies issue policy statements which they treat or which are reasonably regarded by the public as binding and dispositive of the issues they address.[1] The issuance of such binding pronouncements as policy statements does not offer the opportunity for public comment which is normally afforded during the notice-and-comment legislative rulemaking process for rules which have the force of law. Courts have frequently overruled agency reliance on policy statements as binding on affected persons.

Where the policy statement is treated by the agency as binding, it operates effectively as a legislative rule but without the notice-and-comment protection of section 553. It may be difficult or impossible for affected persons to challenge the policy statement within the agency's own decisional process; they may be foreclosed from an opportunity to contend that the policy statement is unlawful or unwise, or that an alternative policy should be adopted. Of course, affected persons could undergo the application of the policy to them, exhaust administrative remedies and then seek judicial review of agency denials or enforcement actions, at which time they may find that the policy is given deference by the courts. The practical consequence is that this process may be costly and protracted, and that affected parties have neither the opportunity to participate in the process of policy development nor a realistic opportunity to challenge the policy when applied within the agency or on judicial review. The public is therefore denied the opportunity to comment and the agency is denied the educative value of any facts and arguments the party may have tendered.

The Conference believes this outcome should be avoided, first by requiring that when an agency contemplates an announcement of substantive policy (other than through an adjudicative decision), it should decide whether to issue the policy as a legislative rule, in a form that binds affected persons, or as a nonbinding policy statement.[2] Second,

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[9] In some cases, the Conference has recommended that agencies generally use notice and comment. Recommendation 76-5, "Interpretive Rules of General Applicability and Statements of General Policy," 1 CFR 305.76-5, Recommendation 83-2, "The 'Good Cause' Exemption from APA Rulemaking Requirements," 1 CFR 305.83-2. In the case of some other exemptions, the Conference has also recommended eliminating them altogether. Recommendation 69-8, "Elimination of Certain Exemptions from the APA Rulemaking Requirements, 1 CFR 305.69-8; Recommendation 73-5, "Elimination of the "Military or Foreign Affairs Function" exemption from APA Rulemaking Requirements," 1 CFR 305.73-5.

[10] The term "program" is meant to be interpreted broadly to include, among others, those involving benefits, contracts, licenses, permits, and loan guarantees. See footnote 7, *supra*.

[1] There are many facets that must be assessed in determining whether a policy statement is operationally a rule that binds affected persons. In general, we apply the concept here to agency statements that are usually issued in permanent form and that are relied upon by an agency and its staff to decide policy whose basis, legality, and soundness cannot be challenged within the agency. Whether a statement is a matter of policy or interpretation, is issued in a permanent form, and is in fact binding (or to what extent it is binding) are often difficult questions that can only be decided in context.

[2] The Conference has already urged agencies to use notice-and-comment procedures, where possible, before promulgating an interpretive rule of

Continued

to prevent policy statements from being treated as binding as a practical matter, the recommendation suggests that agencies establish informal and flexible procedures that allow an opportunity to challenge policy statements. Recognizing that each agency's process differs, the choice of which procedures to change in implementing this recommendation remains in the discretion of each agency. Likewise, actions taken during review of the policy statement would not necessarily be affected by such reconsideration.

**Recommendation**

The following recommendations applicable to policy statements are intended to ensure that, before an agency promulgates substantive policies which bind [3] affected persons, it provides appropriate notice and opportunity for comment on such policies, and makes sure that policy statements are not treated as binding.

**I. Legislative Rulemaking for Binding Policies**

A. Agencies should not issue statements of general applicability that are intended to impose binding substantive standards or obligations upon affected persons without using legislative rulemaking procedures (normally including notice-and-comment). Specifically, agencies should not attempt to bind affected persons through policy statements.

B. When an agency publishes a legislative rule (e.g., in the **Federal Register** and in official agency publications), the preamble to the rule should state that it is a legislative rule intended to bind affected persons. The preamble should also cite the specific statutory authority for issuing the rule in binding form as well as the steps that it has taken to comply with procedural requirements.

**II. Policy Statements**

A. *Notice of nonbinding nature.* Policy statements of general applicability should make clear that they are not binding. Persons affected by policy statements should be advised that such policy statements may be challenged in the manner described in part B below. Agencies should also ensure, to the extent practicable, that the nonbinding nature of policy statements is communicated to all persons who apply them or advise on the basis of them, including agency staff, counsel, administrative law judges, and relevant state officials.

B. *Procedures for challenges to policy statements.* Agencies that issue policy statements should examine and, where necessary, change their formal and informal procedures, where they already exist, to allow as an additional subject requests for modification or reconsideration of such statements. Agencies should also consider new procedures separate from the context in which the policy statement is actually applied. The procedures should not merely consist of an opportunity to challenge the applicability of the document or to request waivers or exemption from it; rather, affected persons should be afforded a fair opportunity to challenge the legality or wisdom of the document and to suggest alternative choices in an agency forum that assures adequate consideration by responsible agency officials. The opportunity should take place at or before the time the policy statement is applied to affected persons unless it is inappropriate or impracticable to do so. Agencies should not allow prior publication of the statement to foreclose full consideration of the positions being advanced. When a policy statement is subject to repeated challenges, agencies should consider instituting legislative rulemaking proceedings on the policy.

**III. Instructions to Agency Staff**

This recommendation does not preclude an agency from making a policy statement which is authoritative for staff officials in the interest of administrative uniformity or policy coherence. Indeed, agencies are encouraged to provide guidance to staff in the form of manuals and other management directives as a means to regularize employee action that directly affects the public. However, they should advise staff that while instructive to them, such policy guidance does not constitute a standard where noncompliance may form an independent basis for action in matters that determine the rights and obligations of any person outside the agency. Further, agencies are encouraged to obtain public comment on such guidance. Finally, in any case in which staff officials' adherence to such directives may affect a member of the public, care should be taken to observe the requirements of 5 U.S.C. 552(a) which imposes a publication requirement independent of any obligation to employ notice-and-comment procedures.

**§ 305.92-3 Enforcement procedures under the Fair Housing Act (Recommendation No. 92-3).**

**Background**

The 1968 Fair Housing Act outlaws various types of discrimination in the sale or rental of residential housing. It prohibits discrimination on the basis of race, color, religion, sex, and national origin, and covers sale and rental of residential housing, refusal to deal, and a number of related actions. In 1988, Congress amended the Fair Housing Act, by altering the enforcement provisions for violations of the antidiscrimination provisions, while at the same time extending the Act's coverage to discrimination against the handicapped and families with children.

The 1968 Act contained limited enforcement provisions, under which the Department of Housing and Urban Development (HUD) had a circumscribed role. The Act provided that persons aggrieved by discrimination could file (within 180 days) a complaint with the Secretary of HUD, who was obligated to conduct an investigation and use informal methods (conferences, conciliation and persuasion) to eliminate any discriminatory practices. If a state or local agency provided rights and remedies that were substantially equivalent to those under the federal statute,[1] the Secretary was required to refer the case to that state or local agency.

If neither agency was able to secure voluntary compliance, the aggrieved party was permitted to file a civil action in a United States District Court, unless state or local forums provided substantially equivalent rights and remedies. In such cases, the state or local court had to be used. The Act also provided for a private right of action in U.S. District Court. Remedies were limited to injunctive relief, actual

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general applicability or statement of general policy that is likely to have substantial impact on the public. Agencies were urged to use post-promulgation notice-and-comment procedure if it is not practicable to accept and consider comments before the rule is promulgated. See Recommendation 76-5, "Interpretive Rules of General Applicability and Statements of General Policy."

[3] As the term is used here, an agency rule is "binding" when the agency treats it as a standard where noncompliance may form an independent basis for action in matters that determine the rights and obligations of any person outside the agency. This is true whether or not the rule was promulgated in accordance with section 553. A document that was not issued pursuant to section 553, and therefore cannot be binding legally, may nevertheless be binding as a practical matter if the agency treats it as dispositive of the issue it addresses. This recommendation is concerned only with substantive, as opposed to procedural, rules. See Recommendation 92-1, "The Procedural and Practice Rule Exemption From the APA Notice-and-Comment Rulemaking Requirements."

[1] Among the provisions in the Act were subpoena authority and authority to submit interrogatories to respondents.

damages, and punitive damages not in excess of $1,000. The 1968 Act also authorized the Department of Justice to file suit in cases involving "pattern or practice" or issues of "general public importance." Injunctive relief was available in such cases.

These remedies were considered by many to be inadequate, both because of the limited judicial remedies and the lack of an effective administrative enforcement process. In 1988, Congress amended the Act's enforcement provisions, while at the same time expanding the Act's coverage.

The 1988 amendments created two additional categories of people protected from discrimination under the Act. Discrimination with respect to handicapped persons is now prohibited, and is defined to include refusal to permit certain "reasonable modifications" of existing premises at the handicapped person's expense, and refusal to make certain "reasonable accommodations" for access. Discrimination against families with children is also prohibited, although there is an exception for certain "housing for older persons."

The amended enforcement provisions furnished significant new remedies. The Act now provides an administrative enforcement procedure, which requires HUD to investigate filed complaints within 100 days. The statute of limitations has been doubled to a year. During the investigation period, HUD is to undertake conciliation efforts. If those are not successful, and HUD finds "reasonable cause" to believe a violation has occurred, it must issue a formal charge of discrimination. Upon issuance of a formal charge, the complainant and respondent each have 20 days to elect to have the claim adjudicated in court. If neither party so elects, the case is heard in an APA hearing before a HUD administrative law judge, with evidence presented under the Federal Rules of Evidence. The parties to the hearing are HUD (represented by its Office of General Counsel) and the defendant, with the aggrieved party permitted to intervene. The ALJ has the authority to award compensatory damages and injunctive relief, and to impose civil penalties against a defendant of up to $10,000 for the first offense, $25,000 if there has been a prior violation within the previous 5 years, and $50,000 if there have been two or more violations within the previous 7 years. ALJ decisions are reviewable by the Secretary,[2] and appealable to the U.S. Court of Appeals.

If either party elects to "remove" the case to court, the case is litigated by the Department of Justice, and the complainant may intervene. As in the administrative forum, injunctive relief and compensatory damages are available, but instead of civil money penalties, punitive damages may be awarded. A jury trial is also available.

The private right of action remains, with an extended statute of limitations, and removal of the $1000 cap on punitive damages. (Injunctive relief and compensatory damages are also available, but civil penalties are not.) There is no requirement that a party exhaust its administrative remedies before filing suit in court, but if administrative proceedings are pending, a private suit may not be filed. The Department of Justice's authority to file suite in "pattern and practice" cases remains the same, except that available relief has been expanded to include civil penalties.

As under the old statute, state and local remedies are to be used to the extent that they are "substantially equivalent" to those provided for in the Act. State and local agencies must be certified by HUD as having equivalent procedures before cases must be referred to them. Agencies that had been certified prior to 1988 were grandfathered in for 40 months with respect to handling discrimination complaints covered by the prior Act. The 40-month period expired in January 1992, but was extended until September 1992. During this "grandfathering" period, state agencies could process housing discrimination complaints involving race, color, sex, religion, and national origin, even though their procedures were not substantially equivalent to the Act's amended provisions. However, until they have been specifically certified to do so, they may not handle complaints involving familial status or the handicapped.

**Discussion**

Implementation of the new enforcement provisions of the Act is in an early stage. HUD appears to be taking its responsibilities seriously. Some portions of the program seem to be working well, while in some others, emerging trends may be cause for concern.

The administrative hearing portion of the enforcement program appears to be functioning smoothly. To the extent that parties have elected to stay in the administrative adjudication process, their cases have been processed expeditiously. However, in more than half the cases, one of the parties has chosen to "remove" the case to court, and most of these court cases are still pending.

HUD has indicated that it is conducting a study on why so many cases are "removed" to court. The Conference applauds that endeavor, and suggests that such a study be an ongoing effort. HUD should also undertake an education program to advise potential complainants and respondents of the practical considerations that relate to the decision on which process to use. Such explanations should address the potential remedies available in each option, as well as the likely time periods that each will require for resolving the dispute.

In virtually all other civil rights enforcement processes, an existing administrative remedy must be used. In fact, in most administrative processes, parties do not have the choice between using an existing administrative process or going to court. Thus, the Fair Housing Act's provision permitting either party the choice of going through the administrative process or to court is an unusual one, offering the potential for quicker hearings in the administrative forum and larger (punitive) damages in judicial forums.

The Fair Housing Act amendments' system arose out of a political compromise resulting from, among other things, concern about the constitutionality of eliminating a party's opportunity for a jury trail in the context of fair housing rights enforcement. The existence of a right to a jury trail in this situation is a subject of some debate, but in light of this debate, as well as the recent nature of the political compromise that permitted enactment of the Fair Housing Act amendments, the Conference does not at this time recommend eliminating the option of a district court remedy. The Conference is reluctant to strongly encourage parties to use the administrative process rather than the judicial route until it has more information as to why parties select one over the other, and more data on alleged significant differences in the relief granted in each.

Under current law, complainants are not automatically parties to proceedings brought by HUD (at the administrative level) or the Department of Justice (in court) as a result of their complaints. Although procedures for intervention exist, concerns have been raised that, in some cases, the interests of complainants and the government may

[2] HUD regulations provide that the Secretary will review only in extraordinary cases.

diverge at points in the litigation where intervention as of right is no longer available. For example, the Department of Justice may not wish to appeal a determination with which the complainant is unsatisfied. If the complainant is not already a party to the litigation, his or her appeal rights may be lost. Providing that a complainant is automatically a party to any case based on his or her complaint would alleviate this problem. Moreover, HUD should notify complainants of their right to be represented by their own counsel (separate from counsel from the government), not only at the beginning of the litigation process, but at subsequent stages where the interests of the government and of the individual complainant may diverge on a significant or dispositive issue (e.g., on the question whether to appeal an adverse decision).

The Act requires that HUD undertake conciliation efforts in cases in which complaints are filed. Conciliation efforts are made by the HUD investigator assigned to the complaint. It appears that close to 25 percent of the cases are conciliated successfully. Conciliation (and other opportunities to use alternative means of dispute resolution) should continue to be encouraged. HUD should study whether using the investigator as conciliator has been advantageous due to the investigator being knowledgeable about the case and the program, or whether parties may tend to perceive some bias because of the investigator's initial involvement in determining the objective merits of the parties' positions. Proper training in conciliation and mediation would be essential for the investigative staff if they are to continue to have a role in this part of the dispute resolution process.

A major area where HUD has not been successful in meeting its responsibility under the Act is its inability to complete investigations and determine whether or not to file charges within the 100 days allowed by statute. In fact, almost 75 percent of the Fair Housing Act complaints filed in 1990 were not processed within the 100-day statutory deadline. There are several possible reasons for this. There has been a significant increase in the number of complaints filed since the Act's amendment. Much of the burden of this increase falls on HUD, because state and local agencies have not been certified for the cases under the expanded coverage. [3] Moreover, HUD has used a fairly complicated internal review system with respect to making "cause" determinations, which might be simplified, now that its personnel have had some experience. HUD has been taking steps to ensure that complaints are processed in a timely fashion, including delegating some decisional authority to regional personnel. Such efforts are to be encouraged, so long as care is taken to ensure adequate training.

As described above, state and local agencies that provide rights and procedures substantially equivalent to those available under federal law may be certified, in which case complaints must be processed by such agencies rather than by HUD. The automatic grandfathering provisions in the 1988 Act have expired (although they have been extended to the extent permitted by the Act), and many state agencies have not been certified. There are concerns from both ends of the spectrum: Concern that HUD will be overlenient in determining that the processes of state and local agencies are substantially equivalent, and concern that HUD will not act expeditiously enough in certifying those that do have equivalent processes.

As a result of the enlarged coverage of the Fair Housing Act, about one-half of the complaints over the last 2 years have involved allegations of discrimination on the basis of familial status. There also have been a substantial number of complaints involving alleged discrimination against the handicapped. Thus, the earlier concentration on discrimination cases arising under the old Act has necessarily been diluted to some degree. HUD should take care to ensure that the importance of attacking all types of discrimination within its purview continues to be recognized, notwithstanding resource limitations.

**Recommendation**

1. Congress should amend the Fair Housing Act to provide that each aggrieved person on whose behalf a complaint has been filed shall automatically be deemed a party to a lawsuit or administrative proceeding that results from such complaint.

2. The Department of Housing and Urban Development (HUD) should notify each complainant of his or her option to select private counsel (separate from counsel from the Government), at the time a reasonable cause finding is made, and a future points where action by government counsel is potentially adversely dispositive of that complainant's remedies. This notice should explain the potential implications to the complainant of exercising that option.

3. HUD should continue to study why parties in cases under the Fair Housing Act are opting in a large portion of cases to use the judicial process, rather than the administrative adjudication process. The results of such studies should be shared with the Administrative Conference, the Congress and the public.

4. HUD should undertake an educational program to advise potential complainants and respondents of the practical considerations that bear upon a decision to choose the administrative process or the judicial process in Fair Housing Act cases, including an explanation of the potential remedies and time periods for resolution of the dispute.

5. HUD should increase its efforts to process complaints within the 100-day statutory period. Among the alternatives it should consider are delegating increased authority to regional offices, with concomitant additional training and appropriate headquarters oversight.

6. In deciding whether to certify or maintain certifications of state and local agencies, HUD should examine closely whether such agencies offer substantially equivalent rights and procedures, and move as rapidly as possible to certify those that do.

7. HUD should encourage the use of alternative dispute resolution in all stages of Fair Housing Act cases. It should particularly monitor the conciliation process, to ensure that it is perceived as working fairly. It should continue to offer training in conciliation and mediation skills.

8. HUD should not allow efforts directed towards the newly covered categories of discrimination to diminish the recognized importance of complaints falling under the original categories.

**§ 305.92-4 Coordination of migrant and seasonal farmworker service programs (Recommendation No. 92-4).**

Since the 1960s, the federal government has established numerous service programs to help meet the needs of migrant farmworkers. From the early days, migrants have been considered a uniquely federal responsibility, primarily because of their interstate movement, which makes it hard for the workers and their families to qualify for local assistance and disrupts other services like schooling for the children. As these programs have evolved, many have come to serve nonmigrant seasonal farmworkers as well.

The programs to meet health, education, housing, job training, and

[3] It may also be that, given the financial pressures facing states, they will not take the necessary actions that would allow HUD to certify them.

other needs of migrant and seasonal farmworkers (MSFWs) have developed separately. There are approximately 10 MSFW-specific service programs, and farmworkers also draw upon the assistance of numerous other general programs such as food stamps or Medicaid. The four largest federal programs are Migrant Education, administered by the Department of Education; Migrant Health and Migrant Head Start, both administered by the Department of Health and Human Services; and the Department of Labor's special job training programs for MSFWs under section 402 of the Job Training Partnership Act.

Each program has its own definition of migrant and/or seasonal farmworker, as well as other eligibility standards. The result is a potential for overlap of some services and gaps in others, and there is no overarching provision for effective coordination among the programs. Various efforts have been undertaken at the national level to improve coordination, but with mixed success to date. These include an Interagency Committee on Migrants, a staff-level group that meets quarterly, largely for information-sharing purposes; an Interagency Coordinating Council, established informally as a forum for policy-level decisionmakers involved in the various programs, but now inactive; and a Migrant Inter-Association Coordinating Committee, involving nonprofit grantees and other organizations representing direct service providers.

In addition, MSFWs often qualify for other services provided by state and local governments or funded through private initiative, each governed by its own particular definitions or eligibility standards. These services are especially important in areas where some or all of the major federal programs are not present. Effective local service providers therefore have to be adroit in locating those available services, from whatever source, that can best meet the needs of their clientele. Because of the great variety in locally available services of this kind, much of the task of coordination among MSFW service programs necessarily takes place at the local and state level. Many states are finding ways to encourage this process by the creation of a governor's committee or task force, involving service providers, growers, representative government officials, farmworkers, and others.

The federal government should also take steps to improve coordination of services. For example, the intake procedures for each service program (now typically undertaken separately by each of the agencies, despite considerable duplication) should be streamlined. To effectuate such efforts, and to provide better interagency consultations before program changes are introduced, the President should establish by executive order a policy-level Interagency Coordinating Council on MSFW programs. This Council is not intended to replace, and indeed should promote, existing coordination at the program staff, state, and service delivery level.

To facilitate interagency coordination, whether or not such a Council is created, a reliable system for gathering data on the nation's population of MSFWs is needed. Although each agency has its own mechanism for generating program statistics and estimates of the target population, these vary widely in method and scope, and each suffers from specific inadequacies. They produce widely varying pictures of the nation's population of MSFWs, to the continuing frustration of legislators, service providers, researchers, and others. Agricultural labor data have always been left out of the Department of Labor's regular employment data system, and no other adequate permanent data source now fills the gap. The recommendation provides some guidance on the goals of such an information-gathering effort.

## Recommendation

### I. Coordination at the National Level

An Interagency Coordinating Council on migrant and seasonal farmworker (MSFW) programs should be established to strengthen national coordination of MSFW service programs. The Council would be charged, inter alia, with identifying specific coordination tasks to be accomplished, in most cases under the primary responsibility of a designated lead agency.

A. To ensure an enduring structure and a clear mandate, the President should issue an executive order creating the Council, specifying the policy-level officials from appropriate agencies who would be permanent members and designating a chair. The order should also designate an agency that would initially have primary responsibility for staffing the Council's meetings and other functions. The Council should be specifically charged to coordinate and review MSFW service programs, giving particular attention to gaps in services and unjustified overlap. It should encourage public participation through public meetings, creation of an advisory committee, or other means.

B. The executive order should provide that the Council, in cooperation with the Office of Management and Budget, review proposals for significant changes in any agency's MSFW service program (including proposed legislation, regulations, and grantee performance standards). OMB should consolidate or coordinate its own oversight of all federal MSFW service programs.

The executive order should assign to the Council the initial responsibility to develop, through delegations to the appropriate agencies, a reliable and comprehensive MSFW population census system, independent of any of the specific programs, along the lines described in part II. Other specific coordination tasks that the Council might wish to take up include development of consolidated or streamlined intake processing for MSFW programs, provision of better linkages among existing MSFW information clearinghouses, and encouragement of cooperation among direct service providers.

D. The Council should identify and assign priorities to the coordination tasks to be accomplished, with a strategy and timetable for their achievement. In most instances, it should assign lead responsibility for each specific coordination task to a designated agency. That agency's coordination efforts with other agencies may include suggesting regulations or other implementation measures.

E. The Council should study the differing eligibility standards of MSFW programs and identify, if appropriate, where consistency could be achieved without substantial impact on the beneficiaries of those programs.

F. The Council should also study and make recommendations on the strengthening of state and local coordination of MSFW programs.

### II. Information Gathering on Migrant and Seasonal Farmworkers

A. To improve coordination of and service delivery in MSFW programs, the executive order should:

(1) Authorize the Council to develop an integrated, cost-effective system for gathering data on the number, characteristics, and distribution of MSFWs and their dependents;

(2) Authorize the Council to designate an appropriate agency to have responsibility for collecting the data, with the cooperation of federal agencies with MSFW service programs;

(3) Direct appropriate federal agencies with expertise in gathering these kinds of data, such as the Bureau of the Census, the Bureau of Labor Statistics,

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the National Center for Education Statistics, or the National Agricultural Statistics Service, to cooperate with the Council's effort; and

(4) Provide opportunities for submission of data and information from the public.

B. This data system should ensure that the information gathered on MSFWs and their dependents sufficiently describes workers employed in a broad spectrum of U.S. agriculture and related industry. This means that the data should include and distinguish among workers employed, for example, in crop and livestock production, the packing and processing of farm products, and fisheries. Data should be collected on workers and their dependents, including such factors as recency and frequency of migration, farm and nonfarm earnings and periods of employment, and health, education, and housing characteristics. These comprehensive data should be collected in a form designed to be useful to service programs with differing definitions of eligible workers and their dependents.

C. This data system should be designed to help the Council identify general trends—including changes in the total number of MSFWs and their dependents and employment patterns—and opportunities for coordination among MSFW programs. To help achieve this goal, the Council should consider whether there are areas in which a consensus on a set of common characteristics of MSFWs should be developed for statistical purposes.

**§ 305.92–5 Streamlining attorney's fee litigation under the Equal Access to Justice Act (Recommendation No. 92–5).**

Congress first waived the government's immunity from attorney's fee awards in the Equal Access to Justice Act (EAJA), 5 U.S.C. 504, 28 U.S.C. 2412(d), in 1980 and reenacted the Act in 1985. The EAJA authorizes certain private parties that prevail in nontort civil litigation against the United States in both courts and agencies to recover their fees and expenses. No recovery is allowed, however, if the government demonstrates that its position was substantially justified, which has been construed to require the government to show that its position had a reasonable basis in both law and fact. The Act precludes fee awards to parties that exceed a specified net worth or, in the case of businesses and organizations, number of employees. It also sets a maximum hourly rate for attorney's fees of $75 per hour. The rate can be raised if the court "determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee"; in agency proceedings, the agency must make such a determination through rulemaking. With cost-of-living increases, attorneys can, at present, hope to recover a little over $100 per hour under the EAJA for most court litigation, though they remain limited to $75 per hour for most litigation before agencies.

Congress sought to accomplish two interconnected goals in the Act: To provide an incentive for private parties to contest government overreaching and to deter government wrongdoing. Congress feared that parties with limited resources would not be able to defend vigorously against government enforcement actions or to challenge opprobrious regulation. One-way fee shifting under the Act was intended to help rectify the imbalance in resources. Because fee awards must be paid out of the offending agency's budget, Congress hoped that EAJA litigation would also spur agencies to act more prudently, particularly when determining the rights of parties of modest means.

Congress originally estimated that the EAJA would cost the government $100 million a year. In recent years, approximately 2,000 EAJA applications have been resolved each year, of which the vast majority involve social security disability or similar individual benefits disputes. The total payout of fees in these cases has been only $5 to $7 million per year.

**Reducing Litigation and Encouraging Settlement**

Although the EAJA may not have been used as often as predicted, it has nevertheless generated a significant amount of contentious litigation. Relatively few EAJA applications appear to be settled, and the empirical evidence available indicates that fee litigation often results in more complicated proceedings than are merited. Ambiguous provisions in the Act—such as the substantial justification standard and the provision permitting enhancements to the fee cap—foster additional litigation and minimize the potential for settlement of fee disputes. The Administrative Conference believes that amendments to the EAJA would produce significant savings in litigation costs.

To reduce litigation over the proper amount of fees awardable under the EAJA, the Conference recommends several technical modifications to the Act. First, Congress should strike the provision allowing enhancement of fees when " a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." The enhancement provision breeds uncertainty, costs money to litigate, and makes settlement more difficult to obtain. Second, Congress should amend 28 U.S.C. 2412(d)(2) to specify how courts should calculate cost-of-living increases. Little is gained by litigating over issues such as which price index or subcategory of an index to use in these calculations. Third, Congress should make clear that fees are to be calculated at the adjusted rate applicable on the date the judge or adjudicator issues an order granting the EAJA application. Currently, courts are split as to when the cost-of-living increase in applicable—for instance, whether it should be calculated as of the date the work is performed, or as of some later date. Choosing the date when the application is granted creates a bright-line rule that should simplify the calculation and compensate a private party to a limited extent for the delay in payment, *e.g.*, payment in 1992 for work performed in 1986. Fourth, because the Conference recommends eliminating the enhancement provision and including an offer-of judgment provision (described below), both of which should tend to reduce the fees payable by the government, it also recommends raising the fee cap to approximate more closely the prevailing market rate for attorneys, to ensure that the level of compensation under the Act remains adequate to serve its purposes.

In addition to these relatively technical modifications to the Act, the Administrative Conference recommends that Congress enact an offer-of-judgment provision to help encourage settlements of fee disputes arising under the EAJA. Upon receiving a private party's fee application, the government could make an offer of judgment as to the fee award. If the private party rejects that offer and ultimately recovers no more than the offer, it could not recover any fees or expenses incurred for services rendered after the offer was rejected. The offer-of-judgment device should encourage settlement, thereby saving both parties the expense of litigating fee disputes; while the government party gains leverage by extending an offer of judgment, the private party benefits from the opportunity to obtain prompt payment of fees.

This offer of judgment recommendation and the four technical recommendations that precede it involve careful balancing of factors that may either increase or reduce the incentives for attorneys to accept EAJA cases. The Conference presents them as a single package, rather than separate proposals, and emphasizes the interrelationship among the recommendations.



The Conference also recommends that Congress act to resolve problems involving implementation of the EAJA's requirement that parties seeking fees file applications within 30 days after final judgment (or final disposition in agency proceedings). Thirty days does not always provide adequate time for prevailing parties to prepare the necessary materials, and the jurisdictional nature of the requirement forecloses the option of a time extension. Extending the filing deadline to 60 days would reduce the pressure on fee applicants without undue prejudice to the government. More importantly, the Supreme Court's recent decision in *Melkonyan* v. *Sullivan*, 111 S. Ct. 2157 (1991), and *Sullivan* v. *Finkelstein*, 110 S. Ct. 2658 (1990), have spawned significant litigation about the timeliness of EAJA applications when the federal courts remand cases to agencies. Currently, some district court remands to agencies are considered final judgments, thus triggering the 30-day filing limit in the EAJA, even though claimants do not yet know whether they have "prevailed" in the underlying action. The uncertainty created by these cases could be avoided by making clear in the statute that the filing deadline is not triggered in a proceeding on remand until the party has prevailed in the remanded proceeding. Alternatively, Congress could resolve these problems by deleting the 30-day requirement. Most other attorney's fee statutes do not include any such deadline, and attorneys waiting to be paid for their services will have no incentive to delay filing.

Congress should also encourage private parties litigating against the United States to inform the court or administrative adjudicator before judgment if they intend to apply for EAJA fees should they prevail. This would permit such decision makers, in appropriate cases, to make a determination as to the substantial justification of the government's position at the same time they resolve the merits. That simultaneous finding may obviate the need for more extensive briefs at a later time.

**Streamlining Fee Disputes in Individual Benefit Cases**

Individual benefit claims brought directly under 42 U.S.C. 405(g) or under a provision cross-referencing 42 U.S.C. 405(g), which include social security disability, SSI, Medicare and similar claims, raise some unique issues deserving special consideration. Currently, the substantial justification issue is litigated in a high percentage of all EAJA disputes arising out of such benefit cases; from July 1989 to June 1990, the government prevailed in less than 15% of these disputes. The average EAJA award in such cases is less than $3,500. In light of these facts, the Conference concludes that the substantial justification standard should be eliminated for benefit cases involving individual claimants (but not for class actions). Although automatic fee shifting in these cases would increase the government's exposure to EAJA awards, that increase would be counterbalanced to some extent by the elimination of considerable government expense in litigating the substantial justification issue.

More importantly, elimination of the substantial justification standard should enable benefit claimants to find representation. Currently, parties seeking to press small disability claims and most SSI claims may have difficulty retaining counsel either through hourly rates or through a contingency fee arrangement; eliminating the substantial justification standard should help ensure the availability of counsel in these cases by making certain that a reasonable fee will be available for any successful claim. In addition, in cases—primarily disability cases—in which claimants can obtain counsel through contingency fee arrangements (restricted, in social security cases, to a reasonable fee not to exceed 25% of back benefits, 42 U.S.C. 406(b)), their counsel currently have little incentive to apply for fees under the EAJA. If counsel have a contingency fee arrangement and obtain an EAJA fee award, they must return the lesser award to the claimant. Public Law 96–481, Section 206, as amended by Public Law 99–80, Section 3, 99 Stat. 186 (August 5, 1985). Not surprisingly, many successful benefits claimants do not apply for EAJA fees (fewer than 40 percent did so from July 1989 to June 1990), even though private parties' success rate in EAJA litigation exceeds 80 percent.

**Extending the EAJA's Coverage**

Finally, the Conference recommends that Congress consider extending the Act's coverage, on a category-by-category basis, to particular agency and court proceedings that have the same characteristics as those adversary proceedings now covered by the Act. The Act covers only "adversarial adjudications" in agencies, which are defined as "adjudications under section 554 of [title 5]." The Supreme Court in *Ardestani* v. *INS*, 112 S. Ct. 515 (1991), construed that provision to exclude agency proceedings—such as deportation cases—which have virtually the identical attributes as proceedings under section 554 but are not technically covered by that provision. Similarly, it is unclear whether EAJA covers all litigation against the United States in Article I courts, even though such proceedings are often directly analogous to those covered by the Act in Article III courts. Congress has dealt explicitly with some of these courts; for example, the EAJA was amended in 1985 to include the United States Claims Court, and a separate statute, with somewhat different standards than the EAJA, provides for fee awards in Tax Court proceedings. 26 U.S.C. 7431. But other Article I bodies remain to be considered. The Court of Veterans Appeals, for example, recently decided that it does not have authority to award attorney's fees under the Act. *Jones* v. *Derwinski*, No. 90–58 (March 13, 1992).

**Recommendation**

1. Congress should amend the Equal Access to Justice Act, 5 U.S.C. 504, 28 U.S.C. 2412(d), as follows:

a. To reduce litigation over the dollar value of fee awards, (1) the provision in the Act allowing enhancement of fees when "a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee" should be stricken, (2) the Act should specify the precise method to be used in calculating future cost-of-living adjustments to the fee cap, (3) the Act should state that the rate to be used is the one that is applicable when the judge's (or administrative adjudicator's) order awarding EAJA fees is issued, and (4) the $75 per hour fee cap should be raised to approximate more closely the prevailing market rate for attorneys.

b. To encourage settlements, the Act should include an offer-of-judgment procedure: after an EAJA application is filed, the government may make an offer of judgment on the EAJA claim; if the private party rejects the government's offer and is ultimately awarded no more than that offer, that party forfeits the right to seek fees or expenses for the EAJA litigation from the time the offer of judgment is rejected.

c. To eliminate litigation on the question of when prevailing parties must file for fees, either the 30-day filing deadline in 5 U.S.C. 504 and 28 U.S.C. 2412(d) should be extended to 60 days, to run from the date of final disposition of the case,[1] or the filing deadline should be eliminated.

[1] "Final disposition" occurs when a party has prevailed in a proceeding and the disposition of the proceeding is final and unappealable; in proceedings involving a remand from a court to an agency, final disposition does not occur until the remanded proceeding is concluded and the resulting order is final and unappealable.

d. To promote judicial economy, the Act should encourage private parties litigating against the United States to notify the court or administrative adjudicator prior to judgment if they intend to file an EAJA application should they prevail, so as to enable the decisionmaker, in appropriate cases, to determine whether the government's position was substantially justified within the meaning of the Act of the same time that judgment is entered against the United States.

2. Congress should modify the provisions of 28 U.S.C. 2412(d) as they apply to individual benefit claims either brought directly under 42 U.S.C. 405(g) or under a provision cross-referencing 42 U.S.C. 405(g) in the federal courts. For those cases, the Act should provide for fee awards to prevailing claimants in individual actions without reference to whether the position of the United States was substantially justified.

3. Congress should consider whether to extend the Act's coverage, on a category-by-category basis, to:

a. Agency proceedings that, although not technically adjudications "under section 554 (of Title 5)," are required by statute to employ procedures equivalent to those of such formal adversary proceedings.

b. Proceedings before Article I courts that have the same attributes as covered proceedings in Article III courts and in agencies.

**§ 305.92-6 Implementation of the Noise Control Act (Recommendation No. 92-6).**

In 1981, Congress agreed to the Administration's proposal to cease funding for the Office of Noise Abatement and Control (ONAC) in the Environmental Protection Agency (EPA). Congress, however, did not repeal the Noise Control Act [2] when it eliminated ONAC's funding.

Before the elimination of ONAC, EPA engaged in a wide variety of activities to abate noise pollution under authority of the Noise Control Act and, after 1978, the Quiet Communities Act.[3] These included identifying sources of noise for regulation, promulgating noise emission standards, coordinating federal noise research and noise abatement, working with industry and international, state and local regulators to develop consensus standards, disseminating information and educational materials, and sponsoring research concerning the effects of noise and the methods by which it can be abated. The Quiet Communities Act authorized EPA to provide grants to state and local governments for noise abatement.

EPA ceased virtually all noise abatement activities after ONAC's funding was eliminated. However, the federal noise emission and labeling standards it had promulgated have remained in effect, thereby preempting state and local governments from adopting different standards. Thus, the standards remain frozen, as neither the EPA nor the state or local agencies have been in a position to amend or update possibly outmoded standards despite the technological developments of the last decade. Moreover, some private rights to bring tort or other actions may be affected by these EPA emission and labeling standards.

The Conference recognizes that the decision to end funding was substantive rather than procedural, but, in part, the impact has been procedural.[4] No procedure has been available for a decade to reexamine the existing preemptive standards to take into account developments in science and technology that may bear on implementation of the legislative intent. Elimination of funding for the agency's noise control program has had the additional procedural effect of leaving several proposed but unissued standards pending for a decade without final action by EPA.

EPA retains the statutory responsibility for enforcing the Noise Control Act, and has used minimal resources for engaging in limited enforcement and other related activities.[5] Pursuant to this authority, EPA has asked the Conference to assist it in reevaluating the current status of the Noise Control Act by recommending options that relate to procedural considerations. The Conference takes no position concerning what actions, if any, EPA should take regarding enforcement and implement of the Noise Control Act. If EPA wishes to assess the current situation, however, the Conference has identified considerations that should be part of such reassessment.

The Conference is unaware of any other instance where Congress has eliminated the funding for an ongoing program that preempts state and local actions without also ending the statutory authorization for that program or addressing the preemptive effect of existing regulations. If this situation does exist in other contexts, there may be procedural problems similar to those associated with the Noise Control Act.

**Recommendation**

1. In considering its authority and responsibility under the Noise Control Act, the Environmental Protection Agency (EPA) should analyze the preemptive impact of its existing and pending noise standards for the purpose of eliminating, where possible, any unintended impacts. EPA should then advise the appropriate congressional committees respecting the preemptive effects of EPA's possibly outmoded regulations under the Noise Control Act,[6] or any other implications of the cessation of funding respecting the agency's responsibilities under the Act.

2. In making the determinations called for under this recommendation, EPA should take into account, among other considerations:

(a) The scientific and technological developments that have occurred since 1981;

(b) Whether there is a need to update EPA's past methodology for measuring and assessing the effects of noise;

(c) The appropriate allocation of responsibility among federal agencies, and between the federal government and the states and localities, in accomplishing any goals determined by Congress respecting regulation of noise, educating the public on the dangers posed by noise, and sponsoring research into noise effects and abatement techniques;

(d) Whether there is a need for additional coordination of the noise abatement activities of federal agencies and the states and localities;

(e) The adequacy of current coordination between the United States and foreign government agencies concerning noise abatement standards and regulations impacting U.S. international trade;[7]

(f) Any appropriate federal government participation in the activities of private-sector standard-setting organizations concerning noise;[8] and

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[2] 42 U.S.C. 4901–4918 (1988).

[3] 42 U.S.C. 4913 (1988).

[4] Although Congress eliminated funding for the Noise Control Act after ONAC had adopted some preemptive regulations and proposed others, it did not repeal the Noise Control Act. This situation is different from the more common circumstance where Congress passes legislation but does not fund its implementation.

[5] Since 1981, EPA has engaged only in very limited enforcement of existing noise regulations, disseminating information created during ONAC's existence, and commenting on environmental impact statements issued by the Federal Aviation Administration concerning airport noise. The FAA has independent authority to abate airport noise under the Noise Control Act and the Aviation Noise and Capacity Act, Public Law No. 101–508, sections 9301–09 (1990). Responsibility for the enforcement of EPA's railroad and motor carrier emission standards is located in the Department of Transportation, which has funding for this purpose. The Department, however, does not have authority to promulgate new or amended emission standards different from those adopted by EPA.

[6] See Conference Recommendation 84–5, "Preemption of State Regulation by Federal Agencies," 1 CFR 305.84–5.

[7] See Conference Recommendation 91–1, "Federal Agency Cooperation with Foreign Government Regulators," 1 CFR 305.91-1

[8] See Conference Recommendation 78–4, "Federal Agency Interaction with Private Standard-Setting Organizations in Health and Safety Regulations," 1 CFR 305.78–4.

(g) The relative advantages and disadvantages of utilizing public education, market incentives, emission standards, or other approaches for any abatement of noise that Congress may wish to pursue.

3. After reviewing whatever advice may be received from EPA under this recommendation, the appropriate congressional committees should review the issues raised by the foregoing recommendations, including whether the continuation of substantive regulatory requirements without funding, or EPA's inability to reexamine, modify, or rescind those requirements, creates undue procedural burdens upon industry, the states, and the public. Congress should then either repeal the Noise Control Act or fund whatever responsibilities under the Act Congress delegates to EPA.

Dated: June 30, 1992.

Jeffrey S. Lubbers,

*Research Director.*

[FR Doc. 92-15878 Filed 7-7-92; 8:45 am]

BILLING CODE 6110-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 92-CE-02-AD; Amendment 39-8307; AD 92-15-13]**

### Airworthiness Directives; Beech 99 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes Airworthiness Directive (AD) 90-04-04, which currently requires inspection of the wing front spar lower cap and associated structure for fatigue cracking on certain Beech 99 series airplanes, and replacement if found cracked. AD 90-04-04 also establishes a service life limit on the wing front spar lower caps that have reinforcing straps installed. This action maintains the requirements of AD 90-04-04, but corrects the compliance times and other incorrect information contained in that AD. The actions specified by this AD are intended to prevent fatigue failure of the wing front spar lower cap and associated structure.

**DATES:** Effective August 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 24, 1992.

**ADDRESSES:** Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 676-7111; or Western Aircraft Maintenance, 4444 Aeronca Street, Boise, Idaho 83705. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office, 1801 Airport Road, room 100 Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4126.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech 99 series airplanes was published in the Federal Register on March 4, 1992 (57 FR 7562). The action proposed superseding AD 92-04-04, Amendment 39-6487 (55 FR 3581, February 2, 1990), with a new AD that would (1) retain the inspection and possible replacement requirements of the wing front spar lower cap and associated structure that is required by AD 90-04-04; (2) correct certain compliance times referenced in AD 90-04-04 and delete information included in this AD that is not pertinent; and (3) maintain the inspection intervals established by either superseded AD 77-05-01 R3 or AD 90-04-04, which will be superseded by this action.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 85 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $37,400. Since AD 90-04-04, which would be superseded by this action, required the same actions (except for a change in repetitive compliance times, the deletion of impertinent information, and the incorporation of established inspection intervals), there is no additional cost impact of this AD on U.S. operators. The $10,200 cost difference between this AD (estimated $37,400) and AD 90-04-04 (estimated $27,200) is a result of inflationary costs used in determining the cost of labor ($55 per hour as opposed to $40 per hour).

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing AD 90-04-04, Amendment 39-6487 (55 FR 3581, February 2, 1990), and adding the following new AD:

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**93-15-13 Beech:** Amendment 39-8307; Docket No. 92-CE-02-AD. Supersedes AD 90-04-04; Amendment 39-6487.

*Applicability:* 99 series airplanes (serial numbers U-1 through U-49, and serial numbers U-51 through U-164) that have 3,000 hours or more time-in-service (TIS), except those airplanes that have Beech Wing Modification Kit No. 99-4023-1S installed, certificated in any category.

*Compliance:* Required as indicated, unless already accomplished.

To prevent fatigue failure of the wing front spar lower cap and associated structure, accomplish the following:

(a) For airplanes that do not have a spar reinforcing strap installed in accordance with the instructions in STC SA1178CE, accomplish the actions specified in paragraphs (a)(1) through (a)(4) of this AD using the criteria in the Beech Structural Inspection and Repair Manual (SIRM).

(1) Upon the accumulation of 3,000 hours TIS on the front spar lower cap or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished within the last 500 hours TIS (the inspection interval established by either superseded AD 77-05-01 R3 or superseded AD 90-04-04), and thereafter at intervals not to exceed 500 hours TIS, inspect the areas of structure defined by Index Number 1 (lower forward fitting only) and Index Numbers 2 through 7 on Page 202, Section 57-15-00, of the Beech SIRM, using the visual, fluorescent penetrant, and eddy current methods as specified in the Beech SIRM. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace as specified in the Beech SIRM.

(2) Upon the accumulation of 10,000 hours TIS on the nacelle splice plates, or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished (superseded AD 90-04-04), and thereafter at intervals not to exceed 1,000 hours TIS, inspect the nacelle splice plates as defined by Index Number 9 on Page 202, Section 57-15-00, of the Beech SIRM, using visual methods as specified in the Beech SIRM. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace as specified in the Beech SIRM.

(3) Upon the accumulation of 10,000 hours TIS on the wing structure or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished within the last 500 hours TIS (the inspection interval established by either superseded AD 77-05-01 R3 or superseded AD 90-04-04), and thereafter at intervals not to exceed 500 hours TIS, inspect the wing structure components defined in paragraph (d) of this AD using visual and dye penetrant methods as indicated. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace as specified in the Beech SIRM.

(4) Upon the accumulation of 10,000 hours TIS on the front spar lower cap or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished (superseded AD 90-04-04), and thereafter at intervals not to exceed 10,000 hours TIS, replace the structural components set forth on Page 203, Section 57-15-00, of the Beech SIRM, and summarized below:

(i) Lower cap of the front spar, with attachment fitting, in each outer wing panel.

(ii) Lower cap of the front spar, with left and right attachment fittings, in the center section.

(b) For airplanes that have a spar reinforcing strap installed in accordance with Supplemental Type Certificate (STC) SA1178CE, accomplish the actions specified in paragraphs (b)(1) through (b)(5) using the Beech SIRM and Aerocon California, Inc., Engineering Order No. E.O. B-9975-02, dated November 14, 1975. Strap tension is to be adjusted in accordance with the instructions in Aerocon California Service Letter, dated May 25, 1976.

(1) If the strap was installed before 1,000 hours TIS on the front spar lower cap, within the next 2,000 hours TIS after the effective date of this AD, unless previously accomplished within the last 2,000 hours TIS (the inspection interval established by either superseded AD 77-05-01 R3 or superseded AD 90-04-04), and thereafter at intervals not to exceed 2,000 hours TIS:

(i) Remove and inspect the STC SA1178CE strap in accordance with the instructions in Aerocon California, Inc. Engineering Order No. E.O. B-9975-2, dated November 14, 1975. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace in accordance with the instructions in Aerocon California, Inc. Engineering Order No. E.O. B-9975-2.

(ii) Inspect the following areas of structure using the visual, fluorescent penetrant, and eddy current methods as specified in the Beech SIRM. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace as specified in the Beech SIRM.

(A) Areas defined by Index Number 1 (lower forward fitting only) and Index Numbers 2 through 7 on Page 202, Section 57-15-00, of the Beech SIRM.

(B) Areas defined by paragraphs (d)(5) and (d)(8) of this AD.

(iii) Reinstall the STC SA1178CE strap and adjust its tension in accordance with the instructions in Aerocon California Service Letter, dated May 25, 1976.

(2) If the strap was installed at or after 1,000 hours TIS on the front spar lower cap, within the next 1,000 hours TIS after the effective date of this AD, unless previously accomplished within the last 1,000 hours TIS (the inspection interval established by either superseded AD 77-05-01 R3 or superseded AD 90-04-04), and thereafter at intervals not to exceed 1,000 hours TIS, accomplish the following:

(i) Remove and inspect the STC SA1178CE strap in accordance with the instructions in Aerocon California, Inc. Engineering Order No. E.O. B-9975-2, dated November 14, 1975. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace in accordance with the instructions in Aerocon California, Inc. Engineering Order No. E.O. B-9975-2.

(ii) Inspect the following areas of structure (specified in paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) of this AD) using the visual, fluorescent penetrant, and eddy current methods as specified in the Beech SIRM. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace as specified in the Beech SIRM.

(A) Areas defined by Index Number 1 (lower forward fitting only) and Index Numbers 2 through 7 on Page 202, Section 57-15-00, of the Beech SIRM.

(B) Areas defined by paragraphs (d)(5) and (d)(8) of this AD.

(iii) Reinstall the STC SA1178CE strap and adjust its tension in accordance with the instructions in Aerocon California Service Letter, dated May 25, 1976.

(3) Upon the accumulation of 10,000 hours TIS on the nacelle splice plates or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished (superseded AD 90-04-04), and thereafter at intervals not to exceed 1,000 hours TIS, inspect the nacelle splice plates as defined by Index Number 9 on Page 202, Section 57-15-00, of the Beech SIRM, using the visual methods as specified in the Beech SIRM. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace as specified in the Beech SIRM.

(4) Upon the accumulation of 10,000 hours TIS on the wing structure or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished within the last 500 hours TIS (the inspection interval established by either superseded AD 77-05-01 R3 or superseded AD 90-04-04), and thereafter at intervals not to exceed 500 hours TIS, inspect the wing structure components defined in paragraph (d) of this AD using visual and dye penetrant methods as indicated; compliance is not required with paragraphs (d)(5), (d)(8), and that portion of paragraph (d)(12) of this AD that refers to the lower spar cap and hinge. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace as specified in the Beech SIRM.

(5) Replace the structural components that are set forth on Page 203, Section 57-15-00, of the Beech SIRM (summarized in paragraphs (b)(5)(i) and (b)(5)(ii) of this AD) upon the accumulation of the front spar's allowable service life. Determine the allowable service life by subtracting the front spar lower cap hours TIS at which the strap was installed from 48,000 hours TIS.

**Note 1:** For example, if the spar cap had been in service 5,000 hours TIS when the strap was installed, then the spar cap's allowable service life becomes 43,000 hours TIS (48,000 minus 5,000).

(i) Lower cap of the front spar, with attachment fitting, in each outer wing panel.

(ii) Lower cap of the front spar, with left and right attachment fittings, in the center section.

(c) The inspection intervals established by superseded AD 77-05-01 R3 and superseded AD 90-04-04 may be substituted for the "unless already accomplished" statement in paragraphs (a)(1), (a)(3), (b)(1), (b)(2), and (b)(4) of this AD.

(d) The items specified in paragraphs (d)(1) through (d)(13) of this AD define the additional structural items to be inspected as



referenced by paragraphs (a)(3) and (b)(4) of this AD.

(1) Inspect the lower fuselage skin at the attachment to the main spar for possible cracks or loose rivets.

(2) Inspect the lower left hand (LH) and right hand (RH) nacelle skins for cracks or loose rivets.

(3) Remove the aft fabric covers in the wheel wells and inspect for possible cracks in the center section skin under the top nacelle fairing. Check around the nacelle attach flange on the top side for possible loose rivets or cracks in the top skin.

(4) Inspect the structure and attaching fasteners of both keel beam assemblies at Butt Line (BL) 66 inboard, BL 88 outboard, at the center section rear spar, Nacelle Station 160.50.

(5) Inspect for possible cracks or loose rivets in the LH and RH dimpled skin attachment holes on the forward side of the main spar at the four countersunk screws and at all rivets between the fuselage and the nacelles.

(6) Inspect for possible cracks or loose rivets along the top skin attachment to the aft spar.

(7) Inspect for possible loose fasteners in the lower aft spar cap and skin.

(8) Inspect for possible cracks or loose fasteners in the lower strap on the main spar at Wing Station 68.5.

(9) Inspect the lower stringers running forward and aft between the main spar and the aft spar for possible cracks or loose fasteners to the lower fuselage skin. This area is to be checked from the center aisle and through access panels inside of the airplane.

(10) Inspect for possible cracks or loose fasteners in frames and angle clips of the center wing/fuselage at Fuselage Stations 188, 197, and 207.

(11) Using dye penetrant procedures outlined in AC 43.13-1A, inspect the four upper forward wing to center section fittings and the eight aft wing to center section fittings for possible cracks. Do not remove the wing attachment bolts unless cracks are indicated.

(12) Inspect the outer wing upper and lower spar cap and hinge for possible cracks, loose rivets, or wear of hinge.

(13) Lower the flaps and remove the lower aft access covers of the outer and center wing to inspect the aft spar and ribs for possible cracks near the inboard flaps.

(e) Airplane maintenance record entries must be made and notification in writing sent to the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209, stating the location and length of any cracks found during inspections required by this AD and also the total hours TIS of the component at the time the crack was discovered. Reports may be submitted by letter or through M or D (Malfunction or Defect) or MRR (Maintenance Reliability Reports) procedures. (Reporting approved by the Office of Management and Budget under OMB No. 2120-0056).

(f) The eddy current inspections required by this AD must be performed by personnel who have received training and are qualified in the operation of eddy current equipment that has been calibrated using a specimen obtained from the airplane manufacturer and simulates cracking of the spar cap.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(i) The strap inspection or modification required by this AD shall be done in accordance with Aerocon California, Inc., Engineering Order No. E.O. B-9975-02, dated November 14, 1975; and Aerocon California Service Letter, dated May 25, 1976. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Western Aircraft Maintenance, 4444 Aeronca Street, Boise, Idaho 83705. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

(j) This amendment (39-8307) supersedes AD 90-04-04, Amendment 39-6487.

(k) This amendment (39-8307) becomes effective on August 24, 1992.

Issued in Kansas City, Missouri, on June 26, 1992.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-15941 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

**[Docket No. 91-CE-98-AD; Amendment 39-8306; AD 92-15-14]**

## Airworthiness Directives; Piper Aircraft Corporation Models PA-46-310P and PA-46-350P Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to Piper Aircraft Corporation (Piper) Models PA-46-310P (Malibu) and PA-46-350P (Mirage) airplanes. This action requires installing vacuum gauge markings and incorporating changes to the limitations section of the Airplane Flight Manual. One of the affected airplanes experienced an in-flight vacuum system failure, which went undetected because the low vacuum detector failed to sense a low vacuum and the vacuum gauge did not display a safe operating range. The actions specified by this AD are intended to prevent failure of the air-driven attitude gyro and autopilot systems caused by an undetected low vacuum.

**DATES:** Effective August 22, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 22, 1992.

**ADDRESSES:** Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert L. Miller, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3020; facsimile (404) 991-3606.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Piper Models PA-46-310P and PA-46-350P airplanes was published in the **Federal Register** on March 2, 1992 (57 FR 7331). The action proposed (1) the disconnection of the low vacuum annunciation switch; (2) the fabrication and installation of a placard that labels the low vacuum light as inoperative; (3) the installation of vacuum gauge markings; and (4) the incorporation of changes to the Airplane Flight Manual. The proposed disconnection, fabrication, and installations would be accomplished in accordance with Piper Service Bulletin No. 947A, dated October 29, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Forty commenters request that the proposed requirements of disabling the low vacuum pressure annunciator

switch and installing a placard with the words "VACUUM LOW LIGHT INOP" should be removed from the proposed AD. The following summarizes these commenters position:

• Although the annunciator may fail to warn of a lower than normal vacuum, it will detect a complete loss of vacuum or an extremely low vacuum; and

• Although possibly unreliable, the use of this annunciator is still better than no annunciator.

After examining all information related to the annunciator disablement and placard requirement, the FAA has determined that these requirements should be removed from the proposed AD.

In addition, several of these commenters proposed ideas to replace the disablement and placard requirements of the proposed AD. The following describes these ideas and presents the FAA's position:

• Five commenters feel that a placard that labels the low vacuum annunciator as "unreliable" would provide pilots with an improved warning. The FAA does not concur and has determined that a properly marked vacuum gauge is the primary indication of vacuum system condition. An "unreliable" annunciator placard could result in the pilot ignoring a warning of a system malfunction and result in a hazardous condition because of a lack of pilot response.

• Three commenters request changes to the airplane flight manual that warn the pilot that the low vacuum annunciator is unreliable, and to inform the pilot of the importance of the vacuum gauge as the primary source of vacuum system condition. Although the FAA agrees that the vacuum gauge is the primary source of vacuum system condition, the FAA does not concur that a flight manual change is required. The FAA believes the pilots are aware that the vacuum gauge is the primary vacuum system indication, and has determined that a change to the flight manual could result in the pilot ignoring a valid warning if the operator thought the annunciator was unreliable.

One other comment was received in regard to the vacuum gauge marking installation requirement of the proposed AD. The commenter states that this requirement should be eliminated because the markings would make the gauge more difficult to read and therefore less accurate. The FAA does not concur and has determined that, without these markings, the vacuum gauge is not in compliance with Federal Aviation Regulations and that these markings must be installed to provide a safe operating environment.

No comments were received on the FAA's determination of the cost impact of the proposed AD on the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the deletion of the annunciator disablement and placard requirement and minor editorial corrections. The FAA has determined that (1) the minor editorial corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed; and (2) the same level of safety will be obtained by eliminating the annunciator and disablement requirement of the AD.

The FAA estimates that 403 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $22,165. This cost analysis is different than that which was originally proposed because the FAA has eliminated the disconnection of the low vacuum annunciation switch requirement, and the placard requirement to label the low vacuum light as inoperative. The FAA estimated that it would take approximately 2 workhours to accomplish the proposed AD. Therefore, the cost analysis for this AD has been reduced by 50 percent (from $44,330 to $22,165).

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new AD:

92-15-14 Piper Aircraft Corporation: Amendment 39-8308; Docket No. 91-CE-88-AD.

*Applicability:* Model PA-46-310P airplanes (serial numbers (S/N) 46-8408001 through 46-8608067 and S/N 4608001 through 4608140) and Model PA-46-350P airplanes (S/N 4622001 through 4622118), certificated in any category.

*Compliance:* Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the air-driven attitude gyro and autopilot systems caused by an undetected low vacuum, accomplish the following:

(a) Install vacuum gauge markings in accordance with the INSTRUCTIONS section in Part II of Piper Service Bulletin No. 947A, dated October 29, 1991.

(b) Incorporate whichever of the following reports that is applicable into the limitations section of the Airplane Flight Manual, and operate the airplane accordingly:

| Model | Report |
|---|---|
| PA-46-310P | Report: VB-1200, page 2-4, Issued: January 11, 1984, Revised: October 14, 1991. |
| PA-46-310P | Report: VB-1300, page 2-4, Issued: July 1, 1986, Revised: October 14, 1991. |
| PA-46-350P | Report: VB-1332, page 2-4, Issued: June 15,1988, Revised: October 14, 1991. |

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an

appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) The installation required by this AD shall be done in accordance with Piper Service Bulletin No. 947A, dated October 29, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

(f) This amendment (39–8308) becomes effective on August 22, 1992.

Issued in Kansas City, Missouri, on June 24, 1992.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–15786 Filed 7–7–92; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 71

**[Airspace Docket No. 91–AGL–11]**

## Transition Area Modification; Rice Lake Municipal Airport, Rice Lake, WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to modify the Rice Lake, WI transition area to accommodate VOR runway 36, VOR runway 18, and NDB runway 36 Standard Instrument Approach Procedures (SIAPs) to Rice Lake Municipal Airport, Rice Lake, WI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

**EFFECTIVE DATE:** 0901 UTC, October 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone (312) 694–7568.

**SUPPLEMENTARY INFORMATION:**

### History

On Thursday, November 14, 1991, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the transition area airspace near Rice Lake, WI (56 FR 57867).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. The airspace designation for the transition area listed in this document is published in § 71.181 of Handbook 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the transition area airspace near Rice Lake, WI, to accommodate VOR runway 36, VOR runway 18, and NDB runway 36 SIAPs to Rice Lake Municipal Airport, Rice Lake, WI.

The SIAPs require the FAA to alter the designated airspace to ensure that the procedures will be contained within controlled airspace. The minimum descent altitudes for these procedures may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

### PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follow:

**Authority:** 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

*Section 71.181 Designation*

* * * * *

AGL WI TA Rice Lake, WI [Revised]
Rice Lake, Rice Lake Municipal Airport, WI
(lat. 45° 28′ 45″N, long. 91° 43′ 20″W)

That airspace extending upward from 700 feet above the surface within a 7 mile radius of Rice Lake Municipal Airport; excluding that airspace within Cumberland, WI, Transition Area.

* * * * *

Issued in Des Plaines, Illinois on June 19, 1992.

**John P. Cuprisin,**

*Manager, Air Traffic Division.*

[FR Doc. 92–15675 Filed 7–7–92; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF COMMERCE

### Office of the Secretary

### 15 CFR Part 6

**[Docket No. 920525–2125]**

## Standardization of Data Elements and Representations

**AGENCY:** Office of the Secretary, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Department is removing from the Code of Federal Regulations regulations identifying responsibilities for management of data elements and representations by Federal agencies. These responsibilities have been superseded by the Computer Security Act of 1987; by Office of Management and Budget Circular A–130, Management of Federal Information Resources; by FIRMR Subchapter C, Management and Use of Federal Information Processing Resources; by the Paperwork Reduction Act of 1990; and by other statutes, Executive Orders, and policies

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concerning general information policy, information technology, privacy, and maintenance of Federal records.

**EFFECTIVE DATE:** July 8, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ms. Shirley M. Radack, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-2833.

**SUPPLEMENTARY INFORMATION:** The purpose of 15 CFR part 6 was to implement section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended (79 Stat. 1127) and Executive Order 11717 of May 9, 1973 (38 FR 12315), dated May 11, 1973. In addition, 15 CFR Part 6 replaced Office of Management and Budget Circular No. A-86 entitled "Standardization of Data Elements and Codes in Data Systems," dated September 30, 1967.

The Federal Property and Administrative Services Act of 1949 was amended by the Computer Security Act of 1987, Public Law 100-235, to provide for the promulgation of standards and guidelines for Federal computer systems. Executive Order 11717 was superseded by the Computer Security Act.

15 CFR part 6 identified responsibilities and provided guidance for the management of Executive Branch activities related to the development, implementation and maintenance of standards for data elements and representations. At the time that 15 CFR part 6 was issued, data elements and representations were a principal aspect of Federal information processing systems and required special emphasis to support cost effective information processing. Since that time, Public Law 100-235 has defined Federal computer system to mean "any equipment of interconnected system or subsystems of equipment that is used in the automated acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission or reception of data or information * * *" and includes computers, ancillary equipment, software, firmware, services and related resources.

In addition, the Office of Management and Budget issued Circular A-130, Management of Federal Information Resources in 1986, and the General Services Administration has issued Federal Information Resources Management Regulation (FIRMR) in 41 CFR ch. 201. The Paperwork Reduction Act of 1980 and other statutes, Executive Orders, and policies concerning general information policy, information technology, privacy, and maintenance of Federal records have been issued to reflect a broader view of information technology, and to provide policies and guidance on the management of Federal information technology resources. As a result, the policies and guidance promulgated in 15 CFR part 6 are obsolete and no longer needed.

The Department finds for good cause that notice and comment and a delayed effective date are unnecessary for this action because removing this rule relieves a restriction.

**List of Subjects in 15 CFR Part 6**

Computer Technology, Science and Technology.

**PART 6—[REMOVED]**

For the reasons set out in the preamble and under authority of 5 U.S.C. 301, part 6 is removed from title 15 of the Code of Federal Regulations.

Dated: June 29, 1992.

**Robert M. White,**

*Under Secretary for Technology.*

[FR Doc. 92-15857 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-CN-M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Social Security Administration**

**20 CFR Part 404**

**[Regulations No. 4]**

**RIN 0960-AD20**

## Repeal of Special Disability Standard for Widows, Widowers, and Surviving Divorced Spouses

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rules.

**SUMMARY:** These final rules reflect provisions of section 5103 of the Omnibus Budget Reconciliation Act of 1990, that change the definition of disability for widows, widowers, and surviving divorced spouses (hereinafter, collectively widows) from one based on the inability to do any "gainful activity" to the same definition used for all other claimants for disability benefits under title II of the Social Security Act (the Act), i.e., inability to engage in any "substantial gainful activity." The statutory change is applicable with respect to benefits payable for months after December 1990 based on applications filed on or after January 1, 1991, or pending on such date.

**EFFECTIVE DATE:** July 8, 1992.

**FOR FURTHER INFORMATION CONTACT:** Cassandra Bond, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1794.

**SUPPLEMENTARY INFORMATION:**

**Background**

These final rules reflect section 5103 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) which changed, effective for monthly benefits payable for months after December 1990, the definition of disability in widows' claims to that used in all other claims for benefits based on disability under Title II of the Act. Section 5103 also contains several other, more limited, provisions applicable only to certain widow claimants.

A widow, generally, may be entitled to widow's insurance benefits based on the earnings of her deceased spouse if she has attained age 60. A widow who is under age 60, but at least age 50, may also be entitled to widow's benefits if she is disabled.

Generally, disability is defined in section 223(d) of the Act as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. The impairment(s) must be of such severity that the claimant is not able to do her previous work and cannot, considering her age, education, and work experience, do any other kind of substantial gainful work which exists in the national economy.

Under section 223(d)(2) of the Act prior to its amendment by section 5103 of Public Law 101-508, claimants for widow's benefits based on disability had to meet a stricter definition of disability than other title II claimants based upon the inability to engage in any gainful activity. Under the statute, the Secretary was to prescribe regulations which deemed a level of severity of a person's impairment(s) that was sufficient to preclude any gainful activity. Our implementing regulations (see §§ 404.1577 and 404.1578) stated that a widow's impairment(s) must have specific clinical findings that are the same as those for any impairment in the Listing of Impairments in appendix 1 to subpart P of part 404 of the regulations or medically equivalent to those for any impairment shown there. Further, these regulations stated that the person's age, education, and work experience would not be considered in determining whether she was disabled.



Section 5103 of Public Law 101-508 repealed the stricter definition of disability used in widows' claims. This change was effective with respect to monthly benefits payable for months after December 1990 based on applications filed on or after January 1, 1991, or pending on that date. Therefore, effective with respect to monthly benefits payable for months after December 1990, the standard of disability for widow's benefits is "inability to engage in any substantial gainful activity," and includes all the policies and practices used in determining disability in other title II claims under the sequential evaluation process set forth in § 404.1520. These policies and practices include, where applicable in a given claim, the severity assessment, residual functional capacity, consideration of age, education, and work experience, and use of the Medical-Vocational Guidelines in appendix 2 to subpart P of part 404 of the regulations.

One of the requirements for entitlement to disabled widow's, as well as other title II benefits, is that the person must file an application. This requirement has been modified as well by section 5103 in that certain persons shall be deemed to have filed an application for benefits payable for months after December 1990. In order for this provision to apply, the person must be entitled to disability insurance benefits under section 223 of the Act for December 1990, or eligible for supplemental security income (SSI) benefits or federally administered State supplementary payments under title XVI of the Act for January 1991. She also must have applied in 1990 for widow's benefits based on disability and must have been found not disabled under the narrower definition of disability for widows applicable at the time, but would have been entitled if the provisions of section 5103 had applied.

If it is determined that a widow meets all the other requirements for entitlement (i.e., is not married, has filed an application, is at least age 50, but not yet 60, is the "widow" of the insured worker, and is under a disability that began before the end of the prescribed statutory period), there is a 5-month waiting period before disabled widow's benefits can be paid, unless the person was previously entitled as a disabled widow. Section 5103(c)(2) now provides that each month in the period commencing with the first month for which the widow is first eligible for SSI benefits or federally administered State supplementary payments under title XVI of the Act shall be included as one of the months of the disability waiting period. Like the primary provision of section 5103, this more limited provision is effective for monthly benefits payable for months after December 1990 based on applications which were filed on or after January 1, 1991, or were pending on that date.

On May 22, 1991, SSA published Social Security Ruling (SSR) 91-3p at 56 FR 23588, which interprets 20 CFR 404.1577 through 404.1579, to be used in adjudicating cases involving widow's disability benefits for months prior to January 1991. It explains how residual functional capacity will be used in determining whether a widow is disabled without considering age, education, and work experience. The republication of §§ 404.1577 through 404.1579 does not affect the application of SSR 91-3p.

**Regulatory Provisions**

The following discussion outlines how these final rules reflect section 5103 of Public Law 101-508. Except for the revisions to §§ 404.335 and 404.336, which reflect the more limited provisions of section 5103 of Public Law 101-508, the revisions to the existing rules fall into two types. Under the first type of revision, the existing rules that discuss the policies and practices used in evaluating claims for disability insurance benefits by workers and claims for child's insurance benefits based on disability are changed by these final rules to show that they now also apply to widow's claims based on disability for monthly benefits payable for months after December 1990. Under the second type of revision, the existing rules that discuss special policies and practices applicable only to disabled widow's claims are changed to show that they now apply to these claims only for monthly benefits payable for months prior to January 1991.

We are retaining the rules that address special policies and practices applicable only to disabled widows' claims for monthly benefits payable for months prior to January 1991 because they are still applicable in new claims in which there are potential retroactive benefits payable for months prior to January 1991, in appeals of denials and cessations in those months, and in reopenings of prior decisions for such months. We will apply the rules as explained in SSR 91-3p.

*Section 404.315 "Who is Entitled to Disability Benefits"*

In paragraph (d), we have added the word "full" to the first sentence to conform the language of this section to the language in §§ 404.335(c)(2) and 404.336(c)(2). This is not a change in our policy, but only a clarification that the disability waiting period consists of 5 full consecutive months. We are also correcting two printer's errors in the last sentence of the paragraph: We have removed the italics from the phrase, "period of disability," and we have changed the single word "anytime" into two words, "any time."

*Section 404.335 "Who is Entitled to Widow's or Widower's Benefits" and Section 404.336 "Who is Entitled to Widow's or Widower's Benefits as a Surviving Divorced Spouse"*

We have changed the reference to the definition of disability used in widows' claims in both sections from § 404.1577, which is no longer applicable to monthly benefits for months after December 1990, to § 404.1505, which contains the definition of disability for all title II claims for months after December 1990 and which includes a cross-reference to § 404.1577 for months prior to January 1991.

We have added identical new paragraphs (b)(4) to both sections to reflect the provisions of section 5103 of Public Law 101-508 regarding deemed filing of new applications by certain widow claimants who filed applications for benefits in 1990.

We have also revised the first sentence of paragraphs (c)(2) of §§ 404.335 and 404.336 and added identical new paragraphs (c)(3) to both sections to reflect the provisions of section 5103 of Public Law 101-508 regarding the inclusion of months of SSI or federally administered State supplementary payment eligibility as months of the waiting period. The new paragraphs provide that a widow may be considered to have satisfied all or part of the 5-month waiting period ordinarily imposed on new claims, if she is receiving or has ever received SSI benefits or a federally administered State supplementary payment.

We are also making minor editorial corrections to both sections. We are changing the first word of §§ 404.335(c)(1) and 404.336(c)(1), "The," to "Your," to make the language of the paragraph consistent with the remaining paragraphs in the section. We are also correcting a typographical error in § 404.335(c)(1) to change the word "which" to "whichever" and adding the word "full" to the first sentence of § 404.336(c)(2). (See explanation under Section 404.315 "Who is entitled to disability benefits.") These revisions only correct errors or provide

clarification, and do not change the meaning of these rules.

*Section 404.1501 "Scope of Subpart"*

We have revised paragraph (i) to state that the special rules in §§ 404.1577 through 404.1579 are now applicable to disabled widow's claims only for monthly benefits payable for months prior to January 1991. We are also changing the phrase "surviving divorced wives" to "surviving divorced spouses" to be consistent with §§ 404.1577 and 404.1578. We are also deleting a reference to § 404.1580, as there is no such section.

*Section 404.1505 "Basic Definition of Disability"*

We have changed paragraph (a) to extend to disabled widows, for disability benefits payable for months after December 1990, the definition of disability that we use for other title II disability claimants. We have changed paragraph (b) to make it clear that the previous definition of disability for disabled widows applies only for months prior to January 1991.

*Section 404.1511 "Definition of a Disabling Impairment"*

We have changed paragraph (a) to include disabled widows entitled to monthly benefits payable for months after December 1990 in the category of beneficiaries for whom a disabling impairment(s) is one which, of itself, is so severe that it meets or equals a set of criteria in the Listing of Impairments in appendix 1 of this subpart or which, when considered with the person's age, education, and work experience, would result in a finding of disability under § 404.1594. Conversely, we revised the title and text of paragraph (b) to make it clear that the special definition of disabling impairment for disabled widow beneficiaries applies only for monthly benefits payable for months prior to January 1991.

*Section 404.1520a "Evaluation of Mental Impairments"*

We have removed from paragraph (c)(3) the provision that excludes consideration of residual functional capacity in disabled widows' claims.

*Section 404.1560 "When Your Vocational Background will be Considered"*

We have revised paragraph (a) to include applicants for disabled widow's benefits payable for months after December 1990 in the list of the categories of applicants whose residual functional capacities and vocational backgrounds will be considered when the issue of disability cannot be decided on medical considerations alone.

*Section 404.1577 "Disability Defined for Widows, Widowers, and Surviving Divorced Spouses" and Section 404.1578 "How We Determine Disability for Widows, Widowers, and Surviving Divorced Spouses"*

We have made minor changes to the title and the text of both rules, to show that they now apply only to widows claiming monthly disability benefits payable for months prior to January 1991. In § 404.1577, we have pluralized "impairment" to reflect that we consider all of an individual's physical or mental impairments, and added a cross-reference to the rules that pertain to claims for monthly benefits payable for months after December 1990.

*Section 404.1579 "How We Will Decide Whether Your Disability Continues or Ends"*

We have made minor revisions in this section. Paragraph (a), "General," has been broken down into two paragraphs. In paragraph (a)(1), we explain that we will follow the rules in §§ 404.1594 through 404.1598 for determining whether a widow beneficiary's disability continues or ends for benefits payable for months after December 1990; these are the same rules applicable to all other title II disability beneficiaries. We then provide that the rules for determining whether a widow's disability continues or ends for benefits payable for months prior to January 1991 are contained in the remainder of the section. Paragraph (a)(2) is the former paragraph (a) with minor revisions to show that it applies only to determinations for monthly benefits prior to January 1991. We then repeat the remainder of the current rules.

It should be noted that the rules for cessations in months prior to January 1991 will have very limited applicability. Since in the vast majority of cases disability is determined to have ceased no earlier than the month in which we mail the beneficiary a notice saying he or she is no longer disabled (see § 404.1594(g)(2)), virtually all current cessations based on a determination that a widow beneficiary is no longer disabled use the definition of disability in section 5103 of Public Law 101–508. Appeals or reopenings of cessation determinations for benefits payable for months prior to January 1991 will constitute nearly the only cases that will be considered under the rules in new paragraph (2). We will apply those rules as explained in SSR 91–3p.

*Section 404.1594 "How We Will Decide Whether Your Disability Continues or Ends"*

We have revised paragraph (a) to include disabled widow beneficiaries for months after December 1990.

*Appendix 1 to Subpart P Section 12.00 "Mental Disorders"*

We have removed from the seventh paragraph in subsection A the last two (parenthetical) sentences, which state that the residual functional capacity assessment does not apply to disabled widows' (or SSI children's) claims, and that the impairment must meet or equal a listed impairment for the individual to be eligible. (The deletion of the reference to SSI children also makes these rules consistent with our recent revisions to the title XVI childhood disability rules in Part 416 (56 FR 5534 (February 11, 1991)) and merely corrects an oversight that occurred when those childhood rules were promulgated.)

**Regulatory Procedures**

We are publishing these amendments without prior notice and public comment thereon. The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of regulations. The APA provides exceptions to its notice and comment requirements when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(B) good cause exists for waiver of proposed rulemaking and public comment procedures in the case of these rules because we are only reflecting statutory changes and making nonsubstantive technical and editorial corrections. The revisions based on the statutory changes are not discretionary and do not involve the setting of policy. Therefore, opportunity for prior public comment is unnecessary and these changes to our regulations are being issued as final rules.

*Executive Order 12291*

The estimated increase in benefit payments resulting from these legislative changes is $110 million for fiscal year 1996, with an increase of 5000 title II beneficiaries and a decrease of 1200 title XVI recipients. This overall increase in benefits will exceed the threshold amount for a major rule under Executive Order 12291. The increase is,

however, largely a transfer with a negligible increase in administrative costs. Moreover, we do not anticipate that modifying the eligibility standard will create any marginal incentive that will adversely impact the program. Given these facts, and that we have identified the overall costs, and increase in beneficiaries, OMB has waived the requirement for a regulatory impact analysis for this rule.

*Paperwork Reduction Act*

These regulations impose no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

*Regulatory Flexibility Act*

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security Disability Insurance; 93.803, Social Security Retirement Insurance; and 93.805, Social Security Survivors Insurance)

**List of Subjects in 20 CFR Part 404**

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Social Security.

Dated: October 4, 1991.

**Gwendolyn S. King,**

*Commissioner of Social Security.*

Approved: November 5, 1991.

**Louis W. Sullivan,**

*Secretary of Health and Human Services.*

**Note:** This document was received at the Office of the Federal Register on June 24, 1992.

Part 404 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-____)

1. The authority citation for subpart D of part 404 is revised to read as follows:

**Authority:** Secs. 202, 203 (a) and (b), 205(a), 216, 223, 228 (a)-(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 428 (a)-(e), and 1302.

2. Paragraph (d) of § 404.315 is revised to read as follows:

**§ 404.315 Who is entitled to disability benefits.**

* * * * *

(d) You have been disabled for 5 full consecutive months. This 5-month waiting period begins with a month in which you were both insured for disability and disabled. Your waiting period can begin no earlier than the 17th month before the month you apply—no matter how long you were disabled before then. No waiting period is required if you were previously entitled to disability benefits or to a period of disability under § 404.320 any time within 5 years of the month you again became disabled.

3. Section 404.335 is amended by removing the word "or" at the end of paragraph (b)(2); removing the period at the end of paragraph (b)(3) and adding in its place "; or"; adding a new paragraph (b)(4); revising the introductory text of paragraph (c), paragraph (c)(1) and the first sentence of paragraph (c)(2); adding the word "and" following the semicolon at the end of paragraph (c)(2); and adding a new paragraph (c)(3) to read as follows:

**§ 404.335 Who is entitled to widow's or widower's benefits.**

* * * * *

(b) * * *

(4) You applied in 1990 for widow's or widower's benefits based on disability, and:

(i) You were entitled to disability insurance benefits for December 1990, or eligible for supplemental security income or federally administered State supplementary payments, as specified in subparts B and T of part 416 of this chapter, respectively, for January 1991; and

(ii) You were found not disabled for any month based on the definition of disability in §§ 404.1577 and 404.1578, as in effect prior to January 1991, but would have been entitled if the standard in § 404.1505(a) had applied. (This exception to the requirement for filing an application is effective only with respect to benefits payable for months after December 1990.);

(c) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1505 and—

(1) Your disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's or father's benefits or to widow's or widower's benefits based upon a disability, whichever occurred last;

(2) Your disability continued during a waiting period of 5 full consecutive months, unless months beginning with the first month of eligibility for supplemental security income or federally administered State supplementary payments are counted, as explained in paragraph (c)(3) of this section. * * *

(3) For monthly benefits payable for months after December 1990, if you were or have been eligible for supplemental security income or federally administered State supplementary payments, as specified in subparts B and T of part 416 of this chapter, respectively, your disability does not have to have continued through a separate, full 5-month waiting period before you may begin receiving benefits. We will include as months of the 5-month waiting period the months in a period beginning with the first month you received supplemental security income or a federally administered State supplementary payment and continuing through all succeeding months, regardless of whether the months in the period coincide with the months in which your waiting period would have occurred, or whether you continued to be eligible for supplemental security income or a federally administered State supplementary payment after the period began, or whether you met the nondisability requirements for entitlement to widow's or widower's benefits. However, we will not pay you benefits under this provision for any month prior to January 1991;

* * * * *

4. Section 404.336 is amended by removing the word "or" at the end of paragraph (b)(2); removing the period at the end of paragraph (b)(3) and adding in its place "; or"; adding a new paragraph (b)(4); revising the introductory text of paragraph (c), paragraph (c)(1) and the first sentence of paragraph (c)(2); adding the words "; and" in place of the period at the end of paragraph (c)(2); and adding a new paragraph (c)(3) to read as follows:

**§ 404.336 Who is entitled to widow's or widower's benefits as a surviving divorced spouse.**

* * * * *

(b) * * *

(4) You applied in 1990 for widow's or widower's benefits based on disability, and:

(i) You were entitled to disability insurance benefits for December 1990, or eligible for supplemental security income or federally administered State supplementary payments, as specified in Subparts B and T of part 416 of this chapter, respectively, for January 1991; and

(ii) You were found not disabled for any month based on the definition of disability in §§ 404.1577 and 404.1578, as in effect prior to January 1991, but would have been entitled if the standard in § 404.1505(a) had applied. (This exception to the requirement for filing

an application is effective only with respect to benefits payable for months after December 1990.);

(c) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1505 and—

(1) Your disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's or father's benefits or to widow's or widower's benefits based upon a disability, whichever occurred last;

(2) Your disability continued during a waiting period of 5 full consecutive months, unless months beginning with the first month of eligibility for supplemental security income or federally administered State supplementary payments are counted, as explained in paragraph (c)(3) of this section. * * *

(3) For monthly benefits payable for months after December 1990, if you were or have been eligible for supplemental security income or a federally administered State supplementary payments, as specified in Subparts B and T of Part 416 of this chapter, respectively, your disability does not have to have continued through a separate, full 5-month waiting period before you may begin receiving benefits. We will include as months of the 5-month waiting period the months in a period beginning with the first month you received supplemental security income or a federally administered State supplementary payment and continuing through all succeeding months, regardless of whether the months in the period coincide with the months in which your waiting period would have occurred, or whether you continued to be eligible for supplemental security income or a federally administered State supplementary payment after the period began, or whether you met the nondisability requirements for entitlement to widow's or widower's benefits. However, we will not pay you benefits under this provision for any month prior to January 1991;

* * * * *

5. The authority citation for subpart P of part 404 is revised to read as follows:

**Authority:** Secs. 202, 205 (a), (b), and (d) through (h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d) through (h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473, secs. 2(d) (2), (5), (6) and (15) of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

6. In § 404.1501, paragraph (i) is revised to read as follows:

**§ 404.1501 Scope of subpart.**

* * * * *

(i) In §§ 404.1577, 404.1578, and 404.1579, we explain the special rules covering disability for widows, widowers, and surviving divorced spouses for monthly benefits payable for months prior to January 1991, and in §§ 404.1581 through 404.1587 we discuss disability due to blindness.

* * * * *

7. In § 404.1505, paragraph (a) is amended by revising the last sentence, and paragraph (b) is amended by revising the last two sentences to read as follows:

**§ 404.1505 Basic definition of disability.**

(a) * * * We will use this definition of disability if you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child's insurance benefits based on disability before age 22 or, with respect to disability benefits payable for months after December 1990, as a widow, widower, or surviving divorced spouse.

(b) * * * There are also different rules for determining disability for widows, widowers, and surviving divorced spouses for monthly benefits for months prior to January 1991. We discuss these rules in §§ 404.1577, 404.1578, and 404.1579.

8. Section 404.1511 is revised to read as follows:

**§ 404.1511 Definition of a disabling impairment.**

(a) *Disabled workers, persons disabled since childhood and, for months after December 1990, disabled widows, widowers, and surviving divorced spouses.* If you are entitled to disability cash benefits as a disabled worker, or to child's insurance benefits, or, for monthly benefits payable after December 1990, to widow's, widower's, or surviving divorced spouse's monthly benefits, a disabling impairment is an impairment (or combination of impairments) which, of itself, is so severe that it meets or equals a set of criteria in the Listing of Impairments in appendix 1 of this subpart or which, when considered with your age, education, and work experience, would result in a finding that you are disabled under § 404.1594. In determining whether you have a disabling impairment, earnings are not considered.

(b) *Disabled widows, widowers, and surviving divorced spouses, for monthly benefits for months prior to January 1991.* If you have been entitled to disability benefits as a disabled widow, widower, or surviving divorced spouse and we must decide whether you had a disabling impairment for any time prior to January 1991, a disabling impairment is an impairment (or combination of impairments) which, of itself, was so severe that it met or equaled a set of criteria in the Listing of Impairments in appendix 1 of this subpart, or results in a finding that you were disabled under § 404.1579. In determining whether you had a disabling impairment, earnings are not considered.

9. In §§ 404.1520a, paragraph (c)(3) is revised to read as follows:

**§ 404.1520a Evaluation of mental impairments.**

* * * * *

(c) * * *

(3) If you have a severe impairment(s), but the impairment(s) neither meets nor equals the listings, we must then do a residual functional capacity assessment.

* * * * *

10. In § 404.1560, paragraph (a) is revised to read as follows:

**§ 404.1560 When your vocational background will be considered.**

(a) *General.* If you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child's insurance benefits based on disability which began before age 22, or widow's or widower's benefits based on disability for months after December 1990, and we cannot decide whether you are disabled on medical evidence alone, we will consider your residual functional capacity together with your vocational background.

* * * * *

11. Section 404.1577 is revised to read as follows:

**§ 404.1577 Disability defined for widows, widowers, and surviving divorced spouses for monthly benefits payable for months prior to January 1991.**

For monthly benefits payable for months prior to January 1991, the law provides that to be entitled to a widow's or widower's benefit as a disabled widow, widower, or surviving divorced spouse, you must have a medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months. The impairment(s) must have been of a level of severity to prevent a person from doing any gainful activity. To determine whether you were disabled, we consider only your physical or mental impairment(s). We do not consider your age, education, and work experience. We also do not consider certain felony-related and prison-related impairments, as explained in § 404.1506. (For monthly

benefits payable for months after December 1990, see § 404.1505(a).)

12. Section 404.1578 is revised to read as follows:

**§ 404.1578 How we determine disability for widows, widowers, and surviving divorced spouses for monthly benefits payable for months prior to January 1991.**

(a) For monthly benefits payable for months prior to January 1991, we will find that you were disabled and pay you widow's or widower's benefits as a widow, widower, or surviving divorced spouse if—

(1) Your impairment(s) had specific clinical findings that were the same as those for any impairment in the Listing of Impairments in appendix 1 of this subpart or were medically equivalent to those for any impairment shown there;

(2) Your impairment(s) met the duration requirement.

(b) However, even if you met the requirements in paragraphs (a) (1) and (2) of this section, we will not find you disabled if you were doing substantial gainful activity.

13. In § 404.1579, by designating the text of paragraph (a) following the paragraph heading as paragraph (a)(2) and revising the first sentence of newly designated (a)(2); and by adding a new paragraph (a)(1) to read as follows:

**§ 404.1579 How we will decide whether your disability continues or ends.**

(a) *General.* (1) The rules for determining whether disability continues for widow's or widower's monthly benefits for months after December 1990 are discussed in §§ 404.1594 through 404.1598. The rules for determining whether disability continues for monthly benefits for months prior to January 1991 are discussed in paragraph (a)(2) of this section and paragraphs (b) through (h) of this section.

(2) If you are entitled to disability benefits as a disabled widow, widower, or surviving divorced spouse, and we must decide whether your disability continued or ended for monthly benefits for months prior to January 1991, there are a number of factors we consider in deciding whether your disability continued. * * *

* * * * *

14. Paragraph (a) of § 404.1594 is revised to read as follows:

**§ 404.1594 How we will decide whether your disability continues or ends.**

(a) *General.* There is a statutory requirement that, if you are entitled to disability benefits, your continued entitlement to such benefits must be reviewed periodically. If you are entitled to disability benefits as a disabled worker or as a person disabled since childhood, or, for monthly benefits payable for months after December 1990, as a disabled widow, widower, or surviving divorced spouse, there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not medically improved we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases (see paragraph (e) of this section for exceptions), we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled.

* * * * *

**Appendix 1 to Subpart P of Part 404 [Amended]**

15. In appendix 1 to subpart P of part 404, the seventh paragraph of section 12.00A is amended by removing the two sentences in the parenthetical at the end of the paragraph.

[FR Doc. 92-15248 Filed 7-7-92; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 950

### Wyoming Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment with exceptions and required amendments.

**SUMMARY:** OSM is announcing the approval, with exceptions and required amendments, of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment would revise or add new statutory provisions pertaining to the review of mine permit applications, land use definitions, and the requirement for the Wyoming Game and Fish Commission to provide approval of revegetation standards only for fish and wildlife habitat on surface mined land. The amendment revises the State program to improve operational efficiency.

**EFFECTIVE DATE:** July 8, 1992.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: (307) 261-5776.

**SUPPLEMENTARY INFORMATION:**

## I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16, and 950.20.

## II. Submission of Amendment

By letter dated March 21, 1991 (administrative record No. WY-15-1), Wyoming submitted enacted legislation which amends the following provisions of the Wyoming Environmental Quality Act: Article 4, Subsection (Subsec.) 35-11-406(h) (new language has been proposed for insertion that would preclude the Administrator from raising as issues any items not previously identified as deficient at the close of the first 150-day review period, unless the applicant in subsequent revisions significantly modifies the application); Article 1, Subsection 35-11-103(e) (definitions for fish and wildlife habitat and grazingland have been proposed); and Article 4, Subsection 35-11-402(b) (new language has been proposed to specify that, where consultation and approval by State wildlife agencies is required for reclamation of fish and wildlife habitat on surface mined lands, the Wyoming Game and Fish Commission shall consider fish and wildlife habitat to mean these lands defined in W.S. 35-11-103(e)(xxvi), excluding grazingland as defined in W.S. 35-11-103(e)(xxvii)).

OSM published a notice in the April 5, 1991, **Federal Register** (56 FR 14041) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (administrative record No. WY-15-7). The public comment period closed May 6, 1991. A public meeting was requested and held on June 14, 1991. The summary notes for that meeting are available for public review (administrative record No. WY-15-18).

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During its review of the amendment, OSM identified some concerns relating to the proposed statutory changes at Subsections 35–11–406(h), 35–11–103(e), and 35–11–402(b). OSM notified Wyoming of the concerns by letters dated July 1, 1991 (administrative record No. WY–15–19). Wyoming responded by submitting, in a letter dated July 30, 1991, additional explanatory information (administrative record No. WY–15–20).

OSM announced receipt of the explanatory information in a notice in the August 9, 1991, **Federal Register** (56 FR 37873) and reopened the public comment on the adequacy of the proposed amendment (administrative record No. WY–15–24). The reopened public comment period closed on August 26, 1991.

By letter dated August 14, 1991, the Wyoming and National Wildlife Federations requested an extension of time, until September 23, 1991, in which to review and possibly provide additional comments on the additional explanatory information (administrative record No. WY–15–25). Since Wyoming's response was reflective, in part, of comments it made at the June 14, 1991, public meeting, and in order to maintain timeliness in the rulemaking process, OSM published, on August 29, 1991, a notice extending the comment period until September 10, 1991 (56 FR 42712); administrative record No. WY–15–29).

By letter dated May 18, 1992 (administrative record No. WY–15–30, Wyoming submitted clarification of its July 30, 1991, response to OSM's issue letter.

## III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment to Chapter 11, Title 35, of the Wyoming Environmental Quality Act, as submitted by Wyoming on March 21, 1991.

*1. Article 4, Subsection 35–11–406(h), Land Quality; Application for Permit; Generally; Denial; Limitations*

Wyoming proposed to revise subsection 35–11–406(h) to specify that after a 150-day technical review period, "* * * the administrator shall not raise any item not previously specified as being deficient unless the applicant in subsequent revisions significantly modifies the application." This language is inserted after an existing sentence which reads, "[a]ll items not specified as being deficient at the end of the first one hundred fifty (150) day period shall be deemed complete for the purposes of this subsection."

Sections 510(b)(1) and (2) of SMCRA provide that no permit or revision application shall be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval * * * that (1) the application is accurate and complete, and that all requirements of the Act and the State program have been complied with, and (2) the applicant has demonstrated that reclamation as required by the Act and the State program can be accomplished under the reclamation plan contained in the permit application. Wyoming's Act contains substantively identical requirements at subsection 35–11–406(n).

Wyoming defines "complete application," for the purpose of the assessment of completeness and suitability for publication required in subsection 35–11–406(h) and (j), at chapter I, section 2(s) in its regulations, as meaning that the application contains all the information required by the regulatory program that is needed to make a decision on the permit. This definition of "complete application" is substantively identical to the Federal definition of "complete and accurate application" at 30 CFR 701.5.

Based on the requirements of section 510(b) of SMCRA and subsection 35–11–406(n) of the State Act, Wyoming must retain the authority to require, at any time prior to permit approval, that the applicant correct any deficiencies identified by the regulatory authority or the public and supply any information needed to support the required findings.

Wyoming's proposed language would have the effect of providing a "cut-off" point in time during the technical review period, after which the Administrator would not be able to raise new issues and request additional information from an applicant regarding the content of a permit application. Since the public comment period would be opened after the application was determined to be "complete," the proposed language would limit the Administrator's ability to raise new issues that might result from the public review after the technical review period. Additionally, the proposed language would set a preemptive standard that could void the Administrator's ability to revoke permits.

Therefore, Wyoming's proposed language at subsection 35–11–406(h) would limit its ability to meet the requirements of section 510(b) of SMCRA and subsections 35–11–406(n) and 35–11–409(a) of Wyoming's Act.

Wyoming, in its July 30, 1991, response to OSM's July 1, 1991, issue letter, argued that OSM is obligated to approve the proposed language because (1) it does not substantively alter the meaning of subsection 35–11–406(h), which the Secretary specifically approved in 1983, (2) any deficiencies identified after the 150-day period expires could still be corrected by the imposition of permit conditions under subsection 35–11–801(a) or denial of the permit under subsection 35–11–406(n)(i), and (3) the plain language of subsection 35–11–409(a) gives the Director the right to revoke a mining permit if "at any time" the permit holder failed to provide any fact that would have resulted in denial of the permit (administrative record No. WY–15–20).

OSM disagrees with Wyoming's assertion that the revision approved by OSM on November 9, 1983, had the same effect as would Wyoming's currently proposed language. The Secretary did previously approve a revised version of subsection 35–11–406(h) providing, among other things, that "[a]ll items not specified as being deficient at the end of the first one hundred fifty (150) day period shall be deemed complete *for the purposes of this subsection*" (emphasis added). However, the approval of this language (Finding B.4, 48 FR 51465, 51466, November 9, 1983) was based on a comparison of the language to the provisions of the Federal regulation at 30 CFR 771.21(b)(1), a regulation which no longer exists, having been removed as unnecessary. This regulation required that a person intending to conduct surface coal mining operations file a complete application for a permit within a timeframe established by the regulatory authority as sufficient to allow for review of the application.

There is nothing in either the finding or the superseded Federal regulation which suggests that the Secretary interpreted the 1983 revision of subsection 35–11–406(h) as establishing a cutoff date beyond which the State regulatory authority could not raise or recognize deficiencies. Rather, because the 1983 revision specified that the application would automatically be deemed complete after 150 days only "for the purposes of this subsection," the Secretary viewed the 1983 revision as merely allowing the operator to proceed with the requirement to advertise the application after passage of a certain length of time (150 days) and initiate public review. Hence, Wyoming still retained the authority under subsection 35–11–406(n) to (1) require that the applicant correct any deficiencies

identified by the regulatory authority or the public and supply any information needed to support the required findings or (2) deny the permit if the Administrator subsequently was unable to find, based on an affirmative demonstration by the applicant, that the application was accurate and complete or that reclamation could be accomplished as required by the State program.

Unlike the 1983 revision, the proposed revision of subsection 35–11–406(h) being considered in this rulemaking does not restrict its reach to the subsection in which it appears. Instead, it flatly prohibits the Administrator from raising any item not previously specified as being deficient, unless significantly revised. Thus, when determining (1) whether the application is complete and accurate, (2) whether it makes the other demonstrations required by section 510(b) of SMCRA and subsection 35–11–406(n) of Wyoming's statute, and (3) whether the applicant failed to provide any fact that would have resulted in the denial of the permit, the Administrator would be prevented from considering new deficiencies identified either as a result of a delayed or prolonged technical review, or during the public review process. Therefore, the plain language proposed in this revision of subsection 35–11–406(h) appears to nullify Wyoming's contention that it could still remedy any deficiencies by denying the application as incomplete under subsection 35–11–406(n)(i) or revoking the permit under subsection 35–11–409(a).

Wyoming's additional argument that deficiencies could be corrected by imposing permit conditions under subsection 35–11–801(a) appears similarly invalid. This statutory provision allows imposition of conditions only if they are not inconsistent with existing rules, regulations, and standards. Since the standards established in this proposed revision would prohibit the Administrator from raising new deficiencies (other than for significant revisions to an application) after the 150-day period expires, it would be difficult to find imposition of a permit condition to be consistent with the proposed language.

Even if the Administrator's authority to impose conditions under subsection 35–11–801(a) were to be sustained, there would still be insufficient grounds to approve this amendment. At subsection 35–11–103(e)(xxiii), Wyoming defines a "deficiency" as "an omission or lack of sufficient information serious enough to preclude correction or compliance by stipulation in the approved permit to be issued by the Administrator." Hence, a deficiency is by definition a defect of such significance that it cannot be remedied by imposition of a permit condition.

Therefore, based on the above discussion, the Director finds that the proposed language at subsection 35–11–406(h) is less stringent than section 510(b) of SMCRA. The Director is not approving the proposed revision of subsection 35–11–406(h), and he is requiring that Wyoming either repeal this provision or modify this paragraph to specify that it does not apply to applications for coal mining operations.

*2. Article 1, Subsection 35–11–103(e), General Provisions; Definitions; and Article 4, Subsection 35–11–402(B), Land Quality; Establishment of Standards*

Wyoming proposes to add definitions of "fish and wildlife habitat" and "grazingland" at subsections 35–11–103(e) (xxvi) and (xxvii). The proposed definition of "fish and wildlife habitat" as "land dedicated wholly or partially to the production, protection or management of species of fish or wildlife" is identical to the one provided in the Federal regulations at 30 CFR 701.5. The proposed definition of "grazingland" includes "rangelands and forestlands where the indigenous native vegetation is actively managed for grazing, browsing, occasional hay production, *and occasional use by wildlife.*" The counterpart Federal definition of "grazingland" at 30 CFR 701.5 lacks the italicized language.

Wyoming also proposes to modify subsection 35–11–402(b) to specify that,

> To the extent federal law or regulations require consultation and approval by state wildlife agencies regarding surface mining lands to be reclaimed for fish and wildlife habitat, the Wyoming Game and Fish Commission shall consider fish and wildlife habitat to mean as defined in W.S. 35–11–103(e)(xxvi) and does not include grazingland as defined in W.S. 35–11–103(e)(xxvii).

This provision has no Federal counterpart.

By letter dated July 1, 1991, OSM requested that Wyoming "clarify how it would interpret land managed for 'occasional use by wildlife,' showing how this differs from 'fish and wildlife habitat' " (administrative record No. WY–15–19). By letter dated July 30, 1991 (administrative record No. WY–15–20), Wyoming responded that the phrase—

> Was inserted into the definition of grazingland precisely to ensure that these lands would receive consideration for wildlife also, proportional to their use by wildlife. We [Wyoming] view the Legislature's intent as one of limiting only the scope of the State Game and Fish Department's approval required by 30 CFR 816.116(b)(3)(i) on these lands. * * * The proposed language will not abrogate the operator's responsibility to return grazinglands to an equal or better use, nor even to replace shrubs and other habitat components for wildlife. Specifically, coal mine operators will be required to (1) restore the land affected to a condition capable of supporting the premining land use in accordance with section 515(b)(24) of SMCRA, (2) establish a permanent vegetation cover to achieve the approved postmining land use in accordance with section 515(b)(19) of SMCRA, and (3) use the best technology currently available (BTCA) to minimize disturbance and adverse impacts of their operations on fish, wildlife, and related environmental values, and to enhance those values where practicable in accordance with section 515(b)(24) of SMCRA. The proposed change will continue the State Game and Fish Department's consultation role as it is now for fish and wildlife values on grazingland. And of course, the Game and Fish Department would have an approval role in determining the stocking rates for trees and shrubs on lands dedicated to fish and wildlife habitat. Grazinglands would not be considered among those lands that would be dedicated to fish and wildlife habitat.

By letter dated May 18, 1992 (administrative record No. WY–15–30), Wyoming clarified its July 30, 1991, response and stated,

> [t]o manage is to 'alter by manipulation'; to use is to '* * * avail oneself of * * * employ * * * consume or take regularly (Webster). Grazingland is altered by the manipulation of the landowner usually for the purpose of raising livestock. Wildlife avail themselves of grazingland by consuming its products. Unless it is public land, grazingland is not usually managed for wildlife by the surface owner. The State recognizes, however, that private land that is mined must be reclaimed to standards that ensure its use by wildlife.
>
> As it is in the federal regulations, 'wildlife habitat' is now defined in the EQA [Wyoming Environmental Quality Act] as '* * * land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.' Private grazinglands in Wyoming are not so dedicated and thus are not managed as wildlife habitat. They are used by wildlife (as are most of the land-use categories in the LQD [Land Quality Division] Rules and Regulations), but they are not managed for wildlife.
>
> Any lands that were managed for fish and wildlife habitat prior to mining will be returned specifically to fish and wildlife habitat after mining, with the additional requirement (30 CFR 816.116(b)(3)(i)) that the State Game and Fish Department must approve the stocking rate for shrubs and trees on those lands. Fish and wildlife resources on grazingland, even if not managed as such, will be reclaimed to State Program fish and wildlife protection and enhancement standards. DEQ [Wyoming] will continue to consult with the State Game

and Fish Department on the establishment of, and compliance with, these standards, including any stocking rate standard.

If public grazingland is mined in Wyoming and the surface management agency agrees that such land has been "* * * dedicated wholly or partially to the production, protection, or management of * * * fish and wildlife' resources, then the Game and Fish Department must approve the stocking rate for shrubs and trees on such lands.

In amending the Wyoming EQA at sections W.S. 35–11–103 and 402, the Legislature and the Governor sought to balance wildlife and agricultural interests on mined lands within the requirements of the federal coal program. Those changes made that were not direct counterparts of the federal regulations were: (1) The addition of language to the federal grazingland definition that was intended to recognize the presence of wildlife, and (2) a directive to the Game and Fish Department to not consider grazingland to be managed as fish and wildlife habitat.

OSM's review of the added phrase "and occasional use by wildlife" identified a concern that Wyoming's proposed land use category for grazingland could overlap the land use category for fish and wildlife habitat. To the degree that it is not entirely clear whether particular land should be classified as grazingland or fish and wildlife habitat for purposes of the differing requirements for the two categories, the State's May 18, 1992 letter provided sufficient assurance that the State will carefully monitor proposed uses and impose applicable requirements.

As expressed in OSM's 1979 and 1983 **Federal Register** preambles accompanying the promulgation and repromulgation of the land use categories, the primary use of the land use categories, in practice, will be to determine whether the post mining land use has changed from the premining land use (See (44 FR 14933) and (48 FR 39893)). In such circumstances, regulatory authority approval is required. Under the proposed definition, the State will be required to approve the use of the land for grazingland, and thus satisfies the chief purpose of the land use categories.

Occasional or incidental use by wildlife, regardless of the postmining land use designation, was recognized by the authors of SMCRA and its implementing regulations. As acknowledged by Wyoming, section 515(b)(24) of SMCRA requires operators, on grazingland as on any mined land, to minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values to the extent possible using BTCA, and achieve enhancement of such resources where practicable.

OSM's implementing regulations at 30 CFR 780.16(a) and 784.21(a) require all applications to contain fish and wildlife resource information sufficient to design a protection and enhancement plan. The scope and level of such resource information is to be determined by the regulatory authority in consultation with State and Federal fish and wildlife agencies. These requirements apply regardless of the postmining land use designation.

The Federal regulations at 30 CFR 780.16(b) and 784.21(b) repeat the requirement of section 515(b)(24) of SMCRA regarding plans to minimize disturbance and provide enhancement of fish and wildlife resources in applications. Furthermore, these Federal regulations require that where enhancement measures are not included in the permit application, the applicant must provide a statement explaining why such measures are not practicable.

Also, the performance standards at 30 CFR 816.97 and 817.97, require, among other things, irrespective of the postmining land use designation, that operators minimize disturbance of, and where practicable, enhance fish and wildlife values, and protect endangered and threatened species, wetlands, and habitats of unusually high value for fish and wildlife.

In addition, the Federal regulations at 30 CFR 780.16(c) and 784.16(c) require that, within 10 days of a request, the regulatory authority provide the resource information submitted by permit applicants under paragraphs (a) and (b) to the U.S. Department of Interior, Fish and Wildlife Service (FWS) Regional or Field Office for review. In its final rule for these regulations (see 52 FR 47352, 47357, December 11, 1987), OSM noted that—

> [r]egulatory authorities that are provided comments by fish and wildlife agencies must consider all comments in their decisions to issue permits. To be defensible, these decisions must be well-reasoned and consistent with the State regulatory program.

OSM, in combining the requirements at 30 CFR 780.16 and 784.21 for the resource information and the protection plan for fish and wildlife, acknowledged the logical link between baseline information pertaining to the resource and the protection and enhancement of that resource. These requirements implement not only section 515(b)(24) of SMCRA (discussed above), but also section 515(b)(2) of SMCRA, which requires operators to restore mined land to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or to higher or better uses. In promulgating the regulations at 30 CFR 780.16, 784.21, and 816.97, OSM concluded that they were needed to define Federal standards regarding the permit application information needed to assure minimum standards of protection for fish and wildlife resources (see 52 FR 47352, December 11, 1987).

Only the requirement at 30 CFR 816.116(b)(3)(i) (for consultation and approval of minimum stocking and planting arrangements for trees and shrubs by State fish and wildlife or forestry agencies) is tied to the postmining land use designations for "fish and wildlife habitat," "recreation," "shelter belts," and "forest lands."

The purpose of requiring other State agencies to approve minimum stocking and planting arrangements is to ensure the establishment of adequate and appropriate standards for revegetation success for these specific land uses. In recognition of local diversity, OSM did not set national standards, but required the regulatory authority to work with the expert State agencies in determination of (1) what is an adequate number of trees and shrubs necessary to start and carry on a wildlife habitat or forest, and (2) what is a normal husbandry practice to the extent that the planting arrangements describe the practices to be used in conducting planting (see *National Wildlife Federation* v. *Lujan*, June 8, 1990, 31 ERC 1617, 1627–1628).

Wyoming's regulations at chapter II, sections 2(b), 3(a), and 3(b), and chapter IV, section 2(a) include similar requirements for the protection and enhancement of wildlife resources, with one exception. Wyoming's regulations do not require an applicant, when enhancement measures are *not* included in a permit application, to provide a statement explaining why such measures are not practicable, as required at 30 CFR 780.16(b)(3)(ii). In addition, unlike the Federal regulations, the State regulation concerning enhancement at chapter II, section 3(b)(iv)(A) limits the scope of enhancement measures to revegetation. OSM is taking this opportunity to notify Wyoming of these deficiencies in its regulatory program and to require, in accordance with 30 CFR 732.17(e), that Wyoming amend its program to correct them.

Since the State's proposed definition of "fish and wildlife habitat" at subsection 35–11–103(e)(xxvi) is substantively identical to the Federal definition of this term at 30 CFR 701.5, the Director finds it to be no less effective than the Federal definition.

Because Wyoming has clarified that it interprets the phrase "and occasional

use by wildlife" in the definition of "grazingland" as meaning that land managed for grazing must also receive consideration for wildlife use, not that the land used solely for occasional use by wildlife would also qualify as "grazingland" in the absence of other grazing uses, the Director finds the proposed definition of "grazingland" at subsection 35–11–103(e)(xxvii) to be no less effective than the Federal definition of "grazingland" at 30 CFR 701.5, and he is approving it.

However, because of the level of interest in this amendment and to avoid confusion, the Director is requiring that Wyoming revise the existing definition of "grazinglands" in the Wyoming regulations at chapter I, section 2(ba)(iii), to eliminate ambiguity and reflect this interpretation.

In approving this definition the Director notes that other provisions of Wyoming's approved program continue to require identification, protection, and enhancement of fish and wildlife resources and consultation with fish and wildlife agencies regarding protection and enhancement of these resources, regardless of the postmining land use designation.

Based on Wyoming's clarification, Wyoming's proposed language at subsection 35–11–402(b) means that, although land may receive occasional use by wildlife when "grazingland" is the postmining land use, the required approval (at 30 CFR 816.116(b)(3)(i) of stocking and planting arrangements) by the Wyoming Game and Fish Department (WGFD) does not apply to the "grazingland" designation, but does apply when "fish and wildlife habitat" is a declared postmining land use. Nothing in the proposed language precludes the possibility of multiple postmining land use designations (i.e., joint designation of both "grazingland" and "fish and wildlife habitat" postmining land uses). Although there is no Federal counterpart to Wyoming's proposed language at subsection 35–11–402(b), the Director finds that it does not conflict with the requirements for fish and wildlife protection in either SMCRA or the implementing Federal regulations discussed above. However, this finding shall not be interpreted as in any way relieving the regulatory authority of its obligation to accord good-faith consideration to all recommendations of the WGFD regarding protection, restoration, and enhancement of wildlife resources, regardless of the approved postmining land use.

Specifically, both the WGFD and the FWS noted that measures designed to enhance wildlife habitat, such as water sources, rock piles, topographic diversity, and shrubs (including sagebrush), are either neutral or beneficial to lifestock. Therefore, given the socioeconomic importance of wildlife in Wyoming, the Director expects the regulatory authority to require such measures when recommended by WGFD unless the applicant can demonstrate that the measures are impracticable.

## IV. Summary and Disposition of Comments

Following are summaries of all substantive oral and written comments received by OSM and the Director's responses to them. Where similar comments were received from more than one commenter, only one response is provided.

### *A. Public Comments*

1. Proposed Revision of Subsection 35–11–406(h)

a. *"Administratively Complete Application" versus "Accurate and Complete Application".* Several commenters interpreted subsection 35–11–406(h) as pertaining to the determination of when an application is administratively complete. Specifically, one commenter, responding to OSM's July 1, 1991, issue letter to Wyoming, said that

> * * * you have said that the reference to complete applications in subsection 406(h) corresponds with the use of the term 'accurate and complete application' at subsection 510(b)(1) of SMCRA. I do not agree. The purpose of subsection 406(h) is to determine whether the application is complete for purposes of commencing the public review process. Thus the correct cross-reference with the federal law is to the definition of 'administratively complete application' at 30 CFR 701.5.

The Director disagrees with the conclusion that the term "complete" as used in subsection 35–11–406(h) refers to an "administratively complete application." Rather the Director has found that the term "complete" refers to a "complete and accurate application."

Subsection 35–11–406(e) of Wyoming's Act requires the Administrator to notify an applicant within 60 days of submission whether or not the application is complete. When the Administrator finds that the application is complete, subsection 35–11–406(g) requires the applicant to publish a notice of the filing of the application. As defined at subsection 35–11–103(e)(xxii),

> '[c]omplete application' under W.S. 35–11–406(e) means that the application contains all the essential and necessary elements and is acceptable for further review for substance and compliance with the provisions of this chapter.

This definition is substantively identical to the Federal definition of "administratively complete application" at 30 CFR 701.5. The public notification required under subsection 35–11–406(g) corresponds to the requirement of the Federal regulation at 30 CFR 773.13(a)(1) for public notification of the submission of an administratively complete application.

As discussed in Finding No. 1 in part III of this notice, "complete application" as used in subsection 35–11–406(h) and (j) is defined by Wyoming at chapter I, section 2(s) of the Land Quality Division (LQD) regulations. This definition ("* * * an application for a permit which contains all the information required by the Act and the land quality division regulations that is necessary to make a decision on permit issuance") is substantively identical to the Federal definition of "complete and accurate application" at 30 CFR 701.5. Although not required under SMCRA or the Federal regulations, subsection 35–11–406(j) requires the applicant to again publish notice of the application once this determination is made, thus providing the public with a second opportunity to comment.

b. *Need for determination of completeness prior to public review; lack of opportunity to comment.* Several commenters said that the amendment would allow for a completeness determination when in fact the application may not be complete prior to commencement of public review. Therefore, the amendment would deny the public an opportunity to comment on a complete application.

Specifically, one commenter said that subsection 35–11–406(h), in its current form, seemingly allows public comment to commence on an application whether or not Wyoming has made its completeness determination, and therefore it is inconsistent with the Federal law because it may deprive the public of the opportunity to comment on a complete application.

As discussed in the response to the preceding comment, Wyoming's program, like the Federal regulation at 30 CFR 773.13(a)(1), requires that an application be administratively complete before it is advertised for public review. Since SMCRA and the Federal regulations do not require that the application be complete and accurate at the time of public review commences, the Director cannot agree with the commenters' assertion that the proposed amendment, which would impact only the second opportunity for comment provided under the Wyoming program (a provision for which there is

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no Federal counterpart), is inconsistent with Federal law for the reasons expressed above.

c. *No course for remedy after public review.* Several commenters said that the amendment would severely limit or deny the significance and effectiveness of any public comment, since any deficiency identified during the public review period would be raised after the 150-day period and the Administrator of the Wyoming program would be prevented from requiring that the deficiency be remedied. One commenter disagreed with Wyoming's claim, presented in its July 30, 1991, response to OSM's July 1, 1991, issue letter, that other provisions aside from subsection 35.11.406(h) would allow the Administrator to address permit application deficiencies after the 150-day time limit. The commenter said that (1) Wyoming gives no assurance that the Director's ability to impose conditions, afforded by subsection 35–11–801, would not be preempted by the proposed language at subsection 35–11–406(h) that imposes the 150-day cut-off for raising deficient items; (2) the Administrator's ability to extend the review period for 30 days, afforded by subsection 35–11–406(h), is based on the assumption that all deficiencies are identified within the 150-day time frame; (3) the Administrator's ability under subsection 35–11–406(k) to take action based on an informal conference would also be preempted by the proposed revision because subsection 35–11–406(k) requires that any action taken by the Administrator be "in accordance with the department's rules of practice;" and (4) a hearing before the Department of Environmental Quality Council must be initiated by a citizen taking an appeal to the Council, and that citizen must be prepared to engage in a trial de novo, which is an unfair burden to place on a citizen for remedy of issues that would otherwise be the mandated responsibility of the Administrator.

Another commenter also expressed the opinion that the opportunity for formal hearings is not a mechanism that is intended to correct problems with completeness determinations, and relying on the hearing process to restore integrity to the public comment process is improper and an unfair burden to place on the average citizen.

The Director agrees with these commenters. The effectiveness of any technical review and the public comment process lies in the ability of the regulatory authority to respond either to technical staff comment or to public comment by requiring further information from the applicant if necessary to determine that an application is indeed accurate and complete. As discussed in Finding No. 1 in part III of this notice, the Director has found that the proposed revision of subsection 35–11–406(h) is less stringent than section 510(b) of SMCRA, and is not approving it.

d. *Ability to revoke a permit.* One commenter expressed concern that the ability of the Director, afforded by subsection 35–11–409(a), to revoke a mining permit (if it is determined at any time that a permit holder intentionally misstated or failed to provide any fact that would have resulted in denial of the permit) would be preempted by the proposed revision of subsection 35–11–406(h). The commenter further reasoned that even if the proposed revision does not preempt the ability to revoke a permit, its practical effect would be to constrain the Director from enforcing his power.

The Director does not agree that the amendment would necessarily result in the effects feared by the commenter. However, as discussed in Finding No. 1 in part III of this notice, he is not approving this proposal on other grounds.

2. Proposed Subsections 35–11–103(e) and 35–11–402(b)

a. *Shrub restoration standard.* Several commenters said that the intent of Wyoming's proposed revisions at subsections 35–11–103(e) and 35–11–402(b) is to circumvent the shrub restoration standard in Wyoming's regulations at chapter IV, section 3(d)(vi)(A), approved by OSM pursuant to 30 CFR 816.116(b)(3)(i) (see Finding No. 3(c), 51 FR 42209, 42212, November 24, 1986). Specifically, one commenter said that the proposed legislation altered the land use provisions of the approved program to eliminate the WGFD's role in establishing discretionary species stocking and shrub restoration standards.

In response, the Director notes that Wyoming's regulations at chapter II, section 2(b)(iii)(C), require that the WGFD be consulted regarding revegetation procedures for wildlife habitat and critical habitat. This consultation requirement, like the shrub restoration standard at chapter IV, section 3(d)(vi)(A), would be unaffected by the amendment. Furthermore, the Director has no authority to require that Wyoming extend the role of the WGFD beyond that specified in the Federal rules at 30 CFR 816.116(b)(3)(i).

b. *Restoration to the highest previous use.* Several commenters noted that Wyoming's Act requires, at subsection 35–11–402(a)(i), that mined lands be restored to the highest previous use, and stated that if the affected land was used for fish and wildlife habitat before mining, even if only occasionally, it should be restored to a condition that will support that use. Furthermore, they said that "fish and wildlife habitat" would be the most appropriate land use distinction to ensure restoration to the highest previous use. One commenter further stated that the Federal regulation at 30 CFR 816.133, that requires restoration of lands to their premining potential, seemed more stringent than Wyoming's requirement to restore lands to whatever the premining use happened to be.

The Director does not agree that fish and wildlife habitat is always the highest previous use, and he does not concur with the assessment that the Wyoming postmining land use requirements are less effective than the Federal regulations. The Federal regulations at 30 CFR 816.133(a) require that areas disturbed by mining be restored to conditions that are capable of supporting either (1) the uses they were capable of supporting before mining, which, as further defined in 30 CFR 816.133(b), essentially means the uses they were supporting prior to mining, if properly managed, or (2) higher or better uses, if approved in accordance with the criteria for approval of alternative postmining land uses set forth at 30 CFR 816.133(c). As defined at 30 CFR 701.5, "higher or better uses" means "postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses." There is nothing in this definition or the alternative postmining land use approval criteria at 30 CFR 816.133(c) that suggests that "fish and wildlife habitat" is always the highest and best use. Nor is there any suggestion that, where several land uses (including wildlife habitat) coexisted prior to mining, fish and wildlife habitat would have to be considered higher than the other uses. Indeed, the preamble to the Federal definition of "land use" at 30 CFR 701.5 notes that the various land use categories are not listed in hierarchical form. Furthermore, in citing on the alleged shortcomings of the Wyoming statute at subsection 35–11–402(a)(i), the commenters failed to consider the rules and regulations implementing this statutory provision, i.e., the LQD regulations. These regulations are substantively identical to and therefore no less effective than the corresponding Federal regulations at 30 CFR 816.133 cited by the commenters.



c. *Joint or multiple postmining land use designations.* Several commenters said that the inclusion of "lands managed for occasional use by wildlife" in the proposed definition of "grazingland" would preclude the designation or joint or multiple land uses in Wyoming. Specifically, one commenter noted that both OSM and Wyoming define "land use" as "management-related activities" and specify that land uses may be identified in combination when joint or seasonal uses occur. The commenter reasoned that when land receives management for two purposes, the two management goals would be declared as joint land uses. The commenter concluded that (1) under the Federal program, when land is managed for grazing and for occasional use by wildlife, two management goals would be recognized and joint land uses of "grazingland" and "fish and wildlife habitat" would be declared; and (2) because Wyoming's proposed definition of "grazingland" defines two different management goals to be only one land use, i.e., grazing, Wyoming's program would preclude a joint land use declaration.

The Director disagrees with the commenters' equation of "land managed for occasional use by wildlife" in Wyoming's definition of "grazingland" as subsection 35–11–103(e) with a "management-related activity" in the context of the Federal definition of "land use" at 30 CFR 701.5. As stated in Finding No. 2 in part III of this notice, Wyoming clarified that grazingland is managed for the purpose of raising livestock, and unless it is public land, is not usually managed for wildlife.

Even if the commenters were correct, there is nothing in the Federal regulations that requires land used for more than one purpose prior to mining be restored to the same multiplicity of uses following mining. However, 30 CFR 780.16 does not require the protection and enhancement of wildlife resources, regardless of the postmining land use designation.

As discussed in Finding No. 2 in part III of this notice, Wyoming, in its July 31, 1991, response to OSM's July 1, 1991, issue letter, and May 18, 1992, clarification, committed to implementing the requirements for consultation, protection, and enhancement regarding wildlife resources regardless of postmining land use.

d. *Implementation.* Several commenters said that Wyoming failed to explain the meaning and impact of "occasional use by wildlife" as opposed to "fish and wildlife habitat," and because of this OSM cannot make a determination of whether the amendment is consistent with Federal law. Specifically reacting to Wyoming's response to OSM's issue letter, one commenter stated

> [t]here is no discussion of what, if any, scientific data would be used to set parameters for 'occasional use by wildlife' or how the LQD [Wyoming] intends to determine what level of consideration for wildlife would be consistent with reclamation of lands 'proportional to their use by wildlife.'

One commenter said that both OSM and Wyoming define "fish and wildlife habitat" as land dedicated wholly or partially to the production, protection, or management of species of fish and wildlife, and that "land managed for occasional use by wildlife" appears to be the same as "land dedicated partially to the management of fish and wildlife." Because these definitions are indistinct, any declaration of a land use could be attacked as arbitrary and capricious and this may be sufficient procedural ground to reject the proposed definition of "grazingland."

In its May 18, 1992, letter, Wyoming clarified that private grazinglands in Wyoming are not dedicated to the production, protection, or management of species of fish or wildlife, and are therefore not managed as wildlife habitat. Wyoming further states that any lands that were managed for fish and wildlife habitat prior to mining will be returned specifically to fish and wildlife habitat after mining and that if on mined public grazingland, the surface management agency agrees that such land has been so dedicated, then the State Game and Fish Department would approve the stocking rate for shrubs and trees.

As discussed in Finding No. 2 in part III of this notice, the Director has found the land use categories and definitions proposed by Wyoming to be consistent with those established in the Federal definition of "land use" at 30 CFR 701.5. Furthermore, the State program, at chapter II, section 2(a)(i)(A) and section 3(b)(xii) of the LQD regulations, includes land use determination requirements and procedures substantively identical to those contained in the Federal rules at 30 CFR 779.22 and 816.133. Therefore, there is no basis for requiring guidelines in Wyoming.

e. *Reclamation standards.* Several commenters said that if there exists occasional use by wildlife, and if reclamation to only "grazingland" postmining land use standards is required (rather than to the standards at 30 CFR 816.116(a)(3) and 816.97(g) for "fish and wildlife habitat"), then reclamation to lower standards will occur and the land will not adequately support use by wildlife.

Several commenters said that without a "fish and wildlife habitat" postmining land use designation, there will be no provision for consultation with WGFD regarding reclamation standards, nor any legal requirement to restore habitat values.

The Director disagrees with the commenters' conclusions. As discussed in Finding No. 2 in part III of this notice, Wyoming's program does provide for protection and enhancement of wildlife resources regardless of the postmining land use designation. Wyoming's regulations at chapter II, section 2(b)(iii)(C) and chapter IV, section 2(a)(ii) require, respectively, that (1) the WGFD be consulted regarding revegetation procedures for wildlife habitat and (2) operators restore wildlife habitat on affected lands commensurate with or superior to habitat conditions which existed before the land became affected. These regulations apply regardless of the postmining land use designation, as do the fish and wildlife protection and enhancement requirements of (1) chapter II, section 3(a)(vi)(E), which requires consultation with WGFD in determining the nature and extent of premining fish and wildlife studies, (2) chapter II, section 3(b)(iv), which further requires that each permit include a fish and wildlife protection and enhancement plan, and (3) chapter IV, section 3(o), which requires implementation of this plan. Furthermore, the regulatory authority remains obligated to accord good-faith consideration to all recommendations of WGFD regarding protection, restoration, and enhancement of wildlife resources. Furthermore, in its May 18, 1992, letter, Wyoming clarified that fish and wildlife resources on grazingland will be reclaimed to the State Program fish and wildlife protection and enhancement standards.

f. *Oversight.* One commenter stated,

> furthermore you [OSM] ultimately decide to approve this provision, I urge you to make clear to the State that any lands previously used for both fish and wildlife and grazing purposes, cannot be restored simply to grazingland standards, and that, accordingly, the reclamation plans for these lands must be reviewed and approved by [the Wyoming] Game and Fish [Department]. Furthermore, I urge you [OSM] to monitor the implementation of this provision closely to insure that it is not being abused.

As discussed in Finding No. 2 in part III of this notice, the approved program requirements for protection and enhancement (where practicable) of wildlife resources apply regardless of postmining land use designation. However, the Federal regulations do not

require that land used by fish and wildlife prior to mining be designated as fish and wildlife habitat after mining. The Federal regulation at 30 CFR 701.5 define "fish and wildlife habitat" as "land dedicated wholly or partially to the production, protection or management of species of fish or wildlife." Mere usage of land by wildlife does not imply that the land is dedicated to their production, protection or management. Since the Federal requirement for State fish and wildlife agency approval of revegetation success standards applies only to lands with a designated "fish and wildlife habitat" postmining land use, the Director cannot concur with the commenter's suggestion that he require such approval for all lands used by fish and wildlife prior to mining regardless of their designated postmining use. Both Federal and State regulations (at 30 CFR 816.133 and chapter II, section 3(b)(xii)) allow land to be restored either to its premining use (if properly managed prior to mining) or to a higher or better use.

However, as urged by the commenter, the Director will, in accordance with his oversight responsibilities under 30 CFR 733.12(a)(1), evaluate the State's implementation of subsections 35–11–103(e) and 35–11–402(b) to ensure that they are not interpreted and applied as providing an exemption from the fish and wildlife protection and enhancement requirements of the State rules at chapter IV, section (3)(o).

g. *Improper exclusion of shrub standard on grazinglands managed for occasional use by wildlife.* One commenter noted that in its July 30, 1991, response to OSM's issue letter, Wyoming stated,

> [W]e view the Legislature's intent as one of limiting only the scope of the State Game and Fish Department's approval required by 30 CFR 816.116(b)(3)(i) on these [grazinglands].

The commenter contended that 30 CFR 816.116(b) (1) and (2), which establish revegetation success standards for grazingland, pasture land, and cropland, do not support the avoidance of consultation with WGFD, since they excuse such consultation only because it is assumed that the lands involved do not contain wildlife. By contrast, the State amendment would, by defining lands with occasional use by wildlife as grazingland, transform lands with occasional use into lands without wildlife. The commenter further argues that *National Wildlife Federation* v. *Lujan* (31 ERC 1617, 1627; June 8, 1990), which upheld the revegetation rules at 30 CFR 816.116, "never concedes that approval by an 'expert agency' is not required where wildlife is an existing use of the land. Rather, the court limits its holding to cropland and grazingland as defined in the federal regulations."

The Director agrees that consultation and approval for woody species stocking and planting arrangement standards are required where "fish and wildlife habitat" is the designated postmining land use. However, as discussed in response to a similar comment at A.2.b. above, he does not agree that any use of land by wildlife prior to mining means that the postmining land use must be "fish and wildlife habitat." And, as discussed in Finding No. 2 in part II of this notice, he does not agree that Wyoming's definition of "grazingland" significantly differs from the corresponding Federal definition, nor can he find any justification for the commenter's argument that Wyoming's definition of "grazingland" implies that "grazingland" will be reclaimed without consideration of wildlife values. Both the State and Federal programs require protection and enhancement (where practicable) of wildlife resources regardless of land use designation. Since the Wyoming program, as amended, would allow the regulatory authority to adopt regulations that fully comply with the Federal requirements upheld in *NWF* v. *Lujan*, the commenter's argument that the amendment is inconsistent with *NWF* v. *Lujan* is without basis.

(h) *Scope of definition.* One commenter said that OSM, in determining whether Wyoming's proposed revisions at subsections 35–11–103(e) and 35–11–402(b) are no less stringent than SMCRA, must consider the language proposed at subsection 35–11–402(b) to be an extension of the proposed definition of "fish and wildlife habitat" at subsection 35–11–103(e), and in doing so find that the proposed definition is not consistent with the Federal definition.

Since subsection 35–11–402(b) only provides clarification and direction as to when the regulatory authority must obtain the approval of WGFD, the Director does not agree that it should be considered an extension of the proposed definition of "fish and wildlife habitat" at subsection 35–11–103(e). Furthermore, as discussed in Finding No. 2 in part II of this notice, subsection 35–11–402(b) does not conflict with the Federal regulations at 30 CFR 816.116(b)(3).

i. *Rangelands versus grasslands.* One commenter objected to Wyoming's proposed definition of "grazingland" because, when compared to the Federal definition, it substitutes the term "rangelands" for "grasslands." The commenter reasoned that since, under the Federal regulations, "rangeland" management may be accomplished solely through the regulation of grazing intensity, which is a less stringent standard than that specified for "grazingland," Wyoming must be asked to provide assurance that "grazinglands," by virtue of encompassing "rangelands," will not somehow become subject to the less stringent management practices intended for "rangelands" under Federal law.

The Director does not agree that the Federal regulations recognize "rangeland" and "grazingland" as distinct land use categories with differing reclamation requirements. "Rangeland" is defined at 30 CFR 701.5 only for the purposes of determining when the requirements for the protection of alluvial valley floors apply. It is not recognized as a separate "land use," as that term is defined at 30 CFR 701.5. The commenter's concern that grasslands could be reclaimed to a lesser standard if Wyoming defines "grazingland" as "rangeland" rather than "grassland" as in the Federal regulation is misplaced. In common usage, the term "rangeland" includes all lands with indigenous vegetation used for grazing, regardless of whether that vegetation is herbaceous or woody in nature. This lack of distinction is important since both the State and Federal regulations require that all grazinglands, regardless of their nature, be returned to their premining productivity. (See chapter IV, section 2(d)(vi) of the LQD regulations.)

j. *Best technology currently available (BTCA).* One commenter said that the preclusion of the approval of reclamation standards for wildlife habitat by WGFD under the proposed definition of "grazingland" is inconsistent with section 515(b)(24) of SMCRA and the Federal regulations at 30 CFR 780.16(b) which require the use of BTCA to minimize disturbances and adverse impacts on fish and wildlife and other environmental values.

The Director does not agree. As discussed in Finding No. 2 in part III of this notice and in response to previous comments, the State regulations requiring use of BTCA with respect to fish, wildlife, and related environmental values apply to all operations regardless of the postmining land use. The proposed amendment will in no way alter this situation.

k. *Difference between statutory and regulatory definitions of "grazingland."* One commenter pointed out that Wyoming's regulations contain a definition of "grazinglands" that differs from the proposed statutory definition,

and questions which would be implemented in the Wyoming program. The commenter said that even if statutory provisions take legal precedence over regulatory provisions, Wyoming should be required to delete one or the other.

As discussed in Finding No. 2 in part III of this notice, the Director has required that Wyoming submit a program amendment to revise the regulatory definition of "grazingland" to reflect the statutory definition as interpreted by Wyoming in its response to OSM's issue letter, and as approved in this amendment.

*B. Agency Comments*

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(4) and (h)(11)(i), by letter dated March 27, 1991 (administrative record No. WY–15–2), OSM solicited comments from the State Historic Preservation Officer, the Advisory Council on Historic Preservation, the Administrator of the Environmental Protection Agency (EPA), the U.S. Soil Conservation Service, the U.S. Forest Service, and various other Federal and State agencies with an actual or potential interest in the Wyoming program. Responses received from these agencies, if any, are summarized and discussed below.

1. U.S. Geological Survey (GS)

By letter dated April 5, 1991, GS stated that it had no comments on the proposed amendment (administrative record No. WY–15–3).

2. U.S. Army Corps of Engineers (COE)

By letter dated April 9, 1991, COE responded that the changes were satisfactory (administrative record No. WY–15–5).

3. U.S. Bureau of Reclamation (BOR)

By letter dated April 12, 1991, BOR concluded that the proposed amendment would have no significant effect upon its program (administrative record No. WY–15–4).

4. U.S. Mine Safety and Health Administrative (MSHA)

By letter dated April 17, 1991, MSHA stated that it had no comments (administrative record No. WY–15–6).

5. U.S. Bureau of Land Management (BLM)

By letter dated April 26, 1991, BLM's Wyoming State Office, provided the following comments (administrative record No. WY–15–8).

a. *Intent of 150-day time limit.* BLM expressed concern that the intent of the proposed revision of subsection 35–11–406(h) is to circumvent or preempt some requirements of SMCRA, and questioned whether Wyoming could impose such a limitation.

As discussed in Finding No. 1 in part III of this notice, the Director has found the proposed revision of subsection 35–11–406(h) to be less stringent than SMCRA and he is not approving it.

b. *Land use definitions.* BLM commented that the proposed definitions of "fish and wildlife habitat" and "grazingland" at subsection 35–11–103(e) were vague and their purpose obscure. BLM stated that

> [a] clearer, more precise definition of what exactly constitutes 'lands dedicated wholly' and 'lands dedicated partially' is in order. We wonder if these definitions could be interpreted to include any surface areas where wildlife have been seen or observed, rather than areas which produce or contain actual habitat. These definitions appear to restrict Wyoming Game and Fish's imposition of mine land rehabilitation requirements to 'fish and wildlife habitat' while precluding their imposition on 'grazingland.' Most, if not all, of the Federal, State, and private lands in Wyoming could easily meet the criteria for both definitions. If this distinction is important (or necessary), then OSM or DEQ [Wyoming] could and should further clarify the distinction by regulation. If it is intended that these definitions be applied only to state or privately-owned land surface, they would have some understandable utility. However, they have no utility for application to BLM administered public land surface. With the exception of the reference to 'hay production,' both definitions apply to BLM administered public land surface, in general, or as appropriate.

BLM further stated that the proposed revision to subsection 35–11–402(b) has no application to BLM-administered public land surfaces.

As discussed above under "Public Comments" in part IV.A.2.d of this notice, the Director is not requiring Wyoming to provide more specific guidelines regarding interpretation of its proposed land use definitions because the proposed definitions, as subsequently clarified in Wyoming's July 30, 1991, and May 18, 1992, letters, are substantively identical to and therefore no less effective than the corresponding Federal definitions. Although the proposed definitions and other statutory revisions would apply to all land surfaces permitted under Wyoming's approved program, regardless of ownership, the Federal land management agency, such as BLM, has the authority to require that the permits include such stipulations and conditions (including revegetation standards) as it deems necessary to ensure that land under its control is reclaimed to the desired use or uses. The Director believes this authority will adequately address BLM's concerns.

6. Wyoming Game and Fish Department (WGFD)

By letter dated April 30, 1991 (administrative record No. WY–15–11), WGFD submitted a series of interagency memoranda and technical studies, dated from June 13, 1983, through September 10, 1990, between itself and the Wyoming Department of Environmental Quality, documenting the negotiated development of the program-wide 'shrub standard,' which is applicable to lands with a postmining land use designation of "fish and wildlife habitat." Also included was an intra-agency memorandum, dated March 1, 1991, summarizing the perceived impacts of Wyoming's proposed revisions of subsections 35–11–103(e) and 35–11–402(b). WGFD requested that OSM consider these documents when evaluating the proposed amendment. Since the shrub standard is not affected by the amendment, none of the documents submitted by WGFD is germane to this rulemaking except the March 1, 1991, memorandum, which is sumarized below.

a. *Scope of "Fish and Wildlife Habitat" definition.* WGFD stated that the revised definition of "fish and wildlife habitat" must be evaluated in the context of the limitations contained in subsection 35–11–402(b) and that it therefore is less effective than the corresponding Federal definition in 30 CFR 701.5 because it would not permit consideration or restoration of wildlife values when reclaiming land to a "grazingland" postmining land use.

The Director cannot agree with this analysis. As discussed in Finding No. 2 in part III of this notice, subsection 35–11–402(b) does not place limitations on the role of WGFD beyond those allowed under 30 CFR 816.116(b)(3)(i). Nor does he agree that the amendment would prohibit restoration of wildlife values on land with a designated postmining land use of "grazingland" as discussed in the same finding. See also the discussion at part IV.A.2.h. of this notice, under "Public Comments."

b. *Consultation.* WGFD argues that since 30 CFR 780.16(b)(3)(ii) requires consultation with State wildlife agencies regarding habitat reclamation procedures whether wildlife is a declared posting land use or not, the revisions proposed by Wyoming can not exclude WGFD from the permit review process.

As discussed in Finding No. 2 in part III of this notice, the Director agrees that the Wyoming program requires

consultation with WGFD regardless of land use. However, under both State and Federal regulations, WGFD approval of proposed fish and wildlife protection and enhancement plans is not required.

c. *Meaning of "Fish and Wildlife Habitat" definition.* WGFD stated that use of the term "dedicated" in the revised definition of "fish and wildlife habitat" does not limit the applicability of this land use category since all land surfaces in Wyoming are dedicated in part to the production, protection, or management of fish and wildlife species. Several examples of such dedication were provided, e.g., State management of big game herd units, which encompass virtually all surfaces of the State; Federal resource management plans which specifically include wildlife as a multiple use component; and private lands on which the owner charges hunter access fees, collects harvest coupons, or permits wildlife oriented recreation in exchange for monetary or other consideration. The existence of wildlife is sufficient documentation that wildlife habitat is part of the land use. The amendment has not established the source or naturel of dedication in its definition and fails to specify the necessary formality of the dedication.

As discussed in part IV.A.2.c., d., and f. of this notice, under "Public Comments" and in Finding No. 2 in part III of this notice, the Director does not agree that use by wildlife prior to mining mandates a postmining land use designation of "fish and wildlife habitat." Since the Federal regulations do not define "dedicated," States have considerable latitude in interpreting this term.

d. *Mandatory designation as "Fish and Wildlife Habitat".* WGFD argues that to assure reestablishment of conditions necessary to support both grazingland and wildlife habitat, "fish and wildlife habitat" must be declared the sole land use on all surfaces in Wyoming. The agency expressed concern that, while the grazingland performance standards would remain effective under the revised wildlife habitat definition, the wildlife habitat performance standards would not be mandatory under a sole grazingland designation. Therefore, WGFD reasons, a "fish and wildlife habitat" designation would ensure restoration of both components of the land use that are of interest to society and would constitute the higher or better land use.

As discussed in part IV.A.2 of this notice, the Director does not agree that designation as "fish and wildlife habitat" is necessary to require that land be restored to conditions capable of supporting both grazing and wildlife resources, nor does he necessarily agree that fish and wildlife habitat is a higher or better land use than grazingland. Furthermore, as discussed in Finding No. 2 in part III of this notice, protection and enhancement of wildlife resources is required regardless of postmining land use designation.

e. *Joint land use designations.* WGFD argues that the amendment is inconsistent with 30 CFR 816.133(a), which the commenter believes requires operators to restore the land to conditions that are capable of supporting all uses the land was capable of supporting prior to mining including wildlife habitat. WGFD explains that this inconsistency exists because the amendment would preclude a joint wildlife habitat/grazingland land use designation, thereby preempting the requirement that land reclaimed as grazingland also be returned to conditions capable of supporting wildlife habitat.

As discussed in part IV.A.2.c. and Finding No. 2 in part III of this notice, the Director does not agree that the proposed revisions will preclude joint wildlife habitat/grazingland land use designations, inhibit compliance with the land use regulations, or preempt the requirement to restore conditions capable of supporting wildlife. Furthermore, the commenter has somewhat misrepresented the substance of 30 CFR 816.133(a), which allows operators to restore lands to a higher or better use or uses in lieu of the requirement cited by the commenter.

7. U.S. Fish and Wildlife Service (FWS)

By memorandum dated May 7, 1991 (administrative record No. WY–15–14), the FWS reiterated a number of the WGFD comments and provided the following additional comments.

a. *No course for remedy after 150 days.* The FWS expressed concern that protection of endangered species could be circumvented by the revision of subsection 35–11–406(h) in that the amendment would preclude the regulatory authority from complying with the Endangered Species Act if new information on endangered or threatened species resulted in the need to re-initiate consultation with the FWS after the 150-day review period.

As discussed in Finding No. 1 in part III of this notice, the Director is not approving the proposed revision of subsection 35–11–406(h).

b. *Limiting consultation role.* The FWS argues that the proposed revisions at subsections 35–11–103(e) and 35–11–402(b) appear to be an effort to limit the consultation role of WGFD in the mine plan review process and to significantly reduce any legal requirement to reclaim wildlife habitat on most private land surfaces.

The Director does not agree that the proposed revisions limit or inhibit compliance with those provisions of the Wyoming program consultation with WGFD during the permit application review process. It restricts only the extent to which WGFD approval of revegetation standards can be required, a restriction which is not inconsistent with the Federal rules at 30 CFR 816.116(b)(3)(i).

c. *Scope of definition.* The FWS states that the revised definition of "fish and wildlife habitat" does not conform with the Federal definition at 30 CFR 701.5 for "fish and wildlife habitat" and the additional limitations of subsection 35–11–402(b) on State wildlife agencies' input into mine plan review would preclude meaningful review.

For reasons set forth at length in Finding No. 2 in part III of this notice and in the response to a public comment in part IV.A.2.e. of this notice, the Director cannot agree with any aspect of this comment.

*State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments.* Pursuant to 30 CFR 732.17(h)(4), the Director is required to solicit comments from SHPO and ACHP for all amendments that may have an effect on historic properties. This was done by letter dated March 27, 1991 (administrative record No. WY–15–2). Neither SHPO nor ACHP responded to OSM's request.

*EPA concurrence.* Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the U.S. EPA with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*)

None of the changes that Wyoming proposes to its statute pertain to air or water quality standards. Nevertheless, by letter dated March 27, 1991, OSM requested EPA's concurrence on the proposed amendment (administrative record No. WY–15–2). By letter dated April 29, 1991, and May 15, 1991 (administrative record Nos. WY–15–9 and WY–15–16), EPA's Region VIII and Washington DC offices provided the requested concurrence.

## V. Director's Decision

Based on the findings in part III of this notice, the Director is partially approving the proposed amendment submitted by Wyoming on March 21, 1991, and clarified by letter dated July 31, 1991. However, as discussed in Finding No. 1, he is not approving the proposed statutory revision of article 4, subsection 35–11–406(h) because it is less stringent than SMCRA and less effective than the implementing Federal regulations.

Also as discussed in Findings Nos. 1 and 2, respectively, the Director is requiring Wyoming to (1) either repeal the proposed revision of Article 4, subsection 35–11–406(h) of the Wyoming Statutes or revise it to specify that it does not apply to coal mining operations, and (2) revise the regulations of the Land Quality Division to require that, when fish and wildlife enhancement measures are not included in a permit application, the applicant must provide a statement explaining why such measures are not practicable.

The Federal regulations at 30 CFR part 950 codifying decisions concerning the Wyoming program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

*Effect of director's decision.* Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approve State programs. In oversight of the Wyoming program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Wyoming of only such provisions.

## VII. Procedural Determinations

### *1. Compliance With the National Environmental Policy Act*

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

### *2. Compliance With the Executive Order No. 12291 and the Regulatory Flexibility Act*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order No. 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rule will be met by the State.

### *3. Executive Order 12778*

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined, to the extent allowed by law, that this rule meets the applicable standards of sections 2(a) and 2(b) of Executive Order 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval, or conditional approval of State program amendments.

### *4. Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

### List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 8, 1992.

**Raymond L. Lowrie,**

*Assistant Director, Western Support Center.*

For reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

## PART 950—WYOMING

1. The authority citation for part 950 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 950.15 is amended by adding paragraph (m) to read as follows:

**§ 950.15 Approval of regulatory program amendments.**

* * * * *

(m) With the exception of the proposed revision of Article 4, Subsection 35–11–406(h) of the Wyoming Statutes (W.S.), which would limit the Administrator's ability to raise deficiencies in the permit application during the technical review period, the revisions to the Wyoming permanent regulatory program, submitted to OSM on March 21, 1991, as clarified by Wyoming on July 31, 1991, are approved effective July 8, 1992. The approved provisions include the following revision of W.S.:

(1) Article 1, subsection 35–11–103(e) (xxvi) and (xxvii), definitions of "fish and wildlife habitat" and "grazingland," and

(2) Article 4, subsection 35–11–402(b), specifying that "to the extent federal law or regulations require consultation and approval by state wildlife agencies regarding surface mining lands to be reclaimed for fish and wildlife habitat, the Wyoming Game and Fish Commission shall consider fish and wildlife habitat to mean as defined in W.S. 35–11–103(e)(xxvi) and does not include grazingland as defined in W.S. 35–11–1–3(e)(xxvii)."

3. Section 950.16 is amended by adding paragraphs (o), (p), and (q) to read as follows:

**§ 950.16 Required program amendments.**

* * * * *

(o) By November 5, 1992 , Wyoming shall submit documentation that the enacted revision of Article 4, subsection 35–11–406(h) of the Wyoming Statutes as submitted to OSM on March 21, 1991 has either been repealed or revised to specify that the provisions of paragraph (h) do not apply to applications for coal mining operations.

(p) By September 8, 1992, Wyoming shall submit a proposed revision to chapter II, section 3(b)(iv)(A) of the Rules and Regulations of the Land Quality Division of the Department of Environmental Quality, or otherwise propose to amend its program, to specify that, when fish and wildlife enhancement measures are not included in a proposed permit application, the applicant must provide a statement explaining why such measures are not practicable. In addition, this rule must be revised to clarify that fish and wildlife enhancement measures are not limited to revegetation efforts.

(q) By September 8, 1992, Wyoming shall submit a proposed revision of the definition of "grazinglands" at chapter I, section 2(ba)(iii), of the Rules and Regulations of the Land Quality Division of the Department of Environmental Quality, or otherwise propose to amend its program, to clarify that it interprets the phrase "managed for * * * occasional use by wildlife" in the statutory definition of "grazingland" as meaning that land dedicated to grazing must also receive consideration for wildlife use, not that the land managed solely for occasional use by wildlife would also qualify as "grazingland" in the absence of other grazing uses.

[FR Doc. 92-15792 Filed 7-7-92; 8:45 am]

BILLING CODE 4310-05-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-300169B; FRL-3939-5]

### Terbuthylazine; Revocation of Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule revokes the tolerances listed in 40 CFR 180.333 for residues of the herbicide terbuthylazine (2-tert-butyl-amino-4-chloro-6-ethylamino-s-triazine) in or on the raw agricultural commodities corn fodder and forage, corn grain (including popcorn grain), and sorghum forage and grain. EPA is taking this action to remove tolerances for residues of a pesticide which was never registered for the related food uses after the tolerances were established.

**EFFECTIVE DATE:** This regulation becomes effective July 8, 1992.

**ADDRESSES:** Written objections, identified by the document control number, [OPP-300169B], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Patricia Critchlow, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5226.

**SUPPLEMENTARY INFORMATION:** EPA issued a proposed rule, published in the Federal Register of February 18, 1988 (53 FR 4860), which proposed the revocation of tolerances for residues of eight pesticide chemicals, including terbuthylazine, which had no current food use registrations. EPA subsequently issued a final rule, published in the Federal Register of April 10, 1991 (56 FR 14472), which revoked the tolerance regulations for all of those pesticides except terbuthylazine. Because of a comment received from a pesticide producer in response to the February 18, 1988 proposed rule, requesting that EPA not revoke the tolerances for terbuthylazine, but also not committing to provide the data necessary to support the continuation of those tolerances, the Agency announced its decision to delay final action on the terbuthylazine tolerances to give an additional period of 30 days for any interested person to commit to providing the Agency with the data needed to support the continuation of these tolerances. Since no commitment to provide the necessary data was received during the additional 30-day comment period, EPA is hereby revoking the existing tolerances listed in 40 CFR 180.333 for residues of terbuthylazine in or on the raw agricultural commodities corn fodder and forage, corn grain (including popcorn grain), and sorghum forage and grain.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291. As explained in the proposal published February 18, 1988, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the February 18, 1988 proposal.

### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 31, 1992.

**Linda J. Fisher,**

*Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

### § 180.333 [Removed]

2. By removing *§ 180.333 Terbuthylazine; tolerances for residues.*

[FR Doc. 92-15612 Filed 7-7-92; 8:45 am]

BILLING CODE 6560-50-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### 45 CFR Parts 205, 206, 232, 233, 234, and 237

RIN 0970-AA06

### Aid to Families With Dependent Children Deficit Reduction Act (DEFRA) Final Rules

**AGENCY:** Administration for Children and Families (ACF).

**ACTION:** Final rule.

**SUMMARY:** These final regulations implement changes in the Aid to Families with Dependent Children (AFDC) program required by the Deficit Reduction Act of 1984 (DEFRA), Public Law No. 98-369 as clarified by the Tax Reform Act of 1986 (TRA), Public Law No. 99-514. The statutory changes were

effective October 1, 1984, unless otherwise specified.

Changes made by these final regulations do not affect the adult financial assistance programs in Guam, Puerto Rico, and the Virgin Islands.

**EFFECTIVE DATE:** July 8, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mack A. Storrs, Administration for Children and Families, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 401–9289.

**SUPPLEMENTARY INFORMATION:**

## Timing of Regulation

On September 10, 1984, interim final regulations implementing changes required by DEFRA to the Aid to Families with Dependent Children program were published. (See 49 FR 35586–35604.) In accordance with section 2646 of Public Law No. 98–369, the interim final rules were effective on October 1, 1984 except for those provisions for which the statute established an earlier effective date. The interim rules are adopted as final with the changes discussed below.

## Background

These final regulations implement changes to the regulations governing the AFDC program required by DEFRA, as clarified by the Tax Reform Act of 1986. They do not implement any other statutory changes made to the Social Security Act. Since their sole purpose is to express as final regulations Federal policies implementing DEFRA, as clarified by the Tax Reform Act, they must be construed in light of any subsequently enacted statutes that require regulatory changes. The Medicaid provisions of DEFRA are being issued in a separate rulemaking.

Although certain provisions of DEFRA were either changed or repealed by the Family Support Act of 1988, Public Law No. 100–485, and the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law No. 101–508, these DEFRA provisions are still included in this final rule. The only purpose of these regulations is to express as final regulations Federal policies implementing DEFRA, as clarified by the Tax Reform Act. The provisions affected by the Family Support Act and OBRA '90 are listed in the section on Legislative Clarifications subsequent to the publication of the Interim Final Rules. They will be revised in a separate rulemaking.

The DEFRA statutory changes implemented by these regulations fall within three basic categories. The following is a summary of the changes implemented by the regulations.

(1) *Eligibility:*

—Permits States to recalculate the period of ineligibility due to receipt of a lump sum under certain circumstances;
—Increases the gross income limit to 185 percent of the State's standard of need;
—Provides States greater flexibility in disregarding the earned income of a dependent child who is a full-time student; and
—Makes aliens sponsored by an agency or organization ineligible for assistance for three years from the date of entry into the United States, unless the sponsoring agency is no longer in existence or has become unable to meet the alien's needs.

(2) *Countable income and resources:*

—Specifies that certain individuals living in the same household with the dependent child are considered to have filed for assistance and that their income and resources must be considered;
—Requires States to consider the income of a parent or legal guardian living with a minor parent as available to the minor and the dependent child on whose behalf the minor files for assistance;
—Requires States to disregard the first $50 per month of the current monthly support obligation of any child support collected on the family's behalf in determining AFDC eligibility and payment amounts;
—Continues a $30 earned income disregard after expiration of the $30 and one-third earned income disregard for an additional 8 months (for a total of 12 months);
—Exempts burial plots and funeral agreements from countable resources for members of the assistance unit. Also, for a limited time, exempts real property which the family is making a good-faith effort to sell, provided the family agrees to repay the AFDC benefits received during that time;
—Requires States to count the earned income credit (EITC) only when actually received;
—Extends the $75 standard work expense disregard to part-time workers;
—Clarifies and reaffirms that the $75 standard work expense disregard is applied against gross earnings.

(3) *Program administration:*

—Requires monthly reporting and retrospective budgeting only for recipients with earned income or a recent work history; permits States to use prospective budgeting for non-monthly reporting cases; allows the Secretary to grant no-cost waivers of these requirements for States to enable them to conform AFDC monthly reporting and retrospective budgeting requirements to those of the Food Stamp program;
—Permits States to continue to make payments on behalf of the remaining members of the assistance unit to a parent or other caretaker who fails to comply with certain work or child support requirements if, after reasonable efforts have been made, the State is unable to identify a suitable protective payee;
—Allows States to not undertake the recovery of overpayments based on cost-effective criteria and dollar limitations as established by the Secretary; and
—Permits States to disclose to State and local law enforcement officers the current address of AFDC recipients who are fugitive felons.

In the interim final rules, we referenced four categories. However, we have made no changes to the interim rules in the category pertaining to title IV–A work programs because section 202 of the Family Support Act repealed the statutory provisions governing those regulations. Accordingly, we are not responding to the comments we received on work programs as they are no longer relevant and the regulations as published in the interim final are adopted as final (although no longer operative).

### *Legislative Clarifications Subsequent to Publication of the Interim Final Rules*

Subsequent to the publication of the interim final rules on September 10, 1984, Congress passed and the President signed Public Law No. 99–514, the Tax Reform Act of 1986. The Tax Reform Act includes clarifying and technical amendments to certain sections of the Social Security Act previously amended by the Deficit Reduction Act of 1984. These amendments are effective October 1, 1984.

The AFDC provisions of the Tax Reform Act:

—Standardize at $75 per month the earned income disregard in counting the income of a stepparent;
—Specify that the requirement that certain household members file for AFDC as a unit applies to children eligible for assistance under the AFDC–UP (Unemployed Parent) program, as well as under the AFDC program;
—Specify that, in considering the income of a parent or legal guardian

of a minor parent, the provision at section 402(a)(39) applies only to a minor under age 18; and

—Specify that a child receiving foster care maintenance payments under title IV–E of the Social Security Act is not considered a member of the family when determining AFDC eligibility and benefits.

The Tax Reform Act makes these amendments effective October 1, 1984. However, the Tax Reform Act also specifies that no State shall be considered to have failed to comply with the law or regulations or to have made overpayments or underpayments by reason of its compliance or noncompliance with these amendments for the period October 1, 1984, through October 22, 1986. This hold-harmless provision applied only to the specific provisions clarified by the Tax Reform Act.

The Family Support Act of 1988 either changed or repealed certain provisions of DEFRA. Regulations implementing the relevant provisions of the Family Support Act are not reflected in the final rule, as the only purpose of these final regulations is to implement the DEFRA provisions. The DEFRA provisions affected by the Family Support Act are listed below, for information and reference purposes only:

—Section 202(a) of the Family Support Act repeals part C of title IV of the Social Security Act—Work Incentive Program for Recipients of Aid Under State Plan Approved Under Part A.

—Section 402(a) of the Family Support Act amends section 402(a)(8)(A)(ii) of the Social Security Act by increasing the limit on the dependent care disregard from $160 to $175 for children age two or above and for incapacitated adults, and to $200 for children under age two. In addition, the order of the earned income disregards is changed so that the dependent care disregard is applied last;

—Section 402(b) of the Family Support Act amends section 402(a)(8)(A)(ii) of the Social Security Act by increasing the amount of the standard work expense from $75 to $90 for applicants and recipients. (The disregard for stepparents was not increased, and remains at $75.)

—Section 402(c)(1) of the Family Support Act amends section 402(a)(8)(A) of the Social Security Act by adding a new clause (viii) which provides that earned income tax credit (EITC) payments shall be disregarded in the determination of need and the amount of AFDC benefits. (The disregard does not apply to the 185 percent gross income limitation.) This disregard applies to any advance EITC payment made to a family by an employer and any EITC payment made as a refund of Federal income taxes;

—Section 402(c)(2) of the Family Support Act repeals section 402(d) of the Social Security Act which required States to count EITC payments as earned income; and

—Section 102 of the Family Support Act amends section 402(a)(8)(A)(vi) and section 457(b)(1) of the Social Security Act to provide for the disregard of the first $50 of any child support payments for such month received in that month, and the first $50 of child support payments for each prior month received in that month if such payments were made by the absent parent in the month when due.

These final regulations do not implement the Family Support Act of 1988. Final regulations implementing the changes made by the Family Support Act described above are being issued separately. Accordingly, the statutory changes made by the Family Support Act will take precedence over these DEFRA regulations.

Section 11115 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) includes technical changes to the Social Security Act which clarify the amendments made by the Family Support Act. The OBRA '90 changes specify that, effective January 1, 1991, EITC payments are excluded from consideration as income when determining eligibility under the 185 percent gross income limitation and are also excluded from consideration as a resource for the month of receipt and the following month. Additionally, at State option, overpayments may be waived when they occurred because receipt of EITC payments during the period January 1 to December 31, 1990, caused ineligibility under the 185 percent gross income limitation.

Section 5051 of OBRA '90 makes monthly reporting and retrospective budgeting optional effective October 1, 1990, and section 5053 makes a technical amendment removing the term "legal guardian" from section 402(a)(39) of the Social Security Act effective November 5, 1990. These final regulations also do not implement changes to the Social Security Act made by OBRA '90. Although regulations implementing these changes have not yet been issued, OBRA '90 statutory changes take precedence over these DEFRA regulations.

*Justification for Dispensing With a Notice of Proposed Rulemaking Regarding Amendments Made to the Regulations To Implement the Tax Reform Act of 1986*

Regulations implementing all of the DEFRA provisions governing the AFDC program were published in the interim final rules on September 10, 1984. The provisions included in the Tax Reform Act of 1986 were merely technical amendments designed to clarify the intent of Congress and were not viewed by Congress as constituting changes in the previous law. Accordingly, the regulations implementing these provisions are not based on administrative discretion.

Since regulatory changes related to the Tax Reform Act of 1986 do not involve administrative discretion but simply implement statutory requirements, we believe that, under 5 U.S.C. 553(b)(3)(B), good cause exists for waiver of a notice of proposed rulemaking (NPRM) on the ground that it is not necessary.

**Discussion of Major Provisions and Responses to Comments**

A discussion of the AFDC provisions contained in Public Law No. 98–369 and Public Law No. 99–514 and the options considered in developing these final regulations follow. For ease of reference, we are including, where appropriate, the discussion of each provision and the options as they appeared in the published interim final rules. We have highlighted the areas where there are substantive changes followed by a comment and response section based on comments received in response to the interim final rules.

In all, 33 letters were received from State agencies, organizations and private citizens. Responses to these comments, as well as a discussion of any significant changes from the preamble or regulations in the interim rules are discussed below. Also addressed are issues raised by States at operational and Regional training sessions between July and November 1984. Some of the suggestions received, such as allowing actual child care costs for part-time workers, would conflict with the statute. We do not provide a rebuttal to criticisms of the statute itself, but do address any comments on regulatory areas of concern.

A number of commenters requested that, where appropriate, policy which appeared only in the preamble to the interim final regulations be incorporated into the text of the regulations. The commenters felt that this would ensure

ease of reference once the regulations are codified. We agree and have, to the extent possible, incorporated these policies into the regulations. In this process, no change has been made in the policy as stated in the interim preamble unless specifically stated in this final preamble.

*Disclosure by State Agencies of Information Regarding Fugitive Felons (Section 205.50 of the Final Regulations)*

Under prior law, section 402(a)(9) of the Act prohibited disclosure by a State of information concerning applicants or recipients except under limited circumstances. Section 2636 of DEFRA adds a new provision to section 402(a)(9) of the Act to permit the State or local agency responsible for the administration of the State plan in the locality to disclose the current address of any recipient to a State or local law enforcement officer if such officer so requests and furnishes the agency with the recipient's name and social security number and demonstrates that: (1) Such recipient is a fugitive felon; (2) the location or apprehension of such felon is within the officer's official duties; and (3) the request is made in the proper exercise of those duties. For purposes of implementing this provision, a State must define a fugitive felon. The State may use the definition under State law or under Federal law (for example, the Fugitive Felon Act, 18 U.S.C. 1073) or a combination of both. This provision applies only to current AFDC recipients. A State need not enact legislation in order for this provision to be effective, as is required under section 618 of the Revenue Act of 1951 (also known as the Jenner amendment), which also is codified in § 205.50. A conforming change to § 205.50(a)(2)(v), which did not appear in the interim regulation, is included in the final regulation. This section now provides that the policies applied to requests for information from certain governmental entities (including law enforcement officers) include an exception in the case of fugitive felons.

There were no comments on this provision. Therefore, the regulations published in the interim final rules are otherwise unchanged.

*Individuals Who Must File for Assistance as a Unit (Sections 233.10, 233.20, and 237.50 of the Final Regulations)*

Under prior law, family members who lived together were not required to file for AFDC benefits as a unit; a parent filing for a dependent child could choose to include or exclude himself or herself and other potentially eligible children from the assistance unit. This allowed the family to maximize the AFDC benefit and family income. States were not able to count either income or resources of excluded individuals in determining need and payment for the eligible child, except that income of a parent was considered available to children under 21 and income of a spouse was considered available to the other spouse.

Section 2640 of DEFRA, which adds section 402(a)(38) to the Act, requires that an application on behalf of a dependent child must include as applicants certain potentially eligible relatives living in the same household as the dependent child. (Certain exceptions required by other statutory provisions are noted below.) Any income and resources of these relatives is counted in determining need under section 402(a)(7) of the Act.

These "certain potentially eligible relatives" include:

- The parent(s) of a dependent child;
- Brothers and sisters of the dependent child (including half brothers and sisters) who are themselves dependent children within the age limit set by the State.

In order to provide States flexibility, and to allow the regional variation in domestic arrangements, the concept of "living in the same household" will continue to be defined by each State. As stated at page 13 of SSA AT–86–1, "The Filing Unit Provision at Section 2640 of the Deficit Reduction Act of 1984" (January 13, 1986):

> The definition must, however, clearly indicate the presumption that family members living in common quarters must be treated as a single household for purposes of the provisions listed above. Exceptions should be limited to situations such as clear landlord/tenant relationships as verified by tax returns or other evidence.

This concept is to be used solely for the purpose of determining household composition. For example, a mother submits an AFDC application for herself and one dependent child. During the initial interview, the State learns that two additional siblings of the dependent child are living in the household. The State must then determine whether these additional siblings also meet the applicable dependent child requirements set forth in sections 406(a) (1) and (2) or 407(a) of the Act (i.e., meet the requirements concerning age, deprivation, and living with a specified relative of proper degree). If so, then they must be included in the AFDC application.

As explained above, section 402(a)(38) of the Act requires that the following potentially eligible individuals, if living in the same household as the dependent child, must be included in the dependent child's application:

- The parent(s) of a dependent child;
- The brothers and sisters of the dependent child (including half brothers and sisters) who are themselves dependent children within the age limit set by the State.

Notwithstanding the preceding, certain parents and siblings must be excluded from the assistance unit because they are not eligible for assistance due to other provisions of the Act. For example:

- Individuals who receive SSI benefits or on whose behalf SSI benefits are paid (e.g., a child who receives benefits through a representative payee);
- Aliens who fail to meet the citizenship and alienage requirements at § 233.50;
- Aliens who are ineligible due to the deemed income or resources of their sponsors, or due to sponsorship by an agency or organization pursuant to § 233.51;
- Individuals ineligible due to receipt of lump sum income; and
- Individuals on whose behalf Federal foster care maintenance payments are made under title IV–E of the Social Security Act or whose costs in a foster family home or child care institution are included in the Federal foster care maintenance payments made with respect to his or her minor parent.

We received numerous questions and comments concerning this provision. As a result, we made some changes in the regulations, reworded some sections of the preamble language, and added five new sections: consolidating multiple assistance unit households; treatment of sanctioned persons who are required to be included in the assistance unit; treatment of persons who fail to cooperate; implementation of the provision; and clarifications due to the Tax Reform Act of 1986.

*Individuals Who Must Be Included in the Assistance Unit*

First, any parent who is living in the same household as the dependent child must be included in the unit. "Parent," as defined in § 233.90(a)(1), includes a natural or adoptive parent and a stepparent in States with laws of general applicability holding a stepparent legally responsible to the same extent as a natural or adoptive parent. In cases of eligibility due to incapacity or unemployment of the principal earner, both parents must be included in the assistance unit if otherwise eligible under the Act.

Second, blood-related or adoptive brothers and sisters (including half brothers and sisters) who are living in the same household as the dependent child and who meet the eligibility requirements for AFDC must also be included in the unit. Those whose only relationship to a dependent child is as a stepbrother or stepsister are not required to be included because the conference report clearly indicates an intent to exclude them from this provision. Moreover, in States without laws of general applicability, the income of a stepparent living in the household is counted as available to the assistance unit, after applying the disregards at section 402(a)(31) of the Social Security Act and § 233.20(a)(3)(xiv) of the regulations, which include amounts to meet the needs of his dependents living with him. Thus, the Act and regulations already account for the needs of the stepbrothers and stepsisters of an AFDC child whenever the stepparent's income is counted. Finally, if stepbrothers and stepsisters were required to be included, it would also require the inclusion of the stepparent since section 402(a)(38) of the Act requires parents of dependent children to be included. Such a result would circumvent section 402(a)(31) of the Act which specifies a particular method of counting a stepparent's income.

For example, in States without laws of general applicability, if a dependent child and his mother (caretaker relative), stepfather, and stepbrother are living in the same household, DEFRA requires that the assistance unit must include only the dependent child and his mother. His stepfather's income would be considered available to the assistance unit after application of the stepparent income disregards (at § 233.20(a)(3)(xiv)), which would include an amount for the support of his child. If application is made on the stepbrother's behalf, depending on State policy, he and his natural parent could receive benefits as part of the same assistance unit, or in a separate unit. Accordingly, we have reworded this example from the preamble to the interim final regulation to indicate that there may be one or two assistance units in such cases, depending on State policy.

In States with laws of general applicability, the stepparent must be included in the assistance unit, since he or she is considered the same as a natural parent; however, stepbrothers and stepsisters of the dependent child need not be included in the assistance unit.

All of the income and resources of the individuals required to be included in the assistance unit must be considered in determining eligibility and payment for the assistance unit. In this connection, the statute specifically provides for the inclusion of title II benefits. When title II benefits are paid to a representative payee under section 205(j) of the Social Security Act on behalf of a member of the assistance unit and the payee lives in the same household as the assistance unit, the title II benefits must also be counted as income. When the representative payee does not live in the household, the title II benefits are included only to the extent that the payee makes them available for the support of the beneficiary. AFDC policy, as set forth in State Letter 1088, which permits the exclusion of a child receiving title II benefits and his title II income, was revoked in the preamble to the interim final regulations (49 FR 35589).

**Consolidating multiple assistance unit households**

Many comments to the interim final regulations involved questions about the effect of the assistance unit provision on multiple assistance unit households. Rather than attempt to describe all possible family arrangements, we believe that a description of the underlying principle and the following examples will provide a basis for determining when to consolidate assistance units.

The underlying principle is that when an individual is required to be in two or more assistance units, these units must be consolidated. With regard to three-generation households (e.g., a mother, a minor mother and baby), the determination as to whether the minor parent is treated as a dependent child in her mother's unit or as an adult caretaker with her own unit depends on whether the minor meets the factors of age, deprivation, and living with a specified relative as required by sections 406(a) and 407(a) of the Act and the implementing Federal regulations at §§ 233.39(b)(1)(ii), 233.90, and 233.100(a)(2).

The resolution of issues involving a minor parent's responsibility for the day-to-day care, control, and supervision of a dependent child under § 233.90(c)(1)(v)(B) must be based on criteria and procedures developed by each State. Our longstanding position is that States be given maximum flexibility in this area, within general Federal statutory and regulatory guidelines, because they are in a better position to evaluate conditions in their respective areas and to develop practices which are realistic and responsive to the goal of strengthening the family.

The following examples illustrate the application of the consolidation principles:

—An AFDC caretaker mother and her three dependent children are living in the same household. One of these children then has a baby. If an application is filed on the baby's behalf, and the minor mother continues as a dependent child (i.e., she continues to satisfy the factors of age, deprivation, and living with a specified relative—i.e., her mother), then this baby, together with his minor mother, must be treated as members of the mother's unit. Section 402(a)(38) of the Act requires that the baby and his minor mother be included in the caretaker mother's unit because: (1) an application was filed for the baby, (2) both the baby and his minor mother reside in the caretaker mother's household, and (3) the minor mother is a dependent child of the caretaker mother. (It should be noted that there is no requirement that an application be filed for the baby.)

—An AFDC caretaker mother and one son are living together in the same household. A daughter who is a minor and her baby, who have been residing in a different household and receiving AFDC on their own, move to the caretaker mother's household; the daughter continues to maintain care and control over her baby. In applying the assistance unit provision, the State determines that the minor mother does not meet the definition of a dependent child since she is not under the care and control of the caretaker mother (45 CFR 233.90(c)(1)(v)(B)). Accordingly, the State determines that section 402(a)(38) of the Act does not require that the units (mother and son, minor mother and baby) be consolidated. Thus, two assistance units are permitted under Federal policy.

(Note: Questions concerning the treatment of the minor mother as a parent or child for need and payment purposes are addressed in a subsequent comment/response)

—A mother, her child, her second husband (who is disabled) and his child live in the same household. Neither parent has adopted the other parent's child or is viewed as a parent of the other parent's child under State law of general applicability. There may be two separate AFDC units—the mother and her child and the husband and his child. (In this situation, section 402(a)(38) does not require the consolidation of assistance units, though the State may choose to do so.) They then have a child. Since this

child is eligible for AFDC due to the father's incapacity, the child is required to be included in the assistance units of both siblings. As a consequence, all five household members must be consolidated in a single assistance unit. A new section has been added to the regulation at § 233.20(a)(1)(iii) to reflect this policy.

In summary, DEFRA only requires consolidation of multiple assistance units when the same individual is required to be included in each unit pursuant to section 402(a)(38). Accordingly, in the absence of such an individual, there is no Federal requirement that assistance units be consolidated.

As the result of comments received on the interim final rule, we have revised the recipient count provision at § 237.50 of the regulation to reflect changes due to the assistance unit provision. These changes provide for the additional individuals now required to be included in assistance units.

**Parents and Siblings Who Must Not Be Included in the Assistance Unit**

Under DEFRA, parents and siblings must be included in the assistance unit unless they are individually ineligible to receive AFDC under another provision of the Act. These are individuals whose ineligibility is based on a specific statutory provision regarding an individual's eligibility which does not involve a failure to cooperate. Some examples of individuals in this group are the following:

- Parents and siblings who receive SSI benefits. Section 402(a)(24) of the Act provides that an individual who is receiving benefits under title XVI cannot be considered as a member of the assistance unit nor is his income or resources considered for purposes of determining need or payment;
- Parents and siblings who are aliens and are ineligible for AFDC because they have been sponsored by an agency or organization or because of the application of the sponsor-to-alien deeming provisions in accordance with section 415 of the Act and § 233.51 of the regulations;
- Parents and siblings who are aliens and are ineligible for AFDC because they do not meet the citizenship and alienage requirements at section 402(a)(33) or section 402(f) of the Act and § 233.50;
- Parents and siblings previously entitled to AFDC who are ineligible due to prior receipt of lump sum income; and
- A child with respect to whom Federal foster care maintenance payments are made under title IV–E or whose costs in a foster family home or child care institution are covered in the Federal foster care maintenance payment made with respect to his or her minor parent. Sections 478 and 402(a)(24) provide that these individuals may not be regarded as a member of an AFDC family and their income and resources may not be regarded in the determination of eligibility or payment.

When any of the individuals listed above are no longer ineligible to receive AFDC (e.g., SSI eligibility ends), the State must include them in the assistance unit in accordance with the methods described in the section below entitled "Implementation of this provision." Regulations implementing these requirements are contained in § 206.10(a)(1)(vii) of these final regulations.

*Treatment of Sanctioned Persons Who Are Required To Be Included in the Assistance Unit*

We received numerous comments and questions on the interim final rule concerning the treatment of income and resources of "sanctioned persons." A sanctioned individual is one who must be in an assistance unit under section 402(a)(38) of the Act but who (1) does not meet a condition of his or her eligibility for assistance (e.g., assigning support rights to the State), or (2) is required by law to have his needs excluded from his family's AFDC grant calculation due to the failure to perform some action (e.g., the JOBS sanction for failure to participate under section 402(a)(19)(G)).

Excluding the needs of sanctioned individuals from the assistance unit follows directly from their status either as ineligible for assistance ((1) above) or specific statutory provisions mandating the exclusion of their needs ((2) above). However, in order to preserve the meaningfulness of the assistance unit provision, the sanctioned individual's income must continue to be counted as available to the assistance unit. For example, an individual whose income exceeds his need could always avoid reduction of total family benefits by becoming sanctioned. This clearly conflicts with congressional intent in establishing the assistance unit provision, which requires that the income of parents and siblings be included in determining eligibility. Therefore, the income and resources of a sanctioned individual must be counted in determining the unit's eligibility and payment amount in the same way that they would be counted if the needs of the individual were included.

Thus, for example, the earned income of these individuals will be counted after application of the appropriate disregards in § 233.20(a)(11). Similarly, the other income disregards, such as the $50 child support disregard at § 233.20(a)(3)(iv)(G) of the final regulation, also continue to be available to the assistance unit, even if the income is received by the sanctioned individual.

A new § 233.20(a)(1)(v) has been added to implement this procedure.

**Persons Who Fail To Cooperate**

In the preamble to the interim final rules, we stated that "failure to include an individual who is required to be in the assistance unit * * * makes the entire assistance unit ineligible for assistance." (49 FR 35589 (1984)). Some commenters misinterpreted this statement as a requirement to terminate an entire family's benefits any time an individual who should have been included had not been included or any time a member refused to cooperate. In order to determine how such individuals must be treated, the State must first determine the effect of the failure to cooperate.

If the caretaker relative does not notify the State concerning an individual required to be in the unit, the State will normally include that individual in the assistance unit as described below under "Implementation of this provision."

In certain situations, however, failure to cooperate will have an effect on the eligibility of the entire assistance unit. When a caretaker relative refuses to provide information about an individual required to be included in the assistance unit, it may not be possible for the State to determine that unit's eligibility or payment. For example, a State learns of a sibling's presence in a household and requires that the caretaker provide necessary information concerning this sibling. The caretaker relative refuses. In this situation, because it does not have information concerning the child's income or resources, the State is unable to determine the family's eligibility or payment amount and would deny benefits to the entire family.

However, if an individual does not meet a condition of eligibility due to a failure to cooperate, then that individual alone is treated as a sanctioned individual, as described above. For example, a 17-year-old sibling, who is required to be included in an assistance unit, returns home. Although the caretaker promptly notifies the State of his return, he refuses to provide a social security number. Rather than make the entire family ineligible, the sibling's income and resources are counted, as required by section 402(a)(38) of the

Social Security Act, but his needs are excluded.

This approach is taken so long as the State has sufficient information to make a proper determination of eligibility. As explained in § 206.10(a)(8), each determination of eligibility must be supported by facts in the case record. Where the facts in the case record are insufficient to support a finding of eligibility, assistance must be denied. For example, if that 17-year-old refuses to furnish his social security number, the State would count his income and resources and exclude his need. If, in addition, the State believes that the social security number is essential to verify unreported income or resources, assistance to the remaining unit members must be terminated.

Failure to meet certain eligibility requirements results in broader penalties. An individual's failure to meet eligibility requirements which by statute affect the entire assistance unit results in ineligibility for the entire assistance unit of which he is or should have been a part. Examples include:

- For cases subject to monthly reporting, the failure to file a required monthly report. No matter who is required to file the report, the entire assistance unit is ineligible if a completed report is not filed on time (§ 233.36); and
- Participation in a strike. If the caretaker relative is on strike as of the last day of a month, the unit is ineligible for that month (§ 233.106(a)(2)(i)).

**Discussion of Other Changes Related to This Provision**

The final regulations regarding inclusion of family members require several revisions to past policy and procedures. Section 402(a)(10) of the Act, which provides that all individuals wishing to make application for AFDC shall have the opportunity to do so, had also been interpreted as granting caretaker relatives the right to include or exclude family members from the assistance unit as they chose. This interpretation, to the extent it conflicts with the statutory provision on who must be included in the assistance unit, is no longer valid. With respect to persons not required to be included in the assistance unit under section 402(a)(38), the caretaker relative retains the right to choose whether or not to include them in the unit. Section 402(a)(10) also continues to be interpreted to mean that State agencies may not deprive any individual of the opportunity to apply for assistance, for example, by establishing waiting lists or by setting up other barriers to application.

**Implementation of This Provision**

Before DEFRA, there was no reason to include an individual in an assistance unit until an application was filed on his or her behalf. Beginning October 1, 1984, the statute requires inclusion of certain individuals. However, under some circumstances, a State may not be aware of such individuals until some time after the date that they are required to be included.

After careful consideration of the comments and the legislative history of this provision, we adopted the following procedure. When a State learns of an individual who is required to be included in an assistance unit, the State must:

—Redetermine eligibility and the amount of payment considering the needs, income, and resources of the additional individual retroactive to the date that the individual was required to be included in the unit;
—Follow established procedures to recover or collect an overpayment if the redetermination results in an overpayment for the assistance unit; and
—Provide retroactive payment if the redetermination identifies an underpayment; however, the State can provide assistance only for those months in which the individual satisfies all conditions of eligibility and payment.

We have added a new paragraph at § 233.20(a)(1)(iv) to reflect this policy. Please refer to the subsequent comment and response which discusses the date an individual must be added to the assistance unit and the treatment of eligibility conditions such as enumeration or the assignment of support.

**Clarifications Due to the Tax Reform Act of 1986**

Since the enactment of DEFRA, a question has arisen as to whether section 402(a)(38) applies to children deprived by reason of the unemployment of a parent under the AFDC-UP program. The actual wording of the assistance unit provision made reference only to section 406(a), with no reference to dependent children deprived due to the unemployment of a parent as set forth in section 407(a). With the enactment of Public Law No. 99–514, the Tax Reform Act of 1986, this question was resolved. Section 1883(b)(2)(A) of the Tax Reform Act amended section 402(a)(38) to include a reference to 407(a). In addition, section 1883(b)(2)(C) provided that the amendment was effective beginning October 1, 1984. Because we have previously interpreted the statute as applying to a child eligible under either program, we have made no change in § 206.10(a)(1)(vii).

Section 1883(b)(10) of the Tax Reform Act also added section 478 to title IV–E of the Social Security Act, which clarifies congressional intent concerning certain children with respect to whom Federal foster care maintenance payments are made under that title. Prior to DEFRA, such cash assistance under title IV–E (which also includes adoption assistance) to an AFDC recipient would have been considered income to the assistance unit. With the enactment of DEFRA, it became unclear whether such individuals should be excluded from assistance units or whether their foster care payments should be counted for the purposes of AFDC. Section 478 of the Act specifies that a child with respect to whom foster care maintenance payments are made under title IV–E is not eligible for AFDC and his or her income and resources are not considered for AFDC purposes. This provision does not extend to individuals receiving adoption assistance or State-only foster care payments.

Subsequently, section 9133 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law No. 100–203, added a similar provision for a son or daughter of a minor parent with respect to whom foster care maintenance payments are made. Effective April 1, 1988, the Federal foster care maintenance payment paid on behalf of the minor parent must include an amount necessary to cover the maintenance costs for the child. For the period that such costs are covered, the child is not eligible for AFDC and his income or resources may not be counted as the income or resources of an AFDC family. A more detailed discussion of these provisions may be found in the Notice of Proposed Rulemaking for OBRA '87 which was published on May 7, 1990 (See 55 FR 18212–18918).

*Comment:* We received many questions concerning inclusion of siblings. The most frequent comment involved a sibling who is supported by an absent parent. For example, a mother and child receive AFDC. A 16-year-old sibling, who lives in their household, is receiving court-ordered support from his absent father. This support exceeds his increment of the need standard. Must this child be included?

*Response:* Yes. The statutory change introduces the concept that certain family members must file for AFDC as a unit. The congressional conference committee report for this provision clearly indicates that Congress intended

to eliminate the family's option of excluding certain family members in order to maximize family benefits. This new provision is similar to the current practice in the Food Stamp program where the entire household is treated as a unit in determining eligibility for food stamps.

Now, in the AFDC program, the State must include in the assistance unit of the child, if living in the same household as the child, all parents, and all brothers and sisters who meet the provisions set forth in sections 406(a) (1) and (2) or 407(a) of the Act. (Individuals discussed above in the section entitled "Parents and siblings who must not be included in the assistance unit" are not subject to this requirement.)

Only after the State has determined the members of the assistance unit does the State determine need. The need determination for the assistance unit is made considering all income and resources of all individuals in the unit. This is a two-step process. First, the composition of the assistance unit must be determined. Second, income is considered in relation to the determination of need.

Accordingly, the 16-year-old child receiving court-ordered support payments must be included, since he is a sibling who meets all factors of entitlement. His income would then be considered in determining need for the entire assistance unit.

*Comment:* Many commenters requested clarification of the words "otherwise eligible" as used in § 206.10(a)(1)(vii) of the interim final regulation.

*Response:* "Otherwise eligible" means that the individual is not individually ineligible to receive AFDC under the Social Security Act (see "Parents and siblings who must not be included in the assistance unit" above) and, with respect to children, means that the individual meets the requirements of sections 406(a) (1), (2) or 407(a) of the Act. This does not include those who are ineligible solely due to some action or inaction on their part, such as failure to cooperate with work program requirements under the Job Opportunities and Basic Skills Training Program set forth in title IV–F of the Social Security Act.

*Comment:* Another comment concerned inclusion of both parents of an AFDC child when the parents are not married.

*Response:* The statute requires that both parents must be included in the assistance unit where the basis for deprivation is either incapacity or unemployment. There is no indication in the legislative history that Congress intended to include only married parents.

*Comment:* Must a parent who is not exercising parental responsibility (for example, a mentally incapacitated parent) be included in an assistance unit?

*Response:* Yes. In this situation, another individual would usually be the caretaker relative, but the parent would be included in the unit. She must be included in the unit because she meets the requirements of the assistance unit provision, i.e., she is a parent of the dependent child, and she and the dependent child are living in the same household. There is no requirement that she be the caretaker relative.

*Comment:* States are currently permitted to include in the grant children who are away at school. How does the assistance unit provision affect this policy?

*Response:* All siblings (including half siblings) who live in the household of an eligible child and meet the AFDC eligibility requirements must be included in the unit. If the State determines that a child away at school is living in the household, that child must be included in the assistance unit.

*Comment:* Must individuals who receive other needs-based benefits, such as State aid to the disabled, be included?

*Response:* Yes. The assistance unit provision affects all eligible parents and siblings unless specifically excluded by statute.

*Comment:* We received many questions concerning the need to file an application for individuals who are required to be included in an existing assistance unit. Must such an individual actually file, or does the original application include all individuals required to be included, even those who join the unit later?

*Response:* The original application includes all individuals required to be included by the assistance unit provision as of October 1, 1984. Individuals required to be included who join an existing assistance unit thereafter are included in that application as of the date they join the unit. This applies to all individuals who begin living with the existing unit, whether due to birth, adoption, or establishment of a new residence. The regulation has been amended at §§ 206.10(a)(1)(ii) and (b)(2) to reflect this requirement. To reduce overpayments, States must provide information regarding this requirement during the initial application process.

*Comment:* Occasionally, it may be advantageous for an expectant mother with children to apply for AFDC as a pregnant woman on her own behalf under section 406(b), rather than for AFDC for the entire family. This will occur when the children have income which exceeds their need and makes the assistance unit ineligible for AFDC. How does the assistance unit provision affect the payment of benefits to pregnant women in such cases?

*Response:* The expectant mother is free to apply for benefits, but current regulations at 45 CFR 233.90(c)(2)(iv) require that eligibility must be determined as "if such child had been born and was living with her * * * ." In making this special determination of eligibility, the State must consider the needs, income (including deemed income, such as parent-to-minor-parent or spouse-to-spouse deemed income), and resources of all individuals in the household who would be required to be included in the unit had the child been born and aid requested for it. If eligibility exists for this fictional unit, the pregnant woman is eligible. The State then determines payment amount based solely on the pregnant woman's needs, income (including deemed income) and resources.

The siblings would not be required to be included in the mother's AFDC grant until the child was born since no application on behalf of a dependent child has been filed. If benefits are desired once the child is born, the newborn child and other household members required to be in the unit may be added to the original application filed by the pregnant mother in a manner prescribed by the State agency, effective with the child's date of birth, provided that the mother requests such assistance.

*Comment;* What action must a State take in the following situation? A mother and her child receive AFDC. She remarries and has a second child. Although the father appears to be disabled, he is not receiving a disability-related benefit and has never filed for such benefits. The new child is a sibling of the eligible child and is potentially eligible for AFDC if the father meets the State's definition of incapacity. What should the State do?

*Response:* The statute requires that the sibling must be included unless he is ineligible. Because the sibling may be eligible based on incapacity of his parent, the agency must determine the father's eligibility. The father would also be required to be included if he is eligible. (NOTE: If the State has a law of general applicability that requires a stepparent to support his stepchildren to the same extent as a natural or adoptive parent, then the unit would only be

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eligible, after the marriage, if either the parent or the stepparent is incapacitated or unemployed.)

*Comment:* What effect does the statutory change have on the "prisoner parent" provision at § 233.90(c)(1)(iii) of the regulations?

*Response:* Current regulations at § 233.90(c)(1)(iii) provide that a parent who is a convicted offender, but who is permitted to live at home while serving a court-imposed sentence performing unpaid public work or unpaid community service during the workday, is considered absent from the home for purposes of deprivation. Since the assistance unit provision pertains only to a parent who is "living in the same home as the dependent child," it does not apply to the prisoner parent who is considered absent for deprivation purposes.

*Comment:* A woman, her minor daughter, and the daughter's child live together. If the grandmother seeks assistance for her grandchild, who must be included in the unit? If the minor mother is included, is she treated as a parent mother or as a child for the purposes of need and payment?

*Response:* In a previous response to this question in SSA–AT–88–1, "The Filing Unit Provision at § 2640 of the Deficit Reduction Act of 1984" (January 13, 1988), p. 12, we stated that the minor mother must be included in the unit. To resolve the issue of whether the minor mother would be treated as a parent or a child, we instructed the State to determine whether the grandmother herself sought to be included in the unit and whether the grandmother or mother was actually responsible for the day-to-day care and control of each child. Some States complained that such special determinations tended to be time-consuming and complex, especially in that the actual responsibility of each person in the household may not be clearly defined. Frequently, such determinations lead to disparate treatment of individuals in similar circumstances. As a consequence, States requested that we reconsider our previous reply.

Accordingly, we reviewed the legislative history of section 402(a)(38), including the relevant conference report (H. Rep. No. 98–861, 98th Cong., 2d Sess. 1407) to determine whether this issue was addressed. We have concluded that Congress did not specifically address this issue, and, therefore, we believe that it would be appropriate to provide States with flexibility. Thus, a State may develop its own policy with respect to the treatment of a mandatory unit member who is eligible both as a minor parent and as a dependent child. A State may decide, for need and payment purposes, to treat such individuals as dependent children or adults, or may develop specific criteria for case-by-case determinations. However, the State must apply this policy consistently—an individual could not, for example, be considered as an adult for the purpose of the earnings disregards and as a child for the purpose of the need standard.

*Comment:* One commenter asked if the resources of a stepparent are counted when his or her spouse is required to be included in an assistance unit as the natural or adoptive parent of a dependent child.

*Response:* No. The State must count only those resources owned by the natural or adoptive parent. This may include resources owned jointly with the stepparent. However, in States with laws of general applicability, stepparents are considered to be parents (§ 233.90(a)(1)). Accordingly, they must be included in the unit, and their resources must be taken into account.

*Comment:* Is allocation for the needs of dependents outside the unit permitted in counting the income of a parent?

*Response:* Yes. States are permitted to allocate income of a parent to dependents outside the unit before counting such income. As set forth in § 233.20(a)(3)(ii)(C), the amount allocated for dependents living in the household but outside the unit must not exceed an amount equal to the State's need standard for a family of the same composition, while the amount allocated for dependents not living in the household must not exceed the amount actually paid.

*Comment:* How does the assistance unit provision affect families of children who are in joint custody of each of their parents during a month? Must siblings in both families file?

*Response:* If deprivation exists, the State must establish one household for purposes of determining AFDC eligibility. The child is considered to be living in this household when applying the assistance unit provision. Accofdingly, only the needs and income of the parent and siblings living in that household must be taken into account.

*Comment:* Another commenter presented the following situation. A household consists solely of a mother, her daughter, and her daughter's child. The grandmother adopts the grandchild, and then files for AFDC for that grandchild (now her child). Who must be included in the unit?

*Response:* The unit would consist of at least the adoptive parent and the adopted child. If the natural mother is under the age limit selected by the State at § 233.90(b) and is otherwise eligible, she would be included as an AFDC child, since she would be an adoptive sister.

*Comment:* Many commenters asked which caretaker relative should receive the AFDC payment in an assistance unit that included multiple caretaker relatives due to the requirement to consolidate assistance units. This was seen as a particular problem where one caretaker relative had no responsibility for children of another caretaker relative.

*Response:* There is no Federal requirement regarding the determination of which caretaker relative in an assistance unit should receive the assistance payment(s). This determination is left to the State.

*Comment:* An individual receives adoption assistance on behalf of a niece as well as AFDC for herself and her child. How does the State treat the adoption assistance grant if the adoption has not yet become final?

*Response:* In view of the statutory changes contained in section 5052 of OBRA '90 which excludes from the AFDC unit a child for whom foster care maintenance or adoption assistance payments are made, we are not addressing this comment.

*Comment:* Two siblings reside with their aunt. She receives foster care payments on behalf of one child and AFDC for herself and the other child. How should the State treat this case?

*Response:* In view of the statutory changes contained in section 5052 of OBRA '90 which excludes from the AFDC unit a child for whom foster care maintenance or adoption assistance payments are made, we are not addressing this comment.

*Comment:* What is the earliest date that an individual who is added through the assistance unit provision is considered to meet conditions of eligibility such as enumeration or the assignment of child support?

*Response:* An individual required to be added to the assistance unit is "deemed" to be included in the application already on file as of the date he/she joins the unit either by birth/adoption or by moving into the household of the existing assistance unit. Correspondingly, certain technical factors of eligibility (e.g., enumeration, assignment of support, or the declaration of citizenship or satisfactory immigration status) will likewise be "deemed" (for underpayment calculation purposes) to be met retroactive to the date the individual was required to be included in the unit. However, the retroactive "deeming" of these technical factors of eligibility will *not* apply if: (1) the individual fails to cooperate with the State agency in meeting these technical requirements; or (2) the caretaker relative fails to fulfill his/her responsibilities with respect to making timely and accurate reports of changes pertaining to unit composition.

In summary, States must adhere to the following procedure when adding an individual to an assistance unit when his/her inclusion is retroactive:

—The State will use the individual's needs, income, and resources to redetermine eligibility for the assistance unit retroactive to the date that the individual should have been included in the unit;

—If the payment calculation results in an overpayment, the State must recover or collect the overpayment; and

—If the payment calculation results in an underpayment, the State will provide assistance only for those months in which all eligibility requirements were met.

In this connection, we note that for individuals whose presence in the household was reported to the State on a timely basis, and who then cooperate with the State in satisfying the technical factors of eligibility concerning enumeration, assignment of support, or declaration of citizenship, such individuals are "deemed" to have satisfied these factors retroactive to the date that they should have been included in the unit.

*Disregard of Child Support Payments (Sections 233.20 and 233.20(a)(3)(iv)(G) of the Final Regulations)*

Under prior law, all support collected periodically on the monthly support obligation was reported to the IV–A agency by the IV–D agency for the purpose of determining eligibility. Under section 2640 of DEFRA, section 457(b) of the Act is amended to require that the first $50 collected which represents monthly support payments is paid to the assistance unit. In addition, section 402(a)(8)(A) of the Act is amended to provide that this amount, not to exceed $50, be disregarded in determining need and the amount of the assistance payment.

The final regulations published on June 9, 1988 (53 FR 21642), amended § 302.51(b)(1) to provide that the first $50 of any amount collected in a month which represents payment on the required support obligation for that month shall be paid to the family. Section 232.20 was amended to provide for payment of this amount to the family by the IV–A agency. The interim final rules added § 232.20(a) to define the terms "support collection", "monthly collections", and "support amounts for a month" as used in that regulation. These three terms all mean the assigned amount that the support enforcement agency collects on behalf of an AFDC family as payment on the required support obligation for the month in which the support was collected, less the sum paid to the assistance unit under § 302.51(b)(1). Under this definition, the IV–A agency cannot count the sum paid under § 302.51(b)(1) in the determination of eligibility under § 232.20(b)(1) (formerly § 232.20(a)(1)). The interim final rules added § 232.20(d) to require the IV–A agency to promptly pay the family the sum under § 302.51(b)(1). However, under the authority of the Family Support Act of 1988, the Department published final rules on August 4, 1989 (54 FR 32306) which provide specified time frames in which the IV–A agency has to pay this sum. (The regulation was effective October 1, 1990.) The IV–A agency may either issue this payment as part of the monthly assistance payment, or separately, in accordance with timeframes under § 302.32 for paying the $50 to the family. In either case, the notice and hearing requirements at § 205.10 do not apply to this payment since it merely represents a pass-through of support collected by the IV–D agency.

For example, if the State makes these payments as part of the monthly assistance payment and the amount of that combined payment is reduced solely because the IV–A agency did not receive notice of any amount collected by the IV–D agency, then the notice and hearing requirements do not apply. On the other hand, if the amount of the combined payment includes a reduction in the monthly assistance payment, the notice and hearing requirements at § 205.10 apply to that reduction. Any question from an assistance unit regarding the amount of child support collected on its behalf by the IV–D agency is to be referred to the IV–D agency.

In addition, the cost of issuing these pass-through payments aids the proper and efficient administration of the IV–A program and therefore is a IV–A administrative cost subject to Federal matching under section 403(a)(3)(D) of the Act.

In the interim final regulations implementing section 2640 of DEFRA, the disregard requirements of that section were inadvertently placed in § 233.20(a)(4)(ii)(*J*). That section pertains to disregards of income and resources in determining eligibility and payment amount. Following review of the comments, we realized this was an incorrect placement of the $50 disregard provision because it created a broader resource disregard than the statute provides.

Specifically, section 2640 of DEFRA requires that the pass-through amount, not in excess of $50, paid to the AFDC family shall not affect the family's eligibility for assistance or decrease the amount otherwise payable to the family in the month the family receives the pass-through. Since the disregards in § 233.20(a)(4)(ii) are applied in every month as long as the funds are retained, placement of the $50 disregard in this section is inconsistent with the statutory language which limits application of the disregard to the month in which the pass-through is paid to the family.

Subsequent to publication of the DEFRA interim final rules, a regulation implementing a disregard of income received under the Job Training Partnership Act (JTPA) was published (see § 233.20(a)(3)(xvii)); we had originally anticipated publication prior to the DEFRA interim final rules. In the JTPA regulation, we had planned to reserve paragraph 233.20(a)(4)(ii)(*J*). As a consequence of the sequence of publication, the latter regulation inadvertently removed paragraph (a)(4)(ii)(*J*) and replaced it with the term "reserved". As a result, the October 1985 through the October 1991 editions of title 45 of the CFR show § 233.20(a)(4)(ii)(*J*) as reserved. Therefore, the $50 pass-through disregard provision has been restored to the regulations, but has been placed in § 233.20(a)(3)(iv)(G) because this section limits the disregard to income only. When the pass-through is retained beyond the month of receipt, it is counted as an available resource.

The new § 233.20(a)(3)(iv)(G) specifically provides that the amount, not in excess of $50, that the IV–A agency sends to the AFDC recipient be disregarded as income for purposes of determining eligibility and payment amount. This section also provides that, in States that count support received directly and retained by the family as income (rather than make these payments subject to recovery by IV–D), the IV–A agency must disregard the first $50 which represents monthly support paid by the absent parent in the determination of eligibility and the amount of the assistance payment. This policy also applies to voluntary support payments. However, the total amount of support that is disregarded cannot exceed $50 per month per assistance unit.

As mentioned earlier, the interim final rules redesignated paragraph (a) as (b)

in § 232.20 and added a new paragraph (a). However, the reference in § 232.20(b)(2) to paragraph (a)(1) should have been changed to paragraph (b)(1). We are making this technical correction now.

*Comment:* Several commenters expressed concern that the interim final regulations implementing the $50 disregard are too restrictive in requiring that the IV–A agency make the payment.

*Response:* Because IV–A agencies already have a system in place for making assistance payments each month to individuals receiving AFDC, we determined that the IV–A agencies were in the best position to issue the $50 payment. However, there may be some circumstances where the State may want to contract out the issuance of the $50 payment to the IV–D or other appropriate State agency. Such a procedure is acceptable. If the State contracts out issuance of the $50 payment to the IV–D agency, the IV–A agency must reimburse the IV–D agency for any administrative costs incurred. The IV–A agency is authorized by Federal statute to claim Federal financial participation for the reimbursement of the IV–D agency at the IV–A rate for administrative costs.

*Comment:* One commenter asked the meaning of "voluntary support payment" as was used in § 233.20(a)(4)(ii)(*j*) (now § 233.20(a)(3)(iv)(G)).

*Response:* Voluntary support payments, as used in § 233.20(a)(3)(iv)(G), are payments which are made by a putative father or an absent parent and acknowledged by him or the mother to be for the support of their child.

*Comment:* Several States commented that they were not able to implement the $50 pass-through provision effective October 1, 1984. They asked whether recipients that are paid an accumulation of pass-through payments at one time are entitled to the disregard for each month of the accumulation. For example, if a IV–A agency could not begin issuing the pass-through amounts until December 1, assuming at least $50 per month in child support was received in October, November, and December, a check for $150 would be issued. Is the entire sum to be disregarded?

*Response:* Yes, recipients that receive an accumulation of pass-through payments for reason of State delays or bookkeeping errors are entitled to the $50 disregard for each month of accumulation.

However, an agency may not permit payments to accumulate merely for the purpose of making them periodically, such as quarterly.

*Comment:* Several commenters asked whether support that is paid to an individual in the month of application (but prior to the date of application) is subject to the $50 disregard.

*Response:* Support that is paid to an individual in the month of application but prior to the date of application is subject to the $50 disregard. This policy is consistent with other policy on the treatment of income in the month of application.

*Comment:* Several commenters asked whether errors such as issuing an incorrect amount or issuing a payment to the wrong person should be corrected by the IV–A or the IV–D agency. They also asked who would be responsible for lost or stolen checks.

*Response:* The IV–A agency is responsible for correcting errors related to the pass-through. However, if the IV–A agency has contracted the payment issuance to the IV–D agency, recovery may also be contracted to the agency. In the case of an overpayment of the pass-through, the IV–A agency must attempt to recover the money from the recipient. If a recipient refuses to return the overpaid pass-through amount, the overpaid amount is considered income and should be taken into account in computing the need for and the amount of the AFDC assistance payment. The IV–A agency must follow the necessary notice and hearing provisions.

The agency that issues a pass-through check that is lost or stolen is responsible for following the same procedure for handling lost or stolen pass-through checks that it uses to handle any other State-issued checks that are lost or stolen.

*Comment:* One State asked how the $50 disregard is to be treated when the individuals in the court order live in separate households.

*Response:* When the children and/or spouse who are covered by a court order reside in separate households, the individuals in each household are entitled to their pro-rata share of the amount collected if the court order does not specify an amount per individual or group. An amount up to the first $50 of the total pro-rata share of support for each household must be passed through to that household and disregarded in determining need and amount of assistance.

Example: Assume a support collection of $100, five children subject to the court order, two in one AFDC household and three in another. The support for the household with two children is $40. The support for the household with three children is $60. Each household is entitled to have up to the first $50 of support disregarded. The household with two children would receive $40 and the household with three children would receive $50. If the total support collection were $120, the pro-rated support for the first household would be $48, and for the second household, $72. The first household would receive and have the entire $48 disregarded, but the second household would receive only $50 of the $72 and that $50 would be disregarded.

*Comment:* Several commenters asked whether the IV–A agency may retain the $50 pass-through amount as payment on an overpayment of assistance.

*Response:* The IV–A agency may not retain the $50 pass-through as partial or total payment of a previous overpayment of assistance. However, if recovery is being made from the AFDC grant, the amount of the pass-through is included in determining the combined amount of the aid, income, and liquid resources for purposes of determining the maximum amount by which the grant may be reduced under § 233.20(a)(13)(i)(A)(*2*).

*Exclusion of Burial Plots, Funeral Agreements, and Certain Real Property From Resource Test (Section 233.20(a)(3) of the Final Regulations)*

Under prior law, a family was considered ineligible for any month it had resources over $1000 (or such lower amount set by the State.) Excluded from consideration were only: the equity value of a car up to $1500 (or a lower amount set by the State); a home owned and occupied by the family; and, at State option, basic items essential to day-to-day living, such as clothing, furniture, and other essential items of limited value.

Section 2626 of DEFRA amended section 402(a)(7)(B) to require States to exclude from consideration as a resource, in accordance with regulations prescribed by the Secretary, funeral agreements covering family members, and one burial plot for each family member. To allow States flexibility to establish definitions and limits which conform to State laws and regulations, the Secretary has placed few limits on the type of funeral agreements to be excluded as discussed in a comment below. Consistent with the policy in the SSI program, we have established a maximum equity value of $1500 per family member for bona fide funeral agreements. States may set a lower amount, just as they may with the basic resource limit or the equity value of a car as described above. In addition, the Secretary has authorized States to define the term "burial plots" for purposes of this exclusion. Such

definitions and limits must be specified in the State plan. For purposes of this discussion, "family member" means a member of the assistance unit.

Section 2626 of DEFRA also provides for the exclusion, for a period of time prescribed by the Secretary, of otherwise non-excludable real property which the family is making a good faith effort to sell. Eligibility for assistance during this period is conditioned on disposal of such property. Any payments made during the period are considered overpayments at the time of disposal, to the extent that payments would not have been made had disposal occurred at the beginning of the period.

In determining the time period for disposal of non-excludable real property, we considered the committee report for this provision, which indicates that Congress intended AFDC policy to be similar to SSI policy (the SSI time limit is nine months). For this reason, we have provided States the option to be consistent by extending the six-month time period by an additional three months. In addition, we have required that, as in SSI, the applicant must agree, in writing, to dispose of the property, and to make repayment of any AFDC benefits that would not have been received had disposal occurred at the beginning of the period.

At the time of disposal, any payments made since the agreement was entered into are overpayments to the extent they would not have been paid had disposal occurred at the beginning of the period. The amount to be recovered cannot exceed the amount of the net proceeds from the disposition of the property. However, if the net proceeds from the sale of the property, together with all other resources at the beginning of the disposal period, are under the State's resource limit, no overpayment would exist.

The interim final rule also provides that if a recipient family becomes ineligible for other reasons during the disposal period, or if disposal is not completed by the end of the period, then: (1) Eligibility for continuing benefits ceases; and (2) all payments made during the period are overpayments which the State must begin to recover. There have been a number of successful legal challenges to the policy set forth in (2). The courts in these cases have concluded that, so long as a recipient is continuing to make a good faith effort to sell the property, neither may an amount of overpaid assistance be computed, nor may any assistance be recovered. Accordingly, we have decided to provide in the final rule that, if a recipient (1) becomes ineligible for AFDC due to other reasons during the disposal period while making a good faith effort to sell the property or (2) fails to sell the property by the end of the period despite a continuing good faith effort, then no overpayment attributable to the real property may be calculated nor may recovery be made until the property is, in fact, sold. Finally, we are retaining the provisions of the interim final rule that each State will define the concept of a "good faith effort" and that a recipient will not be eligible for continued AFDC at the end of the six or nine month conditional payment period if the property remains unsold.

This provision applies to both applicants and current recipients. It does not change the longstanding policy to permit States to establish provisions governing transfer of assets prior to application and placement of liens on real property.

*Comment:* Several commenters suggested that for ease of administration and consistency with SSI, the AFDC program use the SSI definition of "immediate family" for purposes of the burial plot/funeral agreement exclusion, i.e., "an individual's minor and adult children, including adopted children and stepchildren, and individual's brothers, sisters, parents, adopted parents and the spouse of these individuals." Commenters argued that limiting the exclusion to members of the assistance unit is too restrictive, e.g., an AFDC mother who owns burial plots for children who left home. Another commenter expressed concern specifically about SSI children and requested exclusion of burial plots for such children.

*Response:* Section 402(a)(7) of the Social Security Act speaks specifically to the exclusion of resources in relation to the child or relative claiming aid, or "other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid * * *." Excluding burial plots/funeral agreements for individuals other than these is beyond the scope of the statutory provision. The reference to the legislative history regarding consistency with SSI applies only to the provision concerning real property.

*Comment:* One commenter asked whether a savings account established and designated to be used for funeral expenses can be excluded from consideration as a resource under the provisions exempting funeral agreements.

*Response:* While States are permitted the flexibility to establish definitions and limits which conform to State law and regulations, this exclusion does not apply to passbook bank accounts, simple set asides of savings, cash surrender value of life insurance policies, etc. The provision only addresses formal agreements for funeral and burial expenses such as burial contracts, burial trusts and other funeral arrangements (generally with licensed funeral directors.) The regulations have been clarified accordingly.

*Comment:* One commenter asked how funds in a funeral agreement which exceed the $1500 limit are to be treated.

*Response.* Funds in excess of the $1500 limit (or a lower amount established by the State) are applied against the general resource limit. Language has been added to the regulation at § 233.20(a)(3)(i)(A)(*4*) to clarify this policy

*Comment:* One commenter asked when the six-month period of conditional eligibility begins. Is it the (a) date of application, (b) date on which the conditional payment agreement is signed, (c) date of authorization, (d) date of payment, or (e) some other date?

*Response:* For applicants, the period begins with the first payment month for which eligibility has been determined and assistance authorized. For recipients who acquire property while on the rolls, the period begins with the payment month in which the recipient receives the property. We have made this clarification in the regulation.

*Comment:* One State asked what happens if a case is closed before the six-month disposal period ends and the property remains unsold when the family later reapplies. Is the family entitled to the balance of the six-month disposal period?

*Response:* If the case is closed before the six-month disposal period ends and the family reapplies within that period, the family is entitled to a continuation of the disposal period for the balance of the original six months. However, if the family reapplies after the six-month period expires, they are not entitled to any further disposal period for that property. In other words, the six-month period (or nine months, at the option of the State) runs for six (or nine) consecutive months regardless of whether assistance is received during that period.

*Comment:* Several commenters believe that if, under the real property conditional payment exclusion, the property is not sold by the expiration of the six-month disposal period (or nine months, at the option of the State), assistance received during this period should not be considered an overpayment. The commenters argue

that the statutory language provides that any payments of aid received during the six (or nine) month disposal period are considered overpayments at the time of disposal and the property has not in fact been disposed of by the family.

*Response:* As discussed above, we have reconsidered the position taken in the interim final rule with respect to the consequences when excess property has not been sold at the expiration of the disposal period. In light of recent court decisions, we have changed the policy to provide that no amount of overpayment will be calculated or collected until the property is sold so long as the recipient is making a good faith effort to sell the property. However, if at the end of the disposal period, the recipient is not making a good faith effort, then the amount of the overpayment is to be calculated and collected. An overpayment results to the extent that AFDC payments would not have been made if the property had been disposed of at the established fair market value at the beginning of the period.

*Comment:* One commenter asked whether the real property exclusion applies to real property which causes the countable resources to exceed the limit when combined with other countable resources, or only real property which alone is in excess of the resource limit.

*Response:* Regardless of whether the equity value of the real property alone exceeds the resource limit or only in combination with the equity value of personal property, the State would exclude the real property which the family is making a good faith effort to sell and condition eligibility on the disposal of the real property.

*Comment:* Another commenter asked whether under the conditional payment agreement, non-excludable real property must be disposed of at fair market value? What consequence would result from a "convenience" transfer of property, for example, conveying it to a family member?

*Response:* Once the family enters into the conditional payment agreement, any disposal of the non-excludable real property must be a bona fide arms-length transaction at fair market value. A "convenience" transfer at less than the established fair market value would circumvent the statutory requirement that there be a good faith effort to dispose of the property. In that event, an overpayment results to the extent that AFDC payments would not have been made if the property had been disposed of at the established fair market value at the beginning of the period. Overpayment recovery would be made pursuant to § 233.20(a)(13).

*Comment:* Two commenters suggest that the amount of net proceeds from the sale plus the value of other countable resources held at the time of the agreement be reduced by the $1000 resource limit (or lower limit set by the State) to determine the net proceeds available to repay the assistance received during the conditional payment period.

*Response:* The statute states that aid paid during this period is an overpayment to the extent it would not have been paid at the beginning of the period. There is no provision for reducing the amount of the proceeds by the amount of the resource limit. However, encumbrances and expenses related to the sale of the property must be excluded in determining the net proceeds of the sale and therefore must be excluded in determining whether aid would have been paid at the beginning of the period.

*Comment:* One commenter expressed concern about the seeming inequity in the following two situations. In the first, a recipient signs an agreement under the conditional payment provision, receives assistance within the specified conditional payment period, sells the property, but fails to honor the agreement, spending the proceeds of the sale rather than reporting receipt and making repayment. In this instance, AFDC could continue, as the individual no longer owns property exceeding the limit. In the second, the individual signs the agreement, receives AFDC but has not sold the property at the expiration of the disposal period. When the period expires, the case is closed and this individual is expected to repay benefits received when the property is sold, and is ineligible for continued assistance as he still owns property exceeding the limit.

*Response:* While inequities like this could occur in that the recipient who fails to honor the agreement can continue to receive assistance (although recovery of the overpayment must be initiated) while the other recipient remains ineligible, the State agency may avoid this inequity by placing a lien on the property as part of the agreement. That is, with a lien in place, the State would receive the amount it was owed directly from the proceeds of the sale when the property was sold.

*Comment:* One commenter asked how the proceeds are treated and eligibility determined between the sale of property and repayment.

*Response:* Consistent with SSI policy, once the excess real property is sold, the recipient has five working days from the date he or she realizes cash from the sale to repay the overpayment; failure to make repayment within this period results in the cash retained being considered to be an available resource.

*Comment:* One commenter asked if the property is sold after the expiration of the specified time under the conditional payment agreement, and the proceeds are less than the amount of the assistance paid, whether the State should still collect the total amount of assistance paid or only an amount up to the proceeds of the sale.

*Response:* Assuming a good faith effort was made to dispose of the property, the overpayment to be recovered under the conditional payment agreement cannot exceed the net proceeds from the disposal of the property regardless of whether the property is sold after the expiration of the disposal period or sometime during the disposal period. However, if the property was intentionally sold at less than fair market value so that a good faith effort to sell was not made, an overpayment results to the extent that AFDC payments would not have been made if the property had been disposed of at the established fair market value at the beginning of the period.

*Comment:* One commenter asked how to treat assigned child support that is collected by the IV–D agency during the six-month disposal period.

*Response:* Such support which was used to reimburse the State for AFDC payments made for those six months reduces the assistance unit's indebtedness.

*Earned Income of Full-Time Students (Section 233.20(a) (3) and (11) of the Final Regulations)*

This regulation implements section 2642 of DEFRA which amended sections 402(a) (8) and (18) of the Act. Section 2642(a) amended section 402(a)(18) to permit States to exclude for up to six months all or any part of the earned income of a dependent child who is a full-time student in the determination of whether the family's income exceeds 185 percent of the State's standard of need. Section 2642(b) of DEFRA amended section 402(a)(8)(A) of the Act by adding a new clause (vii) which permits States to disregard all or any part of the earned income of a dependent child who is a full-time student and is applying for AFDC in the determination of need under section 402(a)(7) of the Social Security Act, but only to the extent the State disregards such income in determining whether the family's gross income exceeds 185 percent of the State's need standard.

The legislative history of this provision indicates that Congress intended to allow States the authority to disregard, in the determination of eligibility under the gross income limit, earned income which is received by an AFDC child who is a full-time student. As in the case of earnings derived from participation in a program under the JTPA, States may exclude all or a portion of the earned income of a dependent child for up to six months.

The regulation provides that States must specify in their State plans what portion, if any, of the earned income will be disregarded under this disregard provision and the length of time the disregard will be applied (up to six months). Consistent with the JTPA regulations, the six-month limitation is per calendar year (see final rules published December 13, 1984, 49 FR 48547–48550).

The full-time student disregard in section 2642(a) of DEFRA does not override the six-month limitation on the disregard of earned income derived from participation in JTPA programs provided in section 402(a)(8)(A)(v). Thus, earned income of a dependent child who is a full-time student and who is participating in a JTPA program may be disregarded in the determination of eligibility under the gross income limit for a maximum of six months per calendar year, not for 12 months. However, if a full-time student secures employment unrelated to JTPA participation, a second six-calendar-month period could be established by the State under this provision. Thus, up to 12 months of disregard are available, but no more than 6 months for JTPA-related employment and another 6 months for non-JTPA related employment. Where the State disregards, under the JTPA disregard provision, only a portion of the dependent child's JTPA earnings received for a month or none of the JTPA income, any portion of the income which was not disregarded under the JTPA disregard provision for that month may be disregarded under the full-time student disregard provision.

**Application of the Disregard**

The disregards in this regulation are applicable only to the earned income of dependent children who are full-time students. Earned income of other children is treated as any other earned income and disregarded to the extent required or permitted under other provisions of section 402(a)(8) of the Social Security Act and regulations at § 233.20(a)(11).

The AFDC program has a three-step process for considering income in determining whether a family may receive AFDC, i.e., application of the 185 percent gross income limitation, determination of whether the family is needy under the State's need standard, and determination of financial eligibility and the amount of the assistance payment in relation to either the State's need or payment standard. The amendment to section 402(a)(18) affects only the first step and the amendment to section 402(a)(8)(A) affects the second and third steps.

**Gross Income Limitation**

First, the family's total income is measured against 185 percent of the State's standard of need. In making this determination, when a dependent child who is a full-time student has earned income which the State elects to disregard under this regulation, the amount to be disregarded is not counted in determining whether the family's total income (without benefit of other disregards in section 402(a)(8) of the Act except, at State option, section 402(a)(8)(A)(v)) is in excess of 185 percent of the standard of need for a family of the same size (including special needs). If the family's income exceeds that amount, the family is ineligible for assistance. If the family's total income does not exceed 185 percent of the standard of need, the process continues.

**Determination of Need and the Amount of the Assistance Payment**

The second step in the eligibility process for determining whether a family may receive AFDC is to measure the family's income, after appropriate disregards, against the standard of need. Under prior law, in determining need, only the earned income of full-time students who were recipients was disregarded. The DEFRA legislation added a new section 402(a)(8)(A)(vii) to the Act. This section permits States, in making the determination of need, to disregard also the earned income of a dependent child who is applying for AFDC, if the child is a full-time student. However, in order to elect to disregard this income in determining need, the State must also have elected to disregard it in determining whether the family's gross income exceeds 185 percent of the State's standard of need. If the family's income, after application of appropriate disregards, exceeds the State's standard of need, the family is ineligible for assistance. However, if the family's countable income does not exceed the need standard, then there is a third step, i.e., determining the amount of the assistance payment. In making this determination, the earned income of a dependent child who is a full-time student is disregarded in accordance with section 402(a)(8)(A)(i) of the Social Security Act and regulations at § 233.20(a)(11) (i)(A) and (ii)(A) which require that all the earned income of a dependent child who is a full-time student receiving AFDC be disregarded.

*Comment:* Several States asked whether a State may choose which six months during a calendar year to apply the full-time student disregard, e.g., only those months in which the amount of a student's earned income is enough to cause his/her family to lose eligibility without the disregard.

*Response:* Yes. This is a reasonable application of the disregard provision. The statute requires that States disregard earned income of a child who is a full-time student in determining the amount of benefits. However, prior to DEFRA, the statute also required that States count a student's earned income in determining whether his/her family's total income exceeded 150 percent of the standard of need and, for applicant children, in determining whether the family was in need. As the intent of the DEFRA full-time student disregard is to avoid, for up to six months per calendar year, families being made ineligible due to a full-time student's earned income, it is consistent with congressional intent to apply the disregard only when the family needs it to retain eligibility.

*Comment:* Two commenters asked whether the JTPA earned income disregard and the full-time student disregard may be applied simultaneously, e.g., when a full-time student is participating in a JTPA program and also has a newspaper route.

*Response:* Yes. However, the six-month limitation on the exclusion of either JTPA or non-JTPA income stipulated at § 233.20(a)(3)(xix) run independently. Thus, each disregard can only be applied for individual six-month periods, although the time periods may run simultaneously.

*Comment:* One commenter requested clarification concerning whether earned income received by a part-time student may be disregarded under the DEFRA student disregard provision in determining whether a family's income exceeds 185 percent of the State standard of need.

*Response:* The statutory language of the DEFRA student income disregard provision limits application of the disregard to the earned income of children who are full-time students. Earned income of part-time students must be counted in determining whether a family's income exceeds 185 percent of

the standard of need, unless the income is JTPA earnings.

*Comment:* One commenter asked whether a State may opt to disregard only non-JTPA related income under the full-time student provision.

*Response:* Yes. In providing new authority to disregard non-JTPA earnings, Congress did not intend to limit or take away the flexibility States have had regarding the disregard of JTPA income.

*Comments:* One commenter asked whether a State may opt to disregard JTPA earnings for six calendar months and then disregard earnings from other sources for another six calendar months.

*Response:* Yes. The full-time student disregard and the JTPA disregard are separate provisions.

*Recalculation of Ineligibility Caused by Lump Sum Income (Section 233.20(a)(3)(ii)(F) of the Final Regulations)*

Section 402(a)(17) of the Act requires non-recurring lump sum income received in a month to be considered available in the month it is received and also in future months. Thus, if such income, along with other income received in that month, exceeds the standard of need, the family is ineligible in that month, or at State option, ineligible not later than the corresponding payment month. In addition, any amount of the remaining income that exceeds the initial month's need standard is divided by the monthly need standard, and the family is ineligible for aid for the number of additional months resulting from that calculation.

Prior to DEFRA, however, the statute contained no specific provision for shortening the period of ineligibility. Nevertheless, the regulation at § 233.20(a)(3)(ii)(D) permitted a State to shorten the period of ineligibility, but only if a life-threatening circumstance, e.g., a medical emergency, fire, flood, or other natural disaster, occurred prior to the expiration of the period of ineligibility which required the assistance unit to expend part or all of the lump sum income to meet such a circumstance. The period of ineligibility could be shortened under the following specified conditions: (1) The family must have used its lump sum money to meet essential needs, (2) the family must have had no other income or resources available, and (3) the family must have expended or would expend some of the remaining lump sum in connection with the life-threatening circumstance.

Section 2632 of DEFRA amends section 402(a)(17) of the Act to provide for three situations where the State may, at its option, shorten the period of ineligibility. The three situations are:

(1) *An event occurs which would have affected the amount payable if the family had been receiving aid.* Although many events occur which can affect the amount payable, i.e., the grant, the period of ineligibility caused by the lump sum can only be recalculated when the event also affects the need standard. This is the case because the method of calculation of the period of ineligibility is not changed by DEFRA. Under section 402(a)(17) of the Act, in order to calculate the number of months of ineligibility, the total income is divided by the need standard. Thus, the only way the number of months can be reduced is if that divisor, i.e., the need standard, is increased. Therefore, a decrease in the income of the family would not in and of itself cause a recalculation. The need standard must also be affected. For example, assume a family with unearned income of $200 (disability benefit) receives a lump sum of $2,000 on April 1. The need standard is $400. The lump sum of $2,000, along with the $200 unearned income received in April exceeds the standard of need, and the family is ineligible in that month. The family is ineligible for 5 months, April through August, assuming the State elects to begin the period of ineligibility with the month of receipt of the lump sum, with $200 to be applied in the first month of eligibility following the period of ineligibility (dividing the $2,200 income by the monthly standard of $400). In June, the family's $200 monthly disability benefit is discontinued. There has been no change in the need standard of $400, however, which remains the divisor. Assume that a recalculation was done in June, under the supposition that $1,400 of the lump sum was still available, since the family should have budgeted $400 for April and May. The $1,400 is divided by the standard of need of $400, continuing to leave 3 more months of ineligibility, i.e., June through August, with $200 to be applied to the first month of eligibility following the ineligibility period.

Examples of events which could result in a recalculation include: An increase in family expenses, such as rent, in a State where a portion of the need standard, e.g., shelter, is based on actual costs; eligibility for a special need item; and any general increase in the need standard. In the interim rule, we said that, as in the past, when a child is born to a family whose members are ineligible due to prior receipt of a lump sum, the child is treated as a separate assistance unit. We viewed the option in the statute of shortening the period of ineligibility as only applying to persons who are already ineligible due to a prior receipt of a lump sum. We have reconsidered this position in light of comments received and determined that when there is an addition to the family unit during the period of ineligibility, the need standard to be used in the recalculation for States opting for this provision must include additions to the family during the period of ineligibility who are otherwise eligible for assistance, e.g., a newborn, a child returning home, or any other individual now required to be included in the assistance unit. However, if the individual added to the unit for purposes of recalculating the period of ineligibility subsequently leaves the unit, the lump sum period of ineligibility does not follow that individual nor is the period of ineligibility recalculated for remaining members of the unit.

(2) *The lump sum or a portion of the lump sum becomes unavailable to the family for a reason that is beyond the family's control.* In order to provide States with maximum flexibility in implementing this provision, we have left the definitions of "unavailable" and "beyond the family's control" to the States. Examples might include loss or theft of income, or a life-threatening circumstance. The recipient must show that the factors resulting in the income becoming unavailable were beyond the family's control. States that elect this option must develop guidelines for determining when a lump sum becomes unavailable to a family for reasons beyond its control and must substantiate such a finding in the case record.

(3) *A family member incurs and pays for medical expenses, as approved by the State, in a month during the period of ineligibility caused by receipt of a lump sum.* A State choosing this option must specify in its plan which medical expenses are allowable under this provision. For recalculations due to medical expenses, States need not initiate the recalculation until the total medical expenses equal or exceed the amount of any remaining income left after determining the number of months of ineligibility. This is because the number of months of ineligibility will not change until income is reduced by that amount.

Based on the statutory language, the recalculation in the first situation above is done as of the month the event occurs. In doing the recalculation, the amount of funds that should be available in that month based on the previous calculation is divided by the standard of need applicable to that month. For example, a family with no other income receives a

lump sum of $2,000 on April 1. The need standard is $400. The family is ineligible for 5 months, May through September (assuming the State elects to begin the period of ineligibility in May rather than April). In July, the need standard is increased to $500. The recalculation in July would be done with the assumption that $1,200 of the lump sum was still available, since the family was expected to have budgeted $400 for May and June. The $1,200 is divided by the increased standard of need of $500. The family is ineligible for July and August and $200 would be counted as income in September.

**Other Provisions**

Section 2632 of DEFRA also amended section 402(a)(17) of the Act to make two clarifications. The legislative history (statement in the Congressional Record entitled "Clarification of Section 2632, Deficit Reduction Act of 1984", S 10644, August 10, 1984, by Senator Dole, Chairman of the Senate Finance Committee) shows that the purpose of this provision of DEFRA is to clarify the original intent of Congress as to the applicability of the lump sum provision. Senator Dole states that because some courts have interpreted the lump sum provision as enacted in the Omnibus Budget Reconciliation Act of 1981 to apply only to families that have earned income at the time they receive a lump sum, the intent of section 2632(b) of DEFRA is to clarify that the 1981 lump sum provision was always intended by Congress to apply to all families, not just those with earned income. Therefore, the statute now specifies that the lump sum provision applies to all applicants and recipients, and any person whose needs a State considers in determining family income (regardless of whether they have any other income, or whether their other income is earned or unearned). This includes essential persons and stepparents in States with laws of general applicability. (This provision does not apply to stepparents in States without laws of general applicability who are not applying for or receiving AFDC. In these States, the lump sum income of a stepparent is counted in accordance with § 233.20(a)(3)(xiv) of the regulations.)

In addition, the statute specifies that the lump sum income may be either earned or unearned income.

*Comment:* Several commenters, including the chairman of the authorizing House subcommittee, believe States should be allowed to recalculate the period of ineligibility based on the birth or addition of a child to the household rather than requiring the child to be viewed as a new assistance unit. The commenters variously argue that (1) the statute at section 402(a)(17)(A) states in part, "* * * the family of which such person is a member shall be ineligible for aid," and, therefore, a newborn is as much a family member as are the members who were receiving assistance when the lump-sum payment was received, (2) including the newborn as a family member while recalculating the period of ineligibility is consistent with the standard filing unit provision, and (3) the House legislative history specifically cites increased need due to a birth of a child as a situation in which the period of ineligibility should be shortened.

*Response:* We agree with the commenters. For States that have elected the option to shorten the period of ineligibility when an event occurs which would have affected the payment amount had the family been receiving aid, the period of ineligibility must be recalculated when an individual joins the family, rather than creating a separate assistance unit for that individual. The need standard to be used in the recalculation includes additions to the family during the period of ineligibility. Examples of situations requiring recalculation include the birth of a child, a child returning home, and the presence in the home of any other individual now required to be in the assistance unit. However, if the individual added to the unit for purposes of recalculating the period of ineligibility subsequently leaves the unit, ineligibility does not follow that individual. We have revised the regulation accordingly.

*Comment:* One commenter asked whether the example given in the preamble to the interim final rules on how to recalculate the period of ineligibility, which is restated in the discussion of (3) above, is the only acceptable formula.

*Response:* The procedure described in the interim final rules for recalculating the number of months of ineligibility is one method that comports with the statute. It would also be permissible for a State to use another method as long as that method results in the same number of months of ineligibility and same remainder.

*Comment:* One commenter asked whether the lump-sum provision applies if the lump sum is received by an ineligible or sanctioned parent or sibling, or a stepparent living in the home. Further, if one of these individuals is not the one who receives the lump sum, would this individual be considered in computing the period of ineligibility and in recalculating the period of ineligibility?

*Response:* In general, lump sum income received by an individual who is not an applicant, a recipient, or a person whose needs are not taken into account in determining the assistance unit's needs and amount of assistance does not trigger the lump sum rule. The rule does apply to the income of a "sanctioned person"—i.e., a person who must be in an assistance unit under section 402(a)(38) of the Act but who (1) does not meet a condition of his or her eligibility for assistance, or (2) is required by law to have his needs excluded from his family's AFDC grant calculation due to the failure to perform some action. Excluding the needs of such an individual from the assistance unit should not also result in excluding their income because this would defeat the purpose of the assistance unit provision and the sanction as discussed in the preamble sections entitled, "Individuals Who Must File for Assistance as a Unit" and "Treatment of Sanctioned Persons Who Are Required To Be in the Assistance Unit."

Thus, for example, the lump sum rule applies to the income received by the parent of a dependent child who is ineligible for AFDC because she did not assign support rights to the State pursuant to section 402(a)(26) of the Act. Similarly, the rule would apply to the income of a sibling who fails to meet a JOBS participation requirement and, thus, pursuant to section 402(a)(19)(G) of the Act, may not have his needs taken into account in determining the assistance unit's need and amount of AFDC. However, because these individuals are subject to sanctions, their needs are not taken into account in determining the period of the assistance unit's ineligibility for AFDC. Once the sanction ceases their needs are to be taken into account and the period of ineligibility is to be recalculated.

In the case of a stepparent living in the same household as his stepchild who is a dependent child, any lump sum income received by the stepparent would be considered available to the unit pursuant to section 402(a)(38) of the Act if the stepparent is a parent under § 233.90(a)(1)—i.e., the State has a law of general applicability that requires stepparents to support stepchildren to the same extent as natural or adoptive parents. Otherwise, the lump sum income would be attributable to the extent provided under section 402(a)(31) of the Act. The needs of the stepparent would be taken into account in determining the period of ineligibility

only in a State that has a general law of applicability.

If an individual is not the recipient of the lump sum, his needs are required to be taken into account in determining the needs of the unit, and he is not subject to a sanction, then his needs are considered in the need standard amount which is divided into the lump sum amount in order to determine the period of ineligibility. If he is subject to a sanction, his needs are not taken into account.

*Comment:* Several commenters prefer that we not require increases in both the need standard and amount payable under the first option in order to shorten the period of ineligibility. They believe that States should have more flexibility in this area.

*Response:* This issue was addressed in the preamble to the interim final regulations and restated above. Our position remains the same because of the statutory language, i.e., the period of ineligibility caused by the lump sum can only be recalculated when the event also affects the need standard because the method of calculation of the period of ineligibility is not changed by DEFRA. Under section 402(a)(17) of the Act, in order to calculate the number of months of ineligibility, the total income is divided by the need standard.

*Comment:* One commenter asked whether the State can recalculate the period of ineligibility if an assistance unit member takes the lump sum and leaves the family. That is, would this situation fall within the category of the lump sum being unavailable due to a circumstance beyond the family's control?

*Response:* States are responsible for defining the circumstances for which the period of ineligibility is recalculated due to circumstances beyond the control of the family which result in the lump sum no longer being available. However, the case file must clearly establish that the lump sum is not available to the remaining family members and became unavailable due to reasons beyond their control.

*Comment:* One commenter asked if, in recalculating the period of ineligibility, the recalculation is based on the current family size if an individual has left the family, or the original family size.

*Response:* In this situation, if the only factor that has changed is that an individual who was in the original unit has left the family, the original calculation would stand. Otherwise, the recalculation would result in lengthening the period of ineligibility contrary to the intent of the provision which is to permit the State to consider shortening the period of ineligibility under the circumstances specified in section 402(a)(17) of the Act. However, if another factor has changed in the family situation in addition to an individual leaving the unit, i.e., there has been an increase in the need standard, then a recalculation would be done considering all the factors that have changed and the points at which they occurred. If the recalculation taking all factors into consideration results in shortening the period of ineligibility, the appropriate action would be taken to do so. Again, however, if the recalculation would result in a lengthening of the ineligibility period, the original calculation would stand.

*Comment:* One commenter asked whether it is possible to retroactively recalculate the period of ineligibility because of a change in need and payment, i.e., does the State recalculate from the date the event occurred, or from the date the family reports the event? (For example, if a recipient reports in June that needs increased in April, should the State recalculate the period of ineligibility using the increased need standard beginning in April or June?)

*Response:* The State must recalculate the ineligibility period as of the date the payment-affecting event occurs, i.e., April, in the example given. However, no retroactive benefits may be paid should the recalculation result in the period of ineligibility ending in April or May in the example above. Payments would begin prospectively based on the date the family reapplied for assistance and met all conditions of eligibility.

*Comment:* One commenter asked that since the interim final regulation indicates that nonrecurring earned income is to be treated as lump sum income, we provide examples of nonrecurring earnings. The commenter also asked whether regular earnings which exceed the State's need standard are to be handled as a lump sum.

*Response:* Whether a payment is to be viewed as lump sum earned income depends on the nature of the payment, i.e., whether it represents a part of regular ongoing earnings or is a one-time nonrecurring payment that is separate from the regular earnings payments. For example, severance pay represents non-recurring compensation outside regular earnings, and thus constitutes earned lump sum income. On the other hand, overtime pay is a recurring part of regular ongoing earnings and therefore is treated as income in the month received, not as a lump sum.

*Comment:* In recalculating ineligibility caused by lump-sum income, one commenter asked if the medical expenses do not equal or exceed the amount of remaining income left after determining the number of months of ineligibility to be applied as income to the first month of eligibility, whether the medical expense may be deducted from the remaining income to lessen the amount of income applied in that month. The commenter also asks if this would be applicable to a portion of the lump sum which becomes unavailable to the family for reasons beyond the family's control.

*Response:* Yes. If there are medical expenses, recognized under the State plan, that do not equal or exceed the amount of remaining income to be applied in the first month of eligibility following a period of ineligibility, that expense may be used to reduce the amount of income applied in the first month following the period of ineligibility. Likewise, the portion of the lump sum which has become unavailable to the family for reasons beyond its control may be used to reduce the amount of remaining income to be applied in the first month. For example, a family receives a $1,000 lump sum. The applicable standard of need is $300. The family is ineligible for three months—January, February and March—and has $100 income in April. If $200 is stolen from the family in January, after the recalculation, the family is ineligible for January and February and has $200 income in March. However, if the amount stolen is $50, the only change is that income for April is reduced by $50.

*Clarification of Earned Income Provision (Section 233.20(a) (3)(ii)(D), (8)(iii), (7)(ii) and (11)(i) of the Final Regulations)*

In OBRA, section 402(a)(8) of the Act was amended to standardize the work expense disregard ($75 per month) and cap dependent care costs ($160 per month per dependent) for full-time employment and less for part-time employment. Prior to DEFRA, there were conflicting court decisions concerning whether to apply that work expense disregard to gross income or income remaining after deduction of mandatory payroll expenses. However, on February 27, 1985, the U.S. Supreme Court held in *Heckler* v. *Turner*, 470 U.S. 184 (1985) that the work expense disregard applies to gross income.

Section 2625 of DEFRA added section 402(a)(8)(C) to the Act to clarify that the State agency shall apply the $75 work expense disregard against gross earned income and not to net income after deductions for taxes or for any other purposes.

In the interim final rules, § 233.20(a)(6)(iii), which defines "earned income", was amended to clarify that earned income means gross earned income prior to any deductions for taxes or for any other purposes. Sections 233.20(a)(7)(ii) and 233.20(a)(11)(i) were also amended to clarify that for AFDC the standard $75 work expense disregard is subtracted from gross earned income and is meant to recognize all work expenses (including tax deductions), other than dependent care, which the applicant or recipient may incur. Section 233.20(a)(7)(ii) which pertains to the preliminary step for applying the $30 and one-third disregard to an applicant's income has also been revised in relation to final regulations on Continuation of the $30 Disregard from Earned Income, to clarify that the $30 and one-third disregard is not applied to an applicant's earned income unless the individual has personally received AFDC in one of the four months prior to the month of application. In addition, since the term "net income" was misinterpreted to mean earned income remaining after mandatory payroll deductions, § 233.20(a)(3)(ii)(D) was further revised to delete the term "net income" and refer instead to "income after application of disregards" to more clearly reflect the statute. We also clarified in the interim final rule that the general provision on the availability of income and resources at § 233.20(a)(3)(ii)(D), which requires the taking into account of income and resources only when actually available, applies only where it is not inconsistent with another more specific provision governing the treatment of income or resources, such as the use of gross income or the deeming of stepparent income.

These regulatory changes affect the AFDC program only. Guam, Puerto Rico and the Virgin Islands, in administering the adult financial assistance programs, must still disregard all expenses reasonably attributable to the earning of income.

There were no comments concerning this provision. Therefore, the regulations published in the interim final rules are unchanged.

*Gross Income Limitation (Section 233.20(a)(3)(xiii) of the Final Regulations)*

OBRA limited AFDC eligibility to families whose gross income was 150 percent or less of the State's need standard. This limit was established in order to target AFDC benefits to those most in need.

Section 2621 of DEFRA amends section 402(a)(18) of the Act to increase this limit on gross income to 185 percent of the State's standard of need. Accordingly, § 233.20(a)(3)(xii) was amended in the interim final rules to embody this change. We also made a technical revision in this section to reflect only those disregards which are not applied in determining eligibility under this section.

There were no comments concerning this provision. Therefore, the regulations published in the interim final rules are unchanged.

*Counting the Income of Parents of Minor Parents (Section 233.20(a)(3)(xviii) of the Final Regulations)*

Under prior law, a minor could file for benefits solely on behalf of his needy child who then received aid without consideration of the income of the minor's parents. If the minor parent filed for benefits as well, his own parents' income could be considered under certain circumstances. Section 2640 of DEFRA requires that the minor parent must be part of the assistance unit. This section also adds section 402(a)(39) to the Act, which requires that the income of a minor's parent or legal guardian be considered in determining eligibility and payment, subject to the stepparent disregards in section 402(a)(31), if such individual lives in the same household as the assistance unit. For purposes of this section as mandated by section 1883(b)(3)(A) of the Tax Reform Act of 1986 (Pub. L. 99-514), a minor is one who is under age eighteen, as discussed below. For example, where a minor mother applies for AFDC for her child and both live with the minor's parents, the assistance unit would consist of the minor mother and her child. The income of the minor mother's parents would be considered available to the assistance unit, subject to applicable disregards described below. This provision also applies to the income of a parent or legal guardian of a minor legal guardian who files for assistance for a dependent child. Of course, if all these people file for AFDC (i.e., the dependent child, his parent who is also a dependent child, and that child's parents), then all their needs and income are considered as part of a single assistance unit.

**Applying Disregards to This Income**

Section 402(a)(39) of the Social Security Act provides that the income of a parent or legal guardian of a minor parent will be included only to the extent that the income of a stepparent would be included, pursuant to section 402(a)(31) of the Act. This means that in counting such income of a parent or legal guardian, the State must disregard all of the following income:

(a) $75 for work expenses for each parent or legal guardian. Although the statutory provision is not specific as to whether there should be only one exclusion or one for each employed parent or legal guardian, we have determined that in the case of more than one working parent or legal guardian, each should be given the benefit of the disregard because if each has a job, each has such expenses. This is consistent with existing provisions which provide separate work expense disregards to each working member of the assistance unit.

Section 1883(b)(1)(A) of the Tax Reform Act of 1986 (Pub. L. 99-514) extended the full $75 disregard to part-time and employment of less than a full month.

(b) An amount equal to the State's standard of need for a group with the following members:

(1) The parent(s) or legal guardian(s) living in the home; and

(2) Any other individuals living in the home who are not in the assistance unit, but who are dependents of the parent(s) or legal guardian(s). Thus, if there are two adult parents and a sibling of the minor mother living in the same household as the minor mother and her dependent child, the State would disregard an amount equal to the State's standard of need for three people.

(c) Amounts paid by a parent or legal guardian to support individuals outside the home who could be claimed as dependents; and

(d) Payments of child support and alimony by a parent or legal guardian to individuals outside the home.

*Comment:* A number of commenters asked how this provision applies to the counting of the income of a stepparent. Does the presence of the minor parent's natural parent affect how to count income of the stepparent?

*Response:* Nothing in either the statute or legislative history indicates that Congress intended this provision (section 402(a)(39)) to be applied to stepparents of minor parents. Therefore, a State may not count the income of a minor parent's stepparent, unless the State has a law of general applicability holding a stepparent legally responsible to the same extent as a natural or adoptive parent. This is true regardless of the presence of the natural parent. Section 402(a)(31) only provides for the counting of income of the stepparent of a dependent child. In this case, the minor is a parent claiming or receiving aid for a dependent child. Therefore, section 402(a)(31) is not applicable.

*Comment:* Another commenter asked if this provision applies to the resources of a minor parent's parents?

*Response:* This provision applies only to counting income of parents of minor parents.

*Comment:* Many commenters suggested that this provision be applied only to those who are minor according to State law. They believe that an emancipated 17-year-old, for example, even though living in the same household, should not be subject to deeming of parental income.

*Response:* Pursuant to the enactment of the Tax Reform Act, section 402(a)(39) provides that a minor, for purposes of this provision, is an individual who is "under the age of 18". For this reason, we have determined that section 402(a)(39) applies to all minor parents up to age 18.

*Comment:* One commenter asked how to treat the income of the parent of a minor if the grandchild resides in the home, but the minor parent leaves the home or becomes ineligible.

*Response:* The statute clearly indicates that the minor parent and child must both be living with the minor parent's own parent or legal guardian for the provision to apply. Therefore, if the minor parent is absent, the income of a parent or legal guardian is not counted unless he or she (1) makes the income available to the child, or (2) seeks assistance as the caretaker relative of the child.

However, the statute contains no requirement that the minor parent be eligible for AFDC in order for this provision to apply. Therefore, when a minor parent is not eligible for AFDC, due to citizenship requirements, for example, but lives in the same household, the income of his or her parent or legal guardian will be considered available to the assistance unit.

In the case of the minor parent's ineligibility due to SSI entitlement, the State must follow established procedures for deeming income when AFDC and SSI recipients live together. Income of the grandparent(s), including income previously deemed to the SSI recipient for the appropriate month, is deemed first to the AFDC recipients. If eligibility for AFDC exists, the State must then inform the Social Security Office that the income is being counted for AFDC purposes. SSI policy is to exclude any income used to determine another needs-based benefit from the deeming process.

*Comment:* Two commenters suggested that income of a legal guardian be excluded if the legal guardian is not considered financially responsible for the minor parent under State law.

*Response:* We are not addressing these comments in view of the statutory change contained in section 5053 of OBRA '90 (discussed in the "Legislative Clarifications Subsequent to Publication of the Interim Final Rules" section of this preamble).

*Comment:* When the minor parent reaches age eighteen, is deemed income deleted prospectively or retrospectively?

*Response:* Deemed income is deleted prospectively. For example, assume that a State uses a two-month retrospective budgeting cycle and the minor mother attains age eighteen in February. Her parent's income for February would be considered in determining the unit's eligibility for February. The parent's income for December would be used to determine the unit's payment for February. Beginning in March, however, the parent's income would affect neither eligibility nor payment for the assistance unit.

*Continuation of $30 Disregard From Earned Income (Section 233.20(a)(11)(i)(D) and (ii)(B) of the Final Regulations)*

Under prior law, application of the $30 and one-third earned income disregard to a recipient's earned income was limited to four consecutive months. This disregard was not available again until 12 consecutive months had passed during which the individual had not received AFDC.

Under section 2623 of DEFRA, the application of the $30 and one-third disregard is still limited to four consecutive months. However, after the $30 and one-third disregard has been applied to the earned income received in four consecutive months, the $30 disregard continues to be available for eight additional months. After this time, the disregards are not available again until 12 consecutive months have passed during which the person did not receive AFDC. The amendments to section 402(a)(8) of the Act made by this section of DEFRA are extremely complex. After careful review, the position taken in these regulations is the only reasonable interpretation that gives effect to all parts of the provision.

However, we have revised the discussion of the method for applying the $30 disregard to provide a more comprehensive explanation of the policy than was provided in the interim rules. No change in the policy set forth in the interim rules is made in these final rules.

The AFDC program has a three-step process for determining eligibility and amount of benefits. The family's income (with very limited earned income disregards, and any unearned income disregards) must first be measured against 185 percent of the State's need standard. If the income is less than 185 percent of the State's need standard, the process continues. The family's income (less disregards for work expenses, dependent care, and excludable unearned income) is then measured against the State's need standard to determine whether the family is in need. If so, the remaining income with additional disregards is subtracted from the payment standard or need standard to determine the amount of benefits. The $30 and one-third and $30 earned income disregards are not applied in determining whether the family's income is less than 185 percent of the need standard. Nor is the $30 and one-third disregard applied to applicants for assistance in determining whether they are needy, unless the person has received AFDC during one of the four preceding months and meets one of the following conditions: (1) The person has not received the disregard in four consecutive months since October 1, 1981; or (2) the person has already received the disregard in four consecutive months since October 1, 1981; however, at some time after the fourth consecutive month in which the disregard was applied, the person did not receive AFDC for a period of 12 consecutive months.

In order to eliminate ambiguity between § 233.20(a)(7)(ii) and § 233.30(a)(11)(i)(D), we have revised § 233.20(a)(7)(ii) to clarify that the $30 and one-third disregard is not applied to an applicant's earned income unless the individual has personally received AFDC benefits in one of the four months prior to the month of application. For example, a mother who recently became employed and her 6-year-old child have received AFDC for one year. The mother's 17-year-old child, who is not a student and is employed full-time, returned to the home. In determining whether the assistance unit (consisting of the mother, 6-year-old child, and 17-year-old child) is needy, the assistance unit's income (after appropriate disregards) is compared with the State's need standard for a unit of the same size and composition. If the unit's countable income does not exceed the need standard, the unit is determined to be needy. Countable income for this purpose is comprised of the mother's gross earned income (after deducting the standard work expense disregard, dependent care disregard (if appropriate) and the $30 and one-third disregard) plus the 17-year-old child's gross earned income (after deducting the

standard work expense disregard). If the assistance unit is needy, the $30 and one-third disregard would be applied to the 17-year-old child's earned income in determining the amount of AFDC benefits.

After the fourth consecutive month that the $30 and one-third disregard has been applied to the person's earned income, the person is eligible to receive the $30 disregard for eight additional months. Since the $30 disregard is a continuation rather than an entirely separate disregard, it is applied differently than the $30 and one-third disregard in two ways. First, the eight-month period runs continuously regardless of whether the person receives either AFDC or earned income during all or part of the period. Where a person becomes ineligible for AFDC before the $30 disregard has been available for a full eight-month period, the $30 disregard can be extended for any of the remaining months if he/she reapplies during the eight calendar month period. Second, the person is not required to have received AFDC during one of the four prior months to qualify for the $30 disregard if he/she reapplies.

Once a person has received the disregards for the allowable time period, he or she is not entitled to receive them again until he or she has not received AFDC for a period of 12 consecutive months. However, in the case of a person who becomes ineligible after the fourth month and who does not receive assistance during the eight additional months, we believe that Congress did not intend that a family must be off the rolls for 20 months after the loss of the $30 and one-third disregard before being eligible again for the $30 and one-third disregard. Therefore, we have kept the rule at § 233.20(a)(11)(ii)(B) which provides that the $30 and one-third disregard is available after 12 consecutive months during which the individual is not a recipient of AFDC. As an example, if the recipient lost eligibility for May after receiving the $30 and one-third disregard for four consecutive months, the $30 and one-third disregard would again be available to him in May of the following year, if he remained off the rolls throughout that period and if he then met the requirements for AFDC eligibility. If, however, he retained eligibility after April through use of the $30 disregard but lost eligibility for July and remained off the rolls for 12 consecutive months, the $30 and one-third disregard would be available to him in July of the following year if other eligibility conditions were met.

*Comment:* Three commenters believed that Congress intended that recipients have the $30 disregard actually applied to their income in eight additional months after eligibility for the full $30 and one-third disregard expires.

*Response:* Section 402(a)(8) of the Act, as amended by DEFRA, is a very complicated provision with multiple subclauses. The position taken in the regulations that the $30 disregard is available (regardless of whether the disregard is actually applied to a recipient's earned income) for only the eight months immediately following the fourth consecutive month in which the $30 and one-third disregard is applied to a recipient's earned income, was adopted because it is the most reasonable interpretation which gives effect to all parts of section 402(a)(8) relating to the $30 and ⅓ disregards. Under this interpretation, the various provisions limiting those disregards to a certain number of months are harmonized so that they all cover the same time period. At the same time, this interpretation gives effect to the clear congressional intent that a disregard of earned income continue beyond the first four consecutive months of employment and is administratively simple for the State agencies responsible for implementing it.

The interpretation arises from the statutory language itself. Section 402(a)(8)(B)(ii)(II) provides that the State agency shall not apply the $30 disregard, in the case of any person who has received the $30 and ⅓ disregards for 4 consecutive months "to any month after the 8th month following such month." The antecedent to which the words, "such month" refers is the 4th consecutive month. Thus, the period for which the extended $30 disregard is authorized under the statute is clearly linked to that 4th month and must be measured in relation to it. Accordingly, under a literal reading of the statute, if the 4th month were April, the 8th month following it would be December. Under the regulations, the last month for which the recipient could receive the $30 disregard in the example cited would be December. Our interpretation limiting the $30 disregard to a consecutive 12-month period is also directly in accord with the revised language of section 402(a)(8)(B)(ii)(I) which refers to the application of the $30 disregard for a period of 12 consecutive months.

Moreover, we believe this interpretation is fully consistent with the Conference Committee language which states that the $30 disregard would be limited to 12 months. The purpose of both the $30 and the ⅓ disregards is to provide a temporary period of transition from total dependence on welfare when recipients first become employed to help them become self-sufficient. The new DEFRA provision merely extends the length of the transition period beyond the 4 months permitted by OBRA. The limitation of the $30 disregard to the 8-month period immediately following the 4th consecutive month maintains this congressional purpose of a limited transitional period.

To apply the disregard to any 8 months could result in the application of the disregard in months occurring possibly even years after the initial 4-month period, when it would clearly serve no transitional purpose.

Finally, applying the disregard to any 8 months would be administratively cumbersome and error prone. It would require the State agency to keep track of the number of months the $30 disregard has been applied over a much longer period of time and possibly through repeated case openings and closings. In contrast, under the regulation as written, the State agency must only monitor the case and apply disregards during the immediately succeeding 8 months.

*Comment:* One commenter suggested that the regulations should reflect the preamble language which states that where a person becomes ineligible for AFDC after receiving the $30 and one-third disregard in four consecutive months, but before eight additional months of the $30 disregard have been available, the person is eligible to have the $30 disregard applied in the determination of need if he/she reapplies for AFDC before the end of the eight-month period.

*Response:* We agree. Regulations have been added at § 233.20(a)(11)(i)(E) to provide that the $30 disregard is applied in determining eligibility when a person reapplies for AFDC during the eight-consecutive-month period that he/she is eligible for that disregard.

*Comment:* One commenter stated that families who received the $30 and one-third disregard for four consecutive months prior to October 1, 1984, should be entitled to the $30 disregard for eight months.

*Response:* The commenter's interpretation of the provision would give the statute a retroactive effect by allowing its application to recipients who lost their $30 and one-third disregard prior to the effective date of DEFRA. Section 2623 of DEFRA clearly applies only to recipients who have not already received the $30 and one-third disregard for four consecutive months prior to October 1, 1984 (unless they

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have been ineligible for AFDC for 12 consecutive months).

*Treatment of Earned Income Credit in Determining Countable Income (Section 233.20(a)(6)(ix) of the Final Regulations)*

Under prior law, States were required to count as earned income the amount of earned income tax credit (EITC) advance payments an individual was eligible to receive, regardless of whether the individual actually received the payments. Section 2629 of DEFRA amended section 402(d)(1) of the Social Security Act to provide that only EITC payments actually received are counted as earned income. The requirement to count the EITC that a recipient was eligible for, but did not receive, was deleted, and the regulation at § 233.20(a)(6)(ix) was amended accordingly under the interim final rules.

We are not responding to comments received on this provision because effective October 1, 1989, section 402(c)(2) of the Family Support Act of 1988 repealed section 402(d) of the Social Security Act, which formerly required that EITC payments be considered as earned income in the AFDC program. Therefore, the DEFRA provision is no longer in effect, and § 233.20(a)(6)(ix) will not be changed in these final rules. We plan to remove § 233.20(a)(6)(ix) when final regulations implementing the AFDC Related Amendments of the Family Support Act (title IV of the Act) are published, and add a new section to reflect the Family Support Act and OBRA '90 amendments to the Social Security Act (see the "Legislative Clarifications Subsequent to Publication of the Interim Final Rules" section of this preamble). In combination, these amendments provide that, effective January 1, 1991, EITC payments will not be considered as income in the determination of eligibility (including the 185 percent gross income limitation) and the amount of benefits, and will also not be considered as a resource for the month of receipt and the following month. Further, at State option, overpayments may be waived when they occurred because receipt of EITC payments during the period January 1 to December 31, 1990, resulted in ineligibility under the 185 percent gross income limitation.

*Waiver of Overpayment Recoupment When Cost of Collection Would Exceed Amount Due (Section 233.20(a)(13) (i), (v) and (vi) of the Final Regulations)*

Prior to the enactment of DEFRA, section 402(a)(22) of the Social Security Act required that a State correct all overpayments made under the State's plan. Section 2633 of DEFRA amends this statute to permit a State not to recover overpayments for individuals no longer receiving aid (except for cases involving fraud) when the cost to collect the overpayment would equal or exceed the amount of the overpayment. The statute provides that the cost should be based on the Secretary's criteria for determining cost-effectiveness and dollar limitations. The Secretary has established the following criteria for purposes of implementing this section.

For individuals no longer receiving aid who have outstanding overpayments, a State may elect to take no action to recover overpayments of less than $35. When the overpayment amount totals $35 or more, the State must make a reasonable effort to collect the overpayment. At a minimum, it must attempt to notify the former recipient about the amount of and reason for the overpayment and ask for repayment. After that, it may elect when to discontinue pursuing recovery if it determines that such action would not be cost-effective.

There are two principal reasons why $35 was chosen as the amount below which a State, if it chooses, can forego recovery efforts from former recipients. First, $35 is the amount the Food Stamp program currently uses as the criterion to determine cost-effectiveness of overpayment recovery action. Using the same standard promotes consistency and reduces administrative complexity between the two programs. Second, this dollar amount of $35 is consistent with Congressional intent as expressed in the conference report.

Notwithstanding the above criterion, the State must make every effort to recover overpayments caused by recipient fraud, regardless of the amount of the overpayment.

This provision, section 2633 of DEFRA, applies to overpayments uncollected or undiscovered as of the October 1, 1984, effective date as well as to overpayments which occur after that date. Finally, the $35 amount does not represent a tolerance level for overpayments.

The results of a 1986 study funded by the Department on the cost-effectiveness of overpayment recovery techniques should be helpful to States in determining methods of recovering overpayments from former recipients. The State of Illinois conducted the study, "The Overpayment Recovery Project." It demonstrated three methods of collection: (1) Monthly mail-only billing statements; (2) telephone monitoring; and (3) private collection agency referrals. Using traditional cost/benefit analysis, it was determined that while each method was cost-effective, contracting with private collection agencies was the most cost-effective. An important finding was that selected case and recipient characteristics, such as cause of overpayment, amount of overpayment, employment status, age or education of the individual, were not predictive of hypothesized higher repayment levels. Although a number of the State-specific variables would not be completely transferrable to other States, we believe that the study results present a strong case for a State to review its assumptions to not pursue overpayment recovery for cost-effectiveness reasons. We will be pleased to make copies of this report available upon request.

*Comment:* One commenter suggested that the $35 limit specified in the regulation should be increased because it costs more than $35 to establish and pursue recovery of an overpayment from a former recipient.

*Response:* Administrative costs of collecting overpayments from former recipients vary from State to State. We chose $35 as the national standard because it would be consistent with the amount used in the Food Stamp Program and because it expresses Congressional intent as reflected in the conference report. We would be interested in reviewing the findings from any cost-effectiveness studies that States have conducted on this subject.

*Work Transition in the Case of Certain Families Who Lose AFDC Benefits Because of Earned Income (Section 233.20(a)(14) of the Final Regulations)*

Section 303(a)(1) of the Family Support Act of 1988 changed the provisions for extended Medicaid coverage effective April 1, 1990 (October 1, 1990 for Kentucky) through September 30, 1998. Rules to implement these changed provisions for the aforementioned period are being published separately by the Health Care Financing Administration. Accordingly, the discussion beginning with the following paragraph only pertains to the requirements as specified in section 2624 of DEFRA regarding the extension of Medicaid due to the loss of the $30 and one-third disregards. These DEFRA-related rules are suspended until October 1, 1998.

Prior to the enactment of section 2624 of DEFRA, if a family lost eligibility for AFDC solely because of the four-month limitation on the $30 and one-third disregard, the family also lost AFDC-related categorical Medicaid eligibility at the same time.

Section 2624 of DEFRA specifies that in any case where a family has ceased to receive AFDC solely because a member of the family is no longer eligible for either the $30 and one-third or $30 disregard, the family is deemed, but only for purpose of Medicaid eligibility, to be receiving AFDC for a period nine months after the last month of AFDC benefits (regardless of whether the family continues to meet other eligibility conditions). Moreover, at State option, an additional period of up to six months of Medicaid coverage may be provided but only for so long as the family would be eligible for AFDC if the $30 and one-third or $30 disregards were applied. The application of the disregards during the optional six-month period is discussed below in response to a comment.

This provision became effective October 1, 1984, for persons receiving AFDC assistance on or after that date. However, under certain conditions, families not receiving AFDC on that date because a member of the family exhausted his or her eligibility for the $30 and one-third disregard were entitled to extended Medicaid coverage, beginning with the month in which they applied for such coverage. Medicaid coverage was available, beginning with the month of application for this coverage to these families that became ineligible for AFDC prior to October 1, 1984, under the following conditions:

- The family must have applied for Medicaid under this provision no later than March 31, 1985, i.e., the end of the sixth month after the month in which these regulations implementing section 402(a)(37) of the Social Security Act were published;
- The family must have been one that, if the $30 and one-third disregard had been applied, would have been continuously eligible for AFDC (without regard to section 402(a)(37) of the Act) from the time the family ceased to receive AFDC to the time the unit applied under this special provision for Medicaid. In order to have been continuously eligible, a family must have demonstrated to the satisfaction of the State agency that it would have been eligible for each month beginning from the month in which the family lost eligibility. For example, both before and after October 1, 1984, a family would not have been continuously eligible if the family's income exceeded the gross income limit or the only child reached the age limit set by the State; and
- The family must have fully disclosed in ts application any health insurance coverage which was in effect for members of the family.

Because the period covering this "window group" has expired, regulatory sections §§ 233.20(a)(14)(ii) and 233.20(a)(14)(iii) pertaining to this group have been deleted.

*Comment:* Several commenters asked if recipients entitled to extended Medicaid coverage must meet AFDC eligibility requirements such as monthly reporting and work registration during the period of extended coverage since individuals in the assistance unit are deemed to be AFDC recipients.

*Response:* Recipients entitled to the nine-month period of extended Medicaid coverage because they lost AFDC eligibility due to loss of earned income disregards prior to October 1, 1984, must have established that they were otherwise eligible for AFDC under the State plan from the time their AFDC benefits were terminated until the time they applied for Medicaid under the provisions of section 2624 of DEFRA. (We will refer to these individuals as the "window group.") However, once they had established initial eligibility for the nine months of extended benefits, they, along with those individuals who lost eligibility due to the loss of the earned income disregards subsequent to October 1, 1984, were automatically entitled to the nine-month period without regard to categorical eligibility. Families who, at State option, received the additional coverage for a period of up to six months, however, must have met all AFDC eligibility requirements each month during this six-month period in order to have qualified for this extended Medicaid coverage.

*Comment:* Several commenters asked whether extended Medicaid coverage is available to individual members of the assistance unit in the window group even though the unit splits up before application is made for extended Medicaid coverage.

*Response:* Since a family unit which splits up prior to the filing of the Medicaid application is not the same family which lost both of these disregards, we do not believe the statute provided extended Medicaid eligibility under these circumstances.

*Comment:* Several commenters asked whether an assistance unit which qualified for the nine-month period of extended Medicaid coverage would still be eligible for such coverage if the unit left the State during the nine-month period but returned to resume residence before the nine-month period expired.

*Response:* Upon return to the original State, the unit would be eligible for the remainder of the nine-month period, if any. For example, a family's Medicaid coverage for the nine-month period begins in February and runs through October. The family moves to another State March 1st and returns in September. Medicaid coverage would be available in the first State for February and September through October.

*Comment:* One commenter asked how a State would determine whether to use the $30 and one-third or the $30 disregard in evaluating a family's qualification for the optional six months of extended Medicaid coverage.

*Response:* Section 402(a)(37) of the Act provides that the optional period of up to six months extended eligibility may be provided to families that would be eligible to receive aid if section 402(a)(8)(A)(iv) of the Act applied. Therefore, the State must apply the $30 and one-third disregards during each month of the optional period of up to six months.

*Comment:* Several commenters requested clarification as to the appropriate Medicaid extension (four months or nine months) to be applied when ineligibility for AFDC occurs in a month when an increase in earnings *and* the loss of the $30 and one-third disregard or the $30 disregard occur in the same month.

*Response:* In situations where earnings increase and the $30 and one-third disregard or the $30 disregard are lost simultaneously, the State must determine which event caused the AFDC ineligibility as follows: If the increase in earnings would have caused ineligibility even if the applicable disregard ($30 and one-third or $30) were applied, the assistance unit is eligible only for the four-month period of coverage. This question is applicable only in the month following the last month of eligibility for the $30 and one-third or $30 disregard. In most cases, this would be the fifth or thirteenth month of AFDC eligibility.

*Comment:* Several commenters have suggested that the publication date of the final regulations rather than the publication date of the interim final regulations trigger the six-month application period for assistance units which lost eligibility for AFDC prior to October 1, 1984.

*Response:* The statute requires that the six-month application period begin with the date of publication of the final regulations. Interim final regulations are final regulations in that they have the full force and effect of law upon publication. Accordingly, the six-month application period was properly triggered upon publication of the interim final regulations, i.e., September 10, 1984.

*Comment:* Several commenters maintained that it is difficult for former assistance units which lost AFDC eligibility prior to October 1, 1984, to prove continuous AFDC eligibility. Some commenters proposed that we simply require that former assistance units be AFDC eligible at the time of filing for extended Medicaid benefits.

*Response:* The requirement has been established by statute and we have no authority to alter it.

*Comment:* One commenter recommended that States be required to include the supporting documentation required of families applying for extended Medicaid coverage in the State plans and to make these requirements available to the public.

*Response:* Because State operating manuals rather than State plans include all verification and documentation requirements, and these are already required to be available to the public, no new Federal requirements are necessary.

*Comment:* Several commenters inquired whether an assistance unit is eligible for extended Medicaid coverage every time the unit loses eligibility due to loss of either disregard. For example, if the unit lost eligibility due solely to the loss of the $30 and one-third disregard, regained eligibility three months later with the application of the $30 disregard, and then lost eligibility due solely to the loss of the $30 disregard, would the unit be eligible for a full nine months of extended Medicaid coverage or only the six months remaining from the first period of coverage?

*Response:* The family is eligible for nine months of coverage every time it loses eligibility due solely to the loss of either disregard.

*Comment:* Several commenters have inquired as to which Federal program (title IV–A or title XIX) will provide FFP for reimbursement of administrative costs incurred in making extended Medicaid coverage available under section 2624 of the Act.

*Response:* FFP for reimbursement of administrative costs incurred in making extended Medicaid coverage available under section 2624 will be provided in accordance with currently approved cost allocation plans. These plans are to provide for the charging of administrative costs incurred to the benefitting program. Accordingly, those AFDC eligibility determinations performed solely for the purpose of evaluating an applicant's eligibility for extended Medicaid coverage, whether or not performed by AFDC staff, would benefit the Medicaid program and would properly be charged to Medicaid. Therefore, those AFDC eligibility determinations which must be performed in evaluating former recipients who lost AFDC eligibility prior to October 1, 1984, will be solely for the purpose of evaluating eligibility for extended Medicaid coverage and, thus, should be charged to Medicaid. On the other hand, routine AFDC eligibility determinations which must be performed during the course of certifying current recipients' ongoing AFDC eligibility (even though the results may also be used to certify eligibility for extended Medicaid coverage) primarily benefit the AFDC program and, thus, are charged to AFDC.

*Monthly Reporting and Retrospective Budgeting (Sections 233.20(b)(2), 233.31, 233.35, 233.38 and 233.38 of the Final Regulations)*

Under prior law, States required all recipients, unless exempt under an approved State waiver, to submit monthly reports to the State agency. States were required to use these monthly reports to determine eligibility prospectively and the amount of the payment retrospectively. Section 2628 of DEFRA amends section 402(a)(14) of the Act to limit the categories of recipients who are subject to mandatory monthly reporting and amends section 402(a)(13) of the Act to eliminate mandatory retrospective budgeting for recipients who are not subject to monthly reporting. It also permits waivers, under certain circumstances, of AFDC monthly reporting requirements and retrospective budgeting to make requirements under the AFDC and Food Stamp programs compatible.

*Monthly Reporting*

Under DEFRA, the only categories of recipients for which the State must require monthly reports are recipients with earned income and recipients with a recent work history. Categories of recipients, for purposes of mandatory monthly reporting, include recipients who have earned income deemed to them from individuals living with them who have earned income or a recent work history. For purposes of this provision, we have amended § 233.31 to include a minimal definition of recent work history which covers recipients who received some earnings during at least one of the two months prior to the "budget month." The interim final rule specified that "recent work history covers recipients who received some earnings during at least one of the two months prior to the payment month." However, we are revising the rule to change "payment" month to "budget" month because "payment" month is technically imprecise. While every month is a payment month, the determination of whether or not a recipient is in recent work history status and required to file a monthly report for any month is dependent upon whether or not the recipient received income in the applicable budget month or any one of the two months prior to that budget month. Of course, as defined in § 233.31(b)(4), in prospective budgeting, the payment month and the budget month are the same, while in retrospective budgeting, the payment month follows the budget month. For example, under this requirement, a recipient who received her last paycheck in June is required to file monthly reports for June because she received earnings in June, and for July and August because she received income in the one month prior to July and in the two months prior to August. The agency, therefore, in a State that has adopted a two-month retrospective budgeting system, must receive monthly reports for June, July and August before issuing AFDC payments for August, September and October.

In defining a minimal standard for recent work history, we considered the recommendations of a monthly reporting study funded by the Department of Health and Human Services, which proposed that a recipient be required to file a monthly report for the two months following the last month in which the case received earnings. Furthermore, the proposed definition is consistent with the definition used by most States. A State may, of course, establish a longer period in defining recent work history, provided it is so specified in its State plan.

Section 2628 of DEFRA also provides that States may, with prior approval of the Secretary, exempt recipients with earned income or with a recent work history from monthly reporting. The Secretary will approve exemptions for a period up to one year, at the end of which time the State may request a continuation of the exemption. Approval of these exemptions will be based on evidence provided by the State that not requiring these cases to file monthly reports is cost effective. Since Congress has given the Secretary the discretion to determine whether an exemption is appropriate, the Secretary's decision on a request for an exemption is not appealable.

Under DEFRA, States may continue to require all other categories of recipients to report monthly.

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*Retrospective Budgeting*

The interim final rule amended § 233.31 to specify that, for recipients who are not required to file a monthly report, States have the option of computing payments either retrospectively or prospectively.

For those who are required, either by Federal regulation or at State option, to report monthly, the payment amount is determined using retrospective budgeting (except as provided in § 233.34 for their initial months of assistance).

For a State opting to compute payments prospectively for cases exempt from monthly reporting, a transition from prospective budgeting will be necessary when a case becomes required to report, and a transition from retrospective budgeting will be necessary when a case is no longer required to report. Thus, the regulations provide that the question of whether to use prospective or retrospective budgeting for any payment month is dependent on whether the assistance unit was or should have been required to file a monthly report for the corresponding budget month used under retrospective budgeting. For example, if a recipient begins working and receives income in March in a two-month retrospective budgeting State, the payments for March and April will be computed prospectively since no monthly reports were required for the corresponding budget months of January and February. The payments for May, June, and July will be computed retrospectively. Conversely, if the recipient's last earnings are received in March, prospective budgeting will begin with the August payment since the recipient, as a recent earner (under the Federal minimal definition), must file monthly reports for March, April, and May and no monthly report is required for June, the budget month corresponding to the August payment month. To avoid double-counting of income, the transition from prospective to retrospective budgeting should be treated as specified at § 233.35(b), i.e., as if the first month in which the recipient received earnings was the initial month of eligibility. In this situation, the State shall not count income from the budget month already considered for any month determined prospectively which is not of a continuous nature.

In any event, regardless of the method used to determine eligibility and payment amount, if the State subsequently receives information which alters the amount to which the assistance unit was entitled for a month, the payment made is an incorrect payment which the State must correct pursuant to § 233.20(a)(13).

*Waivers for Compatibility With Food Stamps*

The interim final rules added a new § 233.36 which provides that States may request waivers of Federal regulations on monthly reporting and retrospective budgeting methods in §§ 233.31 to 233.37 to make AFDC compatible with the reporting and budgeting requirements of the Food Stamp Act of 1977, as amended. Approval of waiver requests by the Secretary will be based on information provided by the State that documents the need for the waiver and explains how the waiver would simplify administration of both programs. In addition, the rules provide, consistent with Congressional intent as expressed in the conference report, that the Secretary will not approve any waiver request that would result in a net cost to the Federal government. The Secretary will grant waivers under this provision for a period up to one year, at the end of which time the State may request an extension of the waiver.

Congress has given the Secretary discretionary authority to determine whether any waivers should be granted. Therefore, a decision not to grant a waiver is not appealable.

*Comment:* Several commenters asked whether responsibility for reporting income of parents or legal guardians of minor mothers rests with the non-aided parents or guardians or with the minor AFDC mother and asked that it be clarified in regulations.

*Response:* The Deficit Reduction Act did not change who is responsible for filing a required monthly report. It is the responsibility of the caretaker relative, or such person as designated by the State, to submit a monthly report on behalf of the assistance unit. That report must include all income of the assistance unit. We have revised regulations at § 233.36(a) to make clear who has responsibility for submitting a monthly report and whose income is included.

*Comment:* One State's comments concerned the transition period from retrospective to prospective budgeting for States electing to compute payments prospectively for cases exempt from monthly reporting. The State asked that, for those cases, States be permitted to prospectively budget income for two months after earnings cease if they must prospectively budget income for two months when earnings begin.

*Response:* The Deficit Reduction Act amended the statute to allow States to limit retrospective budgeting to cases required to report monthly. It also provided that States could limit the monthly reporting requirement to cases with earnings or recent work histories. It did not provide any authority for a State to prospectively budget income for the two months following the month that earnings cease. Instead, in keeping with the intent of the statute, these rules provide that recipients must file a monthly report for any month in which they receive earned income and, since they have a recent work history, for the next two additional months. In order to compute the AFDC payment based on actual income, these rules provide that retrospective budgeting for any payment month is dependent on whether the assistance unit is required to file a monthly report for the corresponding budget month.

However, neither the statute nor regulations require States to prospectively budget income for two months when earnings begin. The interim final rule presented only one example. States could begin retrospective budgeting with the month in which earnings begin. For example, if a recipient begins working and receives income in March in a two-month retrospective budgeting State, prospective budgeting may end with February and the payments for March and April may be budgeted retrospectively, using the rules at § 233.35, if prospectively eligible for those months.

*Comment:* Questions were raised as to whether States may budget some categories of non-reporters prospectively and other categories retrospectively.

*Response:* Yes. However, this must be specified in the State plan.

*Comment:* One commenter asked whether States may still delay the monthly reporting requirement for applicants until the month following the month in which assistance is authorized and for recipients until the month following the month in which earnings begin.

*Response:* These regulations do not change our policy of permitting a delay of monthly reporting. However, no delay in retrospective budgeting is permitted. For example, if a recipient begins receiving earnings in May, the State must budget July's payment retrospectively even though the State does not require a May monthly report.

*Comment:* One commenter asked whether three monthly reports were required if the applicant's earnings ended before the month of application.

*Response:* No. An applicant with a recent work history may file proportionally fewer reports. For

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example, under this requirement an individual who applies in May and last received earnings in March would file only a monthly report for May in June. If the State has a policy of delaying monthly reporting until the month after the month in which payment is authorized, no monthly report is necessary.

*Eligibility Requirements for Aliens (Sections 233.51, 233.52, and 233.20(a)(3)(xv) of the Final Regulations)*

Section 415 of the Social Security Act, which was added by OBRA, concerns the AFDC eligibility of aliens who are sponsored by an individual as a condition of entry into the United States. That legislation did not address the eligibility of aliens who were sponsored by public or private agencies or organizations. Section 2635 of DEFRA, however, amends section 415 of the Social Security Act to provide that any alien whose sponsor is a public or private agency or organization is ineligible for assistance for three years from the date of the alien's entry into the United States, unless the State agency determines that the sponsoring public or private agency or organization is either no longer in existence or has become unable to meet the alien's needs. This determination is based on such criteria as the State specifies in the State plan. States may require aliens to submit such documentary evidence as is reasonably available to facilitate this determination. In such a case, as a condition of eligibility, the alien is required to cooperate with the State agency by providing necessary information and documentation pertaining to the sponsoring public or private agency or organization as are reasonably available.

*Comment:* One State asked whether the Immigration and Naturalization Service (INS) requires affidavits of support from organizations such as Catholic Charities, Lutheran Social Services and other similar organizations. The State has been informed that affidavits of support are required from individual sponsors only.

*Response:* According to INS central office, the organizations mentioned and other similar organizations work primarily with refugees. Refugees are exempt from the deeming requirements at § 233.51 regardless of whether they are sponsored by individuals or organizations. In any case, under the statute an individual or organization can only be considered a sponsor if an affidavit of support or similar agreement required by INS has been executed on behalf of an alien.

In the interim final rules, regulations at §§ 233.51 and 233.52 were added to implement this provision. There was also a technical amendment to § 233.20(a)(3)(xv) to reflect the statutory requirement at section 415(a) of the Social Security Act that both income and resources be considered for deeming to a sponsored alien pursuant to § 233.51.

*Exceptions to Requirements for Protective Payments (Sections 234.60(a)(12) and (a)(13) and 240.22 (a)(1) and (b)(1) of the Final Regulations)*

Under prior law, States were required to provide for protective payments under the AFDC program when a caretaker relative was sanctioned for failure to meet program requirements in WIN, employment search, or CWEP, as well as for failure to assign rights to support or cooperate in establishing paternity and securing support. The caretaker relative who failed to fulfill these requirements not only had his/her needs removed from the grant, but was also replaced as the payee by a protective payee appointed by the State agency.

Section 2634 of DEFRA amended sections 402(a)(19)(F) and 402(a)(26)(B) of the Act to allow States to continue AFDC payments to the sanctioned caretaker relative for the remaining members of the assistance unit if, after making reasonable efforts, the State agency is unable to locate an appropriate individual to whom such protective payments can be made. In the interim final rules, we amended the regulations at §§ 234.60(a)(12) and (a)(13) and 240.22(a)(1) and (b)(1), accordingly. The Family Support Act of 1988 amended section 402(a)(19) of the Act to provide for the JOBS program. That law also amended that section regarding protective payments (see section 402(a)(19)(G) of the Act). Section 234.60(a)(12) was subsequently amended to reflect the amended section 402(a)(19)(G) of the Act in federal regulations (52 FR 42244 (October 13, 1989)).

*Comment:* Several commenters recommended that the regulations at § 234.60(a) (12) and (13) be amended to delete the word "all" from the phrase "all reasonable efforts" which would then reflect the precise language of the law.

*Response:* We agree, and have amended the regulation to delete the word "all" to conform with the statutory language. However, we believe it is clear from the legislative history that it was Congress' intent that States make diligent efforts to identify a suitable payee before continuing the grant to the sanctioned caretaker.

**Regulatory Procedures**

*Executive Order 12291*

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

—Has an annual effect on the national economy of $100 million or more;
—Results in a major increase in costs or prices for consumers, any industries, any governmental agencies, or any geographic region;
—Has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The incremental changes from the interim final rule resulted in negligible costs for the lump sum provision. Costs attributable to the standard filing unit provision are considered negligible because the regulations reflect current practice. The preamble and regulations basically clarify and codify existing policy, as set forth in AT 86–1. Therefore, these regulations do not constitute a "major rule," and an impact analysis describing potential benefits of the regulations, alternative approaches and their costs and benefits is not required.

*Paperwork Reduction Act*

The Office of Management and Budget has determined that the State Plan requirements are subject to review and approval under the Paperwork Reduction Act of 1980 (Pub. L. No. 96–511). The Office of Management and Budget has approved all information collection requirements contained in the final regulations and assigned OMB approval number 0960–0280. No additional paperwork requirements are contained in these final regulations.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (Pub. L. No. 96–354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each particular rule, we must publish an initial analysis describing the rule's impact on small business. This analysis should indicate the purpose and reason for the rule, the number of small businesses to which it would apply, anticipated reporting and recordkeeping requirements, possible overlap and conflict with other Federal rules, and a description of possible alternative



means of accomplishing the stated objectives which would minimize the impact on small businesses.

The primary impact of these regulations is on State governments and individuals. We certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations affect only benefits to individuals and payments to States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.780 Assistance Payments-Maintenance Assistance)

**List of Subjects**

*45 CFR Part 205*

Computer technology, Family Assistance Office, Grant programs-social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

*45 CFR Part 206*

Family Assistance Office, Grant programs-social programs, Public assistance programs.

*45 CFR Part 232*

Aid to Families with Dependent Children, Child support, Family Assistance Office, Grant programs-social programs.

*45 CFR Part 233*

Aliens, Family Assistance Office, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

*45 CFR Part 234*

Family Assistance Office, Grant programs-social programs, Health care, Public assistance programs, Rent subsidies.

*45 CFR Part 237*

Family Assistance Office, Grant programs-social programs, Public assistance programs.

These regulations are issued under the authority of section 1102 of the Social Security Act, as amended, 49 Stat. 647, as amended; 42 U.S.C. 1302.

Dated: February 14, 1992.

**Jo Anne B. Barnhart,**

*Assistant Secretary for Children and Families.*

Approved: March 23, 1992.

**Louis W. Sullivan,**

*Secretary, Department of Health and Human Services.*

The interim rule published in the **Federal Register** at 49 FR 35599–35604 (September 10, 1984), as subsequently amended by the Final Rule published in the **Federal Register** at 54 FR 42243–42267 (October 13, 1989) and as set forth in 45 CFR parts 205, 206, 232, 233, and 234, is adopted as final with the following changes:

1. The heading of Ch. II, title 45, Code of Federal Regulations, is revised to read "Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services".

## PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Part 205 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

1a. The authority citation for part 205 continues to read as follows:

**Authority:** 5 U.S.C. 552a note; 42 U.S.C. 602, 603, 606, 607, 611, 1302, 1306(a), and 1320b–7.

2. Section 205.50 is amended by revising paragraph (a)(2)(v) to read as follows:

**§ 205.50 Safeguarding information for the financial assistance programs.**

(a) * * *
(2) * * *
(v) The same policies are applied to requests for information from a governmental authority, the courts, or a law enforcement officer (except as provided for under paragraph (a)(1)(v) with respect to fugitive felons) as from any other outside source.
* * * * * *

## PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

Part 206 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 206 is revised to read as set forth below and the authority citations following all the sections in part 206 are removed:

**Authority:** Sections 402 and 1102 of the Social Security Act (42 U.S.C. 602 and 1302) and Pub. L. No. 97–248, 96 Stat. 324, and Pub. L. No. 99–603, 100 Stat. 3359.

2. Section 206.10 is amended by revising paragraphs (a)(1)(ii) and (b)(2) and by adding new paragraph (b)(5) to read as follows:

**§ 206.10 Application, determination of eligibility and furnishing of assistance.**

(a) * * *
(1) * * *
(ii) The agency shall require a written application, signed under a penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitated, someone acting responsibly for him. When an individual is required to be included in an existing assistance unit pursuant to paragraph (a)(1)(vii), such individual will be considered to be included in the application, as of the date he is required to be included in the assistance unit;
* * * * * *

(b) * * *

(2) *Application* is the action by which an individual indicates in writing to the agency administering public assistance (on a form prescribed by the State agency) his desire to receive assistance. The relative with whom a child is living or will live ordinarily makes application for the child for AFDC. An application is distinguished from an inquiry, which is simply a request for information about eligibility requirements for public assistance. Such inquiry may be followed by an application. When an individual is required to be included in an existing assistance unit pursuant to paragraph (a)(1)(vii), such individual will be considered to be included in the application, as of the date he is required to be included in the assistance unit.
* * * * * *

(5) *Assistance Unit* is the group of individuals whose income, resources and needs are considered as a unit for purposes of determining eligibility and the amount of payment.

## PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV-A OF THE SOCIAL SECURITY ACT

Part 232 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 232 is revised to read as set forth below:

**Authority:** 42 U.S.C. 1302.

2. Section 232.20 is amended by revising paragraphs (a) and (b)(2), to read as follows:

**§ 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV–A Program.**

(a) *Definition.* For purposes of this section, notwithstanding any other regulations in this chapter, support collections, monthly collections and support amounts for a month mean the assigned amount that the support enforcement agency collects from an absent parent or spouse on a monthly support obligation, less the disregarded sum under § 302.51(b)(1).

(b) * * *

(2) Any payment received pursuant to § 302.51(b) (3) or (5) shall be treated as income in the month following the month to which the redetermination in paragraph (b)(1) of this section applies.

* * * * *

## PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Part 233 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 233 is revised to read as set forth below:

**Authority:** Secs. 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352 and 1382 (note)), and sec. 6 of Pub. L. No. 94–114, 89 Stat. 579, and Part XXIII of Pub. L. No. 97–35, 95 Stat. 845, Pub. L. No. 97–248, 96 Stat. 324, and Pub. L. No. 99–603, 100 Stat. 3359, and section 1883 of Pub. L. 99–514, 100 Stat. 2918.

2. Section 233.10 is amended by revising paragraph (b)(2)(ii)(*b*) to read as follows:

**§ 233.10 General provisions regarding coverage and eligibility.**

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(*b*) The parent(s) of a dependent child, a caretaker relative (other than a parent) of a dependent child, and, in certain situations, a parent's spouse.

* * * * *

3. Section 233.20 is amended by revising paragraphs (a)(3)(i)(B) (*4*) and (*5*), (ii)(F), (xiv)(A), (xviii), and (xx); (a)(7)(ii); (a)(11) (i)(D) and (ii)(B); and (a)(14); and by adding new paragraphs (a)(1) (iii), (iv), and (v); (a)(3)(iv) (A) through (G); and (a)(11)(i)(E) to read as follows:

**§ 233.20 Need and amount of assistance.**

(a) * * *

(1) * * *

(iii) For AFDC, when an individual who is required to be included in the assistance unit pursuant to § 206.10(a)(1)(vii) is also required to be included in another assistance unit, those assistance units must be consolidated, and treated as one assistance unit for purposes of determining eligibility and the amount of payment.

(iv) For AFDC, when a State learns of an individual who is required to be included in the assistance unit after the date he or she is required to be included in the unit, the State must redetermine the assistance unit's eligibility and payment amount, including the need, income, and resources of the individual. This redetermination must be retroactive to the date that the individual was required to be in the assistance unit either through birth/adoption or by becoming a member of the household. Any resulting overpayment must be recovered or corrective payment made pursuant to § 233.20(a)(13).

(v) In determining need and the amount of payment for AFDC, all income and resources of an individual required to be in the assistance unit, but subject to sanction under § 250.34 or because of an intentional program violation under the optional fraud control program implementing section 416 of the Social Security Act, are considered available to the assistance unit to the same extent that they would be if the person were not subject to a sanction. However, the needs of the sanctioned individual(s) are not considered. In accord with § 250.34(c), if a parent in an AFDC–UP case is sanctioned pursuant to § 233.100(a)(5), the needs of the second parent are not taken into account in determining the family's need for assistance and the amount of the assistance payment unless the second parent is participating in the JOBS program. An individual required to be in an assistance unit pursuant to § 206.10(a)(1)(vii) but who fails to cooperate in meeting a condition of his or her eligibility for assistance is a sanctioned individual whose needs, income, and resources are treated in the manner described above.

* * * * *

(3) * * *

(i) * * *

(B) * * *

(*4*) Bona fide funeral agreements (as defined and within limits specified in the State plan) up to a total of $1,500 in equity value or such lower limit as the State may specify in the State plan for each member of the assistance unit (any excess equity value must be applied towards the general resource limit specified in the State plan). This provision addresses only formal agreements for funeral and burial expenses such as burial contracts, burial trusts or other funeral arrangements (generally with licensed funeral directors) and does not apply to other assets (e.g., passbook bank accounts, simple set-aside of savings, and cash surrender value of life insurance policies);

(*5*) Real property for a period of six consecutive months (or, at the option of the State, nine consecutive months) which the family is making a good faith effort (as defined in the State plan) to sell, subject to the following provisions. The family must sign an agreement to dispose of the property and to repay the amount of aid received during such period that would not have been paid had the property been sold at the beginning of such period, but not to exceed the amount of the net proceeds of the sale. The family has five working days from the date it realizes cash from the sale of the excess real property to repay the overpayment; failure to make repayment within this period results in the cash being considered to be an available resource. If the family becomes ineligible for AFDC for any other reason during the conditional payment period while making a good faith effort to sell the property, or fails to sell the property by the end of the period despite such a good faith effort, then the amount of the overpayment attributable to the real property will not be determined and recovery will not be begun until the property is, in fact, sold. However, if the property was intentionally sold at less than fair market value so that a good faith effort to sell it was not made, or if it is otherwise determined that a good faith effort to sell the property is not being made, the overpayment amount shall be computed using the fair market value determined at the beginning of the period. For applicants, the conditional payment period begins with the first payment month for which all otherwise applicable eligibility conditions are met and payment is authorized. For recipients who acquire property while receiving assistance, the period begins with the payment month in which the recipient receives the property; and

* * * * *

(ii) * * *

(F) When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income (including for AFDC, title II and other retroactive monthly benefits, and payments in the nature of a windfall, e.g., inheritances or lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it is paid, i.e., monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, etc.), the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income

remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month. For purposes of applying the lump sum provision, family includes all persons whose needs are taken into account in determining eligibility and the amount of the assistance payment, and includes solely for determining the income and resources of a family an individual who must be in a family pursuant to § 206.10(a)(1)(vii) but who does not meet a condition of his or her eligibility due to a failure to cooperate or is required by law to have his or her needs excluded from an assistance unit's AFDC grant calculation due to the failure to perform some action. A State may shorten the remaining period of ineligibility when: the standard of need increases and the amount the family would have received also changes (e.g., situations involving additions to the family unit during the period of ineligibility of persons who are otherwise eligible for assistance); the lump sum income or a portion thereof becomes unavailable to the family for a reason beyond the control of the family; or the family incurs and pays for medical expenses. If the State chooses to shorten the period of ineligibility, the State plan shall:

(1) Identify which of the above situations are included;

(2) In the case of situations involving an increase in the need standard and changes in the amount that should have been paid to the family, specify the types of circumstances which will be included;

(3) In the case of situations involving the unavailability of the lump sum income, include a definition of unavailability, and specify what reasons will be considered beyond the control of the family; and

(4) In the case of situations involving the payment of medical expenses, specify the types of medical expenses the State will allow to be offset against the lump sum income.

For purposes of this paragraph (a)(3): Automobile means a passenger car or other motor vehicle used to provide transportation of persons or goods. (In AFDC, in appropriate geographic areas, one alternate primary mode of transportation may be substituted for the automobile); Equity value means fair market value minus encumbrances (legal debts); Fair market value means the price an item of a particular make, model, size, material or condition will sell for on the open market in the geographic area involved (If a motor vehicle is especially equipped with apparatus for the handicapped, the apparatus shall not increase the value of the vehicle); Liquid assets are those properties in the form of cash or other financial instruments which are convertible to cash and include savings accounts, checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, cash value of insurance policies, and similar properties; Need standard means the money value assigned by the State to the basic and special needs it recognizes as essential for applicants and recipients; Payment standard means the amount from which non-exempt income is subtracted;

* * * * *

(iv) Provide that in determining the availability of income and resources, the following will not be included as income:

(A) Except for AFDC, income equal to expenses reasonably attributable to the earning of income (including earnings from public service employment);

(B) Loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs;

(C) Home produce of an applicant or recipient, utilized by him and his household for their own consumption;

(D) For AFDC, any amounts paid by a State IV-A agency from State-only funds to meet needs of children receiving AFDC, if the payments are made under a statutorily-established State program which has been continuously in effect since before January 1, 1979;

(E) For AFDC, income tax refunds (except the earned income tax credit (EITC) portion as provided in § 233.20(a)(6)(ix)) but such payments shall be considered as resources;

(F) At State option, small nonrecurring gifts, such as those for Christmas, birthdays and graduations, not to exceed $30 per recipient in any quarter; and

(G) For AFDC, the amount paid to the family by the IV-A agency under § 232.20(d) or, in a State that treats direct support payments as income under § 233.20(a)(3)(v)(B), the first $50 received by the assistance unit which represents a current monthly support obligation or a voluntary support payment. In no case shall the total amount disregarded exceed $50 per month per assistance unit.

* * * * *

(xiv) * * *

(A) The first $75 of the gross earned income of the stepparent;

* * * * *

(xviii) For AFDC, in the case of a dependent child whose parent or legal guardian (as defined under State law) is a minor under the age of 18 (without regard to school attendance), the State shall count as income to the assistance unit the income, after appropriate disregards, of such minor's own parent(s) or legal guardian(s) living in the same household as the minor and dependent child. The disregards to be applied are the same as are applied to the income of a stepparent pursuant to paragraph (a)(3)(xiv) of this section. However, in applying the disregards, each employed parent or legal guardian will receive the benefit of the work expense disregard in paragraph (a)(3)(xiv)(A) of this section.

* * * * *

(xx) In the case of AFDC, if the State chooses to disregard in the determination of eligibility the monthly earned income of dependent children applying for AFDC who are full-time students, provide that the State plan shall:

(A) Specify the amount that will be disregarded, and

(B) Provide that the disregard shall only apply to the extent that the earned income is also disregarded pursuant to paragraph (a)(3)(xix) of this section.

* * * * *

(7) * * *

(ii) In applying the $30 and one-third disregard under paragraph (a)(11)(i)(D) of this section to an applicant for AFDC, there will be a preliminary step to determine whether the assistance unit is eligible without applying the disregard to the individual's earned income, by comparing the applicant's gross earned income (less the disregards in paragraphs (a)(11)(i) (A), (B) and (C)) and all of the assistance unit's other income to the State need standard. This preliminary step does not apply if the individual has received AFDC in one of the four months prior to the month of application.

* * * * *

(11) * * *

(i) * * *

(D) Where appropriate, an amount equal to $30 plus one-third of the earned income not already disregarded under paragraphs (a)(11) (i), (v), and (vi) of this section of an individual who received assistance in one of the four prior months. The $30 plus one-third disregard is not applied to the income of an applicant for assistance in determining whether the individual is eligible, unless the individual has received AFDC during one of the four preceding months and meets either of the following two

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conditions: the individual has not received the disregard in four consecutive months since October 1, 1981, or the individual has already received the disregard in four consecutive months since October 1, 1981, but at sometime after the fourth consecutive month in which the disregard was applied, the individual did not receive AFDC for a period of 12 consecutive months.

(E) Where appropriate, $30 of the earned income not already disregarded under paragraphs (a)(11) (i), (v), and (vi) of this section, in the case of an individual who reapplies for assistance within the eight-month period that he/she is eligible for the $30 disregard.

(ii) * * *

(B) Disregard from any other individual's earned income the amounts specified in paragraphs (a)(11)(i) (B) and (C) of this section, and $30 plus one-third of his earned income not already disregarded under paragraphs (a)(11) (ii) and (v) of this section. However, the State may not provide the one-third portion of the disregard to an individual after the fourth consecutive month (any month for which the unit loses the $30 plus one-third disregard because of a provision in paragraph (a)(11)(iii) of this section, shall be considered as one of these months) it has been applied to his earned income and may not apply the $30 disregard after the eighth month following the fourth consecutive month (regardless of whether the $30 disregard was actually applied in those months) unless twelve consecutive months have passed during which he is not a recipient of AFDC. If income from a recurring source resulted in suspension or termination due to an extra paycheck, the month of ineligibility does not interrupt the accumulation of consecutive months of the $30 and one-third disregard, nor does it count as one of the consecutive months.

* * * * *

(14) For Medicaid eligibility only, beginning October 1, 1998, pursuant to section 402(a)(37) of the Act, an assistance unit will be deemed to be receiving AFDC, but only for the purposes of this paragraph, for a period of nine months after the last month the family actually received aid if the loss of AFDC eligibility was solely because a member of the unit was no longer eligible due to the 4 and 12 month time limitations to have the $30 and one-third or the $30 disregard in paragraph (a)(11)(ii)(B) applied to his or her earned income. At State option, an additional period of Medicaid coverage for up to six months may be provided when the assistance unit would be eligible during such additional period to receive AFDC if the $30 and one-third or the $30 disregards were applied to the assistance unit's earned income.

4. Section 233.31 is amended by revising paragraph (b)(5) to read as follows:

**§ 233.31 Budgeting methods for AFDC.**

* * * * *

(b) * * *

(5) "Recent work history" means the individual received earned income in any one of the two months prior to the budget month.

5. Section 233.36 is amended by revising paragraph (a) introductory text and paragraph (a)(3) to read as follows:

**§ 233.36 Monthly reporting (AFDC).**

(a) Except as provided in paragraph (b) of this section, a State plan for AFDC shall require the caretaker relative, or another person designated by the State, to submit, on behalf of each assistance unit whose members have earned income or recent work history, each assistance unit which has income deemed to it from individuals living with the unit who have earned income or a recent work history and, at State option, other assistance units, a completed report form to the agency monthly on:

* * * * *

(3) The income of a parent or a legal guardian of a minor parent, a stepparent, or an alien sponsor, as well as the resources of an alien sponsor, where appropriate.

* * * * *

6. Section 233.51 is amended by revising the introductory paragraph to read as follows:

**§ 233.51 Eligibility of sponsored aliens.**

Definition: *Sponsor* is any person who, or any public or private agency or organization that, executed an affidavit(s) of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States. Paragraphs (a) through (d) of this section apply only to aliens who are sponsored by individuals and who filed applications for the first time after September 30, 1981. Paragraphs (e) and (f) apply only to aliens sponsored by public or private agencies or organizations with respect to periods after October 1, 1984. A State plan under title IV–A of the Act shall provide that:

* * * * *

## PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

Part 234 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 234 is revised to read as follows:

**Authority:** 42 U.S.C. 602, 603, 606, and 1302.

2. Section 234.60 is amended by revising paragraph (a)(13) to read as follows:

**§ 234.60 Protective, vendor and two-party payments for dependent children.**

(a) * * *

(13) For cases in which a caretaker relative fails to meet the eligibility requirements of §§ 232.11, 232.12, or 232.13 of this chapter by failing to assign rights to support or cooperate in determining paternity, securing support, or identifying and providing information to assist the State in pursuing third party liability for medical services, the State plan must provide that only the requirements of paragraphs (a)(7) and (9)(ii) of this section will be applicable. For such cases, the entire amount of the assistance payment will be in the form of protective or vendor payments. These protective or vendor payments will be terminated, with return to money payment status, only upon compliance by the caretaker relative with the eligibility requirements of §§ 232.11, 232.12, and 232.13 of this chapter. However, if after making reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments to the sanctioned caretaker relative on behalf of the remaining members of the assistance unit.

* * * * *

## PART 237—FISCAL ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

Part 237 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 237 is revised to read as set forth below and the authority citation following the section in part 237 is removed:

**Authority:** Section 1102 of the Social Security Act (42 U.S.C. 1302); 49 Stat. 647, as amended.



2. Section 237.50 is amended by revising paragraph (b) to read as follows:

**§ 237.50 Recipient count, Federal financial participation.**

* * * * *

(b) *AFDC category.* For the AFDC category under title IV, Part A, of the Act:

(1) The recipient count for any month includes:

(i) Eligible recipients in families which receive a money payment, plus

(ii) Eligible recipients in families not otherwise counted on whose behalf protective or nonmedical vendor assistance payments are made for such month in accordance with the vendor payment provisions at § 234.60, provided that such payments are not excluded from Federal financial participation under the provisions of § 233.145(c) of this chapter.

(2) For the purpose of this provision, *recipients* means, if otherwise eligible:

(i) Children;

(ii) In a home with no parent who is the caretaker relative, an otherwise eligible relative of specified degree;

(iii) Parent(s);

(iv) The spouse of such parent, in the case of AFDC eligibility due to incapacity or unemployment;

(3) As used in paragraph (b)(2)(iii) of this section, the term *parent* means the natural or adoptive parent, or the stepparent who is married to the child's natural or adoptive parent and is legally obligated to support the child under a State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children; and the term "spouse" as used in paragraph (b)(2)(iv) of this section means an individual who is the husband or wife of the child's own parent, as defined above, by reason of a legal marriage as defined under State law.

(4) Where there are two or more dependent children living in a place of residence with two other persons and each of such other persons is a relative who has responsibility for the care and control of one or more of the dependent children, there may be two AFDC families (assistance units), if neither family includes a parent or sibling included in the other family pursuant to § 206.10 (a)(1)(vii).

* * * * *

[FR Doc. 92–15594 Filed 7–7–92; 8:45 am]
BILLING CODE 4150–04–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

[Docket No. 89–16; Notice 6]

RIN 2127–AD75

## Federal Motor Vehicle Safety Standards; Glazing Materials

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This notice amends Standard No. 205, Glazing Materials, to permit a new item of glass-plastic glazing. The new item of glazing permitted is Item 15B, Tempered glass-plastic glazing, that may be used anywhere in a motor vehicle, excluding the windshield. This new item of glazing is a restricted version of existing Item 14 glass-plastic glazing, which may be used anywhere in a motor vehicle, including the windshield. After reviewing public comments to proposals to remove Test No. 1 from the list of tests applicable to Item 3 glazing, the agency concludes that it has insufficient data at this time to support removal of Test No. 1 for Item 3 glazing. Therefore, the agency defers a final decision on this issue.

**DATES:** *Effective Date:* The changes made in this rule are effective August 7, 1992.

*Petitions for Reconsideration:* Any petitions for reconsideration of this rule must be received by NHTSA no later than August 7, 1992.

**ADDRESSES:** Petitions for reconsideration must refer to the docket and notice numbers set forth at the beginning of this notice and be submitted to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 am to 4 pm, Monday through Friday. It is requested, but not required that 10 copies of the petition be submitted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM–12, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Harper's telephone number is (202) 366–4916.

**SUPPLEMENTARY INFORMATION:**

### Background

Federal Motor Vehicle Safety Standard No. 205 Glazing Materials, (49 CFR 571.205) specifies performance requirements for the types of glazing that may be installed in motor vehicles. Standard No. 205 currently incorporates by reference American National Standards Institute Standard Z26.1 "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways" as amended through 1980 (ANS Z26). The requirements of ANS Z26 are specified in terms of performance tests that the various types of "items" of glazing must meet. It also specifies the vehicle locations in which each type of glazing may be installed.

One variety of glazing addressed in Standard No. 205 is glass-plastic glazing, a laminate of one or more layers of glass and one or more layers of plastic. It is installed so that a plastic layer faces inward, towards the interior of the motor vehicle, and a glass layer faces outward. The agency encourages use of glass-plastic glazing because of its proven injury-reduction capabilities in crashes.

### April 1991 Final Rule and Supplementary Notice of Proposed Rulemaking

In a final rule of April 23, 1991 (56 FR 18526), the agency amended Standard No. 205 to permit three new items of glass-plastic glazing. Item 15A Annealed glass-plastic glazing, is permitted to be used anywhere in a motor vehicle, except the windshield. Item 16A Annealed glass-plastic glazing, and Item 16B Tempered glass-plastic glazing, may be used in areas not requisite for driving visibility. In that final rule, the agency also discussed further action on two issues: whether it should permit tempered glass-plastic glazing to be used anywhere in a motor vehicle, except the windshield, and whether it should remove Test No. 1, Light Stability, from the list of tests that Item 3 glazing must meet. These two issue are more fully discussed below.

The issue of permitting an item of tempered glass-plastic glazing for use anywhere in a motor vehicle, except for the windshield, was first raised by NHTSA in the notice of proposed rulemaking (54 FR 41632; October 11, 1989) that preceded the April 1991 final rule. In the NPRM, the agency did not propose to permit a tempered version of glass-plastic glazing for use anywhere in a motor vehicle except the windshield, citing its concern about potential visibility problems if the glazing should shatter. However, public comments in response to the NPRM convinced the agency that because of tempered glass-plastic's greater strength, the benefits from permitting a tempered version of glass-plastic glazing for use anywhere in a motor vehicle except the windshield, outweighed possible visibility problems that may result from shattered glazing.

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Also in the October 1989 NPRM, the agency proposed removal of Test No. 1 for motor vehicle glazing that is used in areas that are not requisite for driving visibility. Its rationale was that it saw no safety need for glazing used in those areas to meet that test requirement. Test No. 1, Light Stability, in the American National Standards Institute Standard (ANS) Z26 (1980 edition), is a measure of visual deterioration of the glazing due to exposure to simulated sunlight and humidity.

In response to that proposal in the NPRM, the agency received comments from four glazing manufacturers. The comments were mixed. Some manufacturers that provided comments concurred with the proposal to remove Test No. 1 from Item 3 glazing. One manufacturer, Libbey-Owens-Ford, however, noted that changes in light transmittance can also indicate deterioration of plastic layers in the glazing. That commenter asserted that if Test No. 1 were no longer applied to Item 3 laminated or glass-plastic glazing, plastics with inferior weathering characteristics may be permitted. These inferior glazing products may have long range safety and reliability problems.

The agency stated in the April 1991 final rule that it had reexamined its position concerning use of tempered glass in glass-plastic glazing in visibility areas other than the windshield. It indicted that the issues raised by commenters on the utility of Test No. 1 for Item 3 glazing might have merit. Accordingly, the agency said that it would provide another opportunity for public comment on these issues.

In a supplementary notice of proposed rulemaking, (SNPRM) (56 FR 18559; April 23, 1991) published by NHTSA on the same date as the April 1991 final rule, the agency proposed the creation of Item 15B Tempered glass-tempered glazing for use in all locations that are requisite for driving visibility, other than the windshield. Also in the April 1991 SNPRM, the agency again asked for public comment on the issue whether to remove Test No. 1 from the list of tests that an item of glazing must meet in order to be designated as Item 3 glazing. The agency specifically requested test data to document the type of safety problems that may arise by permitting plastics that may fail Test No. 1.

**Public Comments on the SNPRM**

In response to the SNPRM, the agency received comments from five commenters, Chrysler Corporation (Chrysler), the Flat Glass Association of Japan (FGAJ), General Motors Corporation (GM), Libbey-Owens-Ford Company (LOF), and Monsanto Chemical Company (Monsanto). The commenters addressed the issues raised in the SNPRM as follows:

*A. Item 15B Glazing*

In general, four commenters, Chrysler, GM, LOF, and Monsanto, concurred with the agency's proposal to permit Item 15B, Tempered glass-plastic glazing. GM and FGAJ offered specific comments about other aspects of the proposal to permit Item 15B glazing. In its comments, GM requested that Item 15B be permitted in the side and rear windows of convertibles. The agency had proposed in the SNPRM to prohibit the use of Item 15B in convertibles. This restriction was proposed because of the agency's belief that excessive exposure to ultraviolet light may make the plastic in glass-plastic glazing deteriorate, possibly degrading visibility in windshields, side or rear windows.

GM stated that, in its opinion, Item 15B glazing would not be exposed to significantly greater amounts of ultraviolet light directed against the plastic side of glazing in convertibles than in non-convertibles. GM stated it believes that convertibles are typically operated with the side windows down. It stated that, similarly, rear windows are typically part of the removed or stowed roof. Therefore, according to GM, the side and rear windows in convertibles are not likely to be exposed to significantly more ultraviolet light when the roof is removed or stowed.

GM further stated that not permitting Item 15B glazing in convertibles could discourage use of this glazing. GM explained that in some cases, the same glazing material is used in both the base and convertible versions of the same passenger automobile. If Item 15B were prohibited in convertibles, a vehicle manufacturer that wanted to use glass-plastic glazing in the base version might be discouraged from using glass-plastic glazing by the additional cost of developing different glazing materials for the base and convertible versions.

Although it did not specifically state its views whether Item 15B glazing should be permitted, the Flat Glass Association of Japan (FGAJ) provided technical comments about some of the tests proposed to be applicable to Item 15B glazing. FGAJ stated that Test No. 4, Boil, was not appropriate for glass-plastic glazing and should be replaced with Test No. 5, Bake; that Test No. 7, Fracture, should be amended to incorporate the 1990 version of Test No. 7 in the ANS Z26 standard; and that the agency should use abrasion resistance Tests Nos. 33 and 34, as stated in the 1990 edition of the ANS Z26 standard, instead of, as proposed in the SNPRM, Test No. 17, Abrasion Resistance (Plastics), and Test No. 18, Abrasion Resistance (Safety Glass).

*B. Applicability of Test No. 1 to Item 3 Glazing*

Chrysler, GM and FGAJ stated that Test No. 1 should be removed from the list of tests applicable to Item 3 glazing, concurring with the agency's rationale that Test No. 1 is a test of luminous transmittance, and is not, therefore, appropriate for glazing to be used in areas not requisite for driving visibility. Libbey-Owens-Ford stated that it had no objection to the removal of Test No. 1 from the Item 3 glazing list of tests. However, it expressed a concern about the agency's eliminating the applicability of Test No. 1 to laminated glazing. LOF reported a 30 percent loss of strength in certain plastics after exposure to ultraviolet radiation in test situations. LOF stated that the test results indicate removal of Test No. 1 might permit use of plastics in laminated safety glazing that would lose their safety properties with extended exposure to outdoor light. LOF did not identify any specific plastics that were tested. LOF stated that whatever the agency decides to do about Test No. 1, Items 3, 16A and 16B glass-plastic glazing should be treated in the same fashion with respect to the applicability of Test No. 1 since all three items are used in the same locations in a motor vehicle. At present, Test No. 1 applies to neither Item 16A nor 16B.

Monsanto opposed making Test No. 1 inapplicable to Item 3 glazing. It stated that although polyvinyl butyryl (PVB) will meet Test No. 1, Monsanto stated that glazing "which is significantly inferior and will not pass the test" should not be permitted because such materials can develop "color, bubbles, haze, etc." as a result of exposure to ultraviolet light. Monsanto did not specify any particular type of material that may encounter the difficulties that were described.

**Agency Analysis of Public Comments and Final Decision**

*A. Item 15B Glazing*

All the comments addressing the issue, whether Item 15B Tempered glass-plastic glazing should be permitted, supported the creation of Item 15B glazing. Neither the public comments, nor other information available to the agency indicates that permitting Item 15B glazing would adversely affect safety. Accordingly, for the reasons stated in the notices of April 23, 1991 (56 FR 18526; 56 FR 18559), the agency is



amending Standard No. 205 to permit Item 15B glazing for use in all motor vehicle locations requisite for driving visibility other than the windshield.

As already noted, two other issues were raised by commenters about further defining the parameters of Item 15B glazing: the issue of whether Item 15B should apply to side and rear windows of convertibles; and the issue of tests applicable to Item 15B glazing.

GM raised the issue of permitting glass plastic glazing in side and rear windows of convertible motor vehicles both in comments on the April 1991 SNPRM and in its petition for reconsideration of the April 1991 final rule creating Items 15A, 16A, and 16B glazing (56 FR 18526). In that petition, GM requested that a prohibition against use of Item 15A glazing in convertibles be removed. GM's rationale in both rulemakings was that the plastic side of Item 15A glazing on the side windows or rear window of convertibles is not significantly more likely to be exposed to ultraviolet light than the same type of glazing in passenger automobiles that are not convertibles. In a January 15, 1992 notice responding to petitions for reconsideration (57 FR 1652), the agency granted GM's request and removed Standard No. 205's prohibition against Item 15A glazing in convertibles. NHTSA took this action because it agreed with GM's rationable.

Since NHTSA has already decided, in the January 1992 final rule, that permitting another type of glass-plastic glazing in side windows and the rear window in convertibles is consistent with motor vehicle safety, the agency adopts the same position regarding the use of Item 15B glazing. Item 15B glazing will be permitted for use in the side windows and rear window of convertibles.

Most of FGAJ's suggestions concerning amendments to tests applicable to Item 15B glazing appear to have been made with the intent of making Standard No. 205 conform more closely with the 1990 edition of the ANS Z26 standard. FGAJ did not base any of its suggestions on a desire to promote greater reliability in test results, or on a need for greater safety. Regarding FGAJ's first recommendation, that Test No. 5, *Bake*, instead of Test No. 4, Boil, should apply to Item 15A, the agency notes that FGAJ previously recommended replacing Test No. 4 with Test No. 5 for other items of glass-plastic glazing. The earlier recommendation was made in response to the agency's NPRM of October 11, 1989 (54 FR 41632) proposing to create Items 15A, 16A, and 16B. In the April 23, 1991 final rule (56 FR 18526), the agency responded to the FGAJ's recommendation, and noted that the main difference between the two tests is that humidity or water is present in the boil test but not in the bake test. The agency stated that it was aware from field reports and certification test failures from independent laboratories, that some grades of plastic will become opaque in the presence of moisture. If this phenomenon is not detected, glazing with lessened visibility could be hazardous in hot, humid climates. Accordingly, the agency concluded that it was inappropriate to replace Test No. 4, Boil, with Test No. 5, Bake. (See 56 FR at 18530).

In its response to the SNPRM to create Item 15B glazing, the FGAJ again raised the issue of replacing the boil test with the bake test. However, it offered no additional information why the proposed change should be make, did not address the agency's concern about the inappropriateness of the bake test in replicating conditions in hot, humid climates, and offered no safety rationale for its proposal. Since no reason has been given why the agency's decision not to replace the bake test for the boil test (for Items 15A, 16A and 16B) was inappropriate, the agency again adopts the rationale stated in the final rule of April 23, 1991 (56 FR 18526).

The second FGAJ recommendation was that the procedure in Test No. 7, Fracture, be amended to be consistent with the 1990 version of ANS Z26. FGAJ noted differences between the Standard No. 205 version (that incorporates the 1980 edition of ANS Z26) and the 1990 test procedures. FGAJ did not cite a safety need to amend the test procedure. Since FGAJ did not show how making the changes would result in more valid results or would promote safety, the agency has decided not to adopt FGAJ's recommendation of Test No. 7.

The third FGAJ recommendation was that abrasion tests 17 and 18 be replaced with different abrasion tests. Test Nos. 33 and 34 (from the 1990 version). Test Nos. 17 and 18 differ from Test Nos. 33 and 34 in that the latter tests indicate on which side (plastic or glass) the test should be run. The agency notes that in S5.1.2.9, of Standard No. 205, Test Nos. 17 and 18 are modified to indicate on which sides the test should be run. Since this addition to Standard No. 205 makes Test Nos. 17 and 18 almost identical to Test Nos. 33 and 34, adopting the third recommendation would have essentially no practical effect. Accordingly, the agency is not adopting that recommendation.

*B. Applicability of Test No. 1 to Item 3 Glazing*

The agency also requested comments in the SNPRM on its proposal to remove Test No. 1, Light Stability, from the list of tests applicable to Item 3 glazing. Test No. 1, as indicated earlier, is intended to measure the reduction of luminous transmittance after the material is exposed to simulated sunlight. The agency initially concluded that there was no apparent safety need to include this visibility test requirement for Item 3 glazing since it is permitted to be used only in areas not requisite for driving visibility.

In both the October 1989 NPRM and April 1991 SNPRM, the agency proposed to remove Test No. 1 from the list of tests for Item 3 glazing because the agency believed that Test No. 1 was included only because of an oversight. Similarly, when the lists of tests applicable to Items 16A and 16B glazing was created, the agency did not include Test No. 1 in the list for either item. The agency took this step because it believed that Test No. 1 would eventually be removed from Item 3, and that since Items 3, 16A and 16B are permitted in identical locations in a motor vehicle, the lists of tests applicable to Items 3, 16A and 16B should be as consistent as possible.

In response to the SNPRM, several commenters characterized Test No. 1 merely as a "reliability" test and stated that the test is irrelevant for an item of glazing specified for use only in areas not requisite for driving visibility. However, two commenters, Libbey-Owens-Ford (LOF) and Monsanto, stated that the test is an indirect detector of inferior plastics. LOF specifically expressed concern that certain materials experienced a 30 percent loss of strength after undergoing several hundred hours of exposure to ultraviolet radiation. The agency agrees with LOF and Monsanto that Test No. 1 may be capable of identifying inferior and potentially unsafe plastic. The agency also concurs with LOF that Standard No. 205 is inconsistent with respect to the applicability of Text No. 1. Test No. 1 applies to Item 3 glazing, but does not apply to Items 16A and 16B glazing, which may be used in motor vehicle locations identical to Item 3.

After carefully reviewing these issues raised by commenters, the agency concludes that it has insufficient information to support either the removal of this test for Item 3 glazing or the extension of its applicability to Items 16A and 16B glazing. Accordingly, the agency again defers its decision on

the issue of applicability of Test No. 1 to Items 3, 16A and 16B glazing pending further analysis of the issue.

**Effect of Final Rule on Concurrent Standard No. 205 Rulemakings**

In anticipation of possible questions from the public, the agency wishes to note that this final rule is independent of, and has no effect on, the NPRM issued by the agency on January 22, 1992 (57 FR 2496) that proposed to amend Standard No. 205 to revise light transmittance requirements to replicate real-world conditions more closely. The issues raised in the January 1992 NPRM are different from those addressed in this final rule. Since NHTSA encourages greater use of glass-plastic glazing, it is issuing this final rule primarily to permit Item 15B glazing to be used in designated motor vehicle locations as soon as possible.

**Effective Date**

This rule is effective 30 days after publication in the **Federal Register**. The rule relieves a restriction in Standard No. 205 by permitting the use of tempered glass-plastic in all glazing locations, except the windshield. Those manufacturers that do not deem it appropriate to use this material at this time are not required to do so. Since this rule permits but does not require the increased use of glass-plastic glazing, the agency concluded that this optional item of glazing should be permitted sooner than 180 days after the issuance of this rule. Therefore, the agency finds good cause that this rule should become effective 30 days after it is published.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

**Rulemaking Analyses and Notices**

*1. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

This agency has considered the costs and other impacts of this rule and determined that the rule is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory procedures. This rule does not impose new requirements, but instead, provides additional flexibility to manufacturers by permitting use of an additional item of glazing in motor vehicles. Since the use of this new item of glazing is optional, no costs will be imposed by this final rule. Any cost impacts resulting from the use of Item 15B glazing will be so slight that they cannot be quantified. Since the effects of this final rule are so minimal, preparation of a full regulatory evaluation is not required.

*2. Regulatory Flexibility Act*

NHTSA has analyzed the effects of this final rule on small entities in accordance with the Regulatory Flexibility Act. Based on that analysis, I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. As indicated above, this rule does not impose new requirements but instead provides additional flexibility to manufacturers by permitting a new item of glazing. Accordingly, no final regulatory flexibility analysis has been prepared.

*3. Executive Order 12612 (Federalism)*

This rule has been analyzed in accordance with the principles and requirements contained in Executive Order 12612, and the agency has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*4. National Environmental Policy Act*

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and has determined that it will not significantly affect the quality of the human environment.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

**PART 571—[AMENDED]**

In consideration of the foregoing, 49 CFR part 571 is amended to read as follows:

1. The authority citation for part 571 continues to read as follows:

**Authority:** 15 U.S.C. 1391, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.205, a new S5.1.2.6 is added, S5.1.2.10 is revised to read as follows, and the second sentence of S6.1 is revised to read as follows:

**§ 571.205 Standard No. 205, Glazing Materials.**

* * * * *

S5.1.2.6 *Item 15B—Tempered Glass-Plastic for Use in All Positions In a Vehicle Except the Windshield.* Glass-plastic glazing materials that comply with Tests Nos. 1, 2, 3, 4, 7, 8, 16, 17, 18, 19, 24, and 28, as those tests are modified in S5.1.2.9 *Test Procedures for Glass-Plastics,* may be used anywhere in a motor vehicle except the windshield.

* * * * *

S5.1.2.10 *Cleaning instructions.*

(a) Each manufacturer of glazing materials designed to meet the requirements of S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, or S5.1.2.8 shall affix a label, removable by hand without tools, to each item of such glazing material.

(b) Each manufacturer of glazing materials designed to meet the requirements of paragraphs S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, or S5.1.2.8 may permanently and indelibly mark the lower center of each item of such glazing material, in letters not less than 3/16 inch nor more than 1/4 high, the following words, Glass Plastic Material—See Owner's Manual for Care Instructions.

* * * * *

S6.1 * * * The materials specified in S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, and S5.1.2.8 shall be identified by the marks "AS 11C", "AS 12", "AS 13", "AS 14", "AS 15A", "AS 15B", "AS 16A", and "AS 16B", respectively. * * *

* * * * *

Issued on: July 1, 1992.

**Frederick H. Grubbe,**

*Deputy Administrator.*

[FR Doc. 92-15888 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-59-M

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AB68**

**Endangered and Threatened Wildlife and Plants; Threatened Status for the Plant Thelypteris pilosa var. alabamensis (Alabama Streak-sorus Fern)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines a plant, *Thelypteris pilosa* var. *alabamensis* (Alabama streak-sorus fern), to be a threatened species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. *Thelypteris pilosa* var. *alabamensis* is currently believed to be limited to a 3.25 mile stretch along the Sipsey Fork, a tributary of the Black Warrior River in Winston County, Alabama. In this area, 15 separate localities have been documented. This species is extremely vulnerable due to its limited distribution. Populations have been impacted or are potentially threatened by impoundments, bridge construction, vandalism and incidental damage from recreational use of habitats, and timbering of forest upslope. This action will extend the Act's protection to *Thelypteris pilosa* var. *alabamensis*.

**EFFECTIVE DATE:** August 7, 1992.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Jackson, Mississippi Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213.

**FOR FURTHER INFORMATION CONTACT:** Cary Norquist at the above address or telephone (601/965–4900 or FTS 490–4900).

**SUPPLEMENTARY INFORMATION:**

## Background

*Thelypteris pilosa* var. *alabamensis* is a small, evergreen fern with linear-lanceolate fronds 10 to 20 centimeters (cm) (4 to 8 inches) long. The fronds appear clustered, arising from short, slender rhizomes covered with reddish-brown scales. The stipe portion of the frond ("petiole") is slender, erect to ascending, 1 to 3 cm (0.4 to 1 inch) long, and covered with long hairs. The blade is typically 3 to 10 cm (1 to 4 inches) long, 1.5 to 3 cm (.05 to 1 inch) broad, and divided once into many ovate to suborbicular leaf segments (pinnae). The sori (groups of spore-producing reproductive structures) occur on the underside of the blades and are linear in shape. This is the only southeastern species of *Thelypteris* which lacks indusia (thin membrane that covers the sori) (Kral 1983, Mickel 1989).

This variety was first described by Crawford (1951) based on material that he and A.M. Harvill collected in 1949 along the Sipsey Fork of the Black Warrior River (Winston County, Alabama). Two specimens from the Mexican States of Chihuahua and Sonora were cited in Crawford's description as belonging to this variety. These specimens, and other *Thelypteris pilosa* specimens from Mexico, have been recently examined by Mickel (1989) and Alan Smith (*Thelypteris* authority, University of California at Berkeley, pers. comm. 1990). They concluded that the Alabama plants are distinct (at least at the varietal level) from the Mexican material, including those specimens from Chihuahua and Sonora, cited in the original description by Crawford (1951). *Thelypteris pilosa* var. *alabamensis* differs from *Thelypteris pilosa* var. *pilosa* (a species relatively common in Mexico and extending south to Guatemala and Honduras) by its overall smaller size, narrower blades, rounded (versus acuminate) pinna and pinna lobe tips, and the frequent free lobe at the base of the basal pinnae (Lellinger 1985, Mickel 1989). Studies are currently underway to determine if these differences warrant elevating *Thelypteris pilosa* var. *alabamensis* to the species' level (Mickel 1989).

In 1960, the type locality was destroyed by bridge construction and subsequent flooding in association with the completion of Lewis Smith Dam, located several miles downstream. The species was presumed to be extinct (Dean 1969) until 1972, when Alabama naturalist L. Smith rediscovered it approximately eight miles upstream (Short and Freeman 1978). Additional colonies were located in this general area in 1975 and 1976 by Short and Freeman (1978). Surveys to locate additional populations and delineate its range along the Sipsey Fork were conducted by Alabama Natural Heritage Program in 1990 (Gunn 1991). Currently, the species' known range is confined to an approximately 3.25 mile stretch along the Sipsey Fork, a tributary of the Black Warrior River in Winston County, Alabama. In this area, the Heritage Program has documented 15 localities. Approximately 50 percent of the sites support small populations (a dozen or fewer plants); three have moderate populations (20 to 75 plants); three have large populations (several hundred); and two have extensive populations (ca. 1,500 and 6,000) (Gunn 1991). A mid-1970's report of this species along the Sipsey Fork near the Lawrence and Winston County line (Short and Freeman 1978) has not been relocated, despite repeated attempts (Gunn 1991).

*Thelypteris pilosa* var. *alabamensis* takes root in crevices or on rough rock surfaces of Pottsville sandstone along the Sipsey Fork (Gunn 1991). Plants typically occur on "ceilings" of sandstone overhangs (rockhouses), on ledges beneath overhangs, and on exposed cliff faces. These bluffs and overhangs are usually directly above the stream; however, some are located a short distance away from the river. Locations vary in slope aspect and shade coverage, from completely shaded to partially sunny on exposed bluff faces. The sites are kept moist by natural water seepage over the sandstone from up-slope runoff. Water vapor from the stream increases the humidity for those sites directly above the water or nearby. *Thelypteris pilosa* var. *alabamensis* grows among various bryophytes and is often associated with climbing hydrangea (*Decumaria barbara*), (*Thalictrum clavatum*, *Heuchera parviflora*, and the ferns *Osmunda cinnamonea*, *O. regalis*, and most notably, the Appalachian bristle fern (*Trichomanes boschianum*). Surrounding forest is of the hemlock-hardwood type and includes various cove-type hardwoods (Gunn 1991, Kral 1983).

All sites are within the boundaries of the Bankhead National Forest and the majority occur on U.S. Forest Service land. Several localities are on private inholdings.

Federal actions involving *Thelypteris pilosa* var. *alabamensis* began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants, considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Thelypteris pilosa* var. *alabamensis* was included in the Smithsonian petition and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1976, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal**

Register (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired. *Thelypteris pilosa* var. *alabamensis* was included as a category 2 species in a revised list of plants under review for threatened or endangered classification published in the December 15, 1980, Federal Register (45 FR 82480). This species was maintained in category 2 in the Service's updated plant notices of September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184). (Category 2 species are those for which are listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support a proposed rule.

The Service funded a survey in 1990 to determine the status of this species in Alabama. Additional water courses were surveyed; however, no populations were located outside an approximately 3 mile segment of the Sipsey Fork (Black Warrior River). A final report was received and approved by the Service in the spring of 1991. This report (Gunn 1991) and other information supported the proposed listing. The data demonstrated a limited distribution and potential threats to the species.

Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982 be treated as having been newly submitted on that date. This was the case for *Thelypteris pilosa* var. *alabamensis* because of the acceptance of the 1975 Smithsonian report as a petition. In October of 1983, and succeeding years, the Service found that the petitioned listing of *Thelypteris pilosa* var. *alabamensis* was warranted, but that listing this species was precluded due to other higher priority listing actions and additional data were being gathered. On November 29, 1991, the Service published a proposal (56 FR 60957) to list *Thelypteris pilosa* var. *alabamensis* as a threatened species, constituting the final 1-year finding.

**Summary of Comments and Recommendations**

In the November 29, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice, inviting public comment, was published in the *Daily Mountain Eagle*, Jasper, Alabama, on December 15, 1991.

Five written responses to the proposed rule were received, including two from private individuals, and three from private organizations (Access Fund, Center for Plant Conservation, and Biodiversity Legal Foundation). The Access Fund (a climbing organization) requested additional information without stating an opinion on the proposed rule. The other four comments were in support of the listing. The two individuals also supplied additional background information on this species which has been incorporated into appropriate sections of the rule.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that *Thelypteris pilosa* var. *alabamensis* should be classified as a threatened species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Thelypteris pilosa* var. *alabamensis* (Mart. and Gal.) Crawford (Alabama streak-sorus fern) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

The type locality, which is approximately 5 miles downstream of extant populations, was destroyed in 1960. The cliffs where the plants grew were leveled when a new bridge was constructed. The area was subsequently flooded with the completion of Lewis Smith Dam several miles downstream (Short and Freeman 1978, Burks *in litt.*). The impoundment inundated suitable habitat, and perhaps plants, upstream and downstream of the type locality (Gunn 1991). Currently, plants are located on both sides of a highway bridge over the Sipsey Fork (upstream of the reservoir's influence). Plants may have been destroyed by this bridge construction (Gunn 1991). Future road or dam construction along the upper reach of the Sipsey Fork poses a potential threat to extant populations.

Logging of woodlands above the occupied sites could adversely affect the microhabitat needed by the fern. As noted in the "Background" section, the species is dependent on up-slope runoff and seepage to maintain the substrate moisture. Heavy timbering or clear-cutting could alter the area's hydrology by interrupting this natural seepage. Additionally, the loss of the canopy would increase ambient light and lower the humidity. Thus, timber removal would dehydrate the habitat and such could be detrimental to this fern (Gunn 1991, Kral 1983, Currie *in litt.*).

Overhangs or rockhouses are habitat for about 50 percent of the known populations of *Thelypteris pilosa* var. *alabamensis*. These areas are frequented by hikers, fishermen, and campers and are subject to vandalism. Two of the larger populations occur in rockhouses which are often used by humans, as evidenced by numerous footprints, abundant litter, and old campfires. Intentional or incidental damage caused by hikers and campers, in addition to the heat and smoke from campfires, threatens these populations (Gunn 1991).

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

This species is not known to be in commercial trade. Over-collecting for any purpose would adversely impact this species due to its rarity and the small number of individuals at several sites. The fern's limited distribution makes it vulnerable to collectors and vandals.

*C. Disease of Predation*

No species specific diseases or predators have been identified. However, as in Factor B, disease or predation could have a serious adverse impact on the small and fragmented populations.

*D. The Inadequacy of Existing Regulatory Mechanisms*

This species is considered endangered by the Alabama Natural Heritage Program (Gunn, pers. comm. 1991) but receives no protection from State legislation. All sites are located along the portion of the Sipsey Fork of the Black Warrior River that has been assigned "Wild and Scenic River" status by 1988 Federal legislation. Those sites on Forest Service land are designated "recreational status", which requires certain management actions by Federal landholders. The managing agency must develop management plan for the wild and scenic corridor, including management recommendations for *Thelypteris pilosa* var. *alabamensis*,

which is identified as a sensitive species for Bankhead National Forest (BNF). Currently, no management plan or recommended action, for either the river or the fern, has been developed by the U.S. Forest Service (Gunn 1991). As a result, no formal protection is afforded to sites on BNF. Four (possibly six) of the sites are on private property where there is no protection.

*F. Other Natural or Manmade Factors Affecting its Continued Existence*

The greatest threat to this species is its extreme vulnerability due to its limited range and small number of plants at many of the sites (see "Background"). A single natural or anthropogenic disturbance could seriously reduce the population size and affect the species' viability. Catastrophic flooding through the narrow gorge could possibly scour all the occupied sites to such a degree that the size of the population would be significantly reduced. Sites near the water have few individuals (one to three plants), probably because of scouring from seasonal (as opposed to catastrophic) flooding. Severe drought would decrease the substrate moisture and be detrimental to this species. A local drought in 1990 appeared to kill individual plants at several localities (Gunn 1991).

As a natural erosional process, sandstone overhangs and bluffs periodically erode small and large sections. A site could be completely eliminated (including one with a large number of plants) if one such incident occurred (Gunn 1991).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Thelypteris pilosa* var. *alabamensis* as threatened. Threatened status seems appropriate since this species is not in imminent danger of extinction. However, this species is extremely vulnerable due to its restricted range and is likely to become endangered in the foreseeable future if protective measures are not taken. Critical habitat is not being designated for reasons discussed in the following section.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is presently not prudent for this species. Publication of critical habitat maps will increase public interest and possibly lead to additional threats to this species from collecting and vandalism. This species occurs at a limited number of sites and several are easily accessible and frequented by hikers and campers. Taking is an activity that is difficult to control and is only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of endangered plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Publication of critical habitat descriptions and maps in the **Federal Register** and local newspapers would make *Thelypteris pilosa* var. *alabamensis* more vulnerable and increase enforcement problems. The principal parties involved, including State/Federal agencies, have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Thelypteris pilosa* var. *alabamensis*.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All sites are located within the boundary for the Bankhead National Forest and the majority of the sites are on U.S. Forest Service lands. The Forest Service will consider this species regarding their activities on their lands. The Environmental Protection Agency will consider this species relative to pesticide (herbicide) registration. Currently, no other activities to be authorized, funded, or carried out by Federal agencies are known to exist that would affect *Thelypteris pilosa* var. *alabamensis*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. The protection may apply to threatened plants once revised regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive,

room 432, Arlington, Virginia 22203 (703/358–2104).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited


Crawford, L.C. 1951. A new fern for the United States. Amer. Fern. Journ. 41:15–20.

Dean, B.E. 1969. Ferns of Alabama, 2nd ed. Southern University Press, Birmingham, AL. 222 pp.

Gunn, S.C. 1991. An update on the status of *Thelypteris pilosa* var. *alabamensis*. Report to the U.S. Fish and Wildlife Service, Jackson, Mississippi. 18 pp.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the South. USDA, U.S. Forest Service, Tech. Publ. R8–TP2. 1305 pp.

Lellinger, D.B. 1985. A field manual of the ferns and fern-allies of the United States and Canada. Smithsonian Inst. Press, Washington, D.C. 389 pp.

Mickel, J.T. 1989. Current status of *Thelypteris Pilosa* var. *alabamensis*. Unpubl. man. 5 pp.

Short, J.W., and J.D. Freeman. 1978. Rediscovery, distribution and phytogeographic affinities of *Leptogramma pilosa* in Alabama. Amer. Fern. Journ. 68:1–2.


### Author

The primary author of this rule is Cary Norquist (see ADDRESSES section) 601/965–4900 or FTS 490–4900.

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

### Regulation Promulgation

### PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding, in alphabetical order, the family Thelypteridaceae, and the following entry, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | | | | | |
|---|---|---|---|---|---|---|
| Scientific name | Common name | Historic range | Status | When listed | Critical habitat | Special rules |
| Thelypteridaceae—Marsh fern family | | | | | | |
| *Thelypteris pilosa* var. *alabamensis* (= *Leptogramma pilosa* var *alabamensis*). | Alabama streak-sorus fern | U.S.A. (AL) | T | 476 | NA | NA |

Dated: June 22, 1992.

**Richard N. Smith,**

*Director, Fish and Wildlife Service.*

[FR Doc. 92–15976 Filed 7–7–92; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 672

**[Docket No. 920655–2155]**

### Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency interim rule; request for comments.

**SUMMARY:** NMFS has determined that an emergency exists in the groundfish fisheries being conducted in the Gulf of Alaska. Premature attainment of the total allowable catch (TAC) specification for the "other species" category is causing unnecessary discarding of groundfish that otherwise could be utilized. The TAC specification for the "other species" category is being increased to allow retention of component species comprising this category when caught as bycatch in other fisheries. This action is necessary to reduce discarding of groundfish for no meaningful purpose. This action is intended to further the goals and objectives of the North Pacific Fishery Management Council.

**DATES:** Effective July 1, 1992 through October 6, 1992.

Comments are invited on this action until July 23, 1992.

**ADDRESSES:** Copies of the Environmental Assessment (EPA) prepared for this action may be obtained from Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. Comments should be sent to the same address.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg, (907) 586–7228.

**SUPPLEMENTARY INFORMATION:** The U.S. groundfish fishery in the exclusive economic zone of the Gulf of Alaska is managed by the Secretary of Commerce (Secretary) under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations governing the U.S. fishery at 50 CFR part 672. Additional regulations applicable to U.S. fisheries are codified at 50 CFR part 620.

At times, amendments to the FMP and its implementing regulations are necessary to respond to fishery conservation and management problems that cannot be addressed within the time frame of the normal procedures provided for by the Magnuson Act. Section 305(c) of the Magnuson Act, 16 U.S.C. section 1855(c), authorizes the Secretary to promulgate emergency rules necessary to address these problems. These emergency rules may remain in effect for not more than 90 days after publication in the **Federal Register**, with a possible 90-day extension. This emergency rule is implemented to increase the TAC for the

"other species" category. A fuller description of, and need for, this action follows:

Under section 3.1 of the FMP, groundfish species managed under the FMP include those in the target species categories and the "other species" category. Section 4.2.1 of the FMP provides a framework procedure for setting annual TAC specifications for these categories. Under the framework procedure, acceptable biological catch (ABC) amounts are specified annually for each of the target species categories. TACs for each of the target species are specified, based on ABCs and other biological and socioeconomic information. Unlike the target species, the "other species" category is not based on biological or socioeconomic information, but solely is based on a formula that requires a TAC for the "other species" category equal to 5 percent of the sum of the TACs for the target species.

Species that constitute the "other species" category include Atka mackerel, sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The purpose of the "other species" category is to account for amounts of certain groundfish species that are caught as bycatch in the target species fisheries. Usually, the 5 percent allowance of the "other species" category is more than adequate to support bycatch needs while fishing for target species. For example, the total catch of "other species" in 1991 was 4,823 metric tons (mt), which was only 2 percent of the total catch (236,003 mt) of the target species categories.

For the 1992 fishing year, the TAC specified for the "other species" category is 13,432 mt, or 5 percent of the sum of the TACs specified for the target species categories, which is equal to 268,634 mt (57 FR 2844, January 24, 1992). The "other species" TAC applies to the entire Gulf of Alaska.

Although the "other species" TAC was expected to support bycatch needs for all of the 1992 fishing year, it was reached unexpectedly early. On May 13, under § 672.20(c)(3), further retention of "other species " was prohibited for the remainder of that 1992 fishing year (57 FR 21215, May 19, 1992). The "other species" TAC was reached early when fishermen targeted the Atka mackerel component of the "other species" TAC in the westward areas of the Gulf of Alaska. This was an extraordinary and unanticipated event, having never occurred before in the Gulf of Alaska. Until now, the conventional wisdom regarding Atka mackerel in the Gulf of Alaska has been that while they were known to be in the Gulf, it was not believed they were present in sufficient numbers to support a directed fishery.

Each fisherman now is required by § 672.20(c)(3) to treat all catches of each component species of the "other species" category as a prohibited species and to sort his catch as soon as possible after retrieval of the catch and to return any prohibited species to the sea as required by § 672.20(e)(2). Inadvertent catches of some components of the "other species" category (e.g., eulachon, capelin, sculpins) commonly occur in the groundfish fisheries. These species are small in size and, when caught in large numbers, impose a significant cost to fishermen who must sort them at sea to comply with regulations. Such treatment of "other species" is imposing an unnecessary burden on fishermen and processors because most, if not all, of the "other species" catches perish after capture. Having to discard them at sea serves no useful purpose when they might otherwise be used by processors.

The Secretary has reviewed the reasons underlying the closure and has determined that no useful purpose is being accomplished by its continuation. Targeting the Atka mackerel component of the "other species" category was an unforeseen event that resulted in premature attainment of the TAC for the "other species" category. An emergency rule is justified to prevent significant economic loss resulting from discarding "other species" catches that otherwise could have been utilized. The Secretary is specifying a new TAC for the "other species" category of 20,432 mt. This amount is an increase of 7,000 mt from the current amount of 13,432 mt. The increase of 7,000 mt is the sum of 5,200 mt and 1,800 mt; 5,200 mt represents a bycatch allowance of about 5 percent of the remaining TAC of the target species categories as of May 17, 1992, and 1,800 mt represents the amount of "other species" taken and returned to the ocean since the May closure.

In a separate action, the Secretary intends to prohibit directed fishing for the "other species" category under 50 CFR paragraph 672.20(c)(2)(ii). NMFS expects that fishing mortality inflicted on any of the component species in the "other species" category resulting from inadvertent bycatches will be the same as if the prohibited species status were retained and each catch had to be sorted and discarded at sea. No significant conservation impacts are expected to result from this action, including any risk of overfishing of any component of the "other species" category. Likewise, no significant allocative impacts are expected.

For the reasons explained above, the Secretary modifies the final specifications for the "other species" TAC in Table 1 as provided in § 672.20(c)(1), from July 1, 1992 until October 6, 1992 as follows:

TABLE 1.—FINAL 1992 SPECIFICATIONS FOR OVERFISHING LEVELS, ACCEPTABLE BIOLOGICAL CATCHES (ABC), AND TOTAL ALLOWABLE CATCHES (TAC) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE SHUMAGIN (SH), CHIRIKOF (CH), KODIAK (KD), WEST YAKUTAT (WYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA (GW). SPECIFICATIONS OF DOMESTIC ANNUAL PROCESSING (DAP) EQUAL TAC. VALUES ARE IN METRIC TONS

| Species | Over-fishing level | Area | ABC | TAC = DAP |
|---|---|---|---|---|
| Other species | NA | GW | NA | 20,432 |
| Total | | | | 289,066 |

Comments on this emergency rule are invited until July 23, 1992 and should be sent to the Chief, Fisheries Management Division, Alaska Region (see **ADDRESSES**). NMFS will initiate action with the Council about changes to regulations that will prevent a recurrence of this situation in future years.

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**Classification**

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under sections 553 (b) and (d) of the Administrative Procedure Act. In addition, this rule relieves a restriction on the fishing industry. Unnecessary sorting and discarding of groundfish that otherwise might be utilized will continue to occur until this emergency rule is implemented.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

Based on the EA prepared for this action, the Assistant Administrator concluded that no significant impact on the human environment will result. A copy of the EA is available (see **ADDRESSES**).

NMFS has determined that none of the actions taken under this emergency rule will adversely affect endangered or threatened species. Therefore, formal consultation pursuant to section 7 of the Endangered Species Act is not required for the implementation of this rule.

This emergency rule is exempt from the normal review procedures of Executive Order 12291, as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why following the usual procedures of that order is not possible.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because it is issued without opportunity for prior public comment.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

**List of Subjects in 50 CFR Part 675**

Fisheries, Reporting and recordkeeping.

Dated: July 1, 1992.

**Samuel W. McKeen,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 92-15876 Filed 7-1-92; 4:40 pm]

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**AGENCY:** O
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**ACTION:** No

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# Proposed Rules

Federal Register
Vol. 57, No. 131
Wednesday, July 8, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

**DEPARTMENT OF ENERGY**

**Office of Energy Research**

**10 CFR Part 605**

**Office of Energy Research Financial Assistance Program**

**AGENCY:** Office of Energy Research, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy (DOE) today is issuing this second notice of proposed rulemaking (NOPR) for the Special Research Grants Program, to be renamed the Office of Energy Research Financial Assistance Program, in connection with DOE's implementation of the President's regulatory review program. This proposal would additionally streamline, make uniform, clarify and reduce the burden of 10 CFR part 605. This proposal is associated with the proposal on 10 CFR part 605 appearing in the June 24, 1992, **Federal Register** at 57 FR 28137.

**DATES:** Written comments must be received August 7, 1992.

**ADDRESSES:** Send comments to: U.S. Department of Energy, Office of Energy Research, ER–64/GTN, Mail Stop G–236, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Zich, Director, U.S. Department of Energy, Acquisition and Assistance Management Division, Office of Energy Research, ER–64/GTN, Washington, DC 20585, (301) 903–5544.

**SUPPLEMENTARY INFORMATION:**

I. Introduction and Background
II. Amendments to 10 CFR Part 605
III. Opportunity for Public Comment
IV. Review Under Executive Order 12291
V. Review Under the Regulatory Flexibility Act
VI. Review Under the Paperwork Reduction Act
VII. Review Under the National Environmental Policy Act
VIII. Intergovernmental Review
IX. Review Under Executive Order 12612
X. Review Under Executive Order 12778
XI. Catalog of Federal Domestic Assistance

## I. Introduction and Background

In accordance with the DOE's response to the President's request for regulatory reform, the Office of Energy Research (ER) is hereby proposing a second amendment to 10 CFR part 605. This proposal would additionally streamline part 605, make part 605 uniform with other agencies' practices, and clarify the policies and administrative requirements for financial assistance awards in program areas of scientific, technical or educational interest to ER. This proposal would delete further provisions of part 605 that are unduly burdensome to financial assistance award recipients. The basis for the proposed amendments in ER's participation as a member of the Federal Demonstration Project, along with 10 other Federal agencies, that has for the past three years been testing streamlined financial assistance processes. Today's proposed rule references the new part heading proposed in the amendments published on June 24, 1992, at 57 FR 28137.

## II. Amendments to 10 CFR Part 605

The following amendments are proposed today:

To include cooperative agreements under part 605; therefore, all references to grants should be amended to read "awards," and all references to grantees should be amended to read, "recipients." Except for this overall amendment, the following are the only amendments being proposed at this time:

605.1 is amended to include cooperative agreement awards under 10 CFR part 605.

605.2 is amended to make cooperative agreement awards under 10 CFR part 605.

605.6 is amended to include cooperative agreement awards under 10 CFR part 605.

605.8 is amended to include cooperative agreement awards under paragraph (d)(2)(iv), include renewal applications as well as new applications in paragraph (b), and delete the twice-used phrase "continuation or" from paragraph (g).

605.9 is amended by deleting the phrase "of grants" from paragraph (f).

605.10 is amended to revise the evaluation criteria to include educational and training activities, substitute the words "applicants, recipients, awards and project" for "research, grantees, grant and research."

605.12 is amended by deleting the word, "grant" from paragraph (a). Delete the phrase "for a grant" from paragraph (b) and substitute the phrase, "of an award" in its place.

605.14 is amended to delete the word "Grants" and use the term "Awards" to indicate both grants and cooperative agreement awards are included under 10 CFR part 605.

605.16 is amended to include DOE's use of an indirect cost rate established at 8 percent of total direct costs on awards issued under part 605 for educational or training activities and to clarify DOE's requirements not to allow indirect costs under awards for conferences or meetings. This amendment makes DOE's payment and non-payment of indirect costs on these activities uniform with other Federal agencies' practices.

## III. Opportunity for Public Comment

Written comments from interested persons are invited in response to this NOPR by submitting three copies of data, views or arguments with respect to the proposals set forth in this notice to the address above. Please identify any comments submitted as "ER Amendments #2."

This notice of proposed rulemaking does not involve any significant issues of law or fact and the rule would be unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Accordingly, pursuant to 42 U.S.C. 7191(c) and 5 U.S.C. 553, DOE is not scheduling a public hearing.

## IV. Review Under Executive Order 12291

This NOPR has been reviewed by OMB under Executive Order 12291 (46 FR 13192, February 17, 1981). Prior to publication of the NOPR, DOE concluded that the proposed rule is not a "major rule" because its promulgation would not result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete in domestic or export markets.

**V. Review Under the Regulatory Flexibility Act**

This NOPR was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 95 Stat. 1164) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small business, small organizations, and small governmental jurisdictions. DOE concluded that this proposed rule would only affect small entities as they apply for and receive awards and does not create additional economic impacts on small entities. Accordingly, DOE certifies that this NOPR will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

**VI. Review Under the Paperwork Reduction Act**

The collection of information requirements contained in this NOPR has been approved by OMB under control numbers 1910–0040 and 1910–1400.

**VII. Review Under the National Environmental Policy Act**

DOE has concluded that the NOPR clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and the DOE guidelines (10 CFR part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

**VIII. Intergovernmental Review**

This program is generally not subject to the intergovernmental review requirements of Executive Order 12372 as implemented by 10 CFR 1005. However, certain financial assistance applications may be. All applications from governmental or non-governmental entities which involve research, development or demonstration activities are subject to the provisions of the Executive Order and 10 CFR Part 1005 when such activities: (1) Have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within the geographic area; (2) necessitate the preparation of an Environmental Impact Statement under NEPA; or (3) are to be initiated at a particular site or location and require unusual measures to limit the possibility of adverse exposure or hazard to the general public. Those planning to submit covered applications should immediately contact ER for further information.

**IX. Review Under Executive Order 12612**

Executive Order 12612 requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Today's proposal would amend existing regulations for a financial assistance program to stimulate research and development, as well as educational and training activities. There will not be any substantial direct effects on States.

**X. Review Under Executive Order 12778**

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposal meets the requirements of sections 2(a) and (b) of Executive Order 12778.

**XI. Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number for 10 CFR part 605 is 81.049.

**Lists of Subjects in 10 CFR Part 605**

Energy, Grant programs-energy, Reporting and recordkeeping requirements, Research.

In consideration of the foregoing, part 605 of chapter II of title 10 of the Code of Federal Regulations is proposed to be amended as set forth below

Issued in Washington, DC, on June 30, 1992.

**Robert M. Simon,**

*Principal Deputy Director, Office of Energy Research.*

Part 605 of chapter II of title 10, Code of Federal Regulations, is proposed to be amended as follows:

## PART 605—THE OFFICE OF ENERGY RESEARCH FINANCIAL ASSISTANCE PROGRAM

1. The authority citation for part 605 continues to read as follows:

**Authority:** Section 31 of the Atomic Energy Act, as amended, Pub. L. 83–703, 68 Stat. 919 (42 U.S.C. 2051); sec. 107 of the Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1240 (42 U.S.C. 5817); Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, 88 Stat. 1878 (42 U.S.C. 5901 *et seq.*); secs. 644 and 646 of the Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Federal Grant and Cooperative Agreement Act, as amended (31 U.S.C. 6301 *et seq.*).

**§ 605.1 [Amended]**

2. In § 605.1, after the phrase "award and administration of," replace "special research grants" with "grants and cooperative agreements".

**§ 605.2 [Amended]**

3. Section 605.2(b) is amended by replacing "special research grants," with "grants and cooperative agreements."

**§ 605.6 [Amended]**

4. Section 605.6, replace the phrase "special research grant" with "grant or cooperative agreement" as it appears in both sentences.

5. Section 605.8 is amended as follows:

(A) Amend paragraph (b), first sentence by replacing the word, "grant" with "or renewal award."

(B) Amend paragraph (b), second sentence by adding after the word, "new," the phrase, "or renewal."

(C) Paragraph (d)(2)(iv) is revised to read as follows:

**§ 605.8 Solicitation.**

* * * * *

(d) * * *

(2) * * *

(iv) Any other information which identifies areas in which grants or cooperative agreements may be made.

* * * * *

(D) Paragraph (g) is amended by removing the phrase "continuation or" (both occurrences).

**§ 605.9 [Amended]**

6. Section 605.9 is amended by removing the phrase "of grants" in paragraph (f).

7. Section 605.10 is amended as follows:

(A) Revise paragraph (d)(1) to read as follows:

**§ 605.10 Application evaluation and selection.**

* * * * *

(d) * * *

(1) The scientific and/or technical merits or the educational benefits of a project.

* * * * *

(B) Amend paragraph (d)(3) by replacing the word "research" with "applicant's."

(C) Amend paragraph (f) by replacing the word "grantee's" with "recipient's," replacing the word "grant" with "award," and removing the phrase "or continuation."

(D) Amend paragraph (g) by replacing the word "research" with the word "application" in the first sentence.

**§ 605.12 [Amended]**

8. Section 605.12 is amended as follows:

(A) Amend paragraph (a) by removing the word "grant" in the first sentence (both occurrences).

(B) Amend paragraph (b) by replacing the phrase "for a grant" with "of an award."

**§ 605.14 [Amended]**

9. Section 605.14 is amended as follows:

(A) Replace the phrase "Grants awarded" with "Awards".

10. Section 605.16 is added to read as follows:

**§ 605.16 Indirect Cost Limitations.**

(a) Awards issued under this part for conferences and scientific/technical meetings will not include payment for indirect costs.

(b) Under this Part, DOE restricts the indirect cost allowance for OER educational or training awards to an 8 percent rate based upon total direct costs.

[FR Doc. 92-15987 Filed 7-7-92; 8:45 am]
BILLING CODE 6450-01-M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 92-CE-32-AD]**

### Airworthiness Directives; Beech 58, 58P, and 58TC Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech 58, 58P, and 58TC airplanes. The proposed action would require a modification to the engine controls support structure. The Federal Aviation Administration (FAA) has received several reports of cracked angle attachment clips that support the engine controls inside the pedestal on the affected airplanes. The actions specified by the proposed AD are intended to prevent loss of engine throttle control caused by failure of the engine controls support angle attachment clips.

**DATES:** Comments must be received on or before September 11, 1992.

**ADDRESSES:** Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-32-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 676-7111. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4145.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-32-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, attention: Rules Docket No. 92-CE-32-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Discussion**

The FAA has received reports of cracked angle attachment clips that support the engine controls inside the pedestal on certain Beech 58, 58P, and 58TC airplanes. In a few of these instances, the cracked angle attachment clips separated, which resulted in loss of engine throttle control. One cracked and separated angle attachment clip incident resulted in a blown tire because of the excessive braking required when the airplane could not be throttled back to idle. Cracked, but not separated, angle attachment clip incidents have resulted in the throttles sticking.

Beech has developed Kit No. 58-5016-1 S, which provides parts and information needed to replace the engine controls support angle attachment clip with brackets. This kit is referenced in Beech Service Bulletin (SB) No. 2439, dated May 1992.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent loss of engine throttle control caused by failure of the engine controls support angle attachment clips.

Since the condition described is likely to exist or develop in other Beech 58, 58P, and 58TC series airplanes of the same type design, the proposed AD would require modification of the engine controls support structure in accordance with the instructions in Beech Kit No. 58-5016-1 S as referenced in Beech SB No. 2439, dated May 1992. This kit provides all the materials and instructions for replacing the engine

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controls support angle attachment clips with brackets.

The FAA estimates that 237 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $257 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $113,049.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [AMENDED]**

2. Section 39.13 is amended by adding the following new AD:

**Beech: Docket No. 92–CE–32–AD.**

*Applicability:* The following model and serial number airplanes, certificated in any category:

| Models | Serial numbers |
|---|---|
| 58 and 58A | TH–1389 and TH–1396 through TH–1662. |
| 58TC and 58TCA | TK–147 and TK–151. |
| 58P and 58PA | TJ–436 and TJ–444 through TJ–497. |

*Compliance:* Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of engine throttle control caused by failure of the engine controls support angle attachment clips, accomplish the following:

(a) Modify the engine controls support structure in accordance with the instructions in Beech Kit No. 58–5016–1 S as referenced in Beech Service Bulletin No. 2439, dated May 1992.

Note 1: Beech Kit No. 58–5016–1 S consists of all the materials and instructions for replacing the engine controls support angle attachment clips with brackets, and may be obtained from the manufacturer at the address specified in paragraph (d) of this AD.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri.

Issued in Kansas City, Missouri, on July 1, 1992.

Barry D. Clements,

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–15908 Filed 7–7–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 92–CE–22–AD]**

**Airworthiness Directives; British Aerospace, Regional Aircraft Limited, Jetstream Model 3101 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to supersede Airworthiness Directive (AD) 91–08–01, which currently requires revising the maximum speed for flaps at 50 degrees from 153/149 knots indicated airspeed (KIAS) to 130 KIAS on British Aerospace (BAe), Regional Aircraft Limited, Jetstream Models 3101 airplanes; and also requires limiting the maximum flap extension to 20 degrees anytime ice is present on the airplane. BAe has developed a modification to the flap system and the Federal Aviation Administration (FAA) has determined that, if the affected airplanes have this modification incorporated, then the actions of AD 91–08–01 are no longer required. The actions specified in this proposed AD are intended to prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane.

**DATES:** Comments must be received on or before September 18, 1992.

**ADDRESSES:** Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–22–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from British Aerospace, Regional Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; Telephone (703) 435–9100; facsimile (703) 435–2628. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–22–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–22–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Discussion**

AD 91–08–01, Amendment 39–7007 (56 FR 24333, May 30, 1991), currently requires revising the maximum speed for flaps at 50 degrees from 153/149 knots indicated airspeed (KIAS) to 130 KIAS on British Aerospace (BAe), Regional Aircraft Limited, Jetstream Models 3101 airplanes; and also requires limiting the maximum flap extension to 20 degrees anytime ice is present on the airplane. This AD action was prompted by an accident in which a Jetstream Model 3101 airplane crashed following flap extension to the 50-degree position for landing. Three post-incident reports of pitch-down occurrences that did not result in an accident were also reported. In one case, a pilot experienced a pitch down and after landing noticed a buildup of over three inches of rough ice on the leading edge of the horizontal stabilizer. The two other reports were of a similar nature with lesser amounts of ice.

After the issuance of AD 91–08–01, the Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, and the FAA conducted a special flight test and evaluation program of the Jetstream Model 3101. The goal of this program was to help identify any possible problem areas, or define any permanent remedial measures. Based upon the findings of this evaluation program, BAe has developed a modification to the flap system that, if incorporated, would eliminate the need for the flap system revision and limitation currently required by AD 91–08–01.

BAe has issued Service Bulletin (SB) 27–JA 910541, which specifies procedures for incorporating this flap system modification. BAe SB 27–JA 910541 consists of the following pages and revision levels:

| Pages | Revision level | Date |
|---|---|---|
| 1, 3, 4, 31, and 32 | 2 | Feb. 4, 1992. |
| 2, 5 through 30, and 33 through 45. | 1 | Nov. 11, 1991. |

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has examined the circumstances and reviewed all available information related to the incidents described above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the condition described is likely to exist or develop in other BAe, Regional Aircraft Limited, Jetstream Model 3101 airplanes of the same type design, the proposed AD would supersede AD 91–08–01 with a new AD that would (1) retain the flap system operating revision and limitation currently required by AD 91–08–01; and (2) limit the applicability to only those airplanes that have not modified the flap system in accordance with BAe Service Bulletin 27–JA 910541.

The FAA estimates that 152 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,360. The only cost difference between the proposed actions and those required by AD 90–08–01, which would be superseded by the proposed AD, is the exemption of airplanes that have incorporated the flap system modification. The cost impact of the proposed AD on U.S. operators would be reduced by this exemption, but the FAA cannot determine how much it would be reduced because there are no available means of determining how many operators have incorporated the flap system modification.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing AD 91–08–01, Amendment 39–7007 (56 FR 24333, May 30, 1991), and adding the following new AD:

**British Aerospace, Regional Aircraft Limited:** Docket No. 92–CE–22–AD. Supersedes AD 91–08–01, Amendment 39–7007.

*Applicability:* Jetstream Model 3101 airplanes (all serial numbers), certificated in any category, that have not modified the flap system in accordance with the Accomplishment Instructions section of British Aerospace (BAe) Service Bulletin (SB) 27–JA 910541, which consists of the following pages and revision:

| Pages | Revision level | Date |
|---|---|---|
| 1, 3, 4, 31, and 32..... | 2 | Feb. 4, 1992. |
| 2, 5 through 30, and 33 through 45. | 1 | Nov. 11, 1991. |

*Compliance:* Required as indicated after the effective date of this AD, unless already accomplished.

To prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after June 10, 1991 (the effective date of superseded AD 91–08–01), accomplish the following:

(1) Modify the operating limitations placards located on the flight deck in accordance with Jetstream Alert SB No. 27–A–JA 910340, dated March 25, 1991. This modification will limit the maximum flap extension speed at the 50-degree position to 130 knots indicated airspeed (KIAS).

(2) Insert a copy of this AD into the limitations section of the airplane flight manual and operate the airplane in accordance with these limitations.

(b) Within the next 25 hours TIS after June 10, 1991 (the effective date of superseded AD 91–08–01), accomplish the following:

(1) Fabricate a placard with the words "Do not extend the flaps beyond the 20-degree position if ice is visible on airplane and ensure that the landing gear selector is down prior to landing." Install this placard on the airplane's instrument panel within the pilot's clear view and operate the airplane in accordance with these limitations. Parts of the airplane where ice could specifically be visible include the windshield wipers, center windshield, propeller spinners, or inboard wing leading edges.

(2) Operate the airplane in accordance with BAe CAA-Mandatory Alert Service Bulletin 27–A–JA 910340, dated March 25, 1991, Section 2.B.—Instruction for Aircraft Operations, paragraphs (1)(a) and (1)(c) until Amendments P/32, P/49, and P/52 have been received. Upon receipt, incorporate these amendments into Airplane Flight Manual (AFM) HP.4.10 and operate the airplane accordingly. Ensure that Amendment G/10 is incorporated into AFM HP.4.10.

(c) Within the next 150 hours TIS, perform an operational test of the landing gear position indication and warning system to establish whether the warning system operates at the 20-degree or 50-degree position. Accomplish this test in accordance with the instructions in the Jetstream Series 3100 Airplane Maintenance Manual.

(1) If the warning system operates at the 20-degree position, no further action is needed.

(2) If the warning system operates at the 50-degree position, modify the airplane in accordance with the instructions in Jetstream SB 32–JM 7493, Revision 1, dated March 25, 1991.

(d) The actions required by paragraphs (a), (b), and (c) of this AD may be terminated if the flap system is modified in accordance with BAe SB 27–JA 910541.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace, Regional Aircraft Limited, Manager Product Support, Commercial Aircraft Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 91–08–01, Amendment 39–7007.

Issued in Kansas City, Missouri, on July 1, 1992.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–15909 Filed 7–7–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 92–NM–57–AD]**

## Airworthiness Directives; Boeing Model 737–300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–300 series airplanes, that currently requires a one-time inspection for chafing and leaks on the variable stator vane (VSV) control system fuel manifold, inspections for correct orientation of the three fifth/ninth stage pneumatic duct coupling clamps, and repair or replacement of chafed components, and relocation of components, if necessary. This action would require that these inspections be performed at repetitive intervals; and provides an optional terminating modification for the repetitive inspections. This proposal is prompted by a recent re-evaluation of the available service information and the actions required by the existing AD. The actions specified by the proposed AD are intended to prevent fuel leakage, which can create a potential fire hazard and lead to subsequent engine shutdown.

**DATES:** Comments must be received by August 24, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–57–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen S. Bray, Aerospace Engineer, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2681; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained

in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–57–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**Discussion**

On September 9, 1991, the FAA issued AD 91–20–03, Amendment 39–8037 (56 FR 47671, September 20, 1991), to require inspection for chafing and leaks on the variable stator vane (VSV) control system fuel manifold, inspections for correct orientation of the three fifth/ninth stage pneumatic duct coupling clamps, and replacement or relocation of components, if necessary. That action was prompted by reports of damage to VSV control system fuel manifolds and chafing of the fuel supply tube lower clamp. The requirements of that AD are intended to prevent fuel leakage, which can create a potential fire hazard and lead to subsequent engine shutdown.

Since the issuance of that AD, the FAA has received a number of inquiries from affected operators requesting clarification of the actions currently required by AD 91–20–03 and the accomplishment instructions of applicable service information. The following discussion provides responses to these inquiries and explains proposed changes to the rule that the FAA has determined to be necessary.

The existing AD does not specify that the fuel supply line on Group 1 airplanes must be inspected to detect interference of the left fan cowl hold open rod with a fuel supply tube and/or lower clamp, as described in Part I of Boeing Alert Service Bulletin 737–71A1208, Revision 2, dated March 23, 1989. The FAA has determined that this inspection is necessary for Group 1 airplanes in order to ensure that the fan hold open rod does not chafe the fuel supply line; therefore, a requirement for such an inspection is included in this proposed AD.

The FAA has received assurance from the airplane manufacturer that proper installation of the VSV fuel manifold and the fifth/ninth stage pneumatic duct coupling clamps has been performed on all Group 3 airplanes during production. Based on this information, the FAA has determined that an initial inspection of the VSV manifold and check of the fifth/ninth stage pneumatic duct coupling clamps is not required for Group 3 airplanes. That requirement is not included in the proposed AD.

Additionally, the FAA has determined that repetitive inspections for chafing and leaks on the variable stator vane (VSV) control system fuel manifold, and inspections for correct orientation of the three fifth/ninth stage pneumatic duct coupling clamps, must be required for Groups 1, 2, and 3, airplanes in order to ensure that the pneumatic duct coupling clamps are correctly installed. Such a repetitive inspection requirement has been included in this proposed AD. However, and optional modification is included in this proposed AD which, if installed, would provide terminating action for the repetitive inspections of these airplanes. This modification consists of installing index keyed pneumatic ducts, which will prevent chafing of the VSV control system fuel manifolds. Procedures for installing this modification are described in Boeing Alert Service Bulletin 737–71A1208, Revision 2, dated March 23, 1989.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–20–03 to include the changes described previously.

There are approximately 455 Model 737–300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 264 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 17 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $246,840. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety and recordkeeping requirements.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–8037 (56 FR 47671, September 20, 1991), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 92–NM–57–AD. Supersedes AD 91–20–03, Amendment 39–8037.

**Applicability:** Model 737–300 series airplanes; as listed in Boeing Alert Service Bulletin 737–71A1208, Revision 2, dated March 23, 1989; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent fuel leakage, causing a potential fire hazard and subsequent engine shutdown, accomplish the following:

(a) For airplanes listed in Boeing Alert Service Bulletin 737–71A1208, dated December 10, 1987: Within the next 30 days after May 27, 1988 (the effective date of AD 88–11–01, Amendment 39–5918), inspect the variable stator vane (VSV) fuel manifold for

chafing and leaks, and check orientation of the fifth/ninth stage pneumatic duct coupling clamps, in accordance with that service bulletin. Repair or replace chafed components and relocate components, as necessary, prior to further flight.

(b) For Groups 1 and 2 airplanes listed in Boeing Alert Service Bulletin 737–71A1208, Revision 2, dated March 23, 1989, that are not subject to paragraph (a) of this AD: Within the next 60 days after October 7, 1991 (the effective date of AD 91–20–03, Amendment 39–8037), inspect the VSV fuel manifold for chafing and leaks, and check orientation of the fifth/ninth stage pneumatic duct coupling clamps, in accordance with that service bulletin. Repair or replace chafed components and relocate components, as necessary, prior to further flight.

(c) For Groups 1 and 2 airplanes listed in Boeing Alert Service Bulletin 737–71A1208, Revision 2, dated March 23, 1989: Within the next 60 days after the effective date of this AD, and thereafter at each engine change, inspect the VSV fuel manifold for chafing and leaks, and check orientation of the fifth/ninth stage pneumatic duct coupling clamps, in accordance with that service bulletin. Repair or replace chafed components and relocate components, as necessary, prior to further flight.

(d) For Group 3 airplanes listed in Boeing Alert Service Bulletin 737–71A1208, Revision 2, dated March 23, 1989: At each engine change after the effective date of this AD, inspect the VSV fuel manifold for chafing and leaks, and check orientation of the fifth/ninth stage pneumatic duct coupling clamps, in accordance with that service bulletin. Repair or replace chafed components and relocate components, as necessary, prior to further flight.

(e) For Group 1 airplanes, as listed in Boeing Alert Service Bulletin 737–71A1208, Revision 2, dated March 23, 1989: Within 60 days after the effective date of this AD, inspect the fuel supply line for interference of the left fan cowl hold open rod with a fuel supply tube and/or lower clamp; in accordance with Boeing Alert Service Bulletin 737–71A1208, Revision 2, dated March 23, 1989. Repair or replace chafed components and relocate components, as necessary, prior to further flight.

(f) Installation of index keyed pneumatic ducts, in accordance with Boeing Alert Service Bulletin 737–71A1208, Revision 2, dated March 23, 1989, constitutes terminating action for the repetitive inspections required by paragraphs (c) and (d) of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 22, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–15919 Filed 7–7–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 92–AGL–7]**

## Proposed Transition Area Establishment; Cottage Grove, WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish a transition area near Cottage Grove, WI, to accommodate a new VOR–A Standard Instrument Approach Procedure (SIAP) to Blackhawk Field Airport, Cottage Grove, WI. The intended effect of this action is to ensure segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before August 17, 1992.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Attn: Rules Docket No. 92–AGL–7, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AGL–7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to section 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area near Cottage Grove, WI, to accommodate a new VOR–A SIAP to Blackhawk Field Airport, Cottage Grove, WI.

The development of the procedure requires that the FAA alter the designated airspace to ensure that the procedure would be contained within

controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700–foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The airspace designation for the transition area listed in this document is published in § 71.181 of Handbook 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Incorporation by reference, Transition areas.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389, 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective December 1, 1991, is amended as follows:

*Section 71.181 Designation*

* * * * *

AGL WI TA Cottage Grove, WI [New]
Cottage Grove, Blackhawk Field Airport, WI
(lat. 43° 06′ 15″ N. long. 89° 11′ 05″ W)
That airspace extending upward from 700 feet above the surface within a 6.2 nautical mile radius of Blackhawk Field Airport; excluding that airspace within the Madison, WI, ARSA and Transition Area.

* * * * *

Issued in Des Plaines, Illinois on June 19, 1992.

**John P. Cuprisin,**

*Manager, Air Traffic Division.*

[FR Doc. 92–15678 Filed 7–7–92; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF TRANSPORTATION**

**14 CFR Part 71**

**[Airspace Docket No. 92–AGL–5]**

## Proposed Alteration to VOR Federal Airway V–103; MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify Federal Airway V–103 by realigning the airway from the Windsor, ON, Canada, VHF omnidirectional range (VOR) to the Pontiac, MI, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) and to the Lansing, MI, VORTAC. Realigning V–103 would reduce controller workload, simplify routings and make better use of the airspace.

**DATES:** Comments must be received on or before August 24, 1992.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500 Docket No. 92–AGL–5, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AGL–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign V–103 from the Windsor, ON, Canada, VOR to the Pontiac, MI, VORTAC and to the Lansing, MI, VORTAC. The current alignment of V–103 coupled with the 8,000 feet mean sea level minimum en route altitude restrict operation along the airway. Realigning V–103 would allow air traffic control the capability to utilize a lower en route

altitude. Modifying the airway would reduce controller workload, simply routings, and make better use of the airspace. VOR Federal airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designation of the airway listed in this document would be published subsequently in Section 71.123 of the Handbook, if the regulation is promulgated.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Incorporation by reference, VOR Federal airways.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compliation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

*Section 71.123 Domestic VOR Federal Airways*

* * * * *

V–103 [Revised]

From Chesterfield, SC; Greensboro, NC; Roanoke, VA; Elkins, WV; Clarksburg, WV; Bellaire, OH; INT Bellaire 327°T(331°M) and Akron, OH, 181°T(185°M) radials; Akron; INT Akron 319°T(323°M) and Windsor, ON, Canada, 125°T(131°M) radials; Windsor; Pontiac, MI; to Lansing, MI. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on June 30, 1992.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 92–15920 Filed 7–7–92; 8:45 am]

BILLING CODE 4910–13–M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 180**

**[PP 6E3447/P546; FRL–4070–3]**

**RIN 2070–AC18**

## Pesticide Tolerance for Ebufos

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to establish a 2-year time-limited import tolerance for residues of the nematicide/insecticide ebufos, O-ethyl S,S-di-*sec*-butyl phosphorodithioate, in or on the raw agricultural commodity (RAC) bananas at 0.01 part per million (ppm). This proposal to establish maximum permissible levels of residues of the nematicide/insecticide in or on the commodity was requested by the FMC Corp.

**DATES:** Comments, identified by the document control number [PP 6E3447/P546], must be received on or before August 7, 1992.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert A. Forrest, Product Manager (PM 14), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-305-6600.

**SUPPLEMENTARY INFORMATION:** The FMC Corp., Agricultural Chemical Group, 200 Market St., Philadelphia, PA 19103, has submitted pesticide petition (PP) 6E3447 to EPA. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of an import tolerance for residues of the nematicide/insecticide ebufos in or on the RAC bananas at 0.02 ppm. The petition was subsequently amended to lower the tolerance proposed to 0.01 ppm.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year dog feeding study with a no-observed-effect level (NOEL) at 0.001 milligram/kilogram/day. The lowest effect level (LEL) was 0.005 mg/kg/day for cholinesterase (ChE) inhibition. Levels tested were 0.0002, 0.001, 0.005, and 0.02 mg/kg.

2. A 2-year rat feeding/carcinogenicity study with a NOEL of 1.0 ppm for both systemic and ChE inhibition. The study was negative for carcinogenic effects under the conditions of the study at all feeding levels. Levels tested were 0.1, 0.5, 1.0, and 5.0 ppm.

3. A 2-year mouse carcinogenic study which was negative for carcinogenic effects under the conditions of the study at all feeding levels. Levels tested were 0.1, 0.5, 1.0, and 5.0 ppm.

4. A two-generation reproduction study in rats with a NOEL of 0.1 ppm (equivalent to 0.005 mg/kg/day) for reproductive effects consisting of a significant decrease in the live birth index at the 0.5 ppm (0.025 mg/kg) level. Levels tested were 0.1, 0.5, and 5.0 ppm.

5. A rat teratology study with a NOEL of 6.0 mg/kg/day for developmental toxicity based on developmental effects associated with the toxicity of ebufos. Levels tested were 0.2, 6.0, and 18.0 mg/kg/day.

6. A rabbit teratology study with a lowest observable effect level (LOEL) of 0.9 mg/kg/day for developmental

toxicity. Levels tested were 0.1, 0.3, and 0.9 mg/kg.

7. An acute delayed neurotoxicity study in chickens, which was negative for neurotoxic effects under the conditions of the study (highest dose tested was 8.0 mg/kg).

8. An Ames test was not mutagenic at the highest doses tested, 600 and 900 *ug*/plate, with or without metabolic activation, respectively.

9. An unscheduled DNA synthesis test in rat hepatocytes was not mutagenic at the highest dose tested, 45 ul/ml.

10. A chromosome aberration assay in Chinese hamster ovary cells was not mutagenic at the highest dose tested, 75 ul/ml with or without the metabolic activation.

11. In an in vitro cell transformation test, it was concluded that ebufos was capable of inducing morphological transformations of mouse embryo cells in the presence of metabolic activation at the highest three out of the four dose levels tested which were 0.06, 0.07, 0.08, and 0.09 *ul*/ml. A positive finding in a mutagenicity test such as this one suggests that the test substance has the potential for inducing carcinogenic effects. Based on the negative findings of the 2-year rat and mouse carcinogenicity studies described above, the pesticide is not considered to be a carcinogen.

12. In a metabolism study with rats, 63 to 79 percent of the dose was excreted in the urine within 24 hours. The major urinary metabolites were methane sulfonic acid; o-ethyl S-(2-butyl) phosphorothioic acid; the threo and ethylthro stereoisomers of methyl 1-methyl-2-hydroxypropyl-sulfone; and S,S-di(2-butyl) phosphorodithioate.

The reference dose (RfD) based on the 1-year feeding study in dogs with a NOEL for ChE at 0.001 mg/kg/day and using an uncertainty factor of 100 is calculated to be 0.00001/mg/kg of body weight (bwt)/day. The theoretical maximum residue contribution (TMRC) resulting from this action will be 0.000002 mg/kg/bwt/day for the overall U.S. population and represents 23 percent of the RfD. The TMRC for the highest exposed subgroup, nonnursing infants less than 1 year old, is 0.000011 mg/kg/ bwt/day, or 108.38 percent of the RfD, assuming that residue levels are at the established tolerances and that 100 percent of the crop is treated.

The Agency believes that actual residues to which the public is likely to be exposed are considerably less than indicated for the following reasons.

1. Not all the planted crop for which a tolerance is established is normally treated with the pesticide.

2. Most treated crops have residue levels which are below the established tolerance level at the time of consumption.

To take the second factor into account, the Agency used the anticipated residues in the RfD analysis. In particular, the anticipated residue value of 0.005 ppm which is the limit of detection of the analytical method for ebufos was used in the analysis. This value was used considering the fact that most bananas are eaten or processed with the peel removed and that the available data showed no detectable residues in the pulp even for exaggerated application rates. Following this adjustment, the estimate of exposure from the proposed tolerance is 0.000001 mg/kg bwt/day, or 11.5 percent of the RfD for the overall population and the estimate of exposure to nonnursing infants less than 1-year old is 0.000005 mg/kg bwt/day, or 54.2 percent of the RfD.

To ensure that ebufos is being applied on bananas in a manner that would not result in an increase in the anticipated residue level, the Agency is requiring that confirmatory usage data including the application rate, number and timing of applications, and the application method be submitted within 12 months after the effective date of the final rule establishing the tolerance.

The nature of the residues in bananas is adequately understood, and an adequate analytical method, gas liquid chromatography using either a flame photometric detector or an alkali ionization detector, is available for enforcement purposes.

Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

Residue methodology data using the Food and Drug Administration pesticide multiresidue method protocols are currently lacking for ebufos and are needed to fulfill the regulatory requirements.

Bananas are not considered to be a livestock feed item. Thus, there is no reasonable expectation of secondary residues in eggs, milk, and meat byproducts from the use of ebufos on bananas.

Because of the lack of FDA multiresidue methodology studies; and the need for confirmatory usage data, the Agency is limiting the period of time that the proposed regulation is to be in effect. Upon receipt of adequate multiresidue methodology studies, and usage data, the Agency will reassess the tolerance for bananas and, if appropriate, will propose that a permanent tolerance be established for this commodity.

The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the establishment of the tolerance will protect the public health. Therefore, the tolerance is proposed as set forth below.

The proposed tolerance of .01 ppm agrees with the tolerance proposed by the Codex Alimentarius Commission for residues of ebufos in or on bananas.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3447/P546]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 25, 1992.

**Stephanie R. Irene,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. By adding new § 180.461 to subpart C, to read as follows:

**§ 180.461 Ebufos; tolerances for residues.**

(a) [Reserved]

(b) A time-limited tolerance to expire July 8, 1994 is established for residues of the nematicide/insecticide ebufos, O-ethyl S,S-di-*sec*-butyl phosphorodithioate, in or on the following raw agricultural commodity:

| Commodity | Parts per million |
|---|---|
| Bananas | 0.01 |

There are no U.S. registrations as of July 8, 1992 for the nematicide/insecticide ebufos.

[FR Doc. 92-15826 Filed 7-7-92; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL MARITIME COMMISSION

**46 CFR Part 586**

**[Petition No. P2-92; Docket No. 92-42]**

### Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade

**AGENCY:** Federal Maritime Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Maritime Commission publishes this proposed rule, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, in response to a petition for relief from conditions allegedly unfavorable to shipping in the United States-Korea trade resulting from Republic of Korea laws. The proposed rule imposes sanctions on Korean, non-U.S. citizen, owned or controlled ocean freight forwarders and non-vessel-operating common carriers.

**DATES:** Comments due on or before August 7, 1992.

**ADDRESSES:** Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

**SUPPLEMENTARY INFORMATION:**

**Introduction**

Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876, as amended by Public Law 101-595, 104 Stat. 2979 ("section 19"), authorizes the Federal Maritime Commission ("Commission") or "FMC") to take regulatory action to correct unfavorable shipping conditions in U.S. foreign oceanborne commerce. Specifically, paragraph (1)(b) of section 19 directs the Commission:

> [T]o make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

46 U.S.C. app. 876(1)(b).

Section 19 further provides that the Commission may initiate such rule or regulation on its own motion or pursuant to a petition for section 19 relief by an affected person. Paragraph (5) of section 19 states in this regard:

> Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under paragraph (1)(b) of this section.

46 U.S.C. app. 876(5).

The Commission's regulations governing section 19 proceedings are set forth at 46 CFR part 585—Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Commerce of the United States ("Section 19 Regulations"). The section 19 Regulations describe who may file petitions, 46 CFR 585.4, how such petitions are filed, 46 CFR 585.5, the contents of petitions, 46 CFR 585.6, and how petitions may be amended or dismissed, 46 CFR 585.7.

The section 19 Regulations also set forth the types of conditions which are generally presumed to be actionable under section 19. These include those which impose discriminatory fees, charges, requirements or restrictions upon certain vessels in the foreign trade of the United States; preclude or tend to preclude some vessels from competing in the trade on the same basis as any other vessel; reserve substantial cargoes to the national-flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in U.S. foreign trades; are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors; and are otherwise unfavorable to shipping in the foreign trade of the United States. 46 CFR 585.3(a), (b), (c), (d).

**Background**

Direct Container Line, Inc. ("Petitioner" or "DCL"), a California corporation operating as a non-vessel operating common carrier ("NVOCC") in the outbound Trade, has filed a petition for relief ("Petitioner") under section 19 from conditions allegedly unfavorable to shipping in the United States-Korea trade ("Trade"). The Petition alleges that DCL has been prevented by Korean law from establishing a branch office in Korea and from operating in the inbound Trade.

A Notice of Filing of the Petition was published in the **Federal Register**, 57 FR 3433 (Jan. 29, 1992), soliciting comments on the Petition generally and specifically on the question of what relief might be fashioned to deal with the unfavorable conditions alleged. Comments were received from nine parties.

**The Petition**

Petitioner alleges that it has been unable to establish a branch office in Korea and therefore has been precluded from operating in the inbound U.S. trade from Korea as a result of the Korean Maritime Transportation Business Act ("Korean Act"), a statute of the Republic of Korea ("ROK"). Petitioner describes the relevant provisions of the Korean Act as follows:

> Chapter IV of the Act, entitled "Maritime Freight Forwarding Business; Maritime Transportation Brokering Business; Shipping Agency Business; Vessel Chartering Business; and Vessel Management Business," broadly covers the shoreside activities of Korea's waterborne foreign commerce, which it expressly classifies generically as "maritime freight forwarding business, etc."
>
> * * * Article 34 of the Act requires as a prerequisite to engaging in any such business in Korea that the would-be operator "register with the Administrator of the Korean Maritime and Port Administration under the conditions as prescribed by the Ordinance of the Ministry of Transportation."
>
> Article 35-2, (paragraph 1, requires that) * * * "a foreigner" wishing to engage in "a maritime freight forwarder business, etc." * * * (have) the "authorization of the aforesaid Administrator, (and) paragraph 2 * * * (provides):

(2) If a foreigner desires to obtain the authorization of investment in a maritime freight forwarding business, etc. under Paragraph (1), the ratio of domestic persons' investment and that of composition of the juristic person's officers shall exceed ½, and the representative of such juristic person shall be a domestic person."

Petition, 2. The Korean Act thus imposes a strict nationality-based requirement for participation as a freight forwarder or NVOCC in the Trade from Korea, and further provides for penalties for violation, including imprisonment and substantial fines.

Petitioner also describes diplomatic attempts to resolve the problem, including ongoing efforts by the U.S. Trade Representative ("USTR") and discussions by the U.S. embassy in talks with representatives of the Government of Korea. These efforts are said to have yielded no visible progress.

Additionally, Petitioner reports that its past attempts to do business in Korea in the prescribed manner, i.e. through a Korean agent, have resulted in a succession of business losses as "one after another, each of (the agents engaged by Petitioner) has gone out of business, in each case holding freight revenues collected on petitioner's shipments, none of which petitioner has been able to recover." Id., 4. Petitioner reports that it has also explored the possibility of entering into a minority ownership arrangement with a Korean national which would comply with the Korean Maritime Transportation Business Act, but found the arrangements and the outcome unsatisfactory.

Finally, Petitioner advises that it is unable to suggest a satisfactory form of sanction which might be imposed under section 19 in this case and requests that the Commission fashion an appropriate remedy.

**Comments on the Petition**

*A. Comments in Support*

Target Intermodal supports the Petition and suggests the suspension of the tariffs of U.S. resident, Korean owned NVOCCs. Trans-World Shipping Corporation, a customshouse broker and freight forwarder, suggests as a sanction that all licensed freight forwarders and NVOCCs be required to certify that the firm is less than fifty percent owned by Korean nationals.

The New York Foreign Freight Forwarders and Brokers Association ("New York Association"), on behalf of its 110 FMC-licensed ocean freight forwarder and NVOCC members, informs the Commission that the current trade practices of the ROK have created unfavorable shipping conditions in the Trade. The New York Association states that its members are disadvantaged by the Korean laws which prevent them from freely conducting business operations in Korea while their Korean competitors suffer no similar restrictions in their U.S. operations.

Absent action by the ROK to change its practices, the New York Association urges the Commission to enforce reciprocal measures against Korean forwarders and NVOCCs operating in the U.S. Noting the correspondence from the USTR and the U.S. Maritime Administrator, filed as attachments to the Petition, indicating that legislative changes by the Korean Government are unlikely in the near term, the Association calls for the Commission to issue regulations to adjust or meet the conditions imposed by Korean law. It proposes that any freight forwarder or NVOCC that falls under the direct or indirect control of Korean nationals by subjected to sanctions. To this end, the New York Association suggests that:

—The FMC determine that an entity of which more than 51 percent is owned by Korean nationals is Korean owned and controlled;
—Every NVOCC filing a tariff with the FMC certify that it is not owned or controlled by Korean nationals;
—All ocean freight forwarder applicants similarly certify non-Korean ownership;
—All existing NVOCC tariffs and ocean freight forwarder licenses be reviewed to ascertain that the business is not owned or controlled by Korean nationals (measured by whether Korean nationals comprise more than one-half of the officers and operators); the license of any freight forwarder found to be Korean owned or controlled be revoked after notice and hearing; and the tariff of any NVOCC found to be Korean owned or controlled be suspended; and
—Each existing NVOCC and ocean freight forwarder be required to certify in its annual anti-rebate certification that it is not owned or controlled by Korean nationals.

The Pacific Coast Council of Customs Brokers and Freight Forwarders ("Pacific Coast Council") also supports the Petition. The Council, which represents over 7,000 customs brokers, freight forwarders and NVOCCs, states that its members are most directly affected by discriminatory Korean law because their West coast location is the gateway to Korea and the Pacific rim. It complains that the ownership restrictions imposed by Article 35–2 of the Korean Act "force U.S. NVOCCs/freight forwarders to relinquish both managerial and ownership control over their own branch organizations." Pacific Coast Council Comments, 4. Pacific Coast Council disputes the claim that poor judgment in choosing an agent is to blame for DCL's problems, nothing that this approach "begs the question" of the discriminatory impact of the requirement for a U.S. enterprise "to turn over its business to (a) * * * Korean agent." *Id.*

The Pacific Coast Council is among those commenters who discussed the planned consortium of Korean forwarders to operate a U.S.-based nationwide customhouse brokerage and forwarder, expressing the belief of many of its members:

> That the Korean Government will secretly force or persuade most of the major trading companies and manufacturing companies to direct their U.S. bound or sourced transportation forwarding consolidation and Customs requirements to those Korean companies who are members of the consortium.

*Id.*, 5. The planned consortium is said to indicate both the discrepancy between treatment of foreign forwarders and NVOCCs in the U.S. and Korea and the need for equal treatment.

The Pacific Coast Council notes that "the problem of discriminatory treatment of U.S. forwarders/NVOCCs in Korea has previously been addressed through intergovernmental negotiations," but that is has not been resolved. *Id.*, 2–3. It refers to the contacts with Korean authorities by the USTR and the U.S. embassy in Seoul, as reported by the Maritime Administrator, without satisfactory results.

The Pacific Coast Council suggests that the Commission impose sanctions on Korean-based freight forwarders and NVOCCs. It proposes that the FMC scrutinize the freight forwarder licenses and NVOCC bonds on file with the Commission to identify those companies based in Korea, and notify each that it is subject to license or bond revocation or suspension [1] unless Korean laws and practices are revised to eliminate their discriminatory impact. The Council emphasizes that its object in urging imposition of sanctions is not to prevent Korean-based companies from operating in the United States, but to gain equal treatment for U.S. companies operating in Korea.

The National Customs Brokers and Forwarders Association of America, Inc.

[1] The Council believes that suspension of an NVOCC's bond will prevent it from operating because ocean common carriers are prohibited from accepting cargo from an NVOCC which lacks a bond.

("NCBFAA") advises that its members are directly affected by the issues raised in DCL's Petition. NCBFAA identified the detrimental effects of Korean law as follows:

> First, the ban on control makes it difficult for non-Korean forwarders to establish efficient and viable relationships with inland Korean transportation companies, thus placing them at a substantial competitive disadvantage with Korean-owned firms. Second, the absence of a direct presence in Korea makes it substantially more difficult for U.S.-owned firms to solicit the business of Korean exporters.

NCBFAA Comments, 3.

NCBFAA also focusses on the planned consortium operation, indicating that reported ROK participation and direction raises extremely troublesome issues of antitrust, national security and fundamental commercial fairness. NCBFAA argues that the allegedly smaller size of Korean-based forwarders and brokers is not a basis for discrimination against U.S. companies, most of which are, in any event, relatively small in size.

NCBFAA agrees with the New York Association that sanctions should be imposed on forwarders and NVOCCs owned or controlled by Korean nationals, and further suggests that the Commission seek participation of the U.S. Customs Service so as to include in the proceeding consideration of the continued fitness of licensed Korean-owned or controlled customs brokers. NCBFAA cautions, however, that care be taken to avoid affecting U.S. citizens of Korean descent "who are unconnected with the Korean government's initiatives." *Id.*, 5.

Although not entirely supportive of Commission action at this time, the comments of the Korean Forwarders and Customs Brokers Association of Southern California ("KFCBA") generally support Petitioner's allegation that conditions unfavorable to shipping in the Trade exist as a result of laws, policies, and actions of the ROK. KFCBA argues that the issues which should be considered are not solely those raised by the Petition but should include activities of the ROK to direct the operations of a substantial proportion of the business in the Trade. KFCBA advocates discussion of these issues in bilateral talks in a manner which addresses the alleged participation and direction of the Korean Customs Administration in a consortium of Korean business entities to establish a "transportation operation (customs brokerage, freight forwarding, NVOCC, trucking and warehousing) in the United States." KFCBA Comments, 2. KFCBA requests that the Commission recommend to U.S. negotiators that the issues raised by DCL be addressed at the same time as the issues raised by the consortium proposal, and that the FMC stay its consideration of the Petition while such talks take place.

KFCBA states that the issues raised by DCL are vastly different from those raised by the anticipated ROK-impelled consortium, which are its major concern. "The consortium is a move by the Korean government to invade and control private industry in the U.S." *Id.* KFCBA urges that bilateral negotiators not trade ROK action favorable to DCL for permission to proceed with the government-backed consortium. Should the Commission proceed to act on the DCL Petition, KFCBA urges thorough evaluation of the issues. With respect to sanctions, KFCBA objects to iimposition of sanctions on Korean-owned, U.S.-resident freight forwarders or NVOCCs, stating that its members are U.S. companies owned and operated by U.S. citizens "(although of Korean extract.)" *Id.*, 5. KFCBA makes no specific recommendation regarding possible remedial action but urges FMC caution in avoiding targeting U.S. operations whose owners are of Korean descent.

*B. Comments in Opposition*

The Korean International Freight Forwarders Association ("KIFFA"), representing 322 ocean freight forwarders in Korea, opposes the Petition. KIFFA, stating that its members are overwhelmingly small-sized companies with a very short history (less than ten years) of operations, argues that ROK's protection of such enterprises from large foreign NVOCCs from advanced countries such as the U.S. and the European Communities is not inappropriate or different from the policies of other countries to protect their own nationals. KIFFA believes that the suspension of Korean-owned, U.S.-resident NVOCC tariffs or ocean freight forwarder licenses would be an inappropriate application of section 19. Petitioner's unsatisfactory experience with agents in Korea is attributed by KIFFA to a lack of caution by DCL in "choosing the capable agent with a good reputation in Seoul." KIFFA Comments, 3. KIFFA contends that it is inappropriate for DCL to seek relief under section 19 at the juncture inasmuch as "the issue of market-opening for a foreign freight forwarding business was not raised in the previous bilateral shipping talks." *Id.*, 5.

KIFFA states that the "Customs Brokerage Venture [presumably the projected Korean-government related venture discussed by others] to be established in U.S.A. has, at this moment, no plan to do the business of NVOCC's or ocean freight forwarders." *Id.*, 3. Referring to past actions by the ROK to liberalize the access of foreign-flag carriers to shoreside activities, KIFFA states its understanding that "KMPA, taking into account the ongoing UR (Uruguay Round) Multilateral negotiations, has a plan to open the freight forwarding market to the foreign companies on a gradual basis after revising the related shipping acts." *Id.*, 5.

Hyundai Merchant Marine Co., Ltd. ("Hyundai") advocates resolution of this matter through discussions between the U.S. and the Korean Governments, without resort to formal FMC proceedings. Hyundai also believes that the unique nature of this inquiry, i.e. the status of Petitioner as a "transportation intermediary," provides additional reasons for the Commission to approach this matter with all deliberate speed, and to assure that all factors are fully considered and analyzed. It is particularly concerned that any Commission action not have harmful consequences on ocean common carriers or their cargo.

Hanjin Shipping Co., Ltd. ("Hanjin") recommends that the Commission decline to initiate a rulemaking proceeding in response to the Petition on the grounds that there is no basis for countervailing sanctions of any kind. Hanjin asserts that the problem alleged by DCL has never before been discussed by the U.S. and Korean Governments, and that such talks should precede any proposal of sanctions. Hanjin maintains that, in any event, it would be wrong to impose sanctions on Korean-flag carriers because they have not been beneficiaries of the laws about which DCL complains.

Hanjin contests Petitioner's characterization of Korean law as constituting an absolute ban on operations by foreign-owned forwarders and NVOCCs. DCL's problems in operating in Korea are said to be no greater than those of other foreign firms which have established successful operations in Korea under the putatively restrictive laws, and attributes DCL's history to poor selection of agents. Hanjin states that recent liberalization of the shipping industry in Korea has occurred and has been in fulfillment of commitments made in bilateral talks. The talks scheduled to take place in June, 1992, which Hanjin understands will include for the first time the subject of NVOCC operations in Korea, are said to be the appropriate forum for action on these issues.

Should the Commission determine to impose sanctions in this matter, Hanjin is in agreement with the Petitioner that per voyage fees imposed on Korean-flag ocean common carriers would not be appropriate. Suggesting that the Korean carriers have done everything possible to ease restrictions affecting U.S.-flag carriers in Korea, Hanjin maintains that sanctions against the Korean carriers, would not be a countervailing sanction or one that meets or adjusts the alleged condition unfavorable to shipping, but would be arbitrary, discriminatory, fundamentally unfair, and therefore "subject to certain reversal by the courts * * *" Hanjin Comments, 5.

Kun Young Trading Co., Ltd. ("Kun Young") states that it is a member of the consortium informally formed by a number of Korean firms. It posits the group's belief that by entering into the customs brokerage business in the United States it can "facilitate the movement of our imports into the United States while at the same time ensuring compliance with all United States Customs and trade laws." Kun Young Comments, 1.

Kun Young notes that foreign ownership of customs brokerage services in the U.S. is not a new concept. It advises that this undertaking will assure the compliance of Korean importers with U.S. laws and provide information concerning Korean laws and requirements to U.S. exporters, and further reports that the group has yet to focus on the viability of providing ancillary services such as freight forwarding, warehousing, NVOCC operations and trucking. Kun Young expresses its expectation that the ROK will give an objective view to any market improvement initiative proposed by the U.S. and hopes that the Commission, based on the precepts of a free market economy, "will not seek to unfairly penalize a venture such as ours." *Id.*, 2

**Discussion**

The provisions of the Korean Act upon which the Petition is based are, on their face, discriminatory. They clearly establish nationality-based requirements for non-Korean companies wishing to participate in the Trade. They flatly prohibit companies owned by U.S. citizens, as well as other non-Koreans, from participating in the U.S./Korea bilateral and Korean cross trades in the same manner, and with the same opportunities, as their Korean-based competitors.

Korean firms are, on the other hand, free to operate in the United States without such barriers. Many commenters linked this Petition to the expected ROK-impelled creation of a consortium of shipping and other trade-involved firms to operate a U.S.-based firm. Some commenters indicate that they expect the consortium to undertake NVOCC, warehouse and freight forwarder operations in addition to providing customshouse brokerage. Without dealing with the merits of the issues with respect to the consortium raised by many of the commenters, we would observe that the creation and operation of any such enterprise in the United States highlights the discriminatory nature of the restrictive practices complained of by DCL. Such an undertaking would not be possible if provisions mirroring those of the Korean Act were applicable in this country.

Petitioner is not a vessel operating common carrier, and the discrimination about which it complains is not based on the registry of the vessels competing in the Trade, unlike the cases in which the Commission historically has been called upon to act under section 19. The Commission has, nevertheless, addressed discriminations suffered by similar concerns. In proposing a rule to adjust conditions unfavorable to shipping in the U.S. trade with Ecuador, the Commission acted on behalf of Overseas Enterprise, Inc., a U.S. company engaged in arranging and coordinating shipping transactions between vessel owners and operators and U.S. exporters. In response to a jurisdictional challenge seeking a narrow reading of section 19, the Commission ruled that it did:

> Not view OEI's activities as making it any less engaged in the business of 'shipping in the foreign trade,' as that term is used in section 19. It participates in such 'shipping' in much the same way as non-vessel-operating common carriers * * * and ocean freight forwarders do.

Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade, Notice of Proposed Rulemaking, 54 FR 34,914 (August 18, 1989). We note, in addition, that any doubt as to the inclusion of NVOCCs, forwarders and similar enterprises among these maritime businesses to which the protections of Section 19 apply was removed by the 1990 amendment of that Section, which added specific reference to non-vessel-operating common carriers and freight forwarders. 104 Stat. 2979, Public Law 101–595 (November 16, 1990).

The Korean Act is on its face "discriminatory or unfair as between carriers, * * * "freight forwarders or others, within the meaning of the Section 19 Regulations at 46 CFR 585.3(d). In addition, the Korean Act precludes non-Korean-owned non-vessel-operating common carriers and freight forwarders from competing in the Trade on the same basis as Korean-owned non-vessel-operating common carriers and freight forwarders, and denies these non-Korean-owned maritime businesses effective and equal access to cargo moving in the Trade.[2] The Commission therefore finds that conditions unfavorable to shipping in the U.S. trade with Korea exist as a result of that Act.

All of the U.S.-based commenters, including organizations representing the firms most affected by the Korean laws in question, support both the finding of conditions unfavorable to shipping in the Trade and the need for Section 19 sanctions. Only the two Korean-flag ocean common carriers, a Korean member of the planned consortium and the Korean International Freight Forwarders Association oppose the Petition.

The latter group of commenters represents that the issue of discriminatory treatment of non-Korean NVOCCs and freight forwarders has never been raised in government-to-government shipping discussions and urges the Commission to delay action on this matter based on the bilateral talks originally scheduled to take place this month.[3] It appears, however, that the matter has been raised in the past by both the USTR and the U.S. embassy, with no positive results. While these discussions may not rise to the formality of the government-to-government talks currently scheduled, they nevertheless represent attempts by U.S. representatives to pursue this matter with appropriate officials of the ROK Government and to bring about a resolution.

Although the upcoming talks are expected to include this issue, the Commission has pending before it a request for formal action on an issue which has not been amenable to

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[2] Paragraphs (a) and (b) of 46 CFR 585.3, define conditions unfavorable to shipping which result from the discriminatory treatment of vessels based on national registry, by denying them effective and equal access to cargo or precluding them from competing in the trade on the same basis as others While these paragraphs refer specifically to "vessels," their focus is the unfair and discriminatory impact of foreign laws, rules and regulations on maritime transportation businesses seeking to participate in trade. The conditions described in paragraphs (a) and (b) therefore also exist where a non-vessel-operating common carrier or freight forwarder is discriminatorily treated based on the nationality of the company or citizenship of its owners.

[3] We understand that those talks are now scheduled to take place July 7 and 8, 1992.

informal resolution. The Commission finds little reason to delay or refuse action on DCL's Petition. The Commission therefore initiates this rulemaking proceeding.

The findings of conditions unfavorable to shipping made herein are based on current conditions brought to our attention by DCL and others. However, the Commission acts today on a proposed rule only; further proceedings, including the receipt and analysis of comments on the proposed rule, will be necessary prior to entry of any final rule. Of course, a resolution of these issues which might emerge from the July talks would be taken into consideration by the Commission in the course of this proceeding.

While all of the commenting parties do not agree that the matter is appropriate or ripe for Commission action, they concur that sanctions imposed on vessel operating common carriers in the Trade are inappropriate, specifically mentioning per voyage fees. The form of sanctions preferred by commenters appears to be the suspension of operating rights, i.e. freight forwarding licenses and NVOCC tariffs, for the Korean-based or Korean-owned-and-controlled firms which are the counterparts of the U.S. firms being disadvantaged by the laws and practices of the ROK.[4]

The rule proposed herein is based on this approach. It is an attempt to create for Korean firms, which are the beneficiaries of the Korean Act's protections from competition from U.S. and other non-Korean firms, conditions which mirror the detrimental effects of those provisions.

Firms owned by U.S. citizens are prohibited from doing business in Korea as freight forwarders on shipments from Korea to the U.S., thus depriving them of the opportunity to earn freight forwarder compensation and other revenue in connection with such shipments, and to compete in the Trade on the same basis as other firms offering to perform the same services. The proposed rule addresses this condition by prohibiting common carriers from paying freight forwarder compensation to Korean firms acting as freight forwarders, consolidators, freight brokers or other transportation intermediaries who provide services that facilitate arrangements between shipper and carrier incidental to the ocean transportation on bills of lading for shipments from Korea to the United States, whether directly or by transshipment.[5] This prohibition does not apply to payments made by an ocean common carrier for which it is legally responsible as part of its obligation under its intermodal bills of lading. Thus, for example, payments to an inland carrier who provides the inland movement pursuant to a joint through bill of lading would not be prohibited.

Firms owned by U.S. citizens report that they are detrimentally affected by the Korean Act because they are unable to establish contacts with shippers in Korea which might produce business in the U.S. export trade. Korean frieght forwarders, however, face no similar barriers to establishing operations in both countries. The proposed rule therefore provides that, upon notice to individual freight forwarders to be made upon publication of the final rule, the Commission proposes to suspend the ocean freight forwarder license presently held by, and to deny the pending or future application for an ocean freight forwarder license of, any firm which is majority-owned or controlled by citizens of the Republic of Korea.

The Commission will review its freight forwarder files, including information required to be filed pursuant to 46 CFR 510.12(e) and 510.19, and Part I and Schedule B of Form FMC–18, Application for License as an Ocean Freight Forwarder, to determine those licensees and applicants which appear to be Korean-owned or controlled. A licensee or applicant which is majority owned or controlled by non-U.S. citizen Korean nationals is deemed ineligible to perform the duties of an ocean freight forwarder, under § 586.4(c)(1) of this rule, in the same manner that non-Korean nationals are deemed by the Korean Maritime Business Act to be ineligible to own or operate as freight forwarders in the Republic of Korea.[6]

Each such licensee or applicant will be notified by publication in the Federal Register of appendix B (appendix B to be published in the final rule) and by certified mail of the Commission's intent to suspend its license or deny its application and may submit a written request for a hearing on the proposed suspension or denial within twenty (20) days after receipt of the notification. Each request for a hearing must be accompanied by a statement of the specific basis on which the Commission's determination of Korean ownership or control is challenged. Such suspension or denial proceedings will be limited to the issue of whether the licensee or applicant is majority Korean-owned or controlled. If no request for hearing is received, each licensee or applicant will be notified by Federal Register publication and registered mail, return receipt requested, that its license has been suspended or its application denied. In addition, effective 60 days after publication of the FMC notice identifying those firms which are Korean-owned or controlled ocean freight forwarders, discussed above, ocean carriers are prohibited in § 586.4(d) of the proposed rule, from paying freight forwarder compensation to such freight forwarders in connection with shipments from the United States to Korea.

Several commenters suggest that the Commission suspend or cancel the tariffs of Korean-owned or controlled NVOCCs. Nothing in the Commission's existing files provides information on the ownership of companies operating as NVOCCs sufficient to identify those which are more than 50% Korean-owned. However, a number of commenters suggested that NVOCCs, which are now required to file an annual certification of their policies and actions to prevent rebating, pursuant to 46 CFR 510.25 and 582.3, respectively, also be required to certify that they are not Korean citizens or owned or controlled by citizens of Korea. This suggestion has merit. But, rather than tying such a requirement to an NVOCC's annual anti-rebating certification, the Commission will, in conjunction with any final rule issued in this proceeding, issue orders pursuant to section 19(6) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(6), directing NVOCCs to

[4] One commenter suggests, in the alternative, that the Commission suspend the bond of any Korean-based or Korean-owned NVOCC to the same effect: To deny them authority to operate in the United States. Although the existence and filing of such a contract is required as a prerequisite to lawful operation, the bond is a contract between private parties. Suspension of tariffs, on the other hand, more directly achieves the desired result and is, as well, a statutorily recognized form of sanction.

[5] We recognize that such a rule could adversely affect those few U.S.-owned forwarders and NVOCCs which have succeeded in establishing Korean operations through minority investment in a Korean-owned forwarder in compliance with the Korean Act. The rule, however, operates by prohibiting ocean carriers from paying freight forwarder compensation and necessarily applies across the board to all Korean-based freight forwarders. There appears to be no appropriate means to identify each such firm and to provide an exception for those few who succeeded in entering into such an arrangement prior to issuance of the proposed rule.

[6] The Commission acknowledges the concern of KFCBA and others that we avoid the imposition of sanctions on freight forwarders or NVOCCs which are owned and operated by U.S. citizens of Korean extraction. We believe the proposed rule adequately addresses this concern.

provide information which would allow the Commission to identify those which are more than 50 percent owned by citizens of Korea or otherwise controlled by such citizens. NVOCCs so identified would then have their tariffs suspended.

In the interim and as an additional measure, the rule issued this date would suspend the tariffs of NVOCCs having a principal place of business in Korea. The Commission's rules at 46 CFR 580.5(c)(2)(i), presently require that common carrier tariffs contain "the full legal name of each participating carrier, appropriately identified as a Non-Vessel-Operating Common Carrier or Vessel Operating Common Carrier and the address of its principal office." NVOCCs are also required to identify their principal place of business in their annual anti-rebate certifications filed pursuant to 46 CFR part 582. Examination of NVOCC tariffs and anti-rebate certifications on file with the Commission has revealed 54 NVOCCs whose tariffs state that their principal offices are in Korea. Appendix A is a list of these NVOCCs. It is presumed that a firm whose principal place of business is in Korea is Korean-owned or controlled. The rule proposed today would therefore suspend the tariffs of each of the NVOCCs named in Appendix A. The suspension would remain in effect indefinitely, until terminated by the Commission.

**Conclusion**

The Commission finds, pursuant to section 19 of the Merchant Marine Act, 1920, and § 585.3 (a), (b), (c), and (d) of its section 19 Regulations, that conditions unfavorable to shipping exist in the foreign oceanborne trades between the United States and Korea, as alleged in Direct Container Line's Petition. As a direct result of Korean laws, regulations, policies and practices, conditions exist which: (1) Preclude or tend to preclude non-Korean non-vessel-operating common carriers and freight forwarders from competing in the Trade on the same basis as Korean non-vessel-operating common carriers and freight forwarders; (2) deny non-vessel-operating common carriers and freight forwarders owned and operated by non-Korean nationals equal and effective access to cargo moving from Korea to the United States; (3) discriminate between non-vessel-operating common carriers and freight forwarders owned and operated by Korean nationals and non-vessel-operating common carriers and freight forwarders owned and operated by non-Korean nationals; and (4) are otherwise unfavorable to shipping in the foreign trade of the United States.

Therefore, pursuant to section 19 of the Merchant Marine Act, 1920, as amended, and the Commission's regulations at 46 CFR Part 585, the Commission hereby grants the Petition of Direct Container Line, Inc. and issues a proposed rule to address the existence of unfavorable shipping conditions in the foreign oceanborne trade between the United States and Korea and prescribes an appropriate remedy or remedies to adjust or meet those conditions. Interested parties are invited to comment on the rule proposed herein.

The Petition of Direct Container Line, Inc. as well as the comments on the Petition are hereby made a part of the record in this proceeding.

**List of Subjects in 46 CFR Part 586**

Cargo vessels; Exports; Foreign relations; Imports; Maritime carriers; Penalties; Rates and fares; Tariffs.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), as amended, Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR part 585, it is proposed to amend part 586 of title 46 of the Code of Federal Regulations as follows:

**PART 586—[AMENDED]**

1. The authority citation for part 586 continues to read as follows:

**Authority:** 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 1710a; 46 CFR part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2. A new § 586.4 is added to read as follows:

**§ 586.4 Conditions unfavorable to shipping in the United States/Korea Trade ("Trade").**

(a) *Conditions unfavorable to shipping in the trade.* (1) The Federal Maritime Commission has determined that the Government of Korea ("ROK") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict non-Korean citizens and companies from competing as freight forwarders or non-vessel-operating common carriers to participate in the carriage of general import and export cargoes, in the trade between the United States and Korea on the same basis as Korean citizens and firms owned by Korean citizens.

(2) Korean law unilaterally prohibits the participation of non-Korean citizens and firms owned by non-Korean citizens from operating as freight forwarders, or non-vessel-operating common carriers or other shoreside maritime transportation businesses in the import and export of general cargoes between the United States and Korea. The enforcement of this system discriminates against U.S. maritime companies desirous of participating in the Trade through the operation of businesses in Korea and denies to these transportation firms effective and equal access to import and export general cargoes in the Trade. It also discriminates against shippers whose opportunities to employ these entities and to select a carrier of their choice are restricted and whose ability to compete in international markets is hampered.

(b) *Korean non-vessel-operating common carriers—suspension of tariffs.* (1) Each non-vessel operating common carrier whose tariff or anti-rebate certification on file with the Federal Maritime Commission reflects as its principal place of business a place in Korea, named in appendix A of this section, is hereby presumed to be a Korean-owned or controlled non-vessel-operating common carrier.

(2) The tariff of each non-vessel-operating common carrier named in appendix A of this section is hereby suspended until further action of the Federal Maritime Commission to terminate the suspension.

(c) *Korean freight forwarders—suspension or revocation of licenses.* (1) Pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), any holder of an ocean freight forwarder license issued by the Federal Maritime Commission pursuant to the Shipping Act of 1984, 46 U.S.C. 1718, and any applicant for such a license, in which a majority interest is held by non-U.S. citizen Korean nationals, is hereby deemed to be ineligible to render forwarding services in the same manner that non-Korean nationals are deemed by the Korean Maritime Business Act to be ineligible to own or operate as freight forwarders in the Republic of Korea.

(2) Any ocean freight forwarder holding a license pursuant to the Shipping Act of 1984, 46 U.S.C. app. 1718, and 46 CFR part 510, and any applicant for such a license, which appears to be owned or controlled by non-U.S. citizen Korean nationals, listed in appendix B of this section (appendix B to be published with the final rule), will be notified by certified mail, return receipt requested, that its license will be suspended until further notice, or, in the case of an applicant, that its application will be denied, unless it is able to show that it is not and was not on the date of publication of this Proposed Rule owned or controlled by non-U.S. citizen Korean-nationals.

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(3) Each such notice shall be served on the individual licensee or applicant at its last known business address and shall include notification of the opportunity to request a hearing on the suspension or denial of a license within 20 days from the receipt of such notification pursuant to the Commission's rules at 46 CFR 510.15 or 510.16 and the rules of practice and procedure at 46 CFR part 502. Failure to respond to such notice shall be deemed to constitute admission that the respondent licensee or applicant is owned or controlled by non-U.S. citizen Korean-nationals, and the licensee or applicant shall be notified by **Federal Register** publication and certified mail, return receipt requested that its license has been suspended, or its application denied.

(4) Each request for a hearing must be accompanied by a statement of the specific basis on which the Commission's determination of Korean ownership or control of the licensee or applicant is challenged.

(d) *Ocean common carriers—prohibition of payment of freight forwarder compensation or brokerage.* (1) Notwithstanding any provisions in its tariff or tariffs in which it participates to the contrary, each common carrier operating in the U.S. foreign trade with Korea is prohibited from making freight forwarder compensation, brokerage or other payments to freight forwarders, consolidators, cargo brokers or other transportation intermediaries who provide services that facilitate arrangements between shipper and carrier incidental to the ocean transportation on export shipments from Korea to the United States.

(2) Notwithstanding any provisions in its tariff or tariffs in which it participates to the contrary, each common carrier operating in the U.S. foreign trade with Korea is prohibited from paying freight forwarder compensation to any ocean freight forwarder which has been notified by the Commission that its license is subject to suspension pursuant to this Rule and whose name appears in appendix B of this section (the list to be published as appendix B to the final rule).

(e) *Effective date.* This section is effective on (insert date 30 days from publication of the final rule in the **Federal Register**), except that § 586.4(d)(2) is effective (insert date 60 days from publication of the final rule in the **Federal Register**).

**Joseph C. Polking,**

*Secretary.*

**Appendix A to § 586.4 Korean Non-Vessel Operating Common Carriers**

1. Auto-Multimodal Express Line Inc. Dba/Amex Line Inc. 16th fl., Jeil Bldg. 31–1 2–KA, Myung-Dong, Chung-Ku Seoul, Republic of Korea.
2. Bogo Shipping Co., Ltd. Bogo Bldg. 988–15 Daechi-Dong, Kangnam-Ku Seoul, Republic of Korea.
3. Bonex Shipping Corporation Dba/Bonex Line Rm. 1503, Sam Koo Bldg., 70 Sokong-Dong Chung-Ku Seoul, Republic of Korea.
4. Bum Han Shipping Co., Ltd. 24th Floor International Insurance Bldg. 1205–KA Namdaemunuro Chung-Ku, Seoul, Republic of Korea.
5. Daeil Shipping Co., Ltd. Soon Hwa Bldg., Suite 1501 #5–2 Soon Hwa-Dong, Choong-Ku Seoul 110–030, Republic of Korea.
6. Daeyoo Shipping Co., Ltd. Rm. 504 Mocksan Bldg. #156 Joekseon-Dong, Jongro-Ku Seoul, Republic of Korea.
7. Dong joo Int'l Shipping Co., Ltd. Rm. 1210, Marine Center Bldg. 118, 2–KA, Namdaemoon-Ro, Chung-Ku Seoul, Republic of Korea.
8. Dong Shin Shipping Co., Ltd. International Insurance Bldg., #120 5–KA Namdaemun-Ro Chunk-Ku Seoul, Republic of Korea.
9. Doo Ran Shipping Co., Ltd. Rm. 905, Sam Jung Bldg. 69–5, 2–GA Taepyung-Ro, Chung-Ku Seoul, Republic of Korea.
10. Eastern Van Express Co., Ltd. 16th Kyungki Bldg. 115 Samkag-Dong, Chung-Ku Seoul 100–200, Republic of Korea.
11. Express Cargo Service Co., Ltd. 602 Rm, Korea YWCA 1–3 1–KA Myung-Dong, Chung-Ku Seoul, Republic of Korea.
12. First Express International 394–44, Seo-Gyo-Dong, Mapo-Ku Seoul, Republic of Korea.
13. Glory Shipping Co., Ltd. Jangkyo Bldg., #1703 1, Jangkyo-Dong, Choong-Ku Seoul, Republic of Korea.
14. Goldmarine Co., Ltd. 3rd Fl, Tae Rim Bldg., 85–13, 4–KA Chungang-Dong, Chung-Ku Busan, Republic of Korea.
15. Gyro Shipping Co., Ltd. Il-Jin Bldg., Room 302 #85–11, 4–KA, Chungang-Dong, Chung-Ku Busan, Republic of Korea.
16. Haewoo Air & Shipping Co., Ltd. Fl. 7, Taepyung Bldg. 69–20 Taepyung-Ro, 2–KA Choong-Ku, Seoul, Republic of Korea.
17. Hanjoo Shipping Int'l Co., Ltd. Dba/Hanex Line 18, 1–KA, Nandaemoon-Ro, Chung-Ku Seoul, Republic of Korea.
18. Hero Shipping Co., Ltd. Rm 901, Taepyung Bldg. 69–20, 2–KA Taepyung-Ro, Seoul, Republic of Korea.
19. Kana Shipping Co. Ltd. Rm #901, Paik Nam Bldg. 188–3, 1–KA, Euljiro Chung Ku Seoul, Republic of Korea.
20. Kenney Transport (Korea), Ltd. Mapo Changkang Bldg., 16–1, Dohwa-Dong Mapo-Ku Seoul, Republic of Korea.
21. Kheeryoong Commerce & Transport Co., Ltd 25–5, 1–KA, Chungmu-Ro, Chung-Ku Seoul, Republic of Korea.
22. Korea Express Corp. Suite #301, Han-Kwang Bldg. 82–1 4–KA Jungang-Dong, Jung-Ku Busan, Republic of Korea.
23. Korea Intermodal Transport Co., Ltd. 15th Fl, Marine Center Bldg., #118 2–KA Namdaemun-Ro, Chung-Ku Seoul 100–770, Republic of Korea.
24. Korea Logistics Systems Inc. 12th Fl., Jung Suck Bldg. 89–14, 4–KA, Chungang-Dong Chung-Ku, Busan, Republic of Korea.
25. Korea Marine Transport Co., Ltd. 15th Fl., Marine Center Bldg. #118 2–KA, Namdaemun-Ro, Chung-Ku Seoul, Republic of Korea.
26. Kunyoung Shipping Co., Ltd. Taeyang B/D 3F, 158–25 Dongkyo-Dong Mapo-Gu Seoul, Republic of Korea.
27. Masters World Trans Co. Ltd. Dba/Masters Container Line Rm 810, Il Jin Bldg. 50–1 Dowha-Dong Mapo-Ku, Seoul, Republic of Korea.
28. Nama Air Cargo & Shipping Co., Ltd. Jinhak Bldg. 201–1 Chungjin Dong Jongro-Ku Seoul 110–130, Republic of Korea.
29. New World Shipping Co., Ltd. 17–7, 4–Ka Namdaemoon-Ro Choong-Ku, Seoul, Republic of Korea.
30. Orient Express Container (Korea) Ltd., 168–4 Dongkyo-Dong, Mapo-Ku, Seoul, Republic of Korea.
31. Orient Express, Ltd., Rm 1102, Jeil Bldg., 31–1 2–KA, Myung-Dong, Chung-Ku, Seoul, Republic of Korea.
32. Orion Express Line, 3th Fl., Sujin Bldg., 187–1 Dangju-Dong, Chongro-Ku, Seoul 110–071, Republic of Korea.
33. Pan Asia Maritime Inc., Room 301, New Seoul Bldg., 62–7 2–KA, Chungmu-Ro, Chung-Ku, Seoul, Republic of Korea.
34. Pan Trans International Freight Service Co., L, Rm #602 Bokchang Bldg., 60 Sokong-Dong Chung-Ku, Seoul, Republic of Korea.
35. Prime Consolidation Limited, Rm 905, Sun Shine Bldg., 11–1 2–GA, Choongmu-Ro Chung-Ku, C.P.O. Box 7125, Seoul, Republic of Korea.
36. Pum Yang Shipping Co., Ltd., 4th Floor, Soon HWA Bldg., 5–2 Soon HWA Dong, Choong-Ku, Seoul, Republic of Korea.
37. Pusan Shipping Co., Ltd., 6th Floor KCCI Building, 4–45 Namdaemun-Ro, Jung-Ku, Seoul, Republic of Korea.
38. Regent Express Korea, Inc., RM 1405, Sam Yoon B/D, 63–2 2nd Street, Chungmu-Ru, Chung-Ku, Seoul, Republic of Korea.
39. Sea-Road Trans Corporation, DBA/SEA-Road International, 7th Floor, Paik Nam Bldg 188–3, 1–GA, Euljiro Choong-Ku, Seoul, Republic of Korea.
40. Seil Shipping Col, Ltd., 51–1 Namchang-Dong, Chung-Ku, Seoul 100–060, Republic of Korea.
41. Selim Shipping Co., Ltd., Rm. 703, Youdong Bldg., 548, Dohwa-Dong, Mapo-Ku, Seoul, Republic of Korea.
42. Shinwoo Shipping Inc., Rm. 1401, Sam Yang Bldg. 85–8, 4–KA Jungang-Dong, Jung-Ku, Busan, Republic of Korea.
43. Ssangyong Shipping Co., Ltd., 60–1, 3–GA, Chungmu-Ro, Jung-Gu, Seoul 100–175, Republic of Korea.
44. Sun Express Corporation, 760–1, 5–KA, Namdaemoon-Ro, Jung-Ku, Seoul, Republic of Korea.
45. Sungwoo Shipping Co., Ltd., 2nd Fl., Samheung Bldg, 10–4 Bukchang-Dong Chung-Ku, Seoul 100–060, Republic of Korea.
46. Sunjin Shipping & Air Cargo Co., Ltd., 80 Chokson-Dong (Hyundai Cheil Bldg.), Chongro-Ku, Seoul, Republic of Korea.
47. Tae Jung Express Co., Ltd., Room No. 521 Baejac Building 55–4 Seosomoon-Dong Chung-Ku, Seoul, Republic of Korea.
48. Uni-Sea & Air Freight Co., Ltd. RM #405 EUI LIM Bldg., 16–48, 3–GA, Hangkang-Ro, Yongsan-Gu, Seoul, Republic of Korea.
49. Union Express, Ltd., 382–33, Sokyo-Dong, Mapo-Ku, Seoul, Republic of Korea.
50. Vantrans Service Inc., 2nd Fl., Hae Yang Bldg., 87–5, 4 KA Chungang-Dong, Chung-Ku, Seoul, Republic of Korea.
51. Woo Shin International Transport Co., Ltd., 9th Floor Royal Bldg 5., Dangju-Dong Chongro-Gu, Seoul, Republic of Korea.
52. World Trans Corporation, Rm 1803–5 Samjung Bldg., 69–5, 2–KA Taepyung-Ro, Chung-Ku, C.P.O. Box 7197 Seoul, Republic of Korea.
53. Worldstar Shipping & Trading Co., Ltd., DBA/Worldstar Shipping Co. Ltd., Nemdo Bldg. 1Fl., Kwanhoon-Dong, Chongno-Ku, Seoul, Republic of Korea.
54. YKL Express Limited, 18FL, Byucksan 125 Bldg., 12–5 Dongja-Dong, Yongsan-Gu, Seoul, Republic of Korea.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92–15872 Filed 7–7–92; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 22**

**[CC Docket No. 92–137; FCC 92–263]**

**Air-Ground Table of Assignments**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal would assign the allocation of working channel 3 (454.850 MHz) to Schaller, Iowa, to provide air-ground service to the Storm Lake Municipal Airport, which does not currently have reliable air-ground service. Schaller is in Sac county in northwest Iowa, south of the Storm Lake Recreation Region, about 57 miles east of Sioux City and 105 miles northwest of Des Moines.

**DATES:** Comments must be filed by August 21, 1992. Reply comments are due by September 7, 1992.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Andrew L. Nachby, Mobile Services Division, Common Carrier Bureau at (202) 632–6450.



**SUPPLEMENTARY INFORMATION:**

**Summary of Notice of Proposed Rulemaking**

In view of the apparent need for air-ground communications service the Commission proposes to amend 47 CFR 22.521(b) to assign the allocation of working channel 3 (454.850 MHz) to Schaller, Iowa.

**Procedures for Amendment of Air-Ground Table of Allotments**

The Commission invites comments on this proposal. The procedures to be followed in submitting comments in this proceeding are similar to those followed in proceedings to amend the FM or Television Table of Assignments in § 1.420 of the Commission's rules. The procedures are discussed below.

*Cut-off Procedures*

The following procedures govern the consideration of filings in this proceeding:

(a) Counterproposals made in this proceeding will be considered if they are made in initial comments so that parties may comment on them in reply comments. Counterproposals will not be considered if made in reply comments (See § 1.420(d) of the Commission's rules).

(b) Petitions for Rulemaking which conflict with the proposal of this Notice will be considered as comments. Public notice of such treatment will be given so long as the petitions are filed before the date for filing initial comments. If they are filed after that date, they will not be considered in connection with the decision in this proceeding.

*Dates and Service*

Under the procedures set out in Section 1.415 and 1.420 of the Commission's rules, interested parties may file comments on or before August 21, 1992, and reply comments on or before September 7, 1992. All submissions made by parties to this proceeding or in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings. These comments and reply comments must be accompanied by a certificate of service (See § 1.420(a)–(c) of the Commission's rules). Reply comments must be served on the person(s) who filed comments.

*Number of copies*

Under § 1.420 of the Commission's rules, an original and four copies of all comments, reply comments, pleadings, briefs or other documents must be submitted to the Commission.

*Public Inspection of Filing*

All findings made in this proceeding are available for inspection during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC. Copies may be purchased from International Transcription Service, 2100 M Street, NW. First Floor Washington, DC 20036, (202) 857–3800.

**List of Subjects in 49 CFR Part 22**

Communications Common Carriers, Radio, Reporting and recordkeeping requirements, Rural areas, Table of air ground radiotelephone service.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92–15929 Filed 7–7–92; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF TRANSPORTATION

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

**[Docket No. 92–33; Notice 1]**

**RIN 2127—AE36**

**Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes identification markings for lenses on round sealed beam headlamps that would be an alternative to those markings presently required. This will allow manufacture of replacement headlamps for old cars that replicate the appearance of the original headlamps. The rulemaking action implements the grant of a petition for rulemaking filed by a manufacturer of such headlamps. The notice also proposes transferring some existing requirements for replacement equipment from S5.1, the section on new vehicle equipment, to S5.7, the section on replacement equipment. The notice also proposes deletion of the footnotes and associated references from the Tables.

**DATES:** The comment closing date for the proposal is September 8, 1992. The proposed effective date for the final rule is 30 days after its publication in the **Federal Register**.

**ADDRESSES:** Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.).

**FOR FURTHER INFORMATION CONTACT:** Patrick Boyd, Office of Rulemaking, (202–366–6346).

**SUPPLEMENTARY INFORMATION:** This rulemaking action affects only the marking of lenses of replacement equipment headlamps of 7-inch and 5¾ inch diameters.

Until 1974, the only types of headlamp systems permitted by Standard No. 108 were a two headlamp system of lamps with lens diameters of 7 inches, and a four headlamp system of lamps with lens diameters of 5¾ inches. The headlamps were required to be designed to conform to SAE Standard J579a Sealed Beam Headlamp Units for Motor Vehicles, August 1965. In 1978, headlamps designed to conform to the newer photometrics of SAE Standard 7579c (December 1974) were added to the list of permissible frontal lighting systems, and, effective July 1, 1979, their lenses were required to be marked in accordance with a three-digit code established by the standard. At the same time, NHTSA incorporated by reference SAE Standard J571d Dimensional Specifications for Sealed Beam Headlamp Units, June 1976, which contained a single digit code applicable to headlamps designed to conform to SAE J7579a. In 1989, in a move towards regulatory simplification, Standard No. 108 was amended to eliminate SAE J571d, and SAE j579a as a permissible headlighting option as these lamps were no longer being manufactured.

Under the nomenclature adopted effective from 1979 to the present, a 7-inch diameter sealed beam headlamp designed to conform to the photometrics of SAE J579c is known as Type 2D1, and the 5¾-inch diameter headlamps as Types 1C1 and 2C1. These alpha-numeric type designations are required to be placed on the headlamp lenses in order to facilitate replacement of headlamps with those of like performance.

Lectric Limited Inc., and Wagner Lighting Division of Cooper Industries Inc., have petitioned for rulemaking to allow use of "1", "2", and "Top" as markings to identify Type 1C1, 2C1, and 2D1 headlamps. The designators "1" and "2" were required for headlamps designed to conform to SAE Standards J571d and J579a. The headlamps contemplated by the petitioners would be designed to conform to the contemporary photometrics of SAE J579c.

Thus, the headlamps would have the appearance of those which were standard equipment on all passenger cars of 1974 and previous model years (as well as those of subsequent model years intended to meet SAE J579a), but have the performance required today. The purpose of this request is to allow the petitioners "to satisfy a previously unaddressed need in the classic and collector car market." This need is for replacement headlamps on older vehicles to replicate the appearance of the original headlamps. According to the petitioners, the owners of such vehicles will not accept a replacement headlamp with descriptive lettering which is incorrect in appearance with descriptive lettering which is incorrect in appearance for the era in which the car was manufactured. General Motors has granted the petitioners a license to use GM's "Guide T-3" marking on the lamps as it was in effect during the 1950s to 1970s. If Standard No. 108 is amended to permit the alternative identification, the petitioners will be able to address this need.

Petitioners state that the headlamps to be produced will be sold only through wholesalers and retailers who service the classic and restored car market. Their low volume and consequent high cost is not likely to attract the average consumer who simply owns and drives an old car.

NHTSA has granted the petition and is proposing the removal of a regulatory barrier to the manufacture of new headlamps for vehicles of special interest to collectors. S5.7 Replacement Equipment would be amended to allow the requested marking as an alternative to that presently required (that specified by SAE Standard J1383 APR 85 which adopted the NHTSA nomenclature).

In reviewing Standard No. 108, NHTSA finds that a number of the exceptions of S5.1 Required Motor Vehicle Lighting Equipment in fact apply to individual items of replacement equipment rather than equipment comprised in new vehicle lighting systems. From the standpoint of regulatory consistency and logic, the agency is proposing a transfer of these provisions to S5.7. The agency is also proposing to delete all footnotes and associated references in the Tables. These footnotes originated in the early days of Standard No. 108 as a guide to manufacturers unfamiliar with the standard. Their continued presence is tentatively deemed no longer necessary for regulatory clarity.

**Effective Date**

Because the amendment would relieve a regulatory barrier not required for safety and would impose no additional burden upon any regulated party, it is tentatively found for good cause shown that an effective date earlier than 180 days after issuance of the final rule would be in the public interest, and the rule would be effective 30 days after its publication in the **Federal Register**.

The proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

**Rulemaking Analyses**

*Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

NHTSA has considered the impacts of this rulemaking action and has determined that it is neither major within the meaning of Executive Order 12291 "Federal Regulation", nor significant under Department of Transportation regulatory policies and procedures. The amendment to the identification mark requirements would not affect the cost of producing headlamps. The agency concludes that the impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

*Regulatory Flexibility Act*

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Motor vehicle manufacturers and lighting manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected as the price of new motor vehicles should not be impacted.

Accordingly, no Regulatory Flexibility Analysis has been prepared.

*Executive Order 12612 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*National Enviromental Policy Act*

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action would not have a significant effect upon the environment. There is no environmental impact associated with the marking of headlamp lenses. The rulemaking action would not have an effect upon fuel consumption.

**Request for Comments**

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notifed upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles.

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is hereby proposed that 49 CFR part 571 be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

**Authority:** 15 U.S.C. 1392, 1401,1403, 1407; delegations of authority at 49 CFR 1.50.

**§ 571.108 [Amended]**

2. Section S5.7 *Replacement equipment* would be amended as follows:

(a) Revising S5.7.1 to read:

S5.7.1 Except as provided below, each lamp, reflective device, or item of associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment on any vehicle to which this standard applies, shall be designed to conform to this standard.

(b) Redesignating S5.7.2 as S5.7.10.

(c) Adding new paragraph S5.7.2 to read:

S5.7.2 A Type C replacement headlamp designed to conform to the requirements of paragraph S7.3.2(a) through (d) of this standard may be marked "1" and "2" rather than "1C1" and "2C1" respectively. A Type D replacement headlamp designed to conform to S7.3.2 (a) through (c) and S7.3.5(b) of this standard may be marked "TOP" or "2" rather than "2D1".

3. S5.1.1.6(a) and (b) would be redesignated S5.7.3(a) and (b), and S5.1.1.6(c) would be removed.

4. S5.1.1.7(a) and (b) would be redesignated S5.7.4(a) and (b), and S5.1.1.7(c) would be removed.

5. S5.1.1.11 would be redesignated S5.7.5.

6. S5.1.1.12 would be redesignated S5.7.6.

7. S5.1.1.26 would be removed.

8. New section S5.7.7 would be added to read:

S5.7.7 Note 6 of Table 1 in SAE Standard J588e, *Turn Signal Lamps*, September 1970, does not apply.

9. S5.1.1.23 would be redesignated S5.7.8.

10. S5.1.1.24 would be redesignated S5.7.9.

11. S5.1.1.8, S5.1.1.9, S5.1.1.10, S5.1.1.13, S5.1.1.14, S5.1.1.15, S5.1.1.16, S5.1.1.17, S5.1.1.18, S5.1.1.19, S5.1.1.20, S5.1.1.21, S5.1.1.22, S5.1.1.25, S5.1.1.27, S5.1.1.28, S5.1.1.29, S5.1.1.30, S5.1.1.31, and would be redesignated, respectively, S5.1.1.6, S5.1.1.7, S5.1.1.8, S5.1.1.9, S5.1.1.10, S5.1.1.11, S5.1.1.12, S5.1.1.13, S5.1.1.14, S5.1.1.15, S5.1.1.16, S5.1.1.17, S5.1.1.18, S5.1.1.20, S5.1.1.21, S5.1.1.22, S5.1.1.23, S5.1.1.24.

12. New S5.1.1.19 would be added to read:

S5.1.1.19 A stop lamp that is not optically combined as defined by SAE Information Report J387 *Terminology—Motor Vehicle Lighting* NOV 87, with a turn signal lamp shall remain activated when the turn signal lamp is flashing.

13. Tables I, II, III, and IV would be amended to remove all footnotes and associated references in the text thereof.

Issued on: July 2, 1992.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 92-15917 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE INTERIOR

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AB56**

## Endangered and Threatened Wildlife and Plants; Proposal to List the Duskytail Darter, Palezone Shiner, and Pygmy Madtom as Endangered Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service proposes to list three fishes—the duskytail darter (*Etheostoma* (*Catonotus*) sp.), palezone shiner (*Notropis* sp., cf. *procne*), and pygmy madtom (*Noturus stanauli*)—as endangered species under the Endangered Species Act (Act) of 1973, as amended. The duskytail darter is presently known to inhabit only five short stream reaches: the Little River, Blount County, Tennessee; Citico Creek, Monroe County, Tennessee; Big South Fork Cumberland River, Scott County, Tennessee; and Copper Creek and

Clinch River, Scott County, Virginia. Two other historic duskytail darter populations are extirpated. The palezone shiner is presently known from only two stream reaches: the Paint Rock River, Jackson County, Alabama, and the Little South Fork Cumberland River, Wayne and McCreary Counties, Kentucky. Two other historic palezone shiner populations are extirpated. The pygmy madtom has been collected from only two short stream reaches: The Duck River, Humphreys County, Tennessee, and the Clinch River, Hancock County, Tennessee. The madtom may no longer exist in the Duck River. All three fishes presently coexist with other federally listed species in all stream reaches, except the Duck River. All these fishes and their habitat are impacted by deteriorated water quality primarily resulting from poor land use practices. The limited distribution of these fishes also makes them very vulnerable to toxic chemical spills. Comments and information are sought from the public on this proposal.

**DATES:** Comments from all interested parties must be received by September 8, 1992. Public hearing requests must be received August 24, 1992.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–1195). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard G. Biggins at the above address.

**SUPPLEMENTARY INFORMATION:**

## Background

The duskytail darter (*Etheostoma* (*Catonotus*) sp.) is being scientifically described by Robert Jenkins (Roanoke College, personal communication, 1990). This small (2-inch) fish, which coexists with other federally listed species in all stream reaches it inhabits, is straw to olivaceous in color. It inhabits rocky areas in gently flowing, shallow pools and eddy areas of large creeks and moderately large rivers in the Tennessee and Cumberland River systems (Starnes and Etnier 1980; Burkhead and Jenkins, in press; Layman, in press; and Clyde Voigtlander, Tennessee Valley Authority, *in litt.*, 1991). Historically, the duskytail was likely more widespread. However it presently has a very fragmented distribution (Etnier and Starnes, in press; Jenkins and Burkhead, in press). The Tennessee Wildlife Resources Agency and the Tennessee Heritage Program of the Tennessee Department of Conservation recognize this fish as a threatened species (Starnes and Etnier 1980). Effective January 1, 1992, the species was listed by the Department of Game and Inland Fisheries as endangered in Virginia (Karen Terwilliger, Virginia Department of Game and Inland Fisheries, *in litt.*, 1991).

Although the fish fauna of the Tennessee and Cumberland River systems has been extensively surveyed, the duskytail has been collected from only seven short river reaches: Little River, Blount County, Tennessee; Citico Creek, Monroe County, Tennessee; Big South Fork Cumberland River, Scott County, Tennessee; Abrams Creek, Blount County, Tennessee; South Fork Holston River, Sullivan County, Tennessee; and Copper Creek and Clinch River, Scott County, Virginia. The duskytail is apparently extirpated from Abrams Creek and South Fork Holston River as it has not been found in either area in recent years (Jenkins and Burkhead, in press).

The Little River population inhabits about 9 river miles (Layman, in press). Layman (in press) stated that the duskytail in the lower reaches of the Little River was undoubtedly lost when the area was impounded. This population is potentially threatened by water withdrawal and increasing residential and commercial development in the watershed (Clyde Voigtlander, *in litt.*, 1991).

The duskytail exists downstream of U.S. Forest Service lands in about 0.5 river miles of Citico Creek (Peggy Shute, Tennessee Valley Authority, personal communication, 1991). Although the majority of the Citico Creek watershed is controlled by the Forest Service, much of the populated reach is privately owned, and stream-side habitat destruction has been observed in the area (Clyde Voigtlander, *in litt.*, 1991).

The duskytail inhabits about 17 river miles of Copper Creek. Although the duskytail is characterized as generally rare or uncommon in Copper Creek (Burkhead and Jenkins, in press), this creek probably supports the largest population of the fish (Clyde Voigtlander, *in litt.*, 1991). According to the Virginia Department of Game and Inland Fisheries (Bud Bristow, *in litt.* 1991), this population is threatened by siltation, riparian erosion, and agricultural pollution.

One duskytail specimen was collected from the Clinch River in 1980, about 1 river mile below the mouth of Copper Creek (Burkhead and Jenkins, in press). This area has been well sampled since 1980, but no additional specimens have been encountered. This one fish may represent periodic downstream movement from Copper Creek, and no viable duskytail population may exist in the Clinch River.

Duskytail darters have only been taken from one site on the Big South Fork of the Cumberland River. Although other collections have been made in the Big South Fork, no other populations have been found (Jack Collier, National Park Service, personal communication, 1990; and Melvin Warren, Southern Illinois University, personal communication, 1990). This population, although within the Big South Fork National Recreational Area (BSFRA), is potentially threatened by runoff from coal mines in the upper watershed above the BSFRA (Jack Collier, personal communication, 1990).

The duskytail darter populations are threatened by the general deterioration of water quality resulting from siltation and other pollutants from poor land use practices, coal mining, and waste discharges. Etnier and Starnes (in press) stated that this darter"

* * * and other darters dependent upon slit free, rocky pools in large streams and rivers, such as the ashy darter, have apparently suffered more from the effects of siltation than have darters typical of swift riffles."

On November 27, 1990, the Service notified by mail (50 letters) Federal and State agencies within the species' historic range, local governments within the species' present range, and interested individuals that a status review of the duskytail darter was being conducted. Seven comments were received as a result of this notification. No objections to the potential listing of the duskytail darter were received, and much information on the species' status and distribution was provided and incorporated into this proposed rule. The species was upgraded to a Category 1 status as a result of this information.

The palezone shiner (*Notropis* sp., cf. *Procne*) is being scientifically described by Melvin Warren (personal communication, 1990). This small (2-inch), slender fish, which coexists with other federally listed species in all stream reaches it inhabitats, has a translucent and straw-colored body with a dark mid-lateral stripe. It occurs in large creeks and small rivers in the Tennessee and Cumberland River systems and inhabits flowing pools and runs with sand, gravel, and bedrock substrates (Warren and Burr 1990).

This fish is listed by the Kentucky State Nature Preserves Commission

(Warren et al. 1986) as an endangered species. In Alabama, the species is considered threatened (Pierson 1990). Although the species is believed to be extirpated from Tennessee, the Tennessee Wildlife Resources Agency and the Tennessee Heritage Program of the Tennessee Department of Conservation recognize this fish as a species in need of management (Starnes and Etnier 1980).

Although numerous and extensive fish collections have been made in the Tennessee and Cumberland River systems, the palezone shiner has been taken from only four rivers: The Paint Rock River, Jackson County, Alabama; the Little South Fork Cumberland River, Wayne and McCreary Counties, Kentucky; Marrowbone Creek, Cumberland County, Kentucky; and Cove Creek, Clinch River drainage, Campbell County, Tennessee (Starnes and Etnier 1980; Warren and Burr 1990; and Richard Hannan, Kentucky State Nature Preserves Commission, *in litt.*, 1990). Based on the results of a recent status survey (Warren and Burr 1990), only two palezone populations remain. No palezone shiners were found in either Marrowbone or Cove Creek. However, the fish still exists in about 3 river miles of the Paint Rock River and in about 30 river miles of the Little South Fork Cumberland River.

The palezones shiner's distribution has apparently been reduced by such factors as impoundments and the general deterioration of water quality from siltation and other pollutants contributed by coal mining, poor land use practices, and waste discharges. Richard Hannan (*in litt.*, 1990) stated that the palezone possibly inhabited the main stem of the Cumberland River in Kentucky prior to impoundment. Warren and Burr (1990) reported that diversity and density of the benthic fish community in the Little South Fork of the Cumberland River has been severely reduced. Anderson (1989) found that nearly all freshwater mussels in the lower third of the South Fork were eliminated in the 1980s and attributed the loss to toxic runoff from surface coal mines. Warren and Burr (1990) stated, "The limited distribution of the species in the Paint Rock River definitely appears correlated with increasing agriculture and associated increase in stream siltation * * *".

In the **Federal Register** (54 FR 554) of January 6, 1989, the Service announced that the palezone shiner was a category 2 species. (A category 2 species is one that is being considered for possible addition to the Federal List of Endangered and Threatened Wildlife and Plants.) On October 30, 1990, the Service notified by mail (63 letters) Federal and State agencies within the species' historic range, local governments within the species' present range, and interested individuals that a status review of the palezone shiner was being conducted. Eleven comments were received as a result of this notification. No objections to the potential listing of the palezone shiner were received, and much information on the species' status and distribution was provided and incorporated into this proposed rule. As a result of the information gathered, the species was upgraded to a Category 1 status.

The pygmy madtom (*Noturus stanauli*) was described by Etnier and Jenkins (1980). This species, which is known from two populations separated by about 600 river miles, was once likely more widespread (O'Bara 1991). However, like some other catfish in the genus *Noturus*, the pygmy madtom is presently rare and has a fragmented distribution (Etnier and Jenkins 1980). The pygmy madtom is the smallest (maximum length 1.5 inches) of the known madtoms (Etnier and Jenkins 1980). It has a very distinctive pigmentation pattern—very dark above the body midline and light below. The species is found in moderate to large rivers on shallow, pea-size gravel shoals with moderate to strong current. The Tennessee Wildlife Resources Agency and the Tennessee Heritage Program of the Tennessee Department of Conservation recognize this fish as a threatened species (Starnes and Etnier 1980).

The fish fauna of the Tennessee River Valley has been extensively surveyed (O'Bara 1991); however, the pygmy madtom has only been collected from two short river reaches. It has been taken from the Duck River, Humphreys County, Tennessee, and from the Clinch River, Hancock County, Tennessee. Based on the results of recent surveys (O'Bara 1991), the fish still exists in the Clinch River, and it is possibly extirpated from the Duck River. Five specimens were taken at one of the two known historic sites in the Clinch River by O'Bara (1991) in the fall of 1990. O'Bara (1991) did not find the species in the Duck River during his 1990 survey, and he reported that the species had not been taken from the Duck River since 1974.

Etnier and Jenkins (1980), in their description of this species, report that it has been taken in only about one-half of the collections made at the Clinch River sites and only about one-fourth of the collections at the Duck River site. Thus, although the species has not been taken in recent years in the Duck River, it may still survive there.

The pygmy madtom, which coexists with other federally listed species in the Clinch River, is threatened by the general deterioration of water quality from siltation and other pollutants associated with poor land use practices and waste discharges. The section of the Duck where the species has been taken is being seriously threatened by streambank erosion. The aquatic resources of the Clinch River are potentially threatened by increased urbanization, coal mining, and poorly managed agricultural practices. Because the pygmy madtom may exist in only one short river reach, this population could easily be lost from a single toxic chemical spill.

The pygmy madtom was recognized by the Service in the January 6, 1989, **Federal Register** (54 FR 554) as a category 2 species. (A category 2 species is one that is being considered for possible addition to the Federal List of Endangered and Threatened Wildlife and Plants.) On October 30, 1990, the Service notified by mail (25 letters) Federal and State agencies within the species' historic range, local governments within the species' present range, and interested individuals that a status review of the pygmy madtom was being conducted. Five comments were received as a result of this notification. No objections to the potential listing of the pygmy madtom were received, and much information on the species' status and distribution was provided and incorporated into this proposed rule. The status of the species was upgraded to a Category 1, as a result of the information gathered.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the duskytail darter (*Etheostoma* (*Catonotus*) sp.), palezone shiner (*Notropis* sp., cf. *procne*), and the pygmy madtom (*Noturus stanauli*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Tennessee and Cumberland Rivers previously

supported one of the world's richest assemblages of temperate freshwater river fishes (Starnes and Etnier 1986), but these rivers are now two of our most severely altered river systems. Most of the main stem of both rivers and many of the tributaries are impounded (over 2,300 river miles, or about 20 percent, of the Tennessee River and its tributaries with drainage areas of 25 square miles or greater are impounded (Tennessee Valley Authority 1971)). In addition to the loss of riverine habitat within the impoundment, most impoundments also seriously alter downstream aquatic habitat. Coal mining related siltation and associated toxic runoff have adversely impacted many stream reaches. Numerous streams have experienced fish kills from toxic chemical spills, and poor land use practices have fouled many waters with silt. The runoff from large urban areas has degraded water and substrate quality. Because of the extent of habitat destruction, the aquatic faunal diversity in many of the basins' rivers has declined significantly. Many species that once existed throughout major portions of these basins now exist only as isolated remnant populations (Neves and Angermeier 1990). Because of this destruction of riverine habitat, 8 fishes and 24 mussels in the Tennessee and Cumberland River basins have already required Endangered Species Act protection, and numerous other aquatic species in these two basins are currently considered candidates for Federal listing.

The fish fauna of the Tennessee and Cumberland River systems have been extensively surveyed (Ronald Cicerello, Kentucky State Nature Preserves Commission; David Etnier, University of Tennessee; Robert Jenkins, Roanoke College; Christopher O'Bara, Tennessee Technological University; Charles Saylor, Tennessee Valley Authority; Melvin Warren and Brooks Burr, Southern Illinois University; personal communications, 1990). Yet, only a few isolated populations of the duskytail darter, palezone shiner, and pygmy madtom remain (see "Background" section for a discussion of the current and historic distribution of and threats to the remaining populations). These fishes have been and are presently adversely impacted by the factors described above. Unless steps are taken to protect these fishes, the number and size of their populations are expected to decline.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The specific areas inhabited by these fishes are presently unknown to the general public. As a result, their overutilization has not been a problem. However, there is the potential for vandalism to become a problem, especially if the specific inhabited reaches are revealed during the sometimes controversial listing process. Although scientific collecting is not presently identified as a threat, these fishes exist in small isolated populations. If these populations continue to decline, take by private and institutional collectors could pose a threat. Federal protection could help to minimize illegal or inappropriate take.

C. *Disease or predation.* Although these fishes are undoubtedly consumed by predators, there is no evidence that predation is a threat to them.

D. *The inadequacy of existing regulatory mechanisms.* States within these species' ranges prohibit the taking of fishes and wildlife for scientific purposes without a State collecting permit. However, the species are generally not protected from other threats. Federal listing will provide additional protection for the species under the Endangered Species Act by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect the species.

E. *Other natural or manmade factors affecting its continued existence.* Because the existing duskytail darter, palezone shiner, and pygmy madtom populations inhabit only short river reaches, they are vulnerable to extirpation from accidental toxic chemical spills. As the populated stream reaches of all three fish species are isolated from each other by impoundments, recolonization of any extirpated population would not be possible without human intervention. Absence of natural gene flow among populations of these fishes is also a threat, making the long-term genetic viability of these isolated populations questionable.

Additionally, several madtom species have, for still unexplained reasons, been extirpated from portions of their range. Etnier and Jenkins (1980) speculated that this may "* * * in addition to visible habitat degradation, be related to their being unable to cope with olfactory 'noise' being added to riverine ecosystems in the form of a wide variety of complex organic chemicals that may occur only in trace amounts." If madtoms are adversely impacted by increased concentrations of complex organic chemicals, increase in these materials could be a problem for the pygmy madtom.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these three fishes in determining to propose these rules. Based on this evaluation, the preferred action is to propose the duskytail darter (*Etheostoma*) (*Catonotus* sp.), palezone shiner (*Notropis* sp., cf. *procne*, and pygmy madtom (*Noturus stanauli*) as endangered. Presently, the dusktail darter inhabits only five short stream reaches, the palezone shiner is known from only two stream reaches, and the pygmy madtom possibly occurs in only one short stream reach. All three fishes and their habitat have been and continue to be impacted by water quality deterioration resulting from poor land use practices and by water pollution. The limited distribution of these fishes also makes them vulnerable to toxic chemical spills. Because of the restricted nature of these populations and their vulnerability, endangered status appears to be the most appropriate classification for the species. (See "Critical Habitat" section for a discussion of why critical habitat is not being proposed for these fishes.)

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Section 7(a)(2) of the Act and regulations codified at 50 CFR, part 402 require Federal agencies to insure, in consultation with and with the assistance of the Service, that activities they authorize, fund or conduct are not likely to jeopardize the continued existence of a listed species or result in the destruction or the adverse modification of critical habitat, if designated. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or, (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not presently prudent for these species. Such a determination would result in no known benefit to these three species.

As part of the development of these proposed rules, Federal and State

agencies were notified of these fishes' distribution, and they were requested to provide data on proposed Federal actions that might adversely affect the species. No specific projects were identified. Should any future projects be proposed in regions inhabited by these fishes, the involved Federal agency will already have the distributional data needed to determine if the species may be impacted by their action. Each of these species occupies a very limited range, and any adverse modification of these river stretches would be likely to jeopardize the continued existence of the species. Therefore, habitat protection for these species will be best accomplished through the section 7 jeopardy standard and the section 9 prohibition against take. Thus, no additional benefits would accrue from critical habitat designation that would not also accrue from the listing of these species.

In addition, these species are rare, and taking for scientific purposes and private collection could be a threat. The publication of critical habitat maps in the **Federal Register** and local newspapers, and other publicity accompanying critical habitat designation could increase the collection threat and increase the potential for vandalism during the critical habitat designation process. The locations of populations of these species have consequently been described only in general terms in these proposed rules. Any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies from the Service office described in the "ADDRESSES" section.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that may have programs affecting these species. No specific proposed Federal actions were identified that would likely affect any of these species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, coal mining, reservoir construction, steam alterations, wastewater facility development, pesticide registration, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been take illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. These species are not in trade, and economic hardship permit requests are not expected.

**Public Comments Solicited**

The Service intends that any final action resulting from these proposals will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject areas and their possible impacts on these species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to (see "Addresses" section of these rules).

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

## References Cited

Anderson, R.M. 1969. The effect of coal surface mining on endangered freshwater mussels (Mollusks: Unionidae) in the Cumberland River drainage. M.S. Thesis, Tennessee Technological University, Cookeville, Tennessee.

Burkhead, N. M., and R. C. Jenkins. In press. Fishes, *in* Virginia's Endangered Species. McDoland and Woodward Co., Blacksburg, Virginia.

Etnier, D.A., and R.E. Jenkins. 1980. *Noturus stanauli*, a new madtom catfish (Ictaluridae) from the Clinch and Duck Rivers, Tennessee. Bull. Alabama Mus. Nat. Hist. 5:17–22.

Etnier, D.A., and W.C. Starnes. In press. The Fishes of Tennessee. University of Tennessee Press, Knoxville, Tennessee.

Jenkins, R. C., and R. M. Burkhead. In press. The Freshwater Fishes of Virginia. American Fisheries Society, Bethesda, Maryland.

Layman, S.R. In press. Life history of the relict, duskytail darter *Etheostoma (Catonotus)* sp., in Little River, Tennessee.

Neves, R.J., and P.L. Angermeier. 1990. Habitat alteration and its effects on native fishes in the upper Tennessee River system, east-central U.S.A. J. Fish Bio. 37 (Supplement A), 45–52.

O'Bara, C.J. 1991. Final report on the status of the pygmy madtom (*Noturus stanali*) Unpub. Report to Tennessee Wildlife Resources Agency, Nashville, Tennessee.

Pierson, J.M. 1990. Status of endangered, threatened, and special concern freshwater fishes in Alabama. J. Alabama Acad. Sci. 61(2)106–116.

Starnes, W.C., and D.A. Etnier. 1980. Fishes. Pages B1–B134. In: D.C. Eagar and R.M. Hatcher (eds.). Tennessee's Rare Wildlife Volume 1: The Vertebrates. Tennessee Heritage Program.

Starnes, W.C., and D.A. Etnier. 1986. Drainage evolution and fish biogeography of the Tennessee and Cumberland Rivers drainage realm. In the Zoogeography of North American Freshwater Fishes (C.H. Hocutt, and E.O. Wiley, eds.), pp. 325–361. New York: John Wiley.

Tennessee Valley Authority. 1971. Stream length in the Tennessee River Basin. Tennessee River Authority, Knoxville, Tennessee, 25 pp.

Warren, M.L., and B.M. Burr. 1990. Status of the palezone shiner (*Notropis* sp., cf. *procne*), a Federal candidate for listing. Unpub. Report to the U.S. Fish and Wildlife Service, Asheville, North Carolina. 27 pp.

Warren, M.L., Jr., W.H. Davis, R.R. Hannan, M. Evans, D.L. Batch, B.D. Anderson, B. Palmer-Ball, Jr., J.R. MacGregor, R.R. Cicerello, R. Athey, B.A. Branson, G.J. Fallo, B.M. Burr, M.E. Medley, and J. M. Baskin. 1986. Endangered, threatened, and rare plants and animals of Kentucky. Transactions of the Kentucky Academy of Sciences, 47(3–4):83–98.


## Author

The primary author of this proposed rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–2782).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

## Proposed Regulations Promulgation

## PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | | | | | | |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
| Fishes | | | | | | | |
| Darter, duskytail | *Etheostoma (Catonotus)* sp. | U.S.A. (TN and VA) | Entire | E | | NA | NA |
| Madtom, pygmy | *Noturus stanauli* | U.S.A. (TN) | Entire | E | | NA | NA |
| Shiner, palezone | *Notropis* sp. | U.S.A. (AL, KY, and TN) | Entire | E | | NA | NA |

Dated: June 22, 1992.

**Richard N. Smith,**

*Director, Fish and Wildlife Service.*

[FR Doc. 92–15977 Filed 7–7–92; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 217 and 227

### Revisions To Enhance and Facilitate Compliance With Sea Turtle Conservation Requirements Applicable to Shrimp Trawlers; Restrictions Applicable to Shrimp Trawlers and Other Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rules; notice of public hearings.

**SUMMARY:** On April 30, 1992 (57 FR 18448), NMFS issued a proposed rule that would amend the regulations protecting sea turtles (50 CFR parts 217 and 227, subpart D). Under the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations implemented thereunder, it is unlawful to take sea turtles. The incidental taking of turtles during scientific research and fishing is exempted from the prohibitions in certain specified circumstances. Shrimp trawlers in the southeastern Atlantic and Gulf of Mexico are so exempted if they employ specified measures (sea turtles conservation measures) to reduce the mortality of sea turtles incidentally taken.

NMFS has revised the schedule for public hearings on this proposed rule to include an additional hearing in Texas.

**DATES**: Comments on the proposed rule will be accepted until July 29, 1992. Public hearings are scheduled as follows:

1. June 22, 1992, at 7 p.m.—11 p.m., Port Aransas, TX.
2. June 23, 1992, at 7 p.m.—11 p.m., Pasadena, TX.
3. June 24, 1992, at 2 p.m.—6 p.m., Thibodaux, LA.
4. June 25, 1992, at 7 p.m.—11 p.m., Mobile, AL.
5. June 30, 1992, at 7 p.m.—11 p.m., St. Petersburg, FL.
6. July 9, 1992, at 7 p.m.—11 p.m., Charleston, SC.
7. July 10, 1992, at 7 p.m.—11 p.m., Brunswick, GA.
8. July 16, 1992, at 7 p.m.—11 p.m., Morehead City, NC.
9. July 17, 1992, at 7 p.m.—11 p.m., Manteo, NC.
10. July 22, 1992, at 7 p.m.—11 p.m., S. Padre Island, TX.
11. July 23, 1992, at 7 p.m.—11 p.m., Lake Charles, LA.
12. July 24, 1992, at 7 p.m.—11 p.m., Biloxi, MS.

**ADDRESSES**: Send written comments to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910.

The hearings will be held at the following locations:

1. Port Aransas Civic Center, 710 West Avenue A, Port Aransas, TX
2. San Jacinto College, Slocomb Auditorium, 8060 Spencer Highway, Pasadena, TX
3. Thibodeaux Civic Center, 310 North Canal Boulevard, Thibodaux, LA
4. Mobile Civic Center, 401 Civic Center Drive, Mobile, AL
5. University of South Florida, Bayboro Campus, Campus Activities Center, 104 7th Avenue South (Corner of 2nd Street & 6th Avenue South), St. Petersburg, FL
6. South Carolina Wildlife & Marine Resource Dept., 217 Fort Johnson Road, Charleston, SC
7. National Guard Armory, 3100 Norwich Street, Brunswich, GA
8. West Carteret High School, Route 2, Box 390, Country Club Road, Morehead City, NC
9. North Carolina Aquarium, Box 967, Airport Road, Manteo, NC
10. South Padre Island Civic Center, 7355 Padre Blvd., South Padre Island, TX
11. Burton Coliseum, 6400 South Common, Lake Charles, LA
12. J.L. Scott Marine Educational Center, 115 Beach Blvd., Biloxi, MS

**FOR FURTHER INFORMATION CONTACT**: Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Regional Office, 813–893–3366, or Phil Williams, NMFS National Sea Turtle Coordinator, 301–713–2322.

Dated: July 1, 1992.

**Charles Karnella,**

*Deputy Director, Office of Protected Resources.*

[FR Doc. 92–15900 Filed 7–7–92; 8:45 am]

BILLING CODE 3510–22–M

# Notices

Federal Register
Vol. 57, No. 131
Wednesday, July 8, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### World Wildlife Fund; Intent to Award a Grant

**AGENCY:** Office of International Cooperation and Development (OICD).

**ACTION:** Notice of intent.

**ACTIVITY:** OICD intends to award a Grant to the World Wildlife Fund (WWF) to provide partial funding support for the project entitled "People, Parks, and Participation: Creating Effective Linkages."

**AUTHORITY:** Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Public Law 99–198).

OICD anticipates the availability of funds in fiscal year 1992 (FY92) to support transportation/per diem for three participants at the WWF workshop, "People, Parks, and Participation: Creating Effective Linkages." The workshop will link those with experience in grassroots development and local participation (i.e., the experts in rural development), with the international conservation and donor organizations implementing such projects.

Based on the above, this is not a formal request for application. An estimated $8,734 will be available in FY92 as partial project support.

Information on proposed Grant #59–319R–2–025 may be obtained from: USDA/OICD Administrative Services, 0324—South Bldg., Washington, DC 20250–4300.

Dated: July 1, 1992.

**Nancy J. Croft,**

*Contracting Officer.*

[FR Doc. 92–15866 Filed 7–7–92; 8:45 am]

BILLING CODE 3410–OP–M

## Soil Conservation Service

### Monroe Annabella Watershed; Sevier County, Utah

**AGENCY:** Soil Conservation Service, U.S. Department of Agriculture.

**ACTION:** Notice of finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Monroe Annabella Watershed, Sevier County, Utah.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Holt, State Conservationist, Soil Conservation Service, PO Box 11350, Salt Lake City, Utah 84147, (810) 524–5050.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Francis T. Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This project concerns conservation of agricultural water. Planned actions include installation of 225,330 feet of irrigated pipeline, 5.5 miles of canal enlargement, 5 wildlife watering facilities, and 75 acres of upland wildlife planting. Conservation treatment elements of the resource management systems include improved irrigation water management on 4,402 acres.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Francis T. Holt. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until August 7, 1992.

This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: July 1, 1992.

**Norm Priest,**

*Deputy State Conservationist.*

[FR Doc. 92–15902 Filed 7–7–92; 8:45 am]

BILLING CODE 3410–16–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Minnesota Advisory Committee to the Commission will be held from 8 a.m. until 6 p.m. on Thursday, July 30, 1992 and Friday, July 31, 1992 at the Crown Sterling Suites, 425 S. Seventh Street, Minneapolis, Minnesota. The purpose of this meeting is for the Committee to study media stereotyping of minorities.

Persons desiring additional information should contact Mary Ryland, Committee Chairperson at (313) 727–3673 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 30, 1992.

**Carol Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 92–15916 Filed 7–7–92; 8:45 am]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### International Trade Administration, Commerce

### Export Trade Certificate of Review

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review, Application No. 92–00006.

**SUMMARY:** The Department of Commerce has issued an Export Trade Certificate of Review to Chris D. McFarland d/b/a McChris International (hereinafter referred to as "McChris International"). This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1991) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Certified Conduct**

*Export Trade*

1. *Products.* All products.
2. *Services.* All services.
3. *Technology Rights.* Intellectual property rights including, but not limited to, patents, trademarks, copyrights, and trade secrets that relate to the Products and Services.
4. *Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights).* Consulting; foreign market research; marketing and trade promotion; financing; insurance; licensing; services related to compliance with customs documentation and procedures; transportation and shipping; warehousing and other services to facilitate the transfer of ownership and/or distribution; and communication and processing of export orders.

*Export Markets*

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Export Trade Activities and Methods of Operation*

1. With respect to the sale of Products and Services and the licensing of Technology Rights in the Export Markets, McChris International may:

a. Provide and/or arrange for the provision of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities;

c. Enter into exclusive and non-exclusive agreements with individual Suppliers and Export Intermediaries for the export of Products and Services to and the licensing of Technology Rights in the Export Markets;

d. Enter into exclusive and non-exclusive agreements with distributors in the Export Markets;

e. Establish the price of Products and Services for sale and Technology Rights for license in the Export Markets; and

f. Allocate export orders and divide the Export Markets among the Suppliers for the sale of Products and Services and the licensing of Technology Rights.

2. McChris International and individual Suppliers may regularly exchange information on a one-to-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by McChris International with its distributors in the Export Markets.

**Definitions**

*Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services for sales to the Export Markets.

*Supplier* means a person who produces, provides, licenses, or sells a Product, Service, or Technology Right.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: July 2, 1992.

**George Muller,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 92–16084 Filed 7–7–92; 8:45 am]

BILLING CODE 3510-DR-M

## National Oceanic and Atmospheric Administration

### Coastal Zone Management; Federal Consistency Appeal by Joseph Rushton and Francis Codd from an Objection by the State of Maryland

**AGENCY:** National Oceanic and Atmospheric Administration; DOC.

**ACTION:** Notice of appeal and request for comments.

On October 11, 1991, the Secretary of Commerce (Secretary) received a notice of appeal from Joseph Rushton and Francis Codd (Appellants). The Appellants are appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of Maryland Department of Natural Resources (State) to the Appellants' consistency certification for a U.S. Army Corps of Engineers (Corps) permit to construct an elevated house and a gravel driveway on a 0.25 acre waterfront lot having frontage along Sullivan's Cove, off of the Severn River, in Anne Arundel County, Maryland. The project site is located within the Chesapeake Bay Critical Area.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(C)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellants request that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in section 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity

do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Glenn E. Tallia, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington DC 20235. Copies of comments will be forwarded to the Appellant and State.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the State and the Office of the Assistant General Counsel for Ocean Services.

**FOR ADDITIONAL INFORMATION CONTACT:** Glenn E. Tallia, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606–4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: July 1, 1992.

**Thomas A. Campbell,**

*General Counsel.*

[FR Doc. 92–15873 Filed 7–7–92; 8:45 am]

BILLING CODE 3510–08–M

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## Dean John A. Knauss Marine Policy Fellowship Program; Grants Availability

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Dean John A. Knauss Marine Policy Fellowship; Open for Applications.

**SUMMARY:** In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The Fellowship program accepts applications once a year during the month of September. All applicants must submit an application to one of the state Sea Grant College Programs in their area.

**FOR FURTHER INFORMATION CONTACT:** Dr. Bernard Griswold, Director, National Sea Grant Federal Fellows Program, National Sea Grant College Program, 1335 East-West Highway, Silver Spring, Maryland 20910, telephone (301) 713–2431 or call your nearest Sea Grant program:

University of Alaska—(907) 474–7086.
University of California—(619) 534–4440.
University of Connecticut—(203) 445–3457.
University of Delaware—(302) 451–2841.
University of Florida—(305) 392–5870.
University of Georgia—(706) 542–7671.
University of Hawaii—(808) 956–7031.
University of Illinois—(217) 333–1824.
Louisiana State University—(504) 388–6710.
University of Maine—(207) 581–1436.
University of Maryland—(301) 405–6371.
Massachusetts Institute of Technology—(617) 253–7131.
University of Michigan—(313) 763–1437.
University of Minnesota—(612) 625–2765.
Mississippi-Alabama Sea Grant Consortium—(601) 875–9341.
University of New Hampshire—(603) 749–1565.
New Jersey Marine Sciences Consortium—(908) 872–1300.
University of North Carolina—(919) 515–2454.
Ohio State University—(614) 292–8949.
Oregon State University—(503) 737–3396.
University of Puerto Rico—(809) 832–3585.
Purdue University—(317) 494–3622.
University of Rhode Island—(401) 792–6800.
South Carolina Sea Grant Consortium—(803) 727–2078.
University of Southern California—(213) 740–1961.
Texas A&M University—(409) 845–3854.
Virginia Graduate Marine Science Consortium (804) 924–5965.
University of Washington—(206) 543–6600.
University of Wisconsin—(608) 262–0905.
Woods Hole Oceanographic Institution—(508) 548–1400 x2578.

**SUPPLEMENTARY INFORMATION:**

### Dean John A. Knauss Marine Policy Fellowship, National Sea Grant College Federal Fellows Program, Purpose of the Fellowship Program

In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government tc graduate students in marine related fields. The U.S. Congress recognized the value of this program and in 1987, Public Law 100–220 stipulated that the Sea Grant Federal Fellows Program was to be a formal part of the National Sea Grant College Program Act. The recipients are designated Dean John A. Knauss Marine Policy Fellows.

*Announcement*

Fellows program announcements are sent annually to all participating Sea Grant institutions and campuses by the state Sea Grant Director upon receipt of a notice from the National Sea Grant College Program Office (NSGCPO). A brochure describing the program is also available from the NSGCPO for distribution by both that office and the state Sea Grant programs.

*Eligibility*

Any student who, at the time of application, is in a master's, doctoral or professional program in a marine related field from any accredited institution of higher education may apply to the NSGCPO through any state Sea Grant program.

*Deadlines*

- Students must submit applications to a state Sea Grant Director, who will be the applicants sponsor, by the date set by the Directors in their individual program announcement (usually early to mid-September).
- Applications are to be submitted to the NSGCPO by the sponsoring state Sea Grant Director, no later than close of business on September 30th of any given year.
- The selection process and subsequent notification will be completed by October 31st of any given year.

*Stipend and Expenses*

For 1993 a Fellow will receive a stipend amount of $24,000.

*Application*

An application will include:

- Personal and academic resume or curriculum vitae.

• Education and career goal statement from the applicant with emphasis on what the prospective Fellow expects from the experience in the way of career development. (not to exceed 2 pages)

• No more than two letters of recommendations with at least one being from the student's major professor. Thesis papers are not desired.

• A letter of endorsement from the sponsoring state Sea Grant Director.

• Copy of undergraduate and graduate student transcripts.

It is our intent that all applicants be evaluated only on their ability, therefore letters of endorsements from members of Congress, friends, relatives or others will not be considered.

Placement preference in the Executive or Legislative Branches of the Government may be stated, and will be honored to the extent possible.

*Selection Criteria*

The selection criteria will include:

• Strength of Academic Performance.

• Communication Skills (both written and verbal).

• Diversity of Academic Background.

• Work Experience.

• Support of Major Professor.

• Support of Sea Grant Director.

• Ability to Work with People.

*Selection*

Selection of finalists will be made by a panel chaired by the Director of Federal Fellowships of the NSGCPO and include representation from (1) the Council of Sea Grant Directors, (2) the Office of the Assistant Administrator for Oceanic Atmospheric Research, and (3) the current and possibly past groups Fellows. The individuals representative of these groups will be chosen on a year by year basis according to availability, timing, and other exigencies. Selection of finalists by the panel will be done according to the criteria outlined above. After selection, the panel will group applicants into the two categories, legislative and executive, based upon the applicant's stated preference and/or the judgment of the panel based upon material submitted. The number of fellows assigned to the Congress will be limited to 10.

Dated: July 1, 1992.

**Ned A. Ostenso,**

*Assistant Administrator, Oceanic and Atmospheric Research.*

[FR Doc. 92-15895 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-12-M

## Marine Mammals; Report to Congress

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of Report Availability.

**SUMMARY:** Title XI of Public Law 101-627, the Fishery Conservation Amendments of 1990, requires NMFS to provide a report to Congress on an assessment of the effectiveness of the Marine Mammal Protection Act provisions for waivers of the moratorium on takings, and state and Federal authorizations with regard to the management of the marine mammal populations for responding to conflicts between marine mammals and human activities in the State of Washington. The report is also to provide information on the status and trends of four marine mammal species in Washington: California sea lions, harbor seals, Steller sea lions and sea otters. This report is now available for distribution to the general public from the locations listed below (See **ADDRESSES**).

**ADDRESSES:** A copy of the report is available from either: (1) Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, or (2) Regional Director, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700—Bldg. 1, Seattle, WA 98115-0070.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ken Hollingshead, F/PR2, NMFS, 301/713-2055 or Mr. Joe Scordino, F/NWR, NMFS, 206/526-6143.

Dated: June 30, 1992.

**Charles Karnella,**

*Deputy Director, Office of Protected Resources.*

[FR Doc. 92-15850 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-22-M

## Florida Keys National Marine Sanctuary Advisory Council Meeting

**AGENCY:** Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Florida Keys National Marine Sanctuary Advisory Council Notice of Open Meeting.

**SUMMARY:** The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

**TIME AND PLACE:** July 23 and 24, 1992 from 9 a.m. until adjournment. The meeting location will be at the Buccaneer Resort, 2600 Overseas Highway, Mile Market 48.5, Marathon, Florida.

**AGENDA:** 1. Discussion of water use zoning scheme.

2. Discussion of Management Strategies.

**PUBLIC PARTICIPATION:** The meeting will be open to public participation and the last thirty minutes will be set aside for oral comments and questions. Seats will be set aside for the public and media. Seats will be available on a first-come first-served basis.

**FOR FURTHER INFORMATION CONTACT:** Pamala James at (305) 743-2437 or Ben Haskell at (202) 606-4016.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

**Frank W. Maloney,**

*Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 92-15979 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-08-M

## Marine Mammals

**AGENCY** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Modification of Scientific Research Permit (P129F).

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and § 222.25 of the regulations governing endangered fish and wildlife permits (50 CFR part 222), Scientific Research Permit No. 492 issued to Dr. Bruce Mate, Marine Science Center, School of Oceanography, Oregon State University, Newport, OR 97365, on March 1, 1985, to take by inadvertent harassment, up to 200 bowhead whales (*Balaena mysticetus*) while attempting to tag ten (10), is modified to extend the expiration date to December 31, 1992.

This modification is effective from January 1, 1992 to December 31, 1992.

Documents pertaining to this Modification and Permit are available for review, by appointment, in the Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Room 7324, Silver Spring, MD 20910 (301/713-2289); Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE BIN C15700, Seattle, WA 98115 (206/526-6150); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/568-7221).

Dated: June 30, 1992.

**Charles Karnella,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 92-15849 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

July 1, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6705. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1905, published on January 16, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 1, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 13, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 9, 1992, you are directed to amend further the directive dated January 13, 1992, to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 314 | 5,475,022 square meters. |
| 342/642 | 939,600 dozen. |
| 363 | 29,016,185 numbers. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-15859 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-DR-F

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

July 1, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6714. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 14563, published on April 21, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 1, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 9, 1992, you are directed to amend the directive dated April 15, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 239 | 943,738 kilograms. |
| 338 | 4,093,748 dozen. |
| 339 | 994,262 dozen. |
| 351/651 | 191,795 dozen. |
| 638/639 | 98,670 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-15858 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-DR-F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Policy Board Advisory Committee; Meeting

**ACTION:** Notice of Advisory Committee meeting.

**SUMMARY:** The Defense Policy Board Advisory Committee will meet in closed session on 21 July 1992 from 0900 until 1700 and on 22 July 1992 from 0800 until 1700 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed, advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended [5 U.S.C. app. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: July 2, 1992.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Office Department of Defense*

[FR Doc. 92-15933 Filed 7-7-92; 8:45 am]

BILLING CODE 3810-01-M

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Title, Applicable Form, and Applicable OMB Control Number:* Defense FAR Supplement, 223.570, Drug-Free Work Force, and the clause at 252.223-7004; OMB Control Number 0704-3336.

*Type of Request:* Revision.

*Average Burden Hours/Minutes Per Response:* 80 hours.

*Responses Per Respondent:* 1.

*Number of Respondents:* 20,608.

*Annual Responses:* 20,608.

*Annual Burden Hours (Including Recordkeeping):* 2,637,824.

*Needs and Uses:* Defense FAR Supplement 252.223-7004 requires the maintenance of appropriate records attendant to a program for achieving a drug free work force. The program includes random drug testing of contractor employees working in sensitive positions.

*Affected Public:* Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: July 2, 1992.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-15932 Filed 7-7-92; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Army

### Re-emphasis for Participation in the Joint Military Astray, Freight Program (JMAFP)

**AGENCY:** Military Traffic Management Command (MTMC), DOD.

**ACTION:** Reprint of FR 28489, Re-emphasis for participation in the Joint Military Astray Freight Program (JMAFP).

**SUMMARY:** This JMAFP is being reprinted in its entirety from the 25 June 1992 **Federal Register** (57 FR 28489), to correct spelling and other minor errors.

Request all mode carriers make a thorough search of their freight terminals and warehouses to help in locating government frustrated property or astray freight.

The Military Traffic Management Command announces a re-emphasis upon the need for the carrier industry to participate in the Joint Military Astray Freight Program (JMAFP).

Once again the Commander of the Military Traffic Management Command is asking the transport carrier industries for their help. According to Major General Richard G. Larson, MTMC Commander, the Department of Defense (DOD) needs the carriers to help locate frustrated and astray freight shipments.

MTMC officials say that they are encouraging the carrier industries to cooperate in the Joint Military Astray Freight Program because doing so can help both DOD and all carriers. If industry and DOD cooperate, says the MTMC Program Management Office (PMO), they will have a more effective astray freight program that will save the carriers millions of dollars in claims as well as recover valuable DOD cargo.

The JMAFP relies on the active participation of all government transportation offices in contacting every carrier terminal warehouse storage area for shipments that cannot be properly delivered for any reason. MTMC officials stress, however, that the full cooperation of all carriers is necessary to make the program work properly.

The location and return of astray or frustrated freight is an important element of the DOD Cargo Loss and Damage Prevention Reporting and Analysis System. Information obtained from the recovery of astray cargo is used to assist all government traffic and transportation managers in instituting preventive action programs to help reduce and eliminate the number of future incidents.

During the recent Desert Shield/Desert Storm operations in Southwest Asia, more government shipments were present in the Defense Transportation System (DTS) than at any time since the height of the Vietnam war years.

With the termination of actions in the Gulf region, much of the government property once again was inserted into the DTS as part of the retrograde shipments returning to the United States, or to the military units relocating back to their European stations.

At the height of the Gulf campaign more than 500 ships carrying 945,000 pieces of cargo weighing 6.5 million measurement tons were moved to support the military forces involved. Sustainment supplies alone filled 37,000 40-foot containers.

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Records indicate some of this freight is still located somewhere in the DTS, with the majority of undelivered military shipments believed to be in hands of same carrier to whom the cargo was initially tendered. It is important to appreciate that this program covers all government agency shipments, not only those of DOD.

As an example of the magnitude of this program, JMAFP personnel located government property valued at $1 million in 1991, and shipments valued over $5 million in the first three months of fiscal year 1992.

Major General Larson has directed a revitalization of the JMAFP with the goal of locating and returning 100 percent of the shipments that have gone astray or are frustrated in a carrier's terminal or warehouse.

This effort can be of substantial benefit to the carrier by freeing up storage space that is occupied by nonrevenue shipments, and by helping the carrier obtain property documentation to receive reimbursement for services already rendered in the movement of the shipments to their present locations.

Toll free lines are open for both industry and government agencies to report astray or frustrated freight. All callers east of the Mississippi River can call 1–800–631–0434. All callers west of the Mississippi River can call 1–800–331–1822.

According to the HQ MTMC PMO, their goal is to make sure every shipment is delivered safety, in undamaged condition, and on time. Should any cargo go astray, MTMC's objective is to recover 100 percent of those shipments as quickly as possible.

**FOR FURTHER INFORMATION CONTACT:** For further information on the JMAFP, the HOTLINE numbers, and how you can participate, please contact Robert O. Saxton or Crystal Hunter at (703) 756–1680 or HQ, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041–5050. This document was submitted for publication in the **Federal Register** by the HQ, MTMC Office of Public Affairs, Mona Lee Goss.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer*

[FR Doc. 92–15927 Filed 7–7–92; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Information Collection Requests.

**SUMMARY:** The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before August 7, 1992.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Cary Green (202) 708–5174.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: July 1, 1992.

**Cary Green,**

*Director, Information Resources Management Service.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Extension.
*Title:* Performance Report for Removal of Architectural Barriers to Individuals with Disabilities (Formerly cited as the Removal of Architectural Barriers to the Handicapped).
*Frequency:* Annually.
*Affected Public:* State or local governments.
*Reporting Burden:*
*Responses:* 57
*Burden Hours:* 29.
*Recordkeeping Burden:*
*Recordkeepers:* 0
*Burden Hours:* 0
*Abstract:* This performance report will be used by State educational agencies who receive grants under the Removal of Architectural Barriers to the Handicapped Program. The Department uses of the information to monitor the performance of the grantees.

### Office of Postsecondary Education

*Type of Review:* Extension.
*Title:* Financial Report for the Endowment Challenge Grant Program.
*Frequency:* Recordkeeping.
*Affected Public:* Non-profit institutions.
*Reporting Burden:*
*Responses:* 280.
*Burden Hours:* 280.
*Recordkeeping Burden:*
*Recordkeepers:* 280.
*Burden Hours:* 560.
*Abstract:* This report requires data from institutions for the purpose of assessing their progress in increasing their endowment fund and monitoring their compliance with regulatory provisions.

### Office of Postsecondary Education

*Type of Review:* Extension.
*Title:* Reporting/Recordkeeping for Perkins Loan Program Subpart C—Due diligence.
*Frequency:* Occasionally.
*Affected Public:* Individuals or households, businesses or other for-profit, and non-profit institutions.
*Reporting Burden:*
*Responses:* 2,796,530.
*Burden Hours:* 68,502.
*Recordkeeping Burden:*
*Recordkeepers:* 718,588.
*Burden Hours:* 11,929.
*Abstract:* The Perkins Loan Program regulations require institutions to maintain records in order to administer

the program. These regulations establish proper administrative standards and loan collection procedures which protect the Federal fiscal interest and stipulate disclosure and recordkeeping requirements.

**Office of Postsecondary Education**

*Type of Review:* Reinstatement.
*Title:* Ability-to-Benefit Testing.
*Abstract:* The Secretary will publish an initial list of tests which are approved as measures of a student's ability-to-benefit from a postsecondary educational program. In order to receive Title IV student financial assistance, students who do not have a high school diploma or its equivalent must submit evidence that they passed an independently administered test which was approved by the Secretary of Education. Test developers may follow the procedures for submitting their tests for consideration on the Secretary's approved list.

*Additional Information:* An expedited review is requested to enact the provisions of Higher Education Technical Amendments of 1991 (Pub. L. 102–26, enacted April 9, 1991) which provides that, in order for a student who does not have a high school diploma or its recognized equivalent, the student must pass an independently administered examination approved by the Secretary of Education to be eligible for Title IV student financial assistance for periods on enrollment beginning on or after July 1, 1991. Due to this critical need, the Secretary must publish a list of approved tests and establish a mechanism for test developers to submit their tests for review and inclusion in the approved list. Test developers will need to submit to the Secretary: (1) A copy of the test; (2) test documentation; (3) technical manual that contains recommended procedures for security, administration, and scoring the test; and (4) the history of use of the test. The Secretary is seeking OMB approval by June 30, 1992.

The Secretary is also establishing a procedure whereby students who have already successfully taken one of the approved tests within the past twelve months can submit that score as their proof of ability-to-benefit.

*Frequency:* One-time-only.
*Affected Public:* Individuals or household, Businesses or other for-profit, Non-profit institutions.
*Reporting Burden:*
*Responses:* 198,750.
*Burden Hours:* 19,695.
*Recordkeeping Burden:*
*Recordkeepers:* 0.
*Burden Hours:* 0.

[FR Doc. 92–15888 Filed 7–7–92; 8:45 am]
BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

### Proposed Consent Order With Robert J. Martin

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of proposed consent order and opportunity for public comment.

**SUMMARY:** The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Robert J. Martin, the president and a part owner of Western Refining Company (Western). The agreement proposes to resolve matters relating to Martin's compliance with the Federal petroleum price and allocation regulations for the period August 19, 1973 through January 27, 1981. If this Consent Order is approved, Martin shall pay to the DOE the principal sum of $560,000 plus interest from the effective date of the Consent Order, over three years. The DOE's Office of Hearings and Appeals will be petitioned to implement Special Refund Procedures pursuant to 10 CFR part 205 subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this notice. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the **Federal Register**, along with an analysis of significant written comments in response to this notice, as well as any other considerations that were relevant to the final decision.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 820 First Street, NE., suite 810, Washington, DC 20002, (202) 523–3045.

**SUPPLEMENTARY INFORMATION:** During the period covered by the proposed Consent Order, August 19, 1973 through January 27, 1981 (when petroleum price and allocation controls were ended by the President on January 28, 1981, Executive Order 12287), Martin was an owner, officer, partner or employee of Western, Wesreco, Inc., Western Oil Marketing Company, Pioneer Trading Co., and Quad Energy. Western, of which Martin was president, was a "refiner" as that term was defined in the Federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE.

As a result of DOE's investigation of Western's compliance with the Federal petroleum price and allocation regulations during the period covered by the proposed Consent Order, ERA issued a Proposed Remedial Order (PRO) to Martin and four others on January 31, 1990. The PRO charges entitlements misreporting and circumvention violations in connection with certain crude oil and processing agreement transactions between Western (and affiliated entities), Betz Oil and Trading Company, and K.T. Trading Corp., both crude oil resellers, during the period January-December 1980. ERA seeks in the PRO to require Martin and four others to make restitution for alleged violations of 10 CFR 205.202, 210.62(c), 211.66(b), 211.66(h), and 211.67. The PRO charges entitlements violations totaling $23,144,485. With interest, the PRO respondents' maximum potential joint and several liability through June 30, 1992, is approximately $86,864,044.

The validity of the allegations in the PRO is currently the subject of litigation before DOE's Office of Hearings and Appeals. The participating PRO respondents have raised a number of objections to the manner in which ERA applied the entitlements reporting regulations in determining that violations occurred, as well as other defenses to the charges and to the liability of the individual respondents for any violations which may be found.

ERA has preliminarily agreed to the proposed settlement amount as resolution of Martin's potential liability for any violations of the Federal petroleum price and allocation regulations during the period covered by the proposed Consent Order, including but not limited to those alleged in the January 31, 1990 PRO. This agreement was reached after entering into settlement discussions with Martin on an ability-to-pay basis. Upon consideration of Martin's financial condition, based on documentation thereof provided to DOE by Martin, ERA has determined that Martin would not be able to satisfy a judgment in an amount approaching the potential maximum liability alleged in the PRO. The ERA has also considered that a

judgment in DOE's favor, even if obtained, would be a multiple of Martin's net worth, yet that liability might well be subordinate to secured creditors in the event of a bankruptcy which such a judgment could precipitate. Consideration of the foregoing factors has led ERA to tentatively conclude that the resolution of its claims against Martin for the principal sum of $560,000, plus interest, is an appropriate settlement and in the public interest.

If the settlement is made final, Martin will pay to DOE $560,000, plus interest over a period of three years in equal quarterly payments of $46,667. The first payment will be made thirty (30) days after the effective date of the Consent Order. In addition, Martin will waive any right to make claims for refunds in any proceedings concluded pursuant to 10 CFR part 205, subpart V.

To distribute the monies received by DOE under the settlement with Martin, ERA will petition OHA to implement Special Refund Procedures under subpart V. To ensured that OHA has sufficient information to evaluate refund claims, the proposed Consent Order requires Martin to provide customer identification and purchase volume information upon request.

If the settlement is not made final by the one hundred fiftieth (150th) day following execution, Martin may withdraw from the proposed agreement.

**Submission of Written Comments**

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Robert J. Martin Consent Order Comments, RG-30, U.S. Department of Energy, Economic Regulatory Administration, 820 First Street, NE., suite 810, Washington, DC 20002. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

All comments received by the thirtieth day following publication of this notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a notice in the **Federal Register**.

Issued in Washington, DC, on June 30, 1992.

**Milton C. Lorenz,**

*Chief Counsel for Enforcement Litigation Economic Regulatory Administration.*

**Consent Order With Robert J. Martin**

*I. Introduction*

101. This Consent Order is entered into between Robert J. Martin ("Martin") and the Department of Energy ("DOE"). Except as otherwise provided herein, this Consent Order settles and finally resolves all civil and administrative disputes, claims and causes of action, whether or not heretofore asserted, between DOE, as hereinafter defined, and Martin, relating to Martin's compliance with the Federal petroleum price and allocation regulations (as defined herein) administered and enforced by DOE and its predecessor agencies during the period August 19, 1973 through January 27, 1981 ("the period covered by the Consent Order"). All the matters settled and resolved by this Consent Order are referred to as "the matters covered by this Consent Order."

*II. Jurisdiction and Regulatory Authority*

201. This Consent Order is entered into by DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193; Executive Order 12009, 42 FR 46267 (1977); and Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. References herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Economic Regulatory Administration and all agencies succeeding to the DOE's authority to enforce the Federal petroleum price and allocation regulations. For purposes of this Consent Order, the phrase "Federal petroleum price and allocation regulations" means all pricing, allocation, reporting and recordkeeping requirements imposed by or under the Economic Stabilization Act ("ESA") of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, the DOE Act, any and all amendments to said Acts, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR parts 130 and 150, and 10 CFR parts 205, 210, 211, 212 and 213, including all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, forms and reporting and certification requirements regarding such regulations. The provisions of 10 CFR 205.199J and the definitions under the federal price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith.

*III. Facts and Determinations*

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by the Consent Order, Martin was president and a part owner of Western Refining Company ("Western"), as well as, an owner, officer, partner or employee in Wesreco, Inc., Western Oil Marketing Company, Pioneer Trading Co., and Quad Energy. Western was a "refiner" as that term was defined in the Federal Petroleum price and allocation regulations and was subject to the jurisdiction of the DOE.

302. As a result of DOE's investigation of Western's compliance with the price and allocation regulations, ERA issued a Proposed Remedial Order ("PRO") to Martin and four others on January 31, 1990. OHA Case No. LRO-0001. The PRO charges entitlements misreporting and anti-circumvention violations in connection with certain crude oil and processing agreement transactions between and among Western (and affiliated entities), Betz Oil and Trading Company (a reseller), and K.T. Trading Corp. (another reseller) during the period January–December 1980. ERA seeks in the PRO to require Martin and four others to make restitution for alleged violations of 10 CFR 205.202, 210.62(c), 211.66(b) and (h), and 211.67.

303. DOE and Martin agreed to enter into settlement discussions on an ability-to-pay basis in order to resolve DOE's claim against Martin as set forth in the PRO described above. Martin submitted to DOE certain financial information and documentation requested by DOE to permit it to evaluate Martin's financial ability to satisfy the aforementioned claim.

304. In reliance on the financial information and documentation that Martin has submitted to DOE, including his sworn statements that the information submitted is true and complete and includes all of his assets, and believing that it serves the public interest for DOE to compromise its enforcement claim on an ability-to-pay basis where, as here, the financial status of the party concerned can be satisfactorily determined, DOE has agreed to enter into this Consent Order.

305. In reliance on DOE's undertakings to consider settlement on an ability-to-pay basis, and in order to

resolve DOE's claims against Martin as set forth in the Proposed Remedial Order noted in Paragraph 302 hereof, without the expense and inconvenience of further administrative or judicial proceedings relating thereto, Martin has agreed to enter into this Consent Order.

*IV. Remedial Provisions*

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Martin for such matters under 10 CFR 205.199I or otherwise, Martin shall pay to DOE the principal sum of five hundred and sixty thousand dollars ($560,000), plus interest and in accordance with the schedule set forth in paragraphs 402 and 403.

402. The payment provided for in paragraph 401 shall be made over a three year period in equal quarterly payments of forty six thousand, six hundred and sixty seven dollars ($46,667) beginning thirty (30) days after the effective date of this Consent Order. In the event that any such payment date is not a business day, payment shall be due on the first business day following such date. Martin has the option to prepay all or any part of the outstanding unpaid balance at any time without penalty. Any payment that is less than the amount determined above, and any prepayment, shall be applied first to pay any interest that has accrued pursuant to paragraph 403, and any remaining portion of the payment shall be applied to reduce the outstanding principal balance.

403. Interest shall be computed from the date this Consent Order becomes effective at the rate of 6.74% per annum, compounded quarterly.

404. The payments pursuant to paragraph 401 of this Consent Order shall be certified or cashier's check made payable to the United States Department of Energy and delivered to the Office of Comptroller, Office of Washington Financial Services, Cash Management Division, P.O. Box 500, Germantown, Maryland 20874–0550.

405. If any quarterly payment provided for above becomes more than thirty days overdue, then the entire principal amount with interest to the date of payment, shall become immediately due and payable at DOE's option. Between the time that any payment or portion thereof is required to be paid under this Consent Order and the time the full payment is completed, interest shall accrue on the overdue quarterly amount.af the rate of 13.48% per annum, compounded quarterly. Such interest shall be paid to DOE with the overdue quarterly payment(s). Any late payment that is less than the amount overdue shall be applied first to pay any interest that has accrued pursuant to this paragraph, and any remaining portion of the payment shall be applied to reduce the overdue balance.

406. Payments made by Martin pursuant to paragraph 401 of this Consent Order shall be distributed by the DOE pursuant to the special refund procedures prescribed by 10 CFR part 205, subpart V.

*V. Issues Resolved*

501. All pending and potential civil and administrative claims, demands, liabilities, causes of action or other proceedings by DOE against Martin regarding Martin's compliance with and obligations under the Federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Proposed Remedial Order, Remedial Order, actions in courts or otherwise, are resolved and extinguished by this Consent Order. This Consent Order, however, does not resolve, extinguish, or otherwise affect DOE's claims against any other person or entity, except that DOE agrees to reduce the principal amount of its claim in OHA Case No. LRO–0001 by $560,000.00, as follows: The $560,000 reduction of the principal amount of the claim is applied to the two parts of the total of the alleged principal violation amount in the proportion that each part is to the total, *i.e.*, the $12,676,350 alleged violation amount for January-April 1980 is reduced by 54.77% of $560,000 or $306,712, to $12,369,646; the $10,468,127 alleged violation amount for May-December 1980 is reduced by 45.23% of $560,000 or $253,288, to $10,214,839.

502. Martin warrants that there is no litigation pending against the DOE initiated or participated in by Martin which in any way relates to or arises out of the matters covered by this Consent Order, or related claims arising under the Freedom of Information Act (5 U.S.C. 552). Martin hereby agrees to release any and all claims, demands, liabilities, or causes of action that Martin has asserted or might be able to assert against DOE, and any employee of DOE, in any matter related to the matters covered by this Consent Order.

503. (a) Compliance by Martin with this Consent Order shall be deemed by DOE to constitute full compliance for civil purposes with regard to the matters covered by this Consent Order. Except as explicitly excluded herein, in consideration for performance as required under this Consent Order by Martin, DOE hereby releases Martin completely and for all purposes from all administrative and civil judicial claims, demands, liabilities, or causes of action, including, without limitation, claims for civil penalties that the DOE has asserted or might otherwise be able to assert against Martin before or after the date of this Consent Order for alleged violations of the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. DOE will not initiate or prosecute any such administrative or civil judicial matter against Martin or cause or refer any such matter to be initiated or prosecuted, nor will DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil judicial matter against Martin or participate voluntarily in the prosecution of such actions. DOE will not assert voluntarily in any administrative or civil judicial proceeding that Martin has violated the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take action with respect to Martin in derogation of this Consent Order. However, nothing contained herein shall preclude DOE from defending the validity of the Federal petroleum price and allocation regulations.

(b) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order; provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to DOE, that a criminal violation may have occurred, or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations to appropriate authorities. Nothing contained herein may be construed as a bar, an estoppel, or a defense: Against any criminal action or against any civil action brought by an instrumentality or agency of the United States other than DOE under (i) section 210 of the ESA or (ii) any statute or regulation other than the Federal petroleum price and allocation regulations.

(c) Martin releases the DOE completely and for all purposes from all administrative and civil judicial claims, or causes of action that Martin has asserted or may otherwise be able to

assert against the DOE relating to the DOE's administration of the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. This release, however, does not preclude Martin from asserting a factual or legal position or argument as a defense to any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Nor does it preclude Martin from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person.

(d) Martin hereby releases any and all claims that Martin may have for refunds pursuant to any special refund proceedings implemented pursuant to 10 CFR part 205, subpart V. Such proceedings include, but are not limited to, proceedings to distribute (i) consent order funds and (ii) crude oil overcharge funds.

504. Within ten (10) days after the effective date of this Consent Order, the DOE and Martin shall jointly dismiss any and all pending objections, motions, complaints, adversary proceedings, and appeals in any forum regarding the Proposed Remedial Order. Specifically, DOE shall file with the Office of Hearings and Appeals a motion to dismiss Martin as a respondent to the Proposed Remedial Order in OHA Case No. LRO–0001.

505. Execution of this Consent Order constitutes neither an admission by Martin nor a finding by DOE of any violation by Martin of any statute or of any regulation. DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and DOE will not seek any such civil penalties. The payment by Martin pursuant to this Consent Order is not to be considered for any purpose as a penalty, fine, forfeiture, or as settlement of any potential liability for penalties, fines or forfeitures.

506. Notwithstanding any other provision herein, and in addition to the matters excluded herein, DOE reserves the right to initiate an enforcement proceeding, including, without limitation, an action for penalties, for any newly discovered regulatory violations committed by Martin during the period covered by this Consent Order, but only if Martin concealed facts relating to such violations. DOE also reserves the right to seek appropriate judicial remedies other than full rescission of this Consent Order, or to rescind this Consent Order, for any misrepresentation of fact material to this Consent Order made by Martin during the course of ERA's audit preceding issuance of the Proposed Remedial Order cited in paragraph 302 above, during any stage of the litigation relating to Martin's alleged liability for the violations asserted in OHA Case No. LRO–0001, or during the course of the negotiations that preceded this Consent Order.

*VI. Reporting and Recordkeeping Requirements*

601. Martin shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 401, Martin shall also maintain any records in his possession for the time period covered by this Consent Order evidencing sales volume data for crude oil and refined products subject to controls and customers' names and addresses, until thirty (30) days after final distribution by DOE of the funds paid pursuant to paragraph 401, *supra*. If requested, Martin shall make such information available to DOE. Except as otherwise provided in this paragraph, upon timely payment to DOE of the amount required to be paid under paragraph 401 of this Consent Order, Martin is relieved of his obligation to comply with the recordkeeping requirements of the Federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Except for formal requests for information regarding compliance by other firms with the Federal petroleum price and allocation regulations, Martin will not be subject hereafter to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Martin's activities subject to such regulations regarding the matters covered by this Consent Order.

603. This Consent Order is subject to disclosure by the DOE pursuant to the requirements of the Freedom of Information Act, as amended, 5 U.S.C. 552 ("FOIA"). Martin waives all claims he may have that some or all of the information contained in this Consent Order is exempt from the mandatory public disclosure requirements of the FOIA, as amended, is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure.

*VII. Contractual Undertaking*

701. It is the understanding and express intention of Martin and DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Martin and DOE each reserves the right to institute a civil action in an appropriate United States District Court, if necessary, to secure enforcement of the terms of this Consent Order, and DOE also reserves the right to seek appropriate penalties for any failure to comply with the terms of this Consent Order. Consistent with Departmental policy, DOE will undertake the defense of the Consent Order in response to any litigation challenging the Consent Order's validity in which the DOE is named as a party. Martin agrees to cooperate with the DOE in the defense of any such challenge.

*VIII. Final Order*

801. Subject to Article IX, this Consent Order is a final order of DOE having the same force and effect as a Remedial Order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Martin hereby waives his right to administrative or judicial appeal from this Order, but Martin reserves the right to participate in any such review initiated by a third party.

*IX. Effective Date*

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Martin, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred fiftieth (150) day following execution by Martin, Martin may, at any time thereafter, but before the effective date, withdraw his agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, Robert J. Martin, hereby agree to and accept the foregoing Consent Order.

Dated: June 19, 1992.

*Name:* Robert J. Martin

I, the undersigned, a duly authorized representative for the Department of Energy, Economic Regulatory Administration, hereby

agree to and accept on behalf of said Administration the foregoing Consent Order.

Dated: June 16, 1992.

*Name:* M.C. Lorenz,

*Chief Counsel.*

[FR Doc. 92-15988 Filed 7-7-92; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Project No. 11168-000 Connecticut]**

## Summit Hydropower; Availability of Environmental Assessment

June 30, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the Dayville Pond Hydroelectric Project located on the Five Mile River in the town of Killingly, Windham County, Connecticut, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed rehabilitation and operation of the project and has concluded that approval of the application for minor license, with appropriate mitigation and enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-15890 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. ER92-478-000, et al.]**

## Tampa Electric Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

### 1. Tampa Electric Company

[Docket No. ER92-478-000]

June 29, 1992.

Take notice that on June 8, 1992, Tampa Electric Company (Tampa Electric) amended its prior filing in this docket by withdrawing the revised Service Schedules A and B between Tampa Electric and the Utilities Commission of the City of New Smyrna Beach (New Smyrna Beach) that had been tendered previously.

Tampa Electric continues to propose an effective date of June 23, 1992, for the Service Schedule J, Letter of Commitment under Service Schedule J, and Letter Agreement under Service Schedule D that were also tendered previously in this docket.

Copies of the filing have been served on New Smyrna Beach and the Florida Public Service Commission.

*Comment date:* July 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 2. Florida Power & Light Company

[Docket No. ER92-622-000]

June 29, 1992.

Take notice that on June 8, 1992, Florida Power & Light Company (FPL) tendered for filing a Notice of Cancellation for the Partial Requirements Service to the City of Vero Beach, Florida (Vero Beach) and the Fort Pierce Utilities Authority (Fort Pierce).

*Comment date:* July 13, 1992, in accordance with Standard Paragraph E end of this notice.

### 3. Tampa Electric Company

[Docket No. ER92-545-000]

June 29, 1992.

Take notice that on June 8, 1992, Tampa Electric Company (Tampa Electric) amended its prior filing in this docket by withdrawing the Service Schedules A and B between Tampa Electric and the Oglethorpe Power Corporation (Oglethorpe) that had been tendered previously.

Tampa Electric continues to propose an effective date of the earlier of July 20, 1992, or the date of acceptance for filing, for the Contract for Interchange Service, the Service Schedules C, D, G, and J, and the Letters of Commitment under Service Schedules G and J that were also tendered previously in this docket.

Copies of the filing have been served on Oglethorpe and the Public Service Commissions of Georgia and Florida.

*Comment date:* July 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 4. Interstate Power Company

[Docket No. ER91-687-000]

June 30, 1992.

Take notice that on June 25, 1992, Interstate Power Company tendered for filing an amendment to its September 30, 1991 filing in this docket.

*Comment date:* July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 5. Entergy Services, Inc.

[Docket No. ER92-665-000]

June 30, 1992.

Take notice that Entergy Services, Inc. (Entergy Services), as agent for Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., on June 26, 1992 tendered for filing an Interchange Agreement with East Kentucky Power Cooperative, Inc.

Entergy Services requests an effective date of May 1, 1992 for the Interchange Agreement. Entergy Services requests waiver of the Commission's notice requirement under Section 35.11 of the Commission's regulations.

*Comment date:* July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 6. Florida Power Corporation

[Docket No. ER92-658-000]

June 30, 1992.

Take notice that on June 23, 1992, Florida Power Corporation (Florida Power) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 90 and the supplements and amendments thereto. Florida Power requests that the cancellation become effective on August 24, 1992. Rate Schedule 90 was filed by Florida Power on April 22, 1980 with an effective date of February 1, 1980. Rate Schedule 90 consists of an Interchange Agreement between Florida Power and Sebring Utilities Commission.

*Comment date:* July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 7. Entergy Power, Inc.

[Docket No. ER92-664-000]

June 30, 1992.

Take notice that Entergy Power, Inc. (EPI), on June 26, 1992 tendered for filing an Interchange Agreement with East Kentucky Power Cooperative, Inc.

*Comment date:* July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 8. Interregional Transmission Coordination Forum

[Docket No. ER92-667-000]

June 30, 1992.

Take notice that on June 26, 1992, the Interregional Transmission Coordination Forum, a voluntary association of utilities and NUGs in the eastern United States for coordination and dispute resolution of transmission issues, submitted for filing under Section 205 of the Federal Power Act its charger, its

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bylaws and other organizational documents, including a dispute resolution process. An effective date of May 29, 1992 is requested, with waiver of notice.

*Comment date:* July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

**9. Public Service Company of Colorado**

[Docket No. ER92-807-000]

June 30, 1992.

Take notice that on June 26, 1992, Public Service Company of Colorado (Public Service) tendered for filing an amendment in the above-referenced docket.

*Comment date:* July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

**10. Entergy Services, Inc.**

[Docket No. ER92-518-000]

June 30, 1992.

Take notice that Entergy Services, Inc., as agent for Entergy Power, Inc. (Entergy Power) on June 25, 1992, tendered for filing an amendment to an energy sale agreement between Etnergy Power and Oglethorpe Power Corporation previously filed with the Commission in Docket No. ER92-518-000. Entergy Power requests an effective date of July 1, 1992. Entergy Power also requests waiver of the Commission's notice requirements under Section 35.11 of the Commission's Rules and Regulations.

*Comment date:* July 14, 1992, in accordance with Standard Paragraph E end of this notice.

**11. Arizona Public Service Company**

[Docket No. ER92-660-000]

June 30, 1992.

Take notice that on June 18, 1992, Arizona Public Service Company (APS) tendered for filing a revised Exhibit B to the Wholesale Power Supply Agreement (Agreement) between APS and Citizens Utilities Company (Citizens) (APS-FERC Rate Schedule No. 149). Exhibit B lists Contract Demands applicable under the Agreement.

No change from the currently effective rate or revenue levels for the period June 1, 1992 through May 31, 1993 is proposed herein.

New facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on Citizens and the Arizona Corporation Commission.

*Comment date:* July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

*Standard Paragraphs*

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-15947 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP92-554-000, et al.]**

**Florida Gas Transmission Company, et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

**1. Florida Gas Transmission Company**

[Docket No. CP92-554-000]

June 29, 1992.

Take notice that on June 25, 1992, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP92-554-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add a new point for delivery of natural gas to Lake Apopka Natural Gas District (LANG), an existing customer, under FGT's blanket certificate issued in Docket No. CP82-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct and operate the LANG Orlando West meter station in Orange County, Florida, to accommodate gas deliveries to LANG under FGT's Rate Schedules "G" (general service), "I" (preferred sales service), and "WPPS" (winter peaking period service). FGT proposes to deliver up to 300 MMBtu equivalent of gas per day and 109,500 MMBtu equivalent per year. It is stated that the gas would be used for commercial purposes. FGT explains that the proposed quantities would be served from the total firm entitlements currently assigned to the Winter Garden Division; there would be no assignment or realignment of firm entitlements to the new delivery point.

It is stated that LANG would reimburse FGT for all construction costs, estimated to be $19,461.

*Comment date:* August 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

**2. Texas Eastern Transmission Corporation**

[Docket No. CP92-546-000]

June 29, 1992.

Take notice that on June 22, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP92-546-000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon Texas Eastern's obligations to provide firm transportation service and the related standby transportation service for Natural Gas Pipeline Company of American (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states that by order issued February 24, 1961, in Docket No. CP60-504, 14 FERC ¶61,171, Texas Eastern was authorized to transport up to 1,000 dt per day equivalent of natural gas on a firm basis and up to 2,000 dt per day equivalent of natural gas on best efforts basis for Natural. Texas Eastern further states that it receives the gas in Pointe Coupee Parish, Louisiana and redelivers the gas to Natural in Brazoria or Kenedy Counties, Texas. By order issued October 30, 1985, in Docket No. CP80-504-003, 33 FERC ¶16,1143, Texas Eastern states it was authorized to add a new delivery point in Wharton County, Texas.

Texas Eastern indicates that Natural has requested termination of the transportation agreement dated April 21, 1980, as amended on September 15, 1983, as the service is no longer needed. Texas Eastern requests that the abandonment authorization be effective April 25, 1990. Texas Eastern states that it does not propose to abandon any facilities.

*Comment date:* July 20, 1992, in accordance with Standard Paragraph F at the end of this notice.



**3. Panhandle Eastern Pipe Line**

[Docket No. CP92-547-000]

June 29, 1992.

Take notice that on June 22, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P. O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-547-000 an application pursuant to Section 7 (b) of the Natural Gas Act, for permission and approval of a sales service provided to Ohio Valley Gas Corporation (Ohio Valley), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle has stated in its application that pursuant to section 7(b) of the Natural Gas Act, it is requesting authorization to abandon firm sales service provided to Ohio Valley under Rate Schedule G-1 as a result of Ohio Valley's election to terminate its firm sales service with Panhandle effective November 1, 1992.

Panhandle also stated that it has filed revised tariff sheets at Docket Nos. RP91-53, RP91-52 and RP92-118, *et. al.*, to recover take-or-pay costs from each of its customers, including Ohio Valley. Additionally, Panhandle stated that it has filed revised tariff sheets to recover portions of other costs in Docket Nos. RP92-125, RP92-127 and RP92-128, *et. al.* The portion of such costs attributable to Ohio Valley are described therein, and may be amended, supplemented, revised or modified pursuant to Commission authorizations or as required by law. By this filing Panhandle is not waiving or relieving Ohio Valley from any of its cost responsibilities associated with these take-or-pay costs or any other costs properly attributable to Ohio Valley. It is stated that the abandonment authority sought herein should be expressly conditioned on and subject to the ultimate recovery by Panhandle of all such residual costs associated with service to Ohio Valley and Ohio Valley's continuing obligation to Panhandle in connection therewith until extinguished by full payment, in addition to any other amounts pursuant to the Gas Sales Contract.

*Comment date:* July 20, 1992, in accordance with Standard Paragraph F at the end of the notice.

**4. Northern Natural Gas Company**

[Docket No. CP92-551-000]

June 30, 1992.

Take notice that on June 23, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-551-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, for authority to upgrade an existing delivery point to accommodate increased natural gas deliveries to Circle Pines Utilities (Circle Pines) for redelivery to the City of Circle Pines, Minnesota, under Northern's blanket certificate issued in Docket No. CP82-401-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that the upgrade of these facilities will increase deliveries at the Circle Pines delivery point by 857 Mcf on a peak day and 4,000 Mcf on an annual basis. Northern also states that Circle Pines requested firm volumes to replace current interruptible volumes to assure Circle Pine's ability to meet its contractual and public service obligations to its customers at this delivery point.

Further, Northern explains that in addition to the upgrade of its delivery point, it will construct approximately .5 miles of 20" loop line on its Elk River branchline. Total estimated cost to upgrade this delivery point is $25,000.

*Comment date:* August 14, 1992, in accordance with Standard Paragraph G at the end of this notice.

**5. Indian Oil Company**

[Docket No. CS92-7-000]

June 30, 1992.

Take notice that on May 15, 1992, Indian Oil Company (Indian) of 925 Hightower Building., Oklahoma City, Oklahoma 73102 filed an application requesting a small producer certificate of public convenience and necessity. Indian requests authorization to make sale for resale of natural gas in interstate commerce, as set forth in the application which is on file with the Commission and open to public inspection.

*Comment date:* July 12, 1992, in accordance with Standard Paragraph J at the end of this notice.

**6. Virginia Electric and Power Company**

[Docket No. CI92-92-60-000

June 30, 1992.

Take notice that on June 19, 1992, Virginia Electric and Power Company (VEPCO) of One James River Plaza, Richmond, Virginia 23261 filed an application under Section 4 and 7 of the Natural Gas Act (NGA) for a unlimited-term blanket certificate with pregranted abandonment. VEPCO requests authority to make sales for resale in interstate commerce without rate restriction of all Natural Gas Policy Act categories of natural gas subject to the Commission's NGA jurisdiction, gas purchased from non-first sellers such as intrastate pipelines and local distribution companies, imported natural gas, gas purchased form interstate pipelines, including gas sold under blanket certificates authorizing interruptible sales of surplus system supply, and gas purchased form end-users. VEPCO also requests waiver of the Commission's regulations concerning the filing and maintenance of rate schedules. VEPCO's application is on file with the Commission and open for public inspection.

*Comment date:* July 20, 1992, in accordance with Standard Paragraph J at the end of the notice.

**7. Atlanta Gas Light Company**

[Docket No. CI92-59-000

June 30, 1992.

Take notice that on June 18, 1992, Atlanta Gas Light Company (Atlanta) of 235 Peachtree Street, NE, Atlanta, Georgia 30303 filed an application under Section 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment. Atlanta requests authority to make sales for resale in interstate commerce without rate restriction (except for gas subject to the Natural Gas policy Act (NGPA) ceiling price) of all NGA categories of NGA gas subject to the Commission's jurisdiction, imported gas sold under pipeline interruptible sales certificates and gas purchased from non-first sellers, including intrastate pipelines and local distribution companies. Atlanta further requests the Commission state in any order granted here that Atlanta's exclusion under NGA Section 1(c) will not be impaired by activities under the requested authorization and grant waiver of the Commission's regulations concerning the filing and maintenance of rate schedules. Atlanta's application is on file with the Commission and open for public inspection.

*Comment date:* July 20, 1992, in accordance with Standard Paragraph J at the end of this notice.

*Standard Paragraphs*

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will

not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

*Standard Paragraph*

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR §§ 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

**Lois D. Cashell**

*Secretary.*

[FR Doc. 92-15948 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. JD92-07511T Wyoming-30]**

## State of Wyoming; NGPA Determination by Jurisdictional Agency Designating Tight Formation

July 1, 1992.

Take notice that on June 26, 1992, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Baxter Formation underlying a portion of Sublette County, Wyoming, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers 640 acres described as all of Section 19, Township 27 North, Range 112 West.

The notice of determination also contains Wyoming's and the Bureau of Land Management's findings that the referenced portion of the Baxter Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92-15950 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. JD92-07512T Wyoming-29]**

## State of Wyoming; NGPA Determination by Jurisdictional Agency Designating Tight Formation

July 1, 1992.

Take notice that on June 26, 1992, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Baxter Formation underlying a portion of Lincoln County, Wyoming, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers approximately 5,200 acres described as follows:

*Township 26 North, Range 112 West, 6th P.M.*
Section 2: All
Section 3: All
Section 9: SE/4SE/4
Section 10: All
Section 11: All
Section 12: All
Section 13: All
Section 14: All
Section 15: All
Section 16: NE/4NE/4.

The notice of determination also contains Wyoming's and the Bureau of Land Management's findings that the referenced portion of the Baxter Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92-15949 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. ER92-641-000]**

## Brazos River Authority; Filing

July 1, 1992.

Take notice that on June 12, 1992, Brazos River Authority tendered for filing a Notice of Cancellation regarding the sale of energy generated by Brazos River Authority at Possum Kingdom, Dam, Palo Pinto County, Texas Federal Power Project No. 1490.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 92-15898 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. RS92-5-000, et al.; RS92-6-000, et al.]

## Columbia Gas Transmission Corp.; Prefiling Conference

June 30, 1992.

Take notice that a prefiling conference will be convened in these proceedings on July 21, 1992, at 10 a.m., in Washington, DC at a location to be announced later. The conference will continue on July 22, if necessary. The conference will address the summaries of the proposals of Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company to comply with Order No. 636. The two pipelines anticipate serving all parties in these proceedings with the summaries by July 7, 1992.

For additional information, contact Donald A. Heydt, (202) 208-0740.

Linwood A. Watson, Jr.,

*Acting Secretary*

[FR Doc. 92-15899 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ92-6-23-000]

## Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 1, 1992.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on June 26, 1992 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective August 1, 1992.

ESNG states that the above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and §§ 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.0527 per dt in the Commodity Charge and no change in the Demand Charge, all as measured against ESNG's Out-Of-Cycle Purchased Gas Adjustment in Docket No. TQ92-5-23-000, et. al., as filed on May 27, 1992 and requested to be effective June 1, 1992.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure 18 CFR § 385.211 and § 385.214. All such motions or protests should be filed on or before July 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 92-15951 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. ER92-631-000]

## Florida Power & Light Co.; Notice of Filing

June 24, 1992.

Take notice that on June 18, 1992, Florida Power & Light Company (FPL) tendered for filing Support Schedules C and F, which have been updated to reflect current costs of providing service under Schedules A and B of the referenced contract filed in Docket No. ER80-58, and Attachment No. 2, Support Information as described in Article III of the offer of Settlement in Docket No. ER80-56.

FPL requests that the revised rates be made effective on June 1, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-15952 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ92-5-46-000]

## Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

July 1, 1992.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on June 26, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Quarterly PGA filing, which includes Thirty-Eighth Revised Sheet No. 41 to its FERC GAs Tariff, Second Revised Volume No. 1, to become effective August 1, 1992. The revised tariff sheet reflects a current decrease of $0.0431 per Dth in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $1.1369 per Dth.

Kentucky West states that effective August 1, 1992, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $1.1200 per Dth, inclusive of all taxes and any other production-related cost add-ons, that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it is or becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

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become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 92-15953 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP92-193-000]**

**Texas Eastern Transmission Corp., Request for Waiver**

July 1, 1992.

Take notice that on June 26, 1992, Texas Eastern Transmission Corporation ("Texas Eastern"), pursuant to rule 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.212, requested authority to waive the facility reimbursement requirements of section 4.4 of its Rate Schedule FT-1 and 4.3 of its Rate Schedule IT-1, which, absent waiver, would require the City of Hamilton, Ohio ("Hamilton") to reimburse Texas Eastern for facilities it has constructed to transport and deliver gas for Hamilton pursuant to authority received in Docket No. CP91-2189-000.

In its request, Texas Eastern states that on June 6, 1991, it filed in Docket No. CP91-2189-000 a prior notice request to provide firm and interruptible transportation service for Hamilton. The prior notice request stated that Texas Eastern would construct and operate mainline tap and related regulation and measurement facilities to provide this service. Because no party protested Texas Eastern's request, the transportation was deemed authorized pursuant to Section 157.205 of the Commission's Regulations. Texas Eastern has since constructed the facilities to deliver gas to Hamilton at a cost of approximately $450,000.00.

Texas Eastern states that good cause exists for waiving the facility reimbursement provisions of its tariffs based on its willingness to pay for the first delivery point to provide firm transportation service for a new customer and on the benefits that will accrue to other customers on Texas Eastern's system as a result of the additional transportation.

Any person desiring to be heard or to protest should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All motions or protests should be filed on or before July 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the Request for Waiver are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 92-15954 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ92-5-18-000]**

**Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff**

July 1, 1992.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on June 26, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-seventh Revised Sheet No. 10
Fifty-seventh Revised Sheet No. 10A
Thirty-eighth Revised Sheet No. 11
Twenty-eighth Revised Sheet No. 11A
Twenty-eighth Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to an Out-of-Cycle PGA Rate Adjustment and are proposed to be effective July 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.1337 per MMBtu in purchased gas costs from those reflected in the rates set forth in the Out-of-Cycle PGA filed May 27, 1992 (Docket No. TQ92-5-18). No changes are proposed for the demand or SGN Standby rates.

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before July 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 92-15955 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP92-165-001]**

**Trunkline Gas Co.; Compliance Filing**

July 1, 1992.

Take notice that Trunkline Gas Company (Trunkline) on June 29, 1992 in compliance with Ordering Paragraph (C) of the Commission's Order dated May 29, 1992 in the above-referenced proceeding, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sub Original Sheet No. 9-CC.3
Original Sheet No. 9-CC.4
Original Sheet No. 9-CC.5
Sub Original Sheet No. 9-DG.4
Original Sheet No. 9-DG.5
Original Sheet No. 9-DG.6
Second Revised Sheet No. 11
Third Revised Sheet No. 12

Trunkline states that Ordering Paragraph (C) of the May 29, 1992 Order required Trunkline to file revised tariff sheets by June 29, 1992 to: (i) Clarify that proposed changes to the gas quality standards are equally applicable to both transportation gas and to Trunkline's gas purchases, and (ii) assure that the benefits from retained volumes of unauthorized gas are provided to both sales and transportation customers.

Trunkline hereby requests waiver of § 154.22 of the Commission's Regulations and any other waivers which may be necessary to make these tariff sheets effective June 1, 1992 as provided in Ordering Paragraph (C) of the May 29, 1992 Order.

Trunkline also states that it is providing as part of the instant filing, workpapers in compliance with Ordering Paragraph (E) of the May 29, 1992 Order which required Trunkline to submit information to the Commission comparing the revenue responsibility of each customer class under the prior and proposed cost classification, cost allocation and rate design methodologies.

Trunkline further states that copies of this filing are being mailed to Trunkline's sales and transportation customers, affected state commissions and intervenors in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance



with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 92-15956 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

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## Office of Fossil Energy

**[Docket No. FE C&E 92-09, 10; Certification Notice—102]**

**Filing Certification of Compliance: Coal Capability of New Electric Powerplant Powerplant and Industrial Fuel Use Act**

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of filing.

**SUMMARY:** EEA Three, Inc. and Fleetwood Cogeneration Associates, L.P. have submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

**ADDRESSES:** Copies of the self-certification filings are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell at (202) 586-9624.

**SUPPLEMENTARY INFORMATION:** Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the Federal Register that a certification has been filed. The following owners/operators of proposed new baseload powerplants have filed self-certifications in accordance with section 201(d).

*Docket C&E-09*

*Owner:* EEA III, L.P., Arlington, VA.
*Operator:* EEA III, Bayonne Cogeneration Project.
*Location:* Hudson County, NJ.
*Plant Configuration:* Combined cycle cogeneration facility.
*Capacity:* 150 megawatts.
*Fuel:* Natural gas.
*Utility Purchasing Electrical Output:* Consolidated Edison Company of New York, NY.
*Expected In-Service Date:* October, 1994.

*Docket C&E-10*

*Owner:* Fleetwood Cogeneration Associates, L.P., Radnor, Pennsylvania.
*Operator:* LFC Power Systems Corporation.
*Location:* Sunsweet Growers plant, Fleetwood, Pennsylvania.
*Plant Configuration:* Topping-cycle cogeneration facility.
*Capacity:* 155 megawatts.
*Fuel:* Natural gas.
*Utility Purchasing Electrical Output:* Metropolitan Edison Company.
*Expected In-Service Date:* March 1, 1900.

Issued in Washington, DC on June 30, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92-15992 Filed 7-7-92; 8:45 am]

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**[Docket No. FE C&E 92-11; Certification Notice—103]**

**Filing Certification of Compliance: Coal Capability of New Electric Powerplant, Powerplant and Industrial Fuel Use Act**

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of filing.

**SUMMARY:** Brush Cogeneration Partners has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

**ADDRESSES:** Copies of the self-certification filing are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell at (202) 586-9624.

**SUPPLEMENTARY INFORMATION:** Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the Federal Register that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

*Owner:* Brush Cogeneration Partners, Boulder, Colorado.
*Operator:* Colorado Cogen Operators Limited Liability Company.
*Location:* Brush, Colorado.
*Plant Configuration:* Topping-cycle cogeneration plant.
*Capacity:* 68 megawatts.
*Fuel:* Natural gas.
*Purchasing Utility:* Public Service Company of Colorado.
*Expected In-Service Date:* Early 1994.

Issued in Washington, DC on June 30, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92-15993 Filed 7-7-92; 8:45 am]

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## Office of Hearings and Appeals

**Cases Filed During the Week of June 12 Through June 19, 1992**

During the Week of June 12 through June 19, 1992, the appeals and applications for exception or other relief listed in the appendix of this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of

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the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 1, 1992.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 12 through June 19, 1992]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 6/8/92 | Gulf/Lacey Springs Gulf, Atlantic Beach, FL. | RR300-177 | Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The April 24, 1992 Dismissal Letter (Case No. RF300-13929) issued to Lacey Springs Gulf regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified. |
| 6/12/92 | Gulf/Griffin Gulf, Atlantic Beach, FL. | RR300-178 | Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The June 21, 1991 Decision and Order (Case No. RF300-11504) issued to Griffin Gulf regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified. |
| 6/16/92 | Encore Corporation, Washington, DC. | RR272-96 | Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The August 4, 1989 Decision and Order (Case No. RF272-54561) issued to Encore Corporation regarding the firm's Application for Refund submitted in the crude oil refund proceeding would be modified. |

REFUND APPLICATIONS RECEIVED

| Date received | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| 6/12/92 thru 6/19/92 | Crude Oil, applications received | RF272-92631 thru RF272-92720 |
| 6/12/92 thru 6/19/92 | Texaco refund, applications received | RF272-18691 thru RF272-18716 |
| 6/12/92 thru 6/19/92 | Gulf oil refund, applications received | RF300-20243 thru RF300-20300 |
| 6/10/92 | Jerry's Clark Super 100 | RF342-224 |
| 6/10/92 | Owens Oil Service | RF342-225 |
| 6/15/92 | Robert C. Brunette | RF304-13175 |
| 6/15/92 | Swim Valley Farms Co | RC272-159 |
| 6/15/92 | Swim Valley Farms Co | RC272-160 |
| 6/16/92 | Esock Brothers Service Station | RF304-13176 |
| 6/16/92 | Gene's Arco | RF304-13177 |
| 6/16/92 | Toney's Arco | RF304-13178 |
| 6/16/92 | Hiun U Kim | RF304-13179 |
| 6/16/92 | Joe Cava's Arco | RF304-13180 |
| 6/16/92 | Gordon Olson Clark Super 100 | RF342-226 |
| 6/16/92 | Jays Clark Super 100 | RF342-229 |
| 6/17/92 | Chuck's Owens Clark Super 100 | RF342-230 |
| 6/18/92 | Tourgard, Inc. | RF342-231 |
| 6/19/92 | The Tennessean Truckstop | RF315-10214 |
| 6/19/92 | Horry N. & Larry L. Brock | RF304-13181 |
| 6/19/92 | Hinson Oil Company | RF304-13182 |
| 6/19/92 | Gary's Arco | RF304-13183 |
| 6/19/92 | Norman C. Brunelle | RF304-13184 |
| 6/19/92 | Amos' Arco | RF304-13185 |
| 6/19/92 | Cook's Service Station | RF342-232 |
| 6/19/92 | James Cavanaugh Super 100 | RF342-233 |
| 6/19/92 | James Cavanaugh Super 100 | RF342-234 |

[FR Doc. 92-15991 Filed 7-7-92; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Decisions and Orders; Week of May 25 Through May 29, 1992

During the week of May 25 through May 29, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

### Appeal

*Glen Milner, 05/27/91, KFA-0270*

Glen Milner filed an Appeal from a denial by the Deputy Director of the Office of Intergovernmental and External Affairs, Albuquerque Field Office, of a request for information that he filed under the Freedom of Information Act (FOIA). In his Appeal, Mr. Milner challenged Albuquerque's withholding of certain portions of documents on the grounds that they constitute Unclassified Controlled Nuclear Information (UCNI), as defined in the Atomic Energy Act of 1954, and withholdable under Exemption 3 of the FOIA. The DOE determined that it would now release a small portion of the documents that were initially withheld. Nevertheless, it determined that most of the withheld material continues to be properly identified as UCNI and are therefore exempt for mandatory disclosure pursuant to

Exemption 3. Accordingly, the Appeal was granted in part and denied in part.

**Remedial Order**

*Revere Petroleum Corporation, Richard E. Dobyns, 05/29/92, HRO–0125*

Revere Petroleum Corporation (Revere) and Richard E. Dobyns (Dobyns) (collectively, "the Respondents") filed a Statement of Objections to an Amended Proposed Remedial Order (Amended PRO) that was issued to the Respondents by the Economic Regulatory Administration (ERA). In the Amended Pro, the ERA charged that during the period April 1979 through March 1980, Revere was a reseller of crude oil which engaged in the practice known as "layering," prohibited under 10 CFR 212.186, and in violation of 10 CFR 210.62(c) and 10 CFR 205.202. The Amended PRO also asserted alternative violations of the reseller price rule, 10 CFR 212.183, and 10 CFR 212.10. In their Statement of Objections, the Respondents principally argues that: (i) The Amended PRO was procedurally invalid and denied due process, (ii) the enforcement proceeding was barred under the equitable doctrines of estoppel and laches, and by a state statute of limitations, (iii) the layering regulation was procedurally and substantively invalid and, in any event, wrongly applied by the ERA in this case, and (iv) Dobyns could not be held personally liable for any violations by Revere. In rejecting these contentions, the DOE determined that the Respondents' procedural challenges to the Amended PRO and the layering regulation were without basis, and that the Respondents had failed to show that the layering regulation had been misapplied by the ERA. The layering violation was therefore sustained. The DOE further determined that Dobyns should be held jointly liable for Revere's layering violation since, as President of Revere, he participated in and benefitted from the layering transactions. Accordingly, the Amended PRO was issued jointly to the Respondents as a final Remedial Order of the DOE. The final Remedial Order requires the Respondents to refund the principal overcharge amount, $54,163,195.85, plus interest.

**Petitions for Special Redress**

*Arkansas, 05/29/92, LEG–0004*

The DOE issued a Decision and Order denying a Petition for Special redress filed by the State of Arkansas which sought approval of a proposed Reactive Fuel Additive Research program that would use oil overcharge funds to underwrite research to develop a substance to reduce the volatility of stored motor fuel. The Decision upheld two earlier determinations by the Office of Financial and Technical Assistance denying the program as being inconsistent with the restitutionary goals of the Stripper Well Settlement Agreement.

*Texas, 05/28/92, LEG–0003*

The DOE issued a Decision and Order denying a Petition for Special redress filed by the State of Texas which sought approval of a proposed Reservoir Conservation Program that would use oil overcharge funds to subsidize the plugging of abandoned oil wells on State lands. The Decision upheld an earlier determination by the Office of Financial and Technical Assistance denying the program as being inconsistent with the restitutionary goals of the Stripper Well Settlement Agreement.

**Refund Applications**

*Mazer Chemicals, Inc., 05/27/92, RF272–65794*

The DOE issued a Decision and Order denying an Application for Refund submitted by Mazer Chemicals, Inc. in the Subpart V crude oil overcharge refund proceeding. The applicant applied for a refund based on fuel oil that it purchased and blended with other materials so that 60 percent of the total volume of the blend was fuel oil. The applicant then sold the blend. The DOE found that the applicant, by selling the blend, fell within the class of firms comprised of refiners, resellers, and retailers. Applicants from this class of firms must submit specific evidence of injury to receive a refund in the subpart V crude oil overcharge refund proceeding. The DOE denied the application because the applicant did not submit such evidence.

*Texaco Inc./Dailey Oil Co., 05/28/92, RR321–9*

Dailey Oil Company filed a Motion for Reconsideration of a Decision and Order that denied duplicate Texaco refund applications that were filed on its behalf. In the Motion, the firm's vice president stated that he had signed the second application, and certified in it that no other application had been filed, because he believed that this was in accordance with the instructions that he had received from Texaco, along with the second form. In considering the Motion, the DOE found the firm's vice president erroneously filed the second application, because he was confused by Texaco's sending him another application form, and not for the purpose of obtaining a duplicate refund. Accordingly, the Motion for reconsideration was approved and Dailey Oil Company was granted a refund of $13,119.

*Texaco Inc./Leo's Texaco, 05/28/92, RR321–37*

Leo Pugliese, the owner of Leo's Texaco, filed a Motion for Reconsideration of a Decision and Order that denied duplicate Texaco refund applications that he had filed. In the Motion, Mr. Pugliese stated that he had signed the second application, and certified in it that no other application had been filed, because he believed that this was in accordance with the instructions that he had received from Texaco, along with the second form. In considering the Motion, the DOE found Mr. Pugliese erroneously filed the second application, because he was confused by Texaco's sending him another application form, and not for the purpose of obtaining a duplicate refund. Accordingly, the Motion for Reconsideration was approved and Mr. Pugliese was granted a refund of $2,456.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| Name of applicant | Case No. | Date |
|---|---|---|
| Acustar Chemical Division, New Castle Chassis Systems | RF272-66068<br>RF272-66194 | 05/26/92 |
| Atlantic Richfield Company/Charles J. Schock III & J. F. Schock et al | RF304-106 | 05/27/92 |
| Atlantic Richfield Company/Empire Gas Corporation et al | RF304-4812 | 05/26/92 |
| Atlantic Richfield Company/Gary Burgin | RF304-12517 | 05/27/92 |
| Gulf Oil Corporation/Denoco, Inc | RF300-12204 | 05/26/92 |
| Gulf Oil Corporation/Sturdy Oil Corp., Sturdy Oil Corporation | RF300-11990<br>RF300-19606 | 05/26/92 |

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| Name of applicant | Case No. | Date |
|---|---|---|
| J.L.D.W. Enterprises, Inc., Johanson Construction Co., The Reynolds Construction Co | RF272-48268<br>RF272-48279<br>RF272-48341 | 05/26/92 |
| Nobel/Sysco Food Services Co | RF272-57283 | 05/26/92 |
| Pottstown Memorial Medical Center et al | RF272-78200 | 05/27/92 |
| Texaco Inc./C&P Texaco et al | RF321-925 | 05/27/92 |
| Texaco Inc./Granby Texaco, Schiff's Texaco | RF321-9498<br>RF321-13627 | 05/29/92 |
| Texaco Inc./J.R. Holland Texaco et al | RF321-1081 | 05/26/92 |
| Texaco Inc./James A. Gusho et al | RF321-11719 | 05/28/92 |
| Texaco Inc./Jim's Texaco | RF321-4083 | 05/29/92 |
| Texaco Inc./Lakeside Service Center | RF321-18826 | 05/29/92 |
| Texaco Inc./University Texaco et al | RF321-3311 | 05/26/92 |
| Texaco Inc./Wrobel's Texaco et al | RF321-9080 | 05/26/92 |

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Arthur De Freese | RF304-12896 |
| DBA Bettles Lodge | RF326-280 |
| Flannery's Beltline Spur | RF309-1218 |
| Howell's Texaco | RF321-8908 |
| Lonestar Texaco | RF321-10347 |
| Old Abilene Town Texaco | RF321-15648 |
| Osborne's Shell Service | RF315-10132 |
| Plaza Texaco | RF321-2143 |
| Swann Oil, Inc | HRO-0269 |
| Swann Oil, Inc | HRH-0269 |
| Swann Oil, Inc | HRO-0267 |
| Town Texaco | RF321-11639 |
| Willow Springs Service Center | RF309-668 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW. Washington, DC 20585, Monday through Friday, between the hours of 1 p.m., and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 1, 1992.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 92-15990 Filed 7-7-92; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4151-6]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before August 7, 1992.

For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260-2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Pesticides and Toxic Substances**

*Title:* Recordkeeping Requirements for Producers of Pesticides (EPA ICR No: 0143.04; OMB No: 2070-0028). This is a reinstatement of a previously approved collection.

*Abstract:* This collection requires producers of pesticides to maintain records related to production and other operations. EPA may inspect these records to determine compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Producers themselves may use the records to fulfill various FIFRA-mandated reporting requirements.

*Burden Statement:* The estimated annual recordkeeping burden for this collection of information is estimated to average 2 hours per pesticide producer. This estimate includes the time needed to review instructions, and review the collection of information.

*Respondents:* Pesticide producers.

*Estimated No. of Respondents:* 5,117.

*Estimated Total Annual Burden on Respondents:* 10,234 hours

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: July 1, 1992.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 92-15969 Filed 7-7-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4151-8]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before August 7, 1992. To obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Pesticides and Toxic Substances**

*Title:* Asbestos-Containing Material in Schools Rule (EPA ICR No.: 1365.01; OMB No.: 2070-0091). This is a reinstatement of a previously approved collection.

*Abstract:* The Asbestos-Containing Material in Schools Rule requires Local Education Agencies (LEAs) to inspect school buildings for friable and non-friable asbestos. The LEAs are also required to develop and implement asbestos management plans which must include an accreditation plan at least as stringent as the accreditation plan develop by EPA. Asbestos abatement workers and laboratories performing asbestos analysis, must be accredited under the States' approved plan.

In terms of recordkeeping requirements, the LEAs must keep original inspection reports, as well as any subsequent inspection reports. They must also keep management planner recommendations; response actions records; and records of fiber release episodes, periodic surveillance, workers' training, and any operation and maintenance activities. The States use the information to ensure compliance with the Federally mandated asbestos rule.

*Burden Statement:* The burden for this collection of information is estimated to average 14.56 hours per response for reporting and 22.06 hours per recordkeeper annually. This estimate includes the time needed to review instructions, gather and maintain the data needed, and review the collection of information.

*Respondents:* Elementary and Secondary School Districts and all the States.

*Estimated No. of Respondents:* 107,550.

*Estimated No. of Responses Per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 3,939,000 hours.

*Frequency of Collection:* On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: July 1, 1992.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 92-15970 Filed 7-7-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4151-9]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before August 7, 1992. To obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Water**

*Title:* NPDES and Sewage Sludge Management of State Programs (ICR 0168.04).

*Abstract:* ICR 0168.04 seeks renewal of clearance for the information requirements approved under OMB control number 2040-0057. In addition, it incorporates State Sludge Management Program requirements currently approved under OMB control number 2040-0128.

Section 402 of the Clean Water Act (CWA) establishes the National Pollutant Discharge Elimination System (NPDES) and allows States to request authority from EPA to administer the NPDES permit program. Section 405 of the CWA sets out the sewage sludge program. As with the NPDES program, States may similarly request authority to administer the program themselves. ICR 168.04 describes three general categories of information requirements imposed upon States in conjunction with these two programs:

For State Program Requests, States must provide information to request a new NPDES or sludge program or to change an ongoing program.

For State program implementation, States which already have approved NPDES programs must fulfill certain recordkeeping and enforcement activities. States without approved NPDES programs must certify the permits which EPA has issued in their place.

For State Program Oversight, approved NPDES States must meet certain statutory requirements, such as submitting proposed permits and reports of permittee violations to EPA.

*Burden Statement:* The average burden associated with NPDES and Sewage Sludge Management of State Programs is 40 hours per response. This total includes time for searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

*Respondents:* States and Territories.

*Estimated No. of Respondents:* 57.

*Estimated Total Annual Burden on Respondents:* 1,050,036 hours.

*Frequency of Collection:* Variable, as needed.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: July 1, 1992.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 92-15971 Filed 7-7-92; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30338; FRL-4074-3]

### Frost Technology Corporation; Applications to Register Pesticide Products

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments must be submitted by August 7, 1992.

**ADDRESSES:** By mail submit comments identified by the document control number [OPP-30338] and the registration/file number to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA

without prior notice to the submitter. All written comments will be available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** PM 21, Susan Lewis, Registration Division (H7505C), Office of Pesticide Programs, rm. 227, CM #2, (703–305–1900).

**SUPPLEMENTARY INFORMATION:** EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

**Products Containing Active Ingredients Not Included In Any Previously Registered Products**

1. File Symbol: 64004–R. Applicant: Frost Technology Corp., 6701 San Pablo Ave., Oakland, CA. 94608–1239. Product name: FROSTBAN™ A. Active ingredient: Pseudomonas fluorescens A506 23%, Pseudomonas syringae 742RS 24%, Pseudomonas fluorescens 1629RS 24%, inerts 29%. Proposed use: For prevention of frost-forming bacteria on plant leaves, blossoms, and fruit. (PM–21)

2. File Symbol: 64004–E. Applicant: Frost Technology Corp., 6701 San Pablo Ave., Oakland, CA. 94608–1239. Product name: FROSTBAN™ B. Active ingredient: Pseudomonas fluorescens A506 71%, inerts 29%. Proposed use: For prevention of frost-forming bacteria on plant leaves, blossoms, and fruit. (PM–21)

3. File Symbol: 64004–G. Applicant: Frost Technology Corp., 6701 San Pablo Ave., Oakland, CA. 94608–1239. Product name: FROSTBAN™ C. Active ingredient: Pseudomonas Syringae 742RS, 71%, inerts 29%. Proposed use: For prevention of frost-forming bacteria on plant leaves, blossoms, and fruit. (PM–21)

4. File Symbol: 64004–U. Applicant: Frost Technology Corp., 6701 San Pablo Ave., Oakland, CA. 94608–1239. Product name: FROSTBAN™ D. Active ingredient: Pseudomonas fluorescens 1629RS 71%, inerts 29%. Proposed use: For prevention of frost-forming bacteria on plant leaves, blossoms, and fruit. (PM–21)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

**Authority:** 7 U.S.C. 136.

Dated: June 29, 1992.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 92–15828 Filed 7–7–92; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL DEPOSIT INSURANCE CORPORATION

**Coastal Barrier Improvement Act; Property Availability: Hidden Harbor Condominium, Parcel A, Palmetto, FL**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the property known as "Hidden Harbor Condominium, Parcel A" located in Palmetto, Florida is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

**DATES:** Written Notices of Serious Interest to purchase or effect other transfer of the property may be mailed or faxed to the Federal Deposit Insurance Corporation until October 6, 1992.

**ADDRESSES:** Copies of detailed descriptions of the property can be obtained by contacting the following person: James Hines, Federal Deposit Insurance Corporation, 285 Peachtree Center Avenue, suite 300, Atlanta, Georgia 30303, telephone (404) 880–3093, fax (404) 888–3119.

**SUPPLEMENTARY INFORMATION:** The 58.77 acre tract is located along West 10th Street, also known as County Road No. 22, approximately 800 feet east of the bridge crossing Cutoff Channel to Snead Island. The property is bounded to the west and north by Terra Ceia Bay and a small harbor know as Hidden Harbor, and on the east by Tropic Isle mobile home park.

Terra Ceia Bay has been labeled Terra Ceia Aquatic Preserve, Class III waters, by the Florida Department of Environmental Regulation under the Florida Aquatic Preserve Act of 1975. The property is raw, undeveloped land, which is thick with vegetation. The property is located within the municipality of Palmetto, Florida. A 34.5 acre portion of the property has been labeled conservation by the City of Palmetto's Comprehensive Plan due to the presence of protected plant species and other environmental considerations. The remaining 22.27 acre tract is zoned RM–6, multi-family. The giant leather fern (*Acrostichum danaeifolium*), a "threatened" plant species listed by the Florida Department of Agriculture and Consumer Services, exists on the property.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before October 6, 1992 by James Hines at the above address.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the federal government;

2. Agencies or entities of state or local government; and

3. "Qualified organizations" pursuant to section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(s)).

**Form of Notice**

Notices of serious interest should be in the following form:

Notice of Serious Interest re: Hidden Harbor Condominium, Parcel A, Palmetto, Florida

1. Name of eligible entity.

2. Declaration of eligibility to submit notice under criteria set forth in Public Law 101–591, section 10(b)(2).

3. Brief description of proposed terms of purchase or other offer (e.g. price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

Dated: July 2, 1992.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 92–15875 Filed 7–7–92; 8:45 am]

BILLING CODE 6714–01–M

## FEDERAL MARITIME COMMISSION

### Port of Oakland et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224–010974–010.
*Title:* Port of Oakland and International Transportation Services, Inc., Nonexclusive Preferential Assignment Agreement.
*Parties:*
The Port of Oakland ("Port")
International Transportation Services, Inc. ("ITS")

*Synopsis:* The Agreement extends the term of the basic Agreement to July 31, 1992, with a right for the Port to extend the term for an additional month upon written notice to ITS.

*Agreement No.:* 212–010386–023.
*Title:* Argentina/U.S. Atlantic and Gulf Ports Pool Agreement.
*Parties:*
American Transport Lines, Inc.
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navigacion C.F.I.I.
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
Hamburg-Sudamerikanische Damppfschifffahrts-Gesellschoft Eggert & Amsinck (Columbus Line)
Empresa de Navegacao Alianca S.A. ("Alianca")

*Synopsis:* The proposed amendment provides for the withdrawal of Columbus Line and Alianca from the Agreement effective July 1, 1992, and the reallocation of their pool shares among the remaining parties. Columbus and Alianca will receive their former shares should they rejoin the Agreement. The parties have requested a shortened review period.

*Agreement No.:* 212–010388–018.
*Title:* U.S. Atlantic & Gulf Ports/Argentina Pool Agreement.
*Parties:*
American Transport Lines, Inc.
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
Hamburg-Sudamerikanische Damppfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line)
Empresa de Navegacao Alianca S.A. ("Alianca")

*Synopsis:* The proposed amendment provides for the withdrawal of Columbus Line and Alianca from the Agreement effective July 1, 1992, and the reallocation of their pool shares among the remaining parties. Columbus and Alianca will receive their former shares should they rejoin the Agreement. The parties have requested a shortened review period.

Date: July 2, 1992.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**
*Secretary.*

[FR Doc. 92–15866 Filed 7–7–92; 8:45 am]
BILLING CODE 6730–01–M

### United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW, room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 202–008548–044.
*Title:* United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference.
*Parties:*
Farrell Lines, Inc.
Levant Line, S.A.
Lykes Bros. Steamship Co., Inc.
Waterman Steamship Corporation.

*Synopsis:* The proposed amendment will add a new provision to the Agreement which provides that any member may disassociate itself from any Conference or Rate Committee action on a rate or service item by giving verbal or written notice of such disassociation.

*Agreement No.:* 224–200344–001.
*Title:* Oakland/Stevedoring Services of America Terminal Agreement.
*Parties:*
City of Oakland
Stevedoring Services of America

*Synopsis:* The amendment extends the term of the Agreement through August 6, 1992, or until a new management agreement between the parties becomes effective.

*Agreement No.:* 224–200426–001.
*Title:* Port Everglades/Sea-Land Terminal Agreement.
*Parties:*
Port Everglades Authority
Sea-Land Service, Inc. ("Sea-Land")

*Synopsis:* The amendment increases the amount of space leased by Sea-Land to a total of 31.71 acres and makes appropriate adjustments in Sea-Land's rental payments.

*Agreement No.:* 224–200447–005.
*Title:* Port of New Orleans/Coastal Cargo Terminal Agreement.
*Parties:*
The Port of New Orleans ("Port")
Coastal Cargo Company ("Coastal")

*Synopsis:* The amendment acknowledges Coastal's options to cancel fifteen sections of leased premises at the Mandeville Street Wharf located at the Port and to have Coastal's rent reduced proportionately.

*Agreement No.:* 224–200684.
*Title:* Maryland Port Administration/Guthrie Latex, Inc. Terminal Agreement.
*Parties:*
Maryland Port Administration ("MPA")
Guthrie Latex, Inc. ("Guthrie")

*Synopsis:* The Agreement permits MPA to lease to Guthrie 14,193 square feet of shed space on Pier 4–5 at the North Locust Point Marine Terminal for five years.

By order of the Federal Maritime Commission.

Dated: July 1, 1992.

**Joseph C. Polking,**
*Secretary.*

[FR Doc. 92–15871 Filed 7–7–92; 8:45 am]
BILLING CODE 6730–01–M

[Petition No. P4-92]

**Castle & Cooke Worldwide, Ltd. and Philippines, Micronesia & Orient Navigation Company; Petition for Exemption From Filing Requirements of the Shipping Acts; Filing**

Notice is hereby given that Castle & Cooke Worldwide, Ltd. and Philippines, Micronesia & Orient Navigation Company ("Petitioners") have petitioned for an exemption pursuant to section 16 of the Shipping Act of 1984 (46 U.S.C. app. 1715) and Section 35 of the Shipping Act, 1916 (46 U.S.C. app. 833a), from the filing requirements of section 8 of the Shipping Act of 1984 (46 U.S.C. app. 1707), section 18(a) of the Shipping Act, 1916 (46 U.S.C. app. 817), and sections 2 and 3 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 844 and 845), and Commission regulations promulgated pursuant to those sections, for their shipping agreement between General Santos, Republic of the Philippines, and the West Coast of the United States.

In order for the Commission to make a thorough evaluation of the petition for exemption, interested persons are requested to submit views or arguments in reply to the petition no later than July 27, 1992. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 in an original and 15 copies.

Replies shall also be served on Edward J. Sheppard, Garvey, Schubert & Barer, 1000 Potomac Street, NW., Washington, DC 20007. Petitioners may respond to the replies no later than August 10, 1992.

Copies of the petition are available for examination at the Washington, DC office of the Commission, 1100 L Street, NW., room 11101.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92-15886 Filed 7-7-92; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

[Program Announcement Number 266]

### Cooperative Agreement to Support Interventions in Iron Deficiency Anemia Among Women

#### Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds to implement a demonstration program directed at reducing the prevalence of iron deficiency anemia among low-income women of childbearing age. Two groups of women will be targeted: (1) Pregnant women served by the Supplemental Food Program for Women, Infants and Children (WIC) and; (2) non-pregnant mothers whose children are served by WIC.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of healthy People 2000, a PHS-lead national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Nutrition and Maternal and Child Health. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

#### Authority

This program is authorized under section 301(a) and 317(k)(3) of the Public Health Service Act, 42 U.S.C. 241(a) and 247(k)(3), as amended.

#### Eligible Applicants

Assistance will be provided only to the official public health agencies of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian Tribal governments. This project involves screening and intervention for iron deficiency anemia among low-income women served by the Supplemental Food Program for Women, Infants and Children (WIC). In each of the eligible jurisdictions, the official health agency administers the WIC program.

#### Availability of Funds

Approximately $120,000 is available in FY 1992 to fund one cooperative agreement award. It is expected that the award will begin on or about September 15, 1992, and is usually made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory performance and the availability of funds. At the request of the recipient, CDC may provide supplies in lieu of a portion of the financial assistance.

#### Purpose

The purpose of this project is to demonstrate the effectiveness of an intervention program to reduce the high prevalence of iron deficiency anemia among low-income pregnant women. Specifically, this project will test the following hypotheses:

A. Iron supplementation during pregnancy with slow-release, low-dose iron supplement capsules will reduce anemia more effectively than standard iron treatment. Pregnant women will receive either ferrous sulfate or slow-release, low-dose iron supplements.

B. Low-dose iron supplementation before pregnancy will reduce anemia more effectively during a subsequent pregnancy compared with iron supplementation during pregnancy alone. Non-pregnant mothers of WIC children will receive slow-release, low-dose iron supplements or no supplements and be followed through their next pregnancy.

#### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below; and CDC shall be responsible for conducting activities under B., below.

*A. Recipient Activities*

1. Develop a protocol for identifying participants and recruit pregnant women and non-pregnant mothers (based on informed consent) in cooperation with a local WIC program serving a minimum of 500 pregnant women per year.

2. Maintain data on an existing data system such as the Pregnancy Nutrition Surveillance System.

3. Test participants for iron status using hemoglobin and serum ferritin, and refer at risk women for appropriate medical follow-up.

4. Track pregnant women during their pregnancy and post-partum period.

5. Track non-pregnant WIC mothers in the project until their next pregnancy or the end of the project period.

6. Evaluate the effectiveness of the project.

*B. CDC Activities*

1. Collaborate in the design and provide technical support for the project methodology, protocols, data collection, and analysis.

2. Provide technical assistance and consultation regarding the development, implementation and management of the demonstration project.

3. Assist in analyzing, interpreting, and using data to monitor the effectiveness of the demonstration project.

4. Collaborate in preparing and presenting project findings to

appropriate state and national audiences.

5. Will assist the state with the selection and procurement of iron preparations (ferrous sulfate and slow-release, low-dose iron supplements).

**Evaluation Criteria**

Applications will be reviewed and evaluated according to the following criteria:

*A. Potential for Public Health Impact (10 Points)*

1. Evidence that there is a high rate of iron deficiency anemia among low-income women of childbearing age in the community selected as the project site.

2. Evidence that the local WIC program within that community serves a demographically diverse population, with a high prevalence of iron deficiency anemia among the pregnant women receiving services.

*B. Project Development and Implementation Plan (15 Points)*

The appropriateness of goals, objectives, and activities related to:

1. Pregnant Women

a. Recruiting, on a random basis, and tracking pregnant women served by the WIC program to receive routine ferrous sulfate supplements or slow-release, low-dose capsules.

b. Testing for hemoglobin levels early in pregnancy, during the third trimester, and the post-partum period.

c. Testing for serum ferritin using capillary tube blood samples obtained in the post-partum period.

d. Integrating an iron supplementation (ferrous sulfate and slow-release iron capsules) program into the local WIC program's existing intervention protocols for iron deficiency.

e. Determining compliance with the iron supplement prescription and reasons for non-compliance.

2. Non-Pregnant Women

a. Recruiting, on a random basis, and tracking WIC mothers to receive slow-release, low-dose iron capsules, or no supplements at all.

b. Testing hemoglobin and serum ferritin levels of all mothers (supplemented and non-supplemented) about 6 months after initiation of supplementation program, and medical referral of those found to be anemic.

c. Determining compliance with the iron supplement prescription and reasons for non-compliance.

*C. Data Collection (15 Points)*

The degree to which:

1. Data system is capable of tracking subjects in various groups, assessing their compliance with supplement prescriptions, monitoring iron blood test results, and evaluating project outcomes.

2. Quality assurance plans with regard to tracking iron supplementation, blood testing procedures, and data collection and management are adequate to assure reliability of data.

*D. Program Evaluation (15 Points)*

The degree to which the applicant describes an effective plan to assess the success of the project.

*E. Capability (40 Points)*

1. Evidence of the applicant's present or past experience in conducting and evaluating nutrition intervention programs, and carrying out surveillance or other data collection.

2. Evidence of the selection of an appropriate local WIC program that serves at least 500 pregnant women per year, and is able and committed to carry out a standard program of iron supplementation.

3. Evidence that collaborative arrangements with the local WIC program is conducive to accomplishing the stated objectives. Include written commitments from appropriate offices and personnel in the state health department and local WIC program.

4. Evidence of plans for adequate project coordination and management, including roles and responsibilities of the WIC/Nutrition Program staff within the state health department and those at the local WIC program. This should include qualifications of key project staff. Position descriptions may be included in the appendix, but should be referenced in the text.

5. Ability to accommodate serum ferritin testing using capillary tube blood specimens.

6. Feasibility of the mechanism by which the state will arrange project funding with the local WIC program.

*F. Commitment (5 Points)*

Evidence that the improvement of the outcome of pregnancy through intervention programs aimed at reducing iron deficiency anemia among pregnant women and women of childbearing age is an important priority.

*G. Budget (Not Scored)*

The extent to which the applicant describes the total amount of funds requested in each of the object class categories, and clearly links budget items to objectives and activities proposed for the budget period.

**Executive Order 12372 Review**

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The due date for state process recommendations will be 30 days after the application deadline date for new and competing continuation awards. [A waiver for the 60 day requirement has been requested.] The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance Number is 93.283.

**Other Requirements**

*Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

*Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 Code of Federal Regulations 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with

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the appropriate guidelines and form provided in the application kit.

**Application Submission and Deadline Date**

The original and two copies of the application PHS Form 5161–1 must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, on or before August 1, 1992.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1(a) or 1(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where to Obtain Additional Information**

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Leah Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, (404) 842–6803.

Programmatic technical assistance may be obtained from Abe Parvanta, Division of Nutrition, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Mail Stop K–25, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 488–5099.

Please refer to "Announcement Number 266" when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone (202) 783–3238).

Dated: July 1, 1992.

**Robert L. Foster,**

*Acting Associate Director for Management and Operations, Centers for Disease Control.*

[FR Doc. 92–15903 Filed 7–7–92; 8:45 am]

BILLING CODE 4160–18–M

## Food and Drug Administration

**[Docket No. 92F–0237]**

## BASF Corp.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that BASF Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,1′-sulfonylbis[4-chlorobenzene] polymer with 4,4′-(1-methylethylidene)bis[phenol] (maximum 8 percent) and 4,4′-sulfonylbis[phenol] (minimum 92 percent) as repeat-use articles or components of repeat-use articles that contact food.

**FOR FURTHER INFORMATION CONTACT:** Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4263) has been filed by BASF Corp., 1600 Biddle Ave., Wyandotte, MI 48192–3799. The petition proposes to amend the food additive regulations in § 177.2440 *Polyethersulfone resins* (21 CFR 177.2440) to provide for the safe use of 1,1′-sulfonylbis[4-chlorobenzene] polymer with 4,4′-(1-methylethylidene)bis[phenol] (maximum 8 percent) and 4,4′-sulfonylbis[phenol] (minimum 92 percent) as repeat-use articles or components of repeat-use articles that contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 29, 1992.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92–15995 Filed 7–7–92; 8:45 am]

BILLING CODE 4160–01–F

**[Docket No. 92P–0205]**

## Sour Cream Deviating from Identity Standard; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Land O'Lakes, Inc., to market test a product designated as "no-fat sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

**DATES:** This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than October 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5007.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Land O'Lakes, Inc., 4001 Lexington Ave. North, Arden Hills, MN 55126.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for sour cream in 21 CFR 131.160 in that: (1) The fat content of the product is reduced from 18 percent to less than 0.5 percent, (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 2-tablespoon serving of the product contains 4 percent of the U.S. Recommended Daily Allowance for vitamin A, and (3) safe and suitable coloring is added so that the product more closely resembles the color of

regular sour cream. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to sour cream but contains fewer calories and a negligible quantity of fat.

For the purpose of this permit, the name of the product is "no-fat sour cream." In accordance with FDA's current views, "no-fat" food labeling is acceptable because the product contains less than 0.5 gram of fat per serving and contains no added ingredient that is a fat or oil. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 2,000,000 pounds (907,185 kilograms) of the test product. The product will be manufactured at the Land O'Lakes' facility (46–137), 1501 West 10th St., Sioux Falls, SD 57114, and distributed in Connecticut, Delaware, Florida, Georgia, Illinois, Maine, Massachusetts, New Hampshire, Pennsylvania, Rhode Island, West Virginia, and Wisconsin.

The agency would like to point out that the test product and labeling comply with FDA's current regulations. However, the agency proposed in the **Federal Register** of November 27, 1991 (56 FR 60421 and 60478), in response to the Nutrition Labeling and Education Act of 1990, to establish definitions for terms such as "light," "reduced calories," "reduced fat," "lowfat," "nonfat," "no fat," and "fat free," as well as criteria for the use of these terms on food labels. The test product may need to be reformulated or relabeled to comply with the relevant definition that the agency ultimately adopts.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than October 6, 1992.

Dated: June 29, 1992.

**Fred R. Shank,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 92–15996 Filed 7–7–92; 8:45 am]

BILLING CODE 4160–01–F

## National Institutes of Health

### Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 57 FR 24262–3, June 8, 1992) is amended to reflect the following organizational change in the Office of the Director, NIH (OD/NIH) (HNA): (1) In the Office of Administration (HNA7), establish the Office of Information Resources Management (HNA79). This organizational change will provide the NIH with a single organizational focal point for the management and oversight of all major IRM functions/activities.

*Section HN–B, Organization and Functions,* is amended as follows: (1) Under the heading Division of Management Survey and Review (HNA76), insert the following:

*Office of Information Resources Management (HNA79).* The Office of Information Resources Management (OIRM) shall direct and manage NIH IRM program activities under the Paperwork Reduction Act; the Computer Security Act; and OMB Circular A–130 by serving as a focal point for:

(1) Implementing, managing and overseeing NIH IRM activities related to: IRM policy, planning and budgeting; Federal Information Processing (FIP) resources user requirements; IRM reviews; clearance of FIP resources and monitoring compliance with Delegated Procurement Authorities (DPAs); FIP and automated systems inventories; capacity management and planning; security; FIP standards; and FIP resources obsolescence and excess equipment;

(2) Collaborating with NIH components responsible for: acquisition of FIP resources; major information systems; telecommunications management; printing management; computer matching; FIP accommodations for the disabled; records and forms management including the Privacy Act; information collection; and information dissemination;

(3) Serving as the NIH liaison to the Public Health Service and the Department on all IRM matters;

(4) Participating with appropriate NIH components in assessing and enhancing the level of knowledge and skill of users of FIP resources;

(5) Coordinating with appropriate NIH components in developing an NIH-wide plan for standardizing networking, cabling, and electrical facilities for FIP resources;

(6) Ensuring that oversight measures are appropriate for the diversity, complexity, and size of the major providers and the individual Institutes, Centers, and Divisions (ICD's);

(7) Overseeing and initiating necessary improvements in the FIP clearance and acquisition process;

(8) Assisting the major providers/individual ICDs in enhancing/strengthening their individual IRM program management to allow maximum delegation of FIP resources clearance authority.

Dated: June 22, 1992.

**Bernadine Healy,**

*Director, NIH.*

FR Doc. 92–15887 Filed 7–7–92; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

**[Docket No. N–92–3362; FR–3190–N–05]**

### HOPE for Public and Indian Housing Homeownership Program; Extension of Cure Period

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of extension of cure period.

**SUMMARY:** HUD is extending from 14 to 30 calendar days the period for curing deficiencies contained in an implementation grant application under the HOPE 1 (Homeownership and Opportunity for People Everywhere) Program for Public and Indian Housing Homeownership.

**FOR FURTHER INFORMATION CONTACT:** Gary Van Buskirk, Office of Resident Initiatives, Department of Housing and Urban Development, room 4112, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–4233.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

**SUPPLEMENTARY INFORMATION:** On January 14, 1992, HUD published a Notice of Amended Program Guidelines (57 FR 1522) and a Notice of Fund Availability (NOFA) (57 FR 1550) for the Hope for Public and Indian Housing Homeownership program (HOPE 1).

In both the Notice of Amended Program Guidelines and NOFA, HUD indicated that it would provide applicants with an opportunity to cure certain deficiencies contained in HOPE 1 implementation grant applications. The Guidelines stated that HUD's notification of deficiencies must:

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require applicants to submit additional or correct material so it is received in the appropriate HUD office no later than close-of-business *on the 14th calendar day after the date of the notification* to the applicant giving it an opportunity to modify its application. (Emphasis added.)

In addition, the HOPE NOFA stated that:

The notification shall require an applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close-of-business on the 14th calendar day after the date of the written notification to the applicant to modify its application.

In this Notice, HUD is extending the period for curing deficiencies contained in HOPE 1 implementation grant applications from 14 to 30 calendar days following the date of HUD's written deficiency notification to the applicant. The reason for the extension is that HOPE 1 implementation grant applications are complex and technical documents, and HUD believes that a significantly longer period of time is required to cure deficiencies than was originally contemplated.

Dated: July 1, 1992.

**Joseph G. Schiff,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 92-15897 Filed 7-7-92; 8:45 am]

BILLING CODE 4210-33-M

## Office of Administration

**[Docket No. N-92-3470]**

**Notice of Submission of Proposed Information Collection to OMB**

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESS:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, rein statement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 30, 1992.

**John T. Murphy,**

*Director, Information Resources Management Policy and Management Division.*

**Notice of Submission of Proposed Information Collection to OMB**

*Proposal:* Multifamily Mortgage Insurance Premium Billing Statement and Reconciliation.

*Office:* Housing.

*Description of the Need for the Information and its Proposed Use:* These forms will be used to reconcile the financial records of the mortgagees of their regular or delinquent payments made to HUD for Mortgage Insurance Premiums on Multifamily Housing Projects.

*Form Number:* HUD-27032A and 27033A.

*Respondents:* Businesses or Other For-Profit.

*Frequency of Submission:* Monthly.

*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Form HUD-27032A | 500 | | 12 | | .05 | | 300 |
| Form HUD-27033A | 150 | | 12 | | .03 | | 54 |

*Total Estimated Burden Hours:* 354.

*Status:* Extension.

*Contact:* George Russell, (202) 708-2022, Jennifer Main, OMB, (202) 395-6880.

Dated: June 30, 1992.

[FR Doc. 92-15973 Filed 7-7-92; 8:45 am]

BILLING CODE 4210-01-M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**Availability of a Draft Revised Recovery Plan for the Grizzly Bear (Ursus arctos horribilis) for Review and Comment**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft revised recovery plan for the grizzly bear (*Ursus arctos horribilis*). This threatened species occurs in several populations in the lower 48 States. The Service solicits review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before August 24, 1992, to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting Dr. Chris Servheen, Grizzly Bear Recovery Coordinator, U.S.

Fish and Wildlife Service, NS312, University of Montana, Missoula, Montana 59812. Written comments and materials regarding this draft recovery plan should be sent to Dr. Chris Servheen at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Chris Servheen, (see ADDRESSES above) at telephone (406) 329–3223.

**SUPPLEMENTARY INFORMATION:**

**Background**

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

The grizzly bear was listed under the Act as a threatened species in the 48 conterminous States on July 28, 1975 (40 FR 31734), due to current and potential threats to the species populations and habitat from human activities. The original recovery plan for the grizzly bear was approved on January 29, 1982. This is a revision of that document. The draft revision of the Grizzly Bear Recovery Plan was first made available for public review on October 4, 1990 (55 FR 40725). Over 2,000 comment letters were received and evaluated. Many of the suggested additions and changes have been incorporated into the new draft revision.

The plan addresses grizzly bear recovery in seven ecosystems. Populations of grizzly bear are known in five of the seven ecosystems—the Northern Continental Divide ecosystem in Montana; the Yellowstone ecosystem in Wyoming, Idaho, and Montana; the Cabinet-Yaak ecosystem in Idaho and Montana; the Selkirk ecosystem in Washington and Idaho; and the North Cascades ecosystem in Washington. As yet, there is no firm evidence of grizzly bear in the Bitterroot ecosystem in Montana and Idaho or the San Juan ecosystem in Colorado. Threats to the grizzly bear populations come from habitat modification caused by human activities such as logging, recreational development, subdivisions, and mining and energy development, and from direct human/bear conflicts as a result of recreational use, livestock operations, highway and railroad corridors, illegal mortality, etc.

Recovery efforts have focused on protecting the species populations and habitat from habitat-destroying activities through section 7 and section 9 of the Act and research on bear biology and habitat needs. Recovery criteria have been established for four of the ecosystems (Yellowstone, Cabinet-Yaak, Northern Continental Divide, and Selkirk). Recovery criteria are being developed for two other ecosystems (North Cascades and Bitterroot). The San Juan ecosystem is an evaluation area and no recovery criteria will be developed until the ecosystem's recovery potential has been evaluated. Delisting can be achieved independently for each of the grizzly bear populations.

**Public Comments Solicited**

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the recovery plan.

**Authority**

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: June 26, 1992.

**John L. Spinks, Jr.**

*Acting Regional Director.*

[FR Doc. 92–15783 Filed 7–7–92; 8:45 am]

BILLING CODE 4310-55-M

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## Bureau of Land Management

**[WY–920–02–4120–14]**

**AGENCY:** Bureau of Land Management, Interior, Wyoming.

**ACTION:** Notice of Competitive Coal Lease Sale; West Black Thunder Tract, WYW118907.

**SUMMARY:** Notice is hereby given that certain coal resources in the West Black Thunder Tract described below in Campbell County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

**DATES:** The lease sale will be held at 2 p.m., on Wednesday, August 12, 1992. Sealed bids must be submitted on or before 4 p.m., on Tuesday, August 11, 1992.

**ADDRESSES:** The lease sale will be held in the Third Floor Conference Room of the Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003. Sealed bids must be submitted to the Cashier, Wyoming State Office, at the address given above.

**FOR FURTHER INFORMATION CONTACT:** Laura Steele, Land Law Examiner, or Eugene Jonart, Coal Coordinator at (307) 775–6250.

**SUPPLEMENTARY INFORMATION:** This coal lease sale is being held in response to an application for a coal lease sale filed by Thunder Basin Coal Company of Wright, Wyoming. The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following described lands located approximately 36 miles southeast of the city of Gillette, Wyoming:

T. 43 N., R. 70 W., 6th P.M., Wyoming
Sec. 7: Lots 8 (S2), 13 (SW), 14 thru 18, and 19 (NW & S2);
Sec. 18: Lots 5 thru 20;
Sec. 19: Lots 5 thru 20;
Sec. 29: Lots 3 thru 6 and 9 thru 16;
Sec. 30: Lots 5 thru 20;
Sec. 31: Lots 5 thru 12;
Sec. 32: Lots 1 thru 8;
Sec. 33: Lots 3 thru 6.
Containing 3,492.495 acres.

The tract, located adjacent to the existing Black Thunder Mine, contains Fort Union Formation coal found within three zones that can be mined as a single unit (main seam) over much of the tract. The main seam averages 74 feet thick on the eastern portion of the tract but splits in the western portion of the tract area. In the western portion of the tract, the upper split averages about 9 feet thick while the main seam averages about 61 feet thick. The tract contains an estimated 429,048,216 tons of in-place coal reserves (417,834,298 tons estimated recoverable coal reserves) at an average overall stripping ration of 2.72 BCY/Ton. The coal rank is subbituminous C with average in-place quality of 8,839 BTU/

LB, 0.25 percent sulfur, and 4.4 percent ash. This places the coal reserves in the tract near the top quality range for coal being mined in the southern Powder River Basin.

The tract in this lease offering contains split estate lands. The surface is not held by a qualified surface owner as defined in the regulations, 43 CFR 3400.0–5.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bid should be sent by "Certified Mail, Return Receipt Requested", or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Tuesday, August 11, 1992, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale.

If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

The lease issued as a result of this offering will provide for payment of an annual advance rental of $3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12½ percent of the value of coal produced by strip or augur mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 203.250(f).

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the Wyoming State Office at the addresses above. Case file documents WYW118907, are available for inspection at the Wyoming State Office.

**Lynn E. Rust,**

*Chief, Branch of Mining Law and Solid Minerals.*

[FR Doc. 92–15904 Filed 7–7–92; 8:45 am]

BILLING CODE 4310–22–M

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**[UT–040–02–4410–08]**

## Notice of Plan Amendment; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice is to advise the public that an environmental assessment and proposed planning amendment for the Virgin River Management Framework Plan have been completed. The proposed plan amendment provides for the sale of a tract of public land in Washington County, Utah, comprising approximately .9 acres, described as follows:

**Salt Lake Meridian**

T.39 S., R. 16 W.,
Section 19, that portion of the SW¼SW¼SE¼NE¼ lying west of the county road.

**DATES:** The protest period for this proposed plan amendment will commence with the date of publication of this notice. Protests must be submitted on or before August 7, 1992.

**ADDRESSES:** Protests should be addressed to the Director of the Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Dale Ross, Dixie Resource Area, 225 North Bluff Street, St. George, Utah 84770, telephone (801) 673–4654.

**SUPPLEMENTARY INFORMATION:** The plan amendment is necessary since the existing plan does not identify this land for disposal. The environmental assessment identifies no significant impacts. Resource values, public values and objectives involved, and the public interest would be served by providing this land for sale.

This action is announced pursuant to section 203 of the Federal Land Policy and Management Act of 1976 and 43 CFR, part 1610. The proposed planning amendment is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provision of 43 CFR 1610.5–2.

Date: June 30, 1992

**William R. Papworth,**

*Acting State Director.*

[FR Doc. 92–15905 Filed 7–7–92; 8:45 am]

BILLING CODE 4310–DQ–M

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**[ID–943–4214–10; IDI–29260]**

## Proposed Withdrawal and Opportunity for Public Meeting; ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 309 acres of public land in Lincoln County to protect several unique geologic sites along the Big Wood River. This notice closes the land for up to 2 years from the mining laws, only. The land will remain open to mineral leasing.

**DATES:** Comments and requests for a public meeting must be received by October 6, 1992.

**ADDRESSES:** Comments and meeting requests should be sent to the Idaho State Director, BLM, 3380 Americana Terrace, Boise, Idaho 83706.

**FOR FURTHER INFORMATION CONTACT:** William E. Ireland, BLM Idaho State Office, (208) 384–3162.

**SUPPLEMENTARY INFORMATION:** On June 29, 1992, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from the mining laws, only, subject to valid existing rights:

Lands to be withdrawn are those lying on either side of the center-line of the Big Wood River channel measured perpendicular to each center-line segment. Segments one (1) and three (3) are 200 feet wide (100 feet on either side of channel center-line). Segments two (2), four (4), five (5), six (6) and seven (7), are 300 feet wide (150 feet on either side of channel center-line). The following descriptions define the center-line of the Big Wood River channel for these segments to be withdrawn.

The point of beginning for each river segment is tied to the True Point of Beginning which is the corner common to Section 32 and 33, T. 2 S., R. 18 E., Boise Meridian, and Section 4 and 5, T. 3 S., R. 18 E., Boise Meridian.

From the True Point of Beginning, N. 88°15'51" E., 1088.05 ft. to the point of beginning of segment no. 1.

Thence: S. 43°59'19"E., 883.93 ft.;
S. 69°51'30"E., 407.84 ft.;
S. 13°27'17"E., 744.43 ft.;
S. 88°59'17"E., 735.49 ft.;
S. 22°59'45"E., 470.45 ft.;
S. 08°24'20"W., 404.92 ft.;
S. 55°26'40"E., 429.74 ft.;
S. 23°56'56"E., 491.71 ft.;
S. 27°56'04"E., 556.80 ft.;
S. 27°39'57"E., 365.95 ft.;
S. 38°30'53"E., 371.51 ft.;
S. 21°32'11"E., 295.66 ft.;
N. 83°11'03"E., 647.91 ft.;
S. 71°32'45"E., 387.64 ft.;
S. 05°27'59"E., 866.34 ft.;
S. 23°44'04"E., 536.87 ft.;
S. 49°27'34"E., 425.93 ft.;
S. 13°08'00"W., 535.89 ft.;
S. 15°13'25"W., 578.48 ft.;
S. 30°16'31"W., 426.33 ft.;
S. 28°12'50"W., 421.32 ft.; from which the True Point of Beginning bears N. 33°58'06"W., 9349.74 feet distant.

From the True Point of Beginning, S. 30°37'11" E., 10,442.10 feet to the point of beginning of segment no. 2.

Thence: S. 17°31'22"W., 551.56 ft.;

S. 48°12'40"W., 908.45 ft.;
S. 46°14'41"W., 404.50 ft.; from which the True Point of Beginning bears N. 21°47'54" W., 11,208.77 ft. distant.

From the True Point of Beginning, S. 20°35'09"E., 16,508.89 feet to the point of beginning of segment no. 3.

Thence: S. 07°44'43"E., 251.55 ft.;
S. 03°51'33"E., 449.90 ft.; from which the True Point of Beginning bears N. 19°55'41"W., 16,994.28 feet distant.

From the True Point of Beginning, S. 04°35'14"E., 23,660.56 feet to the point of beginning of segment no. 4.

Thence: S. 26°37'12"E., 593.24 ft.;
S. 15°23'08"W., 548.57 ft.;
S. 24°30'21"W., 509.82 ft.;
S. 03°43'11"E., 532.53 ft.;
S. 10°22'30"W., 624.26 ft.;
S. 46°42'22"E., 476.70 ft.;
S. 29°45'27"E., 399.96 ft.;
S. 30°54'21"E. 385.95 ft.; from which the True Point of Beginning bears N. 04°56'39"W., 27,368.43 feet distant.

From the True Point of Beginning, S. 08°54'35"E., 32,444.82 feet to the point of beginning of segment no. 5.

Thence: S. 84°59'22"E., 675.19 ft.;
N. 74°25'54"E., 697.25 ft.;
N. 65°32'30"E., 1205.49 ft.;
S. 86°44'40"E., 1041.29 ft.;
S. 66°51'26"E., 465.63 ft.; from which the True Point of Beginning bears N. 15°49'05"W., 32,915.05 feet distant.

From the True Point of Beginning, S. 16°56'04"E., 36,970.31 feet to the point of beginning of segment no. 6.

Thence: S. 28°41'46"E., 769.01 ft.;
S. 08°03'39"W., 868.29 ft.;
S. 44°41'51"E., 262.17 ft.;
S. 81°25'25"E., 432.36 ft.;
S. 05°48'32"E., 616.57 ft.;
S. 30°50'46"E., 358.83 ft.;
S. 13°33'15"W., 507.06 ft.;
S. 07°26'41"E., 495.92 ft.;
S. 11°33'16"E., 628.92 ft.; from which the True Point of Beginning bears N. 16°50'49"W., 41,313.36 feet distant.

From the True Point of Beginning, S. 17°38'22"E., 42,514.59 feet to the point of beginning of segment no. 7a.

Thence: S. 25°19'17" W., 818.16 ft.;
S. 10°38'18" E., 406.96 ft.;
S. 25°26'56" E., 311.54 ft.;
S. 47°35'28" W., 573.54 ft.;
S. 04°35'37" W., 339.23 ft.;
S. 51°35'25" W., 410.21 ft.;
S. 57°21'48" W., 330.74 ft.;
S. 04°27'18" W., 533.36 ft.;
S. 60°20'02" W., 574.09 ft.;
S. 81°02'43" W., 952.34 ft.;
S. 14°13'23" W., 1005.95 ft.;
S. 20°29'33" W., 744.18 ft.;
S. 53°05'46" W., 514.46 ft.;
S. 02°52'29" E., 607.70 ft.;
S. 10°05'41" W., 583.33 ft.;
S. 55°25'33" W., 658.18 ft.;
S. 16°45'53" E., 462.20 ft.;
S. 66°32'33" W., 527.00 ft.;
S. 77°24'38" W., 692.24 ft.;
S. 51°07'32" W., 472.41 ft.;
S. 67°22'31" W., 508.67 ft.;
S. 48°21'43" W., 783.98 ft.;
S. 42°39'53" W., 582.70 ft.; from which the True Point of Beginning bears N. 06°39'56" W., 50,181.07 feet distant.

From the True Point of Beginning, S. 12°32'21" E., 46,124.70 feet to the point of beginning of segment no. 7b.

Thence: S. 12°57'51" E., 393.87 ft.;
S. 49°34'36" E., 135.82 ft.;
S. 17°48'05" E., 388.98 ft.;
S. 02°35'03" E., 367.77 ft.;
S. 65°14'45" W., 323.55 ft.;
S. 42°37'11" E., 239.80 ft.;
S. 18°37'34" E., 373.38 ft.;
S. 60°29'42" W., 302.93 ft.;
S. 41°02'32" W., 313.36 ft.;
S. 54°32'06" W., 359.45 ft.;
S. 68°34'28" W., 456.99 ft.;
S. 11°35'07" W., 211.31 ft.;
S. 13°41'48" E., 377.90 ft.;
S. 08°03'06" W., 314.83 ft.;
S. 54°30'46" W., 359.10 ft.;
N. 77°39'24" W., 542.47 ft.;
S. 80°01'31" W., 417.66 ft.;
S. 38°03'01" W., 262.61 ft.;
S. 78°02'02" W., 285.49 ft.;
S. 66°14'09" W., 368.79 ft.;
S. 08°03'06" W., 314.83 ft.;
S. 19°21'03" W., 612.92 ft.;
N. 44°56'06" W., 291.74 ft.;
S. 48°25'32" W., 313.28 ft.;
N. 32°45'55" W., 299.89 ft.;
S. 81°19'19" W., 401.37 ft.; from which the True Point of Beginning bears N. 06°39'56" W., 50,181.07 feet distant.

The areas described aggregate 309 acres, more or less, in Lincoln County.

The purpose of the proposed withdrawal is to protect several unique geologic sites along the Big Wood River drainage. The sites contain a limited quantity of uniquely-shaped water worn lava boulders and beautiful stone sculptures. The sites have high public value for recreational pursuits in the form of viewing, photography, exploring and hiking.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Idaho State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are all uses, other than location and entry under the mining laws.

Dated: July 1, 1992.

**William E. Ireland,**

*Chief, Realty Operations Section.*

[FR Doc. 92-15906 Filed 7-7-92; 8:45 am]

BILLING CODE 4310-GG-M

## Office of Surface Mining Reclamation and Enforcement

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form maybe obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0007), Washington, DC 20503, telephone 202-395-7340.

*Title:* General Performance Standards 30 CFR 715.

*OMB Approval Number:* 1029-0007.

*Abstract:* This information is collected to meet the requirements of section 502 of the Surface Mining Control and Reclamation Act. The standards contained in the regulation are applicable at sites governed under the initial regulatory program.

*Bureau Form Number:* None.

*Frequency:* On occasion.

*Description of Respondents:* Coal Mine Operators.

*Estimated Completion Time:* One hour.

*Annual Responses:* One.

*Annual Burden Hours:* One.

*Bureau Clearance Officer:* Andrew DeVito (202) 343-5150.

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Dated: June 2, 1992.

John Mosesso,

*Chief, Division of Technical Services.*

[FR Doc. 92-15884 Filed 7-7-92; 8:45 a.m.]

BILLING CODE 4310-05-M

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701-TA-319-354 and 731-TA-573-620 (Preliminary)]**

## Certain Flat-Rolled Carbon Steel Products

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of preliminary countervailing duty and antidumping investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701-TA-319-354 (Preliminary) under section 730(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain flat-rolled carbon steel products, provided for in headings/subheadings 7208, 7209, 7210.31, 7210.39, 7210.41, 7210.49, 7210.60, 7210.70, 7210.90, 7211, 7212.21, 7212.29, 7212.30, 7212.40, 7212.50, and 7212.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of the following countries:

| Country | Cut-to-length plate | Hot-rolled sheet and strip | Cold-rolled sheet and strip | Corrosion-resistant sheet |
|---|---|---|---|---|
| Austria | | | 701-TA-336 | |
| Belgium | 701-TA-319 | 701-TA-329 | 701-TA-337 | |
| Brazil | 701-TA-320 | 701-TA-330 | 701-TA-338 | 701-TA-347 |
| France | 701-TA-321 | 701-TA-331 | 701-TA-339 | 701-TA-348 |
| Germany | 701-TA-322 | 701-TA-332 | 701-TA-340 | 701-TA-349 |
| Italy | 701-TA-323 | 701-TA-333 | 701-TA-341 | |
| Korea | 701-TA-324 | 701-TA-334 | 701-TA-342 | 701-TA-350 |
| Mexico | 701-TA-325 | | | 701-TA-351 |
| New Zealand | | 701-TA-335 | 701-TA-343 | 701-TA-352 |
| Spain | 701-TA-326 | | 701-TA-344 | |
| Sweden | 701-TA-327 | | | 701-TA-353 |
| Taiwan | | | 701-TA-345 | 701-TA-354 |
| United Kingdom | 701-TA-328 | | 701-TA-346 | |

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-573-620 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the following countries of certain flat-rolled carbon steel products, that are alleged to be sold in the United States at less than fair value:

| Country | Cut-to-length plate | Hot-rolled sheet and strip | Cold-rolled sheet and strip | Corrosion-resistant sheet |
|---|---|---|---|---|
| Argentina | | | 731-TA-597 | |
| Australia | | | 731-TA-598 | 731-TA-612 |
| Austria | | | 731-TA-599 | |
| Belgium | 731-TA-573 | 731-TA-588 | 731-TA-600 | |
| Brazil | 731-TA-574 | 731-TA-589 | 731-TA-601 | 731-TA-613 |
| Canada | 731-TA-575 | 731-TA-590 | 731-TA-602 | 731-TA-614 |
| Finland | 731-TA-576 | | | |
| France | 731-TA-577 | 731-TA-591 | 731-TA-603 | 731-TA-615 |
| Germany | 731-TA-578 | 731-TA-592 | 731-TA-604 | 731-TA-616 |
| Italy | 731-TA-579 | 731-TA-593 | 731-TA-605 | |
| Japan | 731-TA-580 | 731-TA-594 | 731-TA-606 | 731-TA-617 |
| Korea | 731-TA-581 | 731-TA-595 | 731-TA-607 | 731-TA-618 |
| Mexico | 731-TA-582 | | | 731-TA-619 |
| Netherlands | | 731-TA-596 | 731-TA-608 | |
| Poland | 731-TA-583 | | | |
| Romania | 731-TA-584 | | | |
| Spain | 731-TA-585 | | 731-TA-609 | |
| Sweden | 731-TA-586 | | | |
| Taiwan | | | 731-TA-610 | 731-TA-620 |
| United Kingdom | 731-TA-587 | | 731-TA-611 | |

The Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in these cases by August 14, 1992.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** June 30, 1992.

**FOR FURTHER INFORMATION CONTACT:** Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

**SUPPLEMENTARY INFORMATION:**

**Background.**

These investigations are being instituted in response to petitions filed on June 30, 1992, by counsel for Armco Steel Co., L.P.; Bethlehem Steel Corp.; Geneva Steel; Gulf States Steel, Inc. of Alabama; Inland Steel Industries, Inc.; Laclede Steel Co.; LTV Steel Co., Inc.; Lukens Steel Co.; National Steel Corp.; Sharon Steel Corp.; USX Corp./U.S. Steel Group; and WCI Steel, Inc. (not all companies are petitioners in all cases).

**Participation in the Investigations and Public Service List.**

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

**Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List.**

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Conference**

The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 21, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Vera Libeau (202–205–3176) not later than July 14, 1992, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated a specified time period within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

**Written Submissions**

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 24, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. In briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: July 1, 1992.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 92–15937 Filed 7–7–92; 8:45 am]

BILLING CODE 7020–02–M

**[Investigation No. 337–TA–333]**

## Commission Determination to Reverse an Initial Determination Finding a Respondent in Default and to Remand the Matter to the Presiding Administrative Law Judge for Reconsideration of a Joint Motion to Terminate the Investigation as to the Respondent on the Basis of a Proposed Consent Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

In the Matter of Certain Woodworking accessories.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to reverse the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation finding respondent Taiwan Zest Industrial Co., Ltd. ("Taiwan Zest") in default and to remand the matter to the ALJ for reconsideration of a joint motion to terminate the investigation as to Taiwan Zest on the basis of a proposed consent order.

**FOR FURTHER INFORMATION CONTACT:** Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098.

**SUPPLEMENTARY INFORMATION:** On January 23, 1992, complainant Cantlin, Inc. ("Cantlin") filed a motion for a default judgment against Taiwan Zest. On March 11, 1992, the ALJ issued an order (Order No. 23) giving Taiwan Zest until March 24, 1992, to show cause why it should not be found to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation. Taiwan Zest did not respond to the show cause order. On April 1, 1992, complainant and Taiwan Zest also filed a joint motion for termination of the investigation with respect to Taiwan Zest on the basis of a proposed consent order. On April 7, 1992, the ALJ issued an ID (Order No. 28) finding Taiwan Zest in default. In doing so, the ALJ found that Taiwan Zest had waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation In the ID, the ALJ noted that he had also issued an order (Order No. 29) denying the joint motion to terminate the investigation as to Taiwan Zest on the basis of the consent order as moot in view of his ID finding Taiwan Zest in default.

Because of the intervening filing of the joint motion to terminate the investigation on the basis of a consent order, the Commission determined to review the ID finding Taiwan Zest in default. The Commission requested submissions from the parties addressing the questions of (1) whether the joint motion to terminate the investigation on the basis of the proposed consent order is the current position of the parties and, if so, (2) whether there is any reason that the motion to terminate the investigation on the basis of a consent order should not therefore supersede the motion to find Taiwan Zest in default. The Commission also stated that it wished to determine whether Taiwan Zest, as distinct from Jaw-Hwa International Patent and Trademark Office, had received the order to show cause and the default ID. The Commission received written submissions from the Cantlin, the Commission investigative attorney, and Taiwan Zest. No reply submissions were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and the Commission interim rule 210.56 (19 CFR 210.56).

Copies of the Commission's order, the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: July 1, 1992.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 92–15934 Filed 7–7–92; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. TA–406–12]**

## Oscillating Fans from the People's Republic of China

**AGENCY:** United States International Trade Commission.

**ACTION:** Termination of investigation.

**SUMMARY:** On June 30, 1992, the Commission received a letter from counsel to petitioner (Lasko Metal Products, Inc.) in the subject investigation stating that Lasko was withdrawing its petition and requesting that the Commission terminate the investigation. In his letter counsel said "there is a compelling reason for this withdrawal based on Lasko's interest in maintaining good relations with its customers. It has come to Lasko's attention that some customers find the time and effort needed to respond to the Commission's questionnaires burdensome. Lasko, of course, must be sensitive to its customers' concerns in a highly competitive market." Counsel separately indicated that the only other known domestic producer acquiesces in the request.

After carefully considering petitioner's request, the Commission has determined to grant the request and to terminate the investigation.

Notice of institution of the investigation was published in the **Federal Register** of June 16, 1992 (57 F.R. 26876).

**EFFECTIVE DATE:** July 2, 1992.

**FOR FURTHER INFORMATION CONTACT:** Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**Authority:** This investigation is being terminated under authority of section 406 of the Trade Act of 1974 (19 U.S.C. 2436). This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: July 6, 1992.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92–16174 Filed 7–7–92; 8:45 am]

BILLING CODE 7020–02–M

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## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 32036]**

## Wisconsin Central Transportation Corp., et al.—Continuance in Control—Fox Valley & Western Ltd.

Decided: July 1, 1992.

By notice served and published May 28, 1992, 57 FR 22489, the Commission accepted the application by Wisconsin Central Transportation Corporation (WCTC) and its subsidiaries to continue in control of Fox Valley & Western Ltd. (FVW) when FVW becomes a carrier through its acquisition and operation of certain rail lines in Wisconsin. The notice set July 13, 1992, as the due date for public comments on the application.

On June 22, 1992, Chicago and North Western Transportation Company (CNW) filed a motion for a 21-day extension of time in which to file comments in this proceeding. CNW states that, despite its diligence in pursuing discovery, the additional time is needed because of applicants' alleged delays in producing requested data to provide sufficient time for CNW to analyze voluminous traffic tapes and other documents belatedly provided to it.

Applicants oppose CNW's motion. They contend that CNW has had ample time to prepare its case and that the Commission should not accommodate what they characterize as CNW's attempt to turn a transaction of limited scope into a major regulatory proceeding.

CNW's extension request will be granted in part. As CNW indicates, an extension for filing comments will not affect the scheduled oral hearings if they are deemed necessary or the Commission's December 10, 1992, deadline for a final decision. Those dates, as well as the due date for briefs, will remain intact. A 14-day extension should be sufficient, however, to meet CNW's needs. With only a few exceptions, CNW indicates that it now possesses the information it seeks in this case. CNW has not shown that it requires the full 3-week extension sought.

*It is ordered:* 1. CNW's motion for extension is granted in part. The procedural schedule is extended as follows:

2. Written public comments are due July 27, 1992.

3. DOT's and Attorney General's comments are due August 11, 1992.

4. WCTC's reply to comments is due August 25, 1992. The remaining schedule will not be altered.

5. This decision is effective on July 8, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92–15980 Filed 7–7–92; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Tad E. Lonergan, M.D.; Revocation of Registrations

On March 11, 1992, the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA), Office of Diversion Control, issued to Tad E. Lonergan, M.D., an Order to Show Cause proposing to revoke Dr. Lonergan's DEA Certificates of Registration, AL1418638 and BL1664641, and to deny any pending applications for renewal of such registrations. Prior to issuance of the Order to Show Cause, DEA received correspondence from Dr. Lonergan advising that his previous offices, at 1815 West Avenue, Fullerton, California 92633, had been closed and that his current address was Willow Springs Ranch, P.O. Box 731, Inyokern, California 93527. Dr. Lonergan's letter also advised that he was forwarding a copy thereof to an attorney who would act on his behalf. Accordingly, the Order to Show Cause was simultaneously mailed to Dr. Lonergan, at the Inyokern address, and to his attorney, Robert E. Smith, Esq., 1555 Palm Canyon Drive, Palm Springs, California 92264. While the Order to Show Cause mailed to Dr. Lonergan was returned to DEA unclaimed, the duplicate mailed to his attorney was received on March 20, 1992.

More than thirty days have elapsed since the Order to Show Cause was received by the attorney authorized to act on Dr. Lonergan's behalf and DEA has received no response thereto. Additionally, attempts by DEA personnel to contact Mr. Smith regarding his client's intentions have failed to elicit a response. Therefore, pursuant to the provisions of 21 CFR 1301.54(a) and 1301.54(d), Dr. Lonergan is deemed to have waived his opportunity for a hearing on any matters of law and fact involved herein. Accordingly, the Administrator now issues his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that on or about June 3, 1988, in the Superior Court of California, in and for Orange County, Dr. Lonergan was convicted of three counts of issuing prescriptions for controlled substances without a legitimate medical purpose and two counts of prescribing controlled substances to a person not under treatment for a pathology other than addiction. The offenses of which Dr. Lonergan was convicted, violations of sections 11153 and 11154 of the California Health and Safety Code, respectively, are felonies relating to controlled substances. On March 26, 1990, the California Court of Appeal for the Fourth District affirmed the three section 11153 convictions.

The Administrator further finds that in an Order effective April 8, 1991, the Medical Board of California, Division of Medical Quality, revoked Dr. Lonergan's license to practice as a physician and surgeon in the State of California, thereby terminating his authority to dispense, administer, prescribe or otherwise handle controlled substances in the state in which he was registered by DEA.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration if he finds that the registrant has been convicted of a felony relating to controlled substances, has had his state license revoked and is no longer authorized to dispense controlled substances or has committed such acts as would render his registration contrary to the public interest as determined by reference to the factors 21 U.S.C. 823(f). Those factors include the recommendation of the appropriate state licensing board, the applicant's experience in handling controlled substances, his conviction record under laws relating to the distribution of controlled substances, compliance with applicable Federal and state laws relating to controlled substances and such other conduct which may threaten the public health and safety.

Dr. Lonergan has been convicted of a felony offense relating to controlled substances; his license to practice medicine has been revoked and his authority to dispense controlled substances has been terminated by an appropriate state professional licensing board; the issuance of prescriptions for controlled substances without legitimate medical purpose is both a violation of Federal and state laws relating to controlled substances, and a threat to the public health and safety. Accordingly, the Administrator concludes that there are lawful bases for the revocation of Dr. Lonergan's registration and the denial of any pending applications for renewal thereof.

This agency has consistently held that the lack of a state license requires the revocation of the registrant's DEA Certificate of Registration. See Lawrence R. Alexander, M.D., Docket No. 92–22, 57 FR 22256 (1992); Bobby Watts, M.D., Docket No. 87–71, 53 FR 11919 (1988); Wingfield Drugs, Inc., Docket No. 87–13, 52 FR 27070 (1987), and cases cited therein.

There having been no evidence of mitigation or explanation submitted on behalf of the registrant, the Administrator concludes that Dr. Lonergan's registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration, AL1418638 and BL1664641, previously issued to Tad E. Lonergan, M.D., be, and they hereby are, revoked. The Administrator further orders that any pending applications for renewal of such registrations be, and they hereby are, denied. This order is effective July 8, 1992.

Dated: June 29, 1992.

**Robert C. Bonner,**

*Administrator of Drug Enforcement.*

[FR Doc. 92–15867 Filed 7–7–92; 8:45 a.m.]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-26,827]

### Amerada Hess Corporation Houston, TX; Negative Determination Regarding Application for Reconsideration

By an application dated June 18, 1992, after being granted a filing extension, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 3, 1992 and was published in the Federal Register on April 20, 1992 (57 FR 14435).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner, on the basis of the company's annual report, states that the decreased sales or production and the increased import criteria of the Group Eligibility Requirements for certification under the Trade Act were met. Petitioner also alleges several certification inconsistencies where the

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Department certified oil and gas workers from Dekalb Energy and Arco Oil & Gas while denying workers at Amerada Hess.

Investigation findings show that Amerada Hess is an integrated oil and gas producer with increased sales and production of crude oil, natural gas and natural gas liquids in 1990 compared to 1989 and in the first six months of 1991 compared to the same period in 1990. The Department's sales and production finding is actually supported by the company's 1991 annual report which also shows increased sales of crude oil and natural gas in 1991. The annual report specifically shows sales of crude oil increasing from $1.25 billion in 1990 to $1.45 billion in 1991. Sales of natural gas increased from $459 million in 1990 to $574 million in 1991. The petroleum products group used by the petitioner to show that the workers met the decreased sales or production criterion is not relevant since these are refined products—gasoline, aviation fuel, diesel fuel etc.

Further, the Dekalb and Arco petitions met declining sales or production criterion and the "contributed importantly" test while Amerada Hess did not, e.g., Dekalb had increased company imports of natural gas in 1991 compared to 1990 and Arco's customers increased their import purchases of natural gas while decreasing their purchases of natural gas from Arco.

Petitioner also states that the Department reconsidered a number of petitions for oil and gas service companies which included three exploration and production companies which, though smaller, are similar to Amerada Hess—Anschutz Corporation, TA-W-26,958; Leede Exploration TA-W-27,048 and Ashland Exploration TA-W-26,764.

A review of the investigation files shows no inconsistencies with the Leede's and Anschutz' investigation versus Amerada Hess. The findings show that Leede Exploration is an independent oil and gas exploration company with no divisions or subsidiaries. Leede evaluates and develops oil and gas projects for unaffiliated companies in the oil and gas industry. Anschutz is an integrated production company which met all the Group Eligibility Requirements of the Trade Act including the "contributed importantly" test—its customers reported declining purchases from Anschutz and increased import purchases in the period relevant to the petition.

The Department erred in its certification of workers at the Ashland Exploration Company. New findings show that Ashland Exploration explores only for its own account and is a producer of crude oil and natural gas. A termination of certification investigation is being instituted to appropriately correct that situation. However, this error would not provide a basis for a worker group certification for workers of another company.

The petitioner brought a printing error in the Federal Register to the Department's attention that incorrectly states that increases of imports contributed importantly to worker separations at Amerada Hess. The error appeared in the April 20, 1992 edition of the Federal Register (57 FR 14435) and is in the process of being corrected.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of June 1992.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.*

[FR Doc. 92-15912 Filed 7-7-92; 8:45 am]

BILLING CODE 4510-30-M

## Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-27; Mertz, Inc., Ponca City, OK*
*TA-W-27; O & K Trojan, Inc., Batavia, NY*

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

*TA-W-27, 413; Sun Pipe Line Co., Longview, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-27, 206; Phillips Petroleum Co., Bellaire, TX*

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

*TA-W-27, 264; Union Texas Petroleum, Auroro, CO*

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

*TA-W-27, 233; Reckitt & Colman Household Products, Canton, OH*

U.S. imports of soap and other detergents decreased in 1991 compared to 1990.

*TA-W-27, 117; General Dynamics Corp., San Diego, CA*

Increased imports did not contribute importantly to worker separations at the firm.



*TA-W-27, 117A & TA-W-27, 117B; General Dynamics Corp., Convair Div., San Diego, CA and Space Systems Div., San Diego, CA*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-27, 117C & TA-W-27, 117D; General Dynamics Corp., Pomona Div., Pomona, CA and Air Defense System Div., Pomona, CA*

Increased imports did not contribute importantly to worker separations at the firm.

**Affirmative Determinations**

*TA-W-27, 249; Moeller Manufacturing Corp., Lincoln, RI*

A certification was issued covering all workers separated on or after May 5, 1991.

*TA-W-27, 131 & TA-W-27, 135; Maxus Energy Corp., Dallas, TX and Amarillo, TX*

A certification was issued covering all workers separated on or after January 1, 1992.

*TA-W-27, 171; Patterson Drilling Co., Inc., Snyder, TX*

A certification was issued covering all workers separated on of after March 20, 1991.

*TA-W-27,194; Clarostat Mfg. Co., Inc., Dover, NH*

A certification was issued covering all workers separated on or after April 15, 1991.

I hereby certify that the aforementioned determinations were issued during the month of June 1992. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 23, 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-15913 Filed 7-7-92; 8:45 am]

BILLING CODE 4510-30-M

## Occupational Safety and Health Administration

**[Docket No. NRTL-2-91]**

### GTE TestMark Laboratories

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Notice of application for recognition as a nationally recognized testing laboratory, and preliminary finding.

**SUMMARY:** This notice announces the application of the GTE TestMark Laboratories for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

**DATES:** The last date for interested parties to submit comments is September 8, 1992.

**ADDRESSES:** Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

**SUPPLEMENTARY INFORMATION:**

**Notice of Application**

Notice is hereby given that the GTE TestMark Laboratories (TML) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1-90 (55 FR 9033), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory.

The addresses of the laboratories covered by this application are:

GTE TestMark Laboratories, 3050 Harrodsburg Road, Lexington, Kentucky 40503.

GTE Testmark Laboratories, 165 Trade Street, Lexington, Kentucky 40510.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition in the areas of testing which it has specified.

The applicant states that for each item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards. Where written test procedures for any of the subject test standards have not yet been developed because the applicant has not yet tested products to these standards for listing purposes, a test procedure for each product will be generated and maintained on file before filing or issuing a listing.

Exhibit 2. A., Appendix A, TestMark Quality Assurance Manual, contains sections dealing with manual administration including enforcement, change of procedure(s), and quality bulletins; quality audit; employee involvement including process improvement technique; shipping, storage, and receiving; supplier quality assurance; electrostatic discharge (ESD) precaution practices; work environment; evaluation report quality assurance; test data acquisition and recording; test plans including procedure; calibration; configuration control; confidentiality and security; and two appendices dealing with quality bulletins and TML instrument calibration practice.

Additional sections and appendices to TML's application include appeal procedures and reports; various project manager diagrams; samples of shipping and receiving documents; management organizational charts; resumes of key TML personnel; a list of testing equipment; a copy of a typical test report; an example of a test standard; a copy of the TML listing mark; the program for monitoring and assuring proper use of the listing mark; and the TML program for conducting factory inspections for product evaluation.

The applicant appears to maintain effective procedures for producing creditable findings or reports that are objective and without bias.

Exhibit 2.B. specifies that TML will conduct field inspections of both manufacturing facilities and other locations such as wholesale and retail establishments which are necessary to insure that TML's listing mark and listing service are not being abused and the intent of the program is followed. Further, the applicant states that it will conduct inspections at manufacturing facilities used by clients to produce products listed under its program at a minimum on a quarterly basis.

The applicant's dispute resolution process allows clients to seek redress for disagreements related to the listing process. The appeal process includes notification, documentation, review and final appeal and review. This procedure has also been expanded to include other interested parties as well.

The Laboratory facilities are in two locations: the main facility at Harrodsburg Road and the smaller Trade Street facility. The main facility includes an electronic testing laboratory, workmanship microscopic

inspection laboratory, and administrative and engineering offices. The outside plant equipment testing, materials testing, and storage facilities are in the Trade Street facility. The total floor space of both buildings is 51,000 square feet of which some 28,000 square feet are allocated for product testing, according to the applicant.

The main facility at Harrodsburg Road has natural gas, electric and water utilities available in the buildings used for product testing. Environmental conditions in the laboratory are controlled to 72 ± 4 degrees Fahrenheit and 40% relative humidity. The temperature and humidity variations throughout the laboratory are recorded as required by specific test requirements. Various environmental conditions for specific product testing are controlled and monitored by the use of environmental chambers. The laboratory has a shipping/storage/receiving department to control and mark incoming products submitted for testing. When products are received the quantity, description, part numbers and dates received are entered into a computerized data base, along with the physical storage location in the shipping/receiving area. The shipping clerk attaches an easily identifiable label to each unit, identifying the project to which the sample belongs.

The main entrance to the laboratory is monitored during normal working hours by a receptionist. Visitors are required to identify themselves and to sign in and out in a visitors's register log, wear a visitor's badge, and be escorted by laboratory personnel when in the laboratory. The laboratory has a key entry system at all locations. The system consists of "zones" with some areas restricted. The laboratory has a contract with a security service to monitor the alarm system. During weekend or non-regular office hours, employees are required to log in the time of entrance and exit. All employees are issued an entry security code.

The Trade Street facility addresses only minimal materials testing for the NRTL program.

**Background**

According to the applicant, the GTE TestMark Laboratories is owned by GTE Service Corporation and is a part of GTE Telephone Operations, which provides telecommunications services in many States and two foreign countries. GTE Service Corporation is not actively engaged in the manufacture of equipment of the type contemplated for testing under this application. While GTE affiliates are engaged in manufacturing, TML will not test their products for the purpose of listing.

TML is not owned or controlled by a manufacturer of equipment. TML was established in 1979 under a long-standing corporate policy that telecommunications operating units procure telecommunications equipment independently and on an equal basis without regard to manufacturer affiliation.

TML is primarily engaged in the testing and evaluation of telecommunication-related equipment. Security of employment for lab employees is not under the influence or control of manufacturers or suppliers.

The applicant states that in the mid-1970s, GTE realized that products had to be standardized to ensure consistency and productivity, and that vendor influence had to be controlled to ensure high quality products and service. To accomplish this, GTE created a testing division. The purpose was to: Test and evaluate products to industry and corporate standards; to ensure product compatibility within the GTE network of "Quality Products;" and to set standards for company-wide GTE purchasing procedures.

These primary goals, according to GTE, governed the formation, policies, and procedures of TestMark Laboratories' predecessor, the Evaluation and Support Department (ESD). ESD was established in July, 1979 in Lexington, KY, as an independent testing facility, and began commercial testing in 1983. In 1987, ESD changed its name to TestMark Laboratories to better describe its function.

The applicant states that the GTE TestMark Laboratories consists of 22 professional, technical, and support employees, as follows:

1—Laboratory Director
1—Engineering Director
1—Manager, Listing Services Facility
10—Electrical Engineers
1—Manager, Mechanical Engineering
1—Mechanical Engineer
1—Quality Engineer
1—Physicist
1—Manager, Administrative Services
3—Administrative Clerks
1—Shipping & Receiving Documentation Employee

TML desires recognition for testing and certification of products when tested for compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI/UL 310—Electrical Quick-Connect Terminals
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 719—Nonmetallic Sheathed Cables
ANSI/UL 1012—Power Supplies
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
UL 1059—Terminal Blocks
UL 1449—Transient Voltage Surge Suppressors
UL 1459—Telephone Equipment
ANSI/UL 1481—Power Supplies for Fire Protective Signaling Systems

**Preliminary Finding**

The GTE TestMark Laboratories addressed all of the criteria which must be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report, a factory inspection form and an inspection summary; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; and a copy of its Quality Assurance Manual including a description of its documentation, calibration system, appeals procedure, record keeping and operational procedures.

Nine major areas were examined in depth in carrying out the laboratory survey: Facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel.

The discrepancies noted by the survey team in the on-site evaluation [Ex. 3.A.(1)] were adequately responded to by the applicant prior to the preparation of the survey report (see 3.B.) and have been incorporated into the report.

With the preparation of the final report of the GTE TestMark Laboratories, the survey team was satisfied that the testing facility appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey). (See Ex. 3.A.).

Following a review of the application file and the on-site survey report of the TML facilities, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory and, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the GTE TestMark Laboratories can meet the

requirements for recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for a Nationally Recognized Testing Laboratory, as well as appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than September 8, 1992, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210. Copies of the TML application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–2–91), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with appendix A of § 1910.7.

Signed at Washington, DC this 1st day of July, 1992.

**Dorothy L. Strunk,**

*Acting Assistant Secretary.*

[FR Doc. 92–15914 Filed 7–7–92; 8:45 am]

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**[Docket No. NRTL–3–90]**

## Southwest Research Institute

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Notice of application for recognition as a nationally recognized testing laboratory, and preliminary finding.

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**SUMMARY:** This notice announces the application of the Southwest Research Institute for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

**DATES:** The last date for interested parties to submit comments is September 8, 1992.

**ADDRESSES:** Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

**SUPPLEMENTARY INFORMATION:**

### Notice of Application

Notice is hereby given that the Southwest Research Institute (SwRI) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970. (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory.

The address of the laboratory covered by this application is: Southwest Research Institute, 6220 Culebra Road, Post Office Drawer 28510, San Antonio, Texas 78228.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition to certify products in the areas of testing which it has specified.

Southwest Research Institute believes that for each item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards.

The applicant states that it has pertinent experience through its Certification and Product Services program which provides third-party certification (listing and labeling) for building materials. The services include plant inspections, identification label or mark applied to the product, follow-up inspections, and listing in SwRI's product directory.

According to the applicant, Southwest Research Institute meets all requirements as an independent testing laboratory (see Exhibit 2. A., Section 1.7, pp 3–4, and Appendix A, Affidavit, opp. p 15).

Exhibit 2. A. includes, among other features, written procedures for: Instrument calibration; records preparation and retention, contracts, dispute settlement, and log sheets; establishment of follow-up and listing service; and a certification services sample quality control manual.

The applicant appears to maintain effective procedures for producing creditable findings or reports that are objective and without bias.

The Fire Technology Department has ten buildings on a 5 acre site with a total of 23,200 square feet of floor space of which some 11,000 square feet is devoted to product testing and evaluation. SwRI, itself, occupies some 765 acres with more than 1.5 million square feet of laboratory space.

The Department has identified more than 200 pieces of test equipment it uses to perform the testing required by the standards. Test equipment is available in the laboratory to perform the testing specified in the standard. If equipment is not available, it may be obtained from other departments.

Natural gas, electric and water utilities are available in the buildings used for product testing. Both 208 volts and 440 volts, 3 phase, 60 cycle electric power is available. A 50 psi gas line and 4 inch standard water line plus a 2,000-gallon per minute fire pump and a 25,000-gallon water storage tank are used to support the test work.

Environmental conditions in the laboratory are controlled by a central heating, air conditioning and ventiliation system designed for the type of testing performed in the laboratory. Environmental chambers are used to control and monitor environmental conditions for specific product testing.

The Department has a shipping/receiving department to control and mark incoming products submitted for test. The material is logged in and permanently recorded by date of receipt, client's name, project number, and project engineer to whom product who then receives the material.

Although the laboratory has no security alarm system, the main entrance to the Department is monitored during normal working hours by a receptionist. Visitors are required to identify themselves and to sign in and out in a visitors register log and are issued a visitor's tag. Access and egress to Southwest Research Institute grounds is controlled by security personnel at a main guard building and grounds are patrolled during and after working hours.

The applicant employs some 32 people at the laboratory site, of whom 21 are currently involved in testing and evaluation to the product standards listed. Key personnel include eight technicians, and 10 engineers and supervisors.

The Department maintains a separate calibration laboratory to calibrate and maintain test equipment used for product testing. Outside vendor calibration services or other calibration service within Southwest Research Institute are also used for special equipment. The typical calibration interval for test equipment is six months. The Section Manager and Calibration Supervisor are responsible for the calibration program.

The calibration status of test equipment is apparent to the operator by a label attached to the test equipment. Calibration labels indicate the date of last calibration, calibration due date, ID number, and calibrator's initials.

The Calibration Supervisor maintains records of calibration, repairs and maintenance, for each piece of test equipment. History of repair and calibration includes type, make or model, ID number, calibration interval and manufacturer.

The lab's calibration standards are traceable to the National Institute of Science and Technology (NIST). The calibration laboratory maintains reference standards directly traceable to NIST.

A card file and calibration due notice form are used to indicate when the instruments are due for calibration. In addition, the technician notifies the Calibration Supervisor of the due date on the calibration sticker.

The Project Manager, Department Director and Vice President are responsible for developing, reviewing and approving the standard test procedures. The test procedures are reviewed, as needed, by laboratory management. All product testing is performed in-house.

The Department has various standard operating procedures (SOPs) and a Quality Assurance (QA) Manual in place, which all laboratory personnel are required to follow for evaluating products.

The SOP for a specific test standards is developed and written by the Project Manager, based upon the guidelines for the Q A Manual. Each SOP is, in turn, reviewed by the Safety Officer, Section Manager, Director of the Department of Fire Technology, and the Vice President of the Chemistry and Chemical Engineering Division. An internal audit group is also responsible for the review of SOPs, records, and correspondence.

The Manager of the Fire Testing Services is responsible for assuring that product testing and evaluations are performed according to relevant standards. Test results are reviewed by the Project Manager, Section Manager and, if under the Certification Program, by the Manager of Certification Services.

Submitted products not meeting specified performance standards and requirements are not acceptable for labeling. Disagreements between the applicant or interested third parties and the laboratory are resolved by a committee composed of senior staff of the Department of Fire Technology.

A final test report describing the methods used and results achieved is provided by the Department. This formal report includes: the title and number of the standard used to evaluate the product, the laboratory report number and the manufacturer's name and address; an introduction section that describes the product as it was evaluated; and a section including test procedures and results and observations made both during and after testing.

The Project Manager authors the test report which is reviewed for technical content and accuracy by the appropriate Section Manager and the Director of the Department of Fire Technology. The final report contains, at the very least, the signatures of the Vice President and the Department Director or Project Manager.

Copies of the report, which are given to the client, are also maintained in the Department and Record files, and by the appropriate Project Manager.

Final reports, data, and correspondence are maintained in a working file until the project is closed. Upon completion, all necessary documentation, reports, masters, etc., are filed for reference in a secured area. Within about one year, the file is microfilmed with one copy maintained at the Department of Fire Technology and another at the Institute Library.

The Laboratory has a written Quality Assurance Manual for Fire Resistance Certification and Labeling Services, which covers all the requirements governing and controlling fire qualification listing services such as test control, inspection control, and control of the listing mark.

The Manager of Quality Assurance is responsible for the QA Program and, along with the Director of the Department of Fire Technology, for the approval of the QA Manual.

The Institute Department of Quality Assurance, which is independent, performs annual internal audits of the Fire Technology Department, consisting of a review of project records, test and measuring equipment calibration records, personnel training and qualification records, testing procedures, procurement records, and individual standard operating procedures.

The laboratory requires the client to sign an "Application for Follow-up Services and Listing" Agreement. The client then completes the "Quality Assurance Manual Information Form" which is used during the initial inspection of the manufacturing site. Once the product has passed the appropriate fire tests, the client then must sign a second contract entitled "Follow-Up and Listing Service Agreement". The client is then permitted to use the SWRI Label on their product. The initial plant inspection is conducted to review the manufacturer's quality control program and to determine the manufacturer's ability to conduct the quality control tests required by the standard.

Unannounced follow-up inspections of the manufacturer's facility are conducted quarterly, or as frequently as necessary as determined by the Manager of Certification Services. Qualified inspection personnel conduct and report inspection activities to ensure that products continue to be manufactured according to the drawings and specifications referenced in the final reports.

In the event of a discrepancy affecting the quality of the product, the use of the laboratory's listing mark is suspended until corrective action is taken to resolve the discrepancies.

At the present time, the Department of Fire technology has no listed products subject to field audits. The department reserves the right to make a field audit.

The printing and distribution of the laboratory's listing label is controlled by the Department of Fire Technology. Depending upon the product, labels can be roll printed on the material to be labeled or are serialized and affixed after manufacture. It is the manufacturer's responsibility to maintain sufficient inventory labels to satisfy manufacturing requirements, and the manufacturer must account for all labels.

**Background**

SWRI is a non-profit organization established in 1947 devoted to industrial research. The Department of Fire Technology in the Chemistry and Chemical Engineering Division, according to the applicant, represents one of the largest and most experienced organizations of its kind in the world, having been engaged in various aspects of fire technology for over 35 years, including the testing and certification of various products that are the subject of this application. The Department lists a large staff of qualified personnel and has facilities which are adequate to

handle and store and easily move equipment to the laboratory areas, which are adjacent the warehouse. Within the 23,200 square feet of floor space of the Department's facilities on the west campus of the Institute, laboratory-scale apparatus designed to meet up to 40 test specifications are housed in 11,100 square feet of laboratory space.

The Department of Fire Technology has, according to SWRI, been recognized by the Council of American Building Officials (CABO) National Evaluation Service as a third-party quality assurance and inspection agency. In addition, the SWRI staff has also participated with numerous organizations and committee addressing a variety of aspects of fire technology.

Southwest Research Institute desires recognition for testing and certification of products when tested for compliance with the following test standards:

ASTM E 152—Standard Methods of Fire Tests of Door Assemblies
ANSI/UL 10A—Tin-Clad Fire Doors
ANSI/UL 10B—Fire Tests of Door Assemblies
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 155—Tests of Fire Resistance of Vault and File Room Doors
ANSI/UL 555—Fire Damping and Ceiling Dampers
UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables
UL 1887—Fire Test of Plastic Sprinkler Pipe for Flame and Smoke Characteristics

**Preliminary Finding**

Southwest Research Institute addressed all of the criteria which must be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report, a factory inspection form and an inspection summary; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; and a copy of its Quality Assurance Manual including a description of its documentation, calibration system, appeals procedure, record keeping and operational procedures.

Nine major areas were examined in depth during the on-site laboratory evaluation: Facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel.

The discrepancies noted during the evaluation [Ex. 3. A.(1)] were adequately responded to prior to the preparation of the survey report and are included as a separate corrective action report section [Ex. 3. A.(2)].

With the preparation of the final report, the survey team was satisfied that the testing facility appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey). (See Ex. 3.A.).

Following a review of the application file and the on-site survey report of the SwRI facility, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory and, therefore, recommended to the Assistant Secretary that the application be preliminary approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Southwest Research Institute can meet the requirements for recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for recognition as a Nationally Recognized Testing Laboratory, as well as Appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than September 8, 1992, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210. Copies of the SwRI application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–3–90), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A of Section 1910.7.

Signed at Washington, DC this 1st day of July, 1992.

**Dorothy L. Strunk,**

*Acting Assistant Secretary.*

[FR Doc. 92–15915 Filed 7–7–92; 8:45 am]

BILLING CODE 4510-26-M

## NATIONAL SCIENCE FOUNDATION

### Committee of Visitors of the Advisory Committee for Biological Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* July 30–31, 1992; 8:30 a.m. to 5 p.m.

*Place:* Room 543, 1800 G Street, NW., Washington, DC.

*Type of Meeting:* Closed.

*Contact Person:* James H. Brown, Division Director, Molecular and Cellular Biosciences (MCB) Division, rm. 325, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9400.

*Purpose of Meeting:* To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

*Agenda:* To provide oversight review of the MCB Divisions's Genetics Program.

*Reason for Closing:* The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 2, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92–15957 Filed 7–7–92; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Instrumentation and Instrument Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* July 30–31, 1992; 8:30 a.m. to 6 p.m.

*Place:* One Washington Circle Hotel, One Washington Circle, Washington, DC.

*Type of Meeting:* Closed.

*Contact Person:* Michael Lamvik, Program Director, Biological Instrumentation and Resources (BIR), National Science Foundation, 1800 G ST. NW., Washington, DC 20550. Telephone (202) 357–7852.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate BIR proposals as part of the selection process for awards.

*Reason for closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 2, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92-13858 Filed 7-7-92; 8:45 am]

BILLING CODE 7555-01-M

## Special Emphasis Panel in Mechanical and Structural Systems; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* July 10, 1992; 8:30 a.m. to 5 p.m.

*Place:* Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC.

*Type of Meeting:* Closed.

*Contact Person:* Drs. Jerome L. Sackman and Huseyin Sehitoglu, Program Directors, MSS, rm. 1108, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9542.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate the Mechanics and Materials Program proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

*Reason for Late Notice:* Preparation of meeting announcement delayed due to personnel changes; was unable to change meeting date because all travel arrangements had been made.

Dated: July 2, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92-15959 Filed 7-7-92; 8:45 am]

BILLING CODE 7555-01-M

## Ocean Sciences Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

*Name:* Ocean Sciences Review Panel.

*Date and Time:* July 27, 28, 29 1992—8:30 a.m. to 5 p.m.

*Place:* St. James Hotel, 950 24th St. NW., Washington, DC 20037.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Michael Reeve, Head, Ocean Sciences Research Section, Division of Ocean Sciences, room 609, National Science Foundation, 1800 G St. NW., Washington, DC, Telephone: 202/357-9639.

*Purpose of Committee:* To provide advice and recommendations concerning oceanographic research and its support by the NSF Division of Ocean Sciences.

*Agenda:* (1) To review and evaluate research proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 2, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92-15960 Filed 7-7-92; 8:45 am]

BILLING CODE 7555-01-M

## Committee of Visitors of the Advisory Committee for Social, Behavioral and Economic Science; Meeting

In accordance with the Federal Advisory Committee (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* July 29-30, 1992; 9 a.m. to 5 p.m.

*Place:* Room 248 (on July 29) and room 540-B (on July 30), 1800 G Street, NW., Washington, DC.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Roberta Balstad Miller, Division Director, Social and Economic Science, rm. 336, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7968.

*Purpose of Meeting:* To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

*Agenda:* To provide oversight review of the Economics Program.

*Reason for Closing:* The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 2, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92-15961 Filed 7-7-92; 8:45 am]

BILLING CODE 7555-01-M

# NUCLEAR REGULATORY COMMISSION

## Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 15, 1992, through June 25, 1992. The last biweekly notice was published on June 24, 1992 (57 FR 28195).

### Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a

margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 7, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition

should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

**Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois**

*Date of amendment request:* April 24, 1992, supplemented June 2, 1992

*Description of amendment request:* By letter dated April 24, 1992, Commonwealth Edison Company (CECo) proposed two changes to the LaSalle County Station's Technical Specifications. The first was to add to the specifications, allowed outage times (AOT) for the scram discharge volume (SDV) vent and drain valves. The second removed surveillance requirement 4.1.3.1.4.b which covers SDV instrumentation. The staff's proposed no significant hazards consideration determination for the requested changes was published on June 12, 1991 (56 FR 27039).

By letter dated June 2, 1992, CECo supplemented the application by proposing to delete the requirement that surveillance requirement 4.1.3.1.4.a be performed at high reactor pressure and low reactor power. The amendment proposes to have this surveillance performed when the reactor is in the shutdown condition. This reduces the number of unnecessary plant transients and needless challenges to plant safety systems.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Commonwealth Edison has evaluated the proposed Technical Specification Amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92, operation of LaSalle County Station Units 1 and 2 in accordance with the proposed amendment will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The deletion of the requirement for control rods to be withdrawn to perform surveillance requirement 4.1.3.1.4.a and the associated Note * does not increase the probability or consequences of a previously evaluated accident. This is justified because the ability of the valves to close in the required time and reopen is still tested, and the difference in initial test conditions has little affect on the results of the test. Therefore, operability of the SDV Vent and Drain valves is verified by performing the surveillance in shutdown conditions.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The change to the initial conditions for the SDV vent and drain valve timing does not involve any changes to the facility or the operation of the facility as described in the [Updated Final Safety Analysis Report] UFSAR.

3) Involve a significant reduction in the margin of safety because:

There is not an overall significant reduction in the margin of safety. Conducting the test at a reduced pressure may be considered a minor reduction in the margin of safety; however, this is mitigated by the increase in safety as a result of eliminating a required scram from high reactor pressure and low power (5 to 15%), which challenges safety systems on an 18 month frequency. The closing time of the SDV vent and drain valves is minimally effected by the change in initial conditions because the SDV is of sufficient size and is initially vented such that peak pressure prior to the closing of the valves is not substantial. The current Technical Specification requires demonstrating the reopening capability of the SDV vent and drain valves against a high backpressure (normal operating reactor pressure) and with this amendment the backpressure will normally be low during the performance of this surveillance. However, the ability of the valves to open against rated pressure would be demonstrated after a reactor scram during normal operation or, if failure to reopen occurred, then repairs would have to be done prior to startup. Therefore, conducting this surveillance during shutdown is acceptable due to the minimal effect on surveillance results and the increased safety due to less challenges to safety systems.

Guidance has been provided in "Final Procedures and Standards on No Significant Hazards Considerations," Final Rule, 51 FR 7744, for the application of standards to license change requests for determination of the existence of significant hazards considerations. This document provides examples of amendments which are and are not considered likely to involve significant hazards considerations. This proposed amendment most closely fits the example of a change which may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or components specified in the Standard Review Plan. Since these changes are to the surveillance requirements for determining valve operability, these changes are clearly within the acceptance criteria of sections 3.9.4 and 4.6 of the Standard Review Plan. This proposed supplemental amendment does not involve a significant relaxation of the criteria used to establish safety limits, a significant relaxation of the bases for the limiting safety system settings or a significant relaxation of the bases for the limiting conditions for operations. Therefore, based on the guidance provided in the Federal Register and the criteria established in 10 CFR 50.92(c), the proposed changes does not constitute a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

*NRC Project Director:* Richard J. Barrett

**Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York**

*Date of amendment request:* May 29, 1992

*Description of amendment request:* The licensee requests an amendment to the Technical Specifications Section 1.0 (Definitions), Table 1-1, to add a definition for "Refueling Interval ($R_i$)." The surveillance interval for $R_i$ would be at least once every 24 months. The definition of "Refueling (R)" would be changed to "Refueling Interval (R)." This change would accommodate operation on a 24-month fuel cycle and would delineate between those surveillances which have been approved for a 24-month interval and those which have not. Consistent with the proposed change to Section 1.0, all existing references in Section 4.0 (Surveillance Requirements) to "Refueling" would be changed to "Refueling Interval." In addition, for those surveillance intervals proposed to be extended to 24 months, the existing references in Section 4.0 to

"Refueling" or "R" would be changed to "Refueling Interval" or "$R_4$," as applicable.

The licensee proposed extending the surveillance interval to 24 months for a number of surveillances. The specific surveillances are:

(1) Snubber visual and functional testing,

(2) Reactor manual trip channel test,

(3) Refueling system interlock test,

(4) Station battery load test,

(5) Electrical tunnel, diesel generator building, and containment fan cooler fire protection spray systems tests,

(6) Pressurizer safety valve setpoint test,

(7) Motor driven auxiliary feed pump full flow test,

(8) Residual heat removal (RHR) system leakage test,

(9) Fire protection system for protection of safe shutdown system test,

(10) Containment fan cooler unit (FCU) fire detection instrument test,

(11) Reactor coolant pump fire detection instrument test,

(12) RHR system flow channel calibration,

(13) FCU condensate flow channel calibration,

(14) Steam generator narrow range level channel calibration,

(15) Turbine impulse (first stage) pressure channel calibration,

(16) Overpressure protection system (OPS) channel calibration,

(17) Area radiation monitoring system calibration,

(18) RHR pump flow channel calibration,

(19) Pressurizer level channel calibration,

(20) Containment FCU weir level channel calibration,

(21) Accumulator pressure channel calibration,

(22) Turbine independent electrical overspeed protection system (IEOPS) channel calibration,

(23) Vapor containment sump level channel calibration,

(24) Steam generator examination

(25) Pressurizer pressure channel calibration, and

(26) Reactor coolant system (RCS) flow channel calibration.

The licensee has also proposed setpoint changes for the pressurizer pressure and level channels, the steam generator narrow range level channels, and the RCS flow channels. These instrument channels require setpoint changes to ensure that the trip setpoint remains acceptable after 30 months of instrument drift (24 months and 25% extension). The changes requested by the licensee related to a 24-month fuel cycle are in accordance with Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle" and Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," as applicable.

In addition, the licensee proposed a change to Section 4.13 (Steam Generator Tube Inservice Inspection) which would delete paragraphs 4.13.C.5 and 4.13.C.6. These paragraphs currently require NRC approval for operating for a period longer than eight equivalent months or one calendar year from the date of the steam generator examination.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analyses of the issue of no significant hazards consideration, for each proposed change, which are presented below:

(1) Snubber visual and functional testing:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. In all four visual inspections reviewed all of the snubbers were found to be operationally specifications [operable]. Leakage projection beyond 18 months is not possible as any degraded snubber was replaced after an 18 month cycle. Comparison of the current inspection program with that proposed in Generic Letter 90-09 indicates that the present program is more restrictive. Generic Letter 90-09 allows two failed snubbers without penalty. Both inspection programs provide the same confidence level.

For snubber functional testing, the Technical Specification currently require a sampling program which provides a 95% confidence level that 90% to 100% of the snubbers operate within acceptance limits. This program will not change and results in the same confidence level and reliability established by the ASME Code.

Based upon historical data it is concluded that extension of the surveillance interval to 24 months (+25%) will involve minimal risk. Snubbers exhibit reliable operation after the first few years of operation. The functional test history supports this observation.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The past visual and functional test history with almost no failures provides assurance that an extension in surveillance interval will not result in increased snubber failure. Where the one failure of a snubber to lock up occurred, a subsequent engineering evaluation concluded that the piping system would have remained operable under a seismic event.

Based upon the guidance in Generic Letter 90-09, which addresses an extension of the visual inspection frequency to as much as 48 months, the past inspection history at IP2 justifies an extension of the surveillance interval to 24 months plus 25%.

3. There will be no significant reduction in the margin of safety.

The purpose of functional testing is to provide a confidence level that a minimum of 90% of the snubbers operate within acceptance limits. The performance of visual examinations is a separate process that compliments the functional testing program and provides additional confidence in snubber operability. The review of past inspection and test history indicates that this objective is met at the time of inspection and testing and maintained throughout the current 18 month (plus 25%) interval. There is no reason based upon past history to indicate that this same success rate will not be maintained over a 24 month (plus 25% interval).

Previous history indicates a greater than 90% confidence level in meeting the Generic Letter objective.

(2) Reactor manual trip channel test:

Eight completed tests (8/29/81, 10/13/84, 1/14/86, 10/5/87, 3/18/89, 2/24/90 and 2/1/91) were reviewed to determine whether any failures occurred. No failures were detected.

It is therefore concluded that the proposed change in test surveillance interval does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur. The success rate of the previous eight tests indicates a highly reliable system. Diverse actuation provides added reliability and protection from common mode failure. Actual testing of breakers on a 31 day cycle provides a means of detecting failure of a key component on a frequent basis. All of the above factors tend to mitigate any risk incurred by extending the current test cycle from 18 months plus 25% to 24 months plus 25% to a negligible level.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The assurance provided by the diversity in design, successful completion of previous tests and periodic monitoring of the breaker indicates that the channels should continue to be operable for a period of 24 (+25%) months.

3. There is no significant reduction in the margin of safety. The design and past test history provide a basis to conclude that any risk imposed by a longer operating cycle is minimal with regard to the operability of the manual reactor channels.

(3) Refueling system interlock test:

The proposed change do [does] not involve a significant hazards consideration since:

1. There is no increase in the probability or consequences of an accident. The proposed change is one of testing frequency. There is no change in test requirements nor acceptance criteria. Successful performance of the test is a prerequisite to declaring the fuel handling equipment operable for the purpose of handling fuel. Regardless of whether equipment failure is induced by the time period of the previous test, the equipment must be restored to operable status in order to perform the required test in an acceptable manner.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Successful test performance is essentially independent of the time period

since the prior test and is a prerequisite to any fuel handling operations.

3. There has been no reduction in the margin of safety. No changes in test requirements or acceptance criteria has occurred. Therefore the equipment is to [be] determined to be operable according to the same standards that existed previously.

(4) Station battery load test:

The proposed changes do not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. Review of data for the last three refueling outages indicates no failures in discharge capacity or unacceptable plate condition. In addition, the Technical Specification requires on a monthly basis, measurement of the voltage of each battery. Similarly on a quarterly basis, additional testing on each battery is performed. Data comparisons are made to determine possible degradation.

Successful past data indicates that the batteries have additional life. This factor, together with monthly and quarterly testing which will remain unchanged, provided assurance that any risk incurred by extending the surveillance interval will be minimal.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Past successful test data, together with the monthly and quarterly tests which would provide an early indication of deterioration, provide ample assurance that the batteries would continue to perform their safety function over the extended cycle or permit corrective action prior to the point where they no longer could perform their safety functions.

3. There will be no significant reduction in the margin of safety. Extension of the surveillance cycle will have minimal impact upon the margin of safety. Periodic inspections and tests will indicate deficiencies at a state where they are unlikely to influence battery capacity permitting corrective action prior to degradation to an unacceptable state.

(5) Electrical tunnel, diesel generator building, and containment fan cooler fire protection spray systems tests:

Completed tests were reviewed from the last four refueling outages with only one test failure occurring. This failure is attributable to personnel error during maintenance and not as a result of length of service.

It is therefore concluded that the proposed change in test interval does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur. The fire protection system is a static system between surveillances and the valves of concern serve as a pressure boundary. In this capacity the valves are not prone to any failure mechanism as a result of length in service time. The test data supports this conclusion. Given adequate maintenance and an acceptable test prior to return to service, there is reasonable assurance that the valve will perform its intended function with little influence due to the time between surveillances.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. As evidenced by past test data there is reasonable assurance that the valves of concern will perform their intended safety function over the extended period between surveillances and that no unforeseen accident will be introduced.

3. There is no significant reduction in the margin of safety. The past test history of valves of concern together with the service conclusions encountered during the extended surveillance interval provide an adequate basis upon which to conclude that there is no significant reduction in the margin of safety.

(6) Pressurizer safety valve setpoint test:

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident resulting from an increased surveillance interval. A statistical analysis of "as found" to "as left" data over three cycles indicates a normal distribution with acceptable scatter; actual valve setpoints did not drift outside setpoint tolerance. There was no indication that setpoints drifted significantly with time and it is reasonable to conclude that: setpoints would remain within tolerance over a 24 month (+25%) cycle as well as an 18 month (+25%) cycle. There are no indication of bias; the drift observed was equally likely to result in a lower or higher setpoint.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The setpoint for actuation is not expected to drift out of an acceptance band over the longer cycle. Therefore, the valves will continue to perform their safety function which is to prevent an accident from an over pressure transient of the reactor coolant system. The combined capacity of the safety valves continues to be equal or greater than the maximum surge rate resulting from a complete loss of load without a direct reactor trip or any other control except for safety valves on the secondary side.

3. There has been no significant reduction in the margin of safety. As it can be reasonably assumed that the pressurizer safety valves will continue to actuate over a longer surveillance cycle and their capacity remains unaffected, there should be no change in the margin of safety.

(7) Motor driven auxiliary feed pump full flow test:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. An evaluation of 4 cycles of test data collected over the past five years indicates satisfactory pump performance in each case. It is considered highly unlikely that pump performance would deteriorate to an unacceptable level if the surveillance interval was extended, in the maximum, for 22.5 months to 30 months. Furthermore, a quarterly ASME Section XI test would detect extreme degradation in the extended 7.5-month period. There is minimal risk involved, in terms of the pumps capability to deliver required flow, by extending the surveillance period.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Since it is highly unlikely, for the reasons stated above, that pump performance would deteriorate to unacceptable levels unnoticed during the extended surveillance interval, it is expected that the motor driven pumps will continue to be able to perform their intended safety function. As the previous test data indicates, any deterioration in pump performance is gradual in terms of time and no sharp decrease in pump performance over a relatively short time span is expected. No new failure modes are anticipated due to the extended surveillance interval.

3. There will be no significant reduction in the margin of safety. Past test data provides a basis to conclude that the motor driven pumps performed acceptably over a 22.5 month cycle. There is no known mechanism anticipated which would induce severe degradation

in pump performance if the surveillance interval were extended an additional 7.5 months. Should such a mechanism occur, the ASME Section XI quarterly test provides a means of detection before unacceptable performance develops.

(8) Residual heat removal (RHR) system leakage test:

Four cycles of test data resulting from hydrostatic testing of the RHR system were reviewed. In all instances the measured leakage did not approach the Technical Specification limits.

It is concluded that extending the surveillance interval would not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur. Extending the surveillance interval to a maximum of 30 months will, in all likelihood, only extend the period when the RHR system is not in service. Mechanisms which would induce leakage are more likely to develop when the system is in operation rather than during an extended standby period. Since past test data supports the integrity of the system and an extended standby period is not expected to enhance leakage, there is a reasonable expectation that the RHR system will continue to perform its intended safety function without excessive leakage.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The integrity and performance of the RHR system is not expected to be influenced by an extended surveillance period for the reason stated above. Therefore it is anticipated that the system will continue to perform its intended safety function and that leakage will not exceed levels previously analyzed for radiological releases.

3. There is no significant reduction in the margin of safety. There is minimal risk involved that an extended surveillance interval will increase system leakage beyond Technical Specification limits or that system performance will be influenced. Past test data indicates that the margin imposed by the Technical Specification is not approached by actual system leakage.

(9) Fire Protection system for protection of safe shutdown system test:

Completed test reports from the last four refuelings were reviewed and all results were satisfactory. No deficiencies.

It is concluded that extending the surveillance interval will not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur. Past history indicates that the portion of the fire protection system covered by Technical Specification 4.14.A and 4.14.E is highly reliable and that system integrity is not unduly influenced by the passage of time. This is expected of a static system which is, for all practical purpose, maintained in a standby condition between surveillance tests. Extension of the surveillance interval by several months is not expected to change the results of surveillance testing performed over the current shorter time cycle. There does not appear to be a degradation mechanism which is highly time dependent.

It is concluded that there is minimal risk that the components of concern would not perform their required safety function if called upon within the proposed surveillance interval.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Since no degradation mechanism which is strongly time dependent is evident, the components of concern are expected to perform their intended safety function if called upon during the somewhat longer surveillance interval.

3. There is no significant reduction in the margin of safety. Since the system is essentially kept in a standby condition there is minimal risk that performance will degrade from the time of the previous surveillance test. Past test history does not indicate that a degradation mechanism strongly dependent upon time is present.

(10)Containment fan cooler unit (FCU) fire detection instrument test:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. Review of past inspection data indicates some minor problems but none which would have rendered the spray system inoperable or unable to have performed its protective function. There was no observed problems with the fire detectors. Since the system is static and has proven reliability, increasing the time interval by several months between inspections is expected to have minimal, if any, impact upon operability of the spray system and fire detection system.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Test inspection data indicates that the spray system and fire detectors have proven reliability over time. Extending the surveillance interval is not expected to influence the integrity of the system to the point where these systems would be unable to perform their protection function.

3. There will be no significant reduction in the margin of safety. Extending the surveillance interval is not expected to influence the capability of these systems to perform their intended safety function.

(11) Reactor coolant pump fire detection instrument test:

It is concluded that extending the surveillance interval would not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur. Extending the surveillance interval may have an impact upon the number of the fire detectors which remain operable. However, the impact upon detection of a fire affecting the Reactor Coolant Pumps will be minimal due to the alternate means of monitoring the Containment air temperature. Failure of the fire detectors is self-monitoring with an alarm in the Control Room advising plant operations of the need for compensatory action.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The purpose of the reactor coolant pump detectors is to detect fires in the pumps necessitating plant shutdown. Only one reactor coolant pump is necessary to achieve hot shutdown. In none of the surveillances over a year period did all detectors fail which would have meant removal of the primary means of fire detection. In all instances, Containment air temperature monitoring, the secondary means of detecting a fire in Containment was implemented. Under the worst of circumstances two pumps always had primary fire detection capability. It is considered highly unlikely that a fire within Containment would progress to the point where the last reactor coolant pump would be threatened, or that achievement of hot shutdown (6 hours) would be at risk without adequate prior notice to plant operators.

3. There is no significant reduction in the margin of safety. Although the primary means of fire protection, i.e., the smoke detectors, is less than desired, the backup means of fire detection, i.e., Containment air temperature monitoring has been implemented. This compensatory action is recognized and required by the Technical Specifications and is an acceptable method for indefinite plant operation.

(12) RHR system flow channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The RHR flow channel calibration procedures from the December 1986 outage to February 1992 were reviewed. It was determined that this channel can support its intended function on a 30 month surveillance cycle.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. This instrument channel is used to determine the flow from the discharge of the RHR pumps. The projected 30 month drift value does not exceed any assumptions of the safety analysis or affect the channels capability of performing its safety function.

3. There will be not [no] significant reduction in the margin of safety.

The projected 30 month drift values were determined with a 95% probability at a 95% confidence level. This drift value does not exceed any assumptions of the safety analysis or affect this channel's capability of performing its safety function.

(13) FCU condensate flow channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The FCU Condensate flow channel calibration procedures from the December 1986 outage to February 1992 were reviewed. It was determined that this channel can support its intended function on a 30 month surveillance cycle.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. This instrument channel is used to determine the condensated [condensate] flow from the fan cooler units. The projected 30 month drift value does not exceed any assumptions of the safety analysis or affect the channels capability of performing its safety function.

3. There will be not [no] significant reduction in the margin of safety. The projected 30 month drift values were determined with a 95% probability at a 95% confidence level. This drift value does not exceed any assumptions of the safety analysis or affect this channel's capability of performing its safety function.

(14) Steam generator narrow range level channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The setpoint limits for reactor trip and auxiliary feedwater initiation will be made more conservative to accommodate the small increase in uncertainty due to the longer period of instrument drift. Separately, the accident analysis utilizing this parameter as an initial condition was found to already bound the effects of the new calculated uncertainty. Therefore, analyzed accidents will be neither more probable nor have worse consequences.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The only effect of a longer period between channel calibrations is a small increase in uncertainty. The small potential decrease in accuracy will be accommodated by a change in applicable setpoints and, if necessary, in values used in the Emergency Operating Procedures. [The] Existing accident analysis was verified to already account for the increased uncertainty in initial condition. Therefore, no new adverse phenomenon will be introduced.

3. There will be no significant reduction in the margin of safety. Changes will be made, as necessary, in the affected setpoints and Emergency Operating Procedure values, so that margin of safety will not be significantly affected.

(15) Turbine impulse (first stage) pressure channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The Turbine Impulse Pressure calibration procedures from the February 1986 outage to the February

1992 were reviewed. The results of the channel statistical calculations show that the channel uncertainties will meet those which can support the current Technical Specification Setpoint requirement and the current Safety Analysis Limits.

2. The possibility of a new or different kind of accident form [from] any previously analyzed has not been created. Since the channel uncertainties do not exceed those which can support the current Technical Specification Setpoint, no new or different kind of accident can be created by the extension of the surveillance interval.

3. There will be no significant reduction in the margin of safety. The projected 30 month drift values were determined with a 95% probability at a 95% confidence level. Since the channel uncertainties are within the current Technical Specification envelope the extension of the surveillance interval will not significantly reduce the safety margin.

(16) Overpressure protection system (OPS) channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The only analysis affected is that required by 10 CFR [Part] 50 Appendix G. The limits specified in Appendix G will continue to be satisfied by a change in the Overpressure Protection System (OPS) setting, if necessary, to account for the additional uncertainty due to the longer period of instrument drift.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The small potential decrease to channel accuracy will be accommodated by a setting change, if necessary. This will not introduce any new phenomenon.

3. There will be no significant reduction in the margin of safety. The Appendix G limits will continue to be satisfied, so the margin of safety will not be affected.

(17) Area radiation monitoring system channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. These area radiation monitors and associated circuits are generally reliable devices. Based on this reliability, and the daily and monthly surveillance of these channels, extension of the surveillance interval from 18 months to 24 months for this test would have little affect on the reliability of the system. Also, the capability to rotate the check source into place to check the channels provides the necessary confidence that the channel is responding in a manner consistent with proper operation. Therefore, no increase in probability or consequences of previously evaluated accidents are involved.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to

Accommodate a 24-month Fuel Cycle", requires confirmation that historical maintenance and surveillance data do not invalidate this conclusion. Since no deficiencies, as a consequence of equipment failure or malfunction, were found in the Area Radiation Monitoring system during the performance of test procedures in the last four refueling cycles, the historical data supports the conclusion that safety will not be compromised by extending the interval between tests to a maximum of 30 months. Thus no new or different kind of accident will be created.

3. There is no significant reduction in the margin of safety. The purpose of the surveillance requirement for the area radiation monitors is to provide a level of assurance of component function as designed. Extension of the surveillance period to 30 months and the consequential effect on the instrument function, based on the historical data, supports the conclusion that safety margins will not be adversely impacted. In addition, the complimentary daily check and monthly test for the monitors as required by existing Technical Specification will be preserved.

(18) RHR pump flow channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The accident analyses do not rely on the RHR flow channel to provide a setpoint for automatic actuation of required equipment, or an alarm setpoint for required operator action. This measurement only provides information for monitoring operation of the low head portion of the Safety Injection System. The small change in accuracy due to the longer period of instrument drift will leave the channel still sufficiently accurate for this purpose.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The small potential decrease in accuracy of information to the operator does not have the potential for creating any previously unanalyzed phenomenon.

3. There will be no significant reduction in the margin of safety. The small potential decrease in accuracy due to a longer period of drift between calibrations is not significant for the function of providing information to the operator for post accident monitoring of system operation.

(19) Pressurizer level channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. An historical review of "As Left/As Found" data was conducted for all completed test procedures since the February, 1986 outage. This evaluation considered all other conceivable impact[s] relevant to the determination of instrument channel uncertainties. The final statistical determination of instrument channel drift value for the 30 month surveillance of the Pressurizer Level instrument channel resulted in recommended changes to existing Technical Specification and plant procedures which are addressed in this amendment application. These proposed changes together insures that existing accident analyses limits are not exceeded.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The evaluation of the impact of the desired change to the pressurizer level instrument channel surveillance interval from 24 to 30 months and the proposed changes to plant procedures preserves the system function within the limits of existing safety analyses, therefore, no new accidents are being created.

3. There are [is] no significant reduction in the margin of safety. The purpose of the surveillance calibration test of the pressurizer level instrument channel is to provide a level of assurance of system function as designed. Extension of the surveillance period to 30 months and consequential effect on instrument drift values with the mentioned changes, was evaluated with acceptable results in regards to system functional capability. The complimentary minimum frequency for visual inspection of the channels on each shift as required by the existing Technical Specification remains unaffected. The margin of safety for the system is being preserved.

(20) Containment FCU weir level channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The FCU Weir Level is not a parameter used in any accident or transient analysis. This measurement is merely an aid to the operator in identifying leakage into the containment from a source other than the Reactor Coolant System. The small change in accuracy due to the longer period of instrument drift will leave the channel still sufficiently accurate for this purpose.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The small potential decrease in accuracy of information to the operator does not havethe potential for creating any previously unanalyzed phenomenon.

3. There will be no significant reduction in the margin of safety. The potential decrease in accuracy due to a longer period of drift between calibrations is not significant. In addition, the measured parameter is itself not significant to any safety limit or any accident or transient analysis.

(21) Accumulator pressure channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The "As Left/As Found" data from all completed test procedures since the December 1986 outage to the present was evaluated to determine a projected 30 month drift with a 95% probability at a 95% confidence level. This evaluation considered the impact of the M&TE [measuring and test equipment] used to record the data as well as other channel uncertainties including sensor rack and process effect for the operating environmental conditions of the instrument

extensive review of work orders and any modification to the channels were also conducted to determine instrument performance from one cycle to the next. This data was statistically evaluated to determine population normality and outliers. As possible, outliers were eliminated by the use of accepted statistical tests or justifiable mechanistic causes. This effort resulted in drift values for the accumulator pressure channel which can be accommodated within existing safety analyses and Technical Specification Limits, therefore system performance is preserved.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The accumulator pressure instrument channel design functional attribute will be retained due to changes in plant alarm setpoints. Thus no new condition outside of existing analyses are being created.

3. There is no significant reduction in the margin of safety. The purpose of the surveillance calibration test of the accumulator pressure instrument channel is to provide a level of assurance of system function as designed. Extension of the surveillance period to 30 months and the consequential effect on instrument drift value was evaluated with acceptable results in regards to system functional capability. The minimum frequency for visual inspection channel checking on each shift is retained. The margin of safety for the system is therefore preserved.

(22) Turbine IEOPS channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. Review of past data for the 18 month (+25%) calibration does not indicate any unacceptable data. It is not expected that extending the surveillance interval to 24 (+25%) months will result in unacceptable data. In addition a monthly test of the trip frequency is conducted which provides additional assurance that an alternate means of monitoring during the extended surveillance interval is available.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Past surveillance data indicates that the IEOPS turbine trip channel has performed in an acceptable manner over a 22.5 month interval. The same is expected for the proposed 30 month interval. In addition there is the monthly frequency check. Therefore, it is expected that the Turbine IEOPS channel will continue to perform its intended safety function over the proposed 30 month interval.

3. There has been no significant reduction in the margin of safety. As the Turbine IEOPS channel is expected to perform its safety function over the proposed 30 month interval there is minimal risk that the margin of safety has been reduced.

(23) Vapor containment (VC) sump level channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The VC sump level calibration procedures from the February 1986 outage to the February 1992 were reviewed. With the change to the Technical Specification setpoint for HI-HI level alarm being implemented ... the channel uncertainties can be accommodated over a 30 month interval.

2. The possibility of a new or different kind of accident form [from] any previously analyzed has not been created. Since the change in the instrumentation setpoint for HI-HI level alarm will restore the channel uncertainties to those which can support the current Technical Specification Setpoint requirement for operator action at the 45 ft. level, no new or different kind of accident can be created by the extension of the surveillance interval.

3. There will be no significant reduction in the margin of safety. The projected 30 month drift values were determined with a 95% probability at a 95% confidence level. With the change to the instrument setpoint ..., the extension of the surveillance interval will not significantly reduce the safety margin.

(24) Steam generator examination:

The proposed changes do not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The Generic Letter [91-04] reflects a surveillance interval of 24 months, without qualification, based upon Regulatory Guide 1.83 which provides the same requirement. The Regulatory Guide establishes a basis acceptable to the NRC for reducing the probability and consequences of steam generator tube failure through periodic inservice inspection for early detection of defects and deterioration. As stated in the basis of this specification, all other aspects of the steam generator inspection program exceed the requirements of Regulatory Guide 1.83 and remains unchanged by this Technical Specification amendment.

2. The possibility of a new or different kind of accident from any previously evaluated has not be created. The proposed Technical Specification establishes a surveillance interval which reflects an acceptable interval to the NRC for the purpose of reducing the probability of steam generator tube failures.

3. There will be no significant reduction in the margin of safety. As noted in the basis of the Technical Specification, the steam generator tube inspection program exceeds the requirements of Regulatory Guide 1.83. This statement remains unaffected by this change.

(25) Pressurizer pressure channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. An historical review of "A Left/As Found" data was conducted for all completed test procedures since the December 1986 outage. This evaluation considered all other conceivable impact[s] relevant to the determination of instrument channel uncertainties. The final statistical determination of instrument channel drift value for the 30 month surveillance interval resulted in recommended changes to existing Technical Specification and plant procedures .... Together, these proposed changes insures that existing accident analyses limits are not exceeded.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The evaluation of the impact of the desired change to the pressurizer pressure instrument channel surveillance interval from 24 to 30 months and the proposed changes to plant procedures preserves the system function within the limits of existing safety analyses, therefore, no new accidents are being created.

3. There are [is] no significant reduction in the margin of safety. The purpose of the surveillance calibration test of the pressurizer pressure instrument channel is to provide a level of assurance of system function as designed. Extension of the surveillance period to 30 months and consequential effect on instrument drift values with the mentioned changes, was evaluated with acceptable results in regards to system functional capability. The complimentary minimum frequency for visual inspection of the channels each shift as required by our existing Technical Specification remains unaffected. The margin of safety for the system is therefore preserved.

(26) Reactor coolant system (RCS) flow channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The RCS Flow calibration procedures from the February 1986 outage to the February 1992 were reviewed. The channel uncertainties projected over the 30 month period can be accommodated within the current Technical Specification setpoint and safety analysis limit.

2. The possibility of a new or different kind of accident form [from] any previously analyzed has not been created. No new or different kind of accident can be created by the extension of the surveillance interval, since there is no change in the Technical Specification setpoint or safety analysis limit.

3. There will be no significant reduction in the margin of safety. The projected 30 month drift values were determined with a 95% probability at a 95% confidence level. The extension of the surveillance interval will not significantly reduce the safety margin.

The NRC staff has reviewed the licensee's analyses and, based on this review, it appears that the three standards of 50.92(c) are satisfied for each proposed change. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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*NRC Project Director:* Robert A. Capra

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* May 19, 1992, as supplemented on June 15, 1992

*Description of amendment request:* This proposed amendment to the Technical Specifications (TSs) will allow the use of the B&W sleeving process as described in BAW-2045P, Rev. 1, "Recirculating Steam Generator Kinetic Sleeve Qualification for 3/4 inch OD Tubes." This revision to the topical allows sleeving to be used in the tube support plate region, as well as in the tube sheet region, which is currently allowed per TS 4.4.5.4.a.6.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of Catawba in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Considering the function of the sleeve, the principal accident associated with this amendment is the steam generator tube rupture accident. The steam generator sleeve has been analyzed and tested to the operating and design conditions of the original tube as documented in Topical Report BAW-2045P, Rev. 1. The Topical Report contains the design verification results from the analysis and confirmatory testing performed on the sleeve. The probability or consequences of this previously evaluated accident does not involve a significant increase since the sleeve meets the original tube design conditions and the structural integrity of the tube is maintained by the sleeving process. The sleeve is less susceptible to the identified stress corrosion failure mechanisms of the original tube because of the B&W specified installation process and the use of improved material (Inconel alloy 690); therefore, the potential for primary to secondary leakage is also reduced by the addition of a steam generator tube sleeve. The continued integrity of the sleeve will be verified by TS inspection requirements, and the sleeve will be plugged in accordance with TSs, if necessary.

Operation of Catawba in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The purpose of the sleeve is to repair a defective steam generator tube to maintain the function and integrity of the tube as opposed to plugging and removing the tube from service. The sleeve functions in essentially the same manner as the original tube, and has been analyzed and tested for steam generator design conditions. The sleeve is less susceptible to the identified stress corrosion failure mechanisms of the original tube because of the B&W specified installation process and the use of improved material (Alloy Inconel 690); therefore, the potential for primary to secondary leakage is also reduced by the addition of a steam generator tube sleeve. The continued integrity of the sleeve will be verified by TS inspection requirements and the sleeve will be plugged in accordance with TSs, if necessary. Repairing a steam generator tube to a serviceable condition utilizing the proposed sleeve process does not create the possibility of a new or different type of accident since the sleeving is a passive component with postulated failures that are similar to the original tube.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the first two standards of 10 CFR 50.92(c) are satisfied. The NRC staff requested additional information regarding the licensees analysis of whether the proposed amendment would involve a significant reduction in the margin of safety. The licensee has stated in the initial application that the structural integrity of the tube is maintained by the installation of the sleeve and the sleeve/tube weld. In addition, in its supplementary response of June 15, 1992, the licensee has discussed the transient and accident analyses that are sensitive to tube plugging. The licensee states that these analyses have been basedon the assumption of ten percent plugging of the steam generator tubes. The equivalent number of tubes plugged will be determined from the total number of tubes actually plugged and sleeved. This value will be monitored to ensure that it remains below the accident analyses assumption of ten percent. Therefore, on the basis that tube plugging and sleeving will not exceed that equivalent value already accounted for in these analyses and the licensee's statement on the maintenance of structural integrity, the staff concludes that there will be no significant reduction in the margin of safety. On these bases, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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*NRC Project Director:* David B. Matthews

**Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* May 5, 1992

*Description of amendment request:* The proposed amendment request allows the removal of component list "Secondary Containment Bypass Leakage Paths," "Containment Isolation Valves," "Containment Penetration Conductor Overcurrent Protective Devices," and "Motor-Operated Valves Thermal Overload Protection and/or Bypass Devices" from Technical Specifications (TS). This removal implements the staff's recommendations contained in NRC Generic Letter 91-08.

*Basis for proposed no significant hazards consideration determination:* In accordance with 10 CFR 50.91(a), the staff has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve an increase in the probability or consequences of an accident previously evaluated.

The removal of Tables 3.6-1, 3.6-2, 3.8-1 and 3.8-2 and placing them in to Plant procedures and the Final Safety Analysis Report (FSAR) does not change plant operation. In addition, changes to the Limiting Conditions for Operation (LCO) are made to be consistent with the components list removal. Therefore, there will be no increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Because deletion of Tables 3.6-1, 3.6-2, 3.8-1 and 3.8-2 does not change the way the plant is operated, the potential for an unanalyzed accident is not created.

The proposed amendment does not involve a significant reduction in the margin of safety.

Deletion of Tables 3.6-1, 3.6-2, 3.8-1 and 3.8-2 from the TS and placing them in the FSAR has no affect on plant operation. Therefore, there is no reduction in any margin of safety.

Based on this review, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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*NRC Project Director:* John T. Larkins



**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia**

*Date of amendment request:* November 7, 1991, as supplemented June 17, 1992

*Description of amendment request:* The proposed amendments would change the Technical Specifications (TS) to allow quarterly leak rate tests of containment purge supply and exhaust isolation valves to be performed by pressurizing the space between the inboard and outboard containment isolation valves (hereafter referred to as "between-valve" tests). The change to between-valve tests would apply only to quarterly tests and not to Type C tests performed at least every 24 months to satisfy 10 CFR 50, Appendix J. The proposed changes would provide clearer distinctions between quarterly and Type C tests, their associated acceptance criteria and required actions. The change would include an additional option (use of a blind flange) for isolating the purge penetrations in the event a Type C test reveals excessive leakage through an isolation valve. Specifically, the following changes are proposed:

1)TS 4.6.1.7.2 presently requires that the containment purge valves with resilient material seals in each sealed closed containment purge supply and exhaust penetration be demonstrated operable at least quarterly by verifying that the measured penetration leakage rate is less than 0.06 $L_a$ "when pressurized to $P_a$." This would be renumbered TS 4.6.1.7.3 and the quoted portion would be changed to read

by pressurizing between the valves to $P_a$. If a containment purge penetration exceeds its required action limit, a Type C penetration leakage test shall be performed within 24 hours provided the total combined leakage rate remains less than 0.60 $L_a$.

A new TS 4.1.6.7.2 would be added to require that

At least once per 24 months each containment purge supply and exhaust penetration shall be Type C tested. Each Type C test shall have a penetration leakage of less than 0.06 $L_a$.

Existing TS 4.6.1.7.3 would be renumbered TS 4.6.1.7.4.

2) Action statement c of TS 3.6.1.7 requires that

With a containment purge supply and/or exhaust isolation valve(s) having a measured leakage rate in excess of the limits of Specification 4.6.1.7.2, restore the inoperable valve(s) to OPERABLE status within 24 hours; otherwise be in at least HOT STANDBY within the next 6 hours, and in COLD SHUTDOWN within the following 30 hours.

This would be changed to read

With a Type C leakage test on the containment purge supply and/or exhaust penetrations exceeding 0.06 $L_a$, but with the combined leakage rate for all penetrations and valves subject to Type B and C tests less than 0.60 $L_a$, reduce the leakage to less than 0.06 $L_a$, within 24 hours by either restoring the affected valve(s) to OPERABLE status, or isolating each affected penetration by insertion of at least one blind flange outside of containment. Otherwise, be in at least HOT STANDBY within the next 6 hours, and in COLD SHUTDOWN within the following 30 hours.

A new Action statement d would also be added to TS 3.6.1.7 to require that

With a containment purge supply and/or exhaust isolation valve(s) having a measured leakage rate by either the Type C test or the between-valve test such that the combined leakage rate for all penetrations and valves subject to Type B and C tests is greater than or equal to 0.60 $L_a$, restore CONTAINMENT INTEGRITY within 1 hour or be in at least HOT STANDBY within the next 6 hours and COLD SHUTDOWN within the following 30 hours.

3) TS 4.6.1.2.f requires that purge supply and exhaust isolation valves with resilient material seals be tested and demonstrated operable by the requirements of TS 4.6.1.7.2. This would be supplemented by adding at the end, "and 4.6.1.7.3."

4) TS Bases 3/4.6.1.7 "Containment Ventilation System" would be supplemented to add that "The required action limit for the quarterly surveillance specified in 4.6.1.7.3 is maintained in Section 6.2.6 of the FSAR and controlled by plant procedures."

*Basis for proposed no significant hazards consideration determination:* The licensee would prefer the between-valve method for quarterly local leak rate tests (LLRTs) because such tests do not require containment entry and, thus, are advantageous in maintaining radiological exposures to plant personnel to levels as low as is reasonably achievable. Quarterly tests are conducted to identify degradation of the resilient seals which could lead to excessive leakage. The method would not apply to Type C tests; Type C tests would continue to be conducted at least once per 24 months, and whenever the quarterly between-valve leak test leakage reaches a certain percentage of the acceptance criteria, by applying pressure "in the same direction as that when the valve would be required to perform its safety function" [Appendix J to 10 CFR part 50]. Because leak characteristics of containment purge valves tend to be direction-dependent and because between-valve testing means that the inboard valve is pressurized in a direction opposite the accident direction, the licensee has proposed several additional requirements, including the following:

The containment purge supply and/or exhaust penetration leakage must be less than 0.06 $L_a$, and the combined leakage rate for all penetrations and valves subject to Type B and C tests must be less than 0.60 $L_a$.

Quarterly between-valve test results will be trended. If the current leakage exceeds the previous test leakage by 10 percent of 0.06 $L_a$, then the between-valve test frequency will be increased to at least once per month.

If the current between-valve test leakage exceeds 35 percent of 0.06 $L_a$, then a Type C test must be performed within 24 hours. (The value of 35 percent of 0.06 $L_a$, is the required action limit given in FSAR Section 6.2.6 which is referenced by proposed TS 4.6.1.7.3 and its associated Bases).

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of accidents previously evaluated. The proposed change involves the requirements that ensure that containment integrity and containment leakage limits are maintained. The proposed change does not involve or have any effect on any initiating event for any accident previously evaluated. Operation under the provisions of the proposed amendment will continue to ensure that containment integrity and leakage limits are maintained. The requirements of 10 CFR 50, Appendix J will continue to be met. Therefore, the probability or consequences of any accident previously evaluated will not be affected.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not introduce any new equipment into the plant or require any existing equipment to be operated in a manner different than that in which it was designed to be operated. Containment integrity and leakage limits will continue to be maintained under the proposed surveillance requirements. With regard to isolating the affected penetration, the provision for the use of blind flanges is a part of the existing design, and is consistent with existing TS 3.6.3, "Containment Isolation Valves."

3. The proposed change does not involve a significant reduction in a margin of safety. Containment integrity and leakage limits will continue to be maintained in a manner that is consistent with the safety analysis. The acceptance criteria for the quarterly tests will be based on a conservative fraction of the leakage limits. If the acceptance criteria for the quarterly test cannot be met, the test frequency will be increased or a Type C LLRT will be performed in a timely manner, as required. Therefore, containment purge penetration leakage will continue to be monitored in an effective manner while reducing radiation exposure to personnel involved in testing as well as reducing personnel hazards associated with the use of scaffolding, etc. The introduction of an alternate method of isolating the penetration

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(i.e., blind flanges) plus the additional action to provide for the event that total combined leakage exceeds 0.60 $L_a$ is consistent with existing TSs 3.6.3, "Containment Isolation Valves," and 3.6.1.1, "Containment Integrity." Based on the above, there will be no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

*Attorney for licensee:* Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30303-1810.

*NRC Project Director:* David B. Matthews

**Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan**

*Date of amendment request:* May 1, 1992

*Description of amendment request:* The proposed amendment would change the number of containment thermistor fire detectors to accurately reflect the as-built conditions in Units 1 and 2.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

*(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.* The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The correction of the number of thermistor fire detectors in the Technical Specification (TS) tables will not alter the existing TS requirements or change the components to which they apply. The requirements for fire detection instrumentation will remain the same. No physical changes are being made to the facility as a result of the change. The editorial changes to the TS will not affect the probability or consequences of an accident in any way. Therefore, the proposed amendment does not involve a change in the probability or consequences of an accident previously evaluated.

*(2) Create the possibility of a new or different kind of accident from any previously evaluated.* The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The correction of the number of thermistor fire detectors in the TS tables will not alter existing TS requirements. No physical changes are being made to the facility as a result of or in support of this proposed change. Since the requirements for the fire protection instrumentation for containment thermistors will remain the same, this proposed amendment will not affect the outcome of previously evaluated accidents. Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

*(3) Involve a significant reduction in a margin of safety.* The proposed amendment does not involve a significant reduction in the margin of safety. The correction of the number of containment thermistor fire detectors listed in the TS tables will not alter existing TS requirements or change the components to which they apply. No physical changes are being made to the facility as a result of the proposed change. Since the requirements for the fire protection instrumentation for containment thermistors will remain the same, this proposed amendment will not affect the margin of safety. The editorial changes made to refine the TS will not affect the margin of safety. Consequently, the proposed amendment does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

*NRC Project Director:* L. B. Marsh.

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine YankeeAtomic Power Station, Lincoln County, Maine**

*Date of amendment request:* May 8, 1992

*Description of amendment request:* The proposed amendment would change Technical Specification 1.4.D by (1) removing reference to the containment air recirculation system providing post-accident containment air mixing, and (2) removing reference to containment air recirculation system requirements that have been satisfied and incorporated into the Final Safety Analysis Report (FSAR). (The tense of TS 1.4.D is changed to reflect construction completion.)

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, the essence of which is presented below:

*Significant Hazards Evaluation:* The proposed change to remove reference to the containment air recirculation system in Technical Specification 1.4 has been evaluated against the standards of 10 CFR 50.92 and has been determined to not involve a significant hazards consideration. This proposed change does not:

1. Involve a significant increase in the probability or consequence of an accident previously analyzed. The containment air recirculation system is not credited in any of the FSAR Chapter 14 analyses, and evaluations have shown that natural convective circulation mixing and/or containment spray-induced convection are adequate to provide a well mixed containment atmosphere. Therefore, there will be no impact on accidents previously analyzed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. Use of the containment air recirculation system and/or the containment spray system as indicated in this submittal does not create the possibility of a new or different kind of accident, because the proposed amendment involves neither a hardware modification nor the creation of a unique operating condition.

3. Involve a significant reduction in a margin of safety. Removing the containment air recirculation system from Technical Specifications does not change the results or conclusions of any of the FSAR Chapter 14 analyses. The containment spray system will provide containment mixing and its operation is already governed by Maine Yankee Technical Specifications.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Wiscasset Public Library, High

Street, P.O. Box 367, Wiscasset, Maine 04578

*Attorney for licensee:* John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

*NRC Project Acting Director:* Victor Nerses

**Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* November 15, 1991

*Description of amendment request:* The amendment would remove the rod sequence control system (RSCS) from the Technical Specifications and reduce the rod worth minimizer (RWM) low-power set point (LPSP) from its current power level of 20 percent to a power level of 10 percent. These changes will enable the licensee to disable the RSCS for the unit and thereby improve reactor startup and controlled shutdown operations.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The enclosed Technical Specification change is judged to involve no significant hazards based on the following:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The removal of the RSCS, and the corresponding RWM LPSP reduction from 20% power to 10% power will not involve a significant increase in the probability or consequences of an accident previously evaluated. The RSCS and the RWM were originally designed to mitigate the consequences of a CRDA [control rod drop accident]; these systems were not designed to prevent a CRDA from occurring. The probability of a CRDA occurring is a function of the Control Rod Drive System (CRDS), which effects movement of the control rods. Since no hardware changes are being made to the CRDS, the control rods or the attendant control rod guides, there will be no increase in the probability of a control rod decoupling from its drive or in the probability of a decoupled control rod sticking in the core.

The RSCS was originally designed and installed at earlier vintage Boiling Water Reactors (BWRs). However, it has since been determined that the probability of occurrence of the CRDA is slight, and other, reliable means are employed which effectively minimize the probability of a CRDA occurring in which peak enthalpy values would exceed the staff acceptance criteria of 280 cal/gm. In its Safety Evaluation accepting Amendment 17 to GESTAR II, the NRC referenced a probability study performed by the NRC staff in 1975 to provide a basis for evaluating potential RSCS backfit requirements. This study concluded that for a CRDA to exceed the staff acceptance criteria of 280 cal/gm heat generation in the peak fuel pellet, the following must occur:

(1) A drive-blade disconnect, (2) which is not discovered before rod drop occurs, (3) the blade must stick, (4) and not be discovered, (5) the sticking must occur in upper 1/8 of core, (6) the drive must be lowered at least 2-3 feet, (7) an incorrect rod pattern must have been selected and pulled and, (8) the error not detected, (9) the error must directly involve the dropped rod and, (10) the error must provide an unusually high worth for that rod, (11) the rod blade must unstick and drop, (12) the drop must occur at low power (less than 10%), (13) it must occur when the relevant overall rod pattern is such as to enhance the rod worth (a small fraction of pattern development time).

The study conservatively estimated that the probability of a CRDA occurring which exceeds the 280 cal/gm criterion is approximately $10^{-7}$ per reactor-year, a significant margin to an acceptance criteria of $10^{-3}$ per reactor-year. Since issuance of this study in 1975, approximately ten times the number of reactor-years have accumulated without occurrence of a rod drop or even a combination of any two of the necessary initiating events listed above. Based on this data, and the fact the probability of a CRDA occurring is dependent on the CRDS, and not the RSCS or the RWM, the District concludes that the removal of the RSCS and reduction of the RWM LPSP does not result in a significant increase of the probability of an accident previously evaluated.

The RSCS and the RWM were designed to mitigate the consequences of a CRDA. However, other design and administrative controls are employed which further reduce the possibility of experiencing a CRDA which exceeds the 280 cal/gm limit. CNS employs the Banked Position Withdrawal Sequence (BPWS) control rod movement pattern. The BPWS is a method by which control rods are inserted and withdrawn such that incremental control rod worths are maintained at low values, thereby mitigating the consequences of the CRDA in the startup and low power operating ranges. The BPWS is enforced through the RWM which prevents withdrawing an out-of-sequence control rod more than one notch past the pre-programmed limit.

The CNS procedures which govern control rod movement require that while the reactor is operating at or below the RWM LPSP with the RWM inoperable, a second licensed operator or other qualified employee shall independently verify that the proper control rod sequence is being maintained during rod manipulation. Additionally, as required by the NRC in the safety evaluation, with this change the District also proposes an administrative limit to minimize reactor startups with the RWM inoperable. The proposed limit is one startup per calendar year.

Further, improvements in CRDA analysis methods have indicated that the peak fuel enthalpies resulting from a CRDA are significantly lower than previously determined by earlier methods as demonstrated by both General Electric and NRC sponsored studies (BNL-NUREG 28109, "Thermal Hydraulic Effects on Control Drop Accident in a BWR"). These analyses have shown that when above 10% reactor power, a CRDA which exceeds the 280 cal/gm limit cannot occur. Therefore, based on this and the foregoing discussion, the District has determined that removing the RSCS from operation and reducing the RWM LPSP from 20% power to 10% power does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The RWM and the RSCS were designed only to mitigate the consequences of the CRDA. As discussed above, the District proposes to remove the RSCS and reduce the RWM LPSP. No other hardware changes or new modes of operation are planned. Likewise, the proposed change to the RWM bases section does not involve any hardware changes or new modes of operation. Therefore, the District concludes that this change will not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change create a significant reduction in the margin of safety?

Removal of the RSCS will not create a significant reduction in the margin of safety. The RWM will continue to provide an effective means of supervising control rod movement to ensure that the operators adhere to the correct rod movement sequences. In addition, CNS procedures ensure that during all control rod movements while operating at or below the RWM LPSP with the RWM inoperable, a second licensed operator or other qualified employee verifies that the correct rod sequences are being followed.

Lowering the RWM LPSP from 20% power to 10% power will not reduce the margin of safety. Calculations performed by General Electric and Battelle Pacific Northwest Laboratories have shown that even with the maximum single control rod position error, and most multiple error patterns, no CRDA can occur which would exceed the acceptance criteria of 280 cal/gm.

The NRC has already reviewed and accepted the technical justification prepared by General Electric for implementing this change. This is documented in the NRC's Safety Evaluation accepting Amendment 17 to GESTAR II. Therefore, the District concludes that removing the RSCS and reducing the RWM LPSP as described above will not create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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*NRC Project Director:* John T. Larkins

**Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* May 4, 1992

*Description of amendment request:* This proposed change would remove component lists from the Technical Specifications (TS) in accordance with guidance provided in NRC Generic Letter 91-08, "Removal of Component Lists from Technical Specifications." The changes proposed and the pages in the TS where they occur are listed below.

1. On page 162, remove from TS 4.7.A.2.f.1 the reference to and description of Tables 3.7.2, 3.7.3, and 3.7.4. In addition, remove the reference to Table 3.7.2 from TS 4.7.A.2.f.2. 2. On page 162a, remove reference to Table 3.7.3 from TS 4.7.A.2.f.4. 3. In TS 3.7.D.2 on page 167, add an asterisk with a footnote stating that isolation valves closed to satisfy this requirement may be opened intermittently under administrative controls. In addition, on page 167, add a new surveillance requirement, TS 4.7.D.1.d. This new specification was a footnote to Table 3.7.4 and discusses the surveillance requirements for devices installed to limit the opening angle of certain containment isolation valves.

4. On page 168, correct the component identification code (CIC) numbers for reactor water sample valves from RRV-740AV/741AV to RR-740AV/741AV. 5. On page 169, correct the CIC numbers for the air containment atmosphere dilution (ACAD) valves to indicate that they are listed as primary containment valves (e.g., change ACAD MV 1301 to PC-1301MV; etc). 6. On pages 171 through 175, remove Tables 3.7.2 through 3.7.4; these pages are no longer used. 7. On page 176, remove reference to Table 3.7.4 from Bases Section 3/4.7.A. 8. On page 183, in Bases Section 3/4.7.D, add a paragraph stating that the updated safety analysis report (USAR) and the plant procedures identify testable penetrations, primary containment testable isolation valves, and the types of leak testing performed on the valves.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The enclosed Technical Specification change is judged to involve no significant hazards based on the following:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will not result in any hardware changes to the plant. The testable penetrations, and primary containment testable isolation valves, listed in the affected tables are not assumed to be initiators of analyzed events. Containment isolation valves, listed in the affected tables are assumed in the mitigation of accident and transient events. The removal of tabular components from the Technical Specifications does not impact affected testable penetrations, and primary containment testable isolation valve OPERABILITY requirements. Technical Specifications will continue to require the testable penetrations, and primary containment testable isolation valves to be OPERABLE. Action statements and surveillance requirements for testable penetrations, and primary containment testable isolation valves will remain in the Technical Specifications. The removal of the Tables and replacing them with a reference to the USAR and plant procedures in the Bases section does not reduce the effectiveness of the Technical Specifications. The testable penetrations, and primary containment testable isolation valves are located in the USAR and any changes to them are controlled by the 10CFR50.59 review process. In addition, the testable penetrations, and primary containment testable isolation valves are adequately addressed in existing plant surveillance procedures which are also controlled by 10 CFR 50.59 and are subject to the change control provision specified in the Administrative Controls Section of the Technical Specifications (Section 6.2.1.A.4). In addition, there are no proposed changes to the LCO's and Surveillance requirements other than the addition discussed below; consequently, no changes in operability of the testable penetrations, and primary containment testable isolation valves will occur. Accordingly, there will be no effect on previously analyzed accidents.

The footnote for Table 3.7.4 has been retained, but was moved to the applicable Surveillance section of the Technical Specifications. This footnote discusses the surveillance requirements for those installed devices that limit the maximum opening angle of certain primary containment purge and vent isolation valves. These valves and their requirements remain the same as the current Technical Specifications. Thus, as the location of the requirement within the Technical Specification has changed, the requirement itself has not; therefore, there is no impact on the probability or consequences of an accident previously evaluated.

The administrative changes revise typographical errors listing Component Identification Code (CIC) numbers in Technical Specification Table 3.7.1. The form, fit, function, and operational requirements of the affected valve CIC numbers do not, in any way change the way equipment is operated, tested, or maintained. Since the proposed administrative changes only correct typographical errors in CIC numbers, it does not increase the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

The proposed change, which involves the deletion of testable penetration, and primary containment testable isolation valve tables from the Technical Specifications does not change the way the plant is operated, tested or maintained. The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment being installed) or involve any changes in the parameters governing normal plant operation. The proposed change, deletion of the testable penetration, and primary containment testable isolation valve tables, will not impose any different requirements to the plant and, adequate control of information will be maintained (changes to the USAR and plant procedures require 50.59 review). The retention of surveillance requirements over specific valves cannot create a new accident since the requirements are the same. Thus, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Cooper Nuclear Station.

The administrative changes revise typographical errors listing Component Identification Code (CIC) numbers in Technical Specification Table 3.7.1. The form, fit, function, and operational requirements of the affected valve CIC numbers do not, in any way, change the way equipment is operated, tested, or maintained. Since the proposed administrative changes only correct typographical errors in CIC numbers, and do not involve a change in system components or system operating characteristics, no new or different kind of accident can be created.

3. Does the proposed change create a significant reduction in the margin of safety?

The proposed changes will not reduce the margin of safety because they have no impact on any safety analysis assumption. The Technical Specifications continue to require the affected testable penetrations, and primary containment testable isolation valves to be OPERABLE by maintaining the surveillance requirements associated with them. The Technical Specifications also maintain the surveillance requirements (new surveillance requirement 4.7.D.1.d) for verifying that the devices that limit the maximum opening angle on certain valves remain functional. In addition, since any further changes to the listing of testable penetrations, and primary containment testable isolation valves in the USAR and plant procedures will be evaluated per the requirements of 10 CFR 50.59, no reduction (significant or insignificant) in a margin of safety will be allowed. Therefore, this change does not involve a significant reduction in the margin of safety.

The administrative changes revise typographical errors listing Component

Identification Code (CIC) numbers in Technical Specification Table 3.7.1. The form, fit, function, and operational requirements of the affected valve CIC numbers do not, in any way change, the way equipment is operated, tested, or maintained. Since the proposed administrative changes only correct typographical errors in CIC numbers, it does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

*Attorney for licensee:* Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

*NRC Project Director:* John T. Larkins

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

*Date of amendment request:* May 4, 1992

*Description of amendment request:* The proposed changes in the Cooper Nuclear Station (CNS) Technical Specifications would remove the requirements associated with the main steam line radiation monitor reactor scram and Group 1 containment isolation functions. The Group 1 isolation consists of the main steam line isolation valves and the main steam line drain valves. These changes reflect changes previously considered and approved in the NRC staff safety evaluation of the licensing topical report NEDO-31400.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The enclosed Technical Specifications change is judged to involve no significant hazards based on the following:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed Technical Specification changes associated with removal of Group 1 Containment Isolation and reactor scram functions from the Main Steam Line Radiation Monitor (MSLRM) do not constitute a significant increase in the probability or consequences of an accident previously evaluated. Removal of these functions does not involve any hardware changes which could increase the frequency of occurrence of any accident previously evaluated, as no new failure modes will be introduced. For all previously analyzed accidents except the Control Rod Drop Accident (CRDA), reactor scram and Main Steam Line Isolation are expected to occur through other single failure proof means prior to actuation of the MSLRMs. Therefore, no credit is taken in any accident analysis for these functions occurring as the result of the actuation of the MSLRMs, with the exception of the CRDA, which is discussed in more detail below. Therefore, the proposed changes to the CNS Technical Specifications, and the associated plant hardware changes do not constitute a significant increase in the probability or consequences of an accident previously evaluated.

Although a Control Rod Drop Accident assumes that Main Steam Line Isolation Valve (MSIV) isolation would occur as the result of increased coolant activity due to a failure of fuel rods, the CRDA analysis conservatively assumes that all activity calculated to be available for transport to the condenser is transported to the condenser prior to closing of the MSIVs. Further, in accordance with the analysis provided in NEDO-31400 which the District has determined conservatively bounds the CRDA analysis for CNS, maintaining the MSIVs in the open position following a CRDA does not involve a significant increase in the consequences of the CRDA. In fact, it has been determined as documented in NEDO-31400 that processing a portion of the activity resulting from a CRDA through the CNS Augmented Offgas System (AOG) would reduce the potential offsite exposures resulting from the accident by reducing the amount of activity available for leakage from the condenser directly to the environment. In addition, maintaining the MSIVs open would also retain availability of the condenser for decay heat removal following such an event.

Additionally, while the analysis conducted for the BWROG [Boiling Water Reactor Owners Group] as described in NEDO-31400 indicates an insignificant increase in reactivity control failure (1.4 X 10-9 events/year) as a result of removing the MSLRM scram function, this is offset by a reduction in transient initiating events caused by spurious reactor scrams from the MSLRMs which results in an approximate 0.3% reduction in core damage frequency. This represents an overall net improvement in safety. Therefore, based on this and the above discussion, the District concludes that this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

This proposed change does not involve any plant hardware changes which could introduce any new equipment failure modes or effects, nor does it institute any new mode of operation other than that discussed above and in NEDO-31400, which has been accepted by the NRC Staff. The new mode of operation discussed above constitutes improved processing of potential activity following the unlikely event of a CRDA, and does not impart the potential for any new accident modes. Therefore, this proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change create a significant reduction in the margin of safety?

As discussed above, the reduction in reactivity control reliability resulting from elimination of the MSLRM scram function has been shown to be negligible (1.4 X 10$^{-9}$ events/year). This is offset by a reduction in the frequency of transient initiating events caused by spurious scrams associated with the MSLRM, with a calculated decrease in core damage frequency of 0.3%. This represents an overall net increase in safety; therefore, this proposed change does not create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

*Attorney for licensee:* Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

*NRC Project Director:* John T. Larkins

**Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut**

*Date of amendment request:* April 28, 1992

*Description of amendment request:* The licensee proposed to delete two license conditions from the Millstone 3 operating license which have been satisfied and are no longer necessary. The conditions to be deleted are: (1) 2.C(5) Inservice Inspection Program, and (2) 2.C(10) Initial Test Program.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant hazards consideration because it would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

Individual license conditions discussed above were one-time commitments that have been met. Their existence is no longer warranted; therefore, removal of license conditions is appropriate and safe. As a result of the proposed amendment, there are no physical changes to the facility and all operating procedures, limiting conditions for operation (LCO), limiting safety system

settings, and safety limits specified in the Technical Specifications will remain unchanged.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

3. Involve a significant reduction in a margin of safety.

Plant safety margins are established through LCOs limiting safety system settings, and safety limits specified in the Technical Specifications. As a result of the proposed amendment, there will be no changes to either the physical design of the plant or to any of these settings and limits; therefore, there will be no changes to any of the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

*Attorney for licensee:* Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

*NRC Project Director:* John F. Stolz

**Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut**

*Date of amendment request:* May 20, 1992

*Description of amendment request:* The licensee has proposed the following changes to the Technical Specifications:

*Figure 3.1-5: Required Shutdown Margin for Mode 5 with RCS Loops Not Filled.* This proposed change revises the title of the figure to be consistent with the wording of Technical Specification Sections 3.1.1.1.2, 3.1.1.2, and 3.4.1.4.2.

Δ *Section 3.4.1.3: Reactor Coolant System--Hot Shutdown.* The requirement to have two reactor coolant pumps (RCPs) operating in Mode 4 is being changed to require three RCPs operating with the reactor trip breakers closed.

Δ *Section 4.4.1.3.3: Reactor Coolant System--Hot Shutdown Surveillance Requirements.* The proposed change will revise the wording of the surveillance requirement to ensure that the required number of reactor coolant loops are verified in operation consistent with the requirements of the Technical Specification 3.4.1.3.

Δ *Section 3/4.4.1.4.2: Reactor Coolant System--Cold Shutdown--Loops Not Filled.* This change will make the requirements of Technical Specification Section 3/4.4.1.4.2 consistent with those requirements of Section 3.1.1.2, and, therefore, preclude any confusion.

Δ *Section 3/4.9.1.1: Refueling Operations--Boron Concentration.* The proposed change will require that valve 3CHS*V305 be closed in addition to those valves specified in Technical Specification Section 4.4.1.4.2.3 which is more restrictive.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes either provide clarification and ensure consistency with our Technical Specifications or are more restrictive requirements that provide greater assurance that systems will be able to perform their function. There are no hardware changes associated with these proposed changes. There is no increase in the probability or consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes clarify the requirements of the Technical Specifications and do not change conditions sufficiently to create an accident of a different type than previously evaluated.

3. Involve a significant reduction in the margin of safety.

Since the changes do not affect the consequences of any accident previously analyzed, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

*Attorney for licensee:* Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

*NRC Project Director:* John F. Stolz

**Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota**

*Date of amendment request:* June 15, 1992

*Description of amendment request:* The license amendment request proposes changes to the facility Technical Specifications in response to Generic Letter 87-09 "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements," which provided guidance to licensees on improvements to Technical Specifications to clarify when a missed surveillance constitutes a violation of the operability requirements of a Limiting Condition for Operation and to clarify the applicability of the action requirements and the time during which the limits apply.

The proposed changes to the Prairie Island Technical Specifications are described below.

(1) In the Table of Contents, the page number for "4.0 SURVEILLANCE REQUIREMENTS" would be changed from "4.1-1" to "4.0-1" to reflect the new Section 4.0 described below.

(2) Section 4.0 would be relocated and reformatted to be consistent with Section 3.0, which was incorporated into the Prairie Island Technical Specifications by License Amendment Nos. 91 and 84. The requirements of the current Section 4.0 would be relocated to Specification 4.0.A and expanded to include a statement similar to Standard Technical Specification 4.0.2 which states that surveillance requirements shall be performed within the specified time intervals. The current Section 4.0 requirements would be incorporated, with only editorial changes, into the new Specification 4.0.A as exceptions to the requirement that surveillances shall be performed within the specified time interval. The proposed Specification 4.0.A more clearly states requirements for completion of surveillance requirements and the allowed exceptions to those requirements.

(3) A new Specification 4.0.B would be incorporated into Section 4.0 to add Standard Technical Specification Section 4.0.3, as modified by Generic Letter 87-09. The incorporation of the proposed Specification 4.0.B will clarify when a missed surveillance constitutes a violation of the operability requirements of a limiting condition for operation and will clarify the

applicability of action requirements and the time during which the limits apply.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the current contents of Specification 4.0 are administrative in nature and therefore have no affect on accidents previously evaluated. The proposed Specification 4.0.B conforms with the guidance provided in Generic Letter 87-09. It proposes a delay of up to 24 hours in the application of action requirements to permit the completion of a missed surveillance. The 24 hour time limit in the application of the action statements, following the identification of a missed surveillance, balances the risks associated with an allowance for completing the surveillance within this period against the risks associated with the potential for a plant upset and challenge to safety systems when the alternative is a shutdown to comply with action requirements before the surveillance can be completed. Therefore, the proposed Specification 4.0.B will not significantly affect the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes to the current contents of Specification 4.0 are administrative in nature and therefore will not create the possibility of a new or different kind of accident from any previously evaluated. The proposed Specification 4.0.B only affects the performance of surveillance requirements. While it may result in the delay of operability verification following discovery of a missed surveillance, it does not involve any modification in operational limits. There are no new failure modes or mechanisms associated with the proposed Specification 4.0.B because the proposed changes will not affect what plant equipment is required to be operable or how that equipment is operated. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated, and the accident analyses presented in the Updated Safety Analysis Report will remain bounding.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes to the current contents of Specification 4.0 are administrative in nature and therefore will have no affect on the plant's margin of safety. The 24 hour delay for completion of a missed surveillance test included in the proposed Specification 4.0.B conforms with the NRC Staff guidance provided by Generic Letter 87-09. The NRC Staff concluded in Generic Letter 87-09, after taking several factors into account, that 24 hours would be an acceptable time limit for completing a missed surveillance when the allowed out of service times of the action requirements are less than this time limit or when shutdown action requirements apply. The NRC Staff concluded that the 24 hour time limit would balance the risks associated with an allowance for completing the surveillance within this period against the risks associated with the potential for a plant upset and challenge to safety systems when the alternative is a shutdown to comply with action requirements before the surveillance can be completed. Therefore, the proposed Specification 4.0.B will not result in any reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

*NRC Project Director:* L. B. Marsh

**Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska**

*Date of amendment request:* June 1, 1992

*Description of amendment request:* The proposed amendment to the Technical Specifications (TS) would change the pressure-temperature limits in TS 2.1.2 and would make the limits valid for 20 effective full-power years (EFPY) of operation. The proposed amendment also modifies TS 2.1.1 to change the minimum requirements for starting a non-operating reactor coolant pump (RCP) and modifies TS 2.3(3) to change the requirements for disabling high-pressure safety injection (HPSI) pumps during scheduled heatup and cooldown operations. Lastly, the proposed amendment would modify TS 2.1.6 to change the power-operated relief valve (PORV) limiting conditions of operation (LCO) and surveillance requirements. These changes are being made to implement Generic Letter 90-06.

*Basis for proposed no significant hazards consideration determination:* The first part of the proposed amendment to the TS deals with pressure-temperature limits. As required by 10 CFR.50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed amendment does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would not increase the probability or consequence of any accident since the curves are being updated for operation to higher reactor vessel neutron fluences.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

It has been determined that a new or different type of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

3) Involve a significant reduction in a margin of safety.

The proposed curves do not constitute a significant reduction in the margin of safety since the uncertainties that are not accounted for in the P-T limits are accounted for in the LTOP [low-temperature overpressure protection] PORV setpoints. This ensures that the actual reactor vessel pressure-temperature limits would not be exceeded during any postulated low temperature overpressure transient.

The second part of the proposed amendment to the Technical Specifications deals with the minimum requirements for starting a non-operating RCP. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed amendment does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

1) Involve a significant increase in the probability or consequences of an accident, previously evaluated.

Limiting the secondary-to-primary temperature differential to less that 30 F decreases the consequences of a RCP start transient, and is therefore conservative, since less energy would be added to the primary during such a transient. The consequences of a reactor coolant pump start would not be increased by changing the pressurizer steam volume requirement since the analysis has shown that the LTOP system would protect the vessel pressure-temperature limits.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

It has been determined that a new or different type of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

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3) Involve a significant reduction in a margin of safety.

These changes will not reduce the margin of safety since the LTOP system is designed such that the reactor vessel pressure-temperature limits will not be exceeded during a RCP startup associated pressure transient at low temperature.

The third part of the proposed amendment to the TS deals with the requirements for disabling HPSI pumps during scheduled heatup and cooldown operations. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed amendment does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would not change the probability or consequences of a HPSI pump start transient since the proposed disable temperatures were chosen such that an inadvertent start of the available pumps would not cause the RCS pressure to exceed the vessel pressure-temperature limits.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

It has been determined that a new or different type of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

3) Involve a significant reduction in a margin of safety.

The margin of safety will not be reduced since an analysis has shown that the proposed changes will ensure the reactor vessel P-T limits would not be exceeded during an inadvertent start of enabled HPSI pumps.

The fourth part of the proposed amendment to the TS deals with the PORV LCO and surveillance requirement. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed amendment does not involve a significant hazards consideration because operation of Fort Calhoun Station in accordance with this amendment would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Credit is not taken for the PORVs in transient overpressure analyses in the USAR. The changes described earlier will reduce the probability of a RCS Depressurization Event by clarifying position and electrical power requirements for the block valves. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The potential failure modes have been previously evaluated in the USAR. A failure of a PORV with the block valve open will result in a RCS Depressurization Event. Failure of a PORV with the block valve closed will not have any adverse consequences since the RCS pressure boundary is maintained. No credit is taken for the operation of the PORV(s) in any safety analysis. Therefore, it has been determined that a new or different kind of accident from any accident previously evaluated in the USAR will not be created.

3) Involve a significant reduction in a margin of safety.

None of the changes will require a reduction in any margin of safety, since the analyses previously contained in the USAR remain valid for the changes described above. Therefore, no significant reduction in the margin of safety is required.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

*Attorney for licensee:* LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009-5728

*NRC Project Director:* John T. Larkins

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of amendment request:* June 22, 1992

*Description of amendment request:* This proposed amendment to the James A. FitzPatrick technical specifications adds response time testing requirements for the reactor protection system and main steam isolation valve actuation instrumentation including the analog transmitter trip system (ATTS). These testing requirements are applied to instrument channels for which response time is a significant input to the Final Safety Analysis Report (FSAR) transient and accident analysis.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation at the FitzPatrick plant in accordance with the proposed amendment will not involve a significant hazards consideration as defined in 10 CFR 50.92 because it will not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated:

The probability and consequences of previously evaluated accidents were based upon the RPS [Reactor Protection System] instrument channel and MSIV [Main Steam Isolation Valve] isolation actuation instrumentation meeting specified reliability and response time standards. The inclusion of the complete channel in the measurement of response time increases assurance that instrument response time will be maintained within the limits assumed in the transient and accident analyses and will not increase the probability of occurrence of previously evaluated accidents.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

During the performance of both sensor calibration and RTT [Response Time Testing], the process instrument lines are isolated from the actual system. Because the actual process system is isolated from the test signals, and because the isolation method is unchanged from existing procedures, the new test method will not create the possibility of a new or different kind of accident.

3. or involve a significant reduction in a margin of safety.

Testing of instrumentation which was not previously subject to response time testing will not decrease the margin of safety. The response time limits for trip functions were increased to allow for inclusion of all components in the instrumentation channel, including the ATTS components. However, the response time limits remains less than those assumed in the transient and accident analyses described in the FSAR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

*NRC Project Director:* Robert A. Capra

**Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire**

*Date of amendment request:* March 20, 1992, as supplemented June 19, 1992

*Description of amendment request:* New Hampshire Yankee (NHY), the licensee for Seabrook Station, submitted



the original RTD Bypass System Elimination License Amendment Request (LAR) 92-01 on March 20, 1992. In response to the NRC staff's request for additional information, the licensee submitted Supplement 1 to the amendment request on June 19, 1992. This notice on LAR 92-01 supersedes and replaces the original notice published on May 13, 1992 (57 FR 20516). The amendment request proposes revising the Technical Specifications (TS) to permit a plant design change that will eliminate the Resistance Temperature Detector (RTD) Bypass System which is currently used for the measurement of narrow range Reactor Coolant System hot leg and cold leg temperatures. The RTD Bypass System will be replaced by narrow range thermowell-mounted fast-response RTDs. The proposed TS changes also modify the requirements for the performance of a precision heat balance to determine Reactor Coolant System (RCS) flow rate by increasing the thermal power level at which the heat balance is required. NHY has also proposed a change to the RCS flow rate requirement and the measurement uncertainty value, instead of specifying the thermal design flow analysis value as proposed in LAR 92-01. NHY is also withdrawing the proposed changes to Technical Specification BASES page B 2-5, which were submitted with LAR 92-01, to ensure conformance with Standard Technical Specifications.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

New Hampshire Yankee has determined that License Amendment Request 92-01 and Supplement 1 thereto do not involve a significant hazard consideration pursuant to the standards of 10CFR50.92 based on the following evaluation.

1. The proposed changes do not involve a significant increase in the probability or consequences of a[n] accident previously evaluated.

Westinghouse has prepared WCAP-13161 "RTD Bypass Elimination Licensing Report for Seabrook Nuclear Station" (Proprietary) in support of the four loop operation of Seabrook Station utilizing new thermowell mounted RTD's. For the Westinghouse scope, WCAP-13161 contains a safety evaluation for this modified hot leg and cold leg temperature measurement system. This significant hazards evaluation addresses both the mechanical modifications to the reactor coolant system pressure boundary and the instrumentation uncertainty changes associated with the modified system.

The installation of thermowells and fast response RTDs will not increase the probability of an accident previously analyzed. The modifications to the Reactor Coolant System pressure boundary will be performed utilizing the same ASME Section III installation requirements as were used for the original installation. The installation requirements are specified in the ASME section III 1977 Edition thru Winter 1977 Addenda.

The removal of the bypass piping and valves associated with this piping will enhance the integrity of the Reactor Coolant System. By removing significant lengths of piping, numerous valves and instrument penetrations the probability of a small break LOCA will be reduced.

The new thermowell mounted RTDs have a total response time equivalent to the existing system as discussed in WCAP-13161. The increased instrumentation uncertainty associated with the new thermowell mounted RTDs necessitated an increase in the Overpower [delta -]T K4 term safety analysis limit and conservative changes to the K6 term to assure protection for all power ranges. The Overpower [delta -]T and Overtemperature [delta -]T functions thus continue to provide an equivalent degree of reactor protection. RTD signal processing and the added circuitry to the reactor protection system racks will be accomplished using the same type of Westinghouse 7300 series reactor protection system technology as has been previously qualified and used in the reactor protection system of Seabrook Station. There is no change in the use of the temperature signals by any reactor protection or reactor control system.

The compliance of Seabrook Station to IEEE 279-1971, (>IEEE Standard: Criteria for Protection Systems for Nuclear Power Generating Stations"), applicable NRC General Design Criteria and regulatory guides has not changed.

This modification does not increase the radiological consequences of any accident previously evaluated. Although the pressure boundary will be modified, proper welding techniques, penetrant testing, radiographs, and system hydrostatic tests will insure the integrity of the pressure boundary and thus not contribute to any radiological consequences.

The proposed revisions to Technical Specification 3/4.2.5 (DNB Parameters) for RCS flow from a value that includes 2.1% measurement uncertainty to a value that includes 2.4% measurement uncertainty has no effect on the accident analyses since the analysis limit which is based on the thermal design flow will not be changed. The effect of undetected venturi fouling, has been included in the RCS flow requirement of Technical Specification 3/4.2.5.

Surveillance Requirement 4.2.5.3 for the precision heat balance determination of RCS flow is changed from being required prior to operation above 75% Rated Thermal Power (RTP) to being required prior to exceeding 95% RTP. Performance of the precision heat balance above 90% RTP was recommended by Westinghouse in association with the RTD bypass elimination to minimize flow rate measurement uncertainties that are exacerbated at lower power levels. The precision heat balance is performed each cycle to detect changes in the RCS flow element (elbow taps) characteristics that would affect the accuracy of the RCS flow indication. Significant changes in the characteristics of all of the elbow taps over a single operational cycle is not credible. Performing the flow rate measurement prior to exceeding 95% RTP provides adequate margin to DNB in the highly improbable event that there is a degradation in RCS flow rate that is masked by a simultaneous non-conservative change in all elbow taps.

The effect of the increased instrument uncertainty on updated Final Safety Analysis Report (UFSAR) Chapter 6 and 15 LOCA and non-LOCA accident analyses within the Westinghouse scope has been evaluated as discussed in WCAP-13161. Relative to both the LOCA and non-LOCA safety analyses, Westinghouse has concluded in WCAP-13161 that the modification does not affect the conclusions of the UFSAR safety analyses.

Additionally, Yankee Atomic Electric Company (YAEC) has evaluated the affect of the modified system for hot leg and cold leg temperature measurement on (1) containment response, (2) Boron Dilution events and (3) Steam Generator Tube Rupture design basis events.

Relative to containment response YAEC concluded that during the limiting event (large break LOCA), the early containment pressure response during the blowdown phase may increase slightly due to the increased uncertainties associated with the modification. However, the long term and peak containment pressures are still valid and the effects of the modification on the containment response is bounded by the current analysis. The YAEC evaluation of the affect of the modification on containment response is enclosed in Section VIII.

Yankee Atomic Electric Company has concluded that the increased uncertainties associated with the modification will have a negligible effect on the Steam Generator Tube Rupture analysis which was performed by them and submitted to the NRC on April 16, 1991 in NHY letter NYN-91061. Yankee Atomic Electric Company also concluded that the modification will have negligible effect on the Boron Dilution analysis to be performed by them for Cycle 3. The YAEC evaluation of the affect of the modification on the Steam Generator Tube Rupture analysis and on the Boron Dilution analysis which is to be performed for Cycle 3 is enclosed in Section VIII.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The removal of the RTD Bypass System will not create the possibility of a new or different kind of accident from any accident previously evaluated. The reactor coolant pressure boundary modifications design and installation will be equivalent to the original RCS design and installation. Reactor coolant loop temperature inputs for reactor control and reactor protection functions will continue to be supplied. Other equipment important to safety will be unaffected and will continue to function as designed.

The removal of the Resistance Temperature Detector (RTD) bypass piping and the installation of a modified temperature measurement system does not affect the integrity of the reactor coolant system pressure boundary. This is due to the reactor coolant piping (pressure boundary component) modifications adhering to the ASME Code (Sections III, Class 1 and Section XI) and to the NRC General Design Criteria. Installation requirements will be equivalent to the original RCS installation pursuant to ASME Section III, 1977 Edition thru Winter 1977 Addenda.

The removal of the RTD Bypass System eliminates components that have been a major cause of plant outages in the industry as well as a major contributor to occupational radiation exposure. Additionally, with these components removed, the probability of a malfunction from them is eliminated. The installation of fast response thermowell mounted RTDs on the reactor coolant loop piping and additional processing electronics will continue to provide the individual loop temperature signals for input to the reactor control and reactor protection systems using components that are environmentally and seismically qualified.

The RTD Bypass System flow alarm is no longer required to warn of flow reduction that could affect instrument system response. Flow through the scoop tubes with thermowells is not monitored because blockage of the flow path is not credible. Blockage is not credible because of the multiple scoop tube holes, the size of the holes, and administrative and chemistry controls that prevent the introduction of objects that could block the flow path.

The modification does not affect the ability of the protection system to mitigate the radiological consequences of any accident. The new RTD signals are processed to provide equivalent signals to those provided by the original direct immersion RTDs. Since three RTDs will be used to provide an average hot leg temperature as opposed to the original use of one RTD, the consequences from a failed RTD are unchanged. Manual actions to bypass a failed RTD channel remain the same.

3. The proposed changes do not result in a significant reduction in the margin of safety.

The instrumentation uncertainty analysis associated with this modification has resulted in proposed Technical Specification changes to the uncertainty terms associated with Overpower [delta -]T and Overtemperature [delta -]T and low Reactor Coolant System (RCS) Flow reactor trip functions. Additionally RCS average temperature measurements used for control board indication and input to the rod control system, and the value of the RCS flow measurement uncertainty are also affected by the modification. The safety evaluations of this modification which have been performed by Westinghouse and YAEC referenced above conclude that sufficient margin exists such that margins to safety are not affected.

The proposed Technical Specification changes also include the elimination of the bypass piping loop low flow alarms and the revision to the Technical Specification requirement for RCS flow.

The proposed increase in the RCS flow requirement reflects the RCS flow measurement uncertainty increase associated with the new RCS temperature measurement system. The proposed RCS flow limit will ensure that RCS flow is greater than or equal to the thermal design flow analysis value.

The RTD Bypass System flow alarm is no longer required to warn of flow reduction that would affect instrument system response. Flow through the scoop tubes with thermowells is not monitored because blockage of the flow path is not credible. Blockage is not credible because of the multiple scoop tube holes, the size of the holes, and administrative and chemistry controls that prevent the introduction of objects that could block the flow path. The removal of this alarm does not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

*Attorney for licensee:* Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624

*NRC Acting Project Director:* Victor Nerses

**Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire**

*Date of amendment request:* March 20, 1992 as supplemented June 19, 1992.

*Description of amendment request:* The proposed amendment would make changes to Seabrook Station Technical Specifications (TS) to modify surveillance testing of emergency diesel generators (EDGs). The changes are described below. The safety injection with loss of offsite power test, which will continue to be performed with the EDGs at standby conditions, will no longer be required to be performed a second time immediately after the 24 hour EDG endurance run. Also, the TS will continue to require a demonstration of hot restart of the EDGs, but will allow a two hour warmup (or until operating temperature stabilizes) instead of a 24-hour warmup prior to the test. Another proposed change is that those tests that require EDG loading will specify a loading range to avoid repeated overloading during testing. In addition, the term "ambient condition" will be changed to "standby conditions" to reflect cooling water and lube oil warming systems which continuously operate. Finally, several footnotes to the TS would be modified to provide clarifying information. The testing changes proposed have been developed to meet the intent of NRC's Regulatory Guide 1.108.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1.] The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revisions to the diesel generator Surveillance Requirements do not change the function or operation of any plant equipment or affect the response of that equipment if it is called upon to operate. The diesel generators will be tested with a LOP/SI start from standby conditions and be rapidly loaded by the emergency power sequencer. Diesel Generator hot restart capability will continue to be verified as will be the ability of the diesel generators to carry load. The tests being performed are not new or unique and the hot restart test is similar to the monthly surveillances. The response of the diesel generators and the electrical system as described in UFSAR Section 15.2.6, Loss of Nonemergency AC Power to The Plant Auxiliaries (Loss of Offsite Power) will remain unchanged. Therefore, since the emergency diesel generators are designed to respond to the loss of voltage on the emergency buses they will function as designed with no adverse affect from the changes and there will be no increase in the probability of an accident previously evaluated in the UFSAR.

The proposed revision of the diesel generator Surveillance Requirements will not increase the probability of an accident and it will not change the response of the diesel generators to a loss of power on the emergency busses. The revision of the diesel generator Surveillance Requirements does not alter the operation of the diesel generators or the associated response circuitry, but it does verify that the diesel generator will respond to a loss of power and will supply the emergency busses. Therefore, the accident analysis of Chapter 15 is unchanged and in particular the statement in the UFSAR Section 15.2.6.1.d remains true and in an accident scenario "[t]he emergency diesel generators, started on loss of voltage on the plant emergency busses, begin to supply plant vital loads". Since the plant response to an accident will not change there is no change in the potential for an increase in the release of radiation to the public from the revision of the diesel generator Surveillance Requirements. Therefore, it follows that the consequences of an accident, as measured in terms of dose, will not increase due to the revision of the diesel generator Surveillance Requirements.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision of the diesel generator Surveillance Requirements does not affect the operation or response of any plant equipment or introduce any new failure mechanisms. The revisions do not affect the test results and the diesel generators will still be verified to be OPERABLE and their response to a LOP will be unchanged. The plant equipment will respond per the design and analyses and there will not be a malfunction of a new or any type introduced by the revision to the diesel generator Surveillance Requirements. Therefore, the previous accident analyses are unchanged and bound all expected plant transients and there are no new o[r] different accident scenarios introduced.

3. The proposed changes do not result in a significant reduction in the margin of safety.

The bases of the Technical Specifications 3/4.8, Electrical Power Systems, state that the operability of the AC and DC power systems and associated distribution systems ensure that sufficient power will be available to supply the safety-related equipment required for safe shut down and mitigation and control of accident conditions. The bases also state that the surveillance requirements for determining the OPERABILITY of the diesel generators are in accordance with the recommendations of Regulatory Guide 1.108, Revision 1. The revision of Surveillance Requirements establishes tests that will continue to verify that the diesel generators are OPERABLE and the testing will still meet the intent of Regulatory Guide 1.108, Revision 1. OPERABLE diesel generators ensure that the assumptions in the bases of the Technical Specifications are not affected and ensure that the margin of safety is not reduced. Therefore, the assumptions in the Bases of Technical Specifications are not affected and this change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

*Attorney for licensee:* Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624

*NRC Acting Project Director:* Victor Nerses

**Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire**

*Date of amendment request:* June 11, 1992

*Description of amendment request:* The proposed amendment would change Seabrook Station Technical Specifications to implement the guidance of NRC Generic Letter (GL) 91-08, "Removal of Component Lists from Technical Specifications." The Technical Specification changes proposed by New Hampshire Yankee (NHY) would implement the guidance of GL 91-08 by removing the listing of Secondary Containment Bypass Leakage Paths (Technical Specification Table 3.6-1) and by revising Technical Specification 3.6.3 (Containment Isolation Valves) to specify that locked or sealed closed containment isolation valves may be opened on an intermittent basis under administrative control. The Bases of Technical Specification 3.6.3 has also been revised to define the administrative controls which are required for opening a locked or sealed closed containment isolation valve. A reference to "isolation times" is deleted in Technical Specification 3.6.3. Also, the isolation valves in 4.6.3.1, 4.6.3.2, and 4.6.3.3 are clarified to be containment isolation valves. The list of Secondary Containment Bypass Leakage Paths which NHY proposes to remove from Technical Specifications will be added to the licensee's Technical Requirements Manual and the Updated Final Safety Analysis Report.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes included in License Amendment Request 91-06 are administrative in nature and do not involve the elimination or reduction of any current requirements. The changes merely serve to improve Technical Specifications by relocating unnecessary plant-specific detail to another NHY document which is subject to the change control provisions of the Administrative Controls (Section 6) of the Seabrook Station Technical Specifications. The proposed removal of Technical Specification Table 3.6-1, Secondary Containment Bypass Leakage Paths, and the proposed revisions to Technical Specification 3.6.3, Containment Isolation Valves, and Surveillance Requirement 4.6.1.1 implement the guidance of NRC Generic Letter 91-06. The proposed changes have no relationship to the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification changes included in License Amendment Request 91-06 implement the guidance of NRC Generic Letter 91-06 by removing the listing of Secondary Containment Bypass Leakage Paths (Technical Specification Table 3.6-1) and by revising Technical Specification 3.6.3, Containment Isolation Valves and Surveillance Requirement 4.6.1.1. The proposed changes are administrative in nature and do not involve the elimination or reduction of any current requirements. The general requirements associated with these Technical Specifications are unaffected by the proposed changes. For example, the removal of the list of Secondary Containment Bypass Leakage Paths does not affect the requirement that the leakage from these containment penetrations be less than or equal to 0.6 La when pressurized to Pa (49.6 psig) as provided in Technical Specification 3.6.1.2. Although the list of Secondary Containment Bypass Leakage Paths will no longer be located in Technical Specifications, it will be located in a NHY document which is subject to the change control provisions of the Administrative Controls (Section 6) of the Seabrook Station Technical Specifications. Changes to this document require the performance of an evaluation pursuant to 10CFR50.59 to ensure that the proposed change does not introduce an unreviewed safety question and review and approval by the Station Operation Review Committee, the Nuclear Safety Audit Review Committee and the Executive Director-Nuclear Production. The Technical Specification changes proposed in License Amendment Request 91-06 have no relationship to plant accidents and therefore have no potential to create a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not result in a significant reduction in the margin of safety.

The proposed Technical Specification changes included in License Amendment Request 91-06 do not reduce or eliminate any current requirements. The proposed changes merely eliminate unnecessary plant-specific detail in the interest of improving the Seabrook Station Technical Specifications. The margin of safety associated with the affected Technical Specifications is not reduced in any way because the general requirements of the affected Technical Specifications remain intact.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

*Attorney for licensee:* Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624

*NRC Acting Project Director:* Victor Nerses

**The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio**

*Date of amendment request:* March 19, 1992

*Description of amendment request:* The amendment would make several technical and administrative changes to the Perry Nuclear Power Plant (PNPP) Unit 1, Technical Specifications. These changes would clarify confusing language, correct errors or omissions from previous amendments, reflect a revised setpoint for verifying adequate vacuum in the secondary containment, and revise the requirements for submittal of written reports to the NRC to conform with 10 CFR Part 50.4.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes constitute either (1) purely administrative changes designed to achieve consistency throughout PNPP Unit 1 Technical Specifications, provide clarification, correct existing errors, or delete material no longer applicable to PNPP Unit 1 Technical Specifications, (2) an additional limitation, restriction or control not presently included in the PNPP Unit 1 Technical Specifications, or (3) changes to conform PNPP Unit 1 Technical Specifications to changes in NRC regulations, where the license changes result in very minor changes to facility operations clearly in keeping with the regulations. Each of the proposed changes have been reviewed and determined to result in no significant changes to plant systems. The proposed changes have no significant effect on accident conditions or assumptions. The proposed changes do not significantly affect possible initiating events for accidents previously evaluated, or any system functional requirements.

The proposed changes to Specification 3.3.1, Reactor Protection System Instrumentation, ACTION a, Specification 3.3.2, Isolation Actuation Instrumentation, ACTION b, and Specification 3.3.3, Emergency Core Cooling System Actuation Instrumentation, Table 3.3.3-1 ACTION 38, are administrative in nature and are being made to correct the Specifications to be consistent with the guidance in Generic Letter 87-09 as it related to section 3.0.4 of the Technical Specifications, which was modified by Amendment 30 to PNPP's Unit 1 Facility Operating License. As such, the proposed changes do not affect any accident previously evaluated.

The proposed changes to Specification 3.3.1, Reactor Protection System Instrumentation, Table 3.3.1-1, ACTION 3 and ACTION 9, to remove the note which excepts the replacement of local power range monitor (LPRM) strings, are purely administrative changes designed to achieve consistency between the PNPP Technical Specification definition of CORE ALTERATION and Specification 3.3.1. Based upon the current definition of CORE ALTERATION, which exempts the replacement of LPRM's, the subject footnote is no longer applicable and its removal will provide clarification and thereby eliminate unnecessary confusion. Consequently, the proposed changes to Specification 3.3.1 ACTION 3 and ACTION 9 do not result in an increase in the probability or consequences of any accident previously evaluated.

The proposed changes to Specifications 3.3.7.5, Accident Monitoring Instrumentation, Table 3.3.7.5-1, Item 2, Reactor Vessel Water Level, and associated Surveillance Requirement 4.3.7.5-1, Table 4.3.7.5-1, Item 2, Reactor Vessel Water Level, are intended for clarification only. Subdividing the Reactor Vessel Water Level instrumentation into "Fuel Zone" and "Wide Range" will provide clarification as to the number of channels required, the minimum number of channels required to be operable and applicable instrument surveillance requirements. The clarification is requested due to PNPP's method of satisfying commitments to Regulatory Guide 1.97, Revision 2, which requires BWR Accident Monitoring reactor coolant level instrumentation to have a range from the bottom of the core support plate to the centerline of the main steam line. PNPP employs a design with Fuel Zone instruments covering the range from -150" [150" below top of active fuel (TAF)] to 50" above TAF, and Wide Range instruments covering the range from 5" to 230" above TAF (reference PNPP USAR Table 7.1-4 and SER, Supplement 6, Section 7.5.2.2). To meet the above monitoring requirement, and to satisfy the intent of Specification 3.3.7.5, both wide range and fuel zone instrumentation should be OPERABLE. However, in its current format, Specification 3.3.7.5 does not make the operability requirements for the individual Wide Range and Fuel Zone instrumentation clear. The proposed changes to Tables 3.3.7.5-1 and 4.3.7.5-1 will provide the necessary clarification. Since the proposed changes are provided for clarification only and do not change current Technical Specification Limiting Conditions for Operation or Surveillance Requirements, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Specification 3.4.4 to add "OPERATIONAL CONDITION 2" to the last sentence of ACTION c is also for clarification purposes. ACTION c provides the required Action to be taken with reactor coolant system conductivity, pH and Chloride concentration out-of-limit while in OPERATIONAL CONDITIONS 4 or 5. ACTION c requires either (1) that the out-of-limit condition be restored to within acceptable limits, or (2) an engineering evaluation be performed to determine the effects of the out-of-the limit condition on the structural integrity of the reactor coolant system. In addition, ACTION c, as currently worded, explicitly prohibits a mode change into OPERATIONAL CONDITION 3 until it is first determined that the structural integrity of the reactor coolant system remains acceptable for continued operation. The intent of this restriction is to ensure that the structural integrity of the reactor coolant system remains acceptable for continued operation prior to any plant startup from OPERATIONAL CONDITIONS 4 or 5. However, ACTION c does not explicitly require the "determination of acceptability" prior to a mode change into OPERATIONAL CONDITION 2 from OPERATIONAL CONDITIONS 4 or 5. Since it is typical for a BWR during the performance of a plant startup to move from OPERATIONAL CONDITION 4 directly into OPERATIONAL CONDITION 2, without entering OPERATIONAL CONDITION 3 at any time, the proposed change will make it clear that such a change is prohibited until after the required acceptability determination is completed. Since the proposed change to Specification 3.4.1, ACTION c, is for clarification only, and does not otherwise change the Specification 3.4.4 Action requirements, the change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change to the wording of the ACTION statement for Technical Specification 3.6.1.9, Feedwater Leakage Control System, is a purely administrative change designed to correct an existing typographical error and in turn provide clarification of the appropriate action to be taken under the subject Specification's Limiting Condition For Operation. The proposed change will make the ACTION statement consistent with its original intent and with that of other standard Technical Specification ACTION statements.

The purpose of the proposed change to Figure 3.6.5.2-1, Containment Average Temperature vs. Relative Humidity, which provides an extension to the dividing line between regions of acceptable versus unacceptable operation, is to provide clarification on what humidity levels are acceptable for containment average air temperature below 72F. The current Figure fails to provide meaningful operational limits below 72F and 8% relative humidity, the point at which the dividing line terminates. The intent of Specification 3.6.5.2 is to restrict operation to within specified temperature versus relative humidity limits to prevent excessive vacuum from being created inside containment following an inadvertent initiation of the containment spray system. By maintaining containment average temperatures and relative humidities within the acceptable operational limits specified in Figure 3.6.5.2-1, peak vacuum inside containment will be maintained [less than or equal to] 0.72 psi (design is [less than or equal to] 0.80 psi) following initiation of both containment spray loops. Based on the results

of an Engineering review of applicable calculations, it is conservative to assume that the boundary between acceptable operation is a straight line extending to temperatures below that shown on the subject figure. Therefore, extending the line which divides the regions of acceptable versus unacceptable operation down in a linear manner such that it intersects the 0% relative humidity line at approximately 62F will provide clarification on acceptable versus unacceptable operational limits below 72F. Maintaining temperature and relative humidity within the clarified limits for acceptable operation below 72F will continue to ensure peak vacuum inside containment will be maintained [less than or equal to] 0.72 psi following initiation of both containment spray loops. The design methodology used to provide the clarification to Figure 3.6.5.2-1 remains consistent with the original design bases and safety analysis. Therefore, the proposed change to Figure 3.6.5.2-1 will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The change to the limit for secondary containment (annulus) minimum negative pressure contained in Technical Specification Surveillance Requirement 4.6.6.1.a is proposed in response to NRC Information Notice (IN) 88-76, "Recent Discovery Of A Phenomenon Not Previously Considered In The Design Of Secondary Containment Pressure Control," dated September 19, 1988. The change replaces existing secondary containment minimum negative pressure verification requirement of 0.40 inches of vacuum water gauge with 0.66 inches of vacuum water gauge. As such the change constitutes a more stringent surveillance requirement than that previously required. The change is intended to ensure that the secondary containment minimum negative pressure of 0.25 inches water gauge required by PNPP's original design bases and safety analysis is maintained at all times. The design methodology used to recalculate the setpoint for the differential pressure (delta-P) instrumentation remains consistent with the original design bases and safety analysis and accounts for the phenomenon described in NRC Information Notice 88-76 with adjustments for specific conditions at the Perry Plant. The revised delta-P and airflow values will permit the M15 system to operate and maintain secondary containment integrity as described in PNPP's USAR. Based on the fact that overall system function has not changed, the parameters upon which the PNPP USAR safety analysis (USAR Chapter 15.6.5.5.1.2.a) was based having [sic] not been affected. Consequently, the proposed change to Surveillance Requirement 4.6.6.1.a does not involve a significant increase in the possibility or consequences of an accident previously evaluated.

The proposed change to Specification 3.8.1.1, A.C. Sources-Operating, ACTION e, is a purely administrative change designed to provide clarification as to the appropriate actions to be taken in the event both the Division 1 and Division 2 diesel generators are declared inoperable, requiring entry into ACTION g, followed by one of the inoperable diesel generators being restored to OPERABLE status, while the other remains inoperable. Consequently, the proposed change to Specification 3.8.1.1, ACTION e, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Likewise, the proposed changes to Specification 3.9.12.d, Inclined Fuel Transfer System and associated Surveillance Requirement 4.9.12.2.a are purely administrative changes designed to provide clarification of the Limiting Conditions For Operation and the Surveillance Requirements associated with the Inclined Fuel Transfer System proximity and liquid (water) level sensors. As such, the proposed changes to Specification 3.9.12.d and Surveillance Requirement 4.9.12.2.a do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Finally, the proposed changes to Specifications 4.7.4.e, Snubbers, 6.7.1.c, Safety Limit Violations, 6.9.1, Routine Reports, 6.9.1.8, Monthly Operating Reports, 6.9.1.9, Core Operating Limits Report, 6.9.2, Special Reports, 6.9.3, Special Reports and 6.9.4, Special Reports, are changes designed to conform the reporting requirements of the subject Specifications to changes in NRC regulation 10 CFR 50.4, Written Communications (reference 51 FR 27817, August 4, 1986). The proposed changes are purely administrative in that they are designed to remove administrative inconsistencies between PNPP Unit 1 Technical Specifications and 10 CFR 50.4 where the Commission has clearly stated that Section 50.4 takes precedent over existing Technical Specifications. The proposed changes have no impact on plant equipment or methods of PNPP facility operations and are clearly in keeping with amended rule 10 CFR 50.4. Therefore, the proposed changes to the reporting requirements of the subject Specifications cannot increase the probability or consequences of an accident previously evaluated.

Based upon the above, the subject technical and administrative changes proposed herein do not increase the probability or consequences of any accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the proposed changes are either administrative in nature which do not increase the possibility of any new or different kind of accident, or constitute more conservative limitations, restrictions or controls than that presently included in PNPP Technical Specifications. The proposed changes do not create the possibility of a new or different kind of accident since they do not affect the reactor coolant pressure boundary or other plant systems or structures in such a manner that could initiate any new or different kind of accident. In addition, the proposed changes do not adversely affect any system functional requirements nor plant maintenance or operability requirements in such a manner that could initiate any new or different kind of accident. Consequently, no new failure modes are introduced as a result of the proposed changes.

(3) The proposed changes do not result in a significant reduction in the margin of safety.

The changes do not involve a significant reduction in the margin of safety because they are administrative in nature, and do not affect any USAR design bases or accident assumptions, or they constitute more conservative limitations, restrictions or controls than that presently included in PNPP Technical Specifications. Therefore, the proposed changes do not reduce the margin of safety as defined in the basis for any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John N. Hannon.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* May 26, 1992 (TS 92-03)

*Description of amendment request:* The proposed amendment would revise Surveillance Requirement 4.0.2 and the associated Bases to delete the 3.25 limit for the allowable extension of three consecutive surveillance intervals, in accordance with the guidance provided in Generic Letter 89-14.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The deletion of the 3.25 limit on extending surveillance intervals will not alter the effectiveness of surveillances that ensure the operability of equipment based on the 1.25 limit that remains in effect. Since operability will be maintained and the 3.25 limit deletion only removes a provision to prevent routine use of the 1.25 limit, the consequences of an accident is not increased. This deletion of the

3.25 limit for extending surveillances is administrative only and does not have the potential for affecting an accident or increasing the probability of an accident. However, this deletion may eliminate unnecessary challenges to safety functions created by surveillance performances during undesired plant conditions or because of required unit shutdown.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As discussed above, this is an administrative change to surveillance interval extensions only and does not have the potential for creating a new or different kind of accident. The surveillances remain the same and only the extension restrictions have been reduced but not eliminated.

3. Involve a significant reduction in a margin of safety.

The surveillances will remain unchanged to verify adequate margins of safety and only the allowable extensions for surveillance performance have been revised. Therefore, no reduction in a margin of safety is involved with the deletion of the 3.25 limit on extending surveillance intervals.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* May 26, 1992 (TS 92-04)

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) Limiting Condition for Operation (LCO) 3.6.5.3, "Ice Condenser Doors," by adding a new requirement to specify that if one or more of the ice condenser inlet doors is inoperable due to being physically restrained from opening, all inlet doors must be restored to the operable condition within one hour or the plant be in at least the hot standby condition within the next 6 hours and in cold shutdown within the following 30 hours. To accomodate this change, the present LCO 3.6.5.3.a would be relabeled 3.6.5.3.b, the new LCO would become LCO 3.6.5.3.a, and a reference to LCO 3.6.5.3.a would be added to LCO 3.6.5.3.b to indicate that both LCOs would not be applied at the same time. A change to Bases 3/4.6.5.3 would include a description of the new requirements. In addition, Surveillance Requirement 4.6.5.3.1.b.2 would be revised to require that each inlet door be checked to ensure that its opening is not impaired by "obstructions," in addition to the present checks for ice, frost or debris impairments.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the existing TS 3.6.5.3 provide requirements that impose more restrictive action to be taken in the event ice condenser inlet doors are physically restrained from opening. The proposed change does not involve or result in any alteration of plant configuration, equipment, or action that would affect accident mitigation. The ice condenser and the associated doors are utilized for accident mitigation and are not considered to be the source for any accident. While the actions to be taken for inoperable inlet doors have been changed, the functions of the ice condenser and the doors remain the same. Therefore, the probability or consequences of an accident previously evaluated has not been increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The ice condenser and the associated doors are utilized for accident mitigation and are not considered to be the source for any accident. While the actions to be taken for inoperable inlet doors have been changed, the functions of the ice condenser and the doors remain the same. Therefore, no equipment postulated to create an accident is impacted, and the possibility of a new or different kind of accident is not increased.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not alter the functions of any safety-related equipment. All accident mitigation functions of the ice condenser will remain the same and the proposed change will ensure appropriate action is taken in the event an ice condenser inlet door is physically restrained from opening. Therefore, a reduction in a margin of safety is not involved as a result of the proposed change.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* May 28, 1992 (TS 92-06)

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) 6.2.3.4 to reflect a restructuring of the Nuclear Power organization by changing the title of the manager to whom the Independent Safety Engineering personnel reports from the Manager of Nuclear Managers Review Group to Manager, Nuclear Reviews. A proposed change to TS 6.3 would replace the references to the fact that the facility staff qualifications are specified in ANSI N18.1-1971, the March 28, 1980 NRC letter, and Regulatory Guide 1.8, with reference to TVA's Nuclear Qualification Assurance Plan. A similar change is proposed to TS 6.4 that would replace the retraining and replacement training program references to ANSI N18.1-1971, Appendix A of 10 CFR Part 55, and the March 28, 1980 NRC letter, with reference to TVA's Nuclear Quality Assurance Plan. Another proposed change would replace the title of the Quality Engineering and Monitoring Supervisor PORC member to Quality Audit and Monitoring Manager in TS 6.5.1.2. In addition, TS 6.10.2.i would change the title of the Nuclear Quality Assurance Manual to Nuclear Quality Assurance Plan.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed title change of the corporate official to whom Independent Safety Engineering (ISE) makes recommendations has no effect on the safe operation of SQN. This change is administrative in nature and serves to reflect recent organizational changes within TVA's Nuclear Power program. The proposed change to Specifications 6.3.1 and 6.4.1 reflects consistency with the Nuclear Quality Assurance Plan and current regulatory guidance. The proposed changes to Specifications 6.5.1.2 and 6.10.2i are nomenclature and title changes only. Since the proposed amendment will not result in any changes to hardware, operating procedures, or accident analyses, the probability or consequences of an accident previously evaluated have not been increased.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The proposed change to Specification 6.2.3.4 provides a change in the title of the corporate official to whom ISE makes recommendations. This change is an administrative change that reflects realignment of the management structure within TVA's Nuclear Power organization. The proposed change to Specifications 6.3.1 and 6.4.1 reflects consistency with the Nuclear Quality Assurance Plan and current regulatory guidance. The proposed changes to Specifications 6.5.1.2 and 6.10.2i are nomenclature and title changes only. The proposed amendment does not involve a physical change to the facility; therefore, no new or different kind of accident is created.

(3) Involve a significant reduction in a margin of safety. The proposed revision to administrative Specification 6.2.3.4 reflects recent restructuring within TVA's Nuclear Power organization. This change in no way affects the physical facility design or safe operation of SQN. The function of ISE continues to conform with NUREG-0737 guidance for performing independent review of plant activities. The proposed change to Specifications 6.3.1 and 6.4.1 reflects consistency with the Nuclear Quality Assurance Plan and current regulatory guidance. The proposed changes to Specifications 6.5.1.2 and 6.10.2i are nomenclature and title changes only. Because compliance with the regulatory requirements has not been compromised and because these changes did not alter the facility or its design, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of amendment request:* June 8, 1992

*Description of amendment request:* The proposed change would revise the completion times in NA-1&2 Technical Specification (TS) 3.0.5 to permit a shutdown to proceed in a controlled and orderly manner that is within the maximum cooldown rate and within the cooldown capabilities of the unit, assuming only the required equipment is operable.

TS 3.0.5 delineates additional conditions that must be satisfied to permit operation to continue when a normal or emergency power source is not operable. It specifically prohibits operation when one division is inoperable because its normal or emergency power source is inoperable, and a system, subsystem, train, component, or device in another division are inoperable for another reason.

An NRC letter to All Power Reactor Licensees, dated April 10, 1980, requested licensees to submit proposed TS 3.0.3 and 3.0.5. The NRC letter contained model TS. Both model TS 3.0.3 and 3.0.5 were formulated to ensure that no set of equipment outages would be allowed to persist that would result in the facility being in an unprotected condition. The model TS 3.0.3 and 3.0.5 contained the same time frames to reach hot standby, hot shutdown, and cold shutdown.

Amendment No. 19 for NA-1 and the original operating license for NA-2 issued TS 3.0.3 and 3.0.5 consistent with the April 10, 1980 NRC letter. However, TS 3.0.3 was later revised in Amendment Nos. 62 and 46 for NA-1&2, respectively. Amendment Nos. 62 and 46 allowed 1 hour to initiate actions and changed the time frames to reach hot standby, hot shutdown, and cold shutdown for TS 3.0.3. These amendments were consistent with NUREG-0452, Revision 4, "Standard Technical Specifications for Westinghouse Pressurized Water Reactors." However, NUREG-0452 does not include TS 3.0.5. As a result, the licensee did not evaluate or request a change to TS 3.0.5 at that time.

As a result of issuance of Amendment Nos. 62 and 46, the time frames for TS 3.0.3 and 3.0.5 became inconsistent. The proposed change would correct this inconsistency and meet the intent of the April 10, 1980 NRC letter and still maintain consistency with NUREG-0452.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change revises [TS] 3.0.5 completion times to permit a shutdown to proceed in a controlled and orderly manner that is within the maximum cooldown rate and within the cooldown capabilities of the unit, assuming only the minimum required equipment is operable. The proposed change has no significant impact on the probability of an accident due to the fact that the total time to reach cold shutdown remains the same.

Likewise, the consequences of any accident previously evaluated will not increase as a result of the proposed change. Previous evaluations have been based on the total time to reach cold shutdown, which remains the same. Finally, the proposed change will correct the inconsistency associated with completion times for [TS] 3.0.3 and 3.0.5 and meet the intent of the April 10, 1980 NRC letter, while still maintaining consistency with NUREG-0452.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not involve any change to plant design or methods of operation. The proposed change does not involve operation of any plant equipment in a manner different from which it was designed to operate. Since a new or different kind of failure is not created, the possibility of a new or different type of accident does not exist.

3. The proposed change does not involve a significant reduction in a margin of safety. The proposed change does not involve a change to safety limits or limiting safety system settings. Setpoints and operating parameters are not affected. Therefore, the margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

*NRC Project Director:* Herbert N. Berkow

**Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of amendment request:* June 8, 1992

*Description of amendment request:* The proposed changes would revise the current NA-1&2 Technical Specifications (TS) to permit staggered testing of the reactor trip system (RTS) instrumentation and permit up to 2 hours to test certain emergency safeguards feature actuation system (ESFAS) instrumentation. Also, some minor administrative changes are included.

The NA-1&2 TS 3.3.1.1 requires that the RTS instrumentation channels and interlocks of Table 3.3-1 shall be operable with response times as shown in Table 3.3-2. The NA-1&2 TS 3.3.2.1 requires that the ESFAS instrumentation channels shown in Table 3.3-3 shall be operable with their trip setpoints set consistent with the values shown in the trip setpoint column of Table 3.3-4 and with response times as shown in Table 3.3-5.

The proposed changes revise the TS 4.3.1.1.1, RTS Instrumentation, Table 4.3-1, Item 19, safety injection input from ESF, to increase the surveillance interval from every month to every 62 days on a staggered test basis and TS 3.3.2.1, Table 3.3-3, Action 20, to allow a channel to be bypassed for up to 2 hours for testing purposes. The proposed amendments would also make administrative changes that do not affect the technical content of the TS.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes revise [TS] 4.3.1.1.1 such that the amount of time each train of [RTS] instrumentation is inoperable for testing is decreased and [TS] 3.3.2.1 such that sufficient time is allowed for testing the ESFAS logic without having to enter a shutdown action statement. These changes to [RTS] and ESFAS instrumentation testing have no significant effect on the probability of an accident because the time spent testing is not significantly increased and because it only affects one train at a time.

Likewise, the consequences of the accidents previously evaluated will not increase as a result of the proposed [TS] changes. Testing the Safety Injection input from ESF function on a staggered test basis increases the operability time for the two trains of [RTS] instrumentation. The consequences of allowing up to an additional hour to test each train of ESFAS logic are not significantly increased because the time spent testing is not significantly increased and the opposite train is still available to perform its design function. The proposed changes are consistent with other testing requirements and are . . . as stringent as the requirements of NUREG 0452, Standard Technical Specifications for Westinghouse Pressurized Water Reactors, Revision 4.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes proposed herein do not involve any changes to plant design nor methods of operation. The proposed changes do not involve operation of any plant equipment in a different manner from which it was designed to operate. Since a new failure mode is not created, a new or different type of accident is not made possible.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed operational configuration does not involve changes to safety limits or limiting safety system settings. Setpoints and operating parameters are not affected. Safety margins are, therefore, not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

*NRC Project Director:* Herbert N. Berkow

**Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin**

*Date of amendments request:* March 1, 1991 and December 6, 1991Description of amendments request: These amendments would revise TS 15.4.8, Auxiliary Feedwater System, by changing sections 15.4.8.1.a and 15.4.8.1.b to require each auxiliary feedwater (AFW) pump to be started quarterly, and would provide the basis for TS 15.4.8 for this change. In addition, TS 15.3.4, Steam and Power Conversion System section 15.3.4.c.2, would be changed to clarify the AFW PUMP out-of-service limitations.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below with regard to the changes in sections 15.4.8.1.a and 15.4.8.1.b:

... we have evaluated these changes ... and have determined that operation of the Point Beach Nuclear Plant units in accordance with the proposed amendments does not present a significant hazards consideration. Previously analyzed accidents considered in our assessment include Steam Generator Tube Rupture, Loss of External Electrical Load, Loss of Power to the Station Auxiliaries, and Loss of Normal Feedwater.

*Criterion 1*

Operation of a facility will not result in a significant hazards consideration if it would not involve a significant increase in the probability or consequences of an accident previously evaluated. This change modifies the frequency of required starting of the auxiliary feedwater pumps and, in the case of the steam turbine-driven pump, requires this start at conditions more representative of those expected during an actual demand to start. Since only the testing frequency and conditions will be changed, there will be no physical change to the facility, its systems, or its operating procedures. Based on pump testing history, decreasing the pump test frequency from monthly to quarterly will have no effect on accident probabilities using accepted Probabilistic Risk Assessment criteria. The previously analyzed accidents are, therefore, not affected. An increased probability or consequences of an accident previously evaluated cannot result.

*Criterion 2*

Operation of a facility in accordance with a proposed amendment does not result in a significant hazards consideration if it cannot create the possibility of a new or different kind of accident from any previously evaluated. The proposed change modifies the frequency of a pump test and, in the case of the turbine-driven auxiliary feedwater pumps, requires this test to be at conditions more indicative of those expected during an actual demand start. No physical change to the facility or its operation results. We have been performing AFW pump testing since we began operation. Potential accidents that may be associated with this testing were previously considered. Therefore, a new or different kind of accident from any previously evaluated cannot result.

*Criterion 3*

Operation of a facility in accordance with a proposed amendment will not result in a significant hazards consideration if it does not involve a significant reduction in a margin of safety. Testing at quarterly intervals could result in a pump being non-operational for a longer period of time prior to detection than the presently prescribed monthly start, thus resulting in a possible reduction in a margin of safety. However, the present monthly testing has never indicated a

pump failure, and the pumps have never failed to start in response to an actual demand, indicating a high degree of reliability. Based on this testing history, decreasing the test frequency from monthly to quarterly has no effect on accident probabilities using accepted probabilistic risk assessment criteria. Fast start testing without prior warm-up of the turbine-driven auxiliary feedwater pumps is more rigorous than the present slow, warm-up test, providing added assurance that the steam turbine-driven pumps will start on demand. In addition, the quarterly interval is based on ASME Section XI requirements which proved adequate assurance of pump operability. Therefore, a margin of safety is, at most, only minimally reduced from present levels.

With regard to the changes to section 15.3.4.C.2:

*Criterion 1*

Operation of a facility in accordance with a proposed amendment does not present a significant hazard if it does not result in an increase in the probability or consequences of an accident previously analyzed.

The intent of Specification 15.3.4.C.2 is to permit, as discussed in 15.3.0, "General Considerations," a temporary relaxation of the single failure criteria, consistent with overall reliability considerations, to allow limited time periods during which corrective actions may be taken to restore the AFW pumps to full operability. The proposed amendment to 15.3.4.C.2 serves to clarify that only one of the three operable AFW pumps associated with a single unit may be taken out of service at one time. This is consistent with the bases and with Specification 15.3.4.C.1 for two-unit operation. The proposed change requires no hardware or procedural change and can be characterized as administrative in nature. Accordingly, this change has no impact on the probability or consequences of previously evaluated accidents since the assumptions for the accidents are not altered and the LCO operability requirements provide the necessary assurance that the mitigative measures will be available.

*Criterion 2*

Operation of a facility in accordance with a proposed amendment does not present a significant hazard if it cannot create the possibility of an accident different from any previously evaluated.

This change does not result from any physical change or modification to the facility or its operation. The operability of equipment necessary for accident mitigation, such as the AFW pumps, is assured by periodic surveillance and testing. The continued availability of that equipment during plant operations is controlled by the limiting conditions for operation. Once operability is established through the successful completion of periodic testing and surveillance, the presumption is that the system will function as designed in the accident analyses.

Since there has been no change to the function, design or operation of the AFW system, one may conclude that a new or diiferent kind of accident will not result from proposed changes.

*Criterion 3*

Operation of the facility in accordance with a proposed amendment will not present a significant hazard if it does not result in a significant reduction in a margin of safety.

Under the existing Specification 15.3.4.C.2 one may argue that the specification would permit two AFW pumps to be out of service during single unit operation for a restricted period of time. Such a condition would not satisfy the intent of the specification which is to provide for redundant sources of auxiliary feedwater to an operating unit at all times. The availability of a single AFW pump for single unit operations would result in a reduction in the margin of safety. In that the proposed change will provide further assurance that during power operations no more than one AFW pump may be out of service at any one time, the change may actually be considered to assure the previously assumed margin of safety is available. Thus the previously accepted margins to safety are not reduced by these changes and it may be concluded that the proposed change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John N. Hannon.

**Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station (YNPS), Franklin County, Massachusetts**

*Date of amendment request:* June 5, 1992

*Description of amendment request:* The proposed amendment would revise the Fire Protection Program Technical Specifications following the guidance of the NRC Generic Letters 86-10 and 88-12.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change has been evaluated and determined to involve no significant hazards consideration. The proposed amendment does not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated. The Fire Protection systems and equipment are not being changed. The proposed changes involve only the way changes to the Fire Protection Systems will be controlled.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. No changes are being made to any equipment or systems needed to mitigate the affects of a fire. The proposed changes only involve the way changes to these systems and equipment are controlled.

3. Involve a significant reduction in the margin of safety. There are no changes being made to systems or equipment. What is being changed is the way changes are to be controlled. As described above, the administrative controls, the reviews, and the audits being required of the Fire Protection Program will ensure that the margin of safety provided for fires will be maintained.

Based on the considerations contained herein, there is reasonable assurance that operation of the Yankee plant consistent with the proposed Technical Specifications will not endanger the health and safety of the public. This proposed change has been reviewed by the PORC and Nuclear Safety Audit and Review Committee.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

*Attorney for licensee:* Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

*NRC Project Director:* Seymour H. Weiss

**Notice of Issuance of Amendment to Facility Operating License**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or

petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

**Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona**

*Date of application for amendments:* February 14, 1992

*Brief description of amendments:* The amendments allow the implementation of the guidance provided in NRC Generic Letter 89-01 wherein programmatic controls for radiological effluent are contained in the technical specifications but the details are relocated to either the Offsite Dose Calculation Manual or to the Process Control Program.

*Date of issuance:* June 18, 1992

*Effective date:* June 18, 1992

*Amendment Nos.:* 62, 46, and 34

*Facility Operating License Nos.* NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: April 1, 1992 (57 FR 11102) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

**Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland**

*Date of application for amendment:* February 6, 1992

*Brief description of amendment:* The amendment modifies the existing 0-12 effective full power years (EFPY) heatup and cooldown curves and rates to approximately 22 EFPY based on the guidance provided in Regulatory Guide 1.99, Revision 2. In addition, adjustments were made to the low temperature overpressure protection (LTOP) mitigating system. The LTOP changes include changes to the controls for the high pressure safety injection pumps and the reactor coolant pumps. In addition, the minimum pressure and temperature (MPT) enable temperature is increased and the adjusted reference temperature (ART) in the TS Bases is changed. The TS Bases are also modified to reflect the above changes.

*Date of issuance:* June 16, 192

*Effective date:* June 16, 1992

*Amendment No.:* 171

*Facility Operating License No.* DPR-53: Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: March 18, 1992. (57 GT 9437) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1992. No significant hazards consideration comments received: No

*Local Public Document Room location:* Calvert County Library, Prince Frederick, Maryland 20678.

**Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut**

*Date of application for amendment:* April 1, 1992

*Brief description of amendment:* The amendment changes Technical Specification (TS) Section 6.9.1.9 to add the list of the sections of the Haddam Neck TS that reference the Technical Report Supporting Cycle Operation (TRSCO), reformat TS Section 6.9.1.9 and delete the words "... at the locations listed in..." and replaces them with the word "per" in ACTION statements 3.3.3.6.a. and 3.3.3.6.b. In addition, in TS Sections 3.3.3.6.a and 3.3.3.6.b, the reference to TS Section 4.6.1.6 has been corrected to 4.6.1.5.

*Date of issuance:* June 17, 1992

*Effective date:* June 17, 1992

*Amendment No.:* 153

*Facility Operating License No.* DPR-61. Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: April 29, 1992 (57 FR 18172) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 17, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

**Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan**

*Date of application for amendment:* April 2, 1990 and July 15, 1991; as amended September 27, 1990, and December 20, 1991, respectively.

*Brief description of amendment:* This amendment revises the Palisades Technical Specifications to: (1) transfer responsibility for the industry operating experience review program from the plant safety and licensing group to the plant review committee, (2) make various editorial corrections, and (3) incorporate changes from the most recent Palisades Plant reorganization.

*Date of issuance:* June 9, 1992

*Effective date:* June 9, 1992

*Amendment No.:* 146

*Facility Operating License No.* DPR-20. The amendment revises the Technical Specifications.

*Date of initial notice in* Federal Register: June 12, 1991 (56 FR 27041) and August 21, 1991 (56 FR 41578). By letters dated September 27, 1990, and December 20, 1991, the licensee submitted additional information and clarifications that did not change the initial proposed no significant hazard consideration determinations. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Van Zoeren Library, Hope College, Holland, Michigan 49423.

**Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan**

*Date of application for amendment:* September 2, 1998

*Brief description of amendment:* This amendment revises the Technical Specifications (TS) to incorporate operability and surveillance requirements for core exit thermocouples (CETs). Generic Letter 83-37, "NUREG-0737 Technical Specification," provided sample TS and requested you to submit a license amendment consistent with the NRC staff guidance. This amendment resolves

CET operability requirements for the Palisade Plant.

*Date of issuance:* June 22, 1992

*Effective date:* June 22, 1992

*Amendment No.:* 147

*Facility Operating License No.* DPR-20. The amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 29, 1989 (54 FR 49128) and May 13, 1992 (57 FR 20509). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Van Zoeren Library, Hope College, Holland, Michigan 49423.

**Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan**

*Date of application for amendment:* June 13, 1991

*Brief description of amendment:* This amendment modifies the Palisades Plant Technical Specifications, Section 4.16.1, in response to NRC Generic Letter 90-09, "Alternate Requirements For Snubber Visual Inspection Intervals and Corrective Actions," which provides an alternate schedule for visual inspection of snubbers.

*Date of issuance:* June 12, 1992

*Effective date:* June 12, 1992

*Amendment No.:* 148

*Facility Operating License No.* DPR-20. The amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 21, 1991 (56 FR 41578) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 12, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Van Wylen Library, Hope College, Holland, Michigan 49423.

**Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan**

*Date of application for amendment:* July 11, 1990

*Brief description of amendment:* This amendment would modify the Palisades Plant Technical Specification (TS) Section 4.1.1.a.4 to change the testing requirements of the Pressurizer Power Operated Relief Valves (PORV) from ASME Code, Section XI, Category C to Category B.

Currently the Palisades PORV's are identified in the TS as ASME Code, Section XI, subsection IWV, Category C valves. Based on a recent engineering evaluation, Consumers Power Company has determined that this designation is technically incorrect in that this ASME category designation applies to self actuating valves, such as relief or check valves, whereas the PORV's are actuated via an external signal. The correct designation for the PORV's is ASME Code, Category B as defined in ASME Code, Section XI, subsection IWV, paragraph IWV-3413. The testing requirements for Category B valves are defined in Table IWV-3700-1, "Inservice Testing Requirements".

*Date of issuance:* June 19, 1992

*Effective date:* June 19, 1992

*Amendment No.:* 149

*Facility Operating License No.* DPR-20. The amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 28, 1990 (55 FR 49447). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Van Wylen Library, Hope College, Holland, Michigan 49423.

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of application for amendments:* March 11, 1992

*Brief description of amendments:* The amendments revise the 24-volt Standby Shutdown Facility (SSF) battery surveillance requirements for battery electrolyte level, voltage and specific gravity to be in agreement with the recommendations in ANSI/IEEE Standard 1106-1987 (IEEE Recommended Practice for Maintenance, Testing and Replacement of Nickle-Cadmium Storage Batteries for Generating Stations and Substations).

*Date of issuance:* June 18, 1992

*Effective date:* June 18, 1992

*Amendment Nos.:* 97 and 91

*Facility Operating License Nos.* NPF-35 and NPF-52: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 29, 1992 (57 FR 18173) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

**Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station Unit No. 1 and Unit No. 2, Shippingport, Pennsylvania**

*Date of amendment request:* October 1, 1990.

*Description of amendment request:* The amendments modify Technical Specification 4.6.1.6.1 relating to containment structural integrity. Specifically, the amendments modify Surveillance Requirement 4.6.1.6.1 which prescribes how containment integrity shall be determined with a non-prescriptive requirement for the determination of structural integrity.

*Date of issuance:* June 23, 1992

*Effective date:* June 23, 1992

*Amendment Nos.:* 165 for Unit 1 - 47 for Unit 2

*Facility Operating License Nos.* DPR-66 and NPF-73. Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 20, 1991 (56 FR 6872) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

**Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida**

*Date of application for amendment:* March 13, 1992

*Brief description of amendment:* This amendment revises Technical Specifications Design Features Section 5.3.1, Fuel Assemblies, to delete the maximum weight of uranium in a fuel rod and provide alternative requirements for fuel assemblies in the design features section.

*Date of issuance:* June 9, 1992

*Effective date:* June 9, 1992

*Amendment No.:* 114

*Facility Operating License No.* DPR-67: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 1, 1992 (57 FR 11109) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

**Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of application for amendments:* October 17, 1991

*Brief description of amendments:* These amendments update the Unit 1 operating license and add to the Unit 2 operating license the standard license condition as stated in Generic Letter 86-10, Section F; revise the Unit 1 and Unit 2 Technical Specifications to delete Sections 3/4.3.3.7, 3/4.7.11, 3/4.7.12, and 6.2.2.e; and add Section 6.5.1.6.n. These amendments are in accordance with the guidelines stated in Generic Letter 88-12.

*Date of issuance:* June 11, 1992

*Effective date:* June 11, 1992

*Amendment Nos.:* 115 and 55

*Facility Operating License Nos.* DPR-67 and NPF-16: Amendments revised the Technical Specifications and the licenses.

*Date of initial notice in* Federal Register: November 13, 1991 (56 FR 57696) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 11, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia**

*Date of application for amendments:* July 11, 1991, as supplemented February 20, 1992.

*Brief description of amendments:* The amendments revise Hatch Unit 1 Technical Specifications 4.6.L and Hatch Unit 2 TS 4.7.4 concerning snubber surveillance to reflect the present guidance proposed in Enclosure B of NRC Generic Letter 90-09, "Alternate Requirements for Snubber Visual Inspection Intervals and Corrective Actions," issued December 11, 1990.

*Date of issuance:* June 19, 1992

*Effective date:* Within 60 days from the date of issuance

*Amendment Nos.:* 181 and 122

*Facility Operating License Nos.* DPR-57 and NPF-5. Amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: May 13, 1992 (57 FR 20512) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 19, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa**

*Date of application for amendment:* December 30, 1991

*Brief description of amendment:* The amendment revised the Technical Specifications by combining the Recirculation Pump Limiting Condition for Operation (LCO) and Surveillance Requirements into one section, consolidating Single Loop Operation (SLO) requirements, and making minor editorial changes and corrections.

*Date of issuance:* June 24, 1992

*Effective date:* June 24, 1992

*Amendment No.:* 183

*Facility Operating License No.* DPR-49. Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: February 5, 1992 (57 FR 4489) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 24, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

**Northeast Nuclear Energy Company, Docket No. 50-245, Millstone NuclearPower Station, Unit 1, New London County, Connecticut**

*Date of application for amendment:* August 1, 1989, superseded April 13, 1992

*Brief description of amendment:* The amendment changes the Technical Specifications (TS) as recommended in NUREG-0737 and as detailed in Generic Letter (GL) 83-36. These changes pertain to containment high-range radiation monitors, containment pressure monitors, and containment water level monitors. In addition, the amendment changes each subsection of the Containment Systems section, TS 3.7.A, to include its own specific action statement, instead of having an overall requirement at the end of Section 3.7.A.

*Date of issuance:* June 15, 1992

*Effective date:* June 15, 1992

*Amendment No.:* 57

*Facility Operating License No.* DPR-21. Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: May 13, 1992 (57 FR 20513) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

**Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut**

*Date of application for amendment:* August 6, 1991

*Brief description of amendment:* The amendment changes the surveillance requirement acceptance criteria for the High Pressure Safety Injection Pumps and the Low Pressure Safety Injection Pumps (Technical Specifications 4.5.2.a.1.b, 4.5.2.a.2.b and 4.5.3.f.2) to satisfy the modified accident analysis.

*Date of issuance:* June 16, 1992

*Effective date:* June 16, 1992

*Amendment No.:* 159

*Facility Operating License No.* DPR-65. Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: September 4, 1991 (56 FR 43811) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

**Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut**

*Date of application for amendment:* February 23, 1992, as supplemented April 1, 1992.

*Brief description of amendment:* The amendment changes the action statement and the visual inspection surveillance requirements (Technical Specifications 3.7.8 and 4.7.8) associated with the snubbers. The changes provide an alternate method for determining the next interval for the visual inspection of snubbers.

*Date of issuance:* June 16, 1992

*Effective date:* June 16, 1992

*Amendment No.:* 160

*Facility Operating License No.* DPR-65. Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: April 29, 1992 (57 FR 18176) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1992. No

significant hazards consideration comments received: No.

*Local Public Document Room location:* Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

**Northeast Nuclear Energy Company, et al., Docket No. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut**

*Date of application for amendment:* December 11, 1991

*Brief description of amendment:* The amendment revises (1) Technical Specification Figure 3.1-2 to correct a drafting inaccuracy, and make the curve consistent with the data points, (2) Technical Specification 3.3-4 so that it is consistent with previously approved changes, and (3) Technical Specification Section 3/4.6.3 to delete an obsolete reference to Table 3.6.2.

*Date of issuance:* June 23, 1992

*Effective date:* June 23, 1992

*Amendment No.:* 67

*Facility Operating License No.* NPF-49. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 8, 1992 (57 FR 712) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

**Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska**

*Date of amendment request:* June 28, 1991, as supplemented November 27, 1991, and April 23, 1992.

*Brief description of amendment:* The amendment revised the Technical Specifications to increase the maximum allowable setpoint drift for the main steam safety valve (MSSV) setpoints from 1% to +3%/-2% and to specify the lift settings for all MSSVs and for the two pressurizer safety valves (PSVs).

*Date of issuance:* June 16, 1992

*Effective date:* June 16, 1992

*Amendment No.:* 146

*Facility Operating License No.* DPR-40. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 13, 1991 The additional information contained in the supplemental letters dated November 27, 1991, and April 23, 1992, was clarifying in nature and, thus, within the scope of the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1992.No significant hazards consideration comments received: No.

*Local Public Document Room location:* W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of application for amendments:* August 16, 1991 and supplemented by letter dated May 29, 1992

*Brief description of amendments:* These amendments revise the Technical Specification 4.6.1.2a and the associated bases to incorporate an exemption from Appendix J of 10 CFR Part 50 that removes the requirement that the third Type "A" Overall Integrated Containment Leakage Rate test required in each 10-year service period is to be conducted at the 10-year inservice inspection interval.

*Date of issuance:* June 24, 1992

*Effective date:* As of the date of issuance, to be implemented within 30 days.

*Amendment Nos.:* 121 and 89

*Facility Operating License Nos.* NPF-14 and NPF-22. These amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 4, 1991 (56 FR 43812) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 24, 1992. No significant hazards consideration comments received: No

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

**Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York**

*Date of application for amendment:* April 8, 1992

*Brief description of amendment:* Technical Specifications Section 6.4 (Training), as related to licensed operator requalification, was revised to reflect the change in the Code of Federal Regulations (CFR) which redesignated Appendix A to 10 CFR Part 55 as 10 CFR 55.59.

*Date of issuance:* June 16, 1992

*Effective date:* June 16, 1992

*Amendment No.:* 120

*Facility Operating License No.* DPR-64: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 13, 1992 (57 FR 20516) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1992. No significant hazards consideration comments received: No

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

**Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York**

*Date of application for amendment:* October 28, 1991

*Brief description of amendment:* The amendment revises Technical Specifications Section 3.1.A (Operational Components), Section 3.1.B (Heatup and Cooldown), Section 3.3 (Engineered Safety Features), and Section 4.3 (Reactor Coolant System Integrity Testing). These sections have been revised to extend the reactor coolant system Pressure-Temperature (PT) limits to 11.0 effective full power years (EFPY) of operation and to provide for the corresponding Overpressure Protection System (OPS) limits. In addition, Section 3.1 has been retyped in its entirety for format consistency and to correct typographical errors.

*Date of issuance:* June 18, 1992

*Effective date:* June 18, 1992

*Amendment No.:* 121

*Facility Operating License No.* DPR-64: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 11, 1991 (56 FR 64661) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 18, 1992. No significant hazards consideration comments received: No

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

**Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California**

*Date of application for amendment:* August 31, 1990, supplemented November 1, 1990, September 9, 1991, and June 5, 1992.

*Brief description of amendment:* The amendment revises the Technical

Specification 3.3.1, "Safety Injection and Containment Spray Systems, operating status, to:

• Expand and clarify the Westinghouse Standard Technical Specification (STS) 72-hour Action Statement time limit for the Emergency Core Cooling Systems (ECCS)

• Remove Specification 3.3.1.C, addition of extended mode requirements for ECCS and for operation of the Recirculation System

• Clarify Containment Spray System requirements

• Remove the action statement requirement for non-safety related back-p saltwater cooling capacity

• Make existing specification consistent with the proposed requirements with editorial changes

*Date of issuance:* June 24, 1992.

*Effective date:* June 24, 1992.

*Amendment No.:* 146

*Facility Operating License No.* DPR-13: The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 3, 1990 (55 FR 40476) The supplemental information contained in letters dated November 1, 1990, and September 9, 1991, were clarifying in nature. A reduction in scope was requested in letter dated June 5, 1992. All supplemental documents were within the scope of the initial notice and did not affect the Commission's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 24, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Main Library, University of California, P. O. Box 19557, Irvine, California 92713

**Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri**

*Date of application for amendment:* December 6, 1991, as supplemented June 16, 1992.

*Brief description of amendment:* The amendment revised Technical Specification 3/4.7.12, Table 3.7-4, and associated Bases to increase the maximum room temperature for the Electrical Penetration Rooms from 101°F to 106°F.

*Date of issuance:* June 18, 1992

*Effective date:* June 18, 1992

*Amendment No.:* 70

*Facility Operating License No.* NPF-30. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 4, 1992 (57 FR 7817) The June 16, 1992, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 18, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

**Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington**

*Date of application for amendment:* December 31, 1990, as supplemented May 20, 1992.

*Brief description of amendment:* The amendment revises Technical Specification (TS) 2.2.1, "Reactor Protection System Instrumentation Setpoints," and its bases, as well as TS 3.3.6, "Control Rod Block Instrumentation," to reflect minor adjustments to protection system instrumentation setpoints associated with the SDV.

*Date of issuance:* June 15, 1992

*Effective date:* June 15, 1992

*Amendment No.:* 106

*Facility Operating License No.* NPF-21: The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 7, 1991 (56 FR 37591) The additional information contained in the supplemental letter dated May 20, 1992, served to clarify the amendment, was within the scope of the initial notice, and did not affect the Commission's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1992. No significant hazards consideration comments requested: No.

*Local Public Document Room location:* Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

**Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington**

*Date of application for amendment:* April 10, 1992

*Brief description of amendment:* The proposed amendment removes the schedule for withdrawal of reactor vessel material specimens (TS Table 4.4.6.1.3-1, "Reactor Vessel Material Surveillance Program Withdrawal Schedule") and modifies TS Surveillance Requirement 4.4.6.1.3 to reflect removal of this schedule. This change is in response to guidance provided by the staff in Generic Letter 91-01, "Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens from the Technical Specifications."

*Date of issuance:* June 15, 1992

*Effective date:* June 15, 1992

*Amendment No.:* 107

*Facility Operating License No.* NPF-21: The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 13, 1992 (57 FR 20520) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Richland Public Library, 955 Northgate Street, Richland, Washington 99352

**Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin**

*Date of application for amendments:* August 9, 1991

*Brief description of amendments:* The amendments revised Technical Specification 15.4.0, "Emergency Power System Periodic Tests," by requiring that the acceptance of test results for the diesel generators be based on their assuming required loads in accordance with the timing sequence listed in Section 8.2 of the Final Safety Analysis Report.

*Date of issuance:* June 10, 1992

*Effective date:* June 10, 1992

*Amendment Nos.:* 132 and 136

*Facility Operating License Nos. DPR-24 and DPR-27.*

**Amendments revised the Technical Specifications.**

*Date of initial notice in* **Federal Register:** February 2, 1992 (57 FR 4496) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 10, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 29th day of June 1992.

For the Nuclear Regulatory Commission

**Steven A. Varga,**

*Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation*

[Doc. 92-15842 Filed 7-7-92; 8:45 am]

BILLING CODE 7590-01-F

**Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review**

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of OMB review of information collection.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: New.

2. The tile of the information collection: Final Policy Statement—Integrated Schedules.

3. The form number if applicable: Not applicable.

4. How often the collection is required: For those licensees who volunteer to participate, a one-time submittal of the integrated schedule program and the integrated schedule, and periodic updates of the integrated schedule.

5. Who will be required or asked to report: Nuclear Power Reactor Licensees.

6. An estimate of the number of responses: Ten.

7. An estimate of the total number of hours required annually to complete the requirement or request: Total burden: 3,000 hours (300 hours per licensee). In addition, there is a one-time burden of 3,000 hours (300 hours per licensee) for submittal of the initial integrated schedule program.

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: The final policy statement regarding the development of integrated schedules encourages, but does not require licensees to develop integrated schedules. Those licensees who volunteer will develop and submit an integrated schedule program, including prioritization methodology, an integrated schedule, and periodic schedule updates.

Copies if the submittals may be inspected or obtained for a fee from the NRC Public Document Room 2120 L Street NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150– ), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton (301) 492–8132. Dated at Bethesda, Maryland, this 29th day of June 1992.

For the Nuclear Power Commission.

**Gerald F. Cranford,**

*Designated Senior Official for Information Resources Management.*

[FR Doc. 92–15942 Filed 7–7–92; 8:45 am]

BILLING CODE 7590–01–M

**Advisory Committee on the Medical Uses of Isotopes: Meeting Notice**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Advisory Committee on the Medical Uses of Isotopes (ACMUI) will hold an open meeting on July 30, 1992, to provide the members of the Committee an opportunity to prepare for a meeting with the Chairman and the Commissioners of the Nuclear Regulatory Commission. The ACMUI meeting with the Commission is scheduled for July 31, 1992, at 10 a.m., in the Commissioners' Conference Room in NRC's One White Flint Building. This meeting will be Noticed separately.

The Committee has no advanced agenda for this meeting; the members will address topics of mutual interest for discussion at the meeting with the Commission. NRC staff will provide supplemental information and other support at the Committee's request.

**DATES:** The meeting will be held at 12:30 p.m., on July 30, 1992.

**LOCATION:** Nuclear Regulatory Commission, One White Flint North, Room 1F21, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS 6–H–3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–504–4317.

**Conduct of the Meeting**

Barry Siegel, M.D. will chair the meeting. Dr. Siegel will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting.

1. Persons may submit written comments by sending a reproducible copy to the Secretary of the Commission, ATTN: Advisory Committee Management Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments must be received by July 17, 1992, to ensure consideration at the meeting. The transcript of the meeting will be kept open until August 21, 1992, for inclusion of written comments.

2. Persons who wish to make oral statements should inform Mr. Camper, in writing, by July 17, 1992. The Chairman will rule on requests to make oral statements. Given the nature and duration of this meeting, the Chairman may determine that oral statements will not be permitted. Opportunity for members of the public to make oral statements will be based on the order in which requests are received. In general, oral statements should be limited to approximately 5 minutes. Oral statements must be supplemented by detailed written statements, for the record. Rulings on who may speak, the order of presentation, and time allotments may be obtained by calling Mr. Camper, 301–504–3417, between 9 a.m. and 5 p.m. EST, on July 23, 1992.

3. At the meeting, questions from attendees other than committee members, NRC consultants, and NRC staff will be permitted at the discretion of the Chairman.

4. The transcript, minutes of the meeting, and written comments will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street, NW, Lower Level, Washington, DC 20555, on or about August 21, 1992.

5. Seating for the public will be on a first-come, first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a) the Federal Advisory Act (5 U.S.C. App) and the Commission's regulations in title 10, Code of Federal Regulations, part 7.

Dated: July 1, 1992

**John C. Hoyle,**

*Advisory Committee Management Officer*

[FR Doc. 92–15943 Filed 7–7–92; 8:45 am]

BILLING CODE 7590–01–M

**Proposed Generic Communication NRC Generic Letter 89–10, Supplement 5: Inaccuracy of Motor-Operated Valve Diagnostic Equipment Resulting From Valve Stem Directional Effects**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of opportunity for public comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to issue a Supplement to Generic Letter (GL) 89–10 on Inaccuracy of Motor-Operated Valve (MOV) Diagnostic Equipment Resulting from Valve Stem Directional Effects. In the supplement to GL 89–10,

the NRC staff would request nuclear power plant licensees to assess the capability of their safety-related MOVs as currently sized and set in light of new information on the inaccuracy of MOV diagnostic equipment resulting from calibrating the equipment in one direction and relying on the equipment to predict thrust in the other direction. Each licensee would be requested to review the information applicable to any equipment used at its facility to establish current torque switch settings for its safety-related MOVs. In particular, licensees would be requested to notify the NRC staff within 30 days of the MOV diagnostic equipment used, the actions taken to address valve stem directional effects on diagnostic equipment accuracy, any MOVs not sized and set adequately in light of increased inaccuracy, and actions taken or planned to meet the regulations. The NRC staff considers the backfit of these requested actions to be justified. With respect to the thrust measuring device (TMD) manufactured by ITI-MOVATS, the Nuclear Management and Resources Council (NUMARC) and ITI-MOVATS have provided guidance for licensees on addressing the effects of the increased uncertainty of that particular diagnostic equipment. Subject to the comments in the enclosure to this generic letter supplement, the NRC staff finds that the NUMARC guidelines contain an acceptable approach for addressing the uncertainty resulting from the use of the ITI-MOVATS TMD.

**DATES:** Comment period expires August 7, 1992. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

**ADDRESSES:** Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P–223, Phillips Building, 7920 Nortfolk Avenue, Bethesda, Maryland, from 7:30 am to 4:15 pm on Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** C.E. Carpenter, Jr. (301) 504–1387.

**SUPPLEMENTARY INFORMATION:** In Generic Letter 89–10 (June 28, 1989), "Safety-Related Motor-Operated Valve Testing and Surveillance," the NRC staff requested holders of operating licenses and construction permits for nuclear power plants to provide additional assurance of the capability of safety-related MOVs and certain other MOVs in safety-related systems to perform their intended functions by reviewing MOV design bases, verifying MOV switch settings initially and periodically, testing MOVs under design-basis conditions where practicable, improving evaluations of MOV failures and necessary corrective action, and trending MOV problems. The NRC staff has issued several supplements to clarify or modify the recommendations of Generic Letter 89–10.

A generic letter is an NRC document that addresses programmatic recommendations and transmits, to more than one licensee, safety-significant information and usually requires a written response from licensees or permit holders or both regarding matters of safety, safeguards, or environmental significance. The addresses may be asked to take actions over a specified period and report implementation of such actions by letter.

The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter supplement. The NRC's final evaluation will include a review of the technical position and analysis of the value of implementation of the recommended actions and impact on licensees. The proposed generic letter, in its entirety, including the supplements and references, is also available for public inspection in the Public Document Room. The text of the proposed generic letter supplement and its enclosure (NRC Staff Comments on the NUMARC Guidelines Concerning the ITI-MOVATS Thrust Measuring Device) is reproduced following this notice.

*To:* All Licensees of Operating Nuclear Power Plants and Holders of Construction Permits for Nuclear Power Plants

*Subject:* Generic Letter 89–10, Supplement 5, "Inaccuracy of Motor-Operated Valve Diagnostic Equipment Resulting From Valve Stem Directional Effects"

**Background**

In Generic Letter (GL) 89–10 (June 28, 1989), "Safety-Related Motor-Operated Valve Testing and Surveillance," the NRC staff requested holders of operating licenses and construction permits for nuclear power plants to provide additional assurance of the capability of safety-related MOVs and certain other MOVs in safety-related systems to perform their intended functions by reviewing MOV design bases, verifying MOV switch settings initially and periodically, testing MOVs under design-basis conditions where practicable, improving evaluations of MOV failures and necessary corrective action, and trending MOV problems. Supplement 1 to GL 89–10 (June 13, 1990) provided the results of public workshops held to discuss the generic letter. In Supplement 2 to GL 89–10 (August 3, 1990), the NRC staff stated that inspections of program descriptions would not commence until January 1, 1991; thus, the program descriptions need not have been available on site until that date. On the basis of the results of NRC-sponsored MOV tests, Supplement 3 to GL 89–10 (October 25, 1990) requested licensees of boiling water reactor (BWR) nuclear plants to take action in advance of the GL 89–10 schedule to resolve concerns about the capability of MOVs used for containment isolation in the steam supply line of the high pressure coolant injection and reactor core isolation cooling systems and in the supply line of the reactor water cleanup system as well as other systems directly connected to the reactor vessel. Supplement 4 to GL 89–10 (February 12, 1992) modified the generic letter so that BWR licensees did not have to address inadvertent MOV operation as part of their GL 89–10 programs on the basis of a staff study of core melt probability resulting from inadvertent MOV operation.

As an integral part of their GL 89–10 programs, most licensees are relying on MOV diagnostic equipment to provide information on the thrust required to open or close the valve as well as the thrust delivered by the motor actuator. The various types of MOV diagnostic equipment estimate stem thrust using different parameters, such as spring pack displacement or strain in the stem, mounting bolts, or yoke. Because some licensees make decisions regarding the operability of safety-related MOVs based on diagnostic equipment thrust readings, the use of MOV diagnostic equipment can have a significant effect on the safe operation of a nuclear power plant.

In 1990, the MOV Users Group (MUG) of nuclear power plant licensees initiated a program to conduct tests of MOV diagnostic equipment to validate the accuracy asserted by the equipment vendors. The Idaho National Engineering Laboratory provided a test stand for the program. The MOV diagnostic equipment vendors participating in the MUG test program were ASEA-Brown Boveri, Impell, ITI-MOVATS, Liberty Technologies, Siemens/KWU, Teledyne, and Wyle Laboratories.

**Discussion**

On February 3, 1992, the MUG released "Final Report—MUG Validation Testing as Performed at Idaho National Engineering Laboratories" (Volume 1). The MUG final report indicates that the MOV diagnostic equipment that relied on spring pack displacement to estimate stem thrust did not meet the accuracy claims of its vendors. MOV diagnostic equipment that relied on other parameters such as stem or yoke was shown, in general, to meet applicable accuracy claims, although the equipment might not have met the accuracy claims in certain individual tests.

The two MOV diagnostic equipment vendors that have commercially available equipment that relies on spring pack displacement to estimate stem thrust are Impel and ITI–MOVATS. Impell representatives have stated that they would be working with their two licensee customers to develop new accuracy values.

On March 2, 1992, the NRC staff held a public meeting with representatives of ITI–MOVATS to discuss the accuracy of the Thrust Measuring Device (TMD) used by ITI–MOVATS to estimate stem thrust on the basis of spring pack displacement. At this meeting, the representatives of ITI–MOVATS described the results of their field validation program that had been initiated to address the concerns raised by the MUG program. The results of the ITI–MOVATS field validation program showed that the inaccuracy of the TMD may be larger than that assumed in some instances by licensees. In addition to the field validation program, the ITI–MOVATS representatives discussed the results of their activities to resolve concerns regarding the fact that the TMD is calibrated in the valve opening direction, but is also used to predict the thrust delivered by the actuator in the valve closing direction. This study of valve stem directional effect by ITI–MOVATS indicated that the increase in uncertainty of the TMD as a result of this effect can be significant. ITI–MOVATS prepared Engineering Report 5.2 (March 13, 1992) to provide guidance to its licensee customers for evaluating the capability of an MOV to perform its safety function under design-basis conditions in light of the increased inaccuracy of the TMD.

The NRC issued Information Notices 91–61 (September 30, 1991), "Preliminary Results of Validation Testing of Motor-Operated Valve Diagnostic Equipment," and 92–23 (March 27, 1992), "Results of Validation Testing of Motor-Operated Valve Diagnostic Equipment," to alert licensees to the issues raised by the MUG testing program and the ITI-MOVATS studies.

On March 11 and April 21, 1992, the NRC staff held public meetings with representatives of the Nuclear Management and Resources Council (NUMARC) to discuss this issue. NUMARC has developed guidelines for use by licensees in evaluating individual MOVs that had been sized and set using MOV diagnostic equipment that relies on spring pack displacement to estimate stem thrust. The NUMARC guidelines reference ITI-MOVATS Engineering Report 5.2 for detailed implementation by licensees and permit holders. The NRC staff provided its comments on the guidelines to NUMARC, and those comments are contained in an enclosure to this GL 89–10 supplement.

This generic letter supplement addresses the response of licensee and permit holders to the new information on the inaccuracy of MOV diagnostic equipment resulting from calibrating the equipment in one direction and relying on thrust estimates provided for the other direction. The additional issues raised by the MUG report and discussed in Information Notice 92–23, primarily load-sensitive behavior (i.e., rate of loading effects), will be addressed as part of the GL 89–10 inspections.

**Requested Actions**

Licensees are requested to assess the capability of their safety-related MOVs as currently sized and set to perform their intended functions in light of the new information regarding the inaccuracy of MOV diagnostic equipment resulting from calibrating the equipment in one direction and relying on the equipment to predict thrust in the other direction. Each licensee should review the information applicable to any equipment use at its facility to establish current torque switch settings for its safety-related MOVs. With respect to the TMD, IRI-MOVATS and NUMARC have provided guidance for licensees on addressing the effects of the increased uncertainty of that particular diagnostic equipment. Subject to the comments in the enclosure to this generic letter supplement, the NRC staff finds that the NUMARC guidelines contain an acceptable approach for addressing the uncertainty resulting from the use of the ITI-MOVATS TMD.

Licensees that use other types of MOV diagnostic equipment should contact their respective vendors to determine whether a similar concern exists for that equipment. On the basis of the new information on valve stem directional effects, licensees should confirm that their safety-related MOVs are set to provide sufficient margin to account for that increased uncertainty. If a licensee finds that an MOV does not have adequate margin, the licensee will be expected to satisfy the requirements of the NRC regulations and plant technical specifications.

**Reporting Requirements**

Pursuant to section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f), each addressee shall submit a letter providing the information described below. The letter shall be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, under oath or affirmation. A copy shall also be submitted to the appropriate Regional Administrator. This generic letter supplement requests information that will enable the NRC to verify that the licensee (1) is evaluating information that the inaccuracy of MOV diagnostic equipment may be greater than assumed by the licensee, and (2) is determining any adverse effects on the operability of safety-related MOVs and the safe operation of the nuclear power plant as a result of any increased inaccuracy of MOV diagnostic equipment.

(1) Within 30 days of receipt of this letter, the licensee shall notify the NRC staff of the following:

(a) The diagnostic equipment used to establish the current size and settings of its safety-related MOVs;

(b) The action take to address any valve stem directional effects for the type of diagnostic equipment used by the licensee;

(c) Any MOVs that are not sized and set to provide sufficient margin to account for an increased uncertainty in the diagnostic equipment resulting from valve stem directional effects;

(d) Actions (such as torque switch setting adjustments, spring pack replacement, or motor/actuator replacement) taken or planned (including the schedule for such actions) to meet the NRC regulations and plant technical specifications for MOVs found not to have sufficient margin to account for uncertainty of diagnostic equipment.

(2) After the necessary actions are determined and the schedule for completion of those actions is established, licensees shall inform the NRC staff of any changes to the planned actions or schedule.

**Safety assessment**

Some licensees have initiated their programs in response to GL 89–10 and have conducted a significant amount of testing of MOVs under design-basis

differential pressure and flow testing. At the public meeting on March 4, 1992, several such licensees indicated that their MOVs had operated properly under the design-basis differential pressure and flow conditions. The staff agrees with those licensees that such testing provides confidence in their methodology to size and set their MOVs. Those licensees should also verify if their methodology accounts for reduced actuator capability under degraded voltage conditions.

The NRC staff has found from its inspections of GL 89–10 programs that the amount of margin used by different licensees in their methods for sizing and setting MOVs varies significantly. Therefore, the fact that one licensee's methodology for using MOV diagnostic equipment was sufficient to ensure that MOVs operated properly under design-basis differential pressure and flow conditions does not mean that another licensee's methodology would also be adequate. Each licensee will need to evaluate the safety significance of any increase in the uncertainty of its MOV diagnostic equipment.

As a result of operating experience and research information, many licensees have increased torque settings and modified actuators to provide additional thrust capability for their safety-related MOVs. Licensees could consider such actions as part of their evaluation of the safety significance of any increased uncertainty in their MOV diagnostic equipment. However, some licensees have lowered torque switch settings on the basis of data obtained from MOV diagnostic equipment during static tests, or diffential pressure and flow tests at less than design-basis conditions. As a result, the torque switch settings for some MOVs are below the actuator manufacturer's original recommendations. The staff considers the confidence that these MOVs will perform their safety functions to have decreased from the level of confidence before commencement of the GL 89–10 program. Therefore, licensees should take prompt action to identify those MOVs and confirm their design-basis operability.

**Regulatory Bases**

Most licensees use diagnostic equipment in tests to estimate the thrust delivered by the motor operator at specific torque switch settings in safety-related MOVs in opening or closing the valve. Criterion XI, "Test Control," of 10 CFR part 50, appendix B, requires that procedures for testing components include provisions for ensuring that adequate test instrumentation is available. Some licensees rely on diagnostic equipment, known as a TMD, manufactured by ITI–MOVATS to set the torque switch in MOVs at a level that is sufficient to allow the performance of their safety functions under design-basis conditions. Criterion XII, "Control of Measuring and Test Equipment," of Appendix B requires that measures be established to ensure that measuring and test devices used in activities affecting quality are properly calibrated.

On March 2, 1992, ITI–MOVATS notified the NRC staff at a public meeting that it had identified an error in the published accuracy of its TMD resulting from its method of calibrating the TMD in the valve opening direction while using the TMD to estimate stem thrust in the closing direction. ITI–MOVATS notified its licensee customers of the error and the need to evaluate the capability of MOVs in light of the increased uncertainty of the TMD. ITI–MOVATS provided guidance to the licensees for performing this evaluation in its Engineering Report 5.2. Criterion V, "Instructions, Procedures, and Drawings," of Appendix B requires licensees to have procedures for the conduct of activities that involve the capability of safety-related equipment to perform its safety function. Criterion XVI, "Corrective Action," of Appendix B requires licensees to establish measures to ensure that conditions adverse to quality such as deficiencies and defective equipment, are promptly identified and corrected.

The NRC staff is responsible for evaluating the response of licensees to the error in the published accuracy of MOV diagnostic equipment resulting from valve stem directional effects identified by ITI–MOVATS. At the meeting on March 2, 1992, the representatives of ITI–MOVATS stated that the error in its published uncertainty of the TMD had been evaluated for reportability under 10 CFR part 21. The ITI–MOVATS representatives determined that the increased uncertainty of the TMD was not reportable under part 21 by them because they did not know the safety significance of its use at individual nuclear power plants. The NRC staff does not consider it necessary for individual licensees to report the increased uncertainty of the TMD under part 21 because the staff is aware of the issue. However, the NRC regulations in 10 CFR part 21 and part 50, appendix B, require licensees to resolve the issue in a timely manner.

**Backfit Discussion**

On the basis of operating experience and research results, the NRC staff determined several years ago the MOV tests beyond those previously found acceptable are necessary to satisfy the NRC regulations. As that determination constituted a backfit, the staff prepared GL 89–10 in accordance with NRC procedures for the issuance of staff guidance containing backfit provisions. This supplement to the generic letter is being treated as a further backfit in that the staff is requesting licensees to address new information on the uncertainty of MOV diagnostic equipment. The NRC staff has determined that the actions requested in this generic letter supplement are necessary to provide confidence that nuclear power facilities are in compliance with their safety analyses and Criterion XI, "Test Control," of appendix B to 10 CFR part 50, which requires that test procedures include provisions for ensuring that adequate test instrumentation is available. Therefore, the NRC staff has determined that the backfit provisions of this generic letter supplement are justified under 10 CFR 50.109(a)(4)(i).

This request is covered by Office of Management and Budget Clearance Number 3150–0011 which expires May 31, 1994. The estimated average number of burden hours is 150 person hours per licensee response, including those needed to assess the new recommendations, search data sources, gather and analyze the data, and prepare the required letters. This estimate of the average number of burden hours pertains only to the identified response-related matters and does not include the time needed to implemented the requested action. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch, Division of Information Support Services, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Paperwork Reduction Project (3150–0011), Office of Information and Regulatory Affairs, NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Although no specific request or requirement is intended, the following information would be helpful to the NRC in evaluating the cost of complying with this generic letter supplement:

(1) The licensee staff's time and costs to perform requested inspections, corrective actions, and associated testing

(2) The licensee staff's time and costs to prepare the requested reports and documentation

(3) The additional short-term costs incurred as a result of the inspection findings such as the costs of the corrective actions or the costs of down time, and

(4) An estimate of the additional long-term costs which will be incurred in the future as a result of implementing commitments such as the estimated costs of conducting future inspections or increased maintenance.

Enclosure

**NRC Staff Comments on the NUMARC Guidelines Concerning the ITI-MOVATS Thrust Measuring Device**

(1) NUMARC has not ensured that all licensees will implement its guidance in a timely manner.

(2) In addition to other high-priority MOVs, licensees should address MOVs known to have marginal capability on a priority basis.

(3) The NUMARC and ITI-MOVATS guidance focuses on the close torque switch setting. Licensees will need to address the valve stem directional effect for the open torque switch setting if the switch is not bypassed and is set on the basis of the close torque switch setting rather than the calibration data in the open direction.

(4) Licensees should ensure that all MOV diagnostic equipment vendors have addressed the resulting uncertainty if their diagnostic equipment is calibrated in the opposite direction of its use. Also, the uncertainty may be applicable to MOV diagnostic equipment used on various actuator and valve types.

(5) Although the staff is not aware of any cases, the industry should ensure that the ITI-MOVATS TMD has not been used in generic MOV studies that might overestimate actuator capacity or capability.

(6) Licensees should be aware that the screening criteria in ITI-MOVATS Engineering Report 5.2 focus primarily on the consideration of minimum required thrust, but licensees also need to address the consideration of maximum allowable thrust limits.

(7) Although the NUMARC and ITI-MOVATS guidance discusses the evaluation of thrust margin, licensees will need to develop justification for an adequate amount of margin to account for the uncertainties in their thrust calculations. Margin should be adequate to account for areas such as variation in assumed parameters in the thrust calculations and degradation between refurbishment.

(8) ITI-MOVATS used parameters in its calibration study that may not be appropriate for general licensee use. For example, ITI-MOVATS assumed a stem friction coefficient of 0.15 that may not be appropriate for some MOVs and relied on the Limitorque spring pack calibration charts, which licensees have found are inaccurate in some cases.

(9) Licensees should ensure that the scope of MOVs evaluated for the increased uncertainty of the diagnostic equipment is consistent with their commitments to Generic Letter 89-10, such as, where applicable, MOVs capable of being mispositioned.

(10) Licensees should address the additional issues raised by the MUG report and discussed in Information Notice 92-23, principally load-sensitive behavior (i.e., rate of loading effects), as part of their program in response to GL 89-10.

Dated at Rockville, Maryland, this 30th day of June, 1992.

For the Nuclear Regulatory Commission.

**John N. Hannon,**

*Director, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 92-15944 Filed 7-7-92; 8:45 am]

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[Docket No. 50-440]

**The Cleveland Electric Illuminating Company, et al., Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-58, issued to the Cleveland Electric Illuminating Company, Centerior Service Company, the Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and the Toledo Edison Company, (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

The amendment would revise the Technical Specifications to establish appropriate setpoints and limits governing plant operation with a single recirculation loop in service, in accordance with the licensees' application for amendment dated June 28, 1991.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 7, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request an/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15 days prior to the first prehearing conference

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scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in providing the contention at the hearing.

The petitioner must also provide reference to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2020 L Street, NW., Washington, DC, 20555 by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John N. Hannon: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.741(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comments of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 28, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, the Perry Public Library, 3753 Main Street, Perry, Ohio, 44061.

Dated at Rockville, Maryland, this 30th day of June 1992.

For the Nuclear Regulatory Commission.

**James R. Hall, Sr.,**

*Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–15945 Filed 7–7–92; 8:45 am]

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**[Docket No. 030–01326, License No. 08–04289–06, EA 92–027]**

## DC General Hospital, Washington, DC 20003; Order Imposing Civil Monetary Penalty

I

District of Columbia General Hospital (Licensee) is the holder of Byproduct Material License No. 08–04289–06 last renewed by the Nuclear Regulatory Commission (NRC or Commission) on December 10, 1991. The license authorizes the Licensee to use byproduct materials for diagnostic and therapeutic procedures involving radiopharmaceuticals and brachytherapy devices in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted during January 21–22, 1992. The results of the inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A Written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated March 4, 1992. The Notice states the nature of the violations, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in three letters, dated March 30, 1992. In its response, the Licensee denied one of the eight violations (Violation E). In addition, the Licensee requested mitigation of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that Violation E should be withdrawn, and that the proposed penalty should be reduced by $950 based on the withdrawal of Violation E, and therefore a civil penalty of $6,550 should be imposed. The NRC staff has also determined that an adequate basis was not provided for any further reduction in the civil penalty amount.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $6,550 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of the violations set forth in the Notice (with the exception of Violation E), this Order should be sustained.

Dated at Rockville, Maryland this 30th day of June 1992.

For the Nuclear Regulatory Commission.

**Hugh L. Thompson, Jr.,**

*Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.*

### Appendix—Evaluations and Conclusion

On March 4, 1992, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for eight violations identified during an NRC inspection on January 21–22, 1992 at the District of Columbia General Hospital (licensee). The licensee responded to the Notice on March 30, 1992. The licensee denied one of the violations (Violation E). The licensee also requested mitigation of the civil penalty. The NRC's evaluations and conclusions regarding the licensee's requests are as follows:

*1. Restatement of Violation E*

10 CFR 35.50(b)(3) requires, in part, that a licensee test each dose calibrator for linearity over the range of its use between the highest dosage that will be administered to a patient and 10 microcuries.

Contrary to the above, the licensee's dose calibrator linearity test performed quarterly covered only the range between 100 millicuries and 10 microcuries (and the highest dosage that the licensee administered to a patient was greater than a 100 millicuries). Specifically, the licensee administered:

158.1 millicuries of iodine-131 to a patient on November 27, 1989; 159.4 milicuries of iodine-131 to a patient on March 5, 1990; 110.9 millicuries of iodine-131 to a patient on July 23, 1990; and 153.3 millicuries of iodine-131 to a patient on December 3, 1991.

*2. Summary of Licensee Response*

In its responses, the licensee admits all of the violations, with the exception of Violation E, which involved the dose calibrator linearity test not covering the range of use. The licensee also requests mitigation of the penalty. In support of its request for mitigation, the licensee states that (1) the NRC should reconsider the 100% escalation of the penalty based on the Licensee's past performance, stating that the overall performance of the program since 1989 has improved; and (2) the NRC should reconsider the 50% escalation of the penalty based on the corrective actions not being prompt and comprehensive.

With respect to its denial of Violation E, the licensee contends that although doses exceeding 100 millicuries of iodine-131 are occasionally administered, in all cases the dosages are constituted from the addition of individual vials containing capsules of the isotope, and each vial is assayed separately. The licensee stated that the results of its assays never exceeded 100 millicuries.

With respect to the NRC escalation of the civil penalty by 100% based on the licensee's past performance, the licensee requests that this escalation be reconsidered. The licensee contends that its overall performance with regard to the radiation safety program, and the involvement of management in the program, did not remain stagnant since the NRC inspection in 1988, but in fact has improved. In support of that contention, the licensee notes that it instituted a number of changes since that time to reflect its commitment to improvement of the radiation safety program. These changes included creation of a full-time health physicist position in July 1990; retention of an outside physics consulting group in October 1990 to provide monthly monitoring of the program; replacement of the consulting group in November 1991 with a different physics contractor, due to unsatisfactory performance as identified by management; and increased attention to the monitoring of personnel radiation exposure.

With respect to the NRC escalation of the civil penalty on the basis that the corrective actions were not prompt and comprehensive, the licensee states that they received the NRC inspection report late on February 14, 1992, and had only 3 working days to prepare a comprehensive program of corrective actions for submittal at the enforcement conference on February 20, 1992. The licensee also indicated that it is looking at options to replace the current Radiation Safety Officer with someone who has both the time and expertise to give the program the support which it requires, but the options were not clear to the licensee at the time of the enforcement conference. Therefore, the licensee contends that escalation of the civil penalty on this factor was unreasonable.

*3. NRC Evaluation of Licensee Response*

With respect to the licensee's denial of Violation E, the NRC agrees that the violation should be retracted since the licensee indicated that the dose calibrator was never used to assay dosages greater than 100 millicuries.

With respect to the escalation of the civil penalty based on the licensee's past performance, the NRC acknowledges that some actions were taken by the licensee in response to the prior NRC findings, which included a prior Severity Level III problem. However, those actions were not effective in precluding the violations identified during the NRC inspection in January 1992. In view of the past problems at the facility, the NRC maintains that escalation of the civil penalty based on this factor was appropriate.

With respect to the escalation of the civil penalty based on the Licensee's corrective actions not being prompt and comprehensive, the NRC notes that the licensee was informed of the inspection findings at an exit interview on January 22, 1992. The exit interview was attended by the Executive Director, Medical Director, Radiation Safety Officer, Chief of Nuclear Medicine, and Chairman of the Radiation Safety Committee. While the written report may not have been received by the licensee until February 14, 1992, it simply reiterated the findings presented at the exit interview; and the licensee had ample time and opportunity to develop corrective actions for the individual violations, as well as the underlying deficiencies that contributed to them. Further, the licensee had previously received a Notice of Violation for a Severity Level III problem involving lack of management control (EA 88–147, February 1, 1990). That action followed an enforcement conference held December 6, 1989. Thus, the licensee was aware of NRC's expectations regarding corrective action. NRC expects that licensees, when informed of violations or regulatory problems, will take prompt action to correct them. While it may not be possible to fully implement long term corrective action prior to the enforcement conference, the plan for such action and the implementation schedule should be formulated by that time. Accordingly, the NRC maintains that escalation of the civil penalty based on this factor was appropriate.

*4. NRC Conclusion*

Based on its evaluation of the Licensee's response, the NRC staff concludes that Violation E should be withdrawn. Reducing the proposed civil penalty by ⅛ due to the withdrawal of one violation results in an adjusted civil penalty of $6,550. The Licensee has provided no basis for further mitigation of the civil penalty. Accordingly, a civil penalty in the amount of $6,500 should be imposed by order.

[FR Doc. 92–15946 Filed 7–7–92; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–30880; File No. SR–CSE–92–02]**

## Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Unlisted Trading Privileges

July 1, 1992.

### I. Introduction

On February 19, 1992, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule

[1] 15 U.S.C. 78s(b)(1) (1988).

19b–4 thereunder,[2] a proposed rule change relating to the Exchange's ability to trade securities pursuant to unlisted trading privileges ("UTP").

The proposed rule change was noticed in Securities Exchange Act Release No. 30454 (March 9, 1992), 57 FR 9297 (March 17, 1992). No comments were received on the proposal.[3]

## II. Description of the Proposal

According to the Exchange, the proposed rule change is designed to facilitate the CSE's full participation in the National Market System by assuring that the CSE is eligible to trade, pursuant to UTP, securities primarily traded on the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange, Inc. ("Amex").[4] Because the CSE's present listing standards make no distinction between initial listing requirements and maintenance standards, and its UTP standards merely cross-reference its listing standards, the CSE can obtain and continue UTP only in the securities of companies which would be eligible for primary listing on the CSE. Accordingly, the CSE currently is prohibited from obtaining or continuing UTP in securities which are in fact listed on another exchange but which do not meet the listing standards of the CSE.

This restriction has resulted in the Exchange's inability to trade, pursuant to UTP, the securities of an issuer that experiences financial difficulties while listed on the NYSE or the Amex, even though the issuer remains listed and registered on the primary market. Because of such situations, the CSE seeks to amend its rules in order to enable the Exchange to trade an issuer's securities pursuant to UTP, even though such issuer would not be eligible for listing on the CSE, provided such issuer maintains its listing on either the NYSE or Amex.[5] Essentially, the Exchange does not wish to adopt stricter listing and/or maintenance requirements than the requirements applied by the primary markets. For stocks not traded on the NYSE or Amex, however, the CSE contemplates no change in its present standards.

## III. Discussion

After careful consideration, the Commission finds that the CSE's proposed rule change to amend its rule governing UTP is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, specifically, sections 6(b) and 11A of the Act.[6] The Commission believes that the proposal is consistent with the section 6(b)(5)[7] requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Additionally, the Commission believes that the proposal is consistent with Section 11A which requires the Commission to facilitate the establishment of a national market system by, among other things, facilitating fair competition between exchanges.

The Commission believes that it is appropriate to allow the CSE to amend its rules in order to enable the Exchange to trade, pursuant to UTP, the securities of a company unable to meet the current listing criteria of the CSE, provided such securities are primarily listed on the NYSE or the Amex and remain so listed. I approving this filing, the Commission has considered the original listing and maintenance standards in place at the NYSE and the Amex and believes that they are adequately designed so as to attract bona fide companies to list and trade their securities in these respective markets.[8] Such listing standards were submitted to the Commission, and upon the Commission's determination that such standards were consistent with the Act, were approved.

Companies listed on the NYSE or the Amex pursuant to these listing standards may experience financial difficulties, yet continue to be listed and traded on the primary exchanges while the exchange determines whether to delist the company's securities. While experiencing these problems, a company may fall below the CSE's listing/maintenance criteria.[9] Under the CSE's current rules, UTP trading of the securities of such a company would not be allowed.

The Commission believes it is consistent with just and equitable principles of trade and with the protection of investors and the public interest to allow the CSE to obtain or continue UTP in a security traded on the NYSE or the Amex, even when such a security falls below CSE's listing standards. As described above, the listing standards of the NYSE and the Amex should ensure that only bona fide companies list on those exchanges. In addition, NYSE and Amex rules require those exchanges to consider delisting a company whose deteriorating financial condition has led it to fall below the exchanges' maintenance criteria. Therefore, so long as such a security remains listed on the NYSE or the Amex, the Commission believes it is reasonable to allow the CSE to trade it pursuant to UTP.

Moreover, pursuant to Section 11A of the Act, Congress has directed the Commission to facilitate a national market system. The Commission's granting of UPT to the regional stock exchanges is instrumental to that directive. UTP enables the regional stock exchanges to provide a competitive marketplace for the trading of eligible securities. Because the other regional stock exchanges do not have in place similar restrictions on their ability to obtain UPT in securities listed primarily on the NYSE or the Amex,[10] the Commission believes that it is appropriate to approve the CSE's proposal. The Commission finds that it would be inconsistent with the Act, especially Section 11A, to require the CSE to maintain its restriction on obtaining UTP in securities listed on the NYSE or the Amex, while allowing other regional exchanges to apply for and obtain UTP in the same securities. Essentially, the Commission believes that effective competition between the

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[2] 17 CFR 240.19b–4 (1991).

[3] Subsequent to this release, the CSE amended its proposed rule change by deleting "provided the security is otherwise deemed suited for trading" from the language originally proposed by the Exchange. In its letter amending the proposal, the CSE also indicated that this proposed rule change is not intended to accommodate the trading of securities that raise new regulatory issues, and, therefore, would require a separate filing with the Commission pursuant to Rule 19b–4 under the Act, such as index or currency warrants, or other novel securities products. See letter from Kevin S. Fogarty, General Counsel, CSE, to Laurie Petrell, Division of Market Regulation, SEC, dated May 18, 1992.

[4] Section 12(f) under the Act sets forth the Commission's authority to extend UTP to a security upon request by a national securities exchange. 15 U.S.C. 781(f) (1988).

[5] The Commission notes that it will not process an exchange's UTP application for a type of security for which the requesting exchange does not have the authority to list and trade. The CSE, therefore, must have in place listing standards for the specific type of security to be traded pursuant to UTP, even though such security is listed and trading on either the NYSE or the Amex. See also note 3, *supra*.

[6] 15 U.S.C. 78f and 78k–1 (1988).

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] For example, the NYSE requires net tangible assets of $18 million and a minimum of $2.5 million pre-tax earnings in the previous year, and $2 million pre-tax earnings for the preceding two years, while the Amex requires at least $4 million in shareholders' equity and a minimum of $750,000 pre-tax income in the last fiscal year or in two of the three last fiscal years. The Amex also has listing criteria for its Emerging Company Marketplace.

[9] The CSE requires net tangible assets of at least $2 million, and earnings equal to at least $200,000 pre-tax annual income for two prior years.

[10] See generally the rules of the Pacific Stock Exchange, Inc. (Rule 3), and the Boston Stock Exchange, Inc. (Chapter XXVII).

exchanges would be diminished if the proposed rule change was not approved.

## IV. Conclusion

For the reasons set forth above, the Commission finds that the CSE's proposed rule change is consistent with Sections 6 and 11A of the Act.

*It is therefore ordered,* Pursuant to section 19(b)(2) [11] of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-15939 Filed 7-7-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-30879; File Nos. SR-NSCC-92-04, SR-MCC-92-07, and SR-SCCP-92-02]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Midwest Clearing Corporation; Stock Clearing Corporation of Philadelphia; Filing and Order Granting Temporary Approval on an Accelerated Basis of Proposed Rule Changes Relating to the Guarantee of Trades in Continuous Net Settlement Systems

July 1, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that National Securities Clearing Corporation ("NSCC"), Midwest Clearing Corporation ("MCC"), and Stock Clearing Corporation of Philadelphia ("SCCP") (collectively referred to as "clearing corporations") filed with the Securities and Exchange Commission ("Commission") proposed rule changes as described in Items I, II, and III below.[2] The Commission is publishing this notice to solicit comment from interested persons and to grant temporary approval of the proposed rule changes on an accelerated basis through June 30, 1993.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposals seek an extension of NSCC's, MCC's and SCCP's authority to (1) guarantee at an earlier time settlement of member trades in their respective Continuous Net Settlement ("CNS") systems and (2) revise the CNS portion of their respective clearing fund formulas to protect against increased risk posed by such earlier guarantees. The Commission has approved these proposals on a temporary basis through June 30, 1992.[3] These proposed rule changes would extend the Commission's approval of the CNS trade guarantee policies.

### II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the clearing corporations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The clearing corporations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes*

The purpose of the proposed rule changes is to extend the Commission's approval of NSCC's, MCC's, and SCCP's policies to guarantee the settlement of all pending CNS trades as of midnight on the day after the trade date ("T+1") for locked-in or automatically compared trades and as of midnight on the day trades are reported to members as compared for all other trades. The proposed rule changes also would extend the Commission's approval of the clearing corporations' revisions to the CNS portions of their clearing fund formulas. These revisions are designed to protect against increased CNS system risk associated with earlier guarantees.[4]

NSCC's revised clearing fund formula requires each member to contribute as the CNS portion of its clearing fund requirement an amount approximately equal to: (1) Two percent of the members' projected total long CNS positions; plus (2) the net of each day's difference between the contract price of pending, compared CNS trades and the current market price for all guaranteed pending CNS trades that have not yet reached settlement; plus (3) one-fourth of one percent of the net of all guaranteed, pending CNS trades and open CNS positions.

Under MCC's proposal,[5] CNS assessments for the clearing fund will be based on the following formula: (1) all presettlement long and short settling CNS trades will be summarized daily for the previous twenty day period; (2) for each day that a member has a net debit exposure, based on mark-to-market, such member will be assessed at a rate of 102% of the net debit exposure; and (3) the average twenty day net debit exposure figure will serve as the additional clearing fund contribution Members whose average net debit exposure for the twenty day period is below the minimum $5,000 clearing fund deposit will not be required to provide additional funds.

SCCP's new clearing fund formula enables SCCP to collect the current mark-to-market value of the securities still pending settlement. CNS contributions to the clearing fund are assessed based upon the larger of (1) $1,000 for every twenty five trading units of one hundred shares, with a $5,000 minimum and $50,000 maximum contribution (the first $25,000 must be in cash and the remainder may be in high grade bonds), calculated using a member's monthly average of trading activity calculated from the preceding quarter or (2) a member's aggregate dollar amount of the execution price of all long trades for each quarter divided by the number of days in the quarter times two percent, with a maximum $100,000 contribution. In addition to the above adjustments and as a further

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[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] NSCC's proposed rule change (File No. SR-NSCC-92-04) was filed on April 29, 1992; MCC's proposed rule change (File No. SR-MCC-92-07) was filed on June 1, 1992; and SCCP's proposed rule change (File No. SR-SCCP-92-02) was filed on June 18, 1992.

[3] Securities Exchange Act Release Nos. 29388 (June 28, 1992), 56 FR 30951 (approving File Nos. SR-NSCC-91-06, SR-MCC-91-03, and SR-SCCP-91-03 through June 30, 1992); 28728 (December 31, 1990), 56 FR 717 (approving File Nos. SR-NSCC-90-25, SR-MCC-90-06, and SR-SCCP-90-03 until June 30, 1991); and 27192 (August 29, 1989), 54 FR 37010 (approving File Nos. SR-NSCC-87-04, SR-MCC-87-03, and SR-SCCP-87-03 until December 31, 1990).

[4] For a more detailed discussion of the proposals, refer to Securities Exchange Release Nos. 29388, 28728, and the 27192 accompanying rule filings, *supra* note 3.

[5] MCC's proposed rule change makes one clarifying modification to MCC's previous filing (File No. SR-MCC-91-03). MCC will guarantee Regional Interface Organization ("RIO") CNS trades only to the extent that the interfacing clearing corporation provides a comparable guarantee to MCC. The clarification is to cover the situation where a security is CNS eligible at MCC but is not CNS eligible at an interfacing clearing corporation. In such a situation, MCC cannot apply its guarantee to the MCC participant because the interfacing clearing corporation is not providing a comparable guarantee to MCC.

means of reducing risks generated by earlier guarantees, all clearing fund contributions will be adjusted daily with respect to any mark-to-market exposure. Adjustments of less than $10,000 may be waived by SCCP.

*B. Self-Regulatory Organizations' Statement on Burden on Competition*

The clearing corporations do not believe that their proposed rule changes impose any burden on competition.

*C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The clearing corporations have not solicited, and do not intend to solicit, comments on the proposed rule changes. The clearing corporations have not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

The Commission believes the clearing corporations' proposals to continue providing earlier guarantees for CNS trades along with revised formulas for calculating clearing fund contributions is consistent with the Act and particularly with section 17A of the Act.[6] Section 17A(b)(3)(F) of the Act [7] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which the clearing agency is responsible and be designed to remove impediments to and perfect the national system for clearance and settlement of securities transactions. The Commission believes that these proposals promote the perfection of the national system by providing increased trade settlement certainty through a reduction in the time that clearing members are exposed to the risk of counterparty default. The Commission further believes that these proposals achieve this goal without compromising the safeguarding of securities and funds in the clearing corporations' custody or control or for which they are responsible.

The clearing corporations have requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. Following the temporary approval of the clearing corporations' original proposals, the Commission has continued to examine the effects of the clearing corporations' procedures for earlier guarantees and their revised formulas for calculating CNS clearing fund contributions. The earlier guarantee procedures and revised formulas have functioned adequately during the applicable temporary approval periods. Accelerated approval will permit NSCC, MCC, and SCCP to continue to provide their participants with earlier trade guarantees and to continue collecting clearing fund assessments based on the revised formulas. The Commission, therefore, believes there is good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filing.

This temporary approval order will terminate on June 30, 1993. During the temporary approval period, the Commission will continue to monitor the adequacy of NSCC's, MCC's, and SCCP's procedures and safeguards applicable to earlier guarantees. The clearing corporations are subject to a continuing obligation to provide data to the Commission pertaining to the ability of the revised CNS clearing fund formulas to guard against increased risk posed by earlier guarantees.[8]

**IV. Solication of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to file numbers SR-NSCC-92-04, SR-MCC-92-07, and SR-SCCP-92-02 and should be submitted by July 29, 1992.

**V. Conclusion**

On the basis of the foregoing, the Commission preliminarily finds that the proposed rule changes are consistent with the Act and in particular with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule changes (SR-NSCC-92-04, SR-MCC-92-07 and SR-SCCP-92-02) be, and hereby are, approved through June 30, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-15940 Filed 7-7-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-30867; File No. SR-NASD-92-19]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Small Order Executive System Tier Size Classifications

June 29, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 4, 1992, the National Association of Securities Dealers, Inc., ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD is proposing an interpretation of an existing rule, pertaining to the Associations periodic reclassification of securities in the appropriate Small Order Execution System ("SOES") maximum order size tiers.

**II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change**

In its filing with the SEC, the Association included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

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[6] 15 U.S.C. 78q-1 (1988).

[7] 15 U.S.C. 78-1(b)(3)(F) (1988).

[8] The Commission reserves the right to amend the data request during the ensuring temporary approval period for any of the clearing corporations in order to obtain the most useful and accurate information available.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to notify the Commission of the reclassification of some 431 National Market System securities within the maximum SOES order size tier levels. The Association reviews the tier levels applicable to each security periodically to determine if the trading characteristics of the issue have changed so as to warrant a SOES tier level move. Such a review was conducted as of December 31, 1991, using fourth quarter, 1991 trading data and the established criteria:

A 1,000-share maximum order size for NASDAQ/NMS securities with an average daily nonblock volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers;

A 500-share maximum order size for NASDAQ/NMS securities with an average daily nonblock volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers;

A 200-share maximum order size for NASDAQ/NMS securities with an average daily nonblock volume of 1,000 shares or more a day, a bid price less than or equal to $250, and that have less than two market makers.

The 431 NASDAQ/NMS securities that have been reclassified as of May 4, 1992, are set out in Exhibit 2 of NASD Notice to Members 92-21.

The NASD beleives that the proposed rule change is consistent with Section 15A(b)(5) of the Act. Section 15A(b)(5) requires, *inter alia*, that the rulemaking initiatives of the NASD be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *" The NASD believes that the reclassification of securities within SOES tier levels will further these ends by providing an efficient mechanism to facilitate small order executions in the NASDAQ market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the proposed rule change will not result in any buden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(i) of the Act, and subparagraph (e) of Rule 19b-4 thereunder, because the proposal is "a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule * * *" In its approval order for proposed rule change SR-NASD-88-1,[1] the SEC requested that the NASD provide this information as an interpretation of an existing rule under Section 19(b)(3)(A), which renders that rule effective upon the Commission's receipt of the filing. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1992.

[1]Securities Exchange Act Rel. No. 25791 (June 9, 1988), 53 FR 22549 (June 16, 1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 92-15891 Filed 7-7-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-30871; File No. SR-NASD-92-25]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Volume Reporting for Convertible Debt Securities and Confirmation Disclosure Requirements for Regular NASDAQ Securities

June 29, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 12, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and simultaneously granting accelerated approval of the proposed rule change.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD is proposing amendments to Schedule D or the NASD By-Laws to require members to furnish certain information on customer confirmation forms and to clarify the volume reporting obligations of market makers maintaining quotations in convertible debt securities in regular NASDAQ.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Association is proposing to amend Schedule D to the NASD By-Laws to include specific provisions for reporting daily volume in convertible debt securities to the NASD and to require members to furnish information pertaining to mark-ups and mark-downs in connection with transactions in regular NASDAQ securities to their customers.

On April 10, 1992, the Commission approved a proposed rule change requiring members to report, beginning June 15, 1992, transactions in regular NASDAQ securities within 90 seconds after execution, similar to the reporting procedures for NASDAQ National Market System ("NASDAQ/NMS") securities. At the NASD's request, the Commission deferred action on transaction reporting for convertible debt securities and approved transaction reporting for regular NASDAQ equity securities alone.[1] The NASD has modified the Automated Confirmation Transactions ("ACT") service to accept real-time last sale transaction reports in regular NASDAQ securities, and by this filing, proposed to eliminate the existing system that currently captures daily volume reports in those securities. Beginning June 15, 1992, the ACT service will be utilized to capture end-of-day volume reports for convertible debt securities and the NASD is amending Schedule D to clarify that market makers in convertible debt securities must continue to report daily volume figures in those securities using the ACT service.

Second, the rule proposal adds a new section to Schedule D that will apply the SEC's confirmation disclosure requirements, specifically the provision dealing with disclosure of mark-ups or mark-downs on customer confirmations in SEC Rule 10b–10(a)(8), to transactions in regular NASDAQ securities. The SEC rule requires broker-dealers that are not market makers to disclose mark-ups and mark-downs on riskless principal transactions and also requires market makers to disclose the difference, if any, between the price of a transaction as reported to the tape and the price to the customer. However, the rule applies only to "reported" securities, which are defined as securities reported pursuant to a national market system plan approved by the Commission.

The transaction reporting plan for regular NASDAQ securities was submitted to the SEC as an NASD rule proposal (amendments to Schedule D) and not a national market system plan (pursuant to section 11A of the Act) because different listing criteria, corporate governance requirements, margin treatment and state merit review requirements applicable to regular NASDAQ securities render them inappropriate as national market securities. Accordingly, the SEC's confirmation disclosure requirements dealing with disclosure of mark-up or mark-downs on customer confirmations do not apply to transactions in regular NASDAQ securities as they do not fall within the definition of "reported" securities. Real-time trade reporting for regular NASDAQ securities, commencing June 15, 192, makes these disclosures possible, however, and the NASD believes that it is in the best interests of investors to require members to disclose mark-ups and mark-downs taken from the reported price. The NASD notes that some members have indicated that they are currently making arrangements to supply customers with this additional disclosure, hence the proposed rule change codifying the requirements in this area would not appear to be burdensome to members.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market."

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**, due to the fact that transaction reporting for securities in regular NASDAQ was implemented on June 15, 1992. The NASD believes that the proposed reporting requirements are appropriate so that the NASD may continue to capture relevant regulatory information on the volume of transactions in convertible bonds listed on NASDAQ, and the proposed confirmation disclosure requirements are appropriate for investor protection. In light of these factors, the NASD requests that the Commission approve the rule change on an accelerated basis.

The Commission finds that the proposed rule change is consistent with the requirements of the Act, and specifically, sections 15(A)(b)(6) and 11A(a)(1)(C)(iii) of the Act. Section 15(A)(b)(6) of the Act requires that NASD rules be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market. Section 11A(a)(1)(C)(iii) of the Act sets forth the objective of ensuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.[2]

The proposed rule change clarifies that market makers must report daily volume of transactions in convertible debt securities through the ACT service. On April 10, 1992, the Commission approved a proposed rule change requiring members to report, beginning June 15, 1992, to the NASD on a real-time basis all transactions in NASDAQ securities. In approving that proposal, the Commission deferred consideration of the inclusion of convertible debt securities at the request of the NASD and subject to the NASD's representation that it would address the reporting of such securities before the June 15, 1992 effective date. Because the proposed rule change clarifies the

[1] The Commission noted that the NASD would submit a rule filing deleting the requirement for market makers in equity stocks to submit end-of-day volume reports, as required by Schedule H procedures. Securities Exchange Act Release No. 30569 April 10, 1992), 57 FR 13396.

The NASD notes that the end-of-day volume reports are required pursuant to Schedule D whereas the Schedule H reporting requirements pertain primarily to non-NASDAQ securities, and are not amended in this proposal.

[2] Although the proposed rule change is not a national market system plan pursuant to section 11A of the Act, the Commission believes that the goals of Section 11A, particularly the reporting and dissemination of transaction reports, are equally served by this proposed rule change.

requirements applicable to convertible debt, it advances the goals of Sections 11A and 15A of the Act, particularly the goal of ensuring the availability of information with respect to transactions in securities.

The proposed rule change also will provide investors with additional information regarding the quality and costs of broker-dealer services by requiring NASD members to provide more complete disclosure for principal transactions in regular NASDAQ securities. The proposed rule change requires members not acting as market makers to disclose mark-ups or mark-downs on customer confirmations in transactions in regular NASDAQ securities, similar to disclosure requirements for NASDAQ/NMS securities as provided by Rule 10b–10(a)(8).[3] The proposed rule change, by applying requirements similar to those of Rule 10b–10(a)(8) to regular NASDAQ securities, will facilitate market efficiency by providing investors greater ability to evaluate transaction costs and execution quality. The rule change thus advances the goals of Section 11A of the Act by ensuring the availability to investors of full information about their securities transactions.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. The Commission believes that accelerated approval is appropriate because transaction reporting for regular NASDAQ securities commenced on June 15, 1992 and it is appropriate to clarify the volume reporting requirements pertaining to convertible debt securities listed on NASDAQ as soon as possible. Additionally, the amendments requiring confirmation disclosure for transactions in regular NASDAQ equivalent to that required for transactions in NASDAQ/NMS securities is appropriate in the interests of customer protection, so that customers may receive additional information relating to costs associated with transactions in regular NASDAQ.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1992.

*It is Therefore Ordered,* Pursuant to section 19(b)(2) of the Act, that the proposed amendments to Schedule D to the NASD By-laws be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–15893 Filed 7–7–92; 8:45 am]

BILLING CODE 8010–01–M

[3] Rule 10b–10(a)(8) requires broker/dealers, other than market makers, that execute riskless principal trades in equity securities to disclose the amount of any mark-up, mark-down, or similar remuneration received in the transaction.

Rule 10b–10(a)(8) applies to reported securities pursuant to a Commission-approved national market system plan and does not apply to regular NASDAQ securities.

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[Release No. 34–30877; File No. SR–NYSE–92–10]

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Rule 350, Compensation or Gratuities to Employees of Others

June 30, 1992.

On April 13, 1992 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19–b–4 thereunder,[2] a proposed rule change consisting of amendments to NYSE Rule 350, Compensation or Gratuities to Employees of Others.

The proposed rule change was published for comment in Securities Exchange Act Release No. 30679 (May 5, 1992), 57 FR 20719 (May 14, 1992). No comments were received on the proposal.

NYSE Rule 350(a) presently sets a limitation of $50 per person per year for any gratuity given by members, member organizations, allied members and employees to certain persons (*i.e.*, principals, officers or employees of the Exchange or of other members or member organizations or of securities, commodities or news and financial organizations) without the prior written consent of the recipient's employer. Rule 350(a) also permits gratuities in excess of the stated amount with the prior consent of the recipient's employer and, in the case of Floor employees, prior written consent of the employer and of the Exchange.

Currently, Rule 350(b) sets a limitation of $100 per person per year for compensation for services rendered by specified types of Floor operations employees of members and member organizations, with prior employer approval.

The Exchange has stated in its filing that one of the purposes of Rule 350 is to protect against any improprieties which might arise in connection with the giving of substantial gifts to certain persons without their employer's knowledge.

The Exchange states that the $50 limitation set forth in Rule 350(a) has been in effect since 1978 when the rule was amended to increase the monetary limitation from $25 to $50 due to inflation. The $100 limitation set forth in Rule 350(b) was adopted in the 1960s and has not been increased since that time.

The Exchange proposes to amend Rule 350(a) to increase from $50 to $100 the amount of a gratuity which a member, allied member, member organization or employee thereof may give to principals, officers or employees of other members of member organizations or of securities, commodities or news and financial organizations without the prior written consent of the recipient's employer. The $50 limitation will not change for gratuities given by a member, allied member, member organization or employee thereof to principals, officers or employees of the Exchange and its subsidiaries.

The Exchange also proposes to amend Rule 350(b) to increase from $100 to $200 the limitation on compensation for services rendered by operations employees of the type specified in the rule, with prior employer approval. The proposed amendments to Rule 350(b) will also clarify and codify that the rule applies to operations employees of other members and member organizations and not of the Exchange.

The Exchange notes that the proposed rule change will not change the categories of persons covered by the rule nor will it change the requirement

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

that members and member organizations retain a record of all gratuities and compensation for at least three years.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with section 6(b)(5) requirements that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, and in general, to protect investors and the public interest.

The Commission believes that the Exchange Rule 350 is designed to prevent fraudulent acts and practices which might arise in connection with the giving of valuable gifts without the employer's knowledge. In particular, Rule 350 requires the principal employer (*i.e.*, the relevant Exchange member and/or the Exchange) to review a gratuity or compensation arrangement to determine whether a conflict of interest exists. Under the proposed rule change, the principal employer will still be required to approve in writing any of the covered gratuity or compensation arrangements, and thus would have to make a review of the proposed arrangements.

The proposed rule change will only change the dollar limitations in the rule. The Commission believes that increasing the dollar limitations is reasonable given the amount of time that has elapsed since the last increase for gratuities. In particular, because Rule 350(a) has not been changed since 1978 and Rule 350(b) has not changed since the 1960s, and because, even with the increase, the dollar amounts are relatively low, the Commission feels that it is appropriate to raise these dollar limitations to take into account the effects of inflation.

*It is Therefore Ordered,* Pursuant to section 19(b) (2) of the Act, that the proposed rule change (SR–NYSE–92–10) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

**Margaret J. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–15892 Filed 7–7–92; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12) (1991).

**[Release No. 34–30876; File No. SR–PSE–92–16]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to the Charges for Alternate Specialist Transactions

June 30, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 28, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to adopt a change in its alternate specialist fees. Specifically, the PSE will offset the current $5.00 charge for alternate specialist transactions effected off-board by reducing by that amount the charge for each alternate specialist non-Intermarket Trading System ("ITS") transaction that is effected on the Exchange.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

PSE rules authorize Specialist and Alternate Specialist ("AS") activities. A registered Specialist on the PSE is responsible for making fair and orderly markets in assigned equities; matching buyers and sellers who wish to trade in assigned stocks; buying and selling for his/her own account when orders cannot be matched; and acting as a floor broker's agent in obtaining executions for orders away from the market.

The PSE rules allowing AS activity provide that an AS can be called upon to make bids and/or offers whenever conditions require additional market depth or liquidity. The AS, similar to the registered Specialist, is treated as a dealer for capital and margin purposes. In 1990, the Exchange submitted a Board approved rule filing tightening AS requirements, including a provision that requires an AS to clear both primary Specialist Posts on the two PSE equity floors before entering into a trade.

As AS pays the initial registration fee and a one time fee for each additional issue. There is also an ongoing monthly fee for each AS issue traded. The AS pays an ITS fee per net outgoing trades, the same as a registered Specialist,[1] and also pays a $5.00 transaction fee on off-board trades; *i.e.* non-ITS trades executed off the PSE. The charge was intended to raise revenue and compensate the Exchange for the use of its facilities, charge for the privileges enjoyed by AS, and provide an incentive to execute trades on the PSE.

By changing the current fee structure to allow the AS to offset the current $5.00 off-board charge by reducing by that amount the charge for each non-ITS transaction effected on the Exchange, the PSE hopes to improve the liquidity of PSE markets by having more specialists execute trades on the PSE, particularly after regular hours.[2] The Exchange states that the AS transaction fee for outgoing offboard trades will read: "$5.00 transaction fee per outgoing offboard trade (charge for outgoing trades offset by cumulative credit for incoming trades)." [3]

The PSE believes that the proposal is similar to the ITS charge/credit system already in place at the PSE.[4]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in

[1] In computing the ITS fee, the charge for outgoing trades is offset by cumulative credit for incoming trades.

[2] The Exchange stated that "after regular hours" refers to the continuation of auction market trading from 1:00 p.m. to 1:50 p.m. (PT). Conversation between David P. Semak, Vice President, Regulation, PSE, and Elizabeth M. Cosgrove, Attorney, SEC, on June 28, 1992.

[3] Conservation between David P. Semak, Vice President, Regulation, PSE, and Elizabeth M. Cosgrove, Attorney, SEC, on June 17, 1992 clarifying that the Exchange is adding the following phrase to the AS transaction fee: "charge for outgoing trades offset by cumulative credit for incoming trades."

[4] *See supra* note 1.

general and furthers the objectives of Section 6(b)(4) in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among PSE's members.[5]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR–PSE–92–16 and should be submitted by July 29, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–15894 Filed 7–7–92; 8:45 am]

BILLING CODE 8010–01–M

[5] The Commission believes the proposed fee offset is appropriate because it is limited to alternate specialists whose duty it is to provide liquidity in securities traded on the exchange.

## DEPARTMENT OF STATE

**[Public Notice 1648]**

### Shipping Coordinating Committee Subcommittee on Safety of Life at Sea Working Group on Bulk Chemicals; Meeting

The Working Group on Bulk Chemicals of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9 a.m. on August 26, 1992, in room 2415, at U.S. Coast Guard Headquarters, 2100 2d Street, SW., Washington, DC 20593-0001. The purpose of the meeting is to finalize preparations for the 22d Session of the Subcommittee on Bulk Chemicals of the International Maritime Organization (IMO) which is scheduled for September 7–11, 1992, at the IMO Headquarters in London.

Among other things, the items of particular interest are:

a. Amendments and interpretation of the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code) and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code).

b. Amendments and interpretation of the provisions of Annex II of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78).

c. Amendments and interpretation of the provisions of the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (GC Code) and the International Code for the Construction of Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code).

d. Transboundary movement of wastes by sea.

e. Prevention of air pollution from ships including fuel oil quality.

f. Review of existing ships' safety standards.

g. Draft HNS convention—Review of the Hazardous and Noxious Substances Working Group Report.

h. Review of the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (OPRC).

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: CDR K.J. Eldridge, U.S. Coast Guard (G–MTH–1), 2100 Second Street, SW. Washington, DC 20593–0001 or by calling (202) 267–1217.

Dated: June 22, 1992.

**Geoffrey Ogden,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 92–15883 Filed 7–7–92; 8:45 am]

BILLING CODE 4710–07–M

**[Public Notice 1649]**

### Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 a.m. on August 20, September 17, October 15, November 19, and December 17, 1992. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950.

The purpose of these meetings is to prepare for the 38th Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunication which is scheduled for January 1993 at the IMO headquarters in London, England.

Agenda items include preparation for the 38th Session, primarily related to the implementation of the Global Maritime Distress and Safety System (GMDSS).

Members of the public may attend these meetings up to the seating capacity of the room.

For further information and meeting room number, contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G–TTM), 2100 Second Street, SW., Washington, DC 20593–0001. Telephone: (202) 267–1389.

Dated: June 16, 1992.

**Geoffrey Ogden,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 92–15882 Filed 7–7–92; 8:45 am]

BILLING CODE 4710–07–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Trade Policy Staff Committee; Generalized System of Preferences (GSP); Results of the Review of Petitions Requesting Changes in the List of Countries and Articles Eligible for Duty-Free Treatment Under the GSP in the 1991 Annual Review

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of results of 1991 Annual Review of the GSP.

**SUMMARY:** The purpose of this notice is to announce the disposition of the petitions accepted for review in the 1991 Annual Review of the GSP program.

**FOR FURTHER INFORMATION CONTACT:** GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971.

**SUPPLEMENTARY INFORMATION:** This publication contains the dispositions of the petitions accepted for review in the 1991 Annual Review of the GSP program (56 FR 20484 and 56 FR 42080). These petitions requested changes in the list of articles and countries eligible for duty-free treatment under the GSP program. The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465) (the 1974 Act). The review was conducted pursuant to regulations codified as 15 CFR 2007. These changes will take effect on July 1, 1992. The President's decisions concerning the 1991 Annual Review have also been reflected in a proclamation (57 FR 26981) and in a recent USTR press release (the press release is available by contacting the USTR Public Affairs Office at (202) 395–3230). All communications with respect to this notice should be addressed to the Director, Generalized System of Preferences, room 517, 600 17th Street, NW., Washington, DC 20506.

Reviews were also conducted concerning the beneficiary status of seven GSP beneficiary countries based on their practices in the area of internationally recognized worker rights. This includes reviews of Bangladesh, El Salvador, and Syria, which were continued from the 1990 Annual Review and reviews of Sri Lanka, Mauritania, Panama, and Thailand, which were accepted for review in the 1991 Annual Review. After reviewing these requests, the President determined that Sri Lanka and Bangladesh have taken or are taking steps to afford internationally recognized worker rights. The President also determined that Syria is not taking such steps and therefore will be suspended from the GSP program. Panama, Mauritania, and El Salvador will continue to be reviewed as part of the upcoming 1992 Annual Review. The review of the worker rights practices of Thailand will be continued until December 15, 1992.

The practices of Malta and Guatemala were also reviewed concerning their alleged failure to provide adequate and effective protection for intellectual property rights. These reviews will be continued as part of the 1992 Annual Review.

The review of Peru's actions regarding an alleged expropriation without compensation, which was accepted for review in the 1990 Annual Review and continued in the 1991 Annual Review, has been extended. Additionally, the implementation of a de minimis waiver for copper wire in HTS subheading 7413.00.10 and two petitions for Peru on products in HTS subheadings 0814.00.40 and 1604.19.25 has been deferred indefinitely.

**Frederick L. Montgomery,**
*Chairman, Trade Policy Staff Committee.*

### ANNEX I—1991 GSP ANNUAL REVIEW

| Case No. | HTS No. | Petitioning county | Product | 1991 imports GSP beneficiaries ($ millions) |
|---|---|---|---|---|
| **Petitions to Add Products to GSP: Granted** | | | | |
| 91-4 | 0712.1000 | Argentina | Dried Potatoes | 0.0 |
| 91-13 | 0814.0040 | Peru* | Lime peel | 0.0 |
| 91-14 | 1210.2000 | Yugoslavia | Hop Cones | 0.0 |
| 91-16 | 1604.1925 | Peru* | Bonito, Yellowtail, Pollack | 0.0 |
| 91-18 | 2005.7011 | Turk./Arg. | Green Olives, not pitted under 13kg | 0.0 |
| 91-19 | 2005.7013 | Turk./Arg. | Green Olives, not pitted, other | 0.0 |
| 91-20 | 2005.7015 | Turk/Arg. | Green Olives, other, over quota | 0.1 |
| 91-21 | 2005.7021 | Argentina | Green Olives, pitted or stuffed, under 1kg | 0.0 |
| 91-22 | 2005.7022 | Argentina | Green Olives, pitted or stuffed, over 1kg | 0.1 |
| 91-23 | 2005.7025 | Turk./Arg. | Green Olives, other | 1.4 |
| 91-25 | 2005.7075 | Turkey | Olives, not green, other | 0.6 |
| 91-28 | 2008.5020 | Argentina | Apricot Pulp | 0.0 |
| 91-31 | 2410.1040 | Turkey | Oriental Tobacco | 241.2 |
| 91-32 | 2902.9060 | Argentina | Biphenyl in Flakes | 0.0 |
| 91-37 | 9926.2050 | Turkey | Plastic Apparel & Clothing | 13.3 |
| 91-40 | 7202.4100 | Turkey | High Carbon Ferrochromium | 43.7 |
| 91-41 | 7202.4950 | Turkey | Low Carbon Ferrochromium | 19.0 |
| 91-42 | 7318.1520 | Chile | Bolts, Nuts, washers, Iron or Steel | 13.1 |
| 91-43 | 7318.1540 | Chile | Machine Screws, Iron or Steel | 0.3 |
| 91-44 | 7318.1560 | Chile | Screws and Bolts, Iron or Steel | 0.4 |
| 91-45 | 7318.1600 | Chile | Nuts, Iron or Steel, threaded | 5.1 |
| 91-46 | 8483.5090 | Turkey | Flywheels and Pulleys | 5.2 |
| 91-47 | 8527.2940 | Brazil | Radiobroadcast Receivers FM only or AM/FM only | 51.8 |
| | | | Total | 395.4 |
| **Petitions to Add Products to GSP: Denied** | | | | |
| 91-1 | 0409.0000 | Mexico | Natural Honey | 13.0 |
| 91-2 | 0703.1040 | Mexico | Green Onions | 90.5 |
| 91-3 | 0709.9040.80 | Mexico | Cilantro | 5.6 |
| 91-5 | 0712.2020 | Mexico | Dried Onion Powder | 0.3 |
| 91-6 | 0712.2040 | Arg./Mex | Dried Onions | 2.2 |
| 91-7 | 0712.9040 | Arg./Mex | Dried Garlic | 0.4 |

ANNEX I—1991 GSP ANNUAL REVIEW—Continued

| Case No. | HTS No. | Petitioning county | Product | 1991 Imports GSP beneficiaries ($ millions) |
|---|---|---|---|---|
| 91-8 | 0712.9075 | Argentina | Dried Tomatoes | 5.0 |
| 91-9 | 0804.2040 | Mexico | Whole Figs | 0.2 |
| 91-10 | 0804.2060 | Mexico | Other Figs | 1.9 |
| 91-11 | 0806.1060 | Peru | Grapes | 71.3 |
| 91-12 | 0806.2020 | Mexico | Seeded Raisins | 0.0 |
| 91-15 | 1604.1330 | Peru | Sardines | 1.8 |
| 91-17 | 1901.9030 | Mexico | Cajeta | 0.0 |
| 91-24 | 2005.7050 | Turkey | Olives, Not Green, Not Pitted | 0.2 |
| 91-26 | 2005.7063 | Turkey | Other Olives | 0.2 |
| 91-27 | 2008.4000 | Argentina | Canned Pears | 0.2 |
| 91-29 | 2008.9210 | Thailand | Tropical Fruit Salad | 13.3 |
| 91-30 | 2204.3000 | Argentina | Grape Must | 0.0 |
| 91-33 | 2905.2100 | Mexico | Benzyl Alcohol | 0.1 |
| 91-34 | 2917.3600 | Mexico | Terephthalic Acid & its Salts | 0.0 |
| 91-35 | 2922.4920 | Mexico | Aromatic Drugs of Amino Acids | 0.6 |
| 91-36 | 3301.1300 | Argentina | Lemon Oil | 13.0 |
| 91-38 | 3926.9050 | Mexico | Plastic Fittings for Furniture | 10.6 |
| | | | | 234.2 |

ANNEX II—1991 GSP ANNUAL REVIEW

| Case No. | HTS No. | Petitioning country | Product | 1991 Imports petitioning country ($ millions) |
|---|---|---|---|---|
| **Petitions for Waivers of Competitive Need Limits: Granted** | | | | |
| 91-59 | 2836.9100 | Chile | Lithium Carbonates | 7.4 |
| 91-67 | 7113.1910 | Peru* | Rope, Curb for Jewelry | 33.6 |
| | 7413.0010 | Peru | Stranded Copper Wire | 3.6 |
| 91-82 | 9502.1040 | Malaysia | Unstuffed Dolls | 1.0 |
| 91-83 | 9502-1080 | Malaysia | Unstuffed Dolls | 0.8 |
| | | | | 46.4 |
| **Petitions for Waivers of Competitive Need Limits: Denied** | | | | |
| 91-52 | 0705.1140 | Mexico | Head Lettuce Imported 9/16-7/31 | 3.5 |
| 91-53 | 0807-1020 | Mexico | Cantaloupes imported 99/16-7/31 | 55.0 |
| 91-54 | 0807.1070 | Mexico | Other melons imported 12/1-5/31 | 16.9 |
| 91-55 | 0810.9040 | Mexico | Prickly Pears | 9.8 |
| 91-56 | 1905.9090 | Mexico | Taco Shells, corn chips | 19.1 |
| 91-57 | 2001.9039 | Mexico | Jalapeno, Serrano peppers | 34.1 |
| 91-58 | 2603.0000 | Mexico | Cooper ores and concentrates | 54.2 |
| 91-60 | 3402.9010 | Mexico | Synthetic detergents | 5.5 |
| 91-61 | 3902.1000 | Mexico | Polypropylene resins | 0.2 |
| 91-62 | 3902.3000 | Mexico | Propylene copolymer resins | 0.0 |
| 91-63 | 3920.7100 | Mexico | Cellophane | 9.9 |
| 91-64 | 3926.9087 | Mexico | Plastic Document Binders | 8.2 |
| 91-65 | 6910.1000 | Mexico | Ceramic Sanitary Fixtures | 1.6 |
| 91-66 | 6912.0044 | Brazil | Ceramic Mugs and Steins | 8.8 |
| 91-68 | 7321.1130 | Mexico | Gas Stoves | 94.4 |
| 91-69 | 7401.1000 | Mexico | Copper mattes | 2.9 |
| 91-70 | 7402.0000 | Mexico | Copper anodes | 4.3 |
| 91-71 | 8301.4060 | Mexico | Locks of base metal | 85.5 |
| 91-72 | 8407.3420.60 | Brazil | Piston Engines | 31.6 |
| 91-73 | 8409.9191 | Mexico | Parts, Int. Comb. engines | 74.9 |
| 91-74 | 8415.8200 | Mexico | Air conditioners | 31.2 |
| 91-75 | 8415.9000 | Mexico | Parts, air conditioners | 76.0 |
| 91-76 | 8428.9000 | Mexico | Garage Door Openers | 77.0 |
| 91-77 | 8527.2110.10 | Brazil | Radio tape players, autos | 44.3 |
| 91-78 | 8539.9000 | Mexico | Parts, electrical filament lamps | 26.9 |
| 91-79 | 8544.5160 | Mexico | Insulated Electrical Conductors | 230.8 |
| 91-81 | 9025.1120 | Brazil | Clinical Thermometers | 1.6 |
| | | | | 1058.5 |

ANNEX III—1991 GSP ANNUAL REVIEW

| Case No. | HTS No. | Principal country affected | Product | 1991 imports GSP beneficiaries ($ millions) |
|---|---|---|---|---|
| **Petitions to Remove Products from GSP: Granted** | | | | |
| 91-50 | 7320.1060 | Mexico | Steel Leaf Springs (vehicles >4 met.tons GVW) | 25.0 |
| **Petitions to Remove from GSP: Denied** | | | | |
| 91-52 | 7314.2000 | Mexico | Steel Wire Fencing | 0.7 |
| 91-51 | 7321.1130 | Mexico | Gas Stoves | 94.4 |
| | | | | 95.1 |
| **Petitions to Add Products to GSP: Withdrawn** | | | | |
| 91-39 | 5608.1100 | Mexico | Fishing Nets | 0.2 |

* Implementation of Peru petitions deferred indefinitely.

[FR Doc. 92-5910 Filed 7-7-92; 8:45 am]
BILLING CODE 3190-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Advisory Circular: Type Certification of Very Light Airplanes With Powerplants and Propellers Certificated to Parts 33 and 35 of the Federal Aviation Regulations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of proposed advisory circular (AC) and request for comments.

**SUMMARY:** This notice announces the availability of and request for comments on a proponent AC, which provides information and guidance concerning type certification of very light airplanes with powerplants and propellers certificated to parts 33 and 35 of the Federal Aviation Regulations (FAR).

**DATES:** Comments must be received on or before September 8, 1992.

**ADDRESSES:** Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Julea Bell, Standards Staff (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number (816) 426-6941.

**SUPPLEMENTARY INFORMATION:** Any person may obtain a copy of this proposed AC by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**"

**COMMENTS INVITED:** Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 23-XX-20 and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE-110), room 1544, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

**BACKGROUND:** This AC is the result of a cooperative effort of the Experimental Aircraft Association (EAA), the Sport Airplane Manufacturers Association (SAMA), operators of these airplanes, and the Federal Aviation Administration (FAA). It was proposed to the FAA that the requirements of the Joint Aviation Requirements—Very Light Aircraft (JAR-VLA) as instituted by the Joint Airworthiness Authorities (JAA) on April 26, 1990, would provide an equivalent level of safety to the applicable requirements of part 23 (amendment 23-42) of the FAR. In response to this proposal, the FAA reviewed the requirements of the JAR-VLA and the applicable portions of this amendment of part 23 (225 sections). The requirements of JAR-VLA were found to correspond directly to 204 sections of part 23; either being word-for-word identical or so similar that no substantive differences could be identified. Of the 21 sections where substantive differences were identified, a detailed analysis was conducted regarding the level of safety imposed by these sections and the corresponding requirements of JAR-VLA. Except for those JAR-VLA sections which allow installations of JAR-22 certificated powerplants and propellers, it was determined that each of these requirements of JAR-VLA could be used as a certification basis when coupled with the imposition of any additional certification requirements (as determined by the uniqueness of the airplane design) to make a finding of equivalency to the corresponding part 23 requirement. This will ensure that the level of safety envisioned by part 23 will be attained. In a like manner, where a particular section of part 23 did not have a corresponding JAR-VLA requirement, it was determined that either the applicable part 23 requirement could be complied with or the exemption process could be pursued. Thus, literal compliance to the intent (level of safety) of each applicable section of part 23 will be achieved.

These approvals will be made through the normal development and process of issue papers as described in FAA Order 8100.5. These issue papers are usually the product of the joint efforts of the applicant and the applicable aircraft certification office (ACO) personnel. To expedite this process, this AC will allow, for the present, all applications to be made to one centralized location; i.e., the Chicago ACO, where a team has been formed for this purpose and where many of the issues have been addressed. Copies of FAA Order 8100.5 or other applicable FAA orders are available for review at any FAA ACO.

It should be noted that future amendments of part 23 and/or JAR-VLA will be evaluated for applicability to the certification of these airplanes. Judgments that a new or amended part 23 section is applicable or not applicable will be made by weighing each with the level of safety that is appropriate for

these airplanes. Those changes that unnecessarily raise the level of safety will be identified and such as discussed in subsequent revisions. Changes that are determined to be appropriate will, in a like manner, be addressed in subsequent revisions of this AC.

Accordingly, the FAA is proposing and requesting comments on AC 23–XX–20, which will provide an acceptable means of compliance with part 23 of the FAR for type certification of certain small airplanes.

Issued in Kansas City, Missouri, June 30, 1992.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service*

[FR Doc. 92–15921 Filed 7–7–92; 8:45 am]

BILLING CODE 4910–13–M

## Aviation Magnet Secondary School Program

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of solicitation for Aviation Magnet Secondary School grant applications.

**SUMMARY:** This solicitation represents the Federal Aviation Administration (FAA) Aviation Magnet Secondary School Grant Program. The Federal Aviation Administration is authorized by section 317 of the U.S. Department of Transportation & Related Agencies Appropriations Act 1992, Public Law 102–143 and Senate Report Number 102–148 to solicit competitive proposals for Aviation Magnet Secondary School grants from public or nonprofit private secondary schools to support aviation magnet school programs. The FAA expects to award grants to a maximum of four (4) aviation magnet secondary schools in the United States and its territories or possessions. Preference will be given to institutions having a court-ordered or a court-approved desegregation plan. A total of $50,000 is available. Successful applicants will be required to provide funds to match the federal grant amount dollar for dollar. In no event shall the total federal share of any program exceed 50% of the total allowable cost of the program.

The grant funds may be used for equipment, books, and other instructional resources to be used in the actual teaching of the aviation magnet secondary school curriculum. No federal grant funds shall be used for salaries, operating expenses, research and development, travel, consultant fees, indirect costs, office supplies or other expendable items, automobiles, aircraft, maintenance agreements, printing costs, promotional and marketing materials or equipment, buildings, parking lots, land, commercial airport facilities, taxiways, runways, or for any program in support of a commercial activity. Applications need to distinguish between description of current aviation magnet school activities, and what would be added with grant funds and matching funds.

### Proposal Review

The proposal will be reviewed, evaluated, and ranked against the evaluation criteria by a panel of education and aviation specialists. This review will be used by the FAA in the selection of applicants for grant awards.

For purposes of review, all proposals received by the FAA will be placed into one of two competitive classes: (1) Eligible institutions with court-ordered or court-approved desegregation programs; and (2) other eligible institutions. Grant awards will be made on a competitive basis within each competitive class. Any award within a given competitive class may range from $10,000 to $50,000 maximum. Each proposal will be reviewed, evaluated and ranked, within the competitive class to which it is assigned by the FAA. There may be no award in either class.

The FAA does not intend to fund all proposed programs or all components of a program.

*Submit Proposals To:* Phillip S. Woodruff, Director of Aviation Education, Federal Aviation Administration Headquarters, APA–100, room 907B, 800 Independence Avenue, SW., Washington, DC. 20591, Telephone: (202) 267–3476.

### Closing Date

Six identical copies of the Proposal must be received by the FAA no later than August 7, 1992 (4 p.m. EDT). One copy of the proposal must contain original signatures on the cover sheet. Proposals received after the closing date will not be considered.

Proposals submitted by mail: A mailed proposal must be sent to the address shown above. Any proposal received after 4 p.m. EDT on the closing date will be treated as late and will not be considered. A proposal that is mailed by U.S. Postal Service certified or registered mail at least five (5) days before the closing date will be considered timely even if it is received after the closing date, and a proposal sent by U.S. Postal Service Express Mail delivery at least two (2) Federal working days prior to the closing date will be considered timely even if it is received after the closing date. Proposals submitted by messenger: A hand-delivered proposal must be taken to the FAA at the address listed above. The office of the Director of Aviation Education will accept hand delivered proposals between the hours of 8 a.m. and 4 p.m. EDT, except on weekends and Federal Holidays. A hand delivered proposal will not be accepted after 4 p.m. EDT on the closing date.

Each institution will be notified when its application has been received. No supplemental material received after the application deadline will be considered unless it has been requested by the FAA.

### Background

The FAA is engaged in a comprehensive program to modernize the Nation's air transportation system to meet the challenge of aviation growth in the coming decades. The modernization program takes advantage of current technological advances to increase the capacity of the Nation's air transportation system while reducing relative costs to the Nation's taxpayers.

The FAA recognizes the increasing complexity of technical and managerial skills that will be needed to accommodate the technological advances in equipment, systems, and configurations being planned and implemented throughout the aviation industry. The FAA sponsors the Aviation Magnet Secondary School grant program to assure that future aviation needs are adequately met and to assure that aviation education opportunities are available to minority students at the secondary level.

### Aviation Magnet Secondary School Grant Program

*Authority*

This grant is authorized by section 317 of the U.S. Department of Transportation & Related Agencies Appropriations, Act of 1992, Public Law 102–143 and Senate Report Number 102–148. Authorized funds may be used for equipment, books, and other instructional resources to be used in the actual teaching of the curriculum to the extent that such items are in direct support of the aviation magnet school programs. The FAA expects to award grants to a maximum of four (4) aviation magnet school in the United States, its territories and possessions. Preference will be given to institutions having a court-approved or court-ordered desegregation plan. Individual awards may range from $10,000 to the maximum of $50,000. In no event shall the total Federal share of any program exceed 50% of the total allowable cost of the program.

No federal grant funds shall be used for salaries, operating expenses, research and development, travel,

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consultant fees, indirect costs, office supplies or other expendable items, automobiles, aircraft, maintenance agreements, printing costs, promotional and marketing materials or equipment, buildings, parking lots, land, commercial airport facilities, taxiways, runways, or any program in support of a commercial activity.

**Eligibility**

Eligible institutions must be accredited secondary schools in the United States or territories or its possessions.

**Proposal Format and Content**

Each FAA-sponsored, Aviation Magnet Secondary School grant program is subject to applicable FAA regulations, and OMB Circulars A–21, A–73, A–88, A–110, and A–133. Proposals must contain the following information in the following order:

**1. Cover Sheet**

Type the title "Aviation Magnet Secondary School Grant Proposal" near the top of the cover sheet. Type the legal name of the proposed grantee institution, its mailing address, and its IRS Employer Identification Number in the center of the cover sheet. Type the names, titles, telephone numbers, and FAX numbers of the proposed authorized Project Director and of another official authorized to execute a grant agreement on behalf of the proposed grantee institution in the lower left and right corners, respectively, of the cover sheet. The cover sheet of one copy of the proposal must bear the original signatures of the above individuals and the dates of those signatures. The signatures of the authorized individuals signify institutional endorsement of the proposal, cognizance of the eligibility and limitation requirements, and a commitment to provide the specific support, including meeting fiscal obligations, for the proposed activities in the event that the grant is made.

*2. Standard Form 424*

Submit the standard forms listed below with each grant proposal. These forms may be obtained by telephoning or writing to the FAA Director of Aviation Education at the address listed above. Applications without these forms will be rejected.

(a) Standard Form 424 (Rev. 4–88), Application for Federal Assistance.

(b) All required certifications regarding lobbying; debarment, suspension and other responsibility matters; and drug-free workplace requirements.

*3. Table of Contents*

Include a table of contents with page numbers.

*4. Project Summary*

Include a concise summary of the proposed program. State the goals and objectives, and the long-range benefits of the program. State the associated costs including cost-sharing figures. The reader should be able to identify quickly the nature of the program and the requested funding level. The summary should not exceed two (2) double-spaced typewritten pages.

*5. Narrative*

The narrative should be clearly written and not exceed ten (10) double-spaced typewritten pages in length. The narrative must contain the following:

(a) Introduction

Present a brief description of the institution, including: historical background, full-time student enrollment, student body profile, location (rural, urban, etc.), fields of emphasis, and status as an aviation magnet secondary school program.

(b) Background

Describe the evolution of the institution's involvement in the aviation magnet school program. Provide information and statistics on the occupational areas that aviation magnet school graduates are expected to be entering within the aviation industry and the FAA. Provide the following information in an "easy to read" chart format.

(1) Partnership with Government, Education, Industry: Describe the financial and non-financial partnerships at the national, regional, state and local levels which support the institution's aviation magnet school programs.

(2) Describe the institution's magnet school programs other than aviation and discuss how they interface with the institution's aviation magnet school program.

(3) Include an institutional organization chart to show how the aviation magnet school program and other magnet programs fit into the institutional structure.

(4) Describe institutional activities to recruit aviation magnet school students, including minority and female recruitment activities.

(5) Submit one copy of an official course catalog and/or other brochure(s) showing the aviation magnet school course offerings to students during the current academic year.

Institutions that do not submit the above information will be rejected.

(c) Strategic Plan

Present a 5-year strategic plan for the institution's aviation magnet secondary school program. Discuss the components of the plan and how the institutions anticipates achieving the goals and objectives of the Strategic Plan. Justify the feasibility of the plan in relation to the programmed work force needs of the aviation industry and FAA, over-all direction of the institution, fiscal concerns, etc.

(d) Program Plan

Discuss in detail the proposed Program Plan with stated goals and objectives. Relate the Program Plan to the Strategic Plan. Applicants may submit photographs, architectural drawings, site plans, or other visual representations that would aid the reviewing panel in assessing the relative merits of the proposed program.

(1) Explain how the program will directly support the courses in the required core and the areas of concentration of the institution.

(2) Explain how the program will either enhance current recognized aviation magnet school courses or provide the development of new aviation magnet school courses.

(3) Explain how aviation magnet school program students and other students will directly or indirectly benefit from the program.

(4) Provide a chart indicating the number of students who will benefit from the program over the next five (5) years.

(5) Present a detailed discussion, from program design to conclusion, of the components of the Program Plan and the activities and tasks necessary to bring the program to a successful conclusion. The program is considered completed when the measurements discussed under the Evaluation/Assessment Plan described in paragraph (h) below, have been applied and analyzed. This should occur within 12 months of the time the facility and/or equipment becomes available to students following a grant award.

(6) Provide a milestone chart for the Program Plan.

(7) Identify the sources of non-Federal funding and show evidence that the funds will be available i.e., provide a letter of commitment for funds which will be held available and accountable for cost sharing obligations.

(8) Describe and explain the mechanism that will be used to manage and monitor the progress of the program in terms of the milestones and budget expenditures.

(e) Program Personnel Plan



(1) Identify and describe the relevant skills of those individuals who will have major responsibilities for the proposed program. Indicate the amount of time each person will be required to devote to the program.

(2) Discuss the role of the program director. Provide information showing that the director has appropriate qualifications, well-defined responsibilities, sufficient time, and adequate academic and institutional authority and support to effectively manage the program.

(3) Discuss the number and qualifications of faculty necessary to adequately utilize the funded program. Demonstrate the institutional commitment to provide the necessary facility positions. Indicate if personnel are current faculty members or must be hired. If the latter, provide a discussion of planned activities to staff the position(s).

(f) Budget Plan

The proposal must contain a budget plan that includes a *detailed itemization* of proposed expenditures for direct costs associated with the program according to the following categories:

| Item | Fed $ | Percent | Non-Fed $ | Percent | Total |
|---|---|---|---|---|---|
| (a) Institutional Resources: | | | | | |
| (1) Equipment | | | | | |
| (2) Books | | | | | |
| (3) Instructional Resources | | | | | |
| (b) Facilities: | | | | | |
| (1) Construction [1] | | | | | |
| (2) Renovation [1] | | | | | |
| (3) Stationary equipment [1] | | | | | |
| (c) Travel [1] | | | | | |
| (d) Consultant Services [1] | | | | | |
| (e) Salaries [1] | | | | | |
| (f) Other direct costs [1] | | | | | |
| Total | | | | | |

[1] Costs directly related to activities on proposal program, though not qualified for Federal funding.

Each category must contain line item entries of allowable costs and be subtotaled. (See OMB Circular A–21 for discussion of allowable costs). The line item entries must be allocated appropriately between Federal and non-Federal funding. FAA grant finds may only be dedicated to category "a". In no event shall the total Federal grant funds provided for an aviation magnet school program exceed 50% of the total allowable cost of the program. Budgets which do not include an itemized list of expenditures will be rejected.

(g) Institutional Need.

Provide a detailed justification for the requested grant funding in terms of financial need.

(1) Discuss the consequences of not funding the proposed program. Explain and identify the funding sources and levels which support the institution's current aviation magnet school program.

(2) Illustrate the amount of incoming funds over the past three years which have been dedicated to the aviation magnet schools program.

(3) Provide the same information for funds dedicated to the institution's other magnet programs.

(h) Evaluation/Assessment Plan

Provide a program Evaluation/Assessment Plan. The plan must include a strategy and measurement component for each goal and objective of the grant program. The actual evaluation/assessment may be performed by the institution's staff or in collaboration with outside consultants within 12 months of the time the program and/or equipment is available to students following grant award. The results of the completed evaluation/assessment will determine whether the goals and objectives of the program have been achieved and the impact of the program upon the aviation magnet school program at the institution. These results shall be the FAA as part of the final program report.

**(6) Local Review Statement**

Attach a statement, signed by an appropriate official of the institution, that contains: (a) an endorsement of the proposed program; (b) a description of how the proposed program supports the institution's long range goals and objectives in aviation education; and (c) a commitment to provide the institutional resources necessary to meet cost sharing obligations, complete the proposed program, maintain the facilities and equipment to an acceptable standard, and continuing facilities support for the aviation magnet school program after the grant funds have been expended.

**Reporting Requirements**

Until the proposed program is completed, the FAA requires that each award institution provided verbal project reports upon request and a written annual project report which shall be submitted to the FAA within 90 days of the close of the institution's fiscal year. The report should include a summary of program progress, highlights and accomplishments, personnel changes and a status report on expenditures and account balances for each of the line items presented in the proposed Budget Plan.

In addition, a Final Project Report must be submitted to the FAA within 90 days of the completion of program activities. Report should include program accomplishments, outcomes of the implemented Evaluation Plan, and Budget Plan expenditures. The FAA anticipates that FAA representatives will make site visits to each grant institution during the lifetime of the program.

**Proposal Review**

The proposal will be reviewed, evaluated, and ranked against the evaluation criteria set forth below in the Evaluation Criteria included in this report, by a panel of education and aviation specialists. This review will be used by the FAA in the selection of applicants for grant awards.

The purposes of review, all proposals received by the FAA will be placed into one of two competitive classes: (1) Minority institutions (see June 1, 1984, 49 FR 22903) and (2) non-minority institutions (see June 1, 1984, 49 FR 22903) and (2) non-minority institutions. Grant awards will be made on a competitive basis within each class. Any award within a given competitive class may range from $10,000 to $50,000 maximum. Each proposal will be reviewed, evaluated and ranked, within the competitive class to which it is assigned by the FAA. There may be no award in either class.

The FAA does not intend to fund all proposed programs.

**Evaluation Criteria**

The evaluation criteria are designed to enable the reviewing panel and FAA officials to effectively evaluate the relative merit of submitted proposals. The proposals will be scored on a 100-point scale and will be evaluated based on the following factors:

1. *Institutional commitment* (15 point maximum).

Each proposal will be evaluated to the extent of the institution's commitment to the Aviation Magnet Secondary School Grant Program, in relation to the date of curriculum offerings and overall size of program, as follows:

(a) Number of aviation specialty options.

(b) Number of students eligible to enroll in program.

(c) Number of graduates anticipated in first year.

(d) Recruitment activities, including outreach programs for minority and female students.

(e) Projected growth of aviation magnet secondary school program over first 5 years. Extent to which programmed growth is realistic in comparison to current enrollment figures and strategic plan.

(f) Amount of institutional cost sharing funds provided toward the program, by year.

(g) Demonstrated continuing support and growth of the institution's aviation magnet secondary school program.

(h) Quality of Local Review Statement.

2. *Strategic plan* (15 points).

The feasibility of the Strategic Plan will be evaluated in terms of the following:

(a) Institution's current aviation magnet secondary school program.

(b) Institution's planned approach to meet future aviation work force needs.

(c) Potential resources, including fiscal, instructional, and administrative elements, necessary for achievement of planned goals.

3. *Program Plan* (20 points).

The Program Plan will be evaluated as follows:

(a) Appropriateness of the program in terms of institution's current aviation magnet school program.

(b) Relationship between the program and the strategic plan.

(c) Extent to which program adequately supports recognized curriculum.

(d) Number of students to benefit in relation to size of institution's overall magnet school program.

(e) Benefits to students.

(f) Evidence that institution has good understanding of activities and tasks required to bring program to conclusion.

(g) Appropriateness of proposed facilities and/or equipment in terms of program goals and objectives.

(h) Extent to which milestones are realistic and attainable.

(i) Extent to which the applicant demonstrates that non-Federal funds required for the program are available.

(j) Extent of administration and technical direction of the program.

4. *Program Personnel* (10 points).

The professional qualifications and experience of the institution's current school personnel and other key officials who will be involved in the proposed aviation magnet school program, will be evaluated as follows:

(a) Qualifications and experience of the Program Director.

(b) Qualifications and experience of program personnel in relation to the goals and objectives of the program.

(c) How well the institution has scheduled and allocated program personnel time to perform duties associated with program.

(d) How well aviation magnet school program personnel responsibilities are defined.

(e) Adequate faculty on board to utilize facilities and/or equipment *or* institutional commitment to provide necessary faculty positions and adequate staffing plan development.

5. *Budget Plan* (10 points).

The Budget Plan will be evaluated as follows:

(a) Proposed expenditures itemized by budget category and mathematical calculations are correct.

(b) Entries are detailed and consistent with program narrative.

(c) Budget figures are appropriate for goods and services being procured.

6. *Institutional Need* (15 points).

Each proposal will be evaluated to determine the extent to which the applicant institution has demonstrated the following:

(a) An overall financial need for funding.

(b) Consequences to the institution's aviation magnet school program if Federal funding not obtained.

7. *Evaluation/Assessment plan* (15 points).

The Evaluation Plan will be evaluated to determine the extent to which it demonstrates the following:

(a) Plan is adequately tied to goals and objectives of the program.

(b) Strategy and measurement components are appropriate for stated program goals and objectives.

(c) Evaluation will produce information which would be useful to other institutions in implementing similar programs.

**Phillip S. Woodruff,**

*Director of Aviation Education, Federal Aviation Administration.*

Issued in Washington, DC, on July 1, 1992.

[FR Doc. 92-15978 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-13-M

## RTCA, Inc.; Task Force 1; GNSS Transition and Implementation Strategy Task Force; Working Group 3: Transition; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the meeting of Working Group 3 of the GNSS Transition and Implementation Strategy Task Force to be held July 8, 1992, at AOPA, 421 Aviation Way, Frederick, Maryland 21701, commencing at 9 a.m.

The agenda for this meeting is as follows: (1) Introduction of attendees; (2) Continue preparation of Task Force Working Group 3 recommendations; (3) Other business; (4) Adjourn.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 1, 1992.

**Joyce J. Gillen,**

*Designated Officer.*

[FR Doc. 92-15922 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-13-M

## RTCA, Inc.; Special Committee 169; Aeronautical Data Link Applications; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Public Law 92-463, 5 U.S.C., appendix I), notice is hereby given for the seventh meeting of Special Committee 169 to be held July 30-31, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of the summary of the sixth meeting held on May 14-15, 1992; (4) Report of Air Traffic Services Data Link Communications Working Group (WG-

1) activities; (5) Report of System Architecture and Dependencies Working Group (WG–2) activities; (6) Lincoln Laboratory Presentation on Terminal Weather Radar Information; (7) Report on GNSS Data Link Requirements; (8) Context Management Application Design Status Review; (9) Report on ATN Manual Review; (10) Develop proposals to establish new special committees; (11) Establish working groups; (12) Assignment of tasks; (13) Other business; (14) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 1, 1992.

Joyce J. Gillen,

*Designated Officer.*

[FR Doc. 92–15923 Filed 7–7–92; 8:45 am]

BILLING CODE 4910–13–M

## RTCA, Inc.; Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Band (118–137–MHZ); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the fourth meeting of Special Committee 172 to be held August 3–5, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the third meeting's minutes; (3) Working group reports; (a) VHF Communications System Recommendations Working Group (WG–1); (b) VHF Data Radio Signal-in-space MASPS Working Group (WG–2); (4) Technical presentations; (5) Working group sessions. Review current draft material; (6) Back in plenary; (a) Review working group progress; (b) Task assignment; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued at Washington, DC, on July 1, 1992.

Joyce J. Gillen,

*Designated Officer.*

[FR Doc. 92–15924 Filed 7–7–92; 8:45 am]

BILLING CODE 4910–13–M

## Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dubuque Municipal Airport, Dubuque, IA

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubuque Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before (August 7, 1992.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 602 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard Wertzberger, Chairman, Dubuque Airport Commission, at the following address: Dubuque Regional Airport, 11000 Airport Road, Dubuque, Iowa 52003.

Air carriers and foreign air carriers may submit copies of written comment previously provided to the Dubuque Airport Commission under 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ellie Anderson, PFC Coordinator, FAA, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–7425. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubuque Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 7, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Dubuque Airport Commission, was not substantially complete within the requirements of 158.25 of part 158. The Airport Commission submitted supplemental information on June 8, 1992, to complete the application. The FAA will approve or disapprove the supplemented application, in whole or in part, no later than October 6, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1992.

Proposed charge expiration date: January 31, 1994.

Total estimated PFC revenue: $108,500.00.

Brief description of proposed project(s): Construct Aircraft Rescue and Firefighting and Snow Removal Equipment storage facility; airport Master plan.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: no.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Dubuque Municipal Airport, Dubuque, Iowa.

Issued in Kansas City, Missouri on June 12, 1992.

George A. Hendon,

*Manager, Airports Division Central Region.*

[FR Doc. 92–15925 Filed 7–6–92; 8:45 am]

BILLING CODE 4910–13–M

## National Highway Traffic Safety Administration

**[Docket No. 74–14; Notice 75]**

**RIN 2127–AD62**

## Interim Evaluation Report; Federal Motor Vehicle Safety Standards; Passenger Car Front Seat Occupant Protection; Request for Comments

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Request for comments.

**SUMMARY:** This notice announces the publication by NHTSA of an Evaluation Report concerning Safety Standard 208, *Occupant Crash Protection.* Safety Standard No. 208 was amended on July 17, 1984 (49 FR 28962) to trigger a nationwide effort to increase safety belt use through state laws, enforcement and education, and to require that automatic occupant protection be phased into passenger cars, beginning September 1, 1986. This interim staff report evaluates the effectiveness of occupant protection, based on data available in May 1992. The report was developed in response to Executive Order 12291, which provides for Government-wide review of existing major Federal regulations. The agency's evaluation plan for Safety Standard 208 was published on January 17, 1990 (55 FR 1586). The agency seeks public review and comment on this interim evaluation report. Comments received will be used to improve the review required by Executive Order 12291.

**DATES:** Comments must be received no later than August 24, 1992.

**ADDRESSES:** Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington DC 20590. (Docket hours, 9:30 a.m.–4 p.m., Monday through Friday.)

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Ephraim, Chief, Evaluation Division, Office of Strategic Planning and Evaluation, Plans and Policy, National Highway Traffic Safety Administration, room 5208, 400 Seventh Street, SW., Washington, DC 20590 (202–366–1574).

**SUPPLEMENTARY INFORMATION:** Safety Standard 208 (49 CFR 575.208) combines a nationwide effort to increase belt use through state belt laws, enforcement and education, and a requirement that *automatic occupant protection,* such as air bags or automatic belts, be phased into passenger cars (1987–90) and light trucks (1995–98). As mandated by the Intermodal Surface Transportation Efficiency Act of 1991, air bags plus manual belts will be required in all cars in 1997 and light trucks in 1998.

Pursuant to Executive Order 12291, NHTSA is conducting an evaluation of the occupant protection program, to determine the effectiveness, benefits, costs, performance characteristics and public acceptance of air bags, automatic belts, and the nationwide effort to increase belt use. Under the Executive Order, agencies review existing regulations to determine if they are achieving the Order's policy goals. This interim report, evaluating the effectiveness of occupant protection, based on data available in May 1992, is issued in response to the exceptional public interest in the occupant protection program.

The report is based on statistical analyses of accident data from the Fatal Accident Reporting System and the National Accident Sampling System, reviews of individual accident cases, and observational surveys of safety belt use on the road. Although there are not enough data for statistically significant results on every evaluation question, it is already clear that the occupant protection program is saving thousands of lives:

- In 1983, the "baseline" year just before the occupant protection program began, national belt use was 14 percent, and no states had belt laws. By the end of 1991, 42 states and the District of Columbia had belt laws, and belt use ad climbed to 59 percent or more.
- Motorized automatic shoulder belts without a disconnect feature have a use rate of 97 percent; motorized belts with a disconnect, 91 percent. The use rate for automatic non-motorized 3-point belts is 64 percent; for manual 3-point belts in air bag-equipped cars, 57 percent; and for manual belts in cars without automatic protection, 56 percent.
- The high use of motorized belts, however, is partially offset by low use of the manual lap belt accompanying the motorized system: 29 percent.
- Fatality risk of occupants in cars equipped with air bags plus manual belts (at 1991 use rates) is 23 percent lower than in "baseline" cars with manual belts at 1983 use rates. The risk in cars with motorized 2-point belts (without disconnect) is 16 percent lower than baseline; in cars with non-motorized 3-point automatic belts, 10 percent lower than baseline. All three are statistically significant fatality reductions relative to baseline, but there are not yet enough data for a definitive rank-ordering of the automatic systems.
- The overall fatality risk in 1991 cars at 1991 belt use rates is 16 percent lower than the baseline of manual-belt cars at 1983 use rates, with confidence bounds of 11 to 21 percent.
- Cars equipped with motorized 2-point belts (without disconnect) have significantly lower occupant ejection rates than cars with any other type of occupant protection. Cars with automatic 3-point belts have significantly lower ejection rates than cars with manual belts.
- Automatic occupant protection, when used, significantly reduces the risk of moderate and serious injuries.
- In summary, the combination of automatic occupant protection, state belt laws, and greater voluntary belt use have saved lives and reduced injury severity.

NHTSA welcomes public review of the evaluation study and invites the reviewers to submit comments about the data used in the report, the definition of "effectiveness," and the methods used for estimating effectiveness. The agency is interested in learning of any additional data that may be relevant to the evaluation of occupant protection, such as observational surveys of belt use (especially the use of manual lap belts in cars with automatic 2-point belts), analyses of individual accident cases, and information on the cost or consumer price of automatic occupant protection.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(15 U.S. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50 and 501.8.)

Issued on: July 2, 1992.

**Donald C. Bischoff,**

*Associate Administrator for Plans and Policy.*

[FR Doc. 92–15901 Filed 7–7–92; 8:45 am]

BILLING CODE 4910-59-M

## Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applicants for exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in

the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessels, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before August 7, 1992.

**ADDRESS COMMENTS TO:** Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

**FOR FURTHER INFORMATION:** Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

## NEW EXEMPTIONS

| Application No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 10819-N | Klean Brite Laboratories, Inc., Rochester, NY. | 49 CFR 176.67(i), 176.67(j) | To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (Mode 2.) |
| 10820-N | Clean Earth Manufacturing, Inc., Birmingham, AL. | 49 CFR 173.154, 173.245(b), 49 CFR | To authorize the manufacture, mark and sell of non-DOT specification roll-on and roll-off non DOT packaging for shipment of certain waste solid, waste corrosive material and corrosive solids as defined in CFR, classed as corrosive material and solid or sludge materials classed as flammable solids. (Mode 1.) |
| 10821-N | MedX, Inc., Miami, FL | 49 CFR 173.197 | To authorize shipment of certain regulated medical waste contained in plastic bags overpacked in steel bulk roll-off type containers secured to a specially designed truck. (Mode 1.) |
| 10822-N | Gulf and Caribbean Cargo, Inc., Orlando, FL. | 49 CFR 172.101, 173.27, 175.75 | To authorize the transportation of Class A explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.) |
| 10823-N | Comdyne I, Inc., West Liberty, OH | 49 CFR 173.302(a)(1), 173.304(a)(1), 175.3. | To manufacture, mark and sell non-DOT specification cylinders for use in transportation of certain flammable and non-flammable compressed gases. (Modes 1, 3, 4, 5.) |
| 10824-N | Sun Refining and Marketing Company, Philadelphia, PA. | 49 CFR 173.31(c)(1), 173.31(c)(5) | To authorize the one-time shipment of DOT 111A100W1 tank cars, containing residual amounts of corrosive materials, which are out of retest. (Mode 2.) |
| 10825-N | Allied-Signal Inc., Morristown, NJ | 49 CFR 173.29(a), 173.420 | To authorize the one-time shipment to two 480m cylinders with localized thin spots on the wall, containing residual amounts of radioactive material to be purged and cleaned. (Mode 1.) |
| 10826-N | Browning-Ferris Industries, Houston, TX | 49 CFR 173.197, 259.30, CFR 172.101 | To authorize shipment of container regulated medical waste contained in plastic bags overpacked in steel bulk roll-off type container secured in specifically designed trucks. (Modes 1, 2.) |
| 10827-N | Shannon Packaging Co., Covina, CA | 49 CFR 173.12(b)(1), 49 CFR Part 107 | To authorize the manufacture, mark and sell of non-DOT specification quad-wall fiberboard boxes equipped with polyethylene film and aluminum foil liner specifically designed for use in transporting lab packs. (Mode 1.) |
| 10828-N | Enicon, Division of America-Kart Corp., Bristol, IN. | 49 CFR 173., 173.119, 173.125, 173.245, 173.249, 173.249(a), 173.250(a), 173.256, 173.257, 173.262, 173.263, 173.264, 173.265, 173.266, 173.269, 173.272, 173.276, 173.277, 173.283, 173.287, 173.288, 173.289, 173.292, 173.297, 173.299(a),. | To manufacture, mark and sell a composite IBC with a capacity up to 340-gallons, consisting of a rotationally molded polyethylene inner receptacle within a wire frame outer casing, for the shipment of certain hazardous materials. (Mode 1, 2.) |
| 10829-N | Amoco Pipeline Co., Levelland, TX | 49 CFR 173.119, 173.304, 173.315 | To authorize the transportation of a trailer mounted mechanical displacement meter prover for use in transporting various commodities classed as flammable liquid or flammable gas. (Mode 1.) |
| 10831-N | Trinity Industries, Inc., Dallas, TX | 49 CFR 173.429(a)(1) | To authorize the transportation of non-DOT specification cylinders having welds that are not in conformance with ANSI-14.1-1971 but do comply with ASME Section VIII, Division 1 Standards for transporting uranium hexafloride, classed as radioactive material. (Mode 1.) |
| 10832-N | Morton International Automotive Safety, Products Ogden, VT. | 49 CFR 173.56, 173,57 | To authorize the transportation of unclassified generats, inflators and components contained in specially designed fiberboard, plastic or metal containers as appropriate or the various sub-assemblies to be shipped as hazardous waste to disposal plant. (Mode 1.) |
| 10833-N | Health Care Waste Services, Corp., Bronx, NY. | 49 CFR 173.197 | To authorize shipment of certain regulated medical waste contained in plastic bags overpacked in steel bulk roll-off type containers secured to specifically designed trucks. (Mode 1.) |
| 10834-N | Ethyl Corp., Baton Rouge, LA | 49 CFR 173.249 | .To authorize a one-time shipment of bromine in a DOT specification IM-101 portable tank which is filled to less than the required 88% of the volume of the tank. (Mode 1.) |
| 10835-N | Shell Oil Co., Houston, TX | 49 CFR 17.21(b) and (c), 173.22(a)(2), 173.28(c)(2). | To authorize the transportation of a 1100 gallon non-DOT specification trailer mounted meter prover tank with residual vapors of flammable or combustible liquid. (Mode 1.) |

NEW EXEMPTIONS—Continued

| Application No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 10636-N | Fibre Drum Technical Council, Washington, DC. | 49 CFR 172.101 | To authorize the manufacture, mark and sale of open-head fiber drums not to exceed 55 gallon capacity which do not meet the performance oriented packaging standards required under Docket HM-181 for the shipment of certain hazardous materials. (Modes 1, 2.) |
| 10637-N | Mini Mobile Systems, Inc., Boca Raton, FL. | 49 CFR 173.197 | To authorize the manufacture, mark and sale of a molded fiberglass bulk roll-off type container for the shipment of certain regulated medical wastes. (Mode 1.) |

*Note:* Notice of Application No. 10793-N Wilco Corporation that appeared at Page 27066 of the Federal Register for June 17, 1992, should have appeared 10812-N Wilco Corporation.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on July 1, 1992.

**Suzanne Hedgepeth,**

*Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 92-15869 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-60-M

## Office of Hazardous Materials Safety; Applications for Modifications of Exemptions or Applications To Become a Party to an Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before July 23, 1992.

**ADDRESS COMMENTS TO:** Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION:** Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

| Application No. | Applicant | Renewal of exemption |
|---|---|---|
| 1862-X | Greer Hydraulics, Inc., Santa Fe Springs, CA (see footnote 1). | 1862 |
| 7259-X | Monsanto Chemical Co., St. Louis, MO (see footnote 2). | 7259 |
| 7765-X | Carleton Technologies, Inc., Orchard Park, NY (see footnote 3). | 7765 |
| 8214-X | Morton International, Inc., Ogden, UT (see footnote 4). | 8214 |
| 8901-X | Douglas Chemical Co., Liberty, MO (see footnote 5). | 8901 |
| 9108-X | Trojan Corp., Spanish Fork, UT (see footnote 6). | 9108 |
| 10171-X | Eurotainer USA, Somerset, NJ (see footnote 7). | 10171 |
| 10172-X | Hoover Group, Inc., Beatrice, NE (see footnote 8). | 10172 |
| 10785-X | Kay-Ray/Sensall, Inc., a subsidiary of Rosemount, Mt. Prospect, IL (see footnote 9). | 10785 |
| 10830-X | Allied-Signal Inc., Morristown, NJ (see footnote 10). | 10830 |

(*1*) To modify the exemption to provide for change in design pressure of welded accumulators having a capacity not over 1 gallon, not exceeding 3000 psig and provide foritional accumulators not to exceed 5 gallons.

(*2*) To authorize shipment of phosphorus pentasulfide in DOT Specification 56 portable tank having a gross weight up to 8200 pounds.

(*3*) To authorize non-DOT specification missile gas storage systems containing nitrogen or helium nonflammable gas, to be refilled a maximum of 10 times based on proof testing and to modify inspection and verification criteria.

(*4*) To modify the exemption to increase the gram capacity and provide for additional air bag module.

(*5*) To modify the exemption to provide for cargo vessel as an additional mode of transportation for use in transporting Class B poisons contained in polyethylene bottles overpacked in fiberboard boxes.

(*6*) To authorize use of contract carriers for shipment of initiating explosive, Class A in composite type packaging.

(*7*) To modify the exemption to provide for additional commodities classed as non-flammable gas for shipment in non-DOT specification IMO Type 5 portable tanks.

(*8*) To modify the exemption to provide for cargo vessel as an additional mode of transportation for use in transporting oxidizers in portable tanks.

(*9*) To reissue an exemption originally issued on an emergency basis to authorize manufacture, marking and sale of radiation detectors containing cylinders of compressed nonflammable or poisonous gas.

(*10*) To reissue exemption originally issued on an emergency basis to authorize the return shipment of numerous DOT specification cylinders, containing certain refrigerant gases, which are equipped with relief services that do not meet the specification.

| Application No. | Applicant | Parties to exemption |
|---|---|---|
| 2000-P | Praxair, Inc., Danbury, CT. | 2000 |
| 2582-P | Praxair, Inc., Danbury, CT. | 2582 |
| 3004-P | Bitec Southeast, Inc., Tampa, FL. | 3004 |
| 3004-P | Praxair, Inc., Danbury, CT. | 3004 |
| 4575-P | Praxair, Inc., Danbury, CT. | 4575 |
| 4884-P | Bitec Southeast, Inc., Tampa, FL. | 4884 |
| 5643-P | Praxair, Inc., Danbury, CT. | 5643 |
| 5704-P | Rockwell International Corp., Canoga Park, CA. | 5704 |
| 5923-P | Praxair, Inc., Danbury, CT. | 5923 |
| 6349-P | Praxair, Inc., Danbury, CT. | 6349 |
| 6530-P | Bitec Southeast, Inc., Tampa, FL. | 6530 |
| 6530-P | Praxair, Inc., Danbury, CT. | 6530 |
| 6543-P | Praxair, Inc., Danbury, CT. | 6543 |
| 6563-P | Bitec Southeast, Inc., Tampa, FL. | 6563 |
| 6691-P | Bitec Southeast, Inc., Tampa, FL. | 6691 |
| 6691-P | Praxair, Inc., Danbury, CT. | 6691 |
| 6765-P | Praxair, Inc., Danbury, CT. | 6765 |
| 6805-P | Bitec Southeast, Inc., Tampa, FL. | 6805 |
| 6805-P | Praxair, Inc., Danbury, CT. | 6805 |
| 6810-P | U.S. Department of Energy; Washington, DC. | 6810 |
| 7268-P | Praxair, Inc., Danbury, CT. | 7268 |
| 7274-P | Praxair, Inc., Danbury, CT. | 7274 |
| 7451-P | Praxair, Inc., Danbury, CT. | 7451 |
| 7835-P | Bitec Southeast, Inc., Tampa, FL. | 7835 |
| 7835-P | Praxair, Inc., Danbury, CT. | 7835 |
| 7846-P | Praxair, Inc., Danbury, CT. | 7846 |
| 8013-P | Bitec Southeast, Inc., Tampa, FL. | 8013 |
| 8013-P | Praxair, Inc., Danbury, CT. | 8013 |
| 8156-P | Bitec Southeast, Inc., Tampa, FL. | 8156 |
| 8156-P | Praxair, Inc., Danbury, CT. | 8156 |
| 8526-P | Rockwell International Corp., Los Angeles, CA. | 8526 |
| 8556-P | Praxair, Inc., Danbury, CT. | 8556 |
| 8862-P | Bitec Southeast, Inc., Tampa, FL. | 8862 |
| 8862-P | Praxair, Inc., Danbury, CT. | 8862 |
| 8915-P | Praxair, Inc., Danbury, CT. | 8915 |
| 8923-P | Bitec Southeast, Inc., Tampa, FL. | 8923 |
| 8923-P | Praxair, Inc., Danbury, CT. | 8923 |
| 8943-P | Ross Transportation Services, Inc., Grafton, OH. | 8943 |
| 8944-P | Bitec Southeast, Inc., Tampa, FL. | 8944 |
| 8944-P | Praxair, Inc., Danbury, CT. | 8944 |
| 9034-P | Praxair, Inc., Danbury, CT. | 9034 |
| 9047-P | Bitec Southeast, Inc., Tampa, FL. | 9047 |
| 9047-P | Praxair, Inc., Danbury, CT. | 9047 |
| 9346-P | Niagara Mohawk Power Corp., Syracuse, NY. | 9346 |
| 9414-P | Bitec Southeast, Inc., Tampa, FL. | 9414 |
| 9414-P | Praxair, Inc., Danbury, CT. | 9414 |
| 9419-P | Bitec Southeast, Inc., Tampa, FL. | 9419 |
| 9436-P | Praxair, Inc., Danbury, CT. | 9436 |
| 9485-P | Southeastern Fumigants, Inc., Dawson, GA. | 9485 |
| 9507-P | Bitec Southeast, Inc., Tampa, FL. | 9507 |
| 9507-P | Presto Technologies, Inc., West Hartford, CT. | 9507 |
| 9507-P | Praxair, Inc., Danbury, CT. | 9507 |
| 9710-P | Praxair, Inc., Danbury, CT. | 9710 |
| 9723-P | Tri-State Motor Transit Co., Joplin, Mo. | 9723 |
| 9723-P | Greenfield Environmental, Carlsbad, CA. | 9723 |
| 9723-P | FCI Transport, Inc., Freehold, NJ. | 9723 |
| 9946-P | Praxair, Inc., Danbury, CT. | 9946 |
| 10001-P | Bitec Southeast, Inc., Tampa, FL. | 10001 |
| 10001-P | Praxair, Inc., Danbury, CT. | 10001 |
| 10022-P | Bitec Southeast, Inc., Tampa, FL. | 10022 |
| 10022-P | Praxair, Inc., Danbury, CT. | 10022 |
| 10184-P | Bitec Southeast, Inc., Tampa, FL. | 10184 |
| 10184-P | Praxair, Inc., Danbury, CT. | 10184 |
| 10239-P | Jones-Hamilton Co., Newark, CA. | 10239 |

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on July 1, 1992.

**J. Suzanne Hedgepeth,**

*Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 92-15870 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF THE TREASURY

### Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on August 4 and 5, 1992, of the following debt management advisory committee:

Public Securities Association
Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session on August 4 and the preparation of a written report to the Secretary of the Treasury on August 5, 1992.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92-463.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the

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public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: July 1, 1992.

John C. Dugan,

*Assistant Secretary (Domestic Finance).*

[FR Doc. 92-13911 Filed 7-7-92; 8:45 am]

BILLING CODE 4810-25-M

## UNITED STATES INFORMATION AGENCY

### Regional Scholar Exchange Program

**AGENCY:** United States Information Agency.

**ACTION:** Notice, request for proposals.

**SUMMARY:** The United States Information Agency (USIA) invites applications for academic exchanges from U.S. not-for-profit organizations engaged in international exchange programs and research institutes to conduct research exchanges in the humanities and social sciences of pre- and/or post-doctoral students and scholars with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Both existing and new projects are eligible. These exchanges are subject to the availability of funding for Fiscal Year 1993.

Support is offered for two categories: Category A, Short and/or Long-term Research Exchanges in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Jajikistan, Turkmenistan, Ukraine, and Uzbekistan; and Category B, Short and/or Long-term Research Exchanges in Estonia, Lativa and Lithuania.

Each category has separate conditions and requirements which are stated in this announcement. Institutions may address one or both categories, but must submit a separate proposal for each category. Proposals for Category A may include all 12 countries, a regional grouping of countries, or one country. Proposals for Category B may include one, two or three of the listed countries. The goal of the program is to ensure the broadest geographic distribution in the Commonwealth of Independent States and Georgia, the Baltics, and the U.S. Programs should be for two-way exchanges, although they do not need to be evenly reciprocal. Organizations may request funding for one or both sides of the exchange. Proposals for programs that do not fit into either Category A or B will be considered technically ineligible.

**DATES:** Deadline for proposals: One original and 14 copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, July 31, 1992. Faxed documents will not be accepted, nor will documents postmarked on July 31, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the above deadline.

Grants awarded to organizations through this competition should begin no earlier than November 15, 1992 and may extend through August 31, 1994, but must be completed by December 31, 1994. Proposals for exchanges ending after December 31, 1994 will be considered technically ineligible.

Duration: Proposals for both categories must provide for at least three-month programs for participants, but must not exceed one year.

**ADDRESSES:** The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Reference: Regional Scholar Exchange Program, Office of Grants Management, E/XE, room 357, 301 4th Street, SW., Washington, DC 20547.

**FOR FURTHER INFORMATION CONTACT:** Interested U.S. organizations should write or call: Mr. Ted Kniker or Ms. Mara Moldwin at the U.S. Information Agency, 301 4th Street, SW., Academic Exchanges Division, European Branch, E/AEE, room 208, Washington, DC 20547; telephone (202) 619-5341, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

**SUPPLEMENTARY INFORMATION:** Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The purpose of the Act is to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations, and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world. Pursuant to the Bureau of Educational and Cultural Affairs' authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement.

### Overview

The Regional Scholar Exchange Program is intended to promote scholarly research by funding U.S. academic exchanges of pre- and postdoctoral students and scholars (including graduate students, junior faculty, and senior scholars) with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Participants must be citizens of the United States, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan (Category A) or citizens of the United States, Estonia, Latvia, or Lithuania (Category B). Within the spirit of the Mutual Education and Cultural Exchange Act of 1961, the purposes of the Regional Scholar Exchange Program are (1) to provide access by US scholars to research sources in the countries listed above, (2) to provide access by scholars from these countries to research sources in the United States, and (3) to encourage scholarly cooperation in the humanities and social sciences.

### Guidelines

*Language qualifications*

For both categories, foreign participants must have sufficient fluency in English and U.S. participants must have sufficient fluency in the language of the host country to be able to conduct research. Escort-interpreters will not be provided, nor funded by USIA.

*Institutional Commitment*

Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign partners' directors, or in the form of a signed agreement by the same persons. Letters of endorsement must describe each institution's or organization's commitment and make specific reference to the proposed program, each institution's activities in support of that program, and each institution's ability to provide access to archival or manuscript repositories. Documentation of support from governmental ministries or academies

will be acceptable when appropriate, replacing individual documentation from each foreign educational institution involved. Applicants must submit this documentation as part of the completed application. Applying institutions are expected to make their own arrangements with the appropriate foreign institutions. National ministries of educational and culture and academies of science are included as eligible foreign partner institutions.

Authorization to work in archives, manuscript repositories, and to use research materials is critical for U.S. scholars. Proposals should include evidence of such authorization.

*Proposal Narrative*

The proposal narrative describing the program must conform to the Guidelines (E/AEE–92–03) and must include any subgrants to be issued. All narratives must describe in detail the abilities of the participating organizations to adapt to the changing exchanges environments in the countries eligible for participation in this program..

*Participant Selection*

The proposal must include detailed descriptions of the selection processes of participants, both foreign and American. This must include procedures by which selecting officials are named. A goal for this program is to select students and scholars from geographically diverse backgrounds in the home country and place them in wide geographic distribution in the host country.

Categories A and B (Short and Long-term Research Exchange): All scholars, at a minimum, must be Ph.D. candidates and currently enrolled at a university. Applying organizations must demonstrate the ability to conduct competitive award programs that are national in scope. Programs must be based on an open, nationwide competition, incorporating peer group review mechanisms.

The selection process for U.S. participants must be merit based. Selection criteria for the U.S. participants must be based on: (1) Academic rigor of the participant's proposed project, including a demonstration of the need to study abroad; (2) feasibility of the participant's proposed project, including time-frame and methodology; (3) language proficiency in the language of the host country by the participant; and (4) a solid foundation of background knowledge and research through general literature available in Western repositories.

The selection process for foreign researchers should be merit based and the result of a country-wide or multi-country wide competition. Selection criteria for the foreign participants should be based on: (1) Academic rigor of the participant's proposed project, including a demonstration of the need to study abroad; (2) feasibility of the participant's proposed project, including time-frame and methodology; (3) English language proficiency by the participant; and (4) a solid foundation of background and research through general literature available in the repositories of the foreign region.

*Orientation Programs*

Participants should be provided with a substantive and comprehensive orientation to the countries of their visits, and proposals should described these orientation programs, including costs, in detail.

**Proposed Budget**

Funding anticipated for Category A is estimated at $1,300,000, which includes all program and administrative costs. Funding anticipated for Category B is estimated at $240,000, which includes all program and administrative costs. The following budgetary guidance applies to both Categories A and B: Project awards to U.S. organizations will be made in a wide range of amounts. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. No more than 10% of the request for funding should be designated for short term research awards. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000, and proposed budgets should not exceed this amount. All organizations must submit a comprehensive line-item budget, the details and format of which are contained in the application packet. The budget should list all sources of support for the program fiscal year 1993, including both cash and in-kind contributions.

**Allowable Costs**

Grants-funded items of expenditure will be limited to the following categories:

Categories A and B:

—International Travel (via American flag carrier);
—Domestic travel;
—Maintenance (lodging, meals, incidental expenses, ext.);
—Stipend (not to exceed $250 per month);
—Academic program costs (e.g. book allowance);
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc.; limited to $150 per participant);
—Excursionary travel and lodging for cultural enrichment (not to exceed $200.00 per participant);
—Administration (salaries, benefits, communications, other direct costs and indirect costs), including administration of tax withholding and reporting as required by Federal, State and local authorities and in accordance with relevant tax treaties.[1];
—Taxes and visa fees;
—Application should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including tuition waivers and overseas partner contributions.

**Review Process**

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet, including the Guidelines for Preparing Proposals (EAEE–92–03). Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

**Review Criteria**

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of program plan—including academic rigor and excellence, thorough conception of project, demonstration of meeting participants' needs, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Reasonable, feasible, and flexible objectives—the capacity of the organization to conduct the program. Proposals should clearly demonstrate

[1] Please Note: It is required that requested administrative funds, including indirect costs and administrative expenses for orientation, not exceed 20 percent of the total amount requested from USIA; administrative expenses should be cost-shared.

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how the institution will meet the program objectives and plan.

c. Track record—relevant Agency and outside assesaments of the organization's experience with international programs; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier effect/impact—the positive effect of the program on long-term mutual understanding, the inclusion of maximum sharing of information, and the establishment of long-term institutional and individual linkages.

e. Value of U.S.-partner country relations—the assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner country.

f. Cost effectiveness—greatest return on each grant dollar, degree of cost-sharing exhibited.

g. Diversity and pluralism—preference will be given to proposals that demonstrate efforts to include participants from diverse regions, and of different socio-economic and ethnic backgrounds, to the extent feasible for the applicant institutions.

h. Adherence of proposed activities to the criteria and conditions described above.

i. Institutional commitment as demonstrated by financial and other support to the program.

j. Follow-on Activities—proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

k. Evaluation plan—proposals should provide a plan for evaluation by the grantee institution.

**Notice**

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this request for proposals does not constitute an award commitment on the part of the government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

**Notification**

All applicants will be notified in writing of the results of the review process on or about November 1, 1992. All funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: June 29, 1992.

**Barry Fulton,**

*Deputy Associate Director, Bureau of Educational and Cultural Affairs.*

[FR Doc. 92-15894 Filed 7-7-92; 8:45 am]

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**Corr**

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**DEPARTM
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**§ 412.98**

1. On p
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**§ 412.232**

2. On p
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**§ 412.331**

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# Corrections

Federal Register
Vol. 57, No. 131
Wednesday, July 8, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

**DEPARTMENT OF THE HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Parts 412 and 413**

**[BPD-756-P]**

**RIN 0938-AF79**

## Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1993 Rates

*Correction*

In proposed rule document 92-12635 beginning on page 23618 in the issue of Thursday, June 4, 1992, make the following corrections:

**§ 412.98 [Corrected]**

1. On page 23680, in the third column, in § 412.98(a), in the sixth line, "be" should read "a".

**§ 412.232 [Corrected]**

2. On page 23683, in the first column, in § 412.232, in amendatory instruction 4., "§ 421.232," should read "In § 412.232".

**§ 412.328 [Corrected]**

3. On page 23684, in the third column, the amendatory instruction appearing before § 412.328 should be designated "3.".

4. On page 23685, in the first column, in § 412.328(b)(2), the third line should read "capital costs per discharge, a discharge".

5. On the same page, in the same column, in § 412.328(c)(1), in the fifth line, "on" should read "of".

**§ 412.331 [Corrected]**

6. On page 23686, in the first column in § 412.331(b)(1)(ii), in the ninth line, after "reporting" insert "period (or combination of cost reporting".

**Addendum [Corrected]**

7. On page 23723, in Table 4a, in the entry for "Cincinnati", the second column should read "0.9821".

8. On page 23745, in Table 6a, in the entry for "Diagnosis code 099.50", in the column designated "DRG", insert "358, 359, 368"; in the column designated "MDC", remove "358, 359, 368" and insert "13"; and in the column designated "CC", remove "13".

9. On page 23746, in Table 6a, in the entry for "Diagnosis code 482.31", in the third entry, in the column designated "DRG", insert "489"; in the column designated "MDC", remove "489" and insert "25"; in the column designated "CC", remove "25"; and in the column designated "Description", remove "D".

10. On page 23746, in Table 6a, in the entry for "Diagnosis code 524.11", in the column designated "DRG", "197" should read "187".

11. On page 23747, in Table 6a, in the entry for "Diagnosis code 710.5", in the column designated "MDC", "09" should read "08".

12. On page 23747, in Table 6B, in the entry for "Procedure code 81.97", the column entries for "MDC" and "DRG" should read:

| MDC | DRG |
|---|---|
| 08 | 233, 234 |
| 21 | 442, 443 |
| 24 | 486 |

13. On page 23748, in Table 6C, in the entry for "Diagnosis code 099.4", in the column designated "DRG", insert "358, 359, 368"; in the column designated "MDC", remove "358, 359, and 368" and insert "13"; and in the column designed "CC", remove "13".

14. On the same page, in Table 6C, in the entry for "Diagnosis code 320.8", the column entries for "MDC" and "DRG" should read:

| MDC | DRG |
|---|---|
| 01 | 20 |
| 15 | 387, 389[4] |

15. On page 23748, in Table 6D, in the entry for "Procedure code 46.12", the column entries for "MDC" and "DRG" should read:

| MDC | DRG |
|---|---|
| 06 | 148, 149 |
| 17 | 400, 405, 407 |
| 21 | 442, 443 |
| 24 | 486 |

16. On pages 23748 and 23749, in Table 6E, in the following "Diagnosis codes", in the column designated "CC", insert "Y": "200.10 through 481" and "665.10 through 665.14". In addition, in "Diagnosis code 201.20", in the "Description" column, "Hodgkin's" was misspelled; in "Diagnosis code 201.90", in the "Description" column, insert "unspecified," after "disease,"; in "Diagnosis code 202.90", in the "Description" column, "histiocytic" was misspelled; in "Diagnosis code 481", the column designated "DRG", should read "89, 90, 91"; in "Diagnosis code V34.00", in the "Description" column, after "cesarean" add "delivery"; in 'Diagnosis code V35.00", in the "Description" column, "cesarean" was misspelled.

17. On page 23749, in Table 6F, in the entry for "Procedure Code 81.59", the column entries for "MDC" and "DRG" should read:

| MDC | DRG |
|---|---|
| 08 | 233, 234 |
| 21 | 442, 443 |
| 24 | 486 |

**Appendix A [Corrected]**

18. On pages 23819 and 23820, in Table I, make the following changes:

a. In the entry for "Large urban areas (populations over 1 mission)", the fifth figure column should read "-0.2".

b. In the entry for "Urban Hospitals", the fifth figure column should read "-0.1"; in the entry for "Urban Hospitals, 300-499" the third figure column should read "-0.2" and the fifth figure column should read "-0.1"; and in the entry for "Urban Hospitals, 500 or more beds", the fifth figure column should read "-0.4".

c. In the entry for "Rural Hospitals", the second figure column should read "-0.1"; in the entry for "Rural Hospitals, 0-49 beds", the second figure column should read "-0.2"; in the entry for "Rural Hospitals, 50-99 beds", the second figure column should read -0.1"; and in the entry for "Rural Hospitals, 200 or more beds", the third figure column should read "-0.4".

d. In the entry for "Urban by Region: New England", the second figure column should read "-0.2".

e. In the entry for "Disproportionate share hospitals (DSH): Other rural DSH hospitals, Fewer than 100 beds", the second figure column should read "-0.2".

19. On page 23826, in Table III, in the first column, in the seventh line, "Hospitals" was misspelled.

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Part II

# Department of Health and Human Services

**Administration for Children and Families**

**Runaway and Homeless Youth Program, Financial Assistance for FY 1992 Availability and Request for Applications; Notice**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**[Program Announcement No. 93550.92-3]**

## Runaway and Homeless Youth Program, Transitional Living Program (TLP) for Homeless Youth, Availability of Financial Assistance for FY 1992 and Request for Applications

**AGENCY:** Administration on Children, Youth, and Families (ACYF), Administration for Children and Families (ACF).

**ACTION:** Announcement of availability of financial assistance and request for applications for transitional living projects for homeless youth.

**SUMMARY:** The Family and Youth Services Bureau of the Administration on Children, Youth and Families announces the availability of fiscal year 1992 funds for competing new discretionary grants under the Transitional Living Program (TLP) for Homeless Youth (Part B of the Runaway and Homeless Youth Act). The purposes of this program are to: (1) Provide shelter, skill training and support services in local communities to assist homeless youth in making a smooth transition to self-sufficiency and to prevent long-term dependency on social services; and (2) provide technical assistance to grantees which provide these services. Technical assistance to TLP grantees is being provided through a separate mechanism and, therefore, is not covered under this announcement.

This announcement contains all of the necessary application materials to apply for a TLP grant. Approximately $1,900,000 is available to support grant awards under this announcement. An estimated nine grants will be awarded.

**DATES:** The deadline or closing date for receipt of all applications under this announcement is: August 24, 1992.

**ADDRESSES:** Application receipt point: Transitional Living Program for Homeless Youth, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 200 Independence Avenue, SW., room 341–F.2, Hubert H. Humphrey Building, Washington, DC 20201. Attn: William J. McCarron. ACF–92–3–ACYF/Transitional Living.

**FOR FURTHER INFORMATION CONTACT:** Pamela A. Johnson, Administration on Children, Youth and Families, Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013, Telephone: (202) 245–0049.

**SUPPLEMENTARY INFORMATION:**

### Part I. General Information

*A. Program Purpose*

The Transitional Living Program (TLP) for Homeless Youth is authorized under part B, section 321(a) of the Runaway and Homeless Youth Act (the Act), 42 U.S.C. 5714–1 *et seq.* The specific purposes of the TLP are to:

(1) Provide stable, safe living accommodations while a homeless youth is a program participant;

(2) Provide the services necessary to assist homeless youth in developing both the skills and personal characteristics needed to enable them to live independently;

(3) Provide education, information and counseling aimed at preventing, treating and reducing substance abuse among homeless youth;

(4) Provide homeless youth with appropriate referrals and access to medical and mental health treatment; and

(5) Provide services and referrals necessary to assist youth in preparing for and obtaining employment.

Funds available under Part B of the Act are to be used to enhance the capacities of youth-serving agencies to effectively address the service needs of homeless older adolescents and young adults. This program was authorized by Congress to support community-based efforts designed to foster a positive transition to self-sufficient living for homeless youth.

For the purposes of this Program, those eligible for services include youth who are "truly" homeless (having no legal domicile) and are living on the street or under other unsafe conditions; those who have been ejected from their families; or those who have become ineligible for services under the jurisdiction of an institutional social service system. This program is not designed to serve youth currently under the jurisdiction of a State or local probation, parole, or child welfare agency or who are otherwise wards of the State.

The TLP affords youth service agencies with an opportunity to serve homeless youth in a manner which is comprehensive and directed towards ensuring a successful transition to self-sufficiency. The TLP also improves the availability of comprehensive transitional living services for homeless youth, which reduces the risk of exploitation and danger to which these youth are exposed while living on the streets without positive economic or social supports.

The overall purpose of the TLP is to support programs which assist homeless youth in making a successful transition to self-sufficient living and to prevent long-term dependency on social services.

*B. Definitions*

For the purposes of this program announcement, the following definitions apply:

(1) *Homeless youth* means an individual who is not less than 16 years of age and not more than 21 years of age; for whom it is not possible to live in a safe environment with a relative; and who has no other safe alternative living arrangement. (section 321(b)(1) of the Act)

(2) *Transitional living youth project* means a project that provides shelter and services designed to promote transition to self-sufficient living and to prevent long-term dependency on social services. (section 321(b)(2) of the Act)

(3) *Community-based* means located within the community and maintained with community and consumer participation in the planning, operation, and evaluation of the programs.

(4) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands (Palau).

*C. Background*

The Family and Youth Services Bureau (FYSB) within the Administration on Children, Youth and Families (ACYF) administers programs that target services to at-risk youth. The TLP specifically targets services to homeless youth. While all adolescents are faced with adjustment issues as they approach adulthood, homeless youth experience more severe problems and are at greater risk in terms of their ability to successfully make the transition to independent living. Their basic human needs (shelter, food, clothing) are not being met, nor are their developmental needs receiving adequate attention. Moreover, homeless youth lack a supportive, safe environment in which they can develop a positive sense of identity and self-sufficiency. An individual must have a sense of continuity of experiences in order to connect what they were as a child to what they are becoming as an adult. Homeless youth, who lack a stable family environment to provide this continuity, are in need of a support system that will assist them in making

the major transition to adulthood and independent living.

It is estimated that about one-fourth of the youth served by runaway and homeless youth programs are homeless. This means that many of the youth served cannot return home or move to another safe living arrangement with a relative, in most cases because of severe family dysfunction. Other homeless youth have "aged out" of the child welfare system and are no longer eligible for foster care. These young people are often lacking both the skills and the personal characteristics which enable them to live independently. Therefore, without social and economic supports, homeless youth are not likely to make a successful transition to independence, and are at high risk of being involved in dangerous lifestyles and problematic behaviors such as drug and alcohol abuse and prostitution. More than two-thirds of homeless youth report using drugs or alcohol, and many homeless youth have experienced long-term physical and sexual abuse in their families.

Homeless youth need a range of services to develop the skills necessary to make the transition from homelessness to self-sufficiency. Since 1978, homeless youth have been an identified population eligible to receive services under the Runaway and Homeless Youth Act. It has become apparent over the years that the service goals for homeless and runaway youth are quite different. For runaway youth, family reunification is often desirable and appropriate; for homeless youth, reunification is typically not feasible. In many instances, programs serving these populations are able to provide only limited assistance to homeless youth, whose needs are more complex and long-term than those of runaway youth. Part B of the Runaway and Homeless Youth Act is intended to address the unique problems and needs of homeless youth.

Throughout the 1980's, discretionary funds under the Runaway and Homeless Youth Act were used to support the development of model programs and practices to serve the needs of homeless youth. Several different types of transitional living program models have been developed and effectively implemented to serve homeless youth. These models have been replicated in other communities where the need exists and resources are available.

As the TLP enters its third year of operation, ACYF has implemented several support activities designed to enhance grantee capacity and effectiveness. These activities include technical assistance and training for service providers, the development of a management information system and a national evaluation study to assess the effectiveness of the services provided and their impact on the youth served. Grantees funded under this announcement are expected to participate fully in these and other similar efforts which may be developed.

Grants awarded under the Transitional Living Program for Homeless Youth are authorized by the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690), formerly the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93–415) and is codified under Part B of the Runaway and Homeless Youth Act (the Act), 42 U.S.C. 5714–1 *et seq.*

All interested applicants should be aware that, in implementing the Transitional Living Program for Homeless Youth, certain sections of parts C and D of the Runaway and Homeless Youth Act are applicable, and are reflected throughout this announcement as necessary. In part C, section 341 (42 USC 5714a) requires the Department to provide informational assistance to potential grantees. Section 342 (42 USC 5714b) permits the lease of surplus Federal property for use as shelter facilities by runaway and homeless youth centers or by transitional living programs. Part D sets forth the Administrative Provisions of the Act. The TLP grantees must also meet the requirements of section 362 (42 USC 5716) on the Federal share of funds and section 363 (42 USC 5731) on the confidentiality of client records.

Grants awarded under this program may not be used as matching funds (non-Federal share) for other Federal programs or to supplant funds available under the Title IV–E Foster Care Independent Living Initiatives or any other Federally-funded program.

*D. Additional Resources*

The Administration on Children, Youth and Families, through an Interagency Agreement with the Public Health Service, DHHS, is working to improve access to medical services for runaway and homeless youth. The Bureau of Health Care Delivery and Assistance (BHCDA) of the Public Health Service, with funds made available under the Stewart B. McKinney Homeless Assistance Act of 1987, has awarded grants to public and private non-profit organizations across the country to provide primary health care to homeless populations. These grantees are listed in appendix C. Applicants are encouraged to coordinate with these programs.

Also, the Office of Special Needs Assistance Programs within the Department of Housing and Urban Development (HUD) offers several housing programs which could benefit providers serving homeless populations including youth. These programs include the Transitional Housing Program which supports the development of innovative approaches to providing short-term (24 months or less) housing and support services to homeless persons who are capable of making the transition to independent living; and the Emergency Shelter Grants Program which, among other purposes, provides funds to meet the costs of operating shelters, essential social services to homeless individuals and services to help prevent homelessness. Under the Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) Program, particularly innovative approaches to satisfying the immediate and long-term needs of the homeless are supported through several categories of activities. These activities include, but are not limited to, grants for housing rehabilitation, supportive services, and operating costs for facilities to assist the homeless.

Finally, Title V of the Stuart McKinney Act establishes a procedure for the identification and use of Federal real property for facilities to assist the homeless. States, units of local government, and private non-profit organizations may submit applications for property determined suitable for homeless assistance use. This program is jointly administered by HUD, HHS, and the General Services Administration (GSA). HUD publishes a weekly **Federal Register** notice listing property availability. Homeless assistance providers have 30 days from the date a suitable property appears in the **Federal Register** to advise HHS of their interest in the property.

Private, non-profit organizations, in addition to States and units of local governments, are eligible to apply for these programs which may be a valuable resource for transitional living service providers. Specific information on application procedures and time lines as well as a more detailed explanation of these homeless assistance programs are available from the HUD Field Offices. The Field Office addresses are listed in appendix E.

Applicants are encouraged to contact these organizations and, where possible, access and coordinate with these resources.

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*E. Available Funds and Duration of Projects*

In FY 1992, the Administration on Children, Youth and Families (ACYF) expects to award approximately $1,900,000 in Transitional Living Program grants. The maximum Federal share for a 36-month project period is $600,000. An applicant should not request more than $200,000 for any 12-month budget period.

Grant applicants may request project periods of up to three years (Standard Form 424A, Rev. 4–88, Budget Information, Section E). Budget forecasts for the second and third years of the proposed project should be included as part of the application. The subsequent award of funds for a second or third year will depend upon satisfactory performance by the grantee (including timely submission of required reports) and on the availability of appropriated funds.

Grant awards will be made from late August 1992 through the end of September 1992. Due to the large volume of applications expected, applicants are asked to refrain from directly contacting the Family and Youth Services Bureau to inquire about the status of their application.

*F. Eligible Applicants*

Any State, unit of local government (or combination of units of local government), public or non-profit, private agency organization, institution or other non-profit entity is eligible to apply under this announcement. Federally recognized Indian Tribes are eligible to apply for grants as local units of government. Non-Federally recognized Indian Tribes and urban Indian organizations are eligible to apply for grants as private, non-profit agencies. Collaborative applications between State and community-based agencies and collaborative applications between two or more community-based agencies are also eligible for consideration under this grant program. However, only one entity may be designated as the direct recipient of Federal funds.

Non-profit applicants who have not previously received financial support from the Administration on Children, Youth and Families must submit proof of their non-profit status with their grant application. This can be done either by making reference to the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by submitting a copy of its letter from IRS (IRS Code, sections 501 (c)(3) and 501 (c)(6)). Non-profit applicants cannot be funded without acceptable proof of this status. Although for-profit entities may participate as sub-grantees, they do not qualify as applicants under this grant announcement.

Applicants are reminded that organizations awarded grants under Part B of the Act must be the primary service providers. Any subgrant or other support service arrangement must be identified and described in the application, including a description of the specific terms of the agreement and the signatures of the parties involved.

Applicants must indicate a willingness to cooperate with third party contractors funded by ACYF, including participation in any management information (data collection) and technical assistance system operated by ACYF.

Applicants are further reminded that TLP grants may be awarded to agencies which will operate a group home facility, *or* to agencies which will provide shelter through a series of host homes or supervised apartments, *or* to agencies which will employ a combination of these or other types of housing options. In general, shelter provision as it is currently practiced in the field can be described in the following manner. Host homes are facilities providing shelter, usually in the home of a family, under contract to accept homeless youth assigned by the TLP service provider, and are licensed according to State or local laws. A supervised apartment is a single unit dwelling or multiple unit apartment house operated under the auspices of the TLP service provider for the purpose of housing program participants. A group home is a single site residential facility designed to house TLP clients who may be new to the program and/or require a higher level of supervision. These dwellings operate in accordance with State or local housing codes and licensure.

*G. Applicant Share of Project Costs*

Section 362(a) of the Runaway and Homeless Youth Act requires that the grantee provide a non-Federal match that equals at least 10 percent of the Federal funds awarded under this announcement. For example, if the applicant requests $100,000 in Federal funds for one budget period (line 15a of Standard Form 424), then the non-Federal share (the sum of lines 15b, 15c, 15d, and 15e) must equal or exceed $10,000. For the TLP, the maximum Federal share over a 36-month project period is $600,000. Therefore, the total non-Federal share must equal or exceed $60,000.

The non-Federal portion may be cash, in-kind contributions or grantee incurred costs (including the facility, equipment or services) and must be project-related and allowable under the cost principles provided in 45 CFR parts 74 and 92, the Department's regulations on the Administration of Grants. Federal Independent Living Initiatives funds provided to States and services or other resources purchased with these funds may not be used to match Transitional Living Program grants.

**Part II. Requirements of the Runaway and Homeless Youth Act, Part B**

Section 322(a) of the Act requires that, to be eligible for assistance under this part, an applicant shall propose to establish, strengthen, or fund a transitional living youth project for homeless youth as defined in section 321(b)(2) and shall submit a plan in which the applicant agrees, as part of such project:

1. To provide, directly or indirectly, shelter (such as group homes, host family homes and supervised apartments) and services (including information and counseling services in basic life skills, interpersonal skill building, decision making, educational advancement, job attainment skills, and mental and physical health care) to homeless youth;

2. To provide such shelter and services to individual homeless youth throughout a continuous period not to exceed 540 days (18 months);

3. To provide, directly or indirectly, on-site supervision at each shelter facility that is not a family home;

4. To provide assurances that such shelter facility used to carry out such project shall have the capacity to accommodate not more than 20 individuals (excluding staff);

5. To provide and train a sufficient number of staff to ensure that all homeless youth participating in the project receive adequate supervision and services;

6. To provide a written transitional living plan for each youth, based on an assessment of such youth's strengths and needs, designed to help the transition from supervised participation in such a project to independent living or another appropriate living arrangement;

7. To ensure proper referrals of homeless youth to social service, law enforcement, educational, vocational, training, welfare, housing, legal services, and health care programs and to help integrate and coordinate such services for youth;

8. To provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the project;

9. To submit an annual report on the activities carried out with funds under this part, the achievements of the project by the applicant, and statistical summaries describing the number and characteristics of the homeless youth who participated in the project in the year for which the report is submitted;

10. To implement accounting procedures and fiscal control devices sufficient to account for income and expenditures of the project;

11. To submit an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant;

12. To keep adequate statistical records on the number and characteristics of homeless youth served and to ensure nondisclosure of the identity of individual homeless youth in reports or other documents based on such statistical records;

13. To provide assurances that records maintained on individual homeless youth will not be disclosed without the consent of the individual youth and parent or legal guardian to anyone other than an agency compiling statistical records or a government agency involved in the disposition of criminal charges against the youth; and

14. To provide such other information as may be reasonably required by the Administration on Children, Youth and Families.

Section 322(b) of the Act requires that, in selecting eligible applicants to receive grants under this part, the Department give priority to entities that have experience in providing shelter and the types of services required to be provided under this announcement.

**Part III. Responsibilities of the Grantee**

Applicants for funding under this program announcement must present a plan in the program narrative section of their application that demonstrates that they are able to meet the requirements of the Act listed in part II, including the following specific responsibilities:

*A. Shelter*

1. Assure that shelter will be or is provided through one or a combination of the following or similar forms: (a) A group home facility; (b) family host homes; or (c) supervised apartments (section 322(a)(1)). Applicants should indicate if the shelter is to be provided directly or indirectly, and must document the availability of shelter facilities. When shelter is to be provided indirectly, applicants must provide evidence of formal written agreements with service providers regarding the terms under which shelter will be provided.

2. Assure that each facility used for housing shall accommodate no more than 20 youth at any given time (section 322(a)(4)); shall have a sufficient number of staff to ensure on-site supervision at each shelter option that is not a family home (section 322(a)(3)); and is in compliance with State and local licensing requirements;

3. Assure that shelter facilities, host family homes and/or supervised apartments will receive adequate, on-site supervision (section 322(a)(5)) including periodic, unannounced visits from project staff.

4. The lease of surplus Federal facilities for use as transitional living shelter facilities may be considered if it is determined that the applicant meets the requirements in section 342(a)(1) through (3) of the Act (42 U.S.C. 5714b(a)(1) through (3)). Each surplus Federal facility used for this purpose must be made available for a period not less than 2 years, and no rent or fee shall be charged to the applicant in connection with use of such a facility (section 342(b)(1)). Any structural modifications or additions to surplus Federal facilities become the property of the government of the United States. All such modifications or additions may be made only after receiving prior written consent from the appropriate Department of Health and Human Services official (section 342(b)(2)).

*B. Services*

Include a description of the core services to be provided, as mandated by section 322(a)(1) of the Act. The descriptions should include, but are not necessarily limited to, the following services:

1. Basic life skills information and counseling, such as personal finances, housekeeping, menu planning and food preparation, leisure-time activities, transportation, and obtaining vital documents (Social Security card, birth certificate).

2. Interpersonal skill building, such as positive relationships with peers and adults, communication, decisionmaking, and stress management.

3. Educational advancement, such as GED preparation and attainment, post-secondary training (college, technical school, military, etc.), and vocational education.

4. Job preparation and attainment, such as career counseling, job preparation training, dress and grooming, job placement and job maintenance.

5. Mental health care, such as counseling (individual and group), drug abuse education, prevention and referral services, and mental health counseling.

6. Physical health care, such as routine physicals, health assessments, family planning/parenting skills, and emergency treatment.

*C. Administration*

1. Describe the procedures to be employed to provide for a coordinated approach to the development, implementation and monitoring of an individualized, written transitional living plan for each program client which addresses the areas in section B, above, and is appropriate to the individual needs of the client (section 322(a)(6)).

2. Describe how the applicant will ensure that individual clients meet the eligibility criteria established by the Act. This may include a discussion of the intake and assessment activities which will be conducted with a client prior to acceptance into the TLP project. Applicants are encouraged to include samples of any forms to be used to determine eligibility and appropriate services.

3. Assure that the clients will substantively participate in the assessment of their needs and in decisions about the services to be received.

4. Assure that the outreach programs to be established are designed to attract individuals who are eligible to participate in the project (section 322(a)(8)).

5. Describe how the project has established or will establish formal service linkages with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment and health care agencies in order to ensure appropriate referrals for the project clients where and when needed (section 322(a)(7)). This may include establishing a case management team composed of practitioners from the agencies involved in providing services.

6. Assure cost-effective use of TLP funds by taking maximum advantage of existing resources within the State which would help in the establishment, operation, or coordination of a TLP, including those resources which are supported by Federal Independent Living Initiatives funds. Also, describe efforts to be undertaken over the length of the project which may increase non-Federal resources available to support the TLP. (The names and addresses of State Independent Living Initiatives

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Coordinators can be found in appendix F.]

7. Provide an assurance that housing and services will be available to a client for a continuous period not to exceed 540 days (18 months) (section 322(a)(3)).

8. Describe the methods to be employed in collecting statistical records and evaluative data and for submitting annual reports on such information to the Department of Health and Human Services (section 322(a)(9)).

9. Describe how the applicant will ensure the confidentiality of client records (section 322(a)(13)).

**Part IV. Evaluation Criteria**

In considering how the applicant will carry out the responsibilities addressed in parts II and III of this announcement, the application will be reviewed and evaluated against the following criteria:

*Criterion 1. Objectives and Need for Assistance (20 Points)*

The extent to which the application reflects a good understanding of the objectives of the TLP; pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring a solution in the geographic areas that the project is proposing to serve; demonstrates the need for the assistance and states the goals or service objectives of the project; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and gives a precise location of the project sites and areas to be served by the proposed project. Maps or other graphic aids may be attached. (The applicant may refer to part I, sections D and E of this announcement.)

*Criterion 2. Results or Benefits Expected (20 Points)*

The extent to which the application identifies the results and benefits to be derived from the project and which are consistent with the objectives of the TLP; states the numbers of clients to be served; and describes the types of services to be offered; and describes the plans for evaluating the effectiveness of the project, including assessing its outcomes and accomplishments and the service delivery models employed.

*Criterion 3. Approoch (35 Points)*

The extent to which the application outlines a sound and workable plan of action as required by section 322(a) of the Act and described in parts II and III above pertaining to the scope of the project; details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work; gives acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. The extent to which the project will take advantage of existing resources within the community and State to help establish, operate, or coordinate TLP services. The application lists the activities to be carried out in chronological order and shows a reasonable schedule of accomplishments and target dates. To the extent applicable, the application identifies the kinds of data to be collected and maintained, and discusses the data that will be used for reporting and evaluation purposes.

*Criterion 4. Staff Background and Organizational Experience (15 Points)*

The extent to which the resumes of the program director and key project staff (including names, addresses, training, background and other qualifying experience) and the organization's experience demonstrates the ability to effectively and efficiently administer a project of the size, complexity, and scope proposed; and reflects the ability to coordinate activities with other agencies.

The application also lists each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

*Criterion 5. Budget Appropriateness (10 Points)*

The extent to which the project's costs (overall costs, average cost per youth served, costs for different services) are reasonable in view of the activities to be carried out and the anticipated outcomes. The extent to which assurances are provided that the applicant can and will contribute the non-Federal share of the total project cost. (Applicants may refer to the budget information presented in Standard Forms 424 and 424A and in the associated budget justification, and to the results or benefits expected as identified under Criterion 2.)

**Part V. Application Process**

*A. Availability of Forms*

All of the forms and instructions needed for submitting an application for Federal assistance under this announcement are included in appendices A and B. Single sided copies of these forms should be reproduced and used to prepare the application package.

A complete application consists of:

1. Standard Form 424: Application for Federal Assistance;

2. Standard Form 424A: Budget Information;

3. Budget Justification (Type on standard size plain white paper) (pages iv-v).

4. Assurances—The assurances in (4) (a), (b) and (c) below must be signed and returned.

(a) Standard Form 424B:Non-Construction Programs;

(b) Certification Regarding Lobbying;

(c) The Anti-Drug Abuse Act of 1988 Certification;

(d) Debarment Certification; and

(e) Drug-Free Workplace Certification.

5. Organizational Capability Statement. Applicants should provide a brief (no more than two pages, single-spaced) description of how the applicant agency is organized and the types and costs of services it provides, including services to clients other than homeless youth. Provide an organizational chart showing any superordinate, parallel, or subordinate agencies to the specific agency that will provide the direct services to homeless youth, and indicate the purposes, clients and overall budgets of these other agencies. If the agency has multiple sites, list these sites. Discuss the experience of the applicant organization in providing services to homeless youth.

6. Program Narrative Statement. A narrative description of the project, organized under the following headings which addresses the requirements identified in parts II and III: (A) Objectives and Need for Assistance; (B) Results and Benefits Expected; (C) Approach; (D) Staff Background and Organizational Experience; (E) Budget Appropriateness.

The Program Narrative Statement must be typed, double-spaced, single sided, on 8½ x 11 inch bond paper. All pages of the narrative (including charts, tables, and maps) must be sequentially numbered, beginning with the "Objectives and Need for Assistance" section as page number one. The narrative must not exceed 35 double-spaced pages.

Applications with narratives exceeding 35 single-spaced pages will not be considered for funding.

7. Appendices/ Attachments: Letters of support and/or agreement, exhibits, and other supporting documents must not exceed 15 pages.

*B. Application Submission*

Each application must be signed by an individual authorized to act on behalf of the applicant agency, organization, institution, or other entity and to assume responsibility for the obligations imposed by the terms and conditions of any grant awarded.

Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package. Each application will be copied by the government in order to provide the total of six copies needed for review panels and filing. To make copying as trouble-free and accurate as possible, the following requirements should be followed:

1. Applicants may attach only photocopies (no originals) of any additional materials, such as resumes, letters of support or agreement, news clippings, or descriptions of the program's participation in local, State or regional coalitions of youth service agencies which would give further support to the application. Resumes must be limited to one page.

2. The absolute maximum for supporting documentation is 15 pages, including letters of support or agreement. Documentation which ACYF staff determines to be excessive will not be provided to the independent panel reviewers.

**Note:** Include only photocopies of the materials. Do not use separate covers, binders, clips, tabs, plastic inserts, pages with pockets, separately bound brochures, folded maps or charts, or any other items that cannot be processed easily on a photocopy machine with automatic feed. Do not bind, clip, or fasten in any way separate subsections of the application, including supporting documentation.

One signed original and two copies of the application, including all attachments, are required to be submitted to the application receipt point specified below. The original copy of the application must have original signatures, signed in black ink. Each copy should be stapled (back and front) in the upper left corner.

The Catalog of Federal Domestic Assistance Number (93.550) and Title (Transitional Living Program for Homeless Youth) must be clearly identified on the application (SF 424, box 10).

Completed applications must be sent to: Transitional Living Program for Homeless Youth, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, room 341–F.2, Hubert H. Humphrey, 200 Independence Avenue, SW., Washington, DC 20201. Attention: William J. McCarron. Hand-delivered applications will be accepted at the ACF agency during the normal working hours of 8:30 a.m. to 5 p.m., Monday through Friday, except holidays.

*C. Closing Date for the Receipt of Applications*

The closing date for receipt of applications under this announcement is: August 24, 1992.

1. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the address specified in the application submission section of this announcement, or

b. Sent on or before the deadline date and received by the granting agency in time for the independent review under Chapter 1–62 of the HHS Grants Administration Manual. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in the above paragraph of this section are considered late applications. The granting agency will notify each late applicant that its application will not be considered in the current competition.

3. Extension of Deadline

The Administration on Children, Youth and Families may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

*D. Assistance to Prospective Grantees*

Prospective grantees can receive informational assistance in developing applications and application procedures from the appropriate ACYF Regional Youth Contacts listed in Appendix E, or from the Family and Youth Services Bureau in Washington, DC (see address at the beginning of this announcement). Prospective grantees may also contact one of the ten Runaway and Homeless Youth technical assistance and training providers. Contact information for technical assistance and training providers is provided in appendix G.

*E. Application Consideration*

Each application which is complete and conforms to the requirements of this program announcement will be scored against the criteria outlined in part III of this announcement. The review will be conducted in Washington, DC, by panels of non-Federal experts knowledgeable about issues related to runaway and homeless youth and transitional/independent living services for adolescents. The results of the competitive review will be analyzed by Federal staff and will be the primary factor taken into consideration by the Associate Commissioner, Family and Youth Services Bureau who, in consultation with ACF Regional officials, will recommend to the Commissioner, ACYF, the programs to be funded. The Commissioner will make the final selection of the applicants to be funded. Consideration will also be given to ensuring that a variety of geographic areas are served and that a variety of project designs and models are represented. The Commissioner may also elect not to fund any applicants that have known management, fiscal or other problems or situations which make it unlikely that they would be able to provide effective services. As required by section 322(b) of the Act, the Department will give priority to entities that have experience in providing shelter and the types of services required to be provided under this announcement to homeless youth in selecting eligible applicants to receive grants.

Successful applicants will be notified through the issuance of a Financial Assistance Award. The award will set forth the amount of Federal funds awarded, the terms and conditions of the grant award, the effective date of the grant, the total project period, the budget period for which support is given, and the amount of the non-Federal matching share.

Organizations whose applications have been disapproved will be notified in writing by the Commissioner of the Administration on Children, Youth and Families.

*F. Paperwork Reduction Act of 1980*

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements

beyond those approved for ACF grant applications by OMB.

*G. Waiver of Executive Order 12372 Requirements for a 60-day Comment Period for the States' Single Point of Contact (SPOC)*

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Pennsylvania, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these ten areas need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

Other applicants should contact their SPOC as soon as possible to alert them to the perspective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF–424, Block 16a. The Administration on Children and Families will notify the State of any applicant who fails to indicate SPOC contact (when required) on the application form.

ACF must obligate the funds for these awards by September 30th, 1992. Therefore, the required 60-day comment period for the State process review and recommendation has been reduced and will end on September 23, 1992 in order for ACF to receive, consider and accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Transitional Living Program for Homeless Youth, Department of Health and Human Services, Administration for Children and Families, Grants and Contracts Management, 200 Independence Avenue, SW., room 345–F.2, Hubert H. Humphrey Building, Washington, DC 20201, HDS–92–3–ACYF/Transitional Living.

A list of the Single Points of Contact for each State and Territory is included as appendix H of this announcement.

*H. Checklist for a Complete Application.*

The Checklist below should be typed on 8½" by 11" plain white paper, completed, and included as the first page of the application package.

**Checklist**

____ Checklist for a complete application;
____ One original application signed in black ink and datedplus two copies;
____ A completed SPOC certification with the date of SPOC contact entered in item 16 page 1 of SF 424; The original and both copies of the application include the following:
____ SF 424 (The original application will have the word "ORIGINAL" hand printed in bold block letters at the top of the SF 424);
____ SF 424A;
____ Budget Justification;
____ SF 424B;
____ Certification Regarding Lobbying;
____ Program Narrative Statement with a maximum of 35 double-spaced pages;
____ Supporting Documents.

(Catalog of Federal Domestic Assistance Number 93.550, Transitional Living Program for Homeless Youth.)

Dated: June 29, 1992.

**Wade F. Horn,**

*Commissioner, Administration on Children, Youth and Families.*

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Appendix A&B

OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code) |

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ - ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, counties, states, etc.):

| 13. PROPOSED PROJECT: Start Date | Ending Date | 14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project |
|---|---|---|---|
| | | | |

| 15. ESTIMATED FUNDING: | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

BILLING CODE 4130-01-C

**Instructions for the SF 424**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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## BUDGET INFORMATION — Non-Construction Programs

### SECTION A – BUDGET SUMMARY

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

### SECTION B – BUDGET CATEGORIES

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

**SECTION C - NON-FEDERAL RESOURCES**

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

**SECTION D - FORECASTED CASH NEEDS**

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

**SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT**

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

**SECTION F - OTHER BUDGET INFORMATION**
(Attach additional Sheets if Necessary)

| | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks | |

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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**Instructions for the SF–424A**

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f), the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

**Assurances—Non-Construction Programs**

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

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Signature of Authorized Certifying Official

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TITLE

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Applicant Organization

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Date Submitted

**Certification Regarding Lobbying**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more that $100,000 for each such failure.

*State for Loan Guarantee and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

*Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions*

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

*Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions*

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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## U.S. Department of Health and Human Services
## Certification Regarding Drug-Free Workplace Requirements
## Grantees Other Than Individuals

**By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.**

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**The grantee certifies that it will or will continue to provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

**The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):**

**Place of Performance (Street address, City, County, State, ZIP Code)**_____

_____

*Check ___ if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4130-01-C

## Appendix C: Health Care for the Homeless Public Health Service Grantees

**Region I**

*Connecticut*

Charter Oak Terrace/Rice Heights Health Center, 81 Overlook Terrace, Hartford, CT 06016, Alfreda Turner, (203) 238–1638/236–0657

Southwest Community Health Center, 381 Bird Street, Bridgeport, CT 06605, Janet Stern, (203) 576–8368

Windham Area Community Action Program, Inc., 231 Broad Street, Danielson, CT 06239, Kerrie J. Clark, (203) 774–0400

*Massachusetts*

Boston Health Care for Homeless Project, 723 Massachusetts Avenue, Boston, MA 02118, Dr. James O'Connell, (617) 534–4623

Franklin County Dial/Self, 196 Federal Street, Greenville, MA 01301, Melanie Goodman, (413) 774–7054

New England Consortium for Families and Youth, 14 Beacon Street, Suite 706, Boston, MA 02128, Nancy Jackson, (617) 742–8555

Springfield Health Services for the Homeless, 1414 State Street, Springfield, MA 01109, John Cipolla, (413) 787–6755

Worcester Area Community Mental Health Center, Inc., POB 229, Greendale Station, Worcester, MA 01606, David Higgins, (508) 756–4354

*Maine*

Portland Public Health Division, 389 Congress Street, Room 307, Portland, ME 04101, Meredith L. Tipton, (207) 774–4581

*New Hampshire*

City of Manchester Public Health Department, 795 Elm Street, Suite 302, Manchester, NH 03101, Fred Rusczek, (603) 624–6466

Travelers Aid Society, 177 Union Street, Providence, RI 02903, Marion F. Avarista, (401) 521–2255

*Vermont*

Community Health Center of Burlington, 279 North Winooski Avenue, Burlington, VT 05401, Marilyn McKenzie, (802) 662–9011

**Region II**

*New Jersey*

Newark Homeless Health Care Project, DHHS, 15 Roseville Avenue, Newark, NJ 07107, Bobbi M. Ruffin, (201) 733–5705

Jersey City Family Hlth. Ctr., Medical and Social Services for the Homeless, 114 Clifton Place, Murdock Hall, 2nd Floor, Jersey City, NJ 07304, Carol Lightsey, (201) 915–2528

Henry J. Austin Health Center, Health Care for the Homeless, 321 N. Warren Street, Trenton, NJ 08618, Derek Beckford, (609) 695–7122

*New York*

William F. Ryan Community Health Center, 110 West 87th Street, New York, NY 10025, Julio Bellber, (212) 645–2500

United Hospital Fund, 55 Fifth Avenue, New York, NY 10003, Bruce Vladeck, (212) 645–2300

Bowery Residents Committee, Human Services Corp., 181 Chrystie Street, New York, NY 10002, Joyce Wolbarst, (212) 533–5700

Westchester Health Network, Neighborhood Health Association of Mt. Vernon, 280 Dobbs Ferry Road, White Plains, NY 10007, Georganne Chapin, (914) 240–3080

Under 21—Covenant House, 460 West 41st Street, New York, NY 10036, Joseph Borge, (212) 330–0585

St. Vincent's Hospital, Dept. of Community Medicine, 153 West 11th Street, New York, NY 10011, Dr. Phillip Brickner, (212) 790–2708

NY Children's Health Project, 317 East 84th Street, New York, NY 10021, Dr. Irwin E. Redlener, (212) 535–8779

*Puerto Rico*

San Juan Department of Health, Calle Cerra 900 PDA 15, Santurce, PR 00907, Pedro A. Borras, M.D., (809) 721–3207

**Region III**

*District of Columbia*

Health Care for the Homeless Project, Inc., 1511 K Street, NW., Suite 500, Washington, DC 20005, Melvin Wilson, (202) 628–5000

*Maryland*

Health Care for the Homeless, 232 North Liberty Street, Baltimore, MD 21201, Jackie Gaines, (410) 637–5533

*Pennsylvania*

Primary Health Care Services of NW Pennsylvania, 1720 Holland Street, Erie, PA 16503, Darlene Collins, (814) 453–5744

Philadelphia Health Management Corporation, 360 South Broad Street, 20th Flr., Philadelphia, PA 19102, Richard Cohen, Ph.D., (215) 985–2553

Primary Care Health Services, Alma Illery Medical Center, 7227 Hamilton Avenue, Pittsburgh, PA 15208, Wilford A. Payne, (412) 244–4700

Rural Health Corporation of Northeastern Pennsylvania, 116 South Main Street, Wilkes-Barre, PA 18701, Stanford Weiss, (717) 825–6741

*Virginia*

The Daily Planet, 302 West Canal Street, Richmond, VA 23220, Sheila Crowley, (804) 783–0678

Peninsula Institute for Community Health, Health Care for Homeless, 707 Howmet Drive, Suite C, Hampton, VA 23661, Edwina S. David, (804) 825–0465

*West Virginia*

Valley Health Systems, Inc., 401 Tenth Street, Suite 410, Huntington, WV 25701, Steve Shattis, M.D., (304) 525–3334

**REGION IV**

*Alabama*

Birmingham Health Care for the Homeless Coalition, P.O. Box 11523, Birmingham, AL 35202, Karen J. McGee, (205) 252–9624

*Florida*

Pinellas County Department of Social Services, Mobile Medical Team, 647 First Avenue North, St. Petersburg, FL 33701, Evelyn Rust, (813) 892–7577

Broward County Board of County Commissioners, Health Care for the Homeless, 115 South Andrews Drive, Rm. 428, Ft. Lauderdale, FL 33021, Henry Thompson, (305) 581–1888

Camillus Health Concern, 311 Northeast First Avenue, Miami, FL 33103, Marland Bluhm, (305) 577–4840

Tampa Community Health Center, Sine Domus Health Center, P.O. Box 5299, Tampa, FL 33675, Norbert Heib, Jr., (813) 246–6263

*Georgia*

Atlanta Community Health Program for the Homeless, Georgia Hill Street Neighborhood Facility, 250 Georgia Ave., SE., Atlanta, GA 30312, Lorine Spencer, (404) 522–5659

*Kentucky*

Lexington-Fayette County Health Department, 650 Newton Pike, Lexington, KY 40508, Dr. John Poundstone, (606) 252–2371

Seven Counties Services, Inc., 101 W. Muhammad A1i Blvd., Louisville, KY 40201, Howard Bracco, Ph.D., (502) 589–8926,

*Mississippi*

Jackson-Hinds Comprehensive Health Department, P.O. Box 3437, Jackson, MS 39207, Aaron Shirley, M.D., (602) 364–5116

*North Carolina*

Lincoln Community Health Center, Inc., 1301 Fayetteville Street, Durham, NC 27707, Evelyn Schmidt, M.D., (919) 688–9078

Wake Health Services, Inc., P.O. Box 95104, Raleigh, NC 27625, Malvise Scott, (919) 790–2270

*South Carolina*

Midlands Primary Health Care Center, Inc., P.O. Box 248, Eastover, SC 29044, John Patrick, (803) 353–8741

*Tennessee*

Chattanooga Hamilton County Health Department, 921 East Third Street, Chattanooga, TN 37403, Howard Roddy, (615) 265–5708

Memphis Health Center, Inc., Memphis Health Care for the Homeless, 360 E. H. Crump Boulevard, Memphis, TN 38126, Phillip L. Williams, (901) 775–2000

**Region V**

*Illinois*

Travelers and Immigrants Aid, Health Care for the Homeless Program, 327 South LaSalle, Chicago, IL 60657, Sid Mohn, (312) 261–4288

Crusaders Central Clinic Association, 120 Tay Street, Rockford, IL 61102, John Frana, (815) 968–7613

*Indiana*

Indiana Health Centers, Inc., 21 North Pennsylvania, Indianapolis, IN 46204, Lynn Clothier, (219) 234–9003

East Side Promise, Inc., People's Health Center, 2340 East 10th Street, Indianapolis, IN 46201, Dave Robinson, (317) 633–7360

*Michigan*

Visiting Nurse
Michigan, 3
Battle Creek
962–0303

Ingham Count
Lansing, MI
887–4311

St. Mary's Hea
Grand Rapi
Himmelsbac

Family Health
Street, Kala
Lockett, (61

Detroit Health
Cass Avenu
Reynolds-C

Downriver Co
306, 329 Col
48001, Alice
Ext. 14

Hamilton Fam
Saginaw St
Matthews,

*Minnesota*

Hennepin Cou
Project, Hea
Portland Av
55415, Allai

West Side Co
Concord St
Berg, (612)

*Ohio*

ECCO Family
the Homele
Street, Colu
(614) 253–0

Cordelia Mar
Avenue, To
Steward, (4

Cincinnati He
Suite 225, C
Garland, (5

Federation fo
Care for the
Building, Cl
Brody, (216

*Wisconsin*

Coalition for
North 5th S
Mark Rosn

**Region VI**

*Louisiana*

New Orleans
Care for th
Street, New
Lutz, M.D.,

*New Mexico*

Albuquerque
P.O. Box 25
Marsha Mc

Youth Shelter
8135, Santa
473–0240

*Oklahoma*

National Res
202 W. 8th,
Walker, (9

Community H
Hands Hlth

*Michigan*

Visiting Nurse Services of Southern Michigan, 311 E. Michigan Ave., Ste. 200, Battle Creek, MI 49017, Sally Whitten, (619) 962-0303

Ingham County Health Dept., P.O. Box 30161, Lansing, MI 48909, Bruce B. Bragg, (517) 887-4311

St. Mary's Health Services, 200 Jefferson, SE., Grand Rapids, MI 49503, William A. Himmelsback, Jr., (616) 774-6162

Family Health Center, Inc., 17 West Paterson Street, Kalamazoo, MI 49007, Grace M. Lockett, (616) 349-2841

Detroit Health Care for the Homeless, 3611 Cass Avenue, Detroit, MI 48201, Cynthia Reynolds-Caine, (313) 832-2450

Downriver Community Services, P.O. Box 306, 329 Columbia Street, Algonac, MI 48001, Alice M. Johnson, (313) 794-4982, Ext. 14

Hamilton Family Health Center, 4001 North Saginaw Street, Flint, MI 48505, Gerald E. Matthews, Ph.D., (313) 789-9141

*Minnesota*

Hennepin County Homeless Assistance Project, Health Services Bldg., Level 3, 525 Portland Avenue, South, Minneapolis, MN 55415, Allain Hankey, (612) 348-5553

West Side Community Health Center, 153 Concord Street, St. Paul, MN 55107, Jane Berg, (612) 222-1816

*Ohio*

ECCO Family Health Center, Health Care for the Homeless Project, 1166 East Main Street, Columbus, OH 43205, Jewel Barron, (614) 253-0861

Cordelia Martin Health Center, 905 Nebraska Avenue, Toledo, OH 43607, Paula W. Steward, (419) 255-7883

Cincinnati Health Network, 400 Oak Street, Suite 225, Cincinnati, OH 45219, Randall Garland, (513) 961-0600

Federation for Community Planning, Health Care for the Homeless, 614 Superior Building, Cleveland, OH 44113, Dr. Ralph Brody, (216) 781-2944

*Wisconsin*

Coalition for Community Health Center, 2770 North 5th Street, Milwaukee, WI 53212, Mark Rosnow, (414) 226-6883

**Region VI**

*Louisiana*

New Orleans Health Department, Health Care for the Homeless Clinic, 914 Union Street, New Orleans, LA 70112, Brobson Lutz, M.D., (504) 528-3750

*New Mexico*

Albuquerque Health Care for the Homeless, P.O. Box 25141, Albuquerque, NM 87125, Marsha McMurrary-Avila, (503) 247-3361

Youth Shelters & Family Services, P.O. Box 8135, Santa Fe, NM 87504, Ann Begin (505) 473-0240

*Oklahoma*

National Resource Center for Youth Services, 202 W. 8th, Tulsa, OK 74119, James M. Walker, (918) 585-2986

Community Health Center, Inc., Healing Hands Hlth. Care, Srvcs., Mary Mahoney, 6291/2 West Main, Oklahoma City, OK 73102, Michael K. Fire, (405) 272-0476

Morton Comprehensive Health Services, Inc., 603 East Pine, Tulsa, OK 74106, Leona Young, (918) 587-2171

*Texas*

South Plains Health Provider Organization, 824 Martin Road, Amarillo, TX 79107, Henry Hawley, (806) 374-734 1

City of Dallas, Dept. of Health & Human Srvcs., 1500 Marilla 7/A/N, Dallas, TX 75201, Adela N. Gonzales, (214) 670-3988

Harris County Hospital District, P.O. Box 66769, Houston, TX 77266, Lois Moore, (713) 529-4624

Guadalupe Economic Services Corporation, 1416 First Street, Lubbock, TX 79401, Richard Lopez, (806) 744-4416

San Antonio Centro Del Barrio, 301 S. Frio, Suite 180, San Antonio, TX 78201-4414, Ronald Kemp, (319) 236-1332

**Region VII**

*Iowa*

Community Health Care, Inc., 428 Western Avenue, Davenport, IA 52801, William Rodgers, (319) 322-7899

Polk County Health Services, Broadlawns Medical CenterHomeless Outreach Program, 18th and Hickman Road, Des Moines, IA 50703, Lynn Ferrell, (515) 282-2599

People's Community Health Clinic, Inc., 403 Sycamore, Suite 2, Waterloo, IA 50703, Ronald Kemp, (319) 236-1332

*Kansas*

Hunter Health Clinic, Inc., 2318 East Central, Wichita, KS 67214, Bert Steeves, (316) 262-3011

*Missouri*

Swope Parkway Health Center, 4900 Swope Parkway, Kansas City, MO 64130, E. Frank Ellis, (816) 923-5800

Grace Hill Neighborhood Health Center, 2500 Hadley Street, St. Louis, MO 63106, Richard Gram, (314) 241-2200

*Nebraska*

Charles Drew Health Center, P.O. Box 111609, Omaha, NE 68111, Robert Patterson, (402) 453-1433

**Region VIII**

*Colorado*

Volunteers of America, 1865 Larimer Street, Denver, CO 80202, Linda Sinton, (303) 297-0400

Colorado Coalition for the Homeless, Stout Street Clinic, 2100 Broadway, Denver, CO 80205, John Parvensky, (303) 293-2220

Community Health Center of Colorado Springs, 2828 International Circle, Colorado Springs, CO 80901, Karen Marczynski, (719) 632-3700

*Montana*

Blackfeet Tribe, Blackfeet Child Abuse Prevention, White Buffalo Home, P.O. Box 1210, Browning, MT 59417, Violet Butterfly, (406) 338-2243

*North Dakota*

Fargo-Moorhead Health Care for the Homeless Project, 401 Third Avenue, North Fargo, ND 58102-4839, Sherlyn Dahl, R.N., (701) 241-1360

*South Dakota*

Health Care for the Homeless, 30 Main Street, Rapid City, SD 57701, Nancy Glassgow, (605) 394-2230

*Utah*

Salt Lake Community, Health Center, Inc., 2300 West 1700 South, Salt Lake City, UT 84104, Susan Reed, (801) 359-7917

**Region IX**

*Arizona*

El Rio Santa Cruz Neighborhood Health Center, P.O. Box 1271, Tucson, AZ 85701, Robert Gomez, (602) 792-9890

Maricopa County Department of Health Services, 806 West Madison, Phoenix, AZ 85006, Adolfo Echeveste, (602) 258-2122

*California*

The Family Health Foundation of Alviso, Inc., 1621 Gold Street, Alviso, CA 95002, Rick Ugarte, (408) 262-7944

Clinical Sierra Vista, Inc., P.O. Box 457, Lamont, CA 93241, Stephen Schilling, (805) 845-3731

Logan Heights Family Health Center, 1809 National Avenue, San Diego, CA 92113, Fran Bulter-Cohen, (619) 234-0360

Merced Family Health Centers, Inc., P.O. Box 858, Merced, CA 95341, Michael Sullivan, (209) 383-1846

San Francisco Community Clinic Consortium, 1520 Stockton Street, San Francisco, CA 94133, Kimberly Kent-Wyard, (818) 896-0531

Nipomo Community Medical Center, Inc., P.O. Box 430, 150 Tegas Place, Nipomo, CA 93444, Ronald Castle, (805) 929-3211

West Contra Cost Community Health Care Corporation, Martin Luther King, Jr. Family Health Center, 101 Broadway Street, Richmond, CA 94804, Wilbur Kelly, (415) 233-3994

Sacramento County Health Dept., 3701 Branch Center Road, Sacramento, CA 95827, Sonia Parker, (916) 366-2171

Santa Cruz County Health Services Agency, Homeless Persons Health Project, 739 River Street, Santa Cruz, CA 95060, Elizabeth McCarty, (408) 425-3460

Alameda County Health Care Services Agency, Alameda County Health Care for the Homeless Program, 1900 Fruitvale Avenue, Suite 3-E, Oakland, CA 94601, Barbara Cowan, MPH, (415) 532-1930

Santa Barbara County Health Care Services, 300 San Antonio Road, Rm. M331, Santa Barbara, CA 93110, Lawrence Hart, M.D., (805) 681-5145

San Mateo County Department of Health Services, Alcohol and Drug Program, 225 West 37th Avenue, San Mateo, CA 94403, Carolina Janet, (415) 573-3703

*Hawaii*

Waianae Coast District Comprehensive Health and Hospital Board, Inc., 86-260 Farrington Highway, Waianae, HI 96792, Michael Tweedell, (808) 696-7081

**Region X**

*Idaho*

Terry Reilly Health Services, 211–10th Avenue North, Nampa, ID 83687–4050, Erwin Teaber, (208) 467–4431

*Oregon*

White Bird Clinic, 341 East Twelfth Street, Eugene, OR 97401, Robert Dritz, (503) 342–5255

Multnomah County Health Div., 426 SW Stark, Portland, OR 97204, Billie Odegaard, (206) 627–8580

Northwest Human Services, 881 Center Street, NE., Salem, OR 97301, Karen Hill, (503) 588–5828

*Washington*

Sea Mar Community Health Ctr., 8720 Fourteenth Avenue, South, Seattle, WA 98108, Rogelio Riojas, (206) 428–4075

Central Seattle Community Health Centers, 105 Fourteenth Ave., Ste. 2–C, Seattle, WA 98122, William Hobson, (206) 461–6910

## Appendix D: HUD Field Offices

**Region I**

*Connecticut*

Daniel Kolesar, 330 Main Street, Hartford, CT 06106–1860, (203) 240–4508

*Massachusetts; Rhode Island*

Frank Del Vecchio, Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 565–5343

*Maine; New Hampshire; Vermont*

David Lafond, Norris Cotten Federation Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7640

**Region II**

*New York (Up State)*

Michael F. Merrill, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 846–5768

*New York (Down State)*

Joan Dabelko, 26 Federal Plaza, New York, NY 10278–0068, (212) 264–2885

*New Jersey*

Frank Sagarese, Military Park Building, 60 Park Place, Newark, NJ 07102, (201) 877–1776

*Puerto Rico*

Carmen R. Caberera, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, (809) 766–5575

**Region III**

*Pennsylvania (Eastern)*

John Kane, Liberty Square Building, 105 S. 7th Street, Philadelphia, PA 19106–1096, (215) 597–2005

*Pennsylvania (Western); West Virginia*

Bruce Crawford, Old Post Office Building and Courthouse Building, 700 Grant Street, Pittsburgh, PA 15219–1906, (412) 644–5493

*Maryland*

Harold Young, Equitable Building, 3rd Floor, 10 N. Calvert Street, Baltimore, MD 21202–1865, (301) 962–2417

*District of Columbia*

James H. McDaniel, 820 First Street, NE, Washington, D.C. 20002, (202) 275–0094

*Virginia*

Joseph Aversano, Federal Building, 400 N. 8th Street, P.O. Box 10170, Richmond, VA 23240

**Region IV**

*Alabama*

Jasper H. Boatright, Beacon Ride Tower, 600 Beacon Park West, Suite 300, Birmingham, AL 35209–3144, (205) 731–1672

*Florida*

James N. Nichol, 325 W. Adams Street, Jacksonville, FL 32202–4303, (904) 791–3587

*Georgia*

Charles N. Straub, Russell Federal Building, Room 688, 75 Spring Street, SW., Atlanta, GA 30303–4303, (494) 331–5139

*Kentucky*

Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201–1044, (502) 582–5394

*Mississippi*

Jeanie E. Smith, Dr. A.H. McCoy Federal Building, 100 W. W. Capitol Street, Room 910, Jackson, MS 39269–1096, (601) 965–4765

*North Carolina*

Charles T. Ferebee, 415 N. Edgeworth Street, Greensboro, NC 27401–2107, (919) 333–5711

*South Carolina*

Louise E. Bradley, Acting, Federal Building, 1835–45 Assembly Street, Columbia, SC 29201–2480, (803) 765–5564

*Tennessee*

Virginia Peck, 710 Locust Street, Knoxville, TN 37902–2526, (615) 549–9422

**Region V**

*Illinois*

Richard Wilson, 547 W. Jackson Blvd., Chicago, IL 60606–5760, (312) 353–1696

*Indiana*

Robert Poffenberger, 151 N. Delaware Street, Indianapolis, IN 46204, (317) 226–5169

*Michigan*

Richard Paul, Patrick McNamara, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–4343

*Minnesota*

Shawn Buckley, 220 2nd Street South, Minneapolis, MN 55401–2195, (612) 370–3019

*Ohio*

Jack E. Riordan, 200 North High Street, Columbus, OH 43215–2499, (614) 469–6743

*Wisconsin*

Lana J. Vacha, Henry J. Reuss Federal Plaza, 310 W. Wisconsin Avenue, Suite 1380, Milwaukee, WI 53203–2289, (414) 297–3113

**Region VI**

*Arkansas*

Bill M. Parsley, Lafayette, 523 Louisiana, Suite 200, Little Rock, AR 72201–3707, (501) 324–6375

*Louisiana*

Greg Hamilton, P. O. Box 70288, 1661 Canal Street, New Orleans, LA 70112–2887, (504) 589–7212

*Oklahoma*

Katie Worsham, Murrah Federal Building, 200 NW 5th Street, Oklahoma City, OK 73102–3202, (405) 231–4973

*Texas (Northern); New Mexico*

R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 885–5483

*Texas (Southern)*

Robert W. Hicks,Washington Square, 800 Dolorosa, San Antonio, TX 78297–4563, (512) 229–6820

**Region VII**

*Iowa; Nebraska*

Gregory A. Bevirt, Braiker/Brandeis, 210 South 16th Street, Omaha, NE 68102–1622, (402) 221–3703

*Kansas, Missouri (Western)*

Miquel Madrigal, Gateway Towers 2, 400 State Avenue, Kansas City, KS 66101–2406, (913) 236–2184

*Missouri, (Eastern)*

David H. Long, 122 Spruce Street, St. Louis, MO 63103–2836, (314) 539–6524

**Region VIII**

*Colorado; Montana; North Dakota; South Dakota; Utah; Wyoming*

Barbara Richards, Executive Tower, 1405 Curtis Street, Denver, CO 80202–2349, (303) 844–3811

**Region IX**

*Arizona; Nevada (Las Vegas, Clark County)*

Diane Domzalski, 400 N. Fifth Street, Suite 1600, Arizona Center, Phoenix, AZ 85004, (602) 379–4754

*California (Northern); Remainder of Nevada*

Gordon H. McKay, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 556–5576

*California (Southern)*

Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801, (213) 251–7235

*Hawaii*

Patti A. Nicholas, Acting, 7 Waterfront Plaza, Suite 500, 500 Ala Moana Blvd., Honolulu, HI 96850–4991, (808) 541–1327

**Region X**

*Alaska*

Collen Craig, Federal Building, 222 W. 8th Avenue, #64, Anchorage, AK 99513–7537, (907) 271–3669

*Idaho; Oregon*

John G. Bonham, 520 W. 6th Avenue, Portland, OR 97204–1596, (503) 326–7018

*Washington*

John Peters, Arcade Plaza, 1321 2nd Avenue, Seattle, WA 98101–2054, (206) 442–0374

**Appendix E: Regional Youth Contacts**

Region I: Sue Rosen, Administration for Children and Families, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203 (CT, MA, ME, NH, RI, VT), (617) 565–2460

Region II: Estelle Haferling, Administration for Children and Families, 26 Federal Plaza, Room 4149, New York, NY 10278 (NJ, NY, PR, VI), (212) 264–5768

Region III: David Lett, Administration for Children and Families, 3535 Market Street, Post Office Box 13714, Philadelphia, PA 19101 (DC, DE, MD, PA, VA, WV), (215) 596–1224

Region IV: Viola Brown, Administration for Children and Families, 101 Marietta Tower, Suite 903, Atlanta, GA 30323 (AL, FL, GA, KY, MS, NC, SC, TN), (404) 331–2128

Region V: William Sullivan, Administration for Children and Families, 105 West Adams, 23rd Floor, Chicago, IL 60603 (IL, IN, MI, MN, OH, WI), (312) 353–8322

Region VI: Ralph Rogers, Administration for Children and Families, 1200 Main Tower, 20th Floor, Dallas, TX 75202 (AR, LA, NM, OK, TX), (214) 767–4540

Region VII: Linda Bitner, Administration for Children and Families, Federal Office Building, Room 384, 601 East 12th Street, Kansas City, MO 64106 (IA, KS, MO, NE), (816) 426–5401

Region VIII: Bob Rease, Administration for Children and Families, Federal Office Building, 1961 Stout Street, 9th Floor, Denver, CO 80294 (CO, MT, ND, SD, UT, WY), (303) 844–3109

Region IX: Carolyn Mangrum, Administration for Children and Families, 50 United Nations Plaza, San Francisco, CA 94102 (AZ, CA, HI, NV, American Samoa, Guam, Northern Mariana Islands, Marshall Islands, Federated States of Micronesia, Palau), (415) 556–7408

Region X: Steve Ice, Administration for Children and Families, 2201 Sixth Avenue, Mail Stop RX 32, Seattle, WA 98121 (AK, ID, OR, WA), (206) 442–0482

**Appendix F: Independent Living State Coordinators (Title IV–E)**

Donna Bownes, Alaska Division of Family and Youth Services, P.O. Box H–05, Juneau, Alaska 99811, 907–465–3633

Shirley Scanlon, Bureau of Family and Children's Services, Department of Human Resources, 50 Ripley Street, Montgomery, Alabama 36130–1801, 205–242–9531

Becky Wright, Independent Living Coordinator, Arkansas Division of Children and Family Services, P.O. Box 1437, Slot 808, Little Rock, Arkansas 72203–1437, 501–682–8453

Bob Gilfillan, Arizona Department of Economic Security, 1400 West Washington, Phoenix, Arizona 85007, 602–542–5120

Loren Suter, California Department of Social Services, 744 P Street M.S. 17–10, Sacramento, California 95814, 916–657–2614

Marlee Tougaw, Administrator, Independent Living Program, 6000 East Evans Avenue, Building 3, Suite 400, Denver, Colorado 80222, 303–691–0684

Bill Pinto, DCYS, 170 Sigourney Street, Hartford, Connecticut 06105, 203–566–3838

Cecelia Hollingsworth, Department of Human Services, Independent Living Program, 1427 21st St., N.W., Washington, DC 20036–5902, 202–727–1534

Linda Homan-Lane, Independent Living Coordinator, Department of Services for Children, Youth and Their Families, 1825 Faulkland Road, Wilmington, Delaware 19805–1195, 302–633–2559

Barbara Winn, Children, Youth and Families, Florida Department of Health, and Rehabilitative Services, 1317 Winewood Blvd. Bldg. B, Room 213, Tallahassee, Florida 32301–0700, 904–488–8000

Doris Walker, Division of Family and Children Services, Georgia Department of Human Resources, 878 Peachtree St., N.E., Atlanta, Georgia 30309, 404–894–2891

Merton Chinen, Hawaii Department of Human Services, P.O. Box 339, Honolulu, Hawaii 96809, 808–548–6124

Alice Fisher, Division of Human Services, Hoover Building, Des Moines, Iowa 50319, 515–281–5650

Tamara K. Cordova, Idaho Department of Health and Welfare, 450 W. State Street, Boise, Idaho 83720, 208–334–5695

Patricia J. Davis, Illinois Department of Children and Family Services, 406 E. Monroe Station, #75, Springfield, Illinois 62701, 217–785–2598

Debra Bridgeforth, Illinois Department of Children and Family Services, Research and Demonstration Unit, 100 W. Randolph St., Rm. 6–200, Chicago, Illinois 60601, 312–814–4116

Sheri Stevens, Family and Social Services Administration, 402 W. Washington St., Indianapolis, Indiana 46207, 317–232–4467

Janet Davenport, Social & Rehabilitation Service, Smith Wilson Building, 300 S.W. Oakley, Topeka, Kansas 66606–1861, 913–296–4657

Mike Yocum, Department for Social Services, Cabinet for Human Resources, 275 E. Main Street, Frankfort, Kentucky 40601, 502–564–2136

Sandra Shucker, Independent Living Coordinator, Office of Community Services, P.O. Box 3318, Baton Rouge, Louisiana 70821, 504–342–4043

Maureen Fallon, Massachusetts Department of Social Services, 24 Farnsworth St., Boston, Massachusetts 02110, 617–727–0900 Ext. 276

Steve Howe, Family Reunification, Office of Family and Children's Services, Social Services Administration, Maryland Department of Human Resources, 311 West Saratoga St., Baltimore, Maryland 21201, 301–333–0208

Nancy Goddard, Maine Department of Human Services, State House, Station 11, Augusta, Maine 04333, 207–289–5060

Ted Forrest, Michigan Department of Social Services, 235 S. Grand Ave., Lansing, Michigan 48909, 517–373–2047

Lyle Johnson, Adolescent & Child Care Services Section, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155–3831, 612–296–2765

Fred Proebsting, Division of Family Services, P.O. Box 88, Jefferson City, Missouri 65102, 314–751–4319

Betty Sumerall, Department of Human Services, Office of Social Services, P.O. Box 352, Jackson, Mississippi 39205, 601–354–6705

Judy Williams, Independent Living Program, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, 406–444–5916

Sarah Stitsinger, Division of Social Services, North Carolina Dept. of Human Resources, 325 N. Salisbury Street, Raleigh, North Carolina 27611, 919–733–7672

Kathy Neideffer, Administrator, Department of Human Services, State Capitol-Judicial Wing, 600 E. Boulevard Ave., Bismarck, North Dakota 58505–0250, 701–224–2316

Mary Furnas, Department of Social Services, P.O. Box 95026, Lincoln, Nebraska 68509–5026, 402–471–3121

Dorothy Doucette, New Hampshire Division for Children and Youth Services, Bureau of Children, 6 Hazen Drive, Concord, New Hampshire 03301, 603–271–4720

Karen Beckmeyer, Division of Youth & Family Services, Capital Center N717, 50 East State St., Trenton, New Jersey 08625, 609–984–8201

Annjentte Torres, Independent Living Coordinator, P.O. Box 2348, Santa Fe, New Mexico 87504, 505–827–4248

Mike Capello, Nevada State Welfare Social Services, 2527 North Carson Street, Carson City, Nevada 89710, 702–687–4783

Suzzane Sennett, State of New York, Department of Social Services, 40 N. Pearl St., Albany, New York 12243, 518–474–9574

Ava Johnson, Social Program Administrator, Ohio Department of Human Services, Policy & Program Development Section, 30 E. Broad, 30th Floor, Columbus, Ohio 43266–0423, 614–466–5302

Sherrill Mullen, Independent Living Coordinator, State of Oklahoma, Department of Human Services, P.O. Box 25352, Oklahoma City, Oklahoma 73125, 405–521–3438

Lee Cornforth, Oregon Childrens Service Division, 198 Commercial Street, SE, Salem, Oregon 97310, 503–378–4452

Jane Johnston, Independent Living Program, Shippenberg University, 313 Horton Hall, Shippenberg, Pennsylvania 17257, 717–532–1659

Bob Diethorn, Office of Children, Youth and Families, Department of Public Welfare, P.O. Box 2675, Harrisburg, Pennsylvania 17105–2675, 717–787–3984

Susan Botelho, Rhode Island Department of Children and Families, 610 Mt. Pleasant Ave., Bldg. 10, Providence, Rhode Island 02908, 401–457–4503

Carol Henderson, Office of Children and Family Service, South Carolina Department of Social Services, P.O. Box 1520, Columbia, South Carolina 29202–1520, 803–734–5670

Duane Jenner, Coordinator, Independent Living Program, Department of Social Services, Richard F. Kniep Bldg., 700

Governor's Drive, Pierre, South Dakota 57501–2291, 605–773–3227

Gail York Crawford, Social Services Policy Development, Tennessee Department of Human Services, 400 Deaderick Street, 14th Floor, Nashville, Tennessee 37219, 615–741–3251

Thomas Chapmond, Independent Living Coordinator, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714–9030, 512–450–3309

Susan Johnson, Texas Department of Human Services, P.O. Box 2960 (538–W), Austin, Texas 78769

Joe Leiker, Department of Social Services, 120 N. 200 West, P.O. Box 45500, Salt Lake City, Utah 84145–0500, 801–538–4100

Sandra Whitaker, Program Manager, Foster Care and Adoption Assistance, Virginia Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229–8699, 804–662–9435

Jean Fiorito, Vermont Department of Social Services, 103 S. Main Street, Waterbury, Vermont 05676, 801–241–2131

Deborah Buford, Independent Living Coordinator, Washington Department of, Social and Health Services/DCFS, Office Bldg. 2, Mail Stop OB–41, 12th and Franklin Streets, Olympia, Washington 98504–0095, 206–721–4342

Ruth Murphy, Wisconsin Department of Health and Social Services, One W. Wilson St., P.O. Box 7851, Madison, Wisconsin 53707–7851, 608–266–5330

Shirlee Lively, Office of Social Services, WV Department of Health and Human Resources, Capital Center-Building 6, Room 805, Charleston, West Virginia 25305, 304–348–7980

Steve Vajda, Program Consultant, Independent Living Program, Department of Family Services, 324 Hathaway Building, Cheyenne, Wyoming 82001, 307–777–6081

## Appendix G: Runaway and Homeless Youth Technical Assistance and Training Providers

*Family and Youth Services Bureau*

Training and Technical Assistance Providers

| Region | Program |
|---|---|
| I | Massachusetts Committee for Children and Youth, 14 Beacon Street, Suite 706, Boston, MA 02108, Nancy Jackson, (617) 742–8555 |
| II | Empire State Coalition, 121 Avenue of America, Room 507, New York, NY 10013, Margo Hirsch, (212) 966–6477 |
| III | Mid-Atlantic Network of Youth and Family Services, Inc., 9400 McKnight Road, Suite 106, Pittsburgh, PA 15237, Nancy Johnson, (412) 366–6562 |
| IV | Southeastern Network of Youth and Family Services, 337 S. Milledge Avenue, Suite 209, Athens, GA 30605, Gail Kurtz, (404) 354–4568 |
| V | Michigan Network of Runaway and Youth Services, 115 West Allegan, Suite 310, Lansing, MI 48933, Bruce Haas, (517) 484–5262 |
| VI | Southwest Network of Youth Services, 404 West 40th Street, Austin, TX 78751, Theresa Andreas-Tod, (512) 459–1455 |
| VII | M.I.N.K., A Network of Runaway and Youth Serving Agencies, P.O. Box 14403, Parkville, MO 64152, Jack McClure, (816) 741–8700 |
| VIII | Mountain Plains Youth Services, 311 N. Washington, Bismarck, ND 58501, Linda Wood, (701) 255–7229 |
| IX | Western States Youth Services Network, 1306 Ross Street, Suite B, Petaluma, CA 94954, Nancy Fastenau, (707) 763–2213 |
| X | Northwest Network of Runaway and Youth Services, 94 Third Street, Ashland, OR 97501, Ginger Baggett, (503) 482–8890 |

## Appendix H: State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Connecticut

Under Secretary, Attn: Intergovernmental Review coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727–9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone: (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol—Room 406, Honolulu, Hawaii 96813, Telephone (808) 548–5893, FAX (808) 548–6172

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–2939

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room

1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373–7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Attn: John B. Walker, Clearinghouse Coordinator

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Part III

# Department of Education

34 CFR Part 74 et al.
Education Department General Administrative Regulations; Final Regulations

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**DEPARTMENT OF EDUCATION**

**34 CFR Parts 74, 75, 76, 77, 237, 263, 300, 356, 562, 630, 653, 654, and 762**

**RIN 1880-AA24**

## Education Department General Administrative Regulations

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the Education Department General Administrative Regulations (EDGAR) to reduce burden by deleting unnecessary requirements and provisions and to include provisions for the award and administration of cooperative agreements under 31 U.S.C. chapter 63. The Secretary adds regulations that make ineligible certain individuals who are applicants for financial aid or discretionary grants. Those applicants who are not current in repaying a debt to the Federal Government or are in default on a debt to the Federal Government are ineligible for discretionary grants and other forms of financial assistance unless they have made satisfactory arrangements to repay the debt. The Secretary revises the standards for receiving continuation awards to require grantees to make substantial progress in meeting the objectives of the project in order to receive a continuation award. Certain EDGAR provisions relating to preapplications are transferred to the program regulations for the only program that currently uses preapplications.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 74.75, 75.261, 75.720 and 76.720. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register on the effective date of the rule. Sections 74.75, 75.261, 75.720 and 76.720 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education (ED) contact person. A document announcing the effective date will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Sherlyn Williams, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW., room 3636, ROB-3, Washington, DC 20202-4700. Telephone: (202) 708-5580. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC, 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m. Eastern time.

**SUPPLEMENTARY INFORMATION:** On August 18, 1988, the Secretary published a notice of proposed rulemaking (NPRM) proposing certain amendments to EDGAR in the **Federal Register** (53 FR 31580). Some of the provisions were made obsolete by laws passed since EDGAR became effective. Other provisions duplicated existing statutory or regulatory requirements. The Secretary believes these amended regulations will assist the Department in its efforts to reduce regulatory burden on the public and to promote efficient operation of departmental programs.

The NPRM included a discussion of the major issues (53 FR 31580-31584). The substantive differences between the revisions published in the NPRM and these final regulations relate to provisions that establish complaint procedures under State-administered programs.

The Department received over 50 comments from the public on the Secretary's proposed removal §§ 76.780-76.782, the provisions that establish complaint procedures under State-administered programs. The comments raised several concerns, including a concern that the regulations not be removed from EDGAR, that various aspects of the procedures be strengthened, and that the procedures should be limited in certain ways.

In the NPRM, the Secretary proposed to remove the State complaint procedures from EDGAR and to transfer those procedures to Part B of the Individuals with Disabilities Education Act (IDEA) (formerly, the Education of the Handicapped Act). In doing so, the Secretary noted that the complaint procedures had originated under the Part B program and that the procedures had not been used under most programs of the Department. Four of the comments received by the Department asked that the State complaint procedures be kept in EDGAR. The commenters believed that the reason that the State-administered programs other than Part B of IDEA did not use the procedures was because there was a lack of awareness about the procedures under those programs. However, the Secretary believes that complaint procedures are most appropriate for the following programs that focus on the special needs of individuals or are designed to assist disadvantaged children:

- Part B of IDEA (34 CFR part 300)
- Chapter 1 State-Operated or Supported Programs for Handicapped Children (34 CFR part 302)
- Part H of IDEA (34 CFR part 303)
- The Chapter 1 Program in Local Educational Agencies (34 CFR part 200)
- Chapter 1 Migrant Education Program (34 CFR part 210)
- Chapter 1 Program for Neglected or Delinquent Children (34 CFR part 203)

Thus, the Secretary has decided to remove State complaint procedures from EDGAR. The four Chapter 1 programs and the part H program listed above already include the complaint procedures contained in EDGAR. This final rulemaking document adds those procedures to the part B program. The Secretary has published an NPRM for the part B program that proposes to add certain protections to the complaint procedures under that program and has requested comment on this proposal (56 FR 41266; August 19, 1991). The Secretary may issue NPRMs, as appropriate, for the other programs identified above to consider the need for similar added protections for those programs.

### Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, over 60 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations as a result of the comments received on the NPRM follows. In addition, the Secretary has reviewed the proposed regulations since publication of the NPRM and has made some changes. These changes are discussed under the section of the regulations to which they pertain.

*General*

Some commenters provided comments on provisions not proposed in the NPRM or already addressed in amendments to EDGAR that were previously published on July 24, 1987 (52 FR 27801). The Secretary will not respond to each of these commenters directly in this final rulemaking document. However, all comments received by the Department on provisions not included in these revisions will be considered in future proposals to amend EDGAR. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are also not addressed.

Parts 75 and 76 EDGAR currently contain numerous cross-references to

part 74 and specific sections in that part. Part 74 now applies only to grants made to institutions of higher education, hospitals, and nonprofit organizations. Grants to State and local governments and federally-recognized Indian tribal governments are now covered by part 80 of EDGAR. Those sections in EDGAR that are being amended by this document have been revised to refer to part 74 or part 80, as appropriate. The Department intends to publish revisions to those cross-references not corrected in this rulemaking document when part 80 is revised in response to the NPRM published on November 4, 1988 (53 FR 44716).

*Cost Principles—General*

*Comment:* Several organizations representing entities with substantial interests in ED grants questioned the Department's practice of restating OMB circulars as appendices to regulations in EDGAR. These commenters thought that, as those circulars are amended by OMB in the future, their inclusion in appendices could result in different rules being applied by ED unless the Department were to take stringent steps to keep the appendices current.

*Discussion:* Any inconsistencies created by disparity between the Department's adoption of the circulars as appendices and the circulars as promulgated by OMB are contrary to the current Federal effort to strengthen accountability in Federal programs and to keep burden to a minimum through uniform principles for management of all Federal programs. The Secretary has now established a chart similar to that used in the common regulations implementing OMB Circular A–102 in § 80.22 (see 53 FR 8034 March 11, 1988), indicating which cost principles are applicable to the various kinds of entities subject to part 74.

Each of the cost principle circulars listed in the chart was established after the adopting agency offered the public an opportunity to comment on the proposed cost principles. Each of the cost principles provides guidance to all Federal agencies regarding what costs are allowable for a specific class of entities. The Secretary has decided to adopt the cost principles in their current form without further comment. These cost principles apply except to the extent program regulations or the regulations in EDGAR require a different outcome. For example, many of the programs administered by the Department are subject to statutory supplement-not-supplant provisions. Under these programs, which prohibit a State from using Federal funds to supplant State and local funds, EDGAR has a specific restricted indirect cost rate formula that eliminates certain costs from the numerator of the indirect cost rate that would otherwise be permitted under general indirect cost principles (see 34 CFR 75.563–75.568).

The OMB circulars that contain cost principles are available from the Publications Division of OMB in their current form. The current form of OMB Circular A–122, "Cost Principles for Nonprofit Organizations," includes its original publication in the **Federal Register** on July 8, 1980, at 45 FR 46022, with corrections published on March 17, 1981, at 46 FR 17185 and amendments published on April 27, 1984, at 49 FR 18260, with corrections published on May 8, 1984, at 49 FR 19588.

OMB Circular A–21, "Cost Principles for Educational Institutions," was originally published in the **Federal Register** on March 6, 1979, at 44 FR 12368. The Circular has been amended several times, as follows: On August 3, 1982, at 47 FR 33658, on June 9, 1986, at 51 FR 20908, on December 2, 1986, at 51 FR 43487, and on October 3, 1991 at 56 FR 50224.

The cost principles for hospitals are published in the Code of Federal Regulations (CFR) as an appendix to 45 CFR part 74. The cost principles for commercial (for-profit) organizations are also published in the CFR as a part in the Federal Acquisition Regulation at 48 CFR part 31.

If OMB publishes amendments to any of these Circulars at a future date, the Secretary will promptly publish a document in the **Federal Register** adopting those amendments.

*Change:* Appendix D is removed and a chart listing applicable cost principles is added in a new § 74.171.

*Comment:* One commenter asked that the requirement for prior approval for purchase of automatic data processing equipment be removed from the cost principles for State and local governments as formerly adopted in appendix C to part 74. Another commenter suggested the department revise appendix C to remove certain prior approval requirements.

*Discussion:* This appendix no longer exists. It implemented OMB Circular A–87, "Cost Principles for State and Local Governments." OMB Circular A–87 is currently implemented in part 80 by reference to the **Federal Register** notices containing the most recent amendments to that Circular. OMB Circular A–87 was promulgated by OMB, and the Secretary has little discretion to promulgate implementing regulations containing an outcome different from the outcome under the Circular unless a statue for a particular program requires such a different outcome. If that were the case, the change would be accomplished in appropriate program regulations. Thus, the prior approval requirement for the purchase of automatic data processing equipment has not been removed.

*Change:* None.

*Section 74.3 Definitions*

*Comment:* Regarding the definition of "grant", several commenters questioned the removal of the provision of financial assistance awarded under a contract as being within the scope of definition of a grant. These commenters thought that the regulations in part 74 should apply to all grants, cooperative agreements and contracts.

*Discussion:* The intent of the proposed change to the definition of grant was to clarify that the Federal Grant and Cooperative Agreement Act prohibits the Federal Government from making assistance available through contracts. However, under that Act cooperative agreements are treated the same as grants for most purposes including the purposes of grants administration covered by part 74. Therefore, the Department lacks authority to include assistance contracts within the scope of grants.

*Change:* The Department has decided to adopt the definition of "grant" that is currently embodied in the common regulations implementing OMB Circular A–102 and codified for the Department at 34 CFR part 80. The definition achieves the same objectives as the proposed amendment and is consistent with the Department's implementation of government-wide regulations for State and local governmental entities.

*Section 74.47 Interest Earned on Advances of Grant Funds*

*Comment:* One commenter from a public school system wanted to know what programs were subject to section 487 of the Higher Education Act of 1965 (HEA).

*Discussion:* Programs subject to section 487 of the HEA, as amended, are not subject to part 74. Therefore, the requirements in § 74.47 do not apply to those programs. However, to respond to the commenter's question, section 487 applies generally to the student grant, loan, and work-study programs authorized under title IV, HEA. Some of the well-known programs subject to this exception are the Pell Grant Program, the Supplemental Educational Opportunity Grant Program, the Perkins Loan Program, and the College Work-Study Program. However, section 487 does not apply to the State Student

Incentive Grant Program and the Byrd Honors Scholarship Program.

*Change:* None.

*Comment:* A commenter was concerned that the $100 annual exemption for the costs of administration for maintaining funds in the interest bearing account was insufficient. The commenter was also concerned that at times they use their own funds to support grant activities before Federal funds are paid.

*Discussion:* The current OMB Circular A–110 provision, upon which this amendment was based, authorizes agencies to permit grantees to retain only $100 per year for administrative expenses. Therefore, the Department cannot adopt a different dollar threshold. As a general matter, ED pays grantees by advance, except in cases where a grantee has been placed on reimbursement due to prior grant administration problems. Therefore, a grantee would not usually have to use its own funds to cover expenses before Federal funds are paid.

*Change:* None.

*Section 74.52 Basic Rule: Costs and Contributions Acceptable*

*Comment:* Several commenters thought that they should be able to apply any indirect costs above an indirect cost ceiling to meet cost-sharing or matching requirements. These commenters cited a provision in OMB Circular A–21 which provides "the cost of a sponsored agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution * * *" as the basis for their argument that these costs should be allowed for cost-sharing and matching.

*Discussion:* A ceiling on indirect costs for educational training grant programs has been in existence since before the Department was created. Under that provision, the Department restricts the indirect cost rate to the lesser of the negotiated indirect cost rate or eight percent. Whichever rate applies, it determines the total allowed for indirect cost recovery by the grantee under an educational training grant program. Therefore, because the costs in excess of the ceiling are unallowable they are not covered under the A–21 provision permitting recovery of the allocable portion of the allowable excess indirect costs.

*Change:* None.

*Section 74.73 Accounting Basis for Reports; the Financial Status Report*

*Comment:* One comment was received from a public school system that was confused about whether it would be required to report on a cash or accrual basis. The reason it was concerned is because it keeps accounts on both a cash and a modified accrual basis.

*Discussion:* After publication of the NPRM for part 74, the new 34 CFR part 80 applying to State and local governments became effective October 1, 1988 (see 34 CFR 80.41). Thus, the commenter would not be subject to the rule in part 74. For grantees subject to part 74, if a grantee's accounts are maintained on a cash basis the grantee shall report on a cash basis, and if a grantee's accounts are maintained on an accrual basis the grantee shall report on an accrual basis.

*Change:* None.

*Section 74.96 Establishing Frequency of Payments*

*Comment:* One commenter questioned the need for establishing, in the grant award document, the frequency of payment request. According to the commenter OMB Circular A–110 provides sufficient guidance on this matter.

*Discussion:* OMB Circular A–110 does not apply to Department programs except to the extent adopted by the Department through regulations. The Treasury Circular 1075 and its implementing regulations, 31 CFR part 205, have the most recent government-wide requirements regarding frequency of requests for payments. The Secretary has decided to adopt those requirements.

*Change:* Section 74.96 has been revised to refer to 31 CFR part 205 (which contains Treasury Circular 1075) as the basis for determining how frequently a grantee may request payments.

*Section 74.144 Inventions and Patents*

*Comment:* One commenter suggested that the Department adopt Department of Commerce regulations regarding inventions and patents.

*Discussion:* The Department made no proposal to change this section in the NPRM. This issue was raised under a government-wide NPRM published November 4, 1988 (53 FR 44716) to consolidate regulations implementing OMB Circular A–102 and A–110. OMB has dropped the effort to consolidate these two circulars into a single common regulation. However, an interagency task force is currently preparing revisions to the common regulation implementing OMB Circular A–102. The proposed rule for A–102 will address the inventions and patents issue. The Department will take appropriate action as part of that rulemaking procedure.

*Change:* The reference in § 74.144 to 34 CFR part 8 is removed because that part no longer exists.

*Section 74.172 Institutions of Higher Education*

*Comment:* Several commenters objected to restating the OMB cost principles for institutions of higher education in an appendix to part 74. These commenters pointed out that revisions to the cost principles are not timely reflected in Department appendices and therefore create cost principles for Department grants that are inconsistent with the principles of other Federal agencies. For example, one commenter pointed out that the Department had not yet adopted the revised ceiling for certain components of the indirect cost rate for institutions of higher education issued by OMB as a revision to Circular A–21 on December 2, 1986. Additionally, commenters noted that, to the extent the cost principle appendices are not inconsistent with the applicable OMB circular, they are redundant.

*Discussion:* This issue was addressed earlier in this preamble. The Secretary agrees with these comments and has made a change.

*Change:* Section 74.172 is deleted. A new § 74.171 is established that adopts current OMB cost principles for each kind of entity subject to part 74.

*Section 74.175 Subgrants to Commercial Organizations*

*Comment:* One commenter suggested renaming this section to more accurately reflect its contents.

*Discussion:* The Secretary agrees with this comment and has decided to make a change.

*Change:* The section has been renamed "Cost principles applicable to the subgrants and cost-type contracts under grants." Also, paragraph (b) has been removed because the cost principles for commercial organizations are now contained in the chart established in § 74.171.

*Section 75.1 Programs to Which Part 75 Applies*

*Comment:* None.

*Discussion:* A correction is made to § 75.1(b) to clarify that the only portions of Public Law 81–874 (the impact Aid Program) to which otherwise relevant provisions of part 75 apply are the entitlement increase for children with disabilities under section 3(d)(2)(C) of Public Law 81–874 (20 U.S.C. 238(d)(2)(C)), and disaster assistance under section 7 of that law (20 U.S.C. 241–1). This clarification was previously

contained in a table incorporated in § 75.1(a), but was omitted inadvertently when § 75.1(a) was revised and the table was removed.

*Change:* Section 75.1(b) has been revised to clarify that, with respect to the Impact Aid Program, the term "direct grant program" includes only the entitlement increase for children with disabilities and disaster assistance portions of the program.

*Section 75.3 ED General Grant Regulations Apply to These Programs*

*Comment:* One commenter was concerned that the proposed removal of § 75.3 would make it difficult to determine what other general regulations applied to a program.

*Discussion:* As a matter of practice, the Department lists applicable regulations, including EDGAR regulations, in the program regulations, application notices, and application packages. Therefore, there is no practical need to list in part 75 of EDGAR the other EDGAR regulations that might apply to a program.

*Change:* None.

*Section 75.60 Individuals Ineligible To Receive Assistance*

*Comment:* None.

*Discussion:* The Secretary has reviewed the language regarding ineligibility of individuals to receive certain kinds of assistance based on a failure to pay financial commitments to the Federal Government and has decided to make a change.

Section 75.60, as proposed, would have provided that an individual is ineligible to receive a fellowship, scholarship, or discretionary grant funded by the Department if the individual was not current in repayment a debt to the Federal Government under certain kinds of programs and transactions and had not made satisfactory arrangements to repay the debt. The Secretary has decided that the phrase "not current in repaying a debt" may not be fully consistent with the concept of default as used in the Department's regulations regarding student financial aid. In order to make the terms in this regulation consistent with the terms understood by holders of loans subject to the student financial aid regulations in 34 CFR part 668, the final regulations add the phrase "in default on a debt" to the phrase "not current in repaying a debt" to clarify that an individual may owe funds under either a loan or a fellowship, scholarship, or discretionary grant.

*Change:* The phrase "in default on a debt" has been added to the phrase "not current in repaying a debt."

*Section 75.61 Certification of Eligibility; Effect of Ineligibility*

*Comment:* None.

*Discussion:* The proposed requirement to submit a certification including a statement that the individual has not been debarred or suspended by the Department or another Federal agency under Executive Order 12549 has been removed from these final regulations as duplicative of regulatory requirements under the Department's Nonprocurement Debarment and Suspension Regulations in 34 CFR part 85.

*Change:* The certification requirement in § 75.61 is revised to cover only eligibility under these regulations and under section 5301 of the Anti-Drug Abuse Act of 1988, as amended.

*Section 75.62 Requirements Applicable to Entities Making Certain Awards*

*Comment:* Two organizations were concerned that fellowships, scholarships, and direct discretionary grants to individuals might be delayed if, under § 75.62(d), the Secretary required entities to submit a list of proposed recipients.

*Discussion:* In proposing § 75.62(d) the Secretary was concerned that the Department have a mechanism to ensure that individuals did not falsely certify to an entity regarding their eligibility for Department funds. However, the Secretary is aware that delays in disbursing funds to entities that make awards for the Department could impose hardship on those entities. The Secretary does not intend to delay awards made by entities for the Department. The Secretary will exercise discretion only as necessary to ensure compliance and will not unnecessarily disturb the timely processing of awards subject to this section.

*Change:* None.

*Comment:* One commenter mistakenly thought that a contract between a grantee and a consultant would be subject to the eligibility requirements in §§ 75.60–75.62.

*Discussion:* This is not the case. These sections only apply to fellowships, scholarships, and direct discretionary grants to individuals.

*Change:* None.

*Comment:* None.

*Discussion:* The proposed requirement to submit a certification including a statement that the individual has not been debarred and suspended by the Department or another Federal agency under Executive Order 12549 has been removed from these final regulations as duplicative of regulatory requirements under the Department's Nonprocurement Debarment and Suspension Regulations at 34 CFR part 85.

*Change:* The certification requirement in § 75.61 is revised to cover only eligibility under these regulations and under section 5301 of the Anti-Drug Abuse Act of 1988, as amended.

*Section 75.105 Annual Priorities*

*Comment:* One commenter recommended that the practice of establishing absolute priorities through regulations be eliminated. The commenter was concerned that absolute priorities might reduce competition and circumvent congressional intent by establishing "set asides" that were not established by Congress.

*Discussion:* The Department has had in effect, since January 1981, regulations describing how the Department establishes annual priorities for grant competitions. The regulations, 34 CFR 75.105, describe three kinds of priorities—invitational, competitive preference, and absolute priorities. The proposed amendment merely clarified the language in § 75.105(c)(3) to make clear that the Secretary establishes a separate competition for applicants that meet an absolute priority.

The Secretary ensures that the establishment of any priorities are in furtherance of, and not contrary to, congressional intent. The Secretary establishes priorities, including absolute priorities, in order to meet rapidly changing national needs in the educational community. Absolute priorities, of course, constitute restrictions on competitions and are subject to the rulemaking requirements of the General Education Provisions Act, section 431, and the Administrative Procedure Act (5 U.S.C. 553). The Secretary solicits public comment in accordance with those applicable rulemaking requirements when establishing new competitive and absolute priorities.

*Change:* None.

*Comment:* None.

*Discussion:* The Secretary believes there is a need for clarification regarding application of the current rule regarding competitive preference.

*Change:* The Secretary has decided to revise § 75.105(c)(2)(i) to clarify that, under a competitive preference, the Secretary may award a range of additional points to an application, depending upon how well the application meets the competitive preference.

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*Sections 75.111 Describe the Project; 75.113 Describe the Key Personnel; 75.114 Describe the Resources; 75.115 Describe the Evaluation Plan; and 75.116 Demonstrate Capability; Include Evaluation of Completed Project*

*Comment:* One commenter was concerned that the removal of §§ 75.111, 75.113, 75.114 and 75.115 would permit the Department to fund formula grantees that did not have a clear sense of purpose or a means to evaluate the effectiveness of their programs.

*Discussion:* The authorizing statute and implementing program regulations for direct formula grant programs establish eligibility requirements. These program-specific requirements are sufficient to ensure that the programs meet their intended purpose. These EDGAR provisions and § 75.116 are removed in accordance with the policy of the Paperwork Reduction Act of 1980. As stated in the preamble to the NPRM, the Paperwork Reduction Act of 1980 and OMB's implementing regulations prohibit Federal agencies from collecting information that is not essential to determine funding under a program.

*Change:* None.

*Sections 75.200 How Applications for New Grants and Cooperative Agreements Are Selected for Funding; Standards for Use of Cooperative Agreements; and 75.262 Conversion of a Grant or a Cooperative Agreement*

*Comment:* One commenter questioned the need for regulations on cooperative agreements. This commenter suggested the Department had been awarding cooperative agreements for some time and that the commenter was unaware of any problems in the award and administration of these agreements.

*Discussion:* As stated in the preamble to the NPRM, the Department is awarding more cooperative agreements each year. The Secretary has determined that all applicants should be aware of the possibility of receiving these types of awards and the criteria for receiving and administering them.

*Change:* None.

*Comment:* Two commenters recommended that the Department apply the requirements of OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," to all cooperative agreements.

*Discussion:* OMB Circular A–110 provides guidance to Federal agencies regarding administering grants and cooperative agreements that should be applied to certain types of organizations. The Department has implemented those requirements in 34 CFR part 74. The Department already applies part 74 to the organizations that are subject to that part.

*Change:* None.

*Comment:* Three commenters did not think that the Secretary could convert grants to cooperative agreements or cooperative agreements to grants and, therefore, proposed that the criteria for conversion from one form of assistance to the other should not be implemented.

*Discussion:* The Federal Grant and Cooperative Agreement Act and its legislative history clearly indicate that Congress envisioned conversion between these two types of award instruments. For example, 31 U.S.C. 6308 provides that a project may be funded under both a grant and cooperative agreement, depending on the nature of the project during its different stages. The OMB guidance on this subject also supports conversions between grants and cooperative agreements (43 FR 36860, August 18, 1978). The Secretary does not envision frequent use of this authority. However, the exercise of good stewardship over Federal grant funds requires that the Secretary make changes to awards if necessary to ensure that program objectives are met in the most efficient manner.

*Change:* None.

*Section 75.216 Applications Not Evaluated for Funding*

*Comment:* One commenter thought the amendment to § 75.216 eliminated a requirement to explain the reason an application was not evaluated.

*Discussion:* This is not the case. The current § 75.216 requires the Secretary to return an application that is not evaluated. The Secretary proposed only to eliminate this requirement to reduce costs to the Department in managing grant competitions.

A related amendment was made to § 75.218, "Applications not selected for funding" to broaden its scope. As revised, § 75.218 now requires the Secretary to inform an applicant if its application is not evaluated or selected. As revised, § 75.216 only contains the standards for whether an application will be evaluated under a particular program.

*Change:* None.

*Section 75.218 Applications Not Evaluated or Selected for Funding*

*Comment:* Three commenters were concerned about the Secretary's proposed elimination of the requirement to explain why an application was not selected.

*Discussion:* Currently, the Secretary informs an applicant if its application is not selected. These letters may be brief in their explanation, and sometimes applicants request additional information. The Secretary has always provided that additional information if requested. The Secretary did not intend, through these amendments, to put an end to that practice. In response to the comments, the Secretary has decided to clarify § 75.218.

*Change:* Section 75.218 is revised to explicitly state the current practice.

*Section 75.233 Setting the Amount of the Grant*

*Comment:* One commenter was concerned that the proposed changed to § 75.233 were an attempt by the Department to circumvent statutory cost-sharing or matching requirements. Another commenter thought the current language in EDGAR was clearer regarding the Secretary's authority to set the amount of the grant.

*Discussion:* In response to the first commenter, the Secretary did not intend any changes to the matching requirements in statutes. Rather, the intent was to make it clear that the 100 percent rule was subject to statutory requirements. In some cases, even if cost-sharing or matching requirements do not apply, the Secretary may not fund 100 percent of the costs of the project because the applicant proposes to earn income under the grant that could be included in the overall costs of the grant. In other cases, an applicant may have resources of its own, such that it only requests seed money to get a project started.

*Change:* None.

*Section 75.261 Extension of a Project Period*

*Comment:* One commenter thought that the 45-day period for requesting an extension of a grant was too restrictive.

*Discussion:* After considering this comment, the Secretary has decided to relax the proposed rule so that a grantee may give notice about the need to extend a grant after the start of the 45-day period if certain conditions exist. Under the final rule, the Secretary may permit a grantee to give notice after the start of the 45-day period if it could not reasonably have known of the need to extend the project before the start of the time period or if the failure to give notice was unavoidable.

*Change:* Section 75.261 has been revised so that the 45-day timing requirement may be waived under certain circumstances. The Secretary has also decided to add a requirement that a grantee must include in its written statement the period of time for which the extension is requested.



*Section 75.518 Minimum Wage Rates*

*Comment:* One commenter thought the proposed removal of § 75.518, which informed grantees of their obligation to pay minimum wage required by law, was unwise because the requirement is controversial.

*Discussion:* The Secretary proposed to remove the reference to minimum wage rates because they are established in Federal law and the section, which merely informs grantees of the requirement, does not add any force to the Federal Government's ability to enforce the requirement.

*Change:* None.

*Section 75.580 Coordination With Other Activities; and 75.581 Methods of Coordination*

*Comment:* None.

*Discussion:* These sections were designed, in part, to meet a statutory requirement for coordination. The statute is no longer effective (See section 210 of the Elementary and Secondary Education Act, as added by section 201 of Public Law 95–561, and removed by Public Law 97–35, section 587[a]). The Secretary did not intend that discretionary grantees stop coordinating Federal programs, only to remove detailed requirements regarding that coordination.

*Change:* The Secretary has decided to retain the general coordination requirement contained in paragraph (a) of the current regulation.

*Section 75.590 Evaluation by the Grantee*

*Comment:* One commenter was concerned that removing the list of traditionally underrepresented groups and private school students, if required to be served, from § 75.590(c) indicated an insensitivity to ensuring that the needs of these groups were met in programs administered by the Department.

*Discussion:* The list was removed because most programs of the Department are very specific regarding the types of persons that may be served. For example, if a program requires grantees to serve infants and toddlers it would be inappropriate to evaluate the effect of this program on the elderly. Therefore, the Secretary has decided to eliminate the list. The Secretary is, of course, concerned that the groups of persons included in the list be appropriately served to the extent they can be served under the programs of the Department. These concerns will be addressed in program regulations, as needed.

*Change:* None.

*Section 75.621 Copyright Policy for Grantees*

*Comment:* None.

*Discussion:* The NPRM for this document proposed to make a technical amendment to this section to remove a reference to copyright policy for contractors. However, that amendment was made when the Education Department Acquisition Regulation (EDAR) was published as final regulations on May 26, 1988 (53 FR 19118).

*Change:* Section 75.621 is being amended to refer to the copyright policy established in both part 74 and part 80.

*Section 76.125 What Is the Purpose of These Regulations?*

*Comment:* Although no comment was received on § 76.125, the Secretary has reviewed that section since publication of the NPRM and has decided to make a change.

*Discussion:* The Secretary has decided to remove the chart of programs which an Insular Area may propose to include in a consolidated grant and replace it with a simple description of the category of programs that may be proposed for consolidation by an Insular Area. The Secretary has determined that Insular Areas may propose to consolidate any two or more State-administered formula grant programs and carry out any one or more of those programs. The chart was intended to inform Insular Areas of those programs that could be consolidated. However, the chart was often incomplete or out-of-date due to new or amended legislation. Therefore, the chart in § 76.125 has been removed.

*Change:* The chart in § 76.125 is removed and conforming amendments are made to paragraphs (a) and (c).

*Section 76.300 Contact the State for Procedures To Follow*

*Comment:* One commenter was concerned because he thought that the effect of the amendment to § 76.300 was to eliminate a State's responsibility under the current EDGAR to inform subgrant applicants, upon request, of the procedures the applicant must follow to apply for assistance. The commenter also thought that the proposed revision would eliminate any State responsibility to have procedures for applicants to use in applying for subgrants. Another commenter suggested adding a phrase to § 76.300 to indicate that the State should establish procedures for an applicant to follow in amending its application.

*Discussion:* The Secretary did not intend to eliminate a State's responsibility to establish procedures for applicants to follow in applying for subgrants. The Secretary has decided not to change the current § 76.300. The requirement to maintain procedures is in proposed § 76.700. The concerns of the second commenter are addressed below under § 76.700.

*Change:* The amendment proposed in the NPRM is not adopted.

*Section 76.401 Disapproval of an Application—Opportunity for a Hearing*

*Comment:* One commenter was concerned that this section did not list chapters 1 and 2 of title I of the Elementary and Secondary Education Act (ESEA) as programs for which a hearing is required before a State may disapprove an application for a subgrant.

*Discussion:* Both chapters 1 and 2 of the ESEA are subject to section 425 of the General Education Provisions Act (GEPA), which requires that a State educational agency provide a local educational agency a hearing before it disapproves the local educational agency's application for a subgrant. This GEPA requirement is implemented in § 76.401. Notices of final rulemaking were published for chapter 1 (May 19, 1989, 54 FR 21752) and chapter 2 (April 18, 1990, 55 FR 14810) in which the Secretary amended the chart in § 76.401 to include those programs.

*Change:* The chapter 1 and chapter 2 programs are included in the final chart.

*Comment:* None.

*Discussion:* The list published in the NPRM did not include the chapter 1, State-Operated or Supported Programs for Handicapped Children. That program requires that a State offer a subrecipient a hearing before it denies an application for assistance.

*Change:* The chapter 1, State-Operated or Supported Programs for Handicapped Children has been added to the list in § 76.401.

*Section 76.563 Restricted Indirect Cost Rate—Programs Covered*

*Comment:* None.

*Discussion:* In the NPRM the Department proposed to revise this section for clarity. Since that time, the Department has published final regulations for chapter 2 that revise this section. Therefore, the proposal in the NPRM for this EDGAR rulemaking effort is no longer necessary.

*Change:* The proposed revision to § 76.563 is not made.

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*Sections 76.560 Coordination With Other Activities; and 76.581 Methods of Coordination*

*Comment:* One commenter recommended that these sections not be removed, stating that a coordination requirement was useful to State agencies in directing the effective and efficient use of Federal funds by State and local agencies.

*Discussion:* These sections were designed, in part, to meet a statutory requirement for coordination. That statute is no longer effective (See section 210 of the Elementary and Secondary Education Act, as added by section 201 of Public Law 95–561, and removed by Public Law 97–35, section 587(a)). The Secretary did not intend that State agencies stop coordinating Federal programs, only to remove detailed requirements regarding that coordination.

*Change:* The Secretary has decided to retain the general coordination requirement contained in paragraph (a) of the current regulation.

*Section 76.684 Day Care Services*

*Comment:* One commenter asked whether the removal of this section had been evaluated for its effect on day care centers funded under Part H of the Education of the Handicapped Act (now IDEA).

*Discussion:* Section 76.684 requires a State or subgrantee that uses funds to provide day care services to comply with Department of Health and Human Services (HHS) day care regulations in 45 CFR part 71. However, HHS revoked those regulations on February 22, 1982, as a result of the passage of the Omnibus Budget Reconciliation Act of 1981, Public Law 97–35. Therefore, the reference to 45 CFR part 71 is obsolete and its removal will not affect services provided under part H of IDEA.

*Change:* None.

*Section 76.770 A State Shall Have Procedures To Ensure Compliance*

*Comment:* One commenter suggested that § 76.770, as proposed for revision, would impose more burdensome administrative requirements on a State educational agency than the current § 76.770 which requires States to monitor projects. The commenter also was concerned that the section duplicated monitoring requirements in part 74 and appeared to impose a requirement to evaluate projects under all Departmental programs, whether or not an evaluation is required by statute under certain programs. Finally, the commenter thought that the phrase "other administrative responsibilities" was too vague for States to be held accountable.

*Discussion:* The requirement to monitor projects has been dropped as duplicative of the monitoring requirement in part 80. Part 74 has not applied to State and local government grants made since October 1, 1988. Pursuant to a common rulemaking document published in the **Federal Register** on March 11, 1988, (See 53 FR 8034), uniform requirements applicable to State educational agencies are now in part 80. The requirements in the proposed § 76.770 would not be more burdensome than the current EDGAR requirements. Under the current § 76.772, a State has to assist in the evaluation of all projects subject to part 76. Under the proposed revision to § 76.770, a State need only have procedures to ensure that projects are evaluated. Finally, in order to avoid any ambiguity about what procedures may be required, the Secretary has revised the requirements regarding other administrative responsibilities so that the State must make its own determination regarding what procedures are necessary for administration of State-administered formula grant programs.

*Change:* § 76.770 has been revised to remove the requirement for States to monitor projects, which is covered under part 80 in § 80.40 and to limit State administrative responsibilities to those determined necessary by the State.

*Section 76.901 Office of Administrative Law Judges*

*Comment:* None.

*Discussion:* Section 76.901 is revised to refer to the authority of the Office of Administrative Law Judges (OALJ). The OALJ was established under the Hawkins-Stafford Amendments of 1988, Public Law 100–297. The OALJ replaces the Education Appeal Board (EAB). The OALJ has jurisdiction over cases arising after October 25, 1988. The EAB continues to have jurisdiction over cases arising before that date.

*Change:* A technical revision is made to § 76.901.

*Section 77.1 Definitions That Apply to All Department Programs*

*Comment:* One commenter asked the Department to establish a definition for "instructional educational materials." The commenter pointed out that many statutes define these terms for the purposes of certain programs.

*Discussion:* The differences in program statutes, noted by the commenter, preclude a common definition of this term.

*Change:* None.

**Waiver of Proposed Rulemaking**

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, regarding adoption of OMB Circulars A–21 and A–122, OMB has already offered a full opportunity to comment on those proposed Circulars. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest. Accordingly, for good cause, the Secretary waives proposed rulemaking and adopts OMB Circulars. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest. Accordingly, for good cause, the Secretary waives proposed rulemaking and adopts OMB Circulars A–21 and A–122.

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Assessment of Educational Impact**

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects**

*34 CFR Part 74*

Administrative practice and procedure, Education Department, Grant programs-education, Grant administration.

*34 CFR Part 75*

Education Department, Grant programs-education, Grant administration, Incorporation by reference.



*34 CFR Part 76*

Education Department, Grant programs-education, Grant administration, Intergovernmental relations, State-administered programs.

*34 CFR Part 77*

Definitions.

*34 CFR Part 237*

Colleges and universities, Education, Elementary and secondary education, Scholarships and fellowships, Teachers.

*34 CFR Part 263*

Business and administration, Colleges and universities, Education, Engineers, Health professions, Indians-education, Law, Medical and dental schools, Natural resources, Psychology and clinical psychology, Scholarships and fellowships, Teachers.

*34 CFR Part 300*

Administrative practice and procedure, Education, Education of handicapped, Equal educational opportunity, Grant programs-education, Privacy, Private schools.

*34 CFR Part 356*

Education, Educational research, Fellowships.

*34 CFR Part 562*

Bilingual education, Education, Elementary and secondary education, Grant programs-education, Reporting and recordkeeping requirements, Scholarships and fellowships.

*34 CFR Part 630*

Colleges and universities, Education, Government contracts, Grant programs-education, Reporting and recordkeeping requirements.

*34 CFR Part 653*

Education, Grant programs, State-administered, Student aid.

*34 CFR Part 654*

Education, Grant programs, Student aid.

*34 CFR Part 762*

Education, Educational research, Fellowships, Teachers.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: June 23, 1992.

**Lamar Alexander,**

*Secretary of Education.*

The Secretary amends parts 74, 75, 76, 77, 237, 263, 300, 356, 562, 630, 653, 654, and 762 of title 34 of the Code of Federal Regulations as follows:

**PART 74—ADMINISTRATION OF GRANTS**

1. The authority citation for part 74 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110, unless otherwise noted.

2. An authority citation is added following each section of part 74 that does not already have an authority citation, or the existing authority citation is revised, to read as follows:

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110)

3. Section 74.3 is amended by revising the definition of "grant" to read as follows:

**§ 74.3 Definitions.**

* * * * *

*Grant* means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

* * * * *

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110)

4. Section 74.47 is revised to read as follows:

**§ 74.47 Interest earned on advances of grant funds.**

(a) Unless exempted by Federal statute (see paragraph (b) of this section for the principal exemption)—

(1) Recipients shall maintain advances of Federal funds in interest-bearing accounts pending disbursement;

(2) Interest earned on Federal advances deposited in those accounts must be remitted promptly, but at least quarterly, to the Department; and

(3) A recipient may retain interest income up to $100 per year to assist in the recoupment of administrative expenses.

(b) In accordance with 31 U.S.C. 6503, States are not accountable to the Federal Government for interest earned by the State itself, or by its subgrantees, if this income is earned on an advance of funds made under a Department grant.

(c) Recipients are subject to the provisions in § 74.61(e) for minimizing the time between the transfer of advances their disbursement. Those provisions apply even if there is no accountability to the Federal Government for interest or other investment income earned on the advances.

(d) The following definitions apply to this section:

(1) *Interest* includes any interest or investment income earned by grantees, subgrantees, and cost-type contractors on advances of Department grant funds to the grantee.

(2) *State* includes any agency or instrumentality of a State but does not include any local government in a State.

(3) Notwithstanding the definition of "grant" in § 74.3, the word "grant", as used in this section, has the meaning given in 31 U.S.C. 6501(4)(A).

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, 31 U.S.C. Chapter 65, OMB Circular A–110)

5. In § 74.73, the section heading and paragraphs (a) and (b) are revised to read as follows:

**§ 74.73 Accounting basis for reports; the financial status report.**

(a) Each grantee shall report program outlays and program income on the same accounting basis, either cash or accrued expenditure (accrual), that it uses in its accounting system.

(b) The Secretary may require a grantee to use Standard Form 269, Financial Status Report, to report the Status of funds for nonconstruction grants.

* * * * *

6. In § 74.74, paragraphs (a), (c), and (d) are revised to read as follows:

**§ 74.74 Federal cash transactions report.**

(a) *Reporting payments.* (1) The Secretary may require a grantee to submit Standard Form 272 to report payments under a grant.

(2) This report is used by the Secretary to monitor cash advanced to the grantee and to obtain disbursement or outlay information for each grant. The Secretary may also use this form to determine the status of funds for a nonconstruction grant.

* * * * *

(c) *Cash in hands of secondary recipients.* If the submission of a report is considered necessary and feasible by the Secretary, the Secretary may require a grantee to report the amount of cash subadvances in excess of three days' need in the hands of its subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(d) *Frequency and due date.* A grantee shall submit the report on a quarterly

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basis. If a Department grant authorizes advances at an annualized rate of one million dollars or more, the Secretary may require submission of the report on a monthly basis.

* * * * *

7. Section 74.75 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b), to read as follows:

**§ 74.75 Request for advance or reimbursement.**

(a) The Secretary includes in the terms and conditions of a grant—

(1) A statement about whether the grantee will be paid by advance or reimbursement; and

(2) Instructions regarding how the grantee must request advances or reimbursements under the grant.

(b) Pursuant to any applicable regulations, the Secretary may change, at any time, the method of making payments to a grantee.

* * * * *

8. Section 74.76(c) is amended by removing "by 74.73(b)" and adding in its place "by 74.73(a)".

9. Section 74.91 is amended by removing the definition of "Advance by Treasury check" and by adding, in its place, a definition of "Advance" to read as follows:

**§ 74.91 Definitions.**

* * * * *

*Advance* is a payment made by the Department to a grantee, upon its periodic request or through the use of predetermined payment schedules, before outstanding obligations are liquidated by the grantee.

* * * * *

10. Section 74.93 is revised to read as follows:

**§ 74.93 Payment methods under Department grants.**

The Department makes payments to a grantee using the most efficient and cost-effective method available in accordance with Treasury Circular 1075 (31 CFR part 205) and any supplementary instructions prescribed by the Department of the Treasury.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110)

11. Section 74.94 is removed.

12. Section 74.96 is revised to read as follows:

**§ 74.96 Establishing frequency of payments.**

The Secretary determines the frequency with which a grantee may make requests for payment in accordance with Treasury Circular 1075 (31 CFR part 205) and any supplementary instructions prescribed by the Department of the Treasury.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110)

**§ 74.144 [Amended]**

13. Section 74.144 is amended by removing "Parts 6 and 8" and by adding, in its place, "Part 6".

14. A new Section 74.171 is added, to read as follows:

**§ 74.171 Allowable costs.**

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to a grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

| For the costs of a— | Use the principles in— |
|---|---|
| Private nonprofit organization other than: (1) An institution of higher education, (2) a hospital, or (3) an organization named in OMB Circular A–122 as not subject to that circular. | OMB Circular A–122. |
| Educational institution | OMB Circular A–21, Appendix E to 45 CFR Part 74. |
| Hospital | 48 CFR Part 31 Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Education Department. |
| Commercial (for-profit) organization other than a hospital and an educational institution. | |

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110)

**§ 74.172 and Appendix D to Part 74 [Removed]**

15. Section 74.172 and Appendix D to part 74 are removed.

**§ 74.173 and Appendix E to Part 74 [Removed]**

16. Section 74.173 and Appendix E to part 74 are removed.

**§ 74.174 [Removed]**

17. Section 74.174 is removed.

18. Section 74.175 is revised to read as follows:

**§ 74.175 Cost principles applicable to subgrants and cost-type contracts under grants.**

The cost principles applicable to a subgrantee or cost-type contractor under a grant are not necessarily the same as those applicable to the grantee. For example, if a State government awards a subgrant or cost-type contract to an institution of higher education, OMB Circular A–21, as specified in § 74.171, applies to the costs incurred by the institution of higher education, even though OMB Circular A–87 applies to the costs incurred by the State.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, OMB Circular A–110)

## PART 75—DIRECT GRANT PROGRAMS

19. The authority citation for Part 75 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, unless otherwise noted.

20. The authority citation following each section in part 75 that is not amended by this document, is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

21. Section 75.1 is amended by adding a third sentence to paragraph (b) to read as follows:

**§ 75.1 Programs to which Part 75 applies.**

* * * * *

(b) * * * With respect to Public Law 81–874 (the Impact Aid Program), the term "direct grant program" includes only the entitlement increase for children with disabilities under section 3(d)(2)(C) of Public Law 81–874 (20 U.S.C. 238(d)(2)(C) and disaster assistance under section 7 of that law (20 U.S.C. 241–1).

* * * * *

**§ 75.3 [Removed]**

22. Section 75.3 is removed.

23. Section 75.4 is amended by revising the introductory language in paragraph (a) and paragraph (a)(1) to read as follows:

**§ 75.4 Department contracts.**

(a) A Federal contract made by the Department is governed by—

(1) Chapters 1 and 34 of Title 48 of the Code of Federal Regulations (Federal Acquisition Regulation and Education Department Acquisition Regulation).

* * * * *

24. New §§ 75.60–75.62 are added and a new center heading is added preceding these sections, to read as follows:

**Ineligibility of Certain Individuals To Receive Assistance**

**§ 75.60 Individuals ineligible to receive assistance.**

(a) An individual is ineligible to receive a fellowship, scholarship, or discretionary grant funded by the Department if the individual—

(1) Is not current in repaying a debt or is in default, as that term is used in 34 CFR part 668, on a debt—

(i) Under a program listed in paragraph (b) of this section; or

(ii) To the Federal Government under a nonprocurement transaction; and

(2) Has not made satisfactory arrangements to repay the debt.

(b) An individual who is not current in repaying a debt, or is in default, as that term is used in 34 CFR part 668, on a debt under a fellowship, scholarship, discretionary grant, or loan program, as included in the following list, and who has not made satisfactory arrangements to repay the debt, is ineligible under paragraph (a) of this section:

(1) A grant awarded under the Pell Grant (20 U.S.C. 1070a, *et seq.*), Supplemental Educational Opportunity Grant (SEOG) (20 U.S.C. 1070b, *et seq.*), or State Student Incentive Grant (SSIG) (20 U.S.C. 1070c, *et seq.*) program, or a scholarship awarded under the Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d–31, *et seq.*), a fellowship awarded under the Jacob K. Javits Fellows Program (20 U.S.C. 1134h–1134k), or a fellowship awarded under the Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d–1134f).

(2) A fellowship awarded under the Christa McAuliffe Fellowship Program (20 U.S.C. 1113–1113e), the Bilingual Education Fellowship Program (20 U.S.C. 3221–3282), or the Rehabilitation Long-Term Training Program (29 U.S.C. 774(b)).

(3) A loan made under the Perkins Loan Program (20 U.S.C. 1087aa, *et seq.*), the Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, *et seq.*), the Stafford Loan Program, Supplemental Loans for Students (SLS), PLUS, or Consolidation Loan Program (20 U.S.C. 1071, *et seq.*), or the Cuban Student Loan Program (22 U.S.C. 2601, *et seq.*).

(4) A scholarship or repayment obligation incurred under the Paul Douglas Teacher Scholarship Program (20 U.S.C. 1111, *et seq.*).

(5) A grant, or a loan, made under the Law Enforcement Education Program (42 U.S.C. 3775).

(6) A stipend awarded under the Indian Fellowship Program (29 U.S.C. 774(b)).

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

**§ 75.61 Certification of eligibility; effect of ineligibility.**

(a) An individual who applies for a fellowship, scholarship, or discretionary grant from the Department shall provide with his or her application a certification under the penalty of perjury—

(1) That the individual is eligible under § 75.60; and

(2) That the individual has not been debarred or suspended by a judge under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a).

(b) The Secretary specifies the form of the certification required under paragraph (a) of this section.

(c) The Secretary does not award a fellowship, scholarship, or discretionary grant to an individual who—

(1) Fails to provide the certification required under paragraph (a) of this section; or

(2) Is ineligible, based on information available to the Secretary at the time the award is made.

(d) If a fellowship, scholarship, or discretionary grant is made to an individual who provided a false certification under paragraph (a) of this section, the individual is liable for recovery of the funds made available under the certification, for civil damages or penalties imposed for false representation, and for criminal prosecution under 18 U.S.C. 1001.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

**§ 75.62 Requirements applicable to entities making certain awards.**

(a) An entity that provides a fellowship, scholarship, or discretionary grant to an individual under a grant from, or an agreement with, the Secretary shall require the individual who applies for such an award to provide with his or her application a certification under the penalty of perjury—

(1) That the individual is eligible under § 75.60; and

(2) That the individual has not been debarred or suspended by a judge under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a).

(b) An entity subject to this section may not award a fellowship, scholarship, or discretionary grant to an individual if—

(1) The individual fails to provide the certification required under paragraph (a) of this section; or

(2) The Secretary informs the entity that the individual is ineligible under § 75.60.

(c) If a fellowship, scholarship, or discretionary grant is made to an individual who provided a false certification under paragraph (a) of this section, the individual is liable for recovery of the funds made available under the certification, for civil damages or penalties imposed for false representation, and for criminal prosecution under 18 U.S.C. 1001.

(d) The Secretary may require an entity subject to this section to provide a list of the individuals to whom fellowship, scholarship, or discretionary grant awards have been made or are proposed to be made by the entity.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

25. Section 75.105(c)(2)(i) and (3) are revised to read as follows:

**§ 75.105 Annual priorities.**

* * * * *

(c) * * *

(2) * * *

(i) If a program uses weighted selection criteria, the Secretary may award bonus points to an application that meets the priority. These points are in addition to any points the applicant earns under the selection criteria (see § 75.200(b)). The notice states the maximum number of additional points that the Secretary may award to an application depending upon how well the application meets the priority.

* * * * *

(3) *Absolute preference.* The Secretary may give an absolute preference to applications that meet a priority. The Secretary establishes a separate competition for applications that meet the priority and reserves all or part of a program's funds solely for that competition. The Secretary may adjust the amount reserved for the priority after determining the number of high quality applications received.

* * * * *

**§§ 75.107, 75.108, 75.110, 75.111, 75.113, 75.114, 75.115, and 75.116 [Removed]**

26. Sections 75.107, 75.108, 75.110, 75.111, 75.113, 75.114, 75.115, and 75.116 are removed.

**§ 75.118 [Amended]**

27. The note following § 75.118 is removed.

**§§ 75.130 through 75.134 [Removed]**

28. Sections 75.130 through 75.134, and the center heading **"Preapplications"**, are removed.

**§§ 75.150 through 75.154 [Removed]**

29. Sections 75.150 through 75.154, and the center heading **"State Approval Procedures"**, are removed.

30. Section 75.155 is revised and a cross-reference is added following the section to read as follows:

**§ 75.155 Review procedures if State may comment on applications: purpose of §§ 75.156–75.158.**

If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§ 75.156–75.158 for that purpose.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

**Cross-Reference:** See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372.

**§ 75.160 [Removed]**

31. Section 75.160 is removed.

32. Section 75.200 is amended by revising the section heading and adding paragraphs (b)(4) and (5) to read as follows:

**§ 75.200 How applications for new grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.**

* * * * *

(b) * * *

(4) The Secretary may award a cooperative agreement instead of a grant if the Secretary determines that substantial involvement between the Department and the recipient is necessary to carry out a collaborative project.

(5) The Secretary uses the selection procedures in this subpart to select recipients of cooperative agreements.

* * * * *

33. Section 75.216 is revised to read as follows:

**§ 75.216 Applications not evaluated for funding.**

The Secretary does not evaluate an application if—

(a) The applicant is not eligible;

(b) The applicant does not comply with all of the procedural rules that govern the submission of the application;

(c) The application does not contain the information required under the program; or

(d) The proposed project cannot be funded under the authorizing statute or implementing regulations for the program.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

34. Section 75.218 is revised to read as follows:

**§ 75.218 Applications not evaluated or selected for funding.**

(a) The Secretary informs an applicant if its application—

(1) Is not evaluated; or

(2) Is not selected for funding.

(b) If an applicant requests an explanation of the reason its application was not evaluated or selected, the Secretary provides that explanation.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

35. Section 75.233 is revised to read as follows:

**§ 75.233 Setting the amount of the grant.**

(a) Subject to any applicable matching or cost-sharing requirements, the Secretary may fund up to 100 percent of the allowable costs in the applicant's budget.

(b) In deciding what percentage of the allowable costs to fund, the Secretary may consider any other financial resources available to the applicant.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

36. Section 75.234 is revised to read as follows:

**§ 75.234 The conditions of the grant.**

(a) The Secretary makes a grant to an applicant only after determining—

(1) The approved costs; and

(2) Any special conditions.

(b) In awarding a cooperative agreement, the Secretary includes conditions that state the explicit character and extent of anticipated collaboration between the Department and the recipient.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

37. Section 75.235 is amended by revising paragraph (b) to read as follows:

**§ 75.235 The notification of grant award.**

* * * * *

(b) The notification of grant award sets the amount of the grant award and establishes other specific conditions, if any.

38. Section 75.253 is amended by revising paragraph (a)(2), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

**§ 75.253 Continuation of a multi-year project after the first budget period.**

(a) * * *

(2) The grantee has either—

(i) Made substantial progress toward meeting the objectives in its approved application; or

(ii) Obtained the Secretary's approval of changes in the project that—

(A) Do not increase the cost of the grant; and

(B) Enable the grantee to meet those objectives in succeeding budget periods;

* * * * *

(d) (1) If the Secretary decides, under this section, not to make a continuation award, the Secretary may authorize a no-cost extension of the last budget period of the grant in order to provide for the orderly closeout of the grant.

(2) If the Secretary makes a continuation award under this section—

(i) The Secretary makes the award under §§ 75.231–75.236; and

(ii) The new budget period begins on the day after the previous budget period ends.

* * * * *

39. Section 75.261 is revised to read as follows:

**§ 75.261 Extension of a project period.**

(a) The Secretary may extend a project period if—

(1) The extension does not violate any statute or regulations;

(2) The extension does not involve the obligation of additional Federal funds;

(3) The extension is to carry out the activities in the approved application; and

(4)(i) The Secretary determines that, due to special or unusual circumstances applicable to a class of grantees, the project periods for the grantees should be extended; or

(ii)(A) The Secretary determines that special or unusual circumstances would delay completion of the project beyond the end of the project period;

(B) The grantee requests an extension of the project at least 45 calendar days before the end of the project period; and

(C) The grantee provides a written statement before the end of the project period giving the reasons why the extension is appropriate under paragraph (a)(4)(ii)(A) of this section and the period for which the project needs extension.

(b) The Secretary may waive the requirement in paragraph (a)(4)(ii)(B) of this section if—

(1) The grantee could not reasonably have known of the need for the extension on or before the start of the 45-day time period; or

(2) The failure to give notice on or before the start of the 45-day time period was unavoidable.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

40. A new § 75.262 is added to read as follows:

**§ 75.262 Conversion of a grant or a cooperative agreement.**

(a)(1) The Secretary may convert a grant to a cooperative agreement or a cooperative agreement to a grant at the time a continuation award is made under § 75.253.

(2) In deciding whether to convert a grant to a cooperative agreement or a cooperative agreement to a grant, the Secretary considers the factors included in § 75.200(b) (4) and (5).

(b) The Secretary and a recipient may agree at any time to convert a grant to a cooperative agreement or a cooperative agreement to a grant, subject to the factors included in § 75.200(b) (4) and (5).

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

**§ 75.510 [Removed]**

41. Section 75.510 is removed.

**§ 75.518 [Removed]**

42. Section 75.518 is removed.

43. In § 75.534, the introductory text and paragraph (a) are revised to read as follows:

**§ 75.534 Automatic increases for additional dependents.**

The Secretary may increase a grant to cover the cost of additional dependents not specified in the notice of award under § 75.235 if—

(a) Allowances for dependents are authorized by the program statute and are allowable under the grant; and

* * * * *

44. Section 75.560(a) is revised to read as follows:

**§ 75.560 General indirect cost rates; exceptions.**

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) Institutions of higher education, at 34 CFR 74.171;

(2) Hospitals, at 34 CFR 74.171;

(3) Other nonprofit organizations, at 34 CFR 74.171;

(4) Commercial (for-profit) organizations, at 34 CFR 74.171; and

(5) State and local governments and federally-recognized Indian tribal organizations, at 34 CFR 80.22.

* * * * *

45. Section 75.563 is revised to read as follows:

**§ 75.563 Restricted indirect cost rate—programs covered.**

Sections 75.564–75.568 apply to each program that has a statutory requirement not to use Federal funds to supplant non-Federal funds.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

**§ 75.580 [Amended]**

46. The center heading "**Coordination**", before § 75.580 is removed; § 75.580 is amended by removing paragraphs (b)-(d), and removing the paragraph designation from paragraph (a).

**§ 75.581 [Removed]**

46a. Section 75.581 is removed.

47. Section 75.590 is amended by revising paragraph (c) to read as follows:

**§ 75.590 Evaluation by the grantee.**

* * * * *

(c) The effect of the project on participants being served by the project.

* * * * *

48. Section 75.608 is revised to read as follows:

**§ 75.608 Areas in the facilities for cultural activities.**

A grantee may make reasonable provision, consistent with the other uses to be made of the facilities, for areas in the facilities that are adaptable for artistic and other cultural activities.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

49. Section 75.616 is revised to read as follows:

**§ 75.616 Energy conservation.**

(a) To the extent feasible, a grantee shall design and construct facilities to maximize the efficient use of energy.

(b) The following standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) are incorporated by reference in this section:

(1) ASHRAE–90 A–1980 (Sections 1–9).

(2) ASHRAE–90 B–1975 (Sections 10–11).

(3) ASHRAE–90 C–1977 (Section 12).

Incorporation by reference of these provisions has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552 (a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Grants and Contracts Service, rm. 3636 ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202–4700 or at the Office of the Federal Register, rm. 8401, 1100 L Street, NW., Washington, DC 20005. These standards may be obtained from the publication sales department at the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1791 Tullie Circle, NE., Atlanta, Georgia 30329.

(c) A grantee shall comply with ASHRAE standards listed in paragraph (b) of this section in designing and constructing facilities built with project funds.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, 42 U.S.C. 8373 (b); E.O. 12185)

50. A new § 75.617 is added to read as follows:

**§ 75.617 Compliance with the Coastal Barrier Resources Act.**

A recipient may not use, within the Coastal Barrier Resources System, funds made available under a program administered by the Secretary for any purpose prohibited by 31 U.S.C. chapter 55 (§§ 3501–3510).

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, 31 U.S.C. 3504, 3505)

51. Section 75.621 is amended by removing "Part 74." and adding, in its place, "Parts 74 or 80, as appropriate." and by revising the authority citation and the cross-reference following that section to read as follows:

**§ 75.621 Copyright policy for grantees.**

* * * * *

**Cross-Reference:** See 34 CFR part 74, subpart F; 34 CFR 74.145 Copyrights; and 34 CFR 80.25 and 80.34.

52. Section 75.622 is revised to read as follows:

**§ 75.622 Definition of "project materials."**

As used in §§ 75.620–75.621, "project materials" means a copyrightable work developed with funds from a grant of the Department.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

53. Section 75.625 is removed and the cross-reference preceding this section is revised to read as follows:

**Cross-Reference:** See 34 CFR 74.45, Program income—royalties or equivalent income earned from patents or from inventions; 34 CFR 80.25, Program income; and 34 CFR Part 6, Inventions and Patents (General).

**§ 75.626 [Amended]**

54. Section 75.626 is amended by removing paragraph (b) and the paragraph designation "(a)".

55. The cross reference following § 75.681 is amended by removing "45 CFR Part 46—Protection of Human Research Subjects" and adding, in its place, "34 CFR Part 97—Protection of Human Subjects."

**§ 75.684 [Removed]**

58. Section 75.684 is removed.

**§ 75.690 [Removed]**

57. Section 75.690 is removed.

58. In § 75.707, column I, paragraph (h) in the table is revised to read as follows:

**§ 75.707 When obligations are made.**

* * * * *

(h) A preagreement cost that was properly approved by the Secretary under the cost principles identified in 34 CFR 74.171 or 80.22.

* * * * *

59. Section 75.720 is revised to read as follows:

**§ 75.720 Financial and performance reports.**

(a) This section applies to the reports required under—

(1) 34 CFR 74.73 (Financial Status Report) and 34 CFR part 74, subpart J (Monitoring and Reporting of Program Performance); and

(2) 34 CFR 80.40 (Monitoring and reporting program performance) and 34 CFR 80.41 (Financial reporting).

(b) A grantee shall submit these reports annually, unless the Secretary allows less frequent reporting. However, the Secretary may require a grantee of a grant made under 34 CFR part 700, 706, 707, or 708 (certain programs of the Office of Educational Research and Improvement) to submit performance reports more often than annually.

(c) The Secretary may, under 34 CFR 74.7 (Special grant or subgrant conditions) or 34 CFR 74.72(e) (regarding grantee accounting systems), or 34 CFR 80.12 (Special grant or subgrant conditions for "high-risk" grantees) require a grantee to report more frequently than annually.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

60. Section 75.740 is amended by revising the section heading, designating the existing text as paragraph (a), adding a new paragraph (b), and revising the authority citation to read as follows:

**§ 75.740 Protection of and access to student records; student rights in research, experimental programs, and testing.**

(a) * * *

(b) Under most programs administered by the Secretary, research, experimentation, and testing are subject to the requirements of section 439 of GEPA and its implementing regulations at 34 CFR part 98.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1232g, 1232h, and 3474)

**§ 75.750 through 75.755 [Removed]**

61. Sections 75.750 through 75.755, the center heading "**Data Collection by a Grantee**", and the cross-reference following § 75.750 are removed.

## PART 76—STATE-ADMINISTERED PROGRAMS

62. The authority citation for Part 76 is revised to read as follows:

**Authority:** 20 U.S.C. 1221e–3(a)(1), 2831(a), 2974(b), and 3474, unless otherwise noted.

**§ 76.3 [Removed]**

63. Section 76.3 is removed.

64. Section 76.102 is revised to read as follows:

**§ 76.102 Definition of "State plan" for part 76.**

As used in this part, "State-plan" means any of the following documents:

| Document | Program | Authorizing statute | Principal Office |
|---|---|---|---|
| State plan | Assistance to States for Education of Handicapped Children. | Part B (except section 619), Individuals with Disabilities Education Act (20 U.S.C. 1411–1420). | OSERS |
| Application | Preschool Grants | Section 619, Individuals with Disabilities Education Act (20 U.S.C. 1419). | OSERS |
| Application | Handicapped Infants and Toddlers | Part H, Individuals with Disabilities Education Act (20 U.S.C. 1471–1485). | OSERS |
| Application or written request for assistance | Client Assistance Program | Section 112, Rehabilitation Act of 1973 (29 U.S.C. 732). | OSERS |
| Application | Removal of Architectural Barriers to the Handicapped Program. | Section 607, Individuals with Disabilities Education Act (20 U.S.C. 1406). | OSERS |
| State plan | State Vocational Rehabilitation Services Program. | Title I, Parts A–C, Rehabilitation Act of 1973 (29 U.S.C. 720–741). | OSERS |
| State plan supplement | State Supported Employment Services Program. | Title VI, Part C, Rehabilitation Act of 1973 (29 U.S.C. 795j–795r). | OSERS |
| State plan | State Independent Living Services Program | Title VII, Part A, Rehabilitation Act of 1973 (29 U.S.C. 796–796d). | OSERS |
| State plan | State Vocational Education Program | Title I, Part B, Carl D. Perkins Vocational Education Act (20 U.S.C. 2321–2325). | OVAE |
| State plan and application | State-Administered Adult Education Program | Section 341, Adult Education Act (20 U.S.C. 1206). | OVAE |
| State plan | Even Start Family Literacy Program | Title I, Chapter 1, Part B of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741–2749). | OESE |
| State application | State Grants for Strengthening Instruction in Mathematics and Science. | Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2961–2993). | OESE |
| State application | Federal, State and Local Partnership for Educational Improvement. | Title I, Chapter 2, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911–2952 and 2971–2976). | OESE |
| State plan or application | Migrant Education Program | Sections 1201, 1202, Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2781 and 2782). | OESE |
| Application | State Student Incentive Grant Program | Section 415C, Higher Education Act of 1965 (20 U.S.C. 1070c–2). | OPE |
| Application | Paul Douglas Teacher Scholarship Program | Section 553, Higher Education Act of 1965 (20 U.S.C. 1111b). | OPE |
| Basic State plan, long-range program, and annual program. | The Library Services and Construction Act State-Administered Program. | Library Services and Construction Act (20 U.S.C. 351–355e–3). | OERI |
| Application | Emergency Immigrant Education Program | Emergency Immigrant Education Act (20 U.S.C. 3121–3130). | OBEMLA |

| Document | Program | Authorizing statute | Principal Office |
|---|---|---|---|
| Application | Transition Program for Refugee Children | Section 412(d) Immigration and Naturalization Act (8 U.S.C. 1522 (d)). | OBEMLA |
| Any document that the authorizing statute for a State-administered program requires a State to submit to receive funds. | Any State-administered program without implementing regulations. | Section 408(a)(1), General Education Provisions Act and Section 414, Department of Education Organization Act (20 U.S.C. 1221e-3(a)(1) and 3474). | Dept-wide |

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

65. Section 76.125 is amended in paragraph (a) by removing "listed" and adding, in its place, "described", removing the chart following paragraph (c), by revising paragraph (c) and by revising the authority citation to read as follows:

**§ 76.125 What is the purpose of these regulations?**

* * * * *

(c) The Secretary may make an annual consolidated grant to assist an Insular Area in carrying out one or more State-administered formula grant programs of the Department.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

**§ 76.136 [Amended]**

66. Section 76.136 is amended by removing "listed in § 76.125(c)(1)" and adding, in its place, "described in § 76.125(c)".

**§ 76.305 [Amended]**

67. Section 76.305 is removed.

68. Section 76.401(a) is revised to read as follows:

**§ 76.401 Disapproval of an application—opportunity for a hearing.**

(a) *State agency hearing before disapproval.* Under the programs listed in the chart below, the State agency that administers the program shall provide an applicant with notice and an opportunity for a hearing before it may disapprove the application.

| Program | Authorizing statute | Implementing regulations Title 34 CFR Part |
|---|---|---|
| Chapter 1, Program in Local Educational Agencies | Title I, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701-2731, 2821-2838, 2851-2854, and 2891-2901). | 200 |
| Chapter 1, Program for Neglected and Delinquent Children | Title 1, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2801-2804). | 203 |
| State Grants for Strengthening Instruction in Mathematics and Science | Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981-2993). | 208 |
| Federal, State, and Local Partnership for Educational Improvement | Title I, Chapter 2, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911-2952 and 2971-2976). | 298 |
| Assistance to States for Education of Handicapped Children | Part B, Individuals with Disabilities Education Act (except Section 619) (20 U.S.C. 1411-1420). | 300 |
| Preschool Grants | Section 619, Individuals with Disabilities Education Act (20 U.S.C. 1419) | 301 |
| Chapter 1, State-Operated or Supported Programs for Handicapped Children. | Title 1, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2791-2795). | 302 |
| Transition Program for Refugee Children | Section 412(d), Immigration and Naturalization Act (8 U.S.C. 1522(d)) | 538 |
| Emergency Immigrant Education Program | Emergency Immigrant Education Act (20 U.S.C. 3121-3130) | 581 |
| Financial Assistance for Construction, Reconstruction, or Renovation of Higher Education Facilities. | Section 711, Higher Education Act of 1965 (20 U.S.C. 1132b) | 617 |

* * * * *

69. Section 76.560 is revised to read as follows:

**§ 76.560 General indirect cost rates; exceptions**

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) Institutions of higher education, at 34 CFR 74.171;

(2) Hospitals, at 34 CFR 74.171;

(3) Other nonprofit organizations, at 34 CFR 74.171;

(4) Commercial (for-profit) organizations, at 34 CFR 74.171; and

(5) State and local governments and Federally-recognized Indian tribal organizations, at 34 CFR 80.22.

(b) Section 76.563 provides restrictions on indirect cost rates under certain programs.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2381(a), and 3474)

**§ 76.580 [Amended]**

70. The center heading "Coordination", before § 76.580 is removed; § 76.580 is amended by removing paragraphs (b)-(d), and removing the paragraph designation from paragraph (a).

**§ 76.581 [Removed]**

70a. § 76.581 is removed.

**§ 76.591 [Amended]**

71. In § 76.591, the section number "75.591" is corrected to read "76.591".

**§ 76.600 [Amended]**

72. In § 76.600, "75.615" is revised to read "75.617".

73. Section 76.681 is amended by revising the section heading and adding a cross-reference following that section, to read as follows:

**§ 76.681 Protection of human subjects.**

* * * * *

**Cross-Reference.** See 34 CFR part 97—Protection of human subjects.

**§ 76.684 [Removed]**

74. Section 76.684 is removed.

**§ 76.690 [Removed]**

75. Section 76.690 is removed.

76. In § 76.707, Column I, paragraph (h) in the Table is revised to read as follows:

**§ 76.707 When obligations are made.**

* * * * *

(h) A preagreement cost that was properly approved by the State under the cost principals identified in 34 CFR 74.171 and 80.22.

* * * * *

77. Section 76.720 is revised to read as follows:

**§ 76.720 Financial and performance reports by a State.**

(a) This section applies to a State's reports required under 34 CFR 80.41 (Financial reporting) and 34 CFR 80.40 (Monitoring and reporting of program performance).

(b) A State shall submit these reports annually, unless the Secretary allows less frequent reporting.

(c) However, the Secretary may, under 34 CFR 80.12 (Special grant or subgrant conditions for "high-risk" grantees) or 34 CFR 80.20 (Standards for financial management systems) require a State to report more frequently than annually.

(Authority: 20 U.S.C. 122e-3(a)(1), 2831(a), and 3474)

78. Section 76.740 is amended by revising the section heading, designating the existing paragraph as paragraph (a), adding a new paragraph (b), and revising the authority citation to read as follows:

**§ 76.740 Protection of and access to student records; student rights in research, experimental programs, and testing.**

* * * * *

(b) Under most programs administered by the Secretary, research, experimentation, and testing are subject to the requirements of section 439 of GEPA and its implementing regulations at 34 CFR part 98.

(Authority: 20 U.S.C. 122e-3(a)(1), 1232g, 1232h, 2831(a), 2974(b), and 3474)

79. Section 76.770 is revised to read as follows:

**§ 76.770 A State shall have procedures to ensure compliance.**

Each State shall have procedures for reviewing and approving applications for subgrants and amendments to those applications, for providing technical assistance, for evaluating projects, and for performing other administrative responsibilities the State has determined are necessary to ensure compliance with applicable statutes and regulations.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

**§ 76.771 [Removed]**

80. Section 76.771 is removed.

**§ 76.772 [Removed]**

81. Section 76.772 is removed.

**§ 76.780 through 76.782 [Removed]**

82. The center heading preceding § 76.780 is removed and §§ 76.780–782 are removed.

**§ 76.783 [Amended]**

83. Section 76.783(b) is amended by removing "(c)" and adding, in its place, "(d)".

84. Section 76.901 is revised to read as follows:

**§ 76.901 Office of Administrative Law Judges.**

(a) The Office of Administrative Law Judges, established under Part E of GEPA, has the following functions:

(1) Recovery of funds hearings under section 452 of GEPA.

(2) Withholding hearings under section 455 of GEPA.

(3) Cease and desist hearings under section 456 of GEPA.

(4) Any other proceeding designated by the Secretary under section 451 of GEPA.

(b) The regulations of the Office of Administrative Law Judges are at 34 CFR part 81.

(Authority: 20 U.S.C. 1234)

## PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

85. The authority citation for part 77 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474, unless otherwise noted.

86. Paragraph (c) of § 77.1 is amended by revising the definitions of "award" and "EDGAR" to read as follows:

**§ 77.1 Definitions that apply to all Department programs.**

* * * * *

(c) * * *

*Award* means an amount of funds that the Department provides under a contract, grant, or cooperative agreement.

* * * * *

*EDGAR* means the Education Department General Administrative Regulations (34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86.)

* * * * *

## PART 237—CHRISTA MCAULIFFE FELLOWSHIP PROGRAM

87. The authority citation for part 237 continues to read as follows:

Authority: 20 U.S.C. 1113–1113e, unless otherwise noted.

88. Section 237.2 is amended by removing "and" at the end of paragraph (a)(4), by adding "; and" in place of the period at the end of paragraph (b), and adding a new paragraph (c) to read as follows:

**§ 237.2 Who is eligible to apply under the Christa McAuliffe Fellowship Program?**

* * * * *

(c) Is eligible for a fellowship under 34 CFR 75.60.

* * * * *

89. Section 237.7 is amended by revising paragraph (a), to read as follows:

**§ 237.7 What regulations apply?**

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 and 75.61 (regarding the ineligibility of certain individuals to receive assistance) and part 77 (Definitions that Apply to Department Regulations.

* * * * *

## PART 263—INDIAN FELLOWSHIP PROGRAM

90. The authority citation for part 263 is revised to read as follows:

Authority: 20 U.S.C. 3385b, unless otherwise noted.

91. Section 263.2 is amended by adding a new paragraph (c), to read as follows:

**§ 263.2 Who is eligible to apply under the Indian Fellowship Program?**

* * * * *

(c) An applicant must be eligible under 34 CFR 75.60.

* * * * *

92. A new section 263.9 is added, to read as follows:

**§ 263.9 Application contents: Evidence of eligibility under 34 CFR 75.60.**

An applicant shall submit the certification required under 34 CFR 75.61.

(Authority: 20 U.S.C. 3385b)

## PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

93. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

94. Part 300 is amended by adding a center heading after section 300.653 and by adding new §§ 300.670–300.672, to read as follows:

**Complaint Procedures of the State**

**§ 300.670 A State shall adopt complaint procedures.**

A State shall adopt written complaint procedures for—

(a) Receiving and resolving any complaint that any public agency is violating a requirement in the Act or in this part;

(b) Reviewing an appeal from a decision of a public agency with respect to a complaint; and

(c) Conducting an independent on-site investigation of a complaint if the State determines that an on-site investigation is necessary.

(Authority: 20 U.S.C. 1412(b))

**§ 300.671 Minimum complaint procedures.**

A State shall include the following in its complaint procedures—

A time limit of 60 calendar days after the State receives a complaint—

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the State.

(Authority: 20 U.S.C. 1412(b))

**§ 300.672 An organization or individual may file a complaint.**

An organization or individual may file a written signed complaint with a State. The complaint must include—

(a) A statement that a public agency has violated a requirement in the Act or in this part; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 1412(b))

**PART 356—HANDICAPPED RESEARCH: RESEARCH FELLOWSHIPS**

95. The authority citation for part 356 is revised to read as follows:

**Authority:** 29 U.S.C. 760–762, unless otherwise noted.

96. Section 356.2 is amended by adding a new paragraph (d) to read as follows:

**§ 356.2 Who is eligible for assistance under this program?**

* * * * *

(d) An applicant for a fellowship under this program must be eligible under 34 CFR 75.60.

* * * * *

97. Section 356.3 is amended by removing "and" at the end of paragraph (b), removing the period at the end of paragraph (c)(2), adding "; and" in its place, and adding a new paragraph (d), to read as follows:

**§ 356.3 What regulations apply to this program?**

* * * * *

(d) The regulations in 34 CFR 75.60–75.61 (regarding the ineligibility of certain individuals to receive assistance).

* * * * *

**PART 562—BILINGUAL EDUCATION: FELLOWSHIP PROGRAM**

98. The authority citation for Part 562 is revised to read as follows:

**Authority:** 20 U.S.C. 3221–3262, unless otherwise noted.

99. Section 562.2 is amended by removing "and" after the semicolon in paragraph (b)(1)(iii), by adding "; and" for the period at the end of paragraph (b)(2), and adding a new paragraph (b)(3) to read as follows:

**§ 562.2 Who is eligible to apply for assistance under the fellowship Program?**

* * * * *

(3) Is eligible for a fellowship under 34 CFR 75.60.

* * * * *

100. Section 562.3 is amended by adding a new paragraph (c), to read as follows:

**§ 562.3 What regulations apply to the Fellowship Program?**

* * * * *

(c) The regulations in 34 CFR 75.60–75.62 (regarding the ineligibility of certain individuals to receive assistance).

* * * * *

**PART 630—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION**

101. The authority citation for part 630 is revised to read as follows:

**Authority:** 20 U.S.C. 1135 *et seq.*, unless otherwise noted.

102. Section 630.11 is amended by revising the parenthetical phrase in the introductory text to read "(See § 630.22)."

103. New §§ 630.22 and 630.23 are added to read as follows:

**§ 630.22 Preapplications.**

The Secretary considers a preapplication under the procedures in §§ 630.21 and 603.23.

(Authority: 20 U.S.C. 1135)

**§ 630.23 Consideration of a preapplication.**

(a) The Secretary considers a preapplication if—

(1) The applicant complies with the procedural rules that govern submission of the preapplication; and

(2) The preapplication is submitted in response to an application notice that requires preapplications.

**Cross-Reference.** See subpart N of 34 CFR part 74.

(b) If the Secretary requires preapplications and an applicant does not preapply, the applicant may not apply for a grant.

(c) If an applicant submits a preapplication, the Secretary—

(1) Informs the applicant that it is eligible and encourages it to apply for a grant;

(2) Informs the applicant that it is eligible but does not encourage it to apply for a grant; or

(3) Informs the applicant that it is ineligible for assistance, and explains why the applicant is ineligible.

(d) An applicant may apply for a grant if the Secretary does not encourage it to apply.

(Authority: 20 U.S.C. 1135)

**PART 653—PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM**

104. The authority citation for part 653 continues to read as follows:

**Authority:** 20 U.S.C. 1111–1111h, unless otherwise noted.

105. Section 653.3 is amended by adding a new paragraph (c), to read as follows:

**§ 653.2 Who is eligible to participate in this program?**

* * * * *

(c) A high school graduate who applies for a scholarship under this program must be eligible under 34 CFR 75.60.

**§ 653.3 [Amended]**

106. Section 563.3 is amended by adding "§§ 75.60–76.62 (regarding the ineligibility of certain individuals to receive assistance in part 75 (Direct Grant Programs)," after "(Administration of Grants)," in paragraph (b).

**PART 654—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM**

107. The authority citation for part 654 continues to read as follows:

**Authority:** 20 U.S.C. 1070d–31 to 1070d–41, unless otherwise noted.

106. Section 654.2 is amended by adding a new paragraph (c), to read as follows:

**§ 654.2 Who is eligible to apply for an award?**

* * * * *

(c) A high school graduate who applies for a scholarship under this program must be eligible under 34 CFR 75.60.

* * * * *

**§ 654.4 [Amended]**

109. Section 654.4 is amended by adding "75.60–75.62 (regarding the ineligibility of certain individuals to receive assistance)," after "in 34 CFR" in paragraph (a).

## PART 762—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT FELLOWS PROGRAM

110. The authority citation for part 762 continues to read as follows:

**Authority:** 20 U.S.C. 1221e, unless otherwise noted.

111. Section 762.2 is amended by adding a new paragraph (d) to read as follows:

**§ 762.2 Who is eligible for a fellowship?**

* * * * *

(d) An individual who applies for a fellowship under the program must be eligible under 34 CFR 75.60.

* * * * *

112. Section 762.4 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b), to read as follows:

**§ 762.4 What regulations apply?**

* * * * *

(b) The regulations in 34 CFR 75.60–75.61 (regarding the ineligibility of certain individuals to receive assistance) also apply to this program.

* * * * *

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Part IV

# National Indian Gaming Commission

25 CFR Parts 515, 519, 522, 523, 524, 556, and 558

Service; Approval of Class II and Class III Gaming Ordinances Under the Indian Gaming Regulatory Act and the Privacy Act Procedures; Proposed Rules and Notice

**NATIONAL INDIAN GAMING COMMISSION**

**25 CFR Parts 519, 522, 523, 524, 556, 558**

**Service; Approval of Class II and Class III Gaming Ordinances Under the Indian Gaming Regulatory Act**

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The National Indian Gaming Commission is proposing to establish this rule in chapter III in title 25 of the Code of Federal Regulations (parts 500–599). This rule provides procedures for service of Commission determinations, requirements for submitting new and existing gaming ordinances to the Chairman for approval, requirements for background investigations on primary management officials and key employees, and requirements for licensing employees of an Indian gaming operation. Elsewhere in today's **Federal Register**, the Commission is proposing procedures under the Privacy Act, is notifying the public that the Commission plans to build a system of records as tribes submit information from key employees and primary management officials, and is establishing the Indian Gaming Individuals Record System.

**DATES:** Comments must be received by August 24, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mary Jane Markley, National Indian Gaming Commission, suite 250, 1850 M Street, NW, Washington, D.C. 20036–5063; telephone: 202–632–7003, extension 18.

**ADDRESSES:** Commenters may submit their comments by mail, facsimile, or delivery to: Ordinance Comments, National Indian Gaming Commission, suite 250, 1850 M Street, NW., Washington, D.C. 20036–5063. Fax number: 202–632–7066. Public comments may be delivered or inspected from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

**Background.**

The Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (Commission). Under the IGRA, the Commission is charged with regulating class II gaming, and certain aspects of class III gaming.

On August 15, 1991, the Commission published final rules (56 FR 40702) requiring class II gaming operations to compute and pay to the Commission the annual fees required by section 2717 of the Act. On April 9, 1992 (57 FR 12382), the Commission published a final rule that defines key statutory terms, notably clarifying the distinctions between class II gaming (regulated by tribes and the Commission) and class III gaming (regulated under negotiated tribal-state compacts). The Commission is proposing rules separately regarding compliance and enforcement under sections 2705, 2706, and 2713 of the Act and review of management contracts under sections 2711 and 2712 of the Act. The regulations proposed here implement the Commission's authority to review and approve tribal gaming ordinances.

**Statutory Authority**

Section 2710(b) of the IGRA contains requirements for submitting new gaming ordinances to the Chairman. Section 2712 contains procedures for the Chairman's review of existing ordinances. Additionally, section 2706(b)(10) authorizes the Commission to promulgate such regulations as it deems appropriate to implement the provisions of the IGRA.

**Service**

Part 519, Service under the IGRA, is included because the Commission will serve official determinations as part of its review of tribal ordinances. Part 519 requires that a tribe and a management contractor, or a tribal operator, designate an agent for service and so notify the Commission. Under § 519.4, the Commission proposes to send a copy of any official determination to the tribal chairman, the designated tribal agent, and to any tribal gaming authority whenever practicable. The Commission looked to rule 5 of the Federal Rules of Civil Procedure concerning service for guidance in drafting its rule.

**Submission of a Gaming Ordinance or Resolution for Approval**

Part 522, Submission of a gaming ordinance or resolution for approval, covers gaming ordinances, resolutions, and amendments adopted by a tribe after promulgation of this rule. (Part 523 applies to existing gaming ordinances or resolutions.) The requirements of part 522 implement section 2710 of the IGRA. That section requires that a class II gaming ordinance or resolution require a tribe to: (1) Have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under section 2710(b)(4); (2) use net revenues for specified purposes, which may include, among other things: (i) Per capita distributions under a plan approved by the Secretary of the Interior under section 2710(b)(3), and (ii) donations to charitable organizations (generally understood to be those approved by the Internal Revenue Service under I.R.C. 501(c)(3)); (3) cause to be conducted independent audits of gaming operations and submit the results of those audits to the Commission under section 2710(b)(2)(C); (4) perform background investigations and issue licenses to certain individuals; (5) issue a separate license to each place, facility, or location at which gaming is conducted on Indian lands; and (6) construct, maintain, and operate gaming facilities in a manner that adequately protects the environment and the public health and safety. Generally, charitable organizations are understood to be those approved by the Internal Revenue Service under I.R.C. section 501(c)(3).

Section 522.6, Approval requirements for class III ordinances, implements section 2710(d)(1)(A)(ii) and (e). Those provisions of the IGRA require class III gaming ordinances to meet the same requirements as class II gaming ordinances. Because compacts may allocate responsibility to an entity other than a tribe for certain responsibilities, the proposed regulation requires the same provisions in a class III gaming ordinance as in class II unless a tribal-state compact under section 2710(d)(3) provides otherwise. There is no discretion, however, regarding the sole proprietary interest provision: A tribe must retain the sole proprietary interest in a gaming operation unless it elects to allow individually owned gaming under § 522.10, Individually owned class II and class III gaming operations other than those operating on September 1, 1986.

Section 522.8 implements section 2710(d)(2)(B), which requires publication in the **Federal Register** of a class III gaming ordinance and its approval by the Chairman.

Section 522.9, Substitute approval, implements section 2710(e) that provides that the Chairman's failure to act results in "approval," but only to the extent that the ordinance or resolution is consistent with the IGRA.

Sections 522.10 and 522.11 implement the IGRA's requirements for individually owned operations under section 2710(b)(4)(A) and (B). The IGRA and these regulations distinguish between new individually owned operations and those operating on September 1, 1986. Licensing provisions for both new and old individually owned oeprations require that licenses be issued under an e approved by the Chairman,

income to the tribes be used for purposes in § 522.4(b)(2), not less than 60 percent of net revenues be income to a tribe, and an assessment be paid to the Commission under part 514, Annual fees payable by class II gaming operations. For new individually owned oeprations, a tribe must employ licensing standards that are at least as restrictive as those established by State law and that require denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity.

Section 522.12, Revocation of class III gaming, implements section 2710(d)(2)(D). That section provides that a tribe may adopt an ordinance or resolution revoking authorization of class III gaming. Such a revocation is, however, subject to a one-year delay during which any civil or criminal actions arising during that period are preserved.

**Review and Approval of Existing Ordinances or Resolutions**

Part 523 covers review and approval of ordinances or resolutions enacted by a tribe prior to final promulgation of today's proposed rule and that have not been approved by the Chairman.

Section 523.1, Scope of part 523, contains the same submission requirements as those for new ordinances or resolutions under part 522. In addition, § 523.2 proposes to require submission of the most recent annual financial statements for gaming operations, including the most recent audit reports and management letters. The Commission proposes requiring submission of those items to verify annual fees under part 514 and to allow verification of a tribe's gaming revenues.

Section 523.3, Review of an ordinance or resolution, provides that when a tribe submits an incomplete ordinance or resolution or one that fails to meet the statutory and regulatory requirements, the Chairman will notify the tribe of the specific areas of noncompliance in writing. A tribe has 120 days from receipt of such notice to bring its ordinance or resolution into compliance with the requirements of part 522. When a tribe fails to amend an ordinance or resolution within the prescribed time, the regulation provides that the Chairman will disapprove the ordinance or resolution. When a tribe and the Commission disagree about amending an ordinance, the Commission intends that a tribe and the Commission may jointly waive the 120-day period, in which case the Chairman would disapprove the ordinance or resolution, and the tribe could then proceed to appeal under part 524 (discussed below). That provision is not contained within the language of § 523.3, but in the view of the Commission this would be a logical way to expedite resolution of disagreements.

Section 523.4, Review of an amendment, applies the procedures of part 522 to amendments. Section 523.4(c) is analagous to § 522.9, Substitute approval.

**Appeals**

Part 524 provides for appeals from the Chairman's approval or disapproval of a gaming ordinance. The Commission notes that the IGRA imposes no specific hearing requirements for appeals of ordinance or resolution approvals. Therefore, the Commission intends to review appeals informally. After the Commission renders a decision, a tribe may appeal to the appropriate Federal district court under section 2714 of the IGRA.

**Background Investigations for Primary Management Officials and Key Employees**

Part 556 implements requirements of the IGRA in section 2710(b)(2)(F). As a prerequisite to approval of an ordinance by the Chairman, that section requires a tribe to have an adequate regulatory system that includes background investigations of primary management officials and key employees. The Commission defined those terms in its definitions rule promulgated in the **Federal Register** on April 9, 1992 (57 FR 12382).

Related to tribal background investigations under the IGRA are procedures under the Privacy Act. 5 U.S.C. 552a. Note that tribes are not subject to that Act in their recordkeeping, but the Commission is, due to its status as a Federal agency. Because tribes are required to provide the Commission with certain records, those records become subject to the Privacy Act. Therefore, tribes must follow certain procedures under that Act. (Hence, for example, the requirement in § 556.1 that a tribe include a privacy notice on its application forms for key employees and primary management officials.) Elsewhere in today's **Federal Register**, the Commission is proposing regulations under the Privacy Act and is establishing a system of records under that Act. The system of records will contain copies of applications of key employees and primary management officials and other information from background investigations.

Section 556.1 requires that a tribe place a privacy notice on its application forms for key employees and primary management officials. This notice lets individuals know that information about them may be used by the Commission when it reviews licenses issued by a tribe under section 2710(b)(2)(F)(ii)(III). In addition, the notice lets the individuals know that information contained in the application and subsequent background investigation may be disclosed not only to their employers but to the Commission and appropriate Federal, Tribal, State, local, or foreign agencies in connection with hiring, firing, issuance or revocation of an Indian gaming license, or investigations of Indian gaming under section 2716(b) of the IGRA. That section directs the Commission to provide information indicating a violation of Federal, State, or tribal statutes, ordinances or resolutions to appropriate law enforcement officials. Without such a notice, the Commission could not maintain information on individuals and therefore would be unable to perform its duties under the IGRA. With respect to existing key employees and primary management officials, § 556.1 requires either new applications containing the privacy notice or signed statements that contain the privacy notice and grant consent to the routine uses and disclosures mentioned above.

Section 556.2, Notice regarding false statements, warns key employees and primary management officials of their duty to be accurate in supplying the information requested by a tribe and the Commission. Federal law provides penalties for anyone making false statements to an entity regulated by the Federal Government. The federal statute states: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both." 18 U.S.C. 1001.

Section 556.3 requires that a tribe obtain certain background information from primary management officials and key employees involved in class II gaming. The information is to be used by a tribe in conducting a background investigation. The information required under § 556.3(a)(1) is necessary to ensure accurate identification, for example, when searching different data

bases that may include different individuals who have the same or very similar names. In addition, a tribe may request any other information it deems relevant. A tribe must make an express promise to keep confidential the identity of each person interviewed in the course of a background investigation.

When a tribe wishes to employ a person previously employed in Indian gaming as a key employee or primary management official, the tribe may request information from the Commission concerning that person (as noted in the privacy notice). Additionally, a tribe may request information from previous employers, including other tribes.

Section 556.4, Report to Commission for class II gaming, requires that when a tribe employs a primary management official or key employee, the tribe must forward to the Commission a completed application. In requiring a tribe to forward applications before completion of a background investigation and issuance of a license, the Commission is attempting to accommodate gaming operations that must replace employees, often quickly after little or no notice. At the same time, the Commission is implementing the intent of the IGRA in requiring that the Commission be informed of the identity of and certain background information concerning new key employees and primary management officials.

Section 556.4 requires a tribe, before issuing a license to a primary management official or key employee, to forward an investigative report on each background investigation to the Commission. The regulation spells out the requirements for such a report. An investigative report must include: (1) Steps taken in conducting a background investigation, (2) results obtained, (3) conclusions reached, and (4) the bases for those conclusions.

Section 556.4 also requires a tribe to forward to the Commission a copy of its eligibility determination under § 2710(b)(2)(F)(ii)(II) for each key employee and primary management official.

Section 556.5 requires background investigations for each primary management official and key employee involved in class III gaming using procedures as stringent as those provided under § 556.3. The Commission's requiring background investigations for class III gaming under its regulations implements section 2710(d)(1)(A) of the IGRA. Under that section a tribe's class III ordinances and resolutions must meet the requirements set out for class II ordinances under section 2710(b). Because the requirement for background investigations is part of the same section, it is the Commission's view that it applies to class III gaming also. The Commission notes that pursuant to a tribal-state compact, the responsibility for performing background investigations may fall to a state. The IGRA, however, requires class III ordinances meet the same requirements as class II ordinances. The Commission proposes that where a state performs background investigations, that they be at least as stringent as those required under these regulations. The Commission solicits comment on its interpretation of these requirements.

Section 556.6, Report to the Commission for class III gaming, requires only identifying information regarding class III key employees and primary management officials. The Commission proposes to keep this information in its records system so that it can inform a tribe of an individual's employment by a particular Indian gaming operation. Under section 2710(d)(1)(A), only the requirements of subsection (b) apply to class III gaming. The Commission solicits comments on its interpretation of the extent of the applicability of the background investigation requirements under the IGRA to class III gaming.

**Gaming Licenses**

Section 558.1, *Scope of part 558*, clarifies that the licensing authority for class II or class III gaming is a tribal authority, unless otherwise provided under a tribal-state compact for class III gaming. This section also implements section 2710(c)(4)(B)(ii). That section requires, as a condition of self-regulation, that a tribe has "adopted and is implementing adequate systems for * * * investigation, licensing, and monitoring of all employees of (a) gaming activity(.)" Only key employees and primary management officials, however, are regulated by the requirements of the ordinance regulations. For other employees, tribes may develop other systems, or adapt portions of these requirements.

Section 558.1 also requires a tribe to forward applications for employment and reports of background investigations for key employees and primary management officials to the Commission within 60 days after approval of an ordinance. A tribe keeps applications and any reports concerning other employees.

Employees whose licenses are suspended by a tribe have a right to a hearing as provided under section 2710(c)(2) only after a tribal ordinance or resolution is approved by the Chairman. Rights under other authorities are not affected by this provision.

Section 558.2, Eligibility determination for employment in a gaming operation, implements section 2710(b)(2)(F)(ii)(II). That section requires that a tribe have a standard for determining eligibility for employment in a gaming operation with respect to key employees and primary management officials. A tribal official, using the standards of a tribal ordinance, makes an eligibility determination that employment of an individual as a key employee or primary management official will not result in employing an individual who, as stated in the proposed regulation, "poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming(.)" When a tribal official determines that employing an individual as a key employee or primary management official would be inconsistent with its eligibility criteria, a tribe may choose to employ that person in another position. Tribes may not, however, employ ineligible persons in positions where they in fact function as key employees or primary management officials. For guidance concerning those positions, please refer to the definitions of those terms in 25 CFR part 502, the definitions regulation promulgated in the Federal Register on April 9, 1992 at 12393.

Section 558.3 provides procedures for forwarding applications and reports to the Commission. Upon employing a key employee or primary management official, a tribe forwards a completed job application to the Commission and begins to conduct a background investigation. A tribe has 60 days to perform a background investigation and forward its report and eligibility determination to the Commission. If, after 90 days, a background investigation remains incomplete, a tribe may no longer employ that person as a key employee or primary management official.

Section 2710(c)(1) authorizes the Commission to "consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe( )". Under § 558.3 the Commission has 30 days to object to issuance of a license. During the 30-day period beginning when the Commission receives a report on a background investigation, the Chairman may request additional information concerning an employee. If, at the end of the 30-day period, the Commission has not notified

the tribe that it has any objections, the tribe may issue the license.

Under § 558.4, after the 30-day period, a tribe must either grant a gaming license to an employee who is eligible for continued employment in a gaming operation, terminate that employment, or place an employee in a position other than as a key employee or a primary management official.

Section 558.5, License suspension, implements section 2710(c)(2). That section requires a tribe to suspend a license upon receipt of Commission information indicating that a primary management official or key employee fails to meet the applicable eligibility criteria. An employee whose license is suspended has a right to notice and a hearing, after which a tribe must decide to revoke or reinstate the gaming license and notify the Commission of its decision.

### Privacy

Elsewhere in today's **Federal Register** is a notice telling the public of the Commission's new system of records under the Privacy Act. As stated in the notice, the system of records will be implemented as tribes submit information from key employees and primary management officials who are employed in Indian gaming operations. Also, by its notice, the Commission is establishing the Indian Gaming Individuals Record System. The notice describes the information to be included in the system. The information is provided mostly by key employees and primary management officials on their applications for employment in Indian gaming.

The Commission will use information in the records system to verify the suitability of key employees and primary management officials for employment in those positions. In the course of verifying the suitability of individuals for employment in certain positions, the Commission intends to disclose information, as appropriate, to (1) federal, state, tribal, or local law enforcement or regulatory agencies; (2) tribes that employ or may wish to employ individuals; (3) agencies charged with responsibility for investigating and prosecuting criminal or civil violations; (4) congressional offices concerning records of an individual in response to an inquiry from the congressional office made at the request of that individual; and, (5) federal, state, local, or tribal agencies or their agents that are involved in civil enforcement action to protect the integrity of Indian gaming.

Persons wishing to inquire whether the records system contains information concerning themselves may submit inquiries to the Commission's Records Manager and may contest the accuracy of the information. Individuals may request the Commission to amend all or any part of a record.

The Commission's Privacy Act proposed regulations are published in today's **Federal Register**. The proposed regulations inform individuals how they may gain access to and amend records concerning themselves. The Privacy Act proposed regulation applies only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to the Freedom of Information Act.

### Regulatory Matters

The Commission has tentatively determined that this document is not a major rule under Executive Order 12291. The Commission believes that the rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, federal, state, or local governments, agencies, or geographical regions. The Commission also believes that the rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has tentatively determined that this rule will not have a significant economic impact on a substantial number of small entities. The Commission solicits comment on these preliminary determinations under the Executive Order and the Regulatory Flexibility Act.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by OMB.

The Chairman of the National Indian Gaming Commission has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Dated: July 1, 1992.

**Anthony J. Hope,**

*Chairman, National Indian Gaming Commission.*

**List of Subjects in 25 CFR Parts 519, 522, 523, 524, and 556**

Gaming, Indian lands.

Title 25 of the Code of Federal Regulations is proposed to be amended by adding parts 519, 522, 523, 524, and 556 to read as follows.

## PART 519—SERVICE

Sec.

519.1 Designation of an agent by a tribe.
519.2 Designation of an agent by a management contractor or a tribal operator.
519.3 Methods of service.
519.4 Copy of any official determination, order, or notice of violation.

Authority: 25 U.S.C. 2706(b)(10).

### § 519.1 Designation of an agent by a tribe.

By written notification to the Commission, a tribe shall designate an agent for service of any official determination, order, or notice of violation.

### § 519.2 Designation of an agent by a management contractor or a tribal operator.

By written notification to the Commission, a management contractor or a tribal operator shall designate an agent for service of any official determination, order, or notice of violation.

### § 519.3 Methods of service.

(a) The Chairman shall serve any official determination, order, or notice of violation by:

(1) Delivering a copy to a designated agent;

(2) Delivering a copy to the person who is the subject of the official determination, order, or notice of violation;

(3) Delivering a copy to the individual who, after reasonable inquiry, appears to be in charge of the gaming operation that is the subject of the official determination, order, or notice of violation;

(4) Mailing to the person who is the subject of the official determination, order, or notice of violation or to his or her designated agent at the last known address. Service by mail is complete upon mailing; or

(5) Facsimile to the person who is the subject of the official determination, order, or notice of violation to his or her designated agent at the last known facsimile number. Service by facsimile is complete upon transmission.

(b) Delivery of a copy means: Handing it to the person or designated agent (or attorney for either); leaving a copy at the person's, agent's or attorney's office with a clerk or other person in charge thereof; if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place

of abode with some person of suitable age and discretion then residing therein.

(c) Service shall not be deemed incomplete because of refusal to accept.

**§ 519.4 Copy of any official determination, order, or notice of violation.**

When practicable the Commission shall send a copy of any official determination, order, or notice of violation to the tribal chairman, the designated tribal agent under § 519.1, and to the relevant tribal gaming authority.

## PART 522—SUBMISSION OF GAMING ORDINANCE OR RESOLUTIONS

Sec.

522.1 Scope of this part 522.
522.2 Submission requirements.
522.3 Amendment.
522.4 Approval requirements for class II ordinances.
522.5 Disapproval of a class II ordinance.
522.6 Approval requirements for class III ordinances.
522.7 Disapproval of a class III ordinance.
522.8 Publication of class III ordinance and approval.
522.9 Substitute approval.
522.10 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.
522.11 Individually owned class II gaming operations operating on September 1, 1986.
522.12 Revocation of class III gaming.

Authority: 25 U.S.C. 2706, 2710, 2712.

**§ 522.1 Scope of this part 522.**

This part applies to any gaming ordinance or resolution adopted by a tribe after [29 days after publication of the final rule]. Part 523 of this chapter applies to all existing gaming ordinances or resolutions.

**§ 522.2 Submission requirements.**

A tribe shall submit to the Chairman all of the following information with a request for approval of a class II or class III ordinance or resolution:

(a) One copy on 81½" × 11" paper of an ordinance or resolution certified as authentic by an authorized tribal official and that meets the approval requirements in §§ 522.4(b) or 522.6 of this part;

(b) A description of procedures to conduct or cause to be conducted background investigations on key employees and primary management officials and to ensure that key employees and primary management officials are notified of their rights under the Privacy Act as specified in § 556.1 of this chapter;

(c) A description of procedures to issue tribal licenses to primary management officials and key employees;

(d) Copies of all tribal gaming regulations;

(e) When an ordinance or resolution concerns class III gaming, a copy of the tribal-state compact;

(f) A description of procedures for resolving disputes between the gaming public and the tribe or the management contractor; and

(g) Designation of an agent for service under part 519 of this chapter.

**§ 522.3 Amendment.**

(a) Within 15 days after adoption, a tribe shall submit for the Chairman's approval any amendment to an ordinance or resolution.

(b) A tribe shall submit for the Chairman's approval any amendment to the submissions made under § 522.2(b) through (g) of this part within 15 days of such amendment.

**§ 522.4 Approval requirements for class II ordinances.**

No later than 90 days after the submission to the Chairman under § 522.2 of this part, the Chairman shall approve the class II ordinance or resolution if the Chairman finds that—

(a) A tribe meets the submission requirements contained in § 522.2 of this part; and

(b) The class II ordinance or resolution provides that—

(1) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under either § 522.9 or § 522.10 of this part;

(2) A tribe shall use net revenues from any tribal gaming or from any individually owned games only for one or more of the following purposes:

(i) To fund tribal government operations or programs;

(ii) To provide for the general welfare of the tribe and its members (if a tribe elects to make per capita distributions, the plan must be approved by the Secretary of the Interior under 25 U.S.C. 2710(b)(3));

(iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government agencies;

(3) A tribe shall cause to be conducted independent audits of gaming operations annually and shall submit the results of those audits to the Commission;

(4) All gaming related contracts that result in purchases of supplies, services, or concessions for more than $25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted under § 522.2(b)(3) of this part;

(5) A tribe shall perform background investigations and issue licenses according to requirements that are at least as stringent as those in parts 556 and 558 of this chapter;

(6) A tribe shall issue a separate license to each place, facility, or location on Indian lands where a tribe elects to allow class II gaming; and

(7) A tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety.

**§ 522.5 Disapproval of a class II ordinance.**

No later than 90 days after a tribe submits an ordinance for approval under § 522.2 of this part, the Chairman may disapprove an ordinance if he or she determines that a tribe failed to comply with the requirements of § 522.2 of this part.

**§ 522.6 Approval requirements for class III ordinances.**

No later than 90 days after the submission to the Chairman under § 522.2 of this part, the Chairman shall approve the class III ordinance or resolution if—

(a) A tribe follows the submission requirements contained in § 522.2 of this part;

(b) The ordinance r resolution meets the requirements contained in § 522.4(b)(2), (3), (4), (5), (6), and (7) of this part except when a tribal-state compact allocates responsibility to an entity other than a tribe for such responsibilities; and

(c) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under § 522.10 of this part.

**§ 522.7 Disapproval of a class III ordinance.**

Notwithstanding compliance with the requirements of § 522.6 of this part and no later than 90 days after a submission under § 522.2 of this part, the Chairman shall disapprove an ordinance or resolution if the Chairman determines that—

(a) A tribal governing body did not adopt the ordinance or resolution in compliance with the governing documents of a tribe; or

(b) A tribal governing body was significantly and unduly influenced in the adoption of the ordinance or resolution by a person having a direct or indirect financial interest in a

management contract, a person having management responsibility for a management contract, or their agents.

**§ 522.8 Publication of class III ordinance and approval.**

The Commission shall publish a class III tribal gaming ordinance or resolution in the **Federal Register** along with its approval thereof.

**§ 522.9 Substitute approval.**

If the Chairman fails to approve or disapprove an ordinance or resolution submitted under § 522.2 of this part within 90 days after the date of submission to the Chairman, a tribal ordinance or resolution shall be considered to have been approved by the Chairman but only to the extent that such ordinance or resolution is consistent with the provisions of the Act and this chapter.

**§ 522.10 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.**

For licensing of individually owned gaming operations other than those operating on September 1, 1986 (addressed under § 522.11 of this part), a tribal ordinance shall require:

(a) That the gaming operation be licensed and regulated under an ordinance or resolution approved by the Chairman;

(b) That income to the tribe from an individually owned gaming operation be used only for the purposes listed in § 522.4(b)(2) of this part;

(c) That not less than 60 percent of the net revenues be income to the Tribe;

(d) That the owner pay an assessment to the Commission under § 514.1 of this chapter;

(e) Licensing standards that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the surrounding State; and

(f) Denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding State.

**§ 522.11 Individually owned class II gaming operations operating on September 1, 1986.**

For licensing of individually owned gaming operations operating on September 1, 1986, under § 502.3(e)(5) of this chapter, a tribal ordinance shall contain the same requirements as those in § 522.10 (a)–(d) of this part.

**§ 522.12 Revocation of class III gaming.**

A governing body of a tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorizes class III gaming.

(a) A tribe shall submit to the Chairman on 8½" x 11" paper one copy of any revocation ordinance or resolution certified as authentic by an authorized tribal official.

(b) The Chairman shall publish such ordinance or resolution in the **Federal Register** and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(c) Notwithstanding any other provision of this section, any person or entity operating a class III gaming operation on the date of publication in the **Federal Register** under paragraph (b) of this section may, during a one-year period beginning on the date of publication, continue to operate such operation in conformance with a tribal-state compact.

(d) A revocation shall not affect—

(1) Any civil action that arises during the one-year period following publication of the revocation; and

(2) Any crime that is committed during the one-year period following publication of the revocation.

## PART 523—REVIEW AND APPROVAL OF EXISTING ORDINANCES FOR RESOLUTIONS

Sec.

523.1 Scope of this part 523.
523.2 Submission requirements.
523.3 Review of an ordinance or resolution.
523.4 Review of an amendment.

Authority: 25 U.S.C. 2706, 2710, 2712

**§ 523.1 Scope of this Part 523.**

This part applies to a class II or a class III gaming ordinance or resolution enacted by a tribe prior to [30 days after promulgation of the final rule] and that is not approved by the Chairman.

**§ 523.2 Submission requirements.**

Within 60 days after a request by the Chairman, a tribe shall:

(a) Submit for review and approval all items required under § 522.2 of this chapter; and

(b) Submit the most recent annual financial statements for the gaming operations, including the most recent audit reports and management letters.

**§ 523.3 Review of an ordinance or resolution.**

Within 90 days after receipt of a submission under § 523.2 of this part, the Chairman shall subject the ordinance or resolution to the standards in part 522 of this chapter.

(a) For class II and class III gaming, if the Chairman determines that an ordinance or resolution submitted under this part meets the approval and submission requirements of part 522 of this chapter and the Chairman finds the annual financial statements are included in the submission, the Chairman shall approve the ordinance or resolution.

(b) If an ordinance or resolution fails to meet the requirements for review under part 522 of this chapter or if a tribe fails to submit the annual financial statement, the Chairman shall notify a tribe in writing of the specific areas of noncompliance.

(c) The Chairman shall allow a tribe 120 days from receipt of such notice to bring the ordinance or resolution into compliance with the requirements of part 522 of this chapter or to submit an annual financial statement, or both.

(d) At the end of the 120-day period provided under paragraph (c) of this section, the Chairman shall disapprove any ordinance or resolution if a tribe fails to amend according to the notification made under paragraph (b) of this section.

**§ 523.4 Review of an amendment.**

Within 90 days after receipt of an amendment, the Chairman shall subject the amendment to the standards in part 522 of this chapter.

(a) If the Chairman determines that an amendment meets the approval and submission requirements of part 522 of this chapter, the Chairman shall approve the amendment.

(b) If an amendment fails to meet the requirements for review under part 522 of this chapter, the Chairman shall notify the tribe in writing of the specific areas of noncompliance.

(c) If the Chairman fails to disapprove a submission under paragraph (a) or (b) of this section within 90 days after the date of submission to the Chairman, a tribal amendment shall be considered to have been approved by the Chairman but only to the extent that such amendment is consistent with the provisions of the Act and this chapter.

## PART 524—APPEALS

Authority: 25 U.S.C. 2706, 2710, 2712.

**§ 524.1 Appeals**

Any person with an interest that is or may be adversely affected by the Chairman's approval or disapproval of a gaming ordinance or resolution under part 522 or 523 of this chapter may appeal the Chairman's determination to the Commission. Such an appeal shall be filed with the Commission within 30 days after the person received the Chairman's determination, or within 45 days after the date of the Chairman's determination, whichever is earlier.

Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal. Such an appeal shall state succinctly why the person believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Within 45 days after it receives the appeal, the Commission shall render its decision on the appeal, unless the Commission notifies the person requesting the appeal that the Commission requires additional time to render a decision.

## PART 556—BACKGROUND INVESTIGATIONS FOR PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES

Sec.
556.1 Privacy notice.
556.2 Notice regarding false statements.
556.3 Background investigations for class II gaming.
556.4 Report to Commission for class II gaming.
556.5 Background investigations for class III gaming.
556.6 Report to Commission for class III gaming.

Authority: 25 U.S.C. 2706, 2710, 2712.

### § 556.1 Privacy notice.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 *et seq*. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new appliation form that contains a Privacy Act notice; or

(2) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

### § 556.2 Notice regarding false statements.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new application form that contains a notice regarding false statements; or

(2) Sign a statement that contains the notice regarding false statements.

### § 556.3. Background investigations for class II gaming.

A tribe shall perform a background investigation for each primary management official and for each key employee of a class II gaming operation.

(a) A tribe shall request from each primary management official and from each key employee all of the following information:

(1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

(2) For the previous 5 years: Business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

(3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (a)(2) of this section;

(4) Current business and residence telephone numbers;

(5) A description of any previous business relationships with Indian tribes, including ownership interests in those businesses;

(6) A description of any previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(8) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition;

(9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within 10 years of the date of the application, the name and address of the court involved and the date and disposition;

(10) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(11) A photograph; and

(12) Any other information a tribe deems relevant.

(b) A tribe shall conduct an investigation sufficient to make a determination under § 558.2 of this chapter. In conducting a background investigation, a tribe or its agents shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(c) If the Commission and a tribe possess an investigative report for an employee, the tribe may update that report instead of performing an entirely new investigation.

### § 556.4 Report to Commission for class II gaming.

(a) When a tribe employs a primary management official or a key employee, the tribe shall forward to the Commission a completed application containing the information listed under § 556.3(a) of this part.

(b) Before issuing a license to a primary management official or to a key employee, a tribe shall forward to the Commission an investigative report on each background investigation. An investigative report shall include all of the following:

(1) Steps taken in conducting a background investigation;

(2) Results obtained;

(3) Conclusions reached; and

(4) The bases for those conclusions.

(c) When a tribe forwards its report to the Commission, it shall include a copy of the eligibility determination made under § 558.2 of this chapter.

### § 556.5 Background investigations for class III gaming.

A tribe or a state shall conduct a background investigation for each primary management official and for

each key employee using procedures as stringent as those provided in § 556.3.

**§ 556.6 Report to Commission for class III gaming.**

Before a tribe or other licensing authority licenses a key employee or primary management official, the tribe shall forward to the Commission the information required under § 556.3(a)(1).

## PART 558—GAMING LICENSES

Sec.

558.1 Scope of this part 558.
558.2 Eligibility determination for employment in a gaming operation.
558.3 Procedures for forwarding applications and reports to the Commission.
558.4 Granting a gaming license.
558.5 License suspension.

**Authority:** 25 U.S.C. 2706, 2710, 2712.

**§ 558.1 Scope of this part 558.**

(a) The licensing authority for class II or class III gaming is a tribal authority, unless otherwise provided under a tribal-state compact for class III gaming.

(b) A tribe shall develop licensing procedures for all employees of a gaming operation. The procedures and standards of § 556 of this part and the procedures and standards of this section apply only to primary management officials and key employees.

(c)(1) Within 60 days after approval of an ordinance under part 522 of this chapter, a tribe shall forward to the Commission applications for employment and reports of background investigations for primary management officials and key employees.

(2) For employees of a gaming operation other than primary management officials or key employees, a tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman or his or her designee for at least the term of employment but in no event less than three (3) years from the date of employment.

(d) A right to a hearing under § 558.5 of this part shall vest only upon receipt of a license under an ordinance approved by the Chairman.

**§ 558.2 Eligibility determination for employment in a gaming operation.**

An authorized tribal official shall make a finding concerning the eligibility of a key employee or a primary management official for employment in a gaming operation. If an authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that employment of a person under investigation poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a management contractor or a tribal gaming operation shall not employ that person in a key employee or primary management official position.

**§ 558.3 Procedures for forwarding applications and reports to the Commission.**

(a) When an employee begins work at a gaming operation, a tribe shall:

(1) Forward to the Commission a completed application for employment that contains the information listed in § 556.2 of this chapter; and

(2) Conduct a background investigation under part 556 of this chapter to determine the eligibility of the employee for continued employment in a gaming operation.

(b) Upon completion of a background investigation and a determination of eligibility for employment in a gaming operation under paragraph (a)(2) of this section, a tribe shall forward a report under § 556.5 of this part to the Commission within 60 days after an employee begins work. A gaming operation shall not employ a person who does not have a license after 90 days as a key employee or primary management official.

(c) During a 30-day period beginning when the Commission receives a report submitted under paragraph (b) of this section, the Chairman may request additional information from a tribe concerning an employee who is the subject of a report. Such a request shall suspend the 30-day period until the Chairman receives the additional information.

(d) If, at the conclusion of the 30-day period described under paragraph (c) of this section, the Commission has not notified the tribe that it has any objections, the tribe may issue the license.

**§ 558.4 Granting a gaming license.**

At the end of the 30-day period described under § 558.3(c) of this part or upon receipt of the Commission's report described under § 558.3(d) of this part, a tribe shall—

(a) Grant a gaming license to an employee who is eligible for continued employment in a gaming operation; or

(b) Terminate the employment of an employee as a key employee or a primary management official.

**§ 558.5 License suspension.**

(a) If, after the issuance of a gaming license, the Commission receives reliable information indicating that an employee is not eligible for employment under § 558.2 of this part, the Commission shall notify the tribe that issued a gaming license.

(b) Upon receipt of such notification under paragraph (a) of this section, a tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

(c) A tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

(d) After a revocation hearing, a tribe shall decide to revoke or to reinstate a gaming license. A tribe shall notify the Commission of its decision.

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## NATIONAL INDIAN GAMING COMMISSION

### 25 CFR Part 515

### Privacy Act Procedures

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The National Indian Gaming Commission (NIGC, or the Commission) is proposing to establish this rule in chapter III of title 25 of the Code of Federal Regulations (part 515). The purpose of these regulations is to describe the procedures and policies adopted by the Commission pursuant to the Privacy Act of 1974, 5 U.S.C. 552a. Under the Act, federal agencies must publish, in the **Federal Register**, notice of any systems of records that they intend to establish. Agencies must also publish procedures regarding the collection, maintenance, use, and dissemination of certain records within those systems. The Commission is publishing notice of the creation of the Indian Gaming Individuals Records System elsewhere in today's **Federal Register**. The regulations proposed here provide procedures regarding the maintenance, use, and dissemination of records compiled in that system and in any other records systems created by the Commission.

**DATES:** Comments must be received by August 24, 1992.

**ADDRESSES:** Comments may be mailed to: Privacy Act Comments, NIGC, Suite 250, 1850 M. St., NW, Washington, DC 20036–5803. Comments may be delivered to the Commission between the hours of 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632–7066 (not a toll free number). Comments may be inspected by the public between the

hours of 9 a.m. and noon, and between 2 p.m. and 5 p.m., at the above address, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mary Jane Markley, (202) 632-7003 (not a toll free number).

**SUPPLEMENTARY INFORMATION:** Congress enacted the Privacy of 1974 as a means of regulating the collection, maintenance, use and dissemination of personal information gathered by federal government agencies. The purpose of the Act is to balance the need of agencies to maintain information about individuals for various purposes, against the individual right to be protected against unwarranted invasions of privacy. The Act restricts the disclosure of certain personal information, while allowing individuals, on whom records have been compiled, greater access to and the right to amend those records. In effect, the Act establishes a code of fair information practices with which agencies must comply.

**Privacy Act Procedures**

The Commission, elsewhere in today's **Federal Register**, published notice of the creation of the Indian Gaming Individuals Records System to maintain information on key employees and management officials of Indian gaming operations. The purpose of these regulations is to inform the public of the procedures and policies the Commission is proposing pursuant to the Privacy Act of 1974, regarding information compiled in that and any other records system created by the Commission. The regulations provide procedures for requests by individuals for access to records compiled by the Commission on those individuals. The regulations also provide procedures for requests for amendments to existing records and for appeals to the Commission from the denial of such requests. Finally, the regulations exempt the Indian Gaming Individuals Records System from specific provisions of the Act.

Any individual, agent, parent or guardian may request the Commission to determine whether a record exists pertaining to such individual. Requests may be made in writing or in person at the address listed above under "Addresses." The Commission, within 10 days after its receipt of such a request, must notify the requester whether or not that person is the subject of a record. If a record exists on that individual, the Commission must then decide whether it will allow the requester access to that record. If the Commission denies access to a record, the requester will be advised of the denial, the reasons for denial, and rights of appeal (discussed below).

Any individual may also request an amendment to all or part of a record pertaining to that individual. The Records Manager, a Commission employee, will review all requests for amendments and will notify the requester, within 10 days after receipt of a request for amendment, whether or not it will amend the record. If the Commission denies the request for amendment, it will promptly notify the requester of the denial along with its reasons for denial. Due to the nature of the information contained in the Indian Gaming Individuals Records System, the Commission proposes to exempt the system from the amendment requirements of the Act if compliance would create an unreasonable administrative and investigative burden forcing the Commission to resolve questions of accuracy, relevance, timeliness or completeness.

Any indivdual may appeal the Commission's adverse decision on a request to access or amend a record. Such appeal must be made within 180 days after the adverse decision is rendered. The Commission will then have 30 days, unless it extends that period for good cause, to review the appeal and make a final determination regarding amendment. The Commission will promptly notify the requester of its final determination and, if denial is upheld on appeal, the reasons for that denial. The requester may file with the Commission a statement setting forth the reasons for disagreement with the Commission's adverse decision on access or amendment. The final determination is subject to judicial review in the appropriate federal district court.

Under the Privacy Act, an agency may promulgate rules exempting any system of records within an agency from compliance with various sections of the Act. 5 U.S.C. 552a. The Act allows such exemptions if the system of records contains investigatory material compiled for law enforcement purposes. 5 U.S.C. 552a(k)(2). Due to the nature of the information contained in the Indian Gaming Individuals Record System, the Commission proposes to exempt that system from the access requirements if such access would compromise information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a sensitive investigative technique, or pose a threat to the Commission, its employees or law enforcement officials.

The Commission also proposes to exempt the Indian Gaming Individuals Records System from the accounting of disclosures requirement. Under that provision, the agency is required to disclose, to the individual named in the record, all disclosures of the subject's record to other persons or agencies. The Commission believes that such disclosures could reveal an investigative interest in the individual who is the subject of the record. The Commission also proposes to exempt the records system from the requirement that each agency maintain only relevant and necessary information in its records. The Commission believes that, due to the investigatory nature of the materials contained in the Indian Gaming Records System, it is not always possible to determine the relevance or necessity of specific information in the early stages of an investigation. For these reasons, the Commission proposes to exempt the system from these requirements.

There will be no fee for the cost of searching for a record or any costs related thereto, except that the Commission may charge a fee sufficient to cover duplication costs. Also, penalties may be imposed, pursuant to 18 U.S.C. 494 and 495, for false statements made in connection with requests for records or amendments.

**Regulatory Matters**

*Executive Order 12291 and the Regulatory Flexibility Act*

The Commission has determined that this document is not a major rule under Executive Order 12291. The rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, federal, state, or local governments, agencies or geographical regions. The rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act.

*Paperwork Reduction Act*

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 et seq. The collection of this information

will not be required until it has been approved by OMB.

*National Environmental Policy Act*

The Commission has determined that this proposed rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

*Executive Order 12778*

The Chairman of the NIGC has certified to OMB that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Dated: July 1, 1992.

**Anthony J. Hope,**

*Chairman, National Indian Gaming Commission.*

**List of Subjects in 25 CFR Part 515:**

Gaming, Indian lands, privacy.

For the reasons set forth in the preamble, title 25 of the Code of Federal Regulations is proposed to be amended by adding a new part 515.

## PART 515—PRIVACY ACT PROCEDURES

Sec.

515.1 Purpose and scope.
515.2 Definitions.
515.3 Identification of individuals making requests.
515.4 Procedures for requests and disclosures.
515.5 Request for amendment to record.
515.6 Review of request for amendment of record by the Records Manager.
515.7 Appeal to the Commission of initial adverse agency determination on access or amendment to records.
515.8 Disclosure of record to a person other than the individual to whom it pertains.
515.9 Fees.
515.10 Penalties.
515.11 General exemptions. [Reserved]
515.12 Specific exemptions.

**Authority:** 5 U.S.C. 552a.

### § 515.1 Purpose and scope.

(a) The purpose of this part is to inform the public of records maintained by the Commission about identifiable individuals and to inform those individuals how they may gain access to and amend records concerning themselves.

(b) This part carries out the requirements of the Privacy Act of 1974 (Pub. L. 93–579) codified at 5 U.S.C. 552a.

(c) The regulation applies only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to 5 U.S.C. 552, the Freedom of Information Act.

### § 515.2 Definitions.

As defined in the Privacy Act of 1974 and for the purposes of this part, unless otherwise required by the context, the following terms shall have these meanings:

(a) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) *Maintain* means maintain, collect, use, or disseminate.

(c) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifier assigned to the individual, such as social security number, finger or voice print, or a photograph.

(d) *System of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to the individual.

(e) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected.

### § 515.3 Identification of individuals making requests.

(a) Any individual may request that the Commission inform him or her whether a particular record system named by the individual contains a record pertaining to him or her and the contents of such record. Such requests shall conform to the requirements of § 515.4 of this part. The request may be made in person or in writing at the NIGC, Suite 250, 1850 M Street, NW., Washington, DC 20036–5803 during the hours of 9 a.m. to 12 noon and 2 p.m. to 5 p.m. Monday through Friday.

(b)(1) Requests made in writing shall include a statement, signed by the individual and either notarized or witnessed by two persons (including witnesses' addresses). If the individual appears before a notary, the individual shall submit adequate proof of identity in the form of a driver's license, birth certificate, passport, or other identification acceptable to the notary. If the statement is witnessed, it shall include a statement above the witnesses' signatures that they personally know the individual or that the individual has submitted proof of his or her identity to their satisfaction. In any case in which, because of the extreme sensitivity of the record sought to be seen or copied, the Commission determines that the identification is not adequate, it may request the individual to submit additional proof of identity.

(2) If the request is made in person, the requester shall submit proof of identity similar to that described in paragraph (b)(1) of this section, and that is acceptable to the Commission. The individual may have a person of his or her own choosing accompany him or her when the record is disclosed.

(c) Requests made by an agent, parent, or guardian shall be in accordance with the procedures described in paragraph (b) of this section.

### § 515.4 Procedures for requests and disclosures.

(a) Requests for a determination under § 515.3(a) of this part shall be acknowledged by the Commission within ten (10) days (excluding Saturdays, Sundays, and Federal holidays) after the date on which the Commission receives the request. If the Commission is unable to locate the information requested, it shall so notify the individual within ten (10) days (excluding Saturdays, Sundays and Federal holidays) after receipt of the request. Such acknowledgement may request additional information to assist the Commission in locating the record, or it may advise the individual that no record exists about that individual.

(b)(1) Upon submission of proof of identity as required by § 515.3(b) (1) or (2) of this part, the Commission shall respond within ten (10) days (excluding Saturdays, Sundays and Federal holidays). The Commission shall decide whether to make a record available to the record subject and shall immediately convey its determination to the requester. If the individual asks to see the record, the Commission may make the record available at the location where the record is maintained.

(2) The Commission shall furnish each record requested by an individual under this section in a form intelligible to that individual.

(3) If the Commission denies access to a record to an individual, that person shall be advised of the reason for the denial and of the appeal procedures provided in § 515.7 of this part.

(4) Upon request, an individual shall be provided access to the accounting of disclosures from his or her record under the same procedures as provided above and in § 515.3 of this part.

**§ 515.5 Request for amendment to record.**

(a) Any individual who has reviewed a record pertaining to him or her that was furnished under this part, may request that the Commission amend all or any part of that record.

(b) Each individual requesting an amendment shall send the request to the Records Manager.

(c) Each request for an amendment of a record shall contain the following information:

(1) The name of the individual requesting the amendment;

(2) The name of the system of records in which the record sought to be amended is maintained;

(3) The location of the system of records from which the individual record was obtained;

(4) A copy of the record sought to be amended or a sufficiently detailed description of that record;

(5) A statement of the material in the record that the individual desires to amend;

(6) A statement of the basis for the requested amendment, including any material that the individual can furnish to substantiate the reasons for the amendment sought.

**§ 515.6 Review of request for amendment of record by the Records Manager.**

(a) The Records Manager shall, not later than ten (10) days (excluding Saturdays, Sundays and Federal holidays) after the receipt of a request for an amendment of a record under § 515.5 of this part, acknowledge receipt of the request and inform the individual whether more information is required before the amendment can be considered.

(b) If more information is not required, within ten (10) days after receipt of the request (excluding Saturdays, Sundays and Federal holidays), the Records Manager shall either make the requested amendment or notify the individual of the Commission's refusal to do so, including in the notification the reasons for the refusal, and the appeal procedures provided in § 515.7 of this part.

(c) The Records Manager shall make each requested amendment to a record if such amendment will tend to negate inaccurate, irrelevant, untimely, or incomplete material in the record.

(d) The Records Manager shall inform prior recipients of any amendment or notation of dispute of such individual's record. The individual may request a list of prior recipients if there exists an accounting of the disclosures.

**§ 515.7 Appeal to the Commission of initial adverse agency determination on access or amendment to records.**

(a) Any individual whose request for access or an amendment has been denied in whole or in part, may appeal the decision to the Commission no later than one hundred eighty (180) days after the adverse decision is rendered.

(b) The appeal shall be in writing and shall contain all of the following information:

(1) The name of the individual making the appeal;

(2) Identification of the record sought to be amended;

(3) The record system in which such record is contained;

(4) A short statement describing the amendment sought; and

(5) The name and location of the agency official who initially denied the amendment.

(c) Not later than thirty (30) days (excluding Saturdays, Sundays and Federal holidays) after the date on which the Commission receives the appeal, the Commission shall complete its review of the appeal and make a final decision thereon. For good cause shown, however, the Commission may extend such thirty (30) day period. If the Commission extends the period, the individual requesting the review shall be promptly notified of the extension and the anticipated date of a decision.

(d) After review of an appeal, the Commission shall send a written notice to the requester containing the following information:

(1) The decision and, if the denial is upheld, the reasons for the decision;

(2) The right of the requester to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission's denial of access or amendment. The Commission shall make this statement available to any person to whom the record is later disclosed, together with a brief statement, if appropriate, of the Commission's reasons for denying requested access or amendment. The Commission shall also send a copy of the statement to prior recipients of the individual's record; and

(3) The right of the requester to institute a civil action in a Federal district court for judicial review of the decision.

**§ 515.8 Disclosure of record to a person other than the individual to whom it pertains.**

(a) Any individual who desires to have a record covered by this part disclosed to or mailed to another person may designate such person and authorize such person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and notarized or witnessed as provided in § 515.3 of this part.

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court of competent jurisdiction to be incompetent, due to physical or mental incapacity or age, may act on behalf of that individual in any matter covered by this section. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, certified copy of court order, or similar documents, and proof of the individual's identity in a form that complies with § 515.3(b) of this part.

(c) An individual to whom a record is to be disclosed in person, pursuant to this section, may have a person of his or her own choosing accompany him or her when the record is disclosed.

**§ 515.9 Fees.**

The Commission shall not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of reviewing the record, the Commission shall not charge the individual for the cost of making that copy. Otherwise, the Commission may charge a fee sufficient to cover the cost of duplication.

**§ 515.10 Penalties.**

Any person who makes a false statement in connection with any request for a record, or an amendment thereto, under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

**§ 515.11 General exemptions. [Reserved]**

**§ 515.12 Specific exemptions.**

(a) The following system of records is exempt from 5 U.S.C. § 552a(c)(3), (d), (e)(1) and (f):

Indian Gaming Individuals Records System

(b) The exceptions under paragraph (a) of this section apply only to the extent that information in this system is subject to exemption under 5 U.S.C. 552a(k)(2). When compliance would not appear to interfere with or adversely affect the overall responsibilities of the Commission with respect to licensing of key employees and primary management officials for employment in an Indian gaming operation, the

applicable exemption may be waived by the Commission.

(c) Exceptions from the particular subsections are justified for the following reasons:

(1) From subsection 5 U.S.C. 552a(c)(3), because making available the accounting of disclosures to an individual who is the subject of a record could reveal investigative interest. This would permit the individual to take measures to destroy evidence, intimidate potential witnesses, or flee the area to avoid the investigation.

(2) From subsections 5 U.S.C. 552a(d), (e)(1), and (f) concerning individual access to records, when such access could compromise classified information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a sensitive investigative technique, or pose a potential threat to the Commission or its employees or to law enforcement personnel. Additionally, access could reveal the identity of a source who provided information under an express promise of confidentiality.

(3) From subsection 5 U.S.C. 552a(d)(2), because to require the Commission to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the length of time it is maintained, would create an impossible administrative and investigative burden by continually forcing the Commission to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From subsection 5 U.S.C. 552a(e)(1) because:

(i) It is not always possible to determine relevance or necessity of specific information in the early stages of an investigation.

(ii) Relevance and necessity are matters of judgment and timing in that what happens relevant and necessary when collected may be deemed unnecessary later. Only after information is assessed can its relevance and necessity be established.

(iii) In any investigation the Commission may receive information concerning violations of law under the jurisdiction of another agency. In the interest of effective law enforcement and under 25 U.S.C. 2716(b), the information could be relevant to an investigation by the Commission.

(iv) In the interviewing of individuals or obtaining evidence in other ways during an investigation, the Commission could obtain information that may or may not appear relevant at any given time; however, the information could be relevant to another investigation by the Commission.

[FR Doc. 92-15880 Filed 7-7-92; 8:45 am]

BILLING CODE 7565-01

## NATIONAL INDIAN GAMING COMMISSION

### Privacy Act of 1974; Publication of System of Records

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Notice of a new system of records.

**SUMMARY:** The purpose of this document is to publish, as required by 5 U.S.C. 552a(e) and OMB Circular A–130, notification of a system of records. The need for such a system arises as a result of law regulating certain types of gaming on Indian lands (25 U.S.C. 2701 *et seq.*). Privacy Act proposed regulations are being published elsewhere in this issue of the **Federal Register**.

**DATES:** The system of records described in this notice will be implemented as tribes submit information from key employees and primary management officials who are employed in a gaming operation, but only after the Chairman of the National Indian Gaming Commission approves a tribal ordinance under 25 U.S.C. 2710. The Commission will consider comments on the system of records during the same period it considers comments on the rulemaking for tribal ordinances and background investigations. Comments on both the system of records notice and the rulemaking must be received by August 24, 1992.

**ADDRESSES:** Comments may be mailed to: Privacy/Ordinance/Investigations Comments, National Indian Gaming Commission, Suite 250, 1850 M Street, NW, Washington, DC 20036–5803, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632–7066 (not a toll-free number). Comments received may be inspected by the public between 9 a.m. and noon, and between 2 p.m. and 5 p.m. at the above address Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mary Jane Markley, (202) 632–7003 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Congress established the National Indian Gaming Commission (NIGC, or the Commission) under The Indian Gaming Regulatory Act of 1988 (25 U.S.C. 2701 *et seq.*) (IGRA) to regulate gaming on Indian lands. The scope of this notice covers information necessary to ensure proper oversight of tribal licensing of certain employees and management officials in gaming operations on Indian lands. The IGRA requires a tribe to notify the Commission of the issuance of a license and the results of background checks for primary management officials and key employees of Indian gaming operations (25 U.S.C. 2710(b)(2)(F)(I) and (III)). Further, under the IGRA, the Commission has 30 days to object to issuance of a license by a tribe (25 U.S.C. 2710(c)(1)). Through rulemaking, the Commission intends to implement those legislative provisions by (1) requiring tribes to obtain certain information from applicants for key employee and primary management official positions in gaming operations; (2) requiring tribes to forward to the Commission the required information for each key employee and primary management official; (3) reviewing and verifying the submitted information; and (4) conducting supplementary background investigations to the extent the Commission deems necessary. The Commission plans to store all such information in a system of records. Hence, the need arises for a system of records notice.

**NIGC–1**

**SYSTEM NAME:**

Indian Gaming Individuals Record System.

**SYSTEM LOCATION:**

National Indian Gaming Commission, Suite 250, 1850 M St., NW, Washington, D.C. 20036–5803.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Key employees and primary management officials as defined under 25 CFR part 502.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Copies of applications for employment in gaming operations on Indian lands; information collected by the staff and members of the Commission; copies of reports of background investigations. Such information includes: (1) Full name, other names used, social security number(s) and birth date; (2) business and employment positions held, business and residence addresses, driver's license numbers; (3) the names and current addresses of personal references; (4) current business and residence telephone numbers; (5) a description of any previous business relationships with Indian tribes; (6) a description of any previous business relationships with the gaming industry generally; (7) the name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit relating to gaming; (8) for any felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition; (9) for any misdemeanor conviction or ongoing misdemeanor prosecution, the name and address of the court involved and the date and disposition; and (10) whatever other information a tribe deems relevant.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

25 U.S.C. 2710.

**PURPOSE:**

Used by Commission members and staff to verify suitability of key employees and primary management officials in Indian gaming operations.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. To disclose relevant information to Federal, State, tribal, or local law enforcement of regulatory agencies to verify information supplied by applicant key employees and primary management officials in connection with determining suitability for employment in an Indian gaming operation.

2. To disclose relevant information to tribes that employ or may wish to employ individuals in Indian gaming operations.

3. In the event that records in this system indicate a violation or potential violation of law, criminal, civil, or regulatory in nature, the relevant records may be referred to the agency charged with responsibility for investigating or prosecuting such violation.

4. To disclose relevant information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

5. To disclose relevant information to a Federal, State, local, or tribal agency (or their agents) that is involved in a civil regulatory or enforcement action to protect the integrity of Indian gaming.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:**

**STORAGE:**

Paper files, machine-processable storage media, and other computer storage devices.

**RETRIEVABILITY:**

Employee name, gaming operation where employed, social security number, and birth date.

**SAFEGUARDS:**

Folders are maintained in locked cabinets to which only authorized personnel have access; automated

records are protected by computer passwords and tape or disc library physical security.

**RETENTION AND DISPOSAL:**

Records are retained and disposed of in accordance with National Archives and Records Administration requirements. A records retention and disposal plan is under development. At present, the Commission contemplates disposal of the records after 10 years.

**SYSTEM MANAGER(S) AND ADDRESS:**

Records Manager, NIGC, Suite 250, 1850 M Street, NW., Washington, DC 20036–5803.

**NOTIFICATION PROCEDURE:**

Persons wishing to inquire whether the System contains information concerning themselves may submit inquiries to the Records Manager, NIGC, at the address above. Such persons must provide proof of their identity by including a statement, signed by the individual and either notarized or witnessed by two persons (include addresses of witnesses). The statement must be that the person is who he or she claims to be. If an individual makes an inquiry in person, such person must present the Commission with a statement signed by the individual and either notarized or witnessed by two persons (include addresses of witnesses).

**RECORD ACCESS PROCEDURE:**

Persons wishing access to their records should contact the Records Manager, NIGC, at the address above. Such persons must provide proof of their identity by including a statement, signed by the individual and either notarized or witnessed by two persons (include addresses of witnesses). The statement must be that the person is who he or she claims to be. If an individual makes an inquiry in person, such person must present the Commission with a statement signed by the individual and either notarized or witnessed by two persons (include addresses of witnesses). Such persons must comply with the Privacy Act regulations.

**CONTESTING RECORD PROCEDURES:**

Any individual who has reviewed a record pertaining to him or her may request that the Commission amend all or any part of that record by sending a request to the Records Manager. A request must contain the name of the individual requesting the amendment, the name of the system of records where the record is maintained, a copy of the record sought to be amended or a description of that record, a statement of the material requested to be amended, and the basis for amendment, including material that substantiates the reason for the amendment.

**RECORD SOURCE CATEGORIES:**

Individual applications for employment in Indian gaming operations; background investigation reports compiled by tribes or by contractors; persons interviewed as part of a background investigation; Federal, state, foreign, tribal, and local law enforcement and regulatory agencies; Commission staff and members; credit bureaus.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:**

Under 5 U.S.C. 552a(k)(2) the Commission is claiming exemptions from certain provisions of the Act for portions of its records. The exemptions and the reasons for them are described in the regulations.

Dated: July 1, 1992.

**Anthony J. Hope,**

*Chairman, National Indian Gaming Commission.*

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Part V

# Department of Health and Human Services

**Public Health Service**

**List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity; Notice**

VOL 57 ISS 131 JL 8 1992 UMI

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Public Health Service**

**Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity**

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notice with comment period.

**SUMMARY:** The Clinical Laboratory Improvement Amendments of 1988, Public Law 100-578, requires that the Secretary provide for the categorization of specific laboratory test systems, assays and examinations by level of complexity. 42 CFR 493.17, published in the **Federal Register** on February 28, 1992 established criteria for such categorization.

It is the Department's intention to complete the categorization of all currently available clinical laboratory test systems, assays and examinations prior to the effective date of 42 CFR 493 (September 1, 1992). This notice announces the second of a series of lists containing specific clinical laboratory test systems, assays and examinations, categorized by complexity. This notice also includes deletions and corrections to the list of test systems, assays and examinations published on February 28, 1992. Additional lists of test systems, assays and examinations as well as deletions and corrections will be published periodically. On or before September 1, 1992, a complete list of all laboratory test systems, assays and examinations, categorized by complexity, will be published in the form of a compilation of these Notices. Any clinical laboratory test system, assay or examination that is not on that final list will be considered high complexity, until categorized otherwise as provided under 42 CFR 493.17. After publication of the compilation, applications will be taken to categorize (or recategorize) other laboratory test systems, assays and examinations following the procedures delineated in 42 CFR 493.17(d). After September 1, 1992, notices will be published periodically in the **Federal Register** to announce any additional test system, assay or examination that has been categorized (or re-categorized) during the preceding interval.

**DATES:** *Effective date:* This list is effective September 1, 1992.

*Comment date:* Written comments on this list of tests will be considered if they are received at the address indicated below, no later than 5 p.m. on August 7, 1992.

**ADDRESSES:** Comments on the content of this Notice—only—should be addressed to Public Health Service, Attention: CLIA **Federal Register** Notice, 1600 Clifton Rd. NE, (Mail Stop MLR5), Atlanta GA 30333.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. Nor can we accept comments by telephone.

**FOR FURTHER INFORMATION CONTACT:** Miley A. Robinson, (404) 639-1701.

**SUPPLEMENTARY INFORMATION:** As described in 42 CFR 493.17, seven criteria were used to classify laboratory test systems, assays or examinations as moderate or high complexity using a grading scheme for level of complexity that assigned scores of 1, 2 or 3 for each of the seven criteria. Test systems, assays or examinations receiving total scores of 12 or less were categorized as moderate complexity, while those receiving total scores of 13 through 21 were categorized as high complexity. As provided under 42 CFR 493.17, the following laboratory test systems, assays and examinations have been categorized as moderate or high complexity as noted.

Dated: June 29, 1992.

**James O. Mason,**

*Assistant Secretary for Health.*

**Additions to the Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity Published as a Notice in the Federal Register on February 28, 1992**

Complexity: Moderate
Speciality Subspeciality: General Chemistry
*Analyte: Acid Phosphatase*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
- Bio-Chem Laboratory Systems ATAC 2100
- BioAutoMed ASCA
- Coulter Dacos
- Coulter Dacos XL
- Coulter Optichem 100
- Kodak Ektachem 700
- Olympus Reply

*Analyte: Alanine Aminotransferase (ALT) (SGPT)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
- Beckman Astra 8e
- Beckman Synchron AS-Xe
- Beckman Synchron AS-Xi
- Beckman Synchron CX 4 CE
- Bio-Chem Laboratory Systems ATAC 2100
- Bio-Chem Laboratory Systems ATAC 6000
- BioAutoMed ASCA
- Boehringer Mannheim Reflotron I System
- Coulter Dacos
- Coulter Dacos XL
- Coulter Optichem 100
- Olympus AU 5021
- Olympus AU 5031
- Olympus AU 5061
- Olympus Reply

*Analyte: Albumin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
- Beckman Array
- Beckman Astra 8
- Beckman Astra 8e
- Beckman Synchron AS-Xe
- Beckman Synchron AS-Xi
- Beckman Synchron CX 4 CE
- Bio-Chem Laboratory Systems ATAC 2100
- Bio-Chem Laboratory Systems ATAC 6000
- BioAutoMed ASCA
- Coulter Dacos
- Coulter Dacos XL
- Coulter Optichem 100
- Kodak Ektachem DT SC Module
- Olympus AU 5021
- Olympus AU 5031
- Olympus AU 5061
- Olympus AU 5121
- Olympus Reply

*Analyte: Alkaline Phosphatase (ALP)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
- Beckman Astra 8e
- Beckman Synchron AS-Xe
- Beckman Synchron AS-Xi
- Beckman Synchron CX 4 CE
- Bio-Chem Laboratory Systems ATAC 2100
- Bio-Chem Laboratory Systems ATAC 6000
- BioAutoMed ASCA
- Coulter Dacos
- Coulter Dacos XL
- Coulter Optichem 100
- Kodak Ektachem 700
- Olympus AU 5021
- Olympus AU 5031
- Olympus AU 5061
- Olympus AU 5121
- Olympus Reply

*Analyte: Alpha-Hydroxybutyrate Dehydrogenase (HBDH)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
- Beckman Synchron CX 4
- Beckman Synchron CX 4 CE
- Beckman Synchron CX 5

Beckman Synchron CX 7
BioAutoMed ASCA
Boehringer Mannheim Hitachi 717
Dupont ACA
Olympus Reply

*Analyte: Ammonia*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Dupont Dimension AR
Kodak Ektachem 400
Kodak Ektachem 700

*Analyte: Amylase*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim Reflotron I System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Coulter Optichem 180
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply

*Analyte: Apolipoprotein Al*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Array 360
Bio-Chem Laboratory Systems ATAC 6000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061

*Analyte: Apolipoprotein B*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Array 360
Bio-Chem Laboratory Systems ATAC 6000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061

*Analyte: Asparate Aminotransferase (AST) (SGOT)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim Reflotron I System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply

*Analyte: Bilirubin, Direct*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Astra Ideal
Beckman Synchron AS-Xe
Beckman Synchron CX 3
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Kodak Ektachem 400
Kodak Ektachem 500
Kodak Ektachem 700
Kodak Ektachem 700 XR
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply

*Analyte: Bilirubin, Neonatal*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Spectrum
Abbott Spectrum EPX
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Abbott Vp
Abbott Vision
Kodak Ektachem 400
Kodak Ektachem 500
Kodak Ektachem 700
Kodak Ektachem 700 XR
Kodak Ektachem DT 60

*Analyte: Bilirubin, Total*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Astra Ideal
Beckman Synchron AS-Xe
Beckman Synchron CX 3
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim Reflotron I System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Kodak Ektachem 400
Kodak Ektachem 700
Kodak Ektachem 700 XR
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer

*Analyte: Blood Gases with pH*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Nova STAT Profile 5
Nova STAT Profile 7
Nova Stat Profile 1
Nova Stat Profile 2
Nova Stat Profile 3
Nova Stat Profile 4
PPG Industries StatPal Blood Gas Analysis System
Radiometer ABL 1
Radiometer ABL 2 RA
Radiometer ABL 3 M
Radiometer ABL 500
Radiometer ABL 505
Radiometer ABL 510
Radiometer ABL 520

*Analyte: Calcium, ionized*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Nova 2
Nova 6
Nova 7
Nova 8
Nova Nucleus
Nova STAT Profile 5
Nova Stat Profile 1
Nova Stat Profile 4
Nova Stat Profile 6
Nova Stat Profile 8
Radiometer ABL 505

*Analyte: Calcium, total*

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra Ideal
Beckman E2A
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 3
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova 10
Nova 7
Nova 9
Nova Nucleus
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply

*Analyte: Carbon Dioxide, total ($CO_2$)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Spectrum
Abbott Spectrum EPX
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Beckman Astra 8e
Beckman Choloride/$CO_2$ Analyzer
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova 12
Nova 3
Nova 4
Nova Nucleus
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply

*Analyte: Carboxyhemoglobin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Radiometer ABL 520
Radiometer OSM 2
Radiometer OSM 3

*Analyte: Carcinoembruonic Antigen (CEA)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX
Bio-Chem Laboratory Systems ATAC 6000

*Analyte: Cerebrospinal Fluid Protein (CSF)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Kodak Ektachem 500
Kodak Ektachem 700
Kodak Ektachem 700 XR

*Analyte: Chloride*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AVL 9130
Baxter CLiNaK ISE Module
Baxter Paramax 720
Beckman Astra 8e
Beckman Choloride/$CO_2$ Analyzer
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
Bio-Chem Laboratory Systems ATAC ISE
Bio-Chem Laboratory Systems ATAC ISE Plus
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova 10
Nova 12
Nova 13
Nova 14
Nova 3
Nova 4
Nova 5
Nova Nucleus
Nova Stat Profile 5
Nova Stat Profile 4
Nova Stat Profile 6
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply
Radiometer ABL 505

*Analyte: Cholesterol*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim ProAct System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer

*Analyte: Cholinesterase*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
Kodak Ektachem 500
Kodak Ektachem 700
Kodak Ektachem 700 XR
Kodak Ektachem DT SC Module

*Analyte: Cortisol*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Serono Baker SR 1

*Analyte: Creatine Kinase (CK)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ames Seralyzer
Beckman Astra Ideal
Beckman Synchron AS-Xe
Beckman Synchron CX 3
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim Reflotron I System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply

*Analyte: Creatine Kinase MB Fraction (CKMB)*
Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Dupont ACA
Dupont Dimension AR
Kodak Ektachem 500
Kodak Ektachem 700
Kodak Ektachem 700 XR

*Analyte: Creatinine*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Kodak Ektachem DT SC Module
Nova Nucleus
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer

*Analyte: Estradiol*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Boehringer Mannheim ES 300
Serono Baker SR 1

*Analyte: Ferritin*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Serono Baker SR 1

*Analyte: Follicle Stimulating Hormone (FSH)*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott IMX Select
Serono Baker SR 1

*Analyte: Fructosamine*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 6000

*Analyte: Gamma Glutamyl Transferase (GGT)*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim Reflotron I System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Kodak Ektachem DT SC Module
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply

*Analyte: Glucose*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Beckman Synchron CX 7
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Dupont Dimension AR
Kodak Ektachem 400
Nova 12
Nova 14
Nova Nucleus
Nova STAT Profile 5
Nova Stat Profile 6
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer

*Analyte: Glycosylated Hemoglobin*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott IMX
Abbott Vision

*Analyte: HCG, Serum, Qualitative*

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Ampcor Quik-Dip Pregnancy

*Analyte: HCG, Serum, Quantitative*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Becton Dickinson Affinity
BioAutoMed ASCA
Serono Baker SR 1

*Analyte: HCG, Urine, Qualitative (non-waived Procedures)*

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Biomerica Nimbus
Roche Pregnosis

*Analyte: HDL Cholesterol (no manual precipitation VLDL/LDL)*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott Vision, Whole Blood Procedure
Boehringer Mannheim Reflotron I System

*Analyte: Iron*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott Spectrum
Abbott Spectrum EPX
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Kodak Ektachem 400
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061

Olympus AU 5121
Olympus Reply

*Analyte: Lactate Dehydrogenase (LDH)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutomed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Kodak Ektachem 400
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply

*Analyte: Lactate Dehydrogenase Heart Fraction (LDH-1)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Spectrum
Abbott Spectrum EPX
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Bio-Chem Laboratory Systems ATAC 6000
Dupont ACA
Dupont ACA IV
Dupont ACA V

*Analyte: Lactate Dehydrogenase Liver Fraction (LLDH)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA

*Analyte: Lactic Acid (Lactate)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Dupont Dimension AR
Kodak Ektachem 500
Kodak Ektachem 700
Kodak Ektachem DT 60
Nova STAT Profile 7

*Analyte: Leucine Aminopeptidase (LAP)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7

*Analyte: Lipase*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Dupont Dimension AR
Kodak Ektachem 400
Kodak Ektachem 700

*Analyte: Lithium*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Baxter CLiNaK ISE Module
Baxter Paramax 720
Nova 11
Nova 13
Nova 4
Nova Nucleus

*Analyte: Luteinizing Hormone (LH)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX Select
Serono Baker SR 1

*Analyte: Magnesium*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova 6
Nova Nucleus
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply

*Analyte: Magnesium, Ionized*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Nova Stat Profile 8

*Analyte: Oxyhemoglobin/Oxygen Saturation*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AVL 912
AVL 995 Hb
Radiometer ABL 520
Radiometer OSM 2
Radiometer OSM 3
Waters Instruments Oxicom 3000

*Analyte: Phosphorus*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply

*Analyte: Potassium*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AVL 9120
AVL 9130
Abbott Vision
Baxter CLiNaK ISE Module
Baxter Paramax 720
Beckman Astra 4
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC ISE
Bio-Chem Laboratory Systems ATAC ISE Plus
Boehringer Mannheim Reflotron I System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova 1
Nova 10
Nova 11
Nova 12
Nova 13
Nova 14
Nova 4
Nova 5
Nova 6
Nova 9
Nova Nucleus
Nova STAT Profile 5
Nova Stat Profile 1
Nova Stat Profile 2
Nova Stat Profile 4
Nova Stat Profile 6
Nova Stat Profile 8
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121

Olympus Reply
Radiometer ABL 4
Radiometer ABL 505
Radiometer KNA 1
Radiometer KNA 2
*Analyte: Progesterone*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Becton Dickinson Affinity
Serono Baker SR 1
*Analyte: Prolactin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX Select
Serono Baker SR 1
*Analyte: Prostatic Acid Phosphatase*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 8000
BioAutoMed ASCA
*Analyte: Protein, Total*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Astra Ideal
Beckman Synchron AS–X
Beckman Synchron AS–Xe
Beckman Synchron CX 3
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 8000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova Nucleus
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
*Analyte: Pseudocholinesterase*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont Dimension AR
*Analyte: Sodium*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AVL 9120
AVL 9130
Baxter CLiNaK ISE Module
Baxter Paramax 720
Beckman Astra 4
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Bio-Chem Laboratory Systems ATAC ISE
Bio-Chem Laboratory Systems ATAC ISE Plus
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova 1
Nova 10
Nova 11
Nova 12
Nova 13
Nova 14
Nova 4
Nova 5
Nova 6
Nova 9
Nova Nucleus
Nova STAT Profile 5
Nova Stat Profile 1
Nova Stat Profile 2
Nova Stat Profile 4
Nova Stat Profile 6
Nova Stat Profile 8
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply
Radiometer ABL 505
Radiometer KNA 1
Radiometer KNA 2
*Analyte: Testosterone*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Serono Baker SR 1
*Analyte: Thyroid Stimulating Hormone (TSH)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 8000
BioAutoMed ASCA
Serono Baker SR 1
*Analyte: Thyroid Stimulating Hormone—high sens. (TSH–HS)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Baxter Stratus II
*Analyte: Thyroxine (T4)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Vision
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Bio-Chem Laboratory Systems ATAC 8000
BioAutoMed ASCA
Dupont Dimension AR
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Serono Baker SR 1
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
*Analyte: Thyroxine, Free (FT4)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Becton Dickinson Affinity
*Analyte: Transferrin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
*Analyte: Triglyceride*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 8000
BioAutoMed ASCA
Boehringer Mannheim Reflotron I System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer
*Analyte: Triiodothyronine (T3)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 8000
Serono Baker SR 1

*Analyte: Triiodothyronine Uptake (T3U)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Dupont ACA
Dupont Dimension AR
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Serono Baker SR 1
*Analyte: Triiodothyronine, Free (FT3)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX
*Analyte: Urea (BUN)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS–Xe
Beckman Synchron AS–Xi
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova 12
Nova 14
Nova Nucleus
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer
*Analyte: Uric Acid*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8
Beckman Astra 8e
Beckman Synchron AS–Xe
Beckman Synchron AS–Xi
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer
*Analyte: Vitamin B12*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Becton Dickinson Affinity
Speciality/Subspeciality: General Immunology
*Analyte: Alpha-1-Acid Glycoprotein (orosomucoid)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
*Analyte: Alpha-1-Antitrypsin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
*Analyte: Alpha-2-Macroglobulin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Synchron CX 4
*Analyte: Alpha-Fetoprotein—Tumor Marker*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Boehringer Mannheim ES 300
*Analyte: Anti-Streptolysin O (ASO)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Array 360
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
*Analyte: C-Reactive Protein (CRP)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Dupont Dimension AR
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
*Analyte: Ceruloplasmin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
*Analyte: Complement C3*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
*Analyte: Complement C4*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
*Analyte: Haptoglobin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Synchron CX 4
*Analyte: Hepatitis A Antibody—IgM*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX
*Analyte: Hepatitis B Core Antibody—IgM*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX
*Analyte: Immunoglobulins IgA*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

*Analyte: Immunoglobulins IgE*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 6000
*Analyte: Immunoglobulins IgG*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
*Analyte: Immunoglobulins IgM*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
*Analyte: Infectious Mononucleosis Antibodies (Mono)*
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Pacific Biotech Cards O.S. Mono
*Analyte: Kappa Light Chains*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
*Analyte: Lambda Light Chains*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
*Analyte: Microalbumin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Array 360
*Analyte: Prealbumin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
*Analyte: Properdin Factor B*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
*Analyte: Prostatic Specific Antigen (PSA)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 6000
*Analyte: Rheumatoid Factor (RA)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
*Analyte: Rubella Antibodies—IgG/IgM*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Serono Baker SR 1
*Analyte: Toxoplasma gondii Antibodies—IgG/IgM*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Serono Baker SR 1
Speciality/Subspeciality: Hematology
*Analyte: Activated Clotting Time (ACT)*
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
International Technidyne Factor VI
International Technidyne Hemochron 400
International Technidyne Hemochron 401
International Technidyne Hemochron 800
International Technidyne Hemochron 801
*Analyte: Activated Partial Thromboplastin Time (APTT)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ciba Corning Biotrack 512
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
International Technidyne Factor VI
International Technidyne Hemochron 400
International Technidyne Hemochron 401
International Technidyne Hemochron 800
International Technidyne Hemochron 801
*Analyte: Antithrombin III (ATIII)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Array 360
*Analyte: Fibrin Split Products (Fibrin Degradation)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
International Technidyne Bed Red D-dimer
Organon Teknika Fibrinosticon
*Analyte: Fibrinogen*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
*Analyte: Hematocrit*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Cell-Dyn 1400
Abbott Cell-Dyn 1500
Abbott Cell-Dyn 1600
Abbott Cell-Dyn 1600 CS
Abbott Cell-Dyn 2000 CS
Abbott Cell-Dyn 2000 SL
Abbott Cell-Dyn 300
Abbott Cell-Dyn 3000 CS
Abbott Cell-Dyn 3000 SL
Abbott Cell-Dyn 400
Abbott Ce11-Dyn 500
Abbott Cell-Dyn 610
Abbott Cell-Dyn 700
Abbott Cell-Dyn 800
Abbott Cell-Dyn 900
Baker 9000 Ax
Baker 9000 Plus
Baker 9000 Rx
Clay Adams HA–5
Coulter S
Coulter S SR
Coulter S560
Coulter S7120
Coulter S770
Coulter S790
Coulter ST
Coulter ZB16
Coulter ZF5
Danam Datacell-18
Danam Datacell-18/AS–30
Danam HC–1020
Danam HC–510
Danam HC–510/HD11
Danam HC–720
Danam HC–820

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Danam HC–820/HD11
Danam SA–1000
Danam Vector 5
Danam Vector 6
Danam Vector 6 Plus
Danam Vector 8
Danam Vector 8 Plus
Infolab I–1100
Infolab I–1800
Infolab I–500
Infolab I–900
Nova 1
Nova 11
Nova 13
Nova 14
Nova 5
Nova Celltrak 11
Nova Celltrak 12
Nova Celltrak 2
Nova Celltrak 2/6
Nova STAT Profile 5
Nova Stat Profile 1
Nova Stat Profile 2
Nova Stat Profile 4
Nova Stat Profile 6
Nova Stat Profile 8
Roche Cobas Minos ST
Roche Cobas Minos STEL
Roche Cobas Minos STX
Seradyn Seragen Quick Count
Technicon H 6000
Technicon H1

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Becton Dickinson QBC
Becton Dickinson QBC II
Becton Dickinson QBC II Plus
Becton Dickinson QBC Plus
Becton Dickinson QBC Reference

*Analyte: Hemoglobin*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott Cell-Dyn 1400
Abbott Cell-Dyn 1500
Abbott Cell-Dyn 1600
Abbott Cell-Dyn 1600 CS
Abbott Cell-Dyn 2000 CS
Abbott Cell-Dyn 2000 SL
Abbott Cell-Dyn 300
Abbott Cell-Dyn 3000 CS
Abbott Cell-Dyn 3000 SL
Abbott Cell-Dyn 400
Abbott Cell-Dyn 500
Abbott Cell-Dyn 610
Abbott Cell-Dyn 700
Abbott Cell-Dyn 800
Abbott Cell-Dyn 900
Ames Seralyzer
Baker 9000 Ax
Baker 9000 Plus
Baker 9000 Rx
Bio-Chem Laboratory Systems ATAC 2100
BioAutoMed ASCA
Boehringer Mannheim Reflotron I System
Clay Adams HA–3
Clay Adams HA–5
Coulter Hemo-W
Coulter M2
Coulter S
Coulter S SR
Coulter S500
Coulter S7120
Coulter S770
Coulter S790
Coulter ST
Coulter ZBI6
Coulter ZF5
Danam Datacell-18
Danam Datacell-18/AS–30
Danam HC–1020
Danam HC–310
Danam HC–510
Danam HC–510/HD11
Danam HC–720
Danam HC–820
Danam HC–820/HD11
Danam SA–1000
Danam Vector 5
Danam Vector 6
Danam Vector 6 Plus
Danam Vector 8
Danam Vector 8 Plus
Infolab I–1100
Infolab I–1800
Infolab I–500
Infolab I–900
Nova Celltrak 11
Nova Celltrak 12
Nova Celltrak 2
Nova Celltrak 2/6
Roche Cobas Minos ST
Roche Cobas Minos STEL
Roche Cobas Minos STX
Seradyn Seragen Quick Count
Technicon H 6000
Technicon H1

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Becton Dickinson QBC II
Becton Dickinson QBC II Plus
Becton Dickinson QBC Reference

*Analyte: Hemoglobin S*

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Ampcor Quik-Dot

*Analyte: Heparin*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Dupont ACA

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
International Technidyne Factor VI
International Technidyne Hemochron 400
International Technidyne Hemochron 401
International Technidyne Hemochron 800
International Technidyne Hemochron 801

*Analyte: Plasminogen*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Dupont ACA

*Analyte: Platelet Count*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott Cell-Dyn 1400
Abbott Cell-Dyn 1500
Abbott Cell-Dyn 1600
Abbott Cell-Dyn 1600 CS
Abbott Cell-Dyn 2000 CS
Abbott Cell-Dyn 2000 SL
Abbott Cell-Dyn 300
Abbott Cell-Dyn 3000 CS
Abbott Cell-Dyn 3000 SL
Abbott Cell-Dyn 400
Abbott Cell-Dyn 500
Abbott Cell-Dyn 610
Abbott Cell-Dyn 700
Abbott Cell-Dyn 800
Abbott Cell-Dyn 900
Baker 9000 Ax
Baker 9000 Plus
Baker 9000 Rx
Coulter ST
Coulter ZBI
Coulter ZBI6
Coulter ZF
Coulter ZF5
Coulter ZM
Danam Datacell-18
Danam Datacell-18/AS–30
Danam HC–1020
Danam HC–820
Danam HC–820/HD11
Danam SA–1000
Danam Vector 6
Danam Vector 6 Plus
Danam Vector 8
Danam Vector 8 Plus
Infolab I–1100
Infolab I–1800
Infolab I–900
Nova Celltrak 11
Nova Celltrak 12
Roche Cobas Minos ST
Roche Cobas Minos STEL
Seguoia Turner 900
Technicon H 6000
Technicon H1

Category: Manual or semi-automated procedures with limited steps and



with limited sample or reagent preparation

Test System, Assay or Examination:
Becton Dickinson QBC
Becton Dickinson QBC II
Becton Dickinson QBC II Plus
Becton Dickinson QBC Plus
Becton Dickinson QBC Reference

*Analyte: Prothrombin Time (PT)*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Ciba Corning Biotrack 512

Category: Manual procedures with limited steps and limited sample or reagent preparation

Test System, Assay or Examination:
International Technidyne Factor VI
International Technidyne Hemochron 400
International Technidyne Hemochron 401
International Technidyne Hemochron 800
International Technidyne Hemochron 801

*Analyte: Red Blood Cell Count (Erythrocyte Count)*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott Cell-Dyn 1400
Abbott Cell-Dyn 1500
Abbott Cell-Dyn 1600
Abbott Cell-Dyn 1600 CS
Abbott Cell-Dyn 2000 CS
Abbott Cell-Dyn 2000 SL
Abbott Cell-Dyn 300
Abbott Cell-Dyn 3000 CS
Abbott Cell-Dyn 3000 SL
Abbott Cell-Dyn 400
Abbott Cell-Dyn 500
Abbott Cell-Dyn 610
Abbott Cell-Dyn 700
Abbott Cell-Dyn 800
Abbott Cell-Dyn 900
Baker 9000 Ax
Baker 9000 Plus
Baker 9000 Rx
Clay Adams HA–3
Clay Adams HA–5
Coulter S
Coulter S SR
Coulter S560
Coulter S7120
Coulter S770
Coulter S790
Coulter ST
Coulter ZBI
Coulter ZBI6
Coulter ZF
Coulter ZF5
Coulter ZM
Danam Datacell-18
Danam Datacell-18/AS–30
Danam HC–1020
Danam HC–310
Danam HC–510
Danam HC–510/HD11
Danam HC–720
Danam HC–820
Danam HC–820/HD11
Danam SA–1000
Danam Vector 5
Danam Vector 6
Danam Vector 6 Plus
Danam Vector 8
Danam Vector 8 Plus
Infolab I–1100
Infolab I–1800
Infolab I–500
Infolab I–900
Nova Celltrak 11
Nova Celltrak 12
Nova Celltrak 2
Nova Celltrak 2/6
Roche Cobas Minos ST
Roche Cobas Minos STEL
Roche Cobas Minos STX
Seradyn Seragen Quick Count
Technicon H 6000
Technicon H1

*Analyte: Thrombin Time*

Category: Manual procedures with limited steps and limited sample or reagent preparation

Test System, Assay or Examination:
International Technidyne Factor VI
International Technidyne Hemochron 400
International Technidyne Hemochron 401
International Technidyne Hemochron 800
International Technidyne Hemochron 801

*Analyte: White Blood Cell (WBC) Differential*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott Cell-Dyn 1400
Abbott Cell-Dyn 1500
Abbott Cell-Dyn 1600
Abbott Cell-Dyn 1600 CS
Abbott Cell-Dyn 2000 CS
Abbott Cell-Dyn 2000 SL
Abbott Cell-Dyn 3000 CS
Abbott Cell-Dyn 3000 SL
Abbott Cell-Dyn 610
Baker 9000 Ax
Baker 9000 Plus
Baker 9000 Rx
Coulter ST
Coulter VCS
Danam Datacell-18
Danam Datacell-18/AS–30
Danam HC–1020
Danam Vector 8 Plus
Infolab I–1100
Infolab I–1800
Nova Celltrak 12
Roche Cobas Minos STEL
Roche Cobas Minos STX
Technicon H 6000
Technicon H1

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Becton Dickinson QBC
Becton Dickinson QBC AutoRead
Becton Dickinson QBC II
Becton Dickinson QBC II Plus
Becton Dickinson QBC Plus
Becton Dickinson QBC Reference

*Analyte: White Blood Cell Count (Leukocyte Count)*

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott Cell-Dyn 1400
Abbott Cell-Dyn 1500
Abbott Cell-Dyn 1600
Abbott Cell-Dyn 1600 CS
Abbott Cell-Dyn 2000 CS
Abbott Cell-Dyn 2000 SL
Abbott Cell-Dyn 300
Abbott Cell-Dyn 3000 CS
Abbott Cell-Dyn 3000 SL
Abbott Cell-Dyn 400
Abbott Cell-Dyn 500
Abbott Cell-Dyn 610
Abbott Cell-Dyn 700
Abbott Cell-Dyn 800
Abbott Cell-Dyn 900
Baker 9000 Ax
Baker 9000 Plus
Baker 9000 Rx
Clay Adams HA–3
Clay Adams HA–5
Coulter Hemo-W
Coulter S
Coulter S SR
Coulter S560
Coulter S7120
Coulter S770
Coulter S790
Coulter ST
Coulter ZBI
Coulter ZBI6
Coulter ZF
Coulter ZF5
Coulter ZM
Danam Datacell-18
Danam Datacell-18/AS–30
Danam HC–1020
Danam HC–310
Danam HC–510
Danam HC–510/HD11
Danam HC–720
Danam HC–820
Danam HC–820/HD11
Danam SA–1000
Danam Vector 5
Danam Vector 6
Danam Vector 6 Plus
Danam Vector 8
Danam Vector 8 Plus
Infolab I–1100
Infolab I–1800

Infolab I-500
Infolab I-900
Nova Celltrak 11
Nova Celltrak 12
Nova Celltrak 2
Nova Celltrak 2/6
Roche Cobas Minos ST
Roche Cobas Minos STEL
Roche Cobas Minos STX
Seradyn Seragen Quick Count
Technicon H 6000
Technicon H1
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC
Becton Dickinson QBC II
Becton Dickinson QBC Plus
Becton Dickinson QBC Reference
Speciality/Subspeciality: Immunohematology
*Analyte: Unexpected RBC antibody—detection—serum*
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination: All Immunohematology Direct Antiglobulin Tube Tests
Speciality/Subspeciality: Toxicology/TDM
*Analyte: Acetaminophen*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Olympus Reply
*Analyte: Amphetamines*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biosite Triage Panel for Drugs of Abuse
*Analyte: Barbiturates*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Dupont ACA
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biosite Triage Panel for Drugs of Abuse
*Analyte: Benzodiazepines*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
*Analyte: Benzodiazepines, Urine*
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biosite Triage Panel for Drugs of Abuse
*Analyte: Cannabinoids*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Dupont ACA
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biosite Triage Panel for Drugs of Abuse
*Analyte: Carbamazepine*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Olympus Reply
*Analyte: Cocaine Metabolites*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biosite Triage Panel for Drugs of Abuse
*Analyte: Cotinine*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott ADX
Abbott TDX
Abbott TDX FLx
*Analyte: Digitoxin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
*Analyte: Digoxin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 8000
BioAutoMed ASCA
Dupont Dimension AR
Olympus Reply
Serono Baker SR 1
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
*Analyte: Ethanol (Alcohol)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Bio-Chem Laboratory Systems ATAC 2100
BioAutoMed ASCA
Dupont Dimension AR
Kodak Ektachem 500
Kodak Ektachem 700
Kodak Ektachem 700 XR
Olympus Reply
*Analyte: Ethosuximide*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
*Analyte: Gentamicin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Olympus Reply
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
*Analyte: Lidocaine*
Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
BioAutoMed ASCA
*Analyte: Methadone*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott TDX
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
*Analyte: Methaqualone*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
*Analyte: N-Acetylprocainamide (NAPA)*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
*Analyte: Opiates*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Dupont ACA
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biosite Triage Panel for Drugs of Abuse
*Analyte: Phencyclidine*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biosite Triage Panel for Drugs of Abuse
*Analyte: Phenobarbital*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Dupont Dimension AR
Olympus Reply
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
*Analyte: Phenytoin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Vision
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Dupont Dimension AR
Olympus Reply
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
*Analyte: Primidone*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Olympus Reply
*Analyte: Procainamide*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
*Analyte: Propoxyphene*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott ADX
Abbott TDX
Abbott TDX FLx
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
*Analyte: Quinidine*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Olympus Reply
*Analyte: Salicylates*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Dupont Dimension AR
Kodak Ektachem 700
Olympus Reply
*Analyte: Theophylline*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX
Abbott Vision
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim Hitachi 717
Dupont Dimension AR
Kodak Ektachem 700
Olympus Reply
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
*Analyte: Tobramycin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
BioAutoMed ASCA
Olympus Reply
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
*Analyte: Tricyclic Antidepressants*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
*Analyte: Valproic Acid*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array 360
BioAutoMed ASCA
*Analyte: Vancomycin*
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Complexity: High
Speciality/Subspeciality: Bacteriology
*Analyte: Neisseria gonorrhoeae*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Gen-Probe Pace2
Speciality/Subspeciality: General Chemistry
*Analyte: 17 OH Progesterone*

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
*Analyte: 17 OH Progesterone, Neonatal*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
*Analyte: Adrenocorticotropic Hormone (ACTH)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Double Antibody
*Analyte: Aldosterone*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
*Analyte: Androstenedione*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
*Analyte: C-Peptide*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Double Antibody
*Analyte: Calcitonin*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Double Antibody
Diagnostic Products Corp. Solid Phase
*Analyte: Cortisol*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
*Analyte: Creatine Kinase MB Fraction (CKMB)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Ciba Corning Magic Lite
Hybritech Tandem-E
*Analyte: Cyclic AMP*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Liquid Phase
*Analyte: Dehydroepiandrosterone (DHEA)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
*Analyte: Dehydroepiandrosterone Sulfate (DHEA-SO4)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
*Analyte: Estradiol*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Bio-Rad Quantimune
Diagnostic Products Corp. Coat-A-Count
Diagnostic Products Corp. Double Antibody
Serono Baker Serozyme
*Analyte: Estriol-Total*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Bio-Rad Quantimune II
*Analyte: Ferritin*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Ciba Corning Magic (MGC)
Ciba Corning Magic Lite
Diagnostic Products Corp. Double Antibody
Serono Baker Serozyme
*Analyte: Folate (Folic acid)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Ciba Corning Magic Lite
*Analyte: Follicle Stimulating Hormone (FSH)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Becton Dickinson Simultrac
Diagnostic Products Corp. Coat-A-Count IRMA
Diagnostic Products Corp. Double Antibody
Hybritech Tandem-E
Serono Baker Serozyme
*Analyte: Gastrin*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Double Antibody
*Analyte: Glucogon*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Double Antibody
*Analyte: Growth Hormone (GH)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Double Antibody
Hybritech Tandem-R
*Analyte: HCG, Serum, Qualitative*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Double Antibody
*Analyte: HCG, Serum, Quantitative*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Ciba Corning Magic Lite
Serono Baker Serozyme
*Analyte: HCG, Urine, Qualitative (non-waived procedures)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Double Antibody
*Analyte: HDL Cholesterol (post-precipitation VLDL & LDL)*
Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination: Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Optichem 100
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
*Analyte: Human Placental Lactogen (hPL)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
*Analyte: Iron Binding Capacity (post saturation/separation)*

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Spectrum
Abbott Spectrum EPX
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
*Analyte: Luteinizing Hormone (LH)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson Simultrac
Ciba Corning Magic Lite
Diagnostic Products Corp. Coat-A-Count IRMA
Diagnostic Products Corp. Double Antibody
Hybritech Tandem-E
Serono Baker Serozyme
*Analyte: Parathyroid Hormone—Intact*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Ciba Corning Magic Lite
*Analyte: Parathyroid Hormone—Mid-molecule (PTH-M)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
*Analyte: Progesterone*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Cotube
Diagnostic Products Corp. Coat-A-Count
Serono Baker Serozyme
*Analyte: Prolactin*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Diagnostic Products Corp. Coat-A-Count IRMA
Diagnostic Products Corp. Double Antibody
Hybritech Tandem-R
Serono Baker Serozyme
*Analyte: Prostatic Acid Phosphatase*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count IRMA
*Analyte: Testosterone*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Diagnostic Products Corp. Double Antibody
*Analyte: Testosterone, Free*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
*Analyte: Thyroglobulin*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
*Analyte: Thyroid Stimulating Hormone (TSH)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
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Becton Dickinson Solid Phase
Ciba Corning Magic (MGC)
Diagnostic Products Corp. Coat-A-Count IRMA
Diagnostic Products Corp. Double Antibody
Serono Baker Serozyme
*Analyte: Thyroxine (T4)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Quantimune II
Ciba Corning Magic Lite
Serono Baker Serozyme
*Analyte: Thyroxine (T4), Neonatal*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
*Analyte: Thyroxine, Free (FT4)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Quantimune
Serono Baker Serozyme
*Analyte: Triiodothyronine (T3)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
*Analyte: Triiodothyronine Uptake (T3U)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Serono Baker Serozyme
*Analyte: Triiodothyronine, Free (FT3)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Quantimune
Ciba Corning Magic (MGC)
Serono Baker Serozyme
*Analyte: Vitamin B12*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Ciba Corning Magic Lite
Speciality/Subspeciality: General Immunology
*Analyte: Alpha-Fetoprotein—Tumor Marker*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Abbott AFP (EIA)
Diagnostic Products Corp. Double Antibody
*Analyte: Anti-DNA Antibodies*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Solid Phase
*Analyte: Immunoglobulins IGE*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count IRMA
Hybritech Tandem-E
Hybritech Tandem-R
*Analyte: Intrinsic Factor Blocking Antibody (IFbAb)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Solid Phase
*Analyte: Microalbumin*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
*Analyte: Prostatic Specific Antigen (PSA)*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination:
Hybritech Tandem-R
Speciality/Subspeciality:
Immunohematology
*Analyte: ABO group—RBC*
Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Dynatech MicroBank System
IBG Inverness Blood Grouping System
*Analyte: ABO group confirmation—Serum, Plasma*
Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Dynatech MicroBank System
IBG Inverness Blood Grouping System
*Analyte: D(Rho) Type*
Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Dynatech MicroBank System
IBG Inverness Blood Grouping System
Speciality/Subspeciality: Toxicology/TDM
*Analyte: Amikacin*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
*Analyte: Amphetamines*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
*Analyte: Barbiturates*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
*Analyte: Benzodiazepines*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
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*Analyte: Cocaine Metabolites*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
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*Analyte: Digoxin*
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Bio-Rad Quantimune
*Analyte: Fentanyl*
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Test System, Assay or Examination:
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*Analyte: Methamphetamines*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
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*Analyte: Morphine*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
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Diagnostic Products Corp. Coat-A-Count
*Analyte: Morphine, Urine*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
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Diagnostic Products Corp. Coat-A-Count
*Analyte: Opiates*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
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Diagnostic Products Corp. Coat-A-Count
*Analyte: Phencyclidine*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
*Analyte: Theophylline*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
*Analyte: Tobramycin*
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count

**Corrections to the Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity Published as a Notice in the Federal Register on February 28, 1992**

The following corrections to the list of test systems, assays and examinations published in the Federal Register on February 28, 1992 were made based on supplemental information provided by the commenters during the comment period or as a result of corrections of data entry errors.

*Deletions:* Based on supplemental information supplied by manufacturers, the following analyte/test system entries have been deleted from the list. The original entries were in error as the analytes listed below are not available on the test systems indicated:

Instrument: Abbott TDX
Analyte: MHPG Urine
Instrument: Abbott TDX FLx
Analyte: Vitamin B12
MHPG Urine
Instrument: AVL 995Hb
Analyte: Carboxyhemoglobin
Instrument: Beckman Astra Ideal
Analyte: Magnesium
Instrument: Beckman Synchron CX4
Analytes: CO2
Acid Phosphatase
Chloride
Potassium
Sodium
Instrument: Beckman Synchron CX5
Analyte: Acid Phosphatase
Instrument: Beckman Synchron CX7
Analyte: Acid Phosphatase
Instrument: Beckman Synchron EL–ISE
Analyte: Calcium, Ionized
Instrument: Beckman E2A
Analytes: CO2
Chloride
Instrument: Becton Dickinson QBC AutoRead
Analyte: Red Blood Cell Count (Erythrocyte Count)
Instrument: Becton Dickinson Affinity
Analyte: HCG, Serum, Qualitative

Kit: Behring LC-Partigen Kit
Analyte: Albumin
Kit: Behring NOR-Partigen Kit
Analytes: Albumin
Alpha-1 Acid Glycoprotein
Alpha-2 Macroglobulin
Kit: Ciba Corning Magic (MGC)
Analyte: HCG, Serum, Quantitative
Instrument: DuPont Dimension
Analytes: Cerebrospinal Fluid Protein
Amphetamines
Barbiturates
Benzodiazepine
Cannabinoids
Carbamazepine
Cocaine Metabolites
Gentamicin
Opiates
Phencyclidine
Quinidine
Tobramycin
Vancomycin
Instrument: Kodak Ektachem 400
Analytes: ALT (SGPT)
AST (SGOT)
Acid Phosphatase
Creatine Kinase
Gamma Glutamyl Transferase (GGT)
Iron
Lactate Dehydrogenase (LDH)
Instrument: Olympus AU5000
Analyte: Acid-Phosphatase
Iron Binding Capacity
Instrument: Technicon Assist
Analytes: Iron Binding Capacity
$CO_2$
Iron
Sodium
Instrument: Technicon Chem 1
Analytes: C-Reactive Protein
Complement C3
Complement C4
Digoxin
Gentamicin
Immunoglobulin IgA
Immunoglobulin IgG
Immunoglobulin IgM
Phenobarbital
Phenytoin
Theophylline
Thyroxine (T4)
Tobramycin
Transferrin

*Recategorizations:* The following test system entries have been recategorized: The Technicon H1 and H6000 for hemoglobin, hematocrit, white blood cell count, red blood cell count, platelet count and white blood cell differential has been recategorized from high to moderate complexity. This change in complexity is a result of information supplied by the manufacturer of the Technicon H1 and H6000 indicating that, for normal operation, the analyst is not required to interpret a histogram to arrive at a final test result. The instruments have a direct read-out systems for all analytes.

The Gen-Probe Pace2 test system for *Neisseria gonorrhoea* in bacteriology has been recategorized from moderate to high complexity. Supplemental information on this test system was received from laboratory professionals with experience performing the procedure and was verified through product inserts submitted by the manufacturer. Based on this information, the procedure was determined to be technically complex with multiple steps that include extensive sample and reagent preparation, precise temperature control and exact timing requirements. Additionally, the complexity of the test requires a higher level of training and experience to perform the procedure than was originally indicated.

Direct Antiglobulin tube tests in immunohematology have been recategorized from high to moderate complexity. This recategorization is due to the correction of a data entry error and not due to a decision to recategorize based on supplemental information.

The following urine HCG color comparison waived procedures have been removed from the list:

Abbott TestPack HCG-combo
Abbott TestPack Plus
Ampcor Quik-Dot (Quik-Dip) Pregnancy Dipstick
Hybritech Concise HCG
Hybritech Tandem ICON II

The listing of these color comparison urine HCG tests as moderately complex were data entry errors.

*Editorial changes:* For clarification and to remove ambiguity, the following changes and deletions have been made in test categories:

The category, "Primary Culture Inoculation", has been deleted since it does not define a complete test procedure. However, it should be noted that reporting any culture result, including "no growth", would constitute testing.

The categories,

(a) "Automated blood gas analyses that do not require operator intervention during the analytic process, such as instruments that have an automated process for calibration, sample intake and flushing of sample lines",

(b) "Automated hematology procedures without differentials that do not require operator intervention during the analytic process",

(c) "Automated hematology procedures with differentials that do not require operator intervention during the analytic process and that do not require an analyst to interpret a histogram or scattergram" and

(d) "Automated mycology procedures that do not require operator intervention during the analytic process", have been deleted and replaced with "Automated procedures that do not require operator intervention during the analytic process."

The category, "Automated or Semi-automated blood gas analyses requiring operator intervention to calibrate instrument, equilibrate gas supplies, introduce sample into measuring chamber or flush sample line", has been deleted and replaced with "Automated or Semi-automated procedures that do require operator intervention during the analytic process."

The categories "Radioimmunoassays" and "Whole Blood Measurements Using Teststrip Meters" have been deleted. The test systems listed under these categories have not changed in complexity unless noted in this notice. These test systems will be listed under categories that more accurately describe the complexity of the procedure such as "Manual procedures with multiple steps" or "automated procedures with no operator intervention."

For clarification, the following changes were made to analyte descriptions:

The analyte, "HCG, urine" has been deleted and replaced with two analytes, "HCG, urine, quantitative" and "HCG, urine, qualitative (non-waived procedures)" to better distinguish between waived and non-waived test systems.

The analyte "Blood gas" has been changed to "Blood Gas with pH" This change does not affect entries. Specific components of blood gas analyses, such as pCO2 and pO2 will not be listed as separate analytes. Additionally, Carboxyhemoglobin and Oxyhemoglobin/Oxygen Saturation are listed as analytes but Methemoglobin and other hematologic analytes used to calculate these parameters are not listed as separate analytes.

The calculated hematologic parameters, MCV, MCHC and MCH, are not listed as separate analytes.

The following are corrections to manufacturer's names and products:

From: Becton Dickinson Miniteck
To: Becton Dickinson BBL Minitek

From: Instrumentation Laboratories
To: Instrumentation Laboratory

From: Medical Diagnostics Technologies
To: Medical Diagnostic Technologies

From: Abuscreen ONTRACK
To: Roche Abuscreen ONTRACK

These and other editorial and spelling corrections will be reflected on the final list of test systems, assays and examinations to be published as a notice in the **Federal Register** on or before September 1, 1992.

[FR Doc. 92-15606 Filed 7-7-92; 8:45 am]
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**S. 2905/P.L. 102–310**

To provide a 4-month extension of the transition rule for separate capitalization of savings associations' subsidiaries. (July 1, 1992; 106 Stat. 276; 1 page) Price: $1.00

**H.R. 4548/P.L. 102–311**

International Peacekeeping Act of 1992. (July 2, 1992; 106 Stat. 277; 1 page) Price: $1.00

**H.R. 3041/P.L. 102–312**

To designate the Federal building located at 1520 Market Street, St. Louis, Missouri, as the "L. Douglas Abram Federal Building". (July 2, 1992; 106 Stat. 278; 1 page) Price: $1.00

**H.R. 2818/P.L. 102–313**

To designate the Federal building located at 78 Center Street in Pittsfield, Massachusetts, as the "Silvio O. Conte Federal Building", and for other purposes. (July 2, 1992; 106 Stat. 279; 1 page) Price: $1.00

**H.R. 3711/P.L. 102–314**

WIC Farmers' Market Nutrition Act of 1992. (July 2, 1992; 106 Stat. 280; 6 pages) Price: $1.00

**H.J. Res. 499/P.L. 102–315**

Designating July 2, 1992, as "National Literacy Day". (July 2, 1992; 106 Stat. 285; 2 pages) Price: $1.00

**H.J. Res. 509/P.L. 102–316**

To extend through September 30, 1992, the period in which there remains available for obligation certain amounts appropriated for the Bureau of Indian Affairs for the school operations costs of Bureau-funded schools. (July 2, 1992; 106 Stat. 288; 1 page) Price: $1.00

**S. 2901/P.L. 102–317**

To direct the Secretary of Health and Human Services to extend the waiver granted to the Tennessee Primary Care Network of the enrollment mix requirement under the medicaid program. (July 2, 1992; 106 Stat. 289; 1 page) Price: $1.00

**H.R. 5260/P.L. 102–318**

Unemployment Compensation Amendments of 1992. (July 3, 1992; 106 Stat. 290; 29 pages) Price: $1.00

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**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### SAN FRANCISCO, CA

**WHEN:** July 22, at 9:00 am
**WHERE:** Federal Building and U.S. Courthouse, Conference Room 7209-A, 450 Golden Gate Avenue, San Francisco, CA
**RESERVATIONS:** Federal Information Center, 1-800-726-4995

### SEATTLE, WA

**WHEN:** July 23, at 1:00 pm
**WHERE:** Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA
**RESERVATIONS:** Federal Information Center, 1-800-726-4995

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**DEPARTMEN**

**Agricultural**

**7 CFR Part 9**

**[Docket No. FV**

**Irish Potatoe**
**Changes to t**

**AGENCY:** Agri
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**ACTION:** Interi
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**SUMMARY:** Th
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# Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 946**

**[Docket No. FV-92-036IFR]**

## Irish Potatoes Grown in Washington; Changes to the Size Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule invites comments on revisions to the minimum size requirements for potatoes grown in Washington. This action: (1) Reduces the minimum size from 1⅞ inch to 1-inch in diameter for round and long white types of potatoes; (2) specifies new container sizes (three pounds or less net weight) for all types and sizes of potatoes; and (3) categorizes potatoes in the handling regulations under the marketing order by skin-color, flesh-color or type rather than by varietal type. The State of Washington Potato Committee (Committee) unanimously recommended the revisions at its February 6, 1992, meeting to provide producers and handlers an opportunity to supply a growing market for smaller-sized potatoes packed in specialty consumer containers and standard commercial containers, and to clarify the handling regulations so they will be consistent with inspection certification procedures.

**EFFECTIVE DATE:** July 2, 1992. Comments received by August 10, 1992, will be considered prior to any finalization of this interim final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–3610.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Order No. 946 (7 CFR part 946), both as amended, regulating the handling of Irish potatoes grown in the State of Washington and the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington potatoes who are subject to regulation under the marketing order and approximately 450 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of Washington potatoes may be classified as small entities.

The Committee's recommended revisions are authorized pursuant to § 946.51 and § 946.52 of the marketing order.

The first revision (§ 946.336(a)(2)(i)) reduces the minimum size from 1⅞ inch to 1-inch in diameter for round and long white types of potatoes. Currently, the regulations provide only for a 1-inch diameter minimum size for round red and yellow-fleshed potato types, if such potatoes meet or exceed U.S. No. 1 grade requirements. The Committee recommended 1-inch diameter round and long white types also be required to meet U.S. No. 1 grade. U.S. No. 1 grade consists of potatoes which are similar in varietal characteristics, firm, fairly clean, fairly well-shaped, and free from damage.

Potato buyers have indicated that there is a growing consumer demand for small round and long white types which are referred to as "gourmet" potatoes. The Committee indicated that this action will allow handlers to satisfy the consumer demand for such small "gourmet" type potatoes. These potatoes are used in restaurants and sold in grocery stores.

The second revision (§ 946.336(a)(2)(iii)) allows handlers to pack any type or size of potato, in

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containers containing a net weight of 3 pounds or less, if those potatoes are U.S. No. 1 grade or better. This revision allows handlers to pack all smaller-sized types of potatoes into specialty consumer containers to supply the growing market for smaller-sized potatoes packed in such containers. A handler who wishes to pack smaller-sized potatoes may accumulate, over a period of time, such potatoes in bulk containers to be packed later or packed at another facility. These potatoes will be required to meet the U.S. No. 1 grade requirements at the time of packaging.

Growers will benefit because these smaller potatoes are usually culled out, sent to the dehydrator, used for cattle feed, or not harvested at all. This rule will allow growers to market more of their crop and provide a greater range of potato sizes to give consumers more choices. Producers usually receive better returns when their crop is sold for fresh use because potatoes disposed of to dehydrators or used for cattle feed generally yield lower returns.

The third revision categorizes potatoes in the handling regulations under the marketing order by skin-color, flesh-color or type rather than by varietal type. Currently, the handling regulations specify requirements for varietal types of potatoes. For example, § 946.336(b)(2) specifies minimum maturity requirements for Norgolds, Burbanks, and White Rose potato varieties. These varieties are all referred to as white or Russet types of potatoes. The Committee indicated that the Federal-State inspection service inspects potatoes and certifies according to type (i.e., round red, round and long whites, yellow-fleshed, and Russet) rather than to specific varietal types of potatoes. Therefore, the Committee recommended that varietal types of potatoes mentioned in the handling regulations be deleted and that the skin-color, flesh-color or type of potato be specified instead. This revision will clarify the handling regulations so that they will be consistent with inspection and certification procedures.

In a separate action, the import regulation will be revised to allow importers to import any size of red-skinned round type potatoes in containers containing a net weight of 3 pounds or less during the months the potato import regulation is based on Washington marketing order requirements, if the potatoes are U.S. No. 1 grade or better. Such a change to the import regulation is required under section 8e of the Act. Section 8e requires imported potatoes meet the same or comparable requirements as established under the domestic marketing order with which the imports most directly compete.

In addition, § 946.336(i) will be removed from the handling regulations. That paragraph states the same information that is contained in § 980.1 of the import regulations. Since the same information applicable to imported potatoes is contained in the import regulations, paragraph (i) in the domestic handling regulations should be deleted to eliminate duplication or confusion.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented and the Committee's recommendation, it is found that the revisions to the handling regulations will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes restrictions on handlers of Washington potatoes and provides additional marketing opportunities by allowing handlers to supply the growing market for smaller-sized potatoes; (2) this action will allow a larger portion of grower deliveries to be packed and sold for fresh use and provide a greater range of potato sizes to give consumers more choices; (3) the action for Washington potatoes was discussed at a public meeting and is fully supported by the industry; (4) the new crop year begins on July 1, 1992, and handlers need time to prepare their packing facilities if they wish to package smaller-sized potatoes; and (5) this action provides a 30-day comment period and all comments timely received will be considered prior to finalization of this action.

**List of Subjects in 7 CFR Part 946**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

**PART 946—IRISH POTATOES GROWN IN WASHINGTON**

1. The authority citation for 7 CFR part 946 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 946.336 is amended by revising paragraphs (a)(2)(i) and (a)(2)(ii), redesignating paragraph (a)(2)(iii) as paragraph (a)(2)(iv), adding a new paragraph (a)(2)(iii), revising paragraphs (b)(1) and (b)(2), and removing paragraph (i) to read as follows:

[**Note:** This section will be published in the annual Code of Federal Regulations].

**§ 946.336 Handling regulation.**

* * * * *

(a) * * *

(1) * * *

(2) *Size:* (i) All red, yellow fleshed, and white types may be 1 inch (25.4 mm) minimum diameter, if U.S. No. 1.

(ii) All Russet types must be 2⅛ inches (54.0 mm) minimum diameter or 4 ounces minimum weight during July 15 through August 31 each season, and 2 inches (50.8 mm) or 4 ounces during the remainder of each season.

(iii) Any type of any size may be packed in a 3 pound or less container if the potatoes are U.S. No. 1 grade or better at the time of packing.

(iv) *Tolerances* * * *

* * * * *

(b) *Minimum maturity requirements.*

(1) *Red, yellow fleshed and white types:* Not more than "moderately skinned."

(2) *Russet types:* Not more than "slightly skinned."

* * * * *

Dated: July 2, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–16062 Filed 7–8–92; 8:45 am]

BILLING CODE 3410–02–M

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**7 CFR Parts 948 and 980**

**[Docket No. FV–92–068IFR]**

**Colorado Potatoes and Potatoes Imported into the United States; Change to the Import Size Requirements and Conforming Change to the Colorado Potato Handling Regulation**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule invites comments on exempting red-skinned round type potatoes meeting U.S. No. 1 or better grade requirements that are imported in containers containing 3 pounds or less during the months of July through September from minimum size requirements. This relaxation is based on a recent action taken under the Washington potato marketing order and is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This action also removes from the Colorado potato handling regulations provisions regarding potato import regulations. This action should benefit potato importers and consumers. There is a growing market for smaller-sized potatoes.

**EFFECTIVE DATE:** July 2, 1992. Comments received by August 10, 1992, will be considered prior to any finalization of this interim final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including red-skinned potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on regulations established under Federal marketing orders for fresh fruits, vegetables, and specially crops, like potatoes. Thus, import regulations should also have small entity orientation and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less that $500,000, and small agricultural service firms, including importers, are defined as those whose annual receipts are less than $3,500,000. Currently, there are about 30 importers of all types of potatoes. The majority of potato importers may be classified as small entities.

The revision to the import regulation (section 980.1) is being initiated by the Department because section 8e of the Act requires imported potatoes to meet the same or comparable requirements as those established under a domestic marketing order. The Act also provides that when two or more marketing orders covering the same commodity are concurrently in effect, imports will be subject to the requirements established for the commodity grown in the area with which the imported commodity is in most direct competition. Currently, section 980.1 of the import regulations provides that during the months of July and August the grade, size, quality, and maturity requirements pursuant to the Washington potato marketing order (7 CFR part 946) shall apply to all imported red-skinned round types of potatoes. A recent review of shipment data indicates that the Washington potato industry, rather than the Colorado potato industry, is typically the dominant shipper of potatoes during the month of September. Thus, the grade, size, quality and maturity requirements pursuant to the Washington potato marketing order shall apply to all imported red-skinned, round types of potatoes from July through September. The requirements under the Colorado potato marketing order will apply during the months of October through the following June. Under the Washington potato marketing order, the recommended revisions will allow handlers to pack any type or size of potato in containers containing a net weight of 3 pounds or less, if the potatoes are U.S. No. 1 grade or better. Thus, the import regulations will be revised to allow importers to import any size of red-skinned round type potatoes in containers containing a net weight of 3 pounds or less. Also, these potatoes must be U.S. No. 1 grade or better. U.S. No. 1 grade consists of potatoes which are similar in varietal characteristics, firm, fairly clean, fairly well-shaped, and free from damage.

In addition, paragraph (h) of section 948.386 is removed from the handling regulations for Colorado potatoes. That paragraph contains the same information that is contained in section 980.1 of the import regulations. Because the same information applicable to imported potatoes is contained in the import regulations, paragraph (h) in the Colorado potato regulations is being removed to eliminate duplication and prevent confusion.

This size requirement exemption brings the import regulations into conformity with the requirements applied under the Washington potato marketing order (7 CFR part 946). The United States Trade Representative has been given an opportunity to review the change in the import regulation and concurs with its issuance.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, it is found that the revisions to the import regulations will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective

date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes restrictions on importers by eliminating the size requirement for certain red-skinned round type of potatoes imported in containers containing 3 pounds or less; (2) section 8e of the Act requires import requirements for potatoes to be in conformity with the requirements of the marketing order with which imports most directly compete; (3) this action will allow importers to supply a growing market for smaller-sized potatoes; and (4) this action provides for a 30-day comment period and all comments timely received will be considered prior to the finalization of this action.

**List of Subjects in 7 CFR Part 948**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

**List of Subjects in 7 CFR Part 980**

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth in the preamble, 7 CFR Parts 948 and 980 are amended as follows:

## PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 948.386 [Amended]**

2. Section 948.386 is amended by removing paragraph (h).

## PART 980—VEGETABLES; IMPORT REGULATIONS

3. The authority citation for 7 CFR part 980 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

4. Section 980.1 is amended by revising paragraphs (a)(2)(i) and (b)(1) to read as follows:

[*Note: This section will be published in the annual Code of Federal Regulations*].

**§ 980.1 Import regulations; Irish potatoes.**

(a) * * *

(2) * * *

(i) Imports of red-skinned, round type potatoes during the months of October through the following June are in most direct competition with the marketing of the same type potatoes produced in Area 2, Colorado (San Luis Valley) covered by Order No. 948, as amended (part 948 of this chapter); and during the months of July through September, the marketing of the same type of potatoes is in most direct competition with the same type as produced in the area covered by Order No. 946 (part 946 of this chapter).

* * * * *

(b) * * *

(1) For the period October 1 through the following June of each marketing year, the grade, size, quality, and maturity requirements of Area No. 2, Colorado (San Luis Valley) covered by Marketing Order No. 948, as amended (part 948 of this chapter) applicable to potatoes of the red-skinned round type; and from July 1 through September 30 each marketing year the grade, size, quality, and maturity requirements of Marketing Order No. 946 (part 946 of this chapter) shall be the respective grade, size, quality, and maturity requirements for imported red-skinned round type potatoes, except there shall be no size requirements for imported red-skinned round type of potatoes that are imported in containers containing a net weight of 3 pounds or less, if the potatoes are U.S. No.1 grade or better.

* * * * *

Dated: July 2, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–16061 Filed 7–8–92; 8:45 am]

BILLING CODE 3410–02–M

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## Agricultural Marketing Service

## 7 CFR Part 981

**[FV–91–462FR]**

## Almonds Grown in California; Changes to Administrative Rules and Regulations Concerning Eligible Charitable Outlets for Disposition of California Almonds

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes a definition of "charitable outlet" in the administrative rules and regulations issued under the Federal marketing order for California almonds. Under certain conditions, handlers may receive credit against their assessments for distributing sample packets of almonds to charitable outlets. This change will clarify the meaning of a "charitable outlet" for purposes of the creditable advertising program implemented under the order. The action was recommended by the Almond Board of California (Board), which is responsible for local administration of the order.

**EFFECTIVE DATE:** August 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Sonia N. Jimenez, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds who are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action amends § 981.441 of Subpart—Administrative Rules and Regulations. Section 981.41 of the order provides authority for crediting a handler's direct expenditures for advertising against such handler's assessment obligation. Section 981.441(d)(1)(i) of the rules and regulations allows handlers credit for distributing generic packages of almonds to charitable or educational outlets. Handlers must file claims with the Board in order to receive credit for the distribution of such sample packages.

Heretofore, there has been no published definitions of "charitable outlet". In the past, Board policy has been to use those charitable organizations described in the Internal Revenue Code (IRC), section 170(c) as a guideline in evaluating advertising claims. Such organizations are those to which contributions are tax deductible. They are listed in the Internal Revenue Service Publication No. 78.

At its December 5, 1991, meeting the Board recommended amending § 981.441 of the Administrative Rules and Regulations to specify that charitable outlets for which handlers may receive credit for distributing generic almond packets must be those charities described in the IRC. This action will clarify the definition of "charitable outlet" contained in § 981.441(d)(1)(i) of the marketing order regulations. This action will not impose any additional economic, regulatory, or recordkeeping burden on handlers.

This final rule is based on a recommendation of the Board, a comment received in response to a proposed rule on this matter, and upon other available information. The Department has decided that the criteria contained in section 170(c) of the IRC are appropriate to establish the definition of "charitable outlet" in the marketing order regulations. The IRC is widely known and establishes the most important requirements for charitable organizations to meet. Under this final rule, charitable outlets would include (1) a state or possession of the United States if the gift is made for public purposes; (2) certain corporations, trusts, community chests, funds, and foundations which are organized and operated exclusively for religious, charitable, scientific, literary, educational or other listed purposes; (3) certain posts or organizations of war veterans; (4) certain domestic fraternal societies, orders, and associations operating under a lodge system, and; (5) certain cemeteries and burial societies. The IRS publication No. 78 lists over 350,000 organizations which have been determined to qualify for tax-deductible contributions under this definition.

The proposed rule was published in the **Federal Register** on January 27, 1992 (57 FR 3032). Interested persons were invited to submit comments on the proposal until February 26, 1992. One comment was received from an independent handler opposing the regulation. The commenter stated that handlers should be able to distribute almonds to any outlet that the handler believes is needy, regardless of whether the organization is registered with the Internal Revenue Service. The commenter also stated that a handler will not receive the recognition and goodwill if its charity contributions are distributed only among larger organizations that are described in the IRC. The Department believes that the description of the types of organizations in the IRC is broad enough to provide handlers with a large number of organizations to which they can make charitable donations. Handlers will not be restricted to donating to larger charities.

The commenter also requested that the proposal be effective for future disposition of charitable packets and not be applied retroactively. This action is a regulatory promulgation of a Board policy that has been followed for the past several years, and does not change that policy. Thus, this comment is denied.

The Department has made a non-substantive revision to the text of the proposed rule to clarify the definition of "charitable outlet."

After consideration of all relevant matters presented, the Board recommendation, the comment received, and other available information, it is found that the issuance of this rule will tend to effectuate the declared policy of the Act.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 7 CFR Part 981**

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

## PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 981.441(d)(1)(i) is amended by revising the first sentence and adding a new sentence after the revised first sentence to read as follows:

**§ 981.441 Crediting for marketing promotion including paid advertising.**

* * * * *

(d) * * *

(1) * * *

(i) For the distribution of sample packages containing one-half ounce or less of almonds to charitable or educational outlets. For the purposes of this section, the term "charitable outlet" means an organization to which a charitable contribution as defined in Section 170(c) of the Internal Revenue Code (26 U.S.C. Section 170(c)) may be made. * * *

* * * * *

Dated: July 2, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–16080 Filed 7–8–92; 8:45 am]

BILLING CODE 3410-02-M

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

**RIN 3150–AD89**

### Decommissioning Funding for Prematurely Shut Down Power Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations on the timing of the collection of funds for decommissioning for those nuclear power reactors that have shut down before the expected ends of their operating lives. These amendments require that the NRC evaluate decommissioning funding plans for power reactors that shut down

prematurely on a case-by-case basis. The NRC's evaluation would take into account the specific safety and financial situations at each nuclear power plant.

**EFFECTIVE DATE:** August 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1255.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 27, 1988 (53 FR 24018), the NRC published a final rule that amended 10 CFR parts 30, 40, 50, 51, 70, and 72. This final rule established several acceptable methods by which power reactor licensees may provide assurance that they will have sufficient funds to decommission their plants by the time the plants are permanently shut down (53 FR 24043). In considering this final rule, the Commission acknowledged that, in certain instances, reactors might be permanently shut down before completing the full term of their operating lives. However, because the Commission determined that such instances would be infrequent, it did not explicitly include remedies for this situation in the final rule.

In establishing the June 27, 1988, final rule, the Commission recognized that power reactor licensees generally have access to significant amounts of financial capital and are closely regulated. Therefore, the Commission allowed these licensees the option of accumulating decommissioning funds over the projected operating life of the facility rather than requiring that these funds be available or guaranteed prior to operation, or at some time before the end of the projected operating life of the facility. The Commission recognized the risk that, if some reactors did not operate for their entire operating lives, those licensees might have insufficient decommissioning funds at the time of permanent shutdown.

After the NRC published the June 27, 1988, final rule, four power reactor facilities shut down prematurely: The Fort St. Vrain Nuclear Generating Station, the Yankee Rowe Nuclear Power Station, the Rancho Seco Nuclear Generating Station, and the Shoreham Nuclear Power Station. The NRC staff sought the Commission's guidance on the appropriate period for collecting funds to compensate for any shortfall of decommissioning funds for plants such as these that shut down prematurely. The Commission elected to determine the appropriate collection period for any decommissioning funding shortfall for prematurely shut down power reactors on a case-by-case basis. As part of its decision, the Commission directed the NRC staff to prepare a rulemaking that would codify this case-by-case approach. A proposed rule implementing this approach was published in the **Federal Register** on August 21, 1991 (56 FR 41493).

**Analysis of and Response to Comments**

The NRC received 17 comments in response to the proposed rule. Eleven comments were from NRC-licensed electric utilities; two from utility trade groups; one from a utility counsel; two from bond rating/investment advisory companies; and one from a public interest group.

Except for the comment from the public interest group, all comments supported that part of the proposed rule that would allow the period of funds accumulation for a prematurely shut down reactor to be determined on a case-by-case basis. However, most utilities and their representatives opposed the guidance in the preamble to the proposed rule that would use a bond rating of "A" as a criterion for determining the future solvency of and thus the extent of the funding period for a licensee with a prematurely shut down power reactor.

*1. Comment: The use of bond ratings.*

The commenters offered a variety of reasons why they considered bond ratings, particularly at the "A" level, to be inappropriate for judging a licensee's ability to pay for decommissioning for a prematurely shut down reactor. These reasons included the following:

(1) Bond ratings are too restrictive and do not allow for variations in licensees situations as contemplated by the case-by-case approach.

(2) Bond rating may not be an accurate indicator of a licensee's future ability to pay for decommissioning.

(3) Not all licensees issue debt that is rated. In the case of poser plants with several owners, owners will likely have different ratings.

(4) Bond ratings would likely decline by virtue of a premature reactor shutdown, thus precipitating further financial problems and further downratings.

(5) Differences in ratings by different services or for different classes of debt issues were not addressed.

(6) Reliance on bond ratings may result in unsound business decisions to avoid accelerated fund accumulation or may discourage use of the SAFSTOR decommissioning option.

(7) A "BBB" rating, or equivalent, is still considered investment grade and is used as a criterion in Regulatory Guide 1.159 [1] and Appendix A to 10 CFR part 30.

(8) A one-year trigger period is too short and may be disruptive.

(9) Possible adverse tax consequences may accrue if accelerated payments are required.

*Response:* The NRC continues to believe that bond ratings can serve as one of several criteria to estimate the ability of a licensee to pay future decommissioning costs. The NRC did not intend that this rule set a mandatory requirement that a minimum "A" rating must be met before the NRC would approve funding into a shut down reactor's safe storage period. Rather, one reason the "A" rating criterion was proposed was to serve as a screening test of whether additional financial data was required to determine whether the licensee should be allowed to fund decommissioning into a storage period. If a licensee met this criterion, the licensee would not have to prepare and submit additional documentation of its financial situation to be allowed to fund decommissioning into a storage period. A benefit of the proposed screening test was a potential saving of licensee and NRC resources to develop and review the additional financial data.

With respect to the level of rating (i.e., "A" vs "BBB" or equivalent), the preamble to the proposed rule presented a rating of "A" as a threshold below which a licensee would be required, if other criteria were not met, to accelerate payment of any decommissioning funding shortfall. The staff chose an "A" rating because a downrating from "A" to "BBB" would allow a licensee to secure funds or meet other criteria while its rating was still investment grade. To that extent, an "A" rating is not inconsistent with the use of "BBB" ratings in Regulatory Guide 1.159 and appendix A to 10 CFR part 30. In Regulatory Guide 1.159, a "BBB" bond rating was used as a minimum suggested standard for a mixed portfolio of investments in a decommissioning trust. Because of investment diversification, a "BBB" investment standard represents a

[1] Regulatory Guide 1.159 is available for inspection and copying for a fee at the Commission's Public Document Room 2120 L Street, N.W., (Lower Level), Washington, D.C. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20013–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5825 Port Royal Road, Springfield, VA 22161.

relatively low level of financial risk. Similarly, appendix A of part 30 used a "BBB" rating as a minimum for a parent company of a licensee to guarantee decommissioning costs. Because a parent company is a separate legal entity from its subsidiary, the NRC would potentially have access to two sources of funds (the licensee and its parent) thus reducing the risk of decommissioning funding shortfalls. For this reason, the NRC disagrees that an "A" bond rating standard is too stringent as a screening test.

For these reasons, the NRC will continue to use the "A" bond rating as a screening test for determining the decommissioning funding period for prematurely shut down power reactors. If a power reactor licensee cannot pass the initial screening test, or if it has passed the screening test but subsequently loses its "A" bond rating, this licensee could still be allowed to fund into the storage period by meeting other criteria as described below.

These criteria include:

(1) A licensee's financial history including its past funding of reactor safety expenditures;

(2) The local rate regulatory environment and other relevant State laws including public utility commission (PUC) commitments;

(3) The number of other generating plants, both nuclear and non-nuclear, in its system. This is another way of measuring the relative impact of decommissioning costs on a particular licensee's finances; and

(4) Other factors that a licensee can demonstrate as being relevant.

The NRC wishes to clarify that it assumes that most licensees with "BBB" bond ratings would still be able to obtain NRC approval of decommissioning funding into the safe storage period for a prematurely shut down reactor. This is because most licensees will be able to successfully meet the other criteria described above even if they are unable to pass the "A" bond rating screening test. Recent exemptions issued to two prematurely shut down plants (Rancho Seco and Shoreham) indicate that bond ratings are only one of several factors that the NRC will use to determine whether a licensee has demonstrated reasonable assurance of its ability to pay decommissioning costs. Finally, this discussion on the use of bond ratings is intended as non-binding guidance only; this final rule includes no such detailed criteria.

*2. Comment: It is not necessary to require that all funds should be available in external funds or guaranteed by the time final dismantlement activities commence.*

A few commenters disagreed with the NRC's statement that all funds are required to be available or guaranteed in external funds by the time final dismantlement activities commence. Some commenters hypothesized scenarios in which relatively small funding shortfalls may be covered in rates already approved by a licensee's PUC or the Federal Energy Regulatory Commission (FERC) prior to actual collection. In this situation, funds, although not strictly available at the time final dismantlement activities commence, would have a high degree of assurance of being obtained by the time the licensee needed to complete the dismantlement activities. Another commenter suggested that the NRC's requirement of full funding prior to the start of final dismantlement operations is inconsistent with a case-by-case approach. This commenter recommends that licensees be required to provide assurance that funds are available to complete specific dismantlement activities, rather than the entire dismantlement process.

*Response:* The NRC disagrees with recommendations that the NRC should abandon its general policy of requiring all funds needed for decommissioning be available prior to the start of final dismantlement. As described in the proposed rule (56 FR 41493), the June 27, 1988, final rule clearly requires funds at the time of permanent end of operations. Section 50.75(e)(1) defines the three methods of financial assurance acceptable for power reactor licensees. Two of the methods, prepayment and surety or insurance, provide all funds by the time of permanent shutdown. The third acceptable method, an external sinking fund, is defined as "a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected."

This requirement was imposed to avoid a situation where lack of funds could delay and degrade the decommissioning process to the detriment of public health and safety. Although the dismantlement process can be completed in discrete stages, the potential unavailability of funds at a later stage may conceivably affect the dismantlement process at an earlier stage by creating incentives to "cut corners." Thus, this requirement was not altered in the proposed rule on funding for plants that shut down prematurely and will remain in the final rule.

*3. Comment: Accelerated funding when there is a risk of premature shutdown.*

One commenter asked the NRC to allow accelerated funding in cases where there is a risk of premature shutdown. This commenter specifically referred to its request for FERC to accelerate funding over a shorter period than the fill remaining operating life so that adequate funds would be available at the time of permanent shutdown. The commenter also indicated that its request was denied by FERC.

*Response:* The NRC strongly supports any effort by its licensees to accelerate funding, especially when a serious possibility of premature shutdown is anticipated. The NRC further believes that existing regulations (i.e., 10 CFR 50.75(e)) would allow accelerated funding and that, in appropriate circumstances, accelerated funding could be ordered if necessary of desirable for safety. In any case, the NRC would defer to FERC or the appropriate PUC for the appropriate rate treatment of accelerated funding.

*4. Comment: Amending 10 CFR 50.82 to clarify issuance of possession-only licenses and other procedural aspects of decommissioning.*

One commenter recommended that § 50.82 be amended to indicate the timing and procedures for decommissioning. The commenter requests that the NRC specify when it will issue a possession-only license or other license amendments to permits scaling back site operations.

*Response:* The NRC is evaluating its regulations concerning decommissioning and is considering issuing proposed amendments to clarify its procedures in the areas suggested by the commenter. To expedite this rule, however, the NRC will consider the timing of possession-only licenses and other license amendment procedures as part of a separate rulemaking action.

*5. Comment: The case-by-case approach "fails to provide sufficient protection to the public's health and safety."*

A commenter argues that many plants will shut down prematurely in the future and safe storage is neither risk free nor cheap. Thus, adequate funds for safe storage must be assured, in addition to funds for actual decommissioning. Therefore, plants must have adequate funding available for the time of

shutdown and not be allowed to fund into the safe storage period. Further, this commenter asserts that "A" bond ratings are inadequate because "in many instances, utility (and other) bonds have gone from investment grade status to junk or default status in one step." In the event of a precipitating incident such as an accident, "there is no likelihood at all that the derating process will be gradual * * *." This commenter concludes by stating that the NRC "should determine how to insure, in each and every case, that adequate funds are available."

*Response:* This commenter makes several assertions to support the commenter's opposition to funding during a safe storage period. These assertions, however, are not supported by facts. It is not true that most bond ratings, especially for electric utilities, move quickly through several categories of ratings. The process is almost always gradual and, therefore, would almost always give the NRC time to take steps to assure the adequacy of fundings during a storage period. In addition, this commenter also ignores NRC's requirement that its power reactor licensees carry accident recovery insurance of at least $1.06 billion (10 CFR 50.54(w)) to provide a source of funds for accident cleanup and decontamination. This requirement reduces the likelihood that premature decommissioning resulting from an accident would be particularly financially stressful.

More importantly, the NRC would, as stated, evaluate each instance of premature decommissioning on a case-by-case basis. The criteria discussed above provides the NRC with a variety of measures to assure the adequacy of funding. The case-by-case approach that is being adopted in this rule allows the NRC to consider the participation financial situation for each licensee that shuts down its power reactor before the expected end of operation life. In spite of the commenter's assertions, the Commission does not expect this to be a frequent occurrence. When it does occur, in most situations the majority of decommissioning funds will have been collected during the operating life of the shut down reactor. Most licensees currently have substantial amounts collected and would, at the least, be able to fund activities necessary to place a shut down reactor into safe storage. Whatever funding shortfall remains can be collected or guaranteed in a time frame and through funding mechanisms commensurate with a licensee's financial situation. As that financial situation changes, the licensee, under NRC monitoring, would alter funding methods accordingly.

For the reasons presented in the discussion of issues raised, the NRC is issuing this final rule as proposed.

**Finding of No Significant Environmental Impact: Availability**

This final rule clarifies decommissioning funding arrangements for those licensees whose power reactors are shut down prematurely. This action is required so that the Commission may evaluate on a case-by-case basis the unique financial situation that could confront those licensees. The Commission would continue its requirements for assurance of decommissioning costs but could alter the timing of funds collection according to a licensee's individual financial situation. The Commission believes that if utility licensees were required to have all funds for decommissioning by the time of permanent shutdown as required by the existing rule, some utilities could be unnecessarily financially stressed without significantly increasing the protection of the public health and safety and of the environment.

Neither this action nor the alternative of maintaining the existing rule would significantly affect the environment. Although changes in the timing of collection of funds for decommissioning prematurely shut down power reactors may affect the financial arrangements of licensees and may have economic and social consequences, they would not alter the effect on the environment of the licensed activities considered in the final rule published on June 27, 1988 (53 FR 24018) as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988).[2] The alternative to this action would not significantly affect the environment. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this final rule will not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. No other agencies or persons were contacted for this action, and no other documents related to the environmental impact of this action exist. The foregoing constitutes the environmental assessment and finding of no significant impact for this final rule.

**Paperwork Reduction Act Statement**

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

**Regulatory Analysis**

On June 27, 1988 (53 FR 24018), the NRC published in the **Federal Register** a final rule amending 10 CFR parts 30, 40, 50, 51, 70 and 72 regarding general requirements for decommissioning nuclear facilities. In that rule, the Commission provided the option that power reactor licensees may collect funds for decommissioning over the projected operating life of the facility but required that all funds needed for decommissioning be accumulated by the time of permanent shutdown. Under the existing rule, power reactor licensees that shut down prematurely would not have the remaining term of the operating license to accumulate decommissioning funds and could be unduly burdened financially if required to raise all remaining decommissioning funds shortly after shutdown. Consequently, the NRC will evaluate the schedule for collecting decommissioning funds for prematurely shut down facilities on a case-by-case basis. A case-by-case approach allows the NRC to evaluate the particular financial circumstances of each affected licensee while continuing to ensure that the public health and safety and the environment are adequately protected. This final rule would generally reduce financial costs for those licensees allowed to extend the collection period of decommissioning funds.

This final rule would not create substantial costs for other licensees. The rule will not signficantly affect state and local governments and geographical regions, or the environment, or create substantial costs to the NRC or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this final rule.

**Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final

[2] Copies of NUREG–0586 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

rule will not have a significant impact upon a substantial number of small entities. The rule will potentially affect licensees of approximately 118 nuclear power reactors. Nuclear power plant licensees do not fall within the definition of small businesses as defined in Section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administrator (13 CFR part 121), or the Commission's Size Standards (50 FR 50241; December 9, 1985).

**Backfit Analysis**

The NRC has determined that this final rule does not impose a backfit as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis is not required for this rule.

**List of Subjects in 10 CFR Part 50**

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 50.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242 as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 995 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.5, 50.46 (a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.5, 50.7(a), 50.10(a)–(c), 50.34 (a) and (e), 50.44(a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54 (a), (i), (i),(1), (1)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a),(c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49(d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.82 is amended by revising paragraph (a) to read as follows:

**§ 50.82 Application for termination of license.**

(a) Any licensee may apply to the Commission for authority to surrender a license voluntarily and to decommission its facility. For a facility that permanently ceases operation after July 27, 1988, this application must be made within two years following permanent cessation of operations, and in no case later than one year prior to expiration of the operating license. Each application for termination of license must be accompanied, or preceded, by a proposed decommissioning plan. For a facility which has permanently ceased operation prior to July 27, 1988, requirements for contents of the decommissioning plan as specified in paragraphs (b) through (d) of this section may be modified with approval of the Commission to reflect the fact that the decommissioning process has been initiated previously. For a facility which has permanently ceased operation before the expiration of its operating license, the collection period for any shortfall of funds will be determined, upon application by the licensee, on a case-by-case basis taking into account the specific financial situation of each licensee.

* * * * *

Dated at Rockville, Maryland this 26th day of June, 1992.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Executive Director for Operations.*

[FR Doc. 92–16133 Filed 7–8–92; 8:45 am]

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## FEDERAL RESERVE SYSTEM

**12 CFR Part 225**

**[Regulation Y; Docket No. R–0698]**

**RIN 7100–AB13**

## Bank Holding Companies and Change in Bank Control Investment Advisory Activities

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board is revising its interpretive rule regarding investment advisory activities of bank holding companies to provide expressly that a bank holding company or its nonbank subsidiary may act as an agent for customers in the brokerage of shares of an investment company advised by the holding company or any of its subsidiaries. In addition, the revision will provide that a bank holding company or its nonbank subsidiary may provide investment advice to customers regarding the purchase or sale of shares of an investment company advised by a holding company affiliate. In both instances, the Board requires certain disclosures to be made to address potential conflicts of interests or adverse effects.

**EFFECTIVE DATE:** August 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Scott G. Alvarez, Associate General Counsel (202/452-3583), or Thomas M. Corsi, Senior Attorney (202/452-3275), Legal Division; or Robert S. Plotkin, Assistant Director (202/452-2782), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**Background**

In 1971, the U.S. Supreme Court held that the operation of a mutual fund by a national bank was prohibited by the Glass-Steagall Act because it involved the bank in prohibited securities underwriting and distributing activities.[1] Subsequent to the Court's decision, the Board amended its Regulation Y to permit a bank holding company to furnish investment advice to an open-end investment company (*i.e.*, a mutual

[1] *Investment Company Institute* v. *Camp*, 401 U.S. 617 (1971).

fund) and to sponsor, organize, and advise closed-end investment companies. Concurrently the Board adopted an interpretive rule outlining the types of relationships the Board believed a bank holding company may have with a mutual fund and a closed-end investment company consistent with the Glass-Steagall Act. This interpretive rule (12 CFR 225.125) governs the manner in which a bank holding company that has obtained Board approval under section 4(c)(8) of the Bank Holding Company Act (BHC Act) to conduct investment advisory activities may conduct those activities. The Board's interpretive rule has been upheld by the U.S. Supreme Court.[2]

Paragraph (h) of the Board's interpretive rule regarding investment advisory activities states that a bank holding company may not engage in the "sale or distribution" of shares of an investment company advised by the bank holding company or one of its nonbank subsidiaries.[3]

Since the time the interpretive rule was issued, the Board has determined, and the Supreme Court has agreed, that a company or bank engaged in securities brokerage activities is not engaged in the "issue, flotation, underwriting, public sale, or distribution of securities" for purposes of the Glass-Steagall Act.[4] The Board has also determined, and the U.S. Court of Appeals has agreed, that the provision of the combination of investment advice and securities brokerage services to a customer by an affiliate of a member bank does not implicate the prohibition, contained in section 20 of the Glass-Steagall Act, of the "public sale" of securities.[5]

In June 1990, the Board requested public comment[6] on a proposal to revise its interpretive rule to indicate that the reference in paragraph (h) of that rule to "sale or distribution" of shares of investment companies advised by the bank holding company or its subsidiary does not prohibit a bank holding company or its nonbank subsidiary from acting solely as agent for the account of customers in the purchase or sale of shares of these investment companies. Acting by order on a specific application, the Board has already determined that the practices at which the prohibition against "sale or distribution" of shares of investment companies is directed are not present where the nonbank affiliate proposes to act only as agent for customers desiring to purchase or sell shares of an investment company advised by a bank affiliate. *Norwest Corporation*, 76 Federal Reserve Bulletin 79 (1990) (*Norwest*).

In its request for public comment, the Board also proposed to permit a bank holding company or its nonbank subsidiary to provide investment advice to customers regarding the purchase or sale of shares of an investment company advised by a holding company affiliate. In addition, the Board proposed to remove other restrictions in paragraph (h) of the interpretive rule, including restrictions on the ability of a bank holding company to make prospectuses available to customers.[7]

In order to address the potential for conflicts of interest or other adverse effects, the Board proposed that any bank holding company that provides advice or brokerage services to customers regarding an investment company advised by an affiliate shall disclose such dual roles to customers; shall caution customers to read the prospectus of an investment company before investing in the investment company; and shall advise customers in writing that the investment company's shares are not deposits, are not obligations of any bank, are not insured by the Federal Deposit Insurance Corporation (FDIC), and are not endorsed or guaranteed in any way by any bank (unless such is the case).

*Proposal as Adopted*

The Board has determined to adopt the revision substantially as proposed, with certain modifications made to address matters raised by the commenters. In order to address any potential adverse effects, the Board has determined that a bank holding company or nonbank subsidiary of the holding company must make the disclosures discussed above when the company or subsidiary provides a customer with securities brokerage or investment advisory services (either separately or in combination) in connection with shares of any mutual fund or closed-end investment company advised by the bank holding company or any of its bank or nonbank subsidiaries.

The Board also believes that the officers and employees of a holding company bank that is permitted under relevant law and by its primary supervisor to provide advice or brokerage services to customers regarding the purchase of shares of an investment company advised by a nonbank affiliate of the bank should disclose the role of the nonbank affiliate and make the other types of disclosures required by the Board to be made by a bank holding company that provides these services. These disclosures are already required by the Office of the Comptroller of the Currency (OCC) for national banks. To the extent that a state-chartered bank owned by a bank holding company engages in providing advisory or brokerage services to bank customers in connection with an investment company advised by the bank holding company or a nonbank affiliate, but is not required by the bank's primary regulator to make disclosures comparable to the disclosures required to be made by a bank holding company providing such services, the Board believes that every bank holding company should require its subsidiary bank(s) to make the disclosures required by the Board to be made by the bank holding company.

*Response to Public Comments*

In response to its proposal, the Board received 29 comments from interested individuals and organizations, with 28 comments in favor and one opposed to the proposal. The principal issues raised by the comments are discussed below.

Authority to Make Proposed Revision

One commenter opposed the proposed revision to paragraph (h) of the interpretive rule. This commenter maintains that activities permitted under the proposal would constitute the public sale or distribution of securities in violation of section 20 of the Glass-Steagall Act (12 U.S.C. 377). The commenter also argued that the proposal would authorize activities that would not be a proper incident to banking for purposes of section 4(c)(8) of the BHC Act, because the adverse effects of engaging in the activities would outweigh public benefits.

The remaining 28 commenters favored adoption of the Board's proposal. Thirteen commenters argued that permitting bank holding companies to provide brokerage services and

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[2] *Board of Governors* v. *Investment Company Institute*, 450 U.S. 46 (1981).

[3] 12 CFR 225.125(h).

[4] *BankAmerica Corporation*, 69 Federal Reserve Bulletin 105, 114 (1983), *aff'd*, *Securities Industry Association* v. *Board of Governors*, 468 U.S. 207 (1984).

[5] *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986), *aff'dd*, *Securities Industry Association* v. *Board of Governors*, 821 F. 2d 810, 811 (D.C. Cir. 1987), *cert. denied*, 108 S. Ct. 697 (1988).

[6] 55 FR 25849, June 25, 1990.

[7] The Board also requested comments on whether it was appropriate, as a general matter, to amend paragraph (g) of the interpretive rule, which limits transactions between a bank holding company or its subsidiaries and an investment company advised by the bank holding company. The Board received general comments on this matter. The Board has not determined to amend paragraph (g) at this time and will consider whether to amend paragraph (g) in a separate proceeding.

investment advice to customers regarding investment companies advised by holding company affiliates does not violate the Glass-Steagall Act as interpreted by the U.S. Supreme Court and other courts. These commenters also argue that significant public benefits would result from the proposal, including additional convenience to consumers, increased efficiency, and an increase in competition, and that potential adverse effects are adequately addressed through proper disclosures to customers and compliance with applicable securities laws.

The Board's interpretive rule indicates that the Board intends that a bank holding company that has received approval under section 4(c)(8) of the BHC Act to conduct investment advisory activities may exercise all functions permitted to be exercised by an "investment adviser" under the Investment Company Act of 1940, except to the extent limited by the Glass-Steagall Act. As explained above, the Supreme Court has determined that the kinds of activities authorized by the proposed revision do not represent the underwriting, public sale, or distribution of securities or any other activity prohibited by the Glass-Steagall Act for banks and their affiliates. In addition, the OCC has similarly determined that these activities are permissible for national banks under the National Bank Act. The OCC has also previously determined that the Glass-Steagall Act does not prohibit a national bank from providing investment advice to customers and conducting securities brokerage activities for customer purchases of an investment company advised by the national bank.[8] On this basis, the Board has determined that a bank holding company is not prohibited by the Glass-Steagall Act from providing brokerage and advisory services to customers regarding an investment company advised by the bank holding company or any of its bank or nonbank affiliates.

For the reasons explained in previous Board orders and suggested by commenters in connection with this proposal, the Board also believes that these activities are permissible under section 4(c)(8) of the BHC Act. The Board has previously determined that the provision of securities brokerage activities and investment advisory activities, separately or in combination, is closely related to banking under section 4(c)(8) of the BHC Act.

The Board also believes that compliance with applicable securities laws and the supplemental disclosures required by the Board address the potential adverse effects from these activities and that, on this basis, the public benefits of the brokerage and advisory activities permitted outweigh potential adverse effects. The Board has previously expressed concern regarding the potential that members of the public might be confused as to whether the securities they are purchasing are federally insured or are obligations of a bank, and the potential that the public might link the economic fortunes of a mutual fund with a bank. The Board believes that the disclosure requirements implemented in this revision adequately address these potential adverse effects. The Board believes that, with these disclosures, the revision will benefit the public by providing increased customer convenience for purchasers of mutual fund shares and increased efficiencies for bank holding companies.

Disclosure Requirements

The commenters generally supported the proposed disclosure and other requirements designed to address adverse effects that potentially could arise from the proposed activities. Several commenters, however, suggested modifications to these requirements. One commenter asserted that the Board should provide the bank holding company with discretion to determine the manner and timing of any required disclosures to customers, including by providing the disclosures in confirmations, in customer statements, or in a separate mailing, because the operations of bank holding companies may differ. Another commenter suggested that the Board not require employees of a bank holding company to advise customers to read an investment prospectus because regulations of the Securities and Exchange Commission already require a broker to direct customers, in writing, to read the prospectus before investing in an investment company, and the holding company employees may not have a meeting with the customer that would permit an oral caution.[9] A third commenter recommended providing an exception from the requirement that a bank holding company advise customers that the brokered investment company shares are not guaranteed, or supported by, any bank, or the FDIC, in situations in which the prospectus gives notice that the investment company is uninsured. Another commenter maintained that the Board should not require a bank holding company's subsidiaries to provide specific disclosure of the bank holding company's dual roles as broker and adviser because such a requirement is not imposed upon securities brokers that are not affiliated with a bank holding company.

The Board's proposal requires that a bank holding company advise its brokerage and advisory services customers of the dual role of the holding company as adviser to the investment company and broker or adviser to the customer, and that the investment company's shares are not deposits, are not an obligation of or endorsed or guaranteed by any bank, and are not insured by the FDIC. These disclosures must be made at least once before a customer invests in an investment company advised by a holding company affiliate.

The interpretive rule has been modified to indicate that these disclosures may be made orally so long as written disclosures are immediately provided to the customer. The specific manner and timing of these written disclosures has been otherwise left in the discretion of the bank holding company, subject to applicable securities laws.

The disclosures required in the Board's proposal are not more onerous than the replacement disclosures suggested by the commenter, but provide a more comprehensive explanation designed to assure that the customer understands the potential conflict of interest from the dual roles of the holding company and that the resources of the bank and the FDIC do not support the investment company. Similar disclosures are required by the OCC when a national bank provides brokerage or advisory services to customers regarding an investment company advised by the bank. These more comprehensive disclosures are particularly helpful because bank holding company customers may not be fully aware of the relationship of the bank holding company with the investment company as a result of a limitation on an affiliate-advised investment company having a name in common with, or similar to, the bank holding company.

[8] *See, e.g.*, Letter, dated December 9, 1987, from J. Michael Shepherd, Senior Deputy Comptroller for Corporate and Economic Programs regarding First Union National Bank of North Carolina.

[9] Rules 134 and 482 of the Securities and Exchange Commission (15 CFR 230.134 and 230.482) provide that an investment company may advertise its availability, if the advertisement contains certain prescribed information and states that the potential investor should obtain a copy of the prospectus of the investment company and should read such prospectus before investing.

As discussed above, in order to assure that the potential adverse effects at which the disclosure requirements are aimed do not occur when a bank affiliate provides advice on, or brokers shares of, an investment company for which the bank holding company provides investment advice, the Board believes that a holding company bank should disclose the advisory role of its affiliate and make the other disclosures required by the Board to be made by a bank holding company providing these services. The Board has amended its interpretive rule to include this requirement to the extent that a holding company bank providing brokerage or advisory services to its customers is not already required by its primary regulator to make such disclosures.

Other Comments

Two technical changes have been made to the proposed language to clarify another issue raised by commenters. The first change clarifies a phrase in the original proposal to indicate that the revisions of the interpretive rule to allow a bank holding company to conduct securities brokerage and investment advisory services presupposes that the bank holding company has received prior approval to engage in brokerage and/or investment advisory activities and does not eliminate the need for prior approval under section 4 of the BHC Act.

The second change makes clear that the Board's revision to its interpretive rule does not affect restrictions placed on the securities underwriting, public sale, or distribution activities of affiliates of banks that engage in these activities on a limited basis as permitted by the Board under section 20 of the Glass-Steagall Act and section 4(c)(8) of the BHC Act ("section 20 affiliate").[10] Moreover, this revision does not alter any other limitations or conditions imposed by Board order with respect to brokerage or investment advisory activities.

*Administrative Procedure Act*

One commenter contended that the Board failed to follow the requirements of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) (APA) in soliciting public comment on this proposal. The commenter contended that the Board's request for comment mischaracterizes the proposed revision as a clarification of the current interpretive rule. The commenter claimed that the proposal represents a rescission of a prior Board position. The commenter also argued that the Board has not provided an adequate basis for this change in position.

The Board believes that this commenter's arguments under the APA are misplaced. Even if the commenter were correct that the Board's proposal represents a change in a prior Board position, as explained above, the proposal is consistent with the Glass-Steagall Act as interpreted by the courts and with section 4(c)(8) of the BHC Act, and the Board has authority to adopt its current proposal.[11] The effect of the Board's proposal was fully explained in its request for comment, the legal authority for the proposed action was discussed, and a draft of the proposed revision to the interpretive rule was provided in order to permit all commenters a full opportunity to comment on the proposal. Moreover, in the Board's opinion, the APA requirement that an agency provide a reasoned justification for its actions is fulfilled by this Federal Register notice explaining the Board's action and its legal basis.[12]

*Effect on Bank Holding Companies Currently Conducting Investment Advisory and Securities Brokerage Activities*

In connection with this final rule, the Board hereby grants relief to those bank holding companies who have previously committed that they would not broker and/or recommend shares of an investment company advised by an affiliate because of the previous interpretive rule. This relief is granted so that these bank holding companies may conduct the activity subject to the limitations and disclosure requirements adopted by the Board in this revision. This grant of relief does not alter any other commitments or restrictions accepted or imposed by the Board, including the limitations imposed or the disclosures required to be made by a section 20 affiliate. Moreover, bank holding companies that participate in a joint venture engaged in securities brokerage or advisory activities, and the joint ventures owned by such bank holding companies are not relieved from any limitations imposed on the ability of the company or joint venture to provide advice or brokerage services in connection with investment companies sponsored, advised, distributed or controlled by the joint venture partner.

**Final Regulatory Flexibility Act Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 95-354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that this final rule will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation. This revision will not place additional burdens on any bank holding company. It will provide for all bank holding companies access to services the Board finds appropriate under section 4(c)(8) of the BHC Act and consistent with court holdings.

**List of Subjects in 12 CFR Part 225**

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

[10] *See, e.g., J.P. Morgan & Co. Inc.*, 75 Federal Reserve Bulletin 192 (1989); *PNC Financial Corp.*, 75 Federal Reserve Bulletin 396 (1989).

[11] The commenter urged that the Board, should it adopt this proposal as a final rule, restore the language previously used in the interpretive rule that prohibited the "sale or distribution" of shares of investment companies advised by a bank holding company or its subsidiaries, and clarify that this prohibition does not prevent a bank holding company or its nonbank subsidiaries from acting solely as agent for the account of customers in the purchase or sale of shares of such investment companies. The commenter is concerned that in eliminating the prohibition, the Board would be permitting bank holding companies to engage in activities that would violate the Bank Holding Company Act and the Glass-Steagall Act. The Board believes it has addressed this concern by adding a statement in the interpretive rule providing expressly that a bank holding company and its nonbank subsidiaries may not engage, directly or indirectly, in the underwriting, public sale or distribution of securities of any investment company for which the holding company or any nonbank subsidiary provides investment advice except in compliance with the terms of section 20 and only after obtaining the Board's approval under section 4 of the Bank Holding Company Act.

[12] This commenter also asserts that the Board, in finalizing the proposal, would be adopting an unsound policy, and should defer action until the issues raised by the proposal are addressed through the legislative process. However, the restrictions in the interpretive rule and the revisions thereof are appropriate under the provisions of existing law and the Board is not precluded from modifying these restrictions to reflect recent developments. In this regard, the Board notes that this modification is consistent with the provisions of S.543 passed by the Senate last year, as well as the provisions of H.R.6 approved by the House Banking and Energy and Commerce Committees.

For the reasons set forth in this document, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)), the Board amends 12 CFR part 225 as follows:

## PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

2. In § 225.125, paragraph (h) is revised to read as follows:

**§ 225.125 Investment adviser activities.**

* * * * *

(h) Under section 20 of the Glass-Steagall Act, a member bank is prohibited from being affiliated with a company that directly, or through a subsidiary, engages principally in the issue, flotation, underwriting, public sale, or distribution of securities. A bank holding company or its nonbank subsidiary may not engage, directly or indirectly, in the underwriting, public sale or distribution of securities of any investment company for which the holding company or any nonbank subsidiary provides investment advice except in compliance with the terms of section 20, and only after obtaining the Board's approval under section 4 of the Bank Holding Company Act and subject to the limitations and disclosures required by the Board in those cases. The Board has determined, however, that the conduct of securities brokerage activities by a bank holding company or its nonbank subsidiaries, when conducted individually or in combination with investment advisory activities, is not deemed to be the underwriting, public sale, or distribution of securities prohibited by the Glass-Steagall Act, and the U.S. Supreme Court has upheld that determination. *See Securities Industry Ass'n* v. *Board of Governors*, 468 U.S. 207 (1984); *see also Securities Industry Ass'n* v. *Board of Governors*, 821 F.2d 810 (D.C. Cir. 1987), *cert. denied*, 484 U.S. 1005 (1988). Accordingly, the Board believes that a bank holding company or any of its nonbank subsidiaries that has been authorized by the Board under the Bank Holding Company Act to conduct securities brokerage activities (either separately or in combination with investment advisory activities) may act as agent, upon the order and for the account of customers of the holding company or its nonbank subsidiary, to purchase or sell shares of an investment company for which the bank holding company or any of its subsidiaries acts as an investment adviser. In addition, a bank holding company or any of its nonbank subsidiaries that has been authorized by the Board under the Bank Holding Company Act to provide investment advice to third parties generally (either separately or in combination with securities brokerage services) may provide investment advice to customers with respect to the purchase or sale of shares of an investment company for which the holding company or any of its subsidiaries acts as an investment adviser. In the event that a bank holding company or any of its nonbank subsidiaries provides brokerage or investment advisory services (either separately or in combination) to customers in the situations described above, at the time the service is provided the bank holding company should instruct its officers and employees to caution customers to read the prospectus of the investment company before investing and must advise customers in writing that the investment company's shares are not insured by the Federal Deposit Insurance Corporation, and are not deposits, obligations of, or endorsed or guaranteed in any way by, any bank, unless that happens to be the case. The holding company or nonbank subsidiary must also disclose in writing to the customer the role of the company or affiliate as adviser to the investment company. These disclosures may be made orally so long as written disclosure is provided to the customer immediately thereafter. To the extent that a bank owned by a bank holding company engages in providing advisory or brokerage services to bank customers in connection with an investment company advised by the bank holding company or a nonbank affiliate, but is not required by the bank's primary regulator to make disclosures comparable to the disclosures required to be made by bank holding companies providing such services, the bank holding company should require its subsidiary bank to make the disclosures required in this paragraph to be made by a bank holding company that provides such advisory or brokerage services.

* * * * *

Board of Governors of the Federal Reserve System, July 2, 1992.

**William W. Wiles,**
*Secretary of the Board.*

[FR Doc. 92-16071 Filed 7-8-92; 8:45 am]
BILLING CODE 6210-01-F

## SMALL BUSINESS ADMINISTRATION

**13 CFR Part 101**

**Administration; Delegation of Authority; Region II**

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The Small Business Administration (SBA) hereby amends its regulation delegating authority to undertake program functions for certain field personnel. Specifically, in light of a reorganization of SBA's staff in Region II (New York; New Jersey; Virgin Islands; and Puerto Rico), this rule revises the authority delegated to the several positions of Assistant Regional Administrator (ARA).

**DATES:** This rule is effective July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Karin L. Genis, (Acting) Deputy Regional Administrator, U.S. Small Business Administration, New York Regional Office, 26 Federal Plaza, room 31–08, New York, New York, 10278, (212) 264–4480.

**SUPPLEMENTARY INFORMATION:** The SBA is amending its regulation delegating authority to undertake program functions for certain personnel in its Region II Regional Office. SBA's Region II staff has been reorganized by action of the Administrator dated March 31, 1992, eliminating the positions of ARA for Finance and Investment; Procurement Assistance; Minority Small Business and Capital Ownership Development; and Business Development. The functions previously performed by the incumbents in such positions will now be carried out at the District Office level by incumbents occupying the new positions of Associate District Director for the specific program function. As such, SBA's regulation delegating authority to field personnel requires revision reflecting this reorganization in order to allow program administration to continue uninterrupted and in an efficient manner.

Due to the fact that this rule governs matters of agency organization, management, and personnel and makes no substantive change to the current regulation, SBA is not required to determine if it constitutes a major rule for purposes of Executive Order 12291, to determine if it has a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601

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*et seq.*), to do a Federalism Assessment pursuant to Executive Order 12612, or to determine if this rule imposes an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35). For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

SBA is publishing this regulation governing agency organization, practice, and procedure as a final rule without notice and an opportunity for public comment pursuant to 5 U.S.C. 553(b)(A).

**List of Subjects in 13 CFR Part 101**

Administrative practice and procedure; Authority delegation; Organization and function, Government agency; Reporting and recordkeeping requirement.

For the reasons set forth above, SBA is amending part 101 of Title 13, Code of Federal Regulations, as follows.

**PART 101—[AMENDED]**

1. The authority citation for part 101 continues to read as follows:

**Authority:** Secs. 4 and 5 of Pub. L. 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93–386 (Aug. 23, 1974); and 5 U.S.C. 552.

2. Section 101.3–2, Delegation of authority to conduct program activities in field offices, is amended by adding a new paragraph at the end of the Preface to read as follows:

**§ 101.3–2 Delegation of authority to conduct program activities in field offices**

* * * * *

Preface

* * * * *

With respect to SBA personnel in Region II only (New York; New Jersey; Puerto Rico; and the Virgin Islands), the authority delegated herein to be exercised by the several positions of Assistant Regional Administrator shall be redelegated to the several positions of Associate District Director responsible for the same program functions.

* * * * *

Dated: July 1, 1992.

**Patricia Saiki,**

*Administrator.*

[FR Doc. 92–16033 Filed 7–8–92; 8:45 am]

BILLING CODE 8025–01–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 91–ASW–17; Amdt. 39–8257; AD 92–11–07]**

## Airworthiness Directives; Bell Helicopter Textron, Inc., Model 205B, 212, and 412 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 205B, 212, and 412 helicopters, that requires a repetitive magnetic particle inspection of the main transmission lower planetary spider gear. This amendment is prompted by the results of a crack growth analysis of a planetary spider gear that cracked in service. The actions specified by this AD are intended to detect and prevent a fatigue failure of the main transmission lower planetary spider gear, which could result in failure of the main transmission and subsequent loss of control of the helicopter.

**EFFECTIVE DATE:** August 10, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support. This information may be examined at the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Rules Docket, 4400 Blue Mound Road, room 158, Building 3B, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Scott A. Horn, FAA, Rotorcraft Certification Office , ASW–170, Fort Worth, Texas 76193–0170, telephone (817) 624–5177; fax (817) 740–3394.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to BHTI Model 205B, 212, and 412 helicopters was published in the **Federal Register** on December 10, 1991 (56 FR 64485). That action proposed to require a repetitive magnetic particle inspection of the main transmission lower planetary spider gear. The proposal was prompted as a result of the manufacturer conducting a crack growth analysis of a planetary spider gear that recently cracked in service. Two additional spider gears were subsequently fatigue tested to develop and support the necessary action. These test data and analyses showed that, over time and under normal operating conditions, a crack can appear in the lower planetary spider gear and spread to a critical length causing the gear to fail.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 875 helicopters of U.S. registry will be affected by this AD, that it will either take approximately 32 work hours per helicopter or 6 work hours per helicopter if performed during an overhaul, to accomplish the required actions, and that the average labor rate is $55 per work hour. It is estimated that one half of the helicopter fleet may be affected each year by the requirements of this AD. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to range from $144,375 to $770,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action:

(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979; and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:



**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 92–11–07 **Bell Helicopter Textron, Inc. (BHTI):** Amendment 39–8257. Docket No. 91–ASW–17.

*Applicability:* All Model 205B, 212, and 412 helicopters, certificated in any category, with main transmission lower planetary spider gear, part number (P/N) 204–040–785–003, installed.

*Compliance:* Required as indicated, unless already accomplished.

To prevent possible fatigue failure of the main transmission lower planetary spider gear, P/N 204–040–785–003, which could result in failure of the main transmission and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 600 hours' time in service after the effective date of this AD, or prior to the accumulation of 3,100 hours' time in service from the last magnetic particle inspection, whichever occurs first, perform a magnetic particle inspection of the main transmission lower planetary spider gear in accordance with the applicable BHTI maintenance, repair and overhaul manuals.

(b) Repeat the inspection of paragraph (a) at intervals not to exceed 3,100 hours' time in service from the last inspection.

(c) Replace unairworthy parts with airworthy parts before further flight.

(d) An alternative method of compliance or adjustment of the compliance times, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW–170, Rotorcraft Directorate, Aircraft Certification Service, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76193–0170. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective August 10, 1992.

Issued in Fort Worth, Texas, on April 28, 1992.

**Mark R. Schilling,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 92–16032 Filed 7–8–92; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 92–ASW–14; Amendment 39–8293, AD 92–06–17]**

## Airworthiness Directives; Robinson Helicopter Company Model R22 Series Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 92–06–17, which was sent previously to all known U.S. owners and operators of Robinson Helicopter Model R22 series helicopters by individual letter. This AD requires a one-time inspection of the affected Model R22 series helicopters for certain bolts that must be removed before further flight. This amendment is prompted by a report of a tail rotor control system bolt failure during ground run-up of a new Model R22 Beta helicopter. The actions specified by this AD are intended to prevent failure of the tailrotor control bolt, and other bolts, that could result in loss of the helicopter if failure occurred.

**DATES:** Effective July 24, 1992, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 92–06–17, issued on March 17, 1992, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received by July 24, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–14, 4400 Blue Mound Road, Fort Worth, Texas 76193–0007.

The applicable service information may be obtained from Robinson Helicopter Company, 24747 Crenshaw Blvd., Torrance, California 90505. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Rules Docket, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Charles Matheis, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–123L, FAA, Northwest Mountain Region, 3229 E. Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5235.

**SUPPLEMENTARY INFORMATION:** On March 17, 1992, the FAA issued Priority Letter AD 92–06–17, applicable to Robinson Helicopter Company (RHC) Model R22 series helicopters, which requires a one-time inspection for certain NAS1304–16 bolts, identified by the letters "AF" on the head of the bolts. That action was prompted by a report of a bolt failure, caused by hydrogen embrittlement, during ground run-up of a new Model R22 Beta helicopter. These particular bolts, identified by the letters "AF", may be susceptible to hydrogen embrittlement and cracks, and may have been installed, delivered, or distributed by RHC between July 9, 1991, and March 1, 1992. This condition could, if not corrected, result in failure of a bolt, and if installed in the tail rotor control system, could result in possible loss of tail rotor control. The bolt is also used in other critical locations. Therefore, bolts with the "AF" letter designation shall be removed before further flight and replaced with an airworthy bolt. Bolts with the AF letter designation are not to be installed as replacement parts.

Since this condition described is likely to exist or develop on other helicopters of the same type design, the FAA issued Priority Letter AD 92–06–17, to prevent tail rotor control system bolt failure as well as other bolts failure. The AD requires a one-time inspection of certain bolts specified above.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on March 17, 1992, to all known U.S. operators and owners of RHC Model R22 series helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communciations received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that

supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-ASW-14." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11304, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, and Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**AD 92-06-17 Robinson Helicopter Company (RHC): Amendment 39-8293. Docket No. 92-ASW-14. Final Rule of a Priority Letter AD.**

*Applicability:* All Model R22 series helicopters, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of NAS1304-16 AF bolts, resulting in loss of helicopter control, accomplish the following:

(a) Within the next 10 hours' time in service or before March 30, 1992, whichever comes first, visually inspect the helicopters specified in (1), at the inspection areas or locations specified in (2), to determine the identification of the NAS1304-16 bolts.

(1) The helicopters affected are—

(i) R22 Serial Numbers (S/N) 1880 through 2060 and S/N 2073;

(ii) All R22 helicopters regardless of S/N overhauled or repaired at Robinson Helicopter Company between July 9, 1991, and March 1, 1992; and

(iii) All R22 helicopters regardless of S/N for which maintenance was performed after July 9, 1991, in the inspection locations specified in paragraph (a)(2).

(2) The inspection locations are—

(i) The tail rotor blade control assembly at the aft end of the tail cone, including tail rotor controls connecting the rotor blade pitch link to the rotor pitch control cross head (slider) arms, and the rotor pitch link to the rotor blade attachment;

(ii) The lower aft corners of the cabin, both left-hand and right-hand sides, where the attachment joins the cabin to the welded frame assembly; and

(iii) The region above the swashplate attaching the counter weights (balance weights) to the swashplate assembly (also described as the main rotor balance weights attachment to the Chord Arm Yoke).

Note: Further details of the installations are contained in Robinson Model R22 Illustrated Parts Catalog (IPC).

(b) Before further flight, remove those NAS 1304-16 bolts bearing the identification letters "AF" on the head of the bolt and replace with serviceable NAS1304-16 bolts with head marking other than "AF" or with NAS6604-16 bolts.

(c) After the effective date of this AD, NAS1304-16 bolts identified with the letters "AF" shall no longer be installed as a replacement part in any application on these helicopters.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806-2425. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) Copies of the applicable service information may be obtained from Robinson Helicopter Company, 24747 Crenshaw Blvd, Torrance, CA 90505. This information may be examined at the FAA, Office of the Assistant Chief Counsel, Rules Docket, 4400 Blue Mound Road, Bldg. 3B Room 158, Fort Worth, Texas.

(g) This amendment becomes effective July 24, 1992, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 92-06-17, issued March 17, 1992, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on June 17, 1992.

**Henry A. Armstrong,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 92-16031 Filed 7-8-92; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing-Federal Housing Commissioner

### 24 CFR Part 201

**[Docket No. R-92-1496; FR-2623-F-04]**

### Introduction; Title I Property Improvement and Manufactured Home Loans; Approval of Lending Institutions Reform of the Title I Program; Technical Amendment

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document makes a technical amendment to correct an omission in the Department's final rule that was published in the Federal Register on October 18, 1991 (56 FR 52414). The final rule amended 24 CFR Parts 200, 201, and 202 with regard to the insurance of lenders against losses sustained as a result of borrower

defaults on property improvement and manufactured home loans.

**EFFECTIVE DATE:** July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Coyle, Director, Title I Insurance Division, room 9158, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708–2880 or (202) 708–4594 (TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

On October 18, 1991 (56 FR 52414), the Department published a final rule implementing major changes to reform the title I property improvement and manufactured home loan programs. The effective date of the final rule was November 18, 1991.

After the final rule was published, the Department discovered that a needed amendment to § 201.55(a)(1) of the title I regulations was omitted from the October 18, 1991 final rule. This document amends § 201.55(a)(1) to correct this omission.

Prior to November 18, 1991, § 201.51(a)(2) of the regulations provided that, if the same lender held both a Title I loan and a senior mortgage on a property securing a defaulted title I property improvement loan, the lender had to obtain a HUD-approved appraisal of the property prior to foreclosing on the senior mortgage. A companion provision in § 201.55(a)(1) specified that, in calculating the lender's insurance claim, the unpaid amount of the Title I loan obligation would be reduced by the amount by which the appraised value or the actual proceeds from the sale of the property, whichever was greater, exceeded the unpaid balance on the senior mortgage.

In the October 18, 1991 final rule, § 201.51(a)(2) was amended to remove the requirements on lenders holding both a Title I loan and a senior mortgage. In their place, the Department established a new procedure which would permit a lender to foreclose on property securing a defaulted title I property improvement loan and later submit an insurance claim, provided that the lender obtained the prior approval of the Secretary before proceeding against the property. The Secretary's decision on whether to agree to foreclosure would be based upon all relevant factors, including but not limited to the appraised value and the amount of the outstanding loans on the property, the estimated costs of foreclosure and disposition, and the anticipated time to dispose of the property. As a practical matter, the Department would not agree to foreclosure unless it appeared that the lender could sell the property for enough to cover all of its expenses and avoid an insurance claim. The Department expected that giving lenders the opportunity to pursue foreclosure, but also to file a claim if a deficiency did occur, would reduce claim losses for both lenders and the Department.

In establishing this new procedure in § 201.51(a)(2), the Department did not revise the claim calculation requirements in § 201.55(a)(1). Because of this omission, a lender that had proceeded with foreclosure with HUD's approval could not be paid an insurance claim, because the language in § 201.55(a)(1) does not take into account that foreclosure and disposition costs are legitimate expenses that need to be deducted from the sale proceeds in determining the amount of funds that are available to apply to the Title I loan. Also, since the lender has obtained HUD's prior approval to the foreclosure, the lender should not be penalized if the property cannot be sold for the appraised value.

Therefore, the Department is amending § 201.55(a)(1) to specify that, where the Department has given its prior approval to the foreclosure under § 201.51(a)(2), the unpaid amount of the loan obligation will be reduced by the amount of any excess proceeds from the foreclosure and disposition of the property, after deducting (a) the balances due on any obligations senior to the Title I loan obligation; and (b) customary and reasonable expenses for foreclosure and disposition, as determined by the Secretary.

**List of Subjects in 24 CFR Part 201**

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the following amendments are made to 24 CFR part 201:

## PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for 24 CFR part 201 continues to read as follows:

**Authority:** 12 U.S.C. 1703; 42 U.S.C. 3535(d).

2. In § 201.55, paragraph (a)(1) is revised to read as follows:

**§ 201.55 Calculation of insurance claim payment.**

* * * * *

(a) * * *

(1) The unpaid amount of the loan obligation (net unpaid principal and the uncollected interest earned to the date of default, calculated according to the terms of the note executed for any loan application that is approved prior to the effective date of these regulations, and calculated according to the actuarial method for all loans for which loan applications are approved on or after the effective date of these regulations). Where the lender has proceeded against the secured property under § 201.51(a)(2), the unpaid amount of the loan obligation shall be reduced by the proceeds received from the property's sale or disposition, after deducting the following:

(i) The balances due on any obligations senior to the Title I loan obligation; and

(ii) Customary and reasonable expenses for foreclosure and disposition, as determined by the Secretary.

* * * * *

Dated: July 2, 1992.

**Arthur J. Hill,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 92–16054 Filed 7–8–92; 8:45 am]

BILLING CODE 4210–27–M

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## DEPARTMENT OF JUSTICE

### Office of the Attorney General

### 28 CFR Part 0

[A.G. Order No. 1598–92]

### Redelegations of Authority to United States Attorneys, Deputy Assistant Attorneys General, Section Chiefs, and Director, Asset Forfeiture Office, in the Criminal Division

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This Order is the Criminal Division's implementation of the first increase in the settlement and Compromise authority delegated to the Assistant Attorneys General since 1981 It provides a corresponding increase in the settlement and compromise authority redelegated to United States Attorneys, Deputy Assistant Attorneys General, Section Chiefs, and the Director, Asset Forfeiture Office, in the Criminal Division, to further the efficient operation of the Department of Justice

**EFFECTIVE DATE:** July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Lee J. Radek, Director, Asset Forfeiture Office, Criminal Division, Department of Justice, Washington, DC 20530, 202–514–1263.

**SUPPLEMENTARY INFORMATION:** This Order conforms the redelegations of the Assistant Attorney General's authority to compromise civil penalties and forfeitures and close civil claims to subpart Y, part 0, title 28 of the Code of Federal Regulations (CFR), §§ 0.160, 0.164, 0.165, and 0.168 as amended by the Attorney General (Order No. 1478–91, 56 FR 8923–24, March 4, 1991). Subject to limitations set forth in §§ 0.160(c) and 0.168(a), § 0.168(d) provides that redelegations of this authority by Assistant Attorneys General to United States Attorneys will include the authority: (1) To accept offers in compromise in cases involving original claims by the United States of not more than $500,000; (2) to accept offers in compromise in cases involving original claims by the United States between $500,000 and $5,000,000, so long as the difference between the original claim and the proposed settlement does not exceed 15 percent of the original claim; and (3) to accept offers in compromise of claims against the United States in cases where the principal amount of the proposed settlement does not exceed $500,000.

This Order supersedes Criminal Division Directive No. 116 (48 FR 50712–13, November 3, 1983), which contains the current redelegation of the authority of the Assistant Attorney General, Criminal Division, to compromise civil penalties and forfeitures and close civil claims.

This Order is exempt from the requirements of Executive Order 12291 as a regulation related to agency organization and management. Furthermore, this Order will not have a significant economic impact on a substantial number of small entities because its effect is internal to the Department of Justice. 5 U.S.C. 605(b).

**List of Subjects in 28 CFR Part 0**

Authority delegations (Government agencies), Organization and functions (Government agencies), Penalties, Seizures and forfeitures.

Accordingly, 28 CFR part 0 is amended as follows:

## PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. The appendix to subpart Y of part 0 is amended under the heading "Criminal Division" by removing Directive No. 116 and adding in its place Attorney General Order No. 1598–92 to read as follows:

### Appendix to Subpart Y—Redelegations of Authority To Compromise and Close Civil Claims

* * * * *

### Criminal Division

* * * * *

[Attorney General Order No. 1598–92]

Redelegations of Authority to United States Attorneys, Deputy Assistant Attorneys General, Section Chiefs, and Director, Asset Forfeiture Office, in the Criminal Division

By virtue of the authority vested in me by part 0 of title 28 of the Code of Federal Regulations, as amended, particularly §§ 0.160, 0.162, 0.164, 0.168 and 0.171, it is hereby ordered as follows:

(a)(1) Each U.S. Attorney is authorized in cases delegated to the Assistant Attorney General of the Criminal Division—

(A) To accept or reject offers in compromise of—

(i) Claims in behalf of the United States in all cases (other than forfeiture cases) in which the original claim did not exceed $500,000, and in all cases in which the original claim was between $500,000 and $5,000,000, so long as the difference between the gross amount of the original claim and the proposed settlement does not exceed 15 percent of the original claim; and in all civil or criminal forfeiture cases, except that the U.S. Attorney shall consult with the Asset Forfeiture Office of the Criminal Division before accepting offers in compromise or plea offers in forfeiture cases in which the orignial claim was $5,000,000 or more, and in forfeiture cases in which the original claim was between $500,000 and $5,000,000, when the difference between the gross amount of the original forfeiture sought and the proposed settlement exceeds 15 percent of the original claim; and

(ii) Claims against the United States in all cases, or in administrative actions to settle, in which the amount of the proposed settlement does not exceed $500,000; and

(B) To close (other than by compromise or entry of judgment) claims asserted by the United States in all cases (other than forfeiture cases) in which the gross amount of the original claim does not exceed $500,000, and in all civil or criminal forfeiture cases, except that the U.S. Attorney shall consult with the Asset Forfeiture Office of the Criminal Division before closing a forfeiture case in which the gross amount of the original forfeiture sought is $500,000 or more.

(2) This subsection does not apply—

(A) When, for any reason, the compromise or closing of a particular claim (other than a forfeiture case) will, as a practical matter, control or adversely influence the disposition of other claims, which, when added to the claim in question, total more than the respective amounts designated above;

(B) When the U.S. Attorney is of the opinion that because of a question of law or policy presented, or for any other reason, the matter should receive the personal attention of the Assistant Attorney General;

(C) When a settlement converts into a mandatory duty the otherwise discretionary authority of an agency or department to revise, amend, or promulgate regulations;

(D) When a settlement commits a department or agency to expend funds that Congress has not appropriated and that have not been budgeted for the action in question, or commits a department or agency to seek a particular appropriation or budget authorization; or

(E) When a settlement limits the discretion of a Secretary or agency administrator to make policy or managerial decisions committed to the Secretary or agency administrator by Congress or by the Constitution.

(b) Notwithstanding the provisions of this Order, the Assistant Attorney General of the Criminal Division may delegate to U.S. Attorneys authority to compromise or close other cases, including those involving amounts greater than as set forth in paragraph (a) above, and up to the maximum limit of his authority, where the circumstances warrant such delegation.

(c) All other authority delegated to me by §§ 0.160, 0.162, 0.164 and 0.171 of title 28 of the Code of Federal Regulations not falling within the limitations of paragraph (a) of this Order is hereby redelegated to Section Chiefs in the Criminal Division, except that—

(1) The authority delegated to me by §§ 0.160, 0.162, 0.164 and 0.171 of that title relating to conducting, handling, or supervising civil and criminal forfeiture litigation (other than bail bond forfeiture), including acceptance or denial of petitions for remission or mitigation of forfeiture, is hereby redelegated to the Director of the Asset Forfeiture Office; and

(2) When a Section Chief or the Director of the Asset Forfeiture Office is of the opinion that because of a question of law or policy presented, or for any other reason, a matter described in paragraph (c) should receive the personal attention of a Deputy Assistant Attorney General or Assistant Attorney General, he shall refer the matter to the appropriate Deputy Assistant Attorney General or to the Assistant Attorney General.

(d) Notwithstanding any of the above redelegations, when the agency or agencies involved have objected in writing to the proposed closing or dismissal of a case, or to the acceptance or rejection of an offer in compromise, any such unresolved objection shall be referred to the Assistant Attorney General for resolution.

Dated: May 19, 1992.

**Robert S. Mueller, III,**

*Assistant Attorney General, Criminal Division.*

Approved: June 5, 1992.

**Wayne A. Budd,**

*Associate Attorney General.*

[FR Doc. 92–15325 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–10–M

28 CFR Part 44

[Order No. 1520-91]

## Unfair Immigration-Related Employment Practices; Correction

**AGENCY:** Department of Justice.

**ACTION:** Correction to interim rule.

**SUMMARY:** The Department of Justice is correcting the amendatory language in regulations concerning unfair immigration-related employment practices that appeared in the **Federal Register** on August 14, 1991 (56 FR 40247).

**EFFECTIVE DATE:** August 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** William Ho-Gonzalez, Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035-5490, telephone (202) 653-8121 (Voice) or (202) 296-0168 (TDD number for the hearing impaired); or Kirk M. Flagg, Trial Attorney, Office of Special Counsel for Immigration Related Unfair Employment Practices, (202) 653-8121 (Voice) or (202) 296-0168 (TDD).

**SUPPLEMENTARY INFORMATION:** On August 14, 1991, the Department of Justice promulgated an interim rule with request for comments concerning unfair immigration-related employment practices. (56 FR 40247.) The **Federal Register** has informed the Department that it would read the amendatory language regarding a change to 28 CFR 44.301 to delete paragraphs (d)(2)(i) and (d)(2)(ii), which the Department intended to leave unchanged. This notice clarifies the amendatory language.

The following correction is made in Order No. 1520-91, Unfair Immigration-Related Employment Practices published in the **Federal Register** on August 14, 1991 (56 FR 40247).

### § 44.301 [Corrected]

The amendatory language in the third column on page 40249 that reads "5. Section 44.301 paragraph (d)(2) is revised to read as follows:" is corrected to read as follows:

"5. In § 44.301, the introductory text of paragraph (d)(2) is revised to read as follows:"

Dated: July 3, 1992.

**William P. Barr,**

*Attorney General.*

[FR Doc. 92-16146 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1425

## Mediation Assistance in the Federal Service

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule is published in order to provide a more complete and accurate Form F-53, Notice to Federal Mediation and Conciliation Service, and to facilitate the entry of data from the Form F-53 into the FMCS automated data processing system. The rule continues the requirement of notification for contract expiration or reopener negotiations, and now encourages requests for assistance for mid-term or Impact and Implementation bargaining. It also provides for labor and management to jointly request grievance mediation by FMCS.

Pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35), the Federal Mediation and Conciliation Service submitted its final rule to the Office of Management and Budget (OMB) on September 9, 1991 and received its approval on November 22, 1991 for the use of this form F-53 through November 30, 1994.

**EFFECTIVE DATE:** August 10, 1992.

**SUPPLEMENTARY INFORMATION:** On June 15, 1989, FMCS published a notice of proposed rulemaking in the **Federal Register** (54 FR 25467). This notice was published in order to revise FMCS Form F-53, which is used for notification of contract expirations or reopener in the Federal service, and to revise the text of 29 CFR part 1425, which accompanies the illustration of Form F-53 in the agency's regulations (29 CFR 1425.2).

Form F-53 is made available to assist federal agencies and labor organizations to obtain FMCS services, as provided for in title 5 U.S.C. 7119(a). The revision of Form F-53 allows parties to more clearly and accurately state the service requested and arranges information in a manner which aids the entry of data into FMCS computer records. The revised version of Form F-53 is shown below in this rule for purposes of identification.

A summary of information pertaining to Form F-53 is as follows:

*Form number:* FMCS F-53, OMB 3076-0005.

*Frequency:* On occasion.

*Respondent:* Parties to a Federal Sector dispute.

*Obligation:* Voluntary.

*Burden:* Approximately 600 responses per year; approximately 100 reporting hours per year; approximately 15 minutes per response.

*Need and Use:* The information is needed to advise FMCS of Federal Sector disputes pursuant to 29 CFR part 1425, 1425.3. It is used in order to make assignments of cases to FMCS mediators.

### Comments

Twelve persons provided written comments and/or proposed revisions. Of this number, eight were representatives of management and four were representatives of unions. Two other oral comments were received by telephone. One was from a federal union, the other from a federal agency labor relations representative. A summary of the 14 comments, with the response of FMCS, follows:

*1. Notice of "I&I", Mid-Term Changes or Other Changes*

The last sentence of the first paragraph at 29 CFR 1425.2 currently states that parties involved in mid-term or impact bargaining need not submit a Form F-53 to FMCS. In order to promote the submission of Form F-53 in these situations, the revised section states that parties "* * * are encouraged to send a notice" (29 CFR 1425.2(b)).

This modification was made because of increased impact-and-implementation (I&I) and mid-term bargaining in the absence of a procedure for informing FMCS mediators about these situations in advance. Although telephone calls to the mediator or district director have been made, these calls have often not allowed sufficient advance time for scheduling mediator activities.

The response to this proposal by almost all commentors was that requiring a notice for all I&I bargaining situations, especially on a form would be too burdensome. Instead, the recommendation was to require a filing with FMCS only when the mediation services were desired.

Thus, the Department of Energy Headquarters commented "Don't make it mandatory." They proposed the language be rewritten, as follows, "Although not required, the parties engaged in mid-term or I&I are encouraged to send a notice. In such a notice, the parties are requested to briefly list the issues being bargained." The Department of Energy, Bonneville Power Administration in Portland, Oregon, wrote that the parties be encouraged to send a notice and list issues briefly. The Panama Canal Commission opposed sending I&I notices and listing issues as too burdensome.

The Department of the Army at Aberdeen Proving Ground opposed the proposed I&I notice requirement because many I&I bargaining disputes are over office moves and relocations and most are resolved amicably. If the notice requirement were made, FMCS might be flooded with needless paper.

Union responses ranged from the Seafarers International Union, which said that I&I reporting was too onerous, to the National Treasury Employees Union suggesting that the notice identify if it is union-initiated mid-term bargaining, to the American Federation of Government Employees reserving judgment if the rule was an undue hardship, to the National Weather Service Union which said the I&I notice requirement was acceptable.

Recognizing these labor and management concerns, FMCS has decided that the new form will now encourage, rather than mandate filing only when a request for assistance in these matters is desired. These should be filed whenever the parties, singly or jointly, find that mediation assistance is needed. The requesting party is asked to specify the issues and type of bargaining. FMCS will continue to require, however, notification of contract termination negotiations and contractual reopener negotiations.

*2. Listing Issues Involved*

Two commenters said there was not enough room provided on the proposed form for listing issues. One suggested a change to "Brief description of issues involved are attached."

The FMCS purpose is only to obtain a very general topic heading: e.g., smoking or alternative work schedules or official time etc., rather than a detailed listing. Guidance to that effect will be provided on the instructions on the back of the Form, so the amount of space provided should be adequate.

*3. The Difference Between Filing a Notice of Contract Expiration or Initial Contract Bargaining and a Request for Mediation Assistance*

Form F–53 was modified to state "1. *Notice* to FMCS in regard to (check one)

——The expiration of an existing contract,
——An initial contract.

This was followed by an, item 2, calling for a similar indication for a request for assistance in regard to (check one)

——Impact and/or Implementation Bargaining; or
——Mid-term Bargaining

The reason for this distinction is to separate those items for which notice is required under the Act, from those in which it is optional. Notices are required in order to give FMCS mediators enough time to schedule meetings, meet with the parties in advance of contract expiration dates and allow for the possibility of early bargaining. This applies to contract expirations, initial contract bargaining situations and contractual re-openers. Should the parties or party *request* mediation assistance in I&I or any mid-term bargaining, such requests can be made on this form.

*4. Time Limits*

The time limit for notice for a contract expiration is "at least 30 days prior to expiration." The text has been amended to add provisions also requiring notice 30 days prior to the reopener date of an existing contract. For parties seeking an initial agreement, notice is "within 30 days after commencing negotiations." (29 CFR 1425.2).

Two organizations commented on these limits, saying notice should be used to initiate negotiations rather than request assistance. Two other organizations said it should be "not later than 30 days", prior to the expiration or modification date of an existing agreement.

The view of FMCS is that the purpose of the required notice is to alert FMCS and permit it sufficient time to proffer its services.

As to requiring a party to file a notice "no later than 30 days prior to expiration" as opposed "at least 30 days prior to expiration", FMCS sees no significant distinction and has therefore not modified the text of these provisions.

*5. Grievance Mediation*

Another change is a new section, 29 CFR 1425.2(c)—for mediation of grievances. Parties seeking to obtain grievance mediation are required to send a joint request. FMCS retains discretion to determine in what circumstances it will make grievance mediation available.

There were four comments on this grievance mediation provision. The Department of Army Headquarters wrote that grievance mediation should be optional, on a case-by-case basis. The Department of Air Force Headquarters wrote that grievance mediation should be allowed only if specifically provided for in the collective bargaining agreement, and a unilateral request for grievance mediation should not be permitted. The National Weather Service union said FMCS should allow grievance mediation requests to be signed by only one party. The Department of Transportation suggested FMCS amend § 1425.3 to describe FMCS's functions to include grievance mediation since currently the description of the function is limited to assistance in resolving negotiation disputes.

FMCS concludes that a joint request for grievance mediation is critical to establishing a basis for resolving the problem. Since contractual positions are involved, both sides must agree at the outset to this process.

As to whether § 1245.3 needs to be amended, FMCS feels that this is not necessary because of the following considerations.

Even though the Federal Service Labor-Management Relations Statute, chapter 71 of title 51 U.S.C. (FSLMRS) does not address grievance mediation, there is no prohibition of such activity. In addition, the Administrative Dispute Resolution Act of 1990, Public Law 101–552, section 581(8), does provide, by implication, that such authorization is conferred. That section states that the only grievances that are excluded from coverage under that Act are those that are already prohibited in the FSLMRS at section 7121(c) of title 5. FMCS views this as providing implied authority to assist in the resolution of other grievances. The Agency, moreover, views its activities in grievance mediation as part of its effort to assist the parties in improving their relationships and offers grievance resolution assistance along with joint training in problem-solving and introduction in interest-based negotiations in order to foster more productive collective bargaining. The Agency has worked with unions and agencies to establish pilot programs to assist in grievance mediation as a way of improving labor relations and attitudes. In addition, the Agency will seek further clarification of its authority under the FSLMRS and the Administrative Dispute Resolution Act. In the interim, FMCS will accept joint requests for such assistance but reserves its discretion not to proceed in all cases.

Since the proposed rule was published on June 15, 1989, FMCS adopted Grievance Mediation Guidelines as follows:

1. The parties shall submit a joint request, signed by both parties requesting FMCS assistance.

2. Any time limits in the parties labor agreement must be waived to permit the grievance to proceed to arbitration should mediation be unsuccessful.

3. Proceedings before the mediator will be informal and rules of evidence will not apply. No record, stenographic, tape recordings or other will be made of mediation sessions. The mediators notes

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are confidential and shall not be revealed.

4. The mediator shall conduct the mediation conference utilizing all of the customary techniques associated with mediation including the use of separate caucuses.

5. The mediator has no authority to compel any resolution of the grievance.

6. In the event that no settlement is reached during the mediation conference(s), the mediator may provide the parties either in separate or joint session with an oral advisory opinion.

7. If either party does not accept an advisory opinion, the matter may then proceed to arbitration in the manner and form provided in their collective bargaining agreement. Such arbitration hearings will be held as if the grievance mediation effort had not taken place. Nothing said or done by the parties, grievant(s) or the mediator during the grievance mediation session(s) can be used during arbitration proceedings.

8. When the parties choose the FMCS grievance mediation procedure, they agree to abide by these guidelines and it is understood that the parties and the grievant shall hold FMCS and the mediator appointed by the Service harmless as to any claim of damages arising from the mediation activity.

9. The grievant shall be entitled to be present at the mediation conference(s).

These guidelines have been incorporated in this regulation at § 1425.2(d).

*6. Other Comments*

Other comments about the proposed revision were: (1) The form takes more than 10 minutes to complete, and (2) FMCS should consider offering Alternative Dispute Resolution (ADR) services on the form.

FMCS is of the view that the information requested is basic and easy to supply. Therefore, in a majority of cases, 10 minutes or less will be needed. In particular since description of issues should be brief and the number of employees requested on the form (Item 7) is approximate, the amount of time consumed should not be great. As to (ADR), the Service does provide other programs in the Federal sector, but does not believe that this should be made part of the F–53 Form, as dealing with these other services on the same form might be confusing to the parties.

**Executive Order 12291**

This rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) a significant decline in productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

**Paperwork Reduction Act Notice**

The collection of information in this rule was submitted to the Office of Management and Budget under section 3504(H) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments regarding any aspect of this information collection should be submitted to the Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington,.DC 20427, Attention: Eileen B. Hoffman, and to the Office of Management and Budget, Attention: Desk Officer for FMCS, OMB Room 3001, Washington, DC 20503.

**Regulatory Flexibility Act Certification**

The FMCS finds that this rule will have no significant economic impact upon a substantial number of small entities within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 605(g)), and will so certify to the Chief Counsel for Advocacy of the Small Business Administration. This conclusion has been reached because the final rule does not, in itself, impose any additional economic requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

**List of Subjects in 29 CFR 1425**

Collective bargaining, Administrative Practice and Procedure, Government employees, Labor Management Relations.

Dated: January 13, 1992.

**Bernard E. DeLury,**

*Director, FMCS.*

Accordingly, part 1425, is amended as follows:

## PART 1425—MEDIATION ASSISTANCE IN THE FEDERAL SERVICE

1. The authority citation for 29 CFR part 1425 is revised to read as follows:

**Authority:** 5 U.S.C. 581(8); 7119, 7134.

2. Section 1425.2 is revised to read as follows:

**§ 1425.2 Notice to the Service of agreement negotiations.**

(a) In order that the Service may provide assistance to the parties, the party initiating negotiations shall file a notice with FMCS Notice Processing Unit, 2100 K Street, NW., Washington, DC 20426, at least 30 days prior to the expiration or modification date of an existing agreement, or 30 days prior to the reopener date of an existing agreement. In the case of an initial agreement the notice shall be filed within 30 days after commencing negotiations.

(b) Parties engaging in any mid-term or impact and/or implementation bargaining are encouraged to send a request to FMCS if assistance is desired. Such a request may be sent by either party or may be submitted jointly. In regard to such requests, a brief listing of the issues is suggested. Such listing should be general in nature, e.g., smoking policies or Alternative Work Schedules (AWS).

(c) Parties requesting grievance mediation must send a request signed by both the union and the agency involved. Receipt of such request does not commit FMCS to provide its services. FMCS has the discretion to determine whether or not to perform grievance mediation, as such service may not be appropriate in all cases.

(d) The guidelines for FMCS grievance mediation are:

(1) The parties shall submit a joint request, signed by both parties requesting FMCS assistance. The parties agree that grievance mediation is a supplement to, and not a substitute for, the steps of the contractual grievance procedure.

(2) The grievant is entitled to be present at the grievance mediation conference.

(3) Any time limits in the parties labor agreement must be waived to permit the grievance to proceed to arbitration should mediation be unsuccessful.

(4) Proceedings before the mediator will be informal and rules of evidence do not apply. No record, stenographic or tape recordings of the meetings will be made. The mediators notes are confidential and content shall not be revealed.

(5) The mediator shall conduct the mediation conference utilizing all of the customary techniques associated with mediation including the use of separate caucuses.

(6) The mediator has no authority to compel resolution of the grievance.

(7) In the event that no settlement is reached during the mediation conference, the mediator may provide the parties either in separate or joint session with an oral advisory opinion.

(8) If either party does not accept an advisory opinion, the matter may then proceed to arbitration in the manner

form provided in their collective bargaining agreement. Such arbitration hearings will be held as if the grievance mediation effort had not taken place. Nothing said or done by the parties or the mediator during the grievance mediation session can be used during arbitration proceedings.

(9) When the parties choose the FMCS grievance mediation procedure, they have agreed to abide by these guidelines established by FMCS, and it is understood that the parties and the grievant shall hold FMCS and the mediator appointed by the Service to conduct the mediation conference harmless of any claim of damages arising from the mediation process.

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FMCS FORM F-53
REVISED 5-92

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FMCS FORM F-53
REVISED 5-92

Form Approved
OMB No. 3076-0005
Exp. May 31, 1994

# FEDERAL SECTOR LABOR RELATIONS
# NOTICE TO FEDERAL MEDIATION AND CONCILIATION SERVICE

MAIL TO:
NOTICE PROCESSING UNIT
**FEDERAL MEDIATION AND CONCILIATION SERVICE**
2100 K STREET N.W.
WASHINGTON D.C. 20427

***THIS NOTICE IS IN REGARD TO: (MARK "X")***

(1) ☐ AN INITIAL CONTRACT (INCLUDE FLRA CERTIFICATION NUMBER) #_____
☐ A CONTRACT REOPENER REOPENER DATE ____/____/____
☐ THE EXPIRATION OF AN EXISTING AGREEMENT. EXPIRATION DATE: ____/____/____

(2) ☐ ***OTHER REQUESTS FOR THE ASSISTANCE OF FMCS IN BARGAINING*** ***(MARK "X")***
SPECIFY TYPE OF ISSUE(S)

(3) ISSUE(S): ☐ ***REQUEST FOR GRIEVANCE MEDIATION (SEE ITEM # 10)*** ***(MARK "X")***

(4) NAME OF FEDERAL AGENCY | NAME OF SUBDIVISION OR COMPONENT, IF ANY
STREET ADDRESS OF AGENCY | CITY | STATE | ZIP
AGENCY OFFICIAL TO BE CONTACTED | AREA CODE & PHONE NUMBER

(5) NAME OF NATIONAL UNION OR PARENT BODY | NAME AND / OR LOCAL NUMBER
STREET ADDRESS | CITY | STATE | ZIP
UNION OFFICIAL TO BE CONTACTED | AREA CODE & PHONE NUMBER

***LOCATION OF NEGOTIATIONS OR WHERE MEDIATION WILL BE HELD***
(6) STREET ADDRESS | CITY | STATE | ZIP

(7) APPROX. # OF EMPLOYEES IN BARGAINING UNIT(S) >> | | IN ESTABLISHMENT >> | |

(8) THIS NOTICE OR REQUEST IS FILED ON BEHALF OF (MARK "X") ☐ UNION ☐ AGENCY

(9) NAME AND TITLE OF OFFICIAL(S) SUBMITTING THIS NOTICE OR REQUEST | AREA CODE & PHONE NUMBER
STREET ADDRESS | CITY | STATE | ZIP

***FOR GRIEVANCE MEDIATION, THE SIGNATURES OF BOTH PARTIES ARE REQUIRED:****

(10) SIGNATURE (AGENCY) | DATE | SIGNATURE (UNION) | DATE

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For Instructions, see back.

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## Instructions

### Complete this form, please follow these instructions.

In item # 1. Check the block and give the date if this is for an existing agreement or reopener. The FLRA Certification number should be provided if available. If not known, please leave this item blank. Absence of this number will not impede processing of the Form.

In item # 2. If other assistance in bargaining is requested please specify: e.g; impact and implementation bargaining (I&I) and/or mid-term bargaining and provide a brief listing of issues, e.g. Smoking, Alternative Work Schedules (AWS), ground rules, office moves, or if desired, add attached list. This is only if such issues are known at time of filing.

In item #3 Please specify the issues to be considered for grievance mediation. Please refer to FMCS guidelines for processing these request. **Please make certain that both parties sign this request!**

In item #4. List the name of the agency, as follows: The Department, and the subdivision or component. For example: U.S. Dept. of Labor, BLS, or U. S. Dept. of Army, Aberdeen Proving Ground, or Illinois National Guard, Springfield Chapter. If an independent agency is involved, list the agency, e.g. Federal Deposit Insurance Corp. (FDIC) and any subdivision or component, if appropriate.

In item #5. List the name of the union and its subdivision or component as follows: e.g. Federal Employees Union, Local 23 or Government Workers Union, Western Joint Council.

In item # 6. Provide the area where the negotiation or mediation will most likely take place, with zip code, e.g., Washington, D.C. 20427. The zip code is important because our cases are routed by computer through zip code, and mediators are assigned on that basis.

In item # 7. Only the *approximate* number of employees in the bargaining unit and establishment are requested. The establishment is the entity referred to in item 4 as name of subdivision or component, if any.

In item # 8. The filing need only be sent by one party unless it is a request for grievance mediation. (See item 9.)

In item # 9. Please give the title of the official, phone number, address, and zip code.

In item #10. Both labor and management signatures are required for grievance mediation requests.

### NOTICE

SEND ORIGINAL TO F.M.C.S.
SEND ONE COPY TO OPPOSITE PARTY
RETAIN ONE COPY FOR PARTY FILING NOTICE

[FR Doc. 92-15592 Filed 7-8-92; 8:45 am]
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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 100**

**[CGD1 92-012]**

## 52nd Annual National Sweepstakes Regatta, Red Bank, NJ

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The 52nd Annual National Sweepstakes Regatta is a powerboat race held on the Navesink River in Red Bank, New Jersey. This regulation temporarily amends the date of the event and is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the race. The purpose of this regulation is to provide for the safety of life and property on navigable waters during the event.

**EFFECTIVE DATES:** This regulation is effective from 8 am to 6 pm on July 18–19, 1992.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (junior grade) Eric G. Westerberg, Chief Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8310.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The drafters of this notice are LTJG E.G. Westerberg, project officer, Chief, Boating Safety Affairs Branch, First Coast Guard District and LCDR J. Astley, project attorney, First Coast Guard District Legal Office.

### Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. This temporary rule contains only a change of date from the permanent regulation. Insufficient time existed for the publication of an NPRM because questions regarding the exact location of the race course and date of the event were not resolved until May 29, 1992 due to concerns over interference with aids to navigation. The event is of such local popularity that delay or cancellation to provide for an NPRM would be against the public interest. Publishing an NPRM and delaying its effective date would also be contrary to public interest since immediate action is needed to respond to any potential hazards to the maritime public.

### Background and Purpose

The circumstances requiring this regulation result from the desire to protect the boating public from possible dangers and hazards associated with high speed powerboat racing. A portion of the Navesink River will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that portion of the Navesink River in Red Bank, NJ between the NJ Route 35 Bridge and a line running across the Navesink River connecting Guyon and Lewis Points. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the race course area and establish spectator anchorages for what is expected to be a large spectator fleet.

### Regulatory Evaluation

This rule constitutes a temporary revision of the permanent regulations governing the running of the National Sweepstakes Regatta published in § 100.103 by changing the date of the race. The public is aware of the terms and conditions of this annual event. Due to infrequent commercial traffic on the applicable portion of the Navesink River, these regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Vessels will have sufficient advance notice to adjust their schedules around this event and traffic may be allowed to transit the regulated area at the discretion of the Patrol Commander.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons cited in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that they will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

### Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion determination is available in the docket for inspection or copying where indicated under "ADDRESSES".

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

### Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is temporarily amended as follows:

**PART 100—[AMENDED]**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.103(b), is temporarily revised to read as follows:

**§ 100.103 National Sweepstakes Regatta, Red Bank, NJ.**

* * * * *

*(b) Effective Period.* This regulation is effective between the hours of 8 am and 6 pm, July 18–19, 1992.

* * * * *

Dated: June 29, 1992.

**J.D. Sipes,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 92–15964 Filed 7–8–92; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 117**

**[CGD1 91-141]**

## Drawbridge Operation Regulations; Charles River, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final Rule.

**SUMMARY:** At the request of the Metropolitan District Commission

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(MDC), the Coast Guard has changed the regulations in § 117.591, paragraph (e), governing the Craigie Bridge over the Charles River at mile 1.0 between Boston and Cambridge, Massachusetts. The final rule establishes periods when advance notice for an opening is required and changes the days when the draw need not open during the morning and evening rush hours from Monday through Saturday to Monday through Friday. Additionally, the regulations for the Charles River have been changed to remove obsolete regulatory provisions, correct inconsistencies, and reflect physical changes that have occurred to the waterway.

**EFFECTIVE DATE:** This rule is effective on August 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The drafters of this notice are John McDonald, project officer, and Lieutenant Commander John Astley, project attorney.

**Regulatory History**

On December 24, 1991, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations, Charles River, in the **Federal Register** (56 FR 66609). The Coast Guard received seven letters commenting on the proposal. A public hearing was not requested and one was not held.

**Background and Purpose**

The Metropolitan District Commission (MDC), requested a change to the regulations for the Craigie Bridge, which presently opens on signal except during the morning and evening rush hours from 6:15 a.m. thru 9:10 a.m. and from 3:15 p.m. thru 6:30 p.m., respectively, excluding Sundays and holidays. The MDC and AMTRACK bridges have never observed the above closed periods on Saturdays and have requested that the regulation be changed to reflect the Monday through Friday closed periods which have been the actual operating policy. The MDC also has requested that commercial and recreational vessels be required to give 24 hours advance notice for bridge openings from December 1 to March 31. This request was made because of the limited number of openings during the winter months, and to relieve the bridge owner of the burden of having personnel constantly available to open the draw. Additionally, the present drawbridge regulations for the Charles River do not adequately reflect changed that have occurred since various portions of the regulations were instituted.

**Discussion of Comments and Changes**

Seven letters were received regarding the proposed rule. All seven letters objected to the Saturday closed periods during the morning and evening rush hours but all seven were in favor of all the other proposed changes to the regulations. The mariners, the MDC and AMTRACK were not aware that the existing regulation allowed for closed periods on Saturdays. The MDC and AMTRACK have requested that the Saturday closed periods be removed from the final rule; therefore, the closed periods for the morning and evening rush hours have been changed to Monday through Friday, except holidays.

Section 117.591, paragraph (a)(1), which gives the requirements for sound signals for bridge openings as two prolonged blasts followed by two short blasts, has been changed to comply with the sound signals required for an opening, as stated in § 117.15, which is one prolonged blast followed by one short blast. This change will eliminate this discrepancy.

Paragraph (a)(3), which refers to the level of the tide at the Charlestown Navy Yard, is being removed. The relocation and construction of the MDC Charles River Lock and Dam, at mile 0.5, makes the Charles River non-tidal in the area where these bridges are located.

Paragraph (f), which gives the operating hours for the Lechemere Canal Bridge, is being removed because the Lechemere Canal Bridge was replaced with a fixed bridge in 1986.

Paragraph (g), which gives the operating hours for the Broad Canal Bridges, and paragraph (h), which states that the draws of the Broad Canal Bridges need not open for the passage of vessels, contradict each other. Therefore, paragraph (g) will be removed. Paragraph (h) will be listed as new paragraph (f) in the revised regulation.

**Regulatory Evaluation**

This rule is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rulemaking to be so minimal that a Regulatory Evaluation is unnecessary. This opinion is based on the fact that the final rule will not prevent mariners from transiting the Craigie Bridge but will simply require advance notice for openings during the winter months.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard expects the impact to be minimal on all entities because the final rule will not prevent mariners from transiting the Craigie Bridge but will simply require advance notice for openings during the winter months. Because it expects the impact to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this final rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES**".

**List of Subjects**

*33 CFR Part 117*

Bridges.

**Regulations**

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 117, as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.591 is revised as follows:

**§ 117.591 Charles River and its tributaries.**

(a) The following requirements apply to all bridges across the Charles River and it's tributaries:

(1) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn, or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed ten minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraph (b) through (f) of this section, the draws shall open on signal.

(b) The draw of the Charlestown Bridge, mile 0.4 at Boston, need not be opened for the passage of vessels.

(c) The draw of the Massachusetts Bay Transportation Authority (MBTA/Amtrak Bridge, mile 0.8, at Boston, shall open on signal; except that from 6:15 a.m. to 9:10 a.m. and 4:15 p.m. to 6:30 p.m., Monday through Friday, except holidays, the draw need not be opened for the passage of vessels, except as stated in paragraph (a)(1) of this section.

(d) The draw of the Massachusetts Bay Transportation Authority (East Cambridge Viaduct) railroad Bridge, mile 1.0 at Boston, need not be opened for the passage of vessels. However, the operating machinery of the draw shall be maintained in an operable condition.

(e) The draw of the Metropolitan District Commission (Craigie) Bridge, mile 1.0 at Boston, shall operate as follows:

(1) Open on signal; except that from 6:15 a.m. to 9:10 a.m. and 3:15 p.m. to 6:30 p.m., Monday through Friday, except holidays, the draw need not open for the passage of vessels, except as stated in paragraph (a)(1) of this section.

(2) From December 1 to March 31, the draw shall open on signal after a 24 hour advance notice is given.

(f) The draws of the bridges across Broad Canal, mile 0.0, need not open for the passage of vessels. However, the draws shall be returned to operable condition within one year after notification by the District Commander to do so.

3. Appendix A to part 117 is amended to add the entries for the Charles River under the State of Massachusetts between the listing for the Annisquam River and the Chelsea River, to read as follows:

**Appendix A to Part 117—Drawbridges Equipped with Radiotelephones**

| Waterway | Mile | Location | Bridge name and owner | Call sign | Calling channel | Working channel |
|---|---|---|---|---|---|---|
| **Massachusetts** | | | | | | |
| Charles River | 0.8 | Charlestown | Charles River Dam, MDC | WHV 969 | 16 | 13 |
| | 1.0 | Boston | Craigie, MDC | WHV 969 | 16 | 13 |

Dated: June 29, 1992.

**J.D. Sipes,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 92–15962 Filed 7–8–92; 8:45 am]

BILLING CODE 4910–14–M

**33 CFR Part 165**

**[CGD1 91–109]**

**Safety Zone; Boston Inner Harbor, Boston, MA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a permanent safety zone around the U.S.S. *Constitution*, with the size of the zone varying depending upon prevailing conditions. This zone is needed to safeguard *Constitution* as an historic national maritime treasure and to protect other vessels and persons viewing *Constitution* waterside from the risk of collision, damage or personal injury due both to its limited maneuverability when underway and to the limited maneuvering room available in the vicinity of its berth. Implementation of this safety zone will enhance safe navigation in Boston Harbor by defining permanent operational parameters for public viewing of *Constitution* when it is underway or moored.

**EFFECTIVE DATE:** This regulation becomes effective August 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** LCDR S. Garrity, Marine Safety Office Boston, (617) 223–3000.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The principal persons involved in drafting this document are LCDR S. Garrity, Project Officer, Marine Safety Office Boston, and LCDR J. Astley, Project Counsel, First Coast Guard District Legal Office.

**Regulatory History**

On January 10, 1992, the Coast Guard published a notice of rulemaking entitled, "Safety Zone; Boston Inner Harbor, Boston, MA" in the **Federal Register** (57 FR 1141). The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held.

**Background and Purpose**

The country's oldest seagoing vessel, the U.S.S. *Constitution* is a treasured national monument. To protect the vessel, the Captain of the Port (COTP) Boston has routinely established a temporary moving safety zone around *Constitution* whenever underway in Boston Harbor.

*Constitution's* July Fourth Turnaround Cruise, the focal point of Boston's Harborfest celebration, is an annual event in Boston Harbor. At 10 a.m. on July Fourth, *Constitution* departs berth at Pier 1, Charlestown Navy Yard,

sometimes joined by other parade vessels, and proceeds outbound in the Boston Main Channel, Boston Inner Harbor. Once beyond Castle Island, *Constitution* and accompanying parade vessels turn and proceed inbound. At noon, when abeam Fort Independence, Castle Island, the *Constitution* fires a twenty-one gun salute honoring our nation's birthday. Following the salute, the U.S.S. *Constitution* and accompanying vessels return to their respective berths and moor by 2 p.m.

Experience has demonstrated that this annual event attracts large crowds of spectator vessels and creates significant congestion in Boston Harbor. The limited maneuverability of *Constitution* and other participating vessels while underway for this event poses a hazard for spectator vessels in the area, precipitating the need for a safety zone. A moving zone around the U.S.S. *Constitution* and other associated parade vessels during the event minimizes the chances of collision with other vessels by eliminating crossing or overtaking situations and helps to provide sufficient maneuvering room for participating vessels. It also minimizes disruption to other vessel traffic, as operators can schedule vessel movements before or after *Constitution's* transit.

In addition to this annual event, *Constitution* occasionally gets underway in Boston Harbor for special events. Like *Constitution's* July Fourth Turnaround Cruise, these events are well publicized and attract many spectator vessels, creating the similar need for a safety zone.

Accordingly, the COTP Boston is establishing a permanent moving safety zone for three hundred years in all directions around the U.S.S. *Constitution* and around each accompanying parade vessel whenever such vessels are underway in Boston Harbor.

Scheduled movements of the U.S.S. *Constitution* and the names and berthing locations of accompanying parade vessels will be published in the Local Notice to Mariners and in a Safety Marine Information Broadcast. During scheduled events, other marine traffic may not enter the moving safety zone without authorization from the COTP Boston.

While establishment of a moving safety zone around the *Constitution* when underway is a familiar practice in Boston Harbor, the COTP Boston, upon request, and after consultation with the Commanding Officer of the *Constitution*, agrees that additional action is necessary to protect the U.S.S. *Constitution* and the viewing public when the ship is moored. Numerous incidents have occurred where small pleasure craft and, on occasion, commercial tour boats have hazarded *Constitution* and themselves by almost colliding with the ship or becoming entangled in the rigging. Similarly, incidents involving lobster boats and the deployment of lobster traps have also occurred, threatening the safety of the vessel.

The Navy maintains records of such incidents and has begun recently to report them to the Coast Guard. A rise in the number of these incidents appears to be related to increases in the number of dinner and tour boats, and recreational vessel traffic operating in Boston Harbor. Vessel congestion in the vicinity of the Navy Yard becomes problematic during peak spectator periods. The most illustrative example of such activity occurs when many vessels gather near *Constitution* for evening colors. As vessels jockey for prime viewing locations, sometimes without regard for personal safety, they have closely endangered the U.S.S. *Constitution* and themselves by becoming fouled in the ship's rigging.

Lobster boats and lobstermen laying traps in the vicinity of *Constitution* have also created safety hazards. In November, 1991, an incident involving a lobster boat occurred in the waters near *Constitution*. Lobster traps and attending lines fouled the props of the arriving H.M.S. *Gloucester* as it was maneuvering toward its berth just ahead of *Constitution* at Pier 1, Charleston Navy Yard. The incident resulted in a near collision between *Constitution* and *Gloucester* and demonstrated the vulnerability of *Constitution* in its present berthing location.

To address these problems, the COTP Boston is establishing a permanent safety zone in the waters between Hoosac Pier and Pier 1, Charlestown Navy Yard. The zone is necessary to ensure the safety of the *Constitution*, spectator craft gathering in the vicinity of the Navy Yard, and vessels mooring in proximity to *Constitution*. This regulation will help to prevent injury to the many waterside visitors who come to see *Constitution* when moored and will help to prevent damage to vessels and land structures in its immediate vicinity.

The provision of a permanent 50 yard safety zone around *Constitution* when *Constitution* is moored at a location other than Pier 1, Charlestown Navy Yard, provides an equivalent level of protection on those rare occasions when the ship is moored at a site other than Pier 1, Charleston Navy Yard.

**Discussion of Comments and Changes**

No written comments were received during the comment period. Accordingly, the text of these regulations appears as it did in the notice of proposed rulemaking.

**Regulatory Evaluation**

This regulation is considered to be non-major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard received no written comments relating to this section, and as noted above, the regulatory text remains unchanged. As stated in the notice of proposed rulemaking, these regulations provide for public access to waterside viewing of *Constitution* for recreational and commercial tour vessels. Denying access to fishermen in the small area of water between Hoosac Pier and Pier 1, Charlestown Navy Yard does not adversely affect their operations since the rest of Boston Harbor is available to them for locating an alternate site. The theory and practice of establishing a safety zone to protect *Constitution* and accompanying parade vessels underway in Boston Harbor have been in effect for many years. The establishment of a safety zone around *Constitution* when moored is consistent with the purpose of promoting safety while at the same time allowing reasonable levels of public waterside access to the vessel.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered the economic impact of these regulations on small entities. The Coast Guard received no written comments to indicate that this rulemaking would have a significant economic impact on a substantial number of small entities. Accordingly, the regulatory text of the final rule has not changed. These regulations only slightly modify the procedure for public waterside viewing of *Constitution*, and small tour boat companies operating in Boston Harbor are provided the same business opportunity as before in conducting sightseeing tours of *Constitution*. Similarly, lobstermen are provided limitless suitable alternative sites in Boston Harbor to conduct their operations. Regardless of whether *Constitution* is underway or moored, no adverse economic impact will result from this rulemaking. Therefore, the Coast Guard certifies under 5 U.S.C.

605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

**Federalism**

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. No written comments relating to this section were received, and the regulatory text remains unchanged.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.C of Commandant Instruction M16475.1B, the rule is categorically excluded from further environmental documentation. In fact, implementation of this rulemaking should help to preserve a national historic landmark and to protect the environment, reducing the risk of collision or other accidents. The Coast Guard received no written comments relating to this section. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Latest research and record keeping, Security measures, Waterways.

**Regulation**

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations is amended as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.111 is added to read as follows:

**§ 165.111 Safety Zone: Boston Harbor, Boston, Massachusetts.**

(a) The following areas are established as safety zones during the conditions specified:

(1) Around the U.S.S. *Constitution* or any accompanying parade vessels when *Constitution* is under way—300 yards in all directions in the waters around the U.S.S. *Constitution* and each parade vessel accompanying *Constitution* whenever the U.S.S. *Constitution* is underway in Boston Harbor from the time such vessels depart their respective berths until the time they complete their transit and are safely moored.

(2) Whenever *Constitution* is moored at Pier 1, Charlestown Navy Yard—the waters between Hoosac Pier and Pier 1, Charlestown Navy Yard, from the imaginary line connecting the outer easternmost point protruding into Boston Harbor from Hoosac Pier to the outer westernmost point protruding into Boston Harbor from Pier 1, Charlestown Navy Yard, extending inbound along the face of both piers to the landside points where both piers end.

(3) Around the U.S.S. *Constitution*—fifty yards in all directions in the waters around *Constitution* when the vessel is moored at any Boston berthing location other than Pier 1, Charlestown Navy Yard.

(b) The general regulations governing safety zones as contained in 33 CFR 165.23 apply.

Dated: June 26, 1992.

**W.H. Boland, Jr,**

*Captain, Coat Guard, Captain of the Port, Boston, Massachusetts.*

[FR Doc. 92–15963 Filed 7–8–92; 8:45 am]

BILLING CODE 4910-14-M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**45 CFR Parts 201, 204, 205, 232, 233, 301, and 1355**

**RIN: 0970–AA69**

**Aid to Families With Dependent Children; Related AFDC Amendments of the Family Support Act of 1988**

**AGENCY:** Administration For Children And Families, HHS.

**ACTION:** Final rules.

**SUMMARY:** These final rules implement five sections of the Family Support Act of 1988 (Pub. L. 100–485) that impact on the administration of the Aid to Families With Dependent Children (AFDC) program. They are:

(1) Section 401, which requires all States to provide benefits to families eligible for AFDC due to the unemployment of a parent who is the principal earner;

(2) Section 402, which increases the amount of the standard work expense disregard to $90; increases the limit on the dependent care disregard to $175 ($200 for children under two); changes the order of the earned income disregards so that the dependent care disregard is applied last; and adds a disregard for earned income tax credit payments;

(3) Section 403, which permits States the option to require an individual under age 18 who has never married and has a dependent child in his or her care (or who is eligible for AFDC as a pregnant woman) to reside in the residence of a parent, legal guardian, or other adult relative, or in an adult-supervised supportive living arrangement such as a foster home or maternity home in order to receive AFDC;

(4) Section 601, which authorizes the government of American Samoa to operate programs under title IV of the Social Security Act; and

(5) Section 604, which provides that State agencies are responsible for assuring that benefits and services available under titles IV–A, IV–D, and IV–F are furnished in an integrated manner and further provides that the State agency shall ensure that all AFDC applicants and recipients are encouraged, assisted, and required to cooperate in the establishment of paternity and the enforcement of child support obligations.

The final rules also implement three sections of the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), Public Law 101–508, which make certain clarifying or technical changes to various amendments made by the Family Support Act. They are:

(1) Section 5061, which repeals the penalty language that rendered the entire family ineligible for the Aid to Families With Dependent Children-Unemployed Parent Program (AFDC–UP) if the principal earner failed to participate in the JOBS program or, if exempt because of remoteness, failed to register with the public employment office in the State;

(2) Section 5062, which allows participation in WIN and CWEP prior to October 1990 to count toward the "quarter of work" requirement for purposes of AFDC–UP eligibility; and

(3) Section 11115, which excludes EITC payments from consideration as income when determining a family's eligibility under the 185 percent gross income limitation, excludes EITC payments from consideration as a resource in the month of receipt and the following month, and permits States to waive any overpayments that occurred because receipt of an EITC payment during the period January 1 through December 31, 1990, caused a family to be ineligible under the 185 percent gross income limitation.

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**EFFECTIVE DATE:** July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mack A. Storrs, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–9289.

**SUPPLEMENTARY INFORMATION:**

**Timing of Regulation**

On August 22, 1990, we published a Notice of Proposed Rulemaking in the **Federal Register** relating to changes required by the Family Support Act of 1988. (See 55 FR 34294–34305)

**Discussion of Statutory Provisions**

The Family Support Act of 1988, Public Law 100–485, revises the AFDC program to promote self-sufficiency by placing greater emphasis on work, child support, and family benefits. A major provision of the Family Support Act amends title IV of the Social Security Act (hereinafter "the Act") to add a new Part F, the Job Opportunities and Basic Skills Training (JOBS) Program. The purpose of JOBS is to assist needy families with children to obtain the education, training and employment needed to avoid long-term welfare dependence. Final regulations to implement JOBS were published separately on October 13, 1989 (54 FR 42146 (1989)).

Additionally, the Family Support Act makes several amendments to title IV, part A of the Act, Aid to Families With Dependent Children. A major amendment is the requirement that all States implement an AFDC–UP program to provide AFDC on the basis of a child's dependency being due to the unemployment of the child's parent who is the principal earner, although under certain circumstances, a State may time-limit cash assistance under the program.

These final rules implement five sections of the Family Support Act, and three sections of the Omnibus Budget Reconciliation Act of 1990 which include technical changes to certain amendments made by the Family Support Act. The following is a summary of the changes implemented by the regulations.

*Mandatory Coverage of Children Deprived Due to the Unemployment of a Parent*

Section 401 of the Family Support Act amended section 402(a) of the Social Security Act by adding a new section 402(a)(41). The new section requires States to provide AFDC to children who are under 18 (or at State option under 19 and in school) and deprived of parental support or care by reason of the unemployment of the parent who is the principal earner. Section 401 was effective October 1, 1990, for all States other than Puerto Rico, American Samoa, Guam, and the Virgin Islands, where it is effective October 1, 1992. Section 401 further provides that States beginning the AFDC–UP program may elect a time limitation for cash assistance under which the State may deny cash assistance if the family received AFDC–UP cash assistance in six of the preceding twelve months. States electing the time-limited option must provide a program of education, training, and employment services throughout the year and continue Medicaid to family members during the months cash assistance is not paid. States operating an AFDC–UP program on September 26, 1988, must continue to operate the program without a time limitation.

*Increased Limit on Dependent Care Disregard*

Section 402(a) of the Family Support Act amended section 402(a)(8)(A)(iii) of the Social Security Act by increasing the limit on the dependent care disregard from $160 to $175 for children age two or above and for incapacitated adults, and to $200 for children under age two. In addition, the order of the earned income disregards is changed so that the dependent care disregard is applied last. This provision was effective October 1, 1989.

*Increased Standard Work Expense Disregard*

Section 402(b) of the Family Support Act amended section 402(a)(8)(A)(ii) of the Social Security Act by increasing the amount of the standard work expense disregard from $75 to $90. This provision was effective October 1, 1989.

**Earned Income Tax Credit Disregard**

Section 402(c)(1) of the Family Support Act amended section 402(a)(8)(A) of the Social Security Act by adding a new clause (viii) which provides that earned income tax credit (EITC) payments shall be disregarded. This disregard applies to any advance EITC payment made to a family by an employer and any EITC payment made as a refund of Federal income taxes. This provision was effective October 1, 1989. Action Transmittal No. FSA–AT–89–54 (November 22, 1989), as clarified by Action Transmittal No. FSA–AT–90–3 (March 3, 1990), advised States that any advance EITC payment made to a family, and any EITC payment made as a refund of Federal income taxes must be disregarded for AFDC purposes, except that they must be counted as income when determining a family's eligibility under the 185 percent gross income limitation at § 233.20(a)(3)(xiii).

Section 402(c)(2) of the Family Support Act repealed section 402(d) of the Act, which required States to consider EITC payments as earned income.

*Households Headed by Minor Parents*

Section 403 of the Family Support Act amended section 402(a) of the Social Security Act by adding section 40 (a)(43). Section 402(a)(43) provides that States are permitted, under certain situations, to require as a condition of eligibility that an individual under age 18, who has never married and has a dependent child in his or her care, live at the residence of a parent, legal guardian, other adult relative, or in an adult-supervised supportive living arrangement such as a foster home or maternity home. This provision was effective January 1, 1990.

*Authorization for American Samoa to Participate in the AFDC Program*

Section 601 of the Family Support Act authorized American Samoa to have an AFDC program. This provision was effective October 1, 1988.

*Responsibilities of the State*

Section 604 of the Family Support Act amended section 402(a) of the Social Security Act by adding section 402(a)(44), which provides that the State agency is responsible for assuring that the benefits and services available under titles IV–A, IV–D, and IV–F are furnished in an integrated manner. This section further provides that the State agency shall ensure that all AFDC applicants and recipients are encouraged, assisted, and required to cooperate in the establishment of paternity and the enforcement of child support obligations, and that they are notified of the paternity establishment and child support services for which they may be eligible. These provisions were effective July 1, 1989.

*Legislative Clarifications Subsequent to Publication of the Proposed Regulations*

Subsequent to publication of the proposed regulations, Congress passed and the President signed Public Law 101–508, The Omnibus Budget Reconciliation Act of 1990. The provisions of OBRA–90 discussed below include clarifying and technical amendments to certain sections of the Social Security Act which were previously amended by the Family Support Act of 1988.

*Technical Amendments to the AFDC–UP Program*

Corrections Regarding Penalty for Failure to Participate in the JOBS Program

Section 5061 of OBRA–90 amended section 407(b)(1)(B) of the Social Security Act to provide that if the principal earner or spouse fails without good cause to participate or be available for participation in the JOBS program as required or, if exempt because of remoteness (or because the State does not have a JOBS program in which he or she can effectively participate), fails to register with the public employment office in the State, the needs of that individual will not be taken into account in determining the amount of the family's AFDC benefits. If the spouse is not participating or fails to register with the public employment office, the needs of the spouse will also not be taken into account. The penalty does not apply to benefits on behalf of any child in the family.

This amendment clarifies the Social Security Act by repealing the penalty language in section 407 that rendered the entire family ineligible for AFDC–UP if the principal earner failed to participate in the JOBS program or, if exempt because of remoteness, failed to register with the public employment office in the State.

Section 5061 is effective with respect to any State IV–A agency as of the date that such agency had an approved JOBS plan under § 250.20.

Correction Regarding AFDC–UP Eligibility Requirements

Section 5062 of OBRA–90 amended section 407(d)(1) of the Social Security Act to allow participation in WIN and CWEP prior to October 1990 to count toward the "quarter of work" requirement for purposes of AFDC–UP eligibility.

Prior to October 1, 1990, participation in WIN and CWEP was included in the definition of "quarter of work" for purposes of establishing eligibility for AFDC–UP. Section 401 of the Family Support Act of 1988 amended the definition of "quarter of work" to include participation in JOBS, but deleted references to WIN and CWEP. The result was that beginning October 1, 1990, prior participation in WIN and CWEP would not have counted toward the "quarter of work" requirement for purposes of establishing eligibility for AFDC–UP.

*Technical Amendments to the Earned Income Tax Credit (EITC) Disregards*

These amendments were effective January 1, 1991.

Clarification Regarding the Resources Disregard

Section 11115(a)(1) of OBRA–90 amended section 402(a)(7)(B) of the Social Security Act by adding a new clause (iv) to exclude the EITC from consideration as a resource for the month of receipt and the following month.

Clarification Regarding the Income Disregard

Section 11115(a)(2) of OBRA–90 amended section 402(a)(18) of the Social Security Act to exclude the EITC from consideration as income when determining a family's eligibility under the 185 percent gross income limitation.

The Family Support Act changes related to the EITC did not amend section 402 (a)(18) of the Social Security Act which denies AFDC eligibility to a family whose total income exceeds 185 percent of the State's need standard for a family of the same composition. Consequently, the EITC disregard provided under the Family Support Act did not apply to this determination.

*Waiver of Overpayments*

Section 11115(d) of OBRA–90 provides that for purposes of section 402(a)(18) of the Social Security Act, a State may waive any overpayment of aid that resulted from the receipt by a family of an EITC payment during the period beginning on January 1, 1990, and ending on December 31, 1990. An EITC payment is any refund of Federal income taxes made to a family by reason of section 32 of the Internal Revenue Code of 1986, and any advance payment made to a family by an employer under section 3507 of such Code.

*Justification for Dispensing With a Notice of Proposed Rulemaking Regarding Changes Made to the Regulations to Implement the Omnibus Budget Reconciliation Act of 1990*

Sections 5061, 5062 and 11115 of OBRA–90 are technical and the regulations implementing these sections do not involve administrative discretion but simply implement statutory requirements. Accordingly, we believe that, under 5 U.S.C. 553(b)(3)(B), good cause exists for waiver of a notice of proposed rulemaking on the grounds that it is not necessary.

**Discussion of Regulatory Provisions and Responses to Comments**

We received 37 letters of public comment regarding the proposed regulations. The respondents include 30 State agencies, one Federal agency, one Indian tribe, three advocacy organizations, and two legal assistance organizations.

Following is a discussion of the regulatory provisions, the comments and our responses, and the rationale for any changes from the proposed regulations. Further, we have made changes to correct minor omissions and typographical errors as a result of our review of the proposed regulations.

*Mandatory Coverage of Children Deprived Due to the Unemployment of a Parent (§ 233.101 of the Final Regulations)*

Prior to the Family Support Act, under the AFDC–UP program States could provide assistance to needy children deprived of parental support by reason of the unemployment of a parent. At the time the Family Support Act was enacted in October 1988, 27 States, the District of Columbia, and Guam had established such programs. Section 401 of the Family Support Act requires that all States (other than Guam, Puerto Rico, the Virgin Islands and American Samoa) include AFDC–UP in their AFDC programs by October 1, 1990. Guam, Puerto Rico, the Virgin Islands and American Samoa must do so by October 1, 1992. This expansion of the program, together with the concomitant work requirements encompassed in the new JOBS program, promotes a fundamental welfare objective to maintain family stability and move recipients from dependence to self-sufficiency.

Section 401 of the Family Support Act provides that a State:

- May design its AFDC–UP program to reflect the State's individual needs and to emphasize education, training, and employment services.
- May count certain educational or vocational activities for the purpose of fulfilling the "quarters of work" requirement of the AFDC–UP program.
- May require at least one parent to participate in JOBS program activities and may make the payment of cash assistance after the performance of assigned activities.
- May establish a time limit for providing cash assistance under the AFDC–UP program, but may not deny assistance unless the family has received aid in at least 6 of the preceding 12 months. (Applies only to

States not operating AFDC–UP on September 28, 1988).

• May not time limit AFDC–UP cash assistance unless it provides a program of education, training and employment services to help the unemployed parents prepare for and obtain employment.

• Must provide Medicaid to family members who do not receive cash assistance due to the time limitation.

We are implementing these provisions by adding a new § 233.101. Section 233.101 is identical to current regulations at § 233.100, as they were amended by the final JOBS rules, except that it additionally implements the provisions of section 401 of the Family Support Act. We have also revised the regulatory language affected by the technical provisions of OBRA–90 as previously discussed.

*JOBS and the AFDC–UP Program*

Title II of the Family Support Act also added a new part F to title IV of the Social Security Act to require States to establish a program of education, training and employment services which is geared toward labor market demands and which provides individuals with marketable skills. This program, the Job Opportunities and Basic Skills Training (JOBS) Program, applies to AFDC families.

Section 201 of the Family Support Act provides that States:

• Must require at least one parent in each AFDC–UP family to participate for a minimum of 16 hours per week in a work supplementation program, a community work experience or other work experience program, on-the-job training, or an approved State work program.

• May substitute participation in an educational activity for the required work activity for parents under age 25 who have not completed high school.

• May require both parents in an AFDC–UP family to participate in a JOBS program if the State guarantees child care. However, if the State determines that only one parent should participate in a JOBS program, child care is not required to be provided.

• Must meet a Federal standard, ranging from 40 percent of the AFDC–UP caseload in FY 1994 to 75 percent in FY 1997, for the number of AFDC–UP recipients required to participate for a minimum of 16 hours per week in a work activity.

• May receive a waiver from this standard if the State operates a JOBS program in conformity with the statute and has made a good faith effort to comply, but has been unable to do so.

Final regulations to implement these requirements were published in the Federal Register on October 13, 1989 (54 FR 42146 (1989)).

*Mandatory Expansion of AFDC–UP Coverage*

Under prior law, States had the option of providing assistance to two-parent families when the parent who is the principal earner was unemployed. Section 401(a) of the Family Support Act added new paragraph (a)(41) to section 402 of the Social Security Act and amended section 407(b) of the Act to require all States to have an AFDC–UP program. We are adding a new § 233.101 to implement this new provision.

*Comment:* We received comments from seven State agencies and one organization on § 233.101(a)(5) regarding sanctions for nonparticipation in JOBS activities. Several commenters strongly suggested reconciling conflicting policies for the application of sanctions under sections 402 and 407 of the Social Security Act. Section 402 applies the sanctions for nonparticipation in JOBS to the principal earner (PE) and sometimes the spouse, whereas section 407 denies AFDC to all members of the AFDC family (including a dependent child) as long as the child's parent who is the PE is not participating in JOBS.

One commenter suggested that we seek a technical amendment to the Act in order to reconcile the different policies for sanctioning an individual as set forth in section 402 versus sanctioning the entire family under section 407.

*Response:* The Family Support Act of 1988 amended section 402(a)(19) of the Social Security Act to provide that if the principal earner fails without good cause to participate in the JOBS program, the needs of that individual will not be taken into account in determining the amount of the family's AFDC payment. If the spouse is not participating, the needs of the spouse will also not be taken into account. Payments would continue to all other eligible family members. When this new sanction language was added to section 402, the language contained in section 407 of the Social Security Act, which denied aid to the entire family for the failure of the principal earner to participate in JOBS (or to register with the State employment office if exempt due to remoteness), was not changed.

Section 5061 of OBRA–90 eliminated this inconsistency by removing the sanction language in section 407 of the Social Security Act that provides for the denial of aid to the entire family and replacing it with language which makes the sanctions consistent under both sections 402 and 407 of the Social Security Act.

Accordingly, we are modifying the proposed regulations at § 233.101(a)(5)(i) to reflect these statutory amendments.

*Comment:* One State agency objected to participation in a JOBS component as a requirement under AFDC–UP because State resources would be severely strained.

*Response:* We have no authority under the statute to eliminate this requirement. The AFDC–UP participation requirement is set forth in sections 403(1)(4)(A)(i) and 407(b)(1)(B) of the Social Security Act. We must also reiterate that flexibility in implementing the AFDC-UP participation requirement was permitted under the final JOBS rules published on October 13, 1989. In response to similar comments made at that time, we said that States with approved JOBS plans have the option to either phase-in the unemployed parent 16-hour work requirement provisions for participation rate purposes or serve the unemployed parents under the regular JOBS program requirements (see 54 FR 42170).

We further encouraged States to implement programs which incorporated the AFDC–UP requirements as early as possible in order to provide consistency of services and thereby assist these unemployed parents in achieving self-sufficiency (see 54 FR 42171).

*Comment:* Another commenter suggested treating refusal of employment or training as a JOBS participation issue rather than as a sanction under AFDC–UP.

*Response:* For applicants, it is neither. Section 407(b)(1)(A)(ii) of the Act clearly requires, as an initial condition of eligibility for AFDC–UP, that a principal earner must *not*, without good cause, have refused a bona fide offer of employment or training for employment within the 30-day period prior to the receipt of assistance. Thus, a failure to meet this condition means that the family is not eligible for assistance. However, once payment is issued, the principal earner's refusal of a bona fide offer of employment or training under JOBS becomes a JOBS participation issue that must be handled in accordance with §§ 250.34, 250.35 and 250.36.

*Comment:* We received comments from one organization and four States regarding implementation of the AFDC–UP program under proposed § 233.101(a). Four commenters requested that we allow a "grace period" for phase-in of AFDC–UP. One commenter further recommended that the final rules implementing AFDC–UP be consistent with the final rules implementing the JOBS program and therefore allow

States to phase-in the AFDC-UP program.

*Response:* Section 401 of the Family Support Act provides that States (other than Puerto Rico, American Samoa, Guam, and the Virgin Islands) must have an AFDC–UP program effective October 1, 1990. Puerto Rico, American Samoa, Guam, and the Virgin Islands have until October 1, 1992. Accordingly, the AFDC–UP program must be implemented on a statewide basis by the appropriate effective dates. Although States had the option of establishing a JOBS program as early as July 1, 1989, section 482(a)(1)(D)(i) of the Social Security Act, as added by the Family Support Act of 1988, specifies that States have until October 1, 1992, to provide a JOBS program statewide. However, the portion of the Family Support Act governing the AFDC–UP program does not permit such latitude.

*Comment:* One commenter recommended that States not be mandated to evaluate all current AFDC families for AFDC–UP eligibility, but rather be required to explain the provisions of the AFDC–UP component to them and evaluate eligibility only if assistance is requested.

*Response:* We disagree with the comment that State agencies should only be required to evaluate those current recipient households who specifically request AFDC–UP assistance. Permitting such a practice would contravene the standard filing unit rule as set forth in section 402(a)(38) of the Social Security Act and the implementing Federal regulations at § 206.10(a)(1)(vii). That rule requires that in order for a family to be eligible for AFDC, an application must include the parent(s) of a dependent child and certain siblings who are dependent children. Of particular importance is the need to accurately determine household composition, income, and whether any adult household members are parents as defined at § 233.90(a)(1).

*Comment:* The commenters also expressed concern that the regulations do not address the impact of AFDC–UP on the standard filing unit rule at section 402(a)(38) of the Social Security Act.

*Response:* With regard to implementation of the standard filing unit rule, State agencies must determine the need of and the amount of benefits for a dependent child and his parent together if they are living in the same home. "Parent", as defined in the Federal regulations at § 233.90(a)(1), only includes a natural or adoptive parent or a stepparent in States with laws of general applicability. Stepparents in States without such laws of general applicability or putative parents do not meet the definition of "parent".

*Comment:* Several State agencies requested a 6 to 12 month quality control (QC) moratorium on implementation efforts.

*Response:* States were notified on September 21, 1990, by FSA Action Transmittal No. FSA–AT–90–24 (QC-QCM 2/88–26) that we had instituted modified quality control procedures for a period of one year (i.e., October 1, 1990, to September 30, 1991). This moratorium applies only to those States that did not have an AFDC–UP program in effect on September 26, 1988, and has been instituted to afford States relief from atypical QC error rates in the AFDC program that may be associated with implementing the provision.

Modified procedures will apply to States with an AFDC–UP program in effect on September 26, 1988, only if the State elects the pay after performance provision for AFDC–UP recipients who are JOBS participants. For those States that amend their AFDC–UP plans to elect this option, modified procedures will only apply to this aspect of their program.

*Comment:* One State agency had concerns regarding the 100-hour rule as provided in proposed § 233.101(a)(1). According to the proposed regulation, States must define an unemployed parent in relation to the number of hours the parent is working. The State feels that since the employment determination is to be based on the expected circumstances of the principal earner, the final rule should specify that no overpayment will be assessed if the expected hours of employment are exceeded. The rationale is that the family was eligible and the regulatory requirements were met when the payment was issued.

*Response:* The "100-hour rule" is not a new regulation. By authority of the Social Security Amendments of 1967 (Pub. L. 90–248), section 407(b)(1)(A)(i) of the Social Security Act gives the Secretary broad discretion to prescribe standards for determining when a principal earner has not been employed during the 30-day period prior to the receipt of AFDC–UP benefits. The "100-hour rule" is one application of the Secretary's discretion. This provision has been included in the AFDC–UP definition of employment at 45 CFR 233.100(a)(1) since 1971.

With regard to the suggestion that overpayments be waived when the expected monthly hours of employment exceed 100 hours, the current regulations at § 233.100(a)(1)(ii) and our final regulations at § 233.101(a)(1)(ii) permit eligibility to continue if the 100 hours are exceeded because the work is intermittent and the excess is of a temporary nature. Accordingly, we do not believe that additional flexibility in this area is warranted.

*Comment:* Section 233.101(a)(3)(i) states that the principal earner must have been unemployed for at least 30 days prior to the receipt of AFDC–UP. One State agency commented that it was unclear whether this means 30 days prior to the receipt of aid, or that the principal earner must have been unemployed for 30 days prior to each month for which payment would be made. If the latter is true, the State recommended that the wording be changed to "30 days prior to the month of eligibility."

*Response:* The commenter is concerned about the provision at proposed § 233.101(a)(3)(i) which requires that the principal earner must have been unemployed for 30 days. We interpret this provision as one period of time, rather than ongoing, as measured from the first day of the period that is covered by the first assistance check.

*Comment:* A commenter suggested that since the AFDC "voluntary quit" provision under § 233.101(a)(3)(ii) only covers 30 days prior to the application date and the Food Stamp program covers 60 days for the same period, conformity on the time period would be desirable.

*Response:* The commenter is concerned about the AFDC provision which makes a family ineligible if the principal earner has voluntarily refused an offer of a job or training for a job in the 30 days prior to receipt of benefits. Whenever it is legally permissible and practicable, we have attempted to make certain AFDC program requirements more consistent with those of the Food Stamp program. However, since the requirement in § 233.101(a)(3)(ii) is set forth in section 407(b)(1)(A)(ii) of the Social Security Act, we are not able to conform the time periods.

In this connection, we note that the recently enacted amendments to the Food Stamp Act of 1977 contain a provision for an Advisory Committee on Welfare Simplification and Coordination (see section 1778 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624)). Members would include individuals experienced in administering the Food Stamp program, cash and medical assistance programs for low-income families under the Social Security Act, and programs providing housing assistance to needy families, as well as individuals who are recipients and individuals representing recipient

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advocacy organizations associated with such programs, and would be appointed by the Secretary of Agriculture after consultation with the Secretary of Health and Human Services and the Secretary of Housing and Urban Development. One of the major purposes of the committee is to recommend common or simplified programs and policies (including recommendations for changes in law, regulations, and administrative practice and for policies that do not currently exist in welfare programs) that would substantially reduce difficulties in applying for and obtaining benefits from more than one program and significantly increase the ability of administrators of such programs to efficiently provide timely and appropriate assistance to those eligible for more than one type of assistance. The commenter's suggestion will be considered in the context of this committee.

*Comment:* One commenter suggested that the IV–A agency or, at State option, the State Employment Service (SES) make the determination that a job offer was bona fide or that refusal was with good cause. Allowing the IV–A agency to do so would simplify the administration of the program and might reduce unnecessary delays in providing assistance. Additionally, the IV–A agency might have information relevant to the determination not available to the SES.

*Response:* Pursuant to section 402(a)(3) of the Social Security Act, the title IV–A single State agency is to administer the State's title IV–A State plan or supervise administration if the counties administer the plan. Accordingly, we have revised the final regulations to make such a determination a IV–A agency responsibility. However, the agency is still free to accept SES recommendations regarding bona fide job offers and good cause refusals of job offers.

*Comment:* Section 233.101 (a)(3)(iii) requires the principal earner to meet the 6-of-13 quarters-of-work requirement within the specified period prior to the application for assistance. One State expressed the wish to be allowed some latitude in implementation of this regulation on the basis that families who applied and were eligible for medical aid at an earlier time should automatically be deemed eligible to receive AFDC–UP assistance as of October 1, 1990. The State felt that this would better serve the most needy families by allowing them the opportunity to participate in the JOBS program.

A similar comment was received from an Indian Tribe which expressed strong opposition to the proposed rules of the Family Support Act of 1988, specifically opposing the proposed "connection with the work force" eligibility criteria. The Tribe stated that because of economic distress and high unemployment rates, the Reservations do not have the economic resources to provide employment opportunities for AFDC–UP parents that would provide them with qualifying quarters of coverage. Additionally, many AFDC–UP applicants would be unable to qualify by participation in training programs because of geographical isolation, lack of transportation and inadequate dependent care.

*Response:* The statute clearly delineates the requirements for AFDC–UP eligibility such that the principal earner must have 6 or more quarters of work in any 13-calendar-quarter period ending within one year prior to the application for such aid and defines what constitutes quarters of work. (See the following section entitled Participation in Training and Education Programs as a Quarter of Work which discusses the options available to States for counting education and training as a quarter of work.)

*Time Limitation on AFDC–UP Cash Assistance*

Congress provided that States which did not have an AFDC–UP program in operation on September 26, 1988, may elect to limit the period of time that they provide cash assistance. Section 401(b) of the Family Support Act adds a new section 407(b)(2)(B) to the Social Security Act that allows a time limitation "to the extent determined appropriate by the State for the operation of its program under this section." We are implementing this amendment by adding a new § 233.101(b)(3).

However, section 407(b)(2)(B)(ii)(II) of the Social Security Act provides that a State may not limit cash assistance unless the family has received assistance in at least six of the preceding twelve months. Since families making initial application for AFDC–UP cash assistance on or after October 1, 1990, will not have met this condition, these States will have to provide AFDC–UP cash assistance to such eligible AFDC–UP applicant families for the month of application and the next five consecutive months. Thereafter, the State may choose to deny assistance, as provided in this section, until such month as the family has once again not received assistance in six of the preceding twelve months.

The following example illustrates this provision. A family applied for AFDC–UP for the first time on October 1, 1990, in a State which elected to limit assistance to the maximum extent allowed under this provision. If the State begins assistance payments with the date of application, then this family, if eligible, must receive AFDC–UP from October 1, 1990, through March 31, 1991. The State may deny assistance beginning April 1 because the family had received six months of assistance (October 1, 1990, through March 31, 1991) of the preceding twelve months (April 1, 1990, through March 31, 1991). If the family is still eligible, the State must resume cash assistance, if requested, under the AFDC–UP program no later than November 1, 1991, the first month that the family had not received assistance in six of the preceding twelve months.

This rolling six-month window may create an administrative burden for families that have had intermittent assistance totaling six months over the past twelve months. However, we were unable to design an alternative to this approach that would not conflict with the statutory requirements when a State decides to have a time-limited program.

The Act does not specify that the family must meet all AFDC eligibility requirements during months denied assistance due to the time limitation in order to resume assistance. Thus, in the above example, if the family had excess income during the months of June and July, the State must count these two months as time limitation months and must resume assistance in November, provided that the family meets all the eligibility requirements at that time and files an application for assistance. However, in order to resume assistance, the family must file a new application, and the "connection with the work force" test, discussed below, would therefore apply. See section 407(b)(1)(A)(iii)(I) and section 407(b)(2)(B)(ii)(III) of the Act.

Section 407(b)(2)(B)(ii)(II) specifies that the time limitation is based solely on assistance provided by reason of the unemployment of the parent. Thus, months in which the family received assistance due to the death, continued absence, or incapacity of a parent do not count in the time limitation formula. To illustrate, if the family in the preceding example received assistance by reason of the incapacity of a parent for the months of August and September 1991, these two months will not count in any subsequent month for the purpose of determining the time limitation for AFDC–UP. As in the above example, the State must resume assistance under the AFDC–UP program no later than November 1991.



The State agency needs to ensure that AFDC–UP recipients are informed that their eligibility for AFDC–UP cash assistance is time-limited. For this reason, we are adding certain notification requirements at § 233.101(b)(3) for AFDC–UP applicants and recipients. First, we are requiring that the State notify an AFDC–UP family at the time of application that cash assistance will terminate due to a time limitation and that any family with a child who is (or becomes) deprived due to the death, continued absence, or incapacity of a parent may receive cash assistance under the regular AFDC program during the period that the family does not receive AFDC–UP cash assistance. In addition, we are requiring States to notify the applicant family of the availability of programs of education, training and employment services, as discussed in the section headed Program of Education, Training, and Employment, which prepare the family to be self-supporting.

Second, we are requiring the State to notify an AFDC–UP recipient family of the earliest month that they could receive AFDC–UP again. This notification may be part of the notice of proposed action which is required prior to termination pursuant to § 205.10(a)(4). To receive assistance again, the family must make a new application.

The Family Support Act also added a new section 407(b)(2)(B)(ii)(III) to the Social Security Act, which provides that, for purposes of meeting the "connection with the work force" test, i.e., that the family have six or more quarters of work in any 13-calendar quarter period ending within one year prior to the application for AFDC–UP, States must consider otherwise eligible families as AFDC–UP recipients for any months that they do not receive assistance solely by reason of the time limitation. The effect of this provision is that a parent who met the "connection with the work force" test at the time of his or her original application for AFDC–UP will be deemed to meet this test again for a reapplication filed during the month that the time limitation ends or in the month following the month that the time limitation ends. An exception to this deeming rule occurs when the family does not meet one of the eligibility requirements during the period it was not receiving AFDC–UP (e.g., the family received excess income for one or more months during that period). In such situations, the deeming rule cannot be applied at reapplication. The actual quarters of work (as defined in section 407(d)) must be computed to determine whether the test has been met. We are adding a new § 233.101(b)(3)(viii) to implement this provision.

The Social Security Act does not contain a similar provision for a family which qualifies for AFDC–UP under the alternative to the "connection with the work force" test provided by section 407(b)(1)(A)(iii)(II), i.e., where the principal earner received, or was qualified to receive, unemployment compensation within one year prior to the application for AFDC–UP. As a consequence, for families eligible for time-limited AFDC–UP based initially on eligibility for unemployment compensation, a subsequent period of AFDC–UP eligibility must be based on subsequent receipt or qualification for unemployment compensation, or based on quarters of work (which includes (among other things) JOBS participation or, at State option, certain other education and training).

Many families meet both tests at the time of application for AFDC–UP, and authorization is often based on whichever test is documented first. Such families are actually eligible for AFDC–UP under both tests, and, therefore, would meet the "connection with the work force" test under section 407(b)(2)(B)(ii)(III). Accordingly, States should review the case files of families which were originally authorized to receive AFDC–UP assistance because the principal earner met the requirements of section 407(b)(1)(A)(iii)(II) to determine whether he or she also had the necessary quarters to meet the "connection with the work force" test in section 407(b)(1)(A)(ii)(III). If so, the family will be deemed to meet section 407(b)(1)(A)(ii)(III) upon reapplication.

*Comment:* There was considerable interest in the issue of States extending time-limited AFDC–UP on an individual basis. Several State agencies expressed interest in being able to do so when the principal earner is satisfactorily participating in an education or training activity, but may not be scheduled to complete the activity until after the time-limited assistance is terminated. They stressed that such exceptions would allow assistance to be extended during the time it took for the principal earner to complete education/training programs, would be based on statewide criteria reflected in the State's IV–A plan, and could mean the difference between unsubsidized employment and dependence on public assistance.

*Response:* We recognize the States' concerns with respect to allowing a principal earner to complete an activity which is not scheduled to terminate when his or her time-limited assistance will conclude. However, it is a question of equity of treatment between those fortunate enough to have a training program approved and those who have not, either through timing or accessibility. Under these circumstances, allowing cash benefits to continue to some individuals would result in inequitable treatment under 45 CFR 233.10(a)(1). Therefore, cash benefits may not be extended past the time limit; however, if the principal earner is participating in a JOBS component activity at the time that the time limit expires, the principal earner may complete that activity.

*Comment:* Two of the commenting organizations expressed concern that the regulations do not require States to determine whether a family about to lose AFDC–UP due to the time limitation has any other basis for continuing eligibility for assistance before termination of benefits, despite the fact that a significant number of families return to regular AFDC rolls when AFDC–UP terminates. They recommended that the final rules require the State agency to review each AFDC–UP case that is to be terminated to determine whether there is an alternative basis for continuing AFDC before the time limit termination.

*Response:* The preamble to the proposed regulation emphasizes that AFDC–UP applicants need to be informed at the time of application that their eligibility for cash assistance is time-limited (see 55 FR 34296, column 3). In the final rules, we are requiring that States notify AFDC–UP families at the time of application that cash assistance will terminate due to a time limitation and that any family with a child who is (or becomes) deprived due to the death, continued absence, or incapacity of a parent may receive cash assistance under the regular AFDC program during the period that the family does not receive AFDC–UP cash assistance. Secondly, we are requiring that States notify an AFDC–UP recipient family of the earliest month that they could receive AFDC–UP again.

We feel that this is a significant requirement for States to meet. We will monitor implementation to determine the appropriateness of further regulation in this area.

*Comment:* Another issue raised by a number of organizations and State agencies is the method used to determine the six months of time-limited

assistance. The question has arisen as to whether the month of application, for which the family may receive a reduced, pro-rata payment, counts as the first month when determining the counted months. If the pro-rated month is counted, technically the family will receive less than six full months of assistance. The recommendation has been made to allow States the option of not counting the pro-rated month, thereby permitting all families to receive six full months of assistance.

*Response:* We do not believe that it is necessary to regulate the manner in which States apply the six-month rule. We believe that States should institute procedures to ensure six full months of coverage in the manner best suited to their administrative needs. One acceptable method in a State that pays from the date of application is to pro-rate the first month, issue a full monthly payment for the next five months, and pro-rate the seventh month. Under this method, the sum of the two pro-rated payments will equal one month.

*Comment:* One State recommended that when a woman receives AFDC based on being pregnant, those months of assistance not be counted in determining the time limits on cash assistance if subsequent to the birth of the child the family applies for AFDC–UP. In such a situation, the parents have not been in receipt of JOBS services to assist them in re-entering the labor force, and the father and the unborn child cannot be assisted until the child's birth. They recommended that since the *family* has not been assisted, the months the pregnant woman receives benefits should *not* be counted toward the six-month limitation.

*Response:* We agree. A pregnant woman receives benefits under section 406(b) of the Social Security Act, not under the AFDC–UP program which is set forth in section 407 of the Act. Therefore, the months that a pregnant woman receives AFDC due to pregnancy are not counted in determining the benefits for the family after the baby's birth.

*Comment:* One State agency asked whether it is necessary to amend the State AFDC plan or the JOBS plan to provide information on the State's implementation of a time-limited AFDC–UP program if the State has already implemented JOBS statewide and the plan already includes information on the AFDC–UP program.

*Response:* Yes, it is necessary to amend the State AFDC plan even if the State has implemented JOBS and provided information on the AFDC–UP program such as State implementation of certain JOBS participation requirements for unemployed parents. However, information on State implementation of time-limited AFDC–UP programs and other related AFDC amendments of the Family Support Act is to be provided on preprints under the State AFDC plan. State plan preprint pages and instructions for implementation of the related AFDC amendments in title IV of the Family Support Act, are provided in FSA Action Transmittal No. 90–15, dated July 18, 1990.

*Comment:* Two State agencies commented that the proposed requirement that States "provide that an unemployed principal earner must indicate his or her desire to participate in JOBS" creates unnecessary paperwork and recommended that the requirement be eliminated.

*Response:* We agree. Section 250.40(a) requires that an applicant must be informed at the time of application of the availability of JOBS program activities and the supportive services for which they are eligible. Additionally, § 250.40(c)(1) provides that after the State IV–A agency gives an AFDC applicant the aforementioned information, the agency must notify the individual, in writing, within one month of the determination of eligibility, of the opportunity to indicate his or her desire to participate in the program and provide a clear description of how to enter the program. In light of these other requirements, we are deleting this provision from § 233.101(a)(6).

*Comment:* We received numerous comments from State agencies and advocacy organizations regarding the requirement for a family to reapply for benefits at the end of the "non-cash period" of time-limited AFDC–UP. All were opposed, citing that the requirement for an application may impose significant administrative burdens and hurdles for needy families. Many commenters were concerned that the requirement to file a new application each time a family becomes eligible for time-limited assistance will have negative effects as artificially imposed, unnecessary gaps occur in their benefit coverage.

Many commenters stated that families will be regularly reporting their circumstances for Food Stamps and Medicaid purposes and would clearly be eligible for renewed AFDC–UP. They pointed out that the proposed regulations provide that eligible families in time-limited States are considered to be "AFDC–UP recipients during any month that assistance is denied solely by reason of the time limitation"; therefore, it follows that a new application should not be required since current AFDC recipients are not required to file an application in order to continue to receive assistance.

Commenters observed that for Medicaid purposes, families are considered to be "deemed AFDC recipients" during periods of "suspended" benefits in order to keep them eligible for medical benefits. They also indicated problems regarding transitional benefits during non-payment months and difficulty for the principal earner in maintaining the "connection with the work force" requirement.

Most of the commenters recommended that States be given the flexibility to build into their State Plan the option to design their time-limited program to restore recipients automatically to payment status. They recommended using the monthly reporting form which could be annotated by the family at the expiration of the time period. They felt that this is consistent with the intent of the Family Support Act and would allow AFDC–UP families to access transitional benefits if they lose eligibility during the "Medicaid only" period.

*Response:* AFDC–UP recipients who receive benefits under a time-limited program are not considered recipients during the period that they are not receiving benefits except for connection with the work force requirement purposes. In addition, section 402(a)(42) requires that Medicaid be provided when the family is not receiving AFDC–UP due to the time limitation. Accordingly, the cases are closed when the time limit for receipt of cash assistance expires. When the period of non-receipt of cash assistance ends, a family is eligible for AFDC–UP if it then meets anew the eligibility requirements and requests aid. It is up to the State to determine the formality of the written application required under § 206.10(a)(1)(ii). For example, a State may choose to make this written application a brief signed statement by the applicant requesting that cash assistance be resumed and acknowledging that all previously reported conditions of eligibility and payment remain unchanged. In addition, a State may choose to design an application that allows the individual to simply update any changes in circumstances that occurred during the non-payment period. Moreover, since § 233.101(b)(3)(v) requires the State, prior to termination due to a time limitation, to notify an AFDC–UP recipient family of the earliest month that it may again receive AFDC–UP cash

assistance, few unnecessary gaps should occur in their benefit coverage.

With regard to the comment concerning the difficulty for the principal earner in maintaining the "connection with the work force" requirement during the non-payment months, we must point out that if the requirements of section 407(b)(2)(B)(ii)(III) of the Act are met, a principal earner is deemed to be receiving AFDC–UP during such non-payment months. This statutory provision should minimize the difficulty in maintaining a "connection with the work force."

*Comment:* One commenter stated that the proposed notice provisions under § 233.101(b)(3) (iv) and (v) are a constructive and appropriate exercise that will give families information necessary for them to plan and budget.

Another commenter pointed out that the requirement to notify a family of the earliest month they could potentially re-qualify for AFDC–UP, after benefits have been exhausted due to time limitation, would have a major impact on automation. They state that this requirement will force the automated system to project up to six months into the future using additional logic not currently contained in the system.

*Response:* We recognize that the notice provisions will place new demands on State systems. However, in consideration of the characteristically unstable and difficult circumstances surrounding AFDC families, we believe that the requirement that States develop a method of notifying these families of the next month of eligibility outweighs the disadvantage of State workload burden and supports the intent of the Family Support Act. In addition, we intend to monitor implementation of this requirement, and will propose changes to the regulation if warranted. These provisions are contained in § 233.101(b)(4) (vi) and (vii) of the final rules.

*Program of Education, Training, and Employment Services*

Section 401(b) of the Family Support Act also added a new section 407(b)(2)(B)(ii)(I), which requires States electing to time-limit assistance to provide education, training, and employment services to help parents in AFDC–UP families prepare for and obtain employment. It further provides that education, training and employment activities authorized under the JOBS program satisfy this requirement. States may also design their own programs for providing education, training, and employment services subject to the approval of the Secretary. We are adding a new § 233.101(b)(4)(iii) to implement this requirement.

A State that elects to time-limit AFDC–UP is required to submit a State IV–A plan amendment which identifies its program(s) for unemployed parents. If the State is offering a State-designed program other than the IV–F program throughout the State or if it is offering a State-designed, non-JOBS program in certain areas of the State, the plan must describe the activities the State is providing and where they are available. The activities for a State-designed, non-JOBS program must include: (1) Education and instruction for individuals who have not graduated from a secondary school or obtained an equivalent degree, (2) training whereby individuals acquire market-oriented skills necessary for self-support, and (3) employment services for placing individuals in jobs. The program must be available to families throughout the year. Also, participation in the program must be made available during periods when cash assistance is not provided due to the time limitation. Consistent with our policy for regular AFDC families, participation in the JOBS program or any State-designed, non-JOBS program is always subject to the approval of the IV–A agency.

Individuals participate in JOBS activities on either a mandatory or voluntary basis pursuant to regulations at §§ 250.30 and 250.31. States have the option to provide necessary supportive services for individuals participating in State-designed, non-JOBS education, training, and employment services programs for families subject to the AFDC–UP requirements. Federal financial participation is available, under sections 403 (k) and (l) of the Social Security Act, for the costs of such services provided to participants. The regulations at 45 CFR part 255 apply to such services. Consistent with the policy expressed at § 255.2, States may not require participation in a State-designed, non-JOBS program activity if there are unmet supportive services needs which prevent an individual from participating.

Under section 402 (g)(1)(A)(i)(II) of the Social Security Act, the States must guarantee child care during periods when cash assistance is provided and when cash assistance is not provided to an individual participating in a JOBS activity or in the education, training, and employment activities of a State-designed non-JOBS program for AFDC–UP purposes if the State approves the activities for the individual.

Approval criteria for supportive services for a State-designed, non-JOBS program must be specified in the State Supportive Services plan. While the option to provide supportive services for a State-designed, non-JOBS program is distinct from the option to provide supportive services for self-initiated education and training in non-JOBS areas, States may wish to use the same or similar criteria for approving such activities and the respective supportive services.

Section 233.101(b)(3) also requires that the State agency must notify each AFDC–UP family under a time limitation that a program of employment preparation is available.

In carrying out the requirements for employment preparation, Federal financial participation (FFP) is available only for programs established under the authority of the JOBS program. State-designed programs, though meeting the requirements of section 407(b)(2)(B)(ii)(I) of the Social Security Act to help families prepare for and obtain employment, area not eligible for FFP because they do not qualify for Federal matching under section 403(a) of the Social Security Act. Specifically, section 403(a)(3) provides that no payment shall be made under the State's title IV–A plan with respect to amounts expended in connection with the provision of any service described in section 2002(a) of the Social Security Act, other than those child care and supportive services authorized under section 402(g) of the Social Security Act. Since section 2002(a) specifically describes activities related to training and employment services, we conclude that State-designed programs meeting the requirements of section 407(b)(2)(B)(ii)(I) are not eligible for FFP.

States that do not time-limit AFDC–UP cash assistance may also provide programs to help families prepare for and obtain employment. Employment preparation programs established under the JOBS program are eligible for FFP, but, as explained above, State-designed programs of employment preparation operated outside the authority of the JOBS program are not eligible for FFP.

*Comment:* We received comments from four organizations and eight State agencies about assistance following termination of cash assistance due to a time limit. In the preamble to the Notice of Proposed Rulemaking (55 FR 34297, column 2), we said that families (receiving AFDC–UP) should "be permitted to participate during periods when they do not receive cash assistance due to the time limitation." Several commenters asked us to clarify the State's obligation in such situations.

*Response:* Each State is required to provide an AFDC–UP program throughout the year, regardless of

whether it has elected to time-limit its program. Further, section 402(a)(19)(B)(i)(II) of the Act permits individuals who would be recipients of AFDC if the State had not exercised the option to time-limit the program (under section 407(b)(2)(B)(i)) to participate in the JOBS program on a voluntary basis.

Thus, for example, an unemployed parent, who has lost eligibility for AFDC due to the time limit may volunteer to participate in a JOBS activity. He or she may enter a JOBS component, subject to approval of the State agency, during the period when cash assistance is not provided. Accordingly, if the unemployed parent is participating in a JOBS component activity at the point that the time-limit expires, such parent may complete that activity. In the same way, an unemployed parent may enter an appropriate activity provided through a State-designed, non-JOBS program when cash assistance is not provided. Further, if the unemployed parent is participating in a State-designed non-JOBS program at the point that the time limit expires, such parent may complete that activity.

Child care and supportive services for participation in an approved activity are available during the period of the non-availability of cash assistance as provided in the State's Supportive Services plan. For States that wish to provide a State-designed program, we will be adding a new preprint page to the Supportive Services plan to cover supportive services for State-designed programs. Federal financial participation is available for such child care and supportive services.

*Comment:* Several commenters asked if they should schedule education and training activities for unemployed parents that extend beyond the period of cash assistance.

*Response:* In determining the unemployed parent's responsibilities, the individual and the agency need to consider the time limit. As described in the preceding response, such individuals may complete an education or training activity that was initiated under the JOBS program prior to the expiration of the time limit. However, the parent may not be required to continue participating in the activity during periods when he or she is not receiving cash assistance due to the time limitation. Further, a parent who volunteers to enter or complete an activity after the expiration of the time limit may not be sanctioned for failure to participate.

*Comment:* Although the preamble to the proposed regulations stated that the program of education, training and employment must be provided throughout the year and not just during the months that the individual is not receiving AFDC benefits, one commenter pointed out that the regulations at § 233.101(a)(8) implied that the program only had to be available for individuals who had lost their eligibility for benefits.

*Response:* We agree that the regulatory language was not clear and have revised § 233.101(b)(3) to reflect the requirement specified at section 407(b)(2)(B)(ii)(I) of the Act, i.e., the program must be provided throughout the year.

In the proposed rules, there were provisions related to time-limited programs in both § 233.101(a) and § 233.101(b). In order to clarify which provisions are specifically addressed to time-limited programs, we have reorganized § 233.101 and have listed all of the time-limited provisions at § 233.101(b)(3).

*Comment:* One commenter asked for clarification of the State's obligation to provide a program of education, training and employment as described in the proposed rule at § 233.101(a)(8) (now § 233.101(b)(3)) in the context of the statewideness requirement for JOBS enunciated at § 250.11.

*Response:* The requirement to provide an approved program of education, training and employment services is mandated for States that choose to time-limit their AFDC–UP program. If a State provides a JOBS program which meets the definition of statewide as specified at § 250.11, the requirement to provide an approved program of education, training and employment services for unemployed parents is met.

Prior to October 1, 1992, a State operating an approved JOBS program, even one that does not meet the definition of statewide, also meets the requirement of having an approved program of education, training and employment services by making referrals to existing programs that together provide such services—e.g., programs such as those offered through the public employment offices of the State and the Job Training Partnership Act (JTPA) program. After October 1, 1992, a State may not operate less than a statewide program without an approved waiver from the Secretary. However, such a waiver does not relieve the State of the obligation to operate an approved program of education, training and employment services (as required by § 233.101(b)(3)) throughout the State including all non-JOBS areas. In non-JOBS areas, a State-designed program might include contracts and agreements for the provision of services or referrals to appropriate agencies for the services.

*Comment:* Two commenters felt that the language in the preamble to the notice of proposed rulemaking (55 FR 34296, column 1) regarding child care for two-parent families was inconsistent with the language provided in the preamble to the JOBS final rules (54 FR 42218, column 2). In the preamble to the notice of proposed rulemaking, it is stated that if the State determines that only one parent in a two-parent family is required to participate in JOBS, the State is not required to provide child care. In the preamble to the JOBS final rules, we provided an exception which would be allowed, on a case-by-case basis, in situations in which the family has provided the State information indicating that the "responsible" individual could not provide appropriate care.

*Response:* We agree that the language in the preamble to the notice of proposed rulemaking is inconsistent with the preamble to the final JOBS rules and retract it. The provisions of § 255.2 which guarantee child care do apply. If a State determines, on a case-by-case basis, that the "responsible" individual could not provide appropriate care, an exception could be allowed.

*Medicaid Eligibility*

The time limitation authorized in these regulations does not extend to medical assistance. Section 401(f) of the Family Support Act amended the Act by adding section 402(a)(42), which provides that a State must continue to provide Medicaid to all members of the AFDC–UP family, who will be called "qualified family members," during any months that they do not receive AFDC due solely to the time limitation. We are adding a new § 233.101(a)(6) to implement this requirement.

The Health Care Financing Administration is publishing separate regulations regarding Medicaid coverage for those families who do not receive AFDC–UP cash assistance because the State elected to time-limit its AFDC–UP program.

*Participation in Training and Education Programs as a Quarter of Work*

A family meets the "connection with the work force" test if the principal earner has six or more quarters of work in any 13 calendar quarter period ending within one year prior to application. Prior to the Family Support Act, section 407(d)(1) also provided that a "quarter of work" means a calendar quarter in which such individual received earned income of not less than $50 (or for which the individual would be credited with a quarter of coverage for Social Security

purposes) or in which an individual participated in the Community Work Experience Program (CWEP) or the Work Incentive Program (WIN).

Section 401(c)(4)(B) of the Family Support Act amended section 407(d)(1) by providing that participation in a JOBS program is credited as a quarter of work. In amending the definition of "quarter of work" to include JOBS participation, Congress deleted references to CWEP and WIN participation. Section 5062 of OBRA–90 restored such references. Thus, we have revised § 233.101(a)(3)(iv) as proposed to include such references.

Section 401(c)(1) of the Family Support Act also permits States to count participation in certain educational or vocational training activities during a quarter as a quarter of work for the purpose of meeting the "connection with the work force" test.

Specifically, section 401(c)(1) amended section 407(d)(1) of the Social Security Act to permit States to treat as a quarter of work any calendar quarter in which the principal earner:

- Attended an elementary or secondary school;
- Attended a vocational or technical training course; or
- Participated in an educational or training program under the JOB Training Partnership Act (JTPA).

In this connection, section 407(d)(1) of the Social Security Act limits application of these three types of activities to no more than four of the required six quarters. The remaining two quarters may be met only if the individual received (or had credited for Social Security purposes) earned income of not less than $50 or participated in WIN, CWEP, or the JOBS program under part F.

The Family Support Act also provides that the attendance in a school or training course must be "full-time," that the vocational or technical training course must be "designed to prepare the individual for gainful employment," and that the course must be approved by the Secretary of Health and Human Services.

In developing these final regulations, we considered whether to prescribe a Federal definition for "full-time" attendance and to issue rules prescribing the types of vocational and training courses which would qualify under this section. We decided that States should have maximum flexibility to define "full-time" attendance and prescribe rules governing training courses that are consistent with their own State laws and State Department of Education policies. This position is consistent with the Administration's objective to promote increased State and local government involvement in developing strategies to reduce welfare dependency.

Finally, section 407(d) of the Social Security Act permits a State to apply the provisions of section 407(d)(1)(B) on less than a statewide basis. A State that elects to apply these provisions on a less than statewide basis is required to so specify in its State plan.

A new § 233.101(a)(3)(iv) implements these provisions.

*Comment:* We received extensive comments regarding § 233.101(a)(3)(iv) which addresses participation in training and education programs as a quarter of work. Fifteen State agencies and three organizations all expressed strong opposition to the limitation that attendance in vocational or technical training cannot substitute for more than four of the six required quarters of work over an individual's lifetime. They pointed out that this requirement is absent from the Family Support Act and felt that it meets neither the intent of the Act nor that of the Congress. They stated that it places an impossible burden on States to retain and track such information over a recipient's lifetime and possibly, across State lines. They further observed that AFDC records are routinely destroyed three to four years after closure. All of the commenters urged removal of the lifetime limit.

*Response:* We concur with these comments and have removed the "lifetime" limitation from this final rule.

*Comment:* Several State agencies also objected to extending the four-quarter limitation to not only vocational and technical training, but also to elementary education, secondary education and JTPA.

*Response:* We are unable to revise the provision as it is a statutory requirement. The Family Support Act provided in section 407(b)(1)(A)(iii)(I) of the Social Security Act that "* * * no more than 4 of which may be quarters of work defined in subsection (d)(1)(B) * * *." The referenced subsection addresses not only vocational and technical training, but also specifically mentions elementary education, secondary education and JTPA.

*Comment:* A number of State agencies asked if the same four quarters of qualifying education or training that were used to satisfy the "quarters of work test" in the first application for AFDC–UP could again be used in any subsequent applications. It was also suggested that if such a practice is permitted, any future quarters of vocational or technical training would not be utilized.

*Response:* Section 407(b)(1)(A)(iii) requires that such parent must have "* * * 6 or more quarters of work * * * in any 13-calendar quarter period *ending within one year prior to the application for such aid* * * *" (emphasis added). This statutory provision clearly prescribes that in any application or reapplication situation, the principal earner will have to meet the 6 out of the 13 calendar quarter requirement. Accordingly, it may be possible for certain quarters of work to apply to more than one application for AFDC–UP.

*Comment:* Two State agencies recommended that the list of training programs which are creditable toward quarters of work be expanded to include CWEP and WIN.

*Response:* In amending the definition of "quarter of work" to include participation in JOBS, the Family Support Act of 1988 deleted the references to WIN and CWEP. Section 5062 of OBRA–90 reincorporated these references. We have revised § 233.101(a)(3)(iv) to include such references.

*State Flexibility in Structuring its AFDC–UP Program*

Section 401(b) of the Family Support Act added section 407(b)(2)(A) to the Act, which permits a State to design its AFDC–UP program to reflect the individual needs of the State and to emphasize education, training, and employment services for unemployed parents and their spouses eligible for AFDC–UP. Under this provision, a State may require the principal earner or both parents to participate in the JOBS program under title IV–F of the Act. Section 407(b)(2)(C) further provides that such participation may be up to 40 hours per week for each such parent subject to the existing limitations and conditions of the JOBS program. We are adding a new § 233.101(b)(1) to implement these provisions.

In addition, section 407(b)(2)(C)(ii) provides that a State may elect to provide assistance to participants only "after the performance of assigned program activities" under the JOBS program, but at regular intervals of no greater than one month.

To implement these provisions, § 233.101(b)(2) of the final rules authorizes a State to elect to withhold payment contingent upon performance of JOBS program activities. In this connection, the State is required to prescribe a set of criteria which defines goals or standards, such as a number of hours of attendance or completion of assigned study materials. The State is

also required to inform the recipient of the goals or standards and notify him or her that payment for a period will be withheld unless there is satisfactory completion of each assigned activity for that period.

Finally, the final rules require payments to be made at regular intervals of not more than one month. The option to require a parent to participate in the JOBS program and the option to provide assistance after the performance of assigned activities are available to States which currently operate an AFDC–UP program as well as to those now required to establish a program. (In Guam, Puerto Rico, the Virgin Islands, and American Samoa, this option is not available until October 1, 1992.)

*Comment:* Four State agencies and three organizations commented on the provision regarding State flexibility in structuring their AFDC–UP programs, specifically payment after performance. The central question appears to be whether failure to meet participation requirements under pay after performance would result in a sanction of the individual or loss of eligibility of benefits for the entire family. The majority of commenters posed this question and recommended that a family not be penalized for non-performance if good cause exists. They also feel that the regulation should provide that States may pay a full or partial grant if an individual has substantially or partially complied with all performance requirements. Two States, however, recommended that States be allowed the option to withhold the entire family's assistance payment until after the principal earner participates in JOBS activities, rather than withholding just the principal earner's portion. Another State asserted that the requirement to determine eligibility and calculate grants on a monthly basis will destroy their current bi-monthly payment after-performance process.

Commenters also recommended that final regulations clarify that § 250.36 (conciliation and fair hearing procedures under JOBS) applies in pay after performance situations and that families have a right to the aid-paid-pending rules until the hearing is resolved.

*Response:* We believe that under the statute, States have maximum flexibility in operating the payment after performance requirement. Three options are available with regard to the application of penalties and fair hearings for individuals who fail to satisfy their performance obligation.

The first option is to follow the JOBS program sanctions, conciliation and fair hearing requirements at §§ 250.34 and 250.36. Under this option, an individual who fails to fulfill the JOBS performance obligation will be sanctioned by not having his or her needs taken into account in determining the family's need for assistance and amount of payment. The sanction action must not occur until after the applicable conciliation and fair hearing requirements have been completed.

The second option recognizes that under the statute, States may view the payment after performance requirement as a "condition of payment" for either the individual or the entire assistance unit. This means that the State may "suspend" making the portion of the family's assistance payments attributable to the individual or the entire amount of the family's payments until the payment after performance obligation is met.

The third option permits States to impose a proportional reduction so that the family's payment (or the amount of the payment attributed to the individual) would be in direct proportion to the number of hours of participation. For example, if an individual only performs 20 of the required 40 hours, the State may reduce the amount of the family's assistance payment (or the individual's portion of the payment) by half since the individual only fulfilled half of the performance obligation.

Under the second and third options, States must develop good cause criteria for use in determining whether or not the assistance payment should be suspended or reduced. The requirement to formulate such criteria is reasonable given that events beyond the control of the individual (e.g., an accident or illness which incapacitates the individual) may prevent the performance requirement from being accomplished. The fair hearing rules to be applied under these options can either: (1) Adhere to the current timely and adequate notice and aid-paid-pending requirements at §§ 205.10(a)(4)(i) and 205.10(a)(6); or (2) only send an adequate notice to the individual not later than the date of action which informs him or her of the right to a fair hearing and the right to have assistance immediately reinstated retroactive to the date of action at the previous month's level pending the hearing decision if a request for a hearing and immediate reinstatement is made within 10 days after the date of the notice. Our rationale for permitting the request for a hearing and immediate reinstatement within 10 days of the action is that since the individual continues to be afforded the right to a hearing and to have assistance continue at the prior month's level, no harm is done.

States electing payment after performance will have to formulate procedures to transition individuals from receiving assistance at the beginning of a performance period to the end of the period. States may wish to consider either of these two transition alternatives. The first permits a State to issue one payment before the payment after performance obligation is completed. The following example is illustrative:

> The State normally pays on the 2nd of the month to cover a family's need for that calendar month. In January, a family is issued an assistance payment on the 2nd and informed on the 5th that the principal earner must begin payment after performance on February 1. The first payment under the monthly payment after performance obligation is made on March 2. This payment is based on performance during February. However, in order to ease the family's transition, the State issues a payment on February 2 to cover the family's need for February even though the performance obligation for that month has not been completed. The full March 2 payment is then contingent on the required performance for February being met. Accordingly, if the individual fails to perform during February and the State chooses not to pursue a JOBS sanction (see first option above), then the March 2 payment must be "suspended" or reduced (see second and third options discussed above) subject to the applicable fair hearing rules.

The second alternative, as explained in the example below, allows a State to delay payment until performance is actually completed.

> The State usually pays on the 1st of the month to cover a family's need for that calendar month. A family is issued a payment on March 1 and told that the principal earner must begin payment after performance on April 1. The first payment based on completion of the April performance obligation is due on May 1. No payment is issued during the month of April since the principal earner has not yet fulfilled the performance obligation. This option comports with section 407(b)(2)(c)(ii) which permits a State to issue payment "at regular intervals of no greater than one month but *after the performance of assigned program activities*" (emphasis added).

The principles of the two options also apply at the time an application for AFDC is approved. Regardless of the option selected, States must fully explain the pay after performance requirements to both applicants and recipients (e.g., the hours the principal earner is expected to "work" before receiving payment, the potential reduction of assistance due to nonperformance, hearing and

reinstatement rights, and advice on how to manage during the family's transition to a different payment date).

With reference to the comment concerning the bi-monthly payment after performance process, the Social Security Act clearly precludes States from implementing a process that pays an assistance unit at intervals greater than one month. Specifically, section 407(b)(2)(C)(ii) of the Act authorizes States to "provide for the payment of aid to families with dependent children *at regular intervals of no greater than one month* but after the performance of assigned program activities." (emphasis added).

**EFFECTIVE DATE:** Section 401(g) of the Family Support Act established October 1, 1990, as the effective date for all amendments with respect to the AFDC–UP program for all States (other than Guam, Puerto Rico, the Virgin Islands, and American Samoa). The effective date of these amendments in Guam, Puerto Rico, the Virgin Islands, and American Samoa is October 1, 1992.

States which did not operate an AFDC–UP program did not have to wait until October 1, 1990, to establish the program. However, before October 1, 1990, a State could not time-limit assistance, institute a payment after performance system, or count participation in an education or training activity in meeting the "connection with the work force" test. These provisions may not be implemented until October 1, 1992, in Guam, Puerto Rico, the Virgin Islands, or American Samoa.

The final regulations for the JOBS program include revisions in current regulations governing the AFDC–UP program, specifically, §§ 233.100(a)(5)(i), 233.100(a)(6), and 233.100(c)(2)(iii). Section 233.100 is suspended when § 233.101 becomes effective, i.e., the publication date in the **Federal Register** of the final rule (or October 1, 1992, for Guam, Puerto Rico, the Virgin Islands, and American Samoa.) It should be noted, that in situations where the applicable Family Support Act provisions that were effective as of October 1, 1990, conflict with § 233.100, which is in effect until the date these final rules are published, the relevant statutory provisions govern. Section 401(h) of the Family Support Act also provides that the amendments made by that section will terminate on September 30, 1998. Thus, beginning on October 1, 1998, the statutory provisions governing the AFDC–UP program will be the same as they were on September 30, 1990, and § 233.100 will again be in effect.

*Increased Limit on Dependent Care Disregard (§ 233.20(a)(11)(i) of the Final Regulations)*

The Family Support Act increased the limit on the dependent care disregard from $160 to $175 per dependent per month for children age two or older and for incapacitated adults, and to $200 for children under age two. Additionally, the order of the earned income disregards is changed so that the dependent care disregard is applied last.

We have revised the regulations at §§ 233.20(a)(11)(i)(C), 233.20(a)(11)(i)(D) and 233.20(a)(11)(ii)(B) to implement this amendment.

Under section 2301 of the Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, the Secretary was granted authority to specify an amount lower than the dependent care disregard limit for individuals who are employed part-time. This provision is implemented in the current regulations at § 233.20(a)(11)(i)(C). Under section 301 of the Family Support Act, States must guarantee child care for each family with a dependent child to the extent the State determines such care is necessary for an individual to accept employment or remain employed. A State may guarantee child care through the dependent care disregard or any other method it deems appropriate. We therefore proposed that for part-time employment and employment not continuing throughout the month, the full $175/$200 disregard limits may be applied, or the State agency may establish a procedure under which it determines and applies disregard limits less than $175/$200. This will allow maximum State flexibility in using the disregard as a method to guarantee child care for JOBS participants and other employed recipients.

We received comments on this provision from two State agencies and two advocacy organizations. The comments are discussed below:

*Comment:* Two commenters did not favor allowing States unrestricted discretion in setting the part-time disregard limits because they believe some States have set unreasonably low disregard levels under the current regulations. The commenters recommended that the final regulations allow a State to set disregard limits below $175/$200 for part-time employment only if the State's local market rate survey demonstrates that the actual cost of care at the 75th percentile is a level lower than $175/$200.

*Response:* We have decided to retain the State option as proposed. Linking the $175/$200 disregard limits in any way to the local market rate, as the commenters suggested, would establish a correlation that is not supported by the Social Security Act. The local market rate concept is specifically set forth in section 402(g)(1)(C)(ii) of the Act, which applies to reimbursing families with child care expenses, and operates only as a ceiling on the amount of Federal matching for such purposes (see also 45 CFR 255.4). Accordingly, the final regulation continues to allow States the flexibility to set disregard limits at levels they choose for individuals who are employed less than full-time throughout the month.

*Comment:* Two commenters recommended that we broaden the regulation at § 233.20(a)(11)(i)(D) to cover the costs necessary for the care of a child in the home who receives foster care or Supplemental Security Income when an AFDC recipient needs care for such children in order to accept or continue employment.

*Response:* There is no statutory authority for such a change. Section 402(a)(8)(A)(iii) expressly limits application of the disregard to dependent care costs for the care of a dependent child receiving AFDC and an incapacitated adult living in the same home as the dependent child.

*Increased Standard Work Expense Disregard (§ 233.20(a)(11)(i) of the Final Regulations)*

The Family Support Act increased the amount of the standard work expense disregard from $75 to $90 per month for each employed applicant and recipient.

We have revised the regulations at § 233.20(a)(11)(i)(B) to implement this provision.

We received comments on this provision from three State agencies. The comments are discussed below.

*Comment:* The commenters requested that we change the $75 to $90 in the stepparent deeming formula for ease of calculation and consistency in application of the disregards.

*Response:* We have no authority to change the stepparent deeming formula set out at section 402(a)(31) of the Social Security Act because the Family Support Act does not amend this provision.

*Earned Income Tax Credit Disregard (§ 233.20(a)(11)(viii) of the Final Regulations)*

The Family Support Act requires that earned income tax credit (EITC) payments in the form of advance payments or Federal income tax refunds will be disregarded and repealed the statutory provision that required States

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to consider EITC payments as earned income.

The Family Support Act does not specifically address whether EITC payments are disregarded only as income, or as income and resources. We proposed to disregard EITC payments as income in the determination of need and the amount of benefits, and to count EITC payments as resources if retained after the month of receipt. We also proposed to count EITC payments as income for purposes of determining whether a family meets the eligibility requirement of section 402(a)(18) of the Act—i.e., its monthly income may not exceed 185 percent of the State's standard of need. However, we have revised the regulations to reflect the clarifying amendments of OBRA–90 which were effective on January 1, 1991. Accordingly, the final regulations provide that EITC payments in the form of advance payments or income tax refunds are excluded from consideration as income for purposes of the 185 percent gross income limitation, as well as in the determination of need and the amount of benefits. In addition, EITC payments are excluded from consideration as a resource for the month in which the EITC is received and the following month. Further, at State option, overpayments may be waived when the overpayment occurred because receipt of an EITC payment by a family during the period January 1, 1990, to December 31, 1990, resulted in ineligibility under the 185 percent gross income limitation at § 233.20(a)(3)(xiii).

We are implementing these provisions by revising the regulations at §§ 233.20(a)(3)(iv)(E), 233.20(a)(3)(xiii), 233.20(a)(11)(i)(B), 233.20(a)(11)(i)(C), 233.20(a)(11)(i)(D), and 233.20(a)(11)(ii)(B), by removing § 233.20(a)(6)(ix), and by adding a new § 233.20(a)(11)(viii). In the proposed rules, the new § 233.20(a)(11)(viii) was inadvertently numbered § 233.20(a)(11)(vii).

We received comments on these provisions from 11 State agencies, two advocacy organizations, and one legal assistance organization. The comments are discussed below.

*Comment:* A State agency asked whether families who lose eligibility for AFDC due to receipt of an EITC payment are eligible for transitional child care and Medicaid benefits for families disqualified due to earned income.

*Response:* Loss of eligibility due to the EITC would not qualify a family for transitional child care or Medicaid benefits because EITC payments are no longer defined as earned income. As explained in the preamble to the notice of proposed rulemaking (55 FR 34299, column 2), the Family Support Act repealed the statutory provision that required States to count EITC payments as earned income. Specifically, section 402(c)(2)(A) of the Family Support Act repealed section 402(d) of the Social Security Act. Section 402(d) provided that EITC payments must be considered as earned income in the AFDC program. We are implementing this amendment by removing paragraph 233.20(a)(6)(ix) of the current regulations which provides that earned income will include the amount of any EITC payments. The final rules provide that EITC payments are excluded from consideration as income, and are also excluded from consideration as a resource for the month of receipt and the following month. Thus, receipt of EITC payments cannot affect AFDC eligibility unless a portion of the EITC is retained after the month following the month of receipt, and the amount so retained causes the family's resources to exceed the $1,000 resource limit (or a lower limit set by the State).

*Comment:* Fourteen commenters objected to the proposed regulations because they believe Congress intended to totally disregard EITC payments as income and resources.

*Response:* The Omnibus Budget Reconciliation Act of 1990 made technical amendments to the Act which clarify the intent of Congress regarding the EITC disregards. These amendments have been incorporated in the final rules.

*Households Headed by Minor Parents (§ 233.107 of the Final Regulations)*

Current law does not preclude a minor parent from applying for and receiving AFDC as a caretaker relative for his or her dependent child regardless of whether the minor parent lives with his or her parent or legal guardian or has established his or her own home.

The Family Support Act, however, allows States to restrict eligibility of families headed by a minor parent and to restrict the direct payment of assistance to the minor parent.

Specifically, section 403 of the Family Support Act added a new section 402(a)(43) to the Social Security Act. Section 402(a)(43) provides that a State may require, as a condition of eligibility, that a minor parent and dependent child in his or her care reside: (1) In the home of the minor parent's parent, legal guardian, or other adult relative, or (2) in an adult-supervised supportive living arrangement.

Further, section 402(a)(43) identifies the kinds of minor parents who may be barred from living alone with their dependent children. These include individuals who are under 18, have never been married, and have a dependent child in their care. Women who are under 18, have never been married, and would otherwise qualify for AFDC on the basis of pregnancy may also be barred.

However, section 402(a)(43) does not define certain concepts. First, there is no definition of "adult relative." Since the term "relative" has long had a specific meaning for AFDC program purposes (see § 233.90(c)(1)(v)(A)), we proposed to utilize the same concept for section 402(a)(43) purposes. Similarly, section 402(a)(43) does not specify an age for an individual to be considered an adult. However, since that section specifically identifies minor parents as being under 18, we proposed that an individual 18 or over be considered to be an adult. The proposed regulations at § 233.107 reflected these decisions.

Secondly, the Act does not define the concept of "adult-supervised supportive living arrangement." We proposed in § 233.107(b)(3) that this concept be defined to include any certified or State-approved setting (other than a public institution) in which a minor receives counseling, supervision, guidance or other supportive services in addition to food and shelter. We included the requirement for supportive services such as counseling or guidance in order to give meaning to the words "adult-supervised" and "supportive" and to make this living arrangement analogous to a family setting where a concern for the emotional growth and development of the minor parent and child would be evident in addition to a concern for physical needs.

Section 403 also provides that AFDC is to be provided to the parent, legal guardian, or other adult relative on behalf of the minor parent and dependent child "where possible." If the State determines that it is not possible to make the payment to any of these individuals, this determination needs to be documented in the case file.

The Family Support Act further provides that the restriction in payment to a household headed by a minor parent applies only to an individual who is "under the age of 18 and has never married." We interpret these provisions to mean that States may restrict payment only through the month of the minor parent's eighteenth birthday. Because of the considerable variance in State laws concerning the treatment of annulments, we are not planning to regulate in this area. Accordingly, it is up to each State to make a determination based on its own State law as to whether a minor parent whose marriage was annulled "has never married."



Finally, we noted that section 402(a)(43) specified five exemptions when the restriction on payments to an unmarried minor parent under 18 with a dependent child would not apply. These are:

(1) Where the minor parent has no living parent or legal guardian whose whereabouts is known (section 402(a)(43)(B)(i)). The State agency must make reasonable efforts to confirm the nonexistence of a parent or legal guardian and document its findings in the case file. These efforts may not, however, interfere with the standards of promptness for acting on applications as set forth in § 206.10(a)(6).

(2) Where there is no parent or legal guardian who allows the minor parent to live in his or her home (section 402(a)(43)(B)(ii)). It is the responsibility of the State agency to make reasonable efforts to confirm and document its findings in the case file.

(3) Where the State agency determines that the physical or emotional health or safety of the individual or his or her dependent child would be jeopardized by living in the home of the individual's parent or legal guardian (section 402(a)(43)(B)(iii)). Neither the statute nor its legislative history specifies criteria for determining when an individual's physical or emotional health or safety is in jeopardy. We note, however, that this provision appears similar to the good cause provisions in § 232.42 relating to refusal to cooperate in establishing paternity and securing support. Accordingly, we invited comments on whether and to what extent the criteria in paragraphs (a)(1), (b), and (c) of § 232.42 should apply to section 402(a)(43)(B)(iii).

(4) Where the individual lived apart from his or her parent or legal guardian for a period of at least one year before either the birth of the dependent child or date of application for assistance (section 402(a)(43)(B)(iv)). It is the responsibility of the State agency to confirm this and document its findings in the case file.

(5) Where the State agency otherwise determines, in accordance with Federal regulations, that there is good cause for waiving this requirement (section 402(a)(43)(B)(v)). Neither the statute nor its legislative history specifies the types of circumstances that would warrant a good cause waiver by the State. In order not to restrict State discretion in this area, we proposed in new § 233.107(c) to permit States to specify other reasons for finding that good cause exists for a minor parent to receive AFDC while living apart from the household of a parent, legal guardian, or other adult relative, or an adult-supervised supportive living arrangement. States wishing to exempt recipients under this provision of the Act would need to submit a State plan amendment setting forth the circumstances the State intends to recognize.

We received comments on this provision from two State agencies, one Federal agency, one legal assistance organization and two advocacy organizations. The comments are discussed below.

*Comment:* One commenter believes there is an apparent contradiction both within the proposed rule and section 402(a)(43). The rule provides that States may require minor parents to live with adult relatives in addition to parents or legal guardians. However, the first four exemptions from the requirement set forth in section 402(a)(43) and the proposed regulation are all limited to circumstances pertaining to just parents or legal guardians. Thus, the regulation seems to imply that if a minor had no living parents whose whereabouts were known or no legal guardian, the State could not require the minor to live with his or her aunt in order to receive a grant. The commenter recommended that the exemption clauses be amended to add adult relatives along with parents and guardians in the first four exemptions.

*Response:* We do not agree that there is an internal contradiction. Section 402(a)(43)(A)(i) specifies that a minor may be required to live with a parent, legal guardian, etc. The choice of living arrangement is left to the State agency—i.e., the State agency may determine whether a minor must reside with a parent, a legal guardian, another adult relative, or in an adult-supervised supportive living arrangement. Second, the State agency's choice of living arrangement for the minor is limited whenever such minor satisfies one of the exemptions listed in section 402(a)(43)(B). If a State agency determines that the minor meets one of the exemptions (e.g., the whereabouts of the minor's parent are unknown and no legal guardian exists) and satisfies all other eligibility factors, then the State agency must authorize payment and allow the minor to live independently. Although the State agency may suggest that an exempt minor adopt a particular living arrangement, it may not require such an arrangement (e.g., to live with a non-guardian adult relative).

*Comment:* A commenter recommended that in cases where minors meet one of the five exemptions, that they would not have to live with their parents, legal guardians or other adult relatives but could still be required to live in an adult-supervised living arrangement unless the State has reason to not require it.

*Response:* Requiring an exempt minor to live in an adult-supervised living arrangement would be contrary to section 402(a)(43) of the Social Security Act.

*Comment:* One commenter was concerned because the preamble discussion of the proposed rules requires the State agency to document the case file whenever a minor is found to be exempt. It was feared that such documentation will be vigorously reviewed by quality control (QC) and result in additional QC errors.

*Response:* Case record documentation which supports a finding of eligibility, and payment is a basic accountability mechanism to ensure that State and Federal funds are being expended correctly. With regard to QC, adherence to the requirements of section 402(a)(43) must be reviewed given that this provision establishes a condition of eligibility for AFDC, in States that choose to implement it.

*Comment:* One commenter expressed concern that a minor mother living with a parent, guardian or other adult relative might be unable to participate as a separate household for Food Stamp program purposes even if she purchases and prepares food separately. The commenter believes that this situation could adversely impact on minor parents who are trying to complete high school and make it on their own.

*Response:* The criteria for determining whether or not individuals qualify as a separate household for Food Stamp purposes is established by the Food and Nutrition Service (FNS). The FNS criteria are outside the scope of these final rules.

*Comment:* One commenter believes that the minor mother provision was well-intended but that it does not recognize the fact that many pregnant or parenting teens come from dysfunctional families where there is alcohol or drug abuse, sexual or physical abuse, or abandonment by one or both parents. It was also stated that although teens are better off living with responsible and caring parents or adults, such healthy household circumstances are not always possible.

The commenter concluded with the hope that alternatives to the minor mother provision would be considered.

*Response:* We appreciate the commenter's perspective and agree that the minor mother provision is not a

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panacea for all problems associated with teen pregnancy and dysfunctional family environments. We view this provision as only one incentive for families to remain together and achieve self-sufficiency. We will continue to objectively evaluate and support effective legislative proposals to help maintain and strengthen family life.

*Comment:* Three commenters objected to the use of the list of specified relatives at § 233.90(c)(1)(v)(A) to determine who may qualify as an adult relative. It was recommended that the final rule provide for living with an adult relative which includes, but is not limited to, those individuals identified at § 233.90(c)(1)(v)(A). One commenter also pointed out that this limitation is inadequate because it excludes individuals who are related to the child, but not related to the minor parent (e.g., the paternal grandparents of the minor's child).

*Response:* We believe that limiting the number of adult relatives with whom a minor may live to the list of specified relatives described in section 406(a) of the Social Security Act is appropriate. This limitation comports with congressional intent to not expand the program beyond the limits described in section 406(a) of the Social Security Act.

The list of specified relatives currently reflected in the Federal regulations was first established in 1944 and is based on section 408(a) of the Social Security Act. The only subsequent expansion of this list occurred with the passage of the Social Security Act Amendments of 1956. These amendments, which recognized first cousins, nephews, and nieces as specified relatives, only extended the degree of relationship slightly beyond the then present law. Furthermore, neither the legislative history of the minor mother provision nor the language of section 403 of the Family Support Act gave any indication that Congress wished to expand the AFDC program to cover other relatives not explicitly described in section 406(a) of the Social Security Act. Accordingly, since section 402(a)(43) uses the same term "relative" as used in section 406(a) we interpret it in the same way. Please note, however, that the Department is currently developing new regulations at § 233.90(c)(1)(v) to clarify that, within the meaning of section 406(a) of the Social Security Act, a specified relative includes all relations within the fifth degree of kinship to the dependent child, which extends to include a great-great-great grandparent, a great-great uncle or aunt or a first cousin once removed.

With regard to the comment on grandparents "not related to the minor parent," we must emphasize that paternal grandparents are considered as specified relatives so long as paternity of the grandchild has been established. If paternity has not been established, such putative grandparents cannot be recognized as specified relatives under section 406(a) of the Social Security Act.

*Comment:* Two commenters expressed concern about our linkage in the preamble of the exemption at § 233.107(a)(4) on physical or emotional health or safety of the minor parent or dependent child to the current child support good cause provisions at § 232.42. It was argued that these provisions are not similar to the child support cooperation standard and should not be incorporated or cross-referenced in the final rule. As written, the child support cooperation provision focuses on harm to the child and only looks to whether the caregiver is harmed in relation to affecting his or her ability to care for the child. The statutory language in the minor parent provision is explicit that potential harm to either the minor parent or the child is sufficient reason for an exemption. It was recommended that we not cross-reference the minor mother exemption to the child support cooperation provision at § 232.42.

*Response:* We agree with the recommendation and believe that State agencies should have the flexibility to develop criteria for determining whether or not the physical or emotional, health and safety of the minor parent or dependent child is jeopardized. Accordingly, any reference to § 232.42 of the regulations is deleted. For example, States might consider including in their criteria:

(1) a substantiated report of abuse or neglect;

(2) the filing of a neglect petition;

(3) A statement by the minor parent that is corroborated by an adult or substantiated through agency investigation; and

(4) A family living situation that results in overcrowding, violates the terms of a lease, or results in living arrangements that violate local health or safety standards.

*Comment:* Two commenters agreed that State-defined reasons for good cause, as permitted in the rule at § 233.107(a)(5), should be contained in the State plan. However, States should also have the discretion to identify additional reasons, on a case-by-case basis, and not be strictly held to the reasons enumerated in the plan. It was recommended that the final regulation retain the requirement that additional State-developed reasons for good cause be enumerated in the plan but that these reasons are not exclusive.

*Response:* We agree with the commenters that States must have the discretion to identify additional reasons for good cause. We further acknowledge the sensitivity of the minor mother issue and recognize the difficulty of anticipating all case circumstances that may arise. However, we disagree with the position that States be permitted to render good cause determinations based solely on individual case circumstances which are not described in the State plan. Such determinations may result in disparate treatment of applicants and recipients and thereby conflict with the equitable treatment provisions at § 233.10(a)(1).

With reference to the fact that certain needy cases will fall outside of the reasons specified in the State plan, we suggest that States compile and evaluate information on such cases and decide whether or not their plans need to be amended.

*Comment:* One commenter stated that minor parents are unlikely to be well-versed in program rules and many will not have the bureaucratic competence to navigate a complex exemption-verification system. To prevent potential harm, it was suggested that these regulations contain express procedural safeguards to be followed by States who elect to implement the minor parent option.

*Response:* While we agree with the commenter that minor parents may experience some difficulty in navigating a complex exemption and verification system, we disagree that Federal regulations should contain detailed procedural safeguards. We believe that the safeguards for applicants at § 206.10(a)(2)(i) are adequate and that State agencies should continue to have the flexibility to develop appropriate procedures. A cross-reference to this section and examples of appropriate safeguards that States may choose to follow have been added to the final rule at § 233.107(f).

*Comment:* One commenter pointed out that many minor parents in need of AFDC have been raised in a single-parent home and have little or no contact with their absent parents. As drafted, § 203.107 seems to require that a minor parent would have to attempt to move in with a virtual stranger (his or her long absent parent) and, in many cases, leave a familiar community for a distant city, in order to qualify for AFDC. The commenter suggested that we redraft the exemption at § 233.107(a)(1) as follows: "The minor parent has no living parent in whose custody he or she has lived or legal guardian whose whereabouts is known."

*Response:* We do not believe that the recommended change is necessary. Our proposed § 233.107(a)(3) makes clear that a minor parent would not have to live with a parent who is a virtual stranger or leave a familiar community for a distant city in order to receive AFDC. A minor parent who has lived apart from his or her parent or guardian for at least one year before the birth of a dependent child or the parent's having made application for AFDC would not be required to live with that parent.

*Comment:* Two commenters stated that the proposed regulations at § 233.107(e)(3) with its emphasis on State "approval" of "adult-supervised supportive living arrangements" is excessively stringent and goes beyond what the Family Support Act requires or allows. It was suggested that we revise the rule to allow States the flexibility to judge the suitability of an adult-supervised arrangement using criteria that is less formal than required for foster care placements.

*Response:* It is not our intention to limit State flexibility in determining the suitability of adult-supervised living arrangements. We have revised § 233.107(e)(3)(i) accordingly.

*Comment:* One commenter recommended that we add a provision to the rule which requires States to grant benefits to minor parents and their children on a provisional basis during transition periods (e.g., movement from one approved living arrangement to another approved living arrangement or from a non-approved residence to an approved living arrangement). It was argued that minor parents are an at-risk population and providing AFDC payments during transition periods will deter homelessness and lessen the chance of child abuse.

*Response:* We have no objection to a State establishing a transition period of reasonable length. However, we have decided not to require such a period by regulation. It seems to us that a State is in the best position to determine whether a transition period is appropriate and what its duration should be.

*Comment:* One commenter asked if the definition of an adult-supervised supportive living arrangement described at § 233.107(e)(3) requires a formal guardianship appointment.

*Response:* State agencies have the flexibility under the rule to determine whether or not a formal guardianship appointment is necessary for placement in an adult-supervised arrangement.

*Comment:* One commenter asked if an adult has to be in residence at an approved facility on a twenty-four hour basis. It was pointed out that in many maternity homes or supervised independent living arrangements, a counselor may only be present during the day, but not at night.

*Response:* We recognize that in many adult-supervised living arrangements, a counselor may be on the premises during the day but not at night, or in the building but not in the living quarters of the minor parent. State agencies may qualify such settings as adult-supervised supportive living arrangements under § 233.107(e)(3) of this rule if they choose.

*Authorization for American Samoa to Participate in Programs Under Title IV of the Social Security Act (§ 201.1 (g) and (h), § 301.1, and § 1355.20 of the Final Regulations)*

Section 601 of the Family Support Act amended certain sections of the Social Security Act to authorize American Samoa to participate in the programs set forth in title IV of the Social Security Act. Section 1101 of the Social Security Act has been amended by adding American Samoa to the list of jurisdictions included in the definition of "State" as it applies to programs under title IV. Accordingly, we have revised the regulation at § 201.1 (g) and (h) to implement this amendment.

Sections 403(a)(1) and 403(a)(2) of the Social Security Act have also been amended to add American Samoa to the list of jurisdictions that may make AFDC assistance payments. Additionally, section 1108 of the Social Security Act has been amended to incorporate a fiscal year Federal payment ceiling of $1,000,000 in American Samoa for expenditures under the AFDC, Foster Care and Adoption Assistance programs under titles IV–A and IV–E respectively.

Section 1118 of the Social Security Act, which provides an alternative Federal method of computing assistance payment expenditures, has been amended to add American Samoa to the jurisdictions that are subject to the 75 percent Federal financial participation (FFP) matching rate. In the case of American Samoa, this 75 percent matching rate applies solely to AFDC assistance payment expenditures.

The proposed regulations published on September 10, 1990 (55 FR 34294–34305), contained amendments to the quality control, rules at §§ 205.43(a), 205.44(b) and 205.44(c). Because enactment of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) resulted in changes to the quality control system for which separate rulemaking is necessary, we have withdrawn our proposed changes to the aforementioned sections.

There were no comments on § 201.1(g), as proposed. However, because we omitted adding a reference to title IV–F in § 201.1(g) and in § 201.1(h), we are making such changes at this time. We are also making conforming amendments to add American Samoa to the regulatory definitions of "State" at § 301.1 for the title IV–D program and at § 1355.20 for the title IV–B and IV–E programs.

*Responsibilities of the State (§§ 204.3 and 232.2(a) of the Final Regulations)*

Section 604 of the Family Support Act amended section 402(a) of the Social Security Act to provide that the State agency is responsible for assuring that the benefits and services available under titles IV–A, IV–D, and IV–F are furnished in an integrated manner. It further provides that the State shall ensure that all AFDC applicants and recipients are encouraged, assisted, and required to cooperate in the establishment of paternity and the enforcement of child support obligations, and they are notified of the paternity establishment and child support services for which they may be eligible.

The Conference Report (H.R. Rep. No. 100–998, 100th Cong., 2d Sess. 131–132 (1988)) indicates that Congress recognizes and emphasizes the responsibility that applicants and recipients must assume if long term welfare dependency is to be avoided. Congress wants assurances that services and benefits will be delivered to all applicants and recipients in an integrated manner; all applicants and recipients will be informed of the education, employment and training opportunities for which they are eligible, the obligations of the State agency, and the rights, responsibilities, and obligations of participants in the education, employment and training program. Additionally, Congress wants to assure that, in addition to preparing for and obtaining employment, all applicants and recipients are encouraged, assisted and required to fulfill their responsibilities to support their children by ensuring their cooperation in the establishment of paternity and enforcement of child support obligations. However, neither the Family Support Act nor the Conference Report provides specific directions or guidelines as to how the State agencies are to achieve these goals. As a consequence, in developing the proposed regulations, it was decided to repeat the language contained in the Act, affording a State agency flexibility in administering its programs.

We received comments on this provision from three State agencies and one legal assistance organization. The comments are, discussed below.

*Comment:* One State agency supported the regulation as written. The other commenters indicated that, as the regulation does not include specific requirements, the new rule does not amend, extend, or enhance previously existing requirements. Two of these commenters asked that the regulation include specific requirements.

*Response:* The paucity of comments on this section reinforces our decision to not provide specific requirements. The regulation may be amended later if it is determined that there is a need. As stated earlier, neither the Family Support Act nor the Conference Report provides specific directions or guidelines. The only requirement of a State is, as the Job Opportunity and Basic Skills Training (JOBS) Program is implemented, to provide program information to applicants at the time of application and to recipients at the time of the first redetermination after implementation. (See the preamble to the JOBS regulations (54 FR 42176) and § 250.40.)

**Regulatory Procedures**

*Executive Order 12291*

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because these regulations will not: (1) Have an annual effect on the economy of $100 million or more; (2) impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, these regulations adhere to the general requirements for all rulemaking in section 2 of Executive Order 12291.

*Paperwork Reduction Act*

Sections 233.20(a)(11)(i)(D), 233.20(a)(13)(i)(A), 233.101, and 233.107 of the final rules contain information collection requirements which are subject to review by the Office of Management and Budget under 44 U.S.C. 3504(h), a provision of the Paperwork Reduction Act of 1980. Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the agency official designated for this purpose whose name appears in the preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (room 3208), Washington, DC 20503, Attention: Desk Officer for DHHS, ACF.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these final rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

*Federalism and Family Effects*

We certify that these final rules have been assessed using the criteria and principles set forth in Executive Orders 12606 and 12612.

*Analysis Required by Executive Order 12612 on Federalism*

One requirement of the Family Support Act is that all States implement an Aid to Families With Dependent Children Unemployed Parent Program (AFDC–UP). Prior to enactment of the Family Support Act, States had the option to choose whether to operate an AFDC–UP program. This requirement has a significant effect on States because it mandates that all States address the problem of unemployment in low-income families.

*Analysis Required by Executive Order 12606 on the Family*

The Family Support Act permits States the option to require, as a condition of eligibility, that individuals under age 18 who have never married and have a dependent child in their care (or who are eligible as pregnant women) live in the residence of a parent, legal guardian, other adult relative, or in an adult-supervised supportive living arrangement such as a foster care or maternity home. This provision has a significant beneficial impact on the family because it supports the traditional family function of providing adult-supervised care and control of children until they reach the age of majority. Prior to the enactment of the new law, minor parents could move away from their family homes and receive AFDC in an independent living arrangement.

**List of Subjects**

*45 CFR Part 201*

Grant programs, Social programs, Guam, Public assistance programs, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

*45 CFR Part 204*

Administrative practice and procedure, Grant programs, Social programs, Public assistance programs.

*45 CFR Part 205*

Computer technology, Grant programs, Social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

*45 CFR Part 232*

Aid to Families with Dependent Children, Child support, Grant programs, Social programs.

*45 CFR Part 233*

Aliens, Grant programs, Social programs, Public assistance programs, Reporting and recordkeeping requirements.

*45 CFR Part 301*

Child support, Grant programs/Social programs, Reporting and recordkeeping requirements.

*45 CFR Part 1355*

Adoption and foster care, Child welfare, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Programs 93.020, Assistance Payments—Maintenance Assistance.)

**Note:** This document was received at the Office of the Federal Register on June 29, 1992.

Dated: January 21, 1992.

**Jo Anne B. Barnhart,**

*Assistant Secretary for Children and Families.*

Approved: April 20, 1992.

**Louis W. Sullivan,**

*Secretary of Health and Human Services.*

Accordingly, chapters II, III, and XIII, title 45, Code of Federal Regulations are amended as set forth below:

## PART 201—GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for part 201 is revised to read as follows:

**Authority:** 42 U.S.C. 303, 603, 1203, 1301, 1302, 1316, 1353 and 1383 (note).

2. Section 201.1 is amended by revising paragraphs (g) and (h) to read as follows:

**§ 201.1 General definitions.**

* * * * *

(g) *State* means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. The term "State" with respect to American Samoa applies to the programs set forth in title IV–A and IV–F of the Act.

(h) *State agency* means the State agency administering or supervising the administration of the State plan or plans under title I, IV–A, IV–F, X, or XVI (AABD) of the Act.

## PART 204—GENERAL ADMINISTRATION—STATE PLANS AND GRANT APPEALS

1. The authority citation for part 204 is revised to read as follows:

**Authority:** 42 U.S.C. 602(a)(44) and 1302 and sections 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 67 Stat. 631.

2. Part 204 is amended by adding § 204.3 to read as follows:

**§ 204.3 Responsibilities of the State.**

The State agency shall be responsible for assuring that the benefits and services available under titles IV–A, IV–D, and IV–F are furnished in an integrated manner.

## PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for part 205 is revised to read as follows:

**Authority:** 42 U.S.C. 602, 603, 606, 607, 611, 1302, 1306(a), 1320b–7.

2. Section 205.10 is amended by adding a new paragraph (a)(4)(ii)(K) as follows:

**§ 205.10 Hearings.**

(a) * * *

(4) * * *

(ii) * * *

(K) An individual's payment is suspended or reduced for failure to meet a payment after performance obligation as set forth at § 233.101(b)(2)(iv) (B) or (C) of this chapter. In addition to the contents set forth in paragraph (a)(4)(i)(B) of this section, the adequate notice must advise the individual of the right to have assistance immediately reinstated retroactive to the date of action at the previous month's level pending the hearing decision if he or she makes a request for a hearing and reinstatement within 10 days after the date of the notice.

* * * * *

## PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV–A OF THE SOCIAL SECURITY ACT

1. The authority citation for part 232 is revised to read as follows:

**Authority:** 42 U.S.C. 1302.

2. Section 232.2 is amended by revising paragraph (a) to read as follows:

**§ 232.2 Child support program; State plan requirements.**

* * * * *

(a) Has in effect a plan approved under part D of title IV of the Act that, consistent with the provisions of this title, ensures that all applicants for and recipients of AFDC are encouraged, assisted, and required to cooperate in the establishment of paternity and the enforcement of child support obligations, and are notified of the paternity establishment and child support services for which they may be eligible; and

* * * * *

## PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for part 233 continues to read as follows:

**Authority:** 42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 note.

2. Section 233.20 is amended by revising paragraphs (a)(3)(iv)(E) and (a)(3)(xiii), removing paragraph (a)(6)(ix), revising paragraphs (a)(11)(i)(B) through (a)(11)(i)(D), revising paragraph (a)(11)(ii)(B), adding paragraph (a)(11)(viii), and revising paragraph (a)(13)(i)(A) to read as follows:

**§ 233.20 Need and amount of assistance.**

(a) * * *

(3) * * *

(iv) * * *

(E) For AFDC, income tax refunds, but such payments shall be considered as resources; and

* * * * *

(xiii) Under the AFDC plan, provide that no assistance unit is eligible for aid in any month in which the unit's income (other than the assistance payment) exceeds 185 percent of the State's need standard (including special needs) for a family of the same composition (including special needs), without application of the disregards in paragraph (a)(11)(i) (except to the extent provided for under paragraph (a)(3)(xix)), paragraph (a)(11)(ii) and paragraph (a)(11)(viii) of this section.

* * * * *

(11) * * *

(i) * * *

(B) The first $90.

(C) Where appropriate, an amount equal to $30 plus one-third of the earned income not already disregarded under paragraphs (a)(11)(i), (a)(11)(v) and (a)(11)(vi) of this section of an individual who received assistance in one of the four prior months.

(D) An amount equal to the actual cost for the care of each dependent child or incapacitated adult living in the same home and receiving AFDC, but not to exceed $175 for each dependent child who is at least age two or each incapacitated adult, and not to exceed $200 for each dependent child who is under age two. For individuals not engaged in full-time employment or not employed throughout the month, the $175 and $200 disregard limits may be applied, or the State agency may establish disregard limits less than $175 and $200.

(ii) * * *

(B) Disregard from any other individual's earned income the amounts specified in paragraphs (a)(11)(i)(B) and (a)(11)(i)(D) of this section, and $30 plus one-third of the individual's earned income not already disregarded under paragraphs (a)(11)(ii) and (a)(11)(v) of this section. However, the State may not provide the one-third portion of the disregard to an individual after the fourth consecutive month (any month for which the unit loses the $30 plus one-third disregard because of a provision in paragraph (a)(11)(iii) of this section, shall be considered as one of these months) it has been applied to the individual's earned income and may not apply the $30 disregard after the eighth month following the fourth consecutive month (regardless of whether the $30 disregard was actually applied in those months) unless twelve consecutive months have passed during which the individual is not a recipient of AFDC. If income from a recurring source resulted in suspension or termination due to an extra paycheck, the month of ineligibility does not interrupt the accumulation of consecutive months of the $30 plus one-third disregard, nor does it count as one of the consecutive months.

* * * * *

(viii) Disregard as income the amount of any earned income tax credit payments received by an applicant or recipient. Disregard as resources, in the month of receipt and the following month, the amount of any earned income tax credit payments received by an applicant or recipient. "Earned income tax credit payments" include:

Any advance earned income tax credit payment made to a family by an employer and any earned income tax credit payment made as a refund of Federal income taxes.

* * * * *

(13) * * *

(i) * * *

(A) The State must take all reasonable steps necessary to promptly correct any overpayment, except that, as set forth in the plan, a State may waive any overpayment which occurred because receipt of an earned income tax credit payment by a family during the period January 1, 1990, to December 31, 1990, caused ineligibility under the 185 percent gross income limitation in paragraph (a)(3)(xiii) of this section.

* * * * *

3. Section 233.100 is amended by adding paragraph (d) to read as follows:

**§ 233.100 Dependent children of unemployed parents.**

* * * * *

(d) For all States (other than Puerto Rico, American Samoa, Guam, and the Virgin Islands) the provisions of this section are suspended through September 30, 1998. For Puerto Rico, American Samoa, Guam, and the Virgin Islands, the provisions of this section are suspended from October 1, 1992, through September 30, 1998.

4. Section 233.101 is added to read as follows:

**§ 233.101 Dependent children of unemployed parents.**

(a) Requirements for State Plans. Effective October 1, 1990 (for Puerto Rico, American Samoa, Guam, and the Virgin Islands, October 1, 1992), a State plan must provide for payment of AFDC for children of unemployed parents. A State plan under title IV–A for payment of such aid must:

(1) Include a definition of an unemployed parent who is the principal earner which shall apply only to families determined to be needy in accordance with the provisions in § 233.20 of this part. Such definition must include any such parent who:

(i) Is employed less than 100 hours a month; or

(ii) Exceeds that standard for a particular month, if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for the prior 2 months and is expected to be under the standard during the next month; except that at the option of the State, such definition need not include a principal earner who is unemployed because of participation in a labor dispute (other than a strike) or by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State's unemployment compensation law.

(2) Include a definition of a dependent child which shall include any child of an unemployed parent (as defined by the State pursuant to paragraph (a)(1) of this section) who would be, except for the fact that his parent is not dead, absent from the home, or incapacitated, a dependent child under the State's plan approved under section 402 of the Act.

(3) Provide for payment of aid with respect to any dependent child (as defined by the State pursuant to paragraph (a)(2) of this section) when the conditions set forth in paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) of this section are met.

(i) His or her parent who is the principal earner has been unemployed for at least 30 days prior to the receipt of such aid;

(ii) Such parent has not without good cause, within such 30-day period prior to the receipt of such aid, refused a bona fide offer of employment or training for employment. Before it is determined that such parent has refused a bona fide offer of employment or training for employment without good cause, the agency must make a determination that such offer was actually made. (In the case of offers of employment made through the public employment or manpower agencies, the determination as to whether the offer was bona fide, or whether there was good cause to refuse it, shall be made by the title IV–A agency. The IV–A agency may accept the recommendations of such agencies.) The parent must be given an opportunity to explain why such offer was not accepted. Questions with respect to the following factors must be resolved:

(A) That there was a definite offer of employment at wages meeting any applicable minimum wage requirements and which are customary for such work in the community;

(B) Any questions as to the parent's inability to engage in such employment for physical reasons or because he has no way to get to or from the particular job; and

(C) Any questions of working conditions, such as risks to health, safety, or lack of worker's compensation protection.

(iii) Such parent:

(A) Has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section), within any 13-calendar-quarter period ending within one year prior to the application for such aid, or

(B) Within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified under the terms of paragraph (a)(3)(v) of this section for such compensation under the State's unemployment compensation law.

(iv) A "quarter of work" with respect to any individual means a period (of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31):

(A) In which an individual received earned income of not less than $50 (or which is a "quarter of coverage" as defined in section 213(a)(2) of the Social Security Act) or participated in a program under part 250 of this chapter; or

(B) At State option (as specified in the plan), in one or more subdivisions of the State, in which he or she attended, full-time, an elementary school, a secondary school, or a vocational or technical training course that is designed to prepare the individual for gainful employment, or in which the individual participated in an educational or training program established under the Job Training Partnership Act, provided that an individual may qualify for no more than four quarters of work under this paragraph for purposes of the requirement set forth in paragraph (a)(3)(iii)(A) of this section; and

(C) A calendar quarter ending before October 1990 in which an individual participated in CWEP under section 409 of the Social Security Act or the WIN program established under title IV–C of the Social Security Act (as in effect for a State immediately before the effective date of that State's JOBS program).

(v) An individual shall be deemed "qualified" for unemployment compensation under the State's unemployment compensation law if he or she would have been eligible to receive such benefits upon filing an application, or he performed work not covered by such law, which, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such benefits upon filing an application.

(vi)(A) The "parent who is the principal earner" means, in the case of any child, whichever parent, in a home in which both parents of such child are living, earned the greater amount of income in the 24-month period the last month of which immediately precedes the month in which an application is filed for aid under this part on the basis of the unemployment of a parent. If the State cannot secure primary evidence of earnings for this period, the State shall designate the principal earner, using the best evidence available. The earnings of

each parent are considered in determining the principal earner regardless of when their relationship began. The principal earner so defined remains the principal earner for each consecutive month for which the family receives such aid on the basis of such application. This requirement applies to both new applicants and current AFDC unemployed parent families who were eligible and receiving aid prior to October 1, 1981.

(B) If both parents earned an identical amount of income (or earned no income) in such 24-month period, the State shall designate which parent shall be the principal earner.

(4) Provide for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education to assure maximum utilization of available public vocational education services and facilities in the State to encourage the retraining of individuals capable of being retrained.

(5) Provide that the needs of the child's parent(s) shall not be taken into account in determining the needs and amount of assistance of the child's family:

(i) If and for so long as such child's parent(s), unless exempt under § 250.30(b) of this chapter, is not currently participating (or available for participation) in a program under part 250 of this chapter or, if they are exempt under § 250.30(b)(5) of this chapter (or because a JOBS program has not been established in the subdivision where they reside or they reside in a JOBS subdivision but there is no appropriate JOBS activity in which they can participate), are not registered with a public employment office in the State, and

(ii) With respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of the State or of the United States but refuses to apply for or accept such unemployment compensation.

(6) Provide that medical assistance will be furnished under the State's approved plan under title XIX during any month in which an otherwise eligible individual is denied assistance solely by reason of the time limitation provided under paragraph (b)(3) of this section.

(b) State Plan Options. A State plan under title IV–A may:

(1) Require the principal earner or both parents to participate in an activity in the JOBS program under part 250 of this chapter, subject to the limitations and conditions of part 250 of this chapter, provided that the participation of each parent in all required activities under the JOBS program does not exceed 40 hours per week, per parent.

(2) Provide cash assistance after the performance of assigned program activities by parents required to participate in an activity in the JOBS program under part 250 of this chapter (as provided in paragraph (b)(1) of this section) so long as the State:

(i) Makes assistance payments at regular intervals at least monthly,

(ii) Prescribes a set of criteria which defines goals or standards for each assigned activity in the JOBS program which must be completed by the participant prior to payment, and

(iii) Prior to, or concurrent with, assignment to an activity, notifies the participant of the prescribed goals or standards and that payment for a period will be withheld unless performance of each assigned activity for that period is completed.

(3) Provide for a State to operate a payment after performance system under which a family is issued an assistance payment after the applicable family member has successfully completed her obligation to participate in JOBS for a specific period. If the applicable family member fails without good cause to satisfy the obligation, the State may:

(i) Impose a sanction in accordance with the JOBS program rules at §§ 250.34, 250.35 and 250.36 of this chapter;

(ii) Reduce the family's assistance payment to which the specific period applies by the amount of the payment attributable to the family member for that period or do not make the payment to the family; or

(iii) Reduce the family's assistance payment to which the specific period applies (or the amount of the payment attributable to the family member for that period) in proportion to the number of required hours that were not completed.

For States that elect to implement paragraphs (b)(3) (ii) or (iii) of this section, the fair hearing requirements set forth at § 205.10(a)(4)(ii)(K) of this chapter apply.

(4) Limit the number of months that a family may receive AFDC–UP under this section when the following conditions are met:

(i) The State did not have on September 26, 1988, an approved AFDC–UP program under section 407 of the Social Security Act.

(ii) The family received such aid (on the basis of the unemployment of the parent who is the principal earner) in at least 6 of the preceding 12 months.

(iii) The State has in effect a program (described in the plan) for providing education, training, and employment services to assist parents in preparing for and obtaining employment throughout the year. Such a program may include education, training and employment activities under the JOBS program which are provided in part 250 of this chapter or under a State-designed program which provides:

(A) Education and instruction for individuals who have not graduated from a secondary school or obtained an equivalent degree,

(B) Training whereby an individual acquires market-oriented skills necessary for self-support, and

(C) Employment services which seek to place individuals in jobs.

(iv) The State must guarantee child care necessary for an individual to participate in an approved, State-designed, non-JOBS program. The regulations at part 255 of this chapter apply to such care.

(v) The State has the option of providing necessary supportive services associated with an individual's participation in a State-designed, non-JOBS program. Federal financial participation is available under sections 403 (k) and (l) of the Social Security Act. The regulations at part 255 of this chapter apply to such supportive services.

(vi) The State must inform an AFDC–UP family at the time of application that AFDC–UP cash assistance will terminate due to a time limitation, that any family with a child who is (or becomes) deprived due to the death, continued absence, or incapacity of a parent may receive cash assistance under the AFDC program during the time limitation for AFDC–UP, and that a program of training, education, and employment services is available to prepare the family to become self-supporting.

(vii) Prior to termination due to a time limitation, the State must notify an AFDC–UP recipient family of the earliest month that it may receive AFDC–UP cash assistance again. This notification may be included in the notice of proposed action which is required pursuant to § 205.10(a)(4) of this chapter. To receive assistance again, the family must make a new application.

(viii) In establishing eligibility upon re-application following months of nonpayment due to the time limitation, an otherwise eligible family that does not receive aid in a month solely by

reason of the option to limit assistance under this paragraph shall be deemed, for purposes of determining the period under paragraph (a)(3)(iii)(A) of this section, to be receiving AFDC–UP cash assistance in that month. This provision also applies if, at the time of the family's original application for assistance, eligibility was established based on the provisions of paragraph (a)(3)(iii)(B) of this section, but eligibility could have been established based on the provisions of paragraph (a)(3)(iii)(A) of this section.

(c) *Federal Financial Participation.* (1) Federal financial participation is available for payments authorized in accordance with the State plan approved under section 402 of the Act as aid to families with dependent children with respect to a child:

(i) Who meets the requirements of section 406(a)(2) of the Act;

(ii) Who is living with any of the relatives specified in section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives as his (or their) own home;

(iii) Who has been deprived of parental support or care by reason of the fact that his or her parent who is the principal earner is employed less than 100 hours a month; or exceeds that standard for a particular month if his or her work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for 2 prior months and is expected to be under the standard during the next month;

(iv) Whose parent who is the principal earner:

(A) Has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section) within any 13-calendar-quarter period ending within 1 year prior to the application for such aid,

(B) Within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified (under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State's unemployment compensation law; and

(v) Whose parent who is the principal earner:

(A) Is currently participating in or available to participate in an activity in the JOBS program under part 250 of this chapter, unless exempt, or is registered with the public employment office in the State if exempt from the JOBS program under § 250.30(b)(5) of this chapter; and

(B) Has not refused to apply for or accept unemployment compensation with respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of the State or of the United States.

(2) The State may not include in its claim for Federal financial participation payments made as aid under the plan with respect to a child who meets the conditions set forth in paragraph (c)(1) of this section, where such payments were made:

(i) For any part of the 30-day period specified in paragraph (a)(3)(i) of this section;

(ii) For such 30-day period if during that period the parent refused without good cause a bona fide offer of employment or training for employment;

(iii) For any period beginning with the 31st day after the receipt of aid, if and for as long as no action is taken during the period to undertake appropriate steps directed toward the participation of the parent who is the principal earner in a program under part 250 of this chapter;

(iv) To the extent that such payments are made to meet the need of an individual who is subject to a sanction imposed, under part 250 of this chapter (for failure to meet the requirements for participation in the JOBS program).

(3) Federal financial participation is available for child care and supportive services expenditures associated with participation in an approved State-designed program (as provided in paragraph (b)(3)(iii) of this section) under titles IV–A and IV–F of the Act respectively. However, Federal financial participation is not available for any other costs, program or administrative, associated with State-designed programs.

(d) For all States (other than Puerto Rico, American Samoa, Guam, and the Virgin Islands) the provisions of this section are in effect through September 30, 1998. For Puerto Rico, American Samoa, Guam, and the Virgin Islands, the provisions of this section are in effect from October 1, 1992, through September 30, 1998.

5. A new § 233.107 is added to read as follows:

**§ 233.107 Restriction in payment to households headed by a minor parent.**

(a) *State plan requirements.* A State in its title IV–A State plan may provide that a minor parent and the dependent child in his or her care must reside in the household of a parent, legal guardian, or other adult relative, or in an adult-supervised supportive living arrangement in order to receive, AFDC unless:

(1) The minor parent has no living parent or legal guardian whose whereabouts is known;

(2) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(3) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for AFDC;

(4) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian;

(5) There is otherwise good cause for the minor parent and dependent child to receive assistance while living apart from the minor parent's parent, legal guardian, or other adult relative, or an adult-supervised supportive living arrangement.

(b) *Allegations.* If a minor parent makes allegations supporting the conclusion that paragraph (a)(4) of this section applies, the State agency shall determine whether it is justified.

(c) *Good Cause.* The circumstances justifying a determination of good cause must be set forth in the State plan.

(d) *Protective Payments.* When a minor parent and his or her dependent child are required to live with the minor parent's parent, legal guardian, or other adult relative, or in an adult-supervised supportive living arrangement, then AFDC is paid (where possible) in the form of a protective payment.

(e) *Definitions:* For purposes of this section:

(1) A *minor parent* is an individual who (i) is under the age of 18, (ii) has never been married, and (iii) is either the natural parent of a dependent child living in the same household or eligible for assistance paid under the State plan to a pregnant woman as provided in § 233.90(c)(2)(iv) of this part.

(2) A *household of a parent, legal guardian, or other adult relatives* means the place of residence of (i) a natural or adoptive parent or a stepparent, or (ii) a legal guardian as defined by the State, or (iii) another individual who is age 18 or over and related to the minor parent as specified in § 233.90(c)(1)(v) of this part provided that the residence is maintained as a home for the minor parent and child as provided in § 233.90(c)(1)(v)(B) of this part.

(3) *An adult-supervised supportive living arrangement* means a private family setting or other living arrangement (not including a public institution), which, as determined by the

State, is maintained as a family setting, as evidenced by the assumption of responsibility for the care and control of the minor parent and dependent child or the provision of supportive services, such as counseling, guidance, or supervision. For example, foster homes and maternity homes are "adult-supervised supportive living arrangements."

(f) *Notice Requirements.* Minor applicants shall be informed about the eligibility requirements and their rights and obligations consistent with the provisions at § 206.10(a)(2)(i). For example, a State may wish to: (1) Advise the minor of the possible exemptions and specifically ask whether one or more of these exemptions is applicable; and (2) assist the minor in attaining the necessary verifications if one or more of these exemptions is alleged.

## PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

1. The authority citation for part 301 is revised to read as follows:

**Authority:** 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1301, and 1302.

2. Section 301.1 is amended by revising the definition of "State" to read as follows:

**§ 301.1 General definitions.**

* * * * *

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

* * * * *

**Subchapter G—The Administration for Children, Youth and Families, Foster Care Maintenance Payments, Adoption Assistance, Child Welfare Services**

## PART 1355—GENERAL

1. The authority citation for part 1355 is revised to read as follows:

**Authority:** 42 U.S.C. 620 et seq.; 42 U.S.C. 670 et seq.; and 42 U.S.C. 1301 and 1302.

2. Section 1355.20 is amended by revising the definition of State to read as follows:

* * * * *

*State* means the 50 States, the District of Columbia, and except in 45 CFR 1356.65 and 1356.70, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands and American Samoa.

* * * * *

[FR Doc. 92-15655 Filed 7-8-92; 8:45 am]
BILLING CODE 4150-04-M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Part 214

**[FRA Docket No. ROS-3, Notice No. 2]**

**RIN 2130-AA48**

### Bridge Worker Safety Rules

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Final rule; extension of effective date.

**SUMMARY:** FRA is extending the effective date of the Bridge Worker Safety Standards from July 24, 1992 to August 24, 1992.

**EFFECTIVE DATE:** The rule becomes effective on August 24, 1992.

**ADDRESSES:** Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Christine Beyer, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: 202-366-0443).

**SUPPLEMENTARY INFORMATION:** FRA published its final rule establishing safety standards for the protection of those who work on railroad bridges on June 24, 1992 (57 FR 28116). As originally written, the final rule set the effective date at thirty days after publication, or July 24, 1992. However, due to a typographical error that occurred in the printing process, the rule was published with an effective date of August 24, 1992. **Federal Register** internal rules mandated that a correction notice be printed changing the effective date to July 24, 1992, as originally submitted by FRA. However, that correction notice appeared on July 2, 1992 (57 FR 25561), which shortened the notice period for the regulated community to approximately three weeks. In order to provide a more reasonable time frame for regulated entities to comply with the regulation, FRA now extends the effective date of the final rule back to August 24, 1992, as it originally appeared in the **Federal Register** on June 24, 1992.

Issued in Washington, DC, on July 2, 1992.

**Gilbert E. Carmichael,**

*Federal Railroad Administrator.*

[FR Doc. 92-16139 Filed 7-8-92; 8:45 am]
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# Proposed Rules

Federal Register
Vol. 57, No. 132
Thursday, July 9, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 400

[Docket No. 0198s]

### General Administrative Regulations; Implementation of 1990 Farm Act Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby proposes to issue new regulations implementing recent amendments to the Federal Crop Insurance Act (FCI Act), as amended (7 U.S.C. 1501 *et seq.*), made by the Food, Agriculture, Conservation, and Trade Act of 1990, with respect to the collection, use, and storage of Social Security Account Numbers (SSN) and Employer Identification Numbers (EIN). The intended effect of this rule is to implement rules affecting how the FCIC, direct insurance, and reinsured companies will collect, use, and store documents containing SSN's and EIN's.

**DATES:** Written comments, data, and opinions on this rule must be submitted not later than July 24, 1992, to be sure of consideration.

**ADDRESSES:** Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, 2101 L Street NW., 5th Floor, Washington, DC during regular business hours, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (703) 235–1168.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1997.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in Section 2(a) and 2(b)(2) of Executive Order 12278.

On November 28, 1990, the President signed into law the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Farm Act). The 1990 Farm Act amendments to section 506 of the FCI Act constitute the basis of this proposed rulemaking containing the provisions for the collection, use, and confidentiality of SSN and EIN.

Section 506 of the FCI Act (7 U.S.C. 1506), as amended, directs the FCIC to require, as a condition of eligibility for participation in the multiple peril crop insurance program, submission of an SSN or EIN.

Each policyholder will be required to notify any other individual or entity that acquires or holds a substantial beneficial interest of 5% or more in such policyholder, of the requirements of the FCI Act, and, if required by the FCIC, provide to the FCIC the name and SSN or EIN of the person holding the substantial interest.

The amendments also provide that: (1) Each policyholder will be required to furnish the insuring company or the FCIC the policyholder's SSN or EIN; (2) each reinsured company will be required to furnish to the FCIC the SSN or EIN of each of its insureds whose policy is reinsured by the FCIC; and, (3) the confidentiality of SSN's and EIN's and related records must be strictly observed by all parties.

Further, and with respect to the applicability of these regulations to companies under an Agency Sales and Service Contract or a Standard Reinsurance Agreement, the Privacy Act of 1974 (5 U.S.C. 552a) requires at subsection (m) that when an agency [FCIC] provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system * * *. [A]ny such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date if this section [December 31, 1974], shall be considered to be an employee of an agency.

The Privacy Act of 1974 reflects the concern of Congress over the government's potential to invade individual privacy in the name of information collecting and provides constraints on an agency's recordkeeping. The principle focus of the Privacy Act, for contracting companies and reinsured companies is on the individual's access to certain records, the limitations on disclosure of records,

safeguards to protect records, and remedial measures for violations of the Act.

This regulation prescribes the procedures the FCIC will follow when participants submit their SSN or EIN to be eligible to participate in the crop insurance program. Previously, submission of SSN's and EIN's was voluntary and no penalty was imposed on participants in the crop insurance program who failed to provide this information on their applications. Under the mandate of the FCI Act, the FCIC, insurance, and reinsured companies will now begin collecting SSN's and EIN's to identify the policyholders. The FCI Act also requires those holding 5% or more interest in such policyholders to supply their SSN or EIN to the FCIC, insurance, or reinsured company.

Furthermore FCIC will; (1) maintain a system of records (for the FCIC, insurance, and reinsured companies); (2) collect, use, and store SSN's and EIN's; (3) clarify the FCIC's and the government contracting agents' authority to use and disclose SSN's and EIN's, and (4) describe the procedures to be used to destroy or discontinue use of EIN's and SSN's.

FCIC is soliciting comments from the public for 15 days after publication of this proposed rule in the **Federal Register**. Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street, NW., 5th Floor, Washington, DC during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 400**

Administrative practice and procedure, Claims, Crop Insurance, Disaster assistance, Drug traffic control, Government employees, Income taxes, Intergovernmental relations, Reporting and recordkeeping requirements, Wages.

**Proposed Rules**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation (FCIC) proposes to add a new subpart Q to its General Administrative Regulations to be known as 7 CFR part 400, subpart Q, General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers, to read as follows:

## PART 400—GENERAL ADMINISTRATIVE REGULATIONS

### Subpart Q—General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

Sec.


400.401 Basis and purpose and applicability.
400.402 Definitions.
400.403 Required system of records.
400.404 Policyholder responsibilities.
400.405 Company responsibilities.
400.406 Restricted access.
400.407 Safeguards and storage.
400.408 Unauthorized disclosure.
400.409 Penalties.
400.410 Obtaining personal records.
400.411 Disposition of records.
400.412 OMB Control numbers.


**Authority:** 7 U.S.C. 1506, 1508.

### Subpart Q—General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

#### § 400.401 Basis and purpose and applicability.

(a) The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, (7 U.S.C. 1501 *et seq.*) (FCI Act), as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Farm Act) (Pub. L. 101–624, 104 Stat. 3359), to prescribe procedures for the collection, use, and confidentiality of Social Security Account Numbers (SSN) or Employer Identification Numbers (EIN) and related records.

(b) These regulations are applicable to:

(1) All holders of all crop insurance policies issued by FCIC under the FCI Act and all private insurance companies, including past and present officers and employees of such companies, selling such policies under an FCIC Agency Sales and Service Contract;

(2) All holders of crop insurance policies sold by private insurance companies and reinsured by the FCIC under the provisions of a FCIC Standard Reinsurance Agreement or other FCIC reinsurance agreement; and all private reinsured companies including past and present officers and employees of such companies;

(3) Any agent or company, or any past or present officer or employee of such agent or company, under contract to private insurance companies for loss adjustment or other purposes related to the crop insurance programs insured or reinsured by FCIC; and

(4) All past and present officers and employees of the Federal Crop Insurance Corporation.

#### § 400.402 Definitions.

(a) *Access*—with respect to authorized persons, the ability of the authorized person to read, review, and use for actions authorized under the FCI Act, the records containing the SSN or EIN.

(b) *ASCS*—Agricultural Stabilization Conservation Service, United States Department of Agriculture.

(c) *Applicant*—the person or entity that submitted the application for a crop insurance policy issued by the FCIC, or issued by a reinsured company under the FCI Act.

(d) *Authorized person*—an officer or employee of the FCIC, insurance company, or reinsured company, whose duties require access in the administration of the FCI Act.

(e) *Collection*—the act of obtaining and recording a SSN or EIN from participants in the crop insurance program.

(f) *Disposition of records*—the act performed by the insurance company or reinsured company of removing records containing a participant's SSN or EIN and disposition of such records by the insurance companies, or reinsured companies.

(g) *EIN*—a participant's Employer Identification Number required under section 6109 of the Internal Revenue Code of 1986.

(h) *FCI Act*—the Federal Crop Insurance Act as amended (7 U.S.C. 1501 *et seq.*).

(i) *FCIC*—Federal Crop Insurance Corporation.

(j) *FOIA*—the Freedom of Information Act, 5 U.S.C. 552.

(k) *Government contract employees*—authorized persons employed by an insurance or reinsured company, former officers or employees of such company, and loss adjusters.

(l) *Past officers and employees*—any officer or employee of the insurance company, reinsured company, or corporation who leaves the employ of such company or corporation subsequent to the official effective date of this rule.

(m) *Policyholder*—an applicant accepted by the FCIC, the insurance company, or the reinsured company.

(n) *Reinsured company*—a private insurance company having a Standard Reinsurance Agreement, or other reinsurance agreement, with the FCIC whose crop insurance policies are reinsured by the FCIC under such agreements

(o) *Related records*—any record, list, or compilation that indicates, directly or indirectly, the identity of any individual

with respect to whom an SSN or EIN is maintained in a system of records.

(p) *Restricted access*—restricting review of all records maintained by authorized persons to only the authorized persons who need access to such records for official business under the FCI Act.

(q) *Retrieval of records*—retrieval of an individual's records by a participant's SSN or EIN.

(r) *Safeguards*—methods of security to be taken by the FCIC, the insurance company, and the reinsured companies to protect a participant's SSN or EIN from unlawful disclosure and access. Records containing the SSN or EIN must be secured in locked file storage, secured computer data files, or similar safe storage.

(s) *SSN*—an individual's Social Security Number.

(t) *Storage*—the secured storing of records kept by the FCIC, insurance, or reinsured companies on computer diskettes (soft and hard drives) computer printouts, magnetic tape, index cards, microfiche, micro film, etc.

(u) *Substantial beneficial interest*—an interest of five percent (5%) or more in an applicant or policyholder.

(v) *System of records*—records maintained by the FCIC, insurance companies, or reinsured companies from which information is retrieved by a personal identifier including the SSN, EIN, or name.

**§ 400.403 Required system of records.**

Insurance companies and reinsured companies are required to implement a system of records for obtaining, using, and storing documents containing SSN or EIN data. This data should include: (1) Name: (2) address; (3) city and state; (4) SSN or EIN; and (5) policy numbers which have been used by the FCIC, the insurance company, or the reinsured companies.

**§ 400.404 Policyholder responsibilities**

(a) The policyholder or applicant for crop insurance must provide a correct SSN or EIN to the FCIC, the insurance company, or the reinsured company to be eligible for insurance. The SSN and EIN will be used by the FCIC, the insurance companies, and the reinsured companies in: (1) Determining the correct parties to the agreement or contract; (2) collecting premiums; (3) determining the amount of indemnities; (4) establishing actuarial data on an individual policyholder basis; and (5) determining eligibility for program benefits.

(b) If the policyholder or applicant for crop insurance does not provide the correct SSN or EIN on the application or other forms where such SSN or EIN is required, the FCIC, insurance company, or reinsured company will reject the application.

(c) The policyholder is required to provide to FCIC, the insurance company, and the reinsured companies the name and SSN or EIN of any individual or company holding or acquiring access to a substantial beneficial interest in such policyholder.

**§ 400.405 Company responsibilities.**

The insuring or reinsured company is required to collect and record the SSN or EIN on each application or any other form required by the FCIC.

**§ 400.406 Restricted access.**

The Manager, other officer, or employee of the FCIC or authorized person (as defined in § 400.402(d)) may have access to the EIN's and SSN's obtained pursuant to § 400.404 only for the purpose of establishing and maintaining a system of records necessary for the effective administration of the FCI Act in accordance with § 400.404 of this part. These numbers may be used in administering the FCI Act.

**§ 400.407 Safeguards and storage.**

(a) Access to records identifying an applicant's SSN or EIN is restricted as provided in § 400.406. Records must be secured in locked file storage, secured computer data files, or similar safe storage. An authorized person, as defined in § 400.402(d) must maintain hardcopy records in file folders and, when not in use, such hardcopy records must be: (1) locked in a cabinet or safe, and/or (2) when on a computer, kept on hard or floppy diskette, and accessed only through a secure computer system procedure.

(b) Records identifying a SSN or EIN stored on computer printouts, hard or floppy diskette, microfiche, or index cards must be kept in locked file cabinets, safes, or in secured computer systems.

**§ 400.408 Unauthorized disclosure.**

Anyone having access to the records identifying a participant's SSN or EIN will abide by the provisions of section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) and section 6109(f) Internal Revenue Code of 1986 (26 U.S.C. 6109(f)). All records are confidential, and are not to be disclosed to anyone not authorized thereunder. Disclosure of records containing the SSN and EIN is restricted in accordance with the parameters of the Privacy Act Statement of Notice established under the Privacy Act (5 U.S.C. 552a).

**§ 400.409 Penalties.**

Unauthorized disclosure of SSN's or EIN's by any person will subject that person, or the person soliciting the unauthorized disclosure, to civil or criminal sanctions imposed under various federal statutes, including 26 U.S.C. 7613, 5 U.S.C. 552(a), and 42 U.S.C. 408.

**§ 400.410 Obtaining personal records.**

Policyholders in the crop insurance program will be able to review or correct their records, as provided by the Privacy Act. Participants may request their records by:

(a) Mailing a written request, with their signature, to the headquarters office of the FCIC; the field office, ASCS; the insurance company, or the reinsured company; or

(b) Making a personal visit to the above mentioned establishments and showing valid identification.

**§ 400.411 Disposition of records.**

The insurance company, and the reinsured company will retain all records of policyholders for a period of not less than five (5) years. If a policyholder's insurance has not been renewed within a five year period from a final action on a policy (such as termination, loss adjustment, or collection), the insurance company or the reinsured company will transfer such records to FCIC.

**§ 400.412 OMB Control numbers.**

Office of Management and Budget (OMB) control numbers are contained in subpart H of part 400, title 7 CFR.

Done in Washington, DC on June 2, 1992.

**James E. Cason,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 92-15907 Filed 7-6-92; 3:47 pm]

BILLING CODE 3410-08-M

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## Animal and Plant Health Inspection Service

## 9 CFR Parts 160, 161, and 162

[Docket No. 91-027-2]

## Accreditation of Veterinarians

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** We are reopening and extending the comment period for our proposed rule that would revise the regulations by which we accredit veterinarians and authorize them to

perform, on behalf of the Animal and Plant Health Inspection Service, certain animal health activities specified in 9 CFR Chapter I. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

**DATES:** Consideration will be given only to comments on Docket No. 91–027 received on or before July 24, 1992.

**ADDRESSES:** To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–027. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. J.A. Heamon, Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8954.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 4, 1992, we published in the **Federal Register** (57 FR 23540–23548, Docket No. 91–027) a proposal to revise the regulations by which we accredit veterinarians and authorize them to perform, on behalf of the Animal and Plant Health Inspection Service, certain animal health activities specified in 9 CFR chapter I. These changes would establish accreditation on a national rather than a State basis, and would also remove a test currently required for accredited veterinarians, require an orientation program for each newly accredited veterinarian, and specify standards for performance of certain services by accredited veterinarians. We also proposed to revise procedures for suspending and revoking accredited veterinarian status, and to add language describing how civil and criminal penalties may be imposed on accredited veterinarians who violate regulatory requirements. These proposed changes are intended to ensure that an adequate number of qualified accredited veterinarians are available in the United States to perform necessary animal health activities.

Comments on the proposed rule were required to be received on or before July 6, 1992. Shortly before the comment period ended, we received several requests to extend the period during which comments would be accepted. These requests came from several associations represesnting veterinarians and an animal health association, who stated that they would need additional time in which to formulate and submit their comments on the proposed rule. In response, we are reopening and extending the comment period on Docket No. 91–027 to include the period from publication of the proposed rule on June 4, 1992, through 15 days after the publication of this notice. This action will allow the requestors and all other interested persons additional time to prepare and submit comments.

**Authority:** 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC, this 2nd day of July 1992.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92–16148 Filed 7–8–92; 8:45 am]

BILLING CODE 3410–34–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 333

**RIN 3064–AA55**

### Extension of Corporate Powers

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Proposed rule.

**SUMMARY:** The FDIC is proposing to amend its current regulations on extension of corporate powers to eliminate language which makes certain prohibitions concerning equity investments by savings associations applicable to state banks that are members of the Savings Association Insurance Fund. Such banks would thereafter be subject to the restrictions of proposed new regulations on activities and investments of insured state banks in lieu of the current restrictions. The proposed new regulations are published elsewhere in today's **Federal Register**. The effect of the proposed amendment would be to subject Savings Association Insurance Fund member state banks and Bank Insurance Fund member state banks to the same restrictions in so far as their equity investments are concerned.

**DATES:** Comments must be received by August 10, 1992.

**ADDRESSES:** Send comments to Hoyle L. Robinson, Executive Secretary, Attention: Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC, 20429. Comments may be hand delivered to room F–402, 1776 F Street NW., Washington, DC between 8:30 a.m. and 5 p.m. on business days. [FAX number: (202) 898–3838.]

**FOR FURTHER INFORMATION CONTACT:** Curtis L. Vaughn, Examination Specialist, (202) 898–6759, Shirley K. Basse, Review Examiner, (202) 898–6815, or Cheryl A. Steffen, Review Examiner, (202) 898–6768, Division of Supervision, FDIC, 550 17th Street NW., Washington, DC, 20429; Pamela E.F. LeCren, Counsel, (202) 898–3730, Counsel, or Grovetta N. Gardineer, (202) 898–3905, Senior Attorney, Legal Division, FDIC, 550 17th Street NW., Washington, DC, 20429; Victor L. Saulsbury, (202) 898–3950, Financial Analyst, or David K. Horne, (202) 898–3981, Financial Economist, Division of Research and Statistics, FDIC, 550 17th Street NW., Washington, DC, 20429.

**SUPPLEMENTARY INFORMATION:** On December 19, 1991, President George Bush signed into law the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236). Section 303 of FDICIA added section 24 to the Federal Deposit Insurance Corporation Act, "Activities of Insured State Banks" (FDI Act) (12 U.S.C. 1831a). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to the activities and equity investments that are permissible for national banks. While much of section 24 is not effective until December 19, 1992, the portions of section 24 dealing with equity investments were effective upon enactment, December 19, 1991.

Paragraph (c) of section 24 "Equity Investments by Insured State Banks", (12 U.S.C. 1831a(c)), provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type that is not permissible for a national bank. As already indicated, this paragraph became effective December 19, 1991. Several exceptions to the general prohibition to making or retaining equity investments are found in paragraph (c) itself and in subsequent paragraphs of section 24. In addition, paragraph (c) provides a "transition rule" that requires insured state banks to divest prohibited equity investments as quickly as can be prudently done but in no event any later than December 19, 1996. The FDIC is given the authority to establish conditions and restrictions governing the retention of the prohibited

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investments during the divestiture period. Paragraph (c) expressly provides for an exception for the retention or acquisition of equity investments in majority owned subsidiaries and equity investments in qualified low income housing.

Section 24(f), "Common and Preferred Stock Investment", (12 U.S.C. 1831a(f)) which also became effective upon enactment of FDICIA, provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank and which is not otherwise permitted under section 24. Like paragraph (c), paragraph (f) contains several exceptions to the general prohibition.

Paragraph (f)(2) creates a limited "grandfather" for investments in common or preferred stock or shares of investment companies. The exception allows insured state banks that (a) are located in a state that as of September 30, 1991 permitted the bank to invest in common or preferred stock listed on a national securities exchange or shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), and (b) which made or maintained investments in listed stock or registered shares during the period from September 30, 1990 to November 26, 1991, to acquire or retain, subject to the FDIC's approval, listed stock or registered shares to the same extent to which the bank did so during the period from September 30, 1990 to November 26, 1991 ("relevant period") up to an aggregate maximum of 100 percent of the bank's capital. A bank must file a written notice with the FDIC of its intent to take advantage of the exception (and must receive the FDIC's approval) before it can lawfully retain or acquire listed stock or registered shares pursuant to the exception provided by paragraph (f)(2). If a bank made investments in listed stock or registered shares during the relevant period that exceed in the aggregate 100 percent of the bank's capital as measured on December 19, 1991, the bank must divest the excess over the three year period beginning on December 19, 1991 at a rate of no less than ⅓ of the excess each year.

Paragraph (d)(2) provides an exception for the retention of an equity interest in a subsidiary that was engaged in a state in insurance activities as principal on November 21, 1991 so long as the subsidiary's activities continue to be confined to offering the same type of insurance to residents of the state, individuals employed in the state and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state.

Paragraph (e) indicates that nothing in section 24 shall be construed as prohibiting an insured state bank in Massachusetts, New York or Connecticut from owning stock in a savings bank life insurance company provided that consumer disclosures are made.

Section 24(g) grants the FDIC the authority to make determinations under section 24 by regulation or order.

Elsewhere in today's Federal Register the FDIC is proposing to add a new part 362 to the FDIC's regulations that would implement the equity investment provisions of section 24.

On April 30, 1991 the FDIC amended the FDIC's regulations by adding a new § 333.3 to part 333, "Extension of Corporate Powers" (12 CFR 333.3). That section, among other things, causes state banks that are members of the Savings Association Insurance Fund ("SAIF member state banks") to be subject to the conditions and restrictions regarding equity investments to which state savings associations are subject pursuant to § 303.13 of the FDIC's regulations (12 CFR 303.13). Section 303.13 was adopted by the FDIC on December 12, 1989 (54 FR 53540, December 29, 1989) in order to implement section 28 of the FDI Act (12 U.S.C. 1831e) which placed certain prohibitions on the activities and equity investments of state savings associations. Section 28 was added to the FDI Act as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73, 103 Stat. 183 (1989)).

Among other things, section 28 of the FDI Act and § 303.13 of the FDIC's regulations prohibit state chartered savings associations from acquiring or retaining any equity investment of a type or in an amount that is not permissible for a federal savings association. If a state savings association meets it fully phased-in capital requirements and the FDIC determines that there is not a significant risk to the deposit insurance fund, a state savings association may acquire or retain an equity investment in a service corporation that would not be permissible for a federal savings association. Equity investments acquired prior to August 8, 1989 that are prohibited investments must be divested as quickly as prudently possible but in no event later than July 1, 1994. The FDIC may set conditions and restrictions governing the retention of the prohibited equity investments during the divestiture period.

It was the determination of the FDIC's Board of Directors when § 333.3 was adopted that savings associations which convert to state chartered banks and retain their membership in SAIF should continue to be subject to the safeguards enacted by FIRREA. The action was found necessary by the Board of Directors to protect SAIF from harm. At the same time, however, the Board of Directors indicated that it was not its intent to permanently establish two classes of state banks that would be treated differently based upon their membership in a particular deposit insurance fund. The FDIC subsequently undertook a review of the issue of expanded bank powers with the hopes of proposing a regulation applicable to all state banks. Before the FDIC could publish a proposal, however, Congress enacted FDICIA along with the provisions described above concerning equity investments.

It is the FDIC's opinion that § 333.3 was not repealed by implication with the enactment of section 303 of FDICIA. However, in light of the action by Congress, the FDIC's previously expressed intent to adopt uniform treatment for state banks, and the fact that the equity investment provisions of section 24 of the FDI Act are currently effective, the FDIC is proposing to amend § 333.3 of this part to allow state banks to be governed by the equity investment provisions of section 24 of the FDI Act and any regulations adopted by the FDIC pursuant thereto.

**Regulatory Flexibility Analysis**

The Board of Directors has determined that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed amendment will not necessitate the development of sophisticated recordkeeping and reporting systems by small institutions nor the expertise of specialized staff accountants, lawyers or managers that small institutions are less likely to have absent hiring additional employees or obtaining these services from outside vendors. On the contrary, the proposed amendment if adopted, will relieve what may be perceived as a burden on SAIF member state banks (both large and small) in that they are currently subject to a different set of rules regarding their equity investments than that to which Bank Insurance Fund member state banks are subject. SAIF member state banks are presently required to comply

with the most restrictive rule and therefore must determine which rule is in fact the more restrictive. This amendment would relieve that burden and place SAIF member state banks on a par with BIF member state banks.

As the proposed amendment will not have a disparate economic impact on small institutions, the FDIC is not required to conduct a Regulatory Flexibility Act analysis. (See section 605 of the Regulatory Flexibility Act (5 U.S.C. 605)).

**List of Subjects in 12 CFR Part 333**

Banks, banking.

In consideration of the foregoing, the FDIC hereby proposes to amend chapter III, title 12 of the Code of Federal Regulations by amending part 333 as follows:

## PART 333—EXTENSION OF CORPORATE POWERS

1. The authority citation for part 333 continues to read as follows:

**Authority:** 12 U.S.C. 1816, 1818, 1819, 1828(m).

**§ 333.3 [Amended]**

2. Section 333.3(a) is amended by removing "set forth in § 303.13(a) through § 303.13(f) of this chapter" where it appears in the first sentence and adding in lieu thereof "set forth in § 303.13(a) through § 303.13(c), and § 303.13(f) of this chapter".

By Order of the Board of Directors.

Dated at Washington, DC this 16th day of June, 1992.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 92-15360 Filed 7-8-92; 8:45 am]

BILLING CODE 6714-01-M

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**12 CFR Part 362**

**RIN 3064-AA29**

## Activities and Investments of Insured State Banks

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Proposed rule.

**SUMMARY:** The FDIC is proposing to add new regulations governing the activities and investments of insured state banks. The proposal implements a portion of new section 24 of the Federal Deposit Insurance Act (FDI Act). Under the proposal, insured state banks are prohibited, subject to certain exceptions, from making equity investments of a type, or in an amount, that are not permissible for a national bank. The proposal requires banks to file with the FDIC their plan for the divestiture of any prohibited equity investments; it establishes procedures regarding notices to the FDIC pertaining to excepted equity investments; delegates authority to act on notices and divestiture plans from the FDIC's Board of Directors to the Director of the Division of Supervision and to regional directors, and requires that certain information be provided to the FDIC regarding existing insurance underwriting activities that the law allows to be continued.

**DATES:** Comments must be received by August 10, 1992.

**ADDRESSES:** Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to room F-402, 1776 F Street NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F-402 between 8:30 a.m. and 5 p.m. on business days. [FAX number: (202) 898-3838.]

**FOR FURTHER INFORMATION CONTACT:** Curtis L. Vaughn, Examination Specialist, (202) 898-6759, Shirley K. Basse, Review Examiner, (202) 898-6815, or Cheryl A. Steffen, Review Examiner, (202) 898-6768, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429; Pamela E.F. LeCren, Counsel, (202) 898-3730, or Grovetta N. Gardineer, Senior Attorney, (202) 898-3905, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429; Victor L. Saulsbury, Financial Analyst, (202) 898-3950, or David K. Horne, Financial Economist, (202) 898-3981, Division of Research and Statistics, FDIC, 550 17th Street NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, Attention: Desk Officer for the Federal Deposit Insurance Corporation, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F-453, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. The collection of information in this regulation is found in § 362.3(c), § 362.3(d), and § 362.4 and takes the form of (1) a requirement to submit a divestiture plan covering the disposition of equity investments that may no longer be retained, (2) a requirement to file a notice of intent to retain and acquire common or preferred stock listed on a national securities exchange or shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a), and (3) a notice concerning certain insurance activities conducted by well-capitalized insured state banks and/or any of their subsidiaries as of November 21, 1991. The information will allow the FDIC to properly discharge its responsibilities under section 24 of the Federal Deposit Insurance Corporation Act as amended by section 303 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, 12 U.S.C. 1831a). The information in the divestiture plans and notices will be used by the FDIC for assuring compliance with the law and as part of the process of determining risk to the applicable insurance fund and for granting exceptions, if warranted, to the restrictions contained in section 24 of the Federal Deposit Insurance Corporation Act.

The estimated annual reporting burden for the collection of information requirement in the regulation is summarized as follows:

*Plan for Divestiture of Prohibited Equity Investments*

Number of Respondents: 1879.
Number of Responses Per Respondent: 1.
Total Annual Responses: 1879.
Hours Per Response: 16.
Total Annual Burden Hours: 30,064.

*Notice of Intent To Invest in Common or Preferred Stock or Shares of an Investment Company*

Number of Respondents: 1038.
Number of Responses Per Respondent: 1.
Total Annual Responses: 1038.
Hours Per Response: 8.
Total Annual Burden Hours: 8,304.

*Notice of Insurance Activities*

Number of Respondents: 10.
Number of Responses Per Respondent: 1.
Total Annual Responses: 10.
Hours Per Response: 6.
Total Annual Burden Hours: 60.

### Background

On December 19, 1991, the Federal Deposit Insurance Corporation

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Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236) was signed into law. Section 303 of FDICIA added section 24 to he Federal Deposit Insurance Corporation Act, "Activities of Insured State Banks" (FDI Act) (12 U.S.C. 1831a). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to activities and equity investments that are permissible for national banks. While much of section 24 does not become effective until December 19, 1992, the provisions of section 24 that deal with equity investments were effective upon enactment, December 19, 1991.[1]

Paragraph (c) of section 24 (12 U.S.C. 1831a(c)), "Equity Investments by Insured State Banks", provides that no insured state bank may directly, or indirectly acquire or retain any equity investment of a type that is not permissible for a national bank. This paragraph became effective December 19, 1991. Several exceptions to the general prohibition to making or retaining equity investments are found in paragraph (c) itself and in subsequent paragraphs of section 24. In addition, paragraph (c) provides a "transition rule" that requires insured state banks to divest prohibited equity investments as quickly as can be prudently done but in no event any later than December 19, 1996. The FDIC is given the authority to establish conditions and restrictions governing the retention of the prohibited investments during the divestiture period. Paragraph (c) expressly provides for an exception for the retention or acquisition of equity investments in majority owned subsidiaries and equity investments in qualified low income housing.

Section 24(f) (12 U.S.C. 1831a(f)) "Common and Preferred Stock Investment", also effective upon enactment of FDICIA, provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank and is not otherwise permitted under section 24. Like paragraph (c), paragraph (f) contains several exceptions to the general prohibition.

Paragraph (f)(2) creates a limited "grandfather" for investments in common or preferred stock listed on a national securities exchange or shares of registered investment companies. The exception allows insured state banks that (a) are located in a state that as of September 30, 1991 permitted the bank to invest in common or preferred stock listed on a national securities exchange ("listed stock") or shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) ("registered shares"), and (b) which made or maintained investments in listed stock or registered shares during the period from September 30, 1990 to November 26, 1991, to acquire and retain, subject to the FDIC's approval, listed stock or registered shares to the same extent to which the bank did so during the period from September 30, 1990 to November 26, 1991 ("relevant period") up to an aggregate maximum of 100 percent of the bank's capital. A bank must file a written notice with the FDIC of its intent to take advantage of the exception and must receive the FDIC's approval before it can lawfully retain or acquire listed stock or registered shares pursuant to the exception provided by paragraph (f)(2). If a bank made investments in listed stock or registered shares during the relevant period that exceed in the aggregate 100 percent of the bank's capital as measured on December 19, 1991, the bank must divest the excess over the three year period beginning on December 19, 1991 at a rate of no less than ⅓ of the excess each year. (The FDIC's option as to the scope and applicability of the "grandfather" provided for by section 24(f)(2) is discussed at length below.)

Paragraph (d)(2) provides an exception for the retention of an equity interest in a subsidiary that was engaged "in a state" in insurance activities "as principal" on November 21, 1991 so long as the subsidiary's activities continue to be confined to offering the same type of insurance to residents of the state, individuals employed in the state and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state.

Paragraph (e) indicates that nothing in section 24 shall be construed as prohibiting an insured state bank in Massachusetts, New York or Connecticut from owning stock in a savings bank life insurance company provided that consumer disclosures are made.

Section 24(g) grants the FDIC the authority to make determinations under section 24 by regulation or order and section 24(i) indicates that nothing in section 24 shall be construed as limiting the authority of the FDIC to impose more stringent restrictions than those set out in section 24.

It is the FDIC's opinion that an insured state bank which prior to December 19, 1991 entered into commitments to acquire equity investments at some time after December 19, 1991 of a type, or in an amount, which are now prohibited to insured state banks pursuant to section 24 may not proceed with the acquisition. Generally speaking, banks in this circumstance should have a defense to a breach of contract claim on the basis of impossibility of performance (i.e., performance under the contract would be illegal as a result of subsequently enacted legislation). See *Connolly* v. *Pension Benefit Guaranty Corporation*, 475 U.S. 211 (1986); *Omnia Commercial Co.* v. *U.S.*, 261 U.S. 502, 511 (1923); *Louisville and Nashville R.R. Co.* v. *Mottley*, 219 U.S. 467 (1911). In short, the FDIC is adopting the position that, with regard to a fully executory contract, there had been no "acquisition" of an equity investment prior to December 19, 1991 which is eligible for retention over the divestiture period. Partially performed contracts will need to be reviewed on the facts in order to determine whether it can be said that an equity investment was "acquired" before December 19, 1991. Insured state banks should be reminded, however that, even if it is determined that the completion of a partially performed contract does not violate the prohibition of section 24, the equity investment must be divested if it is a nonconforming investment. Insured state banks should note that this position is the same that the FDIC adopted in 1989 regarding state savings associations. (See, 54 FR 53545, December 29, 1989).

The FDIC is proposing to add a new part to its regulations that would implement those portions of section 24

[1] Unlike paragraphs (a) and (d), of section 24, paragraphs (c) and (f) do not contain any language delaying their effectiveness until December 19, 1992. Nor does the delayed effectiveness of paragraph (a) which concerns "activities" of insured state banks control the timing of paragraphs (c) and (f) even though "activity" is defined to include acquiring or retaining any investment. As paragraphs (c) and (f) distinguish between other types of investments and investments that are equity investments, the specific treatment accorded equity investments under the statute governs. In short, equity investments are set apart and treated separately under the statute. This is consistent with the same treatment accorded equity investments by state savings associations under section 28 of the FDI Act (12 U.S.C. 1831e)) as added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA", Pub. L. 101–73, 103 Stat. 183). Section 28(a) prohibited state savings associations from engaging in certain activities after January 1, 1990. Section 28(c) prohibited state savings associations from making certain equity investments. Section 28 also defines "activity" to include acquiring or retaining any investment. The section's legislative history clearly indicates that paragraph (c) was immediately effective upon enactment, i.e., making it clear that making an equity investment is not an "activity". (135 Cong. Rec. S10203 (daily ed. August 4, 1989)).



that are presently in effect, i.e., the provisions described above. It is the agency's intent to at a later date propose amendments addressing the remainder of section 24, i.e., the provisions of section 24 concerning activities of insured state banks and their subsidiaries. Those provisions do not take effect until December 19, 1992.

A description of the proposal, as well as a request for specific comments, follows.

Elsewhere in today's **Federal Register** the FDIC is proposing to amend § 333.3 of the FDIC's regulations (12 CFR 333.3) "Savings Association Insurance Fund (SAIF) member state banks formerly savings associations." This amendment would relieve SAIF member state banks from the restrictions of section 333.3 in so far as that regulation makes SAIF member state banks subject to the equity investment restrictions applicable to savings associations found in § 303.13 of the FDIC's regulations. (12 CFR 303.13). The effect of the amendment would be to eliminate what is currently a disparate treatment among banks as to their equity investments based upon their deposit insurance fund membership. It is the FDIC's present intent to consider whether or not to modify or eliminate the remainder of § 333.3 at the same time additional regulations implementing the remainder of section 24 of the FDI Act are considered.

**Scope and Applicability of Exception Created by Section 24(f)(2)**

The FDIC has preliminarily reached several conclusions concerning the interpretation of section 24(f) and the "grandfather" conferred thereby. These conclusions form the basis of the portion of proposed regulation which deals with equity investments in stock listed on a national securities exchange and shares of investment companies. We recognize that the language of the statute may be susceptible to a different interpretation, however, at this time it is the FDIC's opinion that the interpretation discussed below is the interpretation that is the most consistent with the overall intent of section 24. We specifically invite comment on our interpretation and the proposal's reliance thereon.

The FDIC is preliminarily of the opinion that:

1. The exception afforded by paragraph (2) of section 24(f) applies only to an insured state bank (an "Eligible Bank") which (a) is located in a state that permitted, as of September 30, 1991, investment in common or preferred stock listed on a national securities exchange or shares of an investment company registered under the Investment Company Act of 1940 [2] ("Listed Stock" and "Registered Shares", respectively) and (b) made or maintained investments in Listed Stock or Registered Shares during the period beginning on September 30, 1990 and ending on November 26, 1991 (the "Relevant Period"); provided that under no circumstances does section 24(f) allow the aggregate amount of investments in Listed Stock and Registered Shares to exceed 100 percent of the Eligible Bank's capital; and provided further that the Eligible Bank has filed a notice with, and obtained the approval of, the FDIC concerning its intentions to acquire or retain investments in Listed Stock or Registered Shares.

2. An Eligible Bank may, subject to approval of the FDIC, retain, or acquire in the future, investments in Listed Stock or Registered Shares in an amount not to exceed the percentage of the Eligible Bank's capital that was invested in Listed Stock or Registered Shares during the Relevant Period.

3. An Eligible Bank must obtain the approval of the FDIC in order lawfully to retain, or acquire in the future, Listed Stock or Registered Shares. Any such approval may be granted only after receipt by the FDIC of written notice from the Eligible Bank concerning its intention to acquire or retain the investments. The approval may contain such conditions or restrictions (including ordering divestiture of some or all of the investments) as the FDIC determines is appropriate to avoid significant risk to the insurance fund of which the Eligible Bank is a member or to avoid any adverse effect on the safety and soundness of the bank.

*Analysis of Exception*

Section 24(f)(2) provides an exception to the general prohibition to making or retaining equity investments that are not permissible investments for national banks. The exception has limited applicability to specified investments by a potentially small group of state banks. A two part test applies. First, the bank must be an Eligible Bank. (See section 24(f)(2)(A) and 24(f)(2)(B).) Second, it must notify the FDIC of its intent to effect investments pursuant to the exception in paragraph (f)(2) and receive FDIC approval to do so. (See section 24(f)(6).)

Once eligibility has been determined, and provided that FDIC grants its approval,[3] the Eligible Bank may retain the Listed Stock or Registered Shares, and continue to make investments of the same type as it made during the Relevant Period, in an aggregate amount not exceeding the percentage of the Eligible Bank's capital represented by such investment made during the Relevant Period.

For example, if during the Relevant Period the bank had 30 percent of its capital invested in Listed Stock and 45 percent of its capital invested in Registered Shares, it is limited to a maximum investment of 30 percent of capital in Listed Stock and a maximum investment of 45 percent of capital in Registered Shares in the future under section 24(f)(2).[4]

Also by way of example, if the bank had invested 50 percent of its capital in Registered Shares, but did not make or maintain any investment in Listed Stock, it would not be eligible to invest in Listed Stock in the future pursuant to section 24(f), and its maximum investment in Registered Shares would be limited to 50 percent of capital.

The FDIC may decline approval for any Eligible Bank to continue to make the same type of investments up to the same level of capital made during the Relevant Period if to do so may pose a significant risk to the deposit insurance fund. The FDIC also may order any Eligible Bank to divest some or all of its investments made during or subsequent to the Relevant Period if continue ownership of such investments would have an adverse effect on its safety and soundness.[5]

Any bank which invested during the Relevant Period in Listed Stock or Registered Shares in excess of 100 percent of its capital, as measured on December 19, 1991, is required to divest the excess investments over the three year period beginning December 19, 1991.

The purpose of section 24 is to ensure that state banks are not exposed to undue risk as a result of their activities

[2] 15 U.S.C. 80a–1 et seq.

[3] The authority of the FDIC to grant or deny approval carries with it the implied authority to condition or restrict approval.

[4] The Bank may sell any investment and replace it with another investment of the same type. The bank is not limited to buying common or preferred stock or shares of investment companies in which it previously invested, *i.e.*, stock or shares of the same issuer.

[5] The language of section 24(f)(7) does not limit the authority of the FDIC to order divestiture of stock or shares acquired between September 30, 1990 and November 26, 1991. Moreover, section 24(i) expressly indicates that section 24 shall not construed to limit the authority of the appropriate Federal banking agency to impose more stringent restrictions than those contained in section 24. The FDIC therefore would be able, for example, to exercise its cease-and-desist authority if it determines that continued exercise of any "grandfathered" investment authority presents a safety and soundness concern.

and investments which would threaten the deposit insurance funds. In view of this purpose, the FDIC concludes that the exception contained in section 24(f)(2) should be read narrowly. To read the exception broadly would be inconsistent with general tenets of statutory construction [6] and generally accepted notions of the purpose of statutory "grandfather provisions" such as the exception set forth in section 24(f). Such provisions frequently are included in legislation to avoid harsh, unfair or disruptive results on business relationships or activities undertaken prior to a change in the law.

The FDIC's reading of section 24(f)(2) allows Eligible Banks that were engaged in the business of making investments in Listed Stock or Registered Shares prior to enactment of the statute, to continue to do so to the same extent after enactment, subject to FDIC approval. It is the FDIC's present opinion that this reading will not be disruptive to banks already engaged in these investments and that to read section 24(f) as outlined above is consistent with the purpose of the limited exception. A contrary interpretation could permit banks to expand their investments or initiate such investments for the first time which, in the FDIC's present opinion, does not seem justified in the face of the Congressional ban on such investments which is applicable to all other insured state banks.

**Description of Proposal and Request for Comments**

As reflected in § 362.1 of the proposal, it is the FDIC's intent in adopting part 362 to implement the provisions of section 24 of the FDI Act and to ensure that activities and investments undertaken by insured state banks (1) do not present a risk to either the Savings Association Insurance Fund (SAIF) or the Bank Insurance Fund (BIF), (2) are safe and sound, (3) are consistent with the purposes of federal deposit insurance, and (4) are consistent with the law. For the most part, the proposed regulation closely follows the equity investment provisions of section 24. Relevant definitions have been added as has a provision requiring that divestiture plans be submitted covering prohibited equity investments. In addition, a provision has been added requiring that information be filed with the FDIC that will enable the FDIC to monitor compliance with section 24(d)(2)(B) of the FDI Act. That provision creates a limited "grandfather" for certain state banks and/or their subsidiaries that were engaging in certain insurance activities as of November 21, 1991. Lastly, the proposal contains delegations of authority from the Broad of Directors to the Director of the Division of Supervision. The Director may in turn delegate that authority to the regional directors.

*1. Definitions.*

Company

The term "company" is defined in the proposal as any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization. The term is intended to include entities organized to conduct a specific business or businesses but does not include sole proprietorships.

Control

"Control" as defined in the proposal has the same meaning as set forth in § 303.13(a)(2) of the FDIC's regulations. As defined therein, "control" means the power to directly or indirectly vote 25 percent or more of the voting stock of a bank or company, the ability to control in any manner the election of directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company.

Convert its Charter

The phrase "convert its charter" as used in the proposal refers to any instance in which a bank undergoes any transaction which causes the bank to operate under a different form of charter than that under which it operated as of December 19, 1991. The definition is intended to encompass any transaction as a result of which a bank will from that point forward conduct business pursuant to a type of charter created by state statute that is new as to the particular bank. For example, if a bank that is operating under a savings bank charter begins to operate under a commercial bank charter, the savings bank will be said to have converted its charter regardless of how the transaction is accomplished.

Depository Institution

The term "depository institution" as used in the proposal has the meaning set out in section 3(c)(1) of the FDI Act, i.e., any bank or savings association.

Equity Interest in Real Estate

As defined under the proposal "equity interest in real estate" means any form of direct or indirect ownership of any interest in real property, whether in the form of an equity interest, partnership, joint venture or other form, which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council Call Report Instructions. These instructions require that the following direct and indirect investments be included as real estate ventures:

(1) Any real estate acquired, directly or indirectly, and held for development, resale, or other investment purposes, but does not include real estate acquired in any manner for debts previously contracted.

(2) Any debt or equity investments by the bank in real estate subsidiaries that have not been consolidated; associated companies; and corporate joint ventures, unincorporated joint ventures, and general and limited partnerships over which the bank exercises significant influence if such investors are primarily engaged in the holding of real estate for development, resale, or other investment purposes.

(3) Real estate acquisition, development or construction arrangements which are accounted for as direct investments in real estate or as real estate joint ventures in accordance with guidance prepared by the American Institute of Certified Public Accountants in Notices to Practitioners issued in November 1983, November 1984, and February 1986.

(4) Real estate acquired and held for investment that has been sold under contract and accounted for under the deposit method of accounting in accordance with FASB Statement No. 66, "Accounting for Sales of Real Estate".

(5) Receivables resulting from sales of real estate acquired and held for investment accounted for under the installment, cost recovery, reduced profit, or percentage-of-completion method of accounting in accordance with FASB Statement No. 66, "Accounting for Sales of Real Estate" when the buyer's initial investment is less than 10 percent of the sales value of the real estate sold.

(6) Any other loans secured by real estate and advanced for real estate acquisition, development, or investment purposes if the insured depository institution has virtually the same risks and potential rewards as an investor in the borrower's real estate venture.

Characterization as an investment under item 6 above might include

[6] 2A C. Dallas Sands, Sutherland Statutory Construction § 47.11 (4th ed. 1984); *Commissioner of Internal Revenue* v. *Clark*, 109 S.Ct. 1455, 1463 [illegible].

instances in which the insured depository institution: (a) Provides all or substantially all necessary funds to acquire, develop or construct the property and the borrower has little or no equity in the property, (b) funds the commitment or origination fees, or both, by including them in the amount of the loan, (c) funds all or substantially all interest and fees during the term of the loan by adding them to the loan balance, (d) has no security other than the acquisition, construction or development project, (e) structures the arrangement so that foreclosure during development is unlikely because the borrower is not required to make any payments until the project is complete, or (f) finds that in order to recover the investment in the project, the property must be sold to independent third parties, the borrower must obtain refinancing from another source, or the property must be placed in service and generate sufficient net cash flow to service the debt principal and interest.

In general, the FDIC intends to treat loans as investments in real estate on the basis of item 6 when the depository institution participates in the residual profits of the project and one or more of the other five characteristics of a direct investment in real estate or a real estate joint venture is present.

As bank lending standards have evolved over the past several years, in many cases bank assets which are carried as loans on the bank's books have taken on more characteristics associated with investments rather than loans. Accounting for income from real estate loans and for real estate investment is substantially different and the improper classification of these assets can distort an institution's earnings picture. Accounting convention recognizes that, depending upon the circumstances, there is little substantive difference between certain loans and direct investments in real estate and that in those instances the loans should in fact be accounted for as direct real estate investments. The proposed regulation adopts this approach. Comment is specifically requested on the propriety of doing so.

The proposal contains three exclusions from the definition of "equity interest in real estate": (1) Real property used, or intended to be used, as offices or related facilities for the conduct of the bank's or its subsidiaries' business, (2) an interest in real estate that arises out of a debt previously contracted ("dpc property") provided that the real estate is not held any longer than the shorter of the period allowed for holding such real estate under state law or the time period national banks may hold such property, and (3) interests that are primarily in the nature of charitable contributions to community development corporations provided contributions to any one community development corporation do not exceed 2 percent of the bank's tier one capital and total contributions to all such corporations do not exceed 5 percent of the bank's tier one capital. These exclusions parallel § 7.3005, 7.3020, 7.3025 and 7.7480 of the Office of the Comptroller of the Currency's regulations. (12 CFR 7.3005, 7.3020, 7.3025, 7.7480). Insured state nonmember banks should note that, under the proposed exclusion, if state law allows a bank to hold dpc property for a longer period of time than a national bank is permitted to hold such property, the state bank must have divested the dpc property to or before the time that a national bank would be required to have divested the property or the dpc property will be considered to be an equity investment.

Equity Investment

Section 24(c)(1) of the FDI Act provides that an insured state bank may not, directly or indirectly, acquire or retain any equity investment of a type that is not permissible for a national bank and section 24(f)(1) provides that an insured state bank may not, directly or indirectly, acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank. The FDIC is proposing to define equity investment for purposes of the proposal to mean any equity security, partnership interest, any equity interest in real estate and any transaction which in substance falls within any of these categories, even though it may be structured as some other form of business transaction. This broad definition of equity investment is consistent with the FDIC's treatment of a similar prohibition for savings associations found under section 28 of the FDI Act. (See also § 303.13(a)(4) of the FDIC's regulations.)

Equity Security

"Equity security" is defined under the proposal as any stock, certificate of interest or participation in any profit-sharing agreement, collateral trust certificate, pre-organization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing unless it is acquired through foreclosure or settlement in lieu of foreclosure. The definition is the same as that used in § 303.13(a) of the FDIC's regulations.

Equity Investment Permissible for a National Bank

The phrase "equity investment permissible for a national bank" is defined to mean any equity investment expressly authorized for national banks under the National Bank Act or any other federal statute, regulations issued by the Office of the Comptroller of the Currency pursuant to the authority of the National Bank Act or other federal statute, and any formal interpretation or order issued by the Office of the Comptroller of the Currency.

It may be difficult to define with certainty those equity investments that are permissible for a national bank if orders and interpretations issued by the Comptroller of the Currency are recognized. Orders and interpretations represent an ongoing process that continually refines the definition of permissible investments, at times tied to narrow circumstances. It may, therefore, be inappropriate to recognize orders and interpretations. Additionally, staff opinions issued by the Office of the Comptroller of the Currency, including its Chief Counsel, have been held as not binding on the agency in that they do not constitute final agency action. (*American Land Title Association* v. *Clarke*, 743 F.Supp. 491 (W.D.Tex. 1989)). In view of all of the foregoing, the FDIC requests comments on the propriety of including equity investments authorized by an order or formal interpretation of the Office of the Comptroller of the Currency as "permissible for the purposes of this proposal. If it is appropriate to recognize interpretations of the Office of the Comptroller of the Currency, what should the FDIC consider to constitute a formal interpretation? Lastly, insured state banks should be advised that regardless of how the FDIC defines "permissible for a national bank", insured state banks should be prepared to document to the FDIC's satisfaction that their equity investments are permissible for a national bank.

Lower Income

One of the exceptions under the proposal to the general prohibition on acquiring equity investments not permissible for a national bank allows insured state banks to become limited

partners in partnerships that develop housing projects designed to primarily benefit "lower income" persons. "Lower income" is defined for the purposes of the proposal to mean an income that is less than or equal to the median income (as determined by state or federal statistics) for the area in which the housing project is located. The "area" in which a housing project is located shall be understood to refer to the relevant Metropolitan Statistical area (MSA) if the project is located within an MSA. If the project is not located in an MSA, the median income of the "area" shall be understood to refer to the median income of the state or territory as a whole exclusive of the designated MSA's. The FDIC invites comment generally on the issue of what state or federal statistics the FDIC should recognize for the purposes of applying this definition; how the term "area" should be construed for the purposes of applying the definition; and what federal and state statistics are readily available to insured state banks.

National Securities Exchange

The term "national securities exchange" has been defined under the proposal to mean an exchange that is registered as a national securities exchange by the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) and the National Market System. The National Market System refers to the top tier of the three tiers of over-the-counter securities traded through the National Association of Securities Dealers Automated Quotation system (NASDAQ). The FDIC is of the opinion that if a security is listed on a registered exchange or is traded in the National Market System the security will be more liquid due to a wide market, sufficient information will be available about the security and the issuer for the market to make informed pricing decisions about the security, and the opportunities for fraud and manipulation of the security are minimized. Comment is requested on whether the FDIC should recognize other exchanges and quotation services as national securities exchanges. Should securities quoted on the bottom two tiers of NASDAQ be considered to be listed on a national securities exchange? Should the FDIC adopt a different approach entirely to defining what constitutes a national securities exchange? If so, what approach is recommended?

Significant Risk to the Deposit Insurance Fund

"Significant risk to the deposit insurance fund" will be considered to be present whenever it is likely that either of the deposit insurance funds administered by the FDIC may suffer any loss whatever. Although the statute and the regulation use the term "significant" in confunction with the word "loss", the test of significant risk is met if there is a likelihood of any loss whatsoever to either of the funds regardless of how small. Therefore, the amount, or the relative or absolute size of the loss that may result to either of the funds from an insured state bank engaging in an activity is not probative. What is relevant, rather, is the likelihood that some loss to either of the funds may occur. Additionally, it is not necessary that making the equity investment will result in the failure or threatened failure of an insured state bank before a significant risk of loss to either fund is considered to be present. The proposed definition is the same that is used in section 303.13(a) of the FDIC's regulations and is consistent with passages of the legislative history of section 24. (See, S. Rep. No. 102–167, 102d Cong., 1st Sess. 54 (1991)).

Subsidiary

The term "subsidiary" is defined as any company directly or indirectly controlled by an insured state bank. This term has the same meaning as found in section 337.4 of the FDIC's regulations.

Tier One Capital

"Tier one capital" as defined in the proposal has the same meaning as found in Part 325 of the FDIC's regulations when that term is used with reference to an insured state nonmember bank and any other insured bank for which the FDIC is the appropriate federal banking agency. The term shall be understood to refer to "Tier one capital" as defined by the Board of Governors of the Federal Reserve System when the term is used in reference to an insured state member bank. At this time Part 325 defines "tier one capital" as common stockholders' equity, noncumulative perpetual preferred stock and minority interests in consolidated subsidiaries, minus all intangible assets other than mortgage servicing rights eligible for inclusion in core capital and supervisory goodwill eligible for inclusion in core capital. The Board of Governors of the Federal Reserve System defines tier one capital in appendix A to 12 CFR Part 208. As defined therein tier one capital generally means common stockholders' equity, qualifying noncumulative perpetual preferred stock (including related surplus) plus minority interests in the equity accounts of consolidated subsidiaries minus goodwill. Only those capital elements that technically meet the definition of tier one capital can be included as tier one capital for the purposes of this proposal.

Well-capitalized

A "well-capitalized" insured state bank is defined in the proposal to mean an insured state bank that has a ratio of total capital to risk-weighted assets of not less than 10.0 percent; a ratio of Tier 1 capital to risk-weighted assets of not less than 6.0 percent; a ratio of Tier 1 capital to total book assets of not less than 5.0 percent; and which has not been notified that it is in a "troubled condition" for purposes of section 32 of the Federal Deposit Insurance Act. That section requires prior notice of a change in directors or senior executive officers in certain circumstances, including an instance in which the bank is in a troubled condition. An insured state bank will not be considered to be "well-capitalized" unless the above capital levels are not exclusive of the bank's investment in any subsidiary or department that engages in any activity that is not permissible for a national bank. The bank's "investment" in its subsidiary will be considered to equal the amount invested in the subsidiary's equity securities plus any debt issued by the subsidiary that is held by the bank. The bank's investment in a department will be considered to equal the total of any funds transferred to the department which is represented on the department's accounts and records as an accounts payable, a liability, or equity of the department except that transfers of funds to the department in payment of services rendered by the department will not be considered an investment in the department.

With regard to the requirement that the ratio of Tier 1 capital to risk-weighted assets be not less than 6.0 percent, readers should note that the FDIC does not intend to suggest that as a bank's total risk-based capital ratio increases that its Tier 1 capital must always increase proportionately so that 60 percent of a bank's total risk-based capital is always Tier 1 capital. For example, a bank with 11 percent total risk-based capital would not be required to have a 6.6 percent Tier 1 capital ratio in order to qualify as well-capitalized. Rather, the minimum ratio of Tier 1 capital to risk-weighted assets would still be 6.0 percent.

If a bank has been required pursuant to an order, directive, or a consent agreement to raise its capital to a higher level than that described above, the bank will not be considered to be "well-capitalized" unless the bank meets such higher level.

Whether or not the bank is in a "troubled condition" has been included as part of the definition of "well-capitalized" in recognition of the fact that the capital cushion cannot be judged to be more than adequate unless all the facts and circumstances are taken into account. Likewise, the proposed definition requires that the bank's activities that are not permissible for a national bank be in effect separately capitalized, i.e., the bank must be in a position that it could entirely lose its investment in the subsidiary or department and such loss will not cause its capital to fall below a level that is significantly above the level of capital that is considered to be the minimum necessary for the sound operation of a bank.

Comment is specifically requested on the specific capital level or levels that the FDIC should consider necessary in order for a bank to be well-capitalized for the purposes of part 362. Comment is also specifically requested on whether excluding the investment in certain subsidiaries or departments is warranted and whether the term "investment" as used herein is appropriate.

The FDIC expects to eventually conform the meaning of "well-capitalized" as used in part 362 with the meaning of "well-capitalized" as used for the purposes of section 38 of the FDI Act, "Prompt Corrective Action". Final rules have yet to be issued by the FDIC defining "well-capitalized" for the purposes of section 38. The FDIC wishes to make clear that proposing to adopt the definition of well-capitalized as set out herein should not be read as limiting in any way the FDIC's discretion in formulating a proposed definition of that term for purposes of section 38. If a different meaning of the term "well-capitalized" is adopted for purposes of administering the prompt corrective action provisions of the FDI Act, the FDIC will propose amending the definition as used in part 362. Comment is requested on whether it is appropriate that the term be defined the same in the both contexts.

Insured State Bank

"Insured state bank" as used in the proposal refers to any state bank, whether or not a member of the Federal Reserve System, that is insured by the FDIC. The term should be understood to include any insured branch of a foreign bank that is not a federal branch.

The FDI Act does not contain a definition of the term "insured state bank". It does, however, define "state member bank", "state nonmember bank", "insured bank" and "state depository institution". "Insured bank" is defined to mean any bank the deposits of which are insured by the FDIC. It is logical to assume that in enacting section 24 Congress was aware of the distinction between member and nonmember banks and that by using the term state bank it meant to include both types of state banks. What is more, since the FDI Act does not when defining the term insured bank distinguish between insured banks that are member banks and insured banks that are nonmember banks, it follows once again that the reference in section 24 to insured state banks was meant to encompass all types of state banks that are insured regardless of membership in the Federal Reserve System. It also follows that section 24 was thought to encompass state branches of foreign banks as the term "state depository institution" as defined in the FDI Act specifically includes any insured branch which is not a federal branch.

The amendment to section 9 of the Federal Reserve Act (12 U.S.C. 330) enacted by section 303(b) of FDICIA does not dictate another reading of the plain language of section 24.

That amendment is merely a technical amendment which makes clear that the Federal Reserve Board may impose conditions and restrictions upon membership in the Federal Reserve System that are consistent with the requirements and restrictions of section 24.

*2. Exceptions to General Prohibition on Acquiring or Retaining Prohibited Equity Investments*

Majority Owned Subsidiary

Section 24(c) of the FDI Act notwithstanding, an insured state bank is not prohibited from acquiring or retaining a majority stock interest in a subsidiary even if the stock investment in that subsidiary is one that would not be permissible for a national bank. This exception is contained in section 362.3(b)(1) of the proposal. If an insured state bank holds less than a majority interest in the subsidiary, and that equity investment is of a type that would be prohibited to a national bank, the exception does not apply and the equity investment is subject to divestiture.[1] Majority ownership for this exception is understood to mean ownership of greater than 50% of the outstanding voting stock of the subsidiary.

The exception for majority owned subsidiaries is itself limited. Insured state banks should note that section 24(d) provides that no subsidiary of an insured state bank may engage, after December 19, 1992, in any activity that is prohibited to a subsidiary of a national bank unless the bank meets its applicable capital requirements and the FDIC determines that the conduct of the activity in question by the subsidiary will not pose a significant risk to the deposit insurance fund. The FDIC will consider further proposed rulemaking to implement the requirement that activities by majority owned subsidiaries be approved by the FDIC. That rulemaking will consider such things as whether the FDIC should establish parameters for operations of majority owned subsidiaries, e.g., structural and/or operational restrictions to ensure that the conduct of the activity in question will not present a significant risk to the insurance fund.

Section 362.3(b)(1) of the proposal indicates that an insured state bank will not be permitted to retain its majority interest in a subsidiary pursuant to this exception if the bank was required under § 333.3 of the FDIC's regulations to request the FDIC's permission to retain that investment and the application was denied. Section 333.3 applies to state banks that are members of SAIF. Under § 333.3, a SAIF member state bank may not acquire or retain an equity investment that is not permissible for a federal savings association. An institution that meets its capital requirements may apply for permission to retain an interest in a subsidiary that would otherwise be prohibited. In order for the application to be approved, the FDIC must determine that retaining the equity investment in the subsidiary will not pose a significant risk to SAIF. Although the FDIC is proposing to delete the above described portion of § 333.3 (See proposed rule published elsewhere in today's **Federal Register**), it is the FDIC's belief that any denial previously made by the FDIC pursuant to regulation operates to limit the exception as the FDIC has already determined that retaining the investment will pose a significant risk to SAIF. It would

[1] It is our understanding that national banks may own a minority interest in certain types of subsidiaries. Therefore, an insured state bank may hold a minority interest in a subsidiary (i.e., is not required to hold at least 80% of the stock of the company) if a national bank could do so.

jeopardize SAIF to hold otherwise as it would in effect allow the bank to retain an investment expected to adversely affect the fund only to require the bank to later seek the FDIC's permission to retain the investment pursuant to whatever procedures the FDIC adopts to implement the portion of section 24 dealing with activities of subsidiaries. If the SAIF member state bank must divest its interest in a subsidiary, the divestiture must be in accordance with whatever conditions and restrictions which were previously established by the FDIC.

Qualified Housing Projects

The proposed regulation recites the exception for qualified housing projects found in section 24(c)(3) of the FDI Act. Under that exception, an insured state bank is not prohibited from investing as a limited partner in a partnership, the sole purpose of which is direct or indirect investment in the acquisition, rehabilitation, or new construction of a residential housing project intended to primarily benefit lower income persons throughout the period of the bank's investment so long as the investments, when aggregated with any existing equity investment in such a partnership or partnerships, does not exceed 2 percent of the bank's total assets. The proposed regulation indicates that banks are to take as the measure of their total assets the figure reported on the bank's most recent consolidated report of condition. The FDIC has chosen the most recent report of condition as the comparison point in an attempt to provide a more stable asset base against which the bank's investments can be measured. If an investment in a qualified housing project does not exceed the limit at the time the investment is made, the investment shall be considered to be a legal investment even if the bank's total assets subsequently decline. In that event, however, no further investments in qualified housing projects would be permissible until the bank's total assets increase.

Comment is requested on how the FDIC should construe the terms "primarily" and "residential" as used in this exception (i.e., how much commercial activity can go on in a building before it is no longer residential or no longer is intended to primarily benefit lower income persons); whether or not the FDIC should include unfunded commitments as part of the bank's investment in partnership under this exception; and what problems if any the exception as written poses for banks meeting their Community Reinvestment Act obligations.

Insured state banks should note that because the definition of equity investment does not include an interest in community development corporations up to an aggregate of 5% of a bank's tier one capital, (see discussion of "equity investment in real estate" definition) insured state banks may, under the proposal, invest in qualified housing projects excepted by section 362.3(b)(2) up to 2% of their total assets in addition to investing in community development corporations up to an aggregate maximum of 5% of tier one capital.

Savings Bank Life Insurance

Under the proposal an insured state bank is not prohibited from owning stock in a savings bank life insurance company if the bank is located in Massachusetts, New York or Connecticut provided that the savings bank life insurance company prominently discloses to purchasers of life insurance policies and annuities that these instruments are not insured by the FDIC, are not obligations of, and are not guaranteed by, any insured state bank. Section 24(e)(1)(B) of the FDI Act provides that this exception shall only apply if the bank meets the consumer disclosure provision of section 18(k) of the FDI Act. Section 18(k) does not contain any consumer disclosure provisions. In the absence of any other guidance in the statute's legislative history, the FDIC is proposing that the following or a similar disclosure will suffice to meet the statutory obligation to make consumer disclosures: "This [policy/annuity/insurance product] is not a federally insured deposit and is not an obligation of, nor is it guaranteed by, any federally insured bank." The proposal does not establish a specific time frame in which the disclosure must be made nor is the disclosure required to be on a specific form. The FDIC requests comments relating to the specific timing of these disclosures and to the necessity of having the disclosures given to the customer separately or printed on or in the insurance documents. Should customers be required to acknowledge receipt of the disclosures with their signature?

The FDIC is required under section 24 to make a finding whether savings bank life insurance activities of insured state banks pose, or may pose, any significant risk to the insurance funds. These findings will be announced separately from this portion of the rulemaking, however, the FDIC is taking this opportunity to request comment on the risks posed by savings bank life insurance activities. Specific comments are requested relating to the necessity of anti-tying provisions between bank lending activities and sales of insurance, the need for further disclosure to consumers and the need for direct financial reporting to the FDIC. Comments directed to this issue will be used in formulating the FDIC's study.

Director and Officer Liability Insurance

An insured state bank is not prohibited from acquiring up to 10 percent of the voting stock of a company that solely provides or reinsures directors', trustees' and officers' liability insurance coverage or bankers' blanket bond group insurance coverage for insured depository institutions. Any shares in excess of this limit that were purchased before December 19, 1991 shall be divested as quickly as prudently possible but in no event later than December 19, 1996. The term "provides" shall be understood to mean underwriting or assuming the insurance risk rather than acting in the capacity of an agent. If the companion proposal amending section 333.3 is adopted, insured state banks that are members of SAIF that were not permitted to acquire or retain voting stock in a directors and officers liability insurance company unless that company insured the bank's officers and directors would no longer be under those constraints. (See section 24(f)(3)(A) of the FDI Act).

Shares of Depository Institutions

Under section 24, an insured state bank is not prohibited from acquiring or retaining the voting shares of a depository institution if the institution engages only in activities permissible for national banks; the institution is subject to examination and regulation by a state bank supervisor; 20 or more depository institutions own voting shares of the institution but no one institution owns more than 15 percent of the voting shares; and the institution's voting shares are owned only be depository institutions (other than directors' qualifying shares or shares held under or acquired through a plan established for the benefit of the officers and employees). See section 24(f)(3)(B) of the FDI Act). This exception is repeated in the proposal at § 362.3(b)(6).

Interests in Insurance Subsidiaries

As indicated above, section 24 of the FDI Act will, after December 19, 1992, limit the activities that may be conducted by a company in which an insured state bank has the majority equity interest, i.e., a subsidiary. The statute contains an exception, however, for a well-capitalized insured state bank whose majority owned subsidiary was lawfully providing insurance as

principal in a state on November 21, 1991. (See section 24(d)(2)(C) of the FDI Act). An exception is also provided for a subsidiary of an insured state bank that was required before June 1, 1991 to provide title insurance as a condition of the bank's initial chartering under state law provided further that control of the bank has not changed since that date.

In the case of a bank relying upon the exception contained in section 24(d)(2)(C), the activities of the subsidiary must be limited to providing, as principal, insurance of the same type as provided by the subsidiary on November 21, 1991. Insurance of that type may be provided to residents of the state, individuals employed in the state, and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state. This exception has been included in the proposal (rather than in a rulemaking to follow later) as there is a need to collect information from "eligible" banks so that the FDIC can enforce the limits of the exception. (See § 362.4 of the proposal). We are asking that the proposed information be collected at this time as it should be easier for the affected institutions to collect the information on their insurance activities, and those of their subsidiaries, as of November 21, 1991 now rather than asking that the institutions reconstruct those activities at a later date.

For the purposes of the proposal the term "principal" shall be understood to mean underwriting or assuming the risk of insurance rather than acting in the capacity of an agent. (See, 137 Cong. Rec. S17317 daily ed. November 21, 1991) (colloquy between Sen. Graham and Sen. Garn)). The term "insurance of the same type" shall be understood to encompass whatever type of insurance policies and/or products that the bank and/or its subsidiary were authorized by state law to issue as of November 21, 1991 and were in fact providing to the public. In short, the bank and/or its subsidiary must have been actively engaged in insurance underwriting on November 21, 1991.

Comment is specifically requested on how the FDIC should construe the word "type". Is it appropriate to distinguish between, for example, life insurance products such as whole life and term life? Are variable rate annuities and single premium fixed rate annuities different types of insurance products? If the FDIC were to distinguish in this manner, a bank that was lawfully underwriting whole life insurance policies on November 21, 1991 but was not on that date underwriting term life insurance could not begin to offer term life insurance policies. Should credit life insurance be considered a different type of insurance than regular life insurance? What types of casualty insurance should be considered to be of the same type?

The statutory and regulatory exception is limited to banks and/or subsidiaries that were "lawfully providing insurance as principal" on November 21, 1991. As already indicated, the FDIC construes the language of the statute as requiring that the bank and/or subsidiary must have actually underwritten policies and/or other insurance products that were outstanding as of November 21, 1991. The exception is further limited to the types of insurance lawfully provided on November 21, 1991 "in a state." The FDIC shall construe the phrase "in a state" as excepting insurance underwriting activities by an insured state bank only in the state in which the bank was chartered as of November 21, 1991 and limiting the subsidiary of the bank to insurance underwriting activities only in the state in which the subsidiary was incorporated and doing business as of November 21, 1991.

The FDIC believes that this reading of section 24 is consistent with the provision's legislative history which, among other things, clearly indicates that the exception was intended to lapse if any changes in an insured state bank's underwriting capability within its own state occurred. (See, 137 Cong. Rec. S17316 (daily ed. November 21, 1991) (remarks of Sen. Graham)). The legislative history also indicates that the provision was intended to close a loophole in the law that permitted one state to be used as a base for nationwide insurance underwriting and that the language did so by limiting the activities to the state that authorizes it but nowhere else. (See, 137 Cong. Rec. S18619 (daily ed. November 21, 1991) (remarks of Sen. Dodd)). The construction of the exception adopted by the proposal somewhat narrowly circumscribes the exception and is therefore consistent with the above. It is also consistent with one of the basic tenets of statutory construction which provides that exceptions should be narrowly construed within the purpose of the overall provision. In view of the overall indication that insurance underwriting activities that are not be permissible for national banks are inappropriate for insured state banks, it is in the FDIC's view appropriate to adopt a narrow reading of the exception.

Common or Preferred Stock; Shares of Investment Companies

As indicated above, it is the FDIC's present opinion (on which the FDIC has sought comment) that section 24(f)(2) of the FDI Act creates a limited "grandfather" for investments in listed stock and registered shares. The "grandfather" is found in the proposed regulation at § 362.3(b)(4). Section 362.3(b)(4) provides that to the extent the FDIC permits, and subject to the requirements of § 362.3(d), "Notice and Approval of Intent to Invest in Common or Preferred Stock or Shares of an Investment Company; Divestiture of Excess Investments", an insured state bank may (1) retain the listed stock or registered shares that the bank lawfully acquired or held prior to December 19, 1991, and (2) continue to acquire listed stock or registered shares in the future, provided that the bank is located in a state that authorized investments in listed stock or registered shares as of September 30, 1991 and the bank exercised the authority to make such investments sometime during the period from September 30, 1990 to November 26, 1991.

The exception as formulated in the proposal is not a blanket authorization and the amount of the investments that are permissible thereunder is narrowly circumscribed. The limits of the permissible investments that may be made or retained pursuant to the exception, as well as the need for the FDIC's approval in order for an insured state bank to take advantage of the exception, are set out in § 362.3(d) of the proposal. (See discussion in paragraph #4 below).

Section 24(f)(5) of the FDI Act provides that the exception created by section 24(f)(2) will cease to operate if the bank converts its charter or undergoes a change in control. "Change in control" as used in section 24(f)(5) is not defined. Section 362.3(b)(4) of the proposal specifies four types of transactions, in addition to a charter conversion, (see definition of charter conversion discussed above in paragraph #1) the occurrence of which will terminate the grandfathered investment authority. Under the proposal, any time a bank undergoes a transaction for which a notice is required to be filed under section 7(j) of the FDI Act (12 U.S.C. 1817(j)); any time the bank undergoes a transaction subject to section 3 of the Bank Holding Company Act (12 U.S.C. 1842); any time control of the bank's parent company changes; or any time the bank is merged into another depository institution, the

exception will cease to apply. Thus, for example, if 25 percent or more of the bank's voting stock is acquired by an individual, the bank will no longer be able to make investments in listed stock or registered shares pursuant to the authority of § 362.3(b)(4). If the bank is acquired by a bank holding company or control (as that term is defined in the proposal) of the bank's parent company changes, the bank will lose the ability to rely upon § 362.3(b)(4). Likewise, if the bank is merged into another depository institution, the acquiring institution will not inherit the exception provided by § 362.3(b)(4).

Change in control has been in effect defined to include the above four types of transactions or events. The "definition" has been broadly fashioned in light of the general policy embodied in section 24(c) and section 24(f)(1) of the FDI Act that equity investments which are not permissible for national banks are not appropriate investments for insured state banks. Although Congress enacted a limited exception for certain banks, Congress also indicated that the exception ceases to apply whenever control of an eligible bank no longer resides with the same person or entity that controlled the bank on December 19, 1991. In light of the broader Congressional action to generally prohibit equity investments, it would seem appropriate to broadly define the universe of events that are considered to constitute a change in control.

Comment is requested on the propriety of including the four types of transactions or events as transaction or events that terminate the availability of the exception. Does the reference to section 3 of the Bank Holding Company Act, or any of the other identified events, cause some transactions to be considered a change in control that do not warrant inclusion?

If an insured state bank undergoes a change in control within the meaning of the proposal, or the bank converts its charter, and thus is no longer able to take advantage of the exception, the bank cannot make any additional investments in listed stock or registered shares. Under the proposal, however, the bank is not required to divest its existing investments unless the FDIC determines that retaining the investments will adversely affect the bank's safety and soundness and the FDIC has issued an order requiring the bank to divest the stock and/or shares pursuant to the authority of section 24(f)(7) or section 8 of the FDI Act. (See § 362.3(d)(3)). The fact that the FDIC has not taken such action, however, does not preclude the bank's appropriate banking agency (when that agency is an agency other than the FDIC) from taking steps to require divestiture of the stock and/or shares.

*3. Divestiture of Prohibited Equity Investments*

Requirement to Divest

Any equity investment acquired prior to December 19, 1991 that is not of a type, or in an amount, that is permissible for a national bank, and which does not fall within one of the exceptions of this proposed rulemaking, must be divested as quickly as prudently possible but in no event later than December 19, 1996. Although the FDIC is required by statute to see that a bank divests any prohibited equity investment as quickly as prudently possible, it is not the responsibility of the FDIC to determine exactly how an institution will accomplish the divestiture. The FDIC is, however, the final arbiter of when divestiture can be prudently accomplished. It is clear that it would not be prudent to hold equity investments that are subject to divestiture arbitrarily until the final divestiture date without adequate documentation as to the reasons that prolonging the divestiture program would be prudent. The FDIC will review a bank's plan for divestiture and take such action as may be appropriate if the plan does not allow for divestiture as quickly as can be prudently possible.

Under the proposal, SAIF member state banks that hold an equity investment which was subject to divestiture pursuant to § 333.3 of the FDIC's regulations and which is also subject to divestiture under this proposal are not allotted until 1996 to complete divestiture. In such a case, the equity investment must be divested as quickly as prudently possible but in no event later than July 4, 1994 or any earlier date established by a divestiture plan that was filed with and approved by the FDIC pursuant to § 333.3. The FDIC believes that it is inappropriate to allow such institutions a longer time to accomplish divestiture as it has been established that the institutions can prudently accomplish divestiture in advance of December 19, 1996. It would also be an inappropriate diversion of the FDIC's resources to revisit the question of divestiture of these assets.

Divestiture Plan

The proposal requires any insured state bank that is required to divest an equity investment to submit a divestiture plan with the regional director for the Division of Supervision for the region in which the bank's principal office is located not later than 60 days from the effective date of the regulation. An insured state bank that is required to submit a divestiture plan which shall describe the obligor, type, amount, book and market values (estimated or known) of the equity investments subject to divestiture as of the bank's most recent call report date prior to the filing; set forth the bank's plan to comply with the divestiture period; describe the anticipated gain or loss, if any, from the divestiture of the investment(s) and the impact on the bank's capital; and include a copy of a resolution by the bank's board of directors or board of trustees authorizing the filing of the divestiture plan. The regional director may request additional information as deemed appropriate.

It is the FDIC's intent to review each plan for the purpose of determining whether or not the insured state bank that filed the plan can prudently divest the equity investments in question in a more expeditious fashion than that contemplated under the plan filed with the regional office. The proposal specifically provides that an insured state bank that has filed a divestiture plan may act in accordance with its plan until such time as the bank is informed in writing by the appropriate FDIC official that the plan is unacceptable.

Retention of Equity Investments During Divestiture Period

Upon review of the divestiture plan and such additional information as requested by the regional director, and at any time during the divestiture period, the FDIC may impose such conditions and restrictions on the retention of the equity investments as the FDIC deems appropriate including requiring divestiture in advance of December 19, 1996. It is contemplated that the FDIC will communicate in writing its objection or nonobjection to the bank's divestiture plan. The FDIC's decision concerning the adequacy of the divestiture plan will be based on the information presented. As subsequent events may alter the continued validity of the FDIC's original determination, any nonobjection on the part of the FDIC will typically be conditioned upon the continued validity of any assumptions upon which the plan is based, the continued vitality of the bank in question, and the continuation of facts and circumstances existing at the time the nonobjection was communicated.

*4. Notice and Approval of Intent to Invest in Listed Common or Preferred Stock or Shares of Investment Company; Divestiture of Stock or Shares in Excess of 100% of Capital*

Requirement to File Notice and Receive FDIC Approval

Section 362.3(d) of the proposal provides that no insured state bank may acquire or retain listed stock or registered shares pursuant to the exception set out in § 362.3(b)(4) unless the bank files a one-time notice with the FDIC of its intent to take advantage of the exception and the FDIC determines, after reviewing the notice, that retaining the listed stock or registered shares the bank presently holds, and acquiring listed stock or registered shares in the future, will not present a significant risk to the deposit insurance fund of which the bank is a member. (The definition of "significant risk to the fund" is discussed in paragraph #1 above.) Until the FDIC has made its determination, a bank may retain the listed stock or shares that it lawfully held on December 19, 1991 (provided those investments do not exceed 100 percent of the bank's tier one capital). The bank may not, however, make any new investments in listed stock or registered shares until the bank receives the FDIC's approval.

Content of Notice

Section 362.3(d)(2) of the proposal provides that the one-time notice must be filed with the FDIC regional director for the Division of Supervision for the region in which the bank's principal office is located. The notice can be in the form of a letter or any other form convenient to the bank but it must contain the following information:

(1) A description of the listed stock and/or shares held by the bank as of December 19, 1991 and the book and market value of the stock or shares;

(2) The highest dollar amount of the bank's investments in listed stock and/or shares during the period from September 30, 1990 to November 26, 1991;

(3) A description of the bank's funds management policies including a discussion of how investments in listed stock or registered shares relates to the objectives of those policies;

(4) A description of the bank's investment policies including a discussion of the extent to which those policies limit concentrations in listed stock or registered shares, set an aggregate limit on such investments, and/or deal with the sale of the investments in light of market conditions;

(5) A discussion of how the quality of the bank's existing investments was determined and how the bank will judge the quality of future investments; and

(6) Such other information as requested by the regional director.

The notice must be accompanied by a resolution of the bank's board of directors or trustees authorizing the filing of the notice. For the purposes of supplying the information required by item #2, the notice must set out the highest dollar amount of the bank's investment during the period in listed stock calculated as a percentage of the bank's tier one capital as reported in the bank's call report for the quarter in which the high dollar investment occurred; the highest dollar amount during the period of the bank's investment in registered shares calculated as a percentage of the bank's tier one capital as reported in the bank's call report for the quarter in which the high dollar investment occurred; and the total combined percentage of the foregoing.

The FDIC is of the opinion that the information listed in § 362.3(d)(2) is the minimum information necessary in order for the FDIC to properly evaluate whether the retention of the bank's existing investments in listed stocks and/or registered shares, and the continued exercise of the bank's grandfathered investment authority, may pose a significant risk to the deposit insurance fund. Comments are requested on the appropriateness of the requested information; what burden, if any, is entailed by the notice as proposed; and what information in addition to or in lieu of that which is proposed should be included in the notice.

FDIC Determination

Section 362.3(d)(3) of the proposal, "FDIC Determination", sets out the standard against which the FDIC will evaluate notices filed pursuant to paragraph (d)(1), i.e., whether there is a significant risk to the fund posed by the exercise of the grandfathered investment authority. It also indicates that the FDIC may condition or restrict approval as necessary or appropriate and provides that the FDIC may require the notifying bank to divest some or all of its investments in listed stock and/or registered shares. If, upon a review of the notice, it is determined that the exercise of the grandfathered investment authority poses a significant risk to the fund, the notice will not be approved. The FDIC may, however, approve the notice subject to whatever conditions or restrictions are reasonably necessary to prevent that risk from occurring.

The recitation that the FDIC may impose conditions or restrictions in connection with an approval is nothing more than a restatement of the FDIC's existing implied authority to take such action. Insured state banks should note in this regard that section 24(i) of the FDI Act specifically provides that nothing in section 24 shall be construed as limiting the authority of the FDIC to impose more stringent conditions. Nor does section 24 limit the authority of the FDIC to take cease-and-desist action against any insured state bank in the event the exercise of its grandfathered investment authority is found to constitute under the circumstances an unsafe and unsound banking practice.

Divestiture of listed stock and/or registered shares may be ordered if the FDIC has reason to believe that retention of the investments in question will have an adverse effect on the safety and soundness of the notifying bank. Divestiture is not limited to investments held by the bank at the time it files its notice. If the FDIC grants approval for an insured state bank to make investments pursuant to § 362.3(b)(4), and it is determined at any time after the approval is given that the retention of listed stock and/or registered shares acquired pursuant to that approval poses a safety and soundness risk to the bank, the FDIC may require the divestiture of any of the investments.

The FDIC may deny a bank's application to fully exercise the grandfathered investment authority otherwise available to it under section 24(f)(2) of the FDI Act and § 362.3(b)(4) of the proposal but grant approval to make and retain investments in listed stock and/or registered shares to a lesser extent than the highest level of such investments made by the bank during the relevant period. If the FDIC does so, the bank must divest existing investments in excess of the level the FDIC approves as quickly as prudently possible but in no event later than December 19, 1996. A divestiture plan must be filed with the FDIC no later than 60 days after the bank receives notice that approval to retain its existing investments was not granted. The divestiture plan must contain the information specified in § 362.3(c)(3) of the proposal.

Insured state banks should note that they may not lawfully acquire any additional listed stock or registered shares until the FDIC has rendered its determination and granted its approval. (See section 24(f)(6)). The FDIC recognizes that section 24 contemplates

that notices normally will be reviewed and a determination will be made within 60 days. It is therefore the FDIC's intention to respond to the notices within 60 days to the extent practicable.

However, the FDIC has concluded that the 60-day period in paragraph (f)(6)(B) of section 24 does not allow a bank to make additional investments if the FDIC does not respond before expiration of the 60-day period from the FDIC's receipt of the notice. Paragraph (f)(6) is captioned, "Notice *and Approval*" [emphasis added] which contemplates affirmative approval by the FDIC.[9] In addition, paragraph (f)(6) does not expressly indicate the bank may proceed in the absence of a determination by the FDIC within the 60-day period,[9] nor does it require that the FDIC "shall" or "must" make a determination within the 60-day period.[10]

Neither the earlier provision found in H.R. Rep. No. 102–330 nor the statute as enacted expressly specifies a consequence for any failure by the FDIC to act within the 60-day period. A well-recognized rule uniformly applied by the courts holds that:

> A statutory time period is not mandatory unless it both expressly requires an agency or public official to act within a particular time period and specifies a consequence for failure to comply with the provision.[11]

The FDIC Board of Directors has followed this rule.[12]

The FDIC has therefore concluded that section 24(f)(6) does not require the FDIC to act within the 60-day period. Although the FDIC is not required by law to do so, it is the FDIC's intent to respond to notices filed pursuant to § 362.3(d) within 60 days of receipt of the notice.

### Maximum Permissible Investment

Section 362.3(d)(4) of the proposal, "Maximum Permissible Investment", sets out the maximum investment in listed stock and/or registered shares that an insured state bank can make under § 362.3(b)(4), i.e., the highest amount of investment permitted by the statute that the FDIC can allow should it approve the bank's notice filed under § 362.3(d)(1). Under § 362.3(d)(4) of the proposal an insured state bank's investments in listed stock pursuant to the exception contained in § 362.3(b)(4) may not exceed the highest level of investment that the bank made during the period from September 30, 1990 to November 26, 1991 expressed as a percentage of the bank's tier one capital as reported for the quarter in which the high investment occurred. Likewise, an insured state bank's investment in registered shares may not exceed the highest level of investment the bank made during that period expressed as a percentage of the bank's tier one capital as reported for the quarter in which the high investment occurred. In no event may the aggregate of the bank's investments in listed stock and registered shares exceed 100 percent of the bank's tier one capital.

The bank's investment in listed stock is treated separately from its investment in registered shares thus, the bank is allotted two limits, the aggregate of which cannot exceed 100 percent of the bank's tier one capital. If for example, the bank's highest investment in listed stock over the period represented 45 percent of the bank's tier one capital, the maximum permissible investment in listed stock that the FDIC may allow is 45 percent of tier one capital. If the bank had not made or maintained any investments in registered shares during the period, the FDIC cannot permit future investments in registered shares.

If the FDIC determines that a significant risk will be posed to the deposit insurance fund if the FDIC approves (1) the retention of existing investments in listed stock and/or registered shares, and (2) the continued or future investment in such stock and/or shares to the maximum possible investment, the FDIC may set a lower percentage of the bank's tier one capital as the bank's maximum permissible investment.

Once the FDIC has determined the bank's permissible maximum investment, investments in listed stock and/or registered shares may be made in the future only if the new investment, when added to outstanding investments, does not cause the bank to exceed the permissible maximum percentage of the bank's tier one capital as reported on the bank's call report for the period immediately preceding the investment. In short, the bank is not limited to the highest dollar amount of the investment that it made during the period from September 30, 1990 to November 26, 1991. The permissible maximum percentage is set based upon that amount, however, the percentage, once determined, is used with reference to the bank's tier one capital at the time an investment is made. What is more, if the investment when made is within the maximum permissible investment percentage, the investment will not be considered to be in violation of the bank's tier one capital later declines.

The FDIC recognizes in proposing § 362.3(d)(4) as drafted that there are many possibilities to choose from in deciding when to measure capital for purposes of applying the grandfather provided for by the statute for listed stocks and registered shares. Comment is specifically requested on alternative ways that the regulation might do so and the pro's and con's of those alternatives. Additionally, comment is specifically requested on whether or not the regulation should measure the investment as a percentage of total capital as opposed to tier one capital.

### Diverstiture of Excess Stock or Shares

Section 24(f)(4) of the FDI Act provides a transition period during which an insured state bank is required to divest any stock and/or shares that it held as of December 19, 1991 in excess of 100 percent of the bank's capital. Section 362.3(d)(5) of the proposal sets out the diverstiture requirement and, as provided by the statute, indicates that the excess must be diverted by at least ⅕ in each of the three years beginning on December 19, 1991. The proposal indicates that the excess is to be determined by looking to the bank's tier one capital as measured on December

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[8] An earlier version of the provision was simply entitled "Notice of Paragraph (2) Activities". The word "approval" was subsequently added to the title. H.R. Rep. No. 102–330, 102d Cong., 1st Sess., at 55 (Nov. 19, 1991).

[9] The language of paragraph (f)(6) as enacted stands in clear contrast with the language found in H.R. Rep. No. 102–330. The earlier version provided a bank could engage in any investment activity pursuant to paragraph (2) only if notice were filed and "the Corporation *has not determined, within 60 days of receiving such notice*" [emphasis added] that the investment could pose a significant risk to the appropriate insurance fund. Under the earlier version, one might argue that failure of the FDIC to act within 60 days satisfied the second of the two elements of the provision, thus a bank could proceed with its investments as notice had been filed and the FDIC had not determined within 60 days of receipt of the notice that there is a risk to the fund. However, the above language was not enacted.

[10] Paragraph (f)(6) thus stands in contrast to other provisions of the FDI Act and other federal statutes, which (a) clearly provide a set time period in which the FDIC must act on a notice, and (b) provide that failure to act cuts off the FDIC's ability to object to the conduct or activity which is the subject of the notice (absent some other independent authority to do so). (See, for example section 7(j) of the FDI Act (12 U.S.C. 1817(j)), section 32 of the FDI Act (12 U.S.C. 1831i), and 12 U.S.C. 3204(8)).

[11] *Fort Worth National Corp.* v. *Federal Savings and Loan Insurance Corp.*, 469 F.2d 47, 58 (5th Cir. 1972). *See e.g., Mayor's Office of Employ* v. *U.S. Dept. of Labor*, 775 F.2d 198, 201 (7th Cir. 1985); *St. Regis Mohawk Tribe, New York* v. *Brock*, 769 F.2d 37, 41 (2d Cir. 1985); *Thomas* v. *Barry*, 729 F.2d 1469, 1470 n. 5 (D.C. Cir. 1984); *Marshall* v. *Local Union No. 1374, Int. Ass'n of Mach.*, 558 F.2d 1354, 1357 (9th Cir. 1977); *Usery* v. *Whitin Mach. Works, Inc.*, 554 F.2d 498, 501 (1st Cir. 1977); and *Maryland Casualty Co.* v. *Cardillo*, 99 F.2d 432, 434 (D.C. Cir. 1938).

[12] FDIC Docket No. 89–432, par. 8111, A–1205 (January 18, 1990).

19, 1991. (Tier one capital as measured in the bank's December 31, 1991 call report may be used if it is more convenient to do so.)

Insured state banks are required to reduce the excess to a level that is no greater than 100 percent of the bank's tier one capital by December 19, 1994 if the maximum permissible investment set by the FDIC in connection with a notice filed pursuant to § 362.3(d)(1) is 100 percent of tier one capital. Insured state banks that have such an excess are presently subject to the diverstiture requirement and should have already divested ⅓ of the excess or be planning to divest ⅓ of the excess prior to December 19, 1992. The requrement to divest at least ⅓ of the excess each year is waived if divesting a lesser amount will reduce the bank's outstanding investment to 100 percent of the bank's current tier one capital. Banks for which the FDIC has set a maximum permissible investment that is lower than 100 percent of tier one capital, must submit a diverstiture plan with the FDIC regional office within 60 days of being so informed. Such excess investment must be divested as quickly as prudently possible but in no event later than December 19, 1996.

*5. Notification of Exempt Insurance Activities*

Section 362.4 of the proposal directs any insured state bank that was lawfully providing insurance as principal on November 21, 1991, or which has a subsidiary that was lawfully providing insurance as principal on that date, to provide certain information concerning those activities to the FDIC regional director. The information is being requested so that the FDIC will be able to monitor compliance with § 362.3(b)(7) of the proposal. The information may be submitted in letter form.

*6. Delegation of Authority*

Under the proposal the authority to review and act on divestiture plans as well as the authority to approve or deny notices filed concerning "grandfathered" equity investments is delegated to the Director of the Division of Supervision. The Director may in turn, where confirmed in writing, delegate that authority to any associate director of the Division of Supervision or the appropriate regional director or deputy regional director.

**Regulatory Flexibility Analysis**

The Board of Directors has concluded after reviewing the proposed regulation that the regulation, if adopted, will not impose a significant economic hardship on small institutions. The proposal does not necessitate the devleopment of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. The Board of Directors therefore hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.).

**List of Subjects in 12 CFR Part 362**

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institution, Investments.

In consideration of the foregoing, the FDIC hereby proposes to amend chapter III, title 12 of the Code of Federal Regulatiions by adding a new Part 362 to read as follows:

## PART 362—ACTIVITIES AND INVESTMENTS OF INSURED STATE BANKS

Sec.
362.1 Purpose and scope.
362.2 Definitions.
362.3 Equity investments.
362.4 Notification of exempt insurance activites.
362.5 Delegation of authority

**Authority:** 12 U.S.C. 1816, 1818, 1819(tenth), 1831a.

### § 362.1 Purpose and scope.

The purpose of this part is to implement the provisions of section 24 of the Federal Deposit Insurance Act (12 U.S.C. 1831a) which sets forth certain restrictions and prohibitions on the activities and investments of insured state banks. In addition, consistent with the overall purpose of section 24, it is the intent of this part to ensure that activities and investments undertaken by insured state banks do not present a risk to either of the deposit insurance funds, are safe and sound, are consistent with the purposes of federal deposit insurance, and are otherwise consistent with law.

### § 362.2 Definitions.

For the purposes of this section, the following definitions shall apply:

(a) *Company* shall mean any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization.

(b) *Control* shall mean the power to vote, directly or indirectly, 25 per centum or more of any class of the voting stock of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company.

(c) An insured state bank wil be considered to convert its charter if the bank undergoes any transaction which causes the bank to operate under a different form of charter than that under which it operated as of December 19, 1991.

(d) *Depository institution* means any bank or savings association.

(e) *Equity interest in real estate* means any form of direct or indirect ownership of any interest in real property, whether in the form of an equity interest, partnership, joint venture or other form, which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council Call Report Instructions. The term shal include, for example, real estate acquisition, development or construction arrangements which are accounted for as direct investments in real estate or as real estate joint ventures in accordance with generally accepted accounting principles, and any other loans secured by real estate or advanced for real estate acquisition, development or investment purposes if the insured state bank in substance has virtually the same risks and potential rewards as an investor in the borrower's real estate. The phrase equity interest in real estate does not include the following:

(1) An interest in real property that is used or intended to be used by the insured state bank or its subsidiaries as offices or related facilities for the conduct of its business or future expansion of its business;

(2) An interest in real property that is acquired in satisfaction of debts previously contracted for in good faith or acquired in sales under judgments, decrees or mortgages held by the insured state bank or acquired under deed in lieu of foreclosure provided that the property is not intended to be held for real estate investment purposes and is not held longer than the shorter of any time limit on holding such property set by applicable state law or regulation or the time limit on holding such property that is applicable by statute or regulation for a national bank; and

(3) Interests in real property that are primarily in the nature of charitable contributions to community development corporations provided that the contribution to any one community development corporation does not exceed 2 percent of the bank's tier one capital and the bank's total contribution to all such corporations does not exceed 5 percent of the bank's tier one capital.

(f) *Equity investment* means any equity security as defined in § 362.2(g); any partnership interest; any equity interest in real estate as defined in § 362.2(e); and any transaction which in substance falls into any of these categories even though it may be structured as some other form of business transaction.

(g) *Equity security* means any stock, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-tust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing. The term *equity security* does not include any of the foregoing if it is acquired through foreclosure or settlement in lieu of foreclosure.

(h) *Equity investment permissible for a national bank* shall be understood to refer to an equity investment expressly authorized for national banks under the National Bank Act (12 U.S.C. 21 et seq.) or any other statute; regulations issued by the Office of the Comptroller of the Currency; or any order or formal interpretation issued by the Office of the Comptroller of the Currency.

(i) *Insured state bank* shall mean any state bank insured by the Federal Deposit Insurance Corporation (FDIC) whether or not a member of the Federal Reserve System and any insured branch of a foreign bank that is not a federal branch.

(j) *Lower income* means income that is less than or equal to the median income for the area in which the qualified housing project is located as determined by state or federal statistics. The "area" in which a housing project is located shall be understood to refer to the relevant Metropolitan Statistical Area (MSA) in which the project is located if the project is located within an MSA. If the project is not located in an MSA, the median income of the "area" in which the project is located shall be understood to refer to the median income of the state or territory in which the project is located exclusive of the designated MSA's.

(k) *National securities exchange* means a securities exchange that is registered as a national securities exchange by the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) and the National Market System, i.e., the top tier of the National Association of Securities Dealers Automated Quotation System (NASDAQ).

(l) *Residents of the state* shall be understood to include companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the state.

(m) *Significant risk to the deposit insurance fund* shall be understood to be present whenever it is likely that any insurance fund administered by the FDIC may suffer any loss whatever.

(n) *Subsidiary* menas any company directly or indirectly controlled by an insured state bank.

(o) *Tier one capital* shall have the same meaning as set forth in part 325 of this chapter in the case of an insured state nonmember bank and, in the case of an insured state member bank, shall have the same meaning as set forth in regulations defining the term tier one capital as adopted by the bank's appropriate federal banking agency.

(p) *Well-capitalized insured state bank* shall mean an insured state bank which has a ratio of total capital to risk-weighted assets of not less than 10.0 percent; a ratio of Tier 1 capital to risk-weighted assets of not less than 6.0 percent; a ratio of Tier 1 capital to total book assets of not less than 5.0 percent; and which has not been notified by its appropriate Federal banking agency that it is in a "troubled condition" as that term is defined by the appropriate Federal banking agency in its regulations implementing section 32 of the Federal Deposit Insurance Act. For the purposes of this definition, the terms "risk-weighted assets," "total capital," and "total book assets" shall have the respective meaning prescribed in regulations issued by the appropriate Federal banking agency. In order to be considered well-capitalized, an insured state bank must meet the above requirements exclusive of the bank's investment in any department of the bank, and any subsidiary of the bank, that engages in any activity that is not permissible for a national bank. An insured state bank that has been required pursuant to an order, capital directive, or consent agreement to raise its capital to a level higher than the capital levels set out above (exclusive of any investment in a subsidiary or department described above) will not be considered to be "well-capitalized" unless the higher capital levels are met. The bank's "investment" in its subsidiary will be considered to equal the amount invested in the subsidiary's equity securities plus any debt issued by the subsidiary that is held by the bank. The bank's investment in a department will be considered to equal the total of any funds transferred to the department which is represented on the department's accounts and records as an accounts payable, a liability, or equity of the department except that transfers of funds to the department in payment of services rendered by the department will not be considered an investment in the department.

### § 362.3 Equity investments.

(a) *Prohibited investments.* No insured state bank may directly or indirectly acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank.

(b) *Exceptions*—(1) *Majority owned subsidiaries.* An insured state bank is not prohibited from acquiring or retaining a majority interest in a subsidiary. If the FDIC denied an application by a Savings Association Insurance Fund (SAIF) member state bank for permission to acquire or retain the majority interest in a subsidiary pursuant to § 333.3 of this chapter, this exception does not apply. If the denial concerned an application for permission to retain the investment, the SAIF member state bank must divest its interest in the subsidiary in accordance with whatever conditions and restrictions are set forth in the FDIC's order denying the application.

(2) *Qualified housing projects.* (i) Subject to the limitation contained in paragraph (b)(2)(ii) of this section, an insured state bank is not prohibited from investing as a limited partner in a partnership the sole purpose of which is direct or indirect investment in the acquisition, rehabilitation, or new construction of a qualified housing project. A qualified housing project shall be understood to mean residential real estate intended to primarily benefit lower income persons throughout the period of the bank's investment.

(ii) Investments described in paragraph (b)(2)(i) of this section may only be made if the equity investment, when aggregated with any existing equity investment in such a partnership or partnerships, does not exceed 2

percent of the bank's total assets as reported on the bank's most recent consolidated report of condition.

(3) *Savings bank life insurance.* Unless it is otherwise found to pose a significant risk to the insurance fund of which the bank is a member, an insured state bank located in Massachusetts, New York, or Connecticut is not prohibited from owning stock in a savings bank life insurance company provided that the savings bank life insurance company prominently discloses to purchasers of life insurance policies, annuities, and other insurance products that the policies, annuities and other products offered to the public are not insured by the FDIC, are not obligations of, and are not guaranteed by, any insured state bank. The following or a similar statement will satisfy this requirement: "This [policy, annuity, insurance product] is not a federally insured deposit and is not an obligation of, nor is it guaranteed by, any federally insured bank."

(4) *Common or preferred stock; shares of investment companies.* (i) To the extent permitted by the FDIC, and subject to the requirements of paragraph (d) of this section, an insured state bank that is located in a state which as of September 30, 1991 authorized investment in:

(A) (*1*) Common or preferred stock listed on a national securities exchange (listed stock); or

(*2*) Shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1, et seq.) (registered shares); and

(B) Which during any time in the period beginning on September 30, 1990 and ending on November 26, 1991 made or maintained an investment in such listed stock or registered shares, may retain whatever listed stock or registered shares that were lawfully acquired or held prior to December 19, 1991, and continue to acquire listed stock or registered shares.

(ii) The exception provided for by paragraph (b)(4)(i) of this section shall cease to apply to any insured state bank if the bank converts its charter, the bank undergoes any transaction for which a notice is required to be filed under section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)), the bank undergoes any transaction subject to section 3 of the Bank Holding Company Act (12 U.S.C. 1842), control of the bank's parent company changes, or the bank is merged into another depository institution. In such event the insured state bank may not make any additional investments pursuant to the exception provided for by paragraph (b)(4)(i) of this section. The bank is not prohibited under this section from retaining its existing investments provided that the FDIC does not order divestiture under paragraph (d)(3) of this section or section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

(5) *Stock of company that provides director and official liability insurance.* An insured state bank is not prohibited from acquiring up to 10 percent of the voting stock of a company that solely provides or reinsures directors', trustees', and officers' liability insurance coverage or bankers' blanket bond group insurance coverage for insured depository institutions.

(6) *Shares of depository institutions.* An insured state bank is not prohibited from acquiring or retaining the voting shares of a depository institution if the institution engages only in activities permissible for national banks; the institution is subject to examination and regulation by a state bank supervisor; 20 or more depository institutions own voting shares of the institution but no one institution owns more than 15 percent of the shares; and the institution's voting shares (other than directors' qualifying shares or shares held under or acquired through a plan established for the benefit of the officers and employee) are owned only by depository institutions.

(7) *Interests in insurance subsidiaries.* (i) A well-capitalized insured state bank is not prohibited from retaining after December 19, 1992 its equity investment in a majority owned subsidiary that was lawfully providing insurance as principal in a state on November 21, 1991 provided that the activities of the subsidiary continue to be limited to providing, as principal, insurance of the same type provided by the subsidiary as of November 21, 1991 to residents of the state, individuals employed in the state, and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state. In the case of resident companies or partnerships, the subsidiary's activities must be limited to providing insurance to the company's or partnership's employees residing in the state and/or to providing insurance to cover the company's or partnership's property located in the state.

(ii) An insured state bank is not prohibited from retaining after December 19, 1992 its equity investment in a title insurance subsidiary provided that the bank was required before June 1, 1991 to provide title insurance as a condition of the bank's initial chartering under state law and none of the transactions described in paragraph (b)(4)(ii) of this section has occurred since june June 1, 1991.

(c) *Divestiture of prohibited equity investments*—(1) *Requirement to divest.* Any equity investment acquired prior to December 19, 1991 that is not of a type, or in an amount, that is permissible for a national bank, and which does not fall within one of the exceptions in paragraph (b) of this section, must be divested as quickly as prudently possible but in no event later than December 19, 1996. If a SAIF member state bank holds an equity investment that was subject to divestiture pursuant to § 333.3 of this chapter, and the equity investment is subject to divestiture under paragraph (c)(1) of this section, the equity investment must be divested as quickly as prudently possible but in no event later than July 4, 1994 or any earlier date established by a divestiture plan that was filed by the bank under, and approved by the FDIC pursuant to, § 333.3 of this chapter.

(2) *Requirement to file divestiture plan.* Any insured state bank that is required by paragraph (c)(1) of this section to divest an equity investment must submit a divestiture plan with the regional director for the Division of Supervision for the region in which the bank's principal office is located not later than 60 days from [insert effective date of final regulation]. An insured state bank that has submitted a plan pursuant to this section may proceed to act in accordance with that plan unless and until it is informed in writing by the FDIC that the plan is unacceptable.

(3) *Content of divestiture plan.* The divestiture plan shall:

(i) Describe the obligor, type, amount, book and market values (estimated or known) of the equity investments subject to divestiture as of the bank's most recent consolidated report of condition prior to the filing;

(ii) Set forth the bank's plan to comply with paragraph (c)(1) of this section;

(iii) Describe the anticipated gain or loss (anticipated or realized) if any from the divestiture of the investment and the impact thereof on the bank's capital (including capital ratios before and after the sale);

(iv) Include a copy of a resolution by the bank's board of directors or board of trustees authorizing the filing of the divestiture plan; and

(v) Such other information as requested by the regional director.

(4) *Retention of equity investments during divestiture period.* Upon review of the divestiture plan and such additional information as requested by the regional director, and at any time

during the divestiture period, the FDIC may impose such conditions and restrictions on the retention of the equity investments during the divestiture period as the FDIC deems appropriate including requiring divestiture in advance of December 19, 1996.

(d) *Notice and approval of intent to invest in common or preferred stock or shares of an investment company; divestiture of excess investments.* (1) Notice and required FDIC determination. No insured state bank may acquire or retain any listed stock or registered shares pursuant to paragraph (b)(4) of this section unless the bank files a 1-time notice with the FDIC setting forth the bank's intention to acquire and retain the listed stock or registered shares and the FDIC has determined that acquiring or retaining the listed stock or registered shares that are the subject of the notice will not pose a significant risk to the deposit insurance fund of which the bank is a member. The notice must be filed with the regional director for the Division of Supervision for the region in which the bank's principal office is located.

(2) *Content of notice.* The notice shall contain:

(i) A description of the obligor, type, amount and book and market values of the listed stock and/or registered shares held as of December 19, 1991;

(ii) The highest dollar amount of the bank's investments in listed stock and/or registered shares between September 30, 1990 and November 26, 1991, both in the aggregate and individually in each of the two categories, expressed as a percentage of tier one capital as reported in the consolidated report of condition for the quarter in which the high dollar amount of investment occurred;

(iii) A description of the bank's funds management policies and how the bank's investments (planned or existing) in listed stock and/or registered shares relate to the objectives set out in the bank's funds management policies;

(iv) A description of the bank's investment policies and a discussion of to what extent those policies:

(A) Limit concentrations in listed stock and/or registered shares both by issue and by industry;

(B) Set an aggregate limit on investment in listed stock and/or registered shares; and

(C) Deal with the sale of listed stock and/or registered shares in light of market conditions;

(v) A discussion of the parameters used to determine the quality of the bank's outstanding and proposed investments in listed stock and/or registered shares as well as future investments;

(vi) A copy of a resolution by the board of directors or board of trustees authorizing the filing of the notice; and

(vii) Such additional information as deemed appropriate by the regional director.

(3) *FDIC determination.* Approval of a notice filed under paragraph (d)(1) of this section will not be granted unless the FDIC determines that acquiring and retaining the listed stock and/or registered shares does not pose a significant risk to the insurance fund of which the bank is a member. Approval may be made subject to whatever conditions or restrictions the FDIC determines is necessary or appropriate. The FDIC may require diverstiture of some or all of the investments in listed stock or registered shares made during the period from September 30, 1990 to December 19, 1991, as well as any investments in listed stock or registered shares made subsequent to that period if it is determined that retention of the investments in question will have an adverse effect on the safety and soundness of the bank.

(4) *Maximum permissible investment.* (i) The maximum permissible investment in listed stock an insured state bank may hold pursuant to paragraph (b)(4) of this section may not exceed the highest level of investment made by the bank in such stock during the period from September 30, 1990 to November 26, 1991 expressed as a percentage of the bank's tier one capital as reported by the bank in its consolidated report of condition for the quarter in which the high investment occurred.

(ii) The maximum permissible investment in registered shares an insured state bank may hold pursuant to paragraph (b)(4) of this section may not exceed the highest level of investment made by the bank in such shares during the period from September 30, 1990 to November 26, 1991 expressed as a percentage of the bank's tier one capital as reported by the bank in its consolidated report of condition for the quarter in which the high investment occurred.

(iii) The aggregate maximum investment in stock and shares an insured state bank may hold pursuant to paragraph (b)(4) of this section may not exceed 100 percent of the bank's tier one capital.

(iv) Notwithstanding § 362.3(d)(4) (i), (ii) and (iii), the FDIC, in response to a notice filed under paragraph (d)(1) of this section, may set a percentage as the maximum permissible investment for any insured state bank that is lower than that which would otherwise be applicable.

(v) Any acquisition of listed stock or registered shares by an insured state bank made after December 19, 1991 pursuant to approval of a notice filed under paragraph (d)(1) of this section may not, when made, exceed the maximum permissible investment percentage (as set out in the FDIC's approval of such notice) of the bank's tier one capital as reported on the bank's consolidated report of condition for the period immediately preceding the acquisition.

(5) *Divestiture of excess stock and/or shares.* (i) An insured state bank that held as of December 19, 1991 investments in listed stock and/or registered shares in an aggregate amount in excess of 100 percent of the bank's tier one capital as measured on December 19, 1991 is prohibited from retaining the excess listed stock and/or registered shares. (Tier one capital as reprted on the bank's December 31, 1991 consolidated report of condition may be used in lieu of calculating tier one capital as of December 19, 1991.) Such bank's outstanding investment in listed stock or registered shares must comply by no later than December 19, 1994 with the maximum permissible investment set for the bank by the FDIC in connection with the notice filed pursuant to § 362.3(d)(1) if the bank's maximum permissible investment is 100 percent of tier one capital. In such event, the bank shall divest the excess investment by not less than ⅓ in each of the three years beginning on December 19, 1991, provided however, that the bank shall be relieved of the obligation to divest at least ⅓ of its excess investment each year if divesting a lesser amount will reduce the bank's outstanding investment to 100 percent of its current tier one capital. If the bank's maximum permissible investment set by the FDIC is lower than 100 percent of tier one capital, paragraph (d)(5)(ii) of this section shall apply.

(ii) If an insured state bank does not receive approval in connection with a notice filed pursuant to paragraph (d)(1) of this section to retain its outstanding investment in listed stock and/or registered shares, the bank must, as quickly as prudently possible but in no event later than December 19, 1996, divest the listed stock and/or registered shares for which approval to retain was denied. The bank must file a divestiture plan with the regional director for the

Division of Supervision for the region in which the bank's principal office is located no later than 60 days after the bank receives notice that approval to retain the investment(s) was denied. The divestiture plan shall contain the information specified in paragraph (c)(3) of this section.

**§ 362.4 Notification of exempt insurance activities.**

Any insured state bank that was lawfully providing insurance as principal in a state on November 21, 1991, and any insured state bank that has a subsidiary that was lawfully providing insurance as principal in a state on November 21, 1991, shall submit a notice to the regional director for the Division of Supervision for the region in which the bank's principal office is located not later than 60 days from [insert effective date of final regulation]. The notice requirement does not apply in the case of an insured state bank described in § 362.3(b)(7)(ii). The notice shall contain the following information:

(a) The name of the bank/or subsidiary;

(b) The state in which the bank is chartered;

(c) If applicable, a recitation of the authority for the bank or subsidiary to conduct insurance underwriting activities;

(d) The state in which the subsidiary is incorporated; and

(e) A description of the insurance policies and other insurance products that the bank and/or subsidiary provided to the public as of November 21, 1991 in the state(s) identified in paragraphs (b) and (d) of this section.

**§ 362.5 Delegation of authority.**

The authority to review and act upon divestiture plans submitted pursuant to § 362.3(c)(2) as well as the authority to approve or deny notices filed pursuant to § 362.3(d) is delegated to the Director, Division of Supervision, and where confirmed in writing by the Director, to an associate director, Division of Supervision or the appropriate regional director of deputy regional director.

By Order of the Board of Directors.

Dated at Washington, D.C. this 16th day of June, 1992.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 92-15361 Filed 7-8-92; 8:45 am]

BILLING CODE 6714-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[INTL-309-88]

RIN 1545-AL84

### Determination of Interest Expense Deduction of Foreign Corporations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Rescheduling of public hearing on proposed regulations; extension of time for related submissions.

**SUMMARY:** This document reschedules the date of the public hearing and extends the time for submitting comments, requests to speak and outlines of oral comments on proposed regulations relating to the determination of the interest expense deduction of foreign corporations engaged in a trade or business within the United States.

**DATES:** The public hearing has been rescheduled for Friday, October 30, 1992, beginning at 10 a.m. Written comments, requests to speak, and outlines of oral comments to be presented at the public hearing must be received by Friday, October 9, 1992.

**ADDRESSES:** The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send all submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [INTL-309-88], room 5228, Washington, DC 20044..

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Karl T. Walli of the Office of Associate Chief Counsel (International) at (202) 566-6284. Concerning the hearing, Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9231, (not toll-free calls).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and a notice of public hearing appearing in the **Federal Register** on Friday, April 24, 1992 (57 FR 15038), announced among other things, that written comments with respect to the proposed rules were to have been received by Thursday, July 23, 1992; requests to speak (with outlines of oral comments) at a public hearing scheduled for August 31, 1992, were to have been received by Monday, August 10, 1992. There has been a change in the date of the public hearing and an extension of time to submit written comments, requests to speak and outlines of oral comments. The hearing will be held on Friday, October 30, 1992, beginning at 10 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Written comments, requests to speak, and outlines of oral comments to be presented at the public hearing must be received by Friday, October 9, 1992.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

In all other aspects, the details regarding the notice of proposed rulemaking and the public hearing will remain the same.

By direction of the Commissioner of Internal Revenue:

**Dale D. Goode,**

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 92-16023 Filed 7-8-92; 8:45 am]

BILLING CODE 4830-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

[CGD5-92-027]

### Drawbridge Operation Regulations; James River, Isle of Wight and Newport News, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** At the request of the Virginia Department of Transportation, the Coast Guard is considering adopting new regulations that govern the operation of the James River Bridge across James River, mile 5.0, at Isle of Wight and Newport News, Virginia, by eliminating bridge openings between the hours of 6:30 a.m. to 8:30 a.m. and 4 p.m. to 6 p.m., Monday through Friday except Federal holidays, year round, except that vessels in an emergency shall pass at any time. The draw shall open on signal at all other times. This action is intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge, while still providing for the reasonable needs of navigation.

**DATES:** Comments must be received on or before August 10, 1992.

**ADDRESSES:** Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street,

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Portsmouth, Virginia 23704–5004. The comments received will be available for inspection and copying at room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (804) 398–6222.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The drafters of this notice are Bill H. Brazier, Project Officer, and LT Monica L. Lombardi, Project Attorney.

**Discussion of Proposed Rule**

The Virginia Department of Transportation has requested that the openings of the drawbridge across the James River, mile 5.0, at Isle of Wight and Newport News, Virginia, be restricted to help reduce rush-hour highway traffic congestion. Currently, the James River Bridge opens for vessel traffic on demand. The Coast Guard is proposing to restrict the passage of vessels during rush hours by eliminating bridge openings between the hours of 6:30 a.m. to 8:30 a.m. and 4 p.m. to 6 p.m., Monday through Friday except Federal holidays, year round. Vessels in an emergency shall pass at any time. The draw shall open on signal at all other times.

This bridge is heavily traveled throughout the day. A twenty-four hour traffic count indicated that peak vehicular traffic occurred from 6:30 a.m. to 8:30 a.m. and 4 p.m. to 6 p.m., Monday through Friday except Federal holidays. Draw openings during this period caused lengthy highway traffic backups, accidents and extensive delays to motorists.

**Request for Comments**

Interested persons are invited to participate in this rulemaking by submitting written comments or data. Persons submitting comments or data should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended changes to the proposal. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulation may be changed based on comments and data received.

**Regulatory Evaluation**

The proposed regulation is considered to be non major under Executive order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise quality as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard anticipates that these regulations will have no adverse impacts on small entities.

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule will not raise sufficient federalism implications to warrant preparation of a Federalism Assessment.

**Environment**

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

## PART 117—DRAWBRIDGE OPERATIONS REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05.1(g)

2. Section 117.1012 is added to read as follows:

**§ 117.1012 James River**

(a) The James River bridge, mile 5.0, between Isle of Wight and Newport News, shall open on signal; except from 6:30 a.m. to 8:30 a.m. and 4 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the bridge shall remain closed to navigation.

(b) The bridge shall be opened at anytime for public vessels of the United States and vessels in an emergency which presents danger to life or property.

Dated: June 17, 1992.

**W.T. Leland,**

*Rear Admiral, Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 92–15965 Filed 7–8–92; 8:45 am]

BILLING CODE 4910-14-M

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 300**

**[FRL–4151–7]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List; Intent to Delete Big River Sand Company Site

**AGENCY:** The Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region VII announces its intent to delete the Big River Sand Company site from the National Priorities List (NPL), 40 CFR part 300, appendix B, and requests public comment on this action. This action is being taken because EPA and the State of Kansas have determined that no further fund-financed remedial action is appropriate at this site, and that actions taken to date are protective of public health, welfare and the environment.

**DATES:** Comments concerning this site may be submitted on or before August 10, 1992.

**ADDRESSES:** Comments may be mailed to: Diane Brewer, Waste Management Division/Superfund Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Comprehensive information on this site is available for public review at the EPA Region VII Waste Management Division Records Center located at the above address and at the Sedgwick County Public Library, Main Branch, 223 S. Main Street, Wichita, Kansas.

To obtain copies of documents in the public docket contact: Barry Thierer, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7515.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Npl Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

## I. Introduction

The Environmental Protection Agency (EPA) Region VII announces its intent to delete the Big River Sand Company site, Wichita, Kansas, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR as amended, and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Response Trust Fund (Fund). Pursuant to section 105(e) of CERCLA, and 300.435(e)(3) of the NCP, any site deleted from the NPL remains eligible for fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments on this site for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Big Sand site and explains how the site meets the deletion criteria.

## II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e)(3), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment; and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA must first determine that actions taken at the site are protective of public health, welfare and the environment and that no further fund-financed actions are appropriate. In addition, section 121(f)(1)(c) of CERCLA requires State concurrence for deleting a site from the NPL.

In addition to the above, for all remedial actions which result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow unlimited use and unrestricted access, it is EPA's policy to review the site at least every five years to ensure that the remedy remains protective of human health and the environment. A 5-year review is appropriate for the Big River Sand Site and will be conducted in 1993. At that time EPA, in consultation with the State, will determine whether human health and the environment remain protected.

Deletion of a site from the NPL does not preclude eligibility for subsequent fund-financed actions if future conditions warrant such actions. Section 105(e) of CERCLA states: "Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a 'Site Cleaned Up to Date' on the National Priorities List, the site shall be restored to the National Priorities List without application of the hazard ranking system."

## III. Deletion Procedures

According to deletion procedures set forward in § 300.425(e) of the NCP, the agency solicited and received comments on whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments were also received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985 (50 FR 5862). The NPL is designed primarily for informational purposes and to assist Agency management. As is mentioned in section II of this notice, section 105(e) of CERCLA makes clear that deletion of a site from the NPL does not preclude eligibility for future fund-financed response actions.

The EPA Region VII will accept and evaluate public comments before making the final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community are often the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA Region VII has recommended deletion and has prepared the relevant documents.

2. The State of Kansas has concurred with the deletion decision.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in the local newspaper and has been distributed to appropriate federal, state and local officials and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package, which starts July 5 and will conclude on August 4, 1992.

4. The Region has made all relevant documents available in the Regional Office and local site information repository (local library).

Deletion of sites from the NPL does not itself create, alter or revoke any individual's rights or obligations.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

A deletion occurs after an EPA Regional Administrator places a final notice of deletion in the **Federal Register.** The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region VII.

## IV. Basis For Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the Big River Sand Company site, Wichita, Kansas, from the NPL.

The site is located just northwest of Wichita, Kansas, in Sedgwick County. The site consists of approximately 123 acres, half of which have been extensively mined for sand and gravel. Land use adjacent to the site is a mixture of residential and agricultural uses.

Approximately 2,000 drums of paint-related waste were discovered at the site by the Kansas Department of Health and Environment (KDHE) in 1982. The initial site inspection identified damaged, corroded and leaking drums. Sampling conducted by the State detected metals and volatile organic compounds in the ground water and soil. Concentrations of several metals detected in drinking water wells and monitoring wells exceeded Maximum Contaminant Levels (MCL) established by the Safe Drinking Water Act. From 1982 to 1985 KDHE conducted additional sampling and provided oversight on the site cleanup and removal action performed by the property owner.

The site was proposed for the NPL in October 1984, and in May 1986 was placed on the NPL. The EPA initiated a Remedial Investigation (RI) in 1985 to determine the presence and extent of contamination remaining at the site.

The RI found metals in soil and ground water above background levels, but not outside the range of metal concentrations that may be found naturally occurring in soil and ground water. Selenium was detected at 62 micrograms per liter (ug/1) in one monitoring well. Selenium was not detected in any other monitoring wells or in any drinking water wells.

In a Record of Decision signed on June 28, 1988, the Regional Administrator for Region VII selected the No Further Action alternative for the Big River Sand Company site. The EPA in consultation with KDHE, had determined that the site did not pose a significant threat to public health, welfare and the environment and, therefore, taking additional remedial measures was not appropriate.

Community relations activities conducted at EPA included: Development and implementation of a community relations plan for the RI activities; publication in the local newspaper of a notice informing the public of the Public Comment Period (June 1988) and the availability of the Proposed Plan and the RI Report; and briefings with local government officials on the Proposed Plan and site issues.

The EPA, with concurrence of the State of Kansas, has determined that the Big River Sand Company site poses no significant threat to public health or the environment and, therefore, taking of further remedial measure is not appropriate.

Dated: June 29, 1992.

**Morris Kay,**

*Regional Administrator, USEPA Region VII.*

[FR Doc. 92-15968 Filed 7-8-92; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR PART 180

**[OPP-300256; FRL-4073-4]**

**RIN 2070-AC18**

## Buffalo Gourd Root Powder; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that an exemption from the requirement of a tolerance be established for residues of buffalo gourd root powder (*Cucurbita foetidissima* root powder) when used as an inert ingredient (gustatory stimulant) in pesticide formulations applied to growing crops only. This proposed regulation was requested by the Microflo Co.

**DATES:** Comments, identified by the document control number [OPP-300256], must be received on or before August 10, 1992.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Kerry Leifer, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711L, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5180.

**SUPPLEMENTARY INFORMATION:** The Microflo Co., 719 Second St., Suite 12, Davis, CA 95616, submitted pesticide petition (PP) 2E4064 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of Buffalo gourd root powder (*Cucurbita foetidissima* root powder) when used as an inert ingredient (gustatory stimulant) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

The Agency has decided that the data normally required to support the proposed tolerance exemption for buffalo gourd root powder will not need to be submitted. The rationale for this decision is described below.

1. The maximum amount of Buffalo gourd root powder allowable is 2.5 lbs/acre/season, and the maximum amount of cucurbitacin (E and I glycosides) allowable is 3.4 grams/acre/season.

2. Based on a worst-case residue analysis, the expected amount of residue of cucurbitacin on corn grain is 1 ppm.

3. Based on this analysis the amount of residue expected is considered to be of no toxicological concern, and no additional toxicological data are required.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must

bear a notation indicating the document control number, [OPP–300256]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 1, 1992.

**Stephanie R. Irene,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient "Buffalo gourd root powder" to read as follows:

**§ 180.1001 Exemptions from the requirement of a tolerance.**

* * * * * *

(d) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * * * * * * | | |
| Buffalo gourd root powder (*Cucurbita foetidissima* root powder)..... | No more than 2.5 lbs/acre/season (3.4 gm/acre/season of Cucurbitacin). | Gustatory stimulant. |
| * * * * * * * | | |

* * * * * *

[FR Doc. 92–16160 Filed 7–8–92; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**44 CFR Part 362**

**RIN 3067–AB84**

**National Earthquake Hazards Reduction Program; Criteria for Acceptance of Gifts, Bequests, or Services**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** These regulations propose criteria for determining whether the Director of FEMA may accept gifts, bequests, or donations of services, money or property for the National Earthquake Hazard Reduction Program (NEHRP).

**DATES:** Comments from the public are encouraged and will be accepted until September 8, 1992.

**ADDRESSES:** Send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Mary Summers Taylor, Office of Earthquakes and Natural Hazards, State and Local Programs and Support Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2804.

**SUPPLEMENTARY INFORMATION:** Under 31 U.S.C. 1342, officers and employees of the United States Government may not accept voluntary services or employ personal services exceeding that authorized law except for emergencies involving the safety of human life or the protection of property. Unless expressly authorized by law to do so, Federal officers and employees may not accept gifts or bequests of property or money. The general rule is that appropriations may not be augmented with funds or property from private sources unless specifically authorized by law.

Under section 9 the National Earthquake Hazards Reduction Program Reauthorization Act, 42 U.S.C. 7705c, the Director of FEMA may accept and use bequests, gifts, or donations of services, money, or property. Section 9(b) of the Act requires the Director to establish by regulation criteria for accepting such bequests, gifts, or donations, and to take into consideration the impact of such acceptance on the Director's ability to conduct business fairly and objectively, or its impact on the integrity of the National Earthquake Hazards Reduction Program (NEHRP). This authority is similar to that granted by other statutes to other agencies in the NEHRP and the Federal Government.

These regulations establish the required criteria for determining whether to accept bequests, gifts or donations of services, money or property to further the purposes of the NEHRP.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Impact Analysis**

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

**Paperwork Reduction Act**

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778. List of Subjects in 44 CFR part 362

Earthquakes, Gifts to Government, Government Property. Accordingly, 44 CFR part 362 is added to read as follows:

## PART 362—CRITERIA FOR ACCEPTANCE OF GIFTS, BEQUESTS, OR SERVICES

Sec.
362.1 Purpose.
362.2 Definitions.
362.3 Criteria for determining acceptance.

**Authority:** 42 U.S.C. 7701, 7705c.

### § 362.1 Purpose.

This part establishes criteria for determining whether the Director may accept gifts, bequests, or donations of services, money or property for the National Earthquake Hazard Reduction Program (NEHRP), under section 9 of the National Earthquake Hazards Reduction Program Reauthorization Act, 42 U.S.C. 7705c.

### § 362.2 Definitions.

As used in this part—

*Gifts of services* means a gratuitous, voluntary offer of labor or professional work by one person to another without any compensation for that labor or professional work.

*Gifts of property* means a gratuitous, voluntary transfer or conveyance of ownership in property by one person to another without any consideration, including transfer by donation, devise or bequest.

*Program Agencies* means the Federal Emergency Management Agency, the United States Geological Survey, the National Science Foundation, and the National Institute of Standards and Technology.

*Property* means real or personal property, tangible or intangible, including money, certificates of stocks, bonds, or other evidence of value.

*Services* means labor or professional work performed for the benefit of another or at another's command.

*Solicit* means to endeavor to obtain by asking or pleading.

### § 362.3 Criteria for determining acceptance.

The following criteria shall be applied whenever a gift of property or gift of services is offered to the Director for the benefit of the National Earthquake Hazards Reduction Program.

(a) The gift of property or gift of services must clearly and directly further the objectives of the National Earthquake Hazards Reduction Program, as defined in 42 U.S.C. 7702.

(b) All gifts of property must be offered unconditionally, with sole discretion of use, administration and disposition of such property to be determined by the Director or his designee.

(c) The Director may accept and use gifts of services of voluntary and uncompensated personnel, and may provide transportation and subsistence as authorized by 5 U.S.C. 5703 for persons serving without compensation.

(d) Employees of FEMA or the Program Agencies may not solicit gifts of property, or gifts of services.

(e) Acceptance of gifts of property, or gifts of services must first be approved by the Office of the General Counsel, FEMA, for concurrence with all applicable laws and regulations, especially the Ethics Reform Act of 1989, 31 U.S.C. 1353.

(f) In all cases where it is determined that the acceptance of a gift may create a conflict of interest, or the appearance of a conflict of interest, the gift will be declined.

Dated: July 2, 1992.

**Wallace E. Stickney,**

*Director.*

[FR Doc. 92-16103 Filed 7-8-92; 8:45 am]

BILLING CODE 6718-29-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 97

**[PR Docket No. 92-136; FCC 92-260]**

### Relaxed Restrictions on the Scope of Permissible Communications in the Amateur Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to amend the rules for the amateur service by lessening restrictions on the scope of the permissible communications that amateur stations may transmit. This action addresses two petitions and a letter asking for amendment of 47 CFR 97.113. The petitioners indicate this rule needs to be reviewed in light of contemporary communication demands and the operational capabilities of licensees in the amateur service. They also argue that the prohibition against using the amateur service as an alternative to other authorized radio services, except as necessary for emergency communications, may unnecessarily restrict amateur operators from participating in many public service activities and from satisfying their personal communications requirements. The effect of the proposed rule would be to provide greater flexibility for amateur stations to transmit communications for public service projects and personal matters and to eliminate rules that bar amateur stations from transmitting occasionally messages that could indirectly facilitate the business or commercial affairs of some party and messages that could be transmitted in other radio services.

**DATES:** Comments must be filed on or before October 1, 1992. Reply comments must be filed on or before December 1, 1992.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** William T. Cross, Federal Communications Commission, Private Radio Bureau, Personal Radio Branch, Washington, DC 20554, (202) 632-4964.

**SUPPLEMENTARY INFORMATION:** The Commission's Notice of Proposed Rule Making, adopted June 18, 1992, and released July 2, 1992, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239) 1919 M Street, NW., Washington, DC. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendments, may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

### Summary of Notice of Proposed Rule Making

1. This action proposes to amend the rules for the amateur service by lessening restrictions on the scope of the permissible communications that amateur stations may transmit. The proposed rules are set forth at the end of this document.

2. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

3. This is a non-restricted notice and comment rule making proceeding. See § 1.1206(a) of the Commission's Rules, 47 CFR 1.1206(a), for provisions governing permissible *ex parte* contacts.

4. In accordance with section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that these rule changes would not if promulgated, have a significant economic impact on a substantial number of small entities. The Amateur Radio Service may not currently be used to transmit any communication to facilitate the business or commercial

affairs of any party. See 47 CFR 97.113(a).

5. This Notice of Proposed Rule Making and the proposed rule amendments are issued under the authority of section 4(i) and (303)(l)(1) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(l)(1) and (r).

6. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 97**

Radio, Business communications, Prohibited communications.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

**Proposed Rule Changes**

Part 97 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 97—[AMENDED]**

1. The authority citation for part 97 would continue to read as follows:

**Authority:** 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.113 would be revised to read as follows:

**§ 97.113 Prohibited transmissions.**

(a) No amateur station shall transmit:

(1) Communications for hire or for material compensation, direct or indirect, paid or promised, except as otherwise provided in these rules;

(2) Communications in which the station licensee or control operator have a pecuniary interest, including communications on behalf of an employer. Amateur operators may, however, notify other amateurs of the availability for sale or trade, of apparatus normally used in an amateur station, provided that such activity is not conducted on a regular basis;

(3) Music; Communications intended to facilitate a criminal act; Messages in codes or ciphers intended to obscure the meaning thereof, except as otherwise provided herein; Obscene, indecent, or profane words or language; or false or deceptive messages, signals or identification;

(4) Communications, on a regular basis, which could reasonably be furnished alternatively through other radio services.

(b) An amateur station shall not engage in any form of broadcasting, nor may an amateur station transmit one-way communications except as specifically provided in these rules; nor shall an amateur station engage in any activity related to program production or newsgathering for broadcasting purposes, except that communications directly related to the immediate safety of human life or the protection of property may be provided by amateur stations to broadcasters for dissemination to the public where no other means of communication is reasonably available before or at the time of the event.

(c) A control operator may accept compensation as an incident of a teaching position during periods of time when an amateur station is used by that teacher as a part of classroom instruction at an educational institution.

(d) The control operator of a club station may accept compensation for the periods of time when the station is transmitting telegraphy practice or information bulletins, provided that the station transmits such telegraphy practice and bulletins for at least 40 hours per week; schedules operations on at least six amateur service MF and HF bands using reasonable measures to maximize coverage; where the schedule of normal operating times and frequencies is published at least 30 days in advance of the actual transmissions; and where the control operator does not accept any direct or indirect compensation for any other service as a control operator.

(e) No station shall retransit programs or signals emanating from any type of radio station other than an amateur station, except propagation and weather forecast information originating from United States Government stations, and communications originating on United States Government frequencies between a space shuttle and its associated Earth stations. Prior approval for such retransmissions must be obtained from the National Aeronautics and Space Administration. Such retransmissions must be for the exclusive use of amateur operators. Propagation, weather forecasts, and shuttle retransmissions may not be conducted on a regular basis, but only occasionally, as an incident of normal amateur radio communications.

(f) No amateur station, except in auxiliary, repeater or space operation, may automatically retransmit the radio signals of other amateur stations.

[FR Doc. 92–16157 Filed 7–8–92; 8:45 am]

BILLING CODE 6712–01–M

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 14**

**RIN 1018 AB61**

## Live Farm-Raised Fish; Exemption From Fish and Wildlife Export Requirements Except for Marketing Requirements Under Sec. 14.81

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Director has determined that the export of farm-raised fish and farm-raised fish eggs does not adversely affect the wild resources. The U.S. Fish and Wildlife Service (Service) proposes to exempt live farm-raised fish and farm-raised fish eggs from Service export requirements except for marking requirements. This action would exempt exporters of live farm-raised fish and farm-raised fish eggs from import/export license requirements, designated port requirements, and payment of user fees.

**DATES:** Comments must be submitted on or before August 10, 1992.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 3247, Arlington, Virginia 22203–3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, Arlington Square Building room 500, 4401 North Fairfax Drive, Arlington, VA, between the hours of 8 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Striegler, Deputy Chief, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240, Telephone Number (703) 358–1949.

**SUPPLEMENTARY INFORMATION:** Current regulations (Code of Federal Regulations, title 50, parts 13.21, 14.55, 14.64, and 14.92) exempt shell fish and fisheries products imported or exported for human or animal consumtion from Service import and export requirements. This exemption is based on language in the Endangered Species Act of 1973 (16 U.S.C. 1538). Several sources have raised the question of why live farm-raised fish and farm-raised fish eggs are not included in this exemption. Farm-raised fish and farm-raised fish eggs are defined as meeting the definition of "bred in capitivity" as stated in 50 CFR 17.3.

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In reviewing the issue, it has been determined that the exemption of live farm-raised fish and farm-raised fish eggs from the Service export requirements would not significantly increase the risk that illegally taken wild fish would be exported as farm-raised nor would it be detrimental to the Service's fisheries management or law enforcement programs.

Concerns about the possible introduction of injurious species and disease into the country's wild fisheries require that the Service continue to enforce its regulations relating to the *import* of all fish and fish eggs.

**Required Determinations**

The Department of the Interior (Department) has determined this document is not a major rule under E.O. 12291 and certifies this document will not have a significant econmic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The only effect of this rule will be to make it easier for businesses to export live farm-raised fish and farm-raised fish eggs.

The proposed rule would relieve businesses from the information collection requirements contained in 50 CFR 14.3 that have been approved by the Office of Management and budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0012. The information is collected to provide information about wildlife imports and exports, including products and parts. The information is used to facilitate enforcement of the Endangered Species Act of 1973 an amended (16 U.S.C. 1531 *et seq.*) and to carry out the provisions of the Convention of International Trade in Endangered Species of Wild Fauna and Flora. Response is required to obtain a benefit.

These proposed changes in the regulations in Part 14 are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act Procedures under 51 DM 6, appendix 1, sections 1.4(A)(1) and 1.5.

**List of Subjects in 50 CFR Part 14**

Annual Welfare, Exports, Fish, Import, Labeling Reporting and recordkeeping requirements, Transportation, Wildlife.

**Regulation Promulgation**

For the reasons set out in the preamble, title 50, chapter I, subchapter B of the code of Federal Regulations is proposed to be amended as follows:

## PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for part 14 continues to read as follows:

Authority: 18 U.S.C. 42, 16 U.S.C. 3371–3378; 16 U.S.C. 1538(d)–(f), 1540(f); 16 U.S.C. 1382; 16 U.S.C. 704, 712; 31 U.S.C. 483(a); 16 U.S.C. 4223–4244.

2. Section 14.3 is added to read as follows:

**§ 14.3 Information collection requirements.**

The information collection requirements contained within this part 14 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0012. This information is being collected to provide information about wildlife imports or exports, including products and parts, to facilitate enforcement of the Endangered Species Act of 1973 as amended (16 U.S.C 1531 *et seq.*) and to carry out the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The obligation to respond is required to import or export wildlife.

3. Section 14.23 is added to read as follows:

**§ 14.23 Live farm-raised fish and farm-raised fish eggs.**

Live farm-raised fish and farm-raised fish eggs meet the definition of "bred in captivity" as stated in 50 CFR 17.3 Except for wildlife requiring a permit pursuant to parts 17 or 23 of this subchapter, live farm-raised fish and farm-raised fish eggs may be exported from any U.S. Customs port.

4. Section 14.64 is amended by adding paragraph (c) to read as follows:

**§ 14.64 Exceptions to export declaration requirements.**

* * * * *

(c) Except for wildlife requiring a permit pursuant to Parts 17 or 23 of this subchapter, a Declaration for the Importation or Exportation of fish or Wildlife (Form 3–177) does not have to be filed for the exportation of live farm-raised fish and farm-raised fish eggs as defined in 50 CFR 14.23.

**§ 14.92 [Amended]**

5. Section 14.92(a)(2) is amended by removing the last word "and".

6. Section 14.92(a)(3) is amended by removing the period and adding in its place the word "and" preceded by a semicolon.

7. Section 14.92(a)(4) is added to read as follows:

**§ 14.92 Exceptions to license requirement.**

(a) * * *

(4) Live farm-raised fish and farm-raised fish eggs of species not requiring a permit under parts 17 or 23 of this subchapter B which are being exported

Dated: April 20, 1992

**Bruce Blanchard,**

*Director.*

[FR Doc. 92–16091 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

**50 CFR Part 603**

**[Docket No. 91–1220–1320]**

**RIN 0648–AD77**

## Confidentiality of Statistics

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes to amend the regulations regarding access to confidential statistics obtained under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Secretary of Commerce (Secretary) is required by the Magnuson Act to prescribe regulations that will prevent the disclosure of data submitted in compliance with requirements of a fishery management plan (FMP). In November 1990, Public Law 101–627 amended the Magnuson Act's confidentiality provisions. As a result, this action proposes to amend NMFS policies and procedures regarding: (1) Persons having access to confidential statistics, and (2) circumstances under which such data may or may not be disclosed. The intended effect is to prevent unauthorized disclosure of confidential statistics.

**DATES:** Written comments on the proposed rule must be received on or before August 10, 1992.

**ADDRESSES:** Send written comments on the proposed rule to Mark C. Holliday, Fisheries Statistics Division, F/RE1, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Mark C. Holliday (Chief), Fisheries Statistics Division), 301–713–2328.

**SUPPLEMENTARY INFORMATION:**

Section 303(d) of the Magnuson Act requires the Secretary to issue regulations governing the preservation

of confidentiality for statistics submitted to the Secretary pursuant to requirements of an FMP (but does not govern statistics obtained by an observer as defined by the Magnuson Act). The following actions, as required by Public Law 101–627, are proposed to implement the 303(d) requirement:

(1) To modify existing language that allows state employees access to confidential statistics pursuant to a written agreement with the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), while ensuring that the date given to the state will not be subsequently related and disclose the identity or business of any person.

(2) To add new procedures to allow a Regional Fishery Management Council (Council) access to confidential data. Council members have previously been denied access to confidential Federal statistics.

(3) To modify existing language by deleting preliminary fishery management plan (PMP) data from the regulation.

Prior to Public Law 101–627, as reflected in existing regulations at 50 CFR part 603, states were allowed to access Magnuson Act data from NMFS when they could demonstrate they had comparable statutory authority to NMFS for collection of the requested fisheries statistics on their own behalf, and had entered into a cooperative data collection agreement with the Assistant Administrator. Before agreeing to a cooperative data collection agreement for access to confidential data, the Assistant Administrator required that states demonstrate they had the authority to prevent further disclosure of the confidential data they were given.

This proposed rule would remove the requirement for having comparable data collection authority, make explicit the requirement that a state have the ability to prevent the further disclosure of the data in a manner consistent with the Magnuson Act, and use the term "written agreement" instead of "cooperative data collection agreement."

The existing regulation's denial of access to confidential fisheries data by Council members precludes individual competitive advantage through membership on a Council since many members are involved in fishing industry businesses. This also reduced the potential for, or the appearance of, conflicts of interest.

The proposed amended regulations include conditions for access to confidential data by a Council that are the same as currently applied to NMFS employees or Council staff: A requirement to demonstrate any confidential data are needed, what purposes they will be used for, and why non-confidential summaries or aggregations could not fulfill the need. Approvals could apply to one-time requests as well as continuing access to certain classes of data. Access to confidential data is not granted to Plan Development Teams or Scientific or Statistical Committees, since NMFS has no statutory authority to grant access to these groups.

The proposed rule would remove the statutorily confidential protection from data submitted as a requirement of a PMP. The Magnuson Act does not identify PMP data as statutorily confidential under section 303(d). Data submitted as a requirement of a PMP may still remain confidential under an administrative pledge of confidentiality.

## Classification

The Assistant Administrator has determined that this rule is not a "major rule" under Executive Order 12291 and does not require preparation of a regulatory impact analysis. It prescribes agency policies and procedures and will have no economic impact on the public. For the same reasons, the General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act because it does not create any additional burden. As a result, a regulatory flexibility analysis was not prepared.

This rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

## Lists of Subjects in 50 CFR Part 603

Confidential business information, Fisheries, Statistics.

Dated: July 2, 1992.

**Samuel W. McKeen,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 603 is proposed to be amended as follows:

## PART 603—CONFIDENTIALITY OF STATISTICS

1. The authority citation for part 603 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 1853(d).

2. Section 603.1 is revised to read as follows:

### § 603.1 Purpose.

The purpose of this part is to prescribe procedures to protect the confidentiality of statistics required to be submitted to the Secretary by any person in compliance with an FMP.

3. In § 603.2, the definition of "PMP" is removed, the definitions of "Assistant Administrator" and "confidential statistics" are revised, and a new definition for "state employee" is added, in alphabetical order, to read as follows:

### § 603.2 Definitions.

* * * * *

*Assistant Administrator* means the Assistant Administrator for Fisheries, NOAA, or a designee authorized to have access to confidential data under § 603.5(b).

*Confidential statistics* are those submitted as a requirement of an FMP and that reveal the business or identity of the submitter.

* * * * *

*State employee* means any member of the state agency responsible for developing and monitoring the state's program for marine and/or anadromous fisheries.

### § 603.3 [Amended]

4. In § 603.3., the words "PMP or" are removed.

5. § 603.5 is revised to read as follows:

### § 603.5 Access to statistics.

(a) *General.* In determining whether to grant a request for access to confidential data the following information will be taken into consideration:

(1) The specific types of data required;

(2) The relevance of the data to conservation and management issues;

(3) The duration of time access will be required:

Continuous, infrequent, or one-time; and

(4) An explanation of why the availability of aggregate or non-confidential summaries of data from other sources would not satisfy the requested needs.

(b) *Federal employees.* Statistics submitted as a requirement of an FMP and that reveal the identity of the submitter will only be accessible to the following:

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(1) Personnel within NMFS responsible for the collection, processing, and storage of the statistics;

(2) Federal employees who are responsible for FMP development, monitoring, and enforcement;

(3) Personnel within NMFS performing research that requires confidential statistics;

(4) Other NOAA personnel on a demonstrable need-to-know basis; and

(5) NOAA/NMFS contractors or grantees who require access to confidential statistics to perform functions authorized by a Federal contract or grant.

(c) *State personnel.* Upon written request confidential statistics will only be accessible if:

(1) State employees demonstrate a need for confidential statistics for use in fishery conservation and management; and

(2) The state has entered into a written agreement between the Assistant Administrator and the head of the state's agency that manages marine and/or anadromous fisheries. The agreement shall contain a finding by the Assistant Administrator that the state has confidentiality protection authority comparable to the Magnuson Act's, and that the state will exercise this authority to limit subsequent access and use of the data to fishery management and monitoring purposes.

(d) *Regional Fishery Management Councils.* Upon written request by the Council Executive Director, access to confidential data will be granted to:

(1) Council employees who are responsible for FMP development and monitoring;

(2) A Council for use by the Council for conservation and management purposes, with the approval of the Assistant Administrator. In addition to the information described in § 603.5(a), the Assistant Administrator will consider the following in deciding whether to grant access:

(i) The possibility that Council members might gain personal or competitive advantage from access to the data; and

(ii) The possibility that the suppliers of the data would be placed at a competitive disadvantage by public disclosure of the data at Council meetings or hearings.

(e) *Prohibitions.* Persons having access to these data are prohibited from unauthorized use or disclosure, and are subject to the provisions of 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NOAA Directive 88–30.

**§ 603.6 [Amended]**

6. In § 603.6, the introductory text to paragraph (a), the words "a PMP or FMP" are removed and the words "an FMP" are added in their place.

**§ 603.7 [Amended]**

7. In § 603.7, the words, "a PMP or FMP" are removed and the words "an FMP" are added in their place, wherever they occur.

[FR Doc. 92–16152 Filed 7–8–92; 8:45 am]
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# Notices

Federal Register
Vol. 57, No. 132
Thursday, July 9, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Types and Quantities of Agricultural Commodities To Be Made Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949 in Fiscal Year 1992

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice.

**SUMMARY:** This Notice sets forth the determination of the quantities of corn, frozen bulk butter, and nonfat dry milk to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended (section 416(b)), during fiscal year 1992.

**FOR FURTHER INFORMATION CONTACT:** Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA (202) 720–3573.

**SUPPLEMENTARY INFORMATION:** It has previously been determined that a total of 760,000 metric tons of corn, 255,000 metric tons of sorghum, 80,000 metric tons of butter/butteroil, and 75,000 metric tons of nonfat dry milk shall be made available for donation under section 416(b) during fiscal year 1992. This determination was published in the **Federal Register** on November 6, 1991. The purpose of this notice is to inform the public that such previous determination is revised by adding 500,000 metric tons of corn and 45,000 metric tons of frozen bulk butter and reducing nonfat dry milk by 40,000 metric tons.

**Determination**

Accordingly, a total of 1,515,000 metric tons of grains and 160,000 metric tons of dairy products shall be made available for donation overseas pursuant to section 416(b) during fiscal year 1992.

The total kinds and quantities of commodities that shall be made available for donation are as follows:

| | Commodity | Quantity (metric tons) |
|---|---|---|
| Grain | Corn | 1,260,000 |
| | Sorghum | 255,000 |
| | Total | 1,515,000 |
| Dairy Product | Nonfat Dry Milk | 35,000 |
| | Butter/Butteroil* | 125,000 |
| | Total | 160,000 |

* At least 45,000 metric tons must be frozen bulk butter.

Done at Washington, DC, this 30th day of June 1992.

**Edward Madigan,**

*Secretary of Agriculture.*

[FR Doc. 92–15938 Filed 7–8–92; 8:45 am]

BILLING CODE 3410–10–M

## Forms Under Review by Office of Management and Budget

July 3, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title of the information collection;
(3) Form number(s), if applicable;
(4) How often the information is requested;
(5) Who will be required or asked to report;
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information;
(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

**Revision**

- *Farmers Home Administration*

Form FmHA 1962–1, Agreement for the Use of Proceeds/Release of Chattel Property.
Form FmHA 1962–1.
On occasion.
Individuals or households; Farms; 157,310 responses; 51,912 hours Jack Holston (202) 720–9736.

- *Agricultural Marketing Service*

Domestic Dates Produced or Packed in Riverside County, California
Marketing Order 987
FV–191 and FV–192
Recordkeeping; On occasion; Monthly; Annually; Biennially.
Farms; Small businesses or organizations; 455 responses; 202 hours.
Mark Hessel (202) 720–9920.

- *National Agricultural Statistics Service*

Water Quality/Pesticide Data Program.
On occasion.
Farms; 20,250 responses; 17,323 hours.
Larry Gambrell (202) 720–7737.

**Extension**

- *Agricultural Marketing Service*

Meat Market News.
Daily.
Businesses or other for-profit; 182,000 responses; 3,033 hours.
John E. Van Dyke (202) 720–6231.

- *Forest Service*

Pilot Qualification and Approval Record, Aircraft Data Card and Approval Record.
FS 5700–20, FS 5700–20a, FS 5700–21, FS 5700–21a.
Annually.
Individuals or households; Businesses or other for-profit; 1,915 responses; 1,454 hours.
John Eckert (202 205–1497.

- *Office of Personnel*

Advisory Committee Membership Background Information.
AD–755.
Annually.
Individuals or households; 700 responses; 350 hours.
Carolyn T. Wright (202) 720–8325.

- *Animal and Plant Health Inspection Service*

Witchweed Mail Survey.
Annually.
Farms; 2,800 responses; 1,400 hours.
Andrea M. Elston (301) 436–4478.

**New Collection**

• *Animal and Plant Health Inspection Service*

APHIS Exit Survey
Annually.
Individuals or households; Federal agencies or employees; 60 responses; 15 hours.
Richard F. Fraser (301) 436–4949.

**Reinstatement**

• *Rural Electrification Administration*

Personal Experience Record of Applicant for Position as Manager.
Form 328.
Annually.
Businesses or other for-profit; 100 responses; 125 hours.
Paul D. Mardsen.

• *Animal and Plant Health Inspection Service*

Exotic Bee Diseases and Parasites (7 CFR 319.76) Honeybees and Honeybee Semen (7 CFR 322).
On occasion.
Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 270 responses; 360 hours.
Phillip Lima (301) 436–8677.

• *Farmers Home Administration*

7 CFR 1944–D, Farm Labor Housing Loan and Grant Policies; Procedures, and Authorization.
On occasion.
State or local governments; Farms; Non-profit institutions; 4,740 responses; 8,762 hours.
Jack Holston (202) 720–9736.

**Larry K. Roberson,**
*Departmental Clearance Officer.*

[FR Doc. 92–16151 Filed 7–8–92; 8:45 am]
BILLING CODE 3410–01–M

## Animal and Plant Health Inspection Service

**[Docket No. 92–109–1]**

## Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

**AGENCY**: Animal and Plant Health Inspection Service, USDA.

**ACTION**: Notice.

**SUMMARY**: We are advising the public that five applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products..

**ADDRESSES**: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. And 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of the documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

**SUPPLEMENTARY INFORMATION**: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

| Application No. | Applicant | Date received | Organisms | Field test location |
|---|---|---|---|---|
| 92–169–01 | DeKalb Plant Genetics | 06–17–92 | Corn plants genetically engineered to express the *bar* gene for tolerance to the herbicide bialaphos, genes for resistance to European corn borer, and genes which enhance the insect resistance. | Maui County, Hawaii |
| 92–169–02 | Northrup King Company | 06–17–92 | Corn plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki* strain HD–1 for resistance to European corn borer or the coat protein genes of maize dwarf mosaic virus strain B (MDMV–B) for resistance to MDMV–B. | Kauai Cty, Hawaii |
| 92–174–01, renewal of permit 91–346–02, issued on 02–07–92. | Pioneer Hi-Bred International, Incorporated. | 06–22–92 | Soybean plants genetically engineered to express methionine-and cysteine-rich seed storage proteins from Brazil nut. | Salinas, Puerto Rico |

| Application No. | Applicant | Date received | Organisms | Field test location |
|---|---|---|---|---|
| 92-174-02 | Pioneer Hi-Bred International, Incorporated. | 06-22-92 | Corn plants genetically engineered to express the coat protein genes of maize dwarf mosaic virus strain A (MDMV-A), maize chlorotic mottle virus (MCMV), or maize chlorotic dwarf virus (MCDV) for resistance to these viruses. | Kauai County, Hawaii |
| 92-175-01, renewal of permit 91-218-02, issued on 10-04-91. | Upjohn Company | 06-23-92 | Corn plants genetically engineered to express a glufosinate phosphino thricin acetyl transferase (PAT) gene. | Isabela, Puerto Rico |

Done in Washington, DC, this 2nd day of July 1992.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92-16150 Filed 7-8-92; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF AGRICULTURE

### Economic Research Service

### National Agricultural Cost of Production Standards Review Board: Meeting

The National Agricultural Cost of Production Standards Review Board will meet at the U.S. Department of Agriculture, Washington, DC on July 27-28, 1992.

The purpose of this meeting is to discuss general issues related to USDA's estimation of enterprise costs of production. The meeting will open at 8 a.m. on July 27 in room 108-A, USDA Administration Building, 14th and Independence Ave, SW. Subsequent sessions will be held in Waugh Auditorium, 1301 New York Avenue, NW. Meeting times are 1:30-5 p.m. on July 27 and 8 a.m.-12 p.m. on July 28.

All sessions will be open to members of the public who wish to observe. Written comments may be submitted before or after the meeting to Kenneth Deavers, Director, ARED-ERS-USDA, room 314, 1301 New York Avenue, NW., Washington, DC 20005.

This meeting is authorized by 7 USC 4104, as amended. For further information, contact Jim Ryan at (202) 219-0795.

**K.H. Reichelderfer,**

*Acting Administrator.*

[FR Doc. 92-16089 Filed 7-8-92; 8:45 am]

BILLING CODE 3410-18-M

### Forest Service

### Ridge Area Timber Sales, Including Ridge and Milk Timber Sales, Okanogan National Forest, Okanogan County, WA

**AGENCY:** Forest Service, USDA.

**ACTION:** Revision of a notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service published a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) in the **Federal Register** (56 FR 49451) on June 6, 1991, for the analysis of two timber sales on the Okanogan National Forest, Twisp Ranger District. The current title does not reflect the correct name of the project. The revised title of the EIS will be "Environmental Impact Statement for the Ridge and M&M Timber Sales".

The NOI stated that the proposed action was to harvest 10 million board feet of timber and construct 15 miles of road with the Ridge Timber Sale, selling in 1992; and harvest 4 million board feet of timber and construct 6 miles of road with the Milk Timber Sale, selling in 1993. This revised NOI changes the proposed action to harvest 11.5 million board feet of timber and construct 47.7 miles of road with the Ridge Timber Sale, selling in 1993; and harvest 2.3 million board feet of timber and construct 6.2 miles of road with the M&M Timber Sale, selling in 1994.

The NOI stated that the draft EIS was expected to be filed with the Environmental Protection Agency (EPA) and available for public review by October 1991. The revised date of filing the draft EIS is July 1992 and the final EIS is January 1993.

**FOR FURTHER INFORMATION CONTACT:** Questions and comments about this EIS should be directed to Jennifer Klepach, EIS team leader, Okanogan National Forest, Twisp Ranger District, P.O. Box 188, Twisp, WA 98856, telephone (509) 997-2131.

Dated: June 30, 1992.

**Donald C. Lyon,**

*Acting Forest Supervisor.*

[FR Doc. 92-16107 Filed 7-8-92; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 583]**

### Resolution and Order Approving the Application of the Canaveral Port Authority for Special-Purpose Subzone Status at the American Digital Switching, Inc., Plant (Telecommunications and Computer Products) Melbourne, FL

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Canaveral Port Authority, grantee of FTZ 136, filed with the Foreign-Trade Zones Board (the Board) on June 11, 1991, requesting special-purpose subzone status at the telecommunications and computer products plant of American Digital Switching, Inc., in Melbourne, Florida, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790-50808, 10/8/91), including § 400.28. The Secretary of Commerce as Chairman and

Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

**Grant of Authority for Subzone Status**

*American Digital Switching, Inc., Melbourne, FL*

*Whereas*, By an Act of Congress approved June 18, 1934, an Act to provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, The Board' regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

*Whereas*, The Canaveral Port Authority, grantee of FTZ 136, has made application (filed 6–11–91, FTZ Docket 34–91, 56 FR 28862, 6–25–91) to the Board for authority to establish a subzone at the telecommunications and computer products plant of American Digital Switching, Inc., in Melbourne, Brevard County, Florida;

*Whereas*, Notice of said application has been given in the **Federal Register** and public comment has been invited; and,

*Whereas*, the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore*, The Board hereby authorizes the establishment of a subzone at the American Digital Switching, Inc., plant in Melbourne, Florida, designated on the records of the Board as Foreign-Trade Subzone 136B, at the location described in the application, subject to the Act and the Board's Regulations (as revised, 56 FR 50790–50808, 10/8/91), including Section 400.28.

Signed at Washington, DC, this 29th day of June 1992, pursuant to Order of the Board.

**Alan M. Dunn,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 92–16000 Filed 7–8–92; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 21–92]

**Foreign-Trade Zone 177—Evansville, Indiana; Application for Expansion**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission, grantee of FTZ 177, requesting authority to expand its zone in Evansville, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 29, 1992.

FTZ 177 was approved on March 12, 1991 (Board Order 513, 56 FR 12155, 3/22/91). The zone currently involves three sites in the Evansville-Mount Vernon area: *Site 1* (40 acres) within the Southwind Maritime Centre, Posey County, Indiana; *Site 2* (30,000 sq. ft.) Central Warehouse Inc., 301 East Indiana Street, Evansville; and *Site 3* (40,000 sq. ft.) Morton Avenue Warehouse, Inc., East Lynch Road, Evansville.

The applicant is now requesting authority to expand the zone to add a fourth site (78 acres) at the Evansville Regional Airport, Evansville. The site consists of 2 parcels: a warehouse facility (75,000 sq. ft.) within the airport terminal building, and an industrial park (76 acres) on Oakhill Road in the northeast corner of the Airport complex. The facilities are owned and operated by the Evansville-Vanderburgh Airport Authority.

No manufacturing requests are being made at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 8, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 22, 1992).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port Director's Office, Federal Building, room 238, 101 NW. Seventh, Evansville, Indiana 47708.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 1, 1992.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 92–16000 Filed 7–8–92; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 587]

**Resolution and Order Approving the Application of the New Hampshire State Port Authority for Special-Purpose Subzone Status; ABB Combustion Engineering, Inc. (Industrial/Nuclear Equipment) Newington, NH**

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

**Resolution and Order**

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the New Hampshire State Port Authority, grantee of Foreign-Trade Zone 81, filed with the Foreign-Trade Zones Board (the Board) on September 18, 1991, requesting special-purpose subzone status at the industrial/nuclear equipment manufacturing plant of ABB Combustion Engineering, Inc. (subsidiary of ABB Asea Brown Boveri Group, Switzerland), in Newington, New Hampshire, within the Portsmouth Customs Port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

**Grant of Authority for Subzone Status**

*ABB Combustion Engineering, Inc. Newington, NH*

*Whereas*, By an Act of Congress approved June 18, 1934, an Act to provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of

establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas,* The Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

*Whereas,* The New Hampshire State Port Authority, Grantee of Foreign-Trade Zone No. 81, has made application (filed 9–18–91, FTZ Docket 54–91, 56 FR 49742, 10–1–91) to the Board for authority to establish a special-purpose subzone at the ABB Combustion Engineering, Inc., plant in Newington, New Hampshire;

*Whereas,* Notice of said application has been given in the **Federal Register** and public comment has been invited; and,

*Whereas,* The Board has found that the requirements of the Act and the Board's regulations are satisfied and that approval of the application is in the public interest;

*Now, therefore,* The Board hereby authorizes the establishment of a subzone at the ABB Combustion Engineering, Inc., plant in Newington, New Hampshire, designated on the records of the Board as Foreign-Trade Subzone 81C, at the location described in the application, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including Section 400.28.

Signed at Washington, DC, this 29th day of June 1992, pursuant to Order of the Board.

**Alan M. Dunn,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 92–16007 Filed 7–8–92; 8:45 am]

BILLING CODE 3510–DS–M

## International Trade Administration

## Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

**BACKGROUND:** Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

**OPPORTUNITY TO REQUEST A REVIEW:** Not later than July 31, 1992, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

| Antidumping duty proceedings | Period |
|---|---|
| Armenia: Solid urea (A–831–801) | 07/01/91–06/30/92 |
| Azerbaijan: Solid urea (A–832–801) | 07/01/91–06/30/92 |
| Belarus-Baltic: Solid urea (A–822–801) | 07/01/91–06/30/92 |
| Brazil: Industrial nitrocellulose (A–351–804) | 07/01/91–06/30/92 |
| Brazil: Silicon metal (A–351–806) | 03/29/91–06/30/92 |
| Estonia-Baltic: Solid urea (A–447–801) | 07/01/91–06/30/92 |
| Georgia: Solid urea (A–833–801) | 07/01/91–06/30/92 |
| German Democratic Republic: Solid urea (A–429–601) | 07/01/91–06/30/92 |
| Iran: Certain in-shell pistachios (A–507–502) | 07/01/91–06/30/92 |
| Japan: Industrial nitrocellulose (A–588–812) | 07/01/91–06/30/92 |
| Japan: Malleable cast-iron pipe fittings (A–588–605) | 07/01/91–06/30/92 |
| Japan: High power microwave amplifiers and components thereof (A–588–005) | 07/01/91–06/30/92 |
| Japan: Fabric expanded neoprene laminate (A–588–404) | 07/01/91–06/30/92 |
| Japan: Synthetic methionine (A–588–041) | 07/01/91–06/30/92 |
| Kazakhstan: Solid urea (A–834–801) | 07/01/91–06/30/92 |
| Kyrgyzstan: Solid urea (A–835–801) | 07/01/91–06/30/92 |
| Latvia-Baltic: Solid urea (A–449–801) | 07/01/91–06/30/92 |
| Lithuania: Solid urea (A–451–801) | 07/01/91–06/30/92 |
| Moldova: Solid urea (A–841–801) | 07/01/91–06/30/92 |
| Romania: Solid urea (A–485–601) | 07/01/91–06/30/92 |
| Russia: Solid urea (A–821–801') | 07/01/91–06/30/92 |
| Tajikistan: Solid urea (A–842–801) | 07/01/91–06/30/92 |
| The Federal Republic of Germany: Industrial nitrocellulose (A–428–803) | 07/01/91–06/30/92 |
| The People's Republic of China: Industrial nitrocellulose (A–570–802) | 07/01/91–06/30/92 |
| The Republic of Korea: Industrial nitrocellulose (A–580–805) | 07/01/91–06/30/92 |
| The United Kingdom: Industrial nitrocellulose (A–412–803) | 07/01/91–06/30/92 |
| Turkmenistan: Solid urea (A–843–801) | 07/01/91–06/30/92 |
| Ukraine: Solid urea (A–823–801) | 07/01/91–06/30/92 |
| Uzbekistan: Solid urea (A–844–801) | 07/01/91–06/30/92 |
| European Economic Community: Sugar (C–408–046) | 01/01/91–12/31/91 |
| Uruguay: Leather wearing apparel (C–355–001) | 01/01/91–12/31/91 |

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 or 355.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by July 31, 1992.

If the Department does not receive, by July 31, 1992, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

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Dated: June 29, 1992.

Joseph A. Spetrini

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 92-16005 Filed 7-8-92; 8:45 am]

BILLING CODE 3510-10-M

[A-570-003]

## Cotton Shop Towels From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On March 31, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on cotton shop towels from the People's Republic of China (PRC) (57 FR 10881). We have now completed the review and determine the dumping margins to be 72.14 percent for Tianjin Arts & Crafts Import and Export Corporation (TAC), and 122.81 percent for both Chinatex and China National Arts and Crafts Import and Export Corporation (CNART), based on best information available, during the period October 1, 1989 through September 30, 1990.

**EFFECTIVE DATE:** July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Cameron Cardozo, Elizabeth Levy or Michael Rollin, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 31, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 10881) the preliminary results of its administrative review of the antidumping duty order on cotton shop towels from the PRC (48 FR 45277, October 4, 1983) covering the period October 1, 1989 through September 30, 1990. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On June 14, 1991, questionnaires were issued to the three producers/resellers listed above. TAC, which until January 1, 1989, was named China National Arts and Crafts Import and Export Corporation, Tianjin Branch, was the only company that answered the Department's questionnaire.

In the previous review of cotton shop towels from the PRC (56 FR 60969), we determined that TAC had sufficiently demonstrated the absence of governmental control over its legal, financial and economic affairs. TAC, therefore, qualified for a separate dumping rate. See Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the PRC (56 FR 60969, November 29, 1991). TAC has again placed evidence on the record demonstrating its independence from governmental control during the present review. The Department has determined that once a company in a non-market economy country has demonstrated that it is entitled to a separate rate, unless there is an indication that its status may have changed, it is not necessary for that company to resubmit data supporting a separate rate during subsequent reviews. See Final Results of Antidumping Duty Administrative Review: Certain Iron Construction Castings from the PRC (57 FR 24245, June 8, 1992). Accordingly, we are granting TAC's request for a separate dumping rate during this review period.

### Use of Best Information Available

We have assigned to all other PRC firms for which a review was requested a deposit rate based on the best information available (BIA), in accordance with section 776(c) of the Act, because no other named PRC exporter responded to our questionnaire. In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what to use as BIA. When a company refuses to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department will assign to that company the highest margin calculated for any company in this review, any previous review or the original investigation. See, *e.g.*, Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany: Final Results of Antidumping Duty Administrative Review (56 FR 31692, 31704, July 11, 1991). In this case, the highest margin is from a previous review.

### Scope of the Review

The products covered by this review are cotton shop towels from the PRC. This merchandise is classifiable under item number 6307.10.2005 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

The review covers three producers/resellers of cotton shop towels to the United States and the period October 1, 1989 through September 30, 1990.

### Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from one respondent, TAC, and written rebuttal comments from the petitioner, Milliken & Company. Because petitioner's comments were solely in support of the Department's preliminary results and in opposition to respondent's comments, we have only discussed respondent's comments.

*Comment 1:* Respondent argues that the Department improperly initiated this review on the grounds that petitioner's request for initiation failed to meet what TAC characterizes as jurisdictional requirements under 19 CFR 353.22(a) (1990). Specifically, the request failed to state "why the person (requesting the review) desires the Secretary to review those particular producers and resellers" named in the request. Therefore, for this reason, and because each administrative record must stand alone, TAC claims the Department should rescind the notice of initiation of this review, a power that is within the Department's inherent authority.

*Department's Position:* We disagree with respondent's argument that petitioner's request for review was inadequate. This argument was previously presented by the respondent soon after initiation of this review. Based on the Department's stated interpretation of its regulatory provision, we rejected TAC's claim then as well. The provision for stating "why" a requesting party desires an administrative review of particular producers and resellers "is not intended to be a difficult hurdle to overcome." Antidumping and Countervailing Duties: Administrative Reviews on Request; Transition Provisions (50 FR 32556, 32557 (1985)) (*Transition Provisions*). Neither the statute nor the legislative history underlying the 1984 amendment to section 751 of the Act refers to this requirement. See, *e.g.*, H.R. Conf. Rep. No. 98, 98th Cong., 2d Sess. 181 (1984). Clearly, Congress left the manner in which to regulate requests for review within the Department's discretion, and we have explained what information we require in order to initiate a review, and why. See *Asociacion Colombiana de*

*Exportadores de Flores* versus *United States*, 903 F.2d 1555, 1559 (Fed. Cir. 1990). As the Department explained when it promulgated § 353.22(a)(1) (originally § 353.53a(a)(1)), "requests and the statements should help the Department focus on the potential respondents which the requester believes to be most important to the requester." *Transition Provisions*, 50 FR at 32557.

The Court of Appeals for the Federal Circuit has affirmed this view, holding that "(t)he Administration imposed the requirements for its benefit, not for the benefit of the subjects of the investigation." *Asociacion Colombiana*, 903 F.2d at 1559. Furthermore, the Court stated that the question of whether a requesting party satisfies the obligations of the Department's regulations is a decision for the Department and not interested parties to make. *Id.*

We agree with respondent that data from each review period is analyzed separately. Whenever the Department seeks to establish whether a party has demonstrated a consistent pattern of behavior, however, we may turn to the record in previous reviews as precedent. This is the situation here. The Department had no difficulty focusing on the respondents considered most important by the petitioner, in part because petitioner listed the same three producers/resellers in all previous requests for review. Petitioner listed CNART and Chinatex in every request for review since the original investigation. TAC, which only separated from CNART, its parent company three review periods ago, has been listed by petitioner each year thereafter. Petitioner obviously considered these producers "important" in terms of dumping practices.

The Department has consistently determined that TAC and its predecessor CNART engaged in dumping during the original investigation and the past four consecutive administrative review periods. Petitioner has consistently requested that the Department review TAC's shipments of shop towels in order to determine the proper antidumping duty rate for each period. Consequently, in accordance with the Department's consistent interpretation of this regulatory provision, we determine that petitioner's intentions were clear from the face of its initiation request for this review period. While the facts in this case clearly show that the initiation requirements were met, there may be other instances where the facts indicate that additional information may be needed to meet the initiation requirements. See *Asociacion Colombiana*, 903 F.2d at 1555.

*Comment 2:* Respondent argues that the Department should use TAC's input prices for starch and ink in calculating foreign market value (FMV). First, TAC contends that the Department abandoned its methodology of "mixing" surrogate price information with nonmarket economy (NME) prices, a decision which is not grounded in any articulated reasoning or substantial evidence in the record. TAC further notes that the Department did not issue supplemental questionnaires following TAC's response regarding the market-driven status of its inputs, suggesting that the Department was satisfied with TAC's response. Citing *Final Determination of Sales at Less Than Fair Value (LTFV): Chrome Plated Lug Nuts from the PRC*, 56 FR 46153 (1991) (*Lug Nuts*), and *Final Determination of Sales at LTFV; Oscillating Fans and Ceiling Fans from the PRC*, 56 FR 55271 (1991) (*Fans*), TAC states that the Department determined that using individual input prices, sourced within an NME and found to be market-driven, was consistent with the Congressional intent underlying section 773(c)(1)(B) of the Act. These decisions, TAC claims, were also intended to enhance predictability. Thus, without a change in the statute or the regulations, this abrupt policy shift defies the Department's goals of predictability and accuracy as they were articulated in *Lug Nuts*. Such an abuse of discretion, TAC contends, is contrary to law and should be reversed.

*Department's Position:* We disagree with respondent. To the extent it was required, TAC received adequate notice of the Department's reconsideration of its policy. As noted by petitioners, the Department first gave public notice of this reevaluation on November 13, 1991 when it initiated the CVD investigation of fans from the PRC. See *Initiation of Countervailing Duty Investigation: Oscillating Fans and Ceiling Fans from the PRC*, 56 FR 57616 (1991); see also *Initiation of Countervailing Duty Investigation: Chrome plated Lug Nuts and Wheel Locks from the PRC*, 57 FR 877 (January 9, 1992). In addition, several months before publishing the preliminary results in this case, the Department sought and was later granted a remand by the Court of International Trade (CIT) of its LTFV determination in *Lug Nuts*. See *Consolidated International Automotive, Inc.*, versus *United States*, Slip Op. 92–54 (CIT April 8, 1992). Finally, TAC submitted comments following publication of the preliminary results in this review *Cotton Shop Towels from the PRC: Preliminary Results of Antidumping Duty Administrative Review*, 57 FR 10881 (March 31, 1992) (*Preliminary Results*). The Department has fully considered TAC's comments and has maintained its original position. Therefore, the argument that respondent had no notice of the Department's reconsideration of its policy is without merit.

Similarly, the Department acted within its statutory authority by refining its test for evaluating the market conditions within an NME. Contrary to TAC's assertion, the Department has never determined that Congress intended prices of inputs produced within an NME to be used in calculating FMV. See *Lug Nuts*. In *Lug Nuts*, the Department merely interpreted the statute as permitting such a finding. Upon reconsideration, however, we have determined that the approach outlined in *Lug Nuts* offers an inappropriate basis for determining FMV in cases involving NME countries.

We addressed this issue recently in *Amendment to Final Determination of Sales at LTFV and Amendment to Antidumping Duty Order: Lug Nuts from the PRC*, 57 FR 15052 (April 24, 1992) (*Lug Nuts Remand*). There, we noted that section 773(c)(1) of the Act requires that foreign market value be calculated on the basis of "factors of production" generally valued in an appropriate surrogate country if:

> (A) The merchandise under investigation is exported from a nonmarket economy country, and
>
> (B) The administering authority finds that the available information does not permit the foreign market value of the merchandise to be determined under subsection (a) (the "normal" methodology for determining foreign market value) of this section.

19 U.S.C. 1677b(c)(1) (emphasis added). In amending the statute in 1988 to add section 773(c)(1)(B), Congress clearly contemplated a situation in which a sector of an NME may be sufficiently free of NME distortion in order that the actual prices and/or costs incurred in the NME could be used in dumping calculations and render meaningful results. Both paragraphs (A) and (B) must be satisfied before the Department will use the factors of production methodology. If the facts permit, section 773(c)(1)(B) allows the Department to calculate foreign market value using normal foreign market value methodologies despite the fact that the economy of the subject country, on a macro basis, is nonmarket in nature. See *Lug Nuts Remand; Final Negative Countervailing Duty Determinations: Oscillating the Ceiling Fans from the*

*PRC*, 57 FR 24018 (June 5, 1992) (*Fans CVD Determination*). Because the statute provides no guidance to help identify such situations, however, we have attempted to develop the appropriate standards to fairly and consistently make this determination.

When we issued the original determinations in *Lug Nuts* and *Fans*, the Department had only recently begun receiving and considering claims of market conditions existing within NMEs, and was not in a position to announce a definitive rule at that time. We subsequently decided that the scope of the test set forth in the *Lug Nuts* and *Fans* decisions did not take adequate consideration of the indirect nonmarket forces at work within an NME and was, therefore, too narrow. As noted above, the Department's reconsideration of this issue was known publicly as early as two months after the issue was first considered in *Lug Nuts*. Subsequently, the CIT granted the Department's request for a remand of its initial *Lug Nuts* determination, thereby implicitly recognizing the Department's authority to reconsider its standard. *See Consolidated Int'l Automotive, supra*, Slip. Op. 92–54.

Contrary to TAC's assertion, moreover, the Department was not required to promulgate a regulation or wait for a change in the statute before reconsidering this standard. As the Supreme Court has recognized, an agency engaged in the administration of a statute has a choice between proceeding by rule-making or through decision-making, on a case-by-case basis. *Securities and Exchanges Commission* v. *Chenery Corp.*, 332 U.S. 202, 203 (1947); *see also Zenith Elec. Corp.* v. *United States*, 755 F.Supp. 397 (CIT 1990): This decision lies primarily within the informed discretion of the administering agency. The Supreme Court further recognized that an "agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule." *Chenery*, 332 U.S. at 202.

Accordingly, TAC is incorrect in arguing that the Department jeopardized predictability by revising its test. To the contrary, unlike the situation following *Lug Nuts*, we have now developed a test for determining when market conditions are functioning within an NME, based on stated criteria.

One source of guidance to which the Department turned in developing this test is the Federal Circuit's decision in *Georgetown Steel Corp.* v. *United States*, 801 F.2d 1308 (Fed. Cir. 1986) (*Georgetown*). Based on the analysis in *Georgetown*, we have concluded that whenever the imports under investigation are being produced and sold in a nonmarket setting, use of the factors of production methodology under the antidumping law is the appropriate standard. As noted in *Lug Nuts Remand*, 57 FR at 15055, however,

> where those characteristics identified by the Federal Circuit are not present, and we have sufficient confidence in the validity of all relevant costs and prices to permit their use in the dumping calculation, we have concluded that market economy remedies are available, *i.e.*, that the market economy provisions of the antidumping law and the countervailing duty law can be applied.

Our new test, now known as the market oriented industry (MOI) test, determines when we will implement the scenario envisioned in *Lug Nuts Remand* and was first articulated in *Preliminary Determination of Sales at LTFV: Sulfanilic Acid From the People's Republic of China* 57 FR 9409 (March 18, 1992) (*Sulfanilic Acid*) and followed in the *Preliminary Results* and subsequent determinations. *See Lug Nuts Remand; Fans CVD Determination*; and *Final Determination of Sales at LTFV: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China*, 57 FR 21058 (May 18, 1992). The MOI test is clearly not met by the present situation. TAC has only claimed that the domestic prices paid for two insignificant inputs—starch and ink—are market-oriented. As the Department explained in the *Preliminary Results*, TAC has not alleged that PRC shop towel producers are sufficiently market-oriented to justify market economy treatment as permitted under section 773(c)(1)(B) and as interpreted by the MOI test.

*Comment 3*: TAC asserts that the Department unjustifiably delayed the *Preliminary Results* until March 31, 1992, a date beyond the permissible time frame during which the Department would have accepted actual market-driven input costs within an NME. TAC submitted its questionnaire response on October 11, 1991, and the Department tentatively intended to publish its preliminary results on January 31, 1992. Because the policy apparently changed with publication of *Sulfanilic Acid*, the Department caused TAC to miss its rightful opportunity.

*Department's Position:* We disagree with the respondent. The fact that the Department did not issue its preliminary results in this case on January 31, as tentatively scheduled, is not prejudicial to respondent. In the first place, provided an agency explains a decision to revise its policy, the courts have emphasized that agencies cannot be held to an overly rigid interpretation of the law they administer. *See, e.g., Chenery, supra; Rust* v. *Sullivan*, 111 S.Ct. 1759 (1991). Although in situations such as the present, the Department attempts to issue results of administrative reviews in as timely a manner as possible, such reviews are not subject to specific, mandatory time limits. *See* 19 U.S.C. 1675.

*Comment 4:* Respondent argues that the Department abused its discretionary authority when calculating FMV using input prices from surrogate market economy countries to value PRC inputs. According to respondent, the Department unjustly pieced together surrogate information from the three different surrogate economies of India, Indonesia and Pakistan. Furthermore, the Department failed to place information on the record supporting its choice of surrogates or its preference for India over Pakistan or Indonesia.

Respondent cites to publicly available data to support its contention that the Department inappropriately mixed surrogate information. These data, according to respondent, indicate that, unlike India and Pakistan, Indonesia's GNP per capita is not comparable to that of the PRC. Also, in terms of quantity of subject merchandise exported to the United States, India and Pakistan are almost indistinguishable from one another.

Respondent also complains that the Department chose India as its primary surrogate country despite the fact that Indian data were only available for three of the eleven factor inputs. Of those three, only two were contemporaneous with the period of review. Therefore, the respondent claims that the Department ignored the more complete, reliable surrogate data available from Pakistan. The respondent further claims that the Department erred by choosing the highest prices available from Pakistan and Indonesia for the remaining eight factor inputs.

Respondent requests that the Department remedy this abuse of discretion by selecting Pakistan as its primary surrogate economy. The respondent claims that Pakistan offers a more complete set of surrogate data, which is supported by verified information from the Department's investigation of shop towels from Bangladesh. See *Final Determination of Sales at LTFV: Shop Towels From Bangladesh* (57 FR 3996, February 3, 1992).

*Department's Position:* We disagree. In determining FMV in cases involving NME countries, the present statutory provision requires that, to the extent possible, surrogate countries be at a level of economic development

comparable to that of the NME country and be significant producers of comparable merchandise. 19 U.S.C. 1677b(c)(4); See also 19 CFR 353.52(b). In this administrative review, we determined that India, Indonesia and Pakistan are comparable to the PRC in terms of overall economic development and that each of these countries is a significant producer of cotton shop towels or other comparable merchandise. In this and past administrative reviews, the Department has determined that India is the most comparable surrogate on the basis of per capita GNP, the distribution of labor between the agricultural and nonagricultural sectors, and the growth rate in per capita GNP. (*Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the PRC*, 56 FR 4040, February 1, 1991) and (*Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the PRC*, 56 FR 60969, November 29, 1991). The Department is not required to put information on the record during every review period to permit parties to comment on our surrogate country selections. The statute and regulations clearly provide that this decision is to be made by the Department (*See, e.g.*, 19 CFR 353.52(c) ("The Secretary will value the factors of production in a non-state-controlled-economy country which the Secretary considers comparable in economic development to the home market country.")). provided the subject merchandise is produced in significant quantities in a country which the Department considers comparable, the Court of International Trade has sanctioned the Department's exercise of discretion in this area. (*See China National Arts & Crafts Import & Export Corp.* v. *United States*, Slip Op. 91–70 (CIT 1991)).

In our preliminary analysis, we stated that we would assign values based on data from Indonesia or Pakistan, the next most comparable surrogate countries, to factors for which we were unable to obtain Indian values. The Department is under no statutory obligation to use a single source of surrogate data, nor to refrain from using India as its primary surrogate country simply because the Department also used data from other surrogate countries in valuing TAC's factors of production.

*Comment 5:* Respondent argues that surrogate data from Indonesia is recycled data from a wholly unreliable source and should be rejected by the Department. First, the respondent claims, as it has in the last two administrative reviews, that data from an Indonesian company, Tonikitex Manufacturing Corporation, are unreliable and should be rejected by the Department. Second, respondent claims that, although Tonikitex was not mentioned by name, there is an almost one-for-one match between input prices reported in the recent telex with the unreliable and unverified data reported for Tonikitex and used in past reviews.

The respondent adds that, even if the recent Indonesian telex figures are legitimate, the Department should nevertheless decline to use them because the costs for yarn, factory overhead and profit do not relate to the production of shop towels. Therefore the respondent requests that the Department reject the Indonesian data in toto and use the more reliable Pakistani data as argued in Comment 6.

*Department's Position:* We disagree. The respondent failed to substantiate its allegations with evidence and/or documentation that the Indonesian data is indeed recycled and unreliable. More importantly, the statute does not direct the Department to obtain information derived from identical merchandise. As described in the previous comment, the statute requires that, to the extent possible, the country within which we value the factors of production be at a level of economic development comparable to that of the NME country and be a significant producer of comparable merchandise. (19 U.S.C. 1677b(c)(4)).

We have therefore determined that Indonesia, for purposes of this review, is an appropriate alternate surrogate country. Furthermore, we have addressed this same argument in a prior administrative review and confirmed that the Indonesian data are appropriate. See *Shop Towels of Cotton from the PRC; Notice of Final Results of Antidumping Duty Administrative Review*, (56 FR 4040, February 1, 1991).

*Comment 6:* Respondent argues that the Department should choose Pakistan as its primary surrogate economy for the following four reasons. First, respondent claims that the Pakistani shop towel industry is more similar to that of the PRC than India's cottage industry. Respondent asserts that the input costs in the Indian industry will necessarily reflect the fact that, as small-volume manufacturers, they are unable to benefit as TAC does from the economies of scale gained by purchasing and producing in large quantities.

Second, respondent claims that Pakistani yarn prices better reflect the cost of the lower-quality yarn used by TAC. Respondent argues that since the Indian data do not specify the yarn content, the Department should use the Pakistani yarn price, which reflects a waste-fiber content as high as 25 percent. TAC's yarn consists of 75 percent waste fiber.

Third, respondent argues that the Pakistani economy is more comparable to the PRC than Indonesia's. Respondent supports its argument by stating that, in 1990, Pakistan's GNP per capita was six percent greater than the PRC's, whereas Indonesia's was 34 percent greater. Respondent also cites *Chrome-Plated Lug Nuts from the People's Republic of China* (56 FR 46153, September 10, 1991), where the Department used Pakistan as the surrogate.

Finally, respondent argues that Pakistani data are more reliable because they are supported by DOC-verified data obtained during the investigation of *Shop Towels from Bangladesh*. Respondent argues that the verified Bangladeshi factory overhead rates lend validity to the Pakistani data, while discrediting the Indonesian data, because the Bangladeshi data closely correspond with the data from Pakistan.

*Department's Position:* As we stated above, the statute requires that, to the extent possible, surrogate countries be at a level of economic development comparable to that of the NME country and be significant producers of comparable merchandise. In this and past administrative reviews, the Department has determined that India, Pakistan and Indonesia are all comparable to the PRC in terms of economic development and are significant producers of comparable merchandise. If anything, the use of Indian values is warranted by reason of the greater similarity in economic development. There is nothing in the statute, the Department's regulations or the record of this investigation which suggests that alleged greater similarities in industry structure or in raw material composition should dictate our evaluation of the statutory criterion of comparability in economic development. Moreover, the verified experience of Bangladeshi shop towel producers has no bearing on the validity of either Pakistani or Indonesian data for purposes of this review. The Department possesses the clear authority to select different surrogate country data in valuing NME factors or production, so long as that conforms with the statutory guidelines. This is precisely what we have done in the instant review.

## Final Results of the Review

As stated in our preliminary results, the January 1992 wholesale price indices were not, at that point, available for use

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in deflating current factor prices to the period of review. We have now adjusted the affected calculations using January 1992 price indices. As a result, we determine the dumping margins to be:

| Producer/exporter | Margin (percent) |
|---|---|
| TAC | 72.14 |
| Chinatex | 122.81 |
| CNART | 122.81 |
| All other companies without specific rates | 122.81 |

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate(s) for the reviewed company(ies) and any other company without a company-specific rate will be as listed above; (2) for previously reviewed or investigated companies with company-specific rates not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 1, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-16153 Filed 7-8-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-421-601]

## Standard Chrysanthemums From the Netherlands; Termination of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of termination of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) has terminated the countervailing duty administrative review of standard chrysanthemums from the Netherlands initiated on April 13, 1992 (57 FR 12797).

**EFFECTIVE DATE:** July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Moore or Marie MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:** On March 31, 1992, Vereniging van Bloemenveilingen in Nederland and the Bedrijfschap voor de Groothandel in Bloemkwekerijprodukten, exporters, requested an administrative review of the countervailing duty order on standard chrysanthemums from the Netherlands for the period January 1, 1991 through December 31, 1991. No other interested party requested the review. On April 13, 1992, the Department initiated the administrative review for that period (57 FR 7910).

The exporters withdrew their request for review on June 3, 1992. The withdrawal was timely within the meaning of 19 CFR 355.22(a)(3). As a result, the Department has terminated the review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: June 26, 1992.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 92-16004 Filed 7-8-92; 8:45 am]

BILLING CODE 3510-DS-M

## Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

*Docket Number:* 92-078. *Applicant:* St. Louis University, School of Medicine, 1402 South Grand Boulevard, St. Louis, MO 63104. *Instrument:* High Intensity Xenon Flashlamp System, Model XF-10. *Manufacturer:* Hi Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used to photolyse caged compounds as part of ongoing research conducted to further understand the molecular mechanisms by which the neurotransmitter serotonin affects cells in the brain. *Application Received by Commissioner of Customs:* June 5, 1992.

*Docket Number:* 92-079. *Applicant:* Vanderbilt University, School of Medicine, 23rd Avenue South at Pierce, Nashville, TN 37232-6600. *Instrument:* Micromanipulator, Model MM-113-L. *Manufacturer:* Narishige Scientific Instrument Laboratory, Japan. *Intended Use:* The instrument will be used to study the mechanism of vision in an invertebrate species—the fruit fly. In addition, the instrument will be used on an individualized basis to teach graduate level and post-doctorate students techniques useful to their own research. *Application Received by Commissioner of Customs:* June 8, 1992.

*Docket Number:* 92-080. *Applicant:* Rutgers University, P.O. Box 231, Blake Hall, Cook Campus, New Brunswick, NJ 08903. *Instrument:* Fluorometer, Model Aquatracka MK III. *Manufacturer:* Chelsea Instrument Ltd., United Kingdom. *Intended Use:* The instrument will be installed on a shipboard CTD unit, and used for studies to relate biomass to the distribution of nutrients, oxygen and suspended sediment. The materials to be studied are microscopic marine algae, particles, and dissolved substances in coastal waters off New Jersey. *Application Received by Commissioner of Customs:* June 9, 1992.



*Docket Number:* 92-081. *Applicant:* U.S. Department of Agriculture, Agricultural Research Service, National Soil Tilth Laboratory, 2150 Pammel Drive, Ames, IA 50011. *Instrument:* Mass Spectrometer System, Model Delta S. *Manufacturer:* Finnigan, Germany. *Intended Use:* The instrument will be used for studies of soils, plants, water and microbial populations.

The following experiments will be conducted:

1. Label plants with $^{13}C$ and $^{15}N$ in order to study the dynamics of plant residue decomposition in soil.
2. Apply $^{15}N$ enriched fertilizers to agricultural plots to study the dynamics of movement and uptake of nitrogen.
3. Assessing the impact of farming systems on ground water quality in terms of nitrate movement into the ground water using $^{15}N$ enriched sources of nitrogen.
4. Assess the movement of herbicides through the vadose zone utilizing isotopic ratios of $^{12}C/^{13}C$ from soil samples following applications of $^{13}C$ enriched herbicides.
5. Measuring the age of ground water by determination of the isotopic ratios of oxygen.

The objective of these experiments is to provide a clean source of drinking water, but at the same time insure that agricultural production is maintained at the level required to feed our population. *Application Received by Commissioner of Customs:* June 11, 1992.

*Docket Number:* 92-082. *Applicant:* University of Arizona, Department of Geosciences, Gould-Simpson Building, room 208, Tucson, AZ 85721. *Instrument:* Mass Spectrometer, Model Sector 54. *Manufacturer:* VG Isotech, Ltd., United Kingdom. *Intended Use:* The instrument will be used to analyze trace key isotope ratios (Nd, Sr, Os, Pb) that are useful for geological studies dealing with the evolution of the continental crust. In addition, the instrument will be used in demonstration of technique in seminars on analytical techniques in geology. *Application Received by Commissioner of Customs:* June 11, 1992.

*Docket Number:* 92-083. *Applicant:* Washington University, One Brookings, Drive, St. Louis, MO 63130. *Instrument:* Two Micromanipulators, Models WR-89-R and MM-113-R. *Manufacturer:* Narishige Scientific Instruments, Japan. *Intended Use:* The instrument will be used to study ion channels in nerve cell membranes in experiments involving recording the flow of ionic current through ion channels gated by the neurotransmitter glutamate. The objective of these experiments is to understand how the channels work—how glutamate causes them to open and how they conduct the ions through the membrane. *Application Received by Commissioner of Customs:* June 16, 1992.

*Docket Number:* 92-084. *Applicant:* Washington University, One Brookings Drive, St. Louis, MO 63130. *Instrument:* Myograph-Transducers, Electronic Display Box, Model 440A. *Manufacturer:* JP Trading, Denmark. *Intended Use:* The instrument will be used to investigate the contractile properties of smooth muscle in rate blood vessels. *Application Received by Commissioner of Customs:* June 17, 1992.

*Docket Number:* 92-085. *Applicant:* University of California, Davs, Department of LAWR, Viehmeyer Hall, Davis, CA 95616. *Instrument:* Spectrometer Field Portable, Model PIMA II. *Manufacturer:* Integrated Spectronics Pty., Ltd., Australia. *Intended Use:* The instrument will be used for *in situ* spectral reflectance measurements in order to identify minerals in rocks and soils and organic compounds in vegetation. *Application Received by Commissioner of Customs:* June 17, 1992.

*Docket Number:* 92-074. *Applicant:* U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Galveston Laboratory, 4700 Avenue U, Galveston, TX 77551-5997. *Instrument:* (2) Electronic Digital Fish Measuring Systems, Model FMB IV. *Manufacturer:* Limnoterra Atlantic Inc., Canada. *Intended Use:* The instruments will be used for research to update and expand shrimp trawl bycatch estimates both temporally and spatially in the offshore, nearshore, and inshore waters of the Gulf of Mexico and along the U.S. coast of the southeastern Atlantic. *Application Received by Commissioner of Customs:* May 27, 1992.

*Docket Number:* 92-086. *Applicant:* The Pennsylvania State University, Materials Research Laboratory, Center for Dielectric Studies, University Park, PA 16802. *Instrument:* Infrared Radiation Focussing Furnace. *Manufacturer:* Ulvac Sinku-Riko, Inc., Japan. *Intended Use:* The instrument will be used to sinter ceramics used in the microelectronics industry, looking at the effect of complex (designed) temperature profiles on the sintering behavior, microstructural development, and electrical properties of these materials. Experiments will consist of using a high precision dilatometer to measure the shrinkage of these materials during sintering, and to control the sintering of these materials according to a programmed shrinkage rate (this is known as the rate controlled sintering). *Application Received by Commissioner of Customs:* June 17, 1992.

*Docket Number:* 92-015R. *Applicant:* Washington University School of Medicine, Department of Cell Biology and Physiology, 660 South Euclid Avenue, Box 8228, St. Louis, MO 63110. *Instrument:* Two (2) Micromanipulators and Mounting Accessories, Models WR-89-L and MM-3-R. *Manufacturer:* Narishige Scientific Instruments, Japan. Original notice of this resubmitted application was published in the Federal Register of March 16, 1992.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 92-15999 Filed 7-8-92; 8:45 am]

BILLING CODE 3510-DS-M

## National Technical Information Service

## Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent 4,663,893, Entitled "End Deflector For Abrasive Water Jet Slot Cutter," and U.S. Patent 4,708,214, Entitled "Rotatable End Deflector For Abrasive Water Jet Drill" to AQUA-DYNE, Inc., having a place of business in Houston, Texas. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention covers a method for machining having an as-cut finish formed of a brittle crystalline semiconductor material, comprising several steps for operation. And an abrasive water jet drill for producing a cylindrical water jet containing entrained abrasive material using several other parts and a rotating means for rotating said tube whereby the water jet exiting from the outlet as a drilling fluid.

The availability of the invention for licensing was published Vol. 52, No. 146,28479 July 30, 1987 and Vol. 53, No. 119,23302, June 21, 1988 respectively.

A copy of the above identified U.S. Patent may be obtained from the U.S. Patent & Trademark Office, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Girish C. Barua, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151, Phone (703) 487–4732. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NTIS within sixty (60) days of this notice will be considered.

**Douglas J. Campion,**

*Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 92–16119 Filed 7–8–92; 8:45 am]

BILLING CODE 3510–04–M

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Board of Trade: Proposed Amendments to the Cash Settled Three Year Interest Rate Swap Futures Contract and the Options on that Futures Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed contract market rule changes.

**SUMMARY:** The Chicago Board of Trade ("CBT") has submitted proposed amendments to its cash settled three year interest rate swap futures and futures option contracts that would change the instrument underlying the futures contract to a ten year interest rate swap contract from a three year interest rate swap contract. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

**DATES:** Comments must be received on or before August 10, 1992.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the proposed amendments to the CBT three year swap futures and futures option contracts.

**FOR FURTHER INFORMATION CONTACT:** Stephen A. Sherrod, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 354–7303.

**SUPPLEMENTARY INFORMATION:** The CBT was designated as a contract market in cash settled three year interest rate swap futures on January 29, 1991 and was designated as a contract market in options on that futures contract on February 26, 1991. The three year swap futures contract is cash settled at expiration based on the fixed rate side of the swap. The cash settlement price is obtained from a survey of at least seven interest rate swap dealers selected from a list approved by the CBT. The final settlement price is based on the median of the average yields obtained in the survey.

Under the CBT's proposal, the subject of the dealer survey would be changed to a generic ten year interest rate swap from a generic three year interest rate sap, and the names of the futures and option contracts would be amended to reflect that change. The survey procedure would remain the same. The other terms and conditions of the three year swap futures and option contracts would not be affected materially.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the CBT in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on July 2, 1992.

**Gerald Gay,**

*Director.*

[FR Doc. 92–15998 Filed 7–8–92; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Low Observable Technology, Subgroup on Special Operations Forces

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Low Observable Technology, Subgroup on Special Operations Forces will meet in closed session on July 16–17, September 9–11, and November 9–10, 1992 at Booz, Allen & Hamilton, Inc., Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will investigate the operational utility and costs associated with employing low observable technology for Special Operations Forces (SOF) mission areas.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: July 2, 1992.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92–16060 Filed 7–8–92; 8:45 am]

BILLING CODE 3810–01–M

### Defense Science Board Task Force on Joint Precision Interdiction

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Joint Precision Interdiction (JPI) will meet in closed

session on July 29–30, 1992 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review acquisition strategies needed for an optimum family of surveillance, reconnaissance, and target acquisition systems, C3I systems and weapon systems required to perform the JPI mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: 2 July 1992.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer Department of Defense.*

[FR Doc. 92–16079 Filed 7–8–92; 8:45 am]

BILLING CODE 3810-01-M

## Defense Science Board Task Force on Engineering in the Manufacturing Process

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Engineering in the Manufacturing Process will meet in open session on July 27–28, 1992 at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Mr. Hal Bertrand at (703) 578–2775.

Dated: July 2, 1992.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92–16078 Filed 7–8–92; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Air Force

## Privacy Act of 1974; Addition of a System of Records

**AGENCY:** Department of the Air Force, DOD.

**ACTION:** Addition of a system of records.

**SUMMARY:** The Department of the Air Force proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** The addition will be effective August 10, 1992, unless comments are received which result in a contrary determination.

**ADDRESS:** Send any comments to the Air Force Access Programs Manager, SAF/AAIA, The Pentagon, Washington, DC 20330–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. James H. Gibson, at (703) 697–3491 or DSN: 227–3491.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force record systems notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a), have been published in the **Federal Register** as follows:

50 FR 22332 May 29, 1985 (DOD Compilation, changes follow)
50 FR 24672 Jun. 12, 1985
50 FR 25737 Jun. 21, 1985
50 FR 46477 Nov. 08, 1985
50 FR 50337 Dec. 10, 1985
51 FR 4531 Feb. 05, 1986
51 FR 7317 Mar. 05, 1986
51 FR 16735 May 06, 1986
51 FR 18927 May 23, 1986
51 FR 41382 Nov. 14, 1986
51 FR 44332 Dec. 09, 1986
52 FR 11845 Apr. 13, 1987
53 FR 24354 Jun. 28, 1988
53 FR 45800 Nov. 14, 1988
53 FR 50072 Dec. 13, 1988
53 FR 51301 Dec. 21, 1988
54 FR 10034 Mar. 09, 1989
54 FR 43450 Oct. 25, 1989
54 FR 47550 Nov. 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (Updated Mailing Addresses)
55 FR 27868 Jul. 06, 1990
55 FR 28427 Jul. 11, 1990
55 FR 34310 Aug. 22, 1990
55 FR 38126 Sep. 17, 1990
55 FR 42625 Oct. 22, 1990
55 FR 52072 Dec. 19, 1990
56 FR 1990 Jan. 16, 1991
56 FR 5804 Feb. 13, 1991
56 FR 12713 Mar. 27, 1991
56 FR 23054 May 20, 1991
56 FR 23876 May 24, 1991
56 FR 28800 Jun. 11, 1991
56 FR 31394 Jul. 10, 1991 (Updated Index Guide)
56 FR 32161 Jul. 15, 1991
56 FR 63718 Dec. 05, 1991
57 FR 1907 Jan. 16, 1992

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on XXXXXXXXXXX XX, 1992, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: July 2, 1992.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Office, Department of Defense.*

**F040 AF NAFI B**

**SYSTEM NAME:**

Nonappropriated Fund (NAF) Civilian Personnel Records-Manpower.

**SYSTEM LOCATION:**

Headquarters, United States Air Force, Air Force Morale, Welfare, and Recreation Center, Randolph Air Force Base, TX 78150-7000, all major commands and Human Resources offices. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Pending, current and former Air Force nonappropriated fund civilian employees assigned to billeting and morale, welfare, and recreation Nonappropriated Fund Instrumentalities (NAFI).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Employment information including position authorization, personnel data to include name, grade, Social Security Number and date of birth, suspense information, position control information, projected and historical information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by as implemented by Air Force Regulation 40–7, Nonappropriated Funds Personnel Management and Administration, and Executive Order 9397.

**PURPOSE(S):**

To provide system support to HQ AFMWRC and other serviced activities required to maintain a personnel management and records keeping system that pertains to evaluation.

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authorization and position control, position management, staffing, inventory, career management, benefits and the suspensing and processing of personnel actions; to provide information to all levels of management; to provide information for the transfer between NAFIs, and to provide information to employee unions as prescribed by negotiated contracts.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation apply to this system.

Records may also be disclosed to employee unions as prescribed by negotiated contracts.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in computers and on computer output products.

**RETRIEVABILITY:**

Retrieved by name or Social Security Number.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

**RETENTION AND DISPOSAL:**

Master personnel records for pending employees are transferred to the active file upon appointment of the employee; master personnel records for active employees are transferred to the separated employee history file where they are retained for two years subsequent to separation, then transferred to the National Personnel Records Center. The AF Form 2545, NAFI Notification of Personnel Action, is disposed of in accordance with AFR 40–7. Coding forms, on-line terminal message sheets, system quality control products, computer printouts, employee career brief, locator files and personnel and position control registers are destroyed after use. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

**SYSTEM MANAGER(S) AND ADDRESS:**

HQ AFMWRC/MWOSB, Randolph Air Force Base, TX 78150–7000.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the system manager or the servicing Civilian Personnel office.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or the servicing Civilian Personnel office.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information obtained from previous employers; financial institutions; educational institutions; police and investigating officers; documents requesting, paying and appointing individual; documents related to designation of benefits and beneficiaries. Information obtained from subject of the record and official personnel folder.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 92–16082 Filed 7–8–92; 8:45 am]
BILLING CODE 3810–01–F

## Privacy Act of 1974; Amend Systems of Records

**AGENCY:** Department of the Air Force, DOD.

**ACTION:** Amend systems of records.

**SUMMARY:** The Department of the Air Force proposes to amend nine existing systems of records in its inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

**DATES:** The amended systems will be effective August 10, 1992, unless comments are received which result in a contrary determination.

**ADDRESSES:** Send any comments to the Air Force Access Programs Manager, SAF/AAIA, The Pentagon, Washington, DC 20330–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. James H. Gibson at (703) 697–3491 or DSN: 227–3491.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force record systems notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** as follows:

50 FR 22332 May 29, 1985 (DOD Compilation, changes follow)
50 FR 24672 Jun. 12, 1985
50 FR 25737 Jun. 21, 1985
50 FR 46477 Nov. 08, 1985
50 FR 50337 Dec. 10, 1985
51 FR 4531 Feb. 05, 1986
51 FR 7317 Mar. 05, 1986
51 FR 16735 May 06, 1986
51 FR 18927 May 23, 1986
51 FR 41382 Nov. 14, 1986
51 FR 44332 Dec. 09, 1986
52 FR 11845 Apr. 13, 1987
53 FR 24354 Jun. 28, 1988
53 FR 45800 Nov. 14, 1988
53 FR 50072 Dec. 13, 1988
53 FR 51301 Dec. 21, 1988
54 FR 10034 Mar. 09, 1989
54 FR 43450 Oct. 25, 1989
54 FR 47550 Nov. 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (Updated Mailing Addresses)
55 FR 27868 Jul. 06, 1990
55 FR 28427 Jul. 11, 1990
55 FR 34310 Aug. 22, 1990
55 FR 38126 Sep. 17, 1990
55 FR 42625 Oct. 22, 1990
55 FR 52072 Dec. 19, 1990
56 FR 1990 Jan. 18, 1991
56 FR 5804 Feb. 13, 1991
56 FR 12713 Mar. 27, 1991
56 FR 23054 May 20, 1991
56 FR 23876 May 24, 1991
56 FR 28800 Jun. 11, 1991
56 FR 31394 Jul. 10, 1991 (Updated Index Guide)
56 FR 32161 Jul. 15, 1991
56 FR 63718 Dec. 05, 1991
57 FR 1907 Jan. 16, 1992

The amended systems are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The specific changes to the systems of records being amended are set forth below, followed by the systems of records notices published in their entirety.

Dated: July 2, 1992.

L. M. Bynum,

*Alternate OSD Federal Register Liaison Office, Department of Defense.*

**AMENDMENTS**

**F011 AF A**

**SYSTEM NAME:**

Locator, Registration and Postal Directory Files, (56 FR 23877, May 24, 1991).



**CHANGES:**

**SYSTEM LOCATION:**

Delete entry and replace with "Headquarters, United States Air Force; Air Force installations to include bases; units; offices and functions, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Air Force military and civilian personnel; Air Force Reserve and National Guard personnel; volunteer personnel; United States Armed Forces military and civilian personnel assigned to headquarters of unified and specified commands for which Air Force is Executive Agent, and contractor personnel. Dependents may also be included in this system."

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**RETRIEVABILITY:**

Delete the word "Filed" and insert "Retrieved."

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**F011 AF A**

**SYSTEM NAME:**

Locator, Registration and Postal Directory Files.

**SYSTEM LOCATION:**

Headquarters, United States Air Force; Air Force installations to include bases; units; offices and functions, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Air Force military and civilian personnel; Air Force Reserve and National Guard personnel; volunteer personnel; United States Armed Forces military and civilian personnel assigned to headquarters of unified and specified commands for which Air Force is Executive Agent, and contractor personnel. Dependents may also be included in this system.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Cards or listings may contain the individuals name, grade, military service identification number, Social Security Number, duty location, office telephone number, residence address and residence telephone number, and similar type personnel data determined to be necessary by local authority.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Executive Order 9397.

**PURPOSE(S):**

Used to locate or identify personnel assigned/attached to, tenanted on, or on temporary duty at the specific installation, office, base, unit, function, and/or organization in response to specific inquiries from authorized users for the conduct of business. Portions of the system are used for directory service and forwarding individual personal mail received by Air Force postal activities, and for assignment of individual mail boxes. Files may be used locally to support official and unofficial programs which require minimal locator information, membership or user listings.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained on paper records in card or form media in visible file binders/cabinets or card files, in computers and on computer output products.

**RETRIEVABILITY:**

Retrieved by name and/or Social Security Number.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

**RETENTION AND DISPOSAL:**

Retained in office files until reassignment or separation, or when superseded or no longer needed for reference. Postal directory files are maintained for six months after reassignment, separation or departure from servicing activity. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330–1000.

Local system managers: Records Custodians at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on, performing . volunteer service at, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the local system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address requests to the local system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information obtained from automated system interfaces; the individuals, or from personnel records.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**F011 AF MP A**

**SYSTEM NAME:**

Congressional and Other High Level Inquiries, (51 FR 41384, November 14, 1986).

**CHANGES:**

**SYSTEM LOCATION:**

Delete entry and replace with "Headquarters Air Force Military Personnel Center; major commands; field operating agencies; Consolidated

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Base Personnel Offices (CBPOs) at Air Force installations, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Active duty Air Force military personnel; Air Force Reserve personnel, and personnel retired or discharged from the Air Force. Civilian personnel currently or formerly employed by the Air Force. Personnel attending Air Force training institutions or undergoing training under Air Force sponsorship. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to headquarters of unified and specified commands for which Air Force is Executive Agent."

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**RETRIEVABILITY:**

Delete the word "Filed" and insert "Retrieved."

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**SYSTEM MANAGER(S) AND ADDRESS:**

Add to end of entry "and commanders of headquarters of unified and specified commands for which Air Force is Executive Agent."

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**F011 AF MP A**

**SYSTEM NAME:**

Congressional and Other High Level Inquiries.

**SYSTEM LOCATION:**

Headquarters Air Force Military Personnel Center; major commands; field operating agencies; Consolidated Base Personnel Offices (CBPOs) at Air Force installations, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active duty Air Force military personnel; Air Force Reserve personnel, and personnel retired or discharged from the Air Force. Civilian personnel currently or formerly employed by the Air Force. Personnel attending Air Force training institutions or undergoing training under Air Force sponsorship. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to headquarters of unified and specified commands for which Air Force is Executive Agent.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Background information and information reflecting Air Force personnel policies and procedures; copies of inquiries received from the Office of the President, members of Congress and other high level sources requesting information on behalf of a constituent; copies of replies to such inquiries including transmittal media used enroute from and to the Secretary of the Air Force, Office of Legislative Liaison (SAF/LL).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and 10 U.S.C. 8032, The Air Staff, general duties; implemented by Air Force Regulation 11-7, Air Force Relations with Congress.

**PURPOSE(S):**

Information pertinent to an inquiry forwarded to SAF/LL for preparation of the reply to the high level requester. In some instances response may be direct to the requester without referral through SAF/LL. However, when required by directives, copies of such responses are furnished SAF/LL. The records may be used in responding to subsequent inquiries concerning the same individual. The record system is audited periodically to determine trends on the nature of complaints and questions and for statistical purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in visible file binders/cabinets.

**RETRIEVABILITY:**

Retrieved by name.

**SAFEGUARDS:**

Records are accessed by the custodian of the record system and by persons responsible for servicing the records in performance of their official duties who are properly cleared for need-to-know. Records are stored in security file containers/cabinets, locked cabinets or rooms.

**RETENTION AND DISPOSAL:**

Retained for up to 18 months depending on category, then destroyed by tearing into pieces, shredding, macerating, pulping or burning.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Deputy Chief of Staff for Personnel, Headquarters United States Air Force; commanders of major air commands, numbered air forces or comparable level activities, and commanders of headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the system manager or respective local system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Requests from individuals must contain reasonable identifying particulars about the subject in question.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or local respective system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individual's request must contain reasonable identifying particulars about the subject in question.

**CONTESTING RECORD PROCEDURES:**

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information provided by major command or consolidated base personnel office personnel, manual or automated personnel records, Air Force policies and procedures, copies of inquiries, congressional/high level officials'/constituents' comments or requests and Air Force replies thereto.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.



**F012 AF A**

**SYSTEM NAME:**

Information Requests-Freedom of Information Act, (51 FR 41384, November 14, 1986).

**CHANGES:**

**SYSTEM LOCATION:**

Delete entry and replace with "Air Force installations and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

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**STORAGE:**

Add to end of entry "in computers and on computer output products."

**RETRIEVABILITY:**

Delete the word "Filed" and insert "Retrieved."

**SAFEGUARDS:**

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

**RETENTION AND DISPOSAL:**

Delete entry and replace with "Released records are retained in office files for two years after annual cutoff. Denied records are retained in office files for six years. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330-1000."

**NOTIFICATION PROCEDURE:**

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address inquiries to the local Freedom of Information Act (FOIA) manager at a specific Air Force installation."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the local FOIA manager at a specific Air Force installation."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager."

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**F012 AF A**

**SYSTEM NAME:**

Information Requests-Freedom of Information Act.

**SYSTEM LOCATION:**

Air Force installations, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All persons who have requested documents under the provisions of the Freedom of Information Act (FOIA).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Administration of release of information to the public.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 552, The Freedom of Information Act as implemented by Air Force Regulation 12-30, Disclosure of Air Force Records to the Public.

**PURPOSE(S):**

To control administrative processing of requests for information used by FOIA managers.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in file folders, in computers and on computer output products.

**RETRIEVABILITY:**

Retrieved by name.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

**RETENTION AND DISPOSAL:**

Released records are retained in office files for two years after annual cut-off. Denied records are retained in office files for six years then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330-1000.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the local FOIA manager at a specific Air Force installation. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address requests to the local FOIA manager at a specific Air Force installation. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CONTESTING RECORD PROCEDURES:**

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

FOIA manager as result of requests for information from members of the public.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**F012 AF B**

**SYSTEM NAME:**

Privacy Act Request File, (51 FR 41384, November 14, 1986).

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "At all levels of the Air Force having responsibility for systems of records under the Privacy Act. Includes Headquarters United States Air Force staff agencies; major commands; field operating agencies; installations and activities, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "All persons who request access to, information from, or amendment of records about themselves under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) from the Department of the Air Force Activities, or from headquarters of unified and specified commands for which Air Force is Executive Agent."

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with "The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

May be disclosed to the Office of Management and Budget or other Government agencies having a direct interest in monitoring or evaluating compliance with the provisions of the Privacy Act by the Department of the Air Force, including the preparation of special studies or reports on the status of actions taken to comply with the Act, the results of those efforts, any problems encountered and recommendations for any changes in legislation, policies, or procedures.

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RETRIEVABILITY:

Delete the word "Filed" and insert "Retrieved."

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SYSTEM MANAGER(S) AND ADDRESS(ES):

Delete entry and replace with "Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force; Directors of Information Management at major commands or field operating agencies; Chief, Information Management at Air Force installations where the requested or disputed records are located, or records custodian at headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address inquiries to the appropriate system manager.

Written requests should include the person's full name, grade (if applicable), and some other personal information which could be verified from the person's file. For personal visits, the individual should present a valid identification card or driver's license and some verbal information which could be verified from the person's case file. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the appropriate system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F012 AF B

SYSTEM NAME:

Privacy Act Request File.

SYSTEM LOCATION:

At all levels of the Air Force having responsibility for systems of records under the Privacy Act. Includes Headquarters United States Air Force staff agencies; major commands; field operating agencies; installations and activities, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who request access to, information from, or amendment of records about themselves under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) from the Department of the Air Force Activities, or from headquarters of unified and specified commands for which Air Force is Executive Agent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, legal opinions, messages, and miscellaneous documents relating to an individual's request for access to or amendment of records concerning that person, including letters of denial, appeals, statements of disagreements, and related documents accumulated in processing requests received under the Privacy Act of 1974.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a, The Privacy Act of 1974, as implemented by Air Force Regulation 12-35, Air Force Privacy Act Program.

PURPOSE(S):

To record, process and coordinate individual requests for access to, or amendment of, personal records, and appeals on denials of requests for access or amendments to personal records; to prepare legal opinions and interpretations for system managers and the Secretary of the Air Force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

May be disclosed to the Office of Management and Budget or other Government agencies having a direct interest in monitoring or evaluating compliance with the provisions of the Privacy Act by the Department of the Air Force, including the preparation of special studies or reports on the status of actions taken to comply with the Act, the results of those efforts, any problems encountered and recommendations for any changes in legislation, policies, or procedures.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and/or microfilm.

**RETRIEVABILITY:**

Retrieved by name of requester.

**SAFEGUARDS:**

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

**RETENTION AND DISPOSAL:**

Requests for information are destroyed when no longer needed; requests for access or amendment and appeals of denial are destroyed four years after final action or three years after adjudication by the courts, whichever is later.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force; Director of Information Management at major commands or field operating agencies; Chief, Information Management at Air Force installations where the requested or disputed records are located, or records custodian at headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the appropriate system manager. Written requests should include the person's full name, grade (if applicable), and some other personal information which could be verified from the person's file. For personal visits, the individual should present a valid identification card or driver's license and some verbal information which could be verified from the person's case file. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address requests to the appropriate system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CONTESTING RECORD PROCEDURES:**

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Records are obtained from the individual requester, Department of the Air Force organizations, other Department of Defense organizations, and agencies of Federal, state, and local governments, as applicable or appropriate for processing the case.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**F030 AF A**

**SYSTEM NAME:**

Automated Personnel Management System, (53 FR 50073, December 13, 1988).

**CHANGES:**

**SYSTEM NAME:**

Change system name to "Biographical Data and Automated Personnel Management File."

**SYSTEM LOCATION:**

Delete entry and replace with "Headquarters United States Air Force; headquarters of major commands; field operating agencies; direct reporting units; headquarters of unified and specified commands for which Air Force is the Executive Agent, and all Air Force installations and units. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Active duty Air Force military personnel, and Air Force Reserve and Air National Guard personnel. Air Force civilian employees and contractors may be included when records are created which are identical to those on military members. Army, Navy, and Marine Corps active duty military and civilian personnel may be included when assigned to headquarters of unified and specified commands for which Air Force is Executive Agent. Records may be maintained in this system on personnel in a temporary duty (TDY) status for the duration of the TDY."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with "Biographical information which may include name, rank, Social Security Number, service dates, date of birth, civilian employment, military and civilian education, military and civilian experience, program specialties, hobbies, names of family members, religion, professional expertise and appointments, membership in professional societies, civic activities and state of license.

Limited locator type information which may include home address, home phone, home of record and name and address of next of kin.

Records relating to assignment to include unit of assignment, authorized and assigned grade, duty title, duty Air Force Specialty Code or Military Occupation Code, position number, date assigned to organization, estimated date of departure, control tour code, assignment availability date, overseas tour start date, short tour return date, supervisor's name and date supervision began.

Performance data, i.e. date of last report and date next report due.

May also contain limited routine administrative training information consisting of application for training, name and date of course completion, and educational level, when not filed in a separate system.

Limited routine correspondence on promotions, military honors and awards, security and letters of appreciation, when not filed in a separate system.

Additional information as deem appropriate by the commander/supervisor for effective personnel management, when not filed in a separate system."

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Executive Order 9397."

**PURPOSE(S):**

Delete entry and replace with "This system is established as a management tool to provide commanders and supervisors with a ready reference information file for managing their personnel, manpower and resources.

To provide convenient ready reference biographical data for commanders/supervisors requirements.

To assist in determining and scheduling workload requirements in support of their organization's assigned mission.

This system serves a ready reference locator and can be used to produce manpower reports.

Used to determine eligibility/suitability for assignment/reassignment; determine eligibility for retirement related action, to make determinations on discharges or mobilization,

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deferments, and fulfillment of local or statutory requirements.

Records maintained as a historical file while individual is assigned to the unit.

Used to answers correspondence/ telephone inquiries; updating and/or changing information in computer and/ or individual record."

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**STORAGE:**

Delete entry and replace with "Maintained in file folders, in computers and on computer output products."

**RETRIEVABILITY:**

Delete the word "Filed" and insert "Retrieved."

**SAFEGUARDS:**

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

**RETENTION AND DISPOSAL:**

Delete entry and replace with "Retain in office files until superseded, obsolete, no longer needed for reference, reassignment, separation or retirement of the individual or inactivation of the organization. Records on TDY personnel will be destroyed upon completion of the individual's TDY. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting."

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330-1000.

Local System managers: Commanders/supervisors at the installation, base, unit, organization, office or function to which the individual is assigned or attached. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**NOTIFICATION PROCEDURES:**

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the system manager or to respective unit commander or supervisor who maintains the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the system manager or to respective unit commander or supervisor who maintains the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager."

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with "The individual, personnel or training records and records created by commander/ supervisor."

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**F030 AF A**

**SYSTEM NAME:**

Biographical Data and Automated Personnel Management System.

**SYSTEM LOCATION:**

Headquarters United States Air Force; headquarters of major commands; field operating agencies; direct reporting units; headquarters of unified and specified commands for which Air Force is Executive Agent, and all Air Force installations and units. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active duty Air Force military personnel, and Air Force Reserve and Air National Guard personnel. Air Force civilian employees and contractors may be included when records are created which are identical to those on military members. Army, Navy, and Marine Corps Active duty military and civilian personnel may be included when assigned to unified and specified commands for which Air Force is the Executive Agent. Records may be maintained in this system on personnel in a Temporary Duty (TDY) status for the duration of the TDY.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Biographical information which may include name, rank, Social Security Number, service dates, date of birth, civilian employment, military and civilian education, military and civilian experience, program specialties, hobbies, and names of family members, religion, professional expertise and appointments, membership in professional societies, civic activities and state of license.

Limited locator type information which may include home address, home phone, home of record and name and address of next of kin.

Records relating to assignment to include unit of assignment, authorized and assigned grade, duty title, duty Air Force Specialty Code and Military Occupation Code, position number, date assigned to organization, estimated date of departure, control tour code, assignment availability date, overseas tour start date, short tour return date, supervisor's name and date supervision began.

Performance data, i.e. date of last report and date next report due.

May also contain limited routine administrative training information consisting of application for training, name and date of course completion, and educational level, when not filed in a separate system.

Limited routine correspondence on promotions, military honors and awards, security and letters of appreciation, when not filed in a separate system.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Executive Order 9397.

**PURPOSE(S):**

This system is established as a management tool to provide commanders and supervisors with ready reference information file for managing their personnel, manpower and resources.

To assist in determining and scheduling workload requirements in support of their organization's assigned mission.

This system serves a ready reference locator and can be used to produce manpower reports.

Used to determine eligibility/ suitability for assignment/reassignment; determine eligibility for retirement related action, to make determinations on discharges or mobilization, deferments, and fulfillment of local or statutory requirements.

Records maintained as a historical file while individual is assigned to the unit.

Used to answers correspondence/ telephone inquiries; updating and/or changing information in computer and/ or individual record.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in file folders, in computers and on computer output products.

**RETRIEVABILITY:**

Retrieved by name and/or Social Security Number.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

**RETENTION AND DISPOSAL:**

Retain in office files until superseded, obsolete, no longer needed for reference, reassignment, separation or retirement of the individual or inactivation of the organization. Records on TDY personnel will be destroyed upon completion of the individual's TDY. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330–1000.

Local system managers: Commanders/supervisors at the installation, base, unit, organization, office or function to which the individual is assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the system manager or to respective unit commander or supervisor who maintains the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or to respective unit commander or supervisor who maintains the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CONTESTING RECORD PROCEDURES:**

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

The individual, personnel or training records and records created by commander/supervisor.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**F030 AF JA A**

**SYSTEM NAME:**

Confidential Statement of Affiliations and Financial Interests, (51 FR 41388, November 14, 1986).

**CHANGES:**

**SYSTEM LOCATION:**

Delete entry and replace with "Office of the General Counsel, Office of the Secretary of the Air Force, Washington, DC 20330–1000, and Office of The Judge Advocate General, Headquarters United States Air Force, Washington DC 20330–5000. Headquarters of major commands and at all levels down to and including Air Force installations, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

At end of entry delete "HQ USSPACECOM," and add "headquarters of unified and specified commands for which Air Force is Executive Agent."

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**RETRIEVABILITY:**

Delete entry and replace with "Retrieved by name."

**SAFEGUARDS:**

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and metal cabinets."

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**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Delete entry and replace with "The Assistant General Counsel (Personnel), Office of the Secretary of the Air Force, Washington, DC 20330–1000, and The Judge Advocate General, Headquarters United States Air Force, Washington DC 20330–5000."

**NOTIFICATION PROCEDURES:**

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address inquiries to the system manager or Deputy Standards of Conduct Counsellor at system location."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the system manager or Deputy Standards of Conduct Counsellor at system location."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

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**F030 AF JA A**

**SYSTEM NAME:**

Confidential Statement of Affiliations and Financial Interests.

**SYSTEM LOCATION:**

Office of the General Counsel, Office of the Secretary of the Air Force, Washington, DC 20330–1000, and Office of The Judge Advocate General, Headquarters United States Air Force, Washington DC 20330–5000. Headquarters of major commands and at all levels down to and including Air Force installations, and headquarters of unified and specified commands for

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which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Air Force civilian personnel paid at a level of GS–13 through GS–15; Air Force military personnel in the rank of Lieutenant Colonel or Colonel whose basic duties and responsibilities require the exercise of judgment on Government decision making or taking action on (1) the administering or monitoring of grants or subsidies, (2) contracting or procurement, (3) auditing, or (4) any other government activity in which the final decision or action has a significant economic impact on the interest of any non-federal enterprise; and special Government employees who are "advisors" or "consultants." Army, Navy, Air Force, and Marine Corps active duty personnel and civilian employees in the same categories when assigned to headquarters of unified and specified commands for which Air Force is Executive Agent.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Contains the title of the individual's position, date of appointment in present position, agency and major organization segment of the position, employment and financial interests, creditors, interest in real property, a list of persons from whom information can be obtained concerning the individual's financial situation, supervisor's evaluation, and Standards of Conduct Counsellor/ Deputy Counsellor review.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Executive Order 11222, "Prescribing Standards of Ethical Conduct for Government Officers and Employees."

**PURPOSE(S):**

The review of the statements by the individual's supervisor and deputy counselor to determine the existence of or potential for a conflict of interest in the performance of official duties.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records maintained in file folders.

**RETRIEVABILITY:**

Retrieved by name.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

**RETENTION AND DISPOSAL:**

Retained up to two years after the individual has left employment or terminated responsibilities which require disclosure of information. Destroyed by tearing into pieces, shredding, pulping, macerating or burning.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

The Assistant General Counsel (Personnel), Office of the Secretary of the Air Force, Washington, DC 20330–1000, and The Judge Advocate General, Headquarters United States Air Force, Washington DC 20330–5000.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the system manager or Deputy Standards of Conduct Counsellor at system location.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or Deputy Standards of Conduct Counsellor at system location.

**CONTESTING RECORD PROCEDURES:**

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information is obtained from the individual or from personnel designated by the individual.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**F035 AF A**

**SYSTEM NAME:**

Officer Quality Force Management Records, (51 FR 44388, December 9, 1986).

**CHANGES:**

**SYSTEM LOCATION:**

Delete entry and replace with "Headquarters United States Strategic Command (HQ USSTRATCOM), Personnel Programs Division, Directorate of Manpower and Personnel, Offutt AFB NE 68113–1010. Headquarters Air Force Communications Command (HQ AFCC), Force Management Division (DPAFA), Directorate of Personnel Programs, Scott AFB, IL 62225–6001."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete "SAC" and insert "USSTRATCOM."

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Add to end of entry "and Executive Order 9397."

**PURPOSE(S):**

Delete "SAC" and insert "USSTRATCOM."

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Delete entry and replace with "The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system."

* * * * *

**SAFEGUARDS:**

Delete entry and replace with "Records are accessed by the custodian of the record system and by persons responsible for servicing the records in performance of their official duties who are properly screened and cleared for need-to-know. Those in computer storage devices are protected by computer system software. Records and computer software are stored in locked cabinets and locked rooms in buildings protected by guards."

**RETENTION AND DISPOSAL:**

Add to end of entry "Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."



**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Delete entry and replace with "Chief, Personnel Programs Division (J122), Directorate of Manpower and Personnel, HQ USSTRATCOM, Offutt AFB, NE 68113–1010. Chief, Force Management Division (DPAF), Directorate of Personnel Programs, HQ AFCC, Scott AFB, IL 62225–6001."

* * * * *

**NOTIFICATION PROCEDURES:**

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address inquiries to the appropriate system manager.

Full name, military status, grade and Social Security Number are required to determine if the system contains records on an individual. Visitors must provide proof of identity such as a military identification card, valid drivers license, or some item of information which can be verified from the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the appropriate system manager.

Full name, military status, grade and SSN are required to access records. Visitors must provide proof of identity such as a military identification card, valid drivers license, or some item of information which can be verified from the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with "Information obtained from source documents, the individual concerned, member's commander, Personnel Programs Division, HQ USSTRATCOM, Force Management Division, HQ AFCC, Consolidated Base Personnel Offices, and the office of the Judge Advocate General for each command."

* * * * *

**F035 AF A**

**SYSTEM NAME:**

Officer Quality Force Management Records.

**SYSTEM LOCATION:**

Headquarters United States Strategic Command (HQ USSTRATCOM), Personnel Programs Division, Directorate of Manpower and Personnel, Offutt AFB NE 68113–1010. Headquarters Air Force Communications Command (HQ AFCC), Force Management Division (DPAFA), Directorate of Personnel Programs, Scott AFB, IL 62225–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Air Force active duty officers assigned or attached to HQ USSTRATCOM or HQ AFCC whose performance, conduct, or alleged misconduct may or has resulted in initiation of administrative action(s).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information relating to substandard performance, unacceptable conduct or unfitness, and status and dates of pending or completed administrative actions.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; 8074, Commands; territorial organization, and Executive Order 9397.

**PURPOSE(S):**

To provide information to Commander in Chief, HQ USSTRATCOM, Deputy Chief of Staff for Personnel, HQ AFCC, and staff members as appropriate who make decisions on officers' qualifications for continuation on active duty, or further consideration for promotion. Used to evaluate and monitor status of actions on subjects.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in computers and on computer output products.

**RETRIEVABILITY:**

Retrieved by name or Social Security Number (SSN).

**SAFEGUARDS:**

Records are accessed by the custodian of the record system and by persons responsible for servicing the records in performance of their official duties who are properly screened and cleared for need-to-know. Those in computer storage devices are protected by computer system software. Records and computer software are stored in locked cabinets and rooms in buildings protected by guards.

**RETENTION AND DISPOSAL:**

Retained until superseded, obsolete, or no longer needed for reference, whichever is sooner. Files will be destroyed not later than 2 years from last entry. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Chief, Personnel Programs Division, Directorate of Manpower and Personnel, HQ USSTRATCOM, Offutt AFB, NE 68113–1010. Chief, Force Management Division, Directorate of Personnel Programs, HQ AFCC, Scott AFB, IL 62225–6001.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the appropriate system manager.

Full name, military status, grade and Social Security Number are required to determine if the system contains records on an individual. Visitors must provide proof of identity such as a military identification card, valid drivers license, or some item of information which can be verified from the records.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address requests to the appropriate system manager.

Full name, military status, grade and Social Security Number are required to access records. Visitors must provide proof of identity such as a military ID card, valid drivers license, or some item of information which can be verified from the records.

**CONTESTING RECORD PROCEDURES:**

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or

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may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information obtained from source documents, the individual concerned, member's commander, Personnel Programs Division, HQ USSTRATCOM, Force Management Division HQ AFCC, Consolidated Base Personnel Offices, and the office of the Judge Advocate General for each command.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**F035 AF MP O**

**SYSTEM NAME:**

Unit Assigned Personnel Information, (57 FR 1908, January 16, 1992).

**CHANGES:**

**SYSTEM LOCATION:**

Delete entry and replace with "Headquarters United States Air Force; major command headquarters; all Air Force installations and units, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

At end of entry delete "HQ USSPACECOM," and add "headquarters of unified and specified commands for which Air Force is Executive Agent."

* * * * *

**F035 AF MP O**

**SYSTEM NAME:**

Unit Assigned Personnel Information.

**SYSTEM LOCATION:**

Headquarters United States Air Force; major command headquarters; all Air Force installations and units, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active duty military personnel, and Air Force Reserve and Air National Guard personnel. Air Force civilian employees may be included when records are created which are identical to those on military members. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to headquarters of unified and specified commands for which Air Force is Executive Agent.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File copies of separation actions, newcomers briefing letters, line of duty determinations, assignment actions, retirement actions, in and out processing checklists, promotion orders, credit union authorization, disciplinary actions, favorable/unfavorable communications, record of counseling, appointment notification letters, duty status changes, applications for off duty employment, applications and allocations for school training, professional military and civilian education data, private weapons storage records, locator information including names of dependents, home address, phone number, training and experience data, special recognition nominations, other personnel documents, and records of training.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Manual 30-3, Vol III, Mechanized Personnel Procedures, Air Force Manual 30-130, Vol I, Base Level Military Personnel System, and Executive Order 9397.

**PURPOSE(S):**

Provides information to unit commanders/supervisors for required actions related to personnel administration and counseling, promotion, training, separation, retirement, reenlistment, medical examination, testing, assignment, sponsor program, duty rosters, and off duty activities.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in file folders, notebooks/binders, and card files.

**RETRIEVABILITY:**

Retrieved by name and Social Security Number.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

**RETENTION AND DISPOSAL:**

Retained in office files until superseded, no longer needed, separation or reassignment of individual on permanent change of assignment (PCA) or permanent change of station (PCS). On intercommand reassignment PCA or PCS the file is given to individual or destroyed. On intracommand reassignment PCA or PCS the file is given to individual, forwarded to gaining commander, or destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington DC 20330-5060.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the system manager or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CONTESTING RECORD PROCEDURES:**

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information obtained from the individual concerned, financial institutions, educational institution employees, medical institutions, police and investigating officers, bureau of motor vehicles, witnesses, reports prepared on behalf of the agency, standard Air Force forms, personnel management actions, extracts from the Personnel Data System (PDS) and

records of personal actions submitted to or originated within the organization.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**F100 AF PA A**

**SYSTEM NAME:**

Special Events Planning-Protocol, (51 FR 41399, November 14, 1986).

**CHANGES:**

**SYSTEM LOCATION:**

Delete entry and replace with "Office of the Secretary of the Air Force, Public Affairs (SAF/PAC); Air Force installations and USAF Recruiting Service offices, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

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**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Change "10 U.S.C. 8012" to "10 U.S.C. 8013."

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**RETRIEVABILITY:**

Delete the word "Filed" and insert "Retrieved."

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**NOTIFICATION PROCEDURES:**

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address inquiries to the appropriate system manager or to the Executive Officer in the office of Public Affairs at the Air Force installation concerned. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the appropriate system manager or to the Executive Officer in the office of Public Affairs at the Air Force installation concerned. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

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**F190 AF PA A**

**SYSTEM NAME:**

Special Events Planning-Protocol.

**SYSTEM LOCATION:**

Office of the Secretary of the Air Force, Public Affairs (SAF/PAC); Air Force installations and USAF Recruiting Service offices, and headquarters of unified and specified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Non-Air Force civilians, generally, but not limited to civilian leaders of the local community. Segments of the system may be specialized; e.g., active and retired military persons identified by special interests, teachers or other persons in governmental agencies qualified or considered to lecture in Air Force training courses, winners of AF-sponsored Science Fairs.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Biographical data usually including, but not limited to: Name; business and home address and telephone numbers; name of spouse and family; description of positions in business and community affiliations with Air Force-oriented civic organizations and photographs. For Science Fair winners: Name/date of fairs; name of school; year in school; name of project; judging category, previous selection as Air Force winner with year and name of fair. May include summaries of circumstances of visits to the installation.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by.

**PURPOSE(S):**

Used by Public Affairs Officers, Executive Officers, Protocol Officers, or Commanders as reference for planning official functions, reporting to higher headquarters, selecting lecturers for training courses, and submitting nominations for Air Force or Department of Defense conferences or other functions.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in file folders and in notebooks/binders.

**RETRIEVABILITY:**

Retrieved by name.

**SAFEGUARDS:**

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

**RETENTION AND DISPOSAL:**

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Office of the Secretary of the Air Force, Office of Public Affairs (SAF/PAC), Washington, DC 20330–1000, or the Executive Officer in the office of Public Affairs at the Air Force installation concerned. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the appropriate system manager or to the Executive Officer in the office of Public Affairs at the Air Force installation concerned. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address requests to the appropriate system manager or to the Executive Officer in the office of Public Affairs at the Air Force installation concerned. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CONTESTING RECORD PROCEDURES:**

The Department of the Air Force rules for access to records and for contesting and appealing initial agency

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determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information obtained from the public media, a state or local government, source documents such as reports, Federal agencies staff recommendations, and Science Fair questionnaires.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 92–16083 Filed 7–8–92; 8:45 am]

BILLING CODE 3810–01–F

## Department of the Navy

### Notice of Availability for Licensing

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Government-owned Inventions; Notice of Availability of Inventions for Licensing.

**SUMMARY:** The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Requests for copies of the patent applications cited should be directed to the Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000 and must include the application serial number.

**FOR FURTHER INFORMATION CONTACT:** Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000, telephone (703) 696-4001.

Patent Application 501,707: Method for Laser-Assisted Silicon Etching Using Halocarbon Ambients; filed 29 March 1990

Patent Application 508,317: Method for Laser-Assisted Etching of III-V and II-VI Semiconductor Compounds Using Chloroflurocarbon Ambients; filed 10 April 1990

Patent Application 589,839: Laser Texturing; filed 26 September 1990

Patent Application 591,930: Excimer Laser Dopant Activation of Backside Illuminated CCD'S; filed 2 October 1990

Patent Application 664,046: Laser Controlled Decomposition of Chlorofluorocarbons; filed 21 February 1991

Patent Application 709,671: Method of Laser Processing Ferroelectric Materials; filed 3 June 1991

Patent Application 762,538: Laser-Assisted Fabrication of Biopolar Transistors in Silicon-on-Sapphire (SOS); filed 18 September 1991

Patent Application 831,830: Method for Laser-Assisted Etching of III-V and II-VI Semiconductor Compounds Using Chlorofluorocarbon Ambients; filed 21 January 1992

Patent Application 856,010: Laser Formation of Graded Junction Devices; filed 17 March 1992

Patent Application 861,409: Method of Rapid Sample Handling For Laser Processing; filed 31 March 1992

Patent Application 861,410: Photon Controlled Decomposition of Nonhydrolyzable Ambients; filed 31 March 1992

Patent Application 876,615: Conformal Waveguide for Optical and Electronic Integration; filed 30 April 1992

Dated: June 24, 1992.

**Wayne T. Baucino,**

*Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.*

[FR Doc. 92–16008 Filed 7–8–92; 8:45 am]

BILLING CODE 3810–AE–F

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0020]**

### OMB Clearance Request for Qualified Products Identification

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing information collection requirement (9000–0020).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for an extension of a currently approved information collection requirement concerning Qualified Products Identification.

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, Office of Federal Acquisition Policy, General Services Administration, (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified when any of the following conditions apply:

1. The time required to test the item for conformance to the specification exceeds 30 days (720 hours).

2. The tests would require equipment not commonly available.

3. The items are emergency lifesaving or survival equipment.

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1, Qualification Requirements, is included in the solicitation. The offeror must insert the item name and test number to prove that the item offered is prequalified. Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

**B. Annual Reporting Burden**

The annual reporting burden is estimated as follows:

*Respondents*, 2,700; *responses per respondent*, 10; *total annual responses*, 27,000; *preparation hours per response*, 17; and *total response burden hours*, 4,590.

**OBTAINING COPIES OF PROPOSALS:** Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0020, Qualified Products Identification, in all correspondence.

Dated: June 29, 1992.

**Beverly Fayson,**

*FAR Secretariat.*

[FR Doc. 92–16009 Filed 7–8–92; 8:45 am]

BILLING CODE 6820–34–M



**[OMB Control No. 9000–0006]**

### OMB Clearance Request for Subcontracting Plans/Subcontracting Report for Individual Contracts

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension of a currently approved information collection report (9000–0006), SF 294.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Subcontracting Plans/Subcontracting Report for Individual Contracts (Standard Form 294).

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and implemented in FAR 19.7.

In conjunction with these plans, contractors must submit semiannual reports of their progress on SF 294, Subcontracting Report for Individual Contracts.

A satisfactory subcontracting plan is required before a contract exceeding $500,000 ($1,000,000 for construction) can be awarded. The contracting officer must examine the information in the proposed plan to determine if the plan is in compliance with the Small Business Act and the FAR. In addition, the information is used for policy and management control purposes.

Information submitted on SF 294 is used to assess contractors' compliance with their subcontracting plans.

**B. Annual Reporting Burden**

The annual reporting burden is estimated as follows:

*Respondents*, 1,533; *responses per respondent*, 34.47; *total annual responses*, 52,843; *preparation hours per response*, 5.73; and *total response burden hours*, 302,790.

**C. Annual Recordkeeping Burden**

The annual recordkeeping burden is estimated as follows: *Recordkeepers*, 1,533; *hours per recordkeeper*, 121; and *total recordkeeping burden hours*, 185,493.

**OBTAINING COPIES OF PROPOSALS:** Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0006, Subcontracting Plans/Subcontracting Report for Individual Contracts (SF 294), in all correspondence.

Dated: June 29, 1992.

**Beverly Fayson,**

*FAR Secretariat.*

[FR Doc. 92–16010 Filed 7–8–92; 8:45 am]

BILLING CODE 6820–34–M

**[OMB Control No. 9000–0007; FAR Case 91–78]**

### Request for an Extension of OMB Approval for Summary Contract Report

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension of OMB approval for control number 9000–0007.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection regarding Summary Subcontract Report (SF 295).

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, Office of Federal Acquisition Policy, General Services Administration (GSA) (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR 19.7.

In conjunction with these plans, contractors must submit reports of their progress on SF 295, Summary Subcontract Report.

Information submitted on SF 295 is used to assess contractor's compliance with their subcontracting plans.

**B. Annual Reporting Burden**

The annual reporting burden is estimated as follows: *Respondents*, 1,542; *responses per respondent*, 3.61; *total annual responses*, 5,568; *preparation hours per response*, 10.21; and *total response burden hours*, 90,257.

**OBTAINING COPIES OF PROPOSALS:** Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0007, FAR case 91–78, Summary Subcontract Report, in all correspondence.

Dated: June 30, 1992.

**Beverly Fayson,**

*FAR Secretariat.*

[FR Doc. 92–16011 Filed 7–8–92; 8:45 am]

BILLING CODE 6820–34–M

VOL 57 ISS 132 JL 9 1992 UMI



[OMB Control No. 9000-0003]

## OMB Clearance Request for Statement of Contingent or Other Fees

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for a revision of a currently approved information collection requirement (9000-0003) for SF 119.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for a revision of a currently approved information collection requirement concerning Statement of Contingent of Other Fees, Standard Form 119.

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

**SUPPLEMENTARY INFORMATION:**

A. Purpose

Contractor's arrangements to pay contingent fees for soliciting or obtaining Government contracts have long been considered contrary to public policy because such arrangements may lead to attempted or actual exercise of improper influence. By way of this representation, prospective contractors are required to state whether or not they have used such an arrangement to obtain the contract.

The information is used by Government Contracting Officers to determine the appropriateness of awarding a contract to the submitting firm.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents*, 2,500; *responses per respondent*, 10; *total annual responses*, 25,000; *preparation hours per response*, .33; and *total response burden hours*, 8,250.

**OBTAINING COPIES OF PROPOSALS:** Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0003, Statement of Contingent or Other Fees, SF 119, in all correspondence.

Dated: June 29, 1992.

**Beverly Fayson,**

*FAR Secretariat.*

[FR Doc. 92-16012 Filed 7-8-92; 8:45 am]

BILLING CODE 6820-34-M

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Agency Information Collection Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of request submitted for review by the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC));

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number of responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed on or before August 10, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

**FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:** Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC-574.
3. 1902-0116.
4. Gas Pipeline Certificates: Hinshaw Exemption.
5. Extension.
6. Other (One-time filing).
7. Mandatory.
8. Businesses or other for-profit.
9. 1 respondent.
10. 1 response.
11. 245 hours per response.
12. 245 hours.
13. FERC-574 data are used by the Commission in assessing applications for exemption from certain provisions of the Natural Gas Act by companies engaging in the transportation or sale for resale of natural gas in interstate commerce.

**Authority:** Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, July 1, 1992.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 92-16125 Filed 7-8-92; 8:45 am]

BILLING CODE 6450-01-M



### Agency Information Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of request submitted for review by the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC));

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number of responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed on or before August 10, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

**FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:** Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC-6.
3. 1902-0026.
4. Underground Gas Storage Report.
5. Extension.
6. Monthly.
7. Mandatory.
8. Businesses or other for-profit.
9. 36 respondents.
10. 12 responses.
11. 3 hours per response.
12. 1,296 hours.
13. FERC-8 data are used by the Commission in analyzing the total amount of storage gas to assure the continuity of natural gas service. The data are analyzed with regard to natural gas storage injections, withdrawals, balances and reservoir capacities to assure that the stored gas supply is adequate.

**Authority:** Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, July 1, 1992.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 92-16124 Filed 7-8-92; 8:45 am]

BILLING CODE 6450-01-M

## Office of Environment, Safety and Health

### Environment, Safety and Health Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* Environment, Safety and Health Advisory Committee.

*Date and Time:* Wednesday, July 29, 1992, 8 a.m.

*Place:* Red Lion Inn/Hanford House, 802 George Washington Way, Richland, WA 99352.

*Contact:* Lisa Kardell, U.S. Department of Energy, Office of Environment, Safety and Health (EH-50), Room 7A-075, Washington, DC 20585, Telephone: 202/586-1988.

*Purpose of the Committee:* To provide advice and guidance to the Department of Energy on matters relating to environment, safety and health at DOE facilities.

*Purpose of the Meeting:* To gather information regarding the integration of Environment, Safety and Health activities at Department of Energy sites and to consider future tasks.

*Tentative Agenda*

—Call to order by Robert F. Mathias, Designated Federal Official.
—Remarks by Chairperson Gebbie.
—Update on Environment, Safety and Health Activities at DOE by Paul L. Ziemer, Assistant Secretary for Environment, Safety and Health, U.S. Department of Energy.
—Briefing on Safety and Quality Assurance at the Hanford Site.
—Briefing on Environmental Compliance at the Hanford Site.
—Briefing on the Role of the Contractor.
—Briefing on the Hanford Environmental Dose Reconstruction Project.
—Briefing on the Role of the State.
—Briefing on the Role of the Environmental Protection Agency.
—The Local Perspective.
—Indian Nations Perspective.
—Citizen Participation.
—Discussion on future tasks for ESHAC.
—Public comment—10-minute rule.
—Adjournment.

*Public Participation:* The meeting is open to the public. The Chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Lisa Kardell at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. Persons wishing to attend the public meeting should provide their names to (202) 586-1988 by July 22, 1992.

*Transcript:* Available for public review and copying at the Public Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on July 2, 1992.

**Marcia L. Morris,**

*Deputy Advisory Committee, Management Officer.*

[FR Doc. 92-16123 Filed 7-8-92; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket No. JD92-07552T New Mexico-33]

### United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 2, 1992.

Take notice that on June 30, 1992, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mesaverde Formation in a portion of Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application consists of 10,240 acres located on the Jicarilla Apache Indian Reservation and covers all of sections 1-4, 9-16, and 21-24 in Township 25N, Range 4W, NMPM.

The notice of determination also contains BLM's findings that the referenced portion of the Mesaverde Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 92-16040 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

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### Contractors Power Group, Inc.; Application

July 2, 1992.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* 10552-002

c. *Date filed:* May 13, 1991.

d. *Applicant:* Contractors Power Group, Inc.

e. *Name of Project:* Mile 28 Water Power Project.

f. *Location:* On the Bureau of Reclamation's Milner-Gooding Canal, off Snake River, in Jerome County, Idaho Section 7, T8S, R20E, Boise Meridian. The transmission line is entirely on lands of the United States administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. John J. Straubhar, P.E., P.O. Box 820, Twin Falls, ID 83303, (208) 786-0484.

i. *FERC Contact:* Mr. Surender M. Yepuri, P.E., (202) 219-2847.

j. This notice supplements the notice for this project issued April 9, 1992 (See 57 FR 13080), adding to the project description about 2 miles of 34.5-kV transmission line necessary to connect the project to the Idaho Power Company distribution system.

k. All comments on this project should have been filed in accordance with the requirements of the April 9, 1992, notice. Any additional comments, terms, and conditions on the transmission line must be filed within 15 days from the date of this notice.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 92-16038 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ92-5-48-000]

### ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 2, 1992.

Take notice that ANR Pipeline Company ("ANR"), on June 30, 1992, tendered for filing as part of its F.E.R.C. Gas Tariff, Original Volume No. 1, the following tariff sheet, to be effective August 1, 1992:

**Sixty-Fourth Revised Sheet No. 18**

ANR states that the purpose of the instant filing is to implement ANR's Quarterly PGA rate adjustment pursuant to Section 15 of the General Terms and Conditions of its Tariff.

ANR states that the filing proposes a $0.0838 per dekatherm (dth) increase in the gas cost component of the commodity rate of ANR's CD-1/MC-1 Rate Schedules, from rates reflected on Substitute Sixtieth Revised Sheet No. 18. There are decreases in the gas cost components of the monthly D-1 demand rate of $0.021 per dth and the D-2 demand rate of $0.0021 per dth, from rates reflected on Substitute Sixtieth Revised Sheet No. 18.

Sixty-Fourth Revised Sheet No. 18 further reflects an increase in ANR's one-part rate applicable to Rate Schedule SGS-1 of $0.0757 per dth, from rates reflected on Substitute Sixtieth Revised Sheet No. 18.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 92-16041 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. ER92-341-000 and EL92-35-000]

### Arkansas Power & Light Co.; Initiation of Proceeding and Refund Report

July 2, 1992

Take notice that on June 30, 1992, the Commission issued an ordering the above-indicated dockets initiating and investigation in Docket No. EL92-35-000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL92-35-000 will be 60 days after publication of this notice in the Federal Register.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 92-16067 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ92-5-34-000]

### Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

(July 2, 1992)

Take notice that on June 30, 1992 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective August 1, 1992:

**Twenty-Ninth Revised Sheet No. 8**

**Fifth Revised Sheet No. 160**

**Fourth Revised Sheet No. 222**

Fifth Revised Sheet No. 223
Fifth Revised Sheet No. 225
Fifth Revised Sheet No. 228
Sixth Revised Sheet No. 232

FGT states that Twenty-Ninth Revised Sheet No. 8 is being filed in accordance with § 154.308 of the Commission's Regulations and pursuant to section 15 of FGT's FERC Gas Tariff, Second Revised Volume No. 1 to reflect an increase in FGT's jurisdictional rates due to an increase in its average cost of gas purchased from that reflected in its Out-of-Cycle PGA filing in Docket No. TQ92-4-34-000, effective June 1, 1992.

FGT also states that it is required to update its Index of Entitlements concurrently with its Quarterly PGA filing pursuant to Section 9 of the General Terms and Conditions of its Tariff and has included such changes in Fourth Revised Sheet No. 222, Fifth Revised Sheet Nos. 223, 225 and 228, and Sixth Revised Sheet No. 232 contained herein. Additionally, Fifth Revised Sheet No. 160 updates the receipt point list contained in Rate Schedule PTS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92-16042 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP92-194-000]**

## Florida Gas Transmission Co.; Petition for Limited Waiver of Tariff Provisions

July 2, 1992.

Take notice that on June 29, 1992, Florida Gas Transmission Company ("FGT") hereby petitions the Federal Energy Regulatory Commission ("Commission") for a limited waiver of Commission policy and FGT's FERC Gas Tariff, to the extent necessary, to allow FGT to add a new delivery point to an existing agreement for firm transportation service under FGT's Rate Schedule FTS-1 and to an existing agreement for interruptible transportation service under FGT's Rate Schedule ITS-1 between FGT and Lake Apopka Natural Gas District ("Lake Apopka"), while permitting Lake Apopka to maintain its existing priority date.

FGT states that good cause exists for granting the requested waivers in that (i) FGT will continue to serve the same customer, Lake Apopka; (ii) the new delivery point will be located in the same geographic location as other existing delivery points at which FGT presently serves Lake Apopka; and (iii) the new delivery point will not interfere with FGT's ability to render firm service to FGT's other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 10, 1992 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or protest in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. Protests will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92-16043 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ92-12-25-000]**

## Mississippi River Transmission Corp.; Rate Change Filing

July 2, 1992.

Take notice that on June 29, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing Seventy-Eighth Revised Sheet No. 4, and Thirty-Seventh Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective July 1, 1992. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Seventy-Eighth Revised Sheet No. 4 and Thirty-Seventh Revised Sheet No. 4.1 reflect a decrease of 57.77 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed to be effective June 1, 1992, in Docket No. TQ-11-25-000. MRT also states that since the May 29, 1992 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been mailed to each of MRT's jurisdictional sales customers and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92-16044 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RS92-43-000]**

## Mississippi River Transmission Corp.; Prefiling Conference

July 2, 1992.

Take notice that a prefiling conference will be convened in this proceeding on August 13, 1992, at 10:00 a.m., in Washington, D.C. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

The purpose of the conference is to address Mississippi River Transmission Corporation's summary of its proposal to comply with Order no. 636.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information, interested parties may call David Cain at (202) 208-0917.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92-16045 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-4-59-001, TQ92-9-59-001 and TF92-4-59-000]

## Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 2, 1992

Take notice that Northern Natural Gas Company (Northern) on June 30, 1992, tendered for filing the following tariff sheets to its FERC Gas Tariff to become effective July 1, 1992:

Third Revised Volume No. 1

Seventy-First Revised Sheet No. 4A
One Hundred-Tenth Revised Sheet No. 4B
Seventy-Eighth Revised Sheet No. 48.1
Twenty-Sixth Revised Sheet No. 4H

Original Volume No. 2

One Hundred-Seventeenth Rev. Sheet No. 1C

Northern states that the filing is a Flex PGA filing in accordance with § 154.308 of the Commission's regulations to adjust Northern's Base Average Commodity Gas Purchased Cost as required by the Commission's Order Nos. 483 and 483-A (PGA Rulemaking).

Northern states that the filing establishes a base average gas purchased rate of $1.8059 (Sales Recovery Rate for purposes of the IGIC) which will be in effect from July 1, 1992, through July 31, 1992. Northern further states that the filing reflects a $0.4000 per MMBtu decrease from the quarterly rate established in Docket No. TQ92-9-59-000 dated May 29, 1992 and effectuated July 1, 1992 and a $0.1500 per MMBtu decrease from the rate effectuated on June 1, 1992 in Docket No. TQ92-8-59-000.

Northern states that copies of the filing have been mailed to each of Northern's gas utility customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92-16046 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-191-000]

## Northwest Pipeline Corporation; Compliance Filing

July 2, 1992.

Take notice that on June 22, 1992, Northwest Pipeline Corporation (Northwest) submitted four alternative allocation methodologies in response to the Commission's Order on Remand issued on May 6, 1992 in Docket Nos. RM91-2, *et al.*

Northwest states that the purpose of this filing is to obtain Commission approval of the appropriate methodology to allocate a share of Northwest's fixed Supplier Settlement Payment costs to Northwest's customers in compliance with Order Nos. 500, 528 and 528-A.

Northwest states that copies of the filing is being served on all parties of record in Docket No. RP89-137-000, *et al.*

Any person desiring to he heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20528, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92-16047 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-46-000]

## Pacific Gas Transmission Company; Conference

July 2, 1992.

Take notice that on Tuesday, July 14, and Wednesday, July 15, 1992, a conference will be convened in the captioned restructuring docket in accordance with the provisions of Order No. 636. This conference is being held so that Pacific Gas Transmission Company (PGT) can discuss with the Commission Staff and the intervenors in this proceeding its June 1 restructuring proposal to narrow the range of issues identified affecting PGT's compliance with Order No. 636.

The conference will be held at the offices of the Federal Energy Regulatory Commission, at 810 First Street, NE., Hearing Room No. 1, Washington, DC. The conference will begin at 10 a.m. on July 14, 1992. All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Lisa T. Long at (202) 208-2105.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92-16048 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-157-000]

## Pacific Offshore Pipeline Company; Technical Conference

July 2, 1992.

Take notice that, pursuant to the Commission's order issued June 1, 1992, in the captioned proceeding (59 FERC¶ 61,248), a technical conference will be held at 8:30 a.m. on Wednesday, July 15, 1992, at the Offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington DC, for the purpose of discussing any issues involved other than cost allocation and rate design.

All interested persons and Staff are permitted to attend.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92-16049 Filed 7-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-164-002]

## Tarpon Transmission Co.; Tariff Filing

July 2, 1992.

Take notice that on June 29, 1992, Tarpon Transmission Company (Tarpon) tendered for filing with the Commission as part of its FERC Gas Tariff, the following substitute tariff sheets to Tarpon's FERC Gas Tariff, Original Volume No. 1:

Substitute Ninth Sheet No. 2A
Substitute Second Sheet No. 86A
Substitute Third Sheet No. 96A

Tarpon states that it is also tendered for filing the following alternate sheets to its FERC Gas Tariff, Original Volume No. 1:

Alternate Substitute Ninth Sheet No. 2A
Alternate Substitute Second Sheet No. 86A
Alternate Substitute Third Sheet No. 96A

Tarpon states that it has filed the tariff sheet in compliance with Ordering Paragraph (B) of the Commission's "Order Accepting and Suspending Tariff

Sheets," issued May 29, 1992 in the above-referenced docket.

Tarpon states that copies of the filing are being mailed to all parties on Docket No. RP92–164 and to all of Tarpon's shipper's.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92–16050 Filed 7–8–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TQ92–7–18–000]**

### Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 2, 1992.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on June 30, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-eighth Revised Sheet No. 10
Fifty-eighth Revised Sheet No. 10A
Thirty-ninth Revised Sheet No. 11
Twenty-ninth Revised Sheet No. 11A
Twenty-ninth Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to a Quarterly PGA Rate Adjustment and are proposed to be effective August 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.0989 per MMBtu from the rates set forth in the Out-of-Cycle PGA filed June 26, 1992 (Docket No. TQ92–6–18). No change are proposed for the demand or SGN Standby rates.

Texas Gas states that copies of the filing were served upon Texas Gas' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before July 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92–16051 Filed 7–8–92; 8:45 am]

BILLING CODE 6717–01–M

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### Trunkline LNG Co.; Panhandle Eastern Pipe Line; Conference

July 2, 1992.

In the matter of Trunkline LNG Co., Docket Nos. RP92–122–000, RP81–85–000; Trunkline Gas Co., Docket Nos. RP92–123–000, RP92–124–000, RP92–126–000, RP87–15–000, RP87–15–029, RP87–15–030; Panhandle Eastern Pipe Line, Docket Nos. RP92–118–000, RP92–125–000, RP92–127–000, RP92–128–000.

A conference in the above-captioned proceedings will convene on Monday, July 13, 1992 at 10 a.m. The purpose of the conference is to allow the parties to review drafts of settlements which would resolve the matters which the Commission required to be addressed at the conferences established in orders issued in the captioned dockets on March 27, and March 31, 1992.[1] If necessary, the conference will be held in the Commission's meeting room on the Ninth Floor of the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92–16052 Filed 7–8–92; 8:45 am]

BILLING CODE 6717–01–M

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–946–DR]**

### Minnesota; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Minnesota (FEMA–946–DR), dated June 26, 1992, and related determinations.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Minnesota, dated June 26, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 26, 1992:

The county of Nobles for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Richard W. Krimm,**

*Associate Director, State and Local Programs and Support.*

[FR Doc. 92–16053 Filed 7–8–92; 8:45 am]

BILLING CODE 6718–02–M

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## FEDERAL MARITIME COMMISSION

**[Fact Finding Invest. No. 16]**

### Possible Malpractices in the Trans-Atlantic Trades; Order Extending Investigation

By order issued April 9, 1987 (52 FR 12064, April 14, 1987), the Federal Maritime Commission instituted this non-adjudicatory investigation into the practices of rebates, concessions, absorptions and allowances in excess of those set forth in applicable tariffs, and any other devices or means of obtaining, providing, or allowing other persons to obtain transportation of property at less, or different compensation than the rates and charges shown in applicable tariffs or service contracts, in the United States foreign commerce, between ports and points, in the Trans-Atlantic Trades. By Order issued June 10, 1988 (53 FR 22385, June 15, 1988), the term of this investigation was extended to April 14, 1989. By Order issued May 1, 1989 (54 FR 19436, May 5, 1989), the term of this investigation was extended to April 14, 1990. The term of this investigation was further extended to April 14, 1991 by Order issued April 5, 1990 (55 FR 13664, April 11, 1990) and to April 14, 1992 by Order issued June 5, 1991 (56 FR 26820, June 11, 1991). The Investigative Officer has now advised that in order to complete ongoing fact finding activities it is necessary to extend this investigation for an additional period of time.

Therefore, *it is ordered*, That the Investigative Officer shall issue a final

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[1] 58 FERC ¶ 61,334, 58 FERC ¶ 61,339, 58 FERC ¶ 61,340, 58 FERC ¶ 61,341, and 58 FERC ¶ 61,367.

report of findings and recommendations to the Commission on or before July 1, 1993, such report to remain confidential unless and until the Commission rules otherwise.

By the Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 92-16063 Filed 7-8-92; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

[Program Announcement Number 256]

### Cooperative Agreement Program to Participate in the World Health Organization's Programme of Action on Workers' Health; Availability of Funds for Fiscal Year 1992

#### Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of funds for a cooperative agreement program to participate in the World Health Organization's (WHO's) Programme of Action on Workers' Health (PAWH).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

#### Authority

This program is authorized under section 20(a)(1) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a)(1)] and section 307 [42 U.S.C. 242*l*] of the Public Health Service Act, as amended.

#### Eligible Applicant

Assistance will be provided only to the World Health Organization, which is the only international organization providing programs of primary health care to underserved working people in developing countries of the world. In several countries, the WHO-sponsored health-care represents the only means of health protection for the working people. The WHO has unique characteristics and capabilities to meet the objectives stated by CDC. A cooperative agreement is proposed with WHO for the following reasons:

A. The project presents special opportunities for furthering research programs on occupational health through the use of unusual and unique talents, resources, populations, or environmental conditions which are not readily available in the United States (U.S.). WHO provides the U.S. with an opportunity for collaboration in many developing countries, allowing study of specific occupational diseases and injuries. No other organization can offer this opportunity so extensively. Solving the work-related problems at the country level requires finding inexpensive solutions as many countries do not have the resources available to finance prevention and control. Knowledge of low cost controls developed by other countries can be potentially adopted by small businesses in the U.S.

B. WHO has unique qualifications to perform this world-wide occupational safety and health program and no other organization can fulfill the objectives of the project.

#### Availability of Funds

Approximately $138,000 will be available in Fiscal Year 1992. It is expected that the award will begin on or about September 30, 1992, and will be made for 12-month budget periods within a project period of up to three years. Continuation funding will be made on the basis of satisfactory progress and the availability of funds.

#### Background

The Eighth General Program of Work of WHO covering the period 1990–1995, on "Workers' Health" aims at the development of occupational health services and technology throughout the world, and has specifically identified two major objectives: (1) To support the continuous evaluation, adaptation, and application of occupational health technologies and sciences; and (2) to support the health systems infrastructure and workers health care programs in controlling occupational health risks, and in protecting and promoting the health of working populations in various parts of the world.

One of the main targets of WHO is the development of national workers' health systems and to ensure that workers participate in health care programs. WHO develops training programs on leadership in workers' health for selected candidates, particularly from countries where workers' health services have not been developed, and provides follow-up after the return of these candidates to their countries.

WHO's goal of health for all by the year 2000 aims to achieve an "economically productive life" for people all over the world. Member countries are urged to pay special attention to health care delivery to working populations, particularly to medically underserved workers. Developing countries are supported in ensuring safe working conditions and effective protective measures for workers health in agriculture, mining, and industrial enterprises which already exist, or which will be set up in the process of industrialization.

The WHO Workers' Health Program calls for:

1. The transfer and use of knowledge now available that can directly be applied in developing countries.

2. The adaption of much of the knowledge in industrialized countries for use in other parts of the world, particularly including such areas as neurobehavioral health science, hazard control methods, and health-based occupational exposure limits.

3. Development of knowledge and application of ergonomics for the humanization of work, the identification and control of work-related diseases, control of adverse psychosocial factors at work, and other areas of vital importance.

4. The exploration of gaps in knowledge in many new areas of occupational health, and the development of modern educational materials for different levels of health professionals.

The National Institute for Occupational Safety and Health (NIOSH) has been the WHO Collaborating Center in Occupational Health for the United States since 1976. Since NIOSH'S designation as a WHO Collaborating Center, it has been involved in program planning, collaborative research and training, management, and direct staff interaction with WHO's Program on Workers' Health. The WHO gives occupational health a high priority, particularly in respect to developing occupational health services, legislation and institutions, training of personnel, and improvement of knowledge in the field.

#### Purpose

The purpose of this award is to assist WHO in establishing and expanding a Programme of Action on Workers' Health.

The proposed project has specific relevance to the mission and objectives of the CDC and has the potential to advance knowledge which will benefit the U.S. This agreement will assist

WHO in developing guidelines which can be used throughout the world in preventing work-related diseases, injuries and deaths. Through this collaboration, CDC gains the insights of occupational health experts from around the world.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and CDC will be responsible for conducting activities under B., below:

*A. Recipient Activities*

1. Identify and review the occurrence of work-related diseases and injuries in both industrialized and developing countries; stimulate field studies of these diseases and injuries; and produce a series of guidelines on control measures.

2. Develop guidelines on the application of ergonomics in various types of industry and agriculture, both for developing and industrialized countries.

3. Develop guidelines with alternative approaches and models on the organization of occupational health services at the national level in industrialized and developing countries, emphasizing the primary health care approach and the role of health services infrastructures.

4. Coordinate research among WHO collaborating centers to cover gaps in knowledge; and develop educational material based on the scientific reviews that have been produced. Areas of particular interest are; neurotoxicity, occupational reproductive effects, lung diseases from organic and vegetable dusts, injury prevention, and occupational psychosocial factors.

5. Explore and review existing knowledge on the positive role of work in promoting health and propose areas for further study or application.

6. Develop educational materials relating to: ergonomics, safety, occupational hygiene, occupational nursing, occupational medicine, etc. Such materials should be useful in instructing undergraduate students of engineering, public health, and pre-medicine, as well as workers.

7. Develop recommendations on identification, evaluation, and control measures; health supervision and medical surveillance; personal protection and work practices; engineering controls and environmental monitoring; and health-based occupational exposure limits for hazards in the work environment.

8. Provide consultants, upon request, to WHO Collaborating Center countries to conduct various risk evaluations which would focus on identifying hazards and exposures and recommend potential engineering and procedural controls.

9. Convene international workshops on the prevention of work-related diseases and injuries.

*B. CDC Activities*

1. Collaborate with WHO in identifying and evaluating work-related diseases and injuries in order to define their causes and to determine possible modes of prevention.

2. Jointly sponsor with WHO international workshops on the prevention of work-related diseases and injuries.

3. Provide expert consultants to various appropriate committees of WHO.

4. Assist WHO in the development of programs on primary health care of the underserved working populations in developing countries.

5. Participate in developing internationally recommended occupational exposure limits, control technology, protective equipment, work practices, hazard-detection devices, and medical surveillance.

6. Provide scientific findings and appropriate recommendations to WHO to assist in reducing work-related diseases and injuries.

7. Assist in training and developing personnel who would be assigned to perform field work in developing countries.

**Evaluation Criteria**

The application will be reviewed and evaluated according to the following criteria:

Responsiveness to the objectives of the cooperative agreement including the applicants understanding of the objectives of the proposed cooperative agreement and the relevance of the proposal to the objectives. (25%)

2. Feasibility of meeting the proposed goals of the cooperative agreement, including the proposed schedule for initiating and accomplishing the activities and the proposed method for evaluating the accomplishments. (35%)

3. Qualifications and experience of the staff, which will include a program director with technical expertise in the occupational health field with training and experience in the appropriate technical content areas. (20%)

4. Extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies. (20%)

5. Evaluation of the budget to the extent that it is reasonable, clearly justified and consistent with the intended use of funds. (Not scored)

**Other Requirements**

*Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**Executive Order 12371 Review**

The application is not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Catalog of Federal Domestic Assistance Number (CFDA)**

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

**Application Submission and Deadline**

The World Health Organization (WHO) must submit an original and two copies of application PHS Form 5161-1 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE. mailstop E-14, room 300, Atlanta, Georgia 30305, on or before August 12, 1992.

**Where to Obtain Additional Information**

If you are interested in obtaining additional information regarding this program, please refer to Announcement Number 256 and contact Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mailstop E-14, room 300 Atlanta, Georgia 30305, (404) 842-6630. Programmatic technical assistance may be obtained from Phil Strine, National Institute for Occupational Safety and Health, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 639-1530.

A copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone: 202-783-3238).

Dated: July 2, 1992.

J. Donald Millar,

*Director, National Institute for Occupational Safety and Health, Centers for Disease Control.*

[FR Doc. 92-16072 Filed 7-8-92; 8:45 am]

BILLING CODE 4160-19-M

## Food and Drug Administration

**[Docket No. 92P-0212]**

## Sour Cream Deviating from Identity Standard; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to The Morningstar Group to market test a product designated as "no fat sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

**DATES:** This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than October 7, 1992.

**FOR FURTHER INFORMATION CONTACT:** Margaret E. Cole, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5343.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to The Morningstar Group, 5956 Sherry Lane, Suite 1100, Dallas, TX 75225-6522.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for sour cream in 21 CFR 131.160 in that: (1) The milkfat content of the product is reduced from 18 percent to 0.4 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 29.6-milliliter (2-tablespoon) serving of the product contains 4 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to sour cream but contains fewer calories and a negligible quantity of fat.

For the purpose of this permit, the name of the product is "no fat sour cream." In accordance with FDA's current views, "no fat" food labeling is acceptable because the product contains less than 0.5 gram of fat per serving and contains no added ingredient that is a fat or an oil. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 2,599,184 kilograms (5,731,200 pounds) of the test product. The product will be manufactured at Bancroft Dairy, Inc., 1010 South Park St., Madison, WI 53715; Bancroft Dairy, Inc., 428 East Patrick St., Frederick, MD 21701; Avoset Food Corp., 605 North J St., Tulare, CA 93274; and Star Specialty Foods, Inc., 300 Industrial Dr., Sulphur Springs, TX 75482, and distributed in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin.

The agency would like to point out that the test product and labeling comply with FDA's current regulations. However, the agency proposed in the **Federal Register** of November 27, 1991 (56 FR 60421 and 60478), in response to the Nutrition Labeling and Education Act of 1990, to establish definitions for terms such as "light," "reduced calories," "reduced fat," "lowfat," "nonfat," "no fat," and "fat free," as well as criteria for the use of these terms on food labels. The test product may need to be reformulated or relabeled to comply with the relevant definition that the agency ultimately adopts.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than October 7, 1992.

Dated: June 20, 1992.

Fred R. Shank,

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92-16077 Filed 7-8-92; 8:45 am]

BILLING CODE 4160-01-F

**[Docket No. 92F-0219]**

## Transcommerz AG; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Transcommerz AG has filed a petition proposing that the food additive regulations be amended to provide for the safe use of α-hydro-ω-hydroxypoly-(oxytetramethylene), diphenylmethane diisocyanate, 1,4-butanediol, ethylenediamine, 1,3-benzenedimethanamine, diethanolamine, and 1,3,5-tris(4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1H,3H,5H)trione as components of a polyurethane elastomer; and dimethyl-polysiloxane, α-(ρ-nonylphenyl)-ω-hydroxypoly(oxyethylene), and paraffin oil as components of sizing and finishing oils for the polyurethane elastomer in food-contact articles used in the processing and packaging of food, including meat and poultry.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4325) has been filed by Transcommerz AG, c/o 7300 West Camino Real, Boca Raton, FL 33433. The petition proposes to amend the food additive regulations to provide for the safe use of α-hydro-ω-hydroxypoly-(oxytetramethylene), diphenylmethane diisocyanate, 1,4-butanediol, ethylenediamine, 1,3-benzenedimethanamine, diethanolamine, and 1,3,5-tris(4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1H,3H,5H)trione as components of a polyurethane elastomer; and dimethyl-polysiloxane, α-(ρ-nonylphenyl)-ω-hydroxypoly(oxyethylene), and paraffin oil as components of sizing and finishing oils for the polyurethane elastomer in food-contact articles used in the processing and packaging of food, including meat and poultry.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 29, 1992.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92-16076 Filed 7-8-92; 8:45 am]

BILLING CODE 4160-01-F

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**[Docket No. 92M-0245]**

## Custom Hydrophilics; Premarket Approval of Custom 67™ (Xylofilcon A) Soft (Hydrophilic) Contact Lens

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Custom Hydrophilics, Miami, FL, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Custom 67™ (xylofilcon A) Soft (Hydrophilic) Contact Lens. The device is to be manufactured under an agreement with Igel Optics International, Bedfordshire, England, which has authorized Custom Hydrophilics to incorporate information contained in its approved premarket approval application (PMA) and related supplements for the IGEL™ 67 (xylofilcon A) Soft (Hydrophilic) Contact Lens. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 4, 1992, of the approval of the application.

**DATES:** Petitions for administrative review by August 10, 1992.

**ADDRESSES:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** James F. Saviola, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

**SUPPLEMENTARY INFORMATION:** On June 10, 1991, Custom Hydrophilics, Miami, FL 33173, submitted to CDRH an application for premarket approval of the Custom 67™ (xylofilcon A) Soft (Hydrophilic) Contact Lens. The Custom 67™ Soft (Hydrophilic) Contact Lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who may exhibit astigmatism of 1.50 diopters (D) or less that does not interfere with visual acuity. In addition, the lens is to be disinfected using either a heat or chemical lens care system. The application includes authorization from Igel Optics International, Bedfordshire, England, to incorporate information contained in its approved PMA and related supplements for IGEL™ 67 (xylofilcon A) Soft (Hydrophilic) Contact Lens. In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Ophthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On June 4, 1992, CDRH approved the application by a letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

### Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 10, 1992, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 25, 1992.

**James S. Benson,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 92-16074 Filed 7-8-92; 8:45 am]

BILLING CODE 4160-01-F

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## Health Care Financing Administration

## Hearing: Reconsideration of Disapproval of New York State Plan Amendment (SPA)

**AGENCY:** Health Care Financing Administration, HHS.

**ACTION:** Notice of hearing.

**SUMMARY:** This notice announces an administrative hearing on August 11, 1992 at 10 a.m. in room 1434, 26 Federal Plaza, New York, New York to reconsider our decision to disapprove New York SPA 91-83.

**CLOSING DATE:** Requests to participate in the hearing as a party must be received by the Docket Clerk by July 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Docket Clerk, HCFA Hearing Staff, 1849 Gwynn Oak Avenue, Meadowwood East Building, Groundfloor, Baltimore, Maryland 21207, Telephone: (410) 597-3013.

**SUPPLEMENTARY INFORMATION:** This notice announces an administrative hearing to reconsider our decision to disapprove New York State plan amendment (SPA) number 91-83.

Section 1116 of the Social Security Act (the Act) and 42 CFR, part 430 establish

Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

On December 31, 1991, the State of New York submitted SPA 91–83, with a requested effective date of December 1, 1991. New York SPA 91–83 would provide for a one-time supplemental disproportionate share payment adjustment to State-operated and other public hospitals that provide services to any person determined to be low-income in accordance with New York State law. The State also submitted assurances and related rate information for this amendment as required by Federal regulations at 42 CFR 447.253ff.

The issue in the matter is whether New York's amendment significantly changes the standard for setting payment rates and therefore must comply with the Federal regulations at 42 CFR 447.253(f). This regulation states that the Medicaid agency must comply with the public notice requirements in § 447.205 when it is proposing significant changes to its methods and standards for setting payment rates. Section 447.205(d)(1) requires that the notice be published before the proposed effective date of the changes. Section 447.205 (c) and (d) set forth additional requirements regarding the content and publication of the notice.

HCFA believes that the addition of a new supplemental disproportionate share payment adjustment for State-operated and other public hospitals tied to hospital deficits and budget shortfalls, as described in the State of New York's amendment 91–83, represents a significant change in the State of New York's methods and standards for determining disproportionate share payment adjustments. Prior to this amendment neither the State's payment rates nor its disproportionate share payment adjustments were tied to hospital deficits or budget shortfalls. Therefore, the public notice requirements of 42 CFR 447.205 are applicable to this amendment.

The State contends that the public notice requirements of 42 CFR 447.205 are not applicable to this amendment because the addition of a supplemental disproportionate share payment adjustment does not represent a change in its methods and standards used to set payment rates. The State did, however, publish notice of this new supplemental disproportionate share payment adjustment in the New York State Register on December 24, 1991. However, after reviewing this December 24, 1991, notice, HCFA determined that this notice did not satisfy all the public notice requirements described in 42 CFR 447.205. Specifically, § 447.205(c)(2) requires the public notice must "give an estimate of any expected increase or decrease in the State's annual aggregate expenditures." The State's December 24, 1991, notice did not satisfy this requirement. Also, the State's requested effective date of December 1, 1991, violated the public notice requirement contained in 42 CFR 447.205(d)(1) which requires that the notice must be published before the proposed effective date of the change.

On December 12, 1991, the Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991 (Public Law 102–234) was signed into law. This legislation established limits on payment adjustments to disproportionate share hospitals (DSH) for which Federal financial participation (FFP) is available. For the period January 1, 1992 through September 30, 1992, FFP is available for DSH payments only if made in accordance with the following:

(1) A State plan in effect on September 30, 1991;

(2) A SPA submitted to HCFA by September 30, 1991;

(3) A SPA submitted to HCFA between October 1, 1991, and November 26, 1991, or modification of that amendment, if the amendment limits the definition of DSHs to those hospitals with Medicaid utilization rates at or above the Statewide arithmetic mean; or

(4) A payment methodology established and in effect as of September 30, 1991, or in accordance with State law enacted or regulations adopted as of that date. Since 91–83 does not satisfy any of these situations, the State of New York's new supplemental DSH payments provided in this amendment would not be available for FFP after January 1, 1992. In this regard, HCFA could not permit the State of New York to publish a subsequent notice for this amendment to correct the December 24, 1991, deficient public notice.

The notice to New York announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Mary Jo Bane, Commissioner
*New York State Department of Social Services, Ten Eyck Office Building, 40 North Pearl Street, Albany, New York 12243–0001*

Dear Ms. Bane: I am responding to your request for reconsideration of the decision to disapprove New York State Plan Amendment (SPA) 91–83.

The State of New York submitted on December 31, 1991, SPA 91–83 with a requested effective date of December 1, 1991. This plan amendment would provide for a one-time supplemental disproportionate share payment adjustment to State-operated and other public hospitals that provide services to any person determined to be low-income in accordance with New York State law.

The issue in the matter is whether New York's amendment significantly changes the standard for setting payment rates and therefore must comply with the Federal regulation at 42 CFR 447.253(f). This regulation states that the Medicaid agency must comply with the public notice requirements in § 447.205 when it is proposing significant changes to its methods and standards for setting payment rates. Section 447.205(d)(1) requires that the notice be published before the proposed effective date of the change. Section 447.205(c) and (d) set forth additional requirements regarding the content and publication of the notice.

I am scheduling a hearing on your request for reconsideration to be held on August 11, 1992 at 10 a.m. in room 1434, 26 Federal Plaza, New York, New York. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

William Toby, Jr.,

*Acting Administrator.*

*Authority:* (Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: June 30, 1992.

William Toby, Jr.,

*Acting Administrator, Health Care Financing Administration.*

[FR Doc. 92-16085 Filed 7-8-92; 8:45 am]

BILLING CODE 4120-03-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-92-3439; FR-3289-N-03]

### NOFA for Fair Housing Initiatives Program; Major Testing Project On Mortgage Lending Practices Competitive Solicitation

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice of NOFA modification and extension of time for submission of applications.

**SUMMARY:** On May 18, 1992, HUD published a Notice of Funding Availability (NOFA) that provides up to $1 million in funding to conduct a major testing project on mortgage lending practices under the Private Enforcement Initiative of the Fair Housing Initiatives Program (FHIP). The purpose of this Notice is to modify the NOFA and extend the time for submission of applications until August 17, 1992.

**DATES:** The application due date announced for July 20, 1992 is extended by this notice to August 17, 1992.

**FOR FURTHER INFORMATION CONTACT:** Marcella Brown, Director, Funded Programs Division, Office of the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone number (202) 708-3214. This number also has Telecommunications Devices for the Deaf (TDD) capability for hearing or speech-impaired persons. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** A FY 1992 Notice of Funding Availability (NOFA) to solicit applications that will identify specific unlawful discriminatory acts or practices that prevent and/or impede racial and national origin minorities from obtaining financing for the purchase of real property was published on May 18, 1992 (57 FR 21127). The May 18 NOFA makes up to $1 million in Private Enforcement Initiative FHIP funds available for this purpose. (On May 29, 1992, the Department published, at 57 FR 22872, a NOFA that announced HUD's FY 1992 funding of $8.9 million for the Fair Housing Initiatives Program. The May 29 NOFA announced the availability of the other $2 million of the FY 1992 $3 million total for testing activities under the Private Enforcement Initiative.)

Since the publication of the May 18 NOFA, the Department has determined that changes in the site selection, allegation parameters, and data and regulatory agency consultation requirements would be appropriate to facilitate the NOFA's goals. Applicants must now identify six potential sites for activities, three of which will be chosen by HUD in cooperation with the successful applicant. Testers are required to have the same or substantially equivalent housing needs and profile as those in the allegations of a discriminatory practice, except for the attribute which is the basis of the alleged discrimination. The mandatory aspect of the requirements for consultation with the Housing Discrimination Study and representatives from national banking regulatory agencies has been removed.

For the convenience of applicants, the specific placement of these changes in the NOFA are specified below. The intent is to modify each part of the NOFA, as necessary, to implement the changes. Several modifications may be required to implement fully a change. To the extent that this Notice and the NOFA are in conflict, this Notice takes precedence. In addition, to give potential applicants a chance to adjust to these changes, the application due date is extended to August 17, 1992.

Accordingly, the following modifications are made in FR Doc. 92-11749 to the NOFA titled, "Fair Housing Initiatives Program; Major Testing Project On Mortgage Lending Practices Competitive Solicitation", published on May 18, 1992 (57 FR 21127):

1. On page 21128, item (4) under the heading Key features of this NOFA, is revised to read: "The activities will be conducted in 3 geographic locations."

2. On page 21130, paragraph I.(d)(2)(iv), which appears in the first column is revised to read: "(iv) The extent to which the project supports the identification of six sites from which three will be selected."

3. On page 21130, the first sentence in the third paragraph under the heading, "II. Application Process", in the third column is revised to read: "No applications will be accepted after 4 p.m. on August 17, 1992. * * *"

4. On page 21130, in the third column, under the heading, "Site and Lender Selection.", found at paragraph III.(c)(1)(i), the first two sentences are revised to read: "Applicants will identify six sites, considering geographic distribution, for testing activities in the proposed workplan. HUD, in cooperation with the successful applicant(s), will select three of the sites.

* * * * *

5. On page 21131, in the third column, the sixth sentence in paragraph III.(c)(1)(ii), "Identification and Use of Existing Data to Target Lenders." is revised to read: "* * * Applicants should also consider the Housing Discrimination Study, conducted by the Urban Institute and Syracuse University (published August, 1991), and other existing data which might show where and to what extent the Department has knowledge of possible discriminatory lending practices in targeting lenders.

6. On page 21131, in the third column, in paragraph III.(c)(ii)(1), titled, "Developing the Investigative and Testing Plan.", the first and second sentences are revised to read: "Applicants should show evidence that, in developing the proposal, an attempt has been made to consult with representatives from the national banking regulatory agencies, including the Federal Reserve Board, the Comptroller of the Currency, the Office of Thrift Supervision, and FDIC, so as to strengthen the viability of the proposed methodology. The applicants must describe, if applicable, any proposed relationship with, and the roles of, the banking regulatory agencies or industry representatives (such as the American Bankers Association, Mortgage Bankers Association, etc.) in the design of this project. * * *.

Dated: July 2, 1992.

Leonora L. Guarrala,

*General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 92-16055 Filed 7-8-92; 8:45 am]

BILLING CODE 4210-28-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WO-340-4333-02]

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the

proposed collection of information, related forms, and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Washington, DC 20503, telephone 202–395–7340.

*Title:* Special Recreation Application and Permit Form.

*OMB Approval Number:* 1004–0119

*Abstract:* Respondents supply identifying information and data on proposed commercial, competitive, or individual recreational use, respectively, when required, to determine eligibility for a permit. This information allows the Bureau of Land Management to authorize requested use and determine appropriate fees. This information will also be used to tabulate recreation use data for the annual Federal Recreation Fee Report as required by the Land and Water Conservation Act.

*Bureau Form Number:* 8370–1.

*Frequency:* On occasion.

*Description of Respondents:* Recreation visitors to areas of the public lands, and related waters, where special recreation permits are required.

*Annual Responses:* 14,839.

*Annual Burden Hours:* 7,420.

*Bureau Clearance Officer (Alternate):* Gerri Jenkins 202–653–6105.

Dated: April 13, 1992.

**Kemp Conn,**

*Assistant Director-Land and Renewable Resources.*

[FR Doc. 92–16116 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–84–M

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**[CA–060–02–4333–13]**

## Closure of Public Lands; Kelso Creek Area of Jawbone-Butterbredt Area of Critical Environmental Concern, Kern County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of closure of Public Lands in the Kelso Creek area of the Jawbone-Butterbredt Area of Critical Environmental Concern, Kern County, California to vehicle use and camping.

**SUMMARY:** Notice is hereby given that the Bureau of Land Management is closing areas of Public Land, west of Kelso Valley Road, in the vicinity of Dove Springs Road, to all camping and all vehicle use.

**ORDER:** Effective June 29, 1992, those portions of the public lands in the E½ NW¼ and NE¼ SW¼ of section 15, Township 28 South, Range 35 East, Mount Diablo Meridian, Kern County, California, lying west of Kelso Valley Road, are closed to all camping and all vehicle use. No person may use, drive, transport, park, let stand, or have charge or control over any vehicle in this area.

Exemptions to this order are granted to law enforcement and other emergency vehicles in the course of official duties. All other exemptions to this order are by written authorization of the Ridgecrest Resource Area Manager only.

**EFFECTIVE DATE:** This closure is effective June 29, 1992 and will remain in effect until rescinded by the authorized officer.

**FOR FURTHER INFORMATION CONTACT:** Area Manager, 300 South Richmond Road, Ridgecrest, California 93555, (619) 375–7125.

**SUPPLEMENTARY INFORMATION:** The purpose of this closure order is to provide protection to the riparian area in the upper area of Kelso Creek, as outlined in the Sikes Act Management Plan for the Jawbone-Butterbredt Area of Critical Environmental Concern, Plan (CA–06–WHA–20), approved September 27, 1982.

Maps showing the affected area are available by contacting the Ridgecrest Resource Area Office. The affected area will be posted with public notices as well as standard camping and vehicle prohibition signs.

Authority for this vehicle and camping closure is found in 43 CFR 8364.1. Violation of this order is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

Dated: June 29, 1992.

**Richard E. Crowe,**

*Acting District Manager.*

[FR Doc. 92–16115 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–40–M

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## DEPARTMENT OF THE INTERIOR

**[MT–070–02–4333–02 ADVB]**

## District Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Butte District Office, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** A meeting of the Butte District Advisory Council will be held Thursday, July 30. The meeting will begin at 9 a.m. in the Butte District conference room, 106 N. Parkmont (Industrial Park), Butte, Montana. The agenda will include: (1) Election of officers; (2) recreation management, including an update on the Canyon Ferry partnership; (3) access and acquisition initiatives; (4) county input into district resource management planning; (5) cultural resource problems and opportunities; and (6) hazardous waste management.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

**FOR FURTHER INFORMATION CONTACT:** James R. Owings, District Manager, Bureau of Land Management, Box 3388, Butte, Montana 59702.

Dated: June 29, 1992.

**James R. Owings,**

*District Manager.*

[FR Doc. 92–16117 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–DN–M

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**[CA–060–02–4333–10]**

## Route Designation Update, California Desert District

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to initiate an update of route designations in portions of the California Desert District of the Bureau of Land Management (BLM) and to request public comments and recommendations on the inventory of routes to be considered for designation as "open", "limited", or "closed" to motorized vehicle use. The BLM-administered lands to be addressed in this route designation update include public lands shown on the following Desert Access Guides (DAGs): Ridgecrest DAG, Red Mountain DAG, Stoddard Valley DAG, Johnson Valley DAG, Yucca Valley DAG, New York Mountains DAG, Palm Springs DAG, Mecca Hills portions of the Chuckwalla DAG, Imperial Valley South DAG, Salton Sea DAG, and McCain Valley DAG.

**SUMMARY:** Policies and procedures to be followed in the designation of motor vehicle routes for recreational and commercial access are set forth in 43 CFR parts 8341 and 8342, Executive Orders 11644 and 11989, Federal Land Policy and Management Act of 1976, National Environmental Policy Act of 1969, the California Desert Conservation

Area Plan of 1980, as amended, and the 1981 Eastern San Diego County Management Framework Plan, as amended.

The primary purpose of this notice is to request comments and recommendations from members of the public on routes to be considered in the designation process. Some, though not all, existing and previously designated routes are shown on the above-referenced Desert Access Guides published by the Bureau of Land Management. Copies of the Desert Access Guides can be purchased from any of the BLM offices Listed in this notice for $4.00 per DAG.

Additional routes that have been identified by the BLM to be considered as part of the inventory base are not shown on the published DAGs; however, they are available for review on maps maintained in the resource area office responsible for managing the affected public lands. These maps will also be on display at six (6) public meetings/open houses scheduled in August.

Members of the public are encouraged to review the DAGs and information on previously designated routes and provide written comments to the appropriate BLM office within 90 days of the publication of this notice. Comments should identify additional routes to be added to the inventory of routes considered for designation, and make recommendations on specific routes that should be "open", "limited", or "closed" to motorized vehicle use. Recommendations for additional routes and for limiting or closing all or segments of existing routes should include rationale to support the recommendation. A "limited" route is one which is limited with respect to the number of vehicles allowed, the types of vehicles allowed, the time or season of vehicle use, permitted or licensed vehicle use only, or establishment of speed limits.

A change in the status of routes which have been previously designated as "open", "closed", or "limited" will be considered only on the basis of new information, data and/or changed circumstances which were not addressed when the route was previously designated.

Following the 90-day public review period, the BLM will identify the inventory of routes to be considered in the designation process incorporating the results of public comments as well as the BLM inventory efforts.

**DATES:** Written public comments on the route designation update should be submitted to the Resource Area Manager responsible for the affected public lands and postmarked no later than October 7, 1992.

Public meetings have been scheduled as follows:

| | |
|---|---|
| August 4, 1992, 7 p.m. | Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA. |
| August 5, 1992, 7 p.m. | Kerr-McGee Center, Red Rock Canyon/Chimney Peak Rm., 100 W. California Avenue, Ridgecrest, CA. |
| August 11, 1992, 7 p.m. | County Administration Center, Board of Supervisors Chambers, 940 Main Street, 2nd Floor, El Centro, CA. |
| August 12, 1992, 7 p.m. | Palm Springs/South Coast Resource Area Office, 63–500 Garnet Ave., No. Palm Springs, CA. |
| August 13, 1992, 7 p.m. | California Desert District Office, 6221 Box Springs Blvd., Riverside, CA. |
| August 18, 1992, 7 p.m. | Needles Resource Area Office, 101 W. Spike's Road, Needles, CA. |

**ADDRESSES:** Comments should be sent to the following locations:

| Comments concerning | Mail to | BLM contact |
|---|---|---|
| Ridgecrest DAG, Red Mountain DAG | Area Manager, Ridgecrest RA, Attn: Route Update, 300 So. Richmond Rd., Ridgecrest, CA 93555. | M. Phillips, (619)–375–7125. |
| Stoddard Valley DAG, Johnson Valley DAG, Yucca Valley DAG. | Area Manager, Barstow RA,. Attn: Route Update, 150 Coolwater Lane, Barstow, CA 92311. | H. Johnson, (619) 256–2729 |
| New York Mtns. DAG | Area Manager, Needles RA, Attn: Route Update, P.O. Box 888, Needles, CA 92363. | J. Foote, (619)–326–3896. |
| Palm Springs DAG, Chuckwalla DAG | Area Manager, Palm Springs/South Coast RA, Attn: Route Update, P.O. Box 2000, North Palm Springs, CA 92258–2000. | D. Eslinger, (619) 251–0812. |
| Imperial Valley South DAG, Salton Sea DAG, McCain Valley DAG. | Area Manager, El Centro RA, Attn: Route Update, 333 So. Waterman Ave., (After 8/15/92: 1661 South 4th Street), El Centro, CA 92243. | A. Schoeck, (619) 352–5842. |
| Desertwise issues or process comments | District Manager, California Desert District, Attn: Route Update, 6221 Box Springs Blvd., Riverside, CA 92507–0714. | M. Brady, (714) 697–5230. |

**FOR FURTHER INFORMATION, CONTACT:** Molly Brady, California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507–0714, Telephone (714) 697–5230.

**SUPPLEMENTARY INFORMATION:** The objectives of route designation are as follows:

1. To avoid or minimize damage or degradation of the natural, cultural and aesthetic values of the desert.

2. To provide a reasonable motorized vehicle access network which meets the needs of desert users, including commercial users and private landowners, and other public land managing agencies in the California Desert District.

The following summarizes the route designation process:

1. *Inventory and public input.* The inventory process involves using all routes currently identified on the Desert Access Guides plus additional routes that have been designated or inventoried by the BLM which are not shown or cannot be shown because of scale on the published DAGs. The public and the BLM will have 90 days to add any routes that they think should be a part of the base inventory. Following the 90-day period, the inventory will be set and routes that are not part of the inventory will not be designated.

2. *Draft route designations.*

a. Interdisciplinary Team Recommendations. An interdisciplinary team, consisting of BLM specialists whose programs or resources are affected by the access network in the particular map area, will be formed in each resource area. The team will study the base inventory and make recommendations to the Area Manager based on 43 CFR 8342.1 route criteria and resources values of the area. All routes that are part of the inventory base will be analyzed and proposed for designation as "open", "closed", or "limited".

b. Route Analysis Documentation. The proposed route designations and supporting analysis will be documented on the following forms: Vehicle Route Designation Decision Record (CDD–100); Route Specific Environmental Assessment (CDD–101); and Decision Documentation Worksheet (CDD–102). All documentation of the route designations will be kept in a permanent case file in each resource area.

c. Environmental Assessment of Motor Vehicle Access Network. An Environmental Analysis (EA) will be

prepared on the access network of routes being evaluated in each resource area.

d. Section 7 Consultation. Where applicable, copies of route designation maps, all documentation, EA, and environmental finding will be submitted to the U.S. Fish and Wildlife Service for consultation in accordance with the 1973 Endangered Species Act as amended.

e. Public Review of the Proposed Designations and Environmental Assessment. The draft decisions, maps, EA, and environmental finding will be issued for a 45-day public review period. During this public comment period a series of public meetings/open houses will be held to allow for additional public comment.

3. *Final route designation decisions.* a. Following the end of the public comment period and return of the biological opinion from the U.S. Fish and Wildlife Service, the Area Manager will review the comments and biological opinion and develop the final route designation decisions. Only those routes designated as "open" or "limited" will be available for use.

b. The approved route designation decision record and **Federal Register** notice will be published and made available to interested members of the public. This will begin the 30-day appeal period.

4. *Annual route up-date.* Beginning in FY 1995, the route network will be updated on an annual basis in each resource area. The public will be given an opportunity to submit recommendations for changes or additions to the network of designated routes. Consideration will be given to routes overlooked in previous designations and to modifications in designations necessary to deal with current trends, demands and changing resource conditions.

Dated: July 2, 1992.

**Gerald E. Hillier,**

*District Manager.*

[FR Doc. 92-16109 Filed 7-8-92; 8:45 am]

BILLING CODE 4310-40-M

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**[CO-930-2200-13; Colorado 50631]**

## Issuance of Conveyance Document and Opening of Land; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and opening order.

**SUMMARY:** This action serves to inform the public of the conveyance of 680.00 acres of public land out of Federal ownership in exchange for 270.00 acres of nonfederal land reconveyed to the United States. This notice will open all of the 270.00 acres of reconveyed lands to surface entry.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Senti, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, (303) 239-3713.

**EFFECTIVE DATE:** July 9, 1992.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the completion of an exchange of land between the United States and Aaron C. Woodward. The Bureau of Land Management transferred title to the following described land under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716), with a reservation of all mineral deposits to the United States:

**Sixth Principal Meridian, Colorado,**

T. 3 S., R. 94 W.,
SE. 33, SE¼NE¼ and E½SE¼;
T. 4 S., R. 94 W.,
Sec. 26, SW¼NW¼, S½SW¼ and SW¼SE¼;
Sec. 34, E½NE¼ and NE¼SE¼;
Sec. 35, NE¼NW¼, W½W½ and NE¼SE¼;
Sec. 36, NW¼SW¼.
Containing 680.00 acres.

In exchange, the following described lands were reconveyed to the United States. No mineral rights were involved in the exchange.

**Sixth Principal Meridian, Colorado,**

T. 4 S., R. 94 W.,
Sec. 33, E½SW¼SE¼ and SE¼SE¼;
Sec. 34, NE¼NE¼SW¼, S½N½SW¼, S½SW¼ and W½SE¼.
Containing 270.00 acres.

3. At 10 a.m. on August 12, 1992, the E½SW¼SE¼ and SE¼SE¼ of section 33 and the NE¼NE¼SW¼, S½N½SW¼, S½SW¼ and W½SE¼ of section 34, T. 4 S., R. 94 W., Sixth Principal Meridian, Colorado, will be opened to operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 12, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public lands and acquisition of nonfederal land by the Federal Government.

This exchange enabled the Bureau of Land Management to obtain lands needed for legal access to the Naval Oil Shale Reserve. The exchange was based on equal values of the properties exchanged, with cash equalization by the exchange proponent. The public interest was well served by the completion of the exchange.

Dated: June 12, 1992

**Robert S. Schmidt,**

*Chief Branch of Realty Programs.*

[FR Doc. 92-16110 Filed 7-8-92; 8:45 am]

BILLING CODE 4310-JB-M

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**[CO-050-4212-14 COC-51325]**

## Realty Action

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, direct sale of public land, Boulder County, Colorado.

**SUMMARY:** The following described land has been examined and found suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value of $15,200.00: Sixth Principal Meridian, Colorado. T. 1 N., R. 71W, Sec. 19, Lot 93, containing 3.15 acres. The land is not needed for any federal purpose and is identified for disposal in the land use plan. The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. This land is being offered by direct sale to Wayne Ritter. All minerals will be reserved to the United States. The patent, when issued, will contain certain other reservations. Detailed information concerning these reservations as well as specific conditions of the sale are available upon request.

**ADDRESSES:** Bureau of Land Management, Canon City District Office, P.O. Box 2200, Canon City, CO 81215-2200.

**DATES:** On or before August 24, 1992. Interested parties may submit comments to the District Manager, Canon City District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

**FOR FURTHER INFORMATION CONTACT:** Priscilla McLain at (303) 239-3719.

**Donnie R. Sparks,**

*District Manager.*

[FR Doc. 92-16121 Filed 7-8-92; 8:45 am]

BILLING CODE 4310-JB-M

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**[NV-930-02-4212-14; N-51812]**

**ACTION:** Notice of Realty Action, advertisement of public land to be sold by the Bureau of Land Management

(BLM) by direct sale authority to the Wilkinson Ranches, Inc., P.O. Box 74, McDermitt, NV 89421.

**SUMMARY:** Notice of hereby given that pursuant to the Act of October 21, 1976 (43 U.S.C. 1713; Section 203), the BLM will sell a parcel of public land at fair market value to Wilkinson Ranches, Inc.

The following describes the public land to be disposed of:

**Mount Diablo Meridian, Nevada**

T. 48 N., R. 38 E., Sec. 34, Lot 5
58.41 acres

**EFFECTIVE DATE:** August 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Hal Green, District Realty Officer, c/o Bureau of Land Management, 705 East Fourth Street, Winnemucca, NV 89445, Phone: (702) 623–1500.

**SUPPLEMENTARY INFORMATION:** The public land is being offered for sale to the Wilkinson Ranches, Inc., by the BLM in order to facilitate the efficient use and operation of private land owned by the private party. The parcel of public land is bordered on all sides by private land.

This sale action by the BLM is in accord with land use plans, programs, policy and guidelines developed by the Department of the Interior, BLM.

Both surface and subsurface (mineral) estates would be disposed of.

Publication of this notice in the **Federal Register** shall segregate the public land to the extent that the land would not be subject to appropriation under the public land laws including the mining laws. Any subsequent application will not be considered as filed and would be returned to the applicant. The segregative effect of this Notice of Realty Action shall terminate upon issuance of the patent or transfer document for the land described above or upon publication of a notice in the **Federal Register** of a termination of the segregation or 270 days from the date of the publication of this notice, whichever occurs first.

**RESERVATIONS TO THE UNITED STATES GOVERNMENT:** The patent, when issued, will contain the following:

1. Rights-of-way for ditches and canals constructed under the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

For a period of 45 days from the date of publication of this Notice, interested parties may submit comment to the District Manager, Bureau of Land Management, Winnemucca District Office, 705 East 4th Street, Winnemucca, NV 89445.

In the absence of comment or objection to the Bureau's action, this Notice of Realty Action will become the final determination of the Department of the Interior, BLM.

Dated: June 29, 1992.

**Robert Neary,**

*Acting District Manager.*

[FR Doc. 92–16120 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–HC–M

## Proposal to Use Helicopters in the Roundup of Wild Horses on the Pryor Mountain Wild Horse Range

**AGENCY:** Bureau of Land Management, Miles City District, Interior.

**ACTION:** Notice of intent to hold public hearing to consider use of helicopters in the roundup and management of wild horses on the Pryor Mountain Wild Horse Range.

**SUMMARY:** The 1984 Billings Resource Management Plan nor the 1984 Herd Area Management Plan for the Pryor Mountain Wild Horse Range allowed the use of helicopters for the roundup of wild horses. The Herd Area Management Plan will be revised and the Billings Resource Management Plan will be amended to allow the use of helicopters if the proposal is accepted. The 1992 Pryor Mountain capture plan did not discuss the use of helicopters, but it will be updated to include the helicopter as an approved method of roundup on the Pryor Mountain Wild Horse Range.

**DATES:** The public hearing will be held at 1 p.m. on Tuesday, August 18, 1992 at the National Park Service Big Horn Canyon Visitors Center, Highway 14A, in Lovell, Wyoming.

**FOR FURTHER INFORMATION CONTACT:** David Jaynes of the Bureau of Land Management, Billings Resource Area, 810 East Main, Billings, Montana 59105 or at (406) 657–6262.

**SUPPLEMENTARY INFORMATION:** The public hearing will be announced in the "Lovell Chronicle" and the "Billings Gazette".

**Arnold E. Dougan,**

*Acting Associate District Manager.*

[FR Doc. 92–16073 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–DN–M

**[CA–940–5410–10–BO30; CACA 30163]**

## Conveyance of Mineral Interests in California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of segregation.

**SUMMARY:** The private lands described in this notice, containing 114 acres, are segregated and made unavailable for filings under the United States mining laws, to determine their suitability for conveyance of the reserved mineral interest pursuant to Section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

**FOR FURTHER INFORMATION CONTACT:** Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, room E–2841, Sacramento, CA 95825, (916) 978–4820.

Serial No.—CACA 30163

T. 12 S., R. 3 W., San Bernardino Meridian,
Sec. 32, Fractional E½.

County—San Diego

Minerals Reservation—All coal and other minerals.

Upon publication of this notice of segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the United States mining laws. The segregation effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated. June 29, 1992.

**Nancy J. Alex,**

*Chief, Lands Section.*

[FR Doc. 92–16112 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–40–M

**[NM–930–4214–11; NMNM 023544]**

## Proposed Continuation of Withdrawal; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, proposes that a portion of a withdrawal of the Pine Flat Recreation Area (formerly Pine Flat Experimental Area) continue for an

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additional 20 years. The land will remain closed to mining and will be opened to surface entry. The land has been and will remain open to mineral leasing.

**DATES:** Comments should be received by October 7, 1992.

**ADDRESSES:** Comments should be sent to: BLM, New Mexico State Director, P.O. Box 27115, Santa Fe, NM 87502–7115.

**FOR FURTHER INFORMATION CONTACT:** Georgiana E. Armijo, BLM, New Mexico State Office, 505–438–7594.

**SUPPLEMENTARY INFORMATION:** The Forest Service proposes that the withdrawal of land made by Public Land Order 1663 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f)(1988). The land is described as follows:

**New Mexico Principal Meridian**

*Cibola National Forest*

*Pine Flat Recreation Area (formerly Pine Flat Experimental Area)*

T. 9 N., R. 6 E.,
Sec. 7, lot 7;
Sec. 18, NE ¼.

The area described contains 205.42 acres in Torrance County

The withdrawal is essential for protection of substantial capital improvements on this site. The withdrawal currently segregates the land from surface entry and mining but not from mineral leasing. The Forest Service requests that the lands remain closed to mining, but that they be opened to the operation of the public land laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: June 30, 1992.

**Monte G. Jordan,**

*Associate State Director.*

[FR Doc. 92–16014 Filed 7–8–92; 8:45 am]

BILLING CODE 4310-FB

## Fish and Wildlife Service

### Availability of a Draft Recovery Plan for Kearney's Blue-Star for Review and Comment

**AGENCY:** U.S. Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Kearney's blue-star (*Amsonia kearneyana* Woodson) which the Service listed as an endangered species on January 19, 1969. The plant, Kearney's blue-star occurs in the Baboquivari Mountains, Pima County, Arizona. There are two known populations. A natural population occurs on the Tohono O'odham Indian Reservation and an introduced population occurs on private land. The Service solicits review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before September 8, 1992, to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3616 West Thomas, suite 6, Phoenix, Arizona 85019. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Please phone Susan Rutman, U.S. Fish and Wildlife Service, Botanist; at telephone 602/379–4720 (see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Kearney's blue-star is an endangered species consisting of only two wild populations. The total number of plants in both populations total 110 plants. Low numbers, few populations, catastrophic flooding, soil erosion accelerated by losses in plant cover and vigor due to livestock grazing, apparent insufficient reproduction, and seed predation by insects are principal threats to the continued existence and recovery of the Kearney's blue-star.

The Kearney's blue-star recovery plan has been reviewed by the appropriate Service staff in region 2 and selected experts on the biology of the species. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

#### Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

#### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 29, 1992.

**Lynn B. Starnes,**

*Acting Regional Director.*

[FR Doc. 92–16106 Filed 7–8–92; 8:45 am]

BILLING CODE 4310-55-M

### Availability of Draft Recovery Plan for Pecos Bluntnose Shiner for Review and Comment

**AGENCY:** U.S. Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Pecos bluntnose shiner (*Notropis simus simus*) which the Service listed as a threatened species in 1987. This fish occurs in the Pecos River, DeBaca, Chaves, and Eddy counties, in southeastern New Mexico. The Service solicits review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before September 8, 1992, to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, P.O. Box 370, Dexter, New Mexico 88230.

Written comments and materials regarding the plans should be addressed to the project leader at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** James Brooks, Fish and Wildlife Service, Office of Fishery and Wildlife Management Assistance, Project Leader; telephone 505/734–5226 (see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery for species listed unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Pecos bluntnose shiner is threatened with extinction throughout its range. Once abundant in the Pecos River from Santa Rosa to Carlsbad, New Mexico, the range and numbers of fish present have decreased dramatically. The loss of permanent water flows and degradation of riverine habitat are major threats to the species survival. Other factors such as predation by and competition with various introduced species of fish may be adversely impacting this species also.

The Pecos bluntnose shiner recovery plan has been reviewed extensively. The plan will be issued as final incorporation of comments and material received during this comment period.

#### Public Comments Solicited

The Service solicits written comments on the Pecos bluntnose shiner recovery plan. All comments received by the date specified above will be considered prior to approval of the plan.

#### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 29, 1992.

**Lynn B. Starnes,**

*Acting Regional Director.*

[FR Doc. 92–16105 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–55–M

## Geological Survey

### Federal Geographic Data Committee; Public Meeting on the National Spatial Data Infrastructure

**AGENCY:** Geological Survey, DOI.

**ACTION:** Notice of meeting.

**SUMMARY:** The Coordination Group of the Federal Geographic Data Committee will conduct a public meeting to discuss approaches to building the Nation's digital geographic (spatial) data infrastructure. A major goal of Office of Management and Budget Circular A-16, which established the Federal Geographic Data Committee, is the development of a national digital spatial information resource, with the involvement of Federal, State, and local governments, and the private sector. This national information resource, linked by criteria and standards, will enable efficient transfer of spatial data between producers and users.

The committee will use the information gathered at the meeting in developing its longer term strategy for the infrastructure and liaison with the non-Federal community. The views of the public, particularly those interested in the production, use, and sharing of geographic data, are requested.

**DATES:** August 3, 1992, 1:30 p.m. to 5 p.m.

**ADDRESSES:** Ballroom, Ramada Renaissance Techworld, 999 Ninth Street, NW., Washington, DC. The meeting will be held concurrently with the American Society of Photogrammetry and Romote Sensing's Convention of Mapping and Monitoring Global Change.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit views concerning the topic to be addressed at the meeting, contact either Jeff Booth, U.S. Environmental Protection Agency, 401 M Street, SW. (3405R), Washington, DC 20460; telephone (703) 557-3088; telefax (703) 557-3186; or Michael Domaratz, U.S. Geological Survey, 590 National Center, Reston, Virginia 22092; telephone (703) 648-4533; telefax (703) 648-5755.

**SUPPLEMENTARY INFORMATION:** Admittance of the public will be limited to the seating available. Persons planning to attend the meeting should contact Judith Wildman at (703) 648-4150 prior to August 1. Background materials for the meeting are available by contacting Ms. Wildman.

Dated: June 15, 1992.

**Allen H. Watkins,**

*Chief, National Mapping Division.*

[FR Doc. 92–16113 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–31–M

## National Park Service

### Statue of Liberty National Monument Ellis Islands, New York, NY

### Intent to Prepare an Environmental Impact Statement and Notice of Public Scoping Meeting

In accordance with section 102(c) of the National Environmental Policy Act

of 1969, and pursuant to the Report of the Senate Committee on the Department of Transportation and Related Agencies Appropriation Bill, 1992, the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) concerning the establishment of a bridge to Ellis Island, Statute of Liberty National Monument, New York from Liberty State Park, Jersey City, New Jersey as a means of providing alternate access to the island. A no-action/no build alternative will be analyzed along with alternatives including rehabilitation of the existing temporary/construction bridge, developing a new bridge, tunnel or other mode of access with an array of equipment options to shuttle visitors and provide emergency service and analysis of administrative changes to enhance access.

The NPS will hold public meetings as indicated below for the purpose of soliciting both written and verbal comments concerning the scope of alternatives and impacts to be analyzed. The NPS expects to be evaluating impacts on topics such as: Visitor services, cultural resource preservation, park land protection and/or enhancement, water, air, and sound quality, vehicular traffic, unrestricted or open water navigation, and local socio-economic effects.

Public input will help expand and/or confirm these topics for impact analysis. Meetings will be held as follows:

Tuesday, July 21, 1992, 2 p.m.

Interpretive Center, Freedom Way, Liberty State Park, Jersey City, New Jersey

Thursday, July 30, 1992, 2 p.m.

Federal Hall National Memorial, 26 Wall Street, New York, New York

The public response period for written comments on this phase of NEPA compliance work will close September 1, 1992, after which a synthesis of public comments will be prepared and made available. Anticipating extensive interest and concern in this undertaking, a draft Environmental Impact Statement (EIS) is expected to be ready for public and interagency review in the Fall of 1993, commensurate with the progress of other related compliance requirements pertaining to such laws as the National Historic Preservation Act of 1966. Integral with or following these compliance responsibilities of the NPS will be the compliance work of the regulatory agencies such as the US Coast Guard for navigational safety, the US Army Corps of Engineers for water quality and structural placement, and various New York and New Jersey state agencies.

The responsible official for the EIS is Marie Rust, Acting Regional Director, North Atlantic Region, National Park Service. Written comments and suggestions concerning the range of alternatives and related impacts to be evaluated in the EIS must be submitted to Michael Alderstein, Chief, Office of Urban Projects, National Park Service, 26 Wall Street, New York, New York, 10005, by September 1, 1992.

Dated: June 29, 1992.

**John J. Burchill,**

*Acting Regional Director.*

[FR Doc. 92-16028 Filed 7-8-92; 8:45 am]

BILLING CODE 4310-70-M

## Mississippi River Coordinating Commission Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets the schedule for the forthcoming meetings of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

**DATES:** July 14, 1992, 1 p.m. to 5 p.m.

**ADDRESSES:** City Hall, City of Ramsey, 15153 Nowthen Boulevard, Ramsey, Minnesota.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Mississippi National River and Recreation Area, 175 East 5th Street, suite 418, St. Paul, Minnesota 55101, (612) 290-4160.

**SUPPLEMENTARY INFORMATION:** The Mississippi River Coordinating Commission was established by Public Law 100-696, November 18, 1988.

Dated: June 12, 1992.

**Edward D. Carlin,**

*Acting Regional Director, Midwest Region.*

[FR Doc. 92-16029 Filed 7-8-92; 8:45 am]

BILLING CODE 4310-70-M

## Meeting of the National Park System Advisory Board

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of meeting of National Park System Advisory Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that a meeting of the National Park System Advisory Board will be held on August 10 and 11, 1992 at the Many Glacier Hotel, Glacier National Park, Montana. The general business meeting will start at 8 a.m., Monday, August 10, continuing until about 5 p.m. The Board will reconvene at about 8 a.m. the next morning and conclude its meeting by about noon on Tuesday, August 11. The meeting will follow orientation tours and briefings in Glacier National Park and the adjoining Waterton Lakes National Park in Alberta, Canada.

Potential National Historic Landmarks will be discussed during the morning of August 10, along with the Service's studies of the Dutch Harbor Naval Operating Base, Alaska as a potential addition to the National Park System and the Coronado Expedition trail route (AZ, NM, TX, OK and KS) as a potential addition to the National Trails System. Activities relating to the Service's upcoming American Labor History theme study will also be discussed.

Scheduled for discussion during the afternoon of August 10 are Board recommendations regarding National Heritage Corridors, the Service's current concepts for a national system of American Heritage Landscapes/Areas, and the transition of the Presidio of San Francisco to administration by the National Park Service. Other discussion topics will include the Columbus Quincentennial, the Board's participation in the Service's new area study program, and the structuring of Board committees.

Topics for the morning of August 11 will include future activities of the Board's Natural Areas Committee and interim reports on Board activities relating to the Outdoor Recreation Initiative of the Secretary of the Interior, urban park issues, and the education potential of the parks.

The Board will be addressed at various times by officials of the Department of the Interior and the National Park Service, and other miscellaneous topics and reports will be covered. We reserve the right to change the order of the agenda if necessary to accommodate travel schedules, or for other reasons.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Chairman may also permit attendees to address the Board, but may restrict the length of presentations as necessary to allow the Board to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Mr. David L. Jervis, Office of Policy, National Park Service, P.O. Box 37127, Washington, DC 20013–7127 (telephone 202–208–4030). More specific information on potential National Historic Landmarks may be obtained from Senior Historian Benjamin Levy (History Division, telephone 202–343–8164) at the same P.O. box address.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 1220, Main Interior Building, 1849 C Street NW., Washington, DC.

**Herbert S. Cables, Jr.,**

*Deputy Director.*

[FR Doc. 92–16030 Filed 7–8–92; 8:45 am]

BILLING CODE 4310–70–M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 32103]**

### Milford-Bennington Railroad Co., Inc.—Trackage Rights Exemption—Boston and Maine Corp. and Springfield Terminal Railway Co.; Exemption

Boston and Maine Corporation and Springfield Terminal Railway Company have agreed to grant 5.36 miles of overhead trackage rights between Wilton (milepost N–16.36) and Milford, NH (milepost N–11.0) to Milford-Bennington Railroad Company, Inc. (MBR).

The trackage rights will permit MBR to move high volumes of stone and gravel from facilities at Wilton to a processing plant at Milford. MBR intends to consummate the trackage rights agreement 7 days from the filing date of this notice or on July 1, 1992.

As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

The verified notice was filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen and revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the effectiveness of the exemption. Pleadings must be filed with the Commission and served on: Keith G. O'Brien, Rea, Cross & Auchincloss, 1920 N Street NW.—#420, Washington, DC 20036.

Dated: July 1, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92–16086 Filed 7–8–92; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

### Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for individual manufacturing quota for a basic class of controlled substance.

(2) Form 189. Drug Enforcement Administration.

(3) Annually.

(4) Businesses or other for-profit. Form 189 is required to be completed by applicants who desire to manufacture Schedules I and II Controlled Substances. The information is used by DEA to calculate the individual manufacturing quotas for U.S. companies involved in the manufacture of controlled substances.

(5) 85 annual responses at .5 hours per response.

(6) 43 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: July 2, 1992.

**Don Wolfrey,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 92–16088 Filed 7–8–92; 8:45 am]

BILLING CODE 4410–06–M

### Lodging of Consent Decree Pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., in United States v. Cardi Corp.

In accordance with Department policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Cardi Corporation*, Civil Action No. 91–0101T, was lodged, together with an amended complaint, in the United States District Court for the District of Rhode Island on July 2, 1992. The amended complaint alleges that the defendants, Cardi Corporation and Cardi Materials Corporation, violated the Clean Air Act, 42 U.S.C. 7401 *et seq.*, at an asphalt plant located in Warwick, Rhode Island, by failing to conduct emissions testing and to comply with emissions limits set forth in the New Source Performance Standard for Hot Mix Asphalt Plants, 40 CFR part 60, subpart I. The amended complaint also alleges that Cardi Corporation violated the Clean Air Act by failing to comply with an administrative order issued pursuant to that Act by the United States Environmental Protection Agency. The proposed Decree, if entered, will resolve the liability of the defendants for these alleged violations. The proposed Decree would require the defendants to pay a civil penalty and to implement an

operations and maintenance program to ensure compliance with the Clean Air Act at the Warwick plant.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Decree. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cardi Corporation*, Department of Justice No. 90-5-2-1-1099.

The proposed Decree may be examined at the office of the United States Attorney, Westminster Square Building, 10 Dorrance Street, Providence, Rhode Island, 02903; at the Region I office of the United States Environmental Protection Agency, One Congress Street, Boston, Massachusetts, 02203; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20044, 202-347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $4.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

**Roger Clegg,**

*Acting Assistant Attorney General, Environment & Natural Resources Division.*

[FR Doc. 92-16126 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 22, 1992, a proposed consent decree in *United States* v. *Eagle-Picher Industries, Inc.*, Civil Action No. 89-C-165, was lodged with the United States District Court for Colorado. The action was brought under sections 301(a) and 309(b) and (d), of the Clean Water Act, 33 U.S.C. 1311(a) and 1319(b) and (d), for Eagle-Picher's violations of industrial wastewater pretreatment regulations, 40 CFR 403 and 461, at its battery manufacturing plant located in Security, Colorado.

The proposed consent decree requires the defendant to pay civil penalties in the amount of $150,000.00. In addition, the consent decree requires the defendant to maintain future compliance with all applicable industrial wastewater pretreatment regulations and requirements of the Clean Water Act.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Eagle-Picher Industries, Inc.*, DOJ Ref. No. 90-5-1-1-3288.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, District of Colorado, 633 17th Street, suite 1600, Denver, Colorado 80202. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, (202) 347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $4.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

**Roger Clegg,**

*Acting Assistant Attorney General Environment and Natural Resources Division.*

[FR Doc. 92-16015 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

## Consent Judgment in Action To Enjoin Violations of the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *United Air Lines, Inc.*, No. 92-2405 FMS, was lodged with the United States District Court for the Northern District of California on June 24, 1992.

The consent decree requires payment of a $234,500 penalty by defendant for violations of the Clean Air Act. The consent decree also provides that defendant will commit to measures necessary to achieve compliance with Clean Air Act and the violatile organic compound emission limit in the California State Implementation Plan.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *United Air Lines, Inc., DOJ Ref. No. 90-5-2-1-1449.*

The consent decree may be examined at the Office of the United States Attorney, District of California, 450 Golden Gate Avenue, San Francisco, California 36055; at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097 Washington, DC 20004, Tel. (202) 347-2072. A copy of the consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please tender a check in the amount of $3.75 (25 cents per page reproduction charge) payable to the Consent Decree Library.

**Roger Clegg,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 92-16016 Filed 7-8-92; 8:45 a.m.]

BILLING CODE 4410-01-M

## Antitrust Division

### Notice Pursuant to the National Cooperative Research Act of 1984—Advanced Television Test Center, Inc./ Cable Television Laboratories, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Television Test Center, Inc. ("Test Center") and Cable Television Laboratories, Inc. ("CableLabs") on May 18, 1992, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The additional notification was filed for the purpose of extending the protections of Section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On October 2, 1989, Test Center and CableLabs filed their original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 8, 1989 (54 FR 46997). On February 20, 1991, and February 18, 1992, CableLabs and Test Center filed additional written notifications. The Department published notices in the **Federal Register** in response to the additional notifications on April 10, 1991 (56 FR 14542), and April 15, 1992 (57 FR 13121), respectively.

Pursuant to Section 6(b) of the Act, the identities of the additional members of CableLabs are: Barden Communications, Inc., Detroit, MI—effective 2/18/92; Duhamel Cable, Rapid City, SD—effective 4/10/92; Prestige

Cable TV of Maryland, Inc., Cavlersville, GA—effective 2/26/92; and Princetown Cable Company, Schenectady, NY—effective 3/13/92.

The area of activity remains the coordination of testing efforts to facilitate the development of data that the FCC and its Advisory Committee on Advanced Television Service, as well as the Advanced Television Systems Committee, will require and utilize to determine appropriate actions with regard to the introduction of advanced television service in the United States. The parties may also undertake additional ATV tests not required by the Advisory Committee on Advanced Television Service.

**Joseph H. Widmar,**

*Director of Operations Antitrust Division.*

[FR Doc. 92-16122 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc. and General Instrument Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") and General Instrument Corporation through its Jerrold Communications Division ("GI") on May 18, 1992, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The additional notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On September 20, 1990, CableLabs and GI filed their original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 1, 1990 (55 FR 46111). On February 20, 1991, and February 18, 1992, CableLabs and GI filed additional written notifications. The Department published notices in the **Federal Register** in response to the additional notifications on April 10, 1991 (56 FR 14542), and April 15, 1992 (57 FR 13122), respectively.

Pursuant to section 6(b) of the Act, the identities of the additional members of CableLabs are: Barden Communications, Inc., Detroit, MI—effective 2/18/92; Duhamel Cable, Rapid City, SD—effective 4/10/92; Prestige Cable TV of Maryland, Inc., Cavlersville, GA—effective 2/26/92; and Princetown Cable Company, Schenectady, NY—effective 3/13/92.

The area of activity remains the cooperation in the conduct of National Television System Committee (NTSC) visual degradation tests to evaluate the subjective effects of typical impairments and other conditions on NTSC television pictures generated in cable television systems.

**Joseph H. Widmar,**

*Director of Operations Antitrust Division.*

[FR Doc. 92-16127 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc./General Instrument Corporation/Scientific-Atlanta, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs"), General Instrument Corporation ("GI") and Scientific-Atlanta, Inc. ("S-A") on May 18, 1992, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The additional notification was filed for the purpose of invoking the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On June 21, 1991, CableLabs, GI and S-A filed their original notification pursuant to section 6(a) of the Act. The Department published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 1, 1991 (56 FR 36847). On February 18, 1992, CableLabs filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on April 15, 1992 (57 FR 13122).

Pursuant to section 6(b) of the Act, the identities of the additional members are: Barden Communications, Inc., Detroit, MI—effective 2/18/92; Duhamel Cable, Rapid City, SD—effective 4/10/92; Prestige Cable TV of Maryland, Inc., Cavlersville, GA—effective 2/26/92; and Princetown Cable Company, Schenectady, NY—effective 3/13/92.

The area of activity remains the cooperation in the education of the cable industry and the public concerning the availability of, and potential for, digital video transmission and compression technologies in the distribution and delivery of cable television programming. The parties also plan to cooperate in demonstrations of: (a) The distribution of compressed, digitally-transmitted NTSC signals to cable television systems and (b) the delivery and telecast of advanced television (ATV) programming by the cable industry. These demonstrations will be coordinated by CableLabs using high definition television (HDTV) and other ATV proponent television systems that wish to participate.

**Joseph H. Widmar,**

*Director of Operations Antitrust Division.*

[FR Doc. 92-16128 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research Act of 1984; Cable Television Laboratories, Inc./PCN America, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") and PCN America, Inc. ("PCN America") on May 18, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The additional notification was filed for the purpose of invoking the protection of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On March 25, 1991, CableLabs and PCN America filed their original notification pursuant to section 6(a) of the Act. The Department published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 14, 1991 (56 FR 27539). On February 18, 1992, CableLabs filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on April 15, 1992 (57 FR 13122).

Pursuant to section 6(b) of the Act, the identities of the additional members are: Barden Communications, Inc., Detroit, MI—effective 2/18/92; Duhamel Cable, Rapid City, SD—effective 4/10/92; Prestige Cable TV of Maryland, Inc., Cavlersville, GA—effective 2/26/92; and Princetown Cable Company, Schenectady, NY—effective 3/13/92.

The area of activity remains the cooperation in the development of interface concepts between personal communications networks and cable system networks, including the exchange of information relating to the functions and architecture of personal communications networks, and cooperation in the conduct of radio

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frequency tests in connection with experimental personal communications network licenses issued by the FCC.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 92-16129 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research Act of 1984; Cable Television Laboratories, Inc./Tele-Communications, Inc./Viacom International Inc./Public Broadcasting Service

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs"), Tele-Communications, Inc. ("TCI"), Viacom International Inc. ("Viacom") and Public Broadcasting Service ("PBS") on May 18, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The additional notification was filed for the purpose of invoking the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On November 27, 1991, CableLabs, TCI, Viacom and PBS filed their original notification pursuant to section 6(a) of the Act. The Department published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 3, 1992 (57 FR 4061). On February 18, 1992, CableLabs filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on April 15, 1992 (57 FR 13120).

Pursuant to section 6(b) of the Act, the identities of the additional members are: Barden Communications, Inc., Detroit, MI—effective 2/18/92; Duhamel Cable, Rapid City, SD—effective 4/10/92; Prestige Cable TV of Maryland, Inc., Cavlersville, GA—effective 2/26/92; and Princetown Cable Company, Schenectady, NY—effective 3/13/92.

The area of activity remains the participation and coordination with each other in a Request For Proposals ("RFP") for development of one or more Digital Compression Delivery System(s) that will enable cable television program suppliers to provide multiple programs per satellite transponder channel to cable television system headends and customers. The parties intend to evaluate the responses to the RFP and may independently award contract(s) to develop the System(s).

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 92-16130 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

## Pursuant to the National Cooperative Research Act of 1984 Diversey Corp. Phosphoric Acid Joint Venture

Notice is hereby given that, on June 12, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Diversey Corporation filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of three parties to the Phosphoric Acid Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Diversey Corporation advised that Chemland, Inc., Turlock, California, Mason Chemical Co., Chicago, Illinois; and The Procter and Gamble Co., Cincinnati, Ohio have become parties to the Joint Venture.

No other changes have been made in either the membership or planned activity of the Joint Venture. Membership in this Joint Venture remains open, and the members intend to file additional written notification disclosing all changes in membership.

On April 26, 1991, Diversey Corporation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 20, 1991 (56 FR 23089).

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 92-16017 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research Act of 1984; Microelectronics and Computer Technology Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") on June 2, 1992 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain information. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). MCC and its shareholders filed additional notifications on March 29, 1985, July 30, 1986, November 7, 1986, December 23, 1986, February 25, 1987, December 23, 1987, March 4, 1988, August 16, 1988, September 19, 1989, January 16, 1990, March 7, 1990, April 11, 1990, July 11, 1990, October 2, 1990, January 17, 1991, March 1, 1991, July 30, 1991, November 12, 1991, February 11, 1992, March 13, 1992, and May 21, 1992.

The Department published notices in the **Federal Register** in response to these additional notifications on April 23, 1985 (50 FR 15989), September 10, 1986 (51 FR 32263), December 8, 1986 (51 FR 44132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8661), January 22, 1988 (53 FR 1859), March 29, 1988 (53 FR 10159), September 22, 1988 (53 FR 36910), October 26, 1989 (54 FR 43631), March 8, 1990 (55 FR 8612), April 9, 1990 (55 FR 13200), May 8, 1990 (55 FR 19114), October 24, 1990 (55 FR 42916), December 28, 1990 (55 FR 53367), February 11, 1991 (56 FR 5424), July 1, 1991 (56 FR 29976), August 29, 1991 (56 FR 42757), January 15, 1992 (57 FR 1760), March 24, 1992 (57 FR 10190), and June 30, 1992 (57 FR 29100), respectively. A **Federal Register** notice has not yet been published for the MCC notification filed on May 21, 1992. On October 21, 1985, MCC filed an additional notification for which a **Federal Register** notice was not required.

VLSI Technology, located in San Jose, California, has become an Associate Member of MCC and a participant in the Single/Few Chip Packaging Project within MCC's Packaging/Interconnect Technology Program.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 92-16131 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

## Pursuant to the National Cooperative Research Act of 1984—Southwest Research Institute

Notice is hereby given that, on May 19, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Southwest Research Institute

("SwRI") filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission of a project entitled "Characterization of Annular Flow in the Presence of Mechanical Aids and Washouts in Full-Scale Horizontal Wellbores." The notifications disclose (1) the identities of the parties to the project and (2) the nature and objectives of the research to be performed in accordance with the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general area of planned activities are given below.

The current parties to this project, identified by this notice, are: Chevron Oil Field Research Company, LaHabra, CA; Halliburton Services, a division of Halliburton Company, Duncan, OK; Mobile Research and Development Corporation, Dallas, TX; Schlumberger Cambridge Research Limited, Cambridge, England; and Texas, Inc., Bellaire, TX.

The purpose of the project is to investigate and document the behavior of commercially available mechanical aids during the primary cementing operations when the annulus contains a washout section. The primary objectives of the research and development program will be to evaluate the ability of selected mechanical aids to alter the flow patterns within an annular washout for Newtonian and non-Newtonian fluids and to provide fundamental data on the flow patterns for Newtonian and non-Newtonian fluid flow in an annular washout section. The major tasks to this project are: (1) To modify the existing annular flow loop and facility; (2) to perform tests using water and analyze the results; (3) to perform tests using a non-Newtonian slurry and analyze the results; and (4) to report the results to participants.

Membership in this project remains open, and the parties intend to file additional written notifications disclosing all changes in membership of this project. Information regarding participation in this project may be obtained from Southwest Research Institute, 6220 Culebra Road, San Antonio, Texas 78228-0510.

**Joseph H. Widmar,**

*Director of Operations Antitrust Division.*

[FR Doc. 92-16019 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

## Pursuant to the National Cooperative Research Act of 1984—Fabric Softener Quats Steering Committee and Joint Venture

Notice is hereby given that, on June 15, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Sherex Chemical Company, Inc. has filed written supplemental notifications for the Fabric Softener Quats Steering Committee and Joint Venture simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the Joint Venture membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically the Joint Venture advised that Stepan Company, Northfield, IL, has become a party to the Joint Venture and Capital City Products Company, Janesville, WI, has withdrawn from the Joint Venture.

No other changes have been made in either the membership or planned activities of the Joint Venture.

On July 25, 1988, the Fabric Softener Quats Steering Committee and Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 19, 1988 (53 FR 31772).

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 92-16018 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

## Pursuant to the National Cooperative Research Act of 1984—Unix International, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. ("UNIX") on May 5, 1992, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 30, 1989, UNIX filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 1, 1989 (54 Fed. Reg. 8608). On May 4, 1989, August 1, 1989, October 31, 1989, January 31, 1990, May 1, 1990, July 30, 1990, November 13, 1990, February 6, 1991, May 17, 1991, August 12, 1991, November 5, 1991, and February 5, 1992, UNIX filed additional written notifications. The Department published notices in the **Federal Register** in response to the additional notifications on June 22, 1989 (54 FR 26266), August 17, 1989 (54 FR 33985), November 29, 1989 (54 FR 49124), March 14, 1990 (55 FR 9517), May 21, 1990 (55 FR 20862), September 17, 1990 (55 FR 38173), December 28, 1990 (55 FR 53368), March 15, 1991 (56 FR 11273), June 20, 1991 (56 FR 28417), September 12, 1991 (56 FR 46445), December 17, 1991 (56 FR 65509), and April 16, 1992 (57 FR 13382), respectively.

As of April 28, 1992, the following have become members of UNIX International, Inc.: Lehman Brothers, New York, NY; Legent Corporation, Vienna, VA; Softmark Australia, North Sydney, AUSTRALIA NSW; NIIT Ltd., New Delhi, INDIA; Union Bank of Switzerland, Bahnhofstrasse, SWITZERLAND; Novell, Inc., San Jose, CA; and Univel, San Jose, CA.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 92-16020 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

## Pursuant to the National Cooperative Research Act of 1984; West Agro, Incorporated—Iodophors Joint Venture

Notice is hereby given that, on June 16, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), West Agro, Incorporated—Iodophors Joint Venture ("Joint Venture") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the Joint Venture membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Joint Venture advised that BioSentry, Inc., Stone Mountain, GA, has become a member of the Joint Venture. In addition, GAF Chemicals has changed its corporate name to Rhone-Poulenc Surfactants.

No other changes have been made in either the membership, corporate names, or planned activities of the Joint Venture.

On December 15, 1987, the Iodophors Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 15, 1988, (53 FR 1074), as corrected by 53 FR 4232.

On May 24, 1988, December 13, 1988, January 18, 1989, and November 2, 1989, the Joint Venture filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on June 13, 1988 (53 FR 22059), January 12, 1989 (54 FR 1256), February 21, 1989 (54 FR 1490), and January 19, 1990 (55 FR 1882), respectively.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 92-16021 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research Act of 1984; Ethanol Joint Venture

Notice is hereby given that, on June 16, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Zep Manufacturing Co. filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the Ethanol Joint Venture ("Joint Venture"). The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The change consists of the addition of the following parties to the Ethanol Joint Venture: Midwest Dental Products Corporation, Des Plaines, IL and Palermo Sales Company, Inc., West Bethesda, MD.

No other changes have been made in either the membership, corporate names or planned activities of the Joint Venture.

On May 30, 1990, the Ethanol Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on July 5, 1990 ((55 FR 27700). On April 16, 1991, the Ethanol Joint Venture filed an additional notification. The Department of Justice published a notice in the **Federal Register** in response to this additional notification on June 20, 1991 (56 FR 28415).

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 92-16132 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-01-M

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on March 10, 1992, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| 4-Methoxyamphetamine (7411) | I. |
| Amphetamine (1100) | II. |
| Phenylacetone (8501) | II. |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 10, 1992.

Dated: June 22, 1992.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92-16140 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-09-M

### Manufacturer of Controlled Substances; Registration

By Notice dated March 5, 1992, and published in the **Federal Register** on March 16, 1992 (57FR9139), Mallinckrodt Specialty Chemicals Company, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cocaine (9041) | II. |
| Codeine (9050) | II. |
| Diprenorphine (9058) | II. |
| Etorphine Hydrochloride (9059) | II. |
| Dihydrocodeine (9120) | II. |
| Oxycodone (9143) | II. |
| Hydromorphone (9150) | II. |
| Diphenoxylate (9170) | II. |
| Hydrocodone (9193) | II. |
| Levorphanol (9220) | II. |
| Meperidine (9230) | II. |
| Methadone (9250) | II. |
| Methadone-intermediate (9254) | II. |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II. |
| Morphine (9300) | II. |
| Thebaine (9333) | II. |
| Opium extracts (9610) | II. |
| Opium fluid extract (9620) | II. |
| Opium tincture (9630) | II. |
| Opium, powdered (9639) | II. |
| Opium, granulated (9640) | II. |
| Oxymorphone (9652) | II. |
| Alfentanil (9737) | II. |
| Sufentanil (9740) | II. |
| Fentanyl (9801) | II. |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 22, 1992.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92-16141 Filed 7-8-92; 8:45 am]

BILLING CODE 4410-09-M

### Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 25, 1992, Sigma Chemical Company, 3500 DeKalb Street,

St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Methcathinone | I |
| Methaqualone (2565) | I |
| Ibogaine (7260) | I |
| Lysergic acid diethylamide (7315) | I |
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| 4-Bromo-2,5-dimethoxyamphetamine (7391). | I |
| 4-Methyl 1-2,5-dimethoxyamphetamine (7395). | I |
| 2,5-Dimethoxyamphetamine (7396) | I |
| 3,4-Methylenedioxyamphetamine (7400) | I |
| 3,4-Methylenedioxymethamphetamine (7405). | I |
| 4-Methoxyamphetamine (7411) | I |
| Bufotenine (7433) | I |
| Diethyltryptamine (7434) | I |
| Dimethyltryptamine (7435) | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |
| N-Ethyl-1-phenylcyclohexylamine (7455) | I |
| 1-(1-Phenylcyclohexyl)pyrrolidine (7458) | I |
| 1-[1-(2-Thienyl)cyclohexyl]piperdine (7470). | I |
| Etorphine (except HCl) (9056) | I |
| Difenoxin (9168) | I |
| Heroin (9200) | I |
| Morphine-N-oxide (9307) | I |
| Normorphine (9313) | I |
| 1-Methyl-4-phenyl-4-propionoxypiperidine (9661). | I |
| 3-Methylfentanyl (9813) | I |
| Alpha-methylfentanyl (9814) | I |
| Beta-hydroxyfentanyl (9830) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Fenethylline (1503) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Phencyclidine (7471) | II |
| 1-Piperidinocyclohexanecarbonitrile (8603). | II |
| Anilendine (9020) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Diprenorphine (9058) | II |
| Benzoylecgonine (9180) | II |
| Ethylmorphine (9190) | II |
| Meperidine (9230) | II |
| Methadone (9250) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Morphine (9300) | II |
| Oxymorphone (9652) | II |
| Alfentanil (9737) | II |
| Sufentanil (9740) | II |
| Fentanyl (9801) | II |

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 10, 1992.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 22, 1992.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92–16142 Filed 7–8–92; 8:45 am]

BILLING CODE 4410-09-M

## NATIONAL COMMISSION ON AMERICA'S URBAN FAMILIES

### Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the National Commission on America's Urban Families will conduct site visits in Los Angeles, California on Thursday, July 23, 1992. For exact times and locations of site visits, please contact the Commission two days prior to the event at 202–690–6462.

The purpose of the site visits is to inform the Commission about programs and approaches that work to strengthen America's urban families and, as each setting allows, enable participants to express their views on this topic.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 200 Independence Avenue, SW. room 305–F, Washington, DC 20201.

**Anna Kondratas,**

*Executive Director.*

[FR Doc. 92–15936 Filed 7–8–92; 8:45 am]

BILLING CODE 6150-04-M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Networking and Communications Research and Infrastructure; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Networking and Communications Research and Infrastructure

*Date and Time:* July 27, 1992; 8:30 am to 5 pm

*Place:* Room 416, National Science Foundation, 1800 G Street, NW, Washington, DC 20550

*Type of Meeting:* Closed

*Contact Person:* Mr. Daniel Vanbelleghem, NSFNET Program, National Science Foundation, room 416, Washington, DC 20550 (202 357-9717)

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the NSFNET Program.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552 b (c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 6, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92-16102 Filed 7-8-92; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–029]**

### Yankee Atomic Electric Co.; Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption to the requirement of 10 CFR 50.71(e) to periodically submit to the NRC an update to the Final Safety Analysis Report (FSAR). This exemption would be granted to the Yankee Atomic Electric Company (Yankee or the licensee) for the Yankee Nuclear Power Station (YNPS or plant) located in Franklin County, Massachusetts.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would grant an exemption from the requirement of 10 CFR 50.71(e) to periodically update the FSAR. The licensee requested this exemption in their letter of June 19, 1992. This exemption is the proposed action being considered by the NRC.

*The Need for the Proposed Action*

The licensee's letter of June 19, 1992, stated that the plant has permanently ceased power operation and that all nuclear fuel has been removed from the containment to the spent fuel pool and therefore the requirements of 10 CFR 50.71(e) are no longer applicable to YNPS.

*Environmental Impacts of the Proposed Action*

The proposed exemption does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the exemption. This would not reduce environmental impacts of the facility and would not enhance the protection of the environment nor public health and safety. However, it would result in a significant waste of licensee resources that could be better applied to an orderly decommissioning of the facility.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in previous reviews for the Yankee Nuclear Power Station. The plant was licensed prior to the requirement for issuance of a Final Environmental Statement.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated June 19, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room at Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 2nd day of July 1992.

For the Nuclear Regulatory Commission.

**Richard F. Dudley, Jr.,**

*Acting Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 92-16134 Filed 7-8-92; 8:45 am]

BILLING CODE 7590-01-M

## DOE-NRC Meeting to Discuss the Status of DOE Plans Relating to the Classification and Disposal of the Hanford Tank Wastes

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** Members of the Nuclear Regulatory Commission (NRC) staff will attend the Department of Energy (DOE) meeting to discuss the status of DOE's plans relating to the classification and disposal of the Hanford double-shell tank wastes.

**DATES:** July 16, 1992.

**ADDRESSES:** Tower Inn, 1515 George Washington Way, Richland, Washington 99352.

**FOR FURTHER INFORMATION CONTACT:** Chad J. Glenn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 504-2546.

**SUPPLEMENTARY INFORMATION:** The DOE issued a Final Environmental Impact Statement (FEIS) entitled Disposal of Hanford Defense High-Level Transuranic and Tank Wastes in December 1987. Subsequent to the publication of the FEIS, NRC, DOE and other interested parties met on several occasions to exchange information on approaches for classifying and disposing of the Handord double-shell tanks. In March 1989, DOE submitted a proposal to NRC utilizing an overall material balance of tank waste at the Hanford site to demonstrate that the largest practical amount of total site activity attributable to "first-cycle solvent extraction" wastes would be segregated, with the residual activity after such segregation being disposed in the form of grout in concrete vaults. In September 1989, NRC agreed that the criteria used by DOE for classifying the grout feeds as low-level waste were appropriate.

This meeting will provide an opportunity for NRC and other interested parties to be briefed on the status of DOE's plans for processing and disposal of the Hanford tank wastes.

Dated at Rockville, Maryland, this 2nd day of July 1992.

For the Nuclear Regulatory Commission.

**Timothy C. Johnson,**

*Acting Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, NMSS.*

[FR Doc. 92-16135 Filed 7-8-92; 8:45 am]

BILLING CODE 7590-01-M

## PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES

**Meeting**

**SUMMARY:** The Presidential Commission on the Assignment of Women in the Armed Forces will hear testimony in Chicago on July 13th, 14th, & 15th. Presentations will be made by advocacy groups, Women's Army Corps, Women's Veterans Association, military service members and civilians on policies pertaining to the Assignment of Women in the Military. Additionally, each of the Commission's four Fact Finding Panels will meet to discuss women in the Armed Forces.

*Dates:* Monday & Tuesday, July 13th & 14th, 8 a.m. to 6 p.m., Fact Finding Panels Meetings (Rooms to be announced), Northwestern University, Rebecca Crown Center, Hardin Hall, 633 Clark Street, Evanston, Illinois 60208, Wednesday, July 15th, 8 a.m. to 1 p.m.,

Northwestern University, Rebecca Crown Center, Hardin Hall, 633 Clark Street, Evanston, Illinois 60208.

*Note:* In addition to the Chicago hearing, The Presidential Commission on the Assignment of Women in the Armed Forces has scheduled the following regional hearings: Los Angeles, August 6, 7, & 8. Dallas, August 27, 28, & 29.

*Status:* Open to Public.

*Contact:* Please call for more information and possible schedule changes: Contact: Magee Whelan or Kevin K. Kirk, (202) 376–6905.

The Presidential Commission on the Assignment of Women in the Armed Forces was established by Congress in the National Defense Authorization Act of 1992 (Public Law 102–190). The 15-member commission shall assess the laws and policies governing the assignment of women in the military and shall make recommendations on such matters to the President by November 15, 1992.

W.S. Orr,

*Staff Director.*

[FR Doc. 92–16090 Filed 7–8–92; 8:45 am]

BILLING CODE 6820–CO–M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30872; File No. SR–AMEX–92–15]

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Guidelines for Equity Specialists Regarding Their Use of Options to Hedge Positions in Their Specialty Stocks

June 30, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 18, 1992, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its "Guidelines for Specialists' Specialty Stock Options Transactions Pursuant to Rule 175" ("Guidelines") to provide greater flexibility to equity specialists when hedging their specialty stock positions with listed options.

The text of the proposed rule change is available at the Office of the Secretary, AMEX, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

In 1985, the SEC approved amendments to AMEX Rule 175 to permit an equity specialist to use listed options overlying his specialty stock to offset or "hedge" the risk of making a market in his specialty stock. Under these amendments, any option transaction effected pursuant to AMEX Rule 175 must be made in compliance with the Guidelines, which provide, among other things, that stock positions may only be hedged in conformity with specified "hedge ratios." Since approval of these amendments in 1985, only one equity specialist has utilized the "hedging" provisions contained in the Guidelines. The AMEX suggests that this lack of options use by equity specialists is a result of rigidity in "hedge ratios," stringent position liquidation requirements and the absence of a rollover provision for established options positions. In addition, the AMEX notes that an equity specialist is required to continuously monitor his options positions relative to his specialty stock position in order to maintain compliance with the Guidelines.

The AMEX accordingly proposes that the Guidelines be amended to permit equity specialists to utilize either the current fixed "hedge ratios," the proposed "dynamic deltas," or the "long-term option strategy" to establish offsetting options positions on their specialty stocks. Except for options positions effected pursuant to the "long-term option strategy" described below, all opening option transactions established pursuant to the Guidelines would be subject to the following three conditions:

(i) The net option position (which may include a combination of both puts and calls) must be on the opposite side of the market from the underlying specialty stock position;

(ii) The option position must be established solely to offset the risk of making a market in the specialty stock; and

(iii) The net option position must not exceed the equivalent number of shares of the specialty stock position that the specialist is offsetting, based on: (a) dynamic deltas,[1] (b) fixed hedge ratios,[2] or (c) any other hedging strategy approved by the Exchange.

Notwithstanding the above requirements, a specialist would be permitted to utilize a calendar rollover [3] provision when he wishes to replace a near-term option series with a more distant term option series with the result that the specialist would become temporarily "over-hedged." In such a situation, the specialist would be permitted to enter an order to acquire the more distant term option position before liquidating the near-term option position, provided that he enters an order to liquidate his previous position by the close of trading on the exchange(s) where the option is traded on the day *after* the new position is acquired.

*(a) Calculation of Option Positions to Offset Existing Stock Positions*

When a specialist's closing position in an underlying specialty stock changes by more than 25% from that which existed when an offsetting option position was established and causes the specialist's *net* option position to exceed the specialty stock position by the equivalent of more than 5,000 shares (*e.g.*, 50 in-the-money option contracts or 50 option contracts with a delta of 1.0) the specialist must enter liquidation order(s) so that his *net* option position no longer exceeds that permitted by the

[1] "Dynamic deltas" represent the ratio of price movement in the option to price movement in the stock. The number of option contracts permitted to offset each 100 shares of stock maybe calculated as follows: (number of shares/100)/delta value. Delta values may range from 0 to 1, and will be calculated by the Exchange on the basis of its pricing model.

[2] The applicable fixed hedge ratios (number of option contracts permitted to offset each 100 shares of stock) are as follows: (a) 1 to 1 (for in-the-money options); (b) 1.5 to 1 (for at-the-money options); and (c) 2 to 1 (for out-of-money options).

[3] A calendar rollover is a method whereby a market participant with an options position that is about to expire replaces it with a position in a farther out series.

hedging convention used. Such orders must be entered by the close of trading on the exchange(s) where the option is traded on the *next* trading day after the day the hedge becomes excessive relative to the stock position.

When the specialist has liquidated an "excess" option position, he shall be deemed to have established a new offsetting stock/option position, and any subsequent changes in his stock position will be figured from that point. If, while liquidation orders are being worked, the specialist's stock position changes such that it is again within 25% of the establishing position, the unexecuted balance of the liquidation order may be cancelled.

When a specialist's position in an underlying specialty stock becomes flat *or* on the same side of the market as the specialist's *net* option position and his same side net option position is equivalent to a stock position of more than 5,000 shares, the specialist must enter liquidation orders so that his *net* option position is no longer on the same side of the market as his stock position. Such orders must be entered by the close of trading on the exchange(s) where the option is traded on the *same* trading day that the options and stock positions became on the same side of the market.

If, while liquidation orders are being worked, the specialist's stock position changes such that it is no longer on the same side of the market as the *net* option position, the unexecuted balance of the liquidation order may be cancelled.

*(b) Long-Term Option Strategy*

As noted above, a specialist may pursue a long-term strategy to offset marketmaking risk and not be subject to the requirements for establishing or liquidating option positions, provided the specialist meets the following four conditions:

(i) The specialist must obtain approval from the Exchange for a long-term option strategy before effecting any option transaction;

(ii) The option position when established must consist of out-of-the-money options which are not near-term;

(iii) The specialist may not establish or have established any other option position in the same specialty stock, other than pursuant to the long-term strategy; and

(iv) The long-term option strategy must provide a reasonable offset of the specialist's dealer risk in the specialty stock regardless of day-to-day fluctuations in his dealer stock position.

(2) Basis

The AMEX believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to perfect the mechanism of a free and open market and promote just and equitable principles of trade. The Exchange further states that the revisions to the Guidelines are consistent with the objectives of Section 6(b) in that they are expected to facilitate the ability of a specialist to provide liquidity to the market by affording the specialist a reasonable means of offsetting the risk of assuming dealer positions in his specialty stock.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Amex believes that the proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-16056 Filed 7-8-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-30873; File No. SR-AMEX-92-13]**

## Self-Regulatory Organization; Filing of Proposed Rule Change by the American Stock Exchange, Inc.; Relating to Position and Exercise Limits for the Institutional Index Option and Settling the Index Based on the Opening Prices of Its Component Securities

June 30, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 4, 1992,[1] the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items, I, II, and III below, which Items have been prepared by the AMEX. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes**

The AMEX has filed proposed rule changes relating to position and exercise limits for its Institutional Index Option ("XII" or "Index") and the settlement method for expiring XII contracts. Specifically, these changes include: (1) Basing the settlement value of expiring XII contracts on the opening prices of component securities instead of their closing prices; (2) increasing position and exercise limits and expanding permissible hedge exemptions from such limits; and (3) providing the Exchange

[1] The AMEX originally filed the proposed rule change with the Commission on May 12, 1992. The AMEX, however, was required to amend its proposal. The Commission subsequently received the amendment on June 4, 1992. This notice incorporates these amendments.

with the ability to grant exemptions from position limits to member organizations facilitating customer orders.

The text of the proposed rule changes are available at the Office of the Secretary, AMEX, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes**

In its filing with the Commission, the AMEX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The AMEX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Changes**

(1) Morning Settlement

Currently, expiration settlement for options on the Standard & Poor's ("S&P") MidCap Index [2] is based on the opening prices of the Index's component stocks while XII Options settle based on the closing prices of their respective component stocks. Since the October 1987 Market Break, there has been considerable discussion concerning index option settlement policies. Recently, the Chicago Board Options Exchange, Inc. ("CBOE") filed a proposal with the Commission to move its S&P 500 Index ("SPX") Option to morning settlement.[3] SPX and XII are fairly comparable indexes in that they measure a similar part of the broad U.S. stock market and their index values are fairly close to each other. In addition, options on both indexes are used predominantly by professional trading firms, institutional investors and other floor professionals. Accordingly, the AMEX has proposed to move the XII Option to morning settlement.

(2) Position and Exercise Limits

Existing Exchange rules provide for XII position and exercise limits of 25,000 contracts on the same side of the market, with no more than 15,000 of such contracts held in series with the nearest expiration month, the so-called "telescoping provision." The AMEX proposes to increase XII position and exercise limits to 45,000 contracts on the same side of the market and eliminate the "telescoping" requirement that options positions be reduced in the nearest term month.

As noted above, options on the XII are traded primarily by institutional and professional investors as well as member firms, all of whom have a need to hedge a large quantity of assets. These users utilize XII options, among other instruments, to help hedge those assets. However, existing XII position limits are viewed to be overly restrictive, causing Exchange officials to assert that users of XII and similar products have started to utilize less restrictive futures contracts and over-the-counter ("OTC") derivatives in order to meet their hedging needs. The AMEX believes that increasing the position limits for XII Options to 45,000 contracts will increase the institutional use of this product which, in turn, will benefit not only the beneficiaries of assets managed by these institutions but also the market as a whole through increased liquidity. Moreover, the elimination of the "telescoping" provision will further enhance liquidity by removing the requirement that XII Options positions be immediately reduced to 15,000 contracts prior to entering the near-term month.

These proposed changes are intended to result in little or no attendant risk to the marketplace since the XII is composed of 75 of the most widely-held stocks in institutional portfolios that have a market value of more than $100 million in investment funds.[4] Thus, the component issues are extremely liquid and the overall index less volatile than individual stocks. In addition, XII Options are European-style, which means they can only be exercised at expiration.

(3) Hedge Exemption

In 1988, the Commission approved Exchange proposals designed to enable public customers with qualified portfolios of stock to better hedge those holdings with index options by permitting a "hedge exemption" for up 75,000 contracts in excess of existing index option position limits.[5] The AMEX now proposes to expand the types of options positions eligible for a hedge exemption from XII position limits and increase the size of the permissible hedge exemptions to 150,000 contracts on the same side of the market. Four of the proposed positions which will be eligible for the exemption are the most commonly used hedge positions which were approved by the Commission for equity option hedge exemptions. For ease of administration, Exchange approval for the proposed hedge exemptions may be granted orally, followed by the submission to the AMEX of the appropriate documentation substantiating the basis for the exemption. The Exchange will continue to review and monitor each application to determine eligibility.

(4) Facilitation Exemption

The AMEX currently has the authority to grant exemptions from index option position and exercise limits to specialists and options traders in order to facilitate their transactions. The Exchange now proposes to have similar authority to grant member organizations exemptions from position limits when they are taking positions that do not exceed 100,000 contracts on the same side of the market to facilitate customer orders. With expanded position limits and the ability of member organizations to facilitate customer orders, institutions and other large investors will now be better able to utilize XII options as a hedging vehicle. The ability to exempt member organizations in this fashion will better serve the needs of the investing public and result in the distribution of risk in connection with large customer transactions. In addition, the Exchange proposes to establish safeguards to insure that these transactions are adequately documented. Lastly, it is important to note that this exemption will be unavailable for index arbitrage transactions and that any position exempted from position limits pursuant to this authority must be hedged within five business days.

The Exchange believes that the proposed rule changes are consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that they are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The AMEX believes that the proposed rule changes will not impose a burden on competition.

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[2] See Securities Exchange Act Release No. 30290 (January 27, 1992), 57 FR 4072.

[3] See Securities Exchange Act Release No. 30673 (May 6, 1992), 57 FR 20539

[4] To qualify for inclusion in the XII, stocks must be held by a minimum of 200 of the reporting institutions filing Section 13(f) reports and must have traded at least 7 million shares in each of the two preceding calendar quarters.

[5] *See* Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others*

The Exchange's Options Committee, a committee composed of member firm and floor professionals voted in support of these changes on April 16, 1992. In addition, the Exchange has received a comment letter from Kidder, Peabody & Co., dated April 23, 1992 requesting relief from existing XII position limits.

**III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule changes, or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the AMEX. All submissions should refer to the file number in the caption above and should be submitted by July 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-16067 Filed 7-8-92; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-30863; File No. SR-DTC-92-01]**

## Self-Regulatory Organizations; The Depository Trust Company; Filing of Amendment Number One to Proposed Rule Change Relating to DTC Eligibility of Commercial Paper

June 26, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") an amendment to a proposed rule change relating to the eligibility of Commercial Paper ("CP") in DTC's Same-Day-Funds Settlement ("SDFS") service that revises DTC's existing Procedures applicable to CP Issuing Paying Agents ("IPA").[1] The amendment would add a new section to DTC's SDFS Procedures, entitled "IPA Failure to Settle: DTC Notification of CP Issuers." The Commission is publishing this notice to solicit comments on the amendment from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of Amendment Number One**

DTC's amendment to the commercial paper proposal will add new procedures that will provide for timely issuer notification by DTC of an IPA failure to settle on matured CP.

1. Under SDFS failure-to-settle procedures, if on the business day following the failure of an SDFS Participant to settle its net debit obligation to DTC, the Participant is still unable to settle, DTC could eliminate the net debit by reselling to the deliveries securities whose receipt for value by the failing Participant had resulted in its net settlement obligation to DTC. If the failing Participant were an IPA of a CP issuer, it is possible that under DTC's SDFS procedures, matured CP could be resold to the DTC Participants that had presented (*i.e.*, delivered) it to the failing IPA for payment the previous day.

2. DTC will notify CP issuers if their IPA has failed to settle, as follows:

a. If by not later than 12 noon (all times are Eastern Time) on the DTC business day following the settlement day for which an IPA has failed to settle, the IPA has not yet settled with DTC, DTC will begin to contact each issuer of DTC-eligible CP identified on DTC's files with that IPA via facsimile transmission.

b. The facsimile transmission notice will advise the issuer that its IPA has failed to settle and invite any issuer desiring information concerning the impact of the failure-to-settle on the presentment of its matured paper to contract DTC at special telephone number(s) beginning at 4 p.m. that day.

c. Beginning at 4 p.m., DTC will respond to telephone inquiries from each issuer contacted earlier, with information on the aggregate dollar amount of maturity presentments of its CP for which the IPA failure to pay DTC. DTC will arrange also to send to issuers (via facsimile, mail, or physical pick up at DTC) detailed information on each CP maturity transaction not settled, including the identity of the DTC Participant to which the matured CP was resold.

3. For DTC to establish a complete file of contact information for CP issuers, each IPA will be required to provide DTC with the following information concerning each CP issuer for which it acts. This information will be provided at the time the issuer's CP program is sought to be made DTC-eligible.

a. The name and telephone number and facsimile transmission number of a senior official in the treasurer's office of the issuer and,

b. A backup contact name and telephone number. Periodically, the IPA will be asked to confirm the accuracy of information previously provided.

**II. Date of Effectiveness of Amendment Number One and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule as amended, or

[1] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission (June 15, 1992). The proposal amends File No. SR-DTC-92-01, Securities Exchange Act Release No. 30410 (February 25, 1992), 57 FR 7826 (notice of proposal to make permanent DTC CP program in its SDFS service). For a more extensive description of this program, see Securities Exchange Act Release Nos. 28515 (October 3, 1990), 55 FR 41401, 28518 (October 5, 1990), 55 FR 42114 (orders temporarily approving DTC's CP program in its SDFS service), and 29604 (August 23, 1992), 56 FR 43408 (order modifying the formula by which DTC calculates adjustable net debit caps). See, also, Securities Exchange Act Release No. 30649 (April 29, 1992), 57 FR 19319 (order temporarily extending DTC's CP program in its SDFS service until July 31, 1992).

(B) Institute proceedings to determine whether the proposed rule change as amended should be disapproved.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to this amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–92–01 and should be submitted by July 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–16143 Filed 7–8–92; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–30882; File No. SR–NASD–92–28]**

## Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Improvements in the NASD Code of Arbitration Procedure

July 1, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 17, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The NASD is proposing to amend section 12 of the NASD Code of Arbitration Procedure ("Code") and article III, section 21 of the Rules of Fair Practice to improve the efficiency of its arbitration process. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

**Code of Arbitration Procedure**

* * * * *

Part III Uniform Code of Arbitration

* * * * *

**Required Submission**

Sec. 12. (a), (b) and (c) unchanged.

*(d) Class Action claims.*

*(1) A claim submitted as a class action shall not be eligible for arbitration under this Code at the Association.*

*(2) Any claim filed by a member or members of a putative or certified class action is also ineligible for arbitration at the Association if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to an arbitral forum not sponsored by a self-regulatory organization for classwide arbitration. However, such claims shall be eligible for arbitration in accordance with section 12(a) or pursuant to the parties' contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.*

*Disputes concerning whether a particular claim is encompassed by a putative or certified class action shall be referred by the Director of Arbitration to a panel of arbitrators in accordance with section 13 of section 19 of the code, as applicable. Either party may elect instead to petition the court with jurisdiction over the putative or certified class action to resolve such disputes. Any such petition to the court must be filed within ten business days of receipt of notice that the Director of Arbitration is referring the dispute to a panel of arbitrators.*

*(3) No member or associated person shall seek to enforce any agreement to arbitrate against a customer that has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until: (A) The class certification is denied; (B) the class is decertified; (C) the customer is excluded from the class by the court; or (D) the customer elects not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.*

*(4) No member or associated person shall be deemed to have waived any of its rights under this Code or under any agreement to arbitrate to which it is a party except to the extent stated in this paragraph.*

* * * * *

**Rules of Fair Practice**

* * * * *

**Article III**

* * * * *

**Books and Records**

Sec. 21.

(a) through (e) unchanged.

**Requirements When Using Predispute Arbitration Agreements With Customers**

(f)(1) through (4) unchanged.

(5) The requirements of [this subsection] *subparagraphs (f) (1 through (4)* shall apply only to new agreements signed by an existing or new customer of a member after September 7, 1989.

*(6) All agreements shall include a statement that "No person shall bring a putative or certified class action to arbitration, nor seek to enforce any predispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."*

*(7) The requirements of subparagraph (6) shall apply only to new agreements signed by an existing or new customer of a member after [insert date one year after the date of SEC approval].*

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

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rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the proposed Rule Change*

The proposed rule change was previously added to the Uniform Code of Arbitration by the Securities Industry Conference on Arbitration (SICA). In general, the proposed rule change is intended to exclude class action matters from arbitration proceedings conducted by the NASD and to require that predispute arbitration agreements contain a notice that class action matters may not be arbitrated.

This proposed rule change developed from a suggestion made to all self-regulatory organizations (SROs) in a letter dated July 13, 1988, from the Chairman of the Securities and Exchange Commission, David S. Ruder. Chairman Ruder asked the SROs to consider adopting procedures that would give investors access to the courts in appropriate cases, including class actions. The NASD's National Arbitration Committee, after considering Ruder's request, decided not to propose a rule change at that time in light of the broad discretion that the Code gives arbitrators and the Director of Arbitration to defer certain arbitration proceedings to the remedies provided by applicable law. SICA determined separately, however, that it would be preferable for each SRO to clarify in its rules the treatment of class actions and, since 1990, SICA has been developing such rules for the Uniform Code.

On January 7, 1992, SICA unanimously adopted a final version of these rules. The SICA language has been modified to conform to the NASD's Code provisions and, with minor technical changes, has been submitted as the rule change proposed herein.

(1) *Exclusion of Class Action Matters from Arbitration:* The proposed amendment to section 12 of the Code adds a new subsection (d). Proposed Subsection (d)(1) provides that claims filed in arbitration as class actions are not eligible for submission under the Code. Proposed Subsection (d)(2) provides that claims filed by members of a putative or certified class action (hereinafter referred to jointly as "class action") which was filed in another forum are also ineligible for submission if the claim is encompassed by the class action. Disputes over whether the claim is encompassed by a class action would be referred to a panel of one or three arbitrators or may be decided by the court with jurisdiction over the class action.

Proposed Subsection (d)(3) provides that no member or associated person shall move to compel arbitration against a customer who is a member of a class action unless: (1) Class certification is denied; (2) the class is decertified; (3) the customer is excluded from the class; or (4) the customer elects not to participate or has complied with court-imposed conditions, if any, for withdrawing from the class. Proposed Subsection (d)(4) provides that members and associated persons do not waive their rights under the Code or any agreement to arbitrate, except to the extent stated in the proposed new subsection (d).

(2) *Content of Predispute Arbitration Agreements:* The NASD is also proposing to amend Article III, Section 21(f) of the Rules of Fair Practice to incorporate the provisions of the proposed new Subsection 12(d) of the Code into the rule governing the content of predispute arbitration agreements with customers. The proposed amendment to Section 21(f) would not be effective until one year after the date of Commission approval, in order to give members sufficient time to redraft and reprint their arbitration agreements.

(3) *Implementation* The NASD has requested that the proposed rule change become effective upon the date of Commission approval for all open arbitrations and for arbitration filings made on or after that date, except that the change to Article III, Section 21 of the Rules of Fair Practice will take effect one year after the date of Commission approval.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act.[1] In pertinent part, section 15A(b)(6) of the Act requires the Association's rules to protect investors and the public interest. The proposed rule change meets the requirements of section 15A(b)(6) of the Act by facilitating the arbitration process and the resolution of customer claims.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Association does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[1] 15 U.S.C. 78o.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed change should be disapproved.

The NASD consents to an extension of the time periods specified above until 35 days after the NASD has filed an amendment that provides the result of the request for member vote on the proposed rule change to article III, section 21 of the rules of fair practice in a notice to members to be published in July 1992.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 30, 1992.



For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-16058 Filed 7-8-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-30883; File No. SR-NSCC-92-5]**

**Self-Regulatory Organizations; National Securities Clearing Corporation; Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Limiting the Use of Letters of Credit To Collateralize Clearing Fund Contributions**

July 1, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 23, 1992, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-NSCC-92-5) as described below. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis through June 30, 1993.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change [2] modifies the amount of an NSCC member's Clearing Fund deposit that may be collateralized by letters of credit. The proposal increases the minimum cash contribution for those members who use letters of credit and sets a limit on the amount of a member's required Clearing Fund contribution that may be collateralized with letters of credit.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The proposed rule change was originally filed on October 27, 1989 (File No. SR-NSCC-89-16) and was approved temporarily through December 31, 1990. Subsequently, the Commission granted a number of extensions to the temporary approval period to allow the Commission to review and assess the use of letters of credit as Clearing Fund collateral. Securities Exchange Act Release No. 27684 (January 31, 1990), 55 FR 4297; Securities Exchange Act Release No. 28727 (December 31, 1990), 56 FR 716, and Securities Exchange Act Release No. 29369 (June 20, 1991), 56 FR 30053.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) NSCC is seeking approval of a proposed rule change that modifies the amount of a member's Clearing Fund Required Deposit that may be collateralized by letters of credit. Specifically, the proposed rule change would increase the minimum cash contribution for those members who use letters of credit from $50,000 to the greater of $50,000 or 10% of their Clearing Fund Required Deposit up to a maximum of $1,000,000. In addition, the rule change would provide that only 70% of a member's Required Deposit may be collateralized with letters of credit. The rule change would also make certain nonsubstantive drafting changes such as adding headings to the Clearing Fund formula section for purposes of clarity. The effect of the proposed rule change would be to increase the liquidity of the Clearing Fund and limit NSCC's exposure to unusual risks resulting from the reliance on letters of credit.

Since obtaining temporary approval of the original filing, NSCC has filed Clearing Fund composition reports with the Commission. NSCC states that since December 31, 1989, as a result of the new requirements, it has observed the following concerning the composition of the Clearing Fund:

1. Cash deposits have increased by approximately 132%;

2. The value of securities deposited has increased by approximately 148%;

3. Letter of credit deposits have declined by approximately 45%; and

4. The total value of cash and securities now on deposit has increased by approximately 139%.

(b) Because the proposed rule change relates to NSCC's capacity to safeguard securities and funds in its custody or control and to protect the public interest, it is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No new written comments have been solicited or received.[3] NSCC will notify the Commission of any written comments it receives.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Commission believes good cause exists for approving the proposal because it is consistent with sections 17A(b)(3)(A) and (F) of the Act.[4] Section 17A(b)(3)(A) requires that a clearing agency be able to "safeguard securities and funds in its custody or control or for which it is responsible." Section 17A(b)(3)(F) of the Act requires that a clearing agency's rules be designed, among other things, to "protect investors and the public interest."

Although letters of credit are a useful means of funding clearing agency guarantee deposits, their unrestricted use may present risks to clearing agencies. Because letters of credit reflect the issuer's unsecured promise to pay funds upon presentation of stipulated documents, clearing agencies may be exposed to risk in the event of issuer default or insolvency. Furthermore, because the issuer may defer honoring a payment request until the close of business on the third banking day following receipt of the required documents, the clearing agency may have to await payment or to seek alternative short-term financing pending the issuer's payment. This waiting period could hinder NSCC's ability to meet its payment obligations on a timely basis.

As indicated above, since the proposal first received temporary approval, NSCC has experienced a 139% increase in the deposit of cash and securities deposited as Clearing Fund contributions. Because cash and

[3] In a previous filing of this proposal, NSCC received a letter from Wedbush Morgan Securities, Inc. that opposed the proposal because it believed it would increase its cost of posting collateral. Letter from Edward W. Wedbush, President, Wedbush Morgan Securities, Inc., to David F. Hoyt, Assistant Secretary, NSCC (November 9, 1989).

[4] 15 U.S.C. 78q-1(b)(3)(A) and (F) (1988).

securities are more liquid than letters of credit, the enhanced level of such deposits helps to ensure the liquidity of the Clearing Fund in the event of a major member insolvency, catastrophic loss, or major settlement loss. By reducing the risk associated with the use of letters of credit, the proposal is consistent with NSCC's responsibilities under the Act to safeguard securities or funds in its custody or control and to protect investors and the public in general. Although NSCC's proposal is a positive step toward addressing the Commission's concern regarding the use of letters of credit to meet guarantee fund requirements, further analysis by the Commission staff on the issue of the optimal level of collateralization of the Clearing Fund Required Deposit with letters of credit is required. Therefore, the Commission will temporarily approve the proposal through June 30, 1993.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for so approving because accelerated approval of the proposal will keep effective NSCC's rules that help reduce the exposure of NSCC's Clearing Fund to potential liquidity risks associated with using letters of credit to collateralize members' Clearing Fund contributions.

*IV. Solicitation of Comments*

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–92–5 and should be submitted within July 30, 1992.

**V. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed rule filing is consistent with the Act and in particular with section 17A of the Act.

*It is Therefore Ordered,* Pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–NSCC–92–5) be, and hereby is, approved on a temporary basis through June 30, 1993.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–16059 Filed 7–8–92; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–30885; File No. SR–NASD–92–26]**

## Self-Regulatory Organizations; Notice and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Interim Extension of the OTC Bulletin Board Service through October 1, 1992

July 2, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 15, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of Proposed Rule Change**

On June 1, 1990, the NASD initiated operation in the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are not included in the Nasdaq System nor listed on a registered national securities exchange (collectively referred to as "unlisted securities"). Essentially, the Service supports NASD members' market making in unlisted securities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now include OTC Bulletin Board data. The Service is currently operating under an interim approval that expires on June 30, 1992.[2]

The NASD hereby files this proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through October 1, 1992. During this interval, there will be no material change in the Bulletin Board's operational features.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The NASD is proposing this rule change to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service. For the month of May 1992, the Service reflected 10,878 market making positions based on 275 NASD member firms displaying quotations/indications of interest in 4,069 unlisted securities.[3]

During the proposed extension, foreign securities and American Depository Shares (collectively, "foreign/ADS issues") will remain subject to the twice-daily, update limitation in the Commission's original approval order of the OTCBB Service's operation.[4] As a result, all priced bids/

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[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1991).

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

[2] Securities Exchange Act Release No. 30531 (March 30, 1992), 57 FR 11625.

[3] These are average daily figures calculated for the entire month.

[4] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

offers displayed in the Service for foreign/ADS issues will remain indicative.

In conjunction with the launch of the Service in 1990, the NASD implemented a filing requirement (under section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's self-regulatory oversight of broker-dealers' market making in unlisted securities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act"). The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

The NASD relies on section 11A(a)(1), 15A(b)(6) and (11), and section 17B of the Act as the statutory basis for the instant rule change. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, Section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD submits that extension of the Service through October 1, 1992 is fully consistent with the foregoing provisions of the Act.

*B. Self-Regulatory Organization's Statement on the Burden on Competition*

The NASD does not believe any burden will be placed on competition as a result of this filing.

*C. Self-Regulatory Organization's Statement on the Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service.

The NASD further believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 4,100 unlisted equity securities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to Section 2 of Schedule H to NASD By-Laws.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilitates price discovery and the execution of customer orders at the best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of trading in unlisted securities that are eligible and quoted in the Service.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 30, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a three month period, inclusive of October 1, 1992.

For the Commission, by the Division of Market regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–16144 Filed 7–8–92; 8:45 am]

BILLING CODE 8010–01–M

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[Release No. 35–25569]

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

July 2, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 27, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by

certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Arkansas Power & Light Co. (70-7834)**

Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed a post-effective amendment to its application-declaration under sections 9(a), 10, and 12(c) of the Act and Rule 42 thereunder.

By order dated March 20, 1991 (HCAR No. 25278) ("Order"), the Commission, among other things, authorized AP&L, for the period during which any shares of the new preferred stock [1] are outstanding to: (1) Redeem shares of its outstanding New Preferred Stock to be issued under the exemptive provisions of Rule 52, in accordance with any mandatory or optional redemption provisions established at the time of the New Preferred Stock's initial issuance; (2) redeem, (or purchase in lieu of redemption), outstanding New Preferred Stock, in accordance with the sinking fund provisions established at the time of the New Preferred Stock's initial issuance. These redemption provisions applied to the New Preferred Stock that was issued through August 31, 1992.

AP&L now intends to issue $35 million of New Preferred Stock, through December 31, 1992, under the exemptive provisions of Rule 52 ("Remaining Stock"). For the period during which any shares of the Remaining Stock are outstanding, AP&L proposes to: (1) redeem shares of its Remaining Stock, in accordance with any mandatory or optional redemption provisions established at the time of the Remaining Stock's initial issuance; and (2) redeem, (or purchase in lieu of redemption), outstanding Remaining Stock, in accordance with the sinking fund provisions established at the time of the Remaining Stock's initial issuance.

In addition, AP&L was further authorized by the Order to acquire from time-to-time in whole or in part, prior to their respective maturities, certain of AP&L's outstanding securities, up to and including: (1) $350 million aggregate principal amount of one or more series of AP&L's first mortgage bonds ("First Mortgage Bonds"); (2) $175 million aggregate principal amount of one or more series of the pollution control revenue bonds and/or solid waste disposal bonds issued for AP&L's benefit; and (3) $150 million aggregate par value of one or more series of AP&L's preferred stock. AP&L has acquired $21.45 million of the First Mortgage Bonds leaving a balance of $328.55 million of First Mortgage Bonds to be acquired.

AP&L now proposes to extend its authorization, from August 31, 1992 to December 31, 1993 to acquire: (1) $328.55 million aggregate principal amount of First Mortgage Bonds; (2) $175 million aggregate principal amount of one or more series of the pollution control revenue bonds and/or solid waste disposal bonds issued for AP&L's benefit; and (3) $150 million aggregate par value of one or more series of AP&L's preferred stock.

**Central and South West Corp. (70-7918)**

Central and South West Corporation ("CSW"), a registered holding company, and three of its nonutility subsidiaries, CSW Energy, Inc. ("Energy"), CSW Development-I, Inc. ("Energy Sub"), each located at 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, and its nonutility subsidiaries, ARK/CSW Development Partnership (the "Joint Venture"), Polk Power GP, Inc. ("JV Sub"), Polk Power Partners, L.P. ("Partnership"), each located at 23293 South Pointe Drive, Laguna Hills, California 92653, have filed a post-effective amendment under Sections 6(a), 7, 12(b), and 13(b) of the Act and Rules 45, 50(a)(5), 51, 86, 87, 90 and 91 thereunder to their application-declaration filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45, 50(a)(5) and 51 thereunder.

By prior order dated February 18, 1992 (HCAR No. 25477) ("February Order"), CSW, Energy, Energy Sub and the Joint Venture were authorized to invest in a 122.2 megawatt, gas-fired cogeneration facility (the "Project") located near Bartow in Polk County, Florida. Once operational, the Project would be a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978. Under the February Order, CSW, Energy, Energy Sub and the Joint Venture were also authorized to organize the Partnership, a Delaware limited partnership, to own and operate the Project and organize JV Sub to be the sole general partner of the Partnership. JV Sub is a wholly owned subsidiary of the Joint Venture, a Delaware general partnership owned equally by Energy Sub and ARK Energy, Inc. ("ARK"), a nonassociate corporation. JV Sub, a Delaware corporation, has a 1% interest in the Partnership. The two limited partners are Energy Sub and ARK. They each hold a 49.5% interest in the Partnership. Further, the February Order, among other things, authorized Energy Sub to make capital contributions to the Partnership of up to $9 million and authorized the Partnership to borrow approximately $120 million for use in constructing and developing the Project. The February Order also authorized the Partnership and/or the partners to provide some assurance for the $18 million equity of the Project in the form of an equity support agreement or letter of credit ("Equity LOC").

CSW, Energy, Energy Sub and the Joint Venture now propose to make additional capital contributions in the amount of $4.5 million downstream to the Partnership that would be above the $9 million in capital contributions authorized under the February Order. The result of the additional capital contributions will be that Energy Sub and Ark would have each contributed $13.5 million to the Partnership. The Partnership also proposes to increase the amount to be borrowed from third party lenders for use in constructing and developing the Project ("Construction Financing") from approximately $120 million to $135 million. It is presently anticipated that the terms of the Construction Financing would increase from 15 to 20 years. The Partnership requests an exception from the competitive bidding requirements of rule 50 under subsection (a)(5) thereof for the Construction Financing. In addition, CSW proposes to provide an equity support agreement or letter of credit in an amount not to exceed $13.5 million, in order to secure Energy Sub's obligation to make capital contributions to the Partnership. Any letter of credit would bear terms no less favorable to CSW than the terms of the Equity LOC under the February Order.

The Partnership further proposes to enter into a construction agreement ("Construction Agreement") with Energy or Energy Sub for the purpose of developing and constructing the Project. The Construction Agreement would be at terms not limited to cost, as permitted under rule 90(d). It is expected that Energy or Energy Sub would provide general construction management and oversight services and would subcontract with other nonassociate

[1] The new preferred stock will consist of: (1) AP&L's Cumulative Preferred Stock, par value $.01; (2) up to four million shares of AP&L's Cumulative Preferred Stock, par value $25; and/or (3) up to one million shares of AP&L's Cumulative Preferred Stock, par value $100 ("New Preferred Stock").

construction and engineering firms and equipment vendors to provide the design, construction and engineering services and Project equipment. It is anticipated that approximately 80% of the value of the Construction Agreement will be provided by nonassociates under subcontracts. The remaining services will be provided by Energy, Energy Sub or Central and South West Services, Inc. ("CSWS"), a wholly owned subsidiary of CSW. All expenses for services subcontracted to or performed by CSWS will be at cost. It is represented that there will be no adverse affect on the availability of CSWS personnel or services to any operating company in CSW's holding company system, as a result of CSWS's participation. Energy and Energy Sub state that they intend to provide such construction services exclusively as an ancillary activity to their authorized development and ownership activities, not as a continuous or independent line of business. They assert that construction services are not an independent source of revenue for Energy or Energy Sub.

The Construction Agreement will also contain certain warranties and performance and completion guarantees that may create potential liability for Energy in the event that such warranties or guarantees are not satisfied or waived. The maximum potential liability under the Construction Agreement is $82,550,000. In connection with the Construction Financing, CSW may be required by the lenders to support Energy's liability under the Construction Agreement through an indemnity, a cash deposit, a letter of credit or other similar arrangement ("Support Arrangement"). The Support Arrangement would be at terms no less favorable than the terms of the Equity LOC under the February Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-16145 Filed 7-8-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 35-25572; (International Series Release No. 410)]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 7, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 22, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Duke Power Company, et al.**

(70-8030)

("Duke"), 422 South Church Street, Charlotte, North Carolina 28242, a North Carolina public-utility holding company exempt from registration under section 3(a)(2) of the Act pursuant to rule 2, and Duke Guemes, Inc. ("Duke Guemes"), 422 South Church Street, Charlotte, North Carolina 28242, its wholly owned indirect nonutility subsidiary company, have filed an application under section 3(b) of the Act and, in the alternative, sections 9(a)(2) and 10, in connection with a proposed indirect acquisition of an Argentine public-utility company subsidiary.

Duke is engaged in the generation, transmission, distribution and sale of electric energy in the central portion of North Carolina and the western portion of South Carolina. Duke's sole public-utility subsidiary company, Nantahala Power & Light Co., operates eleven hydroelectric stations in North Carolina.

Central Termica Guemes S.A. ("Guemes"), a government-owned Argentina company, owns the Guemes Power Station which is comprised of three gas-fired units with a total capacity of 245 MW. As part of its privatization program, the Argentine government is seeking bidders for up to a 60% voting equity interest in Guemes.[1] Duke will seek to acquire up to a 30% voting equity interest in Guemes through Powerco S.A. ("Powerco"), a partially owned Argentine subsidiary company of Duke Guemes that will be formed to hold the acquired shares of Guemes.[2] Duke also intends to form an indirect Argentine subsidiary company, Powerco Services, Inc. ("Powerco Services"), to manage and operate the Guemes Power Station.[3]

The exact ownership interests and investments to be made by the participants in Powerco have not yet been determined.[4] The application states, however, that Duke and its affiliate companies will not invest more than $50 million in Powerco, inclusive of any guarantees or other financial commitments that may be provided, as well as certain construction obligations.[5]

Duke and its subsidiary companies will provide Powerco Services with a limited number of personnel and sufficient technical expertise to carry out its obligations as manager and operator of the Power Station. The personnel will be employed by Powerco Services, which will pay commercially reasonable, market-based fees for the technical expertise. Duke asserts that there will be no business transactions or financial commitments between Guemes and Duke or any of its subsidiary companies, apart from those described herein.

The applicants anticipate that Duke's proportionate share of the initial annual gross utility revenues of Guemes will not exceed $33 million. On a continuing basis, the annual gross utility revenues of Duke's proportionate share of Guemes, together with the operating revenues that Powerco Services will receive, and not expected to exceed 5% of the gross revenues of Duke.

As a result of the proposed transactions, Guemes and Powerco Services will be public-utility subsidiary companies of Duke within the meaning

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[1] The Argentine government will retain 30% of the voting securities of Guemes, and 10% of the securities will be retained for the employees of Guemes under an employee stock ownership plan.

[2] Duke contemplates forming Powerco, alone or together with one or more foreign investors, to own the 60% interest in Guemes. In the event Powerco is not formed, Duke Guemes will hold the interest in Guemes directly. All references to Powerco in the application are intended to include any entity in lieu of Powerco that may be created to acquire and hold the equity securities of Guemes.

[3] Duke may make available to investors up to a 50% interest in Powerco Services.

[4] The applicants anticipate an ownership interest of 30% to 50% in Powerco. Foreign investors will hold the remaining 50% to 70% interest.

[5] Powerco will be obligated, if it acquires the interest in Guemes, to complete a partially constructed 135-kilometer transmission line connecting Guemes to the National Network of Transmission. Upon completion, the line will be owned by the Argentine government.

of section 2(a)(8) of the Act. The applicants request an unqualified order under section 3(b) of the Act exempting Powerco Services and Guemes from all provisions of the Act. The applicants state that neither Powerco Services nor Guemes will derive any material part of its income, directly or indirectly, from sources within the United States. Further, neither Powerco Services nor Guemes will be, nor have any subsidiary company which will be, a public-utility company operating in the United States.

The application states that, if unqualified exemptions under section 3(b) are granted, the subsidiary companies of Duke which are parent entities of Guemes and Powerco Services will rely upon rule 10(a)(1) to provide an exemption insofar as each is a holding company; and Duke and its subsidiary companies will rely upon rule 11(b)(1) to provide an exemption from the approval requirements of section 9(a)(2) and 10 to which they would otherwise be subject.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-16228 Filed 7-7-92; 12:21 pm]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of reporting requirements submitted for review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Comments should be submitted on or before August 10, 1992. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

**AGENCY CLEARANCE OFFICER:** Cleo Verbillis, Small Business Administration, 409 3RD Street, S.W., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

**OMB REVIEWER:** Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

*Title:* Candidate for Appointment to SBA Advisory Councils and Nominee for State Small Business Person of the Year.

*SBA Form No.:* SBA Form 899.

*Frequency:* On occasion.

*Description of Respondents:* Individuals, seeking appointment to SBA Advisory Councils.

*Annual Responses:* 700.

*Annual Burden:* 93.

Dated: June 30, 1992.

**Calvin Jenkins,**

*Director, Office of Administrative Services.*

[FR Doc. 92-16035 Filed 7-8-92; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2662]**

### New Mexico; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 18, 1992, I find that Lea County, New Mexico constitutes a disaster area as a result of damages cause by severe thunderstorms, hail and flooding May 22-25, 1992. Applications for loans for physical damage may be filed until the close of business on August 17, 1992, and for loans for economic injury until the close of business on March 18, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, Texas 76155.

or other local announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Eddy, Chaves, and Roosevelt in the State of New Mexico, and Andrews, Cochran, Gaines, Living, Winkler, and Yoakum Counties in the State of Texas may be filed until the specified date at the above location.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damages: | |
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 6.500 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 8.500 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 256206 and for economic injury the numbers are 764000 for New Mexico and 764100 for Texas:

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 23, 1992.

**Alfred E. Judd,**

*Acting Assistant Administrator for Disaster Assistance.*

[FR. Doc. 92 16094 Filed 7-9-; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Economic Injury Disaster Loan Area #7638]**

### Pennsylvania; Declaration of Disaster Loan Area

Bucks County and the contiguous counties of Lehigh, Montgomery, Northampton and Philadelphia, in the State of Pennsylvania, and Burlington, Hunterdon, Mercer and Warren Counties in the State of New Jersey constitute an economic injury disaster area as a result of damages caused by a fire at the Four Seasons Mall in New Hope Borough, Pennsylvania, which occurred on June 9, 1992. Eligible small business without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on March 22, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308.

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to this disaster for the State of New Jersey is 7639.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: June 22, 1992.

**Patricia Saiki,**

*Administrator.*

[FR Doc. 92-16095 Filed 7-8-92; 8:45 am]

BILLING CODE 8025-01-M

**Interest Rates**

The interest rate on section 7(a) Small Business Administration direct loans (as amended by PL 97–35) and the SBA share of immediate participation loans is 8½ percent for the fiscal quarter beginning July 1, 1992.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the July–September quarter of FY 92, this rate will be 7½ percent.

Dated: June 30, 1992.

**Charles R. Hertzberg,**

*Assistant Administrator for Financial Assistance.*

[FR Doc. 92–16036 Filed 7–8–92; 8:45 am]

BILLING CODE 8025–01–M

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**[License # 02/02–0457]**

**License Surrender; Ferranti High Technology, Inc.**

Notice is hereby given that Ferranti High Technology, Inc. ("FHT"), 501 Madison Avenue, New York, New York 10022, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). CCA was licensed by the Small Business Administration on May 31, 1983.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 8, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 25, 1992.

**Wayne S. Foren,**

*Associate Administrator for Investment.*

[FR Doc. 92–16096 Filed 7–8–92; 8:45 am]

BILLING CODE 8025–01–M

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**[License # 04/04–5162]**

**First American Lending Corp.; License Surrender**

Notice is hereby given that First American Lending Corporation. ("FALC"), P.O. Box 24660, W. Palm Beach, FL, 33416, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). FALC was licensed by the Small Business Administration on September 27, 1979.

Under the Authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 22, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 25, 1992.

**Wayne S. Foren,**

*Associate Administrator for Investment.*

[FR Doc. 92–16098 Filed 7–8–92; 8:45 am]

BILLING CODE 8025–01–M

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**[License # 09/09–0324]**

**Latigo Capital Partners I; License Surrender**

Notice is hereby given that Latigo Capital Partners I ("LCPI"), 701 Rancho Circle, Las Vegas, NV, 89913, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). LCPI was licensed by the Small Business Administered on September 20, 1985.

Under the Authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on May 14, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 25, 1992.

**Wayne S. Foren,**

*Associate Administrator for Investment.*

[FR Doc. 92–16097 Filed 7–8–92; 8:45 am]

BILLING CODE 8025–01–M

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**[License #03/04–0107]**

**Metropolitan Capital Corp.; License Surrender**

Notice is hereby given that METROPOLITAN CAPITAL CORPORATION ("MCC"), 2550 Huntington Ave., Alexandria, VA 22303 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). FALC was licensed by the Small Business Administration on February 2, 1970.

Under the Authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 27, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 25, 1992.

**Wayne S. Foren,**

*Associate Administrator for Investment.*

[FR Doc. 92–16037 Filed 7–8–92; 8:45 am]

BILLING CODE 8025–01–M

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**[License No. 06/06–0293]**

**Neptune Capital Corp.; Surrender of License**

Notice is hereby given that Neptune Capital Corporation, 5956 Sherry Lane, suite 800, Dallas, TX 75225 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Neptune Capital Corporation was licensed by the Small Business Administration on December 23, 1986.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on June 24, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 22, 1992.

**Wayne S. Foren,**

*Associate Administrator for Investment.*

[FR Doc. 92–16093 Filed 7–8–92; 8:45 am]

BILLING CODE 8025–01–M

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**Rocky Mountain Equity Corp.; License Surrender**

**[License No. 09/09–0209]**

Notice is hereby given that Rocky Mountain Corporation, 2525 East Camelback, suite 275, Phoenix, Arizona, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). Rocky Mountain Corporation was licensed by the Small Business Administration on September 22, 1981.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on June 22,

1992 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 22, 1992

Wayne S. Foren,

*Associate Administrator for Investment.*

[FR Doc. 92-16092 Filed 7-8-92; 8:45 am]

BILLING CODE 8025-01-M

## Seafirst Capital Corp.; License Surrender

[License #10/10/0166]

Notice is hereby given that Seafirst Capital Corporation ("SCC"), 701 Fifth Ave., Seattle, WA, 98124, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). SCC was licensed by the Small Business Administration on June 19, 1980.

Under the Authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on May 14, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 25, 1992.

Wayne S. Foren,

*Associate Administrator for Investment.*

[FR Doc. 92-16099 Filed 7-8-92; 8:45 am]

BILLING CODE 8025-01-M

## Region V Advisory Council Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting at 11:30 a.m. on Friday, August 21, 1992, at the Decathlon Athletic Club, 7800 Cedar Avenue South, Bloomington, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Edward A. Daum, District Director, U.S. Small Business Administration, 610-C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, (612) 370-2306.

Dated: July 1, 1992.

Caroline J. Besson,

*Assistant Administrator, Office of Advisory Councils.*

[FR Doc. 92-16038 Filed 7-8-92; 8:45 am]

BILLING CODE 8025-01-M

## Small Business Investment Company Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 8.00 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as further amended by section 1 of Public Law 99-226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usuary ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: June 24, 1992.

Wayne S. Foren,

*Associate Administrator for Investment.*

[FR Doc. 92-16039 Filed 7-8-92; 8:45 am]

BILLING CODE 8025-01-M

## TENNESSEE VALLEY AUTHORITY

### Information Collection Under Review by the Office of Management and Budget

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Information collections under review by the Office of Management and Budget (OMB).

**SUMMARY:** The Tennessee Valley Authority (TVA) has sent to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collections proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

*Agency Clearance Officer:* Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (MR 2F), Chattanooga, Tn 37402-2801; (615) 751-2523.

*Type of Request:* Regular submission.

*Title of Information Collection:* Survey of Attitudes About Use and Management of TVA Lands Open to the Public.

*Frequency of Use:* On occasion.

*Type of Affected Public:* Individuals or households, farms.

*Small Businesses or Organizations Affected:* Yes.

*Federal Budget Functional Category Code:* 452.

*Estimated Number of Annual Responses:* 3400.

*Estimated Total Annual Burden Hours:* 510.

*Estimated Average Burden Hours Per Response:* .15.

*Need For and Use of Information:* This survey of residents of counties adjoining TVA lakes and users of TVA lands open to the public will help define public expectations regarding TVA land management. TVA will use the information in formulating effective land policies and their implementation for the next five to ten years.

*Type of Request:* Regular submission.

*Title of Information Collection:* Survey of Attitudes Toward Forest Practices and Policies.

*Frequency of Use:* On occasion.

*Type of Affected Public:* Individuals or households, farms.

*Small Businesses or Organizations Affected:* Yes.

*Federal Budget Functional Category Code:* 452.

*Estimated Number of Annual Responses:* 1600.

*Estimated Total Annual Burden Hours:* 320.

*Estimated Average Burden Hours Per Response:* .2.

*Need For and Use of Information:* This survey of residents of the Tennessee valley region and Alabama will identify the public's level of knowledge and opinions on forest practices, policies, forest-based industrial development, and related economic and environmental issues. The survey will provide baseline information for use in formulating program direction for TVA's Forest Resources Development Program. Some of the information may also be incorporated into TVA's Natural Resources Management Plan.

**Charles E. Price,**

*Interim Vice President, Information Services, Interim Senior Agency Official.*

[FR Doc. 92-16111 Filed 7-8-92; 8:45 am]

BILLING CODE 8120-08-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: City of San Diego, CA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in San Diego County, California.

**FOR FURTHER INFORMATION CONTACT:** Leonard E. Brown, District Engineer, Federal Highway Administration, 801 I Street, P.O. Box 1915, Sacramento, California 95812-1915, Telephone: (916) 551-1307, or Richard L. Grob, Senior Environmental Planner, California Department of Transportation, 2829 Juan Street, P.O. Box 85406, San Diego, California 92110, Telephone: (619) 688-3377.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the California Department of Transportation, will study the easterly extension of Nobel Drive with interchange construction at I-805. The following is a brief summary of the project:

The proposed project study area encompasses approximately 600 acres of land in the eastern portion of the University Community Plan area in the City of San Diego and the western portion of Naval Air Station Miramar. The project study area includes both the La Jolla Village Drive/Miramar Road/I-805 and Governor Drive/I-805 interchanges. The project is an extension of Nobel Drive, an existing city six-lane divided arterial, from its current eastern terminus near Shoreline Drive, northeast across I-805, and intersecting with Miramar Road in the vicinity of Eastgate Mall. Nobel Drive is proposed for six lanes west of I-805 and four lanes east of I-805. An interchange would be constructed at I-805 and Nobel Drive overcrossing would be provided. Also as part of the Nobel Drive extension project, La Jolla Village Drive would be widened from Towne Centre Drive to I-805 and Miramar Road would be widened from I-805 to approximately 700 feet east of Miramar Mall. I-805 would also be widened at certain locations to accommodate the Nobel Drive interchange.

The Nobel Drive extension is being proposed by the City of San Diego to provide an alternate east-west transportation corridor to serve the University community area. The Nobel Drive extension would help alleviate existing and projected capacity problems on Miramar Road/La Jolla Village Drive and at the La Jolla Village Drive/Miramar Road/I-805 interchange. All improvements related to the interchange with Nobel Drive will be coordinated among Caltrans, FHWA, and the City of San Diego. It is anticipated that construction of the project would be divided into phases and would begin in Spring 1995.

Two primary alternatives have been identified for the Nobel Drive extension. Alternative "A" would join Miramar Road to form a four-way intersection with a realigned Eastgate Mall. Alternative "B" would join Miramar Road at a "T" intersection further west of the existing Miramar Road/Eastgate Mall intersection. Both of these alternatives would traverse land within Naval Air Station Miramar. It is anticipated at this time that three other alternatives will be evaluated in addition to Alternatives "A" and "B" and at least these five alternatives will be analyzed in the same level of detail in the EIR/EIS. The three other alternatives include the No Project Alternative, the Stopping at I-805 Alternative, and a Collector Road Alternative.

The No Project Alternative includes no extension of Nobel Drive and no new interchange at I-805. Stopping at I-805 would involve terminating Nobel Drive at I-805 and construction of the interchange and overcrossing. Variations of this alternative would involve reconstruction work at the Governor Drive and La Jolla Village Drive/Miramar Road interchanges. The Collector Road Alternative would connect Nobel Drive to Miramar Road via a collector roadway parallel to and east of I-805 from south of Governor Drive to Miramar Road.

The FHWA, Caltrans, and the City of San Diego will institute a formal scoping process for the project. Other agencies, such as U.S. Fish and Wildlife Service and the U.S. Navy, have been contacted regarding the sensitive issues involved with the project and will continue to be involved throughout the process. A public scoping meeting will be held on August 11, 1992 at 7 p.m. in the Community Room of the Regents Park Medical Centre at 4150 Regents Park Row (University City, San Diego). This is the regularly scheduled meeting of the University Community Planning Group. The meeting is intended to provide an opportunity for all interested parties to voice their concerns. Through the public scoping meeting and Notice of Intent process, significant environmental concerns will be sought, considered, and included in the scope of the project.

To ensure that the full range of issues relative to this proposed action are addressed, and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the environmental studies should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued On: July 2, 1992.

**Leonard E. Brown,**

*District Engineer Sacramento, California.*

[FR Doc. 92-16108 Filed 7-8-92; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: July 2, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

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**Internal Revenue Service**

*OMB Number:* 1545–0720.
*Form Number:* IRS Forms 8038, 8038–G, 8038–GC.
*Type of Review:* Revision.
*Title:* 1. Information Return for Tax-Exempt Private Activity Bond Issues (8038).

2. Information Return for Tax-Exempt Governmental Obligations (8038–G).

3. Consolidated Information Return for Small Tax-Exempt Governmental Bond Issues, Leases and Installment Sales (8038–GC).

*Description:* Forms 8038, 8038–G, and 8038–GC collect the information that IRS is required to collect by Code Section 149(e). IRS uses the information to assure that tax-exempt bonds are issued consistent with the rules of IRC sections 141–149.

*Respondents:* State or local governments, Businesses or other for-profit, Non-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 74,500.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | Form 8038 | Form 8038–G | Form 8038–GC |
|---|---|---|---|
| Recordkeeping | 23 hr., 55 min. | 14 hr., 21 min. | 4 hr., 4 min. |
| Learning about the law or the form | 4 hr., 56 min. | 1 hr., 53 min. | 1 hr., 46 min. |
| Preparing the form | 6 hr., 29 min. | 1 hr., 59 min. | 2 hr., 50 min. |
| Copying, assembling and sending the form to the IRS | 16 min. | 13 min. | 16 min. |

*Frequency of Response:* Quarterly (Forms 8038 and 8038–G). Annually (Form 8038–GC).

*Estimated Total Reporting/Recordkeeping Burden:* 1,527,400 hours.

*Clearance Officer:* Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 92–16064 Filed 7–8–92; 8:45 am]

BILLING CODE 4830–01–M

**Public Information Collection Requirements Submitted to OMB for Review**

July 1, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Financial Management Service**

*OMB Number:* 1510–0034.
*Form Number:* POD 315.
*Type of Review:* Extension.
*Title:* Depositor's Application to Withdraw Postal Savings.

*Description:* This form is used as an application for payment by depositor or other legal representatives. This form serves to identify the depositor and insures payment is made to the proper person.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 1,075.

*Estimated Burden Hours Per Response:* 30 minutes.

*Frequency of Response:* Other (as needed).

*Estimated Total Reporting Burden:* 538 hours.

*Clearance Officer:* Jacqueline R. Perry, (301) 436–6453, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 92–16065 Filed 7–8–92; 8:45 am]

BILLING CODE 4810–35–M

**Public Information Collection Requirements Submitted to OMB for Review**

Date: July 2, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–1219.
*Form Number:* IRS Form 8038–T.
*Type of Review:* Revision.
*Title:* Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

*Description:* Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. These issues include state and local governments.

*Respondents:* State or local governments.

*Estimated Number of Respondents/Recordkeepers:* 2,500.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 8 hours, 37 minutes. |
| Learning about the law or the form. | 3 hours, 28 minutes. |
| Preparing, copying, assembling, and sending the form to the IRS. | 3 hours, 46 minutes. |

*Frequency of Response:* Other (at least once every 5 years).

*Estimated Total Reporting/Recordkeeping Burden:* 34,625 hours.

*Clearance Officer:* Garrick Shear, (202) 622–3428, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 92–16066 Filed 7–8–92; 8:45 am]

BILLING CODE 4830–01–M



**Public Information Collection Requirements Submitted to OMB for Review**

Date: June 30, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0065.
*Form Number:* IRS Forms 4070, 4070–A, 4070PR, 4070A–PR.
*Type of Review:* Revision.
*Title:* Employee's Daily Record of Tips; Registro Diario de Propinas del Empleado; Employee's Report of Tips to Employer; Informe al Patrono de Propinas Recibidas por el Empleado.

*Description:* Employees who receive at least $20 a month in tips must report the tips to their employers monthly for purposes of withholding of employment taxes. Forms 4070 and 4070PR (Puerto Rico only) are used for this purpose. Employees must keep a daily record of the tips they receive. Forms 4070–A and 4070A–PR are used for this purpose.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 540,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | Form 4070 | 4070–A | 7070PR | 4070A–PR |
|---|---|---|---|---|
| Recordkeeping | 7 minutes | 3 hours, 23 minutes | 7 minutes | 3 hours, 23 minutes. |
| Learning about the law | 2 minutes | 2 minutes | 2 minutes | 2 minutes. |
| Preparing the form | 8 minutes | 14 minutes | 18 minutes | 55 minutes. |
| Coping and providing | 10 minutes | | | |

*Frequency of Response:* Monthly.

*Estimated Total Reporting/Recordkeeping Burden:* 32,527,200 hours.

*Clearence Officer:* Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 92–16067 Filed 7–8–92; 8:45 am]

BILLING CODE 4830–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**Trade Policy Staff Committee (TPSC); the Effective Date, With Respect to the Republic of Moldova, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of the Effective Date, with respect to the Republic of Moldova, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics.

**SUMMARY:** In Proclamation 6352 of October 9, 1991 (56 **Federal Register** 51317), the President proclaimed that the "Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics" enters into force and nondiscriminatory treatment would be extended to products of the U.S.S.R. in accordance with the terms of the Agreement on the date of exchange of written notices of acceptance in accordance with article XVII of the Agreement. Subsequently, the U.S.S.R. was succeeded by twelve independent states, including the Republic of Moldova. An exchange of diplomatic notes with the Republic of Moldova in accordance with article XVII of the Agreement, as modified by technical adjustments and retitled "Agreement on Trade Relations between the United States of America and the Republic of Moldova," took place in Chisinau, Moldova on July 2, 1992. Accordingly, the Agreement became effective on July 2, 1992, with respect to the Republic of Moldova, and nondiscriminatory treatment is extended to products of the Republic of Moldova as of July 2, 1992 in accordance with the Agreement and as provided for in Proclamation 6352 of October 9, 1991.

**Frederick L. Montgomery,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 92–16227 Filed 7–7–92; 11:43 am]

BILLING CODE 3190–01–M

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 132
Thursday, July 9, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 57 FR 29352, Wednesday, July 1, 1992.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:00 p.m. (Eastern Time) Tuesday, July 7, 1992.

**CHANGES IN THE MEETING:**

**OPEN SESSION:**

The item listed below has been deleted from the agenda:

FY 1993 State and Local Contracting Principles.

**CLOSED SESSION:**

The Closed session of the meeting has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634-6748.

Dated: July 7, 1992.

**Frances M. Hart,**

*Executive Officer, Executive Secretariat.*

[FR Doc. 92-16216 Filed 7-7-92; 11:10 am]

BILLING CODE 6750-06-M

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**NATIONAL CREDIT UNION ADMINISTRATION**

Notice of Previously Held Emergency Meeting

**TIME AND DATE:** 10:30 a.m., Tuesday, July 7, 1992.

**PLACE:** Chairman's Office, 6th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

**STATUS:** Closed.

**MATTER CONSIDERED:**

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (6), (7), and (8).

The Board voted unanimously that agency business required that a meeting be held with less than the usual seven days advance notice. Earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions listed above. General Counsel Robert Fenner certified that the meeting could be closed under those exemptions.

**FOR FURTHER INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 92-16282 Filed 7-7-92; 2:12 pm]

BILLING CODE 7535-01-M

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**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

**INSTITUTE OF MUSEUM SERVICES**

Notice of Meeting

**SUMMARY:** This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Public Law 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

**TIME/DATE:** 8:30 a.m. to 4 p.m.—Friday, July 24, 1992.

**STATUS:** Open.

**ADDRESS:** Cornell Club, 6 East 44th Street, New York, New York 10017.

**FOR FURTHER INFORMATION CONTACT:** S. William Laney, Executive Assistant to the National Museum Services Board, Room 510, 1100 Pennsylvania Avenue, N.W., 20506 (202) 786-0536.

**SUPPLEMENTARY INFORMATION:**

The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94-462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of July 24, 1992 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506—(202) 786-0536 (202) 786-9136 at least seven (7) days prior to the meeting date.

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**NATIONAL MUSEUM SERVICES BOARD**

**July 24, 1992 Meeting Agenda**

I. NMSB Chairman's Report and Approval of Minutes from April 24, 1992 Meeting
II. Agency Director's Report
  A. Reviewer Training
  B. Conservation Task Force Meeting
III. Agency Agenda Reports: Programs
  A. Conservation Project Support
  B. Panel Recommendations
III. Agency Agenda Reports: Programs Other
  A. General Operating Support (GOS)
  B. Small, Minority, Emerging and Rural Museum Survey Update
IV. NMSB Open Agenda

Dated: July 2, 1992

**Linda Bell,**

*Director of Policy Planning and Budget, Institute of Museum Services.*

[FR Doc. 92-16183 Filed 7-7-92; 10:48 am]

BILLING CODE 7036-01-M

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**SECURITIES AND EXCHANGE COMMISSION**

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week July 13, 1992.

A closed meeting will be held on Tuesday, July 14, 1992, at 2:30 p.m. An open meeting will be held on Wednesday, July 15, 1992, at 3:00 p.m., in Room 1030.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 14, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Litigation matter.

The subject matter of the open meeting scheduled for Wednesday, July 15, 1992, at 3:00 p.m., will be:

Consideration of whether to adopt recordkeeping and reporting rules to implement the risk assessment provisions of the Market Reform Act of 1990. The final risk assessment rules would require brokers and dealers in securities to make and keep records concerning the financial and securities activities of certain of their

affiliated companies. The rules would also require brokers and dealers to file quarterly reports with the Commission summarizing the records maintained pursuant to the recordkeeping rule. For further information, please contact Roger G. Coffin, at (202) 272–7375.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Chris Sakach at (202) 272–2300.

Dated: July 7, 1992.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92–16229 Filed 7–7–92; 12:51 pm]

BILLING CODE 8010–01–M

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# Corrections

Federal Register
Vol. 57, No. 132
Thursday, July 9, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**50 CFR Part 663**

### Pacific Coast Groundfish Fishery

*Correction*

In proposed rule document 92-13645 beginning on page 24589 in the issue of Wednesday, June 10, 1992, make the following correction:

On page 24590, in the file line at the end of the document, "Filed 5-9-92" should read "Filed 6-5-92".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**21 CFR Part 356**

**[Docket No. 81N-0033]**

**RIN 0905-AA06**

### Oral Health Care Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Tentative Final Monograph

*Correction*

In the issue of Thursday, June 25, 1992, on page 28555, in the second column, in the correction of proposed rule document 92-11177, the heading above the correction numbered 2 should read "§ 356.52 [Corrected]".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

**42 CFR Part 60**

**RIN 0905-AD05**

### Health Education Assistance Loan Program

*Correction*

In rule document 92-14662 beginning on page 28789 in the issue of Monday, June 29, 1992, make the following corrections:

1. On page 28789, in the third column, in the **SUMMARY**, in the fifth line from the bottom, "This" should read "These".

2. On page 28792, in the table, in the first column, in the first entry under 60.35(a)(2), remove "D72" that appears after "(Reporting)".

3. On page 28793, in the table, in the fourth column, in the third entry under 60.61(a)(2), "31,070" should read "31,071".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR-943-4214-10; GP2-280; OR-48432 (WASH)]**

### Proposed Withdrawal and Public Meeting; Washington

*Correction*

In notice document 92-14309 beginning on page 27267 in the issue of Thursday, June 18, 1992, make the following correction:

On page 27267, in the third column, in the **SUMMARY**, in the fourth line, "expend" should read "expand".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**14 CFR Part 39**

**[Docket No. 90-ANE-29; Amendment 39-8132, AD 92-01-08]**

### Airworthiness Directives; Pratt & Whitney Canada PW100 Series Turboprop Engines

*Correction*

In rule document 92-15077 beginning on page 28600 in the issue of Friday, June 26, 1992, make the following corrections:

**§ 39.13 [Corrected]**

On page 28601, in the third column, in § 39.13:

1. In the second line, "81332" should read "8132".

2. In the first paragraph, in the third line, "PW123" the first time it appears should read "PW121"; and in the fourth line, "PW325B" should read "PW125B".

BILLING CODE 1505-01-D

federal register

Thursday
July 9, 1992

Part II

# Department of Labor

### Employment and Training Administration

**Job Training Partnership Act: Title III National Reserve Grants; Availability of Funds and Application Procedures for Program Year 1992; Notice**

DEPARTMENT OF LABOR

Employment and Training Administration

## Job Training Partnership Act: Title III National Reserve Grants; Availability of Funds and Application Procedures for Program Year 1992

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of availability of funds and solicitation for grant applications.

**SUMMARY:** The Employment and Training Administration announces the availability of Job Training Partnership Act (JTPA) title III discretionary national reserve funds for Program Year (PY) 1992 (July 1, 1992–June 30, 1993) for the delivery of dislocated worker services, and the procedures for making application for PY 1992. The Department is again announcing that funds are available for a new Defense Conversion Adjustment grant program to be funded with Department of Defense (DoD) appropriated funds. Funds are available for obligation for this program from July 1, 1991 through September 30, 1993. Applications will be accepted for six funding categories: Category I—Intrastate Dislocated Worker Projects; Category II—Multistate, Regionwide, National or Industrywide Dislocated Worker Projects; Category III—Indian Reservation Dislocated Worker Projects; Category IV—Emergency Dislocated Worker Projects; Category V—Additional Financial Assistance to Formula-funded Programs and Activities Provided by State and Substate Grantees; and Category VI—Defense Conversion Adjustment Program projects.

**DATES:** Applications will be accepted on an ongoing basis throughout the Program Year. Grant awards will be made during the Program Year in response to the applications received. There is no closing date for applications under this announcement. All applications prepared and submitted pursuant to these guidelines and received at the address below will be considered. Grant awards will be made only to the extent that funds are available, however, and applications submitted too late for consideration under Program Year 1992 funding, for Categories I to V, due to the review and processing time required, will automatically be held over for Program Year 1993 funding consideration. Applicants are encouraged to submit fully documented applications as early as possible following the dislocation event.

**ADDRESSES:** It is preferred that applications be mailed. Mail or hand deliver applications to: Office of Grants and Contracts Management, Division of Acquisition and Assistance, Employment and Training Administration, U.S. Department of Labor, room C–4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Dislocated Worker Grants, Barbara J. Carroll, Grant Officer.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert N. Colombo, Director, Office of Worker Retraining and Adjustment Programs. Telephone (202) 535–0577.

**SUPPLEMENTARY INFORMATION:** The Employment and Training Administration (ETA) announces the availability of funds reserved by the Secretary of Labor for the delivery of dislocated worker services, and the procedures to make application for these funds. Funding is authorized by section 302(a)(2) of the Job Training Partnership Act (JTPA or the Act) (29 U.S.C. 1652(a)(2)), as added by section 6302(a) of the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), Public Law 100–418, 102 Stat. 1107, 1525. Funding is also authorized by the 1990 National Defense Appropriation Act. The application procedures, selection criteria, and approval process contained in this notice are issued in accordance with JTPA, 20 CFR 631.61.

This program announcement consists of four parts. Part I provides the background and purpose of the discretionary funds reserved for the Secretary of Labor (Secretary) for activities under sections 323 and 324 of the Act. 29 U.S.C. 1662b and 1662c. Part II establishes basic U.S. Department of Labor policies and emphases for discretionary grants. Part III describes the basic grant application process, which is relevant to all applications. Part IV provides detailed guidelines for the preparation of each category of application, Intrastate Dislocated Worker Projects, Multistate Dislocated Worker Projects, Indian Reservation Dislocated Worker Projects, Emergency Dislocated Worker Projects, Additional Financial Assistance to Formula Funded Programs, and Defense Conversion Adjustment Programs. The primary selection criteria used in reviewing each type of application is also included. Any entity interested in submitting a discretionary proposal should carefully review parts I, II, III and the appropriate category of part IV which is relevant to the type of proposal being submitted.

The JTPA title III program is listed in the Catalogue of Federal Domestic Assistance at No. 17–246 "Employment and Training Assistance—Dislocated Workers" (JTPA title III Programs).

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## JTPA TITLE III NATIONAL RESERVE PROGRAM YEAR 1992 SOLICITATION FOR GRANT APPLICATIONS

### Part I. Background

*A. Fund Availability*

Funds available for title III of JTPA for Program Years (PY) 1991 and 1992 (July 1, 1991–June 30, 1992/July 1, 1992–June 30, 1993) total $526,986,000 for each year. Of this amount, $421,588,800, as prescribed in section 302(a)(1) of the JTPA, has been allotted by formula for PY 1991 and will be for PY 1992. The remainder, $105,392,000 is available for each year to be used by the Secretary for discretionary purposes including projects funded under this Notice. Of this amount, approximately $88,467,020 is being made available each year for discretionary projects under this solicitation. The balance each year will be used for other mandatory and authorized discretionary activities. DoD Funds are also available to fund Defense Adjustment Conversion programs awarded pursuant to the requirements contained in Part IV F.

*B. Circumstances Under Which Services May Be Provided With JTPA National Reserve Funds*

(1) Services may be provided as described in JTPA section 314 in the following circumstances:

(a) Mass layoffs, including mass layoffs caused by natural disasters or Federal Government actions (such as relocations of Federal facilities) when the workers are not expected to return to their previous occupations;

(b) Industrywide dislocations;

(c) Multistate dislocations;

(d) Special projects carried out through agreements with Indian tribal entities;

(e) Special projects to address national and regional concerns;

(f) Demonstration projects;

(g) To provide additional financial assistance to programs and activities provided by States and substate grantees under part A of Title III;

(h) To provide additional assistance under proposals for financial assistance that are submitted to the Secretary and approved by the Secretary after consultation with the Governor of the State in which the project is to operate.

(i) To provide for emergency assistance to a distressed industry or area as determined by the Secretary with the agreement of the Governor; and

(j) To provide program funds where there is a dislocation resulting from a reduction in Defense Department procurements or the full or partial closure of military facilities.

(2) Funds appropriated to DoD are now available for individual projects to assist workers dislocated as a result of reductions in Defense Department procurements and the closing or reduction of military facilities. The Department may fund any approved projects designed to assist workers dislocated as a result of reductions in Defense procurements or military base closings or reductions out of those appropriations.

### Part II. Department of Labor Policy and Program Emphasis

*A. Basic Policies*

1. Available funds shall be awarded by the Grant Officer in a manner that efficiently targets resources to areas most in need, and in a manner which promotes effective use of funds.

2. All projects and activities funded shall be subject to the Act, the appropriate regulations, the requirements contained in these instructions and the Grant Officer's award document(s) and any subsequent grant amendment.

3. Cost limitations contained in the Act and regulations shall be applicable unless otherwise specifically approved by the Grant Officer. Any request to vary statutory and/or regulatory cost limitations must be specifically justified in the application. No variations are allowable unless specifically authorized by the Grant Officer.

4. Title III national reserve funds and Department of Defense appropriated funds provided to the Department shall not be considered as an ongoing source of funds for existing centers or other projects or activities. For this reason, it is a general policy of the Department that it will not refund national reserve projects. Projects involving extraordinary circumstances such as massive continuing layoffs, may be considered for refunding.

5. National reserve funds are not to be used to subsidize a grantee's on-going operations. A grantee may only be reimbursed for costs over and above those costs associated with the grantee's on-going costs. It is the Department's position that where national reserve funded projects are operated by existing State or substate grantees, administrative savings will be realized.

**Note:** Substate grantee is defined at JTPA section 301.

6. National reserve funds and Department of Defense funds shall only be provided to meet needs which cannot be met by JTPA formula funds or other State and local resources. Grants will be primarily awarded therefore, where substantial numbers of workers, relatively speaking, in a substate area, labor market, region or industry are dislocated.

**Note:** Substate area is defined at JTPA section 301.

7. Eligible dislocated workers to be served with JTPA appropriated funds shall be workers meeting the requirements of section 301(a) of the Act and 20 CFR 631.3. Eligible dislocated workers to be served with funds provided to the DOL by the Department of Defense shall meet the requirements of part IV, F, category VI, section 1.(b) of these guidelines.

8. For Intrastate (Category I) and Multistate (Category II) applications, the threshold for determining that a "substantial" number of workers have been affected shall be the definition of "substantial layoff" at 20 CFR 631.2. Applications may also be submitted to assist workers dislocated from small and medium sized companies within a single State where the Governor has determined such workers constitute a substantial proportion of the State's or substate area's economic base as described at 20 CFR 631.30(b).

9. The Department shall make every effort to review and respond to each application within 45 days of the Department's receipt of the application.

10. No grant funds awarded shall be used to reimburse costs incurred prior to the date authorized by the Grant Officer.

*B. Secretary's Rights Reserved*

The Secretary reserves the right to distribute some of these funds in a manner other than that provided by this notice, consistent with the Act, and taking into consideration special circumstances and unique needs which may arise throughout the course of the program year.

The Secretary also reserves the right to fund individual projects on an incremental basis where the Department determines that such an action would result in the most effective use of available resources.

If insufficient applications are received by the Department which are of acceptable quality and which meet the guidelines and selection criteria

contained in this notice to exhaust the title III JTPA national reserve account, the Department shall take whatever action it deems necessary and appropriate, consistent with the Act and the regulations, to exhaust the funds. This could include returning any unobligated national reserve funds to the U.S. Treasury.

*C. Basic Planning Rules*

1. Operating Definition of State

For purposes of these grant application procedures, State shall be the 50 States of the United States and the following grant eligible territories and legal jurisdictions: District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, Commonwealth of Northern Marianas, Republic of the Marshall Islands, Federated States of Micronesia, and the Republic of Palau.

2. Allocation of Costs

a. State Administration. States may include no more than 1.5 percent or $15,000, whichever is lower, for State administration of "pass-through" grants. State administrative costs requested that are above this established set aside must be accompanied by a justification showing the projected person-hours and functions to be performed and any other relevant cost information. This cost is to be included in the Administrative cost category. It is expected that these funds will be used for subgrant administration, the provision of technical assistance, onsite and desk monitoring, and data collection.

b. State 40 percent funds. States must provide specific information regarding why State 40 percent funds are not available to support a project.

c. Administrative Requirements for Grant Projects.

(1) In addition to applicable administrative requirements contained in the Act and regulations, some grantee organizations will be subject to other requirements as listed below:

(a) State and local Governments (except for JTPA grant recipients under the Federal, State, Governor-Secretary Agreement block grant)—OMB Circular A–87 (cost principles) and 41 CFR part 97 (Uniform Administrative Requirements for Grants with State and Local Governments). The audit requirements at 29 CFR part 96 also apply.

(b) Non-Profit Organizations—OMB Circulars A–122 and A–133 (Audits) apply.

(c) Educational Institutions—OMB Circulars A–21 and A–133 (Audits) apply.

(d) Profit Making Commercial Firms—Federal Acquisition Regulations (FAR) 48 CFR part 31.

(2) No equipment with a unit cost of $500 or more may be purchased without specific prior approval of the Grant Officer. Any planned equipment purchases with a unit cost of $500 or more must be justified and specifically listed along with its purchase price in the grant application. Leased equipment does not require prior approval from the Grant Officer.

c. Establishment of a Labor Management Committee. Costs associated with the establishment of a Labor Management Committee are appropriately charged as Rapid Response costs against the State's 40 percent title III formula funds. Therefore, they are not to be charged to the grant. Ongoing operational costs of the Labor Management Committee during the period of performance of the grant are chargeable to the Administration Cost category.

d. When a participant is eligible for either partial or full reimbursement of training costs (*e.g.*, Pell grants, employer tuition reimbursement, etc.) the application must describe the procedures established for the reimbursement and/or crediting of such costs if such costs are initially charged to the national reserve grant.

Note: Where national reserve funds are expended for training prior to certification of TAA eligibility, national reserve funds shall not be reimbursed to the JTPA program when TAA funds become available to cover the balance of the training.

e. Necessary and Reasonable Costs/Cost Effectiveness. In accordance with 20 CFR 629.37(a), costs will be required to be "reasonable" and "necessary" to be charged to the grant. In reviewing a grant application, the Secretary shall consider these criteria. Areas of concern include but are not limited to: Staff to participant ratios; the proportion of staff costs to the total grant; the cost of purchased or leased equipment; the cost of proposed training as it relates to the complexity of the skills to be learned, the length of training, and the provider's access to other supplemental funding sources; etc. The extent to which the proposed project budget reflects costs that appear to be "reasonable" and "necessary" will be a significant factor in determining the project's cost effectiveness.

f. All indirect costs that are administrative in nature shall be charged to the Administration Cost category. Any indirect costs that are not administrative costs shall be itemized separately in the appropriate cost category.

g. It is not intended that national reserve account (NRA) projects automatically be charged 15 percent of the award amount toward the overall administrative costs of the SDA/substate grantee. The amount planned to be used for administration and the specific purposes for which it will be used must be determined in order for an administrative cost budget line item to be established. Once determined, and approved, the amount budgeted for administration may be included in any existing SDA/substate grantee administrative cost pool where the SDA/substate grantee is administering the national reserve grant. A portion of costs charged to the administrative cost pool may be allocated to the NRA, up to the total amount included in the cost pool from the NRA grant and consistent with overall expenditures for the NRA grant and consistent with existing rules for the charging of costs against an administrative cost pool.

3. Additional Funding

The amount of a grant award cannot be increased after the grant is awarded. If circumstances change so substantially that additional funds are required to serve dislocated workers from the targeted company, another grant application must be submitted. The same review and approval procedures will apply to a second grant application as apply to other dislocated worker project proposals. A second application shall include an up-to-date status report of performance under the first award including: overall enrollments, enrollments by activity and expenditures (obligations and expenditures by cost category).

4. Activities

a. The application budget shall not include costs for activities or services begun with State funds prior to the grant award. If initial training costs for a participant are incurred with State funds, the balance of training cost commitment for that participant must be funded by the State.

b. Applications shall not provide for using national reserve funds for work experience.

c. National reserve funds shall not be used for rapid response activities except in the case of additional financial assistance to formula funded programs. Rapid response activities are paid for out of State 40 percent funds.

d. National reserve funds shall not be awarded to fund an individual training project or a particular activity.

5. Identification of Participants To Be Served

The applicant must demonstrate how the planned number of participants to be served was determined. Furthermore, the applicant must explain how those affected workers most in need of services to return to the labor force will be identified and assured access to necessary services.

6. Project Locations

If an applicant plans to operate more than one project or subproject, each location shall be listed and separate budgets, implementation schedules and, where appropriate, lists of local demand occupations for retraining provided. In all cases, the applicant must also include a summary budget and implementation schedule for the entire project.

7. Placement Rate Expectations

Since funds and resources are specifically focused on the needs of a targeted group of workers and their employment and training needs, the Department expects that:

(a) Project placement rate—The planned entered employment rate for any program will be at least 70 percent.

(b) Occupational classroom training—A placement rate of 75 percent will be expected from occupational classroom training. This rate may be calculated by including the provision of job search assistance and other services to participants who receive occupational classroom training.

(c) On-the-Job Training (OJT)—A placement rate of at least 80 percent will be expected for OJT. This rate may be calculated by including the provision of job search assistance and other services to participants who receive OJT. If the applicant does not believe such a rate can be achieved in its proposal, it must provide reasons for planning a lower rate.

8. On-the-Job Training (OJT)

No OJT under six weeks duration shall be funded with national reserve grant funds. Any OJT training for between six and 10 weeks in duration shall be consistent with an approved rationale to determine the length of training for a given occupation. The rationale to be used shall be stated in the application. An OJT contract must contain a "hire first" provision.

**Part III. The Basic Application Process**

*A. Funding Considerations*

1. Identification of Dislocated Workers

a. Dislocated workers eligible to be provided services with JTPA national reserve or Defense Department appropriated funds are defined as individuals who meet the definitions set forth in section 301(a) of the Act and 20 CFR 631.3; 29 U.S.C. 1651(a). The dislocated workers to be served must be specifically identified in the application.

Eligible individuals may be served without regard to the State of residence of the individual (Section 311(b)(1)(B); 29 U.S.C. 1661(b)(1)(B)).

b. Applications should indicate that the provision of services to eligible participants will take into account those "most in need", those least likely to be recalled, those with the least transferrable or most obsolete occupational skills, and those with the most barriers to other employment opportunities such as poor reading or math skills. Those "most in need" for purposes of national reserve funding, will be determined on a project-by-project basis. Applications shall provide that those participants requiring labor exchange services and other minimal employment services are directed to other appropriate resources such as the State Employment Service.

2. Dislocated worker project applications selected for funding will generally be those which:

(a) Effectively identify and target the project to specific groups of dislocated workers, industries or plants, occupations and geographic areas;

(b) Specify occupational and educational training related to local demand occupations;

(c) Demonstrate a timely response to the target group's employment and training needs for such services; and

(d) Are cost-effective in terms of services to be provided and results to be achieved.

*B. Screening and Review of Applications*

1. Screening Requirements

All applications will be screened to determine completeness and conformity to the Act, regulations, application guidelines and other requirements contained in this announcement.

In order for an application to be in conformance, it must be paginated and include the following:

a. Transmittal letter. A transmittal letter from the Governor or the applicant's authorized signatory containing the required assurances.

b. Standard form. SF 424, Application for Federal Domestic Assistance (Catalogue No. 17.246).

c. Budget. A detailed line item budget according to the applicable cost categories found at 20 CFR 631.13 of the JTPA Title III regulations and as outlined in these guidelines.

d. Project narrative. The narrative portion of the application including attachments shall not exceed twenty-five (25) double-spaced pages, typewritten on one side of the paper only. The narrative must address all of the elements specified in the application guidelines.

e. Certifications. (i) An original signature certification regarding "Drug-Free Workplace" must be submitted with the application except in the case where the applicant is a State. States may opt to submit a copy of the Statewide or agency annual certification renewable every Fiscal Year per Training and Employment Information Notice (TEIN) No. 15–90. This certification requirement applies only to the Federal grant applicant. The "Certification Regarding Drug-Free Workplace Requirements" form is found in appendix A.

(ii) A "Certification Regarding Debarment, Suspension and Other Responsibility Matters, Primary Covered Transactions" must be submitted with all national reserve applications (except those related to national or agency-recognized emergency disasters) as required by the DOL regulations implementing Executive Order 12549, "Debarment and Suspension," 29 CFR 98.510. This certification form is found in appendix B.

(iii) A "Certification Regarding Lobbying" shall be submitted with each national reserve application as required by 29 CFR part 93, "New Restrictions on Lobbying." 54 FR 6736, 6751 (February 26, 1990). A suggested form incorporating the required text is found in appendix C.

(iv) When the applicant is not the State JTPA entity (i.e., subject to the JTPA Governor/Secretary Agreement), SF 424B, Assurances—Non-Construction Programs, with an original signature, must be submitted with the application. This assurance form is found in appendix D.

2. Review and Evaluation

Complete conforming applications will be reviewed and evaluated based on the selection criteria for each category and the availability of funds.

*C. Information and Reporting Requirements*

1. Records

By accepting a grant, the grantee agrees that it shall maintain and make available to the U.S. Department of Labor upon request, information on the

operation of the project and on project expenditures. Such information may include the implementation status of the project such as completion of subagreements, hiring of staff, date enrollments began, current and cumulative number of participants, and cumulative expenditures.

2. Reports

The grantee shall submit to the Employment and Training Administration, an original and two copies of:

a. The Worker Adjustment Program Quarterly Report. ETA Form No. 9020 (OMB No. 1205–0274), and

b. The Worker Adjustment Program Annual Program Report. ETA Form No. 9019 (OMB No. 1205–0274).

*D. Grant Funding Procedures*

1. Proposals funded pursuant to the Secretary/Governor agreement shall be subject to the following procedures. Where proposals are approved for funding pursuant to the Secretary/Governor Agreement, immediate funding shall be provided. The State and/or local program may be required to submit additional information to satisfy requirements that have been determined to be unacceptable in the original proposal. In such circumstances, the Department may or may not allow the incurring of costs prior to the approval of the modification submitting the additional information depending on the nature and the seriousness of the problems identified. The Grant Officer's approval letter shall contain the Department's decision on this issue.

2. Proposals not funded pursuant to the Secretary/Governor Agreement shall be subject to the following grant award procedures:

a. Once a decision is made by the Secretary to approve a proposal, the Secretary shall send a letter to the applicant announcing the award.

b. The applicant shall also be contacted by telephone by the Employment and Training Administration's (ETA) Grant Officer to resolve any problems identified in the proposal and to develop a grant to be executed by the applicant and the Department of Labor. A letter announcing this process shall also be forwarded to the applicant from the ETA Grant Officer.

c. All of the details of the grant shall be resolved by telephone and the grant document shall then be completed by the Department's grants office and forwarded in duplicate to the applicant for signature. The applicant shall sign both copies of the grant document and return the copies to the ETA Grant Officer for final execution.

d. The ETA Grant Officer shall sign both copies of the grant, and forward one signed copy to the applicant. The grant document and the transmittal letter shall instruct the grantee as to the date that the grantee may commence to incur costs against the executed grant.

3. Emergency awards. When an award is approved, the Secretary shall send an award letter to the applicant.

a. For emergency proposals which are funded pursuant to the Secretary/Governor Agreement, immediate funding, normally 30 percent of any approved request shall be provided. The applicant shall then be required to submit a fully documented proposal in accordance with the appropriate requirements. Normally the grantee will be allowed to immediately begin incurring costs once the award is made. Such costs may be incurred pursuant to the initial proposal, the award letter, the appropriate assurances, the Act, the regulations, and the application procedures.

In certain situations it may be necessary to require additional information before the grantee may commence to incur costs. The grantee shall be notified in the award letter where this is the case and of the requirements that must be met before costs may be incurred.

The final funding level, and any additional requirements shall be determined once the Department receives, reviews and approves the fully documented proposal.

b. For emergency proposals which are approved but not funded pursuant to the Secretary/Governor Agreement, the ETA Grant Officer shall both fax and mail an original initial grant once the Secretary has approved the award. The grantee shall sign both the faxed grant and the original grant, in duplicate. The signed fax copies should be faxed immediately to the Grant Officer. The two copies of the signed original grant shall be returned by mail as soon as executed. The Grant Officer will sign the returned fax copies and refax one to the grantee with a cover letter which will authorize the grantee to commence to incur costs and which will also instruct the grantee regarding the development and submission of a fully documented proposal. The Grant Officer shall, upon receipt of the two signed original copies, sign and return one original with a cover letter. This original initial grant will contain the same date for incurring costs as the faxed grant and the same instructions for developing and submitting a fully documented proposal.

The final level and any additional requirements shall be determined once the Department receives, reviews and approves the fully documented proposal.

*E. Grant Amendment Procedures*

The Department recognizes that circumstances will arise where grant amendments will be necessary, and that those circumstances will be, in some cases, beyond the control of the project operator. Nevertheless, the Department is concerned about the need to amend discretionary awards since such amendments can, and in many cases do, represent poor planning and/or poor management of the project. Following are guidelines for when an amendment is necessary.

1. All grant amendment requests must be submitted to the Grant Officer by the authorized signatory citing the number of the Notice of Obligation transmitting the grant funds to the State or, in the case of a grantee who is not subject to the JTPA Governor/Secretary Agreement, the grant number.

The States and grantees are responsible for monitoring the implementation and progress of their national reserve projects and identifying circumstances that would require a grant amendment request. All requests for grant amendments must be accompanied by an explanation of the reasons for proposing such a change to the originally approved project plan.

a. There are several reasons for grant amendments. Following are types of reasons, and the information or possible changes required related to each reason.

(1) Grant Amendment Requests required due to changes in circumstances after the grant award, such as, but not limited to, a delay in layoff or plant closure date, the recall of a number of the project participants, certification of worker eligibility for Trade Adjustment Assistance, or recruitment difficulty resulting in enrollments significantly below the planned level. Such circumstances may require substantial amendment of the project plan and may entail any or all of the following aspects of the plan.

(a) Extension of the period of performance. When an extension of the period of performance beyond the approved project period of operation is necessary, such extension requests must be submitted 60 days before the scheduled expiration date of the project as designated in the grant award letter or subsequent correspondence. The reason for the request explaining the change in circumstances that requires the extension must be provided.

(b) A revised quarterly implementation plan reflecting the requested period of performance which reflects the activity through the most recent quarter must be provided.

(c) A revised budget (if appropriate) must be provided.

(2) Grant amendment requests required due to budget changes. The following budget changes will require a grant amendment request. In each case, an explanation of the circumstances requiring the change and a revised overall grant budget must accompany the request. Any other parts of the approved grant impacted by such changes must also be submitted for approval.

(a) Any proposed increase to the approved budget for Administration.

(b) A proposed increase or decrease of 15 percent or more in the approved project budget for Retraining, so long as the decrease does not result in an overall expenditure for Retraining of less than the 50 percent for this cost category.

(c) In the case of any budget change regardless of the percentage that would result in a decrease in the Retraining cost category line item below the required 50 percent expenditure rate for Retraining, or requiring a change in an expenditure rate previously waived by the Secretary, a grant amendment request must be submitted. If the budget change would result in a retraining expenditure rate below the required 50 percent level, a request for waiver including justification must accompany the amendment request.

(d) A proposed increase or decrease of 15 percent or more in the approved project budget for Supportive Services. The resulting increase may not exceed the 25 percent cost limitation for this cost category.

(3) Grant amendment requests required due to changes in project participant activity levels such as any increase or decrease of more than 15 percent in the total number of participants to be served or in the number of participants to receive Retraining services including classroom training, occupational skill training, on-the-job training, entrepreneurial training, remedial education, or other proposed training serving more than 10 participants. In such circumstances, the following information must accompany the grant amendment request.

(a) The reason for the request explaining the change in circumstances that requires the extension.

(b) A revised quarterly implementation plan which reflects the activity through the most recent quarter, and the appropriate adjustments to reflect the requested new activity level.

(c) A revised budget (if appropriate).

(4) Grant amendment requests due to a change in the targeted dislocated workers (i.e., company(ies) industry, etc.) and or geographic area(s) to be served. In such circumstances, the following information must accompany the grant amendment request.

(a) The reason for the request explaining the change in circumstances that requires the extension.

(b) When appropriate, a revised quarterly implementation plan reflecting the activity through the most recent quarter, and making the appropriate adjustments to reflect the requested activity level, or a statement to indicate no such activity level changes are anticipated. If a new subproject is added to the grant, each subproject must have a quarterly implementation schedule, and an overall implementation schedule for the project must also be submitted.

(c) A revised budget (if appropriate), or a statement indicating such a change will not affect budget line items. If a new subproject is added to the grant, each subproject must have a separate budget, and an overall project budget must also accompany the request.

(d) The amendment must specifically state if a substantial number of the new workers to be added to the target group are represented by a labor organization. If appropriate, based on the statement provided, evidence of consultation with labor organizations representing such workers must be provided before expenditures will be authorized to serve these workers.

(e) Where a new geographic area is involved, evidence of review by the substate area's Private Industry Council(s) must also accompany the request.

(5) Grant amendment requests required when it is projected that national reserve grant funds will remain unexpended. As soon as it becomes apparent that funds will be unexpended, the State should notify the Employment and Training Regional Office.

If this information becomes available within the Program Year in which the grant funds were awarded, the State may submit a request to the Grant Officer to deobligate those funds it projects to be unexpended. Such funds may be reobligated by the Secretary to another grantee requiring funding assistance to address a worker dislocation.

When the underexpenditure is not identified until after the end of the Program Year in which the grant funds were awarded, the funds are not available for reobligation. Therefore, States may propose an effective alternative use of such funds. If the State desires to reprogram a portion of the unexpended funds originally awarded to a project, it must provide the following information.

(a) Evidence that the original target group has substantially been served, or may be served at a reduced funding level. The circumstances resulting in this assessment by the State must be explained.

(b) Documentation of the services provided to the original target group. This may follow the format of the implementation schedule in identifying activities and numbers of participants served.

(c) Evidence of expenditures for the original target group by cost category.

Note: The original project may continue to operate at a reduced level of activity and expenditure while a new subproject serving another group of targeted workers is funded and becomes operational using the projected unexpended funds.

(d) A request to extend the period of performance of the grant. Please note the time limitations pursuant to Section 161(b) on authorization to expend national reserve funds.

(e) A proposal for expenditure of the projected unexpended funds must include the same information required for submittal of a grant application—identification of the target groups; dates of the dislocation; number of workers affected; an explanation of how the projected number of participants was derived; an analysis of the labor market relative to the targeted participants; identification of demand occupations in which retraining will occur; a description of the services to be provided; a cumulative quarterly implementation schedule by major services to be provided, terminations and entered employment, and projected expenditures; a detailed line item budget (including staffing information); evidence of labor consultation where appropriate, and documentation of PIC/LEO review where appropriate.

All requests must be submitted in a timely basis to allow sufficient time for the reasonable expenditure of the funds in question during the remaining statutory time limitation for the funds.

2. Requests for grant amendments will be considered in light of the general purposes of the national reserve account, the selection criteria for national reserve projects published annually by the Employment and Training Administration in the Federal Register, and the purposes of the original grant award. Amendments which request significant changes in the

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target group to be served will be reviewed in the same context as a new proposal.

3. The Grant Officer will advise the State or national reserve grantee in writing of any approval or disapproval of the proposed grant amendments, generally within 30 days of receipt of the grant amendment request.

**Part IV. Specific Application Requirements**

*A. Category I—Intrastate Dislocated Worker Projects*

An application for an Intrastate Dislocated Worker Project, within a single State, must comply with the following requirements:

1. Eligible Grant Applicants

The eligible grant applicants for such projects are the 59 State JTPA grant recipient agencies under the Federal-State, Governor-Secretary Agreement. ("State" as previously defined.)

2. Eligible Project Operators

Eligible subgrantees who may operate dislocated worker projects include but are not limited to State agencies, JTPA title III substate grantees; units of local government; local public agencies, such as community colleges or area vocational schools; private non-profit organizations, including community-based organizations; labor organizations; regional development councils; industry-sponsored associations; private-for-profit organizations and Indian tribal entities.

3. Submission of Applications

Applications for Intrastate Dislocated Worker Projects must be submitted to the Department of Labor by the Governor or the State JTPA agency accompanied by the assurances listed below from the authorized signatory. Applications submitted by other entities shall not be considered for funding.

4. Required Assurances

a. Applications shall be transmitted with a letter from the Governor or the authorized JTPA State signatory official containing the following assurances:

If the proposed project is funded:

—The grantee assures that any title III funds awarded from funds reserved by the Secretary shall be administered, by the grantee, in accordance with the Act, the JTPA regulations, the proposal and any amendments thereto, as approved by the Grant Officer, and shall be consistent with the approval letter signed by the U.S. Department of Labor Grant Officer transmitting the grant award.

—The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for title III activities.

—The grantee agrees to accept any grant funds awarded under this application, and provide administration and oversight of the grant. The grantee agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential underexpenditure of funds.

—Following receipt of grant approval, the grantee shall advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the State shall provide additional information explaining the projected implementation date.

—The grantee agrees to compile and maintain information on project implementation on a monthly, and performance and expenditures data on a quarterly basis. The information shall, at a minimum, be consistent with the activities and cost categories contained in the project proposal and shall be available to the Department as requested, and

—Based on the State's oversight authority, the State agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential underexpenditure of funds.

b. Project proposals not accompanied by these required assurances will not be accepted for review.

5. Review and Coordination Requirements

a. Formula funds. The Governor and substate area grantee must include comments regarding the proposed project with respect to the availability of State and substate formula funds, experience of the program operator in operating programs for dislocated workers, and any other area of concern pertinent to the funding of the project. These comments shall be forwarded by the Governor or authorized signatory at the time of submission.

b. Private Industry Council (PIC)/local elected official (LEO). All grant applications to provide services to dislocated workers shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment.

c. Labor organizations. All applications for dislocated worker projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) must provide documentation of full consultation with the appropriate local labor organization(s) in the development of the project. Thus, documentation is required for each union representing at least 20 percent of the affected workers.

6. Application Content

Following are the areas to be addressed and information to be provided for each intrastate grant application submitted for JTPA Title III national reserve funds. Applications are to be submitted using the following format.

a. *Period of Award:* Awards will be made for an 18-month period to allow for project start-up (not to exceed 90 days), operation, and administrative closeout. If the period of operation is extended, the period of the award will be extended by an equal time period.

b. *Period of operation:* Applications should generally provide for a period of operation of 12 months. Applications for periods of operation in excess of 12 months may be submitted with information supporting the need for the additional period.

c. *Synopsis of the Project:* A short summary of the pertinent facts regarding the project that includes:

(1) The name and address of the project operator along with the name and phone number of a contact person for the project operator;

(2) The project location(s) (city, county);

(3) The planned starting and ending dates of the project;

(4) The total amount of Title III national reserve funds requested;

(5) The name(s) of the company(ies) from which the affected workers have been dislocated, and the type of business or industry involved;

(6) The date(s) of employment termination and the number of workers affected;

(7) The names of the counties and cities in which the affected workers reside;

(8) The total number of participants planned;

(9) The total number of placements planned;

(10) The planned cost per participant;

(11) The planned cost per entered employment; and

(12) The name, address, and telephone number of the signatory official for the substate grantee(s) serving the area in which the project is to be operated.

d. *Project Narrative:* The project narrative shall address the following elements:



(1) *Project Description.* A description of the need for a project to serve the target group and an explanation of how this need was determined. The description should include:

(a) The industry(ies) affected;

(b) The reason for the layoff(s) or closure(s)

(c) The schedule for layoff(s) and/or closing(s);

(d) The number of affected workers likely to participate in the program, taking into consideration:

(i) The total number of workers affected by specific occupation(s) and the wage level(s) for each occupation;

(ii) The number of affected workers eligible to participate, with special attention given to those workers who will need more extensive services than available labor exchange services provided by the State Employment Service agency, based on their current educational and/or occupational skills;

(iii) The number of affected workers likely to retire;

(iv) The number of affected workers likely to transfer;

(v) The number of affected workers likely to be recalled; applicants must indicate that recall within the next 12 months is highly unlikely;

(vi) The number of affected workers who possess locally transferable skills and, therefore, will find other employment with minimal assistance; and

(vii) When the layoff(s) or closure(s) occurred more than 4 months prior to submittal of the application, information shall be provided to show how the proposed operator determined the number of affected workers who remain unemployed and in need of services.

Note: Provide the methodology that was used to determine these numbers (*e.g.*, current survey of affected workers, unemployment insurance (UI) data, *etc.*).

(e) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(f) The economic conditions for the State and the geographic area to be served as documented by the most recent unemployment rate for the area, or the economic and unemployment trends in the specific industry affected, to document the severity of the need for such a project.

(g) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the city and State to which the plant will be relocated shall be provided.

(2) *Existing Resources.* Provide a statement of why the need cannot be met by existing Federal, and/or State, and/or local resources. The statement shall indicate why the proposed project was not funded with State or substate area grantee title III funds.

(a) The status of fund availability (obligations and expenditures) for both the State's title III formula program and any current discretionary awards shall be provided. This information shall be through the end of the latest quarter for which data are available. Where a substate grantee will operate the proposed program, the same information regarding fund availability, obligation and expenditure of substate formula funds, as well as any discretionary national reserve funds, shall be provided.

(b) The application must indicate whether an application has been made (provide petition number, if available), or a certification given, for Trade Adjustment Assistance (TAA) for the affected workers. When the proposed target group has applied for TAA certification or has been certified, a description of how TAA resources and national reserve grant funds will be coordinated shall be provided. A statement shall be provided, pursuant to section 141 (b) and (h) of JTPA, that the project operator shall ensure that duplication of services does not occur.

The current TAA funding availability and obligations shall be provided as well as information or any current request to the Department for TAA funds to serve the workers the application proposes to serve.

When a target group is certified to receive TAA, including Trade Readjustment Allowances (TRA), national reserve funds may still be needed for those services not allowable under TAA such as, assessment, job search assistance including job clubs, transportation assistance within the commuting area, counseling, child care, and training that does not meet TAA training criteria. In such instances, the applicant may request a waiver of the requirement that 50 percent of the total grant must be expended for retraining. The request shall provide an estimate of the number of workers to receive TAA funded training and the cost of such training. The coordination procedures established to track the project participants receiving TAA funded training should also be explained.

(c) The nature and duration of any contractual obligation of, or voluntary arrangements by, the employer(s) or union(s) to provide employment-related services to terminated employees shall be included. When applicable, severance pay arrangements should be noted.

(3) *Labor market employment opportunities.* All applications shall contain a discussion demonstrating familiarity with the local labor market(s) including occupations in which participants will be retrained or placed. The discussion shall include the following:

(a) An explanation of how the potential for placement in occupational areas was determined, including information on specific employers or industries that have demands for workers in those occupational areas and whether retraining will be required prior to placement. The source of such information should be provided.

Note: A list of demand occupations within the State or substate area is the least acceptable approach to providing this information. Current local information, such as special employer surveys, should be provided.

(b) Information that shows how the characteristics and skills of the target group population are related to the demand occupations identified in the labor market in which training and/or placement will occur.

(c) Certification that the number of currently unemployed workers available for employment in the demand occupations for which retraining is planned is insufficient to meet the need.

(4) *Coordination and linkage.* In addition to the applicable review and coordination requirements described in paragraph IV.A.5. above, all applications for funds will be required to:

(a) Describe the involvement (if any) of organized labor in the development and operation of proposed project activities.

(b) Show how the proposed project for dislocated workers will coordinate with other State and local agencies and related programs including but not limited to:

(i) The local substate area grantee(s),

(ii) Veterans' programs (including JTPA) available in the area,

(iii) The State Employment Service,

(iv) The unemployment compensation system, to ensure that workers understand the requirement, for enrollment in training in order to be eligible for needs-related payments, as outlined in 20 CFR 631.20 of the JTPA regulations,

(v) The Pell Grant program, and

(vi) Other appropriate State and local program resources.

In those instances where other State funds, such as vocational education, economic development, or special appropriations are available to the project, include a brief discussion of the

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activities for which these funds will be used and their relationship to the national reserve funds requested, taking into consideration section 141(b) of the Act.

(5) *Description of services.* All applications shall include a description of the following services.

(a) Intake and eligibility determination. Describe the procedures to recruit and ensure the eligibility of each participant. Indicate what entity will be accountable for eligibility determination.

(b) Basic Readjustment Services (JTPA section 314(c); 29 U.S.C. 1661c(c)). Describe how assessment, job search assistance, counseling, job development and placement services and any other basic readjustment activities will be coordinated with training activities (assessment procedures must include the capability to determine if a participant's reading skills are below the 8th grade level);

(c) Retraining services (JTPA section 314(d); 29 U.S.C. 1661c(c)). Describe the retraining to be provided, including the types and lengths of retraining for various occupations or occupational areas, and the likely providers of on-the-job, classroom and occupational skill training.

Note: National reserve funds shall not be provided to substitute for such activities as the employer's traditional training responsibility associated with model changes, the introduction of new products, general employee upgrading, *etc.*;

(d) Participant supportive services. Discuss which services will be provided and how they will be coordinated with training activities, including needs-related payments; (JTPA section 314(e); 29 U.S.C. 1661c(e));

(6) *Implementation plan.* The following information regarding implementation plans shall be included.

(a) A schedule for the implementation of program activities upon receipt of funds and a discussion of initial actions taken to support implementation. Enrollment of all participants should normally occur within 90 days of the grant award. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided shall be included; and

(b) Quarterly implementation data showing the following projected cumulative data for the overall project and for each subproject site including:

(i) Enrollments for each major activity—assessment, job search assistance, classroom training, occupational skills training, on-the-job training and other training;

(ii) Total terminations;

(iii) Number of participants entering employment from each activity; and

(iv) Expenditures.

(7) *Planned outcomes.* Provide project data showing the projected overall:

(a) Cost per participant;

(b) Cost per entered employment;

(c) Entered employment rate; and

(d) Average wage rate at entered employment.

(8) *Financial and management capability.* Except where the actual project operator will be the State or the substate grantee, provide a description of the fiscal and management capabilities of the prospective project operator including: (Limit to no more than two pages.)

(a) How the prospective project operator (or the division which will have responsibility for this project) is or will be organized.

(b) Current or previous relevant experience in providing services to dislocated workers or in administering training and employment programs.

(c) A paragraph outlining the capability of the project operator to maintain and report required fiscal and management information.

(d) Information about each previous grant program experience including, if the proposed project operator has been awarded and operated a national reserve grant or substate grant within the last 2 program years:

(i) The target group served;

(ii) Amount of the grant award(s);

(iii) The period of award;

(iv) The number of participants planned according to approved project plan, as amended if applicable;

(v) The number of participants enrolled. If the project is still in operation, provide enrollment through the most recent full month of operation;

(vi) Expenditures by cost category. If the project is still in operation, provide expenditure data through the most recent full month of operation;

(vii) The planned cost per participant and actual cost per participant; and

(viii) The total number of placements and the placement rate (planned vs. actual).

(9) *Detailed line item budget.* A line item budget, developed in accordance with the following must be submitted.

(a) Costs for each item shall be allocated under the following cost categories: Administration, Basic Readjustment Services, Retraining, and Supportive Services including needs-related payments as classified in 20 CFR 631.13. The following requirements apply.

(i) The budget shall provide information by both cost categories as discussed below and by line-items. The suggested format in Plate I is recommended for utilization in the display and explanation of the budget and budget narrative.

(ii) Any costs that are subcontracted shall be so noted by the name of the contractor, and activity or function to be performed. These costs should be supported with individual contractor budgets using the format in Plate I. Staffing costs shall be specifically identified. Administrative costs prorated as required by 20 CFR 629.38(e)(2) shall be identified.

Training costs on the basis of off-the-shelf or catalogue prices (e.g. tuition) or on the basis of the requirements for acceptable fixed-unit price, performance based contracts as published in the **Federal Register** at 54 FR 10459 (March 13, 1989) shall be identified.

(iii) For an Intrastate project, where the State is not the project operator, the State may reserve 1 and ½ percent (.015) of the total grant award or $15,000, whichever is less, for costs associated with the administration of the grant such as contract negotiation, reporting activities and project oversight. This cost is to be charged to the Administration cost category. A State requesting administrative costs that exceed the maximum set aside must provide a justification including the projected person-hours and functions to be performed.

PLATE I

| Budget | Administration | Basic readjustment | Retraining | Supportive services | Total |
|---|---|---|---|---|---|
| (1) Staff salaries | X | X | X | | X |
| Fringe benefits (Attach supplement/narrative, listing and explaining each position, function, annual salary, no. of months charged to grant, time charged to grant). | X | X | X | | X |



PLATE I—Continued

| Budget | Administration | Basic readjustment | Retraining | Supportive services | Total |
|---|---|---|---|---|---|
| (2) Staff travel | X | X | X | | X |
| (3) Communications | X | X | X | | X |
| (4) Facilities | X | X | X | | X |
| ● Rent | X | X | X | | X |
| ● Maintenance | X | X | X | | X |
| ● Utilities | X | X | X | | X |
| (5) Consumable office supplies | X | X | | | X |
| (6) Consumable instructional materials | | X | X | | X |
| (7) Equipment | X | X | X | | X |
| ● Lease | X | X | X | | X |
| ● Purchase (Attach supplement/ narrative, listing and explaining each item leased and/or purchased $500 or over). | X | X | X | | X |
| (8) Relocation (section 314) | | X | X | | X |
| (9) Subcontracts | | | | | |
| ● Tuition | | | X | | X |
| ● OJT wages | | | X | | X |
| ● Fixed unit price 20 CFR 629.38(e)(2) | | | | | X |
| ● Audit | X | | | | |
| ● Other (identify) | X | X | X | | X |
| (10) Supportive services | | | | X | X |
| ● Needs related payments | | | | X | X |
| ● Child care | | | | X | |
| ● Transportation | | | | X | |
| ● Other | | | | X | |
| (11) Other (identify) | X | X | X | | X |
| (12) Totals | X | X | X | | X |

*Instructions:* All spaces marked with an "X" must be completed, if none, show an "0". Observe parnthetical notes cited above and attach a budget supplement/narrative to explain basis for each line item. Information should make clear how line item costs were calculated, classified and allocated, especially how staff positions are assigned and justified.

(b) Depending on the nature of the project and the identity of the grantee, an applicant may submit a budget that requests a deviation from the cost limitations in 20 CFR 631.14. An explanation for the need for this deviation shall be provided. The Secretary shall decide, in the grant award, whether and to what extent any deviation from the statutory cost limitations as applied to formula funds, shall be allowed.

(c) Where national reserve funds will be combined with funds from other sources—employer, union, State title III formula-allotted, State vocational education, economic development funds, *etc.*,—the budget shall indicate separately for each line item, the total cost, the amount to be funded from the national reserve account, and the amount to be funded from the other source(s).

(d) No direct costs shall be charged for any activity that is included in the indirect cost line item. If any indirect costs are not administrative they should be deducted from the indirect cost allocation pool and charged directly to the appropriate cost category.

7. Selection Criteria

Grant applications for Intrastate Dislocated Worker Project JTPA title III national reserve funds shall be evaluated and selected for funding based on the following:

a. Overall criteria (JTPA section 322(a)(3); 29 U.S.C. 1662b(a)(3)). All applications for national reserve funds, regardless of the proposed use, shall be considered against the following criteria. The application:

(1) Efficiently targets resources to areas of most need, and

(2) promotes the effective use of funds.

b. Application Review

(1) Applications shall be reviewed and approved or rejected based upon overall responsiveness of the application's content and the selection criteria, taking into consideration the extent to which funds are available.

(2) Applications may be rejected where:

(a) Other available applications appear to be more effective in achieving the goals of title III,

(b) The information required is not provided in sufficient detail to permit adequate assessment of the proposal,

(c) The information regarding why the State and substate grantee were unable to fund the proposed project is not provided, or

(d) The application is not consistent with statutory, regulatory or application requirements.

c. Additional specific criteria for evaluation and selection of applications for Intrastate Dislocated Worker Projects.

(1) Severity of need. The severity of the circumstances and need as described in the grant application *(e.g.,* the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, the local and State unemployment rates compared to the national rate, the projected short and long-term effect of events on unemployment).

(2) Target Group. The concentration of the eligible individuals in specific occupation(s), plant(s), industry(ies) or geographic area(s). The extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force as shown by an analysis of the characteristics of the affected workers. This shall be a major factor in determining the responsiveness of a proposal.

(3) Coordination and linkages; utilization of resources. The extent to which it is demonstrated that the project will be integrated with other existing program and community resources, including the State/substate title III formula-funded activities and other JTPA programs, as well as the Trade Adjustment Assistance program, where appropriate.

(4) Services. The services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population. The extent to which specific

occupations are identified for retraining and placement, with evidence presented that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in an OJT or in a classroom setting shall be major factors in determining fundability.

(5) Management capability. Assurance of project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability to begin program operations expeditiously.

(6) Cost effectiveness. The cost effectiveness of the project; *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels. The level of funding designated for client services as opposed to staff support and administration. The proportion of staff costs to those costs directly attributable to client services such as tuition, tools, *etc.* The Grant Officer shall also consider whether costs appear to be necessary and reasonable (20 CFR 629.37(a)). The cost effectiveness of the project shall be a major factor in determining fundability.

(7) Other considerations. The overall effectiveness and effficiency of the proposal itself as compared to other proposals received.

(8) Comments regarding the application submitted by the Governor or other interested parties.

8. Funding Mechanism

The following apply:

a. (1) For an Intrastate Dislocated project, the Department shall issue a Notice of Obligation (NOO) of Title III national reserve funds to the State, pursuant to the JTPA Governor/Secretary Agreement.

(2) A grant award letter containing the general requirements established as a condition of the grant award shall accompany the NOO.

(3) The Act, regulations, grant award letter, grant application, assurances and any amendments approved by the grant officer shall govern the operation of the project.

b. Unless otherwise directed in the grant award letter, the effective date for the use of the funds shall be the date of the NOO accompanying the grant award letter and no costs may be incurred against funds awarded prior to that date. The authority to expend funds immediately is given, in most cases, to permit the most timely response to the needs of the newly dislocated worker.

*B. Category II—Multistate, Regionwide, National or Industrywide Dislocated Worker Projects.*

An application for a Multistate, Regionwide, National, or Industrywide (MRNI) dislocated worker project must comply with the following requirements:

1. Eligible Grant Applicants

Applications may be submitted by, but are not limited to, State agencies, local public agencies such as community colleges or area vocational schools, private non-profit organizations, including community-based organizations, labor organizations, regional development councils, industry-sponsored associations, and private-for-profit organizations.

All entities may not be appropriate applicants for this grant category. Applicant entities must be an appropriate agency given the nature and extent of the proposed project.

2. Eligible Project Operators

Eligible project operators shall include State agencies, substate grantees, service delivery areas, units of local government, local public agencies, private non-profit organizations, including community-based organizations, labor organizations, regional development councils, industry-sponsored associations, private-for-profit organizations and Indian tribal entities.

3. Submission of Applications

a. In the case of MRNI projects, an application shall be submitted directly to the Grant Officer accompanied by the required certifications (appendices A, B, and C to this notice) and with the assurances listed below from the authorized signatory for the applicant.

b. An application shall not be accepted for consideration unless the applicant can demonstrate that, for multistate, national and regionwide applications, there have been closings or mass layoffs affecting a minimum of 100 workers per site in at least 2 States. For industrywide projects, there must have been closings or mass layoffs affecting a minimum of 100 workers per site in at least three different plants or facilities in the same industry in at least two different States.

4. Required Assurances

a. Applications for multistate, regionwide, or industrywide projects for dislocated workers shall be transmitted with a letter from the proposed grantee containing the following assurances:

If the proposed project is funded:

—The grantee agrees to accept any grant funds awarded under this application, and provide administration and oversight of the grant.

—The grantee assures that any title III funds awarded from funds reserved by the Secretary shall be administered by the grantee in accordance with the Act, the JTPA regulations, the proposal and any amendments thereto as approved by the Grant Officer, and shall be consistent with the grant document signed by the U.S. Department of Labor Grant Officer.

—The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for title III activities.

—The grantee agrees to compile and maintain information on project implementation on a monthly, and performance and expenditure data on a quarterly basis. The information shall, at a minimum, be consistent with the activities and cost categories contained in the project proposal and shall be available to the Department as requested.

—The grantee agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential underexpenditure of funds, and

—Following receipt of grant approval, the proposed grantee shall advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the Grantee shall provide additional information explaining the projected implementation date.

b. Project proposals not accompanied by these required assurances will not be accepted for review.

5. Review and Coordination Requirements

a. Formula funds. The grant applicant must include in its submission, information regarding the availability or non-availability of State and substate formula funds, experience of the program operator in operating programs for dislocated workers, and any other area of concern pertinent to the funding of the project.

b. Private Industry Council (PIC)/local elected official (LEO). All grant applications to provide services to dislocated workers shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment.

c. Labor organizations. All applications for dislocated worker projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) must provide documentation of full consultation with the appropriate local labor organization(s) in the development of the project design. Thus, documentation is required for each union representing at least 20 percent of the affected workers.

6. Application Content

Following are the areas to be addressed and information to be provided for each Category II grant application submitted for JTPA title III national reserve funds. Applications are to be submitted using the following format.

a. *Period of Award:* Awards will be made for an 18-month period to allow for project start-up (not to exceed 90 days), operation, and administrative closeout. If the period of operation is extended, the period of the award will be extended by an equal time period.

b. *Period of Operation:* Applications should generally provide for a period of operation of 12 months. Applications for periods of operation in excess of 12 months may be submitted with information supporting the need for the additional period.

c. *Synopsis of the Project:* A short summary of the pertinent facts regarding the project that includes:

(1) The name and address of the project operator along with the name and telephone number of a contact person for the project operator;

(2) The project locations (cities, counties, and States);

(3) The planned starting and ending dates of the project;

(4) The total amount of title III national reserve funds requested;

(5) The name(s) of the company(ies) from which the affected workers have been dislocated, and the type of business or industry involved;

(6) The date(s) of employment termination and the number of workers affected;

(7) The names of the States, counties, and cities in which the affected workers reside;

(8) The total number of participants planned;

(9) The total number of placements planned;

(10) The planned cost per participant; and

(11) The planned cost per entered employment.

d. *The Project Narrative:* The project narrative shall address the following elements:

(1) *Project description.* A description of the need for a project to serve the target group and an explanation of how this need was determined. The description shall:

(a) Demonstrate that the subject industry's or company's employment is declining and that there are poor prospects for reemployment in a similar occupation or industry based on any combination of the following data: labor turnover, Employment Service vacancy data, labor market conditions in the States with industry facilities, and production trends, or that the Secretary has determined the industry to be depressed based on data available to the Federal Government.

(b) Indicate a schedule for layoff(s) and/or closing(s).

(c) Indicate the number of affected workers likely to participate in the program, taking into consideration:

(i) The total number of affected workers by specific occupation(s) and the wage level(s) for each occupation;

(ii) The number of affected workers eligible to participate, with special attention given to those workers who will need more extensive services than available labor exchange services provided by the State Employment Service agency, based on their current educational and/or occupational skills;

(iii) The number of affected workers likely to retire;

(iv) The number of affected workers likely to transfer;

(v) The number of affected workers likely to be recalled. Applicants must indicate that recall within the next 12 months is highly unlikely;

(vi) The number of affected workers who possess locally transferable skills and, therefore, will find other employment with minimal assistance; and

(vii) When the layoff(s) or closure(s) has occurred more than 4 months prior to submittal of the application, information to show how the proposed operator determined the number of affected workers who remain unemployed and in need of services.

Note: Provide the methodology that was used to determine these numbers (i.e., current survey of affected workers, Unemployment Insurance (UI) data, etc.).

(d) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(e) The economic conditions for the State(s) and the geographic area(s) to be served as documented by the most recent unemployment rate for each area, or the economic and unemployment trends in the specific industry affected, to illustrate the severity of the need for such a project.

(f) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the city and State to which the plant will be relocated should be provided.

(2) *Existing Resources.* Provide a statement of why the need cannot be met by existing Federal, and/or State and/or local resources. The statement shall indicate why the proposed project was not funded with State or substate area grantee title III funds for the geographic area(s) to be served.

(a) The application must indicate whether an application has been made (provide petition number, if available), or a certification given, for Trade Adjustment Assistance (TAA) for the affected workers. When the proposed target group has applied for TAA certification or has been certified, a description of how TAA resources and national reserve grant funds will be coordinated shall be provided. A statement shall be provided, pursuant to section 141(b) and (h) of JTPA, that the project operator shall ensure that duplication of services does not occur 29 U.S.C. 1551(h).

The current TAA funding availability and obligations shall be provided as well as information on any current request to the Department for TAA funds to serve the workers the application proposes to serve.

When a target group is certified as eligible to receive TAA, including Trade Readjustment Allowances (TRA), national reserve funds may still be needed for those services not allowable under TAA such as, assessment, job search assistance including job clubs, transportation assistance within the commuting area, counseling, child care and training that does not meet TAA training criteria. In such instances, the applicant may request a waiver of the requirement that 50 percent of the total grant must be expended for retraining. The request shall provide an estimate of the number of workers to receive TAA funded training and the cost of such training. The coordination procedures established to track the project participants receiving TAA funded training should also be explained.

Note: TAA eligibility may vary by subproject site and must be addressed on a site by site basis.

(b) The nature and duration of any contractual obligation of, or voluntary arrangements by, the employer(s) or union(s) to provide employment-related services to terminated employees shall be included. When applicable,

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severance pay arrangements should be addressed.

(3) *Labor market employment opportunities.* All applications shall contain a discussion demonstrating familiarity with the local labor markets including occupations in which participants will be retrained or placed. The discussion shall include the following:

(a) An explanation of how the potential for placement in occupational areas was determined, including information on specific employers or industries that have demands for workers in those occupational areas and whether retraining will be required prior to placement. The source of such information should be provided.

Note: A list of demand occupations within the State(s) or substate area(s) is the least acceptable approach to providing this information. Current local information, including special employer surveys, should be provided.

(b) Information that shows how the characteristics and skills of the target group population are related to the demand occupations identified in the labor market in which training and/or placement will occur.

(c) Certification that the number of currently unemployed workers available for employment in the demand occupations for which retraining is planned is insufficient to meet the need.

(4) *Coordination and linkage.* In addition to the applicable review and coordination requirements described in paragraph IV.B.5. above, all applications for funds will be required to:

(a) Described the involvement (if any) of organized labor in the development and operation of proposed project activities.

(b) Show how the proposed project for dislocated workers will coordinate with other State and local agencies and related programs including but not limited to;

(i) The local substate area grantee(s),

(ii) Veterans' programs (including JTPA) available in the area;

(iii) The State Employment Service, if appropriate;

(iv) The unemployment compensation system to ensure that workers understand the requirement for enrollment in training in order to be eligible for needs-related payments, as outlined in 20 CFR 631.20 of the JTPA regulations;

(v) The Pell Grant program; and

(vi) Other appropriate State and local program resources.

In those instances where other State funds, such as vocational education, economic development, or special appropriations are available to the project, include a brief discussion of the activities for which these funds will be used and their relationship to the national reserve funds requested, taking into consideration Section 141(b) of the Act.

(5) *Description of services.* All applications shall include a description of the following services.

(a) Intake and eligibility determination. Describe the procedures to recruit and ensure the eligibility of each participant. Identify the entity responsible for eligibility determination.

(b) Basic readjustment services (JTPA section 314(c); 29 U.S.C. 1661c(c)). Describe how assessment, job search assistance, counseling, job development and placement services and any other basic readjustment activities will be coordinated with training activities (assessment procedures must include the capability to determine if a participant's reading skills are below the 8th grade level).

(c) Retraining services (JTPA section 314(d); 29 U.S.C. 1661c(d)). Describe the retraining to be provided, including the types and lengths of retraining for various occupations or occupational areas, and the likely providers of on-the-job, classroom and occupational skill training.

Note: National reserve funds shall not be provided to substitute for such activities as the employer's traditional training responsibility associated with product model changes, the introduction of new products, general employee upgrading, *etc.*;

(d) Participant supportive services. Discuss which services will be provided and how they will be coordinated with retraining activities, including needs-related payments; (JTPA section 314(e); 29 U.S.C. 1661c(e));

(6) *Implementation plan.* The following information regarding implementation plans shall be included.

(a) A schedule for the implementation of program activities upon receipt of funds and discussion of initial actions taken to support implementation. Enrollment of all participants normally should occur within 90 days of the grant award. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided shall be included, and

(b) Quarterly implementation data showing the following projected cumulative data for the overall project and for each subproject site including:

(i) Enrollments for each major activity—assessment, job search assistance, classroom training, occupational skills training, on-the-job training and other training;

(ii) Total terminations;

(iii) Number of participants entering employment from each activity; and

(iv) Expenditures.

(7) *Planned outcomes.* Provide project data showing the projected overall:

(a) Cost per participant;

(b) Cost per entered employment;

(c) Entered employment rate; and

(d) Average wage rate at entered employment.

(8) *Financial and management capability.* Except where the actual project operator will be the State or the substate grantee, provide a description of the fiscal and management capabilities of the prospective project operator including: (Limit to no more than two pages.)

(a) How the prospective project operator (or the division which will have responsibility for this project) is or will be organized.

(b) Current or previous relevant experience in providing services to dislocated workers or in administering training and employment programs.

(c) A paragraph outlining the capability of the project operator to maintain and report as necessary required fiscal and management information.

(d) If the proposed project operator has operated or been awarded a national reserve grant or subgrant within the last 2 program years, the following information about each previous grant shall be provided:

(i) The target group served;

(ii) Amount of the grant award;

(iii) The period of award;

(iv) The number of participants planned according to approved project plan, as amended if applicable;

(v) The number of participants enrolled. If the project is still in operation, provide enrollment through the most recent full month of operation;

(vi) Expenditures by cost category. If project is still in operation, provide expenditure data through the most recent full month of operation;

(vii) The planned cost per participant and actual cost per participant; and

(iii) The total number of placements and the placement rate (planned vs. actual).

(9) *Detailed line item budget.* A line item budget, developed in accordance with the following must be submitted.

(a) Costs for each item shall be allocated under the following cost categories: Administration, Basic Readjustment Services, Retraining, and Supportive Services including needs-related payments as classified in 20 CFR 631.13. The following requirements apply.



(i) The budget shall provide information by both cost categories as discussed below and by line-items. The suggested format in Plate I is recommended for utilization in the display and explanation of the budget and budget narrative.

(ii) Any costs that are subcontracted shall be so noted by the name of the contractor, and activity or function to be performed. These costs should be supported with individual contractor budgets using the format in Plate I.

Staffing costs shall be specifically identified. Administrative costs prorated as required by 20 CFR 629.38(e)(2) shall be identified.

Training costs on the basis of off-the-shelf or catalogue prices (e.g. tuition) or on the basis of the requirements for acceptable fixed-unit price, performance based contracts as published in the **Federal Register** at 54 FR 10459 (March 13, 1989) shall be identified.

(iii) For an Intrastate Project, where the State is not the project operator, the State may reserve 1 and ½ percent (.015) of the total grant award or $15,000, whichever is less, for costs associated with the administration of the grant such as contract negotiation, reporting activities and project oversight. These costs are to be charged to the Administration cost category. A State requesting administrative costs that exceed the maximum set aside must provide a justification including the projected person-hours and functions to be performed.

PLATE II.—BUDGET

| | Administration | Basic readjustment | Retraining | Supportive services | Total |
|---|---|---|---|---|---|
| (1) Staff salaries | X | X | X | | X |
| Fringe benefits (Attach supplement/narrative, listing and explaining each position, function, annual salary, no. of months charged to grant, time charged to grant). | X | X | X | | X |
| (2) Staff travel | X | X | X | | X |
| (3) Communications | X | X | X | | X |
| (4) Facilities | X | X | X | | X |
| ● Rent | X | X | X | | X |
| ● Maintenance | X | X | X | | X |
| ● Utilities | X | X | X | | X |
| (5) Consumable office supplies | X | X | | | X |
| (6) Consumable instructional materials | | X | X | | X |
| (7) Equipment | X | X | X | | X |
| ● Lease | X | X | X | | X |
| ● Purchase (Attach supplement/narrative, listing and explaining each item leased and/or purchased $500 or over). | X | X | X | | X |
| (8) Relocation (Section 314) | | X | X | | X |
| (9) Subcontracts | | | | | |
| ● Tuition | | | X | | X |
| ● OJT wages | | | X | | X |
| ● Fixed Unit Price 20 CFR 629.38(e)(2) | | | | | X |
| ● Audit | X | | | | |
| ● Other (Identify) | X | X | X | | X |
| (10) Supportive services | | | | | |
| ● Needs related payments | | | | X | X |
| ● Child care | | | | X | |
| ● Transportation | | | | X | |
| ● Other | X | X | X | | X |
| (11) Other (Identify) | X | X | X | | X |
| (12) Totals | X | X | X | | X |

*Instructions:* All spaces marked with an "X" must be completed; if none, show an "O". Observe parenthetical notes cited above and attach a budget supplement/narrative to explain basis for each line item. Information should make clear how line item costs were calculated, classified and allocated, especially how staff positions are assigned and justified.

(b) Depending on the nature of the project and the identity of the grantee, an applicant may submit a budget that requests a deviation from the cost limitations in 20 CFR 631.14. An explanation for the need for this deviation shall be provided. The Secretary shall decide, in the grant award, whether and to what extent any deviation from the statutory cost limitations as applied to formula funds, shall be allowed.

(c) Where national reserve funds will be combined with funds from other sources—employer, union, State Title III formula-allotted, State vocational education, economic development funds, etc., the budget shall indicate separately for each line item, the total cost, the amount to be funded from the national reserve account, and the amount to be funded from the other source(s).

(d) No direct costs shall be charged for any activity that is included in the indirect cost line item. If any indirect costs are not administrative they should be deducted from the indirect cost allocation pool and charged directly to the appropriate cost category.

7. Selection Criteria

Grant applications for JTPA Title III national reserve funds for Category II dislocated worker projects shall be evaluated and selected for funding based on the following:

a. *Overall criteria.* (JTPA Section 322(a)(3); 29 U.S.C. 1662b(a)(3)). All applications for national reserve funds, regardless of the proposed use, shall be considered against the following criteria. The application:

(1) Efficiently targets resources to areas of most need, and

(2) Promotes the effective use of funds.

b. *Application Review.* (1) Applications shall be reviewed and approved, or rejected, based upon overall responsiveness of the application's content and the selection criteria, taking into consideration the extent to which funds are available.

(2) Applications may be rejected where:

(a) Other available applications appear to be more effective in achieving the goals of title III;

(b) The information required is not provided in sufficient detail to permit adequate assessment of the proposal;

(c) The information regarding why the State and substate grantee were unable to fund the proposed project is not provided, or

(d) The application is not consistent with statutory, regulatory, or application requirements.

c. *Additional specific criteria for evaluation and selection of applications for Multistate, Regionwide, National or Industrywide Dislocated Worker Projects.* (1) Severity of need. The severity of the circumstances and need as described in the grant application (*e.g.*, the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, the local and State unemployment rates compared to the national rate, the projected short and long-term effect of events on unemployment).

(2) Target group. The concentration of the eligible individuals in specific occupation(s), plant(s), industry(ies) or geographic area(s). The extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force as shown by an analysis of the characteristics of the affected workers. This shall be a major factor in determining the responsiveness of a proposal.

(3) Coordination and linkages; utilization of resources. The extent to which it is demonstrated that the project will be integrated with other existing program and community resources, including State/substate title III formula-funded activities and other JTPA programs, as well as the TAA program, where appropriate.

(4) Services. The services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population. The extent to which specific occupations are identified for retraining and placement, with evidence presented that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in OJT or in a classroom setting shall be major factors in determining fundability.

(5) Management capability. Assurance of project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability to begin program operations expeditiously.

(6) Cost effectiveness. The cost effectiveness of the project, *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels. The level of funding designated for client services as opposed to staff support and administration. The proportion of staff costs to those costs directly attributable to client services such as tuition, tools, etc. The Grant Officer shall also consider whether proposed costs are necessary and reasonable. (20 CFR 629.37(a)). The cost effectiveness of the project shall be a major factor in determining fundability.

(7) Other considerations. The overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

(8) Comments regarding the application received by the grant officer.

8. Funding Mechanism

The following apply:

a. (1) In case of an award to an existing State JTPA grantee, the Grant Officer shall issue an award letter and Notice of Obligation. For others, an appropriate grant document shall be executed by the DOL Grant Officer and the grant applicant's official signatory.

(2) The Act, regulations, grant award letter/agreement, grant application assurances and any amendments approved shall govern the operation of the project.

b. Unless otherwise directed in the grant award document, the effective date for the use of the funds shall be the date of the grant award letter or grant agreement and no costs may be incurred against funds awarded prior to that date. The authority to expend funds immediately is given, in most cases, to permit the most timely response to the needs of the newly dislocated worker.

*C. Category III—Indian Reservation Dislocated Worker Projects*

An application for a dislocated worker project on an Indian reservation shall comply with the following requirements:

1. Eligible Grant Applicants

In the case of dislocation events affecting American Indians on an Indian reservation, tribal entities receiving JTPA grant funds pursuant to section 401 shall be eligible grant applicants.

2. Eligible Project Operators

Indian tribal entities may act as project operators or may contract with appropriate entities to administer the delivery of employment and training services to eligible participants.

3. Submission of Application

Applications for dislocated worker projects to operate on Indian reservations shall be submitted directly to the Grant Officer accompanied by the appropriate certifications (see appendices A, B, and C to this notice) and by the assurances listed below.

4. Required Assurances

An application for a dislocated worker project to operate on an Indian reservation shall be transmitted with a letter from the proposed grantee containing the following assurances.

*If the proposed project is funded:*

—The grantee assures that any title III funds awarded from funds reserved by the Secretary shall be administered, by the grantee, in accordance with the Act, the JTPA regulations, the proposal and any amendments thereto, as approved by the Grant Officer, and shall be consistent with the approval letter signed by the U.S. Department of Labor Grant Officer transmitting the grant award.

—The grantee agrees to accept any grant funds awarded under this application, and provide administration and oversight of the grant.

—The Grantee agrees to compile and maintain information on project implementation, performance and expenditures. The information shall, at a minimum, be consistent with the activities and cost categories contained in the project proposal and shall be available to the Department as requested.

—The grantee agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential underexpenditure of funds.

—The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for title III activities, and

—Following receipt of the grant approval, the Grantee shall advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the Grantee shall provide additional information explaining the projected implementation date.

b. Project proposals not accompanied by these required assurances will not be accepted for review.

5. Review and Coordination Requirements

a. Formula funds. The applicant must include in its submission comments regarding the proposed project with respect to the availability of title III and

title IV–A funds, experience of the program operator in operating programs for dislocated workers, and any other area of concern pertinent to the funding of the project.

b. Private Industry Council (PIC)/local elected official (LEO). All grant applications to provide services to dislocated workers shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment, if applicable.

c. Labor organizations. All applications for dislocated worker projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) must provide documentation of full consultation with the appropriate local labor organization(s) in the development of the project design. Thus, documentation is required for each union representing at least 20 percent of the affected workers.

6. Application Content

Following are the areas to be addressed and information to be provided for each grant application submitted for JTPA Title III national reserve funds. Applications are to be submitted using the following format.

a. *Period of Award:* Awards will be made for an 18-month period to allow for project start-up (not to exceed 90 days), operation, and administrative closeout. If the period of operation is extended, the period of the award will be extended by an equal time period.

b. *Period of operation:* Applications should generally provide for a period of operation of 12 months. Applications for periods of operation in excess of 12 months may be submitted with information supporting the need for the additional period.

c. *Synopsis of the project.* A short summary of the pertinent facts regarding the project that includes:

(1) The name and address of the project operator along with the name and phone number of a contact person for the project operator;

(2) The project location (Indian reservation);

(3) The planned starting and ending dates of the project;

(4) The total amount of title III national reserve funds requested;

(5) The name(s) of the company(ies) from which the affected workers have been dislocated, and the type of business or industry involved;

(6) The date(s) of employment termination and the number of workers affected;

(7) The name of the Indian reservation on which the affected workers reside;

(8) The total number of participants planned;

(9) The total number of placements planned;

(10) The planned cost per participant;

(11) The planned cost per entered employment; and

(12) The name, address, and telephone number of the signatory official for the title IV–A grantee serving the area in which the project is to be operated.

d. *The Project Narrative.* The project narrative shall address the following elements:

(1) *Project description.* A description of the need for a project to serve the target group and an explanation of how this need was determined. An application by an Indian tribal entity for funds for a dislocated worker project shall be based upon a specific plant closure or mass layoff that has occurred within the past year preferably within the last six months. The facility involved must be located on an Indian reservation. The description should include:

(a) The industry(ies) affected;

(b) The schedule for layoff(s) and/or closing(s);

(c) The number of affected workers likely to participate in the program, taking into consideration:

(i) The total number of affected workers by specific occupation(s) and the wage level(s) for each occupation;

(ii) The number of affected workers eligible to participate, with special attention given to those workers who will need more extensive services than available labor exchange services provided by the State Employment Service agency, or other entities, such as the Bureau of Indian Affairs, based on their educational and/or occupational skills;

(iii) The number of affected workers likely to retire;

(iv) The number of affected workers likely to transfer;

(v) The number of affected workers likely to be recalled; applicants must indicate that recall within the next 12 months is highly unlikely;

(vi) The number of affected workers who possess locally transferable skills and, therefore, will find other employment with minimal assistance; and

(vii) When the layoff(s) or closure(s) has occurred more than 4 months prior to submittal of the application, information shall be provided to show how the proposed operator determined the number of affected workers who remain unemployed and in need of services.

Note: Provide the methodology that was used to determine these numbers.

(d) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(e) The economic conditions for the reservation and the geographic area to be served as documented by the most recent unemployment rate for the area, or the economic and unemployment trends in the specific industry affected, to illustrate the severity of the need for such a project.

(f) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the city and State to which the plant will be relocated shall be provided.

(2) *Existing resources.* Provide a statement of why the need cannot be met by existing Federal, and/or State and/or local resources. The statement shall indicate why the proposed project was not funded with State or substate area grantee JTPA Title III funds or Title IV–A funds.

(a) The status of fund availability (obligations and expenditures) for any Title IV–A program on the reservation(s) shall be provided. This information shall be through the end of the latest quarter for which data are available.

(b) The application must indicate whether an application has been made (provide petition number, if available), or a certification given, for Trade Adjustment Assistance (TAA) for the affected workers. When the proposed target group has applied for TAA certification or has been certified, a description of how TAA resources and national reserve grant funds will be coordinated shall be provided. A statement shall be provided, pursuant to Section 141(h) of JTPA, that the grantee shall ensure that duplication of services does not occur.

29 U.S.C. 1551(h).

The current TAA funding availability and obligations shall be provided as well as information on any current request to the Department for TAA funds to serve the workers the application proposes to serve.

When a target group is certified as eligible to receive Trade Adjustment Assistance (TAA) including Trade Readjustment Allowances (TRA), national reserve funds may still be needed for those services not allowable under TAA such as, assessment, job search assistance including job clubs, transportation assistance within the commuting area, counseling, child care and training that does not meet TAA training criteria. In such instances, the applicant may request a waiver of the requirement that 50 percent of the total

grant must be expended for Retraining. The request shall provide an estimate of the number of workers to receive TAA-funded training and the cost of such training. The coordination procedures established to track the project participants receiving TAA-funded training should also be explained.

(c) The nature and duration of any contractual obligation of, or voluntary arrangements by, the employer(s) or union(s) to provide employment-related services to terminated employees shall be included. When applicable, severance pay arrangements should be noted.

(3) *Labor market employment opportunities.* All applications shall contain a discussion demonstrating familiarity with the local labor markets including occupations in which participants will be retrained or placed. The discussion shall include the following:

(a) An explanation of how the potential for placement in occupational areas was determined, including information on specific employers or industries that have demands for workers in those occupational areas and whether retraining will be required prior to placement. The source of such information should be provided.

**Note:** A list of demand occupations within the State is the least acceptable approach to providing this information. Local information, including special employer surveys, should be provided.

(b) Information that shows how the characteristics and skills of the target group population are related to the demand occupations identified in the labor market for placement.

(c) Certification that the number of currently unemployed workers available for employment in the demand occupations for which retraining is planned is insufficient to meet the need.

(4) *Coordination and linkage.* In addition to the applicable review and coordination requirements described in IV.c.5. above, each application for funds shall:

(a) Describe the involvement (if any) of organized labor in the development and operation of the proposed project activities.

(b) Show how the proposed project for dislocated workers will coordinate with other State and local agencies and related programs, including, but not limited to:

(i) The JTPA grantee(s), especially the Title IV grantee;

(ii) Veterans' programs (including JTPA) available in the area;

(iii) The State Employment Service;

(iv) The unemployment compensation system, to ensure that workers understand the requirement for enrollment in training in order to be eligible for needs-related payments, as outlined in 20 CFR 631.20 of the JTPA regulations;

(v) The Pell Grant program; and

(vi) Other appropriate local program resources.

In those instances where JTPA title IV–A or Bureau of Indian Affairs funds, as well as other Federal funds, such as vocational education, economic development, or special appropriations, are available to the project, it is necessary to include a brief discussion of the activities for which these funds will be used and their relationship to the national reserve funds requested, taking into consideration section 141(b) of the Act.

(5) *Description of services.* All applications shall include a description of the following services.

(a) Intake and eligibility determination. Describe the procedures to recruit and ensure the eligibility of each participant. Indicate what entity shall be responsible for eligibility determination.

(b) Basic readjustment services (JTPA section 314(c); 29 U.S.C. 1661c(c)). Describe how assessment, job search assistance, counseling, job development and placement services and any other basic readjustment activities will be coordinated with training activities (assessment procedures must include the capability to determine if a participant's reading skills are below the 8th grade level);

(c) Retraining services (JTPA section 314(d); 29 U.S.C. 1661c(d)). Describe the retraining to be provided, including the types and lengths of retraining for various occupations or occupational areas, and the likely providers of on-the-job, classroom and occupational skill training.

**Note:** National reserve funds shall not be provided to substitute for such activities as the employer's traditional training responsibility associated with model changes, the introduction of new products, general employee upgrading, *etc.*

(d) Participant supportive services. Discuss which services will be provided and how they will be coordinated with training activities, including needs-related payments; (JTPA section 314(e); 29 U.S.C. 1661c(e)).

(6) *Implementation plan.* The following information regarding implementation plans shall be included.

(a) A schedule for the implementation of program activities upon receipt of funds and discussion of initial actions taken to support implementation. Enrollment of all participants normally should occur within 90 days of the grant award. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided shall be included, and

(b) Quarterly implementation data showing the following projected cumulative data for the overall project and for each subproject site including:

(i) Enrollments for each major activity—assessment, job search assistance, classroom training, occupational skill training, on-the-job training and other training;

(ii) Total terminations;

(iii) Number of participants entering employment from each activity; and

(iv) Expenditures.

(7) *Planned outcomes.* Provide project data showing the projected overall:

(a) Cost per participant;

(b) Cost per entered employment;

(c) Entered employment rate; and

(d) Average wage rate at entered employment.

(8) *Financial and management capability.* Provide a description of the fiscal and management capabilities of the prospective project operator including: (Limit to no more than two pages.)

(a) How the prospective project operator is or will be organized.

(b) Current or previous relevant experience in providing services to dislocated workers or in administering training and employment programs.

(c) A paragraph outlining the capability of the project operator to maintain and report required fiscal and management information.

(d) If the proposed grantee has been awarded a national reserve grant within the last 2 program years, the following information about each previous grant program experience shall be provided:

(i) The target group served;

(ii) Amount of the grant award;

(iii) The period of award;

(iv) The number of participants planned according to approved project plan, as amended if applicable;

(v) The number of participants enrolled. If the project is still in operation, provide enrollment through the most recent full month of operation;

(vi) Expenditures by cost category. If the project is still in operation, provide expenditure data through most recent full month of operation;

(vii) The planned cost per participant and actual cost per participant; and

(viii) The total number of placements and the placement rate (planned vs. actual).

(9) *A detailed line item budget.* A line item budget, developed in accordance with the following must be submitted.

(a) Costs for each item shall be allocated under the following cost categories: Administration, Basic Readjustment Services, Retraining, and Supportive Services including needs-related payments as classified in 20 CFR 631.13. The following requirements apply.

(i) The budget shall provide information by both cost categories as discussed below and by line-item. The suggested format in Plate III is recommended for utilization in the display and explanation of the budget and budget narrative.

(ii) Any costs that are subcontracted shall be so noted by the name of the contractor, and activity or function to be performed. These costs should be supported with individual contractor budgets using the format in Plate I. Staffing costs shall be specifically identified. Administrative costs prorated as required by 20 CFR 629.38(e)(2) shall be identified.

Training costs on the basis of off-the-shelf or catalogue prices (e.g. tuition) or on the basis of the requirements for acceptable fixed-unit price, performance based contracts as published in the **Federal Register** at 54 FR 10450 (March 13, 1989) shall be identified.

PLATE III—BUDGET

| | Administration | Basic readjustment | Retraining | Supportive services | Total |
|---|---|---|---|---|---|
| (1) Staff salaries | X | X | X | | X |
| (3) Communications | X | X | X | | X |
| (4) Facilities | X | X | X | | X |
| ● Rent | X | X | X | | X |
| ● Maintenance | X | X | X | | X |
| ● Utilities | X | X | X | | X |
| (5) Consumable Office Supplies | X | X | | | X |
| (6) Consumable Instructional Materials | | X | X | | X |
| (7) Equipment | X | X | X | | X |
| ● Lease | X | X | X | | X |
| ● Purchase (Attach supplement/ narrative, listing and explaining each item leased and/or purchased $500 or over). | X | X | X | | X |
| (8) Relocation (Section 314) | | X | X | | X |
| (9) Subcontracts | | | | | |
| ● Tuition | | | X | | X |
| ● OJT wages | | | X | | X |
| ● Fixed Unit Price 20 CFR 629.38(e)(2) | | | | | |
| ● Audit | X | | | | |
| ● Other (Identify) | X | X | X | | X |
| (10) Supportive Services | | | | X | X |
| ● Needs Related payments | | | | X | |
| ● Child Care | | | | X | |
| ● Transportation | | | | X | |
| ● Other | | | | X | |
| (11) Other (Identify) | X | X | X | | X |
| (12) Totals | X | X | X | | X |

*Instructions:* All spaces marked with an "X" must be completed, if none, show an "O".Observe parenthetical notes cited above and attach a budget supplement/narrative to explain basis for each line item. Information should make clear how line item costs were calculated, classified and allocated, especially how staff positions are assigned and justified.

(b) Where national reserve funds will be combined with funds from other sources—employer, union, State title III allocated, JTPA title IV–A, State vocational education, or economic development funds, *etc.*—the budget shall indicate for each line item, the total cost, the amount to be funded from the national reserve account and the amount to be funded from the other funding source(s).

(c) Depending on the nature of the project and the identity of the grantee, an applicant may submit a budget that requests a deviation from the cost limitations in 20 CFR 631.14. An explanation for the need for this deviation shall be provided. The Secretary shall decide, in the grant award, whether and to what extent any deviation from the statutory cost limitations as applied to formula funds shall be allowed.

(d) No direct costs shall be charged for any activity that is included in the indirect cost line item. If any indirect costs are not administrative, they should be deducted from the indirect cost allocation pool and charged directly to the appropriate cost category.

7. Selection Criteria

Grant applications for JTPA Title III national reserve funds shall be evaluated and selected for funding based on the following:

a. Overall criteria. (JTPA section 322(a)(3); 29 U.S.C. 1662b (a)(3)). All applications for national reserve funds, regardless of the proposed use, shall be considered against the following criteria. The application:

(1) Efficiently targets resources to areas of most need; and

(2) Promotes the effective use of funds.

b. Application Review.

(1) Applications shall be reviewed and approved or rejected based upon overall responsiveness of the application's content and the selection criteria, taking into consideration the extent to which funds are available.

(2) Applications may be rejected where:

(a) Other available applications appear to be more effective in achieving the goals of title III,

(b) The information required is not provided in sufficient detail to permit adequate assessment of the proposal,

(c) The application is not consistent with statutory, regulatory or application requirements, or

(d) The information regarding why the State or substate grantees under title III or the title IV–A grantee were unable to fund the proposed project is not provided.

c. Additional specific criteria for evaluation and selection of applications for Indian reservation dislocated Worker Projects.

(1) Severity of need. The severity of the circumstances and need as described in the grant application (*e.g.*, the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, the reservation, local and State unemployment rates compared to the national rate, the projected short and long-term effect of events on unemployment).

(2) Target group. The concentration of the eligible individuals in specific occupation(s), plant(s), industry(ies) or geographic area(s). The extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force as shown by an analysis of the characteristics of the affected workers. This shall be a major factor in determining the responsiveness of a proposal.

(3) Coordination and linkages; utilization of resources. The extent to which it is demonstrated that the project will be integrated with other existing program and community resources, including the State/substate title III formula-funded activities, JTPA title IV activities, and other JTPA programs, as well as TAA program, where appropriate.

(4) Services. The services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population. The extent to which specific occupations are identified for retraining and placement, with evidence presented that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in OJT or in a classroom setting shall be major factors in determining fundability.

(5) Management capability. Assurance of project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability to begin program operations expeditiously.

(6) Cost effectiveness. The cost effectiveness of the project, *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels. The level of funding designated for client services as opposed to staff support and administration. The proportion of staff costs to those costs directly attributable to client services such as tuition, tools, *etc.* The Secretary shall also consider whether costs appear to be necessary and reasonable. 20 CFR 629.37(a). The cost effectiveness of the project shall be a major factor in determining fundability.

(7) Other considerations. The overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

(8) Comments regarding the application received by the Grant Officer.

8. Funding Mechanisms

The following apply.

a. (1) A grant agreement will be executed by the USDOL grant officer and the grant applicant's signatory official.

(2) The Act, regulations, grant document, grant award letter, grant application and any amendments approved by the DOL Grant Officer shall govern the operation of the project.

b. The effective date for the use of the funds shall be indicated in the grant document and no costs may be incurred against funds awarded prior to that date. The authority to expend funds immediately is given, in most cases, to permit the most timely response to the needs of the newly dislocated worker.

*D. Category IV—Emergency Dislocated Worker Projects*

1. Determination That an Emergency Exists

For purposes of national reserve funds under title III of JTPA, two basic types of emergency dislocated worker projects shall be recognized. They are:

(a) Unexpected mass layoffs or plant shutdowns that create emergency situations. Such closings and layoffs include those created as a result of government action, and are where:

(1) The emergency nature of the sudden and unexpected dislocation event shall result in circumstances which do not provide a reasonable period of time to develop a full proposal;

(2) The number of dislocated workers who meet the eligibility criteria shall be such that the JTPA title III substate grantee, Indian title IV grantee and/or the State are unable to respond to the dislocation with existing resources; and

(3) The affected workers shall not have received a 60-day notice under the Worker Adjustment and Retraining Notification Act in advance of the layoff or plant closure.

(b) An emergency (and generally short-term layoff) caused by a natural disaster. The Secretary of Labor may determine that the massive devastation and economic dislocation caused by a natural disaster constitutes an emergency requiring assistance with funds under JTPA Section 302(a)(2) for those areas that are distressed as a result of the natural disaster. 29 U.S.C. 1652(a)(2). Under such circumstances, the Secretary, with the Governor(s) of the principal State(s) affected, may determine to mount special programs to demonstrate that title III funds can be used to assist the affected communities. Such programs shall be designed to enable affected workers to return to their regular employment as soon as possible.

A principal strategy in this approach would be to develop special temporary jobs that would benefit the public. Such jobs shall be in public or private non-profit agencies for up to six months duration to assist in community repairs and cleanup, to enable resumption of regular employment. It is in the interest of the public and affected individuals that these jobs be filled as rapidly as possible. These jobs are to be filled consistent with section 301(a) of the Act. 29 U.S.C. 1651(a). Therefore, for purposes of eligibility for emergency jobs under these special programs, individuals who have become unemployed because of the natural disaster, shall meet the eligibility requirements.

An application for an Emergency Dislocated Worker Project shall be accompanied by the required certifications (See appendices A, B and C to this notice) and comply with the following requirements. Basically, the information for both types of emergency applications is the same. The following requirements specifically indicate where different information shall be provided.

(c) The determination that a situation or set of circumstances has resulted in a distressed area or industry which is appropriate for emergency funding may be initiated by either the Governor of the State where the emergency exists or by the Secretary.

2. Eligible Grant Applicants

Eligible grant applicants for such projects are 59 State JTPA grant recipient agencies under the Federal-State, Governor-Secretary Agreement ("State" as previously defined) as represented by the governor.

3. Eligible Subgrantees

Eligible subgrantees which may operate such a dislocated worker project include, but are not limited to, State agencies, JTPA Title III substate grantees, units of local government, local public agencies, such as community colleges or area vocational schools; Indian tribal entities; private non-profit organizations including community-based organizations, labor organizations, regional development councils, industry-sponsored associations; and private-for-profit entities.

4. Submission of an Application

a. Applications shall be transmitted with a letter from the Governor or the authorized JTPA State signatory official. The letter to request initial emergency funding (see 6.a. below) may be sent by telefacsimile (FAX), however an original signed request must be received by the grant officer before any funds shall be awarded.

b. The initial emergency application should normally be submitted within 15 days of the precipitating emergency event.

5. Assurances

a. The emergency application letter shall contain the following assurances:

If the proposed project is funded:

—The grantee assures that any Title III funds awarded from funds reserved by the Secretary shall be administered by the grantee in accordance with the initial and final proposals and any amendments thereto approved as by the Grant Officer, the Act, the JTPA regulations, and shall be consistent with the approval letter signed by the Department of Labor Grant Officer transmitting the grant award.

—The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for Title III activities.

—The grantee agrees to accept any grant funds awarded under this application, and provide administration and oversight of the grant.

—Following receipt of the grant approval, the grantee shall advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the grantee shall provide additional information explaining the projected implementation date.

—The grantee agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential underexpenditure of funds.

—The grantee agrees to compile and maintain information on project implementation on a monthly, and performance and expenditures data on a quarterly, basis. The information shall, at a minimum, be consistent with the activities and cost categories contained in the project proposal and shall be available to the Department as requested, and

—Based on the State's oversight authority, the State agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential underexpenditure of funds.

b. Project proposals not accompanied by these required assurances will not be accepted for review.

6. Application Content

Emergency grants shall be funded following a two-step process. The first step shall be an initial request for funds which will contain relevant, but limited information. The second step shall be the fully documented proposal required for discretionary funds.

a. *Initial Request.* The State's initial request for funding should be brief and provide the following information. It shall not exceed two pages (plus the transmittal letter and the assurances). DOL will initiate the funding decision process upon receipt of a FAX.

The initial request must contain: (1) An explanation of the circumstances requiring the emergency funds;

(2) The areas to be served by the grant;

(3) A brief assessment of the need;

(4) An estimate of the number of workers whose employment is impacted by the emergency;

(5) A brief summary of the activities to be conducted. These activities must be allowable under Section 314 of the Act, 29 U.S.C. 1661. In the case of a natural disaster, temporary job creation may be permitted as a demonstration program under Section 324 of the Act (see 29 U.S.C. 1662(c), as discussed above). Wages paid for any temporary jobs created shall meet the requirements set forth in Section 142(a)(3) of the Act, 29 U.S.C. 1552(a)(3); and paragraph D.1.(b) above;

(6) An estimate of the number of participants to be served by the emergency grant request; participants shall be eligible pursuant to the definitions set forth at JTPA section 301(a). 29 U.S.C. 1661(a); and paragraph D. 1.(b) above;

(7) The grant applicant shall assure that no other JTPA, Federal, State or local funds are available to meet the identified need; and

(8) The total amount of funds requested. Where an emergency request is approved, the Department shall immediately release to the grantee up to one-third of the total funds requested for the emergency.

b. The Department shall review the material required to be submitted for an initial request and, based on that information and other information available to the Department, a decision whether to fund the emergency project shall be made.

c. Project plan. A fully documented proposal shall be submitted by the grantee and must be approved by the U.S. DOL before any additional funds for the approved grant shall be allocated to the grantee. The final amount to be approved shall be based on the fully documented proposal and other available information.

(1) The fully documented proposal for an emergency which was not the result of a natural disaster shall include the same items required for a dislocated worker project application as required by Section 6 of Category I, Application for Intrastate Dislocated Worker Project.

(2) The fully documented proposal for a natural disaster emergency to conduct only short-term emergency activities shall include:

(a) A period of performance not to exceed 9 months.

(b) A substantive description of the nature and extent of the emergency, including: (i) An estimate of the number of workers dislocated from their employment; (ii) the geographic location of the emergency; (iii) the area(s) where services and activities will be conductedifferent from the location of the emergency; and (iv) the projected immediate recovery period.

(c) A description of how the grantee will identify and recruit affected workers to be served under the project, and the total number of affected workers to be served.

(d) Services and activities. (i) A description of the types of services to be provided and the numbers of participants to receive various services under the short-term emergency response. This shall include the number of participants to be provided temporary jobs, the types and location of temporary jobs, a statement that the workers funded by the emergency grant are authorized to perform the temporary jobs, the wages (or wage range) to be paid in major job categories, and a description of the employers for such

jobs. Criteria used by the grantee in selecting such employers shall also be included. To the extent that regular employees of an employing unit (e.g., unit of government utilizing the emergency JTPA funds) have the authority to do the planned work, then so do the participants hired with the Title III emergency funds.

(ii) A description of how the grantee will select affected workers to fill any temporary jobs.

(iii) A monthly implementation schedule for each of the activities to be conducted.

(e) Administration. (i) Identification of the entity in the State that will be responsible for the overall administration of the emergency project.

(ii) A description of the monitoring plan for the project, the monitoring schedule and the steps that will be taken to ensure the integrity of project activities.

(f) Budget. (i) A line-item budget (see Plate IV) for JTPA national reserve funds by major activity that specifically reflects staff and other costs to be supported by the award in each of the cost categories. The Title III cost categories—Administration, Basic Readjustment Services, Retraining, and Participant Support Services including needs-related payments—shall be used in the proposal. Expenditures on temporary jobs for participants are to be included under the cost category of Retraining-natural disaster. The Title III cost limitations on Administration and Supportive services including needs-related payments shall apply.

(ii) A description of the relationship between JTPA funds and any other funds which may be available.

(3) Documentation in support of each emergency request, accompanied by a complete application for any balance of the available national reserve grant funds, shall be submitted within 60 days of receipt of the initial emergency award, unless the Governor and the Grant Officer have agreed to a different time frame.

d. Reporting and Oversight. (1)(a) The reporting of JTPA funds and activities shall reflect the budget categories and activities contained in the approved project proposal.

(b) The grantee shall submit a detailed report of the project no later than 45 days after the end of the project. The report shall contain the following information:

(i) Name and address of operator;
(ii) Period of performance;
(iii) Date of the emergency;
(iv) Location(s) of the emergency;
(v) Numbers of individuals affected;
(vi) Number of participants served (total and by activity), compared to planned numbers;
(vii) Number of participants who were employed in unsubsidized jobs at termination;
(viii) Number of participants who were receiving services not funded by this project at termination;
(ix) Expenditures (total and by cost category), compared to planned expenditures;
(x) Identification of jobs created under the project, and the number of participants in each; and
(xi) The average period of participation and wages received by the participants.

(c) The grantee also shall provide brief monthly cumulative reports on the number served, total expenditures and the number of monitoring visits conducted. These reports shall be submitted by the 10th of each month to the appropriate Department of Labor Regional office.

(2) The grantee shall assure that it will monitor on a regular basis and provide technical assistance to each subgrantee to ensure that:

(a) The objectives of the program are met;

(b) The jobs created are consistent with jobs specified by subgrantees;

(c) Time and attendance records are accurate; and

(d) The subgrantee is managing and operating its programs in accordance with the Act, the regulations, the provisions, terms, and conditions of the emergency grant and the grant award letter.

PLATE IV—BUDGET

| | Administration | Basic readjustment | Retraining | Supportive services | Total |
|---|---|---|---|---|---|
| (1) Staff Salaries | X | X | X | | X |
| Fringe Benefits (Attach supplement/narrative, listing and explaining each position, function, annual salary, no. of months charged to grant, time charged to grant). | X | X | X | | X |
| (2) Staff Travel | X | X | X | | X |
| (3) Communications | X | X | X | | X |
| (4) Facilities | X | X | X | | X |
| ● Rent | X | X | X | | X |
| ● Maintenance | X | X | X | | X |
| ● Utilities | X | X | | | X |
| (5) Consumable Office Supplies | | X | X | | X |
| (6) Consumable Instructional Materials | | X | X | | X |
| (7) Equipment | X | X | X | | X |
| ● Lease | X | X | X | | X |
| ● Purchase | X | X | X | | X |
| (Attach supplement/narrative, listing and explaining each item leased and/or purchased $500 or over). | | | | | |
| (8) Relocation (Section 314) | | X | X | | X |
| (9) Subcontracts | | | X | | X |
| ● Tuition | | | X | | X |
| ● OJT wages | | | | | X |
| ● Fixed Unit Price 20 CFR 629.38(e)(2) | | | | | |
| ● Audit | X | | | | |
| ● Other (Identify) | X | X | X | | X |
| (10) Supportive Services | | | | X | X |
| ● Needs Related payments | | | | X | |
| ● Child Care | | | | X | |
| ● Transportation | | | | X | |
| ● Other | | | | X | |
| (11) Other (Identify) | X | X | X | | X |
| (12) Totals | X | X | X | | X |

*Instructions:* All spaces marked with an "X" must be completed. If none, show an "O". Observe parenthetical notes cited above and attach a budget supplement/narrative to explain basis for each line item. Information should make clear how line item costs were calculated, classified and allocated, especially how staff positions are assigned and justified.

| | Total |
|---|---|
| | X |
| | X |
| | X |

initially approved for the grant award, may be made available based on the initial funding request and may be used to provide funds for project startup and early implementation costs, assessment, wages and fringe benefits for temporary jobs, and training costs. It is intended that enrollment and service provision shall begin during this initial funding period. JTPA funds shall not be used to fund activities traditionally and more appropriately funded by State, local, private or other Federal agencies.

b. A final funding level shall be determined based on review and approval of the fully documented proposal and the balance of the approved funding level will be issued as soon as possible following receipt of the fully documented proposal.

c. (1) In the case of emergency funding of a dislocated worker project, the Department shall issue a Notice of Obligation (NOO) for the initial title III national reserve funds awarded to the State, pursuant to the JTPA Governor/Secretary agreement. A second NOO shall be issued for the balance of funds following approval of the fully documented proposal.

(2) Grant award letters containing the specifications expected as a condition of the grant will accompany the NOOs.

(3) The grant award letters, the grant application and the assurances and any approved amendments, the Act, regulations and these guidelines will govern the operation of the project.

d. Unless otherwise directed, the effective date for the use of the funds will be the date of the grant award letter or grant document and no costs may be incurred against awarded funds prior to such date. The authority to expend funds immediately is given in most cases to permit the most timely response to the needs of the newly dislocated workers.

*E. Category V—Additional Financial Assistance (AFA) to formula-funded programs and activities provided by State and substate grantees*

(Section 323(a)(7); 29 U.S.C. 1662b(a)(7)). Such applications shall comply with the following.

1. Policy and Funding Requirements

a. The primary purpose of the national reserve account is to target funds to specific dislocation events. In administering the account it is the Department's intent to give top priority to proposals which are designed to target funds to such specific dislocations.

The Secretary may consider applications for title III national reserve funds to be used for on-going title III formula funded activities. Such applications shall be submitted only under unusual circumstances and shall be subject to the standards and requirements provided in this category. The Department expects States and substate grantees to plan and operate their programs within the constraints of their formula allotments. Operations shall not be conducted in a manner that anticipates national reserve account funds in order to sustain title III formula program operations.

The Department further expects States to utilize any additional funds provided for formula activities in accordance with the statutory requirements, including in particular an appropriate use of any additional funds for Rapid Response activities. The State is responsible for assuring that formula funds are available and used to provide Rapid Response to all appropriate plant closings and mass layoffs, including closings and layoffs where national reserve funds are provided to assist workers dislocated by such closings and layoffs.

b. Applications for national reserve account funds shall be subject to the following requirements:

(1) Requests submitted during the first six months of any program year must specifically identify all of the plant closings and mass layoffs that have or will occur that caused the increased unemployment generating the request, the geographic areas where the layoffs and closings have or will occur, the magnitude of the layoffs, the projected number of dislocated workers who will need and want EDWAA assistance as well as the other requirement provided for by this category. Proposals submitted during the final six months of a program year are not required to submit the specific information required by this paragraph, but must submit all other required information.

(2) A State may request additional formula funds only once each program year.

(3) The data used to support any request for additional formula funds shall be data for the most recent 12 month period for which data are available. Such a period shall be a 12 month period that is more recent than and does not include any part of the 12 month period used by the Department for the most recent formula allotment, or by the State for the most recent substate allotment.

(4) No State or substate area grantee shall be eligible if funds from that State were reallotted or funds from that substate area were reallocated the previous program year.

(5) No State or substate area grantee shall be eligible as long as there are unexpended funds subject to reallocation that shall not be expended by the end of the current program year.

(6) No State or substate area grantee may request funds just for a single activity such as administration or needs-related payments.

(7) (i) If the AFA application is for the State, the State shall demonstrate that, based on the statutory formula used to allot funds to the State (Section 302(b); 29 U.S.C. 1652(b)) for the program year(s) during which the additional formula funds shall be expended, there has been an increase of at least 20 percent in at least two of the funding formula factors: i.e., the relative number of unemployed individuals who reside in the State, as compared to the total number of unemployed individuals in all States; the relative excess number of unemployed individuals residing in the State; or the number of individuals who have been unemployed in excess of 15 weeks.

(ii) If the AFA application is on behalf of a substate area, the application must demonstrate that, based on the allocation formula prescribed by the Governor to distribute funds to the substate grantees (Section 302(d); 29 U.S.C. 1652(d)), for the program year(s) during which the additional formula funds shall be expended there has been an increase of at least 20 percent in at least two of the formula allocation factors, such as: The insured unemployment data; unemployment concentrations; plant closing and mass layoff data; declining industries data; farmer-rancher economic hardship data; or any other factor used by the State to distribute formula funds to address the State's worker adjustment assistance needs.

(8) No State or substate area grantee may receive additional formula funds from the reserve account to serve additional dislocated workers if the State or substate grantee is presently serving displaced homemakers with formula funds in the program year in which the application is submitted and/or the program year(s) in which the funds shall be expended (as a result of a determination that service to this additional dislocated worker group could be provided without adversely affecting the delivery of services to dislocated workers eligible for services under JTPA section 301(a)(1) (A) and (B); 29 U.S.C. 1651(a)(1) (A) and (B)).

(9) The Department shall evaluate the use of both the formula allotments and the reallocated funds in its funding

decision process when considering requests for additional formula funds.

2. Operational Requirements

a. These funds shall be treated the same as all other formula funds. If the State has applied for and is awarded additional "formula" funds, such funds shall be subject to the "forty percent/sixty percent" State and substate grantee distribution requirement (Section 302(c) (1); 29 U.S.C. 1652(c)(1)) and the statutory cost limitations. If the State has applied for and is awarded additional funds for a specific substate grantee, all such funds shall pass directly to the substate area and shall be subject to the statutory cost limitations. Additional funds awarded from the Secretary's reserve account are not subject to recapture and reallotment. Nevertheless, it is expected that these funds will be expended by the end of the program year following the program year in which they are awarded.

b. For purposes of tracking national reserve funds provided as additional formula funds, expenditures shall be reported by the grantee separately from other formula and national reserve funds.

c. In determining a State or substate area grantee's performance, expenditures and additional participants resulting from such funding shall be included in performance standard computations.

d. No eligible dislocated workers shall be simultaneously enrolled in formula funded title III activities and additional formula assistance activities.

3. Eligible Grant Applicants

The eligible grant applicants for additional formula funds are the States and territories of the United States (including the District of Columbia, the Freely Associated States of the Republic of Marshall Islands and the Federated States of Micronesia, and the Trust territory of the Republic of Palau), as represented by the governor designated, State JTPA grant-recipient or grant administering agency under the Federal-State, Governor-Secretary Agreement.

4. Submission of Application

The Governor or authorized JTPA signatory for the State shall submit a national reserve application for additional financial assistance in support of title III formula-funded activities and programs provided by the State or substate area grantees to the DOL Grant Officer. The application shall be accompanied by the required certifications (see appendices A, B, and C to this notice) and the assurances listed below.

5. Assurances

Applications shall be transmitted with a letter from the Governor or authorized signatory containing the following assurances:

If the proposed request for additional financial assistance is funded:

—The grantee assures that any title III funds awarded from funds reserved by the Secretary shall be administered in accordance with the Act, the JTPA regulations, the grant application approved by the Grant Officer, these guidelines and shall be consistent with the approval letter signed by the Department of Labor Grant Officer.

—The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for title III activities, and

—Within 30 days of receipt of the grant approval, the grantee agrees to allocate the grant funds for additional financial assistance to the substate grantees in accordance with the Act, regulations, the proposal, and grant award letter.

6. Content of an Application

a. *Period of Award.* Applications shall cover a period of time not to exceed 12 months.

b. *Application narrative.* (1) Describe the substate area or areas for which the additional financial assistance is required including the projected number of participants served under the substate plan and the substate grantee's performance to date based on the services provided.

(2) Address why the need cannot be met by existing resources:

(a) Provide the status of fund availability (obligations and expenditures) for the State and substate grantee, where appropriate, as of the most recent quarter.

(b) Where appropriate, a statement from the State certifying that the substate grantee(s) funds have not been subject to reallocation.

(c) The State shall indicate that it has exercised State reallocation procedures and that no funds are available from either the 60 percent or 40 percent funds within the State.

(3) An explanation shall be submitted, stating how the circumstances under which State formula funds were provided, or under which the State allocated funds to the substate area(s), have substantially and significantly changed so as to justify the need for additional funds.

(a) When the State applies for these funds to serve the entire State, such circumstances must include an increase in mass layoffs or plant closings with accompanying numbers of dislocated workers which are at least 10 percent of the State labor force, or a 20 percent increase in at least two of the three statutory formula funding factors, i.e., the State's unemployment rate, the excess number of unemployed (in excess of 4.5 percent of the unemployed in the civilian labor force of the State), or the number of long-term unemployed individuals (unemployed in excess of 15 weeks). The 20 percent increase shall be an increase in the data for at least two of the factors used to determine the State's formula allotment for the program year during which the discretionary funds shall be expended. If more than one such program year is involved, it shall be the program year during which a majority of the funds will expended.

(b) When the State applies for AFA funds on behalf of a substate grantee, such circumstances shall include at least a 20 percent increase in the data for at least two of the factors (insured unemployment data; unemployment concentrations; plant closing and mass layoff data; farmer-rancher economic hardship data; and long-term unemployment data) used by the State to determine the substate area's formula allocation for the program year during which the discretionary funds shall be expended. If more than one program year is involved, it shall be the program year during which a majority of the funds shall be expended.

(4) A statement must be included providing information to indicate the severity of need for additional funds, such as the area unemployment rate, an analysis of unemployment insurance (UI) exhaustees, the proportion of unemployed workers who lack sufficient skills to remain in the labor force without assistance, etc.

(5) Include a brief description of the activity(ies) to be funded.

(6) Include an implementation plan which provides:

(a) A schedule for the implementation of proposed activities upon receipt of funds; and

(b) Quarterly implementation data showing the following cumulative projected data as appropriate: Enrollments by activity, total terminations, number of participants to enter employment and expenditures.

(7) Set forth planned outcomes, if appropriate, including: cost per participant, cost per entered employment, and entered employment rate. The actual data for the preceeding program year for formula programs shall also be included.

(8) A detailed line-item budget must be submitted. These funds are subject to the cost limitations found in section 315 of the Act (29 U.S.C. 1661(d) and are subject to the regulations found at 20 CFR 631.14. Line-item costs shall be apportioned by the cost categories required for Department of Labor Report ETA 9020, "Worker Adjustment Program Quarterly Financial Report" (WQFR). (OMB Control No. 1205–0274)

(9) A statement must be included that no services to displaced homemakers have been or are being provided with formula funds currently available to the State and/or substate areas and no assistance shall be provided during the period of use of the additional formula assistance.

7. Selection criteria

The following criteria shall be used to evaluate proposals for additional formula funds:

a. A demonstration that State and substate grantee formula funds will not remain unexpended and that formula funds are not available to meet the need.

b. A demonstration that the circumstances under which State formula funds were provided or under which the State allocated funds to the substate grantee(s) have substantially and significantly changed so as to justify the need for additional funds.

c. The severity of circumstances and need in the State or substate area as described in the grant application.

d. The ability of the State or substate grantee(s) to utilize the funds provided immediately.

e. The cost effectiveness of the project or activity, including the extent to which other State and substate public and private resources, have been integrated into the proposed project or activity.

f. The extent to which the expenditure of funds will be directly for, or related to, the provision of services to participants.

g. The overall effectiveness and efficiency of the proposal itself.

h. The amount of the grant award in addition to relevant requirements above, shall take into consideration the State's proportionate share of the national workforce.

8. Funding Mechanism

a. (1) In the case of additional financial assistance to programs and activities provided by State or substate area grantees, the Department will issue a Notice of Obligation (NOO) of title III national reserve funds to the State, pursuant to the JTPA Governor/Secretary Agreement.

(2) A grant award letter containing the general specifications expected as a condition of the award will accompany the NOO.

(3) The Act, Regulations, grant award letter, the grant application, any approved amendments, the assurances and these guidelines shall govern the operation of the project.

b. The effective data for the use of the funds shall be the date indicated on the grant award letter and no costs may be incurred against awarded funds prior to such date. The authority to expend funds immediately is given in most cases to permit the most timely response to the need of the newly dislocated worker.

*F. Category VI—Defense Conversion Adjustment Programs*

An application for funds under this subpart shall comply with the following requirements:

Application Rules

a. Definitions.

In addition to or in lieu of the definitions contained and cited in § 631.2 of this part, the following definitions shall apply to programs funded under this subpart:

(1) "DoD" means the United States Department of Defense.

(2) "Industrywide project" means services and activities provided by a single grantee to serve workers dislocated from at least three different plants or facilities within the defense industry in at least two different areas of a single State or two different States.

(3) "Multistate project" means services and activities provided in more than one State by a single grantee to serve workers dislocated from one or more defense plants or facilities.

(4) "Substantially and seriously affected worker" means a member of any group of 100 or more workers at a defense facility who are, or who are expected to become, eligible to participate in the Defense Conversion Adjustment Program.

b. Participant eligibility.

(1) An eligible dislocated worker, as defined by Section 301(a) of the Act and § 631.3 of the regulations, shall be eligible for participation in activities under a defense conversion adjustment (DCA) program only if such dislocated worker has been terminated or laid off or has received a notice of termination or layoff as a consequence of reductions in expenditures by the United States for defense (including substantial reductions at military facilities) or by closure of United States military facilities. Examples include terminations or layoffs, or notices thereof, as a result of a cancellation of or a reduction in a DoD contract for a product or service, where such cancellation or reduction is a result of a reduction in an expenditure by the United States for defense or by closure of a United States military facility.

(2) An eligible dislocated worker whose termination or layoff, or notice thereof, is not directly the consequence of reductions in expenditures by the United States for defense (including substantial reductions at military facilities) or by closure of United States military facilities is not eligible for services under a DCA program, but may be eligible under the basic title III dislocated worker program.

c. Priority areas of service.

(1) Priority areas of service for DCA programs shall be those geographic areas that have, or are projected by the Secretary to have the greatest number of dislocated workers who meet the eligibility criteria for services as defined in b. above.

(2) In determining priority areas of service, the Secretary shall require applicants to submit documentation that supports that the workers to be served by the application will be or were in fact, dislocated due to:

(a) Proposed and actual closure(s) of, or substantial personnel reduction(s) in, military installation(s);

(b) Proposed or actual cancellation(s) of, or reduction(s) in, any contract(s) for products or services for the Department of Defense, where the proposed closure(s), cancellation(s) or reduction(s) will have a substantial impact on employment; and

(c) Other reductions in expenditures by the United States government for defense.

The DOL shall consult with and obtain agreement from the DoD regarding the adequacy of the documentation provided in the applications before making a final decision regarding the approval of the applications. The agreement from DoD will indicate that DoD concurs that the application will provide services to workers who meet the requirements under b. above.

d. Allowable activities.

(1) Allowable activities for DCA programs shall be those activities authorized by section 314 of JTPA, except as provided below.

(2)(a) Job search shall be an allowable activity only to assist a totally separated dislocated worker who meets the eligibility criteria under b. above in securing a job within the United States, and where it has been determined that the dislocated worker cannot reasonably be expected to secure suitable employment within the

commuting area in which the worker resides. Procedures for determining whether a dislocated worker cannot reasonably be expected to secure suitable employment within the commuting area in which the dislocated worker resides shall be described in the grant application and shall be subject to approval by the Secretary.

(b) The cost of job search for a dislocated worker who meets the eligibility criteria under b. above shall be an allowable readjustment cost, but shall not provide for more than 90 percent of the cost of necessary job search expenses, and may not exceed a total of $800, unless the need for a greater amount is justified in the grant application and approved by the Secretary.

(c) These requirements shall not apply to regular job development activities and services provided to an eligible participant within the commuting area within which the eligible participant resides.

(3)(a) Relocation shall be an allowable activity only where a dislocated worker who meets the eligibility criteria under b. above cannot reasonably be expected to secure suitable employment in the commuting area in which the dislocated worker resides and has obtained suitable employment affording a reasonable expectation of long-term employment in the area in which the worker wishes to relocate, or has obtained a bona fide offer of such employment, provided that the worker is totally separated from employment at the time relocation commences.

(b) The cost of relocation for a dislocated worker who meets the eligibility criteria under b. above shall not exceed an amount which is equal to the sum of 90 percent of the reasonable and necessary expenses incurred in transporting the dislocated worker and the dislocated worker's family, if any, and household effects, and a lump sum equivalent to three times such worker's average weekly wage. The maximum relocation allowable, however, shall not exceed $800 per participant, unless a greater amount is justified to the satisfaction of the Secretary in the grant application and is approved by the Secretary. Necessary expenses shall be travel expenses for the dislocated worker and the dislocated worker's family and for the transfer of household effects. Reasonable costs for such travel and transfer expenses shall be by the least expensive, most reasonable form of transportation.

2. Eligible Grantee

(1) Funds available for a DCA program shall be awarded to eligible grantees in accordance with the requirements of the Act and regulations, and the procedures, criteria and process contained in these guidelines.

(2) Funds shall be distributed to eligible grantees in accordance with procedures specified in these applications.

(3) Eligible grantees for DCA programs shall be States, Title III substate grantees, employers, employer associations, and representatives of employees. (section 325(a)). However, a specific eligible grantee may not be an appropriate applicant for a particular project. Applicants will be considered given the nature and extent of the proposed project.

3. Submission of Applications

(a) Two types of applications may be submitted: Regular full applications, and emergency applications. Regular full applications shall follow the procedures and requirements as contained in this section and Sections 4 and 5.(a)(b)(c) and (d) below. Emergency applications shall be subject to the procedures and requirements contained in Section 5(e) below.

(b) In the case of a multistate or industrywide project, the applicant shall submit the application directly to the Department of Labor Grant Officer. In the case of an intrastate project, the Governor shall submit the application to the Grant Officer. Each application shall contain the required certifications and assurances listed in Section 4 below.

4. Assurances and Certifications

(a) The following assurances shall be included with each application:

If the proposed project is funded from funds provided to the Secretary of Labor by the Department of Defense:

—The grantee assures that such funds shall be administered by the grantee in a manner consistent with the Act, the JTPA regulations, the requirements contained in the application guidelines and in accordance with provisions specified in the proposal and amendments approved by the Grant Officer, if any, pursuant to the grant document signed by the Department of Labor Grant Officer.

—The grantee agrees to compile and maintain information on project implementation, performance and expenditures. The information shall, at a minimum, be consistent with the activities and cost categories contained in the project proposal and shall be available to the grantor as requested.

—The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act, the Federal regulations for title III activities, and the requirements in the application guidelines.

—Following receipt of the grant approval, the grantee shall advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the grantee shall provide additional information explaining the projected implementation date.

—The grantee agrees to compile and maintain information on project implementation on a monthly, and performance and expenditures data on a quarterly, basis. The information shall, at a minimum, be consistent with the activities and cost categories contained in the project proposal and shall be available to the Department as requested, and

—The grantee agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential under-expenditure of funds.

Project proposals not accompanied by the above assurances shall not be accepted for review.

(b) Each application shall also contain the following certifications:

(i) An original signature certification regarding "Drug-Free Workplace" must be submitted with the application except in the case where the applicant is a State. States may opt to submit a *copy* of the Statewide or agency plan every fiscal year per Training and Employment Information Notice (TEIN) No. 15–90. This certification requirement applies only to the Federal grant applicant. The "certification Regarding Drug-Free Workplace Requirements" form is found in appendix A.

(ii) A "Certification Regarding Debarment, Suspension and Other Responsibility Matters, Primary Covered Transaction", must be submitted with all national reserve applications (except those related to national or agency-recognized emergency disasters) as required by the DOL regulations implementing Executive Order 12549, "Debarment and Suspension," 29 CFR 98.510. This certification form is found in appendix B.

(iii) A "Certification Regarding Lobbying", as required by 29 CFR Part 93, "New Restrictions on Lobbying." 54 FR 6736, 6751 (February 26, 1990). A suggested form incorporating the required text is found in appendix C.

5. Application Content

Each application shall contain the following information in the format outlined below:

a. *Period of Award:* Awards will be made for an 18-month period to allow for project start-up (not to exceed 90 days), operation, and administrative closeout. If the period of operation is extended, the period of the award will be extended by an equal time period.

b. *Period of operation:* Applications should generally provide for a period of operation of 12 months. Applications for periods of operation in excess of 12 months may be submitted with information supporting the need for the additional period.

c. *Synopsis of the project.* A short summary of pertinent information regarding the project shall be included and shall contain the following:

(1) The name and address of the project operator, along with the name and telephone number of a contact person for the grantee and project operator;

(2) The project locations (cities, counties, and States);

(3) The planned starting and ending dates of the project;

(4) The total amount of National Defense Act national reserve funds requested;

(5) The name(s) of the company(ies) from which the affected workers have been dislocated;

(6) The date(s) of employment termination and the number of workers affected;

(7) The names of the States, counties, and cities in which the affected workers reside;

(8) The total number of participants planned;

(9) The total number of placements planned;

(10) The planned cost per participant;

(11) The planned cost per entered employment; and

(12) The name, address, and telephone number of the signatory official for the project operator.

d. *Project Narrative.* The project narrative shall be a detailed explanation containing the following information, and shall not exceed 25 pages:

(1) A description of the need for the project and an explanation of how this need was determined. The description shall include:

(a) Information that demonstrates that the employment losses are the result of reductions in DoD expenditures, and that there are no prospects for reemployment in a similar industry or occupation within the commuting area in which the workers reside. Specific information demonstrating what defense reductions occurred or will occur. Such information shall include specific identification of bases closed, contracts terminated, projects canceled, etc. If the dislocations are the result of the cancellation of a subcontract, the documentation should identify both the subcontract and the prime contract that resulted in the cancellation of employment. The procedures used to make this determination shall be briefly described.

(b) The schedule for layoffs and closings.

(c)(i) The number of affected workers likely to participate in the program, taking into consideration the total number of workers affected by specific occupations, the wage levels for each occupation, the number of workers eligible to participate, the number likely to retire, the number likely to be transferred, and the number likely to be recalled. Applicants shall certify that recall within the next 12 months is highly unlikely for these dislocated workers.

(ii) The number of affected workers who posses locally transferable skills, and who can be expected to find other employment with minimal or no assistance.

(iii) Where the layoff has occurred more than 4 months prior to the submittal of the application, information indicating how the applicant determined the number of affected workers who remain unemployed and in need of services, and

(d)(i) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(ii) Information on the economic conditions for the State(s) and the geographic area(s) to be served as documented by the most recent unemployment rate for each State and area, or the economic and unemployment trends in the specific industry affected, to illustrate the severity of the need for such a project, and

(iii) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the city and the State to which the plant will be relocated shall be provided.

(2) *Existing Resources.* The project narrative shall explain why these dislocated workers cannot be served with existing resources, in particular State or substate grantee JTPA Title III formula funds.

(3) *Trade adjustment assistance (TAA) for workers under the Trade Act.* The application shall indicate whether an application has been made for TAA assistance, and if so, whether certification has been given or denied for Trade Adjustment Assistance for workers. If certification has been issued, provided petition number, if available.

When a target group is certified as eligible to receive Trade Adjustment Assistance (TAA) including Trade Readjustment Allowances (TRA), national reserve funds may still be needed for those services not allowable under TAA such as assessment, job search assistance including job clubs, transportation assistance within the commuting area, counseling, child care and training that does not meet TAA training criteria. In such instances, the applicant may request a waiver of the requirement that 50 percent of the total grant must be expended for Retraining. The request should provide an estimate of the number of workers to receive TAA-funded training and the cost of such training. The coordination procedures established to track the project participants receiving TAA-funded training should also be explained.

(4) *Employer/union assistance.* The project narrative shall explain in detail the nature and duration of any contractual obligation of, or any voluntary arrangements by the employer(s) or union(s) to provide training-related services to terminated employees. When applicable, severance pay arrangements shall be addressed.

(5) *Labor market information.* The project narrative shall contain a detailed discussion on available labor market data as it relates to the specific area in which dislocation services will be provided. Specific listings of demand occupations in the areas where the dislocated workers will be trained shall be included, as well as an explanation of how such occupations were identified. The narrative also shall contain a certification that the number of unemployed workers available for employment in the identified demand occupations for which retraining is planned is insufficient to meet the need.

(6) *Coordination and linkage.*

(a) *Governors and substate grantees.*

(i) The application shall include evidence that the Governor of each State and the appropriate title III grantee of each substate area in which a project site is proposed have been informed of such application and given an opportunity to comment on how the proposed project would affect workers in the State or substate area.

(ii) Letters from the appropriate Governors and substate grantees shall be included to document that the opportunity was provided for review

and comment of the application. Each Governor's letter shall indicate why the State has not funded the proposed project/subproject for that State as well as a description of the funding and assistance, if any, it will provide to the project/subproject. The substate area grantee letter shall indicate why the substate grantee is unable to provide sufficient services to the proposed project/subproject in the substate area, as well as a description of the funding and assistance, if any, it will provide to the project/subproject.

(b) *Private industry council (PIC)/ local elected official (LEO).* All grant applications shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment.

(c) *Labor organizations.* All applications for dislocated workers projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) shall provide documentation of full consultation with the appropriate local labor organization in the development of the project design. Thus, documentation is required for each union representing at least 20 percent of the affected workers. Describe the involvement (if any) of organized labor in the development and operation of the proposed project activities.

(d) *Other.* (i) Each application shall show that the proposed project for dislocated workers will coordinate with other State and local agencies and related programs including, but not limited to:

(aa) DoD Readjustment Program;

(bb) Veterans' programs (including JTPA, Title IV–C) available in the area;

(cc) Disabled Veterans Outreach Program (DVOP) and Local Veteran's Employment Representatives (LVER);

(dd) The Unemployment Compensation System;

(ee) The State Employment Service;

(ff) The Pell Grant program;

(gg) Other Federal programs;

(hh) The Trade Adjustment Assistance (TAA) program, if applicable; and

(ii) Other appropriate State and local program resources.

(iii) In those instances where State and other funds, such as vocational education, economic development, TAA, or special appropriations, are available to the project, the application shall include a brief discussion of the activities for which these funds will be used and their relationship to the national reserve funds requested, taking into consideration section 141(b) of JTPA.

(7) *Description of services.* All applications shall include the description of services to be provided:

(a) *Intake and eligibility determination.* Describe the procedures to recruit and ensure the eligibility of each participant. Indicate what entity shall be accountable for eligibility determination.

(b) *Basic readjustment services.* Describe how assessment, job search assistance, counseling, job development and placement services and any other activities will be coordinated with retraining activities (assessment procedures shall include the capability to determine if a participant's reading skills are below the 8th grade level). See JTPA section 314(c), 29 U.S.C. 1661c(c).

(c) *Retraining services.* Describe the retraining to be provided, including the types and lengths of retraining for various occupations or occupational areas, and the likely providers of both on-the-job and classroom skill training.

**Note:** Funds provided to DOL by DoD for DCA programs shall not be provided to substitute for such activities as the employer's traditional training responsibility associated with product model changes, the introduction of new products, general employee upgrading, and other such changes. See JTPA section 314(d), 29 U.S.C. 1661c(d).

(d) *Participant supportive services.* Discuss which services will be provided and how they will be coordinated with training activities, including needs-related payments. See JTPA Section 314(e), 29 U.S.C. 1661c(e).

(8) *Implementation plan.* The following information regarding implementation plans shall be included.

(a) A schedule for the implementation of program activities upon receipt of funds and a discussion of initial actions taken to support implementation. Enrollment of participants normally should occur no later than 90 days following the grant officer's authorization to incur costs against the funds awarded. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided shall be included, and

(b) Projected quarterly implementation data showing the following projected cumulative data for the overall project and for each subproject site:

(i) Enrollments for each major activity: assessment, job search assistance, classroom training, occupational skills training, on-the-job training and other training;

(ii) Total terminations;

(iii) Number of participants entering employment from each activity; and

(iv) Expenditures.

(9) *Planned outcomes.* The application shall include project data showing the projected overall:

(a) Cost per participant;

(b) Cost per entered employment;

(c) Entered employment rate; and

(d) Average wage rate at entered employment.

(10) *Financial and management capability.* Except where the actual project operator will be the State or the substate grantee, the application shall include a two-page or less description of the fiscal and management capabilities of the prospective project operator, including how the prospective project operator (or the division which will have responsibility for this project) is or will be organized. The description shall include information demonstrating:

(a) Current or previous relevant experience in providing services to dislocated workers or in administering training and employment programs; and

(b) The capability of the project operator to maintain and report as necessary required fiscal and management information.

(11) *Detailed line item budget.* (a) Costs for each item shall be allocated under the following cost categories: Administration, Basic Readjustment Services, Retraining, and Supportive Services including needs-related payments as classified in 20 CFR 631.13.

(i) The budget shall provide information by both cost categories as discussed below and by line-item. The suggested format in plate V is recommended for utilization and explanation of the budget and budget narrative.

(ii) Any costs that are subcontracted shall be so noted by the name of the contractor, and activity or function to be performed. Staffing costs shall be specifically identified. Training costs for off-the-shelf catalogue prices or which meet the requirements for acceptable fixed-unit price, performance based contracts as published in the Federal Register at 54 FR 10459 (March 13, 1989) shall be identified. Administrative costs prorated as required by 20 CFR 629.38(e)(2) shall be identified.

(iii) For a pass through project, where the State is not the project operator, the State may reserve 1 and ½ percent (.015) of the total grant award or $15,000, whichever is less, for costs associated with the administration of the grant such as contract negotiation, reporting activities and project oversight. This cost is to be charged to the Administration cost category. A State requesting administrative costs that exceed the maximum set aside must provide a justification including the

projected person-hours and functions to be performed.

PLATE V.—BUDGET

| | Administration | Basic readjustment | Retraining | Supportive services | Total |
|---|---|---|---|---|---|
| (1) Staff Salaries | X | X | X | | X |
| Fringe Benefits (Attach supplement/ narrative, listing and explaining each position, function, annual salary, no. of months charged to grant, time charged to grant). | X | X | X | | X |
| (2) Staff Travel | X | X | X | | X |
| (3) Communications | X | X | X | | X |
| (4) Facilities | X | X | X | | X |
| ● Rent | X | X | X | | X |
| ● Maintenance | X | X | X | | X |
| ● Utilities | X | X | | | X |
| (5) Consumable Office Supplies | X | X | X | | X |
| (6) Consumable Instructional Materials | | X | X | | X |
| (7) Equipment | X | X | X | | X |
| ● Lease | X | X | X | | X |
| ● Purchase | X | X | | | X |
| (Attach supplement/narrative, listing and explaining each item leased and/or purchased $500 or over) | | | | | |
| (8) Relocation (Section 314) | | X | X | | X |
| (9) Subcontracts | | | X | | X |
| ● Tuition | | | X | | X |
| ● OJT wages | | | | | X |
| ● Fixed Unit Price 20 CFR 629.38(e)(2) | X | | | | |
| ● Audit | X | X | X | | X |
| ● Other (Identify) | | | | X | X |
| (10) Supportive Services | | | | X | |
| ● Needs Related payments | | | | X | |
| ● Child Care | | | | X | |
| ● Transportation | | | | X | |
| ● Other | X | X | X | | X |
| (11) Other (Identify) | X | X | X | | X |
| (12) Totals | | | | | |

*Instructions:* All spaces marked with an "X" must be completed, if none, show an "O". Observe parenthetical notes cited above and attach a budget supplement/narrative to explain basis for each line item. Information should make clear how line item costs were calculated, classified and allocated, especially how staff positions are assigned and justified.

(b) Depending on the nature of the project and the identity of the grantee, an applicant may submit a budget that requests a deviation from the JTPA cost limitations. An explanation for the need for this deviation shall be provided. The Secretary shall decide, in the grant award, whether and to what extent any deviation from the statutory cost limitations as applied to formula funds shall be allowed.

(c) Where national reserve funds will be combined with funds from other sources, e.g., other defense funds, employer or union training funds, State formula-allotted funds, State vocational education or economic development funds, the budget shall indicate for each line item the total cost and the amount to be funded from the national reserve account and the other funding source(s).

(d) No direct costs shall be charged for any activity that is included in the indirect cost line item.

(e) *Emergency application.* (1)(a) Applications for emergency funding consideration shall be submitted only to address situations where:

(b) The dislocations occur under circumstances which do not provide a reasonable period of time to develop a full proposal; that is a sudden and unexpected event;

(c) The number of dislocated workers who meet the eligibility criteria is such that both the JTPA title III substate grantee and the State are unable to respond to the dislocation with existing resources; and

(d) The workers did not receive a 60-day notice under the Worker Adjustment and Retraining Notification Act in advance of the layoff.

(2)(a) Emergency proposals shall be considered under a two-step process. The first step shall be an initial proposal request which shall contain limited key information. The second step, which will be necessary only where there is a decision made by the Secretary to approve the initial request, shall be the fully documented proposal. An applicant may also, if it so wishes, submit a fully documented proposal where the Secretary determines not to approve an initial emergency proposal.

(b) The applicant's initial proposal request shall not exceed two pages (plus the transmittal letter and the assurances and certifications). This initial request may be submitted by FAX. An original signed request must also be submitted, and must be on file in the Department before any funds shall be released. The initial request shall contain:

(i) An explanation of the circumstances justifying the proposal to be submitted as an emergency request;

(ii) The areas to be served by the grant;

(iii) A brief assessment of the need, including the procedures used to determine that there are limited prospects for reemployment in a similar industry or occupation within the commuting area in which the affected workers reside;

(iv) An estimate of the number of individuals impacted by the emergency who meet the eligibility criteria under this subpart;

(v) An estimate of the number of individuals to be served by the grant;

(vi) The amount of funds being requested;

(vii) A brief summary of the activities to be conducted;

(viii) A statement that demonstrates the employment losses are the result of reductions in DoD expenditures, and

that there are no prospects for reemployment in a similar industry or occupation within the commuting area in which the worker resides. Specific information demonstrating what defense reduction(s) occurred shall be provided (see 5.(d)(1)(a) above); and

(ix) The assurances and certifications specified in section 4.

(3) A full proposal shall be submitted where the Grant Officer approves an initial proposal request. The full proposal shall be submitted in accordance with the requirements contained in the award letter responding to the initial proposal request and the procedures and requirements contained in Section 5. (a), (b), (c) and (d) above. The full proposal shall be reviewed following established procedures for the selection, review and approval of discretionary grant applications as contained in Sections 6, 7 and 8.

(4)(a) If a decision is made to fund a proposal, an amount, not to exceed one-third of the request, shall immediately be made available to commence operations allowable under the Act, regulations, the requirements and instructions contained in this document, and the grant officer approval letter, and

(b) Once the fully documented proposal has been reviewed, the Department shall determine how much, if any, additional funds to provide. The final amount provided, when combined with the initial amount awarded, shall not exceed the total initial request.

6. Selection Criteria

These criteria shall be used to determine the acceptability of the fully documented proposal and the final award amount for any already approved emergency award. These criteria shall also be used to determine whether awards shall be made in all other cases.

(a) *Overall criteria.* Grant applicants for funds under this subpart shall be evaluated and selected for funding where DoD has concurred that the dislocated workers to be served by the program described in the application, as documented by the information required in 5.(d)(1)(a), shall be or were dislocated as a result of DoD expenditure reductions and based on the extent to which the proposed project:

(1) Demonstrates that the proposal meets the requirements for this category;

(2) Demonstrates that the proposal meets the purposes of the Act and the regulations;

(3) Will encourage an effective response to the dislocations;

(4) Promotes an effective use of funds; and

(5) Provides all information as required for a proposal.

(b) *Specific criteria.* The following specific criteria shall apply to the evaluation of applications and selection of grantees for DCA dislocated worker projects;

(1) *Priority area.* The Secretary shall determine whether this application will serve eligible dislocated workers in a priority area of service as defined by section 1.d.

(2) *Severity of need.* The Secretary shall consider the severity of the circumstances and need, as described in the grant application (*e.g.*, the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, and the local and State unemployment rates compared to the national rates).

(3) *Target group.* The Secretary shall consider the concentration of the eligible individuals in a specific occupation(s), plant(s), or geographic area(s). The Secretary shall consider the extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force, as shown by an analysis of the characteristics of the affected workers. The requirements of this paragraph shall be a major factor in determining the responsiveness of a proposal.

(4) *Coordination and linkages; utilization of resources.* The Secretary shall consider the extent to which the applicant has demonstrated that the project will be integrated with other existing program and community resources, including Defense Adjustment programs, State/substate JTPA Title III formula-funded activities other JTPA programs where appropriate, welfare programs, and the Trade Adjustment Assistance program, where appropriate.

(5) *Services.* The Secretary shall consider the services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population; and the extent to which specific occupations are identified for retraining and placement. The applicant shall demonstrate that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in an on-the-job or in a classroom setting or both. This demonstration shall be a major factor in determining whether to fund the application.

(6) *Management capability.* The application shall contain assurance of the project operator's fiscal and program management capabilities to administer the proposed project. The Secretary shall consider the project operator's demonstrated ability to begin program operations expeditiously in making a funding decision.

(7) *Cost effectiveness.* The Secretary shall consider the cost effectiveness of the project, *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels; the level of funding designated for client services as opposed to staff support and administration; the proportion of staff costs to those costs directly attributable to client services such as tuition, and tools. The Secretary shall also consider whether costs are necessary and reasonable. The cost effectiveness of the project shall be a major factor in determining whether to fund the application.

(8) *Other considerations.* The Secretary shall consider the overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

(9) The Secretary shall consider written comments regarding the application submitted by the Governor or other interested parties.

(10) The Secretary shall consider the comments of DoD as to whether this application shall serve eligible workers dislocated as a result of reductions in Defense procurements and base closings.

7. Application Review

(a) An application shall be reviewed and approved or rejected based upon overall responsiveness of the application's content and the application of the selection criteria, taking into consideration the extent to which funds are available.

(b) Applications shall be rejected when:

(1) The application proposes to assist workers who were not dislocated as a result of reductions in defense spending or military base closings; (DoD comments shall be used for this determination) (Projects not considered for funding for this subcategory for this reason shall be automatically considered for funding with regular Title III discretionary funds);

(2) The application does not meet the standards established by these requirements;

(3) Other available applications appear to be more effective in achieving the goals of this category;

(4) The information required is not provided in sufficient detail to permit adequate assessment of the proposal;

(5) The information regarding why the State and substate grantee were unable

to fund the proposed project is not provided or is unsatisfactory; or

(6) The application is not consistent with statutory and/or regulatory requirements.

8. Approval

(a) In the case of an award to a State or to an existing State JTPA substate area grantee, the Grant Officer shall issue an award letter and Notice of Obligation (NOO) pursuant to the Secretary/Governor Agreement. For others, an appropriate grant document shall be executed by the appropriate Department of Labor Grant Officer and the grant applicant's official signatory.

(b) The Act, JTPA regulations, these requirements, the grant award letter/agreement, assurances, grant application and any approved amendments thereto, and the approval by the Grant Officer in writing shall govern the operation of the project.

(c) The effective date for the use of the funds shall be the date of the grant award letter or grant agreement authorizing costs to be incurred against the funds awarded. No costs may be incurred against awarded funds prior to such date. The authority to incur costs immediately is given, in most cases, to permit the most timely response to the needs of the newly dislocated worker. Where authority to immediately incur costs is not provided, specific instructions will be included in the Grant Officer's award letter regarding the actions needed in order to obtain authority to incur costs.

Signed at Washington, DC, this 23rd day of June, 1992.

**Roberts T. Jones,**

*Assistant Secretary for Employment and Training.*

**Appendix A Certification Regarding Drug-Free Workplace Requirements**

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the sites(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code):

_____

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

_____

Name of Applicant OrganizationQ02

_____

Name and Title of Authorized Signatory

_____

Signature

_____

Date

**Appendix B**

**Certification Regarding Debarment, Suspension, and other Responsibility Matters Primary Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR part 98, § 98.510, Participants' responsibilities.

(Before signing certification, read attached instructions which are in integral part of the certification)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____

Name of Applicant Organization

_____

Name and Title of Authorized Signatory

_____

Signature

Date _____

**Appendix C**

**Certification Regarding Lobbying**

**Certification for Contracts, Grants, Loans and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the

making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant local, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL–A, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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Name of Applicant Organization

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Name and Title of Authorized Signatory

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Signature

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Date

**Note:** In these instances, "All," in the Final Rule is expected to be clarified to show that it applies to covered contract/grant transactions over $100,000 (per OMB).

**Appendix D**

**SF 424–B**

**Assurances—Non-Construction Programs**

**Note:** Certain of these assurances not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified. As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, personal gain.

4. Will initiate and complete the work within the applicable timeframe after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR part 900, subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. Sections 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 36–01 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the national Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93–205)

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*)

14. Will comply with Public Law 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 *et seq.*) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

[FR Doc. 92-15457 Filed 7-8-92; 8:45 am]

BILLING CODE [illegible]

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July 9, 1992

Part III

# Department of the Interior

## Bureau of Indian Affairs

**Resolution Amending the Southern Ute Tribal Liquor Code; Notice**

VOL 57 ISS 132 JUL 9 1992 UMI

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

## Resolution Amending the Southern Ute Tribal Liquor Code

June 15, 1992.

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. 88–103, amending the Southern Ute Indian Tribal Liquor Ordinance, was duly adopted by the Southern Ute Tribal Council on July 27, 1988. The Ordinance provides for the regulation of the sale, possession, consumption, distribution and manufacture of liquor in the area of Indian Country under the jurisdiction of the Southern Ute Tribe, Colorado and amends the previous Southern Ute Tribal Liquor Ordinance which was published in the **Federal Register** on January 28, 1970, 35 FR 1118.

**DATES:** This Ordinance is effective as of July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., MS 2612–MIB, Washington, DC 20240–4001; telephone (202) 208–4400, (FTS) 268–4400.

**SUPPLEMENTARY INFORMATION:** The Ordinance reads as follows: The Southern Ute Indian Tribal Council declares that it is in the best interest of the Southern Ute Indian Tribe that alcoholic beverages and fermented malt beverages shall be sold within the exterior boundaries of the Southern Ute Indian Reservation only by persons licensed as provided in Title XVI. The Tribal Council further declares that it is lawful to sell alcoholic beverages and fermented malt beverages within the exterior boundaries of the Southern Ute Indian Reservation subject to the provisions of this Title. This title shall be deemed an exercise of the police powers of the Southern Ute Indian Tribal Council for the protection of the peace, safety, property, health and general welfare of the Southern Ute Indian Tribe.

### Section 2. Definitions

As used in this title, unless the context otherwise requires:

A. "Adult" means a person lawfully permitted to purchase alcoholic beverages or alcoholic liquors.

B. "Alcoholic beverages" or "alcoholic liquors" means malt, vinous, or spirituous liquors.

C. "Fermented malt beverage" means any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any similar product or any combination thereof in water containing not less than one-half of one percent and not more that three and two-tenths percent alcohol by weight.

D. "Hotel" means any establishment with five or more sleeping rooms for the accommodation of guests and having restaurant facilities.

E. "License" means to grant a licensee to sell alcoholic beverages as provided by this title.

F. "Licensed premises" means the premises specified in an application for a license under this title which are owned or in possession of the licensee within which such licensee is authorized to sell, dispense, or serve alcoholic beverages in accordance with the provisions of this title.

G. "Location" means a particular parcel of land that may be identified by an address or by other descriptive means.

H. "Malt liquors" includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water containing more than three and two-tenths percent of alcohol by weight.

I. "Meal" means a quantity of food of such nature as ordinarily consumed by an individual at regular intervals for the purpose of sustenance in any facility where meals are regularly served at tables or lunch counters, or in any guest room of a hotel where the guest has meals served.

J. "Neighborhood" means that geographic area determined at the discretion of the Tribal Council to be affected by a license as proposed to be issued under this Title.

K. (1) "Optional premises" means:

(a) The premises specified in an application for a hotel and restaurant license under this title with related outdoor sports and recreational sports and recreational facilities for guests or the general public located on or adjacent to the hotel or restaurant within which such licensee is authorized to sell or serve alcoholic beverages in accordance with the provisions of this title and at the discretion of the Tribal Council; or

(b) The premises specified in an application for an optional premises license located on an applicant's outdoor sports and recreational facility.

(2) For purposes of subsection (K), "outdoor sports and recreational facility means a facility which charges a fee for the use of such facility.

L. "Person" means a natural person, partnership, association, company, corporation, or organization or a manager, agent, servant, officer, or employee of any of them.

M. "Premises" means a distinct and definite location which may include a building, a part of a building, a room, or any other definite contiguous area.

N. "Restaurant" means an establishment, which is not a hotel as defined in subsection (D) of this section, provided with special space, sanitary kitchen and dining room equipment, and persons to prepare, cook, and serve meals, where, in consideration of payment, meals, drinks, tobaccos, and candies are furnished to guests and in which nothing is sold excepting food, drinks, tobaccos and candies. Any establishment connected with any business wherein any business is conducted, excepting the sale of food, drinks, tobaccos, candies, or hotel business, is declared not to be a restaurant. Nothing in this subsection (N) shall be construed to prohibit the use in a restaurant of orchestras, singers, floor shows, coin-operated music machines, and amusement devices which pay nothing of value and cannot by adjustment be made to pay anything of value or other forms of entertainment commonly provided in restaurants.

O. "Retail liquor store" means an establishment engaged only in the sale of malt, vinous, and spirituous liquors and soft drinks and mixers, all in sealed containers for consumption off the premises, and in the sale of tobaccos, tobacco products, smokers' supplies, and nonfood items related to the consumption of such beverages.

P. "Sealed containers" means any container or receptacle used for holding liquor, which container or receptacle is corked or sealed with any stub, stopper, or cap.

Q. "Sell" or "sale" means any of the following: To exchange, barter, or traffic in; to solicit or receive an order for except through a licensee licensed under this title; to keep or expose for sale; to serve with meals; to deliver for value or in any way other than gratuitously; to peddle or to possess with intent to sell; to possess or transport in contravention of this title; to traffic in for any consideration promised or obtained, directly or indirectly.

R. "Spirituous liquors" means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin, and every liquid or solid, patented or not, containing at least one-half of one percent alcohol. Any liquid or solid containing beer or wine in combination with any other liquor shall not be construed to be malt or vinous but shall be construed to be spirituous liquor.

S. "Tavern" means an establishment serving malt, vinous, and spirituous liquors in which the principal business is the sale of such beverages at retail for consumption on the premises and where sandwiches and light snacks are available for consumption on the premises.

T. "Tribal Council" means the Tribal Council of the Southern Ute Indian Tribe or such Tribal Council's delegate.

U. "Vinous liquors" means wine and fortified wines which contain not less than one-half of one percent and not more than twenty-one percent of alcohol by volume and shall be construed to mean alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

**Section 3. Licensing Authority of Southern UTE Indian Tribal Council**

A. For the purpose of regulating and controlling the licensing of the distribution and sale of alcoholic beverages and fermented malt beverages, the Tribal Council shall be empowered to:

(1) Grant or refuse licenses for the sale of alcoholic beverages and fermented malt beverages, as provided by this title, and suspend or revoke such licenses upon a violation of this title or any other rule or regulation adopted pursuant to this title;

(2) Make such general rules and regulations and special rulings and findings as are necessary for the proper regulation and control of the distribution and sale of alcoholic beverages and fermented malt beverages and the enforcement of this title and alter, amend, repeal, and publish the same from time to time;

(3) Hear and determine at public hearing all complaints against any licensee and administer oaths and issue subpoenas to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing so held;

(4) Keep complete records of all acts and transactions of the Tribal Council regarding alcoholic beverage licensees and fermented malt beverages licensees, which records, except confidential reports obtained from the licensee showing the sales volume or quantity of liquor sold or customers served, shall be open for inspection by the public.

(5) Suspend or revoke any license issued upon any violation by the licensee or by any agent, servant, or employee of such licensee of any provision of this title, or of any rule or regulation of the Tribal Council made pursuant to this title, or of any term, condition, or provision of the license issued by the Tribal Council upon its own motion or upon complaint, after investigation and public hearing, at which the licensee shall be afforded an opportunity to be heard;

Not by way of limitation, the rules and regulations made pursuant to paragraph (2) of this section may cover the following subjects: Compliance with or enforcement or violation of any law, provision of this title, rule, or regulation issued pursuant to this title; specifications of duties of officers and employees of the Tribe regarding licensing; instructions for local law enforcement officers; all forms necessary or convenient in the administration of this title, inspections, investigations, searches, seizures, and such activities as may become necessary; limitation of the number of licensees as to any area or vicinity; misrepresentation and unfair practices; unfair competition; control of signs and other displays on licensed premises; identification of licensees and their employees; transportation; health and sanitary requirements; standards of cleanliness, orderliness, and decency; sampling and analysis of products; standards of purity and labeling; records to be kept by licensees and availability thereof; and any other matters deemed necessary for the fair, impartial, stringent, and comprehensive administration of this title, but nothing in this title shall be construed as delegating to the Tribal Council the power to fix prices. All rules shall be reasonable and just.

B. In any hearing held by the Tribal Council pursuant to this title, no person may refuse upon the request of the Tribal Council to testify or provide other information on the ground of self-incrimination; but no testimony or other information relating to this title produced in said hearing or any information directly or indirectly derived from such testimony or other information may be used against such person in any criminal prosecution based on a violation of this title except a prosecution for perjury. Continued refusal to testify or provide other information shall constitute grounds for suspension or revocation of the license granted pursuant to this title.

**Section 4. Duties of Inspectors and Police Officers**

A. The inspectors of the Tribal Council, while actually engaged in performing their duties and while acting under proper orders or regulations issued by the Tribal Council, shall have and exercise all the powers vested in peace officers. In the exercise of their duties, such inspectors shall have the power to arrest. Such inspectors shall also have the authority to issue summons for violations of the provisions of this title.

B. It is the duty of all tribal police to enforce the provisions of this article and the rules and regulations made pursuant to this title and to arrest and complain against any person violating any of the provisions of this title or rules and regulations made pursuant to this title.

**Section 5. Exemptions**

A. The provisions of this title shall not apply to the sale or distribution of sacramental wines sold and used for religious purposes.

B. (1) Any provision of this title to the contrary notwithstanding, when permitted by federal law and rules and regulations promulgated pursuant thereto, a head of a family may produce for family use and not for sale of such amount of malt or vinous liquor as is exempt from the federal excise tax on such liquors when produced by a head of a family for family use and not for sale.

(2) The production of malt or vinous liquors under the circumstances set forth in this subsection (B) shall be in strict conformity with federal laws and rules and regulations issued pursuant thereto.

(3) The producer of malt or vinous liquors pursuant to the provisions of this subsection (B) shall not be required to obtain any license provided by this title.

**Section 6. Jurisdiction**

The provisions of this title apply to any relevant act or transaction within the exterior boundaries of the Southern Ute Indian Reservation except to the extent that the exercise of that jurisdiction is prohibited by federal law.

**Article II: Retail Sales of Alcoholic Beverages**

*Section 1. Licensing—General Provisions*

A. Before granting any license, the Tribal Council shall consider, except where this article specifically provides otherwise, the reasonable requirements of the neighborhood, the desires of the

adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions which are or may be placed upon the neighborhood by the Tribal Council.

B. The Tribal Council shall not consider an application for any license to sell alcoholic beverages at retail if, within the two years before the date of the application, the Tribal Council has denied an application at the same location for the reason that the reasonable requirements of the neighborhood or the desires of the inhabitants were satisfied by the existing outlets.

C. The Tribal Council shall not consider an application to sell alcoholic beverages until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises, or by virtue of ownership thereof.

D. The Tribal Council shall not consider an application to sell alcoholic beverages for a location in an area where the sale of alcoholic beverages as contemplated is not permitted under the applicable zoning laws.

E. No licenses shall be refused arbitrarily or without good cause, and any such refusal may be reviewed upon application for judicial review to the Tribal Court.

F. All licenses granted pursuant to this article shall be good for one year from the date of issuance unless revoked or suspended pursuant to section 12 of this article.

G. Ninety days prior to the expiration date of an existing license, the Tribal Council shall notify the licensee of such expiration date by first class mail at the business' last known address. Application for the renewal of an existing license shall be made to the Tribal Council not less than forty-five days prior to the date of expiration.

No application for renewal of a license shall be accepted by the Tribal Council after the date of expiration. The Tribal Council may, for good cause, waive the time requirements set forth in this subsection. The Tribal Council may cause a hearing on the application for renewal to be held. No renewal hearing provided for by this paragraph shall be held by the Tribal Court until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten days prior to the hearing and notice of the hearing has been provided the applicant at least ten days prior to the hearing. The Tribal Council may refuse to renew any license for good cause, subject to judicial review. Any renewal hearing held by the Tribal Council shall be pursuant to section 3 of this article.

H. Each license issued under this article is separate and distinct, and it is unlawful for any person to exercise any of the privileges granted under any license other than that which he holds or for any license to allow any other person to exercise such privileges granted under this license. A separate license shall be issued for each specific business or business entity and each geographical location, and in said license the particular liquors which the applicant is authorized to sell shall be named and described. For purposes of the section, a resort complex with common ownership, a hotel and restaurant licensee with optional premises, and an optional premise licensee for optional premises located on an outdoor sports and recreational facility shall be considered a single business and location. At all times a licensee shall possess and maintain possession of the premise for which the license is issued by ownership, lease, rental, or other arrangement for possession of such premises.

I. All licenses granted and issued pursuant to this article shall specify the date of issuance, the character and kind of license, the date of its expiration, the name of the licensee, and the place where the license is to be exercised.

J. Licenses granted and issued pursuant to this article shall at all times be conspicuously placed in the licensed premises where the said license is exercised and used.

K. If the place where the license is to be exercised is changed, a permit for this change must be obtained from the Tribal Council and conspicuously placed at all times in the place of business of the licensee.

L. (1) No license granted under the provisions of this article shall be transferable except as provided in this subsection (L), but this shall not prevent a change of location as provided in section 12(B)(6) of this article.

(2) When a license has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the license period.

(3) For any other transfer of ownership, application shall be made to the Tribal Council on forms prepared and furnished by the Tribal Council. In determining whether to permit a transfer of ownership, the Tribal Council shall consider the requirements of section 5 of this article. The Tribal Council may cause a hearing on the application for transfer of ownership to be held. No hearing provided for by this paragraph shall be held by the Tribal Council until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten days and notice of the hearing has been provided the applicant at least ten days prior to the hearing. Any transfer of ownership hearing by the Tribal Council shall be pursuant to section 3 of this article.

M. A licensee shall report each transfer or change of financial interest in the license to the Tribal Council within thirty days after the transfer or change. A report shall be required for transfers of capital stock of a public corporation; except that a report shall not be required for transfers of such stock totalling less than ten percent in any one year, but any transfer of a controlling interest shall be reported, regardless of size. It is unlawful for the licensee to fail to report a transfer as required by this subsection. Failure to report a transfer shall be grounds for suspension or revocation of the license.

N. Each licensee holding a tavern license or racetrack license shall manage such premise himself or employ a separate and distinct manager on the premises and shall report the name of the manager to the Tribal Council. Such licensee shall report any change in managers to the Tribal Council within thirty days after the change. It is unlawful for the licensee to fail to report the name of or any change in managers as required by this subsection (N). Such failure to report shall be grounds for suspension of the license.

O. Licensees at facilities owned by the Tribe shall be regulated pursuant to guidelines established by the Tribal Council. In the absence of such guidelines, the provisions of this article shall apply to licensees at facilities owned by the Tribe.

P. In computing any period of time prescribed by this article, the date of the act, event, or default from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and legal holidays shall be counted as any other day.

*Section 2. Application to Tribal Council for License*

A. Applications for licenses under the provisions of this article shall be made to the Tribal Council on forms prepared and furnished by the Tribal Council and shall set forth such information as the Tribal Council may require to enable the Tribal Council to determine whether a license should be granted. Such

information shall include the name and address of the applicant, and if a partnership, also the names and addresses of all the partners, and if a corporation, association, or other organization, also the names and addresses of the president, vice-president, secretary, and managing officer together with all the other information deemed necessary by the Tribal Council. Each application shall be verified by the oath or affirmation of such person or persons as the Tribal Council may prescribe.

B. Each application for a license filed with the Tribal Council shall be accompanied by an application fee in an amount determined by the Tribal Council to cover actual and necessary expenses subject to the following limitations:

(1) For a new license, not to exceed four hundred fifty dollars;

(2) For a transfer of location or ownership, not to exceed two hundred dollars.

(3) For a renewal of license, not to exceed fifty dollars.

These fees are separate and distinct from the fee charged in section 11 of this article.

C. The applicant shall file at the time of application plans and specifications for the interior of the building if the building to be occupied is in existence at the time. If the building is not in existence, the applicant shall file a plot plan and a detailed sketch for the interior and submit an architect's drawing of the building to be constructed. In its discretion, the Tribal Council may impose additional requirements necessary for the approval of the application.

*Section 3. Public Notice—Posting and Publication*

A. Upon receipt of an application, except an application for renewal or for transfer of ownership, the Tribal Council shall schedule a public hearing upon the application not less than thirty days from the date of the application and shall post and publish the public notice thereof not less than ten days prior to such hearing. Public notice shall be given by the posting of a sign in a conspicuous place on the premises for which application has been made and by publication in a newspaper of general circulation on the reservation.

B. Notice given by posting shall include a sign of suitable material, not less than twenty-two inches wide and twenty-six inches high, composed of letters not less than one inch in height and stating the type of license applied for, the date of the application, the date of the hearing, and the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the names and addresses of all partners, and if the applicant is a corporation, association, or other organization, the sign shall contain the names and addresses of the president, vice president, secretary, and manager or other managing officers.

C. Notice given by publication shall contain the same information as that required for signs.

D. If the building in which the liquor is to be sold is in existence at the time of the application, any sign posted as required in subsections (A) and (B) of this section shall be placed so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time of the application, the applicant shall post the premises upon which the building is to be constructed in such a manner that the notice shall be conspicuous and plainly visible to the general public.

E. (1) At the public hearing held pursuant to this section, any party in interest shall be allowed to present evidence and to cross examine witnesses.

(2) As used in this subsection (E), "party in interest" means any of the following:

(a) The applicant;

(b) An adult resident of the neighborhood under consideration;

(c) The owner or manager of a business located in the neighborhood under consideration;

(d) The principal or representative of any school located within five hundred feet of the premises for which the license is under consideration.

(3) The Tribal Council, in its discretion, may limit the presentation of evidence and cross-examination so as to prevent repetitive and cumulative evidence or examination.

(4) Nothing in this subsection (E) shall be construed to prevent a representative of an organized neighborhood group which encompasses part or all of the neighborhood under consideration from presenting evidence subject to this section. Such representative shall reside within the neighborhood group's geographic boundaries and shall be a member of the neighborhood group. Such representative shall not be entitled to cross-examine witnesses or seek judicial review of the Tribal Council's decision.

*Section 4. Results of Investigation—Decision of Authorities*

A. Not less than five days prior to the date of hearing, the Tribal Council shall make known its findings based on its investigation in writing to the applicant and other interested parties. The Tribal Council has authority to refuse to issue any license for good cause, subject to judicial review.

B. Before entering any decision approving or denying the application, the Tribal Council shall consider, except where this article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts, the reasonable requirements of the neighborhood for the type of license for which application has been made, the desires of the adult inhabitants, the number, type, and availability of liquor outlets located in or near the neighborhood under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed. In investigating the qualifications of the applicant or a licensee, the Tribal Council may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the Tribal Council takes into consideration information concerning the applicant's criminal history record, the Tribal Council shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of his application for a license. Additionally, a representative of the Tribal Council may visit and inspect the property in which the applicant proposes to conduct such business.

C. Any decision of the Tribal Council approving or denying an application shall be in writing stating the reasons therefor, within thirty days after the date of the public hearing, and a copy of such decision shall be sent by certified mail to the applicant at the address shown in the application.

D. No license shall be issued by the Tribal Council after approval of an application until the building in which the business is to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as is necessary to comply with the provisions

of this article, and then only after inspection of the premises has been made by the licensing authority to determine that the applicant has complied with the architect's drawing and the plot plan and detailed sketch for the interior of the building submitted with the application.

*Section 5. Persons Prohibited as Licensees*

A. No license provided by this article shall be issued to or held by:

(1) Any person until the annual fee therefor has been paid;

(2) Any person who is not of good moral character;

(3) Any corporation, any of whose officers, directors, or stockholders holding over ten percent of the outstanding and issued capital stock thereof are not of good moral character;

(4) Any partnership, association, or company, any of whose officers, or any of whose members holding more than ten percent interest therein, are not of good moral character;

(5) Any person employing, assisted by, or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the Tribal Council;

(6) Any sheriff, deputy sheriff, police officer, prosecuting officer, or any of its inspectors or employees;

(7) Any person unless he is with respect to his character, record, and reputation satisfactory to the Tribal Council.

B. No license provided for by this article shall be issued to or held by any person who will operate any place where liquor is sold or is to be sold by the drink within five hundred feet from any public or parochial school or the principal campus of any college, university; except that this provision shall not apply to a liquor license in effect and actively doing business before said principal campus was constructed.

*Section 6. Refusal of License*

The Tribal Council shall refuse to grant a license if the premises on which the applicant proposes to conduct its business do not meet the requirements of this article, or if the character of the applicant or its officers or directors is such that violations of this article would be likely to result if a license were granted, or if in its opinion licenses already granted for the particular locality are adequate for the reasonable needs of the community.

*Section 7. Judicial Review*

Any person applying to the Tribal Court for a review of any Tribal Council decision shall apply for review within thirty days after the date of decision and shall be required to pay the cost of preparing a transcript of proceedings before the Tribal Council when such a transcript is demanded by the person taking the appeal or when such a transcript is furnished by the Tribal Council pursuant to court order. The Tribal Court shall determine by clear and convincing evidence whether said refusal was arbitrary and without good cause, and, if so finding, said court shall order the Tribal Council to issue said license.

*Section 8. Records—Inspection*

Each licensee shall keep a complete set of books of account, invoices, copies of orders, shipping instructions, bills of lading, weigh bills, correspondence, and all other records necessary to show fully the business transactions of such licensee, all of which shall be open at all times during business hours for the inspection and examination of the duly authorized representative of the Tribal Council. The Tribal Council may require any licensee to furnish such information as it considers necessary for the proper administration of this article, and may require an audit to be made of such books of account and records on such occasions as it may consider necessary by an auditor to be selected by said Tribal Council who shall likewise have access to all books and records of such licensee, and the expense thereof shall be paid by said licensee.

*Section 9. Suspension and Revocation*

A. In addition to other penalties prescribed by this article, the Tribal Council has the power, on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke any license for any violation by the licensee or by any of the agents, servants, or employees of such licensee of the provisions of this article, or of anyof the rules or regulations authorized pursuant to this article, or of any the terms, conditions, or provisions of the license issued by such authority. Conviction of a violation of this article or any of the rules and regulations authorized and adopted pursuant to this article shall be grounds for, but shall be required prior to, such a suspension or revocation.

In addition, the Tribal Council, in its discretion, may revoke or elect not to renew a retail license if it determines that the licensed location has been inactive, without good cause, for at least one year or, in the case of a retail license approved for a facility which has not been constructed, such facility has not been constructed and placed in operation within two years of approval of the license application or construction of the facility has not commenced within one year of such approval.

B. Notice of suspension or revocation, as well as any required notice of a hearing, shall be given by mailing the same in writing by registered mail, return receipt requested, to the licensee at the address contained in such license. Any license may be temporarily suspended by the Tribal Council without notice pending any prosecution, investigation, or public hearing.

C. Nothing in this article shall prevent summary suspension of such license for a period not exceeding fifteen days. No suspension under this section shall be for a period longer than six months.

D. Whenever any license is suspended or revoked, no part of the fee paid therefor shall be returned or refunded to the holder of such license.

*Section 10. Classes of License*

A. The licenses to be granted and issued by the Tribal Council pursuant to this article shall be as follows:

(1) *Retail liquor store license.* A retail liquor store license shall be issued to persons selling alcoholic beverages in sealed containers not be consumed at the place where sold. Alcoholic beverages in sealed containers shall not be sold at retail other than in retail liquor stores. In addition, retail liquor stores may sell nonfood items related to the consumption of such liquors. Nothing in this section shall prohibit a retail liquor store licensee, at the option of the licensee, from displaying promotional material furnished by a manufacturer or wholesaler, which material permits a customer to purchase other items from a third person if the retail liquor store licensee does not receive payment from the third person and if the ordering of the additional merchandise is done by the customer directly from the third person.

(2) *Hotel and restaurant license.* (a) A hotel and restaurant license shall be issued to persons selling malt, vinous, and spirituous liquors in the place where such liquors are to be consumed subject to the following restrictions:

(i) Restaurants shall sell malt, vinous, and spirituous liquors as provided in this section only to customers of such restaurant and only if meals are actually and regularly served and provide not less than twenty-five percent of the gross income of the business of the licensed premises.

(ii) Hotels shall sell malt, vinous, and spirituous liquors as provided in this

section only to customers of said hotel and, except in hotel rooms, only on the licensed premises where meals are actually and regularly served and provided not less than twenty-five percent of the gross restaurant income of the business of the licensed premises.

(b) Notwithstanding any provision of this article to the contrary, a hotel, licensed pursuant to this article may furnish and deliver complimentary alcoholic beverages in sealed containers for the convenience of its guests.

(c) It is the intent of this section to require hotel and restaurant licenses to maintain a bona fide restaurant business and not a mere pretext of such for obtaining a hotel and restaurant license.

(d) Each hotel and restaurant license shall be granted for specific premises, and optional premises approved by the Tribal Council, and issued in the name of the owner or lessee of the business.

(e) Each hotel and restaurant licensee shall himself manage or have a separate and distinct manager and shall register the manager of each liquor-licensed premises with the Tribal Council. No person shall be a registered manager for more than one hotel and restaurant license.

(f) The registered manager for each hotel and restaurant license or the hotel and restaurant licensee shall purchase alcoholic beverages for one licensed premises only, and such purchases shall be separate and distinct from purchases for any other hotel and restaurant license.

(g) When a person ceases to be a registered manager of a hotel and restaurant license, for whatever reason, the hotel and restaurant licensee shall notify the licensing authorities within five days and shall designate a new registered manager within thirty days.

(h) The Tribal Council may refuse to accept any person as a registered manager unless he is satisfactory to the Tribal Council as to his character, record, and reputation. In determining a registered manager's character, record, and reputation, the Tribal Council may have access to criminal history record information furnished by an appropriate criminal justice agency subject to any restrictions imposed by such agency.

(3) *Tavern license.* A tavern license shall be issued to persons selling malt, vinous, or spirituous liquors by the drink only to customers for consumption on the premises, and such licensee shall have available for consumption on the premises during business hours sandwiches and light snacks, but he need not have meals available for consumption.

(4) *Racetrack license.* A racetrack licensee may sell malt, vinous, and spirituous liquors by the drink for consumption on the licensed premises only to customers of such racetrack and shall serve food as well as such liquors.

(5) *Optional premises license.* An optional premises license shall be granted for optional premises approved by the Tribal Council to persons selling malt, vinous, and spirituous liquors by the drink only to customers for consumption on the optional premises and for storing malt, vinous, and spirituous liquors in a secure area on or off the optional premises for future use on the optional premises.

*Section 11. License Fees*

A. The following license fees shall be paid to the Finance Officer of the Southern Ute Indian Tribe annually in advance:

(1) For each retail liquor store license, two hundred fifty dollars;

(2) For each hotel and restaurant license, three hundred fifty dollars;

(3) For each tavern license, three hundred twenty-five dollars;

(4) For each racetrack license, two hundred fifty dollars.

(5) For each optional premises license, three hundred twenty-five dollars

*Section 12. Unlawful Acts*

A. It is unlawful for any person:

(1) To sell, serve, give away, dispose of, exchange, or deliver, or to permit the sale, serving, giving, or procuring of any alcoholic beverages to or for any person under the age of twenty-one years, to a visibly intoxicated person, or to a known habitual drunkard.

(2) To obtain or attempt to obtain any alcoholic beverage by misrepresentation of age or by any other method in any place where alcoholic beverages are sold if such person is under twenty-one years of age;

(3) To have in his possession alcoholic beverages in any store, in any public place including public streets, alleys, roads, or highways, or upon property owned by the Tribe or any subdivision thereof, or inside vehicles while upon any streets, alleys, roads, or highways declared to be public by any law of the state of Colorado and/or the Southern Ute Indian Tribe if such person is under twenty-one years of age;

(4) To knowingly, or under conditions which an average parent or guardian should have knowledge of, or permit any person under twenty-one years of age, of whom he may be a parent or guardian, to violate the provisions of paragraph (2) or (3) of this subsection (A);

(5) To buy any alcoholic beverage from any person not licensed to sell at retail as provided by this article except as otherwise provided in this article;

(6) To sell at retail any alcoholic beverages in sealed containers without holding a retail liquor store license;

(7) To manufacture, sell, or possess for sale any alcoholic beverage unless such person is licensed to do so and any license issued to him pursuant to this article is in full force and effect; except that when permitted by federal law or regulation, an adult may manufacture, without a license, the amount permitted thereby for personal or family use;

(8) To consume alcoholic beverages in any public place except on any licensed premises permitted under this article to sell such liquor by the drink for consumption thereon; to consume any alcoholic beverage upon any premises licensed to sell liquor for consumption on the licensed premises, the sale of which is not authorized by the Tribal Council; to consume alcoholic beverages at any time on such premises other than such liquor as is purchased from such establishment; or to consume alcoholic beverages in any public room on such premises during such hours as the sale of such liquor is prohibited under this article;

(9) To regularly provide premises, or any portion thereof, together with soft drinks or other mix, ice, glasses, or containers at a direct or indirect cost or charge to any person who brings alcoholic beverages upon such premises for the purpose of consuming such alcoholic beverages on said premises during the hours in which the sale of alcoholic beverages is prohibited or to consume alcoholic beverages upon premises operated in the manner described in this paragraph (9);

(10) With knowledge, to permit or fail to prevent the use of his identification, including a driver's license, by a person who is under twenty-one years of age, for the unlawful purchase of any alcoholic beverages.

B. It is unlawful for any person licensed pursuant to this article:

(1) (a) To sell alcoholic beverages to any person under the age of twenty-one years, to an habitual drunkard, or to a visibly intoxicated person, or to permit any malt or vinous liquors to be sold or dispensed by a person under eighteen years of age, or spirituous liquors to be sold or dispensed by a person under twenty-one years of age, or to permit any such person to participate in the sale or dispensing thereof. If a person who, in fact, is not twenty-one years of age exhibits a fraudulent proof of age, any action relying on such fraudulent

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proof of age shall not constitute grounds for the revocation or suspension of any license issued under this article.

(b) (i) If a licensee or his employee has reasonable cause to believe that a person is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to obtain any alcoholic beverage, as defined in this article, the licensee or employee shall confiscate such fraudulent proof of age, if possible, and shall, within twenty-four hours after the confiscation, turn it over to the tribal police. The failure to confiscate such fraudulent proof of age or to turn it over to the tribal police within twenty-four hours after the confiscation shall not constitute a criminal offense, notwithstanding Section 14 of this article.

(ii) If a licensee or his employee believes that a person is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to obtain any alcoholic beverage, as defined in this article, the licensee or his employee or any peace or police officer, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person in a reasonable manner for the purpose of ascertaining whether the person is guilty of any unlawful act under this section. Such questioning of a person by a licensee or his employee or a peace or police officer does not render the licensee, his employee, or a peace or police officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention.

(c) Each licensee shall display a printed card, pursuant to paragraph (7) of this subsection (B), which contains a notice of the provisions of this paragraph (1).

(d) Any licensee or his employee acting in good faith in accordance with the provisions of this paragraph (1) shall be immune from any liability, civil or criminal; except that a licensee or employer acting willfully or wantonly shall not be immune from liability pursuant to this paragraph (1).

(2) To sell, serve, or distribute any alcoholic beverage on any Tribal Council election day, referendum day, or any primary or general election day (as defined by Colorado State law), during polling hours or at any specially designated time when the Tribal Council prohibits the selling, serving and distributing of alcoholic beverages.

(3) To sell, serve, or distribute any alcoholic beverages at any time other than the following.

(a) For consumption on the premises, on any Tuesday through Saturday and on any Monday which falls on a January 1, beginning each day at 12 midnight until 2 a.m. and from 7 a.m. until 12 p.m.;

(b) For consumption on the premises, on Sundays and Christmas, beginning at 12 midnight until 2 a.m. and from 8 a.m. until 8 p.m.;

(c) For consumption on the premises, on any Monday which does not fall on a January 1 and on any day after Christmas, beginning at 7 a.m. until 12 midnight.

(d) In sealed containers, on Monday through Saturday, beginning at 8 a.m. until 12 midnight each day, but no alcoholic beverage shall be sold, served, or distributed in a sealed container on any such weekday which is also Christmas.

(4) To offer for sale or solicit any order for vinous or spirituous liquors in person at retail except within the licensed premises;

(5) To have in possession or upon the licensed premises any alcoholic beverages, the sale of which is not permitted by said license;

(6)(a) To sell at retail alcoholic beverages except in the permanent location specifically designated in the license for such sale, or in such place to which a licensee may desire to move his permanent location. Such licensee may move his permanent location to any other place on the Southern Ute Indian Reservation, but it shall be unlawful to sell any malt, vinous, or spirituous liquor at any such place until permission to do so is granted by the Tribal Council.

(b) In permitting such change of location, the Tribal Council shall consider the reasonable requirements of the neighborhood in which the applicant seeks to change his location, the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all reasonable restrictions which are or may be placed upon the new location by the Tribal Council. If the Tribal Council permits such change, they shall issue such permit without charge.

(7) The fail to display at all times in a prominent place on premises licensed for retail sale a printed card with a minimum height of fourteen inches and a width of eleven inches with each letter to be a minimum of one-half inch in height, which shall read as follows:

Warning

It is illegal to sell alcoholic beverages to any person under twenty-one years of age, and it is illegal for any person under twenty-one years of age to possess or to attempt to purchase the same.

Identification cards which appear to be fraudulent when presented by purchasers may be confiscated by the establishment and turned over to a law enforcement agency.

It is illegal if you are twenty-one years of age or older for you to purchase alcoholic beverages for a person under twenty-one years of age.

Fines and imprisonment may be imposed by the Tribal Court for violation of these provisions.

(8) To sell alcoholic beverages in a place where the same are to be consumed, unless such a place is a hotel, restaurant, tavern, or racetrack or optional premises;

(9) To display or cause to be displayed, on the licensed premises, any exterior sign advertising any particular brand of malt liquors unless the particular brand so designated in the sign is dispensed on draught or in sealed containers within the licensed premises wherein the sign is displayed;

(10) To have on the licensed premises, if licensed as a retail liquor store any container which shows evidence of having once been opened or which contains a volume of liquor less than that specified on the label of such container; except that a person holding a retail liquor store license may have upon the licensed premises malt, vinous, or spirituous liquors in open containers, if such open containers are samples brought on the premises and under the control of a wholesaler;

(11) To employ or permit, if such person is licensed to sell alcoholic beverages for on-premises consumption or is the agent or manager of said licensee, any employee, waiter, waitress, entertainer, host, hostess, or agent of said licensee to solicit from patrons in any manner for himself or herself or for any other employee, the purchase of any alcoholic beverage or any other thing of value.

*Section 13. Unlawful Financial Assistance*

A. It is unlawful for any person licensed to sell at retail pursuant to this article to receive and obtain from any manufacturer, wholesaler or importer of alcoholic beverages, directly or indirectly, any financial assistance or any equipment, fixtures, chattels, or furnishings used in the storing, handling, serving, or dispensing of food or alcoholic beverages within the premises or from asking for any structural alterations or improvements in or on the building on which such premises are located. This subsection (A) shall not apply to signs or displays within such premises or to advertising materials which are intended primarily to advertise the product of the wholesaler or manufacturer and which have only negligible value in themselves or to the inspection and servicing of malt or vinous liquor dispensing equipment to the extent necessary for the maintenance of reasonable standards of purity, cleanliness, and health.



B. (1) It is unlawful for any person or corporation holding any license pursuant to this article or any person who is a stockholder, director, or officer of any corporation holding a license pursuant to this article to be a stockholder, director, or officer or to be interested, directly or indirectly, in any person or corporation that lends money to any person or corporation licensed pursuant to this article, but this subsection (B) shall not apply to banks, savings and loan associations, or industrial banks supervised and regulated by an agency of the state or federal government, or to FHA-approved mortgagees, or to stockholders, directors, or officers thereof; and it is unlawful for any person or corporation licensed pursuant to this article, or any stockholder, director, or officer of such corporation, to make any loan or be interested, directly or indirectly, in any loan to any other person licensed pursuant to the provisions of this article; except that paragraph (1) shall not apply to any financial institution which comes into possession of a licensed premises by virtue of a foreclosure or deed in lieu of foreclosure if such financial institution does not retain such premises for longer than one year or for such time exceeding one year as provided in paragraph (2) of this subsection (B).

(2) In the case of a financial institution which comes into possession of a licensed premises by virtue of a foreclosure or deed in lieu of foreclosure, the Tribal Council may grant a transfer of ownership for such license for a period of one year and, upon notice and hearing, renewal of such license may be granted. This paragraph (2) shall apply in the case of every foreclosure or deed in lieu of foreclosure in which disposition of the license has not otherwise been made by the Tribal Council.

C. It is unlawful for any owner, part owner, shareholder, stockholder, or person interested, directly or indirectly, in any retail business or establishment of a person licensed to sell at retail pursuant to the provisions of this article to enter into any agreement with any person or party to receive, possess, or accept any money, fixtures, supplies, or things of value from any person or party, whereby a person licensed to sell at retail pursuant to this article may be influenced or caused, directly or indirectly, to buy, sell, dispense, or handle the product of any manufacturer of alcoholic beverages. This subsection (C) shall not apply to displays within such premises.

D. Any transaction, agreement, or arrangement prohibited by the provisions of this section, if made and entered into by and between the persons and parties described and referred to in this section, is unlawful, illegal, invalid, and void, and any obligation or liability arising out of such transaction, agreement or arrangement shall be unenforceable in any court of this state by or against any such persons and parties entering into such transaction, agreement, or arrangement.

E. It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in any retail liquor store, retail license, or retail dispensary of any kind licensed pursuant to this article except that it is not unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in any hotel and restaurant license to conduct, own either in whole or in part, or be directly or indirectly interested in any other hotel and restaurant license or establishment. The Tribal Council shall require a complete disclosure of all persons having a direct or indirect financial interest, and the extent of such interest, in each hotel and restaurant license issued under this article. A willful failure to report and disclose the financial interests of all persons having a direct or indirect financial interest in a hotel and restaurant license shall be grounds for suspension or revocation of such license by the Tribal Council. The invalidity of any provision of this paragraph (E) concerning interest in more than one hotel and restaurant license shall invalidate all interests in more than one hotel and restaurant license, and such invalidity shall make any such interest unlawful financial assistance as described by this paragraph (E).

F. This section is intended to prohibit and prevent the control of the outlets for the sale of alcoholic beverages by any person or parties other than the persons licensed pursuant to the provisions of this article.

*Section 14. Violations and Penalty*

A. Except as otherwise provided in this section, any person violating any of the provisions of this article or any of the rules and regulations authorized and adopted pursuant to this article or any amendments or additions thereto is guilty of a liquor violation of the criminal code of the Southern Ute Indian Tribal Code and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars or by imprisonment, for not more than one year, or by both such fine and imprisonment, for each offense; and, upon conviction thereof, any license granted and issued pursuant to the provisions of this article to said person so convicted may be revoked, and no such license shall thereafter be granted or issued to said person so convicted; and the court may decree that no license for the sale of alcoholic beverages shall ever thereafter be issued to any such person convicted of such violation.

B. The penalties provided in this section shall not be affected by the penalties provided in any other section of this article but shall be construed to be in addition to any other penalties.

**Article III. Retail Sales of Fermented Malt Beverages**

*Section 1. Licensing—General Provisions*

A. All licenses granted pursuant to this article shall be nontransferable and good for one year from the date of issuance unless revoked and shall be granted by the Tribal Council upon receipt of an application upon a form provided for said purpose by said Tribal Council, accompanied by a remittance for the full amount of the license fee payable to the Tribe.

B. All licenses granted and issued pursuant to this article are separate and distinct from any licenses to be granted and issued pursuant to any other part of this Ordinance.

C. All licenses granted and issued pursuant to this article shall specify the date of issuance, the character and kind of license, the date of its expiration, the name of the licensee, and the place where the license is to be exercised.

D. Licenses granted and issued pursuant to this article shall at all times be conspicuously placed in the licensed premises where the said license is exercised and used.

E. If the place where the license is to be exercised is changed, a permit for this change must be obtained from the Tribal Council and conspicuously placed at all times in the place of business of the licensee.

F. (1) No licenses shall be refused arbitrarily or without good cause, and any such refusal may be reviewed upon application for judicial review to the Tribal Court.

(2) The Tribal Council, in its discretion, may revoke or elect not to renew a retail license if it determines that the licensed location has been inactive, without good cause, for at least one year or, in the case of a retail license approved for a facility which has

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not been constructed, such facility has not been constructed and placed in operation within two years of approval of the license application or construction of the facility has not commenced within one year of such approval.

G. The Tribal Council shall not consider an application for any license to sell fermented malt beverages at retail if, within one year next preceding the date of the application, the Tribal Council has denied an application at the same location for the reason that the reasonable requirements of the neighborhood or the desires of the inhabitants were satisfied by the existing outlets.

H. In computing any period of time prescribed by this article, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and legal holidays shall be counted as any other day.

I. Application for the renewal of an existing license shall be made to the Tribal Council not less than forty-five days prior to the date of expiration. The Tribal Council may, for good cause, waive the time requirements set forth in this subsection I.

J. Licensees at facilities owned by the Tribe shall be regulated pursuant to guidelines established by the Tribal Council. However, fermented malt beverages and alcoholic beverages may not be served on the same premises at the same time. In the absence of such guidelines, the provisions of this article shall apply to licensees at facilities owned by the Tribe.

K. A licensee shall report each transfer or change of financial interest in the license to the Tribal Council within thirty days after the transfer or change. A report shall be required for transfers of capital stock of a public corporation; except that a report shall not be required for transfers of such stock totalling less than ten percent in any one year, but any transfer of a controlling interest shall be reported, regardless of size. It is unlawful for the licensee to fail to report a transfer as required by this subsection K. Failure to report a transfer shall be grounds for suspension or revocation of the license.

L. Each retail licensee who is licensed to sell for consumption on the premises or for consumption both on and off the premises shall manage such premises himself or employ a separate and distinct manager on the premises and shall report the name of such manager to the Tribal Council. Such licensee shall report any change in managers to the Tribal Council within thirty days after the change. It is unlawful for the licensee to fail to report the name of or any change in managers required by this subsection L. Such failure to report shall be ground for suspension of the license.

*Section 2. License—Application—Hearings—Fees*

A. The Tribal Council shall issue only the following classes of licenses under this article:

(1) Sales for consumption off the premises of the licensee;

(2) Sales for consumption on the premises of the licensee;

(3) Sales for consumption both on and off the premises of the licensee

B. (1) Application to sell fermented malt beverages at retail may be made to the Tribal Council prior to the construction of the building in which such beverages are to be sold. If, at the time an application to sell fermented malt beverages at retail is made to the Tribal Council, the building in which the beverages are to be sold has not been constructed, the following procedure shall be followed:

(a) The applicant shall file at the time of an application a plot plan and a detailed sketch for the interior of the building to be occupied and a drawing of the building to be constructed. In its discretion, the Tribal Council may impose additional requirements necessary for approval of the application.

(b) The premises upon which the building is to be constructed shall be posted by the applicant in such a manner that the notice is conspicuous and plainly visible to the public.

(2) No license shall be issued by the Tribal Council after approval of the application until the building in which the business is to be conducted is ready for occupancy, with such furniture, fixtures, and equipment in place as are necessary to comply with the provisions of this article, and then only after inspection of the premises has been made by the Tribal Council to determine that the applicant has complied with drawings and the plot plan and detailed sketch for the interior of the building submitted with the application.

(C) Upon receipt of a complete application, except an application for renewal or for transfer of ownership, the Tribal Council shall schedule a public hearing upon the application not less than thirty days from the date of the application and shall post and publish the public notice thereof not less than ten days prior to such hearing. Public notice shall be given by the posting of a sign in a conspicuous place on the premises for which application has been made and by publication in a newspaper of general circulation.

D. (1) At the public hearing conducted by the Tribal Council on an application to sell fermented malt beverages, any party in interest shall be allowed to present evidence and to cross-examine witnesses.

(2) "Party in interest," as used in this subsection D, means any of the following: The applicant; an adult resident of the neighborhood under consideration; the owner or manager of a business located in the neighborhood under consideration;or the principal or representative of any school located within five hundred feet of the premises for which the license is under consideration.

(3) The Tribal Council may, in its discretion, limit the presentation of evidence and cross-examination so as to prevent repetitive and cumulative evidence or examination.

E. The Tribal Council shall collect an annual license fee of fifty dollars.

F. Each application for a license filed with the Tribal Council shall be accompanied by an application fee in an amount determined by the Tribal Council to cover actual and necessary expenses subject to the following limitations:

(1) For a new license, not to exceed four hundred fifty dollars;

(2) For a transfer of location or ownership, not to exceed two hundred fifty dollars each;

(3) For a renewal of license, not to exceed fifty dollars. These fees are separate and distinct from the annual license fee set out in subsection E above.

*Section 3. Qualification and Conditions for License*

A. A license shall be granted to any person, partnership, association, organization, or corporation desiring to sell any fermented malt beverage meeting the following qualifications and conditions:

(1) The licensee, if a corporation, shall be incorporated pursuant to the laws of the state of Colorado or duly qualified to do business in the state of Colorado.

(2) The licensee shall be of good character and reputation. No license shall be issued to or held by any corporation any of whose officers, directors, or stockholders hold over ten percent of the outstanding and issued stock thereof unless such director, officer, or stockholder is of good moral character and reputation. In investigating the character of an applicant or a licensee, the Tribal Council may have access to criminal history record information furnished by a criminal justice agency subject to any

restrictions imposed by such agency. In the event the Tribal Council takes into consideration information concerning the applicant's criminal history record, the Tribal Council shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of his application for a license. As used in this paragraph (2), "criminal justice agency" means any federal, state, municipal or tribal court or any governmental agency or subunit of such agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

B. In considering the issuance of licenses, the Tribal Council shall consider the reasonable requirements of the neighborhood and the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise.

*Section 4. Suspension and Revocation—Fines*

A. The Tribal Council may on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, suspend or revoke any license issued by the Tribal Council for any violation by the licensee or by any of the agents, servants, or employees of such licensee of the provisions of this article, or of any of the rules or regulations authorized pursuant to this article, or of any of the terms, conditions or provisions of the license issued by the Tribal Council. Conviction of a violation of this article or any of the rules and regulations authorized and adopted pursuant to this article shall be grounds for, but shall not be required prior to, such a suspension or revocation.

B. Notice of suspension or revocation, as well as any required notice of a hearing, shall be given by mailing the same in writing by registered mail, return receipt requested, to the licensee at the address contained in such license. Any license may be temporarily suspended by the Tribal Council without notice pending any prosecution, investigation, or public hearing.

C. Nothing in this article shall prevent summary suspension of such license for a period not exceeding fifteen days. No suspension under this section shall be for a period longer than six months.

D. Whenever any license is suspended or revoked, no part of the fee paid thereof shall be returned or refunded to the holder of such license.

*Section 5. Unlawful Acts*

A. It is unlawful for any person:

(1) To sell fermented malt beverages to any person under the age of twenty-one years or between the hours of 12 midnight and 5 a.m. or to any person at times such sales are prohibited under special order of the Tribal Court.

(2)(a) To sell, serve, give away, dispose of, exchange, or deliver, or to permit the sale, serving, giving, or procuring of, any fermented malt beverage to or for any person under the age of twenty-one years, to a visibly intoxicated person, or to a known habitual drunkard. If a person who, in fact, is not twenty-one years of age exhibits a fraudulent proof of age, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued pursuant to the provisions of this article.

(b)(i) If a licensee or his employee has reasonable cause to believe that a person is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to obtain any fermented malt beverage, the licensee or employee shall confiscate such fraudulent proof of age, if possible, and shall, within twenty-four hours after the confiscation, turn it over to the tribal police. The failure to confiscate such fraudulent proof of age or to turn it over to the tribal police within twenty-four hours after the confiscation shall not constitute a criminal offense, notwithstanding Section 8.A of this article.

(ii) If a licensee or his employee believes that a person is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to obtain any fermented malt beverage, the licensee or his employee or any peace or police officer, acting in good faith and upon probable cause based upon reasonable grounds therefore, may detain and question such person in a reasonable manner for the purpose of ascertaining whether the person is guilty of any unlawful act under this section. Such questioning of a person by a licensee or his employee or a peace or police officer does not render the licensee, his employee, or a peace or police officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention.

(iii) Any licensee or his employee acting in good faith in accordance with the provisions of this paragraph (2) shall be immune from any liability, civil or criminal; except that a licensee or employee acting willfully or wantonly shall not be immune from liability pursuant to this paragraph (2).

(3) To obtain or attempt to obtain any fermented malt beverage by misrepresentation of age or by any other method in any place where fermented malt beverages are sold if such person is under twenty-one years of age.

(4) To have in his possession fermented malt beverages in any store, in any public place including public streets, alleys, roads, or highways, upon property owned by the Tribe, upon property held in trust for the Tribe, or inside vehicles while upon the public streets, alleys, roads, or highways if such person is under twenty-one years of age.

(5) To permit any person under twenty-one years of age of whom he may be a parent or guardian to violate the provisions of paragraph (1) or (2) of this subsection A if said parent or guardian knows or reasonably should know of such violation.

(6) To manufacture, sell, or possess for sale any fermented malt beverage unless such person is licensed to do so pursuant to this article and any license issued to him pursuant to this article is in full force and effect; except that, when permitted by federal law or regulation, an adult may manufacture, without a license, the amount permitted thereby for personal or family use.

(7) With knowledge, to permit or fail to prevent the use of his identification, including a driver's license, by a person who is under twenty-one years of age for the unlawful purchase of any fermented malt beverage.

B. It is unlawful for any person licensed pursuant to this article:

(1) To give away fermented malt beverages for the purpose of influencing the sale of any particular kind, make, or brand of any malt beverage and to furnish or supply any commodity or article at less than its market price for said purpose, except advertising material and signs.

(2)(a) On or after July 30, 1987, but prior to three years from said date, to fail to display at all times in a prominent place on premises licensed for retail sale a printed card with a minimum height of fourteen inches and width of eleven inches with each letter to be a minimum of one-half inch in height, which shall read as follows:

Warning

It is illegal to sell 3.2 beer to any person under the legal drinking age, and it is illegal for any person under the

legal drinking age to possess or to attempt to purchase the same.

Identification cards which appear to be fraudulent when presented by purchasers may be confiscated by the establishment and turned over to a law enforcement agency.

It is illegal if you are the legal drinking age or older for you to purchase 3.2 beer for a person under the legal drinking age.

Fines and imprisonment may be imposed by the courts for violation of these provisions.

(b) On or after three years from July 30, 1987, to fail to display at all times in a prominent place on premises for retail sale a printed card with a minimum height of fourteen inches and a width of eleven inches with each letter to be a minimum of on-half inch in height, which shall read as follows:

Warning

It is illegal to sell 3.2 beer to any person under twenty-one years of age, and it is illegal for any person under twenty-one years of age to possess or to attempt to purchase the same.

Identification cards which appear to be fraudulent when presented by purchasers may be confiscated by the establishment and turned over to a law enforcement agency.

It is illegal if you are twenty-one years of age or older for you to purchase 3.2 beer for a person under twenty-one years of age.

Fines and imprisonment may be imposed by the courts for violation of these provisions.

(3) To permit any fermented malt beverages to be sold or dispensed by any person under the age of eighteen years.

C. It is unlawful for any manufacturer or wholesaler to sell, deliver, or cause to be delivered to any retail licensee any beverage containing alcohol in excess of three and two-tenths percent by weight, or for any retailer to sell, possess, or permit the consumption on the premises of any of the beverages containing alcohol in excess of three and two-tenths percent by weight, or for any retail licensee to hold or operate under any license for the sale of any beverages containing alcohol in excess of three and two-tenths percent by weight for the same premises. Any violation by any licensee of the provisions of this subsection C shall immediately cause the cancellation of the license granted under this article.

D. (1) Not withstanding the increase in the legal drinking age from eighteen years of age to twenty-one years of age as contained in this section, any person who is eighteen years of age or older on July 29, 1987, may continue to purchase, possess, and consume any fermented malt beverage without violating the provisions in this section. It is likewise lawful for any person to sell, serve, give away, dispose of, exchange, or deliver, or to permit the sale, serving, giving, or procuring of, any fermented malt beverage to or for any person eighteen years of age or older on July 29, 1987.

(2) This subsection D is repealed, effective three years from July 30, 1987.

*Section 6. Federal Mandate—Effect on Law*

If the Congress of the United States repeals the mandate established by the "Surface Transportation Assistance Act of 1982" relating to the national uniform drinking age of twenty-one, as found in section 6 of Public Law 98–363, or the United States Supreme Court declares the provisions to be unconstitutional or otherwise invalid, the pertinent age in section 6 shall be nineteen years of age.

*Section 7. Unlawful Financial Interest*

A. It is unlawful for any wholesaler or manufacturer to furnish, supply, or loan in any manner, directly or indirectly, to any retail licensee licensed pursuant to this article any financial assistance or any equipment, fixtures, chattels, or furnishings used in the storing, handling serving, or dispensing of food or fermented malt beverages within the premises or for making any structural alterations or improvements in or on the building on which such premises are located; but this section shall not apply to signs or displays within such premises.

B. It is unlawful for any retail licensee licensed pursuant to this article to receive and obtain from any wholesaler or manufacturer, directly or indirectly, any financial assistance, or any equipment, chattels, or furnishings used in the storing, handling, serving, or dispensing of food or fermented malt beverages within the premises, or to ask for any structural alterations or improvements in or on the building on which such premises are located; but this section shall not apply to signs or signs or displays within such premises, or to advertising materials which are intended primarily to advertise the product of the wholesaler or manufacturer and which have only negligible value in themselves, or to the inspection and servicing of malt beverage dispensing equipment to the extent necessary for the maintenance of reasonable standards of purity, cleanliness, and health.

C. It is unlawful for any person of a corporation holding any license pursuant to this article, or any person who is a stockholder, director, or officer of any corporation holding a license pursuant to this article, to be a stockholder, director, or officer or to be interested, directly or indirectly, in any person or corporation that lends money to any person or corporation licensed pursuant to this article, but this subsection C shall not apply to banks, savings and loan associations, or industrial banks supervised and regulated by an agency of the state or federal government or to FHA-approved mortgages, or to officers, directors, or stockholders thereof; and it is unlawful for any person or corporation licensed pursuant to this title, or any stockholder, director, or officer of such corporation, to make any loan or be interested, directly or indirectly, in any loan to any other licensee under this article.

D. It is unlawful for any owner, part owner, shareholder, stockholder, or person interested, directly or indirectly, in any retail business or establishment of a retail licensee licensed pursuant to this article to enter into any agreement with any person or party to receive, possess, or accept any money, fixtures, supplies, or things of value from any person or party whomsoever, whereby a retail licensee licensed pursuant to this article may be influenced or caused directly or indirectly to buy, sell, dispense, or handle the product of any manufacturer of fermented malt beverages; but this section shall not apply to displays within such premises.

E. Any transaction, agreement, arrangement prohibited by this article, if made and entered into by and between the persons and parties described and referred to in this article, shall be unlawful and void, and any obligation or liability arising out of such transaction, agreement, or arrangement shall be unenforceable in tribal court by or aganist any such persons and parties entering into such transaction, agreement, or arrangement.

F. The purpose and intent of the provisions of this section is to prohibit and prevent the control of the retail outlets for the sale of fermented malt beverages by any persons or parties other than the retail licensee licensed pursuant to the provisions of this article.

*Section 8. Violation—Penalty*

Any person violating any of the provisions of this article or any of the rules and regulations authorized and adopted pursuant to this article or any amendments or additions thereto is guilty of a liquor violation of the Criminal Code of the Southern Ute Indian Tribal Code and, upon conviction thereof, shall be punished by a fine of

not more than five thousand dollars for each offense, or by imprisonment for not more than one year, or by both such fine and imprisonment; and, upon conviction thereof, any license granted and issued pursuant to the provisions of this article to said person so convicted may be revoked, and no such license shall thereafter be granted or issued to said person so convicted.

*Section 9. Lawful Acts*

It is lawful for a person under eighteen years of age who is under the supervision of a person on the premises over eighteen years of age to be employed in a place of business where fermented malt beverages are sold at retail in containers for off-premises consumption. During the normal course of such employment, any person under eighteen may handle and otherwise act with respect to fermented malt beverages in the same manner as he does with other items sold at retail; except that no person under eighteen shall sell or dispense fermented malt beverages, check age identification, or make deliveries beyond the customary parking area for the customers of the retail outlet. This section shall not be construed to permit the violation of any other provisions of this section under circumstances not specified in this section.

*Section 10. Judicial Review*

Any person applying to the tribal courts for a review of the Tribal Council's decision shall apply for review within thirty days after the date of decision and shall be required to pay the cost of preparing a transcript of proceedings before the Tribal Council when such a transcript is demanded by the person taking the appeal or when such a transcript is furnished by the Tribal Council pursuant to court order. Such court shall determine by a clear and convincing evidence whether said refusal was arbitrary and without good cause, and, if so finding, said court shall order the Tribal Council to issue said license.

**Article IV. Special Event License**

*Section 1. Special Event Licenses Authorized*

The Tribal Council may issue a special event license for the sale, by the drink only, of fermented malt beverages, or alcoholic beverages to organizations and political candidates qualifying under this article, subject to the applicable provisions of Article I, Article II, and Article III of this Title and to the limitations imposed by this Article IV.

*Section 2. Qualifications of Organizations for Licenses*

A. (1) A special event license issued under this article may be issued to an organization, which has been incorporated under the laws of the state of Colorado for purposes of a social, fraternal, patriotic, political, or athletic nature, and not for pecuniary gain, or which is a regularly chartered branch, lodge, or chapter of a national organization or society organized for such purposes and being non-profit in nature, or which is a regularly established religious or philanthropic institution, to any political candidate who has filed the necessary reports and statements with the secretary of state of Colorado, and to any organization or tribal political candidate determined by the Tribal Council to meet the same general guidelines as above.

(2) A special event license may be issued to any facility owned by the Tribe at which productions or performances of an artistic or cultural nature are presented for use at such facilities or at recreation facilities owned by the Tribe, subject to the provisions of this article.

*Section 3. Grounds for Issuance of Special Event Licenses*

A. A special event license may be issued only upon a satisfactory showing by an organization or a qualified political candidate that other existing facilities are not available or are inadequate for the needs of the organization or political candidate and:

(1) Existing licensed facilities are inadequate for the purposes of serving members or guests of the organization or political candidate and that additional facilities are necessary by reason of the nature of the special event being scheduled; or

(2) The organization or political candidate is temporarily occupying premises other than the regular premises of such organization or candidate during such special events and that members of the general public will be served during such special events.

B. A special event license may be issued under this section notwithstanding the fact that the special event is to be held on premises licensed under the provisions of Article I or Article III of this title. The holder of a special event license issued pursuant to this subsection (B) shall be responsible for any violation of Article II or Article III of this title.

C. Nothing in this article shall be construed to prohibit the sale or dispensing of fermented malt beverages or alcoholic beverages on any closed street, highway, or public byway for which a special event license has been issued.

*Section 4. Fees for Special Event Licenses*

A. Special event license fees are:

(1) Fifty dollars per day for an alcoholic beverage license.

(2) Twenty-five dollars per day for a fermented malt beverage license.

B. All such fees are payable in advance to the Finance Officer of the Southern Ute Indian Tribe, and the Tribe Council may require any applicant to post a performance bond to assure compliance with the provisions of this article.

*Section 5. Restrictions Related to Special Event Licenses*

A. Each special license shall be issued for a specific location and is not valid for any other location.

B. A special event license authorizes sale of the beverage or the liquors specified only during the following hours:

(1) Between the hours of seven a.m. of the day specified in an alcoholic beverage license and until two a.m. of the day immediately following.

(2) Between the hours of seven a.m. of the day specified in a fermented malt beverage license and until midnight of the same day.

C. A special event license may not be issued to any organization for more than ten days in one calendar year. This provision does not apply to tribally owned facilities.

D. No issuance of a special event license shall have the effect of requiring the Tribal Council to issue such a license upon any subsequent application by an organization.

E. Sandwiches or other food snacks shall be available during all hours of service of alcoholic beverages, but prepared meals need not be served. This provision does not apply to tribally owned facilities.

*Section 6. Ground for Denial of Special Event Licenses*

A. The Tribal Council may deny the issuance of a special event license upon the grounds that such issuance would be injurious to the public welfare by reason of the nature of the special event, its location within the reservation, or the failure of the applicant in a past special event to conduct such event in compliance with applicable laws and regulations.

B. Public notice of the proposed license and of the procedure for protesting issuance of the license shall

be conspicuously posted at the proposed location for at least ten days before approval of the license by the Tribal Council.

*Section 7. Applications for Special Event Licenses*

A. Applications for a special event license shall be made with the Tribal Council on forms provided by the Tribal Council and shall be verified by oath or affirmation of an officer of the organization or of the political candidate making application.

B. In addition to the fees provided in section 4 of this article, applications shall be accompanied by such fee as the Tribal Council may fix, not to exceed twenty-five dollars, for both investigation and issuance of license.

C. The Tribal Council shall cause a hearing to be held if, after investigation and upon review of the contents of any protest filed by affected persons, sufficient grounds appear to exist for denial of a license. Any protest shall be filed by affected persons within ten days after the date of notice pursuant to section 6 of this article. Any hearing required by this subsection (C) or any hearing held at the discretion of the Tribal Council shall be held at least ten days after the initial posting of the notice, and notice thereof shall be provided the applicant and any person who has filed a protest.

*Section 8. Exemptions*

An organization otherwise qualifying under section 2 of this article shall be exempt from the provisions of this part and shall be deemed to be dispensing gratuitously and not to be selling fermented malt beverages or malt, spirituous, or vinous liquors when it serves, by the drink, fermented malt beverages or malt, spirituous, or vinous liquors to its members and their guests at a private function held by such organization or unlicensed premises so long as an admission or other charge, if any, required to be paid or given by any such member as a condition to entry or participation in the event is uniform as to all without regard to whether or not a member or such member's guest consumes or does not consume such beverages or liquors.

**Eddie F. Brown,**

*Assistant Secretary—Indian Affairs*

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Part IV

# National Indian Gaming Commission

25 CFR Parts 571, et al.

**Compliance and Enforcement Procedures Under the Indian Gaming Regulatory Act; Proposed Rule**

VOL 57 ISS 132 JL 9 1992 UMI

## NATIONAL INDIAN GAMING COMMISSION

### 25 CFR Parts 571, 573, 575 and 577

### Compliance and Enforcement Procedures Under the Indian Gaming Regulatory Act

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The National Indian Gaming Commission is proposing regulations to implement the compliance and enforcement provisions of the Indian Gaming Regulatory Act of 1988. The proposed rule would establish procedures for monitoring and investigations, enforcement, civil penalties, and appeals to the Commission.

**DATES:** Comments must be received by September 8, 1992.

**ADDRESSES:** Commenters may submit their comments by mail, facsimile, or delivery to: Compliance and Enforcement Rule Comments, National Indian Gaming Commission, suite 250, 1850 M Street NW., Washington, DC 20036–5803. Fax number: 202–632–7066 (not a toll-free number). Public comments may be delivered or inspected from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Neil Stoloff at 202–632–7003 ext. 35, or by facsimile at 202–632–7066 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Background

The Indian Gaming Regulatory Act (IGRA, or the Act), 24 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (the Commission). Under the IGRA, the Commission is charged with regulating class II gaming, and certain aspects of class III gaming.

On August 15, 1991, the Commission published a final rule (56 FR 40702) requiring class II gaming operations to compute and pay to the Commission the annual fees required by section 2717 of the Act. On April 9, 1992 (57 FR 12382), the Commission published a final rule that defines key statutory terms, notably clarifying the distinctions between class II gaming (regulated by tribes and the Commission) and class III gaming (regulated under negotiated tribal-state compacts).

The regulations proposed today would implement the Commission's authority to enforce federal and tribal gaming requirements. The Commission is proposing rules separately regarding its review and approval of tribal gaming ordinances and resolutions under sections 2710 and 2712 of the Act. In the coming months, the Commission will propose rule regarding its review of management contracts under sections 2711 and 2712 of the Act and tribal self-regulation under section 2710(c) of the Act.

#### Statutory Authority

Section 2705 of the IGRA authorizes the Commission's Chairman, subject to an appeal to the Commission, to:

(1) Issue orders of temporary closure of Indian gaming operations as provided in section 2713(b) of the Act;

(2) Levy and collect civil money penalties as provided in section 2713(a) of the Act;

(3) Approve tribal ordinances and resolutions regulating class II and class III gaming as provided in sections 2710 and 2712 of the Act; and

(4) Approve management contracts for class II and class III gaming as provided in sections 2710(d)(9) and 2711 of the Act.

Section 2706 of the IGRA authorizes the Commission to, among other things:

(1) Monitor class II gaming conducted on Indian lands;

(2) Inspect and examine all premises located on Indian lands on which class II gaming is conducted;

(3) Inspect, examine, photocopy, and audit papers, books, and records concerning class II gaming conducted on Indian lands;

(4) After providing an opportunity for a hearing, make permanent an order of temporary closure of an Indian game; and

(5) Adopt such regulations and guidelines as the Commission deems appropriate to implement the Act.

#### Regulatory Approach

The IGRA authorizes the Commission to enforce the provisions of both federal and tribal gaming law. At the same time, the Act's regulatory scheme contemplates that Indian tribes, through ordinances and management contracts, certificates of self-regulation, and tribal-state compacts, will exercise primary regulatory authority over gaming on Indian lands. Although the regulations proposed today would implement the Commission's broad enforcement authority under the Act, they must be read within the context of a regulatory scheme that respects tribal sovereignty. Thus, as a matter of policy the Commission will, whenever practicable, afford tribes the opportunity to address compliance problems in the first instance.

For example, the Chairman's authority to issue notices of violation and orders of temporary closure is discretionary under the Act and these regulations. The Chairman intends to exercise this discretion only after a tribe, once notified of a violation, fails to take appropriate enforcement action in a timely manner.

In today's proposed regulations, the Commission also attempts to encourage early resolution of disputes by providing opportunities for settlement of enforcement actions and expedited review of orders of temporary closure.

In general, the enforcement provisions of these regulations apply to the owners and operators of Indian gaming operations, against whom the Commission is seeking civil sanctions. For simplicity's sake, such persons are referred to here as "respondents."

The flow chart presented below summarizes the enforcement process reflected in today's proposal. The Commission invites comment on both the basic approach of these regulations and any specific issues that commenters identify.

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## ENFORCEMENT PROCESS FLOW CHART

When the Chairman finds a violation, he will attempt to work with the tribe to ensure compliance. If the tribe fails to take appropriate enforcement action, the Commission will follow the procedures outlined below.

If the violation is minor and readily correctable, the Chairman's representative will oversee on-the-spot compliance.

If the violation is not minor or readily correctable, but does not warrant closure, the Chairman's representative will issue a notice of violation prescribing corrective action within a time certain and will gather information necessary to calculate a penalty.

Within 15 days after the notice issues, the respondent may provide pertinent information to the Chairman regarding the violation.

Within 15 additional days, the Chairman may issue a proposed penalty assessment.

Within 30 days after service of the proposed penalty assessment, the respondent may appeal to the Commission.

If the violation warrants closure, the Chairman's representative, after consulting with the Chairman, will issue a notice of violation (as above) and an order of temporary closure, effective upon issuance.

Within 7 days after service of the order of temporary closure, the respondent may request expedited review by the Chairman.

Within 2 working days after the respondent makes a timely request, the Chairman will review the matter.

Within 2 working days after his or her review, the Chairman will render a decision.

Within 30 days after the date of closure, the respondent may appeal to the Commission.

If the respondent files a timely appeal with the Commission, within 30 days after the request the Commission will designate a presiding official who will hold a hearing.

Within 30 days after the date the hearing concludes, the presiding official will issue a recommended decision.

Within 10 days after service of the recommended decision, the parties may file with the Commission any objections to the recommended decision.

Within 20 days after the period for filing objections, the Commission will affirm or reverse the recommended decision, in whole or in part. The Commission's decision constitutes final agency action.

Once the Commission takes final action, the respondent may appeal to the appropriate federal district court.



BILLING CODE 7565-01-C

Today's proposal would promulgate four new parts in chapter III of title 25 of the CFR: Monitoring and investigations, enforcement, civil penalties, and appeals before the Commission. Key provisions are discussed below.

**Monitoring and Investigations**

Part 571 sets forth general procedures for the Commission's exercise of its investigative and information-collection authorities under sections 2706(b), 2710(b)(2)(C), 2715, and 2716 of the Act. Section 2716(a) of the Act provides that "* * * the Commission shall preserve any and all information received pursuant to [the Act] as confidential pursuant to the provisions of (5 U.S.C. 552(b) (4) and (7) (the Freedom of Information Act (FOIA)))." Those provisions of the FOIA exempt from mandatory disclosure:

(1) Trade secrets and commercial or financial information; and

(2) Investigatory records (subject to certain limitations).

The Commission believes that section 2716(a) removes from the Commission the discretion it would otherwise have to disclose information that falls within the cited exemptions from FOIA. The Commission does not believe, however, that the IGRA makes all information the Commission receives under the Act confidential, whether or not such information logically falls within a FOIA exemption.

Still, the Commission believes that most of the information it receives under the Act will fall within one of the two cited FOIA exemptions. Information associated with fee reports, audit reports, background investigations, and management contracts, for example, clearly would be exempt from disclosure. Under the Commission's proposed interpretation of the Act, then, most information would be deemed confidential and, in the absence of an express waiver, exempt from disclosure.

Accordingly, proposed § 571.3 provides that, unless confidentiality is waived, the Commission will treat as confidential any and all information received under the Act and falling within exemptions (b)(4) and (b)(7) of the FOIA. Nonetheless, in accordance with section 2716(b) of the Act, when information indicates a violation of federal, state, or tribal statutes, regulations, ordinances, or resolutions, the Commission will provide such information to appropriate law enforcement officials. The Commission solicits comment on its interpretation of section 2716 of the Act.

Section 571.5 provides that the Commission's authorized representative, upon presenting appropriate credentials, may enter the premises of a gaming operation to inspect, examine, photocopy, and audit papers, books, and records concerning class II gaming conducted on Indian lands.

Sections 571.8 through 571.11 would implement section 2715 of the IGRA by authorizing the Commission to require, by subpoena and deposition, the attendance and testimony of witnesses, and the production of all books, papers, and documents relating to any matter under consideration or investigation by the Commission.

Sections 571.12 and 571.13 would implement sections 2710(b)(2)(C) and 2710(d)(2)(A) of the Act by requiring each gaming tribe to obtain an annual independent audit of all gaming operations on Indian lands and provide the results of the audit to the Commission.

**Enforcement**

Proposed part 573 sets forth general rules governing the Commission's enforcement of the Act, 25 CFR chapter III, and tribal laws, regulations, ordinances, and resolutions approved by the Chairman under 25 U.S.C. 2710 and 2712. Section 573.3 authorizes the Chairman to issue a notice of violation to the owner or operator of an Indian gaming operation. Section 573.6 identifies the circumstances under which the Chairman may exercise his authority to issue an order of temporary closure of all or part of an Indian gaming operation. Section 2713(b) of the IGRA grants this power when the Chairman finds "substantial" violations of federal or tribal law.

Proposed § 573.6(a) indentifies the specific violations deemed "substantial" violations that may warrant closure. In developing this list, the Commission focused on violations that, by their nature, may warrant closure immediately upon detection. If the Commission discovers, for example, that a gaming operation on Indian lands has no valid tribal license, immediate closure may be appropriate because the violation cannot be remedied quickly—that is, by qualifying for and obtaining a tribal license—and to allow the establishment to operate in the meantime would violate section 2710(b)(1) of the Act. (Note that section 2710(b)(1) appears to require a tribal license even when a tribe itself is the proprietor of a gaming operation.)

The Chairman will consider closure for violations other than the specific violations listed in § 573.6 when, under § 573.6(a)(1), noncompliance continues beyond a reasonable time after notice by a tribe.

Section 573.6(b) provides that an order of temporary closure will be effective upon receipt, unless the order provides otherwise. In cases where a substantial violation does not warrant closure immediately upon detection, the Chairman may issue an order of temporary closure that, in the absence of appropriate correction action, will become effective on a date certain. The Commission solicits comment on its proposed approach to addressing "substantial" violations under section 2713(b) of the Act.

Because an order of temporary closure is a serious civil sanction, § 573.6(c) provides a right to informal expedited review of such an order. Whether or not a respondent seeks expedited review, however, proposed part 577 (discussed below) provides a right of appeal to the full Commission.

As noted above, the Chairman's authority under the IGRA to enforce tribal ordinances and resolutions is limited to ordinances and resolutions that have been approved by the Chairman under 25 U.S.C. 2710 or 2712. At a minimum, those ordinances and resolutions must meet the approval criteria of 25 U.S.C. 2710(b)(2). In addition, the Commission encourages tribes to include in ordinances and resolutions submitted for the Chairman's approval any additional provisions that the tribes may want the Chairman to assist in enforcing. Under proposed § 573.6(a)(9), for example, the Chairman may not be able to exercise his closure authority against a gaming operation that refuses to allow an authorized tribal official to enter or inspect the operation, unless an ordinance or resolution approved by the Chairman under 25 U.S.C. 2710 or 2712 includes a provision that requires such access. In this example, the Chairman may be limited to his authority under 25 U.S.C. 2711(f) to void the management contract, which can only occur after notice and hearing.

**Civil Penalties**

Part 575 addresses the assessment of civil penalties under section 2713 of the Act. The objective of civil penalties is to deter violations and to promote maximum compliance with the terms and purposes of the Act. The Commission seeks, in exercising its civil penalty authority, to treat the owners and operators of Indian gaming establishments in a fair and equitable manner and to encourage swift resolution of compliance issues. (Note that collected civil penalties revert to

the U.S. Treasury; they are not used to fund Commission operations.)

Section 575.4 authorizes the Chairman to assess a penalty, not to exceed $25,000 per violation, for each notice of violation or order of temporary closure, after considering the following factors:

*(1) Economic Benefit of Noncompliance*

The Chairman will consider the extent to which the respondent obtained an economic benefit from a violation. In general, the Chairman will seek to impose a civil penalty that accounts for both the documented or estimated benefit and the likelihood of escaping detection. If a violation continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation, to the extend necessary to recover the total economic benefit of noncompliance.

The Chairman's consideration of the economic benefit of noncompliance is necessary to ensure that violators do not profit from their unlawful conduct and, conversely, that law-abiding Indian gaming operations are not placed at a competitive disadvantage. The Administrative Conference of the United States has endorsed this approach to civil penalty assessment (see 1 CFR 305.79–3, Recommendation A.I.)

*(2) Seriousness of the Violation*

The Chairman will consider the seriousness of a violation in terms of the extent to which the violation threatens the integrity of Indian gaming. Serious violations include, but are not limited to, the "substantial" violations listed in proposed § 573.6.

*(3) History of Violations*

The Chairman will consider the respondent's history of violations over the preceding five years.

*(4) Negligence or Willfulness*

The Chairman will consider the degree of negligence or willfulness of the respondent in causing or failing to correct the violation, through either act or omission.

*(5) Good Faith*

Finally, the Chairman may adjust a penalty based on the degree of good faith of the respondent in attempting to achieve rapid compliance after notice of a violation.

Section 575.5 provides that, once cited for a violation, a respondent may submit information to assist the Chairman in determining the facts surrounding the violation and the penalty amount, if any. This section also allows the Chairman to review and reassess any penalty if necessary to consider facts that were not reasonably available on the date of the proposed assessment.

The Chairman's civil penalty authority is discretionary under the Act. Proposed § 575.6, therefore, authorizes the Chairman to reduce or waive a penalty if he determines that, taking into account exceptional factors present in a particular case, the penalty is demonstrably unjust. The Chairman must fully explain and document every reduction or waiver.

**Appeals Before the Commission**

Proposed part 577 provides procedures for appeals to the Commission regarding:

(1) The fact of a violation alleged in a notice of violation or order of temporary closure;

(2) Civil money penalties assessed by the Chairman;

(3) Whether an order of temporary closure issued by the Chairman should be made permanent or be dissolved; and

(4) The validity of the Chairman's voiding or modification of a management contract under 25 U.S.C. 2711(f) subsequent to initial approval.

Appeals from other determinations of the Chairman under 25 U.S.C. 2711 and 2712 (Management contracts) and 2710 and 2712 (Tribal gaming ordinances) will be addressed elsewhere in chapter III of 25 CFR.

Part 577 provides for appeals to the Commission to be held before a presiding official designated by the Commission. To ensure a separation of prosecutorial and adjudicative functions within the Commission, the presiding official must have had no previous role in the enforcement action that is the subject of the appeal. Subject to certain minimum standards, the presiding official will have broad discretion to conduct the proceeding in a manner that will lead to an expeditious resolution yet provide a full airing of the issues.

Section 2713(b)(2) of the IGRA provides:

> Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. Not later than sixty days following such hearing, the Commission shall, by a vote of not less than two of its members, decide whether to order a permanent closure of the gaming operation.

In interpreting this provision, the Commission found an apparent ambiguity: Does the *right* to a hearing last 30 days, or does the hearing itself have to be provided within 30 days after the Chairman issues an order of temporary closure? If the latter interpretation were to prevail, the Commission would have to provide some brief period (say, 10 days) within which a respondent would be permitted to request a hearing, and the Commission would be required to provide a hearing within the remainder of the statutory 30-day period (in this case, 20 days). The Commission believes that this approach would run the risk of forcing the respondent to file a hastily prepared appeal and the Commission to provide a quick hearing that may not withstand judicial scrutiny.

Rather, the Commission believes that a more reasonable interpretation of section 2713(b)(2) is that the right to appeal an order of temporary closure runs for 30 days from the date on which the Chairman issues the order. The Commission then would conclude a hearing within 30 days after the Commission's receipt of a timely notice of appeal, as provided in proposed § 577.4(b). As a matter of policy, the Commission would, whenever practicable, reach its decision on such an appeal within 90 days after issuance of the order of temporary closure, the shortest time required under any interpretation of the Act. The Commission also notes that any hardship that may result from concluding a hearing later than 30 days following issuance of an order of temporary closure would be mitigated by proposed § 573.6(c), which provides a right to informal expedited review of such an order. The Commission solicits comment on its proposed interpretation of section 2713(b)(2) of the IGRA.

Proposed § 577.8 provides for the protection of confidential information that may be contained in documents served on parties to appeals that involve more than two parties (in cases that involve only a single respondent and the Chairman, confidentiality is already protected under proposed § 571.4). The Commission has attempted to protect confidential information while affording parties access to information necessary for effective representation before the Commission. Section 577.8 conditions such access upon a party's agreement not to disclose confidential information.

In the same vein, the regulations proposed today would not provide for unlimited public access to proceedings under part 577 because of statutory restrictions on the Commission's discretion to disclose certain information (discussed above under Monitoring and Investigations). The Commission intends, however, to make available to the public significant decisions and other associated

documents, with any confidential information deleted.

Section 577.9 authorizes the presiding official to defer the hearing for a reasonable time to permit the parties to negotiate a settlement. In the absence of a settlement, § 577.10 provides that, if no issue of material fact is found to have been raised, the presiding official may issue a recommended decision based on the record before him or her. When a genuine question of material fact is raised, on the other hand, the presiding official will set the case for an evidentiary hearing.

Proposed § 577.12 provides that, under certain circumstances, the presiding official may permit persons other than the respondent to participate as parties. This may occur if the presiding official finds that:

(1) The outcome of the proceeding could directly and adversely affect the persons or the class they represent;

(2) They may contribute materially to the disposition of the proceeding; and

(3) Their interest is not adequately represented by existing parties.

Under § 577.14, the presiding official must render his or her recommended decision within 30 days after the conclusion of the hearing, after which the parties will have 10 days to file with the Commission their objections to any aspect of the recommended decision. Proposed § 577.15 requires the Commission, by a majority vote, to affirm or reverse, in whole or in part, the recommended decision of the presiding official within thirty (30) days after the date on which the presiding official issued the decision. In the absence of a majority vote by the Commission within the time provided, the action of the Chairman that is the subject of the appeal will be vacated. As provided in § 2714 of the IGRA, decisions by the Commission on appeals provided under proposed part 577 will be final agency decisions for purposes of appeal to the appropriate federal district court.

**Regulatory Matters**

*Executive Order 12291 and the Regulatory Flexibility Act*

The Commission has tentatively determined that this document is not a major rule under Executive Order 12291. The Commission believes that the rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, federal, state, or local governments, agencies, or geographical regions. The Commission also believes that the rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has tentatively determined that this rule will not have a significant economic impact on a substantial number of small entities. The Commission believes that, because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act. The Commission solicits comment on these preliminary determinations under the Executive Order and the Regulatory Flexibility Act.

*Paperwork Reduction Act*

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by OMB.

*National Environmental Policy Act*

The Commission has determined that this proposed rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

*Executive Order 12778*

The Chairman of the National Indian Gaming Commission has certified to OMB that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Dated: July 1, 1992.

**Anthony J. Hope,**

*Chairman, National Indian Gaming Commission.*

**List of Subjects**

*25 CFR Part 571*

Gambling, Indians-lands, Investigations, Reporting and recordkeeping requirements.

*25 CFR Part 573*

Administrative practice and procedure, Gambling, Indians-lands.

*25 CFR Part 575*

Administrative practice and procedure, Gambling, Indians-lands, Penalties.

*25 CFR Part 577*

Administrative practice and procedure.

For the reasons set forth in the preamble, title 25 of the Code of Federal Regulations is proposed to be amended by adding new parts 571, 573, 575, and 577.

## PART 571—MONITORING AND INVESTIGATIONS

**Subpart A—General**

Sec.

571.1 Scope.
571.2 Definitions.
571.3 Confidentiality.

**Subpart B—Inspection of Books and Records**

571.5 Entry of premises.
571.6 Access to papers, books, and records.
571.7 Maintenance and preservation of papers and records.

**Subpart C—Subpoenas and Depositions**

571.8 Subpoena of witnesses.
571.9 Subpoena of documents and other items.
571.10 Geographical location.
571.11 Depositions.

**Subpart D—Audits**

571.12 Audit standards.
571.13 Copies of audit reports.
571.14 Relationship of audited financial statements to fee assessment reports.

**Authority:** 25 U.S.C. 2706(b), 2710(b)(2)(C), 2715, 2716.

**Subpart A—General**

**§ 571.1 Scope.**

This part sets forth general procedures governing Commission monitoring and investigations of Indian gaming operations.

**§ 571.2 Definitions.**

As used in this chapter, the following terms have the specified meanings:

*Authorized representative* means any person who is authorized to act on behalf of the Commission for the purpose of implementing the Act and this chapter.

*Day* means calendar day unless otherwise specified.

*Hearing* means that part of a proceeding that involves the submission of evidence to the presiding official, either by oral presentation or written submission.

*Party* means the Chairman, the respondent(s), and any other person named or admitted as a party to a proceeding.

*Person* means an individual, Indian tribe, corporation, partnership, or other organization or entity.

*Presiding official* means a person designated by the Commission who is qualified to conduct an administrative hearing and authorized to administer

oaths, and has had no previous role in the prosecution of a matter over which he or she will preside.

*Respondent* means the owner or operator of an Indian gaming operation, against whom the Commission is seeking civil sanctions under section 2713 of the Act.

*Violation* means a violation of applicable federal or tribal statutes, regulations, ordinances, or resolutions.

**§ 571.3 Confidentiality.**

Unless confidentiality is waived, the Commission shall treat as confidential any and all information received under the Act and falling within the exemptions of 5 U.S.C. 552(b)(4) and (7); *except* that when such information indicates a violation of Federal, State, or tribal statutes, regulations, ordinances, or resolutions, the Commission shall provide such information to appropriate law enforcement officials. The confidentiality of documents submitted in a multiple-party proceeding under part 577 of this chapter is addressed in § 577.8 of this chapter.

## Subpart B—Inspection of Books and Records

**§ 571.5 Entry of premises.**

(a) The Commission's authorized representative may enter the premises of an Indian gaming operation to inspect, examine, photocopy, and audit all papers, books, and records (including computer records) concerning:

(1) Gross revenues of class II gaming conducted on Indian lands; and

(2) Any other matters necessary to carry out the duties of the Commission under the Act and this chapter.

(b) The Commission's authorized representative shall present official identification upon entering a gaming operation for the purpose of enforcing the Act.

**§ 571.6 Access to papers, books, and records.**

(a) Once the Commission's authorized representative presents proper identification, the manager or another employee of a gaming operation shall provide the authorized representative with access to all papers, books, and records (including computer records) concerning class II gaming or any other matters for which the Commission requires such access to carry out its duties under the Act.

(b) If such papers, books, and records are not available at the location of the gaming operation, an employee of the gaming operation shall make them available at a time and place convenient to the Commission's authorized representative.

(c) Upon the request of the Commission's authorized representative, an employee of the gaming operation shall photocopy, or allow the Commission's authorized representative to photocopy, any papers, books, and records that are requested by the Commission's authorized representative.

**§ 571.7 Maintenance and preservation of papers and records.**

(a) A gaming operation subject to regulation by the Commission shall keep permanent books of account or records, including inventory records of gaming supplies, sufficient to establish the amount of gross and net income, deductions and expenses, receipts and disbursements, and other information required in any financial statement, report, or other accounting prepared pursuant to the Act or this chapter.

(b) The Commission may require a gaming operation to submit statements, reports, or accountings, or keep specific records, that will enable the Commission to determine whether or not such operation:

(1) Is liable for fees payable to the Commission and in what amount; and

(2) Has properly and completely accounted for all transactions and other matters monitored by the Commission.

(c) Books or records required by this section shall be kept at all times available for inspection by the Commission's authorized representatives. They shall be retained for as long as their contents may become material in the administration of any federal or Indian gaming requirements, but in no event less than seven (7) years.

## Subpart C—Subpoenas and Depositions

**§ 571.8 Subpoena of witnesses.**

By majority vote the Commission may authorize the Chairman to require by subpoena the attendance and testimony of witnesses relating to any mater under consideration or investigation by the Commission. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

**§ 571.9 Subpoena of documents and other items.**

By majority vote the Commission may authorize the Chairman to require by subpoena the production of certain documents and other items that are material and relevant to facts in issue in any matter under consideration or investigation by the Commission.

**§ 571.10 Geographical location.**

The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing.

**§ 571.11 Depositions.**

(a) A Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before a person designated by the Commission who has the power to administer oaths.

(b) A Commissioner or a person designated by a Commissioner under paragraph (a) of this section shall give reasonable notice of the taking of a deposition. Notice shall include the name of the witness and the time and place of the deposition.

(c) Every person deposed under this part shall be required to swear or affirm to testify to the whole truth. Testimony shall be reduced to writing and subscribed by the deponent. Depositions shall be filed promptly with the Commission.

(d) Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall be severally entitled to the same fees as are paid for like services in the courts of the United States.

## Subpart D—Audits

**§ 571.12 Audit standards.**

A tribe shall obtain an annual independent audit of each gaming operation on Indian lands. Such audits shall be conducted in accordance with generally accepted auditing standards.

**§ 571.13 Copies of audit reports.**

A tribe shall submit to the Commission a copy of the report(s) on the results of each annual audit within 120 days after the end of each fiscal year.

**§ 571.14 Relationship of audited financial statements to fee assessment reports.**

A tribe shall reconcile its quarterly fee assessment reports, submitted under 25 CFR part 514, with its audited financial statements and make available such reconciliation upon request by the Commission's authorized representative.

# PART 573—ENFORCEMENT

Sec.

573.1 Scope.
573.3 Notice of violation.
573.6 Order of temporary closure.

**Authority:** 25 U.S.C. 2705(a)(1), 2706, 2713, 2715.

**§ 573.1 Scope.**

This part sets forth general rules governing the Commission's enforcement of the Act, this chapter, and tribal laws, regulations, ordinances, and resolutions approved by the Chairman under 25 U.S.C. 2710 and 2712. Civil penalties in connection with notices of violation and orders of temporary closure issued under this part are addressed in part 575 of this chapter.

**§ 573.2 Notice of violation.**

(a) The Chairman may issue a notice of violation to the owner or operator of an Indian gaming operation for any violation(s) of any provision of the Act or this chapter, or of any tribal law, regulation, ordinance, or resolution approved by the Chairman under 25 U.S.C. 2710 and 2712.

(b) A notice of violation shall contain:

(1) A citation to the federal or tribal law, regulation, ordinance, or resolution that has been or is being violated;

(2) A description of the circumstances surrounding the violation, set forth in common and concise language;

(3) Measures required to correct the violation;

(4) A reasonable time for correction, if the respondent cannot take measures to correct the violation immediately; and

(5) Notice of rights of appeal.

**§ 573.6 Order of temporary closure.**

(a) *When an order of temporary closure may issue.* The Chairman may issue an order of temporary closure of all or part of an Indian gaming operation if one or more of the following substantial violations are present;

(1) A tribal operator or management contractor fails to correct violations within:

(i) The time permitted in a notice of violation; or

(ii) A reasonable time after notice by a tribe.

(2) A tribe fails to pay the annual fee required by 25 CFR part 514.

(3) A gaming operation operates for business without a tribal ordinance or resolution approved by the Chairman under 25 U.S.C. 2710 or 2712.

(4) A gaming operation operates for business without a license from a tribe, in violation of 25 U.S.C. 2710(b)(1).

(5) A gaming operation operates for business without background investigations having been completed under 25 U.S.C. 2710, 2711, or 2712.

(6) There is clear and convincing evidence that a gaming operation defrauds a customer.

(7) A management contractor operates for business without a contract approved by the Chairman under 25 U.S.C. 2711 or 2712.

(8) The owner, operator, or other agent of a gaming operation knowingly submits false or misleading information to the Commission or a tribe in response to any provision of the Act, this chapter, or a tribal ordinance or resolution approved by the Chairman under 25 U.S.C. 2710 or 2712.

(9) An employee of a gaming operation refuses to allow an authorized representative of the Commission or an authorized tribal official to enter or inspect a gaming operation, in violation of § 571.5 or 571.6 of this chapter, or of a tribal ordinance or resolution approved by the Chairman under 25 U.S.C. 2710 or 2712.

(10) A tribe fails to suspend a license upon notification by the Commission that a primary management official or key employee does not meet the standards for employment contained in 25 U.S.C. 2711(e).

(11) A gaming operation operates class III games in the absence of a tribal-state compact that is in effect, in violation of 25 U.S.C. 2710(d).

(12) A gaming operation's facility is constructed, maintained, or operated in a manner that threatens the environment or the public health and safety, in violation of a tribal ordinance or resolution approved by the Chairman under 25 U.S.C. 2710 or 2712.

(b) *Order effective upon receipt.* The owner or operator of an Indian gaming operation shall close the operation upon receipt of an order of temporary closure, unless the order provides otherwise.

(c) *Informal expedited review.* Within seven (7) days after receipt of an order of temporary closure, the respondent may request, orally or in writing, informal expedited review by the Chairman.

(1) The Chairman shall conduct the expedited review provided for by this paragraph within two (2) working days after his or her receipt of a timely request.

(2) The Chairman shall, within two (2) working days after the expedited review provided for by this paragraph:

(i) Decide whether to continue an order of temporary closure; and

(ii) Provide the respondent with an explanation of the basis for the decision.

(3) Whether or not a respondent seeks informal expedited review under this paragraph, within thirty (30) days after the Chairman issues an order of temporary closure the respondent may appeal the order to the Commission under part 577 of this chapter. Otherwise, the order shall become permanent unless rescinded by the Chairman for good cause.

## PART 575—CIVIL PENALTIES

Sec.
575.1 Scope.
575.3 How assessments are made.
575.4 When penalty will be assessed.
575.5 Procedures for assessment of civil penalties.
575.6 Settlement, reduction, or waiver of penalty.
575.9 Final assessment.

Authority: 25 U.S.C. 2705(a)(1), 2706, 2713, 2715.

**§ 575.1 Scope.**

This part addresses the assessment of civil penalties under section 2713 of the Act with respect to notices of violation and orders of temporary closure issued under part 573 of this chapter.

**§ 575.3 How assessments are made.**

The Chairman shall review each notice of violation and order of temporary closure in accordance with § 575.4 of this part to determine whether a civil penalty will be assessed, the amount of the penalty, and, in the case of continuing violations, whether each daily illegal act or omission will be deemed a separate violation for purposes of the total penalty amount assessed.

**§ 575.4 When penalty will be assessed.**

The Chairman may assess a penalty, not to exceed $25,000 per violation, for each notice of violation or order of temporary closure, after considering the following factors:

(a) *Economic benefit of noncompliance.* The Chairman shall consider the extent to which the respondent obtained an economic benefit from the noncompliance that gave rise to a notice of violation or order of temporary closure, as well as the likelihood of escaping detection.

(1) The Chairman may consider the documented benefits derived from the noncompliance, or may rely on reasonable assumptions regarding such benefits.

(2) If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation.

(b) *Seriousness of the violation.* The Chairman may adjust the amount of a civil penalty to reflect the seriousness of the violation. In doing so, the Chairman shall consider the extent to which the violation threatens the integrity of Indian gaming. Serious violations include, but are not limited to, the substantial violations identified in § 573.6(a) of this chapter.

(c) *History of violations.* The Chairman may adjust a civil penalty by

an amount that reflects the respondent's history of violations over the preceding five (5) years. History of violations may be determined with respect to either a particular gaming operation or its owner or operator.

(1) A violation shall not be considered unless the associated notice or order is the subject of a final order of the Commission;

(2) No violation for which the associated notice or order has been vacated shall be considered; and

(3) Each violation shall be considered whether or not it led to a civil penalty assessment.

(d) *Negligence or willfulness.* The Chairman may adjust the amount of a civil penalty based on the degree of fault of the respondent in causing or failing to correct the violation, either through act or omission.

(e) *Good faith.* The Chairman may adjust the amount of a penalty based on the degree of good faith of the respondent in attempting to achieve rapid compliance after notification of the violation.

**§ 575.5 Procedures for assessment of civil penalties.**

(a) Within 15 days after service of a notice of violation, the respondent may submit written information about the violation to the Chairman. The Chairman shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Chairman shall serve a copy of the proposed assessment on the respondent within thirty (30) days after the notice was issued, when practicable.

(c) The Chairman may review and reassess any penalty if necessary to consider facts that were not reasonably available on the date of issuance of the proposed assessment.

**§ 575.6 Settlement, reduction, or waiver of penalty.**

(a) *Reduction or waiver.* (1) Upon written request of a respondent received at any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chairman may reduce or waive a penalty if he determines that, taking into account exceptional factors present in a particular case, the penalty is demonstrably unjust. The Chairman shall fully explain and document every reduction or waiver in the records of the case.

(2) All petitions for reduction or waiver shall contain:

(i) A detailed description of the violation that is the subject of the penalty;

(ii) A detailed recitation of the facts that support a finding that the penalty is demonstrably unjust, accompanied by underlying documentation, if any; and

(iii) A declaration, signed and dated by the respondent and his or her counsel or representative, if any, as follows: Under penalty of perjury, I declare that, to the best of my knowledge and belief, the representations made in this petition are true and correct.

(3) The Chairman, within his or her discretion, shall determine whether to grant a reduction or waiver. The Chairman shall serve the respondent with a written determination, including a brief statement of the grounds for the Chairman's decision.

(b) *Settlement.* At any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chairman and the respondent may agree to settle an enforcement action, including the amount of the associated penalty. In the event a settlement is reached, a settlement agreement shall be prepared and signed by the Chairman and the respondent. If a settlement agreement is executed, the respondent shall be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise provided expressly in the settlement agreement. In the absence of a settlement of the issues under this paragraph, the respondent may contest the assessed penalty before the Commission in accordance with part 577 of this chapter.

**§ 575.8 Final assessment.**

(a) If the respondent fails to request a hearing as provided in part 577 of this chapter, the proposed assessment shall become a final order of the Commission.

(b) The Commission shall transfer penalties paid under this chapter to the U.S. Treasury.

## PART 577—APPEALS BEFORE THE COMMISSION

Sec.


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**Authority:** 25 U.S.C. 2700, 2713, 2715.

**§ 577.1 Scope.**

(a) This part provides procedures for appeals to the Commission regarding:

(1) The fact of a violation alleged in a notice of violation or order of temporary closures;

(2) Civil money penalties assessed by the Chairman;

(3) Whether an order of temporary closure issued by the Chairman should be made permanent or be dissolved; and

(4) The validity of the Chairman's voiding or modification of management contract under 25 U.S.C. 2711(f) subsequent to initial approval.

(b) Appeals from determinations of the Chairman under 25 U.S.C. 2711 (Management contracts) and 2710 (Tribal gaming ordinances) are addressed elsewhere in this chapter.

**§ 577.3 Request for hearing.**

(a) A respondent may contest before the Commission the matters listed in § 577.1(a)(1) through (4) by submitting a notice of appeal to the Commission within thirty (30) days after service of:

(1) A notice of violation;

(2) A proposed penalty assessment or reassessment;

(3) An order of temporary closure; or

(4) An order voiding or modifying a management contract subsequent to initial approval.

(b) A notice of appeal shall include a statement of the reasons why the respondent believes the Chairman's action to be erroneous, including supporting documentation, if any.

**§ 577.4 Hearing deadline.**

(a) The Commission shall designate a presiding official who shall commence a hearing within 30 days after the Commission receives a timely notice of appeal from the respondent. The Commission shall transmit the administrative record of the case to the presiding official upon designation.

(b) If the subject of an appeal is whether an order of temporary closure should be made permanent or be dissolved, the hearing shall be concluded within 30 days after the Commission receives a timely notice of appeal, unless the respondent waives this requirement. Notwithstanding any other provision of this part, the presiding official shall conduct such a hearing in a manner that will enable him or her to conclude the hearing within the period required by this paragraph, while ensuring due process to all parties.

**§ 577.6 Service.**

(a) A respondent who initiates an appeal under this part shall serve copies of the initiating documents on the

Commission at the address indicated in the notice or order that is the subject of the appeal. All filings shall be made with the Commission until a presiding official is designated, after which all filings shall be made with the presiding official. Any party or other person who subsequently files any other document with the Commission or the presiding officer shall simultaneously serve copies of that document on any other parties to the proceeding, except to the extent that § 577.8 of this part may govern the disclosure of confidential information contained in a filing.

(b) Copies of documents by which a proceeding is initiated shall be served on all known parties personally, by facsimile, or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally, by facsimile, or by first class mail.

(c) Service of copies of all documents is complete at the time of personal service or, if service is made by mail or facsimile, upon receipt.

(d) Whenever an attorney or other representative has entered an appearance for a party in a proceeding initiated under this part, service thereafter shall be made upon the representative.

(e) Computation of time for filing and service. In computing any period of time prescribed for filing and serving a document, the last day of the period so computed shall be included, unless it is a Saturday, Sunday, federal legal holiday, or other nonbusiness day, in which case the period shall run until the end of the next business day.

(f) Extensions of time. (1) The presiding official may extend the time for filing or serving any document except a notice of appeal.

(2) A request for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the presiding official may grant an extension of time on his or her own initiative.

**§ 577.7 Conduct of evidentiary hearing.**

(a) When a genuine question of material fact is raised, the presiding official shall, and in any other case may, set the case for an evidentiary hearing. Within limits established by the presiding official, an evidentiary hearing under this section shall include an opportunity to submit oral and documentary evidence, cross-examine witnesses, and present oral arguments.

(b) When holding a hearing under this part, the presiding official may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas authorized by the Commission;

(3) Rule on offers of proof and receive relevant evidence;

(4) Authorize exchanges of information among the parties when to do so would expedite the proceeding;

(5) Regulate the course of the hearing;

(6) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) At any conference held pursuant to paragraph b(6) of this section, require the attendance of at least one representative of each party who has authority to negotiate the resolution of issues in controversy;

(8) Dispose of procedural requests or similar matters;

(9) Recommend decisions in accordance with § 577.14 of this part; and

(10) Take other actions authorized by the Commission consistent with this part.

**§ 577.8 Request to limit disclosure of confidential information.**

(a) If any person submitting a document in a proceeding that involves more than two parties claims that some or all of the information contained in that document is exempt from the mandatory public disclosure requirements under the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905 (disclosure of confidential information), or is otherwise exempt by law from public disclosure, the person shall:

(1) Indicate that the document in its entirety is exempt from disclosure or identify and segregate information within the document that is exempt from disclosure; and

(2) Request that the presiding official not disclose such information to the parties to the proceeding (other than the Chairman, whose actions regarding the disclosure of confidential information are governed by § 571.3 of this chapter) except pursuant to paragraph (b) of this section, and shall serve the request upon the parties to the proceeding. The request to the presiding official shall include:

(i) A copy of the document, group of documents, or segregable portions of the documents marked "Confidential Treatment Requested"; and

(ii) A statement explaining why the information is confidential.

(b) A party to a proceeding may request that the presiding official direct a person submitting information under paragraph (a) of this section to provide that information to the party. The presiding official shall so direct if the party requesting the information agrees under oath and in writing:

(1) Not to use or disclose the information except within the context of the proceeding; and

(2) To return all copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

(c) If a person submitting documents in a proceeding under this part does not claim confidentiality under paragraph (a) of this section, the presiding official may assume that there is no objection to disclosure of the document in its entirety.

(d) If the presiding official determines that confidential treatment is not warranted with respect to all or any part of the information in question, the presiding official shall so inform all parties by telephone, if possible, and by facsimile or express mail letter directed to the parties' last known address. The person requesting confidential treatment then shall be given an opportunity to withdraw the document before it is considered by the presiding official, or to disclose the information voluntarily to all parties.

(e) If the presiding official determines that confidential treatment is warranted, the presiding official shall so inform all parties by facsimile or express mail directed to the parties' last known address.

(f) When a decision by a presiding official is based in whole or in part on evidence not included in the public record, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal a part of the official record.

**§ 577.9 Consent order or settlement.**

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days before the date set for hearing under § 577.11 of this part, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. Whether to grant the motion shall be in the discretion of the presiding official.

(b) *Consent.* Any agreement containing consent findings and an order disposing of the whole or any part of a proceeding shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) A waiver of any further procedural steps before the Commission;

(3) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(4) That the presiding official's certification of the findings and agreement shall constitute dismissal of the appeal and final agency action.

(c) *Submission.* Before the expiration of the time granted for negotiations, the parties or their authorized representatives may:

(1) Submit to the presiding official a proposed agreement containing consent findings and an order;

(2) Notify the presiding official that the parties have reached a full settlement and have agreed to dismissal of the action, subject to compliance with the terms of the settlement; or

(3) Inform the presiding official that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time granted, the presiding official shall certify such findings and agreement within thirty (30) days after his or her receipt of the submission. Such certification shall constitute dismissal of the appeal and final agency action.

**§ 577.10 Summary recommended decision.**

If no genuine issue of material fact is found to have been raised, the presiding official may declare the hearing concluded and, within thirty (30) days thereafter, issue a recommended decision. A recommended decision under this section shall include a statement of:

(a) Findings of fact and conclusions of law on all issues presented; and

(b) Any terms and conditions of the recommended decision.

**§ 577.12 Intervention.**

(a) Persons other than the respondent may be permitted to participate as parties if the presiding official finds that:

(1) The final decision could directly and adversely affect them or the class they represent;

(2) They may contribute materially to the disposition of the proceedings; and

(3) Their interest is not adequately represented by existing parties.

(b) A person not named as a party who wishes to participate as a party under this section shall submit a petition to the presiding official within ten (10) days after the person knew or should have known about the proceeding. The petition shall be filed with the presiding official and served on each person who has been made a party at the time of filing. The petition shall state concisely:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(c) Objections to the petition may be filed by any party within ten (10) days after service of the petition.

(d) When petitions to participate as parties are made by individuals or groups with common interests, the presiding official may request all such petitioners to designate a single representative, or he or she may recognize one or more petitioners.

(e) The presiding official shall give each petitioner, as well as the parties, written notice of the presiding official's decision on the petition. For each petition granted, the presiding official shall provide a brief statement of the basis of the decision. If the petition is denied, the presiding official shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae (that is, "friend of the court").

**§ 577.13 Transcript of hearing.**

Evidentiary hearings under § 577.7 of this part shall be recorded verbatim and transcripts thereof shall be provided to parties upon request. Fees for transcripts shall be at the actual cost of duplication.

**§ 577.14 Recomended decision of presiding official.**

(a) *Recommended decision.* Within thirty (30) days after the filing of the transcript with the presiding official, the presiding official shall render his or her recommended decision. The recommended decision of the presiding official shall include findings of the fact and conclusions of law upon each material issue of fact or law presented on the record. The decision of the presiding official shall be based upon the whole record.

(b) *Filing of objections.* Within (10) days after the date of service of the presiding official's recommended decision, the parties may file with the Commission objections to any aspect of the decision, and the reasons therefor.

**§ 577.15 Review by Commission**

The Commission shall affirm or reverse, in whole or in part, the recommended decision of the presiding official by a majority vote within thirty (30) days after the date on which the presiding official issued the decision. The Commission shall provide a notice and order to all parties stating the reasons for its action. In the absence of a majority vote by the Commission within the time provided by this section, the action of the Chairman that is the subject of the appeal shall be deemed vacated.

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Part V

# Department of Transportation

**Federal Railroad Administration**

**49 CFR Part 245**
**Railroad User Fees; Final Rule**

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DEPARTMENT OF TRANSPORTATION

49 CFR Part 245

[FRA Docket No. RSUF-1, Notice No. 7]

RIN 2130-AA62

Railroad User Fees

AGENCY: Federal Railroad Administration; Department of Transportation.

ACTION: Final rule.

SUMMARY: The Federal Railroad Administration ("FRA") is today issuing a final rule establishing the railroad user fee program. The Federal Railroad Safety Act of 1970 (the "Safety Act") requires FRA to equitably assess a schedule of fees on railroads to cover the costs incurred by FRA in administering the Act. The program adopted in the final rule is based substantially on the proposal identified by FRA in the notice of proposed rulemaking ("NPRM"). Some minor adjustments have been made in response to comments received on the NPRM and to clarify certain provisions.

The purpose of the regulation is to implement the authorizing legislation by assessing the fees according to a formula that is based on a combination of road miles, train miles, and employee hours.

DATES: Effective Date: The final rule is effective on August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Gail L. Payne, Senior Program Analyst, Industry Operations and Safety Analysis Division, Office of Policy, (RRP-12), FRA, Washington, DC 20590 (Telephone: 202 366-0384); or William R. Fashouer, Deputy Assistant Chief Counsel, Office of Chief Counsel, (RCC-10), FRA, Washington, DC 20590 (Telephone: 202-366-0616).

SUPPLEMENTARY INFORMATION:

## I. Introduction

### A. Background

Section 10501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, 104 Stat. 1388-399) amended the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*) by adding a new section 216 requiring the Secretary of Transportation to establish by regulation, after notice and comment, a schedule of fees to be assessed equitably to railroads, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors, but not based on the proportion of industry revenues attributable to a railroad or class of railroads. The fees to be collected are to be imposed on railroads subject to the Safety Act and are to be designed to cover the costs of administering the Safety Act, other than activities described in section 202(a)(2) thereof (45 U.S.C. 431(a)(2)). The Secretary's authority under the Safety Act, including the authority to implement new section 216, has been delegated to the Federal Railroad Administrator. (See 49 CFR 1.49(m)).

The Secretary is further directed in section 216 to assess and collect the applicable user fees with respect to each fiscal year before the end of the fiscal year. The aggregate fees received for any fiscal year may not exceed 105 percent of the aggregate of appropriations made by the Congress for the fiscal year for activities covered by the fees. The Secretary's authority to collect fees is to expire on September 30, 1995. FRA estimates that the costs to be incurred by FRA's Office of Safety in administering the Safety Act in fiscal year 1992 that would be reimbursed through user fees will equal approximately $32 million.

### B. History of the User Fee Regulatory Process

On September 30, 1991, FRA published an interim final rule establishing the railroad user fee program for fiscal year 1991 (56 FR 49418). The interim final rule based the collection of railroad user fees for fiscal year 1991 on two criteria: train miles and road miles and was preceded by a notice of proposed rulemaking which was published in the **Federal Register** on May 7, 1991 (56 FR 21216). In proceeding with an interim final rule applicable to fiscal year 1991 only, FRA acceded to the wishes of certain segments of the rail industry, which requested FRA to reopen the proceeding in fiscal year 1992 in order to consider whether there might be other allocation criteria that better distribute the user fee burden across the railroad industry. On November 8, and December 6, 1991, FRA held open meetings to hear suggestions from the railroad industry and the public on options and criteria for the assessment of railroad user fees for fiscal years 1992 through 1995. Participating in the open meetings were representatives of the major railroad industry associations, and a number of individual railroads. FRA published a revised NPRM implementing the railroad user fee program for fiscal year 1992 through 1995 in the **Federal Register** on February 26, 1992 (57 FR 6571).

In its NPRM, FRA proposed a revised allocation formula through which railroad user fees would be assessed. FRA would assess railroad user fees on the basis of three criteria: One criterion, road miles, would be a measure of system size; the second criterion, train miles, would be a measure of volume; and the third criterion, employee hours, would be a measure of employee activity. FRA also proposed to apply a revised sliding scale system to help relieve the user fee burden on light density lines. FRA proposed to apply the revised formula across the board to all railroads, large or small, and to include a minimum fee of $500.00 to ensure that each railroad pays a share of the costs of the FRA safety and enforcement program.

FRA held a public hearing on the NPRM on April 2, 1992. FRA received a number of comments from the public, including more than a dozen written comments and more than 65 pages of hearing transcript.

## II. Overview

FRA has carefully considered the comments it received on the NPRM. As we have indicated throughout this proceeding, FRA appreciates the effort put forth by those who have participated in the user fee regulatory process. Railroads of different size, type, class, and geographic location (to name just a few factors) have very different views on how user fees should be allocated across the railroad industry. FRA has stressed throughout this proceeding that its goals were the adoption of a fair and equitable system that did not involve burdensome administration for either FRA or the railroads. FRA believes very strongly that, within the constraints of the data available, the final rule adopted herein accomplishes those goals.

With these considerations in mind, FRA has decided to proceed as follows in implementing the user fee program. The final rule provides for the allocation of user fees based on the three factors identified by FRA in the NPRM: train miles, road miles, and employee hours. The allocation amongst the three criteria has been adjusted slightly from that included in the NPRM. In the final rule, train miles account for fifty-five percent of the railroad's users fee, road miles account for thirty-five percent of the railroad's user fee and employee hours account for ten percent of the railroad's user fee. The sliding scale proposed in the NPRM has been adopted without change as has the $500.00 minimum fee. FRA has included a number of clarifying changes throughout the final rule reflecting minor adjustments that FRA identified as necessary in light of comments received on the NPRM or from our experience in implementing the

fiscal year 1991 user fee collections. For the most part, these revisions do not reflect substantive changes. Most revisions are clarifications or the provision of greater detail on existing provisions that will assist entities subject to the rule in interpreting and applying it.

## III. Discussion of Comments

Comments were received on the NPRM from 17 railroads, commuter agencies or associations, either through testimony at the public hearing or written comments. Testifying at the public hearing in Washington, DC on April 2, 1992 were representatives of the American Short Line Railroad Association ("ASLRA") (including representatives of several member railroads), the Association of American Railroads ("AAR"), the National Railroad Passenger Corporation ("Amtrak"), Norfolk Southern Corporation ("Norfolk Southern"), and the Railway Labor Executives Association ("RLEA"). Written comments were received from 12 entities, mostly small and medium size railroads, commuter railroads, and industry associations. The volume of comments was significantly reduced from the level FRA received in response to the fiscal year 1991 NPRM. In keeping with FRA's stated policy to consider late filed comments to the extent practicable, FRA considered all comments submitted through May 15, 1992.

### *A. Allocation Formula*

The principal focus of the comments FRA received on the NPRM was the allocation formula and just about all of the commenters addressed this issue in some fashion. The ASLRA and several individual class II and III railroads generally supported the proposed formula while all of the other commenters suggested revisions. Not surprisingly, the addition of the employee hours factor to the allocation formula attracted the most attention. Several commenters supported it as an appropriate reflection of railroad activity and thus, a relevant component in allocating user fees. Other commenters argued that it was inappropriate because it duplicated the train mile factor and unreasonably burdened commuter and passenger railroads.

The addition of the employee hours component attracted considerable attention from Amtrak and the commuter railroads all of which objected to the inclusion of this factor. Amtrak and the commuter railroads argued that their operations were labor intensive, and thus, they were unfairly burdened by the inclusion of this factor. Amtrak further argued that it employed a number of personnel in jobs not found in the freight railroad system and thus it reported significantly higher employee hours than a freight railroad of comparable size. FRA also notes that freight railroads employ substantial numbers of people in jobs not found on Amtrak or commuter railroads. In response to these comments, FRA decided to retain employee hours as part of the allocation formula, but to reduce its proportion of the user fee formula from the twenty percent (20%) proposed in the NPRM to ten percent (10%). The ten percent (10%) withdrawn from the employee hours component has been reassigned equally to the other two factors (road miles and train miles). The resulting formula will be fifty five percent (55%) train miles, thirty five percent (35%) road miles, and ten percent (10%) employee hours.

FRA continues to believe, as noted by ASLRA, that employee hours is a relevant measure of railroad activity and should be included as part of the user fee formula. Among other things, a basic purpose of most of the rail safety statutes is to protect railroad employees. FRA's regulations and inspection and enforcement activity are shaped accordingly.

The original allocation formula proposed by FRA based collection of railroad user fees on two criteria: road miles and train miles. FRA noted in the original NPRM that "FRA selected these criteria because they equitably allocated user fees across the railroad industry, they represented data the industry was already maintaining and therefore imposed only a limited additional reporting burden on the industry, they represented data that FRA could verify, and they allowed FRA to complete the interim rulemaking process in fiscal year 1991."

Commenters suggested that the interim rule placed undue emphasis on the fixed component of rail operations and insufficient weight upon rail activity, thus burdening the light density lines. Other comments suggested that employee hours be included in the allocation formula to offset the emphasis on the fixed component and more equitably reflect the focus of safety activities. Subsequent to the Open Meetings and in response to these and similar comments, FRA sought in the February 29, 1992 NPRM to reduce the weight of system size measures and still equitably allocate user fees. FRA proposed an allocation formula composed of three criteria, road miles, train miles, and employee hours, with respective weights of thirty percent (30%), fifty percent (50%), and twenty percent (20%). These allocations represented FRA's view of a fair allocation between activity and fixed facility components. The commuter and intercity carriers voiced strong opposition to the proposed emphasis on employee hours because they believed a disproportionate number of employees were required for passenger operations vis-a-vis freight operations and that the formula thus operated unfairly to their disadvantage. Further, rail labor was concerned that the user of employee hours in the formula could promote the use of contract employees.

Upon further review, FRA concluded that assigning twenty percent of the allocation formula to the employee hours component produced an allocation that unfairly burdened commuter and intercity carriers. To remedy this inequity, FRA decided that the best course of action was to reduce the employee hours component to ten percent (10%) and reallocate the other ten percent (10%) equally to the other two components. FRA considered and rejected assigning the full ten percent to the road miles component because that would have resulted in an allocation formula weighted too heavily on the fixed facility component which was, of course, one of the principal objections to the interim final rule allocation. Assigning the full ten percent to the road miles component would have increased that factor to forty percent (40%) which FRA considered to be too close to the interim final rule allocation which had generated so much opposition within the industry.

FRA also considered and rejected allocating the full ten percent to the train mile component. While that would have provided some benefits to the commuter and passenger carriers, it retained an allocation too heavily weighted on activity measures. The commuter and intercity passenger carriers have also voiced objections to the train mile component on the basis that this factor also potentially operates to the detriment of their operations which involve the operation of shorter and more frequent trains as opposed to the longer trains operated by some of the large freight carriers. As a result, FRA concluded that assigning the full ten percent (10%) to the train mile component would not adequately ameliorate the inequity identified by the commuter railroads and Amtrak.

Under the revised formula, the fixed facility component (road miles) will account for approximately one-third of the total user fee calculation, while

railroad activity measures (train miles and employee hours) will account for approximately two thirds of the calculation. FRA is of the opinion that this allocation formula produces a fair and reasonable distribution of railroad user fees. Clearly, FRA's goal is to achieve a formula that properly balances fixed facility and performance oriented measures in order to be responsive to the comments we have received throughout this proceeding.

The net effect of the final rule provides relief to 389 low density carriers and an overall reduction to Class II and III carriers of almost 3% from 11.7% of the total user fees under the interim final rule to 8.9% under the final rule adopted herein. The incremental change from 50/30/20 to 55/35/10 results in a negligible increase for Class III carriers and a slight decrease for Class II carriers. While the revised allocation represents an increase in fees for passenger operations from the allocation found in the interim final rule (from about 6.9% to 8.9%), it reflects a reduction of almost one percentage point from the 50/30/20 allocation.

The ASLRA generally supported the formula proposed in the NPRM. The ASLRA noted that the proposed formula weights railroad activity and system size, with emphasis on the former, where it belongs. The ASLRA also noted that the proposed formula is simple, verifiable, and administratively workable. The ASLRA urged FRA to adopt the proposed formula as the best practicable user fee allocation (with a minor adjustment related to switching and terminal railroads). The ASLRA's comments also urged FRA not to adopt proposals involving user fee allocations based on railroad-specific safety expenditures or safety risk assessments. The ASLRA believed that credible data, which are essential to the foundation of a system of this type, are not available and that this type of allocation formula would be unduly complicated and difficult to administer. Finally, the ASLRA favored the scaling factor included in the NPRM and noted that the revised scaling factor would help prevent user fees from pushing marginal line segments operated by short lines and regionals into the abandonment candidate category.

As to switching and terminal railroads, the ASLRA requested FRA to modify the train mile component of the rule to address the calculation of train miles when actual train miles are not known. It was never FRA's intention to impose a requirement that yard switching miles be calculated on the basis of six miles per hour for time actually engaged in yard switching service if the locomotive lacked a mechanism for calculating yard miles. Railroads are authorized to calculate yard switching miles on any reasonable, supportable, and verifiable basis. The opportunity to use six miles per hour is simply offered as an option for railroads that do not wish to develop an otherwise supportable basis. The final rule has been adjusted to clarify FRA's intent on this subject. FRA wishes to highlight, however, that while railroads have an option in how they calculate yard switching miles, they must use a consistent basis for calculating yard switching miles under all FRA reporting requirements.

The AAR, representing the Class I railroads and Amtrak, reiterated the position it advocated in written comments submitted to the FRA shortly after the second public meeting in December 1991. Specifically, AAR proposed that the Class I freight railroads and Amtrak be assessed a portion of the total user fees based on FRA's safety inspection efforts expended on those railroads. AAR further recommended that the fees payable by the Class I freight and Amtrak be divided among them on the basis of route miles and train miles as established in FRA's interim formula for 1991. FRA considered this proposal very carefully in preparing the NPRM for fiscal years 1992–1995. Section D 5 (Association of American Railroads Proposal) of the NPRM (57 FR 6571, 6574) and the discussion following it contains a detailed analysis of the proposal and the reasons why FRA decided not to adopt it as the proposed rule in this proceeding. FRA remains of the view that these reasons remain valid ones and the relevant discussion is incorporated herein by reference.

To summarize our view, the language of section 216 focuses on output/size measures rather than on safety expenditures or individual risk assessments as the basis for allocating user fees. Accordingly, the statute does not require, either explicitly or implicitly, that FRA base the collection of user fees on the extent of oversight a particular railroad or class of railroads receives from the FRA. As indicated in the NPRM, FRA is currently implementing a new National Inspection Plan which will form the basis for allocating FRA safety inspection resources. FRA remains strongly of the opinion that the new National Inspection Plan needs to be implemented on its own merits without requiring it to shoulder the burden of the user fee allocations as well.

In addition to the reasons identified by FRA for rejecting a linkage between the user fee collections and FRA's actual expenditure of safety inspection resources, FRA identified several specific concerns it had with the proposal advocated by the AAR. First, the establishment of three classes of railroads (Class I, II and III) is not related in any way to safety concerns, but rather reflects a revenue-based distinction established by the Interstate Commerce Commission. Revenue-based distinctions are inconsistent with the statute. As a result, there is no railroad safety justification for dividing the industry into three classes and there would be none for assigning FRA's costs among the three classes. FRA does not allocate its safety resources on that basis. Second, FRA noted that its allocation of resources is changing significantly during implementation of the new National Inspection Program. As a result, the actual FRA expenditure of resources in fiscal year 1992 could be significantly different than that expended in 1991. Since the fiscal year 1992 collections are based on 1991 data, FRA did not consider it appropriate to rely on data that may be considerably outdated.

The AAR also requested the agency to consider adopting whatever allocation formula it selected for fiscal year 1992 only and to reopen the proceeding again in fiscal year 1993 in order to consider other allocation options. As the agency has noted on several occasions, it proceeded with an interim final rule for fiscal year 1991 and reopened the proceeding in fiscal year 1992 because the limited time available in fiscal year 1991 did not allow for an extensive period of public involvement in the rulemaking process. To allow for broader public involvement in the fiscal year 1992 through 1995 proceeding, FRA conducted a series of public meetings and provided for a longer public comment period on the NPRM. Accordingly, the agency is of the view that it would not be appropriate to reopen the proceeding each year to consider different allocation formulas. The two-stage process undertaken so far has been sufficiently confusing to covered railroads that FRA would certainly not want to repeat the process on an annual basis. The agency is satisfied that the user fee collection process established in this final rule is a fair and reasonable one. Accordingly, the agency has decided to adopt it for the fiscal years 1992 through 1995 as proposed in the NPRM. Naturally, our decision not to reopen the proceeding on an annual basis does not mean that the

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agency will not monitor the user fee allocation formula adopted herein and take whatever action is appropriate if the agency determines that a fair allocation of railroad user fees is not being maintained.

The FRA also received a significant number of comments from commuter railroads whose participation in the current rulemaking was considerably larger than the fiscal year 1991 proceeding. A number of the comments received from the commuter railroads related to the issues of (1) the fairness and equity of collecting user fees from commuter railroads and (2) the problems commuter railroads have in meeting the costs of providing service and the additional burden associated with paying user fees. Several commenters also noted the undesirable consequences that may flow from the fare increases commuter railroads will have to impose to generate sufficient funds to make user fee payments. FRA has noted from the very beginning of this proceeding that there are a number of issues related to user fees over which it has no control. The existence of user fees and the amount to be collected constitute the most prominent of these. FRA certainly recognizes that the payment of railroad user fees produces certain adverse consequences for both freight and commuter railroads and requires a reallocation of resources. Lack of resources to meet user fee and other costs is not a problem restricted to commuter railroads. In considering this issue, FRA has concluded that it has limited discretion in the area of what railroads are or are not to be subject to user fees. Commuter railroads constitute a significant component of the railroad industry and one that currently receives an important and undoubtedly growing level of oversight from FRA's safety personnel. In addition, because of the nature of the user fee statutory mandate, the establishment of any exemptions requires a reallocation of the user fee burden to other railroads. Finally, the statute evidences no congressional intention to exempt commuter railroads and does include criteria (*e.g.*, passenger miles) consistent with charging user fees to commuter railroads. In light of these considerations, FRA cannot justify either a blanket exemption for commuter railroads, as some commenters suggested, or placement in the minimum fee ($500.00) category, as others proposed.

As noted above, the commuter railroads expressed strong reservations over the inclusion of the employee hours component. FRA has recognized these concerns are legitimate ones and has adjusted the formula to alleviate any unfairness to commuter railroads.

Several commenters supported other bases upon which to allocate user fees, including gross ton miles, revenue ton miles, and car miles. FRA considered all of these items when first faced with the challenge of developing a user fee regulation and commenters have previously raised them in comments at earlier stages in this proceeding. Since none of these factors are currently reported by all railroads, employing them as a basis for collecting user fees not only adds a new data collection and reporting burden but also creates an almost insurmountable burden in developing sound data to govern the first year's user fee collections. In light of these difficulties, FRA has rejected these suggestions while conceding that absent these drawbacks one or more of them might make a fine basis upon which to fairly allocate railroad user fees.

Several commenters raised specific issues regarding what types of activities that must be reported as part of the employee hours component. Each railroad is already required to report its employee hours to FRA under 49 CFR part 225 and FRA's Guide for Preparing Accident/Incident Reports contains additional information detailing how employee hours are to be calculated. FRA does not intend to alter the types of information to be submitted under the user fee reporting requirement. Thus, volunteer hours and hours worked by contractor employees are not included in the employee hours figure to be provided to FRA under the accident/incident rules and this rule does not change that. The RLEA objected to the failure to include contractor employee hours worked in the employee hours reporting requirement. FRA does not believe that the benefit associated with including contractor hours justifies the additional burden associated with collecting employee hours for these activities. The record indicates that adding contractor employee hours would be administratively burdensome since a significant percentage of contract work in the industry is currently performed on a unit cost or fixed cost basis for which there is no employee hour data. In addition, work performed by the hour often has more than just employee hours associated with it, since the rates usually include equipment. Railroads could require future agreements with contractors to include employee hour data, however, this would entail additional costs (for the contractors to provide such data and for the railroads to assemble it) and some contractors would undoubtedly be reluctant to provide this information on contracts with lump sum prices. Including employee hour data for contractors would be particularly difficult for fiscal year 1992 collections since data supporting these hours was not required to be kept during calendar year 1991 (the relevant reporting period for the fiscal year 1991 user fee). Finally, as noted above, contractor hours are not reported by railroads under the employee hours reporting requirements found in 49 CFR part 225. Since there are significant benefits to keeping the reporting requirements consistent, not the least of which is ease of administration and a lesser burden on the industry, the agency does not favor adding contractor hours to the user fee employee hours reporting requirement.

B. Covered Activities

FRA received minimal comment on the issue of what FRA activities should be reimbursed from user fees. The American Trucking Association reiterated comments it provided on the fiscal year 1991 NPRM to the effect that certain additional items of expense incurred by FRA should be reimbursed by the railroad industry through user fees. FRA responded to these suggestions in detail in the interim final rule (See 56 FR 49421) and the agency's views on these matters have not changed.

## IV. Section-by-Section Analysis

Section 245.1 describes the purpose and scope of the user fee regulations. No comments were received on this section and it remains unchanged from the NPRM.

Section 245.3 defines the applicability of these regulations. The user fee rule applies to entities meeting the statutory definition of railroad, except those railroads whose entire operations are confined within an industrial installation. FRA's rationale for excluding these so called "plant railroads" was outlined in the original May, 1991 NPRM. An additional discussion of this topic can be found in 49 CFR part 209, Appendix A. The term "railroad" is otherwise intended to have the full breadth encompassed in the statutory definition found in section 202(e) of the Safety Act (45 U.S.C. 431(e)). This section remains unchanged from the NPRM.

Section 245.5 includes a series of definitions of important terms employed in the user fee regulation. In response to inquiries received by FRA during the collection of the fiscal year 1991 user fees, FRA has added definitions of

several additional terms. New definitions have been added for industrial track, responsible entity, and yard track. The definitions of industrial track and yard track have been included to assist railroads in completing the road mile portion of the user fee reporting form.

FRA has also added a definition of the term responsible entity. For the purposes of railroad user fees, FRA will consider the responsible entity to be the entity that owned the railroad as of December 31 of the applicable fiscal year. FRA's fiscal year runs from October 1 to September 30. As a result, for fiscal year 1992, the responsible entity would be determined as of December 31, 1991. FRA has incorporated the concept of a responsible entity into the user fee rule because of difficulties encountered in fiscal year 1991 collections in terms of entities that changed owners during the fiscal year. FRA is of the opinion that the parties to these transactions are best able to allocate the user fee responsibility amongst themselves. December 31 was selected because it coincides with the existing road mile reporting date.

A minor clarification has been made to the definition of train mile in terms of calculating yard switching miles to indicate that the option of calculating yard switching miles at a rate of 6 mph for the time actually engaged in yard switching service is only one option available to a railroad for calculating these train miles. FRA will accept any method of calculating these miles that is reasonable, supportable, and verifiable. No other changes have been made to § 245.5.

Section 245.7 identifies the penalties FRA may impose upon any individual or entity that violates any requirement of this part. No comments were received on this section and it remains unchanged from the NPRM.

Section 245.101 establishes the user fee reporting requirements and identifies the information which must be reported to FRA on an annual basis. FRA has made several changes to this section designed to clarify road mile and employee hours reporting requirements. In terms of the road mile component, it is FRA's intention that the road miles associated with a given section of railroad should be reported by only one entity. As a result, FRA has amended § 245.101(d) to provide that road miles are to be reported for all track owned, operated under lease, or controlled by the railroad. FRA reiterates that road miles consisting of leased track are to be reported by the lessee railroad. Road miles for jointly owned track are to be reported by the railroad controlling operations on the line. Section 245.101(d)(1) has been amended to clarify FRA's intention on this issue as well.

The fiscal year 1991 user fee assessment process brought to FRA's attention the fact that certain railroads have inappropriately designated track segments of unusual length as industrial or yard tracks. In the absence of exceptional circumstances, FRA does not intend for industrial or yard tracks to extend beyond a few miles at most. As noted above in the discussion of changes to § 245.5, FRA has added definitions of both industrial track and yard track to clarify the treatment of these two situations. Finally, FRA has added a clarification that road miles do not include track that was out of service for the entire calendar year that is the subject of the report.

FRA has made one change to § 245.101(e) to indicate that employee hours do not include hours worked by individuals not employed directly by the reporting railroad (i.e., contractor employees). An explanation of FRA's views on this issue was included above.

FRA has added a new section (h) to § 245.101 (and renumbered the original (h) as (i)) to emphasize that each railroad required to report to FRA under various reporting requirements must report information in a consistent manner, e.g. train miles reported under user fee reporting requirements must be consistent with train miles reported to FRA on the Illness and Injury Summary Report. Railroads have a continuing obligation to explain and resolve any discrepancies.

Finally, FRA reiterates the requirement in § 245.101 that each railroad is required to include on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees, information identifying all subsidiary railroads for which it is reporting and to provide a breakdown of train miles, road miles, and employee hours for each of these subsidiaries. Again, this information shall be reported at the same level of aggregation as it is reported under part 225 and other FRA reporting requirements. Subsidiaries reporting part 225 data independent of their controlling entity should also report user fee data independent of their controlling entity.

Section 245.103 requires each railroad subject to this part to maintain adequate records supporting the information submitted to FRA regarding the railroad's train miles, road miles, and employee hours for the previous calendar year. No changes have been made to this section as included in the NPRM.

Section 245.105 requires relevant records to be maintained for three years. No comments were received on this section and it remains unchanged from the NPRM.

Section 245.201 describes the method FRA will use for calculating the user fee to be paid by each railroad subject to this part for fiscal years 1992 through 1995. As noted in the discussion above, the only change made to this section involves altering the assessment formula from fifty percent train miles, thirty percent road miles, and twenty percent employee hours to fifty five percent train miles, thirty five percent road miles, and ten percent employee hours.

Section 245.301 outlines the procedures that will be employed by FRA in collecting railroad user fees. FRA has eliminated the Preliminary Assessment Notice to be provided to each railroad. Providing an estimated assessment to each railroad proved to be administratively burdensome and created unnecessary confusion for many railroads. In publishing a summary of its calculations in the **Federal Register**, FRA will provide the information that can be used by the railroads to calculate an estimated user fee bill and to make necessary plans and budget adjustments in a more efficient and effective manner. FRA plans to publish this notice after it has had an opportunity to collect and collate all of the user fee reporting forms from the individual railroads.

Section 245.303 provides that each railroad subject to this part has an obligation to pay to FRA an annual railroad user fee. Payments are due to FRA no later than thirty days after the Assessment Notice is mailed. FRA has added a requirement that railroads making aggregate payments for one or more subsidiaries or affiliates must return the payment records received from FRA for each of the subsidiaries or affiliates and must also list all applicable bill numbers with the payment. FRA has also added a new subsection (b) noting that the responsible entity, defined to mean the railroad subject to this part as of December 31 of the applicable fiscal year, is responsible for paying the fee for that year. In the event all or a portion of the railroad is sold during the year, it will be the responsibility for the parties involved in the transaction to prorate the bill among themselves in an appropriate manner. FRA lacks the data to accomplish this task on its own and believes that the individual entities involved in the transaction are best able to make a proper allocation. A further

discussion of this topic was included under § 245.5 above.

Finally, FRA has added a new subsection (c) indicating that no user fee will be due from railroads that properly report both zero train miles and zero road miles on FRA Form 6180.91. This situation can occur in instances where railroads have no operations (reporting zero train miles) and lease the track they own to other operators (under § 245.101(d)(1) the lessee railroad reports the road miles for leased track). Under the interim final rule, these railroads qualified as railroads subject to user fees and were assessed a minimum fee. FRA has concluded that assessing a user fee on these entities is not appropriate since it results in effectively a double counting. The road miles are reported by the lessee railroad and the user fee paid by the lessee railroad includes a charge for relevant road miles.

## V. Regulatory Impact

### *A. Executive Order 12291 and DOT Regulatory Policies and Procedures*

These final regulations have been evaluated in accordance with existing regulatory policies. They are considered to be nonmajor under Executive Order 12291 because they would not have an annual effect on the economy of $100 million or more, produce a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or produce significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These final regulations are considered to be significant under section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures (the "Procedures") (44 FR 11034, February 26, 1979) because of the widespread interest within the railroad industry in the user fee program.

FRA has determined that these regulations will not in and of themselves significantly alter the fees to be paid by individual railroads or produce a change in the total user fees to be collected. In fiscal year 1991, approximately 600 railroads were assessed railroad user fees. The Class I railroads accounted for about 81 percent of the total fees, Class II railroads about 6 percent of the fees, Class III railroads about 6 percent of the fees, and the major passenger rail carriers about 7 percent. Under the final rule, the user fees to be paid by small and medium size railroads (Class II and Class III railroads) would be reduced while the share to be paid by Amtrak and the other major passenger rail carriers would be larger. FRA has determined that under the final rule the Class II and Class III railroads would be responsible for approximately 9 percent of the total fees while the major passenger railroads would be responsible for approximately 9 percent of the fees.

FRA noted in the NPRM that by operation of law the railroad user fees collected in fiscal years 1992 through 1995 will be greater than the amount collected in fiscal year 1991 because the fiscal year 1991 collections involved reimbursement for FRA's safety enforcement costs for only seven months of the year. In addition, the user fees to be collected in fiscal years 1992 through 1995 will include some railroad safety enforcement costs that were not included in the fiscal year 1991 assessments. Both of these circumstances were also discussed in FRA's original notice of proposed rulemaking.

In accordance with section 10(e) of the Procedures, FRA has prepared a Regulatory Evaluation, which includes a brief analysis of the economic consequences of the revisions to the user fee regulations and an analysis of the anticipated benefits and impacts. The regulatory evaluation has been included in the docket for this proceeding.

### *B. Regulatory Flexibility Act*

FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule applies only to railroads, and accordingly, would have no direct impact on small units of government (except to the extent they own or operate a railroad), or other businesses or organizations. Although a substantial number of small railroads would be subject to these regulations, the smallest of these carriers would only be subject to the minimum fee of $500 which does not constitute a significant economic impact under the Regulatory Flexibility Act. FRA has endeavored throughout this proceeding to lessen the burden on light density railroads and to avoid having railroad user fees act as an incentive to abandonment of light density lines. As noted above, the revised allocation formula included in this final rule will have a positive effect on small and medium size carriers, since Class II and Class III railroads, as a group, will pay proportionately less under this rule than under the allocation formula contained in the interim final rule.

### *C. Executive Order 12612—Federalism*

The regulations adopted herein will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted. The regulations apply to commuter rail operators and will have an impact on state and local governments which operate or support freight or commuter rail service. However, the user fees to be paid by commuter rail operators and state-owned freight railroads are not substantial and cannot be considered to constitute a significant effect on the states involved. FRA believes that it is also worth noting that commuter rail operators and state-owned freight railroads benefit from the FRA safety and enforcement program and as such they come within the ambit of those entities which Congress determined should pay to support the cost of that program.

### *D. Paperwork Reduction Act*

This final rule contains information collection requirements. FRA has submitted these information collection requirements to the Office of Management and Budget ("OMB") for approval in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Certain of the information collection requirements were included in the interim final rule and previously received OMB approval. FRA has endeavored to keep the burden associated with railroad user fees as simple and minimal as possible. The sections that contain information collection requirements and the estimated time to fulfill each requirement are as follows:

| Section | Brief description | Est. average time |
|---|---|---|
| 245.101 | Annual Report of Railroads Subject to User Fees. | 1 to 8 ours depending on size of railroad. |
| 245.101 | Revised Annual Report. | 45 minutes. |
| 245.103 | Recordkeeping | 5 minutes. |

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. OMB has assigned the information collection requirements that were included in the interim final rule OMB approval number 2130-0532. This final rule involves the

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addition of information collection activities related to the inclusion of employee hours in the user fee annual report.

**VI. Environmental Impact**

FRA has evaluated these final regulations in accordance with its procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, executive orders, and DOT Order 5610.1c. These final regulations meet the criteria that establish this as a non-major action for environmental purposes.

**List of Subjects in 49 CFR Part 245**

Railroad user fee, reporting and recordkeeping requirements.

In consideration of the foregoing, chapter II, subtitle B, of title 49, Code of Federal Regulations is amended as follows:

1. Part 245 is revised to read as follows:

## Part 245—RAILROAD USER FEES

**Subpart A—General**

Sec.
245.1 Purpose and Scope.
245.3 Application.
245.5 Definitions.
245.7 Penalties.

**Subpart B—Reporting and Recordkeeping**

245.101 Reporting Requirements.
245.103 Recordkeeping.
245.105 Retention of Records.

**Subpart C—User Fee Calculation**

245.201 User Fee Calculation.

**Subpart D—Collection Procedures and Duty to Pay**

245.301 Collection Procedures.
245.303 Duty to Pay.

**Authority:** 45 U.S.C. 431, 437, 438, 446; 49 CFR 1.49(m).

### Subpart A—General

**§ 245.1 Purpose and scope.**

(a) The purpose of this part is to implement section 216 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 446) (the "Safety Act") which requires the Secretary of Transportation to establish a schedule of fees to be assessed equitably to railroads to cover the costs incurred by the Federal Railroad Administration ("FRA") in administering the Safety Act (not including activities described in section 202(a)(2) thereof).

(b) Beginning in the fiscal year ending September 30, 1991, each railroad subject to this part shall pay an annual user fee to the FRA. For fiscal years 1992 through 1995, the user shall be calculated by FRA in accordance with § 245.101. The Secretary's authority to collect user fees shall expire on September 30, 1995, as provided for in section 216(f) of the Safety Act.

**§ 245.3 Application.**

This part applies to all railroads except those railroads whose entire operations are confined within an industrial installation.

**§ 245.5 Definitions.**

As used in this part—

(a) *Employee hours* means the number of hours worked by all employees of the railroad during the previous calendar year.

(b) *FRA* means the Federal Railroad Administration.

(c) *Industrial track* means a switching track serving industries, such as mines, mills smelters, and factories.

(d) *Light density railroad* means railroads with 1200 or less train-miles per road mile.

(e) *Main track* means a track, other than an auxiliary track, extending through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

(F) *Passenger service* means both intercity rail passenger service and commuter rail passenger service.

(g) *Railroad* means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation (*See,* 45 U.S.C. 431(e)).

(h) *Responsible Entity* means the railroad subject to this part as of December 31 of the applicable fiscal year (October 1 to September 30), i.e December 31, 1991 for fiscal year 1992, December 31, 1992 for fiscal year 1993, etc.

(i) *Road miles* means the length in miles of the single or first main track, measured by the distance between terminals or stations, or both. Road miles does not include industrial and yard tracks, sidings, and all other tracks not regularly used by road trains operated in such specific service, and lines operated under a trackage rights agreement.

(j) *Safety Act* means the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*)

(k) *Sliding Scale* means the adjustment made to the mile of road of light density railroads. The sliding scale is as follows:

| Train miles per road mile | Scaling factor |
|---|---|
| Up to 500 | .0 |
| 501 to 750 | .25 |
| 751 to 1000 | .50 |
| 1001 to 1200 | .75 |
| 1201 and above | 1.00 |

The scaling factor is multiplied by the preliminary rate per road mile for each railroad for the year.

(l) *Trackage rights agreement* means an agreement through which a railroad obtains access and provides service over tracks owned by another railroad where the owning railroad retains the responsibility for operating and maintaining the tracks.

(m) *Train* means a unit of equipment, or a combination of units of equipment (including light locomotives) in condition for movement over tracks by self-contained motor equipment.

(n) *Train mile* means the movement of a train a distance of one mile measured by the distance between terminals and/or stations and includes yard switching miles, train switching miles, and work train miles. Yard switching miles may be computed on any reasonable, supportable, and verifiable basis. In the event actual mileage is not computable by other means, yard switching miles may be computed at the rate of 6 mph for the time actually engaged in yard switching service.

(o) *Yard track* means a system of tracks within defined limits used for the making up or breaking up of trains, for the storing of cars, and for other related purposes, over which movements not authorized by timetable, or by train order may be made subject to prescribed signals, rules or other special instructions. Sidings used exclusively as passing track and main line track within yard limits are not included in the term yard track.

**§ 245.7 Penalties.**

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation. Civil penalties may be assessed against individuals only for willful violations. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 45 U.S.C. 438(e) for knowingly and willfully falsifying records or reports required by this part.



### Subpart B—Reporting and Recordkeeping

**§ 245.101 Reporting requirements.**

(a) Each railroad subject to this part shall submit to FRA, not later than March 1st of each year (August 1st, for the fiscal year ending September 30, 1992) a report identifying the railroad's total train miles for the prior calendar year, the total road miles owned, operated under lease, or controlled (but not including trackage rights) by the railroad as of December 31 of the previous calendar year, and the railroad's total number of employee hours for the prior calendar year. An entity shall be considered a railroad subject to this part if it conforms to the definitions found in § 245.5(g) and (h) above. Each railroad shall report all of the data for the entire relevant calendar year whether or not its present operations generated all of the reportable data. This report shall be made on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees and shall be filed by the Responsible Entity (see § 245.5(h)). The report shall include an explanation for an entry of zero for train miles, road miles, or employee hours. Each railroad shall also identify all subsidiary railroads for which it is reporting and provide a breakdown of train miles, road miles, and employee hours for each subsidiary. Finally, each railroad shall enter its corporate billing address for the user fees, and the name, title, telephone number, date, and a signature of the person submitting the form to FRA.

(b) FRA anticipates mailing blank copies of FRA Form 6180.91—Annual Report of Railroads Subject to User Fees to each railroad during the month of January (the month of July for the fiscal year ending September 30, 1992) for the railroad's use in preparing the report. This action by FRA is for the convenience of the railroads only and in no way affects the obligation of railroads subject to this part to obtain and submit FRA Form 6180.91 to FRA in a timely fashion in the event a blank form is not received from FRA. Blank copies of FRA Form 6180.91 may be obtained from the Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590.

(c) Train miles, as defined in § 245.5(n), shall be calculated by the railroad in accordance with the following considerations:

(1) Each railroad subject to this part is to report the train miles for the freight and passenger service it operates without regard to track or facility ownership.

(2) Train miles are to be reported by both freight and passenger railroads and shall include miles run between terminals or stations, or both, miles run by trains consisting of empty freight cars or without cars, locomotive train miles run, miles run by trains consisting of deadhead passenger equipment, motor train miles run, yard-switching miles run, work train miles, and train switching miles.

(d) Road miles, as defined in § 245.5(i), shall be calculated by the railroad in accordance with the following considerations:

(1) Road miles to be reported shall include all track owned, operated under lease, or controlled by the railroad but shall not include track used under trackage rights agreements. (Note: road miles consisting of leased track are to be reported by the lessee railroad). Road miles consisting of jointly-owned track or track jointly operated under lease shall be reported by the railroad controlling operations over the track. Road miles for a given section of railroad should be reported by only one railroad.

(2) Road miles to be reported shall not include industrial track, yard tracks, sidings, and other tracks not regularly used by road trains operated in such specific service. The determination that a particular track segment qualifies as industrial track or yard track must be made on a reasonable and supportable basis. Road miles do not include track which was out of service for the entire calendar year that is the subject of the user fee report.

(e) Employee hours, as defined in § 245.5(a), shall be calculated by the railroad in accordance with the following considerations: Employees hours to be reported include the number of hours worked by all railroad employees, regardless of occupation, during the previous calendar year. Include all employees in the occupational categories shown in appendix D of the FRA Guide for Preparing Accident/Incident Reports. Employee hours do not include time paid but not actually worked, such as holidays, vacations, etc. Employee hours do not include hours worked by volunteers. Employee hours do not include hours worked by individuals not employed directly by the reporting railroad (i.e. contractor employees).

(f) In computing both train miles and road miles, fractions representing less than one-half mile shall be disregarded and other fractions considered as one mile.

(g) Each railroad subject to this part has a continuing obligation to assure that the information provided to FRA on Form 6180.91—Annual Report of Railroads Subject to User Fees is accurate. Should a railroad learn at a later date that the information provided was not correct, it shall submit a revised Form 6180.91 along with a letter explaining in detail the discrepancy.

(h) Each railroad subject to this part has an obligation to assure that the information provided to FRA under this part is consistent with information provided to FRA under other reporting requirements, in particular reports submitted under 49 CFR part 225—Railroad Accidents/Incidents: Reports Classification, and Investigations. The railroad shall fully explain and resolve any discrepancies.

(i) The FRA has prepared a questionnaire entitled "Written Questionnaire on Whether Your Company Is A 'Railroad' Subject To FRA User Fee Regulations" (FRA Form 6180.90) in order to assist in determining whether certain entities meet the definition of "railroad" included in § 245.5 or constitute railroads whose entire operations are confined within an industrial installation ("plant railroads") excluded from this part under § 245.3. Copies of FRA Form 6180.90 are available from the Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590.

**§ 245.103 Recordkeeping.**

Each railroad subject to this part shall maintain adequate records supporting its calculation of the railroad's total train miles for the prior calendar year, total road miles as of December 31 of the previous calendar year, and the total employee hours for the previous calendar year. Such records shall be sufficient to enable the FRA to verify the information provided by the railroad on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees. Such records shall also be available for inspection and copying by the Administrator or the Administrator's designee during normal business hours.

**§ 245.105 Retention of records.**

Each railroad subject to this part shall retain records required by § 245.103 for

at least three years after the end of the calendar year to which they relate.

## Subpart C—User Fee Calculation

### § 245.201 User fee calculation.

(a) The fee to be paid by each railroad shall be determined as follows:

(1) After March 15th of each year (August 1st for the fiscal year ending September 30, 1992), FRA will tabulate the total train miles, total employee hours, and total road miles for railroads subject to this part for the preceding calendar year. FRA's calculations will be based on the information supplied by railroads under § 245.101 hereof, and other reports and submissions which railroads are required to make to FRA under applicable regulations (i.e. 49 CFR parts 225 and 228). At the same time, FRA will calculate the total cost of administering the Safety Act for the current fiscal year (other than activities described in section 202(a)(2) thereof) which will represent the total amount of user fees to be collected.

(2) Using tabulations of total train miles, total employee hours, total road miles, and the total cost of administering the Safety Act, FRA will calculate a railroad's user fee assessment as follows:

(i) The assessment rate per train mile will be calculated by multiplying the total costs of administering the Safety Act by 0.55 and then dividing this amount (i.e., fifty-five percent of the total amount to be collected) by the total number of train miles reported to the FRA for the previous calendar year. The result will be the railroad user fee assessment rate per train mile for the current fiscal year.

(ii) The assessment rate per employee hour will be calculated by multiplying the total costs of administering the Safety Act by 0.1 and then dividing this amount (i.e., 10 percent of the total amount to be collected) by the total number of employee hours reported to the FRA for the previous calendar year. The result will be the railroad user fee rate per employee hour for the fiscal year.

(iii) The assessment rate per road mile will be calculated in three steps. First, FRA will determine a preliminary assessment rate per road mile by multiplying the total costs of administering the Safety Act by 0.35 and dividing this amount (i.e., thirty-five percent of the total amount to be collected) by the total road miles reported to FRA for the previous calendar year. Second, FRA will adjust this preliminary rate per road mile for each light density railroad by multiplying the preliminary rate by the appropriate scaling factor identified in § 245.5(h). The result will be a reduced assessment rate per road mile for light density railroads. Third, FRA will adjust the preliminary assessment rate per road mile for all railroads except light density railroads by adding to their preliminary rate an incremental amount reflecting the reallocation of the relief provided to light density railroads under step 2 using the sliding scale. The incremental amount is calculated by subtracting (A) the total amount to be collected from light density railroads after application of the sliding scale from (B) the total amount that would have been collected from light density railroads using the preliminary assessment rate and developed under step 1 and (C) dividing the resulting amount by the total road miles reported to FRA by all railroads except light density railroads. The incremental amount is then added to the preliminary assessment rate for all railroads except light density railroads to derive the assessment rate per road mile for all railroads except light density railroads. The results will be a modified assessment rate per road mile for light density railroads qualifying under step 2 and a general assessment rate applicable to all other railroads. In those cases where the computed fee is less than the defined minimum, the net increase attributable to the application of the minimum standard is not included in the reallocation process under step 3 and is instead added to total collections.

(b) The user fee to be paid by each covered railroad is the greater of $500.00 or the sum of the railroad's train miles times the assessment rate per train mile, the railroad's employee hours times the assessment rate per employee hour, and the railroad's road miles times the applicable assessment rate per road mile.

## Subpart D—Collection Procedures and Duty to Pay

### § 245.301 Collection procedures.

(a) After March 15th of each year (August 15th for the fiscal year ending September 30, 1992), FRA will publish in the **Federal Register** a notice containing FRA's preliminary estimates of the total user fee to be collected, the assessment rate per train mile, the assessment rate per employee hour, and the assessment rate per road mile (as adjusted by the sliding scale). The information published by FRA will be sufficient to enable each railroad to calculate its estimated user fee bill for the fiscal year on the basis of the train mile, employee hour, and road mile information provided by the railroad to FRA.

(b) After June 1st of each year, (August 15th for the fiscal year ending September 30, 1992), FRA will provide to each covered railroad a notice (the "Assessment Notice") containing FRA's final calculations of the total user fee to be collected, the assessment rate per train mile, the assessment rate per employee hour, the assessment rate per road mile (as adjusted by the sliding scale), the train miles, employee hours, and road miles for the railroad for the prior calendar year, the user fee to be paid by the railroad, and a statement and payment record form. FRA will mail the Assessment Notice sufficiently in advance of the end of the fiscal year in order to allow all collections to be completed prior to the end of the fiscal year. FRA will mail the Assessment Notice to the billing address designated by the railroad on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees.

### § 245.303 Duty to pay.

(a) Beginning in the fiscal year ending September 30, 1991, each railroad subject to this part shall pay an annual railroad user fee to the FRA. Payment in full shall be received by FRA no later than thirty days after the Assessment Notice is mailed. Payment is made only when received by FRA. Payments in excess of ten thousand dollars ($10,000.00) shall be made by wire transfer through the Federal Reserve communications, commonly known as Fedwire, to the account of the U.S. Treasury in accordance with the instructions provided in the Assessment Notice. Payments of ten thousand dollars or less shall be by check or money order payable to the Federal Railroad Administration. The payment shall be identified as the railroad's user fee by noting it with the User Fee Bill Number as assigned by FRA and by returning the payment record received with the Assessment Notice. Payment shall be sent to the address stated in the assessment notice. Any railroad making an aggregate payment for one or more subsidiaries or affiliates should return the payment records for each and list all applicable Bill Numbers with the payment.

(b) The responsibility for paying the user fee rests with the responsible entity (see § 245.5(h)). Parties involved in purchase and sale transactions of railroad(s) or portions of a railroad shall be responsible for allocating the user fee amongst the interested entities in an appropriate fashion. FRA will not prorate user fee bills.

(c) No user fee will be collected from railroads that properly report zero train

miles and zero road miles on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees.

(d) Payments not received by the due date will be subject to allowable interest charges, penalties, and administrative charges (31 U.S.C. 3717). Follow-up demands for payment and other actions intended to assure timely collection, including referral to local collection agencies or court action, will be conducted in accordance with Federal Claims Collection Standards (4 CFR chapter II) and Departmental procedures (49 CFR part 89).

Issued in Washington, DC, on July 2, 1992.

**Gilbert E. Carmichael,**

*Federal Railroad Administrator.*

[FR Doc. 92-16026 Filed 7-8-92; 8:45 am]

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Part VI

# Environmental Protection Agency

## Thirtieth Report of the Interagency Testing Committee to the Administrator; Notice

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**ENVIRONMENTAL PROTECTION AGENCY**

**[OPPTS-41037; FRL-4071-4]**

## Thirtieth Report of the Interagency Testing Committee to the Administrator, Receipt of Report and Request for Comments Regarding Priority Testing List of Chemicals

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its 30th Report to the Administrator of EPA on May 29, 1992. As noted in this Report, which is included with this notice, the Committee revised the Priority Testing List by adding one chemical group, the siloxanes, and four chloroalkyl phosphates: 1,2-ethanediyl tetrakis(2-chloro-1-methylethylene) phosphate (TCIEP); 2,2-bis(chloromethyl)-1,3-propanediyl tetrakis(2-chloroethyl) phosphate (TCEBP); oxydi-2,1-ethanediyl tetrakis(2-chloroethyl) phosphate (TCEDP); and 2-chloro-1-methylethyl bis(2-chloropropyl) phosphate (DCPCEP). These chemicals are recommended. There are no designated or recommended with intent-to-designate chemicals.

The ITC removed two chemicals from the Priority Testing List in the 30th Report as a result of EPA actions. Sodium cyanide and acrylic acid, designated in the 27th ITC Report, were removed because EPA issued a consent order for sodium cyanide on December 17, 1991 (56 FR 65442), and for Acrylic acid on March 4, 1992 (57 FR 7856).

EPA invites interested persons to submit written comments on the Report.

**DATES:** Written comments should be submitted by August 10, 1992.

**ADDRESSES:** Send four copies of written submissions to: TSCA Public Docket Office (TS-793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE G004, 401 M St., SW., Washington, DC 20460. Submissions should bear the document control number (OPPTS-41037; FRL-4071-4). The public record supporting this action, including comments, is available for public inspection in Rm. NE G004 at the address noted above from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. E-543B, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** EPA has received the TSCA Interagency Testing Committee's 30th report to the Administrator.

### I. Background

TSCA (Pub. L. 94-469, 90 Stat. 2003 et seq; 15 U.S.C. 2601 et seq.) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the Interagency Testing Committee to recommend chemicals and chemical groups to the Administrator of EPA for priority testing consideration. Section 4(e) directs the ITC to revise the TSCA section 4(e) Priority Testing List at least every 6 months. The ITC's most recent revisions to this List are included in the Committee's 30th Report. The Report was received by the Administrator on May 29, 1992, and is included in this Notice. The Report adds one chemical group and 4 chloroalkyl phosphates to the TSCA section 4(e) Priority Testing List.

### II. Written and Oral Comments

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals.

A notice will be published at a later date in the **Federal Register** adding the substances recommended in the ITC's 30th Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716), which requires the reporting of unpublished health and safety studies on the listed chemicals. That notice will also add the chemicals to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR part 712). The section 8(a) rule requires the reporting of production volume, exposure, and release information on the listed chemicals.

### III. Status of List

The ITC's 30th Report notes the addition of one chemical group and 4 chloroalkyl phosphates to the Priority Testing List, and the removal of sodium cyanide and acrylic acid from the List. The current Priority Testing List contains 24 chemicals and 23 chemical groups, 11 of these chemicals are designated.

**Authority:** 15 U.S.C. 2603.

Dated: June 30, 1992.

**Charles M. Auer,**

*Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.*

## Thirtieth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

*Summary*

The U.S. Congress created the Interagency Testing Committee (ITC) under Section 4(e) of the Toxic Substances Control Act (TSCA) to recommend chemicals and chemical groups to the Administrator of the U.S. Environmental Protection Agency (EPA) for testing under Section 4(a) of TSCA and to facilitate coordination of chemical testing sponsored or required by U.S. Government organizations represented on the Committee. Congress directed the Committee to: (1) organize their recommendations as the Priority Testing List, (2) revise the Priority Testing List at least every 6 months and (3) transmit these revisions to the EPA Administrator for publication in the **Federal Register**. During this reporting period (11/28/91 to 5/27/92), the Committee revised the TSCA section 4(e) Priority Testing List by adding two chemical groups and removing two chemicals.

Recent questions related to the safety of siloxanes for a number of medical uses, including breast implants, prompted the Food and Drug Administration (FDA) to request that the Committee review the health effects of siloxanes. The Committee added a group of 56 siloxanes to the Priority Testing List and recommended them for autoimmune effects, cancer, reproductive effects and developmental toxicity testing and for epidemiological studies.

The Committee also added a group of four chloroalkyl phosphates to the Priority Testing List and recommended them for screening tests, because there are few publicly-available data and because these chemicals are structurally similar to five chloroalkyl phosphates that were recommended in the Committee's 23rd Report.

The Committee removed sodium cyanide and acrylic acid from the Priority Testing List because EPA implemented the Committee's testing recommendations.

The Committee reviewed 350 studies on the 5 chloroalkyl phosphates recommended in the Committee's 23rd Report and deferred them to provide an opportunity for manufacturers to submit exposure data and to discuss voluntary testing.

During this reporting period, a few Committee members participated in EPA's, National Cancer Institute (NCI's) and National Toxicology Program (NTP's) chemical selection meetings, met with the Synthetic Organic Chemical Manufacturers Association and the Chemical Manufacturers Association to discuss completed, ongoing and planned testing of chemical groups and attended the March 18, 1992 U.S. House of Representatives and March 25, 1992 U.S. Senate hearings on TSCA reauthorization. The Committee's Executive Director coordinated testing with the National Toxicology Program, coordinated responses to the Agency for Toxic Substances and Disease Registry's (ATSDR) request for comments on Priority Data Needs and presented an invited paper to the American Society for Testing and Materials on the role of the Committee's testing recommendations in facilitating test method development.

Also during this reporting period, the Committee initiated efforts to develop a Priority Testing Candidate List of chemicals and chemical groups under consideration, conducted a partial review of glycol ethers' reproductive effects data, and formed two subcommittees to review non-public data on ethoxylated and imidazolium quaternary ammonium compounds and to review chemicals nominated by the Occupational Safety and Health Administration (OSHA).

*Additions to the Priority Testing List*

Additions to the Priority Testing List are presented, together with the types of testing recommended, in Table 1.

TABLE 1.—ADDITIONS TO THE SECTION 4(E) PRIORITY TESTING LIST

| Group | CAS No. | Chemical | Action | Date | Recommended Tests |
|---|---|---|---|---|---|
| Siloxanes | | | Recommended | 5/92 | Physical and chemical properties: None, at this time.<br>Chemical fate: None, at this time.<br>Health effects: Autoimmune effects, reproductive effects, developmental toxicity, cancer and epidemiology studies<br>Ecological effects: None, at this time. |
| Chloroalkyl Phosphates | | | Recommended | 5/92 | Physical and chemical properties: melting point, octanol-water partition coefficient, vapor pressure and water solubility.<br>Chemical fate: Aerobic biodegradation and hydrolysis rate screening.<br>Health effects: Acute toxicity screening.<br>Ecological effects: Algal toxicity, fish, aquatic and benthic invertebrate acute toxicity screening. |

**TSCA Interagency Testing Committee**

*Statutory member Agencies and Their Representatives*

Council on Environmental Quality
Charles Herrick, member (see Note 1)

Department of Commerce
Willie E. May, member
Edward White, alternate (see Note 2)

Environmental Protection Agency
James B. Willis, member
John S. Leizke, alternate

National Cancer Institute
Thomas P. Cameron, member
Richard Adamson, alternate

National Institute for Environmental Health Sciences
Errol Zeiger, member
James K. Selkirk, alternate

National Institute for Occupational Safety and Health
Robert W. Mason, member
Henryka Nagy, alternate (see Note 3)

National Science Foundation
Carter Kimsey, member and Chairperson
Jarvis L. Moyers, alternate

Occupational Safety and Health Administration
Christine Whittaker, member and vice chairperson
Surender Ahir, alternate

*Liaison Agencies and Their Representatives*

Agency for Toxic Substances and Disease Registry
Sharunda Buchanan, member

Consumer Product Safety Commission
Val Schaeffer, member (see Note 5)
Lakshmi C. Mishra

Department of Agriculture
Donald Derr, member
Ralph T. Ross, alternate (see Note 6)

Department of Defense
Randall S. Wentsel, member

Department of the Interior
Clifford P. Rice, member
Barnett A. Rattner, alternate

Department of Transportation
George Cushmac, member
James O'Steen, alternate

Food and Drug Administration
Edwin J. Mathews, member (see Note 7)
Raju Kammula, alternate

National Library of Medicine
Vera Hudson, member

National Toxicology Program
Victor A. Fung, member (see Note 8)

U.S. International Trade Commission
James Raftery, member
Edward Matusik, alternate

*Committee Staff*

John D. Walker, Ph.D., Executive Director
Norma S.L. Williams, Executive Assistant

*Support Staff*

Mary Ellen Levine, Office of the General Counsel, EPA (see Note 9)

**Notes:**

1. Appointed on February 4, 1992.
2. Appointed on February 6, 1992.
3. Appointed on November 15, 1991.
4. Appointed on November 22, 1991.
5. Appointed on April 2, 1992.
6. Appointed on December 19, 1991.
7. Appointed on December 26, 1991.
8. Appointed member on March 20, 1992.
9. Appointed on January 7, 1992.

The Committee acknowledges the assistance and support given by the staff of Syracuse Research Corp. (technical support contractor) and

personnel of the EPA Office of Pollution Prevention and Toxics.

**Chapter 1—Introduction**

1.1 *Background.* Background on the TSCA Interagency Testing Committee (ITC) was provided most recently in chapter 1.1 of the 29th Report that was submitted to the EPA Administrator on November 27, 1991 (56 FR 67424, December 30, 1991).

1.2 *Committee's previous reports.* Twenty-nine previous Reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register**. In these 29 Reports, the Committee recommended testing for 124 chemicals and 39 chemical groups. Chemical groups were defined most recently in chapter 1.2 of the 29th Report.

1.3 *Committee's activities during this reporting period.* The Committee's activities during this reporting period (November 28, 1991 to May 27, 1992) are described below.

1.3.a *Chemical and chemical group selections.* During this reporting period, the Committee initiated efforts to develop a Priority Testing Candidate List of chemicals and chemical groups under consideration, reviewed data on siloxanes and chloroalkyl phosphates, conducted a partial review of glycol ethers' reproductive effects data, and formed two subcommittees to review non-public data on ethoxylated and imidazolium quaternary ammonium compounds and to review chemicals nominated by the Occupational Safety and Health Administration.

Siloxanes and chloroalkyl phosphates are recommended, not designated, because the Committee wants to review the TSCA section 8(a) and 8(d) information and any use exposure and release information as well as any physical chemical property information that is voluntarily submitted, before deciding whether to designate or withdraw these chemicals for testing. These recommendations are consistent with the Committee's practice of distinguishing between data needs and data gaps and recommending testing for chemicals with data needs and of comprehensively evaluating chemicals and chemical groups as discussed in Chapter 1.3.a of the ITC's 27th and 29th Reports.

Some chemical groups on the Priority Testing Candidates List that the Committee will be considering in the future were listed in Chapter 1.3.b of the 29th Report.

1.3.b *Comprehensive information processing.* The Committee's approach to comprehensive information processing is described in Chapter 1.3.b of the 29th Report.

1.3.c *Information dissemination.* To promote public understanding of the Committee's functions, some of the activities that occurred during this reporting period are briefly described below.

Some Committee Members and staff attended recent hearings on TSCA reauthorization. On March 18, 1992 hearings were held before the House of Representatives Subcommittee on Environment, Energy and Natural Resources, chaired by Congressman Mike Synar (D-OK). On March 25, 1992 hearings were held before the Senate Environment and Public Works Subcommittee, chaired by Senator Harry Reid (D-NV). EPA discussed its revitalized chemical testing program.

At the invitation of the Chemical Manufacturers Association, the Committee's Chairperson and Executive Director met with the chloroalkyl phosphate manufacturers on April 1, 1992 to discuss completed, ongoing and planned testing and the status of the ITC's review of chloroalkyl phosphates. The manufacturers were asked to supply samples of chloroalkyl phosphates for EPA sponsored fish neurotoxicity tests. They were encouraged to provide information on the uses of chloroalkyl phosphates, the levels of chloroalkyl phosphates that might result from processing and use and information that might explain the low (parts per billion) environmental concentrations of chloroalkyl phosphates. This exposure information is needed to provide some perspective for the chloroalkyl phosphate toxicity data. Additional meetings with the chloroalkyl phosphate manufacturers are planned.

At the invitation of the American Society for Testing and Materials (ASTM), the ITC's Executive Director presented a paper at ASTM's Second Symposium on Environmental Toxicology and Risk Assessment. The Symposium was convened on April 28–29, 1992 in conjunction with ASTM's semi-annual meeting to develop and revise ASTM methods for chemical fate and ecological effects testing. The Executive Director discussed ITC's role in facilitating development of chemical fate and ecological effects test methods.

1.3.d *Information coordination.* Congress directed the Committee to facilitate coordination of chemical testing sponsored or required by U.S. Government organizations represented on the Committee. This directive promotes conservation of U.S. government chemical testing resources by eliminating unnecessary and duplicative testing.

At the request of the National Toxicology Program (NTP), TSCA Section 8(d) reports on health effects of bis-(4-chlorophenyl) sulfone (CAS No. 80-07-9) were provided to facilitate NTP's evaluation of this chemical. The TSCA Section 8(d) reports were submitted to the EPA as a result of the Committee's recommendation for physical and chemical property testing of sulfones in their 27th Report. After the 27th Report was published, the NTP's Executive Committee deferred testing bis-(4-chlorophenyl) sulfone for subchronic and mutagenic effects until the TSCA Section 8 information could be reviewed. NTP is currently reviewing this TSCA Section 8 information.

At the request of the Agency for Toxic Substances and Disease Registry (ATSDR), comments were provided on ATSDR's Priority Data Needs for a number of the 38 hazardous substances (41 CAS numbered chemicals) that were published in the October 17, 1991 **Federal Register** (56 FR 52178). The EPA and NTP provided comments during development of the Priority Data Needs. The ITC's comments are included in ATSDR's Docket number 42. These comments are summarized below. The National Cancer Institute described completed and ongoing studies on arsenic, cadmium, chromium, nickel and polychlorinated biphenyls. The Department of Interior described ongoing wildlife studies on cyanide, polychlorinated biphenyls and selenium. The ITC staff determined that the Committee had considered about 75% of ATSDR's 275 hazardous substances, had recommended about 70 of them for testing, had taken action on 33 of the 38 hazardous substances for which ATSDR determined Priority Data Needs, and had designated 3 of the 38 substances for testing. For the 33 substances on which the ITC had taken action, there may be existing studies that could satisfy ATSDR's Priority Data Needs. For the 3 ITC designated substances, 33 studies were identified that may satisfy ATSDR's Priority Data Needs and 3 studies were identified that may provide useful information related to ATSDR's Priority Data Needs.

In an effort to avoid duplication of effort, ATSDR is considering the Committee's comments and will formally respond to them along with other comments received on the 38 substances. The studies received by ATSDR from the Committee will be screened and reviewed before the Priority Data Needs are finalized.

1.3.e *Referrals.* During this reporting period, the Committee did not refer any

chemicals to member agencies or other organizations for testing consideration.

1.3.f *Deferrals.* During this reporting period, the Committee deferred the five chloroalkyl phosphates recommended in the 23rd Report because of an interest on the part of industry to voluntarily take action on these chemicals. The Chemical Manufacturers Association (CMA) and several chloroalkyl phosphate producers have approached the ITC and EPA to discuss voluntary testing for certain of the chloroalkyl phosphates. It is the interest of the ITC and ITC member agencies to ensure that the hazard of these chemicals is well characterized; additionally, the Committee believes that exposures to these chemicals should be better characterized. The Committee encourages CMA and the chloroalkyl phosphates' producers to offer a formal proposal to EPA, which may result in a testing consent order or other binding agreement through a public process, to develop hazard and exposure data. The Committee also believes that, considering the potential cancer risk of these chemicals, voluntary exposure controls on the part of industry may be appropriate. The Committee is deferring these five chloroalkyl phosphates pending the results of future discussions with industry.

1.3.g *Removals.* Two chemicals designated in the Committee's 27th Report were removed from the Priority Testing List, because EPA implemented the Committee's testing recommendations. On December 17, 1991 and March 4, 1992, EPA published Consent Orders for sodium cyanide (56 FR 65442) and acrylic acid (57 FR 7656), respectively. The most recent table of removals from the Priority Testing List was published in the Committee's 29th Report. As a result of the removals made during this reporting period, 100 chemicals and 18 chemical groups have been removed from the ITC's Priority Testing List.

1.4 *The TSCA section 4(e) Priority Testing List.* Under Section 4(e)(1)(B) of TSCA, Congress directed the Committee to revise the Priority Testing List at least every 6 months and transmit the revised List to the EPA Administrator. Under this authority, the Committee is revising the Priority Testing List by recommending two chemical groups (Table 1).

The Priority Testing List includes 24 chemicals and 23 chemical groups that have been recommended or designated for testing (Table 2). Individual chemicals in Priority Testing List chemical groups are listed in Table 1 of the 24th Report and in the paragraphs following Table 1 of the 26th, 27th, 28th and 29th Reports. For this 30th Report, the individual chemicals in Priority Testing List chemical groups are listed in tables that are included in chapters 2.4.a and 2.4.b. Lists of individual chemicals are provided to minimize any ambiguities associated with TSCA Section 8(a) and 8(d) reporting requirements.

Combining the 100 chemicals and 18 chemical groups that have been removed from the ITC's Priority Testing List with the 24 chemicals and 23 chemical groups currently on the Priority Testing List, reveals that the Committee has recommended or designated 124 chemicals and 41 chemical groups for testing since their first meeting in February 1977.

TABLE 2.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST

| Report | Date | Chemical/Group | Action |
|---|---|---|---|
| 22 | May 1988 | Ethoxylated quaternary ammonium compounds | Recommended |
| 22 | May 1988 | Imidazolium quaternary ammonium compounds | Recommended |
| 23 | November 1988 | Tetrakis(2-chloroethyl)ethylene diphosphate | Recommended with intent-to-designate |
| 23 | November 1988 | Tris(1,3-dichloro-2-propyl) phosphate | Recommended with intent-to-designate |
| 23 | November 1988 | Tris(1-chloro-2-propyl) phosphate | Recommended with intent-to-designate |
| 23 | November 1988 | Tris(2-chloro-1-propyl) phosphate | Recommended with intent-to-designate |
| 23 | November 1988 | Tris(2-chloroethyl)-phosphate | Recommended with intent-to-designate |
| 23 | November 1988 | Butyraldehyde | Recommended |
| 23 | November 1988 | Brominated flame retardants | Recommended |
| 26 | May 1990 | Isocyanates | Recommended with intent-to-designate |
| 26 | May 1990 | Brominated flame retardants | Recommended |
| 26 | May 1990 | Alkyl phosphates | Recommended |
| 27 | November 1990 | Acetophenone | Designated |
| 27 | November 1990 | Phenol | Designated |
| 27 | November 1990 | *N,N*-Dimethylaniline | Designated |
| 27 | November 1990 | Ethylacetate | Designated |
| 27 | November 1990 | 2,6-Dimethylphenol | Designated |
| 27 | November 1990 | Aldehydes | Recommended with intent-to-designate |
| 27 | November 1990 | 2,4-Dinitrophenol | Recommended |
| 27 | November 1990 | 3,4-Dimethylphenol | Recommended |
| 27 | November 1990 | *N*-phenyl-1-naphthylamine | Recommended |
| 27 | November 1990 | Sulfones | Recommended |
| 27 | November 1990 | Substantially produced chemicals in need of subchronic tests. | Recommended |
| 28 | May 1991 | Acetone | Designated |
| 28 | May 1991 | *n*-Butanol | Designated |
| 28 | May 1991 | Isobutanol | Designated |
| 28 | May 1991 | Di-(2-ethylhexyl)adipate | Designated |
| 28 | May 1991 | Dimethyl terephthalate | Designated |
| 28 | May 1991 | Thiophenol | Designated |
| 28 | May 1991 | *m*-Dinitrobenzene | Recommended |
| 28 | May 1991 | Allyl alcohol | Recommended |
| 28 | May 1991 | 2,4-Dichlorophenol | Recommended |
| 28 | May 1991 | Alkynes | Recommended |
| 28 | May 1991 | Nitroalcohols | Recommended |
| 28 | May 1991 | Phosphoniums | Recommended |
| 28 | May 1991 | Hydrazines | Recommended |
| 28 | May 1991 | Oxiranes | Recommended |
| 28 | May 1991 | Alkoxysilanes | Recommended |
| 28 | May 1991 | Aldehyde hydrates | Recommended |

TABLE 2.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST—Continued

| Report | Date | Chemical/Group | Action |
|---|---|---|---|
| 25 | May 1991 | Propylene glycol ethers and esters | Recommended |
| 26 | May 1991 | Methyl ethylene glycol ethers | Recommended |
| 26 | May 1991 | Isothiocyanates | Recommended |
| 26 | May 1991 | Cyanoacrylates | Recommended |
| 29 | November 1991 | White phosphorus | Recommended |
| 29 | November 1991 | Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers | Recommended |
| 30 | May 1992 | Siloxanes | Recommended |
| 30 | May 1992 | Chloroalkyl phosphates | Recommended |

## Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding to the section 4(e) Priority Testing List two chemical groups (see Table 1). The recommendation of these chemicals is made after considering the factors identified in section 4(e)(1)(A) and other relevant information, such as the data needs of Member Agencies.

2.2 *Designated chemicals.* None.

2.3 *Recommended with intent-to-designate chemicals.* None.

2.4 *Recommended chemicals*—2.4.a Siloxanes.

*I. Rationale for Recommendation*

Recent questions related to the safety of siloxanes for a number of medical uses, including breast implants, prompted the Food and Drug Administration (FDA) to request that the Committee review the health effects of siloxanes. The Committee added a group of 58 siloxanes to the Priority Testing List (Table 3). The Committee recommended siloxanes for testing because of FDA's request, because production volumes are substantial, because of uncertainties related to human exposure, and because of the paucity of publicly-available health effects data for these substances. By recommending these chemicals, the Committee is providing manufacturers, processors, and distributors the opportunity to submit data under TSCA Section 8 and to voluntarily submit physical and chemical property data and use exposure information.

TABLE 3.—RECOMMENDED SILOXANES

| CAS No. | Chemical Name |
|---|---|
| 107-46-0 | Hexamethyldisiloxane |
| 107-50-6 | Tetradecamethylcycloheptasiloxane |
| 107-51-7 | Octamethyltrisiloxane |
| 107-52-8 | Tetradecamethylhexasiloxane |
| 107-53-9 | Tetracosamethylundecasiloxane |
| 141-62-8 | Decamethyltetrasiloxane |
| 141-63-9 | Dodecamethylpentasiloxane |
| 540-97-6 | Dodecamethylcyclohexasiloxane |
| 541-01-5 | Hexadecamethylheptasiloxane |
| 541-02-6 | Decamethylcyclopentasiloxane |
| 541-05-9 | Hexamethylcyclotrisiloxane |
| 546-56-5 | Octaphenylcyclotetrasiloxane |
| 556-67-2 | Octamethylcyclotetrasiloxane |
| 556-68-3 | Hexadecamethylcyclooctasiloxane |
| 556-69-4 | Octadecamethyloctasiloxane |
| 556-70-7 | Docosamethyldecasiloxane |
| 556-71-8 | Octadecamethylcyclononasiloxane |
| 999-97-3 | Hexamethyldisilazane |
| 2370-88-9 | Tetramethylcyclotetrasiloxane |
| 2374-14-3 | Trifluoropropylmethylcyclotrisiloxane |
| 2471-08-1 | Hexacosamethyldodecasiloxane |
| 2471-09-2 | Octacosamethyltridecasiloxane |
| 2471-10-5 | Triacontamethyltetradecasiloxane |
| 2471-11-6 | Dotriacontmethylpentadecasiloxane |
| 2554-06-5 | Methylvinylcyclosiloxane |
| 2627-95-4 | Tetramethyldivinyldisiloxane |
| 2652-13-3 | Eicosamethylnonasiloxane |
| 7013-67-8 | Non-end blocked siloxanes |
| 9004-73-3 | Methylpolysiloxane |
| 9006-65-9 | Dimethicone |
| 9016-00-6 | Polydimethylsiloxane |
| 18766-38-6 | Docosamethylcycloundecasiloxane |
| 18772-36-6 | Eicosamethylcyclodecasiloxane |
| 18844-04-7 | Hexatriacontamethylheptadecasiloxane |
| 19919-94-3 | Tetracosamethylcyclododecasiloxane |
| 20523-12-8 | Hexatriacontamethylcyclooctadecasiloxane |
| 23523-14-0 | Triacontamethylcyclopentadecasiloxane |
| 23732-94-7 | Hexacosamethylcyclotridecasiloxane |
| 35938-50-8 | Tetratriacontamethylhexadecasiloxane |
| 35936-52-0 | Octatriacontamethyloctadecasiloxane |
| 63148-52-9 | Dimethyl silicones and siloxane |
| 67762-90-7 | Dimethyl silicones and siloxanes, reaction products with silica |
| 67762-94-1 | Dimethylmethylvinylsiloxane |

TABLE 3.—RECOMMENDED SILOXANES—Continued

| CAS No. | Chemical Name |
|---|---|
| 68037-59-2 | Dimethylhydropolysiloxane |
| 68037-74-1 | Dimethylpolysiloxanes |
| 68083-14-7 | Dimethyldiphenylsiloxane |
| 69430-24-6 | Cyclopolydimethylsiloxane |
| NA[1] | Tetracontamethylnonadecasiloxane |
| NA[1] | Octacosamethylcyclotetradecasiloxane |
| NA[1] | Dotetracontamethylicosasiloxane |
| NA[1] | Tetracontamethylcycloeicosasiloxane |
| NA[1] | Octatriacontamethylcyclononadecasiloxane |
| NA[1] | Tetratriacontamethylcycloheptadecasiloxane |
| NA[1] | Dotriacontamethylcyclohexadecasiloxane |
| NA[1] | Polymethyloctadecylsiloxane |
| NA[1] | Dimethylmethyltrifluoropropylsiloxane |

[1] NA = not assigned.

*II. Summary of Recommended Tests*

Siloxanes are recommended for autoimmune effects, cancer, reproductive effects and developmental toxicity testing and for epidemiological studies (Table 1).

*III. Supporting Information*

A. *Background.* On November 6, 1984, the Committee designated octamethylcyclotetrasiloxane (OMCTS) for chemical fate and ecological effects testing in the Committee's 15th report (49 FR 46931, November 29, 1984). On May 31, 1991, at the request of EPA, the Committee recommended alkoxysiloxanes for ecological effects testing in the Committee's 28th report (56 FR 41212, August 19, 1991). While health effects testing was not recommended previously, recent questions related to the safety of siloxanes for a number of medical uses, including breast implants, prompted FDA to request that the Committee review the health effects of siloxanes. The Committee is also concerned with widespread human exposure and environmental release of siloxanes. Most of the recommended chemicals were chemicals identified by FDA. At the request of FDA, a few structurally related methyl siloxanes were identified using the Committee's substructure-based chemical selection expert system (SuCSES). SuCSES was also used to identify structural homologs for other siloxanes identified by FDA, but FDA and the Committee did not request that they be recommended for testing at this time.

B. *Physical and chemical properties.* The Committee found limited information on measured physical and chemical properties for the siloxanes listed in Table 3: 20 log octanol/water partition coefficients (generated using High Pressure Liquid Chromatography), 1 measured log octanol/water partition coefficient, 15 melting points, 16 boiling points, 1 water solubility, 13 vapor pressures, and 1 Henry's Law constant (Refs. 19, 27, 31, 43, and 61).

C. *Exposure information—production/use/disposal/exposure/release.* The siloxanes in Table 3 are commercially available or have been identified in various medical uses.

Siloxanes have numerous medical, industrial, consumer, and military uses. They are used in the drug and pharmaceutical, construction, textile, transportation, electrical, electronic, paper and processing industries, tire, plastic, and rubber foundries, in chemical, petroleum, and gas processing as well as in medical devices, cosmetics and toiletries, food and related products, coatings, paint additives, inks, rubber and plastics, polishes, fibers, threads, and household, automotive, and institutional products (Refs. 29, 30, and 66). Siloxanes also are used in plastic and rubber lubricants, damping fluids, heat transfer fluids, oil defoamers, antifoams, viscous fluid drive clutches, speed control devices, liquid springs, dash pots, timing devices, thread and fiber lubricants, and textile softeners (Refs. 29 and 30). They are processed to meet electrical specifications for use in capacitors, pulse transformers, specialty transformers, air-borne and landbased radar equipment, and television circuit components (Refs. 29 and 30). Siloxanes are used in food applications; for example, dimethyl antifoaming agent in juices and beer (Ref. 38). Dimethylpolysiloxanes are useful as a low temperature damping medium, heat transfer medium, dielectric coolant, and a base fluid for low temperature silicone fluids (Refs. 29 and 30). Octamethylcyclotetrasiloxane is in several silicone fluids, which are used in a variety of applications including antiperspirants, facial make-up, hair sprays and skin care products, fermentation processes, instant coffee production, food washing solutions, diet soft drinks, paper coatings and sizing, waste yeast tanks, adhesives, textile sizes, vacuum distillations, deasphalting, brine units, boiler treatments, detergent manufacture, effluent treatments, industrial cleaning solutions, waste water treatment facilities, surfactants, and in window cleaners and panel polishes (Refs. 56 and 66). In 1982, octamethylcyclotetrasiloxane, decamethylcyclopentasiloxane, and dodecamethylcyclohexasiloxane were being evaluated for use in a variety of consumer and industrial products, including household and car care products, specialty wax preparations, other chemical specialty formulations, and coatings (Refs. 66). Decamethylcyclopentasiloxane is used in cosmetics and toiletries, as a vehicle and end blocking agent in antiperspirants and in aerosol products containing insoluble powders (Refs. 29 and 66). Hexamethyldisiloxane is used in cosmetic and personal care product formulations, in the production of octamethylcyclotetrasiloxane, as an adhesion promotor-priming agent for photolithography applications, and as an end blocking agent in the production of fluorosilicone oils (Refs. 7, 31, and 40).

*Human exposure—medical.* Exposure to siloxanes may occur because of uses as medical fluids, resins, gels and elastomers. Fluid siloxanes are used as lubricants in disposable syringes. Resins, gels and elastomers are used as implants for the augmentation and reconstruction of soft tissues such as breast and testicular tissues. Siloxanes are also used to fabricate tubal occlusion devices for female sterilization, encasement of pacemakers and electrical leads, heart valves, arteriovenus shunts, catheters, urethral stents, penile prothesis, prosthetic finger joints, artifical tendons, and intraocular lenses as well as to construct elastomers that are used as implanted drug delivery systems.

*Occupational.* The National Occupational Exposure Survey (NOES) conducted during 1981–1983 by NIOSH reported that 14,234 workers were potentially exposed to hexamethyldisiloxane, 367,371 workers were potentially exposed to dimethyl silicones and siloxanes, 935 workers were potentially exposed to octamethylcyclotetrasiloxane, 4,386 workers were potentially exposed to dimethyldiphenylsiloxane, and 6,903 workers were potentially exposed to reaction products of dimethyl silicones and siloxanes with silica (Refs. 50).

*Monitoring.* Atomic absorption analyses of organic extracts identified dimethylpolysiloxanes in various fruit juices (orange, apple, pineapple, apricot, tomato, lemon, grapefruit, mango, and apricot juice) (Ref. 38). Dimethylpolysiloxanes were quantitatively detected in 51 of 98 samples above the detection limit of 0.2 ppm; 14 of the 51 samples were above 10 ppm and 1 sample had a dimethylpolysiloxanes content of 152 ppm.

Dodecamethylcyclohexasiloxane was identified in drinking water concentrates from New Orleans, LA and Seattle, WA and decamethylcyclopentasiloxane was identified in drinking water concentrates from New Orleans, LA and Cincinnati, OH (Ref. 44).

Based on a method where airborne particles are collected on Teflon filters, extracted with an organic solvent, and then analyzed by pyrolysis gas chromatography/mass spectrometry (GC/MS), polydimethylsiloxanes were frequently detected in indoor airborne particles, especially in office buildings where many silicone-containing products were present, such as electrical contact cleaners, photocopiers, and electronic equipment (Ref. 76). Decamethylcyclopentasiloxane was measured in 29 air samples (0.3–12.4 $\mu g/m^3$) from office buildings located in 7 cities, dodecamethylcyclohexasiloxane was measured in 5 air samples (0.4–16.5 $\mu g/m^3$) from office buildings located in 2 cities, hexadecamethylcyclooctasiloxane was measured in 1 air sample (38 $\mu g/m^3$) from office buildings located in 8 cities, octamethylcyclotetrasiloxane was measured in 11 air samples (0.4–37 $\mu g/m^3$) from office buildings located in 4 cities, hexamethylcyclotrisiloxane was measured in 3 air samples from one office building, and tetradecamethylcycloheptasiloxane was measured in 3 air samples (7.4–10.8 $\mu g/m^3$) from one office building (Ref. 74). Octamethylcyclotetrasiloxane has also been detected in 2 of 5 indoor air samples collected in Northern Italy, 1983–84, at concentrations of 10 $\mu g/m^3$ and 13 $\mu g/m^3$ (Ref. 9). Emissions of hexamethylcyclotrisiloxane and octamethylcyclotetrasiloxane to indoor air have been detected from new carpets (Refs. 35 and 54).

In a study designed to monitor personal exposure to volatile organic compounds, hexamethylcyclotrisiloxane and octamethylcyclotetrasiloxane were detected in air, breath, and tap water samples (Ref. 75). The national survey of human adipose tissue conducted in 1982 analyzed 46 composite samples and found decamethylcyclopentasiloxane in 28 samples and octamethylcyclotetrasiloxane in 21 samples (Ref. 53).

*Environmental exposure.* Based on a method where airborne particles are collected on Teflon filters, extracted with solvent, and then analyzed by pyrolysis/GC/MS, polydimethylsiloxanes have been frequently detected in outdoor airborne particles. Polydimethylsiloxane concentrations were approximately 1 $ng/m^3$ in outdoor airborne particles at telephone office sites in Wichita, KS, Lubbock, TX, and Neenah, WI and 2 $ng/m^3$ in Newark, NJ. (Ref. 76). Decamethylcyclopentasiloxane has been detected at concentrations ranging from 0.21 to 0.9 $\mu g/m^3$ in 3 outdoor air samples, octamethylcyclotetrasiloxane has been detected at concentrations ranging from 6.6 to 22.6 $\mu g/m^3$ in 3 outdoor air samples taken from outside an office building in Newark, NJ, and hexamethylcyclotrisiloxane has been detected at concentrations ranging from 0.9 to 149 $\mu g/m^3$ in 139 outdoor air samples from 8 locations (Ref. 74).

Hexamethylcyclotrisiloxane was detected in 4 of 6 water samples collected from Lake Pontchartrain, LA, in 1980; concentrations ranged from 0.02 to 0.3 $\mu g/L$, and octamethylcyclotetrasiloxane was detected in 1 of 3 samples at 0.03 $\mu g/L$ (Ref. 48). Octamethylcyclotetrasiloxane and dodecamethylpentasiloxane were found in the influent to a sewage treatment facility in Singapore, while only octamethylcyclotetrasiloxane was found in the post-aerated wastewater and sludge (Ref. 42). Octamethylcyclotetrasiloxane and hexamethylcyclotrisiloxane have been detected as volatile emissions from refuse landfills (Ref. 41).

D. *Chemical fate information.* The Committee is not recommending chemical fate testing at this time because it wants to review data developed under TSCA Section 4 for octamethylcyclotetrasiloxane and any chemical fate data that may be submitted under TSCA Section 8(d).

E. *Health effects information.* Health effects data were located for 9 of the 52 recommended siloxanes: hexamethyldisiloxane, octamethyltrisiloxane, dodecamethylpentasiloxane, decamethylcyclopentasiloxane, hexamethylcyclotrisiloxane, octamethylcyclo tetrasiloxane, trifluoropropylmethylcyclotrisiloxane, dimethicone, and polydimethylsiloxane.

*Human studies.* Available data suggest that polydimethylsiloxane and octamethylcyclotetrasiloxane are not absorbed through intact human skin (Refs. 10, 23, and 34), and that polydimethylsiloxane was not absorbed by the gastrointestinal tract (Refs. 1, 4, and 62).

There have been human case reports of adverse effects from release of polydimethylsiloxane fluid into body tissues. These effects include granuloma formation, ulcer development and acute and latent pneumonitis illness (Refs. 5, 6, 47, and 55). In some cases, adverse effects did not develop for years. The granulomas appeared to be similar to typical foreign-body reaction masses (Refs. 64, 65, and 77), and cases have been reported where these granulomas developed at sites distant from the site of injection of the liquid silicone fluid (Ref. 25). Case reports have also suggested that silicone from breast implants and other prosthetic devices can produce symptoms of autoimmune disease (Refs. 3, 26, 59, and 73). These symptoms are diverse and are similar to scleroderma, systemic lupus erythematosus, and systemic rheumatic disease, and have been described in the literature as human adjuvant disease (Ref. 59). An epidemiologic study of workers exposed to silicones for at least 5 years and followed for 19 years reported a higher than expected incidence of cancers of the skin, large intestine and lung, but a decrease in mortality due to cancers of all types (Ref. 28).

*Laboratory studies.* Available data suggest that hexamethyldisiloxane and octamethylcyclotetrasiloxane are not absorbed through animal skin (Refs. 10, 15, and 16). Oral administration of octamethylcyclotetrasiloxane to monkeys and rats resulted in gastrointestinal absorption (Refs. 20 and 21). When injected, polydimethylsiloxane distributes throughout the body, but this process is slow if the injection is to an area not accessible to phagocytizing cells (Ref. 33).

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Acute animal toxicity tests have been conducted for octamethylcyclotetrasiloxane, hexamethyldisiloxane, dodecamethylpentasiloxane, and four polymeric methyl siloxanes. The oral $LD_{50}$ for these compounds ranged from 40 g/kg to >60 g/kg (Refs. 11, 12, 15, 46, 57, 58, 63, 67, 68, 69, 71, and 72). The dermal $LD_{50}$ was >16 mL/kg and 4.6 g/kg for hexamethyldisiloxane and octamethylcyclotetrasiloxane, respectively (Refs. 63, 67, 68, 69, and 71). Following inhalation exposure to near saturated atmospheres, death occurred in 1–15 minutes (≈4,000 ppm) and 8 hours (≈1,300 ppm), for hexamethyldisiloxane and octamethylcyclotetrasiloxane, respectively (Refs. 57, 63, 69, and 71). For hexamethyldisiloxane and polydimethylsiloxane, only irritation at the injection site was observed following subcutaneous administration (Refs. 8 and 57). No effects were observed following intraperitoneal injection of 10 mL/kg of dodecamethylpentasiloxane or polydimethylsiloxane, but some deaths occurred at > 0.3 mL/kg of hexamethyldisiloxane (Refs. 32 and 57). All of these compounds either produced no irritation or slight irritation to the skin and eyes (Refs. 57, 63, 67, 15, 17, and 18).

Repeat exposure studies in rats and rabbits of hexamethyldisiloxane produced no effects following dermal (20 exposures, dose not reported) or inhalation (20 exposures to 4,400 ppm) exposure. Dermal exposure for 21 days to 40 mg/kg/day of trifluoropropylmethylcyclotrisiloxane produced no effects, but similar exposure to 200 mg/kg/day reduced weight gain, food consumption, serum alkaline phosphatase activity and increased activity of serum enzymes; 5/12 animals died from exposure to 400 mg/kg/day (Refs. 11, 12, 13, 14, 60, 67, 68, 69, and 70). Polydimethylsiloxane produced no effects following oraladministration (20 gavage doses of 20.0 g/kg) (Ref. 57). Octamethylcyclotetrasiloxane reduced body weight and increased liver weight following both oral (2 g/kg/day by gavage for 28 days) and inhalation (700 ppm for 6 hours/day for 90 days) exposures (Refs. 22 and 24). In a chronic study of polydimethylsiloxane in mice, increased mortality was observed in females but not in males exposed for 76 weeks to dietary doses of 1,250 mg/kg/day, while subcutaneous implant of polydimethylsiloxane for 2 years resulted in mesenchymal tumors, some of which were malignant (Refs. 8 and 45).

In a developmental toxicity study, an increase in postimplantation loss was observed in rats following subcutaneous administration of 200 mg/kg of polydimethylsiloxane on gestation days 6–16, but this effect was not observed in a second trial (Refs. 2 and 39). Additionally, no soft tissue or skeletal malformations were observed following oral (1,000 mg/kg/day, gestation days 6–15) or dermal (200 mg/kg, gestation days 6–15) administration to rats, or subcutaneous administration to rabbits (1,000 mg/kg, gestation days 6–16) (Ref. 39).

Gene mutation assays in bacteria and mitotic recombination tests in yeasts were negative for decamethylcyclopentasiloxane, hexamethylcyclotrisiloxane, octamethylcyclotetrasiloxane, hexamethyldisiloxane and octamethyltrisiloxane. A weakly positive result was reported for octamethyltrisiloxane in the mouse lymphoma L5178Y forward mutation assay; negative results were reported for the other siloxanes, both with and without S9 activation (Refs. 36 and 49).

Sister chromatid exchange assays in mouse lymphoma cells were negative for decamethylcyclopentasiloxane, hexamethylcyclotrisiloxane, octamethylcyclotetrasiloxane, and hexamethyldisiloxane. Chromosomal aberration assays in mouse lymphoma cells yielded negative results in the presence and absence of S9 activation for decamethylcyclopentasiloxane, but mixed positive results were reported for others, as follows: hexamethylcyclotrisiloxane and octamethylcyclotetrasiloxane-positive with S9, negative without S9; and hexamethyldisiloxane-negative with S9, positive without S9 (Ref. 36).

In *in vivo* tests, hexamethylcyclotrisiloxane and hexamethyldisiloxane produced no evidence of chromosomal aberrations in the rat bone marrow cytotogenicity assay (Ref. 36). Polydimethylsiloxane fluid did not produce evidence of chromosomal effects in the mouse dominant lethal assay (Ref. 39).

Dermal sensitization was not observed in mice following a challenge with polydimethylsiloxane (Ref. 51). Preliminary findings with subcutaneously-placed, siloxane-containing implants indicated a dose-related decrease in activity of natural killer cells after 180 days; a time course study is currently underway (Ref. 52).

F. *Ecological effects information.* The Committee is not recommending ecological effects testing at this time because it wants to review data developed under TSCA Section 4 for octamethylcyclotetrasiloxane and any ecological effects data that may be submitted under TSCA Section 8(d).

*References*


(1) Bateman, F.J.A. "Silicone barrier cream in prevention of bedsores." *British Medical Journal.* 554–555 (1956)

(2) Bates, H., Filler, R., and Kimmel, C. "Developmental toxicity study of polydimethylsiloxane injection in the rat." *Teratology.* 31(3):50. Abstract (1985).

(3) Brozena, S.J., Fenske, N.A., Cruse, C.W., Espinoza, C.G., Vasey, F.B., Geramin, B.F., and Espinoza, L.R. "Human adjuvant disease following augmentation mammoplasty." *Archives of Dermatology.* 124(9): 1383–1386 (1988).

(4) Carter, H.B.N., and Sherman, R.T. "Dimethicone (silicone) skin protection in surgical patients." *Archives of Surgery.* 116–117 (1957).

(5) Chastre, J., Basset, F., Viau, F., Dournovo, P., Bouchama, A., Akesbi, A., and Gibert, C. "Acute pneumonitis after subcutaneous injections of silicone in transsexual men." *The New England Journal of Medicine.* (1983).

(6) Chastre, J., Brun, P., Soler, P., Basset, F., Trouillet, J.L., Fagon, J.Y., Gibert, C., and Hance, A.J. "Acute and latent pneumonitis after subcutaneous injections of silicone in transsexual men." *American Review of Respiratory Disease.* 135(1):236–240 (1987).

(7) Chemcyclopedia 87. *The Manual of Commercially Available Chemicals.* Volume 5. Kuney, J.H. Ed. Washington, DC: American Chemical Society. p. 180 (1987).

(8) Cutler, M.G., Collings, A.J., Kiss, I.S., and Sharratt, M. "A lifespan study of polydimethylsiloxane in the mouse." *Food and Cosmetic Toxicology.* 12:443–450 (1974).

(9) De Bortoli, M., Knoppel, H., Pecchio, E., Peil, A., Rogora, L., Schauenburg, H., Schlitt., H., and Vissers, H. "Concentrations of selected organic pollutants in indoor and outdoor air in Northern Italy." *Environment International.* 12:343–350 (1986).

(10) Dow Corning Corporation. "*In vitro* percutaneous absorption of octamethylcyclotetrasiloxane (D4)." TSCA 8d submission 88–890001542, microfiche number OTS–0520671. Washington, DC: OPPT, USEPA (1985b).

(11) Dow Chemical Corporation. "Results of range finding toxicological tests on octamethylcyclotetrasiloxane." TSCA 8d submission 87–8214040, microfiche number OTS–0206723, Washington, DC: OPPT, USEPA (1985c).

(12) Dow Corning Corporation. "Results of range finding toxicological tests on dimethyl cyclic tetramer." TSCA 8d submission 87–8215081, microfiche number OTS–0206762, Washington, DC: OPPT, USEPA (1985d).

(13) Dow Corning Corporation. "Evaluation of the dermal irritation potential of 13 personal care fluids." TSCA 8d submission 87–8215092, microfiche number OTS–0206762, Washington, DC: OPPT, USEPA (1985e).

(14) Dow Corning Corporation. "Comparative eye irritation of specially prepared Dow Corning 200 fluids with cover letter." TSCA 8d submission 87-8215080, microfiche number OTS-0206762, Washington, DC: OPPT, USEPA (1986f).

(15) Dow Corning Corporation. "Toxicity studies on hexamethyldisiloxane (DC 200 fluid)." TSCA FYI submission FYI-OTS-0286-0469, microfiche number OTS-0000469-0, Washington, DC: OPPT, USEPA (1986a).

(16) Dow Corning Corporation. "Toxicity studies on TX-135A." TSCA FYI submission FYI-OTS-0286-0469. Washington, DC: OPPT, USEPA (1986b).

(17) Dow Corning Corporation. "Comparison of the primary skin irritation potential and the effects of repeated prolonged skin exposures to various volatile experimental cosmetics fluids with SD alcohol 40." TSCA FYI submission FYI-OTS-0286-0469, microfiche number OTS-0000469-0, Washington, DC: OPPT, USEPA (1986c).

(18) Dow Corning Corporation. "Range finding eye irritation test on hexamethyldisiloxane (DC 200 fluid)." TSCA FYI submission FYI-OTS-0286-0469, microfiche number OTS-0000469-0, Washington, DC: OPPT, USEPA (1986d).

(19) Dow Corning Corporation. "The *n*-octanol/water partition coefficient of octamethylcyclotetrasiloxane." TSCA 8d submission 86-880000065, microfiche number OTS-0513955. Washington, DC: OPPT, USEPA (1987).

(20) Dow Corning Corporation. "Metabolism of octamethylcyclotetrasiloxane in the monkey." TSCA 8d submission 86-880000257, microfiche number OTS-0514147, Washington, DC: OPPT, USEPA (1988a).

(21) Dow Corning Corporation. "An assessment of the mesio 3/2 content of feces and urine obtained 24 hours after the oral administration of D4 to rats." TSCA 8d submission 86-880000346, microfiche number OTS-0516496, Washington, DC: OPPT, USEPA (1988b).

(22) Dow Corning Corporation. "A 28-day oral gavage study of octamethylcyclotetrasiloxane in male and female rats with attachments and cover letter dated 040888." TSCA 8d submission 88-880000215, microfiche number OTS-0514105, Washington, DC: OPPT, USEPA (1988c).

(23) Dow Corning Corporation. "Dermal absorption of Dow Corning F-218 fluid in the adult male rat, primate and human." TSCA 8d submission 87-8215083, microfiche number OTS-0206762, Washington, DC: OPPT, USEPA (1989a).

(24) Dow Corning Corporation. "Inhalation studies and industrial hygiene survey for octamethylcyclotetrasiloxane (D4)." TSCA 8d submission 88-8900001518, microfiche number OTS-0516677, Washington, DC: OPPT, USEPA (1989b).

(25) Ellenbogen, R., Ellenbogen, R., and Rubin, L. "Injectable fluid silicone therapy. Human morbidity and mortality." *Journal of the American Medical Association*. 234:306-309 (1975).

(26) Endo, L.P., Edwards, N.L., Longley, S., Corman, L.C., and Panush, R.S. "Silicone and rheumatic diseases." *Seminars in Arthritis and Rheumatism*. 17(2):112-118 (1987).

(27) Flaningam, O.L. "Vapor pressures of poly(dimethylsiloxanes) oligomers." *Journal of Chemical and Engineering Data*. 31:266-272 (1986).

(28) General Electric Company. "An epidemiologic study of employees in the silicones industry final report." TSCA FYI submission FYI-OTS-0187-0532, microfiche number OTS-0000532-0, Washington, DC: OPPT, USEPA (1987).

(29) General Electric Company. GE Silicones. Fluids. General Electric Company, U.S.A. pp.1-16 (1991).

(30) General Electric Company. Material Safety Data Sheets on DF1040, SF99, SF96, SF1147, SF1173, SF1188, SF1202, SF1204, SF1706, VISC-12M, VISC-30M, VISC-60M. General Electric Company, Waterford, NY (1992).

(31) Hardman, B.B., and Torkelson, A. "Silicon compounds (silicones)." In: *Kirk-Othmer Encyclopedia of Chemical Technology*. 3rd Edition. Volume 20: pp. 922-962 (1982).

(32) Hawthorne, G.A., Ballantyne, D.L., Rees, T.D., and Seidman, I. "Hematological effects of dimethylpolysiloxane fluid in rats." *Research Journal of the Reticuloendothelial Society*. 7(5):587-593 (1970).

(33) Hine, C.H., Elliott, E.W., Wright, R.R., Cavalli, R.D., and Porter, C.D. "Evaluation of a silicone lubricant injected spinally." *Toxicology and Applied Pharmacology*. 15(3):566-573 (1969).

(34) Hobbs, E.J., Fancher, O.E., and Calandra, J.C. "Effect of selected organopolysiloxanes on male rat and rabbit reproductive organs." *Toxicology and Applied Pharmacology*. 21(1):45-54 (1972).

(35) Hodgson, A.T., Wooley, J.D. and Daisey, J.M. "Volatile Chemical Emissions from Carpets." Report submitted by Lawrence Berkeley Laboratory to the U.S. Consumer Product Safety Commission under Interagency Agreement CPSC-IAG-90-1256 (1992).

(36) Isquith, A., Matheson, D., and Slesinski, R. "Genotoxicity studies on selected organosilicon compounds: *In vitro* assays." *Food and Chemical Toxicology*. 26(3):255-261 (1988a).

(37) Isquith, A., Slesinski, R., and Matheson, D. "Genotoxicity studies on selected organosilicon compounds: In vivo assays." *Food and Chemical Toxicology*. 26(3):263-266. (1988b).

(38) Kacprzak, J.L. "Atomic absorption spectroscopic determination of dimethylpolysiloxane in juices and beer." *Journal of the Association of Official Analytical Chemists*. 65(1): pp. 148-150 (1982).

(39) Kennedy, G.L., Keplinger, M.L., and Calandra, J.C. "Reproductive, teratologic and mutagenic studies with some polydimethylsiloxanes." *Journal of Toxicology and Environmental Health*. 1:909-920 (1976).

(40) Kim, Y.K. "Fluorine compounds, organic: poly(fluorosilicones)" In: *Kirk-Othmer Encyclopedia of Chemical Technology*. 3rd Edition. Volume 11: pp. 74-81 (1982).

(41) Koe, L.C.C., and Ng, W.J. "Identification of odorous gases originating from refuse waste." *Water, Air, and Soil Pollution*. 33:199-204 (1987).

(42) Koe, L.C.C., and Tan, N.C. "GC-MS identification of gaseous volatiles in wastewater." *Environmental Monitoring and Assessment*. 15:13-24 (1990).

(43) Lindley, D.D., and Hershey, H.C. "The orthobaric region of octamethyltrisiloxane." *Fluid Phase Equilibria*. 55:109-124 (1990).

(44) Lucas, S.V. GC/MS analysis of organics in drinking water concentrates and advanced waste treatment concentrates. Vol. 1. Analysis results for 17 drinking water and 16 advanced waste treatment and 3 process blank concentrates. EPA-600/1-84-020A. (NTIS PB85-128221). Columbus, OH: Columbus Labs. Health Effects Research Laboratory. pp. 45,46,147,150 (1984).

(45) Maekawa, A., Ogiu, T., Onondera, H., Furuta, K., Matsuoka, C., Ohno, Y., Tanigawa, H., Salmo, G.S., Matsuyama, M., and Hayashi, Y. "Malignant fibrous histiocytomas induced in rats by polymers." *Journal of Cancer Research and Clinical Oncology*. 108(3):364-365 (1984).

(46) Marshall, T.C., Clark, C.R., Brewster, D.W., and Henderson, T.R. "Toxicological assessment of heat transfer fluids for use in solar energy applications." *Toxicology and Applied Pharmacology*. 58:31-38 (1981).

(47) Mason, J., and Apisarnthanarax, P. "Migratory silicone granuloma." *Archives of Dermatology*. 117(6):366-367 (1981).

(48) McFall, J.A., Antoine, S.R., and DeLeon, I.R. "Organics in the water column of Lake Pontchartrain." *Chemosphere*. 9:1253-1265 (1985).

(49) NCI/DCE (National Cancer Institute/ Division of Cancer Etiology). Short-term testing program. (no date).

(50) NIOSH. National Institute for Occupational Safety and Health. National Occupational Exposure Survey (NOES) (1983).

(51) NTP (National Toxicology Program). "NTP Report on the Immunotoxicity of Polydimethylsiloxane in Female B6C3F1 Mice (Contact Hypersensitivity Studies)." (no date).

(52) NTP (National Toxicology Program). "Status report on the potential effects of silicone preparations on the immune system in mice." Personal communication to Allan Anderson, of the Food and Drug Administration, from Albert E. Munson, February 9 (1992).

(53) Onstot, J.D., Ayling, R.E., and Stanley, J.S. "Characterization of HRGC/MS unidentified peaks from the analysis of human adipose tissue." U.S.EPA-560/5-87-002A. Exposure Evaluation Division, Office of Pollution Prevention and Toxics, Washington, DC., pp. 20, 22, 26 and 28 (1987).

(54) Pleil, J.D., and Whiton, R.S. "Determination of organic emissions from new carpeting." *Applied Occupational and Environmental Hygiene*. 5:693-699 (1990).

(55) Rae, V., Pardo, R.J., Blackwelder, P.L., and Falanga, V. "Leg ulcers following subcutaneous injection of a liquid silicone preparation." *Archives of Dermatology*. 125(5):670-673 (1989).

(56) Robinson, J., Gray, D.A., Jacobson, R., Howard, P., and Santodonato, J. "Technical support document for octamethylcyclotetrasiloxane." Prepared for: Test Rules Development Branch, Existing Chemicals Assessment Division, Office of

Toxic Substances. Washington, D.C., May 29 (1985).

(57) Rowe, V.K., Spencer, H.C., and Bass, S.L. "Toxicological studies on certain commercial silicones and hydrolyzable silane intermediates." *Journal of Industrial Hygiene and Toxicology*. 30(6):332–352 (1948).

(58) Sandmeyer, E.E., and Kirwin, C.J. Jr. "Organic silicone esters." In: *Patty's Industrial Hygiene and Toxicology*. Clayton, G.D., and Clayton, F.E., Eds. Volume IIA; 3rd revised edition. New York, NY: John Wiley and Sons. 2396–2412 (1981).

(59) Sergott, T.J., Limoli, J.P., Baldwin, C.M. Jr., and Laub, D.R. "Human adjuvant disease possible autoimmune disease after silicone implantation: A review of the literature case studies and speculation for the future." *Plastic and Reconstructive Surgery*. 78(1):104–114 (1986).

(60) Siddiqui, W.H., and Hobbs, E.J. "Subchronic dermal toxicity of trifluoropropylmethylcyclotrisiloxane in rabbits." *Drug and Chemical Toxicology*. 5(4):415–426 (1982).

(61) Silicones Health Council. "Aquatic Half-life of OMCTS." and "Henry's Law Constant of OMCTS." TSCA 4 submission 40–8994112, microfiche number OTS–0525564. Washington, DC: OTS, USEPA (1989).

(62) Suskind, R.R. "The present status of silicone protective creams." *Industrial Medicine and Surgery*. 24:413–416 (1955).

(63) SWS Silicones Corporation. Material safety data sheet for siloxane SWS–03314. Technical Resources, Incorporated. May (1992).

(64) Symmers, W.S.C. "Silicone mastitis in topless waitresses." *British Medical Journal*. 3:19–22 (1968).

(65) Travis, W.D., Balogh, K., and Abraham, J.L. "Silicone granulomas: Report of three cases and review of the literature." *Human Pathology*. 16:19–27 (1985).

(66) Union Carbide Corporation. Silicone Fluids. Union Carbide Corporation, U.S.A. pp. 1–67 (1982).

(67) Union Carbide Corporation. "Toxicity and irritation assay results of some food, drug or cosmetic product chemicals." TSCA 8d submission 87–8214984, microfiche number OTS–0206746, Washington, DC: OPPT, USEPA (1985a).

(68) Union Carbide Corporation. "Toxicity and irritation assay results of some food, drug or cosmetic product chemicals." TSCA 8d submission 87–8214985, microfiche number OTS–0206746, Washington, DC: OPPT, USEPA (1985b).

(69) Union Carbide Corporation. "Range finding toxicity studies with cover letter." TSCA 8d submission 87–8214982, microfiche number OTS–0206746, Washington, DC: OPPT, USEPA (1985c).

(70) Union Carbide Corporation. "Evaluation of potential hazards by dermal contact." TSCA 8d submission 878214987, microfiche number OTS–0206746, Washington, DC: OPPT, USEPA (1985d).

(71) Union Carbide Corporation. "Silicone fluid Y–4061: Acute toxicity and primary irritancy studies." TSCA FYI submission FYI–OTS–0386–046, microfiche number OTS–0000469–0, Washington, DC: OPPT, USEPA [1986].

(72) U.S. FDA (U.S. Food and Drug Administration). Food additive safety profile, addendum. Online (1992).

(73) Varga, J., Schumacher, H.R., and Jimenez, S.A. "Systemic sclerosis after augmentation mammoplasty with silicone implants." *Annals of Internal Medicine*. 111(5): 377–383 (1989).

(74) VOC data base. National Ambient Volatile Organic Compounds Data Base Update. U.S. Environmental Protection Agency. August 15 (1990).

(75) Wallace, L.A., Pellizzari, E., Hartwell, T., Rosenzweig, M., Erickson, M., Sparacino, C., and Zelon, H. "Personal exposure to volatile organic compounds. I. Direct measurements in breathing-zone air, drinking water, food, and exhaled breath." *Environmental Research*. 35:293–319 (1984).

(76) Weschler, C.J. "Polydimethylsiloxanes associated with indoor and outdoor airborne particles." *The Science of the Total Environment*. 73:53–63 (1988).

(77) Winer, L.H., Sternberg, T.H., Lehman, R., and Ashley, F.L. "Tissue reactions to injected silicone liquids. A report of three cases." *Archives of Dermatology*. 90:586–592 (1964).

2.4.b. *Chloroalkyl phosphates.*

*I. Rationale for Recommendation*

Four chloroalkyl phosphates are recommended for physical and chemical property, chemical fate, health effects and ecological effects screening tests (Table 4). The Committee recommends testing these four chloroalkyl phosphates because they are structurally similar to the five chloroalkyl phosphates recommended in the 23rd Report (53 FR 46262, November 16, 1988) and because there are insufficient data to reasonably determine or predict physical and chemical properties, persistence and health or ecolgical effects.

TABLE 4.—RECOMMENDED CHLOROALKYL PHOSPHATES

| CAS No. | Chemical Name | Acronym |
|---|---|---|
| 34621–99–3 | 1,2-Ethanediyl tetrakis(2-chloro-1-methylethylene) phosphate | TCIEP |
| 38051–10–4 | 2,2-Bis(chloromethyl)-1,3-propanediyl tetrakis(2- chloroethyl) phosphate | TCEBP |
| 53461–82–8 | Oxydi-2,1-ethanediyl tetrakis(2-chloroethyl) phosphate | TCEDP |
| 76649–15–5 | 2-Chloro-1-methylethyl bis(2-chloropropyl) phosphate | DCPCEP |

*II. Summary of Recommended Tests*

Four chloroalkyl phosphates (TCIEP, TCEBP, TCEDP and DCPCEP) are recommended for determination of melting point, water solubility, octanol-water partition coefficient, and vapor pressure data, hydrolysis and aerobic biodegradation rate. Also recommended are screening tests to develop acute health effects data (except for TCIEP) and fish, algae and aquatic and benthic invertebrates acute toxicity data (fish and aquatic invertebrate acute toxicity data are available for TCIEP).

*III. Supporting Information*

A. *Background.* In 1986, two chloroalkyl phosphates, tris(2-chloroethyl) phosphate (TCEP) and tetrakis(2-chloroethyl) ethylenediphosphate (TCEEP) were identified for priority testing consideration during the Committee's Sixth Scoring Exercise (52 FR 10409, April 1, 1987). On May 12, 1988, the Committee decided to expand this group to include other commercially-available chloroalkyl phosphates: tris(2-chloro-1-propyl) phosphate (TCPP), tris(2-chloroisopropyl) phosphate (TCIP), and tris(1,3-dichloroisopropyl) phosphate (TDCP). In its 23rd Report (53 FR 46262, November 16, 1988), the Committee recommended testing for TCEP, TCPP, TCIP, TDCP and TCEEP.

The Committee's computerized substructure-based chemical selection expert system (SuCSES) was developed in 1986 (Ref. 10). In 1988, some components of SuCSES had not been integrated into the system and did not permit the Committee to identify all commercially-available chloroalkyl phosphates. In 1992, with these integrated components, SuCSES was used to identify four additional chloroalkyl phosphates: TCIEP, TCEBP, TCEDP and DCPCEP.

B. *Physical and chemical properties.* No information was found on physical and chemical properties measured at ambient temperature.

C. *Exposure/information—production/use/disposal/exposure/release.* The chloroalkyl phosphates listed in Table 4 are commercially available and may be produced in substantial quantities. Actual production volumes are confidential business information. Chloroalkyl

phosphates are used as flame retardants in flexible and rigid polyurethane foams. These chloroalkyl phosphate-treated foams are used in furniture and bedding that are sold for household, business, and transportation uses.

There are no publicly-available exposure estimates, OSHA occupational exposure standards, publicly-available effluent monitoring data and Toxics Release Inventory data. Uncertainties related to exposure and release of chloroalkyl phosphates may be clarified after the Committee's review of the data obtained under TSCA Section 8(a) and 8(d) along with any other information submitted as a result of the generic request for voluntary use, exposure, release, and physical and chemical property data made in Chapter 1 of the 28th report (56 FR 41212, August 19, 1991).

D. *Chemical fate information.* No chemical fate information was found.

E. *Health effects information.* Except for data described below for TCIEP and TCEBP, no health effects information was found.

Five acute toxicity studies on TCIEP were reviewed. The oral LD50 for male rats was 1.58 g/kg (Ref. 3). No rabbits died when 2 g/kg TCIEP was applied to abraded and non-abraded skin for 24 hours (Ref. 4). Inhalation of 200 mg/liter for 1-hour resulted in death of 3 of 10 rats (Ref. 5). TCIEP was not a skin irritant; however, when 0.1 ml was instilled into the conjunctiva of rabbits eyes, it was irritating (Refs. 6 and 7). In comparison to the studies reviewed on the five chloroalkyl phosphates recommended in the ITC's 23rd Report: by the oral route, TCIEP was less toxic than TCIP and TDCP, and about the same as TCEP and TCEEP; by the inhalation route, TCIEP was more toxic than TCEP, TCPP, TCIP, and TCEEP.

In a 90-day rat dermal toxicity study, TCIEP increased liver weight at 500 mg/kg/day and hypertrophy of the liver and thyroid at 2500 mg/kg/day (Ref. 8). In a pilot developmental toxicity test, 800 mg/kg/day TCEBP increased postimplantation loss at maternally toxic doses (Ref. 9). In comparison to the TSCA 8(d) developmental toxicity studies on chloroalkyl phosphates recommended in the ITC's 23rd Report, TCEBP was less toxic than TCEP, TDCP or TCEEP.

The Committee is aware that Ames, micronucleus, skin sensitization and 90-day developmental toxicity tests were completed for TCIEP and has requested copies of these test reports from the test sponsor.

F. *Ecological effects information.* Except for TCIEP data, no ecological effects information was found.

For TCIEP, the 2-day LC50 for daphnids ranged from 4.1–5.3 mg/L and the 4-day $LC_{50}$ for fathead minnows ranged from 3.0–3.3 mg/L (Refs. 1 and 2). In comparison to the studies reviewed on the chloroalkyl phosphates recommended in the ITC's 23rd Report, $LC_{50}$ values for TCIEP were close to the fish LC50 of TDCP (1.4 mg/L), but less than the fish $LC_{50}$ of TCPP (51 mg/L) or the fish $LC_{50}$ of TCEP (250 mg/L).

*References*

(1) Eastman Kodak Company. Acute aquatic effects of Thermolin RJT on the daphnid, *Daphnia magna*. Rochester, NY (1987).

(2) Eastman Kodak Company. Acute aquatic effects of Thermolin RJT on the fathead minnow, *Pimaphales promelas*. Rochester, NY (1987).

(3) MB Research Laboratories, Inc. Report on Thermolin 102 oral LD50 in rats. Project No. MB 77-1540, Spinnerstown, PA (1977).

(4) MB Research Laboratories, Inc. Report on Thermolin 102 acute dermal toxicity in rabbits. Project No. MB 77-1540, Spinnerstown, PA (1977).

(5) MB Research Laboratories, Inc. Report on Thermolin 102 inhalation toxicity in rats. Project No. MB 77-1540, Spinnerstown, PA (1977).

(6) MB Research Laboratories, Inc. Report on Thermolin 102 primary dermal irritation in rabbits. Project No. MB 77-1540, Spinnerstown, PA (1977).

(7) MB Research Laboratories, Inc. Report on Thermolin 102 rabbit eye irritation. Project No. MB 77-1540, Spinnerstown, PA (1977).

(8) Toxicol Laboratories Limited. "Thermolin RJT 90-day dermal toxicity study in the rat." Report No. OLA/11/88, Ledbury, U.K. (1988).

(9) Monsanto Co. "Pilot teratology study in rats with cover sheets and letter dated 4/10/90." Document No. 88-900000115, Fiche No. OTS-0524046, Office of Pesticides and Toxic Substances, Washington, DC. (1990).

(10) Walker, J.D. "Chemical selection by the Interagency Testing Committee: use of computerized substructure searching to identify chemical groups for health effects, chemical fate and ecological effects testing." *The Science of the Total Environment*. 109/110: 691-700 (1991).

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Part VII

# Department of Transportation

**Research and Special Programs Administration**

**49 CFR Parts 107 and 171**

## Hazardous Materials Transportation; Registration and Fee Assessment Program; Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107 and 171

[Docket No. HM-208, Amdt. Nos. 107-28 and 171-115]

RIN 2137-AB43

# Hazardous Materials Transportation; Registration and Fee Assessment Program

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** RSPA is establishing a national registration program for certain persons engaged in the offering for transportation, and transportation, of certain hazardous materials in foreign, intrastate or interstate commerce. Those persons are required to annually file a registration statement with RSPA. All persons who are required to be registered are assessed an annual fee of $300, $250 of which is to fund a nationwide emergency response training and planning grant program for States and local governments and $50 of which is to offset the costs to DOT of processing each registration statement.

RSPA is imposing an initial deadline of August 31, 1992, for filing the registration statement and paying the registration and processing fees. After September 15, 1992, no person required to file a registration statement with RSPA may transport, or cause to be transported or shipped, any of the specified hazardous materials unless that person has on file a registration statement as prescribed by this final rule. This regulation is necessary to establish a national registration and fee collection system to fund a national emergency response training and planning grant program.

**EFFECTIVE DATE:** August 31, 1992. However, immediate compliance is authorized.

**ADDRESSES:** Copies of the "Hazardous Materials Transportation Uniform Safety Act of 1990" (HMTUSA), Public Law 101-615, may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371, (202) 275-2001.

**FOR FURTHER INFORMATION CONTACT:** Joseph S. Nalevanko, Office of Hazardous Materials Planning and Analysis, (202) 366-4109, or Beth Romo, Office of Hazardous Materials Standards, (202) 366-4488, Hazardous Materials Safety, 400 Seventh Street SW., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On November 16, 1990, the President signed the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law 101-615, which amended the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.* Revised 49 App. U.S.C. 1805, requires, in part, certain carriers and shippers engaged in the transportation of hazardous materials to register with the Secretary of Transportation. Because the Secretary's responsibility in this matter has been delegated to the Research and Special Programs Administration (RSPA), most references in this final rule are to RSPA.

RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 10, 1991 (Docket HM-208; Notice No. 91-4; 56 FR 51294) proposing to establish a nationwide registration program for certain shippers, carriers, and packaging manufacturers engaged in intrastate, interstate, or foreign commerce. The proposed registration and fee collection program included those persons under a statutory obligation to file a registration statement. These registration and fee requirements apply to all modes of transportation (i.e., highway, air, water, and rail), in intrastate, interstate and foreign commerce. They apply to the transportation of highway route-controlled quantities of radioactive materials, certain explosives, hazardous materials extremely toxic by inhalation, certain bulk shipments of hazardous materials (e.g., shipments involving cargo tank trucks or rail tank cars having a capacity equal to or greater than 13, 248 liters (3,500 gallons)), and shipments of 2170 kg (5,000 pounds) or more of a class of hazardous material for which placarding of a vehicle, rail car, or freight container is required.

In addition, RSPA proposed, under the discretionary authority in 49 App. U.S.C. 1805, to include all persons who are engaged in the manufacturing, fabricating, marking, retesting, or reconditioning of United Nations (UN) or Department of Transportation (DOT) specification or DOT exemption packages, except small business concerns, as described in 13 CFR 121.601, that manufacture, fabricate, or mark only boxes or bags, or both.

RSPA proposed two major alternative fee schedules. One alternative provided for a graduated fee schedule under which all persons (except foreign entities) required to file a registration statement with RSPA would have the choice of deciding whether to pay a registration fee based either on the person's annual net income or on the number of activities which the person carries out and for which filing a registration statement is required. The second alternative provided a flat fee schedule under which each person subject to the registration program would pay the same fee. In addition to the registration fee, RSPA proposed a $50 processing fee to cover the Department's costs in processing the registration statements.

The filing of a registration statement and the payment of a registration fee was proposed to be an annual requirement. The registration year was proposed to begin June 1 of one year and end May 31 of the following year. RSPA proposed May 31, 1992, for the effective date of the required filing of the initial registration statement and the required payment of the associated registration fee.

RSPA proposed that a "lock box" system be used by registrants for the filing of registration statements and the payment and processing of fees. The "lock box" is a post office box that a bank uses to collect mail frequently and transmit funds immediately to the U.S. Treasury. As proposed, persons subject to the registration program would mail their registration statements and their payments in full to a specific post office box on or before May 31 of each year. RSPA outlined the lock box procedures and proposed that payment be in U.S. dollars and by certified check, cashier's check, money order, or VISA or MasterCard credit card for the amount of the registration fee and the cost to DOT of processing the registration statement.

Proposed recordkeeping requirements included a requirement that copies of the registration statement and the Certificate of Registration be maintained at a person's principal place of business. RSPA further proposed that a copy of the Certificate of Registration be maintained at all fixed sites where applicable activities occur and also carried on board all transport vehicles, trains, vessels and aircraft. In addition, RSPA proposed that foreign entities subject to the registration requirements be required to designate an agent who is a resident of the United States.

## II. Discussion of Comments

In addition to public hearings held in Burlingame, California; Des Plaines, Illinois; and Washington, DC, RSPA received over 160 written comments to Docket HM-208. Those submitting

comments represented a broad spectrum of interests in hazardous materials transportation.

RSPA received comments from small shippers, intermediaries such as warehousemen and freight forwarders, large chemical corporations, and trade associations representing the interests of the chemical manufacturers. Carriers in all modes provided comments and also were represented by rail, trucking, air, and ocean carrier associations. The packaging industry provided comments through individual companies and their associations.

United States agencies and foreign governments submitted comments on the proposed registration program. Because of the proposed rule's potential impact on foreign entities, there was considerable interest expressed by international air and vessel carriers, container lessors, corporations having foreign operations, and U.S. companies concerned with trade agreements.

Several State agencies and the National Governors' Association submitted comments addressing various issues. Small business entities responding to the proposed registration program included farmers and farm cooperatives, cleaning product suppliers, propane gas suppliers, petroleum marketers, contract haulers, and fireworks distributors.

**Regulatory Review Comments**

In response to the President's January 28, 1992, announcement of a federal regulatory review, DOT published a notice on February 7, 1992 (57 FR 4744) soliciting public comments on the Department's regulatory programs. In response to that notice, RSPA has received several comments to the proposed registration rule. These comments reiterated earlier comments to Docket HM–208 and addressed the applicability of the proposed registration requirements to packaging manufacturers and foreign entities, the separate registration of subsidiaries, the proposed requirement for maintaining proof of registration, and the amount of the annual fee.

All comments have been considered in preparing this final rule. Based on the merit of comments to the Notice and those received during the regulatory review, RSPA is modifying several requirements proposed in the Notice. Significant changes in this rule from the proposal published October 10, 1991, are discussed in detail below.

**III. Scope and Exceptions—Sections 107.601–107.606**

Section 107.601 defines the scope of the registration and fee collection regulations with respect to certain domestic and international shippers and carriers of hazardous materials in foreign, intrastate and interstate commerce. In response to comments, several clarifications have been made to this section. In addition, the proposal in the Notice to include certain package manufacturers in the registration program is not adopted in this final rule.

RSPA received numerous comments concerning the proposed scope of the registration program; these comments generally fall into two categories: (A) Recommendations to expand the scope of the registration program beyond that proposed in the Notice, or to limit the program to those persons required by statute to be registered; and (B) requests for clarification on whether certain persons, functions and activities associated with the transportation of hazardous materials are subject to the registration requirement.

*A. Scope of the Registration Program*

Under 49 App. U.S.C. 1805, RSPA has discretionary authority to expand the registration program to include a broad spectrum of persons and activities involved in the transportation of hazardous materials; such persons and activities are in addition to those persons and activities which, under the HMTA, must be covered by the registration program. Under this authority, RSPA proposed to expand the scope of the registration program to include all persons who are engaged in the manufacturing, fabricating, marking, retesting, or reconditioning of UN or DOT specification or DOT exemption packages, except for small business concerns, as described in 13 CFR 121.601, that manufacture, fabricate, or mark only boxes or bags, or both.

A number of commenters suggested that RSPA further expand the scope of the registration program to include: (1) Persons who offer or transport hazardous waste in any quantity; (2) persons who offer or transport Division 1.1 or 1.2 explosives in quantities less than 25 kilograms (55 pounds); and (3) persons offering or transporting hazardous materials in any quantity requiring placards, and not just in quantities of 2,170 kilograms (5,000 pounds) or more of a class of a hazardous material for which placarding is required. In addition, one commenter suggested that RSPA request Federal, State and local government agencies who offer or transport certain hazardous materials to register on a voluntary basis since, under the HMTA, these agencies are not required to be registered with RSPA.

Other commenters believed that the scope of the registration program should be expanded to include agents, property brokers, non-vessel operating common carriers (NVOCCs), consolidators, freight forwarders, warehousemen and other intermediaries involved in the transportation of hazardous materials, regardless of whether or not these entities are currently subject to the Hazardous Materials Regulations (HMR). These commenters maintained that all entities associated with, and benefiting from, the movement of hazardous materials should contribute toward emergency response training and planning. However, many commenters, including associations representing warehousemen, NVOCCs, brokers, freight forwarders, container lessors, and the intermodal tank container industry, were opposed to expanding the scope of the registration program beyond the minimum required by the HMTA. For example, the American Warehousemen's Association stated that Congress did not intend that the registration program apply across-the-board to every person involved in the transportation process.

In deciding whether to expand the scope of the registration program beyond the mandatory provisions of the HMTA, RSPA has evaluated and sought to balance a wide range of considerations. First, there is the fact that all persons involved in the transportation of hazardous materials—including storage incidental to transportation—have an important role to play in the safe transportation of these materials. The actions of each person involved in the transportation of hazardous materials can contribute to increasing or decreasing the risk associated with the distribution of these materials throughout the United States, thus affecting the workload and planning and training requirements of State and local emergency response personnel.

Twenty-eight percent of all hazardous materials incidents reported to RSPA between 1986 and 1990, and as published in RSPA's 1990 annual report to Congress on the transportation of hazardous materials, were attributable to package failures; these incidents certainly have contributed to the workload of emergency response personnel. The design, production and quality control processes used in the manufacturing of packages for the transportation of hazardous materials can affect the risk associated with these materials, in terms of fatigue and stress problems induced by the transportation

environment, or in terms of defective fittings, valves, or closures.

Package manufacturers, however, are only one component of a very large universe of shippers, carriers and other persons involved in the transportation of hazardous materials. This universe can vary significantly from year to year and includes physicians working in hospitals or operating out of private offices; technicians in clinics and laboratories; dry cleaners; gasoline station operators; photo developers; new and used car dealers; wholesale and retail distributors of paints, alcoholic beverages, and garden products; and a host of other persons and activities. Although individually each may not contribute significantly to the risk associated with the transportation of hazardous materials, in the aggregate they can account for a substantial portion of the total risk and workload faced by State and local emergency response personnel.

Given the diverse nature of the persons involved in the transportation of hazardous materials, RSPA has concluded that it is both reasonable and prudent that the registration program begin by focusing solely on those persons and activities subject to the mandatory registration requirements of the HMTA. This will ensure that the initial registration procedures and fee collection process operate in an orderly and efficient manner. To expand the registration program at this time either on a selective or on a more comprehensive basis could create unnecessary confusion and result in needless burdens on domestic commerce.

Further, as pointed out in the Notice, RSPA does not have an accurate picture of the universe of persons subject to the HMR nor the number of persons subject to the mandatory filing of registration statements. This uncertainty supports the decision that the initial steps of the registration program should be as simple and as streamlined as possible, provided that the basic purposes and integrity of the registration program are not undermined.

Also, limiting the registration program to those persons who are under a statutory obligation to register will enable RSPA and State and local compliance and enforcement personnel to carefully focus and concentrate their efforts, and gain additional experience with the registration process. However, RSPA may propose expanding the scope of the registration program in the future.

*B. Persons Under Statutory Obligation to Register: Requests for Clarification*

1. RSPA's Authority to Grant Exceptions

In responding to the question posed in the Notice on the possible broadening or narrowing of the registration program, several commenters mistakenly assumed that RSPA has the authority to except certain classes of persons explicitly covered by 49 App. U.S.C. 1802 and 1805 from the requirement to be registered with RSPA. RSPA has no such authority.

Thus, under 49 App. U.S.C. 1805, each person who carries out one or more of the following activities must file a registration statement with RSPA:

(1) Transports or causes to be transported or shipped in commerce highway-route controlled quantities of radioactive materials;

(2) Transports or causes to be transported or shipped in commerce more than 25 kilograms (55 pounds) of Division 1.1, 1.2, or 1.3 (Class A or Class B explosives) materials in a motor vehicle, rail car, or transport container;

(3) Transports or causes to be transported or shipped in commerce more than one liter (1.06 quarts) per package of a hazardous material which has been designated by RSPA as extremely toxic by inhalation;

(4) Transports or causes to be transported or shipped in commerce a hazardous material in a bulk package, container, or tank if the package, container, or tank has a capacity equal to or greater than 13,248 liters (3,500 gallons) or more than 13.24 cubic meters (468 cubic feet); or

(5) Transports or causes to be transported or shipped in commerce a shipment of 2170 kilograms (5,000 pounds) or more of a class of a hazardous material for which placarding of a vehicle, rail car, or freight container is required.

Under 49 App. U.S.C. 1802, the term "person" means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise. This definition appears in § 171.8 of the HMR.

However, 49 App. U.S.C. 1805 exempts from the registration requirement agencies of the Federal Government, agencies of States, agencies of political subdivisions of States, employees of such agencies with respect to their official duties, and employees of a "hazmat employer."

2. Applicability of Registration Requirements to Intrastate Offerors and Carriers

A number of commenters questioned whether intrastate offerors and carriers are subject to the mandatory registration requirements of the HMTA. The registration and other provisions of the HMTA make no distinction between interstate and intrastate carriers and shippers of hazardous materials. Further, it would be illogical to presume that intrastate offerors and carriers are excepted from the registration program when they will be primary recipients of the enhanced emergency response capabilities derived from the national emergency response training and planning grant program for States and local governments. State and local emergency personnel, in responding to incidents involving the transportation of hazardous materials, do not and cannot make distinctions between intrastate and interstate offerors and carriers; and the HMTA neither requires nor, in RSPA's view, permits such an illogical and counterproductive result. Such a result would seriously vitiate the purposes of both the registration and the emergency response planning and training grant programs. This final rule requires that intrastate offerors and carriers be registered with RSPA in the same manner and to the same extent as foreign and interstate offerors and carriers of hazardous materials.

3. Applicability of Registration Requirements to Federal Contractors

Commenters representing air carriers requested an exception from the registration requirements for certain air carriers operating under Civil Reserve Air Fleet or Military Airlift Command charter programs on the grounds that these programs may obligate such carriers to engage in activities subject to the registration program. The Air Transport Association of America stated that such carriers should be excepted from the registration requirement because they are under a highly-structured government contract, subject to ongoing safety fitness reviews, and have no discretion as to the types of cargoes they transport. The U.S. Department of Energy, in discussing the applicability of the registration requirement to government contractors, was uncertain whether such carriers are exempt from the registration requirement.

RSPA's lack of authority to grant exceptions to the mandatory registration

requirements is particularly clear in the case of Federal contractors who offer or transport hazardous materials. In part, 49 App. U.S.C. 1816 states that:

> Any person who, under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government, transports, or causes to be transported or shipped, a hazardous material * * * shall be subject to and comply with all provisions of this title, all orders and regulations issued under this title, and all other substantive and procedural requirements of Federal, State, and local governments and Indian tribes (except any such requirements that have been preempted by this title or any other Federal law), in the same manner and to the same extent as any person engaged in such activities that are in or affect commerce is subject to such provisions, orders, regulations, and requirements.

4. Applicability of Registration Requirements to Foreign Offerors, Carriers, and Governments

Foreign air carriers expressed the belief that they should be excepted from the registration requirement for a wide variety of reasons: The need for international reciprocity and cooperation; the potential imposition by foreign entities of similar or more stringent requirements on U.S. carriers and offerors; and the existence of various international agreements which purportedly take precedence over U.S. statutory law. The British Government stressed the issue of equity, and stated that just as U.S. government agencies are excepted from the registration program, foreign governments and agencies also should be excepted, especially for the transportation of defense materials. In a similar vein, another commenter maintained that Congress could not possibly have intended that the emergency response training and planning grant program for State and local governments be funded, at least in part, by foreign governments through the registration program, but not the U.S. Government itself.

With respect to foreign offerors, carriers and governments, it is noted that 49 App. U.S.C. 1802 defines these entities as "persons" and thus subject to the registration program to the extent they engage in any of the activities covered by the registration program. However, because of the extraordinary complexity of international commercial relations and significant problems associated with informing and identifying the parties concerned, RSPA is providing a two-year delay of application to foreign offerors, including foreign governments which offer hazardous materials for transportation.

For purposes of this delay of application, offerors which are foreign subsidiaries of U.S. corporations will be considered foreign offerors, except as noted below (see discussion below). The delay of application does not apply to foreign carriers. Foreign carriers operating in the United States are more familiar with U.S. requirements than foreign offerors. These carriers also come under the immediate surveillance of U.S. inspection and enforcement personnel. Therefore, foreign carriers operating in the United States are not excepted from registration requirements under the two-year delay. This means, for example, that any Canadian or Mexican motor or rail carrier, foreign airline carrier, or merchant vessel carrier transporting any of the specified hazardous materials in or on U.S. territory, airspace or territorial sea is subject to the registration program and must register with RSPA before entering the United States with any of those hazardous materials.

Application of these requirements to foreign carriers entering the United States is consistent with international law and international agreements to which the United States is a party. The registration fee is being used to support emergency response to hazardous materials incidents, response which will benefit foreign, as well as interstate and intrastate, offerors and carriers of hazardous materials into and in the United States by all modes of transportation. Moreover, the fee itself does not exceed the cost of supporting the response programs, including RSPA's costs of processing registrations, and is assessed fairly among the parties creating risks.

5. Applicability of Registration Requirements to Parent Companies and Their Subsidiaries

RSPA received a variety of comments on its proposal that each independently incorporated subsidiary must register and pay a fee separate from its parent company. As indicated in the Notice, RSPA proposed this regulatory approach because corporations are explicitly defined as "persons" under 49 App. U.S.C. 1802. Comments to Docket HM-208 provide no basis for excepting incorporated subsidiaries of a parent from the mandatory registration requirements under the HMTA. Therefore, each separate corporate entity under a parent company that engages in any of the activities subject to the registration program, and the parent company itself if it engages in any such activity, must be separately registered and pay the full registration and processing fee. For example, if a shipping company has a subsidiary trucking company and both are engaged in an activity subject to the registration program, each company must file a separate registration statement and each must pay a registration fee of $300 (including a processing fee of $50).

A number of commenters expressed concern that separate registration for corporate entities might be inappropriately applied to federated farmer cooperatives, because both local and regional cooperatives are separately incorporated. However, whether each local farm cooperative would be subject to separate registration depends on whether the cooperative is a separate person under applicable State law. Commenters also suggested that a parent company should be allowed to file one consolidated registration statement listing its subsidiaries with appropriate information and enclosing one combined total fee. They claimed that having one integrated filing would promote compliance, reduce administrative burdens, ensure the accuracy of information, facilitate updating, and give RSPA one point of contact.

RSPA is willing and able to partially accommodate these requests. RSPA has developed a "registration statement", DOT Form F 5800.2 (see Attachment #1), that is designed to capture the minimum amount of information required by the HMTA; facilitate processing and entry of the information into a computerized database; and result in the rapid issuance of a Certificate of Registration. Registrants must use this form in order to be properly registered with RSPA. Furthermore, the information provided on the registration statement must be specific to each registrant. Although the HMTA requires that each person subject to the registration program file a registration statement, a parent company can submit separate registration statements on behalf of, and for, each of its subsidiaries subject to the registration program (and itself, if also subject to the registration program) and enclose one combined registration fee payment. Registrants are advised that if there are discrepancies in the information provided on the registration statement (e.g. failure to sign each separate registration statement), or in the amount of the fee to be paid, the issuance of the certificates of registration for some, and possibly for all, of the companies on behalf of which the parent company has submitted the registration statements inevitably will be delayed.

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6. Applicability of Registration Requirements to Owner-Operators of Motor Vehicles

RSPA received several comments on the issue of requiring separate registration from owner-operators under permanent or long-term lease to motor carriers. These commenters requested that RSPA exempt owner-operators under permanent or long-term lease arrangements to registered motor carriers. For example, the Chemical Waste Transportation Institute stated that owner-operators under long-term leases are virtually indistinguishable from employee drivers and should not be required to file separately. On the other hand, some commenters believed RSPA must require the separate registration for owner-operators acting as motor carriers under their own operating authority. The American Trucking Associations and the Independent Truckers and Drivers Association supported this view. They stated that an owner-operator acting solely as a separate motor carrier and maintaining separate liability insurance should be required to file a separate registration.

RSPA has considered these comments in light of 49 App. U.S.C. 1802 and 1805, and finds that there is a statutory basis for distinguishing between owner-operators operating under term lease arrangements, and owner-operators acting under their own operating authority. First, 49 App. U.S.C. 1805(c)(14) states that notwithstanding any other provisions of this subsection, an employee of a hazmat employer is not required to file a registration statement by or under this section. Also, 49 App. U.S.C. 1802, the term "hazmat employee" means "an individual who is employed by a hazmat employer and who in the course of the individual's employment directly affects hazardous materials transportation safety as determined by the Secretary by regulation. Such term includes an owner-operator of a motor vehicle which transports in commerce hazardous materials."

Whether or not owner-operators are under a 30-day or longer lease (in the same manner as prescribed by the Interstate Commerce Commission in 49 CFR 1057.11 and 1057.12 or an equivalent contractual relationship) is a reasonable basis for distinguishing between owner-operators who are in fact "hazmat employees" and owner-operators who are operating as independent companies. Accordingly, owner-operators of motor vehicles having a 30-day or longer lease arrangement are excepted from the requirement to register with RSPA.

7. Applicability of Registration Requirements to Certain Shipments of Hazardous Materials

Many commenters asked RSPA to clarify paragraphs (a)(4) and (a)(5) of proposed § 107.601. First, the Fertilizer Institute (TFI) claimed that Congress did not intend to impose registration and fee requirements on farmers and small businesses involved in offering or transporting small cargo tanks with a capacity of less than 3,500 gallons and that this intent is negated by the 5,000-pound placarded quantity registration requirement of paragraph (a)(5). Further, TFI maintained that this apparent contradiction will have a major economic impact on the farming industry because, for example, a cargo tank carrying 1,000 gallons of liquid fertilizer would weigh 8,300 pounds, and thus be subject to the registration requirements. In addition, these commenters point out that several Congressmen have indicated their intent to introduce legislation which would except farming and other operations from the mandatory registration requirements of the HMTA.

Again, the language of the HMTA is clear and explicit: a person need only engage "in one" of the activities explicitly mentioned under 49 App. U.S.C. 1805 in order to be subject to the mandatory registration requirements. "Transporting or causing to be transported or shipped in commerce a shipment of 5,000 pounds [2,170 kilograms] or more of a class of a hazardous material for which placarding of a vehicle, rail car, or freight container is required" is one of the activities described in the HMTA.

Second, one commenter stated that clarification between the apparent overlap in proposed paragraphs (a)(4) and (a)(5) could be achieved by inserting the phrase "placarded shipments" into paragraph (a)(5). Without such clarification, the commenter claimed, RSPA would be double-charging for a single activity, which is unfair and contrary to Congressional intent. Another commenter stated that RSPA should clarify the placarded quantity provision of paragraph (a)(5) and believed that it should apply to dry freight only. As another alternative, the State of Maryland Department of Environment recommended that RSPA add "in non-bulk packaging" in § 107.601(a)(5) after "or hazardous materials."

In addition, statements on the floor of both the House of Representatives (Cong. Rec., January 3, 1992) and the Senate (Cong. Rec., January 21, 1992) have raised questions about Congressional intent in enacting 49 App. U.S.C. 1805 and indicated that this provision might be amended. Furthermore, on May 8, 1992, the Secretary of Transportation formally proposed amendment of 49 App. U.S.C. 1805(c)(1)(C) to avoid requiring registration of farmers transporting ammonia in purse tanks as if they were commercial transporters of hazardous materials.

It is likely, therefore, that confusion about applicability of this rule exists among farmers and other transporters of hazardous materials weighing more than 2,170 kg (5,000 pounds) in a bulk packaging, container or tank with a capacity less than 13,248 liters (3,500 gallons). To alleviate this problem, RSPA is delaying application of this rule to those persons until July 1, 1993.

The option of charging a higher registration fee for persons who engage in more than one activity subject to the registration program is within the discretionary authority of RSPA, as pointed out in the Notice (see also 49 App. U.S.C. 1815). However, this is no longer an issued because RSPA is imposing the same fee on all registrants, regardless of their number of covered activities.

Third, a number of commenters believed RSPA should define the term "shipment", in paragraph (a)(5). One commenter maintained that the term "shipment" should mean a single package or container or single tank, and expressed concern that the absence of a definition for "shipment" would require registration by a carrier transporting a number of packages of different types in a single aircraft container. Another commenter stated that a shipper might elect to offer two or more shipments, described on separate waybills and hazardous materials shipping papers, together amounting to more than 5,000 pounds. This commenter also asked whether a carrier accepting such separately documented packages from a single shipper or forwarder for transportation would be subject to the registration requirements.

The term "shipment" is used in a wide variety of ways by persons in commerce and industry and by regulators and enforcement agencies. Rather than attempting to define the term in a meaningful way for purposes of § 107.601, RSPA is providing a qualification of the "5000 pound proviso" that limits it to hazardous materials being loaded at one loading facility. This is consistent with the applicability of § 172.504(b) in regard to

placarding, which was the basis for the limitation specified in Section 8 of HMTUSA. This qualification, contrary to the view discussed above, is necessary because the meaning of the term "shipment" is not explicit and it would be unnecessarily burdensome on carriers to require them to calculate aggregations of offerings (small shipments) during pickup and delivery operations. In addition, it is likely that most "less than truckload" carriers would be subject to the registration requirement due to the probability that at one time or another during the registration year they will handle a one class offering of 5000 pounds or more that is loaded at one facility.

In the context of paragraph (a)(5), a person who offers, at any one time and from any one facility, a package or combination of packages the gross weight of which is 5,000 or more pounds, is engaged in the "shipment" of materials. If these materials are in a hazard class for which placarding of a vehicle, rail car or freight container is required, both the offeror of the material and the carrier accepting the material for transportation are subject to the registration program. Again, in the context of paragraph (a)(5), if a person who offers, at any one time and from any one facility, a package or combination of packages the gross weight of which is less than 5,000 pounds, even if these materials involve a class of hazardous material for which placarding of a vehicle, rail car or freight container is required, neither the offeror of the material nor the carrier accepting the material meets the criteria of paragraph (a)(5) with respect to the requirement to be registered with RSPA. The nature of the materials, however, may require registration under other paragraphs in § 107.601.

In this final rule, paragraph (a)(5) is redesignated paragraph (e) and revised to clarify that the weight of the shipment refers to "gross weight". RSPA also has revised paragraph (e) to mirror the provisions of the HMTA which mandate registration for a shipment of 2170 kg (5000 pounds) or more of a class of a hazardous material or hazardous materials. The phrase "of a class" was inadvertently omitted in the Notice.

8. Applicability of Registration Requirements to Persons Who Offer (or Cause to be Transported) or Transport in Commerce Hazardous Materials.

Many commenters asked RSPA to more clearly define the terms "cause to be transported or shipped" or "offer," noting that definitions for these terms appear neither in the HMTA nor in the Notice. One commenter recommended that RSPA define "shipper" and "carrier," with the definition of "shipper" to include wholly-owned private carriers. Another commenter sought guidance as to who the "shipper" is in transactions where more than one party is involved at the shipment's origin. This commenter also added that it is unclear whether a firm who is the shipper of record or a firm actually tendering the shipment is the person who is the offeror. Other commenters requested clarification of who must register and pay fees in situations where consignees return off/specification, residue, or recovered material on a one/time basis to the original shipper.

Members of the Intermodal Tank Container Association (ITCA) claimed to be uncertain and confused as to whether or not they would have a legal obligation to comply with the registration requirements. ITCA declared that intermediaries such as freight forwarders, brokers, and NVOCCs should not be left to determine "at their peril" whether or not to register and pay. Because the proposed regulations do not refer to persons acting in capacities other than as offerors or transporters, ITCA stressed the importance of clearly identifying those persons required to register. On February 26, 1990, RSPA published a formal interpretation of what constitutes an "offeror" or "shipper" of hazardous materials under the HMR [Int. No. 88–1–RSPA; 55 FR 6761]. In this interpretation, RSPA stated that determining regulatory responsibilities involves a case/by/case determination based on all relevant facts. No single factor, RSPA said, conclusively determines legal responsibility of performance of "offeror" functions under the HMR. The interpretation, among other things, stated:

> The word "shipper" is not specifically defined in the HMR (49 CFR parts 171–180), due primarily to the fact that it is not possible for the Department to account for the numerous commercial arrangements that may exist under that concept. Although the word "shipper" does appear, it is used in an ordinary layman's manner rather than as a specific, technical term of art. Consequently, responsibilities generally are placed on "offerors" for performance of the functions associated with "offering" hazardous materials for transportation (e.g., see the general and applicability provisions in §§ 171.1, 171.2, 172.3, and 173.1).
>
> The key issue in determining the regulatory responsibilities under the requirements of parts 171, 172, and 173 is determining which parties perform which functions. This involves a case-by-case determination based upon all relevant facts. Any person who performs, attempts to perform, or under the circumstances involved, is contractually or otherwise responsible to perform, any of the functions assigned by the HMR to the offeror, is legally responsible under the HMR for the proper performance of those functions. Any person's performance or attempted performance of any "offeror" functions may be evidence of that person's responsibility for performance of other "offeror" functions. In many cases, more than one person may be responsible for performing, or attempting to perform, "offeror" functions, and each such person may be held jointly and severally accountable for all or some of the "offeror" responsibilities under the HMR.

More precise definitions of the terms "causes to be transported or shipped," and "offeror" would not be helpful in this context. However, it is clear that if in transportation an "intermediary" or "facilitator"—such as a freight forwarder, broker, warehouseman, consolidator, or non-vessel operating common carrier—performs any of the functions of an offeror as to any covered hazardous material, this intermediary is subject to the registration program.

Further, while commenters assume that there is only one offeror in any given situation, in actuality there may be one or more offerors, jointly and severally responsible for compliance with the HMR, in any transportation transaction—depending on the nature of the transaction. Each such offeror is subject to the registration program.

In addition, if a consignee returns off-specification, residue, or recovered material on a one-time basis to the original shipper, the consignee is an offeror of hazardous materials; thus, if the materials involved are covered by the registration requirements, the consignee must register with RSPA.

In summary, if a person performs any function of an offeror or carrier of hazardous materials, and if the materials or activities involved are subject to the registration requirements, that person must register with RSPA. This is consistent with the present scope of the HMR—except that the registration requirements also apply to *all* intrastate offerors and carriers of hazardous materials by highway (as well as all other modes) because of the HMTA statutory mandate.

9. Preemption of State and Local Registration Programs And Use of Funds

The National Governors' Association and other commenters urged RSPA to specifically state in the final rule that the Federal registration and fee program does not preempt or restrict a State's ability to register or permit motor carriers. Several commenters were concerned about the purpose and the use of the funds collected as registration fees.

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This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Indian tribes to impose their own fees or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials.

RSPA encourages States, as well as local governments and Indian tribes, to incorporate by reference, or otherwise adopt and enforce, the HMR as State, local or Indian tribal law. This approach greatly enhances compliance with a nationally uniform set of regulations concerning the transportation of hazardous materials.

The monies generated by this registration program will be used to fund a public sector grant program that is being established to increase the effectiveness of State and local hazardous materials emergency training and planning programs, as required by 49 App. U.S.C. 1815. This section authorizes DOT to provide assistance to States for emergency response planning and to States and Indian tribes for emergency response training. The program is to begin in fiscal year 1993 and extend through fiscal year 1996. Thus, the grant monies that will be distributed as a result of this registration program will be used to fund some of the hazardous materials transportation enforcement, compliance, planning, training, emergency response and cleanup programs of States, Indian tribes, and local governments. For a thorough discussion of the grant program, interested readers should refer to RSPA's proposed grants rule, which was published in the **Federal Register** on March 2, 1992, under Docket HM–209 (57 FR 7474).

The existence of this registration program and the related grants program is not to be construed as having any preemptive effect. Of course, State, local or Indian tribe requirements may be preempted by the Commerce Clause of the Constitution or by statutory provisions of the HMTA or other Federal laws. For example, 49 App. U.S.C. 1811 prohibits imposition of hazardous materials transportation fees which are not equitable or which are not used for purposes related to the transportation of hazardous materials. This provision was added to the HMTA by Congress in the HMTUSA—the same law which mandated the registration and grants program. It clearly demonstrates a legislative intent to authorize hazardous materials transportation fees so long as those fees meet the criteria of that section. Likewise, 49 App. U.S.C. 1819 addresses the uniformity of State motor carrier registration forms and procedures. However, neither the HMTA registration provisions being implemented by this regulation nor this regulation itself provides any basis for preemption of State, local government or Indian tribal requirements relating to hazardous materials transportation.

10. Motor Carrier Permitting Requirement

Several commenters recommended that RSPA clarify the relationship between registration and motor carrier permitting and emphasize that RSPA's registration rule does not preempt or restrict a State's ability to register or permit motor carriers. The major purposes of this registration program are threefold: (1) To identify and provide information on the activities and locations of certain persons engaged in the transportation of hazardous materials; (2) to encourage compliance with the HMR; and (3) to provide a mechanism for funding certain hazardous materials safety activities. The program is not intended to deny a person the right to engage in any of the activities covered by the registration program. On the other hand, a permitting or licensing program is primarily intended to establish criteria which certain offerors and carriers of hazardous materials must meet in order to operate. As discussed previously, the registration program has no preemptive effect on a State's ability to develop or implement a hazardous materials registration program. The potential burdens and problems of duplicative or inconsistent State and local registration programs are being addressed by a working group created under 49 App. U.S.C. 1819.

As discussed in the Notice, the HMTA requires motor carriers to obtain a safety permit if they carry certain hazardous materials. Carriage of these materials also may make them subject to registration requirements, which apply to all modes of transportation. In addition, carriers must comply with all applicable Federal motor carrier safety regulations and minimum Federal financial responsibility laws. The preemptive effect of the requirement for motor carriers transporting hazardous materials to obtain a safety permit from DOT under 49 App. U.S.C. 1805(d), has not yet been determined.

## IV. General Registration Procedures—Section 107.608

### *A. Registration Statement*

The HMTA specifically requires the submission of a registration statement from persons required to register, and also requires that the statement include, at a minimum, the registrant's name and principal place of business, a description of each activity the registrant carries out for which filing of a registration statement is required, and the State or States in which the registrant carries out each such activity. RSPA has decided to collect additional information only as necessary for administrative purposes (e.g., certain existing identification numbers, and information relating to fee payment).

Several commenters urged RSPA to allow persons subject to the registration program an adequate period of time (to gather information, and prepare and file their registration statements) between the publication of the final rule and the beginning of the registration year. For the first year, RSPA is setting August 31, 1992, as the initial registration deadline, and September 15, 1992, as the date after which no person required to register may offer or transport hazardous materials unless such person has a current Certificate of Registration. In subsequent years, the registration year will begin on July 1 and end June 30 of the following year. Any person who at any time during the registration year engages in one or more of the activities subject to the registration program must file a registration statement with RSPA and pay the registration fee before engaging in any of those activities. Persons who expect to engage in any of the activities subject to the registration requirement are encouraged to register as soon as possible, since the time involved in obtaining a certificate validating the registration statement possibly could entail more than several days. RSPA realizes that many of the activities subject to the registration requirement may be conducted on an infrequent basis throughout the year, or involve delivery schedules that may have been contracted for months in advance. However, under this regulation, persons who violate the registration requirement after September 15, 1992, will be subject to civil and criminal penalties, and their shipments could be frustrated or temporarily delayed. Similarly, persons who submit incomplete or inaccurate registration statements may be subject to civil and criminal penalties.

Many commenters claimed that the proposal to renew registration annually is an unnecessary burden and would generate substantial paperwork with no comparable benefit. They further stated that activities do not change significantly in a year, and registration renewal should be required less frequently and only if a person changes activities.

RSPA is retaining the annual filing requirement. In addition, RSPA has not implemented the suggestion that registrants be allowed to file for multiple years and pay a correspondingly larger fee. As pointed out in the Notice, the registration statement cannot be filed or renewed less frequently than once every year without severely impairing the efficiency and effectiveness of the registration program, and the integrity of the information collected under this program. The HMTA requires that an annual registration fee be paid by all persons subject to the registration program. Further, in order to identify the registrant, a document accompanying a check or money order or supplying credit card information is absolutely necessary. In addition, the registration statement provides a means for a person to annually update the information on the States within which it is carrying out activities subject to the registration program.

RSPA acknowledges the point made by several commenters that a complete and accurate listing of States in which a registrant engaged in certain activities may be difficult, especially in the case of air and merchant vessel operators. However, the use of airspace and waterways for the transportation of hazardous materials creates an increased need for emergency planning and response, the development of which is a primary objective of the registration and fee collection program. Registrants transporting hazardous materials by air or merchant vessel should, at a minimum, indicate all States in which loading and unloading operations were conducted, and also should make a good faith effort to indicate those States whose airspace or waterways were traversed.

In response to comments and on its own initiative, RSPA has simplified and clarified the proposed registration statement to the following extent: (1) The categories "Importer" and "Freight Forwarder" have been removed from the Prior-Year Survey Information. (2) A State group category, "48 Contiguous States," has been added to the lists of States for the convenience of registrants having widespread operations (marking this group designation will indicate that the registrant actually engaged in the activity in all 48 contiguous States). To indicate that activity was also conducted in Alaska, American Samoa, the District of Columbia, Guam, Hawaii, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands, the appropriate abbreviation(s) must also be circled. (3) The proposed category F (referring to the manufacturing, fabricating, or marking of a UN or DOT specification or DOT exemption packaging) has been removed. (4) The registrant's certification has been revised to indicate that the information is true, accurate, and complete to the best of the certifier's knowledge. (5) Some minor changes in the language of the statement have been made in order to provide clearer directions or to more accurately reflect the statutory or regulatory language. The registration statement is provided as Attachment #1 to this final rule. This form may be reproduced and used to register.

### *B. Availability of Registration Statements*

Additional copies of the registration statement and a set of instructions to assist in completing the statement may be obtained by calling the Hazardous Materials Registration Program at 202–366–4109 or the Hazardous Materials Registration Support Center at 617–494–2545, or by writing to the Hazardous Materials Registration Program, DHM–60, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Although RSPA will make extensive efforts to distribute the registration statement, it is the responsibility of persons engaged in any of the activities requiring registration to obtain, complete, and submit the statement in a timely manner.

### *C. Use of Electronic Data Information Systems and Methods of Payment*

Although RSPA intends to use a computer database to manage the information collected in the registration program, suggestions made by commenters that registrants be permitted to register through electronic transfer of the registration statement information or by electronic transfer of payment have not been adopted by RSPA at this time. Electronic transmittal of information and electronic transmittal of funds were considered by RSPA during the initial planning stages for internal program procedures. In order to keep the registration process as simple and consistent as possible, such methodologies have not been integrated into the management system. The use of electronic information submission and fund transfer may be reconsidered in the future.

### *D. Availability of Data to State and Local Governments*

A number of commenters questioned whether the information collected from the registration statements would be made available to State and local governments. RSPA intends to make the date available to Federal, State and local government agencies in accordance with its general policy of sharing information with hazardous materials safety regulatory and enforcement personnel. As specified in 49 App. U.S.C. 1805, a registration statement will be made available for inspection by any person, for a fee to be established by the Secretary, except that any information protected by law from disclosure to the public may not be released. Inquiries about the availability of information may be directed to the Hazardous Materials Registration Support Center at 617–494–2545 or the Hazardous Materials Registration Program at 202–366–4109.

### *E. Proof of Submission and Amendments*

Several commenters were concerned about the § 107.608(b) proposal that registrants must have on file a current annual registration statement before conducting any activity subject to registration requirements. One commenter recommended that RSPA reconsider this requirement, citing the potential difficulties faced by many U.S. air carriers on a "stand-by" arrangement with the Department of Defense to provide supplemental airlift in the event of a declared national emergency. Several commenters also objected to the proposed requirement that registrants furnish an amended registration statement and receive an amended Certificate of Registration in advance of engaging in any new activity subject to the registration program.

First § 107.608(b) is closely patterned on the statutory language of 49 App. U.S.C. 1805, which states that no person subject to the registration requirement may engage in any activity for which registration is required, unless that person has on file a registration statement.

Second, the expedited registration provisions address the concerns of those who, for whatever reason, may wish to be registered in an expedited manner. Applicants unable to register through the regular process will have the option of registering through an expedited process if they are willing to pay an additional $50 processing fee (see discussion below). Third, in § 107.608(c), RSPA has retained only one requirement concerning the need for registrants to amend their registration statements during the registration year. Because there is no longer a connection between the number of activities conducted and the amount of the registration fee, there

is no need to amend the statement when a new activity is conducted by a registrant. Registrants must file an amended registration statement only when there has been a change of name or principal place of business during the registration year.

*F. Designation of Resident Agent by Foreign Entities*

Several commenters suggested various alternative procedures on how foreign offerors and carriers could be registered and how best to enforce the registration requirements. However, RSPA is retaining the requirement as proposed in the Notice that a person who is not a resident of the United States and who is subject to the registration requirements must designate an agent for service of process who is a resident of the United States. The designated U.S. agent is required to file (or ensure filing of) the registration statement and pay (or ensure payment of) the fee for, and on behalf of, the non-U.S. resident. The agent also is required to maintain records required by this rule.

**V. Fee Schedule—Section 107.612**

This section has been greatly simplified. As revised, persons subject to the registration program must pay an annual registration fee of $300. This fee represents a combination of the minimum $250 fee required by the HMTA plus a processing fee of $50. All registrants, regardless of size, income, or hazardous materials activities, must pay the same registration fee.

After a careful analysis of the many diverse comments on this subject, RSPA has considered all appropriate factors and decided to charge an annual minimum flat fee for several reasons. It is the most simple and straightforward fee schedule possible. It will be easily understood by the regulated parties. It is easily administered and enforceable. It minimizes paperwork burdens on industry and the government and any unintended competitive impacts or undesirable market entry constraints on domestic and international commerce. And, because it is the minimum registration fee possible under the HMTA, it provides the maximum relief possible for small businesses. Under these circumstances, a registration fee of $300 (including a $50 processing fee) strikes a practical balance between equity considerations and the virtue of regulatory simplicity.

The collection of a processing fee is authorized under the HMTA in order to cover the costs of the Department of Transportation in processing the registration statements. This authority is distinct from that relating to the collection of fees to fund the Public Sector Training and Planning Programs. Although several commenters thought that the proposed processing fee of $50 was excessive, other commenters considered the proposed fee reasonable, at least for the start-up year. RSPA had determined that a $50 processing fee collected from the estimated minimum number of registrants is necessary to ensure that sufficient funds are collected to cover the costs of processing the registration statements. The amount of this fee may be adjusted in succeeding years based on the number of registrants.

**VI. Payment Procedures and Expedited Registration—Section 107.616**

In response to several comments, and in recognition that there may be special circumstances in which a person will need to register within a short period of time, RSPA is adopting an expedited method for registration and fee payment that will immediately provide, for $300 plus an additional $50 fee, a temporary registration number via telephone, if the registrant furnishes credit card information, name, and address. RSPA will assign the registrant a Temporary Registration Number, which the registrant may immediately use to prove compliance with the registration requirement and which will remain effective for 45 days from the date of issuance. A letter containing the Temporary Registration Number, accompanied by a blank copy of the registration statement, will be sent by RSPA to the registrant to prove compliance and payment after the credit card payment is verified. The registrant must complete the registration statement within 30 days and submit it with a copy of the letter as proof of payment to RSPA. RSPA then will issue a regular Certificate of Registration with a new Registration Number. This service will be continuously available through the Hazardous Materials Registration Support Center at 800–942–6990 or 617–494–2545. The expedited registration process is being offered to accommodate registrants with a clear and immediate need to register, and is not intended to be the normal means of registration. RSPA may limit, or alter the procedures related to, the provision of this service. Registrants who opt to use this service should note that failure to comply with the instructions issued relating to expedited registration will result in a significant delay in processing the request.

**VII. Recordkeeping Requirements—Section 107.620**

*A. Issuance of a Certificate of Registration*

Although several commenters opposed issuance of a Certificate of Registration, RSPA maintains that the issuance of such a document as a means of confirming registration and of notifying the registration and of notifying the registrant of the assigned Registration Number serves a useful and necessary function. A Certificate will not be issued until all registration requirements have been met, including the submission of a completed registration statement and payment of the required fees in full. As noted elsewhere, failure to comply with any requirement or instruction relating to the registration process will result in delays in the issuance of a Certificate. RSPA will endeavor to provide a Certificate within a reasonable time after receipt of a registration statement and payment in full. Inquiries related to the receipt of a registration statement or the issuance of a Certificate of Registration should be directed to the Hazardous Materials Registration Support Center at 617–494–2545.

*B. Maintaining Proof of Registration*

Practical concerns were raised by commenters to RSPA's proposals that a copy of the registration certificate issued by RSPA be carried on board transport equipment and also be maintained at each fixed site where a registrant engages in activities subject to registration requirements. One commenter stated that these requirements are the most burdensome aspect of the registration proposal because they could create errors, waste enforcement resources, and generate volumes of paper. Another commenter stated that duplicate documentation on board transport equipment and at fixed sites was contrary to RSPA's goal of a simplified system. Other commenters suggested that RSPA should assign a unique registration number to each registrant which could be affixed to a truck in the form of a decal or entered on shipping papers. The National Transportation Safety Board (NTSB) stated that such a system could facilitate Federal, State and local government compliance and enforcement efforts, especially for persons having a history of noncompliance.

RSPA has revised § 107.620 to require that a copy of the registration certificate be maintained only at a registrant's principal place of business. In addition,

motor carriers subject to the registration requirements either: (1) Must carry a copy of their Certificate of Registration on board all transport vehicles used to transport hazardous materials subject to the registration program; or (2) must display the carrier's unique registration number on any document in the motor vehicle that can be made available, upon request, to enforcement personnel.

A few commenters interpreted the requirement for carriers to have a Certificate of Registration on board transport equipment to mean that an offeror must provide a carrier with a copy of the offeror's certificate of registration when offering a shipment within the scope of the registration requirements. This is not the case.

Another commenter thought that copies of checks, money orders, or credit card billings must be maintained at each location. This also is not the case; in fact, this requirement applies only to the principal place of business.

## VIII. Summary

In this final rule, RSPA is imposing registration and fees on persons engaged in offering or transporting certain hazardous materials. RSPA is not adopting the proposed requirement to require registration of persons who manufacture, fabricate, mark, retest, or recondition UN or DOT specification or DOT exemption packaging. In addition, owner-operators of motor vehicles under a 30-day or longer lease to registered motor carriers are excepted from the registration requirements. Certain foreign carriers are required to register by the initial deadline of August 31, 1992, but a two-year delay of application is provided to foreign offerors, including foreign subsidiaries of domestic corporations and foreign governments performing an offeror function. Finally, RSPA is retaining the proposed requirement that each independently incorporated subsidiary must register and pay a fee separate from its parent company.

An August 31, 1992 filing deadline has been set for initial registration. In subsequent years, registrants will be required to submit their registration renewals and appropriate fees by June 30. Registrants are required to pay an annual fee of $300 (including a $50 processing fee). RSPA is adopting an expedited registration and fee payment system to provide an immediate, temporary registration. A registrant utilizing the expedited registration system will pay an additional fee of $50, for a total fee of $350.

The registration statement has been modified to provide registrants with an optional "48 Contiguous States" category, and the certification language appearing on the proposed registration statement has been rewritten to provide greater flexibility to the person signing the statement. The proposed requirement for registrants to maintain a copy of the certificate of registration at all fixed sites has been withdrawn. However, each registrant must maintain a copy of the certificate at its principal place of business. In addition, motor carriers must maintain a copy of the certificate on board each transport vehicle transporting hazardous material subject to registration requirements or annotate the registration number on a document readily available for inspection, upon request, by enforcement personnel.

The following is a section-by-section review of this final rule:

*Part 107: Hazardous Materials Program Procedures*

A new Subpart G, "Registration of Hazardous Materials Offerors and Carriers" is added to part 107.

*Section 107.601* describes the applicability of the registration and fee collection regulations. The requirements apply to offerors and carriers whose hazardous materials transportation activities involve certain specific types or quantities of hazardous materials in foreign, intrastate or interstate commerce. Under 49 App. U.S.C. 1805, RSPA interprets "transport container" to mean "freight container". Therefore, when more than 25 kg of a Division 1.1, 1.2, or 1.3 material is transported in a freight container in any mode, it is subject to the registration requirements.

RSPA has revised paragraph (e) to mirror the provisions of the HMTA which mandate registration for a shipment of 2,170 kg (5,000 pounds) or more *of a class* of a hazardous material or hazardous materials. The phrase "of a class" was inadvertently omitted in the Notice. Also, application of paragraph (e) has been delayed until July 1, 1993, for shipments in a bulk packaging, container, or tank.

The proposed inclusion of persons who manufacture, fabricate, mark, retest or recondition a UN or DOT specification or DOT exemption packaging has not been adopted, but RSPA may reconsider this issue in the future.

*Section 107.606* provides exceptions from the requirements. The registration and fee assessment requirements would not apply to Federal agencies, State agencies, political subdivisions of States, employees of those agencies, or hazmat employees (including owner-operators under a 30-day or longer lease to a registered motor carrier). In addition, in paragraph (f), foreign offerors, including foreign subsidiaries of U.S. corporations, would be excepted from all registration requirements until June 30, 1994.

*Section 107.608* outlines general registration requirements. Paragraph (a) indicates the annual deadline for submitting registration statements. Paragraph (b) prohibits a person required to file a registration statement from engaging in any hazardous materials transportation activities for which a registration statement is required unless that person has complied with all applicable registration requirements. Paragraph (c) requires submission of an amendment if a change in the registrant's name or place of business occurs during the registration year. Paragraph (d) provides an address for obtaining copies of the registration statement form. Paragraph (e) requires foreign entities subject to the registration requirements to use a designated agent.

*Section 107.612* adopts a flat fee of $300 (including a $50 processing fee) to be imposed on each person required to register.

*Section 107.616* prescribes payment procedures. Paragraphs (a) through (c) outline the procedures to be followed when submitting the registration statement and payment. A new paragraph (d) is added to summarize the procedures for expedited registration.

*Section 107.620* outlines recordkeeping requirements. The proposed requirement to maintain a copy of the certificate at all fixed sites is not adopted. The requirement to maintain a copy of the registration statement and the Certificate of Registration at a person's principal place of business has been retained in paragraph (a) and applies to all registrants. As provided in redesignated paragraph (b), motor carriers would also be required to maintain a copy of the Certificate of Registration on board transport vehicles or annotate their registration number on any document in the vehicle readily available to enforcement personnel. Redesignated paragraph (c) requires registrants to provide any relevant records and information requested by DOT.

*Part 171: General Information, Regulations and Definitions*

*Section 171.2.* Paragraphs (a) and (b) are revised to mandate compliance with Subpart G of Part 107, as proposed in the Notice.

## IX. Regulatory Analyses

*A. Executive Order 12291 and DOT Regulatory Policies and Procedures*

These regulations have been evaluated in accordance with existing regulatory policies and are considered to be non-major under Executive Order 12291. The regulations are considered to be significant under section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures ("the Procedures") (44 FR 11034; February 26, 1979) because they implement a substantial regulatory program or change in policy. In accordance with section 10(e) of the Procedures, RSPA has determined that a Regulatory Impact Analysis is not required because the regulations do not meet any of the criteria mandating the preparation of such an analysis. As a result, in accordance with section 10(e), RSPA has prepared a Regulatory Evaluation which includes an analysis of the economic consequences of the regulation and an analysis of its anticipated benefits and impacts. The Regulatory Evaluation is available for review in the Dockets Unit.

*B. Regulatory Flexibility Act*

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Under 49 App. U.S.C. 1815, the amount of the annual fee which may be collected from a person required to register with RSPA may not be less than $250 and may not exceed $5,000. Because of the required minimum fee of $250, RSPA's ability to treat small entities differently is restricted. RSPA expects that the impact of a $300 fee (including a $50 processing fee) on small business entities will be minimal, and without significant economic consequences. The rule will have no direct impact on small units of government.

*C. Executive Order 12612*

The rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). As noted above, States and local governments are "persons" under the HMTA, but are specifically exempted from the requirement to file a registration statement. The regulations herein have no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Indian tribes to impose their own fees or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

*D. Paperwork Reduction Act*

Under 49 App. U.S.C. 1805, the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this rule.

*E. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

*F. National Environmental Policy Act*

RSPA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impacts of RSPA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, executive orders, and DOT Order 5610.1c. These regulations meet the criteria that establish this as a non-major action for environmental purposes.

**List of Subjects**

*49 CFR Part 107*

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

*49 CFR Part 171*

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 107 and 171 are amended as follows:

## PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

**Authority:** 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1802, 1804, 1806, 1808–1811; Public Law 89–670, 80 Stat. 933 (49 App. U.S.C. 1653(d), 1655); 49 CFR 1.45 and 1.53 and app. A of 49 CFR part 1.

2. Subpart G is added to part 107 to read as follows:

**Subpart G—Registration of Persons Who Offer or Transport Hazardous Materials**

Sec.


107.601 Applicability.
107.606 Exceptions.
107.608 General registration requirements.
107.612 Amount of fee.
107.616 Payment procedures.
107.620 Recordkeeping requirements.


### Subpart G—Registration of Persons Who Offer or Transport Hazardous Materials

**§ 107.601 Applicability.**

The registration and fee requirements of this subpart apply to any person who offers for transportation, or transport, in foreign, interstate or intrastate commerce—

(a) Any highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this chapter;

(b) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material (see § 173.50 of this chapter) in a motor vehicle, rail car or freight container;

(c) More than one L (1.06 quarts) per package of a material extremely toxic by inhalation (Division 2.3, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A) (see §§ 173.115 and 173.132 of this chapter);

(d) A hazardous material in a bulk packaging, container, or tank having a capacity equal to or greater than 13,248 L (3,500 gallons) or more than 13.24 cubic meters (468 cubic feet); or

(e) A shipment of 2,170 kg (5,000 pounds) gross weight or more of a class of a hazardous material(s) for which placarding of a vehicle, rail car, or freight container is required. Prior to July 1, 1993, this provision does not apply to a hazardous material in a bulk packaging, container, or tank. For applicability of this subpart, the term "shipment" is further limited to the hazardous material being loaded at one loading facility.

**§ 107.606 Exceptions.**

The following are excepted from the requirements of this subpart:

(a) An agency of the Federal Government;

(b) A State agency;

(c) An agency of a political subdivision of a State;

(d) An employee of any of those agencies in paragraphs (a), (b), and (c) of this section with respect to is or her official duties;

(e) A hazmat employee (including, for purposes of this subpart, the owner-operator of a motor vehicle which transports in commerce hazardous materials if that vehicle, at the time of those activities, is leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR part 1057 or an equivalent contractual relationship);

(f) Until July 1, 1994, a person domiciled outside the United States who offers, solely from locations outside the United States, hazardous materials for transportation in commerce. This exception includes a foreign subsidiary of a United States corporation.

**§ 107.608 General registration requirements.**

(a) Except as provided in § 107.616(d), each person subject to this subpart must submit a complete and accurate registration statement not later than—

(1) August 31, 1992, or in time to comply with paragraph (b) of this section, whichever is later, on DOT Form F 5800.2; and

(2) June 30 for each subsequent registration year, or in time to comply with paragraph (b) of this section, whichever is later, on DOT Form F 5800.2.

(b) After September 15, 1992, no person required to file a registration statement may transport or cause to be transported or shipped hazardous materials, unless such person has on file, in accordance with § 107.620, a current annual Certificate of Registration in accordance with the requirements of this subpart.

(c) A registrant whose name or principal place of business has changed during the year of registration must notify RSPA of that change by submitting an amended registration statement not later than 30 days after the change.

(d) Copies of DOT Form F 5800.2 and instructions for its completion may be obtained from the Hazardous Materials Registration Program, DHM–60, U.S. Department of Transportation, Washington, DC 20590–0001 or by calling 617–494–2545 or 202–366–4109.

(e) If the registrant is not a resident of the United States, the registrant must attach to the registration statement the name and address of a permanent resident of the United States, designated in accordance with § 107.7, to serve as agent for service of process.

**§ 107.612 Amount of fee.**

Each person subject to the requirements of this subpart must pay an annual fee of $300 (which includes a $50 processing fee).

**§ 107.616 Payment procedures.**

(a) Except as provided in paragraph (d) of this section, each person subject to the requirements of this subpart must mail the registration statement and payment in full to the U.S. Department of Transportation, Hazardous Materials Registration, P.O. Box 740188, Atlanta, Georgia 30374–0188. A registrant required to file an amended registration statement under § 107.608(c) must mail it to the same address.

(b) Payment must be made by certified check, cashier's check, or money order in U.S. funds and drawn on a U.S. bank, payable to the U.S. Department of Transportation and identified as payment for the "Hazmat Registration Fee" or by a VISA or MasterCard credit card authorization completed and signed on the registration statement.

(c) Payment must correspond to the annual fee indicated in § 107.612.

(d) A person may obtain a temporary registration number, valid for 45 days from the date of issuance, through an expedited registration process as follows:

(1) Contact RSPA by telephone (800–942–6990 or 617–494–2545) and provide name, principal place of business, and credit card payment information;

(2) Pay a $350 registration and processing fee (including a $50 expedited handling fee); and

(3) Submit a completed registration statement and proof of payment to RSPA before the expiration date of the temporary registration number.

**§ 107.620 Recordkeeping requirements.**

(a) Each person subject to the requirements of this subpart, or its agent designated under § 107.608(e), must maintain at its principal place of business for a period of three years from the date of issuance of each Certificate of Registration:

(1) A copy of the registration statement filed with RSPA;

(2) A copy of the certified or cashier's check, money order, or a copy of the credit card billing statement showing payment for the person's registration and processing fee; and

(3) The Certificate of Registration issued to the registrant by RSPA.

(b) In addition to the requirements of paragraph (a) of this section, each motor carrier subject to the requirements of this subpart must carry a copy of its current Certificate of Registration issued by RSPA or another document bearing the registration number identified as the "U.S. DOT Hazmat Reg. No." on board all transport vehicles used to transport hazardous materials or shipments of hazardous materials subject to the requirements of this subpart. The Certificate of Registration or document bearing the registration number must be made available, upon request, to enforcement personnel.

(c) Each person subject to this subpart must furnish its Certificate of Registration (or a copy thereof) and all other records and information pertaining to the information contained in the registration statement to an authorized representative or special agent of DOT upon request.

## PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

4. The authority citation for part 171 continues to read as follows:

**Authority:** 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1818; 49 CFR part 1.

5. In § 171.2, paragraphs (a) and (b) are revised to read as follows:

**§ 171.2 General requirements.**

(a) No person may offer or accept a hazardous material for transportation in commerce unless that person complies with subpart G of part 107 of this chapter, and the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by this subchapter (including §§ 171.11, 171.12, and 176.11).

(b) No person may transport a hazardous material for transportation in commerce unless that person complies with subpart G of part 107 of this chapter, and the hazardous material is handled and transported in accordance with this subchapter, or an exemption issued under subpart B of part 107 of this chapter.

* * * * *

Issued in Washington, DC, on July 6, 1992, under the authority delegated in 49 CFR part 1.

**Douglas B. Ham,**

*Acting Administrator, Research and Special Programs Administration.*

**Note:** This is an appendix to the preamble of the document and will not appear in the Code of the Federal Regulations.

## Appendix to Preamble—Registration Statement Form

BILLING CODE 4910-60-M

VOL 57 ISS 132 JL 9 1992 UMI



Exempted from Paperwork Reduction Act by 49 App. U.S.C. 1805(c)(13)

**U.S. DEPARTMENT OF TRANSPORTATION**
**HAZARDOUS MATERIALS REGISTRATION STATEMENT**
**REGISTRATION YEAR 19___ - 19___**

___ Initial Registration ___ Renewal of Registration ___ Amendment to Registration

Current Registration No.: _ _ _ _ _ _ _ _ _ _ _ _ _

**REQUIREMENTS:** THE SUBMISSION OF THIS FORM AND THE PAYMENT OF ATTENDANT FEES IS REQUIRED BY THE HAZARDOUS MATERIALS TRANSPORTATION ACT, 49 APP. U.S.C. 1805(C) AND 1815(H), AND BY THE CODE OF FEDERAL REGULATIONS (CFR), TITLE 49, PART 107, SUBPART G. FAILURE TO COMPLY WITH THE REGISTRATION REQUIREMENTS CONTAINED THEREIN MAY RESULT IN CIVIL OR CRIMINAL PENALTIES. ANY PERSON, AS DEFINED BY 49 APP. U.S.C. 1802, WHO, BETWEEN JULY 1 AND JUNE 30 OF THE FOLLOWING YEAR, ENGAGES IN ANY OF THE FOLLOWING ACTIVITIES MUST SUBMIT THIS REGISTRATION STATEMENT AND THE COMBINED REGISTRATION AND PROCESSING FEE INDICATED IN ITEM 4:

A) OFFERS OR TRANSPORTS IN COMMERCE ANY HIGHWAY ROUTE-CONTROLLED QUANTITY OF A CLASS 7 (RADIOACTIVE) MATERIAL, AS DEFINED IN 49 CFR 173.403;
B) OFFERS OR TRANSPORTS IN COMMERCE MORE THAN 25 KILOGRAMS (55 POUNDS) OF A DIVISION 1.1, 1.2, OR 1.3 (EXPLOSIVE) MATERIAL (SEE 49 CFR 173.50) IN A MOTOR VEHICLE, RAIL CAR, OR FREIGHT CONTAINER;
C) OFFERS OR TRANSPORTS IN COMMERCE MORE THAN ONE LITER (1.06 QUARTS) PER PACKAGE OF A MATERIAL EXTREMELY TOXIC BY INHALATION (DIVISION 2.3, HAZARD ZONE A, OR DIVISION 6.1, PACKING GROUP I, HAZARD ZONE A) (SEE 49 CFR 173.115 AND 173.132);
D) OFFERS OR TRANSPORTS IN COMMERCE A HAZARDOUS MATERIAL IN A BULK PACKAGING, CONTAINER, OR TANK HAVING A CAPACITY EQUAL TO OR GREATER THAN 13,248 LITERS (3,500 GALLONS) OR MORE THAN 13.24 CUBIC METERS (468 CUBIC FEET); OR
E) OFFERS OR TRANSPORTS IN COMMERCE A SHIPMENT OF 2,170 KILOGRAMS (5,000 POUNDS) GROSS WEIGHT OR MORE OF A CLASS OF A HAZARDOUS MATERIAL OR HAZARDOUS MATERIALS FOR WHICH PLACARDING OF A VEHICLE, RAIL CAR, OR FREIGHT CONTAINER IS REQUIRED.

1. **Registrant's Name** _____

2. **Principal Place of Business**

Street Address _____ City _____

County _____ State _ _ Zip Code _ _ _ _ _ - _ _ _ _ Country _____

3. **Registrant's US DOT ID Number or Reporting Railroad Alphabetic Code (If applicable)** _____

4. **Annual Registration Fee.** The combined registration and processing fee is $300.00.

Total Amount Enclosed: _____

Make check or money order in U.S. funds, drawn on a U.S. bank, and payable to "U.S. Department of Transportation." Payment is non-refundable.

**Method of Payment**

___ Cashier's Check ___ Certified Check ___ Money Order

___ Credit Card: ___ VISA ___ MasterCard

Card Number: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ Expiration Date: ☐☐ ☐☐

Name as it appears on the card _____

Authorized Signature _____

Cardholder acknowledges ordering goods or services in the amount of the Total shown hereon and agrees to perform the obligations set forth in the Cardholder's agreement with the issuer. Credit card statement will list this payment as "US DOT Hazmat Regis."

5. **PRIOR-YEAR SURVEY INFORMATION: Hazardous Materials Activities, and States In Which Business was Transacted.** Mark each hazardous materials activity the registrant engaged in during the calendar year preceding the beginning date of the registration year. For each marked activity, also mark each capacity (shipper and/or carrier) in which the registrant served. Also circle the 2-letter state abbreviation for every state in which the registrant engaged in any of these activities. Circling "48 Contiguous States" indicates that business was conducted in all 48 contiguous states. A list of states and their abbreviations is given at the end of this section.

___ A. Offered or transported in commerce any highway route-controlled quantity of a Class 7 (radioactive) material.
___ 1. Shipper ___ 2. Carrier

AL AR AZ CA CO CT DE FL GA ID IL IN IA KS KY LA MA MD ME MI MN
MO MS MT NC ND NE NH NJ NM NV NY OH OK OR PA RI SC SD TN TX UT
VT VA WA WV WI WY 48 CONTIGUOUS STATES AK AS DC GU HI MP PR VI

Form DOT F 5800.2 (5/92)



___ B. Offered or transported in commerce more than 25 kilograms (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container.
___ 1. Shipper ___ 2. Carrier

AL AR AZ CA CO CT DE FL GA ID IL IN IA KS KY LA MA MD ME MI MN
MO MS MT NC ND NE NH NJ NM NV NY OH OK OR PA RI SC SD TN TX UT
VT VA WA WV WI WY 48 CONTIGUOUS STATES AK AS DC GU HI MP PR VI

___ C. Offered or transported in commerce more than 1 liter (1.06 quarts) per package of a material extremely toxic by inhalation (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A).
___ 1. Shipper ___ 2. Carrier

AL AR AZ CA CO CT DE FL GA ID IL IN IA KS KY LA MA MD ME MI MN
MO MS MT NC ND NE NH NJ NM NV NY OH OK OR PA RI SC SD TN TX UT
VT VA WA WV WI WY 48 CONTIGUOUS STATES AK AS DC GU HI MP PR VI

___ D. Offered or transported in commerce a hazardous material in a bulk packaging, container, or tank having a capacity equal to or greater than 13,248 liters (3,500 gallons) or more than 13.24 cubic meters (468 cubic feet).
___ 1. Shipper ___ 2. Carrier

AL AR AZ CA CO CT DE FL GA ID IL IN IA KS KY LA MA MD ME MI MN
MO MS MT NC ND NE NH NJ NM NV NY OH OK OR PA RI SC SD TN TX UT
VT VA WA WV WI WY 48 CONTIGUOUS STATES AK AS DC GU HI MP PR VI

___ E. Offered or transported in commerce a shipment of 2,170 kilograms (5,000 pounds) gross weight or more of a class of a hazardous material or hazardous materials for which placarding of a vehicle, rail car, or freight container is required.
___ 1. Shipper ___ 2. Carrier

AL AR AZ CA CO CT DE FL GA ID IL IN IA KS KY LA MA MD ME MI MN
MO MS MT NC ND NE NH NJ NM NV NY OH OK OR PA RI SC SD TN TX UT
VT VA WA WV WI WY 48 CONTIGUOUS STATES AK AS DC GU HI MP PR VI

___ F. Did not engage in any of the activities listed in A through E during the applicable calendar year.

**TWO-LETTER STATE ABBREVIATIONS**

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Alabama | AL | Georgia | GA | Maryland | MD | New York | NY | South Dakota | SD |
| Alaska | AK | Guam | GU | Massachusetts | MA | North Carolina | NC | Tennessee | TN |
| American Samoa | AS | Hawaii | HI | Michigan | MI | North Dakota | ND | Texas | TX |
| Arizona | AZ | Idaho | ID | Minnesota | MN | N. Mariana Is. | MP | Utah | UT |
| Arkansas | AR | Illinois | IL | Mississippi | MS | Ohio | OH | Vermont | VT |
| California | CA | Indiana | IN | Missouri | MO | Oklahoma | OK | Virgin Islands | VI |
| Colorado | CO | Iowa | IA | Montana | MT | Oregon | OR | Virginia | VA |
| Connecticut | CT | Kansas | KS | Nebraska | NE | Pennsylvania | PA | Washington | WA |
| Delaware | DE | Kentucky | KY | Nevada | NV | Puerto Rico | PR | West Virginia | WV |
| Dist. Columbia | DC | Louisiana | LA | New Hampshire | NH | Rhode Island | RI | Wisconsin | WI |
| Florida | FL | Maine | ME | New Jersey | NJ | South Carolina | SC | Wyoming | WY |
| | | | | New Mexico | NM | | | | |

6. **Certification of Information.** I certify that, to the best of my knowledge, the above information is true, accurate, and complete.

Signature _____ Date _____

Name _____ Phone (_ _ _) _ _ _ - _ _ _ _

Title _____

FALSE STATEMENTS MAY VIOLATE 18 U.S.C. 1001.

Mail completed form to:
U.S. Department of Transportation
Hazardous Materials Registration
P.O. Box 740188
Atlanta, GA 30374-0188

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Privacy Act
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Thursday, July 9, 1992

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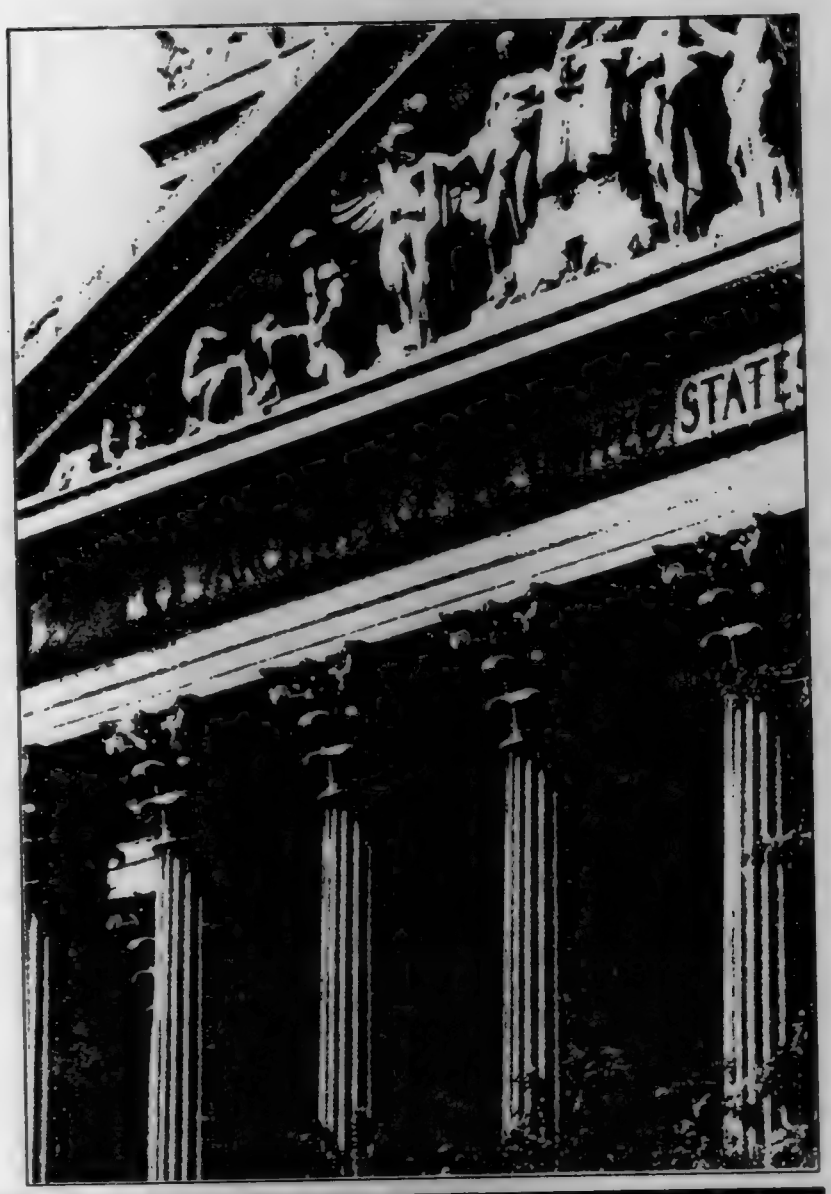


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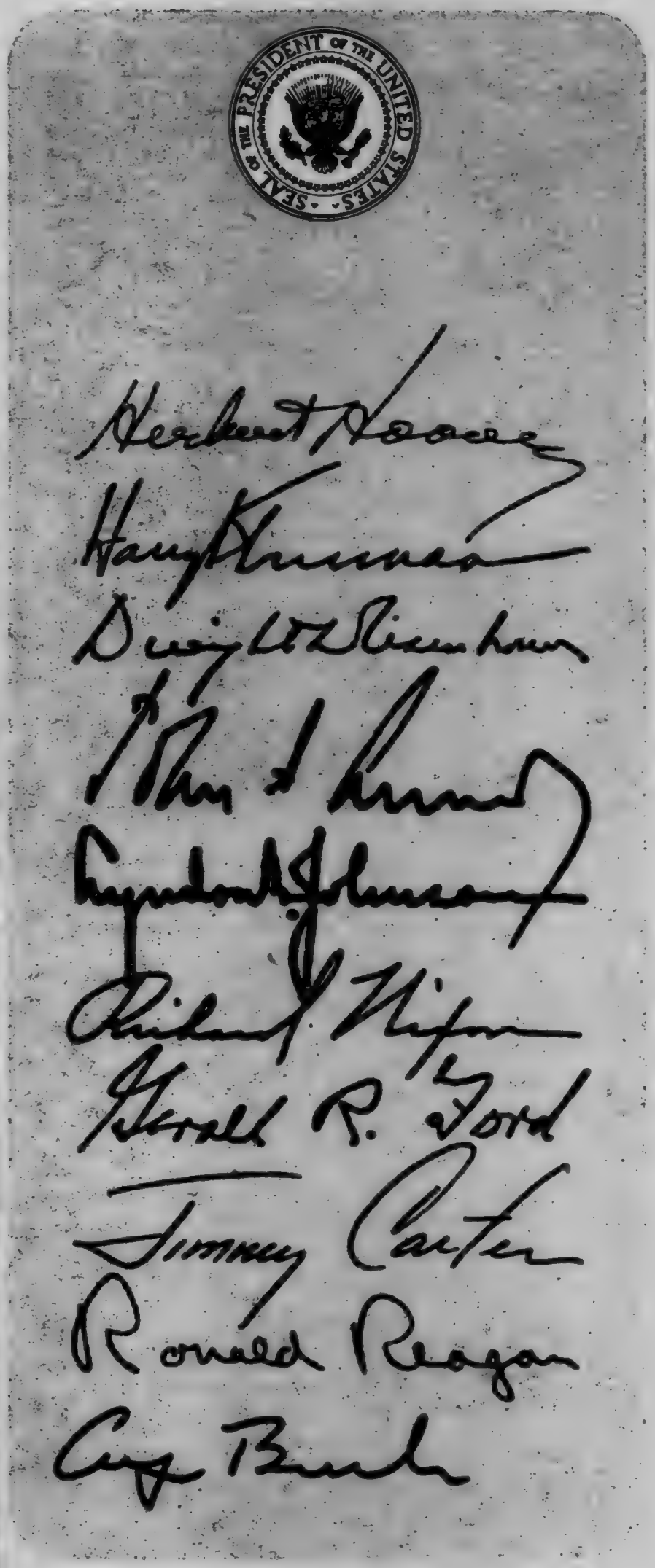


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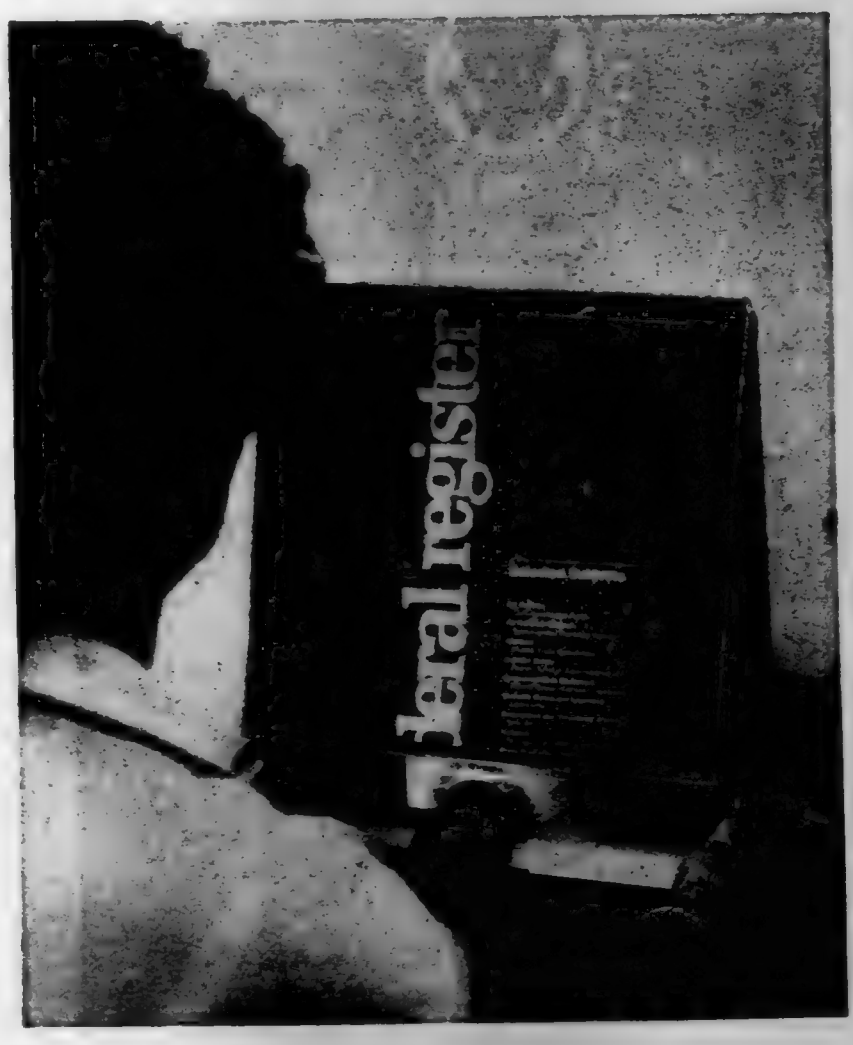


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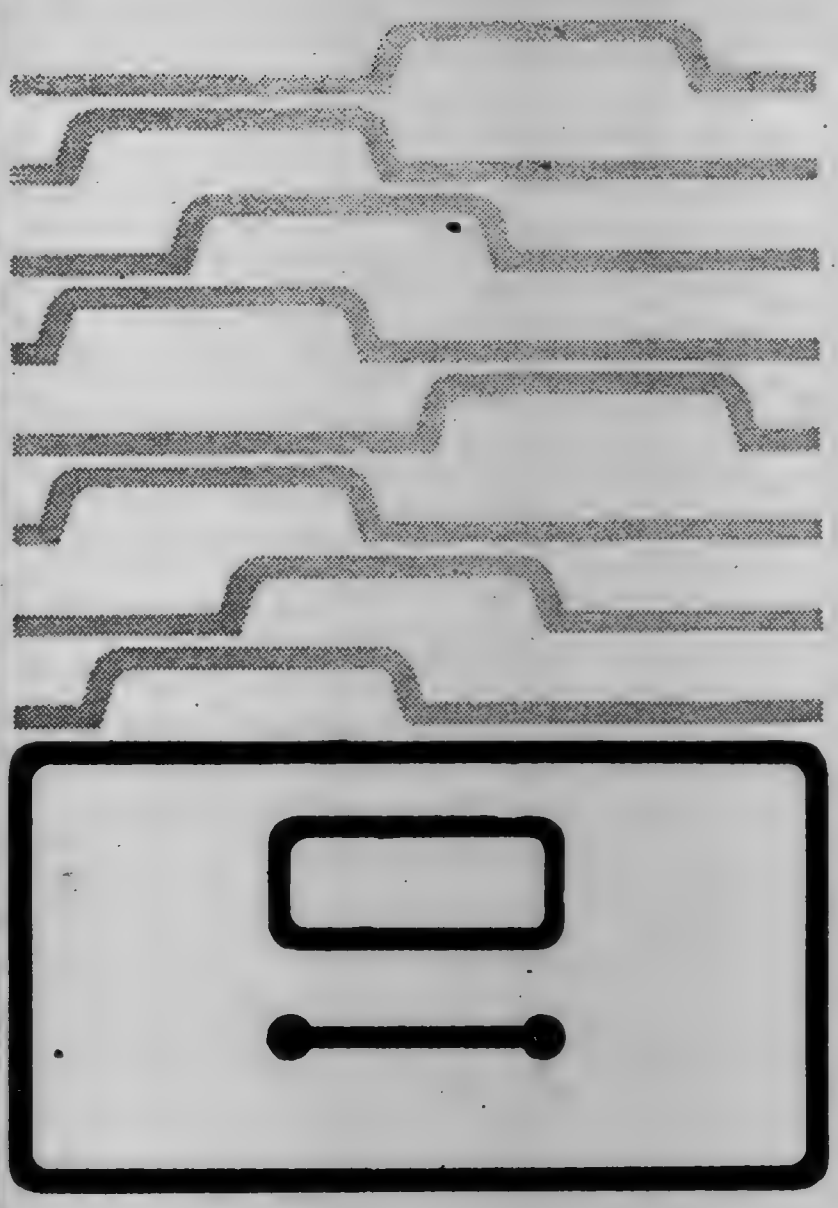

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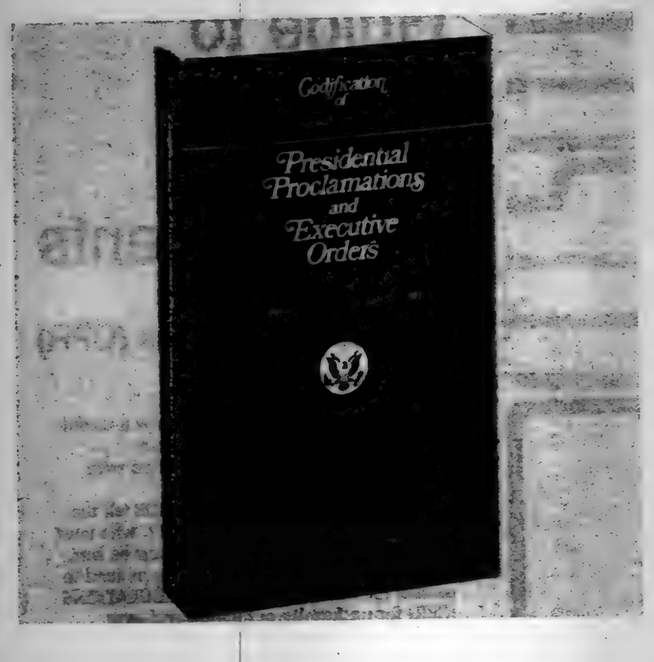


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**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### SAN FRANCISCO, CA

**WHEN:** July 22, at 9:00 am
**WHERE:** Federal Building and U.S. Courthouse, Conference Room 7209-A, 450 Golden Gate Avenue, San Francisco, CA
**RESERVATIONS:** Federal Information Center, 1-800-726-4995

### SEATTLE, WA

**WHEN:** July 23, at 1:00 pm
**WHERE:** Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA
**RESERVATIONS:** Federal Information Center, 1-800-726-4995



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**OFFICE OF
MANAGEME**

**5 CFR Part 5**

**RIN 3206-AE**

**Prevailing R**

**AGENCY:** Offi
Management

**ACTION:** Fina

**SUMMARY:** T
Management
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**FOR FURTHER**
Paul Shields,

**SUPPLEMENT**
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# Rules and Regulations

Federal Register
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Friday, July 10, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206-AE85

### Prevailing Rate Systems

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations to change the lead agency for the New Orleans, Louisiana, wage area from the Department of Veterans Affairs (DVA) to the Department of Defense (DOD) and to change the survey beginning month from February to November. These changes recognize the fact that DOD is the major employer of Federal Wage System employees in the New Orleans area and allow DOD to conduct the survey at a better and more convenient time.

**EFFECTIVE DATE:** August 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Paul Shields, (202) 606-2848.

**SUPPLEMENTARY INFORMATION:** The Department of Veterans Affairs is the lead agency for the New Orleans, Louisiana, wage area. The DVA Medical Center in New Orleans is the host activity for the survey. DVA has requested that DOD assume responsibility for the New Orleans survey because DOD is the largest FWS employer in the area and because DOD now has several large facilities in the survey area that can act as a host activity because of the addition of Plaquemines Parish to the survey area in 1985. DOD has agreed to assume responsibility for the survey. The beginning date of the wage survey will be changed from February to November to move the survey out of the Mardi Gras season, a source of survey problems in the past. This change also accommodates DOD's need to balance the distribution of its wage surveys. Notice of proposed regulation changes, published on April 8, 1992 (57 FR 11920), provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the proposed rule is being adopted as a final rule.

**Executive Order 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

**List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management

**Constance Berry Newman,**

*Director.*

Accordingly, OPM amends 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

1. The authority for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Public Law 92-502.

**Appendix A to Subpart B—Amended**

2. Appendix A to subpart B is amended for New Orleans, Louisiana, by revising the lead agency listing from "VA" to "DOD" and the beginning month of survey from "February" to "November."

[FR Doc. 92-16172 Filed 7-9-92; 8:45 am]
BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Part 327

[Docket No. 92-007F]

RIN 0583-AB59

### Restoration of Nicaragua to the List of Countries Eligible to Import Meat Products into the United States

**AGENCY:** Food Safety and Inspection Service (FSIS), USDA.

**ACTION:** Final rule.

**SUMMARY:** FSIS is amending the Federal meat inspection regulations by listing Nicaragua as a country eligible to export its meat products from cattle, sheep, swine, and goats to the United States.

In 1986, FSIS representatives were not able to make required reviews of the Nicaraguan meat inspection system because their personal safety could not be assured. Because of this, FSIS could not obtain current information and make the determinations necessary for maintenance of Nicaragua's eligibility to export meat and meat products to the United States. Therefore, on September 17, 1986, FSIS published a final rule (51 FR 17196) withdrawing the country of Nicaragua from the list of countries eligible to export meat to the United States.

In April 1990, Nicaragua requested relistment as a country eligible to export meat to the United States. Since several years have passed since its eligibility status was withdrawn, Nicaragua had to reestablish its eligibility by providing FSIS with current information on how its meat inspection system meets the provisions of the Federal Meat Inspection Act (FMIA) and regulations issued thereunder. Nicaragua has now demonstrated, through FSIS's eligibility process, that its meat inspection system imposes requirements at least equal to those of the United States. Therefore, FSIS is amending 9 CFR 327.2(b) by restoring Nicaragua to the list of countries eligible to import meat products into the United States.

**EFFECTIVE DATE:** The effective date for this rule is August 10, 1992.

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**FOR FURTHER INFORMATION CONTACT:** Dr. Lawrence Skinner, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC, (202) 720–6933.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291**

The Administrator has determined in accordance with Executive Order 12291 that this rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and it will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule will restore Nicaragua to the list of countries from which meat products are eligible to be imported into the United States.

In 1983, its last full year of exporting meat to the United States, Nicaragua exported 28.4 million pounds of beef products to the United States. In 1984, when export activity to the United States was suspended temporarily due to problems with adequate residue testing and species verification programs, 11.1 million pounds of beef products were exported to the United States during a 9-month period. During a 4-month period in 1985, before the prohibition of all imports of goods and services of Nicaraguan origin under Executive Order 12513, Nicaragua exported 9.6 million pounds of beef products to the United States. Therefore, based on a monthly average of 1.8 million pounds (47.1 million pounds/25 months) for the 25-month period during 1983–1985, it is estimated that Nicaragua will export about 22.6 million pounds (1.88 million pounds × 12 months) of beef products to the United States now that is eligibility is restored. This amount represents only 0.06 percent of the total U.S. meat production, based on U.S. production of 39.6 billion pounds in 1989, and will have little, if any, impact on domestic producers.

**Executive Order 12778**

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. All State and local laws, regulations or policies except those that are consistent with this rule and apply to imported meat and meat products after entry into the United States are preempted. This rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the implementation of its provisions.

**Effect on Small Entities**

The Administrator, FSIS, has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, (5 U.S.C. 601), because the amount of product estimated to be imported represents only 0.06 percent (22.6 million pounds/39.6 billion pounds) of the U.S. domestic production.

**Background**

Pursuant to the FMIA (21 U.S.C. 601 *et seq.*), the Secretary of Agriculture is responsible for administrating the programs which are designed to ensure that meat products distributed to consumers are wholesome, not adulterated, and properly marked, labeled and packaged. The Secretary has delegated to the Administrator of FSIS the authority to issue regulations and implement appropriate procedures to ensure compliance with the requirements of the FMIA. In these regulations, the Administrator has established procedures by which foreign countries desiring to export meat products to the United States may become eligible to do so.

To obtain such eligibility, a country's inspection system must undergo a complete evaluation by FSIS personnel to assure compliance with requirements that are "at least equal to" the requirements of the FMIA and regulations issued thereunder as applied to official establishments in the United States. This evaluation consists of two processes, a document review and an on-site review of the inspection system operations.

The document review process begins when FSIS assesses the laws and regulations governing the country's inspection system for equivalency to the FMIA and regulations issued thereunder, and requires a foreign country to respond to a series of questionnaires which focus on its inspection controls in five risk areas: contamination, disease, processing, residue control, and compliance and economic fraud. FSIS then evaluates the responses to these questionnaires to assure that the critical points in each of the risk areas are being addressed satisfactorily.

When the document review proves to be satisfactory, FSIS sends a multi-disciplinary team on an on-site review to evaluate all aspects of the country's inspection system, including its laboratories and individual plants. On-site reviews are designed to further explore areas determined to require more detailed evaluation, and are also undertaken to allow FSIS to observe the system in its daily operations.

When this review is satisfactorily concluded, rulemaking is undertaken, and, if it is determined that the country meets the "at least equal" requirements, it is listed in the regulations as being eligible to import meat into the United States. Once a country is listed, FSIS monitors the foreign inspection system through a continuing oversight function to assure that the inspection system maintains the "at least equal to" requirements. This includes reinspections of a random sample of foreign meat products at U.S. ports-of-entry, and routine on-site reviews of the foreign inspection system.

Whenever the Administrator cannot obtain current information about the system of meat inspection being maintained by a foreign country, the Administrator has the authority, under 9 CFR 327.2(a)(4), to withdraw the eligibility of the foreign inspection system to export meat products into the United States.

In 1986, FSIS representatives could not make the required on-site reviews of the Nicaraguan meat inspection system because their personal safety could not be assured. As a result, on September 17, 1986, an amendment to 9 CFR 327.2(b) of the Federal meat inspection regulations was published in the **Federal Register** (51 FR 32903) withdrawing the eligibility of Nicaragua to export meat products to the United States.

In April 1990, Nicaragua requested relistment as a country eligible to export meat products to the United States. Because of the considerable lapse of time since its eligibility was withdrawn, it was necessary for Nicaragua to provide FSIS with current information demonstrating that its inspection system imposes requirements "at least equal" to all the provisions of the FMIA and therefore can be considered as eligible to have its meat imported into the United States.

**Nicaragua—Review Results**

Nicaragua's eligibility determination process effectively began in October 1990, with receipt of Nicaragua's questionnaire responses relating to five risk areas and official copies of Nicaragua's relevant meat inspection laws and regulations. The preliminary phase of the document review was conducted in November 1990, and Nicaragua was requested to provide additional information regarding controls in several key areas concerning prevention of diseased meat, contamination, residue monitoring, processing, and compliance and economic fraud. Additional information was provided in December 1990; however, further clarification was still necessary for some of the risk areas. Discussions between FSIS and Nicaragua's inspection officials were held during 1991 to satisfactorily complete the document review process.

In January 1992, FSIS conducted an on-site review of Nicaragua's meat inspection system. The review team visited three meat plants and a government meat inspection laboratory. During the review process, the FSIS team noted minor variations in the application of requirements which were resolved through discussions with inspection officials. Therefore, based on the findings of the document and on-site reviews, and discussions with senior government meat inspection officials and various plant and laboratory personnel, FSIS has determined the meat inspection system of Nicaragua meets the "at least equal" requirements of the FMIA and the regulations issued thereunder.

**Comments**

The Agency received no comments in response to the proposed rule which was published in the **Federal Register** on April 15, 1992 (57 FR 13053); therefore, this rule is finalized as proposed.

Accordingly, FSIS is amending 9 CFR 327.2(b) of the Federal meat inspection regulations to add Nicaragua to the list of countries from which meat products may be eligible for importation into the United States. Although a foreign country may be listed as approved for importation of meat products, the meat products of such foreign country must also comply with other Federal laws including restrictions under the Animal and Plant Health Inspection Service regulations (9 CFR part 94), relating to the importation of meat products from foreign countries into the United States.

**List of Subjects in 9 CFR Part 327**

Food labeling, Food packaging, Imports, Meat inspection.

**The Final Rule**

For the reasons set forth in the preamble, FSIS is amending 9 CFR part 327 of the Federal meat inspection regulations as set forth below.

**PART 327—IMPORTED PRODUCTS**

1. The authority citation for part 327 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Add "Nicaragua" to the alphabetical list of countries eligible to import cattle, sheep, swine, and goat products into the United States in § 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)).

Done at Washington, DC, on June 25, 1992.

H. Russell Cross,

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 92–16171 Filed 7–9–92; 8:45 am]

BILLING CODE 3410–DM–M



**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 92–ANM–6]**

**Establishment of Transition Area; Enterprise, Montana**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes 700-foot and 1200-foot transition areas at Enterprise, Montana, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Glasgow Industrial Airport, formerly the Valley County Enterprise Airport. The airspace will be depicted on aeronautical charts for pilot reference.

**EFFECTIVE DATE:** 0901 u.t.c., August 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** James E. Riley, ANM–537, Federal Aviation Administration, Docket No. 92–ANM–6, 1601 Lind Avenue SW, Renton, Washington 98055–4056, Telephone: (206) 227–2537.

**SUPPLEMENTARY INFORMATION:**

**History**

On April 21, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing the Enterprise, Montana, Transition Area to provide controlled airspace for aircraft executing a new instrument approach procedure to the Valley County Enterprise Airport (57 FR 14520). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. During the comment period, Valley County Enterprise Airport's name was changed to Glasgow Industrial Airport. This action reflects that name change. Accordingly, the rule is adopted as proposed, with the airport name change. Transition areas are published in section 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsequently in the Handbook.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations establishes 700-foot and 1200-foot transition areas to provide controlled airspace for aircraft executing a new instrument approach procedure to the Glasgow Industrial Airport, Enterprise, Montana. The intended effect is to ensure segregation of aircraft operating under Instrument Flight Rules and aircraft operating under Visual Flight Rules.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under he criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation Safety, Incorporation by reference, Transition areas.

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

*Section 71.181 Designation*

* * * * *

Enterprise, Montana [New]

That airspace extending upward from 700 feet above the surface within a 12 mile radius of Glasgow Industrial Airport (lat. 48°25'16"N, long. 106°31'38"W) excluding that area designated as the Glasgow, Montana, 700-foot transition area; that airspace extending upward from 1200 feet above the surface bounded on the south by the north edge of V430 and on the east by the west edge of the Glasgow, Montana, 1200-foot transition area, starting at lat. 48°23'50"N, long. 107°37'50"W to lat. 48°32'30"N, long. 107°07'00"W to lat. 48°20'20"N, long. 107°07'00"W, thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on June 25, 1992.

**Helen M. Parke,**

*Assistant Manager, Air Traffic Division.*

[FR Doc. 92-16220 Filed 7-9-92; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 10

[T.D. 92-68]

### Extension of Reciprocal Privileges to Saudi Arabian Aircraft

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by expanding the exemptions from customs duties and internal revenue taxes on certain supplies, equipment, and facilities used by commercial aircraft of Saudi Arabian registry. Previously, the exemption for such Saudi Arabian aircraft applied only to aircraft fuels, lubricants, and consumable technical supplies. Customs has been duly informed that the Government of Saudi Arabia now affords exemption privileges to U.S.-registered aircraft for spare parts, commissary stores, ground equipment, and other aircraft supplies, in connection with international commercial operations, that are substantially reciprocal to exemption privileges that may be allowed under U.S. law to aircraft of foreign registry. Accordingly, Customs is extending reciprocal customs duty and internal revenue tax exemptions on such supplies, equipment, and facilities used by commercial aircraft registered in Saudi Arabia.

**EFFECTIVE DATE:** These reciprocal privileges became effective April 1, 1990. This amendment is effective July 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** William G. Rosoff, Entry Rulings Branch (202) 566-5856.

**SUPPLEMENTARY INFORMATION:**

### Background

Sections 309 (a)(3) and (d) and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 (a)(3) and (d) and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw from Customs or Internal Revenue custody, free of customs duties and internal-revenue taxes imposed by reason of importation, articles of foreign or domestic origin for supplies (including equipment), ground equipment, maintenance, or repair of the aircraft. The privileges granted by these sections are allowed only if the Secretary of Commerce finds and advises the Secretary of the Treasury that the foreign country in question affords substantially reciprocal privileges to U.S.-registered aircraft. The regulations implementing these reciprocal duty-free customs and internal-revenue tax exemptions are found at § 10.59(f), Customs Regulations (19 CFR 10.59(f)), which enumerates those countries entitled to reciprocal privileges and designates the extent of the exemptions allowed.

In T.D. 73-307, an exemption from duties and taxes, except for spare parts, commissary stores, ground equipment, and aircraft supplies other than fuels, lubricants and consumable technical supplies, was granted to aircraft registered in Saudi Arabia under the provisions of 19 U.S.C. 1309 and 1317. Section 10.59(f) reflects the reciprocal privileges granted Saudi Arabian aircraft as applicable only as to aircraft fuels, lubricants, and consumable technical supplies.

In accordance with 19 U.S.C. 1309(d), the Deputy Assistant Secretary for Services, International Trade Administration, Department of Commerce, has advised the Customs Service by letter dated April 20, 1992, that, following an appropriate investigation and based on Article 11 of the Air Transport Agreement between the Governments of the U.S. and Saudi Arabia, the Government of Saudi Arabia affords U.S.-registered aircraft engaged in international commercial operations exemption privileges substantially reciprocal to those exemption privileges allowed to foreign-registered aircraft by §§ 309 and 317 of the Tariff Act of 1930, as amended. The effective date of these findings was April 1, 1990. This document amends the list in § 10.59(f), Customs Regulations (19 CFR 10.59(f)), by removing the exception which indicated that Saudi Arabian commercial aircraft were only exempt from the payment of duties and taxes on fuel, lubricants, and consumable technical supplies withdrawn from Customs or Internal Revenue custody.

Authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

### Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12291

Because the subject matter of this document does not constitute a departure from established policy or procedures, but merely announces the granting of an exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that the notice and public comment procedures thereon are unnecessary. Further, for the same reasons and because Saudi Arabia has been found to be presently granting reciprocal exemption privileges to U.S.-registered aircraft, it has been determined, pursuant to 5 U.S.C. 553(d)(1) and (3), that a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "major rule" as defined in E.O. 12291, therefore, a regulatory impact analysis is not required.

### Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations and Disclosure Law Branch.

### List of Subjects in 19 CFR Part 10

Aircraft, Caribbean Basin initiative, Exports, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

### Amendment to the Regulations

To reflect the expanded reciprocal privileges granted to aircraft registered in Saudi Arabia, part 10, Customs Regulations (19 CFR part 10), is amended as set forth below:

## PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for part 10 continues to read in part as follows:

**Authority:** 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

Section 10.59 also issued under 19 U.S.C. 1309, 1317;

* * * * *

**§ 10.59 [Amended]**

2. In § 10.59, paragraph (f) is amended by revising the text opposite "Saudi Arabia" in the column headed "Treasury Decision(s)" to read "73–307, 92–68" and by removing all text for that entry in the column headed "Exceptions if any, as noted".

Dated: July 2, 1992.

**Kathryn C. Peterson,**

*Chief, Regulations and Disclosure Law Branch.*

[FR Doc. 92–16154 Filed 7–9–92; 8:45 am]

BILLING CODE 4820–02–M

**19 CFR Part 162**

**[T.D. 92–69]**

## Disposition of Low Value Seized Property

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Customs Service is amending its regulations pertaining to the destruction or other appropriate disposition of seized property valued at less than $1,000 where the expense of storing such property is disproportionate to the value of the property. The amendment defines disproportionate insofar as it relates to the amount of the seizure costs compared to the value of the seized property. Customs is also amending the regulations to include the statutory administrative petitioning and judicial hearing rights of a claimant to destroyed or otherwise disposed of property. The regulations are also being amended to provide that a claimant receiving full or partial relief from the forfeiture will be reimbursed the difference between the value of the merchandise at the time of seizure and any remitted forfeiture amount the claimant is required to pay. These amendments will increase the efficiency of Customs seized property programs without unduly affecting the rights of claimants to seized property.

**EFFECTIVE DATE:** August 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Baskin, Penalties Branch (202) 566–8317.

**SUPPLEMENTARY INFORMATION:**

### Background

The Tariff and Trade Act of 1984 amended section 612 of the Tariff Act of 1930, as amended, to provide that if the expense of keeping any vessel, vehicle, aircraft, merchandise or baggage is disproportionate to the value thereof, and such value is less than $1,000, destruction or other appropriate disposition of such property may proceed forthwith (19 U.S.C. 1612(b)). This provision permits the appropriate Customs officer to order the immediate destruction or other appropriate disposition of low-value seized property that is too costly to store without requiring the completion of forfeiture proceedings prior to the destruction of the seized property.

In a Notice of Proposed Rulemaking published in the **Federal Register** on June 4, 1991 (56 FR 25383), Customs announced its intention to amend § 162.46(d)(2) of the Customs Regulations (19 CFR 162.46(d)(2)) which currently provides for the disposition of low-valued seized property and add new provisions to § 162.46. Customs received one comment in response to its request for public comment on the proposed amendment. Customs has determined that no significant issues were raised which were not adequately addressed by the proposed amendment or other current regulations which will remain in force. Accordingly, Customs has determined to publish the amendment as proposed.

### Comment Analysis

The commentor raised questions regarding the treatment Customs would accord baggage contained in a seized vehicle or other conveyance, and the procedures Customs would use to assure that innocent owners of seized property would receive notification that their property was subject to disposal.

Customs points out that the underlying premise behind the amendment is that although the property being discussed has been seized because there has been a violation of a law administered by Customs, the property will be safeguarded to the greatest extent that is economically practical and feasible. The statute anticipates that a wide variety of property will be seized by Customs. It addresses all types of property, ranging from vessels and vehicles to regular merchandise and baggage. Customs is required by law to draw a distinction between the seizure of a conveyance and any merchandise or baggage which may be found thereon. The language in § 162.48(b)(1) of the amendment mirrors the disjunctive language of the statute and indicates that the values of seized properties will not be aggregated.

The commentor raised concerns that there was not protection for innocent owners of merchandise seized along with the vehicles of wrongdoers in the proposed amendment.

Customs is required, pursuant to the provisions of 19 CFR 162.31, to provide notice to any party which the facts on the record indicate may have an interest in seized property. The amendment specifically does not curtail any notice requirements because of a low value which might be assigned to seized goods, nor does it extinguish any petitioning rights that any party may have with respect to the seized goods. These rights include, where appropriate, the opportunity to offer full value of the seized property in exchange for its release.

It should be noted that low-value merchandise can only be disposed of summarily if the costs of storing such merchandise are disproportionate to its value. Much low-value seized merchandise is stored in the Customhouse in the district of seizure and the costs of such storage are low.

In response to the comment which raised the possibility that Customs might arbitrarily give a low appraisal to seized property in order to dispose of it quickly, Customs points out that the amendment will not alter current methods of appraisement of seized merchandise which is conducted pursuant to the provisions of 19 U.S.C. 1606 and 19 CFR 162.43.

### The Amendments

Based on the foregoing discussion of the comment received on the proposed amendment Customs has determined that the proposed amendment should be adopted as final and the regulations amended accordingly.

The amendments are intended to clarify the meaning of disproportionate as it relates to the amount of the seizure costs as compared to the value of the seized property. The amendment provides that the expense of keeping and maintaining the property will be presumed to be disproportionate to its value where the expense has reached or is anticipated to reach 50 percent of the value of the property.

The amendment includes the statutory requirement that the right of a claimant relating to seized property which has been destroyed or disposed of will not be extinguished without the completion of forfeiture proceedings (19 U.S.C. 1607). Customs is also amending the regulations to provide that the administrative petitioning rights of a claimant, as provided for by § 618 of the Tariff Act of 1930, as amended, (19 U.S.C. 1618) and part 171 of the Customs Regulations (19 CFR part 171), will be preserved. Additionally, the Customs Regulations are being amended to provide that a claimant receiving full or

partial relief from forfeiture will be reimbursed the difference between the value of the merchandise at the time of seizure pursuant to 19 U.S.C. 1606 and § 162.43 of the Regulations (19 CFR 162.43) and any remitted forfeiture amount that the claimant is required to pay.

The Customs Regulations are also being amended to state that a claimant may file a claim and cost bond seeking judicial condemnation of seized property pursuant to 19 U.S.C. 1608. Finally, the Customs Regulations are also being amended to provide that, pursuant to 19 U.S.C. 1613b, a successful claimant to destroyed or otherwise disposed of property will be compensated from the Customs Forfeiture Fund.

**Executive Order 12291 and the Regulatory Flexibility Act**

In that this amendment does not meet the criteria for a "major rule" within the meaning of Executive Order 12291, Customs has not prepared a regulatory impact analysis. This amendment is certified under the provisions of § 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) not to have a significant economic impact on a substantial number of small entities.

**Drafting Information**

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 162**

Administrative practice and procedure, Customs duties and inspection, Drug traffic control, Exports, Law enforcement, Penalties, Reporting and recordkeeping requirements, Search warrants, Seizures and forfeitures.

**Amendment to the Regulations**

Part 162 Customs Regulations (19 CFR 162) is amended as set forth below:

## PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The general authority for part 162 and the authority for § 162.46 continue to read as follows and the authority for § 162.48 is revised:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

Section 162.46 also issued under 19 U.S.C. 1609, 1611;

* * * * *

Section 162.48 also issued under 19 U.S.C. 1606, 1607, 1608, 1612, 1613b, 1618;

* * * * *

**§ 162.46 [Amended]**

2. Section 162.46 is amended by redesignating paragraph (d)(1) as paragraph (d) and by removing paragraph (d)(2).

3. Section 162.48 is amended by revising the section heading, designating the existing text as paragraph (a) and adding a new paragraph heading, and adding a new paragraph (b), to read as follows:

**§ 162.48 Disposition of perishable and low-value property.**

(a) *Disposition of perishable property.*

* * *

(b) *Disposition of low-value property.*

(1) If the expense of keeping any vessel, vehicle, aircraft, merchandise or baggage is disproportionate to the value thereof, and such value is less than $1,000, destruction or other disposition of such property may be ordered by the appropriate Customs officer. Storage expenses are presumed to be disproportionate to the value of the property where the expense has reached or is anticipated to reach 50 percent of the value of the property. The right of a claimant to seized property which has been destroyed or otherwise disposed of shall not be extinguished.

(2) Publication of a notice of the seizure, regardless of the disposition of the property, will be required pursuant to 19 U.S.C. 1607. Claimants to seized property will be permitted to file a petition for remission of the forfeiture pursuant to 19 U.S.C. 1618, and part 171 of this chapter. A claimant receiving full or partial relief from the forfeiture shall be reimbursed the difference between the value of the merchandise at the time of the seizure, pursuant to 19 U.S.C. 1606 and § 162.43 of this part, and any remitted forfeiture amount that the claimant is required to pay.

(3) A claimant to destroyed or otherwise disposed of seized property requesting relief in the form of payment may file a claim and cost bond and seek judicial hearing on the forfeiture pursuant to 19 U.S.C. 1608.

(4) Successful claimants shall be compensated from Customs Forfeiture Fund pursuant to 19 U.S.C. 1613b.

Approved: January 23, 1992.

**Peter K. Nunez,**

*Assistant Secretary of the Treasury.*

[FR Doc. 92-16155 Filed 7-9-92; 8:45 am]

BILLING CODE 4820-02-M

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**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**20 CFR Part 655**

**RIN 1205-AA90**

**Wage and Hour Division**

**29 CFR Part 507**

**RIN 1215-AA70**

**Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports**

**AGENCY:** Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Interim final rule; extension of effective date.

**SUMMARY:** The Department of Labor has promulgated regulations for filing and enforcement of attestations by employers seeking to use certain alien crewmembers to perform longshore work at U.S. ports. This document extends the expiration date of the interim final rule.

**DATES:** Effective July 9, 1992 the expiration of the interim final rule published on May 30, 1991, as corrected at 56 FR 29431 (June 27, 1991), and extended by documents published January 3, 1992 (57 FR 182), April 1, 1992 (57 FR 10989) and July 1, 1992 (57 FR 29203) is extended through September 8, 1992.

**FOR FURTHER INFORMATION CONTACT:** On 20 CFR part 655, subpart F, and 29 CFR part 506, subpart F, contact Flora Richardson, Chief, Division of Foreign Labor Certifications, United States Employment Service, Employment and Training Administration, Department of Labor, room N-4470, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535-0174 (this is not a toll-free number).

On 20 CFR part 655, subpart G, and 29 CFR part 506, subpart G, contact Solomon Sugarman, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 523-7605 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On May 30, 1991, the Department of Labor (DOL) published an interim final rule adding, at 20 CFR part 655, subparts F and G, and at 29 CFR part 507, subparts F and G, regulations for filing and enforcement of

attestations by employers seeking to use certain alien crewmembers to perform longshore work at U.S. ports, pursuant to section 258 of the Immigration and Nationality Act. 56 FR 24648 (May 30, 1991); see 8 U.S.C. 1288. Public comments were invited through July 29, 1991, and the interim final rule was effective from May 28, 1991, through December 31, 1991. The expiration date later was extended through March 31, 1992, 57 FR 182 (January 3, 1992). It was further extended through June 30, 1992, 57 FR 10989 (April 1, 1992), and later extended to July 10, 1992, 56 FR 29203 (July 1, 1992).

DOL has determined that it requires additional time to publish the final rule. This additional time will extend past July 10, 1992. So as not to have an interruption in the regulations governing the program, DOL is extending the expiration date for the interim final rule, before which time a final rule is expected to be published.

Accordingly, FR Doc. 91-12718, 56 FR 24648 (May 30, 1991), is amended, by revising the first sentence in the "**DATES**" section to read "*Effective dates*: May 28, 1991, through September 8, 1992."

Signed at Washington, DC, this 8th day of July, 1992.

**Lynn Martin,**

*Secretary of Labor.*

[FR Doc. 92-16317 Filed 7-8-92; 11:24 am]

BILLING CODE 4510-35-M, 4510-27-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 510

### Animal Drugs, Feeds, and Related Products; Change of Sponsor Name and Address

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address from Sterling Drug Inc., to Sterling Winthrop, Inc., Nine Great Valley Pkwy., Malvern, PA 19355.

**EFFECTIVE DATE:** July 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8646.

**SUPPLEMENTARY INFORMATION:** Sterling Drug Inc., Nine Park Ave., New York, NY 10016, has advised FDA of a change of sponsor name and address from Sterling Drug Inc., to Sterling Winthrop, Inc., Nine Great Valley Pkwy., Malvern, PA 19355. The agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect this change.

**List of Subjects in 21 CFR Part 510**

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR Part 510 is amended as follows:

### PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

**§ 510.600 [Amended]**

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Sterling Drug Inc.,"and by alphabetically adding a new entry "Sterling Winthrop, Inc.," and in the table in paragraph (c)(2) in the entry for "000934" by revising the sponsor name and address to read as follows:

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(1) * * *

| Firm name and address | Drug labeler code |
|---|---|
| * * * * * | |
| Sterling Winthrop, Inc., 9 Great Valley Pkwy., Malvern, PA 19355 | 000934 |
| * * * * * | |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * * | |
| 000934 | Sterling Winthrop, Inc., 9 Great Valley Pkwy., Malvern, PA 19335. |
| * * * * * | |

Dated: July 6, 1992.

**Robert C. Livingston,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 92-16197 Filed 7-9-92; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

[CGD1 92-079]

### Special Local Regulations: Montauk Grand Prix, Montauk, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for the Montauk Grand Prix, an offshore powerboat race which will take place in Block Island Sound. These regulations restrict access to the area of the race course and are needed to provide for the safety of life on navigable waters during the event.

**EFFECTIVE DATES:** This temporary regulation is effective from 11 pm to 3 pm on July 11, 1992. In case of inclement weather, the effective date will be July 12, 1992, from 11 am to 3 pm.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (junior grade) Eric G. Westerberg, Chief Boating Safety Affairs Branch, (617) 223-8310.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The drafters of these regulations are LTJG E. G. WESTERBERG, Project Officer, First Coast Guard District Boating Safety Affairs Branch, and LCDR J. ASTLEY, Project Attorney, First Coast Guard District Legal Office.

**Regulatory History**

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until June 2, 1992 and there was not sufficient time remaining to publish rules in advance of the event or to provide for a delayed

effective date. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards associated with this type of marine event. The event is of such local popularity that delay or cancellation to provide for an NPRM would be against the public interest.

**Background and Purpose**

The Montauk Grand Prix is a high high speed powerboat race which will be held adjacent to Montauk, NY in Block Island Sound. This event will include up to 50 powerboats competing on a rectangular course at speeds approaching 100 m.p.h. The regulated area will be the race course and spectator areas, and will be patrolled by the Coast Guard, Coast Guard Auxiliary, sponsor provided patrols, state and local law enforcement officials. No vessel other than participants or those vessels authorized by either the sponsor or the Coast Guard Patrol Commander shall enter the regulated area. The potential hazards to participants, spectators, and transiting vessels are such that in the interest of safety of life on the navigable waters of the United States, the Coast Guard District Commander is issuing special local regulations governing the conduct of the regatta. The circumstances requiring this regulation result from the desire to protect the maritime public from possible hazards associated with high speed powerboat racing.

**Regulatory Evaluation**

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The regulated area does not obstruct commercial shipping lanes or harbor entrances. All shore points of Napeague Bay will remain accessible to vessel traffic via alternate routes around the race course. The Coast Guard will attempt to minimize any delays for commercial vessels transiting the area. The economic impact of this proposal is expected to be so minimal that a Regulatory Evaluation is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Due to the limited duration of the event the Coast Guard expects the impact of this regulation to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C 3501).

**Federalism**

The Coast Guard has analyzed this action in accordance with the principles of a criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard has considered the environmental impact of this regulation and has concluded under section 2.B.2.c of Commandant Instruction M16475.1B, that it will have no significant impact and is categorically excluded from further environmental documentation.

**List of Subjects in 33 CFR Part 100**

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

**Regulations**

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35T01-079 is added to read as follows:

**§ 100.35T01-079 Montauk Grand Prix, Montauk, New York.**

*(a) Regulated area.* The regulated area will include waters within the following points:

| | Latitude | Longitude |
|---|---|---|
| Point 1 | 41°04.6'N | 71°57.8'W |
| Point 2 | 41°05.6'N | 71°57.2'W |
| Point 3 | 41°04.4'N | 72°02.0'W |
| Point 4 | 41°02.6'N | 72°03.7'W |
| Point 5 | 41°01.8'N | 72°03.2'W |

*(b) Special local regulations.* (1) Commander, Coast Guard Group Moriches reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) No vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless participating in the event or as authorized by the event sponsor or Coast Guard personnel.

(3) All vessels viewing the event that are not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must be at anchor within the designated spectator area.

(4) The sponsor shall be responsible for proper marking for the course within the regulated area and adequately marking the boundaries of the spectator area. All turn and spectator area buoys shall be established in a position agreeable to the Coast Guard Patrol Commander not later than one hour prior to the start of the event. All buoys marking the course and spectator area must be removed not later than one hour after completion of the event.

(5) The sponsor shall provide no less than (6) six vessels for spectator control and to secure the race area. If the sponsor does not provide a sufficient number of vessels to patrol the event, the Coast Guard patrol Commander may terminate the event. These vessels shall be on scene no later than one hour prior to the start of the event.

(6) Race participants must remain on the course when racing. Any participating vessel straying from the race course must reduce speed and return to the course at headway speed. Only disabled race boats will be allowed to enter the spectator area. If a contestant enters the spectator area for any other reason, they will be automatically disqualified and the race may be terminated.

(7) All persons shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(8) In the event of an emergency or as directed by the Coast Guard Patrol Commander, the sponsor shall immediately dismantle the race course. At the discretion of the patrol commander, any violation of the provisions contained within this regulation shall be sufficient grounds to terminate the event.

*(c) Effective dates.* These regulations are effective between the hours of 11 a.m. and 3 p.m. on July 11, 1992. In case of inclement weather, the regulations will be effective between the hours of 11 a.m. and 3 p.m. on July 12, 1992.

Dated: July 2, 1992.

**J.D. Sipes,**

*Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.*

[FR Doc. 92-16256 Filed 7-9-92; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 100**

**[CGD 05-92-28]**

## Special Local Regulations for Marine Events; Night in Venice Boat Parade, Ship Channel and Great Egg Waterway, Ocean City, NJ

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of implementation of special local regulations.

**SUMMARY:** This notice implements special local regulations for the Night in Venice Boat Parade, an annual event to be held on July 18, 1992 in the Ship Channel and on the Great Egg Waterway, Ocean City, New Jersey. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

**EFFECTIVE DATES:** The regulations in 33 CFR 100.504 are effective from 5:00 p.m. to 11:45 p.m., July 18, 1992.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204, or Commander, Coast Guard Group Cape May (609) 884-6981.

**Drafting Information**

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

**Discussion of Regulations**

The City of Ocean City, New Jersey, has submitted an application to hold the Night in Venice Boat Parade. The event will consist of approximately 120 vessels less than 65 feet in length. The parade will start at Ship Channel Buoy 4(LLNR 1160), cruise down the channel through Great Egg Waterway to Daybeacon 28(LLNR 33865), and return to Great Egg Waterway Buoy 2(LLNR 33800). Since this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations in 33 CFR 100.504. Commercial traffic should not be severely disrupted at any given time, since commercial vessels will be permitted to transit the regulated area as the parade progresses.

Dated: June 22, 1992.

**W. T. Leland,**

*Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. 92-16249 Filed 7-9-92; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 100**

**[CGD 05-92-29]**

## Special Local Regulations for Marine Events; The Start of the Cock Island Race; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of implementation of special local regulations.

**SUMMARY:** This notice implements special local regulations for the start of the Cock Island Race from the Portsmouth Seawall area of the Southern Branch of the Elizabeth River, Norfolk Harbor, Norfolk and Portsmouth, Virginia on July 18, 1992. The sailboats will race to Hampton Roads and return. These special local regulations are needed to control vessel traffic within the area due to the confined nature of the waterway and the expected vessel congestion during the starting of the races. The effect will be to restrict general navigation in the regulated area for the safety of participants in the races.

**EFFECTIVE DATES:** The regulations in 33 CFR 100.501 are effective from 9:00 a.m. to 2 p.m., on July 18, 1992.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District 431 Crawford Street, Portsmouth, Virginia 23705 (804) 398-6204, or Commander, Coast Guard Group Hampton Roads (804) 483-8568.

**Drafting Information**

The drafters of this notice are QMI Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

**Discussion of Regulation**

Ports Events, Inc., of Portsmouth, Virginia, submitted an application to hold the Cock Island Race. The race will consist of over 200 sailboats ranging from 22 to 60 feet. The sailboats will be divided into several classes. Each class will start at ten minute intervals from the Portsmouth Seawall area of the Southern Branch of the Elizabeth River, Norfolk Harbor, Norfolk and Portsmouth, Virginia on July 18, 1992, race to Hampton Roads and return. Because this is the type of event contemplated by these regulations, and because the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.501 are being implemented for the start of the races.

Dated: June 22, 1992

**W.T. Leland,**

*Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. 92-16250 Filed 7-9-92; 8:45 am]

BILLING CODE 4710-14-M

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**33 CFR Part 100**

**[CGD 09-92-13]**

## Special Local Regulations: APBA Great Lakes Challenge, Cuyahoga River, Cleveland, OH

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** Special Local Regulations are being adopted for the APBA Great Lakes Challenge. This event will be held on the Cuyahoga River, Cleveland, OH, on the 15th and 16th of August 1992, from 7 a.m. (e.d.s.t.) until 7 p.m. (e.d.s.t.), each day. This event will have an estimated 150 jet skis and wetbikes racing a closed course race on the Cuyahoga River which could pose hazards to navigation in the area. Special Local Regulations are necessary to ensure the safety of life and property on portions of the Cuyahoga River during this event.

**EFFECTIVE DATE:** These regulations will become effective from 7 a.m. (e.d.s.t.) until 7 p.m. (e.d.s.t.), each day, on August 15, and August 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, Aids to Navigation & Waterways Management Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been

published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until June 1, 1992, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

**Drafting Information**

The drafters of this regulation are William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, project officer, Aids to Navigation & Waterways Management Branch and M. Eric Reeves, Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

**Discussion of Regulations**

The APBA Great Lakes Challenge will be conducted on the Cuyahoga River, Cleveland, OH, between the Main Avenue Viaduct Bridge, Conrail Lift Bridge, and Baltimore & Ohio Railroad Bridge, on the 15th and 16th of August 1992. This event will have an estimated 150 jet skis and wetbikes racing in a closed course race, including slalom and freestyle racing marked by perimeter buoys, which could pose hazards to navigation in the area. In order to provide for the safety of life and property, the Coast Guard will be regulating vessel traffic within this section of the Cuyahoga River. A no wake zone on the outside of the race course area will be established in which direction of vessel traffic will be designated by the Coast Guard Patrol Commander. When determined appropriate by the Coast Guard Patrol Commander, racing shall be suspended and, if necessary, race course buoys shall be removed to provide for the passage of all commercial vessel traffic on the days of racing. Commercial vessels desiring to transit the regulated area shall provide prior notification to the Coast Guard Patrol Commander to ensure a safety transit can be made. Recreational vessel traffic desiring to transit the regulated area may do so only with prior approval of the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Cleveland Harbor, OH).

**Economic Assessment and Certification**

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certified that it will not have a significant economic impact on a substantial number of small entities.

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 33 CFR Part 100**

Marine Safety, navigation (water).

**Temporary Regulations**

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

**PART 100—[AMENDED]**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding a temporary section 100.35–T0913 to read as follows:

**§ 100.35 T0913 APBA Great Lakes Challenge, Cuyahoga River, Cleveland, OH.**

(a) *Regulated area.* That portion of the Cuyahoga River, Cleveland, OH, between the Conrail Lift Bridge on the north, the Baltimore & Ohio Railroad (Bascule) Bridge on the west, and the Main Avenue Viaduct Bridge on the south.

(b) *Special local regulations.* (1) The regulated area will be restricted from 7 a.m. (e.d.s.t.) until 7 p.m. (e.d.s.t.), each day, on the 15th and 16th of August, 1992, unless sooner terminated by the Coast Guard Patrol Commander. During the restricted periods, no vessel may transit, anchor, or remain in the regulated area without the permission of the Coast Guard Patrol Commander. Vessels in the area shall comply with the directions of the Coast Guard Patrol Commander.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Commercial vessels desiring to transit the regulated area shall make an advance request to the Coast Guard Patrol Commander. All transiting vessel traffic will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: June 30, 1992.

**G.A. Penington,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 92–16253 Filed 7–9–92; 8:45 am]

BILLING CODE 4910–14–M

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**Coast Guard**

**33 CFR Parts 100 and 165**

**[CGD 92–042]**

**Safety and Security Zones**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary rules issued.

**SUMMARY:** This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or

congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

**DATES:** The following list includes safety zones, security zones, and special local regulations that were established between April 1, 1992 and June 31, 1992 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

**ADDRESSES:** The complete text of any temporary regulation may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

**FOR FURTHER INFORMATION CONTACT:** Don Harris, Regulatory Paralegal, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3:30 p.m., Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The local Captain of the Port (COTP) must be immediately responsive to the safety needs of the waters within COTP jurisdiction; therefore, the COTP has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. Non-major safety zones, special local regulations and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period April 1, 1992 through June 30, 1992, unless otherwise indicated.

| Docket # | Location | Type | Effective Date |
|---|---|---|---|
| CGD1-92-016 | Bazaar 40th Birthday Party | Safety | 25 Apr 92 |
| CGD1-92-017 | Greenwood Lake Powerboat Classic | Safety | 16 May 92 |
| CGD1-92-021 | Fleet Week, New York Harbor, NY | Safety | 20 May 92 |
| CGD1-92-022 | Flushing Bay, East River, New York | Safety | 23 Mar 92 |
| CGD1-92-023 | Chelsea Challenge 2000 | Security | 04 Apr 92 |
| CGD1-92-025 | Narragansett Bay, Quonset Pt | Safety | 05 Jun 92 |
| CGD1-92-026 | Kill Van Kull, New York | Safety | 28 Mar 92 |
| CGD1-92-028 | USS John F. Kennedy, NY Harbor, NY | Safety | 26 May 92 |
| CGD1-92-029 | Boken 92 Fireworks, Lower Hudson | Safety | 26 Apr 92 |
| CGD1-92-031 | Niantic River Regatta | Safety | 02 May 92 |
| CGD1-92-032 | Harvard-Yale Regatta, New London | Special | 06 Jun 92 |
| CGD1-92-033 | Fairfield Aerial Fireworks | Safety | 05 Jul 92 |
| CGD1-92-035 | Westport P.A.L. Fireworks | Safety | 02 Jul 92 |
| CGD1-92-036 | Riverfest, Hudson River, New York | Special | 07 Jun 92 |
| CGD1-92-038 | Amazon Club Grand Opening Fireworks | Safety | 18 May 92 |
| CGD1-92-041 | Circle Line Fireworks | Safety | 26 May 92 |
| CGD1-92-043 | Baseball Day Weekend Fireworks | Safety | 20 June 92 |
| CGD1-92-045 | Oyster Bay Fireworks | Safety | 04 Jul 92 |
| CGD1-92-046 | Boston Main Channel, Boston, MA | Safety | 17 Jun 92 |
| CGD1-92-50 | New Bedford Harbor, MA | Safety | 04 Jul 92 |
| CGD1-92-051 | Bristol Harbor, RI | Safety | 04 Jul 92 |
| CGD1-92-052 | Stippican Harbor, MA | Safety | 04 Jul 92 |
| CGD1-92-059 | Subfest '92 | Safety | 04 Jul 92 |
| CGD1-92-060 | City of Norwalk Firework Display | Safety | 03 Jul 92 |
| CGD1-92-063 | Raritan Bay, New York, New Jersey | Safety | 03 Jul 92 |
| CGD1-92-066 | Town of Stratford 7/4/ Fireworks | Safety | 03 Jul 92 |
| CGD1-92-067 | Long Point, Manasquan River | Safety | 04 Jul 92 |
| CGD1-92-068 | Hempstead Harbor, Western Long Is | Safety | 10 Jun 92 |
| CGD1-92-069 | Vineyard Sound, Falmouth, MA | Safety | 04 Jul 92 |
| CGD1-92-071 | Hyannis Harbor, MA | Safety | 04 Jul 92 |
| CGD1-92-072 | Stamford Fourth of July 1992 | Safety | 05 Jul 92 |
| CGD1-92-073 | Burlington Independence Day | Safety | 03 Jul 92 |
| CGD1-92-074 | Hickey Fireworks Display | Safety | 20 Jun 92 |
| CGD1-92-076 | Annual Norwich Fireworks | Safety | 03 Jul 92 |
| CGD1-92-077 | East Rockaway, New York Fireworks | Safety | 04 Jul 92 |
| CGD1-92-081 | 4th of July Fireworks—Middletown | Safety | 05 Jul 92 |
| CGD1-92-082 | Town of Old Lyme, CT Fireworks | Safety | 04 Jul 92 |
| CGD5-92-016 | Sails, Props, and Sales Parade of Boat, Elizabeth River | Special | 25 Apr 92 |
| CGD5-92-019 | Ocean View Offshore Grand Prix | Special | 16 May 92 |
| CGD5-92-032 | Discovery Sail of America 1992 | Special | 26 Jun 92 |
| CGD7-92-033 | Lake Worth, ICW, Mile 1022 | Special | 01 May 92 |
| CGD7-92-034 | San Juan Harbor, June 1–15 | Temporary | 01 Jun 92 |
| CGD7-92-051 | San Juan Harbor, San Juan, PR | Special | 24 May 92 |
| CGD7-92-057 | City of Augusta, Georgia | Special | 15 Jun 92 |
| CGD8-92-010 | Banana Bend Championship Outboard | Special | 04 Apr 92 |
| CGD8-92-011 | East-West Powerboat Shootout | Special | 04 Apr 92 |
| CGD8-92-013 | Star Boat Race—Neches River | Special | 25 Apr 92 |
| CGD8-92-014 | Galveston Blessing of the Fleet | Special | 03 May 92 |
| CGD13-92-08 | Tacoma Fourth of July Air Show | Special | 04 Jul 92 |

| Docket # | Location | Type | Effective Date |
|---|---|---|---|
| | Captain of the Port Regulations | | |
| Baltimore 92-05-14 | Patapsco River | Safety | 29 May 92 |
| Baltimore 92-05-15 | Severn River, Annapolis | Security | 27 May 92 |
| Baltimore 92-05-16 | Patapsco River | Safety | 14 Jun 92 |
| Baltimore 92-05-19 | Upper Chesapeake Bay | Safety | 08 Jun 92 |
| Baltimore 92-05-22 | Patuxent River | Safety | 04 Jul 92 |
| Baltimore 92-05-25 | Upper Chesapeake Bay | Safety | 22 May 92 |
| Charleston 92-29 | Intracoastal Waterway SC | Safety | 19 Apr 92 |
| Charleston 92-38 | Cooper River | Safety | 27 Apr 92 |
| Charleston 92-53 | Ashley River | Safety | 07 Jun 92 |
| Chicago 09-92-07 | Lake Michigan & Chicago | Security | 23 Apr 92 |
| Corpus Christi 91-10 | Victoria Barge Canal | Safety | 31 Dec 91 |
| Corpus Christi 92-02 | Corpus Christi Channel | Safety | 30 Mar 92 |
| Corpus Christi 92-03 | Corpus Christi Channel | Safety | 03 May 92 |
| Corpus Christi 92-04 | Corpus Christi Channel | Safety | 10 Apr 92 |
| Corpus Christi 92-05 | Corpus Christi Channel | Safety | 20 May 92 |
| Corpus Christi | Gulf Intracoastal W'Way | Safety | 25 Jun 92 |
| Corpus Christi 92-09 | Corpus Christi Channel | Safety | 16 Jun 92 |
| Hampton Rds 92-05-09 | Elizabeth River | Safety | 29 Mar 92 |
| Hampton Rds 92-05-10 | Chesapeake Bay-Hampton Rd | Safety | 03 Apr 92 |
| Hampton Rds 92-05-11 | Chesapeake Bay | Security | 24 Apr 92 |
| Hampton Rds 92-05-13 | James River, Newport News | Safety | 11 May 92 |
| Hampton Rds 92-05-14 | Chesapeake Bay | Safety | 22 May 92 |
| Hampton Rds 92-05-15 | Albermarle Sound, Oregon | Safety | 05 May 92 |
| Hampton Rds 92-05-15 | Albermarle Sound, Oregon | Safety | 22 May 92 |
| Hampton Rds 92-05-16 | Newport News Channel | Safety | 02 Jun 92 |
| Hampton Rds 92-05-17 | James River, Newport News | Safety | 02 Jun 92 |
| Hampton Rds 92-05-19 | Newport News Channel | Safety | 04 Jun 92 |
| Hampton Rds 92-05-20 | Newport News Channel | Safety | 16 Jun 92 |
| Hampton Rds 92-05-21 | Chesapeake Bay | Safety | 26 Jun 92 |
| Hampton Rds 92-05-23 | James River | Safety | 16 Jun 92 |
| Houston 92-01 | Houston Ship Channel | Safety | 06 Feb 92 |
| Houston 92-02 | Houston Ship Channel | Safety | 10 Feb 92 |
| Jacksonville 92-22 | Intracoastal Waterway | Safety | 12 Apr 92 |
| Jacksonville 92-35 | Amelia River, Fernandina | Safety | 01 May 92 |
| Jacksonville 92-32 | St. Johns River | Safety | 17 Apr 92 |
| Jacksonville 92-40 | Intracoastal Waterway | Safety | 08 May 92 |
| LA/LB 91-24 | Ports of Los Angeles | Security | 04 Jan 92 |
| Louisville 92-01 | Ohio River | Safety | 11 Apr 92 |
| Louisville 92-03 | Ohio River | Safety | 28 Apr 92 |
| Louisville 92-05 | Ohio River | Safety | 04 Jul 92 |
| Louisville 92-06 | Ohio River | Safety | 04 Jul 92 |
| Louisville 92-07 | Ohio River | Safety | 04 Jul 92 |
| Miami 92-36 | Port Everglades | Safety | 27 Apr 92 |
| Miami 92-39 | Key West, Florida | Safety | 16 May 92 |
| Miami 92-42 | Miami, Florida | Safety | 18 May 92 |
| Milwaukee 92-165 | Pt Beach Nuclear Plant | Safety | 26 Apr 92 |
| Mobile 92-02 | Mobile Bay, Al | Safety | 11 Apr 92 |
| Mobile 92-03 | Gulf Intracoastal | Safety | 05 Jun 92 |
| New Orleans 91-19 | Lower Mississippi River | Safety | 31 Dec 92 |
| New Orleans 92-01 | Lower Mississippi River | Safety | 04 Jan 92 |
| New Orleans 92-10 | Lower Mississippi River | Safety | 16 May 92 |
| Paducah 92-05 | Tennessee River | Safety | 24 Feb 92 |
| Paducah 92-09 | Cumberland River | Safety | 10 May 92 |
| Paducah 92-10 | Tennessee River | Safety | 06 Jun 92 |
| Paducah 92-11 | Ohio River | Safety | 10 May 92 |
| Paducah 92-12 | Ohio River | Safety | 10 May 92 |
| Paducah 92-13 | Ohio River | Safety | 11 May 92 |
| Paducah 92-15 | Tennessee River | Safety | 10 Jun 92 |
| Paducah 92-15 | Tennessee River | Safety | 17 Jun 92 |
| Paducah 92-16 | Tennessee River | Safety | 28 Jun 92 |
| Philadelphia 92-12 | Marcus Hook | Safety | 05 Apr 92 |
| Philadelphia 92-13 | Marcus Hook | Safety | 05 Apr 92 |
| Philadelphia 92-05-17 | Schuylkill River | Safety | 05 Apr 92 |
| Philadelphia 92-15 | Marcus Hook | Safety | 18 Apr 92 |
| Philadelphia 92-16 | Marcus Hook | Safety | 18 Apr 92 |
| Port Arthur 92-01 | GIWW MM 264—269 | Safety | 11 Mar 92 |
| San Diego 92-01 | San Diego Bay | Safety | 29 Apr 92 |
| San Francisco 92-03 | San Francisco Bay | Safety | 22 Jun 92 |
| San Juan 92-50 | Grand Regatta Fireworks | Safety | 13 Jun 92 |
| Savannah 92-213 | Savannah River | Safety | 26 Mar 92 |
| Savannah 92-45 | Savannah River | Safety | 10 May 92 |
| Tampa 92-24 | Florida East of Albert Whitted Airport | Safety | 05 Apr 92 |
| Tampa | Headwaters of Crystal | Safety | 22 May 92 |
| Tampa 92-30 | Spanish Caravel Vessels | Safety | 10 Apr 92 |
| Wilmington 92-001 | NE Cape Fear River | Safety | 30 Mar 92 |
| Wilmington 92-004 | Cape Fear River | Safety | 04 Jul 92 |

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Dated: July 7, 1992.

**D.M. Wrye,**

*Lieutenant Commander, USCG Acting Executive Secretary Marine Safety Council.*

[FR Doc. 92-16244 Filed 7-9-92; 8:45 am]

BILLING CODE 4910-14-M

**Coast Guard**

**33 CFR Part 117**

**[CGD7 92-03]**

## Drawbridge Operation Regulations: Atlantic Intracoastal Waterway, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** At the request of the Florida Department of Transportation, the Coast Guard is amending the regulations governing the Brooks Memorial (Southeast 17th Street) drawbridge, mile 1065.9, at Fort Lauderdale, by changing the opening schedule from a 15-minute closure period by use of a time clock after each opening to an on the hour and half-hour opening schedule.

**EFFECTIVE DATE:** August 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Brodie Rich, Project Manager at (305) 536-4103.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The principal persons involved in drafting this document are Brodie Rich, Project Officer, and LT J. M. Losego, Project Counsel.

### Regulatory History

On April 6, 1992, the Coast Guard published a notice of proposed rulemaking entitled DRAWBRIDGE OPERATION REGULATIONS in the **Federal Register** (57 FR 11592). The Coast Guard received 115 letters commenting on the proposal. A public hearing was not requested and one was not held.

### Background and Purpose

This drawbridge opens on signal except that from 7 a.m. to 7 p.m., daily, the draw need not be reopened for a period of 15 minutes after each closure. The owner of or agency controlling the bridge has been required to display on both sides of the bridge a time clock which is acceptable to the District Commander and which indicates to approaching vessels the number of minutes remaining before the draw is available for opening. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property have been passed through the draw at any time. The Florida Department of Transportation (FDOT) initially requested changing the time clock from 15-minute closures to 30-minute closures after each opening. The Coast Guard tested this regulation and the results indicated that the extended closure would create unsafe navigational conditions. The Coast Guard then tested bridge openings on the hour and half-hour which have reduced highway traffic congestion without unreasonably impacting navigation.

### Discussion of Comments and Changes

The Coast Guard received 115 letters commenting on the proposed hour and half-hour opening schedule. All commenters supported the proposal. Navigation and highway traffic levels during the test period were lighter than a similar period in 1991, however, the hour and half-hour openings appear to have improved highway traffic flow while affording navigation and highway users an opportunity to plan their bridge transit times.

### Regulatory Evaluation

These regulations are considered to be not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this change to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this change will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since tugs with tows are exempt from this change, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

### Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying at the following address: Commander, U.S. Coast Guard, Seventh Coast Guard District, 909 S.E. First Avenue, Brickell Plaza, Federal Building, Miami, FL 33131.

### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.261, paragraph (hh) is revised to read as follows:

**§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.**

* * * * *

(hh) The draw of the Brooks Memorial (S.E. 17th Street) bridge, mile 1065.9 at Fort Lauderdale, shall open on signal; except that from 7 a.m. to 7 p.m. the draw need open only on the hour and half-hour.

* * * * *

Dated: June 29, 1992.

**William P. Leahy, Jr.,**

*Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.*

[FR Doc. 92-16254 Filed 7-9-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGDI 92-065]

## Safety Zone; Boston Main Channel, Boston Inner Harbor, Boston, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone in the waters of Boston Harbor between the Subaru Terminal in South Boston and Bird Island Flats (the southwest corner of Logan Airport) in East Boston. Vessel movements within this safety zone are permitted under the criteria set forth in this regulation. This action is necessary to protect the maritime community from the possible dangers and hazards to navigation associated with the extensive blasting and dredging operations which are being conducted in conjunction with the construction of the Third Harbor Tunnel.

**EFFECTIVE DATES:** This regulation becomes effective on July 1, 1992 at 12:02 a.m. and terminates at 12:01 a.m., October 1, 1992.

**ADDRESSES:** The docket for this rulemaking is available for inspection or copying at room 234, U.S. Coast Guard Marine Safety Office, 455 Commercial Street, Boston, MA 02109-1045, between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Chris Oelschlegel, USCG Marine Safety Office Boston, at (617) 223-3000.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The principal persons involved in drafting this document are Lieutenant Chris Oelschlegel, project officer for the Captain of the Port Boston, and Lieutenant Commander John Astley, project attorney, First Coast Guard District Legal Office.

### Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Third Harbor Tunnel marine construction activities have been ongoing in the Boston Main Channel, Boston Inner Harbor since January 1992. Dredging and marine underwater blasting operations were supposed to have been completed, initially, in March 1992. In support of the construction, the Coast Guard established a safety zone in the Boston Main Channel (57 FR 3). Due to unforeseen delays in the start-up of construction activity, the Coast Guard, at the request of the Massachusetts Highway Department, the project coordinators, extended the effective date of the rulemaking (57 FR 77), until 12:01 a.m. June 30, 1992. The new termination date coincides with the anticipated suspension of marine construction activity due to a moratorium imposed by the Army Corps of Engineers in response to environmental concern over the annual migration of lobster through Boston Inner Harbor.

On June 24, 1992, the Coast Guard received yet another request from the Massachusetts Highway Department asking that the safety zone in effect for Boston Harbor be extended again through November 1, 1992. Discussions with the Army Corps of Engineers indicated that the lobster moratorium, which was to have shut down construction activity, will in fact be lifted.

The Coast Guard wishes to work cooperatively with the Massachusetts Highway Department and to support the needs of the Third Harbor Tunnel construction project to the greatest extent possible in order to ensure safety. Accordingly, the Coast Guard will allow the effective date of the first safety zone to lapse and, at 12:02 a.m., July 1, 1992, will implement a new safety zone to remain in effect till 12:01 a.m. October 1, 1992. At the end of that three month period the Coast Guard will reassess the status of Third Harbor Tunnel marine operations and determine whether the need for a safety zone still exists. It is anticipated that there will be a temporary cessation of marine operations for the project from July 10—16, 1992, due to Sail Boston 1992 harbor activities.

Because contractors for this project intend now to continue dredging and blasting operations in the Boston Main Channel after July 1, 1992, the Coast Guard will establish a safety zone in Boston Harbor to support the contractor's change in plans. The wording of the text of this temporary final rule parallels the text of the safety zone as it appears in the Federal Register of April 21, 1992. The Coast Guard believes the port community is well acquainted with the restrictions on vessel traffic that are already in place and is best served by not imposing any additional changes that would confuse the matter.

Publishing an NPRM and delaying the effective date of this rulemaking would be contrary to the public interest since immediate action is needed to prevent injury to the persons and vessels involved.

### Background and Purpose

The U.S. Coast Guard is establishing a safety zone to enhance vessel safety during the extensive construction project for the Third Harbor Tunnel being undertaken by the contractors Morrison/Knudsen-Interbeton-White. The tunnel is part of a larger multi-year effort aimed at reducing automobile congestion within the city of Boston. The contractors anticipate finishing construction of the tunnel in mid-1994. The initial stage of construction involves blasting and dredging. The Coast Guard views the blasting portion of the construction as a concern for mariners, while contractors blast bedrock located beneath the subsurface of the channel on a line between the southwest corner of Logan Airport in East Boston and the Subaru Pier in South Boston. The purpose of the blasting is to form a trench across the subsurface of the main ship channel into which prefabricated sections of the tunnel can be placed. The blasting portion of the tunnel construction has not proceeded on schedule due to unforeseen delays. Termination of blasting on July 1, 1992, will cause an undue delay in the overall tunnel construction. It is therefore necessary to implement a safety zone until 12:01 a.m. October 1, 1992, to ensure that the blasting and dredging operations that will occur in Boston Harbor until then are conducted safely.

A typical marine underwater blast will cause a 2–3 foot wave on the surface of the water in the immediate vicinity. No rock will be sprayed into the air due to the blast. Because the vibration shock of underwater blasting can potentially damage the hulls of vessels located too close to the operation, this zone will ensure that vessels transiting in the vicinity of the blasting area will maintain a safe distance to eliminate this risk. The safety zone also ensures that communication is established between the contractors and vessels transiting the waters within the safety zone. With proper communication among all parties, the contractor is assured of having ample time to comply with a request to move his operation temporarily to allow a vessel to navigate through the zone safely.

### Description of the Blasting

The blasting operation will be taking place 24 hours a day, 7 days per week. No blasting will take place when there is restricted visibility (the contractor must have ½ mile visibility beyond the safety zone). Before each blast, personnel onboard the barge CGA-100

(100 feet x 52 feet x 12 feet) will drill ten holes (the width of the tunnel) and load the holes with the explosives. After retreating to a safe distance, the contractors will remotely detonate the explosives in the holes and then move ten feet down (across channel) to the next set of holes to be drilled. Operations will begin first on the East Boston side of the zone and move toward the South Boston side.

**Description of the Dredging**

The dredging operation will be taking place 24 hours per day, 7 days per week. In preparation for blasting operations, contractors will dredge the soft bottom of the subsurface of areas to be blasted until they reach bedrock. Performing the dredging will be the SUPERSCOOP (a clamshell dredge—225 feet × 75 feet), working with four bin barges and two offshore barges into which dredged spoils will be placed. In general, the SUPERSCOOP will be positioned ahead of the CGA–100, also working from East to South Boston. During blasting operations, these vessels too will retreat to a safe distance from the blast. If there is a "high spot" of dredged material on the sea bed resulting from the blast, the SUPERSCOOP will swing around and remove that material immediately after the blast. After most blasting is complete, the SUPERSCOOP will conduct a second pass across the channel to dredge the blasted material.

**Obstruction of the Channel**

The CGA–100 will be positioned in line with the shipping channel. When in the channel, it will cause an obstruction of 60–65 feet (the width of the barge (52 feet) + 10–15 feet overhang from drills on the edge of the barge). The CGA–100 will be held in place by six anchors, which will extend outward 500 feet in all directions. Each anchor will be marked with a white buoy equipped with radar reflectors and lighted at night with blinking white lights (60 flashes per minute). The navigational hazard associated with the anchoring system can be minimized, however, as the anchor wires can be "dropped" and made to lie on the bottom within 10 minutes after contractor's receipt of a notification of an impending vessel movement. Accordingly, it is essential that mariners passing between the barge and the anchor buoys communicate with the contractors to ensure that the anchor wires are "dropped" in order to minimize this navigational hazard. The dredge SUPERSCOOP will also be positioned parallel to the channel. When in the channel, it will cause an obstruction of about 130 feet (the width of the SUPERSCOOP (75 feet) + (48 feet)—the width of the largest scows receiving dredged material (connected to the dredge by wire cables)). The SUPERSCOOP will be held in place by four anchors extending outward 500 feet in all directions, with the same "drop" capability as the blasting barge. Each anchor will be marked similarly with white buoys equipped with radar reflectors and blinking white lights (60 flashes per minute). Again, communications are essential for mariners passing between the dredge and its anchor buoys to ensure that the anchor wire can be "dropped" by the contractor if necessary. Though the dredge and the barge are being operated by the same contractor, all communications should be initiated with the SUPERSCOOP since that vessel has control over the entire project.

**Notification of Blasting**

Two hours, one hour, forty-five minutes, thirty minutes, and fifteen minutes prior to blasting, the contractors will broadcast on Channels 9, 13, and 16 VHF–FM their intention to conduct blasting operations. Approximately fifteen minutes before a blast round is to be fired, the signal will be given by the blaster for four clearly audible prolonged (4–6 seconds) horn/whistle signals to indicate that the blast area is being secured. Two work boats will be available for security of the immediate blast area. One boat will be placed approximately 1500 feet west of the blast area. The second boat will be placed 1500 feet east of the blast area. These boats will patrol and warn any vessel traffic of the impending blast. When the area is determined to be secure by the contractor, the blaster will signal with four clearly audible short (approximately one second duration) horn/whistle signals to indicate that the blast is going to be fired in one minute. The blast round will then be fired unless there is a last minute breakdown in the security of the blast area. If a vessel not involved with the blasting operation is within the safety zone at this point, the contractor will not blast. Immediately following the blast, the blaster will inspect the area and determine that it is clear to resume operations. At this point an all clear signal (4–6 second horn/whistle signal) will be given.

This safety zone is necessary to protect vessel traffic operating in Boston Harbor from the hazards associated with the proposed blasting operations and hazards to navigation due to the presence of contractor vessels in proximity to the Boston Main Channel, Boston Inner Harbor. Notice of this safety zone will be published in the Local Notice to Mariners and Safety Marine Information Broadcasts. Entry into this safety zone during blasting operations will be prohibited, unless authorized by the Captain of the Port Boston.

**Regulatory Evaluation**

This rule is not major under Executive Order 12291 on Federal Regulation and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. Costs to the shipping industry from these regulations, if any, will be minor and have no significant adverse financial effect on vessel operators. Deep draft vessel traffic, fishing vessels, and commuter or tour boats may experience slight delays (a few minutes) in departures or arrivals while waiting for the blast to occur; however, mariners can time their transit through the safety zone with contractors to minimize delays by communicating with the contractors using bridge to ridge marine radios.

**Small Entities**

Under the Regulatory Facility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as a "small businesses concerns" under section 3 of the Small Business Act (15 U.S.C. 632)." Since this action will cause only slight, intermittent delays in transits by deep draft vessel traffic, fishing vessels, and commuter or tour boats and scheduling of transits and blasting operations can be adjusted as necessary in most cases to accommodate all parties, no significant adverse economic impact should result from this rulemaking. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of entities.

**Collection of Information**

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in

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Executive Order 12612, and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded under section 2.B.2.C of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. An Environmental Impact Statement on construction of the Third Harbor Tunnel has already been issued by the Federal Highway Administration. In fact, implementation of this rulemaking should help to reduce the risk of collision or other marine accidents. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Latest research, reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations is amended as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T01–085 is added to read as follows:

**§ 165.T01–085 Safety Zone: Boston Main Channel, Boston Inner Harbor, Boston, MA.**

(a) *Location.* The following area is a safety zone: All waters of the Boston Inner Harbor within an area described between two lines: One boundary line on the east extending across the Boston Main Channel from the esternmost of the Massport North Jetty dock, South Boston, to the landside point in East Boston abeam Boston Main Channel; Lighted Buoy "12"; and another boundary line on the west extending across the Boston Main Channel from the northwest corner of the Boston Fish Pier, South Boston to Cashman's drydock, East Boston.

(b) *Regulations.* (1) Except with permission of the Captain of the Port, all vessels must:

(i) Remain outside the safety zone (i.e., not operate or anchor within the area between the two boundary lines for the safety zone) once the dredge SUPERSCOOP has given the final warning that a blast will occur (four clearly audible short, one second duration, horn/whistle signals one minute prior to the blast) and remain outside of the zone until the dredge SUPERSCOOP has given the all-clear signal (a horn/whistle signal sounded for a prolonged, 4–6 second interval). Vessels moored at the Massport North Jetty dock in South Boston, Chashman's drydock in East Boston, or the north face of the Boston Fish Pier in South Boston may remain inside the safety zone provided they are securely moored.

(ii) Maintain at all times at least 100 yards distance from the blasting barge CGA–100, the dredge SUPERSCOOP, and all attending scows or tugs mad fast to the SUPERSCOOP or CGA–100.

(iii) Maintain at all times a safe distance from anchors and anchor buoys deployed by the blasting barge CGA–100 and the dredge SUPERSCOOP.

(iv) Communicate with the SUPERSCOOP (the vessel in charge of the contractor's operation) on Channels 9, 13, or 16 VHF–FM to arrange for safe passage when the CGA–100 or SUPERSCOOP (or their anchors) are in the Boston Main Channel; and if requesting barge CGA–100 and dredge SUPERSCOOP to slack anchor lines, provide at least 10 minutes notification of vessel transit to allow the barge and dredge to slack their anchor lines.

(v) Provide the contractor at least 4 hours advanced notice (i.e., Channels 9, 13, or 16 VHF–FM or cellular phone (617–966–1670)) to move/suspend his operations in any case where the transiting vessel operator believes the safe passage of his vessel is jeopardized by the presence/operation of the CGA–100 or SUPERSCOOP.

(2) Except with the permission of the Captain of the Port, vessels involved with the Third Harbor Tunnel blasting and dredging operation must:

(i) CGA–100 and SUPERSCOOP: Mark anchors with white buoys, lighted at night with a white light (60 flashes per minute); and slack anchor lines to the bottom of the channel within 10 minutes after receipt of a request to do so from any vessel operator intending to transit the safety zone.

(ii) All vessels: Move/suspend operations and relocate to a safe position within four hours after receipt of a request to do so from any vessel operator expressing concern about the safety of any impending transit through the safety zone.

(iii) SUPERSCOOOP: Communicate with and arrange safe passage through the safety zone for all vessels not involved in Third Harbor Tunnel blasting/dredging operations.

(iv) SUPERSCOOP: Initiate appropriate broadcast notice and warning signals to local mariners prior to and after conducting blasting operations. Two hours, one hour, forty-five minutes, and thirty minutes prior to blasting, broadcast on Channels 9, 13, and 16 VHF–FM the intention to conduct blasting operations. Approximately fifteen minutes before a blast round is to be detonated, give a signal of four clearly audible prolonged (4–6 seconds) horn/whistle signals to indicate that the blast area is being secured. Determine the blast area to be secured. Signal with four clearly audible short (approximately one second) horn/whistle signals to indicate that the blast is going to be detonated in one minute. Do not blast if a vessel not involved with the blasting operation is within the safety zone with exception of vessels moored as described in paragraph (b)(1) of this section. Immediately following the blast, inspect/survey the blast area to determine whether it is clear to resume operations. Remove any debris that lessens the channel depth. Give all clear signal (4–6 second horn/whistle signal) after area is determined to be clear to resume normal operations.

(v) All vessels: Relocate to a safe distance prior to conducting blasting operations.

(3) The Captain of the Port may, upon request, authorize a deviation from any rules in this section if he determines that the proposed operations can be done safely.

(4) The Captain of the Port may direct the movement of any vessel within the safety zone as appropriate to ensure the safe navigation of vessels throughout the safety zone.

(c) *Effective date.* This regulation becomes effective at 12:02 a.m., July 1, 1992 and terminates at 12:01 a.m., October 1, 1992.

Dated: June 26, 1992.

**W.H. Boland, Jr.,**

*Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.*

[FR Doc. 92–16251 Filed 7–9–92; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

**[CGD1 92–070]**

**Safety Zone Regulations: Boys Harbor Fireworks Extravaganza**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone in Threemile Harbor one mile south of Sammys Beach, East Hampton, NY. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

**EFFECTIVE DATES:** This regulation becomes effective at 8:45 pm July 18, 1992. It terminates at 10 p.m. on July 18, 1992 unless terminated sooner by the Captain of the Port. The rain date for this event is July 19, 1992 at the same times.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander D.D. Skewes, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The drafters of this notice are LCDR D.D. Skewes, project officer for Captain of the Port, Long Island Sound, and LCDR J. Astley, project attorney, First Coast Guard District Legal Office.

**Regulatory History**

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the date the application was received, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date. This is a fund-raising event for Boys Harbor Inc., a nonprofit, charitable organization. Therefore, this event is of general benefit and interest to the public. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards.

**Background and Purpose**

On June 10, 1992 the sponsor, Boys Harbor Inc., New York, NY requested that a 60 minute fireworks display, launched from two floating platforms, be permitted in the port of Threemile Harbor in the vicinity of Threemile Harbor, East Hampton, NY. This zone is required to protect the maritime community from the dangers and potential hazards to navigation, including falling debris and potential fireworks launching mishaps, associated with this fireworks display which is occurring over a navigable waterway. The zone covers all waters of Threemile Harbor within a 1200 foot radius of the barges 24 and 76, which will be located approximately 1 mile south of Sammys Beach.

**Regulatory Evaluation**

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The event will last approximately 60 minutes. The area affected by this event receives infrequent commercial traffic. Because of the short duration of the event, commercial entities will be able to adjust to any disruptions caused by this event. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons cited under the Regulatory Evaluation section above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Foderalism**

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they will have no significant impact and they are categorically excluded from further environmental documentation.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Final Regulation**

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T01–070 is added to read as follows:

**§ 165.T01–070 Safety Zone: Boys Harbor Fireworks Extravaganza.**

(a) *Location.* The following area has been declared a safety zone: All waters of the Threemile Harbor within a 1200' radius of the barges 24 and 76, the fireworks launching platforms, which will be located approximately 1 mile south of Sammys Beach in approximate position 41° 01' 05"N 072° 11' 55"W.

(b) *Effective date.* This regulation becomes effective at 8:45 pm July 18, 1992. It terminates at 10 p.m. July 18, 1992 unless terminated sooner by the Captain of the Port. The rain dates for this project are July 19, 1992 at the same times.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port or his on scene representative.

Dated: July 7, 1992.

**H. Bruce Dickey,**

*Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

[FR Doc. 92–16255 Filed 7–9–92; 8:45 am]

BILLING CODE 4910–14–M

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**POSTAL SERVICE**

**39 CFR Part 20**

**Implementation of International Customized Mail Service**

**AGENCY:** Postal Service.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** International Customized Mail (ICM) service is a new type of

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international mail service that will be available only pursuant to a service agreement between the Postal Service and a qualifying mailer. The Postal Service will provide ICM service on a cutomer-specific basis, with the particular service features and postage rate applicable to an individual qualifying mailer determined through negotiation between the Postal Service and the mailer. The establishment of ICM service will benefit all users of the Postal Service by increasing the total level of contribution to fixed costs realized by the Postal Service from its international operations. Interim implementing regulations have been developed and are set forth below for comment and suggested revision prior to adoption in final form.

**DATES:** The interim regulations will take effect on July 10, 1992. Comments must be received on or before August 10, 1992.

**ADDRESSES:** International Law Counsel, Office of Postal Rates and Mailing Rules, Law Department, U.S. Postal Service, Washington, DC 20260–1140. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 6604, 475 L'Enfant Plaza West, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William T. Alvis, (202) 268–2982, or Michael B. Sundel, (202) 268–2985.

**SUPPLEMENTARY INFORMATION:** The criteria of the Postal Reorganization Act (Act) that govern the Postal Service's international rate setting authority include 39 U.S.C. 101(d), which requires that rates must apportion the costs of all postal operations to all users of the mail on a fair and equitable basis; 39 U.S.C. 101(a), which provides that rates may not apportion costs in a manner that would impair the overall value of the service to the people; 39 U.S.C. 403(a), which requires that rates be fair and reasonable and 39 U.S.C 403(c), which provides that rates may not be unduly or unreasonably discriminatory or preferential. Implicit in these criteria is a requirement that international rates be set in a manner that covers variable costs and makes an appropriate contribution to fixed costs. Within this statutory framework, the Postal Service historically has endeavored to make every different type of international service universally available. Consequently, when determining the rates for a particular international service, the Postal Service has considered the aggregate costs of providing that service to all mailers, rather than the unique costs associated with providing that service to specific mailer or groupings of mailers.

This approach to ratemaking means that, for any given international service, the Postal Service typically charges the same rate to all customers mailing items of a particular weight, regardless of quantity or availability of alternative services.[1] All of the Postal Service's international rates and service offerings are published in the International Mail Manual (IMM) and, subject to the minimum volume and preparation requirements applicable to certain services, are available to any mailer. Uniform pricing represents a simple method to ensure that the Postal Service's international rates comply with the nondiscrimination provisions of the Act.

This approach made sense as long as the Postal Service faced little or no competition in its international operations and thus had little incentive to determine whether additional distinctions could be justified. As that condition no longer exists, however, uniform pricing for all international services is no longer appropriate. The high degree of aggregation made necessary by uniform pricing means that some customers face published rates disproportionate to the costs that the Postal Service would incur in providing those customers with the services in question, while other customers want or need special services or combinations of services that the Postal Service does not provide.

Exacerbating the problem has been the increasing complexity of the context within which the Postal Service must price its services. Until relatively recently, the most significant components of the costs incurred by the Postal Service in connection with its international operations, namely transportation expenses and the charges imposed by foreign postal administrations to deliver U.S.-origin mail (terminal dues), were based exclusively on weight. Although transportation expenses are still a function of weight, the postal administrations of countries to which much U.S. mail is sent have implemented terminal dues arrangements that recognize that mail processing costs vary by volume as well as by weight.[2] Moreover, the Postal Service currently is charged terminal dues by foreign postal administrations using four different methods of calculation. Consequently, the Postal Service incurs substantially different costs for delivering mail to different countries. Due to uniform pricing, however, the Postal Service's rates do no reflect country-specific costs to the extent possible. Similarly, uniform rates do not generally take into account differences in how mail is prepared or where it is tendered, both of which can significantly affect costs.

The other catalyst for a more flexible approach to ratemaking is the development of private sector alternatives for the Postal Service's international services. Over the past two decades, the international hard copy communications and parcel marketplace has become increasingly competitive, with competition for bulk and expedited services used by businesses especially vigorous. Customers, in general, and business customers, in particular, are aware of the range of alternative offerings available and will switch service providers to obtain price savings and desired features. The Postal Service's competitors have responded by implementing flexible rate structures and customer-specific service offerings.

This flexibility enables the Postal Service's competitors to tailor service features to individual customers and to price those features on a partially or completely disaggregated basis. In contrast, traditional Postal Service pricing policies and practices, whereby the Postal Service generally treats all current and potential customers identically and uses averaged costs when setting rates, are not designed to deal with a competitive environment. The expanded alternatives available to customers and the improved attractiveness of those alternatives have made it increasingly difficult for the Postal Service to sell its services to a varied group of customers using a single published schedule of rates. To the extent that uniform pricing prevents the Postal Service from attracting new customers and from keeping existing customers, all of the Postal Service's other users suffer by having to pay more for their postal services.

[1] To the extent that the Postal Service has departed from completely uniform pricing by charging different rates for different groups of destination countries, the separate rate groups have been based on commonality of transportation costs and/or of terminal dues systems. In setting rates for those race groups, which generally consist of countries in the same geographic region (*e.g.*, Europe, South America), the Postal Service necessarily establishes a single rate for all countries in a particular rate group. As a result, the rates do not incorporate country-specific cost differentials.

[2] For instance, the terminal dues system adopted by the 20th Congress of the Universal Postal Union (UPU) takes into account the number of pieces per pound in setting compensation levels. The terminal dues system used by a number of European countries in lieu of the UPU method is predicated on an explicit per-piece plus per-round rate.



In order to improve its ability to compete effectively against other providers of international hard copy communications and parcel delivery services, the Postal Service is adopting a new regulation, IMM 290. This regulation authorizes the Postal Service to negotiate and to enter into flexible rate and service agreements with "qualifying mailers," as defined therein, subject to certain conditions as discussed below. IMM 290 is designed to provide the Postal Service with the ability to provide customer-specific service offerings at rates that accurately reflect the Postal Service's costs of delivering the customer-specific mail volumes, while ensuring that those rates comply with all of the statutory requirements that apply to international postal rates.

IMM 290 establishes a new type of international mail service, International Customized Mail (ICM), which is available only pursuant to a service agreement between the Postal Service and a qualifying mailer. An ICM mailing may include items from any or all of the three classes of international mail described in IMM 140: Postal Union Mail, Parcel Post, and Express Mail International Service. With the exception of the size and weight limits and the format specifications that pertain to all international mail of a particular class, there are no requirements generally applicable to ICM mail. Rather, such matters as postage and method of payment, preparation requirements, makeup requirements, tender and delivery schedules, and any other obligations of either party will be set forth in the service agreement.

The Postal Service recognizes that, for three reasons, making ICM service available to all existing and potential customers regardless of size or mailing patterns is not feasible. First, increased volumes amplify the beneficial effects of flexible pricing. The additional contribution to fixed costs realized from the Postal Service's entering into an ICM service agreement with a large business customer that had been using another provider would dwarf the additional contribution realized from any number of new household or small business customers. Similarly, there would be no discernible effect on other users of the Postal Service if an individual household or small business customer stopped sending international mail through the Postal Service. In contrast, the contribution lost from the defection of a large business customer to another service provider could be significant enough to accelerate the need for a general rate increase.

Second, volume of use determines the cost-effectiveness of flexible pricing as a means of increasing net contribution. In general, the unit costs incurred by the Postal Service to administer this program are inversely proportional to the size of the mailing. Indeed, for all but the largest volume customers, those costs in many instances could be greater than any additional contribution.

Third, how and where the customer tenders its mail affects the Postal Service's ability accurately to determine costs on an individualized, rather than aggregated, basis. The Postal Service's existing costing systems were designed to support uniform pricing for international services. Those systems are not intended to generate data that are disaggregate to the extent required for ICM service. Specifically, mail handling and processing costs generally are aggregated across different postal facilities. Although the Postal Service is capable of calculating with a high degree of precision the costs incurred in delivering items deposited at or picked up from a single point, the way in which cost information is collected makes it difficult to determine accurately the costs associated with mail deposited at or picked up from multiple locations.

In order to maximize the beneficial effects of flexible pricing, the Postal Service will offer ICM service only to a customer satisfying both the minimum volume and mail origin qualifying criteria set forth in IMM 290. First, the customer must be capable, on an annualized basis, of either (1) tendering at least one million pounds of international mail to the Postal Service, or (2) paying at least two million dollars in international postage to the Postal Service.[3] Second, the customer must be capable of tendering all of the mail covered by the service agreement to the Postal Service from a single location.[4]

[3] This criterion does not mean that the mailer will be required to enter into a service agreement with the Postal Service covering one million pounds or two million dollars. Rather, the mailer must send enough international mail through the Postal Service and/or other service providers that, if it elected to give all of its business to the Postal Service, the business would annually total at least one million pounds or be worth at least two million dollars.

[4] This criterion does not mean that every service agreement necessarily will require the mailer to tender its mail from a single location. Rather, mailers seeking to qualify must simply be capable of doing so. Whether the Postal Service includes this requirement as a condition in a particular service agreement will depend on the circumstances surrounding the mailer in question. There may very well be cases in which a mailer's use of multiple origins would not diminish the Postal Service's ability accurately to determine costs, but would provide the Postal Service and/or the mailer with significant operational benefits.

Both the Postal Service's existing customers and customers of other service providers can qualify for ICM service. Even after satisfying the above criteria, however, a qualifying mailer must enter into an ICM service agreement with the Postal Service to receive the service.

In negotiating the rates to charge a particular qualifying mailer, the Postal Service will take into account both the costs incurred in providing the customer with the service features specified in the service agreement and the rates available to the customer from the Postal Service's competitors. The Postal Service anticipates that ICM rates will depend on, among other factors, the volume and characteristics of the mail to be tendered by the customer, the destination country or countries, the amount and type of worksharing to be performed by the customer, the level of service to be provided by the Postal Service, and the service agreement's duration. In no case, however, will the Postal Service enter into an ICM service agreement unless it reasonably believes at the time that the rates will generate revenues greater than costs.

Offering ICM service will enable the Postal Service to tailor services and combinations of services to specific customers and to price those services on a partially or completely disaggregated basis. The Postal Service recognizes, however, that all of its rates, whether published or not, must comply with the nondiscrimination provisions of the Postal Reorganization Act. With regard to ICM rates, these requirements mean that the Postal Service must make every ICM service agreement available to similarly situated customers under substantially similar circumstances and conditions. The Postal Service will accomplish this by making public the following information about each executed ICM service agreement: (1) The term of the agreement, including any renewal option; (2) the type of mail involved; (3) the destination country or countries; (4) a brief description of each of the services to be provided by the Postal Service; (5) minimum volume commitments for each service; (6) a brief description of any worksharing to be performed by the mailer and (7) the agreed-upon rate for each service at the volume level committed to by the mailer.

Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), the Postal Service invites

interested persons to submit written data, views, or arguments concerning the interim rule.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

**List of Subjects in 39 CFR Part 20**

International postal service, Foreign relations.

**PART 20—[AMENDED]**

1. The authority citation for 39 CFR part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended by adding new section 290 to read as follows:

**CHAPTER 2—CONDITIONS FOR MAILING**

* * * * *

**290 International Customized Mail**

**290.1 Description**

International Customized Mail (ICM) service is an international business mail service that is available only pursuant to an ICM service agreement between the Postal Service and a mailer meeting the requirements in 290.2. The Postal Service provides ICM service, on a mailer-specific basis, pursuant to the terms and conditions stipulated in a particular ICM service agreement.

**290.2 Qualifying Mailers**

To qualify for ICM service, a mailer must be capable, on an annualized basis, of either (1) tendering at least one million pounds of international mail to the Postal Service, or (2) paying at least two million dollars in international postage to the Postal Service. The mailer must also be capable of tendering all of its ICM mail to the Postal Service from a single location.

**290.3 ICM Service Agreement**

290.31 Provisions in All ICM Service Agreements. Each ICM service agreement must set forth the following:

a. The term of the agreement, including any renewal options.

b. The type of mail to be tendered by the mailer.

c. The destination country or countries.

d. The services to be provided by the Postal Service, including any speed-of-delivery targets.

e. Minimum volume commitments for each service.

f. Postage and method of payment.

g. Weight and size limits.

h. Preparation requirements.

i. Makeup requirements.

j. Any other obligations of either party.

**290.32 Origin**

The ICM service agreement must stipulate the location from which the mailer is required to tender its items to the Postal Service.

290.4 Postal Bulletin Notifications. Within 30 days of entering into an ICM service agreement, the Postal Service must publish the following information about the agreement in the Postal Bulletin:

a. The term of the agreement, including any renewal option.

b. The type of mail involved.

c. The destination country or countries.

d. A brief description of each of the services to be provided by the Postal Service.

e. Minimum volume commitments for each service.

f. A brief description of any worksharing to be performed by the mailer.

g. The agreed-upon rate of each service at the volume level committed by the mailer.

A transmittal letter making the changes in the pages of the International Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 20.3.

**Stanley F. Mires,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 92-16274 Filed 7-9-92; 8:45 am]

BILLING CODE 7710-12-M

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[AD-FRL-4035-3]**

## Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Amendments to Method 24 for the Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule modifies Method 24 to incorporate procedures for the determination of volatile matter content, density, volume solids, and water content for multicomponent surface coatings. This action is necessary because Method 24 refers to the American Society for Testing and Materials (ASTM) Method, D 2369–81, for determination of volatile content of coatings that was originally incorporated by reference (48 FR 373 (1983)). The ASTM specifically excluded multicomponent coatings in its applicability statement, but it was not EPA's intent to exclude these coatings. This inconsistency resulted when Method 24 was published in 1980 with its reference to the ASTM Method D 2369–81 before the final version of the ASTM method was published. The EPA believed this ASTM method would apply to all surface coatings. However, in its final form, Method D 2369–81 contained a statement exempting multicomponent coatings. New Source Performance Standards, which refer to Method 24, regulate all surface coatings which include multicomponent coatings. By adding minor technical procedures to Method 24, ASTM D 2369 can be used to determine the volatile matter content of multicomponent coatings.

**DATES:** *Effective Date.* July 10, 1992.

*Judicial Review:* Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

*Incorporation by Reference:* The incorporation by reference of certain publications in these standards is approved by the Director of the Federal Register as of July 10, 1992.

*Docket:* A Docket, number A–91–49, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m. and Noon and 1:30 and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section (LE–131), Waterside Mall, room M1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Lori T. Lay or Gary McAlister, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–4825.

**SUPPLEMENTARY INFORMATION:**

## I. Summary

Method 24 is being corrected to make it applicable to multicomponent coatings by incorporating the following changes:

A. The coating components be mixed in a container according to the manufacturer's recommendations. Aliquots are immediately removed for analysis.

B. Aliquots for determination of volatile matter content are allowed to stand for 1 to 24 hrs before the sample is oven dried.

## II. The Rulemaking

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations (New Source Performance Standards or State implementation plans), nor does it change any emission standard. Rather, the rulemaking would simply amend an existing test method associated with emission measurement requirements in the current regulations that would apply irrespective of this rulemaking.

The Agency views this method correction as being of a minor technical nature and notes that it was developed in consultation with the regulated community. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b) for a determination that the issuance of a notice of proposed rulemaking is unnecessary. This action will take effect on August 10, 1992, unless adverse or critical comments are received by that date. If such comments are received, the portion of this action objected to will be withdrawn through the publication of a **Federal Register** notice. If any portion of this action is withdrawn, it will be included in a notice of proposed rulemaking and a comment period will be established. If no such comments are received, the public is advised that this action will be effective as of August 10, 1992.

## III. Agency Efforts To Obtain Input From Inside and Outside the Government

The EPA solicited input from members of an interagency informal work group and ASTM who were involved with the drafting of the original regulation. The EPA distributed a summary of the proposed changes to Method 24 to the members of the informal review committee that was involved in the development of this regulation. The EPA received four responses: most of which contained multiple comments. The changes resulting from the comments are summarized in this preamble.

A. Users have been given the option of mixing the coating on a weight basis as well as a volume basis. One respondent believed that, although volume ratios rather than weight ratios are commonly given in the directions for mixing multicomponent paints, each component must be weighed to determine the correct proportion for mixing. Since liquid components expand at high temperatures, incorrect measurement of component volumes may result. Therefore, if each component is weighed and the density of each component determined, the correct volume can be calculated. The Agency agrees with this point and has amended the procedure accordingly.

B. A procedure for measuring "exempt" solvents has been included. One respondent suggested that procedures be included for the determination of exempt solvents. The Agency amended the procedure to include ASTM Method D4457–85 for the determination of dichloromethane and 1,1,1-trichloroethane in paints by direct injection into a gas chromatograph. Also, an equation was added to the procedure for calculating the weight content of nonexempt volatile matter for coatings containing exempt solvents.

C. Requirements for the determining the final weight of oven dried samples were simplified. Two respondents noted that allowing the aluminum pans to cool to room temperature in a desiccator and then weighing them is an adequate procedure. No more precision is gained by weighing to a constant weight for 6 hours. The Agency agrees and has deleted the 6-hour constant weight requirement.

## IV. Administrative Requirements

### *A. Docket*

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they may effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test method revisions and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

### *B. Executive Order 12291*

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding the regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The RFA specifically requires the completion of an analysis in those instances where small business impacts are possible. This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted.

Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have an impact on small entities because no additional costs will be incurred.

### *D. Paperwork Reduction Act*

This rule does not change any information collection requirements subject to Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 40 CFR Part 60**

Air pollution control, Intergovernmental relations, Incorporation by reference, Surface coating of metal furniture, Automotive and light duty truck surface coating operations, Pressure sensitive tape and label surface coating, Industrial surface coating: Large appliances, Metal coil surface coating, Beverage can surface coating industry, Flexible vinyl and urethane coating and printing, Plastic parts for business machine coatings industry, and Reporting and recordkeeping requirements. No industries other than those already referencing the current method, will be affected.

Dated: June 29, 1992.

William K. Reilly,

*Administrator.*

40 CFR Part 60 is amended as follows:

## PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

2. In § 60.17 of subpart A, by amending paragraph (a)(31) by removing the words ", par. 2.2." and adding a period, and by adding paragraph (a)(62) to read as follows:

**§ 60.17 Incorporation by reference.**

* * * * *

(a) * * *

(62) ASTM D4457–85 Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph, IBR approved for appendix A, Method 24.

* * * * *

**Appendix A [Amended]**

3. In Method 24 of appendix A, the heading is revised; sections 3.1, 3.2, 3.3, and 3.4 are redesignated as sections 3.2, 3.3, 3.4, and 3.5, respectively; section 5.2 is revised; and new sections 2.5, 3.1, 3.6, 3.7, 3.7.1, 3.7.2, 3.7.2.1, 3.7.2.2, 3.7.2.3, 3.7.2.4 and 5.1.3 are added, to read as follows:

**Method 24—Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings**

* * * * *

2.5 ASTM D4457–85 Standard Test Method for Determination of Dichloromethane and 1,1,1–Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph (incorporated by reference—see § 60.17).

* * * * *

3.1 Multicomponent Coatings. Multicomponent coatings are coatings that are packaged in two or more parts, which are combined before application. Upon combination a coreactant from one part of the coating chemically reacts, at ambient conditions, with a coreactant from another part of the coating. To determine the total volatile content, water content, and density of multicomponent coatings, follow the procedures in section 3.7. For all other coatings analyze as follows:

* * * * *

3.6 Exempt Solvent Content. Determine the weight fraction of exempt solvents ($W_E$) by using ASTM Method D4457–85 (incorporated by reference—see § 60.17). Run a duplicate set of determinations and record the arithmetic average ($W_E$)

**Note:** Exempt solvents are defined as those solvents listed in 57 FR 3941, February 3, 1992. Dichloromethane and 1,1,1-trichloroethane are listed exempt solvents and may be used in coatings.

3.7 To determine the total volatile content, water content, and density of multicomponent coatings, use the following procedures:

3.7.1 Prepare about 100 ml of sample by mixing the components in a storage container, such as a glass jar with a screw top or a metal can with a cap. The storage container should be just large enough to hold the mixture. Combine the components (by weight or volume) in the ratio recommended by the manufacturer. Tightly close the container between additions and during mixing to prevent loss of volatile materials. However, most manufacturers mixing instructions are by volume. Because of possible error caused by expansion of the liquid when measuring the volume, it is recommended that the components be combined by weight. When weight is used to combine the components and the manufacturer's recommended ratio is by volume, the density must be determined by section 3.4.

3.7.2 Immediately after mixing, take aliquots from this 100 ml sample for determination of the total volatile content, water content, and density. To determine water content, follow section 3.3. To determine density, follow section 3.4. To determine total volatile content, use the apparatus and reagents described in ASTM D2369–81, sections 3 and 4, respectively (incorporated by reference, and see § 60.17) the following procedures:

3.7.2.1 Weigh and record the weight of an aluminum foil weighing dish. Add 31±1 of suitable solvent as specified in ASTM D2369–81 to the weighing dish. Using a syringe as specified in ASTM D2369–81, weigh to 1 mg, by difference, a sample of coating into the weighing dish. For coatings believed to have a volatile content less than 40 weight percent, a suitable size is 0.3±0.10 g, but for coatings believed to have a volatile content greater than 40 weight percent, a suitable size is 0.5±0.10 g.

**Note:** If the volatile content determined pursuant to section 5 is not in the range corresponding to the sample size chosen repeat the test with the appropriate sample size. Add the specimen dropwise, shaking (swirling) the dish to disperse the specimen completely in the solvent. If the material forms a lump that cannot be dispersed, discard the specimen and prepare a new one. Similarly, prepare a duplicate. The sample shall stand for a minimum of 1 hour, but no more than 24 hours prior to being oven dried at 110°C±5°C. for 1 hour.

3.7.2.2 Heat the aluminum foil dishes containing the dispersed specimens in the forced draft oven for 60 min at 110±5°C. Caution—provide adequate ventilation, consistent with accepted laboratory practice, to prevent solvent vapors from accumulating to a dangerous level.

3.7.2.3 Remove the dishes from the oven, place immediately in a desiccator, cool to ambient temperature, and weigh to within 1 mg.

3.7.2.4 Run analyses in pairs (duplicate sets) for each coating mixture until the criterion in section 4.3 is met. Calculate $W_v$ following Equation 24–1 and record the arithmetic average.

* * * * *

5.1.3 Coatings Containing Exempt Solvents.

$$W_o = W_v - W_E - W_w \qquad \text{Eq. 24–4}$$

where:

$W_E$ = weight fraction of exempt solvents, g/g.

5.2 Weight Fraction Solids.

$$W_s = 1 - W_v \qquad \text{Eq. 25–4}$$

where:

$W_s$ = weight fraction of solids, g/g.

* * * * *

[FR Doc. 92–15986 Filed 7–9–92; 8:45 am]

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## 40 CFR Parts 86, 124, and 164

[FRL–4151–3]

## Changes to Title 40 of the Code of Federal Regulations To Reflect the Role of the New Environmental Appeals Board in Agency Adjudications; Corrections

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; corrections.

**SUMMARY:** This document contains corrections to the final regulations that were published Thursday, February 13, 1992, at 57 FR 5320. The regulations relate to the role of the Environmental Appeals Board in Agency adjudications.

**EFFECTIVE DATE:** July 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** James W. Black, Administrator's Office (A–101), 401 M Street SW., Washington, DC 20460, (202) 260–4076.

**SUPPLEMENTARY INFORMATION:** As published, the regulations contain minor typographical errors that might cause confusion and therefore need to be corrected.

### List of Subjects

*40 CFR Part 86*

Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

*40 CFR Part 124*

Administrative practice and procedure, Air pollution control, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

*40 CFR Part 164*

Administrative practice and procedure, Pesticides and pests.

**Edward E. Reich,**

*Environmental Appeals Judge.*

Accordingly, the publication on February 13, 1992 is corrected as follows:

**Correction of Publication**

**§ 86.1015 [Corrected]**

Paragraph 1. On page 5333, in the first column, amendment 5, in the amendatory language and in the section heading marked "§ 86.1015–84 Treatment of confidential information" the section number is corrected to read "§ 86.1015."

**§ 124.78 [Corrected]**

Paragraph 2. On page 5336, in the first column, amendment 7, in the section heading "§ 124.75 Ex parte communications" the numeral "5" in the section number is corrected to read "8".

**§ 164.2 [Corrected]**

Paragraph 3. On page 5342, in the first column, the amendatory language for amendment 2 is corrected to read as follows:

2. Section 164.2 is amended by revising paragraph (c), redesignating paragraphs (g) through (r) as paragraphs (h) through (s) and by adding a new paragraph (g) to read as follows:

[FR Doc. 92–15860 Filed 7–9–92; 8:45 am]

BILLING CODE 6560–50–M

**40 CFR Part 261**

**[EPA/OSW–FRL–4151–2]**

**RIN 2050–AA78**

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic; Corrections

**AGENCY:** Environmental Protection Agency, (EPA).

**ACTION:** Final rule; corrections.

**SUMMARY:** On March 29, 1990, the Environmental Protection Agency (EPA) promulgated a rule (55 FR 11798) to revise the existing toxicity characteristics (TC) used to identify certain wastes defined as hazardous; these wastes are regulated under subtitle C of the Resource Conservation and Recovery Act (RCRA) due to their potential to leach significant concentrations of specific toxic constituents. In the preamble, the exclusion from subtitle C regulation for arsenical-treated wood and wood products was revised inappropriately. This rule corrects that revision. Today's rule also deletes two additional references in the Code of Federal Regulations (CFR) to the Extraction Procedure (EP) Toxicity Characteristic and replaces them with references to the TC.

**EFFECTIVE DATE:** The revision is effective July 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** For general information about this notice, contact the RCRA/Superfund Hotline at (800) 424–9346 (toll free) or (202) 260–3000 in the Washington, DC metropolitan area. For information on specific aspects of this notice, contact Dave Topping, Waste Identification Branch, Office of Solid Waste (OS–332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7737.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On March 29, 1990 (55 FR 11798), EPA promulgated a rule to revise the existing toxicity characteristics used to identify certain wastes defined as hazardous; these waste are regulated under subtitle C of RCRA. This rule broadened the scope of the hazardous waste regulatory program and fulfilled specific statutory mandates under the Hazardous and Solid Waste Amendments of 1984. The existing Extraction Procedure was replaced by the Toxicity Characteristic Leaching Procedure (TCLP), and additional constituents were added to the list that could cause a waste to be hazardous under the toxicity characteristic. Technical corrections to this rule were published on June 29, 1990 (55 FR 26986), August 2, 1990 (55 FR 31387), and September 27, 1990 (55 FR 39409).

### B. Arsenical-Treated Wood

Today's rule corrects an error made at the time of promulgation of the final Toxicity Characteristic (TC) rule. The 1990 rule amended the preexisting exclusion from the characteristic of EP Toxicity to arsenical-treated wood and wood products. Previously, 40 CFR 261.4(b)(9) excluded from the definition of hazardous waste those discarded arsenical-treated wood or wood products that failed the test for EP toxicity characteristic (EPTC) and were not hazardous for any other reason, if the waste was generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

When the TC was promulgated, EPA revised that provision to reflect the new characteristics. However, the Agency unintentionally narrowed the scope of the exclusion by rewording the provision so that only arsenical-treated wood and wood products that failed the TC "solely for arsenic" would be excluded. Therefore, arsenical-treated wood and wood products that failed the TC for other EP constituents (e.g., chromium) would not become regulated as hazardous waste. However, EPA had not intended to change the scope of the arsenical-treated wood exclusion. As noted in the preamble (55 FR 11805), EPA had intended only to replace references to the EPTC with the TC. Today's rule, therefore, corrects the arsenical-treated wood and wood products exclusion by excluding these materials from RCRA subtitle C if they exhibit the TC for any of the EP constituents but are not hazardous for any other reason and are used for their intended purpose.

### C. Other Technical Corrections

Today's rule also corrects the regulatory language in 40 CFR 261.4(b)(6)(ii) and 265.301(d)(1) by deleting references to the Extraction Procedure (EP) Toxicity Characteristic and by correctly referencing the TC. 40 CFR 261.4(b)(6)(ii) contains the list of specific chromium bearing wastes that are not hazardous wastes if they do not exhibit the TC or other characteristics of hazardous waste. Also, the technical correction in 40 CFR 265.301(d)(1) applies to the double liner design requirements for landfills at interim status facilities. This correction makes the requirements identical to those for permitted facilities, as found in 40 CFR 264.301(e)(1).

### D. Rulemaking Procedures

Because the revisions in this notice correct inadvertent errors or omissions from the 1990 TC rule and are not substantive changes in the scope or content of the affected provisions, public notice and comment on these revisions is necessary. *See* 5 U.S.C. 553(b)(3)(B). For the same reasons, an immediate effective date is appropriate. 5 U.S.C. 553(d).

**Richard J. Guimond,**

*Deputy Assistant Administrator, Solid Waste and Emergency Response.*

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

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**Authority:** 42 U.S.C. 6905, 6912(a), 6922, and 6938.

2. Section 261.4 is amended by revising paragraph (b)(6)(ii) introductory text to read as follows:

**§ 261.4 Exclusions.**

* * * * *

(b) * * *

(6) * * *

(ii) Specific waste which meet the standard in paragraphs (b)(6)(i) (A), (B), and (C) (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are: * * *

3. Section 261.4 is amended further by revising paragraph (b)(9) to read as follows:

**§ 261.4 Exclusions**

* * * * *

(b) * * *

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood product for these materials' intended end use.

* * * * *

## PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

4. The authority citation for part 265 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

5. Section 265.301 is amended by revising paragraph (d)(1) to read as follows:

**§ 265.301 Design requirements.**

* * * * *

(d) * * *

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such waste does not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristic in § 261.4 of this chapter, with EPA Hazardous Waste Number D004 through D017; and

* * * * *

[FR Doc. 92-15987 Filed 7-9-92; 8:45 am]
BILLING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### 45 CFR Parts 302 and 303

**RIN 0970-AA53**

## Child Support Enforcement Program: Immediate Income Withholding; Review and Adjustment of Child Support Orders; Notice of Assigned Support Collected

**AGENCY:** Office of Child Support Enforcement (OCSE), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements three provisions of the Family Support Act of 1988 (Pub. L. 100-485). Section 101 of this Act requires immediate wage withholding, with certain exceptions, in the case of support orders issued or modified on or after November 1, 1990, and being enforced under the IV-D State plan. Immediate wage withholding begins January 1, 1994, for orders issued on or after that date, if the case is not being enforced by the IV-D program. Section 103(c) of this Act requires periodic review of support orders and adjustment, as appropriate, in accordance with State guidelines for support award amounts, effective October 13, 1990. Section 103(c) also establishes more specific review and adjustment requirements effective October 13, 1993; those requirements will be addressed in a separate rulemaking. Section 104 of this Act requires monthly notices of collections to individuals who have assigned their rights to support to the State. Monthly notices are required beginning January 1, 1993, unless the State obtains a waiver in order to send quarterly notices.

**DATES:** *Effective date:* This rule is effective July 10, 1992.

*Compliance dates:* The various compliance dates of the statutory requirements are:

November 1, 1990—Immediate Income Withholding (§ § 302.70 and 303.100)
October 13, 1990—Review and Adjustment of Orders (§ § 302.70, 303.4, and 303.8)
October 13, 1993—Review and Adjustment of Orders
January 1, 1993—Notice of Assigned Support Collected (§ 302.54)
January 1, 1994—Immediate Income Withholding, all orders.

**FOR FURTHER INFORMATION CONTACT:** Policy Branch, OCSE, specifically:

Marilyn Cohen (202) 401-5366 regarding review and adjustment of child support orders;
Lourdes Henry (202) 401-5440 regarding monthly notice of support collected;
Craig Hathaway (202) 401-5367 regarding immediate wage withholding.

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

Public reporting burden for the collection of information requirements in this final regulation, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is estimated as follows:

| Requirement | Average time per response |
|---|---|
| § 302.54(b) (1) and (2): notices | 30 seconds. |
| § 302.54(c): waiver | 1 hour, one time. |
| § 302.70(a)(10): procedures | 8 hours, one time. |
| § 303.8(b)(1): plan | 8 hours, one time. |
| § 303.100(b)(3): agreement | 1 minute. |
| § 303.100(f)(1)(ii): payment | 30 seconds. |

These information collection requirements were approved under OMB control number 0970-0110.

### Statutory Authority

This regulation is published under the authority of the following provisions of the Social Security Act (the Act), as amended by Public Law 100-485: sections 466 (a)(8) and (b)(3) with respect to immediate income withholding; section 466(a)(10) with respect to periodic review of individual support award amounts; and section 454(5)(A) covering timing of notice of support collections. This regulation is also published under the general authority of section 1102 of the Act, which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

### Background and Description of Regulatory Provisions

*1. Notice of Assigned Support Collected*

Former 45 CFR 302.54 required States, at least annually, to provide notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under 45 CFR 232.11. The notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and indicate the amount of

support collected which was paid to the family. This regulation implemented section 454(5) of the Act as amended by the Child Support Enforcement Amendments of 1984.

Section 104 of the Family Support Act of 1988 amended section 454(5)(A) of the Act to require States to send a monthly notice of support payments to individuals who have assigned support rights to the State. A State may provide quarterly notices if the Secretary determines that a monthly notice would impose an unreasonable administrative burden on the State.

To implement these statutory changes, we redesignated the current §§ 302.54 (a) and (b) as new paragraphs (a) (1) and (2) which remain in effect until December 31, 1992.

Effective January 1, 1993, § 302.54(b) requires that the State have in effect procedures for issuing monthly notices.

Under § 302.54(b)(1), the IV–D agency is required to provide a monthly notice of the amount of support payments collected for each month to individuals who have assigned rights to support under § 232.11, unless no collection is made in the month, and the assignment is no longer in effect, or the conditions for issuance of a quarterly notice set forth in paragraph (c) are met. If, in a former AFDC case which continues to receive IV–D services, a State is collecting support for a previous period for which the assignment remains in effect in accordance with § 302.51(f), the State must send a monthly notice to the family.

Section 302.54(b)(2) requires the monthly notice to list separately payments collected from each absent parent when more than one absent parent owes support to the family and indicate the amount of current support and arrearages collected and the amount of support collected which was paid to the family. If no support collection is made during a month, the State is not required to provide a notice to the family. A State may, at its option, provide a monthly notice when no support collections are received.

Under § 302.54(c), a waiver may be granted allowing the State to provide quarterly, rather than monthly, notices if the State does not have an automated system that performs child support enforcement program activities, or has an automated system that is unable to generate monthly notices. Effective October 1, 1995, States are required to have in effect automated systems that perform child support enforcement activities. Upon the request of a State, the Office may grant a waiver to permit a State to provide quarterly, rather than monthly, notices, if the State: (1) Until September 30, 1995, does not have an automated system that performs child support enforcement activities consistent with § 302.85 or has an automated system that is unable to generate monthly notices; or (2) uses an automated voice response system which provides the information required under paragraph (b)(2).

Under paragraph (c)(2), a quarterly notice must be provided in accordance with conditions set forth in paragraph (b)(1) and must contain the information set forth in paragraph (b)(2).

*2. Review and Adjustment of Child Support Orders*

Beginning with the enactment of the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378), each State had to establish guidelines for child support award amounts in the State, as a condition for State IV–D plan approval. These guidelines were not binding, but had to be made available to all judges and other officials with authority to determine award amounts.

Under section 103 of Public Law 100–485, Congress required that States use the guidelines as a rebuttable presumption that the amount of the award computed according to the guidelines is the correct amount of child support to be awarded. A written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined by State criteria, is sufficient to rebut the presumption in that case. To ensure further that the use of the guidelines will result in appropriate support award amounts, section 103 requires that the guidelines be reviewed at least once every four years. Final regulations governing these aspects of section 103 were published on May 15, 1991 (56 FR 22335).

Use of guidelines does not ensure that orders, over time, continue to meet the support standards set by the guidelines. To address this problem, section 103 of Public Law 100–485 phases in a requirement for the periodic review and adjustment of support orders, in accordance with the support guidelines in the State. Under section 103, the Social Security Act (the Act) is amended by adding a new section 466(a)(10) of the Act. Section 466(a)(10)(A), effective October 13, 1990, requires States to have procedures for review and adjustment of orders in IV–D cases, consistent with a State plan indicating how and when review and adjustment would occur. Review may take place at the request of either parent subject to the order or may be initiated by the State itself. An adjustment to the award is required, as appropriate, if the award amount is found not to be in accordance with the State's guidelines, which must be used as a rebuttable presumption in establishing or adjusting support obligations in the State.

The new section 466(a)(10)(B), effective October 13, 1993 (or earlier at State option), requires the State to have implemented a process whereby orders enforced under title IV–D will be reviewed within 36 months after establishment of the order or the most recent review of the order and adjusted in accordance with the State's guidelines for support award amounts.

The new section 466(a)(10)(C) requires States to have procedures for notifying each parent subject to an order in effect in the State, that is being enforced under the State plan, of their rights concerning reviews and proposed adjustments. Each parent must be notified: of the right to request the State to review the order; of any review, at least 30 days before it commences; and of a proposed adjustment or of a determination that there should be no change in the award amount. In the latter case, the parent must have at least 30 days after notification to initiate proceedings to challenge the proposed adjustment or determination.

Proposed regulations governing review and adjustment requirements of section 103 were published on August 15, 1990 (55 FR 33414). We received many comments in response to the proposed rule which urged that we delay publication of final regulations governing review and adjustment requirements until demonstration projects underway in a number of States were completed. These projects, mandated by section 103(e) of Public Law 100–485, are developing, testing and evaluating model procedures for reviewing child support award amounts in Delaware, Colorado, Illinois and Florida. The results of the demonstration projects are required to be reported to Congress by March 31, 1993. A similar project was conducted in Oregon and the final report was issued in April 1991. Commenters also raised difficult issues with respect to review and adjustment, especially those concerning requirements for interstate cases. In response to these concerns, we have decided to publish a separate rule on the review and adjustment requirements which are effective October 13, 1993 to benefit fully from the wisdom gained from the review and adjustment projects. We believe this is the most prudent approach, given the time remaining before the 1993 requirements go into effect. Therefore, this final rule only addresses the requirements for

review and adjustment effective October 13, 1990.

*Section 302.70 Required Laws.*

Under § 302.70 States are required to enact certain laws and implement certain procedures designed to improve the effectiveness of the Child Support Enforcement program. Paragraph (a)(10) requires States to enact necessary laws and have procedures in effect for the review and adjustment of child support orders in accordance with the requirements of 45 CFR 303.8. Because of the addition of paragraph (a)(10) and revisions to § 303.100, we are making technical corrections to § 302.70(a) by revising paragraph (a)(8). We are making technical corrections to § 302.70(d)(1) and (2) to clarify that a State may apply for an exemption from any of the requirements of § 302.70(a) if it can demonstrate that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program.

*Section 303.4 Establishment of Support Obligations*

Section 303.4(c) is amended to require States to periodically review and adjust child support orders, as appropriate, in accordance with § 303.8.

*Section 303.7 Provision of Services in Interstate IV–D Cases*

Section 303.7(b)(2) is amended to clarify that the 20 calendar day time frame for referral of an interstate case is tied to the receipt of any information necessary to process the case, if appropriate.

*Section 303.8 Review and Adjustment of Orders*

The title of this section has been changed to "Review and Adjustment of Child Support Orders," to be consistent with the statutory language of Public Law 100–485.

*Section 303.8(a) Definitions*

Section 303.8(a) contains definitions designed to clarify key aspects of the review and adjustment process.

Paragraph § 303.8(a)(1) limits "adjustment" to the child support provisions of an order. Under § 303.8(a)(1)(i), "adjustment" means an upward or downward change in the amount of child support based upon an application of State guidelines for setting and adjusting child support awards. Under § 303.8(a)(1)(ii), "adjustment" also means the provision for the health care needs of the child through health insurance or other means.

Paragraph (a)(2) defines "parent" for purposes of § 303.8 to include any custodial parent or noncustodial parent (or, for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order).

Paragraph (a)(3) defines "review" as an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine the appropriate support award amount, and the need for a provision in the order addressing the child(ren)'s health care needs through health insurance or other means under State guidelines.

*Section 303.8(b) Plan for Review and Adjustment*

*Plan*

Paragraph (b) requires the State to develop and implement a plan for review and adjustment of orders by October 13, 1990. Under paragraph (b)(1), the State must have a written and publicly available plan indicating how and when a child support order, in effect in the State, will be periodically reviewed and adjusted. Paragraph (b)(2) specifies the requirements that the State must meet for the period October 13, 1990 through October 12, 1993 with respect to orders being enforced in IV–D cases. Paragraph (b)(2)(i) requires that the State must use the plan specified in paragraph (b)(1) to determine whether such orders should be reviewed. Paragraph (b)(2)(ii) specifies that the State must initiate a review, in accordance with the plan, at the request of either parent subject to the order or of a IV–D agency.

*Pre-Review Notice*

Paragraph (b)(2)(iii) specifies the requirements for notifying each parent subject to a child support order in effect in the State regarding review and adjustment. Under this paragraph, the State must notify each parent of any planned review of the order at least 30 calendar days before commencement of the review.

*Adjustment of the Order*

Paragraph (b)(2)(iv) specifies that if the review determines that there should be a change in the child support award amount, the State must adjust the order in accordance with the State's guidelines for child support described in § 302.56. In addition, an adjustment must be made if the review determines that provision for the health care needs of the child(ren) in the form of health insurance or other means, as indicated by the State's guidelines, is required.

*Post-Review Notice*

Paragraph (b)(2)(v) specifies the requirements for notifying each parent subject to a child support order in effect in the State following any review. This paragraph requires notification of (A) any adjustment or a determination that there should be no change in the order; and (B) each parent's right to initiate proceedings to challenge the adjustment or determination, either through pre-decision review, appeal or administrative review, within at least 30 calendar days of the date of the notice.

*3. Wage or Income Withholding*

Section 3 of the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378) added sections 454(20) and 466 of the Act to require all States to implement certain mandatory procedures which had been proven to noticeably increase the effectiveness of State programs, including procedures for wage withholding.

Section 466 required that States have in effect two distinct procedures for carrying out a program for wage withholding. The first, required under section 466(a)(1) and (b) of the Act, pertained only to cases being enforced through the IV–D agency. Under this requirement, States must have and use a procedure under which wages of an absent parent shall be subject to withholding in IV–D cases on the date the absent parent fails to make payments in an amount equal to one-month's support obligation. States were also required to implement the withholding at any earlier date that is in accordance with State law or that the absent parent may request. Withholding was to begin without amendment to the order or further action by the court. The Act also specified other elements of the withholding system for IV–D cases such as requirements for prior notice to the absent parent, basis for appeal, restrictions on the maximum amounts to be withheld, notice to the employer, and interstate withholding. These requirements were implemented in regulations at former 45 CFR 303.100 (a) through (g).

The second procedure, required by section 466(a)(8) of the Act, and implemented at former § 303.100(h), provided that all new or modified orders issued in the State include a provision for wage withholding when an arrearage occurs, in order to ensure that withholding is available without the necessity of filing an application for IV–D services.

Section 101 of Public Law 100–485 amends section 466 of the Act to require that States enact laws and implement procedures for immediate income withholding in certain cases. Under amended section 466(b)(3), a new subparagraph (A) provides that immediate withholding is required, effective November 1, 1990, for all IV–D cases with new or modified orders on the effective date of the order, unless one of the parties demonstrates, and the court or administrative authority finds good cause not to require the withholding, or a written agreement is reached between the parties which provides for an alternative arrangement.

For cases being enforced by the IV–D agency which are not subject to immediate withholding, section 101 of Public Law 100–485 amends the current requirements at section 466(b)(3) by creating a new subparagraph (B) which provides that the absent parent's wage shall be subject to withholding on the earliest of: The date on which arrearages occur which are at least equal to the support payable for one month; the date on which the absent parent requests that withholding begin; the date on which the custodial parent requests that withholding begin (in accordance with the standards and procedures the State may establish); or an earlier date the State may select.

Section 101 or Public Law 100–485 also amends section 466(a)(8) of the Act by revising the current language as redesignated subparagraph (a) to require that child support orders not described in subparagraph (B) contain wage withholding provisions, and creating a new subparagraph (B) to require that, effective January 1, 1994, States have procedures providing for withholding in all support orders not being enforced by the IV–D agency, regardless of whether support payments are in arrears, on the effective date of the order, except that such wages shall not be subject to withholding in any case where one of the parties demonstrates, and the court or administrative authority finds that there is good cause not to require immediate income withholding or a written agreement is reached between the parties which provides for an alternative arrangement.

To address these statutory changes we have adopted the following regulatory amendments:

We have amended § 303.100 to reiterate the statutory changes outlined above by revising paragraph (a) so that it will now cover withholding requirements which are common to all orders being enforced under the IV–D State plan, and redesignating paragraphs (b) and (c) as new paragraphs (d) and (e), to provide for advance notice to the absent parent and for procedures when the absent parent contests the withholding in cases where it is not immediate (i.e., initiated withholding). We have created a new paragraph (b) providing for immediate withholding for those orders which are issued or modified on or after November 1, 1990, and a new paragraph (c) providing for initiated withholding for orders not subject to immediate withholding under paragraph (b). We have also redesignated paragraphs (d), (e) and (g) as new paragraphs (f), (g), and (h) to provide for, in both immediate and initiated IV–D withholding, notice to the employer, procedures for administration, and interstate withholding. Former paragraph (f), which allowed States the option to extend withholding to other forms of income, has been moved to a new paragraph (a)(9) since it is applicable to all types of withholding. Finally, we have redesignated paragraph (h) as new paragraph (i) to address provision for withholding in non-IV–D child support orders.

*General Withholding Requirements*

We have consolidated the requirements which are common to all IV–D withholdings in § 303.100(a) using the unchanged statutory authority of section 466(b) of the Act. Paragraphs (a)(1) and (2) require that States must provide for wage withholding for all IV–D cases for both current and overdue support. Paragraph (a)(3) establishes limits of amounts to be withheld in all IV–D cases, as required by the Consumer Credit Protection Act (hereinafter CCPA). Paragraph (a)(4) requires that withholding in all IV–D cases must occur without the need for any amendment to the order or any other action by the court or entity that issued it, except actions required or permitted under § 303.100.

Paragraph (a)(5), requires that States develop procedures for allocation of support among families when there is more than one withholding in a case but in no case shall the allocation result in a withholding not being implemented for one of the support obligations. This revision is not specified in the statute. However, we are using the authority granted to the Secretary at section 1102 of the Act to publish regulations not inconsistent with the Act which may be necessary to efficiently administer the Secretary's functions under the Act. Upon publication of the current requirement in 1985, we stated that, in response to comments received on the proposed rule, we had changed the requirement that the employer respond to multiple withholdings on a first-come-first-served basis to one in which the State would allocate support payments among the families. We also suggested several mechanisms States could use in allocating amounts to be withheld, one of which was to give top priority to AFDC cases. We have since become aware that some States may have implemented this suggestion by deciding to allocate all available withholding up to the CCPA limit to the AFDC family, leaving no amounts available for a second non-AFDC family. This was not our intent, and this language in paragraph (a)(5) clarifies that, although a State may give priority to AFDC families, in no case shall the allocation result in another non-AFDC family receiving no support through the withholding process.

Paragraph (a)(6) requires that IV–D withholdings be carried out in full compliance with all procedural and due process requirements of the State.

Paragraph (a)(7) requires States to have procedures for promptly terminating withholding in all cases when there is no longer a current order and all arrearages have been satisfied. At State option, a State may also allow termination when the absent parent requests termination and withholding has not been terminated previously and subsequently initiated, and the absent parent meets the conditions for an alternative arrangement set forth under paragraph (b)(3).

Paragraph (a)(8) requires that States must have procedures for promptly refunding amounts improperly withheld. Paragraph (a)(9) permits a State to extend its withholding system to include forms of income other than wages.

Under paragraph (a)(10), support orders issued or modified in IV–D cases must require the absent parent to keep the IV–D agency informed of the name and address of his or her current employer, whether the absent parent has access to employment-related health insurance coverage and, if so, the health insurance policy information. This will simplify implementation of withholding.

*Immediate Withholding in IV–D Cases*

We have implemented section 466(b)(3)(A) of the Act by creating a new § 303.100(b) providing for immediate wage withholding. Paragraph (b)(1) requires that, in the case of a support order being enforced under title IV–D that is issued or modified on or after November 1, 1990, the wages of an absent parent shall be subject to withholding, regardless of whether support payments are in arrears, on the effective date of the order, except that

such wages shall not be subject to withholding in any case where one of the parties demonstrates, and the court or administrative authority finds, that there is good cause not to require immediate withholding, or a written agreement is reached between the parties which provides for an alternative arrangement.

Paragraphs (b)(2) and (b)(3) establish minimum definitions of "good cause" and "written agreement." Although not specified in the statute, we are using our authority under section 1102 of the Act to set these requirements because we believe that Congress intended that immediate withholding would be implemented in most cases. Consequently, paragraph (b)(2) provides that a finding of good cause by the court or administrative authority must be based on, at a minimum: (i) A written determination and explanation of why implementing immediate withholding would not be in the best interests of the child; and (ii) Proof of timely payment of previously ordered support in cases involving the modification of support orders. We believe that the best interests of the child should remain paramount and other concerns secondary. Certainly, payment of past-ordered support will provide a measure of the absent parent's good faith. In modification proceedings, States may choose not to allow past timely payment to justify avoiding immediate withholding.

These criteria were formulated to exclude certain other considerations. For example, we do not believe that good cause would be demonstrated if the absent parent objects to immediate withholding on the grounds that it would be inconvenient, since the purpose of the support order and withholding is to provide for the best interests of the child. Payroll deduction is a convenient means of paying debts. Moreover, the overall thrust of the immediate withholding provisions have, in effect, removed any reason for an employer to believe that the employee is not meeting his or her obligations in a responsible manner, since all child support orders (IV–D and non-IV–D) will eventually be subject to this automatic provision. This also means that a demonstration by the absent parent that he or she has established a good credit rating should not qualify for good cause, since the imposition of immediate withholding contains no assumption that the absent parent would default on support payments. Also, a credit rating may or may not take into consideration an absent parent's support obligation, or that obligation may not be heavily weighted.

Paragraph (b)(3) provides that a "written agreement" means a written alternative arrangement signed by both parents, and, at State option, the State in IV–D cases in which there is an assignment of support rights to the State, and reviewed and entered in the record by the court or by an administrative authority. We have given States the option in IV–D cases in which there is an assignment of support rights to the State to be a party to any alternative arrangement between the absent and custodial parents which meets the above condition because of the State and Federal interest in securing support for those in need of public assistance. We have provided that such written agreement be reviewed and entered in the record by the court or administrative authority for protection of the best interests of the child as well as the parents. Such an agreement may contain stipulations between the custodial and absent parents, and, at State option, the State in IV–D cases in which support rights have been assigned, which are in addition to those required under this paragraph.

*Initiated Wage Withholding*

We have implemented revised section 466(b)(3)(B) of the Act by creating a new § 303.100(c) for initiated wage withholding in cases where immediate withholding, as set forth in § 303.100(b), would not apply because the support order was issued before, and not modified after, November 1, 1990. Paragraph (c), in conjunction with paragraphs (a), (d), (e), and (f) will continue, with some modification, the original wage withholding requirements contained in Public Law 98–378 for existing orders being enforced under title IV–D.

Section 303.100(c) sets forth requirements for withholding with respect to cases in which wages are not subject to immediate withholding in paragraph (b), including cases subject to a good cause finding or a written agreement. Under paragraph (1), the wages of the absent parent shall become subject to withholding on the date on which payments which the absent parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of: (i) The date on which the absent parent requests that withholding begin; (ii) The date on which the custodial parent requests that withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved; or (iii) Such earlier date as State law or procedure may provide. In the latter instance, we have specified that the State may select an earlier date via law or procedure to indicate that this must apply on an across-the-board, rather than a case-by-case basis. For example, a State may wish to set a lower trigger of one week's support delinquency, rather than the outside limit of a month's delinquency required by statute and regulation. The State may not apply a more stringent standard on an individual case basis, but must apply it to all cases if this approach is selected.

These provisions parallel the requirements of Public Law 98–378 with one important exception. The new requirement at section 466(b)(3)(B)(ii) of the Act and at § 303.100(c)(1)(ii) now allows the custodial parent to request that withholding be imposed without regard to whether support payments are in arrears, if the State agrees based on procedures and standards which it may establish to determine when this is appropriate. Since the statute has given States authority to determine the criteria under which such requests by the custodial parent may be approved, we have not established requirements for these procedures and standards. However, such procedures and standards may not limit custodial parents' requests to cases where the 30-day triggering arrearage is met or cases where the custodial parent requests review and adjustment of the order and the order is adjusted. Under this provision, a State could choose to establish a simple administrative procedure to implement withholding upon custodial parent request if an absent parent is not meeting the terms of a written agreement for an alternative arrangement, or the support order was established or modified before November 1, 1990. Alternatively, a State may opt to require a return to court in order to implement withholding where no qualifying arrearage exists. In any case, State statute, rules or procedures must provide for withholding upon request in cases not subject to withholding in which the 30-day triggering arrearage has not been met, and in which State standards are met. This provision will also enable States which desire to do so to bridge the gap between the original initiated withholding mandated in Public Law 98–378 and the new immediate withholding requirements of Public Law 100–485 by incorporating either some, or all, of the new immediate withholding provisions on behalf of their existing initiated

withholding caseload. We encourage States to establish expedited procedures for custodial parents in such cases to request withholding as a means of ensuring regular and timely support payments consistent with protecting the due process rights of the other parent.

Paragraph (c)(2) requires the State to send the advance notice required under paragraph (d) to the absent parent within 15 calendar days of the appropriate date under paragraph (c)(1) if the absent parent's address is known on that date, or, if the absent parent's address is not known on that date, within 15 calendar days of locating the absent parent. Obviously, advance notice is unnecessary if the absent parent requests withholding under paragraph (c)(1)(i).

Paragraph (c)(3) requires that the only basis for contesting an initiated withholding is a mistake of fact, defined as an error in identity of the absent parent or in the amount of support due.

*Advance Notice to the Absent Parent in Cases of Initiated Withholding*

Section 303.100(d)(1) requires timely advance notice to the absent parent in cases of initiated withholding on the date specified in paragraph (c)(2) and specifies the required contents of the notice. We have also established a timeframe, in paragraph (d)(2)(ii), for sending notice to the employer in States which are not required to provide advance notice to the absent parent because they had a withholding system in effect on August 16, 1984, which provides any other procedures necessary to meet the procedural due process requirements of State law. Under this timeframe, a State is required to send notice to the employer under paragraph (f) within 15 calendar days of the appropriate date specified in paragraph (c)(1) if the employer's address is known on that date, or, if the employer's address is not known on that date, within 15 calendar days of locating the employer's address.

*State Procedures When the Absent Parent Contests Initiated Withholding in Response to the Advance Notice*

Section 303.100(e) addresses State procedures to be followed when the absent parent contests a proposed initiated withholding. We have changed the citations within this paragraph to reflect the redesignation of other paragraphs in this section.

*Notice to the Employer for Immediate and Initiated Withholding*

Section 303.100(f) provides for notice to the employer for both immediate and initiated wage withholding. In paragraph (f)(1)(ii), we have added a requirement that the employer report to the State the date on which the amount sent to the State was withheld from the absent parent's wages. This date is needed by the State to ensure proper distribution of support under current statute and regulations. If the employer fails to report this date to the State, the IV–D agency must, in accordance with § 302.51(a)(4), reconstruct the date of withholding by contacting the employer or comparing actual amounts collected with the pay schedule specified in the court or administrative order.

Paragraph (f)(2) requires that, in the case of immediate wage withholding under paragraph (b), the State must issued the notice to the employer specified in paragraph (f)(1) within 15 calendar days from the date the support order is entered if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address. We believe that a 15-day turnabout is consistent with the intent of immediate wage withholding. Paragraph (f)(3) requires that, in cases of initiated withholding, if the absent parent fails to contest withholding within the period specified, the State must send the notice to the employer within 15 calendar days of the end of the contact period if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address. Paragraph (f)(4) requires that if the absent parent changes employment within the State when a withholding is in effect, the State must notify the absent parent's new employer within 15 calendar days of locating the new employer's address, in accordance with the requirements of paragraph (f)(1) that the withholding is binding on the new employer.

*Administration of Withholding*

Section 303.100(g) provides for certain administrative actions by the States and is applicable to both immediate and initiated withholding.

With the technology available to transfer funds electronically, many employers have payroll systems (or contracts with service bureaus) which can automatically deposit wages in more than one financial account. We encourage employers, who currently have the capability to do so, to begin remitting withheld wages electronically as soon as possible to any State's withholding agency which has the capability to receive such funds electronically on the same day funds are deposited in employees' bank accounts. OCSE is developing model procedures for electronic transfer of child support payments through cooperation with the National Automated Clearinghouse Association (NACHA) which sets rules and administers the Automated Clearinghouse Network. A work group has also been formed representing employers, financial institutions and child support agencies to develop a standard format for transferring both income withholding payments and the related data. OCSE will continue to keep States informed of efforts in this area. In anticipation of the requirement that all States have operational automated child support enforcement systems by October 1, 1995, in accordance with section 123 of Public Law 100–485, we require in paragraph (g)(2) that, no later than October 1, 1995, the State must be capable of receiving withheld amounts and accounting information which are electronically transmitted by the employer to the State. This will greatly reduce the time it takes for support payments to reach families in need of them.

Under § 303.100(g), States are allowed to designate more than one public or private entity to administer withholding on a State or local basis under the supervision of the State withholding agency. However, because of the need to reduce the burden on employers and to simplify procedures for electronic transfer of withheld amounts, we encourage States to designate a single public agency to administer withholding in IV–D cases. This will simplify withholding for employers in both intrastate and interstate cases whether it is accomplished through electronic transfer or other means, and is essential to ensure a simple process for electronic transfer of withheld child support obligations.

We also encourage States to use electronic funds transfer for withholding wages in non-IV–D cases. In many States, funds paid through wage withholding could be deposited directly in custodial parents' bank accounts. Custodial parents' bank account statements would provide good documentation of payments received. Using non-IV–D cases would enable States to implement wage withholding easily in non-IV–D cases. (Historically, payment in IV–D cases have gone through the IV–D system rather than directly to custodial parents' accounts because of additional information needed in IV–D cases.)

*Interstate Withholding*

Section 303.100(h), requiring that State law must provide for procedures to extend the State's withholding system

so that system will include interstate cases, is applicable to immediate and initiated withholding. Paragraph (h)(1) provides that a responding State may register orders for purposes of withholding only if registration is for the sole purpose of obtaining jurisdiction for enforcement of the order; does not confer jurisdiction on the court or agency for any other purpose (such as modification of the original support order or resolution of custody or visitation disputes); and does not delay implementation of withholding beyond the timeframes in paragraph (h)(5). This is a formal statement in the regulations of our policy since wage withholding was originally enacted in 1984, with a clarification that "delay" means a delay beyond required timeframes.

Paragraph (h)(3) requires that the initiating State must notify the State in which the absent parent is employed within 20 calendar days of a determination that withholding is required in a particular case, and, if appropriate, receipt of any information necessary to carry out the withholding. For consistency, we have also amended the requirements at § 303.7(b)(2), for provision of services in interstate cases, to require that within 20 calendar days of determining the absent parent is in another State, and, if appropriate, the receipt of any information needed to process the case, the initiating IV–D agency must refer any interstate case to the responding State's interstate registry for action, including URESA petitions and requests for location, document verification, administrative reviews in Federal income tax refund offset cases, wage withholding, and State income tax refund offset in IV–D cases. In addition, the last sentence of paragraph (h)(3) requires that, if necessary, the State where the support order is entered must provide the information necessary to carry out the withholding within 30 calendar days of receipt of the request for information.

Under paragraph (h)(4), the State in which the absent parent is employed must implement withholding in accordance with paragraph (h)(5) upon receipt of the notice required in paragraph (h)(3). Finally, paragraph (h)(5) requires that the State where the absent parent is employed must provide the absent parent with notice, if appropriate; an opportunity to contest an initiated withholding, if appropriate; send notice to the employer; and notify the initiating State when the absent parent is no longer employed in the responding State. Paragraphs (h) (6) and (7) set forth choice of law requirements in interstate cases.

*Provision for Withholding in Child Support Orders*

Paragraph (i) amends the former requirement in 45 CFR 303.100(h) which implemented the requirement in section 466(a)(8) of the Act that all child support orders include provision for withholding, to assure that withholding is available if arrearages occur, without the necessity of filing application for IV–D services. In requiring all orders issued after January 1, 1994, to be subject to immediate withholding (except where exclusions due to good cause or alternate arrangement between the parties are applicable), section 101(b) of Public Law 100–485 redesignated prior section 466(a)(8) (which was effective October 1, 1985) as section 466(a)(8)(A) and limited its applicability to orders *not* covered under the immediate withholding requirement for all non-IV–D orders issued in 1994 and thereafter. Therefore, since prior section 466(a)(8) was effective October 1, 1985, we have limited the applicability of 45 CFR 303.100(i) to orders which were issued between October 1, 1985 and January 1, 1994, or are modified on or after January 1, 1994. In response to comments on the proposed rule, we are not including in this final rule requirements effective for non-IV–D orders issued in 1994 and thereafter.

**Response to Comments**

We received comments on the proposed rule published August 15, 1990, in the **Federal Register** (55 FR 33414) from over 70 commenters representing national organizations, State and local IV–D agencies, child advocacy groups and private citizens. Comments and our responses appear below.

*I. Notice of Assigned Support Collected*

*General*

1. *Comment:* We received many comments stating that sending monthly notices to individuals who have assigned rights to support under § 232.11 would be costly due to the price of postage; would be time-consuming and take time away from providing other mandated services; create a tremendous burden on the States; and cause confusion on the part of the AFDC recipient resulting in increased letters and phone calls. Another commenter recommended that States be permitted to provide quarterly notices of collection to avoid increased program costs. One commenter suggested that the regulation be amended to require a monthly notice only upon request.

*Response:* Section 104 of the Family Support Act of 1988 amended section 454(5)(A) of the Social Security Act to require States to send a monthly notice of support payments collected to individuals who have assigned rights to support to the State. The statute does not authorize States to send notices only upon request but does allow a State to provide quarterly notices if the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden.

2. *Comment:* One commenter asked, if States are contracting with individual counties to provide IV–D services, is the monthly notice requirement at § 302.54(b)(2) passed on to the counties?

*Response:* Yes, a political subdivision operating the IV–D program for the State must provide monthly notice in accordance with § 302.54. However, it is permissible for the State to issue all such notices at its option.

3. *Comment:* One commenter asked us to clarify whether the amount of support collected includes the $50 pass-through payments for each months of collection.

*Response:* Yes, the notice should reflect the amount of support collected, including the $50 pass-through payments.

*Content of Notice*

1. *Comment:* We received several comments suggesting including additional information in the notice, i.e., the amount of support paid that month, year to date amount paid and amount applied to the AFDC debt and the debt to the family. The commenters suggested that the notice should be sent to non-AFDC, AFDC and Medicaid clients and should be sent at least quarterly even if no payments have been made.

*Response:* The monthly notice must include the amount of support paid during that month. However, the Federal requirements are minimum standards. States have the option to include additional information in the monthly notice to individuals who have assigned rights to support under § 232.11 or to send notice to individuals other than those who have assigned rights to support under § 232.11.

*Providing One-time Notice Under Proposed Section 302.54(b)(1)*

1. *Comment:* Many commenters objected to the proposed requirement at § 302.54(b)(1) and the IV–D agency must notify individuals who have assigned rights under § 232.11 that a monthly notice will be provided for each month in which support is collected. Some commenters maintained that there is no statutory requirement for providing such a notice, and that the proposed language went beyond the intent of Congress.

Several commenters felt that such a notice would be redundant, costly, and confusing. Another commenter asserted that this one-time notice would involve the production and mailing of notices at considerable expense to the States, with no benefit to clients. One commenter claimed that there was no compelling reason for announcing that monthly notices will be provided and contended that if the monthly notices were clearly worded and understandable, no prior explanation should be required. These commenters recommended that the advance notice requirement be deleted. One commenter suggested that a notice be required even when no collection had been made in that month so as not to cause confusion and an increase in the number of telephone inquiries. This commenter suggested giving the client the option of waiving the right to receive the notice on a monthly basis.

*Response:* We proposed that a one-time notice be provided to individuals who have assigned rights to support under § 232.11 to inform these individuals that if no support collection was made during a month, the State would no longer provide a notice to the family. Prior policy with respect to annual notice of support collections required States to provide an annual notice even if no collections were made during the year. Because States will be required, effective January 1, 1993, to provide monthly, rather than annual notice, we are not requiring States effective that date to send a monthly notice even if no collection is made. In view of the overwhelming negative response to the one-time advance notice requirement, and the distinct possibility that it will create more confusion than it will eliminate, we are deleting it from the final rule. States may determine how or whether to deal with any confusion over this change in policy. One suggestion would be to include this change in policy as part of the last annual notice before monthly notices begin to be sent.

*Automated Voice Response System/ Toll-Free Telephone Numbers*

1. *Comment:* We received a number of comments in favor of using an automated voice response system to meet the monthly notice requirements. The commenters believe this method is faster, more cost effective and more convenient than a computer-generated form mailed to the custodial parent once a month. One commenter requested that we put language in the regulation regarding using an automated voice response system. Another commenter stated that providing a monthly notice at the request of the recipient, is contradicting HHS's position on the proper interpretation of the statute that notice may not be sent only upon request. On the other hand, another commenter argued that the final regulations should change the word "provide" to "send" for consistency with the statute, clarify that written notice must be sent and that an automated voice response system does not meet the requirement for sending a monthly notice.

*Response:* Section 454(5)(A) does not require that monthly notice be "sent," but rather that the AFDC "individual will be notified on a monthly basis * * *." We believe that automated voice response systems have proven to be worthwhile, cost-effective and in some ways more responsive than monthly written notice. In using an automated voice response system, an individual would place a toll-free call to a specified telephone number, provide certain personal identification information to guarantee confidentiality, and receive a message over the telephone regarding the amount of support collected during the month on his or her behalf, case status and other information. A number of States currently use such a system with positive responses from AFDC recipients. In the State of Washington, the Department of Social and Health Services has an automatic response system called KIDS (Kids Information Delivery System) which responds to questions regarding child support case activities. This system receives an average of 23,000 calls per day. The IV–D staff view the system as a relief from the overwhelming number of calls (freeing them to pursue establishment and enforcement activities), and clients see the benefits of obtaining quick information about their payments. The District of Columbia also has an automated voice response system that handles more than 700 calls per day. The system operates 24-hours a day and can handle more telephone calls more efficiently than a comparable activity using human operators. Agency staff use the time made available by this system to perform needed enforcement activities. This system is updated daily with no necessity of downtime. In addition, the IV–D program in Philadelphia, Pennsylvania has an automated voice response system which handles more than 2,000 calls per day.

However, we agree that the use of an automated voice response system alone may not be adequate. Therefore, these final regulations require States which have an automated voice response system to provide quarterly, rather than monthly, written notices. In this way, individuals entitled to notice of collections will benefit from both easy access to information through the automated voice response system as well as being assured quarterly written notice of collections. (See also discussion following under *Waivers.*)

2. *Comment:* One commenter stated that since an automated voice response system only reaches those who want the information, a State with a non-automated hotline should be allowed to do likewise. The State can answer the inquiries manually by accessing its automated distribution system. Local offices can also respond to such inquiries. The option should be given to all States regardless of whether the State has an automated voice response system.

*Response:* While use of both systems require a request to be made for information, we do not believe use of a hotline is equally effective. Use of an automated voice response system eliminates the need for State employees to respond to individual requests, a task that has proved overwhelming in State after State. Use of an automated voice response system allows State employees to work cases, not just answer questions about status. While use of a hotline manned by caseworkers can be a helpful public service, it may not substitute for monthly notice. Access to information through an automated voice response system enables individuals served by the program to obtain information quickly and conveniently.

3. *Comment:* One commenter indicated that clients should receive a monthly written notice if payments are made, and that having a toll-free number available for them to call is not acceptable. Many low income families do not have telephones.

*Response:* While some families do not have telephones, anyone has access to a public telephone. Automated voice response systems are accessed using toll-free numbers and, therefore, obviate any long distance telephone charges. In addition, quarterly notices must be sent if the State uses an automated voice response system.

4. *Comment:* One commenter asked us not to allow States to substitute phone inquiry systems, automated or otherwise, for monthly written notices of child support collections. The information needed to make the notice meaningful is much too complex to be conveyed in response to a telephone inquiry.

*Response:* Automated voice response systems have proved to be very effective at providing information about case status and collections. Automated

daily updates of this information are also possible. We believe that a system of this type can be designed to be easily understandable, effective, and efficient and provide all of the information required by these regulations.

5. *Comment:* One commenter asked us to clarify whether or not the automated voice response system is eligible for enhanced Federal Financial Participation (FFP).

*Response:* The development of an automated voice response system is eligible for enhanced Federal funding at the 90 percent matching rate if the functionality is an integral part of an approved Statewide comprehensive automated system and if all other requirements for IV–D funding are met. If the automated voice response system is developed apart from the Statewide comprehensive system, funding is available at the regular match rate of 66 percent. In either case, Federal matching at 66 percent is available for operation of the automated voice response system.

*Waivers Under Proposed Section 302.54(c)*

1. *Comment:* One commenter suggested that a waiver be allowed even if a State has an operational automated system which can produce the monthly notices and that waivers be renewable periodically after October 1, 1995. A commenter requested continuing waivers especially if a State is under court order requiring the issuance of notices more complex than those required to meet Federal regulatory requirements. Another commenter asked if the availability of a toll-free phone number for collection information (as well as general information) would be considered as an additional factor justifying permission being granted for quarterly notices. One commenter asked if a State can apply for a waiver of the monthly notice requirement if it has a certified automated system, but believes that the mailing costs would be excessive.

*Response:* We revised the regulations to allow indefinite waiver of the monthly notice requirement if States send quarterly notices and have an automated voice response system which provides all required information in § 302.54(b)(2). We believe that the combination of quarterly notices and an automated voice response system adequately addresses divergent concerns with respect to administrative burden and a State's responsibility to provide notice. The regulation does not allow use of a hotline manned by agency employees during regular business hours to justify sending quarterly notices because it is not as accessible as an automated response system, is too labor intensive, can divert resources from other pressing enforcement agency responsibilities, and, too frequently, is inadequate to meet the demands for information. Given the availability and advantages of an automated voice response system and the mandate that all States develop automated information management systems by 1995, we do not believe use of a hotline is an adequate substitute for monthly or quarterly notice.

With respect to granting waivers based on mailing costs, section 454(5)(A) of the Act allows quarterly notices only if a State demonstrates an unreasonable administrative (not just cost) burden. Any such costs, moreover, must be balanced against the benefits of frequent notices of collection which the Congress perceived in enacting this statutory requirement.

States that generate monthly notices using their automated system and States which receive waivers to provide quarterly notices should not be overly burdened by these requirements. Therefore, the Office may grant a waiver to permit a State to provide quarterly, rather than monthly, notices, if the State: (1) Until September 30, 1995, does not have an automated child support enforcement system that performs child support enforcement activities consistent with § 302.85 or has an automated system that is unable to generate monthly notices; or (2) uses an automated voice response system which provides the information required under paragraph (b)(2). A quarterly notice must be provided in accordance with conditions set forth in paragraph (b)(1) and must contain the information set forth in paragraph (b)(2). For a waiver to provide quarterly notices to be extended beyond September 30, 1995, the State must use an automated voice response system which provides the information required under paragraph (b)(2). Waivers will be granted as a part of the State plan approval process.

2. *Comment:* A few commenters stated that waivers should not be given to States with computer systems that do not currently generate notices. States should be required to program computers to generate notices.

*Response:* Effective October 1, 1995, States are required to have in effect Statewide automated child support enforcement systems. However, many States do not currently have a comprehensive automated system. Any automated system developed to meet the 1995 requirements for a Statewide system must produce mandated notices of collections. We believe it is reasonable to allow a State that cannot currently generate notices using an automated system a waiver to send quarterly notices because sending monthly notices would impose an unreasonable administrative burden on the State.

3. *Comment:* One commenter asked us to clarify for those States which are not State-administered whether the waiver will include all jurisdictions within the State.

*Response:* For States which are not State-administered, the waiver will include all jurisdictions within the State.

**II. Review and Adjustment of Support Orders**

This final regulation only addresses requirements for review and adjustment of support orders effective October 13, 1990. We are issuing a separate regulation to address the requirements for review and adjustment which take effect on and after October 13, 1993. In that regulation, we will address, for the post-October 1993 period, specific requirements for interstate review and adjustment, grounds for adjustment, timeframes for review and adjustment, and notice of the right to request a review.

Comments and our responses which relate to the October 13, 1990 requirements for review and adjustment appear below:

*Section 302.70—Required State Laws*

1. *Comment:* Several commenters indicated that State agencies need a strong Federal mandate to support their efforts to obtain new legislation that will facilitate a comprehensive periodic review and adjustment program. They suggested that § 302.70(a)(10) be expanded to specifically require States to adopt laws that provide for: (1) A quantitative standard for adjustment, (2) agency subpoena power that may be enforced administratively and (3) a clear statement that agreements between parents settling child support obligations are contrary to public policy.

*Response:* Section 303.8 sets forth specific Federal requirements for review and adjustment of orders effective October 13, 1990. Congress allowed States discretion in developing their plans for how and when child support orders in effect in the State will be periodically reviewed and adjusted between 1990 and 1993. In 1993, more stringent requirements become effective requiring reviews in certain cases at 36-month intervals. As States develop their plans and enact legislation implementing review and adjustment in the States, we encourage them to consider authorizing agency subpoena

power that may be enforced administratively, and otherwise facilitating the review and adjustment process in anticipation of the 1993 statutory mandates. The OCSE is funding several demonstrations related to periodic review and adjustment, and we are committed to widely disseminating knowledge of desirable practices employed by the demonstration States or learned elsewhere across the country. However, we do not believe such specific mandates were intended by the Congress with respect to States' review and adjustment activities between 1990 and 1993.

With respect to stipulated agreements, any child support obligation incorporated within such agreement must be set in accordance with State guidelines for child support awards, or there must be a written finding or finding on the record by the court or administrative agency determining that the guideline amount is unjust or inappropriate in the particular case. (See final rules on presumptive guidelines published May 15, 1991 (56 FR 22335)).

*2. Comment:* In response to the requirement that States have laws effective October 13, 1990 requiring that States have procedures for review and adjustment of child support orders, one commenter contended that this timeframe was unreasonable as it would be virtually impossible to have State law enacted by October 13, 1990.

*Response:* Section 466(a)(10) of the Act was enacted on October 13, 1988. This permitted States a full two-year implementation period within which to enact legislation and procedures in order to be in compliance with the requirements effective on October 13, 1990.

*3. Comment:* One commenter requested that § 302.70(d)(1) be changed to permit States to apply for an exemption from the required State law criteria for review and adjustment. The commenter indicated that under certain circumstances a State could demonstrate that procedures for review and modification would not increase the effectiveness and efficiency of its Child Support Enforcement program based on the cost of implementing these procedures.

*Response:* We have revised paragraph § 302.70(d)(1) to eliminate reference to specific mandated procedures. By referencing § 302.70(a) in its entirety, States may request an exemption from any mandated procedure, including review and adjustment of orders. Exemption requests must meet the requirements of OCSE–AT–88–19 (December 28, 1988).

*4. Comment:* One commenter asked whether OCSE has the authority to direct the activities of courts or other agencies serving non-IV–D clients in regard to review and modification of support orders.

*Response:* OCSE does not have the authority under the Family Support Act to direct the activities of courts or other agencies with respect to review and adjustment of orders in non-IV–D cases. However, the State, in order to have an approved State IV–D plan, may need to enact laws and procedures which bind the courts and other authorities involved in the review and adjustment of orders being enforced under the IV–D program. As directed by the Congress, the Secretary of HHS is also conducting a study of the impact of extending review and adjustment services to non-IV–D cases.

*Section 303.4—Establishment of Support Obligations*

*1. Comment:* Several commenters urged OCSE to put timeframes in a separate section, independent of the timeframes for establishing support orders set forth in § 303.4 because 90 days is insufficient time for review and adjustment in certain cases such as interstate cases.

*Response:* We have not included timeframes for review and adjustment in § 303.4(d) because we agree that separate timeframes for review and adjustment are warranted. States have flexibility in their plans for review and adjustment to indicate how and when child support orders will be periodically reviewed and adjusted for the three years commencing on October 13, 1990. Therefore, we are not setting timeframes for review and adjustment in this final rule. We address timeframes for review and adjustment of orders in a separate regulation to be issued governing requirements effective on and after October 13, 1993.

*State Responsibilties and IV–D Agency Responsibilities*

*1. Comment:* Questions were raised on the State's responsibilities as differentiated from the IV–D agency's responsibilities. One commenter noted that the language of Public Law 100–485 distinguishes the State's duties which may be carried out by the IV–D agency or by some other arm of the State from other duties which are specifically the responsibility of the State IV–D agency. The commenter further noted that proposed § 303.8 reflected this distinction in the description of the State's responsibilities for conducting the review and adjustment process. The commenter was concerned that the preamble rationale contradicted this by specifying that the IV–D agency must respond to requests for review by the absent parent for review and adjustment.

The commenter presented the following rationale: The review and adjustment section of Public Law 100–485 clearly distinguishes between the "State" and "State child support enforcement agency," or IV–D agency. Under that section, some duties lie generally with the State, which means that they may be carried out by the IV–D agency, or by some other arm of the State, according to the individual State scheme. Other duties are assigned to the State child support agency, and are specifically the responsibility of that entity.

Section 466(a)(10)(A) states, "The State must, at the request of either parent subject to the order, or [at the request] of a State child support enforcement agency, initiate a review of such order, and adjust such order, as appropriate, in accordance with the guidelines * * *." The statute makes a clear distinction between the "State" and the "State child support enforcement [or IV–D] agency," a distinction that is recognized throughout the Federal regulations, most particularly in the definition 45 CFR 301.1. There, "State" is defined as "the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam," while "IV–D agency" (the State child support enforcement agency referred to in the Family Support Act) is defined as "the single and separate organizational unit in the State that has the responsibility for administering or supervising the administration of the State plan under title IV–D of the Act." To interpret the statute any other way would require the IV–D agency to respond to a request for modification from itself, a function not within its power to provide, and by its terms contradictory.

This distinction between the duties of the State and those of the IV–D agency is crucial. State child support enforcement agencies were created under title IV–D of the Social Security

Act with a specific goal and purpose: to reduce AFDC dependency and promote family economic self-sufficiency, by establishing and enforcing child support awards. This is a valid State purpose, carried out by one State entity. Yet States have many goals and interests, carried out by many entities. States have, for example, an interest in creating just and impartial forums for the resolution of disputes and protection of all State citizens. Commonly, this State purpose is realized through the State court system, quasi-judicial processes, State administrative processes, or some combination thereof.

*Response:* We agree with the commenter's characterization of the statute and believe it is the best way to accommodate divergent State processes for establishing/adjusting child support awards. Therefore, § 303.8 reflects the distinction between the State and the IV–D agency in the description contained therein of the State's responsibilities for conducting the review and adjustment process. Throughout the provision, the regulation consistently describes the duty of conducting the review and adjustment process as a State responsibility. This appropriately reflects the Act, which does not specify the IV–D agency (or any other State entity) as the specific focus for the State's responsibility to conduct reviews and adjustments. The commenter was correct in pointing out that our statement in the preamble should have stated that the State, not the IV–D agency, responds to the absent parent's request for review and adjustment. At the State's discretion, the forum for review and adjustment may be the State court system, a State administrative process, or some other mechanism.

These regulations appropriately reflect statutory language which places responsibility for review and adjustment with the State. However, while this allows States to develop review and adjustment processes within appropriate forums or agencies in the State, it in no way relieves the State of the responsibility to meet Federal requirements, as a condition of IV–D State plan approval, or from the consequences specified by statute should they fail to do so.

States may allocate the various review and adjustment functions as they see fit between the administrative agency and the courts, or based on the availability of administrative, quasi-judicial, and judicial processes. By virtue of their varied administrative and judicial structures, States may choose to allocate differently the screening, review, and adjustment functions, with some conducting much of the review process in the administrative agency, while others place the review process in the adjudicatory body, whether it be through quasi-judicial or judicial process, or a combination thereof.

We urge States to examine the work underway in those States with Federally-supported demonstration projects or who are otherwise pursuing innovative approaches to carry out review and adjustment. For example, both Florida and Colorado review and adjust orders using the judicial system but attempt to obtain obligor and obligee stipulations to a modified order prior to filing a motion to adjust in court. Delaware uses the IV–D administrative agency for some processes and the court for others. Delaware is testing two review and adjustment processes: a mediation process using the existing structure and a mail-based stipulation process, thereby requiring two separate sets of procedures. Oregon uses the IV–D agency for the entire review and adjustment process. The Oregon agency found advantages to using an administrative process, including the #fact that it was less costly and that hearings could be conducted with the parties by telephone.

The regulations would allow States to address issues which arise in some States where there may be a perceived conflict of interest for a IV–D agency attorney, such as representing or advocating for an obligor seeking a downward adjustment. The IV–D agency must provide services deemed appropriate and in the best interests of the child. In cases in which application of the guidelines indicates the appropriate support award amount is less than the obligor is currently required to pay, we do not believe there will be a conflict for the State IV–D agency to serve primarily an administrative function rather than that of legal advocate and present these facts to the decision-maker.

*Section 303.8—Review and Adjustment of Child Support Orders*

*Scope of Adjustment—Section 303.8(a)(1)*

*1. Comment:* Several commenters suggested that the regulatory language refer to "adjustment" rather than "modification" to be consistent with the statutory language. They indicated that the use of the term "adjustment" would enable States to change the support award amount in accordance with guidelines without having to otherwise show a change in circumstances necessary to warrant a modification, which may be required by State statutory or case law.

*Response:* We concur with the suggestion that regulatory language be consistent with statutory language. Therefore, we use the term "adjustment" instead of "modification". In addition, we are using "orders" instead of "obligations" as "orders" is the term used in section 466(a)(10) of the Act.

*2. Comment:* One commenter requested that we add a definition of "support" to include the availability of health insurance coverage as a basis for triggering the modification process.

*Response:* Under current regulations at § 303.31(b)(1), the IV–D agency is required to petition for health insurance that is available to the absent parent at reasonable cost in cases in which there is an assignment of support rights to the State and the custodial parent does not have satisfactory health insurance other than Medicaid, and in other cases when requested by the individual applying for services. Rather than define "support" we believe it is more appropriate, and achieves the same goal, to define "adjustment" to mean an upward or downward change in the amount of child support based upon an application of State guidelines, consistent with the requirements at § 302.56, for setting and adjusting child support awards and/or providing for the child's health care needs through health insurance or other means.

*3. Comment:* One commenter asked whether the IV–D agency is responsible for modification of alimony provisions of an order. The commenter questioned mortgage and schooling provisions when treated as support in an order, and suggested that IV–D services be clearly limited to situations where child support is explicitly spelled out. Applications for services should be rejected if other factors are weighed heavily in the original order.

*Response:* Section 103 of the Family Support Act specifically provides for review and adjustment of child support orders only. Clearly, under the law which this regulation implements, review and adjustment does not extend to aspects of the decree other than child support. The law links the review and adjustment process to use of guidelines for setting child support awards. Therefore, neither the law nor these regulations provide an avenue under the IV–D program for adjusting spousal support awards. Under § 302.31(a)(2), effective October 1, 1985, the State must secure support for a spouse or former spouse who is living with the child or children, but only if a support obligation has been established for that spouse and

the child support obligation is being enforced under the title IV–D State plan. Furthermore, these regulations are not meant to create an avenue under the IV–D program for review and adjustment of ancillary provisions for orders, such as custody or visitation rights. The IV–D agency should inform the applicant of what services are available under the IV–D program, what other services may be available and the cost thereof, and what services the IV-D agency may not provide.

*Definition of Parent—Section 303.8(a)(2)*

*1. Comment:* One commenter requested us to define parent to include "custodial parent, non-custodial parent or any custodial beneficiary".

*Response:* We complied with this request in our definition of parent. This will ensure that the appropriate persons affected by a review and/or adjustment will be contacted during the process.

*2. Comment:* Several commenters asked that the definition of "parent" be extended to include State IV–E and Medicaid agencies.

*Response:* We have defined "parent" to include any custodial parent or non-custodial parent (or for purposes of requesting a review, any person or entity who may have standing to request an adjustment to the child support order). We have not further delineated what persons or entities may be considered a "parent" for purposes of review. While we recognize that, generally, the parties to a child support order are the two parents, other custodial placements for children receiving IV–D services are possible, under which an individual or entity acts in the stead of a parent. For example, a child for whom child support is due under an order may be in foster care placement and receiving services through the State IV–E program. Certainly, if the State is either a party to the underlying support order or, under State law or procedure, has standing to bring or intervene in a legal proceeding for adjustment of the amount of child support, the State IV–E agency could request a review in such a case.

*3. Comment:* Several commenters raised concerns about providing review and adjustment of orders in Medical Assistance Only (MAO) cases. One commenter noted that such cases have medical support rights assigned to the Medicaid Agency, not to the IV–D agency. Another commenter requested MAO cases be treated as non-AFDC cases as there is no child support assignment.

*Response:* Non-AFDC applicants for Medicaid services are required to assign medical support rights to the State as a condition of receiving Medicaid and are treated as non-AFDC cases under the IV–D program. See final regulations on providing services in these cases published February 26, 1991 (56 FR 7988). The IV–D agency is required to seek health insurance coverage in these cases in accordance with § 303.31. However, if the custodial parent has satisfactory health insurance coverage or the order requires the absent parent to provide health insurance coverage, the State must review and adjust the order only upon request of the absent or custodial parent.

*Definition of Review—Section 303.8(b)(3)*

*1. Comment:* One commenter requested the definition of review be placed with other definitions in § 303.8 for clarity.

*Response:* We agree that all the definitions pertaining to review should be in one section. Therefore, we have placed the definition of review in § 303.8(a).

*2. Comment:* Several commenters requested that we not require "complete, accurate, up-to-date" information as part of our definition of review to allow States to impute income to a parent who may be unemployed or underemployed or for whom no income information could be obtained.

*Response:* We agree with this suggestion and have deleted these terms in the final regulation. "Review" is defined as an objective evaluation of information necessary for application of the guidelines. Income may be imputed to a party by a decisionmaker, when appropriate, and permitted under State law and procedures.

*3. Comment:* A commenter suggested that review and adjustment be defined as a "legal proceeding before a court or administrative body at which a new support award is determined by engaging in fact-finding to determine those facts necessary for the calculation of a support award under the State's guidelines and determining what the new award shall be". Another commenter suggested that review be defined as an administrative, quasi-judicial or judicial process, with a right of appeal.

*Response:* We agree with these commenters and have incorporated their concepts in the definition of "review". The definition of "review" is "an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body, or agency, of information necessary for application of the State's guidelines for support to determine: (i) the appropriate support award amount, and (ii) the need to provide for the health care needs of the child(ren), through health insurance or other means. The definition is broad enough to allow flexibility concerning where the review takes place to recognize variances in State processes across the country. Therefore, States may decide the appropriate forum for conducting reviews.

*Plan for Review and Adjustment—Section 303.8(b)*

*Written and Publicly Available Plan—Section 303.8(b)(1)*

*1. Comment:* One commenter felt that public availability of the plan for review and adjustment would be too burdensome. Another commenter recommended public input to the State's plan for review and adjustment.

*Response:* We have reviewed these suggestions and believe it is important for the plan to be available to the public. This requirement need not be burdensome if States publicize where one may go to examine a copy of the State's plan which is available for public inspection. Although there is no requirement to have input, we encourage States to ask for and respond to public comments.

*2. Comment:* One commenter suggested we maintain the distinction between the State's plan for review and adjustment and the State IV–D plan in the final rule and preamble.

*Response:* We have maintained the distinction between the State's plan for review and adjustment and the State IV–D plan by noting, as appropriate, the title IV–D State plan or State's plan for review and adjustment.

*Commitment of Resources*

*1. Comment:* The proposed regulation required that the plan must "* * * show the commitment of resources necessary to review orders in all IV–D cases upon the request of either parent subject to the order or of a State child support enforcement agency." Numerous commenters asked for a definition of resources and felt that it would be difficult for a State to show the commitment of resources. They pointed out that this requirement is not specified in the Family Support Act nor in any other pertinent regulation.

*Response:* In response to many comments stressing how difficult it would be for States to show the commitment of resources, we are deleting this proposed requirement. We believe the requirement is unnecessary because existing regulations at § 303.20(c)(5) require States to have an organizational structure and sufficient resources to meet program requirements.

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including performance and time standards contained in Federal regulations. This includes adequate resources to establish and adjust support orders.

*Targeting Cases for Review*

*1. Comment:* Numerous commenters requested that we delete the proposed requirement that the plan must target cases for review between 1990 and 1993, and modify orders, if appropriate, in IV–D cases in which there is an assignment of support rights to the State because there is no justification for giving priority to public assistance clients over non-public-assistance clients. One commenter asked whether a State plan can specify reviewing only AFDC cases with support orders over 10 years old.

*Response:* We have deleted this requirement from the final regulation. From October 13, 1990 to October 13, 1993, the IV–D agency may request review in those cases that meet the criteria for review and adjustment under the State's plan. This is consistent with Congressional intent to allow States flexibility during the first three years of review and adjustment of orders. We encourage States to seriously explore and test innovative processes during this period. States should use the period between October 13, 1990 and October 12, 1993 to prepare and plan for more stringent requirements in 1993. However, we strongly encourage States to target for review and adjustment the oldest cases or those cases that seem ripe for review (particularly those in which there is an assignment of support rights to the State) in anticipation of the 1993 requirement that specifies "* * * the order is to reviewed not later than 36 months after the establishment of the order or the most recent review * * *." (See also responses in next section for discussion of the need for States to anticipate impact of reviewing most orders over three years old effective October 13, 1993.)

With respect to reviewing only AFDC cases with support orders over 10 years old, a State's plan for review and adjustment may not exclude large categories of IV–D cases, for example non-AFDC cases, entirely.

*Which Orders Must Be Reviewed*

*1. Comment:* One commenter recommended we make clear that the State must initiate a review at the request of either parent only if the case meets the criteria set out in the State's plan.

*Response:* Effective October 13, 1990, each State is required to have developed and implemented a plan for the review and adjustment of orders. The plan must indicate how and when child support orders in effect in the State are to be reviewed. Between October 13, 1990 and October 12, 1993 each State's plan would specify adequate thresholds, grounds, timeframes or other conditions governing the review and adjustment process in the State. We agree that upon receipt of a request from either parent or the IV–D agency, a decision to review and adjust, if appropriate, must be made based on the State's plan.

While States are given latitude in conducting reviews according to individual State plans between 1990 and 1993, we advise States to consider implementing the 1993 requirements from the very beginning in both statute, where needed, and in the State's plan for review. This would ensure a minimum of disruption from an administrative standpoint, as well as encourage a more rapid implementation of the program changes that Congress envisioned. Between now and 1993, States should plan to review their existing IV–D cases in which support is assigned to the State and the orders will be more than three years old by October 13, 1993. States should anticipate the statutory requirement that, effective October 13, 1993, the State must review and adjust, if appropriate, most orders in AFDC cases which have not been reviewed or modified within the past 36 months. Some States have implemented plans under which the entire AFDC caseload is being reviewed in equal monthly proportions (and opportunity is being given to the parties in non-AFDC cases to request a review) in advance of the October 13, 1993 effective date, so that the number of cases with orders over three years old will be fewer on that date, and more manageable. Advance planning in recognition of the potential impact of, and mandatory requirement for, the periodic review of cases at three-year intervals is a prudent consideration.

*2. Comment:* Several commenters have requested clarification of the State's responsibilities as of October 13, 1993. They would like to know whether all cases that are 36 months old or older are immediately subject to review on October 13, 1993, if there is an assignment of support rights to the State. These commenters argued that the State merely has to begin a process to review such orders on that date and has until some future date, perhaps 3 years later, to complete reviews on all old orders.

*Response:* Section 466(a)(10)(B) of the Act specifies "* * * beginning 5 years after enactment of this paragraph or such earlier date as the State may select, the State must implement a process for the periodic review and adjustment of child support orders being enforced under this part under which the order is to be reviewed not later than 36 months after the establishment of the order or the most recent review * * *." The statute requires this review, and adjustment if appropriate, in most AFDC cases but only upon request in non-AFDC cases. Therefore, starting on October 13, 1993, States are required to review child support orders in AFDC cases that are 36 months old or older unless the State determines the review would not be in the best interests of the child and neither parent has requested a review. The statute does not allow States an extended period after 1993 to complete reviews in old orders.

We disagree with commenters that States should be given additional time after 1993 to review and adjust orders over three years old. Congress has given States five years to prepare for the 1993 requirements and did not intend a State to wait a full five years after enactment of the Family Support Act to begin to review old orders. States have considerable advance notice in order to adopt any necessary laws, to anticipate the number of cases potentially needing review when the 36-month requirement becomes effective, and to otherwise address the operational implementation in a meaningful way. Further delay would only result in children being deprived of the appropriate amount of financial and medical support to which they are entitled. Therefore, starting in 1993 is not enough; States should be anticipating the impact of the 1993 date and should be working to reduce the number of old orders which require review. States are strongly urged to begin this process as soon as possible so that it is not too cumbersome a task in 1993.

*3. Comment:* One commenter asked if the review is to be initiated or completed 36 months after establishment of the order or of the most recent review.

*Response:* A review must be initiated, not completed, within 36 months after establishment of the order or the most recent review.

*4. Comment:* Commenters suggested that States be required to adopt criteria that are broad and inclusive, thus ensuring that orders that have never been updated or are very old will automatically qualify; that AFDC and non-AFDC cases be treated the same; and that no category of cases is systematically excluded from review.

*Response:* States have discretion to establish conditions and circumstances to qualify a case for review in their plan

for review and adjustment. However, they cannot categorically exclude any segment of the caseload, e.g., non-AFDC cases or interstate cases in which there is an order in the State that can be adjusted under State law.

*5. Comment:* One commenter asked whether the plan can identify circumstances that would not warrant a review. Commenters asked whether a request may be rejecting if it is deemed frivolous. Another commenter noted that the plan adopted by the State should articulate the standards which the State will employ in determining whether an award will be subject to review.

*Response:* States' plans for review and adjustment must articulate how and when orders in the State will be reviewed. This means the State's plan must address what the process for review and adjustment is, as well as under what circumstances an order will or will not be reviewed and adjusted. Therefore, States should adopt plans for review and adjustment of orders which articulate standards and criteria for rejected requests as frivolous, such as frequent requests where there is no indication of a substantial change in circumstances. If the criteria for review articulated in the State's plan are not met in a particular case in which review has been requested, the State may decline to conduct the review.

*6. Comment:* The majority of commenters recommended that inconsistency with the guidelines be adequate grounds for adjustments, regardless of whether the order was established under the guidelines, unless the inconsistency is considered negligible under the State's procedures. The commenters argued that the award amount indicated by the guidelines is rebuttable, thereby permitting an opportunity to present additional information that may have been taken into consideration in setting the original award amount.

*Response:* Section 466(a)(10)(A) of the Act requires that orders be adjusted, as appropriate, according to the State's guidelines. This rule applies regardless of whether or not the original order was established under the State's guidelines. Section 467 of the Act and regulations published on May 15, 1991, at 45 CFR 302.56 require guidelines to be used as a rebuttable presumption in setting all child support awards. We agree that information applied in setting the original order and still relevant may be presented during the review to rebut the amount of support indicated by the guidelines.

Because of the discretion given to the States during the first three years of review and adjustment, we are not mandating that inconsistency with the guidelines be adequate grounds for adjustment between 1990 and 1993. Many State laws require proof of a substantial change in circumstances before adjusting an order and inconsistency with the guidelines would not currently meet that test. States are encouraged to adopt quantitative standards (percentage and/or fixed dollar amounts or both) to determine whether an inconsistency is sufficient to justify an adjustment.

*7. Comment:* One commenter stated that no guidance is given as to whether and under what circumstances the IV–D agency has an affirmative duty to request a review. The commenter suggested that regulations could further define IV–D agency responsibilities by directing that the IV–D agency request reviews in all cases in which (a) the support rights have been assigned to the State; (b) the IV–D agency determines that the present award is lower than the amount likely to be ordered under the State's guidelines and the difference is not negligible; and (c) the agency determines that said review would be in the best interests of the child.

*Response:* While we have not specified in this final rule governing 1990–1993 requirements under what circumstances the IV–D agency has an affirmative duty to request a review, we strongly encourage States to include the commenter's suggestions in their plan for review and adjustment. Affirmative, aggressive action during the period prior to October 1993, will ensure an easier transition to the more stringent requirements that become effective at that time.

*8. Comment:* Several commenters asked how a State documents a review when automatic matches with appropriate databases indicate that modification should not currently be pursued. Another commenter asked whether computer matching of IV–D cases against wage reporting systems, public assistance records, unemployment insurance rolls, etc., constitute a review assuming neither parent requests a review. Another commenter asked how a review is defined when the State initiates an evaluation of cases by applying certain criteria to computer-generated case listings and matches these against other databases. Several commenters questioned whether notices need to be sent to parties where pre-screening indicates that no modification would be warranted under the State's guidelines.

*Response:* There is no requirement for pre-screening or pre-review, but States may place pre-screening procedures in their plans for review and adjustment. These pre-screening procedures may identify cases with low potential for adjustment. A State's plan between 1990 and 1993 establishes under what circumstances a review will be conducted. A State is not required to review orders absent a request for a review by a parent or IV–D agency between 1990 and 1993 unless its plan requires it to do so.

Some States, however, are reviewing cases whether or not there is a request. This is especially worthwhile in AFDC cases given the requirement for review of most orders in AFDC cases which is effective October 13, 1993. However, regardless of the basis for review, States should not rely solely on computer matching to conduct a review as it may not ensure up-to-date, complete and accurate information necessary to apply the State's guidelines. In conducting a review, it may be necessary to obtain information from the parties, in addition to use of the automated resources.

Oregon, in its final report on the review and adjustment demonstration project, determined that disposition of cases using their Partial Automated Review (PAR) procedure often took longer and was more labor intensive. Experience showed that the new award amounts computed by PAR after accessing automated data sources were frequently based on incomplete data as to earnings or allowable deductions. Accordingly, the parents usually submitted additional information so that a new calculation had to be performed. Moreover, the preliminary results obtained under PAR created false expectations in many situations, with the consequence that staff time was consumed in responding to parents' complaints when the final result was lower or higher than expected.

It is important to recognize the distinction between review and "pre-screening". Pre-screening of cases against automated records in accordance with the State's review and adjustment plan to determine whether a case qualifies for a review is appropriate. However, pre-screening does not meet the definition of a review as specified in § 303.8(a)(3). Therefore, a complete review must be conducted if a case meets the conditions for review under a State's review and adjustment plan. Otherwise, the specification in the statute that a review will produce a determination that an order should be adjusted or that no change is necessary would not be met. The advance notice is only required if a review is to be conducted.

*9. Comment:* Some commenters had concerns about the use of pro se

processes. One commenter recommended that we clearly state in regulations that a State is not required to review and adjust an order if the parties elect to proceed on their own, either pro se or with a private attorney. Another commenter asked whether the requesting party can proceed with a pro se action without the IV–D agency being involved. Commenters questioned whether the agency can recommend use of a pro se process if the case does not meet the criteria for modification but a parent insists it take place.

*Response:* Establishing pro se processes for seeking adjustments to orders simplifies the process and ensures access to reviews for anyone who may seek an adjustment. If a party elects to proceed on their own behalf, either pro se or through private counsel, the State is not required to review the order or seek an adjustment. Pro se kits can be offered when a request for review and adjustment does not meet the State's criteria for review under its review and adjustment plan. At least one State which utilizes an administrative review and adjustment process has a pro se "do it yourself" kit for court adjustment of orders. This kit is provided to requestors in cases which the IV–D agency has deemed through a preliminary review do not meet the criteria for review under the State's plan. In addition, the kit is provided to: (1) Requestors who the agency deemed do not qualify for a review, (2) those who meet the agency criteria but prefer court review, (3) those whose change in income is the reason for the request but recomputation using the guidelines does not meet the required minimum threshold for adjustment, (4) those requestors who claim a special circumstance requiring court determination, and (5) those cases in which the agency finding is disputed and cannot be resolved through supervisory review. The State's forum for pro se adjustment can be judicial, administrative or a combination of the two.

*Advance Notice of Review—Section 303.8(b)(2)(iii)*

*1. Comment:* Numerous commenters indicated confusion as to who is entitled to an advance notice of review. One commenter suggested having different types of notices required when one party to a case requests a review as compared to when the State initiates a review. Another commenter recommended that each parent be notified of a review.

*Response:* The State must notify each parent of a review regardless of whether one or both of the parties requested the review or the state initiated the review. One form of notice can be used whether a parent, both parents, or the State makes the request for review.

*2. Comment:* One commenter asked if the purpose of the 30-day advance notice is to advise the parties that a review which could result in modification with be conducted; or to advise the parties that a completed review indicates a modification is appropriate. In addition, this commenter also wanted to know if this means that the review cannot be conducted until the 30-day period expires.

*Response:* The purpose of the 30-day advance notice required under § 303.8(b)(2)(iii) is to advise the parties that a review will be conducted and to give them an opportunity to submit pertinent information. Generally, as required by the statute, the review cannot be conducted until the 30 days expire. However, the parties may jointly agree to waive this 30 day requirement. Following a review, another notice is required under § 303.8(b)(2)(v) advising each parent of any adjustment or determination that there should be no change in the child support award amount and of each parent's right to initiate proceedings to challenge the adjustment or determination within at least 30 calendar days after the date of the notice.

*3. Comment:* There were several comments on notifying parents of the likely outcome of the review in the advance notice. One commenter requested the parents be notified in the advance notice of review of: (1) The amount of the proposed adjustment, (2) a date by which a party must note an objection, (3) the date and time of the proceeding and (4) the adjustment or determination that there should be no change.

*Response:* Because the review has not taken place, the advance notice of review required under § 303.8(b)(2)(iii) should not include the amount of the proposed adjustment or date by which a party must note an objection. (See earlier discussion about the results of the Oregon demonstration project's Partial Automated Review and notice to parents.) The notice should include details about when and where the review will take place, as well as any necessary information the parties must provide the State. The proposed adjustment or determination that there should be no change in the order and date by which objections can be made are specified in the notice to the parties required under § 303.8(b)(2)(v) which is provided after the review is completed.

*4. Comment:* Several commenters inquired about providing advance notice and subsequent reviews of support orders to parents who had not been located. They asked whether the State can forward the notice to the last address of record.

*Response:* Generally, notices cannot be sent to individuals whom the State is unable to locate. However, if permitted by State due process requirements, notices by publication or by mailing to the last known address of record may be used. If a party to an order cannot be located, the State may be unable to secure information necessary to conduct the review. If the State cannot proceed with the review because of inadequate information, the case file should be documented and no review would be required until location efforts required under § 303.3 are successful.

*5. Comment:* Several commenters asked for clarification about whether the requirement to notify parties of a proposed review is satisfied by sending the parties copies of a legal pleading such as a complaint or petition to modify or an administrative notice of review.

*Response:* Sending the parties copies of the complaint or petition to adjust the order will satisfy the requirement to provide advance notice of a review if the copies are sent 30 days before the complaint or petition is heard.

*6. Comment:* One commenter asked us to remove the requirement to wait 30 days before initiating the review after sending the advance notice so that the review could be commenced immediately upon selection of the case.

*Response:* The 30-day advance notice is mandated by statute and cannot be deleted. In addition, 30 days allows adequate time to gather information necessary to conduct the review. However, as indicated previously, parties may jointly stipulate to a waiver of the 30 day requirement.

*7. Comment:* There was an inquiry as to whether the notice requirement applies in AFDC and foster care cases.

*Response:* Section 303.8(b)(2)(iii) requires States to send advance notice to "notify each parent subject to a child support order in effect in the State of any review of the order at least 30 calendar days before commencement of the review" in *any* IV–D case in which an order is to be reviewed.

*Requiring Parents to Provide Necessary Information*

*1. Comment:* Several commenters recommended that we require that support orders require parties to the order to provide information necessary

to conduct a review. Another commenter felt it is unreasonable to assume tat either party will provide the necessary information. There were questions concerning safeguarding of shared information.

*Response:* A State may require in its advance notice that each party provide specified information necessary to conduct the review. States are also permitted and encouraged to make the provision of information a requirement in the support order. States must make every effort to obtain and use information necessary to apply the State's guidelines. States should attempt to secure the necessary information by accessing employment security or other records rather than relying totally on the parties to provide the information. With respect to concerns about safeguarding of shared information under § 303.21(a)(1), the use or disclosure of information concerning applicants or recipients of support enforcement services is limited to the purposes directly connected with the administration of the plan or program for Child Support Enforcement and AFDC programs, among others.

*2. Comment:* One commenter asked us to clarify that requests for information to accomplish the review be sent at the same time as the notice of review.

*Response:* We encourage the States to request specific information needed to accomplish the review in the advance notice of review.

*3. Comment:* A number of commenters raised concerns about financial information. One commenter asked that we define the income verification process, whether the parents can be provided with court-approved financial affidavits and if wage reporting information can be required to be verified with the payor prior to review. One commenter asked whether sending financial statements is sufficient advance notice of a review. In addition, they asked whether a review may commence if all documentation is received before the 30-day period expires.

*Response:* The State may send financial statements to be completed by parties as part of the advance notice of review. However, the parties must be notified that a review will take place 30 days following the notice. With respect to starting the review as soon as all information is received, section 466(a)(10)(C)(i) of the Act requires States to notify the parties 30 days before commencing the review. Therefore, the State must wait the full 30 days before starting the review unless the parties jointly agree to waive the requirement. The necessity and extent of income verification is determined according to State standards and guidelines.

*4. Comment:* A commenter asked us to require States to adopt laws granting IV–D agencies administrative subpoena power.

*Response:* We are not requiring States to enact such laws in this rule because of the flexibility given States by the Congress to develop processes for review and adjustment over the 1990–1993 period. However, we encourage them to do so as a means of improving their ability to obtain information. One of the demonstration States, Illinois, found legislation enacted giving subpoena power to the administrative agency to be very beneficial. The Illinois IV–D agency reports that the information gained from employers is useful not only in assessing the financial status of the responsible relative, but also in updating addresses and locating the absent parent. The use of administrative subpoena power has reduced delays in the filing of motions as the legal representatives do not have to wait for additional evidence to support their findings. In Colorado, another demonstration State, the IV–D agency issues administrative subpoenas to any obligor who fails to return an affidavit for child support issued with the initial notice. The administrative subpoenas require the non-responding parties to bring the requested financial information to an adjustment hearing at the IV–D office. Obligors who fail to respond to the administrative subpoena may be served with a motion to compel, which requires a court appearance. Because information on the financial situation of both parents is necessary for application of Colorado guidelines, administrative subpoenas may also be served upon non-AFDC obligees who fail to return affidavits.

*Post-Review Notice of Results and Right to Challenge—Section 303.8(b)(2)(v)*

*1. Comment:* One commenter felt 30 days to challenge the adjustment or determination that there should be no adjustment is an unnecessary and time consuming step. Another commenter recommended allowing 30 days to appeal the decision.

*Response:* This requirement is mandated by section 466(a)(10)(C) of the Act. States are required to notify each parent "of a proposed adjustment (or determination that there should be no change) in the child support award amount and (that) such parent is afforded not less than 30 days after such notification to initiate proceedings to challenge such adjustment (or determination)."

*2. Comment:* One commenter asked if the notice of results of the review could be an order of a referee, a recommendation of a mediator, or an administrative finding subject to judicial review, rather than a letter without legal impact.

*Response:* Any of these alternatives are acceptable, if they are acceptable under the State's law and procedures.

*3. Comment:* One commenter inquired how the post-review notice requirement relates to the right to appeal when review is conducted in a judicial setting. The commenter felt that the proposed regulation was written in such a way that the court notification cannot substitute for IV–D notice as the court will not "propose" a modification.

*Response:* The post-review notice is to inform each parent of the result of the review and the right of each parent to challenge the adjustment or determination, not to adjust by initiating proceedings within at least 30 calendar days after the notice. In jurisdictions that permit "de novo" review in these instances, the parties may present additional information at the hearing or appeal. The post-review requirement can be met by States with traditional judicial processes as long as any party to the order has not less than 30 days to challenge the determination. Since we believe appeal of a decision meets the intent of Congress, § 303.8(b)(2)(v) refers to any adjustment to the order. Our change is to minimize any duplication of, or delay in, the process as long as an individual's due process rights are protected.

*4. Comment:* One commenter suggested the challenge occur within the modification process to eliminate some of the duplicate notices, waiting periods, and guessing about what the court will do.

*Response:* While objections can be raised and supporting evidence offered during the process, a challenge to the finding by the decisionmaker cannot be raised until the results are reported to the parents. Upon notice of the results, either or both parents may decide to challenge the results.

*5. Comment:* A commenter asked if the regulations need to specify whether the challenge to the review is to be heard through an administrative or judicial process or whether it is up to the State.

*Response:* States have discretion and authority to designate the appropriate forum for hearing challenges to adjustments or determinations that there be no adjustment to the order.

*Miscellaneous Questions on the Audit and Interstate Process*

*1. Comment:* One commenter asked whether a State would be subject to an audit exception if, following the criteria in the State's plan for review and adjustment, the State rejects a frivolous request for review.

*Response:* The State would not be subject to an audit exception if it follows its plan's criteria for review and adjustment of orders.

*2. Comment:* One commenter asked how States will be audited against the 1990 review and adjustment requirements.

*Response:* The States will be audited to determine if they are in substantial compliance with requirements for review and adjustment or orders effective October 13, 1990, in accordance with the requirements of § 303.8, and the State's plan for review and adjustment established in accordance with § 303.8.

*3. Comment:* Numerous comments were made regarding the need for explicit guidance and requirements governing interstate processing of review and adjustment requests.

*Response:* Because of the complexities of interstate review and adjustment and State flexibility with respect to review and adjustment between 1990 and 1993, we are allowing States to determine how best to perform review and adjustment in interstate cases for those three years but will address specific interstate case processing requirements beginning October 13, 1993, under separate rule.

Between October 13, 1990 and October 12, 1993, the States must have established State plans for review and adjustment and implement and follow these plans. Interstate cases must be processed according to the requirements of § 303.7. If an initiating State sends a request for review and adjustment to the responding State, the responding State must decide if the review is appropriate in accordance with its plan for review and must adjust the order if appropriate and permitted under its State law.

**III. Immediate Income Withholding**

*Section 303.100—Wage or Income Withholding*

*General Withholding Requirements*

*1. Comment:* One commenter asked that we clarify that the wage withholding requirements apply to spousal support when such support is included in the child support order being enforced by the State.

*Response:* Spousal support must be withheld in cases where such support is included in the child support order being enforced under the title IV–D State plan.

*2. Comment:* Section 303.100(a)(2) requires that, in addition to the amount withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of overdue support. A commenter claimed that this requirement will pose problems for States because of requirements for presumptive guidelines at 45 CFR 302.56. The commenter was concerned that judges may be encouraged to determine the amount of the obligation according to the guidelines, but then allocate a portion of that amount to be applied to overdue support, thereby reducing the amount available for current support.

*Response:* Neither the wage withholding requirements of this section nor the presumptive guidelines requirements at 45 CFR 302.56 support this interpretation. Guidelines are used to determine the underlying obligation, not the payment schedule. The total amount to be withheld to satisfy current and overdue support is subject to limitations contained in paragraph (a)(3) regarding maximum amounts allowed under the Consumer Credit Protection Act (CCPA). In any case, amounts withheld must be used first to satisfy current support, and any additional amounts applied to satisfy arrearages. The presumptive guidelines should not be used as either a basis or a limit for determining the amount to be withheld to satisfy arrearages.

*3. Comment:* One commenter asked that we define overdue support for purposes of wage withholding. This commenter was concerned that in some paternity cases the initial support award contains, in addition to current support, a support debt for a prior period, and should not be considered arrearages for purposes of wage withholding.

*Response:* Section 301.1 defines overdue support as a delinquency pursuant to an obligation determined under a court order or established under State law. A support debt created for a prior period in an initial support order entered prior to November 1, 1990, would not meet the conditions established in § 303.100(c)(1) as an arrearage qualifying for triggering initiated withholding, since this amount would not reflect payments which the absent parent failed to make under a support order, i.e., payments which accrued pursuant to a support order and which were not paid timely. In cases of immediate withholding under § 303.100(b), an amount applied to reduce this debt may be included in the total amount to be withheld. However, the existence of such a support debt would not preclude the obligor from meeting the requirements for good cause or an alternative arrangement under paragraphs (b)(1)(i) and (ii) if the order requires an amount to be paid periodically toward liquidation of the debt.

*4. Comment:* One commenter asked that paragraph (a)(3), limiting withheld amounts to the limits imposed by the CCPA, be cross-referenced with paragraph (a)(9) allowing States to extend withholding to income other than wages.

*Response:* We did not revise paragraph (a)(9) as requested because the CCPA limits under 15 U.S.C. 1673(b) apply only to periodic payment of compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension or retirement program, and including payments under title II of the Social Security Act for disability, since those payments are based on coverage earned through wages or salaries. Some States may extend withholding to other forms of income (State lottery winnings, dividend payments, etc.) which do not fall within the CCPA definition of compensation for personal service and would therefore not be subject to the CCPA limits.

*5. Comment:* A commenter asked that we clarify the requirement in paragraph (a)(4) that withholding must occur without the need for any amendment to the order involved or any other action by the court or entity that issued it, since provisions under this section may require hearings on mistakes of fact at paragraph (e) or where a State requires the court or administrative entity to reverse a good cause finding.

*Response:* We agree, and have added the phrase "other than that required or permitted under this section" to the end of paragraph (4). For example, a return to court may be appropriate or necessary to reverse a good cause finding, cancel an alternative arrangement, or implement withholding upon the custodial parent's request if the triggering arrearage has not been met. In cases of triggered withholding, returning to court to amend the underlying support order to provide for withholding is explicitly prohibited. As we stated previously in response to comments in the final rule on implementation of the Child Support Amendments of 1984 (50 FR 19623), the requirement at 466(b)(2) of the Act does not rule out a judge signing a withholding order, if this process does not involve a hearing or a court appearance.

6. *Comment:* A number of commenters responded to the proposed change in paragraph (a)(5), that, in cases where there is more than one notice for withholding, the State must allocate amounts available, but in no case shall allocation result in withholding not being implemented for one of the families. Several commenters felt that the proposed change was not specific enough and that it would not remedy the problem of unequal or unfair allocations adequately. A commenter pointed out that a State could satisfy this requirement by allocating a token amount (one dollar) in withholding for one of the families involved. Some commenters wanted the language to require the court or administrative authority which issued the support order(s) to allocate amounts, not the IV-D agency. Other commenters felt that any change to the former requirement, which allowed States to allocate according to their own criteria, would further complicate an allocation process already misunderstood by many families. Some commenters felt that allocation was an insurmountable problem at this time and should not be regulated until further study. Finally, one commenter insisted that this allocation policy could result, in situations where an absent parent has two obligations only one of which is for current support, in the family with the order for current support receiving the entire allocation and the other family none.

*Response:* We believe that the clarification in paragraph (a)(5), which will ensure that allocation will result in each family benefiting from withholding, reasonably addresses the problem. We do not agree this clarification complicates allocation or that a State would allocate a token amount to a family. We agree that, in giving current support a priority, in some cases an allocation by the IV-D agency will result in withholding not being implemented for the family which is owed arrearages only. However, other enforcement tools such as Federal and State income tax refund offset are available.

7. *Comment:* Many commenters strongly objected to the proposed language in paragraph (a)(7)(ii) that withholding could be terminated when the absent parent requests termination, withholding has not been terminated previously and subsequently initiated, and the absent parent meets the conditions for an alternative arrangement. Many commenters felt that withholding should only be terminated according to paragraph (a)(7)(i), i.e., when there is no longer a current order for support and all arrearages have been satisfied. Several commenters also felt that allowing termination for any other reason would be contrary to the intent of Congress in establishing immediate withholding. Other commenters objected to allowing the absent parent to request termination, noting that terminating withholding would never be consistent with the best interests of the child. Several commenters claimed that termination procedures would be administratively burdensome, requiring costly staff time to deal with requests and additional staff time to re-apply withholding when arrearages subsequently occurred. Other commenters claimed that States had in many cases already restricted termination based on assurances by Congress that immediate and constant wage withholding are the best way to assure payments and protect the well being of children. Some commenters expressed their concern that, if a subsequent alternative arrangement is allowed, some absent parents would subject custodial parents to undue pressure. One commenter pointed out that in its State 50 percent of all collections are through wage withholding and that 75 percent of all obligors eventually accrue arrearages. Another commenter felt that if the custodial and absent parents wanted termination after implementation of withholding, the IV-D case should be closed. One commenter asked that a good cause finding be added to the criteria for termination.

*Response:* In response to these comments, we have provided that States who believe that termination of immediate withholding should be restricted have the authority to do so. Paragraph (a)(7)(i) now requires that, for all cases, the State must have procedures for promptly terminating withholding when there is no longer a current order for support and all arrearages have been satisfied. States who wish to afford the absent parent the added opportunity to request termination at an earlier date have the option at paragraph (a)(7)(ii) to provide for this if withholding has not been terminated previously and subsequently initiated and the absent parent meets the conditions for an alternate arrangement set forth under paragraph (b)(3). We agree that States who expressed concerns regarding the termination of withholding, the subsequent occurrence of future delinquencies, and the unavoidable administrative burden if arrearages again occur, should have the authority to limit termination, if they so choose.

8. *Comment:* Several commenters objected to the requirement at paragraph (a)(8) that the State have procedures for promptly refunding to absent parents amounts which have been improperly withheld. One commenter asked that we make clear that this referred only to withheld amounts retained by the State, since if it were otherwise, the State would have to recoup the overpayment from the custodial parent. Another commenter asked that this "new" requirement be deleted, since if withheld amounts have been passed on to the custodial parent, the absent parent should pursue reimbursement from the custodial parent. This commenter felt it would be administratively burdensome to the State and the absent parent should use remedies under State law. Another commenter suggested that it would be administratively simpler to allow the IV-D agency to credit the absent parent's account.

*Response:* This is not a new requirement; it is a restatement of former paragraph (a)(10). This provision does not refer only to withheld amounts retained by the State. Any amounts improperly withheld, even if they have been sent to the custodial parent, must be promptly refunded by the State to the absent parent. Subsequent to the refund, the State may attempt to recover any amounts sent to the custodial parent. Federal funding is not available under 45 CFR 304.20 for these refunds. OMB Circular A-87 precludes Federal funding for "any loss arising from uncollectible accounts and other claims and related costs." However, this does not preclude the State from negotiating directly with the absent parent under State law to apply the refund to other arrearages or future support.

*Immediate Withholding*

1. *Comment:* Several commenters objected to the provisions establishing exceptions to immediate withholding which were set forth in paragraphs (b)(1) and (2). These commenters felt that the provisions for good cause and for alternative arrangements would not meet the goal of immediate withholding for all cases and would be administratively burdensome to States.

*Response:* The provisions for good cause and alternative arrangements are mandated by the statute at section 466(b)(3)(A) of the Act. However, as stated in the preamble to the proposed rule, we are aware that some States have laws and procedures which do not allow exceptions to immediate withholding for good cause and/or alternative arrangements. States have

the option of applying for an exemption from these provisions in accordance with regulations at 45 CFR 302.70(d) and program instructions at OCSE–AT–88–12 dated December 12, 1988 if they can demonstrate that the enactment of these requirements would not increase the effectiveness and efficiency of the State Child Support Enforcement Program.

2. *Comment:* A number of commenters responded to our solicitation of comments on whether the establishment of escrow accounts should be included as conditions for good cause and/or alternative arrangements. Most favored requiring escrow accounts in the amount equal to the support payable for two months as a condition for both a finding of good cause and for an alternative arrangement. One commenter urged that the escrow account be for an amount equal to one year's support. Another commenter recommended either an escrow account or a form of electronic funds transfer as an alternative requirement. Several commenters stated that such a requirement would ensure that the family would continue to receive support upon a default in payment. One commenter suggested that escrow accounts be allowed as an option.

*Response:* Although many commenters advocated requiring escrow accounts in an amount equal to the support payable for two months as a condition for both a finding of good cause and an alternative arrangement, we have not mandated escrow accounts because there is no evidence of the need for Federal regulation in this regard. Federal regulations at 45 CFR 303.103 already require States to have in effect and use procedures which require that absent parents post security, bond or give some other guarantee to secure support in appropriate cases. Certainly, States who believe this to be a valuable tool may require an escrow account as a means to ensure that funds are available should the obligor become delinquent.

3. *Comment:* One commenter pointed out that the proposed requirements that the absent parent agree to keep the IV-D agency apprised of his or her current employer and information on any employment related health insurance coverage at paragraphs (b)(2)(iii) and (b)(3) for good cause and alternative arrangements, respectively, were duplicative of the requirement at paragraph (a)(10) for all withholding orders.

*Response:* We agree, and have eliminated these provisions from paragraphs (b)(2) and (3).

4. *Comment:* One commenter asked if the conditions for reaching a determination of good cause contained in paragraphs (b)(2)(i), and (ii) must both be met, or if the phrase "at least" meant that meeting one of the conditions was sufficient for a finding of good cause.

*Response:* Both remaining conditions must be met as the minimum criteria for a finding of good cause.

5. *Comment:* One commenter recommended that there would be other reasons for allowing good cause beyond the best interest of the child, such as extraordinary hardship on the obligor.

*Response:* The provisions of paragraph (b)(2) are minimum requirements, and States may establish criteria in addition to those set forth in this rule. However, we do not believe that an automatic withholding of support from an obligor's wages should constitute an extraordinary hardship.

6. *Comment:* Several commenters claimed that the establishment of a definition for good cause was an abuse of regulatory authority and that alternatively, courts should be required to provide written justifications of their good cause findings.

*Response:* Although the statute did not define good cause, we have used our authority under section 1102 of the Act to set these requirements because we believe that Congress intended that immediate withholding would be implemented in most cases.

7. *Comment:* We received many comments in response to our solicitation of views regarding whether the State should be a required party, rather than a party at State option, to any alternative arrangement between the absent and custodial parents in an IV–D case in which there is an assignment of support rights to the State. Several commenters felt that the State should be a required party in all IV–D cases, not just those in which support rights have been assigned. These commenters were concerned that it would be unlikely for any alternate arrangement to be in the best interest of a child and that State oversight was needed. One commenter favored the State being a required party in all cases because of the administrative burden caused by subsequent delinquencies. Another commenter asked that the States not be precluded from being a required party to an alternate agreement in any IV–D case because there should be no distinction between cases with assigned support and those without. Some commenters recommended that the State be a required party only in AFDC cases where both the State and the Federal governments had a vested interest in securing support for those in need of public assistance. A number of commenters favored the language in the proposed rule, allowing the State to be a required party to any alternate arrangement at State option in cases in which there is an assignment of support rights. One commenter asked if the phrase "at State option" meant that the option would allow individual county jurisdictions within the State to exercise or not to exercise the option.

*Response:* The final rule retains the language in the proposed rule allowing States the option of requiring the State to be a party to a written alternate arrangement in cases in which there is an assignment of support rights to the State. Since opinions on this issue varied so greatly, we believe that States should be allowed the flexibility to choose the best approach. Any State which believes it is essential for the State to be a party in any case involving assigned support may so require under this option. If a State chooses to exercise this option, it may establish procedures which allow local jurisdictions discretion for State involvement based on the circumstances of the case.

8. *Comment:* Several commenters asked for clarification of the requirement that the written agreement be reviewed and entered by the court or administrative authority. Several commenters wanted the final rule to explicitly require that the court have the authority to approve the written agreement and not to enter agreements found to be inappropriate. Other commenters were concerned that the court or administrative authority could substitute its judgment for that of the parties if the review included approval authority. These commenters urged that the final rule specify that the court or administrative authority could not disapprove alternative agreements.

*Response:* The statute at section 466(b)(3)(A) clearly requires the court or administrative authority to determine whether good cause not to implement withholding exists. The statute does not create a similar role for the court or administrative authority with respect to written agreements for alternative arrangements. We have used our regulatory authority only to require the court or administrative authority in these cases to review and enter such agreements in the record.

*Initiated Wage Withholding*

1. *Comment:* One commenter requested that the definition of payments which the absent parent has failed to make at paragraph (c)(1) be based on the absent parent's established payment schedule (i.e., weekly, biweekly or monthly payments). This commenter reasoned that withholding

should be initiated if the absent parent missed any one payment.

*Response:* Section 466(b)(3)(B) of the Act requires that, in cases not subject to immediate withholding, the wages of an absent parent shall become subject to withholding on the date on which payments which the absent parent has failed to make are at least equal to the support payable for one month. The requirement is based on the amount which is owed, not when it is due. However, the statute at section 466(b)(3)(B)(iii) allows States to establish an earlier triggering date if they so choose.

2. *Comment:* Another commenter asked that the regulations should make provisions for potential changes in States' laws which may allow violations of visitation agreements to trigger withholding.

*Response:* Matters pertaining to visitation and custody are separate from support and should not be used to trigger withholding. Withholding should not be used as a punitive measure, particularly for reasons which do not relate to child support.

3. *Comment:* We received many comments regarding paragraph (c)(1)(ii) which requires that, in cases not subject to immediate withholding, withholding be implemented on the date the custodial parent requests that withholding begin, if the State determines, under such procedures and standards as it may establish, the request should be approved. Several commenters stated that the custodial parent should not be allowed to request withholding if the absent parent had not accrued a qualifying arrearage. One commenter stated that such a provision was inconsistent with the requirements for advance notice to the absent parent when arrearages occur. Another commenter claimed that this provision could be used by the custodial parent to harass the absent parent. One commenter questioned why a State would implement withholding if the case is not before the court for modification or there is no arrearage. Another commenter felt that this provision would add to the enforcement tools available under title IV–D and would provide a bridge between the former withholding requirements and those mandated through immediate withholding for those cases which have support orders entered before November 1, 1990. This commenter recommended that the provision be further strengthened by specifying that, for cases in which support rights had been assigned to the State, the State may request that withholding be implemented.

*Response:* Section 466(b)(3)(B)(ii) of the Act explicitly requires withholding to be triggered, without regard to whether there is an arrearage, on the date the custodial parent requests it, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved. Therefore, States must establish procedures which specify the circumstances in which a custodial parent request for withholding will be granted in cases not subject to immediate withholding and in which the 30 day triggering arrearage has not been met. If the State determines that withholding will be implemented under those procedures, the absent parent must be given advance notice of the withholding in accordance with paragraphs (c)(2) and (d)(1). Moreover, the procedures and standards adopted by the State for approving the custodial parent's request should prevent harassment.

In establishing its procedures, a State should consider whether it is appropriate to require further action by the court for cases in which there has been a determination of good cause not to implement immediate wage withholding, an alternative arrangement exists or an order was established or modified prior to November 1, 1990. For example, a State could opt to remove the good cause determination or negate an alternative arrangement before withholding is initiated. Although we encourage States to adopt simple administrative procedures to ensure the timely initiation of custodial parent requests, we believe that States should also ensure that their procedures extend appropriate protections to the non-custodial parent as well.

*Advance Notice to the Absent Parent in Initiated Withholding*

1. *Comment:* The majority of commenters were concerned that the requirement that the State send the advance notice to the absent parent within 5 working days of the appropriate date under paragraph (c)(1) was unrealistic. Several commenters suggested that a 15 working day timeframe was more feasible, while other commenters were in favor of 10 working days. Another commenter stated that the 5 day timeframe could only be met when all State support enforcement programs are fully automated. One commenter felt that establishing any timeframe for this requirement violated the statutory mandate which provides that the wages of an absent parent become subject to withholding on the appropriate date identified in paragraph (c)(1). A commenter also pointed out that advance notice to the absent parent was not necessary in cases where the absent parent had requested withholding.

*Response:* We agree that the proposed 5 working day timeframe was too stringent. Consequently, we have changed the timeframe for sending the notice of withholding to the absent parent to within 15 calendar days of the appropriate date in paragraph (c)(1) which requires initiated withholding under certain conditions in cases where the wages of an absent parent are not subject to immediate withholding. Although the statute requires that the wages of an absent parent become subject to withholding on the date identified in paragraph (c)(1), we realize that it is unrealistic to expect that the notice be sent on that date, although it is clear that the State must have in effect procedures which identify the date when an action takes place which triggers withholding.

The former regulations for withholding at § 303.100(a)(4) addressed this issue by requiring that the State take steps to implement withholding on the appropriate date. We believe that the most realistic approach to ensuring that timely action takes place is to establish measurable timeframes for this requirement. The revised requirements at section 466(b) of the Act eliminated the requirement that advance notice be sent to the absent parent on the day wages become subject to withholding. Because Congress deleted this requirement, it is reasonable to allow States time to send the notice. Moreover, the 15 calendar day timeframe parallels several other requirements under regulations for program standards in 45 CFR part 303.

Finally, we agree with the comment that it is unnecessary for the advance notice to be sent to the absent parent when the absent parent has requested that withholding be implemented. Moreover, we would point out that notice of withholding is not required in cases subject to immediate withholding or in interstate cases in which the absent parent has previously received notice of withholding.

2. *Comment:* One commenter asked if the requirement at proposed paragraph (c)(2), that the State must send advance notice to the absent parent within 5 working days of the appropriate date under paragraph (c)(1) if the absent parent's address is known or, if not known, within 5 days of location, referred to obtaining an address or verifying that the absent parent is at the location.

*Response:* The extent and specifics of verification procedures are left to the States. The State must ensure the absent parent's due process rights under State law are protected.

3. *Comment:* A number of commenters were concerned that the requirement at

proposed paragraph (c)(3), providing that in cases where there has been a finding of good cause, withholding not be implemented upon request of the custodial parent under paragraph (c)(1)(ii) until the finding had been reversed, was unauthorized by the statute. One commenter asked that the regulation should specify that the support order require that a good cause finding ceases only upon a qualifying delinquency. Another commenter claimed that reopening a good cause finding would result in a misuse of the State's resources.

*Response:* We have eliminated the specific regulatory provision that a good cause finding must be reversed before the custodial parent's request for withholding can be approved. We recognize that the statute provides both for a good cause exemption from immediate wage withholding and for custodial parents to initiate wage withholding by request without providing guidance on which provision takes precedence. However, the law does require that States must have in place procedures to review and approve, if appropriate under their procedures and standards, a custodial parent's request. Therefore, we believe that States are in the best position to determine the circumstances under which a custodial parent's request will be approved. We urge that States consider the issue of removal of good cause determination when they develop their review procedures, but will not require that it specifically be included in their procedures.

4. *Comment:* One commenter recommended that proposed paragraph (c)(4), providing that the only basis for contesting a withholding is a mistake of fact, be changed to require that if the amount of current or overdue support is at issue, the court should be required to modify the support order to reflect the correct amount of support or arrearages and issue the withholding notice rather than requiring an additional hearing on a claimed mistake of fact.

*Response:* This is a restatement of former language at § 303.100(a)(4). Section 466(b)(2) of the Act requires that withholding must occur without the need for any amendment to the support order involved or for any further action, other than those required under section 466, by the court or administrative authority which issued the support order. Any State law or procedure (other than to reverse a determination of good cause, cancel an alternative arrangement or implement withholding at the custodial parent's request) which requires a return to court in order to implement withholding is contrary to this requirement.

*Procedures When the Absent Parent Contests Initiated Withholding*

1. *Comment:* One commenter asked that the final regulation provide that the State procedures required at paragraph (e) when the absent parent contests initiated withholding include the right of the custodial parent to contest any claims.

*Response:* While we have not required such procedures to include the custodial parent's right to contest the claim, any procedure conducted pursuant to paragraph (e) with respect to a claim that there is a mistake of fact should provide an opportunity for all relevant evidence to be presented, including evidence from the custodial parent.

*Notice to the Employer for Immediate and Initiated Withholding*

1. *Comment:* One commenter asked if the provision at paragraph (f)(1)(ii), requiring the employer report to the State the date on which an amount was withheld, was intended to establish the date of collection for purposes of distribution or the initial date of receipt for meeting program standards timeframes.

*Response:* The date the wages were withheld establishes the date of collection for distribution purposes at 45 CFR 302.51; it is not used as the initial date of receipt in the State, which starts measurement of the timeframe within which support must be sent to the family under requirements at 45 CFR 302.32. Provisions at 45 CFR 302.51(a)(4) require that, with respect to payments made through wage or other income withholding and received by the IV–D agency on or after January 1, 1989, the date of collection for distribution purposes in all IV–D cases must be the date of withholding. If the employer fails to report the date of withholding, the IV–D agency must reconstruct that date by contacting the employer or comparing actual amounts collected with the pay schedule specified in the court or administrative order.

2. *Comment:* One commenter recommended that the requirement at paragraph (f)(1)(ii) that the employer send amounts withheld to the State within 10 working days be changed to 30 calendar days. This commenter maintained that since the statute at section 466(b)(6)(B) requires that methods must be established by the State to simplify the withholding process, and employers find it simpler to send one monthly payment, the timeframe should be extended.

*Response:* The 10-day requirement has been in effect since May 18, 1985. We believe that to extend this timeframe would be inconsistent with Congressional intent that support collected be expeditiously distributed.

3. *Comment:* We received several comments objecting to the proposed requirement at paragraph (f)(1)(xi) that the notice to the employer must indicate that the absent parent is required under a support order to provide health insurance coverage. One commenter stated that such a requirement would involve both the IV–D agency and the employer in a meaningless task, since, if the obligor does not sign up for coverage, the employer has no authority to compel enrollment. Another commenter pointed out that the IV–D agency is required to enforce health insurance requirements in support orders. One commenter pointed out that the IV–D agency had no authority to require employers to take action based on the information provided and such information would not assist the employer in complying with the withholding order. Another commenter felt that the requirement needed strengthening and should be amended to require the employer to report quarterly the obligor's insurance company name, policy number and dependents covered.

*Response:* We agree that this proposed requirement will not assist in enforcing health insurance requirements and have deleted it from the final rule. However, States with such authority, including Minnesota, Washington and Iowa, may provide such language in their notice to the employer. In addition, States at their discretion may choose to require employers to provide quarterly reports of the obligor's insurance company's name, policy number and dependents covered. In addition, Oregon has already moved in this direction through a modification of quarterly employer reporting for employment security purposes.

4. *Comment:* A number of commenters objected to the requirement at proposed paragraph (f)(2) that in a case of immediate wage withholding the State must issue the notice to the employer within 5 working days of the effective date of the order, or of locating the absent parent. Some commenters argued that the 5 day requirement was not realistic in light of administrative factors beyond the IV–D agency's control. One commenter recommended a timeframe of 10 working days; another commenter recommended 15 working days; and another commenter favored 30 calendar days. Several commenters also pointed out that marking the timeframe from the effective date of the support order would be impossible in some instances since some orders are made effective retroactive to the date a petition for support is filed or the date a paternity action is instituted. These commenters recommended that the timeframe

commence from the date the order is entered. Another commenter suggested that the requirement be changed to within 5 working days of the receipt of the order by the IV–D agency.

*Response:* We have changed the timeframe in the final rule to 15 calendar days. This provides a more realistic approach and is consistent with other timeframes established in this rule and in regulations for program standards. We also agree with those commenters who pointed out the difficulty in complying with a timeframe which commences with an "effective" date and have changed the final rule to provide that notice to withhold be sent to the employer within 15 calendar days of the date the support order is entered.

*Administration of Withholding*

1. *Comment:* One commenter was concerned that the proposed requirement at paragraph (g)(2)(ii) that the State may designate only one entity to administer withholding in each jurisdiction will mean that every wage withholding action in every support order in the State will become a IV–D case. This commenter complained that this situation would result in increases in workloads and additional tax burdens on State and local taxpayers since there is no Federal financial participation in cases where an application for IV–D services has not been made. It was suggested that since Congress authorized a study regarding the impact of immediate withholding in non-IV–D cases, this proposed requirement should not be issued in final regulations until the results of the study are available.

*Response:* The requirement for only one wage withholding entity in each jurisdiction applies only to administration of withholding of IV–D cases and has been in effect since October 1, 1985. States have the option of establishing a separate mechanism for the administration of withholding for non-IV–D cases.

2. *Comment:* We received comments responding to the proposed requirement at paragraph (g)(3) that effective October 1, 1995, States must be capable of receiving withheld amounts and accounting information which are electronically transmitted by the employer to the State. One commenter stated that the requirement was premature and that the issue should not be regulated until procedures for transmitting support payments have been agreed upon by OCSE and the National Automated Clearing House Association (NACHA) and the process of transmitting payments has been tested. This commenter suggested that the proposed rule be withdrawn and that OCSE promulgate this requirement in 1995. Another commenter felt that this rule should appear instead in regulations for automated systems and that it include procedures for all collections, such as transfer of interstate payments and collections from county depositories to the State agency responsible for distribution.

*Response:* This provision was drafted in anticipation of the requirement that all States have operational automated child support enforcement systems by October 1, 1995. We believe that it is important that States have as much advance notice of this requirement as possible so that this capability can be included in the design of their automated systems. States are encouraged to extend this capability for all collections. We are currently pursuing a national initiative on this issue in cooperation with NACHA. The goal of this project is to develop a Child Support Convention, a set of procedures with a selected format to be used by employers to electronically transfer income withholding payments and standardized data elements which will contain case related information about the withholding. As part of developing these procedures we have contacted all State IV–D agencies for assistance, and will continue to involve the States in the ongoing developments.

*Interstate Withholding*

1. *Comment:* We received many comments regarding the proposed requirement at paragraph (h)(1) that States may register orders from other States only if it is for the sole purpose of establishing jurisdiction for enforcement of the order, does not confer jurisdiction for any other purpose, and does not delay withholding. Most commenters strongly supported this requirement, and several stated that support orders from their States had been registered by other States when interstate withholding had been requested and that the underlying order was subsequently modified downward in the responding jurisdiction.

Several commenters recommended strengthening the requirement. One commenter stated that the phrase "does not delay" would not assure compliance, since some States would claim that registration did not delay enforcement compared to their procedures for full URESA registration. Another commenter recommended that the final rule prohibit any registration whatsoever of the support order by the responding State. One commenter claimed that the proposed requirement was designed to allow a certain State to continue to register orders, with resulting delays, and suggested that any registration was not consistent with Congressional intent.

Finally, one commenter recommended that there be no restrictions on registration. This commenter argued that the better procedure is to allow the responding State to modify the order as necessary to enforce the other State's order through withholding. The commenter claimed that the proposed language clearly prefers administrative process for interstate wage withholding and that the limitations on registration were not feasible for judicial situations, since the absent parent may raise ability to pay defenses to enforcement. It was argued that this situation would necessitate a delay in enforcement of the order, including wage withholding and that such delay illustrates the futility of separating enforcement and adjustment authority. The commenter further maintained that the complexity of the subject requires careful coordination with ongoing efforts of the Commission on Interstate Child Support authorized under section 126 of Public Law 100–485, and the National Conference of Commissioners on Uniform State Laws (NCCUSL) which is redrafting URESA.

*Response:* We do not believe that an absolute prohibition on registration of orders for the purpose of wage withholding is feasible at this time due to the varied legal and administrative systems among the States. However, we do agree that the language can be strengthened regarding conditions under which registration is permitted, and have added language to specify that registration create no delay beyond the timeframes contained in paragraph (h)(5) regarding notice to the obligor, opportunity of the obligor to contest, and notice to the employer.

With respect to the comment recommending that there be no limits on registration, we strongly disagree. Registration of the underlying support order for the purpose of enforcement of a withholding notice may not open the underlying order to modification. Any State which allows such modifications is not in conformance with the requirements of section 466(b)(2) of the Act which provides that withholding must occur without the need for any amendment to the support order involved and section 466(b)(9) which provides that a State must extend its withholding system so that system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States.

Congressional intent on this issue has been clearly articulated since the adoption of Public Law 98–378 in 1984: "Withholding must occur without amendment of the order or further action by the court. The Committee

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believes that this requirement is particularly crucial to the effectiveness of any income withholding provision, because it means that the custodial parent will not have to experience the costs and delays involved in returning to court to get a garnishment decree or a new support order." (Senate Report 98–387, page 27). In addition, the Model Interstate Income Withholding Act, published in 1984 by the American Bar Association and the National Conference of State Legislatures (under a contract from OCSE), explicitly provides that entry by the responding State of the initiating States's support order shall not confer jurisdiction on the courts or agencies of the responding State for any purpose other than income withholding. OCSE recently conducted a review of State law and practices on this issue, and has notified States identified as having problems in this area that any responding State's registration procedure which opens the underlying support order to modification or delays implementation of withholding is not in conformance with Federal requirements.

We agree with the need for ongoing coordination with the Interstate Commission and with the NCCUSL. In fact, the NCCUSL's Drafting Committee and the Interstate Commission's members have agreed to coordinate their efforts with respect to interstate child support enforcement. As referenced earlier, the work of both groups is scheduled for completion in 1992.

2. *Comment:* One commenter requested that the final rule clarify the requirements for notifying the obligor in interstate wage withholding proceedings.

*Response:* Under paragraph (h)(5)(i) notice must be given to the absent parent in accordance with paragraph (d), *if appropriate*, and under paragraph (h)(5)(ii), the absent parent must be given an opportunity to contest the withholding in accordance with paragraph (e), if appropriate. Notice would not be appropriate and, in fact, is not permitted, in immediate withholding in interstate cases, or in cases in which withholding was previously ordered as a result of a triggering arrearage.

3. *Comment:* Several commenters noted that the proposed requirement at paragraph (h)(3) providing that the initiating State must notify the responding State to implement wage withholding within 5 days of a determination that withholding is required was inconsistent with other regulatory requirements. These commenters pointed out that this conflicts with existing requirements at 45 CFR 303.7(b)(2) providing that the initiating State refer an interstate case for enforcement to the responding State's central registry within 20 calendar days of determining that the absent parent is in another State. Other commenters asked that the proposed requirement be changed to 30 calendar days.

*Response:* We agree that the proposed timeframe of 5 working days was inconsistent with existing requirements and have changed this timeframe in the final rule at paragraph (h)(3) to provide that the initiating State must notify the responding State to implement withholding within 20 calendar days of determining that withholding is required in a particular case, and, if appropriate, receipt of any information necessary to carry out the withholding. For consistency, we are also revising § 303.7(b)(2) to tie the 20 calendar day timeframe for referral of an interstate case to the receipt of any information necessary to process the case. An interstate request for withholding is, of course, not needed in cases where a State has long arm jurisdiction over the employer and can implement withholding directly.

4. *Comment:* We received comments objecting to the 5-day requirement at proposed paragraph (h)(5) for the responding State to send the notice of withholding to the employer, as unrealistic.

*Response:* We agree and have changed this timeframe to 15 calendar days in the final rule which is consistent with a number of other timeframes in this section.

*Immediate Withholding in Non-IV–D Cases*

1. *Comment:* A number of commenters complained that the requirements set forth in paragraph (i), for immediate withholding in non-IV–D cases, were premature since the requirement had a statutory effective date of January 1, 1994. Several commenters pointed out that, since section 101(c) of Public Law 100–485 required that OCSE conduct a study on making immediate withholding mandatory in all cases, final regulations should be postponed so that questions regarding the administrative feasibility and cost implications of such a requirement could be evaluated in light of the fact that no Federal financial participation was available for this activity. One commenter cited preliminary information on one project indicating that there were many complaints from private parties who objected to immediate withholding when a IV–D application had not been filed.

*Response:* We agree with commenters that it is premature to attempt to regulate this issue. Consequently, we have eliminated proposed paragraph (i) for immediate withholding in non-IV–D cases. As a result, new paragraph (i) requires that there be a provision for withholding in non-IV–D child support orders, to ensure that withholding as a means of support is available without the necessity of filing an application for IV–D services.

**Executive Order 12291**

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule implements specific requirements of Public Law 100–485 and will not result in additional costs to the States of $100 million or more. Any costs will be administrative, and we believe increased collections as a result of support order adjustments and immediate wage withholding will exceed increased administrative costs.

**Regulatory Flexibility Analysis**

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the Act.

**List of Subjects**

*45 CFR Part 302*

Child support, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

*45 CFR Part 303*

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93.023, Child Support Enforcement Program.)

Dated: September 3, 1991.

**Jo Anne B. Barnhart,**

*Assistant Secretary for Children and Families.*

Approved: January 16, 1992

**Louis W. Sullivan,**

*Secretary*



For the reasons set out in the preamble, 45 CFR chapter III is amended to read as follows:

1. The title of 45 CFR Chapter III is revised to read "Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services".

**PART 302—STATE PLAN REQUIREMENTS**

1a. The authority citation for part 302 continues to read as follows:

**Authority:** 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Section 302.54 is revised to read as follows.

**§ 302.54 Notice of collection of assigned support.**

(a) Until December 31, 1992, the State plan shall provide as follows:

(1) The IV–D agency, at least annually, must send a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title.

(2) The notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of support collected which was paid to the family.

(b) Effective January 1, 1993, the State plan shall provide that the State has in effect procedures for issuing notices of collections as follows:

(1) The IV–D agency must provide a monthly notice of the amount of support payments collected for each month to individuals who have assigned rights to support under § 232.11 of this title, unless no collection is made in the month, the assignment is no longer in effect and there are no longer any assigned arrearages, or the conditions in paragraph (c) of this section are met.

(2) The monthly notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of current support, the amount of arrearages collected and the amount of support collected which was paid to the family.

(c)(1) The Office may grant a waiver to permit a State to provide quarterly, rather than monthly, notices, if the State:

(i) Until September 30, 1995, does not have an automated system that performs child support enforcement activities consistent with § 302.85 or has an automated system that is unable to generate monthly notices; or

(ii) Uses a toll-free automated voice response system which provides the information required under paragraph (b)(2) of this section.

(2) A quarterly notice must be provided in accordance with conditions set forth in paragraph (b)(1) of this section and such notice must contain the information set forth in paragraph (b)(2) of this section.

3. Section 302.70 is amended by revising paragraph (a)(8); adding a new paragraph (a)(10); revising paragraph (d)(1) and the first sentence of (d)(2) to read as follows:

**§ 302.70 [Amended]**

(a) * * *

(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing an application for services under § 302.33 of this part, in accordance with § 303.100(i) of this chapter;

* * * * * *

(10) Effective October 13, 1990, procedures for the review and adjustment of child support orders, in accordance with the requirements of § 303.8 of this chapter.

* * * * * *

(d)(1) *Exemption.* A State may apply for an exemption from any of the requirements of paragraph (a) of this section by the submittal of a request for exemption to the appropriate Regional Office.

(2) *Basis for granting exemption.* The Secretary will grant a State, or political subdivision in the case of paragraph (a)(2) of this section, an exemption from any of the requirements of paragraph (a) of this section for a period not to exceed three years if the State demonstrates that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program. * * *

* * * * * *

**PART 303—[AMENDED]**

4. The authority citation for part 303 continues to read as follows:

**Authority:** 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

5. In § 303.4, paragraph (c) is revised to read as follows:

**§ 303.4 Establishment of support obligations.**

* * * * * *

(c) Periodically review and adjust child support orders, as appropriate, in accordance with § 303.8.

* * * * * *

6. In § 303.7, paragraph (b)(2) is revised to read as follows:

**§ 303.7 Provision of services in interstate IV–D cases.**

* * * * * *

(b) * * *

(2) Except as provided in paragraph (b)(1) of this section, within 20 calendar days of determining that the absent parent is in another State, and, if appropriate, receipt of any necessary information needed to process the case, refer any interstate IV–D case to the responding State's interstate central registry for action, including URESA petitions and requests for location, document verification, administrative reviews in Federal income tax refund offset cases, wage withholding, and State income tax refund offset in IV–D cases.

* * * * * *

7. A new § 303.8 is added to read as follows:

**§ 303.8 Review and adjustment of child support orders.**

(a) *Definitions.* For purposes of this section:

(1) *Adjustment* applies only to the child support provisions of the order, and means:

(i) An upward or downward change in the amount of child support based upon an application of State guidelines for setting and adjusting child support awards; and/or

(ii) Provision for the child's health care needs, through health insurance coverage or other means.

(2) *Parent* includes any custodial parent or non-custodial parent (or for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order).

(3) *Review* means an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine:

(i) The appropriate support award amount; and

(ii) The need to provide for the child's health care needs in the order through health insurance coverage or other means.

(b) *Plan for review and adjustment.* (1) Effective on October 13, 1990, the State must have a written and publicly available plan indicating how and when child support orders in effect in the State will be periodically reviewed and adjusted.

(2) During the period from October 13, 1990 through October 12, 1993, the State must, for orders being enforced under this chapter:

(i) Determine whether such orders should be reviewed, using the plan

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specified in paragraph (b)(1) of this section;

(ii) Initiate a review, in accordance with the plan, at the request of either parent subject to the order or of a IV–D agency;

(iii) Notify each parent subject to a child support order of any review of the order at least 30 calendar days before commencement of the review;

(iv) Adjust the order when the review determines that there should be a change in the child support award amount, or that health insurance should be required, as indicated by the review in accordance with the State's guidelines for support described in § 302.56 of this chapter.

(v) Following any review, notify each parent subject to a child support order in effect in the State, of:

(A) Any adjustment or a determination that there should be no change in the order; and

(B) Each parent's right to initiate proceedings to challenge the adjustment or determination, either through pre-decision review, appeal, or administrative review, within at least 30 calendar days after the date of the notice.

8. Section 303.100 is revised as follows:

**§ 303.100 Procedures for wage or income withholding.**

(a) *General withholding requirements.* (1) The State must ensure that in the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her wages must be withheld, in accordance with this section, as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of overdue support.

(3) The total amount to be withheld under paragraphs (a)(1), (a)(2) and, if applicable, (f)(1)(iii) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) In the case of a support order being enforced under the State plan, the withholding must occur without the need for any amendment to the support order involved or any other action by the court or entity that issued it other than that required or permitted under this section.

(5) If there is more than one notice for withholding against a single absent parent, the State must allocate amounts available for withholding giving priority to current support up to the limits imposed under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). The State must establish procedures for allocation of support among families, but in no case shall the allocation result in a withholding for one of the support obligations not being implemented.

(6) The withholding must be carried out in full compliance with all procedural due process requirements of the State.

(7) The State must have procedures for promptly terminating withholding:

(i) In all cases, when there is no longer a current order for support and all arrearages have been satisfied; or,

(ii) At State option, when the absent parent requests termination and withholding has not been terminated previously and subsequently initiated, and the absent parent meets the conditions for an alternative arrangement set forth under paragraph (b)(3) of this section.

(8) The State must have procedures for promptly refunding to absent parents amounts which have been improperly withheld.

(9) The State may extend its withholding to include withholding from forms of income other than wages.

(10) Support orders issued or modified in IV–D cases must include a provision requiring the absent parent to keep the IV–D agency informed of the name and address of his or her current employer, whether the absent parent has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information.

(b) *Immediate withholding on IV–D cases.* (1) In the case of a support order being enforced under this part that is issued or modified on or after November 1, 1990, the wages of an absent parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order, except that such wages shall not be subject to withholding under this paragraph in any case where:

(i) Either the absent or custodial parent demonstrates, and the court or administrative authority finds, that there is good cause not to require immediate withholding; or (ii) A written agreement is reached between the absent and custodial parent, and, at State option, the State in IV–D cases in which there is an assignment of support rights to the State, which provides for an alternative arrangement.

(2) For the purposes of this paragraph, any finding that there is good cause not to require immediate withholding must be based on at least:

(i) A written determination that, and explanation by the court or administrative authority of why, implementing immediate wage withholding would not be in the best interests of the child; and

(ii) Proof of timely payment of previously ordered support in cases involving the modification of support orders.

(3) For purposes of this paragraph, "written agreement" means a written alternative arrangement signed by both the custodial and absent parent, and, at State option, by the State in IV–D cases in which there is an assignment of support rights to the State, and reviewed and entered in the record by the court or administrative authority.

(c) *Initiated withholding in IV–D cases.* In the case of wages not subject to immediate withholding under paragraph (b) of this section, including cases subject to a finding of good cause or to a written agreement:

(1) The wages or the absent parent shall become subject to the withholding on the date on which the payments which the absent parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of:

(i) The date on which the absent parent requests that withholding begin;

(ii) The date on which the custodial parent requests that withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved; or

(iii) Such earlier date as State law or procedure may provide.

(2) The State must send the advance notice required under paragraph (d) of this section to the absent parent within 15 calendar days of the appropriate date under paragraph (c)(1) of this section if the absent parent's address is known on that date, or, if the absent parent's address is not known on that date, within 15 calendar days of locating the absent parent.

(3) The only basis for contesting a withholding under this paragraph is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged absent parent.

(d) *Advance notice to the absent parent in cases of initiated withholding.* (1) On the date specified in paragraph (c)(2) of this section, the State must send advance notice to the absent parent regarding the initiated withholding. The notice must inform the absent parent:

(i) Of the amount of overdue support that is owed, if any, and the amount of wages that will be withheld;

(ii) That the provision for withholding

applies to any current or subsequent employer or period of employment;

(iii) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;

(iv) Of the period within which the absent parent must contact the State in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin withholding; and

(v) Of the actions the State will take if the individual contests the withholding, including the procedures established under paragraph (e) of this section.

(2) (i) The requirement for advance notice to the absent parent under paragraph (d)(1) of this section and for State procedures when the absent parent contests the withholding in response to the advance notice under paragraph (e) of this section do not apply in the case of any State which had a withholding system in effect on August 16, 1984 if the system provided on that date, and continues to provide, any other procedures as may be necessary to meet the procedural due process requirements of State law.

(ii) Any State in which paragraph (d)(2)(i) of this section applies must meet all other requirements of this section and must send notice to the employer under paragraph (f) of this section within 15 calendar days of the appropriate date specified in paragraph (c)(1) of this section if the employer's address is known on that date, or, if the employer's address is not known on that date, within 15 calendar days of locating the employer's address.

(e) *State procedures when the absent parent contests initiated withholding in response to the advance notice.* The State must establish procedures for use when an absent parent contests the withholding. Within 45 calendar days of sending advance notice to the absent parent under paragraph (d) of this section, the State must:

(1) Provide the absent parent an opportunity to present his or her case to the State;

(2) Determine if the withholding shall occur based on an evaluation of the facts, including the absent parent's statement of his or her case;

(3) Notify the absent parent whether or not the withholding is to occur and, if it is to occur, include in the notice the time frames within which the withholding will begin and the information given to the employer in the notice required under paragraph (f) of this section; and

(4) If withholding is to occur, send the notice required under paragraph (f) of this section.

(f) *Notice to the employer for immediate and initiated withholding.* (1) To initiate withholding, the State must send the absent parent's employer a notice which includes the following:

(i) The amount to be withheld from the absent parent's wages, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (f)(1)(iii) of this section, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));

(ii) That the employer must send the amount to the State (or to such other individual or entity as the State may direct) within 10 working days of the date the absent parent is paid, and must report to the State (or to such other individual or entity as the State may direct) the date on which the amount was withheld from the absent parent's wages;

(iii) That, in addition to the amount withheld for support, the employer may deduct a fee established by the State for administrative costs incurred for each withholding, if the State permits a fee to be deducted;

(iv) That the withholding is binding upon the employer until further notice by the State;

(v) That the employer is subject to a fine to be determined under State law for discharging an absent parent from employment, refusing to employ, or taking disciplinary action against any absent parent because of the withholding;

(vi) That, if the employer fails to withhold wages in accordance with the provisions of the notice, the employer is liable for the accumulated amount the employer should have withheld from the absent parent's wages;

(vii) That the withholding under this section shall have priority over any other legal process under State law against the same wages;

(viii) That the employer may combine withheld amounts from absent parents' wages in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual absent parent;

(ix) That the employer must implement withholding no later than the first pay period that occurs after 14 working days following the date the notice was mailed; and

(x) That the employer must notify the State promptly when the absent parent terminates employment and provide the absent parent's last known address and the name and address of the absent parent's new employer, if known.

(2) In the case of an immediate wage withholding under paragraph (b) of this section, the State must issue the notice to the employer specified in paragraph (f)(1) of this section within 15 calendar days of the date the support order is entered if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address.

(3) In the case of initiated withholding, if the absent parent fails to contact the State to contest withholding within the period specified in the advance notice in accordance with the requirements of paragraph (d)(1)(iv) of this section, the State must send the notice to the employer required under paragraph (f)(1) of this section within 15 calendar days of the end of the contact period if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address.

(4) If the absent parent changes employment within the State when a withholding is in effect, the State must notify the absent parent's new employer, in accordance with the requirements of paragraph (f)(1) of this section, that the withholding is binding on the new employer.

(g) *Administration of withholding.* (1) The State must designate a public agency to administer withholding in accordance with procedures specified by the State for keeping adequate records to document, track, and monitor support payments.

(2)(i) The State may designate public or private entities to administer withholding on a State or local basis under the supervision of the State withholding agency if the entity or entities are publicly accountable and follow the procedures specified by the State; and (ii) the State may designate only one entity to administer withholding in each jurisdiction.

(3) Effective October 1, 1995, the State must be capable of receiving withheld amounts and accounting information which are electronically transmitted by the employer to the State.

(4) Amounts withheld must be distributed in accordance with section 457 of the Act and §§ 302.32, 302.51 and 302.52 of this chapter.

(5) The State must reduce its IV–D expenditures by any interest earned by the State's designee on withheld amounts.

(h) *Interstate withholding.* (1) The State law must provide for procedures to extend the State's withholding system

so that the system will include withholding from income or wages derived within the State in cases where the applicable support orders were issued in other States. A State may require registration of orders from other States for purposes of enforcement through withholding only if registration is for the sole purpose of obtaining jurisdiction for enforcement of the order; does not confer jurisdiction on the court or agency for any other purpose (such as modification of the underlying or original support order or resolution of custody or visitation disputes); and does not delay implementation of withholding beyond the timeframes established in paragraph (h)(5) of this section.

(2) The State law must require employers to comply with a withholding notice issued by the State.

(3) Within 20 calendar days of a determination that withholding is required in a particular case, and, if appropriate, receipt of any information necessary to carry out withholding, the initiating State must notify the IV–D agency of the State in which the absent parent is employed to implement interstate withholding. The notice must contain all information necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order and a statement of arrearages, if appropriate. If necessary, the State where the support order is entered must provide the information necessary to carry out the withholding within 30 calendar days of receipt of a request for information by the initiating State.

(4) The State in which the absent parent is employed must implement withholding in accordance with paragraph (h)(5) of this section upon receipt of the notice required in paragraph (h)(3) of this section.

(5) The State in which the absent parent is employed must:

(i) Within 15 calendar days of location of the absent parent and his or her employer, send notice to the absent parent, if appropriate, in accordance with the requirements of paragraph (d) of this section;

(ii) Provide the absent parent with an opportunity to contest the withholding, if appropriate, in accordance with paragraph (e) of this section;

(iii) Send notice to the employer in accordance with the requirements of paragraph (f) of this section; and

(iv) Notify the State in which the custodial parent is receiving services when the absent parent is no longer employed in the State and provide the name and address of the absent parent and new employer, if known.

(6) The withholding must be carried out in full compliance with all procedural due process requirements of the State in which the absent parent is employed.

(7) Except with respect to when withholding must be implemented which is controlled by the State where the support order was entered, the law and procedures of the State in which the absent parent is employed shall apply.

(i) *Provision for withholding in all child support orders.* Child support orders issued or modified in the State between October 1, 1985, and January 1, 1994, or modified on or after January 1, 1994, must have a provision for withholding of wages, in order to ensure that withholding as a means of support is available if arrearages occur without the necessity of filing an application for IV–D services. This requirement does not alter the requirement governing all IV–D cases in paragraph (a)(4) of this section that enforcement under the State plan must proceed without the need for a withholding provision in the order.

[FR Doc. 92–15696 Filed 7–9–92; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 649

### American Lobster Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Alternative fastener for lobster trap ghost panel specifications.

**SUMMARY:** NMFS has approved an alternative to the ghost panel designs and materials prescribed by regulations implementing Amendment 3 to the American Lobster Fishery Management Plan.

This action is being taken at the request of the New England Fishery Management Council Lobster Oversight Committee. This alternative will allow lobster fishermen to comply with the degradable escape panel requirements and allow escapement of lobster after a trap has been abandoned or lost.

**EFFECTIVE DATE:** Effective from July 10, 1992, through July 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Resource Policy Analyst, Fishery Management Operations, NMFS Northeast Regional Office, 508/281–9273.

**SUPPLEMENTARY INFORMATION:** The American lobster fishery is managed under the American Lobster Fishery Management Plan (FMP) under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) Ghost panel specifications approved under Amendment 3 to the FMP, became effective on May 26, 1992, and included a requirement that lobster traps contain a ghost panel to allow for the escapement of lobster after a trap has been abandoned or lost. The specification requirement, which appears at § 649.21(d)(1)(111), allows the use of the door of the lobster trap to serve as the ghost panel if fastened with a material described in § 649.21(d)(1)(11).

Implementing regulations at 50 CFR part 649 provide the Director, Northeast Region, NMFS, (Regional Director) with the authority to approve alternative designs and/or materials, under specified criteria, at the request of, or after consultation with, the New England Fishery Management Council's (Council) Lobster Oversight Committee (Committee).

At the April 23, 1992, Committee meeting, alternatives to this ghost panel specification were discussed and the Committee agreed to ask the Regional Director to consider the use of a bungee cord attachment in those instances when the bungee cord is attached with untreated non-stainless/uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter. At its May 20–21, 1992, meeting, the Council endorsed the Committee recommendation.

After consideration of the comments from the Committee, the Regional Director has decided that a lobster trap door fastened in the following manner is interpreted as an acceptable fastening alternative for the ghost panel regulations. This alternative will allow lobster fishermen to comply with the degradable escape panel requirements and allow escapement of lobster after a trap has been abandoned or lost.

The use of a bungee cord that is attached with untreated nonstainless/uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter can serve as the fastener of the trap door as specified in § 649.21(d)(1)(iii). The bungee cord must be attached so that when the untreated material degrades, the door of the trap will pivot open freely.

This action will be permanently codified in 50 CFR part 649 through an amendment to the FMP to follow.

### Classification

This action is authorized by 50 CFR 649.21 and complies with E.O. 12291.

**List of Subjects in 50 CFR Part 649**

Fisheries.

Dated: July 6, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-16173 Filed 7-9-92; 8:45 am]

BILLING CODE 3510-22-M

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**National Oceanic and Atmospheric Administration**

**50 CFR Part 672**

**[Docket No. 911176-2018]**

**Groundfish of the Gulf of Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for pollock in statistical area 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

**DATES:** Effective 12 noon, Alaska local time (A.l.t.), July 7, 1992, until 12 noon, A.l.t., September 28, 1992.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC for statistical area 63 is 10,470 metric tons, determined in accordance with § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS, in accordance with § 672.20(c)(2)(ii), has determined that the third quarterly allowance of pollock TAC for statistical area 63 will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in statistical area 63, effective from 12 noon A.l.t., July 7, 1992, until 12 noon, A.l.t., September 28, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

**Classification**

This action is taken under 50 CFR 672.20 and is in compliance with E.O. 12291.

**List of Subjects in 50 CFR Part 672**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 7, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-16201 Filed 7-7-92; 11:31 am]

BILLING CODE 3510-22-M

VOL
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# Proposed Rules

Federal Register
Vol. 57, No. 133
Friday, July 10, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 92-NM-87-AD]

## Airworthiness Directives; Boeing Model 727 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that currently requires inspection of the main landing gear (MLG) door actuator attach fitting bolts, and replacement, if necessary. This action would require revised inspection procedures, and provides a revised optional terminating modification. This proposal is prompted by a recent reassessment of the corrective actions required by the existing AD, which revealed that additional actions are necessary in order to fully address the unsafe condition. The actions specified by the proposed AD are intended to prevent landing with one MLG partially extended.

**DATES:** Comments must be received by August 24, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-87-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanton R. Wood, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2772; fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-87-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-87-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

### Discussion

On July 8, 1991, the FAA issued AD 91-15-14, Amendment 39-7078 (56 FR 46112, September 10, 1991), to require inspection of the main landing gear (MLG) door actuator attach fitting bolts, and replacement, if necessary. That action was prompted by reports of loose MLG door actuator attach fitting bolts that allowed movement of the fitting, which jammed the MLG door and prevented full extension of one MLG, resulting in a landing with that MLG partially extended. The requirements of that AD are intended to prevent a landing with one MLG partially extended.

Since the issuance of that AD, the FAA has completed a reassessment of the corrective actions required by the existing AD. As a result of that reassessment, the FAA has determined that the repetitive inspections required by AD 91-15-14 and the optional terminating action for these repetitive inspections may not adequately correct the addressed unsafe condition. The FAA now finds that a check for proper mating of the MLG actuator attach fitting serrations also is necessary in order to ensure the proper operation of the MLG during landing.

The FAA has reviewed and approved Boeing Service Bulletin 727-32-0383, Revision 1, dated January 30, 1992. This revision describes procedures for repetitive inspections of the MLG door actuator attach fitting serrations to ensure that they are fully mated; revised procedures for repetitive inspections of the attach fitting bolts for proper torque; and replacement of any damaged parts found. While the original issue of the service bulletin (which was cited in AD 91-15-14) described inspection procedures of two outboard bolts that attach the door actuator fitting to the attachment fitting for the actuator beam, Revision 1 of the service bulletin delineates inspections of three bolts in this area. This service bulletin revision also describes a revised optional terminating action for the repetitive inspections. This optional terminating action consists of replacing certain nuts and bolts on the attach fitting.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91-15-14 to require the revised inspection procedures described previously, and replacement of any damaged parts found. This proposed AD would also provide a revised optional modification which, if accomplished, would constitute terminating action for

the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 1,635 Boeing Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,047 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $57,585. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39-7078 (56 FR 46112, September 10, 1991), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 92-NM-87-AD. Supersedes AD 91-15-14, Amendment 39-7078.

*Applicability:* All Model 727 airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a landing with one main landing gear (MLG) partially extended, accomplish the following:

(a) Within the next 1,500 flight cycles after October 15, 1991 (the effective date of AD 91-15-14, Amendment 39-7078), inspect for loose MLG door actuator attach fitting bolts, in accordance with Part III, Accomplishment Instructions, of Boeing Service Bulletin 727-32-0383, dated December 6, 1990.

(b) If loose bolts are found as a result of the inspection required by paragraph (a) of this AD, prior to further flight, accomplish Figure 1 or 2 of Boeing Service Bulletin 727-32-0383, dated December 6, 1990.

(c) For airplanes that have accomplished the actions required by paragraph (a) of this AD prior to the effective date of this AD: Prior to the accumulation of 3,700 flight cycles after accomplishing the inspection or replacement required by paragraphs (a) and (b) of this AD, or within 3 years after the effective date of this AD, whichever occurs first; and thereafter at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs first; inspect the MLG door actuator attach fitting to ensure that serrations are fully mated, and to detect loose bolts, in accordance with part III, Accomplishment Instructions, of Boeing Service Bulletin 727-32-0383, Revision 1, dated January 30, 1992.

(d) If serrations are not fully mated, or if loose bolts are found, accomplish Figure 1 or 2 of Boeing Service Bulletin 727-32-0383, Revision 1, dated January 30, 1992.

(1) If Figure 1 is accomplished, repeat the inspection required by paragraph (c) of this AD at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs first.

(2) Accomplishment of Figure 2 constitutes terminating action for the inspection requirements of paragraph (c) of this AD.

(e) For airplanes that have not previously accomplished the actions required by paragraph (a) of this AD prior to the effective date of this AD: Prior to the accumulation of 1,500 flight cycles after the effective date of this AD, or within 18 months after the effective date of this AD, whichever occurs first; and thereafter at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs first; inspect the MLG door actuator attach fitting to ensure that serrations are fully mated, and to detect loose bolts, in accordance with Part III, Accomplishment Instructions, of Boeing Service Bulletin 727-32-0383, Revision 1, dated January 30, 1992.

(f) If serrations are not fully mated, or if loose bolts are found, accomplish Figure 1 or 2 of Boeing Service Bulletin 727-32-0383, Revision 1, dated January 30, 1992.

(1) If Figure 1 is accomplished, repeat the inspection required by paragraph (e) of this AD at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs first.

(2) Accomplishment of Figure 2 constitutes terminating action for the inspection requirements of paragraph (e) of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 23, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16207 Filed 7-9-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 92-NM-94-AD]**

## Airworthiness Directives; Garrett Model GTCP 36-280 and GTCP 36-300 Auxiliary Power Units, as Installed in, but not Limited to, Airbus Industrie Model A320 Series Airplanes; McDonnell Douglas Model DC-9-80 Series Airplanes; and Boeing Model 737 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Garrett Model GTCP 36-280 and GTCP 36-300 auxiliary power units (APU). This proposal would require a modification of these APU's that will ensure the retention of the APU tieshaft. This proposal is prompted by two incidents of APU tieshaft separation. The actions specified by the proposed AD are intended to prevent APU tieshaft separation, which could cause the tieshaft to exit the inlet plenum and

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puncture the titanium fire wall of the airplane.

**DATES:** Comments must be received by August 24, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-94-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Garrett Airlines Services Division, Technical Publications, Department 65-70, P.O. Box 52170, Phoenix, Arizona 85072-2170. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-140L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5245; fax (310) 988-5210.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-94-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-94-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**Discussion**

Two incidents, involving Airbus Industrie Model A320 series airplanes equipped with Garrett Model GTCP 36-300 auxiliary power units (APU), have occurred in which the tieshaft separated due to severe imbalance in the rotation group. The resulting translational energy caused the compressor shaft to exit the APU inlet plenum and puncture the titanium APU fire wall. One of these APU tieshaft separations resulted in a two inch hole in the titanium APU fire wall and a cracked fuselage skin. APU tieshaft separation, if not corrected, could result in damage to the titanium APU fire wall, which could lead to a reduction in the fire protection capability of the APU compartment.

The Garrett Model 36-280 APU is similar in design to the Model 36-300 APU and, therefore, may be subject to the same potential unsafe condition.

The FAA has reviewed and approved Garrett Service Bulletin GTCP36-49-A6642, dated May 1, 1992, that describes procedures for modification of the Garrett Model GTCP 36-300 APU, as installed in, but not limited to, Airbus Industrie Model A320 series airplanes. The FAA has also reviewed and approved Garrett Service Bulletin GTCP36-49-A6653, dated May 1, 1992, that describes procedures for modification of the Garrett Model GTCP 36-280 APU, as installed in, but not limited to, McDonnell Douglas Model DC-9-80 series airplanes and Boeing Model 737 series airplanes. The modification described in these service bulletins involves reworking the load compressor and engine compressor, as well as replacing the rotating group and compressor shaft. Accomplishing this modification will extend the shaft support configuration to retain the tieshaft with the engine compressor and load compressor, which are constrained within the static structure during any tieshaft separations.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of certain Garrett Model GTCP 36-280 and GTCP 36-300 APU's. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 247 Airbus Industrie Model A320 series airplanes, 118 McDonnell Douglas Model DC-9-80 series airplanes, and 34 Boeing Model 737 series airplanes of the affected design in the worldwide fleet that may be equipped with the affected APU's. The FAA estimates that 47 Airbus Industrie Model A320 series airplanes and 118 McDonnell Douglas Model DC-9-80 series airplanes of U.S. registry would be affected by this proposed AD. There are currently no Boeing Model 737 series airplanes of U.S. registry equipped with the affected APU's.

The FAA estimates that it would take approximately 15 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts will be provided by the manufacturer at no cost to operators.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $136,125, or $825 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator,



the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Garrett Auxiliary Power Division:** Docket 92-NM-94-AD.

*Applicability:* Garrett Model GTCP 36-300 auxiliary power units (APU), as installed in, but not limited to, Airbus Industrie Model A320 series airplanes, McDonnell Douglas Model DC-9-80 series airplanes, and Boeing Model 737 series airplanes; Garrett Model GTCP 36-280[D] APU's, serial numbers prior to P-80346, as installed in, but not limited to, McDonnell Douglas Model DC-9-80 series airplanes; and Garrett Model GTCP 36-280[B] APU's, serial numbers prior to P-40182, as installed in, but not limited to, Boeing Model 737 series airplanes; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent damage to the titanium APU fire wall due to APU tieshaft separation, which could lead to a reduction in the fire protection capability of the APU compartment, accomplish the following:

(a) For airplanes equipped with Garrett Model GTCP 36-300 APU's: Within 30 months after the effective date of this AD, modify the APU, in accordance with Garrett Service Bulletin GTCP36-49-A6642, dated May 1, 1992.

(b) For airplanes equipped with Garrett Model GTCP 36-280 APU's: Within 30 months after the effective date of this AD, modify the APU, in accordance with Garrett Service Bulletin GTCP36-49-A6653, dated May 1, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 23, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16214 Filed 7-9-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 92-NM-121-AD]**

## Airworthiness Directives; SAAB-SCANIA Models SAAB SF340A and SAAB 340B Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain SAAB-SCANIA Models SAAB SF340A and SAAB 340B series airplanes. This proposal would require relocation of the sensor loops of the bleed air leak detection system. This proposal is prompted by recent reports of bleed air leak detection systems failing to indicate leaks in the bleed air duct. The actions specified by the proposed AD are intended to prevent damage/disbonding of the fuselage skin due to overheat, and subsequent reduced structural capability of the fuselage skin.

**DATES:** Comments must be received by August 24, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-121-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB-SCANIA AB, Product Support, S-581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-13, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-121-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-121-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**Discussion**

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain SAAB-SCANIA Models SAAB SF340A and SAAB 340B series airplanes. The LFV advises that there have been recent reports of bleed air leak detection systems failing to indicate leaks in the bleed air duct. This condition, if not corrected, could result in damage/disbonding of the fuselage skin due to overheat, and subsequent reduced structural capability of the fuselage skin.

SAAB-SCANIA has issued Service Bulletin 340-36-005, dated March 20, 1992, which describes procedures for re-routing the sensor loops of the bleed air leak detection system to a better position in order to ensure overheat/leak detection. The LFV classified this service bulletin as mandatory and

issued Swedish Airworthiness Directive 1–053 in order to assure the continued airworthiness of these airplanes in Sweden.

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require relocation of the sensor loops of the bleed air leak detection system. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 172 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $28,380. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Saab-Scania:** Docket 92–NM–121–AD.

*Applicability:* Model SAAB SF340A series airplanes, serial numbers 004 through 159, inclusive; and SAAB 340B series airplanes, serial numbers 160 through 299, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent damage/disbonding and subsequent reduced structural capability of the fuselage skin, accomplish the following:

(a) Within 3 months after the effective date of this AD, relocate the sensor loops of the bleed air leak detection system, in accordance with SAAB–SCANIA Service Bulletin 340–36–005, dated March 20, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 23, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–16215 Filed 7–9–92; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 92–NM–93–AD]**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require inspections to detect cracks and corrosion of the portal latch pin support fittings of certain cargo doors, and rework or replacement of damaged parts; and eventual modification of those fitting installations. It would also require inspections to detect cracks and corrosion of the cam latch bellcranks and cam latches of certain cargo doors, and rework or replacement of damaged parts; and eventual replacement of the cam latches. This proposal is prompted by numerous reports of corroded or cracked fittings, cam latch bellcranks, and cam latches. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the latch system for the cargo doors, resulting in a door opening in flight and rapid depressurization of the airplane.

**DATES:** Comments must be received by September 10, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–93–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Pliny Brestel, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2783; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–93–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–93–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**Discussion**

In February 1989, a cargo door on a Boeing Model 747 series airplane opened in flight, resulting in an explosive decompression of the airplane. Although the cause of the accident has not been determined, it became apparent that the latching, locking, and warning systems of the cargo door were a factor in its opening in flight.

In June 1989, the Air Transport Association (ATA) of America sponsored a conference to focus on continued structural airworthiness of non-plug type cargo doors. A Cargo Door Task Force was established, including representatives from the operators, the manufacturers, and the FAA. One objective of the Task Force was to select service bulletins to be recommended for mandatory accomplishment in order to enhance safety. Two service bulletins, Boeing Service Bulletin 747–52–2186 and Boeing Service Bulletin 747–52–2107 (superseded by Boeing Alert Service Bulletin 747–52A2233), which are both applicable to the Model 747 series airplane lower lobe forward and aft cargo doors and the main deck side cargo door, are addressed in this proposal.

The manufacturer has reported that numerous cargo door portal latch pin support fittings have been found with corrosion, and one fitting had cracked and broken into two separate pieces. Also, there have been reports of the failure of certain bolts that attach the latch fittings to the door sill. Investigation revealed that the cracking and breaking have been attributed to stress corrosion. These conditions, if not corrected, could result in loss of the structural integrity of the latch fitting or its attachments, opening of the door in flight, and ultimately, rapid decompression of the airplane.

In addition, the manufacturer has reported several instances of cracked or fractured cam latches. Investigation revealed that these fatigue cracks originated at the cross-bolt hole attachment to the bellcrank. Fractured cam latches can result in the adjacent door structure receiving more load, which could subsequently result in cumulative fatigue-type damage to the structure, opening of the door in flight, and ultimately, rapid decompression of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991, that describes procedures for repetitive inspections to detect cracks and corrosion of the portal latch pin support fittings for the lower lobe forward and aft cargo doors and the main deck side cargo door, if installed; and rework or replacement of damaged parts and a check of the door rigging, as necessary. The service bulletin also describes procedures for modification of certain portal latch pin support fitting installations.

The FAA has also reviewed and approved Boeing Alert Service Bulletin 747–52A2233, dated August 29, 1991, that describes procedures for inspections to detect cracks and corrosion of the cam latch bellcranks and cam latches for lower lobe forward and aft cargo doors and the main deck side cargo door, if installed; rework of damaged parts, or replacement of bellcranks and cam latches; and operational testing. This service bulletin also describes procedures for replacement of certain cam latches as terminating action for the inspections.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive inspections to detect cracks of the portal latch pin support fittings for lower lobe forward and aft cargo doors and main deck side cargo door, if installed, and rework or replacement of damaged parts, and a check of the door rigging, as necessary. These repetitive inspections may be performed with no disassembly necessary. The proposed AD would also require eventual disassembly of parts for a close inspection to detect cracks and corrosion, and modification of certain portal latch pin support fitting installations, which would constitute terminating action for the repetitive inspections.

The proposed AD would also require inspections to detect cracks and corrosion of the cam latch bellcranks and cam latches for lower lobe forward and aft cargo doors and main deck side cargo door, if installed, and rework of damaged parts, or replacement of bellcranks and cam latches; operational testing; and eventual replacement of certain cam latches, which would constitute terminating action for the inspections of the cam latch bellcranks and cam latches.

The proposed actions would be required to be accomplished in accordance with the Boeing service bulletins described previously.

The FAA estimates that 204 airplanes of U.S. registry would be required to perform inspections and modification of the portal latch pin support fittings, that it would take approximately 59 work hours to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of these actions on U.S. Operators is estimated to be $661,980.

The FAA estimates that 134 airplanes of U.S. registry would be required to perform inspections of the cam latch bellcranks and cam latches and replacement of the cam latches, that it would take approximately 92 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts for these actions would cost approximately $36,128 per airplane. Based on these figures, the total cost impact of these actions on U.S. operators is estimated to be $5,519,192.

Based on these figures, the total cost impact of this proposed AD on U.S. operators is estimated to be $6,181,172. This total cost figure assumes that no U.S. operator has yet accomplished any

of the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 92–NM–93–AD.

*Applicability:* Model 747 series airplanes; as listed in Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991, and Boeing Alert Service Bulletin 747–52A2233, dated August 29, 1991; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent inadvertent in-flight opening of the lower lobe forward and aft cargo doors and the main deck side cargo door, if installed, accomplish the following:

(a) Prior to the accumulation of 1,800 flight hours after the effective date of this AD, or within 600 flight cycles after the effective date of this AD, whichever occurs first: With no disassembly required, perform a general visual inspection to detect cracks in the portal latch pin support fittings on the lower lobe forward and aft cargo doors and on the main deck side cargo door, if installed and in the cargo configuration, in accordance with Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991.

(1) Repeat this visual inspection at intervals not to exceed 1,800 flight hours or 600 flight cycles, whichever occurs first, in accordance with the service bulletin.

(2) If any cracked part is found as a result of the inspections required by paragraphs (a) or (a)(1) of this AD, prior to further flight, replace it and check the door rigging, in accordance with the service bulletin.

(b) Prior to the accumulation of 12,500 flight hours after the effective date of this AD, or 2,500 flight cycles after the effective date of this AD, or within 30 months after the effective date of this AD, whichever occurs first: With no disassembly required, perform a general visual inspection to detect cracks in the portal latch pin support fittings on the main deck side cargo door, if installed and in the passenger configuration, in accordance with Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991.

(1) Repeat this visual inspection at intervals not to exceed 12,500 flight hours, 2,500 flight cycles, or 30 months after the immediately preceding inspection, whichever occurs first, in accordance with the service bulletin.

(2) If any cracked part is found as a result of the inspections required by paragraphs (b) or (b)(1) of this AD, prior to further flight, replace it and check the door rigging in accordance with the service bulletin.

(c) When converting from the passenger configuration to the cargo configuration, prior to further flight, and thereafter at intervals not to exceed 1,800 flight hours or 600 flight cycles, whichever occurs first: With no disassembly required, perform a visual general inspection to detect cracks in the portal latch pin support fitting assemblies of the main deck side cargo door, if installed, in accordance with Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991. Prior to further flight, replace any cracked parts found, in accordance with the service bulletin.

(d) When converting from the cargo configuration to the passenger configuration, prior to further flight, and thereafter at intervals not to exceed 12,500 flight hours, 2,500 flight cycles, or 30 months after the immediately preceding inspection, whichever occurs first: With no disassembly required, perform a visual inspection to detect cracks in the portal latch pin support fitting assemblies of the main deck side cargo door, if installed, in accordance with Boeing Service Bulletin 747–52–2186, Revision 4, dated October 24, 1991. Prior to further flight, replace any cracked parts found, in accordance with the service bulletin.

(e) Prior to the accumulation of 25,000 flight hours after the effective date of this AD, or 5,000 flight cycles after the effective date of this AD, or within 5 years after the effective date of this AD, whichever occurs first: Disassemble parts and perform a close detailed visual inspection to detect cracks and corrosion in the portal latch pin support fitting assemblies/installations on the lower lobe forward and aft cargo doors and on the main deck side cargo door, if installed, in accordance with Boeing Service Bulletin 747–52–2816, Revision 4, dated October 24, 1991.

(1) If cracks or corrosion are found, prior to further flight, repair or replace any damaged parts, and check the door rigging, in accordance with the service bulletin.

(2) Inspect to verify that all H–11 steel latch fitting to sill bolts, BACB30MT, and corresponding nuts, BACN10HR ( ), have been replaced with superseding BACB30US bolts and corresponding BACN10HR( )CD nuts. If not, prior to further flight, install the superseding BACB30US bolts and BACN10HR( )CD nuts, in accordance with the service bulletin.

(3) Apply sealant to the portal latch pin support fitting and attaching hardware, in accordance with the service bulletin.

(4) Accomplishment of paragraphs (e), (e)(1), (e)(2), and (e)(3) of this AD constitutes terminating action for the repetitive inspections required by paragraphs (a)(1), (b)(1), (c), and (d) of this AD.

(f) Prior to the accumulation of 6,000 flight hours after the effective date of this AD, or within 18 months after the effective date of this AD, whichever occurs first: Determine the configuration of the bellcrank/cam latch assembly of the lower lobe forward and aft cargo doors and of the main deck side cargo door, if installed, and perform the procedures specified in either paragraph (f)(1) or (f)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 747–52A2233, dated August 29, 1991. Prior to further flight, repair or replace damaged parts, in accordance with the service bulletin.

(1) For cargo doors with cam latches attached to the bellcrank by cross bolts, accomplish one of the procedures specified in paragraph (f)(1)(i), (f)(1)(ii), or (f)(1)(iii) of this AD:

(i) Replace all bellcranks and cam latches with bellcranks and cam latches of the new part configuration, in accordance with Section III., paragraph F., of the service bulletin; and perform an operational test of the door latch mechanism, in accordance with Section III., paragraph Y., of the service bulletin. Or

(ii) Inspect the bellcranks to detect corrosion and, prior to further flight, repair or replace any corroded parts; and replace all cam latches with cam latches of the new part configuration, in accordance with Section III., paragraph G., of the service bulletin. Perform an operational test of the door latch mechanism, in accordance with Section III., paragraph Y., of the service bulletin. Or

(iii) Inspect the bellcranks to detect corrosion and, prior to further flight, repair or replace any corroded parts; and inspect the cam latches to detect cracks and corrosion and, prior to further flight, repair or replace any cracked or corroded parts; in accordance with Section III., paragraph H., of the service bulletin. Perform an operational test of the door latch mechanism, in accordance with Section III., paragraph Y., of the service

bulletin. If one or more of the cam latches are repaired and/or reinstalled as a result of the actions required by this paragraph, replace those cam latches in accordance with paragraph (g) of this AD.

(2) For cargo doors with cam latches attached to the bellcrank by axial bolts, determine the configuration of the cam latches, and accomplish the procedures specified in either paragraph (f)(2)(i) or (f)(2)(ii) of this AD:

(i) Replace all cam latches that have cross-bolt holes with cam latches of the new part configuration, in accordance with Section III., paragraph L., of the service bulletin. Perform an operational test of the door latch mechanism, in accordance with Section III., paragraph Y., of the service bulletin. Or

(ii) If the cam latches do not have cross-bolt holes, they may be reinstalled. If the cam latches have cross-bolt holes, inspect those latches to detect cracks; and, prior to further flight, replace any cracked cam latches or reinstall those cam latches that were not found cracked, in accordance with Section III., paragraph J., of the service bulletin. Perform an operational test of the door latch mechanism, in accordance with Section III., paragraph Y., of the service bulletin. If one or more of the cam latches that have cross-bolt holes is reinstalled as a result of the actions required by this paragraph, replace those cam latches in accordance with paragraph (g) of this AD.

(g) Prior to the accumulation 25,000 flight hours after the effective date of this AD, or within 5 years after the effective date of this AD, whichever occurs first, accomplish the procedures specified in either paragraph (g)(1) or (g)(2) of this AD, as applicable, in accordance will Boeing Alert Service Bulletin 747–52A2233, dated August 29, 1991:

(1) If one or more of the cam latches on the lower lobe forward and aft cargo doors and main deck side cargo door was repaired and/or reinstalled in accordance with paragraph (f)(1)(iii) of this AD, replace those cam latches with cam latches of the new part configuration, in accordance with Section III. of the service bulletin. Perform an operational test of the door latch mechanism, in accordance with Section III., paragraph Y., of the service bulletin. Or

(2) If one or more of the cam latches that have cross-bolt holes on the lower lobe forward and aft cargo doors and main deck side cargo doors was reinstalled in accordance with paragraph (f)(2)(ii) of this AD, replace those cam latches with cam latches of the new part configuration, in accordance with Section III. of the service bulletin. Perform an operational test of the door latch mechanism, in accordance with section III., paragraph Y., of the Service bulletin.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Settle ACO.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 9, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–16219 Filed 7–9–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 92–NM–107–AD]**

## Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require revisions to the FAA-approved Airplane Flight Manual (AFM) to include a minimum speed limitation and to amend weather and automatic flight control and augmentation system (AFCAS) limitations; and a one-time inspection to determine the dimensions of the autopilot input brackets of the rudder post assembly, and replacement of incorrect brackets. This proposal is prompted by a recent report that incorrect brackets were mounted on the rudder post assembly on one of these airplanes. The actions specified by the proposed AD are intended to prevent an incorrect rudder deflection.

**DATES:** Comments must be received by August 25, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–107–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–107–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–107–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

### Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that there has been a recent report of a mechanical limitation at approximately 29 degrees in one direction on a rudder on a Model F28 Mark 0100 series airplane. Results of a subsequent inspection revealed that incorrect autopilot input brackets were mounted

on the cable quadrant of the rudder post assembly at zone 330. Under certain conditions, these brackets can cause overcentering of the autopilot input bracket and push-pull rod, resulting in the one-sided mechanical restriction described previously. It can also lead to autopilot servo commands, which will deflect the rudder in the opposite direction. This condition, if not corrected, could result in an incorrect rudder deflection.

Fokker has issued Service Bulletin SBF100-027-041, dated February 24, 1992, which describes procedures for a one-time inspection to determine the dimensions of the autopilot input brackets of the rudder post assembly, and replacement of incorrect brackets. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA No. 92-034 in order to assure the continued airworthiness of these airplanes in the Netherlands. The Netherlands Airworthiness Directive includes procedures for revising the Airplane Flight Manual (AFM) to include a minimum speed limitation on dry, wet, or icy runways, to amend the maximum allowable cross-wind component for takeoff and landing, and to amend the automatic flight control and augmentation system (AFCAS) limitations.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revisions to the FAA-approved AFM to include a minimum speed limitation on dry, wet, or icy runways, to amend the maximum allowable cross-wind component for takeoff and landing, and to amend the AFCAS limitations. This proposed AD would also require a one-time inspection to determine the dimensions of the autopilot input brackets of the rudder post assembly, and replacement of any incorrect brackets found. Once the inspection and any necessary corrective action have been accomplished, the AFM limitations described previously may be removed from the AFM. The inspection (and any necessary replacement) would be required to be accomplished in accordance with the service bulletin described previously.

The proposed compliance time for revising the AFM is 30 days; the proposed compliance time for conducting the inspection is 45 days. These times were developed in consideration of (1) the safety implications, (2) necessary parts availability, (3) normal maintenance schedules for timely accomplishment of the inspection, and (4) the fact that an operator survey indicates that 48 out of 51 affected airplanes have already been modified (brackets replaced). The FAA considers that the compliance times proposed are the maximum intervals allowable for all affected airplanes to continue to operate without compromising safety.

The FAA estimates that 51 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, and 5 work hours per airplane to accomplish the proposed inspection. The average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $16,830.

The total cost figure discussed above assumes that no operator has yet accomplished any of the proposed requirements of this AD action. However, a survey conducted of U.S. operators has revealed that, to date, the proposed requirements already have been accomplished on 48 out of the 51 affected airplanes. Therefore, the actual total cost impact of this proposed rule would be substantially less than the figure indicated above.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker:** Docket 92-NM-107-AD.

*Applicability:* Model F28 Mark 0100 series airplanes; serial numbers 11262 through 11267, inclusive, and 11270 through 11378, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent an incorrect rudder deflection, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) as follows. Paragraph (a)(1) of this AD may be accomplished by inserting a copy of this AD into the AFM.

(1) Add the following to section 2.04.01, SPEED LIMITATIONS: "MINIMUM $V_1$ ON DRY OR WET RUNWAY IS 110 KNOTS. MINIMUM $V_1$ ON ICY RUNWAY IS 117 KNOTS."

(2) Amend section 2.05.01, WEATHER LIMITATIONS, as follows: "MAXIMUM ALLOWABLE CROSS-WIND COMPONENT FOR TAKEOFF AND LANDING—25 KNOTS"

(3) Amend section 2.08.01, AFCAS LIMITATIONS, as follows: "DO NOT ENGAGE AP WHILE AFCAS IS IN TAKEOFF MODE.

*APPROACH/LANDING*

IN LAND MODE (GS/LOC IN FMA) DISENGAGE AP AT 1,500 FEET AGL AND CONTINUE APPROACH ON FLIGHT DIRECTOR."

(b) Within 45 days after the effective date of this AD, inspect to determine the dimensions of the autopilot rudder servo input brackets of the rudder post assembly, part numbers 77938–003 and 77939–003; and, if brackets with incorrect dimensions are found, prior to further flight, replace those brackets; in accordance with Fokker Service Bulletin SBF100–027–041, dated February 24, 1992.

(c) After accomplishment of paragraph (b) of this AD, the limitations required by paragraphs (a)(1), (a)(2), and (a)(3) of this AD may be removed from the FAA-approved Airplane Flight Manual.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 25, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–16209 Filed 7–9–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 92–NM–83–AD]**

## Airworthiness Directives; Fokker Model F28 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 series airplanes. This proposal would require installation of an improved top of the center wing-to-fuselage skin connection. This proposal is prompted by several reports of fatigue cracks found in the connection angles that are part of the top of the center wing-to-fuselage skin connection. The actions specified by the proposed AD are intended to prevent failure of the wing-to-fuselage connection.

**DATES:** Comments must be received by August 25, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–83–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–83–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–83–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

### Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 series airplanes. The RLD advises that several operators have reported fatigue cracks in the connection angles that are part of the top of the center wing-to-fuselage skin connection.

There are three versions of the top of the center wing-to-fuselage skin connection. All connection angles are split up into two sections at frame 10790. The first group of Model F–28 series airplanes produced has been equipped with connection angles, installed with sealing angles at frames 9805, 10790, and 11905. Fatigue cracks have been found in these connection angles. Thicker connection angles were installed on the second group of these airplanes. However, fatigue reevaluation revealed that the latter connection angles were also prone to fatigue cracks. Consequently, the last group of these airplanes has been equipped with additional reinforcement angles at frames 10305 and 11405. Although the connection angles of the first group are visually inspected on a regular basis, service experience has shown that sometimes relatively large cracks can be found. Fatigue cracks in these areas, if not corrected, could result in failure of the wing-to-fuselage connection.

Fokker has issued Service Bulletin F28/53–101, dated May 31, 1991, which describes procedures for installation of an improved top of the center wing-to-fuselage skin connection. Fokker recommends the accomplishment of this installation prior to the accumulation of 30,000 landings or prior to June 1, 1997, whichever occurs later. All Model F28 series airplanes should be modified by the June 1, 1997, date; however, the 30,000 landing limit was established for the youngest of the airplanes requiring the installation, which may not reach this number of landings by June 1, 1997. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA No. 91–055 in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness

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agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of an improved top of the center wing-to-fuselage skin connection. The installation would be required to be accomplished in accordance with the service bulletin described previously. Accomplishment of this installation would constitute terminating action for the repetitive inspection of the connection angles, identified as Item 53-10-14 in the Fokker F28 Structural Integrity Program (SIP), which is required by AD 89-07-16 R1, Amendment 39-6444 (55 FR 266, January 4, 1990).

The installation of an improved top of the center wing-to-fuselage skin connection, as described in the Fokker service bulletin, has been reviewed by the Aviation Rulemaking Advisory Committee (ARAC)-chartered F28 Aging Aircraft Task Group. That group has recommended that the installation be mandatory since it has been found to meet the criteria for mandatory modifications, those necessary to ensure the continuing airworthiness of the aging fleet. The FAA participated in this review and concurred with the recommendation.

The FAA's decision to propose the installation is also based, in part, on the fact that service experience has demonstrated that repetitive inspections currently conducted in the subject area may not be providing the degree of safety assurance necessary for these airplanes. As mentioned previously, although the area is currently subjected to visual inspections on a regular basis, relatively large cracks have been found, indicating that a significant crack growth rate exists. If fatigue cracks were grow to a size where the limit load could not be sustained, failure of the wing-to-fuselage connection could occur. Should total failure occur, the wing could separate from the fuselage.

Additionally, inspection of the subject area is time-consuming: Gaining access to the area requires at least 4 work hours and includes the removal of passenger seats, access panels, floor panels, fairing panels, and interior/soundproofing panels, and, on some airplanes, the removal of the center-wing bag tanks. Conducting a visual inspection of the area requires at least 2 work hours.

In light of these items, the FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The installation proposed by this proposed AD action is in consonance with those considerations.

The FAA estimates that 44 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 450 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $3,600 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,247,400. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker:** Docket 92-NM-83-AD.

*Applicability:* Model F28 series airplanes; serial numbers 11003 through 11161, inclusive, 11991, and 11992; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent potential failure of the wing-to-fuselage connection, accomplish the following:

(a) Prior to the accumulation of 30,000 landings, or prior to June 1, 1997, whichever occurs later, install improved connection angles with reinforcement angles, in accordance with Fokker Service Bulletin F28/53-101, dated May 31, 1991.

(b) Accomplishment of the installation required by paragraph (a) of this AD constitutes terminating action for the inspection identified as item 53-10-14 in the Fokker F28 Structural Integrity Program (SIP), which is required by AD 89-07-16 R1, Amendment 39-6444.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 25, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16211 Filed 7-9-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-92-AD]

## Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 series airplanes. This proposal would require replacing certain existing emergency evacuation slides/rafts with modified slides/rafts. This proposal is prompted by the results of two evacuation demonstrations that revealed buckling of the evacuation slides/rafts and poor visibility of the slides for passengers evacuating during night lighting conditions. This condition, if not corrected, could delay or impede the evacuation of passengers during an emergency.

**DATES:** Comments must be received by August 25, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-92-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Layton Walker, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5339; fax (310) 988-5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-92-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-92-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

### Discussion

Following two evacuation demonstrations on McDonnell Douglas Model MD-11 airplanes, buckling of the evacuation slides/rafts was observed at the number 2 and 4 passenger doors. At the overwing door, the ramp portion of the slide/raft moved forward on the wing, which caused the slide to tilt, thus impeding the evacuation. Poor visibility of the evacuation slides/rafts also was noted during demonstrations that were conducted under night lighting conditions. This caused hesitation among test evacuees in jumping onto the slides and impeded rapid evacuation of the airplane. This condition, if not corrected, could cause delays or impede the evacuation of passengers during an emergency.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 25-87, dated January 23, 1992; and McDonnell Douglas Service Bulletin 25-116, Revision 1, dated May 15, 1992; that describe procedures for installing placards on the slide/rafts, and replacing existing emergency evacuation slides/rafts with modified ones at forward, mid, overwing, and aft passenger doors. Among other things, the modified slide/rafts incorporate (1) new emergency lighting that provides a higher level of illumination of side lanes, (2) deceleration pads at the runway end of the slide/raft, and (3) improved inflate/deflate valves. (These McDonnell Douglas service bulletins refer to several Air Cruisers service bulletins for additional information.)

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacing certain existing emergency evacuation slides/rafts with modified slides/rafts. The actions would be required to be accomplished in accordance with the McDonnell Douglas service bulletins described previously.

The FAA proposes a three-tier compliance time for the replacement of currently installed slide/rafts with modified evacuation slides. The proposed compliance times were developed primarily from data obtained from evacuation demonstrations performed on Model MD-11 and Model DC-10 series airplanes. The FAA reviewed the results of evacuation demonstrations that relate to the number of passengers successfully egressing, the time required for egressing, the number of passenger seats and passenger configuration, and, especially, the number of passenger seats located in the aft section of the plane. Based on this data, the FAA is proposing a compliance time of 12 months for the replacement on airplanes with interior passenger seating configurations not exceeding 306, and the number of passenger seats in the zone between doors 3 and 4 not exceeding 165. The FAA is proposing a compliance time of 6 months for the replacement on airplanes with interior passenger seating configurations from 307 to 381, inclusive, and the number of passenger seats in the zone between doors 3 and 4 not exceeding 165.

Because approval of airplanes having a passenger configuration not exceeding 381, and with more than 165 passengers in the zone between doors 3 and 4, is based partially on actual demonstrated data and partially on analysis, the risk potential is higher for these airplanes. Therefore, the FAA considers that the affected slides on these airplanes must be replaced expeditiously, and is proposing a 3 month compliance time for those airplanes.

McDonnell Douglas has advised the FAA that there are Model MD-11 series airplanes that have passenger configurations exceeding 381 (but none that exceed 399 passenger seats). In order for these planes to be FAA-approved, the modified evacuation

slides/rafts (as addressed in this AD action) must be installed during production. For this reason, airplanes having these passenger configurations are not addressed in this proposed AD action.

The proposed compliance times were also developed with respect to potential problems with parts availability. The manufacturer of the modified slides has advised the FAA that, at this time, it can not provide all the slides needed to modify all Model MD–11 series airplanes in the fleet at one time. This manufacturer will necessitate a timeframe of approximately 12 months to supply the in-service fleet.

There are approximately 57 Model MD–11 airplanes of the affected design in the worldwide fleet. The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 28 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $28,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $590,800, or $29,540 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Docket 92–NM–92–AD.

*Applicability:* Model MD–11 series airplanes; operating in an 11-passenger configuration, or in any combination of passenger and main deck cargo configurations; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

**Note:** Model MD–11 series airplanes that are operated as freighters may continue to use the existing unmodified slides at door number 1. Should any of these airplanes be converted to an all-passenger configuration, or any combination of passenger and main deck cargo configurations, the requirements of this AD must be accomplished.

To prevent buckling of the evacuation slides/rafts and poor visibility during night lighting conditions, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) For Model MD–11 series airplanes with interior passenger seating configurations not exceeding 306, and the number of passenger seats in the zone between doors 3 and 4 not exceeding 165: Within 12 months after the effective date of this AD, replace existing evacuation slides/rafts with modified slides/rafts, part numbers 60289–115 or –117; 60290–115; 60291–115; and 60291–116; in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 25–87, dated January 23, 1992; and McDonnell Douglas Service Bulletin 25–116, Revision 1, dated May 15, 1992.

(b) For Model MD–11 series airplanes with interior passenger seating configurations from 307 to 381, inclusive, and the number of passenger seats in the zone between doors 3 and 4 not exceeding 165: Within 6 months after the effective date of this AD, replace existing evacuation slides/rafts with modified slides/rafts, part numbers 60289–115 or –117; 60290–115; 60291–115; and 60291–116; in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 25–116, Revision 1, dated May 15, 1992.

(c) For Model MD–11 series airplanes with interior passenger seating configurations not exceeding 381, and more than 165 passenger seats in the zone between doors 3 and 4: Within 3 months after the effective date of this AD, replace existing evacuation slides/rafts with modified slides/rafts part numbers 60289–115 or –117; 60290–115; 60291–115; and 60291–116; in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 25–87, dated January 23, 1992; and McDonnell Douglas Service Bulletin 25–116, Revision 1, dated May 15, 1992.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 25, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–16210 Filed 7–9–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 92–NM–96–AD]**

**Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F28 Mark 0100 series airplanes equipped with certain main landing gear (MLG) downlock actuator mechanisms. This proposal would require modification of certain MLG downlock actuator mechanisms. This proposal is prompted by reports that a number of MLG's have failed to give a downlock indication on the first gear down selection. The actions specified by the proposed AD are intended to prevent false indications to the crew that the landing gear is not down and locked.

**DATES:** Comments must be received by August 24, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–96–

AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–96–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–96–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**Discussion**

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on all Fokker Model F28 Mark 0100 series airplanes equipped with certain main landing gear (MLG) downlock actuator mechanisms. The RLD advises that there have been reports that a number of MLG's have failed to give a downlock indication on the first gear down selection. Positive downlock indication was achieved in all cases when landing gear selection cycles were repeated. Further investigation revealed that the problem is caused by an incorrect adjustment and operation of the downlock actuator. This condition, if not corrected, could result in false indications to the crew that the landing gear is not down and locked.

Fokker has issued Service Bulletin SBF100–32–052, dated May 1, 1991, which describes procedures for modification of the MLG downlock actuator mechanism. This modification involves inspecting and reworking the cylinder, end fitting, nut, and spring, as necessary. (The service bulletin also references Dowty Service Bulletins F100–32–45, dated March 14, 1991, and F100–32–46, dated March 18, 1991, as additional sources of information.) The RLD classified the Fokker service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA No. 91–031 in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the MLG downlock actuator mechanism. The actions would be required to be accomplished in accordance with the Fokker service bulletin described previously.

Additionally, operators of certain airplanes would be required to submit a report to Fokker of any suspect downlock actuators found installed on the airplane.

The FAA estimates that 26 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $14,300. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker:** Docket 92–NM–96–AD.

*Applicability:* All Model F28 Mark 0100 series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously. To prevent false indications to the crew that the landing gear is not down and locked, accomplish the following:

(a) Within 120 days after the effective date of this AD, inspect the downlock actuator nameplate, part number 201218001 or 201218002, in accordance with Fokker Service Bulletin SBF100–32–052, dated May 1, 1991.

(1) If "Dowty Service Bulletin F100–32–45" is identified on the nameplate, no further action is required by this AD.

(2) If "Dowty Service Bulletin F100–32–45" is *not* identified on the nameplate, replace the downlock actuator with one that has "Dowty Service Bulletin F100–32–45" identified on the nameplate, in accordance with Fokker Service Bulletin SBF100–32–052, dated May 1, 1991.

(b) For airplanes having serial numbers 11333 and subsequent: If "Dowty Service Bulletin F100–32–45" is *not* identified on the downlock actuator nameplate, within 10 days after accomplishing the requirements of paragraph (a)(2) of this AD, report that finding to Fokker, Fleet Airworthiness (Ref: EQFA); telephone 011–31–20–605–3087; fax 011–31–20–605–2580 or 011–31–20–605–6690. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 23, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–16212 Filed 7–9–92; 8:45 am]

BILLING CODE 4910–13–M

## 14 CFR Part 39

**[Docket No. 92–NM–123–AD]**

## Airworthiness Directives; Boeing Model 747–400 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Boeing Model 747–400 series airplanes, that currently requires repetitive inspections to detect damage, chafing, and proper clearance of the electrical power feeder cables and engine fuel supply tube, and corrective action, if necessary. The actions specified by that AD are intended to prevent a fire in the number two and number three engine struts. This action would require a modification of the electrical power feeder cable installation that would constitute terminating action for the required inspections.

**DATES:** Comments must be received by August 24, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–123–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jon Regimbal, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2687; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–123–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–123–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

### Discussion

On February 11, 1992, the FAA issued AD 92–05–01, Amendment 39–8180 (57 FR 6665, February 27, 1992), to require repetitive inspections of the engine number two and engine number three upper strut wing leading edge compartments to detect damage, chafing, and proper clearance of the fuel supply tube and the electrical power feeder cables, and corrective action, if necessary. That action originally was prompted by a fire that occurred in engine strut number two of a Model 747–400 series airplane. The fire appeared to have been caused by electrical arcing between the number one engine electrical power feeder cable and the engine number two fuel feed line in the upper strut wing leading edge compartment of engine strut number two. Arcing could result from chafing or other damage to the electrical feeder cables. Arcing in this location could create a hole in the fuel tube and provide a simultaneous ignition source. The requirements of that AD are intended to prevent a fire in the number two and number three engine struts.

When AD 92–05–01 was issued, it contained a provision for an optional modification of the electrical power feeder cable installation in the number

two and number three engine struts, which, if installed, would constitute terminating action for the required repetitive inspections. In the preamble to AD 92-05-01, the FAA indicated that it intended to revise that AD to require the installation of the modification of the electrical power feeder cable installation. This action proposes such a requirement.

The FAA previously reviewed and approved Boeing Alert Service Bulletin 747-24A2168, Revision 1, dated December 5, 1991, which describes procedures for inspection for proper clearance between the power feeder cables and fuel tube, and procedures for modification of the engine number two and engine number three upper strut wing leading edge compartments. The modification consists of the installation of a new cable support bracket. Once this modification is installed, repetitive inspections for clearance between the cables are no longer necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 92-05-01 to continue to require inspections for chafing, damage, and proper clearance between the engine power feeder cables and fuel tube, and corrective action, if necessary. It would also require the eventual modification of the engine number two and engine number three upper strut wing leading edge compartments. Accomplishment of the modification would constitute terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This proposed action is based on the FAA's determination that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

There are approximately 184 Model 747-400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD.

The inspections currently required by AD 92-05-01 take approximately 4 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact associated with the current inspection requirements of AD 92-05-01 on U.S. operators is $4,840, or $220 per airplane.

The modification that would be required by this proposed AD would require approximately 6 work hours to accomplish, at an average labor rate of $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed modification requirements of the AD on U.S. operators is estimated to be $7,260, or $330 per airplane.

Based on the figures discussed above, the (combined) total cost impact of this AD on U.S. operators would be approximately $12,100, or $550 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8180 (57 FR 6665, February 27, 1992), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 92-NM-123-AD. Supersedes AD 92-05-01, Amendment 39-8180.

*Applicability:* Model 747-400 series airplanes, line numbers 696 to 843, 845 to 850, 852 to 870, 872 to 875, 877, 880 to 884, and 887; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fire within the engine strut, accomplish the following:

(a) For airplanes having line numbers 696 through 734, inclusive: Within 10 days after February 18, 1992 (the effective date of AD 91-20-51, amendment 39-8152), inspect the electrical power feeder cables and the engine fuel supply tube in engine struts two and three for damage or chafing and minimum clearance of 0.375 inch, in accordance with Boeing Alert Service Bulletin 747-24A2168, dated September 24, 1991, or Revision 1, dated December 5, 1991. If damage is found or if clearance is not within the specified limits, prior to further flight, repair any damage in accordance with that service bulletin, and relocate the electrical power feeder cables so that the clearance is more than 0.375 inch. Repeat this inspection at the intervals specified in either paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) If the clearance is less than 0.75 inch, repeat the inspection at intervals not to exceed 500 flight hours.

(2) If the clearance is 0.75 inch or greater, repeat the inspection at intervals not to exceed 1,000 flight hours.

(b) For airplanes having line numbers 735 to 843, 845 to 850, 852 to 870, 872 to 875, 877, 880 to 884, and 887: Within 30 days after March 13, 1992 (the effective date of AD 92-05-01, amendment 39-8180), inspect the electrical power feeder cables and engine fuel supply tube in engine strut number three for damage or chafing and minimum clearance of 0.375 inch, in accordance with Boeing Alert Service Bulletin 747-24A2168, Revision 1, dated December 5, 1991. If damage is detected or if clearance is not greater than the specified limits, prior to further flight, repair any damage in accordance with that service bulletin, and relocate the electrical power feeder cables so that the clearance is more than 0.375 inch. Repeat this inspection at the intervals specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable:

(1) If the clearance is less than 0.75 inch, repeat the inspection at intervals not to exceed 500 flight hours.

(2) If the clearance is 0.75 inch or greater, repeat the inspection at intervals not to exceed 1,000 flight hours.

(c) Within 12 months after the effective date of this AD, modify the electrical power feeder cable installation in engine struts two and three, in accordance with Phase II of Boeing Alert Service Bulletin 747-24A2168, Revision 1, dated December 5, 1991. Accomplishment of this modification constitutes terminating action for the inspections required by paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 24, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16213 Filed 7-9-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 92-ANM-1]**

## Proposed Establishment of Transition Area; Salmon, ID

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish 700-foot transition area at Salmon, Idaho, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Lemhi County Airport, Salmon, Idaho. The intent of the proposal is to accurately define controlled airspace for pilot reference. The airspace would be depicted on aeronautical charts.

**DATES:** Comments must be received on or before August 15, 1992.

**ADDRESSES:** Send comments on the proposal to: Federal Aviation Administration, Docket No. 92-ANM-1, 1601 Lind Avenue SW., Renton, WA 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 92-ANM-1, 1601 Lind Avenue SW., Renton, WA 98055-4056, Telephone: (206) 227-2535.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ANM-1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055-4056, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

### The Proposal

The FAA proposes an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700-foot transition area Salmon, Idaho, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Lemhi County Airport, Salmon, Idaho. Transition areas are published in section 71.181 of Handbook 7400.7 effective November 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

**Salmon, Idaho [New]**

That airspace extending from 700 feet above the surface within an area bounded by a line beginning at lat. 45°25'10" N, long. 114°05'00" W, to lat. 45°25'10" N, Long. 113°48'15" W, to lat. 45°07'20" N, Long. 113°39'10" W, to lat. 44°48'10" N, Long. 114°17'45" W, to lat. 44°58'30" N, Long. 114°28'15" W, to lat. 45°09'00" N, Long. 114°09'20" W, thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on June 25, 1992.

**Helen M. Parke,**

*Assistant Manager, Air Traffic Division.*

[FR Doc. 92-16208 Filed 7-9-92; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 133

### Exchange of Briefs in Copyright Infringement Actions

**AGENCY:** Customs Service, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Custom Regulations to provide that in cases where imported goods are detained on suspicion of copyright infringement, the importer and copyright owner shall first provide each other with a copy of all additional evidence, briefs, or other material, which each will submit to Customs in regard to the disputed claim of infringement, and shall accompany the submission of this information to Customs with a written statement confirming that a copy has already been provided to the opposing party.

It is also proposed to amend the Customs Regulations to expressly provide that when the copyright owner has posted the required bond necessary to protect the importer from possible loss or harm should the detained article be found noninfringing, such bond may not be withdrawn by the copyright owner until a decision on the issue of infringement has been reached.

Affording each party the opportunity, as a matter of course, to view and respond to the opposing presentation will result in reduced costs and increased efficiency for Customs by eliminating individual requests having to be processed under the Freedom of Information Act (FOIA) to obtain these materials, in addition to producing more accurate and better informed follow-up submissions by these parties, and better decision-making by Customs.

**DATES:** Comments must be submitted on or before September 8, 1992.

**ADDRESSES:** Comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** John F. Atwood, International Trade Compliance Division, (202)-566-6956.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 133.43(c)(1), Customs Regulations (19 CFR 133.43(c)(1)), currently provides, in cases where goods are detained by Customs on suspicion of copyright infringement, that the importer and the copyright owner may submit legal briefs and other pertinent materials to Customs in support of their respective positions on the disputed claim of infringement. These submissions are forwarded to Customs Headquarters for decision. Very often, however, the copyright owner and the importer will request a copy of the other's brief and related materials, under the Freedom of Information Act (FOIA), 5 U.S.C. 552. After a copy of the other's submission is received under the FOIA, a rebuttal argument is then usually made to Customs.

In order to respond to the concerns of each party that Customs facilitate the opportunity to view and address the arguments presented by the opposing party, it has been determined that an amendment to § 133.43(c)(1), Customs Regulations (19 CFR 133.43(c)(1)), is necessary, in order to provide one such opportunity, automatically, during the decision-making process.

Accordingly, in cases where imported goods are detained on suspicion of copyright infringement, it is proposed to amend the Customs Regulations to provide that the importer and copyright owner shall first provide each other with a copy of all additional evidence, legal briefs, or other material, which each will submit to Customs in regard to the disputed claim of infringement, and shall accompany the submission of this information to Customs with a written statement confirming that a copy has already been provided to the opposing party.

Affording each party the opportunity, as a matter of course, to view and respond to the opposing presentation will result in reduced costs and increased efficiency for Customs by eliminating individual requests having to be processed under the FOIA to obtain these materials, in addition to producing more accurate and better informed follow-up submissions by these parties, and better decision-making by Customs.

Furthermore, it is also proposed in this connection to amend § 133.43(c)(4) to expressly provide that when a copyright owner has posted the required bond necessary to protect the importer from possible loss or harm should the detained article be found noninfringing (see 19 CFR 133.43(b)(2)), such bond may not be withdrawn by the copyright owner until a decision on the issue of infringement has been reached.

#### Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. to 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, room 2119, 1301 Constitution Avenue, NW., Washington, DC.

#### Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* ), it is certified that, if adopted, this proposed amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### Executive Order 12291

Because the document does not meet the criteria of a "major rule" as defined in § 1(b) of E.O. 12291, a regulatory impact analysis is not required.

#### Paperwork Reduction Act

No new recordkeeping or data collection burdens are imposed upon the public as a result of the proposed amendment. Accordingly, it is not subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

#### List of Subjects in 19 CFR Part 133

Copyrights, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Trade names, Trademarks.

**Proposed Amendment**

It is proposed to amend part 133, Customs Regulations (19 CFR part 133), as set forth below.

**PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS**

1. The authority citation for part 133 would be revised, and would include the specific sectional authority thereunder, as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 133.1 also issued under 15 U.S.C. 1096, 1124.

Sections 133.2 through 133.7, 133.11 through 133.13, and 133.15 also issued under 15 U.S.C. 1124.

Section 133.21 also issued under 15 U.S.C. 1124, 19 U.S.C. 1526.

Sections 133.24 and 133.46 also issued under 19 U.S.C. 1623.

Section 133.53 also issued under 19 U.S.C. 1558(a).

2. It is proposed to amend § 133.43 by revising paragraphs (c)(1) and (c)(4), to read as follows:

**§ 133.43 Procedure on suspicion of infringing copies.**

* * * * *

(c) * * *

(1) *Demand and bond; exchange of briefs.* If the copyright owner files a written demand for exclusion of the suspected infringing copies together with a proper bond, the district director shall promptly notify the importer and copyright owner that, during a specified time limited to not more than 30 days, they may submit any further evidence, legal briefs or other pertinent material to substantiate the claim or denial of infringement. The burden of proof shall be upon the party claiming that the article is in fact an infringing copy.

(i) *Exchange of briefs.* Before timely submitting the additional evidence, legal briefs, or other pertinent material to Customs, pursuant to paragraph (c)(1) of this section, in regard to the disputed claim of infringement, the importer and the copyright owner shall first provide each other with a copy of all such information. The subsequent submission of this information to Customs shall be accompanied by a written statement confirming that a copy has already been provided to the opposing party. The district director shall notify the importer and the copyright owner that they shall have additional time, not to exceed 30 days, in which to provide a response to the arguments submitted by the opposing party, and that rebuttal arguments, timely submitted, shall be fully considered in the decision-making process.

(ii) *Decision.* Upon receipt of rebuttal arguments, or 30 days after notification if no rebuttal arguments are submitted, the district director shall forward the entire file, together with a sample of each style that is considered possibly infringing, to Customs Headquarters, (Attention: International Trade Compliance Division, Office of Regulations and Rulings), for decision on the disputed claim of infringement. The final decision on the disputed claim of infringement shall be forwarded to the district director who shall send a copy thereof to the copyright owner as well as to the importer.

* * * * *

(4) *Withdrawal of bond.* Where the copyright owner has posted a bond on the grounds that the imported article is infringing, the copyright owner may not withdraw the bond until a decision on the issue of infringement has been reached.

* * * * *

**Carol Hallett,**

*Commissioner of Customs.*

Approved: June 10, 1992.

**Peter K. Nunez,**

*Assistant Secretary of the Treasury.*

[FR Doc. 92-16156 Filed 7-9-92; 8:45 am]

BILLING CODE 4820-02-M

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 100**

**[CGD1 92-057]**

**Special Local Regulation: Gateway Powerboat Regatta, Greenwich and Stamford, CT**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary special local regulation for the Gateway Powerboat Regatta. The regatta will be held on Saturday, August 22, 1992, in the waters of Long Island Sound adjacent to the harbors of Greenwich and Stamford, Connecticut. This regulation is needed to protect the boating public from the hazards associated with high speed powerboat racing in confined waters.

**DATES:** Comments must be received on or before August 1, 1992.

**ADDRESSES:** Comments should be mailed to the Commander, First Coast Guard District, Boating Safety Division, 408 Atlantic Ave., Boston, MA 02110-3350, or may be delivered to room 428 at the address listed above, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (junior grade) E.G. Westerberg, Chief, Boating Safety Affairs Branch, First Coast Guard District, (617) 223-8310.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1 92-057) and the specific section of the proposal to which their comment applies, and give reason for each comment. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Boating Safety Division at the address under "**ADDRESSES**". If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

**Drafting Information**

The drafters of this notice are LTJG E.G. Westerberg, Project Manager, First Coast Guard District, and LCDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

**Background and Purpose**

On April 20, 1992 the sponsor, Gateway Powerboat Association, Inc., submitted a request to hold an offshore powerboat race on Long Island Sound. The Coast Guard is considering establishing temporary regulations in Long Island Sound for this event known as the "Gateway Powerboat Regatta." The proposed rule would establish a regulated area in Long Island Sound and provide specific guidance to control vessel movement during the limited timeframe of the race.

This event will include up to 40 powerboats competing on a rectangular course at speeds approaching 100 m.p.h. Due to the inherent dangers of a race of this type, restriction of traffic will be temporarily effected to promote the safe navigation of the other users of Long Island Sound.

The sponsors, Gateway Powerboat Association, Inc. have previously conducted this event in Long Island Sound in 1987 and 1988. This year's race will follow a similarly marked course and the same regulations as set forth in the previous years. By providing sufficient lead time, the U.S. Coast Guard in cooperation with Gateway Powerboat Association, Inc., is attempting to minimize any burden to the users of the waterway.

**Discussion of Proposed Amendments**

The Coast Guard proposes to require Special Local Regulations on specified waters of Long Island Sound adjacent to the harbors of Stamford and Greenwich, Connecticut. The event will close the regulated area to all traffic from 10:00 a.m. to 3:00 p.m. on August 22, 1992. This closure is needed to protect spectators and participants from the hazards that accompany a high speed powerboat race.

**Regulatory Evaluation**

This proposal is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary due to the limited duration of the race, the extensive advisories that have been and will be made to the affected maritime community, and the fact that the major portion of the vent is taking place on a Saturday afternoon, which is normally a very light volume day for commercial marine traffic.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard expects the impact of this proposal to be minimal. Because of the limited duration of the race and the fact that the event is taking place on a Saturday, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

**PART 100—[AMENDED]**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, § 100.35T01–057 is added to read as follows:

**§ 100.35T01–057 Gateway Powerboat Regatta, Stamford and Greenwich, CT.**

(a) *Regulated area.* The regulated area will include all waters within the following points:

| *Latitude* | *Longitude* |
|---|---|
| 40°55.7'N | 73°37.5'W |
| 40°57.6'N | 73°32.9'W |
| 40°58.8'N | 73°33.8'W |
| 40°57.0'N | 73°38.4'W |

(b) *Special local regulations.* (1) Commander, U. S. Coast Guard Group Long Island Sound reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless participating in the event as authorized by the sponsor or the Coast Guard. The Patrol Commander, as delegated by the Commander, Coast Guard Group Long Island Sound, will attempt to minimize any delays for commercial vessels transiting the area and will monitor channel 16 VHF–FM.

(3) All persons and vessels shall comply with the instructions of the Commander, U.S. Coast Guard Group Long Island Sound or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period.* This regulation will be effective from 10 a.m. through 3 p.m. on August 22, 1992.

Dated: June 18, 1992.

**K. W. Thompson,**

*CAPT, U.S. Coast Guard Commander, First Coast Guard District, Acting.*

[FR Doc. 92–16248 Filed 7–9–92; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 117**

**[CGD5–90–025]**

**Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, VA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is issuing a revised proposal for the operation of the Dominion Boulevard drawbridge across the Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River, mile 8.8, in Chesapeake, Virginia, which would change the time of the morning rush hour restrictions on drawbridge openings, extend the evening rush hour restrictions, and allow commercial vessels passage through the bridge at any time. This proposal is intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

**DATES:** Comments must be received on or before August 24, 1992.

**ADDRESSES:** Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, room 507, between 8

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a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The drafters of this notice are Linda L. Gilliam, Project Officer, and LT Monica L. Lombardi, Project Attorney.

**Regulatory History**

The original proposal was published on August 6, 1990, in the Federal Register (55 FR 31846). It would have closed the Dominion Boulevard Bridge to recreational, commercial, and public vessels of the United States during morning and evening rush hours, Monday through Friday, from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m., but allow the draw to open on signal at all times for vessels in distress. The Commander, Fifth Coast Guard District, also published the proposed rule as a public notice on August 7, 1990, and interested persons were given until September 20, 1990, to submit comments. Based on the comments received from the commercial maritime industry, a supplemental public notice was issued on September 17, 1990, extending the comment period to October 22, 1990, to give them additional time to submit their comments.

**Discussion of Comments**

As a result of the proposed rule and the public notice, comments were received from the motoring public and the maritime industry. The motorists were all in favor of closing the bridge to navigation during the morning and evening rush hours, since elimination of draw openings would help reduce traffic disruption, delays, congestion and minor accidents. The maritime industry was against such restrictions based on economic impact, and waterway safety concerns.

The comments indicated that the proposed three hour restriction in the morning and the evening was too severe and would cause undue hardships for waterway traffic transiting on the Southern Branch of the Elizabeth River. The Coast Guard issued a supplemental proposed rule with shorter proposed morning and evening rush hour restrictions. The proposed new hours of restriction were from 6:30 a.m. to 7:30 a.m. and 3:30 p.m. to 5 p.m., Monday through Friday. All vessel traffic was still restricted, except vessels in distress. This supplemental proposed rule (56 FR 35839) was published on July 29, 1991, with the comment period ending September 12, 1991. A supplemental public notice was issued September 5, 1991, extending the comment to October 12, 1991, to allow the maritime industry more time to submit comments on the supplemental proposed rule.

As a result of the supplemental proposed rule and the public notice issued on August 1, 1991, comments were received from the maritime community and the motoring public. The comments from the motorists again were all in favor of the proposed restrictions during peak traffic hours. The majority of the comments from the motorists suggested extending the morning and evening rush hours. All suggestions varied on the appropriate hours of restriction. The comments from the commercial maritime industry were opposed to restricting the drawbridge based on such factors as economic impact concerns and safety. This current supplemental proposed rule is also being issued in response to a resolution forwarded to the U.S. Coast Guard by the City of Chesapeake requesting that the proposed regulations for this drawbridge restrict openings to recreational vessels only during hours that better reflect peak highway traffic usage to help reduce traffic congestion, but remain open on signal during the rest of the time.

**Discussion of Proposed Rule**

The Coast Guard now proposes to amend the regulations governing operation of the drawbridge across the Southern Branch of the Elizabeth River at mile 8.8 in Chesapeake, by restricting bridge openings from 7 a.m. to 8 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, for the passage of pleasure craft. Commercial vessels and public vessels of the United States would be allowed to pass at any time. This proposal responds to requests from concerned motorists and the City of Chesapeake to restrict openings during peak highway traffic hours to help reduce traffic congestion, but remain open on signal the rest of the time. This bridge currently opens on signal at all times. The Coast Guard expects that the restrictions on drawbridge openings in the morning and the evening will not be unduly restrictive to recreational boaters. The hours of restriction the Coast Guard is proposing are from 7 a.m. to 8 a.m. and 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays. These hours should reduce traffic congestion on the bridge and the highways linked by the bridge and the risk of safety hazards on the water for waterway traffic while still providing for the reasonable needs of recreational vessels along this waterway.

**Request for Comment**

Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the proposed rule. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this supplemental proposal. This rule may be changed based on comments received.

**Regulatory Evaluation**

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposed regulation on commercial navigation or on any industries that depend on waterborne transportation will be nonexistent. Because the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard will accept comments on the economic impact on small entities, in connection with the proposal for permanent regulations, and consider them at that time.

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations to read as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.997, paragraphs (d) and (e) are redesignated as paragraphs (e) and (f) and a new paragraph (d) is added to read as follows:

**§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.**

* * * * *

(d) The draw of the Dominion Boulevard Bridge, mile 8.8, in Chesapeake shall open on signal, except:

(1) From 7 a.m. to 8 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not be opened for the passage of pleasure craft.

(2) Vessels in an emergency involving danger to life or property shall be passed at any time.

* * * * *

Dated: June 25, 1992.

**W.T. Leland,**

*Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. 92-16247 Filed 7-9-92; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Part 3**

**RIN 2900-AF44**

## Diseases Associated With Service in the Republic of Vietnam

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning presumptive service connection for certain diseases even though there is no record of the disease during service. This proposed amendment is necessary because Congress has added certain diseases associated with military service in the Republic of Vietnam during the Vietnam era to those diseases subject to presumptive service connection. The intended effect of this amendment is to assure that the regulations accurately reflect all the conditions to which presumptive service connection may be applied.

**DATES:** Comments must be received on or before August 10, 1992. Comments will be available for public inspection until August 19, 1992. The change is proposed to be effective February 6, 1991, the date the legislation was signed into law.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding this change to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until August 19, 1992.

**FOR FURTHER INFORMATION CONTACT:** John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

**SUPPLEMENTARY INFORMATION:** Section 2 of the Agent Orange Act of 1991, Public Law 102–4, 105 Stat. 11 (1991), added 38 U.S.C. 1116 (formerly 316) to establish a presumption of service connection for veterans with service in the Republic of Vietnam during the Vietnam era who subsequently develop, to a degree of 10 percent or more, non-Hodgkin's lymphoma, soft-tissue sarcoma (subject to specified statutory exceptions), and chloracne or other acneform disease consistent with chloracne, even though there is no record of that disease during military service. Qualifying skin conditions must have become manifest to a degree of 10 percent or more within one year of the last date of service in the Republic of Vietnam during the Vietnam era.

The term "soft-tissue sarcoma" is an imprecise term and there is no standard list of conditions which is universally accepted within the medical community as a definitive listing of "soft-tissue sarcomas". Although Congress has specifically excluded osteosarcoma, chondrosarcoma, Kaposi's sarcoma, and mesothelioma by statute, they have offered no specific guidance as to which other tumors they consider to be soft-tissue sarcomas.

VA has previously addressed the issue of what the term soft-tissue sarcoma encompasses for the purpose of amending 38 CFR 3.311a, to implement a determination by the Secretary of Veterans Affairs in accordance with the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Public Law 98–542. Public Law 98–542 provided that the Secretary, after receiving the advice of the Veterans Advisory Committee on Environmental Hazards (VACEH), will make a determination based upon "sound medical and scientific evidence", with respect to whether service connection will be granted for a particular disease. Based upon advice from VACEH and the Veterans Health Administration (VHA), the Secretary concluded that soft-tissue sarcomas should be classified by tumor type rather than tumor location and further, that in order to be recognized as "soft-tissue" sarcomas by VA, tumors must be malignant and arise from tissue of mesenchymal origin, including muscle, fat, blood or lymph vessels, or connective tissue (but not cartilage or bone), but that tumors of infancy or childhood, and those having a strong, known causal association with a specific etiology should not be included. The list of tumors which meet those criteria was published as part of the revision to 38 CFR 3.311a(c) (See the **Federal Register** of October 15, 1991 (56 FR 51651–3)).

Those same criteria are consistent with the statutory language of Public Law 102–4 to the extent that when they are applied, osteosarcoma, chondrosarcoma, Kaposi's sarcoma, and mesothelioma are not considered soft-tissue sarcomas for VA purposes. However, since it provides presumptive service connection for "each" soft-tissue sarcoma becoming manifest to a degree of 10 percent or more, the statutory language of Public Law 102–4 clearly encompasses a broader category of tumors than that listed in 38 CFR 3.311a by not excluding tumors of infancy and childhood.

To implement these provisions of Public Law 102–4, we propose to amend 38 CFR 3.307 and 3.309. We propose to cite the list of tumors that appears at 38 CFR 3.311a(c)(2) and to augment it with the following tumors: Extraskeletal Ewing's sarcoma, congenital and

infantile fibrosarcoma, and malignant ganglioneuroma. These additional soft-tissue sarcomas are generally considered tumors of infancy and childhood which rarely, if ever, occur initially in an individual old enough to have been accepted for military service. They will be included in this regulation, however, in order to satisfy the requirements established by the statutory language of Public Law 102–4.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.109.

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Vietnam.

Approved: April 13, 1992.

**Edward J. Derwinski,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

## PART 3—ADJUDICATION

### Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

**Authority:** 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

**§ 3.307 [Amended]**

2. In § 3.307(a) introductory text, the first sentence, remove the words "or prisoner of war related disease", and add, in their place, the words ", prisoner of war related disease, or a disease associated with service in the Republic of Vietnam".

2a. In § 3.307(a)(1), after the words "§ 3.309(c)" add the words "and (e)".

3. In § 3.307, the section heading is revised, and new paragraph (a)(6) and its authority citation are added to read as follows:

**§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with service in the Republic of Vietnam; wartime and service on or after January 1, 1947.**

(a) * * *

(6) *Disease associated with service in the Republic of Vietnam.* The diseases listed in § 3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service in Vietnam during the Vietnam era, except that chloracne or another acneform disease consistent with chloracne shall have become manifest to a degree of 10 percent or more within a year after the last date on which the veteran performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era. "Service in the Republic of Vietnam" includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(Authority: 38 U.S.C. 501(a) and 1116)

* * * * *

4. In § 3.309, new paragraph (e) and its authority citation are added to read as follows:

**§ 3.309 Disease subject to presumptive service connection.**

* * * * *

(e) *Diseases associated with service in the Republic of Vietnam.* If a veteran, during active military, naval, or air service, served in the Republic of Vietnam during the Vietnam era, the following diseases shall be service-connected if the requirements of § 3.307(a)(6) are satisfied even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of § 3.307(d) are also satisfied.

Chloracne
Non-Hodgkin's lymphoma
Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

**Note:** The term "soft-tissue sarcoma" includes those tumors listed at § 3.311a(c)(2). For the purposes of this section only, the following tumors of infancy and childhood, although rarely if ever occurring in an individual old enough to have been accepted for military service, shall also be included:

Extraskeletal Ewing's sarcoma
Congenital and infantile fibrosarcoma
Malignant ganglioneuroma

(Authority: 38 U.S.C. 501(a) and 1116)

[FR Doc. 92–16191 Filed 7–9–92; 8:45 am]

BILLING CODE 8320–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Ch. I**

**[FRL 4152–5]**

### Public Meeting Location Change on the Hazardous Waste Identification Rule

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; notice of meeting location change.

**SUMMARY:** EPA's Office of Solid Waste will hold its July 15, 1992 Roundtable Discussion of the contaminated media and corrective action issues raised by its recently proposed Hazardous Waste Identification Rule (57 FR 21450) at the Ramada Renissance Techworld, not the Washington Hilton.

**DATES:** The meeting will begin at 8:30 a.m. and end at 5 p.m.

**ADDRESSES:** The meeting will be held at the Ramada Renissance Techworld, 999 9th Street, NW., Washington, DC, 20001–9000, (202) 898–9000.

**FOR MORE INFORMATION CONTACT:** For information on substantive matters, please contact William A. Collins, Jr., of the Waste Identification Branch, at 202–260–4791. For information on administrative matters, or to advise your intent to attend, please contact Michael Young or Denise Madigan, EPA's Roundtable Co-Convenors at 212–725–6160, and 202–429–8782, respectively.

Dated: July 7, 1992.

**Chris Kirtz,**

*Director, Consensus and Dispute Resolution Program.*

[FR Doc. 92–16263 Filed 7–9–92; 8:45 am]

BILLING CODE 6560–50–M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1039

**[Ex Parte No. 346 (Sub-No. 27)]**

### Rail General Exemption Authority—Transportation Equipment

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is seeking public comment on whether to exempt the rail transportation of Transportation Equipment (STCC 37) [1] from its regulation. The Commission has concluded, preliminarily, that regulation of the rail transportation of Transportation Equipment is not necessary to carry out the rail transportation policy, and that such regulation is not needed to protect shippers from an abuse of market power. If the Commission issues the exemption, Transportation Equipment would be added to the list of exempt commodities in our regulations, as set forth below.

**DATES:** Comments must be submitted by August 10, 1992.

**ADDRESSES:** Send an original and 10 copies of comments referring to Ex Parte No. 346 (Sub-No. 27) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927-5660 [TDD for hearing impaired: (202) 927-5721]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To receive a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927-7428. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

### Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

### Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, we are required to examine the impact of a proposed action on small entities. We preliminarily conclude that the action proposed in this proceeding will not have a significant impact on a substantial number of small entities. We invite comment on the issue of the economic impact of our proposal on small entities.

### List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: June 24, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Simmons dissented with a separate expression.

**Sidney L. Strickland, Jr.,**

*Secretary.*

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 1039—EXEMPTIONS

1. The authority citation for part 1039 would continue to read as follows:

**Authority:** 49 U.S.C. 10321, 10505, 10706, 10761, 10762, 11105, 11902, 11903, and 11904; and 5 U.S.C. 553.

2. In § 1039.11, paragraph (a) is proposed to be amended by adding to the chart, before STCC No. 38, STCC No. 37 (Transportation Equipment):

**§ 1039.11 Miscellaneous commodities exemptions.**

(a) * * *

| STCC No. | STCC tariff | Commodity |
|---|---|---|
| * | * * | * * |
| 37 | .....do ..... | Transportation equipment. |
| * | * * | * * |

* * * * * * *

**§ 1039.16 [Removed]**

3. § 1039.16 is proposed to be removed.

[FR Doc. 92-16240 Filed 7-9-92; 8:45 am]

BILLING CODE 7035-01-M

[1] STCC is the acronym for the Standard Transportation Commodity Code.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 217, 222, and 227

**[Docket No. 911054-1254]**

### Sea Turtle Conservation

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** NMFS issues this advance notice of proposed rulemaking (ANPR) to announce that it is considering publishing regulations that would place sea turtle conservation requirements on various fisheries off the south Atlantic and Gulf of Mexico states for the protection of threatened and endangered sea turtles. Sea turtle conservation regulations are currently in place for shrimp fisheries in the southeastern Atlantic and Gulf of Mexico. The ANPR is in response to a study by the National Academy of Sciences (NAS) (1990), and other information, regarding the mortality of sea turtles in non-shrimp fisheries. By this ANPR, NMFS is soliciting public comment and information on non-shrimp fisheries for which sea turtle conservation measures may be needed and on appropriate conservation measures that should be applied to protect endangered and threatened sea turtles.

**DATES:** Written comments must be received on or before September 8, 1992.

**ADDRESSES:** Comments on this ANPR should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Phil Williams, NMFS National Sea Turtle Coordinator, (301-427-2322) or Charles Oravetz, Chief, Protected Species Management Program, (813-893-3366).

**SUPPLEMENTARY INFORMATION:** All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531 *et seq.* The loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempi*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles inhabit marine waters along the U.S. Atlantic seaboard and in the Gulf of Mexico, where significant incidental mortality associated with commercial fisheries operations has been documented.

The shrimp trawl fishery in the southeast region of the United States is by far the leading cause of human-induced mortality to sea turtles in the water. NMFS has promulgated regulations to protect sea turtles by requiring shrimp trawlers to use turtle excluder devices (TEDs) in their nets or to restrict tow times to prevent mortality (52 FR 24244, June 29, 1987). NMFS recently proposed amendments to these

regulations which would strengthen the required conservation measures (57 FR 18446, April 30, 1992).

However, a recent study by the NAS (NAS, 1990) concluded that "collectively, the nonshrimp fisheries constitute the second largest source of mortality of juvenile to adult sea turtles." This study identified finfish trawls, seines, pompano gill nets in Florida, and various passive fishing gear such as gill nets, weirs, traps, and longlines as potential sources of mortality to sea turtles.

NMFS has been aware of the mortality of sea turtles in these other fisheries but has concentrated its resources on reducing the largest source of mortality, the shrimp trawl fishery. Available data indicate that the levels of take in these fisheries do not approach the level in the shrimp trawl fishery.

In conjuction with implementation of section 114 of the Marine Mammal Protection Act (16 U.S.C. 1383a), the Interim Exemption for Commercial Fisheries enacted by Public Law 100-711, NMFS conducted an internal ESA section 7 consultation that addressed listed species that might be affected by fishing operations in the southeast region. The 1989 Biological Opinion resulting from this consultation concluded that "bottom trawl fisheries, gill net fisheries, and longline fisheries may have significant adverse impacts on the recovery of these species, and additional information on the amount/extent of incidental take is needed." These were generally the same fisheries identified in the NAS study.

In the Biological Opinion, the groundfish trawl fishery that operates in the winter off North Carolina and the shark gill net fishery off southeast Florida were among those fisheries identified as being of highest priority for observer coverage. Observer coverage would document levels of take and mortality of sea turtles in these fisheries. Conservation measures could then be evaluated to reduce this take.

The shark gill net fishery consists of approximately 24 vessels that operate on the southern east coast of Florida. The mesh size used in shark gill nets ranges from 8 to 12 inches (20–30 centimeters), which is the same size mesh used in turtle set nets when turtles were commercially harvested in the United States. Strandings of sea turtles on southeast Florida beaches adjacent to where this fishery operates implicate this fishery as a major, although localized, problem.

Based on data from logbooks and observer reports from the Interim Exemption for Commercial Fisheries Program, NMFS anticipates that the fisheries for sharks, direct and indirect, could result in the injury or mortality of all listed turtles species. The reasonable and prudent measures necessary to minimize the impacts of the shark fisheries include regional observer programs implemented to document incidental capture, injury, and mortality of listed species. These programs would emphasize monitoring of gillnet and longline fisheries that take sharks directly or indirectly.

NMFS issued a proposed rule on June 8, 1992 (57 FR 24222) to implement the proposed Shark FMP and establish a management regime for sharks in the EEZ of the Atlantic Ocean for commercial and recreational shark fishing. Among the proposed measures is the establishment of a mandatory observer program to document the incidental capture of listed species.

Another localized gill net fishery of concern to NMFS is the pompano fishery, which operates primarily in Florida state waters near Ft. Pierce. Abandoned pompano nets have been discovered with as many as ten dead green turtles tangled in the webbing. These nets are reportedly set in relatively shallow waters during the evening and retrieved the following morning. Nets are seldom tended during fishing operations, and turtles encountering gill nets are likely to drown unless promptly released.

The groundfish trawl fishery that operates from October through February along the upper Atlantic coast has been identified as a source of turtle mortality based on high levels of sea turtle strandings, particularly off North Carolina in the months of November and December. Between November 29, 1990 and December 7, 1990, 54 turtles were reported stranded in this area. Most were loggerheads, but eight Kemp's ridleys and three greens were included in the total.

In response to these strandings, the North Carolina Division of Marine Fisheries closed the fishery on December 7, 1990, and no sea turtle strandings were reported thereafter. NMFS began an assessment of the interaction between the fishery and sea turtles and tested several turtle excluder device (TED) models on a commercial trawler.

In 1991 NMFS and the State of North Carolina worked cooperatively to limit sea turtle deaths in this fishery through a combination of required conservation measures and turtle monitoring and gear research efforts. In addition, NMFS reinitiated consultation under section 7 of the ESA for the summer flounder fishery, which is managed under the Magnuson Fishery Conservation and Management Act pursuant to the Fishery Management Plan for the Summer Flounder Fishery (FMP). A biological opinion, issued on November 15, 1991, concluded that continued unrestricted operation of the summer flounder fishery in waters off North Carolina and southern Virginia would jeopardize the continued existence of the endangered Kemp's ridley (*Lepidochelys kempi*). To avoid jeopardizing the continued existence of listed sea turtles by this fishery, NMFS issued on emergency interim rule to require sea turtle conservation measures by trawlers and establish a scientific observer program to document incidental capture of turtles (56 FR 63685, December 5, 1991).

In addition, NMFS has proposed permanent sea turtle conservation measures in a limited area off of North Carolina (57 FR 24577, June 10, 1992). However, NMFS is considering proposing more comprehensive turtle conservation measures in this fishery under the Endangered Species Act based on the results of turtle conservation activities during the 1991–1992 season.

Longline fisheries for tuna, shark, and swordfish have also been implicated in incidental capture and mortality of sea turtles. Endangered and threatened sea turtle captures and mortalities by Japanese bluefin tuna longline vessels were documented in the early 1980s by NMFS observers. With recent increases in effort for yellowfin tuna, bluefin tuna, sharks, and swordfish, it appears likely that longline fisheries could be exerting a major negative impact on the recovery of listed turtles. An observer program to document incidental catch and mortality rates in longline fisheries is of high priority.

NMFS is inviting public comment to assist in determining which, if any, additional fisheries should be regulated for the conservation of sea turtles and what measures would be appropriate to reduce the mortality of sea turtles. Accordingly, through this ANPR, all interested parties are invited to submit comments and information.

Dated: July 2, 1992.

**Nancy Foster,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

**References**

National Academy of Sciences. 1990. Decline of the Sea Turtles: Causes and Prevention. Washington, D.C., National Academy Press. 189 pp.

National Marine Fisheries Service. 1989. Endangered Species Act Section 7 Consultation concerning the issuing of exemptions for commercial fishing operations under Section 114 of the Marine Mammal Protection Act.

National Marine Fisheries Service. 1991. Proposed Fishery Management Plan for Sharks of the Atlantic Ocean. 145 pp., plus appendices.

National Marine Fisheries Service. 1991. Proposed Rule: Fishery Conservation and Management; Foreign Fishing; Atlantic Sharks.

National Marine Fisheries Service. 1991. Endangered Species Act Section 7 Consultation on the Implementation of the Secretarial Shark Fishery Management Plan of the Atlantic Ocean regarding the directed and incidental shark fisheries in the Atlantic. 24 pp.

[FR Doc. 92-16184 Filed 7-9-92; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 57, No. 133
Friday, July 10, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Assistant Secretary for Food and Consumer Services

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Assistant Secretary for Health

### Final Version of the United States Country Paper for the International Conference on Nutrition

**AGENCY:** Office of the Assistant Secretary for Food and Consumer Services, USDA, Office of the Assistant Secretary for Health, DHHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Agriculture (USDA) and the Department of Health and Human Services (DHHS) announce the availability of the final version of the U.S. Country paper for the International Conference on Nutrition (ICN).

**FOR FURTHER INFORMATION CONTACT:** (1) For a copy of the final paper, write to Floyd Miles, Food and Nutrition Service (USDA), room 206, 3101 Park Center Drive, Alexandria, VA 22302 or phone (703) 305–2133. (2) For other information regarding the International Conference on Nutrition: Neil Gallagher, Office of International Cooperation and Development, Department of Agriculture, room 3005 South Building, 14th and Independence Avenue, S.W., Washington, DC 20250–4300, (202) 690–1817, or Linda Meyers, Office of Disease Prevention and Health Promotion, U.S. Public Health Service, DHHS, 330 C Street, SW., room 2132 Switzer Building., Washington, DC 20201, (202) 472–5307.

**SUPPLEMENTARY INFORMATION:** The International Conference on Nutrition (ICN) will be held in Rome, Italy, in December 1992. It is jointly sponsored by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO). As many as 150 nations are likely to send delegations. Many nongovernment organizations and private business groups are also expected to participate. The Conference will look critically at the problems of hunger, malnutrition and diet-related diseases in both developing and developed nations and examine ways to foster added international cooperation in the field of nutrition.

The U.S. Country Paper is the major United States contribution to the principal background document for the Conference—"An Assessment and Analysis of Trends and Current Problems in Nutrition." The paper was prepared following an outline produced by the Joint FAO/WHO Secretariat for the ICN. This allows it to be used more readily to compare U.S. policies and programs with those of other nations. A supplement to the main paper outlines the many contributions that U.S. international programs are making toward the improvement of nutrition worldwide, especially among vulnerable groups and the poor in the developing world.

Since the content and focus of the U.S. Country Paper were dedicated by the needs of the conference organizers, the paper should not be viewed as a comprehensive statement of official U.S. Government policies. Sections were written by individuals outside the Government to reflect the important nutrition-related activities of the private sector, educational organizations and voluntary groups. However, a number of documents stating U.S. Government policy on nutrition, public health, and international assistance are cited in the text. Readers should refer to those documents for more detailed statements and information on public policies. This notice is not published pursuant to the Administrative Procedures Act.

Dated: June 24, 1992.

**Ann Chadwick,**

*Acting Assistant Secretary for Food and Consumer Services, U.S. Department of Agriculture.*

Dated: June 26, 1992.

**James O. Mason,**

*Assistant Secretary for Health, Department of Health and Human Services.*

[FR Doc. 92–16169 Filed 7–9–92; 8:45 am]
BILLING CODE 3410–30–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### South Fork of Granite Creek Timber Sale; Idaho Panhandle National Forests, Washington and Idaho

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; Intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to harvest timber, build roads, improve existing stands of trees, and regenerate new stands of trees in Tillicum Creek and South Fork of Granite Creek drainages. These drainages flow into the North Fork of Granite Creek at the eastern edge of the analysis area. The analysis area consists of approximately 29,700 acres, and is located approximately 30 air miles north-northwest of Priest River, Idaho. Portions of the proposed actions are located within the South Fork Mountain Roadless Area (#01124), Hungry Mountain Roadless Area (#01156), and the Grassy Top Roadless Area (#01982).

**DATES:** Written comments concerning the scope of the analysis should be received on or before August 24, 1992. A Public meeting is scheduled for 7:30 p.m. July 29, 1992 in the Conference Room on the Main Floor of the Federal Building, 1500 Highway 2, Sandpoint, Idaho 83864.

**ADDRESSES:** Written comments should be sent to: S. Blaise Chanson, Senior Environmental Analyst, BIO/WEST, Inc., 1063 West 1400 North, Logan, Utah 84321.

**FOR FURTHER INFORMATION CONTACT:** Specific questions about the proposed action, analysis and EIS should be directed to S. Blaise Chanson, Senior Environmental Analyst, BIO/WEST, Inc., Phone (801) 752–4202; or to Barry Coles, District Silviculturist, Priest Lake Ranger District, Phone (208) 443–2512.

**SUPPLEMENTARY INFORMATION:** Any timber sale(s) arising from the EIS will be administered by the Priest Lake Ranger District of the Idaho Panhandle National Forests, Bonner County, Idaho and Pend Oreille County, Washington. If approved, the sales will be sold in 1955–1998. Because of the potential for significant impacts resulting from the proposed action (as defined by 40 CFR

1508.27), and Environmental Impact Statement (EIS) will be prepared. The EIS will be prepared by an independent consultant, BIO/West, Inc., under the specifications of Contract No. 53–0313–1–ID167 with the Idaho Panhandle National Forests. Although not being prepared in-house, the EIS will be a Forest Service document, with the Forest Service acting as the lead agency. As such, the EIS will be subject to all appropriate Forest Service regulations and guidelines. The EIS will tier to the Idaho Panhandle National Forests Forest Service Plan (August 1987), which provides the overall guidance (Goals, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for the area. The purpose and need of the proposed actions is to provide for the area's share of the Allowable Sale Quantity while meeting the multiple resource objectives as prescribed by the Management Area directions in the Forest Plan. The purpose and goals for the proposed actions are defined by the management areas and include:

Management Area 1—Provide for long-term growth and cost effective production of commercially valuable wood products on those lands suitable for timber production.

Management Area 2—Manage identified grizzly bear habitat to support the Forest's share of a recovered grizzly bear population, while providing the production of commercially valuable wood products.

Management Area 4—Provide winter forage to support existing and projected big game populations through scheduled timber harvest and permanent forage areas.

Mangement Area 7—Manage identified caribou habitat to support the Forest's share of a recovered caribou population, while providing for the production of commercially valuable wood products.

Management Area 9—Manage to maintain and protect existing improvements and resource productive potential within minimum investments.

Management Area 16—Manage riparian areas to feature riparian-dependent resources (fish, water quality, natural channels, and biotic communities), while producing other resource outputs.

The western boundary of the South Fork of Granite Creek Timber Sale starts at the intersection of Kalispell Rock and the Kaniksu Forest Boundary and then runs northerly contiguous with the Forest Boundary to Grassy Top Mountain. The northern boundary then runs east along the ridge to High Rock Mountain and then on to North Fork of Granite Creek approximately 0.3 mile south of Stagger Inn Campground. The eastern boundary of the analysis area runs south along the North Fork of Granite Creek to the confluence with the South Fork of Granite Creek. The boundary continues south along a ridge to Indian Mountain where it turns westerly for approximately 2 miles before continuing south along a ridge to Diamond Peak. The southern boundary is the ridgeline running between Diamond Peak and Kalispell Rock. Approximately 6,400 acres of the South Fork Mountain Roadless Area (#01124), 400 acres of the Hungry Mountain Roadless Area (#01156), and 11,500 acres of the Grassy Top Roadless Area (#01982) are within the 29,700 acre analysis area. The geographic scope of the analysis will depend on the resource, and may require analysis beyond the timber sale boundary.

Preliminary issues identified as a result of internal review of the timber sale area include:

- The efficiency and cost-effectiveness of the timber sale.
- Cumulative effect of harvesting in relation to past harvest activities within the analysis area.
- The effect of clearcut harvests on visuals and aesthetics.
- Potential conflict with dispersed and developed recreation activities.
- The effect of any management activity on the roadless character of South Fork Mountain Roadless Area, the Grassy Top Roadless Area, and the Hungry Mountain Roadless Area.
- Management and protection of sufficient old growth for viable populations of dependent species.
- Potential effect on threatened or endangered species, particularly grizzly bear, caribou and gray wolf.
- Potential effect on sensitive species including bog lemmings at Sema Meadows.
- Potential effect on stability of headwater channels through increased water yield.
- The protection of watershed values as they relate to riparian zones and fish productivity.
- Potential effect on westslope cutthroat and bull trout spawning and rearing habitat due to increased water yield and sediment yield.

The Forest Service is seeking information and comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues for the proposed and the area being analyzed. For most effective use, comments should be submitted to BIO/WEST, Inc. within 45 days of publication of this notice in the **Federal Register** information received will be used in the preparation of the Draft EIS. This preparation includes the following steps:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of issues of minor importance, or those covered by previous relevant environmental analysis.
4. Identification of reasonable alternatives to the proposed action.
5. Identification of the potential environmental effects of the alternatives.

The analysis will consider a range of alternative developed from the key issues. One of these will be the "No Action" alternative, in which all activities are deferred. Other alternatives will consider various levels and locations of harvest and regeneration in response to issues and non-timber objectives.

The analysis will evaluate the environmental effects of each alternative. This analysis will be consistent with the standards and management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for each alternative will be identified and the effectiveness of those mitigation measures will be disclosed.

Agencies and other interested parties are invited to visit the Forest Service officials or BIO/WEST representatives any time during the process. Two specific time periods are identified for the receipt of formal comments on the analysis. The comment periods are: (1) During the scoping process (the next 45 days) and, (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and be available for public review in early April 1993. At that time the EPA will publish a notice of availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. To be the most help, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. Reviewers may wish to refer to the *Council on Environmental Quality Regulations for implementing the procedural provisions*

*of the National Environmental Policy Act* at 40 CFR 1503.3 in addressing these points.

The Forest Service believes it is important to give reviewers notice at this early stage of several federal court decisions related to public participation in the environmental review process. First, reviewers of the Draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Copr.* v. *NRDC*, 435 U.S. 519,533 (1987). Second, environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis, 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

The Final EIS is expected to be released August 16, 1993. The District Ranger for the Priest Lake Ranger District of the Idaho Panhandle National Forests, the responsible official for the EIS, will make a decision regarding this proposal considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and appliable laws, regulations, and policies. The reasons for the decision will be documented in a Record of Decision.

Dated: July 1, 1992.

Albert W. Collotzi,

*District Ranger.*

[FR Doc. 92–16114 Filed 7–9–92; 8:45 am]

BILLING CODE 4310–70–M

## Montana Department of Fish, Wildlife, and Parks Project—Integrated Management Plan for the Chain of Lakes Recreation Area

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** Notice is hereby given that the USDA Forest Service, Kootenai National Forest (KNF), in conjunction with the State of Montana Department of Fish, Wildlife, and Parks (MDFWP) will prepare an environmental impact statement (EIS) for the integrated management plan (IMP) for the Chain Lakes Recreation Area. The KNF and MDFWP are joint lead agencies in this effort as there are significant State and National Forest System lands included within the project area.

Joint lead status will allow both agencies to fulfill their interrelated responsibilities in managing the process of preparation of the draft and final EIS documents. The MDFWP has the responsibility for managing state lands and resources. The Forest Service has the responsibility for the Federal surface land and resources.

The Kootenai National Forest Plan currently provides direction for managing the Forest Service lands in the Chain of Lakes Recreational Area. Since the State of Montana is the responsible manager of the leased private lands in the area, there is a need for both the State of Montana and the Forest Service to involve the public in developing plans for coordinated management and development of the Chain Lakes Recreation Area. The analysis process will ultimately lead to one of the following decisions: (1) Approval of the integrated management plan and specified capital investment projects; (2) approval of the integrated management plan with some changes in the scope of priorities of the specified capital investment projects; (3) approval of the integrated management plan or a modified plan, with prioritized scheduling of specified capital investment projects.

Projects proposed on National Forest System lands will be consistant with direction in the Kootenai National Forest Plan.

The State Department of Fish, Wildlife, and Parks and the Kootenai National Forest invite written comments and suggestions on the scope of the analysis in addition to comments already received as a result of local public participation activities. The agencies also give notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

**DATES:** Comments concerning the scope and implementation of this proposal must be received by August 1, 1992.

**ADDRESSES:** Submit written comments and suggestions concerning the scope of the analysis to Dan Vincent, Regional Supervisor, Montana Department of Fish, Wildlife and Parks, 490 North Meridian Road, Kalispell, MT, 59901.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about the proposed actions and environmental impact statement to Marty Watkins, Project Coordinator, Montana Department of Fish, Wildlife, and Parks, 490 Meridian Road, Kalispell, MT, 59901 (Phone (406) 752–5501) or Larry Froberg, District Ranger, Fisher River Ranger District, 12557 Hwy 37, Libby, MT, 59923 (Phone (406) 293–7773).

**SUPPLEMENTARY INFORMATION:** The Chain of Lakes Recreation Area includes some 4000 acres of recreation lands, wetlands, and lakes which were donated by Champion International Corporation to the private non-profit Conservation Fund in 1990. That private group subsequently leased those lands to the State of Montana for a two year period during which time the State must write and fund a conservation/management plan for the area in order to secure title to the property.

The proposed project area is located in northwest Montana, approximately mid way between the communities of Libby and Kalispell. The project analysis area is some 25 miles long, encompassing about 6000 acres (4000 State and 2000 National Forest) along the south side of US Highway 2, and includes some 17 fishable lakes, over 30 smaller ponds and bogs, with several thousand acres of desirable waterfowl habitat.

This EIS will tier to the Final EIS and Kootenai Forest Plan (September 1987) as applicable to activities on National Forest System lands. The Kootenai Forest Plan provides goals and objectives, forest-wide standards and guidelines, management area standards and guidelines and management area prescriptions for the various lands on the Forest. This direction provides for management practices that will be utilized during the implementation of the Forest Plan.

The analysis will consider a range of alternatives. Along with the proposed action and reasonable action alternatives, the analysis will consider a "No Action or no development" alternative. Other alternatives will be considered as developed through additional public participation in the analysis process.

Public participation will be requested at several points during the analysis. The Kootenai National Forest and Montana Department of Fish, Wildlife, and Parks will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the Draft EIS.

The scoping process includes:

—Identifying potential issues.
—Identifying major issues to be analyzed in depth.
—Identifying issues which have been covered by a relevent previous environmental analysis.
—Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
—Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
—Determining potential cooperating agencies and task assignments.

Public participation to this point involved the presentation of the project to over 20 organizations and groups in Libby, Kalispell, and surrounding communities, plus discussions with both local and national legislative representatives of the State of Montana. Numerous personal contacts have been made with local groups and residents by the Chain of Lakes Advisory Council. A two page questionaire was distributed to over 3000 interested parties to gather information on public interests and over 500 written responses were received. Future public participation will include continued public meetings, personal contacts, and contact through media and written material. The following issues have been identified through the scoping efforts that have occurred to date:

—What range of camping and recreational opportunities should be provided? This includes what level of recreation development, maintenance, and administration are desirable for the area?
—What, if any, additional land acquisition or conservation easements are desirable in the area?
—What level of livestock grazing is compatible with other management objectives in the area?
—What are the effects of the proposal on water quality?
—What are the effects of the proposal on cultural and historic resources?
—What are the effects to any threatened, endangered, or sensitive animals or plants in the area?
—What would be the effect to private land, and private uses of federal lands, in the area?

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October, 1992. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Montana Department of Fish, Wildlife, and Parks, and the Forest Service believe it is important to give reviewers notice at this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and cointentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Hertiages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Montana Department of Fish, Wildlife, and Parks and the Forest Service at a time when they can meaningfully consider and respond to them in the Final EIS.

To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The final EIS is scheduled to be completed by December , 1992. In the final EIS, the Department of Fish, Wildlife, and Parks and the Forest Service are required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Daniel Vincent, Regional Supervisor, Montana Department of Fish, Wildlife, and Parks, 490 Meridian Road, Kalispell, MT, 59901, and Robert Schrenk, Forest Supervisor, Kootenai National Forest, 506 US Highway 2 W, Libby MT, 59923 are the Responsible Officials. As the Responsible Officials, they will decide which, if any, of the proposed alternatives will be implemented and document the decision and reasons for the decision in the Record of Decision.

Dated: June 19, 1992.

**Dan Vincent,**

*Responsible Official, Region One Supervisor, Montana Dept of FWP.*

Dated: June 29, 1992.

**Robert Schrenk,**

*Responsible Official, Forest Supervisor, Kootenai National Forest.*

[FR Doc. 92-16164 Filed 7-9-92; 8:45 am]
BILLING CODE 3410-11-M

## Pilot Creek Environmental Impact Statement, Six Rivers National Forest, Humboldt County, CA; Revised Notice of Intent

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised notice of intent to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The Forest Service published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) in the **Federal Register** (56 FR 3068) on January 28, 1991, for a proposal to harvest timber within the Pilot Creek drainage. The draft EIS was expected to be available for public review in January 1992. The draft EIS has been delayed due to changes made in the project objective. The draft EIS is not expected to be filed with the Environmental Protection Agency (EPA) and available for public review in February 1993. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The final EIS is now scheduled to be completed in June 1, 1993.

The NEPA (National Forest Policy Act) process was initiated in March of 1991. The analysis of the project indicated conflicts with the strategies for furbearer habitat management. These conflicts caused a major shift in the project objective and a delay in implementation schedules. The revised project objective is to implement a management strategy that will result in the long-term maintenance or enhancement of habitat quality within the furbearer territories present and will result in the sale of between 10 and 20 million board feet (MMBF) of timber. Other related activities include road construction, site preparation, reforestation, stand improvement treatments, and a variety of resource enhancement projects.

The project area now covers approximately 12,000 acres located in the headwaters of the Pilot Creek Drainage on the Mad River District. The project area encompasses a proposed fisher territory and two proposed

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marten territories. A portion of the project area is currently unroaded and was released for multiple-use management as part of the RARE II decision.

This project offers an opportunity to yield potential benefits for the Six Rivers National Forest:

1. This represents the Forest's initial effort to manage furbearer territories and evaluate long-term effects. The experience gained from planning and implementing this project should prove valuable for other furbearer management projects.

2. This project is utilizing a computerized GIS (geographic information system) for planning and analysis. The experience gained from this effort should help the Forest be better prepared for the planning, acquisition, and development of larger scale GIS applications.

3. The project will be developed and implemented utilizing the philosophies of ecosystem management. Project analysis will be done at the watershed landscape level.

All other information presented in 56 FR 3068 is still accurate.

**FOR FURTHER INFORMATION CONTACT:** Marcia Andre, District Ranger, Mad River Ranger District, Star Route Box 300, Bridgeville, California 95526 or telephone Roger Moore, Project Planner (707) 574–6233.

Dated: June 29, 1992.

**Martha Kelalle,**

*Deputy Forest Supervisor.*

[FR Doc. 92–16168 Filed 7–9–92; 8:45 am]

BILLING CODE 3410–11–M

## Amendment to the Land and Resource Management Plan for the Shoshone National Forest; Park, Hot Springs, Fremont, Sublette and Teton Counties, Wyoming

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised notice of intent to prepare environmental impact statement.

**SUMMARY:** On April 5, 1990, a Notice of Intent (NOI) to prepare an environmental Impact Statement amending the Land and Resource Management Plan for the Shoshone National Forest was published in the **Federal Register** (55 FR 12687). The amendment was to focus on actions to be taken on the approximately 120,000 acres of lands burned by the Clover Mist and other fires in 1988, including recalculation of the amount of timber to be offered from the Forest. The EIS was also to analyze possible actions to mitigate the effects of the fires from the standpoint of all resources in and adjacent to the burned areas.

The Shoshone National Forest intends to revise the scope of analysis presented in the April 1990 **Federal Register** Notice. The scope of this analysis and amendment will now be limited to the recalculation of the allowable sale quantity (ASQ) based on changes in the timber inventory resulting from areas burned over or otherwise altered since 1986, and updated timber inventory data. This will involve only the 85,945 acres of land currently classified as suitable. The Forest's intent is to apply the current Forest Plan standards and guidelines, as well as other direction incorporated by reference in the Plan and current laws. Application of standards and guidelines includes such actions as: inventorying fire effects, changing data bases to reflect the most current information, and altering or specifying management practices in accordance with the Forest Plan to account for those changes. Issues outside of this scope of analysis will be deferred to the pending Forest Plan revising scheduled for completion in the year 2000

**DATES:** Written comments must be received by July 31, 1992.

**ADDRESSES:** Send written correspondence to: Barry Davis, Forest Supervisor; Shoshone National Forest; P.O. Box 2140; Cody, Wyoming 82414.

**FOR FURTHER INFORMATION CONTACT:** Lathrop Smith, Timber Management Officer (307) 754–7207.

**SUPPLEMENTARY INFORMATION:**

### Background

The Land and Resource Management Plan for the Shoshone National Forest was approved on February 27, 1986 and implementation began 45 days later. In 1988, the Clover Mist and other fires burned over 120,000 acres of the Shoshone National Forest. The fires burned more than 10% of the lands classified as suited for timber production. As a result of these fires and a refined timber inventory, there is a need to recalculate the Allowable Sale Quantity. By regulation (36 CFR 219.3), calculation of the amount of timber to be offered must be done on a forest-wide basis.

### Analysis and Response to Public Comments

Public comment was received in response to the April 5, 1990 Notice of Intent. The comments have been analyzed and distilled into a comprehensive set of analysis issues. These issues will be addressed in accordance with the revised scope of analysis. Further scoping has been undertaken with a cross section of interest groups. The public will be invited to working group sessions throughout the analysis and disclosure process. Advance notice on dates and locations of these sessions will be done via press releases and direct mailings. Critical junctures in the process will be handled through more formal information sharing procedures.

A Draft Environmental Impact Statement and Proposed Amendment are scheduled to be completed in January 1993. The Final Environmental Impact Statement and Amendment are scheduled for completion in June 1993.

The comment period on the Draft Environmental Impact Statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes that it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d, 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F.Supp. 1334, 1338, (E.D. Wis. 1980). Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: July 6, 1992.

**Robert K. Vander Linden,**

*Acting Forest Supervisor.*

[FR Doc. 92–16185 Filed 7–9–92; 8:45 am]

BILLING CODE 3410–11–M

## Soil Conservation Service

## Gaffney, SC; Finding of No Significant Impact

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR parts 1500–1508); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture gives notice that an environmental impact statement (EIS) is not being prepared for flood prevention at Kennedy Street, City of Gaffney Cherokee County, South Carolina.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Banks, District Conservationist, Soil Conservation Service, P.O. Box 399, Gaffney, South Carolina, 29342, telephone (803) 489–7150.

**SUPPLEMENTARY INFORMATION:** The environmental evaluation of this federally assisted action indicates that the proposed measure will not cause significant adverse local, regional or national impacts on the environment. As a result of these findings, Mr. Billy Abercrombie, State Conservationist, has determined that the preparation and review of an EIS is not needed.

The proposed action is to reduce flooding and improve storm water conditions in and adjacent to the Kennedy Street Community.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation and the environmental assessment are on file and may be reviewed by interested parties at the Soil Conservation Service, P.O. Box 399, Gaffney, South Carolina 29201, telephone (803) 489–7150.

The FONSI has been sent to interested Federal, State, and local agencies and other interested parties. A limited number of copies of the FONSI are available to fill single copy requests.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local officials.

Dated: July 1, 1992.

**Jose J. Acevedo,**

*Deputy State Conservationist.*

[FR Doc. 92–16165 Filed 7–9–92; 8:45 am]

BILLING CODE 3410–16–M

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 585]**

## Expansion of Foreign-Trade Zone 83; Huntsville, AL, Area

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

*Whereas*, the Huntsville-Madison County Airport Authority, Grantee of Foreign-Trade Zones No. 83, has applied to the Board for authority to expand its general-purpose zone to include a site in Morgan County, Alabama, within the Huntsville Customs port of entry;

*Whereas*, the application was accepted for filing on July 1, 1991, and notice inviting public comment was given in the **Federal Register** on July 19, 1991 (Docket 38–91, 56 FR 33245);

*Whereas*, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

*Whereas*, the expansion is necessary to improve and expand zone services in the Huntsville area; and,

*Whereas*, the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore*, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed on July 1, 1991, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28.

Signed at Washington, DC, this 1st day of July, 1992.

**Alan M. Dunn,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 92–16255 Filed 7–9–92; 8:45 am]

BILLING CODE 3510–DS–M

## International Trade Administration

**[A–570–506]**

## Porcelain-on-Steel Cooking Ware From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On April 24, 1992, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware (POS cooking ware) from the People's Republic of China (PRC). The review covers one manufacturer, Clover Enamelware Enterprise Ltd., China, and its related third-country reseller in Hong Kong, Lucky Enamelware Factory Ltd., and the period December 1, 1990 through November 30, 1991.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results.

**EFFECTIVE DATE:** July 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Sheila E. Forbes or Thomas F. Futtner, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–8120/3814.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 24, 1992, the Department published in the **Federal Register** (57 FR 15058) the preliminary results of its administrative review of the antidumping duty order on POS cooking ware from the PRC (51 FR 43414, December 2, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

**Scope of the Review**

Imports covered by the review are shipments of POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under items 654.0815, 654.0824, and 654.0827 of the Tariff Schedules of the United States Annotated ("TSUSA"). The merchandise is currently classifiable under HTS item 7323.94.00. The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the shipments of one manufacturer in the PRC, Clover Enamelware Enterprise Ltd., and its related third-country reseller in Hong Kong, Lucky Enamelware Factory Ltd., which exported the POS cooking ware to the United States, and the period December 1, 1990 through November 30, 1991.

**Final Results of the Review**

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review, and we determine that the following margin exists for the period December 1, 1990 through November 30, 1991:

| Manufacturer/third-country reseller | Margin (percent) |
|---|---|
| Clover Enamelware Enterprise Ltd./ Lucky Enamelware Factory Ltd. (Hong Kong) | 56.65 |

Upon completion of this administrative review, the Department will issue appraisement instructions directly to Customs. Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 13.76 percent. This rate represents the highest non-best information available rate in the most current review period in which such a rate was established.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and § 353.22 of the Commerce Department's regulations (19 CFR 353.22 (1991)).

Dated: July 6, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-16266 Filed 7-9-92; 8:45 am]

BILLING CODE 3510-DS-M

## Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of application for an amendment to an Export Trade Certificate of Review.

**SUMMARY:** The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92-A0001".

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 92-00001, which was issued on April 10, 1992 (57 FR 13707, April 17, 1992).

*Summary of the Application*

*Applicant:* Aerospace Industries Association of America, Inc. ("AIA"), 1250 Eye Street, NW., Washington, DC 20005, Contact: Mac S. Dunaway, Esquire, Telephone: (202) 862-9700.

*Application No.:* 92-A0001.

*Date Deemed Submitted:* July 6, 1992.

*Request For Amended Conduct:* AIA seeks to amend its Certificate to add the Sundstrand Corporation of Rockford, Illinois as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2 (1)).

Dated: July 6, 1992.

**George Muller,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 92-16194 Filed 7-9-92; 8:45 am]

BILLING CODE 3510-DR-M

[Docket No. 920529-2129]

## Foreign Buyer Program; Support for Domestic Trade Shows

**AGENCY:** International Trade Administration; Department of Commerce.

**ACTION:** Notice of Call for Applications for the FY94 Foreign Buyer Program (October 1, 1993, through September 30, 1994).

**SUMMARY:** This notice sets forth objectives, procedures and application review criteria associated with the U.S. Department of Commerce's Foreign Buyer Program (FBP) to support domestic trade shows.

The Foreign Buyer Program was established to bring foreign buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The Foreign Buyer Program emphasizes cooperation between the Department and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance to U.S. companies interested in exporting. The assistance provided includes export counseling, market analysis, and overseas promotion of selected shows to potential foreign buyers, end-users, representatives and distributors. Shows selected for the Foreign Buyer Program will provide a venue for U.S. companies interested in expanding their sales into international markets.

**DATES:** Applications must be received by August 4, 1992.

**ADDRESSES:** Export Promotion Services/ Foreign Buyer Program, U.S. and Foreign Commercial Service (US&FCS), International Trade Administration, U.S. Department of Commerce, room 2116, 14th and Constitution Avenue, NW., Washington, DC 20230. Tel.: (202) 377-0481 (facsimile applications will not be accepted).

**FOR FURTHER INFORMATION CONTACT:** Bill Crawford, Product Manager, Foreign Buyer Program, Room 2116, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Tel. (202) 377-0481 or FAX: (202) 377-0115.

**SUPPLEMENTARY INFORMATION:** The International Trade Administration of the U.S. Department of Commerce is accepting applications for the Foreign Buyer Program (FBP) for events taking place between October 1, 1993, and September 30, 1994.

Under the FBP, the Department seeks to bring foreign buyers together with U.S. firms by selecting and promoting in foreign markets domestic trade shows in industries with high export potential. Selection of a trade show is one-time, i.e., a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. If the event occurs more than once in the 12 month period covering this announcement, the trade show organizer must submit a separate application for each event.

The Department will select 22 events to support during this 12 month period. The Department will select those events that, in its judgment, most clearly and best meet the Department's objectives as well as satisfy the selection criteria. For this reason, non-selection of an event should not be viewed as a finding that the event will not be successful in promoting U.S. exports.

The collection of the information required in an application is authorized by law (15 U.S.C. 1512 et seq.). A trade show will not be considered for the Foreign Buyer Program unless a completed application has been received.

The Office of Management and Budget has approved the information collection requirement contained in this notice under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) (OMB number 0625-0151 approved for use through 9/30/94).

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Reports Clearances Officer, International Trade Administration, room 4001, U.S. Department of Commerce, Washington, DC 20230 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0625-0151), Washington, DC 20503.

### General Selection Criteria

Subject to Departmental budget and resource constraints, selection will be granted to those events which, in the judgment of the Department, most clearly and best meet the following criteria:

(a) *Export Potential:* The products and services to be promoted at the trade show should be from U.S. industries which have high export potential as determined by U.S. Department of Commerce sources, i.e., best prospects lists and U.S. export statistics. (Certain industries are rated as priorities by our domestic and international commercial officers in their annual workplans and country marketing plans).

(b) *International Interest:* Trade Shows will be selected which meet the needs of a significant number of overseas markets covered by the US&FCS and correspond to marketing opportunities as identified by the posts in their country marketing plans (e.g. best prospects). Previous foreign attendance at the show may be used as an indicator.

(c) *Scope of the Show:* The event must offer a broad spectrum of U.S. made products and/or services for the subject industry. Trade shows with a majority of U.S. firms will be given preference.

(d) *Stature of the Show:* The trade show must be clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally and as a showplace for the latest technology or techniques in that industry.

(e) *Exhibitor Interest:* Show Organizer must demonstrate interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of these exhibitors should be new-to-export or seeking to expand sales into additional foreign markets.

(f) *Overseas Marketing:* Show Organizer must describe efforts made to market event overseas for prior shows as well as to detail international marketing efforts for the event for which FBP support is being sought.

(g) *Logistics:* The trade show site, facilities, transportation services and availability of accommodations must be in the stature of an international-class trade show.

(h) *Delegation Incentives:* Show Organizers should list types of incentives to be offered to delegations and delegation leaders recruited through US&FCS overseas posts. Examples of incentives include waived or reduced admission fees to the event, competitive travel packages, plant tours, and international reception, and complimentary accommodations for delegation leaders.

(i) *Cooperation:* Successful applicants will be required to enter into a Memorandum of Understanding (MOU) which sets forth the specific actions to

be performed by the show producer/owner and the USDOC. There must be a willingness on the part of the trade show organizer to cooperate with the US&FCS to fulfill the program's goals, and to adhere to target dates set out in the Memorandum of Understanding (MOU) and the event timetable.

**Note:** Past experience in the Foreign Buyer Program will be taken into account in evaluating current application to the program.

**Department of Commerce Support of Foreign Buyer Program Events**

The support provided for selected events may differ depending on the specific needs identified and agreed upon by the Department and the show organizer. Services may include, but are not limited to, special overseas marketing efforts by staff of the US&FCS. Such marketing activities include contacting key foreign government and private sales prospects and providing publicity in appropriate Departmental periodicals.

*Specific Department Actions*

For each Foreign Buyer Program show the Department of Commerce (DOC) will:

(a) Designate a project manager as central contact to work with the show organizer on all aspects of promotion abroad and foreign buyer assistance at the show. The project manager will work closely with the show organizers' contact to develop an overall promotional timetable to promote the event.

(b) Advise and work closely with all interested U.S. Embassies and Consulates to encourage maximum trade show promotion and exposure for those exhibitors indicating export interest.

(c) Promote industry trade show participation through announcements in publications with overseas distribution. (E.g., regional and embassy commercial newsletters, and Commercial News USA).

(d) Provide show organizer with specifications of a DOC-designed hard panel system International Business Center (IBC), including furniture requirements, DOC office, conference rooms, lounge area, storage area, etc.

(e) Provide show organizer with samples of multi-language brochures, U.S. Embassy/Consulate address labels, shipping instructions and quantities required for overseas shipment.

(f) Provide show organizers with promotional articles about the Foreign Buyer Program and the services available to U.S. exhibitors and foreign visitors at the International Business Center. Will send a letter with program flyer to all U.S. exhibitors at least one month before the show to promote the IBC and the benefits of the Program.

(g) Provide a final show report to the show organizer not later than 120 days after the show. This report will include data collected by show organizer in a post show survey reflecting FBP results.

(h) Request US&FCS District Offices in the U.S. to provide export counseling on specific marketing information to those U.S. participants that have indicated a need for such counseling before and during the show.

(i) Review all printed materials bearing the Foreign Buyer Program logo for substantive and legal accuracy of statements regarding the Program or DOC activities and event support.

**Department of Commerce Services Provided at Trade Show Site**

(a) At least one project manager will provide primary management of the International Business Center (IBC), facilitate matching foreign buyers with exhibiting U.S. companies, and inform U.S. companies about U.S. Department of Commerce products and services and other International Trade Administration programs. At least one Trade Specialist from a US&FCS District Office will be available during the show to provide additional export counseling.

(b) The Department of Commerce will provide export counseling at the International Business Center to exhibitors and assist foreign buyers to meet their purchasing/representation objectives during the show.

(c) US&FCS staff will participate, if appropriate, in special export promotion seminars specifically aimed at new-to-market/new-to-export firms exhibiting at the trade show.

*Specific Responsibilities of the Show Organizer*

Show organizers selected for the Foreign Buyer Program must:

(a) Designate an official authorized to work with the US&FCS project manager on all aspects of the show promotion as well as a contact during the show to assist with foreign visitor information and product referral (matchmaking services).

(b) Produce and distribute a multilingual promotional brochure in four or more languages and in the quantities specified by the project manager for overseas distribution. Draft of the brochure must be approved by the project manager prior to printing and include the FBP logo and information on the Program and the services available for the international buyer. These brochures must be printed not less than six months prior to the show.

When mailing the brochures to overseas posts, the show organizer is expected to provide names of attendees to the most recent show (by country and on mailing labels if possible), most recent show directory/exhibits guide, and a press release directed to prospective international attendees. Copies of Commercial News USA advertisement, promotional video, etc., also may be made available.

(c) Produce a one-page promotional advertisement to be placed in Commercial News USA. Advertisement must be approved by the project manager, have FBP logo prominently and appropriately displayed, and refer foreign firms to "the Commercial Section of the nearest U.S. Embassy or Consulate" for information on the show(s).

(d) Coordinate with project manager in developing and promoting delegation incentive program to U.S. Embassies and Consulates. Program may include reduced admission fees, complimentary accommodations for delegation leaders leading delegations of more than 15 foreign buyers, etc., all intended to encourage recruitment of delegations.

(e) Provide overseas posts with hotel information at least 6 months prior to the event. Coordinate hotel reservations arrangements.

(f) With guidance from project manager, prepare and distribute an information letter and survey to U.S. exhibitors before show to determine interest in exporting and international marketing objectives. Information collected will include products or services that the U.S. exhibitors wish to export, international marketing objectives and geographic areas of interest to the company. Information will be incorporated by the show organizer into the show directory or as a separate Export Interest Directory. If published as an Export Interest Directory, two to three copies will be distributed to all Department of Commerce posts overseas 1–3 months prior to the show. If published in the show directory, copies will be distributed upon completion of the show. Preliminary copies may be distributed overseas prior to the show, if possible. Mailing labels will be provided by Commerce.

(g) Establish an International Business Center (IBC) at the show in a prominent location adjacent to the main registration area with conspicuous display of signage throughout the show to indicate its location. The IBC will consist of a separate registration area for foreign visitors (see item K), lounge area, 2 to 3 conference rooms, and a

business office for USDOC officials. The show organizer will staff the IBC with interpreters covering 5–7 languages and sufficient show organizer personnel to assist the two USDOC officials from Washington and the one District Office trade specialist. USDOC design specifications do not allow for pipe and drape at the IBC. A hard panel system is required. A business services center (photocopying, facsimile service, typing, etc.) for attendees and exhibitors may be located within the IBC.

(h) Provide to the project manager a proposed Convention Center floor layout indicating the location and dimensions of the International Business Center at least six (6) months prior to the event.

(i) Provide all U.S. exhibitors with information about the IBC and Department of Commerce services prior to the show and encourage them to visit the IBC.

(j) Include a one page advertisement in the show directory/exhibits guide highlighting the FBP and the IBC, and publish in the Show Daily an article describing the FBP and the services provided at the IBC. The copy will be supplied by the Department of Commerce.

(k) Establish a separate international registration system to ensure Commerce project managers access to all foreign attendees at time of registration and to facilitate distribution of the Export Interest Directory and Importer Profile cards. This registration area should be located within the IBC or adjacent to it. The Importer Profile should include the product interest and marketing objectives of all foreign buyers interested in meeting with U.S. exhibitors. (Show organizers are also encouraged to computerize this information). The Importer Profile will be posted at the International Business Center for the benefit of U.S. exhibitors and U.S. attendees interested in international business and will be disseminated at the conclusion of the event to all U.S. exhibitors indicating interest in international business.

*Important:* The Show Organizer must provide a cashier to process all international registration and seminar fees. DOC employees are not bonded and, therefore, cannot handle currency.

(l) Within 3 months following the show, send the following information to all posts: Results of the selected FBP event and information on the next show, copies of the export interest and show directories, importer profile and printout of the names and addresses of the foreign attendees from the respective countries (Embassy/Consulate mailing labels will be provided by the project manager).

(m) Show organizer will provide mailing labels to project officer so that a survey of U.S. exhibitors in the Export Interest Directory to determine international business results can be accomplished. Survey will include the number of useful international contacts at the event, number of representative/distributor agreements made or pending, joint venture or licensee type arrangements made or pending, dollar value of overseas orders booked at event, and projected overseas sales as a result of contacts made at the event. This information will be incorporated into the final report to be prepared by the DOC project manager.

(n) Upon notification of acceptance into the Foreign Buyer Program, remit the appropriate contribution. For this recruitment period the contribution is $4,000 for shows of 5 days or less in duration. For shows over five days in duration the fee is $6,000.

*Selection:* Selection indicates that the Department has found the event to be a leading international trade show appropriate for participation by U.S. exporting firms and promotion in overseas markets by U.S. Embassies and Consulates. Selection does not constitute a guarantee by the U.S. Government of success of the show or of the undertakings or obligations of the show organizer. Selection is not an endorsement of the show organizer except as to its Foreign Buyer activities. Each successful applicant will be given copies of an official U.S. Department of Commerce Foreign Buyer Program logo for use in its advertising promotional materials concerning the Foreign Buyer Program. Show organizers may use the logo to signify their participation in the Program. However, the logo may not be used to indicate or imply Departmental endorsement, except as to an organizer's Foreign Buyer activities. Advertising and promotional materials shall not result in embarrassment to the Department or the Foreign Buyer Program. Further, DOC review by the project manager of any materials using the logo is necessary.

*Exclusions:* Trade shows will not be considered that are either first time events or are horizontal, that is, not industry specific. Annual trade shows will not be selected for this program more than twice in any three year period (e.g., shows selected for fiscal years 1992 and 1993 are not eligible for inclusion in this program in fiscal year 1994, but will be considered in subsequent years).

**When, Where and How to Apply for Selection in the 1994 Foreign Buyer Program**

Except to the extent required by law, no information of a proprietary nature reported on this application will be disclosed without the prior written consent of the relevant firm.

Please type the information requested below on company letterhead and mail two (2) complete sets of your application to: Product Manager, Foreign Buyer Program, room 2116, Cooperative Events Division, OEMP/EPS, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce 14th and Constitution Avenue, NW., Washington, DC 20230.

Applications must be received at the above address by August 4, 1992. Facsimile applications will not be accepted. Answers to the questions listed below constitutes the formal application:

(1) Name of show.

(2) Site of show.

(3) Dates of show. Indicate if show is held annually, biennially, or other.

(4) Name, address, and phone number of applicant.

(5) Name, address, and phone number of applicant contact.

(6) Name, address, and phone number of show sponsor (trade association, national or state government, etc.)

(7) Basic history or description of show. Applicant must demonstrate that subject event is a leading international trade show for the industry (e.g., what makes this show unique compared to other U.S. or international shows?). Includes copies of previous show promotion materials.

(8) Resume of applicant's show experience.

(9) Number of total exhibitors at the past two shows (separate U.S. and foreign).

(10) Specify net square feet of paid exhibit space in the past two shows. Separate U.S. and foreign.

(11) Specify the total number of attendees at the past two shows (separate U.S. and foreign). Also include the number of countries represented at past two shows. Do *not* include exhibitor attendance in these figures.

(12) State any admission fees for show visitors (exhibit only) and indicate if there are or will be reduced or waived fees for international visitors or for members of U.S. Embassy delegations.

(13) Give a description of any technical program offered and the cost to attend (if applicable).

(14) State product categories to be displayed.

(15) State the audience profile of potential foreign customers (target countries, industries, profession or technical level).

(16) Describe marketing efforts made to promote event overseas for prior show and proposed marketing plan for event being applied for (e.g., use of overseas trade associations, publications, travel agents, etc.)

(17) Specify delegation incentives to be offered to delegations and delegation leaders recruited through U.S. Embassies or Consulates (examples include waived or reduced admission fees to the exhibition or conference, competitive travel packages, plant tours, international receptions, complimentary accommodations for delegation leaders, etc.).

(18) Submit two (2) sets of all show promotional literature, including show catalog, for previous show.

Applicant must type the following and submit with the appropriate signature:

"The above information is correct and the applicant will abide by the terms set forth in this Notice of Call for Applications for the FY93 Foreign Buyer Program (October 1, 1993, through September 30, 1994)."

Applications will be processed by the Cooperative Events Division, Office of Export Marketing Programs, Export Promotion Services, and final selection of events will be made approximately 75 days after publication of this Federal Register notice. *Contribution:* A contribution of $4,000 for shows of 5 days or less in duration is required. For shows over five days in duration a fee of $6,000 is required. Fees are for shows selected and promoted during the October 1, 1993, through September 30, 1994, period.

ITA has determined that this action is not a major rule within the meaning of section 1(b) of Executive Order 12291. Therefore, a Regulatory Impact Analysis has not nor will be prepared. Because a notice of proposed rulemaking and an opportunity for public comment is not required for this agency action relating to practice and procedure under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, no initial or final Regulatory Flexibility Analysis has to be or will be prepared. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

**Ann H. Watts,**

*Director, Cooperative Events Division, Office of Export Marketing Programs, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce.*

[FR Doc. 92-16237 Filed 7-9-92; 8:45 am]

BILLING CODE 3510-FP-M

## National Oceanic and Atmospheric Administration

### Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS) and request for comments.

**SUMMARY:** NOAA announces the intent of the Caribbean Fishery Management Council (Council) to prepare an SEIS to assess the potential impacts on the human environment of expanding the Fishery Management Plan for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP) to include the deep-water reef fish resources and components of the marine aquarium trade. These management changes would be made through Amendment 2 to the FMP. The Council also is considering as part of Amendment 2 the closure of two additional red hind spawning aggregation areas to rebuild this overfished resource as well as closure of a mutton snapper and tiger grouper spawning aggregation area. Amendment 2 to the FMP also would: Prohibit the harvest of jewfish and possibly red grouper; establish marine reef reserves; modify fish trap restrictions; prohibit the use of destructive methods of harvesting species in the marine aquarium fishery; and institute mandatory permitting and reporting requirements that could lead subsequently to an effort limitation program. The intent of this notice is to inform the public of the council's (1) concerns over the current uncontrolled harvest of certain reef resources, (2) intention to amend the FMP to address these concerns, and (3) plans to prepare an SEIS covering the environmental effects on the human environment of the fishery as proposed under the management changes.

Resource-related problems and management alternatives were discussed at meetings of the Shallow-Water Reef Fish Mangement Committee and the Council in Hato Rey, Puerto Rico, June 26–28, 1991, and at Council Meetings in St. Thomas, U.S. Virgin Islands, October 30–31, 1991, and San Juan, Puerto Rico, March 26–27, 1992. These issues also were discussed at meetings of the Council's Scientific and Statistical Committee and Reef Fish Advisory Panel held on March 10–11, 1992. In view of these previous discussions, no additional scoping meetings are scheduled. Public hearings will be held on the draft Amendment 2 and the draft SEIS; dates will be announced later.

**DATES:** Public comments are invited until July 31, 1992.

**ADDRESSES:** Comments and questions regarding the proposed management changes should be directed to Miguel Rolon, Executive Director, Caribbean Fishery Mangement Council, suite 1108, Banco Popular, Hato Rey, Puerto Rico 00918 (809) 766–5926.

**FOR FURTHER INFORMATION CONTACT:** Mr. Miguel Rolon (see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

#### Background

The FMP was prepared by the Council under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and was implemented in September 1985. The FMP established a management program for shallow-water reef fish resources within the Exclusive Economic Zone (EEZ) of the Council's area of jurisdiction. The preponderance of fishery resources managed under the FMP occur in waters under the authority of the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands. The FMP's management program was extended to the shoreline with agreement that the island governments would adopt compatible regulations.

The FMP's initial measures were designed to rebuild declining reef fish resources and established: (a) A minimum mesh size of 1.25 inches (3.2 centimeters) for fish traps; (2) requirements for degradable panels and door fasteners on traps; (3) a prohibition against hauling or tampering with another person's traps without written permission of the owner; (4) a vessel and gear identification system; (5) a prohibition on using poisons, drugs, other chemicals or explosives for taking fish in the management unit; (6) incremental size limits for Nassau grouper (*Epinephelus striatus*) and yellowtail snapper (*Ocyurus chrysurus*); and (7) a spawning season closure for Nassau grouper.

In November 1990, Amendment 1 to the FMP: (1) Prohibited the harvest or possession of Nassau grouper; (2) provided for the annual closure to all fishing within a red hind (*Epinephelus guttatus*) spawning aggregation area in the EEZ southwest of St. Thomas; (3) defined overfishing for reef fish; (4) revised the habitat section of the FMP; (5) increased the minimum allowable mesh size for fish traps to 2.0 inches (5.1 centimeters) effective September 1991; and (6) provided for the collection of socioeconomic information under existing state/federal agreements. These measures were designed to guard against continued declines of Nassau grouper and red hind resources and to increase escapement of juveniles and smaller reef fishes from traps. The mesh size increase proposed for fish traps was later reduced to 1.5 inches (3.8 centimeters) to minimize economic impacts on the industry until studies could be conducted within the management area to more thoroughly evaluate the effectiveness of various mesh sizes and shapes. This adjustment provided additional protection to the resource over the initial 1.25-inch (3.2-centimeter) mesh size requirement. At the same time, escape panel requirements also were specified for the various allowable mesh sizes, and jute twine, no greater than ⅛ inch (0.3 centimeter) in diameter, was prescribed as the only acceptable fastening material for panels. Also, provisions for utilizing the access door as one of the required panels were described. The escape panels are designed to prevent continued fishing and subsequent mortality of fishes by traps that are lost (ghost traps).

**Issues**

The actions proposed in Amendment 2 address continuing and growing concerns by the Coun cil over scarce resources, the need to protect important species when they aggregate for spawning, and the need to extend management protection to other reef-associated species not presently in the management unit. Of some 350 species of shallow-water reef fish in the Caribbean, about 180 are landed throughout the region and collectively comprise the most important fishery in the islands. The management unit currently includes the 64 most commonly landed species that dominate the catch from the shoreline to the edge of the insular platform. At greater depths beyond the platform, another fishery occurs—the deep-water reef fish fishery.

The distribution of some of the species overlap with the shallow-water reef fishes, although the deep-water species are more abundant as adults in deeper waters. With the possible exception of red and tiger grouper, measures are not envisioned initially for deep-water species due to lack of data on the status of stocks. Measures in the existing FMP to prohibit the use of chemicals and explosives to harvest reef fishes would apply immediately. Including these species in the management unit facilitates future regulatory action if necessary. Inclusion of the deep-water fishery adds 14 species to the FMP management unit.

Upwards of 105 species of reef-associated fishes are taken by the marine aquarium trade industry. A decline in abundance has been noted for some of the more desirable species in certain localities. The ecological effects of their removal are unknown, and some of the most widely used collecting methods employ chemicals and nets that damage the reef habitat and inflict mortality upon fishes and associated invertebrates. Expanding the FMP management unit to include marine aquarium species would obviate the need for a separate fishery management plan and provide a mechanism to manage initially this select group of fishes under the existing restrictions on the use of chemicals and explosives and small-mesh traps. Certain kinds of nets that have a potential for damaging reef resources also would be prohibited by this amendment. Harvest of certain species either could be regulated or prohibited as necessary. These adjustments in Amendment 2 would require changing the FMP title, expanding the management unit, and updating the entire FMP to describe the fisheries incorporated. Marine aquarium invertebrate species would be included in the Fishery Management Plan for Corals and Associated Invertebrates of Puerto Rico and the U.S. Virgin Islands, which is currently being developed.

Following collapse of the Nassau grouper resource, the red hind became the single most important species in the fishery; however, statistics show a decrease in the number of young fish in the population. Whenever possible, the Council relies upon closing aggregation sites during spawning seasons to enhance reproductive capacity. Most species that aggregate during the spawning season are highly vulnerable to capture at that time. Allowing mature individuals the opportunity to spawn is important to reverse declines in abundance. Even some fishermen have requested closure of spawning aggregation areas for red hind. A spawning aggregation area off St. Thomas, described and closed during the 1989–90 spawning season (December-February) by emergency regulatory action, has been closed during each successive spawning season under Amendment 1. Two additional spawning area closures for red hind are being considered under Amendment 2.

A decline in the abundance of jewfish (*Epinephelus itajara*) has been noted throughout the management area and may extend throughout the Caribbean Basin. Similar declines in the Gulf of Mexico and off the south Atlantic coast of the United States led to a total prohibition on jewfish harvest in those areas. The Council believes that the jewfish should be protected throughout its range. The species appears to be scarce wherever it occurs and has unique biological characteristics that make it highly susceptible to overfishing. The U.S. Virgin Islands government has listed jewfish as a protected species, and prohibits its take in Territorial waters.

**Proposed Management Measures and Alternatives Under Consideration**

In considering how to amend the FMP to protect more adequately reef resources and to address the specific issues above, the Council has already considered several alternative approaches. At this time, the Council's preferences include:

(1) Expansion of the management unit so that protection may be afforded to deep-water reef resources and finfishes in the marine aquarium trade, as appropriate.

(2) Prohibition of the use of noxious chemicals and other destructive gears for collecting marine aquarium fishes.

(3) Establishment of permitting and reporting systems administered by the local governments to obtain reef fish catch-and-effort data. These systems will serve as a basis for developing limited access programs for the fishery.

(4) Prohibition of the harvest of scarce or severely overfished resources. Jewfish, as well as the young of overfished species harvested in the aquarium trade (such as red hind, Nassau grouper, and others) are candidates for harvest prohibitions.

(5) Closing additional red hind aggregation areas to all fishing during the spawning season. Closure of spawning aggregation sites for mutton snapper and tiger grouper also are being considered.

(6) Establishing marine coral reef reserves at strategic locations within the management area. These areas would be off limits to all fishing activity and

would serve as a genetic reservoir to ensure recruitment to surrounding areas.

**Scoping Process**

As indicated in the Summary, the Council has identified needed management program changes, including a greatly expanded management unit encompassing the deep-water reef fishery and the marine aquarium fishery in addition to the shallow-water reef fish fishery. Amendment 2 also is designed to serve as the forerunner to a limited access system for the reef fish fishery. Although an EIS was developed for the original FMP, the Council recognized that the proposed changes are substantial and has concluded that an SEIS would be prepared for the fishery as proposed under Amendment 2. Finally, Amendment 2 will reopen an informal Section 7 Consultation on the fishery, as now required under the Endangered Species Act.

**Timing of the Analysis and Tentative Decisionmaking Schedule**

The Council has adopted a tentative schedule for preparation, review, and approval of Amendment 2. Under this schedule, the draft Amendment 2 and draft SEIS are planned for completion prior to the Council's September 1992 meeting. If acceptable draft documents are completed, the Council could decide then to release them for public review. Oral public comments on the proposed management changes will be invited at the September meeting. If the draft Amendment 2 and draft SEIS are released for public review, the comment period would probably occur during October and November. The Council intends to make final decisions on the management measures in Amendment 2 at its December 1992 meeting. Again, public comments on these decisions could be made to the Council at that meeting. Based on final Council decisions, a final Amendment 2 and final SEIS would be prepared and submitted to the Secretary of Commerce for review, approval, and implementation. The Council reserves the right to modify or abandon this schedule.

Under the Magnuson Act, Secretarial review and approval of a proposed amendment is completed in no more than 95 days and includes concurrent public comment periods on the amendment and proposed regulations. If Amendment 2 is approved by the Secretary, the new management measures are scheduled to become effective in the spring of 1993.

Dated: July 6, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-16236 Filed 7-9-92; 8:45 am]

BILLING CODE 3510-22-M

## COMMISSION ON NATIONAL AND COMMUNITY SERVICE

**Discretionary Funds**

**AGENCY:** Commission on National and Community Service.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Commission on National and Community Service is announcing the availability of its discretionary funds, the amount available, and the proposed uses for these funds. The Commission seeks comments on the proposed uses, as well as any new ideas.

**ADDRESSES:** All comments concerning these discretionary funds and their usage should be addressed to Mike Kenefick, Senior Grants Officer, Commission on National and Community Service, 529 14th Street NW., suite 452, Washington, DC 20045.

**FOR FURTHER INFORMATION CONTACT:** Mike Kenefick, Senior Grants Officer (202) 724-0600.

**SUPPLEMENTARY INFORMATION:** The Commission on National and Community Service, established by the National and Community Service Act of 1990, as amended, seeks to promote the development of a major national community service movement, focused initially on youth. Toward this end, the Commission funds a variety of programs to expand available full-time and part-time service opportunities that span the generations. In addition, the Commission is authorized to support this goal through training, technical assistance, conferences, and other means consistent with the Act. Up to $2.5 million in fiscal year 1992 discretionary funds has been allocated by the Board of Directors of the Commission for these purposes. Additional amounts may be available in fiscal year 1993. Some discretionary activities will be conducted by the Commission; others will be undertaken through grants to public or private nonprofit organizations.

Through this notice, the Commission is requesting comments regarding how it might best support the goal of a major national community service movement through activities such as those described below. These examples are only suggestions—comments may critique these ideas, expand on them, or suggest alternative approaches. The Commission is particularly interested in ways in which technology may be used to facilitate knowledge transfer, coalition building, and youth involvement.

In addition, public and private nonprofit organizations are invited to submit concept papers describing specific proposals in any of the above areas. Such concept papers must not exceed five double-spaced pages of narrative, and should be accompanied by a one-page budget estimate and a one-page resume or other biographical information about the project director or principle staff. Additional material should not be attached or submitted. All concept papers should include a cover sheet clearly stating the title of the proposed project and the name, address, and phone number of the project director and sponsoring organization. A concept paper may be submitted at any time by any public or private nonprofit organization. Concept papers will be reviewed by Commission staff to determine the proposal's potential for meeting the Commission's stated goals and its cost-effectiveness. Based on this review, applicants may be invited to submit a formal proposal. Final award decisions will be made by the Board of Directors.

This year's funds have been tentatively allocated as outlined below.

1. Up to $1 million for knowledge transfer activities that facilitate the communication of information, understanding, ideas, practices, inspiration and stimulation from leaders of exemplary programs to others through training, technical assistance, and other means. Clearinghouses are one example, and comments on the types of clearinghouses the Commission should support are welcome. The Commission has set K-12 activities as its first priority for a clearinghouse and we plan to issue a separate notice in the **Federal Register** on that at a later date. Examples of knowledge transfer activities include:

a. *Shared Learning Seminars:* A series of interactive meetings allowing Commission grantees and others to share experience in a way that accelerates learning and innovation.

(b) *Leader Site Visitation Program:* To provide grants to existing membership organizations to enable staff of new innovative programs to visit and learn from designated Commission "leader" programs.

c. *Knowledge Transfer Publications:* To disseminate written case studies of model programs, discussions of best

practices, and ways to solve practical problems.

d. *Information Exchange Telephone Conference:* Such as conferences scheduled, for example, monthly, on specific topics and allowing for experts to communicate practical information in an interactive format.

2. Up to $1 million for coalition building activities that will encourage and facilitate collaborations at the local, state, and national levels dedicated to building the infrastructure needed for a strong, diverse and innovative community service movement. Examples include:

a. *Strategy Meetings:* To bring diverse groups of leaders together to formulate cohesive strategies for promoting and supporting the community service movement. Meetings might involve a single sector (i.e. religious or foundation leaders) or provide for cross-fertilization (i.e. education reform leaders meetings with youth service leaders).

b. *Topical Discussions:* To allow for dialogue on important issues such as working effectively with monority communities, building strong programs in the inner city, or intergenerational collaborations.

c. *National and Regional Grantees Meetings:* Bringing grantees together for joint planning and to foster a sense of national identity and purpose.

3. Up to $250,000 for youth involvement in the leadership of the community service movement at every level. Examples include:

a. *Youth Voice State Implementation:* To provide grants to states to develop and support youth working groups to implement the state plan and document successful strategies involving youth in decision making.

b. *Youth training:* To educate young people about the Commission, teach leadership skills, and increase youth voice in policy-making.

c. *Documenting Young People In Service:* Through which young people around the country would document through photographs their peers' involvement in service. The result would be a traveling exhibit and book celebrating the work of young people.

d. *Forums for Young People:* To discuss and respond to the activities of the Commission and other initiatives in the youth service field.

4. Funds allocated for coalition building, knowledge transfer and youth involvement may be used for fellowships to further these goals. Nominations of individuals to be fellows and organizations who would host them would be accepted on an ongoing basis. Sponsoring or host organizations would be expected to provide administrative or overhead costs while the Commission would fund direct costs such as salaries and travel. Ideas from organizations who are interested in developing and coordinating a fellowship program are also welcome. Examples of fellowship initiatives include:

a. *Commission Senior Fellows:* A select number of proven leaders and innovators in the field freed half-time from their current programs to work with less experienced programs.

b. *Community Service Fellows:* Who would assist city, county, and state officials in identifying innovative ways in which community service can strengthen government services.

c. *Youth Fellows:* Who would be affiliated with public or private nonprofit organizations to help facilitate youth leadership and involvement.

**Authority:** 42 U.S.C. 12501 *et seq.*

**Dated:** July 6, 1992.

**Catherine Milton,**

*Executive Director.*

[FR Doc. 92-16231 Filed 7-9-92; 8:45 am]

BILLING CODE 6820-BA-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### New Transshipment Charges for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

July 7, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs charging transsshipments to 1992 limits.

**EFFECTIVE DATE:** July 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a notice published in the **Federal Register** on January 2, 1992 (57 FR 50), CITA announced that Customs would be conducting other investigations of transshipments of textiles produced in China and exported to the United States. Based on these investigations, the U.S. Customs Service has determined that textile products in various categories, produced or manufactured in China and entered into the United States with the incorrect country of origin were transshipped in circumvention of the U.S.-China Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended. In addition, charges are being applied to Category 239 because the product was substantially transformed in China. The U.S. Government informed the Government of the People's Republic of China in a letter dated April 10, 1992 of the charges to be made to the 1992 quotas. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the 1992 quota levels for the categories listed below:

| Category | Amount to be charged to 1992 limit |
|---|---|
| 239 | 231,285 kilograms. |
| 336 | 1,500 dozen. |
| 338 | 179,331 dozen. |
| 338-S [1] | 13,578 dozen. |
| 339 | 52,636 dozen. |
| 339-S [2] | 145,576 dozen. |
| 341 | 1,550 dozen. |
| 347 | 91,927 dozen. |
| 348 | 51,808 dozen. |
| 359-O | 30,115 kilograms. |
| 359-C | 40,882 kilograms. |
| 369-O | 200,276 kilograms. |
| 634 | 3,983 dozen. |
| 635 | 8,019 dozen. |
| 638 | 600 dozen. |
| 640 | 4,085 dozen. |
| 641 | 9,450 dozen. |
| 642 | 190 dozen. |
| 645 | 434 dozen. |
| 646 | 1,250 dozen. |
| 647 | 45,295 dozen. |
| 648 | 9,563 dozen. |
| 659-O | 2,786 kilograms. |
| 659-S | 25,694 kilograms. |
| 845 | 1,500 dozen. |
| 846 | 838 dozen. |

[1] Charges to Category 338-S are in addition to those charges being made to Category 338.

[2] Charges to Category 339-S are in addition to those charges being made to Category 339.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in China and exported to the United States. The charges resulting from these investigations will be published in the **Federal Register**.

The U.S. Government is taking this action pursuant to the U.S. letter dated April 10, 1992, the U.S.-China bilateral textile agreement of February 2, 1988, as amended, and in conformity with Paragraph 16 of the Protocol of Extension and Article 8 of the Arrangement Regarding International Trade in Textiles, done at Geneva on

December 20, 1973 and extended on December 14, 1977, December 22, 1981, July 31, 1986 and July 31, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 7, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC* 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetble Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on July 10, 1992, you charge the following amounts to the following categories for 1992:

| Category | Amount to be charged to 1992 limit |
|---|---|
| 239 | 231,285 kilograms. |
| 336 | 1,500 dozen. |
| 338 | 179,331 dozen. |
| 338–S [1] | 13,578 dozen. |
| 339 | 52,606 dozen. |
| 339–S [2] | 145,576 dozen. |
| 341 | 1,550 dozen. |
| 347 | 91,927 dozen. |
| 348 | 51,608 dozen. |
| 359–O [3] | 30,115 kilograms. |
| 359–C [4] | 40,882 kilograms. |
| 369–O [5] | 200,276 kilograms. |
| 634 | 3,983 dozen. |
| 635 | 8,019 dozen. |
| 638 | 600 dozen. |
| 640 | 4,085 dozen. |
| 641 | 9,458 dozen. |
| 642 | 193 dozen. |
| 645 | 434 dozen. |
| 646 | 1,250 dozen. |
| 647 | 45,295 dozen. |
| 648 | 9,563 dozen. |
| 659–O [6] | 2,786 kilograms. |
| 659–S [7] | 25,694 kilograms. |
| 845 | 1,500 dozen. |
| 846 | 838 dozen. |

[1] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023.

[2] Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[5] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6000 (Category 369–L); and 6307.10.2005 (Category 369–S).

[6] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[7] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

This letter will be published in the **Federal Register**.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc 92–16195; Filed 7–9–92; 8:45 am]

BILLING CODE 3510–DR–F

## Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1992 Correlation

July 6, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Changes to the 1992 Correlation.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

**SUPPLEMENTARY INFORMATION:**

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1992) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. Effective on May 1, 1992, the 1992 Correlation was amended as follows, based upon Presidential Proclamation No. 6428, which implements Section 212 of the Caribbean Basin Economic Recovery Expansion Act of 1990:

| Obsolete number | New number |
|---|---|
| 6116.10.1820 (331) | 6116.10.1720 (331) |
| 6116.10.1830 (631) | 6116.10.1730 (631) |
| 6116.10.1840 (831) | 6116.10.1740 (831) |
| 6116.92.6010 (331) | 6116.92.6410 (331) |
| 6116.92.6020 (331) | 6116.92.6420 (331) |
| 6116.92.6030 (331) | 6116.92.6430 (331) |
| 6116.92.6040 (331) | 6116.92.6440 (331) |
| 6116.92.6050 (331) | 6116.92.7450 (331) |
| 6116.92.6060 (331) | 6116.92.7460 (331) |
| 6116.92.6070 (331) | 6116.92.7470 (331) |
| 6116.92.9000 (331) | 6116.92.8800 (331) |
| | 6116.92.9400 (331) |
| 6116.93.6010 (431) | 6116.93.6400 (431) |
| 6116.93.6020 (431) | 6116.93.7400 (431) |
| 6116.93.9010 (631) | 6116.93.8800 (631) |
| 6116.93.9020 (631) | 6116.93.9400 (631) |
| 6116.99.5020 (631) | 6116.99.4800 (631) |
| 6116.99.5040 (631) | 6116.99.5400 (631) |
| 6216.00.1220 (331) | 6216.00.1720 (331) |
| 6216.00.1230 (631) | 6216.00.1730 (631) |
| 6216.00.1240 (831) | 6216.00.1740 (831) |
| 6216.00.3910 (331) | 6216.00.3800 (331) |
| 6216.00.3920 (331) | 6216.00.4100 (331) |
| 6216.00.5210 (431) | 6216.00.5410 (431) |
| 6216.00.5220 (431) | 6216.00.5810 (431) |
| 6216.00.5235 (631) | 6216.00.5420 (631) |
| 6216.00.5245 (631) | 6216.00.5820 (631) |

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92–16196 Filed 7–9–92; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed Additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to

procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List:

*Commodities*

Brake Pad Assembly, 2530–01–225–4215
Nonprofit Agency: Arizona Industries for the Blind, Phoenix, Arizona
Parts Kit, Automatic Transmission Filter, 2940–01–121–6350
Nonprofit Agency: Goodwill Industries—Knoxville, Inc., Knoxville, Tennessee

*Services*

Assembly of Promotional Material, U.S. Information Agency, Washington, DC
Nonprofit Agency: Virginia Industries for the Blind, Richmond, Virginia
Food Service Attendant, Naval Station and Deperming Station, Norfolk, Virginia
Nonprofit Agency: Louise W. Eggleston Center, Inc., Norfolk, Virginia
Grounds Maintenance, Marine Corps Reserve Center, 75th & Warwick Boulevard, Newport News, Virginia
*Nonprofit Agency:* Association for Retarded Citizens of the Peninsula, Hampton, Virginia

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 92–16284 Filed 7–9–92; 8:45 am]

BILLING CODE 6820–33–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### DOD Advisory Panel on Streamlining and Codifying Acquisition Laws

**AGENCY:** Defense Systems Management College, DOD.

**ACTION:** Notice of meeting.

**SUMMARY:** Open to the public on July 27, 1992, starting at 8:30 a.m. at the Defense Systems Management College in Building 184 on Fort Belvoir, VA. The panel will hear presentations and recommendations by the various panel working groups on the statutes they have reviewed to date. For further information contact Laura Neal at (703) 355–2665.

Dated: July 7, 1992.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92–16223 Filed 7–9–92; 8:45 am]

BILLING CODE 3810–10–M

### Membership; Defense Mapping Agency Performance Review Board

**AGENCY:** Defense Mapping Agency (DMA) Department of Defense (DoD).

**ACTION:** Notice of membership of the Defense Mapping Agency Performance Review Board (DMA PRB).

**SUMMARY:** This notice announces the appointment of the members of the DMA PRB. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Board provides fair and impartial performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DMA.

**EFFECTIVE DATE:** August 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** B.R. Webster, Defense Mapping Agency, Office of Human Resources, 8613 Lee Highway, Fairfax, VA 22031–2137, telephone (703) 285–9521.

**SUPPLEMENTARY INFORMATION:** Per 5 U.S.C. 4314(c)(4), the following is a standing register of executives appointed to the DMA PRB; specified PRB panels will be constituted from this standing register. Executives listed will serve a one-year renewable term, effective 20 August 1992.

Ancell, A. Clay
Deputy Director for Programs, Production and Operations, DMA Aerospace Center
Brown, William J.
Deputy Director for Programs, Production and Operations, DMA Hydrographic/Topographic Center
Coghlan, Thomas K.
Chief, Mapping and Charting Department, DMA Hydrographic/Topographic Center
Dierdorff, Curtis L.
Deputy Director for Human Resources, DMA
Gilliam, Penman R.
Deputy Director, DMA
DMA Performance Review Board Membership
Gustin, Russell T.
Chief, Digital Products Department, DMA Reston Center
Hall, Charles D.
Technical Director, DMA Hydrographic/Topographic Center
Hall, Robert H.
Deputy Director for Plans & Requirements, DMA
Henning, Thomas A.
Deputy/Technical Director, DMA Systems Center
Hogan, William N.
Deputy Director for Programs, Production and Operations, DMA
Jackson, Mikel F.
Chief, Digital Products Department, DMA Hydrographic/Topographic Center
Knopfel, Lawrence
Technical Director/Deputy Director, DMA Combat Support Center
Krygiel, Annette J.
Deputy Director for Modernization Development, DMA Systems Center
Labovitz, Mordecai Z.
Deputy Director for Acquisition, Installations and Logistics, DMA
Mendez, John M.
Deputy Director for Programs and Operations, DMA Systems Center
Muncy, Larry N.
Chief, Scientific Data Department, DMA Aerospace Center
Peeler, Paul L., Jr.
Director, DMA Technical Services Center
Phillips, Earl W.
Assistant Deputy Director for Production, Headquarters, DMA
Robinson, Bill E.
Assistant Deputy Director for Advanced Systems Requirements, DMA
Skidmore, James R.
Technical Director, DMA Aerospace Center
Smith, Kathleen M.
Chief, Digital Products Department, DMA Aerospace Center
Smith, Lon M.
Director, DMA Systems Center
DMA Performance Review Board Membership
Smith, Robert N.
Chief, Data Services Department, DMA Reston Center
Smith, William D.
Deputy Comptroller, DMA
Vaughn, John R.
Comptroller, DMA
Ward, Curtis B.
Assistant Deputy Director for Resources, Headquarters, DMA

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Dated: July 6, 1992.

L. M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-16234 Filed 7-9-92; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF ENERGY

### Metal Casting Competitiveness Research Program; Solicitation for Financial Assistance

**AGENCY:** Department of Energy, Idaho Field Office.

**ACTION:** Solicitation for financial assistance: Metal Casting Competitiveness Research Program.

**SUMMARY:** Notice is hereby given that pursuant to Public Law 101-425, Department of Energy Metal Casting Competitiveness Research Act of 1990, the U.S. Department of Energy (DOE) Idaho Field Office (ID), is seeking applications for cost-shared research and technology development in the U.S. metal casting industry. The objective is to promote the competitiveness and energy efficiency of the U.S. metal casting industry through major gains in manufacturing productivity; remediation technologies; process cost reduction; and product quality improvement. This is a complete solicitation document. No other solicitation will be issued for this Metal Casting Competitiveness Research Program.

**DATES:** The effective date of this solicitation is July 10, 1992. The deadline for receipt of applications is October 6, 1992.

**ADDRESSES:** Applications shall be submitted to: [NUMBER DE-PS07-92ID13180]

J.O. Lee, Contracting Officer, Contracts Management Division, Financial Assistance Branch, 785 DOE Place, MS 1221, Idaho Falls, Idaho 83401-1562, Contact Point: Ginger Sandwina, (208) 526-8698.

**SUPPLEMENTARY INFORMATION:**

#### Background

The U.S. metal casting industry has been losing its competitive position in the domestic marketplace relative to imported castings for a number of years. The domestic metal casting industry, with costs which are typically 40 to 50 percent for charge materials, 20 to 30 percent for labor, and 15 to 20 percent for energy, is generally at a disadvantage when compared to most foreign competitors. In addition, many foreign competitors obtain R&D assistance funded by their governments. Moreover, they are not required to meet stringent environmental regulations, while the ability of the U.S. metal casting industry to compete is adversely affected because of the expense of complying with rules and regulations intended to protect the environment and the workplace. These advantages often outweigh the additional transportation and distribution costs incurred by foreign competitors entering the U.S. market for metal castings. A technically advanced and viable metal casting industry is essential to the competitiveness of many American industries. Many metal casting companies lack the resources to conduct metal casting research alone due to the fragmented nature of the industry. In order to improve the competitiveness and energy efficiency of the U.S. metal casting industry, the Office of Industrial Processes (OIP) of the DOE is sponsoring a new R&D program titled Metal Casting Competitiveness Research Program (MCCRP). As part of this program, this solicitation for federal financial assistance applications is being issued.

#### Project Description

DOE anticipates awarding up to four Cooperative Agreements as a result of this solicitation provided applications are received to further the objectives of Public Law 101-425 and funds are available. Total funds appropriated for this solicitation are $1,800,000. The Catalog of Federal Domestic Assistance Number for this program is 81.078. Each award will make available federal funds to a project on a cost-sharing basis, but the federal funding contribution will not exceed 50 percent of the total cost of a research project. Under Cooperative Agreements it is anticipated there will be substantial involvement by DOE.

DOE suggests, but does not require, a multi-phase approach and projects may be initiated at the bench, laboratory, or pilot-scale levels. The period of performance for Phase I is anticipated to be 12 months. At the end of Phase I, provided satisfactory progress has been made and funds are available, DOE may award a continuation of work to undertake further development if the participant demonstrates a continuing need for federal assistance, shows sufficient progress in the research effort in Phase I, has completed Phase I in compliance with its management plan, and identifies the new research planned. In its determination, DOE will take into account the recommendations and guidance made by the Industrial Advisory Board established in accordance with Public Law 101-425.

The thrust of the Program is directed towards R&D which will improve the competitive position and energy efficiency of the U.S. metal casting industry, defined as the industries identified by codes numbered 3321, 3322, 3324, 3325, 3363, 3364, 3365, 3366, and 3369, in the Standard Industrial Classification manual published by the Office of Management and Budget in 1987. Utilizing the recommendations of the DOE Metal Casting Industrial Advisory Board, and in accordance with the objectives of Public Law 101-425, the below listed priority research subject areas have been identified. Applicants should focus their effort on the seven subject areas identified with a bullet (•), which have the highest priority. One, or more, of the lower priority listed subjects may be included in the proposed research. Proposals for research in areas not included in the list below will not be considered. Applications should explain why industry is not already performing the proposed research and why DOE funding is appropriate.

A. Solidification and Casting Technologies:

- (1) Dimensional control of castings.
- (2) Clean cast metal technology.

(3) Expendable pattern casting technology.

B. Computational Modeling and Design:

- (1) Computer integrated processing methods for productivity and quality improvements such as CAD, CAE, CAM and CIM.

C. Processing Technologies and Design for Energy Efficiency, Material Conservation, Environmental Protection, or Industrial Productivity:

(1) Energy Efficiency:

- (a) Aluminum Furnace Optimization

(b) Cupola Furnace Optimization

(2) Material Conservation:

- Process improvements for lightweight components of aluminum, magnesium, and thin-wall

(3) Environmental Protection:

- Sand reclamation
- Characterization of waste streams

(4) Industrial Productivity: Gating system removal technologies

D. Other Areas of Research:

(1) On-line process control (sensors) for molding, melting, and coremaking

(2) Plasma melting

Each proposal must contain the following:

1. A critical review of existing and emerging technologies, patents, on-going research, and practices, on a world-wide basis, that are and/or could be competitive with the proposed technology. The hurdles that must be

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overcome to ensure commercial viability must be identified;

2. (a) An initial economic evaluation indicating the potential for a significant reduction in manufacturing costs and/or a significant improvement in product value due to an improvement in product characteristics, and (b) an estimate of the economic benefit to the domestic metal casting industry; and

3. An estimate of the potential energy savings attributable to the implementation of the technology expected to result from the proposed research.

4. Public Law 101–425 proposal criteria:

(1) Demonstrate the support of the metal casting industry by describing:

(A) How industry has participated in deciding what research activities will be undertaken;

(B) How industry will participate in the evaluation of the applicant's progress in research and development activities; and

(C) The extent to which industry funds are committed to the applicant's proposal.

(2) Demonstrate a commitment for matching funds from non-federal sources, which shall consist of:

(A) Cash, or

(B) As determined by DOE, the fair market value of equipment, services, materials, appropriate technology transfer activities, and other assets directly related to the proposal's cost;

(3) Include a single or multiyear management plan that outlines how the research and development activities will be administered and carried out;

(4) State the annual cost of the proposal and a breakdown of those costs; and

(5) Describe the technology transfer mechanisms the applicant will use to make available research results to industry and to other researchers.

The management plan shall:

(1) Outline the basic research and development activities expected to be performed;

(2) Outline who will conduct those research activities;

(3) Establish the time frame over which the research activities will take place; and

(4) Define the overall program management and direction by:

(A) Identifying managerial, organizational and administrative procedures and responsibilities;

(B) Outlining how the coordination of research and development between the individuals and organizations involved will be achieved;

(C) Demonstrating how implementation and monitoring of the progress of research projects after receipt of funding from the Secretary will be achieved;

(D) Demonstrating how recommendations and implementations on modifications to the plan will be achieved; and

(E) Providing sufficient rationale to support the plan's costs.

Underlying assumptions along with detailed calculations to support the claimed economic and energy efficiency benefits must be included in the application. The applicant shall identify in its proposal that it has in existence at the time the application is submitted the following qualifications:

a. The technical capability to enable it to make use of existing research support and facilities in carrying out its research objectives;

b. A multidisciplinary research staff experienced in metal casting or other directly related technologies; and

c. The facilities and equipment capable of conducting at least laboratory scale testing or demonstration of metal casting or related processes.

*Evaluation of Applications*

1. Qualified Applicants

The following entities are qualified to respond to this solicitation:

(A) an educational institution;

(B) a consortium of educational institutions;

(C) a consortium of educational institution(s) with one or more of the following: Government-owned laboratories, private research organizations, nonprofit institutions, or private firms; that is located in a region where the metal casting industry is concentrated.

2. Evaluation of Applications

a. Application Deadline: The deadline for receipt of applications is September 21, 1992. Only applications which are timely in accordance with 10 CFR 600.13, will be evaluated. Late applications will be handled in accordance with 10 CFR 600.13.

b. Selection of Proposals: Only those proposals which meet all of the requirements of this solicitation will be considered for selection. Selections will be made in accordance with the following selection criteria and programmatic considerations:

1. The research proposal has the potential for making a significant contribution to improving the competitiveness of the domestic metal casting industry by offering technology which is based upon sound scientific and engineering principles, is technically feasible and cost effective, and has practical industrial application.

2. The research proposal has the potential for making a significant contribution to resolving one or more environmental, safety or health issues prevalent in the domestic metal casting industry.

3. The research proposal contains a quality, realistic and workable management plan fully addressing all management plan proposal guidelines.

4. The research proposal identifies a viable mechanism to facilitate the transfer of the technology to the metal casting industry at the earliest practicable time;

5. The research proposal contains evidence of strong support by the metal casting industry by identifying significant industry involvement in preparation of the proposal and in performing the research activities; and

6. The extent of the financial commitment of non-Federal sources to the research activities.

c. Weighting of Criteria: Criteria 1 is weighted two times Criteria 2. Criteria 2 is weighted two and one half times Criteria 3. Criteria 4, 5 and 6 are weighted equal and combined are weighted one and one half times Criteria 3.

In conjunction with the evaluation results and rankings of individual proposals, the Government will make selections for negotiations and planned awards from among the highest ranking proposals utilizing the following programmatic considerations:

- To the greatest extent possible and subject to available appropriations, selection decisions will ensure that at least one applicant is selected from each of the four census regions of the country where the metal casting area is concentrated.
- It is desirable to implement each research and development project as a continuing collaborative effort in which the participants represent both the scientific/engineering research disciplines as well as members of the metal casting industry engaged in its practical, daily operations and experienced in the application of advanced metal casting processes.
- To the maximum extent possible, the research and development activities should be conducted on the premises of the industrial participants in the proposed projects.
- It is desirable that a dominant portion of the proposed research focus on improving metal casting processes and the application of emerging advanced technologies in the typical U.S. metal casting company.

• Proposals that have the potential to save significant energy and provide significant cost benefits are preferred.

d. All Applications will be Evaluated Under the Office of Conservation and Renewable Energy Merit Review of Discretionary Financial Assistance Applications Review Procedures for Solicited Proposals. Selections for negotiations are expected to be made November 9, 1992, and financial assistance awards are expected to be made during the first six months of fiscal year 1993.

*Conditions, Instructions, and Notices to Applicants*

1. General Conditions

The applications will be evaluated in accordance with the applicable DOE Financial Assistance Rules, Code of Federal Regulations, Title 10, Chapter II, Subchapter H, Part 600, and the criteria and programmatic considerations set forth in this solicitation. In conducting this evaluation, the Government may utilize assistance and advice from non-Government personnel. Applicants are therefore requested to state on the cover sheet of the applications if they do not consent to an evaluation by such non-government personnel. The applicants are further advised that DOE may be unable to give full consideration to an application submitted without such consent. DOE reserves the right to support or not to support any, all, or any part of any application. All applicants will be notified in writing of the action taken on their applications in approximately 90 days after the closing date for this solicitation, provided no follow-up clarifications are needed. Status of any application during the evaluation and selection process will not be discussed with the applicants. Unsuccessful applications will not be returned.

2. Instructions for Preparation of Applications

Each application in response to this solicitation should be prepared in one volume. One original and six copies of each application is required. The application facesheet is the Standard Form 424.

a. Proprietary Proposal Information: Applications submitted in response to this solicitation may contain trade secrets and/or privileged or confidential commercial or financial information which the applicant does not want used or disclosed for any purpose other than evaluation of the application. The use and disclosure of such data may be restricted provided the applicant marks the cover sheet of the application with the following legend, specifying the pages of the application which are to be restricted in accordance with the conditions of the legend:

> The data contained in pages _____ of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the government's right to use or disclose data obtained without restriction from any source, including the applicant.

Further, to protect such data, each page containing such data shall be specifically identified and marked, including each line or paragraph containing the data to be protected with a legend similar to the following:

> Use or disclosure of the data set forth above is subject to the restriction on the cover page of this application.

It should be noted, however, that data bearing the aforementioned legend may be subject to release under the provisions of the Freedom of Information Act (FOIA), if DOE or a court determines that the material so marked is not exempt under the FOIA. The Government assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose.

Applicants are hereby notified that DOE intends to make all applications submitted available to non-Government personnel for the sole purpose of assisting the DOE in its evaluation of the applications. These individuals will be required to protect the confidentiality of any specifically identified information obtained as a result of their participation in the evaluation.

b. *Budget:* A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes. Project period means the total approved period of time that DOE will provide support contingent upon satisfactory progress and availability of funds. The project period may be divided into several budget periods. Each application must contain Standard Forms 424A. The budget summary page only needs to be completed for the first budget period; all other periods of support requested should be shown on the total costs page.

Items of needed equipment should be individually listed by description and estimated cost, inclusive of tax, and adequately justified. The type and extent of budgeted travel and its relation to the research, should be specified. Anticipated consultant services should be justified and information furnished on each individual's expertise, primary organizational affiliation, daily compensation rate and number of days of expected service. Consultant's travel costs should be listed separately under travel in the budget.

3. Notices to Applicants

a. *False Statements:* Applications must set forth full, accurate, and complete information as required by this solicitation. The penalty for making false statements is prescribed in 18 U.S.C. 1001.

b. *Application Clarification:* DOE reserves the right to require applications to be clarified or supplemented to the extent considered necessary either through additional written submissions or oral presentations.

c. *Amendments:* All amendments to this solicitation will be mailed to recipients who submit a written request for the application forms.

d. *Applicant's Past Performance:* DOE reserves the right to solicit from available sources relevant information concerning an applicant's past performance and may consider such information in its evaluation.

e. *Commitment of Public Funds:* The Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed award. Any other commitment, either explicit or implied, is invalid.

f. *Effective Period of Application:* All applications should remain in effect for at least 180 days from the closing date.

g. *Availability of Funds:* The actual amount of funds to be obligated in each fiscal year will be subject to availability of funds appropriated by Congress to carry out the purposes of the Act (Pub. L. 101–425).

h. *Assurances and Certifications:* DOE requires the submission of preaward assurances of compliance and certifications which are mandated by law. The assurance and certification forms will be provided in the application package and consist of the following:

i. *Preaward Costs:* The government is not liable for any costs incurred in preparation of an application. Awardees may incur preaward costs up to ninety (90) days prior to the effective date of award. Should the awardee take such action, it is done so at the awardee's risk and does not impose any obligation on the DOE to issue an award.

j. *Patent Rights:* Pursuant to the direction in section 9 of Public Law 101–425, applicants are advised that patent

rights will be treated in accordance with Chapter 18, Title 35 of the United States Code.

k. *Loans under DOE Minority Economic Impact (MEI) Loan Program:* Applicants are advised that loans under the DOE Minority Economic Impact (MEI) Loan Program are not available to finance the cost of preparing an application pursuant to this solicitation.

l. *Environmental impact:* The applicant shall include a listing, discussion and existing documentation if the project/activity has the possibility of involving, generating or resulting in changes to any of the following: (1) Air Pollutants—released or discharged into the atmosphere through point or fugitive sources; (2) Liquid Effluent—any waste stream discharged; (3) Solid Waste—nonradioactive, nonhazardous solid waste; (4) Radioactive Waste—waste containing >2 nCi/g; (5) Hazardous Waste—RCRA hazardous per 40 CFR 261.3 and polychlorinated biphenyls (PCBs); (6) Mixed Waste—combination of radioactive and hazardous waste; (7) Chemical Storage/Use—define species, uses and estimates volumes; (8) Petroleum Products Storage—define product, volume, use and type of storage; (9) Asbestos Waste—define friability, estimated volume, and if project is renovation or demolition; (10) Water Use/Diversion—withdrawal of groundwater or diversion or withdrawal of surface water; (11) Sewage System—all pipes, tanks, treatment structures; disposal areas, etc. for collection, treatment, and disposal of sewage; (12) Clearing/Excavation—removal of surface debris, vegetation, and other changes in soil surface features; (13) Construction/Renovation; (14) Excess Noise Levels—ambient noise level name, near proposed project/activity; (15) Pesticide Use—identify pesticide name, target organism, use area, application rate, method, and applicator; (16) Radiation Exposures—radiation levels at or near the proposed project/activity.

The discussion shall address the following questions. Will this action contribute to a cumulative impact with on-going activities? Is this action related to a proposed action with potentially significant impacts? Will the project create uncertain, unique, or unknown risks? Will the project require siting, construction, or expansion of a waste facility? Will the project impact an RCRA-regulated unit or facility? Will the project threaten or violate any statute, regulation, or DOE Order? Will the project require any federal, state, or local permits, approvals, etc.? Has this action/area been previously assessed under NEPA? Will the action take place in an area of previous or on-going disturbance? Will the action have any socioeconomic concerns?

Will the project adversely affect any of the following environmentally sensitive resources? (1) Threatened/Endangered Species; (2) Wildlife/Vegetation; (3) Soils/Erosion; (4) Cultural/Historical; (5) Wilderness/Scenic Areas; (6) Prime/Unique Farmland; (7) Wild/Scenic Rivers; (8) Lakes/Floodplains/Wetlands; (9) Domestic/Groundwater; (10) Air Resources/Quality.

Discussions shall include how all environmental impacts will be mitigated. If an environmental impact cannot be mitigated, what are the direct and indirect, short term and long term adverse effects that cannot be avoided?

To facilitate handling, please place the following identification on the outside of the package containing your request for the application forms:

Solicitation: DE–PS07–92ID13180
Procurement Request Number: 07–92ID13180

Dated: July 2, 1992.

**David W. Newnam,**

*Acting Director, Contracts Management Division.*

[FR Doc. 92–16268 Filed 7–9–92; 8:45 am]
BILLING CODE 6450–01–M

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## Federal Energy Regulatory Commission

**[Docket No. RS92–11–000]**

## Texas Eastern Transmission Corp.; Conference

July 2, 1992.

Take notice that on July 14, 1992 and, if necessary, July 15, 1992, a conference will be convened in the captioned restructuring docket. The conference will be held at The Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036. The conference will begin at 9 a.m. on July 14, 1992. All interested parties are invited to attend. Attendance at the conference however, will not confer party status. For additional information, interested parties can call Neil L. Levy at (202) 208–2704.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92–16177 Filed 7–9–92; 8:45 am]
BILLING CODE 6717–10–M

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## Office of Hearings and Appeals

### Notice of General Interest Concerning DOE's Crude Oil Overcharge Refund Program

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of general interest response to comments filed.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) has reviewed the comments filed in connection with a notice of Opportunity to File Comments published in the **Federal Register** on May 4, 1992. The notice announced that the OHA would take comments on the appropriate standard to be used in considering which products should be eligible for a refund in the DOE's ongoing crude oil overcharge refund proceeding. Set forth below are the conclusions reached regarding the comments received and a new, expanded eligibility standard.

**ADDRESS:** Motions for Reconsideration of previously-denied claims, which were based on the prior standard, should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Wieker, Deputy Director or Virginia A. Lipton, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2390 (Wieker), (202) 586–2400 (Lipton).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of a change in the standards used in considering Applications for Refund in the crude oil overcharge refund proceeding currently being conducted being conducted by the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). This proceeding takes place pursuant to 10 CFR part 205, subpart V and the DOE's Modified Statement of Restitutionary Policy, 6 Fed. Energy Guidelines ¶ 90,508A. To date, approximately $207.4 million in crude oil overcharge refunds has been distributed to claimants, and approximately $323.9 million remains in escrow to be distributed. The DOE also expects to receive additional crude oil overcharge monies arising from cases in administrative and judicial litigation and from settlements of those cases.

On May 4, 1992, the OHA published a Notice in the **Federal Register** requesting comments on the issue of which products should be eligible for a refund in the crude oil overcharge refund

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proceeding. 57 FR 19124. In that notice we referred to the standard that we have applied in many previous cases. We had generally considered any product that was covered by the Emergency Petroleum Allocation Act (EPAA) of 1973 to qualify as a product that is eligible for a refund in this proceeding. Further, we utilized a presumption that any product regulated by the Agency during the August 19, 1973 through January 27, 1981 period was covered by the EPAA.

We experienced difficulties in applying the announced standard and the presumption. Accordingly, in the May 4 notice we requested comments regarding whether a different standard should be adopted. We have received a number of comments, reviewed them, and are now issuing a new standard bearing those comments in mind. We recognize that our May 4 notice stated that a hearing would be held regarding this issue if sufficient interest were indicated. In view of the consensus expressed by our commenters, we see no useful purpose in delaying a determination in order to convene a hearing. Accordingly, we will proceed directly to consider the comments and announce a new standard.

We received comments from: Great Lakes Carbon Corporation, Goodyear Tire & Rubber Company, Reynolds Metals Company, Eastman Kodak Company, Firestone Tire & Rubber Company, Kaiser Aluminum & Chemical Corporation, Aluminum Company of America, Lawter International, Philip Kalodner, Esq., on behalf of a group of utilities, transporter and manufacturers, and a group of States, by their counsel.

All agreed that we should use a somewhat broader refund eligibility standard than that described above. Except for the States, the commenters generally proposed an eligibility standard that includes not only products covered by the EPAA, but also all products produced from crude oil refiners. The States' formulation, though for all practical purpose the same, was expressed in a slightly different manner. They suggested an eligibility standard that would include all products specifically listed in one of the definitions of "covered products"as set forth in regulations promulgated pursuant to the EPAA. The States recommend that we also consider as eligible any products actually produced in a crude oil refinery.

We believe that there is considerable merit to the proposal that a change in our standard should be made. As an initial matter, the Consent Orders pursuant to which the DOE received and continues to collect crude oil overcharge funds settled allegations of crude oil price violations. These regulatory violations resulted in a uniform increase in the cost of crude oil refined by all crude oil refineries. As an economic matter, we generally believe that it is likely that crude oil overcharges were spread to all products that were produced from crude oil refineries. Accordingly, we are persuaded that a modification to include all products produced at a crude oil refinery is more likely to satisfy our restitutionary goals. See *OHA Report On Stripper Well Overcharges*, 6 Fed. Energy Guidelines ¶90,507 at 90,640.

The standard we will now use in considering applications for crude oil overcharge refunds is as follows. We will presume that a claimant incurred a crude oil overcharge in the purchase of a product during the relevant period if either that product was named as a covered product in regulations promulgated pursuant to the EPAA, or (a) was purchased from a crude oil refinery or (b) originated in a crude oil refinery and was purchased from a reseller who did not substantially change its form. 10 CFR 212.31 (definition of "Reseller").

This new standard will broaden eligibility for a crude oil overcharge refund. Our prior standard, which included only products covered by the EPAA, did not include all products produced by crude oil refineries. For example, petroleum coke, road oils, and refinery gas were previously not considered for refunds because they were not covered by the EPAA. However, these are clearly products which may be produced from a crude oil refinery. Therefore, to the extent that an applicant purchased these products and any other products from a crude oil refinery (or from a reseller who purchased them from a crude oil refinery, if the reseller did not substantially change their form), the applicant is presumed overcharged and eligible to file an application for a crude oil refund. Nevertheless, if it should come to our attention that a particular applicant did not incur crude oil overcharges, (i.e., crude oil overcharges were not included in the purchase price paid for a particular product) we will consider the overcharge presumption rebutted.

We will treat all products covered by the EPAA as having been produced at a crude oil refinery. Products not covered by the EPAA will be treated differently. It will be the burden of the applicant to establish that a product not within the definition of covered products under the EPAA was in fact produced at a crude oil refinery. See, definition of "covered products" at 40 FR 2795 (January 16, 1975).

We will continue to utilize the injury presumptions which have been developed in the crude oil proceeding. These presumptions are used to facilitate the process of determining whether a firm that incurred an overcharge was actually injured, and therefore is entitled to a refund, i.e. whether the firm absorbed or passed through that overcharge.

One further issue must be addressed at this point. In our May 4 Notice, we pointed out that broadening our eligibility standard could reduce the size of the aggregate refund paid to each eligible firm below the sum of the volumetric levels established in the various crude oil refund implementation orders. We asked for comments on whether such a result was warranted. 57 FR 19125. The comments we received indicate to us that there is some confusion on this issue, which warrants clarification here.

The Stripper Well Settlement Agreement specifies that at least 40 percent of all crude oil overcharge monies received goes directly to the States and that an equal amount goes to the Federal Government. This means that a maximum of 20 percent of crude oil overcharge remittances pursuant to the various consent orders constitutes the monies that are available for payments to applicants in the crude oil overcharge refund proceeding. However, in deriving our various crude oil volumetric refund amounts, we used as the numerator of the volumetric fraction the total crude oil overcharge monies received in connection with each crude oil consent order, including the funds remitted to the States and the Federal Government. The two trillion gallon denominator included all refined products consumed in the United States during the regulated period. Accordingly, if more that 400 billion gallons (20 percent of the roughly 2 trillion gallons in the denominator of the volumetric refund fraction) is approved for payments in our crude oil overcharge refund proceeding, the DOE will not have sufficient funds available to pay the aggregate amount indicated in the various crude oil implementation Orders. Therefore, the fact that the additional gallonage is eligible for a refund, as described above, may reduce the amounts otherwise available to claimants.

In spite of this fact, we believe that the new, expanded standard enunciated above is consistent with the relevant statutes and regulations, will produce fairer results, and allow us more

completely to fulfill the OHA's restitutionary responsibilities. We will therefore now consider crude oil overcharge claims by applying this standard. We will also liberally accept Motions for Reconsideration of claims which were previously denied based on the former EPAA standard.

Dated: July 2, 1992.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 92-16289 Filed 7-9-92; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 4152-1]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 10, 1992.

**FOR FURTHER INFORMATION OR A COPY OF THIS ICR, CONTACT:** Sandy Farmer at EPA, (202) 260-2740.

**SUPPLEMENTARY INFORMATION:**

#### Office of Air and Radiation

*Title:* Recordkeeping and Periodic Reporting of the Production, Import, Export and Feedstock-use of Ozone Depleting Substances (EPA ICR #1432.11; OMB #2060-0170). This ICR requests renewal of the existing clearance.

*Abstract:* The EPA requires producers, consumers, importers and exporters of class I and class II ozone depleting substances to submit periodic reports to the Agency. The information reported includes the level of production, import, export and feedstock-use of the regulated substances. Facilities are also required to report on the status of their allotted production, transformation and consumption allowances. The Agency uses this information to monitor industry's compliance with the Clean Air Act and the Montreal Protocol.

*Burden Statement:* The public reporting burden for this collection of information is estimated to average 12 hours per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

*Respondents:* Producers, consumers, exporters, importers and transformers of class I and class II ozone depleting substances.

*Estimated Number of Respondents:* 95.

*Estimated Total Annual Burden on Respondents:* 34,814 hours.

*Frequency of Collection:* quarterly.

Send comments regarding the burden estimates, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: July 2, 1992.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 92-16159 Filed 7-9-92; 8:45 am]

BILLING CODE 6560-50-M

**[ER-FRL-4152-3]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 22, 1992 Through June 26, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

#### Draft EISs

ERP No. D-FHW-C40125-NY Rating EC2, Northern State Parkway Widening Project, Construction from Meadowbrook State Parkway Interchange to Wantagh State Parkway Interchange, Funding, Town of North Hempstead, Nassau County, NY.

*Summary*

EPA had concerns regarding the proposed project's potential ground water and air quality impacts. EPA requested that the final EiS include additional information on these issues.

ERP No. D-FHW-F40322-MN Rating EC2, I-35W/Washington Avenue South in Minneapolis to I-35E in Burnsville Improvements, Construction and Reconstruction, Funding, Section 404 and 10 Permits, U.S. CGD Permit, Cities of Minneapolis and Burnsville, Hennepin and Dakota Counties, MN.

*Summary:*

EPA requested additional information on alternatives and wetland mitigation sites and acreages.

#### Final EISs

ERP No. F-FHW-E40730-FL, US 1/FL-5 Upgrading, Abaco Road on Key Largo to Card Sound Road, Updated Information, Funding and Coast Guard Bridges, NPDES and COE Permits, Dade and Monroe Counties, FL.

*Summary*

EPA expressed objections to the preferred alternative due to the loss of 164 areas of wetlands. EPA recommended that FHWA consider the option of not upgrading the entire 20.4 miles to a divided four-lane highway to reduce wetland impacts.

ERP No. F-FHW-K40178-CA, San Joaquin Hills Transportation Corridor Improvements, CA-73 Extension between I-5 in San Juan Capistrano City to Jamboree Road in Newport Beach City, Funding and Section 404 Permit, Orange County, CA.

*Summary*

EPA stated the final EIS does not fully describe cumulative impacts. In addition, EPA noted that mitigation to reduce or avoid impacts to air quality, wetlands and sensitive wildlife habitat should have been more developed in the final EIS and that appropriate commitments to implement such mitigation should have been included in the FEIS. EPA expressed its desire in working with project sponsors in completing mitigation plans for air quality, wetlands and wildlife habitat impacts.

ERP No. F-ICC-F53018-OH, Indiana and Ohio Railroad Line, Construction and Operation extending from the northern border at Brecon to the southern city limits of Mason, Right-of-Way, Butler, Warren, and Hamilton Counties, OH.

*Summary*

EPA expressed concerns about the proposed alternative and stated its belief that of the build alternatives, Alternative A is preferred since it is located further away from residential properties that the other alternatives.

**Regulations**

ERP No. R-HUD-A85044-00, 24 CFR Parts 50, 55, 200, 203, 204—HUD Systems for Approval of Single Family Housing in Subdivisions, Proposed Rulemaking, (57:74 FR 2352).

*Summary:*

EPA objected to HUD's exempting of the mortgage insurance endorsement from the National Environmental Policy Act (NEPA) without apparent statutory authority. EPA believes that these types of actions are more appropriate and might be included in HUD's list of NEPA categorical exclusions.

Dated: July 6, 1992.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 92-16222 Filed 7-9-92; 8:45 am]

BILLING CODE 6560-50-M

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**[ERL-FRL-4152-2]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075. Availability of Environmental Impact Statements Filed June 29, 1992 Through July 03, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920258, Draft EIS, NPS, WA, Hanford Reach of the Columbia River, Comprehensive River Conservation Study, Designation or Nondesignation, National Wildlife Refuge with Wild and Scenic River Overlay, Benton, Grant and Franklin counties, WA, Due: August 24, 1992, Contact: Bob Karotko (206) 553-4720.

EIS No. 920259, Draft EIS, AFS, ID, Moyer Salt Timber Sale, Timber Harvest and Road Construction/Reconstruction, Implementation, Salmon National Forest, Cobalt Ranger District, Lemhi County, ID, Due: August 24, 1992, Contact: Lynn M. Bennett (208) 756-2215.

EIS No. 920260, Final EIS, AFS, WA, Withrow Timber Sale, Implementation, Wenatchee National Forest, Naches Ranger District, Yakima County, WA, Due: August 10, 1992, Contact: John Durkee (509) 653-2205.

EIS No. 920261, Draft EIS FHW, WI, WI-131 and WI-33 Transportation Improvement, Relocation and/or Reconstruction, between Village of Ontario and Community of Rockton, Funding and Possible COE 404 Permit, Vernon County, WI, Due: August 31, 1992, Contact: Robert Cooper (608) 264-5940.

EIS No. 920262, Final EIS, VAD, NY, Albany New York Area National Cemetery Development, Construction and Operation, Sites Selection, Town of Florida, Montgomery County, Town of Saratoga and Town of Waterford, Saratoga County; Albany County, NY, Due: August 10, 1992, Contact: Robert J. Frazier (202) 233-7085.

EIS No. 920263, Final EIS, FAA, UT, Salt Lake City International Airport Expansion, Construction and Operation, Air Carrier Runway 16R/34L, Plan Approval, Funding and Section 404 Permit Issuance, Salt Lake City, Salt Lake County, UT, Due: August 10, 1992, Contact: Ms. Barbara Johnson (303) 286-5533.

EIS No. 920264, Final EIS, COE, FL, Everglades National Park Modified Water Deliveries, Implementation, Central and Southern Florida Project, Dade County, FL, Due: August 10, 1992, Contact: Jonathan D. Moulding (904) 791-2286.

EIS No. 920265, Draft EIS, FAA, CA, Burbank-Glendale-Pasadena Airport Land Acquisition and Replacement Terminal Project, Construction and Operation, Approval and Funding, Airport Layout Plan, Cities of Burbank, Glendale and Pasadena, Los Angeles County, CA, Due: September 08, 1992, Contact: William Johnstone (310) 297-1621.

EIS No. 920266, Draft EIS, UMT, CA, Tasman Corridor Mass Transit System Improvements, between Milpitas and Northern San Jose and Mountain View/Sunnyvale, Revised Information for the Locally Preferred Alternative, Funding, Santa Clara, CA, Due: August 25, 1992, Contact: Robert Hom (415) 744-3115.

Dated: July 6, 1992.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 92-16221 Filed 7-9-92; 8:45 am]

BILLING CODE 6560-50-M

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**[FRL-4152-6]**

## Performance Evaluation Reports for Fiscal Year 1991; Section 105 Grants; Missouri, Kansas, Iowa, Nebraska

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability of grantee performance evaluation reports.

**SUMMARY:** EPA's grant regulations (40 CFR 35.150) require the Agency to conduct yearly performance evaluations on the progress of the approved State/EPA Agreements. EPA's regulations (40 CFR 56.7) require that the Agency make available to the public the evaluation reports. EPA has conducted evaluations on the Missouri Department of Natural Resources, Nebraska Department of Environmental Control, Iowa Department of Natural Resources, and Kansas Department of Health and Environment. These evaluations were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act.

**EFFECTIVE DATE:** July 10, 1992.

**ADDRESSES:** Copies of the evaluation reports are available for public inspection at the EPA's Region VII Office, Air and Toxics Division, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Carol D. LeValley at (913) 551-7610.

Dated: June 29, 1992.

**Morris Kay,**

*Regional Administrator.*

[FR Doc. 92-16261 Filed 7-9-92; 8:45 am]

BILLING CODE 6560-50-M

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**[FRL-4152-4]**

## Science Advisory Board, Radiation Advisory Committee, High-Level Waste/Carbon-14 Release Subcommittee; Two Open Meetings, August 3-4 and August 4-5, 1992

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the High-Level Waste/Carbon-14 Release Subcommittee of the Science Advisory Board's (SAB) Radiation Advisory Committee (RAC) will meet August 3-4, 1992, at the Howard Johnson Hotel, 2650 Jefferson Davis Highway in the Crystal City section of Arlington, Virginia. The Subcommittee meeting will begin at 9 a.m. August 3 and end at noon August 4. The parent Radiation Advisory Committee will convene on August 4 at 1:30 p.m. and adjourn no later than 4:30 p.m. on August 5. Members of the Radiation Advisory Committee plan to attend the August 4 morning session of the Subcommittee. The meetings are open to the public and seating is limited.

**First Meeting**

On August 3 and 4, the Subcommittee will continue its review of issues relating to the gaseous release of carbon-14 from high-level radioactive waste disposal. The charge for this review appeared in the May 29, 1992 (57 FR 20747). The Subcommittee will consider the members' preliminary

thoughts and begin to develop a draft consensus position on the questions raised in the charge. The Subcommittee also hopes to be briefed on the potential for gaseous release of Iodine-129 and on the possible use of "getters"—materials which would chemically inhibit the release of carbon-14 from the spent fuel. The final meeting of the Subcommittee is scheduled for September 9–10, location within the Washington DC area to be announced in a subsequent notice.

When completed, the Subcommittee's report will be presented to and approved first by the RAC (probably at a public meeting October 29–30, 1992) and then by the SAB's Executive Committee (probably in January 1993) before becoming an approved SAB report.

*Availability of Documents*

The primary documents under Subcommittee review are, (1) "Office of Radiation Programs' Position on the Potential for Gaseous Release from a High-Level Waste Repository" and (2) the June 10, 1992 draft "Issues Associated with Gaseous Releases of Radionuclides for a Repository in the Unsaturated Zone" prepared by SC&A Inc. and Rogers & Associates Engineering Corp. for EPA's Office of Radiation Programs. Additionally, at its first meeting June 16–17, 1992, the Subcommittee expressed an interest in the Agency's dose calculations; the Agency expects to make these calculations available in July. Copies of the two review documents and other materials provided to the Subcommittee will be maintained in EPA Docket R–89–01 as announced in the **Federal Register** May 29, 1992.

*Opportunity for Public Comments*

Opportunity for public comments on this issue will also be provided at the August 3–4 Subcommittee meeting. Written comments may be of any length. Individuals who wish their materials sent to the Subcommittee before the August meeting should provide 20 copies to Mrs. Conway before July 24; individuals who wish to provide materials at the meeting should bring at least 50 copies so that there will be some for the audience as well as the Subcommittee.

At the August 3–4 meeting, the total time for oral public comments will be limited to approximately one hour. If many requests to present oral comments are received, each individual or group will be limited to five minutes. Members of the public who wish to make brief oral presentations to the Subcommittee should write or fax Mrs. Conway no later than noon Friday July 24. Requests for time for oral comment must include the name and affiliation of the speaker and the topic(s) to be addressed. Both an overhead projector and a 35 mm slide projector will be available. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written comments.

**Second Meeting**

On August 4–5, 1992, the Radiation Advisory Committee will discuss uncertainty analysis, be briefed on how the Superfund program handles sites with radioactive materials, and hear requests for FY93 reviews. Members of the public who wish to make brief oral presentations to the Radiation Advisory Committee should write or fax Mrs. Conway no later than noon Friday July 24. One fifteen minute period will be scheduled for public comment on each day of the Committee meeting.

For details concerning these meetings, including draft agendas, please contact Mrs. Kathleen Conway or Mrs. Dorothy Clark, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone 202/260–6552. Fax 202/260–7118.

Dated: July 2, 1992.

**Donald G. Barnes,**

*Staff Director, Science Advisory Board.*

[FR Doc. 92–16262 Filed 7–9–92; 8:45 am]

BILLING CODE 6560–50–M

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**[OPPTS–140185; FRL–4075–6]**

## Access to Confidential Business Information by Syracuse Research Corporation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor, Syracuse Research Corporation (SRC), of Syracuse, New York, for access to information which has been submitted to EPA under sections 4, 5, 8(a), 8(d), and 8(e) of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**DATES:** Access to the confidential data submitted to EPA will occur no sooner than July 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** Under contract number 68–D9–0059, contractor SRC, of Merrill Lane, Syracuse, NY, will assist the TSCA Interagency Testing Committee in preparing semi-annual reports on health and environmental test data for existing chemicals as set forth in section 4(e) of TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D9–0059, (SRC) will require access to CBI submitted to EPA under sections 4, 5, 8(a), 8(d), and 8(e) of TSCA to perform successfully the duties specified under the contract. SRC personnel will be given access to information submitted to EPA under sections 4, 5, 8(a), 8(d), and 8(e) of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of November 9, 1989 (54 FR 47128), SRC was authorized for access to CBI submitted to EPA under sections 4, 5, 8(a), 8(d), and 8(e) of TSCA. EPA is issuing this notice to extend SRC's access to TSCA CBI under contract number 68–D9–0059.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 8(a), 8(d), and 8(e) of TSCA that EPA may provide SRC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters or contractor facilities.

Clearance for access to TSCA CBI under this contract may continue until July 29, 1992.

SRC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: June 30, 1992.

**George A. Bonina,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 92–16161 Filed 7–9–92; 8:45 am]

BILLING CODE 6560–50–F

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**[OPPTS–140184; FRL–4074–4]**

## Access to Confidential Business Information by Mathtech, Incorporated

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its subcontractor, Mathtech, Incorporated (MAT), of Princeton, New Jersey and Falls Church, Virginia, for access to

information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**DATES:** Access to the confidential data submitted to EPA will occur no sooner than July 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** Under contract number 68-D8-0116, subcontractor MAT, of 210 Carnegie Center, Suite 200, Princeton, NJ and 5111 Leesburg Pike, Falls Church, VA 22041, under subcontract to ICF, Incorporated of Fairfax, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in performing economic and regulatory analyses of actual or potential EPA actions taken under TSCA.

MAT is working as a subcontractor under the ICF, Incorporated (ICF). Access to TSCA CBI by ICF was previously announced in the **Federal Register** of March 13, 1992 (57 FR 8873).

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-D8-0116, MAT will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. MAT personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide MAT access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and MAT's Falls Church, VA facilities only.

MAT will be authorized access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Before access to TSCA CBI is authorized at MAT's site, EPA will approve MAT's security certification statement, perform the required inspection of its facility, and ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, MAT will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this subcontract may continue until September 30, 1992.

MAT personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: June 30, 1992.

**George A. Bonina,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 92-16202 Filed 7-9-92; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL RESERVE SYSTEM

### Consumer Advisory Council; Solicitation of Nominations for Membership

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** The Board is asking the public to nominate qualified individuals for appointment to its Consumer Advisory Council, which is comprised of representatives both of consumer and community interests and of the financial services industry. Nine new members will be selected for three-year terms that will begin in January 1993. The Board expects to announce the selection of new members by year-end 1992.

**DATES:** Nominations should be received by August 30, 1992.

**ADDRESSES:** Nominations should be submitted in writing to Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about nominees will be available for inspection upon request.

**FOR FURTHER INFORMATION CONTACT:** Bedelia Calhoun, Staff Specialist, Division of Consumer and Community Affairs, (202) 452-2412; or for Telecommunications Device for the Deaf (TDD) users only, Dorothea Thompson (202) 452-3544; Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The Consumer Advisory Council was established in 1976 at the direction of Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial community. Members serve three-year terms that are staggered to provide the Council with continuity. The Council's meetings are held in Washington, DC.

New members will be selected this year for terms beginning January 1, 1993, to replace members whose terms expire this year. Nominations should include the address and telephone number of the nominee, information about past and present positions held, and a description of special knowledge, interests or experience related to consumer credit or other consumer financial services. Persons may nominate themselves as well as other individuals.

The Board is interested in candidates who are willing to express their viewpoints and who have some familiarity with consumer financial services. Candidates do not have to be experts on all levels of consumer financial services, but they should possess some basic knowledge of the area. In addition, they should be able to make the necessary time commitment to prepare for and attend meetings (usually two days long including committee meetings) three times a year.

In making the appointments, the Board will seek to complement the qualifications of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board expects to announce its selection of new members by year-end.

Council members whose terms end on December 31, 1992 are listed below:

George C. Galster, Professor of Economics, The College of Wooster, Wooster, OH
E. Thomas Garman, Professor of Consumer Studies, Virginia Polytechnic Institute and State University, Blacksburg, VA
Deborah B. Goldberg, Reinvestment Specialist, Center for Community Change, Washington, DC
Michael M. Greenfield, Professor of Law, Washington University, St. Louis, MO
Collen D. Hernandez, Executive Director, Kansas City Neighborhood Alliance, Kansas City, MO
Kathleen E. Keest, Staff Attorney, National Consumer Law Center, Boston, MA
Bernard F. Parker, Jr., Executive Director, Community Resource Projects, Detroit, MI
Nancy Harvey Steorts, President, Nancy Harvey Steorts & Associates, Dallas, TX
Sandra L. Willett, Consultant on Quality Service, Boston, MA

Other Council members, whose terms continue through 1993 and 1994 are listed below (together with the expiration date of each one's term of office).

Barry Abbott, Partner, Morrison & Foerster, San Francisco, CA, December 31, 1994
John R. Adams, Corporate Vice President and Compliance Officer, CoreState Financial

Corporation, Philadelphia, PA, December 31, 1994
John A. Baker, Senior Vice President, Equifax, Inc., Atlanta, GA, December 31, 1994
Veronica E. Barela, Executive Director, NEWSED Community Development Corporation, Denver, CO, December 31, 1993
Mulugetta Birru, Executive Director, Homewood-Brushton Revitalization & Dev. Corp., Pittsburgh, PA, December 31, 1994
Genevieve Brooks, Deputy Borough President, Office of the Bronx Borough President, Bronx, NY, December 31, 1994
Toye L. Brown, Director, Massachusetts Bay Transportation Authority, Boston, MA, December 31, 1993
Cathy Cloud, Enforcement Program Director, National Fair Housing Alliance, Washington, DC, December 31, 1994
Denny D. Dumler, Senior Vice President, Colorado National Bank of Denver, Denver, CO, December 31, 1993
Michael D. Edwards, President, Prairie Security Bank, Yelm, Washington, December 31, 1994
Donald A. Glas, President, First State Federal Savings and Loan Association, Hutchinson, MN, December 31, 1993
Joyce Harris, President & CEO, Telco Community Credit Union, Madison, WI, December 31, 1993
Julia E. Hiler, Executive Vice President, Sunshine Mortgage Corporation, Marietta, GA, December 31, 1993
Gary S. Hattem, Vice President, Bankers Trust Company, New York, NY, December 31, 1994
Henry Jaramillo, Jr., President, Ranchers State Bank, Belen, NM, December 31, 1993
Edmund Mierzwinski, Consumer Advocate, U.S. Public Interest Research Group, Washington, DC, December 31, 1994
Otis Pitts, Jr., President, Tacolcy Economic Development Corporation, Miami, FL, December 31, 1993
Jean Pogge, Vice President and Manager of Development Deposits, South Shore Bank, Chicago, IL, December 31, 1994
John V. Skinner, President & CEO, Jewelers Financial Services, Inc., Irving, TX, December 31, 1994
Lowell N. Swanson, President, United Finance Co., Portland, OR, December 31, 1994
Michael W. Tierney, Program Director, Local Initiatives Support Corporation, Washington, DC, December 31, 1994

Board of Governors of the Federal Reserve System, July 6, 1992.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 92-16198 Filed 7-9-92; 8:45 am]

BILLING CODE 6210-01-M

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### The Bank of New York Company, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 3, 1992.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

*1. The Bank of New York Company, Inc.*, New York, New York; to engage *de novo* in the making of equity and debt investments in corporations or projects designed primarily to promote community welfare, such as economic rehabilitation and development of low-income areas by providing housing, services or jobs for residents, pursuant to § 225.25(b)(6) of the Board's Regulation Y; and to invest in New York Equity Fund 1992 Limited Partnership.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Firstar Corporation*, Milwaukee, Wisconsin; to acquire Elan Life Insurance Company, Milwaukee, Wisconsin, and thereby engage in credit life insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 6, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-16202 Filed 7-9-92; 8:45 am]

BILLING CODE 6210-01-F

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### Credit Suisse, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 3, 1992.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33

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Liberty Street, New York, New York 10045:

*1. Credit Suisse*, Zurich, Switzerland, and CS Holding, Zurich, Switzerland; to engage *de novo* in foreign exchange advisory and transactional services, pursuant to § 225.25(b)(17) of the Board's Regulation Y, and thereby provide by any means, general information and statistical forecasting with respect to foreign exchange markets; advisory services designed to assist customers in monitoring, evaluating, and managing their foreign exchange exposures; and transactional services with respect to foreign exchange by arranging for "swaps" among customers with complementary foreign exchange exposures and for the execution of foreign exchange transactions; investment advice on financial futures and options on futures, pursuant to § 225.25(b)(19) of the Board's Regulation Y, and thereby provide investment advice, including counsel, publications, written analyses and reports, as a commodity trading advisor registered with the Commodity Futures Trading Commission, with respect to the purchase and sale of futures contracts and options on futures contracts for the commodities and instruments referred to in § 225.25(b)(18) of the Board's Regulation Y.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Lincolnshire Bancshares, Inc.*, Lincolnshire, Illinois; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y, by purchasing loan participations from its banking subsidiary, Success National Bank, Lincolnshire, Illinois.

**C. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. BankAmerica Corporation*, San Francisco, California; to engage *de novo* through its subsidiaries, Seafirst Corporation, Seattle, Washington, and Seafirst Community Service Corporation, Seattle, Washington, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

*2. Saratoga Bancorp*, Saratoga, California; to engage *de novo* through its subsidiary, Saratoga National Bank, Saratoga, California, in origination and/or purchase of loans and/or participations, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 6, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-16203 Filed 7-9-92; 8:45 am]

BILLING CODE 6210-01-F

## First Lucedale Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 3, 1992.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. First Lucedale Bancorp, Inc.*, Lucedale, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Lucedale, Lucedale, Mississippi.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Coal City Corporation*, Coal City, Illinois; to acquire at least 80 percent of the voting shares of Manufacturers National Corporation, Chicago, Illinois, and thereby indirectly acquire Manufacturers Bank, Chicago, Illinois.

Board of Governors of the Federal Reserve System, July 6, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-16204 Filed 7-9-92; 8:45 am]

BILLING CODE 6210-01-F

## James Lewis Hewitt; Change in Bank Control Notice

### Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 30, 1992.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. James Lewis Hewitt*, Orlando, Florida; to acquire an additional 4 percent, for a total of 26.4 percent, of the voting shares of Florida Security Holding Corporation, Orlando, Florida, and thereby indirectly acquire United American Bank of Central Florida, Orlando, Florida.

Board of Governors of the Federal Reserve System, July 6, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-16205 Filed 7-9-92; 8:45 am]

BILLING CODE 6210-01-F

## PNC Financial Corp, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The



listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 7, 1992.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. PNC Financial Corp*, Pittsburgh, Pennsylvania, and PNC Bancorp, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of CCNB Corporation, Camp Hill, Pennsylvania, CCNB Bank, National Association, Camp Hill, Pennsylvania, and The Gettysburg National Bank, Gettysburg, Pennsylvania.

In connection with this application, PNC Financial Corp also proposes to acquire Chartier Life Insurance Company, Phoenix, Arizona, and thereby engage in credit life insurance to consumer borrowers of its banking affiliates, all of which are wholly owned subsidiaries of Chartier Life Insurance Company's parent holding company, CCNB Corporation, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

**B. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Barnett Banks, Inc.*, Jacksonville, Florida; to acquire 100 percent of the voting shares of 7L Corporation, Tampa, Florida, and First Florida Banks, Inc., Tampa, Florida, and thereby indirectly acquire First Florida Bank, N.A., Tampa, Florida.

In connection with this application, Applicant also proposes to acquire FFB Insurance Agency, Inc., Tampa, Florida, and thereby engage in credit life insurance sales related to extensions of credit, pursuant to § 225.25(b)(8) of the Board's Regulation Y; and to acquire an additional 15 percent, for a total of 22.5 percent, of Southeast Switch, Inc., Maitland, Florida, and thereby engage in the operation of an automated teller machine network, pursuant to § 225.25(b)(7) of the Board's Regulation Y, and offering consulting services to electronic funds transfer networks, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 6, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-16206 Filed 7-9-92; 8:45 am]

BILLING CODE 6210-01-F

## GENERAL SERVICES ADMINISTRATION

### Environmental Impact Statement for the Proposed Federal Courthouse Facility, Located in Portland, Oregon

**AGENCY:** General Services Administration.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The General Services Administration (GSA) hereby gives notice that it intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA) for the proposed Federal Courthouse building in Portland, Oregon. The EIS will evaluate the proposed project, the no-action alternative, and other reasonable alternatives identified in the scoping process. Scoping will be accomplished by correspondence, and through a public scoping meeting, with interested persons, organizations, and federal, state, and local agencies.

**ADDRESSES:** Written comments on the scope of alternatives and potential impacts should be addressed to the GSA's EIS contractor, Woodward-Clyde Consultants, at the following address: Woodward-Clyde Consultants, 111 SW. Columbia Ave., suite 990, Portland, Oregon 97201.

**DATES:** Written comments should be sent to Woodward-Clyde Consultants by August 21, 1992. Comments will also be accepted at a public scoping meeting from 3:30 p.m. to 9 p.m. on August 10, 1992, at the location indicated below.

**PUBLIC SCOPING MEETING:** Comments and suggestions will be solicited at a public scoping meeting to be held at: The Portland Building, 1120 SW. Fifth Ave. Room C on the 2nd Floor, Portland, Oregon 97204.

The meeting will be held on August 10, 1992, from 3:30 p.m. to 9:00 p.m. during which time, interested parties can discuss and comment on the proposed project. At 7:00 p.m., a group meeting will be convened which will include a brief presentation to include an overview of the proposed project and the EIS process. At this time, there will be an opportunity to make comments in a group setting. All comments received throughout the day will be made part of the administrative record for the EIS and will be evaluated as part of the scoping process.

**FOR FURTHER INFORMATION CONTACT:** Krista Reininga at Woodward-Clyde Consultants, 111 S.W. Columbia Suite 990, Portland Oregon 97201, (503) 222-7200, or Jim Schultz, General Services Administration, (206) 931-7258.

**SUPPLEMENTARY INFORMATION:** GSA, assisted by the EIS contractor, will prepare an environmental impact statement (EIS) on a proposal to design and construct a new federal courthouse in Portland, Oregon. The scoping process will determine the scope of issues to be addressed in the EIS and to identify the significant issues related to the proposed project. Scoping will be conducted in a manner consistent with NEPA guidelines. GSA will serve as lead agency for the preparation of the EIS pursuant to § 1501.5(a) of the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (CEQ Regulations 40 CFR parts 1500-1508).

### Scoping

GSA invites interested individuals, organizations, and federal, state and local agencies to participate in defining the reasonable alternatives to be evaluated in the EIS, and in identifying any significant social, economic, or

environmental issues related to the alternatives. Scoping comments can be made verbally at the public scoping meeting or in writing (see the **DATES** and **ADDRESS** sections above for location and time of scoping meeting). During scoping, comments should focus on identifying specific impacts to be evaluated and suggesting alternatives that minimize adverse impacts while achieving similar objectives. Comments may also identify issues which are not significant or which have been covered by prior environmental review. Scoping should be limited to commenting on alternatives and not commenting on preferences. There will be an opportunity to comment on preferences after the Draft EIS is completed.

**Additional Information**

A project information packet will be available at the public scoping meeting, or can be obtained by contacting Woodward-Clyde Consultants. The packet will describe in more detail the proposed project, the relocation of residents to available existing housing, alternatives, and the EIS process.

**Mailing List**

If you wish to be placed on the mailing list to receive further information as the EIS process develops, contact Woodward-Clyde Consultants at the address listed above.

**Project Purpose, Historical Background, and Project Description**

The need for developing a new Federal Courthouse building in Portland is to house the U.S. District Court's current space needs and to accommodate its anticipated incremental growth through the year 2020. Currently, the U.S. District Courts occupy the Gus J. Solomon Courthouse, located at 620 SW. Main Street, Portland, as well as various leased locations throughout downtown Portland. Since the Solomon Courthouse is filled to capacity, the long-term needs of the Courts cannot be met by this facility alone.

In 1989, GSA first addressed the need for additional space with a construction plan to develop an annex to the Solomon Courthouse. Work on the project was halted when it was determined that the design, which was to be constructed adjacent to the Solomon Courthouse, would not accommodate court needs. Also, results of a 1990 Long Range Facility Plan, conducted by the Administrative Office of U.S. Courts (AOC) with GSA participation, indicated a dramatic increase in space requirements for current and future (30 years) needs.

Therefore, the Commissioner for Public Buildings Service directed GSA to develop a Modified Prospectus Development Study and to solicit, investigate, and select up to the point of award, a site for a new Federal Courthouse in downtown Portland. GSA then selected an architectural firm, and negotiations are underway for the design of the proposed new courthouse.

Initially, use of the proposed building would be shared by the Courts and other executive agencies. The agencies would be replaced as the Courts expand, until 2020, when the building would be fully occupied by Courts and agencies specifically related to the Courts. The building design should reflect the dignity and permanence of the Court, respond to the unique urban environment in which it will be located, and provide the optimum life cycle cost benefit to the government. The project scope includes the construction of a building with 339,670 square feet of occupiable area with approximately 14 floors. The building will house executive agencies, joint use spaces (conference rooms, fitness center), food service and GSA building management functions. It will provide space for 349 additional employees and 678 employees currently in leased space. In addition, 200 parking spaces are required by the Court Housing Plan. The facility will conform to the U.S. Courts Design Guidelines. The total project cost is currently estimated at $133,810,349.

**Alternatives**

In 1991, GSA established an 11 by 12 block study area in the central business district of downtown Portland to locate a potential site for the proposed courthouse. This area is bounded by Alder Street on the north, Front Street on the east, Mill Street on the south, and 12th Avenue on the west. Nine potential sites were identified and subjected to preliminary evaluation. Of the nine sites identified, three were found technically acceptable and referred for possible selection.

Site #1, referred to as the "Hamilton Hotel" site, is the preferred site and was selected for further study and acquisition negotiations because of its location in the area designated as a Government Center in the Portland master plan. Site #1 is located on the block bounded by 3rd Avenue on the west, 2nd Ave. on the east, SW. Main St. on the south, and SW. Salmon St. on the north. It is currently occupied by the Hamilton Hotel and the Lownsdale Hotel. There are several small businesses located along the street frontage of the hotels, a two-story office structure and surface parking lot.

Site #2 is located on the block bounded by 5th Ave. on the west, 4th Ave. on the east, Columbia St. on the north, and Clay St. on the south. This block is currently occupied by the vacant State Office Building. The third site that was technically suitable was Terry Schrunk Plaza, which is federally owned and houses the underground parking garage for the Green/Wyatt Federal Building. This site will not be studied as it is the least desirable alternative.

**Probable Effects**

GSA will evaluate all significant environmental, social, and economic impacts of the alternatives to be analyzed in the EIS. Impacts anticipated include, but are not limited to, changes in the social environment, changes to land use, neighborhood impacts, housing, noise, aesthetics, historic resources, changes in traffic patterns, economic impacts, changes to the natural environment, and conformance to City planning and zoning requirements. The impacts will be evaluated both for the construction period and for the life of the project. Measures to mitigate significant adverse impacts will be addressed.

**Procedures**

The Draft EIS will be prepared based upon the scoping report. After its publication, the Draft EIS will be available for public and agency review and comment, and a public hearing will be held. A Final EIS will be prepared that addresses the comments on the Draft EIS.

Dated: July 2, 1992.

**Robert D. Eberle,**

*Regional Administrator.*

[FR Doc. 92-16284 Filed 7-9-92; 8:45 am]

BILLING CODE 6820-23-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Analysis and Comparison of State Board and Care Regulations and their Effect on the Quality of Care in Board and Care Homes—New—This study will examine the effects of different state regulatory systems on the performance of board and care homes in the ten study states. The study will also examine the effect of licensure on the quality of care in the homes and provide descriptive data about the homes, owners/operators, staff and residents. Respondents: State or local governments, business or other for-profit, small businesses; Burden Information on the Operator Interview and Supplement—Number of Respondents: 612; Frequency of Response: once; Average Burden per Response: 40 minutes; Estimated Burden: 408 hours—Burden Information on the Staff Interview—Number of Respondents: 912; Frequency of Response: once; Average Burden per Response: 20 minutes; Estimated Burden: 304 hours—Burden Information on the Resident Interview—Number of Respondents: 3,460; Frequency of Response: once; Average Burden per Response: 20 minutes; Estimated Burden: 1,153 hours—Burden Information on Resident Medication Supplement—Number of Respondents: 3,460; Frequency of Response: once; Average Burden per Response: 5 minutes; Estimated Burden: 214 hours—Total Burden for all Information Collections: 2,079 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619–0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: June 25, 1992.

**James F. Trickett,**

*Deputy Assistant Secretary for Management and Acquisition.*

[FR Doc. 92–15935 Filed 7–9–92; 8:45 am]

BILLING CODE 4150–04–M

## Food and Drug Administration

**[Docket No. 92N–0258]**

### American Cyanamid Co.; Withdrawal of Approval of NADA

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by the American Cyanamid Co. The NADA provides for the use of an Aureomycin SS Type A medicated article containing 4-grams-per-pound (g/lb) chlortetracycline to make a Type C poultry feed. The sponsor requested the withdrawal of approval.

**EFFECTIVE DATE:** July 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8749.

**SUPPLEMENTARY INFORMATION:** American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543–0400, is the sponsor of NADA 55–017, which provides for the use of an Aureomycin SS Type A medicated article containing 4-g/lb chlortetracycline to make a Type C poultry feed. The sponsor requested the voluntary withdrawal of approval of the NADA by letter dated April 6, 1992.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 55–017 and all supplements and amendments thereto is hereby withdrawn, effective July 20, 1992.

Dated: July 6, 1992.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 92–16283 Filed 7–9–92; 8:45 am]

BILLING CODE 4160–01–F

**[Docket No. 92N–0280]**

### Pharmaceutical Basics, Inc.; Withdrawal of Approval of 63 Abbreviated New Drug Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of 63 abbreviated new drug applications (ANDA's) held by Pharmaceutical Basics, Inc. (PBI), 8755 West Higgins Rd., suite 810, Chicago, IL 60631. The agency has identified evidence from which it concludes that these applications contain untrue statements of material fact, and that the products covered by these applications lack substantial evidence of effectiveness. However, because PBI has waived its opportunity for a hearing, and requested that approval be withdrawn from the applications, the agency makes no findings of the existence of statutory grounds for withdrawal of approval.

**EFFECTIVE DATE:** July 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Megan L. Foster, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

**SUPPLEMENTARY INFORMATION:** This notice pertains to the following ANDA's:

| ANDA no. | Drug |
|---|---|
| 70-168 | Tolazamide Tablets, 250 milligrams (mg) |
| 70-169 | Tolazamide Tablets, 500 mg |
| 70-203 | Sulfamethoxazole and Trimethoprim Tablets, 400 mg/80 mg. |
| 70-204 | Sulfamethoxazole and Trimethoprim Tablets, 800 mg/160 mg |
| 70-300 | Carbamazepine Tablets, 200 mg |
| 70-339 | Metoclopramide Hydrochloride Tablets, 10 mg |
| 70-427 | Prazepam Capsules, 5 mg |
| 70-428 | Prazepam Capsules, 10 mg |
| 70-477 | Chlordiazepoxide and Amitriptyline Hydrochloride Tablets, 5 mg/12.5 mg |
| 70-478 | Chlordiazepoxide and Amitriptyline Hydrochloride Tablets, 10 mg/25 mg. |
| 70-489 | Temazepam Capsules, 15 mg |
| 70-490 | Temazepam Capsules, 30 mg |
| 70-491 | Trazodone Hydrochloride Tablets, 50 mg |
| 70-492 | Trazodone Hydrochloride Tablets, 100 mg |
| 70-539 | Lorazepam Tablets, 1 mg |
| 70-540 | Lorazepam Tablets, 2 mg |
| 70-562 | Flurazepam Hydrochloride Capsules, 15 mg |
| 70-563 | Flurazepam Hydrochloride Capsules, 30 mg |
| 70-646 | Megestrol Acetate Tablets, 20 mg |
| 70-647 | Megestrol Acetate Tablets, 40 mg |
| 70-746 | Oxybutynin Chloride Tablets, 5 mg |
| 70-753 | Acetohexamide Tablets, 250 mg |
| 70-754 | Acetohexamide Tablets, 500 mg |
| 71-007 | Meclofenamate Sodium Capsules, 50 mg |
| 71-008 | Meclofenamate Sodium Capsules, 100 mg |
| 71-013 | Metaproterenol Sulfate Tablets, 10 mg |
| 71-014 | Metaproterenol Sulfate Tablets, 20 mg |
| 71-242 | Clorazepate Dipotassium Capsules, 3.75 mg |
| 71-243 | Clorazepate Dipotassium Capsules, 7.5 mg |
| 71-244 | Clorazepate Dipotassium Capsules, 15 mg |
| 71-260 | Baclofen Tablets, 10 mg |
| 71-261 | Baclofen Tablets, 20 mg |
| 71-283 | Trimipramine Maleate Capsules, 25 mg |
| 71-284 | Trimipramine Maleate Capsules, 50 mg |
| 71-285 | Trimipramine Maleate Capsules, 100 mg |
| 71-355 | Tolazamide Tablets, 100 mg |
| 71-537 | Minoxidil Tablets, 2.5 mg |
| 71-864 | Desipramine Hydrochloride Tablets, 25 mg |
| 71-865 | Desipramine Hydrochloride Tablets, 50 mg |
| 71-866 | Desipramine Hydrochloride Tablets, 75 mg |

| ANDA no. | Drug |
|---|---|
| 71-867 | Desipramine Hydrochloride Tablets, 100 mg |
| 72-001 | Timolol Maleate Tablets, 5 mg |
| 72-002 | Timolol Maleate Tablets, 10 mg |
| 72-003 | Timolol Maleate Tablets, 20 mg |
| 72-362 | Fenoprofen Calcium Tablets, 600 mg |
| 72-542 | Lithium Carbonate Capsules, 300 mg |
| 88-195 | Hydroflumethiazide and Reserpine Tablets, 50/0.125 mg |
| 88-709 | Chlorpropamide Tablets, 100 mg |
| 88-709 | Chlorpropamide Tablets, 250 mg |
| 88-719 | Warfarin Sodium Tablets, 2 mg |
| 88-720 | Warfarin Sodium Tablets, 2.5 mg |
| 88-721 | Warfarin Sodium Tablets, 5 mg |
| 88-745 | Methyclothiazide Tablets, 5 mg |
| 89-121 | Hydroxyzine Hydrochloride Tablets, 10 mg |
| 89-122 | Hydroxyzine Hydrochloride Tablets, 25 mg, |
| 89-123 | Hydroxyzine Hydrochloride Tablets, 50 mg |
| 89-211 | Benztropine Mesylate Tablets, 0.5 mg |
| 89-212 | Benztropine Mesylate Tablets, 1.0 mg |
| 89-213 | Benztropine Mesylate Tablets, 2.0 mg |
| 89-291 | Hydrocodone Bitartrate and Acetaminophen Tablets, 5 mg/500 mg |
| 89-348 | Dipyridamole Tablets, 25 mg |
| 89-349 | Dipyridamole Tablets, 50 mg |
| 89-350 | Dipyridamole Tablets, 75 mg |

After an extensive inspection of PBI, FDA became aware of untrue statements, discrepancies, and omissions relating to the batches of drug products used to support approval of these applications. FDA determined that these falsifications raise substantial questions about the reliability of the data submitted in support of these applications, and notified PBI of its intent to initiate proceedings to withdraw their approval. By letters dated January 9, 1992, PBI requested withdrawal of approval of the 63 ANDA's listed above, thereby waiving its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is withdrawn effective July 10, 1992. Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action.

Dated: July 2, 1992.

**Gerald F. Meyer,**

*Acting Director, Center for Drug Evaluation and Research.*

[FR Doc. 92-16281 Filed 7-9-92; 8:45 am]

BILLING CODE 4160-01-F

## Health Resources and Services Administration

### Program Announcement and Proposed Funding Priority for Grants for Area Health Education Centers Special Initiatives

The Health Resources and Services Administration (HRSA) announces the acceptance for fiscal year (FY) 1993 for Grants for Area Health Education Centers Special Initiatives under the authority of section 781(a)(2) of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100-607. This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds. Comments are invited on the proposed funding priority.

The Administration's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

### Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1992, HRSA reviewed 38 applications for AHEC Special Initiatives Grants. Of those applications, 50 percent were approved and 50 percent were not recommended for further consideration. Funds for FY 1992 have not yet been awarded. In FY 1991, HRSA reviewed 37 applications for AHEC Special Initiatives Grants. Of those applications, 76 percent were approved and 24 percent were not recommended for further consideration. Nine projects; or 31 percent of the approved applications, were funded.

Section 781(a)(2) authorizes Federal project assistance to medical and osteopathic schools which have previously received Federal financial assistance for an area health education center (AHEC) program under either section 802 of Public Law 94-484 in FY 1979 or under section 781(a)(1). In addition, section 781(a)(2) authorizes medical and osteopathic schools currently receiving Federal support for an AHEC program to apply for project assistance on behalf of an area health education center that is no longer federally funded as part of that program.

Section 781(a)(2) applications will be for projects to improve the distribution, supply, quality, utilization, and efficiency of health personnel in the health services delivery system; to encourage regionalization of educational responsibilities of the health professions schools; or to prepare, through preceptorships and other programs, individuals subject to a service obligation under the National Health Service Corps Scholarship program (section 338-A of the PHS Act) to effectively provide health services in health professional shortage areas (section 332 of the PHS Act). Public Law 101-597, enacted November 16, 1990, changed the term "Health Manpower Shortage Area" to read "Health Professional Shortage Area."

To receive support, programs must meet the requirements of regulations set forth in 42 CFR part 57, subpart MM. The period of Federal support shall not exceed 2 years.

### National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Area Health Education Centers Special Initiatives Program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

### Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between its training programs and U.S. Public Health Service programs which provide comprehensive primary care services to the underserved.

### Review Criteria

The review of applications will take into consideration the following criteria:

1. The relative merit of the proposed project; and

2. The relative cost-efficiency of the proposed project.

In addition, the following mechanisms will be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2/ Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

The following funding preference was established in FY 1988 after public comment and the Administration is extending this preference in FY 1993.

**Funding Preference**

In making awards under section 781 for FY 1993, a funding preference will be given to approved competing continuation applications as authorized by section 781(a)(1).

The following funding priorities were established in FY 1991 after public comment and the Administration is extending these priorities in FY 1993.

**Funding Priorities**

In determining the order of funding of approved applications the following priorities will be given to:

1. Applications which demonstrate substantial clinical training (a student or resident clerkship or preceptorship of between 4 to 8 weeks) in one or more PHS Act section 332 Health Professional Shortage Area(s) and/or a PHS Act section 329 Migrant Health Center, PHS Act section 330 Community Health Center, or State-designated clinic/center serving an underserved population. Section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas. Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers. Section 330 authorizes support for community health care services to medically underserved populations.

2. Applications proposing centers (projects) that will serve Health Professional Shortage Areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks and/or Hispanics than exists in the general population in the United States.

**Proposed Funding Priority for Fiscal Year 1993**

Additionally, the following funding priority is proposed:

Applications which demonstrate the development or implementation of information dissemination systems with the capability to provide state-of-the-art information on clinical modalities, protocols, and other guidelines which can address emerging health issues such as substance abuse, clinical preventive services, infant mortality and geriatrics for primary care practitioners, including National Health Service Corps personnel.

This funding priority focuses on creating a network and infrastructure to transmit the most current information to practicing health professionals.

Interested persons are invited to comment on the proposed funding priority. All comments received on or before August 10, 1992, will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priority will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Requests for application materials and questions regarding grants policy and business management aspects should be addressed to: Ms. Diane Murray, Grants Management Specialist (U–76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be forwarded to the Grants Management Branch at the above address.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and Supplement for this program have been approved by the Office of Management Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline date for receipt of applications is September 14, 1992. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

If additional programmatic information is needed, please contact: Ms. Cherry Tsutsumida, Chief, Multidisciplinary Centers and Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6950.

This program is listed at 93.824 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 20, 1992.

**John H. Kelso,**

*Acting Administrator.*

[FR Doc. 92–16279 Filed 7–9–92; 8:45 am]

BILLING CODE 4160–15–M

## Federal Assistance to the West Virginia Health Sciences Center for a Telecommunications Project

**AGENCY:** Health Resources and Services Administration (HRSA), HHS.

**ACTION:** Notice of grant award.

**SUMMARY:** The Office of Rural Health Policy (ORHP), Health Resources and Services Administration, announces its intent to award a grant in fiscal year (FY) 1992 to the West Virginia Health Sciences Center in Morgantown, West Virginia. The demonstration project will examine the feasibility of developing a two-way video communications network between the West Virginia Health Sciences Center and rural hospitals and physicians throughout West Virginia to provide specialty consultation services to isolated rural practitioners. The award will be made from funds appropriated under Public Law 102–170 (HHS Appropriation Act for FY 1992). As a part of ORHP's overall appropriation, monies were specifically designated to support the West Virginia pilot project. The grant for the project is authorized under section 301 of the Public Health Service Act.

**SINGLE SOURCE JUSTIFICATION:** The HRSA plans to provide Federal financial assistance to the West Virginia Health

Sciences Center's (WVHSC) proposed Mountaineer Doctor Television (MDTV), a two-way interactive telecommunications system designed to address needs for consultation, clinical information, and health professional education in rural areas of West Virginia. The MDTV pilot program is an expansion of a highly successful telephone (audio only) consultations service operated and funded by WVHSC. The Medical Access and Referral System (MARS) receives more than 1,000 calls monthly from West Virginia physicians, about two-thirds of them practicing in rural areas. With MDTV, specialists at the WVHSC who are called upon for consultations will actually be able to see and interact with the patient; at the same time, the patient will see the physician.

The MDTV project will build upon the experience gained with the MARS system and the experience gained elsewhere with telecommunications technology applied to medical applications. It provides a unique opportunity for the Department to build on this experience and begin a rigorous evaluation of the cost-effectiveness of telemedicine for rural areas.

**AVAILABILITY OF FUNDS:** Approximately $800,000 is to be made available for obligation to support this project for a 12-month budget and project period, beginning in Federal fiscal year 1992.

**OTHER AWARD INFORMATION:** This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented by 45 CFR Part 100). This is intended to be a one-time program, and therefore a Catalog of Federal Domestic Assistance number has not been requested.

**FOR FURTHER INFORMATION:** For information, contact: Dena S. Puskin, Sc.D., Office of Rural Health Policy, HRSA, 5600 Fishers Lane, room 9–05, Rockville, MD 20857, (301)–443–0835.

Dated: May 22, 1992.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 92–16280 Filed 7–9–92; 8:45 am]

BILLING CODE 4160–15–M

## Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1992:

*Name:* HRSA AIDS Advisory Committee.
*Time:* September 16–18, 1992, 8:30 a.m.

*Place:* National Institutes of Health, Building 31, Conference Rm. 10, 9000 Rockville Pike, Bethesda, MD 20205.

The meeting is open to the public.

*Purpose:* The Committee advises the Secretary with respect to health professional education, patient care/health care delivery to HIV-infected individuals, and research relating to transmission, prevention and treatment of HIV infection.

*Agenda:* Discussions will be held concerning the status of Health Resources and Services Administration (HRSA) program activities, issues related to standards and models of care, rural health, and training of health care professionals.

Anyone requiring information regarding the subject Committee should contact Gilda Martoglio, Acting Executive Secretary, HRSA AIDS Advisory Committee, Health Resources and Services Administration, Room 14A–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–4588.

Agenda items are subject to change as priorities dictate.

Dated: July 7, 1992.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 92–16277 Filed 7–9–92; 8:45 am]

BILLING CODE 4160–15–M

## Indian Health Service

## Indian Child Protection and Child Abuse Prevention

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice of Competitive Grant Applications for Indian Child Protection and Child Abuse Prevention Demonstration Projects for Mental Health/Social Services for American Indians/Alaska Natives.

**SUMMARY:** The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for Tribal Demonstration Projects for Indian Child Protection and Child Abuse Prevention for Mental Health/Social Services for American Indians/Alaska Natives established under the authority of section 103(b)(1) of Public Law 100–472, Indian Self-Determination and Education Assistance Act Amendments of 1988. There will be one funding cycle during Fiscal Year (FY) 1992 (see Fund Availability and Period of Support). This program is within the catalog of Federal Domestic Assistance Number 93.228. Executive Order 12372 requiring intergovernmental review is not applicable to this program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

**DATES:** An original and 2 copies of the completed grant application must be submitted, with all required documentation, to the Grants Management Branch, Division of Acquisition and Grants Operations, Twinbrook Metro Plaza, suite 605, 12300 Twinbrook Pkwy., Rockville, MD 20852, by c.o.b. August 14, 1992.

Applications shall be considered as meeting the deadline if they are either: (1) received on or before the deadline with hand carried applications received by c.o.b. 5:00 P.M.; or (2) postmarked on or before the deadline date and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted as proof of timely mailing.

Applications received after the announced closing date will be returned to the applicant and will not be considered for funding.

**ADDITIONAL DATES:**

a. Application Receipt Date: August 14, 1992

b. Application Review Date: September 15, 1992

c. Applicants Notified of Results (approved, approved unfunded, or disapproved): September 28, 1992

d. Anticipated Start Date: September 30, 1992

**FOR FURTHER INFORMATION CONTACT:** For program information, contact Maria E. Stetter, Training/Administrative Officer, IHS, Mental Health/Social Services Branch 2401 12th St., NW., room 214N, Albuquerque, New Mexico 87102, (505) 766–2873. For grants information, contact M. Kay Carpenter, Grants Management Officer, Grants Management Branch, Division of Acquisition and Grants Operations, IHS, Twinbrook Metro Plaza, Suite 605, 12300 Twinbrook Pkwy., Rockville, MD 20852, (301) 443–5204. (These telephone numbers are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** This announcement provides information on the general program goal, eligibility requirements, programmatic activities, funding availability, and application procedures.

### General Program Goal

The goal of this project is to establish programs for child protective services,

child abuse prevention (including family violence prevention) programs, and educational programs aimed at child abuse prevention, which are community based and culturally relevant to meet Healthy People 2000 objectives as they affect American Indians and Alaska Natives.

**Eligibility Requirements**

Any federally recognized Indian tribe or Indian tribal organization is eligible to apply for a demonstration grant from the IHS under this announcement.

**Programmatic Activities**

Programmatic Activities may include, but are not limited to: (1) Establishing child protective service programs; (2) establishing child abuse prevention (including family violence prevention) programs; (3) developing multidisciplinary child abuse investigation and prevention programs; (4) developing child protection codes and regulations; (5) establishing training programs and/or providing community education on child abuse; and (6) supporting other innovative and culturally relevant programs and projects.

**Fund Availability and Period of Support**

In FY 1992, funds are available to support at least one project up to $200,000 and, if additional funds are made available, up to three projects will be funded with anticipated funding of $200,000 per project. Projects will be funded annually for up to three years with funding levels for succeeding years based on the FY 1992 level, the availability of appropriations in future years, continuing need for the project(s), and satisfactory performance. The anticipated start date is September 30, 1992.

**Application Process**

An IHS Grant Application Kit, including form PHS 5161–1 (rev. 3/89), may be obtained from the Grants Management Branch, Division of Acquisition and Grants Operations, Twinbrook Metro Plaza, suite 605, 12300 Twinbrook Pkwy., Rockville, MD 20852, telephone (301) 443–5204.

*A. Narrative*

The narrative section of the application must include the following: (1) Justification for need for assistance; (2) approach (including use of appropriate native healing practices; (3) adequacy of management controls, and (4) key personnel. The work plan section should be project specific. These instructions for the preparation of the narrative are to be used in lieu of the instructions of pages 15–16 of form PHS 5161–1. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. The Narrative May Not Exceed Ten Single-Spaced Pages in Length, Excluding Attachments, Budget, and Letters of Support Tribal Resolutions.

1. Need for Assistance

(a) Describe and define the target population at the project location.

(b) Describe the existing resources and services available, including the maintenance of native healing systems, where appropriate, which are related to the specific program/service the applicant is proposing to provide.

(c) Describe in detail the needs of the target population and what efforts have been made in the past to meet these needs, if any.

(d) Summarize the applicable State, IHS, and/or national standards, regulations and laws, and describe the unmet needs of any applicant's current program in relation to applicable State, IHS and/or national standards, laws and regulations.

2. Approach

(a) Program Objectives

1. State concisely the objectives of the project and how this project will address significant unmet mental health needs among Indians.
2. Describe briefly what the project intends to accomplish and the significant number of Indians to benefit from the project.
3. Describe how accomplishment of the objectives will be measured (including if replicable).
4. Describe how the project has the potential to deliver services in an efficient and effective manner.

(b) Work Plan

1. Describe the tasks and resources needed to implement and complete this project.
2. Provide a task timeline (timelines) breakdown or chart.
3. Discuss data collection for the project, how it will be obtained, analyzed, and maintained by the project.
4. Describe how the project will be evaluated.
5. Identify who will conduct the evaluation of the projected deliverables/outcomes.
6. Multi-year projects must include a description of the activities to be performed in the second and third years.

3. Adequacy of Management Controls

(a) Describe where the project will be housed, i.e., facilities and equipment available.

(b) Describe the management controls of the grantee over the directions and acceptability of work to be performed.

(c) Applicant must demonstrate that the organization has adequate systems and expertise to manage Federal funds.

(d) Provide an organizational chart and indicate how the project will operate within the organization.

4. Key Personnel

(a) Provide a biographical sketch and position description for the program director and other key personnel as described on page 17 of form PHS 5161–1.

(b) List the qualifications and experience of consultants or contractors where their use is anticipated.

*B. Budget*

An itemized estimate of costs and justification of the proposed program by line item must be provided on form PHS 5161–1 (rev. date 3/89). A narrative justification must be submitted for costs. Indicate needs by listing individual items and quantities necessary. Multi-year projects shall include funding requirements for the second and third years. (Grant funding may not be used to supplant existing public and private resources.)

*C. Documentation of Support*

1. Tribal Resolution

A resolution of the Indian tribe supporting the project must accompany the application submission. Applications which propose services which will benefit more than one Indian tribe must include resolutions from all affected tribes to be served. Applications by tribal organizations will not require resolution(s) if the current tribal resolution(s) under which they operate would encompass the proposed grant activities. A statement of proof or a copy of the current operational resolution must accompany the application. If a resolution or a statement is not submitted, the application will be considered incomplete and will be returned without consideration.

2. Letters of Cooperation/Collaboration/Assistance

If other related human services programs are to be involved in the project, letters confirming the nature and extent of their cooperation/collaboration/assistance must be

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submitted. Letters included in the application should be program specific.

*D. Assurances*

The application shall contain assurance to the Secretary that the applicant will comply with program regulations, 42 CFR 36, Subpart H.

*E. Coordination With Northern Plains Healthy Start Project*

If an applicant is from an area covered by the Northern Plains Healthy Start Project, they must indicate how they will coordinate with the Northern Plains Healthy Start Project.

**Review Process**

Applications that meet eligibility requirements, are complete, and conform to this program announcement will be reviewed by a centralized Objective Review Committee (ORC) conducted at the IHS Headquarters and in accordance with IHS objective review procedures.

The ORC will be comprised of not more than 40 percent IHS staff and at least 60 percent non-IHS staff (to include tribal) with appropriate expertise. The ORC will review each application against established criteria. Based upon the evaluation criteria, the reviewers will assign a numerical score to each application. In making the final funding decision, the IHS will also consider recommendations of the IHS Area Office within which the applicant organization is located.

**Evaluation Criteria**

Applications will be evaluated against the following criteria and weights:

*Weights*

25 1. Need—The demonstration of identified problems and risks in the target populations. Extent of community involvement and commitment.

40 2. Approach—The soundness and effectiveness of the applicant's plan for conducting the project, with special emphasis on the objectives and methodology portion of the application.

15 3. Adequacy of Management Controls—The apparent capability of the applicant to successfully conduct the project including both technical and business aspects. The soundness of the applicant's budget in relation to the project work plan and for assuring effective utilization of grant funds. Adequacy of facilities and equipment available within the organization or proposed for purchase under the project.

20 4. Key Personnel—Qualifications and adequacy of the staff.

100 Total Weight

**Reporting Requirements**

A. Progress Report

Program progress reports will be submitted quarterly with a final report due 90 days after the end of the annual project period.

B. Financial Status Report

Financial status reports will be submitted quarterly with a final financial status report due 90 days after the end of the annual project period. Standard Form 269 will be used for financial reporting.

*Grant Administration Requirements*

Grants are administered in accordance with the following documents:

A. 45 CFR part 92, HHS, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 45 CFR Part 74, Administration of Grants to Non-profit Recipients.

B. PHS Grants Policy Statement, and

C. Appropriate Cost Principles: Office of Management and Budget (OMB) Circular A–87, State and Local Governments, or OMB Circular A–122, Nonprofit Organizations.

Date: May 18, 1992.

**Everett R. Rhoades,**

*Assistant Surgeon General Director.*

[FR Doc. 92–16278 Filed 7–9–92; 8:45 am]

BILLING CODE 4160–16–M

## Public Health Service

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, June 28, 1992.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. Periodic Survey of Health Status, Minnesota Colon Cancer Control Study—0925–0275—Although screening for occult stool blood is recommended by the National Cancer Institute and other health agencies, there is no definitive evidence that such screening is reliable or decreases mortality from colorectal cancer. The requested information collection is necessary to provide this evidence. Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations; Number of Respondents: 34,550; Number of Responses Per Respondent: 1; Average Burden Per Response: 0.17 hours; Estimated Annual Burden: 5,680 hours.

2. Study of the Relationship of Medical School Characteristics to Graduates Choosing Primary Care—New—Information from this survey of medical schools and graduates will be used to determine which characteristics of allopathic and osteopathic medical schools are related to the choice of a primary care specialty and the decision to provide primary care to the underserved.

| Title | Number of respondents | Number of responses per respondent | Average burden per response |
|---|---|---|---|
| Graduate Survey | 1,600 | 1 | 0.25 |
| Medical School Survey | 125 | 1 | .17 |
| Osteopathic Medical Schools Survey | 15 | 1 | 1.26 |

Note: Total annual burden—440 hours.

3. Quantitative Evaluation of Video-Based HIV Prevention Information with Runaway and Homeless Youths in the United States—New—This study is designed to provide guidance to decision makers and health education programs targeted to racial/ethnic minority runaway and homeless youths in shelters. Information obtained through this effort will benefit the National Aids Information and Education Program (NAIEP) in its effort to use videos in reaching larger audiences with HIV and AIDS prevention information. Respondents: Individuals or households; Number of Respondents: 4,000; Number of Responses Per Respondent: 1.85; Average Burden Per Response: .236; Estimated Annual Burden: 1,749.

4. Annual Morbidity Reporting Series—0920–0007—Annual summary reports of nationally notifiable diseases are submitted to CDC from all States and U.S. Terrorities. These data summaries provide number of cases of certain diseases by county, age, sex and month of occurrence. Respondents: State or local governments; Number of Respondents: 57; Number of Responses Per Respondent: 1; Average Burden Per Response: 6.45; Estimated Annual Burden: 368.

Desk Officer: Shannah Koss

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address:

Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: July 6, 1992.

**Lorraine Fishback,**

*Acting Director, Office of Health Planning and Evaluation.*

[FR Doc. 92–16235 Filed 7–9–92; 8:45 am]

BILLING CODE 4160–17–M



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

**[Docket No. N–92–1917; FR–2934–N–86]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**ADDRESSES:** For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register** the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P, Rm. 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 501–0067; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586–1191; (these are not toll-free numbers).

Dated: July 2, 1992.

**Randall H. Erben,**

*Acting Assistant Secretary.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 07/10/92**

**Suitable/Available Properties**

*Buildings (by State)*

*Missouri*

Bldg. T200
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220525
Status: Underutilized
Comment: 2284 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible.

Bldg. T455
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220526
Status: Underutilized
Comment: 6736 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T532
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220527
Status: Underutilized
Comment: 1296 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 7/31/92.

Bldg. T546
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000

Landholding Agency: Army
Property Number: 219220526
Status: Underutilized
Comment: 2740 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible.

Bldg. T588
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220529
Status: Underutilized
Comment: 1980 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 10/1/92.

Bldg. T589
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220530
Status: Underutilized
Comment: 1980 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T1332
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220531
Status: Underutilized
Comment: 2360 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T1334
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220532
Status: Underutilized
Comment: 2360 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T1365
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220533
Status: Underutilized
Comment: 2360 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T1343
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220534
Status: Underutilized
Comment: 1144 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T1366
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220535
Status: Underutilized
Comment: 1144 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible.

Bldg. T1374
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220536
Status: Underutilized
Comment: 1144 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible.

Bldg. T1363
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220537
Status: Underutilized
Comment: 1296 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T1475
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220538
Status: Underutilized
Comment: 1144 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 7/31/92.

Bldg. T1476
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220539
Status: Underutilized
Comment: 1144 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible.

Bldg. T1656
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220540
Status: Underutilized
Comment: 4720 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible.

Bldg. T1677
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220541
Status: Underutilized
Comment: 3012 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible.

Bldg. T1684
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220542
Status: Underutilized
Comment: 3012 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 7/30/92.

Bldg. T1686
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220543
Status: Underutilized
Comment: 3012 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 7/30/92.

Bldg. T1692
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220544
Status: Underutilized
Comment: 3012 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T1904
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220545
Status: Underutilized
Comment: 2360 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T2301
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220546
Status: Underutilized
Comment: 614 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 7/31/92.

Bldg. T3065
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220547
Status: Underutilized

Comment: 2750 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T3066
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220548
Status: Underutilized
Comment: 2750 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T286
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220549
Status: Unutilized
Comment: 5310 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible.

Bldg. T290
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220550
Status: Unutilized
Comment: 5482 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible.

Bldg. T405
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220551
Status: Unutilized
Comment: 7670 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T406
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220552
Status: Unutilized
Comment: 7670 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T1340
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220553
Status: Underutilized
Comment: 4720 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T1351
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220554
Status: Underutilized
Comment: 4720 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible, scheduled to be vacated 9/1/92.

Bldg. T1460
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220555
Status: Underutilized
Comment: 4720 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible, scheduled to be vacated 7/31/92.

Bldg. T1461
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220556
Status: Underutilized
Comment: 4720 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible.

Bldg. T1462
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220557
Status: Underutilized
Comment: 4720 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible.

Bldg. T1488
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220558
Status: Underutilized
Comment: 4720 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible.

Bldg. T1489
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220559
Status: Underutilized
Comment: 4720 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible.

Bldg. T1900
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220560
Status: Underutilized
Comment: 7670 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible, scheduled to be vacated.

Bldg. T2108
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220561
Status: Underutilized
Comment: 7670 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T2359
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220562
Status: Underutilized
Comment: 4720 sq. ft., wood frame, 2 story, presence of absestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible, scheduled to be vacated 7/31/92.

Bldg. T3053
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220563
Status: Underutilized
Comment: 5310 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T3056
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220564
Status: Underutilized
Comment: 5310 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T3067
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220565
Status: Underutilized
Comment: 5310 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T3069
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473-5000
Landholding Agency: Army
Property Number: 219220566
Status: Underutilized
Comment: 5310 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only.

most recent use—enlisted barracks, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T3070
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220567
Status: Underutilized
Comment: 5310 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T451
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220568
Status: Underutilized
Comment: 4840 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible, scheduled to be vacated 10/31/92.

Bldg. T515
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220569
Status: Underutilized
Comment: 2331 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible, scheduled to be vacated 10/31/92.

Bldg. T1653
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220570
Status: Underutilized
Comment: 2740 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible.

Bldg. T1687
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220571
Status: Underutilized
Comment: 2846 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible.

Bldg. T1902
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220572
Status: Underutilized
Comment: 2248 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible, scheduled to be vacated 10/31/92.

Bldg. T1905
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220573
Status: Underutilized
Comment: 3775 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible, scheduled to be vacated 8/14/92.

Bldg. T1913
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220574
Status: Underutilized
Comment: 7213 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T2120
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220575
Status: Underutilized
Comment: 1296 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible.

Bldg. T2126
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220576
Status: Underutilized
Comment: 1500 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible.

Bldg. T2166
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220577
Status: Underutilized
Comment: 1296 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T2361
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220578
Status: Underutilized
Comment: 4720 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible.

Bldg. T2363
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220579
Status: Underutilized
Comment: 4720 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible, scheduled to be vacated 7/31/92.

Bldg. T3057
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220580
Status: Underutilized
Comment: 2650 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible.

Bldg. T1444
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220581
Status: Underutilized
Comment: 1828 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general purpose, not handicapped accessible.

Bldg. T1445
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220582
Status: Underutilized
Comment: 1828 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general purpose, not handicapped accessible.

Bldg. T1472
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220583
Status: Underutilized
Comment: 1828 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general purpose, not handicapped accessible, scheduled to be vacated 7/31/92.

Bldg. T1473
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220584
Status: Underutilized
Comment: 1828 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general purpose, not handicapped accessible.

Bldg. T1832
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220585
Status: Underutilized
Comment: 5893 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. bldg., not handicapped accessible, scheduled to be vacated 1/30/93.

Bldg. T1842
Fort Leonard Wood

Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220586
Status: Underutilized
Comment: 2740 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. bldg., not handicapped accessible, scheduled to be vacated 10/31/92.

Bldg. T583
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220587
Status: Underutilized
Comment: 2250 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—gen. instruction bldg., not handicapped accessible.

Bldg. T3072
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220588
Status: Underutilized
Comment: 2750 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—gen. instruction bldg., not handicapped accessible, scheduled to be vacated 7/21/92.

Bldg. T1441
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220590
Status: Underutilized
Comment: 1828 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—applied instruct bldg., not handicapped accessible, scheduled to be vacated 7/31/92.

Bldg. T1442
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220591
Status: Underutilized
Comment: 1828 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—applied instruct bldg., not handicapped accessible.

Bldg. T1485
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220592
Status: Underutilized
Comment: 1296 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—cmder. hdqtrs. bldg., not handicapped accessible, scheduled to be vacated 10/1/92.

Bldg. T1491
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220593
Status: Underutilized
Comment: 1296 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—cmder. hdqtrs. bldg., not handicapped accessible, scheduled to be vacated 10/1/92.

Bldg. 1691
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220594
Status: Unutilized
Comment: 2846 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—cmder. hdqtrs. bldg., not handicapped accessible.

Bldg. T2121
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220595
Status: Unutilized
Comment: 1296 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—cmder. hdqtrs. bldg., not handicapped accessible.

Bldg. T1443
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220596
Status: Underutilized
Comment: 1828 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—headquarters bldg., not handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T1651
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220597
Status: Underutilized
Comment: 1600 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—battalion hdqtrs., not handicapped accessible.

Bldg. T2154
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220598
Status: Underutilized
Comment: 1,296 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—battalion hdqtrs., not handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T2168
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220599
Status: Underutilized
Comment: 2,892 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—dining facility, not handicapped accessible, scheduled to be vacated 7/31/92.

Bldg. T2199
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220600
Status: Underutilized
Comment: 2,892 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—dining facility, not handicapped accessible, scheduled to be vacated 7/31/92.

Bldg. T463
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220601
Status: Underutilized
Comment: 5,310 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—religious ed. cntr., not handicapped accessible, scheduled to be vacated 10/31/92.

Bldg. T201
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220602
Status: Underutilized
Comment: 3,663 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—drama center, not handicapped accessible.

Bldg. T202
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220603
Status: Underutilized
Comment: 3,775 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—exchange branch, not handicapped accessible.

Bldg. T2058
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski MO, 65473–5000
Landholding Agency: Army
Property Number: 219220604
Status: Underutilized
Comment: 3,448 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—guest house, not handicapped accessible, scheduled to be vacated.

Bldg. T1751
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220605
Status: Underutilized
Comment: 7,670 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—guest house, not handicapped accessible, scheduled to be vacated.

Bldg. T1753
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army

Property Number: 219220606
Status: Underutilized
Comment: 7,670 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—guest house, not handicapped accessible, scheduled to be vacated.

Bldg. T2309
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220607
Status: Underutilized
Comment: 658 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—heating plant, not handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T1672
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220818
Status: Underutilized
Comment: 4,720 sq. ft., 2 story wood frame, presence of asbestos, most recent use—enlisted barracks, off-site removal only, scheduled to be vacated 10/30/92.

Bldg. T1673
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220819
Status: Underutilized
Comment: 4,720 sq. ft., 2 story wood frame, presence of asbestos, most recent use—enlisted barracks, off-site removal only, scheduled to be vacated 10/30/92.

Bldg. T1674
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220820
Status: Underutilized
Comment: 4,720 sq. ft., 2 story wood frame, presence of asbestos, most recent use—enlisted barracks, off-site removal only, scheduled to be vacated 10/30/92.

Bldg. T1675
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220821
Status: Underutilized
Comment: 4,720 sq. ft., 2 story wood frame, presence of asbestos, most recent use—enlisted barracks, off-site removal only, scheduled to be vacated 10/30/92.

Bldg. T1676
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220822
Status: Underutilized
Comment: 4,720 sq. ft., 2 story wood frame, presence of asbestos, most recent use—enlisted barracks, off-site removal only, scheduled to be vacated 10/30/92.

Bldg. T1678
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220823
Status: Underutilized
Comment: 4,720 sq. ft., 2 story wood frame, presence of asbestos, most recent use—enlisted barracks, off-site removal only, scheduled to be vacated 10/30/92.

Bldg. T1681
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220824
Status: Underutilized
Comment: 4,720 sq. ft., 2 story wood frame, presence of asbestos, most recent use—enlisted barracks, off-site removal only, scheduled to be vacated 10/30/92.

Bldg. T1682
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220825
Status: Underutilized
Comment: 4,720 sq. ft., 2 story wood frame, presence of asbestos, most recent use—enlisted barracks, off-site removal only, scheduled to be vacated 10/30/92.

Bldg. T1693
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220826
Status: Underutilized
Comment: 4,720 sq. ft., 2 story wood frame, presence of asbestos, most recent use—enlisted barracks, off-site removal only, scheduled to be vacated 10/30/92.

Bldg. T1694
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220827
Status: Underutilized
Comment: 4,720 sq. ft., 2 story wood frame, presence of asbestos, most recent use—enlisted barracks, off-site removal only, scheduled to be vacated 10/30/92.

Bldg. T1695
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220828
Status: Underutilized
Comment: 4,720 sq. ft., 2 story wood frame, presence of asbestos, most recent use—enlisted barracks, off-site removal only, scheduled to be vacated 10/30/92.

Bldg. T1696
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220829
Status: Underutilized
Comment: 4,720 sq. ft., 2 story wood frame, presence of asbestos, most recent use—enlisted barracks, off-site removal only, scheduled to be vacated 10/30/92.

Bldg. T1698
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220830
Status: Underutilized
Comment: 4,720 sq. ft., 2 story wood frame, presence of asbestos, most recent use—enlisted barracks, off-site removal only, scheduled to be vacated 10/30/92.

Bldg. T1474
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220831
Status: Underutilized
Comment: 1,828 sq. ft., 1 story wood frame, presence of asbestos, most recent use—applied instruction bldg., off-site removal only, scheduled to be vacated 10/30/92.

Bldg. T2107
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220832
Status: Underutilized
Comment: 7,670 sq. ft., 2 story wood frame, presence of asbestos, most recent use—guest house, off-site removal only, scheduled to be vacated 10/30/92.

New Mexico

Bldg. 814, Kirtland AFB
Adjacent to Sandia Natl. Labs
Albuquerque, Co: Bernailillo, NM 87185–
Landholding Agency: Energy
Property Number: 419220002
Status: Unutilized
Comment: 6,900 sq. ft., one story wood frame, needs rehab, presence of asbestos, off-site use only, most recent use—office, secured area w/alternate access.

Bldg. 815, Kirtland AFB
Adjacent to Sandia Natl. Labs
Albuquerque, Co: Bernailillo, NM 87185–
Landholding Agency: Energy
Property Number: 419220003
Status: Unutilized
Comment: 3,440 sq. ft., one story wood frame, needs rehab, presence of asbestos, off-site use only, most recent use—auditorium, secured area w/alternate access.

Texas

Bldg. 458, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220621
Status: Unutilized
Comment: 2,584 sq. ft., 1 story brick structure (exterior brick must be removed), most recent use—youth center, off-site use only.

Bldg. 358, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220622
Status: Unutilized
Comment: 4,000 sq. ft., 2 story barracks, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 359, Fort Bliss
El Paso, Co: El Paso, TX 79916–

Landholding Agency: Army
Property Number: 219220623
Status: Unutilized
Comment: 4,000 sq. ft., 2 story wood structure, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 466, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220624
Status: Unutilized
Comment: 3,540 sq. ft., 2 story wood structure, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 467, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220625
Status: Unutilized
Comment: 3,540 sq. ft., 2 story wood structure, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 474, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220626
Status: Unutilized
Comment: 3,540 sq. ft., 2 story wood frame, presence of asbestos, most recent use—troop housing, off-site use only.

Bldg. 475, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220627
Status: Unutilized
Comment: 3,540 sq. ft., 2 story wood frame, presence of asbestos, most recent use—troop housing, off-site use only.

Bldg. 476, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220628
Status: Unutilized
Comment: 3,540 sq. ft., 2 story wood frame, presence of asbestos, most recent use—troop housing, off-site use only.

Bldg. 477, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220629
Status: Unutilized
Comment: 3,540 sq. ft., 1 story barracks, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 660, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220630
Status: Unutilized
Comment: 1,687 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 704, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220631
Status: Unutilized
Comment: 4,500 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—classroom, off-site use only.

Bldg. 901, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220632
Status: Unutilized
Comment: 2,747 sq. ft., 2 story wood frame structure, most recent use—admin., off-site use only.

Bldg. 1160 Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220633
Status: Unutilized
Comment: 3,540 sq. ft., 2 story wood frame structure, most recent use—admin., off-site use only.

Bldg. 1162, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220634
Status: Unutilized
Comment: 937 sq. ft., 1 story wood frame structure, most recent use—admin., off-site use only.

Bldg. 1163, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220635
Status: Unutilized
Comment: 5,577 sq. ft., 1 story wood frame structure, most recent use—admin., off-site use only.

Bldg. 2500, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220636
Status: Unutilized
Comment: 168 sq. ft., 1 story wood frame structure, most recent use—oil storage, off-site use only.

Bldg. 2502, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220637
Status: Unutilized
Comment: 1,200 sq. ft., 1 story wood frame structure, most recent use—admin., off-site use only.

Bldg. 2546, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220638
Status: Unutilized
Comment: 54 sq. ft., 1 story wood frame structure, most recent use—heat plant, off-site use only.

Bldg. 4305, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220639
Status: Unutilized
Comment: 1,713 sq. ft., 1 story wood frame structure, most recent use—admin., off-site use only.

Bldg. 4639, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220640
Status: Unutilized
Comment: 875 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 4649, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220641
Status: Unutilized
Comment: 873 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 4739, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220642
Status: Unutilized
Comment: 874 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 4761, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220643
Status: Unutilized
Comment: 915 sq. ft., 1 story wood frame structure, most recent use—admin., off-site use only.

Bldg. 11050, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220644
Status: Unutilized
Comment: 2,304 sq. ft., 1 story wood frame structure, most recent use—admin., off-site use only.

Bldg. 4552, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220645
Status: Unutilized
Comment: 2,169 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 4567, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220646
Status: Unutilized
Comment: 2,169 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 4582, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220647
Status: Unutilized
Comment: 1,713 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use - storage, off-site use only.

Bldg. 4650, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220648
Status: Unutilized
Comment: 858 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use - storage, off-site use only.

Bldg. 4721, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220649
Status: Unutilized
Comment: 1,381 sq. ft., 1 story wood frame structure, most recent use - storage, off-site use only.

Bldg. 4752, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220650
Status: Unutilized

Comment: 2,169 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use - storage, off-site use only.

Bldg. 4822, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220651
Status: Unutilized
Comment: 1,770 sq. ft., 1 story wood frame structure, most recent use - storage, off-site use only.

Bldg. 4829, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220652
Status: Unutilized
Comment: 915 sq. ft., 1 story wood frame structure, most recent use - storage, off-site use only.

Bldg. 11610, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220653
Status: Unutilized
Comment: 322 sq. ft., 1 story wood frame structure, most recent use - storage, off-site use only.

Bldg. 11625, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220654
Status: Unutilized
Comment: 322 sq. ft., 1 story wood frame structure, most recent use - storage, off-site use only.

Bldg. 4617, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220655
Status: Unutilized
Comment: 978 sq. ft., 1 story wood frame structure, most recent use - general instruction, off-site use only.

Bldg. 4670, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220656
Status: Unutilized
Comment: 2,214 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use - instruction bldg., off-site use only.

Bldg. 4621, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220657
Status: Unutilized
Comment: 1,382 sq. ft., 1 story wood frame structure, most recent use - day room, off-site use only.

Bldg. 4623, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220658
Status: Unutilized
Comment: 875 sq. ft., 1 story wood frame structure, most recent use - day room, off-site use only.

Bldg. 4638, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220659
Status: Unutilized
Comment: 875 sq. ft., 1 story wood frame structure, most recent use - day room, off-site use only.

Bldg. 4636, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220659
Status: Unutilized
Comment: 875 sq. ft., 1 story wood frame structure, most recent use - day room, off-site use only.

Bldg. 4640, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220660
Status: Unutilized
Comment: 1,770 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use - day room, off-site use only.

Bldg. 4645, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220661
Status: Unutilized
Comment: 873 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use - recreation, off-site use only.

Bldg. 4646, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220662
Status: Unutilized
Comment: 873 sq. ft., 1 story wood structure, most recent use—recreation, off-site use only.

Bldg. 4647, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Propoerty Number: 219220663
Status: Unutilized
Comment: 659 sq. ft., 1 story wood structure, presence of asbestos, most recent use—recreation, off-site use only.

Bldg. 4696, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220664
Status: Unutilized
Comment: 1,658 sq. ft., 1 story wood structure, presence of asbestos, most recent use—recreation, off-site use only.

Bldg. 4720, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220665
Status: Unutilized
Comment: 874 sq. ft., 1 story wood structure, presence of asbestos, most recent use—recreation, off-site use only.

Bldg. 4738, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220666
Status: Unutilized
Comment: 874 sq. ft., 1 story wood structure, most recent use—recreation, off-site use only.

Bldg. 4760, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220667
Status: Unutilized
Comment: 915 sq. ft., 1 story wood structure, presence of asbestos, most recent use—recreation, off-site use only.

Bldg. 4818, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220668
Status: Unutilized
Comment: 873 sq. ft., 1 story wood structure, presence of asbestos, most recent use—recreation, off-site use only.

Bldg. 4821, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220669
Status: Unutilized
Comment: 1,381 sq. ft., 1 story wood structure, presence of asbestos, most recent use—recreation, off-site use only.

Bldg. 4828, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220670
Status: Unutilized
Comment: 915 sq. ft., 1 story wood structure, presence of asbestos, most recent use—recreation, off-site use only.

Bldg. 4831, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220671
Status: Unutilized
Comment: 915 sq. ft., 1 story wood structure, most recent use—recreation, off-site use only.

Bldg. 4655, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220672
Status: Unutilized
Comment: 1,770 sq. ft., 1 story wood structure, most recent use—classroom, off-site use only.

Bldg. 4740, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220673
Status: Unutilized
Comment: 1,770 sq. ft., 1 story wood structure, most recent use—classroom, off-site use only.

Bldg. 4755, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220674
Status: Unutilized
Comment: 1,770 sq. ft., 1 story wood structure, most recent use—classroom, off-site use only.

Bldg. 4770, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220675
Status: Unutilized
Comment: 2,169 sq. ft., 1 story wood structure, most recent use—classroom, off-site use only.

Bldg. 4837, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219220676
Status: Unutilized
Comment: 1,770 sq. ft., 1 story wood structure, presence of asbestos, most recent use—classroom, off-site use only.

Bldg. 4,840, Fort Bliss
El Paso, Co: El Paso, TX 79916-
Landholding Agency: Army

Property Number: 219220677
Status: Unutilized
Comment: 1,770 sq. ft., 1 story wood structure, presence of asbestos, most recent use—classroom, off-site use only.

Bldg. 5345, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220678
Status: Unutilized
Comment: 874 sq. ft., 1 story wood structure, most recent use—classroom, off-site use only.

Bldg. 4679, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220679
Status: Unutilized
Comment: 2,747 sq. ft., 1 story wood structure, presence of asbestos, most recent use—sales store, off-site use only.

Bldg. 4779, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220680
Status: Unutilized
Comment: 2,747 sq. ft., 1 story wood structure, presence of asbestos, most recent use—sales store, off-site use only.

Bldg. 11042, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220681
Status: Unutilized
Comment: 6,851 sq. ft., 1 story wood structure, most recent use—vehicle maintenance shop, off-site use only.

Bldg. 11187, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220682
Status: Unutilized
Comment: 1,500 sq. ft., 1 story wood structure, most recent use—craft shop, off-site use only.

Bldg. 11263, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220683
Status: Unutilized
Comment: 8,773 sq. ft., 1 story wood structure, presence of asbestos, most recent use—retail store, off-site use only.

Bldg. 11550, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220684
Status: Unutilized
Comment: 400 sq. ft., 1 story cylinder block, most recent use—ammunition storage, off-site use only.

Bldg. 11626, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220685
Status: Unutilized
Comment: 112 sq. ft., 1 story concrete structure, most recent use—generator bldg., off-site use only.

Bldg. 11637, Fort Bliss
El Paso, Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219220686
Status: Unutilized
Comment: 228 sq. ft., 1 story navigations aids bldg. off-site use only.

*Suitable/Unavailable Properties*

Buildings (by State)

Missouri

Bldg. T1461
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219220589
Status: Underutilized
Comment: 2,360 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—gen. instruction bldg not handicapped accessible, scheduled to be vacated 7/31/92.

*Unsuitable Properties*

Buildings (by State)

Missouri

Bldg. 67, Storage Bunker
2000 East 95th Street
Kansas City, Co: Jackson, MO 64131–
Landholding Agency: Energy
Property Number: 419220004
Status: Unutilized
Reason: Floodway.

LAND (by State)

California

Portion, Travis AFB
6 miles southeast of Vacaville
Travis AFB, Co: Solano, CA 94535–
Landholding Agency: GSA
Property Number: 549220012
Status: Surplus
Reason: Floodway
GSA Number: 9–D–CA–499L.

[FR Doc. 92–15074 Filed 7–9–92; 8:45 am]
BILLING CODE 4210–29–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV–930–4214–10; N–50568]

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Legal Description of Lands Transferred Pursuant to the National Forest and Public Lands of Nevada Enhancement Act of 1988; Correction Notice

June 25, 1992.

**AGENCIES:** Bureau of Land Management, Interior. U.S. Forest Service, Agriculture.

**ACTION:** Correction Notice.

**SUMMARY:** This notice makes a correction to Document No. 89–27518 published on November 24, 1989, in Volume 54, Federal Register, Pages 48659–48664.

**EFFECTIVE DATE:** April 26, 1989.

**FOR FURTHER INFORMATION CONTACT:** Regarding land transferred to the U.S. Forest Service, contact Bob Larkin, Officer, Land Management and Planning, U.S. Forest Service, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431. Regarding land transferred to the Bureau of Land Management, contact Bob Stewart, Chief, Public Affairs Staff, Bureau of Land Management, Nevada State Office, P.O. Box 12000, 850 Harvard Way, Reno, Nevada 89520.

**SUPPLEMENTARY INFORMATION:** The following correction is made to Document No. 89–27518 published on November 24, 1989:

Page 48660, second column, line 44, delete ";" and add "SE¼SE¼;".

**Billy R. Templeton,**

*State Director, Nevada, Bureau of Land Management.*

**R. M. (Jim) Nelson,**

*Supervisor, Toiyabe National Forest, U.S. Forest Service.*

[FR Doc. 92–16167 Filed 7–9–92; 8:45 am]
BILLING CODE 4310–HC–M

## Bureau of Land Management

[UT–020–4212–13; U–65659]

### Salt Lake District; Realty Action

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action; Exchange of public lands in Tooele, Box Elder, Utah, and Washington Counties, Utah.

**SUMMARY:** The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716):

T. 1S., R. 11W., SLM,
Sec. 19, lot 4, S½SE¼, SE¼SW¼;
Sec. 20, W½SW¼.
T. 1S., R. 12W., SLM,
Sec. 24, S½SE¼;
Sec. 25, All.
The area described contains 953.95 acres.

In exchange for these lands, the United States will acquire the following described lands from USPCI, Inc.:

T. 4N., R. 19W., SLM,
Sec. 23, W½W½, N½SE¼SW¼, SW¼SE¼SW¼, S½SE¼SE¼SW¼.
T. 6S., R. 5W., SLM,
Sec. 27, SE¼SW¼ west of the Los Angeles Salt Lake Railroad ROW and excepting State Highway 36:
Sec. 34, NW¼, NW¼NE¼ excepting therefrom, that portion lying within the bounds of State Highway 36 and the

railroad ROW; S½SW¼ excepting State Highway 36.
T. 7S., R. 5W., SLM,
Sec. 3, lots 3,4, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 4, E½SE¼;
Sec. 9, E½NE¼, NE¼SE¼ excepting therefrom, that portion lying within the bounds of State Highway 36 and the San Pedro, Los Angeles and Salt Lake Railroad right-of-way;
Sec. 22, W½NW¼.
T. 6S., R. 6W., SLM,
Sec. 28, lots 5,6, NE¼SW¼, NW¼SE¼.
T. 10S., R. 6E., SLM,
Sec. 23, SE¼SE¼;
Sec. 26, E½NW¼, SW¼NW¼, W½NE¼, NE¼NE¼, SW¼;
Sec. 27, S½NE¼, NE¼NE¼;
Sec. 34, N½SE¼, SE¼SE¼;
Sec. 35, N½, N½S½, S½SW¼, SW¼SE¼.
T. 40S., R. 17W., SLM,
Sec. 4, SW¼NW¼, NW¼SW¼;
Sec. 5, lot 1, SE¼NE¼.

The area described contains a total of 2611.577 acres.

The purpose of this exchange is to acquire lands which have high values for wildlife, livestock grazing, and recreational use. The exchange would also create a more logical and efficient land management pattern. The public interest will be served by completing the exchange.

The value of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to the United States by USPCI of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

The exchange will be made for both surface and subsurface estates, where possible. The mineral estate of some of the offered lands is held by other owners and will not be a part of this exchange. The selected lands will have a reservation of a right-of-way for ditches and canals constructed by the authority of the United States under the provisions of the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945) and will be subject to all existing rights-of-way.

Publication of this notice in the **Federal Register** will segregate the public lands described above for a period of two years from the date of first publication to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

Further information concerning the exchange, including the EA is available for review at the Salt Lake District Office.

For a period of 45 days from the date of first publication, interested parties may submit comments to the Salt Lake District, 2370 South 2300 West, Salt Lake City, Utah 84119.

**Deane H. Zeller,**
*Salt Lake District Manager.*
[FR Doc. 92-16186 Filed 7-9-92; 8:45 am]
BILLING CODE 4310-DQ-M

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[ID-060-02-4333-11]

## Lower Salmon River; Campfire and Sanitation Requirements

**AGENCY:** Bureau of Land Management, Idaho.

**ACTION:** Notice of campfire and sanitation requirements on the Lower Salmon River.

**SUMMARY:** Pursuant to 43 CFR 8365.1-6, the following acts are prohibited yearlong within the Lower Salmon River Recreation Area from Hammer Creek (River Mile 53) to the Confluence of the Salmon and Snake Rivers (River Mile 0):

(a) Building, maintaining, or using a fire or campfire. The following persons are exempt from this order:

(1) A person with a valid site-specific burning permit issued by the Idaho Department of Lands.

(2) A person using any of the following types of equipment to contain their fire:

(i) *Firepan, Including Portable Barbecue with Grill.* A device made of fire-resistant material or metal, with raised edges of a height sufficient to contain all ash and residue from a wood or charcoal fire. All ash and wood or charcoal residue must be packed out, including partially consumed briquets.

(ii) *Gas Stoves.* Pressurized liquid or gas stoves including space-hearing devices.

(iii) *Enclosed Wood Stove.* A wood or charcoal fire built inside a fully enclosed stove. The stove must be enclosed on six (6) sides with ¼ inch or smaller screening covering the chimney opening. Example: sheep herder stove with screening or spark arrestor covering chimney top. All ash and wood residue must be packed out.

(b) Boating, either float boating or power boating, on trips lasting more than one day, without a portable sanitary device for carrying out all solid human waste (fecal matter).

These restrictions meet requirements of the Recreation Area Management Plan for the Lower Salmon River Recreation Area including the revision of the Plan in 1991.

Violation of these prohibitions is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

**SUPPLEMENTARY INFORMATION:** These restrictions meet the requirements of the Recreation Area Management Plan for the Lower Salmon River Recreation Area including the revision of the Plan in 1991.

Implementing the fire pan regulation will enhance the effort to keep beaches and camp sites clean by requiring boaters and land-based recreationists to pack out all residue from their fires including ash and burned refuse. It will also aid in educating the public on no-trace camping techniques, especially on keeping the sand beach resources as clean as possible.

Implementing the portable toilet regulation will protect public health and safety by removing human fecal material from the area. It will enhance the effort to keep beaches and campsites clean by requiring removal of said waste. It will also aid in educating and informing the public on no-trace camping techniques. Protection of the natural qualities of the river corridor was highly favored by recreationists during several river visitor user studies. The recommendation of the Lower Salmon River Ad Hoc Advisory Group supported requiring firepan and ash removal year-round as well as requiring human waste carry-out.

**DATES:** This notice is effective as of July 10, 1992.

**ADDRESSES:** Comments may be mailed to Bureau of Land Management, 1808 North Third Street, Coeur d'Alene, ID 83814.

**FOR FURTHER INFORMATION CONTACT:** LuVerne Grussing at (208) 962-3683.

Dated: July 1, 1992.
**Delmar D. Vail,**
*State Director.*
[FR Doc. 92-16199 Filed 7-9-92; 8:45 am]
BILLING CODE 4310-84-M

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## INTERNATIONAL JOINT COMMISSION—UNITED STATES AND CANADA

[Public Notice 1651]

## Invitation To Comment on the First Progress Report of the Air Quality Committee Under the Canada-U.S. Air Quality Agreement

The Governments of the United States and Canada signed an Agreement on Air Quality on March 13, 1991. The purpose of the Agreement was to

establish a practical and effective instrument to address shared concerns regarding transboundary air pollution.

Under the terms of the Agreement, the Governments have established a bilateral Air Quality Committee. This Committee is responsible for reviewing progress made in the implementation of the Agreement, preparing and submitting periodic progress reports to the Governments, referring each progress report to the International Joint Commission, and releasing those reports to the public. The first progress report of the Committee is now available and may be obtained from:

Acid Raid Division, U.S. Environmental Protection Agency, Mail Code: 6204J, 401 M Street, SW., Washington, DC 20460. Acid Raid Hotline: (617) 641–5377

Environment Canada, Enquiry Centre, 351 St. Joseph Blvd., Hull, Quebec, K1A OH3, (819) 997–2800

Under this Agreement, the Governments have assigned the International Joint Commission the responsibility of inviting comments on each progress report of the Air Quality Committee.

A synthesis of comments received by the International Joint Commission will be provided to the Governments and made available to the public. The Commission must also provide a record of the comments if requested by either Government.

The International Joint Commission invites comments on any aspect of the first report of the Air Quality Committee. Please send comments in writing by October 31, 1992, to either address below or contact us by telephone if you have any questions about the comment process.

The Secretary, United States Section, International Joint Commission, 1250 23rd Street, NW., suite 100, Washington, DC 20440, Telephone: (202) 736–9000

The Secretary, Canadian Section, International Joint Commission, 100 Metcalfe Street, 18th Floor, Ottawa, ON K1P 5M1, Telephone: (202) 995–2984

Dated: July 1, 1992.

**James G. Chandler,**

*Acting Secretary, United States Section.*

[FR Doc. 92–16024 Filed 7–9–92; 8:45 am]

BILLING CODE 4710–14–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 701–TA–313 (Final)]**

### Portable Seismographs From Canada

**AGENCY:** United States International Trade Commission.

**ACTION:** Termination of investigation.

**SUMMARY:** On June 15, 1992, the Commission received a letter from the U.S. Department of Commerce stating that, having received a letter from petitioner in the subject investigation (GeoSonics Inc., Warrendale, PA) withdrawing its petition, Commerce was terminating its countervailing duty investigation on portable seismographs from Canada. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the subject investigation is terminated.

**EFFECTIVE DATE:** July 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

**Authority:** This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40).

Issued: July 6, 1992.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92–16230 Filed 7–9–92; 8:45 am]

BILLING CODE 7020–02–M

## INTERSTATE COMMERCE COMMISSION

### Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. *Parent Corporation:* Anheuser-Busch Companies, Inc., One Busch Place, St. Louis, Missouri 63118.

| 2. *Wholly-Owned Subsidiaries* | *State of Incorporation* |
|---|---|
| (1) Anheuser-Busch Inc | Missouri. |
| (2) August A. Busch & Co. of Massachusetts, Inc. | Massachusetts. |
| (3) Busch Properties, Inc | elaware. |
| (4) Consolidated Farms, Inc | Delaware. |
| (5) Metal Container Corp | Delaware. |
| (6) Kingsmill Realty, Inc | Virginia. |
| (7) Busch International Sales Corp. | Delaware. |
| (8) St. Louis Refrigerator Car Co. | Delaware. |
| (9) Manufacturers Railway Co. | Missouri. |
| (10) Manufacturers Cartage Co. | Missouri. |
| (11) MRS Redevelopment Corp. | Missouri. |
| (12) Metal Container Service Corp. | Delaware. |
| (13) St. Louis National Baseball Club, Inc. | Missouri. |
| (14) St. Louis National Baseball Club (Georgia), Inc. | Georgia. |
| (15) MRS Transport Co | Texas. |
| (16) Williamsburg Transport, Inc. | Virginia. |
| (17) Fairfield Transport, Inc | California. |
| (18) Busch Entertainment Corp. | Delaware. |
| (19) Anheuser-Busch Recycling Corp. | Ohio. |
| (20) Metal Label Corp | Tennessee. |
| (21) Busch Creative Services Corp. | Delaware. |
| (22) Golden Eagle Distributing Co. | Delaware. |
| (23) Busch Agricultural Resources, Inc. | Delaware. |
| (24) Anheuser-Busch International, Inc. | Delaware. |
| (25) Anheuser-Busch Europe, Inc. | Delaware. |
| (26) Civic Center Corp | Missouri. |
| (27) Stadium Plaza Redevelopment Corp. | Missouri. |
| (28) Broadway Redevelopment Corp. | Missouri. |
| (29) Suffolk-Busch Development Corp. | Massachusetts. |
| (30) Eagle Snacks, Inc | Delaware. |
| (31) Anheuser-Busch Beverage Group, Inc. | Delaware. |
| (32) Nutri-Turf, Inc | Delaware. |
| (33) Anheuser-Busch Asia, Inc. | Delaware. |
| (34) Campbell Taggart, Inc | Delaware. |
| (35) A-B Sports, Inc | Delaware. |
| (36) Anheuser-Busch Metal Corp. | Delaware. |
| (37) Anheuser-Busch Investment Capital Corp. | Delaware. |
| (38) BACI, Inc | Delaware. |
| (39) BACI Holdings, Inc | Delaware. |
| (40) InnoVen IV Corp | Delaware. |
| (41) Innervisions Productions, Inc. | Missouri. |
| (42) Busch Mechanical Services Inc. | Delaware. |
| (43) Busch Media Group, Inc | Delaware. |
| (44) Metal Container Corp of California. | California. |
| (45) Busch Biotech, Inc | Delaware. |

| 2. *Wholly-Owned Subsidiaries* | *State of Incorporation* |
|---|---|
| (46) Pacific Interntional Rice Mills, Inc. | Delaware. |
| (47) Optimus, Inc | Delaware. |
| (48) Busch Import/Export Company, Inc. | Delaware. |
| (49) BACI of Tennessee, Inc | Tennessee. |
| (50) Anheuser-Busch World Trade Ltd. | Delaware. |
| (51) Litchfield Development Corp. | Delaware. |
| (52) Horizon Beverage Co | California. |
| (53) Garrard Holding Co | Delaware. |
| (54) Garrard Leasing Co | Kentucky. |
| (55) Busch Investment Corp | Delaware. |
| (56) Anheuser-Busch Entertainment Limited. | Delaware. |
| (57) Anheuser-Busch Distributors of New York, Inc. | Delaware. |
| (58) Bend Music, Inc | Delaware. |
| (59) Tune Out Music, Inc | Delaware. |
| (60) Busch Foreign Sales Corp. | Barbados. |
| (61) Anheuser-Busch Florida Investment Capital Corp. | Delaware. |
| (62) Anheuser-Busch Wisconsin Investment Capital Corp. | Wisconsin. |
| (63) Anheuser-Busch Wholesaler Developement Corp. | Delaware. |
| (64) Anheuser-Busch Wholesaler Development Corp III. | Delaware. |
| (65) Anheuser-Busch Australia Limited. | Delaware. |
| (66) Anheuser-Busch European Trade Limited. | England. |
| (67) Sea World, Inc | Delaware. |
| (68) Sea World of Florida Inc. | Florida. |
| (69) F & C of Orlando, Inc | Florida. |
| (70) HSH of Orlando, Inc | Florida. |
| (71) Sea World of Texas, Inc. | Delaware. |
| (72) Texas Trident, Inc | Texas. |
| (73) Primrose Inc | Texas. |
| (74) Coleridge Corp | Delaware. |
| (75) Boardwalk and Baseball, Inc. | Delaware. |
| (76) A-B Contract Services Co. | Delaware. |
| (77) Rainbo Baking Company of Albuquerque. | Delaware. |
| (78) Colonial Baking Company of Atlanta. | Delaware. |
| (79) Colonial Baking of Augusta. | Delaware. |
| (80) Rainbo Bread Co. of Aurora. | Delaware. |
| (81) Colonial Baking Co. of Cedar Rapids. | Delaware. |
| (82) Colonial Baking Co. of Chattanooga. | Delaware. |
| (83) Colonial Baking Co. of Columbus. | Delaware. |
| (84) Rainbo Baking Co. of Corpus Christi. | Delaware. |
| (85) Manor Baking Co. of Dallas. | Delaware. |
| (86) Rainbo Bread Co | Delaware. |
| (87) Colonial Baking Co. of Des Moines. | Delaware. |
| (88) Rainbo Baking Co. of El Paso. | Delaware. |
| (89) Evansville Colonial Baking Co. | Delaware. |
| (90) Rainbo Bakeries of San Joaquin Valley, Inc. | Delaware. |
| (91) Colonial Baking Co. of Gulfport. | Delaware. |
| (92) Rainbo Baking Co. of Harlingen. | Delaware. |
| (93) Rainbo Baking Co. of Houston. | Delaware. |
| (94) Colonial Baking Co. of Huntsville. | Delaware. |
| (95) Betts Baking Co | Delaware. |
| (96) Colonial Baking Co. of Indianapolis Inc. | Delaware. |
| (97) Rainbo Baking Co. of Johnson City. | Delaware. |
| (98) Florida Cypress Gardens, Inc. | Florida. |
| (99) Busch Properties of Florida, Inc. | Florida. |
| (100) Heron Enterprises, Inc | Florida. |
| (101) ILH Co | Florida. |
| (102) Busch Agricultural Resources International, Inc. | Delaware. |
| (103) Manor Baking Co | Delaware. |
| (104) Rainbo Baking Co. of Lexington. | Delaware. |
| (105) Rainbo Baking Co. of Louisville. | Delaware. |
| (106) Rainbo Baking Co. of Lubbock. | Delaware. |
| (107) Colonial Baking Co. of Memphis. | Delaware. |
| (108) Colonial Baking Co. of Alabama. | Delaware. |
| (109) Colonial Baking Co. of Muncie, Inc. | Delaware. |
| (110) Colonial Baking Co. of Nashville. | Delaware. |
| (111) Rainbo Baking Co. of Oklahoma City. | Delaware. |
| (112) Rainbo Baking Co. of Phoenix. | Delaware. |
| (113) Rainbo Bakers, Inc | Delaware. |
| (114) Rainbo Bread Co. of Roanoke. | Delaware. |
| (115) Rockford Colonial Baking Co. | Delaware. |
| (116) Rainbo Baking Co. of Sacramento Valley. | Delaware. |
| (117) Rainbo Bread Co. of St. Joseph. | Delaware. |
| (118) Colonial Baking Co. of St. Louis. | Delaware. |
| (119) Rainbo Baking Co. of San Antonio. | Delaware. |
| (120) Colonial Baking Co. of Springfield. | Delaware. |
| (121) Kilpatricks Bakeries, Inc. | Delaware. |
| (122) Rainbo Baking Co. of Tucson. | Delaware. |
| (123) Rainbo Baking Co. of Tulsa. | Delaware. |
| (124) Rainbo Baking Co. of Wichita. | Delaware. |
| (125) Eagle Crest Foods, Inc | Delaware. |
| (126) Merico, Inc | Texas. |
| (127) Arizona Baking Co. of the Southwest. | Delaware. |
| (128) Bel-Art Advertising, Inc. | Texas. |
| (129) C-Trans, Inc | Texas. |
| (130) Colonial Baking Co. of Madison County. | Delaware. |
| (131) EG Bread, Inc | Delaware. |
| (132) Hardin's Bakeries, Corp. | Misisippi. |
| (133) Rainbo Baking Co. of Waco. | Delaware. |
| (134) Roswell Baking Co | Delaware. |
| (135) A & Eagle Food Products, Inc. | Delaware. |
| (136) Colonial Baking Co. of El Dorado. | Delaware. |
| (137) Ramtag, Inc | Texas. |
| (138) PRX Folding Carton, Inc. | Delaware. |
| (139) Dough Acquisiton, Inc | Delaware. |

B 1. *Parent Corporation and Address of Principal Office*

National Cooperative Refinery Association, 2000 South Main Street, P.O. Box 1404, McPherson., Kansas 67460.

2. *Wholly Owned Subsidiaries Which Will Participate in the Operations, and State(s) of Incorporation*

Clear Creek, Inc., Incorporated in the State of Kansas

**Sidney L. Strickland, Jr,**

*Secretary.*

[FR Doc. 92-16241 Filed 7-9-92; 8:45 am]

BILLING CODE 7035-01-M

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**[Finance Docket No. 32092]**

## Exemption; Consolidated Rail Corporation; Trackage Rights Exemption; Norfolk and Western Railway Co.

Norfolk and Western Railway Company (NW) has agreed to grant overhead trackage rights to Consolidated Rail Corporation from the connection between the tracks of the Belt Railway Company of Chicago (BRC) and NW at "80th Street" Interlocking, (a) north to the connection with METRA (Metropolitan Rail) at 74th Street, or (b) west to the connection with the BRC at "Belt Jct.", Chicago, IL, a total distance of approximately 6,385 feet. The trackage rights operations are expected to become effective on or about June 30, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the

transaction. Pleadings must be filed with the Commission and served on: John J. Paylor, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected by the conditions in *Nofolk and Western Ry. Co—Trackage Rights—BN*,354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and as clarified in *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C.2d 799 (1990), *aff'd sub nom. Railway Labor Executives' Assn. V. ICC*, 930 F.2d 511 (6th Cir. 1991).

Decided: July 2, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92-16242 Filed 7-9-92; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF LABOR

### Employment Standards Administration; Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

### New General Wage Determination; Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

*Volume I*

Kentucky:
- *KY91-31 (July 10, 1992)..... p.All.
- *KY91-32 (July 10, 1992)..... p.All.
- *91-33 (July 10, 1992)..... p.All.
- KY91-34 (July 10, 1992)..... p.All.

* These new general wage determinations are applicable to building construction in Bourbon, Clark and Woodford Counties, previously in KY91-29.

*Volume II*

Kansas: KS91-16 (July 10, 1992). p.All.

*Volume III*

South Dakota: SD91-6 (July 10, 1992). p.All.

### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Georgia:
- GA91-31 (Feb. 22, 1991)..... p.All.
- GA91-32 (Feb. 22, 1991)..... p.All.

Maryland:
- MD91-1 (Feb. 22, 1991)..... p.All.
- MD91-11 (Feb. 22, 1991)..... p.All.

New Jersey: NJ91-3 (Feb. 22, 1991). p.721, p.724

New York:
- NY91-17 (Feb. 22, 1991)..... p.921, p.922
- NY91-20 (Feb. 22, 1991)..... p.949, pp.950-952

Pennsylvania:
- PA91-7 (Feb. 22, 1991)..... p.1019, p.1020
- PA91-14 (Feb. 22, 1991)..... p.1063, pp.1064-1065
- PA91-21 (Feb. 22, 1991)..... p.1107, p.1108
- PA91-23 (Feb. 22, 1991)..... p.1123, p.1124
- PA91-24 (Feb. 22, 1991)..... p.1129, p.1130

Virginia: VA91-74 (Feb. 22, 1991). p.All.

West Virginia: WV91-2 (Feb. 22, 1991). p.1421, pp.1422-1427

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Kansas: KS91-11 (Feb. 22, 1991). p.All.

Missouri:
- MO91-1 (Feb. 22, 1991)..... p.651, p.656
- MO91-9 (Feb. 22, 1991)..... p.721

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| Ohio: OH91-29 (Feb. 22, 1991) | p. 903<br>pp.911-912 |
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| Colorado: | |
| CO91-1 (Feb. 22, 1991) | p.151<br>pp.153, 157 |
| CO91-5 (Feb. 22, 1991) | p.All. |
| Idaho: ID91-1 (Feb. 22, 1991) | p.All. |

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 2nd day of July 1992.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 92-15983 Filed 7-9-92; 8:45 am]

BILLING CODE 4510-27-M

## Occupational Safety and Health Administration

**Advisory Committee on Construction Safety and Health; Full Committing Meeting**

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standard Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on July 28-29, 1992, at the Frances Perkins Building, 200 Constitution Avenue, NW., room S-4215A and B, Department of Labor, Washington, DC. The meeting is open to the public and will begin at 9 a.m. on each day.

The agenda for this meeting includes reports on the following subjects: Activities of the Office of Public Information; the procedures used by the Office of Field Programs to conduct programmed inspections; action by the Employment and Training Administration to develop a Dictionary of Occupational Titles; the status of negotiated rulemaking of steel erection; work groups activities; OSHA-BLS coordination on the Annual Survey; and activities of the OSHA Training Institute. In addition, the Advisory Committee will address a proposal to reduce construction industry employee exposure to methylene chloride.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs at the address below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone 202-523-8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC, this 26 day of June 1992.

**Dorothy L. Strunk,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 92-16270 Filed 7-9-92; 8:45 am]

BILLING CODE 4510-26-M

## NUCLEAR REGULATORY COMMISSION

**Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review**

**AGENCY:** U.S Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. *Type of submission (new, revision, or extension)*: New

2. *The title of the information collection*: "Survey for Fabricators and Users of DOT Specification Packages."

3. *The form number, if applicable*: Not applicable.

4. *How often the collection is required*: Voluntary, one-time request.

5. *Who will be required or asked to report*: Users and fabricators of the DOT specification packages for fissile materials and for Type B quantities of other radioactive materials.

6. *An estimate of the number of respondents*: 114.

7. *The average burden per response*: 90 minutes.

8. *An estimate of the total number of hours needed to complete the requirements or request*: 171 hours.

9. *An indication of whether Section 3504(h), Public Law 96-511 applies*: Not Applicable.

10. *Abstract*: NRC will conduct a survey of fabricators and users of specification packages, to gather technical and use data associated with the identified packages. Specification Packages are broad families of package designs authorized by the Department of Transportation (DOT) for transport of certain Type B and fissile radioactive materials. The information will be used to plan future NRC regulatory actions with regard to specification package designs.

Copies of the submittal to OMB may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555.

Comments and questions can be directed by mail to the OMB Reviewer:

Ronald Minsk, Office of Information and Regulatory Affairs (3150-_____), NEOB-3019, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 1st day of July 1992.

For the Nuclear Regulatory Commission.

**Gerald F. Cranford,**

*Designated Senior Official for Information Resources Management.*

[FR Doc. 92-16225 Filed 7-9-92; 8:45 am]

BILLING CODE 7590-01-M

**Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review**

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: New.

2. The title of the information collection: 48 CFR chapter 20, Nuclear Regulatory Commission Acquisition Regulation (NRCAR).

3. The form number if applicable: N/A.

4. How often the collection is required: On occasion; one time.

5. Who will be required or asked to report: Offerors responding to NRC solicitations and contractors receiving contract awards from NRC.

6. An estimate of the number of responses: 11,270.

7. An estimate of the burden per response: 10.7 hours.

8. An estimate of the total number of hours needed to complete the requirement or request: 120,441.

9. An indication of whether section 3504(h), Public Law 96–511 applies: Applicable.

10. Abstract:

The NRCAR is necessary to implement and supplement the government-wide Federal Acquisition Regulation, and to ensure that the regulations governing the procurement of goods and services within the NRC satisfy the needs of the agency.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer:

Ronald Minsk, Office of Information and Regulatory Affairs, NEOB–3019, (3150–———), Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda [o. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland this 18th day of July 1992.

For the Nuclear Regulatory Commission

Gerald F. Cranford,

*Designated Senior, Official for Information Resources Management.*

[FR Doc. 92–16226 Filed 7–9–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–029]

**Yankee Atomic Electric Co., Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the emergency preparedness requirements of 10 CFR part 50, Appendix E, sections IV.F.2 and IV.F.3. This exemption would be granted to the Yankee Atomic Electric Company (Yankee or the licensee) for the Yankee Nuclear Power Station (Rowe) located in Franklin County, Massachusetts.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would grant a one-time exemption from the annual emergency preparedness requirements of 10 CFR part 50, Appendix E, section IV.F.2 and a permanent exemption from section IV.F.3 which requires a full scale offsite biennial exercise. The licensee requested these exemptions in their letter of May 22, 1992. This request is the proposed action being considered by the NRC.

*The Need for the Proposed Action*

The licensee's letter of May 22, 1992, stated that the plant has permanently ceased power operation and that all nuclear fuel has been removed from the containment to the spent fuel pool and therefore the requirements of 10 CFR part 50, Appendix E, section IV.F.2, for one time only, and section IV.F.3, are no longer needed as there could not be any possible release of fission products into the environment from reactor system pressure boundary releases.

*Environmental Impact of the Proposed Action*

The proposed exemption does not have any effect on accident risk and the possibility of environmental impact is extremely remote.

The licensee's safety analysis submitted with their May 22, 1992, letter established that in the event a fuel assembly is damaged to such an extent that all fuel pins ruptured and released the entire gap inventory of fission gases to the Spent Fuel Pool Building, the radiological consequences at the Exclusion Area Boundary would be well below (less than 0.0008 percent) the values specified in 10 CFR part 100. Therefore, this would not represent an undue hazard to the health and safety of the public. Exposures at the Protected Area Fence would be well below (less than 2 percent) the EPA's Protective Action Guidelines (PAGs) and exposures in the Control Room would be a small fraction (less than 4 percent) of the limits in 10 CFR part 50, Appendix A, General Design Criterion 19.

Based on its safety analysis, YAEC has determined that the consequences of accidents which may potentially result in a radiological release are significantly diminished given YNPS's permanently shutdown and defueled status. The safety analysis examined each design basis event described in the FSAR chapter 400, "Transient Analysis," and stated that only the fuel handling accident remains applicable, considering the current status of the plant.

Therefore, the proposed exemption does not increase the probability or consequences of any accidents, no changes are made in the types of any radioactive effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure onsite.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the exemption. This would not reduce environmental impacts of the facility and would not enhance the protection of the environment nor public health and safety. However, denial of the exemption would unnecessarily deplete licensee resources.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered

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in prior reviews for the Yankee Nuclear Power Station. The plant was licensed before the requirement for issuance of a Final Environmental Statement.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated May 22, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room at Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 2d day of July 1992.

For the Nuclear Regulatory Commission.

**Richard F. Dudley, Jr.,**

*Acting Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 92-16232 Filed 7-9-92; 8:45 am]

BILLING CODE 7590-01-M

## Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.7, Revision 1, "Instructions for Recording and Reporting Occupational Radiation Exposure Data," describes an acceptable program for the preparation, retention, and reporting of records of occupational radiation exposures. It includes copies of NRC Forms 4 and 5 and detailed instructions on completing them.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 512-2249 or (202) 512-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

**Authority:** 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 30th day of June 1992.

For the Nuclear Regulatory Commission.

**Eric S. Beckjord, Director,**

*Office of Nuclear Regulatory Research.*

[FR Doc. 92-16224 Filed 7-9-92; 8:45 am]

BILLING CODE 7590-01-M

## Two-Year Trial Program for Conducting Open Enforcement Conferences; Policy Statement

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is issuing this policy statement on the implementation of a two-year trial program to allow selected enforcement conferences to be open to attendance by all members of the general public. This policy statement describes the two-year trial program and informs the public of how to get information on upcoming open enforcement conferences.

**DATES:** This trial program is effective on July 10, 1992, while comments on the program are being received. Submit comments on or before the completion of the trial program scheduled for July 11, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Send comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch.

Hand deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, MD between 7:45 a.m. to 4:15 p.m., Federal workdays.

Copies of comments may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC

**FOR FURTHER INFORMATION CONTACT:** James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301-504-2741).

**SUPPLEMENTARY INFORMATION:**

**Background**

The NRC's current policy on enforcement conferences is addressed in Section V of the latest revision to the "General Statement of Policy and Procedure for Enforcement Actions," (Enforcement Policy) 10 CFR part 2, appendix C that was published on February 18, 1992 (57 FR 5791). The Enforcement Policy states that, "enforcement conferences will not normally be open to the public." However, the Commission has decided to implement a trial program to determine whether to maintain the current policy with regard to enforcement conferences or to adopt a new policy that would allow most enforcement conferences to be open to attendance by all members of the public.

**Policy Statement**

*Position*

The NRC is implementing a two-year trial program to allow public observation of selected enforcement conferences. The NRC will monitor the program and determine whether to establish a permanent policy for conducting open enforcement conferences based on an assessment of the following criteria:

(1) Whether the fact that the conference was open impacted the NRC's ability to conduct a meaningful conference and/or implement the NRC's enforcement program;

(2) Whether the open conference impacted the licensee's participation in the conference;

(3) Whether the NRC expended a significant amount of resources in making the conference public; and

(4) The extent of public interest in opening the enforcement conference.



**I. Criteria For Selecting Open Enforcement Conferences**

Enforcement conferences will not be open to the public if the enforcement action being comtemplated—

(1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;

(2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;

(3) Is based on the findings of an NRC Office of Investigations (OI) report; or

(4) Involves safeguards information, Privacy Act information, or other information which could be considered proprietary.

Enforcement conferences involving medical misadministrations or overexposures will be open assuming the conference can be conducted without disclosing the exposed individual's name. In addition, enforcement conferences will not be open to the public if the conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility. Finally, with the approval of the Executive Director for Operations, enforcement conferences will not be open to the public in special cases where good cause has been shown after balancing the benefit of public observation against the potential impact on the agency's enforcement action in a particular case.

The NRC will strive to conduct open enforcement conferences during the two-year trial program in accordance with the following three goals:

(1) Approximately 25 percent of all eligible enforcement conferences conducted by the NRC will be open for public observation;

(2) At least one open enforcement conference will be conducted in each of the regional offices; and

(3) Open enforcement conferences will be conducted with a variety of the types of licensees.

To avoid potential bias in the selection process and to attempt to meet the three goals stated above, every fourth eligible enforcement conference involving one of three categories of licensees will normally be open to the public during the trial program. However, in cases where there is an ongoing adjudicatory proceeding with one or more intervenors, enforcement conferences involving issues related to the subject matter of the ongoing adjudication may also be opened. For the purposes of this trial program, the three categories of licensees will be commercial operating reactors, hospitals, and other licensees, which will consist of the remaining types of licensees.

**II. Announcing Open Enforcement Conferences**

As soon as it is determined that an enforcement conference will be open to public observation, the NRC will orally notify the licensee that the enforcement conference will be open to public observation as part of the agency's trial program and send the licensee a copy of this **Federal Register** notice that outlines the program. Licensees will be asked to estimate the number of participants it will bring to the enforcement conference so that the NRC can schedule an appropriately sized conference room. The NRC will also notify appropriate State liaison officers that an enforcement conference has been scheduled and that it is open to public observation.

The NRC intends to announce open enforcement conferences to the public normally at least 10 working days in advance of the enforcement conference through the following mechanisms:

(1) Notices posted in the Public Document Room;

(2) Toll-free telephone messages; and

(3) Toll-free electronic bulletin board messages.

Pending establishment of the toll-free message systems, the public may call (301) 492-4732 to obtain a recording of upcoming open enforcement conferences. The NRC will issue another Federal Register notice after the toll-free message systems are established.

To assist the NRC in making appropriate arrangements to support public observation of enforcement conferences, individuals interested in attending a particular enforcement conference should notify the individual identified in the meeting notice announcing the open enforcement conference no later than five business days prior to the enforcement conference.

**III. Conduct of Open Enforcement Conferences**

In accordance with current practice, enforcement conferences will continue to normally be held at the NRC regional offices. Members of the public will be allowed access to the NRC regional offices to attend open enforcement conferences in accordance with the "Standard Operating Procedures For Providing Security Support For NRC Hearings And Meetings" published November 1, 1991 (56 FR 56251). These procedures provide that visitors may be subject to personnel screening, that signs, banners, posters, etc., not larger than 18" be permitted, and that disruptive persons may be removed.

Each regional office will continue to conduct the enforcement conference proceedings in accordance with regional practice. The enforcement conference will continue to be a meeting between the NRC and the licensee. While the enforcement conference is open for public observation, it is not open for public participation.

Persons attending open enforcement conferences are reminded that (1) the apparent violations discussed at open enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at open enforcement conferences or the lack thereof, are not intended to represent final determinations or beliefs.

In addition to providing comments on the agency's trial program in accordance with the guidance in this notice, persons attending open enforcement conferences will be provided an opportunity to submit written comments anonymously to the regional office. These comments will subsequently be forwarded to the Director of the Office of Enforcement for review and consideration.

Dated at Rockville, MD, this 7th day of July 1992.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 92-16233 Filed 7-9-92; 8:45 a.m.]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

**Request for Clearance of a Revised Information Collection to Add Form RI 36-7 to OMB Clearance Number 3206-0128**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a revised information collection, to add form RI 36-7 to the Application for Refund of Retirement Deductions (CSRS). OPM must have SF 2802 completely filled out and signed before paying a refund of retirement contributions. SF 2802B must also be complete if there are spouse(s) or former

spouse(s) who must be notified of the employee's intent to take a refund. RI 36–7, Marital Information Required of Refund Applicants, is used to pay refunds of retirement contributions. OPM must determine the applicant's marital status and whether any spouse (and any former spouses divorced after May 6, 1985) have been informed of the proposed refund. RI 36–7 is needed when the SF 2802 is incomplete as to the applicant's marital status.

Approximately 21,050 RI 36–7 forms will be completed per year. The form requires 10 minutes to complete. The annual burden is 3,508 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

**DATES:** Comments on this proposal should be received by August 10, 1992.

**ADDRESSES:** Send or deliver comments to—

Lorraine Dettman, Chief, Operations Support Division, Retirement Programs, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 3002, Washington, DC 20503

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:** Mary Beth Smith-Toomey, Chief Administrative Management Branch (202) 606–0623.

U.S. Office of Personnel Management.

**Constance Berry Newman,**

*Director.*

[FR Doc. 92–16189 Filed 7–9–92; 8:45 am]

BILLING CODE 6325–01–M

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Meeting of the President's Council of Advisors on Science and Technology

**ACTION:** Amended notice of meeting.

**CHANGES:** The President's Council of Advisors on Science and Technology (the "Council") is currently holding a series of public meetings around the country as announced in 57 FR 23604–605 (June 4, 1992). This amendment is to provide notice of the precise location for the next two public meetings.

**DATES AND LOCATIONS:** On July 15, 1992, the Council will meet at the University of California—Berkeley from 8:30 a.m. to 3:30 p.m. following the agenda set out in the **Federal Register** notice referenced above. This meeting will be held at Foot Hill Housing Unit 6 located at 2700 Hearst Avenue (at the corner of Galey Road and Hearst Avenue). The meeting will convene in the Assembly Room of Building 4.

On July 17, 1992, the Council will meet at the University of Texas at Austin from 8:30 a.m. to 3:30 p.m. following the agenda set out in the **Federal Register** notice referenced above. This meeting will be held at the Frank C. Erwin, Jr. Special Events Center located at 1701 Red River Street.

**FOR FURTHER INFORMATION CONTACT:** Ms. Alicia Tenuta, Office of Science and Technology Policy, 744 Jackson Place, NW., Washington, DC 20506 at (202) 395–3170, fax number (202) 395–5076.

Dated: July 6, 1992.

**Vickie V. Sutton,**

*Assistant Director, Office of Science and Technology Policy.*

[FR Doc. 92–16238 Filed 7–9–92; 8:45 am]

BILLING CODE 3170–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

July 6, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Medical Care International, Inc.
Common Stock, $.01 Par Value (File No. 7–8663)

National Media Corp.
Common Stock, $.10 Par Value (File Value (File No. 7–8664)

Praxair, Inc.
Common Stock, $.01 Par Value (File Value (File No. 7–8665)

Solectron Crop.
Common Stock, No Par Value (File No. 7–8666)

Westmoreland Coal Co.
Common Stock, $2.50 Par Value (File No. 7–8667)

Bradless, Inc.
Common Stock, $.01 Par Value (File No. 7–8668)

Citizens Utilities Co.
Class A Common Stock, $.25 Par Value (File No. 7–8669)

Citizens Utilities Co.
Class B Common Stock, $.25 Par Value (File No. 7–8670)

Dr. Pepper/Seven Up Companies, Inc.
Common Stock, $.01 Par Value (File No. 7–8671)

General Instrument Corp.
Common Stock, $.01 Par Value (File No. 7–8672)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 27, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges to such applications are consistent with the maintenance of fair and orderly markets and and protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92–16178 Filed 7–9–92; 8:45 am]

BILLING CODE 8010–01–M

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

July 6, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

American Oil & Gas Corp.
Common Stock, $.04 Par Value (File No. 7–8699)

Chemical Banking Corp.
8⅜% Pfd. Stock, $1.00 Par Value (File No. 7–8700)

Family Dollar Stores
Common Stock, $.10 Par Value (File No. 7–8701)

First Commonwealh Financial Corp.
Common Stock, $5.00 Par Value (File No. 7–8702)

Ford Holdings, Inc.
Depositary Shares (rep. 1/4,000 shares of Ser. A. Cum. Pfd. Stock) (File No. 7–8703)

Franklin Quest Co.
Common Stock, $0.50 Par Value (File No. 7–8704)

Health Management Association, Inc.

Class A Common Stock, $0.01 Par Value (File No. 7–8705)
Hook-SuperRx, Inc.
Common Stock, $0.01 Par Value (File No. 7–8706)
Hospital Staffing Services, Inc.
Common Stock, $0.001 Par Value (File No. 7–8707)
Interstate Bakeries Corp.
Common Stock, $0.01 Par Value (File No. 7–8708)
MacFrugal's Bargains Close-Outs, Inc.
Common Stock, $0.02778 Par Value (File No. 7–8709)
Midwest Resources, Inc.
Common Stock, No Par Value (File No. 7–8710)
PacificCorp
$1.98, No Par Srl. Pfd Stock, Ser. 1992 (File No. 7–8711)
Standard Pacific Corp.
Common Stock, $0.01 Par Value (File No. 7–8712)
Superior Industries International, Inc.
Common Stock, $0.50 Par Value (File No. 7–8713)
Transportacion Maritima Mexicana, SA de CV
American Depository Shares (rep. 1 Ser. L Share, Without Par Value) (File No. 7–8714)
Transportacion Maritima Mexicana, SA de CV
American Depository Shares (rep. 1 Ord. Partic. Ctf.) (File No. 7–8715)
UJB Financial Corp.
Common Stock, $1.20 Par Value (File No. 7–8716)
Valero Natural Gas Partners, L.P.
Common Units, No Par Value (File No. 7–8717)
Van Kampen Merritt Municipal Opportunity Trust
Common Shares of Beneficial Interest, $0.01 Par Value (File No. 7–8718)
Van Kampen Merritt Trust for Investment Grade California Municipal
Common Shares of Beneficial Interest, $0.01 Par Value (File No. 7–8719)
Western Gas Resources, Inc.
Common Stock, $0.10 Par Value (File No. 7–8720)
Westinghouse Electric Co.
Depository Shares (rep. ¼ Share of Ser. B Conv. Pfd. Stock, $1.00 Par Value) (File No. 7–8721)
Ground Round Restaurants, Inc.
Common Stock, No Par Value (File No. 7–8722)
North American Vaccine
Common Stock, No Par Value (File No. 7–8723)
Sulcus Computer Corp.
Common Stock, No Par Value (File No. 7–8724)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 27, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92–16180 Filed 7–9–92; 8:45 am]

BILLING CODE 8010–01–M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

July 6, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Nuveen Insured California Select Tax Free Income Portfolio
Shares of Beneficial Interest, $.01 Par Value (File No. 7–8673)
Nuveen Insured New York Select Tax Free Income Portfolio
Shares of Beneficial Interest, $.01 Par Value (File No. 7–8674)
Putnam Tax Free Health Care Fund
Common Shares of Beneficial Interest, No Par Value (File No. 7–8675)
International Mobile Machines Corporation
Common Stock, $.01 Par Value (File No. 7–8676)
Conagra Incorporated
Class E Cumulative Convertible Voting Preferred Stock, No Par Value (File No. 7–8677)
Hafslund Nycomed, A.S.
American Depositary Shares (each representing one Class B Share, NOK 50 each) (File No. 7–8678)
Delta Air Lines, Inc.
Depositary Shares (each representing 1/1,000 share of Series C Convertible Preferred Stock, $50 Liquidity Preference, $1.00 Par Value) (File No. 7–8679)
Ultramar Corporation
Common Stock, $.01 Par Value (File No. 7–8680)
Authentic Fitness Corporation
Common Stock, $.01 Par Value (File No. 7–8681)
Bradlee's Inc.
Common Stock, $.01 Par Value (File No. 7–8682)
Davstar Industries, Ltd.
Warrants to Purchase Class A Common Shares, expiring March 20, 1997 (File No. 7–8683)
Royal Appliance Manufacturing Co.
Common Stock, $.01 Par Value (File No. 7–8684)
Regency Health Services
Common Stock, $.01 Par Value (File No. 7–8685)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 27, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92–16176 Filed 7–9–92; 8:45 am]

BILLING CODE 8010–01–M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

July 6, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder the unlisted trading privileges in the following securities:

Praxair, Inc.
Common Stock, $.01 Par Value (Filed No. 7–8658)
MacFrugal's Bargins Close-Out, Inc.
Common Stock, $.02778 Par Value (Filed No. 7–8659)
International Mobile Machines Corp.

Common Stock, $.01 Par Value (Filed No. 7–8660)
First USA, Inc.
Common Stock, $.01 Par Value (Filed No. 7–8661)
Hook-SuperRx, Inc.
Common Stock, $.01 Par Value (File No. 7–8662)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 27, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92–16175 Filed 7–9–92; 8:45 am]

BILLING CODE 8010–01–M

## Self-Regulatory Organizations; Applications of Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

July 6, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Putnam Tax Free Health Care Fund
Common Shares of Beneficial Interest, No Par Value (File No. 7–8686)
Halb Rogal & Hamilton Company
Common Stock, No Par Value (File No. 7–8687)
Nuveen Insured California Select Tax Free Income Portfolio
Shares of Beneficial Interest, $.01 Par Value (File No. 7–8688)
Nuveen Insured New York Select Tax Free Income Portfolio
Shares of Beneficial Interest, $.01 Par Value (File No. 7–8689)
Mitchell Energy & Development Corp.
Class A Common Stock, No Par Value (File No. 7–8690)
Mitchell Energy & Development Corp.
Class B Common Stock, No Par Value (File No. 7–8691)
Sea Container Limited
When Issued Class A Common Stock, $0.01 Par Value (File No. 7–8692)
International Mobile Machines Corp.
Common Stock, $.01 Par Value (File No. 7–8693)
Schult Homes Corporation
Common Stock, No Par Value (File No. 7–8694)
Broad, Inc.
Pfd Stock Series B Cum., No Par Value (File No. 7–8695)
Delta Airlines, Inc.
Depositary Shares, $1.00 Par Value (File No. 7–8696)
Ultramar Corporation
Common Stock, $.01 Par Value (File No. 7–8697)
Hafslund Nycomed A.S.
American Depositary Shares (File No. 7–8698)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 27, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92–16179 Filed 7–9–92; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

## Delegation of Loan Authority to Specific Agency Field Personnel

**AGENCY:** Small Business Administration.

**ACTION:** Notice Delegating Loan Approval Authority to Specific Agency Field Personnel.

**SUMMARY:** This notice increases the delegated authority of certain specific Small Business Administration (SBA) field personnel to approve SBA guaranteed loans. This increased authority is based upon the education, training, or experience of such personnel and is meant to expedite Agency action in processing loan applications.

**EFFECTIVE DATE:** This notice is effective July 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Hertzberg, Assistant Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, Tel. (202) 205–6490.

**SUPPLEMENTARY INFORMATION:** On December 19, 1991, SBA published, in the **Federal Register** 56 FR 65823, a final rule amending Section 101.3–2 of part 101, title 13, Code of Federal Regulations, which set forth a clarified standard delegation of authority to conduct program activities in SBA field offices. Previously, Section 101.3–2 had set forth the standard delegation of authority to SBA field personnel as well as all deviations from the standard based upon education, experience, and/or training. The December 19, 1991 publication eliminated all deviations in favor of a standard delegation of authority. In addition, the rule provided authority by which SBA might, as it deemed appropriate, increase, decrease, or set the level of authority for any individual SBA field official in a regional, district, or branch office, based upon education, training, or experience by publication of a notice in the **Federal Register**.

The Agency believes that, when appropriate, delegating increased levels of authority to field personnel yields increased benefits for program participants and SBA. SBA is authorized to guaranty up to 90% of a loan depending upon total loan amount. As such, it is essential that the Agency have qualified loan officers to process expeditiously and accurately the applications submitted. Agency officials in the field who are delegated greater levels of authority in light of their additional education, training, or experience allow for loan applications of greater amounts being processed where both the lender and the borrower are located. In this fashion, the loan applicant and the lender are both served with quicker and more accurate processing, while the Agency is served by quality lending and better relations with its participating lenders.

This notice increases the delegated authority of specific SBA officials to approve guaranteed loan applications based upon each respective official's education, training, or experience. The

SBA branch managers in Melville, and Rochester, N.Y. have successfully completed training courses offered by the Agency. Such training qualifies them to better analyze and process loan applications submitted by SBA participating lenders for SBA guarantees. The SBA branch manager in Elmira, N.Y. is a loan officer with 20 years experience processing SBA guaranteed loans. Additionally, the supervisory loan specialists in Elmira and Melville, N.Y. have successfully completed training courses offered by the Agency.

SBA branch managers and supervisory loan specialists have, as a standard, delegated authority to approve SBA guaranteed loans of up to $250,000. This notice increases the delegated loan approval authority for the branch managers in Elmira, Melville, and Rochester, N.Y. to $500,000. Further, this notice increases the delegated authority to approve SBA guaranteed loans for the supervisory loan specialists in Elmira and Melville, N.Y. to $500,000. This increased delegation of authority is specific to the individuals presently incumbent and continues only so long as they remain in such positions.

Dated: June 24, 1992.

**Charles R. Hertzberg,**

*Assistant Administrator for Financial Assistance.*

[FR Doc. 92-16034 Filed 7-9-92; 8:45 am]

BILLING CODE 8025-01-M

## STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT PROGRAM

### Scientific Advisory Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

*Name of Committee:* Strategic Environmental Research and Development Program, Scientific Board.

*Date of Meeting:* Tuesday, July 28, 1992, and Wednesday, July 29, 8 a.m. to approximately 5 p.m. on Tuesday and 3 p.m. on Wednesday.

*Place:* Main Auditorium, National Guard Building, ONE Massachusetts Avenue NW., Washington, DC.

*Matters To Be Considered:* The Scientific Advisory Board will hold management sessions, will revisit six Phase I programs equal to or in excess of $1M, and will review eight Phase II programs equal to or in excess of $1M. Representatives from DoD, DOE, and EPA will provide briefings on the individual projects.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Mr. Jerry L. Miller, CERD-M, room 6208, 20 Massachusetts Avenue, NW., Washington, DC 20314-1000, 202-272-1843.

**Robert Oswald,**

*Acting Executive Director.*

[FR Doc. 92-16163 Filed 7-9-92; 8:45 am]

BILLING CODE 5000-05-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aircraft Accessibility Federal Advisory Committee; Meetings

**AGENCY:** Department of Transportation (DOT), Office of the Secretary.

**ACTION:** Notice; Schedule of Committee Meeting.

**SUMMARY:** The Department of Transportation gives notice, as required by the Federal Advisory Committee Act (Pub. L. 92-463), of the time and location of the first meeting of the Aircraft Accessibility Federal Advisory Committee.

**DATES:** The initial meeting of this Committee is scheduled for Wednesday, July 29, and Thursday, July 30, 1992, in Conference Room 6244 of the Department of Transportation (Nassif Building), 400 7th Street, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Donald R. Trilling, Director, Office of Transportation Regulatory Affairs, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Telephone (202) 366-4220

or

Ira Laster, Jr., Senior Program Coordinator, Department of Transportation, Office of Transportation Regulatory Affairs, 400 7th Street, SW., Washington, DC 20590, Telephone (202) 366-4859.

**SUPPLEMENTARY INFORMATION:** The purpose of the Aircraft Accessibility Federal Advisory Committee is to advise the Secretary of Transportation on issues necessary for further rulemaking to implement the Air Carrier Access Act of 1986. The Committee will advise the Department on matters such as:

1. The degree to which it is possible to design for placement in a narrow-body aircraft a toilet that will accommodate persons with disabilities, including those who use wheelchairs;

2. For the various cabin configurations of different aircraft types under 200 seats, what physical layouts are possible to offer passengers at least visual privacy, and the ability to maneuver in the lavatories?

3. What physical layouts are possible which would provide disabled passengers using an on-board chair full maneuvering room inside the lavatory? What layouts would provide partial accessibility (e.g., a privacy area curtain outside the lavatory)?

4. Which designs can be accomplished without the loss of revenue seats? Which designs can be accomplished with only a minimal loss of revenue seats?

5. How would such arrangements affect passenger traffic within the cabin, flight attendant duties in galleys, and the passenger ease of access to the remaining lavatories?

6. How might such arrangements impair safety, if at all?

7. In small planes, where can the on-board chairs be stored?

8. Down to what size airplanes and for what types can accessible lavatory requirements reasonably be imposed?

9. Should any requirements for accessible lavatories be made a function of stage length (i.e., range of distances the aircraft usually covers during a flight segment) instead of airplane size, and, if so, for what stage lengths should such requirements be imposed? How would this approach alter air carriers' operational flexibility?

**Background**

Concurrent with the March 1990 publication of DOT's Air Carrier Access Act rule, the Department issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking comments on specifications for accessible lavatories in narrow-body aircraft. The ANPRM stated that if sufficient information was not received, the Department would bring together aircraft manufacturers, disabled consumers, air carriers, and flight duty personnel to exchange information from which to frame a regulatory requirement.

Comments to the Docket in response to the 1990 ANPRM revealed little agreement among commenters concerning the degree of accessibility that can be achieved in lavatories on narrow-body aircraft. This is a complex, controversial question best answered through structured dialogue between aircraft manufacturers, air carriers,

consumers with disabilities, and flight duty personnel.

The Department will use advice provided by the Committee to develop a notice of proposed rulemaking and a final rule.

Issued on July 2, 1992.

**Jeffrey N. Shane,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 92-16239 Filed 7-9-92; 8:45 am]

BILLING CODE 4910-62-M

## Federal Aviation Administration

### Intent To Rule on Applications To Impose, Use a Passenger Facility Charge (PFC) at Tompkins County Airport, Ithaca, NY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Tompkins County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before August 10, 1992.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

New York Airports District Office, 181 South Franklin Avenue, room 315, Valley Stream, New York 11581

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert A. Nicholas Airport Manager of the Tompkins County Airport, at the following address:

County of Tompkins, 320 North Tioga Street, Courthouse, Ithaca, NY 1450

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tompkins County Airport under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Philip Brito, Manager, New York Airports District Office 181 South Franklin Ave., Room 315, Valley Stream, New York, 11581. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Tompkins County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 8, 1992, the FAA determined that the application to impose a PFC submitted by The County of Tompkins, New York was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 30, 1992.

The following is a brief overview of the application. Level of the proposed PFC: $3.00 Proposed charge effective date: January 1, 1993 Proposed charge expiration date: December 31, 1998 Total estimated PFC revenue: $1,900,000 Brief description of proposed project(s): Construct New Passenger Terminal including access road, Ramp and taxiway modifications, relocation of T-hangars, site preparation and utilities relocation.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA regional Airports office located at:

Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Tompkins.

Issued in New York City, New York on June 24, 1992.

**Anthony P. Spera,**

*Manager, Planning and Programming Branch, Eastern Region.*

[FR Doc. 92-16218 Filed 7-9-92; 8:45 am]

BILLING CODE 4910-13-M

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 133
Friday, July 10, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY FUTURES TRADING COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 57 F.R. 29761.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 10:00 a.m., Thursday, July 30, 1992.

**CHANGES IN THE MEETING:** The Commodity Futures Trading Commission has changed the time of the July 30 meeting to 2:30 p.m.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254-6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 92-16302 Filed 7-8-92; 8:45 am]

BILLING CODE 6351-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:12 a.m. on Tuesday, July 7, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's assistance agreement with an insured bank.

Reports of the Office of Inspector General.

Recommendation concerning an administrative enforcement proceeding.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and concurred in by Vice Chairman Andrew C. Hove, Jr., Director Stephen R. Steinbrink (Acting Comptroller of the Currency), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: July 7, 1992.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 92-16304 Filed 7-8-92; 9:40 am]

BILLING CODE 6714-01-M

**FEDERAL HOUSING FINANCE BOARD**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 57 FR, 27287, June 18, 1992.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m. Wednesday, June 24, 1992.

**CHANGES IN THE MEETING:** The following topics were added to the agenda during the closed portion of the meeting.

1. Membership Discussion.
2. Credit Product Developments.
3. Board Management Issues.

The above matter is exempt under 552b(c) (2), and (9)(B) of title 5 of the United States Code.

**CONTACT PERSON FOR MORE INFORMATION:** Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

**J. Stephen Britt,**

*Executive Director.*

[FR Doc. 92-16330 Filed 7-8-92; 11:09 am]

BILLING CODE 6725-01-M

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

**CITATION OF PREVIOUSLY ANNOUNCED AGENDA** (57 FR 29761, Monday, July 6, 1992)

**TIME AND DATE:** 10:00 a.m., Tuesday, July 7, 1992.

**PLACE:** Room 600, 1730 K Street, N.W., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. *LJ's Coal Corporation,* Docket No. KENT 90-400. (Issues include whether the judge erred in concluding that LJ's violation of 30 CFR § 75.220 was not of a significant and substantial nature.)

2. *Secretary of Labor for Price and Vacha and UMWA v. Jim Walter Resources, Inc.,* Docket No. SE 87-128-D. This item has been postponed until a later date.

It was determined by a unanimous vote of Commissioners that this item be postponed and that no earlier announcement of the change was possible.

**CONTACT PERSON FOR MORE INFO:** Jean Ellen; (202) 653-5629/(202) 708-9300 for TDD Relay.

Dated: July 6, 1992.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 92-16419 Filed 7-8-92; 3:39 am]

BILLING CODE 6735-01-M

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 10:00 a.m., Wednesday, July 15, 1992.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 8, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-13606 Filed 7-8-92; 10:07 am]

BILLING CODE 6210-01-M

**LEGAL SERVICES CORPORATION BOARD OF DIRECTORS**

Reauthorization Committee Meeting

**TIME AND DATE:** The Board of Directors Reauthorization Committee will meet on August 9, 1992. The meeting is scheduled to commence at 2:30 p.m.

**PLACE:** Sir Francis Drake Hotel, 450 Powell Street, The Carmel Room (2nd Floor), San Francisco, California 94101, (415) 392-3500.

**STATUS OF MEETING:** *Open;* The Legal Services Corporation Board of Directors

Reauthorization Committee wishes to consider public comment regarding proposed legislation for the Corporation. However, due to time constraints, the Committee will be unable to receive public comment during the August 9, 1992 meeting. Therefore, parties interested in having their comments on this matter considered by the Committee are encouraged to submit written statements in that regard before the close of business on Thursday, July 24, 1992. All written statements should be submitted to the attention of Kenneth Boehm, Assistant to the President and Counsel to the Board of Directors, Legal Services Corporation, 750 1st Street, N.E., Washington, D.C. 20002–4250.

**MATTERS TO BE CONSIDERED:**

1. Approval of Agenda.
2. Approval of Minutes of April 5, 1992 Meeting.
3. Consideration of Public Comment Regarding Proposed Reauthorization Legislation for the Corporation.
4. Consideration of Proposed Reauthorization Legislation for the Legal Services Corporation.

**CONTACT PERSON FOR INFORMATION:**
Kenneth Boehm at (202) 336–8896.

Date Issued: July 8, 1992.

**Patricia D. Batie,**
*Corporate Secretary.*

[FR Doc. 92–16410 Filed 7–8–92; 3:15 pm]

BILLING CODE 7060–01–M

**UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS**

Notice of Vote to Close Meeting

At its meeting on July 6, 1992, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for August 3, 1992, in San Francisco, California. The members will consider a filing with the Postal Rate Commission for a Mail Classification Change Regarding Delivery Point Barcoding.

The meeting is expected to be attended by the following persons: Governors Alvardo, Daniels, del Junco, Griesemer, Mackie, Nevin, Pace, Setrakian and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552b(c)(3) Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39 United States Code; and section 7.3 (c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

**David F. Harris,**
*Secretary.*

[FR Doc. 92–16344 Filed 7–8–92; 2:18 pm]

BILLING CODE 7710–12–M

# Corrections

Federal Register
Vol. 57, No. 133
Friday, July 10, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 712 and 716**

**[OPPTS-82036A; FRL-4070-6]**

### Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals; Technical Amendment

*Correction*

In rule document 92-15338 beginning on page 29033 in the issue of Tuesday, June 30, 1992, make the following correction:

On page 29033, in the third column, under **EFFECTIVE DATE**, "[insert date of publication in the **Federal Register**]" should read "June 30, 1992".

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## DEPARTMENT OF THE TREASURY

**Internal Revenue Service**

**[Delegation Order No. 183 (Rev. 4)]**

### Delegation of Authority

*Correction*

In notice document 92-11984 beginning on page 21851 in the issue of Friday, May 22, 1992, make the following correction:

On page 21852, in the second column, in paragraph a., in the 12th line, after "but" insert "not".

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Part II

# Postal Service

**39 CFR Part 111**

**Barcoded Rates for Automation-Compatible Flat-Size Mailpieces; Final Rule and Notice**

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**POSTAL SERVICE**

**39 CFR Part 111**

**Barcoded Rates for Automation-Compatible Flat-Size Mailpieces**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts Domestic Mail Manual (DMM) regulations to implement requirements for barcoded rates for automation-compatible First-, second-, and third-class flat-size mailpieces. The regulations implement rate and classification changes adopted by the Governors of the Postal Service and sets forth the physical, barcoding, addressing and preparation specifications of the Postal Service necessary for reduced postage rate.

**EFFECTIVE DATE:** The revisions in this rule become effective September 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** George T. Hurst (202) 268–5232 on issues relating to physical mailpiece design and packaging requirements, Lynn M. Martin (202) 268–5176 concerning presort requirements and documentation, Cheryl Beller (202) 268–5166 concerning palletization requirements, or Leo F. Raymond (202) 268–5199 concerning the overall final rule.

**SUPPLEMENTARY INFORMATION:** On June 21, 1991, pursuant to 39 U.S.C. 3622 and 3623, the Postal Service submitted a request to the Postal Rate Commission (PRC) for a recommended decision to establish reduced postage rates for barcoded flat-size mailpieces meeting the physical, barcoding, addressing, and preparation specifications of the Postal Service. The PRC issued its recommended decision on the filing, designated as Docket MC91–1, on March 19, 1992. On May 4, 1992, the Governors of the Postal Service approved the PRC's recommended rate and classification changes (published elsewhere in this issue) and the Board of Governors established an effective date of September 20, 1992. The implementing regulations described below indicate the revisions and additions that will be made to the DMM to make barcoding discounts available for automation-compatible First-, second-, and third-class flat-size mailpieces.

The proposed rule was published in the **Federal Register** on April 21, 1992 (57 FR 14525–14551).

The original deadline for submitting comments on the proposed rule was May 21, 1992. However, due to requests from the mailing public for additional time, the Postal Service extended this deadline to June 1, 1992. Notification of the extended comment period was published in the **Federal Register** on May 20, 1992, (57 FR 21367).

Subsequently, the publication of an additional **Federal Register** notice on June 1, 1992, (57 FR 23072), correcting two rate discrepancies in the original proposal, extended the comment period by 10 days for those comments relating specifically to the rate corrections. Accordingly, all comments received or mailed by June 1, 1992 have been considered in the final rule, while those relating directly to the rate discrepancies have also been considered if they were received or mailed by June 11, 1992.

The Postal Service received 95 different comments on the proposed rule, including 9 from mailing industry trade associations, 17 from mailing related businesses, 67 from companies and corporations, and 1 from the Postal Rate Commission. On the basis of the comments received and further consideration of the proposals by the Postal Service, the Postal Service has decided to adopt the proposed regulations, with the revisions detailed below.

**Evaluation of Comments Received**

*Comments Concerning Physical Mailpiece Specifications*

*Minimum Size*—Ten commenters stated that although they understood the Postal Service's proposed minimum dimension of 6 by 6 inches for eligibility for automation-based rates for barcoded flats if existing flat sorting machine (FSM) configurations cannot efficiently process smaller size pieces, the Postal Service should continue all reasonable efforts to reduce the minimum dimension to 5 by 7 inches as soon as possible. Seven commenters stated that the minimum dimensions should be immediately set at 5 by 7 inches citing previous Postal Service pronouncements that the FSMs can already efficiently process pieces of this size. One commenter stated that pieces measuring 5½ by 8½ inches should be eligible for the discounts for barcoded flats. Two commenters stated that the Postal Service should begin modifications to FSMs as quickly as possible to give them the capability to efficiently process "digest-size" pieces.

The Postal Service evaluated the feasibility of including digest-size mailpieces in its machinability criteria for automation-compatible flats prior to the publication of the proposed rule. It was determined that smaller size mailpieces could be accommodated on the FSMs after the installment of a modification to the equipment. The Postal Service anticipated at one time that this modification could be installed prior to the date discounts for barcoded flats become available; however, unfore seen difficulties have made that installation schedule impossible. The Postal Service remains committed to modifying the FSMs to process smaller mailpieces as soon as practicable and will announce a new minimum size specification when one can be established. In the meantime, minimum size specifications are adopted as proposed.

*Maximum Size*—Five commenters stated that the maximum size of 12 by 15 inches to be eligible for barcoded flats discounts was too small to accommodate their tabloid size mailpiece (12 by 15½ inches) and that the equipment should be modified or redesigned with a broader range of capabilities. Two of these commenters stated that the requirement that the bound edge of an eligible flat could not be more than 12 inches will cause them to lose significant discounts and should be remedied as quickly as possible. Two commenters suggested that the maximum size for third-class carrier route qualification should be changed for consistency to apply the same dimensions to all flat-size mailpieces (DMM 128.3). One commenter stated that because many third-class catalogs are thicker than the proposed maximum of ¾ inch, the Postal Service should formally announce its intent to continue evaluating equipment processing capabilities that may allow expanded dimensions in the future.

As stated in the proposed rule, the specifications for height, length, and thickness are dictated by the operation and parameters of the Postal Service's FSMs. For example, the 12-inch maximum height for the bound edge is dictated by the need to orient the mailpiece on the machine so that the leading edge is closed and will not cause equipment jams by "ballooning out" or fanning as it catches air during high speed processing. These machines were designed to process the greatest number of the enveloped flat-size mailpieces handled by the Postal Service that could be processed in a cost effective manner. Although subsequent alterations have facilitated the processing of magazines, catalogs, and other non-enveloped pieces, the Postal Service determined that it was not cost-effective to develop equipment capable of handling larger pieces. The relatively small percentage of mail volume that would be automated as a result of this increased capability did not justify the additional expense. There is currently no deployable



equipment which can process a wider range of sizes in a cost effective manner. Although current USPS FSMs can be retrofitted to efficiently perform some new tasks (such as the processing of smaller mailpieces as noted above) no economical modifications are available that will allow the FSMs to accommodate mailpieces larger or thicker than the proposed maximum dimensions or to transport pieces for sortation at high speed with the leading edge open. For these reasons, the Postal Service adopts the proposed maximum size specifications for automation-compatible flat-size mailpieces. In the development of the next generation of flat sortation equipment, the Postal Service will continue to explore the possibility of accommodating larger mailpieces.

The issue of modifying size specifications for third-class carrier route mailpieces in order to establish more continuity among requirements is outside the scope of this rule. However, the comments received will be considered if a future proposal on this issue is made.

*Maximum Weight*—Four commenters stated that the 16-ounce maximum weight limit for second- and third-class mailpieces in proposed DMM 522.13 needs to be reviewed in the future to determine whether a heavier limit can be identified. One commenter noted that the weight of mailpieces can fluctuate due to imprecise trimming of publications during production, as well as the absorption of humidity after production, and therefore flexibility needs to be granted on this issue.

For first- and third-class mail, the proposed maximum weights of 11 and 16 ounces respectively, are dictated by the requirements of the Domestic Mail Classification Schedule (DMCS). Moreover, the proposed maximum of 16 ounces is needed to ensure sufficient throughput to justify the operational expense of the automated equipment versus other means of flats sortation and is based on experience gained operating FSMs as well as specific studies conducted to evaluate this issue. As mailpiece weight increases, throughput decreases (primarily due to equipment jams) and maintenance costs rise, thus eroding the savings associated with processing greater volumes with fewer employee workhours. Accordingly, the maximum weights for barcoded flats rate eligibility are adopted as proposed. As noted previously, the Postal Service will continue to work to design and develop the most cost-effective, efficient FSMs possible, capable of processing the widest practical variance in physical mailpiece specifications.

Minor weight fluctuation of mailpieces during and after their production will occur and may, in some instances, have a bearing on flat-size barcode rate eligibility. However, the Postal Service has determined that no greater burden is being imposed by these requirements than already exists in virtually all rate eligibility criteria. Maximum weight limits, established for every rate category of every class of mail, must be adhered to if the mail being presented is to qualify for the specific rate or service.

*Mailpiece Rigidity/Flexibility*—Four commenters urged the Postal Service to provide mailers access to the proposed "flats machinability test device" to assist them in measuring their mailpieces' adherence to flexibility criteria. Two commenters stated that the proposed flexibility criteria could be misinterpreted to disqualify envelopes that were tested for flexibility while empty. They further stated that the requirements should specify that testing be performed on the mailpiece "including its contents." Four commenters stated that the flexibility criteria were unduly demanding and would needlessly exclude too much mail from the automated mailstream. Two other commenters urged the USPS to reexamine flexibility standards for possible equipment changes in the future to accommodate catalogs currently being mailed.

The Postal Service has determined that the flexibility requirements proposed for flat-size automation-compatibility are essential to assure efficient processing on the FSMs and is therefore adopting the proposed requirements as written. An illustration will be included in the DMM to clarify the proper method for determining deflection.

The word "mailpiece" has traditionally referred to an entire item (including all contents) intended for mailing whenever cited in DMM regulations, particularly those requirements concerning design and construction. Because the term implicitly refers to the whole item to be mailed, the Postal Service believes that further clarification is not necessary.

Because of the importance mailpiece flexibility has for the automated processing of flats-size mailpieces, and the absence of a more cost-effective tool to measure this criteria, the Postal Service is adopting the proposed flats machinability test device as the required tool for measuring the flexibility and rigidity of automation-compatible flat-size mailpieces. The device will be provided upon request to those mailers wishing to qualify flat-size mailpieces for barcoded rates. Those wishing to construct their own device must adhere to the criteria established in specification USPS–STD–28. Assistance concerning the testing of flat-size mailpieces for flexibility and rigidity, or fabricating a test device that meet postal specifications is available from the field division director, marketing and communications, serving the mailer's location.

*Uniformity of Contents*—Four commenters stated that the prohibition of attachments to the exterior of automation-compatible flat-size mailpieces will add significant costs to their publications. They further added that it appears this requirement is being instituted with only limited testing and observation as to the extent of the problem. Two commenters noted that the proposed regulation prohibiting a mailpiece's contents from being smaller than its envelope is contradictory since the contents *must* be smaller to fit. It was recommended that either all references to insert size be removed or that an acceptable perimeter margin between the contents and the envelope be established. One commenter cited the need for regulations defining uniformity to clarify the variance in thickness the equipment can accommodate in any one mailpiece (i.e., the contents cannot vary more than 0.007 inch). One commenter stated that an official testing policy needs to be established to test "ride-alongs." Another commenter noted that the language defining the content uniformity of a barcoded flat should be the same as the current requirements for letter-size automation-compatibility.

As noted in the proposed rule, the requirements for both surface and content uniformity are derived directly from the limitations and capabilities of the equipment upon which automation-compatible flat-size mailpieces will be processed. The exterior surface of such a mailpiece must not have attachments or protuberances that are insecurely fastened or that create an irregular surface or shape that the FSM cannot efficiently process. In addition, reducing to a minimum the shifting of a flat-size mailpiece's contents is critical to stabilizing the piece during high speed transport. Unlike the automated equipment used for letter-size mail, which captures a mailpiece between two belts (firmly holding the piece and its contents together during transport), flat sorting machines rely on "pusher fingers" to accelerate a mailpiece along the mail transport path to sortation bins. The contents of an envelope or wrapper

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cannot shift too freely during transport or its erratic movement may cause the mailpiece to tumble and jam in the equipment. Attachments or untrimmed wrappers or sleeves can also jam in the equipment, not only because of irregular size but also because of inadequate methods used to fasten them to the host piece.

However, the Postal Service has determined that the automated equipment can process flat-size mailpieces with permanently affixed single-sheet attachments that have the same dimensions as the host piece. Therefore the proposed rule concerning surface uniformity is changed to allow securely affixed attachments consisting of single sheets of the same size as the mailpiece, as long as the attachment is uniformly secured to an edge of the mailpiece which can be inducted as the leading edge for FSM processing. In addition, the Postal Service will continue to analyze FSM performance in processing various attachments to evaluate the potential for accommodating a broader range of attachment designs in the future.

With respect to suggestions that it further quantify size and uniformity requirements, the Postal Service believes that the large majority of flat-size mailpieces designed to meet the physical requirements established in the proposed rule will pose no problems in processing on the automated equipment. Rather than attempting to add more requirements at this time that could unduly restrict all automation-compatible flat-size mailpieces to deal with a small volume of flats which may be of questionable design, the Postal Service encourages mailers to work with local postal representatives prior to the production of barcoded flat-size mailpieces to ensure compliance with Postal regulations and equipment capabilities. If necessary, the Postal Service will revisit this issue in the future.

The Postal Service adopts the proposed requirements for surface and content uniformity as well as shape (with the inclusion of securely affixed single-sheet attachments as noted above).

*Polywrapping, Shrinkwrapping, and Polybagging*—Fourteen commenters stated that, although the proposed rule prohibiting polywrap-type materials from flat-size automation-compatible mailings was understandable given the processing difficulties currently experienced with such materials, the Postal Service should pursue every practical means to develop specifications that will accommodate their use in the future. Thirty-four commenters stated that polywrap-type materials should be allowed immediately, based on the encouraging results of Postal Service tests that have taken place. Two commenters requested that a testing and certification procedure be established for evaluating submitted materials. One commenter noted that this requirement may conflict with the Presidential moratorium on additional government regulations adversely impacting private business.

The Postal Service is adopting the proposed rule prohibiting the use of polywrap-type materials for automation-compatible flat-size mailings pending the completion of further study of this issue. Although preliminary tests are encouraging, several issues must be resolved before the prohibition on polywrap-type materials can be modified. In particular, the specific make-up of individual materials that causes undesirable electrostatic properties still needs to be isolated and clearly identified before requirements can be published. Recognizing the impact this issue has on the mailing industry, the Postal Service will continue to pursue polywrap analysis and will publish specifications for automation-compatible polywrap as soon as possible.

The Postal Service is not subject to the current Presidential moratorium on regulations adversely impacting private business. In addition, the Postal Service has determined that the proposed prohibition on polywrap-type materials would not fall within this moratorium even if it did apply, because it does not take away a previous right or place an additional burden upon an existing practice. Mailpieces enclosed in polywrap-type materials are not being prohibited from the mails nor is a postage discount that previously existed being eliminated for these types of mailpieces.

*Blow-In Inserts*—Nine commenters questioned whether the requirements for flat-size automation-compatibility would prohibit the use of unattached enclosures (often referred to as "blow-in cards"). This issue was not addressed in the proposed rule and requirements governing the acceptability of such items are not changed. Although enclosures bound into publications are less likely to be dislodged during processing, loosely inserted enclosures are not prohibited in the automation-compatibility criteria for flat-size mailpieces.

*Barcode Skew & Verification*—Seven individuals commented on the proposed requirements concerning barcode skew and baseline shift, requesting further clarification through the use of DMM illustrations. Three commenters requested information on how the Postal Service intends to verify the quality of barcodes placed on flat-size mailpieces.

To clarify these requirements, the Postal Service is modifying the proposed rule to subdivide DMM section 551.52 (Flat-Size Mailpieces [Skew and Baseline Shift]) into 3 subsections titled Rotational Skew, Baseline Shift, and Positional Skew, with a new DMM Exhibit illustrating each.

Postal Service verification procedures for barcode readability and accuracy have been established for ZIP+4 Barcoded rate discounts for qualifying letter-size mailpieces. Because flat-size pieces will use the same POSTNET format to represent address information as does barcoded letter-size mail, the existing verification procedures used are not altered with this rulemaking.

*Multiple Barcodes*—The Postal Service, upon further consideration, has decided to rescind the portion of the proposed rule that inadvertently prohibited the placement of two POSTNET format barcodes on the address side of automation-compatible letter-size mailpieces. This final rule does adopt, however, that portion of the proposal prohibiting the placement of more than one POSTNET-format barcode on the address side of flat-size mailpieces.

Unlike flat mail barcode readers retrofitted on FSMs, barcode sorters for letter-size mail are able to discriminate (via the use of default logic) between different barcode locations and lengths when scanning a piece for its barcode. Accordingly, barcode sorters for letter-size mailpieces do not experience as significant a problem as their flats counterparts when confronted with more than one POSTNET barcode.

*Type Size*—Two commenters stated their appreciation for the clarifications received from the Postal Service concerning the type size allowable on address labels. Three commenters suggested that the type size permissible on second-class publications be further clarified to emphatically state that 10-point type is only a recommendation and not a requirement.

The legibility requirement in DMM 429.312 recommends but does not limit mailers to 10-point type, as long as the address is printed in legible handwriting, or plain type, using black or strongly contrasting ink. This rulemaking does not address type-size of characters in the address for flat-size automation-compatibility and is making no changes to current requirements in this area.



*Comments Concerning Package and Sack Make Up and Preparation*

*Securing Packages*—Twenty-five commenters stated that the proposed required sequence of placing straps on packages of flat-size mailpieces for automation-based rates (first around the longer dimension and then along the shorter one) should be removed. Seventeen commenters stated that the wording should be modified to allow strapping, banding, or shrinkwrapping. Two commenters stated that the Postal Service should recommend a girth then length strapping sequence to secure packages of flat-size mailpieces.

In consideration of these concerns, the Postal Service adopts the proposed rule on securing packages of flat-size mailpieces for automation-based rates with the following changes.

When packages are strapped, either dimension may be secured first, although securing the longer dimension first is preferred. Shrinkwrap will be allowed as an alternative means to secure pieces into packages, if the material used is of sufficient strength to maintain the package's integrity throughout normal handling and transportation.

*Counter Stacking*—Two commenters requested clarification to specify that the requirements governing the counter stacking of mailpieces within packages were not being altered with this rulemaking.

The Postal Service is not altering the requirements for counter stacking groups of mailpieces of irregular thickness within a package to ensure they are leveled or squared-off for more secure packaging. Existing requirements are reiterated in DMM Chapter 5 to further clarify this issue. However, the Postal Service may seek to modify counterstacking requirements in a future rulemaking as the deployment of automatic induction systems on FSMs may require.

*Firm Packages*—Nine commenters commented on firm packages and one on "bulk orders," stating that further clarification was required to specify how mailpieces packaged this way will be treated within a flat-size barcoded rate mailing. They requested that the Postal Service address issues relating to the level of pallet on which they will be allowed, how they should be barcoded and identified, and what rate they will qualify for.

Mailpieces prepared in optional firm packages are presorted by the mailer for postal delivery to the address appearing on the top piece of the package. These packages are not meant to be opened by the Postal Service but are kept intact for manual processing to their point of delivery. Allowing such a significant quantity of what are essentially manually processed packages within an automated mailstream introduces manual handlings beyond what is justified for automation-based discounts. In addition, second-class mailpieces within firm (or "bulk order") packages are not required to be individually addressed except for the top piece in the package. Such packages, dispersed within an automation-based rate mailing, could be easily mistaken for packages of individually addressed and barcoded pieces. Once displaced from the original firm package, the loose unaddressed pieces are undeliverable. Therefore, the Postal Service has determined that optional firm packages (or bulk orders) may not be included in a barcoded rate flat-size mailing; however, they may be included in a carrier route mailing that is copalletized with a barcoded rate mailing.

*Thickness of Packages*—Seven commenters stated that a change or further clarification is required concerning the proposed six inch package thickness recommendation. This statement was a recommendation and not a requirement for packages of flat-size automation-compatible mailpieces prepared in sacks. The Postal Service is adopting the rule as proposed.

*Preparation Requirements for Residual Mail*—Fourteen commenters responded to the proposed requirement to establish a specific quantity of addressed pieces per residual package in a flat-size barcoded rate mailing. Many commented upon their inability to program software to separate ten pieces for packaging stating that the current requirements for preparing residual packages should suffice. Several commenters stated that inconsistencies in package quantities would result in numerous errors and thus more flexibility in residual package quantity should be allowed.

In consideration of these comments and on further consideration by the Postal Service, the final rule does not require a residual package quantity of ten pieces, but instead recommends placing residual pieces in packages measuring 6 inches.

The preparation requirements for residual mail have been clarified to allow the Postal Service to verify the postage payment and 85% ZIP+4 barcode requirement for this portion of the mailing. Although Exhibit 574, Representative Documentation, in the proposed rule showed residual mail listed in 3-digit ZIP code sequence, the proposed regulations inadvertently omitted a requirement to prepare residual mail in 3-digit ZIP Code sequence as necessary to allow the Postal Service to verify this documentation. The final rule provides two options for preparation for residual mail. The first option uses documentation in ZIP Code sequence, as illustrated in the proposed rule, and adds a requirement that residual mail be placed in 3-digit ZIP Code sequence before packaging. It further recommends that 3-digit ZIP Codes not be split between two different residual sacks for ease of postal verification. Under the second option, for mailings of identical weight pieces, pieces bearing ZIP+4 or delivery point barcodes must be separately packaged and sacked from those pieces bearing 5-digit barcodes. The mailer must physically separate the two groups of residual sacks at the time of verification to allow for verification by weighing.

*Optional Endorsement Lines on Packages*—Two commenters commented on the proposed changes to optional endorsement lines on packages of barcoded flat-size mailpieces, stating that the proposed optional endorsement line should not include the identifier "B/C" because this is not required for mailers using adhesive "dot" labels. Two commenters stated that no adhesive label or optional endorsement line should be required on residual packages, but if optional endorsement lines are required, the Postal Service should specify that they read as currently required by comparable existing regulations.

In view of these comments and on further consideration, the Postal Service will not require the "B/C" abbreviation in the optional endorsement lines of packages; the existing format for 5-digit, optional city, 3-digit, and SCF optional package labeling will instead be specified.

Six comments were received requesting a change to the term used to identify packages of unsorted mail to reflect how the Postal Service will handle this mail. Four commenters stated that "RESID" in the optional endorsement line can be confused with RESIDENT and asked whether this term was really needed. Two commenters stated that if any changes are made to the optional endorsement information, such as the notation "RESID" or "BASIC," they should be recommendations only and not requirements, leaving the format of the optional endorsement line as it is today.

In view of these concerns and on further consideration, the Postal Service adopts the identifier "WORKING" or the abbreviation "WKG" (a familiar mail

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processing term) to identify packages of residual mailpieces that require opening and piece handling (sortation) at origin. This term will not bear any resemblance to delivery information such as RESIDENT yet will alert those responsible for processing the packages as to their proper handling.

*Package and Sack Presort Requirements*—The Postal Service received no specific comments regarding the presort levels for package and sack sortation. However, twenty-five comments were received concerning the proposed documentation requirements, stating that mailers were unable to predict the sack in which a package will be placed as required by the proposed requirement. In addition, 11 comments were received concerning the sacking of residual mail to origin SCFs, stating that delivery delays and sack shortages may result. Based on these comments and upon further consideration of the proposed rule, the Postal Service has determined that the following changes are warranted and are adopted in this final rulemaking.

The proposed rule provided that in a sacked mailing the rate for which pieces qualified was determined by both the level of package sortation and the level of sack sortation. For example, pieces in 3-digit packages would qualify for the 3/5-digit barcoded rates only if the packages were placed in 3-digit sacks containing the required minimum number of pieces. For palletized mailings, the proposed rule provided that rate eligibility would be determined strictly based on the sortation level of the package. Based on the comments concerning the inability of some mailers to predict the sack in which a package will be placed and to make the rate eligibility and documentation requirements for sacked and palletized mailings more uniform, under this final rule the level of the package in which pieces are prepared determines the rate the pieces will qualify for regardless of whether the mail is prepared in sacks or as packages on pallets. This means that pieces prepared in qualifying 5- and 3-digit packages that are placed in any level sack (other than a residual sack) are eligible for the 3/5-digit barcoded rates. Consistent with this change, the minimum quantity for 5-digit, 3-digit, and SCF sacks of First-Class Mail is increased to 125 pieces or 15 pounds, as with third-class mail. There are no minimums on any levels of sack for second-class mail.

In addition, under the proposed rule, the final level of sortation was an SCF sack with all residual mail placed in origin SCF sacks. Because of the concerns about possible delivery delays and sack shortages that this could create, the final rule allows ADC sacks for First-Class Mail and SDC sacks for second- and third-class mail. There is no 125 piece/15 pound minimum for First- or third-class mail prepared in ADC/SDC sacks. For all three classes of mail, packages other than residual must be sacked to the ADC/SDC level at a minimum. The final rule also gives First-Class mailers the option of omitting 5- and 3-digit sacks and preparing this mail at the SCF and ADC sack level. Based on the average smaller physical dimensions of First-Class flats, these changes should help to reduce the number of almost empty "skin" sacks that mailers could otherwise end up producing.

The proposed rule also provided that mailers could prepare packages to 5-digit and 3-digit destinations that contained fewer than the specified minimum number of pieces although the pieces in such packages would be ineligible for the 3/5 Barcoded rates (First- and third-class), Presorted First-Class rates, 3/5 presort rates (third-class) or the level B/H rates (second-class). However, because packages containing fewer than the required number of pieces do not offer customers a rate benefit and increase the Postal Service's package handling costs, the provisions to allow mailers to prepare First- or third-class packages containing fewer than the minimum number of pieces required for rate eligibility are eliminated in this final rule. Second-class mailers will continue to be allowed to prepare packages containing fewer than 6 pieces for service reasons even though there is no rate advantage.

These changes should increase rate eligibility, as well as reduce the number of sacks required and simplify the documentation requirements by eliminating the need to predict the level of sack that pieces will be placed in. In addition, rate eligibility and documentation requirements for sacked and palletized mailings are now more uniform because the level of the package in which pieces are prepared determines the rate the pieces will qualify for regardless of whether the mail is prepared in sacks or as packages on pallets.

*Packaging, Sacking and Documentation for First-Class Nonpresorted Flats*—In the proposed rule, the Postal Service referred mailers to sections on presort mail preparation for First-Class nonpresorted barcoded rate flats. The Postal Service finds that these regulations for presorted mail are inadequate to address mailers' needs for preparing nonpresorted mail and therefore this final rule includes several easy options for preparing First-Class nonpresorted Barcoded rate flat-size mailings consisting of 250 or more pieces. The options are based on the percentage of barcoded pieces in a mailing and on whether a mailing consists of identical weight or nonidentical weight pieces.

*Comments Concerning Labors, Placards, and Facing Slips*

*Handwritten Labels*—Twenty-three commenters stated that although there are obvious advantages to machine-printed sack and pallet labels for both the industry and the Postal Service, legibly handwritten sack and tray labels should be allowed. These commenters cited instances of lost or damaged labels that needed immediate replacement where no facilities existed for on-demand label generation. In consideration of these comments, the Postal Service revises the proposed requirements by strongly recommending that sack and tray labels be machine-printed, but permitting handwritten labels printed legibly in ink or indelible marker.

*Pallet Labels*—Six commenters noted that the proposed requirements for pallet labels appeared to exclude the use of pink label stock for pallets containing second-class matter. The Postal Service inadvertently omitted the requirement for pink label stock for pallets containing second-class mail in the proposed rule. The requirement is included in this final rule.

*Contents Line of Sack and Pallet Labels*—Twelve commenters stated that the proposed requirement to include the notations "Zip+4" and "B/C" in the contents line of sack and pallet labels for automation-compatible flat-size mailings was redundant and should be eliminated. Several commenters stated that this information would create a contents line longer than their current label printers could accommodate. One commenter suggested using the existing identifiers.

For efficient handling and processing of automation-compatible flat-size mailpieces, the Postal Service has determined that a specific identifier is required to quickly and easily differentiate barcoded quantities of mail from nonbarcoded mail. Without some notation on the contents line, visual identification of automation-compatible mail becomes slow and inefficient. However, upon consideration of these comments, the Postal Service will require that the only notation "BARCODED" be used. (As noted

elsewhere, the final rule also adopts the notation "WORKING" or the abbreviation "WKG" as an identifier for sacks containing residual mail that is part of a mailing of barcoded flat-size mailpieces.) Although the Postal Service recognizes the limitations of label width and type-size of certain label printing equipment, this change should not prove difficult given that the longest possible contents line consists of no more than 23 character spaces (including spaces left blank between identifiers).

*Facing Slips on Residual Packages*—Nineteen commenters cited difficulties in manually applying facing slips on residual packages in a highly automated mail production operation. Because of this, many requested that the Postal Service allow the necessary information to be included in the optional endorsement line. One commenter recommended that the use of red "D"s and green "3"s be allowed as an alternative. Another commenter suggested an action word such as "PROCESS" be substituted for the negative term "RESIDUAL."

In recognition of the problems associated with manually applying facing slips in automated mail production environments and the need for a term more indicative of the processing such mail will receive, the Postal Service adopts the requirement that either a facing slip be used bearing the word "WORKING" or the abbreviation "WKG" or the optional endorsement line containing this same information be used to identify residual packages.

*Comments Concerning Mailing Jobs*

Thirty-four comments were received concerning the definition of a mailing. A majority of the comments stated that the current definition of a mailing (essentially that mail which is reported on an individual mailing statement) should be modified because of the difficulties involved in qualifying and quantifying the minimum percentage of ZIP+4 barcoded pieces for each segment within a "job," "project," or "cycle." Several commenters suggested that Form 3553, CASS Report, should not be submitted with every mailing statement, that the increase in requisite documentation was unwarranted, and that the Postal Service should adopt a more flexible definition of a mailing similar to that provided for in optional procedure mailing systems. Commenters also stated that a "job" or "project" should be used to compute the overall number of pallets allowable under 650 pounds as opposed to individual segments or mailings given that any one pallet could contain multiple mailings. One Commenter noted that any redefinition of a mailing should also consider relaxing the minimum quantity requirements for third-class bulk rates. Two commenters recommended that the Postal Service examine the feasibility of incorporating the 85% prebarcoded requirement into the System Certification Program rather than checking every mailing for qualification.

The Postal Service has reviewed these comments carefully and determined that some accommodations can be made satisfying the documentation requirements herein, without changing the definition of a mailing or impairing the Postal Service's ability to verify barcode rate eligibility, address and barcode accuracy, and ultimately postage calculation and payment. Accordingly, compliance with the 85% prebarcode requirement and with CASS certification requirements may be based upon a mailing job, rather than upon the individual mailings comprising that job, as provided in DMM 575.4.

However, each individual mailing must meet minimum quantity requirements. For example to be eligible to mail at the bulk third-class rates of postage, a mailing must include a minimum of 200 pieces or 50 pounds of mail. This minimum quantity requirement must be met for each mailing with the mailing job.

*Comments Concerning Changes To Palletization Requirements*

Fifty-one comments were received disagreeing with the proposal to eliminate preparation of bulk mail center (BMC) and state distribution center (SDC) level pallets. Eleven comments concerned perceived inconsistencies that would be established by increasing certain maximum pallet weights to 2,200 pounds. Eight commenters noted that the dynamics of the mailing industry run counter to the proposal to submit copalletization authorizations 30 days in advance of the proposed date of mailing. Seventeen commenters objected to the reapplication process for palletization noted in the proposal, recommending that the Postal Service not require authorization, or at least grant waivers because of the "unnecessary" duplication of paperwork and length of time anticipated for approval. Eight commenters noted safety hazards or added mailer costs involving banding of double-stacked pallets. Four commenters objected to the package placement requirements for copalletized mailings. Three others voiced negative reaction to the pallet top cap requirements in the proposed rule. Eighteen commenters responded to the proposal to prohibit placing qualifying carrier route mail and barcoded mail on the same 5-digit pallet, and a majority of the commenters recommended that the minimum pallet weight limit be set at 500 pounds to help offset the problems they believed this proposal would cause.

In consideration of these comments and since pallet make up and preparation requirements for second- and third-class mail already exist in DMM regulations, the Postal Service has determined to apply these existing requirements to the preparation of automation-compatible flat-size mailings, with the following changes. Qualifying carrier route presort flats may not be placed on the same 5-digit pallet with barcoded flats.

Because of this prohibition, the Postal Service also adopts a reduction in the minimum weight allowed for 5-digit pallets in a barcoded rate mailing from 650 pounds to 500 pounds.

Including carrier route mail on the same pallet with barcoded mail at the 5-digit level would severely impede efficient and timely processing of either mailing. The cost effectiveness of 5-digit pallets would be eroded because additional manual handlings and possibly additional transportation would be required to move the mail to its next processing point. However, to minimize the impact that the separation of these two pallet sortations will have on mailers' ability to create 5-digit pallets, this final rule adopts a minimum 5-digit pallet weight of 500 pounds for barcoded rate flat-size mailings.

Existing pallet preparation requirements do not provide for the palletization of First-Class mail and the decision to use existing requirements does not address preparation of First-Class Mail on pallets. Although the proposed rule did refer to the placement of First-Class Mail on pallets in a proposed DMM change, significant changes to the original proposal would be required to provide for such palletization. Therefore, the Postal Service has determined to withdraw that portion of the proposed rule dealing with the palletization of First-Class Mail for further consideration and possible future action.

*Comments Concerning Documentation Requirements*

*Documentation Detailing Rate Eligibility*—Although many comments received had relevance to the documentation issue, twenty-five of the comments received directly addressed the documentation requirements of the proposed rule. Fourteen of these stated that the documentation requirements

were too extensive, placing undue burdens upon the industry. Six commenters stated that the format illustrated in Exhibit 574 was too restrictive and did not provide the traditional flexibility mailers were used to in developing acceptable documentation to verify rate eligibility. Five commenters requested further clarification on the content and format of the documentation and of the Postal Service's announcement of attempts to standardize documentation requirements published in the proposed rule.

In addition to a properly completed mailing statement, certain information provided in paper form (hard copy) is necessary to allow verification of rate eligibility by sortation level in a given mailing. In addition, the Postal Service has determined that standardization of format and layout of data will benefit not only the verification process, but mailers as well who have previously requested the establishment of a universally acceptable document.

Nevertheless, upon further consideration of the comments concerning this issue, the Postal Service has determined that it can adopt in the final rule allowances for documentation prepared in different formats as long as the essential information is provided. DMM Exhibits 574A and B illustrate recommended formats, providing all necessary data. Mailers will not be required to copy the exact layout of the documentation illustrated in these Exhibits but will be required to provide all data elements shown, in a logical manner which can be as easily read and understood.

As clarification, existing second-class documentation requirements are not amended by this rule, although publishers who prepare ZIP+4 Barcoded rate flats will encounter new requirements to also document the number of flat-size ZIP+4 Barcoded mailpieces.

*Prohibited Combinations on Mailing Statements*—Twelve commenters expressed opinions on this portion of the proposed rule, generally requesting that the Postal Service reconsider the necessity of prohibiting carrier route and walk-sequence mailings from appearing on the same mailing statement with automation-based rate mailings given the amount of paperwork and systems modifications this requires.

Upon evaluation of the comments received and further consideration of the proposed rule, the Postal Service has amended provisions of the proposed rule to allow specific instances in which carrier route presort rate qualifying mail, including pieces mailed at walk sequence rates, and flats barcoded rate mail can be reported on the same mailing statement. This will reduce the number of mailing statements that must be submitted by mailers (and verified and processed by the Postal Service) when a mailing job includes both a carrier route presort mailing and a mailing eligible for the ZIP+4 Barcoded rates. Including these rate categories on the same mailing statement is only permissible provided the qualifying carrier route mailing is presented on pallets, is prepared as part of the same mailing job as the flats barcoded rate mailing reported on the mailing statement, and verification and postage payment for all the mailings in the job takes place at a single post office.

*Availability of Trays for Flat-Size Mailpieces*—Two commenters stated that the Postal Service should design and make available to mailers trays capable of accommodating flat-size mailpieces so mailers can enjoy the benefits of traying. Although noting that trays were not mentioned in the proposed rule, these commenters recommended that the Postal Service announce its intentions for future plans to provide trays for flat-size mail.

The Postal Service is engaged in an ongoing evaluation of this issue. Flats trays were not incorporated into the proposed rule because an acceptable cost-effective tray that can be mass-produced for mailers is not yet available. The Postal Service has been reviewing the design and construction of trays capable of accommodating flat-size mailpieces as well as their integration into current mail processing systems for several years. Trays will be permitted, if and when an acceptable solution can be found.

*Equipment Deployment*—One commenter recommended that the Postal Service publish an equipment deployment schedule of flat sorting machines with wide area barcode read capability, as well as one showing where barcode sack tag scanners are deployed.

The Postal Service has determined that difficulties in publishing and updating an equipment deployment schedule outweigh the benefits that may be derived from it. However, recognizing the substantial efficiencies to be gained both by mailers and internally by the Postal Service through implementation of this equipment in as many processing sites as quickly as practicable, the Postal Service will continue to pursue their rapid deployment.

In view of the above considerations, the Postal Service adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

Domestic Mail Manual Issue 44, September 20, 1992, will include these changes. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

**List of Subjects in 39 CFR Part 111**

Postal Service.

**Neva R. Watson,**

*Attorney, Legislative Division.*

**PART 111—[AMENDED]**

1. The authority citation for part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Make the following amendments to the Domestic Mail Manual:

**CHAPTER 1—DOMESTIC MAIL SERVICES**

* * * * *

**120 Preparation for Mailing**

* * * * *

[Change the title of Exhibit 122.63e as follows:] Area Distribution Center (ADC) Labeling List for Use with Presorted First-Class Mailings and First-Class ZIP+4 Barcoded Flat-Size Mailings.

* * * * *

124 NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

* * * * *

**124.4 Restricted Matter**

* * * * *

124.47 Odd-Shaped Items in Envelopes. [Revise the last sentence to read:] First-, second-, and third-class matter that is part of a mailing claimed at an automation-based rate (see 514.1) must meet the applicable requirements of 520.

* * * * *

128 PROCESSING CATEGORIES

**128.1 General**

128.11 Assignment. All mail is assigned to one of five processing categories based on the physical dimensions of the mailpiece, regardless of the placement (orientation) of the delivery address on the mailpiece. The five categories are:

a. Letter size.
b. Flat size.
c. Machinable parcels.
d. Irregular parcels.
e. Outside parcels.

128.12 Mailings. Unless permitted by regulation, any mailing at other than the

single-piece First-, third-, or fourth-class rates may not contain pieces from more than one processing category.

**128.2 Letter-Size**

Except as provided by 128.32, letter-size mail has the following dimensions:

* * * * *

**128.3 Flat-Size**

128.31 General Definition. [Text of existing 128.3; add the following to the beginning of the section:] Except as provided by 128.32, flat-size mail * * *

* * * * *

128.32 Automation-Compatible Flat-Size Mail. For determining eligibility for ZIP+4 Barcoded rates, based on compatibility with specific mail processing equipment, "automation-compatible flat-size mail" is defined as all mail meeting the dimensional criteria in 522.

* * * * *

**CHAPTER 3—FIRST-CLASS MAIL**

**310 Rates and Fees**

* * * * *

312 NONPRESORTED BULK RATES

**312.1 Nonpresorted ZIP+4 Rate**

312.11 Cards.

* * * * *

312.12 Letter-Size Mail Other Than Cards

312.121 Rate Application. Subject to the eligibility requirements in 327, the nonpresorted ZIP+4 rates in 312.122 apply to letter-size pieces (other than cards eligible for the card rate) and to letter-size cards that exceed the dimensions in 311.122 and 322.

* * * * *

312.13 Flat-Size Mail. None.

* * * * *

**312.2 Nonpresorted ZIP+4 Barcoded Rate**

312.21 Cards.

* * * * *

312.22 Letter-Size Mail Other Than Cards. None.

312.23 Flat-Size Mail.

312.231 Rate Application. The nonpresorted ZIP+4 Barcoded rates in 312.232 apply to flat-size mail meeting the requirements of 328.

312.232 Rates.

| | |
|---|---|
| First ounce or fraction of an ounce | $0.267 |
| Each additional ounce or fraction of an ounce | 0.230 |

| Weight not exceeding (ounces) | Rate |
|---|---|
| 1 | $0.267 |
| 2 | .497 |
| 3 | .727 |
| 4 | .957 |
| 5 | 1.187 |
| 6 | 1.417 |
| 7 | 1.647 |
| 8 | 1.877 |
| 9 | 2.107 |
| 10 | 2.337 |
| 11 | 2.567 |

313 PRESORTED BULK FIRST-CLASS RATES

**313.1 General**

313.11 Cards. To be eligible for the presorted First-Class rates for cards in 313.221, 313.321, 313.621, 313.721, and 313.821, each postal card or postcard must meet the requirements of 311.11 and 322 in addition to the applicable requirements of the particular rate. Letter-size cards that exceed the dimensions in 311.112 are subject to the rates for letter-size mail other than cards in 313.222, 313.322, 313.622, 313.722, and 313.822 and the applicable requirements of the particular rate.

* * * * *

**313.5 3/5-Digit ZIP+4 Barcoded Rate for Flat-Size Mail**

313.51 Rate Application. The 3/5-digit ZIP+4 Barcoded rates in 313.52 apply to flat-size mail meeting the requirements of 325.

313.52 Rates.

| | |
|---|---|
| First ounce or fraction of an ounce | |
| (For piece weighing not more than 2 ounces) | $0.233 |
| (For piece weighing more then 2 ounces) | .191 |
| Each additional ounce or fraction of an ounce | .230 |

| Weight not exceeding (ounces) | Rate |
|---|---|
| 1 | $0.233 |
| 2 | .463 |
| 3 | .651 |
| 4 | .881 |
| 5 | 1.111 |
| 6 | 1.341 |
| 7 | 1.571 |
| 8 | 1.801 |
| 9 | 2.031 |
| 10 | 2.261 |
| 11 | 2.491 |

**313.6 ZIP+4 Presort Rates**

313.61 Rate Application. The ZIP+4 Presort rates in 313.62 apply to cards and letter-size pieces that meet the requirements in 324.

313.62 Rates.

* * * * *

313.622 Letter-Size Mail Other Than Cards.

* * * * *

**313.7 3-Digit ZIP+4 Barcoded Rates**

313.71 Rate Application. The 3-digit ZIP+4 Barcoded rates in 313.72 apply to cards and letter-size pieces that meet the requirements in 325.

313.72 Rates.

* * * * *

313.722 Letter-Size Mail Other Than Cards.

* * * * *

**313.8 5-Digit ZIP+4 Barcoded Rates**

313.81 Rate Application. The 5-digit ZIP+4 Barcoded rates in 313.82 apply to cards and letter-size pieces that meet the requirements in 325.

313.82 Rates.

* * * * *

313.822 Letter-Size Mail Other Than Cards.

* * * * *

315 FEES AND SURCHARGES

**315.1 Nonstandard Surcharge**

315.12 Pieces Mailed at the Single-Piece Rates. [Insert the following at the end of the sentence] "* * * and 312.23."

* * * * *

315.13 Presorted Bulk First-Class Rates. A surcharge of $0.05 is assessed on each piece of nonstandard First-Class Mail mailed at a presort rate (Presorted First-Class, Carrier Route, 3/5 ZIP+4 Barcoded rate for flats). Pieces that would be subject to a surcharge under 315.11 are not eligible for any ZIP+4 Presort or ZIP+4 Barcoded rates for letters.

* * * * *

**320 Classification**

* * * * *

324 ZIP+4 PRESORT FIRST-CLASS MAIL (LETTER-SIZE MAIL ONLY)

* * * * *

**324.5 Physical Mailpiece Requirements.**

324.51 Basic Requirement. Each piece in the mailing must be letter-size and meet the requirements in 521 and 540.

* * * * *

324.8 Postage Payment and Documentation. Postage for ZIP+4 Presort mailings must be paid as specified in 382. Documentation must be submitted with each ZIP+4 Presort mailing as described in 365, 366, or 560, as applicable.

* * * * *

**324.9 Markings**

Each piece must be marked as specified in 362.5.

* * * * *

325 ZIP+4 BARCODED (PRESORTED) MAIL

**325.1 General**

325.11 Description.

325.111 Definitions (Cards and Letter-Size Mailpieces Only).

* * * * *

325.112 Eligibility—Cards and Letter-Size Mailpieces.

* * * * *

325.113 Eligibility—Flat-Size Mailpieces.

a. Pieces Bearing ZIP+4 or Delivery Point Barcode. Pieces that bear the correct and properly prepared ZIP+4 or delivery point barcode and that meet the requirements of 325.2 through 325.9 qualify for either the 3/5 ZIP+4 Barcoded rate or the nonpresorted ZIP+4 Barcoded rate (for flat-size mailpieces), depending on the level of presort (see 325.14).

b. Pieces Bearing 5-Digit Barcode. Pieces that bear the correct and properly prepared 5-digit barcode and that meet the requirements of 325.2 through 325.9 qualify for either the Presorted First-Class rate or single-piece First-Class rate, depending on the level of presort (see 325.14).

c. Prohibited Pieces. Pieces that do not bear the correct and properly prepared ZIP+4, delivery point, or 5-digit barcode, as well as pieces that do not meet the eligibility requirements of 325.2 through 325.9, must not be included in a mailing of flat-size pieces claimed at the 3/5 ZIP+4 Barcoded rate or the nonpresorted ZIP+4 Barcoded rate (for flat-size mailpieces).

325.12 Applicable Rates by Sortation Category for National Mailings of Cards and Letter-Size Mailpieces.

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325.13 Applicable Rates by Sortation Category for Automated Site Mailings of Cards and Letter-Size Mailpieces.

* * * * *

325.14 Applicable Rates for Mailings of Flat-Size Mailpieces.

325.141 ZIP+4 Barcoded or Delivery Point Barcoded Mailpieces. Subject to the general eligibility requirements in 325.113, a ZIP+4 barcoded or delivery point barcoded flat-size mailpiece prepared under 572 and 573 can qualify for the following:

a. 3/5 ZIP+4 Barcoded Rate if part of a group of 10 or more addressed pieces prepared in 5-digit packages and sacked to a 5-digit, 3-digit, SCF, or ADC destination;

b. 3/5 ZIP+4 Barcoded Rate if part of a group of 50 or more addressed pieces (excluding those prepared in 5-digit packages) prepared in 3-digit packages and placed in a 3-digit, SCF, or ADC sack;

c. Nonpresorted ZIP+4 Barcoded Rate—(for automated flat-size mailpieces) if prepared in SCF packages placed in an SCF or ADC sack or prepared in residual packages and placed in a residual sack.

325.142 5-Digit Barcoded Mailpieces. Subject to 325.113, a 5-digit barcoded flat-size mailpiece prepared under 572 and 573 can qualify for the:

a. Presorted First-Class Rate if part of a group of 10 or more addressed pieces prepared in 5-digit packages and sacked to a 5-digit, 3-digit, SCF, or ADC destination, or if part of a group of 50 or more addressed pieces (excluding those prepared in 5-digit packages) prepared in 3-digit packages and placed in a 3-digit, SCF, or ADC sack.

b. Single-piece First-Class Rate if prepared in SCF packages placed in SCF or ADC sacks or prepared in residual packages and placed in a residual sack.

* * * * *

**325.3 ZIP+4 Barcoding and Addressing Requirements**

325.31 Cards and Letter-Size Mailpieces. [Text of existing 325.3; add the following to the end of the section:] Pieces bearing a 5-digit barcode must meet the requirements of 552.

325.32 Flat-Size Mailpieces. Regardless of presort level or rate, at least 85% of the pieces in each flat-size barcoded rate mailing must bear the correct ZIP+4 or delivery point barcode, prepared under 551, representing information specified in 530. All remaining pieces must bear the correct 5-digit barcode for the delivery address, prepared under 552. The address on each piece (regardless of barcode) must contain the correct numeric 5-digit ZIP Code, ZIP+4 code, or the correct numeric equivalent to the delivery point barcode (see 515.3). See 575.2 for application of the 85% requirement to a mailing job instead of to individual mailings within a mailing job.

* * * * *

[Delete 325.5; renumber 325.6 through 325.9 as 325.4 through 325.7; no changes in text other than as shown below.]

**325.4 Physical Requirements**

325.41 Cards and Letter-Size Mailpieces. Each piece in the mailing must meet the applicable physical requirements in 521.

325.42 Flat-Size Mailpieces. Each piece in the mailing must meet the physical requirements in 522.

* * * * *

**325.6 Presort**

325.61 Cards and Letter-Size Mailpieces. [Text of existing (renumbered) 325.6.]

325.62 Flat-Size Mailpieces. All pieces in the mailing must be presorted together to the finest extent as prescribed in 572 and 573.

**325.7 Postage Payment and Documentation**

325.71 Postage Payment. Postage for ZIP+4 Barcoded rate mailings must be paid under 382.

325.72 Documentation.

325.721 Cards and Letter-Size Mailpieces. [Text of existing (renumbered) 325.7. Change "364.4" to "364.2 or 364.4 as applicable."].

325.722 Flat-Size Mailpieces. Documentation must accompany the mailing as specified in 574 or 575.

* * * * *

327 NONPRESORTED ZIP+4 MAIL (LETTER-SIZE MAIL ONLY)

* * * * *

**327.3 Mailpiece Characteristics**

[Revise the beginning of the first sentence to read:] Each piece in the mailing must meet the physical requirements for letter-size mailpieces in 521 and * * *

* * * * *

328 NONPRESORTED ZIP+4 BARCODED MAIL

**328.1 Eligibility**

Pieces that bear the correct ZIP+4 or delivery point barcode prepared under 551, and that meet the requirements of 328.2 through 328.5, qualify for the nonpresorted ZIP+4 Barcoded rate. Remaining pieces qualify for the single-piece First-Class rate.

**328.2 Minimum Quantity**

328.21 Per Mailing. [Text of existing 328.1.].

328.22 Barcoding

328.221 Cards. [Text of existing 328.2, except add "prepared as specified in 551" to the end of the first sentence, and add the following to the end of the section:] Five-digit barcodes must meet the requirements of 552.

328.222 Flat-Size Mailpieces. At least 85% of the pieces in the mailing must bear the correct ZIP+4 or delivery point barcode, prepared under 551, representing information specified in 530 (except as specified in 575.2). All remaining pieces must bear the correct 5-digit barcode for the delivery address on the piece, prepared under 552. The

address on each piece (regardless of barcode) must contain either the correct numeric 5-digit ZIP Code, ZIP+4 code, or the correct numeric equivalent to the delivery point barcode (see 515.3).

**328.3 Mailpiece Characteristics**

328.31 Physical Requirements.

328.311 Cards. [Text of existing 328.31. Change the sentence in parenthesis to read as follows:] "(The nonpresorted ZIP+4 Barcoded rate for letter-size mailing is available only for cards.)"

328.312 Flat-Size Mailpieces. Each piece in the mailing must meet the requirements of 522.

[Delete existing 328.32; redesignate existing 328.33 as 328.32.]

* * * * *

**328.4 Preparation**

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328.43 Traying or Sacking.

328.431 Cards. Each piece in the mailing must be trayed in accordance with 368.2.

328.432 Flat-Size Mailpieces. Each piece in the mailing must be packaged and sacked as required by 572 and 577.

**328.5 Postage Payment and Documentation**

328.51 Postage Payment. Postage for nonpresorted ZIP+4 Barcoded rate mailings must be paid as specified in 382.

328.52 Documentation.

328.521 Cards. [Text of existing (renumbered) 328.5.].

328.522 Flat-Size Mailpieces. Documentation must accompany the mailing as specified in 577.

* * * * *

**340 Authorizations and Permits**

341 ANNUAL PRESORT FEE

[Insert "3/5 ZIP+4 Barcoded First-Class (for flat-size mailpieces)" after "5-digit ZIP+4 Barcoded First-Class."]

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**350 Physical Limitations**

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352 SIZE LIMITS

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**352.2 Shape, Ratio, and Sealing**

352.21 Standards.

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c. [Revise the beginning of the first sentence to read:] "Except for automation-compatible flat-size mailpieces (see 522.133)."* * * * *

* * * * *

**352.3 Automation Capability**

Pieces claimed at an automation-based rate must also meet the physical requirements for automation compatibility in 521 or 522, as applicable.

353 NONSTANDARD FIRST-CLASS MAIL

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**353.3 Surcharge**

Nonstandard First-Class Mail is subject to a surcharge as specified in 315.1.

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**360 Preparation**

361 ADDRESSING

* * * * *

**361.6 ZIP+4 Barcoded First-Class Mail**

361.61 Cards and Letter-Size Mailpieces. [Text of existing 361.6.]

361.62 Flat-Size Mailpieces. The address on each piece in the mailing must contain the correct numeric 5-digit ZIP Code or ZIP+4 code, or the correct numeric equivalent to the delivery point barcode (see 515.5). As specified in 325.32 and 328.222, each piece must also bear either the correct ZIP+4 or delivery point barcode, prepared under 551 representing information specified in 530, or the correct 5-digit barcode for the delivery address on the piece, prepared under 552.

362 MARKING

* * * * *

**362.6 ZIP+4 Barcoded (Presort) First-Class Mail.**

* * * * *

364 ZIP+4 BARCODED LETTER-SIZE FIRST-CLASS MAIL

**364.1 National Mailings—Presort Requirements**

364.11 General. [Revise the first sentence as follows:] ZIP+4 Barcoded rate national mailings (as defined in 325.111a), claimed at the rates described in 325.12, must consist of letter-size mailpieces (including cards) packaged and trayed under 364.11 through 364.16, or 364.14 through 364.16, as applicable.

* * * * *

365 ZIP+4 PRESORT FIRST-CLASS MAIL—NATIONAL MAILINGS (LETTER-SIZE MAIL ONLY)

* * * * *

365.16 Automation Compatibility. [Change the reference in the first sentence from 520 to 521.]

* * * * *

366 COMBINED LETTER-SIZE PRESORT MAILINGS DESTINATING AT AUTOMATED SITES

* * * * *

366.16 Automation Compatibility. [Change the reference in the first sentence from 520 to 521.]

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**380 Payment of Postage**

* * * * *

382 CARRIER ROUTE FIRST-CLASS, PRESORTED FIRST-CLASS, AND ALL ZIP+4 AND ZIP+4 BARCODED RATES

* * * * *

**382.2 Exact Postage on Each Piece**

* * * * *

382.23 ZIP+4 Barcoded (Presort) Rates—Letter-Size Mailpieces.

* * * * *

[Renumber existing 382.24 and 382.25 as 382.25 and 382.26, respectively; add new 382.24 as follows:]

382.24 ZIP+4 Barcoded (Presort) Rates—Flat-Size Mailpieces. When meter or precanceled stamps are used, flat-size mailpieces in mailings prepared under 570 that qualify for the 3/5 ZIP+4 Barcoded rate, the nonpresorted ZIP+4 Barcoded rate (for flat-size mailpieces), the Presorted First-Class rate, or the single-piece First-Class rate must bear the correct postage at the corresponding rate. If the appropriate denominations of precanceled stamps are not available, mailers may affix a nondenominated precanceled stamp or precanceled stamps with a total value less than the applicable rate, following the procedures in 382.315b.

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**382.3 Postage at the Lowest Rate in the Mailing Affixed to All Pieces in the Mailing**

382.31 Identical Pieces.

* * * * *

382.314 ZIP+4 Barcoded (Presort) Rate Mailings—Letter-Size Mailpieces.

* * * * *

[Renumber existing 382.315 and 382.316 as 382.316 and 382.317, respectively; add new 382.315 as follows:]

382.315 ZIP+4 Barcoded (Presort) Rate Mailings—Flat-Size Mailpieces.

a. General Rule. When all pieces in a mailing of identical-weight flat-size pieces prepared under 570 have meter or precanceled postage affixed, each piece may bear the correct postage at the 3/5 ZIP+4 Barcoded rate provided the applicable documentation requirements in 574 or 575 are met. Additional postage

for pieces qualifying for the nonpresorted ZIP+4 Barcoded rate (for flat-size mailpieces), the Presorted First-Class rate, or the single-piece First-Class rate, as shown in the documentation required by 574.3 or 575, must be paid either by a meter strip affixed to the mailing statement accompanying the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

b. Procedure if Appropriate Precanceled Stamp is Not Available. [Duplicate text of existing 382.314b(2)(c), except change cites from "564.62" to "574.3 or 575."]

* * * * *

382.33 Nonidentical Pieces at All ZIP+4 and ZIP+4 Barcoded rates.

* * * * *

382.332 ZIP+4 Barcoded (Presort) Rate Mailings—Letter-Size Mailpieces

* * * * *

[Renumber existing 382.333 and 382.334 as 382.334 and 382.335, respectively; add new 382.333 as follows:]

382.333 ZIP+4 Barcoded (Presort) Rate Mailings—Flat-Size Mailpieces

a. General Rule. When all pieces in a mailing of nonidentical-weight flat-size pieces prepared under 570 have meter or precanceled postage affixed, each piece may bear the correct postage at the 3/5 ZIP+4 Barcoded rate provided the applicable documentation requirements in 574 are met. Additional postage for pieces qualifying for the nonpresorted ZIP+4 Barcoded rate (for flat-size mailpieces), the Presorted First-Class rate, or the single-piece First-Class rate, as shown in the documentation required by 574.3 or 575, must be paid either by a meter strip affixed to the mailing statement required to accompany the mailing, or through an advance deposit account as provided in Handbook F–1, 524.

b. Procedure if Appropriate Precanceled Stamp is Not Available. [Duplicate text of existing 382.332b(2)(c), except change cites from "564.62" to "574.3 or 575."]

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**382.6 ZIP+4 Barcoded Rate Letter-Size Combined Mailings With Different Postage Payment Methods**

382.61 General. * * *

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c. Each piece in the combined mailings meets the physical requirement of 521.

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## CHAPTER 4—SECOND-CLASS MAIL

**410 Rates and Fees**

**411 Rates**

**411.1 Characteristics Common to All Rates** *

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411.12 Eligibility

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411.125 ZIP+4 Rates. [Add to the beginning of the existing text:] ZIP+4 rates are available only for letter-size mailpieces meeting the physical requirements of 521. * * *

[At the end of what becomes the second sentence, replace "440" with "440 (or 560)."]

411.126 ZIP+4 Barcoded Rates. [Replace the first sentence with the following:] The ZIP+4 Barcoded rates include a discount applied per addressed piece. The ZIP+4 Barcoded rates are available only for letter-size (128.2) and flat-size (128.32) mailpieces prepared under 424.6, and meeting the physical requirements of 521 and 522, respectively, and the applicable level A/G, B3/H3/J3, and B5/H5/J5 sortation for letter-size or flat-size mailpieces in 440 (or 560) and 570, respectively.

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**411.2 Regular Rates**

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411.23 Piece Rates. Each piece rate requires specific preparation as described in 411.113, 411.114, and 411.12. Rates per addressed piece are:

| L | Regular V (All pcs.) L | ZIP+4 (Letter-size only) | ZIP+4 Barcoded (Letter-size only) | ZIP+4 Barcoded (Flat-size only) |
|---|---|---|---|---|
| A | $0.201 | $0.192 | $0.182 | $0.178 |
| B3 | 0.158 | .154 | .147 | .143 |
| B5 | 0.158 | .154 | .139 | .143 |
| C1 | 0.119 | n/a | n/a | n/a |
| C2 | 0.114 | n/a | n/a | n/a |
| C3 | 0.104 | n/a | n/a | n/a |

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**411.3 Preferred Rates**

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411.32 In-County Rates.

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411.326 Piece Rates. Each piece rate requires specific preparation as described in 411.113, 411.114, and 411.12. Rates per addressed piece are:

| L | Regular V (All pcs.) L | ZIP+4 (Letter-size only) | ZIP+4 Barcoded (Letter-size only) | ZIP+4 Barcoded (Flat-size only) |
|---|---|---|---|---|
| J1 | $0.077 | $0.077 | $0.077 | $0.077 |
| J3 | 0.077 | .073 | .073 | .062 |
| J5 | 0.077 | .073 | .060 | .062 |
| K1 | 0.040 | n/a | n/a | n/a |
| K2 | 0.035 | n/a | n/a | n/a |
| K3 | 0.033 | n/a | n/a | n/a |

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411.33 Special Nonprofit Rates.

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411.333 Piece Rates. Each piece rate requires specific preparation as described in 411.113, 411.114, and 411.12. Rates per addressed piece are:

| L | Regular V (All pcs.) L | ZIP+4 (Letter-size only) | ZIP+4 Barcoded (Letter-size only) | ZIP+4 Barcoded (Flat-size only) |
|---|---|---|---|---|
| G | $0.169 | $0.162 | $0.152 | $0.146 |
| H3 | 0.126 | .122 | .116 | .111 |
| H5 | 0.126 | .122 | .109 | .111 |
| I1 | 0.088 | n/a | n/a | n/a |
| I2 | 0.086 | n/a | n/a | n/a |
| I3 | 0.081 | n/a | n/a | n/a |

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411.34 Classroom Rates

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411.343 Piece Rates. Each piece rate requires preparation as described in 411.113, 411.114, and 411.12. Rates per addressed piece are:

| L | Regular V (All pcs.) L | ZIP+4 (Letter-size only) | ZIP+4 Barcoded (Letter-size only) | ZIP+4 Barcoded (Flat-size only) |
|---|---|---|---|---|
| G | $0.169 | $0.162 | $0.152 | $0.146 |
| H3 | 0.126 | .122 | .116 | .111 |
| H5 | 0.126 | .122 | .109 | .111 |
| I1 | 0.088 | n/a | n/a | n/a |
| I2 | 0.086 | n/a | n/a | n/a |
| I3 | 0.081 | n/a | n/a | n/a |

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411.35 Science of Agriculture Rates.

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411.353 Piece Rates. Each piece rate requires specific preparation as described in 411.113, 411.114, and 411.12. Rates per addressed piece are:

| L | Regular V (All pcs.) L | ZIP+4 (Letter-size only) | ZIP+4 Barcoded (Letter-size only) | ZIP+4 Barcoded (Flat-size only) |
|---|---|---|---|---|
| A | $0.201 | $0.192 | $0.182 | $0.178 |
| B3 | 0.158 | .154 | .147 | .143 |
| B5 | 0.158 | .154 | .139 | .143 |

| | | ZIP+4 (Letter-size only) | ZIP+4 Barcoded | |
|---|---|---|---|---|
| L | Regular V (All pcs.) L | | (Letter-size only) | (Flat-size only) |
| C1 | 0.119 | n/a | n/a | n/a |
| C2 | 0.114 | n/a | n/a | n/a |
| C3 | 0.104 | n/a | n/a | n/a |

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420 Classification

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424 ADDITIONAL ELIGIBILITY REQUIREMENTS FOR SPECIFIC RATES

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**424.5 ZIP+4 Rates (Letter-Size Only)**

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424.52 Automation Compatibility. [Change the reference cited "520 through 540" to "521, 530, and 540."]

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**424.6 ZIP+4 Barcoded Rates**

424.61 General. The ZIP+4 Barcoded rates, available for letter- and flat-size publications, include a discount applied to each addressed piece prepared under with 424.62 through 424.64 and the applicable level A/G/J or B/H sortation requirements in 440 or 560 (for letter-size mailpieces) or 570 (for flat-size mailpieces). All ZIP+4 Barcoded rate (discount) is not available for level C/I/K presorted mailpieces.

424.62 Automation Compatibility Requirements. Each piece for which a ZIP+4 Barcoded rate is claimed must meet the applicable physical requirements (see 521 for letter-size mailpieces and 522 for flat-size mailpieces) and must bear the correct ZIP+4 or delivery point barcode prepared under 530 and 550.

424.63 Minimum Quantity.

424.631 Per Mailing.

a. General. There is no specific minimum number of pieces required for a ZIP+4 Barcoded rate second-class mailing. However, at least 85% of the addressed pieces in each ZIP+4 Barcoded rate mailing must bear the correct ZIP+4 or delivery point barcode. All pieces in a ZIP+4 Barcoded rate mailing, regardless of presort level or rate, must meet the applicable requirements of 520, 530, and 550, and the address on each piece in the mailing must contain the correct numeric 5-digit ZIP Code, ZIP+4 Code, or the correct numeric equivalent to the delivery point barcode.

b. Additional Requirements for Flat-Size Pieces. Each piece in a ZIP+4 Barcoded rate mailing of flat-size mailpieces that does not bear the correct ZIP+4 barcode or delivery point barcode (see 424.631) must bear the correct 5-digit barcode for the delivery address on the piece, prepared as specified in 552. Nonbarcoded mailpieces must not be included in a ZIP+4 Barcoded rate mailing of flat-size mailpieces.

424.632 Per Package, Sack, and Tray.

a. Letter-Size Mailpieces. [Text of existing 424.632.]

b. Flat-Size Mailpieces. Each package must contain at least six addressed pieces if claimed at a level B/H/J3/J5 rate; no minimum package size applies to pieces claimed at the level A/G/J1 rates. Each sack must contain at least one package of at least six addressed pieces if that mail is claimed at a level B/H/J3/J5 rate; no minimum applies to sacks containing mail claimed at the level A/G/J1 rates.

424.64 Preparation.

424.641 Presort.

a. Letter-Size Mailpieces. [Text of existing 424.641; replace "441 or 443" with "441, 443, 447, or 560."]

b. Flat-Size Mailpieces. All pieces must be presorted together as required by 572, 573.1, and either 573.2 or 576.

424.642 Packaging, Sacking, Traying, and Palletization.

a. Letter-Size Mailpieces. [Text of existing 424.642; replace "447" with "441, 443, 447, or 560."]

b. Flat-Size Mailpieces. All pieces must be packaged as required by 572 and 573.1, and either sacked as required by 573.2 or palletized as required by 576).

424.65 Rate Eligibility—Letter Size Mailpieces.

[Text of existing 424.643; renumber subsections accordingly.]

424.66 Rate Eligibility—Flat Size Mailpieces.

a. General. Rate eligibility for ZIP+4 Barcoded flat-size mailings is determined by the sortation level of the package in which a mailpiece is placed, regardless of the destination of the sack or pallet to which that package is subsequently sorted. Flat-size mailpieces claimed at a flats barcoded rate cannot be combined on 5-digit pallets with other mailpieces at a carrier route or walk-sequence rate (see 576.42).

b. Flats ZIP+4 Barcoded or Delivery Point Barcoded Mailpieces. Subject to the general eligibility requirements in 424.61 through 424.64, a ZIP+4 barcoded or delivery point barcoded flat-size mailpiece prepared under 573 or 576 can qualify for one of the following:

(1) B5/H5/J5 Flats ZIP+4 Barcoded rate if placed in a 5-digit package containing six or more addressed pieces and sacked or palletized to a 5-digit, optional multicoded city, 3-digit, SCF, or SDC destination.

(2) B3/H3/J3 Flats ZIP+4 Barcoded rate if placed in an optional multicoded city or unique 3-digit package containing six or more addressed pieces and sacked or palletized to an optional multicoded city, 3-digit, SCF, or SDC destination.

(3) A/G/J1 Flats ZIP+4 Barcoded rate if placed in a package containing fewer than six addressed pieces, or in a nonunique 3-digit, SCF, or residual package.

c. 5-Digit Barcoded Mailpieces. Subject to the general eligibility requirements in 424.61 through 424.64, a 5-digit barcoded flat-size mailpiece prepared under 573 or 576 can qualify for one of the following:

(1) B5/H5/J5 or B3/H3/J3 presort rate if placed in a 5-digit, optional multicoded city, or unique 3-digit package containing six or more addressed pieces that is in turn sacked or palletized to a 5-digit, optional multicoded city, 3-digit, SCF, or SDC destination.

(2) A/G/J1 presort rate if placed in a package containing fewer than six addressed pieces or in a nonunique 3-digit, SCF, or residual package.

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429 MAILPIECE CHARACTERISTICS

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**429.2 External Characteristics**

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429.21 Physical Limitations. [Add the following to the end of the last sentence:] "(See 520 for automation-compatibility)."

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445 BUNDLING AND PALLETIZING

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**445.2 Packages and Bundles Presented on Pallets**

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445.22 Package Preparation.

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445.223 Sortation.

a. [Change the end of the first sentence as follows:] "444.21, 444.22, 573.122, 573.13, 573.142, 573.152, and 573.16." [Add the following at the end of section a.] "Preparation of SCF packages is required for barcoded rate flat-size mailings presented on pallets (see 573.152)"

* * * * *

445.224 Package Labels. [Change the first sentence to read as follows:] "Mailers must label packages with either pressure-sensitive labels as

provided in 441.21, 443.22, 444.221, and 572.441, optional endorsement lines as provided in 444.24c or 572.442," or facing slips as provided in 573.18 and 573.27 (for residual packages in a flat-size barcoded rate mailing).

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445.24 Pallet Preparation.

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445.241 Weight and Volume.

a. [Add the following at the end of this section.] "The minimum mail load for 5-digit pallets prepared under 576 as a barcoded rate flat-size mailing is 500 pounds."

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445.243 Labels.

* * * * *

d. Additional Information. [Add the following at the end of the current section:] "Pallets containing automation-compatible flat-size mailpieces prepared under 576 must show the word BARCODED on the contents line of the pallet label. Pallets containing copalletized ZIP+4 Barcoded rate and carrier route presort rate mailings prepared under 576.4 must show the words BARCODED/CARRIER ROUTES (or its authorized abbreviation CAR RTS) on the contents line of the pallet label. The word BARCODED must not be abbreviated on the contents line.

* * * * *

445.323 Sortation.

a. [Change the end of the first sentence as follows:] "444.21, 444.22, 573.122, 573.13, 573.142, 573.152 and 573.16 as applicable for the rates claimed." [Add the following at the end of section a.] "Preparation of SCF packages is required for automation-compatible flat-size mail presented on pallets (see 576.3)"

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445.324 Package Labels. [Change the first sentence to read as follows:] "Mailers must label packages with either pressure-sensitive labels as provided in 441.21, 443.22, 444.221, and 572.441, optional endorsement lines as provided in 444.24c or 572.442," or facing slips as provided in 573.27 (for residual packages in a flat-size barcoded rate mailing).

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445.343 Labels.

* * * * *

d. Additional Information. [Add the following at the end of the current section:] "Pallets containing automation-compatible flat-size mailpieces prepared under 576 must show the word BARCODED on the contents line of the pallet label. Pallets containing copalletized ZIP+4 Barcoded rate and carrier route presort rate mailings prepared under 576.4 must show the words BARCODED/CARRIER ROUTES (or its authorized abbreviation CAR RTS) on the contents line of the pallet label. The word BARCODED must not be abbreviated on the contents lines.

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445.4 Palletizing Sacks

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445.42 Package Preparation. [Change the end of the sentence to read as follows:] "* * * 444.21, 444.22, and 572.4."

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445.43 Sack Preparation.

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445.433 Sack Sortation [Change the end of the first sentence to read as follows.] ". . . 444.32 and 573.2."

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445.44 Pallet Preparation.

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445.441 Weight and Volume.

a. [Add the following at the end of this section.] "The minimum mail load for 5-digit pallets prepared under 576 is 500 pounds."]

* * * * *

445.443 Labels.

* * * * *

d. Additional Information. [Add the following at the end of the current section.] "Pallets containing automation-compatible flat-size mailpieces prepared under 576 must show the word BARCODED on the contents line of the pallet label. Pallets containing copalletized ZIP+4 Barcoded rate and carrier route presort rate mailings prepared under 576.4 must show the words BARCODED/CARRIER ROUTES (or its authorized abbreviation CAR RTS) on the contents line of the pallet label. The word BARCODED must not be abbreviated on the contents line.

* * * * *

**CHAPTER 5—AUTOMATION-COMPATIBLE MAIL**

510 General

511 CONTENT

This chapter contains the physical, addressing, and barcoding requirements for cards and letter- and flat-size mailpieces eligible for the automation-based rates detailed in 313, 411, and 611. This chapter also presents the preparation requirements for automation-compatible flat-size mailpieces (see 570), and alternative preparation requirements for automation-compatible cards and letter-size mailpieces (see 560).

* * * * *

513 PREPARATION REQUIREMENTS

**513.1 Alternative Preparation Requirements for Cards and Letter-Size Mailpieces.**

[Text of existing 513.]

**513.2 Preparation Requirements for Flat-Size Mailpieces**

All automation-based rate mailings of flat-size mailpieces (as defined in 128.32) must be prepared as specified in 572, 573.1 and either 573.2 or 576.

514 DEFINITIONS

**514.1 Automation-Based Rates**

514.11 ZIP+4 Barcoded Rates.

514.111 Cards and Letter-Size Mailpieces.

[Revise the beginning of the existing text to read:] The ZIP+4 Barcoded rates for cards and letter-size mailpieces include . . .

* * * * *

514.112 Flat-Size Mailpieces. The ZIP+4 Barcoded rates for flat-size mailpieces include the 3/5 ZIP+4 Barcoded and nonpresorted ZIP+4 Barcoded First-Class rates; the level A, B, G, H, and J ZIP+4 Barcoded second-class rates; and the 3/5 ZIP+4 Barcoded and Basic ZIP+4 Barcoded third-class rates.

* * * * *

516 [RESERVED]

517 [MAILING]

[Text of existing 570.]

**520 Physical Requirements for All Pieces in Automation-Based Rate Mailings**

521 CARDS AND LETTER-SIZE MAILPIECES

[Redesignate existing sections 521.1 through 521.5 as 521.11 through 521.15; renumber subsections accordingly; no change in text. Renumber existing 522 through 527 as 521.2 through 521.7; renumber subsections accordingly; no change in text, except retitle new 521.6 as Flexibility of Letter-Size Mailpieces.]

522 FLAT-SIZE MAILPIECES

**522.1 Physical Characteristics**

522.11 Size.

522.111 Length. For purposes of automation compatibility, the length (horizontal dimension) of a flat-size mailpiece must be at least 6 inches but not more than 15 inches (see 128.32 and 522.113).

522.112 Height. For purposes of automation compatibility, the height (vertical dimension) of a flat-size mailpiece must be at least 6 inches but

not more than 12 inches (see 128.32 and 522.113).

*522.113 Determination of Length and Height.*

a. Address Orientation. For purposes of barcode rate eligibility, the length and height of flat-size pieces are not determined based on the orientation of the address.

b. Single-sheet and Enveloped Mailpieces. For flat-size mailpieces prepared as single-sheets or in envelopes, full-length wrappers, or full-length sleeves, the length is the longest dimension; the height is the dimension perpendicular to the length.

c. Folded and Bound Mailpieces. For flat-size pieces (such as self-mailers, magazines, newsletters, and folded envelopes) that have a bound or folded edge, the height is the dimension parallel to the bound or folded edge; the length is the dimension that is perpendicular to the height. If the piece is folded more than once or bound and then folded, the height of the mailpiece is based on the final fold. Flat-size pieces with a final fold must be designed so that the address is in view when the final folded edge is to the right and any intermediate bound or folded edge is at the bottom.

522.114 Aspect Ratio. There is no aspect ratio requirement used in determining the automation-compatibility of flat-size mailpieces.

522.115 Thickness. A flat-size mailpiece must be at least 0.009 inch but not more than 0.75 inch thick.

522.116 Preferred Address Location

a. Pieces with Only Closed or Sealed Edges. The preferred address location for single-sheet mailpieces and those prepared in envelopes, full-length wrappers, or full-length sleeves is the center of the address side.

b. Other Mailpieces. For folded and bound mailpieces not prepared in an envelope, full-length wrapper, or full-length sleeve, the preferred address location is parallel to either edge of the upper right corner when the bound edge of final fold is to the right (see Exhibit 429.3).

522.12 Shape. Each piece in the mailing must be rectangular in shape.

522.13 Weight. The weight of each piece in a First-Class mailing must not exceed 11 ounces. The weight of each piece in a second- or third-class mailing must be less than 16 ounces.

522.14 Prohibitions.

522.141 Wrappings. Polywrapped, polybagged, or shrinkwrapped mailpieces are not acceptable in a mailing claimed at an automation-based rate.

Note: The Postal Service is evaluating suitable materials for automation-compatibility. As soon as such materials can be identified, the Postal Service will announce changes to this prohibition.

522.142 Closures.

a. Clasps, String, Buttons. Clasps, string, buttons, or like materials must not be affixed to mail claimed at an automation-based rate. Other protrusions that impede or damage mail processing equipment are also prohibited.

b. Staples. Staples must not be used as a substitute for tabs or wafer seals on mail claimed at an automation-based rate. As a method of binding, staples may be placed in the fold or spine of a magazine or booklet-type or similar mailpiece if parallel with the bound edge, tightly and securely inserted, and not protruding so as to damage or interfere with automated processing equipment.

522.15 Tabs, Wafer Seals, Tape, and Glue

522.151 Noninterference. Tabs, wafer seals, tape, or glue must not interfere with recognition of postage information, rate markings, the delivery or return addresses, or the barcode. If any part of the barcode is printed on a tab or wafer seal, that tab or wafer seal must meet the background reflectance criteria in 551.4.

522.152 Adhesion Requirements. [Copy text of existing 521.53.]

522.153 Cellophane Tape. Subject to 522.151, cellophane tape may be used as the closure for a flat-size mailpiece, but it may not be placed over the barcode or where the barcode will be printed. No part of the barcode may be printed on cellophane tape.

522.154 Glue. [Copy text of existing 521.55.].

522.16 Flexibility and Rigidity

522.161 Flexibility. A flat-size mailpiece must have sufficient flexibility to bend so that it fits between 2 concentric arcs drawn on a horizontal flat surface, one with a radius of 16.72 inches and the other with a radius of 15.72 inches. The piece must be positioned vertically so that the bound, folded, or final folded edge (as applicable) is perpendicular to the surface where the arcs are drawn (see Exhibit 522.161).

522.162 Rigidity. A flat-size mailpiece must have sufficient rigidity so that, when placed flat on a surface so that it extends unsupported 5 inches off that surface, no part of the edge of the mailpiece that is opposite the bound, folded, or final folded edge (as applicable) deflects either more than 1¾ inches (if the mailpiece is less than ⅛ inch thick) or more than 2⅜ inches (if the mailpiece is ⅛ inch thick up to the maximum ¾ inch thick). See Exhibit 522.162.

522.163 Test Device. The test described in 522.161 and 522.162 must be performed using a "Flat Mail Machinability Tester," constructed to meet Postal Service specification USPS–STD–28, following the instructions for use of that device.

522.164 Obtaining Test Devices, Instructions, and Information. Although the Postal Service does not test flat-size mailpiece flexibility or rigidity for mailers, the Postal Service provides the "Flat Mail Machinability Tester" to mailers and also provides technical assistance to mailers who plan to test their flat-size mailpieces for flexibility and rigidity, or who wish to fabricate or use a testing device that meets postal specifications. Information and assistance is available from the field division director, marketing and communications, serving the mailer's location (see 132).

522.17 Uniformity.

522.171 Surface. The exterior surface of flat-size mailpieces must have no protuberances caused by prohibited closures (see 522.142), have no attachments except as provided in 522.712, have no irregularly-shaped or distributed contents (see 522.172), and have no untrimmed excess material from the envelope, wrapper, or sleeve.

522.172 Attachments. An attachment to a flat-size mailpiece must be permanently, securely, and uniformly affixed to the front or back cover to a bound, folded, or otherwise closed edge that can be inserted into flat sorting machines as the leading edge for processing. In addition, the attachment must consist of a single sheet of the same size as the cover, and meet the requirements of 429.2, 522.171, and 522.174.

522.173 Contents. The contents of a flat-size mailpiece must be of approximately uniform thickness. Where applicable, the contents must also be of approximately the same size as the envelope, wrapper, or sleeve in which they are mailed. If the contents are of irregular thickness or significantly smaller than the envelope, wrapper, or sleeve in which mailed, those contents must be prepared to meet the requirements of 522.171 and secured in place, if necessary, to prevent shifting within the wrapping during processing.

522.174 Regular Shape. Each flat-size mailpiece must have a smooth and regular shape, free of creases, folds, tears or other irregularities not compatible with processing on automated equipment.

522.2 Preparation for Mailing

522.21 General. It is preferred that each flat-size mailpiece be prepared in an envelope or equivalent wrapping that is closed on all four sides and is free of untrimmed excess material. Each such mailpiece, as well as folded flat-size self-mailers (formed of single or multiple sheets), flat-size cards, and flat-size booklet-type mailpieces and magazines must meet the requirements of 522.1 and 522.3. The barcode must appear on the address side of the mailpiece (see 522.113 for pieces with more than one folded edge).

522.22 Additional Requirements for Booklet-Type Mailpieces and Magazines. The contents of flat-size mailpieces prepared in sleeves or other wrappers must be sufficiently secure in the sleeve or wrapper to stay in place during processing. If material bearing the delivery address or barcode for the mailpiece is enclosed in a partial wrapper, that wrapper must be sufficiently secure to prevent the contents from shifting and obscuring the delivery address or barcode.

**522.3 Labels and Stickers on Outside of Mailpieces**

[Duplicate existing 527; renumber subsections accordingly; no change in text.]

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**530 Accuracy in Addresses and ZIP+4 Codes**

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532 REQUIRED DOCUMENTATION

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**532.1 General**

[Add the following to the beginning of this section] "Except as provided in 575.2 (flat-size barcoded rate mailings in a single mailing job) * * *"

* * * * *

**532.2 Description of Required Documentation**

532.21 Form 3553 Requirements. [Add the following to the end of the first sentence:] "* * * except for flat-size barcoded rate mailings in a single mailing job as provided in 575.2."

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**540 Nonbarcoded Mailpieces Qualifying for ZIP+4 Rates**

541 General

**541.1 Applicability**

The requirements in 542 through 546 apply to all letter-size mailpieces (including first-class card rate mail) claimed at a ZIP+4 rate except those on which the requirement for a ZIP+4 code is met by a ZIP+4 barcode or delivery point barcode on the mailpiece in accordance with the requirements in 550. Only letter-size mailpieces may be claimed at a ZIP+4 rate.

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**550 Barcoded Pieces**

**551 ZIP+4 BARCODE REQUIREMENTS**

* * * * *

**551.2 Barcode Location**

551.21 General

551.211 Cards and Letter-Size Mailpieces. On cards and letter-size mailpieces, the ZIP+4 barcode or delivery point barcode must be located either within the barcode read area, in the lower right corner of the address side of the mailpiece under 551.22 and 551.23, or within the address block as prescribed in 551.24.

551.212 Flat-Size Mailpieces. On flat-size mailpieces, the ZIP+4 barcode or delivery point barcode must be located on the address side of the mailpiece as provided in 551.25.

551.22 Barcode Clear Zone (Lower Right Corner)—Letter-Size Mailpieces

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551.23 Barcode Placement on Letter-Size Mailpieces—Lower Right Corner

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551.24 Barcode Placement on Letter-Size Mailpieces—Address Block

[Redesignate existing 551.25, 551.251, 551.252, and Exhibit 551.252 as 551.24, 551.241, 551.242, and Exhibit 551.242, respectively; no change in text.]

* * * * *

551.25 Barcode Placement on Flat-Size Mailpieces

551.251 General. The ZIP+4, delivery point, or 5-digit barcode must be placed on the address side of the mailpiece. Regardless of location, the barcode must be at least ⅛ inch from any edge of the mailpiece.

551.252 In Address Block. Barcodes placed in the address block (the preferred location) must meet the requirements of 551.242a–b, 551.242d–f, and 551.242i–j.

551.253 On Inserts. Barcodes placed on inserts must meet the requirements of 551.723, 551.731, and 551.733.

551.254 Background. Regardless of the presence of other printing or materials (see 522.3) on the mailpiece, that portion of the surface of the mailpiece on which the barcode is printed must meet the reflectance requirements of 551.4.

551.26 Duplicate Barcode Prohibition. The address side of a flat-size mailpiece must not bear more than one POSTNET-format barcode. This barcode must be correct for the delivery address on the mailpiece. Other mailer-applied non-POSTNET barcodes may appear on the address side if their format is not intelligible or confusing to automated postal equipment. Advice on the use of other barcode formats may be obtained from the field division automation readability specialist.

* * * * *

**551.5 Skew and Baseline Shift**

551.51 Cards and Letter-Size Mailpieces. [Insert text of existing 551.5 and add the following at the end of the last sentence.] "(see Exhibit 551.5)."

551.52 Flat-Size Mailpieces

551.521 Rotational Skew. The maximum rotational skew acceptable on a flat-size mailpiece is ±10 degrees from a perpendicular to the baseline of the barcode. Rotational Skew is the slanting of the individual bars either more or less than the ideal 90-degree angle from the baseline of the barcode (see Exhibit 551.5).

551.522 Baseline Shift. The individual bars of a barcode on a flat-size mailpiece must not be vertically offset more than 0.005 inch from the average baseline of the barcode (see Exhibit 551.5).

551.523 Positional Skew. There is no positional skew requirement for barcodes on flat-size mailpieces.

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552 5-DIGIT BARCODE

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**552.3 Barcode Location for Letter-Size Mailpieces**

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**580 Letter-Size Mailpieces—Rate Applicability, Grouping/Packaging, Traying and Documentation Requirements**

* * * * *

**570 Flat-Size Mailpieces—Rate Applicability, Packaging, Sacking, Palletization and Documentation Requirements**

571 [RESERVED]

572 GENERAL REQUIREMENTS

**572.1 Applicability**

All presort rate mailings of first-, second-, and third-class flat-size mailpieces claimed at a barcoded rate must be presorted in packages (see 573.1) and either sacked (see 573.2) or, for second- and third-class pieces, palletized (see 576). First-class flat-size nonpresorted ZIP+4 barcoded rate mailings must be packaged and sacked under 577.

**572.2 Rate Eligibility**

Flat-size mailpieces are eligible for automation-based first-, second-, and third-class rates as described in 325.14, 328.1, 411.126, and 628.3, respectively.

**572.3 Prohibited Combinations**

572.31 Barcoded Rate Mailings and Carrier Route Mailings. A single mailing cannot include pieces at both carrier route rates (including walk-sequence) and barcoded rates.

572.32 Classes and Mail Processing Categories. A single barcoded flat-size mailing must not contain pieces of different classes or of different processing categories.

**572.4 General Package Preparation**

572.41 Facing and Counterstacking. Each piece in a package must be faced in the same direction with a delivery address facing up and visible on the top piece in the package. Counterstacking (i.e., reverse-stacking or cross-stacking) groups of pieces within a package to ensure a leveled off or squared-off package is permitted under the following conditions:

a. All pieces in the package must have the address side facing up.

b. The pieces in the package must be divided into groups containing an approximately equal number of pieces, with every other group of pieces rotated 180 degrees.

c. A maximum of four groups within a package may be made, although two groups within a package is preferred.

572.42 Thickness. Flat-size mailpieces should be prepared in as few packages as possible. However, it is recommended that packages of flat-size mailpieces prepared in sacks not exceed 6 inches. Packages on pallets must meet the requirements of 576.

572.43 Securing Packages

572.431 Method. Packages must be secured by flat plastic strap, rubber bands, or string placed tightly around both the length and girth of the package. Elastic strapping may be used if approved by the Engineering and Development Center (see 572.432). It is strongly recommended that whatever material is used to secure the package that it first be tightly placed around the longer dimension, and then around the shorter dimension of the package. Instead of (or in addition to) strapping, the entire package may be enclosed in heavy gauge plastic or shrinkwrap. The strapping or wrapping material must not be applied or located so as to obstruct the address or sortation markings on the top piece in the package, or to inhibit the machinability of the mailpieces.

572.432 Testing of Elastic Strapping Material. [Duplicate existing 561.223; amend internal cites accordingly.]

572.44 Labeling Packages

572.441 Standard Package Labeling. Except when optional endorsement lines are used as provided by 572.442, the correct pressure-sensitive label required by 573.1 or a facing slip required by 573.16, 573.27, or 577 must be firmly affixed on the address-side of the top piece in each package next to the address label.

572.442 Optional Package Labeling—With Optional Endorsement Lines. [Duplicate section 441.232; amend internal cites accordingly; in new 572.442c, delete existing examples for firm, carrier route, optional SDC, state, and mixed state packages. Add a new example for residual packages and for packages in First-Class Nonpresorted Flats barcoded rate mailings) as follows:]

"On RESIDUAL PACKAGES use * * * * * * * * * * WORKING."

* * * * *

**572.5 General Requirements for Sack Preparation**

572.51 Weight. The weight of a sack (or pouch) and its contents must not exceed 70 pounds.

572.52 Equipment. Packages of flat-size mailpieces prepared under 573.1 or 577 must be sorted into green nylon pouches or sacks (for first-class mail, as directed by the postmaster), into brown sacks (for second-class mail), or into white canvas sacks (for third-class mail). Pallets may be used for packages or sacks of presorted second- and third-class pieces as provided by 576.

572.53 Sack Labels

572.531 General. The applicable sack label (see 572.534, 573.2, and 577) must be securely placed in the label holder of each sack. Sack labels supplied by the Postal Service bear machine-printed barcodes that enable sortation on automated equipment. Second- and third-class mailers who produce their own labels are urged to prepare them with barcodes as specified in 572.537.

572.532 Physical Specifications

a. Sack Labels. Strip labels to fit label holders in sacks must be printed on 70-pound or heavier stock that is white or manila if used for first- or third-class mail, or pink if used for second-class mail, with a vertical dimension of 0.965 inch (+0.015 inch) and a horizontal dimension of 3.312 inches (+0.062 inch).

b. Tray/Pouch Labels. Tray labels required to fit the size of the label holder in pouches must meet the specifications in 561.47.

572.533 Method of Preparation. It is strongly recommended that sack labels be machine-printed to ensure legibility.

572.534 Content of Printed Text Lines

a. Description. There are three printed lines required on sack labels:

Line 1—Destination,
Line 2—Contents, and
Line 3—Mailer name and location.

The information contained on these printed text lines must be specified in 573.2, 576, 577, as applicable.

b. Line 1—Destination. Line 1, the destination line, must be the first visible line on the sack label. It must be completely visible when the label is placed in the label holder. To ensure such visibility, mailers should print the top line so that it is no less than ⅛ (0.125) inch below the top of the label when the label is cut and prepared for use. The destination information must be as specified in 573.2, 576, or 577, as applicable.

c. Abbreviations. [Duplicate text of existing 441.321e, except replace cites in 441.321e(4) with "573.2."]

d. Line 2—Contents. The contents line must be the second visible line of the sack label and must bear the information required by 573.2 or 577, as applicable. First-Class, second-class, and third-class mail must show "FCM," "2C" or "NEWS" (as appropriate), or "3C," respectively, followed by "FLATS BARCODED." Second-Class optional city sacks must also bear the word "CITY." SDC sacks must also show the abbreviation for the state or states served by the SDC and additional codes, if appropriate, as shown in Exhibit 122.63f for second-class mail or Exhibit 122.63g for third-class mail. Sacks of residual mail (see 573.26) must also bear the word "WORKING" or the abbreviation "WKG."

e. Line 3—Mailer Name and Location. The third required line of the sack label must show the name of the mailer and the city and two-letter state abbreviation of the mailer's location.

572.535 Extraneous Information on Sack Labels

[Duplicate text of existing 441.323, except replace cities in 441.323b and 441.323c with "573.2" and delete references to bundle or pallet labels. Revise new 573.135d, and add new 573.135g as follows:]

d. Mailer Name and Location. The publication title or abbreviation; a mailer code assigned by the Postal Service; or "Mailer," "From," or "FR" may appear before the name of the mailer. Mailer codes and other extraneous information may follow to the right of the location of mailing.

provided any numeric format used does not have the appearance of a ZIP Code or 3-digit ZIP Code prefix.

* * * * *

g. Interference with Barcode. Extraneous information on sack labels must appear to the right of the "quiet zone" (see 573.137e) and must not interfere with scanning and sorting by automated equipment.

572.536 Printing Density of Text Lines. [Duplicate text of existing 446.25; revise cite to read "573.137e."]

572.537 Barcode Specifications for Optional Barcoded Sack Labels.

[Duplicate text of existing 446.3; renumber subsections accordingly; replace cites to 446.34 and 446.24 with "572.537d" and "572.535g," respectively. Duplicate existing Exhibit 446.32; redesignate as Exhibit 572.537; amend cites accordingly. Do not duplicate existing Exhibit 446.36; retain cite to that Exhibit in renumbered 572.537f.]

## 573 SORTATION REQUIREMENTS FOR PRESORTED FLAT-SIZE BARCODED RATE MAILINGS

### 573.1 Package Sortation

573.11 General Requirements

573.111 Sequence. All pieces in the same presorted flat-size barcoded rate mailing must be presorted together to the finest extent in the sequence and manner required by 573.12, 573.13 (second-class only), 573.14, and 573.15. Firm packages are prohibited in a barcoded rate mailing of flat-size mailpieces.

573.112 Package Size. All pieces for the same package destination should be secured together in a single package when physically possible. When the size of individual pieces in a package or the total number of pieces to a particular package destination is large enough to require physical preparation of more than one package to that destination, mailers are urged to minimize the number of packages by preparing large packages measuring as close as possible to the recommended 6-inch maximum. When a group of pieces to a package destination must be prepared in more than one package due to the size of individual pieces or the total number of pieces, it does not affect rate eligibility provided the minimum number of pieces required for preparation of the particular destination sortation level is met as set forth in 573.12 through 573.15. Pieces for the same package destination should be placed in the same sack or level of sack wherever possible.

573.12 Required 5-Digit Packages

573.121 First-Class Mail. When there are 10 or more addressed pieces for the same 5-digit ZIP Code destination, they must be prepared in a 5-digit package (or packages as provided in 572.42 and 573.112) for that destination. A red "D" label must be placed on the top piece in the package or the correct 5-digit optional endorsement line must be used (see 572.442). When there are fewer than 10 pieces for a particular 5-digit ZIP Code destination in a mailing, the pieces to that 5-digit ZIP Code must not be prepared as 5-digit packages.

573.122 Second-Class Mail. When there are six or more addressed pieces of mail for the same 5-digit ZIP Code destination, they must be prepared in a 5-digit package (or packages as provided in 572.42 and 573.112) for that destination. A red "D" label must be placed on the top piece in the package or the correct 5-digit optional endorsement line must be used (see 572.442). Groups of fewer than six pieces for a particular 5-digit ZIP Code destination may be prepared in 5-digit packages, however pieces in such packages do not qualify for level B5/H5/J5 ZIP+4 Barcoded rates for flats.

573.123 Third-Class Mail. When there are 10 or more addressed pieces for the same 5-digit ZIP Code destination, they must be prepared in a 5-digit package (or packages as provided in 572.42 and 573.112) for that destination. A red "D" label must be placed on the top piece in the package or the correct 5-digit optional endorsement line must be used (see 572.442). When there are fewer than 10 pieces for a particular 5-digit ZIP Code destination in a mailing, the pieces to that 5-digit ZIP Code must not be prepared as 5-digit packages.

573.13 Optional Multicoded City Packages (Second-Class Mail Only). After preparing required 5-digit packages under 573.12, if there are six or more addressed pieces for one of the multicoded cities listed in Exhibit 122.63a, they may be prepared in a multicoded city package (or packages as provided in 572.42 and 573.112) for that destination. A yellow "C" label must be placed on the top piece in the package or the correct multicoded city optional endorsement line must be used (see 572.442). Multicoded city packages may be prepared by the mailer on a selected basis. Groups of fewer than six pieces for a particular multicoded city destination may be prepared in optional multi-coded city packages, however, pieces in such packages do not qualify for level B3/H3/J3 ZIP+4 Barcoded rates for flats.

573.14 Required 3-Digit Packages

573.141 First-Class Mail. If, after preparing packages under 573.12, there are 50 or more addressed pieces for the same 3-digit ZIP Code area, they must be prepared in a 3-digit package (or packages as provided 572.42 and 573.112) for that destination. The destination facilities associated with all assigned 3-digit ZIP Code prefixes are listed in Exhibits 122.63b-d. A green "3" label must be placed on the top piece in the package or the correct 3-digit optional endorsement line must be used (see 572.442). When there are fewer than 50 pieces for a particular 3-digit ZIP Code destination in a mailing, the pieces to that 3-digit ZIP Code destination must not be prepared as 3-digit packages.

573.142 Second-Class Mail. If, after preparing packages under 573.12 and 573.13, there are six or more addressed pieces for the same 3-digit ZIP Code area, they must be prepared in a 3-digit package (or packages as provided in 572.42 and 573.112) for that destination. The destination facilities associated with all assigned 3-digit ZIP Code prefixes are listed in Exhibits 122.63b-d. A green "3" label must be placed on the top piece in the package or the correct optional endoresement line must be used (see 572.442). Groups of fewer than six pieces for a particular 3-digit ZIP Code destination may be prepared in 3-digit packages, however only pieces in packages of six or more addressed pieces for unique 3-digit ZIP Codes qualify for level B3/H3/J3 ZIP+4 Barcoded rates for flats.

573.143 Third-Class Mail. If, after preparing packages under 572.12, there are 10 or more addressed pieces for the same 3-digit ZIP Code area, they must be prepared in a 3-digit package (or packages as provided in 572.42 and 573.112) for that destination. The destination facilities associated with all assigned 3-digit ZIP Code prefixes are listed in Exhibits 122.63b-d. A green "3" label must be placed on the top piece in the package or the correct 3-digit optional endorsement line must be (see 572.442). When there are fewer than 10 pieces for a particular 3-digit ZIP Code destination in a mailing, the pieces to that 3-digit ZIP Code must not be prepared as 3-digit packages.

573.15 Required SCF Packages.

573.151 First-Class Mail. If, after preparing packages under 573.12 and 573.14, there are 10 or more addressed pieces for the same SCF destination, they must be prepared in an SCF package (or packages as provided in 572.42 and 573.112) for that destination. SCF destinations, for purposes of this section, and the ZIP Code ranges each serves, are listed in Exhibit 122.63d. A green "3" label must be placed on the top piece in the package or the correct SCF optional endorsement line must be used (see 572.442). When there are fewer

than 10 pieces for a particular SCF destination in a mailing, the pieces to that SCF must not be prepared as SCF packages.

573.152 Second-Class Mail. If, after preparing packages under 573.12 through 573.14, there are six or more addressed pieces for the same SCF destinations, they must be prepared in an SCF package (or packages as provided in 572.42 and 573.112) for that destination. SCF destinations, for purposes of this section, and the ZIP Code ranges each serves, are listed in Exhibit 122.63d. A green "3" label must be placed on the top piece in the package or the correct SCF optional endorsement line must be used (see 572.442). Groups of fewer than six pieces for a particular SCF destination may be prepared in SCF packages.

573.153 Third-Class Mail. If, after preparing packages under 573.12 and 573.14, there are 10 or more addressed pieces for the same SCF destination, they must be prepared in an SCF package (or packages as provided in 572.42 and 573.112) for that destination. SCF destinations, for purposes of this section, and the ZIP Code ranges each serves, are listed in Exhibit 122.63d. A green "3" label must be placed on the top piece in the package or the correct SCF optional endorsement line must be used (see 572.442). When there are fewer than 10 pieces for a particular SCF destination in a mailing, the pieces to that SCF must not be prepared as SCF packages.

573.16 Required Residual Packages. After preparing packages under 573.12 through 573.15, all remaining pieces are residual and must be prepared in accordance with 573.27.

**573.2 Sack Sortation**

573.21 General Requirements

573.211 Sortation. All pieces in the mailing must be presorted together to the finest extent in the sequence and manner required by 573.22 through 573.26. Remaining residual pieces must be prepared under 573.27.

573.212

Minimum Volume per Sack.

a. General Rule. All 5-digit, 3-digit, and SCF sacks of First- or third-class mail must contain at least 125 pieces or 15 pounds of mail as required under 573.22, 573.24, and 573.25. First-Class ADC and third-class SDC sacks may contain less than 125 pieces or 15 pounds of pieces. There is no minimum volume per sack for second-class mail.

b. Additional Requirements for Mailings of Nonidentical-Weight Pieces. For purposes of 573.212a and 573.22 through 572.27, mailers who prepare First- or third-class mailings of nonidentical-weight pieces must either:

(1) Sort based on the average weight of the mailpieces (i.e., divide the total weight of the mail by the number of pieces to determine whether the required number of pieces or pounds will occur first); or

(2) Sort based on the actual piece count or weight of the mail for each sack, provided documentation can be supplied with the mailing that shows (specifically for each 5-digit, 3-digit, and SCF sack) the number of pieces and the total weight of those pieces.

573.213 Declaration of Criterion. To facilitate postal verification, the mailer must declare on the mailing statement required to accompany the mail which criterion (number of pieces and/or weight of the mail) was used to presort the mailing. An abbreviated designation is sufficient (e.g., "PCS" for number of pieces, "WT" for weight of the mail, "BOTH" if both were used as provided by 573.212b(2)).

573.22 5-Digit Sacks

573.221 Optional First-Class 5-Digit Sacks. If there are 125 or more addressed pieces or 15 or more pounds of addressed pieces (whichever occurs first) for the same 5-digit ZIP Code destination, a 5-digit sack for that destination may be prepared. Five-Digit sacks containing fewer than 125 addressed pieces or 15 pounds of addressed pieces are not permitted. (Also see 573.212 and 573.213.)

573.222 Required Second-Class 5-Digit Sacks. If there are four or more packages of addressed pieces of second-class mail for the same 5-digit ZIP Code destination, a 5-digit sack for that destination must be prepared. Sacks may contain fewer than four packages of addressed pieces. (Also see 573.212 and 573.213.)

573.223 Required Third-Class 5-Digit Sacks. If there 125 or more addressed pieces or 15 or more pounds of addressed pieces of third-class mail (whichever occurs first for the same 5-digit ZIP Code destination, a 5-digit sack for that destination must be prepared. Five-digit sacks containing fewer than 125 addressed pieces or 15 pounds of addressed pieces are not permitted. (Also see 573.212 and 573.213.)

573.224 Labeling 5-Digit Sacks. Five-digit sacks must be labeled as follows:

Line 1: City, two-letter state abbreviation, and 5-digit ZIP Code of destination
Line 2: Class of contents, followed by FLATS BARCODED
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:
NEW TOWN ND, 58763
3C FLATS BARCODED
LFR CO OLD TOWN ME

573.23 Optional Multicoded City Sacks (Second-Class Mail Only). After preparation of sacks under 573.22, an optional multicoded city sack may be prepared to one of the multicoded cities listed in Exhibit 122.63a whenever there are four or more packages of addressed pieces of mail for that destination. (Also see 573.212 and 573.213.) Multicoded city sacks may be prepared by the mailer on a selected basis, and may contain fewer than four packages of addressed pieces. First- or third-class mail must not be prepared in optional multicoded city sacks. Optional multicoded city sacks must be labeled as follows:

Line 1: City, two-letter state abbreviation, and lowest 5-digit ZIP Code of the city shown in Exhibit 122.63a
Line 2: 2C, followed by FLATS BARCODED, and "CITY" directly under ZIP Code on line 1
Line 3: Name of mailer and city and two-letter state abbreviation of mailer location

Example:
IRVING TX, 75015
2C FLATS BARCODED CITY
JFR CO BERLIN NH

573.24 3-Digit Sacks

573.241 Optional First-Class 3-Digit Sacks. After preparing sacks under 573.22, if there are 125 or more addressed pieces or 15 or more pounds of addressed pieces (whichever occurs first) for the same 3-digit ZIP Code area, a 3-digit sack may be prepared for the corresponding destination facility. The destination facilities associated with all assigned 3-digit ZIP Code prefixes are listed in Exhibits 122.63b–d. Three-digit sacks containing fewer than 125 addressed pieces or 15 pounds of addressed pieces are not permitted. (Also see 573.212 and 573.213.)

573.242 Required Second-Class 3-Digit Sacks. After preparing sacks under 573.22 and 573.23, if there are four or more packages of addressed pieces for the same 3-digit ZIP Code area, a 3-digit sack must be prepared for the corresponding destination facility. The destination facilities associated with all assigned 3-digit ZIP Code prefixes are listed in Exhibits 122.63b–d. Sacks may contain fewer than four packages of addressed pieces. (Also see 573.212 and 573.213.)

573.243 Required Third-Class 3-Digit Sacks. After preparing sacks under 573.22, if there are 125 or more addressed pieces or 15 or more pounds

of addressed pieces (whichever occurs first) for the same 3-digit ZIP Code area, a 3-digit sack must be prepared for the corresponding destination facility. The destination facilities associated with all assigned 3-digit ZIP Code prefixes are listed in Exhibits 122.63b–d. Three-digit sacks containing fewer than 125 addressed pieces or 15 pounds of addressed pieces are not permitted. (Also see 573.212 and 573.213.)

573.244 Labeling 3-Digit Sacks. Three-digit sacks must be labeled as follows:

a. Unique 3-Digit ZIP Code Prefixes.

Line 1: City, two-letter state abbreviation, and unique 3-digit prefix (see Exhibit 122.63b)
Line 2: Class of contents, followed by FLATS BARCODED
Line 3: Name of mailer and city and two-letter state abbreviation of mailer location
Example:
FLUSHING NY, 113
3C FLATS BARCODED
H2O CO PLUMMER MN

b. Other 3-Digit ZIP Code Prefixes.

Line 1: Name of SCF and two-letter state abbreviation of SCF, followed by 3-digit prefix of the pieces contained in the sack (see Exhibits 122.63c or 122.63d for name of SCF serving each 3-digit area) Note: The letters "SCF" are not used.
Line 2: Class of contents, followed by FLATS BARCODED
Line 3: Name of mailer and city and two-letter state abbreviation of mailer location
Example:
OIL CITY PA 163
FCM FLATS BARCODED
PIPECO PRUDHOE BAY AK

573.25 SCF Sacks

573.251 Required First-Class SCF Sacks. After preparing sacks under 573.22 and 573.24, if there are 125 or more addressed pieces or 15 or more pounds of addressed pieces (whichever occurs first) for destination ZIP Codes within the service area of the same SCF serving more than one 3-digit ZIP Code area, those packages must be prepared in an SCF sack(s) for the corresponding destination SCF facility. SCF destinations, for purposes of this section, and the ZIP Code ranges each serves, are listed in Exhibit 122.63d. SCF sacks containing fewer than 125 addressed pieces or 15 pounds of addressed pieces are not permitted.

573.252 Required Second-Class SCF Sacks. After preparing sacks under 573.22 through 573.24, if there are four or more packages of addressed pieces for destination ZIP Codes within the service area of the same SCF serving more than one 3-digit ZIP Code area, those packages must be prepared in an SCF sack(s) for the corresponding destination SCF facility. SCF destinations, for purposes of this section, and the ZIP Code ranges each serves, are listed in Exhibit 122.63d. SCF sacks may contain fewer than four packages.

573.253 Required Third-Class SCF Sacks. After preparing of sacks under 573.22 and 573.24, if there are 125 or more addressed pieces or 15 or more pounds of addressed pieces (whichever occurs first) for destination ZIP Codes within the service area of the same SCF serving more than one 3-digit ZIP Code area, those packages must be prepared in an SCF sack(s) for the corresponding destination SCF facility. SCF destinations, for purposes of this section, and the ZIP Code ranges each serves, are listed in Exhibit 122.63d. SCF sacks containing fewer than 125 addressed pieces or 15 pounds of addressed pieces are not permitted.

573.254 Labeling SCF Sacks. SCF sacks must be labeled as follows:

Line 1: Letters "SCF" followed by city, two-letter state abbreviation, and 3-digit prefix for SCF as shown in Exhibit 122.63d
Line 2: Class of contents, followed by FLATS BARCODED
Line 3: Name of mailer and city and two-letter state abbreviation of mailer location
Example:
SCF WATERLOO IA, 506
NEWS FLATS BARCODED
ELBA PUBL NAPOLEON MO

573.26 ADC or SDC Sacks

573.261 Required First-Class ADC Sacks. After preparing sacks under 573.22, 573.24, and 573.25, all remaining 5-digit, 3-digit and SCF packages for destination ZIP Codes within the service area of the same Area Distribution Center (ADC) must be prepared in an ADC sack. ADC destinations and the ZIP Code ranges each serves, are listed in Exhibit 122.63e. There is no minimum quantity for ADC sacks. ADC sacks must be labeled as follows:

Line 1: Applicable label information shown in Exhibit 122.63e.
Line 2: FCM, followed by FLATS BARCODED
Line 3: Name of mailer and city and two-letter state abbreviation of mailer location
Example:
DIS ALBANY NY, 120
FCM FLATS BARCODED
ABC CO WASHINGTON DC

573.262 Required Second-Class SDC Sacks. After preparing sacks under 573.22 through 573.25, remaining 5-digit, optional city, 3-digit, and SCF packages for destination ZIP Codes within the service area of the same State Distribution Center (SDC) must be prepared in an SDC sack. SDC destinations and the ZIP Code ranges each serves, are listed in Exhibit 122.63f. There is no minimum quantity for SDC sacks. SDC sacks must be labeled as follows:

Line 1: Applicable label information shown in Exhibit 122.63f
Line 2: Contents (2C or NEWS) followed by FLATS BARCODED and the abbreviation for the state or states served by the SDC and additional codes, if appropriate, as shown in Exhibit 122.63f. Additional codes must be right justified.
Line 3: Name of mailer and city and two-letter state abbreviation of mailer location
Example:
DIS PITTSBURGH PA, 150
2C FLATS BARCODED PA
NALCO NEWS ALBANY NY

573.263 Required Third-Class SDC Sacks. After preparing sacks under 573.22, 573.24, and 573.25, all remaining 5-digit, 3-digit, and SCF packages for destination ZIP Codes within the service area of the same State Distribution Center (SDC) must be prepared in an SDC sack. SDC destinations and the ZIP Code ranges each serves are listed in Exhibit 122.63g. There is no minimum quantity for SDC sacks. SDC sacks must be labeled as follows:

Line 1: Applicable label information shown in Exhibit 122.63g.
Line 2: 3C FLATS BARCODED followed by the abbreviation for the state or states served by the SDC, and additional codes, if appropriate, as shown in Exhibit 122.63g. Additional codes must be right-justified.
Line 3: Name of mailer and city and two-letter state abbreviation of mailer location
Example:
BMC PITTSBURGH PA, 15193
3C FLATS BARCODED PA, 000
EXETER CO DUPONT PA

573.27 Required Residual Packaging and Sacking for First-, Second-, and Third-Class Mailings. Pieces remaining after preparing packages under 573.12 through 573.15 are residual. Residual pieces must be packaged and sacked in one of the following ways. The physical separation option in 573.272 may be used only within mailings of identical weight pieces.

573.271 ZIP Code Sequencing and Listing. Residual pieces must be put in 3-digit ZIP Code sequence and packaged.

The packages should measure as close to 6 inches thickness as possible. To facilitate verification, all residual pieces for the same 3-digit ZIP Code area should be placed in the same package. Residual packages must be labeled using the residual optional endorsement line in 572.442 or a facing slip. If a facing slip is used it must be placed on the address side of the top copy in each residual package and bear the word "WORKING" or its authorized abbreviation "WKG." Residual packages must be placed in residual sacks. Sacks should be as full as possible up to the 70-pound limit. The last sack may be less than full.

573.272 Physical Separation Option for Mailings of Identical Weight Pieces. Residual pieces must be separated so that pieces bearing 5-digit barcodes are separately packaged from pieces bearing ZIP+4 or delivery point barcodes. Each package should measure as close to 6 inches in thickness as possible. Residual packages must be labeled using the residual optional endorsement line in 572.442 or a facing slip. If a facing slip is used, it must be placed on the address side of the top copy of each residual package and bear the word "WORKING" or its authorized abbreviation "WKG." The packages containing pieces that are 5-digit barcoded must be placed in separate sacks from packages of ZIP+4 or delivery point barcoded pieces. The residual sacks must be separated by contents (5-digit barcode vs. ZIP+4 or delivery point barcode) when presented to the Postal Service for verification. Sacks should be as full as possible up to the 70-pound limit. The last sack may be less than full.

573.273 Labeling Residual Sacks. Residual sacks must be labeled as follows:

a. Sacks Containing ZIP+4 or Delivery Point Barcoded Pieces.

Line 1: Letters "DIS" followed by the city name, two-letter state abbreviation and 3-digit Zip Code prefix for the SCF serving the entry post office as shown in Exhibits 122.63c and 122.63d

Line 2: Class of Contents, followed by FLATS BARCODED WORKING (or WKG)

Line 3: Name of mailer and city and two-letter state abbreviation of mailer location

Example:
DIS NORTHERN VA 220
JC FLATS BARCODED WKG
EXETER CO DUPONT PA

b. Sacks Containing 5-Digit Barcodes.

Line 1: Letters "DIS" followed by the city name, two-letter state abbreviation and 3-digit ZIP Code prefix for the SCF serving the entry post office as shown in Exhibits 122.63c and 122.63d

Line 2: FCM, followed by FLTS 5D BARCODE WKG

Line 3: Name of mailer and city and two-letter state abbreviation of mailer location

Example:
DIS NORTHERN VA 220
FCM FLTS 5D BARCODE WKG
EXETER CO DUPONT PA

574 STANDARD DOCUMENTATION REQUIREMENTS FOR PRESORT RATE MAILINGS

574.1 General. Except as provided in 575, the following three types of documentation must accompany each mailing: (a) Form 3553, (b) postage and 85% ZIP+4 or delivery point barcode documentation, and (c) a mailing statement. Each is described in more detail in 574.2 through 574.4.

574.2 Form 3553. Each mailing must be accompanied by a Form 3553 in accordance with 532.2. This form documents that the addresses in the mailing were matched and coded using the current Postal Service ZIP+4 file and current CASS certified address matching software in accordance with 530.

574.3 Postage and Percentage of ZIP+4 or Delivery Point Barcoded Pieces

574.31 Purpose. This documentation enables the Postal Service to verify the percentage of ZIP+4 or delivery point barcoded pieces in the mailing. It also enables the Postal Service to verify the number of pieces claimed at each rate category on the mailing statement, and to verify that any difference between the amount of postage affixed to the pieces in the mailing and the amount of postage owed for the pieces is paid. It does this by providing the Postal Service with a detailed description of what is being mailed, how it is prepared, the rate for which pieces qualify, and how many pieces have a ZIP+4 or delivery point barcode. The Postal Service will match the numbers shown on the documentation with samples from the actual mailing to confirm that the information on the documentation is accurate. The postage and percentage of ZIP+4 or delivery point barcoded pieces documentation is not required when a mailing is 100% ZIP+4 or delivery point barcoded and the exact rate of postage for which each piece in the mailing qualifies (based on presort and weight) is affixed to each piece.

Note: For second-class mailings, the documentation described in this section will provide the presort per piece rate documentation and the 85% ZIP+4 or delivery point barcoded documentation required in 424.841 and 424.843. Additional documentation for second-class mailings is also required under the provisions of 424.841 for zone separations.

574.32 Format. It is recommended that one of the formats shown in Exhibits 574A and 574B be used to prepare required postage and 85% documentation for first-, second-, and third-class mail. If another format is used, it must allow Postal Service verification personnel to easily determine the information required by 574.33 using a single report. Information that could not pertain to the class being mailed (such as column headings for Level A, Level B, Level J rates in a third-class mailing), must not be included in the documentation.

574.33 Information Required.

574.331 Sections. The number of sections in the documentation will vary by format chosen. However, all documentation must have a ZIP Code listing as described in 574.332 that shows the number of pieces to each package destination in the mailing. This information may be broken down into sections by type of package as shown in Exhibit A, listed in one section as shown in Exhibit B, or prepared in another format chosen by the mailer provided the information required in 574.332 is given. In addition, all documentation must contain a summary section as provided in 574.333.

574.332 ZIP Code Listings.

a. ZIP Code Column. Except for residual mail prepared under the physical separation option in 573.272, the 5-digit or 3-digit ZIP Codes of all the pieces in the mailing must be listed in ascending numerical order under a column heading "ZIP Codes." The 5-digit ZIP Codes contained in each multicoded city package and the 3-digit ZIP Codes contained in each SCF package must, however, be listed together even if that causes some pieces to be listed out of sequence. For multicoded city packages (second-class only) and SCF packages, the lowest 5-digit or 3-digit ZIP Code respectively that is included in the pieces packaged for that destination must be used for placing all the ZIP Code listings for that package destination in ascending numerical order. The ZIP Code column must be listed using one of the following two methods:

(1) ZIP Code Listings Divided into Sections by Type of Package (See Exhibit 574A) The ZIP Code listing is divided into sections by type of package (5-digit, 3-digit, etc.). Packages must be listed as follows:

(a) Within the 5-digit section, 5-digit packages must be listed by 5-digit ZIP Code. At the mailer's option the 5-digit ZIP Code may be preceded by the abbreviation 5DG.

(b) Within the multicoded city section, multicoded city packages must be listed by each 5-digit ZIP Code contained in the package. The lowest 5-digit ZIP Code for pieces packaged to the city that is contained in the mailing must be preceded by the abbreviation CTY. Other 5-digit ZIP Codes for that city contained in the mailing must be listed below this entry in a manner that makes it clear which 5-digit ZIP Codes were prepared in packages for the same city.

(c) Within the 3-digit section, 3-digit packages must be listed by 3-digit ZIP Code. At the mailer's option the 3-digit ZIP Code may be preceded by the abbreviation 3DG.

(d) Within the SCF section, SCF packages must be listed by each 3-digit ZIP Code contained in the package. The lowest 3-digit ZIP Code for pieces packaged to the SCF that is contained in the mailing must be preceded by the abbreviation SCF. Other 3-digit ZIP Codes for that SCF contained in the mailing must be listed below this entry in a manner that makes it clear which 3-digit ZIP Codes were prepared in packages for the same SCF.

(e) Within the residual section, pieces in residual packages must be listed by 3-digit ZIP Code. At the mailer's option, the 3-digit ZIP Codes may be preceded by the abbreviation WKG. When the residual portion of the mailing is prepared under the physical separation option in 573.272, residual packages need not be included in the ZIP Code listing portion of the documentation.

(2) Continual ZIP Code List (See Exhibit 574B). All packages in the mailing are listed together in one section. Packages must be listed as follows:

(a) 5-digit packages must be listed by 5-digit ZIP Code. The 5-digit ZIP Code must be preceded by the abbreviation 5DG.

(b) Multicoded city packages (second-class mailings only) must be listed by each 5-digit ZIP Code contained in the package. The lowest 5-digit ZIP Code for pieces packaged to the city that is contained in the mailing must be preceded by the abbreviation CTY. Other 5-digit ZIP Codes for that city contained in the mailing must be listed below this entry in a manner that makes it clear which 5-digit ZIP Codes were prepared in packages for the same city.

(c) 3-digit packages must be listed by 3-digit ZIP Code. The 3-digit ZIP Code must be preceded by the abbreviation 3DG.

(d) SCF packages must be listed by each 3-digit ZIP Code contained in the package. The lowest 3-digit ZIP Code for pieces packaged to the SCF that is contained in the mailing must be preceded by the abbreviation SCF. Other 3-digit ZIP Codes for that SCF contained in the mailing must be listed below this entry in a manner that makes it clear which 3-digit ZIP Codes were prepared in packages for the same SCF.

(e) Pieces packaged as residual must be listed by 3-digit ZIP Code. The 3-digit ZIP Code must be preceded by the abbreviation WKG. When the residual portion of the mailing is prepared under the physical separation option in 573.272, residual packages need not be included in the ZIP Code listing portion of the documentation.

b. Basic Columns and Line Entries for Rates and Totals. For each ZIP Code entry in the ZIP Code Column as described above in 574.332a show:

(1) Number of pieces bearing a ZIP+4 or delivery point barcode under a column heading (or column headings—see 574.332c) that name(s) the rate of postage for which the pieces qualify based on the class of mail (see 325.14, 424.66, or 628.143) and the level of package sortation, and states that the pieces are ZIP+4 or delivery point barcoded.

(2) Number of pieces that are 5-digit barcoded under a column heading (or column headings—(see 574.332c) that name(s) the rate of postage for which the pieces qualify based on the class of mail (see 325.14, 424.66, or 628.143) and level of package sortation, and states that the pieces are 5-digit barcoded.

(3) Cumulative total (the total of all pieces listed for that ZIP Code plus all pieces listed for the preceding ZIP Code entries under a column heading "Cumulative Total." Cumulative totals may accumulate through the entire ZIP Code listing section see Exhibit 574B, or may accumulate only through each individual package section if ZIP Code listings are divided into sections by type of package, see Exhibit 574A.

c. Additional Column Listings.

(1) First-Class Precanceled Stamped Mailings Containing Pieces of More than One Ounce Increment. For nonidentical weight First-Class mailings paid by nondenominated precanceled stamps or precanceled stamps of a denomination less than the lowest rate in the mailing in which postage to cover additional ounces is not affixed, the documentation must contain separate columns for each ounce increment for any pieces listed under 574.332b(1) and 574.332b(2). The column headings must contain the name of the qualifying rate and the type of barcode (see 325.14) for the pieces and the weight category.

(2) First-Class Mailings Containing Pieces Subject to the Nonstandard Surcharge. For nonidentical weight or nonidentical size mailings in which postage at the exact rate is not affixed to each mailpiece, and which contain both pieces subject to the nonstandard surcharge in 315 and pieces that are not subject to the surcharge, the documentation must contain a separate column to document the number of pieces weighing 1 ounce or less that are subject to the surcharge. The column headings must contain the name of the rate, the type of barcode (see 325.14) and an indication that the nonstandard surcharge applies. The additional columns in 574.332c(1) above may also be necessary for particular mailings.

Note: For both identical-size mailings and nonidentical-size mailings containing pieces that are subject to the nonstandard surcharge, the summary listing must reflect that the surcharge is $0.05 for presort rate pieces and $0.10 for single-piece rate pieces (in SCF and residual packages).

(3) First-Class Metered Mailings Containing Pieces Over and Under 2 Ounces Within SCF and Residual Packages. Unless the pieces are metered at the exact rate of postage for which they qualify, two rate columns for residual rate mailpieces bearing ZIP+4 or delivery point barcodes must be shown, one for pieces weighing 2 ounces or less and one for pieces weighing over 2 ounces. Two rate columns for residual mailpieces containing 5-digit barcodes must also be shown, one for each weight category. The column headings must contain the name of the residual rate and the type of barcode (see 325.14) for which the pieces qualify and the weight category.

(4) Second-Class Mailings Containing Both In-County and Outside-County Rate Pieces. For second-class mailings containing both in-county rated pieces and outside-county rated pieces, separate columns for in-county rated pieces and for outside-county rated pieces must be shown for any pieces listed under 574.332b(1) and 574.332b(2). In addition, for three-digit packages, separate columns for unique 3-digit package that qualify for the level B3 or H3 rates, and for the level J3 rates must be shown, and separate columns for nonunique 3-digit packages that qualify for level A or G rates, and for level J1 rates must be shown, for each of the two general categories of pieces in 574.332b(1) and 574.332b(2). The column headings must contain the name of the rate for which the pieces qualify and the type of barcode.

(5) Second-Class Combined Mailings. Second-class mailings combining pieces from more than one second-class publication or edition must provide additional information by publication or edition as required by 424.853.

(6) First- and Third-Class Mailings using Minimum Volume per Sack Criteria in 573.212b(2). For nonidentical weight pieces, mailers that determine the minimum volume per sack based on the actual piece count or weight of the mail for each sack must list for each sack the number of pieces and the total weight of those pieces (see 573.212b(2)).

574.333 Summary Portion

a. Second-Class Mailings and Permit Imprint Mailings.

(1) Rate Categories and Postage Owed. The summary must list each rate category at which any pieces in the mailing are claimed from the applicable column totals in the ZIP Code listing portion of the documentation. For each rate listed, the summary must show:

(a) Total number of pieces claimed at that rate,

(b) Applicable rate of postage,

(c) Postage charges for that rate category (the total number of pieces times the rate of postage).

(2) Totals

(a) A grand total of the postage charges for all the rate categories in the entire mailing must be shown. For permit imprint mailings, this grand total is the amount of postage owed for the mailing (the amount to be deducted from the advance deposit account) for second-class mailings the grand total is the amount of second-class per-piece charges for the mailing.

(b) The total number of pieces in the mailing that bear a ZIP+4 or delivery point barcode, the total number of pieces that bear a 5-digit barcode, and the total pieces in the mailing must be shown.

(c) The percentage of ZIP+4 or delivery point barcoded pieces in the mailing must be shown.

b. First- and Third-Class Metered and Precanceled Stamp Mailings.

(1) Rate Categories and Postage Owed. The summary must list each rate category at which any pieces in the mailing are claimed from the applicable column totals in the ZIP Code listing portion of the documentation. For nonidentical-weight First-Class precanceled stamp mailings in which stamps to cover the additional ounces are not affixed, each rate category must be listed more than once so that there is a separate listing for each ounce increment at that rate. For First-Class metered mailings having postage affixed to all pieces at the 3/5 flats barcoded rate containing SCF packaged pieces and residual pieces over and under 2 ounces, a separate listing for pieces weighing 2 ounces or less and a separate listing for pieces weighing over 2 ounces must be shown to account for the greater amount of postage owed for the pieces weighing over 2 ounces. For First-Class mailings having 1-ounce pieces both subject to and not subject to the non-standard surcharge, a separate listing for each must be shown. For each rate listed, the summary must show:

(a) The number of pieces claimed at that rate;

(b) The amount of additional postage due for each piece at that rate (when the amount of postage affixed is less than the rate of postage owed);

(c) The postage due for pieces claimed at that rate (the total number of pieces at that rate category times the amount of postage due per piece).

(2) Totals

(A) A grand total of the additional postage charges due for all the rate categories in the entire mailing must be shown. This grand total is the amount of postage that must be affixed to the mailing statement or paid through an advance deposit account.

(B) The total number of pieces in the mailing that bear a ZIP+4 or delivery point barcode, the total number of pieces that bear a 5-digit barcode, and the total pieces in the mailing must be shown.

(C) The percentage of ZIP+4 or delivery point barcoded pieces in the mailing must be shown.

574.34 Method of Submission.

574.341 General. This documentation required by 574 must be presented to the Postal Service in paper (hard copy) form, unless the mailer is authorized to submit documentation on electronic media as provided by 574.342.

574.342 Electronic Media. Mailers may submit documentation on electronic media rather than in hard copy form only if the postmaster of the post office or detached mail unit verifying the mailing or mailing job has determined that the post office or DMU has the ability to receive and use the documentation in electronic form and if the mailer is authorized to do so by the rates and classification center serving that post office.

574.35 Other Documentation. The mailer may be authorized to combine the documentation required by this section with other documentation required by other postal regulations or programs provided the combined documentation is approved in advance by the postmaster of mailing. Combined documentation must be further approved by the rate and classification center serving the office of mailing if any of the merged documentation is related to or required by 145.7, 145.8, 145.9, 424.5, 424.8, 424.9, 464, 465, 644, 645, 664, or 665.

574.4 Mailing Statement.

574.41 General. At the time the mail is presented to the Postal Service for acceptance, each flats barcoded rate mailing must be accompanied by a complete and signed mailing statement appropriate for the method of postage payment and class of mail submitted using the appropriate Postal Service form or an approved facsimile. Mailers must write the method used to determine the minimum volume per 5-digit and 3-digit sacks on the top of the mailing statement as required by 573.213.

574.42 Method of Submission

574.421 General. The mailing statement must be submitted in paper (hard copy) form, unless the mailer is authorized to submit documentation on electronic media as provided by 574.422.

574.422 Electronic Media. Mailers may submit mailing statements on electronic media rather than hard copy form only if the postmaster of the post office or detached mail unit (DMU) receiving the mailing statements has determined that the post office or DMU has the ability to receive and use the mailing statement in electronic form and if the mailer is authorized to do so by the rates and classification center serving that post office.

## 575 ELECTIVE DOCUMENTATION FOR PRESORT RATE MAIL

### 575.1 Abbreviated Documentation For Postage and Percentage of ZIP+4 or Delivery Point Barcode Pieces

575.11 Authorization Procedure.

575.111 Letter of Request. Mailers must submit a written letter of request for authorization to submit with each mailing the abbreviated documentation described in this section rather than complete documentation described in 574.3. (The documentation required by 574.2 and 574.4 must still be submitted.) The letter must be sent to the postmaster of the post office where the mailings are verified and postage is paid.

575.112 Authorization. Upon receipt of the letter of request, the postmaster or authorized representative will verify a subsequent mailing for which complete documentation is submitted. If the complete documentation is found to contain all the information required in 574.3 and, when the mail is sampled and compared to the documentation the documentation is found to be correct,

the postmaster will authorize use of abbreviated documentation procedures. The authorization is good for a period of one year and will be provided to the mailer in writing. If the complete documentation does not contain all of the information required in 574.3, or is found not to be correct when compared to mail sampled, the request will be denied in writing. The written denial will state the deficiencies that must be corrected. The mailer may submit another request for abbreviated documentation authorization when the deficiencies noted have been corrected.

575.12 Requirement. The mailer must submit the summary section of the documentation required in 574.333 and only those portions of the ZIP Code listings described in 574.332 that pertain to pieces destinating at a particular SCF area. The SCF area selected by the mailer should include pieces qualifying for both the 3/5-digit rates and for the basic or single-piece rates. If the selected SCF area does not contain pieces at all applicable rate levels included in the mailing, the ZIP Code listings for an additional SCF area that contains pieces qualifying for the missing rate levels must be provided with the mailing. A minimum of 3 sacks must be represented by the documentation submitted.

Note: Nothing in this section shall relieve the mailer from the requirement to submit, at the request of the postmaster, additional documentation including documentation pertaining to pieces that destinate at particular SCFs specified by the postmaster.

575.13 Sack Presentation. When the mailing is presented for verification and either acceptance or clearance for dispatch, the sacks that contain the pieces corresponding to the ZIP Codes of the selected SCF area or areas for which the ZIP Code listings are submitted must be identified and physically separated.

575.14 Mailings Presented on Pallets. At the time a mailing is presented for verification and either acceptance or clearance for dispatch, mailers using abbreviated documentation must identify and physically separate the pallets that contain the pieces corresponding to the ZIP Codes of the selected SCF area or areas for which the ZIP Code lists are submitted. If mailings are copalletized and/or commingled mixed rate levels on pallets, the abbreviated documentation applies only to the flats barcoded portion of the mailing and does not apply to required documentation listing the contents of each pallet or to the documentation required for mailings at carrier route rates (if carrier route mail is contained on the pallets in accordance with 576.4).

575.15 Retention of Documents. Mailers authorized to submit abbreviated documentation must retain the information necessary to produce complete documentation for each mailing made during the past 12 months. Mailers must also be able to produce complete documentation of a particular mailing upon request by the postmaster, for either upcoming mailings or for past mailings.

575.16 Reauthorization and Review. Prior to expiration of the one-year authorization, the postmaster or his or her authorized representative must schedule a review of complete documentation with the mailer. If the complete documentation is found to be accurate subsequent to review, the postmaster or authorized representative will issue a written authorization to continue use of abbreviated documentation for another year. If the documentation is found not to be accurate, complete documentation must be submitted for subsequent mailings until the problem is corrected and the mailer is again authorized to submit abbreviated documentation. A review of complete documentation must also be scheduled and performed by the postmaster or authorized representative anytime there is a change in the presort or documentation requirements for barcoded flat-size mailings.

### 575.2 Mailing Job Provisions for Meeting the 85% ZIP+4 Barcode and Form 3553 Requirements

575.21 Purpose. At the mailer's option, compliance with the requirement that at least 85% of the pieces bear a correct ZIP+4 or delivery point barcode may be based upon all flat-size barcoded rate mailings within a job when the job meets the criteria in 575.22. In addition, one Form 3553 for all flats barcoded rate mailings in the mailing job may be submitted.

575.22 Eligible Mailing Jobs

575.221 Definition of a Mailing Job. Often referred to as a mailing cycle, mailing project, or publication issue, a mailing job consists of the total pieces that are meant to be mailed as an entity from a fixed set of addresses. These addresses may be from a single list or multiple lists that have been merged into a single list for the purposes of mailing. A mailing job may consist of only flats barcoded rate mailings or may consist of a combination of flats barcoded rate mailings, carrier route mailings, 3/5 and basic presort mailings. If carrier route or other non-barcoded rate mailings are included in the job the pieces in those mailings must not be counted towards the 85% barcode requirement regardless of whether those pieces have been barcoded.

575.222 Verification and Payment at a Single Post Office. To be eligible for the option of submitting the 85% ZIP+4 barcode documentation and a single Form 3553 based on all the flats barcoded rate mailings in a mailing job (as opposed to being individually applied to each barcoded rate mailing in the job), all mailings in the job MUST be verified and paid for at a single post office. Mailing jobs containing mailings being entered at multiple destination post offices that are verified and paid for at a single post office under a Centralized Postage Payment (CPP) System or Plant-Verified Drop Shipment (PVDS) are eligible for this option.

575.23 Postage and 85% ZIP+4 Barcode Documentation for Mailing Job Option. Separate documentation for each individual flats barcoded rate mailing that is prepared over the course of the mailing job must be prepared in accordance with 574.3. The abbreviated documentation in 575.1 may also be authorized. In addition, a separate overall summary in the format required by 574.333 that summarizes the rate and barcode category information for all pieces in all flats barcoded rate mailings entered over the entire mailing job must be submitted when the first flats barcoded rate mailing of the mailing job is verified.

575.24 Mailing Statements in a Mailing Job. Each mailing submitted as part of a mailing job must be accompanied by the appropriate mailing statement for its class and method of postage payment.

Note: When a carrier route mailing and a flats barcoded rate mailing (produced as part of the same mailing job) are copalletized under the provisions of 576.4, the separate mailings may be reported on a single mailing statement.

575.25 Simultaneous Mailings From Different Mailing Jobs. If more than one mailing job is active at one time for a given mailer, mailings from each mailing job must be prepared and presented separately, and must be clearly identified as separate mailings from separate jobs. The documentation must contain an identifier that clearly distinguishes between the mailing jobs. Mailing statements presented for individual mailings within the mailing job must bear the appropriate identifier relating it to the appropriate mailing job.

575.26 Resolution of Discrepancies. When the last mailing from a mailing job is presented to the Postal Service, any discrepancies between the mail

presented to and verified by the Postal Service, the mail described in the documentation, and the mail claimed on the corresponding mailing statements submitted for individual mailings (in regard to quantity, rate eligibility, or postage) must be reconciled to the satisfaction of the Postal Service, and any additional postage that may be due must be paid by the mailer.

576 PALLETIZATION OF PRESORTED BARCODED FLAT RATE MAILPIECES

576.1 General Requirements.

576.11 Second-Class Mailings. Second-class barcoded rate flat-size mailings must be prepared as packages on pallets or sacks on pallets as provided by 445.2 or 445.4, except as provided in 576.2 through 576.3. See 445.3, 424.86, 576.2, and 576.3 for copalletizing multiple flats barcoded rate mailings. See 576.2 through 576.4 and 445.3 for copalletizing carrier route and flats barcoded rate mailings.

576.12 Third-Class Mailings. Third-class barcoded rate flat-size mailings must be prepared as packages on pallets or sacks on pallets as provided by 644.1 through 644.16 or 644.4, except as provided in 576.2 through 576.3. See 576.2, 576.3, and 644.18 for copalletizing multiple flats barcoded rate mailings. See 576.2 through 576.4, 644.17, and 644.18 for copalletizing carrier route and flats barcoded rate mailings.

**576.2 Pallet Preparation**

576.21 Minimum Pallet Weight. The minimum mail load for 5-digit pallets containing either ZIP+4 Barcoded rate mailings or carrier route presort rate mailings prepared as copalletized mailings under 576.4, is 500 pounds.

576.22 Residual Mail. Residual packages (see 573.16) must not be placed on pallets. This mail must be packaged and sacked in accordance with 573.27 and presented with the palletized portion of the mailing.

**576.3 Package Preparation**

Packages presented on pallets must be prepared according to 572.4 and in the presort sequence required in 573.1.

576.4 Copalletizing ZIP+4 Barcoded Rate and Carrier Route Presort Rate Mailings

576.41 General. Flats barcoded rate mailings may only be copalletized with other flats barcoded rate mailings, or with carrier route presort rate mailings. Flats barcoded rate mailings and carrier route presort rate mailings (including walk sequence) may only be copalletized as provided in 445.3 or 644.17 and 644.18 when they are generated as part of the same mailing job under the provisions of 575.2 and when the requirements of 576.42 and 576.43 are met.

576.42 5-Digit Pallet Preparation. Flats claimed at carrier route presort rates, including walk-sequence rates, must not be placed on the same 5-digit pallet with barcoded flats.

576.43 Pallet Labels. When barcoded flat-size mailings are palletized, the contents line of the pallet label must include the word "BARCODED" as shown in the illustrations below. For additional information concerning pallet labels, see 445.24 and 644.14 as applicable.

NEW TOWN ND, 58763
2C FLATS BARCODED
LFR CO OLD TOWN ME
IRVING TX, 75015
3C FLATS BARCODED
LFR CO OLD TOWN ME

* * * * *

577 FIRST-CLASS NONPRESORTED ZIP+4 BARCODED RATE FOR FLATS

**577.1 Rate Eligibility**

Pieces that bear the correct ZIP+4 or delivery point barcode prepared under 551, and that meet the requirements of 328.2 through 328.5 and the requirements of this section qualify for the nonpresorted ZIP+4 barcoded rate for flat-size mailpieces. Remaining pieces must meet the requirements of 552, 328.2 through 328.5, and the requirements of this section and qualify for the single-piece First-Class rate.

**577.2 Packaging, Sacking, and Documentation**

577.21 Preparation for Mailings Not Requiring Documentation.

577.211 Conditions Under Which Mailings Do Not Require Documentation. Each piece in the mailing must be ZIP+4 or delivery point barcoded. In addition, correct postage for the mailing must be affixed to each piece, or it must be possible to ascertain the correct postage by means of weighing. Mailings of identical weight pieces paid by means of permit imprint, and identical weight pieces having an identical amount of precanceled postage affixed fall under this category. If metered, mail must be metered at the Nonpresorted barcoded rate for flats applicable to each mailpiece based on weight. In other situations, the mailing must be prepared as provided in 577.22.

577.212 Packaging. Packages must be prepared in accordance with 572.4. Each package should measure as close to 6 inches in thickness as possible and must be labeled with the "WORKING" optional endorsement line as provided in 572.442, or a facing slip. If a facing slip is used it must be placed on the address side of the top copy in each residual package and bear the word "WORKING" or its authorized abbreviation "WKG."

577.213 Sacking. The packages must be placed in sacks. The sacks should be as full as possible up to the 70 pound maximum. The last sack may be less than full. Sacks must be labeled as follows:

Line 1: Letters "DIS" followed by the city name, two-letter state abbreviation and 3-digit ZIP Code prefix for the SCF serving the entry post office as shown in Exhibits 122.63c and 122.63d
Line 2: FCM, followed by FLATS BARCODED WKG
Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location
Example:
DIS NORTHERN VA, 220
FCM FLATS BARCODED WKG
EXETER CO DUPONT PA

577.22 Mailings Requiring Documentation (Mailings Containing 5-Digit Barcoded Pieces and/or Mailings Requiring Postage Documentation). Pieces not eligible to be mailed without documentation (see 522.211) must be packaged and sacked in one of the following ways. The physical separation option in 577.222 may be used only within mailings of identical weight pieces.

577.221 ZIP Code Sequencing and Listing.

a. Packaging. All pieces must be put in 3-digit ZIP Code sequence and secured into packages in accordance with 572.4. Each package should measure as close to 6 inches in thickness as possible. The packages must be labeled with the "WORKING" optional endorsement line as provided in 572.442, or a facing slip. If a facing slip is used it must be placed on the address side of the top copy in each package and bear the word "WORKING" or its authorized abbreviation "WKG."

b. Sacking. Packages must be placed in sacks. All mail for a particular 3-digit ZIP Code area should be contained in the same sack. The sacks should be as full as possible up to the 70 pound maximum. The last sack may be less than full. Sacks must be labeled as follows:

Line 1: Letters "DIS" followed by the city name, two-letter state abbreviation and 3-digit ZIP Code prefix for the SCF serving the entry post office as shown in Exhibits 122.63c and 122.63d
Line 2: FCM, followed by FLATS BARCODED WKG

Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:
DIS NORTHERN VA, 220
FCM FLATS BARCODED WKG
EXETER CO DUPONT PA

c. Documentation. The format detailed below should be followed. Each 3-digit ZIP Code contained in the mailing must be listed in ascending numerical order.

(1) Standard Columns and Line Entries for Rates and Totals. For each 3-digit ZIP Code listed show:

(a) The number of pieces that bear a ZIP+4 or delivery point barcode under a column heading "Nonpresorted Barcoded Rate for Flats—ZIP+4 Barcoded."

(b) The number of pieces that bear a 5-digit barcode under a column heading "Single Piece Rate—5-Digit Barcoded."

(c) The cumulative total (the total of all pieces listed for that ZIP Code plus all pieces listed for the preceding 3-digit ZIP Code areas under a column heading "Cumulative Total."

At the end of the listing show the totals of the pieces under each column heading.

(2) Additional Rate Column Listings

(a) First-Class Precanceled Stamped Mailings Containing Pieces of More than 1-Ounce Increment. For nonidentical weight First-Class mailings paid by nondenominated precanceled stamps or precanceled stamps of a denomination less than the lowest rate in the mailing in which postage to cover additional ounces is not affixed, the documentation must contain separate columns for each ounce increment for any pieces listed under 577.221c(1)(a) and 577.221c(1)(b). The column headings must contain the name of the qualifying rate (see 325.14) and type of barcode for the pieces and the weight category.

(b) First-Class Mailings Containing Pieces Subject to the Nonstandard Surcharge. For nonidentical weight or non-identical size mailings in which postage at the exact rate is not affixed to each mailpiece, and which contain both pieces subject to the nonstandard surcharge in 315 and pieces that are not subject to the surcharge, the documentation must contain a separate column to document the number of pieces weighing 1-ounce or less that are subject to the surcharge. The column headings must contain the name of the rate (see 325.14) and an indication that the nonstandard surcharge applies. The additional columns in 577.221c(2)(a) above may also be necessary for particular mailings.

(3) Summary

(a) Rate Categories and Postage Owed. List the rate categories in the mailing from the columns above. For each rate category show the total number of pieces claimed. For permit imprint mailings also show the rate of postage for each category and the total postage due for all pieces claimed at that rate. For each rate category in metered or precanceled stamp mailings show the amount of additional postage due for each rate category (if any) and the total postage due for all pieces claimed at that rate.

(b) Totals. A grand total of the postage charges due for all the rate categories in the entire mailing must also be shown. This grand total shows the amount of postage that must be affixed to the mailing statement or paid through an advance deposit account. The summary must also list the total number of pieces in the mailing that bear a ZIP+4 or delivery point barcode and show the total number of pieces that bear a 5-digit barcode. The percentage of ZIP+4 or delivery point barcoded pieces in the mailing must be shown.

577.222 Physical Separation Option for Mailings of Identical Weight Pieces. Pieces must be separated so that pieces bearing 5-digit barcodes are separately packaged from pieces bearing ZIP+4 or delivery point barcodes. Each package should measure as close to 6 inches in thickness as possible. The packages must be labeled with the "WORKING" optional endorsement line as provided in 572.422, or a facing slip. If a facing slip is used, it must be placed on the address side of the top copy in each package and bear the word "WORKING" or its authorized abbreviation "WKG." The packages containing pieces that are 5-digit barcoded must be placed in sacks separate from sacks containing residual packages of ZIP+4 or delivery point barcoded pieces. The sacks must be separated by contents (5-digit barcode vs. ZIP+4 or delivery point barcode) when presented to the Postal Service for verification. The sacks should be as full as possible up to the 70 pound maximum. The last such may be less than full.

The sacks must be labeled as follows:

a. Sacks Containing ZIP+4 or Delivery Point Barcoded Pieces.

Line 1: Letters "DIS" followed by the city name, two-letter state abbreviation, and 3-digit ZIP Code prefix for the SCF serving the entry post office as shown in, Exhibits 122.63c and 122.63d

Line 2: FCM, followed by FLATS BARCODED WKG

Line 3: Name of mailer and city and two-letter state abbreviation of mailer's location

Example:
DIS NORTHERN VA, 220
FCM FLATS BARCODED WKG
EXETER CO DUPONT PA

b. Sacks Containing 5-Digit Barcodes.

Line 1: Letters "DIS" followed by the city name, two-letter state abbreviation and 3-digit ZIP Code prefix for the SCF serving the entry post office as shown in Exhibits 122.63c and 122.63d

Line 2: FCM, followed by FLTS 5D BARCODE WKG

Line 3: Name of mailer and city and two-letter state abbreviation of mailer location

Example:
DIS NORTHERN VA, 220
FCM FLTS 5D BARCODE WKG
EXETER CO DUPONT PA

BILLING CODE 7710-12-M

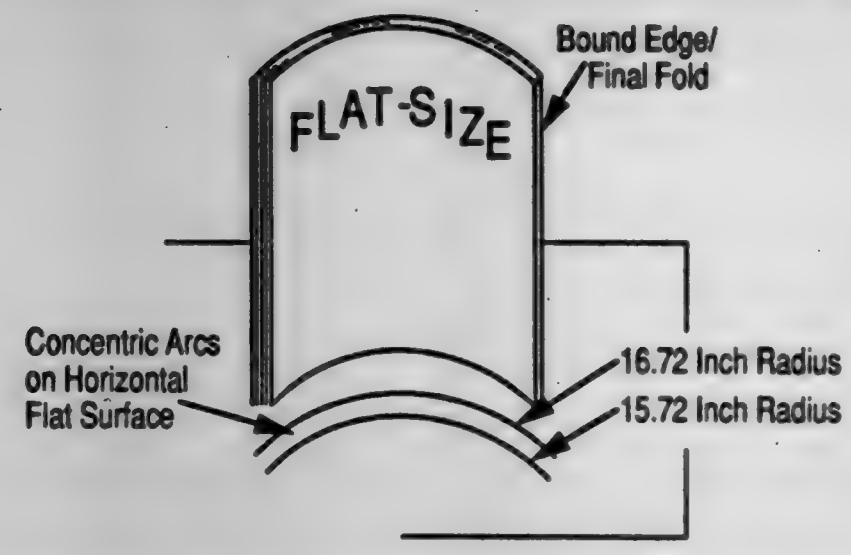


**Exhibit 522.161, Establishing Flexibility — Flat-Size Mailpiece**

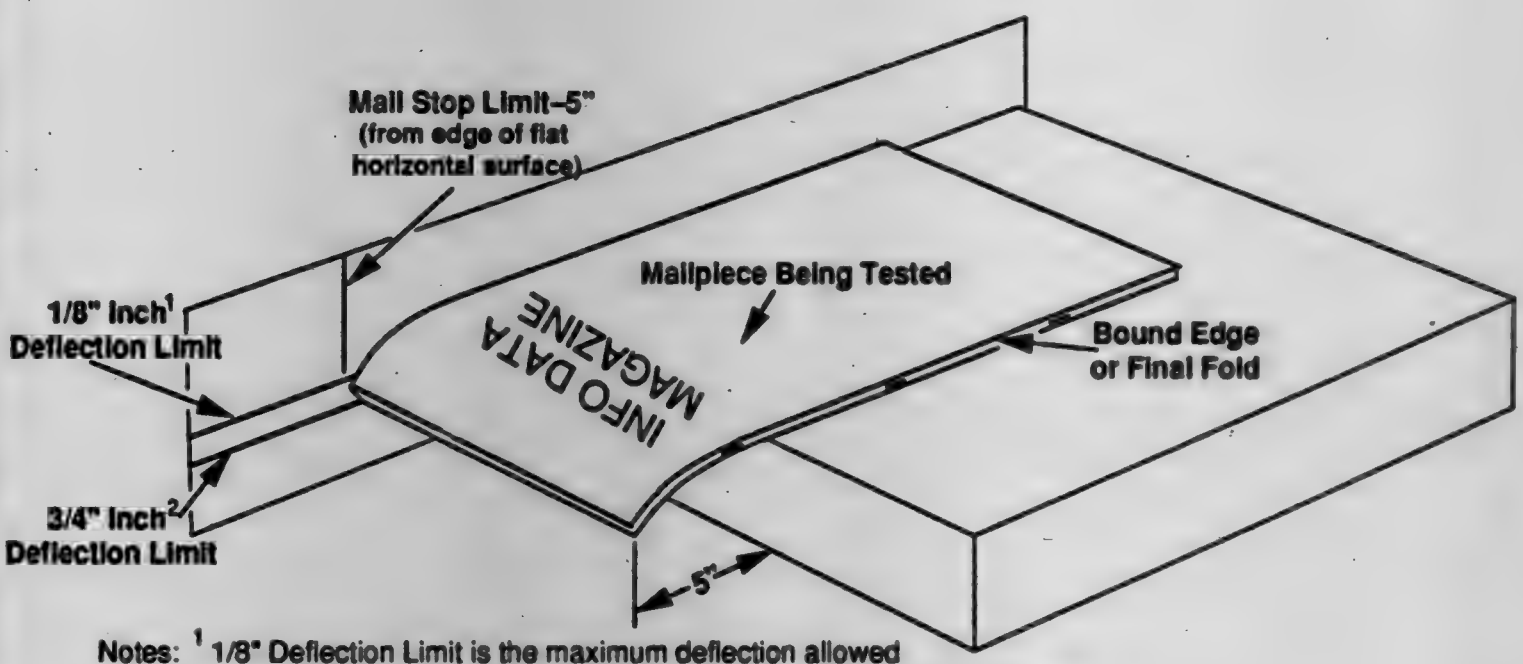


Notes: [1] 1/8" Deflection Limit is the maximum deflection allowed for flat-size mailpieces measuring up to and including 1/8' in thickness.

[2] 3/4" Deflection Limit is the maximum deflection allowed for flat-size mailpieces measuring at least 1/8" but not more than 3/4" in thickness.

**Exhibit 522.162, Establishing Rigidity — Flat-Size Mailpiece**

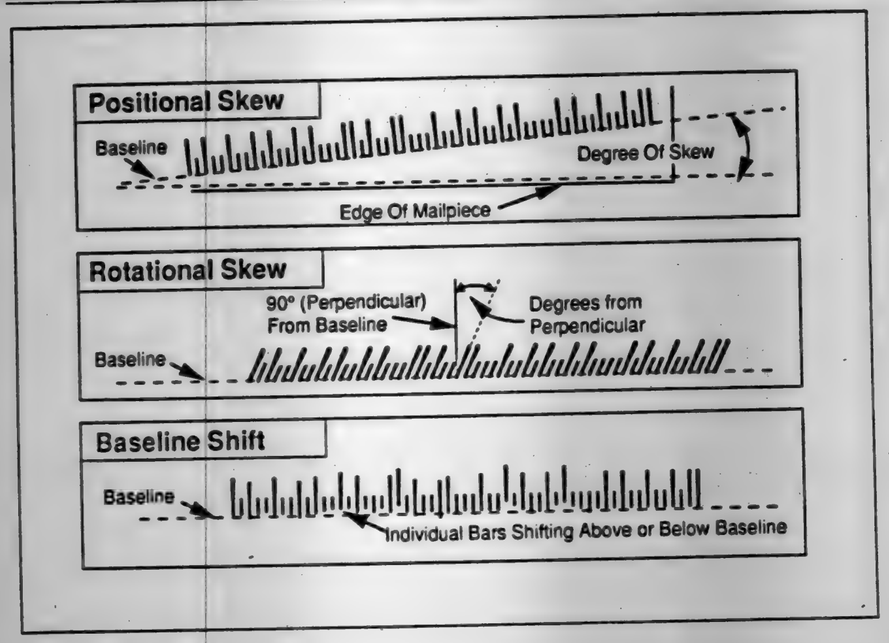


**Exhibit 551.5, Barcode Skew and Baseline Shift**



**5-DIGIT PACKAGES**

| ZIP Code | 3/5 Flats Barcoded Rate 2+4 Barcoded | 3/5 Presort Rate 5DG Barcoded | Cumulative Total |
|---|---|---|---|
| 16645 | 423 | 31 | 454 |
| 17364 | 502 | 20 | 976 |
| 17372 | 213 | 11 | 1200 |
| 17604 | 433 | 45 | 1678 |
| 18042 | 121 | 16 | 1815 |
| 18113 | 398 | 4 | 2217 |
| 18844 | 456 | 5 | 2678 |
| TOTALS | 2546 | 132 | 2678 |

**3-DIGIT PACKAGES**

| ZIP Code | 3/5 Flats Barcoded Rate 2+4 Barcoded | 3/5 Presort Rate 5DG Barcoded | Cumulative Total |
|---|---|---|---|
| 155 | 263 | 10 | 273 |
| 166 | 551 | 17 | 841 |
| 173 | 353 | 11 | 1205 |
| 176 | 38 | 2 | 1245 |
| 180 | 498 | 6 | 1749 |
| 184 | 128 | 16 | 1893 |
| 187 | 540 | 36 | 2469 |
| TOTALS | 2371 | 98 | 2469 |

**SCF PACKAGES**

| ZIP Code | Basic Flats Barcoded Rate 2+4 Barcoded | Basic Presort Rate 5DG Barcoded | Cumulative Total |
|---|---|---|---|
| SCF 157 | 9 | 0 | 9 |
| 159 | 7 | 2 | 18 |
| SCF 174 | 6 | 2 | 26 |
| 175 | 7 | 1 | 34 |
| SCF 182 | 5 | 0 | 39 |
| 186 | 6 | 0 | 45 |
| TOTALS | 40 | 5 | 45 |

**RESIDUAL PACKAGES***

| ZIP Code | Basic Flats Barcoded Rate 2+4 Barcoded | Basic Presort Rate 5DG Barcoded | Cumulative Total |
|---|---|---|---|
| 168 | 5 | 2 | 7 |
| 185 | 3 | 0 | 10 |
| 188 | 5 | 1 | 16 |
| TOTALS | 13 | 3 | 16 |

**SUMMARY**

| | | Postage Rate (per piece) | Postage Charges |
|---|---|---|---|
| Total 3/5 Flat Barcoded Rate | 4917 | 0.170 | 835.890 |
| Total 3/5 Presort Rate | 230 | 0.187 | 43.010 |
| Total Basic Flat Barcoded Rate | 53 | 0.208 | 11.024 |
| Total Basic Presort Rate | 8 | 0.233 | 1.864 |
| TOTAL POSTAGE DUE FOR MAILING | | | $ 891.79 |

Total Pieces With ZIP+4 Barcode: 4970
Total Pieces Without a ZIP + 4 code: 238
Total Pieces in the Mailing: 5208

Percentage of ZIP + 4 coded Pieces: 95.43%

* Necessary only if residual is prepared under the listing and sequencing option in 573.272.

**Exhibit 574a - Sample Documentation**
**(Third-Class ZIP + 4 Barcoded Rate Mailing of Flat-Size Mailpieces, Separate Sections by Type of Package)**

| ZIP Code | 3/5 Flats B/C Rate Z+4 B/C | 3/5 Presort Rate 5DG B/C | Basic Flats B/C Rate Z+4 B/C | Basic Presort Rate 5DG B/C | Cumulative Total |
|---|---|---|---|---|---|
| 3DG 155 | 263 | 10 | 0 | 0 | 273 |
| SCF 157 | 0 | 0 | 9 | 0 | 282 |
| 159 | 0 | 0 | 7 | 2 | 291 |
| 5DG 16645 | 423 | 31 | 0 | 0 | 745 |
| 3DG 166 | 551 | 17 | 0 | 0 | 1313 |
| WKG 168* | 0 | 0 | 5 | 2 | 1320 |
| 5DG 17364 | 502 | 20 | 0 | 0 | 1842 |
| 5DG 17372 | 213 | 11 | 0 | 0 | 2066 |
| 3DG 173 | 353 | 11 | 0 | 0 | 2430 |
| SCF 174 | 0 | 0 | 6 | 2 | 2438 |
| 175 | 0 | 0 | 7 | 1 | 2446 |
| 5DG 17604 | 433 | 45 | 0 | 0 | 2924 |
| 3DG 176 | 38 | 2 | 0 | 0 | 2964 |
| 5DG 18042 | 121 | 16 | 0 | 0 | 3101 |
| 3DG 180 | 498 | 6 | 0 | 0 | 3605 |
| 5DG 18113 | 398 | 4 | 0 | 0 | 4007 |
| SCF 182 | 0 | 0 | 5 | 0 | 4012 |
| 186 | 0 | 0 | 6 | 0 | 4018 |
| 3DG 184 | 128 | 16 | 0 | 0 | 4162 |
| WKG 185 | 0 | 0 | 3 | 0 | 4165 |
| 3DG 187 | 540 | 36 | 0 | 0 | 4742 |
| 5DG 18844 | 456 | 5 | 0 | 0 | 5202 |
| WKG 188* | 0 | 0 | 5 | 1 | 5208 |
| TOTALS | 4917 | 230 | 53 | 8 | 5208 |

**SUMMARY**

| | | Postage Rate (per piece) | Postage Charges |
|---|---|---|---|
| Total 3/5 Barcoded Flats | 4917 | 0.170 | 835.89 |
| Total 3/5 Presort Rate | 230 | 0.187 | 43.01 |
| Total Basic Barcoded Flats Rate | 53 | 0.208 | 11.024 |
| Total Basic Presort Rate | 8 | 0.233 | 1.864 |
| TOTAL POSTAGE DUE FOR MAILING | | | $ 891.79 |

| | |
|---|---|
| Total Pieces With ZIP+4 Barcode: | 4970 |
| Total Pieces Without a ZIP + 4 code: | 238 |
| Total Pieces in the Mailing: | 5208 |

Percentage of ZIP + 4 coded Pieces: 95.43%

---

* Necessary only if residual is prepared under the listing and sequencing option in 573.272.

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**Exhibit 574b - Sample Documentation**
**(Third-Class ZIP + 4 Barcoded Rate Mailing of Flat-Size Mailpieces, Continuous ZIP Code Listing)**

BILLING CODE 7710-12-C

**CHAPTER 6—THIRD-CLASS MAIL**

**610 Rates and Fees**

**611 RATES**

* * * * *

611.2 Bulk Rates

[Revise Exhibits 611.2a–g as shown on separate sheets.]

* * * * *

611.22 Rate Structure

611.221 Piece and Pound Rates

a. Minimum Per-Piece Rates.

(1) General. [Add to the end of the existing text:] The minimum per-piece rates are divided into two major categories: "letters" (see 661.221a(2)) and "other than letters" (see 661.221a(3)).

(2) "Letters" Category. [Text of existing 661.221a(2)(a); change the reference at the end of the first sentence from "128" to "128.2."]

(3) "Other than Letters" Category. [Text of existing 661.221a(2)(b); change the reference in the first sentence from "128" to "128.2;" add the following to the end of the section:] The ZIP+4 Barcoded discount is applied to the "other than letter" category rates for automation-compatible flat-size mailpieces (see 128.32 and 522) meeting the applicable eligibility criteria.

* * * * *

611.222 Postage Discounts and Reductions.

* * * * *

b. Automation. The following automation-based rates are available only for mailpieces that meet specific physical and preparation requirements and that meet the requirements for either basic or 3/5 presort:

(1) ZIP+4 (see 628.1 and 628.2), for letter-size mailpieces bearing a ZIP+4 code.

(2) ZIP+4 Barcoded (see 628.1 and 628.3), for letter- or flat-size mailpieces bearing a ZIP+4 or delivery point barcode.

* * * * *

**520 Classification**

* * * * *

**628 ADDITIONAL CONDITIONS FOR AUTOMATION-BASED BULK THIRD-CLASS RATES**

**628.1 Conditions Applicable to All Automation-Based Bulk Third-Class Rates**

628.11 General

628.111 Definition. The automation-based bulk third-class rates (Basic ZIP+4, 3/5 ZIP+4, Basic ZIP+4 Barcoded, 3-digit ZIP+4 Barcoded, 3/5 ZIP+4 Barcoded, and 5-digit ZIP+4 Barcoded) apply only to mailpieces prepared as specified in 628.1 through 628.3.

628.112 Minimum Quantity. Each mailing at an automation-based bulk third-class rate must contain at least 200 mailpieces or 50 pounds of mailpieces all of the same processing category.

628.113 Physical Mailpiece Requirements for General Automation Compatibility. Each letter-size or flat-size mailpiece in a mailing must meet the requirements of 521 or 522, respectively. The same mailing may contain only pieces of the same processing category (e.g., only letter-size or only flat-size mailpieces) (see 128).

* * * * *

628.14 Presort

628.141 General Requirement. All pieces in an automation-based rate bulk third-class mailing must be presorted together as required by 641 or 560 (for letter-size mail) or by 570 (for flat-size mailpieces as defined in 128.32).

628.142 Rate Eligibility—Letter-Size Mailpieces

[Text of existing section.]

628.143 Rate Eligibility—Flat-Size Mailpieces

a. General. Rate eligibility for flat-size ZIP+4 Barcoded rate mailings is determined by the sortation level of the package in which a mailpiece is placed, regardless of the destination of the sack/pallet to which that package is subsequently sorted. Flat-size mailpieces claimed at a ZIP+4 Barcoded rate cannot be combined on 5-digit pallets with other mailpieces claimed at a carrier route or walk-sequence rate (see 576.42).

b. ZIP+4 Barcoded or Delivery Point Barcoded Mailpieces. Subject to the general eligibility requirements in 628.1 and 628.3, a ZIP+4 barcoded or delivery point barcoded flat-size mailpiece prepared as specified in 572, 573, or 576 can qualify for the following:

(1) 3/5 Flats ZIP+4 Barcoded rate if part of a 5-digit or 3-digit package containing at least 10 addressed pieces.

(2) Basic Flats ZIP+4 Barcoded rate if part of an SCF package containing at least 10 pieces or in a residual package.

c. 5-Digit Barcoded Mailpieces. Subject to the general eligibility requirements in 325.113, a 5-digit barcoded flat-size mailpiece prepared as specified in 572 and 573 or 576 can qualify for the:

(1) 3/5 presort rate if placed in a 5-digit or 3-digit package containing at least 10 addressed pieces.

(2) Basic presort rate if placed in an SCF package containing at least 10 pieces or in a residual package.

628.15 Optional Use of Trays. [Revise the first sentence as follows:] Automation-based rate bulk third-class mailings of letter-size mailpieces (see 128 and 521) may be prepared in trays rather than in sacks as provided in 560 and 647.

* * * * *

**628.3 ZIP+4 Barcoded Rates**

628.31 General

* * * * *

1628.312 Required Percentage of ZIP+4 Barcoded Mailpieces

(a) Letter-Size Mailpieces. [Text of existing 628.312.]

(b) Flat-Size Mailpieces. Regardless of presort level or rate, at least 85% of the pieces in each mailing must bear the correct ZIP+4 or delivery point barcode, prepared under 551, representing information specified in 530. Remaining pieces must bear the correct 5-digit barcode for the delivery address on the piece, prepared as specified in 552. The address on each piece (regardless of barcode) must contain the correct numeric 5-digit ZIP Code or ZIP+4 code, or the correct numeric equivalent to the delivery point barcode (see 515.3).

(c) Copalletized Mailings of Flat-Size Mailpieces. Mailings of mailpieces claimed at the carrier route rates and mailings of mailpieces claimed at a ZIP+4 Barcoded rate for flats may be copalletized to the 3-digit, SCF, and BMC presort levels; copalletization of such pieces to the 5-digit presort level is prohibited. See 576 for additional information about copalletized mailings. Copalletized pieces in other mailings do not count towards compliance with 628.312b.

* * * * *

628.32 Other Rates

628.321 Mailings of Letter-Size Mailpieces. [Text of existing 628.32.]

628.322 Mailings of Flat-Size Mailpieces. ZIP+4 Barcoded rate mailings may contain pieces claimed at the 3/5 and Basic ZIP+4 Barcoded rates and 3/5 and basic presort levels. Other rates are not available.

628.33 Requirements for OCR Processing

* * * * *

628.36 Optional Sortation of Letter-Size Mailpieces to Automated Sites. Mailers may prepare 3-digit ZIP+4 Barcoded rate mailings of letter-size mailpieces without making 5-digit packages or sacks if:

* * * * *

628.37 Additional Tray and Sack Labeling Requirements

628.371 Letter-Size Mailpieces. The second (contents) line on labels for trays and sacks in ZIP+4 Barcoded rate

mailings of letter-size mailpieces must show the information specified in 641.133 and 641.135 followed by "ZIP+4 BARCODED."

628.372 Flat-Size Mailpieces. The labels for sacks in ZIP+4 Barcoded rate mailings of flat-size mailpieces must show the information specified in 570.

628.38 Letter-Size Mailpieces Prepared with 5-Digit Barcodes and Barcode Windows

* * * * *

629 MAILPIECE CHARACTERISTICS

* * * * *

**629.2 Physical Limitations**

* * * * *

629.22 Size, Shape, and Ratio (General Standards)

629.221 Maximum Size Standards

* * * * *

d. Automation-Based Rates. The maximum sizes for mailpieces at these rates are described in 128.2 and 521 (for letter-size mailpieces) and 128.32 and 522 (for flat-size mailpieces).

629.222 Minimum Size Standards.

* * * * *

g. The minimum size for flat-size mailpieces claimed at a ZIP+4 Barcoded rate is as prescribed in 128.32 and 522.

* * * * *

**629.4 Optional Use of Detached Address Labels for Flats**

* * * * *

629.48 Automation-Based Rates. Mailings prepared under 629.4 are not eligible for any automation-based rate.

* * * * *

644 PALLETIZATION

* * * * *

**644.1 Packages and Bundles Presented on Pallets**

* * * * *

644.12 Package Preparation

* * * * *

644.123 Sortation.

a. [Change the end of the first sentence and add the second sentence as follows.] "* * * as required in 573.123, 573.143, 573.153, and 573.16, for automation-based rate flat-size mailpieces, or 641.122a through 641.122e and 641.41. Preparation of SCF packages are required for barcoded rate flat-size mailings presented on pallets (see 576.3)."

* * * * *

644.124 Package Labels

a. [Change the first sentence to read as follows.] "Mailers must label packages with either pressure-sensitive labels as provided in 572.441, 641.122a through 641.122e, and 641.41, or the optional endorsement line as provided in 572.442 or 642."

* * * * *

644.14 Pallet Preparation

* * * * *

644.141 Weight and Volume

a. [Add the following at the end of this section.] "* * * (Exception: The minimum mail load for 5-digit pallets prepared under 576 is 500 pounds.)"

* * * * *

644.143 Pallet Labels

* * * * *

d. Additional Information. [Add the following at the end of the regular text in the current sections.] "Pallets containing automation-compatible flat-size mailpieces prepared under 576 must show the word BARCODED on the contents line. Pallets containing copalletized ZIP+4 Barcoded rate and carrier route presortrate mailings prepared under 576.4 must show the words BARCODED/CARRIER ROUTES (or its authorized abbreviation (CAR RTS), on the contents line. The word BARCODED must not be abbreviated on the contents line.

* * * * *

644.17 Commingling Mixed Rate Level Mailings on Pallets

644.171 General. The procedures and requirements in 644.172 through 644.176 apply to mailers who want to present packages of third-class mail that are subject to more than one presort level rate on the same pallet as follows:

a. Non-Automation Rate Mailings. Mailers must obtain an authorization to commingle carrier route presort, 3/5 presort, and basic rate mail on the same pallet.

b. Non-Automation and Automation-Based Rate Mailings. Mailers must obtain an authorization to commingle packages subject to carrier route presort rates with packages subject to flats barcoded rates. Packages from automation-based rate mailings may be commingled with packages subject to non-automation rates only under 576.4 (copalletization of flats barcoded mailings and carrier route presort mailings.)

c. Flats Barcoded Mailings. Mailers do not need to obtain an authorization to commingle mixed rate level mailings when only flats barcoded mailings are presorted on pallets (see 576).

* * * * *

644.175 Preparation

*a. Summary Listing.* [Add the following note at the end of the current section after subsection (b).] Note: Mailers who copalletize carrier route and ZIP+4 Barcoded rate flats under 576.4 must also list the number of pieces that qualify for the 3/5-digit barcoded rate for flats by 5-digit and 3-digit ZIP Code, and the number of pieces that qualify for the basic barcoded rate for flats by 3-digit ZIP Code.

* * * * *

c. Pallet Preparation

* * * * *

(2) Indicating Placement. [Add the following at the end of the current section.] When preparing copalletized carrier route and flats barcoded rate mailings under 576, mailers must place all carrier route rate packages together and all packages from flats barcoded mailings together and must indicate to the postal personnel verifying the mail how the packages are placed on pallets (e.g., carrier route mail is placed on the bottom and flats barcoded mail is placed on the top).

* * * * *

644.18 Copalletizing Multiple Bulk Third-Class Flat-Size Mailings

644.181 General. [Add the following note after the current section.] Note: Mailers may copalletize packages from carrier route presort flat-size mailings on pallets with packages from flats barcoded rate mailings provided all carrier route pieces are generated as part of the same mailing job as the barcoded pieces with which they are copalletized under 576.4.

* * * * *

644.186 Preparation

a. Summary List. [Add the following note at the end of the current section after subsection (6).] Note: Mailers who copalletize carrier route mailings and flats barcoded rate mailings under 576.4 must also list the number of pieces that qualify for the 3/5-digit flats barcoded rate by 5-digit and 3-digit ZIP Code, and the number of pieces that qualify for the basic flats barcoded rate by 3-digit ZIP Code.

* * * * *

b. Pallet Preparation for Copalletized Flat-Size Mail

* * * * *

(4) Indicating Placement. [Add the following at the end of the current section.] When preparing copalletized carrier route mailings and flats barcoded rate mailings under 576.4, mailers must place all carrier route rate packages together and all packages from barcoded rate mailings together and must indicate to the postal personnel verifying the mail how the packages are placed on pallets (e.g., carrier route mail is placed on the bottom and flats barcoded rate mail is on the top).

* * * * *

644.4 Palletizing Sacks

* * * * *

644.42 Package Preparation. [Change this section to read as follows.] "See 572.4, 573.1, 641.12, and 641.41."

644.43 Sack Preparation

* * * * *

644.432 Sack Labeling. [Change the end of the first sentence as follows.] "* * * in 572.53, 573.233, 573.243, 573.253, 573.254, 573.283, 573.27, 641.13, 641.22, and 641.42, as appropriate."

* * * * *

644.433 Sack Sortation. [Change this section to read as follows.] "See 573.2, 641.13, and 641.42."

644.44 Pallet Preparation

644.441 Weight and Volume

a. [Add the following at the end of this section.] "* * * (Exception: The minimum mail load for 5-digit pallets prepared under 576 is 500 pounds.)"

* * * * *

644.443 Pallet Labels

* * * * *

*d. Additional information.* [Add the following at the end of the regular text in the current section.] "Pallets containing automation-compatible flat-size mailpieces prepared under 576 must show the word BARCODED on the contents line. Pallets containing copalletized ZIP+4 Barcoded rate and carrier route presort rate mailings prepared under 576.4 must show the words BARCODED/CARRIER ROUTES (or its authorized abbreviation "CAR RTS), on the contents line. The word BARCODED must not be abbreviated on the contents line.

* * * * *

**600 Payment of Postage**

661 METHOD OF PAYMENT

* * * * *

661.3 Bulk Mailings at Automation-Based Rates

661.31 Permit Imprint (See 145)

661.311 Identical-Weight Pieces. [Revise the first and second sentences as follows:] Mailings of identical-weight mailpieces may have postage paid by permit imprint. Mailings at automation-based (ZIP+4 and ZIP+4 BARCODED) rates must be accompanied * * *

* * * * *

661.32 Meter Stamps

* * * * *

661.322 Correct Postage Affixed to Each Piece

* * * * *

b. ZIP+4 Barcoded Rate Mailings. [Revise the beginning of the first sentence as follows:] Letter-size mailpieces qualifying for * * * [Add the following as a new second sentence:] Flat-size mailpieces qualifying for the Basic ZIP+4 Barcoded rate and the 5% ZIP+4 Barcoded rate are metered at the respective rate for which they qualify.

* * * * *

661.323 Lowest Rate in Mailing Affixed to Each Piece

* * * * *

b. ZIP+4 Barcoded Mailings—Letter-Size Mailpieces

* * * * *

c. ZIP+4 Barcoded Mailings—Flat-Size Mailpieces. When all pieces in a mailing of identical-weight flat-size mailpieces prepared under 570 have meter or precanceled postage affixed, each piece may bear the correct postage for the 5% ZIP+4 Barcoded rate provided the applicable documentation requirements in 574.3 or 575 are met. Additional postage for pieces qualifying for the Basic ZIP+4 Barcoded rate, as shown in the documentation required by 574.3 or 575, must be paid either by a meter-strip affixed to the mailing statement required to accompany the mailing, or through an advance deposit account as provided for in Handbook F-1, 524.

* * * * *

661.4 ZIP+4 Barcoded Rate Combined Letter-Size Mailings With Different Postage Payment Methods

661.41 General.

* * * * *

c. Each piece in the combined mailings meets the physical requirement of 521.

* * * * *

BILLING CODE 7710-12-M

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| Rate or Discount | Regular | | | Special | | |
|---|---|---|---|---|---|---|
| | .2067 lb. (3.3067 oz.) or less (per piece) | | More than .2067 lb. (3.3067 oz.) (per piece + per pound) | .2085 lb. (3.3367 oz.) or less (per piece) | | More than .2085 lb. (3.3367 oz.) (per piece per pound) |
| | Letters | Other than Letters | All pieces | Letters | Other than Letters | All pieces |
| **BASE RATE** (Basic Presort) | $0.198 | $0.233 | $0.109/pc. + 0.600/lb. | $0.111 | $0.146 | $0.063/pc. + 0.398/lb. |
| **DISCOUNTS** | | | | | | |
| Presort | | | | | | |
| 3/5 | $0.033 | $0.046 | $0.046/pc. | $0.013 | $0.014 | $0.014/pc. |
| Carrier Route | 0.067 | 0.091 | 0.091/pc. | 0.037 | 0.045 | 0.045/pc. |
| 125-Piece W-S | ---- | 0.096 | 0.096/pc. | ---- | 0.047 | 0.047/pc. |
| Saturation W-S | 0.074 | 0.106 | 0.106/pc. | 0.040 | 0.052 | 0.052/pc. |
| Dest. Entry | | | | | | |
| BMC | $0.012 | $0.012 | $0.058/lb. | $0.012 | $0.012 | $0.058/lb. |
| SCF | 0.017 | 0.017 | 0.081/lb. | 0.017 | 0.017 | 0.081/lb. |
| Delivery Unit | 0.022 | 0.022 | 0.104/lb. | 0.022 | 0.022 | 0.104/lb. |
| Automation | | | | | | |
| ZIP + 4 | .1563 lb. (2.5 oz.) maximum | NOT AVAILABLE | | .1563 lb. (2.5 oz.) maximum | NOT AVAILABLE | |
| (Basic Presort) | $0.009 | | | $0.007 | | |
| (3/5 Presort) | 0.004 | | | 0.004 | | |
| ZIP + 4 Barcoded | .1875 lb. (3.0 oz.) maximum | Automation-Compatible Flats (See 522) 1.0 lb. (16 oz.) maximum | | .1875 lb. (3.0 oz.) maximum | Automation-Compatible Flats (See 522) 1.0 lb. (16 oz.) maximum | |
| (Basic Presort) | $0.019 | $0.025 | $0.025/pc. | $0.017 | $0.025 | $0.025/pc. |
| (3-digit sort) | 0.011 | 0.017 | 0.017/pc. | 0.010 | 0.017 | 0.017/pc. |
| (5-digit sort) | 0.019 | 0.017 | 0.017/pc. | 0.017 | 0.017 | 0.017/pc. |

**Note:** The discounts shown are subtracted from the base rate to yield the net postage that must be paid. Each automation discount is in addition to a specific presort discount. Some addressed pieces may be eligible for more than one discount. Some combinations of discounts may be required or prohibited. See 624 for the eligibility requirements that apply to each discount.

**Exhibit 611.2a, Summary of Third-Class Rates and Discounts**



| Entry Discount | Nonautomation-Based Rates | | | | Automation-Based Rates | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Basic | 3/5 | Carrier Route | Saturation | Basic ZIP + 4 | 3/5 ZIP + 4 | Basic Barcoded | 3-Digit Barcoded | 5-Digit Barcoded |
| None | $0.198 | $0.165 | $0.131 | $0.124 | $0.169 | $0.161 | $0.179 | $0.154 | $0.146 |
| BMC | 0.186 | 0.153 | 0.119 | 0.112 | 0.177 | 0.149 | 0.167 | 0.142 | 0.134 |
| SCF | 0.181 | 0.148 | 0.114 | 0.107 | 0.172 | 0.144 | 0.162 | 0.137 | 0.129 |
| Delivery Unit | ---- | ---- | 0.109 | 0.102 | ---- | ---- | ---- | ---- | ---- |

**Note: See 521.3 and 628.113 for additional weight restrictions for automation-based rates.**

**Exhibit 611.2b, Regular Bulk Third-Class Letter-Size Minimum Per Piece Rates for Pieces Weighing .2067 Lb. (3.3067 Oz.) or Less**

| Entry Discount | Nonautomation-Based Rates | | | | | Automation-Based Rates | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Basic | 3/5 | Carrier Route | 125-PC W-S | Saturation | Basic ZIP + 4 | 3/5 ZIP + 4 | Basic Barcoded | 3-Digit Barcoded | 3/5-Digit Barcoded |
| None | $0.233 | $0.187 | $0.142 | $0.137 | $0.127 | ---- | ---- | $0.208 | ---- | $0.170 |
| BMC | 0.221 | 0.175 | 0.130 | 0.125 | 0.115 | ---- | ---- | 0.196 | ---- | 0.158 |
| SCF | 0.216 | 0.170 | 0.125 | 0.120 | 0.110 | ---- | ---- | 0.191 | ---- | 0.153 |
| Delivery Unit | ---- | ---- | 0.120 | 0.115 | 0.105 | ---- | ---- | 0.186 | ---- | 0.148 |

**Note: Automation-based rates available only for automation-compatible flats (see 522).**

**Exhibit 611.2c, Regular Bulk Third-Class Nonletter-Size Minimum Per Piece Rates for Pieces Weighing .2067 Lb. (3.3067 Oz.) or Less**

| Per Piece/Pound | Nonautomation-Based Rates | | | | | Automation-Based Rates | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Basic | 3/5 | Carrier Route | 125-PC W-S | Saturation | Basic ZIP + 4 | 3/5 ZIP + 4 | Basic Barcoded | 3-Digit Barcoded | 3/5-Digit Barcoded |
| Per Piece Rates (for all entry categories) | $0.109 | $0.063 | $0.018 | $0.013 | $0.003 | ---- | ---- | $0.084 | ---- | $0.046 |
| | | | Plus | | | | | Plus | | |
| Per Pound Rates (by entry discount) | | | | | | | | | | |
| None | $0.600 | $0.600 | $0.600 | $0.600 | $0.600 | ---- | ---- | $0.600 | ---- | $0.600 |
| BMC | 0.542 | 0.542 | 0.542 | 0.542 | 0.542 | ---- | ---- | 0.542 | ---- | 0.542 |
| SCF | 0.519 | 0.519 | 0.519 | 0.519 | 0.519 | ---- | ---- | 0.519 | ---- | 0.519 |
| Delivery Unit | ---- | ---- | 0.496 | 0.496 | 0.496 | ---- | ---- | ---- | ---- | ---- |

**Note: Each piece is subject to both a piece and a pound rate.**

**Note: Automation-based rates available only for automation-compatible flats (see 522).**

**Exhibit 611.2d, Regular Bulk Third-Class Piece/Pound Rates for Pieces Weighing More Than .2067 Lb. (3.3067 Oz.)**

| Entry Discount | Nonautomation-Based Rates | | | | Automation-Based Rates | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Basic | 3/5 | Carrier Route | Saturation | Basic ZIP + 4 | 3/5 ZIP + 4 | Basic Barcoded | 3-Digit Barcoded | 5-Digit Barcoded |
| None | $0.111 | $0.098 | $0.074 | $0.071 | $0.104 | $0.094 | $0.094 | $0.088 | $0.081 |
| BMC | 0.099 | 0.086 | 0.062 | 0.059 | 0.092 | 0.082 | 0.082 | 0.076 | 0.069 |
| SCF | 0.094 | 0.081 | 0.057 | 0.054 | 0.087 | 0.077 | 0.077 | 0.071 | 0.064 |
| Delivery Unit | ---- | ---- | 0.052 | 0.049 | ---- | ---- | ---- | ---- | ---- |

Note: See 521.3 and 628.113 for additional weight restrictions for automation-based rates.

### Exhibit 611.2e, Special Bulk Third-Class Letter-Size Minimum Per Piece Rates for Pieces Weighing .2085 Lb. (3.3367 Oz.) or Less

| Entry Discount | Nonautomation-Based Rates | | | | | Automation-Based Rates | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Basic | 3/5 | Carrier Route | 125-PC W-S | Saturation | Basic ZIP + 4 | 3/5 ZIP + 4 | Basic Barcoded | 3-Digit Barcoded | 3/5-Digit Barcoded |
| None | $0.146 | $0.132 | $0.101 | $0.099 | $0.094 | ---- | ---- | $0.121 | ---- | $0.115 |
| BMC | 0.134 | 0.120 | 0.089 | 0.087 | 0.082 | ---- | ---- | 0.109 | ---- | 0.103 |
| SCF | 0.129 | 0.115 | 0.084 | 0.082 | 0.077 | ---- | ---- | 0.104 | ---- | 0.098 |
| Delivery Unit | ---- | ---- | 0.079 | 0.077 | 0.072 | ---- | ---- | 0.099 | ---- | 0.093 |

Note: Each piece is subject to both a piece and a pound rate.

Note: Automation-based rates available only for automation-compatible flats (see 522).

### Exhibit 611.2f, Special Bulk Third-Class Nonletter-Size Minimum Per Piece Rates for Pieces Weighing .2085 Lb. (3.3367 Oz.) or Less

| Per Piece/Pound | Nonautomation-Based Rates | | | | | Automation-Based Rates | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Basic | 3/5 | Carrier Route | 125-PC W-S | Saturation | Basic ZIP + 4 | 3/5 ZIP + 4 | Basic Barcoded | 3-Digit Barcoded | 3/5-Digit Barcoded |
| Per Piece Rates (for all entry categories) | $0.063 | $0.049 | $0.018 | $0.016 | $0.011 | ---- | ---- | $0.039 | ---- | $0.032 |
| | | | Plus | | | | | Plus | | |
| Per Pound Rates (by entry discount) | | | | | | | | | | |
| None | $0.398 | $0.398 | $0.398 | $0.398 | $0.398 | ---- | ---- | $0.398 | ---- | $0.398 |
| BMC | 0.340 | 0.340 | 0.340 | $0.340 | 0.340 | ---- | ---- | 0.340 | ---- | 0.340 |
| SCF | 0.317 | 0.317 | 0.317 | 0.317 | 0.317 | ---- | ---- | 0.317 | ---- | 0.317 |
| Delivery Unit | ---- | ---- | 0.294 | 0.294 | 0.294 | ---- | ---- | ---- | ---- | ---- |

Note: Each piece is subject to both a piece and a pound rate.

Note: Automation-based rates available only for automation-compatible flats (see 522).

### Exhibit 611.2g, Special Bulk Third-Class Piece/Pound Rates for Pieces Weighing More Than .2085 Lb. (3.3367 Oz.)

BILLING CODE 7710-12-C

Domestic Mail Manual Issue 44, September 20, 1992, will include these changes. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

**Neva R. Watson,**

*Attorney, Legislative Division.*

[FR Doc. 92-15985 Filed 7-9-92; 8:45 am]

BILLING CODE 7710-12-M

VOL 57 ISS 133 JL 10 1992 UMI



## POSTAL SERVICE

### Changes in Certain Postal Rates and Mail Classifications

**AGENCY:** Postal Service.

**ACTION:** Changes in domestic postal rates and mail classifications for bulk mailings of First-, second-, and third-class flat-shaped mail pieces that are pre-barcoded by mailers and are automation compatible.

**SUMMARY:** Pursuant to its authority under 39 U.S.C. 3625, the Postal Service is implementing the changes indicated below in domestic postage rates and mail classifications for pre-barcoded First-, second-, and third-class flat-shaped mail.

**EFFECTIVE DATE:** September 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Scott Reiter, (202) 268–2999.

**SUPPLEMENTARY INFORMATION:** On June 21, 1991, the Postal Service filed, pursuant to chapter 36, title 39, United States Code, a request with the Postal Rate Commission for a recommended decision on the establishment of rate categories and discounts for bulk mailings of pre-barcoded, automation compatible, flat-shaped mail. An explanation of the Postal Service's proposal and an invitation to participate in Commission Docket No. MC91–1 was published in the **Federal Register** by the Postal Rate Commission on July 1, 1991 (56 FR 29983–84).

On March 19, 1992, the Postal Rate Commission issued its Opinion and Recommended Decision. The Commission recommended the classifications requested by the Postal Service and recommended rates for those classifications.

In a Decision adopted on May 4, 1992, the Governors of the Postal Service approved this Recommended Decision. The Board of Governors of the Postal Service ordered that the changes in rates and mail classification become effective at 12:01 a.m. on September 20, 1992.

In accordance with these actions by the Governors and the Board of Governors, the Postal Service hereby gives notice that the rate and classification changes listed below will become effective at 12:01 a.m. on September 20, 1992. Implementing regulations are published elsewhere in this issue.

**Authority:** 39 U.S.C. 101(d), 401, 403, 404, 3621, 3625, 3626.

**Neva R. Watson,**

*Attorney, Legislative Division.*

The Domestic Mail Classification Schedule is amended to add the underlined text:

100.020 Regular Mail

Regular First-Class Mail consists of mailable matter posted at First-Class *Mail* regular rates, weighing 11 ounces or less, and not mailed or eligible for mailing under sections 100.0201, 100.0203, 100.0204, *100.0205, 100.0206,* 100.0211, 100.0211, or 100.023.

*100.0205 Nonpresorted Pre-barcoded Flats*

*Nonpresorted pre-barcoded First-Class Mail flats consist of properly prepared First-Class Mail flat size pieces which are presented in mailings of 250 or more pieces, bear a barcode as prescribed by the Postal Service, and meet the flats machinability and address readability specifications of the Postal Service. Such flats must be presented for mailing in a manner which does not require cancellation.*

*100.0206 Presorted Pre-barcoded Flats*

*Presorted pre-barcoded First-Class Mail flats consist of properly prepared First-Class Mail flat size pieces which are presented in mailings of 500 or more pieces, bear a barcode as prescribed by the Postal Service, are presorted to the 3/5-digit ZIP Code level in a manner prescribed by the Postal Service, and meet the flats machinability and address readability specifications of the Postal Service. Such flats must be presented for mailing in a manner which does not require cancellation.*

100.041 First-Class Mail mailed under sections 100.0203, 100.0204, *100.0206,* 100.0214 and 100.0232 must be presorted in accordance with regulations prescribed by the Postal Service.

100.042. First-Class Mail mailed under sections 100.0203, 100.0204, *100.0206,* 100.0214 and 100.0232 must be prepared as follows: * * *

[No changes are proposed for the remainder of § 100.042.]

100.047 Pieces mailed under sections 100.0201, 100.0202, 100.0203, 100.0204, *100.0205, 100.0206,* 100.0211, and 100.023 must be prepared as follows: * * *

[No changes are proposed for subsections a. or b. of § 100.047]

c. Pieces not within the same postage increment may be mailed at ZIP+4 rate category or pre-barcoded ZIP+4 presorted mail rates *or presorted pre-barcoded flat rates* only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

d. Pieces mailed at presorted ZIP+4 rate category or pre-barcoded ZIP+4 presorted mail rates *or presorted pre-barcoded flat rates* must be properly prepared and presorted as prescribed by the Postal Service.

*200.098 Pre-barcoded flats*

*Pre-barcoded second-class mail flats which are properly prepared and presorted, which bear a barcode as prescribed by the Postal Service, and which meet the flats machinability and address readability specifications of the Postal Service, are eligible for the applicable discounts for prebarcoded second-class flats set forth in Rate Schedules 200, 201, 202, and 203.*

300.023 Bulk Rate Presort Categories

Bulk rate mail sent under section 300.021 must meet the conditions of sections 300.0231, 300.0232, 300.0233, 300.0324, 300.0235, 300.0236, 300.0237, *300.0238,* 300.0239, *300.02310,* or 200.02311, to be eligible for the applicable rate.

*300.0238 Pre-barcoded flats*

*Pre-barcoded third-class mail flats consist of bulk rate third-class mail flat size pieces which are properly prepared and presorted, bear a barcode as prescribed by the Postal Service, and meet the flats machinability and address readability specifications of the Postal Service. Such flats must be presented for mailing in a manner which does not require cancellation.*

Rate Schedule 100, First-Class Mail, is amended as follows: Letters, Nonpresort, First ounce:

Change "ZIP+4" to "ZIP+4 Letters"

Add as the last line: "Pre-barcoded Flats—26.7 [9]"

Letters, Presort, First ounce, 3 and 5 Digit:

Change "ZIP+4" to "ZIP+4 Letters"

Change "Pre-barcode—3 Digit" to "Pre-barcoded Letters—3 Digit"

Change "Pre-barcode—5 Digit" to "Pre-barcoded Letters—5 Digit"

Add as the last line: "Pre-barcoded Flats—23.3"

Rate Schedule 200, Second-class Mail, Regular Rate Publications, Outside County; Rate Schedule 202, Publications of Authorized Nonprofit Organizations, Outside County; and Rate Schedule 203, Classroom Publishers, Outside County are amended as follows:

[9] Notes: Add: "Nonpresorted pre-barcoded flat mail must be properly prepared and submitted in mailings of at least 250 pieces.".

Automation Discounts for Automation Compatible Mail From Required:
Change "ZIP+4" to "ZIP+4 Letter Size"
Change "Pre barcode" to "Pre-barcoded Letter Size"
Add as the last line: "Pre-barcoded Flats—Piece—2.3"
Automation Discounts for Automation Compatible Mail From 3/5 Digit:
Change "ZIP+4" to "ZIP+4 Letter Size"
Change "3-Digit Prebarcode" to "3-Digit Pre-barcoded Letter Size"
Change "5-Digit Prebarcode" to "5-Digit Pre-barcoded Letter Size"
Add as the last line: "Pre-barcoded Flats—Piece—1.5"

Rate Schedule 201, Second-class Mail: In-County, is amended as follows:
Automation Discounts for Automation Compatible Mail From Required:
Change "ZIP+4" to "ZIP+4 Letter Size"
Change "5-Digit Prebarcode" to "5-Digit Pre-barcoded Letter Size"
Add as the last line:
"3/5-Digit Pre-barcoded Flats—1.5"
Rate Schedule 301, Third-Class Mail: Regular Bulk; and Rate Schedule 302, Third-Class Mail: Nonprofit Bulk are amended as follows:
Non-Letter Size
Piece Rate
Discounts
Add as the last section:
"Automation [7]
Barcode [4]
Basic—2.5
3/5 Digit—1.7"
Non-Letter Size
Pound Rate
Discounts
Add as the last section:
"Automation [7] (per piece)
Barcode [4]
Basic—2.5
3/5 Digit—1.7"

[FR Doc. 92-15984 Filed 7-9-92; 8:45 am]
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[7] Notes: Add: For flat size pieces meeting applicable Postal Service regulations."

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Part III

# Department of the Interior

**Bureau of Indian Affairs**

**Fort Mojave Indian Reservation, Clark County, Nevada; San Bernardino County, California, and Mohave County, Arizona; Availability of a Final Environmental Impact Statement; Notice**

VOL 57 ISS 133 JL 10 1992 UMI

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**Availability of a Final Environmental Impact Statement; Fort Mojave Indian Reservation, Clark County, Nevada, San Bernardino County, California, and Mohave County, Arizona**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that a Final Environmental Impact Statement (FEIS) for two proposed leases of approximately 1,328 acres on the Fort Mojave Indian Reservation for mixed residential, commercial and recreational development projects in Clark County, Nevada, San Bernardino County, California, and Mohave County, Arizona, is available for final public review. This notice is furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR part 1503 and § 1506.9) to obtain comments from government agencies and the public on the FEIS.

**DATES:** Written comments should be received on or before August 14, 1992. Comments are solicited and should be directed to the Bureau of Indian Affairs (BIA) at the address provided below.

**ADDRESSES:** Comments should be addressed to: Mr. Wilson Barber, Jr., Area Director, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona, 85001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy L. Heuslein, Area Environmental Protection Officer, Bureau of Indian Affairs, Phoenix Area Office, Environmental Quality Services, P.O. Box 10, Phoenix, Arizona. Telephone (602) 379–6750.

Individuals wishing copies of this FEIS for review should immediately contact the above individual or Kiva Environmental & Planning Consultants, at (602) 494–0719. Copies of the FEIS have been sent to all agencies and individuals who participated in the scoping process, public hearings, and to all others who have already requested copies of the document.

**SUPPLEMENTARY INFORMATION:** The Bureau of Indian Affairs (BIA), Department of the Interior, in cooperation with the Fort Mojave Indian Tribe, the U.S. Army Corps of Engineers and the U.S. Coast Guard have prepared a Final Environmental Impact Statement on the proposal to lease approximately 1,328 acres of the Fort Mojave Indian Reservation in Clark County, Nevada, San Bernardino County, California, and Mohave County, Arizona. The Fort Mojave Indian Tribe has developed a master plan for a planned community on their reservation lands in Nevada and a portion in California. The FEIS describes the proposed actions, alternatives, affected environment and evaluates the anticipated impacts of two proposed lease sites with each area to be leased to the same developer.

The lessee, James F. Temple, proposes to lease (Mojave Valley Resort—Site 1) approximately 528 acres of Indian trust land in Clark County, Nevada, and San Bernardino County, California, for a period of 65 years with a 20-year renewal option under the terms and conditions of a lease agreement. The proposed action is the development of a portion of the Fort Mojave Tribe's master planned community which would include five 1,000-room hotels/casinos, 460,000 square feet of commercial space, 650 condominiums, an 18-hole golf course with associated facilities, public use areas, open space and wetlands.

The lessee also proposes to lease (Mojave Valley Resort—Site 2) approximately 800 acres of Indian trust land in Mojave County, Arizona, for a period of 75 years with a 20-year renewal option under the terms and conditions of a lease agreement. The proposed action for this lease site would be the construction of a residential development area across the Colorado River from Mojave Valley Resort—Site 1. The development would include 110,000 square feet of commercial space, 2,240 condominiums, 2,880 apartments, 500 mobile home spaces, 750 recreational vehicle spaces, an 18-hole golf course, public use areas and open space.

Both actions are designed to provide additional lease income for the Fort Mojave Indian Tribe and would also provide employment opportunities for Tribal members. The current goals of the Fort Mojave Tribal Council include enhancement of economic development on the reservation, an increase in Tribal revenues, and employment and training opportunities.

The principal alternatives for each proposed lease site under consideration (Sites 1 and 2) have been analyzed and evaluated in the draft EIS (October 1991) and final EIS. The alternatives for the Mojave Valley Resort—(Site 1—Nevada/California) the 528 acre lease site are based on the following: (1) A planned destination resort with small residential community. Alternative 2 would reduce the proposal to three 1,500-room hotels/casinos instead of five 1,000-room hotels/casinos. The commercial area, public use and roadway acreage would be reduced by approximately 50 per cent. The acreage of the condominiums would be about the same as the proposed action, however, the density would be lower. This alternative would also include 25 acres of single family housing. The golf course would be reduced by 16 acres but located in the same area as the proposed action. (2) Alternative 3 proposed for the Mojave Valley Resort—(Site 1) would be for the community acreage to be oriented towards seasonal visitors. There would be three 1,000-room hotels/casinos, and the proposed resort would be reduced to approximately 300 acres with the remainder of acres of the lease-hold left as open space. The residential acreage would be reduced by 20 per cent, the commercial land use would be eliminated, public use areas would be reduced by 50 per cent, while the golf course would be reduced to nine holes. (3) Alternative 4 (Wetlands Mitigation) is a new alternative discussed in the FEIS for Site 1, which provides mitigation for filling in the existing wetlands (404 permit process). The golf course would include 82 acres of new wetland habitat. This alternative is the Preferred Alternative for Site 1. (4) The No Action Alternative discusses the aspect that the lease would not be approved and that the proposed Site 1 development project would not be considered. This alternative would result in the current land use (undeveloped state).

The alternatives for the Mojave Valley Resort (Site 2—Arizona) 800 acre lease site include the following: (1) Alternative 2 reduces the number of acres of multi-family housing (condominiums and apartments) and would add over 300 acres of single-family housing. This alternative would increase the population to 1,000 more residents than the proposed action. This alternative provides the same amount of mobile home spaces, RV spaces, commercial and public use areas, open space and golf course acreage as the Site 2 proposed action alternative. (2) Alternative 3 would involve reducing residential dwelling units by 5,252 (over 50% reduction), which reduces the number of acres of condominiums and apartments, and removes the mobile home park and RV park while adding over 300 acres of open space. The overall total number of dwelling units would be approximately 40 per cent less while the total acreage proposed to be developed would be 401 acres. This alternative would create a less dense community and population. (3) The No Action alternative for Site 2 would be the same as lease Site 1 discussed above except that the current land use is part

agricultural land and an undeveloped state.

Other government agencies and members of the public have contributed to the planning and evaluation of the proposals and to the preparation of this FEIS. The scoping process for the Mojave Valley Resort EIS involved several scoping phases. The first phase started with the publication of a Notice of Intent (NOI) in the February 5, 1990, Federal Register for the Mojave Valley Resort's proposed lease sites on the Fort Mojave Indian Reservation. Scoping meetings were held on February 13, 14 and 15, 1990, in Laughlin, Nevada; Bullhead City, Arizona; and Las Vegas, Nevada, respectively, in order to obtain input from Federal, State, local agencies along with comments from Tribal and the interested public.

The original NOI published in the February 5, 1990, Federal Register, also discussed another lease proposal on the Fort Mojave Indian Reservation that was to be evaluated in this document. The Mojave Highlands 750 acre lease proposal in Clark County, Nevada, will be covered in another DEIS to be published in the near future. The BIA made a decision in January 1991 to separate the Mojave Valley Resort lease site proposals from the Mojave Highlands lease site proposal.

A Notice of Availability (NOA) for the Mojave Valley Resort Draft EIS was published in the Federal Register on October 22, 1991. Public hearings were conducted on November 12, 13 and 14, 1991, in Needles, California; Riviera (Bullhead City), Arizona; and Las Vegas, Nevada, respectively. The Draft EIS was available for public review and comment from October 22 to December 31, 1991.

Agencies and individuals are urged to provide comments on this Final EIS within 30 days after publication in the Federal Register. All comments received by August 14, 1992, will be considered in preparation of the Record of Decision (ROD) for the two proposed actions for Sites 1 and 2.

This notice is published pursuant to § 1503.1 of the Council of Environmental Quality Regulations (40 CFR, parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 437 et seq.) Department of the Interior Manual (516 DM 1–7) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: July 1, 1992.

**Wilson Barber, Jr.,**

*Phoenix Area Director.*

[FR Doc. 92–16158 Filed 7–9–92; 8:45 am]

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Part IV

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Parts 71 and 91**

**Alteration of the Houston Terminal Control Area and the Revocation of the Houston William P. Hobby Airport, Airport Radar Service Area; Final Rule**

VOL 57 ISS 133 JL 10 1992 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 91

[Airspace Docket No. 90-AWA-12]

## Alteration of the Houston Terminal Control Area and the Revocation of the Houston William P. Hobby Airport, Airport Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Houston, TX, Terminal Control Area (TCA). The new TCA configuration will encompass two primary airports: Houston Intercontinental and William P. Hobby. The revised TCA will consist of airspace from the surface or higher to and including 10,000 feet above mean sea level (MSL) within a 30-mile radius of Houston Intercontinental Airport and a 20-mile radius of William P. Hobby Airport. This action will increase the capability of air traffic control (ATC) to provide service in the TCA environment to aircraft transitioning to and from the en route structure. William P. Hobby Airport is currently served by an Airport Radar Service Area (ARSA) which is being rescinded concurrent with the alteration of this TCA.

EFFECTIVE DATE: 0901 u.t.c., October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9255.

SUPPLEMENTARY INFORMATION:

### Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military, or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 29 TCA's. The FAA is proposing to take action to modify or implement the application of these proven safety techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

### Suspension of Certain Aircraft Operations From the Mode C Transponder Requirement

On December 5, 1990, the FAA published Special Federal Aviation Regulation (SFAR) No. 62 which suspends, until December 30, 1993, certain provisions of the regulation which requires the installation and use of automatic altitude-reporting (Mode C) transponders (55 FR 50302). SFAR No. 62 provides access to specified airports within 30 miles of a TCA-primary airport (Mode C veil) for aircraft without Mode C transponders. The FAA believes that the operation of an aircraft without a Mode C transponder can be safely accommodated provided that the operation is conducted in areas not currently within ATC radar coverage and not used predominantly by pilots of aircraft that are required to install and use traffic alert and collision avoidance systems (TCAS) equipment.

SFAR No. 62 identified 17 airports within the Houston Intercontinental TCA Mode C veil where aircraft not equipped with Mode C transponders can operate at and below 1,200 feet above ground level (AGL): (1) Within a 2-nautical-mile radius of a listed airport; and (2) along a direct route between that airport and the outer boundary of the Mode C veil.

The designation of William P. Hobby Airport as a TCA-primary airport will extend the TCA Mode C veil to include the airspace within a 30-nautical-mile radius of that airport. Thirteen additional airports are being excluded from the Mode C requirement under SFAR No. 62 as a result of the revised Houston TCA Mode C veil. These airports are located approximately 25 to 30 miles from William P. Hobby Airport and outside the current Houston Intercontinental TCA Mode C veil. The 13 airports to be added to SFAR No. 62 are:

(1) Ausinia Ranch Airport, Texas City, TX (TS50)
(2) Bailes Airport, Angleton, TX (7R9)
(3) Covey Trails Airport, Fulshear, TX (80XS)
(4) Creasy Airport, Santa Fe, TX (5TA5)
(5) Custom Aire Service Airport, Angleton, TX (81D)
(6) Flying C Ranch Airport, Needville, TX (XS25)
(7) Garrett Ranch Airport, Danbury, TX (77XS)
(8) H&S Airfield Airport, Damon, TX (XS21)
(9) HHI Hitchcock Heliport, Hitchcock, TX (6TA5)
(10) Johnnie Volk Field Airport, Hitchcock, TX (37R)
(11) Lane Airpark Airport, Rosenberg, TX (T54)
(12) Meyer Field Airport, Rosharon, TX (TA33)
(13) Prairie Aire Field Airport, Damon, TX (4TA0)

Additionally, Houston-Southwest (AXH) and Houston-Hull Airport (SGR), Houston, TX, are being removed from the current list of airports at which operations in noncompliance with the Mode C transponder equipment requirement are permitted. Houston-Southwest Airport is located approximately 13 nautical miles from William P. Hobby Airport. Houston-Hull Airport is located approximately 19 nautical miles from William P. Hobby Airport. Due to the radar coverage over these airports by the radar equipment at William P. Hobby Airport, operations in the vicinity of these airports, or along the most direct routing between these airports and the outer boundary of the revised Houston TCA Mode C veil, no longer meet the criteria for exclusion from the Mode C transponder equipment requirement.

Specifically, continuing the exclusion for operations in the vicinity of these airports would result in the display of radar targets without associated altitude information on ATC radar scopes, thus adversely affecting the safety benefits associated with the Mode C transponder equipment requirement.

### User Group Participation

The alteration to the existing TCA and expansion of the area to include the William P. Hobby Airport in the configuration is the product of discussions with a broad representation of the aviation community. In conjunction with this action, the FAA will continue to work cooperatively with local user groups to ensure that the TCA is effective for all users by identifying any adjustments or modifications that appear necessary. Through joint FAA and user cooperation, any problems that

arise can then be identified and corrective action taken when necessary.

This TCA configuration as adopted has been developed through substantial public participation. Informal airspace meetings were held on July 20 and 21, 1988, to allow local aviation interests and airspace users an opportunity to provide input on the design of the proposed Houston TCA. The Houston Ad Hoc Airspace Committee, which represented a cross section of the aviation community, was formed; technical assistance and support were supplied by an FAA representative from the Southwest Region. Following the informal meetings and extensive coordination with the airspace user groups, a tentative TCA configuration was prepared for public discussion. As a result of those efforts, the FAA further adjusted the proposed TCA to the configuration published in the Notice of Proposed Rulemaking (NPRM) on June 14, 1991 (56 FR 27654).

**Discussion of Comments**

In response to the NPRM, the FAA received 17 written comments from pilots and owners of aircraft, other individuals, local government agencies, and aviation trade and industry associations. One of the letters had multiple signatures. Another letter enclosed petitions with multiple signatures on each page. The FAA has completed a thorough analysis of the comments and has amended the final TCA design as contained in the rule. The FAA believes that this final TCA design promotes the safe and efficient use of the airspace, while satisfying ATC and user requirements.

The following is a summary of the public comments and the agency's response:

Four commenters objected to lowering the TCA floor from 3,000 to 2,000 feet MSL over the David Wayne Hooks Airport. They expressed concern that a lower TCA floor could create hazardous conditions for nonparticipating aircraft operating below the floor in the vicinity of the airport by permitting large turbojet aircraft to operate at even lower altitudes. The FAA disagrees with these conclusions; lowering the floor of the TCA to 2,000 feet MSL will not permit lower approaches, but will contain existing procedures which permit aircraft inbound to Houston Intercontinental Airport to cross David Wayne Hooks Airport either at or descending to 2,000 feet MSL in TCA designated airspace.

Three commenters who were opposed to the requirement for including the airspace from 20 to 30 miles in the TCA suggested using extensions or arrival and departure corridors. FAA date indicates that, while corridors do provide a degree of safety to arriving and departing aircraft in the terminal environment, they do not provide adequate airspace to vector, sequence, and meter effectively the vast numbers of aircraft served in major terminal areas today. The primary concern in any proposed TCA action is providing the highest degree of safety while preserving the most efficient use of the available terminal airspace. The use of corridors would decrease the capacity to accommodate airspace users in most terminals because of the differing performance characteristics of aircraft.

One commenter was concerned about the removal of Houston-Southwest and Houston-Hull Airports from the Mode C Veil exemption list. This commenter stated that a number of aircraft based at these airports do not have electrical systems and would be forced to move. The FAA does not agree with this statement since § 91.215(b)(3) specifically excludes aircraft without an electrical system from the Mode C requirements for operations in a Mode C veil provided such operations are conducted outside the TCA.

The Aircraft Owners and Pilots Association (AOPA) and the Experimental Aircraft Association (EAA) objected to extending the lateral limits of the TCA from 20 to 30 nautical miles and recommended cutouts for airports, based on the maximum 20-mile circumference of the proposed TCA. They also recommended that Genoa and Ellington Airports be excluded from the William P. Hobby Airport surface area and that the ceiling of the TCA be limited to 8,000 feet MSL. The FAA agrees partially with this particular recommendation and has revised the TCA design to provide a cutout for Ellington Airport, thereby removing it from the surface area. However, the Genoa Airport will remain within the inner circle, or surface area, of the William P. Hobby Airport. The recommendation to limit the ceiling will be addressed later in this document.

A petition submitted by West Houston Airport suggested that the ceiling of the proposed TCA be limited to 7,000 feet and objected to the expansion of the lateral limits to 30 miles. The petitioners stated that "There are no existing and valid facts to substantiate the expansion of the TCA" and further asserted that "There have been no midair collisions in the Houston area * * * The Houston airspace has an enviable safety record partly due to the low number of operations" at the airports. The commenters further stated that, while enplanements have substantially increased at both Houston Intercontinental and William P. Hobby Airports, the actual operations have decreased. An FAA analysis of the total airport operations for Houston Intercontinental and William P. Hobby Airports showed an increase in operations during the 1990 fiscal year: an increase of 16,436 operations from 310,477 at Houston Intercontinental Airport and an increase of 10,040 operations from 267,328 at William P. Hobby Airport. The FAA believes that increased passenger enplanements and total airport operations coupled with increased use of the airspace by aircraft having differing performance characteristics justify expansion of the TCA to 10,000 feet MSL and 30 miles. In addition, the airspace was limited to a 20-mile radius south of William P. Hobby Airport because the volume of traffic beyond that radius did not warrant the protection of a TCA environment.

One commenter expressed concern over reduced access through the east/west flyway. The FAA shares this concern and in the final rule has increased the vertical limits of the flyway from the present 1,800 feet to 2,000 feet MSL. In addition, the horizontal limits of the flyway have been enhanced to increase the available airspace between the surface areas at Houston Intercontinental and William P. Hobby Airports.

The Air Transport Association (ATA) concurred with the configuration of the proposed TCA with the exception of the upper limits, which is suggested should be established at 12,500 feet MSL. The FAA believes that the ceiling of 10,000 feet MSL is all that is currently necessary to accommodate aircraft operations and air traffic control procedures. The ceiling of 10,000 feet MSL combined with the Mode C requirements of the Federal Aviation Regulations will provide sufficient airspace to contain traffic within the Houston terminal complex.

The Air Line Pilots Association (ALPA) strongly recommended that instrument approach procedures into William P. Hobby Airport be modified to contain arrivals within the TCA. ALPA also recommended that at least 500 feet of separation be provided between aircraft within the TCA and uncontrolled traffic below the floor of the TCA. A TCA is designed to include only that airspace necessary to contain the operations of participating aircraft. While the idea of creating buffers below the TCA floor may appear advantageous, it would eliminate airspace for nonparticipating aircraft to

maneuver below or circumnavigate the TCA airspace. Standard Instrument Approach Procedures (SIAP) revisions will be reviewed and revised appropriately by the FAA regional office.

Several commenters expressed concerns about "compression" of VFR traffic below the TCA around Houston-Southwest and the inability to conduct practice instrument approach procedures, as published, without entering the proposed TCA. The FAA believes that the TCA configuration will not impede the pilots' desire to remain outside the TCA airspace to practice instrument approaches. Additionally, procedure turn altitudes may be altered to accommodate the practice area and airspace.

The existence of a TCA will not preclude accessibility to the airspace nor ATC services by properly certificated pilots in properly equipped aircraft. A request for clearance to operate within the TCA is a viable alternative. The TCA as configured will provide optimum use of the airspace to contain required aircraft operations and enhance aviation safety in the Houston terminal complex.

**The Rule**

These amendments to parts 71 and 91 of the Federal Aviation Regulations modify the TCA at the Houston Intercontinental Airport and establish William P. Hobby Airport as a TCA-primary airport within that TCA. This action raises the upper limits of the TCA to 10,000 feet MSL and encompasses the airspace within a 30-mile radius of Houston Intercontinental Airport and a 20-mile radius of William P. Hobby Airport. This action will enable ATC to provide terminal ATC service to arriving and departing aircraft in a TCA environment while transitioning to and from the en route structure. William P. Hobby Airport is currently being served by an ARSA which is rescinded concurrent with the amendment to this TCA. This TCA accommodates current traffic flows and provides a greater degree of safety in known areas of congestion involving controlled IFR and uncontrolled VFR operations. Consequently, the FAA has determined that the inclusion of William P. Hobby Airport in the Houston TCA is in the interest of flight safety and will result in a greater degree of protection for the largest number of people during flight in the terminal areas. In addition, this action will enhance air traffic procedures and simplify VFR transient operations outside the TCA airspace. The descriptions of TCA's and ARSA's are published in §§ 71.401(b) and 71.501 respectively of FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amendments listed in this document will be published subsequently in §§ 71.401(b) and 71.501 of the Handbook.

SFAR No. 62 is being amended to include 13 additional airports and to remove 2 airports from the list of airports at which certain operations are excluded from the Mode C transponder requirement. This action will allow operations to and from those airports and along routes which are not within air traffic control radar coverage and not predominantly used by aircraft required to install and use traffic alert and collision avoidance systems equipment.

**Regulatory Evaluation Summary**

*Introduction*

This section summarizes the regulatory evaluation prepared by the FAA that provides more detailed information on estimates of the economic consequences of this rule. This summary and the full evaluation quantify, to the extent practicable, estimated costs and benefits of the rule to the private sector, consumers, and Federal, State, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis for all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the rule, has not been prepared. Instead, the agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (P.L. 96-354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he or she should consult the regulatory evaluation contained in the docket.

*Costs*

The FAA estimates the total cost of implementing the rule to be $1.2 million (discounted, 15 years) in 1990 dollars. This estimate represents costs to the FAA for additional ATC personnel and revisions to aeronautical charts. GA aircraft operators are not expected to incur any costs as a result of the rule. These costs are discussed below.

For the FAA, the rule will impose costs for two additional controllers at Houston Terminal Radar Approach Control Facility. The discounted cost of the two controllers will be $1,180,000 at 10 percent over 15 years. No additional equipment requirements are anticipated as a result of the rule.

For GA aircraft operators, the rule will impose no monetary costs for avionics equipment. Costs incurred by aircraft operators without Mode C transponders have already been accounted for by the Mode C rule. The potentially affected GA aircraft operators are assumed to have already acquired the other types of avionics equipment (such as operable two-way radio and VOR) that are required for entering a TCA. The only aircraft without Mode C transponders would be non-electrical and antique types. Costs to these types of aircraft have already been accounted for by the Mode C rule.

Costs to balloonists, parachutists, ultralight and sailplane owners, or fixed base operators will be negligible. Letters of agreement and cutoffs may be executed, where advisable, to minimize any adverse effect on these operators.

Another cost component of the rule will be the revision of aeronautical charts to reflect the change of the airspace around the Houston Intercontinental Airport and William P. Hobby Airport. The change will be incorporated during the routine updating and printing of the charts so that all costs associated with printing aeronautical charts are subsumed within the normal reprinting costs. However, to depict the revised airspace configuration of the Houston TCA, the map plates of four aeronautical charts will have to be modified: Sectional, terminal area, en route low altitude, and en route high altitude. Also, the VFR Flyway Chart will require modification. The National Oceanic Service, the agency responsible for the publication and distribution of aeronautical charts, estimates the total one-time discounted costs (10 percent, 1

year) of these map plate changes to be $57,000.

In summary, the total estimated cost of this rule is the sum of the costs to the FAA for additional personnel and revision of aeronautical charts, or $1.2 million (discounted, 15 years) in 1990 dollars.

*Benefits*

The rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Enhanced safety will take the form of reduced aviation fatalities and property damage as a result of a lowered risk of midair collisions due to increased positive control in the airspace to be established as the Houston TCA. Other benefits would be expected to accrue in the form of improved operational efficiency of FAA air traffic controllers.

Since deregulation of the airline industry in 1978, passenger enplanements and aircraft operations, particularly part 121 (large transport category aircraft) have increased greatly. (At William P. Hobby Airport, air carrier operations more than tripled between 1978 and 1988). As a result, the risk of potential midair collisions also increased. Since 1978, the FAA has implemented additional regulatory initiatives primarily aimed at mitigating this potential safety problem. These initiatives include modification of selected TCA's and the conversion of Terminal Radar Service Areas (TRSA's) into ARSA's. Most recently, the FAA implemented rules expanding Mode C requirements and mandating TCAS on certain aircraft.

The rule is expected to increase benefits in terms of enhanced safety to the aviation community and the flying public. Enhanced safety will take the form of fewer midair collisions as a result of more efficient separation of aircraft in congested areas.

Because midair collisions involving part 135 aircraft and especially 121 aircraft are rare, the FAA reviewed data of critical near midair collisions (CNMAC) for 1986 and 1987 involving aircraft operations in 23 TCA's and a random sample of 23 of the 79 ARSA's that existed in 1988. The review revealed that TCA's have approximately 68 percent fewer CNMAC's annually, on average, than ARSA's. As a result, if the ARSA at William P. Hobby Airport remained intact and the Mode C and TCA rules were not in effect, the William P. Hobby Airport terminal area would be expected to experience an average of 1.6 CNMAC's annually, or 25 CNMAC's over the next 15 years. However, with the conversion of the ARSA to a TCA, this figure is expected to reduce to an average of 0.5 CNMAC's annually or 8 CNMAC's over the next 15 years. Thus, over the next 15 years, the rule could result in the reduction of 17 (25 −8) CNMAC's.

Many of these potential CNMAC's will not occur as predicted because the Mode C and TCAS rules are in effect and William P. Hobby Airport already lies within the current Houston TCA Mode C veil. Consequently, the safety benefits of the rule and the Mode C and TCAS rules cannot be estimated independently of each other.

Another potential benefit of the rule will be improved operational efficiency of air traffic controllers. Under the rule, Mode C transponder requirements will ease controller workload per controlled aircraft because of the reduction in radio communications. This decrease in controller workload will be partially offset by the increase in workload resulting from the increased amount of TCA controlled airspace around Houston, TX. Other types of benefits made possible by the two additional ATC controllers will be in the form of significant reductions in the number of VFR aircraft requests denied and VFR aircraft delayed during busy periods. Therefore, the potential benefits of improved operational efficiency, which are difficult to quantify, will also be attributed to this rule.

The expanded TCA airspace around Houston Intercontinental Airport will yield potential benefits by lowering the risk of CNMAC's and improving the operational efficiency of ATC. However, because the airspace around Houston Intercontinental Airport is already controlled by a TCA and reaps the benefits of a TCA, it is difficult to determine to what extent the risk of CNMAC's is reduced. The reduction in risk is not expected to be as great as the conversion of the ARSA to a TCA at William P. Hobby Airport.

*Comparison*

The total cost of implementing the Houston TCA is estimated to be $1.2 million (discounted, 15 years). The potential safety benefits of the rule will be the lowered risk of midair collisions by expanding the present Houston Intercontinental TCA to include the William P. Hobby ARSA. The precise number of midair collisions avoided and their respective monetary values cannot be estimated independent of the Mode C and TCAS rules. However, the FAA contends that, even with the Mode C and TCAS rules in effect, the estimated cost of the TCA relative to the reduction in the risk of midair collisions and the improved operational efficiency of ATC makes the rule cost-beneficial. In addition, even when the potential cost of the TCA is added to the costs of other TCA's and ARSA's (only those established since Phase I of Mode C) plus the costs of the Mode C and TCAS rules, the total collective costs, $848.1 million, are still less than the total collective benefits, valued at $2,217 million.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

As stated in the Cost section of this evaluation, the rule will have no independent monetary impact on the aviation public and, therefore, it will have no cost impact on small entities. Thus, a regulatory flexibility analysis is not required.

**International Trade Impact Assessment**

The rule will affect only U.S. terminal airspace operating procedures at and in the vicinity of Houston, TX. The rule will not impose a competitive trade advantage or disadvantage on foreign firms in the sale of aviation products or services in the United States. In addition, domestic firms will not incur a competitive trade advantage or disadvantage in the sale of U.S. aviation products or services in foreign countries.

**Federalism Implications**

The regulation herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Conclusion**

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation is not major under Executive Order 12291 and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this regulation will not have a significant economic impact, either positive or negative, on a substantial number of small entities.

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**List of Subjects**

*14 CFR Part 71*

Airport radar service areas, Airspace, Aviation safety, Incorporation by reference, Navigation (Air), Terminal control areas.

*14 CFR Part 91*

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

**The Amendment**

Accordingly, pursuant to the authority delegated to me, parts 71 and 91 of the Federal Aviation Regulations (14 CFR parts 71 and 91) are amended as follows:

**PART 91—[AMENDED]**

Part 91 is amended as follows:

**Special Federal Aviation Regulation No. 62—Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement**

1. The authority citation for Special Federal Aviation Regulation No. 62 continues to read as follows:

**Authority:** 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Special Federal Aviation Regulation No. 62 is amended by revising section 2, paragraph (10), to read as follows:

* * * * *

(10) Airports within a 30-nautical-mile radius of the Houston Intercontinental Airport and the William P. Hobby Airport.

| Airport name | Arpt. ID | Alt. (AGL) |
|---|---|---|
| Ainsworth Airport, Cleveland, TX | OT6 | 1,200 |
| Ausinia Ranch Airport, Texas City, TX. | TS50 | 1,200 |
| Baltes Airport, Angleton, TX | 7R9 | 1,200 |
| Biggin Hill Airport, Hockley, TX | TX49 | 1,200 |
| Cleveland Municipal Airport, Cleveland, TX. | 6R3 | 1,200 |
| Covey Trails Airport, Fulshear, TX. | 80XS | 1,200 |
| Cressy Airport, Santa Fe, TX | 5TA5 | 1,200 |
| Custom Aire Service Airport, Angleton, TX. | 81D | 1,200 |
| Fay Ranch Airport, Cedar Lane, TX. | OT2 | 1,200 |
| Flying C Ranch Airport, Needville, TX. | XS25 | 1,200 |
| Freeman Property Airport, Katy, TX. | 61T | 1,200 |
| Garrett Ranch Airport, Danbury, TX. | 77XS | 1,200 |
| Gum Island Airport, Dayton, TX | 3T6 | 1,200 |
| H & S Airfield Airport, Damon, TX. | XS21 | 1,200 |
| Harbican Airpark Airport, Katy, TX. | 9XS9 | 1,200 |
| Harold Freeman Farm Airport, Katy, TX. | 8XS1 | 1,200 |
| HHI Hitchcock Heliport, Hitchcock, TX. | 5TA5 | 1,200 |
| Hoffpauir Airport, Katy, TX | 59T | 1,200 |
| Horn-Katy Hawk International Airport, Katy, TX. | 57T | 1,200 |
| Johnnie Volk Field Airport, Hitchcock, TX. | 37R | 1,200 |
| King Air Airport, Katy, TX | 55T | 1,200 |
| Lake Bay Gall Airport, Cleveland, TX. | OT5 | 1,200 |
| Lake Bonanza Airport, Montgomery, TX. | 33TA | 1,200 |
| Lane Airpark Airport, Rosenberg, TX. | T54 | 1,200 |
| Meyer Field Airport, Rosharon, TX. | TA33 | 1,200 |
| Prairie Aire Field Airport, Damon, TX. | 4TA0 | 1,200 |
| R W J Airpark Airport, Baytown, TX. | 54TX | 1,200 |
| Westheimer Air Park Airport, Houston, TX. | 5TA4 | 1,200 |

* * * * *

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES**

3. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

4. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

*Section 71.401(b)—Terminal Control Areas*

* * * * *

**Houston, TX [Revised]**

Primary Airports

Houston Intercontinental Airport (lat. 29°58'49"N., long. 95°20'22"W.)
William P. Hobby Airport (lat. 29°38'43"N., long. 95°16'43"W.)
Ellington Field (lat. 29°36'26"N., long. 95°09'31"W.)
Humble VORTAC (IAH) (lat. 29°57'24"N., long. 95°20'44"W.)
Hobby VOR/DME (HUB) (lat. 29°39'00"N., long. 95°16'44"W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by a line beginning at the intersection of the Humble VORTAC (IAH) 6-mile arc and the IAH VORTAC 090° radial; thence clockwise along the IAH VORTAC 6-mile arc to the IAH VORTAC 069° radial; thence east along the IAH VORTAC 069° radial to the 10-mile arc of IAH VORTAC thence clockwise along the 10-mile arc to the IAH VORTAC 090° radial thence west to point of beginning; and that airspace bounded by a line beginning at lat. 29°45'36"N., long. 95°21'57"W.; to lat. 29°45'45"N., long. 95°11'46"W.; thence clockwise along the Hobby VOR/DME (HUB) 8-mile DME arc to intercept Beltway 8, thence south to intercept the 4.6-mile radius of Ellington Field, thence west to the 5.5-mile DME arc of HUB, thence clockwise to Interstate 45, thence southeast to the 7-mile DME arc clockwise to the HUB 156° radial thence north along the HUB 156° to the HUB VOR/DME 6-mile arc clockwise to the HUB 211° radial then south along the HUB 211° to HUB VOR/DME 8-mile arc clockwise to point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 and the HUB VOR/DME 15-mile arc, thence counterclockwise along the HUB VOR/DME 15-mile arc to the intersection of HUB VOR/DME 15-mile arc and the IAH VORTAC 15-mile arc, thence counterclockwise along the IAH VORTAC 15-mile arc to the intersection IAH VORTAC 15-mile arc and Westheimer Road (lat. 29°44'06"N., long. 95°28'46"W.), thence southwest to and along State Highway 59 to the point of beginning excluding Areas A and C.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 and the IAH VORTAC 20-mile DME arc, thence clockwise along the IAH VORTAC 20-mile DME arc to the intersection of the IAH VORTAC 20-mile DME arc and Interstate 10, west on Interstate 10 to the HUB VOR/DME 15-mile arc, thence counterclockwise along the HUB VOR/DME 15-mile arc to the IAH VORTAC 15-mile DME arc, thence counterclockwise along the IAH VORTAC 15-mile DME arc to the intersection of the IAH VORTAC 15-mile DME arc and Westheimer Road, thence southwest to and along State Highway 59 to the point of beginning; and that airspace beginning at the Intersection of HUB VOR/DME 15-mile arc and HUB 156° radial then north along the HUB 156° radial to the HUB VOR/DME 10-mile arc clockwise along the HUB 10-mile arc to HUB 211° radial then south along the HUB 211° radial to Intersect the 15-mile arc to point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 and the IAH VORTAC 30-mile DME arc, thence clockwise along the IAH VORTAC 30-mile DME arc to Interstate 10, west along Interstate 10 to the HUB VOR/DME 20-mile arc, thence clockwise along the HUB VOR/DME 20-mile arc to State Highway 59, thence southwest on State Highway 59 to the point of beginning excluding Areas A, B, and C.

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*Section 71.501—Airport Radar Service Areas*

* * * * *



**William P. Hobby, TX [Removed]**

* * * * *

Issued in Washington, DC, on June 30, 1992.

**Barry Lambert Harris,**

*Acting Administrator.*

**Appendix—Houston, Texas, Terminal Control Area**

**Note:** This appendix will not appear in the Code of Federal Regulations.

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**HOUSTON, TEXAS**
**TERMINAL CONTROL AREA**
**HOUSTON INTERCONTINENTAL AIRPORT**
**FIELD ELEVATION- 96 FEET**

**HOBBY AIRPORT**
**FIELD ELEVATION - 47 FEET**

*(Not to be used for navigation)*

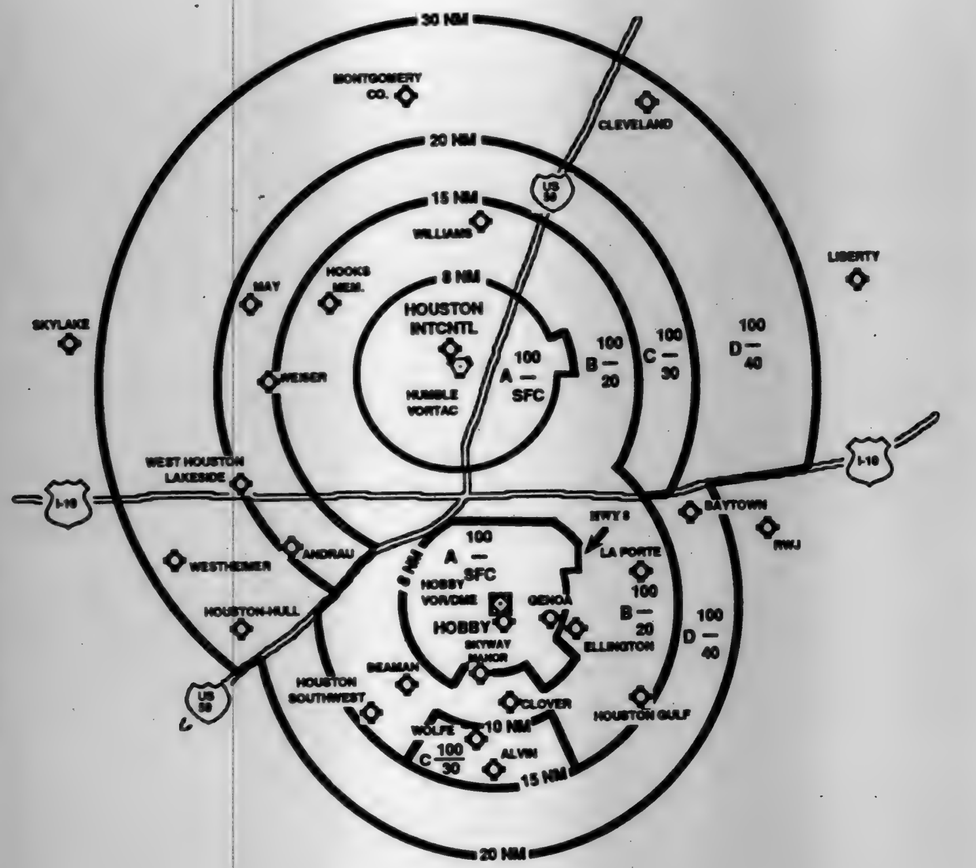


Graphic prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
(ATP - 220)

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federal register

Friday
July 10, 1992

Part V

# Department of Education

34 CFR Part 668
**Student Assistance General Provisions; Proposed Rule**

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DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840-AB44

## Student Assistance General Provisions

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the Student Assistance General Provisions. These amendments are necessary to implement the Student Right-to-Know and Campus Security Act, Public Law 101-542, as amended by the Higher Education Technical Amendments of 1991, Public Law 102-26. The proposed regulations would require an institution of higher education to disclose information about completion or graduation rates and campus safety policies and procedures to current and prospective students and employees.

**DATES:** Comments must be received on or before August 24, 1992.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed as follows: Ms. Carney M. McCullough, Chief, Policy Section, Pell Grant Branch, U.S. Department of Education, 400 Maryland Avenue, SW., room 4318, Regional Office Building 3, Washington, DC 20202-5346.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Paula M. Husselmann, Senior Program Specialist, Pell Grant Branch, U.S. Department of Education, 400 Maryland Avenue, SW., room 4318, ROB-3, Washington, DC 20202-5346. Telephone: (202) 708-7888. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

**SUPPLEMENTARY INFORMATION:** The Student Assistance General Provisions (34 CFR part 668) apply to all institutions that participate in the student financial assistance programs authorized by title IV of the Higher Education Act of 1965, as amended (HEA). The proposed changes in these regulations are necessary to implement the changes to the HEA made by the Student Right-to-Know and Campus Security Act, Public Law 101-542, as amended by the Higher Education Technical Amendments of 1991, Public Law 102-26.

### Summary of Proposed Changes

*Section 668.12 Institutional Participation Agreement*

The regulations governing the institutional participation agreement, which is required of any institution participating in a program under title IV of the HEA, would be revised to include a requirement that an institution certify that it has established a campus security policy, is implementing that policy, and is in compliance with the disclosure requirements of the HEA regarding campus security policies and crime statistics.

*Section 668.41 Scope*

Public Law 101-542 expands the types of "consumer information" that institutions must disclose to students, employees, and others to include completion or graduation rates and information about campus security policies and crime statistics. Section 668.41 would be revised to reflect these new statutory responsibilities.

*Section 668.46 Completion or Graduation Rate*

This new section would put in place section 485(a)(1)(L) of the HEA, which requires an institution to disclose, through appropriate publications and mailings, its completion or graduation rate of full-time certificate-seeking or degree-seeking undergraduate students. The statute requires an institution to make these disclosures to current and prospective students by July 1, 1993 and annually thereafter. An institution must disclose this information to prospective students before they enroll or enter into any financial obligation. The Secretary otherwise has broad regulatory flexibility in defining completion or graduation rates.

New § 668.46(a) provides that the completion or graduation rate to be disclosed by an institution is the rate at which its full-time, certificate-seeking or degree-seeking undergraduate students who are enrolling for the first time at that institution, and have not previously enrolled at any other institution of higher education, either complete or graduate from their programs. Section 668.46(a) also would require that an institution must make available completion or graduation rates to prospective students before they enroll or enter into any financial obligation at the institution related to the student's program of study, whichever occurs first.

A student is considered to have entered into such a financial obligation when he or she signs an enrollment contract with the institution, registers for study at the institution, or makes a payment to the institution for all or a portion of the student's cost of attending that institution, or when the institution (1) makes a loan, such as a Perkins loan, to the student or (2) certifies information concerning a student's financial need or enrollment status to help a student to obtain a loan, such as a Stafford, SLS, or PLUS loan. These proposed regulations would require an institution to make completion and graduation rates under this section available to current and prospective students. However, the Secretary also encourages institutions to make the rates available to secondary schools and guidance counselors so they have the information needed to advise student and parent consumers. To ensure compliance with the requirements of this section, completion and graduation rates also must be made available to the Secretary, upon request.

New § 668.46(b) states that students are considered to have completed or graduated from their respective programs if they completed or graduated from the programs they entered within 150 percent of the normal time for completion or graduation or, within that time frame, enrolled in a higher level program for which the prior program provided substantial preparation. For example, if a student enrolls in an educational program that is one year in length, the student would be counted as having completed or graduated if the student completes or graduates from the program within 18 months. If an institution offers programs of different length, the institution discloses its completion or graduation rate when 150 percent of the normal time for completion or graduation for its longest program has elapsed.

New § 668.46(c) contains important methodological details relating to the calculation of completion or graduation rates. Section 668.46(c) would require an institution to determine its completion or graduation rate by following the progress of a cohort of entering students from enrollment through the period of time equal to 150 percent of the normal length of each student's program. If an institution operates on a continuous enrollment basis, it follows a cohort of students who enter the institution from July 1 through September 30. If an institution does not operate on a continuous basis, it follows a cohort of students who enter during the fall enrollment. If the institution does not operate on a continuous basis, the cohort would also include, as students entering during the fall enrollment, students who enter an institution for the first time during the summer and then

re-enroll at the same institution for the fall enrollment. However, such an institution would exclude from the cohort students who enter the institution during the summer but fail to re-enroll at the same institution for the fall enrollment.

For the purpose of establishing a cohort of students, an institution never includes students who transfer into the institution. The completion or graduation rate disclosed by an institution under these proposed regulations is the rate of completion or graduation of those of its students who, when they enrolled at the institution, entered an institution of higher education for the first time. Students who transfer out of an institution are not counted as completers or graduates unless they enroll at another institution of higher education in a higher level program for which the prior program provided substantial preparation.

Finally, the Secretary recognizes that by permitting institutions to establish cohorts of only those students who enter during a particular portion of a year, as opposed to cohorts of all the students who enter during a particular year, the possibility of biased data or institutional abuse exists. For example, in order to generate a misleadingly high completion or graduation rate, an institution might be tempted to manipulate enrollment periods or take extraordinary steps to encourage students who entered the institution during the cohort period to complete or graduate from their respective programs. On the other hand, the Secretary wishes to reduce, to the extent possible, the burdens on institutions associated with the need to disclose completion or graduation rates. The Secretary specifically invites public comment on the cohort periods proposed and whether additional safeguards against bias or institutional manipulation are warranted.

The completion or graduation rate required is the percentage of all the students in the cohort who completed or graduated from their respective programs within 150 percent of those particular programs' normal lengths. Thus, if an institution offers one-year and two-year programs, its completion or graduation rate for any cohort of entering students would be the percentage (computed three years later) of all the entering students who completed their particular programs within 150 percent of the normal time for completion—18 months or three years, respectively. However, in addition to the required institution-wide rate, an institution also may disclose a completion or graduation rate for students in individual programs if it so chooses.

Beginning in 1993, each year by July 1 an institution would be required to disclose the completion or graduation rate of the most recent cohort of entering students that all have had an opportunity to complete or graduate from their respective programs. For example, a degree-granting institution whose programs are four years or less in length must disclose by July 1, 1993 the graduation rate for its most recent cohort—the cohort of students who entered the institution in the fall of 1986. It is necessary to revert to the 1986 cohort of entering students because, allowing six years for graduation from a four-year program, which is the longest program offered, the 1986 cohort is the most recent cohort of entering students for which all students would have had the opportunity to graduate before the required 1993 disclosure.

The Secretary specifically invites public comment on whether the proposed requirement in § 668.46(c)(2)(i) that institutions each year must disclose the completion or graduation rate of the most recent cohort of entering students that all have had an opportunity to complete or graduate from their respective programs identifies with sufficient clarity which cohort's rate must be disclosed in any particular year. Alternatively, should the Secretary specify a particular deadline date, such as April 1, and require all institutions to disclose by the following July 1 the completion or graduation rate of the most recent cohort of entering students that all have had an opportunity by that date to complete or graduate from their respective programs (i.e., 150 percent of the normal length of the longest program).

If, in 1993, the institution cannot calculate the graduation rate of the most recent cohort that has had an opportunity to graduate (i.e., 150 percent of the longest program) because the data do not exist, or would require an excessive effort to produce, the institution would be required to disclose the projected graduation rate of the cohort of students who entered the institution in the fall of 1991. The institution would continue to disclose the projected graduation rate of the 1991 cohort of entering students until it can either disclose the actual graduation rate of the 1991 cohort or the actual graduation rate of a cohort prior to the 1991 cohort (for which data exist), whichever occurs first. The Secretary expects each institution to make a full, good faith effort to disclose the actual completion or graduation rate of the most recent cohort of entering students that have all had an opportunity to complete or graduate from their respective programs. However, the Secretary realizes that in some instances it may not be feasible for an institution to disclose an actual rate, either because the data do not exist or because an excessive effort would be required to produce the data. For example, an institution with a large enrollment in programs of long duration may, as a practical matter, face excessive burdens in calculating a completion or graduation rate unless its student records are accessible by computer. The Secretary specifically invites public comment on whether the regulations should contain more detailed guidance on what circumstances justify disclosing a projected completion or graduation rate rather than an actual rate.

Under the proposed regulations, if an institution discloses to current or prospective students a projected completion or graduation rate, it must, as part of the disclosure, explain what the projected rate represents and how it was calculated. For example, an institution may include the provisions of this regulation that pertain to a projected completion or graduation rate in its explanation. The projected completion or graduation rate of the 1991 cohort in any year would reflect the percentage of students in the cohort who (1) have already completed or graduated from their respective programs, or (2) re-enrolled during the period of July 1 through September 30 of the preceding year (if the institution operates on a continuous enrollment basis) or during the fall enrollment of the preceding year (if the institution does not operate on a continuous enrollment basis). Thus, if a student enrolls for the fall 1991 term in a four-year degree program, that student would be counted as a "projected graduate" for the July 1, 1993 disclosure if he or she re-enrolled for the fall 1992 term. This would be true even if he or she did not re-enroll for the spring 1992 term. However, if the student fails to re-enroll for the fall 1992 term, he or she would not be counted as a projected graduate for the July 1, 1993 disclosure and would not be counted as a projected graduate for the purpose of disclosure in any succeeding year unless the student re-enrolled during the preceding fall term.

The Secretary strongly encourages an institution to provide information supplementing its actual or projected completion or graduation rate, particularly information about the characteristics of students attending the

institution. The Secretary recognizes that institutions have different purposes and missions that may not accurately be reflected by a projected or actual completion or graduation rate, and for that reason believes that data about student outcomes, such as a completion or graduation rate, should be considered in the context of information about the student population at that institution. An institution is encouraged to disclose other data and statistical information concerning its completion and graduation rates as long as the information required by this section of the regulations is clearly identifiable.

New § 668.46(d) would authorize the Secretary to waive the preceding disclosure requirements if the institution is a member of an athletic association or conference that voluntarily publishes completion or graduation rate data that are, in the opinion of the Secretary, substantially comparable to what is required by § 668.46. The proposed regulations would require an institution, or an athletic association or conference applying on behalf of an institution, to request a waiver in writing and to describe why it believes the data the athletic association or conference publishes are both accurate and substantially comparable. The Secretary wishes to emphasize that the granting of a waiver would not be automatic, and he intends to scrutinize requests for waivers carefully to ensure substantial comparability of data. Finally, § 668.46(e) states, in accordance with the statute, that an institution may exclude from its calculations of completion or graduation rates students who leave school to serve in various capacities, such as in the military or on church mission assignments.

*Section 668.47 Disclosures Regarding Student Athletes*

This new section would put in place section 485(e) of the HEA by requiring each institution that awards athletically related student aid to disclose the completion or graduation rate of various student populations at the institution, including student athletes. Specifically, institutions that award athletically related student aid would be required to report to the Secretary and to disclose the following to the potential student athlete and his or her parents, high school coach, and guidance counselor: (1) The number of full-time, regular, undergraduate students enrolled in that institution categorized by race and sex; (2) the number of those students, by sport, who receive athletically related student aid, categorized by race and sex; and (3) the completion or graduation rates (including a four-year average) for each of these various student populations. For these purposes, "sport" is defined as basketball, football, baseball, cross-country and track, and all other sports combined. Also, for the purpose of calculating completion or graduation rates for various student populations, institutions would be required to use the methodology in proposed § 668.46, including following cohorts of entering students and reporting a projected completion or graduation rate until it is possible to disclose the actual completion or graduation rate. An institution that has completion or graduation rates for fewer than four classes would have to disclose the average rate of those classes for which it has rates. It would not be required to disclose average projected completion or graduation rates or attempt to average projected with actual completion or graduation rates.

An institution would be authorized, but not required, to provide supplemental information to the Secretary, potential student athletes, and others that shows completion or graduation rates when students transferring into and out of the institution are included, provided the information required by this section is clearly identifiable.

In addition, as under proposed § 668.46(d), the Secretary would be authorized to waive the requirements of this section if the institution belongs to an athletic association or conference that publishes substantially comparable information. Finally, institutions would be required to report this information about completion or graduation rates to the Secretary and begin disclosing it to potential student athletes by July 1, 1993.

*Section 668.48 Institutional Security Policies and Crime Statistics*

This proposed new section would implement section 485(f) of the HEA as added by the "Crime Awareness and Campus Security Act of 1990," title II of Pub. L. 101–542, as amended by Pub. L. 102–26. In general, section 485(f) requires institutions to publish and distribute an annual security report containing campus security policies and procedures as well as campus crime statistics. An institution that has more than one campus must distribute an annual security report for each of its separate campuses. The Secretary wishes to emphasize that, consistent with the requirements of the statute as reflected in these regulations, institutions are free to develop and adopt whatever policies and procedures relating to campus crime and safety they choose.

New § 668.48(a) would require each institution to publish and distribute an annual security report, through appropriate publication and mailings, by September 1, 1992 and by September 1 of each year thereafter. Examples of appropriate publications are the institution's catalogue, a student handbook, or a crime prevention manual or handbook, if these publications are distributed annually. The report must contain a number of statutorily prescribed items pertaining to campus safety but as a matter of institutional choice, may contain other information as well. The major components of the annual report mandated by the statute are—

- A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions on campus and policies concerning the institution's response to the reports;
- A statement of current policies concerning security of and access to campus facilities, including residences;
- A statement of current policies concerning campus law enforcement, including the enforcement authority of institutional security personnel and policies that encourage prompt reporting of all campus crime to the campus police and local police;
- A description of the type and frequency of programs designed to inform students and employees about campus security procedures and to encourage them to be responsible for their own security and the security of others;
- A description of programs designed to inform students and employees about the prevention of crime;
- A statement of policy concerning the monitoring and recording through local police agencies of criminal activity engaged in by students at off-campus locations of student organizations, including off-campus housing facilities;
- A statement of policy regarding the possession, use, or sale of alcoholic beverages and illegal drugs; and
- A description of any drug and alcohol abuse education programs required by section 1213 of the HEA (20 U.S.C. 1145g). Section 1213 of the HEA contains the "drug-free campuses" requirements added by section 22 of the Drug Free Schools and Communities Amendments of 1989 (Pub. L. 101–226). Under the proposed regulations, an institution that currently describes its policies regarding drug and alcohol use in the materials it distributes annually to comply with regulations governing Drug-Free Schools and Campuses (34 CFR part 86) does not have to repeat the

information for purposes of complying with section 485(f)(1)(I). However, the institution's annual security report must make a cross-reference to the materials containing those policies.

The report must also contain certain campus crime statistics. The first security report is due September 1, 1992 and must contain statistics concerning the occurrence on campus (as reported to campus security authorities or the local police) between January 1, 1991 and December 31, 1991, as well as the two preceding calendar years for which data are available, of the following crimes: murder, rape, robbery, aggravated assault, burglary, and motor-vehicle theft. The proposed regulations provide that if an institution does not have those statistics for a period before August 1, 1991, when the statute requires institutions to start gathering statistics, it need not report them. However, if an institution does have statistics for a period before August 1, 1991, it also must report those statistics (back to January 1, 1989). In subsequent years, the annual security report would remain due on September 1, but would contain statistics for the most recent calendar year and the two preceding calendar years for which data are available. In addition, the security report must contain statistics reflecting the number of arrests for the following crimes occurring on campus: Liquor-law violations, drug abuse violations, and weapons violations. The first report is due September 1, 1992 and must reflect arrests between January 1, 1991 and December 31, 1991, unless data are not available for the full period. Thereafter, the report is due on September 1 and must reflect arrests during the preceding calendar year.

Section 668.48(b) states that the institution must distribute the annual security report to all students and employees and to any applicant for enrollment or employment on request. Section 668.48(c) states that an institution must comply separately with the publication and distribution requirements of § 668.48 for each campus and clarifies that for this purpose a branch, school, or administrative division within an institution that is not within a "reasonably contiguous geographic area" with the institution's main campus is considered to be a separate campus. The Secretary specifically requests public comment regarding whether the phrase "reasonably contiguous geographical area," which is used in the statute, requires further clarification. Section 668.48(d) clarifies what periods of time must be covered by the crime statistics included in the security report and states that the statistics must be compiled in accordance with the definitions of the Federal Bureau of Investigation's Uniform Crime Reporting System. Anyone wishing to obtain these definitions should contact Mr. Harper Wilson, Chief, Uniform Crime Reporting System, Federal Bureau of Investigation, Washington, DC 20535. The telephone number is (202) 324–2614. Upon request, the institution must submit these statistics to the Secretary. Section 668.48(e) provides that the institution must report to the campus community certain crimes in a manner that is timely and will aid in the prevention of similar crimes.

Finally, § 668.48(f) contains a definition of "campus," taken from the statute, and a definition of "campus security authorities." In general, the latter term includes: (1) Individuals or organizations identified by the institution as those to whom students and employees should report crimes; and (2) officials of the institution who have significant responsibility for student and campus activities. This latter clause would include such officials as deans and residence directors but not include counselors. The Secretary believes that this definition strikes an appropriate balance between the need of individual crime victims for counseling and the need of the broader campus community for a complete reporting of campus crime.

**Executive Order 12291**

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities affected by these regulations are small institutions of higher education. However, the regulations would not have a significant economic impact on the small institutions affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal burdens necessary to implement statutory requirements.

**Paperwork Reduction Act of 1980**

Sections 668.46, 668.47 and 668.48 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Institutions of higher education must comply with the information collection requirements of these regulations to implement sections 103 and 104 of title I, and section 204 of title II, of the Student Right-to-Know and Campus Security Act, Pub. L. 101–542 ("Act"), as amended by Pub. L. 102–26. Section 103 of the Act requires an institution to disclose the completion or graduation rate of certificate-seeking or degree-seeking full-time undergraduate students entering the institution. Section 104 of the Act requires the collection of statistical information regarding the completion and graduation rate of the institution's general population of students and those that receive athletically related student aid. Section 104 of title I of the Act also requires the Secretary to publish a report, categorized by school and certain athletic conferences, concerning the completion or graduation rates of institutions that award athletically related student aid. Section 104 of the Act further requires institutions to report these data annually to the Secretary. Title II of the Act requires an institution to compile information concerning certain security policies and campus crime statistics. Title II of the Act also requires an institution, upon request by the Secretary, to submit to the Secretary the statistics concerning crimes on campus. The Secretary is required to review the statistics and report to Congress. In addition, the Secretary is required to identify exemplary campus security policies and disseminate information concerning these policies. An estimate of the total annual reporting and recordkeeping burden that will result from the collection of information is 5,800 hours for requirements of title I and 21,000 hours for the requirements of title II.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during

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and after the comment period, in room 4318, ROB-3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and the overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 668**

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant program—education, Loan program—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 2, 1992.

**Lamar Alexander,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.033; Supplemental Loans for Students Program, 84.032; College Work-Study Program, 84.003; Perkins Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069; Income Contingent Loan Program, 84.226)

The Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

1. The authority citation for part 668 continues to read as follows:

**Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.**

2. Section 668.12 is amended by removing "and" at the end of paragraph (b)(2)(ii); by redesignating paragraph (b)(2)(iii) as paragraph (b)(2)(iv); and by adding a new paragraph (b)(2)(iii) to read as follows:

**§ 668.12 Institutional participation agreement.**

* * * * *

(b) * * *

(2) * * *

(iii) That it has established a campus security policy, is implementing that policy, and is in compliance with the disclosure requirements of section 485(f) of the HEA; and

* * * * *

3. Section 668.41 is amended by revising paragraph (a) to read as follows:

**§ 668.41 Scope and special definition.**

(a) Each institution participating in any title IV, HEA program shall, through appropriate publications and mailings—

(1) Disseminate to all enrolled students, and to prospective students upon request, information concerning the institution, in accordance with § 668.45;

(2) Disseminate to all enrolled students, and to prospective students upon request, information concerning any student financial assistance available to students enrolled in the institution, in accordance with § 668.44;

(3) Disseminate to all enrolled students, and to all prospective students, information concerning the institution's completion or graduation rate, in accordance with § 668.46; and

(4) Disseminate to all enrolled students and employees, and to all applicants for enrollment or employment upon request, information concerning institutional security policies and crime statistics, in accordance with § 668.48.

* * * * *

(Authority: 20 U.S.C. 1092)

**§§ 668.42, 668.43, 668.44 and 668.45 Redesignated as §§ 668.43, 668.44, 668.45 and 668.49.**

4. Sections 668.42, 668.43, 668.44 and 668.45 are redesignated as 668.43, 668.44, 668.45 and 668.49, respectively.

5. A new § 668.42 is added, to read as follows:

**§ 668.42 Definitions.**

The following definitions apply to this subpart:

*Educational program*: As defined in 34 CFR 600.2.

*Full-time student*: As defined in 34 CFR 690.2.

*Undergraduate student*: As defined in 34 CFR 690.2.

(Authority: 20 U.S.C. 1092)

6. In newly designated § 668.43, paragraph (a) is amended by removing "in § 668.43 and § 668.44" and adding, in its place, "in § 668.44 and § 668.45".

7. A new § 668.46 is added to read as follows:

**§ 668.46 Completion or graduation rate.**

(a)(1) An institution shall make readily available to all enrolled students and prospective students, through appropriate publications and mailings, the institution's completion or graduation rate (or, as provided in paragraph (c)(2)(ii) of this section, a projected completion or graduation rate) of its full-time, certificate-seeking or degree-seeking undergraduate students who enroll for the first time at that institution and have not enrolled previously at any other institution of higher education.

(2) The institution shall disclose the completion or graduation rate (or, as provided by paragraph (c)(2)(ii) of this section, the projected completion or graduation rate) required by paragraph (a)(1) of this section by July 1, 1993 and by July 1 of each year thereafter.

(3)(i) The institution shall make its completion or graduation rate (or, as provided in paragraph (c)(2)(ii) of this section, its projected completion or graduation rate) available to a prospective student before the prospective student enrolls in the institution or enters into any financial obligation at the institution related to the student's program of study, whichever occurs first.

(ii) For the purpose of paragraph (a)(3)(i) of this section, a prospective student is considered to have entered into a financial obligation at the institution related to his or her program of study when any of the following occurs:

(A) The prospective student enters into an enrollment contract with the institution.

(B) The prospective student registers for study at the institution.

(C) The prospective student makes a payment to the institution to cover all or a portion of the student's tuition and fees, room and board, books and supplies, or transportation.

(D) The institution makes a loan, such as a Perkins loan, to the student.

(E) The institution certifies information concerning a student's financial need or enrollment status for the purpose of assisting that student to obtain a loan, such as a Stafford, SLS, or PLUS loan.

(b)(1) In calculating the completion or graduation rate under paragraph (a)(1) of this section, the institution shall count a student as having completed or graduated from his or her educational program—

(i) If the student completes or graduates from the program he or she entered within 150 percent of the normal time for completion or graduation; or

(ii) If, within 150 percent of the normal time for completion or graduation, the student enrolls in a higher level program at an eligible institution for which the prior program provided substantial preparation.



(2) If the institution offers programs of different length, the institution shall disclose its completion or graduation rate when 150 percent of the normal time for completion or graduation has elapsed for the program of greatest length.

(3) The following are examples of the period of time that is equal to 150 percent of normal time for completion or graduation:

(i) For an institution whose programs are four years in length, 150 percent of normal time for completion or graduation from those programs is six years (72 months).

(ii) For an institution whose programs are two years in length, 150 percent of normal time for completion or graduation from those programs is three years (36 months).

(iii) For an institution whose programs are nine months in length, 150 percent of normal time for completion or graduation from those programs is 14 months.

(c)(1)(i) An institution shall calculate its completion or graduation rate under paragraph (a)(1) of this section by following the progress of each student in a cohort of entering students from the time of enrollment through the period equal to 150 percent of the normal time for completion or graduation from that student's program.

(ii)(A) If an institution operates on a continuous enrollment basis, it shall establish and follow a cohort of students who enter the institution from July 1 through September 30.

(B) If an institution does not operate on a continuous enrollment basis, it shall establish and follow a cohort of students who enter the institution during the fall enrollment. A student who enters an institution during the summer must be considered to have entered the institution during the fall enrollment, but only if that student re-enrolls during the fall enrollment at the same institution.

(iii) The completion or graduation rate under paragraph (a)(1) of this section is the percentage of all the students in the cohort who complete or graduate from their respective programs within 150 percent of the normal time for completion or graduation from that particular program.

(2)(i) An institution shall disclose each year by July 1 the completion or graduation rate of the most recent cohort of entering students that all have had an opportunity to complete or graduate from their respective programs, as described in paragraph (b)(1) of this section.

(ii) If an institution cannot disclose by July 1, 1993 the completion or graduation rate of such a cohort because the data to calculate such a rate either do not exist or would require an excessive effort to produce, the institution shall—

(A) Disclose the projected completion or graduation rate (as described in paragraph (c)(3)(i) of this section) of the cohort of students who entered from July 1, 1991 through September 30, 1991, if the institution operates on a continuous enrollment basis, or during the 1991 fall enrollment, if the institution does not operate on a continuous enrollment basis; and

(B) Disclose the projected completion or graduation rate of the 1991 cohort of entering students by July 1 of each subsequent year until the institution can report the completion or graduation rate of either the 1991 cohort of entering students, or a cohort prior to the 1991 cohort, whichever occurs first.

(3)(i) For the purpose of paragraph (c)(2)(ii) of this section, the projected completion or graduation rate of an institution's 1991 cohort of entering students for any year is the percentage of all the students in that cohort who have either—

(A) Completed or graduated from their respective program within 150 percent of the normal time for completion or graduation from that particular program; or

(B) Re-enrolled during the period of July 1 through September 30 of the preceding year, if the institution operates on a continuous enrollment basis, or during the fall enrollment of the preceding year, if the institution does not operate on a continuous basis.

(ii) If an institution discloses a projected completion or graduation rate, the institution shall explain as part of that disclosure what that rate represents and how it was calculated.

(d)(1) The Secretary grants a waiver of the requirements of this section to any institution that is a member of an athletic association or conference that voluntarily has published completion or graduation rate data, or has agreed to publish such data that, in the opinion of the Secretary, are substantially comparable to the data required by this section.

(2) An institution, or athletic association or conference applying on behalf of an institution, that seeks a waiver under paragraph (d)(1) of this section shall submit a written application to the Secretary that describes why it believes the data the athletic association or conference publishes are both accurate and substantially comparable to the information required by this section.

(e) For the purpose of calculating a completion or graduation rate, an institution may exclude students who leave school to serve—

(1) In the Armed Services;

(2) On official church mission assignments; or

(3) With a foreign aid service of the Federal Government, such as the Peace Corps.

(Authority: 20 U.S.C. 1092)

8. A new 668.47 is added to read as follows:

**§ 668.47 Disclosures regarding student athletes.**

(a)(1) Beginning July 1, 1993, when an institution offers a potential student athlete athletically related student aid, the institution shall disclose to the potential student athlete and his or her parents, high school coach, and guidance counselor the following information categorized by race and sex—

(i) The number of full-time, regular, undergraduate students enrolled in that institution during the preceding award year;

(ii) The number of students described in paragraph (a)(1)(i) of this section who received athletically related student aid, categorized by sport;

(iii) The completion or graduation rate (or, as provided by paragraph (b) of this section, the projected completion or graduation rate) for each category of students described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section; and

(iv) The average completion or graduation rate for the four most recent completing or graduation classes for each category of students described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section. If an institution has completion or graduation rates for fewer than four of those classes, it shall disclose the average rate of those classes for which it has rates.

(2) The following definitions apply to this section:

*Athletically related student aid* means any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution to receive such assistance.

*Sport* means (i) basketball, (ii) football, (iii) baseball, (iv) cross-country and track, and (v) all other sports combined.

(b) The provisions of § 668.46(b) (relating to the calculation of completion or graduation rates), § 668.46(c) (relating to cohorts and projected completion or graduation rates), and § 668.46(e) (relating to the exclusion of students who leave school) apply to the

calculation of completion or graduation rates under this section.

(c)(1) The Secretary grants a waiver of the requirements of this section to any institution that is a member of an athletic association or conference that voluntarily has published completion or graduation rate data, or has agreed to publish such data that, in the opinion of the Secretary, are substantially comparable to the data required by this section.

(2) An institution, or athletic association or conference applying on behalf of an institution, that seeks a waiver under paragraph (c)(1) of this section shall submit a written application to the Secretary that describes why it believes the data the athletic association or conference publishes are both accurate and substantially comparable to the information required by this section.

(d) An institution shall submit to the Secretary by July 1, 1993 and July 1 of each year thereafter a report that contains the information described in paragraph (a)(1) of this section for the appropriate time periods.

(Authority: 20 U.S.C. 1092)

9. A new § 668.48 is added to read as follows:

**§ 668.48 Institutional security policies and crime statistics.**

(a) An institution shall, by September 1, 1992 and by September 1 of each year thereafter, publish and distribute, through appropriate publications and mailings, an annual security report that contains, at a minimum, the following information:

(1) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to those reports, including policies for making timely reports to members of the campus community regarding the occurrence of crimes described in paragraph (a)(6) of this section.

(2) A statement of current policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(3) A statement of current policies concerning campus law enforcement, including—

(i) The enforcement authority of security personnel, including their working relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals; and

(ii) Policies that encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies.

(4) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(5) A description of programs designed to inform students and employees about the prevention of crimes.

(6) Statistics concerning the occurrence on campus of the following criminal offenses reported to campus security authorities or local police agencies:

(i) Murder.

(ii) Rape.

(iii) Robbery.

(iv) Aggravated assault.

(v) Burglary.

(vi) Motor-vehicle theft.

(7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity engaged in by students at off-campus locations of student organizations recognized by the institution, including student organizations with off-campus housing facilities.

(8) Statistics concerning the number of arrests for the following crimes occurring on campus:

(i) Liquor-law violations.

(ii) Drug-abuse violations.

(iii) Weapons possessions.

(9) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws.

(10) A statement of policy regarding the possession, use and sale of illegal drugs and enforcement of Federal and State drug laws.

(11) A description of any drug or alcohol-abuse education programs, as required under Section 1213 of the Higher Education Act of 1965, as amended. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with Section 1213 of the HEA.

(b) An institution shall distribute the security report required by paragraph (a) of this section annually to all current students and employees, and to any applicant for enrollment or employment upon request.

(c) An institution shall comply separately with the requirements of this section for each campus. A branch, school, or administrative division within an institution that is not within a reasonably contiguous geographic area with the institution's main campus is considered to be a separate campus.

(d)(1)(i) An institution's first annual security report (due September 1, 1992) shall contain statistics described in paragraph (a)(6) of this section covering the period January 1, 1991 through December 31, 1991 and the two preceding calendar years, or the portion thereof for which data are available. The first annual security report must contain that data covering at least the period from August 1, 1991 through December 31, 1991.

(ii) An institution's second annual security report (due September 1, 1993) and each subsequent report shall contain those statistics covering the most recent calendar year and the two preceding calendar years for which data are available.

(2)(i) An institution's first annual security report (due September 1, 1992) shall contain statistics described in paragraph (a)(8) of this section covering the period January 1, 1991 through December 31, 1991, or the portion thereof for which data are available. The first annual security report must contain that data covering at least the period August 1, 1991 through December 31, 1991.

(ii) An institution's second annual security report (due September 1, 1993) and each subsequent report shall contain those statistics covering the then preceding calendar year.

(3) The institution shall compile crime statistics required under paragraphs (a)(6) and (a)(8) of this section in accordance with the definitions used in the Federal Bureau of Investigation's Uniform Crime Reporting System.

(4) Upon the request of the Secretary, the institution shall submit the statistics required by paragraphs (a)(6) and (a)(8) of this section to the Secretary.

(e) The institution shall, in a manner that is both timely and will aid in the prevention of similar crimes, report to the campus community on crimes that are—

(1) Described in paragraph (a)(6) of this section;

(2) Reported to campus security authorities or local police agencies; and

(3) Considered by the institution to represent a threat to students and employees.

(f) For purposes of this section:

(1) *Campus:* includes—

(i) Any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area and used by

an institution in direct support of, or related to, its educational purposes; and

(ii) Any building or property owned or controlled by a student organization recognized by the institution.

(2) *Campus security authorities:* means—

(i) Individuals or organizations specified in an institution's statement of campus security policy as the individuals or organizations to whom students and employees should report criminal offenses; and

(ii) Officials of the institution who have significant responsibility for student and campus activities, such as deans and residence directors, but not including counselors.

(Authority: 20 U.S.C. 1092)

[FR Doc. 92-16182 Filed 7-9-92; 8:45 am]

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Part VI

# Department of Education

## National Center or Centers for Research In Vocational Education; Inviting Applications for New Awards for Fiscal Year (FY) 1992; Notice

VOL 57 ISS 133 JL 10 1992 UMI

## DEPARTMENT OF EDUCATION

[CFDA No.: 84.051]

### National Center or Centers for Research in Vocational Education; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program, proposed program regulations, and the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant for the National Center for Research and Development in Vocational Education, the National Center for Dissemination and Training in Vocational Education, or both.

Purpose of Program: Under the National Center or Centers for Research in Vocational Education Program (the National Centers Program), the Secretary awards a grant to a National Center for the purpose of conducting applied research and development activities in the field of vocational education, consistent with the purposes of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*) (the Act). Under the National Centers Program, the Secretary also awards a grant to a National Center for the purpose of designing and conducting dissemination and training activities that are consistent with the purposes of the Act, including the broad dissemination of the results of the research and development activities conducted by the National Center, and planning, developing, and conducting training activities that meet a national need. However, in accordance with section 404(a)(5) of the Act, the Secretary gives preference to any institution of higher education or consortium of institutions of higher education that demonstrates its ability to effectively carry out both the applied research and development as well as the dissemination and training activities referred to above. Thus, the Secretary may make a single grant award to an institution or a consortium of institutions for the dual purpose of conducting applied research and development as well as dissemination and training activities. These activities, as well as the invitational priorities discussed below, support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by supporting critical improvements in vocational education.

Eligible Applicants: Institutions of higher education or consortia of institutions of higher education.

TRANSMITTAL OF APPLICATIONS UNDER THE VOCATIONAL EDUCATION RESEARCH PROGRAM

| Title and CFDA No. | Deadline for transmittal of applications | Available funds per year | No. of awards | Project period in months |
|---|---|---|---|---|
| National Center for Research and Development CFDA No. 84.051. | September 4, 1992. | $4 Million (est). | 1 | 60 months. |
| National Center for Dissemination and Training CFDA No. 84.051. | September 4, 1992. | $2 Million (est). | 1 | 60 months. |

**Note:** The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement)

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The proposed regulations for this program published in the **Federal Register** at 56 FR 51511–51514 to be codified in 34 CFR part 413.

**SUPPLEMENTARY INFORMATION:** It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case, it is essential to solicit applications on the basis of the notice of proposed rulemaking (NPRM) for part 413—National Center or Centers for Research in Vocational Education—and other relevant parts of the NPRM entitled "State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education," published in the **Federal Register** on October 11, 1991 (56 FR 51448). The Department must initiate the request for applications at this time in order for awards to be made in FY 1993. The Secretary has carefully considered public comments on the NPRM and expects to make some changes in the final regulations for part 413.

The Secretary expects to correct a technical error in the number of points reserved for distribution among the criteria in §§ 413.21 and 413.22 of the NPRM by changing § 413.20(b) to reserve 10 points instead of 15 points for each set of criteria.

The Secretary received several comments on the NPRM suggesting that holding two competitions for the National Center or Centers appeared to give preference to operating separate centers rather than a single comprehensive center. The commenters also stated that the proposed procedure for evaluating applications provided an inadequate competitive advantage to applicants that demonstrate their capacity to effectively carry out both functions of the National Center. On the basis of public comment, the Secretary expects to revise § 413.20 to clarify that, while the Secretary holds two competitions and judges individual applications according to the criteria in either §§ 413.21 or 413.22, as applicable, in accordance with section 404(a)(5) of the Act, the Secretary intends to give preference in grant selection to an institution or consortium of institutions that demonstrates the ability to carry out effectively both activities listed in section 404(a) of the Act and in § 413.3 (a) and (b) of the NPRM. The Secretary expects to delete § 413.20(h) of the NPRM, which provided for the assignment of five preference points to certain applications. In lieu of assigning preference points, the Secretary expects to give preference in grant selection to institutions or consortia that demonstrate the ability to carry out effectively both the research and development activities and the dissemination and training activities, either directly or by contract. After the Secretary has reviewed, evaluated, and scored each application, each applicant that has submitted two applications and has earned a score of 80 points or higher on each of its two applications, will be

deemed by the Secretary to have demonstrated its ability to carry out both activities effectively and will be placed in a pool with any other applicant that has earned a score of 80 points or higher on each of its two applications. The applicant scoring the highest combined score from among the applicants in the pool will be the recipient of a single grant award for the purpose of carrying out both program activities.

Finally, the Secretary also expects to add a new paragraph (j) to § 413.20 to clarify that, in the event that no applicant institution or consortium of institutions demonstrates to the Secretary its ability to carry out both activities effectively, the Secretary will make two grant awards to the applicants scoring the highest in each of the competitions.

The comments received by the Secretary did not raise any other significant policy issues with respect to the proposed regulations. Applicants should prepare their applications based on the NPRM while bearing in mind the above modifications. The Secretary does not expect to make further changes in the final regulations that would affect applicants for funds. However, if any other changes are made in the final regulations for this program, applicants will be given an opportunity to amend or resubmit their applications.

**Invitational Priorities**

Under 34 CFR 75.105(c)(1), the Secretary is authorized to invite applications that meet one or more priorities. The Secretary is particularly interested in applications that include descriptions of one or more of the following invitational priorities and address the President's AMERICA 2000 plan. AMERICA 2000 is a comprehensive plan for the revitalization of American education by the year 2000. The priorities apply to both research and development activities and dissemination and training activities. However, an application that meets one or more of the invitational priorities does not receive competitive or absolute preference over other applications:

*Invitational Priority 1—Performance Standards*

Activities that will contribute to the improvement and effectiveness of vocational education program performance standards, as well as worker performance standards, as called for in AMERICA 2000.

*Invitational Priority 2—Business and Education Skill Standards*

Activities that will contribute to the development of business and education skill standards and competencies in industries and trades and will contribute to Track III of AMERICA 2000 by striving to provide adult Americans with the knowledge and skills necessary to compete in a global economy.

*Invitational Priority 3—Technical Preparation (Tech Prep)*

Activities that will contribute to the articulation of school and college instruction with high quality work experience.

*Invitational Priority 4—Integration of Academic and Vocational Education*

Activities that will contribute to the integration of academic and vocational education so that students will obtain the literacy and occupational skills needed to function effectively in the Nation's economy.

*Invitational Priority 5—Special Populations*

Activities that will contribute to the improvement of vocational education services for members of special populations.

*Invitational Priority 6—Dissemination System*

Activities that will contribute to the development of a nation wide system, including an electronic subsystem, that disseminates results from research and development activities carried out under the Act to ensure improved knowledge about vocational education and that will contribute to Track II of AMERICA 2000 by bringing America on-line.

**Selection Criteria**

*A. General*

Evaluation of applications for new grants under the National Centers Program competitions:

(1) The Secretary will hold two separate competitions under this program. Each will have the same closing date of August 28, 1992. One competition will be held for research and development activities and the second competition will be held for dissemination and training activities. An institution of higher education or consortium of higher education institutions may submit a research and development application, a dissemination and training application, or both, as separate applications under separate covers.

(2) The Secretary evaluates applications for the research and development center and the dissemination and training center independently against the criteria in §§ 413.21 and 413.22 of the proposed regulations, respectively, regardless of whether an institution or consortium of institutions is competing for either one of the grants or both grants.

(3) In accordance with section 404(a)(5) of the Act, and what the Secretary believes to be the intent of Congress, the Secretary will give performance in grant selection to institutions or consortia that demonstrate the ability to carry out effectively both the research and development activities and the dissemination and training activities, either directly or by contract. After the Secretary has reviewed, evaluated, and scored each application, each applicant that has submitted two applications and has earned a score of 80 points or higher on each of its two applications, will be deemed by the Secretary to have demonstrated its ability to carry out both activities effectively and will be placed in a pool with any other applicant that has earned a score of 80 points or higher on each of its two applications. The applicant scoring the highest combined score from among the applicants in the pool will be the recipient of a single grant award for the purpose of carrying out both program activities.

(4) The maximum score for each application, excluding preference points, is 100 points.

(5) The maximum score for each criterion is indicated in parentheses following the criterion.

(6) In the final regulations the Secretary expects to reserve 10 points in § 413.20(a). In addition to the points assigned in §§ 413.21 and 413.22 of the proposed regulations, the Secretary assigns the 10 points reserved in § 413.20(a) as follows: 10 points to selection criterion (a)—Program factors—in §§ 413.21 and 413.22, for a total of 30 points for that criterion in § 413.21 and 30 points in § 413.22.

*B. Applied Research and Development Activities*

The Secretary expects to use the following criteria in evaluating each research and development application:

(1) Program factors. (30 points) The Secretary reviews each application to determine the extent to which each of the required research and development activities described in § 413.3(a)(2) of the proposed regulations are of high quality and effective.

(2) Plan of Operation. (35 points) The Secretary reviews each application to

determine the quality of the plan of operation for the proposed center, including—

(i) The applicant's plan for managing the National Center;

(ii) The procedures the applicant will use to implement the National Center particularly with regard to the public or private nonprofit institution of higher education with which it is associated and, in the case of a consortium, with the other members of the consortium;

(iii) The applicant's plan for managing the National Center's activities and personnel, including—

(A) Quality control procedures for its activities;

(B) Procedures for ensuring compliance with timelines;

(C) Coordination procedures for communicating among staff, subcontractors, members of the consortium, if any, and the Department of Education;

(D) Procedures for ensuring that adequate progress is being made toward achieving the goals of the grantee by subcontractors and members of a consortium; and

(E) Procedures for ensuring that adequate budget, accounting, and recordkeeping procedures will be used.

(iv) The quality of the applicant's detailed plans for year one of the National Center, including—

(A) Methodology and plan of operation;

(B) Tasks and timelines;

(C) Deliverables; and

(D) Dissemination plans for each project.

(v) The quality of the applicant's general plans for developing appropriate, coherent, and effective vocational education research and development activities or dissemination and training activities, or both, for years two through five.

(3) Key personnel. (10 points) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use for the National Center, including—

(i) The extent to which the Director of the National Center has—

(A) Appropriate professional qualifications, relevant project management experience, and administrative skills;

(B) A commitment to work full time at the National Center;

(C) A clear commitment to the goals of the project; and

(D) Sufficient authority to manage effectively the activities of the National Center.

(ii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(iii) The extent to which other key personnel to be used for the National Center—

(A) Have experience and training in project management and in fields related to the proposed activities to be carried out; and

(B) Will commit sufficient time to the project.

(4) Vocational education experience. (10 points) The Secretary reviews each application to determine the extent to which the applicant understands the state of knowledge and practice related to vocational education, including—

(i) The applicant's experience in conducting applied research and development activities or dissemination and training activities, or both, in the field of vocational education of the type described in § 413.3 of the proposed regulations;

(ii) The applicant's capacity for conducting applied research and deveopment activities or dissemination and training activities, or both, in the field of vocational education of the type described in § 413.3 of the proposed regulations; and

(iii) How the activities of the National Center will contribute to the advancement of relevant theory and practice in vocational education.

(5) Budget and cost effectiveness. (10 points) The Secretary reviews each application to determine the extent to which—

(i) The Center has an adequate budget that is cost effective;

(ii) The budget is adequate to support the Center's activities; and

(iii) Costs are reasonable in relation to the objectives of the Center.

(6) Coordination activities. (5 points) The Secretary reviews each application to determine the extent to which there is an effective plan for the coordination of activities described in § 413.3 (a) and (b) on the proposed regulations regardless of whether these activities are carried out between two institutions or within one institution.

*C. Dissemination and Training Activities*

The Secretary expects to use the following selection criteria in evaluating each dissemination and training application:

(1) Program factors. (30 points) The Secretary reviews each application to determine the extent to which each of the required dissemination and training activities, described in § 413.3(b) of the proposed regulations are of high quality and effective.

(2) The selection criteria and points in § 413.21 (b), (c), (d), (e), and (f) on the proposed regulations.

**Instructions for Transmittal of Applications**

(a) If an applicant wants to apply for a grant or grants, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.051), Washington, DC 20202–4725.

or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.051), room #3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted, or that an application is being submitted under each of the two competitions.

**Application Instructions and Forms**

Public reporting for this collection of information is estimated to average 90 hours per response, including the time reviewing instructions, searching existing data sources, gathering and

maintaining the data needed, and completing and reviewing the collection of information, including suggestions for reducing this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1830–0013, Washington, DC 20503.

To apply for an award under this program competition, each application must be organized in the following order and include the following five parts:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)).

Part II: Budget Information.

Part III: Budget Narrative.

Part IV; Program Narrative.

Part V: Additional Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certification regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and Instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and Instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

All forms and instructions are included as Appendix A of this notice.

All applicants must submit one original signed application, including ink signatures on all forms and assurances and six copies of the application. Please mark each application as original or copy. No grant may be awarded unless a complete application form has been received.

**FOR FURTHER INFORMATION CONTACT:**

Jackie L. Friederich, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4526—MES), Washington, DC 20202–7242. Telephone (202) 205–9071. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

**Program Authority:** 20 U.S.C. 2404.

Dated: June 26, 1992.

**Betsy Brand,**

*Assistant Secretary, Office of Vocational and Adult Education.*

**Appendix A**

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OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

| | | |
|---|---|---|
| 2. DATE SUBMITTED | | Applicant Identifier |
| 3. DATE RECEIVED BY STATE | | State Application Identifier |
| 4. DATE RECEIVED BY FEDERAL AGENCY | | Federal Identifier |

TYPE OF SUBMISSION: Application — ☐ Construction ☒ Non-Construction; Preapplication — ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): [ ][ ] – [ ][ ][ ][ ][ ][ ][ ]

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 0 5 1

TITLE: National Center or Centers for Research in Vocational Education

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

| | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II.—BUDGET INFORMATION

| | A | B | C |
|---|---|---|---|
| *Section A—Budget Summary by Categories:* | | | |
| 1. Personnel | | | |
| 2. Fringe Benefits (Rate %) | | | |
| 3. Travel | | | |
| 4. Equipment | | | |
| 5. Supplies | | | |
| 6. Contractual | | | |
| 7. Other | | | |
| 8. Total, Direct Cost (Lines 1 through 7) | | | |
| 9. Indirect cost (Rate %) | | | |
| 10. Training Costs/Stipends | | | |
| 11. Total, Federal Funds Requested (lines 8 through 10) | | | |
| *Section B—Cost Sharing Summary (if appropriate):* | | | |
| 1. Cash Contribution | | | |
| 2. In-Kind Contribution (only costs specifically for this project) | | | |
| 3. Total, Cost Sharing (Rate %) | | | |

NOTE: For Fully-Funded Projects use Column A to record the first 12-month budget period; Column B to record the remaining months of the project; and Column C to record the total.

For Multi-Year Projects use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

*Section C—Budget Estimates (Federal Funds Only) For Balance of Project*

BUDGET PERIODS

| Second | Third | Fourth | Fifth |
|---|---|---|---|
| | | | |

**Instructions for Part II—Budget Information**

*Section A—Budget Summary by Categories*

1. *Personnel:* Show salaries to be paid to project personnel.

2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits.

3. *Travel:* Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, DC.

4. *Equipment:* Indicate the cost of non-expendable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project.

6. *Contractual:* Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment; and (2) sub-contracts.

7. *Other:* Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. *Total, Direct Cost:* Show the total for lines 1 through 7.

9. *Indirect Costs:* Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. *Training/Stipend Cost:* (if allowable)

11. *Total, Federal Funds Requested:* Show total for lines 8 through 10.

*Section B—Cost Sharing Summary*

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of Total Project Cost, not of Federal funds.

*Section C—Budget Estimates (Federal Funds Only) for Balance of Project*

If the project period exceeds 12 months, include cost estimates for the continuation budget periods, as appropriate. This Section does not apply to projects that are full-funded.

**Instructions for Part III—Budget Narrative**

The Budget Narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Be sure that each page of your application is numbered consecutively.

**Instructions for Part IV—Program Narrative**

The Program Narrative will comprise the largest portion of your application. This part is where you spell out the who, what, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and Part 413 of NPRM published on October 11, 1991, 56 FR 51511–51514, other relevant portions of the NPRM published at 56 FR 51448, eligibility requirements, information on any priority set by the Secretary, and the selection criteria for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with an abstract or summary of your proposed project. Then describe the project in detail, addressing each selection criterion in order. Be sure to number consecutively, all pages in your application.

You may include supporting documentation as appendices. Be sure that this material is concise and pertinent to this program competition.

Applicants are advised that—

(a) The Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (EDGAR Sec. 75.217)

(b) The technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments which pertain to the established technical review criteria, such as commitment and resources.

**Additional Materials**

*Instructions for Estimated Public Reporting Burden*

Under terms of the Paperwork Reduction Act of 1980, as amended, and the proposed regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0013, Washington, DC 20503. (Information collection approved under OMB control number 1830–0013. Expiration date: 9/30/92.)

BILLING CODE 4000–01–M

OMB Approval No. 0348-0040

## ASSURANCES — NON-CONSTRUCTION PROGRAMS

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

SF 424B (4-88) Back

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

---

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

# Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

VOL 57 ISS 133 JL 10 1992 UMI

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| | | |
|---|---|---|
| 1. Type of Federal Action:<br>☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | 2. Status of Federal Action:<br>☐ a. bid/offer/application<br>b. initial award<br>c. post-award | 3. Report Type:<br>☐ a. initial filing<br>b. material change<br>For Material Change Only:<br>year _____ quarter _____<br>date of last report _____ |

| | |
|---|---|
| 4. Name and Address of Reporting Entity:<br>☐ Prime ☐ Subawardee<br>Tier _____, *if known:*<br>Congressional District, *if known:* | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:<br>Congressional District, *if known:* |
| 6. Federal Department/Agency: | 7. Federal Program Name/Description:<br>CFDA Number, *if applicable:* _____ |
| 8. Federal Action Number, *if known:* | 9. Award Amount, *if known:*<br>$ |
| 10. a. Name and Address of Lobbying Entity<br>*(if individual, last name, first name, MI):* | b. Individuals Performing Services *(including address if different from No. 10a)*<br>*(last name, first name, MI):* |
| *(attach Continuation Sheet(s) SF-LLL-A, if necessary)* | |
| 11. Amount of Payment *(check all that apply):*<br>$ _____ ☐ actual ☐ planned | 13. Type of Payment *(check all that apply):*<br>☐ a. retainer<br>☐ b. one-time fee<br>☐ c. commission<br>☐ d. contingent fee<br>☐ e. deferred<br>☐ f. other; specify: _____ |
| 12. Form of Payment *(check all that apply):*<br>☐ a. cash<br>☐ b. in-kind; specify: nature _____<br>value _____ | |
| 14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:<br>*(attach Continuation Sheet(s) SF-LLL-A, if necessary)* | |
| 15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No | |
| 16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure. | Signature: _____<br>Print Name: _____<br>Title: _____<br>Telephone No.: _____ Date: _____ |
| Federal Use Only: | Authorized for Local Reproduction<br>Standard Form - LLL |

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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## DISCLOSURE OF LOBBYING ACTIVITIES
### CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

[FR Doc. 92-16181 Filed 7-9-92; 8:45 am]
BILLING CODE 4000-01-C

Authorized for Local Reproduction
Standard Form - LLL-A

federal register

Friday
July 10, 1992

Part VII

# Department of the Interior

**Bureau of Indian Affairs**

**Indian Gaming; Notice**

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## DEPARTMENT OF THE INTERIOR

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved tribal-state compact.

**SUMMARY:** Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved The Ute Mountain Ute Tribe and the State of Colorado Gaming Compact executed on April 30, 1992.

**DATES:** This action is effective July 10, 1992.

**ADDRESSES:** Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Ronal Eden, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–3463.

Dated: July 6, 1992.

**Eddie F. Brown,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 92–16188 Filed 7–9–92; 8:45 am]

BILLING CODE 4310–02–M

federal register

Friday
July 10, 1992

Part VIII

# Department of the Interior

**Minerals Management Service**

**Outer Continental Shelf; Western Gulf of Mexico; Oil and Gas Lease Sale 141 and Leasing Systems, Sale 141; Notices**

92 1025

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Western Gulf of Mexico
Oil and Gas Lease Sale 141

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356, (1988)), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394. Bids may be delivered in person to that address during normal business hours (8:00 a.m. to 4:00 p.m.) until the bid submission deadline at 10:00 a.m., Tuesday, August 18, 1992. Hereinafter, all times cited in this Notice refer to c.s.t. unless otherwise stated. Bids will not be accepted the day of bid opening, Wednesday, August 19, 1992. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or written withdrawal request is received by the RD prior to 10:00 a.m., Tuesday, August 18, 1992. Bid opening time will be 9:00 a.m., Wednesday, August 19, 1992, at the Le Meridien Hotel, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 57 FR 17928 (Vol. 57, No. 82), published on April 28, 1992.

3. Method of Bidding. A separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 141 (map number, map name, and block number(s)), not to be opened until 9:00 a.m., c.s.t., August 19, 1992," must be submitted for each block or prescribed bidding unit bid upon. The company name and qualification number should also appear on the envelope. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 141, NG 14-3, Corpus Christi, Block 455, not to be opened until 9:00 a.m., Wednesday, August 19, 1992, Overthrust Inc., No. 1093." For those blocks which must be bid upon as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. For identification purposes, the company name and company qualification number should also appear on the check or draft together with the bid block identification (abbreviations acceptable). No bid for less than all of the unleased portions of a block or bidding unit as described in paragraph 12 will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only aliquot portions currently available for leasing.

All documents must be executed in conformance with signatory authorizations on file in the Gulf of Mexico regional office. Partnerships also need to submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

4. Bidding, Yearly Rental, and Royalty Systems. The following bidding, yearly rental, and royalty systems apply to this sale:

(a) Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of $25 or more per acre or fraction thereof.

(b) Yearly Rental. All leases awarded will provide for a yearly rental payment of $3 per acre or fraction thereof.

(c) Royalty Systems. All leases will provide for a minimum royalty of $3 per acre or fraction thereof. The following royalty systems will be used:

(1) Leases with a 12 1/2-Percent Royalty. This royalty rate applies to blocks in water depths of 400 meters or greater as shown on Map 2 (see paragraph 12). Leases issued on the blocks and bidding units offered in this area will have a fixed royalty rate of 12 1/2 percent.

(2) Leases with a 16 2/3-Percent Royalty. This royalty rate applies to blocks in water depths of less than 400 meters (see Map 2). Leases issued on blocks and bidding units offered in this area will have a fixed royalty rate of 16 2/3 percent.

5. Equal Opportunity. Each bidder must qualify for the sale by submitting prior to the bid submission deadline stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Representation Form, Form MMS-2032 (June 1985). See paragraph 14(e).

6. Bid Opening. Bid opening will begin at the bid opening time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of bid opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid may be accepted and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $25 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.



10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

11. Leasing Maps and Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) OCS Leasing Maps--Texas Set. This set of 16 maps sells for $18.00.

| | |
|---|---|
| Map 1 | South Padre Island Area |
| Map 1A | South Padre Island Area, East Addition (revised 12/16/85) |
| Map 2 | North Padre Island Area |
| Map 2A | North Padre Island Area, East Addition |
| Map 3 | Mustang Island Area |
| Map 3A | Mustang Island Area, East Addition |
| Map 4 | Matagorda Island Area |
| Map 5 | Brazos Area |
| Map 5B | Brazos Area, South Addition |
| Map 6 | Galveston Area |
| Map 6A | Galveston Area, South Addition |
| Map 7 | High Island Area |
| Map 7A | High Island Area, East Addition |
| Map 7B | High Island Area, South Addition |
| Map 7C | High Island Area, East Addition, South Extension |
| Map 8 | Sabine Pass Area |

(b) OCS Protraction Diagrams. These diagrams sell for $2.00 each.

| | |
|---|---|
| NG 14-3 | Corpus Christi (revised 01/27/76) |
| NG 14-6 | Port Isabel (revised 01/15/92) |
| NG 15-1 | East Breaks (revised 01/27/76) |
| NG 15-2 | Garden Banks (revised 10/19/81) |
| NG 15-4 | Alaminos Canyon (revised 04/27/89) |
| NG 15-5 | Keathley Canyon (revised 04/27/89) |
| NG 15-8 | (No Name) (revised 04/27/89) |

(c) A complete set of both OCS Leasing Maps and all OCS Protraction Diagrams is available on microfiche for $5.00 per set.

12. Description of the Areas Offered for Bids.

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased or transected by administrative lines such as the Federal/State jurisdictional line. In these cases, the following supplemental documents to this Notice are available from the Gulf of Mexico regional office (see paragraph 14(a):

(1) Western Gulf of Mexico Lease Sale 141-Final. Unleased Split Blocks.

(2) Western Gulf of Mexico Lease Sale 141-Final. Unleased Acreage of blocks with Aliquots Under Lease.

(b) Maps 1, 2, and 3 referred to in this Notice are available on request from the Gulf of Mexico regional office:

Map 1 entitled "Western Gulf of Mexico Lease Sale 141 - Final. Stipulations, Lease Terms, and Warning Areas."

Map 2 entitled "Western Gulf of Mexico Lease Sale 141 - Final. Bidding Systems and Bidding Units." Refers largely to Royalty Rates and Bidding Units.

Map 3 entitled "Western Gulf of Mexico Lease Sale 141 - Final. Detailed Maps of Biologically Sensitive Areas." Pertains to areas referenced in Stipulation No. 2.

(c) Prospective bidders are advised of specific archaeological survey requirements further detailed in paragraph 14(g).

(d) In several instances, two or more blocks have been joined together into bidding units totaling less than 5,760 acres. Any bid submitted for a bidding unit having two or more blocks must be for all of the unleased Federal acreage within all of the blocks in that bidding unit. The list of those bidding units with their total acreages appears on Map 2.

(d) The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11(a), (b), and (c), except for those leased blocks described on pages 7 through 11, and blocks deferred from bidding as referenced on page 12.

May 29, 1992

## Western Gulf of Mexico Leasing Update List

The following blocks have become available for leasing since publication of the block update listing of April 16, 1992. This list is being furnished for your convenience. If you have any questions regarding this please contact Ms. Pat Bryars at 504-736-2763.

**Galveston, South Addition**

A-127
A-219
A-248

**Mustang Island**

A-34

**High Island, South Addition**

A-476
A-586

**East Breaks**

514

**Garden Banks**

142
186
187
425
462
485
606
607
650
651
695

WESTERN GULF OF MEXICO LEASED LANDS

Descriptions of blocks listed represent all Federal acreage leased unless otherwise noted.

**South Padre Island**

1030
1043
1044
1050
1052
1059
1060
1073
1111
1112
1122
1125
1133
1134
1143
1166

**South Padre Island, East Addition**

1100
1115
1116
1117
1120
1136
1155
A-62

**North Padre Island**

886
887
894
895
906
908
909
914

927
929
934
935
947
948
949
954
955
956
957
967
968
969
976
977
978
987
988
989
1010

**North Padre Island, East Addition**

889
890
891
892
893
910
911
912
913
930
931
932
951
952
970
972
974
975
990
991
993
995

996
1011
1016
1018
A-8
A-9
A-10
A-11
A-12
A-13
A-23
A-26
A-27
A-30
A-31
A-32
A-38
A-40
A-41
A-42
A-43
A-44
A-47
A-48
A-55
A-56
A-57
A-58
A-59
A-62
A-63
A-64
A-69
A-70
A-72
A-75
A-76
A-83
A-84
A-86
A-87

**Mustang Island**

729
730
731
737

738
739
740
742
743
752
754
755
756
757
758
759
762
763
764
765
767
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A-28
A-30
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A-32
A-33
A-36
A-37
A-38

**Mustang Island, East Addition**

760
A-40
A-47
A-48
A-51
A-52
A-53
A-54
A-57
A-61
A-64
A-70
A-71
A-81
A-84
A-85
A-86
A-91
A-92
A-96
A-98
A-107
A-111
A-112
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A-116
A-117
A-118
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A-121
A-122
A-124
A-133
A-135
A-138
A-139
A-140
A-149
A-151
A-174

**Matagorda Island**

487
516
519
520
526
527
528
529
(Seaward of 8(g) line)
555
556
557
564
565
566
567
568
569
586
587
588
589
591
592
599
600
601
602
603
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A-2
A-3
A-4
A-5
A-7
A-8

**Brazos**

341
342
364
365
366
367
375
376
377
396
397
398
399
400
411
412
413
414
415
416
417
430
431
432
433
434
435
(Seaward of 8(g) Line)
436
437
438
439
449
450
451
452
(EVz)
453
454
455
456
457
466
467
469
470
474
475
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A-41
A-43

**Brazos, South Addition**

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A-52
A-53
A-61
A-62
A-65
A-66
A-69
A-70
A-73
A-78
A-84
A-85
A-93
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A-105
A-107
A-110
A-111
A-113
A-124
A-127
A-128
A-129
A-131
A-133

**Galveston**

144
151
180
181
182
189
(SEV4)
190
191
(Landward of 8(g)line)
192
209
210
211
212
213
222
223
224
225
226
238
239
240
241
242
243
252
253
254
255
266
267
268
269
270
271
272
273
274
275
281
282
(Seaward of 8(g) line)
283
284
286
287
288
289

290
291
295
(S½NE¼NE¼; NW¼NE¼; W½SW¼NE¼; NE¼SW¼ NE¼; N½SE¼NE¼; W½; W½NW¼SE¼; S½SE¼)
296
(NE¼; NE¼NE¼ NW¼; S½NE¼NW¼; SE¼NW¼; S½SW¼NW¼; N½SW¼; NE¼SW¼ SW¼; N½SE¼SW¼; N½SE¼; N½SW¼SE¼ SE¼SE¼;)
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A-109
A-110
A-111

**Galveston, South Addition**

A-115
A-122
A-125
A-129
A-130
A-141
A-142
A-144
A-145
A-157
A-158
A-172
A-189
A-200
A-201
A-206
A-207
A-212
A-218
A-230
A-237
A-245
A-249

**High Island**

15
20
21
22
34
37
47

48
49
50
51
52
53
(NE¼; E½NE¼SE¼)
65
66
67
68
69
70
71
72
87
88
89
90
91
92
93
94
95
97
98
105
106
107
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109
110
111
113
114
115
116
117
131
134
135
(N½; N½S½; SW¼SW¼; W½SE¼SW¼; NE¼SE¼ SW¼; N½S½SE¼)
136
(E½; E½NE¼SW¼; S½SE¼SW¼)
137
138
139
140
141
143
154

155
(W½)
156
160
(NE¼; NE¼NW¼; E½SE¼NW¼; N½SE¼; N½SE¼SE¼)
161
(NW¼NE¼ NW¼; S½NE¼NW¼; W½NW¼; SE¼NW¼; NE¼NE¼ SW¼; W½NE¼SW¼; NW¼SW¼; NW¼SW¼ SW¼)
162
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A-74
A-83
A-87
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A-93
A-94
A-95
A-98
A-99
A-108
A-127
A-128
A-129
A-137
A-154

**High Island, South Addition**

A-411
A-412
A-417
A-418
A-419
A-421

A-422
A-423
A-424
A-426
A-434
A-435
A-438
A-439
A-440
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**High Island, East Addition**

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**High Island, East Addition, South Extension**

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**Sabine Pass**

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**East Breaks**

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**Garden Banks**

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| 381 | 513 | 768 | 947 | 237 | 822 | 242 |
| 382 | 514 | 769 | 950 | 261 | 826 | 243 |
| 386 | 515 | 771 | 963 | 280 | 827 | 245 |
| 387 | 516 | 772 | 964 | 305 | 854 | 246 |
| 388 | 517 | 775 | 974 | 336 | 856 | 247 |
| 389 | 523 | 782 | 975 | 337 | 857 | 255 |
| 397 | 524 | 783 | 990 | 380 | 865 | 256 |
| 398 | 525 | 784 | 991 | 398 | 900 | 286 |
| 399 | 535 | 785 | 996 | 441 | 901 | 300 |
| 407 | 543 | 786 | | 442 | 903 | 301 |
| 409 | 544 | 787 | | 485 | 904 | 302 |
| 410 | 549 | 788 | | 489 | 908 | 324 |
| 411 | 550 | 798 | | 490 | 947 | 345 |
| 412 | 554 | 803 | | 491 | 951 | 377 |
| 413 | 555 | 804 | Port Isabel | 533 | 954 | 388 |
| 414 | 556 | 806 | | 534 | 955 | 420 |
| 415 | 557 | 811 | 39 | 556 | 998 | 421 |
| 416 | 558 | 812 | 40 | 557 | 999 | 422 |
| 418 | 559 | 813 | 81 | 558 | | 431 |
| 419 | 562 | 814 | 82 | 599 | | 432 |
| 420 | 563 | 815 | 125 | 600 | | 465 |
| 421 | 568 | 816 | 126 | 601 | | 466 |
| 422 | 569 | 817 | 130 | 602 | | 476 |
| 424 | 593 | 826 | 131 | 644 | Keathley Canyon | 509 |
| 426 | 594 | 831 | 174 | 645 | | 512 |
| 427 | 598 | 832 | 175 | 646 | | 522 |
| 428 | 599 | 833 | 216 | 647 | 6 | 523 |
| 429 | 600 | 848 | 217 | 648 | 7 | 556 |
| 430 | 601 | 849 | 218 | 687 | 114 | 557 |
| 431 | 602 | 850 | 481 | 691 | 122 | 567 |
| 432 | 603 | 855 | 482 | 719 | 123 | 568 |
| 443 | 610 | 856 | 483 | 720 | 133 | 583 |
| 444 | 611 | 860 | 525 | 726 | 134 | 584 |
| 447 | 622 | 861 | 526 | 730 | 155 | 594 |
| 448 | 623 | 862 | 568 | 731 | 156 | 595 |
| 455 | 628 | 875 | 570 | 734 | 157 | 596 |
| 456 | 630 | 876 | 653 | 735 | 158 | 600 |
| 457 | 638 | 877 | 954 | 736 | 159 | 601 |
| 463 | 639 | 885 | 970 | 763 | 165 | 603 |
| 464 | 644 | 892 | | 764 | 166 | 604 |
| 465 | 645 | 893 | | 765 | 167 | 638 |
| 466 | 646 | 894 | | 767 | 168 | 639 |
| 467 | 653 | 895 | | 770 | 177 | 647 |
| 468 | 674 | 902 | | 774 | 178 | 648 |
| 469 | 682 | 903 | Alaminos Canyon | 775 | 179 | 649 |
| 470 | 683 | 906 | | 776 | 191 | 650 |
| 471 | 694 | 906 | | 778 | 192 | 693 |
| 472 | 697 | 919 | | 779 | 199 | 694 |
| 473 | 726 | 920 | 20 | 780 | 200 | 695 |
| 474 | 727 | 921 | 21 | 781 | 201 | |
| 475 | 736 | 929 | 24 | 782 | 202 | |
| 476 | 738 | 930 | 25 | 783 | 203 | |
| 477 | 739 | 936 | 26 | 810 | 211 | |
| 506 | 740 | 938 | 85 | 811 | 212 | |



(1) Although currently unleased and shown on Texas Leasing Map No. 7C, High Island Area, East Addition, South Extension, dated October 19, 1981, no bids will be accepted on the following blocks: A-375 and A-398.

(2) No bids will be accepted in the Corpus Christi Naval Operations Deferral Area containing approximately 340 blocks as shown on Map 1.

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms as shown on Map 1 and will be issued on Form MMS-2005 (March 1986). Copies of the lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on Map 1 and Map 3 and as supplemented by references in this Notice.

Stipulation No. 1--Protection of Archaeological Resources.

(This stipulation will apply to all blocks offered for lease in this sale. Bidders should refer also to paragraph 14(g) of this Notice for specific survey requirements.)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be, or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.



**Stipulation No. 2--Protection of Topographic Features.**

(This stipulation will be included in leases located in the areas so indicated on Maps 1 and 3 described in paragraph 12.)
The banks which cause this stipulation to be applied to blocks of the Western Gulf are:

| Bank Name | No Activity Zone Defined by Isobath (meters) |
|---|---|
| **Shelf Edge Banks** | |
| West Flower Garden Bank* (defined by 1/4 1/4 1/4 system) | 100 |
| East Flower Garden Bank* (defined by 1/4 1/4 1/4 system) | 100 |
| MacNeil Bank | 82 |
| 29 Fathom Bank | 64 |
| Rankin Bank | 85 |
| Geyer Bank | 85 |
| Elvers Bank | 85 |
| Bright Bank***** | 85 |
| McGrail Bank***** | 85 |
| Rezak Bank***** | 85 |
| Sidner Bank | 85 |
| Parker Bank | 85 |
| Stetson Bank | 82 |
| Applebaum Bank | 85 |
| **Low Relief Banks**** | |
| Mysterious Bank | 74,76,78,80,84 (see leasing map) |
| Coffee Lump | Various (see leasing map) |
| Blackfish Ridge | 70 |
| Big Dunn Bar | 65 |
| Small Dunn Bar | 65 |
| 32 Fathom Bank | 52 |
| Claypile Bank*** | 50 |
| **South Texas Banks****** | |
| Dream Bank | 78,82 |
| Southern Bank | 80 |
| Hospital Bank | 70 |
| North Hospital Bank | 68 |
| Aransas Bank | 70 |
| South Baker Bank | 70 |
| Baker Bank | 70 |

* Flower Garden Banks--In paragraph (c) a "4-Mile Zone" rather than a "1-Mile Zone" applies.
** Low Relief Banks--Only paragraph (a) applies.
*** Claypile Bank--Paragraphs (a) and (b) apply. In paragraph (b) monitoring of the effluent to determine the effect on the biota of Claypile Bank shall be required rather than shunting.
**** South Texas Banks--Only paragraphs (a) and (b) apply.
*****Central Gulf of Mexico bank with a portion of its "1-Mile Zone" and/or "3-Mile Zone" in the Western Gulf of Mexico.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown on Map 3) of the banks as listed above.

(b) Operations within the area shown as "1,000-Meter Zone" shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "1-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1-Mile Zone" designated, the "1,000-Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 1--Military Warning Areas.

(This stipulation will be included in leases located within Warning Areas shown on Map 1 described in paragraph 12.)

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS), to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS; if such injury or damage to such person or property occurs by reason of the activities of any agency of the U. S. Government, its contractors or subcontractors, or any of their officers, agents, or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the table below.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee; and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the appropriate military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of its officers, agents, or employees; and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.



(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors, or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the table below to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities conducted within individual designated warning areas. Necessary monitoring control and coordination with the lessee, its agents, employees, invitees, independent contractors, or subcontractors will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic in the individual designated warning areas, shall enter into an agreement with the commander of the individual command headquarters listed in the following table, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating in the warning areas at all times.

Warning Areas' Command Headquarters
Western Planning Area

| Warning Areas | Command Headquarters |
|---|---|
| W-228 | Chief, Naval Air Training<br>Naval Air Station<br>ATTN: Lt. Cmdr. I.V. Veles, USN<br>or Lt. Jex<br>Corpus Christi, Texas 78419-5100<br>Telephone: (512) 939-3862/3902 |
| W-602 | Headquarters SAC/DONO<br>Deputy Chief of Staff<br>Operations Headquarters<br>Strategic Air Command<br>Attn: Mr. Berube<br>Offutt AFB, Nebraska 68113-5001<br>Telephone: (402) 294-3103/3450 or<br>Scheduling: (402)-294-2334 |

14. Information to Lessees.

(a) Supplemental Documents. For copies of the various documents identified as available from the Gulf of Mexico regional office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, either in writing or by telephone (504) 736-2519. For additional information, contact the Regional Supervisor for Leasing and Environment at the above address or by telephone at (504) 736-2759.

(b) Navigation Safety. In accordance with 33 CFR 322.5 (1), operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended.

U.S. Corps of Engineers (COE) permits are required for the construction of any artificial islands, installations, and other devices temporarily or permanently attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

For additional information, prospective bidders should contact Lt. Commander William M. Prosser, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, telephone (504) 589-6901. For COE information, prospective bidders should contact Mr. Dolan Dunn, Chief Evaluation Section, Regulatory Branch, P.O. Box 1229, Galveston, Texas 77553, telephone (409) 766-3935.

(c) Offshore Pipelines. Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) 8-Year Leases. Bidders are advised that any lease issued for a term of 8 years will be canceled after 5 years, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated; or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria; or if there is not a suspension of operations in effect, etc. Bidders are referred to 30 CFR 256.37.

(e) Affirmative Action. Revision of the Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1).

Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) Ordnance Disposal Areas. Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on Map 1 described in paragraph 12 of this Notice. These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi area range from approximately 600 to 900 meters. Water depths in the East Breaks area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards. Lessees are also advised of an Environmental Protection Agency dumping site located in portions of Alaminos Canyon, East Breaks, Garden Banks, and Keathley Canyon.

(g) Archaeological Resources. Bidders are advised of the Notice to Lessees (NTL) affecting the historic shipwreck requirements published December 20, 1991, in the Federal Register pages 66076-66082 with an effective date of February 17, 1992. This NTL details the survey methodology, including a more intensive survey with line spacing 50 meters apart, and report writing requirements. A Letter to Lessees (LTL) of November 30, 1990, lists those blocks identified as having a high probability for encountering historic shipwrecks. Copies of both the NTL and the LTL are available from the MMS Public Information Unit upon request.

(h) Proposed Rigs to Reefs. Bidders are advised that there are OCS artificial reef sites and planning sites for the Gulf of Mexico. These are generally located in water depths of less than 200 meters. While all existing and proposed sites require a permit from the U.S. Army Corps of Engineers, this "Rigs to Reefs" program is implemented through State sponsorship. For more information, prospective bidders should contact the State Artificial Reef Coordinator for their areas of interest:

Alabama
Mr. Wallace M. Tatum
(205) 968-7578

Mississippi
Mr. Mike Buchanan
(601) 385-5860

Louisiana
Mr. Rick Kasprzac
(504) 765-2375

Texas
Mr. Hal R. Osburn
(512) 389-4863

Scott Sewell

Director, Minerals Management Service

Scott Sewell

Approved:

Richard Roldan

Assistant Secretary, Land and Minerals Management

Richard Roldan

July 7, 1992

Date

Billing Code: 4310-MR

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf
Western Gulf of Mexico

Notice of Leasing Systems, Sale 141

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding systems to be used. In the Outer Continental Shelf (OCS) Sale 141, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16 2/3-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12 1/2-percent royalty on all remaining unleased blocks.

a. Bonus Bidding with a 16 2/3-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. Bonus Bidding with a 12 1/2-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Western Gulf of Mexico (Sale 141) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12 1/2-percent royalty system would be less than for the same blocks under a 16 2/3-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks. The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12 1/2-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Western Gulf of Mexico Lease Sale 141 - Final. Bidding Systems and Bidding Units." This map is available from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

Scott Sewell

Director, Minerals Management Service

Scott Sewell

Approved:

Richard Roldan

ACTING Assistant Secretary - Land and Minerals Management

Richard Roldan

Date: July 7, 1992

[FR Doc. 92-16276 Filed 7-8-92; 8:45 am]

BILLING CODE 4310-MR-C

federal register

Friday
July 10, 1992

Part IX

# Department of Education

**Office of Special Education and Rehabilitative Services**

**34 CFR Part 366**

**Centers for Independent Living; Proposed Rule**

VOL 57 ISS 133 JL 10 1992 UMI

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 366

RIN 1820-AA51

Centers for Independent Living

AGENCY: Department of Education.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: The Secretary of Education provides advance notice that the Department intends to amend the regulations in part 366 governing the Centers for Independent Living (CIL) program by amending existing regulations and by adding regulations in a new subpart F and a new subpart G to implement requirements added by the Rehabilitation Act Amendments of 1986 (1986 Amendments), Public Law 99-506. The 1986 Amendments added new sections 711(f) and 711(g) to part B of title VII of the Rehabilitation Act of 1973, as amended (Act), which establishes the CIL program. These two sections require that (1) the Secretary publish in the Federal Register indicators of what constitutes minimum compliance with evaluation standards developed pursuant to section 711(e)(1) of the Act and approved by the National Council on Disability (NCD), formerly the National Council on the Handicapped (NCH); (2) each grantee report to the Secretary at the end of each project year the extent to which each center under the grant is in compliance with the evaluation standards; (3) the Secretary ensure that a continuation award is made only to a grantee that is in compliance with the evaluation standards and the provisions of its approved grant application; (4) the Secretary give priority to geographic areas among the States that are currently not served or are underserved by CIL projects; and (5) the Secretary consider past performance, if appropriate, in making new grant awards. The ANPRM proposes to implement the requirements in sections 711(e), 711(f), and 711(g), and amend the application requirements for the program. The ANPRM is consistent with the requirements in section 711(c)(3) of the Act. The Secretary publishes this notice to move toward a minimum level of consistency among centers, where appropriate, and to promote increased quality of independent living services to individuals with severe disabilities.

This advance notice of proposed rulemaking will be followed by a notice of proposed rulemaking prior to publication of final regulations.

DATES: Comments must be received on or before August 24, 1992.

ADDRESSES: All comments concerning this notice should be addressed to Neil C. Carney, Commissioner, Rehabilitation Services Administration, room 3028 Mary E. Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202-2575.

FOR FURTHER INFORMATION CONTACT: John Nelson, Office of Developmental Programs, Rehabilitation Services Administration, Room 3326 Mary E. Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202-2741. Telephone: (202) 205-9362. TDD users may contact the Program Specialist via the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: This advance notice of proposed rulemaking recommends proposing a new subpart F in part 366 that would contain the proposed evaluation standards for centers for independent living and a new subpart G that would contain proposed indicators of what constitutes minimum compliance with the proposed evaluation standards for the CIL program. This ANPRM also proposes making certain changes to the existing regulations to implement changes in the Act made by the 1986 Amendments and proposes making other clarifying changes.

## Proposed Evaluation Standards

In 1984, the Rehabilitation Services Administration (RSA) began a process for developing and publishing standards for evaluation consistent with the provisions of section 711(c)(3) of the Act to assist each independent living center receiving funds under title VII of the Act to review and evaluate the operation of its center. Experts in the field of independent living participated in the drafting of these standards. RSA distributed the standards for review and comment to over 500 individuals and organizations, including independent living centers, disability organizations, researchers, consumer groups, and other experts on disability issues. After this distribution, RSA revised the draft standards and submitted them to NCD, which approved them.

Subsequent review by the Department of Education has revealed that revisions were necessary to several of the standards to better implement the requirements of the Act, as amended in 1986. In addition, some elements of the standards would be more appropriate as regulatory requirements (e.g., application requirements) rather than as standards for evaluation. Therefore, pursuant to section 711(e)(1) of the Act, the Secretary proposes to revise the standards to address these problems and is publishing in this ANPRM proposed evaluation standards for centers for independent living for public comment. A chart comparing the standards and the Secretary's proposed evaluation standards is published as an appendix to this ANPRM for information purposes only. The chart indicates the standards that would become regulatory requirements or application assurances.

Simultaneously with the publication of this ANPRM, the Secretary is forwarding the proposed evaluation standards to NCD for its comments. The Secretary will publish a notice of proposed rulemaking, including the proposed evaluation standards, based on comments both from the public and NCD. Prior to publishing final evaluation standards in the Federal Register, the proposed evaluation standards will be forwarded to the NCD for its approval, as required by section 711(e)(4) of the Act. If approved by NCD, the Secretary expects that the evaluation standards would go into effect for use with FY 1993 awards.

Pursuant to sections 711(e)(1) and 711(f)(3) of the Act, the Secretary proposes the following standards to evaluate the operation of each center that receives funds under part B of title VII of the Act:

- *Proposed evaluation standard 1* (Practice of independent living philosophy—§ 366.50(a)) would require a center to promote and practice the independent living philosophy of consumer control, equal access, and self-advocacy by individuals with severe handicaps. Proposed evaluation standard 1 implements sections 711(c)(3)(A) through (C) and (G) through (J) of the Act.
- *Proposed evaluation standard 2* (Range of disabilities served—§ 366.50(b)) would require a center to provide services to individuals with a range of severe disabilities. Although some existing centers serve primarily the specific needs of discrete disability groups, such as individuals who have severe visual or hearing impairments, a cornerstone principle of the philosophy of independent living centers is that centers must serve individuals with a range of disabilities. The provision of independent living services to individuals with a range of disabilities also is an important indicator of a center's effectiveness in serving individuals with severe handicaps.

Accordingly, the Secretary has determined that centers may not refuse to serve an individual solely because of his or her type of disability and that centers may not limit their independent living services to the provision of special programs devoted solely to individuals with only one or two types of disabilities.

Proposed evaluation standard 2 would also implement the intent of Congress, as evidenced in the legislative history of the 1986 Amendments, that centers may not limit the provision of services to individuals with only one or two types of disabilities. Senate Report No. 99–366, which accompanied Senate Bill S. 2515, indicates quite clearly that the Senate understood and approved the requirement that each center must serve individuals with a range of disabilities. The Senate Report states that the Senate Committee on Labor and Human Resources ("Senate Committee") "recognize[d] that some currently existing Independent Living Centers serve primarily the specific needs of discrete disability groups, such as the visual and hearing impaired, and offer critical services to these individuals." Senate Report No. 99–366, 99th Cong., 2d Sess. 26 (1986). However, the Senate Committee went on to state, in the very next sentence, its "[intent] that these existing Independent Living Centers be able to meet the needs of these discrete groups *while seeking to serve individuals with a range of disabilities.*" [Emphasis added.] Id.

Proposed evaluation standard 2 implements sections 711(c)(3) (A) and (B) of the Act.

• *Proposed evaluation standard 3* (Achievement of individual independent living goals—§ 366.50(c)) would require a center to increase the development and achievement of independent living goals by individuals with severe handicaps. Proposed evaluation standard 3 implements section 711(c)(3)(F) of the Act.

• *Proposed evaluation standard 4* (Increase and improve community options for independent living—§ 366.50(d)) would require a center to work to increase the availability and improve the quality of community options for independent living in order to facilitate the development and achievement of independent living goals by individuals with severe disabilities. Proposed evaluation standard 4 implements section 711(c)(3)(H) through (J) of the Act.

• *Proposed evaluation standard 5* (Range of services—§ 366.50(e)) would require a center to provide a range of services to individuals with severe handicaps. The range of services that a center provides must include, as appropriate, a combination of services chosen by the center from those services listed in section 711(c)(2) of the Act. Although "advocacy," "independent living skills training," and "peer counseling" have been considered "core services" by centers for independent living and NCD, the Act does not designate these three services as mandatory services. Therefore, proposed evaluation standard 5 would not give preference to centers that provide "advocacy," "independent living skills training," and "peer counseling" over centers that provide other services. Proposed evaluation standard 5 implements section 711(c)(3)(C) of the Act.

• *Proposed evaluation standard 6* (Resource development—§ 366.53(g)) would require a center to conduct resource development activities to obtain funding from sources other than title VII of the Act. Proposed evaluation standard 6 implements section 711(c)(3)(D) and (H) through (J) of the Act.

Comments on the validity, usefulness and measurability of the proposed evaluation standards are encouraged. Submitting data to support any suggested changes to the proposed evaluation standards also is encouraged. The Secretary is particularly interested in soliciting comments regarding the proposed weights, minimum performance levels, and performance ranges of the proposed indicators of compliance.

**Proposed Indicators of Compliance**

The Secretary has developed proposed indicators of what constitutes minimum compliance with the proposed evaluation standards based upon consideration of the individual views of experts in the field of independent living, substantial experience in administration of the grant program, and analysis of the FY 1986 through 1988 data from 100 centers that were submitted pursuant to section 711(c)(3) of the Act. Pursuant to section 711(f)(1) of the Act, the proposed compliance indicators would establish weights, minimum performance levels, and performance ranges to determine whether an individual center complies with the proposed evaluation standards. Each proposed compliance indicator would measure the performance of an individual center for independent living in an essential project area as follows:

• *Proposed compliance indicator (a)*—§ 366.63(a). Compliance with proposed evaluation standard 1, which requires that the center shall promote and practice the independent living philosophy, would be determined by a center's performance on a proposed indicator that would require evidence that the center has engaged in activities that promoted the independent living philosophy described in § 366.50(a) of the ANPRM. To achieve the minimum number of points on this proposed indicator, a center would have to provide evidence that it had engaged in at least three of the six listed activities.

The Secretary is particularly interested in comments on the validity, usefulness, and measurability of these and any other activities that should be recognized as contributing to the practice of the independent living philosophy.

• *Proposed compliance indicator (b)*—§ 366.63(b). Compliance with proposed evaluation standard 2, which requires that the center shall provide services to individuals with a range of severe disabilities, would be determined by a center's performance on a proposed indicator that would identify the number of severe disability categories represented by the individuals with severe disabilities served by the center. The severe disability categories are listed in § 366.20(h) of the ANPRM.

To achieve the minimum number of points on this proposed indicator, a center would have to serve individuals whose primary severe disabilities include severe disabilities from a minimum of three of the eight categories listed in § 366.20(h). Each of the 3 severe disability categories would have to include no less than 10 percent of the total number of individuals served by the center (with each individual being counted only once). Comments on the proposed severe disability categories are encouraged.

• *Proposed compliance indicators (c)(1) and (c)(2)*—§ 366.63(c)(1) and (c)(2). Compliance with proposed evaluation standard 3, which requires that the center shall increase the development and achievement of independent living goals by individuals with severe disabilities, would be determined by a center's performance on two proposed indicators that would identify the percentage of individuals with severe handicaps served by the center who have new or amended independent living plans (ILPs) and the percentage of individuals with ILPs served by the center who achieve a major independent living goal. The proposed indicators would make centers accountable for supporting the development and achievement of consumer goals.

To achieve the minimum number of points on proposed indicator (c)(1), a center would have to assist a minimum

of 30 percent of the individuals with severe handicaps served during the project year in developing or amending ILPs. All individuals served during the project year would be considered for compliance with this indicator. For a center to achieve the minimum number of points on proposed indicator (c)(2), a minimum of 50 percent of the individuals who had ILPs developed or amended with assistance by the center during the project year would have to achieve at least one major goal identified jointly by center staff and the individual with severe handicaps.

The Secretary particularly invites comments on how the achievement of independent living (IL) goals is determined currently and on the proposed point ranges for these indicators of performance

• *Proposed compliance indicator (d)*—§ 366.63(d). Compliance with proposed evaluation standard 4, which requires that the center shall work to increase the availability and improve the quality of community options for independent living in order to facilitate the development and achievement of independent living goals by individuals with severe disabilities, would be determined by a center's compliance with a proposed indicator that requires a center to provide evidence that it has worked to increase and improve community options for independent living for individuals with severe handicaps. To achieve the minimum number of points on this proposed indicator, a center would have to provide evidence that it had engaged in at least two of the five listed activities. Comments on definitions and measures of actions and outcomes in effecting change in community options for independent living are particularly encouraged.

• *Proposed compliance indicators (e)(1) and (e)(2)*—§ 366.63(e)(1) and (e)(2). Compliance with proposed evaluation standard 5, which requires that the center shall provide a range of services to individuals with severe disabilities, would be determined by a center's performance on two proposed compliance indicators that would identify the number of different independent living services provided to individuals with severe handicaps and the percentage of individuals with severe handicaps who received a range of services.

To achieve the minimum number of points on proposed indicator (e)(1), a center would have to provide a minimum of 6 of the 18 different types of services identified in § 366.50(e) of the ANPRM to individuals with severe handicaps. For a center to achieve the minimum number of points on proposed indicator (e)(2), a minimum of 20 percent of all individuals served by the center would have to receive at least 2 different types of services.

The Secretary invites specific comment on the number of independent living services that centers should provide in order to comply with indicator (e)(1) and the appropriateness of the point ranges proposed for compliance with these indicators.

• *Proposed compliance indicator (f)*—§ 366.63(f). Compliance with proposed evaluation standard 6, which requires that the center shall conduct resource development activities to obtain funding from sources other than title VII of the Rehabilitation Act of 1973, as amended, would be determined by a center's performance on a proposed indicator that would identify the amount of funds to conduct independent living services obtained by the center from sources other than title VII of the Act during the project year. To achieve the minimum number of points on this proposed indicator, a center would have to obtain funds to conduct independent living services from sources other than title VII in an amount that is equal to at least 10 percent of all funds received by the center under title VII during the project year. Comments are requested regarding the appropriateness of the proposed point range.

Comments on the validity, usefulness and measurability of all of the above proposed compliance indicators are encouraged. Submitting data to support any suggested changes to the proposed compliance indicators also is encouraged.

**Principles for Weighting**

This ANPRM recommends proposing weights for each proposed evaluation standard as follows:

| Proposed evaluation standards | Weight |
|---|---|
| 1—Practice of independent living philosophy (Compliance indicator (a)) | 10 |
| 2—Range of disabilities served (Compliance indicator (b)) | 20 |
| 3—Achievement of independent living goals (Compliance indicators (c)(1) and (c)(2)) | 20 |
| 4—Increase and improve community options (Compliance indicator (d)) | 10 |
| 5—Range of services (Compliance indicators (e)(1) and (e)(2)) | 20 |
| 6—Resource development (Compliance indicator (f)) | 20 |
| Total | 100 |

With the exception of proposed evaluation standards 1 and 4, the proposed weighting pattern would give each of the proposed evaluation standards, as measured by their respective proposed compliance indicators, an equal weight of 20 points. The larger weight of 20 points, which would be assigned to proposed evaluation standards 2, 3, 5, and 6, reflects a focus upon those specific program areas of a center that provide services or resources for services and that support individuals with severe handicaps. The smaller weight of 10 points, which would be assigned to proposed evaluation standards 1 and 4, reflects a lesser focus upon the less tangible measures of the process by which a center achieves compliance and upon the small ranges of performance found in these 2 proposed evaluation standards.

The ANPRM would propose to establish the separate performance levels that a center would have to achieve to receive the minimum number of points for each compliance indicator. However, the notice would propose to establish a composite scoring system based on a center's overall performance on all of the compliance indicators. A center's overall performance, or composite score, would be used to determine the center's compliance with the proposed evaluation standards.

The minimum composite score a center would have to achieve to be in compliance with the proposed evaluation standards and, thus, be eligible for continuation funding would be 65 points. This methodology would allow a center that performs poorly on some of the proposed evaluation standards, as determined by the proposed compliance indicators, to be eligible for continuation funding if the center performs well on most of the proposed evaluation standards. Thus, a center would know exactly what overall minimum level of performance would be expected to be in compliance with the proposed evaluation standards. The Rehabilitation Services Administration will provide training and technical assistance to centers on the application of the indicators prior to implementation. The maximum possible composite score a center could achieve would be 100 points.

Comments on the proposed minimum performance levels and performance ranges, the composite score needed to comply with the proposed evaluation standards, and on the relative weights assigned to each proposed compliance indicator and to each proposed evaluation standard are particularly encouraged. Submitting data to support any suggested changes, especially data relevant to the establishment of ranges

and levels of performance, is particularly encouraged.

**Application of Compliance Indicators**

As stated earlier, the Secretary would use the proposed compliance indicators to determine whether a center has complied with the proposed evaluation standards and, thus, is eligible for continuation funding. For those grants that include several centers, each center would have to meet the compliance indicators. If one or more centers under a grant do not meet the compliance indicators, the Secretary would continue funding only those centers under the grant that are in compliance with the indicators. A center's performance would be determined by the data it submitted for the most recent complete project year. For a center that does not meet the minimum composite score on the basis of the previous year's performance, proposed § 366.43(b) would provide an additional opportunity for that center to submit data from the first six months of the current project year to demonstrate that the most recent data available shows it would meet the minimum composite score. In this way, a center would have two opportunities to demonstrate that it has complied with the proposed evaluation standards and, thus, that it is eligible for continuation funding.

The proposed compliance indicators would apply to continuation awards for the third or any subsequent year of a CIL grant made in FY 1992 and thereafter. Because grant awards under this program are made near the end of the fiscal year with project periods that run concurrently with the following fiscal year, a center would receive two years of funding before its performance would be measured against the proposed compliance indicators. This is because, at the time a center would apply for its second year of funding (or its first continuation award), it would not have available a full project year of data. When a center submits its application for its third year of funding (or its second continuation award), it would be required to submit project data from the first year of funding.

As previously described, the Secretary would use data either from a center's most recent complete project year or from the first six months of the current project year, whichever is more favorable to the center, to determine whether it meets the minimum composite score. Failure to submit the required data with a center's application for continuation funding would prevent the Secretary from considering the continued funding of the center's project.

The Rehabilitation Services Administration will provide technical assistance to any center found to be out of compliance with the indicators. A corrective action plan will be implemented to establish action steps and timeframes to assure that the center will be in compliance with the indicators by the next funding cycle. Failure to satisfy the provisions of the corrective action plan could affect future funding of continuation awards.

Beginning with new awards made in FY 1993, if applicable, the Secretary also would use the proposed compliance indicators as an additional factor in evaluating a former or present center's "past performance." This is explained more fully under "Consideration of Past Performance."

**Other Changes**

The ANPRM proposes to amend 34 CFR Part 366 by replacing the words "individuals with handicaps" with "individuals with severe handicaps." Both the Act and the regulations implementing the CIL program are inconsistent in their use of the terms "individuals with handicaps" and "individuals with severe handicaps." However, sections 701 and 702 of the Act and the legislative history of title VII of the Act clearly indicate that the purpose of title VII, in its entirety, is to provide services only to "individuals with severe handicaps."

The ANPRM proposes to amend § 366.2(b) by changing the time in which a designated State unit shall submit an application, or advise the Secretary in writing of its decision not to submit an application, from "within three months after the beginning of a fiscal year" to "within three months after the date in each fiscal year on which the Secretary begins accepting applications." This change would make this provision consistent with section 711(d) of the Act.

The ANPRM proposes to amend § 366.4 by adding definitions for the following terms: "communication," "community advocacy," "housing services," "individual advocacy," "independent living plan," "independent living skills training," "information and referral," "peer counseling," "primary severe disability," "severe disability," and "transportation services."

The ANPRM proposes to amend § 366.4 by deleting the definition of the term "individual with severe handicaps." The definition of the term "individual with serve handicaps" presently in the regulations is not entirely consistent with the definition of this term in the Act nor is it entirely consistent with the purposes of the CIL program. The proposed definition of "severe disability" encompasses the statutory definition of the term "individual with severe handicaps."

The ANPRM proposes to amend § 366.20 by adding three new application requirements. Under the proposed application requirements, a center would have to add to its application for continuation funding three new assurances: (1) An assurance that the center shall make eligibility determinations without regard to the type or types of severe disabling conditions present in persons seeking services; (2) an assurance that the center has developed and implemented a plan to take affirmative action to employ, and advance in employment, qualified individuals with severe disabilities on the same terms and conditions required with respect to the employment of individuals with severe disabilities both under the provisions of the Act that govern employment by State rehabilitation agencies and rehabilitation facilities, and under Federal contracts and subcontracts; and (3) an assurance that the center has responded to inquiries and requests for information or referral concerning independent living services and benefits.

Compliance with the assurances required by § 366.20, as proposed, would be determined after an on-site compliance review of the center. The Rehabilitation Services Administration will conduct on-site compliance reviews of centers pursuant to section 711(f)(3) of the Act.

The ANPRM proposes to amend § 366.20 by adding a new paragraph (h) that would list the eight major categories into which severe disabilities could be grouped for purposes of paragraph (g) of this section and compliance indicator (b) in § 366.63 of the ANPRM.

The ANPRM proposes to amend § 366.31 by adding 11 new selection criteria that are derived, in part, from elements found in the draft standards and, in part, from the Secretary's consideration of the views of experts in the field of independent living and data submitted pursuant to section 711(c)(3) of the Act. The proposed criteria would be added to the selection criteria used by the Secretary to evaluate each application for a new grant in the following areas: plan of operation, service comprehensiveness, quality of key personnel, and budget effectiveness.

**Consideration of Geographical Location—§ 366.32(a)**

The ANPRM also proposes to provide that, in making new awards, the

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Secretary give priority to geographic areas among the States that are currently not served or are underserved by CIL projects. This proposed provision would implement sections 711(g)(2) and 711(h) of the Act.

**Consideration of Past Performance—§ 366.32 (b) and (c)**

The ANPRM proposes to provide that, beginning with new awards made in FY 1993, the Secretary consider the past performance of an applicant in carrying out a similar CIL project under previously awarded grants. The Secretary would evaluate the past performance of an applicant for a new grant by examining the applicant's compliance with grant conditions, including compliance with the requirements of the Act and applicable regulations, and the soundness of its programmatic and financial management practices.

The ANPRM also proposes to provide that, beginning with new awards made in FY 1993, the Secretary consider an applicant's compliance with the requirements of §§ 366.61 through 366.63 as an additional factor in evaluating an applicant's past performance. These proposed provisions would implement section 711(g)(3) of the Act.

The ANPRM uses the term "handicap," as currently found in the applicable statute. The Department has proposed the elimination of the term "handicap" in its proposal to reauthorize the Rehabilitation Act. It is expected that this term will be changed to "disability" after the reauthorization of the Rehabilitation Act. If that occurs, the term will also be changed in applicable regulations.

Invitation to Comment:

Interested persons are invited to submit comments and recommendations regarding this advance notice of proposed rulemaking.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3038, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in this ANPRM.

**List of Subjects in 34 CFR Part 366**

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

Dated: July 7, 1992.

**Lamar Alexander,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number: 84.132 Centers for Independent Living)

The Secretary issues an advance notice of proposed rulemaking containing the following changes that may be proposed to part 366 of title 34 of the Code of Federal Regulations.

## PART 366—CENTERS FOR INDEPENDENT LIVING

1. The authority citation for part 366 continues to read as follows:

**Authority:** 29 U.S.C. 711 and 796e, unless otherwise noted.

2. Section 366.2(b) would be amended by removing the words "after the beginning of a fiscal year or if a State unit has advised the Secretary in writing at any time within three months after the beginning of a fiscal year of its decision not to submit an application" and adding, in their place, the words "after the date in each fiscal year on which the Secretary begins accepting applications from designated State units or if a designated State unit has advised the Secretary in writing at any time within three months after the date in each fiscal year on which the Secretary begins accepting applications from designated State units of its decision not to submit an application".

3. In § 366.3, paragraph (a) would be amended by removing "part 78 (Education Appeal Board), and" and adding, before the period at the end of the paragraph, ", part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses)".

4. Section 366.4(b) would be amended by removing the definition of *Individual with severe handicaps* and by adding in alphabetical order definitions of *Communication, Community advocacy, Housing services, Individual advocacy, Independent living plan, Independent living skills training, Information and referral, Peer counseling, Primary severe disability, Severe disability*, and *Transportation services to read as follows: § 366.4 What definitions apply to this program?*

* * * * *

(b) * * *

*Communication* means to transmit or convey written or oral information in a manner responding to the needs of individuals with handicaps, including the provision of services such as communication devices, interpreters (manual and oral interpreters for the deaf, non-English and other), readers, braille, large print, and tapes.

*Community advocacy* means procedures used by centers to represent individuals (or groups of individuals) with severe handicaps, and to assist these individuals to act on their own behalf, to advocate for new community options, removal of barriers to independent living, and improvement and enforcement of policies, procedures, and laws that facilitate or improve the ability of persons with severe disabilities to live independently.

* * * * *

*Housing services* means procedures and activities carried out by centers to assist individuals with severe handicaps in obtaining housing that is accessible or can be made accessible.

*Individual advocacy* means procedures used by centers to represent individuals with severe handicaps, or to assist these individuals to act on their own behalf, for the purpose of achieving, maintaining, or improving their independent living goals or obtaining their legal rights and benefits.

*Independent living plan* means a written document containing the specific goals an individual plans to achieve and the steps, actions, or activities that he or she and the center will take to reach these goals. An independent living plan must be jointly developed and signed by the individual with severe handicaps and by the designated center staff member. If applicable, the independent living plan must be coordinated with any individualized written rehabilitation program developed under section 102 of the Act, section 123 of the Developmental Disabilities Act of 1984, and sections 612(4) and 614(5) of the Individuals with Disabilities Education Act.

*Independent living skills training* means instruction to develop independent living skills in areas such as, but not limited to, daily living activities, personal care, financial management, social skills, and prevocational training.

*Information and referral* means responding to specific inquiries concerning any aspect of independent living from individuals with severe handicaps, their families, other independent living services providers, and the community at large and, if necessary, making referrals to other organizations or agencies for necessary services or additional information.

*Peer counseling* means guidance provided by individuals with severe handicaps (e.g., as counselors, advisors, role models, and mentors) to assist other individuals with severe handicaps to develop, clarify, and achieve their independent living goals.

*Primary severe disability* means the severe disability that the individual identifies as most limiting to his or her ability to function independently in family or community or to engage or continue in employment.

*Severe disability* means an injury, disease, or mental or physical impairment or disorder so substantially limiting to an individual's ability to function independently in family or community or to engage or continue in employment that independent living services are required for the individual to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment.

*Transportation services* means the procedures and activities carried out by centers to make public and private transportation available and accessible to individuals with severe handicaps.

(Authority: 29 U.S.C. 711(c) and 796e)

5. Section 366.20 would be amended by redesignating paragraph (d) as paragraph (g); removing the words "individuals with handicaps" from paragraphs (a), (b), and (c) and from redesignated paragraph (g), and adding, in their place, the words "individuals with severe handicaps"; removing the words "varying handicapping" from redesignated paragraph (g)(2) and adding, in their place, the words "different types of severely handicapping"; removing the word "and" after the semicolon following paragraph (c); and adding new paragraphs (d), (e), (f), and (h) and revising the authority citation at the end of the section to read as follows:

**§ 366.20 What are the application requirements?**

* * * * *

(d) An assurance that the center shall make eligibility determinations without regard to the type or types of severe disabling conditions present in persons seeking services;

(e) An assurance that the center will develop and implement a plan to take affirmative action to employ, and advance in employment, qualified individuals with severe disabilities on the same terms and conditions required with respect to the employment of individuals with severe disabilities both under the provisions under the Act that govern employment by State rehabilitation agencies and rehabilitation facilities, and under Federal contracts and subcontracts.

(f) An assurance that the center will respond to inquiries and requests for information or referral concerning independent living services and benefits.

* * * * *

(h) For purposes of paragraphs (g)(1) and (g)(2) of this section and § 366.63(b), severe disabilities are grouped into the following categories:

(1) "Hearing impairments or disorders," including deafness.

(2) "Mental illness," including psychotic, neurotic, character, personality, and behavior impairments or disorders.

(3) "Mental retardation," including below average intellectual functioning concurrent with deficits in adaptive behavior.

(4) "Neurological impairment or disorder," including impairments or disorders of the nervous system (e.g., multiple sclerosis, epilepsy, and cerebral palsy), except as related to musculoskeletal system impairments, and other nervous system impairments.

(5) "Orthopedic impairment or disorder," including impairments or disorders of the musculoskeletal system related to infections (e.g., polio), non-infectious diseases (e.g., arthritis and muscular dystrophy), and accidents (e.g., amputation and spinal cord injury).

(6) "Traumatic brain injury," including any physical, mental, or behavioral impairment or disorder resulting from physical injury to the brain caused by a trauma or force.

(7) "Visual impairment or disorder," including blindness.

(8) "Other severe impairments or disorders," which means any severe injuries, diseases, or physical or mental impairments or disorders not included in paragraphs (h)(1) through (7) of this section.

* * * * *

(Authority: 29 U.S.C. 711(c), 796e(a), 796e(b)(3), 796e(c)(1), and 796e(f))

6. In § 366.31, paragraph (c)(2)(iii) would be amended by adding, before the word "disabilities", the word "severe"; paragraph (b)(2) would be amended by removing the period in (b)(2)(v)(D) and adding, in its place, a semicolon, and adding paragraphs (b)(2)(vi) and (vii); paragraph (c)(2) would be amended by removing the word "and" after the semicolon in (c)(2)(ii), and adding paragraphs (c)(2)(iv), (v), (vi) and (vii); paragraph (d) would be amended by adding paragraphs (d)(4), (d)(4)(i), (d)(4)(ii), (d)(4)(iii) and (d)(4)(iv); and paragraph (f)(2) would be amended by removing the word "and" after the semicolon in (f)(2)(i), removing the period in (f)(2)(ii) and adding, in its place, a semicolon, adding paragraphs (f)(2) (iii) and (iv), and paragraph (g) would be amended by adding a cross-reference following (g)(2) to read as follows:

**§ 366.31 What selection criteria does the Secretary use in this program?**

* * * * *

(b) * * *

(2) * * *

(vi) A clear description of the center's overall goals and mission; and

(vii) A clear description of the center's work plan for achieving its established goals and mission.

(c) * * *

(2) * * *

(iv) Evidence that the center has established service priorities and has documented the needs to be addressed;

(v) Evidence that the center has established specific objectives for the numbers of individuals with severe disabilities it plans to serve;

(vi) Evidence that the center has identified the types of severe disabilities of the individuals it plans to serve; and

(vii) Evidence that the center has identified the types of services it plans to provide and its service delivery procedures.

(d) * * *

(4) The Secretary reviews each application for—

(i) Copies of written policies and procedures that specify appropriate roles and responsibilities for the governing board and center staff and that establish clear lines of authority and supervision between the two;

(ii) Job descriptions for all personnel and, to the extent possible, for all volunteers;

(iii) Descriptions of personnel performance appraisal procedures; and

(iv) Descriptions of plans for the training and development of the center's governing board and staff.

* * * * *

(f) * * *

(2) * * *

(iii) A plan for resource development activities (e.g., fee-for-service arrangements, endowment funds, corporate donations and development, and grants) appropriate to achieve

growth and self-sufficiency of the center; and

(iv) A projection of costs of services and activities (e.g., total program costs, service component costs, and average cost per service and per individual served).

(g) * * *

(2) * * *

Cross-Reference. See § 75.590 Evaluation by the grantee.

* * * * *

7. A new § 366.32 would be added to read as follows:

**§ 366.32 What other factors does the Secretary consider in reviewing an application?**

In addition to the selection criteria in § 366.31, the Secretary, in making new awards under this program—

(a) Gives priority to geographic areas that are currently not served or are underserved by the Centers for Independent Living program;

(b) Considers in fiscal year 1993 and thereafter the past performance, if any, of the applicant in carrying out a similar Center for Independent Living project under previously awarded grants, as indicated by factors such as compliance with grant conditions, soundness of programmatic and financial management practices, and meeting the requirements of section 711(c)(3) of the Act; and

(c) Beginning with fiscal year 1993, considers the past performance, if any, of the applicant in carrying out a similar Center for Independent Living project under previously awarded grants, as indicated by factors such as compliance with grant conditions, including compliance with requirements of the Act and applicable regulations, soundness of programmatic and financial management practices, and meeting the requirements of §§ 366.61 through 366.63.

(Authority: 29 U.S.C. 796(e) and 796e(f))

8. Section 366.43 would be revised to read as follows:

**§ 366.43 What are the reporting requirements?**

(a) Each application for continuation funding for the third or any subsequent year of a grant must include data for the most recent complete project year that enables the Secretary to determine the extent to which the center has met the evaluation standards in subpart F as measured by the program compliance indicators established in subpart G of this part.

(b) If the data for the most recent complete project year provided under paragraph (a) of this section shows that the center has failed to achieve the minimum composite score required in § 366.62(a), that center may, at its option, submit data from the first six months of its most current project year to demonstrate that its project performance has improved sufficiently to meet the minimum composite score.

(Authority: 29 U.S.C. 796(e)e and 796e(f))

9. Part 366 would be amended by adding a new Subpart F consisting of §§ 366.50 and 366.51 to read as follows:

**Subpart F—What Are the Project Evaluation Standards?**

§ 366.50 What are project evaluation standards?

§ 366.51 Composite chart of maximum weights for each evaluation standard.

§§ 366.52–366.59 [Reserved]

**§ 366.50 What are project evaluation standards?**

The project evaluation standards for independent living centers assist the Secretary and each center for independent living to review and evaluate the effectiveness of the center's operation. The project evaluation standards are—

(a) Standard 1—Practice of independent living philosophy. (Maximum weight—10 points) The center shall promote and practice the independent living philosophy of—

(1) Consumer control of the center for independent living. This means that qualified individuals with severe handicaps are substantially involved in the decision-making, service delivery, management, and establishment of the policy and direction of the center;

(2) Self-help and self-advocacy; and

(3) Equal access by individuals with severe handicaps to society and to all services, programs, activities, resources, and facilities, whether private or public, and regardless of the funding source (e.g., Federal, State, local or private);

(b) Standard 2—Range of disabilities served. (Maximum weight—20 points) The center shall provide services to individuals with a range of severe disabilities;

(c) Standard 3—Achievement of individual independent living goals. (Maximum weight—20 points) The center shall increase the development and achievement of independent living goals by individuals with severe handicaps in areas such as, but not limited to, one or more of the following as determined by the individual's independent living plan:

(1) Assistive devices.

(2) Communication skills.

(3) Community involvement.

(4) Consumer and legal rights.

(5) Education.

(6) Employment.

(7) Family life.

(8) Health and health care.

(9) Housing services.

(10) Household management.

(11) Income planning and financial management.

(12) Living arrangements.

(13) Mobility.

(14) Nutrition.

(15) Personal care services, training, and management.

(16) Personal growth and self-direction.

(17) Recreation.

(18) Reduction of architectural and social barriers.

(19) Social skills.

(20) Transportation services;

(d) Standard 4—Increase and improve community options for independent living. (Maximum weight—10 points)

(1) The center shall work to increase the availability and improve the quality of community options for independent living in order to facilitate the development and achievement of independent living goals by individuals with severe handicaps by initiating and carrying out—

(i) Community advocacy;

(ii) Technical assistance;

(iii) Public information and education;

(iv) Outreach to consumers and service providers; and

(v) Collaboration with other agencies and organizations that could assist in improving community options for independent living.

(2) These five types of initiatives may be applied to the independent living goal areas listed in § 366.50(c);

(e) Standard 5—Range of Services. (Maximum weight—20 points) The center shall provide a combination of services, as appropriate to the independent living plans of individuals with severe handicaps. The types of services a center may provide include, but are not limited to—

(1) Barrier reduction services;

(2) Equipment and electronic services;

(3) Health maintenance services;

(4) Housing services;

(5) Income planning and financial management services;

(6) Independent living skills training;

(7) Individual advocacy;

(8) Legal services;

(9) Mobility training and orientation services;

(10) Peer counseling;

(11) Other counseling (e.g., non-peer, group, family, and professional);

(12) Personal care training, management, and services;

(13) Prevocational services;

(14) Reader, interpreter and other communication services;

(15) Recreational services;

(16) Rehabilitation engineering services;

(17) Social services; and

(18) Transportation services; and

(f) Standard 6—Resource development. (Maximum weight—20 points) The center shall conduct fund-raising activities to obtain funding from sources other than Title VII of the Rehabilitation Act of 1973, as amended, for the conduct of independent living services. Other sources may include, but are not limited to—

(1) Fee-for-service agreements;

(2) Private or public endowment funds;

(3) Corporate donations and development;

(4) State or local funding; and

(5) Private or public grants.

(Authority: 29 U.S.C. 796e)

**§ 366.51 Composite chart of maximum weights for each evaluation standard.**

MAXIMUM WEIGHTS AND CORRESPONDING COMPLIANCE INDICATORS FOR STANDARDS

| Standard | Weight | Compliance indicators |
|---|---|---|
| 1—Practice of independent living philosophy. | 10 | (a). |
| 2—Range of disabilities served. | 20 | (b). |
| 3—Achievement of independent living goals. | 20 | (c)(1) and (c)(2). |
| 4—Increase and improve community options. | 10 | (d). |
| 5—Range of services | 20 | (e)(1) and (e)(2). |
| 6—Resource development | 20 | (f) |
| Total | 100 | |

(Authority: 29 U.S.C. 796e)

**§§ 366.52–59 [Reserved]**

10. Part 366 would be amended by adding a new subpart G consisting of §§ 366.60 through 366.64 to read as follows: Subpart G—What Requirements Must a Center Meet to Receive Continuation Funding?

Sec.

366.60 What are the compliance indicators?

366.61 How is a center's performance measured using the compliance indicators.

366.62 What are the requirements for continuation funding?

366.63 What are the weights, minimum performance levels, and performance ranges for each compliance indicator?

366.64 Summary chart of minimum performance levels and corresponding points.

**Subpart G—What requirements Must a Center Meet To Receive Continuation Funding?**

**§ 366.60 What are the compliance indicators?**

(a) The compliance indicators in this subpart measure the performance of an individual center for independent living in essential project areas.

(b) The compliance indicators establish weights, minimum performance levels, and performance ranges in essential project areas to determine whether an individual center complies with the project evaluation standards contained in § 366.50.

(Authority: 29 U.S.C. 796e)

**§ 366.61 How is a center's performance measured using the compliance indicators?**

(a) Each indicator establishes both a minimum performance level and a performance range.

(b) Points are assigned to different levels of performance within each performance range. The higher a center scores on the performance range, the greater the number of points the center receives for that indicator.

(c) If a center does not achieve the minimum performance level for a compliance indicator, the center receives no points.

(d) The maximum composite score that a center can receive is 100 points.

(e) To be in minimum compliance with the project evaluation standards in § 366.50, a center must achieve a composite score of at least 65 points.

(Authority: 29 U.S.C. 796e)

**§ 366.62 What are the requirements for continuation funding?**

(a) To be eligible to receive a continuation award for the third or any subsequent year of a grant, a center must—

(1) Comply fully with the provisions of its approved application;

(2) Achieve a minimum composite score of 65 points on the program compliance indicators in § 366.63;

(3) Meet the requirements in this part; and

(4) Meet the requirements of the Act.

(b) If a single grant application requests funding for more than one center, each individual center to be funded under the grant must meet the requirements of paragraph (a) of this section.

(Authority: 29 U.S.C. 711 and 796e)

**§ 366.63 What are the weights, minimum performance levels, and performance ranges for each compliance indicator?**

(a) *Number of activities engaged in by the center and designed to promote the independent living philosophy.* (5–10 points).

(1) The center shall provide evidence that it has engaged in a minimum of three of the following activities designed to promote the independent living philosophy described in § 366.50(a):

(i) The center provides an opportunity for the consumer to set his or her individual goals with only the minimum assistance necessary from center staff.

(ii) The center provides an opportunity for individuals with severe disabilities who receive services to evaluate the quality and appropriateness of the center's program.

(iii) The center conducts a needs assessment of the community to assist in the development of service delivery plans.

(iv) The center produces written materials for individuals who are visually impaired (e.g., braille, large print, and tape).

(v) The center's public relations materials stress equal access to society and to all services, programs, activities, resources, and facilities, whether public or private, for all individuals with severe disabilities.

(vi) The center is fully physically and communicationally accessible to persons with hearing, mobility, and visual disabilities (e.g., the center has telecommunication devices for the deaf (TDDs), braille writing equipment, picture boards, staff who are able to write and read braille, and staff who are fluent in sign language).

(2) The performance ranges and points based upon the number of activities engaged in by the center and designed to promote the independent living philosophy met by the center are as follows:

(i) 3 activities=5 points

(ii) 4–5 activities=7 points

(iii) 6 activities=10 points

(b) *Number of primary severe disability categories represented by at least 10 percent of all individuals with severe disabilities served.* (4–20 points) The center shall provide evidence that it provided services to individuals whose primary severe disabilities include severe disabilities from at least 3 of the 8 categories listed in § 366.20(h), and each of those 3 categories must include no less than 10 percent of the total number of individuals served by the center. In determining these minimum percentages, a center may not count an individual more than once. The performance ranges and points based on the number of primary severe disability categories with at least 10 percent of the

total number of individuals served by the center in each category as follows:

(1) 3 categories served=4 points
(2) 4 categories served=7 points
(3) 5 categories served=10 points
(4) 6 categories served=13 points
(5) 7 categories served=16 points
(6) 8 categories served=20 points

(c) (1) *Percentage of individuals with severe handicaps for whom an independent living plan was developed.* (2–10 points) The center shall provide evidence that center staff assisted a minimum of 30 percent of the individuals with severe handicaps served during the project year in developing, reviewing, or amending independent living plans (ILPs) with at least one major goal identified jointly by center staff and the individual with severe handicaps. All individuals served during the project year are to be considered for compliance with this indicator. The performance ranges and points based on the percent of all current individuals with ILPs developed with assistance by the center are as follows:

(i) 30 percent to 39 percent with new, reviewed, or amended ILPs=2 points
(ii) 40 percent to 49 percent with new, reviewed, or amended ILPs=4 points
(iii) 50 percent to 59 percent with new, reviewed, or amended ILPs=6 points
(iv) 60 percent to 69 percent with new, reviewed, or amended ILPs=8 points
(v) 70 percent or more with new, reviewed, or amended ILPs=10 points

(2) *Percentage of individuals with ILPs achieving an independent living goal.* (2–10 points) The center shall provide evidence that a minimum of 50 percent of the individuals who had ILPs developed, reviewed, or amended with assistance from the center during the project year achieved at least one major goal identified jointly by center staff and the individual with severe handicaps. Achievement of a major life goal would be jointly agreed to by center staff and the individual with severe handicaps. The performance ranges and the points based on the percent of all individuals with ILPs developed, reviewed, or amended with assistance from the center who achieved at least one major goal are as follows:

(i) 50 percent achieved 1 or more major goals=2 points
(ii) 60 percent achieved 1 or more major goals=4 points
(iii) 70 percent achieved 1 or more major goals=6 points
(iv) 80 percent achieved 1 or more major goals=8 points
(v) 90 percent achieved 1 or more major goals=10 points

(d) *Evidence that the center increased and improved community options for independent living.* (2–10 points)

(1) The center shall provide evidence that it worked to increase and improve community options for independent living during the project year through activities such as, but not limited to—

(i) Community advocacy;
(ii) Technical assistance;
(iii) Public information and education;
(iv) Outreach to consumers and service providers; and
(v) Collaboration with other agencies and organizations that could assist in improving community options for independent living as identified in § 366.50(c).

(2) The performance ranges and points based on the number of activities undertaken to improve the quality of community options for independent living are as follows:

(i) 2 activities=2 points
(ii) 3 activities=4 points
(iii) 4 activities=6 points
(iv) 5 activities=8 points
(v) 6 or more activities=10 points

(e) (1) *The center provided a range of services to individuals with severe handicaps.* (4–20 points) The center shall provide evidence that it provided a minimum of six of the different types of services identified in § 366.50(e) to individuals with severe handicaps. The performance ranges and points based on the number of services provided by the center are as follows:

(i) 6 different types of services=2 points
(ii) 8 different types of services=4 points
(iii) 10 different types of services=6 points
(iv) 12 different types of services=8 points
(v) 14 or more different types of services=10 points

(2) *Percentage of individuals who received a range of services.* (2–10 points) The center shall provide evidence that a minimum of 20 percent of all individuals served by the center each received at least 2 different types of services. The performance ranges and points based on the percent of all individuals who received at least two different services are as follows:

(i) 20 percent to 29 percent=2 points
(ii) 30 percent to 39 percent=4 points
(iii) 40 percent to 49 percent=6 points
(iv) 50 percent to 59 percent=8 points
(v) 60 percent or more=10 points

(f) *The center obtained funding to conduct independent living services from sources other than Title VII for the continuation and growth of center activities.* (4–20 points) The center shall provide evidence that it obtained funding to conduct independent living services from sources other than Title VII of the Rehabilitation Act, as amended, that is equal to at least 10 percent of all funds it received under Title VII during the project year. The performance ranges and points based on the percentage that non-Title VII funds represent of all funds the center received under Title VII during the project year are as follows:

(1) 10 percent to 19 percent=4 points
(2) 20 percent to 29 percent=8 points
(3) 30 percent to 39 percent=12 points
(4) 40 percent or more=16 points
(5) 50 percent or more=20 points

(Authority: 29 U.S.C. 796e)

**§ 366.64 Summary chart of minimum performance levels and corresponding points.**

A summary of the minimum performance levels and corresponding points to be awarded for each compliance indicator is shown on the following chart:

PERFORMANCE LEVELS, CORRESPONDING POSSIBLE POINTS AWARDED AND EVALUATION STANDARDS

| Compliance indicator | Performance level | Possible points awarded | Evaluation standard |
|---|---|---|---|
| (a) Activities engaged in by the center to promote independent living philosophy. | 3–6 activities | 5–10 points | 1—Practice of independent living philosophy. |
| (b) Primary severe disability categories with at least 10% or more individuals. | 3–8 categories | 4–20 points | 2—Range of disabilities served. |
| (c)(1) Percentage of individuals with new or amended independent living plans. | 30%–70+% | 2–10 points | 3—Achievement of independent living goals. |

PERFORMANCE LEVELS, CORRESPONDING POSSIBLE POINTS AWARDED AND EVALUATION STANDARDS—Continued

| Compliance indicator | Performance level | Possible points awarded | Evaluation standard |
|---|---|---|---|
| (c)(2) Percentage of individuals achieving at least one major independent living goal. | 50%–90+% | 2–10 points | 3—Achievement of independent living goals. |
| (d) Evidence of increase and improvement of community options. | 2–8 activities | 2–10 points | 4—Increase and improve community options. |
| (e)(1) Range of services | 6–14 types of services | 2–10 points | 5—Range of services. |
| (e)(2) Percentage of individuals | 20%–60+% | 2–10 points | 5—Range of services. |
| (f) Percent of Title VII funding | 10%–40+% | 5–20 points | 6—Resource development. |

Maximum composite score is 100 points.
Minimum passing composite score is 65 points.

(Authority: 29 U.S.C. 796e)

**Note: The following Appendix will not be codified in the Code of Federal Regulations.**

APPENDIX—COMPARISON OF STANDARDS AND PROPOSED STANDARDS

| Standards | Proposed standards | Discussion of changes |
|---|---|---|
| **Philosophy** | | |
| Standard 1: The center shall promote and practice the following independent living philosophy: | Proposed Standard 1: *Practice of independent living philosophy.* The center shall promote and practice the independent living philosophy: | Proposed Standard 1: Various elements of the standard are included in the proposed standards. Element 1.6 is now contained in proposed standard 5; element 1.7 is now contained in proposed standard 4; element 1.8 is now contained in proposed standard 2. |
| 1.1 Consumer control of policy direction and management of the independent living center; | 1.1 Consumer control of the center for independent living; this means that qualified individuals with severe disabilities are substantially involved in the decision-making, service delivery, management and establishment of the policy and direction of the center; | |
| 1.2 Consumer control of the development of own Independent Living service objectives and services; | 1.2 Self-help and self advocacy; and | |
| 1.3 Self-help and self-advocacy; | | |
| 1.4 Equal access to society by individuals with disabilities; | 1.3 Equal access by individuals with severe disabilities to society and to all services, programs, activities, resources and facilities, whether private or public, regardless of the funding source (e.g. Federal, State, local, or private). | |
| 1.5 Equal access to programs and physical facilities; | | |
| 1.6 Development of peer relationships and peer role models; | | |
| 1.7 Meeting the specific independent living needs of the local community; and | | |
| 1.8 A range of services to all people with disabilities. | | |
| **Target Population** | | |
| Standard 2: The center shall have a clearly defined target population that includes a range of disabilities. | Proposed Standard 2: *Range of disabilities served.* The center shall provide services to individuals with a range of severe disabilities. | Proposed Standard 2: The proposed standard includes the clarification that the center must serve all individuals with disabilities (e.g., cross-disability). |
| **Outcomes and Impacts** | | |
| Standard 3: The center shall increase individual consumer achievement of independent living goals, in areas such as, but not limited to, the following: | Proposed Standard 3: *Achievement of individual independent living goals.* The center shall increase the development and achievement of independent living goals by individuals with severe disabilities in areas such as, but not limited to, the following: | Proposed Standard 3: The requirement that the center increase the development of independent living goals has been added. |
| 3.1 Housing; | 3.1 Assistive devices; | |
| 3.2 Living arrangements; | 3.2 Communication skills; | |
| 3.3 Income and financial management; | 3.3 Community involvement; | |
| 3.4 Transportation; | 3.4 Consumer and legal rights; | |
| 3.5 Personal care; | 3.5 Education; | |
| 3.6 Nutrition; | 3.6 Employment; | |
| 3.7 Household management; | 3.7 Family life; | |
| 3.8 Mobility; | 3.8 Health and health care; | |
| 3.9 Health and health care; | 3.9 Housing services; | |
| 3.10 Assistive devices; | 3.10 Household management; | |
| 3.11 Education; | 3.11 Income planning and financial management; | |
| 3.12 Employment; | 3.12 Living arrangements; | |
| 3.13 Community involvement; | 3.13 Mobility; | |
| 3.14 Family life; | 3.14 Nutrition; | |
| 3.15 Recreation; | 3.15 Personal care services, training and management; | |

APPENDIX—COMPARISON OF STANDARDS AND PROPOSED STANDARDS—Continued

| Standards | Proposed standards | Discussion of changes |
|---|---|---|
| 3.16 Personal growth;<br>3.17 Social skills;<br>3.18 Communication skills;<br><br>3.19 Self-direction; and<br>3.20 Consumer and legal rights. | 3.16 Personal growth and self-direction;<br>3.17 Recreation;<br>3.18 Reducation of barriers (architectural and social); and<br>3.19 Transportation services. | |
| Standard 4: The center shall increase the availability and improve the quality of community options for independent living, in such areas as, but not limited to, the following:<br>4.1 Housing;<br>4.2 Transportation;<br>4.3 Personal care;<br>4.4 Education;<br>4.5 Employment;<br>4.6 Communication;<br>4.7 Reduction of barriers, including architectural and social;<br>4.8 Disability awareness and social acceptance;<br>4.9 Recreation;<br>4.10 Consumer involvement in civic activities and community affairs;<br>4.11 Physical and mental health care; and<br>4.12 Legal services. | Proposed Standard 4: *Increase and improve community options for independent living.* The center shall work to increase the availability and improve the quality of community options for independent living in order to facilitate the development and achievement of independent living goals by individuals with severe disabilities by initiating and carrying out:<br>(1) Community advocacy;<br>(2) Technical assistance;<br>(3) Public information and education;<br>(4) Outreach to consumers and service providers; and<br>(5) Collaboration with other agencies and organizations that could assist in improving community options for independent living.<br>These five types of initiatives can be applied to the independent living goal areas in Standard 3. | Proposed Standard 4: This proposed standard merges standards 4 and 7 and uses the service areas for proposed standard 3 as examples of areas in which a center is to increase the availability and improve the quality of community options for independent living. The greater the community options for independent living, the more likely the successful achievement of independent living goals. |
| **Services** | | |
| Standard 5: The center shall provide to disabled individuals within the center's target population and their families, or both, the following independent living services:<br><br>5.1 Advocacy;<br>5.2 Independent living skills training (e.g., health care, financial management, etc.);<br>5.3 Peer counseling;<br>In addition to the services above, the center may provide or make available other services such as, but not limited to, the following:<br>5.4 Legal services;<br>5.5 Other counseling services (e.g., non-peer, group, family);<br>5.6 Housing services;<br><br>5.7 Equipment services;<br>5.8 Transportation services;<br>5.9 Social and recreational services;<br>5.10 Educational services;<br><br>5.11 Vocational services, including supported employment;<br>5.12 Reader, interpreter, and other communication services;<br>5.13 Attendant and homemaking services; and<br>5.14 Electronic services. | Proposed Standard 5: *Range of services.* The center shall provide a range of services to individuals with severe disabilities. The services a center may provide include, but are not limited to:<br><br>5.1 Individual advocacy;<br>5.2 Barrier reduction services;<br><br>5.3 Equipment and electronic services;<br><br>5.4 Health maintenance services;<br>5.5 Housing services;<br><br>5.6 Income planning and financial management services;<br>5.7 Independent living skills training;<br>5.8 Legal services;<br>5.9 Mobility training and orientation services;<br>5.10 Other counseling (e.g., non-peer, group, family and professional);<br>5.11 Peer counseling;<br><br>5.12 Personal care training, management, and services;<br>5.13 Pre-vocational services;<br>5.14 Reader interpreter and other communication services;<br>5.15 Recreational services;<br>5.16 Rehabilitation engineering services;<br>5.17 Social services, and<br>5.18 Transportation services | Proposed Standard 5: This proposed standard is significantly different from the standard. Title VII, Part B of the Act does not set out services that are mandatory for centers, and therefore, the standard was deemed without statutory authority. Although peer counseling, advocacy, and independent living are considered core services by the independent living movement, they must be part of the combination of services provided by the center pursuant to section 711(c)(2) of the Act. |
| Standard 6: The center shall provide information and referral to all inquires, including those from outside the center's target population | Proposed Standard 6: *Resource Development.* The center shall conduct resource development activities to obtain funding from sources other than Title VII of the Rehabilitation Act of 1973, as amended. Other sources may include, but should not be limited to:<br>(1) Fee-for-service agreements;<br>(2) Private or public endowment funds;<br>(3) Corporate donations and development;<br>(4) State or local funding; and<br>(5) Private or public grants. | Standard 6: The Standard will become an assurance and will be an application requirement for all applicants for Title VII, Part B funding.<br>Proposed Standard 6: Proposed standard 6 captures the intent of draft standard 11, element 11.4 (resource development activities, e.g., fund raising, grant development, endowment funds, permanent government funding). This proposed standard will provide motivation for centers to expand their funding sources and provide opportunities for federal funding of additional centers. |

APPENDIX—COMPARISON OF STANDARDS AND PROPOSED STANDARDS—Continued

| Standards | Proposed standards | Discussion of changes |
|---|---|---|
| Standard 7: The center shall conduct activities to increase community capacity to meet the needs of individuals with disabilities, such as, but not limited to, the following:<br>7.1 Advocacy and technical assistance services to improve community options, remove community barriers and create access to public programs;<br>7.2 Public information and education (e.g., presentations, press);<br>7.3 Outreach to consumers and service providers; and<br>7.4 Initiatives to establish an active role in the disabled community. | | Standard 7: The standard is now included in proposed standard 4. Element 7.4 (Initiatives to establish an active role in the disabled community) was deleted because its meaning was unclear. |
| **Organizational Management and Administration** | | |
| Standard 8: Qualified disabled individuals shall be substantially involved in the policy direction, decisionmaking, service delivery, and management of the center, and given preference as:<br>8.1 Members of Boards of Directors (at least 51% qualified disabled persons);<br>8.2 Managers and Supervisors; and<br>8.3 Staff. | | Standard 8: The essential elements of the standard will be amendments to the regulations as assurances which are conditions that must be satisfied to receive Title VII, Part B funding for a center for independent living.<br>Standard 8, Element 8.1: The intent of this element, requiring 51% of the Board of Directors to be qualified individuals with severe disabilities, has been an assurance since 1987.<br>Standard 8, Elements 8.2 and 8.3: These elements of the standard will become assurances that the center has an affirmative action plan to employ and advance in employment, qualified individuals with severe disabilities in both management and staff positions. |
| Standard 9: The center shall establish clear priorities through annual and three-year program and financial planning objectives that include, but are not limited to, the following:<br>9.1 Overall center goals or mission;<br>9.2 Work plan for achieving goals;<br>9.3 Specific objectives for numbers and disabilities of individuals to be served;<br>9.4 Service priorities and needs to be addressed;<br>9.5 Types of services to be provided and service delivery procedures; and<br>9.6 Annual, three-year, and alternative budget projections. | | Standard 9: Elements 9.1–9.5: will be amendments to the regulations as selection criteria for all applicants to receive an award. Elements 9.6 is a requirement of the Education Department General Administrative Regulations (EDGAR), applicable to all discretionary grant recipients. |
| Standard 10: The center shall use sound organizational and personnel assignment practices:<br>10.1 Written policies and procedures for Board and Staff which specify appropriate roles and responsibilities;<br>10.2 Job descriptions for all personnel, including volunteers;<br>10.3 Clear lines of authority and supervision;<br>10.4 Personnel performance appraisal and guidance;<br>10.5 Equal opportunity and affirmative action policies and procedures; and<br>10.6 Staff and Board training and development. | | Standard 10: The elements of the standards will become selection criteria for all applications to receive an award and will become part of the regulations for this program. |
| Standard 11: The center shall practice sound fiscal management, including:<br>11.1 An annual budget that identifies funding sources, and the allocation of resources across services and activities;<br>11.2 A budget monitoring system and procedures for managing cash flow;<br>11.3 An annual audit by independent public accountant;<br>11.4 Resource development activities (e.g., fund raising, grant development, securing fee-for-service agreements, business development, endowment funds, permanent government funding) appropriate to achievement of objectives; and<br>11.5 Determination of costs of services and activities (total program cost, cost by funding source, service component costs, average cost per service and per individual served).. | | Standard 11: With the exception of element 11.4, the elements of the standard will become selection criteria for all applicants to receive an award and will become an amendment to the regulations for the Centers for Independent Living program. As indicated earlier, element 11.4 has been included in proposed standard 6. |

APPENDIX—COMPARISON OF STANDARDS AND PROPOSED STANDARDS—Continued

| Standards | Proposed standards | Discussion of changes |
|---|---|---|
| **Evaluation**<br>Standard 12: The grantee and the centers shall conduct annual self-evaluations and shall maintain records adequate to measure performance on these Independent Living Center Evaluation Standards, including:<br>12.1 Documentation of the number and types of individuals served (age, disability or relationships to disabled individual, gender, living arrangement, ethnicity, services received);<br>12.2 Documentation of the types and units of services provided to individuals and the community;<br>12.3 Documentation of individual outcomes;<br>12.4 Documentation of community independent living impacts;<br>12.5 Client intake, service planning, and progress reports;<br>12.6 Management records, including financial, legal administrative personnel, and interagency agreements; and<br>12.7 Consumer evaluation of quality and appropriateness of the center program. | | Standard 12: The elements of the standard are identical to the requirements of the center's evaluation plan required by section 711(c)(3) of the Act, also known as A–K reports. |

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Part X

# Department of Transportation

## Federal Transit Administration

49 CFR Ch. VI

**Policy Statements on Local Share Issues; Rule**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**49 CFR Chapter VI**

**Policy Statements on Local Share Issues**

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of policy statements.

**SUMMARY:** The Federal Transit Administration (FTA) announces two new policy statements, both involving advancement of the Federal matching share and postponement of the local share to be provided in connection with FTA grants. The first policy implements a provision of the Fiscal Year 1992 Dire Emergency Supplemental Appropriations Act (Pub. L. 102–301) and permits a temporary waiver during fiscal years 1992 and 1993 of local-share requirements under the FTA's section 9 formula grant program. The second policy, announced by DOT Secretary Card on June 23, 1992, applies to most FTA grants or contracts, and permits the Federal share in connection with those projects to be advanced before local share funds must be made available. Each of these policy statements is separately described in this Notice.

**DATES:** For specific application dates, see the "APPLICABILITY" section of each policy statement.

**FOR FURTHER INFORMATION CONTACT:** Douglas A. Kerr, Office of Grants Management (TGM–12), 202–366–2440.

**SUPPLEMENTARY INFORMATION:**

**I. Policy on Section 9 Temporary Matching Fund Waiver**

*A. Background*

On December 18, 1991, President Bush signed into law the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102–240), which authorized Federal transportation infrastructure funding over six years. Section 1054 of the ISTEA allows a grant recipient to request as a Federal share up to 100 percent of the cost of a construction project funded under programs of the Federal Highway Administration and to repay the Government at a specified later date, the amount of the project's local share. To make the transit program more closely parallel the highway program, Congress in the Fiscal Year 1992 Dire Emergency Supplemental Appropriations Act (Public Law 102–302), enacted June 22, 1992, extended the provision of Section 1054 of the ISTEA to the section 9 formula capital grant program administered by FTA.

*B. Purpose*

The purpose of this portion of the Notice is to provide implementing guidance on the Fiscal Year 1992 Dire Emergency Supplemental Appropriations Act, which provides in pertinent part as follows:

> For fiscal years 1992 and 1993, funds provided under section 9 of the Federal Transit Act shall be exempt from requirements for any non-Federal share, in the same manner as specified in section 1054 of Public Law 102–240.

The Federal Highway Administration (FHWA) has issued temporary guidance on its procedures for implementing 1054, which was published in the **Federal Register** on April 23, 1992 (57 FR 14885). Further, FHWA is preparing a regulation to implement the provision, as required by section 1054(d). FTA similarly will be issuing a regulation as required by section 1054(d). The FTA initial implementing guidance presented in the **Federal Register** today closely parallels that of the FHWA. The basic procedures described here vary little from the regular procedures for requesting Federal participation in a section 9 transit project.

*C. Applicability*

This policy applies to capital assistance grants obligated under FTA's section 9 program after September 30, 1991, and before October 1, 1993. For purposes of this policy, the word "project" means a single project or a program of projects occurring in one grant award.

*D. Policy*

A grantee may, in connection with fiscal year 1992 or 1993 section 9 apportionments, request an increased Federal share up to 100 percent on section 9 capital projects when the grantee certifies that sufficient funds are not available to pay the non-Federal share of the project.

The grantee may request the increased share through September 30, 1993. The amount of the increased share actually obligated by the FTA must be repaid by March 30, 1994.

If the amount owed is not repaid, in the case of projects originating under section 9, deductions will be made to the urbanized area's section 9 fiscal year 1995 and fiscal year 1996 apportionments. The amount to be deducted in each fiscal year will be equal to 50 percent of the amount needed for repayment.

The amounts deducted will become available for reapportionment to all other urbanized areas under the section 9 program that have not received a higher Federal share and to those urbanized areas that have made the repayment required.

In the case of projects for which financing originated under Title I of the ISTEA (for example, the Surface Transportation Program or the Congestion Mitigation and Air Quality Improvement Program), deductions will be made to the State's fiscal year 1995 and 1996 apportionments in accordance with procedures of the Federal Highway Administration (FHWA).

The amount by which the FTA will increase the Federal funds in a project will be limited by the total amount of an appropriation that is apportioned to the urbanized area.

To request an increased Federal share, the grantee must:

(a) Submit a request with the grant application to the appropriate FTA Regional Office.

(b) Certify that sufficient funds are not available to pay the cost of the non-Federal share of the project. The certification may apply to one project or a group of projects.

(c) Show that the project is part of a Transportation Improvement Program endorsed by the Metropolitan Planning Organization, and include specific endorsement by the Metropolitan Planning Organization for the request for increased Federal share.

(d) Specify the Federal participating ratio, the amount of regular Federal funds requested, and the amount of increased Federal share desired.

(e) The grantee may draw down the increased Federal share as part of its normal billing procedures.

**II. Policy on Deferred Local Share**

*A. Purpose*

This portion of the Notice announces a revision in the Federal Transit Administration's (FTA) policy on simultaneous expenditure of FTA assistance funds and local share funds. Specifically, the FTA policy requiring the local share be paid pro-rata with any drawdown of the Federal share of project costs is revised. To date, the FTA had required that a grant recipient provide the local share of funds to meet project expenses at the same time any Federal funds were provided. The new policy, however, allows the recipient, with prior written approval on a case-by-case basis, to draw down 100 percent of the Federal funds needed to pay all of the first 80 percent of project costs of section 3, 8, 9, 16, 18, and 26 capital, planning, and research projects. The funds drawn down, however, will continue to be limited to the amount necessary to meet immediate cash disbursement or reimbursement needs. The new policy will make it possible to provide more Federal money, put it to work faster, create more jobs, and improve transit in our cities.



*B. Applicability*

The new policy applies to capital, planning, and research grants and cooperative agreements, or amendments thereto, to carry out the purposes of sections 3, 8, 9, 16, 18, and 26 of the Federal Transit Act, as amended. This policy applies to all grants and cooperative agreements involving funds not yet expended by the grantee, provided prior FTA written approval is obtained.

*C. Policy*

The FTA is establishing a new policy which allows the recipient to draw down 100 percent of the Federal funds needed to pay all of the first 80 percent of project costs of sections 3, 8, 9, 16, 18, and 26 capital, planning, and research projects.

The recipient must request FTA approval to obtain 100 percent advance financing for transit projects, by sending a written request for financing to the appropriate FTA Regional Office. The request must include information demonstrating that the recipient possesses the financial capacity to complete the project and that the application of the new policy will generate transit benefits.

On the basis of the information provided, the FTA will determine whether the recipient may draw down and expend the entire Federal portion of its FTA funds before it spends any of its local share.

This policy does not rescind any current requirements associated with FTA's various grant programs. The requirement to have a non-Federal matching share is not waived, it is merely being postponed.

*D. Enforcement*

The Federal Transit Act, as amended, (the Act) (49 U.S.C. app. 1601 *et seq.*), provides remedies when localities fail to provide the local share. Section 9(g)(3) of the Act permits FTA to adjust the amount of annual grants when audits or triennial reviews reveal that a grantee has failed to comply with its certifications, statutory and regulatory requirements, or reveal that projects are not being carried out in a timely and effective manner. Section 9(h) of the Act permits FTA to terminate and seek reimbursement of grants directly or by offsetting funds available under section 9, if the recipient makes a false statement in connection with a certification. False statements are also a criminal violation under section 1001 of title 18 of the United States Code.

Special conditions will be inserted in the "Terms and Conditions" of any assistance agreement, with the same contractual effect as that under section 9 grants.

**Authority:** 49 U.S.C. app. 1601 *et. seq.*

**Issued on:** July 8, 1992.

**Brian W. Clymer,**

*Administrator.*

[FR Doc. 92–16322 Filed 7–8–92; 11:48 am]

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Part XI

# Department of the Interior

## Fish and Wildlife Service

50 CFR Part 20

**Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Proposed Rule**

**Annual Waterfowl Status Meeting and Fish and Wildlife Service Migratory Bird Regulations Committee Meetings; Notice**

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

## Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; Supplemental.

**SUMMARY:** The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1992–93 early-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in early seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions.

**DATES:** The comment period for proposed early-season frameworks will end on July 20, 1992; and for late-season proposals on August 30, 1992. A public hearing on late-season regulations will be held on August 6, 1992, starting at 9 a.m.

**ADDRESSES:** The August 6 public hearing will be held in the Auditorium of the Department of the Interior Building, 1849 C Street, NW., Washington, DC. Written comments on the proposals and notice of intention to participate in this hearing should be sent in writing to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240, (703) 358–1714.

**SUPPLEMENTARY INFORMATION:**

### Regulations Schedule for 1992

On May 8, 1992, the Service published for public comment in the **Federal Register** (57 FR 19865) a proposal to amend 50 CFR part 20, with comment periods ending as noted earlier. On June 19, 1992, the Service published for public comment a second document (57 FR 27672) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks.

On June 25, 1992, a public hearing was held in Washington, DC, as announced in the May 8 and June 19 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons.

This document is the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with proposed frameworks for early-season regulations. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 1992–93 season. All pertinent comments received through June 25, 1992, have been considered in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. Final regulatory frameworks for migratory game bird hunting seasons for early seasons are scheduled for publication in the **Federal Register** on or about August 17, 1992.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals published in the May 8 **Federal Register**. The regulations for early waterfowl hunting seasons proposed in this document are based on the most current information available about the status of waterfowl populations and habitat conditions on the breeding grounds.

### Presentations at Public Hearing

Service employees presented reports on the status of various migratory bird species for which early hunting seasons are being proposed. These reports are briefly reviewed as a matter of public information.

Mr. Ashley Straw, Woodcock Specialist, reported on the 1992 status of American woodcock. The report included harvest information gathered since 1963 and breeding population information (Singing-ground Survey) collected since 1968. The two surveys are run cooperatively by the U.S. Fish and Wildlife Service, Canadian Wildlife Service, and 39 State and Provincial wildlife agencies. Information from harvested woodcock indicated that the 1991 recruitment index (ratio of immatures to adult females) was near the long-term average for the Eastern Region and slightly lower than the long-term average for the Central Region. In the U. S. portion of the Eastern Region, the 1991 recruitment index was 1.8 immatures per adult female (5.9 percent above the 1963–91 average). The 1991 recruitment index for the Central Region was 1.6 (11.1 percent below the 1963–91 average). Between 1990 and 1991, the only change in Federal frameworks for woodcock hunting regulations was a shift in the closing date from February 28 to January 31 in the Central Region. As a result of this change, the framework closing dates of the Eastern and Central Regions were concurrent. Indices of hunting success (average daily and seasonal bags) continued to decline in the Eastern Region but did not change in the Central Region. Daily hunting success in the Eastern Region declined from 1.9 in 1990 to 1.7 woodcock bagged per day in 1991 (10.5 percent), while the seasonal success index declined from 8.2 to 7.3 woodcock bagged per season (11.0 percent). In the Central Region the daily success index remained at 2.3 birds per day in 1990 and 1991, while the seasonal success index remained at 11.6 woodcock bagged per season. Analysis of Singing-ground Survey data using route-regression methodologies indicated a significant decrease in the breeding population of 16.1 percent between 1991 and 1992 and a significant long-term (1968–92) decline of 1.9 percent per year in the Eastern Region. Route-regression results for the Central Region breeding population showed a significant decrease between 1991 and 1992 of 16.8 percent and a non-significant long-term decline of 0.8 percent per year. Comparison of recent (1985–92) versus historical (1968–84) trends the Singing-ground Survey suggested that the rate of decline between these periods was different for the Eastern Region. Slopes of the breeding indices in recent years (1985–1992) were not significantly different from zero for either region. This suggests that woodcock populations may be stabilizing in both regions. However, this is not true for individual States within the survey area. During the past 8 years, breeding population indices of woodcock declined significantly in Connecticut, Maine, Massachusetts, New Jersey, and Wisconsin. Conversely, the index for Indiana increased significantly over this time period.

Mr. David Dolton, Mourning Dove Specialist, presented the status of the mourning dove population in 1992. The report included information gathered over the last 27 years. Trends were calculated for the most recent 2 and 10-year intervals and for the entire 27-year period. Between 1991 and 1992, the

average number of doves heard per route increased significantly in the Eastern Management Unit by 4.6 percent and in the Western Management Unit by 12.9 percent. No significant change occurred in the Central Management Unit. Analyses indicated a significant downward trend in the Western Management Unit for the 27-year period, but no trend over the most recent 10 years. No significant trend was found in the Eastern or Central Management Units for either the 10 or 27-year time frames. Trends for doves seen at the Unit level over the 10 and 27-year periods agreed with trends for doves heard.

Mr. Dolton also presented the status of white-winged and white-tipped doves in Texas. In 1992, whitewing call-count surveys indicated approximately 366,000 birds nesting in the Lower Rio Grande Valley in Hidalgo, Starr, Cameron, and Willacy Counties. This represented an 8 percent increase from 1991, but it is still 18 percent below the long-term average. In Upper South Texas, more than 410,000 whitewings were nesting throughout a 16-county area in 1992. This is a 13 percent decrease from last year. The whitewing population increase in Upper South Texas and Central Texas in recent years may reflect a redistribution of Valley birds. In West Texas, where a relatively small population of whitewings is found, an estimated 28,000 birds were reported in 1992, 32 percent below the 1991 estimate. Estimates of white-tipped doves in the Lower Rio Grande Valley increased 44 percent between 1991 and 1992. An average of 1.1 whitetips were heard per stop in 1992. This is only 16 percent below the 1.3 whitetips per stop recorded in the peak year of 1986.

Mr. Roy Tomlinson, Western Dove and Pigeon Specialist, presented population and harvest information for the band-tailed pigeon. Pigeon populations are managed as two separate and distinct populations: the Coastal Population (Washington, Oregon, Nevada, and California) and the Four-Corners Population (Arizona, Utah, Colorado, and New Mexico). Counts conducted annually at mineral springs in Oregon during late August indicate pigeon populations declined precipitously between 1968 and 1973, generally increased between 1974 and 1984, and then declined between 1984 and 1985, with fairly stable counts at low levels since 1985. Washington's call-count survey, conducted in late June and early July, gave a 1991 index that was 25 percent below both that of 1990 and the 1986–90 average. The Breeding Bird Survey indicates a significant downward trend in the Coastal Population during the past 25 years and harvest data for the Coastal Population indicate a substantial population decline during the same period.

No pigeon population surveys are conducted in any of the States of the Four-Corners Population and only Arizona has maintained annual harvest estimates since the late 1960's. The 1991 harvest in Arizona was 8 percent below that in 1990, and the 1968–91 trend is declining significantly. Harvest in the Four-Corners area is generally light and does not exceed 5,000 birds in all four States annually.

Mr. David Sharp, Central Flyway Representative, reported on the status and harvest of sandhill cranes populations. The Mid-Continent Population appears to have stabilized following dramatic increases in the early 1980's. The preliminary spring estimate for 1992, uncorrected for visibility, was 258,700, which is down from 299,000 recorded last year and 412,490 recorded in 1990. The photo-corrected 3-year average for the 1989–91 period was 391,458, which is within the established population objective range of 350,000 - 450,000. All Central Flyway States, except Kansas and Nebraska, elected to allow crane hunting in portions of their respective States in 1991–92; about 18,147 permits were issued and approximately 5,880 permittees hunted one or more times. Compared to the previous year's seasons, the number of permittees decreased about 20 percent and active hunters decreased 23 percent. An estimated 13,058 cranes were harvested in 1991–92, which reflected a 28 percent decrease from the record high of 18,041 harvested in 1990–91. Mid-continent cranes are also hunted in Alaska, Canada, and Mexico. The estimated retrieved harvest in Canada in 1991 was 5,394. Data for Alaska and Mexico are not available, but the combined harvest is believed to be about 3,000. Rangewide sport harvests are near guidelines established in the Mid-Continent Population Cooperative Management Plan.

Annual appraisals of the Rocky Mountain Population, which stages in the San Luis Valley of Colorado in March, suggest that the population has been relatively stable since 1984. The 1992 index of 20,014 cranes was within established objective levels of 18,000–22,000. Limited special seasons were held during 1991 in portions of Arizona, New Mexico, Utah, and Wyoming, resulting in harvests estimated at 475 cranes. This compares to a harvest estimate of 181 cranes in 1990.

Mr. Brad Bortner, Chief, Population Assessment Section, reported briefly on habitat conditions observed during the May breeding waterfowl survey. Last winter was abnormally dry across the northcentral U.S. and Prairie Canada. Repeated periods of mild temperatures decreased the potential for spring runoff to fill wetland basins.

By early May, severe or extreme drought conditions extended across a broad region, including southern Alberta, western Montana, and much of the western U.S. At the same time, parts of southeastern Saskatchewan, southern Manitoba, Minnesota, Wisconsin, and Michigan were unusually wet. By the end of May, drought conditions had spread over all of Montana, most of the Dakotas, and extreme southern areas of Alberta and Saskatchewan. Extremely wet conditions persisted over an extensive region of northern Alberta and northern Saskatchewan.

In the Northwest Territories and Alaska, northern portions of Alberta, Saskatchewan, and Manitoba, many lakes still had extensive ice-cover in late May. Six to eight inches of snow fell across northern Manitoba during early June. Generally, spring phenology across most of the northern survey areas was delayed by 1 to 2 weeks, and prospects for early waterfowl nesting in most of these northern areas seemed poor. Normal or above-normal levels of precipitation were recorded throughout eastern Canada and northeastern U.S during April. In much of this region, precipitation and temperatures were near normal during May. However, waterfowl nesting chronology was delayed in some areas.

Overall, pond numbers in southern Canada increased 12 percent from last year but still remained 18 percent below the 1961–1991 average. The largest increase occurred in southern Manitoba (+69 percent), while pond numbers decreased 28 percent in southern Alberta and reached record-low numbers in one survey stratum. Conditions in extreme southwestern Saskatchewan were dry, with one survey stratum also having record-low pond numbers. The total pond estimate for the northcentral U.S. increased 17 percent from last year but was 31 percent below the 1974–1991 average. Pond numbers in South Dakota and Montana decreased slightly from last year, while pond numbers increased 85 percent in North Dakota. Preliminary information from Wisconsin indicates above-average pond numbers. In Minnesota, conditions were fair with about average pond numbers; while in California, Nebraska, Wyoming, and

Colorado, conditions were mostly dry and unfavorable.

In the prairie-pothole region, upland nesting conditions were variable, but generally poor. The recent years of drought across much of the region have permitted cultivation or haying of wetland margins and basins. Consequently, regions benefitting from ample precipitation this year, such as southern Manitoba, often had little nesting cover associated with the increase in pond numbers. Nesting cover was generally more abundant in northern parkland areas.

In 1991, the May survey indicated 3.8 million blue-winged teal. This year's preliminary blue-winged teal population estimate is 4.3 million. This represents a 15 percent increase over last year, and approaches the long-term average.

**Comments Received at Public Hearing**

Three oral statements were presented at the public hearing on proposed early-season regulations. These comments are summarized below.

Mr. Charles Kelley, representing the Southeastern Association of Fish and Wildlife Agencies, supported the regulations proposals for the 1992–1993 hunting seasons and commended the Service for its efforts to present information for public comment. He expressed concern about the baiting regulations and supported efforts to clarify them.

Ms. Susan Haygood, representing the Humane Society of the United States, advocated a closure on the hunting of all waterfowl species. She stated that the proposed opening framework date for Alaska was too early, allowing young birds to be taken, and requested that the opening be delayed by 2 weeks. She further suggested that all seasons for migratory birds should open at noon during midweek to reduce the high harvest associated with Saturday openings, and she opposed special seasons in an effort to further reduce hunter participation. She opposed the liberal limits on sea ducks, but supported the closure on western band-tailed pigeons.

Mr. Wayne Pacelle, representing the Fund for Animals, provided comment on the regulatory process and suggested that the Service attempt to involve the public to a greater extent. He stated his organization opposed the killing of wildlife through sport hunting and expressed the view that the interests of non-hunters were not considered to the same extent as those of hunters. He supported the closure on the Pacific Coast Population of band-tailed pigeons but opposed the season on the Four-Corners Population due to the lack of data. He was distressed over the proposed reopening of the September teal season and requested a closed season on pintails in 1992. He expressed the opinion that the shooting of cranes and swans was unethical and supported the view of the Humane Society of the United States that seasons in Alaska opened too early and were too long.

**Written Comments Received**

The preliminary proposed rulemaking, which appeared in the May 8 **Federal Register**, opened the public comment period for early-season migratory game bird hunting regulations. As of June 25, 1992, the Service had received 16 comments; 9 of these specifically addressed early-season issues. Due to the delayed publication of the preliminary proposals in 1992, many letters were received during the time of the year when the comment period normally would have been open. The majority of these letters either requested the Service to liberalize framework dates for ducks or that the Service reinstate the September teal season. The Service continues to encourage those people to submit written comments during the comment period. These early-season comments are summarized below and numbered in the order used in the May 8 **Federal Register**. Only the numbered items pertaining to early seasons for which written comments were received are included.

**General**

*Council Recommendations:* The Central Flyway Council recommended no changes in frameworks for those regulations not addressed by other Central Flyway Council recommendations.

*Written Comments:* A local organization from Massachusetts requested that shooting hours remain at one-half hour before sunrise to sunset for all species.

**1. Ducks**

*iii. September Teal Seasons*

In the May 8, 1992, **Federal Register** (57 FR 19865), the Service reiterated that implementation criteria were necessary prior to lifting the suspension on the September teal season. In cooperation with the Flyway Councils, the Service has developed interim criteria which will govern September teal seasons until a stabilized-regulations harvest strategy for duck hunting is completed. The Service proposes the following criteria:

1. A September teal season will be permitted annually whenever the breeding population exceeds 3.3 million blue-winged teal.

2. Seasons of up to 9 days in length may be held during September 1–30 in non-production States of the Mississippi and Central Flyways with a daily bag limit not to exceed 4 teal.

3. If breeding populations of blue-winged teal fall below 3.3 million or if band-recovery rates exceed those for which we have experience, a more conservative harvest strategy will be considered. A decision to suspend the special season or to enact restrictions during the regular season will be based on all available information related to population status, harvests, and habitat.

The Service currently believes that a partial season should not be allowed because the difference in harvest rates between a partial and full season would likely be unmeasurable and because it would imply that there is an objective base for such "fine-tuning". With respect to future evaluations, the Service will continue to support efforts to estimate harvests south of the U.S. and will promote blue-winged teal banding as part of the mallard preseason banding program in order to improve the ability to estimate survival rates. Finally, the Service strongly urges the Flyway Councils to document changes in wintering habitat-management practices that may result from reinstatement of the September teal season.

Consistent with the strategy concerning the use of shooting hours, developed by the Service in 1990, shooting hours will begin at sunrise unless States can demonstrate that the impact of presunrise shooting hours on non-target duck species is negligible.

*Council Recommendations:* The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended interim criteria for reinstatement of the September teal seasons as follows:

"Breeding population indices were viewed as the most appropriate basis for development of interim guidelines for reinstatement of September teal seasons. Final guidelines for September teal seasons should include a range of criteria, including breeding populations, habitat conditions, harvest rates, and development of an approach to evaluate teal harvest south of the United States."

"In the interim (1992), reinstatement of September teal seasons is recommended if the breeding population is sustained at 1991 levels (3.779 +/− 0.245 million). This criterion includes consideration of the precision of population surveys for blue-winged teal. Thus, a breeding population of 3.5 million breeding blue-winged teal would be considered sufficient to recommend reinstatement of the season for 1992. The Service and the Mississippi Flyway Council should jointly develop final implementation

criteria (in conjunction with development of stabilized regulations strategies) by March 1994."

The Central Flyway Council recommended reinstatement of the September teal season when the 3-year running average of the breeding population index equals or exceeds 3 million. The season length and daily bag limits should be the same as used in past years—a 9-day season with a 4-bird daily bag limit. The September teal season should be reviewed if the 3-year running average of the breeding population index falls below 3 million.

*Written Comments:* Since publication of the preliminary proposals in the May 8 **Federal Register**, the Service has received three written comments regarding the special September teal seasons. Two individuals from Texas requested that the Service reinstate the September teal season. A petition with 1080 signatures was received from a local organization in Louisiana requesting that the Service reinstate the September teal season.

*iv. Experimental September Teal/Wood Duck Seasons*

Due to the apparent increase in the breeding population of blue-winged teal and the subsequent proposed reinstatement of the September teal seasons in 1992, the Service proposes to modify the former experimental September wood duck seasons to also allow the harvest of teal.

The strategy developed by the Service in 1990 concerning the use of shooting hours stated that for species-specific duck seasons, shooting hours will begin at sunrise unless States can demonstrate that the impact of presunrise shooting hours on non-target duck species is negligible. The three States involved in these September seasons have provided information to the Service to demonstrate the negligible impact of presunrise shooting hours on non-target duck species during seasons for wood ducks only. Florida has also submitted information that demonstrates insignificant impacts on nontarget duck species for seasons directed at both wood duck and teal. However, the Service has no information from Kentucky or Tennessee regarding the effect of presunrise shooting hours on non-target duck species during seasons for both wood duck and teal. With the addition of teal to the bag limit during these September seasons, hunters may hunt in different habitats or behave differently than when only wood ducks were hunted. Therefore, the Service is asking Kentucky and Tennessee to provide additional information. These States will be allowed to continue presunrise shooting hours during their September seasons under the condition that they conduct studies or provide information that demonstrate a negligible impact on non-target duck species during the one-half hour prior to sunrise. The frameworks proposed in this document would allow shooting hours in Florida, Kentucky, and Tennessee to begin at one-half hour before sunrise and extend until sunset.

*Council Recommendations:* The Atlantic Flyway Council recommended that Florida be allowed to hold a September teal season (in conjunction with their experimental September wood duck season) when and if September teal seasons are restored in the Central and Mississippi Flyways.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that if the full September teal season is reinstated, teal be incorporated into the daily bag limit in Kentucky's and Tennessee's September wood duck season and that the bag limit be 4 birds, including no more than 2 wood ducks. If an abbreviated September teal season is offered, the Committee recommended a daily bag limit of 2 teal or wood ducks, singly or in the aggregate.

**3. Sea Ducks**

Although the Service does not propose any modifications in the frameworks for sea ducks in this document, concern continues for the perceived increase in harvest pressure on these species. Additional data are needed to assist management efforts for these species and a management plan is needed to guide future management efforts. The Service asks that the Flyway Councils address these concerns prior to the regulations cycle for the 1993–94 seasons.

*Written Comments:* A local organization from Massachusetts requested continuation of the special sea duck season in the Atlantic Flyway with no change in frameworks.

**4. Canada Geese**

*A. Special Seasons*

The Service is concerned about the protection of nontarget Canada goose populations during special seasons, and continues to believe that most Canada goose harvest-management objectives can be addressed through the regular Canada goose hunting-season frameworks in accordance with flyway management plans. However, the Service recognizes the need for special seasons in certain circumstances to control local breeding and/or nuisance populations of Canada geese. As indicated in the June 10, 1992, **Federal Register** (57 FR 27672), the Service has become aware of the need to modify the special-season criteria previously published in the September 26, 1991, **Federal Register** (56 FR 49104). The proposed modified criteria are:

**Criteria for Special Canada Goose Seasons**

1. States may hold special Canada goose seasons, in addition to their regular seasons, for the purpose of controlling local breeding populations or nuisance geese. These seasons are to be directed only at Canada goose populations that nest primarily in the conterminous United States and must target a specific population of Canada geese. The harvest of nontarget Canada geese must not exceed 10 percent of the special-season harvest during early seasons or 20 percent during late seasons. More restrictive proportions may apply in instances where a nontarget Canada goose population of special concern is involved.

2. Early seasons must be held prior to the regular season. In the Atlantic and Mississippi Flyways, where seasons are focused primarily on local breeding populations of giant Canada geese, seasons may not exceed 10 consecutive days and will generally be held between September 1 and September 10. In the Central and Pacific Flyways, seasons may not exceed 30 consecutive days, generally between September 1 and September 30, and must be directed at local breeding populations or nuisance situations that cannot be addressed through the regular-season frameworks.

3. Late seasons must be held after the regular season and prior to February 15.

4. The daily bag and possession limits may be no more than 5 and 10 Canada geese, respectively.

5. The area(s) open to hunting will be described in State regulations.

6. All seasons will be conducted under a specific Memorandum of Agreement. Provisions for discontinuing, extending, or modifying the season will be included in the Agreement.

7. Initially, all seasons will be considered experimental. The evaluation required of the State will be incorporated into the Memorandum of

following:

A. Conduct neck-collar observations (where appropriate) and population surveys beginning at least 1 year prior to the requested season and continuing during the experiment. For early seasons to be held after September 10, data-gathering must begin at least 2 years prior to the requested season.

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B. Determine derivation of neck-collar codes and/or leg-band recoveries from observations and harvested geese.

C. Collect morphological information from harvested geese, where appropriate, to ascertain probable source population(s) of the harvest.

D. Analyze relevant band-recovery data.

E. Estimate hunter activity and harvest.

F. Prepare annual and final reports of the experiment.

8. If the results of the evaluation warrant continuation of the season beyond the experimental period, the State will continue to estimate hunter activity and harvest and report these to the Service annually for all years the season is offered.

9. The season will be subject to periodic re-evaluations when circumstances or special situations warrant.

For early seasons held after September 10, the Service emphasizes that data gathered prior to and during the experiment must strongly indicate that the season will successfully meet all established criteria for special early Canada goose seasons.

*Council Recommendations:* The Atlantic Flyway Council recommended that new experimental seasons for resident Canada geese be initiated in 1992 in Erie, Cattaraugus, and Chautaugua Counties of New York and Bucks, Lehigh, Montgomery, Crawford, Erie, Butler, and Mercer Counties of Pennsylvania.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service closely monitor existing regular and special seasons for impacts on the Southern James Bay Population of Canada geese. They further recommend that the Service fully analyze data from existing seasons before expanding seasons that might cause cumulative harvest on this population of geese. They emphasized that special seasons should adhere to the criteria established by the Service.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service approve operational status of the seasons in the Upper-Peninsula and Northern-Lower-Peninsula portions of Michigan which were part of the original 1986–89 experimental season and that the Service approve a 3-year expanded experiment in the eastern Upper Peninsula.

The Committee further recommended that the experimental seasons in the Fergus Falls/Alexandria and Southwest Border goose zones in Minnesota be extended pending completion of the final report. Preliminary final reports indicate that these seasons meet the criteria outlined in the Memorandum of Agreement between Minnesota and the Service; however, Minnesota is unable to complete the final report until 1991 band-recovery and parts-collection-survey data are obtained. The final reports will be completed prior to the March 1993 Council Meeting.

The Committee also recommended that the Service establish a 3-year experimental special season in Boone, Callaway, Cole, and Howard Counties of central Missouri. They recommended that the season be 9-15 days long and be held prior to October 15. The daily bag limit would be 3 geese. All geese harvested would be checked at mandatory check stations and a special permit would be required for hunters to participate.

The Pacific Flyway Council recommended no change for the Oregon-Washington season except that the hunt area in Oregon be enlarged to include Youngs Bay, its tributaries south and east of the city of Astoria, and adjacent agricultural lands. Also, the Council recommended no change for September Canada goose hunting seasons in Utah and Wyoming.

*Written Comments:* The New York State Department of Environmental Conservation requested initiation of a special season in Erie, Cattaraugus, and Chautauqua Counties.

The Michigan Department of Natural Resources supported the recommendation by the Upper-Region Regulations Committee of the Mississippi Flyway Council. Michigan indicated that they meet or are very close to the criteria established by the Service for the proportion of migrants in the harvest. They further indicated that they intend to obtain larger sample sizes and intensively monitor the harvest for all special goose seasons.

The Oregon Department of Fish and Wildlife supported the expansion of the experimental September Canada goose season along the lower Columbia River to include Youngs Bay and adjacent upland areas.

A local organization from Massachusetts requested continuation of the special seasons in that State.

**9. Sandhill Cranes**

*Council Recommendations*: The Central Flyway Council recommended no changes in the Mid-continent sandhill crane hunting frameworks. The management plan currently is being revised. The Council believes that frameworks should not be modified prior to the revision and that future frameworks should abide by the revised management plan.

The Central and Pacific Flyway Councils recommended that an experimental season be initiated in Montana for the Rocky Mountain Population of sandhill cranes. All hunts would follow guidelines as outlined in the revised "Pacific and Central Flyway Management Plan for Rocky Mountain Greater Sandhill Cranes."

**15. Band-tailed Pigeons**

In the July 15, 1991, **Federal Register** (56 FR 32284), the Service stated that it continued to be concerned about the decline of the Coastal Population of band-tailed pigeons and encouraged cooperative investigations into factors causing the decline. Available data indicate that either the population decline is continuing or the population is stable at a low level, and therefore the Service concern has strengthened. Although hunting appears not to be the cause of this population decline, the Service believes it prudent at this time to take every possible action that might help to reverse this trend. Therefore, the band-tailed pigeon frameworks proposed herein do not provide for an open season for the Coastal Population (in Washington, Oregon, Nevada, and California) during 1992–93.

The Service proposes that a State-issued permit will be required for hunting the Four-Corners Population of band-tailed pigeons. States will be required to acquire and report harvests and hunter participation information. This permit requirement is viewed as being in lieu of a State participating in the Migratory Bird Harvest Information Program.

*Council Recommendations*: The Pacific Flyway Council recommended no change in frameworks for either the Pacific Coast Population or the Four-Corners Population of band-tailed pigeons. They further indicated that formulation of a Four-Corners Population management plan and revision of the Coastal Population plan will provide accessible background information, and provide a format for collection of population-status information in the future.

*Written Comments:* The California Department of Fish and Game requested that the season for the Coastal Population of band-tailed pigeons remain open. They suggest the Service consider alternatives short of complete closure to maintain the information-gathering networks established to gain insight into the actual causes for the population decline in pigeons. These efforts include the Migratory Bird

Harvest Information Program; reproductive and disease information from hunter-killed birds; and band-recovery information from marked samples. They indicated that, because of restrictive regulations, the breeding population information for the past 6 years does not reflect the long-term downward trend, and that hunting is not limiting pigeon populations.

An individual from Washington requested that the Service close the hunting season for band-tailed pigeons in Washington, Oregon, and California. He further indicated that widespread habitat alteration has adversely affected pigeon populations and that biological information necessary to evaluate status of the population is not available.

**16. Mourning Doves**

*Council Recommendations*: The Central Flyway Council recommended that the portion of the South Zone in Texas from Del Rio to Fort Hancock be transferred to the Central Zone, and further that the same area be discontinued as part of the Special White-winged Dove Area. Transferring this area to the Central Zone would permit the hunting of both white-winged doves and mourning doves to begin in this area on September 1, rather than limiting the hunt prior to September 20 to weekends during the special season.

The Central Flyway Council recommendation regarding the number of white-winged doves allowed in the aggregate daily bag limit affects mourning doves as well. See item 17. **White-winged and White-tipped Doves.**

The Pacific Flyway Council recommended no change in frameworks. They remarked that significant restrictions in mourning dove frameworks were implemented in 1987. Since that time, the Western Management Unit call-count index has shown a modest increase.

**17. White-winged and White-tipped Doves**

*Council Recommendations*: The Central Flyway Council recommended that the special white-winged dove season be increased from 2 days to 4 days in September if the Lower Rio Grande Valley whitewing population increased in 1992 to over 350,000 breeding birds.

The Council further recommended that the number of white-winged doves permitted in the 12-dove aggregate daily bag limit during the Texas mourning dove season in Cameron, Hidalgo, Starr, and Willacy Counties in the Lower Rio Grande Valley be increased from 2 to 6 to match the statewide daily bag limit.

Finally, the Central Flyway Council recommendation regarding realignment of zone boundaries affects white-winged doves. See item 16. **Mourning Doves.**

The Pacific Flyway Council recommended no change in frameworks. They noted that since the implementation of restrictive regulations in 1987, white-winged dove populations appear to be stable or slightly increasing in areas where data are collected.

**18. Alaska**

*Council Recommendations*: The Pacific Flyway Council recommended no change in frameworks for Alaska, including continuation of the tundra swan season.

**21. Virgin Islands**

The frameworks proposed in this document do not provide for an open season on scaly-naped pigeons in the Virgin Islands during the 1992–93 season.

**22. Falconry**

*Written Comments:* The Minnesota Department of Natural Resources requested that the Service increase the number of segments allowed during the extended falconry seasons from 3 to 4 segments or offer another option that would allow States with 3-way-split regular seasons to select extended falconry dates in a manner so that, when viewed in conjunction with their gun days, the combined seasons will appear continuous.

**Public Comment Invited**

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

**Comment Procedure**

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

**NEPA Consideration**

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)", filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

**Endangered Species Act Consideration**

The Division of Endangered Species is completing a biological opinion on the proposed action. As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. The Service's biological opinions resulting from consultations under section 7 are considered public documents and are available for inspection in the Division

of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

**Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act**

In the May 8 Federal Register, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis (FRIA), and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. A Regulatory Flexibility Analysis (RFA), prepared as part of the FRIA concluded that this rule would have significant effects on small entities. Information contained in that document stated that while the Service believes that its rules for migratory bird hunting are "major," and impact "small entities," particularly small businesses, it has been unable to locate information of the kind needed to complete its analysis on small entities. The FRIA and the RFA document the relationships between hunting regulations, and hunter numbers and hunter days, both of which have major economic implications. The Service concluded that the adoption of other regulatory options would have little impact upon hunter expenditures at the national-economy or small-entity levels. Unless migratory bird hunting regulations are established, the national economy stands to lose at least $1 billion annually. Most of this loss would be borne by small entities. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Department of the Interior, Washington, DC 20240. As noted in the above Federal Register reference, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act.

**Authorship**

The primary authors of this proposed rulemaking are Robert J. Blohm and William O. Vogel, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1992–93 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918, as amended, (16 U.S.C. 703—712), and the Fish and Wildlife Service Act of August 8, 1956, as amended, (16 USC 742 a—d and e—j).

Dated: July 6, 1992.

J. Michael Hayden,

*Assistant Secretary for Fish and Wildlife and Parks.*

**Proposed Regulations Frameworks for 1992–93 Early Hunting Seasons on Certain Migratory Game Birds**

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director approved the following proposed frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for certain migratory game birds.

**General**

*Dates:* All outside dates noted below are inclusive.

*Shooting and Hawking (taking by falconry) Hours:* Unless otherwise specified, from one-half hour before sunrise to sunset daily.

*Possession Limits:* Unless otherwise specified, possession limits are twice the daily bag limit.

*Area and Zone Descriptions:* Descriptions that differ from those published in the August 21, 1991, Federal Register (at 56 FR 41617) are described in a later portion of this document.

**Mourning Doves**

*Outside Dates:* Between September 1, 1992, and January 15, 1993, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

*Eastern Management Unit (All States east of the Mississippi River, and Louisiana)*

*Hunting Seasons and Daily Bag Limits:* Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

*Zoning and Split Seasons:* States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana, and Mississippi may commence no earlier than September 20, 1992. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

*Central Management Unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)*

*Hunting Seasons and Daily Bag Limits:* Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

*Zoning and Split Seasons:* States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1, 1992 and January 25, 1993; and for the South Zone between September 20, 1992, and January 25, 1993.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 6 of which may be white-winged doves and no more than 2 of which may be white-tipped doves, with the following exceptions:

1. During the special white-winged dove season in the South Zone, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

2. In Cameron, Hidalgo, Starr, and Willacy Counties, the daily bag limit may not exceed 12 doves (15 under the alternative) in the aggregate, of which

no more than 2 may be white-winged doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

*Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington)*

*Hunting Seasons and Daily Bag Limits:* Idaho, Nevada, Oregon, Utah, and Washington - Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

*Arizona and California*—Not more than 60 days which may be split between two periods, September 1-15, 1992, and November 1, 1992 - January 15, 1993. In Arizona, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

**White-winged Doves**

*Hunting Seasons and Daily Bag Limits:*

Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada counties of Clark and Nye, and in the California counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which not more than 6 may be white-winged doves and not more than 2 may be white-tipped doves; except in Cameron, Hidalgo, Starr, and Willacy Counties where the daily bag limit may include no more than 2 white-winged doves and 2 white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19, 1992. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

**Band-tailed Pigeons**

*Pacific Coast States:* The season is closed in California, Oregon, Washington, and Nevada.

*Four-Corners States:* Arizona, Colorado, New Mexico, and Utah.

*Outside Dates:* Between September 1 and November 30, 1992.

*Hunting Seasons and Daily Bag Limits:* Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.Permit Requirement: The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report on harvest and hunter participation to the Service by June 1 of the following year.

*Areas:* These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

*Zoning:* New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1, 1992.

**Rails**

*Outside Dates:* States included herein may select seasons between September 1, 1992, and January 20, 1993, on clapper, king, sora, and Virginia rails.

*Hunting Seasons:* The season may not exceed 70 days, and may be split into two segments.

*Clapper and King Rails*

*Daily Bag Limits:*

In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species.

In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

*Sora and Virginia Rails*

*Daily Bag and Possession Limits:* In the Atlantic, Mississippi, and Central Flyways and the Pacific Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

**American Woodcock**

*Outside Dates:* States in the Atlantic Flyway may select hunting seasons between October 1, 1992, and January 31, 1993. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1992, and January 31, 1993.

*Hunting Seasons and Daily Bag Limits:* In the Atlantic Flyway, seasons may not exceed 45 days, with a daily bag limit of 3; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with a daily bag limit of 5. Seasons may be split into two segments.

*Zoning:* New Jersey may select seasons in each of two zones. The season in each zone may not exceed 35 days.

**Common Snipe**

*Outside Dates:* Between September 1, 1992, and February 28, 1993. Except, in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, the season must end no later than January 31.

*Hunting Seasons and Daily Bag Limits:* Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

**Common Moorhens and Purple Gallinules**

*Outside Dates:* Between September 1, 1992, and January 20, 1993, in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks and no frameworks are provided in this document.

*Hunting Seasons and Daily Bag Limits:* Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into two segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

**Sandhill Cranes**

*Regular Seasons in the Central Flyway:*

*Outside Dates:* Between September 1, 1992, and February 28, 1993.

*Hunting Seasons:* Seasons not to exceed 58 days may be selected in the following States: Colorado (the Central Flyway portion except the San Luis Valley); Kansas; Montana (the Central

Flyway portion except that area south of I-90 and west of the Bighorn River); North Dakota (west of U.S. 281); South Dakota; and Wyoming (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston).

Seasons not to exceed 93 days may be selected in the following States: New Mexico (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay, and Roosevelt); Oklahoma (that portion west of I-35); and Texas (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to I-35 at Austin; I-35 to I-35W; I-35W to the Texas-Oklahoma boundary).

*Daily Bag limits:* 3 sandhill cranes.

*Permits:* Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit in his possession while hunting.

*Special Seasons in the Central and Pacific Flyways:*

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (as described in a management plan approved March 22, 1982 [revised March 1991], by the Central and Pacific Flyway Councils) subject to the following conditions:

1. Outside dates are September 1, 1992 - January 31, 1993.
2. The season in any State or zone may not exceed 30 days.
3. The daily bag limit may not exceed 3 and the season limit may not exceed 9.
4. Participants must have in their possession while hunting a valid permit issued by the appropriate State.
5. Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils.
6. All hunts except those in Arizona, New Mexico (Middle Rio Grande Valley), and Wyoming will be experimental.

**Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)**

*Outside Dates:* Between September 15, 1992, and January 20, 1993.

*Hunting Seasons and Daily Bag Limits:* Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed species.

*Daily Bag Limits During the Regular Duck Season:* Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may select, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species. In all other areas, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck-season daily bag and possession limits.

*Areas:* In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States.

**September Teal Season**

*Outside Dates:* Between September 1 and September 30, 1992, an open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

*Hunting Seasons and Daily Bag Limits:* Not to exceed 9 consecutive days, with a daily bag limit of 4 teal.

*Shooting hours:* From sunrise to sunset daily.

**Special September Teal/Wood Duck Seasons**

*Florida:* An experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

*Tennessee and Kentucky:* In lieu of a special September teal season, an experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

**Special Early Canada Goose Seasons**

*Atlantic and Mississippi Flyways*

Canada goose seasons of up to 10 consecutive days may be selected by Indiana, Massachusetts, Michigan, Minnesota, Missouri, New York, North Carolina, Ohio, Pennsylvania, and Wisconsin. The seasons in the following States and portions of States are experimental: Indiana; Massachusetts; Missouri; New York; North Carolina; Ohio; Pennsylvania; Wisconsin; in Michigan, that portion of the Upper Peninsula previously open to the hunting of Canada geese in early September and that portion of the Lower Peninsula including Oceana, Newaygo, Mecosta, Isabella, Midland, and Bay Counties and all counties north thereof; in Minnesota, the Fergus Falls/Alexandria and Southwest Border Zones. Outside dates for the seasons are September 1-10, 1992, except in Missouri, where the outside dates are October 1-15, 1992. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

**Pacific Flyway**

*Wyoming* may select a September season on Canada geese subject to the following conditions:

1. The season must be concurrent with the September portion of the sandhill crane season.
2. Hunting will be by State permit.
3. No more than 150 permits, in total, may be issued.
4. Each permittee may take no more than 2 Canada geese per season.

*Utah* may select an experimental special season on Canada geese in Cache County subject to the following conditions:

1. Not to exceed 4 days during September 1-15, 1992.
2. Hunting will be by State permit.
3. Not more than 200 permits may be issued.
4. Each permittee may take 2 Canada geese per season.

*Oregon and Washington* may select an experimental season on Canada geese subject to the following conditions:

1. The seasons in Oregon and Washington must be concurrent.
2. Not to exceed 10 days during September 1-10, 1992.
3. Hunting will be by State permit.
4. Each permittee may take 2 Canada geese per day.

**Alaska**

*Outside Dates:* Between September 1, 1992, and January 26, 1993.Hunting seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and snipe in each of five zones. The season may be split without penalty

in the Kodiak Zone. The seasons in each zone must be concurrent.

*Closures:* The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, cackling Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

*Daily Bag and Possession limits:*

*Ducks*—Except as noted, a basic daily bag limit of 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 6 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. The basic limits may include no more than 2 pintails daily and 6 in possession, and 2 canvasbacks daily and 6 in possession.

In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, common and king eiders, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

*Geese*—A basic daily bag limit of 6, of which not more than 4 may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

*Brant*—A daily bag limit of 2.

*Common snipe*—A daily bag limit of 8.

*Sandhill cranes*—A daily bag limit of 3.

*Tundra swans*—In Game Management Unit 22, an open season for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued, authorizing each permittee to take 1 tundra swan.
2. The season must be concurrent with other migratory bird seasons.
3. The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report the results of this hunt to the Service by June 1 of the following year.

**Hawaii**

*Outside Dates:* Between September 1, 1992, and January 15, 1993.

*Hunting Seasons:* Not more than 60 days (70 under the alternative) for mourning doves.

*Bag Limits:* Not to exceed 15 (12 under the alternative) mourning doves.

*Note:* Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

**Puerto Rico**

*Doves and Pigeons:*

*Outside Dates:* Between September 1, 1992, and January 15, 1993.

*Hunting Seasons:* Not more than 60 days.

*Daily Bag and Possession Limits:* Not to exceed 10 Zenaida, mourning, and white-winged doves and scaly-naped pigeons in the aggregate, no more than 5 of which may be scaly-naped pigeons.

*Closed Areas:* Closed areas were described in the August 21, 1991, Federal Register (56 FR 41608).

*Ducks, Coots, Moorhens, Gallinules, and Snipe:*

*Outside Dates:* Between October 1, 1992, and January 31, 1993.

*Hunting Seasons:* Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

*Daily Bag Limits:*

*Ducks*—Not to exceed 3.

*Common moorhens*—Not to exceed 6.

*Common snipe*—Not to exceed 6.

*Closures:* The season is closed on the ruddy duck *(Oxyura jamaicensis)*; the White-cheeked pintail *(Anas bahamensis)*; West Indian whistling (tree) duck *(Dendrocygna arborea)*; fulvous whistling (tree) duck *(Dendrocygna bicolor)*; and the masked duck *(Oxyura dominica)*, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule *(Porphyrula martinica)*, common coot *(Fulica americana)*, and Caribbean coot *(Fulica caribaea)*.

*Closed Areas:* There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

**Virgin Islands**

*Doves and Pigeons:*

*Outside Dates:* Between September 1, 1992, and January 15, 1993.

*Hunting Seasons:* Not more than 60 days for Zenaida doves.

*Daily Bag and Possession Limits:* Not to exceed 10 Zenaida doves.

*Closed Seasons:* No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Local Names for Certain birds:

Zenaida dove *(Zenaida aurita)*—mountain dove; Bridled quail dove *(Geotrygon mystacea)*—Barbary dove, partridge; Common Ground dove *(Columba passerina)*—stone dove, tobacco dove, rola, tortolita; Scaly-naped pigeon *(Columba squamosa)*—red-necked pigeon, scaled pigeon.

*Ducks:*

*Outside Dates:* Between December 1, 1992, and January 31, 1993.

*Hunting Seasons:* Not more than 55 consecutive days may be selected for hunting ducks.

*Daily Bag Limits:* Not to exceed 3 ducks.

*Closures:* The season is closed on the ruddy duck *(Oxyura jamaicensis)*; the White-cheeked pintail *(Anas bahamensis)*; West Indian whistling (tree) duck *(Dendrocygna arborea)*; fulvous whistling (tree) duck *(Dendrocygna bicolor)*; and the masked duck *(Oxyura dominica)*.

**Special Falconry Regulations**

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

*Extended Seasons:* For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

*Framework Dates:* Seasons must fall between September 1, 1992 and March 10, 1993.

*Daily Bag and Possession Limits:* Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

*Regular Seasons:* General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

**Zone Descriptions**

*Special Early Canada Goose Seasons:*

*Missouri*

*Central Missouri Zone:* All or portions of Boone, Callaway, Cole, and Howard Counties.

*New York*

Counties of Erie, Cattaraugus, and Chautauqua.

*Oregon*

*Open Area:* Those portions of Multnomah, Columbia, and Clatsop Counties (excluding Sauvie Island Wildlife Area) within the following boundary: Beginning at Portland, Oregon, at the south end of the Interstate 5 bridge; south on I-5 to Highway 30; west on Highway 30 to the

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town of Svensen; south from Svensen to Youngs River Falls; due west from Youngs River Falls to the Pacific Ocean coastline; north along the coastline to a point where Clatsop Spit and the South Jetty meet; due north to the Oregon-Washington border; east and south along the Oregon-Washington border to the I-5 bridge; south on the I-5 bridge to the point of beginning.

*Pennsylvania*

Northwestern Counties of Butler, Crawford, Erie, and Mercer.

Southeastern Counties of Bucks, Lehigh, and Montgomery.

*Mourning and White-winged Doves:*

*Texas*

*North Zone:* That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

*South Zone:* That portion of the State south and west of a line beginning at the International Bridge south of Del Rio proceeding east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

*Special White-winged Dove Area in the South Zone:* That portion of the State south and west of a line beginning at the International Bridge south of Del Rio proceeding east on U.S. 90 to Uvalde; south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southwest along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

*Central:* That portion of the State lying between the North and South Zones.

[FR Doc. 92-16353 Filed 7-6-92; 1:05 am]
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DEPARTM

Fish and W

Annual Wa
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ACTION: No

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Annual Waterfowl Status Meeting and Meetings of the Fish and Wildlife Service Migratory Bird Regulations Committee**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Meetings.

**SUMMARY:** The Fish and Wildlife Service, Office of Migratory Bird Management, will conduct an open meeting on July 25 to review the status of waterfowl populations and the 1992 fall flight forecast for ducks. The Service Migratory Bird Regulations Committee will meet on August 4 and 5 to develop 1992–93 waterfowl hunting regulations recommendations for presentation at the August 6 public hearing to be held in Washington, DC.

**DATES:** Waterfowl Status Meeting, July 25, 1992; Service Regulations Committee Meetings, August 4 and 5, 1992.

**ADDRESSES:** The Waterfowl Status Meeting will be held at the Denver Sheraton-Airport Hotel, 3535 Quebec Street, in Denver, Colorado. Meetings of the Service Regulations Committee will be held in the Board Room of the American Institute of Architects Building, 1735 New York Avenue (at corner of 18th and E Streets, NW.), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Department of the Interior, Washington, DC 20240, (703) 358–1714.

**SUPPLEMENTARY INFORMATION:** On July 25 at 8:30 a.m. at the Denver Sheraton-Airport Hotel in Denver, Colorado, the Fish and Wildlife Service, Office of Migratory Bird Management, will review for State and Federal officials and any other interested parties or individuals results of the various field investigations and data analyses that are used annually to determine the status of waterfowl populations and the fall flight forecast for ducks. The information presented will have a bearing on the regulatory proposals; however, the meeting is not a regulations meeting. Public comment will be limited to that which supplements the status information presented.

The Migratory Bird Regulations Committee of the U.S. Fish and Wildlife Service, including Flyway Council Consultants to the Committee, will meet on August 4 at 8:30 a.m. to review discussions that occurred at the Flyway Council meetings and to discuss and develop recommendations for 1992–93 waterfowl hunting regulations to be presented at the public hearing. The meeting on August 5 at 8:30 a.m. is to ensure that the Service's regulations proposals presented at the public hearing reflect the Director's position with the benefit of full consultation on the issues. The public hearing will be held on August 6 at 9 a.m. in Washington, DC. After the hearing, the Service Regulations Committee will meet with the Director to review the public comments presented at the hearing and to determine on the basis of those comments whether any modifications need to be made to the regulations recommendations presented at the hearing. The Service Regulations Committee will then meet with the Consultants to announce any changes in the proposals.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by any person outside the Department, these meetings will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Dated: July , 1992.

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 92–16352 Filed 7–8–92; 1:06 pm]

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**Briefing on How To Use the Federal Register**
For information on briefings in San Francisco, CA and Seattle, WA, see announcement on the inside cover of this issue.

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## WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### SAN FRANCISCO, CA

**WHEN:** July 22, at 9:00 am
**WHERE:** Federal Building and U.S. Courthouse, Conference Room 7209-A, 450 Golden Gate Avenue, San Francisco, CA
**RESERVATIONS:** Federal Information Center, 1-800-726-4995

### SEATTLE, WA

**WHEN:** July 23, at 1:00 pm
**WHERE:** Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA
**RESERVATIONS:** Federal Information Center, 1-800-726-4995

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7 CFR Par

Milk Price

AGENCY: C
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ACTION: Fi

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# Rules and Regulations

Federal Register
Vol. 57, No. 134
Monday, July 13, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**7 CFR Part 1430**

**Milk Price Support Program**

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations for the price support program to limit, retroactive to January 1, 1991, the scope of that program to milk produced within the area of the forty-eight contiguous states of the continental United States. This action is a result of amendments to section 204 of the Agricultural Act of 1949 (1949 Act) enacted in the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (1991 Act).

**EFFECTIVE DATE:** July 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Joseph Chervenic, Financial Management Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013; phone (202) 720–3679.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulations 1512–1 and has been classified "nonmajor". It has been determined that the provisions of this rule will not result in an annual effect on the national economy of $100 million or more.

It has been determined by an environmental evaluation that this rule will have no significant adverse impact on the quality of the human environment. Therefore, neither an environmental assessment nor environmental impact statement is needed.

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This final rule has been reviewed in accordance with Executive Order 12778. There are no pre-emption of State law issues; the provisions of this final rule are retroactive to January 1, 1991 as required by the 1991 Act; and the administrative appeal provisions of 7 CFR part 780 must be exhausted before a suit may be brought in a court of competent Federal jurisdiction.

Section 204 of the 1949 Act contains the authority for the conduct of the Commodity Credit Corporation (CCC) price support program and other provisions applicable to producers of milk. That section was added by the Food, Agriculture, Conservation, and Trade Act of 1990. Subsection (h) of section 204 was subsequently added by the Omnibus Budget Reconciliation Act of 1990 (1990 Budget Act). Subsection (h) provided for the collection of reductions in the price received by producers for milk produced in the United States and marketed by producers for commercial use in calendar years 1991–95. The price reductions can be refunded if the producer has in the year in which the reduction was made not marketed more milk than in the preceding year. Regulations to implement the provision were published in the **Federal Register** on February 5, 1991 (56 FR 4525). Unlike previous price reduction programs, producers in all States were subject to this price reduction provision. Previous programs had limited the provision to milk produced within the area comprised by the forty-eight contiguous states of the continental United States.

Section 127 of the 1991 Act provided, effective as of January 1, 1991, that the provisions of section 204(h) of the 1949 Act would be limited to marketings of milk produced within the area of the 48 contiguous states and the District of Columbia.

This rule amends 7 CFR part 1430 to implement the 1991 Act amendment. To comply with the retroactivity provision, this rule provides for a return of sums collected by the CCC for 1991 marketings of milk produced in areas that are now excluded from the program retroactive to January 1, 1991.

Section 101(b) of the 1990 Act provided that the notice and comment provisions of 5 U.S.C. 553 shall not apply to the implementation of milk price reductions under section 204 of the 1949 Act. Further, immediate implementation of the rule is in the public interest as it immediately affects current operations and current milk price reductions. For these reasons, this rule is issued without prior public comment.

**List of Subjects in 7 CFR Part 1430**

Dairy products, Fraud, Penalties, Price support programs, Reporting and recordkeeping requirements.

**Final Rule**

Accordingly, the subpart of 7 CFR part 1430 entitled "Subpart—Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1991 to December 31, 1995," is amended as follows:

**PART 1430—DAIRY PRODUCTS**

1. The authority citation for this subpart continues to read as follows:

**Authority:** 7 U.S.C. 1446e.

**§ 1430.340 General statement.**

* * * * *

2. Section 1430.340(a) is amended by removing the words "United States" and inserting in their place the words "United States, as defined in this subpart".

3. Section 1430.340(b) is amended by adding paragraph (b)(5) to read as follows:

* * * * *

(b) * * *

(5) In addition, the CCC may make provision for the refund of monies collected in those cases in which monies were collected for milk marketings later excluded by statutory amendment from coverage of this subpart for any of the calendar years 1991–95.

4. Section 1430.340(d) is amended by removing the second sentence therein.

5. Section 1430.341(u) is revised to read as follows:

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§ 1430.341 Definitions.

* * * * *

(u) *United States* means, except with respect to paragraphs (i), (s), and (v) of this section, the following:

(1) The District of Columbia, and

(2) All States except for Alaska and Hawaii.

* * * * *

Signed at Washington, DC, on July 2, 1992.

**Keith D. Bjerke,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 92-16339 Filed 7-10-92; 8:45 am]

BILLING CODE 3410-05-M

## DEPARTMENT OF JUSTICE

### 8 CFR Part 242

**[AG Order No. 1579-92]**

### Executive Office for Immigration Review; Rules of Procedure; Correction

**AGENCY:** Department of Justice.

**ACTION:** Correction to interim rules due to typographical errors.

**SUMMARY:** This document contains corrections to the interim rules of procedure for practice before immigration judges, which were published Monday, April 6, 1992 [57 FR 11568]. These corrections are necessary due to typographical errors in the text, the supplementary information and the amendatory language of § 242.2, which in each instance incorrectly referenced paragraph (i) as paragraph (h).

**EFFECTIVE DATE:** April 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305-0470.

**Correction**

In rule document 92-7537 beginning on page 11568, in the issue of Monday, April 6, 1992, make the following corrections:

1. On page 11570, in the first column in the supplementary information concerning 8 CFR 242.2, in the second paragraph, the first sentence should read, "A new paragraph (i) has been added."

2. On page 11573, in the second column, the amendatory language of instruction 24b should read, "Adding a new paragraph (i) to read as follows:"

§ 242.2 [Corrected]

3. On page 11574, in the first column in § 242.2, paragraph (h) is correctly designated as paragraph (i).

Dated: July 1, 1992.

**Gerald S. Hurwitz,**

*Counsel to the Director.*

[FR Doc. 92-16299 Filed 7-10-92; 8:45 am]

BILLING CODE 1531-25-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Parts 122 and 156

**[Docket No. 92-084-1]**

### Organisms and Vectors; Inspection and Certification of Animal Byproducts

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning organisms and vectors and the regulations concerning inspection and certification of animal byproducts by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing reference to "Veterinary Services." These changes are warranted so that the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

**EFFECTIVE DATE:** July 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MMD 20782, (301) 436-7885.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR part 122 concern organisms and vectors. The regulations in 9 CFR part 156 concern inspection and certification of animal byproducts. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Service (APHIS) was the official responsible for various decisions under these regulations. We are amending 9 CFR parts 122 and 156 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. Those revisions will be published in separate Federal Register documents. Delegations of authority within the agency are contained in 7 CFR part 371.

We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator." In part 122, we are also removing the definition of "Deputy Administrator" and replacing it with a definition of "Administrator," and we are deleting the definition of "Veterinary Services." In part 156, we are also deleting the definition of "Deputy Administrator." In addition, in part 156, we are revising the definition of Administrator to make it consistent with other parts of 9 CFR and to increase clarity.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

**Executive Order 12372**

These programs/activities under 9 CFR parts 122 and 156 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

**Paperwork Reduction Act**

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects**

*9 CFR Part 122*

Animal diseases, Imports, Reporting and recordkeeping requirements, Transportation.

*9 CFR Part 156*

Exports, Livestock, Poultry and poultry products, Reporting and recordkeeping requirements.



Accordingly, we are amending 9 CFR parts 122 and 156 as follows:

**PART 122—ORGANISMS AND VECTORS**

1. The authority citation for part 122 is revised to read as follows:

**Authority: 21 U.S.C. 111, 161-158.**

§ 122.1 [Amended]

2. In § 122.1, paragraph (c) is revised; paragraph (d) is removed; and paragraphs (e) through (h) are redesignated as paragraphs (d) through (g) to read as follows:

§ 122.1 Definitions.

* * * * *

(c) *Administrator.* The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person authorized to act for the Administrator.

* * * * *

§§ 122.2 and 122.3 [Amended]

3. In addition to the amendments set forth above, in 9 CFR part 122, remove the word "Deputy" in the following places:

a. Section 122.2, second sentence; and

b. Section 122.4, paragraph (a).

**PART 156—INSPECTION AND CERTIFICATION OF ANIMAL BYPRODUCTS**

4. The authority citation for part 156 is revised to read as follows:

**Authority: 7 U.S.C. 1622, 1624.**

§ 156.2 [Amended]

5. In § 156.2 paragraph (b) is revised to read as follows:

§ 156.2 Definitions.

* * * * *

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

6. In § 156.2, paragraph (c) is removed, and paragraphs (d) through (i) are redesignated as paragraphs (c) through (h).

§§ 156.2, 156.4, 156.5, 156.6, and 156.8 [Amended]

7. In 9 CFR part 156, remove the word "Deputy" from the following places:

a. Section 156.2, newly redesignated paragraph (d);

b. Section 156.4, both times the word appears;

c. Section 156.5;

d. Section 156.6, first sentence; and

e. Section 156.8, paragraph (b), each of the five times the word appears.

Done in Washington, DC, this 8th day of July 1992.

**Robert Melland,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92-16347 Filed 7-10-92; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### 15 CFR Parts 771 and 774

**[Docket No. 920654-2154]**

### Revision of General License GATS

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** General License GATS allows foreign registered civil aircraft in the United States on temporary sojourn to depart, and U.S. registered aircraft to depart on temporary sojourn abroad. GATS is not applicable to departures for purpose of sale or other transfer of operational control, although General License G-DEST frequently applies to such situations.

This rule clarifies existing policy on the availability of General License GATS and on what actions constitute the transfer of operational control of aircraft for export control purposes, by providing specific criteria the exporter must meet. These criteria emphasize the need to avoid situations that give control of the aircraft to Country Groups S and Z, nations designated as supporting international terrorism, or nationals of any of these countries. Aircraft operators should be mindful that under Department of Transportation Order T-2, no person may fly an aircraft registered under the laws of the United States to North Korea or Vietnam.

**EFFECTIVE DATE:** This rule is effective July 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Bruce Webb, Capital Goods Technology Center, Bureau of Export Administration, Telephone: (202) 377-3805.

**SUPPLEMENTARY INFORMATION:**

**Background**

The purpose of this General License GATS (15 CFR 771.19) is to authorize international flights for aircraft on "temporary sojourn" if the operator meets the criteria clarified in this regulation. The Bureau of Export Administration (BXA) has been asked whether certain international flights are on "temporary sojourn" if the flight plan includes an overnight stay in-country. An international flight with an overnight stay in-country is on "temporary sojourn" if there is no more than one such overnight stay while in-country. BXA has also been asked whether an international flight is on "temporary sojourn" if the flight plan includes an in-country continuation. A flight within the country would qualify as a "temporary sojourn" in the following two circumstances. First, an international flight is on "temporary sojourn" if it has no more than one domestic continuation in-country between two different airports—the airport of arrival in-country and the airport of departure from that country. Second, an international flight is a "temporary sojourn" if it includes no more than one round trip continuation in-country between the airport of arrival, another airport, and return to the airport of arrival for departure from that country. For all such flights, operators should be mindful that General License GATS is available only if the operator continues to maintain all indicia of "operational control" throughout the "temporary sojourn". Operators should not use General License GATS for a flight that has more than one overnight stay or domestic service, beyond that described above, without first seeking an advisory opinion from the Bureau of Export Administration.

**Rulemaking Requirements**

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule does not involve a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function. This rule does not impose a new control. No other law

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requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Daniel E. Cook, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects in 15 CFR Parts 771 and 774**

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 771 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR parts 771 and 774 continues to read as follows:

**Authority:** Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

**PART 771—[AMENDED]**

2. Section 771.19 is amended by revising paragraphs (a), (b)(1)(i), and (b)(2)(i), by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to read as follows:

**§ 771.19 General license GATS; aircraft on temporary sojourn.**

* * * * *

(a) *Foreign registered aircraft.* An operating civil aircraft of foreign registry that has been in the United States on a temporary sojourn may depart from the United States under its own power for any destination, provided that:

(1) No sale or transfer of operational control of the aircraft has occurred while in the United States;

(2) If of U.S. origin or subject to the provisions of § 776.12 of this subchapter, the aircraft is not departing for the purpose of sale or transfer of operational control; and

(3) It does not carry from the United States any item for which export authorization has not been granted by the appropriate U.S. Government agency.

(b) * * *

(1) * * *

(i) The aircraft does not depart for the purpose of sale or transfer of operational control of the aircraft, or disposition of its equipment, parts, accessories, or components to a foreign country or any national thereof;

* * * * *

(2) * * *

(i) The aircraft does not depart for the purpose of sale or transfer of operational control of the aircraft, or disposition of its equipment, parts, accessories, or components to a foreign country or any national thereof;

* * * * *

(c) When aircraft are departing for sale or other transfer of operational control, General License G–DEST (§ 771.3) is available for most destinations. Where G–DEST is not applicable, the following nine criteria should be considered in determining whether the flight is a temporary sojourn. To be considered a temporary sojourn, the flight must not be for the purpose of sale or transfer of operational control. Operational control is deemed transferred unless the exporter retains each of the following indicia of control:

(1) *Hiring of cockpit crew.* Right to hire and fire the cockpit crew.

(2) *Dispatch of aircraft.* Right to dispatch the aircraft.

(3) *Selection of routes.* Right to determine the aircraft's routes (except for contractual commitments entered into by the exporter for specifically designated routes).

(4) *Place of maintenance.* Right to perform or obtain the principal maintenance on the aircraft, which principal maintenance is conducted outside Country Groups S and Z and "countries supporting international terrorism" as defined in § 770.2 of this subchapter, under the control of a party who is not a national of any of these countries. (The minimum necessary in-transit maintenance may be performed in any country.)

(5) *Location of spares.* Spares are not located in Country Groups S or Z or "countries supporting international terrorism."

(6) *Place of registration.* The place of registration is not changed to Country Groups S or Z or a "country supporting international terrorism."

(7) *No transfer of technical data.* No technical data are transferred to a national of Country Groups S or Z or "countries supporting international terrorism," except the minimum necessary in transit maintenance to perform flight line servicing required to depart safely.

(8) *Colors and logos.* The aircraft does not bear the livery, colors, or logos of a national of Country Group S or Z or "countries supporting international terrorism."

(9) *Flight number.* The aircraft does not fly under a flight number issued to a national of Country Group S or Z or "countries supporting international terrorism" as it appears in the Official Airline Guide.

* * * * *

**PART 774—[AMENDED]**

3. Section 774.2(a)(1) is amended by adding the reference "GATS," immediately following the reference "G–NNR,".

Dated: July 7, 1992.

**James M. LeMunyon,**

*Acting Assistant Secretary for Export Administration.*

[FR Doc. 92–16193 Filed 7–10–92; 8:45 am]

BILLING CODE 3510–DT–M

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**International Trade Administration**

**19 CFR Parts 353 and 355**

**[Docket No. 920652–2152]**

**Antidumping and Countervailing Duties; Protection of Proprietary Information**

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Interim-final rule; request for comments.

**SUMMARY:** The International Trade Administration (ITA) is issuing interim-final regulations to permit parties to an antidumping or countervailing duty proceeding to file and serve the public version of a document containing business proprietary information one business day after the submitter files and serves the document containing business proprietary information. The regulations are intended to avoid inadvertent disclosures of business proprietary information and violations of administrative protective orders

issued by the ITA. Avoiding such inadvertent disclosures and violations will help to preserve the integrity and administrability of the antidumping and countervailing duty provisions of the Tariff Act of 1930, as amended. It will also improve the administration of the antidumping and countervailing duty laws by reducing the number of investigations of alleged violations, which could involve lengthy proceedings and may result in the imposition of sanctions.

**DATES:** Effective Date: July 13, 1992. Written comments will be considered in issuing final regulations if received not later than October 13, 1992.

**ADDRESSES:** Address written comments (10 copies) to Alan M. Dunn, Assistant Secretary for Import Administration, room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Comments should be addressed: Attention: Notice of Proposed Rulemaking/One-Day Lag. Each person submitting a comment should include his or her name and address, and give reasons for any recommendation.

**FOR FURTHER INFORMATION CONTACT:** Lisa B. Koteen, Senior Attorney, Office of the Chief Counsel for Import Administration, (202) 377–0836.

**SUPPLEMENTARY INFORMATION:**

**Classification**

*Executive Order 12291*

The ITA has determined that the interim-final regulations concerning the filing and service of public versions of documents containing business proprietary information under 19 CFR parts 353 and 355 are not a major rule as defined in section (1)(b) of Executive Order 12291 (46 FR 13191 (1981)) because they will not: (1) Have a major monetary effect on the economy; (2) result in a major increase in costs or prices; or (3) have a significant adverse effect on competition (domestic or foreign), employment, investment, productivity, or innovation.

*Executive Order 12612*

These interim-final regulations do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612 (52 FR 41685 (1987)).

*Paperwork Reduction Act*

These interim-final regulations do not impose a collection of information requirement for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

*Administrative Procedure Act*

Because this rule is a rule of agency procedure or practice, under section 553(b)(A) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(A)) it may be issued and published in final form without giving notice of proposed rulemaking and opportunity for comment. Further, because it is a procedural rather than a substantive rule, under section 553(d) of the APA (5 U.S.C. 553(d)) it may and is being made immediately effective. However, the ITA is issuing the rule in interim-final form in order to invite and consider comments.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act does not apply to this rule because the rule was not required to be promulgated as a proposed rule before issuance as a final rule by section 553 of the APA (5 U.S.C. 553) or by any other law. Accordingly, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

**Background**

Section 777(b)(1)(A) of the Tariff Act of 1930, as amended, requires that, when parties submit business proprietary information in the course of antidumping or countervailing duty proceedings, they must accompany those submissions with either a non-proprietary (public) summary or an explanation of why the information cannot be summarized. 19 U.S.C. 1677f(b)(1)(A).

The ITA regulations currently require that, when factual information is submitted in connection with a proceeding, the submitter may request that the information, or any part of that information, be treated as proprietary. 19 CFR 353.32(a)(1); 19 CFR 355.32(a)(1). The submitter must place brackets around the information for which proprietary treatment is requested. 19 CFR 353.32(A)(2); 19 CFR 355.32(a)(2). An adequate public summary of all proprietary information must be incorporated into a public version of the document containing proprietary information, and the public version must be filed and served simultaneously with the non-public version. 19 CFR 353.32(b); 19 CFR 35.32(b). If the information is not capable of summary (which the submitter must explain) it may be deleted from the public version and the public version must include brackets to indicate that the information deleted is proprietary. See 19 CFR 353.32(b)(2); 19 CFR 355.32(b)(2).

Experience has proven that information is almost always susceptible of summarization, particularly numerical information, such as prices, costs, and the amounts of grants or loans. Under the current regulations, a public version of numeric data is adequate if it is indexed or presented within a range of ten percent of the actual figures or, if an individual portion of the information is voluminous, the summary is adequate if at least one percent of the portion is summarized as stated. 19 CFR 353.32(b)(1); 19 CFR 355.32(b)(1). The summarized data are placed within brackets to indicate that they represent proprietary information.

Properly summarizing proprietary information and ensuring that public versions are thoroughly sanitized takes time and requires close attention to detail. The pressure of deadlines for filing information in antidumping and countervailing duty proceedings increases the likelihood (1) that proprietary material in a non-public version will not be properly bracketed; (2) that a public version will contain proprietary material; or (3) that a person submitting proprietary information will serve a document containing that information on a party that has not been granted access to it under an administrative protective order (APO). Disclosure may thus be a simple matter of erroneous release of proprietary information or it may entail a violation of the terms of an APO.

The first type of disclosure can happen in several ways. For example, a person submitting proprietary information on behalf of a party to a proceeding files and serves a public version in which actual proprietary data appears, rather than an adequate public summary. As another example of this type of disclosure, brackets have been omitted from the non-public version, thus identifying proprietary information as public. As a third example, the submitter serves a non-public version of the document containing proprietary material on someone who does not have access to the proprietary data under an APO. Essentially, the material becomes public when it is erroneously filed or served in any of these ways. Normally the submitters have been able to retrieve the document promptly after the disclosure has been discovered. Nevertheless, such disclosures have the potential to harm the party whose proprietary information has been disclosed.

The second type of disclosure is described by the situation in which an individual (normally, counsel to a party to a proceeding), who has obtained access to business proprietary information pursuant to an APO, discloses the information. Such

disclosure constitutes a violation of the terms of the APO. See 19 CFR 353.34; 19 CFR 355.34. 19 CFR part 354 governs the procedures for investigating alleged violations and for imposing sanctions if a violation has indeed occurred.

The ITA has found that a significant proportion of APO violations occur because an individual who has obtained access to business proprietary information under APO either has failed to sanitize properly a public version of a proprietary document or has served the non-public version on a person who has not been granted access to the proprietary information. Although these violations are normally inadvertent, they are violations nonetheless and the ITA must investigate and impose appropriate sanctions.

**Explanation of the Interim-Final Rules**

The kinds of disclosures described in the Background section of this notice tend to occur under the press of filing deadlines. To lessen the possibility of public disclosure of business proprietary information, the ITA is allowing parties an extra business day after submitting proprietary information in which to submit public versions of the documents containing such information, with certain specified exceptions. Furthermore, parties will have the added protection that bracketing in non-public versions does not become final until one business day after the document is submitted.

The United States International Trade Commission (ITC), which determines injury to the domestic industry in antidumping and countervailing duty investigations, allows parties to submit public versions one business day after submitting documents containing proprietary information. 19 CFR 207.3(c). Since 1991 the ITC regulations have also provided that bracketing will not be final for one business day. *Id.* The ITC regulations have apparently been implemented successfully and have created no difficulties for either the ITC or the parties. The Department is proposing to promulgate a rule comparable to the ITC's regulation.

A section-by-section explanation of the revisions follows. Because the antidumping and countervailing duty regulations with respect to submission and disclosure of information are parallel, the explanations of the respective provisions are combined.

Under the new procedure, parties must continue to file the business proprietary versions of their documents on the deadline for filing such documents. The amendments to paragraphs (a) and (b)(4) of §§ 353.31 and 355.31 provide exclusions from the general time limits and the time limits for questionnaire responses for public versions of most documents submitted in the course of antidumping or countervailing duty proceedings. This exclusion covers all public versions, except for those specified in paragraph (b)(3) of §§ 353.32 and 355.32.

The amendment to paragraph (g) of §§ 353.31 and 355.31 eliminates the requirement that parties must serve public summaries simultaneously when they submit proprietary information to the Department. APO versions, however, must still be served at the same time that documents containing proprietary information are submitted.

The non-public version of a document must be filed with business proprietary information enclosed in brackets and the following warning must appear on every page containing proprietary information: "Bracketing of proprietary information not final for one business day after date of filing." In accordance with the warning, parties are not permitted to discuss information contained in the document with anyone who does not have access to the information (either as its submitter or by virtue of an APO) until the bracketing becomes final. In the event that the submitter finds an error in the bracketing, the party is permitted to file and serve a corrected version of the proprietary document (or corrected replacement pages) one business day after the document had been filed. If the party that discovers the error is not the submitter, the party must notify the submitter immediately because the submitter only has one business day in which to file the corrected version or replacement pages. The amendment to this paragraph concludes with notice that the extra business day may not be used to make other changes in proprietary submissions. Any violation of this restriction could result in striking all or part of the document from the record.

The amendment to paragraph (b) of § 353.32 and 355.32 permits parties to file and serve public versions of documents containing proprietary information one business day after the non-public version is filed. Thus, the public versions would be available at the same time as the bracketing in the proprietary version becomes final.

The modification to the filing procedure has been successfully adopted by the ITC in response to concerns expressed by the bar. It should ease the task of counsel and other representatives of parties to proceedings by providing an extra day, after the proprietary information has been submitted, in which to concentrate on properly sanitizing the submission, both in terms of the bracketing in the document filed and in terms of preparing proper summaries of proprietary information.

**Drafting Information**

The principal author of this document is Lisa B. Koteen, Senior Attorney, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce.

**List of Subjects in 19 CFR Parts 353 and 355**

Business and industry, Foreign trade, Imports, Trade practices.

Dated: June 3, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

For the reasons stated, 19 CFR part 353 and 355 are amended as follows:

**PART 353—[AMENDED]**

1. The authority citation for part 353 continues to read as follows:

Authority: 5 U.S.C. 301 and subtitle IV, parts II, III, and IV of the Tariff Act of 1930, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. No. 96–39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. No. 98–573, 98 Stat. 294, and Title I, subtitle C, part II of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. 1107 (1988).

2. Section 353.31 is amended by revising paragraphs (a)(1) introductory text, (b)(4), and (g) introductory text to read as follows:

**§ 353.31 Submission of factual information.**

(a) *Time limits in general.* (1) Except as provided in § 353.32(b) and paragraphs (a)(2) and (b) of this section, submissions of factual information for the Secretary's consideration shall be submitted not later than:

* * * * *

(b) *Questionnaire responses and other submissions on request.*

* * * * *

(4) Except as provided in § 353.32(b) and subject to the other provisions of paragraph (b) of this section, questionnaire responses in administrative reviews must be submitted not later than 60 days after the date of receipt of the questionnaire.

* * * * *

(g) *Service of copies on other parties.* With the exception of petitions, proposed suspension agreements submitted under § 353.18(g)(1)(i), and factual information submitted under

§ 353.32(a) that is not required to be served on an interested party, the submitter of a document shall, at the same time, serve a copy of the document on all interested parties on the Department's service list by first class mail or personal service. In addition, where proprietary information is involved, the submitter shall serve the following administrative protective order versions.

* * * * *

3. Section 353.32 is amended by revising paragraphs (a)(2) and (b) introductory text and adding paragraphs (a)(3) and (b)(3) to read as follows:

**§ 353.32 Request for proprietary treatment of information.**

(a) *Submission and content of request.*

* * * * *

(2) The submitter shall identify proprietary information on each page by placing brackets around the proprietary information and clearly stating at the top of each page containing such information "Proprietary Treatment Requested" and the warning "Bracketing of proprietary information not final for one business day after date of filing." The bracketing becomes final one business day after the date of filing of the document, i.e., at the same time as the nonbusiness proprietary version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. After the bracketing becomes final, recipients may divulge the pubic version of the document to anyone not subject to the administrative protective order. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the business proprietary document at the same time as the nonbusiness proprietary version is filed. No changes to the document other than bracketing and deletion of business proprietary information are permitted after the deadline. Failure to comply with this paragraph may result in the striking from the record of all or a portion of a submitter's document.

(3) The submitter shall provide a full explanation why each piece of factual information subject to the request is entitled to proprietary treatment under § 353.4. The request and explanation shall be a part of or securely bound with the document containing the information.

(b) *Public summary.* Except as provided in paragraph (b)(3) of this section, not later than one business day after submitting information for which proprietary treatment is requested, any person who requests proprietary treatment shall provide to the Secretary.

* * * * *

(3) All requests for proprietary treatment of information contained in petitions submitted under § 353.12 and proposed suspension agreements submitted under § 353.18(g)(1)(i) shall be accompanied by a public summary and statement described in paragraphs (b)(1) and (b)(2) of this section.

**PART 355—[AMENDED]**

4. The authority citation for part 355 continues to read as follows:

**Authority:** 5 U.S.C. 301, and subtitle IV, parts II, III, and IV of the Tariff Act of 1930, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. No. 96–39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. No. 98–573, 98 Stat. 294, and Title I, subtitle C, part II of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. 1107 (1988).

5. Section 355.31 is amended by revising paragraphs (a)(1), (b)(4), and (g) introductory test to read as follows:

**§ 355.31 Submission of factual information.**

(a) *Time limits in general.* (1) Except as provided in paragraphs (a)(2) and (b) of this section, submissions of factual information for the Secretary's consideration shall be submitted not later than:

* * * * *

(b) *Questionaire responses and other submissions on requests.*

* * * * *

(4) Except as provided in § 355.32(b) and subject to the other provisions of paragraph (b) of this section, questionnaire responses in administrative reviews must be submitted not later than 60 days after the date of receipt of the questionnaire.

* * * * *

(g) *Service of copies on other parties.* With the exception of petitions, proposed suspension agreements submitted under § 355.18(g)(1)(i), and factual information submitted under § 355.32(a) that is not required to be served on an interested party, the submitter of a document shall, at the same time, serve a copy of the document, on all interested parties on the Department's service list by first class mail or personal service. In addition, where proprietary information is involved, the submitter shall serve the following administrative protective order versions:

* * * * *

6. Section 355.32 is amended by revising paragraphs (a)(2) and (b) introductory text and adding paragraphs (a)(3) and (b)(3) to read as follows:

**§ 355.32 Request for proprietary treatment of information.**

(a) *Submission and content of request.*

* * * * *

(2) The submitter shall identify proprietary information on each page by placing brackets around the proprietary information and clearly stating at the top of each page containing such information "Proprietary Treatment Requested" and the warning "Bracketing of proprietary information not final for one business day after date of filing." The bracketing becomes final one business day after the date of filing of the document, i.e., at the same time as the nonbusiness proprietary version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. After the bracketing becomes final, recipients may divulge the public version of the document to anyone not subject to the administrative protective order. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the business proprietary document at the same time as the nonbusiness proprietary version is filed. No changes to the document other than bracketing and deletion of business proprietary information are permitted after the deadline. Failure to comply with this paragraph may result in the striking from the record of all or a portion of a submitter's document.

(3) The submitter shall provide a full explanation why each piece of factual information subject to the request is entitled to proprietary treatment under § 355.4. The request and explanation shall be a part of or securely bound with the document containing the information.

(b) *Public Summary.* Except as provided in paragraph (b)(3) of this section, not later than one business day after submitting information for which proprietary treatment is requested, any person who requests proprietary treatment shall provide to the Secretary:

* * * * *

(3) All requests for proprietary treatment of information contained in petitions submitted under § 355.12 and proposed suspension agreements submitted under § 355.18(g)(1)(i) shall be accompanied by a public summary and statement described in paragraphs (b)(1) and (b)(2) of this section.

[FR Doc. 92-16267 Filed 7-10-92; 8:45 am]
BILLING CODE 3510-DS-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 290

[DCAA 5410.8]

### Defense Contract Audit Agency (DCAA) Freedom of Information Act Program

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Defense Contract Audit Agency is amending its implementation of the Freedom of Information Act of 1974. This administrative change updates an address and telephone number in appendix B to part 290.

**EFFECTIVE DATE:** This change will be effective September 11, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dave Henshall, (703) 274-4400.

**SUPPLEMENTARY INFORMATION:** The Agency's final rule was published in the Federal Register on Tuesday, October 1, 1991 (56 FR 49685). It was amended on Thursday, November 7, 1991 (56 FR 56932) and on Monday, April 27, 1992 (57 FR 15254).

**List of Subjects in 32 CFR Part 290**

Freedom of information.

Accordingly 32 CFR part 290 is amended as follows:

### PART 290—DEFENSE CONTRACT AUDIT AGENCY (DCAA) FREEDOM OF INFORMATION ACT PROGRAM

1. The authority citation for 32 CFR part 290 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Appendix B to part 290 is amended as follows:

a. DCAA Western Regional Office is amended by revising the telephone number to read "(714) 228-7036".

b. DCAA Mid-Atlantic Regional Office is amended by revising the address to read "615 Chestnut Street, suite 1000, Philadelphia, PA 19106-4496".

Dated: July 8, 1992.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-16334 Filed 7-10-92; 8:45 am]
BILLING CODE 3810-01-M

## DEPARTMENT OF TRANSPORTATION

### Saint Lawrence Seaway Development Corporation

### 33 CFR Part 402

### Tariff of Tolls

**AGENCY:** Saint Lawrence Seaway Development Corporation, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. The Authority proposed to the Corporation and the Corporation agreed that the toll for materials for recycling will be changed to the lower bulk rate from the current, higher general cargo rate. These materials are relatively low valued. The Corporation and the Authority believe that making the rate for these materials more competitive will encourage use of the Seaway system for their transit. The Authority also proposed to the Corporation and the Corporation agreed that a new business incentive toll will be added for passenger vessels to encourage increased use of the Seaway system by that class of vessels.

**EFFECTIVE DATE:** July 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-0091.

**SUPPLEMENTARY INFORMATION:** Section 402.3 is amended by adding a new paragraph (b)(10) that includes within the definition of "bulk cargo", "material for recycling, scrap material, refuse and waste". This changes the toll for materials for recycling, materials that are relatively low valued, to the lower bulk rate from the current, higher general cargo rate. The Corporation and the Authority believe that making the rate for these materials more competitive will encourage use of the Seaway system for their transit, creating new business opportunities. Section 402.9 also is amended to add new paragraphs (f) through (i) to add a new business incentive toll for passenger vessels. This is similar to the new business incentive tolls for cargoes already contained within that section. The amendment provides a new business incentive toll for any passenger vessel that did not move through a Seaway lock during the 1988 and 1989 navigation seasons or the three navigation seasons immediately preceding the season in which a new business refund is submitted. Under this program, a qualifying passenger vessel receives a 25% discount of the passenger per lock charge each transit it carries 20 passengers or more beginning within the Seaway after the opening of navigation and before July 1 or beginning on or after October 1 in 1992 and 1993 and ending at the closing of navigation in those years and a 50% discount for each transit it carries 20 or more passengers beginning on or after July 1 and before October 1 in 1992 and 1993. It applies to both the Montreal-Lake Ontario and Welland Canal sections of the Seaway.

No comments were received in response to the March 6, 1992, (57 FR 8103) Notice of Proposed Rulemaking. An exchange of diplomatic notes between Canada and the United States approving this amendment occurred on June 30, 1992.

**Regulatory Evaluation**

This final rule involves a foreign affairs function of the United States, and therefore, Executive Order 12291 does not apply. This final rule has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the final rule is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

**Regulatory Flexibility Act Determination**

The Saint Lawrence Seaway Development Corporation certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls relates to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

**Environmental Impact**

This final rule does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly

affecting the quality of human environment.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation amends part 402—Tariff of Tolls (33 CFR part 402) as follows:

PART 402—[AMENDED]

1. The authority citation for 33 CFR part 402 continues to read as follows:

Authority: 68 Stat. 93, 33 U.S.C. 981–990.

2. A new paragraph (b)(10) is added to § 402.3 read as follows:

§ 402.3 Interpretation.

* * * * *

(b) * * *

(10) Material for recycling, scrap material, refuse and waste;

* * * * *

3. New paragraphs (f) through (i) are added to § 402.9 to read as follows:

§ 402.9 Incentive tolls.

* * * * *

(f) Notwithstanding anything contained in this Tariff, the charge per passenger per lock charged on new business shall be reduced by:

(1) Twenty-five percent for a transit beginning within the Seaway after the opening of navigation and prior to July 1 or the beginning on or after October 1 in the years 1992 and 1993 and ending at the closing of navigation in the years 1992 and 1993; or

(2) Fifty percent for a transit beginning on or after July 1 and prior to October 1 in the years 1992 and 1993.

(g) The reduction mentioned in paragraph (f) of this section shall be granted at the end of the applicable navigation season after payment of the full toll specified in the schedule under the tariff in § 402.8 of this part if:

(1) A vessel carries 20 passengers or more during a transit qualifying as new business; and

(2) An application for a new business refund is submitted to the Authority or the Corporation for audit by the Authority or the Corporation.

(h) For the purposes of this section, "new business" means: A passenger vessel that has not moved through a Seaway lock during the navigation seasons of 1988 through 1989 or the three navigation seasons immediately preceding the season in which a new business refund is submitted.

(i) When a passenger vessel's transit qualifies as new business, at any time during 1992 or 1993, it shall continue to qualify until the end of the 1993 navigation season as long as it carries a minimum of 20 passengers.

Issued at Washington, DC on July 6, 1992.

Saint Lawrence Seaway Development Corporation.

Stanford E. Parris,

*Administrator.*

[FR Doc. 92-16314 Filed 7-10-92; 8:45 am]

BILLING CODE 4910-61-M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-4151-4]

### Arizona; Final and Interim Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** The State of Arizona has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The Environmental Protection Agency (EPA) has reviewed Arizona's application and has made a decision, subject to public review and comment, that Arizona's hazardous waste program revisions, except corrective action, satisfy all of the requirements necessary to qualify for final authorization. However, EPA has determined that Arizona's corrective action provisions qualify the State for interim authorization only. Thus, EPA intends to approve Arizona's hazardous waste program revisions as follows: interim authorization for corrective action and final authorization for all other provisions. Arizona's application for program revision is available for public review and comment.

**DATES:** Final authorization for Arizona shall be effective September 11, 1992 unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Arizona's program revision application must be received by the close of business August 12, 1992.

**ADDRESSES:** Copies of Arizona's program revision application are available during the business hours of 9 a.m. to 5 p.m. at the following addresses for inspection and copying:

Arizona Department of Environmental Quality, Central Office, Office of Waste Programs, Waste Assessment Section, 3033 N. Central Avenue, Phoenix, Arizona 85012 Phone: 602/207-4213.

Arizona Department of Environmental Quality, Northern Regional Office, 2501 North 4th Street, suite #14, Flagstaff, Arizona 86004 Phone: 602/779-0313 or 1-800/234-5677.

Arizona Department of Environmental Quality, Southern Regional Office, 4040 East 29th Street, Tucson, Arizona 85711 Phone: 602/628-5651 or 1-800/234-5677.

U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, California 94105 Phone: 415/744-1510.

Written comments should be sent to April Katsura, U.S. EPA Region IX (H-2-2), 75 Hawthorne Street, San Francisco, California 94105 Phone: 415/744-2026.

**FOR FURTHER INFORMATION CONTACT:** April Katsura at the above address and phone number.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal hazardous waste program. Revisions to state hazardous waste programs are necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, state program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268, 124 and 270.

In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows states to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the substantially equivalent option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. All interim authorizations pursuant to section 3006(g)(2) expire on January 1, 1993. EPA assumes responsibility for that portion of the program on that date if a state has not received final authorization for those provisions.

#### B. Arizona

Arizona initially received final authorization for the base program on November 20, 1985. Arizona received authorization for revisions to its

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program on August 6, 1991. On June 21, 1991, Arizona submitted a program revision application for additional program approvals. Today, Arizona is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

On July 1, 1987, the Arizona Department of Environmental Quality (ADEQ) was established pursuant to Arizona law (Laws 1986, chapter 386, section 34). ADEQ was designated as the State agency for administering Arizona's hazardous waste management program. Prior to that time, the Arizona hazardous waste management program was the responsibility of the Department of Environmental Services of the Arizona Department of Health Services. The State's regulatory and statutory equivalency to the Federal RCRA program was in no way altered by this reorganization of the RCRA program to the new department.

On January 1, 1987, pursuant to Arizona law, the State's environmental quality rules which previously appeared in title 9 of the *Arizona Official Compilation of Administrative Rules and Regulations* were renumbered, amended and/or reprinted in title 18 of the *Arizona Administrative Code* (Laws 1986, chapter 232, section 4). Similarly on July 1, 1987, pursuant to Arizona law, The Arizona Hazardous Waste Management Act was transferred from title 36, *Arizona Revised Statute*, to title 49 and renumbered accordingly (Laws 1986, chapter 368, section 42). Neither the recodification and renumbering of Arizona's hazardous waste management rules nor the recodification and renumbering of the Hazardous Waste Management Act affects ADEQ's authority to implement RCRA.

Arizona's application did not include a provision addressing RCRA sections 3004(t) (2) and (3). Those provisions create a federal cause of action for any person with a claim arising from conduct for which financial assurances are required under RCRA. This action may be asserted directly against the guarantor of the assurances if (1) the owner or operator of the facility is in bankruptcy or other similar proceedings under federal law, or (2) the person with the claim is not likely to obtain jurisdiction over the facility owner/operator in either federal or state court. The cause of action created by section 3004(t) is always available in federal court and, therefore, is not delegable to states. States are welcome to create parallel causes of action viable in state courts, but to the extent that states do so, the state cause of action cannot limit the availability of the federal action.

EPA has reviewed Arizona's application, and has made an immediate final decision that Arizona's hazardous waste program revisions, except corrective action, satisfy all of the requirements necessary to qualify for final authorization. However, EPA has determined that Arizona's corrective action provisions qualify the State for interim authorization.

In order to receive final authorization for corrective action, a state's definitions of solid and hazardous wastes must be equivalent to EPA's definitions. The definition of hazardous waste must not exclude the hazardous components of mixed waste. (See clarification of Interim Status Qualification Requirements for the Hazardous Components of Radioactive Mixed Waste 51 FR 24504, dated July 3, 1986.) Therefore, mixed waste authorization must precede or be received concurrently with corrective action final authorization. A state cannot receive final authorization for corrective action without mixed waste authorization being approved and in effect.

The State of Arizona believes that its current regulations for mixed waste are not equivalent to and no less stringent than the federal requirements. The State is in the process of amending its hazardous waste rules and intends to apply for mixed waste authorization by fall 1992.

In the meantime, EPA intends to grant Arizona interim authorization for corrective action until the State adopts the necessary regulations and applies for mixed waste authorization. Under interim authorization, the State implements corrective action and its provisions operate in lieu of the federal requirements. The difference between interim authorization and final authorization is that interim authorization expires on January 1, 1993, and responsibility for that portion of the authorized program automatically reverts to EPA if the State has not received final authorization by that date.

EPA believes that Arizona's authcrization for mixed waste can be in effect by January 1, 1993. If Arizona does receive mixed waste authorization prior to January 1, 1993, the State will then automatically receive final authorization for corrective action at the time mixed waste authorization is granted. The **Federal Register** notice for the mixed waste approval will include an announcement of the corrective action final authorization. If authorization for mixed waste is not effective in Arizona by January 1, 1993, the interim authorization for corrective action automatically expires and corrective action reverts to EPA. If that occurred, EPA would publish a **Federal Register** notice announcing the reversion.

EPA intends to approve final authorization for Arizona's hazardous waste program revisions and interim authorization for corrective action. The public may submit written comments on EPA's immediate final decision up until August 12, 1992. Copies of Arizona's application for program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Arizona's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Arizona is applying for authorization for the following federal hazardous waste regulations:

| Federal requirement | State authority |
|---|---|
| Liability Coverage (51 FR 25350, July 11, 1986) | Arizona Revised Statute ARS) 49-922 (A)+(B); Arizona Administrative Code (AAC) R18-8-264(A) and 265(A). |
| Standards for Hazardous Waste Storage and Treatment Tank Systems (51 FR 25470, July 14, 1986, as amended on August 15, 1986 at 51 FR 29430) including both HSWA and non-HSWA portions. | ARS 49-922(A)+(B); AAC R18-8-260(C), 262 (A)+(D), 264(A), 265 (A)+(H), 270(A). |
| Corrections to listing of Commercial Chemical Products and Appendix VIII Constituents (51 FR 28296, August 6, 1986). | ARS 49-922(A)+(B); AAC R18-8-261(A). |
| Revised Manual SW-846; Amended Incorporation by Reference (52 FR 8072, March 16, 1987) | ARS 49-922(A)+(B); AAC R18-8-260(C)+270(A). |
| Closure-Post Closure Care for Interim Status Surface Impoundments (52 FR 8704, March 19, 1987) | ARS 49-922(A)+(B); AAC R18-8-265(A). |



| Federal requirement | State authority |
|---|---|
| Definition of Solid Waste Technical Corrections (52 FR 21306, June 5, 1987) | ARS 49-921 and 922(A)+(B); AAC R18-8-261(A) and 266. |
| Amendments to Part B Information Requirements for Disposal Facilities (52 FR 23447, June 22, 1987, as amended on September 8, 1987 at 52 FR 33936). | ARS 49-922(A)+(B); AAC R18-8-270(A). |
| List (Phase I) of Hazardous Constituents for Ground-Water Monitoring (52 FR 25942, July 9, 1987) | ARS 49-922(A)+(B); AAC R18-8-264(A) and 270(A). |
| Identification and Listing of Hazardous Waste (52 FR 26012, July 10, 1987) | ARS 49-922(A)+(B); AAC R18-8-261(A). |
| Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee (52 FR 44314, November 18, 1987) | ARS 49-922(A)+(B); AAC R18-8-2-264(A) and 265(A). |
| Hazardous Waste Miscellaneous Units (52 FR 46946, December 10, 1987) | ARS 49-922(A)+(B); AAC R18-8-260(C), 264(A) and 270(A). |
| Technical Correction; Identification and Listing of Hazardous Waste (53 FR 13382, April 22, 1988) | ARS 49-922(A)+(B); AAC R18-8-261(A). |
| Dioxin Waste Listing and Management Standards (50 FR 1978, January 14, 1985) | ARS 49-922(A)+(B); AAC R18-8-261(A). 264(A), 265(A), and 270(A). |
| Paint Filter Test (50 FR 18370, April 30, 1985) | ARS 49-922(A)+(B); AAC R18-8-264(A) and 265(A). |
| Small Quantity Generators (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); AAC R18-8-261(A), (D) ,(E)+(F). |
| Waste Minimization (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); AAC R18-8-262(A)+(F). 264(A) and 270(A). |
| Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); AAC R18-8-264(A) and 265(A). |
| Liquids in Landfills (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); AAC R18-8-264(A), 265(A), and 270(A). |
| Dust Suppression (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); AAC R18-8-266. |
| Double Liners (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); AAC R18-8-264(A) and 265(A). |
| Ground-Water Monitoring (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); AAC R18-8-264(A). |
| Cement Kilns (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); AAC R18-8-261(A) and 266. |
| Fuel Labeling (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); AAC R18-8-266. |
| Corrective Action (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); ACC R18-8-264(A) and 270(A). |
| Pre-Construction Ban (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); AAC R18-8-270(A). |
| Permit Life (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); AAC R18-8-270(A). |
| Omnibus Provision (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); AAC R18-8-270(A)+(G). |
| Interim Status (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); AAC R18-8-270(A). |
| Hazardous Waste Exports (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); ACC R18-8-262(A). |
| Exposure Information (50 FR 28702, July 15, 1985) | ARS 49-922(A)+(B); AAC R18-8-270(A). |
| Listing of TDI, DNT, and TDA Wastes (50 FR 42936, October 23, 1985) | ARS 49-922(A)+(B); AAC R18-8-261(A). |
| Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces (50 FR 49164, November 29, 1985, as amended on November 19, 1986 at 51 FR 41900 and April 13, 1987 at 52 FR 11819). | ARS 49-922(A)+(B); AAC R18-8-261(A)+(D), 264(A), 265(A), and 266. |
| Listing of Spent Solvents (50 FR 53315, December 31, 1985, as amended on January 21, 1986 at 51 FR 2702) | ARS 49-922(A)+(B); AAC R18-8-261(A). |
| Listing of EDB Wastes (51 FR 5330, February 13, 1986) | ARS 49-922(A)+(B); AAC R18-8-261(A). |
| Listing of Four Spent Solvents (51 FR 6541, February 25, 1986) | ARS 49-922(A)+(B); AAC R18-8-261(A). |
| Generators of 100 to 1000 kg Hazardous Waste (51 FR 10174, March 24, 1986) | ARS 49-922(A)+(B); AAC R18-260(C), 261(A), (D), (E) & (F), 262(A), (D), (E) & (H), 263(A), and 270(A). |
| Codification Rule, Technical Correction (51 FR 19176, May 28, 1986) | ARS 49-922(A)+(B); AAC R18-265(A). |
| Biennial Report Correction (51 FR 28556, August 8, 1986) | ARS 49-922(A)+(B); AAC R18-8-264(A)+(E) and 265(A)+(E). |
| Exports of Hazardous Waste (51 FR 28664, August 8, 1986) | ARS 49-922(A)+(B); AAC R18-8-261(A), (E) & (F), 262(A), (F) & (I) and 263(A). |
| Standards for Generators—Waste Minimization Certifications (51 FR 35190, October 1, 1986) | ARS 49-922(A)+(B); AAC R18-8-262(A). |
| Listing of EBDC (51 FR 37725, October 24, 1986) | ARS 49-922(A)+(B); AAC R18-8-261(A). |
| Exception Reporting for Small Quantity Generators of Hazardous Waste (52 FR 35894, September 23, 1987) | ARS 49-922(A)+(B); AAC R18-8-262(A)+(I-I). |
| Permit Application Requirements Regarding Corrective Action (52 FR 45788, December 1, 1987) | ARS 49-922(A)+(B); AAC R18-8-270(A). |
| Corrective Action Beyond the Facility Boundary (52 FR 45788, December 1, 1987) | ARS 49-922(A)+(B); ACC R18-8-264(A). |
| Permit Modification (52 FR 45788, December 1, 1987) | ARS 49-922(A)+(B); ACC R18-8-270(A)+(O). |
| Permit as a Shield Provision (52 FR 45788, December 1, 1987) | ARS 49-922(A)+(B); ACC R18-8-270(A). |
| Permit Conditions to Protect Human Health and the Environment (52 FR 45788, December 1, 1987) | ARS 49-922(A)+(B); AAC R18-8-270(A). |
| Post-Closure Permits (52 FR 45788, December 1, 1987) | ARS 49-922(A)+(B); AAC R18-8-270(A) & (C). |
| Sharing of Information with the Agency for Toxic Substances and Disease Registry (HSWA 3019(b)) | ARS 49-104(A)(4) and 49-926(A). |
| Hazardous and Used Oil Fuel Criminal Penalties (HSWA 3006(h), 3008(d), and 3014) | ARS 49-925; AAC R18-8-266. |
| Surface Impoundment Requirements: Compliance with new unit requirements by November 8, 1988 or stop hazardous waste activity for units existing prior to November 8, 1984 or becoming subject to RCRA pursuant to 3005(j)(6)(A) or (B) (HSWA 3005(j)(6)(A)). | ARS 49-922(A)+(B); ARS 49-142, 143+923; AAC R18-8-264(A), 265(A) and 270(A). |
| Surface Impoundment Requirements: Disposal of waste prohibited from land disposal under RCRA 3004(d), (e) or (g) (HSWA 3004(j)(11)). | ARS 49-922(A)+(B); AAC R18-8-268. |

In its application, Arizona has not requested authorization for land disposal restrictions. Therefore, at this time the State is not being authorized for that provision.

Arizona is applying for the HSWA regulations governing exports of hazardous waste (51 FR 28664, August 8, 1986). These rules contain provisions which are not delegable to states. Therefore, EPA will not be authorizing Arizona for the non-delegable provisions; EPA will continue to administer these provisions in accordance with federal requirements.

The non-delegable provisions are as follows:

—Per 40 CFR 262.53, an exporter of hazardous waste must notify EPA of its intended export.

—Per 40 CFR 262.53(b), the notification to export must be sent to EPA's Office of International Activities.

—Per 40 CFR 262.54(g)(1), the notification of a change in the original notification allowing shipment to a new consignee must be sent to EPA.
—Per 40 CFR 262.54(i), the additional copy of the manifest must be delivered to the U.S. Customs official at the point the hazardous material leaves the U.S.
—Per 40 CFR 262.55, exception reports must be filed with the EPA Administrator.
—Per 40 CFR 262.56(a), the annual reports addressed by 40 CFR 262.56(a) should be filed with the EPA Administrator.
—Per 40 CFR 262.57(b), the retention periods for recordkeeping are extended as requested by the EPA Administrator.
—Per 40 CFR 263.20(g)(4), transporters must give a copy of the manifest to a U.S. Customs official at the point of departure from the U.S.
—Per 264.12(a), the notification required by 40 CFR 264.12(a) must be sent to the Regional Administrator.
—Per 265.12(a), the notification required by 40 CFR 265.12(a) must be sent to the Regional Administrator.

Arizona agrees to review all State hazardous waste permits which have been issued under State law prior to the effective date of this authorization. Arizona agrees to then modify or revoke and reissue such permits as necessary to require compliance with the amended State program. The modifications or revocation and reissuance will be scheduled in the annual State Grant Work Plan.

Arizona is not being authorized to operate any portion of the hazardous waste program on Indian lands.

*C. Decision*

I conclude that Arizona's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Arizona is granted final and interim authorization to operate its hazardous waste program as revised.

Arizona is now responsible for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Arizona also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance with Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain federal regulations in favor of Arizona's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

**List of Subjects in 40 CFR Part 271**

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 18, 1992.

**John Wise,**

*Acting Regional Administrator.*

[FR Doc. 92-15825 Filed 7-10-92; 8:45 am]

BILLING CODE 6560-50-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1804 and 1852

### Change to NASA FAR Supplement Concerning Security Plan for Unclassified Automated Information Resources

**AGENCY:** Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This rule amends the NASA Federal Acquisition Regulation Supplement (NFS), chapter 18 of the Federal Acquisition Regulation System in title 48 of the Code of Federal Regulations. It provides for a solicitation provision and a contract clause to obtain contractor compliance with requirements for protecting unclassified automated information resources under Pubic Law 100-235, the Computer Security Act of 1987. This rule will require the apparently successful offeror, under NASA solicitations involving unclassified automated information resources, to provide a plan describing its automated information security program.

**EFFECTIVE DATE:** July 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Carol E. Bennett, Procurement Analyst, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington DC 20546. Telephone: (202) 453-8254.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sensitive information and automated information resources are important to the functioning of the Federal government. The protection of such information is integral to the government serving the public interest. Concern that Federal agencies were not adequately protecting sensitive information contained in computers caused Congress to enact the Computer Security Act. The Act provides for establishing minimum acceptable security practices for Federal computer systems that contain sensitive information and declares that improving the security and privacy of sensitive information in Federal computer systems is in the public interest. This requirement for an automated information security plan is being adopted under Section 6 of the Computer Security Act, Additional Responsibilities for Computer Systems Security and Privacy, consistent with the policy in OMB Circular A-130, OMB Bulletin 90-08, and 41 CFR 201-39.1001-1(i), Federal Information Resources Management Regulations.

**Availability of NASA FAR Supplement**

The NASA FAR Supplement, of which this final rule will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

**Regulatory Flexibility Act**

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the security plan will be required from only the apparently successful offeror and only when the solicitation involves a computer system covered by the Computer Security Act.

**Paperwork Reduction Act**

No public comments were received in response to the notice of proposed rulemaking published in 56 FR 19627, April 29, 1991.

However, as a result of the notice, OMB required NASA to submit an information collection request before promulgating the final rule. NASA submitted an OMB Inventory Correction Worksheet that increases the annual burden hours under the existing procurement report, "Information Collection from the Public in the Support of the NASA Acquisition Process, 2700–004," OMB Control Number 2700–0042 expires May 31, 1993.

**List of Subjects in 48 CFR Parts 1804 and 1852**

Government procurement.

**Don G. Bush,**

*Assistant Administrator for Procurement.*

1. The authority citation for 48 CFR parts 1804 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

**PART 1804—ADMINISTRATIVE MATTERS**

2. Subpart 1804.4 is amended as set forth below:

**1804.470–3 [Amended]**

a. Section 1804.470–3 is amended by designating the existing paragraph as paragraph "(a)", and by adding paragraph "(b)" to read as follows:

(a) * * *

(b) The requiring activity is also responsible for determining to what extent a contractor security plan for unclassified automated information resources will be required and evaluating and recommending approval of prospective contractors' automated information security plans.

**1804.470–4 [Amended]**

b. Section 1804.470–4 is amended by removing the word "the" at the beginning of the paragraph and inserting in its place "(a) Except as provided in paragraph (b) of this section, the", and by adding paragraph (b) to read as follows:

(a) * * *

(b) The clause prescribed in paragraph (a) of this section may be excluded from any contract when the requiring activity, in concert with its computer security manager, recommends that a security plan for unclassified automated information resources be submitted by the apparently successful offeror after notification of selection but before contract award. Under these circumstances, the contracting officer shall insert the provision at 1852.204–77, Submission of Security Plan For Unclassified Automated Information Resources, in solicitations and the clause at 1852.204–78, Security Plan For Unclassified Automated Information Resources, in contracts. The provision may be modified to identify specific information that is to be included in the plan. The clause may be modified to omit reference to the provision when the solicitation did not include the provision. The contracting officer shall incorporate the approved plan into the contract by reference as provided for in clause 1852.204–78.

**PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. Part 1852 is amended as set forth below:

**1852.204–76 [Amended]**

a. In the prescription for the clause at 1852.204–76, revise "1804.470–4" to read "1804.470–4(a)".

**1852.204–77, 1852.204–78 [Added]**

b. Sections 1852.204–77 and 1852.204–78 are added to read as follows:

**1852.204–77 Security plan for unclassified automated information resources.**

As prescribed in 1804.470–4(b), insert the following provision:

**Submission of Security Plan For Unclassified Automated Information Resources (Jan 1992)**

(a) The apparently successful offeror shall provide a plan, for Contracting Officer approval prior to award, that describes its automated information security program. The plan shall be submitted no later than thirty days after receipt of the Contracting Officer's written request. The plan shall address the security measures and program safeguards which will be provided to ensure that all information systems and resources acquired and utilized in the performance of the contract by contractor and subcontractor personnel:

(1) Operate effectively and accurately;

(2) Are protected from unauthorized alteration, disclosure, or misuse of information processed, stored, or transmitted;

(3) Can maintain the continuity of automated information support for NASA missions, programs, and functions;

(4) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the system's integrity and accuracy; and

(5) Have appropriate technical, personnel, administrative, environmental, and access safeguards.

(b) This plan, as approved by the Contracting Officer, will be included in any resulting contract for contractor compliance.

(End of provision)

**1852.204–78 Security plan for unclassified automated information resources.**

As prescribed in 1804.470–4(b), insert the following clause:

**Security Plan for Unclassified Automated Information Resources (Jan 1992)**

In addition to complying with any functional and technical security requirements set forth in the Schedule and the clauses of this contract, the Contractor shall comply with the Unclassified Automated Information Resources Security Plan submitted pursuant to provision 1852.204–77, Submission of Security Plan For Unclassified Automated Information Resources, as approved by the Contracting Officer.

(End of clause)

[FR Doc. 92–16130 Filed 7–10–92; 8:45 am]

BILLING CODE 7510–01–M

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**48 CFR Part 1834**

## Interim Changes to NASA FAR Supplement Streamlining the Major System Acquisition Process by Eliminating the Requirement for a Formal Solicitation Between Each Phase of the Procurement

**AGENCY:** Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** NASA has revised the NASA FAR Supplement, part 1834, to provide for selection/down-selection between phases of a Major System Acquisition utilizing a streamlined approach which eliminates the current NASA requirement to provide a new, formal solicitation for each phase of the acquisition.

**DATES:** The interim rule is effective July 13, 1992. Comments are due not later than August 12, 1992.

**ADDRESSES:** Comments should be addressed to Ms. Barbara Connelly-Fratzke, NASA Headquarters, Office of Advanced Procurement Planning Division (Code HX), Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Connelly-Fratzke, Telephone: (202) 453–2054.

**SUPPLEMENTARY INFORMATION:**

**Background**

In an attempt to streamline the Major System Acquisition process, and in particular to avoid major time lapses between phases, NASA has revised

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NASA FAR Supplement part 1834 to eliminate the requirement for a new, formal solicitation between each phase of the Major System procurement. Implementation of full and open competition requirements of the Competition In Contracting Act (CICA) has previously been interpreted within NASA to require a new, formal solicitation for each phase of the acquisition. This interpretation has not been universal among Government agencies. The Department of Defense has conducted phased procurement (referred to as a progressive competition) for a number of its major systems. These progressive competitions contemplated full and open competition for the initial phase with sequential down-selection, from among the successful preceding phase contractors, for the remaining phases. This procedure constituted a continuation of the initial full and open competition, as each subsequent phase was synopsized in the Commerce Business Daily (CBD) inviting all capable firms to participate in each phase of the procurement. The original Sources Sought synopsis stated the Government's intent to conduct a progressive competition for the major system, with down-selection from among the successful contractors of the preceding phase. All other prospective offeror(s) would be required to demonstrate their design and/or concept, to the same level of maturity, and be given all of the solicitation information necessary to compete for the next phase, e.g., the initial phase(s) solicitation(s), the selection criteria for the next phase, all preceding phase(s) system performance requirements necessary to demonstrate the same level of maturity, and any proposal preparation instructions, etc. In a phased competition Contractors are effectively qualified for consideration of awards in subsequent phases by successfully demonstrating the system performance requirements of the preceding phase(s).

**Availability of NASA FAR Supplement**

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

**Regulatory Flexibility Act**

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This proposed revision to the regulation falls in this category. NASA certifies that this interim rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

**Paperwork Reduction Act**

This interim rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

**List of Subjects in 48 CFR Part 1834**

Government procurement.

**Don G. Bush,**

*Assistant Administrator for Procurement.*

2. Part 1834 is revised to read as follows:

## PART 1834—MAJOR SYSTEM ACQUISITION

**Authority:** 42 U.S.C. 2473(c)(1).

**1834.002 Policy.**

NASA's implementation of OMB Circular No. A–109, Major System Acquisitions, and FAR Part 34, Major System Acquisition, is contained in NASA Management Instruction (NMI) 7100.14, Major System Acquisitions. This part addresses selection/down-selection procedures for phased-type procurement of major systems.

**1834.005–1 Competition.**

(a) In procurements subject to the provisions of OMB Circular No. A–109, and NMI 7100.14, or other similar phased-type procurements, it is NASA policy to insure competition in the selection of contractors for award. Phase A—Preliminary Analysis, is for analysis of alternate overall project concepts for accomplishing a proposed agency technical objective or mission; Phase B—Definition, includes detailed study, comparative analysis, and preliminary system design directed towards refining the concept(s); Phase C—Design, includes the detailed definition of final objectives and project concept(s), system design, with mock-ups and test articles of critical systems and subsystems; Phase D—Development/Operations, covers final hardware design and development, fabrication, test, and project operations. Each phase of the acquisition can be contracted for separately or combined based on the acquisition strategy, e.g., A, B, A/B, C, B/C, D, or C/D. In such procurements, where the initial phase is subject to full and open competition and all offerors are made aware that a progressive competition is being conducted, involving a continuous process of down-selection between phases, then the subsequent phase(s) awards are considered to be a continuum of the original competition and the entire process is considered full and open competition. To assure the full exploration of alternate solutions to agency mission needs, each phase of the acquisition, must be synopsized in the Commerce Business Daily (CBD) in accordance with FAR 5.201 and must solicit all known potential sources. In addition to the other information required by FAR 5.201, each synopsis must state that the Government plans to conduct a phased-type procurement involving a progressive competition and the Government's expectations are that only offeror(s), participating in the preceding phase, will be capable of successfully competing for the subsequent and future phase(s); however, all responsible sources may submit a proposal which shall be considered by the agency. The synopsis must identify the preceding phase contractor(s) and advise that any other potential offeror(s), desiring to enter the competition, must otherwise demonstrate they meet the same level of design maturity as the successful contractor(s) from the preceding phase(s). The synopsis must also state that NASA reserves the right to make a down-selection for the next phase(s), when and if appropriate, without the issuance of a new, formal solicitation(s).

(b) To allow for down-selection for the follow-on phase(s), without the issuance of a new, formal solicitation, the contracts for each phase must contain a requirement or an option to deliver proposals for the next phase and must include the selection criteria which NASA will apply to the next phase proposals. Proposals should be required in sufficient time to avoid time lapses between phases. If a prospective offeror, other than the preceding phase contractor(s), requests a solicitation, the contracting officer shall provide all the material furnished to the preceding phase contractor(s), necessary to submit a proposal, including any solicitation(s) issued in previous phase(s) for the system, the contract for the preceding phase(s) and any selection criteria included therein, and any other proposal preparation instructions provided to the preceding phase contractor(s).

(c) If the conditions in paragraphs (a) and (b) of this section are met, then each phase of a phased-type procurement is considered full and open competition.

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. 88–18; Notice 3]**

**RIN 2127–AC80**

### Federal Motor Vehicle Safety Standards; Air Brake Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule amends Federal Motor Vehicle Safety Standard No. 121, Air Brake Systems, with respect to electrical power sources for trailer antilock brake systems (ABS), including trailer converter dollies. In response to a petition by WABCO, the agency has conducted a rulemaking proceeding and decided that trailer antilock brake systems may be powered by either the stop lamp circuit or a separate circuit. Before this rulemaking, the standard required trailer antilock brake systems to be powered by the stop lamp circuit. The agency has also decided that a trailer antilock system must automatically receive power from the stop lamp circuit in the event that the separate circuit or circuits are not in use. The agency believes that the amendments will provide truck and trailer manufacturers and operators greater flexibility to develop and use new trailer ABS systems while ensuring safety and compatibility among ABS and non-ABS equipped trailers and tractors.

**DATES:** *Effective Date:* The amendments become effective August 12, 1992.

*Petitions for reconsideration:* Any petition for reconsideration of this rule must be received by NHTSA no later than August 12, 1992.

**ADDRESSES:** Any petition for reconsideration should refer to the docket and notice number set forth in the heading of this notice and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Soodoo, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–5892).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. General Information*

Until the amendments in this rulemaking take effect, Standard No. 121, Air Brake Systems, requires trailer antilock brake systems (ABS) to be powered from the trailer stop lamp circuit. Specifically, section S5.5.2, Antilock System Power-Trailers, reads as follows:

> On a trailer equipped with an antilock system that requires electrical power for operation, the power shall be obtained from the stop lamp circuit. Additional circuits may also be used to obtain redundant sources of electrical power.

The agency emphasizes that nothing in Standard No. 121 requires antilock brake systems on trailers. Instead, the provisions in S5.5.2 specify requirements which apply if a trailer is equipped with ABS.

The stop lamp circuit is powered through one of the pins on a seven-pin electrical connector. These connectors have been used between tractors and trailers under the system standardized within the United States trucking industry since the 1950s. The other six pins in the seven-pin electrical connector are for a ground return to the towing vehicle and for other circuits such as those for turn signals. Standard No. 121 permits additional circuits to be used to obtain "redundant" sources of electrical power.

The reason for requiring trailer ABS to be powered from the stop lamp circuit has been to ensure the compatibility of tractors and trailers, old and new. By compatibility, the agency means that tractors and trailers with and without antilock can be used together in the same combination. This includes compatibility between tractors and trailers and compatibility among trailers in multiple trailer combinations (i.e., tractors with two or more trailers). The stop lamp circuit was selected as the source of power since it is the only circuit that is always energized when the brakes are applied.

Until recently, equipping heavy vehicles with ABS has generated very little interest in the United States. However, new generation systems have become available and users in this country are becoming more interested in adopting them into their fleets. In some applications, ABS suppliers are recommending that trailer ABS systems can be more effectively powered through a separate electrical circuit instead of through the stop lamp circuit. This could be accomplished by using the unused seventh pin in the seven-pin connector, a separate ABS connector, or a new connector with additional pins or circuits. Multiplexing of the truck tractor to trailer electrical distribution system, which involves the use of an electronic technique for passing a number of different signals through a single wire lead with different frequencies used for the signals, is another method being considered.

Greater electricel power than the amount typically available from the stop lamp circuit may be needed to meet the increased powering demands of multiple-unit combinations, especially triples. In contrast, the stop lamp circuit provides sufficient power for antilock operation in most single trailer unit applications. Single trailer units comprise between 95 and 98 percent of the combination vehicle fleet.

*B. Petition*

On August 21, 1987, WABCO Automotive Products Group North American Operations (WABCO) petitioned the agency to amend section S5.5.2 to read as follows: "the power shall be obtained from *either* the stop lamp circuit or a separate electrical circuit specifically provided to power the trailer anti-lock system." (emphasis added) The petitioner stated that allowing the use of a separate circuit to power trailer ABS would provided better ABS performance, improve system reliability and durability, and provide more accurate and timely driver warning than requiring the stop lamp circuit to be the primary electrical power source for ABS. In supporting its request to permit a separate electrical circuit for powering trailer ABS, WABCO stated that the current provision in Standard No. 121, requiring the trailer ABS to be powered only through the stop lamp circuit, results in there being no power to the ABS until the brake pedal is depressed and the stop lamp circuit is energized. The petitioner also stated that the driver has no warning, other than during a brake application, as to whether or not the ABS is operational. WABCO stated that a separate electrical circuit would provide for continuous power to the ABS, which is believes is more desirable for safe and reliable ABS performance. Also, with the installation of ABS status lights in the vehicle cab, the driver could be provided continuous warning in the event of ABS failure.

WABCO acknowledged that it is common in the United States for individual trucks and tractors to pull a variety of trailers, and therefore tractors or trucks without a separate electrical circuit could be scheduled to operate

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with trailers equipped with WABCO antilock devices. To reduce problems associated with incompatibility, WABCO stated that it would provide a relay in the circuitry, thus enabling use of the separate electrical circuit if the towing vehicle is equipped to provide power separately. This device would allow the vehicle to accept power through the stop lamp circuit if the towing vehicle is not equipped with a separate electrical circuit. According to the petitioner, this feature would allow compatibility among all non-antilock equipped towing units and trailers equipped with antilock.

*C. Grant of Petition and Request for Comments*

NHTSA granted WABCO's petition in a letter dated March 17, 1988, stating that a further review of the issues raised in the petition appeared to be warranted. On October 12, 1988, NHTSA published in the **Federal Register** (53 FR 39751) a request for comments about possible amendments to Standard No.121's requirement that trailer ABS be powered from the stop lamp circuit.

In response to the October 1988 notice, NHTSA received comments from truck manufacturers, trailer manufacturers, brake manufacturers, motor carriers, and others about trailer antilock power requirements. Among the subjects addressed by commenters there were included comments about the possible advantages offered by separate electrical circuits; the types of circuits and connectors that could be used to obtain those advantages; the need for compatibility among different tractors and trailers; the effects on users that could occur from using different circuits and connectors; and the appropriate role for NHTSA in this area, including whether rulemaking is needed at this time.

A number of commenters, including Freightliner and Rockwell, supported optional use of separate electrical circuits to power trailer antilock systems. Freightliner stated that a separate circuit is the best means to ensure proper operation of trailer antilock systems, citing greater power capacity and improved reliability.

Other commenters opposed permitting optional use of separate electrical circuits to power trailer antilock systems. The American Trucking Associations (ATA) argued that permitting separate electrical circuits would result in significant compatibility problems, given that large numbers of existing tractors that are not equipped with the separate circuits would not be able to fully use antilock on certain future trailers.

A number of commenters argued that any regulation should continue to permit use of the stop lamp circuit for trailer antilock power, citing the need for compatibility.

*D. Notice of Proposed Rulemaking*

On May 3, 1991, NHTSA issued a notice of proposed rulemaking (NPRM) in which the agency proposed two alternative amendments concerning electrical power sources for trailer antilock brake systems. (56 FR 20401) Under the first alternative, the agency proposed requiring that all ABS-equipped trailers have a separate electrical circuit capable of providing full-time power to the antilock braking system. The agency also proposed that any towing trailer would be equipped with a connector at its rear, enabling it to make the separate ABS circuit available to the "towed trailer."Additionally, under this alternative, a backup power system through the stop lamp circuit would be required, as well as the capability of signalling an ABS failure to a towing vehicle. Under the second alternative, NHTSA proposed rescinding the existing requirement that trailer antilock systems be powered from the stop lamp circuit. Under this alternative, the agency would leave the selection of trailer ABS power sources to market forces.

These two alternative proposals were based on NHTSA's tentative conclusion that Standard No. 121's electrical power source requirements for trailer ABS should be amended to reflect the possible use in this country of a new generation of trailer ABS systems that use separate electrical circuits and the increasing use in the United States of multiple trailer combinations. The agency was concerned that the existing requirement might inhibit the use of some state-of-the-art trailer antilock systems that have more performance features, but also have higher power requirements.

Notwithstanding NHTSA's tentative conclusion that Standard No. 121's existing electrical power source requirements for trailer ABS systems should be revised, the NPRM explained that selecting new requirements posed a difficult decision. The agency was concerned that the existing requirements could inhibit use of the best safety technology currently available for trailer ABS systems. Nevertheless, the agency recognized that any amendment that permits use of that technology could result in compatibility problems.

The NPRM further explained that while the two alternatives differ significantly, neither would prohibit trailer antilock systems that are powered by separate electrical circuits. The agency accordingly believed that both alternatives were responsive to WABCO's petition. Since NHTSA tentatively concluded that trailer ABS systems powered by separate electrical circuits could offer more safety benefits than those powered by the stop lamp circuit, it tentatively concluded further that Standard No. 121 should not prohibit such systems. The NPRM explained that the agency's safety standards should not prevent innovations in safety technology.

The NPRM also posed questions related to the possible advantages, disadvantages, and implications resulting from adopting either alternative.

*E. Comments to the NPRM*

In response to the May 1991 NPRM, the agency received comments from truck manufacturers, brake manufacturers, the Truck Trailer Manufacturers Association (TTMA), trucking user groups, and a safety advocacy group, the Advocates for Highway and Auto Safety (Advocates). The commenters provided no clear consensus about which alternative proposal would provide a better system for trailer ABS powering. Several commenters, including ATA, Ford#, Midland-Grau, Paccar, the Motor Vehicle Manufacturers Association (MVMA), and Bendix viewed both proposed alternatives as being unacceptable.

Ford suggested a modification that it believed would maximize the benefits from ABS without discouraging the use of trailer ABS and without eliminating the benefits obtained from continued use of such systems. Specifically, Ford recommended that new approaches or powering trailer ABS through a separate circuit should be allowed but not mandated, provided that the systems incorporate the stop lamp circuit as a backup power source. ATA similarly requested that S5.5.2 be amended to permit, but not require, powering of the trailer ABS primarily by a separate electrical circuit, provided that the ABS could also be sufficiently powered by the stop light circuit.

Commenters provided mixed reactions to the first alternative which proposed requiring separate powering of ABS. Advocates and Midland supported this alternative, with Advocates claiming that this approach would improve performance by ensuring that adequate voltage would be delivered to all trailing units. Accordingly, Advocates favored requiring separate



circuits and connectors for voltage delivery to all trailers, a system which it believed was necessary to ensure fully redundant ABS operation. While Midland favored separate power for all units to ensure continuous power to the trailer ABS, it recommended that the regulation be simplified to avoid being needlessly design restrictive.

In contrast, Ford, Paccar, MVMA, Grote, Madison Associates, the Owner-Operator Independent Drivers Association (Owner-Operators), and Volvo opposed the first alternative, claiming that it was design restrictive. Paccar and Grote believed that this alternative would preclude manufacturers from designing new and improved ABS systems because any new system would have to be powered from the separate circuit. This course would act as a disincentive for developing alternate technologies such as multiplexing. Bendix, which did not support either proposal, stated that Alternative One would result in added costs and complexity, in incompatibility among old and new vehicles, and in increased maintenance problems associated with the additional electrical connections and circuits necessary to provide separate full time trailer antilock power. Bendix was also concerned that this proposed alternative would significantly increase ABS-related costs, thus inhibiting the voluntary use of ABS on trailers. Rockwell stated that while separate power for multiple units is currently feasible, it did not believe that this should be required at this time.

Commenters also had mixed reactions to Alternative Two which proposed rescinding the current stop lamp power requirements and letting market forces determine trailer ABS powering. Rockwell, Mack, Paccar, MVMA, Madison, International, Volvo, Grote, and Ford (but only if its intermediate plan was not accepted) favored this approach over Alternative One. However, these commenters indicated varying levels of support for a rescission, and some offered alternative requirements. Mack stated that rescinding the current requirements would allow the trucking industry freedom to develop the most appropriate power source for trailer ABS. In contrast, Advocates, Midland, Owner-Operators, and Bendix opposed rescinding the current requirements.

Commenters also addressed other issues relevant to this rulemaking, including compatibility, ABS on multiple trailers, maintenance, reliability, and cost. These comments will be discussed more fully in the section explaining the agency's decision.

## II. Agency Decision

*A. General Considerations*

NHTSA notes that this rulemaking raises the following primary issues: (1) How to specify requirements to best achieve the primary powering of ABS trailers for both single trailer and multiple trailer combinations, (2) the need to provide backup powering of ABS trailers that use a separate ABS power circuit for primary power in case that primary power is not available, and (3) the need to provide that some level of compatibility between new ABS and old or new non-ABS equipped units, and (4) the need to require a failure warning device. The agency notes that the requirements adopted in this notice apply to ABS-equipped trailer converter dollies as well as other ABS-equipped trailers. The agency's decisions, as explained below, are based on its analysis of the comments and other available information.

As for primary powering of trailer antilock brake systems, NHTSA has decided to amend Standard No. 121 to allow such systems to obtain their primary power from either the stop lamp circuit or a separate circuit. The agency believes that this approach will provide truck and trailer manufacturers and operators flexibility to develop and use new trailer ABS systems while ensuring safety and compatibility among ABS and non-ABS equipped trailers and tractors. By providing greater flexibility, the agency anticipates that more vehicle operators will decide to purchase trailers equipped with ABS. The agency believes that this decision will foster voluntary adoption of trailer ABS because it avoids specifying costly regulations that would act as disincentives for voluntarily equipping trailers and converter dollies with ABS.

For the near future, the agency anticipates that single trailers, which comprise over 95 percent of the combination fleet, will be adequately powered by the stop lamp circuit, while some multiple trailer combinations, especially triples, will need to be powered by a separate circuit. In time, the agency believes that a new connector system or other innovations will be developed to allow the same powering approach for both single and multiple trailer applications.

As for back-up powering, the agency has decided that the trailer ABS must automatically receive power from the stop lamp circuit, if the separate power circuit or circuits are not in use. The agency believes that by ensuring compatibility, this provision will facilitate the introduction of new trailer antilock systems while still ensuring that they function when the trailers are towed by tractors with or without ABS separate power provisions. In addition, by requiring an automatic back-up system, the agency will better ensure compatibility among new and existing vehicles, including trailers operated in mixed multiple trailer combinations (i.e., in which one trailer is ABS equipped and one or more trailers are not ABS equipped.)

As for providing a warning device to indicate an ABS malfunction, the agency has decided to address this issue in a more general rulemaking on braking stability and control that may be issued in the future instead of in this rulemaking responding to the WABCO petition. The agency believes that addressing the issue of warning indicators is also premature because trailer ABS is not being required at this time. It is more appropriate to address this and many other detailed aspects of equipping trailers with ABS in the more general rulemaking about whether to require ABS.

*B. Primary Power*

As explained above, Standard No. 121 currently requires a trailer equipped with ABS to receive its primary power through the stop lamp circuit. The NPRM proposed two alternative approaches related to the primary power source for trailer ABS. Alternative One proposed requiring all ABS-equipped trailers to have a separate electrical circuit, capable of providing full-time power to the antilock system. Alternative Two proposed rescinding the existing provisions requiring that trailer ABS be powered from the stop lamp circuit. The NPRM emphasized that neither alternative would prohibit trailer antilock systems from being powered by separate electric circuits.

Among the reasons specified in the NPRM for justifying the separate electrical circuit were that such circuits can provide greater power than the stop lamp circuit and can provide continuous power. As a result, the agency stated its tentative conclusion that such circuits would result in faster reaction time for ABS and also enable to continuous and automatic in-cab warning of trailer ABS failure. The agency was concerned that the stop lamp circuit would not be capable of powering multiple ABS systems in multiple trailer combinations.

The NPRM also discussed other issues related to powering trailer ABS, including the compatibility of new ABS trailers with existing tractors and

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trailers, the adverse safety consequences in terms of braking performance and performance of other vehicle systems that are dependent on towing vehicle electrical power such as lighting, the need to standardize connectors, the appropriate peak current capacity, and the effect of requirements on multiple trailer combinations.

Commenters addressed various issues related to how best to specify the primary powering for trailer ABS. Several commenters opposed requiring a separate circuit, citing problems with compatibility, cost, and design restrictiveness. Ford stated that manufacturers should be afforded flexibility to develop trailer ABS systems instead of being faced with design restrictive criteria. Ford believed that its suggested approach would place competitive pressures on other manufacturers to develop trailer ABS systems by getting dual circuit systems in operation. In contrast, Ford stated that the first alternative, which proposed mandating a separate circuit, could result in lowering the installation rate for trailer ABS because costs would increase. In addition, Ford was concerned that this approach could discourage development of alternative trailer ABS designs because any new design would have to incorporate a separate circuit. Ford further believed that is recommended approach would allow for a separate circuit capable of providing enough power to activate the antilock system when used in double and triple trailer configurations.

ATA stated that antilock systems on single trailers could be effectively powered by the stop lamp circuit. Accordingly, it viewed the high power performance of a separate circuit as being unnecessary or the vast majority of trailers. In addition, ATA commented that the power needs for multiple trailers might be adequately resolved by improving the wiring or installing light emitting diodes (LEDs). Accordingly, ATA concluded that there were less costly alternatives to ensure the powering of multiple trailers. MVMA favored a more general requirement, stating that an overly specific design solution would discourage inventiveness and creativity in the design of new and better trailer ABS systems in the future. Similarly, PACCAR stated that requiring the primary power to be provided through a separate circuit would preclude new and improved systems that could continue to use the stop lamp circuit of the existing seven-pin connector. Bendix was also concerned that the proposal to require a separate circuit was too design restrictive because it does not provide alternative ways for achieving trailer antilock power. Bendix believed that the agency did not demonstrate a convincing safety need or rationale to justify revising the existing requirement which requires primary power through the stop lamp circuit.

Other commenters believed that the primary trailer ABS powering should be achieved through a separate electrical circuit, as proposed in Alternative One. Midland-Grau stated that such a configuration would provide continuous power to the trailer ABS, allowing the system to go through a self-diagnostic start-up check before the vehicle is moved and allowing adequate power to operate the ABS on double and triple trailer combinations. Advocates recommended full braking capacity of all trailers equipped with ABS on multiple trailers, and thus favored ABS powering through a separate circuit instead of the stop lamp circuit which it believed provides inadequate electrical power for current ABS designs and for multiple combination trailers. Advocates stated that stop lamp powering would result in the rear trailers receiving insufficient electrical power for ABS operation, and thus the second and third trailer would have an increased likelihood of lock-up. Although Advocates acknowledged that 95 to 98 percent of current truck trailers are single (non-towing) trailers, it state that multiple combination trailers pose a significant problem because multiple trailers are disproportionately involved in fatal crashes.

After reviewing the comments and other available information, NHTSA as decided to amend Standard No. 121 to allow trailer antilock brake systems to obtain their primary power through either the stop lamp circuit or a separate circuit. The agency agrees with comments by several manufacturers and the ATA that this approach will provide truck and trailer manufacturers and operators the flexibility needed to develop and use new trailer ABS system. By providing such flexibility, the agency anticipates that more vehicle operators will decide to purchase ABS-equipped trailers. This is consistent with the agency's attempt to foster voluntary adoption of trailer ABS by avoiding the specification of costly regulations that would act as disincentives for voluntarily equipping trailers and converter dollies with ABS.

With respect to non-towing trailers which can only be operated in single trailer combinations, NHTSA anticipates that most will continue to be powered by the stop lamp circuit, at least until further innovations with the dedicated circuit are made. Even those commenters that support a separate circuit, such as Advocates, acknowledge that the stop lamp circuit typically provides adequate electrical power for single trailers, which constitute the vast majority of combination vehicles.

With respect to multiple trailer combinations, NHTSA notes that the systems to provide electrical power for such vehicles are still being developed and no one best way has been established. Accordingly, the agency has decided to promulgate a general requirement that provides maximum flexibility to the vehicle and brake manufacturers to develop safe and cost effective ABS powering systems. Under this approach, manufacturers could comply with the trailer ABS powering requirements by providing primary ABS power either through the stop lamp circuit or the separate circuit. Notwithstanding Advocates' contention that the separate circuit is the only way to ensure adequate ABS powering for multiple trailers, the agency agrees with ATA and Bendix that improving the wiring or installing LED lamps may permit the stop lamp circuit to provide adequate power for multiple trailers. If these or other innovations are successfully developed, adequate powering of multiple trailer combinations could be achieved in a more cost effective manner than through a dedicated circuit.

In response to Advocates' concern that powering multiple trailers through the stop lamp circuit would result in a significant safety problem, NHTSA believes that Advocates overstates the risk to safety. First, as Advocates acknowledges, only between three and five percent of the tractor trailer fleet are multiple trailer combinations. Although Advocates contends that such vehicles are disproportionately represented in fatal crashes, it does not explain how adopting Alternative One would significantly decrease the number of fatal crashes. The agency notes that if inadequate power is provided for the trailer ABS to function as designed, then the electronic control unit should shut down the ABS, with the trailer reverting to the braking level of non-ABS trailers. Second, nothing in today's amendments preclude manufacturers from equipping their vehicles with a separate circuit to power trailer ABS; and the agency anticipates that since ABS systems represent a significant cost option, the typical purchaser of a trailer with ABS will install a dedicated circuit if this action significantly increases the benefits of the trailer ABS system.



Third, the agency is reluctant to require a separate circuit since comments indicate that it may be possible to redesign the stop lamp circuit to permit adequate powering even for multiple trailer combinations. Future improvements may occur through better wiring and connectors and through reduced power requirements for lighting and stop lamps. Fourth, even if a trailer without ABS capability operates in a mixed multi-trailer combination, the tractor and the other trailer or trailers may have operational ABS. Since a combination vehicle with some ABS capability provides better braking performance than one with no ABS capability, the agency believes that it is better to have some operational ABS than none at all. Based on the above considerations, NHTSA has decided to allow (but not mandate) the use of a separate circuit to power trailer ABS.

*C. Backup Power From Stop Lamp Circuit*

As explained above, Standard No. 121 currently requires trailer ABS to receive its primary power through the stop lamp circuit and expressly permits additional circuits to operate on redundant sources of electrical power. The purpose of permitting redundant power sources is to ensure compatibility among vehicles in combinations. As explained above, compatibility means that tractors and trailers with and without antilock can be used together in the same combination.

In its petition, WABCO acknowledged that, because individual trucks and tractors frequently are scheduled to pull a variety of trailers, tractors without a separate electrical circuit could be scheduled to operate with WABCO antilock equipped trailers. To decrease the potential for incompatibility problems, WABCO indicated their intention to provide a relay in the circuitry that would enable use of the separate electrical circuit for towing vehicles equipped with such a separate circuit, but that would also accept power through the stop lamp circuit for towing vehicles not equipped with the separate electrical circuit. According to the petitioner, this feature would allow compatibility among all non-antilock equipped towing units and trailers equipped with antilock.

Throughout this rulemaking, NHTSA has been very concerned about how best to ensure compatibility among towing vehicles and trailers. The NPRM, in Alternative One, proposed requiring that the antilock system automatically receive backup power from the stop lamp circuit in the event that the separate electrical circuit did not provide electrical power. The agency tentatively concluded that requiring such a backup powering system would help alleviate problems with incompatibility among new and old vehicles. The NPRM posed several questions about how the proposed requirements should be specified to ensure compatibility when new units would be towed in combination with old units.

The NPRM noted that partial compatibility would be ensured under the proposal's first alternative because all trailer antilock brake systems would be required to operate from the stop lamp circuit in the event that the dedicated electrical circuit did not provide electrical power, e.g., in situations where the ABS-equipped trailer is pulled by a towing vehicle that is not equipped with separate electrical circuits. Nevertheless, NHTSA recognized that any alternative that permits use of separate circuits would not fully resolve compatibility concerns. For instance, a single trailer might have an ABS system that required greater power than is available from the stop lamp circuit. Similarly, trailers used in doubles and triples combinations might require greater power than is available from the stop lamp circuit.

Several commenters, including Ford, MVMA, and Bendix, stated that maximizing compatibility was an important consideration in determining trailer ABS powering requirements. MVMA stated that the agency should require the stop lamp circuit to be available as a back-up power source to avoid tractor trailer incompatibility situations.

Several commenters addressed the need for requiring an automatic backup power source from the stop lamp circuit. Ford stated that such an approach would maximize the benefits of new ABS technology without discouraging the use of trailer ABS and without eliminating the current benefits from the continued use of such systems on the roads. Midland-Grau stated that all its trailer ABS use a second permanent powering connector with automatic backup through the stop lamp circuit. Advocates favored having the ABS of combination vehicles fully redundant if the primary circuit failed during over-the-road use. To achieve full stop lamp circuit redundancy of the ABS systems in multi-trailer trucks. Advocates recommended that the agency require multiplexing or other design enhancements of the stop-lamp circuit.

Grote stated that eventually a backup powering circuit might not be necessary since multiplexing might be able to ensure compatibility without the need for a dedicated ABS circuit.

After reviewing the available information, NHTSA has decided to amend Standard No. 121 to require the ABS-equipped trailers automatically receive power from the stop lamp circuit, in situations where the separate power circuit or circuits are not in use (i.e., if a separate circuit is used for primary power, the system must revert to the stop lamp circuit for backup in the event that the separate circuit is not powered or otherwise not in use.) The agency believes that this provision will facilitate the introduction of new trailer antilock brake systems while still ensuring their safety and compatibility. Specifically, by providing an automatic back-up system for trailer ABS powering, the agency will better ensure compatibility among new and existing vehicles, including trailers operated in mixed multiple trailer combinations.

*D. Failure Warning*

Standard No. 121 does not currently have requirements to provide an indication when the trailer ABS has an electrical failure or is otherwise inoperable. The NPRM, in Alternative One, proposed requiring that all ABS-equipped trailers (including trailer converter dollies) have a dedicated electrical circuit capable of signaling an electrical malfunction in the trailer antilock system to a towing vehicle.

Several commenters addressed the need for and placement of a failure indicator. Ford and Midland-Grau supported having an ABS malfunction indicator on the trailer's exterior. Midland-Grau believed that the warning should be standardized to reduce confusion about the operating status of various types of trailer ABS. Standardization would include such aspects as the location, type, and color of trailer mounted lights. Advocates favored a continuously lit warning monitor in the tractor cab that would indicate the operational status of ABS before pedal application.

In contrast, other commenters recommended that the agency not require a warning indicator at this time. ATA believed that requiring an in-cab trailer antilock failure warning was neither necessary nor desirable, claiming that drivers do not need to know the operational status of the antilock system on their vehicles when driving. PACCAR, in disagreeing with the proposal's underlying premise that a constant power source was needed to adequately facilitate the warning lamps, explained that an acceptable system could be designed using the stop lamp

circuit only. Bendix stated that the failure warning circuit should not be mandated unless the safety need could be demonstrated. It also stated that such a failure warning scheme should be considered on an individual vehicle basis.

After reviewing the comments, NHTSA has decided to address the need to provide a warning device that indicates an ABS malfunction in the more general rulemaking on braking stability and control, rather than in this rulemaking which responds only to the WABCO petition. The agency believes that addressing the issue of warning indicators here is premature because trailer ABS is not being required at this time. It is more appropriate to address this and many other detailed aspects of how ABS-equipped vehicles should be powered and failure warnings signalled in the more general rulemaking considering whether to require ABS. Among the other issues that will be considered in this future proposal are the types of indicators (e.g., self-contained indicators mounted on the trailer v. in-cab indicators), ways to standardize the electrical connectors and the circuitry, and electrical specifications for both ABS powering and failure indicators. In the interim, the agency urges the industry to arrive at a consensus about standardization for electrical connectors, circuitry, and warning indicators.

NHTSA emphasizes that this final rule is not the end of rulemaking about antilock brake systems on combination trailers and other heavy vehicles. The agency would consider adopting new requirements to reflect technological advances in ABS trailer powering. Among other things, the agency might reconsider the issues of primary ABS powering, backup powering, and ABS failure warning, if the agency were to require ABS. As the industry continues to develop ABS-equipped trailers, the agency anticipates that some degree of standardization will ensue. If such standardization of ABS and ABS related components becomes a reality, the agency would consider further rulemaking to ensure compatibility.

*E. Miscellaneous Issues*

1. Connectors

The NPRM explained that, while the connectors for additional electrical circuits should ultimately be standardized for maximum compatibility, the agency decided not to propose requiring a standardized connector at this time. At present, U.S. manufacturers are considering several connectors, including a connector standardized by the International Standardization Organization (ISO) and required by Economic Commission for Europe (ECE) and European Economic Community (EEC) regulations (see ISO Standard 7638, Road Vehicles—Brake Anti-lock Device Connector) and a "seven-plus" connector, i.e., a connector which is interchangeable with the current seven-pin connector but which includes additional circuits in an outer ring of additional contacts. In addition, several manufacturers are studying multiplexing to enhance ABS powering.

In the NPRM, the agency noted that the industry would probably settle on a standardized connector as manufacturers developed a new generation of antilock equipped trailers for the United States. The agency explained that if the industry failed to standardize a connector, resulting in a proliferation of incompatible connectors, the agency might then consider rulemaking to standardize the connector.

Several commenters, including MVMA, PACCAR, and Grote, stated that specifying a particular connector was a design restrictive condition.

As stated in the NPRM, NHTSA has decided not to specify a particular connector until the market-place addresses the use of different connectors because in time one type of connector may predominate. Notwithstanding the agency's reluctance to specify a connector, the agency may have to reconsider this issue in the future if there is a proliferation of different types of connectors.

*2. Electrical Specifications*

The NPRM proposed requiring that the peak current capacity of the circuit providing trailer antilock power be sufficient to provide at least 30 amperes to the modulator valve, and at least 2 amperes to the electronic control unit. The agency explained that this would be consistent with the specifications developed by the ISO for its connector, and would ensure that the circuits have sufficient power for available antilock systems.

Only Rockwell addressed the issue of specifying a value for the electrical capacity, recommending without explanation, a capacity of 35 amps.

As with the connectors, the agency has decided not to specify the electrical current capacity at this time. The agency believes that it is premature to specify the capacity, because that would reduce the flexibility in potential trailer ABS design innovations.

*3. Effective Date*

The NPRM proposed two different effective dates. The first alternative proposing to require trailer ABS powering by a separate electrical circuit would have become effective one year after the final rule's publication; optional compliance would have been permitted 30 days after the final rule's publication. The second alternative proposing to rescind the existing requirement that trailer antilock systems be powered from the stop lamp circuit would have become effective 30 days after publication.

As explained above, the final rule amends Standard No. 121 to allow trailer ABS powering by either a separate circuit or the stop lamp circuit. Prior to this rulemaking, the standard required trailer antilock systems to be powered by the stop lamp circuit. The final rule also specifies that a trailer antilock system must automatically receive power from the stop lamp circuit in the event that it receives no power from the separate circuit. The final rule thus provides truck and trailer manufacturers with greater flexibility to develop new trailer ABS systems without placing any new requirements on them. The agency has therefore determined that there is "good cause" to have an effective date 30 days after publication of the final rule. A longer leadtime is not necessary because this rulemaking provides an additional option to manufacturers and facilitates the introduction of certain trailer ABS powering systems, without imposing any new mandatory requirements on manufacturers. The public interest will be served by not delaying the introduction of new ABS systems that may provide better performance without having any negative impact on safety.

**Regulatory Impacts**

*A. Executive Order 12291*

NHTSA has analyzed this rulemaking and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency notes that the amendment allowing manufacturers the option of using a separate circuit on trailers (with a specific requirement for backup power through the stop lamp circuit) is optional; and therefore will not impose additional costs for manufacturers. Since there are no costs or other significant impacts, a Final Regulatory Evaluation is not necessary. The agency believes that the amendments will provide truck and

trailer manufacturers and operators with greater flexibility to develop and use new trailer ABS systems while ensuring safety and compatibility among ABS and non-ABS equipped trailers and tractors.

*B. Regulatory Flexibility Act*

NHTSA has also considered the impacts of this rulemaking under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Therefore, NHTSA has not prepared a regulatory flexibility analysis. The agency has determined that a significant number of the manufacturers of heavy air-braked trailers are small entities. However, there would be no impact on them from this rulemaking because the cost and complexity of trailer antilock systems built to comply with the requirements implemented by this notice would be the same as, and possibly less than, those for trailer antilock systems built to comply with the current requirements.

While some medium and heavy duty vehicle manufacturers and their suppliers of brake parts may be affected by NHTSA's rule, any economic impact is not expected to be significant. The added cost of trailer ABS powered by a separate connector is entirely optional. Therefore, NHTSA does not believe that this amendment will affect purchasing decisions by small entities acquiring such vehicles.

*C. Environmental Impacts*

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will not have a significant impact on the quality of the human environment.

*D. Federalism Assessment*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications warrant the preparation of a Federalism Assessment. No state laws will be affected.

**List of Subject in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Tires

**PART 571—[AMENDED]**

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

**Authority:** 15 U.S.C. 1391, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

* * * * *

2. S5.5.2 of § 571.121 is revised to read as follows:

**§ 571.121 Standard No. 121; Air brake systems.**

S5.5.2 *Antilock system power—trailers.* On a trailer (including a trailer converter dolly) equipped with an antilock system that requires electrical power for operation, the power shall be obtained from either the stop lamp circuit or one more separate electrical circuit or circuits specifically provided to power the trailer antilock system. The antilock system shall automatically receive power from the stop lamp circuit, if the separate power circuit or circuits are not in use.

* * * * *

Issued on July 7, 1992.

**Frederick H. Grubbe,**

*Deputy Administrator.*

[FR Doc. 92-16297 Filed 7-10-92; 8:45 am]

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**49 CFR Parts 571 and 586**

**[Docket No. 88-06, Notice 19]**

**RIN 2127-AE32**

## Federal Motor Vehicle Safety Standards; Side Impact Protection—Light Trucks, Buses, and Multipurpose Passenger Vehicles

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** On June 14, 1991, NHTSA published in the **Federal Register** (56 FR 27427) a final rule extending the quasi-static side door strength requirements of Federal Motor Vehicle Safety Standard No. 214, *Side Impact Protection*, to trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less. The agency established an effective date of September 1, 1993 for the extension of these requirements. NHTSA received one petition for reconsideration of the final rule, from General Motors (GM). The petitioner requested that the agency phase-in the new requirements instead of applying them to all of the newly covered vehicles simultaneously. In response to GM's petition, NHTSA is establishing a brief phase-in period for the new requirements and is delaying by one year the effective date for double opening cargo doors, doors with no windows, and certain contoured doors. The agency notes, however, that it is adopting a different phase-in schedule from that suggested by the petitioner. NHTSA is also establishing the reporting and recordkeeping requirements necessary for it to enforce the phase-in. Finally, NHTSA is adopting a phase-in exclusion for vehicles manufactured in two or more stages and for altered vehicles.

**DATES:** The amendments in this final rule are effective September 1, 1993. NHTSA notes, however, that the amendments to Standard No. 214 have the effect of providing an additional year's leadtime for certain doors and vehicles. Petitions for reconsideration must be received by August 12, 1992.

**ADDRESSES:** Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4924).

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 14, 1991, NHTSA published in the **Federal Register** (56 FR 27427) a final rule extending the quasi-static side door strength requirements of Federal Motor Vehicle Safety Standard No. 214, *Side Impact Protection*, to trucks, buses and multipurpose passenger vehicles (MPV's) with a gross vehicle weight rating of 10,000 pounds or less. (These vehicles are collectively referred to as "LTV's.") The agency established an effective date of September 1, 1993 for the extended applicability of the requirements, thus providing a leadtime of just over two years from the time of the final rule. Certain side doors, including ones that are more than a specified distance away from seats and therefore unlikely to have vehicle occupants sitting near them, were excluded from the coverage of the standard.

Standard No. 214's quasi-static requirements, which have applied to passenger cars since January 1, 1973, seek to mitigate occupant injuries in side impacts by reducing the extent to which the side structure of a vehicle is pushed into the passenger compartment during a side impact. The requirements specify that side doors must resist crush forces that are applied against the door's outside surface in a laboratory test. The load is applied by means of a piston

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pressing a vertical steel cylinder against the middle of the door. Since car manufacturers have generally chosen to meet the requirements by reinforcing the side doors with metal beams, the agency expects that LTV manufacturers will generally do the same.

**Petition for Reconsideration**

NHTSA received one petition for reconsideration of the final rule extending Standard No. 214's quasi-static side door strength requirements to LTV's, from General Motors (GM). The petitioner requested that, instead of making the requirements effective for all LTV's on September 1, 1993, the agency provide the following phase-in: 75 percent of LTV's manufactured in the production year beginning September 1, 1993, 90 percent of LTV's manufactured in the production year beginning September 1, 1994, and 100 percent of LTV's effective September 1, 1995.

GM stated that a phase-in of the requirements is essential for two reasons. First, that company noted that the agency has not yet established the test requirements for double cargo doors and for doors with no windows. GM stated that until the test requirements for double cargo doors and doors without windows are known, it cannot design the modifications needed to meet the requirements for those doors. According to the petitioner, the modifications may include structural or hardware changes as well as the installation of side door beams. GM stated that two years is an absolute minimum leadtime, barely allowing for validation of the design, and thus leaving inadequate time for other considerations such as cost and mass optimization.

GM also argued that because the requirements for some types of side doors are not yet completed, manufacturers cannot yet modify a vehicle to meet the requirements for all available types of side doors in one design iteration. According to GM, manufacturers generally implement design changes on all like models based on the most severe test requirements. Thus, if GM designed a particular model with sliding doors to meet Standard No. 214 and the test requirements for doors without windows or for double cargo doors later turned out to have the most severe implications on product design (e.g., required structural changes), GM's first redesign would be obsolete. The company indicated that a phase-in would help address this concern.

The second reason cited by GM in support of its argument that a phase-in is needed is the possible interaction between the requirements of Standard No. 214 and other safety standards, especially Standard No. 208, *Occupant Crash Protection*. GM argued that such interaction may require longer leadtime for some vehicles. (Under Standard No. 208, vehicles must meet specified injury criteria, including a head injury criterion (HIC), measured on test dummies in frontal barrier crash tests.)

According to GM, side door beams installed to meet Standard No. 214 can change a vehicle's frontal barrier performance enough to necessitate retesting to recertify the vehicles to Standard No. 208 and other standards. The company stated that the addition of door beams generally stiffens a vehicle's occupant compartment. While this usually helps reduce the likelihood of dummy head contacts in Standard No. 208 testing, GM stated that its experience shows that stiffening the occupant compartment can also increase non-contact HICs in Standard No. 208 tests, particularly when using the Hybrid III test dummy (one of two alternative test dummies specified by the standard). In a meeting with NHTSA staff concerning its petition, GM provided data from crash tests for one model in which the addition of a roof reinforcement increased HIC from 930 to 1010, and the further addition of door beams raised HIC to 1250.

GM stated that the expected modifications for Standard No. 214 will substantially affect the performance in Standard No. 208 tests only in a minority of LTV models. The company argued, however, that some LTV models will likely need significant changes to achieve adequate performance in frontal barrier crashes because of crash pulse changes caused by the installation of side door beams and that it will not know which models need such changes until it completes the frontal barrier tests. GM argued that a phase-in is needed to provide the longer leadtime it believes is required to make the necessary design changes and conduct compliance testing for this group of LTV's.

The petitioner stated that the first year phase-in of 75 percent that it recommends would include all of a manufacturer's LTV's except perhaps one or two van models that have double cargo doors or doors without windows for which test requirements are not yet defined and/or one or two other LTV models that cannot be recertified to meet Standard No. 208 by September 1, 1993 if side door beams are added. GM stated that the second year phase-in of 90 percent that it recommends would include all of a manufacturer's LTV's except perhaps one small-volume LTV model that cannot yet be recertified to meet Standard No. 208 if side door beams are added.

GM also argued that its recommended phase-in would allow manufacturers to meet the new requirements with designs that are more optimized for cost and mass, and that are less likely to degrade other areas of vehicle performance. The company stated that manufacturers may use the phase-in to avoid diverting test and design resources from other important safety and crashworthiness projects, such as implementing air bags in advance of the mandated automatic restraint phase-in. Finally, GM stated that it believes that its proposed phase-in is reasonable and meets the intent of the agency to extend Standard No. 214's side door strength requirements to LTV's promptly and practicably.

While GM was the only petitioner for reconsideration, Chrysler submitted a letter strongly urging that NHTSA grant GM's petition and adopt the phase-in schedule recommended by GM. Chrysler stated that it shared GM's concern that the test requirements for double-opening side cargo doors and doors without windows will not be available in time for it to meet the requirements by September 1, 1993. That company stated that while it does not manufacture any full-size vans/wagons with such doors which are sufficiently close to seats to be covered by the standard, it manufactures many such vans with those types of doors that are sold to van converters who do install seats close to the doors. Chrysler stated that it therefore expects to be asked to provide vehicles that meet door crush requirements to these final stage manufacturers so that they can take advantage of "pass-through" certification. Also, Ford Motor Company expressed its support for a brief phase-in, in a meeting with Department officials.

**Summary of Amendments Being Made in Response to GM's Petition**

In response to GM's petition, NHTSA is amending Standard No. 214 in several respects. First, the agency is establishing a brief phase-in for the newly-extended requirements. For the production year beginning September 1, 1993, 90 percent of a manufacturer's LTV's will be required to meet the new requirements; 100 percent compliance will be required effective September 1, 1994. Second, NHTSA is delaying by one year, to September 1, 1994, the effective date of the requirements for double opening cargo doors and doors with no windows, since the test procedure for these doors has not yet been established. The agency is also delaying the effective

date for certain contoured doors, since it has determined that the test procedure for these doors also needs clarification.

Since NHTSA is adopting a phase-in, it is also establishing the reporting and recordkeeping requirements necessary for the agency to enforce the phase-in. Similar requirements have been adopted by the agency as an integral part of its phase-ins of other major new safety requirements. Finally, the agency is adopting a phase-in exclusion for vehicles manufactured in two or more stages and for altered vehicles.

**Response to GM's Petition**

Several commenters on NHTSA's proposal to extend Standard No. 214's side door strength requirements to LTV's requested a phase-in of the requirements. In the preamble to the June 1991 final rule, the agency addressed the related issues of leadtime and the appropriateness of a phase-in as follows:

> After considering [the] comments and other information, NHTSA has decided to make the new requirements effective on September 1, 1993. NHTSA has concluded that manufacturers need this time period to equip all LTV's with side door beams as standard equipment after the necessary design, tooling, and testing. In addition, final-stage manufacturers need this much time to decide how to certify compliance with the requirements * * *.
>
> NHTSA does not believe that additional leadtime or a phase-in is necessary. Door beam technology has been used with passenger cars since 1973. Further, a few LTV's are currently manufactured with side door beams. While Ford initially asserted that the installation of side door beams in one of its models would require major design changes, Ford has since developed a beam design which can be installed in the door of the specific model without a major design change. 56 FR 27436.

After considering GM's petition for reconsideration, however, NHTSA has concluded that GM's two primary arguments have merit and warrant changes in the standard's effective date. The agency's analysis of GM's arguments and a discussion of the changes being made in response to those arguments follow.

NHTSA agrees with GM's first main argument that the lack of test procedures for double-opening cargo doors and doors without windows makes it impossible for manufacturers to complete the necessary design modifications for these doors. The agency indicated in the June 1991 final rule that it expected "in the near future" to propose amendments to address test procedures for these doors. However, the development of the proposal took longer than expected, and it was not published until January 15, 1992, with a comment closing date of March 16, 1992. See 57 FR 1716. Thus, the continuing lack of test procedures for these doors has cut much farther into the two-year leadtime period than expected. Assuming that a final rule is issued this summer or early Fall, the remaining leadtime would be little more than one year.

In order to ensure that the "practicability" requirements of the National Traffic and Motor Vehicle Safety Act are met and the manufacturers have sufficient leadtime for the necessary design, tooling, and testing of double-opening cargo doors and doors without windows, NHTSA has decided to extend the effective date for these doors by one year, to September 1, 1994. Assuming that the agency publishes a final rule concerning the test procedures some time this summer or early Fall, this will provide manufacturers with approximately two years leadtime for these doors.

NHTSA does not believe that GM's argument about its desire to modify all like models based on the most severe test requirements justifies relief beyond providing additional leadtime for the types of doors for which test procedures have not yet been established. First, even in the absence of the details of the test procedure, the agency believes that the performance requirements set forth in Standard No. 214 for double-opening cargo doors and doors without windows are sufficient for manufacturers to determine whether structural or other changes beyond adding a door beam will be required. Therefore, manufacturers should be able to determine whether these doors represent the most severe test requirement for a particular model and design other types of doors for the same model with that in mind, thereby avoiding a need for more than one design iteration. Second, given the safety benefits associated with this rulemaking, the agency believes that it would be inappropriate to delay application of the standard to types of doors for which design changes can easily be made merely to facilitate future compliance for other types of doors.

As discussed in the January 1992 notice of proposed rulemaking (NPRM) concerning test procedures for double-opening cargo doors and doors without windows, NHTSA has determined that clarification of the test procedure is also needed for certain contoured doors. The NPRM therefore proposed amendments to clarify the test procedure for contoured doors.

Standards No. 214's test procedure works well when a door's lower edge is essentially horizontal along its entire length, or only a small portion of the door's lower edge deviates from that description by being contoured upward. Almost all passenger cars have doors of these types. However, as discussed in the January 1992 NPRM, the standard's test procedure is not appropriate when only a small portion of a door's lower edge is horizontal and the edge is contoured significantly upwards for a large part of the door. Some LTV's have such doors. Since, in the absence of clarifying amendments concerning test procedures, these doors pose similar difficulties concerning compliance as those for double-opening cargo doors and doors without windows, NHTSA is also extending the effective date for these doors to September 1, 1994.

After reviewing the information submitted by GM in support of its petition, NHTSA is also persuaded that the possible interaction between the requirements of Standard No. 214 and other safety standards, particularly Standard No. 208, may require longer leadtime for a few vehicles.

As indicated above, NHTSA concluded in the June 1991 final rule that manufacturers required about two years leadtime for the design, tooling and testing necessary to meet the new requirements, and that additional leadtime was not needed in light of the time side door beam technology has been used for passenger cars. The two-years period did not, however, account for the possibility that a few vehicles, after being redesigned for Standard No. 214, might require further redesign to ensure that they continue to meet the dynamic test requirements of Standard No. 208.

NHTSA does not consider it likely, for a particular LTV, that the addition of side door beams would increase HIC in Standard No. 208 testing. The occupant compartments of LTV's are generally stiffer than those of passenger cars, and any incremental stiffness that may result from the addition of side door beams is likely to be extremely small. Further, as indicated by GM, the stiffening of a vehicle's occupant compartment usually reduces the likelihood of dummy head contacts in frontal crash tests. For most current vehicles, this would be expected to reduce HIC. In addition, even if the addition of side door beams did slightly raise non-contact HIC, this would only affect the compliance of vehicles with Standard No. 208 if the vehicles previously only marginally complied with the standard. The agency believes

that the small possibility of a particular vehicle's HIC being increased by the addition of side door beams is demonstrated by the fact that no other manufacturer has presented information to the agency concerning the problem. Further, GM, in responding to the agency's request for data concerning this problem, provided data for only one vehicle.

NHTSA agrees, however, that the test data presented by GM demonstrate that the addition of side door beams may, for a few vehicles, sufficiently affect HIC that further redesign will be necessary to ensure that the vehicles continue to meet Standard No. 208.

The agency has therefore decided to establish a brief phase-in for the new requirements. Accordingly, for the production year beginning September 1, 1993, 90 percent of a manufacturer's LTV's will be required to meet the new requirements; 100 percent compliance will be required effective September 1, 1994. Thus, the agency is providing an extra year's leadtime for up to 10 percent of a manufacturer's production of LTV's.

NHTSA believes that the phase-in being adopted will provide sufficient flexibility to cover the possibility that the compliance of a few LTV's with Standard No. 208 could be affected by the addition of side door beams and therefore need further redesign. The agency has carefully reviewed the information provided by GM and does not believe that the number of vehicles that could be affected would exceed 10 percent of that company's annual LTV production. Further, given the small number of vehicles, if any, that would be involved, the agency believes that an additional year's leadtime is ample for a manufacturer to make any additional changes necessary to ensure continuing compliance with Standard No. 208. Finally, given the fact that the delay in effective date affects no more than 10 percent of a manufacturer's LTV production for a single year and that it appears that not all manufacturers would avail themselves of the phase-in, any reduction in safety benefits is minimized.

NHTSA notes that it is not adopting the specific phase-in recommended by the petitioner, i.e., 75 percent of LTV's for the production year beginning September 1, 1993, and 90 percent of LTV's for the following year. The agency believes, for the reasons stated above, that the combination of delaying the effective date of double-opening cargo doors and doors without windows and the one-year phase-in adequately addresses the concerns raised by GM's two main arguments.

As indicated above, GM also asserted that its recommended phase-in would allow manufacturers to meet the requirements with designs that are more optimized for cost and mass and that are less likely to degrade other areas of vehicle performance. That company also asserted that manufacturers may use the phase-in to avoid diverting test and design resources from other important safety and crashworthiness projects, such as implementing air bags in advance of the mandated automatic restraint phase-in. However, GM did not provide any evidence demonstrating that additional leadtime, beyond that provided by this final rule, is needed for design optimization or would result in any safety benefits by facilitating design improvements in other areas. In the absence of such evidence and given the reduced safety benefits that could result from a longer phase-in, the agency does not believe that a longer phase-in is appropriate.

In the NPRM proposing to extend the side door strength requirements of Standard No. 214 to LTV's, the agency requested that any commenters supporting a leadtime longer than two years address whether such longer leadtime is needed for all vehicles or whether the proposed amendments could be phased in for some vehicles at an earlier time. See 54 FR 52832, December 22, 1989. The agency thus addressed in the NPRM the possibility of a phase-in. Several commenters, including GM, Ford and the Motor Vehicle Manufacturers Association, supported a phase-in. Ford requested that the agency adopt in any final rule, provisions such as those in Standard No. 208 for production volumes, carryforward credits, and cars produced by more than one manufacturer.

While NHTSA did not discuss in the NPRM the specific requirements that would be associated with a phase-in, the agency has addressed that issue in three other rulemakings: (1) The establishment of Standard No. 208's automatic crash protection requirements for cars, (2) the extension of those requirements to LTV's, and (3) the establishment of Standard No. 214's dynamic side impact protection requirements for cars. In each case, for example, reporting and recordkeeping requirements have been integral parts of the phase-ins. Given that the agency raised the possibility of a phase-in in the NPRM and the general understanding commenters had concerning how the agency implemented phase-ins in other rulemakings, NHTSA believes that the establishment of specific phase-in requirements along the lines of those in Standard No. 208 and Standard No. 214 (dynamic side impact requirements for passenger cars) are within the scope of notice for this rulemaking.

As suggested by Ford in its comment on the NPRM, the agency is including provisions similar to those in Standard No. 208 for production volumes and vehicles produced by more than one manufacturer. As in the case of the agency's phase-in of Standard No. 214's dynamic requirements for passenger cars, NHTSA is not, however, including the provisions for carry-forward credits. The purpose of the limited phase-in adopted in response to GM's petition is to provide an additional year's leadtime for up to 10 percent of a manufacturer's LTV production. Carryforward credits are unnecessary to meet this purpose. Further, some LTV's already meet the requirements of Standard No. 214, and a provision permitting manufacturers to count such vehicles toward the 90 percent one-year requirement could unnecessarily dilute the requirement, resulting in reduced safety benefits.

NHTSA is also establishing the reporting and recordkeeping requirements necessary for the agency to enforce the phase-in. The requirements are similar to those adopted for Standards No. 208 and No. 214, although only a single report is required since the phase-in is for one year. For a further explanation of the agency's rationale for the specific requirements, see the preamble to the final rule establishing those requirements for the phase-in of Standard No. 214's dynamic requirements for passenger cars (56 FR 45768, October 30, 1990).

As the agency recognized for the phase-in of Standard No. 208's automatic restraint requirements for LTV's, a phase-in of requirements for LTV's has the possibility of creating significant problems for many final stage manufacturers and alterers. Like other manufacturers, final stage manufacturers and alterers must certify that their vehicles meet all applicable safety standard. Many of these manufacturers are small businesses and typically complete or modify vehicles based on instructions from the major manufacturers, as a basis for certification.

The potential problems that could be caused by applying a phase-in requirement to these manufacturers can be illustrated by considering the case of a van converter which purchases vans from GM, Ford or Chrysler and then alters them for the specialty market. If the one-year 90 percent phase-in requirement were applied to van converters, each van converter would

need to ensure that 90 percent of the vans it altered complied with Standard 214. However, many van converters are very small and only alter a few vans each year. If the vehicles a particular van converter wanted to alter happened to be ones for which GM, Ford or Chrysler determined that the extra year's leadtime permitted by the phase-in was needed, it is highly unlikely the van converter could make the necessary design changes to those vehicles to certify that they would meet Standard No. 214.

In light of the potential problems that the phase-in could cause for final stage manufacturers and alterers, NHTSA is excluding LTV's manufactured in two or more stages and LTV's that are altered from Standard No. 214's requirements during the phase-in. This is the same approach that the agency followed for the phase-in of Standard No. 208's automatic crash protection requirements for LTV's. See 56 FR 12479–80, March 26, 1991. Because of this exclusion, this rule also permits original manufacturers the option to either include or exclude their LTV's that are sent to second stage manufacturers and alterers, when determining compliance during the phase-in for Standard No. 214.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

**Regulatory Impacts**

*A. Executive Order 12291 and DOT Regulatory Policies and Procedures*

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291. However, the agency has determined that the rulemaking action is significant within the meaning of the Department of Transportation's regulatory policies and procedures because it is related to an earlier major rule which extended Standard No. 214's quasi-static side door strength requirements to LTV's.

The only new requirements imposed on manufacturers by today's final rule are the reporting and recordkeeping requirements associated with the one-year phase-in. NHTSA has determined that the reporting and recordkeeping requirements will have a minimal impact on manufacturers. The amendments in today's final rule otherwise delay by one year the effective date of Standard No. 214's side door strength requirements for certain doors and LTV's and thereby provide manufacturers with additional flexibility.

NHTSA's Final Regulatory Impact Analysis (FRIA) prepared in conjunction with the June 1991 final rule extending Standard No. 214's side door strength requirements to LTV's remains valid. The effective date extensions made by this rule are necessary to meet the practicability requirements of the National Traffic and Motor Vehicle Safety Act. Changes in safety benefits from those estimated in the FRIA are expected to be minimal, since the number of vehicles affected is not large and since those LTV's most affected by this rule (e.g., those without windows) would not be passenger-carrying vehicles or, in the case of Ford, would be a van, which has a better-than-average safety record in side crashes compared to other LTV's.

*B. Regulatory Flexibility Act*

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities.

As discussed above, a phase-in of requirements for LTV's has the possibility of creating significant problems for small businesses which are final stage manufacturers and alterers, if the phase-in applies to them and the vehicles they wish to purchase from major manufacturers are ones which those manufacturers have not yet redesigned to meet the new requirements. Such problems will not occur as a result of this rulemaking action, however, since the agency is excluding LTV's manufactured in two or more stages and LTV's that are altered from Standard No. 214's requirements during the phase-in.

The phase-in issue aside, today's amendments simply delay by one year the effective date of Standard No. 214's side door strength requirements for certain doors and LTV's and thereby provide manufacturers with additional flexibility. This one-year delay for some doors/vehicles will not significantly affect the purchase price of vehicles, and today's amendments will therefore not have any significant economic impact on small manufacturers, small organizations, and small governmental units.

*C. Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the reporting requirements associated with this rule are being submitted for approval to the Office of Management and Budget (OMB). Upon approval, NHTSA will publish the assigned OMB control number in the **Federal Register**.

*D. Environmental Impacts*

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this final rule. The agency has determined that the final rule will not have a significant economic impact on the quality of the human environment.

*E. Federalism Assessment*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects**

*49 CFR Part 571*

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products, Tires.

*49 CFR Part 586*

Reporting and Recordkeeping requirements.

In consideration of the foregoing, parts 571 and 586 of title 49 of the Code of Federal Regulations are amended as follows:

**PART 571—[AMENDED]**

1. The authority citation for part 571 continues to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.214, S2.1, as added at 56 FR 27437, June 14, 1991, effective September 1, 1993, is revised to read as follows:

**§ 571.214 Standard No. 214; Side impact protection.**

* * * * *

S2.1 *Definitions.*

*Double cargo doors* means a pair of hinged doors with the lock and latch

mechanisms located where the door lips overlap.

*Walk-in van* means a van in which a person can enter the occupant compartment in an upright position.

3. In § 571.214, S3, as revised at 56 FR 27437, June 14, 1991, effective September 1, 1993, is amended by revising S3(a) and adding new S3(e)(5) through S3(e)(7) to read as follows:

S3. *Requirements.* (a)(1) Except as provided in section S3(e), each passenger car shall be able to meet the requirements of either, at the manufacturer's option, S3.1 or S3.2, when any of its side doors that can be used for occupant egress is tested according to S4.

(2) Except as provided in section S3(e), each multipurpose passenger vehicle, truck and bus manufactured on or after September 1, 1994 shall be able to meet the requirements of either, at the manufacturer's option, S3.1 or S3.2, when any of its side doors that can be used for occupant egress is tested according to S4.

(3) Except as provided in section S3(e), from September 1, 1993 to August 31, 1994, at least 90 percent of each manufacturer's combined yearly production of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less, as set forth in S9, shall be able to meet the requirements of either, at the manufacturer's option, S3.1 or S3.2, when any of its side doors that can be used for occupant egress is tested according to S4.

* * * * *

(e) * * *

(5) For multipurpose passenger vehicles, trucks, and buses manufactured before September 1, 1994, any double cargo doors.

(6) For multipurpose passenger vehicles, trucks, and buses manufactured before September 1, 1994, any doors without one or more windows.

(7) For multipurpose passenger vehicles, trucks, and buses manufactured before September 1, 1994, any doors for which the ratio of the width of the lowest portion of the door to the width of the door at its widest point is not greater than 0.5. The width of the door is measured in a horizontal plane and on the outside surface of the door. The lowest portion of the door is that portion of the lower edge of the door which is lowest to the ground and which is essentially horizontal.

* * * * *

4. In § 571.214, S9 through S9.2.3 are added to read as follows:

**§ 571.214 Standard No. 214; Side impact protection.**

* * * * *

S9. *Phase-in of side door strength requirements for multipurpose passenger vehicles, trucks and buses.*

S9.1 *Multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1993 and before September 1, 1994.*

S9.1.1 The combined number of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less complying with the requirements of S3(a)(3) shall not be less than 90 percent of:

(a) The average annual production of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less manufactured on or after September 1, 1990 and before September 1, 1993 by each manufacturer, or

(b) The manufacturer's annual production of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less during the period specified in S9.1.

S9.1.2 Walk-in vans, vehicles which do not have any side doors that can be used for occupant egress, vehicles which exclusively have doors of the types specified in S3(e), and vehicles specified in S9.2.3 may be excluded from all calculations of compliance with S9.1.1.

S9.2 *Multipurpose passenger vehicles trucks and buses produced by more than one manufacturer.*

S9.2.1 For the purposes of calculating average annual production of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less for each manufacturer and the number of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less manufactured by each manufacturer under S9.1.1, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S9.2.2:

(a) A vehicle which is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer which markets the vehicle.

S9.2.2 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 586, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S9.2.1.

S9.2.3 Each multipurpose passenger vehicle, truck and bus with a GVWR of 10,000 pounds or less that is manufactured in two or more stages or that is altered (within the meaning of § 567.7 of this chapter) after having previously been certified in accordance with Part 567 of this chapter is not subject to the requirements of S3(a)(3).

**PART 586—[AMENDED]**

5. The authority citation for part 586 continues to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

6. Section 586.1 is revised to read as follows:

**§ 586.1 Scope.**

This part establishes requirements for passenger car manufacturers to submit a report, and maintain records related to the report, concerning the number of passenger cars manufactured that meet the dynamic test procedures and performance requirements of Standard No. 214, *Side Impact Protection* (49 CFR 571.214), and it establishes requirements for manufacturers of multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less to submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the side door strength requirements of Standard No. 214.

7. Section 586.2 is revised to read as follows:

**§ 586.2 Purpose.**

The purpose of the reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a passenger car manufacturer has complied with the requirements of Standard No. 214, *Side Impact Protection* (49 CFR 571.214) concerning dynamic test procedures and performance requirements concerning side impact protection, and whether a manufacturer of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less has complied with the side door strength requirements of Standard No. 214.

8. Section 586.3 is revised to read as follows:

**§ 586.3 Applicability**

This part applies to manufacturers of passenger cars and to manufacturers of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less. However, this part does not apply to any manufacturers of multipurpose passenger vehicles, trucks

and buses whose production consists exclusively of walk-in vans, vehicles which do not have any side doors that can be used for occupant egress, vehicles which exclusively have doors of the types specified in S3(e) of 49 CFR 471.214, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

9. Section 586.4 is amended by revising paragraph (b) to read as follows:

**§ 586.4 Definitions.**

* * * * *

(b) Bus, gross vehicle weight rating or GVWR, multipurpose passenger vehicle, passenger car, and truck are used as defined in § 571.3 of this chapter.

* * * * *

10. Section 586.5 is amended by revising the section heading to read as follows:

**§ 586.5 Reporting requirements—manufacturers of passenger cars.**

* * * * *

11. Section 586.6 is amended by revising the section heading to read as follows:

**§ 586.6 Records—passenger cars.**

* * * * *

12. Section 586.7 is redesignated as section 586.9 and revised to read as follows:

**§ 586.9 Petition to extend period to file report.**

A petition for extension of the time to submit a report must be received not later than 15 days before expiration of the time stated in § 586.5(a) or § 586.7(a). The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The filing of a petition does not automatically extend the time for filing a report. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest.

13. Sections 586.7 and 586.8 are added to read as follows:

**§ 586.7 Reporting requirements—manufacuturers of trucks, buses and multipurpose passenger vehicles.**

(a) *General reporting requirements.* Within 60 days after the end of the production year ending August 31, 1994, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of S3(a) of Standard No. 214 for its trucks, buses and multipurpose passenger vehicles produced in that year. Each report shall—

(1) Identify the manufacturer;

(2) State and full name, title, and address of the official responsible for preparing the report;

(3) Contain a statement regarding whether or not the manufacturer complied with S3(a) (3) of Standard No. 214 and the basis for that statement;

(4) Provide the information specified in § 586.7(b);

(5) Be written in the English language; and

(6) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) *Report content*—(1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that has not previously manufactured trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less for sale in the United States must report the number of such vehicles manufactured during the current production year.

(2) *Production.* Each manufacturer shall report the number of multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less that meet the side door strength requirements (S3.1 or S3.2) of Standard No. 214.

(3) *Vehicles produced by more than one manufacturer.* Each manufacturer who reporting of information is affected by one or more of the express written contracts permitted by S9.2.2 of Standard No. 214 shall:

(i) Report the existence of each contract, including the names of all parties to the contract, and explain how the contract affects the report being submitted.

(ii) Report the actual number of vehicles covered by each contract.

**§ 586.8 Records—multipurpose passenger vehicles, trucks and buses.**

Each manufacturer shall maintain records of the Vehicle Identification Number for each multipurpose passenger vehicle, truck and bus for which information is reported under § 586.7(b)(2) until December 31, 1996.

Issued on: July 7, 1992.

Frederick H. Grubbs,

*Deputy Administrator.*

[FR Doc. 92-16298 Filed 7-10-92; 8:45 am]

BILLING CODE 4910-59-M

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 260**

**[Docket No. 920255-2055]**

## Inspection and Certification; Fee for Inauguration of Inspection Service on a Contract Basis

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS is amending the inspection and certification regulations pertaining to the NMFS National Seafood Inspection Program, to remove the fee charged for inauguration of inspection service on a contract basis. NMFS has found that the inauguration fee does not serve its intended purpose due to changes in the type of inspection services required by industry over the past several years and is no longer needed.

**EFFECTIVE DATE:** July 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Dr. I. Sackett, Jr., Inspection Program Coordinator, Inspection Services Division, Office of Trade and Industry Services; telephone (301) 713-2355.

**SUPPLEMENTARY INFORMATION:** The original purpose of the inauguration fee for the National Seafood Inspection Program (Program) was to cover costs associated with hiring and establishing a NMFS inspector at a new contract inspection site, e.g., a processing plant. During the Program's early years, nearly all inspection service contracts called for an inspector to be assigned to a plant for a full, 40-hour work week. In recent years, the majority of firms contract for the minimum number of hours necessary to fulfill the Federal inspection requirements of the purchasers. Because the inspection requirements of plants vary depending upon product forms and production capability, it is not possible to establish an inauguration fee equitable in every case. Therefore, NMFS believes it best to revoke the inauguration fee. These costs are covered by the hourly rate NMFS charges currently for this type of inspection service.

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**Classification**

This rule is not a "major rule" within the meaning of E.O. 12291 because it will not have an annual effect on the economy of $100 million or more, will not increase costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will have no adverse effect.

Because this rule removes a fee for the provision of a contractual service provided by NMFS, as a contractual matter the requirements of 5 U.S.C. 553 do not apply.

Because this rule is being issued without prior comment, a regulatory flexibility analysis in not required under the Regulatory Flexibility Act and none has been prepared.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

**List of Subjects in 50 CFR Part 260**

Food grades and standards, Food labeling, Seafood.

Dated: June 26, 1992.

**Samuel W. McKeen,**

*Program Management Officer for Fisheries, National Marine Fisheries Service.*

For reasons set forth in the preamble, 50 CFR part 260 is amended as follows:

**PART 260—INSPECTION AND CERTIFICATION**

1. The authority citation for part 260 continues to read as follows:

**Authority:** Sec. 8, 70 Stat. 1122, 16 U.S.C. 742e; secs. 203, 205, 60 Stat. 1087, 1090 as amended; 7 U.S.C. 1622, 1624; Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

**§ 260.71 [Removed]**

2. Section 260.71 is removed and reserved.

[FR Doc. 92-16300 Filed 7-10-92; 8:45 am]
BILLING CODE 3510-22-M

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**50 CFR Part 672**

**[Docket No. 911178-2018]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Rescission of closure.

**SUMMARY:** NMFS is modifying the closure to retention of the "other species" category in the Gulf of Alaska (GOA). This notice establishes a directed fishing allowance for the "other species" category, following promulgation of a recently published emergency rule that increased the total allowable catch (TAC) specification for this category. This action is necessary to prevent the TAC for the "other species" category from being exceeded in the Gulf of Alaska.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), July 8, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg, Chief, Fisheries Management Division, NMFS, (907) 586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan for the Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

On May 13, 1992, NMFS issued a notice of closure of the "other species" category in the Gulf of Alaska, declaring each species in this category to be a prohibited species under § 672.20(c)(3). NMFS took this action because the Regional Director, Alaska Region, NMFS (Regional Director), determined that the 1992 TAC specification of 13,432 metric tons (mt) for "other species" had been reached (57 FR 21215, May 19, 1992). On July 1, 1992, the Secretary implemented an emergency rule under sec. 305(c) of the Magnuson Act that increased the TAC for the "other species" category to 20,432 mt (57 FR 30168, July 8, 1992).

Under § 672.20(c)(2)(ii), the Regional Director has determined that the revised amount of the "other species" category is likely to be reached. Therefore, NMFS is prohibiting directed fishing for the "other species" category, effective from 12 noon A.l.t., July 8, 1992, until 12 midnight A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

**Classification**

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

**List of Subjects in 50 CFR Part 672**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 8, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-16355 Filed 7-8-92; 1:44 am]
BILLING CODE 3510-22-M

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**50 CFR Part 675**

**[Docket No. 911172-2021]**

## Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of pollock and Pacific ocean perch in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands Management Area (BSAI) and is requiring that incidental catches of pollock and Pacific ocean perch be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the apportionments of total allowable catch (TAC) for pollock assigned to the inshore and offshore components and the TAC for Pacific ocean perch in the AI have been reached.

**EFFECTIVE DATE:** Effective 12 noon, Alaska local time (A.l.t.), July 8, 1992, through 12 midnight, A.l.t., December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1992 initial TAC for pollock and the 1992 TAC for Pacific ocean perch in the AI were established by the final notice of specifications (57 FR 3952, February 3, 1992) as 43,860 metric tons (mt) and 9,945 mt, respectively. The TAC for pollock was revised to 47,730 mt (57 FR 27185, June 18, 1992) and allowances of 5,662 mt and 10,516 mt were apportioned to the inshore and offshore components of the fishery, respectively.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that both the inshore and offshore allowances of the TAC for pollock and the TAC for Pacific ocean perch in the AI have been reached. Therefore, NMFS is requiring that pollock and Pacific ocean perch be treated as prohibited species. Under § 675.20(c), NMFS is prohibiting retention of pollock by vessels operating in the inshore and offshore components and Pacific ocean perch in the AI effective from 12 noon, A.l.t., July 8, 1992, through 12 midnight, A.l.t., December 31, 1992.

## Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

## List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: July 8, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-16354 Filed 7-8-92; 1:47 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 57, No. 134
Monday, July 13, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 124

**[Docket No. 90-011]**

### Patent Term Restoration for Veterinary Biologics

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposal rule.

**SUMMARY:** We are proposing to establish regulations concerning the restoration of the time lost to the terms of veterinary biologics patents while awaiting premarket government approval. This action would implement the patent term extension provisions of the "Generic Animal Drug and Patent Term Restoration Act" of 1988 (Pub. L. 100-670).

**DATES:** Consideration will be given only to comments received on or before September 11, 1992.

**ADDRESSES:** Send an original and 3 copies of written comments to Chief, Regulatory Analysis and Development Staff, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 90-011. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Frank Y. Tang, Biotechnologist, BCTA, BBEP, APHIS, USDA, room 851, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-4833.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 16, 1988, the President signed into law the Generic Animal Drug and Patent Term Restoration Act of 1988 (35 U.S.C. 156, as amended by Public Law 100-670) (the Act). Title II of the Act amended the U.S. patent laws to enable owners of patents relating to certain animal drugs and veterinary biological products, and the owners of patents relating to methods of using or manufacturing them, to apply for extension of the patent term to recover some of the time lost while awaiting premarket government approval. Patents concerning veterinary biologics subject to the Virus-Serum-Toxin Act (VSTA), as amended (21 U.S.C. 151-159) are covered by the Act. Patents on products primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site-specific genetic manipulation techniques are not eligible for patent term restoration under the Act.

United States patents are effective for 17 years from the date they are issued. A patent gives an inventor the right to exclude others from making, using, or selling the patented invention within the United States (see 35 U.S.C. 154.) This exclusive right is designed to encourage innovation and development of new products by protecting the patent holder from direct competition for a period of time. However, a patent does not automatically given an inventor the right to actually make, use, and sell the invention. Federal law requires some inventions, such as veterinary biological products, to be Federally approved before they are manufactured or marketed. For these inventions, a portion of the 17 years of protection afforded by a patent may be lost waiting for Federal review and approval.

The Virus-Serum-Toxin Act, among other things, prohibits the preparation, sale, barter, or exchange of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product intended for use in the treatment of domestic animals, in places under Federal jurisdiction. It also prohibits the shipment of such products anywhere in or from the United States. The Act also states that it is unlawful for anyone to prepare, sell, barter, or exchange in places under Federal jurisdiction, or ship in or from the United States, any virus, serum, toxin, or analogous product unless it is prepared in compliance with USDA regulations at an establishment holding a valid USDA license (21 U.S.C. 151). Therefore, veterinary biological products cannot be marketed until these requirements are met. It takes time to satisfy the regulations and standards under the VSTA which are designed to assure that only pure, safe, potent, and effective biological products are marketed. If a product is covered in any way by a patent, the time spent waiting for Federal review and approval reduces the effective length of the patent. Profits therefore are reduced, along with the incentive to develop new veterinary biological products. The Generic Animal Drug and Patent Term Restoration Act is designed to restore these incentives.[1]

### The Generic Animal Drug and Patent Term Restoration Act of 1988

The Generic Animal Drug and Patent Term Restoration Act of 1988 contains two titles: Title I, among other things, authorizes the Food and Drug Administration to approve abbreviated new drug applications for generic animal drugs; Title II allows patent term restoration for certain patents covering animal drugs and veterinary biological products.

The Act specifically excludes veterinary drugs and biological products produced via biotechnology. As stated in the Act, biotechnology refers to manufacture that primarily sues recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site-specific genetic manipulation techniques. New applications for animal drug products manufactured using biotechnology are not approval under Title I of the Act. Patents covering veterinary biological products manufactured using biotechnology are also not eligible for extension under Title II of the Act.

Administration of Title II of the Act is divided among the Food and Drug Administration (FDA) of the Department of Health and Human Services, the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA), and

[1] In September, 1984, a similar statute, The Drug Price Competition and Patent Term Restoration Act (Pub. L. 98-417) became law. This Act, which allows patent term restoration to holders of patents claiming human drug products (including biologics and antibiotics), medical devices, food additives and color additives, became law in September, 1984. Regulations have been issued under this Act by both the Food and Drug Administration (FDA) and the Patent and Trademark Office (PTO). The FDA regulations appear at 21 CFR part 60. The PTO regulations appear at 37 CFR part 1.

the Patent and Trademark Office (PTO) of the United States Department of Commerce.

Applications for patent term extension are submitted to PTO for a determination whether a patent is eligible for extension. USDA would assist PTO by determining the length of the regulatory review period for any veterinary biological product involved; FDA does the same for animal drugs. In addition, APHIS and FDA are responsible for determining, if they are petitioned to do so, whether the applicant for patent term restoration acted with due diligence to obtain approval from the agency involved with the animal drug or veterinary biological product. A notice of a Memorandum of Understanding between the PTO and APHIS concerning implementation of procedures in determining a product's eligibility for patent term extension under 35 U.S.C. 156 was published in the **Federal Register** on June 23, 1989 (See 54 FR 26399). PTO issued regulations (See 54 FR 30375, July 20, 1989), governing the format, content, and submission of patent term restoration applications. Regulations covering FDA responsibilities have been proposed by that agency (see 56 FR 5784–5787, February 31, 1991).

**Provisions of this Proposal**

We are proposing to add a new Part 124 to our existing regulations in title 9, chapter I, Code of Federal Regulations.

Subpart A of the proposed regulations contains general provisions. Proposed subpart B provides for APHIS to assist PTO in determining a patent holder's eligibility for patent term restoration. Proposed subpart C contains regulations governing the determination of regulatory review periods. Subpart D provides for filing due diligence petitions; that is, challenging a regulatory review period determination on the grounds that an applicant did not diligently pursue premarketing approval. Standards for determining due diligence are also included in proposed subpart D. Subpart E contains regulations, governing informal hearings on the issue of due diligence

*Subpart A—General Provisions (Sections 124.1–124.2)*

Proposed Subpart A contains a statement of the scope of the regulations and APHIS's responsibilities in proposed § 124.1

In proposed § 124.2, we have included definitions of terms used in proposed new part 124. The terms we define are: "Applicant", "Due diligence petition", "Informal hearing", "License applicant", "License application", "Patent", and "PTO".

*Subpart B—Eligibility Assistance (Section 124.10)*

In subpart B, we are proposing new regulations to implement the Act's requirement that we assist PTO in determining eligibility for patent term restoration. Under the Act, a patent term restoration applicant must satisfy six conditions. First, the applicant must show that the patent has not expired (35 U.S.C. 156(a)(1)). Second, the applicant must establish that the patent has not been previously extended (35 U.S.C. 156(a)(2)). Third, the applicant must, as part of its application, supply certain details regarding the patent and regulatory review time spent in securing approval (35 U.S.C. 156(a)(3)). Fourth, the applicant must establish that the product was subject to a regulatory review period before its commercial marketing or use (35 U.S.C. 156(a)(4)). Fifth, the applicant must show that the product either: (1) Represents the first permitted commercial marketing or use of the product under the provision of law under which the regulatory review period occurred; or (2) in the case of a veterinary biological product which has received permission for commercial marketing or use in both non-food-producing animals, and food-producing animals, and the product was not extended on the basis of a regulatory review period for use in non-food-producing animals, that the product represents the first permitted commercial marketing or use of the product for administration to a food-producing animal (35 U.S.C. 156(a)(5)(C)). Sixth, the applicant must submit the application for patent term restoration to PTO within 60 days of the date APHIS approves the application for commercial marketing or use of the product (35 U.S.C. 156(d)(1)).

Although the Commissioner of PTO must decide whether an applicant has satisfied these six conditions, APHIS possesses information which PTO must have to decide whether the last four requirements have been met. To assist PTO in its responsibilities under the Act, we have developed the procedures proposed in § 124.10.

We are proposing that, upon a request and submission of a copy of an application by PTO, APHIS will advise PTO whether:

(1) The product underwent a regulatory review period within the meaning of the Act (35 U.S.C. 156(g)) before commercialization (see proposed § 124.10(a)(1));

(2) The marketing approval represents the first approval for commercial marketing or use of the product under the provision of law under which such regulatory review period occurred (see proposed § 124.10(a)(2)), and whether the marketing approval represents the first approval for commercial marketing or use of the product in a food-producing animal; and

(3) The patent term restoration application was received within 60 days after the product was approved (see proposed § 124.10(a)(3)).

In addition, proposed § 124.10(a)(4) explains that we may provide PTO with any other information relevant to their determination whether the patent is eligible for extension. Finally, we would, under proposed § 124.10(b), notify PTO in writing of our findings and make them available to the public and the applicant.

*Subpart C—Regulatory Review Period (Sections 124.20–124.24)*

Patent term extension calculation

Proposed § 124.20(a) of the regulations and 35 U.S.C. 156(g)(5)(B) define a regulatory review period for veterinary biological products as the sum of the following:

(i) the period beginning on the date authorization to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective and ending on the date an application for a license was submitted under the Virus-Serum-Toxin Act, and (ii) the period beginning on the date an application for a license was initially submitted for approval under the Virus-Serum-Toxin Act and ending on the date such license was issued.

Under this proposal, we will consider a license application to be "initially submitted" when the application contains sufficient information to allow the agency to begin substantive review (see proposed § 124.20(b)).

A license is issued under proposed § 124.20(b) on the date we notify the applicant of such issuance in writing. A letter to an applicant stating that the license will be issued if certain conditions are met, would not constitute issuance under the proposed regulations.

Regulatory Review Period Determination

Our proposed § 124.21 sets 30 days for APHIS to determine a product's regulatory review period. The time limit is prescribed by the Act (35 U.S.C. 156(d)(2)(A)). (See proposed § 124.21(a).) Under the proposal, once we have determined the regulatory review period, we would notify both PTO and the applicant of the determination, make a copy of it available to the public, and

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publish a notice in the **Federal Register** announcing our determination (see proposed § 124.21 (a) and (b)). The **Federal Register** notice would state the applicant's name, the product's trade name (and generic name, if applicable), the product's approved uses and indications, and the number of the patent for which an extension of the patent term is sought. In addition, the notice would state what the regulatory review determination was, including a statement of the length of the testing and approval phases and the dates used in calculating each phase.

Revision of Regulatory Review Period Determination

Section 124.22 of the proposed regulations would allow any interested person to request a revision of a regulatory review period determination within 30 days after the publication of that determination in the **Federal Register**. The person requesting a revision must explain the basis of the request and may submit evidence to support the person's position. We would provide the applicant for patent term restoration an opportunity to respond to the request for revision if made by another person. Any revision would be made under proposed § 124.21. We would notify the PTO, the applicant, and the person requesting the revision (if not the applicant) of any revision and publish that revision in the **Federal Register**. Under this proposed section, we could correct a product's regulatory review period if there was an error in the dates we used to determine it.

Final Action on Regulatory Review Period Determination

Proposed § 124.23 describes the circumstances under which we would consider a regulatory review period determination final. In general, a regulatory review period determination would be final when the 180-day period allowed for filing a due diligence petition expired. Once this period expired, we would notify PTO and the applicant that the determination was final, and would make a copy of the notification available to the public in room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

*Subpart D—Due Diligence Petition (Sections 124.30–124.33)*

The regulations contained in proposed subpart D would detail what format and procedures to follow when submitting a due diligence petition to APHIS. The proposed regulations also describe the standard we would use to determine whether an applicant has met the due diligence requirement. Under proposed subpart D, we would reduce the regulatory review period by the amount of time the applicant unreasonably delayed our review.

Filing, Format, and Content of Petition

Proposed § 124.30(a) would allow any person to challenge a regulatory review period determination made by APHIS. Such person would have to file a petition known as a due diligence petition with the agency upon which it may be reasonably determined that the applicant did not act with "due diligence" in pursuing APHIS approval of the product. This is in accordance with the Act, 35 U.S.C. 156(d)(2)(B)(i). Under proposed § 124.30(a) such a petition would have to be filed within 180 days after publication of a regulatory review period determination by APHIS.

In accordance with proposed § 124.30(b), a due diligence petition would have to be filed under the docket number of the **Federal Register** notice announcing the regulatory review period determination. In addition, proposed § 124.30(c) requires the petitioner to claim that the applicant failed to act with due diligence sometime during the regulatory review period and must set forth sufficient facts to merit an investigation.

Proposed § 124.30(d) would require the petitioner to serve the applicant with a copy of the petition. APHIS, as prescribed by the Act, has 90 days in which to act on the petition. Proposed § 124.31(a) indicates that the applicant has 10 days in which to respond to the petition.

Applicant's Response to Petition

Proposed § 124.31(a) affords the applicant 10 days to respond to the petition. Proposed § 124.31(b) states that the applicant may respond only to the issue raised in the due diligence petition. This provision is designed to eliminate irrelevant and immaterial information in the applicant's response. Proposed § 124.31(c) states that if the applicant does not respond to the petition, APHIS will decide the matter on the basis of information available to APHIS.

APHIS Action on Petition

Under proposed § 124.32 due diligence petitions would be handled in two ways.

(1) We could deny the petition without conducting a due diligence investigation; or

(2) We could investigate and determine whether the applicant acted with due diligence.

Under proposed § 124.32(b), a due diligence petition could be denied in three situations. These are: (1) When the petition does not conform to the requirements of proposed § 124.30 (see proposed § 124.32(b)(1)); (2) when the petition does not provide sufficient information to make a due diligence determination (see proposed § 124.32(b)(2)); or (3) when the petition, though alleging that the applicant was not diligent for a period of time, alleges that the lack of diligence lasted for a period of time which is too short for it to have an effect on the maximum patent term extension that the applicant is entitled to under 35 U.S.C. 156 (see proposed § 124.32(b)(3)). This would prevent APHIS from expending its resources to investigate unnecessary due diligence petitions.

Due Diligence Standard

We propose in § 124.33 of the regulations to incorporate the definition of due diligence in the Act (35 U.S.C. 156(d)(3)). The Act states that due diligence is "that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period."

APHIS would apply a rule of reason or balancing approach in making due diligence determinations. This approach is the same as used by FDA when handling patent term restoration applications for patents covering human drugs (see 21 CFR 60.36).

Proposed § 124.33(b) would provide that, in making a due diligence determination, we shall consider the actions of the patent term restoration applicant, the USDA licensing applicant and all those acting on behalf of the applicants. We recognize that because of business arrangements and other circumstances, the applicant for patent extension is frequently not the same person as the applicant seeking a USDA license.

*Subpart E—Due Diligence Hearing (§§ 124.40–124.43)*

Request for Hearing

Proposed § 124.40 states that a request for an informal due diligence hearing must be filed within 60 days after publication of a due diligence determination by APHIS. This time period is specified in the Act. Under this proposal, any person (including persons who filed a due diligence petition, the patent term restoration applicant, the licensing applicant, and third parties) may request a due diligence hearing.

The hearing request would have to be filed under the docket number of the Federal Register notice of APHIS's regulatory review period determination. The docket number is printed in the Federal Register as part of the notice. Under the proposed regulations, the hearing request must also contain a full statement of the facts upon which the hearing request is based.

Proposed § 124.40(c) would incorporate the statutory provision that a hearing would be held not later than 30 days after the date of the request for a hearing, or at the request of the person making the request for the hearing, not later than 60 days after such date.

Notice of Hearing

Proposed § 124.41 would implement the hearing notice requirements contained in 35 U.S.C. 156(d)(2)(B)(ii). The Act requires APHIS to notify the patent holder and "any interested person" of the hearing and provide them with an opportunity to participate. The proposed regulations would require that notice of the hearing be given to the applicant, the petitioner, the person requesting the hearing (who might also be the applicant or the petitioner), and any other interested person no less than 10 days before the hearing date.

Hearing Procedure

Proposed § 124.42 would establish the basic procedures to be used in due diligence hearings. The Act provides that the term "informal hearing" has the meaning prescribed for such term in section 201(y) of the Federal Food, Drug, and Cosmetic Act. Therefore, the procedures proposed in this rule are based on those contained in section 201(y). See 21 U.S.C. 321(y).

Administrative Decision

Under proposed § 124.43, the Assistant Secretary of Marketing and Inspection Services would affirm or revise the determination made under § 124.32. This action would be termed a "due diligence redetermination" in the proposed regulations.

**Executive Order 12291, Executive Order 12778, and Regulatory Flexibility Act**

This proposed rule has been reviewed in accordance with Executive Order 12991 and Departmental Regulation 1512–1 and has been determined to be a non-major rule since it does not meet the criteria for a major regulatory action. Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The patent extension provision in 35 U.S.C. 156 (as amended by title II of Pub. L. 100–670) benefits the patent holder by restoring to the patent holder that part of the term of the patent which has been lost due to regulatory review of the patented product. Thus the statute results in a net economic benefit to the patent holder. The proposed rule is intended merely to implement the statute. The proposed rule simply provides procedures to allow APHIS to assist PTO in carrying out the requirements of the Act. An application for patent term restoration is made voluntarily by the patent holder. The time and cost required to comply with the proposed regulation is far outweighed by the benefit conferred by patent term restoration to the patent holder.

The Administrator of APHIS has determined that this action would not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. (5 U.S.C. 601 *et seq.*).

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative proceedings which must be exhausted by an applicant for patent term extension prior to any judicial challenge to the regulatory review period determination under this rule.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*), we will submit the information collection provisions in this proposed rule to the Office of Management and Budget (OMB) for approval. You may send written comments on these provisions to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to 1) Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and 2) Clearance Officer, ORIM, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

**Executive Order 12372**

The program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**List of Subjects in 9 CFR Part 124**

Animal biologics, Patents.

Accordingly, we are proposing to amend title 9 CFR, chapter I, Subchapter E by adding a new Part 124—"Patent Term Restoration" to read as follows:

## PART 124—PATENT TERM RESTORATION

**Subpart A—General Provisions**

Sec.

124.1 Scope.
124.2 Definitions.

**Subpart B—Eligibility Assistance**

124.10 APHIS liaison with PTO.

**Subpart C—Regulatory Review Period**

124.20 Patent term extension calculation.
124.21 Regulatory review period determination.
124.22 Revision of regulatory review period determination.
124.23 Final action on regulatory review period determination.

**Subpart D—Due Diligence Petitions**

124.30 Filing, format, and content of petitions.
124.31 Applicant response to petition.
124.32 APHIS action on petition.
124.33 Standard of due diligence.

**Subpart E—Due Diligence Hearing**

124.40 Request for hearing.
124.41 Notice of hearing.
124.42 Hearing procedure.
124.43 Administrative decision.

**Authority:** 35 U.S.C. 156.

**Subpart A—General Provisions**

**§ 124.1 Scope.**

(a) This Part sets forth procedures and requirements for APHIS review of applications for the extension of the term of certain patents for veterinary biological products pursuant to 35 U.S.C. 156—Extension of patent term. Responsibilities of APHIS include:

(1) Assisting PTO in determining eligibility for patent term restoration;

(2) Determining the length of a product's regulatory review period;

(3) If petitioned, reviewing and ruling on due diligence challenges to APHIS's regulatory review period determinations; and

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(4) Conducting hearings to review initial APHIS findings on due diligence challenges.

(b) The regulations in this Part are designed to be used in conjunction with regulations issued by PTO concerning patent term restoration which may be found in 37 CFR part 1.

**§ 124.2 Definitions.**

*Applicant.* Any person who submits an application or an amendment or

*Due diligence petition.* A petition submitted under § 124.30 of this part.

*Informal hearing.* An hearing which is not subject of the provisions of 5 U.S.C. 554, and 557 and which is conducted as provided in 21 U.S.C. 321(y).

*License applicant.* Any person who, in accordance with Part 102 of this Chapter, submits an application to the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture for a U.S. Veterinary Biological Product License.

*Patent.* A patent issued by the Patent and Trademark Office of the United States Department of Commerce.

*PTO.* The Patent and Trademark Office of the United States Department of Commerce.

## Subpart B—Eligibility Assistance

**§ 124.10 APHIS liaison with PTO.**

Upon receipt of a copy of an application for extension of the term of a veterinary biologic patent from PTO, APHIS will assist PTO in determining whether a patent related to a biological product is eligible for patent term extension by:

(a)(1) Verifying whether the product was subject to a regulatory review period before its commercial marketing or use;

(2) Determining whether the permission for commercial marketing or use of the product after the regulatory review period was the first permitted commercial marketing or use of the product under the provision of law under which such regulatory review period occurred, and if so; whether it was the first permitted commercial marketing or use of the veterinary biological product for administration to a food-producing animal;

(3) Ascertaining whether the patent term restoration application was submitted within 60 days after the product was approved for marketing or use; and

(4) Providing such other information as may be necessary and relevant to PTO's determination of whether a patent related to a product is eligible for patent term restoration.

(b) APHIS will notify PTO of its findings in writing, send a copy of this notification to the applicant, and make a copy available for public inspection in room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

## Subpart C—Regulatory Review Period

**§ 124.20 Patent term extension calculation.**

(a) As provided by 37 CFR 1.779 of PTO's regulations, in order to determine a product's regulatory review period, APHIS will review the information in each application to determine the lengths of the following phases of the review period, and will then find their sum:

(1) The number of days in the period beginning on the date authorization to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective and ending on the date an application for a license was submitted under the Virus-Serum-Toxin Act; and

(2) The number of days in the period beginning on the date an application for a license was initially submitted for approval under the Virus-Serum-Toxin Act and ending on the date such license was issued.

(b) A license application is "initially submitted" on the date it contains sufficient information to allow APHIS to commence review of the application. A product license is issued on the date of the APHIS letter informing the applicant of the issuance. The issuance of a license releases the product for commercial marketing or use.

**§ 124.21 Regulatory review period determination.**

(a) Not later than 30 days after the receipt of an application from PTO, APHIS shall determine the regulatory review period. Once the regulatory review period for a product has been determined, APHIS will notify PTO in writing of the determination, send a copy of the determination to the applicant, and make a copy available for public inspection in room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

(b) APHIS will also publish a notice of the regulatory review period determination in the **Federal Register**. The notice will include the following:

(1) The name of the applicant;

(2) The trade name and generic name (if applicable) of the product;

(3) The number of the patent for which an extension of the term is sought;

(4) The approved indications or uses for the product;

(5) The regulatory review period determination, including a statement of the length of each phase of the review period and the dates used in calculating each phase.

**§ 124.22 Revision of regulatory review period determination.**

(a) Any interested person may request a revision of the regulatory review period determination within the 30 day period beginning on its publication in the **Federal Register**. The request must be sent to Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, 6505 Belcrest Road, Hyattsville, MD 20782.

The request must specify the following:

(1) The identity of the product;

(2) The identity of the applicant for patent term restoration;

(3) The docket number of the **Federal Register** notice announcing the regulatory review period determination; and

(4) The basis for the request for revision, including any documentary evidence.

(b) If APHIS revises its prior determination, APHIS will notify PTO of the revision, send a copy of notification to the applicant, and publish the revision in the **Federal Register**, including a statement giving the reasons for the revision.

**§ 124.23 Final action on regulatory review period determination.**

APHIS will consider its regulatory review period determination to be final upon expiration of the 180-day period for filing a due diligence petition under § 124.30 unless it receives:

(a) New information from PTO records, or APHIS records, that affects the regulatory review period determination;

(b) A request under § 124.22 for revision of the regulatory review period determination;

(c) A due diligence petition filed under § 124.30; or

(d) A request for a hearing filed under § 124.40.

## Subpart D—Due Diligence Petitions

**§ 124.30 Filing, format, and content of petitions.**

(a) Any person may file a petition with APHIS, no later than 180 days after the publication of a regulatory review period determination under § 124.21, alleging that an applicant did not act



with due diligence in seeking APHIS approval of the product during the regulatory review period.

(b) The petition must be filed with APHIS under the docket number of the **Federal Register** notice of the agency's regulatory review period determination. The petition must contain any additional information required by this subpart.

(c) The petition must allege that the applicant failed to act with due diligence sometime during the regulatory review period and must set forth sufficient facts to merit an investigation of APHIS of whether the applicant acted with due diligence.

(d) The petition must contain a certification that the petitioner has served a true and complete copy of the petition on interested parties by certified or registered mail (return receipt requested) or by personal delivery.

**§ 124.31 Applicant response to petition.**

(a) The applicant may file with APHIS a written response to the petition no later than 10 days after the applicant's receipt of a copy of the petition.

(b) The applicant's response may present additional facts and circumstances to address the assertions in the petition, but shall be limited to the issue of whether the applicant acted with due diligence during the regulatory review period. The applicant's response may include documents that were not in the original patent term extension application.

(c) If the applicant does not respond to the petition, APHIS will decide the matter on the basis of the information submitted in the patent term restoration application, the due diligence petition, and APHIS records.

**§ 124.32 APHIS action on petition.**

(a) Within 90 days after APHIS receives a petition filed under § 124.30, the Assistant Secretary for Marketing and Inspection Services shall make a determination under paragraphs (b) or (c) of this section or under § 124.33 whether the applicant acted with due diligence during the regulatory review period. APHIS will publish its determination in the **Federal Register** together with the factual and legal basis for the determination, notify PTO of the determination in writing, and send copies of the determination to PTO, the applicant, and the petitioner.

(b) APHIS may deny a due diligence petition without considering the merits of the petition if:

(1) The petition is not filed in accordance with § 124.30;

(2) The petition does not contain information or allegations upon which APHIS may reasonably determine that the applicant did not act with due diligence during the applicable regulatory review period; or

(3) The petition fails to allege a sufficient total amount of time during which the applicant did not exercise due diligence so that, even if the petition were granted, the petition would not affect the maximum patent term extension which the applicant is entitled to under 35 U.S.C. 156.

**§ 124.33 Standard of due diligence.**

(a) In determining the due diligence of an applicant, APHIS will examine the facts and circumstances of the applicant's actions during the regulatory review period to determine whether the applicant exhibited the degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period. APHIS will take into consideration all relevant factors, such as the amount of time between the approval of an experimental use permit and licensure of the veterinary biological product.

(b) For purposes of this Part, the actions of the marketing applicant shall be imputed to the applicant for patent term restoration. The actions of an agent, attorney, contractor, employee, licensee, or predecessor in interest of the marketing applicant shall be imputed to the applicant for patent term restoration.

## Subpart E—Due Diligence Hearing

**§ 124.40 Request for hearing.**

(a) Any interested person may request, within 60 days beginning on the publication of a due diligence determination by APHIS (See § 124.32), that APHIS conduct an informal hearing on the due diligence determination.

(b) The request for a hearing must:

(1) Be in writing;

(2) Contain the docket number of the **Federal Register** notice of APHIS's regulatory review period determination;

(3) Be delivered to the Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, 6505 Belcrest Road, Hyattsville, MD 20782.

(4) Contain a full statement of facts upon which the request for hearing is based;

(5) Contain the name, the address, and the principal place of business of the person requesting the hearing; and

(6) Contain a certification that the person requesting the hearing has served a true and complete copy of the request upon the petitioner of the due diligence determination and the applicant for patent term extension by certified or registered mail (return receipt requested) or by personal service.

(c) The request must state whether the requesting party seeks a hearing not later than 30 days after the date APHIS receives the request, or, at the request of the person making the request, not later than 60 days after such date.

**§ 124.41 Notice of hearing.**

No later than ten days before the hearing, APHIS will notify the requesting party, the applicant, the petitioner, and any other interested person of the date, time, and location of the hearing.

**§ 124.42 Hearing procedure.**

(a)(1) The presiding officer shall be appointed by the Administrator of APHIS from officers and employees of the Department who have not participated in any action of the Secretary which is the subject of the hearing and who are not directly responsible to an officer or employee of the Department who has participated in any such action.

(2) Each party to the hearing shall have the right at all times to be advised and accompanied by an attorney.

(3) Before the hearing, each party to the hearing shall be given reasonable notice of the matters to be considered at the hearing, including a comprehensive statement of the basis for the action taken or proposed by the Secretary which is the subject of the hearing and any general summary of the information which will be presented at the hearing in support of such action.

(4) At the hearing the parties to the hearing shall have the right to hear a full and complete statement of the action which is the subject of the hearing together with the information and reasons supporting such action, to conduct reasonable questioning, and to present any oral and written information relevant to such action.

(5) The presiding officer in such hearing shall prepare a written report of the hearing to which shall be attached all written material presented at the hearing. The participants in the hearing shall be given the opportunity to review and correct or supplement the presiding officer's report of the hearing.

(6) The Secretary may require the hearing to be transcribed. A party to the hearing shall have the right to have the hearing transcribed at his expense. Any transcription of a hearing shall be included in the presiding officer's report of the hearing.

(7) The due diligence hearing will be conducted in accordance with rules of practice adopted for the proceeding. APHIS will provide the requesting party, the applicant, and the petitioner with an opportunity to participate as a party in the hearing. The standard of due diligence set forth in § 124.33 will apply at the hearing. The party requesting the due diligence hearing will have the burden of proof at the hearing.

**§ 124.43 Administrative decision.**

Within 30 days after completion of the due diligence hearing, the Assistant Secretary for Marketing and Inspection Services, taking into consideration the recommendation of the Administrator, will affirm or revise the determination made under § 124.32. APHIS will publish the due diligence redetermination in the **Federal Register**, notify PTO of the redetermination, and send copies of the notice to PTO and the requesting party, the applicant, and the petitioner.

Done in Washington, DC, this 8th day of July 1992.

Robert Melland,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92-16343 Filed 7-10-92; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 92-AMN-7]**

## Proposed Establishment of Control Zone; Jackson, WY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish a control zone at Jackson, Wyoming, to prove additional controlled airspace for aircraft executing instrument approach procedures to the Jackson Hole Airport. The intent of this proposal is to segregate aircraft operating in visual flight rules (VFR) conditions from those operating under instrument flight rules (IFR). The area would be depicted on aeronautical charts to provide reference for pilots.

**DATES:** Comments must be received on or before August 15, 1992.

**ADDRESSES:** Send comments on the proposal to: Federal Aviation Administration, Docket No. 92-ANM-7, 1601 Lind Avenue SW., Renton, WA 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 92-ANM-7, 1601 Lind Avenue SW., Renton, WA 98055-4056, Telephone: (206) 227-2535.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ANM-7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055-4056, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

### The Proposal

The FAA proposes an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a control zone at Jackson, Wyoming to provide additional controlled airspace for aircraft executing instrument approach procedures to the Jackson Hole Airport. The Wyoming Department of Tranporation petitioned the FAA to propose this action.

This action, if promulgated, would segregate aircraft operating in VFR from those aircraft operating in IFR. This action would accurately define controlled airspace for pilot reference. The airspace would be depicted on aeronautical charts. Control zones are published in section 71.171 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1 The control zone listed in this document would be published subsequently in the handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7,

Compilation of Regulations, published April 30, 1991, and effective November 1, 1991 is amended as follows:

*Section 71.171 Designation*

* * * * *

Jackson, Wyoming [new]
Within a 4.3 mile radius of Jackson Hole Airport, Jackson, Wyoming (lat. 43°36'24"N, long. 110°44'15"W.).

* * * * *

Issued in Seattle, Washington, on June 24, 1992.

**Helen M. Parke,**

*Assistant Manager, Air Traffic Division.*

[FR Doc. 92-16217 Filed 7-10-92; 8:45 am]

BILLING CODE 4910-13-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1832 and 1852

### Addition of Coverage to NASA FAR Supplement on the Use of Milestone Billing Arrangements for Contract Financing

**AGENCY:** Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice amends the NASA Federal Acquisition Regulation Supplement (NFS), Chapter 18 of the Federal Acquisition Regulation System in title 48 of the Code of Federal Regulations. This rule sets forth the policies and criteria for the use of milestone billing arrangements for contract financing, as well as the clause to be included in contracts using such financing. It also sets forth the policy regarding advance payment determinations and findings for the use of milestone billing arrangements for expendable launch vehicle (ELV) services contracts.

**DATES:** Comments must be received on or before August 12, 1992.

**ADDRESSES:** Submit comments to the Assistant Administrator for Procurement, NASA, Code HC, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Le Cren, Procurement Analyst, Contract Pricing and Finance Division (Code HC), Telephone: (202) 453-9203.

**SUPPLEMENTARY INFORMATION:**

#### Background

FAR 32.102(e)(1) allows for the use of progress payments based on a percentage or stage of completion. Subparagraph 32.102(e)(2) allows for such payments in accordance with agency procedures. NASA has used and intends to use in the future a form of such payments—milestone billing arrangements, which provide for payment upon the successful completion of specific performance events. In addition, the use of milestone billing arrangements for expendable launch vehicle (ELV) services contracts currently requires an advance payment determinations and findings (DF). NASA has determined that D&Fs are not required for such contracts.

#### Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This proposed regulation falls in this category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

#### List of Subjects in 48 CFR Parts 1832 and 1852

Government procurement.

**Don G. Bush,**

*Assistant Administrator for Procurement.*

1. The authority citation for 48 CFR parts 1832 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

## PART 1832—CONTRACT FINANCING

2. Part 1832 is amended as set forth below:

a. Section 1832.402-2 is added to read as follows:

**1832.402-2 Expendable launch vehicle services contracts.**

Determinations and findings are not required for advance payments for contracts supporting expendable launch vehicle (ELV) services contracts (however, see 1832.70 for Milestone Billing Arrangements). Instead, all advance payments clauses for ELV services contracts shall be submitted to Code HC for concurrence prior to issuance of the solicitation (see 1832.7005) and to the Assistant Administrator for Procurement (Code HC) for approval prior to award (see 1832.7006).

b. Subpart 1832.70 is added to read as follows:

**Subpart 1832.70 Milestone Billing Arrangements**

1832.7001 General.
1832.7002 Policy.
1832.7003 Criteria for use.
1832.7004 Contractual implementation.
1832.7005 Concurrence prior to solicitation.
1832.7006 Approval prior to contract award.
1832.7007 Subcontracts and contract amendments.
1832.7008 Solicitation and contract clause.

### Subpart 1832.70—Milestone Billing Arrangements

**1832.7001 General.**

As authorized at FAR 32.102(e), milestone billing arrangements may be used for contract financing. Milestone billing arrangements fall between progress payments based on costs with unusual terms and advance payments in the order of preference specified in FAR 32.106. Milestone billing arrangements are contractual provisions which provide for payments to a contractor upon successful completion of specific performance events not involving physical deliveries to the Government. As milestone arrangements are interim payments with respect to total contract performance, they are fully recoverable, in the same manner as progress payments, in the event of default. Milestone payments shall not be considered as payments for contract items delivered and accepted, incentive price revisions, or inspection and acceptance provisions of the contract. Milestone billing arrangements are contract financing payments and as such are not subject to prompt payment.

**1832.7002 Policy.**

In negotiating milestone billing arrangements, contracting officers must seek to establish an overall level of contract financing that will result in the contractor maintaining an appropriate investment in contract work-in-process inventory. The level of contract financing should be based on the number, value and timing of the milestone billing events, and the manner in which milestone payments are liquidated against contract line item deliveries. Therefore, proposed milestone billing arrangements should be carefully evaluated to insure that contract financing objectives are being met, that the proposed milestone billing arrangement will not result in an unreasonably low or negative level of contractor work-in-process inventory, or create an administrative burden (e.g., too frequent payments).

**1832.7003 Criteria for use.**

(a) Milestone billing arrangements are limited to fixed-price type contracts in excess of $10 million with long lead times (at least 12 months) between the

initial incurrence of costs under the contract and the delivery of the first end item.

(b) The contract shall not provide for progress payments based on cost or advance payments, with the exception of expendable launch vehicle (ELV) services contracts (see 1832.7003(d)).

(c) The established milestone events will be readily determinable.

(d) Milestone billing amounts shall not exceed the Government's best estimate of the cost to perform each milestone event. For ELV services contracts, 42 U.S.C. 2459c provides authority to make advance payments in conjunction with milestone billing arrangements. Advance payments provided under such arrangements must be reasonably related to launch vehicle and related equipment, fabrication, and acquisition costs. However, 42 U.S.C. 2459c provides considerable flexibility in determining what types of costs (committed, incurred, expended) may be considered in determining payment schedules for ELV services contracts. Individual milestone payments may exceed a contractor's incurred costs during performance only if the payment schedules comply with the intent of 42 U.S.C. 2459c, are considered fair and reasonable, and serve the Government's best interests.

(e) The contract milestones should represent the completion of substantial items of service or events that would normally require management visibility and attention to assure their timely accomplishment. Milestones should not be based on insignificant events, administrative functions, percentage of completion estimates, or the passage of time. The number of milestone events will be kept to a minimum.

**1832.7004 Contractual implementation.**

Contracts containing milestone billing arrangements will include the following requirements:

(a) Normally, milestone billings will not be submitted after deliveries of major end items commence upon which milestone payments have been made. In the event the period between delivery of such major end item and the next end item delivery exceeds three months, milestone payments can continue to be made as mutually agreed for appropriate events.

(b) Completion of each milestone must be certified by the contractor and verified by the contract administration office in order for payment to be made.

(c) The processing of milestone billing vouchers shall not be delegated outside NASA.

(d) The relationship between milestone billing events and deliverable contract line items will be clearly established in the contract. A milestone billing event should normally be associated with only one contract line item. However, a contract line item may have more than one related milestone billing event. Upon delivery and acceptance of a contact line item on which milestone payment(s) has/have been made, the amount of the related milestone payment(s) will be deducted from the amount otherwise payable for the contract line item.

(e) Milestone billing amounts will not be subject to the "Adjusting Billing Prices" paragraph of the Incentive Price Revision-Firm Target clause (FAR 52.216-16(f)) in fixed-price incentive contracts and will not be adjusted for actual costs incurred above or below the contract target cost. Milestone billings will not be adjusted as a result of the operation of an economic price adjustment clause.

(f) Milestone payments are interim payments with respect to total performance and, as such, are fully recoverable, in the case of default, in the same manner as progress payments.

**1832.7005 Concurrence prior to solicitation.**

Prior to the issuance of a solicitation in which a milestone billing arrangement is made available, concurrence shall be requested in writing from Code HC. The request shall provide the reasons why a milestone billing arrangement is appropriate and include a copy of the milestone billing arrangement clause if it differs from the clause at 1852.232–83, Milestone Billing Arrangements.

**1832.7006 Approval prior to contract award.**

Subsequent to solicitation, but prior to contract award, a request for approval of the milestone billing arrangement shall be submitted to the Assistant Administrator for Procurement (Code HC). The request for approval should include the following information:

(a) The name and phone number of the contracting officer.

(b) A copy of the contractor's support for a milestone billing arrangement, including the rationale and statement of need for milestone billings.

(c) A copy of the proposed milestone billing clause.

(d) Description of the milestone billing events, with a schedule milestone completion dates and milestone values, and the method of verifying completion.

(e) Description of the contract end items with their delivery schedule and prices.

(f) Proposed milestones and contract end items, with appropriate narrative showing how the milestone amounts were estimated and distributed to the contract end items for interim milestone payment and end item final payment purposes.

(g) Financial analysis (numeric and graphic) showing cash flow and contractor investment in the contractor work-in-process inventory, with and without milestone billings.

(h) Any other information considered relevant.

**1832.7007 Subcontracts and contract amendments.**

Subcontracts and amendments to prime contracts that incorporate milestone billing arrangements are also subject to the criteria, contractual implementation, concurrence and approval policies in this Subpart. Requests for concurrence and approval shall be submitted to the prime contractor through the next higher tier subcontractor, if applicable, to the contracting officer.

**1832.7008 Solicitation and contract clause.**

(a) The contracting officer shall insert a clause substantially the same as the clause at 1852.232–83, Milestone Billing Arrangements, in solicitations and contracts when a fixed-price type contract will be awarded and a milestone billing arrangement is contemplated.

(b) The contracting officer shall include a clause substantially the same as the clause at 1852.232–84, Milestone Billing Arrangements—Subcontracts, in all solicitations and contracts when a fixed-price subcontract in excess of $10 million with a milestone billing arrangement is contemplated.

## Part 1852—Solicitation Provisions and Contract Clauses

3. Sections 1852.232–83 and 1852.232–84 are added to read as follows:

**1852.232–83 Milestone Billing Arrangements.**

As prescribed in 1832.7008(a), insert the following clause.

**Milestone Billing Arrangements (XXX 1902)**

(a) A payment will be made to the contractor upon completion of each milestone event specified in paragraph (g) of this clause in the amount specified for the relevant milestone event.

(b) Upon completion of each milestone billing event, the contractor shall notify the contracting officer in writing, accompanied by a certification, that the milestone event has been completed. The contractor's written notification shall contain a brief narrative of the work activity accomplished for the particular milestone event. The contracting

officer shall promptly verify that successful completion of the milestone event has occurred and notify the contractor of NASA's concurrence. The contractor shall then submit a voucher with a copy of the contracting officer's verification to the designated paying office.

(c) Milestone billings shall not be submitted after deliveries of major end items commence upon which milestone payments had been made.

(d) All milestone payments are interim contract financing payments with respect to total contract performance. As such, they are fully recoverable in the event of default under the Default clause. Therefore, all milestone payments made with respect to contract line items that are not delivered and accepted by the Government shall, in the event of a termination for default, be paid to the Government upon demand.

(e) The contractor shall establish and record a preferred creditor's lien on behalf of the Government, i.e., a first lien paramount to all other liens, in each jurisdiction where property subject to this contract is located. The lien shall be on the contractor's work-in-process covered by the contract, except to the extent that the Government by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or other property as against other creditors of the contractor. The property subject to the liens shall include that to be acquired under subcontracts where payments are to be made to the subcontractor prior to the acceptance of such property. The contractor shall promptly provide to the Government a copy of all lien filings.

(f) The contractor represents and warrants that it maintains with responsible insurance carriers (1) insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workers' compensation laws. The contractor agrees that, until work under this contract has been completed and all payments made under the contract have been liquidated, it will maintain this insurance and furnish any certificates with respect to its insurance that the administering office may require.

(g) Upon successful completion of a milestone event, the contractor may request milestone payments based on the following milestone data:

| Milestone event | Contract line item | Amount | Estimated date of completion |
|---|---|---|---|
| (1) | | | |
| (2) | | | |
| (3) etc. | | | |

(h)(1) A milestone event may be successfully completed in advance of the date appearing in paragraph (g) of this clause. However, payment shall not be made prior to that date without the prior written consent of the contracting officer.

(2) The contractor is not entitled to partial payment for less than successful completion of a milestone event.

(3) All preceding milestone events must be successfully completed before payment can be made for the next milestone event.

(End of clause)

**1852.232–84 Milestone Billing Arrangements—Subcontracts.**

As prescribed in 1832.7008(b), insert the following clause.

**Milestone Billing Arrangements—Subcontracts (XXX 1992)**

(a) The contractor is prohibited from using milestone billing arrangements in subcontracts except in accordance with NASA FAR Supplement Subpart 1832.70.

(b) The contractor shall insert the substance of this clause, including this paragraph (b), in all subcontracts in excess of $10 million.

(End of clause)

[FR Doc. 92–16138 Filed 7–10–92; 8:45 am]

BILLING CODE 7510–01–M

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# Notices

Federal Register
Vol. 57, No. 134
Monday, July 13, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 92-108-1]

### Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

**ADDRESSES:** Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

| Permit No. | Permittee | Date issued | Organisms | Field test location |
|---|---|---|---|---|
| 92-076-02 | New York State Agricultural Experiment Station | 6-18-92 | Squash, cantaloupe, and tomato plants genetically engineered to express the coat protein gene of cucumber mosaic virus white leaf strain. | Ontario County, New York. |
| 92-105-02 | Holden's Foundation Seeds, Incorporated | 6-18-92 | Corn plants genetically engineered to express male sterility linked with kanamycin or phosphinothricin tolerance as markers. | Iowa County, Iowa. |

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 8th day of July 1992.

**Robert Melland,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92-16346 Filed 7-10-92; 8:45 am]

BILLING CODE 3410-34-M

## Rural Electrification Administration

### East Kentucky Power Cooperative, Inc.; Finding of No Significant Impact

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Notice of Finding of No Significant Impact.

**SUMMARY:** Notice is hereby given that the Rural Electrification Administration (REA) has prepared an environmental assessment (EA) and has made a finding of no significant impact (FONSI) with respect to the potential environmental impact resulting from a proposal by East Kentucky Power Cooperative, Inc. (EKPC) to construct and operate a combustion turbine generation facility at a site within EKPC's service territory. This action has been taken in accordance with REA Environmental Policies and Procedures, 7 CFR 1794.34. The preferred Smith site is located within the boundaries of the J.K. Smith Generating Station Complex in southeastern Clark County, Kentucky.

**FOR FURTHER INFORMATION CONTACT:** Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

**SUPPLEMENTARY INFORMATION:** As part of its environmental review process, REA held an interagency and two public scoping meetings in September 1991. EKPC was required by REA to develop an environmental analysis (EVAL) and other documentation to support its proposal. The documentation provided by EKPC, input from the three meetings, and input from certain Federal and state agencies have been used by REA to develop its EA. REA has concluded that the EA represents an accurate assessment of the environmental impacts of the proposed project and that the impacts are acceptable.

The J.K. Smith Generation Complex (3,200 acres) is located approximately 9 miles southeast of Winchester, Kentucky, in southeastern Clark County. The complex contains the partially completed facilities associated with a coal-fired generation project. Construction of this project was suspended in 1982. The proposed project would impact approximately 46 acres of land within the complex. It consists of three combustion turbine generating units with a total net capacity of 300 megawatts and associated facilities. The three units would have dual fuel capability. Natural gas would be obtained from existing pipelines that cross the complex. Fuel oil, the secondary fuel, would be delivered by tanker truck and stored in an above ground tank. Water would be obtained from the Kentucky River through existing intake facilities and treated wastewater would be returned to the river through existing discharge facilities. The electrical output of the facility would be routed through the Dale Station to the Powell 138 kilovolt (kV) transmission line that is currently under construction, and a new 138 kV transmission line of approximately 15 miles that would connect the project to the proposed Fawkes Substation in Madison County. The new one acre substation would be located adjacent to an existing Kentucky Utilities, Inc., substation.

Alternatives considered to the project as proposed were no action, demand side options, purchased capacity from both utility and non-utility generators, and ownership participation in a coal-fired unit. Alternative generation technologies and alternative sites were also evaluated. REA has considered these alternatives and concludes that the development of a combustion turbine generation project with associated transmission facilities at the Smith site is the preferred alternative for EKPC to meet peak load capacity requirements beginning in 1995.

Based upon an independent analysis of the EVAL and other information available, as defined in the EA, REA has concluded that the construction and operation of the proposed combustion turbine generation facility utilizing the Smith site will have no significant impact on air quality, water quality, wetlands, the 100-year floodplain, existing land uses, prime farmland, cultural resources, or flora and fauna. In addition, REA has determined that the construction and operation of the proposed project should have no effect on Federally-listed or proposed threatened and endangered species, designated critical habitat, or candidate species. However, as a precaution, surveys of specific habitats within the project site and transmission line route will be conducted to determine the potential occurrence of one listed and three candidate plant species.

No other potential significant impact resulting from the construction and operation of the proposed project has been identified.

Copies of the environmental analysis, environmental assessment and finding of no significant impact are available for review at, or can be obtained from, REA at the address provided herein or from Mr. Robert E. Hughes, Jr., East Kentucky Power Cooperative, Inc., 4758 Lexington Road, P.O. Box 707, Winchester, Kentucky 40392, during normal business hours. Copies of the documents have also been sent to various Federal, state and local agencies and will also be available for review at the following libraries in Kentucky: Adair County Public Library in Columbia, Madison County Public Library in Richmond, Clark County Public Library in Winchester, Green County Public Library in Greensburg, and the Jamestown Public Library in Jamestown.

REA will take no final action with respect to EKPC's request for financing assistance for the proposed project for at least thirty (30) days after publication of this notice in the **Federal Register** and in newspapers of general circulation in the five counties previously identified.

Any comments should be sent to REA at the address given previously. All comments received will be considered.

Dated: July 2, 1992.

**George E. Pratt,**

*Deputy Administrator—Program Operations.*

[FR Doc. 92–16243 Filed 7–10–92; 8:45 am]

BILLING CODE 3410–15–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Public Meeting of the New York State Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee will be convened at 1:30 p.m. and adjourn at 4 p.m. on Monday, August 3, 1992, in Conference Room 914, T.J. Dulski Federal Building, 111 West Huron Street, Buffalo, New York, 14202. The purpose of the meeting is to release the Committee's recently completed report, Shelter Issues in New York: The New Fair Housing Amendments Act, and Western New York Public Housing; take action on a draft report, Minority Access to Health Care and Nursing Homes; and complete details for a Statewide conference.

Persons desiring additional information, or planning a presentation to the Committee, should contact Paula M. Ciprich, Member and Convener, at (716/857–7548), or John I. Binkley, Director, ERO, at (202/523–5264) or TDD (202/376–8116). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the regional office at least five (5) working days before the scheduled date of the meeting. The meeting will be conducted

pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 2, 1992.

Carol-Lee Hurley,

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 92-16323 Filed 7-10-92; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-475-802]

### Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On April 20, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, from Italy (57 FR 14385). The review covers one manufacturer/exporter of the subject merchandise, Pirelli Trasmissioni Industriali, S.p.A., and the period June 1, 1990 through May 31, 1991.

As a result of the review, the Department of Commerce has determined to assess antidumping duties based on the best information available.

**EFFECTIVE DATE: JULY 13, 1992.**

**FOR FURTHER INFORMATION CONTACT:** Megan Pilaroscia or Jean C. Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 19, 1991, in accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order (54 FR 25313, June 14, 1989) on industrial belts and components and parts thereof from Italy for the period June 1, 1990 through May 31, 1991 (56 FR 33250). On April 20, 1992, we published the preliminary results of this administrative review (57 FR 14385). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

#### Scope of the Review

The products covered by this review are shipments of industrial belts and components and parts thereof, whether cured or uncured, from Italy. The covered merchandise consists of V-belts and synchronous industrial belts used for power transmission. These include V-belts and synchronous belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.*, closed loops) belts, or in belting in lengths or links.

This review excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

During the review period, the merchandise was classifiable under Harmonized Tariff System (HTS) subheadings 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00. The HTS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the shipments of one manufacturer/exporter of industrial belts from Italy to the United States, Pirelli Trasmissioni Industriali, S.p.A. (Pirelli), and the period June 1, 1990 through May 31, 1991.

#### Final Results of the Review

Because Pirelli did not submit a complete response to our questionnaires, we preliminarily determined to use the best information available (BIA). As BIA, we used the rate from the original investigation of sales at less-than-fair-value, which was 74.90 percent. We give interested parties an opportunity to comment on our preliminary results; we received on comments. Therefore, the antidumping duty margin is 74.90 percent for merchandise produced by Pirelli and entered during the period June 1, 1990 through May 31, 1991.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 74.90 percent. This rate normally represents the highest rate for any firm with shipments in the administrative review, other than those firms receiving a rate based entirely on BIA. Because the only firm in this review received a BIA rate, and there is no previous review in which a non-BIA rate was established, the "all other" rate will be the "all other" rate from the original investigation of sales at less-than-fair-value.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

In addition, this notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 7, 1992.

Alan M. Dunn,

*Assistant Secretary for Import Administration.*

[FR Doc. 92-16377 Filed 7-10-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-814]

## Pure and Alloy Magnesium From Canada: Final Affirmative Determination; Rescission of Investigation and Partial Dismissal of Petition

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Magd Zalok, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 377–4162.

**FINAL DETERMINATION AND RESCISSION OF INVESTIGATION:** The Department determines that pure magnesium from Canada is being, or likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The estimated margin is shown in the "Suspension of Liquidation" section of this notice. In addition, we are rescinding our investigation of alloy magnesium.

### Case History

Since the publication of our preliminary determination on February 20, 1992 (57 FR 6092), the following events have occurred: In response to requests from Norsk Hydro Canada Inc. (NHCI), we postponed the deadlines for the final determinations in these cases (57 FR 508860, March 13, 1992) and (57 FR 20809, May 15, 1992). On April 27, 1992, the Department preliminarily determined that pure and alloy magnesium are two classes or kinds of merchandise (see discussion, below).

### Class or Kind of Merchandise

As stated above, the Department preliminarily determined that pure and alloy magnesium are two separate classes or kinds of merchandise (*see* April 27, 1992 Memorandum to Francis J. Sailer). The Department's decision was based on numerous submissions of factual information by the parties to this proceeding, as well as information collected by the Department at verification. Since the Department's preliminary determination on class or kind, we have received no new arguments on this issue. For the reasons discussed below, we determine that pure and alloy magnesium constitute two separate classes or kinds of merchandise.

The Department is permitted to separate products under investigation into separate classes or kinds of merchandise based on the criteria set forth in *Diversified Products Corporation* v. *United States*, 6 CIT 155, 572 F. Supp. 883 (1983) ("Diversified"). According to Diversified, the Department may rely upon the following factors in determining whether products belong to the same class or kind of merchandise: (1) The general physical characteristics of the merchandise; (2) the ultimate use of the merchandise; (3) the expectations of the ultimate purchaser; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed. See e.g., Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992 (May 3, 1989). Our analysis of pure and alloy magnesium in light of the Diversified criteria supports a finding that these two products are separate classes or kinds of merchandise.

Although the percentages of magnesium, by weight, contained in pure and alloy magnesium can be very similar, the addition of alloying elements to pure magnesium clearly results in products with different physical characteristics. Pure magnesium is a soft metal of low strength and low corrosion resistance. When alloyed with other elements, however, the mechanical and physical properties of the magnesium are significantly altered, becoming harder and stronger and possessing a high corrosion resistance. While much of the production process for pure and alloy magnesium is the same, the final stage in the production of alloy magnesium is more costly, requiring alloying furnaces for the addition of alloying agents and more controlled conditions throughout the remaining production process.

The different ultimate uses of pure and alloy magnesium offer the strongest support for separating these products into two classes or kinds of merchandise. There is a considerable lack of interchangeability between pure and alloy magnesium. While pure magnesium is used primarily as a chemical in the aluminum alloying and desulfurization industries, alloy magnesium is a structural material, used primarily for die casting.

Because of the different ultimate uses of pure and alloy magnesium, along with their lack of interchangeability, it follows that customers have different expectations for the two metals (e.g., only alloy magnesium is suitable for die or gravity casting). The different expectations of the pure and alloy customer is also evidenced in the highly controlled nature of the final stage in the production process for alloy magnesium. Because of its specialized nature, customers of alloy magnesium are very interested in how it is produced. This degree of specialization and customer interest in the production process is typically not present in the manufacture of pure magnesium.

The channels of trade for pure and alloy magnesium are very similar. Both pure and alloy magnesium are typically sold directly by producers to end-users. Furthermore, some companies use the same sales staff for both pure and alloy magnesium.

Throughout these investigations, we have seen advertising which applies to only pure and alloy magnesium and advertising which applies to both. Therefore, the way in which the product is advertised and displayed is not particularly instructive for purposes of our class or kind analysis.

In sum, our analysis of pure and alloy magnesium in light of the Diversified criteria supports a finding that these products should be separate classes or kinds of merchandise. Although there is evidence that the channels of distribution for these two products are similar, the product characteristics, ultimate uses, and expectations of the customer show that pure and alloy magnesium are two distinct classes or kinds of merchandise.

### Rescission of Investigation With Respect to Alloy Magnesium

The dumping allegation presented in Magnesium Corporation of America's ("Magcorp's") September 5, 1991 petition contained pricing information only with respect to pure magnesium. Prior to the Department's preliminary determination that pure and alloy magnesium are two separate classes or kinds of merchandise, Magcorp submitted new information concerning the prices it believed were being charged in the United States for alloy magnesium by Norsk Hydro.

The Department has determined that the evidence supporting petitioner's dumping allegation regarding alloy magnesium is insufficient. This determination is based on the following facts:

- Significant terms of petitioner's and Norsk Hydro's sales referred to in the new allegation were not described in detail (e.g., the scrap buy-back program). Without terms, the Department is unable to quantify an accurate net selling price.
- Petitioner only provided data on the alloy prices that petitioner, allegedly, had to charge to meet the prices on magnesium from Canada and Norway

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without any explanation of how these prices are representative of petitioner's U.S. selling price.

• There is no indication in any of petitioner's supporting information as to the source country for the foreign magnesium referenced by petitioner.

Because the evidence provided by the petitioner is insufficient to support the dumping allegation against alloy magnesium, we are rescinding the portion of this investigation dealing with alloy magnesium from Canada.

**Scope of the Investigation**

The product covered by this investigation is pure magnesium from Canada. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope of this investigation. Pure magnesium is currently classified under subheading 8104.11.0000 of the Harmonized Tariff Schedule ("HTS"). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

**"On Behalf of" Issue**

Norsk Hydro has challenged petitioner's ability to file the petition and has requested that the Department dismiss the petition and terminate this investigation. Norsk Hydro argues that this investigation is being conducted in violation of U.S. law since the petitioner is acting alone and not on behalf of the domestic industry. After finding no opposition to the petition, the Department concluded in the preliminary determination that there was no basis to say that the petition was not filed on behalf of the domestic industry. Norsk Hydro claims that the Court of International Trade ("CIT"), the Court of Appeals for the Federal Circuit ("Federal Circuit"), and a panel established under the General Agreement on Tariffs and Trade ("GATT") have interpreted the phrase "on behalf of" as requiring an affirmative showing of support by others in the domestic industry.

First, Norsk Hydro cites *Suramericana de Aleaciones Laminadas, C.A.* v. *United States*, 746 F. Supp. 139, 144 (CIT 1990), No. 91–1015 (Fed. Cir. Oct. 5, 1990), in which the CIT held that an interested party must show that a majority of the domestic industry backs its position. In Suramericana, the petitioner lacked standing because only thirty-four percent of the domestic industry supported the petition for an investigation. *Id.* at 150. Norsk Hydro argues that in this investigation, petitioner clearly lacks standing because it is the only company to support the petition and represents twenty-two percent of the industry. Norsk Hydro concludes that petitioner did not act "on behalf of" the domestic industry and, therefore, does not have standing to initiate the investigation.

Second, Norsk Hydro claims that relevant case precedents reaffirm that petitioner does not have standing in this investigation. Norsk Hydro cites *Oregon Steel Mills, Inc.* v. *United States*, 862 F.2d 1541, 1545 (Fed. Cir. 1988), to substantiate the assertion that "industry support is an essential part of the merits of an affirmative determination."

Finally, Norsk Hydro claims that Commerce' finding of standing is inconsistent with a GATT panel decision, United States—Imposition of Anti-Dumping Duties on Imports of Seamless Steel Hollow Products from Sweden ADP/47 (Aug. 20, 1990) ("Swedish Steel"). Under similar circumstances, this GATT panel rejected an affirmative standing determination by the Department and stated that "on behalf of the industry affected' implies that such a request must have the authorization or approval of the industry affected." *Id.* at ¶ 5.9. Norsk Hydro contends, therefore, that Commerce's conduct violated U.S. obligations under the GATT and Antidumping Code.

The Department disagrees with Norsk Hydro and continues to find that MagCorp filed the petition on behalf of the domestic industry in the instant investigation. The Federal Circuit recently reversed the CIT's decision in Suramerica and upheld the Department's interpretation of the statutory phrase "on behalf of." *Suramericana de Aleaciones Laminadas, C.A.* v. *United States*, Slip Op. 91–1015, —1055 (June 11, 1992). The Federal Circuit explained that nothing in the statute or legislative history indicates the degree of support that must be shown before the Department may accept a petition as filed "on behalf of" the domestic industry. The court noted that, absent any indication of Congressional intent, there are several possible interpretations of the statute but that the CIT erred in choosing its interpretation over that of the Department (citing *Chevron U.S.A. Inc.* v. *Natural Resources Defense Fund*, 467 U.S. 837, 866 (1984)). The Federal Circuit held that the Department's interpretation of the phrase "on behalf of" is a permissible interpretation of the statute. The Oregon Steel decision, as the Federal Circuit noted, did not address the issue of quantification of support required by the phrase "on behalf of." The Federal Circuit's decision in Suramerica follows numerous CIT decisions upholding Commerce's interpretation of the phrase "on behalf of." For example, in *Citrosuco Paulista* v. *United States*, 704 F. Supp. 1075, 1080 (CIT 1988), the CIT held "neither the statute, nor Commerce's regulations require a petitioner to establish affirmatively that it has the support of a majority of a particular industry, and the Court declines to impose such a requirement." See also, *Comeau Seafoods* v. *United States*, 724 F. Supp. 1407, 1411 (CIT 1989); *Sandvik AB* v. *United States*, *721 F. Supp. 1322, 1328 (CIT 1989)*, *Vitro Flex* v. *United States*, 714 F. Supp. 1229, 1235 (CIT 1989). The CIT has suggested that the Department may dismiss petitions that are not actively supported by a majority of the domestic industry, but has found no statutory requirement for doing so. *Citrosuco Paulista* v. *United States*, 704 F. Supp. at 1095.

At the outset of this investigation, the petitioner clearly stated that it had brought its petition "on behalf of" the domestic producers of pure and alloy magnesium. While the two other domestic producers chose not to affirmatively support the petition, they declined the Department's published invitation to oppose the investigation. Absent any showing of opposition by domestic producers, the Department properly continued the investigation. The Department's actions in this regard are consistent with the Federal Circuit's opinion in Suramerica.

In Suramerica, the Federal Circuit also rejected the argument that a presumption of standing for the petitioner violates U.S. obligations under the GATT and the Subsidies Code. As the Federal Circuit noted, the decision in Swedish Steel was limited in scope, by the panel's express language, to the specific case before it. Furthermore, as the Federal Circuit stated, GATT interpretations are not controlling over U.S. law: "If the statutory provisions at issue here are inconsistent with the GATT, it is a matter for Congress and not this court to decide and remedy." Slip Op. at 18.

In sum, the Department's interpretation of the phrase "on behalf of" in this case is consistent with the Federal Circuit's decision in Suramerica. An affirmative showing of support by the domestic industry was not required in order for the Department to conduct these investigations. The evidence reviewed by the Department supports the determination that MAGCORP's petition was brought "on behalf of" the domestic industry.



**Critical Circumstances**

On March 4, 1992, petitioner alleged that "critical circumstances" existed with respect to imports of pure and alloy magnesium from Canada. Section 733(e)(1) of the Act provides that critical circumstances exist when:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of investigation at less than its fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B) of the Act, and section 353.16(f) of the Department's regulations, we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. (See, *e.g.*, Silicon Metal from Brazil, 56 FR 26977, June 12, 1991). If imports during the period immediately following the filing of a petition increase by at least 15 percent over imports during a comparable period immediately preceding the filing of a petition, we consider them massive.

Since the petition was filed on September 5, 1991, we compared the volume of imports for NHCI during the three month period from the filing of the petition, September 1991 through November 1991, to a comparable period immediately preceding the filing of the petition (June through August 1991). We believe that use of the minimum period of three months (provided in section 353.16(g) of the Department's regulation) best serves the objective of determining whether critical circumstances exist, since the Department directed the U.S. Customs Service to suspend liquidation on or after December 6, 1991, as a result of the affirmative preliminary determination in the countervailing duty investigation of pure and alloy magnesium from Canada. Including the three months after the CVD suspension of liquidation in our critical circumstances analysis could mask the companies' attempts to bring in imports prior to any suspension of liquidation.

NHCI failed to provide the Department with the necessary information regarding its volume of pure magnesium exports to the United States. Therefore, as best information available, we used the volume of imports provided in the United States Import Statistics (IM–146) in our analysis of critical circumstances. Based on this, we determine that NHCI's imports of pure magnesium have been massive over a relatively short period.

It is our standard practice to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. See, *e.g.*, Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 FR 18992, (May 3, 1989).

Because NHCI's margin exceeds 25 percent and because we found that NHCI's imports of pure magnesium were massive over relatively short period of time, we determine that critical circumstances exist with respect to this company. With respect to Timminco's imports of pure magnesium, we determine that no critical circumstances exist. This finding is in accordance with section 353.16 of the Department's regulations. (19 CFR 353.16) (1991).

**Period of Investigation**

The period of investigation (POI) is April 1, 1991 through September 30, 1991.

**Such or Similar Comparisons**

We find that pure magnesium constitutes one such or similar category of merchandise. All of our comparisons were based on sales of identical merchandise.

**Best Information Available**

We have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for NHCI. Section 776(c) requires the Department to use the best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation * * *" Given NHCI's failure to respond to sections B, C, and D of the Department's questionnaire, this section of the Act applies.

In deciding what to use as best information available, section 353.37(b) of the Department's regulations (19 CFR 353.37(b) (1991)) provides that the Department may take into account whether a party refuses to provide requested information. Thus, the Department determines on a case-by-case basis what is the best information available. Given NHCI's refusal to submit its responses to sections B, C, and D of the questionnaire, we assigned it the highest calculated margin based on information submitted by petitioner regarding pure magnesium, as best information available. This margin is 31.33 percent.

**Fair Value Comparisons**

To determine whether sales of pure magnesium by Timminco to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

**United States Price**

All of Timminco's sales were made directly to unrelated U.S. customers price to importation. Therefore, U.S. Price was based on purchase price in accordance with section 772(b) of the Act. Exporter's sales price methodology was not indicated by other circumstances.

We calculated purchase price based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, U.S. brokerage and handling expenses, U.S. duties, and U.S. freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts.

We recalculated credit expenses for U.S. sales to reflect the company's actual short-term interest rates during the period of investigation and to deduct the discount from the selling price before calculating the actual credit expense incurred on each sale.

**Foreign Market Value**

In order to determine whether Timminco had adequate sales of magnesium in the home market to serve as a basis for calculating foreign market value (FMV), we compared the volume of home market sales to the aggregate volume of third country sales, in accordance with 19 CFR 353.48(a). We have determined that home market sales were less than five percent of the aggregate volume of third country sales. Therefore, FMV was based on third country sales.

We based our selection of the appropriate third country on whether the third country had an "adequate" volume of sales, within the meaning of 19 CFR 353.49(b)(1). We selected Japan because the merchandise sold in the

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United States and because Japan constituted Timminco's largest third country market.

We calculated FMV on the basis of prices to unrelated customers in Japan. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, and packing expenses. We made a circumstance of sale adjustment, where appropriate, for differences in credit costs pursuant to 19 CFR 353.56(a). Where appropriate, we added U.S. packing to FMV, in accordance with Section 773(a)(1) of the Act.

We recalculated third country credit expenses to reflect the company's actual short-term interest expenses for the period of investigation.

**Currency Conversion**

We made currency conversions in accordance with § 353.60 (a) of the Department's regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

**Verification**

Pursuant to section 776(b) of the Act, we verified the information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents. Our verification results are outlined in detail in the public versions of our verification report, which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

**Comments**

All written comments submitted by the interested parties in this investigation which have not been previously addressed in this notice are addressed below:

*Comment 1*

NHCI argues that the Department should revise certain elements of Magcorp's constructed value calculations used in the Department's calculation of NHCI's foreign market value since they are not reasonably quantified or valued.

*DOC Position*

The Department reviewed Magcorp's allegation extensively at the time this case was initiated. We accepted petitioner's constructed value calculation because it was consistent with the Department's methodology. It was up to NHCI to provide a response that might demonstrate that petitioner's allegation was incorrect. Given that NHCI chose not to provide responses to the Department's questionnaire, Magcorp's allegation was accepted as the best information available.

**Suspension of Liquidation**

In accordance with section 735 (d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation on all entries from NHCI of pure magnesium, as defined in the "Scope of Investigation" section of this notice. Also because we determined that critical circumstances exist with respect to NHCI, we are instructing the U.S. Customs Service to suspend liquidation of such entries that are entered or withdrawn from warehouse, for consumption, on or after the date which is 90 days prior to the publication of the notice of the preliminary determination in this investigation in the **Federal Register**. The U.S. Customs Service shall require a cash deposit equal to the estimated amounts by which the foreign market value of pure magnesium exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins for pure magnesium are as follows:

| Manufacturer/producer/exporter | Weighted-average margin (Percent) |
|---|---|
| Norsk Hydro Canada Inc. | 31.33 |
| Timminco Limited | 00.00 |
| All Others | 31.33 |

We are also directing the U.S. Customs Service to terminate suspension of liquidation of all entries of alloy magnesium pursuant to our rescission of the investigation of this class or kind of merchandise. The U.S. Customs Service shall release any cash deposits or bonds posted on entries of alloy magnesium made prior to this determination.

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the ITC of our determinations.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and (19 CFR 353.20(a)(4)).

Dated: July 6, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration*

[FR Doc. 92-16376 Filed 7-10-92; 8:45 am]

BILLING CODE 3510-DS-M

**[A-403-803]**

## Pure and Alloy Magnesium From Norway: Final Negative Determination; Rescission of Investigation and Partial Dismissal of Petition

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** The Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1274.

**FINAL DETERMINATION AND RESCISSION OF INVESTIGATION:** We determine that pure magnesium from Norway is not being, nor is it likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673d(a)). In addition, we are rescinding our investigation of alloy magnesium.

**Case History**

Since the publication of our preliminary determination in the **Federal Register** (57 FR 6092, February 20, 1992), the following events have occurred.

On March 16, 1992, Norsk Hydro a.s ("Norsk Hydro") submitted revised sales listings for its home, third country, and U.S. markets. On March 25, 1992, Norsk Hydro submitted additional corrections to its U.S. sales listing. The Department verified the questionnaire responses of Norsk Hydro in Norway, Germany, and Canada from March 23 to April 3, 1992.

On April 27, 1992, the Department preliminarily determined that pure and alloy magnesium are two classes or kinds of merchandise, as discussed, below. A public hearing was held on May 1, 1992.

On May 7, 1992, Norsk Hydro requested that the Department extend the final determination in this investigation. Accordingly, on May 11, 1992, the Department extended the final determination to July 6, 1992 (57 FR 20809, May 15, 1992).

**Class or Kind of Merchandise**

As stated above, the Department preliminarily determined that pure and alloy magnesium are two separate classes or kinds of merchandise (see April 27, 1992 Memorandum to Francis J. Sailer). The Department's decision was based on numerous submissions of factual information by the parties to this proceeding, as well as information collected by the Department at verification. Since the Department's preliminary determination on class or kind, we have received no new arguments on this issue. For the reasons discussed below, we determine that pure and alloy magnesium constitute two separate classes or kinds of merchandise.

The Department is permitted to separate products under investigation into separate classes or kinds of merchandise based on the criteria set forth in *Diversified Products Corporation* v. *United States*, 6 CIT 155, 572 F. Supp. 883 (1983) ("Diversified"). According to Diversified, the Department may rely upon the following factors in determining whether products belong to the same class or kind of merchandise: (1) The general physical characteristics of the merchandise; (2) the ultimate use of the merchandise; (3) the expectations of the ultimate purchaser; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed. See e.g., *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992 (May 3, 1989). Our analysis of pure and alloy magnesium in light of the Diversified criteria supports a finding that these two products are separate classes or kinds of merchandise.

Although the percentages of magnesium, by weight, contained in pure and alloy magnesium can be very similar, the addition of alloying elements to pure magnesium clearly results in products with different physical characteristics. Pure magnesium is a soft metal of low strength and low corrosion resistance. When alloyed with other elements, however, the mechanical and physical properties of the magnesium are significantly altered, becoming harder and stronger and possessing a high corrosion resistance. While much of the production process for pure and alloy magnesium is the same, the final stage in the production of alloy magnesium is more costly, requiring alloying furnaces for the addition of alloying agents and more controlled conditions throughout the remaining production process.

The different ultimate uses of pure and alloy magnesium offer the strongest support for separating these products into two classes or kinds of merchandise. There is a considerable lack of interchangeability between pure and alloy magnesium. While pure magnesium is used primarily as a chemical in the aluminum alloying and desulfurization industries, alloy magnesium is a structural material, used primarily for die casting.

Because of the different ultimate uses of pure and alloy magnesium, along with their lack of interchangeability, it follows that customers have different expectations for the two metals (e.g., only alloy magnesium is suitable for die or gravity casting). The different expectations of the pure and alloy customer is also evidenced in the highly controlled nature of the final stage in the production process for alloy magnesium. Because of its specialized nature, customers of alloy magnesium are very interested in how it is produced. This degree of specialization and customer interest in the production process is typically not present in the manufacture of pure magnesium.

The channels of trade for pure and alloy magnesium are very similar. Both pure and alloy magnesium are typically sold directly by producers to end-users. Furthermore, some companies use the same sales staff for both pure and alloy magnesium.

Throughout these investigations, we have seen advertising which applies to only pure or alloy magnesium and advertising which applies to both. Therefore, the way in which the product is advertised and displayed is not particularly instructive for purposes of our class or kind analysis.

In sum, our analysis of pure and alloy magnesium in light of the Diversified criteria supports a finding that these products should be separate classes or kinds of merchandise. Although there is evidence that the channels of distribution for these two products are similar, the product characteristics, ultimate uses, and expectations of the customer show that pure and alloy magnesium are two distinct classes or kinds of merchandise.

**Rescission of Investigation With Respect to Alloy Magnesium**

The dumping allegation presented in Magnesium Corporation of America's ("Magcorp's") September 5, 1991 petition contained pricing information only with respect to pure magnesium. Prior to the Department's preliminary determination that pure and alloy magnesium are two separate classes or kinds of merchandise, Magcorp submitted new information concerning the prices it believed were being charged in the United States for alloy magnesium by Norsk Hydro.

The Department has determined that the evidence supporting petitioner's dumping allegation regarding alloy magnesium is insufficient. This determination is based on the following facts:

- Significant terms of petitioner's and Norsk Hydro's sales referred to in the new allegation were not described in detail (e.g., the scrap buy-back program). Without terms, the Department is unable to quantify an accurate net selling price.
- Petitioner only provided data on the alloy prices that petitioner, allegedly, had to charge to meet the prices on magnesium from Canada and Norway without any explanation of how these prices are representative of petitioner's U.S. selling price.
- There is no indication in any of petitioner's supporting information as to the source country for the foreign magnesium referenced by petitioner. Because the evidence provided by the petitioner is insufficient to support the dumping allegation against alloy magnesium, we are rescinding the portion of this investigation dealing with alloy magnesium from Norway.

**Scope of Investigation**

The product covered by this investigation is pure magnesium from Norway. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope of this investigation. Pure magnesium is currently classified under subheading 8104.11.0000 of the Harmonized Tariff Schedule ("HTS"). Althought the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

**"On Behalf Of" Issue**

Norsk Hydro has challenged petitioner's ability to file the petition and has requested that the Department dismiss the petition and terminate this investigation. Norsk Hydro argues that this investigation is being conducted in violation of U.S. law since the petitioner is acting alone and not on behalf of the domestic industry. After finding no opposition to the petition, the Department concluded in the preliminary determination that there was no basis to say that the petition was not filed on behalf of the domestic industry. Norsk Hydro claims that the Court of International Trade ("CIT"), the Court of Appeals for the Federal Circuit

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("Federal Circuit"), and a panel established under the General Agreement on Tariffs and Trade ("GATT") have interpreted the phrase "on behalf of" as requiring an affirmative showing of support by others in the domestic industry.

First, Norsk Hydro cites *Suramericana de Aleaciones Laminadas, C.A.* v. *United States*, 746 F. Supp. 139, 144 (CIT 1990), No. 91–1015 (Fed. Cir. Oct. 5, 1990), in which the CIT held that an interested party must show that a majority of the domestic industry backs its position. In Suramerica, the petitioner lacked standing because only thirty-four percent of the domestic industry supported the petition for an investigation. *Id.* at 150. Norsk Hydro argues that in this investigation, petitioner clearly lacks standing because it is the only company to support the petition and represents twenty-two percent of the industry. Norsk Hydro concludes that petitioner did not act "on behalf of" the domestic industry and, therefore, does not have standing to initiate the investigation.

Second, Norsk Hydro claims that relevant case precedents reaffirm that petitioner does not have standing in this investigation. Norsk Hydro cites *Oregon Steel Mills, Inc.* v. *United States*, 862 F.2d 1541, (Fed. Cir. 1988), to substantiate the assertion that "industry support is an essential part of the merits of an affirmative determination."

Finally, Norsk Hydro claims that Commerce's finding of standing is inconsistent with a GATT panel decision, United States—Imposition of Anti-Dumping Duties on Imports of Seamless Steel Hollow Products from Sweden ADP/47 (Aug. 20, 1990) ("Swedish Steel"). Under similar circumstances, this GATT panel rejected an affirmative standing determination by the Department and stated that " 'on behalf of the industry affected' implies that such a request must have the authorization or approval of the industry affected." *Id.* at ¶ 5.9. Norsk Hydro contends, therefore, that Commerce's conduct violated U.S. obligations under the GATT and Antidumping Code.

The Department disagrees with Norsk Hydro and continues to find that MagCorp filed the petition on behalf of the domestic industry in the instant investigation. The Federal Circuit recently reversed the CIT's decision in Suramerica and upheld the Department's interpretation of the statutory phrase "on behalf of." *Suramericana de Aleaciones Laminadas, C.A.* v. *United States*, Slip Op. 91–1015–1055 (June 11, 1992). The Federal Circuit explained that nothing in the statute or legislative history indicates the degree of support that must be shown before the Department may accept a petition as filed "on behalf of" the domestic industry. The court noted that, absent any indication of Congressional intent, there are several possible interpretations of the statute but that the CIT erred in choosing its interpretation over that of the Department (*citing Chevron U.S.A. Inc.* v. *Natural Resources Defense Fund*, 467 U.S. 837, 866, (1984)). The Federal Circuit further held that the Department's interpretation of the phrase "on behalf of" is a permissible interpretation of the statute. The Oregon Steel decision, as the Federal Circuit noted, did not address the issue of quantification of support required by the phrase "on behalf of."

The Federal Circuit's decision in Suramerica follows numerous CIT decisions upholding Commerce's interpretation of the phrase "on behalf of." For example, in *Citrosuco Paulista* v. *United States*, 704 F. Supp. 1075, 1080 (CIT 1988), the CIT held "neither the statute, nor commerce's regulations require a petitioner to establish affirmatively that is has the support of a majority of a particular industry, and the Court declines to impose such a requirement." See also, *Comeau Seafoods* v. *United States*, 724 F. Supp. 1407, 1411 (CIT 1989); *Sandvik AB* v. *United States*, 724 F. Supp. 1322, 1328 (CIT 1989); *Vitro Flex* v. *United States*, 714 F. Supp. 1229, 1235 (CIT 1989). The CIT has suggested that the Department may dismiss petitions that are not actively supported by a majority of the domestic industry, but has found no statutory requirement for doing so. *Citrosuco Paulista* v. *United States*, 704 F. Supp. at 1085.

At the outset of this investigation, the petitioner clearly stated that it had brought its petition "on behalf of" the domestic producers of pure and alloy magnesium. While the two other domestic producers chose not to affirmatively support the petition, they declined the Department's published invitation to oppose the investigation. Absent any showing of opposition by domestic producers, the Department properly continued the investigation. The Department's actions in this regard are consistent with the Federal Circuit's opinion in Suramerica.

In Suramerica, the Federal Circuit also rejected the argument that a presumption of standing for the petitioner violates U.S. obligations under the GATT and the Subsidies Code. As the Federal Circuit noted, the decision in Swedish Steel was limited in scope, by the panel's express language, to the specific case before it. Furthermore, as the Federal Circuit stated, GATT interpretations are not controlling over U.S. law: "If the statutory provisions at issue here are inconsistent with the GATT, it is a matter for Congress and not this court to decide and remedy." Slip Op. at 18.

In sum, the Department's interpretation of the phrase "on behalf of" in this case is consistent with the Federal Circuit's decision in Suramerica. An affirmative showing of support by the domestic industry was not required in order for the Department to conduct these investigations. The evidence reviewed by the Department supports the determination that Magcorp's petition was brought "on behalf of" the domestic industry.

**Critical Circumstances**

On March 4, 1992, petitioner filed a critical circumstances allegation. The narrative of this allegation, however, dealt solely with imports of magnesium from Canada. Nowhere did petitioner's submission allege that massive imports of Norwegian magnesium were being sold at less than fair value over a relatively short period. Furthermore, the import data supplied by the petitioner (the Department of Commerce IM–145 statistics) did not support such an allegation.

Because the petitioner provided neither a written allegation of critical circumstances nor information in support of an allegation in accordance with 19 CFR 353.16, we did not initiate a critical circumstances investigation with regard to magnesium from Norway.

**Period of Investigation**

The POI is April 1, 1991, through September 30, 1991.

**Such or Similar Comparison**

For pure magnesium, comparisons were made on the basis of: (1) Product type, (2) American Society for Testing and Materials ("ASTM") specification, (3) purity, (4) form, and (5) size.

We used home market sales as the basis for foreign market value for sales of pure magnesium, as described in the "Foreign Market Value" section of this notice. Where there were no sales of identical merchandise in the home market to compare to sales of merchandise in the United States, we used sales of the most similar merchandise based on the characteristics described above. All comparisons to products sold in the home market had difference in merchandise adjustments which were less than 20 percent of the total cost of manufacturing the U.S. merchandise.



**Fair Value Comparisons**

To determine whether sales of pure magnesium from Norway to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. Based on these comparisons, we determine that Norsk Hydro made sales at not less than fair value.

**United States Price**

In calculating USP, the Department used purchase price, as defined in section 772(b) of the Act, for certain sales, both because the subject merchandise was sold to unrelated purchasers in the United States prior to its importation and because exporter's sales price ("ESP") methodology was not indicated by other circumstances. We also based USP on ESP, in accordance with section 772(c) of the Act, for those sales which were made to unrelated parties after importation into the United States.

We calculated purchase price based on prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, insurance, import duties, inland freight, inland freight between Montreal and Toledo, merchandise processing fees and broker fees in accordance with section 772(d)(2) of the Act. For the sales made during the period in which a value added tax ("VAT") was collected in Norway, we added to the net price the amount of VAT that was not collected by reason of exportation of the merchandise in accordance with section 772(d)(1)(c) of the Act.

Where USP was based on ESP, we calculated ESP based on prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, insurance, ocean freight, import duties, inland freight, freight allowances, brokerage and handling, and merchandise processing fees in accordance with section 772(e) of the Act. We made further deductions, where appropriate, for credit, commissions and in direct selling expenses, including warehousing charges, inventory carrying charges, advertising, and non-U.S. indirect selling expenses in accordance with section 772(e) of the Act. For sales made during the period in which a VAT was collected in Norway, we added to the net unit price the amount of VAT that was not collected by reason of exportation of the merchandise in accordance with section 772(d)(1)[C) of the Act.

We excluded from our analysis one sample sale because it involved an extremely small quantity of merchandise which would have no effect on our calculations.

**Foreign Market Value**

In accordance with section 773(a) of the Act, we calculated FMV based on home market sales.

In order to determine whether there were sufficient sales of such or similar merchandise in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of pure magnesium to the aggregate volume of third country sales of the such or similar category, in accordance with section 773(a)(1) of the Act. The volume of home market sales of pure magnesium exceeded five percent of the aggregate volume of third country sales.

We based FMV on prices to unrelated customers in Norway. We made deductions, where appropriate, for rebates and quality control. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

Where USP was based on purchase price, we made adjustments to FMV for differences in circumstances of sale. We adjusted for differences in credit, warehouse handling, and VAT in accordance with 19 CFR 353.56.

For comparisons involving ESP transactions, we made adjustments to FMV for differences in circumstances of sale. We adjusted for differences in credit and VAT in accordance with 19 CFR 353.56. We made further deductions for home market indirect selling expenses, including advertising, inventory carrying costs, and indirect selling expenses, capped by the sum of commissions paid and indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

Norsk Hydro reported certain advertising expenses in the home market as direct selling expenses. Because Norsk Hydro did not adequately demonstrate that such expenses were directed at its customer's customer, we have reclassified these expenses as indirect selling expenses.

Norsk Hydro requested a difference in merchandise adjustment for one sale. Because Norsk Hydro provided no cost information to support this difference in merchandise adjustment, as requested by the Department is its original questionnaire, we are not allowing the downward adjustment to FMV.

**Currency Conversions**

We made currency conversions in accordance with 19 CFR 353.60(a). All currency conversions were made at the rates certified by the Federal Reserve Bank.

**Verification**

Pursuant to section 776(b) of the Act, we verified the information used in reaching the final determination in this investigation.

**Interested Party Comments**

*Comment 1*

Respondent argues that in the Department's preliminary determination, it erred in reclassifying Norsk Hydro's reported home market advertising expenses as indirect selling expenses. According to respondent, 19 CFR 353.56(a)(2) authorizes the Department to treat advertising expenses as direct selling expenses and make adjustments where the producer demonstrates that the cost of advertising was undertaken on behalf of its customers. Respondent argues that its advertisements do, in fact, demonstrate that respondent assumed expenses on behalf of its customers.

Respondent further argues that its direct advertising expense claim consisted only of those expenses bearing a "direct relationship to the sales compared" as is required by the Department's regulations. Respondent claims that its advertising encouraged consumption of primary magnesium, the merchandise subject to investigation, since the ads specifically highlighted the benefits of pure magnesium to the customers of products made by respondent's customers. That respondent's customers transform the magnesium is of no consequence to the "direct relationship" of the advertisements to the sales under investigation because the advertisements focus on the benefits of magnesium in later developed products. Finally, respondent argues that, given the derived demand for magnesium, it would be unreasonable for the Department to conclude that respondent's claimed direct advertising expenses should be reclassified as indirect selling expenses because they promote the company's image. Citing *Brother Indus. Ltd.* v. *United States*, 540 F. Supp. 1341 at 1366 (CIT 1982), where the CIT stated that "the particular product in question * * * is the sole subject of the advertisement, such advertisement does not lose its direct relationship to the sales of that product under investigation," respondent states

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that its advertisements were not undertaken to promote the company's image, but rather the specific magnesium products under investigation.

*DOC Position*

Norsk Hydro has failed to demonstrate that its home market advertising expenses were directed at its customer's customer. Of Norsk Hydro's *various* home market advertising expenses, it has only recently provided the Department with an explanation of how *one* sample advertisement is directed to its customer's customer. This one example is not a sufficient indication that all of Norsk Hydro's home market advertising was directed to its customer's customer. Therefore, we have continued to classify this expense as an indirect selling expense.

*Comment 2*

Respondent argues that two small quantity home market sales which are not reflective of Norsk Hydro's usual commercial quantities be excluded from the Department's foreign market value calculations.

*DOC Position*

Our review of Norsk Hydro's home market sales listing does not support the claim that these two small quantity sales are not reflective of Norsk Hydro's usual commercial quantities. Therefore, we used these sales in our calculations.

**Suspension of Liquidation**

We are directing the U.S. Customs Service to terminate suspension of liquidation of all entries of pure magnesium by virtue of our finding of sales made at not less than fair value. We are also directing the U.S. Customs Service to terminate suspension of liquidation of all entries of alloy magnesium pursuant to our rescission of the investigation of this class or kind of merchandise. The U.S. Customs Service shall release any cash deposits or bonds posted on entries of pure and alloy magnesium made prior to this determination.

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: July 6, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-16378 Filed 7-10-92; 8:45 am]

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**[A-834-802, A-835-802, A-821-802, A-842-802, A-823-802, A-844-802, A-831-802, A-832-802, A-822-802, A-833-802, A-841-802, A-843-802]**

## Postponement of Final Antidumping Duty Determinations: Uranium From Kazakhstan, Kyrgystan, Russia, Tajikistan, Ukraine, Uzbekistan, Armenia, Azerbaijan, Byelarus, Georgia, Moldova an Turkmenistan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Larry Sullivan or Carole A. Showers, Investigations, Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telehone (202) 377-0114 or 377-3217, respectively.

**NOTICE OF POSTPONEMENT:** On June 23, 1992, Techsnabexport Ltd. ("Tenex"), NUEXCO Trading Corportion ("NUEXCO"), Energy Fuels Nuclear, Inc. ("EFN"), and Global Nuclear Services and Supply Ltd. ("GNSS") (referred to collectively as "Tenex"), respondents in these investigations, requested that for those investigations in which the Department made affirmative preliminary determinations, the Department postpone the final determinations until October 16, 1992, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)). Tenex represents a significant proportion of exports of the subject merchandise from the states subject to these investigations.

On June 30, 1992, the Ad Hoc Committee of Domestic Uranium Producers and the Oil, Chemical and Atomic Workers International Union, petitioners in the above-referenced investigations, requested that for those investigations in which the Department made negative preliminary determinations, the Department postpone the final determinations until October 16, 1992.

Accordingly, we are postponing the date of the final determinations of each of these investigations until not later than October 16, 1992.

In accordance with 19 CFR 353.38(b), we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. We are rescheduling the public hearing announced in the preliminary determinations of sales at less than fair value, (57 FR 23380, June 3, 1992). Tentatively, the hearing in these proceedings will be held on October 2, 1992 at 10 a.m. in room 3708 at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date and place of the hearings 48 hours prior to the scheduled time.

In accordance with 19 CFR 353.38, ten copies of the business proprietary version an five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than September 16, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than Septemer 23, 1992. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with § 353.38 of the Commerce Department's regulations and will be considered if received within the time limits specified above.

This notice is published pursuant to 19 CFR 353.20(b).

Dated: July 2, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-16379 Filed 7-10-92; 8:45 am]

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**[C-122-815]**

## Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium From Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Rick Herring or Magd Zalok, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3530 or 377-4162, respectively.



**FINAL DETERMINATION:**

**Case History**

Since the publication of the preliminary determination (56 FR 63927, December 6, 1991), the following events have occurred. On February 11, 1992, petitioner, the Magnesium Corporation of America (Magcorp), requested that the final determinations of the countervailing duty investigations be extended to coincide with the date of the final determinations in the antidumping duty investigations of pure magnesium and alloy magnesium from Canada. The final determinations in the antidumping investigations were postponded, at the request of respondents, on March 13, 1992 and May 15, 1992 to July 6, 1992 (57 FR 8860 and 57 FR 20809, respectively).

On February 24, 1992, a supplemental questionnaire was issued to the Government of Quebec regarding certain aspects of Hydro-Quebec's Risk and Profit Sharing Program. On April 27, 1992, we divided the subject merchandise into two different classes or kinds of merchandise, pure magnesium and alloy magnesium. (See the "Class or Kind of Merchandise" section of Pure and Alloy Magnesium from Canada: Final Affirmative Determination; Rescission of Investigation and Partial Dismissal of Petition, which is published concurrently with this notice, for a detailed discussion of this issue). At the same time, we also determined that alloy billets are included within the scope of the investigation of alloy magnesium. For the analysis underlying this determination, see the April 27, 1992 Memorandum to Francis J. Sailer, Deputy Assistant Secretary, regarding "Scope Issues" which is on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

**"On Behalf Of" Issue**

Respondents have challenged petitioner's ability to file the petition and requested that the Department dismiss the petition and terminate these investigations. They argue that these investigations are being conducted in violation of U.S. law since the petitioner is acting alone and not on behalf of the domestic industry. They state that while the Department assumed in the preliminary determination that the petition was filed on behalf of the domestic magnesium industry, the Court of International Trade (CIT) in *Suramericana de Aleaciones Laminadas, C.A.* v. *United States*, 746 F. Supp. 139 (CIT 1990), No. 91-1015 (Fed. Cir. Oct. 5, 1990) (Suramerica) has held that an affirmative showing of support by the rest of the domestic industry is a necessary prerequisite for a petitioner to seek relief under U.S. trade laws.

Respondents further state that a presumption of standing violates U.S. obligations under the GATT and the Subsidies Code. They state that a recent GATT panel rejected a finding of standing under very similar circumstances to those present in these investigations. United States—Imposition of Antidumping Duties on Imports of Seamless Stainless Steel Hollow Products from Sweden, ADP/47 (Aug. 20, 1990) at paragraph 5.17. Respondents argue that the GATT Panel determined that the absence of opposition to an investigation by any domestic producer did not satisfy the Antidumping Code's standing requirements, which mirrors those of the Subsidies Code.

We determine that the petitioner does have standing to file these investigations. The Court of Appeals for the Federal Circuit (Federal Circuit) recently reversed the CIT's decision in Suramerica and upheld Commerce's interpretation of the statutory phrase "on behalf of." *Suramericana de Aleaciones Laminadas, C.A.* v. *United States*, Slip Op. 91-1015, -1055 (June 11, 1992). The Federal Circuit explained that nothing in the statute or legislative history indicates the degree of support that must be shown before the Department may accept a petition as having been filed "on behalf of" the domestic industry. The court noted that, absent any indication of Congressional intent, there are several possible interpretations of the statute but that the CIT erred in choosing its interpretation over that of the Department (citing *Chevron U.S.A. Inc.* v. *Natural Resources Defense Fund*, 467 U.S. 837, 866 (1984)). The Federal Circuit further held that the Department's interpretation of the phrase "on behalf of" is a permissible interpretation of the statute. The Oregon Steel decision, 862 F.2d 1541 (Fed. Cir. 1988), as the Federal Circuit noted, did not address the issue of quantification of support required by the phrase " on behalf of."

The Federal Circuit's decision in Suramerica follows numerous CIT decisions upholding Commerce's interpretation of the phrase "on behalf of." For example, in *Citrosuco Paulista* v. *United States*, 704 F. Supp. 1075, 1085 (CIT 1988), the CIT held "[n]either the statute nor Commerce's regulations require a petitioner to establish affirmatively that it has the support of a majority of a particular industry, and the Court declines to impsoe such a requirement." See also, *Comeau Seafoods* v. *United States*, 724 F. Supp. 1407, 1411 (CIT 1989); *Sandvik AB* v. *United States*, 721 F. Supp. 1322, 1328 (CIT 1989); and *Vitro Flex* v. *United States*, 714 F. Supp. 1229, 1235 (CIT 1989). The CIT has suggested that the Department may dismiss petitions that are not actively supported by a majority of the domestic industry, but has found no statutory requirement that it do so. *Citrosuco Paulista* v. *United States*, 704 F. Supp. at 1085.

At the outset of these investigations, the petitioner, Magcorp, clearly stated that it had brought its petitions "on behalf of" the domestic producers of pure and alloy magnesium. While the two other domestic producers chose not to support the petition affirmatively, they declined Commerce's published invitation to oppose the investigations. Absent any showing of opposition by domestic producers, the Department properly continued the investigations. The Department's actions in this regard are consistent with the Federal Circuit's opinion in Suramerica.

In Suramerica, the Federal Circuit also rejected the argument that a presumption that the petitioner is acting on behalf of the domestic industry violates U.S. obligations under the GATT and the Subsidies Code. As the Court noted, the decision in Imposition of Antidumping Duties on Imports of Seamless Stainless Steel Hollow Products from Sweden was limited in scope, by the Panel's express language, to the specific case before it. Furthermore, the Federal Circuit stated that GATT interpretations are not controlling over U.S. law: "If the statutory provisions at issue here are inconsistent with the GATT, it is a matter for Congress and not this court to decide and remedy." Slip Op. at 18.

In sum, Commerce's interpretation of the phrase "on behalf of" in this case is consistent with the Federal Circuit's decision in Suramerica. An affirmative showing of support by the domestic industry was not required in order for the Department to conduct these investigations. The evidence reviewed by the Department supports the determination that Magcorp's petition was brought "on behalf of" the domestic industry.

**Scope of Investigations**

The products covered by these investigations are pure magnesium and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight, with magnesium being the largest

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metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. Pure and alloy magnesium are currently provided for in subheadings 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Secondary and granular magnesium are not included in these investigations. Our reasons for excluding granular magnesium are summarized in the Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada (57 FR 6094, Feb. 20, 1992).

**Analysis of Programs**

For purposes of these determinations, the period for which we are measuring subsidies (the period of investigation) is calendar year 1990, which corresponds to the fiscal year of Norsk Hydro Canada Inc. (NHCI) and Timminco Limited.

During the period of investigation, NHCI made sales of magnesium produced by its parent company (Norsk Hydro a.s) in Norway. In order to measure the subsidy conferred upon NHCI, we deducted the value of the Norwegian merchandise from NHCI's total sales value. Since the subsidies provided to NHCI confer benefits on the production of merchandise, we allocated the subsidies only over the value of merchandise manufactured in Canada.

The subsidies provided to respondents benefit the production of both pure magnesium and alloy magnesium and cannot be segregated. Therefore, we have calculated a single estimated net subsidy for both classes or kinds of merchandise. Because there is a significant differential in the estimated net subsidy calculated for the two companies, we have assigned individual company rates for NHCI and Timminco pursuant to 19 CFR 355.20(d) (1991).

Based upon our analysis of the petition, responses to our questionnaires, verification and written comments from respondents, petitioner, and other interested parties, we determine the following:

*A. Programs Determined to be Subsidies*

We determine that subsidies are being provided to manufacturers, producers, or exporters in Canada of pure and alloy magnesium under the following programs:

*1. Federal Funding for a Feasibility Study under the Canada-Quebec Subsidiary Agreement on Industrial Development*

Under this Subsidiary Agreement, the Governments of Canada and Quebec established a program to provide financial assistance to companies to cover the cost of feasibility studies related to major industrial projects. This Subsidiary Agreement was implemented under the 1984 Canada-Quebec Economic and Regional Development Agreement (ERDA). ERDAs provide the legal basis for various departments of the federal and provincial governments to cooperate in the establishment of economic development programs. Subsidiary agreements, like the Subsidiary Agreement on Industrial Development, establish programs, delineate administrative procedures and set up the relative funding commitments of the federal and provincial governments. This Subsidiary Agreement was signed on January 23, 1985, and terminated on March 31, 1992. The last date for authorizing a project under this Agreement was March 31, 1990.

To qualify for funding under this program, the project to be studied must involve the establishment, expansion or modernization of a manufacturing or advanced processing facility. Maximum funding is 75 percent of the actual cost of the study.

Norsk Hydro a.s, the parent company of NHCI, received a grant to undertake a feasibility study under this program. The grant was funded equally by the Governments of Canada and Quebec. A condition of the grant was that it was to be repaid if the company commenced operations in Quebec.

We determine that the funds provided by the Government of Canada under this Subsidiary Agreement are countervailable because assistance under this Agreement is limited to companies located in a particular region of Canada (*i.e.*, the Province of Quebec). However, we determine that the funds provided by the Government of Quebec under the Subsidiary Agreement are not countervailable because the provincial funds were not limited to a specific enterprise or industry, or group of enterprises or industries.

Since NHCI commenced business operations in Quebec and, as a result, was obligated to repay the funds, we are treating the reimbursable grant as an interest-free, short-term loan rolled over from year to year. To calculate the benefit from the Government of Canada's portion of the funds provided to NHCI under this program, we calculated the amount of interest which should have been paid based on the number of days this "loan" was outstanding during the period of investigation. We used the national average short-term interest rate for 1990, as provided by the Government of Canada, to calculate the amount of interest that would have been paid had this reimbursable grant been in the form of a short-term commercial loan. We then divided this amount by NHCI's total sales of Canadian-produced merchandise for the period of investigation and calculated an estimated net subsidy of 0.10 percent *ad valorem* for NHCI. Timminco did not receive any benefits from this program.

Since NHCI reimbursed the Government of Canada for the funds received under the Subsidiary Agreement in 1990, and because the company will not receive any more assistance under this Subsidiary Agreement, we are not including the amount of this subsidy in our duty deposit rate.

*2. Exemption from Payment of Water Bills*

Under an agreement signed between NHCI and Le Societe du Parc Industriel du Centre du Quebec, the company is exempt from paying its water bills. Since no other company receives such an exemption, we determine this program to be countervailable since benefits are limited to a specific enterprise or industry, or a group of enterprises or industries.

To calculate the benefit under this program, we divided the amount NHCI should have paid for industrial water for the period of investigation by NHCI's total sales of Canadian-manufactured products for the period of investigation. On this basis, we calculated an estimated subsidy of 1.43 percent *ad valorem* for NHCI. Timminco did not receive any benefits from this program.

*3. Article 7 Grants from the Quebec Industrial Development Corporation*

The Industrial Development Corporation (Societe de Developpement Industriel du Quebec) (SDI) is a crown corporation which acts as an investment corporation and administers development programs on behalf of the Government of Quebec. Established in 1971 under the Quebec Industrial Development Act, the program has been amended several times. Funding for SDI is obtained through the Quebec National Assembly, through the sale of notes, bonds and other securities, and by an endowment established by the Government of Quebec at the time of SDI's formation.

Acting on special mandates from the Government of Quebec, the SDI provides assistance under Article 7 in the form of loans, loan guarantees, grants, assumptions of costs on loans, and equity investments. This assistance is offered to major projects capable of having a major impact upon Quebec's economy. Article 7 assistance greater than 2.5 million dollars must be approved by the Council of Ministers, and assistance over 5 million dollars becomes a separate budget item under Article 7. To be approved for assistance in this amount, the Council of Ministers must determine that the project to be financed is of special economic importance and value to the province. Funding for this type of assistance does not come from the SDI budget, but comes from the budget of the Council of Ministers. After approval from the Council of Ministers, the Treasury Board will authorize release of the funds. This is done on a project-by-project basis.

NHCI received a grant under this program. The amount of the grant was calculated as a percentage of the cost of environmental protection equipment purchased by NHCI. The money was primarily used by NHCI to pay interest on NHCI's outstanding debt.

To determine whether this program is countervailable, we reviewed the number of recipients which received benefits under Article 7 of SDI. We compared the amount of assistance provided to each of the recipients to the amount of assistance provided to NHCI. While a wide variety of firms did receive Article 7 assistance, we determine that NHCI received a disproportionately large share of assistance under the program. Therefore, we determine the program, with respect to the assistance provided to NHCI, to be countervailable. (We note that the number of recipients, the amount of assistance provided to each recipient, and the exact forms of assistance provided under Article 7 is proprietary. Therefore, a complete analysis of this determination of disproportionality is provided in a separate proprietary memorandum which is part of the official record for these investigations. A public summary of this memorandum is available in our Central Records Unit in the main Commerce Building. See, July 8, 1992 Memorandum for Francis J. Sailer, Deputy Assistant Secretary, regarding "Benefits Provided to Norsk Hydro By the Societe de Developpement Industriel du Quebec (SDI)".)

Our policy with respect to grants is (1) to expense recurring benefits to the year of receipt, and (2) to allocate nonrecurring benefits over the average useful life of assets in the industry, unless the sum of grants provided under a particular program is less than 0.5 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy). (See, *e.g.*, Final Affirmative Countervailing Duty Determination; Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7678 (February 25, 1991).) We have determined that the Article 7 assistance received by NHCI is nonrecurring, as it was received based on a one-time authorization of funds. Therefore, we have allocated the benefits over 14 years, the average useful life of assets in the magnesium industry.

We calculated the benefit from the grant received by NHCI using the company's cost for long-term, fixed-rate debt as a discount rate and our declining balance methodology as described in the Department's proposed rules (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989)), and used in prior investigations (see, *e.g.*, Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods From Canada, 51 FR 15037 (April 22, 1986).) We divided that portion of the benefit allocated to the period of investigation by NHCI's total sales of Canadian-manufactured products and calculated an estimated net subsidy of 6.18 percent *ad valorem* for NHCI. Timminco did not receive any benefits from this program.

*4. Preferential Electric Rates*

The Risk and Profit Sharing Program is administered by the provincially-owned power company, Hydro-Quebec. Under this program, long-term contracts are signed between Hydro-Quebec and its industrial customers for the provision of electricity. A portion of the rate to be charged under these contracts is based either on the price of the customer's products or the customer's profitability. Therefore, the price paid by each of these customers for electricity varies from year-to-year because of fluctuations in the customer's prices or profits. The Government of Quebec states that the contracts are negotiated with the expectation that over the term of the contract, Hydro-Quebec will earn the full projected revenue that would have been generated under its general rates and programs.

According to Hydro-Quebec, the objective of the Risk and Profit Sharing Program is to strengthen and develop Quebec's industrial sector. Industrial customers which meet the following criteria are eligible to participate in the program:

- A capital-intensive firm;
- A firm requiring a major power demand (at least 5 megawatts);
- A firm where energy costs represent a major factor in production costs (15 percent or more); and
- a firm for which energy rates and availability of electricity in the long term constitute a major factor in the choice of location (in Quebec or elsewhere in the world).

The first contract with features of Risk and Profit Sharing was signed in 1984, although the program was not formalized until 1985. All the remaining contracts were negotiated between 1985 and 1989.

In our preliminary determination, we found the Risk and Profit Sharing Program to be provided to a specific enterprise or industry or group of enterprises or industries because there were only 14 companies with Risk and Profit Sharing contracts while there were over 300 industrial users of electricity in Quebec. Furthermore, we preliminarily found the rates paid by NHCI to be preferential when compared to the weighted-average rate paid by other industrial customers during the review period.

Implicit in the methodology used in the preliminary determination is a finding that electricity contracts that include risk and profit sharing provisions, like those under the Risk and Profit Sharing Program, are preferential, *per se*. This is because preferential rates will be found to exist whenever the rate paid by a Risk and Profit Sharing customer falls below the benchmark rate. Given the structure of these types of contracts, shortfalls are expected, as are higher payments in those years when the customers' profits are high or when the price for the customers' output is high. For this reason, a year-by-year comparison between rates actually paid and the benchmark, as used in the preliminary determination, is not an appropriate measure of the benefits potentially arising from such contracts, which based on information on the record, are not unusual in the electric power industry. On this basis, we have reconsidered our preliminary determination.

As a general matter, the first step the Department takes in analyzing the potential preferential provision of electricity—assuming a finding of specificity—is to compare the price charged with the applicable rate on the power company's non-specific rate schedule. If the amount of electricity purchased by a company is so great that

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the rate schedule is not applicable, we will examine whether the price charged is consistent with the power company's standard pricing mechanism applicable to such companies. If the rate charged is consistent with the standard pricing mechanism and the company under investigation is, in all other respects, essentially treated no differently than other industries which purchase comparable amounts of electricity, we would probably not find a countervailable subsidy.

The difficult issue we addressed in the preliminary determination was how to analyze variable rate pricing mechanisms for extremely large purchasers. As mentioned above, we implied in our preliminary determination that variable rate pricing is *per se* preferential.

In the course of suspension agreement negotiations, NHCI stated that it was in the process of negotiating a letter of intent regarding an amendment to the company's power contract. Subsequently, a letter of intent was signed, and we requested that it be placed on the record. In light of the analysis discussed above, if we were to confront a power contract similar to the one envisioned by the letter of intent between NHCI and Hydro-Quebec, we would not find that it was preferential simply on the basis that the rate varied. Rather, we would likely look to see if, over the life of the contract, one could reasonably expect that the price charged would yield a revenue stream consistent with the power company's standard pricing mechanism for purchasers of comparable quantities of electricity. However, we need not resolve this issue now.

For this final determination, we find that we are able to analyze the contract between NHCI and Hydro-Quebec without reaching the issue of whether its risk and profit sharing aspects confer a subsidy on NHCI. This is because, under the terms of this contract, the risk and profit sharing elements, *i.e.*, those where NHCI's electricity rates depend on its profitability, did not occur until after the period of investigation. During the period of investigation, NHCI simply received discounts from an established standard industrial rate schedule. Therefore, for purposes of this final determination, we are limiting our analysis to whether the same discounts were provided to a specific enterprise or industry, or group of enterprises or industries.

During the period 1983–1991, Hydro-Quebec operated a rate discount program for industrial customers. From 1983 through 1986, qualifying customers were able to obtain a 50 percent discount. Between 1987 and 1991, the discount percentage decreased. During the period of investigation, 1990, qualifying customers were able to obtain a 20 percent discount.

We determine that the discount scheme described above was available to and used by a wide variety of industries in Quebec. However, under the terms of its contract, NHCI, and only NHCI, received a 60 percent discount during the period of investigation. Moreover, the electricity rate against which NHCI's discount was applied was lower than the large power rate in force for other industrial customers. Therefore, we determine that NHCI benefitted from the preferential provision of electricity and that the provision of electricity on these terms was limited to a specific enterprise.

To calculate the benefit to NHCI, we compared the actual amount paid for electricity during the period of investigation under its Risk and Profit Sharing contract to the amount it would have paid under the published tariff schedules of Hydro-Quebec, including all discounts which would have been applicable to NHCI under the tariff schedule. We then divided that difference by NHCI's total sales of Canadian-manufactured products and calculated an estimated net subsidy of 14.00 percent *ad valorem* for NHCI. Timminco did not receive any benefits from this program.

*B. Programs Determined Not to be Countervailable*

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Canada of magnesium under the following programs:

*1. Research Conducted by the Institute of Magnesium Technology (IMT)*

The IMT was incorporated in 1989, as a private, non-profit company. The creation of the IMT was a joint effort by the Governments of Canada and Quebec and the magnesium industry. Its purpose is both to promote the development of the magnesium processing industry and the promote the growth of world markets for magnesium products. The IMT provides magnesium processors with the expertise and equipment necessary for development work, as well as for the improvement of products and processes. In addition, the IMT also offers development of prototypes and pre-production trials.

Currently, the IMT has 30 members from throughout the world, including the United States. These members are magnesium producers, diecasters, and end-users. U.S. producers of magnesium have been invited to join the IMT. Members pay a yearly fee to the IMT to support the operation of the Institute.

The IMT aims to be self-sustaining by 1995, through membership fees and research contracts, but initial funding was provided by the Governments of Canada and Quebec under the Canada-Quebec Subsidiary Agreement on Scientific and Technological Development. Under this Subsidiary Agreement, both governments provided funds for the construction of a research laboratory and the purchase of equipment for the IMT. In addition, both governments provided funds to the IMT to help it launch its research program.

The Department's practice regarding the countervailability of research and development assistance is that when the results of the research are made available to the public, including competitors in the United States, the assistance does not confer a countervailable benefit. (See, *e.g.*, Final Affirmative Countervailing Duty Determination; Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7678 (February 25, 1991).) Using this standard, we determine that research performed by the IMT is not countervailable, because membership is open to all parties, and these parties can obtain research performed by the Institute on equal terms.

*2. Manpower Training Program*

This program is administered by the Quebec Ministry for Manpower and Income Security. The Province of Quebec offers this program to individuals for manpower training and retraining. To be eligible for training under this program, an individual has to be more than 16 years old, either employed or in the job market, knowledgeable of the area in which training was chosen, and either employed or seeking employment directly related to the training. During the period of investigation, NHCI received payments under this program for teaching materials and teacher services used in the training of employees and non-employees of the company.

We verified that there are no *de jure* or *de facto* limitations of any kind pertaining to the enterprise or industrial sector employing the worker or potential hiree. Since the program is offered and provided to individuals employed or seeking employment, and to companies providing such training, within a large number and broad range of industrial sectors in Quebec, we determine that this program is not countervailable.



*C. Programs Determined Not to be Used*

We determine that producers or exporters in Canada of the subject merchandise did not use, or receive benefits under, the following programs during the review period (a description of these programs can be found in the notice of our preliminary determination):

1. *St. Lawrence River Environmental Technology Development Program (ETDP)*
2. *Program for Export Market Development (PEMD)*
3. *The Export Development Corporation (EDC)*
4. *Canada-Quebec Subsidiary Agreement on the Economic Development of the Regions of Quebec*
5. *Opportunities To Stimulate Technology Programs*
6. *Development Assistance Program*
7. *Industrial Feasibility Study Assistance Program*
8. *Export Promotion Assistance Program*
9. *Creation of Scientific Jobs in Industries*
10. *Business Investment Assistance Program*
11. *Business Financing Program*
12. *Research and Innovation Activities Program*
13. *Export Assistance Program*
14. *Energy Technologies Development Program*
15. *Financial Assistance Program for Research, Formation and for the Improvement of the Recycling Industry*
16. *Transportation Research and Development Assistance Program*

**Comments**

All written comments submitted by the interested parties in this investigation which have not been previously addressed in this notice are addressed below.

*Comment 1*

The government of Canada and NHCI state that we should determine the federal portion of the funding for the feasibility study provided to NHCI under the Subsidiary Agreement on Industrial Development not countervailable because the Government of Canada funds feasibility studies through a variety of "integrally linked" initiatives. These initiatives include the Advanced Manufacturing Technologies Application Program (AMTAP) and the Strategic Technologies Program (STP), as well as other subsidiary agreements signed with other provinces in Canada.

*DOC Position*

If the Department determines that two or more programs are integrally linked, it will examine the beneficiaries under all of the programs to determine whether benefits are being provided to a specific enterprise or industry or group of enterprises or industries. In determining whether programs are integrally linked, we examine, among other factors, the administration of the programs, evidence of a government policy to treat industries equally, the purposes of the programs as stated in their enabling legislation, and the manner of the funding of the programs. (See Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada, 50 FR 25098 (June 15, 1985).)

Although administered by the same agency and financed by that agency's budget, no evidence has been provided to establish that the three programs are integrally linked.

STP provides funding for feasibility studies and for research and development. Individual recipients can receive no more than C$50,000. AMTAP provides funding for qualified firms to engage outside consultants to conduct feasibility studies on advanced manufacturing technologies applicable to their manufacturing operations. AMTAP contributes no more than C$15,000 for a single applicant. The Subsidiary Agreement on Industrial Development (SAID) has a much broader purpose than the funding of feasibility studies and the hiring of outside consultants. SAID also funds the cost of infrastructure development. SAID also provides financial assistance to Quebec companies in the form of repayable or non-repayable contributions, interest rebates and other forms of assistance. Therefore, the purpose of SAID differs from the two other programs cited by respondents. The level of funding is also much higher for SAID approved projects. In addition, applicants for AMTAP must already be engaged in manufacturing or secondary processing in Canada. Therefore, companies seeking to open a manufacturing operation in Canada could not qualify for assistance under AMTAP, while they could qualify for assistance under SAID. For these reasons, we determine that SAID is not integrally linked with AMTAP and STP.

Respondents' statement that the Government of Canada funds feasibility studies under other subsidiary agreements in other provinces does not warrant an examination of whether the programs are integrally linked, unless such agreements exist between the Government of Canada and each of the provinces. There was no evidence presented that demonstrated that subsidiary agreements for the funding of feasibility studies exist with all provinces. Therefore, we conclude that funding provided by the Government of Canada under the Canada-Quebec Subsidiary Agreement on Industrial Development is countervailable.

*Comment 2*

In calculating any benefit arising from the funding of NHCI's feasibility study, the Government of Quebec claims that the Department has abandoned its practice for measuring benefits from grants and has created a methodology that has no basis in law. The Government of Quebec states that calling the grant a loan was the only apparent way Commerce could countervail the program and that the Department provided no explanation for its divergence from past practice. The Government of Quebec further states that if Commerce's grant methodology were properly applied, the grant from this program must be expensed in the year of receipt.

*DOC Position*

Our treatment of this reimbursable grant as a rolled-over short-term loan is consistent with past practice. For example, see our calculation of the benefit provided under the Program for Export Development in the Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish from Canada (Groundfish), 51 FR 10041 (March 24, 1986), and the calculation of tax savings under the Export Tax Reserves Program in the Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Cooking Ware From The Republic of Korea (Cooking Ware), 51 FR 42867 (November 26, 1986). In addition, we believe the methodology is appropriate because if the "grant" were treated under the grant methodology but subsequently repaid, the countervailing duties that would be assessed would be much larger than the actual benefit provided to the company. This would be contrary to the statute, to our regulations, and to our GATT obligations.

*Comment 3*

The Government of Canada and NHCI argue that the Department used the wrong benchmark in calculating the benefit conferred by government funding of NHCI's feasibility study. They state that a fixed long-term interest rate from the year the funding was received should have been used to calculate the benefit from this program.

*DOC Position*

Our use of a short-term benchmark is consistent with the Department's policy and practice (see Groundfish). A fixed long-term interest rate would only be an

appropriate benchmark if the date of repayment was known with certainty and that date was far enough in the future to enable us to characterize the loan as long-term.

*Comment 4*

The Governments of Canada and Quebec state that the Department incorrectly found that a benefit was conferred by the grant provided for the feasibility study. They state that since the assistance was paid back during the period of investigation, no subsidy was provided. To support this argument they cite the Final Negative Countervailing Duty Determination: Certain Computer Aided Software Engineering Products From Singapore (Software), 55 FR 12248 (April 2, 1990).

*DOC Position*

The grant provided to NHCI was provided to the company prior to the period of investigation. As previously stated, NHCI was only obligated to repay the grant if it established a magnesium plant in Quebec. During a portion of the period of investigation, the entire amount of the grant was outstanding. Therefore, NHCI benefitted from the use of the entire grant amount for a portion of the period of investigation. When repayment was required, it was done so on an interest-free basis. Moreover, there were no other fees or costs for which NHCI was responsible as a condition for receiving the grant. Furthermore, we have consistently treated benefits which are potentially repayable as short-term interest-free loans. (See Groundfish and Cooking Ware.) For these reason, we find that this case is distinguishable from the *Software* case. However, since the amount of the assistance was paid back and there is evidence that NHCI cannot use the program again, we did not reflect this subsidy in our calculation of the duty deposit rate.

*Comment 5*

The Government of Quebec states that the Department's decision to countervail the governmental provision of industrial water contradicts the Department's past policy and practice not to countervail the use of natural resources.

*DOC Position*

NHCI was exempted from paying its industrial water bills, No other company has received such an exemption. Therefore, we found the program countervailable in accordance with section 771(5) of the Act. There is no precedent to support the Government of Quebec's contention that the provision of water at a preferential rate, which is limited to one company, is not countervailable.

*Comment 6*

The Government of Quebec and NHCI argue that the Department incorrectly calculated the benefit conferred by NHCI's exemption from the payment of its industrial water bills. They argue that Commerce should look at the actual water consumed by NHCI rather than the projected amount reflected in the water bills issued by Le Societe du Parc Industriel du Centre du Quebec.

*DOC Position*

At verification, officials of the industrial park stated that all of their water bills are based on forecasted water usage. Absent NHCI's exemption it would have, like all other companies, paid amounts based on projected water usage. The benefit to NHCI is what it would have paid absent the exemption. Therefore, the Department was correct in calculating the subsidy based on projected water usage.

*Comment 7*

NHCI states that in determining whether assistance provided under Article 7 of SDI is countervailable, the Department should examine the whole universe of SDI funding. In NHCI's view, Article 7 and general assistance under SDI are integrally linked because all SDI funding is provided by the same government pursuant to the same legal authority.

*DOC Position*

As discussed under Comment 1, in evaluating whether programs are integrally linked, the Department considers, among other factors, the administration of the programs, evidence of a government policy to treat industries equally, the purposes of the programs as stated in their enabling legislation, and the manner of funding the programs. Based on the evidence in these cases, we determine that general SDI assistance and Article 7 assistance are not integrally linked.

Most of the assistance, in monetary terms, provided by the SDI is in the form of venture loans and the creation of Quebec Business Investment Companies (SPEQs). Venture loans are loans where the borrower also pays a "success premium"—either an option to purchase equity in the company or participation in some form of profit sharing. The SPEQs are private companies, whose main operations are to invest capital in small- and medium-size businesses and to enable those who invest to obtain an income tax deduction. While some Article 7 assistance may take these forms, it can also include grants and assumption of interest. Such grants are not provided under general SDI programs, only under Article 7. In addition, in terms of purpose, Article 7 assistance is designed for "important" projects carried out under special mandates from the Government of Quebec, whereas the goals of other SDI-established programs are much broader (business development, export growth, research and development). Therefore, the two programs offer different types of assistance and have been established for different purposes.

Funding for general SDI programs comes from SDI's own budget and the organization aims to achieve self-financing of its operations. A majority of the Article 7 assistance must be approved by the Council of Ministers. In addition, funding for Article 7 assistance approved by the Council of Ministers does not come from the SDI budget, but comes from the Council's own budget. Therefore, the process for approving assistance differs under the general SDI program and Article 7, and the two are funded from different sources.

Finally, even SDI considers its general programs and Article 7 assistance to be separate. Article 7 expenses are segregated from its own expenditures and revenues in SDI's financial statements.

*Comment 8*

NHCI argues that even if the Department continues to examine Article 7 assistance apart from general SDI assistance, it should not continue the practice adopted in its preliminary determination of looking only at assistance in forms similar to that received by NHCI in determining specificity. Evidence shows that Article 7 assistance, in various forms, went to a wide range of enterprises.

*DOC Position*

For purposes of these final determinations, we have considered all forms of Article 7 assistance in making our specificity determination. Based on assumptions which are fully supported by the evidence in this record, we have calculated grant equivalents for all the Article 7 projects. While we agree with respondents that Article 7 assistance is available to and used by a wide variety of enterprises and industries, we found that NHCI received a disproportionate share of benefits when compared to other projects funded under Article 7.

*Comment 9*

Respondents claim that the Department's preliminary determination incorrectly compares the amount provided to NHCI with the amounts provided to other individual projects. If amounts received by various industries are compared, the base metals industry (including NHCI) did not receive a disproportionate share.

*DOC Position*

Section 771(5)(A) of the Act directs that a countervailable subsidy is conferred when benefits are provided to a specific enterprise or industry, or group of enterprises or industries. Consistent with this, our analysis focused on funding provided to an individual enterprise, NHCI, as opposed to a group of industries, the base metals industries.

*Comment 10*

Respondents claim that it is the Department's practice to apply a two-step analysis when considering whether the benefits received by individual firms or industries are disproportionate. First, the Department looks across firms to determine whether some have received a larger share of total funds available than others. Second, they claim that the Department examines "vertical proportionality", *i.e.*, the amount of assistance received by individual firms or industries in relation to the size of the project being funded.

*DOC Position*

In support of their claim that the Department performs a second step in its analysis of proportionality, respondents cite to the Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers From the Netherlands (Dutch Flowers), 52 FR 3301 (Feb. 3, 1987), and the Final Affirmative Countervailing Duty Determination; Cold-Rolled Carbon Steel Flat-Rolled Products from the Republic of Korea (Korean Steel), 49 FR 47284 (Dec. 3, 1984). In both cited cases, we looked to the share of benefits in relation to the share of production. In Dutch Flowers, we found that horticulture received 50 percent of the funding, although it accounted for only 24 percent of the value of agricultural production. In Korean Steel, we compared the amount of loans made to the basic metals sector with the percentage of GNP accounted for by steel production. Thus, neither precedent directs us to look at the amount of assistance as a percentage of project size, as respondents would have us do.

Respondents argue that an assistance-to-investment comparison is appropriate because it is the best measure of the economic distortion caused by the subsidy. As they put it, the greater the share of government investment, the less likely the investment would have occurred. Conversely, the less the government's share, the less likely the government assistance had much effect. However, it can be argued that the effect (and distortion to the economy) of luring a large investment which would employ thousands of workers is much greater than the effect of luring a small investment employing dozens of workers. Therefore, one dollar of assistance, if that is all it takes to attract a magnesium smelter to your area, can be more distortive than one million dollars to a restaurant employing 20 people. In either case, a distortion has occurred.

Therefore, because there is no precedent to support assistance-to-investment analysis and because no conclusive argument has been put forward as to why this standard should be adopted by the Department, we are rejecting this argument.

*Comment 11*

NHCI states that the funds provided to the company under Article 7 of SDI should be expensed in the year of receipt. It states that all disbursements made under this program were made in connection with interest payments on NHCI's outstanding loans and that the interest payments are recurring annual charges expensed by NHCI. NHCI also states that the assistance provided under the program was an assumption of interest. Such assistance is similar to an interest-free loan; therefore, the benefit should be expensed in the year of receipt.

*DOC Position*

While the Department will expense recurring benefits such as a five percent payment received every time a product is exported, we look to the nature of the program to determine whether the benefits are recurring, not to the manner in which the funds are used. The authorization of assistance to NHCI was made by the Government of Quebec in a single act. There is no evidence in the record to support the conclusion that Article 7 assistance to Norsk Hydro will recur. Therefore, these benefits are not considered recurring and are allocated over time. Similarily, we do not look to respondent's accounting treatment of the benefits to determine the appropriate allocation period. Therefore, the fact that NHCI's interest expenses are not amortized is irrelevant to our determination of the proper allocation period.

The second part of respondent's argument for expensing SDI benefits is an attempt to liken interest assumption to an interest-free loan, the benefits of which would be expensed at the time of the interest payment. While the interest assumption could be modeled in many ways, our precedent is to treat such assistance as grants. (See our treatment of "Grants for Payment of Principal and Interest on Debentures" in the Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada, 54 FR 31991 (August 3, 1989).)

*Comment 12*

NHCI states that if the Department decides not to expense the Article 7 grant in the year of receipt, then the Department should allocate the benefits over the useful life of the company's assets as determined by its depreciation schedule, rather than the 14-year amortization schedule used in the preliminary determination. In support of its argument, NHCI cites to *IPSCO, Inc.* v. *United States* (701 F. Supp. 236, 238–240 (CIT 1988)) in which the CIT remanded a determination in which the Department amortized certain grants according to the same IRS schedules used in these investigations.

*DOC Position*

It is the Department's practice to use the IRS schedules in determining the length of time over which it will allocate benefits provided in the form of nonrecurring grants. (See, e.g., Groundfish.) We believe that use of a firm's estimation of useful life, as reflected in its accounting records, suffers from the fact that a firm may select a useful life for a variety of reasons, such as tax liability or to qualify for a tax subsidy. Thus, to use a firm's accounting useful life could result in drastically different benefit amounts, even though firms might be receiving identical subsidies and might be otherwise identically situated. For these reasons, we continue to believe that the IRS schedule is the most appropriate source with respect to determining the period over which benefits are to be allocated.

We were ordered to use company-specific experience in *IPSCO, Inc.* v. *United States* 701 F. Supp. 236 (CIT 1988), because our regulations did not provide for the use of IRS tables. In partial response to *IPSCO*, we have now issued proposed substantive regulations which would require us to use the IRS tables. See, Notice of Proposed

Rulemaking, 54 FR 23366, 23384 (May 31, 1989).

*Comment 13*

Timminco requests that the Department exclude its specialized product, MAG–CAL, from this investigation. MAG–CAL is used for the specialized purpose of removing bismuth from lead as part of the lead refining process. Typically, MAG–CAL combines 70 percent magnesium and 30 percent calcium. Timminco is the only company producing this product.

*DOC Position*

This issue is moot since Timminco is the only company which produces this product and the company received a zero rate. Therefore, Timminco will be excluded from the countervailing duty orders on pure and alloy magnesium from Canada.

*Comment 14*

Respondents argue that no government action was involved in the sale of electricity to NHCI under the Risk and Profit Sharing Program (RPSP), and where there is no government action there can be no countervailable subsidy.

*DOC Position*

Hydro-Quebec is wholly-owned by the Government of Quebec. All contracts under the RPSP must be individually approved by the Government of Quebec. Government officials also sit on Hydro-Quebec's Board of Directors. In addition, the utilization of the province's hydro-electric resources plays a central role in the Government of Quebec's development policies. Therefore, we believe it is correct to treat Hydro-Quebec as a government entity capable of conferring subsidies through its actions.

We note that this determination is consistent with the Department's practice. See, Dutch Flowers. In that case, we found that a utility company owned 40 percent by the Government of the Netherlands acted on behalf of the government because the Netherlands Minister of Economic Affairs reserved the right to approve selling prices and contracts.

*Comment 15*

Respondents argue that the companies which have RPSP contracts do not comprise a specific group of enterprises or industries. They state that participants in the RPSP represent a wide range of industries. They also state that the eligibility criteria for the RPSP were neutral and objective.

*DOC Position*

For purposes of these final determinations, we have not examined whether RPSP customers comprise a specific enterprise or industry, or group of enterprises or industries. Instead, we examined recipients of non-reimbursable discounts and found that only NHCI received excessive discounts during the period of investigation.

*Comment 16*

Respondents argue that Hydro-Quebec acted in a commercially reasonable manner in negotiating its electricity contract with NHCI. They also state that at the time of the negotiations with NHCI, Hydro-Quebec was anticipating energy surpluses. Thus, water behind the dams would either be used to generate electricity or be wasted. Respondents state that as long as the sales price of electricity to NHCI exceeded Hydro-Quebec's short-term marginal cost, it was commercially sound to enter into the contract. Respondents further argue that commercially justified price differentials do not constitute preferential pricing. To support this argument they cite Dutch Flowers and the Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Steel Wire Nails from New Zealand, 52 FR 37196 (Oct. 5, 1987).

*DOC Position*

In these final determinations we do not reach the issue of whether the RPSP contract negotiated between NHCI and Hydro-Quebec is preferential because we looked only at the non-reimbursable discounts received by NHCI during the period of investigation. However, respondents' arguments are equally applicable to those discounts as they claim that the marginal cost of providing electricity at the time of the discounts was near zero.

Section 771(5)(A) defines as a subsidy the preferential provision of goods and services (when provided to a specific enterprise or industry, or group of enterprises or industries). The Department has consistently taken the position that preference results when different prices are charged to different customers. Regardless of whether price discrimination is considered commercially reasonable in any given circumstance, it still constitutes the preferential provision of the good or service.

The Department's definition of preference does not require that all users pay identical prices. In the case of electricity, where users can be categorized according to different use characteristics, a finding of no preference requires that similarly situated users pay the same rate. In these investigations, no evidence was provided to demonstrate that all customers similar to NHCI received discounts of the same magnitude.

The position taken by Commerce in Dutch Flowers supports this position. In Dutch Flowers, natural gas prices were broken down into five categories or zones, designated "a" through "e". Zone "a" users were small gas consumers, while zone "e" users were the largest consumers of natural gas. Zone "a" users paid the highest price, while zone "e" users paid the lowest. The price charged for natural gas within each of the zones was based on world market prices for light and heavy fuel oil with an adjustment based on the readiness of various buyers to switch to, and maintain usage of, the substitute fuel. Under a separate contract negotiated with the utility company, the greenhouse growers paid the rates applicable to zone "d" users. Individually, these growers would have fallen in zones "a", "b" or "c". Their collective consumption would have made them eligible for the lowest rates provided in zone "e".

Thus, in Dutch Flowers, a consistent rate-making "philosophy" was applied to each customer category—each group was charged the rate necessary to prevent them from switching to alternative fuel sources. Because this same philosophy was applied to each group, the Department was able to find that no preference was exhibited towards users in any group.

In these investigations, Hydro-Quebec offered non-reimbursable discounts to a large group of industrial users in order to sell its surplus electricity. The same discount formula applied to all, except NHCI which received a 60 percent discount.

*Comment 17*

Respondents argue that fixed-discount provisions are a normal commercial practice and an integral part of RPSP-type contracts.

*DOC Position*

See Comment 18, below, with respect to fixed discounts generally. We disagree with respondents' statement that such discounts are common in RPSP-type contracts. Respondents have provided no evidence to support this statement. Of the 14 RPSP contracts negotiated by Hydro-Quebec, only three incorporated these types of discounts. Therefore, the practice is not even a common practice with Hydro-Quebec.

*Comment 18*

The Government of Quebec states, that during the period of investigation, NHCI benefitted from a rate discount widely advertised and generally available. The Government of Quebec states that it was that particular discount, not a feature of the Risk and Profit Sharing Program, that was countervailed in the preliminary determination. They further state that NHCI was enrolled in the surplus power program. The Government of Quebec certifies that for the period of investigation, NHCI's rate for electricity was not based on a formula for a group of 14 companies. Instead, they argue, it was one of a number of companies that received discounts for increasing electricity consumption. The Government of Quebec states that these companies do not constitute a specific group of enterprises or industries.

*DOC Position*

The Government of Quebec's assertion is not supported by evidence on the administrative record. The program referred to by the Government of Quebec was a 1983 industrial discount program for companies which expaned capacity and, thus, increased electricity usage. According to information collected at verification, the Department found that NHCI did not apply for, was not enrolled in, nor was it even eligible to participate in the program. The fact that NHCI received special discounts not available to other firms supports the Department's determination that NHCI received preferential benefits.

*Comment 19*

Reynolds Metals Company states that in order to determine whether the NHCI contract provides a preferential benefit to the company, the Department must analyze the prices to be paid by NHCI over the life of the contract.

*DOC Position*

The methodology employed in our preliminary determination implicitly required that the benchmark rate be obtained in each year of the life of NHCI's contract. We agree with Reynolds that this is not necessary.

*Verification*

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

**Suspension of Liquidation**

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of pure and alloy magnesium from Canada which were entered, or withdrawn from warehouse, for consumption, on or after December 6, 1991, the date of publication of our preliminary determination in the **Federal Register**. These final countervailing duty determinations were extended to coincide with the final antidumping duty determinations on pure magnesium and alloy magnesium from Canada and Norway, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 4, 1992, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between December 6, 1991 and April 3, 1992. We will reinstate suspension of liquidation under section 703(d) of the Act, if the International Trade Commission (ITC) issues a final affirmative injury determination, and will require a cash deposit equal to 21.61 percent *ad valorem* for all entries of magnesium produced and exported by Norsk Hydro Canada Inc., and all other manufacturers, producers and exporters in Canada of pure and alloy magnesium, except for Timminco which, because its estimated net subsidy is zero, is exempt from the suspension of liquidation.

**ITC Notification**

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on entries of pure magnesium and alloy magnesium from Canada entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to Section 705(d) of the Act (19 U.S.C. 1671d(d)).

Dated: July 6, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-16382 Filed 7-10-92; 8:45 a.m.]

BILLING CODE 3510-DS-M

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**[C-122-816]**

## Countervailing Duty Order: Certain Softwood Lumber Products From Canada

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** In its investigation, the U.S. Department of Commerce determined that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters of certain softwood lumber products from Canada. In a separate investigation, the U.S. International Trade Commission (ITC) determined that imports of certain softwood lumber products from Canada found by the Department to be subsidized are materially injuring a U.S. industry.

As a result of the affirmative determinations of the Department and the ITC, pursuant to section 705 (a) and (b) of the Tariff Act of 1930, as amended (19 U.S.C. 1671d (a) and (b) (the Act), all unliquidated entries of certain softwood lumber products, which were entered, or withdrawn from warehouse, for consumption, on or after March 12, 1992, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register** (57 FR 8800) will be liable for the assessment of countervailing duties. Furthermore, a cash deposit of the

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estimated countervailing duties must be made on all entries or withdrawals from warehouse, of certain softwood lumber products from Canada, for consumption, made on or after the date of publication of this countervailing duty order in the **Federal Register.**

**EFFECTIVE DATE:** July 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Norbert Gannon or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–2786.

**SUPPLEMENTARY INFORMATION:** The products covered by this order are certain softwood lumber products. These lumber products include: (1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters; (2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbitted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed; (3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbitted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed; (4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbitted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed. Such products are currently provided for under subheadings 4407.1000, 4409.1010, 4409.1090, 4409.1020, respectively, of the Harmonized Tariff Schedule (HTS). Although HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order remains dispositive.

In accordance with section 705(a) of the Act (19 U.S.C. 1671d(a)), on May 15, 1992, the Department made its final determination that producers or exporters of certain softwood lumber products from Canada receive benefits which constitute subsidies within the meaning of the countervailing duty law (56 FR 7678). On July 6, 1992, in accordance with section 705(d) of the Act, the ITC notified the Department of its determination that such subsidized imports from Canada are materially injuring a U.S. industry.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to sections 706(a)(1) and 751 of the Act (19 U.S.C. 1671e(a)(1) and 1675), countervailing duties equal to the amount of the estimated net subsidy on all entries of certain softwood lumber products from Canada. These countervailing duties will be assessed on all unliquidated entries of certain softwood lumber products from Canada which were entered or withdrawn from warehouse for consumption, on or after March 12, 1992, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register.**

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equivalent to 6.51 percent *ad valorem* for all entries of softwood lumber from Canada.

This determination constitutes a countervailing duty order with respect to certain softwood lumber products from Canada pursuant to section 706 of the Act (19 U.S.C. 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

**Notice of Review**

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding the review, contact Norbert Gannon or Kelly Parkhill at (202) 377–2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e).

Dated: July 9, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92–16506 Filed 7–10–92; 8:45 am]

BILLING CODE 3510–DS–M

## Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 89–A0010.

**SUMMARY:** The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the Air-Conditioning & Refrigeration Institute ("ARI") on May 10, 1991. Notice of issuance of the Certificate was published in the **Federal Register** on May 21, 1991 (56 FR 23284).

**FOR FURTHER INFORMATION CONTACT:** George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Amended Certificate**

Export Trade Certificate of Review No. 89–00010, was issued to the Air-Conditioning & Refrigeration Institute on May 10, 1991. Notice of issuance of the certificate was published in the **Federal Register** on May 21, 1991 (56 FR 23284).

ARI's Export Trade Certificate of Review has been amended to:

1. Add the following companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2 (1)): Alco Controls Division, Emerson Electric Company; Bristol Compressors, Inc.; Climate Master, Inc., A Subsidiary of LSB Industries; Eaton Corporation, Automotive & Appliance Controls Operation; Edwards Engineering Corporation; E.I. du Pont de Nemours & Company, Fluorochemicals Division; EVAPCO, Inc.; FHP Manufacturing Company, division of Harrow Products, Inc.; Heat Exchangers, Inc.; Manitowoc Equipment Works, Division of Manitowoc Co., Inc.; Mile High Equipment Company; Mortex Products, Inc.; Parker Refrigeration Components Group, Parker-Hannifin Corporation; Paul Mueller Company; Scotsman Ice Systems; Servend International, Inc.; Superior Coils, Inc.; and Tecumseh Products Company;

2. Delete the following companies as a "Member" of the Certificate: Artesian Building Systems, Inc.; A.D. Auriema Inc.; Copeland Corporation; Halsey Taylor, Scotsman Industries, Sundstrand Heat Transfer, Inc., Sundstrand Corp.; and Win-Tron Electronics Ltd.;

3. Change the listing of the company name of the following current "Members" as follows: Change Kysor-Warren to Kysor/Warren; Lau Industries to Lau; Marvair Company to Crispaire; Sterling Radiator Division, Reed National Corp. to Sterling Radiator, A Division of Mestek, Inc.; Titus Products, Division of Phillips Industries, Inc. to TITUS; Turbotec Products, Inc. to Turbotec Products Inc.; and Phillips Industries, Inc. to Tomkins Industries, Inc.; and

4. Add (a) Refrigerant Recovery/Recycling Equipment; (b) Thermal Storage Equipment; and (c) Ground Source Closed-Loop Heat Pumps (ARI Standard 330) as products to be covered by the Certificate.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230

Dated: July 7, 1992.

**George Muller,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 92–16313 Filed 7–10–92; 8:45 am]

BILLING CODE 3510–DR–M

## National Oceanic and Atmospheric Administration

### Financial Assistance for Research and Development Projects to Provide Information for the Full and Wise Use and Enhancement of Fishery Resources in the Gulf of Mexico and off the U.S. South Atlantic Coastal States

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice requesting comments on the fiscal year (FY) 1993 Marine Fisheries Initiative (MARFIN) proposed Program Emphasis Areas.

**SUMMARY:** For FY 1993, funds are expected to be available to assist persons in carrying out research projects that optimize the use of U.S. Gulf of Mexico and south Atlantic (North Carolina to Florida) fisheries involving the U.S. fishing industry (recreational and commercial), including fishery biology, resource assessment, socioeconomic assessment, management and conservation, selective harvesting methods, and fish handling and processing. Emphasis is on research that will enhance social and economic benefits from living marine resources. NMFS issues this notice to solicit public comments on proposed program emphasis areas for the FY 1993 Financial Assistance Program. This is not a solicitation for proposals.

**DATES:** Comments on the proposed areas of program emphasis for the FY 1993 MARFIN solicitation will be accepted from July 13, 1992 through August 12, 1992.

**ADDRESSES:** Send comments to: Regional Director, Attn: D. Pritchard, Southeast Regional Office, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Mr. David L. Pritchard, 813–893–3720.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The Fish and Wildlife Act of 1956, at 16 U.S.C. 753a, authorizes the Secretary of Commerce (Secretary) to conduct research to enhance U.S. fisheries. Funding is expected to be available in FY 1993 for financial assistance under the MARFIN program to manage and enhance the use of fishery resources in the Gulf of Mexico and in the south Atlantic Ocean off the south Atlantic states of North Carolina, South Carolina, Georgia and Florida. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries. This program is described in the Catalog of Federal Domestic Assistance under program number 11.433 Marine Fisheries Initiative.

A Notice of Availability of Fjnancial Assistance for fiscal year 1993 MARFIN program is expected to be published in the **Federal Register** after public comments have been received on the proposed areas of emphasis in this notice.

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna and shellfish that are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Gulf of Mexico shrimp, groundfish, menhaden, south Atlantic snapper-grouper, etc.



**II. Proposed Areas of Emphasis for the FY 1993 MARFIN Program**

Research needs identified in fishery management plans and amendments prepared by the Gulf and South Atlantic Fishery Management Councils (Councils) and the Gulf and Atlantic States Marine Fisheries Commissions (Commissions) are included by reference. Areas of special emphasis include:

*A. Shrimp Trawler Bycatch*

Studies are needed to contribute to the regional shrimp trawler bycatch program being conducted by NMFS in cooperation with state fishery management agencies, commercial and recreational fishing organizations and interests, environmental organizations, universities, the Councils, and the Commissions. In particular, the studies should address:

1. Data collections and analyses to expand and update current bycatch estimates temporally and spatially, including offshore, nearshore, and inshore waters. Emphasis should be on inshore and nearshore waters (less than 10 fathoms (18.3 m)).

2. Assessments of the status and condition of fish stocks significantly impacted by shrimp trawler bycatch, with emphasis given to overfished species under the jurisdiction of the Councils.

3. Identification, development, and evaluation of gear, nongear, and tactical fishing options to reduce bycatch.

4. Social and economic assessments of the impact of bycatch and of bycatch reduction options on coastal communities and industries.

5. Economic studies of the dynamic effects of bycatch on the bycatch fisheries; e.g., mackerel and reef fish.

6. Improved methods for communicating with and improving technology and information transfer to the shrimp industry.

*B. Highly Migratory Pelagic Fisheries*

1. Longline Fishery, Including Bycatch

A number of pelagic longline fisheries exist in the Gulf and south Atlantic. Most target highly migratory species, such as tunas, billfish, some sharks, and swordfish. These fisheries have evolved rapidly over the last decade, with increases in fishing effort and changes in fishing gear and tactics. These changes need to be characterized and their effects quantified. High priority areas include:

a. Characterization of specific longline fisheries, including targeted species, bycatch catch per unit effort, and

biological parameters (e.g., sex, and reproductive state) by gear type, area, and season.

b. Evaluation of vessel log data for monitoring the fisheries.

c. Development and evaluation of gear and fishing tactics to minimize the bycatch of undersized and unwanted species, including sea turtles and marine mammals.

d. Assessment of the impact of longline bycatch on related fisheries, including biological, social, and economic factors and effects.

2. Sharks

Little is known about shark resources in the Gulf and south Atlantic. A Secretarial Fishery Management Plan (FMP) for sharks has been developed that identifies a number of research needs. In general, these needs can be grouped as:

a. Characterization of the directed and bycatch commercial and recreational fisheries from existing and new data. Emphasis should be on species, size, and sex composition and catch per unit effort by season, area, and gear type.

b. Collection and analysis of basic biological data on movements, habitats, growth rates, mortality rates, age composition, and reproduction.

c. Determination of baseline cost and returns for commercial fisheries that take and retain sharks, and estimations of demand curves for shark products and recreational shark fisheries.

d. Development of species profiles and stock assessments for sharks taken in significant quantities by commercial and recreational directed and bycatch fisheries. Assessments can be species-specific or for species groups, as long as the latter do not differ substantially from the groups identified in the Secretarial Shark FMP.

e. Identification of coastal sharks using laboratory (tissue analysis) methods, and preservation of tissue samples for mercury analysis.

*C. Reef Fish*

Many species within the reef fish complex are showing signs of being overfished, either by directed or bycatch fisheries. The ecology of reef fish makes them especially vulnerable to overfishing because they tend to concentrate over specific types of habitats that are patchily distributed. The patchy distribution of the resource can make traditional fishery statistics misleading, because catch per unit effort can remain relatively high as fishermen move from one area to another, yet overall abundance of the resource can be declining sharply. Priority research areas include:

1. Collection of basic biological data for species in commercially and recreationally important fisheries, with emphasis on stock and species identification, age and growth, early life history, the source of recruits (especially amberjack and vermilion snapper in the Gulf of Mexico) and reproductive biology. The behavior of age-0 and age-1 red snapper is another important research need. Also important is the effect of reproductive mode and sex change (protogynous hermaphroditism) on population size and characteristics, with reference to sizes of fish exploited in the fisheries and the significance to proper management.

2. Identification and quantification of natural and human-induced mortality (such as the loss of undersized fishes caught in deep water).

3. Mapping and quantification of reef fish habitat, primarily from existing biological and physical data. Special attention should be directed to determine the habitat and limiting factors for red snapper in the Gulf of Mexico.

4. Identification and characterization of spawning aggregations by species, areas, and seasons.

5. Stock assessments to establish the status of major recreational and commercial species. Especially needed are innovative methods for stock assessments on aggregate species, including the impact of fishing on genetic structure.

6. Research in direct support of management techniques, including catch-and-release mortality, marine fishery reserves, gear and fishing tactic modifications to minimize bycatch, balancing traditional fisheries use with alternate uses (e.g., eco-tourism and sport diving), and economic and social profiles and studies to evaluate impacts of management options. Also needed are studies to determine effects of fishing closures and quotas on alternative commercial and recreational fisheries.

7. Research to evaluate the use of reef fish marine reserves as an alternative or supplement to current fishery management measures and practices, especially in the south Atlantic.

8. Use of available data to describe the socioeconomic behavior of recreational fishermen (e.g., effects of switching species and bag limits on recreational trips).

Additional explanation of research needs for Gulf reef fish is available from a MARFIN-supported plan for cooperative reef fish research in the Gulf of Mexico.

*D. Coastal Herrings*

Preliminary studies indicate that substantial stocks of coastal herrings occur in the Gulf and south Atlantic. Most of the available data come from fishery-independent surveys conducted by NMFS and state fishery management agencies. Because of the size of these stocks, their importance as prey, and in some instances as predator species, their potential for development as commercial and recreational fisheries needs to be understood. General research needs include:

1. Collection, collation, and analysis of available fishery-independent and fishery-dependent data from state and Federal surveys, with emphasis on species and size composition, seasonal distribution patterns, biomass, and environmental relationships. Emphasis should be given to controversial species such as Spanish sardine.

2. Description and quantification of predator-prey relationships between coastal herring species and those such as the mackerels, tunas, swordfish, billfish, sharks, bluefish, and others in high demand by commercial and recreational fisheries.

*E. Coastal Migratory Pelagic Fisheries*

The demand for many of the species in this complex by commercial and recreational fisheries has led to overfishing for some, such as Gulf king and Spanish mackerel, and Atlantic Spanish mackerel. Additionally, some are transboundary with Mexico and other countries and ultimately will demand international management attention. Current high priorities incude:

1. Development of recruitment indices for king and Spanish mackerel, cobia, dolphin, and bluefish, primarily from fishery-independent data sources, although indices of year-class success using occurrence in bycatch is also important.

2. Improved catch statistics for all species in Mexican waters, with special emphasis on king macherel. This includes length frequency and life history information.

3. Information on populations of coastal pelagics overwintering off North Carolina, South Carolina, and Georgia, especially population size, age, food, and movements.

4. Collection of basic biostatistics for coastal migratory pelagic species (e.g., cobia and dolphin) to develop age-length keys and maturation schedules for stock assessments, where significant gaps in the database exist.

5. Demand and supply functions for recreational and commercial fisheries

for king mackerel in the Gulf of Mexico and for Spanish mackerel in the south Atlantic. Emphasis can be on changes in marginal values of producer and consumer surplus, since the studies would be used in allocation frameworks where total values are not necessarily required.

*F. Groundfish and Estuarine Fishes (Weakfish, Menhaden, Spot, Croaker, and Red Drum)*

Substantial stocks of groundfish and estuarine species occur in the Gulf and south Atlantic. Most of the database comes from studies conducted by NMFS and state fishery management agencies. Because of the historic and current size of these fish stocks, their importance as predator and prey species, and their current or potential use as commercial and recreational fisheries, more information on their biology and conservation is needed. General research needs include:

1. Measurement of general levels of sport fishing effort and associated economic and biological parameters (including other factors regarding retained and released catch) for red drum in both the Gulf of Mexico and the south Atlantic.

2. Definitions of the stocks of weakfish in the south Atlantic.

3. Information on the immigration and escapement of red drum from state waters into the exclusive economic zone in the Gulf of Mexico.

4. Stock identification, including determination of migratory patterns through tagging studies, monitoring long-term changes in abundance, growth rates and age structure, and determination of inshore versus offshore components of the fishery.

5. Monitoring of juvenile populations and population indices to determine year-class strength.

6. Catch and effort statistics from recreational and commercial fisheries, including size and age structure of the catch, to develop production models.

7. Biological and economic analyses of the optimum utilization of long-term fluctuating populations.

8. Quantification of the bycatch in the commercial menhaden purse seine fishery, and the coastal herring purse seine and beach seine fisheries.

*G. General*

There are many areas of research that need to be addressed for improved understanding and management of fishery resources. These include methods for data collection, management, analysis, and for better conservation management. Examples of high priority research topics include:

1. Development and refinement of social and economic models of fisheries. Models should focus on effects of management alternatives such as quotas, moratoria, fishery reserves, bag limits, size limits, gear restrictions, and limited area and seasonal closures.

2. Assessment of the changes in recreational and commercial values that have resulted from past management actions for red drum, shrimp, mackerels, and reef fish.

3. Development and evaluation of controlled-access approaches (e.g., limited entry) for species under Federal management. Of special interest are studies that would address fisheries where both state and Federal jurisdictions are involved, such as the Gulf shrimp fishery. Studies of systems for mackerel and reef fish will have the highest priority since the Councils are considering controlled-access approaches to the management of these species. Studies should consider existing management strategies and how these strategies might be benefitted or adversely impacted by controlling access. Additionally, they should address how a controlled-access program should be introduced into affected fisheries.

4. Development of improved methods and procedures for technology transfer and education of constituency groups concerning fishery management and conservation programs. Of special importance are programs concerned with controlled access and introductions of conservation gear and fishing practice modifications.

5. Development of new modeling and analytical approaches to understanding basic processes in fishery productivity and energy transfer that can be applied to specific fishery resource problems.

6. Development of baseline socio-demographic information on federally managed south Atlantic and Gulf of Mexico fisheries.

**Authority:** 16 U.S.C. 753a.

Dated: July 8, 1992.

**Nancy Foster,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 92-16373 Filed 7-10-92; 8:45 am]

BILLING CODE 3510-22-M

## Marine Mammals

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Modification No. 1 to Permit No. 739 (P474).

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 739 issued to Mount Desert Oceanarium, P.O. Box 696, Southwest Harbor, Maine 04679 (P474) on May 13, 1991 (56 FR 23684) is modified as follows:

Section A. and Special Conditions B.3 and 6 are revised to read that the permit holder may obtain seasonal care and custody of harbor seals from New England Aquarium as well as Mystic Marinelife Aquarium.

All other conditions currently contained in the permit remain in effect.

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Room 7330, SSMC1, Silver Spring, Maryland 20910, (301) 427-2289; and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930, (508) 281-9300.

Dated: July 6, 1992.

**Charles Karnella,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 92-16288 Filed 7-10-92; 8:45 am]

BILLING CODE 3510-22-M

## Marine Mammals

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Receipt of Application for Permit (P511).

**SUMMARY:** Notice is hereby given that Dr. Michael D. Scott, Inter-American Tropical Tuna Commission, c/o Scripps Institution of Oceanography, La Jolla, CA 92037, has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The applicant requests authority to harass, capture, tag with radio- and roto-tags and release, the following animals: 10,895, spotted dolphin (*Stenella attenuata*) (45 radio-tagged/50 roto-tagged); 7,270 spinner dolphin (*S. longirostris*) (20 radio-tagged/50 roto tagged; 355 striped dolphin (*S. coeruleoalba*) (5 radio-tagged/50 roto-tagged); 2,860 common dolphin (*Delphinus delphis*) (10 radio-tagged/50 roto-tagged); 355 bottlenose dolphin (*Tursiops truncatus*) (5 radio-tagged/50 roto-tagged); 355 rough-toothed dolphin

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(*Steno bredanensis*) (5 radio-tagged/50 roto-tagged); and 355 Risso's dolphin (*Grampus griseus*) (5 radio-tagged/50 roto-tagged). The primary species of interest are the spotted, spinner, and common dolphins. Because mixed-species herds of dolphin are common in the eastern tropical Pacific (ETP), the other species listed may be captured and tagged on an opportunistic basis.

The research is designed to study the relationship between these species and yellowfin tuna; the applicant plans to simultaneously radio-track spotted dolphin and sonic-track yellowfin tuna from the same aggregation. The applicant will focus on (1) whether the dolphin-tuna bond breaks at particular times or circumstances (of particular interest is the hypothesis that the tuna do not associate with dolphin at night); (2) when the tuna and dolphin are apart, where the tuna go and are, therefore, likely to be vulnerable to fishing at these times; (3) when they are together, how are they oriented spatially (e.g., do they consistently remain close to the dolphin or do they range back and forth within some critical distance?). The information on movements and behavior, will help to establish whether the tuna/dolphin bond is food-based or not. The long-term objective of this research is to understand the dynamics of the tuna/dolphin association, so that fishermen may be able to exploit the tuna at times when the association has broken naturally or break the association artificially. In either case, the applicant indicates that the research could lead to new fishing methods that would eliminate the encirclement and mortality of dolphins.

**ADDRESSES:** Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice.

Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/713-2289); and Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Long Beach, CA 90802-4213 (310/980-4015).

Dated: July 2, 1992.

**Charles Karnella,**

*Acting Director, Office of Protected Resources.*

[FR Doc. 92-16289 Filed 7-10-92; 8:45 am]

BILLING CODE 3510-22-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Simulation, Readiness and Prototyping; Meeting

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Simulation, Readiness and Prototyping will meet in open session on 30 and 31 July, 1992, at the Institute for defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will break into sub-groups for the purpose of working sessions. Discussions will involve issues raised during the various briefings received at prior Task Force meetings.

For further information, contact Lieutenant Colonel John Fair at (703) 695-1535.

Dated: July 8, 1992.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-16333 Filed 7-10-92; 8:45 am]

BILLING CODE 3810-01-M

### Department of the Air Force

### Privacy Act of 1974; Amend a System of Records

**AGENCY:** Department of the Air Force, DOD.

**ACTION:** Amend a system of records.

**SUMMARY:** The Department of the Air Force proposes to amend one existing system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The amended system will be effective August 12, 1992, unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Access Programs Manager, SAF/AAIA, The Pentagon, Washington, DC 20330-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. James H. Gibson (703) 697-3491 or DSN: 227-3491.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force record systems notices subject to the Privacy Act of 1974 (5 U.S.C. 552a) as amended, have been published in the **Federal Register** as follows:

50 FR 22332 May 29, 1985 (DOD Compilation, changes follow)
50 FR 24672 Jun. 12, 1985
50 FR 25737 Jun. 21, 1985
50 FR 46477 Nov. 8, 1985
50 FR 50337 Dec. 10, 1985
51 FR 4531 Feb. 5, 1986
51 FR 7317 Mar. 5, 1986
51 FR 16735 May 6, 1986
51 FR 18927 May 23, 1986
51 FR 41382 Nov. 14, 1986
51 FR 44332 Dec. 9, 1986
52 FR 11845 Apr. 13, 1987
53 FR 24354 Jun. 28, 1988
53 FR 45800 Nov. 14, 1988
53 FR 50072 Dec. 13, 1988
53 FR 51301 Dec. 21, 1988
54 FR 10034 Mar. 9, 1989
54 FR 43450 Oct. 25, 1989
54 FR 47550 Nov. 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (Updated Address Directory)
55 FR 27868 Jul. 6, 1990
55 FR 28427 Jul. 11, 1990
55 FR 34310 Aug. 22, 1990
55 FR 38126 Sep. 17, 1990
55 FR 42625 Oct. 22, 1990
55 FR 52072 Dec. 19, 1990
56 FR 1990 Jan. 18, 1991
56 FR 5804 Feb. 13, 1991
56 FR 12713 Mar. 27, 1991
56 FR 23054 May 20, 1991
56 FR 23876 May 24, 1991
56 FR 28800 Jun. 11, 1991
56 FR 31394 Jul. 10, 1991 (Updated Index Guide)
56 FR 32161 Jul. 15, 1991
56 FR 63718 Dec. 5, 1991
57 FR 1907 Jan. 16, 1992

The amended system is not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The specific changes to the system of records being amended are set forth below, followed by the system of records notice published in its entirety.

Dated: July 7, 1992.

L. M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F030 AF MP A**

**SYSTEM NAME:**

Personnel Data System (PDS), (54 FR 47551, November 15, 1989).

**CHANGES:**

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete "Air Force Accounting and Finance Center" and add "Defense Finance Accounting System (DFAS)" throughout entry.

Delete paragraph 8(o) and replace with "Retired Personnel Data System (RPDS) is made up of four files - Retired Officer Management File and Retired Airman Management File containing records on members in retired status and the Retired Officer and Airman Loss Files containing records on former retirees who have been lost from rolls, usually through death. The RPDS is used to produce address listings for the Retired Newsletter and Policy letter, statistical reports for budgeting, to manage the Advancement Program, the Temporary Disability Retired List, Age 59 rosters, mobilization rosters and orders for ARPC, General Officer roster, and statistical digest data for management analysis functions. Data is extracted from the master files upon retirement from Active Duty or Reserve or obtained from member by ARPC via survey or from address changes submitted to the Defense Finance Accounting System (DFAS). Data includes name, SSN, grade data, service data, education data, retirement data, address, home and business phone numbers, state of medical license, expiration date of medical license."

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**PURPOSE(S):**

Delete "Air Force Accounting and Finance Center (AFAFC)" and replace with "Defense Finance Accounting System (DFAS)" throughout entry.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Add to end of entry "Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**NOTIFICATION PROCEDURES:**

Delete the word "written" in first sentence, and to end of entry "Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**RECORD ACCESS PROCEDURES:**

Delete the word "written" in first sentence, and add to end of entry "Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

* * * * *

**F030 AF MP A**

**SYSTEM NAME:**

Personnel Data System (PDS).

**SYSTEM LOCATION:**

Headquarters United States Air Force (HQ USAF), Washington DC 20330–1000. Headquarters Air Force Military Personnel Center (HQ AFMPC), Randolph Air Force Base, TX 78150–6001. Air Reserve Personnel Center (ARPC), Denver, CO 80280–5000. Headquarters of major commands and separate operating agencies and Consolidated Base Personnel Offices (CBPOs), Central Civilian Personnel Offices (CCPOs), Consolidated Reserve Personnel Offices (CRPOs), and activity or squadron orderly rooms. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Air Force active duty and retired military personnel; Air Force Reserve and Air National Guard personnel; Air Force Academy cadets; Air Force civilian employees; certain surviving dependents of deceased members of the Air Force and predecessor organizations; potential Air Force enlistees; candidates for commission enrolled in college level Air Force Reserve Officer Training Corps (AFROTC) programs; deceased members of the Air Force and predecessor organizations; separated members of the Air Force, the Air National Guard (ANG) and United States Air Force Reserve (USAFR); ANG and USAFR technicians; prospective, pending, current, and former Air Force civilian employees, except Air National Guard technicians; current and former civilian employees from other governmental agencies that are serviced at CCPOs may be included at the option of servicing CCPO; Department of Defense (DOD) contractors and foreign military personnel on liaison or support duty.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The principal digital record maintained at each PDS operating level is the Master Personnel File, which contains the following categories of information:

1. Accession data pertaining to an individual's entry into the Air Force (place of enlistment source of commission, home of record, date of enlistment, place from which ordered to enter active duty (EAD)).

2. Education and training data, describing the level and type of education and training, civilian or military (academic education level, major academic specialty, professional specialty courses completed, professional military education received).

3. Utilization data used in assigning and reassigning the individual, determining skill qualifications, awarding Air Force Specialty Codes (AFSC), determining duty location and job assignment, screening/selecting individual for overseas assignment, performing strength accounting processes, etc. (Primary Air Force Specialty Code, Duty and Control Air Force Specialty Code, personnel accounting symbol, duty location, up to 24 previous duty assignments, aeronautical rating, date departed last duty station, short tour return date, reserve section, current/last overseas tour).

4. Evaluation Data on members of the Air Force during their career (Officer Effectiveness Report dates and ratings, Enlisted Performance Report dates and ratings, results of various qualifications tests, and "Unfavorable Information" indicator).

5. Promotion Data including promotion history, current grade and/or selection for promotion (current grade, date of rank and effective date; up to 10 previous grades, dates of rank and effective dates; projected temporary grade, key "service dates").

6. Compensation data although PDS does not deal directly with paying Air Force members, military pay is largely predicated on personnel data maintained in PDS and provided to Defense Finance Accounting System (DFAS) as described in ROUTINE USES below (pay date, Aviation Service Code, sex, grade, proficiency pay status).

7. Sustentation data--information dealing with programs provided or actions taken to improve the life, personal growth and morale of Air Force members (awards and decorations, marital status, number of dependents, religious denomination of member and spouse, race relations education).

8. Separation and retirements data, which identifies an individual's eligibility for and reason for separation (date of separation, mandatory retirement date, projected or actual separation program designator and

character of discharge). At the central processing site (AFMPC), other subsidiary files or processes are operated which are integral parts of PDS:

(a) Procurement Management Information System (PROMIS) is an automated system designed to enable the USAF to exercise effective management and control of the procurement personnel required to meet the total scheduled manpower requirements necessary to accomplish the Air Force mission. The system provides the recruiter with job requirement data such as necessary test scores, AFSC, sex, date of enlistment; and the recruiter enters personal data on the applicant--Social Security Number (SSN), name, date of birth, etc.--to reserve the job for him or her.

(b) Career Airman Reenlistment Reservation System (CAREERS) is a selective reenlistment process that manages and controls the numbers by skill of first-term airmen that can enter the career force to meet established objectives for accomplishing the Air Force mission. A centralized data bank contains the actual number, by quarter, for each AFSC that can be allowed to reenlist during that period. The individual requests reenlistment by stating his eligibility (AFSC, grade, active military service time, etc). If a vacancy exists, a reservation--by name, SSN, etc--will be made and issued to the CBPO processing the reenlistment.

(c) Airman Accessions provides the process to capture a new enlistee's initial personal data (entire personnel record) to establish a personnel data record and gain it to the Master Personnel File of the Air Force. The initial record data is captured through the established interface with the Processing and Classification of Enlistees System (PACE) at Basic Military Training, Lackland Air Force Base, for non-prior service; for prior service enlistees the basic data (name, SSN, date of enlistment, grade, etc.) is input directly by USAF Recruiting Service and updated and completed by the initial gaining CBPO.

(d) Officer Accessions is the process whereby each of the various Air Force sources of commissioning (AF Academy, AFROTC, Officer Training School, etc) project their graduates in advance allowing management to select by skill, academic specialty, etc--which and how many will be called to active duty when, by entering into the record an initial assignment and projected entry onto active duty date. On that date the individual's record is accessed to the active Master Personnel File of the Air Force.

(e) Technical Training Management Information System (TRAMIS) is a system dealing with the technical training activities controlled by Air Training Command. The purpose of the system is to integrate the training program, quota control and student accounting into the personnel data system. TRAMIS consists of numerous files which constitute "quota banks" of available training spaces, in specific courses, projected for future use based on estimated training requirements. Files include such data as: Course identification numbers, class start and graduation dates, length of training, weapon system identification, training priority designators, responsible training centers, trainee names, SSN (and other pertinent personnel data) on individuals scheduled to attend classes.

(f) Training Pipeline Management Information System (TRAPMIS) is an automated quota allocating system which deals with specialized combat aircrew training and aircrew survival training. Its files constitute a "quota bank" against which training requirements are matched and satisfied, and through which trainees are scheduled in "pipeline" fashion to accommodate the individual's scheduled geographical movement from school to school to end assignment. Files contain data concerning the courses monitored as well as names, SSNs and other pertinent personnel data on members being trained.

(g) Air Force Institute of Technology (AFIT) Quota Bank File reflects program quotas by academic specialty for each fiscal year (current plus two future fiscal years, plus the past fiscal year programs for historical purposes). Also, this file reflects the total number of quotas for each academic specialty. Officer assignment transactions process against the AFIT Quota Bank File to reflect the fill of AFIT Quotas. Examples of data maintained are: Academic specialty, program level, fiscal year, name of incumbent selected, projected, filling AFIT quota.

(h) Job File is derived from the Authorization Record and is accessible by Position Number. Resource managers can use the Job File to validate authorizations by Position Number for assignment actions and also to make job offers to individual officers. Internal suspensing within the Job File occurs based upon Resource Managers update transactions. Data in the file includes: Position number, duty AFSC, functional account code, program element, location, and name of incumbent.

(i) Casualty subsystem is composed of transactions which may be input at Headquarters Air Force and/or CBPOs to report death or serious illness of members from all components. A special file is maintained in the system to record information on individuals who have died. Basic identification data and unique data such as country of occurrence, date of incident, casualty group, aircraft involved in the incident and military status are recorded and maintained in this file.

(j) Awards/Decorations are recorded and maintained on all component personnel in the headquarters Air Force master files. All approved decorations are input at CBPOs whereas disapproved decorations are input at Major Command/Headquarters Air Force (MAJCOM/HAF). A decorations statistical file is built at AFMPC which reflects an aggregation of approvals/disapprovals by category of decoration. This file does not contain any individually identifiable data. All individually identifiable data on decorations is maintained in the Master Personnel File. Such information as the type of decoration, awarding authority, special order number and date of award are identified in an individual's record. Several occurrences for all decorations are stored; however only specific data on the last decoration of a particular type is maintained.

(k) Point Credit Accounting and Reporting System (PCARS). This system is an Air National Guard/Air Force Reserve unique supported by PDS. Its basic purpose is to maintain and account for retirement/retention points accrued as a result of participating in drills/training. The system stores basic personal identification data which is associated with a calendar of points, earned by participation in the Reserve program. Each year an individual's record is closed and point totals are accumulated in history, and a point earning statement is provided the individual and various records custodians.

(l) Human Reliability/Personnel Reliability File: This file is maintained at Headquarters Air Force in support of Air Force Regulation 35-99. It is not part of the Master Personnel Files but a free standing file which is updated by transactions from CBPOs. The file was established to specifically identify individuals who have become permanently disqualified under the provisions of the above regulation. A record is maintained on each disqualified individual which includes basic identification data, service component, Personnel/Human Reliability status and date, and reason for disqualification.

(m) Variable Incentive Pay (VIP) File for medical officers: Contains about 125 character record on all Air Force physicians and is specifically used to identify whether the individual is participating in the Continuation Pay or Variable Incentive Pay programs. Update to this file is provided by the Surgeon (AFMPC), changes to the Master Personnel File. Besides basic identification data an individual's record, includes source of appointment, graduate medical location status, amount of VIP or Continuation Pay and the dates of authorization and the dates and reason for separation.

(n) Weighted Airman Promotion System (WAPS):

(1) The Test Scoring and Reporting Subsystem (TSRS) provides for: Identifying at the CBPO individuals eligible for testing; providing output to the Base Test Control Officer and the CBPO to control, monitor, and operate WAPS testing functions; editing and scoring WAPS test answer cards at AFMPC; providing output for maintaining historical and analytical files at AFMPC and the Human Resources Laboratory (HRL) and includes the central identification of AFMPC of individuals eligible for testing.

(2) The Personnel Data Reporting Subsystem (PDRS) provides for: Identifying promotion eligibles at AFMPC; verifying these eligibles and selected promotion data; merging test and weighted promotion data at AFMPC to effect promotion scoring, assigning the promotion objective and aligning selectees in promotion priority sequence; maintaining projects on promotion selectees at AFMPC, MAJCOM, and the CBPO; updating these projections monthly; creating output products to monitor the flow of data in the system; maintaining promotion historical and analytical files and reports at AFMPC.

(3) Basically, identification data along with time in grade, test scores, decoration information, time in service, and airman performance report history is used to support this program.

(o) Retired Personnel Data System (RPDS) is made up of four files - Retired Officer Management File and Retired Airman Management File containing records on members in retired status and the Retired Officer and Airman Loss Files containing records on former retirees who have been lost from rolls, usually through death. The RPDS is used to produce address listings for the Retired Newsletter and Policy letter, statistical reports for budgeting, to manage the Advancement Program, the Temporary Disability Retired List, Age 59 rosters, mobilization rosters and orders for ARPC, General Officer roster, and statistical digest data for management analysis functions. Data is extracted from the master files upon retirement from Active Duty or Reserve or obtained from member by ARPC via survey or from address changes submitted to the Defense Finance Accounting System (DFAS). Data includes name, SSN, grade data, service data, education data, retirement data, address, home and business phone numbers, state of medical license, expiration date of medical license.

(p) Separated Officer File contains historical information on officers who leave the Air Force via separation, retirement, or death. Copies are sent to HRL and Washington offices for research purposes. The data comprises the Master Personnel File in its entirety and is captured 30 to 60 days after separation from the Air Force.

(q) Airman Gain/Loss File includes data extracted from the Airman Master File when accession and separation (gains and losses) occur. This file, like the Separated Officer File, is used for historical reports regarding strength changes. Data includes name, SSN, and other data that reflects strength, i.e., promotions, reassignment data, specialty codes, etc.

(r) Officer and Airman Separation Subsystem is used to process, track, approve, disapprove and project separations from the Air Force and transfers between components of the Air Force. This subsystem uses the Active, Guard, and Reserve Master Personnel Files. Data includes that specifically related to separations, e.g., date of separation, separation program designator, waivers, etc.

(s) The Retirements Subsystem is used to process and track applications for an approval/disapproval and projections of retirements. This subsystem uses the Master Files for active duty and Reserve officers and airmen. Data specifically related to retirements includes application data, date of separation, waiver codes, disapproval reason codes, separation program designator, Title 10 U.S.C. section, etc.

(t) Retired Orders Log is a computer produced retirement orders routine. Orders are automatically produced when approval, verification of service dates, and physical clearance have been entered in system. The orders log contains data found in administrative orders for retirement, including name, SSN, grade, order number, effective dates, etc. The log is used to control assignment of order number, and as a cross-reference between orders, revocations and amendments.

(u) General Officer Subsystem of PDS contains data extracted from the Master Personnel File and language qualification data and assignment history data maintained by the Assistant for General Officer Matters. A record is maintained on each general officer and general officer selectee. The general officer files are updated monthly and are used to produce products used in the selection/identification of general officers for applicable assignments.

(v) Officer Structure Simulation Model (OSSM) provides officer force descriptions in various formats for existing, predictive or manipulated structures. It functions as a planning tool against which policy options can be applied so as to determine the impact of such policy decisions. The OSSM input records contain individual identifiable data from the Master Personnel Record, but all output is statistical.

(w) Widow's File is maintained on magnetic tape and updated by the office of primary responsibility. When required, address labels and listings are produced by employing selected PDS utility programs. The address labels are used to forward the Retired Newsletter to widows of active duty and retired personnel. The listings are used for management control of the program. Contained in the file are the name, address, and SSN of the widow. Additionally, the deceased sponsor's name, SSN, date of death, and status at time of death are maintained.

(x) Historical Files are files with a retention period of 365 days or more. They consist of copies of active master files, and are used primarily for aggregation and analysis of statistical data, although individual records may be accessed to meet ad hoc requirements.

(y) Miscellaneous files, records, and processes are a number of work files, inactive files with a less-than–365–day retention period, intermediate records, and processes relating to statistical compilations, computer operation, quality control and problem diagnosis. Although they may contain individual-identifying data, they do so only as a function of system operation, and are not used in making decisions about people.

(z) Civilian employment information including authorization for position, personnel data, suspense information; position control information; projected information and historical information; civilian education and training data; performance appraisal, ratings, evaluations of potential; civilian historical files covering job experience, training and transactions; civilian

awards information, merit promotion plan work files; career programs files for such functional areas as procurement, logistics, civilian personnel, etc., civilian separation and retirement data for reports and to determine eligibility; adverse and disciplinary data for statistical analysis and employee assistance; stand-along files, as for complaints, enrollee programs; extract files from which to produce statistical reports in hard copy, or for immediate access display on remote computer terminals; miscellaneous files, as described in item (y) above.

(aa) Aviator Continuation Pay: This file is used to identify where the officer is participating in the Continuation Pay Program. Update to this file is provided by HQ AFMPC/DPMAT, DFAS,and directly from changes to the Master Personnel File. Identification data on an individual record includes amount of continuation pay, active duty service computation, and bonus eligibility date.

**AUTHORITY FOR MAINTAINING THE SYSTEM:**

10 U.S.C. 265, policies and regulations: Participation of reserve officers in preparation and administration; 269, Ready reserve: Placement in; transfer from; 275, Personnel records; 278, Dissemination of information; 279, Training Reports; 31, Enlistments; 564, Warrant officers: Effect of second failure of promotion; 593, Commissioned Officers: Appointment, how made; term; 651, Members: Required service; 671, Members not to be assigned outside US before completing training; 673, Ready reserve; (47, Uniform Code of Military Justice, Section 835, Article 35, Service of Charges; Section 837, Article 37, Unlawfully influencing action of court; Section 885, Article 85, Desertion; Section 886, Article 86, Absence without leave; Section 887, Article 87, Missing movement); 972, Enlisted members: Required to make up time lost; 1005, Commissioned officers:Retention until completion of required service; 1163, Reserve components: Members; limitations on separation; 1164, Warrant officers; separation for age; 1166, Regular warrant officers: elimination for unfitness or unsatisfactory performance; 61, Retirement or Separation for Physical disability; 63, Retirement for Age; 1263—Age 62: Warrant officers; 65, Retirement for Length of Service; 1293, Twenty years or more: Warrant officers; 1305, Thirty years or more: Regular warrant officers; 67, Retired pay; 1331, Computation of years of service in determining entitlement to retired pay; 1332, Age and service requirements; 1333, Computation of years of service in computing retired pay; 79, Correction of Military Records; 165, Accountability and responsibility, 2771, Final settlement of accounts: Deceased members; 8013, Secretary of the Air Force: Powers and duties; delegation by; 805, The Air Staff, Sections 8032, General duties; and 8033, Reserve components of Air Force; policies and regulations for government of: Functions of National Guard Bureau with respect to Air National Guard; 831, Strength, Section 8224, Air National Guard of the United Status; 833, Enlistments; 835, Appointments in the Regular Air Force, 8284, Commissioned officers; Appointment, how made; 8285, Commissioned officers: Original appointment; qualifications; 8296, Promotion lists: Promotion-list officer defined; determination of place upon transfer or promotion; 8297, Selection boards; 8303, commissioned officers; Effect of failure of promotion to captain, major, or lieutenant colonel; 837, Appointments as Reserve Officers; 8360, Commissioned officers: Promotion service; 8362, Commissioned officers: Selection boards; 8363, Commissioned officers; Selection boards; general procedures; 8366, Commissioned officers; Promotion to captain, major, or lieutenant colonel; 8376, Commissioned officers: Promotion when serving in temporary grade higher than reserve grade; 839, Temporary Appointments, 8442, Commissioned officers; regular and reserve components: Appointment in higher grade; 8447, Appointments in commissioned grade: How made; how terminated; 841, Active Duty, 8496, Air National Guard of United States: Commissioned officers; duty in National Guard Bureau; 853, Rights and benefits, Section 8691, Flying officer rating: qualification; 857, Decorations and Awards; 859, Separation, 8786, Officer considered for removal: Voluntary retirement or honorable discharge; severance benefits; 8796, Officers considered for removal: Retirement or discharge; Separation or Transfer to Retired Reserve, 8846, Deferred Officers; 8848, 28 years: Reserve first lieutenants, captains, majors, and lieutenant colonels; 8851, Thirty years or five years in grade: Reserve colonels and brigadier generals; 8852, Thirty-five years or five years in grade: Reserve major generals; 8853, Computation of years of service; 865, Retirement for Age; 8883, Age 60; regular commissioned officers below major general; 8884, Age 60: Regular major generals whose retirement has been deferred; 8885, Age 62: Regular major generals; 8886, Regular major generals whose retirement has been deferred; 867, Retirement for Length of Service; 8911, Twenty years or more; regular or reserve commissioned officers; 8913, Twenty years or more: Deferred officers not recommended for promotion; 8914, Twenty to thirty years: Regular enlisted members; 8915, Twenty-five years: Female majors except those designated under section 8067(a)-(d) or (g)-(i) of this title; 8918, Thirty years or more: Regular commissioned officers; 8921, Thirty years or five years in grade: Promotion-list colonels; 8922, Thirty years or five years in grade: Regular brigadier generals; 8923, Thirty-five years or five years in grade: Regular major generals; 8924, Forty years or more: Air Force officers; 901, Training generally; 9301, Members of Air Force: Detail as students, observers and investigators at education institutions, industrial plants, and hospitals; and 9302, Enlisted members of Air Force: Schools; 903, United States Air Force Academy; 9342, Cadet: Appointment; numbers, territorial distribution; 9344, Selection of persons from Canada and American Republics; 9345, Selection of Filipinos; 1, Organization, 102, General policy; and 104, units; Location; organization; command; 3, Personnel, 307, Federal recognition of officers; Examination, certification of eligibility; 7, Services, supplies, etc., 709, Caretakers and clerks; 3, Basic Pay, 308, Special pay: Reenlistment bonus; 313, Special pay: Medical officers who execute active duty agreements; 7, Allowances, 407, Travel and transportation allowances: Dislocation allowance; 10; Air Force Manual 30–3, Vol I-V, Mechanized Personnel Procedures, Air Force Manual 30–130, Base Level Military Personnel System, and Air Force Manual 300–4, Standard Data Elements and Codes; and Executive Order 9397.

**PURPOSE(S):**

The Air Force operates a centralized personnel management system in an environment that is widely dispersed geographically and encompasses a population that is diverse in terms of qualifications, experience, military status and needs.

There are three major centers of Air Force personnel management: HQ USAF Washington, DC, where most major policy and long-range planning/programming decisions are made; the Air Force Military Personnel Center at Randolph Air Force Base, TX, which performs most personnel operations-type functions for the active duty components of the force; and the Air Reserve Personnel Center at Denver, CO, which performs certain operational functions for the Reserve components of the force. Offices at major command headquarters, State Adjutant Generals, and Air Force bases perform operational

tasks pertaining to the population for which they are responsible. The structure of the Air Force and its personnel management system, the composition of the force, and the Air Force's stated objective of treating people as individuals, i.e., giving due consideration to their desires, needs and goals, demand a dynamic data system that is capable of supporting the varying needs of the personnel managers at each echelon and operating locations. It is to this purpose that the data in the Personnel Data System is collected, maintained, and used.

*Uses within the Air Force Personnel Community:*

1. HQ USAF, Washington, DC: Deputy Chief of Staff, Personnel and his immediate staff; Director of Personnel Plans; Director of Personnel Programs; Assistant for General officer Matters; Assistant for Colonel Assignments; Reserve Personnel Division; Air National Guard Personnel Division; and The Surgeon General, the Chief of Air Force Chaplains and the Staff Judge Advocate, each of which perform certain personnel functions within their area of responsibility. Data from the central data base at the AFMPC is furnished Washington area agencies by retrieval from the computer at Randolph via remote access devices and by provision of recurring products containing required management information, including computer tape files which are used as input to unique systems with which PDS interfaces. Although most of the data is used by policy makers to develop long-term plans and programs and track progress toward established goals, some individual data is provided/retrieved to support actions taken on certain categories of persons managed by offices in the headquarters, e.g. General Officers, Colonels, Air National Guard personnel, etc.

2. Air Force Military Personnel Center (AFMPC), Randolph Air Force Base, TX: Personnel managers at AFMPC use the data in PDS to make decisions on individual actions to be taken in areas such as personnel procurement, education and training, classification, assignment, career development, evaluation, promotion, compensation, casualty and personal affairs, separation and retirement.

3. Air Reserve Personnel Center (ARPC), Denver, CO: Personnel managers at ARPC perform many of the same functions for the Reserve components of the Air Force as the managers at AFMPC perform for the active duty force. As with the Washington area, ARPC obtains data from the central data base at AFMPC by retrieval through remote terminals and recurring output products containing information necessary to their management processes.

4. Major Command Headquarters: Major command headquarters personnel operation are supported by the standard content of PDS records provided them by AFMPC. In addition, there is provided in the PDS record an "add-on area" which the commands are authorized to use for the storage of data which will assist them in fulfilling unique personnel management requirements generated by their mission, structure, geographical location, etc. The standard functions performed fall generally under the same classifications as those in AFMPC, e.g., assignment, classification, separation, etc. Nonstandard usages include provisions of unique aircrew data, production of specially-tailored name listing, control of theater oriented training, etc. Some commands use PDS data--both standard and add-on as input to unique command systems, which are separately described in the **Federal Register.**

5. Consolidated Base Personnel Offices (CBPO): CBPOs, which represent the base-level aspect of PDS, are the prime point of system-to-people interface. Supplied with a standard data base and system, CBPOs provide personnel management support to commanders and supervisors on a daily basis. Acting on receipt of data from higher headquarters, primarily by means of transactions processed through PDS, they notify people of selection for reassignment, promotion, approval/disapproval of requests for separation and retirement, and similar personnel actions. When certain events occur to an individual at the local level, e.g., volunteer for overseas duty, reduction in grade, change in marital status, application for retirement, etc., the CBPO enters transactions into the vertical system to transmit the requisite information to other management levels and update the automated records resident at those levels. CBPOs too are allotted an "add-on" area in the computer record which they use to support local management unique requirements such as local training scheduling, unique locator listing urinalysis testing scheduling, etc.

*Uses within the Air Force--external to the Personnel Community.*

1. HQ USAF/AFMPC Interfaces: Automated interfaces exist between the PDS central site files and the following systems of other functions:

a. The Flight Records Data System (FRDS) maintained by the Air Force Safety Agency (AFSA) at Norton Air Force Base, CA.

b. Certain personnel identification data on rated officers is transferred monthly to the FRDS. This data flow creates the basic identifying data in the FRDS, insures compatibility with the PDS, and precludes duplicative data collection and input generation by the AFSA.

c. Update of the personnel data to the FRDS generates return flow of flying hour data which is used at AFMPC for rated resource distribution management.

d. The Master Military Pay Account (MMPA), is the Joint Uniform Military Pay System (JUMPS) centralized pay file maintained by DFAS at Denver, CO. The PDS transfers certain pay related data as changes occur to update the MMPA, e.g., promotions, accessions, separations/retirements, name, SSN, grade. These data provide criteria for DFAS to determine specific pay entitlements.

e. DFAS maintains a separate pay system for Air National Guard and Air Force Reserve personnel called the Air Reserve Pay and Allowances System (ARPAS).

(1) PDS outputs certain pay related data to ARPAS as changes occur, e.g., retirements/separations, promotions, name, SSN, grade. These data form the criteria for DFAS to determine specific Reserve pay entitlements.

(2) ARPAS outputs data which affect accumulated point credits for Air National Guard/Reserve participation to AFMPC for update of the PCARS, a component of PDS. PCARS also receives monthly input from HQ Air University which updates point credits as a result of completing an Extension Courses Institute correspondence program.

f. DFAS provides data on (VIP) for Medical Officers which is used to update a special control file within PDS and produce necessary reports for management of the VIP program.

g. Air Training Command operates a system called PACE (Processing and Classification of Enlistees) at Lackland Air Force Base, TX. From that system data is fed to AFMPC to initially establish the PDS record on an Air Force enlistee.

h. On a monthly basis, copies of the PDS Master Personnel File are provided to the Human Resources Laboratory at Brooks Air Force Base, TX, where they are used as a statistical data base for research purposes.

i. On a quarterly basis, AFMPC provides the USAF School of Aerospace Medicine with data concerning name, SSN, and changes in base and command of assignment of flying personnel. The

data reflects significant medical problems in the flying population.

j. A complete printout of PDS data pertaining to an individual is included in his Master Personnel File when it is forwarded to National Personnel Records Center.

k. PDS data is provided to the Contingency Planning Support Capability (CPSC) at five major command headquarters: Tactical Air Command, Military Airlift Command, Air Force Communications Command, United States Air Forces Europe, and Pacific Air Forces. A record identifiable by individual's name and SSN provides contingency and/or manning assistance temporary duty (TDY) being performed by the individual. Record is destroyed upon completion of the TDY. Statistical records (gross statistics by skill and unit) are also generated for CPSC from PDS providing force availability estimates. CPSC is described separately in the **Federal Register**.

2. Consolidated Base Personnel Offices (CBPO) Interfaces: Certain interfaces have been established at base level to pass data from one functional system to another. The particular mode of interface depends on the needs of the receiving function and the capabilities of the system to produce the necessary data:

a. The Flight Management Data System (FMDS) receives an automated flow of selected personal data on flying personnel as changes occur. This data consists primarily of assignment data and service dates which the base flight manager uses to determine appropriate category of aviation duty which is reflected by designation of an Aviation Service Code. The FMDS outputs aviation service data as changes occur to the BLMPS. These data subsequently flow to the PDS central site files at AFMPC so it is available for resource management decisions.

b. The Medial Administration Management System (MAMS), currently being developed and tested, will receive flow of selected assignment data as changes occur for personnel assigned to medical activities. MAMS will use these data to align assigned personnel with various cost accounting work centers within the medical activity and thus be able to track manpower expenditure by subactivities.

c. The Automated Vehicle Operator Record (AVOR) is being developed to support motor vehicle operator management. Approximately 115 characters of vehicle operator data will be incorporated into the BLMPS data base during FY76 for both military and civilian personnel authorized to operate government motor vehicles and selected personnel data items (basic identification data) will be authorized for access by the vehicle operator managers.

d. Monthly, a magnetic tape is extracted from BLMPS containing selected assignment data on all assigned personnel. This tape is transferred to the base Accounting and Finance Office for input into the Accounting Operations System. This system uses these data to derive aggregate base manpower cost data.

e. A procedure is designed into BLMPS to output selected background data in predefined printed format for personnel being administered military justice. This output is initiated upon notification by the base legal office. The data is forwarded to the major command where it is input into the Automated Military Justice Analysis and Management System (AMJAMS).

f. The BLMPS output (on an event-oriented basis) pay-affecting transactions such as certain promotions; accessions, and assignments/reassignments, to DFAS, where the data is entered into the JUMPS.

*Uses external to the Air Force, but within DOD.*

1. To The Office Of The Secretary Of Defense (OSD): Individual information is provided to offices in OSD on a recurring basis to support top-level management requirements within the Department of Defense. Examples are the DOD Recruiter File to the Assistant Secretary for Manpower and Reserve Affairs (M&RA), a magnetic tape extract of military personnel records (RCS: DDM(SA)1221) to M&RA, input to the Reserve Component Common Personnel Data System to M&RA, and the Post Career Data File to M&RA.

2. To other Defense Agencies: PDS supports other components of DOD by provision of individual data in support of programs operated by those agencies. Examples are the Selected Officer List to Defense Intelligence Agency for use in monitoring a classified training program and the Defense System Management School (DSMS) Track Record System to DSMS for use in evaluating the performance of graduates of that institution. An extract file on Air National Guard Technicians is provided the National Guard Computer Center.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Other Government/Quasi-Government Agencies: Information used in analyzing officer/airman retention is provided RAND Corporation. Data on prior service personnel with military service obligations is forwarded to the National Security Agency. Lists of officers selected for promotion and/or appointment in the Regular Air Force are sent to the Office of the President and/or the Congress of the United States for review and confirmation. Certain other personnel information is provided these and other government agencies upon request when such data is required in the performance of official duties. Selected personnel data is provided foreign governments, United States governmental agencies, and other Uniformed Services on USAF personnel assigned or attached to them for duty. Examples: the government of Canada, Federal Aviation Administration, US Army, Navy, etc.

Litigation/Miscellaneous: Lists of individuals selected for promotion or appointment, who are being reassigned, who die, or who are retiring are provided to unofficial publications such as the Air Force Times, along with other information of interest to the general Air Force public. Information from PDS support a world-wide locator system which responds to queries as to the location of individuals in the Air Force. Locator information pertinent to personnel on active duty may be furnished to a recognized welfare agency such as the American Red Cross or the Air Force Aid Society. For civilian personnel--to provide automated system support to Air Force officials at all levels from that part of the Office of Personnel Management required personnel management and records keeping system that pertains to evaluation, authorization and position control, position management, staffing skills inventory, career management, training, retirement, employee services, rights and benefits, merit promotion, demotions, reductions in force, complaints resolution, labor management relations, and the suspensions and processing of personnel actions; to provide for transmission of such records between employing activities within the Department of Defense--to provide individual records and reports to OPM; to provide information required by OPM for the transfer between federal activities; to provide reports of military reserve status to other armed services for contingency planning--to obtain statistical data on the work force to fulfill internal and external report requirements and to provide Air Force offices with information needed to plan for and evaluate manpower, budget and civilian personnel programs--to provide minority group designator codes to the Office of Personnel Management's

automated data file--to provide the Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs, with data to access the effectiveness of the program for employment of women in executive level positions--to obtain listings of employees by function or area for locator and inventory purposes by Air Force offices--to assess the effect or probable impact of personnel program changes by simulations and modeling exercises--to obtain employee duty locations and other information releasable under OPM rules and the Freedom of Information Act to respond to request from Air Force offices, other Federal agencies and the public--to provide individual records to other components of the Department of Defense in the conduct of their official personnel management program responsibilities--to provide records to OPM for file reconciliation and maintenance purposes--and to provide information to employee unions as required by negotiated contracts.

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:**

**STORAGE:**

Maintained in visible file binders/ cabinets, card files, on computer magnetic tapes, disks or computer paper printouts or microfiche.

**RETRIEVABILITY:**

Retrieved by name or Social Security Number (SSN). The primary individual record identifier in PDS is SSN. Some files are sequenced and retrieved by other identifiers; for instance, the assignment action record is identified by an assignment action number. Additionally, at each echelon there exists computer programs to permit extraction of data from the system by constructing an inquiry containing parameters against which to match and select records. As an example, an inquiry can be written to select all Captains who are F–15 pilots, married, stationed at Randolph AFB, who possess a master's degree in Business Administration; then display name, SSN, number of dependents and duty location. There is the added capability of selecting an individual's record or certain preformatted information by SSN on an immediate basis using a teletype or cathode ray tube display device. High-speed line printers located in the Washington DC area, at major command headquarters, and ARPC permit the transfer of volume products to and for the use of personnel managers at those locations.

**SAFEGUARDS:**

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in the performance of their official duties where authorized, and properly screened and cleared for need-to-know, and by commanders of medical centers and hospitals. Records are stored in security file containers/ cabinets, safes, vaults and locked cabinets, safes, vaults or rooms. Records are protected by guards. Records are controlled by personnel screening visitor registers and computer system software.

**RETENTION AND DISPOSAL:**

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning: Preceding retention statement applies to Analog output products of the PDS. Data stored digitally within system is retained only for the period required to satisfy recurring processing requirements and/or historical requirements. Files with a retention period of 364 days or less are automatically released at the end of their specified retention period. "Permanent history" files are retained for 10 years. Files 365 or more days old are defined as "historical files" and are not automatically released. Retention periods for categories of PDS files are as follows: If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next daily, then the retention will be not greater than 10 days. If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next daily, which is also used for processing of weekly runs, then the retention will be not greater than 20 days. If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next weekly, which is also used for processing of monthly runs, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is weekly, and the created magnetic tape file will be used for processing of next weekly, then the retention will be not greater than 20 days. If cycle in which a program or series of programs creating output is weekly, and the created magnetic tape file will be used for processing of next weekly, which is also used for processing of monthly runs, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of quarterly runs, then the retention will be not greater than 90 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of semi-annual run, the retention will be not greater than 190 days. If cycle in which a program or series of programs creating output is monthly, which is also used for processing of annual runs, then the retention will be not greater than 365 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, then the retention will be not greater than 90 days. If cycle in which program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of semi-annual run, then the retention will be not greater than 190 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of annual runs, then the retention will be not greater than 365 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If cycle in which a program or series of programs creating output is annual, and the created magnetic tape file will be used for processing of next annual, then the retention will be not greater than 365

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days. If cycle in which a program or series of programs creating output is annual, and the created magnetic tape file will be used for processing of next annual, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If the program or series of programs creating output is a one time run, and the file will be used for processing as required, then the retention will be lowest possible retention commensurate to job completion. If the program or series of programs creating output is compile card image or SOLT tapes, and the created magnetic tape file will be used for processing as required run, then the retention will be not greater than 90 days maximum. If cycle in which a program or series of programs creating output is as required runs, and the created magnetic tape file will be used for processing as required, the retention will be lowest possible commensurate to job completion. If the program or series of programs creating output is test files, and the created magnetic tape file will be used for processing as required, then the retention will be not greater than 30 days. If the program or series of programs creating output is print/punch backup and the created magnetic tape file will be used for processing as required, then the retention will be not greater than 10 days. In addition, for civilian personnel at base level (CCPO), master personnel files for prospective employees are transferred to the active file upon appointment of the employee or in the event the employee is not appointed and will no longer be considered a candidate for appointment, are destroyed by degaussing-master personnel files for active employees are transferred to the separated employee history file where they are retained for three years subsequent to separation and then destroyed by degaussing. The notification of personnel action--Standard Form 450--is disposed of as directed by OPM--work files and records such as the employee career brief, position survey work sheet, retention register work sheet, alphabetic and Social Security Number locator files, and personnel and position control register are destroyed after use by tearing into pieces, shredding, pulping, macerating, or burning--work sheets pertaining to qualification and retention registers are disposed of as directed by the Office of Personnel Management--transitory files such as pending files, and recovery files are destroyed after use by degaussing--files and records retrieved through general retrieval systems are destroyed after use by tearing into pieces, shredding, pulping, macerating, or burning. Those records at AF Manpower and Personnel Center for the end of each fiscal year quarter are retained for five years before destroying by deletion--the separated employee file retains employee information at time of separation for five years after which the employee's record is destroyed by degaussing. System manager(s) and address: Deputy Chief of Staff, Personnel, Headquarters United States Air Force, Washington, DC 20330–1000. Subordinate system managers are:

a. Director of Personnel Data Systems, Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center (HQ AFMPC), Randolph Air Force Base, TX 78150–6001. He is responsible for overall PDS design, maintenance and operation, and is designated the Automated Data Processing system manager for all Air Force personnel data systems.

b. The Director of Personnel Data Systems at each major command headquarters for systems operated at that level.

c. The Chief, CBPO, at Air Force installations for systems operated at that level.

d. The Civilian Personnel Officer at Air Force installations for civilian systems operated at that level. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the system manager of the operating level with which they are concerned.

Persons submitting such a request, either personally or in writing, must provide SSN, name, and military status (active, ANG/USAFR, retired, etc.) ANG members not on extended active duty may submit such requests to the appropriate State Adjutant General or the Chief of the servicing ANG CBPO. USAFR personnel not on extended active duty may submit such requests to ARPC, Denver, CO 80280–5000, or, if unit assigned, to the Chief of the serving CBPO or Consolidated Reserve Personnel Office. Personal visits to obtain notification may be made to the Military Records Review Room, Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78150–6001; The Military Records Room, Air Reserve Personnel Center, Denver CO 80280; The Office of the Director, National Personnel Records Center (NPRC), 111 Winnebago St., St. Louis, MO 63118; the office of the Director of Personnel Data Systems at the appropriate major command headquarters; or the office of the Chief of his servicing CBPO. Identification will be based on presentation of DD Form 2AF, Military Identification Card. Air Force civilian employees must provide SSN, full name, previous names, if any, last date and location of Air Force civilian employment, if not currently employed by the Air Force-- current employees should submit such requests to the CCPO--former employees of the Air Force should submit such requests to the CCPO for the last Air Force installation at which they were employed. Authorizations for a person other than the data subject to have access to an individual's records must be based on a notarized statement signed by the data subject.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address requests to the subordinate system manager at AFMPC, ARPC, NPRC, Major Command or CBPO/CRPO/CCPO. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CONTESTING RECORDS PROCEDURES:**

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program, 32 CFR part 806b, or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information obtained from educational institutions, medical institutions, automated system interfaces, police and investigating officers, the bureau of motor vehicles, a state or local government and source documents such as reports.

**EXEMPTIONS CLAIMED FOR THE SYSTEMS:**

None.

[FR Doc. 92–16335 Filed 7–10–92; 8:45 am]

BILLING CODE 3810–01–F



## Department of the Army

### Office of the Secretary of the Army; Environmental Assessment to Assess the Impacts of the Realignment of the Joint Readiness Training Center and the 199th Separate Motorized Brigade to Fort Polk, LA

Dated: July 7, 1992.

**AGENCY:** Department of Defense, United States Army.

**ACTION:** Notice of availability.

**SUMMARY:** Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, mandates the realignment of the Joint Readiness Training Center and the 199th Separate Motorized Brigade to Fort Polk, Louisiana. The Army is required by law to analyze the environmental and socioeconomic impacts of this realignment. An Environmental Assessment has been prepared to do that analysis.

The Enviromental Assessment has resulted in a Finding of No Significant Impact. It was determined that the proposed action would not have significant environmental impacts. There are significant socioeconomic impacts related to the population decrease at Fort Polk as a result of this realignment. There will be a loss of about 6,800 jobs and a loss of $125.8 million in annual income from the Fort Polk regional area of influence. The Army has approved, subject to environmental documentation, additional stationing which will reduce the socioeconomic impacts. The additional stationing will reduce the loss of jobs to about 4,900 and loss of income to about $77.8 million. Community assistance is available from the Department of Defense Office of Economic Adjustment.

**FOR FURTHER INFORMATION CONTACT:** For more information, or to obtain copies of the Environmental Assessment, contact the U.S. Army Corps of Engineers, Memphis District, ATTN: CELMM–PD–F, B–202, Clifford Davis Federal Building, Memphis, TN 38103–1894, or call (901) 544–3460.

**Lewis D. Walker,**

*Deputy Assistant Secretary of the Army (Environment, Safety & Occupational Health), OASA(I,L&E).*

[FR Doc. 92–16295 Filed 7–10–92; 8:45 am]

BILLING CODE 3710–08–M

## Office of the Secretary of the Army

### Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act Public Law 92–463, announcement is made of the following Committee Meeting:

*Name of Committee:* Department of Defense 50th Anniversary of World War II Advisory Committee (DoDAC), a subcommittee of the Department of the Army Historical Advisory Committee

*Date of Meeting:* July 13, 1992.

*Place:* National Defense University, Fort Lesley J. Mc Nair, 4th and P Streets SW., Washington DC 20319–6000

*Time:* 9 am to 3:30 pm

*Proposed Agenda:* Provide an overview of the Department of Defense Plan to commemorate the 50th Anniversary of World War II, (1991–1995), for new committee members. Summarize commemorative events and programs that have been conducted or initiated since the previous DoDAC meeting. Review service and interservice plans for CY 92 commemorative events and programs. Plan for future programs and commemorative events, educational programs and commemorative community programs.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, contact Lieutenant Colonel Roger D. King, HQDA (SACC), Pentagon, room 3E524, Washington DC 20310–0107, or telephone (703) 692–2095.

**Roger D. King**

*Lieutenant Colonel, GS Chief, European Division.*

[FR Doc. 92–16577 Filed 7–10–92; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

### Office of Administrative Law Judges; Intent to Compromise a Claim, American Printing House for the Blind

**AGENCY:** Department of Education.

**ACTION:** Notice of intent to compromise a claim under the General Education Provisions Act (GEPA).

**SUMMARY:** The Department intends to compromise a claim against the American Printing House for the Blind now pending before the Office of Administrative Law Judges, Docket No. 89–29–0. This notice is filed pursuant to section 452(j) of GEPA (20 U.S.C. 1234a(j)) and 34 CFR 81.26.

**DATES:** Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before August 27, 1992.

**ADDRESSES:** All comments concerning this notice should be addressed to Lucinda A. Stewart, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 4099, FOB–6, Washington, DC 20202–2110.

**FOR FURTHER INFORMATION CONTACT:** Lucinda A. Stewart, Esq. Telephone: (202) 401–2666. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300 between 8 a.m. and 7 p.m., Eastern time.

**SUPPLEMENTARY INFORMATION:** The claim in question arose from an audit of the financial affairs and operations of the American Printing House for the Blind (APHB) for the fiscal years 1983–1987 (i.e., July 1, 1982 to June 30, 1987). The audit was performed by the Department of Education's Office of Inspector General (OIG). The auditors questioned the allowability of certain expenditures under "An Act to Promote Education of the Blind" passed by Congress sin 1879 and codified in 20 U.S.C. 101 *et seq.*

This statute authorizes an annual appropriation for APHB to manufacture and distribute educational materials adapted for blind and visually impaired students who are below college age. These materials include textbooks in braille and large-type print, as well as braille typewriters and microcomputer software and hardware. The materials are distributed to State departments of education, residential schools for the blind, and rehabilitation agencies and organizations based upon the relative numbers of eligible students or clients enrolled in their respective programs. Specifically, as described in the annual reports APHB submits to the Department, each recipient agency or institution receives an annual quota allocation based upon the "per pupil" registration for that fiscal year and can order materials and products free-of-charge up to the level of this dollar allocation or credit. The total number of materials and products provided is determined by the size of the appropriation and the actual unit production costs incurred by APHB in creating these products.

The statute provides that the price put upon each article so manufactured or furnished shall only be its actual cost and that no part of the appropriation shall be expended in the erection or leasing of buildings. 20 U.S.C. 102(2) and (3). Based upon these provisions, the auditors took exception to APHB's inclusion of depreciation on its buildings

and building improvements in its calculation of actual production costs, which had the effect of reducing the number of products ultimately distributed to the recipients.

Based upon this OIG finding, the Assistant Secretary for Special Education and Rehabilitative Services (OSERS) concluded that APHB had overcharged its quota recipients by $312,900 for the subsidized products and, in a March 23, 1989, program determination letter, notified APHB that it would have to either return this amount to the Federal Government or restore the disallowed amount to the recipients on a proportional basis.

By letter dated April 21, 1989, APHB sought review of the disallowance, and on August 25, 1989, the United States Department of Education Office of Administrative Law Judges (OALJ) accepted jurisdiction of the appeal. In the proceeding before the OALJ, OSERS determined that, based on the applicable statute of limitations in 20 U.S.C. 1234(k), it was necessary to lower the amount of the claim to $210,894.60, because the Department was barred from recovering funds spent by APHB prior to March 1984.

On May 8, 1991, the OALJ determined that APHB's inclusion of building depreciation expense violated the statute, but reserved for future determination the second factual and legal issue raised by APHB in its appeal; namely, whether APHB should be permitted to offset the disallowance with losses it allegedly sustained in Federal quota sales during the period covered by the disallowance. APHB maintained that the recipients were not, in fact, harmed by the inclusion of depreciation expense because APHB sold the subsidized products for less than the cost of production.

The Department intends to compromise the full amount of the $210,894.60 claim for $100,000, which APHB has agreed to disburse as additional credits to the recipients, on a prorata basis, over a two-year period beginning on October 1, 1992.

The Department believes this amount represents a fair compromise. In compliance with the May 8, 1991 OALJ order, APHB has corrected the practice that resulted in the disallowance decision. Over the next two-year period, APHB has further agreed to provide $100,000 worth of additional credits to the affected agencies and institutions, over and above their annual quota distributions—credits that will be made from non-Federal sources. Given the fact that blind and visually impaired individuals will receive substantial tangible benefits in the form of additional books and other educational products for the next two years and the risk and costs of litigating the complex evidentiary and legal matters raised by APHB in its second appeal issue, the Department believes that continuation of the adversarial proceeding is not practical or in the public interest.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Lucinda A. Stewart at the address given at the beginning of this notice.

**Program Authority:** 20 U.S.C. 1234a(f).

**Dated:** July 7, 1992.

**William D. Hansen,**

*Acting Assistant Secretary for Office of Management and Budget/Chief Financial Officer.*

[FR Doc. 92-16301 Filed 7-10-92; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Office of Placement and Administration

### Naval Petroleum Reserves; California; Crude Oil Sale

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice of intent.

**SUMMARY:** DOE announces that consideration is being given to revising its solicitation for the sale of crude oil from the Naval Petroleum Reserves in California (NPRC), Kern County, California. The possible revisions being considered would incorporate a "Right of First Refusal" if bids fail to meet the Statutory Minimum Price.

**DATES:** Persons interested in the opportunity to provide comments conerning the revisions to the solicitation for the sale of NPRC crude oil should submit their comments on or before July 28, 1992.

**ADDRESSES:** Additional information may be received from and comments should be addressed to: Ms. Jacqueline Kniskern, U.S. Department of Energy, Office of Placement and Administration, PR-322.1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2830.

**Thomas S. Keefe,**

*Director, Program Support Division, Office of Placement and Administration.*

[FR Doc. 92-16383 Filed 7-10-92; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Docket No. RS92-21-000]**

### National Fuel Gas Supply Corp.; Prefiling Conference

July 6, 1992.

Take notice that a prefiling conference will be convened in this proceeding on July 21, 1992, continuing through July 22, 1992, if necessary, at 10 a.m., in Washington, DC at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of the conference is to address National Fuel Gas Supply Corporation's summary of its proposal to comply with Order No. 636. The pipeline expects to serve the summary on all parties in this proceeding by July 7, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information, interested parties may call Donald Williams at (202) 208-0743.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16294 Filed 7-10-92; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-4152-8]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before August 12, 1992. To obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260-2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Water**

*Title:* Application for NPDES Discharge permit and the Sewage Sludge Management Permit (ICR 0226.09).

*Abstract:* ICR 0226.09 requests renewal of OMB clearance for all reporting requirements imposed upon facilities applying for the permit to discharge wastewater and facilities disposing of or applying sewage sludge.

EPA administers the National Pollutant Discharge Elimination System (NPDES) under section 402 of the Clean Water Act (CWA), which authorizes the Agency to issue permits for the discharge of pollutants into waters of the U.S. Under section 405 of the CWA, the Agency may also issue permits for the use and disposal of sewage sludge.

Applicants for NPDES or Sewage Sludge permits are typically publicly or privately-owned treatment works, commercial dischargers, storm water dischargers, and others. Generally, to apply for a permit, the applicants must submit information concerning their facilities, discharges, treatment systems, sewage sludge use and disposal practices, pollutant sampling data and other information. Under section 308 of the CWA, EPA may also request supplemental information to meet the purposes of the CWA.

The application and supplemental data allow EPA to establish appropriate permit conditions, to issue permits and to assess compliance with the permits. EPA stores the information in national databases which are used by permit writers in setting conditions for individual permits.

*Burden Statement:* The average reporting burden associated with NPDES and Sewage Sludge permits is 11.76 hours per response. This total includes time for searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. The average annual recordkeeping burden is 1.74 hours per record keeper.

*Respondents:* Facilities discharging wastewater; facilities disposing of or applying sewage sludge.

*Etimated No. of Respondents:* 96,135.

*Estimated Total Annual Burden on Respondents:* 1,130,866 hours.

*Frequency of Collection:* Every five years, on occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460,

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: July 6, 1992.

**David Schwarz,**

*Acting Director.*

[FR Doc. 92–16259 Filed 7–10–92; 8:45 am]

BILLING CODE 6560–95–M

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**[FRL–4153–2]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.),* this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 12, 1992

**FOR FURTHER INFORMATION OR A COPY OF THIS ICR, CONTACT:** Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Air and Radiation**

*Title:* National Emission Standards for Hazardous Air Pollutants: Radionuclides (EPA ICR #1100.06; OMB #2060–0191). This ICR request renewal of the existing clearance.

*Abstract:* The EPA requires various sources which emit radionuclides to test for radionuclide emissions, to submit an annual report and to maintain test records for five years. The information elements in the annual report include: facility identification and location; a list of radioactive materials and a description of the processing which the materials undergo; a list of points where radioactive materials are released to the atmosphere; a description of emission controls at each point of release; the distance to the nearest school, residence, business or office and nearest farm producing vegetables, milk and meat; descriptions of the released radionuclides and methods for determining releases; stack, building and user-supplied input parameters and a description of construction and modifications. The Agency will use this information for compliance determination.

*Burden Statement:* The public reporting burden for this collection of information is estimated vary between 29 and 288 hours per response with an average of 150 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Respondents:* Federal facilities, elemental phosphorous plants, Nuclear Regulatory Commission licensees, phosphogypsum stack owners, underground uranium mine owners, and uranium mill tailings piles owners.

*Estimated Number of Respondents:* 221.

*Estimated Total Annual Burden on Respondents:* 63,348 hours.

*Frequency of Collection:* Annually.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y, 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503

Dated: July 2, 1992.

**Paul Lapsley Director,**

*Regulatory Management Division.*

[FR Doc. 92–16368 Filed 7–10–92; 8:45 am]

BILLING CODE 6560–50–M

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**[FRL–4153–3]**

## Industrial Pollution Prevention Project Focus Group of the Technology Innovation and Economics Committee, National Advisory Council for Environmental Policy and Technology (NACEPT); Meeting

Under Public Law 92–463 (The Federal Advisory Committee Act), EPA gives notice of a meeting of the Industrial Pollution Prevention Project Focus Group of the Technology Innovation and Economics (TIE) Committee. The TIE Committee is a standing committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The meeting will convene at 8:30 a.m. on July 14, 1992, and end at 12 noon on July 15. It will be located in Mount Vernon Rooms A and B of the Madison Hotel at 1177 15th Street, NW., Washington, DC 20005.

The Industrial Pollution Prevention Project Focus Group is examining methods by which pollution prevention can be encouraged, particularly through effluent guidelines. The Focus Group is investigating the possibility that among the most important barriers to the implementation of pollution prevention concepts and programs are disincentives inadvertently built into standard setting processes, including the effluent guidelines, and into associated permit and compliance programs. The Focus Group, which includes individuals from industry, academia, environmental groups, all levels of government, and other interested parties, is developing recommendations for EPA about the incorporation of pollution prevention into EPA's Office of Water effluent guidelines process and about EPA's efforts to spread the pollution prevention ethic.

The Focus Group is an "Ongoing Forum" for the Industrial Pollution Prevention Project. At the meeting, the Focus Group will discuss ideas originally presented at its March 1992 meeting about how to encourage pollution prevention through the effluent guidelines system. The effluent guidelines system includes regulations, permitting and compliance practices, and information transfer programs. The objective of this discussion will be to formulate possible recommendations to EPA.

We regret any inconvenience caused due to the late publication of this notice. Unfortunately, this "emergency publication" is required as a result of some difficulty in making hotel arrangements and some recent policy changes possibly affecting the Committee and its associated Focus Groups.

The July 14–15 meeting will be open to the public. Written comments submitted by July 10 will be received and considered by the Focus Group. Additional information about the meeting will be available July 6, 1992, and may be obtained from Jim Lund, EPA (WH–551), 401 M Street, SW., Washington, DC 20460 (202–260–7811); David R. Berg or Morris Altschuler, EPA (A–101–F6), 401 M Street, SW., Washington, DC 20460 (202–260–9153); or by written request sent either by fax at 202–260–6882 or by mail at the second address.

Dated: July 7, 1992.

**Abby J. Pirnie,**

*NACEPT Designated Federal Official.*

[FR Doc. 92–16369 Filed 7–10–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4153–4]

## Science Advisory Board Executive Committee

July 27–28, 1992.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB's) Executive Committee, will conduct a meeting on Monday and Tuesday, July 27–28, 1992. The meeting will be held at the Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. It will begin at 8:30 a.m. on the 27th in room 542 East Tower. After 12 noon the Committee will reconvene in the Administrator's Conference Room and conduct the remainder of its deliberations there, adjourning no later than 1 p.m. on July 28th.

At this meeting, the Executive Committee plans to review reports from its Committees on the following topics: Drinking water research program; Bioremediation research; Alaska bioremediation oil spill project; Ecological risk; Gasoline vapors in homes; Volatile exposures to volatile chemicals associated with showering; Bioremediation research; Research strategies; Radiogenic cancer risk; and Drinking water and naturally occurring radioactive materials.

In addition, selected EC members have been authorized to vet Committee reports on the following topics: Modeling of movement of viral material; Chlorine dioxide disinfection of drinking water; Ozonation and byproducts in disinfection of drinking water; Chlorine and chloramine disinfection of drinking water, Cryptosporidium in drinking water; Disinfection byproducts; Research program for ecotoxic effects of "dioxins"; Habitat assessment; and Formaldehyde.

Discussion of several of the following items will round out the agenda as time permits: Role of the SAB; Implementation of recommendations of the Expert Panel report on the Role of Science at EPA; Relationship with the Environmental Finances Advisory Board (EFAB); Update on Ecological Monitoring and Assessment Program (EMAP); Planning for the Annual Membership meeting; Tentative FY93 projects and membership considerations; Briefing on the role of contracts at EPA laboratories; and Briefing on Rio Environmental Summit.

The meeting is open to the public. Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official for the Executive Committee (A–101), U.S. Environmental Protection Agency, Washington, DC 20460, at (202) 260–4126 or by Fax at (202) 260–9232. Limited, unreserved seating will be available at the meeting.

Dated: July 2, 1992.

**Donald G. Barnes,**

*Staff Director, Science Advisory Board.*

[FR Doc. 92–16370 Filed 7–10–92; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–140166; FRL–4076–9]

## Access to Confidential Business Information by ABT Associates, Incorporated

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor, ABT Associates (ABT), of Cambridge, Massachusetts and Bethesda, Maryland, for access to information which has been submitted to EPA under sections 4, 5, 6, 8, 9, and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**DATES:** Access to the confidential data submitted to EPA will occur no sooner than July 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** Under contract number 68–D0–0020, contractor ABT of 55 Wheeler St., Cambridge, MA and 4800 Montgomery Lane, Suite 500, Bethesda, MD, will assist the Office of Pollution Prevention and Toxics (OPPT) in performing economic analyses of pulp and paper sludge under section 6 of the Toxic Substances Control Act.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D0–0020, ABT will require access to CBI submitted to EPA under sections 4, 5, 6, 8, 9, and 21 of TSCA to perform successfully the duties specified under the contract. ABT personnel will be given access to information submitted to EPA under sections 4, 5, 6, 8, 9, and 21 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of January 11, 1991 (56

FR 1185), ABT was authorized for access to CBI submitted to EPA under sections 4, 5, 6, 8, 9, and 21 of TSCA.

EPA is issuing this notice to allow ABT access to TSCA CBI under contract number 68–D0–0020 at its Bethesda, MD facility. EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, 9, and 21 of TSCA that EPA may provide ABT access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at the contractor's Bethesda, MD facility only.

ABT will be authorized access to TSCA CBI at its facility under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Before access to TSCA CBI is authorized at ABT's site, EPA will approve ABT's security certification statement, perform the required inspection of its facility, and ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, ABT will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1993.

ABT personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: July 2, 1992.

**Linda A. Travers,**

*Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 92–16371 Filed 7–10–92; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–947–DR]**

### California; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**EFFECTIVE DATE:** July 2, 1992.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–947–DR), dated July 2, 1992, and related determinations.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 2, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of California, resulting from earthquakes and continuing aftershocks commencing on June 28, 1992, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. A. Roy Kite of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster: San Bernardino County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Wallace E. Stickney,**

*Director.*

[FR Doc. 92–16324 Filed 7–10–92; 8:45 am]

BILLING CODE 6718–03–M

**[FEMA–947–DR]**

### California; Amendment to Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of California (FEMA–947–DR), dated July 2, 1992, and related determinations.

**EFFECTIVE DATE:** July 2, 1992.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of California, dated July 2, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1992: Riverside County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 92–16325 Filed 7–10–92; 8:45 am]

BILLING CODE 6718–02–M

**[FEMA–949–DR]**

### Texas; Notice of Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**EFFECTIVE DATE:** July 2, 1992.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–949–DR), dated July 2, 1992, and related determinations.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 2, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe thunderstorms and tornadoes on June 27, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alton S. Ray, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster: The counties of Carson and Hutchinson for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Wallace E. Stickney,**

*Director.*

[FR Doc. 92-16326 Filed 7-10-92; 8:45 am]

BILLING CODE 6718-02-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed; Port Authority of New York and New Jersey; et seq.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.6 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

*Agreement No.:* 021-000861-006.

*Title:*

Port Authority of New York and New Jersey/Universal Maritime Service Corp. Terminal Agreement.

*Parties:*

The Port Authority of New York and New Jersey ("Port Authority")
Universal Maritime Service Corp. ("Universal")

*Synopsis:* The subject modification extends the term of the lease arrangement between the Port Authority and Universal at the Red Hook Container Terminal through October 31, 1992.

*Agreement No.:* 224-003930-007.

*Title:* Port Authority of New York & New Jersey/Universal Maritime Service Corp., Terminal Lease Agreement.

*Parties:*

The Port of New York & New Jersey ("Port Authority")
Universal Maritime Service Corp. ("UMS")

*Synopsis:* The Agreement provides for the continuation of the rental modifications set forth in Supplement No. 8 to Lease No. BP-500 (Agreement No. 224-003930-006) through October 31, 1992 between the Port Authority and UMS.

Dated: July 7, 1992.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92-16291 Filed 7-10-92; 8:45 am]

BILLING CODE 6730-01-M

### Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

J.L.G. Forwarding, 12104 S. Lakeshore Drive, Clermont, FL 34711, Jeri L. Hayhurst, Sole Proprietor

Falcon Transportation and Forwarding Corporation, 129 Hanse Avenue, Freeport, NY 11520. Officers: Anthony F. Scorsese, President; James P. O'Connell, Secretary; Michael Belusci, Treasurer

Vil International, Inc., 150 Pacific Avenue, Jersey City, New Jersey 07304. Officers: Jeffrey M. Leben, President; Allen Clifford, Vice President

Global Trading Enterprises Inc., 14626 Kendal Lakes Blvd., Miami, FL 33183. Officers: Elizabeth Pena, President; Marco Guim, Vice President; Mario S. Cuervo, M.D., Chairman of the Board

International Shipping Corporation, 8870 N.W. 24th Terrace, Miami, FL 33172. Officers: Ottomar Krueger, President; Judy Caceres, Vice President

Seven Seas Express Company, 4706 New York Avenue, La Crescenta, CA 91214. George I. Ko, Sole Proprietor

Martin Strauss Airfreight Corp., 147-31 176th Street, Jamaica, NY 11434. Officers: Michele Moslow, President/Stockholder; Brian Solomon, Secretary; Libby Strauss, Treasurer/Stockholder; Wilhelm Walter Kuhnle, Vice President; Martin Strauss, Director

South American Freight International Inc., 6110 N.W. 74th Avenue, Miami, FL 33166. Officers: Marilu Perez, President; Maria A. Bermudez, Vice President/Secretary

BAG International, 1560 S.W. 137 Place, Miami, FL 33184. Brenda M. Alvarado, Sole Proprietor

Export Professional Group, Inc., #5 Acacia Street, Reparto Monte Rey, Pueblo Viejo, San Juan, Puerto Rico 00920. Officers: Abimael Cruz Rivera, President; Ivan Cruz Rivera, Secretary; Ruben Cruz Rivera, Treasurer

By the Federal Maritime Commission.

Dated: July 7, 1992

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92-16290 Filed 7-10-92; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Verle Burgason, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 3, 1992.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Verle Burgason*, Ames, Iowa, to acquire an additional 1,410 shares of voting stock, for a total of 1,443.33 shares (46.892 percent), and Jo Ann Burgason, Ames, Iowa, to acquire an additional 705 shares of voting stock, for a total of 721.37 shares (23.446 percent), of Wabeno Bancorporation, Inc., Venice, Florida, and thereby indirectly acquire State Bank of Wabeno, Wabeno, Wisconsin.

**B. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. Frank and Rosaline Kiang*, Oakland, California; to acquire an additional 15.31 percent, for a total of 40.64 percent, of the voting shares of Met Financial Corporation, Oakland, California, and thereby indirectly acquire Metropolitan National Bank, Oakland, California.

Board of Governors of the Federal Reserve System, July 7, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92–16305 Filed 7–10–92; 8:45 am]

BILLING CODE 6210–01–F

## John Horace Day, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 92-13840) published at page 25037 of the issue for Friday, June 12, 1992.

Under the Federal Reserve Bank of Atlanta, the entry for John Horace Day and Susan Beasley Day is revised to read as follows:

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. John Horace Day and Susan Beasley Day*, both of Orlando, Florida, to retain 6.84 percent and to acquire an additional 6.90 percent, and E.G.P., Inc., Orlando, Florida, to retain 2.18 percent, for a total of 29.99 percent, of the voting shares of Orange Banking Corporation, Orlando, Florida, and thereby indirectly acquire Orange Bank, Orlando, Florida.

Comments on this application must be received by July 31, 1992.

Board of Governors of the Federal Reserve System, July 7, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92–16309 Filed 7–10–92; 8:45 am]

BILLING CODE 6210–01–F

## NationsBank Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 1992.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. NationsBank Corporation*, Charlotte, North Carolina; to engage *de novo* through its subsidiary, AMRESCO Services, Inc., Dallas, Texas, in providing data processing services of a financial, banking or economic nature primarily to affiliated and unaffiliated persons managing or servicing distressed assets for the FDIC, RTC, financial institutions, and other persons owning assets of a similar character, and to provide data processing services of a financial, banking or economic nature in support of the operations of certain affiliated and unaffiliated persons owning, holding or managing financial assets, for example, supporting the electronic banking services offered by financial institutions, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Independent Southern Bancshares, Inc.*, Brownsville, Tennessee; to engage *de novo* in providing investment or financial advice, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 7, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92–16308 Filed 7–10–92; 8:45 am]

BILLING CODE 6210–01–F

## Chesley Pruet; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 92-12546) published at page 22770 of the issue for Friday, May 29, 1992.

Under the Federal Reserve Bank of Dallas, the entry for Chesley Pruet is revised to read as follows:

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. Chesley Pruet*, El Dorado, Arkansas; to retain 24.85 percent and to acquire an additional 5.63 percent, for a total of 30.48 percent, of the voting shares of Continental National Bancshares, Inc., El Paso, Texas, and thereby indirectly acquire Continental National Bank, El Paso, Texas.

Comments on this application must be received by July 31, 1992.

Board of Governors of the Federal Reserve System, July 7, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-16307 Filed 7-10-92; 8:45 am]

BILLING CODE 6210-01-F

**U.K. Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 5, 1992.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. U.K. Bancorporation, Inc.*, Falmouth, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of United Kentucky Bank of Pendleton County, Falmouth, Kentucky, a *de novo* bank in formation.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1 North Bank Corporation*, Hale, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers and Merchants Bank of Hale, Hale, Michigan.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Union Planters Corporation*, Memphis, Tennessee; to acquire 100 percent of the voting shares of Bank of Commerce, Woodbury, Tennessee.

Board of Governors of the Federal Reserve System, July 7, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-16310 Filed 7-10-92; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**Interest Rate on Overdue Debts**

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 14¼% for the quarter ended June 30, 1992. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: July 7, 1992.

**Dennis J. Fischer,**

*Deputy Assistant Secretary, Finance.*

[FR Doc. 92-16342 Filed 7-10-92; 8:45 am]

BILLING CODE 4150-04-M

### Indian Health Service

**Health Professions Recruitment Program for Indians**

**AGENCY:** Indian Health Service, IHS.

**ACTION:** Notice of competitive grant applications for the Health Professions Recruitment Program for Indians.

**SUMMARY:** The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for the Health Professions Recruitment Program for Indians established by section 102 of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1612), as amended by Public Law 100-713. There will be only one funding cycle during fiscal year (FY) 1992. This program is described at section 93.970 in the Catalog of Federal Domestic Assistance and is governed by regulations at 42 CFR 36.310 *et seq.* Costs will be determined in accordance with OMB Circulars A-21, A-87, and A-122 (cost principles for different types of applicant organizations); and subpart Q of 45 CFR part 74 or 45 CFR part 92 (as applicable).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Educational and Community-based programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

**DATES:** An original and two copies of the completed grant application must be submitted, with all required documents, to the Grants Management Branch by close of business on August 31, 1992. Close of business means 5 p.m. Eastern daylight time.

Applications shall be considered as meeting the deadline if they are either: (1) Received by the Grants Management Branch on or before the deadline; or (2) postmarked on or before the deadline and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Applications received after the announced closing date will be returned to the applicant and will not be considered for funding.

**FOR FURTHER INFORMATION CONTACT:** For program information, contact Wesley J. Picciotti, Chief, Scholarship Branch, Division of Health Professions Recruitment and Training, Indian Health Service, 12300 Twinbrook Parkway, suite 100, Rockville, Maryland 20852, (301) 443-6197. For grants information, contact M. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, 12300 Twinbrook Parkway, suite 605, Rockville, Maryland

20852, (301) 443–5204. (The telephone numbers are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** This announcement provides information on the general program purpose and objectives, eligibility requirements, funding availability and period of support, and application procedures for the Health Professions Recruitment Program for Indians for FY 1992.

**A. General Program Purpose**

To increase the number of American Indians and Alaska Natives entering the health professions and to assure an adequate supply of health professionals to Indians, Indian tribes, tribal organizations, and urban Indian organizations involved in the provision of health care to Indian people.

**B. Eligibility and Preference**

The following organizations are eligible with preference given in the order of priority to:

1. Indian tribes,
2. Tribal organizations,
3. Urban Indian organizations and other Indian health organizations; and
4. Public and other nonprofit private health or educational entities.

**C. Program Objectives**

1. To identify Indians with a potential for education or training in Public Health (Masters level) and other health professions, and to encourage and assist them to enroll in such programs.

2. To deliver the necessary student support systems to help to ensure that students who are recruited successfully complete their academic training. Support services may include providing career counseling and academic advice; assisting students to identify academic deficiencies and to develop plans to correct those deficiencies; assisting students to locate financial aid; monitoring students to identify possible problems; assisting with the determination of need for and location of tutorial services; and other related activities which will help to retain students in school.

3. To publicize existing sources of financial aid available to Indian students interested in enrolling in or enrolled in an accredited Masters of Public Health program or accredited health professions program.

Each proposal must respond to all three objectives.

**D. Required Affiliation**

If the applicant is an Indian tribe, tribal organization, urban organization or other Indian health organization, or a public or nonprofit private health organization, the applicant must submit a letter of support from at least one accredited school of public health or health professions program, depending on the type of program for which it proposes to recruit. This letter must document linkage with that educational organization.

When the target population of a proposed project includes a particular Indian tribe or tribes, an official document, i.e., a letter of support or tribal resolution, must be submitted indicating that the tribe or tribes will cooperate with the applicant.

**E. Fund Availability and Period of Support**

In order to meet the needs of IHS for Indians in the health professions, approximately $250,000 is available in FY 1992 to fund projects for recruitment of Indian students into accredited Masters of Public Health (MPH) programs and other accredited health professions programs. The average funding level for projects in FY 1991 was $81,000. The anticipated start date for selected projects will be September 30, 1992. Projects will be awarded for a budget term of 12 months, with a maximum project period of up to three years. Funding for succeeding years will be based on the FY 1992 level, continuing need for the projects, satisfactory performance, and the availability of appropriations in those years.

**F. Type of Program Activities Considered for Support**

Grant programs developed to locate and recruit students with potential for (1) Masters of Public Health or (2) other health professions degree programs, and to provide support services to Indian students who are recruited.

**G. Application Process**

1. An IHS Recruitment Grant Application Kit may be obtained from the Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, 12300 Twinbrook Parkway, Suite 605, Rockville, Maryland 20852, Telephone (301) 443–5204. This Kit includes Standard Form PHS 5161–1 (Rev. 3/89); Standard Forms 424, 424A, and 424B (Rev. 4/88); Application Receipt Card—PHS 3038 (Rev. 9/81); instructions for preparing the program narrative; and IHS application check list.

2. The application must be signed and submitted by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award.

3. Each application will be reviewed at the Grants Management Branch for completeness, accuracy, and eligibility. All acceptable applications will be subject to a competitive review and evaluation. This program is not subject to Executive Order 12372.

4. If an application is disapproved or if funds are not available to support all approved applications, the affected applicants will be so notified by September 25, 1992.

**H. Criteria for Review and Evaluation**

1. In accordance with 42 CFR part 36, subpart J, § 36.313, Evaluation and Grant Awards, applications will be evaluated against the following criteria (with clarification added).

- The potential effectiveness of the proposed project in carrying out the purposes of Section 102, with special emphasis on the objectives and methodology portion of the application.
- The demonstrated capability of the applicant to successfully conduct the project, including organizational and scholarly commitment to the recruitment, education, and retention of Indian students.
- The accessibility of the applicant to target Indian communities or tribes, including evidence of past or potential cooperation between the applicant and such communities or tribes. Evidence must be an official document in such form as is prescribed by the tribal governing body to which recruitment efforts will be directed, i.e., tribal resolution and letters of support. In addition, applications from non-educational institutions must show an affiliation with one (or more) accredited MPH school(s) or health professions program to include letter(s) of support.
- The relationship of project objectives to Indian Health manpower's deficiencies, indicating the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.
- The soundness of the fiscal plan for assuring effective utilization of grant funds.
- The completeness of the application.

2. The project period for any proposal may not exceed three years. Continuation of a project is contingent upon satisfactory performance of the grantee, the continuing need for manpower resources in this specialty, and the availability of funds. Applications must include information for the entire anticipated project period.

Dated: June 5, 1992.
**Michel E. Lincoln,**
*Deputy Director.*
[FR Doc. 92-16312 Filed 7-10-92; 8:45 am]
BILLING CODE 4160-16-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. N-92-3471]**

### Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

**ADDRESSES:** Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 30, 1992.

**John T. Murphy,**
*Director, Information Resources, Management Policy and Management Division.*

*Proposal:* Schedule of Pooled Project Mortgage.

*Office:* Government National Mortgage Association.

*Description of the Need for the Information and its Proposed Use:* Form HUD-1172 provides a means of identifying specific project mortgages in the pool and assures that all required mortgage documents have been delivered to a document custodian. This information is necessary to assure GNMA's interest in the pooled mortgage in event of a default.

*Form Number:* HUD-11721.

*Respondents:*

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD-11721 | 35 | | 9 | | .1 | | 32 |

*Total Estimated Burden Hours:* 32.

*Status:* Extension.

*Contact:* Charles Clark, HUD, (202) 708-2234, Brenda Countee, HUD, (202) 708-2234, Jennifer Main, OMB, (202) 395-6880.

Dated: June 30, 1992.

*Proposal:* Schedule of Pooled Loans—Manufactured Home Loans Issuer Certification of Pool Composition—Manufactured Home Loans.

*Office:* Government National Mortgage Association.

*Description of the Need for the Information and its Proposed Use:* The information collected provides a means of identifying specific manufactured home loans in the pool and assure that all the required loans and related documents have been delivered to a document custodian. In addition this information is necessary to assure GNMA's interest in the pooled loans in the event of a default, provide information on interest rates, terms, and constraints for manufactured home loan pools.

*Form Number:* HUD-11725 and HUD-11739.

*Respondents:* Businesses or Other For-Profit.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD-11725 and HUD-1739 | 12 | | 17 | | .25 | | 51 |

*Total Estimated Burden Hours:* 51.

*Status:* Extension.

*Contact:* Charles Clark, HUD, (202) 708-2234, Brenda Countee, HUD, (202) 708-2234, Jennifer Main, OMB, (202) 395-6880.

Dated: June 30, 1992.

*Proposal:* Preference in the Provision for Families who are Occupying Substandard Housing, Involuntarily Displaced or Paying More than 50 percent of Family Income for Rent.

*Office:* Public and Indian Housing.

*Description of the Need for the Information and its Proposed Use:* The information collected is used by Public Housing Authorities (PHAs) to determine whether prospective tenants are eligible for preference in obtaining housing because they are occupying substandard housing, involuntarily displaced, or paying more than 50 percent of their family income for rent. HUD will use the information to determine if PHAs are properly administering the programs.

*Form Number:* None.

*Respondents:* Individuals or Households, State or Local Governments and Non-Profit Institutions.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Public Housing Authorities Inform Applicants of Federal Preference | 3,300 | | 1 | | 3.3 | | 10,890 |
| Develop Procedures Applicants Qualification | 330 | | 1 | | 12 | | 3,960 |
| Documents | 130,000 | | 1 | | 1 | | 130,000 |
| Verify Eligibility | 3,300 | | 39 | | 1 | | 128,700 |
| Government Agencies Private Landlords Certify Basis for Preference. Determination | 10,000 | | 13 | | .25 | | 32,500 |
| Meeting Criteria | 3,300 | | 3.9 | | 1 | | 12,870 |

*Total Estimated Burden Hours:* 318,920.

*Status:* Reinstatement.

*Contact:* Edward C. Whipple, HUD, (202) 708–1015, Jennifer Main, OMB, (202) 395–6880.

Dated: June 30, 1992.

*Proposal:* Annual Contributions for Operating Subsidies—Performance Funding System; Determination of Operating Subsidy (FR–1775).

*Office:* Public and Indian Housing.

*Description of the Need for the Information and its Proposed Use:* The information is used by Public Housing Authorities/Indian Housing Authorities (PHAs/IHAs) for inclusion in budget submissions which are reviewed and approved by Field Offices as the basis for obligating operating subsidies. The information is necessary in order to calculate the eligibility for operating subsidies under the Performance Funding System.

*Form Number:* HUD–52728A, 52728B, 52728C.

*Respondents:* State or Local Governments.

*Frequency of Submission:* Annually and on Occasion, Recordkeeping.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–52728A,B, and C | 2,400 | | 1 | | 2.25 | | 5,400 |
| Recordkeeping | 2,400 | | 1 | | 1 | | 2,400 |

*Total Estimated Burden Hours:* 7,800.

*Status:* Reinstatement.

*Contact:* John T. Comerford, HUD, (202) 708–1872, Jennifer Main, OMB, (202) 395–6880.

Dated: June 30, 1992.

[FR Doc. 92–16293 Filed 7–10–92; 8:45 am]
BILLING CODE 4210–01–M

## Office of the Assistant Secretary for Public and Indian Housing

**[Docket No. N–92–3444; FR–3142–N–02]**

## NOFA for the Indian Housing Development and Indian Housing Family Self-Sufficiency Programs for Fiscal Year 1992; Corrections

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of Funding Availability (NOFA) for the Indian Housing Development and Indian Housing Family Self-Sufficiency Programs, Fiscal Year 1992; Corrections.

**SUMMARY:** The purpose of this notice is to make certain corrections to the Department's Notice of Funding Availability for the Indian Housing Development and Indian Housing Family Self-Sufficiency Programs (Fiscal Year 1992) published in the **Federal Register** (57 FR 26730) on June 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** Applicants may contact the appropriate Indian FO for further information. Refer to Appendix 1 in the June 15, 1992 NOFA for a complete list of FOs and telephone numbers.

**SUPPLEMENTARY INFORMATION:** Accordingly, the following corrections are made to FR Document 92–13908, published in the **Federal Register** on June 15, 1992 (57 FR 26730) to read as follows:

1. On page 26731, in the second column, paragraph I.D.1.a is corrected to read as follows:

"a. Applications due from IHA's on or before July 30, 1992, 3:15 p.m., Field Office local time."

2. On page 26734, in the first column, the second sentence in paragraph II.E.2.c. is corrected to read as follows:

"c. * * * The number of calendar days from January 1, 1992 to the date of the last Program Reservation for an IHA shall be divided by the longest time, in number of calendar days, since the last Program Reservation for any IHA. * * *"

3. On page 26734, in the third column, paragraph II.F.2.c. is corrected as follows:

"c. Projects under construction with a cost increase needed to cover HUD-approved off-site sewer and water component."

4. On page 26737, in the first column, under the heading, "Appendix 1. Listing of Indian Field Offices", in item 4. for Region IX—Phoenix, the telephone number is corrected to read "(602) 379–4156" instead of "(603) 379–4156".

Dated: July 6, 1992.

**Grady J. Norris,**

*Assistant General Counsel for Regulations.*

[FR Doc. 92–16292 Filed 7–10–92; 8:45 am]
BILLING CODE 4210–33–M

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WO-320-09-4211-02]

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the information and collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at phone number listed below. Comments and suggestions on the requirements should be made to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0107), Washington, DC 20503, telephone number 202–395–7340.

*Title:* 43 CFR 2800 and 2880, Rights-of-Way.

*OMB Approval Number:* (1004–0107)

*Abstract:* This information, supplied by an applicant for a right-of-way, is needed for the authorized officer to determine whether or not a right-of-way may be granted, establish terms and conditions of the grant, and administer the grant when made.

*Bureau Form Number:* None.

*Frequency:* Once when an application is filed.

*Description of Respondents:* Applicants needing a right-of-way on Federal Lands.

*Estimated Completion Time:* 16.8 hours.

*Annual Responses:* 1,000.

*Annual Burden Hours:* 16,800.

*Bureau Clearance Officer (Alternate):* Gerri Jenkins 202–653–6105.

Dated: May 6, 1992.

**Michael Penfold,**

*Assistant Director, Land and Renewable Resources.*

[FR Doc. 92–16285 Filed 7–10–92; 8:45 am]

BILLING CODE 4310-84-M

[ES-910-02-4830-01-241A]

### Change of Address; Eastern States

**SUMMARY:** The Department of Interior's Bureau of Land Management, Eastern States is moving. Effective August 10, 1992 our new address will be: Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, VA 22153, Phone: (703) 440–1600.

**FOR FURTHER INFORMATION CONTACT:** Terry Lewis, Chief, Office of External Affairs, (703) 461–1369.

Dated: July 2, 1992.

**Denise Meridith,**

*State Director.*

[FR Doc. 92–16365 Filed 7–10–92; 8:45 am]

BILLING CODE 4310-GJ-M

[OR-013-02-4410-13; GP2-308]

### Lakeview District Multiple Use Advisory Council; Meetings

**AGENCY:** Bureau of Land Management, Lakeview District, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lakeview District Multiple Use Advisory Council is holding a meeting on Tuesday, August 11, 1992 at 10 a.m. at the Aspen Ridge Resort south of Bly, Oregon. The agenda for the meeting includes discussions of the preferred alternative for the Klamath Falls Resource Management Plan and a proposed plan to equalize the ratio of public/private land ownership in Lake County following potential future acquisitions.

The public is invited to attend the meeting. If you would like to attend, please contact the Lakeview District Office by Friday, August 7.

**DATES:** Tuesday, August 11, 1992, 10 a.m. to 3 p.m.

**FOR FURTHER INFORMATION CONTACT:** Renee Snyder, Public Affairs Officer, 1000 South Ninth Street, Lakeview, OR 97630, (503) 947–6110.

**Bob Bolton,**

*Acting District Manager.*

[FR Doc. 92–16287 Filed 7–10–92; 8:45 am]

BILLING CODE 4310-33-M

[ID-040-02-4320-10-ADVB]

### Salmon District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

**DATES:** The meeting will be held Tuesday, August 4, and Wednesday, August 5, 1992, starting at 10 a.m. each day.

**ADDRESSES:** The meeting on August 4 will begin at the public library in Leadore, Idaho, for a brief business meeting, followed by a tour of the Lemhi Resource Area. On August 5, the meeting will begin at the Salmon District Office, Salmon, Idaho, with a tour of the Challis Resource Area to follow.

**SUPPLEMENTARY INFORMATION:** This meeting is held in accordance with Public Law 92–463. The meeting is open to the public; public comments will be accepted from 10 to 10:30 a.m. on August 4. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467 by August 3, 1992. The agenda items include election of officers, update on the Challis Resource Management Plan (RMP) and Wild and Scenic River study, the status of Lemhi grazing agreements, the status of the Salmon Summit implementation, range improvements, and any other issues dealing with grazing management in the Salmon District. Summary minutes of the meeting will be kept in the Salmon District Office and will be available for public inspection and reproduction during regular business hours (7:45 a.m. to 4:15 p.m.) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy Jackson, District Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467, phone (208) 756–5400.

Dated: June 19, 1992.

**Roy S. Jackson,**

*District Manager.*

[FR Doc. 92–16321 Filed 7–10–92; 8:45 am]

BILLING CODE 4310-GG-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32091]

### Southern Pacific Transportation Co.; Trackage Rights Exemption; Peninsula Corridor Joint Powers Board

Peninsula Corridor Joint Powers Board (JPB) has agreed to grant trackage rights to Southern Pacific Transportation Company (SP) over 4.7 miles of JPB's lines, between Santa Clara Junction (milepost 44.0) and Tamien, CA (milepost 48.70). The trackage rights are to be on an interim basis, for a period of 90 days, and were to become effective on or after July 1, 1992.

This grant of trackage rights is one of a series of transactions[1] that will

[1] Verified notices have been filed and approved in Finance Docket No. 31980, *Peninsula Corridor Joint Powers Board and San Mateo County Transit District—Acquisition Exemption—Southern Pacific Transportation Company* (not printed), served January 17, 1992, to exempt JPB's and Samtrans' acquisition of certain SP main lines; in Finance Docket No. 31983, *Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board and San Mateo County Transit District* (not printed), served January 17, 1992, to exempt JPB's and Samtrans' grant back to SP of trackage rights over certain main line that they are acquiring from SP; and in Finance Docket No. 31985, *Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company* (not printed), served January 17, 1992, to exempt SP's related grants of certain trackage rights to JPB.

Continued



facilitate freight, intercity passenger, and commuter service between Santa Clara Junction and Tamien, CA, during the transfer of commuter operations from SP to Amtrak. This notice is related to a notice filed in Finance Docket No. 32094, *Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company*, in which SP is granting JPB trackage rights over SP lines, on an interim basis for a period of 90 days. SP also anticipates filing, in Finance Docket No. 31984, a verified notice to exempt its grant of certain other trackage rights to JPB.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Transportation Company, Southern Pacific Building, One Market Plaza, room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry.*, Inc.—Lease and Operate, 360 I.C.C. 653 (1980), and as clarified in *Wilmington Term. R.R.—Pur. & Lease—CSX Transp. Inc.*, 6 I.C.C. 2d 799 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n* v. *ICC*, 930 F.2d 511 (6th Cir. 1991).

Dated: July 2, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92–16320 Filed 7–10–92; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Lui on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

### Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Nonimmigrant Checkout Letter.

(2) Form G–146. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This form is used in making inquiry of a person in the U.S. or abroad concerning the whereabouts of aliens and/or departure information wanted by the Immigration and Naturalization Service when initial investigation to locate the alien or verify his/her departure has been unsuccessful.

(5) 20,000 annual responses at .166 hours per response.

(6) 3,320 annual burden hours.

(7) Not applicable under 3504(h).

(1) Medical Examination of Aliens Seeking Adjustment of Status.

(2) Form I–693. Immigration and Naturalization Service.

(3) One time only.

(4) Individuals or households. Applicants for permanent resident status must establish that they are admissable to the U.S. To be admissable, they must be free of mental defect, disease, or disability, as determined by a designated physician. This form is given by the applicant to the designated physician to allow the doctor to record the results of the examination. The form is then included in the applicants application package.

(5) 350,000 annual responses at 1.5 hours per response.

(6) 525,000 annual burden hours.

(7) Not applicable under 3504(h).

(1) Petition for Alien Fiance(e).

(2) I–129F. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. By filing the I–129F, a citizen of the United States may facilitate the entry of his/her finace(e) into the United States so that a marriage between the citizen and the alien fiance(e) may be concluded.

(5) 20,000 annual responses at .5 hours per response.

(6) 10,000 annual burden hours.

(7) Not applicable under 3504(h).

### Revision of a Currently Approved Collection

(1) Application for Certificate of Citizenship In Behalf of an Adopted Child.

(2) N–643. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This application is to be filed by a U.S. citizen parent or parents in behalf of an adopted alien child to become a U.S. citizen and receive a Certificate of Citizenship.

(5) 20,000 annual responses at .5 hours per response.

(6) 10,000 annual burden hours.

(7) Not applicable under 3504(h).

(1) Freedom of Information/Privacy Act Request.

(2) Form G–639. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This form is used by persons requesting a search of INS records under the Freedom of Information Act or Privacy Act.

(5) 25,000 annual responses at .25 hours per response.

(6) 6,250 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: July 7, 1992.

**Lewis Arnold,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 92-16303 Filed 7-10-92; 8:45 am]

BILLING CODE 441-10-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-26,764]

### Ashland Exploration Co., Ashland, KY; Revocation and Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

The Department noticed, as a result of a reconsideration investigation on another case, that the workers at Ashland Exploration Company were mistakenly certified for trade adjustment assistance.

Accordingly, its recommended that the Department revoke the certification which was inadvertently issued to workers of Ashland Exploration Company in Ashland, Kentucky and issue a notice of negative determination.

Pursuant to section 223 of the Trade Act of 1974 as amended by the Omnibus Trade and Competitiveness Act of 1988, the Department, on April 9, 1992, issued a notice of negative determination regarding eligibility to apply for worker adjustment assistance. This notice was published in the **Federal Register** on April 27, 1992 (57 FR 15331).

On May 6, 1992 the Department certified on reopening a number of the oil and gas service companies which had earlier been denied. These companies perform exploration and drilling activities for unaffiliated firms in the oil and gas industry. Ashland Exploration Company was inadvertently included with the oil and gas service companies to be certified. This notice was published in the **Federal Register** on May 22, 1992 (57 FR 21828).

The investigation findings show that Ashland Exploration is not an oil and gas service company doing business with unaffiliated firms in the oil and gas industry but is engaged in crude oil and natural gas production and explores for its own account. Ashland Exploration is a wholly owned subsidiary of Ashland Oil, Inc.

Any worker or group of workers aggrieved by the Negative Determination may file for administrative reconsideration under § 90.18 of the Departmental regulations. All applications must be in writing and filed no later than 30 days after publication of this notice in the **Federal Register**. Applications are to be filed with the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, Washington, DC 20210.

#### Conclusion

After review of the investigation finding, I conclude that the subject worker group was mistakenly certified. Accordingly the certification is hereby revoked and the worker group is denied certification.

Signed at Washington, DC, this 30th day of June 1992.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.*

[FR Doc. 92-16272 Filed 7-10-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,622]

### Cincinnati Milacron Heald Corp., Worcester, MA; Negative Determination Regarding Application for Reconsideration

By an application dated May 20, 1992, the ATF Davidson Worker Assistance Center requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on March 4, 1992 and was published in the **Federal Register** on March 25, 1992 (57 FR 10385).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Its stated that the Department did not perform a thorough investigation since horizontal boring machines were excluded from the investigation.

Horizontal boring machines were excluded from the investigation because they were produced in Worcester in the 1970s with the last such machine being shipped out in 1980. This past production is outside the scope of the present investigation.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers.

The Department's survey of major customers of Cincinnati Milacron Heald Corporation in Worcester showed that the major customers did not shift their purchases of surface grinders from Worcester to foreign manufacturers in the survey period.

#### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of June 1992.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.*

[FR Doc. 92-16271 Filed 7-10-92; 8:45 am]

BILLING CODE 4510-30-M

## Bureau of Labor Statistics

### Proposal To Provide Establishment Practices and Employee Benefits Information From Occupational Compensation Surveys

**AGENCY:** Bureau of Labor Statistics, Labor.

**ACTION:** Request for comments on proposed new data.

**SUMMARY:** The Department of Labor, through the Bureau of Labor Statistics, currently collects and publishes extensive data on employee compensation. Among the Department's compensation surveys is the Occupational Compensation Survey Program (OCSP), which provides locality data on occupational earnings and employee benefits. The OCSP is a combination of two former programs,

the Area Wage Survey Program and the White-Collar Pay Survey Program. Consolidating the two programs has created an ideal opportunity to reexamine the data elements collected to determine how the needs of users can best be met. Considerable research has been done on the occupational earnings data collected, and research is now being undertaken regarding the establishment benefits information collected.

The Department is seeking comments at this time regarding the establishment practices and employee benefits information that should be collected and published to best meet the needs of users. Comments are being sought at this time so that interested parties may be involved at the outset of the development of the program.

**DATES:** Comments are due by October 1, 1992.

**ADDRESSES:** Send comments to Kenneth J. Hoffmann, Project Director, Occupational Compensation Survey Program, Bureau of Labor Statistics, 441 G St. NW, Washington, DC 20212.

**FOR FURTHER INFORMATION CONTACT:** Kenneth J. Hoffman, Project Director, Occupational Compensation Survey Program, Bureau of Labor Statistics, telephone 202–523–1538; or Philip M. Doyle, Project Director, Occupational Compensation Survey Program, Bureau of Labor Statistics. Telephone 202–523–1309.

**SUPPLEMENTARY INFORMATION:** The Bureau of Labor Statistics has combined the Area Wage Survey Program and the National White-Collar Pay Survey to form the Occupational Compensation Survey Program. The OCSP will publish occupational earnings data for approximately 200 areas on an annual or biennial basis to meet the needs of the President's Pay Agent for administering the Federal Employees Pay Comparability Act of 1990, the Labor Department's Employment Standards Administration for administering the Service Contract Act, and other public and private users. National and regional estimates will also be produced.

To obtain a better picture of compensation, the Bureau will also collect information on benefits and establishment practices for broad occupational groups ("white-collar" and "blue-collar and service workers") every two to four years. In recognition of the needs of many users for a coordinated set of national and locality data on pay and benefits, the locality data from the OCSP will be as comparable as possible with the national data provided by the Bureau's Employee Benefit Survey and the Employment Cost Index.

The Bureau has been collecting locality data on shift differentials, work schedules, and union contract coverage. Information has also been collected on the incidence of paid sick leave, life insurance, accidental death and dismemberment insurance, sickness and accident insurance, long term disability insurance, paid jury duty, funeral leave, military leave, cost of living allowances, severance pay, supplemental unemployment benefits, and retirement benefits. Provision and incidence information has been collected on holiday, vacation, and personal leave; and information has been collected on the incidence, funding, and participation rate for health plans.

Because of the major effort required to expand the occupational earnings information collected, the Bureau is temporarily limiting its data collection to information on holiday and vacation provisions and incidence and funding of health, insurance, and retirement plans.

The Bureau will like your comments on the establishment practices and employee benefits that should bé included in our compensation surveys; on whether information should be collected on incidence, provisions, employee usage, or cost; what occupational groups the data should relate to; and how often such information should be collected. Commenters are encouraged to provide specific comments on the above topics.

Signed at Washington, DC, this 2nd day of July, 1992.

**George L. Stelluto,**

*Associate Commissioner for Compensation and Working Conditions, Bureau of Labor Statistics.*

[FR Doc. 92–16273 Filed 7–10–92; 8:45 am]

BILLING CODE 4510–24–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Challenge IV Section) to the National Council on the Arts will be held on July 28–29, 1992 from 9:15 a.m–5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on July 28–29 from 9:15 a.m.–10 a.m. The topics will be opening remarks and general discussion.

The remaining portions of this meeting on July 28–29 from 10 a.m.–5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: July 8, 1992.

**Yvonne M. Sabine,**

*Director, Panel Operations, National Endowment for the Arts.*

[FR Doc. 92–16380 Filed 7–10–92; 8:45 am]

BILLING CODE 7537–01–M

### Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization of Museum Resources Panel B: Catalogue Section) to the National Council on the Arts will be held on August 3–4, 1992 from 9:15 a.m.–5:30 p.m. in room 716 at the Nancy Hanks Center, 110 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 3 from 9:15 a.m.–10 a.m. The topics will be opening remarks and general discussion.

The remaining portions of this meeting on August 3 from 10 a.m.–5:30 p.m. and August 4 from 9:15 a.m.–5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: July 8, 1992.

**Yvonne M. Sabine,**

*Director, Panel Operations, National Endowment for the Arts.*

[FR Doc. 92–16381 Filed 7–10–92; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL SCIENCE FOUNDATION

### Information, Robotics and Intelligent Systems Division; Workshop

The National Science Foundation (NSF) will hold a two-day workshop on Electronic Libraries on July 20–21, 8:30 a.m. to 5:30 p.m. and July 21, 1992, 8:30 a.m. to 3 p.m. at NSF's Conference and Training Center in room 500A at 1110 Vermont Avenue, NW., Washington, DC, 20550.

Electronic Libraries is a generic term used to capture the various concepts of a future knowledge network, based on the National Research and Education Network (NREN) expected to be in place in the mid 1990's. It will involve the store, distribution, and access of a variety of information and knowledge sources, tools, and materials—text, image, sound, software, scientific databases, special instruments, etc. for the enhancement of human endeavors. The goal for this workshop is threefold. First, to determine what is being done and available—experiments, research projects, resources generated, and so on. Second, to discuss new research and emerging issues in the area of electronic libraries. Lastly, the workshop will provide a forum for the community to discuss the roles that NSF can and should play to advance the field.

Invited participants will include individuals from the computer, information and library sciences who are leaders in the field from academia, industry, and government. Although the workshop will not operate as an advisory committee, the public is invited to attend. To attend the workshop or for additional information, contact Dr. Y. T. Chien, Division Director, Information, Robotics and Intelligent Systems, National Science Foundation. Telephone: (202) 357–9572.

Dated: July 6, 1992.

**Y.T. Chien,**

*Division Director, Information, Robotics and Intelligent Systems.*

[FR Doc. 92–16311 Filed 7–10–92; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### EPRI Workshop on Application of NDE for RPV Integrity

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of NRC Participation in EPRI Workshop.

**SUMMARY:** The Nuclear Regulatory Commission staff will attend and participate in the Workshop on Application of Non-Destructive Examination (NDE) for Reactor Pressure Vessel (RPV) Integrity being sponsored by the Electric Power Research Institute (EPRI).

**DATES:** July 16, 1992 8:15 a.m.

**ADDRESSES:** EPRI NDE Center, 1300 Harris Boulevard, Charlotte, North Carolina.

**FOR FURTHER INFORMATION CONTACT:** Mr. M.E. Mayfield, Materials Engineering Branch, Division of Engineering, Office of Nuclear Regulatory Research, Washington, DC 20555 (Telephone: (301) 492–3844), or Mr. T. J. Griesbach, Electric Power Research Institute, 3412 Hillview Avenue, Palo Alto, CA 94303 (Telephone: (415) 855–2345).

**SUPPLEMENTARY INFORMATION:** Staff and contractors for both the USNRC and EPRI will participate in a workshop being hosted by the EPRI NDE Center, addressing the application of Non-Destructive Examination results in Reactor Pressure Vessel integrity analyses. The workshop will include technical presentations describing recent work on developing flaw distributions, and an open discussion on how the flaw distribution information could be incorporated into RPV integrity analyses.

Dated at Rockville, Maryland, this 8th day of July, 1992.

For the Nuclear Regulatory Commission.

**Charles Z. Serpan, Jr.,**

*Chief, Materials Engineering Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 92–16350 Filed 7–10–92; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Salary Council

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of Meetings.

**SUMMARY:** According to the provisions of section 10 of the Federal Advisory Committee Act (P.L. 92–463), notice is hereby given that the eleventh and twelfth meetings of the Federal Salary Council will be held at the times and places shown below. The agenda for these meetings will be the discussion of issues relating to the new locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meetings will be open.

**DATES:** July 28, 1992, and August 11, 1992, beginning at 10:00 a.m.

**ADDRESSES:** Room 7B09 for the July 28th meeting and Room 1350 for the August 11th meeting, Office of Personnel Management, 1990 E Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street, NW., Room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

**Douglas A. Brook,**

*Acting Director.*

[FR Doc. 92–16562 Filed 7–10–92; 8:45 am]

BILLING CODE 6325-01-M

## POSTAL SERVICE

### Intent To Prepare Environmental Impact Statement; Public Scoping Meeting

**AGENCY:** Postal Service.

**ACTION:** Notice of intent to prepare an environmental impact statement and to hold a public scoping meeting.

**SUMMARY:** The U.S. Postal Service intends to prepare an Environmental Impact Statement and to hold a Public Scoping Meeting, to address all potential environmental issues that might be generated by the reuse and expansion of the Brooklyn General Post Office Building as a facility for the Federal Courts and related agencies serving the Eastern District of New York in downtown Brooklyn. The building is on a 1.9 acre parcel and contains approximately 593,000 square feet. It is located at 271 Cadman Plaza East, across the street from the existing Emanuel Celler Federal Building and Courthouse. The Brooklyn General Post Office Building is listed on the National and State Registers of Historic Places.

**SUPPLEMENTARY INFORMATION:** Under the proposal, the Brooklyn General Post Office Building would be expanded to approximately 1,150,000 gross square feet, and would provide space for Federal Courts, the U.S. Attorney, the U.S. Marshalls Service, and various support functions. A portion of the ground floor would continue to house a retail postal facility. The proposed project is being undertaken to service the dual needs of the United States Postal Service, which seeks an appropriate reuse for the General Post Office Building, now that its mail-processing functions have been relocated to a new facility in the Spring Creek area of Brooklyn, and the General Services Administration, which needs to accommodate the projected space requirements of the Federal Courts and related agencies.

The Environmental Impact Statement will evaluate alternative designs for reusing the General Post Office Building as a federal court facility, as well as the "No Build" alternative. The Environmental Impact Statement will also discuss other alternatives considered but rejected during project planning because they did not adequately meet project purposes and needs. The Environmental Impact Statement will assess impacts on the affected environment.

The Environmental Impact Statement will be prepared in accordance with the National Environmental Policy Act and its implementing regulations and procedures. The draft document will be released for public review and comment upon its completion.

To ensure that the full range of issues and alternatives relating to the proposed project are addressed, comments and suggestions are being solicited. To facilitate the receipt of comments, a Public Scoping Meeting will be held on July 28, 1992, from 2 p.m. to 4 p.m. and from 7 p.m. to 9 p.m. at the following location: Auditorium, Polytechnic University, Dibner Library/CATT Building, 5 Metrotech Center, Brooklyn, NY 11201.

At that time, the public and interested federal, state, county and municipal governments will have an opportunity to provide oral and written comments concerning the proposed project.

Comments on the project or the scope of work to be undertaken for the Environmental Impact Statement may also be submitted by no later than August 10, 1992, to: Mr. Charles Vidich, Program Manager, Environmental Engineering, United States Postal Service, Six Griffin Road North, Windsor, CT 06006-0310.

**FOR FURTHER INFORMATION CONTACT:** Charles Vidich (203) 285-7254.

**Stanley F. Mires,**

*Assistant General Counsel, Legislative Division.#*

[FR Doc. 92-16345 Filed 7-10-92; 8:45 am]

BILLING CODE 7710-12-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-30897; File No. SR-NASD-90-69]**

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Limitation of Asset-Based Sales Charges as Imposed by Investment Companies

July 7, 1992.

### I. Introduction and Background

The National Association of Securities Dealers, Inc. ("NASD") submitted on December 28, 1990, a proposed rule change pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and rule 19b-4 [2] thereunder to amend article III, section 26 of the Rules of Fair Practice to subject asset-based sales charges imposed in connection with mutual fund shares to a maximum sales charge. Notice of the proposed rule change appeared in the **Federal Register** on April 19, 1991.[3] The Commission received 24 comment letters.[4] This order approves SR-NASD-90-69 as proposed, effective one year from the date of this order.

In 1970, Congress amended section 22(b) of the Investment Company Act of 1940 ("1940 Act") to expand the NASD's authority to prohibit NASD members from offering or selling to the public mutual fund shares that include an excessive sales load.[5] To that end, in 1975 the NASD proposed and, with Commission approval, adopted amendments to article III, section 26 of the Rules of Fair Practice to impose a limitation on the sales charge permitted as a front-end sales load on shares offered and sold by its members.[6]

Under the "maximum sales charge rule" in the existing Rules of Fair Practice, no member may offer or sell shares of any open-end investment company or any "single payment" investment plan issued by a unit investment trust registered under the 1940 Act if the public offering price includes a sales charge which is excessive. Under existing rules, the maximum front-end sales charge may not exceed 8.5 percent of the offering price of mutual fund shares. The maximum amount is scaled down in steps to 6.25 percent if investors are not offered one of three additional services or benefits: dividend reinvestment at net asset value, quantity discounts, or rights of accumulation.

### II. Rationale for the Proposed Changes to the Maximum Sales Charge Rule

At the time the maximum sales charge rule was adopted, the primary method

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] See Securities Exchange Act Release No. 29070 (April 12, 1991); 56 FR 16137 (April 19, 1991).

[4] See *infra* notes, 19, 23, and 26, listing, respectively, commenters who provided specific comments on the proposal, but expressed no general opinion in favor or against it, those in favor of the proposal and those opposing the proposal.

[5] Section 22(B) provides that the NASD shall adopt rules which "prohibit its members from purchasing, in connection with a primary distribution of redeemable securities of which any registered investment company is the issuer, any such security from the issuer or from any principal underwriter except at a price equal to the price at which such security is then offered to the public less a commission, discount, or spread which is computed in conformity with a method or methods, and within such limitations as to the relation thereof to said public offering prices, as such rules may prescribe in order that the price at which such security is offered or sold to the public shall not include an excessive sales load but shall allow for reasonable compensation for sales personnel, broker-dealers, and underwriter, and for reasonable sales loads to investors." 15 U.S.C. 80a-22(b).

[6] Securities Exchange Act Release No. 11725, Investment Company Act Release No. 8260 (October 10, 1975), 8 SEC Docket 66.

used by mutual funds to finance sales related expenses was a front-end sales charge deducted from the offering price of mutual fund shares. Consequently, the rule was drafted specifically to address front-end sales charges. Since the adoption of the rule in 1975, the mutual fund industry has devised other methods of assessing sales related charges. These methods include "asset-based sales charges" [7] and "deferred sales charges," which include "contingent deferred sales charges," or "CDSLs." Contingent deferred sales charges are "contingent" since they are paid only on redemptions that occur within a specified period after purchase and may be expressed as a percentage of either the original purchase price or, more typically, the redemption proceeds.

The NASD has applied the existing maximum sales charge rule to contingent deferred sales charges even though such charges do not fit within the literal definition of sales load contained in section 2(a)(35) of the 1940 Act.[8] The rule has not been applied to asset-based sales charges, however. Such payments are the only type of mutual fund sales compensation that currently is not subject to NASD regulation. With the advent of these new methods of assessing sales charges on mutual funds, the NASD believed the Rules of Fair Practice should be amended specifically to encompass all sales charges. The NASD desired to take steps to assure a level playing field among all members selling mutual fund shares. Moreover, it believed additional amendments were necessary to prevent circumvention of the existing maximum sales charge rule because it had become possible for funds to use 12b–1 plans, either separately or in combination with initial or deferred sales loads, to charge investors more for distribution than could have been charged as an initial sales load under the existing maximum sales charge rule.[9]

[7] In 1980, the Commission adopted rule 12b-1 under the 1940 Act which allows mutual funds to use their assets to finance sales related expenses. See Investment Company Act Release No. 11414 (October 28, 1980), 45 FR 73898 (November 7, 1980).

[8] In section 2(a)(35) of the 1940 Act, "sales load" is related to the offering price of a mutual fund. It is defined as the difference between the offering price and that part of the offering price that is retained for investment, less any charges that are not for sales or promotional activities. 15 U.S.C. 80a–2(a)(35). The NASD interpreted this definition to apply to contingent deferred sales charges and therefore informed its members that it was a misrepresentation to assert that a fund with a contingent deferred sales load was a "no load fund." See NASD Notice to Members 88–35, April 1988.

[9] The Commission noted this problem of circumvention when proposing amendments to rule 12b–1 to require funds, in determining whether to implement or continue a 12b–1 plan, to consider whether total distribution charges exceed, or are reasonably likely to exceed the maximum front-end sales load permitted under the NASD's Rules of Fair Practice and under what circumstances, over the life of the investment, total distribution charges could exceed, the maximum sales load limits in the NASD Rules. See Investment Company Act Release No. 16431 (June 13, 1988), 53 FR 23258 (June 21, 1988).

## III. Description of the Proposal

The proposed rule change amends Sections (b) and (d) of article III, section 26 of the Rules of Fair Practice. Section (b) provides definitions applicable to transactions within section 26, and section (d) outlines the maximum sales charge provisions for the offer and sale of mutual fund shares by NASD members.

### *A. Amendments to Article III, Section 26(b)*

Section 26(b) has been amended to define the term "sales charge(s)" to include all charges and fees, described in the prospectus that are used to finance sales related expenses. Included in the definition are front-end, deferred and asset-based sales charges. The NASD believes the amendments to the definitional section of section 26 will effectively capture all sales charges for sales-related expenses, no matter how they are imposed, and subject them to the NASD's maximum sales charge rule.

Further, the NASD wished to clearly distinguish sales charges from service fees for the purposes of the maximum sales charge rule to ensure that members would be able to apply the appropriate caps. Accordingly, subsection (b)(8)(C) was amended to define asset-based sales charges to specifically exclude service fees and section (b)(9) has been amended to define the term "service fees." It states that service fees shall mean payments by an investment company for personal service and/or the maintenance of shareholder accounts.[10]

[10] Two commenters requested that the proposed definition of service fees be amended specifically to exclude transfer agent, maintenance, and custodian fees. See letters from Scudder Steven & Clark, and T. Rowe Price Associates, Inc., *infra* notes 19 and 23.

The NASD did not believe it would be appropriate to amend the proposal as such because it intends to distinguish service fees from other fees as a payment for personal services provided to the customer. As interpreted by the NASD, the service fee does not include recordkeeping charges, accounting expenses, transfer costs, or custodian fees. However, payment for personal services, such as a registered representative providing information on investments, is intended by the NASD to be included. Nevertheless, the NASD has represented that it will inform members of fees excluded from the service fee definition in a "Question and Answer" release following approval of this order.

### *B. Amendments to Article III, Section 26(d)*

Section 26(d) embodies the maximum sales charge rule. Under the current rule, NASD members are prohibited from offering or selling shares of an open-end investment company "if the public offering price includes a sales charge which is excessive." The NASD has amended this section to reflect the fact that it will apply to all types of sales charges whether they are front-end, deferred or asset-based. Accordingly, section 26(d) has been amended to prohibit members from offering or selling mutual fund shares if "sales charges described in the prospectus are excessive." In its application, the maximum sales charge rule does not directly govern the mutual fund itself in setting fees, but the NASD member who underwrites and distributes the fund's shares to investors. Charges shall be deemed excessive if they do not conform to the provisions of section 26(d).

Section 26(d)(1) addresses funds that do not have an asset-based sales charge and, for the most part, reiterates the previous rule with minor changes to expand the rule's provisions to include deferred sales charges.

The proposal adds subsections (d)(1)(E) and (d)(1)(F), which are intended to establish the principle that if charges are made for services, or if services are not offered but charges are incurred, an appropriate reduction will be made from the maximum permitted sales charge. Subsection (d)(1)(E) would prohibit an NASD member from offering or selling shares in a mutual fund that has an aggregate sales charge of more than 7.25 percent of the offering price if the fund also has a service fee.

Subsection (d)(1)(F) would permit a fund without an asset-based sales charge that reinvests dividends at the offering price to have a service fee provided that: (1) The aggregate front-end and/or deferred sales charges do not exceed 6.25 percent of the offering price and (2) the fund offers quantity discounts and rights of accumulation.

Section 26(d)(2) is new and expands the rule to govern the sale of mutual funds shares with asset-based sales charges. Subsection (d)(2)(A) establishes a maximum asset-based sales charge of 6.25 percent of new gross sales,[11] plus

[11] New gross sales means the proceeds from the sale of fund shares, excluding the following: sales from the reinvestment of distributions and exchanges of shares between investment companies in a single complex, between classes of shares of an investment company with multiple classes of shares or between series shares of a series investment company.

an interest rate equal to the prime rate plus one percent per annum of the total charges—asset-based, front-end, and deferred—levied by a mutual fund that pays a service fee.[12]

Under subsection (d)(2)(B), a mutual fund with asset-based sales charges, but not service fee, would be subject to a cap of 7.25 percent of the total new gross sales, rather than 6.25 percent, plus an interest rate equal to the prime rate plus one percent, per annum.[13]

Subsection (d)(2)(C) would permit a mutual fund that has had an asset-based sales charge in the past to apply the appropriate cap of 6.25 percent or 7.25 percent retroactively to new gross sales from the time it first adopted and asset-based sales charge until the proposed amendments are implemented.

Further, under subsection (d)(2)(D), mutual funds are permitted to keep records of exchanges between mutual funds in the same complex, between classes of shares of mutual funds with multiple classes, and between series shares of series mutual funds. Such mutual funds may increase the maximum aggregate sales charges permitted under the previous sections by including such exchanges as new gross sales, provided the maximum aggregate sales charges of the mutual fund, class, or series of the redeeming mutual fund are reduced by the amount of the increase.[14]

Finally, subsection (d)(2)(E) prohibits NASD members from offering or selling the shares of a mutual fund that has an asset-based sales charge in excess of .75 percent of its average annual net assets.

Section 26(d)(3) is also new. It would prohibit any NASD member or associated person from describing a fund orally or in writing as a no-load fund if the fund has a front-end, deferred, or asset-based sales charge, except for funds with only combined asset-based sales charges and service fees of no more than 0.25 percent of average annual net assets. The NASD added this *de minimis* exception in response to the Investment Company Institute ("ICI") who argued that funds with rule 12b–1 fees of 0.25 percent or less resemble traditional no-load funds (funds with no front-end or deferred loads and no rule 12b–1 fees) much more than load funds (funds with front-end or deferred loads or larger rule 12b–1 fees).[15] The ICI contended that without the exception it would be difficult for investors to distinguish between funds that use relatively small rule 12b–1 fees to finance advertising and other sales promotion activities and funds that use larger rule 12b–1 fees as alternatives to front-end sales loads.[16]

Section (d)(4) has been added to address issues raised by the different accounting approaches used to calculate the maximum sales charge. Because the proposed rule change contemplates a minimum standard of fund-level accounting rather than individual shareholder accounting, it is possible that long-term shareholders in a mutual fund that has an asset-based sales charge may pay more in total sales than they would have paid if the mutual fund did not have an asset-based sales charge. In light of this possibility, section (d)(4) prohibits a member from offering or selling shares of such mutual funds if the fund does not disclose this information near the fee table at the front of the prospectus.

The final amendments are in section (d)(5), which prohibits NASD members and their associated persons from offering or selling the shares of a mutual fund if it pays a service fee in excess of .25 of 1% of its average annual net assets. With regard to the service fee limitations, one commenter noted that the language of the rule change does not specifically limit fees paid by an "underwriter" to the actual party providing services to the customer.[17] In responding to the comment, the NASD pointed out that as a matter of NASD jurisdiction, fees paid directly to a member by an investment company may be, and are, limited. Thus where the "underwriter" uses another member to actually provide the service to the customer, the rule change will limit the investment company's fees to the "underwriter," and the fees paid by the "underwriter" to the member provider may not exceed the limitations set forth in the rule.

## IV. Summary of Comments

The Commission received 24 comment letters on the proposed rule change. The NASD responded to the issues raised by the commenters in a letter dated September 12, 1991 ("NASD response letter.")[18] To the extent that they have not been addressed in the preceding sections of this order, commenters' views and the NASD's responses are discussed below.

Nine of the comment letters received by the Commission offered specific comments on the proposal but did not, however, state if the commenter generally favored or opposed the proposal.[19] Most of these comments

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[12] The reduction from 8.5 percent, the maximum permitted under the maximum sales charge rule, to 6.25 occurs because asset-based sales charges do not provide quantity discounts or rights of accumulation and because a service fee, not subject to the cap, is paid.

[13] One commenter noted that the term "plus interest charges on *such amount*" used in subsections (d)(2)(A), (d)(2)(B) and (d)(2)(C) would require that interest be calculated on the gross cap rather than the remaining balance, and furthermore, noted that there is no standard mandating the frequency at which the remaining balance be determined. *infra* note 23. The NASD intended that interest be calculated on the remaining balance and not the gross cap. See *infra* note 18, in which the NASD represents that it will clarify this issue in a "Question and Answer" release following approval of this order.

[14] One commenter requested clarification as to (i) whether exchanges are treated as new sales or if the number of years in which sales charges were previously paid are taken into consideration; (ii) whether the current market value or the original cost is used; and (iii) what transpires if the "from" fund cap is already at zero. See letter from Colonial Management Associates, Inc., *infra* note 23.

In response, the NASD noted that exchanges are treated as new sales of the fund into which monies are transferred; the current market value of the new fund is used to determine cost and all associated charges; and if the "from" fund is at zero, the new fund sets up new maximums and the old caps would no longer be applicable. See *infra* note 18, in which the NASD represents that it will clarify this issue in a "Question and Answer" release following approval of this order.

[15] Traditionally, no-load funds have marketed their shares directly, primarily through advertising, and do not charge sales loads. Any distribution expenses have been paid by the funds' investment advisers or principal underwriters out of their profits. Load funds typically are distributed by broker-dealers; investors pay sales loads to cover brokers' commissions and other sales expenses.

[16] Letter to Lynn Nellius, Secretary NASD, from the Investment Company Institute (May 31, 1990) at 11. Currently, funds that have rule 12b–1 plans, but do not impose either front-end or deferred loads, may be described as no-load. See Investment Company Act Release No. 11645 (Feb. 25, 1981), 22 SEC Docket 238, 252–54 (order permitting the Vanguard Group to call its funds no-load although they made small distribution payments, *e.g.*, 0.02% out of fund assets, because the funds were found to be the functional equivalent of traditional no-load funds). The Commission stated it would re-examine this position in the future in light of the impact of Rule 12b–1, however. In 1988, the Commission proposed prohibiting funds with Rule 12b–1 plans from being described as no-load. Inv. Co. act Rel. No. 16431, *supra* note 9. No final action has been taken with respect to this proposal.

[17] See letter from Colonial Management Associates, Inc., *infra* note 23.

[18] See letter from John A. Taylor, Vice President Investment Companies/Variable Contracts, NASD to Katherine A. England, Esq., Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated September 12, 1991. Also, in response to comments received, the Commission has requested and the NASD has represented that it will issue a formal "Question and Answer" release following SEC approval of the proposal to be filed with the Commission pursuant to 19(b)(3)(A) of the Act. While addressed in this order, the NASD has represented that it will also clarify in the "Question and Answer" release issues raised by commenters regarding service fees, the appropriate amount for calculating interest charges for purposes of the rule, and exchange transactions. See *supra* notes 10, 13 and 14.

[19] See letters to Jonathan G. Katz, Secretary, SEC from Barbara J. Bouchey, Lincoln Investment Planing Inc., dated May 6, 1991; Sullivan &

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addressed the *de minimis* exception to the sales charge definition proposed for adoption and are therefore considered below in connection with comments received in response to the Commission's solicitation of comment on that issue.

One commenter raised issues not otherwise raised by those in favor of the proposal, those opposing the proposal, or those commenting on the *de minimis* exception. Specifically, this commenter questioned (1) the NASD's authority to regulate "Pure No-Load Funds" pursuant to article III, section 26 of the Rules of Fair Practice and (2) the NASD's jurisdiction to regulate service fees.[20] As this commenter has noted, funds that do not charge asset-based fees but do however charge service fees will be subject to NASD regulation under the proposed rule. In responding to this commenter, the NASD asserted its jurisdictional authority to regulate fees received by its members pursuant to section 22(b) of the 1940 Act [21] and section 15A(b)(6) of the Act.[22]

The Commission received eight comment letters that were generally in favor of the proposed rule change.[23] These commenters believed the NASD should regulate asset-based sales charges; they believed the proposal appropriately recognized that rule 12b–1 fees, alone or in combination with contingent deferred sales charges, generally serve as the functional equivalent of traditional front-end sales charges and should therefore be subject to NASD regulation. Moreover, those in favor of the proposal believed it constituted a step forward in this area, providing significant protections for investors while allowing flexibility in fund distribution systems. Some commenters who supported the proposal requested modifications of various sections as discussed below.

One commenter who was otherwise in favor of the proposed rule change suggested that the small one-time asset-based sales charges on very large purchases should not trigger a change in the fund's classification resulting in a substantial decrease in the maximum sales charge permitted.[24] The NASD believes it is difficult to exclude the "one-time charges" from the parameters of the rule as the fund's own disclosure documents describe these fees as asset-based sales charges. Both the Commission and the NASD have taken the position that providing such relief would not be compatible with the proposed rule.

Another commenter generally in favor of the proposed rule change suggested allowing an asset-based distribution charge with an annual maximum of .75%–1.0% which is not limited with a cap.[25] Here again, the NASD and the Commission are of the opinion that such a modification would undermine the intent of the rule, inasmuch as an overall cap, which is equivalent regardless of the type of sales charge assessed, is the essence of the proposed rule change.

The Commission received comment letters from seven commenters who expressed complete opposition to all aspects of the proposed rule change.[26] Most of these commenters who expressed opposition to the proposed rule change maintained that the proposed rule should not be approved because they believe fees are already adequately disclosed in the prospectus and that potential shareholders need only examine the mutual fund fee table, required in every fund prospectus, to determine if the costs of the fund are fair and reasonable.[27] Similarly, these commenters asserted that shareholders seeking alternatives to funds with sales charges and 12b–1 fees have a variety of no-load funds from which to choose. The NASD believes and the Commission agrees that disclosure alone is insufficient to achieve market uniformity and investor protection in this context. While disclosure is the cornerstone of the securities laws, the Commission believes the NASD's proposal would further the objectives of market uniformity and investor protection.

Further, those opposing the rule change objected to the fee capping aspect of this proposal, arguing that the government does not require the same disclosure and fee caps for other products such as bank certificates of deposit and insurance products. Approval of the proposal, thus, would place the mutual fund community at a competitive disadvantage.[28] In response to this argument, the NASD has stated that it does not believe the proposed rule change imposes any burden on the ability of investment companies to compete for investor's dollars not necessary or appropriate in the furtherance of the purposes of the Act. In addition, the Commission notes that the alternative investment products to which commenters have compared mutual fund shares are subject to an entirely different regulatory scheme, and some differences in the nature of regulation may be warranted.

In the same vein, commenters expressed opposition to the proposed rule change because they believed that the proposed rule would not give NASD members reasonable compensation for the skills and services provided to mutual fund shareholders. More specifically, three commenters opposed the imposition of the .25 percent service fee limitation entirely, arguing that this amount is inadequate compensation for brokers.[29] Having considered this argument, the NASD has informed the Commission that it believes a .25 percent annual service fee is adequate compensation for the service provided to investors as no aggregate cap is imposed on service fees and such fees may be assessed indefinitely.

Two commenters generally opposing the proposal, and one who offered specific comments but no general opinion in favor or against the proposal contended that the rule change should not be retroactively applied to investments made under the then-existing rules where fees were adequately disclosed in the prospectus and/or fee table.[30] The NASD takes

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Worcester, dated May 10, 1991; Scudder, Stevens & Clark, Inc., dated May 9, 1991; Benham Capital Management Group, dated May 15, 1991; Drinker Biddle & Reath, dated May 9, 1991; 100% No-Load Mutual Fund Council, dated May 28, 1991; Templeton Funds Management, Inc., dated July 2, 1991; The Dreyfus Corporation, dated June 27, 1991; and The Association of No-Load Mutual Fund Investors, dated June 17, 1991.

[20] See letter from Drinker, Biddle & Reath, *supra* note 19.

[21] 15 U.S.C. 80a–22(b) (1988).

[22] 15 U.S.C. 78o–3(b)(6) (1988).

[23] See letters to Jonathan G. Katz, Secretary, SEC from The Vanguard Group of Investment Companies, dated May 8, 1991; Lord Abbett Co., dated May 10, 1991; Investment Company Institute, dated May 10, 1991; Invesco MIM Inc., dated April 29, 1991; Colonial Management Associates, Inc., dated May 10, 1991; T. Rowe Price Associates, Inc., dated May 10, 1991; The Keystone Group, dated May 10, 1991; and Fidelity Management & Research Co., dated May 10, 1991.

[24] See letter from Lord Abbet & Co., *supra* note 23.

[25] See letter from Invesco MIM Inc., *supra* note 23.

[26] See letters to Jonathan G. Katz, Secretary, SEC from Loscalzo & Saile, dated May 9, 1991; Thomas Forst, Treasurer, Lincoln Investment Planning Inc., dated May 7, 1991; Kleinbard, Bell & Brecker, dated May 9, 1991; Manchester Advisors, dated May 6, 1991; J. Bush & Co. Incorporated, dated May 9, 1991; Charles Trzcinka, dated May 23, 1991; and L. A. Hendershot & Associates, Inc. dated May 6, 1991.

[27] See letters from Loscalzo & Saile; Manchester Advisor; L. A. Hendershot & Associates, Inc.; and Keinbard, Bell & Brecker, *supra* note 26.

[28] See letters from Manchester Advisors; Thomas Forst, Treasurer, Lincoln Investment Planning Inc.; Kleinbard, Bell and Brecker; and L. A. Hendershot & Associates, *supra* note 26.

[29] See letters from J. Bush & Co. Incorporated; Kleinbard, Bell & Brecker; and Loscalzo & Saile, *supra* note 26.

[30] See letters from Barbara J. Bouchey, Lincoln Investment Planning Inc.; Kleinbard, Bell and Brecker; and Thomas Forst, Treasurer, Lincoln Investment Planning, Inc., *supra* notes 19 and 26.

issue with this position and believes that it is advantageous for investment companies to apply the proposed rule change to investments made prior to the effective date of the proposed rule change. The proposed rule change would apply current charges to old debts, thereby allowing investment companies to recoup distribution costs which were previously paid and intended to be amortized. Without this provision, the NASD asserts that funds would have difficulty paying off their debts while remaining within the rule's limitations. In addition, the NASD has asserted that if this were not permitted funds would be forced to utilize three different net asset values: (1) Investments made before the new rule: (2) investments made under the new rule; and (3) investments made after the cap is reached.

Finally, in its notice of the proposed rule change, the Commission specifically requested comment on the no-load *de minimis* exception in section 26(d)(3) of the proposal. Commenters addressed what they believed to be the consequences of use of the "no-load" designation by funds that assess a charge on assets to finance sales activities. Four commenters who objected strongly to the *de minimis* exception argued that the no-load designation should be reserved for funds with no sales or distribution charges so as not to undercut their distinctive marketing advantage or confuse investors.[31] Two argued that 0.25 percent was not "immaterial" in that it would be the equivalent of a 2.25 percent front-end sales load for an investor that held the shares for ten years.[32]

Six commenters supported the *de minimis* exception, saying that funds with small asset-based charges were functionally similar to traditional no-load funds because they both use low-cost distribution systems. [33] One of these commenters supplied statistical data to show that funds with *de minimis* charges had expense ratios generally comparable to those of most traditional no-load funds.[34] Commenters also pointed out that the prospectus fee table, which discloses actual fees and charges, would minimize investor confusion. The NASD agreed and expressed the opinion that the industry generally supports this exception.[35]

Moreover, two commenters favoring the proposal pointed out that without a *de minimis* exception the rule could have anomalous results, since a fund with a high advisory fee but no distribution fee could be described as no-load while a fund with a *de minimis* distribution fee and a low advisory fee could not use the no-load label, even if the two funds had the same overall expense level.[36] These commenters suggested that this would give the fund without an explicit distribution fee an unfair marketing advantage.

## V. Discussion

The Commission has considered all comments received and has determined that the NASD's proposed rule change should be approved. The Commission is of the opinion that the proposed rule change carries out the NASD's congressional mandate to prevent excessive sales charges on mutual funds shares. The Commission believes that the proposed rule change appropriately balances the need to ensure that the NASD's rules allow broker-dealers, sales personnel and underwriters to receive reasonable compensation, against the need to ensure that investors are charged reasonable sales loads. While disclosure of the sales loads in the fund's prospectus is critical to an informed investor, disclosure alone in this instance is insufficient to comply with the congressional mandate that the NASD adopt rules to prevent excessive sales loads. Additionally, the Commission believes the amendments will promote fairness by assuring some degree of parity between the sales and sales-promotion expenses permitted of traditional load funds and those allowable to funds that assess finance charges against their assets.

The Commission has considered the jurisdictional issues raised with respect to service fees in the comments received and finds that regulation of these fees is within the NASD's jurisdiction. The ability of the NASD, through its rules, to regulate comprehensively mutual fund fees received by members is fully consistent with the statutory mandate of section 22(b) of the 1940 Act that gives the NASD authority to prohibit excessive sales loads, and with protection of investors and the promotion of just and equitable principles of trade pursuant to section 15A(b)(6) of the Act.

Section 22(b) of the 1940 Act gives the NASD a specific grant of authority to prohibit excessive sales loads. In addition, section 15A(b)(6) of the Act requires, in pertinent part, that the Association adopt and amend its rules to promote just and equitable principles of trade, and in general to provide for the protection of investors and the public interest. The requirement that the Association's rules comport with just and equitable principles of trade encompasses the power to provide safeguards against unreasonable rates of commission or other charges.

The Association's proposal would revise its existing regulation of maximum sales charges that may be imposed by investment companies. The revision would extend the current maximum sales charge rule to include asset-based sales charges and tailor the rule's application to different sales charge compensation structures. The purpose of the revised maximum sales charge rule is to create "approximate economic equivalency" as to maximum sales charges for different types of mutual funds. Given the specific mandate of section 22(b) of the 1940 Act and the requirement of just and equitable principles of trade embodied in section 15A(b)(6) of the Act, the Commission is of the view that the NASD has authority to adopt rules that ensure overall reasonableness of sales fees received by members.

The Association's proposal would also directly limit members' underwriting and distribution of shares of investment companies that impose or pay service fees in excess of prescribed maximums. These limitations are intended to assure that service fees paid by investors are reasonable. If maximum sales loads are regulated, but service fees are not subject to any maximum limitation, it will be possible for members and investment companies to circumvent the intention of the sales fee rules by imposing or paying increased service fees. Such a result would frustrate the NASD's power to regulate sales charges pursuant to section 22(b) of the 1940 Act. In addition,

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[31] See comments from the 100% No-Load Mutual Fund Council; Benham Capital Management Group; Scudder, Stevens & Clark; and Charles Trzcinka, Associate Professor of Finance at the University of Buffalo, *supra* notes 19 and 26.

[32] See comments of the 100% No-Load Mutual Fund Council (arguing that approval of the proposal "will be sending a message that 25 basis points is immaterial") and of Charles Trzcinka, *supra* notes 19 and 26.

[33] These were the Investment Company Institute, T. Rowe Price Associates, INVESCO MIM, Dreyfus Corporation, the Association of No-Load Mutual Fund Investors, and the Vanguard Group. The Association of No-Load Mutual Fund Investors qualified their support, suggesting that the limit be 0.10% and that the use of the no-load label be limited to funds with aggregate fees and expenses of no more than 1% of average annual net assets.

[34] Letter to Jonathan G. Katz, Secretary, SEC, from the Investment Company Institute, dated December 20, 1991.

[35] NASD response letter, *supra* note 18 at 2.

[36] Dreyfus Corporation and the Vanguard Group. Vanguard also contended that all funds incur sales-related expenses and pay for them directly out of disclosed rule 12b–1 fees or indirectly out of the advisory fee.

the limitations on service fees are consistent with the NASD's authority, pursuant to section 15A(b)(6), to prevent excessive compensation of members and to assure that fees paid by investors for services are reasonable. Accordingly, the Commission finds the NASD has properly exercised its authority in proposing to limit both sales loads and service fees.

The Commission believes that the maximum asset-based sales charge of .75 of 1 percent per annum of average net assets in subsection (d)(2)(E) of the proposed rule and the maximum service fee of .25 of 1 percent of a fund's average annual net assets proposed in subsection (d)(5) should be adequate to finance sales related expenses and to provide compensation for continued service to mutual fund shareholder accounts.

The Commission also has considered the scope of the prohibition on use of the no-load label and finds the NASD's proposal to include a *de minimis* exception appropriate. To a large degree, the components of financing distribution costs—sales loads, rule 12b-1 fees, advisory fees, and underwriting fees—are all inextricably linked. Given that all funds have distribution costs, tying the no-load label to the "sales charge/no sales charge" distinction may ignore the realities of distribution financing.

Making statistical comparisons, on the other hand, as to whether funds with *de minimis* 12b-1 charges ("*de minimis* fee funds") more closely resemble traditional no-load funds or traditional load funds is complicated somewhat by the evolution of the mutual fund industry. Virtually all *de minimis* fee funds are money market funds, a type of fund that did not exist until 1970. Most traditional load funds are equity funds or bond and income funds; virtually none is a money market fund. Accordingly, because expense ratios vary greatly among fund investment objectives, comparing expense ratios of *de minimis* fee funds to those of traditional load funds is difficult.

Comparing the expense ratios of *de minimis* fee funds to traditional non-load funds is possible, however, and that comparison supports the NASD's determination to include the *de minimis* exception. Data submitted by the Investment Company Institute indicates that, for all fund categories analyzed, although *de minimis* fee funds on average have higher expense ratios than funds without such charges, the difference is relatively small—between 12 and 24 basis points, depending on fund size and investment objective.

Moreover, there is a significant degree of overlap between the expense ratios of *de minimis* fee funds (funds with rule 12b-1 fees of 0.25 percent or less) and traditional no-load funds. For example, the data show that the expense ratios of *de minimis* fee funds almost all fall within the range of variation for traditional no-load funds in every fund investment objective category. Taxable and tax-free money market funds that have a traditional no-load structure have a mean expense ratio of 0.55 percent; their expense ratios range from 0.01 percent to 1.52 percent. *De minimis* fee money market funds have a mean expense ratio of 0.72 percent, with expense ratios ranging from 0.13 percent to 1.88 percent. Ninety-nine percent of all *de minimis* fee money market funds have expense ratios within the range of variation of traditional no-load money market funds.[37]

Thus, *de minimis* fee funds and traditional no-load funds are generally comparable in price. Any differences may be properly addressed by the prospectus fee table, preventing possible investor confusion. Accordingly, the Commission believes that the line drawn by the NASD is reasonable and consistent with its mandate under the Act.

*It is Therefore Ordered*, Pursuant to section19(b)(2) of the Act, that the proposed rule change, SR-NASD-90-69 be, and hereby is, approved. Pursuant to the NASD's request, this rule shall become effective July 7, 1993.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

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[37] Similarly, 100% of all *de minimis* fee equity funds have expenses within the range of variation of traditional no-load equity funds, and 97% of all *de minimis* fee bond and income funds have expense ratios within the range of variation of traditional no-load bond and income funds. Moreover, although most of the funds in these ranges are distributed relatively close to the respective medians, the expense ratios of significant numbers of *de minimis* fee funds and traditional no-load funds overlap within the first standard deviation of each set of curves that was compared.

## DEPARTMENT OF STATE

**[Public Notice 1652]**

### Public Information Collection Requirements Submitted to OMB for Review

**AGENCY:** Department of State.

**ACTION:** The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**SUMMARY:** The Department of State is requesting extension of approval for the Nonimmigrant Visa Application form and the Application for Immigrant Visa and Alien Registration. The Nonimmigrant Visa Application is used by aliens who desire to travel to the United States in nonimmigrant status. The information provided on the form assists in identifying the applicant and in determining the applicant's eligibility for a nonimmigrant visa. The Application for Immigrant Visa and Alien Registration is needed to assist consular officers in determining whether an applicant is entitled to immigrant visa status and whether any grounds of ineligibility apply to the applicant, and provides the Immigration and Naturalization Service with information for registration of the alien after admission. The following summarizes the information collection proposals submitted to OMB:

1. Type of request—Extension.
Originating office—Bureau of Consular Affairs.
Title of information collection—Nonimmigrant Visa Application.
Frequency—On occasion.
Form No.—OF-156.
Respondents—Aliens Applying for Nonimmigrant Visas.
Estimated Number of respondents—8,000,000.
Average hours per response—1 hour.
Total estimated burden hours—8,000,000.

2. Type of request—Extension.
Originating office—Bureau of Consular Affairs.
Title of information collection—Application for Immigrant Visa and Alien Registration.
Frequency—On occasion.
Form No.—OF-230 (Parts I & II).
Respondents—Aliens Seeking Immigrant Visas.
Estimated number of respondents—600,000.
Average hours per response—24 hours.
Total estimated burden hours—14,400,000.

Section 3504(h) of Public Law 96-511 does not apply.

**ADDITIONAL INFORMATION OR COMMENTS:** Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Lin Liu (202) 395-7340.

Dated: July 2, 1992.
**Sheldon J. Krys,**
*Assistant Secretary for Diplomatic Security.*
[FR Doc. 92-16315 Filed 7-10-92; 8:45 am]
BILLING CODE 4710-43-M

[Public Notice 1653]

## Public Information Collection Requirement Submitted to OMB for Review

**AGENCY:** Department of State.
**ACTION:** The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**SUMMARY:** The Department of State is requesting approval for the Non immigrant Fiance(e) Visa Application form. The Nonimmigrant Fiance(e) Visa Application, is used by aliens who are beneficiaries of a fiance(e) petition filed by a United States citizen and approved by the United States Immigration and Naturalization Service, who intend to enter the United States to conclude a valid marriage with the petitioner. The information provided on the form assists in identifying the applicant and in determining the applicant's eligibility for a nonimmigrant fiance(e) visa. The following summarizes the information collection proposal submitted to OMB:

Type of request—Existing information collection without an OMB control number.
Originating office—Bureau of consular Affairs.
Title of information collection—Nonimmigrant Fiance(e) Visa appication.
Frequency—On occasion.
Form No—OF-156K.
Respondents—Aliens Applying for Nonimmigrant Fiance(e) Visas.
Estimated number of respondents—6,000.
Average hours per response—24 hours.
Total estimated burden hours—144,000.

Section 3504(h) of Public Law 96-511 does not apply.

**ADDITIONAL INFORMATION OR COMMENTS:** Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Lin Liu (202) 395-7340.

Dated: July 2, 1992.
**Sheldon J. Krys,**
*Assistant Secretary for Diplomatic Security*
[FR Doc. 92-16316 Filed 7-10-92; 8:45 am]
BILLING CODE 4710-43-M

## The Commission for Broadcasting to the Peoples Republic of China, Public Notice 1654

**ACTION:** Notice of meeting.

**SUMMARY:** The Commission will hold public meetings.
**DATES:** July 22, 1992, 9:30 a.m., to 4:45 p.m.
**ADDRESSES:** 1555 Wilson Boulevard, suite 604, Arlington, VA 22209.
**FOR FURTHER INFORMATION CONTACT:** Marge Cook, Deputy Executive Director, 703-235-9000.

Dated: July 1, 1992.
**Marjorie S. Cook,**
*Deputy Executive Director.*
[FR Doc. 92-16286 Filed 7-10-92; 8:45 am]
BILLING CODE 4710-10-M

[Public Notice 1650]

## Office of the Legal Adviser; Public Notice Correction

This notice serves to correct information in 57 FR 28897. The telephone number listed for the Office of the Assistant Legal Adviser for International Claims and Investment Disputes is incorrect. The correct telephone number is (202) 653-2412.

Dated: June 30, 1992.
**Ronald J. Bettauer,**
*Assistant Legal Adviser for International Claims and Investment Disputes.*
[FR Doc. 92-16318 Filed 7-10-92; 8:45 am]
BILLING CODE 4710-08-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

## Trade Policy Staff Committee (TPSC); Initiation of a Review to Consider Designation of Albania as a Beneficiary Developing Country Under the Generalized System of Preferences (GSP); Initiation of a Review to Consider Designation of Ethiopia as a Beneficiary Developing Country Under the GSP; Solicitation of Public Comments Relating to the Designation Criteria

**AGENCY:** Office of the United States Trade Representative.
**ACTION:** Solicitation of Public Comment with respect to the eligibility of Albania and the eligibility of Ethiopia for the Generalized System of Preferences (GSP) program.

**SUMMARY:** The purpose of this notice is to announce the initiation of a review to consider designation of Albania and the designation of Ethiopia as beneficiary developing countries under the GSP program, and to solicit public comment relating to the designation criteria.

**FOR FURTHER INFORMATION CONTACT:** GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395-6971. Public versions of all documents related to this review will be available for review by appointment with the USTR Public Reading Room shortly following filing deadlines. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395-6186.

**SUPPLEMENTARY INFORMATION:** The TPSC has initiated a review to determine if Albania and Ethiopia each meet the designation criteria of the GSP law and should be designated as beneficiaries. The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461-2465). The designation criteria are listed in sections 502(a), 502(b) and 502(c) of the Act. Interested parties are invited to submit comments regarding the eligibility of Albania and the eligibility of Ethiopia for designation as GSP beneficiaries. The designation criteria mandate determinations related to participation in commodity cartels, preferential treatment provided by beneficiaries to other developed countries, expropriation without compensation, enforcement of arbitral awards, international terrorism, and internationally recognized worker rights. Other practices taken into account include market access for goods and services, investment practices and intellectual property rights.

An original and fourteen (14) copies of comments regarding each country may be submitted, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street, NW., room 517, Washington, DC 20506. Comments must be received no later than 5 p.m. on August 12, 1992.

Information and comments submitted regarding this notice will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. If the document contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and (14) copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document.

The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

Daniel F. Leahy,

*Acting Chairman, Trade Policy Staff Committee.*

[FR Doc. 92-16375 Filed 7-10-92; 8:45 am]

BILLING CODE 3190-01-M

## Trade Policy Staff Committee; Generalized System of Preferences (GSP); Results of the Review of Petitions Requesting Changes in the List of Articles Eligible for Duty-Free Treatment Under the GSP in the Special GSP Review for Central and Eastern Europe

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of results of Special GSP Review for Central Eastern Europe.

**SUMMARY:** The purpose of this notice is to announce the disposition of the petitions accepted for review in the Special GSP Review for Central and Eastern Europe.

**FOR FURTHER INFORMATION CONTACT:** GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395-6971.

**SUPPLEMENTARY INFORMATION:** This publication contains the dispositions of the petitions accepted for review in the Special GSP Review for Central and Eastern Europe (56 FR 37758 and 56 FR 65750). These petitions requested additions to the list of articles eligible for duty-free treatment under the GSP program. The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461-2465). The review was conducted pursuant to regulations codified as 15 CFR 2007. The President's decision concerning the Special GSP Review for Central and Eastern Europe have also been reflected in a proclamation (57 FR 26969) and in a recent USTR press release (the press release is available by contacting the USTR Public Affairs Office at (202) 395-3230). These changes were implemented July 2, 1992. All communications with respect to this notice should be addressed to the Director, Generalized System of Preferences, room 517, 600 17th Street, NW.

Daniel F. Leahy,

*Acting Chairman, Trade Policy Staff Committee.*

ANNEX I—SPECIAL GSP REVIEW FOR CENTRAL AND EASTERN EUROPE

(Petitions to add products to GSP: granted)

| Case No. | HTS No. | Petitioning country | Product | 1991 imports ($thousands) | | Comments |
|---|---|---|---|---|---|---|
| | | | | C. and E. Europe* | All GSP beneficiaries | |
| SCEER-1 | 0210.1200 | Hungary | Pork Bellies | 137.5 | 169.3 | |
| SCEER-4 | 1210.1000 | Czechoslovakia | Hop Cones | 7,035.1 | 7,036.4 | |
| SCEER-5 | 1602.4940 | Hungary | Prepared or Preserved Pork | 1,690.3 | 1,690.3 | |
| SCEER-6 | 1602.5020 | Hungary | Prepared or Preserved Beef | 149.6 | 7,653.6 | Exclude Argentina. |
| SCEER-9 | 2204.1000 | Hungary | Sparkling Grape Wine | 9.3 | 1,350.7 | |
| SCEER-11 | 2204.2130 | Hungary | Tokay wines | 0.0 | 0.0 | Breakout. |
| SCEER-12 | 2204.2180 | Hungary | Grape Wine, >14% Alcohol | 22.2 | 36.3 | |
| SCEER-15 | 2902.9040 | Czechoslovakia | 1,4 Dibenzene, Anthracene | 0.0 | 5.2 | Breakout, Exclude India. |
| SCEER-16 | 2904.1004 | Czechoslovakia | 2-Anthracenesulfonic acid | 39.5 | 39.5 | Exclude India. |
| SCEER-17 | 2904.1008 | Poland | Benzenesulfonyl chloride | 0.0 | 914.1 | Exclude India. |
| SCEER-18 | 2904.9035 | Czechoslovakia | 4,4'-Dinitrostilbene-2,2'disulfonic acid | 0.0 | 0.0 | Exclude India. |
| SCEER-19 | 2907.1530 | Czech/Poland | 2-Napthol (Beta-Napthol) | 63.7 | 63.7 | Exclude India. |
| SCEER-20 | 2907.2300 | Poland | 4,4'-Isopropylidenediphenol and its salts | 0.0 | 0.0 | Exclude India. |
| SCEER-21 | 2908.2008 | Czechoslovakia | 1-Napthol-4-sulfonic acid | 0.0 | 0.0 | Exclude India. |
| SCEER-22 | 2908.2015 | Czechoslovakia | 1,8-Dihydroxynapthic acid | 25.3 | 25.3 | Exclude India. |
| SCEER-23 | 2908.9024 | Czechoslovakia | 4,6-Dintro-o-cresol | 0.0 | 0.0 | Exclude India. |
| SCEER-24 | 2914.4920 | Czechoslovakia | Ninhydrin | 0.0 | 0.0 | Exclude India. |
| SCEER-25 | 2914.6100 | Czechoslovakia | Anthraquinone | 0.0 | 49.6 | Exclude India. |
| SCEER-26 | 2915.9014 | Czechoslovakia | Valproic acid | 0.0 | 181.3 | Exclude India. |
| SCEER-27 | 2916.3906 | Czechoslovakia | Cinnamic acid | 0.0 | 0.0 | Exclude India. |
| SCEER-28 | 2917.1910 | Hungary | Ferrous Fumarate | 368.4 | 748.0 | Exclude India. |
| SCEER-29 | 2918.2150 | Poland | Salicyclic acid and its salts | 7.2 | 14.4 | Exclude India. |
| SCEER-30 | 2918.2925 | Czechoslovakia | 3-Hydroxy-2-napthic acid | 0.0 | 0.0 | Exclude India. |
| SCEER-31 | 2921.4215 | Czech/Poland | N-Ethylaniline; and N,N-Diethyaniline | 26.4 | 31.6 | Breakout, Exclude India. |
| SCEER-32 | 2921.5920 | Czechoslovakia | 4,4'Diamino-2,2'-stilbenedisulfonic acid | 0.0 | 0.0 | Exclude India. |
| SCEER-33 | 2922.3014 | Czechoslovakia | 2-Aminoanthraquinone | 0.0 | 0.0 | Exclude India. |
| SCEER-34 | 2922.3018 | Czech/Hungary | 1-Aminoanthraquinone; and Ketamine hydrochloride | 0.0 | 0.0 | Breakout, Exclude India. |
| SCEER-35 | 2922.4915 | Czechoslovakia | Benzocaine; and Procaine hydrochloride | 0.0 | 506.9 | Breakout, Exclude India. |
| SCEER-36 | 2922.5005 | Hungary | Alpha-methyldopa | 2,499.1 | 2,958.0 | Exclude India. |
| SCEER-37 | 2924.2118 | Czechoslovakia | Sym-diethyldiphenolurea | 0.0 | 505.5 | Exclude India. |
| SCEER-38 | 2925.2015 | Czechoslovakia | N,N-Diphenylguanadine | 0.0 | 31.8 | Exclude India. |
| SCEER-39 | 2926.9008 | Czechoslovakia | Benzonitrile | 0.0 | 0.0 | Exclude India. |
| SCEER-40 | 2926.9014 | Czech/Hungary | Verapamil hydrochloride; P-chlorobenzonitrile | 0.0 | 0.0 | Breakout, Exclude India. |
| SCEER-41 | 2926.9017 | Czechoslovakia | O-chlorobenzonitrile | 0.0 | 147.3 | Exclude India. |
| SCEER-42 | 2930.9024 | Czechoslovakia | N-cyclohexylthiophthalimide | 2.4 | 336.6 | Exclude India. |
| SCEER-43 | 2932.2925 | Czechoslovakia | 4-Hydroxy coumarin | 0.0 | 12.7 | Exclude India. |
| SCEER-44 | 2933.3915 | Hungary | Cyproheptadine hydrochloride | 160.1 | 259.4 | Exclude India. |
| SCEER-45 | 2933.4004 | Hungary | Chloroquinoline diphosphate | 0.0 | 0.0 | Exclude India. |
| SCEER-46 | 2933.4008 | Hungary | 4,7'-Dichloroquinoline | 0.0 | 0.0 | Exclude India. |
| SCEER-47 | 2933.5130 | Hungary | Phenobarbital | 97.0 | 97.0 | Exclude India. |
| SCEER-48 | 2933.5932 | Hungary | Trimethoprim | 0.0 | 2,342.6 | Exclude India. |
| SCEER-49 | 2933.9044 | Hungary | Carbadox | 0.0 | 0.0 | Exclude India. |

*Imports fr
**Petitions

| Case No. |
|---|
| SCEER-50 |
| SCEER-51 |
| SCEER-52 |
| SCEER-53 |
| SCEER-55 |
| SCEER-57 |
| SCEER-56 |
| SCEER-58 |
| SCEER-59 |
| SCEER-61 |
| SCEER-62, 63 |
| SCEER-64 |
| SCEER-67 |
| SCEER-68 |
| SCEER-69 |
| SCEER-70 |
| SCEER-71 |
| SCEER-73 |
| SCEER-75 |
| SCEER-78 |
| SCEER-81 |
| SCEER-82 |
| SCEER-83 |
| SCEER-85 |
| SCEER-86 |
| SCEER-87 |
| SCEER-88 |
| SCEER-89 |
| SCEER-90 |
| SCEER-91 |
| SCEER-92 |
| 91-14 |
| 91-31 |

| Case No. |
|---|
| SCEER-2 |
| SCEER-3 |
| SCEER-8 |
| SCEER-10 |
| SCEER-13 |
| SCEER-14 |
| SCEER-60 |
| SCEER-65 |
| SCEER-66 |
| SCEER-72 |
| SCEER-74 |
| SCEER-76 |
| SCEER-77 |
| SCEER-79 |
| SCEER-80 |

## ANNEX I—SPECIAL GSP REVIEW FOR CENTRAL AND EASTERN EUROPE—Continued

[Petitions to add products to GSP: granted]

| Case No. | HTS No. | Petitioning country | Product | 1991 imports ($thousands) | | Comments |
|---|---|---|---|---|---|---|
| | | | | C. and E. Europe* | All GSP beneficiaries | |
| SCEER-50 | 2933.9059 | Hungary | Imapramine hydrochloride | 0.0 | 640.4 | Exclude India. |
| SCEER-51 | 2934.3008 | Hungary | Prochloroperazine maleate; and Promethazine hydrochl | 58.5 | 58.5 | Exclude India. |
| SCEER-52 | 2934.3015 | Hungary | Chloropromazine hydrochloride | 370.9 | 370.9 | Exclude India. |
| SCEER-53 | 2934.9008 | Czechoslovakia | 2,5-Diphenyloxazole | 12.3 | 12.3 | Exclude India. |
| SCEER-55 | 2935.0053 | Hungary | Glyburide, Furosemide | 15.7 | 1,737.5 | Exclude India. |
| SCEER-57 | 2936.2600 | Hungary | Vitamin B12 | 17.9 | 17.9 | Exclude India. |
| SCEER-56 | 2937.9240 | Hungary | Ethynodiol deconoate, D-Norgestrel, DL-Norgestrel | 777.4 | 848.5 | Exclude India. |
| SCEER-58 | 2937.9960 | Hungary | Nandrolone phenpropionate | 0.0 | 0.0 | Exclude India. |
| SCEER-59 | 2937.9940 | Hungary | Nandrolone deconoate; and Pipcuriunm bromide | 60.0 | 1,948.9 | Exclude India. |
| SCEER-61 | 2939.4010 | Czechoslovakia | Pseudoephedrine and its salts | 0.0 | 0.0 | Exclude India. |
| SCEER-62, 63. | 2939.4050 | Czechoslovakia | Ephedrines and their salts | 125.0 | 125.0 | Exclude India. |
| SCEER-64 | 2941.4000 | Hungary | Chloramphenicol & derivatives | 34.7 | 34.7 | Exclude India. |
| SCEER-67 | 3204.2010 | Czechoslovakia | Fluorescent brightening agent 32 | 0.0 | 0.0 | Exclude India. |
| SCEER-68 | 3204.2050 | Czechoslovakia | Synthetic organic fluorescent B | 0.0 | 597.2 | Exclude India. |
| SCEER-69 | 3812.1010 | Czechoslovakia | N-cyclo-2-penzene; and 2-Mercaptobenzene (MBT) | 0.0 | 84.7 | Exclude India. |
| SCEER-70 | 3812.3040 | Czechoslovakia | N-1,3-Dimethylbutyl-N-phenyl-P-phenylediamine; and N- | 0.0 | 10.2 | Exclude India. |
| SCEER-71 | 3822.0050 | Czechoslovakia | Laborastory reagents | 0.0 | 706.6 | Exclude India. |
| SCEER-73 | 5404.1040 | Hungary | Synthetic monofilament of polypropylene, n/o 254mm le | 0.0 | 1,237.1 | Breakout Specific Dimensions. |
| SCEER-75 | 6912.0035 | Hungary | Ceramicware <$38 | 0.0 | 1,530.6 | |
| SCEER-78 | 6912.0048 | Hungary | Ceramicware | 373.9 | 3,970.3 | |
| SCEER-81 | 7013.3130 | Hungary | Glassware $3< >$5 | 1,292.6 | 1,331.1 | |
| SCEER-82 | 7318.1580 | Poland | Screws & Bolts | 36.0 | 4,475.6 | |
| SCEER-83 | 8112.9110 | Hungary | Unwrought gallium, Gallium powder | 38.7 | 38.7 | |
| SCEER-85 | 8482.3000 | Poland | Spherical roller bearings | 2,560.0 | 2,672.1 | |
| SCEER-86 | 8482.4000 | Poland | Needle roller bearings | 4.6 | 642.6 | |
| SCEER-87 | 8482.5000 | Poland | Cylindrical roller bearings | 1,019.8 | 1,264.6 | |
| SCEER-88 | 8482.8000 | Poland | Combination bearings | 90.0 | 269.5 | |
| SCEER-89 | 9105.1910 | Czechoslovakia | Alarm clocks | 0.0 | 0.0 | Exclude Brazil. |
| SCEER-90 | 9105.1940 | Czechoslovakia | Alarm clocks | 2.1 | 2.1 | Exclude Brazil. |
| SCEER-91 | 9404.3060 | Czechoslovakia | Sleeping bags | 0.0 | 79.6 | |
| SCEER-92 | 9609.1000 | Czechoslovakia | Pencils, Crayons, leads encased | 0.0 | 0.0 | |
| | | | Total | 19,323.2 | 52,216.6 | |
| | | | Petitions to Add Products to GSP, 1991 AR**—GRANTED | | | |
| 91-14 | 1210.2000 | Yugoslavia | Hop cones | 41.4 | 76.8 | |
| 91-31 | 2401.1040 | Turkey | Oriental/Turkish cigarette leaf | 16,570.8 | 22,989.3 | |
| | | | Total | 16,612.0 | 23,066.1 | |
| | | | Total petitions to add products-GRANTED | 35,935.2 | 75,282.7 | |

*Imports from Eligible Central and Eastern European Countries, Excluding Yugoslavia
**Petitions Submitted in Context of 1991 GSP Annual Review, to be Implemented as part of the Special GSP Review.

## ANNEX II—SPECIAL GSP REVIEW FOR CENTRAL AND EASTERN EUROPE

[Petitions to add products to GSP: denied]

| Case No. | HTS No. | Petitioning country | Product | 1991 imports ($ thousands) | | Comments |
|---|---|---|---|---|---|---|
| | | | | C. & E. Europe* | All GSP Beneficiaries | |
| SCEER-2 | 0406.9000.40 | Hungary | Goya cheese | 2,587.3 | 6,056.0 | |
| SCEER-3 | 0712.9075 | Hungary | Dried tomatoes | 1,588.6 | 8,773.5 | |
| SCEER-8 | 2009.6000 | Hungary | Grape juice, Must | 0.0 | 14,905.3 | |
| SCEER-10 | 2204.2140 | Hungary | Grape Wine, <14% Alcohol, other than "Tokay" wines. | 4,203.4 | 10,956.1 | |
| SCEER-13 | 2204.2180 | Hungary | Tokay wines | 0.0 | 0.0 | Subsumed under SCEER-12,Breakout |
| SCEER-14 | 2208.2050 | Hungary | Grape Brandy | 0.0 | 0.0 | |
| SCEER-60 | 2939.1020 | Czechoslovakia | Codeine phosphate | 0.0 | 12.1 | |
| SCEER-65 | 3204.1250 | Czechoslovakia | Mordant black 11 | 1,010.8 | 3,029.4 | |
| SCEER-66 | 3204.1550 | Czechoslovakia | Various vat dyes | 199.2 | 586.6 | |
| SCEER-72 | 3912.2000 | Hung/Czechoslov | Cellulose nitrates in primary forms | 518.0 | 566.4 | |
| SCEER-74 | 6911.1010 | Hungary | Institutional Chinaware, Porcelain | 779.7 | 4,365.8 | |
| SCEER-76 | 6912.0039 | Hungary | Household Ceramicware >$38 | 35.8 | 27,361.0 | |
| SCEER-77 | 6912.0045 | Hungary | Household Ceramicware | 460.8 | 2,107.0 | |
| SCEER-79 | 7013.2120 | Czechoslovakia | Drinking glasses $.30<>$3 | 214.8 | 406.6 | |
| SCEER-80 | 7013.2130 | Czechoslovakia | Drinking glasses $3<>$5 | 417.9 | 917.0 | |

ANNEX II—SPECIAL GSP REVIEW FOR CENTRAL AND EASTERN EUROPE—Continued

[Petitions to add products to GSP: denied]

| Case No. | HTS No. | Petitioning country | Product | 1991 imports ($ thousands) C. & E. Europe* | 1991 imports ($ thousands) All GSP Beneficiaries | Comments |
|---|---|---|---|---|---|---|
| 5CEER-84 | 8482.1050 | Hung/Czechoslov | Ball bearings | 5,686.5 | 13,905.1 | |
| | | | Total | 17,712.6 | 94,041.9 | |
| | | | Petitions to Add Products to GSP—Withdrawn | | | |
| SCEER-7 | 2003.1000 | Hungary | Mushrooms | 773.3 | 45,995.9 | |
| SCEER-54 | 2935.0035 | Czechoslovakia | Sulfasalazine | 0.0 | 1.4 | Breakout |
| | | | Total | 773.3 | 45,997.3 | |

*Imports from Eligible Central and Eastern European Countries, Excluding Yugoslavia
**Petitions Submitted in Context of 1991 GSP Annual Review, to be implemented as part of the Special GSP Review

[FR Doc. 92-16374 Filed 7-10-92; 8:45 am]
BILLING CODE 3190-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Order 92-7-7; Docket 48056]**

### Application of Kiwi International Air Lines, Inc. for Certificate Authority Under Subpart Q

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Kiwi International Air Lines, Inc., fit, willing, and able and award it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

**DATES:** Persons wishing to file objections should do so no later than July 20, 1992.

**ADDRESSES:** Objections and answers to objections should be filed in Docket 48056 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: July 7, 1992.

**Jeffrey N. Shane,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 92-16361 Filed 7-10-92; 8:45 am]
BILLING CODE 4910-62-M

### Federal Republic of Yugoslavia Aviation Sanctions; Notice

**SUMMARY:** The Department of Transportation has issued a final order implementing the Executive Order imposing aviation sanctions with regard to the Federal Republic of Yugoslavia (Serbia and Montenegro).

By Order 92–6–27, served June 22, 1992, the Department of Transportation imposed a number of conditions on all U.S. and foreign air carrier licenses, designed to prohibit transactions relating to transportation between the United States and the Federal Republic of Yugoslavia (Serbia and Montenegro), hereafter referred to as "Yugoslavia". Specifically, the Department prohibited U.S. and foreign air carriers (direct and indirect) and their agents from selling in the United States any transportation by air which includes a stop in Yugoslavia and from engaging in foreign air transportation to or from the United States with aircraft of Yugoslav registry. The Department also prohibited all U.S. air carriers (direct and indirect) and their agents from engaging in any transaction relating to transportation to or from Yugoslavia and prohibited all foreign air carriers (direct and indirect) and their agents from engaging in any transaction in the United States relating to transportation to or from Yugoslavia.

Dated: July 7, 1992.

**Jeffrey N. Shane,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 92-16362 Filed 7-10-92; 8:45 am]
BILLING CODE 4910-62-M

## Coast Guard

**[CGD1-92-056]**

### Alteration of Obstructive Bridge—Chelsea St. Chelsea River (Creek), Boston, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of public hearing; request for comment.

**SUMMARY:** The Chelsea Street Bridge has been the subject of numerous complaints that it is an unreasonable obstruction to navigation. On August 19, 1992, the Coast Guard will hold a public hearing to provide an opportunity for all interested persons to present data, views, and comments orally or in writing concerning the obstructive nature and possible alteration of the Chelsea St. Bridge across Chelsea River (Creek) between Chelsea and East Boston, Massachusetts.

**DATES:** (a) The hearing will be held on August 19, 1992, commencing at 7 p.m. (b) Written comments in conjunction with the public hearing may be submitted on or before September 9, 1992.

**ADDRESSES:** (a) The hearing will be held at room 801, Boston City Hall, City Hall Plaza, Boston, MA 02201. (b) Written comments may be submitted at the hearing or may be mailed to Commander (obr), First Coast Guard District, room 628, Capt. John Foster Williams Bldg., 408 Atlantic Avenue, Boston, MA 02110–3350.

**FOR FURTHER INFORMATION CONTACT:** Mr. William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

**SUPPLEMENTARY INFORMATION:** The Commandant of the Coast Guard has authorized a public hearing to be held by the Commander, First Coast Guard District to receive comments regarding

the obstructive character of the Chelsea Street Bridge. The public hearing will give the bridge owner, waterway users, and other interested parties an opportunity to be heard and to offer information and comments regarding required alterations to the bridge to provide reasonably free, safe, and unobstructed passage for waterbone traffic. In addition, the public hearing will help develop additional facts pertaining to the cost of vessel allisions with the bridge, savings due to the elimination of delays to waterbone traffic, future navigational needs, the mimimum suggested horizontal and vertical clearances required to accommodate present and future navigation, the preferred location of the navigation opening, and any effect the alteration may have on the human environment.

**Request for Comments**

Interested persons are invited to participate in this action by attending the public hearing and/or by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give the basis for their opinion.

Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. All comments received will be considered before final action is taken.

**Public Hearing**

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement describing the purpose of the hearing and announce the procedures to be followed at the hearing. Persons planning to appear and make statements or otherwise present information are requested to notify the Contact Officer listed above by August 17, 1992. Such notification should include the approximate time required to make the presentation. Depending on the number of scheduled speakers, it may be necessary to limit the amount of time allocated to each person. Any limitation of time allocated to each speaker will be announced at the beginning of the hearing. A transcript will be made of the hearing and may be purchased by the public.

The hearing will be held: August 19, 1992, commencing at 7 p.m., room 801, Boston City Hall, City Hall Plaza, Boston, MA 02201.

**Authority:** 33 U.S.C. 513; 33 CFR 110.20.

Dated: July 2, 1992.

J.D. Sipes,

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 92-16252 Filed 7-10-92; 8:45 am]

BILLING CODE 4910-14-M

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**[CGD 92-041]**

## National Boating Safety Advisory Council; Applications for Appointment

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for applicants.

**SUMMARY:** The U.S. Coast Guard is seeking applicants for appointment to membership on the National Boating Safety Advisory Council (NBSAC). The Council is a 21 member Federal advisory committee that advises the Coast Guard on matters related to recreational boating safety. Members for the Council are drawn equally from the following sectors of the boating community: State officials responsible for State boating safety programs; recreational boat and associated equipment manufacturers; and national recreational boating organizations and the general public. Members are appointed by the Secretary of Transportation. Applicants are considered for membership on the basis of their expertise, knowledge, and experience in boating safety. The terms of appointment are staggered so that seven vacancies occur each year. Applications are being sought for membership vacancies that will occur as follows: Two (2) representatives of State officials responsible for State boating safety programs; three (3) representatives of recreational boat and associated equipment manufacturers; and two (2) representatives of national recreational boating organizations and from the general public. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The Council normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

**DATES:** Completed application forms should be received no later than September 14, 1992.

**ADDRESSES:** Requests for application forms, as well as the completed application forms, should be sent to Commandant (G-NAB), U.S. Coast Guard Headquarters, Washington, DC 20593-0001; telephone: (202) 267-0997.

**FOR FURTHER INFORMATION CONTACT:** Mr. A. J. Marmo, Executive Director, National Boating Safety Advisory Council (G-NAB), room 1202, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001; (202) 267-1077.

Dated: July 2, 1992.

W. J. Ecker,

*Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 92-16245 Filed 7-10-92; 8:45 am]

BILLING CODE 4910-14-M

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**[CGD 92-043]**

## Chemical Transportation Advisory Committee (CTAC) and CTAC Subcommittee on the Revision of the Regulations for Barges Carrying Bulk Liquid Hazardous Materials Cargoes

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meetings.

**SUMMARY:** A. The Chemical Transportation Advisory Committee will hold a meeting on Tuesday, August 25, 1992 in room 2415, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593. The meeting is scheduled to begin at 9:30 a.m. and end at 4 p.m.

The agenda for the meeting follows:

1. Opening remarks,
2. U.S. Coast Guard remarks,
3. New member appointments,
4. General interest topics,
5. Issue briefs:
   - Tankerman regulations,
   - Benzene NVIC,
   - Inert Gas Systems Review,
   - Chemical Tanker Vapor Control Systems,
   - Static Discharge During Gauging,
6. Subcommittee reports:
   - Tank filling limits,
   - Fire fighting media review/foam,
   - 46 CFR part 151 update,
7. New tasks and initiative,
8. International activities update,
9. Other business,
10. Closing.

B. The Subcommittee on the Revision of the Regulations for Barges Carrying Bulk Liquid Hazardous Materials Cargoes, title 46 Code of Federal Regulations (CFR) part 151, of the Chemical Transportation Advisory Committee will meet as working groups on Monday, August 24, 1992 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. The meetings of the working groups on Cargo Classification and Construction, Design and Equipment will be in rooms 1303 and 4315, respectively, and are scheduled to begin at 9:30 a.m. and end at 12 noon. The meetings of the working

groups on Liquefied Flammable Gases and Operations, Administrative and Inspection will be in rooms 1303 and 4315, respectively, and are scheduled to begin at 12:30 a.m. and end at 3:30 p.m. The purpose of these meetings is to continue work to fulfill the tasking of the Subcommittee which is to review 46 CFR part 151, determine areas in need of updating and revision, and make recommended changes.

Attendance at the above meetings is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

A meeting of the SOLAS Working Group on Bulk Chemicals is to be held on the day after the CTAC meeting. CTAC meeting attendees may wish also to attend this meeting, which is in preparation for the twenty-second session of the IMO Subcommittee on Bulk Chemicals (BCH).

**FOR FURTHER INFORMATION CONTACT:** Commander Eldridge or Mr. Thompson, U.S. Coast Guard Headquarters (G-MTH-1), 2100 2nd Street, SW., Washington, DC 20593, (202) 267-1217.

Dated: July 6, 1992.

**R. C. North,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 92-16351 Filed 7-10-92; 8:45 am]

BILLING CODE 4910-14-M

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**[CGD 92-040]**

## National Offshore Safety Advisory Committee

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I), notice hereby is given of a meeting of the National Offshore Safety Advisory Committee (NOSAC). The meeting will be held on Friday, August 28, 1992, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting is scheduled to run from 8:30 a.m. to 12 noon. Attendance is open to the public. The agenda follows:

*1. Subcommittee Reports*

(a) Clean Air Act Amendments,
(b) User Fees,
(c) Revisions to OCS Regulations (46 CFR subchapter N).

*2. Other Issues to be Discussed*

(a) OPA-90 Implementation,
(b) Status of Revisions to Lifesaving Equipment Regulations (46 CFR subchapter W),
(c) Status of Regulations for Offshore Supply Vessels (46 CFR subchapter L),
(d) Future Inspection Regulations for Crewboats,
(e) Work Place Safety Initiatives,
(f) Activity at the International Maritime Organization Affecting Offshore Operations,
(g) Resiliently Seated Valves.

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the NOSAC Executive Director no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written materials should be submitted to the Executive Director no later than August 7, 1992.

**FOR FURTHER INFORMATION CONTACT:** Commander Michael Ashdown, Executive Director, National Offshore Safety Advisory Committee (NOSAC), room 1405, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-2307.

Dated: July 6, 1992.

**R.C. North,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 92-16246 Filed 7-10-92; 8:45 am]

BILLING CODE 4910-14-M

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## Federal Highway Administration

## Environmental Impact Statement: Stone and Taney Counties, Missouri

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Stone and Taney Counties, Missouri.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Mullen, District Engineer, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, Telephone: (314) 636-7104; Mr. H. E. Sfreddo, Division Engineer, Design, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone (314) 751-2551; Mr. Kevin Keith, Project Manager, Ozark Mountain Highroad, HCR-2, Box 2950, Branson, MO, Telephone (417) 336-5701.

**SUPPLEMENTARY INFORMATION:** (1) The proposed highway project will be a new fully access controlled right-of-way facility on new location extending westerly a distance of four miles from the vicinity of the existing U.S. 65/Route F intersection four miles north of Branson, Missouri then south across Lake Taneycomo and southeasterly to another intersection with U.S. 65, approximately five miles south of Branson. This project will reduce extreme traffic congestion on Missouri Route 76 through a rapidly developing entertainment and recreation area in and around Branson, Missouri.

(2) The proposed 18-mile long facility will provide a 24-foot pavement in each direction separated by a variable width median. Several build alternatives will be considered within a generally one-mile wide corridor along with alternative interchange location and type studies. Other alternatives being considered are the no-build and the transportation systems management (TSM) alternative, along with consideration of localized mass transit and people mover systems.

(3) A project information office has been established in Branson located at the same address as Mr. Kevin Keith referenced above. A combined corridor and design public hearing is tentatively scheduled to be held on October 21st, 1992. Other public information meetings will be held during the planning and design of the proposed facility.

Issued on: June 30, 1992.

**James M. Mullen,**

*District A Engineer, Division Administration, Jefferson City, Missouri.*

[FR Doc. 92-16118 Filed 7-10-92; 8:45 am]

BILLING CODE 4910-22-M

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## Maritime Administration

## Approval of Applicant as Trustee

Notice is hereby given that First Trust of California, National Association, with offices 101 California Street, San Francisco, California, has been approved as Trustee pursuant to Public Law 100-710 and 46 CFR part 221.

Dated: July 8, 1992.

By Order of the Maritime Administrator.
James E. Saari,
*Secretary.*
[FR Doc. 92-16363 Filed 7-10-92; 8:45 am]
BILLING CODE 4910-61-M

## National Highway Traffic Safety Administration

[Docket No. 91-61; Notice 2]

## Solar Electric Engineering Grant of Petition for Temporary Exemption From Five Federal Motor Vehicle Safety Standards

This notice grants the petition by Solar Electric Engineering of Santa Rosa, California, to be exempted from five Federal motor vehicle safety standards for passenger cars and trucks that it converts to electric power. The basis of the grant is that an exemption will facilitate the development and field evaluation of low-emission motor vehicles.

Notice of receipt of the petition was published on January 6, 1992, and an opportunity afforded for comment (57 FR 427).

Petitioner intends to convert 1992 model Ford Escort passenger cars, and Chevrolet S10 pickup trucks to electric power, as well as certain other unspecified passenger cars certified as conforming to the Federal motor vehicle safety standards. The Fords will be marketed under the name "Electron-One", and the Chevrolets under the name "Electron-Two." The basis of the petition was that a temporary exemption would facilitate the development and field evaluation of a low-emission motor vehicle, as provided by 49 CFR 555.6(c).

Although the vehicles to be converted are certified by their original manufacturers to conform to all applicable Federal motor vehicle safety standards, petitioner determined that the vehicles may not conform with all or part of five Federal motor vehicle safety standards after their modification. The standards and sections for which exemptions were requested are discussed more fully below.

1. Standard No. 103, *Windshield Defrosting and Defogging Systems*
2. Standard No. 105, *Hydraulic Brake Systems*

Petitioner stated that it is unsure whether performance requirements continue to be met after conversion.

3. Standard No. 201, *Occupant Protection in Interior Impact*
4. Standard No. 204, *Steering Control Rearward Displacement*
5. Standard No. 208, *Occupant Crash Protection*

None of the impact protection materials of vehicles certified to comply with Standard No. 201 are removed as part of the conversion, and the vehicles' original restraint systems conforming to Standard No. 208 remain in place. However, the petitioner was unsure whether performance differs "since the weight and mass has (sic) been altered."

According to the petitioner, an exemption would facilitate the development and field evaluation of a low-emission motor vehicle by enabling the petitioner to produce and market its vehicles. Such exemption would not unduly degrade the safety of the vehicle because of its intended use in low speed urban areas.

Further, the petitioner argues, granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act because the vehicles would "reduce air pollution at street level and lessen the dependence of the United States on importation of petroleum."

One comment was received on the petition. Ford Motor Company asked the agency not to provide a "wholesale exemption from the substance of key safety standards such as FMVSS 105—Brakes (sic) and FMVSS 208—Occupant Protection (sic) * * * in the absence of clear evidence demonstrating that petitioner's vehicles conform as fully to the standards' safety objectives as is practicable for an electrically powered vehicle."

It is NHTSA's policy to provide as narrow an exemption as is practicable given the demands of safety and the fact situation applicable to the petitioner. The Administrator must find, in accordance with the statute, that an exemption would not unreasonably degrade the safety of the vehicle if it is granted. Balancing the public interest in low-emission vehicles and the public interest in safety, Congress has conceded that a measure of degradation may result from exemptions but it must not be an unreasonable degradation. However, as an assurance of a measure of protection to the public, Congress draw a limit as to the duration of such exemptions (a maximum of 2 years) and their extent (no more than 2,500 vehicles in any 12-month period that the exemption is in effect). When certified conventionally-powered vehicles are converted to electric power, NHTSA's experience has been that resultant questions of conformance appear to be more apparent than actual. Therefore, NHTSA has been able to find that temporary exemption of a converted certified vehicle does not unreasonably degrade safety. The test posited by Ford, "clear evidence" of conformance "as fully * * * as is practicable for an electrically powered vehicle", would require NHTSA to gather data from all manufacturers of electrically powered vehicles to determine what level is "practicable" with respect to each standard. In instances in which the subject of a petition is a converted vehicle, NHTSA does not believe that safety demands such a rigorous test. Different considerations may obtain where the vehicle to be exempted is new from the ground up and is produced by an entity new to the vehicle manufacturing business, but that is not the fact situation before the agency in this case.

However, with Ford's comment in mind, NHTSA has reviewed each of the five standards from which exemption has been requested. With respect to Standard No. 103 *Defrosting and Defogging Systems*, the vehicles to be converted were originally equipped with defrosting and Defogging systems. While the conversion to electric power may affect the performance of these systems, the systems will remain in place, and no exemption shall be given from S4.1, the requirement that vehicles be equipped with these systems. However, the test requirements of S4.2 and demonstration procedures of S4.3 were written for vehicles powered by internal combustion engines. Standard No. 103 incorporates by reference SAE Recommended Practices J902 and J902a, *Passenger Car Windshield Defrosting Systems*, which specify a tachometer as an item of test equipment, and a test condition for "engine speed" of 1500 rpm. In a literal sense, it is impossible for the manufacturer of an electric vehicle to test according to S4.2 and S4.3, and an exemption is therefore required from these sections. In its ANPRM on electric vehicles (56 FR 67038), NHTSA has asked for comments on appropriate modifications to the tests conditions and procedures of Standard No. 103 to allow the test requirements to be met.

Standard No. 105 *Hydraulic Brake Systems* consists primarily of service brake system performance requirements (S5.1) to be met through a series of stops and under a variety of conditions, and parking brake performance (S5.2) to be determined on a grade of 30 percent. The performance characteristics of vehicles that are converted will differ from the original vehicle because of the increased weight of the batteries. Service brake performance may also differ if the conversion adds a regenerative braking feature. But the original service and parking brake systems of these vehicles remain in

place. There would appear, therefore, to be no need for an exemption from S5.3 *Brake System Indicator Lamp*, and S5.4 *Reservoirs*.

Turning to Standard No. 201 *Occupant Protection in Interior Impact*, conformance with the interior compartment door requirements (S3.3) is demonstrated through a 30-mph frontal barrier impact, and compliance could be affected by the increased weight and mass of the vehicle. However, compliance with seat back requirements (S3.2) and interior compartment doors (S3.3) may be demonstrated through static tests, and conformance is not affected by conversion. Nor does conversion affect compliance by sun visors (S3.4) and armrests (S3.5). Therefore, NHTSA is granting an exemption only from S3.3 of Standard No. 201.

As for Standard No. 204 *Steering Control Rearward Displacement*, compliance is wholly dependent upon the results of a barrier test, the results of which may be affected by the change of weight entailed by conversions, and, if a vehicle is to be exempted, the exemption must cover the entire standard.

The final standard for which exemption has been requested is Standard No. 208 *Occupant Crash Protection*. Much of the standard is full of requirements that do not apply to the petitioner. What petitioner seeks is an exemption from the requirements that are demonstrated through a barrier impact, specifically S4.1.4.1.

The vehicle is *per se* a low-emission motor vehicle, and an exemption would facilitate its field evaluation and further development by the petitioner. Given the continuing concern over the environment, an exemption of such a vehicle is in the public interest. Because the vehicle was originally manufactured to conform, and may remain in conformance, an exemption is consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

For the foregoing reasons it is hereby found that a temporary exemption would facilitate the development and field evaluation of a low emission motor vehicle and would not unreasonably degrade the safety of such vehicle, and it is further found that such exemption would be consistent with the public interest and the objectives of the Act. Accordingly, Solar Electric Engineering is hereby granted NHTSA Temporary Exemption 92–3, expiring June 1, 1994, from the following Federal motor vehicle safety standards or portions thereof: Paragraphs S4.2 and S4.3 of 49 CFR 571.103 Motor Vehicle Safety Standard No. 103 *Windshield Defrosting and Defogging*, 49 CFR 571.105 Motor Vehicle Safety Standard No. 105 *Hydraulic Brake Systems*, except for S5.3 and S5.4; S3.3 of 49 CFR 571.201 Motor Vehicle Safety Standard No. 201 *Occupant Protection in Interior Impact*, 49 CFR 571.204 Motor Vehicle Safety Standard No. 204 *Steering Control Rearward Displacement*, and S4.1.4.1 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*.

**Authority:** 15 U.S.C. 1410; delegation of authority at 49 CFR 1.50.

Issued on July 8, 1992.

**Frederick H. Grubbe,**

*Deputy Administrator.*

[FR Doc. 92–16364 Filed 7–10–92; 8:45 am]

BILLING CODE 4910–59–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: July 7, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Bureau of the Public Debt**

*OMB Number:* 1535–0065
*Form Number:* PD F 1946–1
*Type of Review:* Extension
*Title:* Application for Disposition—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whose Estate is being Settled Without Administration
*Description:* Used by person(s) entitled to a decedent's estate not being administered to request disposition of United States Savings Bonds/Notes and/or related checks.
*Respondents:* Individuals or households
*Estimated Number of Respondents:* 1,500
*Estimated Burden Hours Per Response:* 35 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 875 hours

*OMB Number:* 1535–0069
*Form Number:* PD F 5174–1, 5174–3, 5174–4, 5176–1, 5176–2, 5176–3, 5178, 5179, 5180, 5182, 5188 and 5201
*Type of Review:* Extension
*Title:* TREASURY DIRECT Forms
*Description:* These forms are used by individuals/entities who wish to purchase Treasury bills, notes, and bonds and to maintain a book-entry account with the Department of the Treasury. Also forms are used to support transactions dealing with TREASURY DIRECT system accounts.
*Respondents:* Individuals or households, Businesses or other for-profit
*Estimated Number of Respondents:* 214,132
*Estimated Burden Hours Per Response:*

| Form | Time per response (minutes) |
|---|---|
| PD F 5174–1 | 10 |
| PD F 5174–3 | 10 |
| PD F 5174–4 | 10 |
| PD F 5176–1 | 10 |
| PD F 5176–2 | 10 |
| PD F 5176–3 | 10 |
| PD F 5178 | 10 |
| PD F 5179 | 10 |
| PD F 5180 | 10 |
| PD F 5182 | 10 |
| PD F 5188 | 10 |
| PD F 5201 | 10 |

*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 35,546 hours
*Clearance Officer:* Rita DeNagy (202) 874–1148, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239–0001
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 92–16327 Filed 7–10–92; 8:45 am]

BILLING CODE 4810–40–M

### Public Information Collection Requirements Submitted to OMB for Review

Date: July 7, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department

Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0786
*Regulation ID Number:* IL–50–86 Final
*Type of Review:* Extension
*Title:* Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form T.D. 8110 (Final)
*Description:* The Internal Revenue Service needs the information in order to ensure that purchasers of bearer obligations are not U.S. persons (other than those permitted to hold obligations under section 165(j) and to ensure that U.S. persons holding bearer obligations properly report income and gain on such obligations. The people reporting will be financial institutions holding bearer obligations.
*Respondents:* Businesses or other for-profit
*Estimated Number of Respondents:* 1,000
*Estimated Burden Hours Per Respondent:* 20 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 39,742 hours
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 92–16328 Filed 7–10–92; 8:45 am]

BILLING CODE 4830–01–M

## Public Information Collection Requirements Submitted to OMB for Review

Date: July 7, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0014
*Form Number:* IRS Form 637
*Type of Review:* Extension
*Title:* Application for Registration (for Certain Excise Tax Transactions)
*Description:* This form is used to apply for excise tax registration. The registration applies to refiners or producers of gasoline and to certain manufacturers or sellers and purchasers that must register to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for the exemption. Gasoline producers are required by section 4101 to register with the Service before incurring any tax liability
*Respondents:* State and local governments, Business or other for-profit, Non-profit institutions, Small businesses or organizations
*Estimated Number of Respondents/ Recordkeepers:* 2,000

Estimated Burden Hours Per Respondent/Recordkeeper

| | |
|---|---|
| Recordkeeping | 8 hours, 22 minutes. |
| Learning about the law or the form. | 18 minutes. |
| Preparing and sending the form to the IRS. | 26 minutes. |

*Frequency of Response.* Other (One-time only)
*Estimated Total Reporting/ Recordkeeping Burden:* 18,240 hours
*OMB Number:* 1545–0187
*Form Number:* IRS Form 4835
*Type of Review:* Revision
*Title:* Farm Rental Income and Expenses
*Description:* This form is used by landowners (or sub-lessors) to report farm income based on crops or livestock produced by the tenant when the landowner (or sub-lessor) does not materially participate in the operation or management of them. This form is attached to Form 1040 and the data is used to determine whether the proper amount of rental income has been reported
*Respondents:* Individuals or households, Farms
*Estimated Number of Respondents/ Recordkeepers:* 407,719

Estimated Burden Hours Per Respondent/Recordkeeper

| | |
|---|---|
| Recordkeeping | 2 hours, 57 minutes. |
| Learning about the law or the form. | 4 minutes. |

Estimated Burden Hours Per Respondent/Recordkeeper—Continued

| | |
|---|---|
| Preparing the form | 1 hour, 2 minutes. |
| Copying, assembling and sending the form to the IRS. | 20 minutes. |

*Frequency of Response:* Annually
*Estimated Total Reporting/ Recordkeeping Burden:* 1,789,886, hours
*OMB Number:* 1545–1054
*Form Number:* IRS Form 8736
*Type of Review:* Extension
*Title:* Application for Automatic Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts
*Description:* Form 8736 is used Partnerships, REMICs, and by certain trusts to request an automatic 3-month extension of time to file Form 1065, Form 1041, or Form 1066. Form 8736 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.
*Respondents:* Farms, Businesses or other for-profit, Small businesses or organizations
*Estimated Number of Respondents/ Recordkeepers:* 36,000

Estimated Burden Hours Per Respondent/Recordkeeper

| | |
|---|---|
| Recordkeeping | 3 hours, 7 minutes. |
| Learning about the law or the form. | 24 minutes. |
| Preparing, copying, assembling and sending the form to the IRS. | 28 minutes. |

*Frequency of Response.* Annually
*Estimated Total Reporting/ Recordkeeping Burden:* 142,920 hours
*OMB Number:* 1545–1139
*Regulation ID Number:* PS–264–82 NPRM
*Type of Review:* Extension
*Title:* Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders
*Description:* The regulations provide the procedures and the statements to be filed by S Corporations for making the election provided under Section 1368. Statements required to be filed will be used to verify that taxpayers are complying with the requirements imposed by Congress.

*Respondents:* Individuals or households, Businesses or other for-profit
*Estimated Number of Respondents:* 1
*Estimated Burden Hours Per Respondent:* 1
*Frequency of Respons:* Annually and Other (non-recurring)
*Estimated Total Reporting Burden:* 1 hour
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 92–16329 Filed 7–10–92; 8:45 am]

BILLING CODE 4830–01–M

## Public Information Collection Requirements Submitted to OMB for Review

Date: July 7, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0390
*Form Number:* IRS Form 5306
*Type of Review:* Revision
*Title:* Application for Approval of Prototype or Employer Sponsored Individual Retirement Account
*Description:* This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by persons who want to establish approved prototype individual retirement accounts or annuities. The data collected is used to determine if plans may be approved.
*Respondents:* Businesses or other for-profit, Small businesses or organizations
*Estimated Number of Respondents/ Recordkeepers:* 600

**Estimated Burden Hours Per Respondent/Recordkeeper**

| | |
|---|---|
| Recordkeeping | 11 hours, 58 minutes. |
| Learning about the law or the form. | 18 minutes. |
| Preparing, and sending the form to the IRS. | 30 minutes. |

*Frequency of Response:* On occasion
*Estimated Total Reporting/ Recordkeeping Burden:* 7,662 hours
*Clearance Officer:* Garrick Shear (202) 622–3428 Internal Revenue Service room 5571 1111 Constitution Avenue, NW. Washington, DC 20224
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880 Office of Management and Budget room 3001, New Executive Office Building Washington, DC 20503

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 92–16331 Filed 7–10–92; 8:45 am]

BILLING CODE 4830–01–M

## Public Information Collection Requirements Submitted to OMB for Review

Date: July 6, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0160
*Form Number:* IRS Form 3520–A
*Type of Review:* Extension
*Title:* Annual Return of Foreign Trust with U.S. Beneficiaries
*Description:* Section 6048(c) requires that foreign trusts with at least one U.S. beneficiary must file an annual information return on Form 3520–A. The form is used to report the income and deductions of the foreign trust. IRS uses Form 3520–A to determine if the U.S. owner of the trust has included the net income of the trust in its gross income.
*Respondents:* Individuals or households, Businesses or other for-profit, Small businesses or organizations
*Estimated Number of Respondents/ Recordkeepers:* 500

**Estimated Burden Hours Per Respondent/Recordkeeper**

| | |
|---|---|
| Recordkeeping | 29 hours, 25 minutes. |
| Learning about the law or the form. | 53 minutes. |
| Preparing, and sending the form to the IRS. | 1 hour, 25 minutes. |

*Frequency of Response:* Annually
*Estimated Total Reporting/ Recordkeeping Burden:* 15,860 hours
*Clearance Officer:* Garrick Shear (202) 622–3428 Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880 Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 92–16332 Filed 7–10–92 8:45 am]

BILLING CODE 4830–01–M

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 134
Monday, July 13, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**U.S. COMMISSION ON CIVIL RIGHTS**

**DATE AND TIME:** Friday, July 17, 1992, 9:00 a.m.

**PLACE:** U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW, Room 512, Washington, DC 20425.

**STATUS:** Open to the Public.

*July 17, 1992*

I. Approval of Agenda
II. Approval of Minutes of June 26 and July 1 Meeting
III. Announcements
IV. Appointments to the New Mexico, Oregon, and Virginia Advisory Committees
V. *Impact of School Desegregation in Milwaukee Public Schools on Quality Education for Minorities. * * * 16 Years Later*
VI. *The Increase of Hate Crimes in Michigan*
VII. *The Increase of Hate Crimes in Indiana*
VIII. Staff Director's Report
- Discussion of July 7, 1992 Memorandum—*Racial and Ethnic Tensions in American Communities Project*

IX. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376-8105, (TDD 202-376-8116), at least five (5) working days before the scheduled date of the meeting.

**CONTACT PERSON FOR FURTHER INFORMATION:** Barbara Brooks, Press and Communications (202) 376-8312.

Dated: July 8, 1992.

**Emma Monroig,**

*Solicitor.*

[FR Doc. 92-16559 Filed 7-9-92; 4:00 pm]

BILLING CODE 6335-01-M

**U.S. CONSUMER PRODUCT SAFETY COMMISSION**

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** Vol. 57, page 29936, July 7, 1992.

**PREVIOUSLY ANNOUNCED DATE OF MEETING:** July 8, 1992.

**CHANGES:** The Commission decided to cancel the meeting scheduled for July 8, 1992 and reschedule the matters concerning Section 15 and 37 of the CPSA for consideration on July 23, 1992.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-504-0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-504-0800

Dated: July 8, 1992.

**Sheldon D. Butts,**

*Deputy Secretary.*

[FR Doc. 92-16484 Filed 7-9-92; 2:57 pm]

BILLING CODE 6355-01-M

**DEPARTMENT OF ENERGY**

**FEDERAL ENERGY REGULATORY COMMISSION**

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

**DATE AND TIME:** July 15, 1992, 10:00 a.m.

**PLACE:** 825 North Capitol Street N.E., Room 9306, Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

*Note—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from and added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

**Consent Agenda—Hydro, 962nd Meeting—July 15, 1992, Regular Meeting (10:00 a.m.)**

CAH-1.
Project No. 2179-012, Merced Irrigation District
CAH-2.
Project No. 7270-008, Northern Wasco County People's Utility District
CAH-3.
Project Nos. 9840-009 and 010, Appomattox River Water Authority
CAH-4.
Docket No. UL89-15-006, Theodore A. and Holly S. Keck
CAH-5.
Project No. 6188-018, Sierra Hydro, Inc.
CAH-6.
Omitted

**Consent Electric Agenda**

CAE-1.
Docket No. ER92-583-000, People's Electric Cooperative
CAE-2.
Docket No. EC92-5-000, Iowa Public Service Company, Iowa Power Inc. and Midwest Power Systems Inc.
CAE-3.
Docket No. ER92-64-001, Northeast Utilities Service Company
CAE-4.
Docket Nos. ER92-436-001 and EL92-29-001, Florida Power Corporation
CAE-5.
Omitted
CAE-6.
Docket No. ER84-560-033, Union Electric Company
CAE-7.
Docket No. ER92-222-001, Arkansas Power and Light Company
CAE-8.
Docket No. ER92-343-001, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
CAE-9.
Docket No. EL91-32-001, Power Authority of the State of New York v. Long Island Lighting Company
Docket No. EL91-34-001, Municipal Electric Utilities Association of New York State v. Long Island Lighting Company
Docket Nos. ER92-25-001, ER92-26-001 and ER92-31-001, Long Island Lighting Company
CAE-10.
Docket No. EL92-56-001, Houlton Water Company, Van Buren Light and Power District, and Eastern Maine Electric Cooperative, Inc. v. Main Public Service Company
CAE-11.
Docket No. ER85-477-010, Southwestern Public Service Company
CAE-12.
Docket Nos. ER92-180-000 and EL92-17-000, Detroit Edison Company
CAE-13.
Docket Nos. ER91-143-000 and EL91-15-000, Public Service Company of New Hampshire Docket No. ER91-235-000, New England Power Company
CAE-14.
Docket No. ER84-75-000 (Phase III), Southern California Edison Company

**Consent Oil and Gas Agenda**

CAG-1.
Docket No. RP92-189-000, United Gas Pipe Line Company
CAG-2.
Docket No. RP88-259-053, Northern Natural Gas Company
CAG-3.
Docket No. RP92-190-100, Carnegie Natural Gas Company

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CAG–4.
Docket No. RP91–166–010, Northwest Pipeline Corporation
CAG–5.
Docket No. RP92–186–000, Texas Gas Transmission Corporation
CAG–6.
Docket No. CP91–1252–005, Questar Pipeline Company
CAG–7.
Docket Nos. RP92–48–003 and 004, Viking Gas Transmission Company
CAG–8.
Docket No. PR92–10–000, Cranberry Pipeline Corporation
CAG–9.
Docket No. PR92–11–000, Utah Gas Service Company
CAG–10.
Docket No. PR92–14–000, The Nueces Company
CAG–11.
Docket No. RP92–114–004, Williams Natural Gas Company
CAG–12.
Docket Nos. RP91–152–019 and RP88–183–040, Williams Natural Gas Company
CAG–13.
Docket Nos. RP90–104–017, RP88–115–028, RP90–192–001 and CP88–686–006, Texas Gas Transmission Corporation
CAG–14.
Docket No. RP87–110–002, Northwest Pipeline Corporation
CAG–15.
Docket Nos. RP83–137–033 and RP85–31–005, Transcontinental Gas Pipe Line Corporation
CAG–16.
Docket No. RP89–245–005, Paiute Pipeline Company
CAG–17.
Docket Nos. RP91–224–004 and RP92–1–006, Northern Natural Gas Company
CAG–18.
Docket No. RP91–210–009, Tennessee Gas Pipeline Company
CAG–19.
Docket Nos. CP89–629–020 and CP90–639–011, Tennessee Gas Pipeline Company
CAG–20.
Docket Nos. TA92–2–82–005 and TM92–2–82–002, Viking Gas Transmission Company
CAG–21.
Docket Nos. RP91–2–010, RP89–137–006, RP89–219–005, RP90–50–005 and RP90–90–002, Northwest Pipeline Corporation
CAG–22.
Docket No. IS92–10–001, Amerada Hess Pipeline Corporation
Docket No. IS92–11–001, ARCO Transportation Alaska, Inc.
Docket No. IS92–12–001, BP Pipelines (Alaska) Inc.
Docket No. IS92–13–001, Exxon Pipeline Company
Docket No. IS92–14–001, Mobil Alaska Pipeline Company
Docket No. IS92–15–001, Phillips Alaska Pipeline Company
Docket No. IS92–16–001, Unocal Pipeline Company
CAG–23.
Docket Nos. RP86–41–010, 009, RP87–14–010 and RP90–22–017, Algonquin Gas Transmission Company
CAG–24.
Omitted
CAG–25.
Docket No. PR92–12–000, The Texas Corporation
CAG–26.
Docket Nos. CP83–75–001, FA90–19–000 and RP91–166–000, Southern Energy Company
Docket Nos. RP89–224–000, RP90–139–000 and RP–91–69–000, Southern Natural Gas Company
CAG–27.
Docket No. GP92–8–000, State Oil and Gas Board of Alabama, Tight Formation Determination, Alabama–3 Pottsville Series Sandstones, FERC No. JD91–06540T
CAG–28.
Docket No. GP91–12–000, OXY USA, Inc.
CAG–29.
Docket No. RS92–38–000, Gulf States Transmission Corporation
CAG–30.
Docket No. RS92–92–000, Jupiter Energy Corporation
CAG–31.
Docket No. RS92–31–000, Cornerstone Pipeline Company
CAG–32.
Docket Nos. RS92–5–000, RP91–161–000 and RP92–3–000, Columbia Gas Transmission Corporation
Docket Nos. RS92–6–000, RP91–160–000 and RP92–2–000, Columbia Gulf Transmission Company
CAG–33.
Docket No. RS92–89–000, WestGas InterState, Inc.
CAG–34.
Docket No. RS92–77–000, Point Arguello Natural Gas Line Company
CAG–35.
Omitted
CAG–36.
Omitted
CAG–37.
Docket Nos. RP92–104–000, RP92–131–000 and RS92–19–000, KN Energy, Inc.
CAG–38.
Omitted
CAG–39.
Docket No. CI88–496–002, O&R Energy, Inc.
Docket No. CI91–98–000, Southern California Gas Company
Docket No. CI91–115–000, San Diego Gas & Electric Company
Docket No. CI92–20–000, MASSPOWER
Docket No. CI92–22–000, The Berkshire Gas Company
Docket No. CI92–27–000, Boston Gas Company
Docket No. CI92–32–000, Oregon Natural Gas Development Corporation
Docket No. CI92–38–000, The Brooklyn Union Gas Company
Docket No. CI92–41–000, NI-TEX, Inc.
Docket No. CI90–151–001, Indeck Energy Services, Inc.
Docket No. CI91–34–001, Midland Cogeneration Venture Limited Partnership
Docket No. CI92–11–000, Tenaska Gas Company
Docket No. CI92–18–000, Tenaska Marketing Venture
Docket No. CI92–21–000, Destec Gas Services, Inc.
Docket No. CI92–39–000, MCV Gas Acquisition General Partnership
Docket No. CI92–43–000, Encogen Northwest, L.P.
Docket No. CI92–40–001, ONG Western, Inc.
CAG–40.
Docket No. CP88–137–007, ANR Pipeline Company
Docket No. CP88–1953–003, ANR Storage Company
Docket No. CP89–1554–008, Colorado Interstate Gas Company
Docket No. CP88–851–008, Northwest Pipeline Corporation
Docket No. CP90–186–009, Texas Eastern Transmission Corporation
Docket No. CP91–1252–007, Questar Pipeline Company
Docket No. CP92–462–001, Panhandle Eastern Pipe Line Company
CAG–41.
Docket No. CP87–75–007, Tennessee Gas Pipeline Company
CAG–42.
Docket No. CP91–2206–002, Tennessee Gas Pipeline Company
Docket No. CP89–661–018, Algonquin Gas Transmission Company
Docket No. CP92–245–001, Iroquois Gas Transmission System, L.P.
CAG–43.
Docket Nos. TC81–9–007 and 008, Texas Gas Transmission Corporation
CAG–44.
Docket No. CP90–1248–001, Texas Eastern Transmission Corporation and United Gas Pipe Line Company
CAG–45.
Omitted
CAG–46.
Docket No. CP92–365–000, United Gas Pipe Line Company
Docket No. CP92–375–000, Southern Natural Gas Company
CAG–47.
Docket No. CP92–296–000, Northwest Gas Pipeline Corporation
Docket No. CP92–289–000, El Paso Natural Gas Company
CAG–48.
Docket No. CP92–207–000, Transwestern Pipeline Company
CAG–49.
Omitted
CAG–50.
Docket Nos. CP92–515–000, CP92–516–000 and CP92–517–000, Transcontinental Gas Pipe Line Corporation
CAG–51.
Docket Nos. CP92–348–000 and CP92–347–000, Transcontinental Gas Pipe Line Corporation
CAG–52.
Omitted
CAG–53.
Omitted
CAG–54.
Docket No. CP91–2650–000, Cascade Natural Gas Company
CAG–55.
Docket Nos. RP92–53–001 and 002, Kern River Gas Transmission Company
CAG–56.
Docket N
CAG–57.
Docket N
Tarpor
CAG–58.
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CAG–60.
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**Hydro Age**

H–1.
Reserved

**Electric Ag**

E–1.
Docket N
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E–2.
Docket N
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M–1.
Docket N
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**Oil and Ga**

*I. Pipeline*

PR–1.
Reserved

*II. Produce*

PF–1.
Reserved

*III. Pipelin*

PC–1.
Docket N
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Docket N
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PC–2.
Docket N
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PC–3.
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CAG–56.
Docket No. CP92–109–001, Equitrans, Inc.
CAG–57.
Docket Nos. RP92–82–013 and RP92–97–003, Tarpon Transmission Company
CAG–58.
Docket Nos. RP85–209–020 and TC88–6–000, United Gas Pipe Line Company
CAG–59.
Docket No. RP92–174–000, National Fuel Gas Supply Corporation
CAG–60.
Docket Nos. RP91–215–002, 004, RP91–217–001, 002, RP92–8–002, RP91–104–004, 003, RP91–108–003 and RP91–109–004, Transwestern Pipeline Company
CAG–61.
Docket No. CP92–216–000, Peoples Natural Gas Company v. Natural Gas Pipeline Company of America
CAG–62.
Docket Nos. RP92–86–001, RP92–137–005, RP92–108–002 and CP92–378–002, Transcontinental Gas Pipe Line Corporation

**Hydro Agenda**

H–1.
Reserved

**Electric Agenda**

E–1.
Docket No. ER91–569–001, Entergy Services, Inc. Order on rehearing regarding power and transmission rates
E–2.
Docket No. ER91–313–001, Pennsylvania Electric Company. Order on rehearing regarding transmission rates

**Miscellaneous Agenda**

M–1.
Docket No. RM91–12–000, Administrative Dispute Resolution. Notice of Proposed Rulemaking

**Oil and Gas Agenda**

*I. Pipeline Rate Matters*

PR–1.
Reserved

*II. Producer Matters*

PF–1.
Reserved

*III. Pipeline Certificate Matters*

PC–1.
Docket No. CP91–2519–001, Columbia Gulf Transmission Company and Arkla Energy Resources, a Division of Arkla, Inc.
Docket No. CP91–2521–001, Tennessee Gas Pipeline Company, Columbia Gulf Transmission Company, Arkla Energy Resources, a Division of Arkla, Inc. and Mississippi River Transmission Corporation. Order on requests for rehearing of order rejecting applications
PC–2.
Docket No. RM92–2–000, Regulations Governing Vehicular Natural Gas. Order on final rule
PC–3.
Docket Nos. CP92–522–000 and RS92–83–000, Tarpon Transmission Company. Order on jurisdictional status of offshore system

Dated: July 8, 1992.
**Lois D. Cashell,**
*Secretary.*
[FR Doc. 92–16532 Filed 7–9–92; 2:59 pm]
BILLING CODE 6717–01–M

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**FARM CREDIT ADMINISTRATION**

## Farm Credit Administration Board; Special Meeting

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 16, 1992, from 10:00 a.m. until such time as the Board may conclude its business.

**FOR FURTHER INFORMATION CONTACT:** Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

**ADDRESS:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

*B. New Business*

1. Regulations

a. Privacy Act Regulations; New Exempt System of Records (Final).

2. Other

a. Alternative Means of Dispute Resolution Policy Statement.

**Closed Session***

*A. New Business*

1. Enforcement Actions

Dated: July 9, 1992.
**Curtis M. Anderson,**
*Secretary, Farm Credit Administration Board.*
[FR Doc. 92–16531 Filed 7–9–92; 2:58 pm]
BILLING CODE 6705–01–M

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**FEDERAL COMMUNICATIONS COMMISSION**

## FCC To Hold Open Commission Meeting, Thursday, July 16, 1992

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 16, 1992, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

*Item No., Bureau, and Subject*

1–Common Carrier–Title: Policy and Rules Concerning Rates for Dominant Carriers (CC Docket No. 87–313). Summary: The Commission will consider adoption of a *Memorandum Opinion and Order on Second Further Reconsideration* concerning the local exchange carrier price cap new services test.
2–Common Carrier—Title: Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54–63.58 (CC Docket No. 87–266). Summary: The Commission will consider adoption of a *Memorandum Opinion and Order on Reconsideration* of the First Report and Order.
3–Common Carrier—Title: Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54—63.58 (CC Docket No. 87–266). Summary: The Commission will consider adoption of a *Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking.*
4—Mass Media—Title: Amendment of Part 73 of the Commission's Rules to Modify Processing Procedures for Commercial FM Broadcast Applications (MM Docket No. 91–347). Summary: The Commission will consider adoption of a *Report and Order* concerning processing of applications for commercial FM frequencies.
5—Mass Media—Title: Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments (MM Docket No. 91–348). Summary: The Commission will consider adoption of a *Report and Order* governing conflicts between rulemaking petitions to amend the FM Table of Allotments and applications for new or modified FM facilities.
6—Mass Media—Title: Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* concerning the procedures used to obtain certain FM channel and/or class modifications.
7—Private Radio—Title: Amendments of Parts 0, 1, 2, and 95 of the Commission's Rules to Provide for Interactive Video and Data Services (Gen Docket No. 91–2, RM–6196). Summary: The Commission will consider adoption of a *Memorandum Opinion and Order* concerning whether to reconsider part of its decision to establish the Interactive Video and Data Service.
8—Office of Engineering and Technology, Mass Media—Title: Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service (MM Docket No. 87–268). Summary: The Commission will consider adoption of a *Second Further Notice of Proposed Rulemaking* concerning issues pertaining to the allotment of channels for Advanced Television Service.
9—Office of Engineering and Technology—Title: Amendment of the Commission's Rules to Establish New Personal

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* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

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Communications Services (GEN Docket No. 90-314 and ET Docket No. 92-100).

Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking and Tentative Decision* concerning the implementation of personal communications services and requests for pioneer's preferences.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Dated: July 9, 1992.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92-16533 Filed 7-9-92; 3:00 pm]

BILLING CODE 6712-01-M

federal register

Monday,
July 13, 1992

Part II

# Veterans Affairs Department

38 CFR Parts 0 et al.
Nomenclature Changes; Rules

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**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Parts 0, 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 18a, 18b, 21, 36, 39, 41, 43, 44, and 45**

**RIN 2900-AF95**

**Nomenclature Changes**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Technical amendments.

**SUMMARY:** Public Law No. 102–40 and Public Law No. 102–83 effected a renumbering of the provisions of title 38, United States Code. Accordingly, this technical amendment changes the references to the provisions of title 38 to reflect the renumbering. Also, with the change of the Veterans Administration to the Department of Veterans Affairs, position titles have been changed to reflect the change in status. This technical amendment also redesignates the position titles where necessary. No substantive changes to the content of the regulations are being made by this technical amendment.

**EFFECTIVE DATE:** This amendment is effective August 6, 1991, the date Public Law No. 102–83 was signed by the President.

**FOR FURTHER INFORMATION CONTACT:** Frederic Conway, Deputy Assistant General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 523–3911.

**SUPPLEMENTARY INFORMATION:** Public Law No. 102–40, the "Department of Veterans Affairs Health-Care Personnel Act of 1991," and Public Law No. 102–83, the "Department of Veterans Affairs Codification Act," redesignated sections of title 38, United States Code, to conform to chapter numbers and made other changes to reflect the change in the status of the Veterans Administration to the Department of Veterans Affairs effected by Public Law No. 100–527, the "Department of Veterans Affairs Act." This document revises the references found throughout title 38 of the Code of Federal Regulations to conform to the changes made by the enactment of these laws.

The Department of Veterans Affairs finds good cause for making this final rule effective immediately, since the rule is merely a technical amendment following a statutory change in our status, name, and underlying statute. The amendment is not a regulation or rule for the purposes of Executive Order No. 12291.

Approved: June 29, 1992.

**B. Michael Berger,**

*Director, Records Management Service.*

For the reasons set out in the preamble, title 38 of the Code of Federal Regulations is amended under the authority of Public Law 102–40, 105 Stat. 187, and Public Law No. 102–83, 105 Stat. 378, as set forth below:

## PART 0—STANDARDS OF ETHICAL CONDUCT AND RELATED RESPONSIBILITIES

1. Remove the citation "38 U.S.C. 1783" and add in its place "38 U.S.C. 3683", wherever it appears.

2. Remove the words "Chief Attorneys" and add in their place "District Counsels", wherever they appear.

## PART 1—GENERAL PROVISIONS

1. Remove the citation "38 U.S.C. 202" and add in its place "38 U.S.C. 302", wherever it appears.

2. Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501", wherever it appears.

3. Remove the citation "38 U.S.C. 901" and add in its place "38 U.S.C. 2301", wherever it appears.

4. Remove the citation "38 U.S.C. 210, 901" and add in its place "38 U.S.C. 501, 2301", wherever it appears.

5. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.

6. Remove the citation "38 U.S.C. 219" and add in its place "38 U.S.C. 527", wherever it appears.

7. Remove the citation "38 U.S.C. 218" and add in its place "38 U.S.C. 901", wherever it appears.

8. Remove the citation "38 U.S.C. 218(b)(1)" and add in its place "38 U.S.C. 902", wherever it appears.

9. Remove the citation "38 U.S.C. 210(c)(1), 5009" and add in its place "38 U.S.C. 501, 8109", wherever it appears.

10. Remove the citation "38 U.S.C. 5009" and add in its place "38 U.S.C. 8109", wherever it appears.

11. Remove the citation "38 U.S.C. 3301, 3302" and add in its place "38 U.S.C. 5701, 5702", wherever it appears.

12. Remove the citation "38 U.S.C. 210, 3301" and add in its place "38 U.S.C. 501, 5701", wherever it appears.

13. Remove the citation "38 U.S.C. 3301" and add in its place "38 U.S.C. 5701", wherever it appears.

14. Remove the citation "38 U.S.C. 4132" and add in its place "38 U.S.C. 7332", wherever it appears.

15. Remove the citation "38 U.S.C. 1820" and add in its place "38 U.S.C. 3720", wherever it appears.

16. Remove the citation "38 U.S.C. 3301(a), (c)" and add in its place "38 U.S.C. 5701(a), (c)", wherever it appears.

17. Remove the citation "38 U.S.C. 3301(c), (h)(2)(D)" and add in its place "38 U.S.C. 5701(c), (h)(2)(D)", wherever it appears.

18. Remove the citation "38 U.S.C. 3301(h)(2)(A), (B), (C)" and add in its place "38 U.S.C. 5701(h)(2)(A), (B), (C)", wherever it appears.

19. Remove the citation "38 U.S.C. 3101(e), (h)(2)(A) and (D)" and add in its place "38 U.S.C. 5701(e), (h)(2)(A) and (D)", wherever it appears.

20. Remove the citation "38 U.S.C. 3101(h)(2)(D)" and add in its place "38 U.S.C. 5701(h)(2)(D)", wherever it appears.

21. Remove the citation "38 U.S.C. 651–654" and add in its place "38 U.S.C. 1751–1754", wherever it appears.

22. Remove the citation "38 U.S.C. 3301(g)" and add in its place "38 U.S.C. 5701(g)", wherever it appears.

23. Remove the citation "38 U.S.C. 3301(f)" and add in its place "38 U.S.C. 5701(f)", wherever it appears.

24. Remove the citation "section 3301(f)" and add in its place "section 5701(f)", wherever it appears.

25. Remove the citation "38 U.S.C. 775, 784" and add in its place "38 U.S.C. 1975, 1984", wherever it appears.

26. Remove the citation "38 U.S.C. 3302(b)" and add in its place "38 U.S.C. 5702(b)", wherever it appears.

27. Remove the citation "38 U.S.C. 3305" and add in its place "38 U.S.C. 5705", wherever it appears.

28. Remove the citation "38 U.S.C. 3001" and add in its place "38 U.S.C. 5101", wherever it appears.

29. Remove the citation "38 U.S.C. 3301(b)(1)" and add in its place "38 U.S.C. 5701(b)(1)", wherever it appears.

30. Remove the citation "38 U.S.C. 210(c); 1004" and add in its place "38 U.S.C. 501, 2404", wherever it appears.

31. Remove the citation "38 U.S.C. 1004" and add in its place "38 U.S.C. 2404", wherever it appears.

32. Remove the citation "38 U.S.C. 3003; 3020" and add in its place "38 U.S.C. 5103; 5120", wherever it appears.

33. Remove the citation "38 U.S.C. 1820(a)(4) and (5) and 3102(a)" and add in its place "38 U.S.C. 3720(a)(4) and (5) and 5302(a)", wherever it appears.

34. Remove the citation "38 U.S.C. 3102" and add in its place "38 U.S.C. 5302", wherever it appears.

35. Remove the citation "38 U.S.C. 3102, 3114" and add in its place "38 U.S.C. 5302, 5314", wherever it appears.

36. Remove the citation "38 U.S.C. 1826" and add in its place "38 U.S.C. 3726", wherever it appears.

37. Remo
3101(c)" ar
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38. Remo
3114" and
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42. Remo
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51. Remo
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"General C
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53. Remo
Deputy Ad
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54. Remo
Secretary
and add in
Secretary
wherever

**PART 2—**
**AUTHORI**

1. Remo
212(a)" an
512(a)", w

37. Remove the citation "38 U.S.C. 3101(c)" and add in its place "38 U.S.C. 5301(c)", wherever it appears.

38. Remove the citation "38 U.S.C. 3114" and add in its place "38 U.S.C. 5314", wherever it appears.

39. Remove the citation "38 U.S.C. 1804(b) and 1804(d)" and add in its place "38 U.S.C. 3704(b) and 3704(d)", wherever it appears.

40. Remove the citation "section 3102" and add in its place "section 5302", wherever it appears.

41. Remove the citation "38 U.S.C. 3102, 3115" and add in its place "38 U.S.C. 5302, 5315", wherever it appears.

42. Remove the citation "38 U.S.C. 3115" and add in its place "38 U.S.C. 5315", wherever it appears.

43. Remove the citation "38 U.S.C. 3301(i)" and add in its place "38 U.S.C. 5701(i)", wherever it appears.

44. Remove the citation "38 U.S.C. 3301(g)" and add in its place "38 U.S.C. 5701(g)", wherever it appears.

45. Remove the citation "38 U.S.C. 1820(a)(4) and 3102" and add in its place "38 U.S.C. 3720(a)(4) and 5302", wherever it appears.

46. Remove the citation "38 U.S.C. 210(c)(1)" and add in its place "38 U.S.C. 501", wherever it appears.

47. Remove the citation "38 U.S.C. 3102(b)" and add in its place "38 U.S.C. 5302(b)", wherever it appears.

48. Remove the citation "38 U.S.C. 3102(a)" and add in its place "38 U.S.C. 5302(a)", wherever it appears.

49. Remove the citation "38 U.S.C. 1785" and add in its place "38 U.S.C. 3685", wherever it appears.

50. Remove the citation "38 U.S.C. 1785, 3102" and add in its place "38 U.S.C. 3685, 5302", wherever it appears.

51. Remove the words "Chief Attorney" and add in their place "District Counsel", wherever they appear.

52. Remove the words "General Council" and add in their place "General Counsel", wherever they appear.

53. Remove the words "Assistant Deputy Administrator for Reports and Statistics" and add in their place "Associate Deputy Assistant Secretary for Information Resources Management", wherever they appear.

54. Remove the words "Assistant Secretary for Policy and Evaluation" and add in their place "Assistant Secretary for Policy and Planning", wherever they appear.

**PART 2—DELEGATIONS OF AUTHORITY**

1. Remove the citation "38 U.S.C. 212(a)" and add in its place "38 U.S.C. 512(a)", wherever it appears.

2. Remove the citation "38 U.S.C. 3503 or 3504" and add in its place "38 U.S.C. 6103 or 6104", wherever it appears.

3. Remove the citation "38 U.S.C. 5053" and add in its place "38 U.S.C. 8153", wherever it appears.

4. Remove the citation "38 U.S.C. 213" and add in its place "38 U.S.C. 513", wherever it appears.

5. Remove the citation "38 U.S.C. 620" and add in its place "38 U.S.C. 1720", wherever it appears.

6. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.

7. Remove the citation "38 U.S.C. 3311" and add in its place "38 U.S.C. 5711", wherever it appears.

8. Remove the citation "38 U.S.C. 202" and add in its place "38 U.S.C. 302", wherever it appears.

9. Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501", wherever it appears.

10. Remove the citation "38 U.S.C. 223" and add in its place "38 U.S.C. 515(a)", wherever it appears.

11. Remove the citation "38 U.S.C. 236" and add in its place "38 U.S.C. 515(b)", wherever it appears.

12. Remove the citation "38 U.S.C. 4116(e)" and add in its place "38 U.S.C. 7316(e)", wherever it appears.

13. Remove the citation "38 U.S.C. 210, 212" and add in its place "38 U.S.C. 501, 512", wherever it appears.

14. Remove the citation "38 U.S.C. 629(c)(1)" and add in its place "38 U.S.C. 1729(c)(1)", wherever it appears.

15. Remove the citation "38 U.S.C. 3301" and add in its place "38 U.S.C. 5701", wherever it appears.

16. Remove the citation "38 U.S.C. 3305" and add in its place "38 U.S.C. 5705", wherever it appears.

17. Remove the citation "38 U.S.C. 218(a)(3)" and add in its place "38 U.S.C. 901", wherever it appears.

18. Remove the citation "38 U.S.C. 210(c), 212, 1803(c)(1), 1819(f)" and add in its place "38 U.S.C. 501, 512, 2404", wherever it appears.

19. Remove the citation "38 U.S.C. 212" and add in its place "38 U.S.C. 512", wherever it appears.

20. Remove the citation "section 210(c)(2)" and add in its place "section 503(a)", wherever it appears.

21. Remove the citation "section 210(c)(3)" and add in its place "section 503(b)", wherever it appears.

22. Remove the citation "38 U.S.C. 210, 212(a)" and add in its place "38 U.S.C. 501, 512(a)", wherever it appears.

23. Remove the citation "38 U.S.C. 5053" and add in its place "38 U.S.C. 8153", wherever it appears.

**PART 3—ADJUDICATION**

1. Remove the citation "38 U.S.C. 412" and add in its place "38 U.S.C. 1312", wherever it appears.

2. Remove the citation "38 U.S.C. 801(a)" and add in its place "38 U.S.C. 2101(a)", wherever it appears.

3. Remove the citation "38 U.S.C. 801(b)" and add in its place "38 U.S.C. 2101(b)", wherever it appears.

4. Remove the citation "38 U.S.C. 3021" and add in its place "38 U.S.C. 5121", wherever it appears.

5. Remove the citation "38 U.S.C. 501(a)" and add in its place "38 U.S.C. 1501(a)", wherever it appears.

6. Remove the citation "38 U.S.C. 541" and add in its place "38 U.S.C. 1541", wherever it appears.

7. Remove the citation "38 U.S.C. 512, 536" and add in its place "38 U.S.C. 1512, 1536", wherever it appears.

8. Remove the citation "38 U.S.C. 642" and add in its place "38 U.S.C. 1742", wherever it appears.

9. Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501", wherever it appears.

10. Remove the citation "38 U.S.C. 110 and 359" and add in its place "38 U.S.C. 110 and 1159", wherever it appears.

11. Remove the citation "38 U.S.C. 521, 541 and 542" and add in its place "38 U.S.C. 1521, 1541 and 1542", wherever it appears.

12. Remove the citation "38 U.S.C. 512" and add in its place "38 U.S.C. 1512", wherever it appears.

13. Remove the citation "38 U.S.C. 521 and 522" and add in its place "38 U.S.C. 1521 and 1522", wherever it appears.

14. Remove the citation "38 U.S.C. 521(b)" and add in its place "38 U.S.C. 1521(b)", wherever it appears.

15. Remove the citation "38 U.S.C. 521(j)" and add in its place "38 U.S.C. 1521(j)", wherever it appears.

16. Remove the citation "38 U.S.C. 502(a)" and add in its place "38 U.S.C. 1502(a)", wherever it appears.

17. Remove the citation "38 U.S.C. 511" and add in its place "38 U.S.C. 1511", wherever it appears.

18. Remove the citation "38 U.S.C. 534 and 535" and add in its place "38 U.S.C. 1534 and 1535", wherever it appears.

19. Remove the citation "38 U.S.C. 536, 537" and add in its place "38 U.S.C. 1536, 1537", wherever it appears.

20. Remove the citation "38 U.S.C. 541, 542 or 543" and add in its place "38 U.S.C. 1541, 1542 or 1543", wherever it appears.

21. Remove the citation "38 U.S.C. 541(a)" and add in its place "38 U.S.C. 1541(a)", wherever it appears.

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22. Remove the citation "38 U.S.C. 541 and 542" and add in its place "38 U.S.C. 1541 and 1542", wherever it appears.
23. Remove the citation "38 U.S.C. 310, 331" and add in its place "38 U.S.C. 1110, 1131", wherever it appears.
24. Remove the citation "38 U.S.C. 315" and add in its place "38 U.S.C. 1115", wherever it appears.
25. Remove the citation "38 U.S.C. 724" and add in its place "38 U.S.C. 1924", wherever it appears.
26. Remove the citation "38 U.S.C. 321, 341" and add in its place "38 U.S.C. 1121, 1141", wherever it appears.
27. Remove the citation "38 U.S.C. 417" and add in its place "38 U.S.C. 1317", wherever it appears.
28. Remove the citation "38 U.S.C. 411(a)" and add in its place "38 U.S.C. 1311(a)", wherever it appears.
29. Remove the citation "38 U.S.C. 421" and add in its place "38 U.S.C. 1321", wherever it appears.
30. Remove the citation "38 U.S.C. 411(b)" and add in its place "38 U.S.C. 1311(b)", wherever it appears.
31. Remove the citation "38 U.S.C. 411(c)" and add in its place "38 U.S.C. 1311(c)", wherever it appears.
32. Remove the citation "38 U.S.C. 411(d)" and add in its place "38 U.S.C. 1311(d)", wherever it appears.
33. Remove the citation "38 U.S.C. 3103(c)" and add in its place "38 U.S.C. 5303(c)", wherever it appears.
34. Remove the citation "38 U.S.C. 352, 504" and add in its place "38 U.S.C. 1152, 1504", wherever it appears.
35. Remove the citation "38 U.S.C. 3010" and add in its place "38 U.S.C. 5110", wherever it appears.
36. Remove the citation "38 U.S.C. 357" and add in its place "38 U.S.C. 1157", wherever it appears.
37. Remove the citation "38 U.S.C. 418" and add in its place "38 U.S.C. 1318", wherever it appears.
38. Remove the citation "38 U.S.C. 3103(b)" and add in its place "38 U.S.C. 5303(b)", wherever it appears.
39. Remove the citation "38 U.S.C. 3103A" and add in its place "38 U.S.C. 5303A", wherever it appears.
40. Remove the citation "38 U.S.C. 521" and add in its place "38 U.S.C. 1521", wherever it appears.
41. Remove the citation "38 U.S.C. 3110" and add in its place "38 U.S.C. 5310", wherever it appears.
42. Remove the citation "38 U.S.C. 3011(c)" and add in its place "38 U.S.C. 5111(c)", wherever it appears.
43. Remove the citation "section 418" and add in its place "section 1318", wherever it appears.
44. Remove the citation "38 U.S.C. 418" and add in its place "38 U.S.C. 1318", wherever it appears.
45. Remove the citation "38 U.S.C. 521 and 542" and add in its place "38 U.S.C. 1521 and 1542", wherever it appears.
46. Remove the citation "38 U.S.C. 3112" and add in its place "38 U.S.C. 5312", wherever it appears.
47. Remove the citation "38 U.S.C. 521(b) or (c)" and add in its place "38 U.S.C. 1521(b) or (c)", wherever it appears.
48. Remove the citation "38 U.S.C. 521(d)" and add in its place "38 U.S.C. 1521(d)", wherever it appears.
49. Remove the citation "38 U.S.C. 521(e)" and add in its place "38 U.S.C. 1521(e)", wherever it appears.
50. Remove the citation "38 U.S.C. 521(f)" and add in its place "38 U.S.C. 1521(f)", wherever it appears.
51. Remove the citation "38 U.S.C. 541(b) or (c)" and add in its place "38 U.S.C. 1541(b) or (c)", wherever it appears.
52. Remove the citation "38 U.S.C. 541(d)" and add in its place "38 U.S.C. 1541(d)", wherever it appears.
53. Remove the citation "38 U.S.C. 541(e)" and add in its place "38 U.S.C. 1541(e)", wherever it appears.
54. Remove the citation "38 U.S.C. 521, 541" and add in its place "38 U.S.C. 1521, 1541", wherever it appears.
55. Remove the citation "38 U.S.C. 521(g)" and add in its place "38 U.S.C. 1521(g)", wherever it appears.
56. Remove the citation "38 U.S.C. 521(b)" and add in its place "38 U.S.C. 1521(b)", wherever it appears.
57. Remove the citation "38 U.S.C. 522(b)" and add in its place "38 U.S.C. 1522(b)", wherever it appears.
58. Remove the citation "38 U.S.C. 521(c), (h)" and add in its place "38 U.S.C. 1521(c), (h)", wherever it appears.
59. Remove the citation "38 U.S.C. 543(a)(2)" and add in its place "38 U.S.C. 1543(a)(2)", wherever it appears.
60. Remove the citation "38 U.S.C. 541(c), (h)" and add in its place "38 U.S.C. 1541(c), (h)", wherever it appears.
61. Remove the citation "38 U.S.C. 542" and add in its place "38 U.S.C. 1542", wherever it appears.
62. Remove the citation "38 U.S.C. 415(b)(1)" and add in its place "38 U.S.C. 1315(b)(1)", wherever it appears.
63. Remove the citation "38 U.S.C. 415(b)(3)" and add in its place "38 U.S.C. 1315(b)(3)", wherever it appears.
64. Remove the citation "38 U.S.C. 415(c)(1)" and add in its place "38 U.S.C. 1315(c)(1)", wherever it appears.
65. Remove the citation "38 U.S.C. 415(c)(3)" and add in its place "38 U.S.C. 1315(c)(3)", wherever it appears.
66. Remove the citation "38 U.S.C. 415(d)(1)" and add in its place "38 U.S.C. 1315(d)(1)", wherever it appears.
67. Remove the citation "38 U.S.C. 415(g)" and add in its place "38 U.S.C. 1315(g)", wherever it appears.
68. Remove the citation "38 U.S.C. 3112(a)" and add in its place "38 U.S.C. 5312(a)", wherever it appears.
69. Remove the citation "38 U.S.C. 3112(b)(1)" and add in its place "38 U.S.C. 5312(b)(1)", wherever it appears.
70. Remove the citation "38 U.S.C. 3112(c)(1)" and add in its place "38 U.S.C. 5312(c)(1)", wherever it appears.
71. Remove the citation "38 U.S.C. 3112(c)(2)" and add in its place "38 U.S.C. 5312(c)(2)", wherever it appears.
72. Remove the citation "38 U.S.C. 521, 541 or 542" and add in its place "38 U.S.C. 1521, 1541 or 1542", wherever it appears.
73. Remove the citation "38 U.S.C. 3023" and add in its place "38 U.S.C. 5123", wherever it appears.
74. Remove the citation "38 U.S.C. 508" and add in its place "38 U.S.C. 1508", wherever it appears.
75. Remove the citation "38 U.S.C. 3105" and add in its place "38 U.S.C. 5305", wherever it appears.
76. Remove the citation "38 U.S.C. 3011(c)" and add in its place "38 U.S.C. 5111(c)", wherever it appears.
77. Remove the citation "38 U.S.C. 532(d), 534(c), 536(c), 541(e), 541(f)" and add in its place "38 U.S.C. 1532(d), 1534(c), 1536(c), 1541(e), 1541(f)", wherever it appears.
78. Remove the citation "38 U.S.C. 302" and add in its place "38 U.S.C. 1102", wherever it appears.
79. Remove the citation "38 U.S.C. 410(a)" and add in its place "38 U.S.C. 1310(a)", wherever it appears.
80. Remove the citation "38 U.S.C. 404" and add in its place "38 U.S.C. 1304", wherever it appears.
81. Remove the citation "section 418" and add in its place "section 1318", wherever it appears.
82. Remove the citation "38 U.S.C. 210(c), 521(c), 541(c)" and add in its place "38 U.S.C. 501, 1521(c), 1541(c)", wherever it appears.
83. Remove the citation "38 U.S.C. 1766" and add in its place "38 U.S.C. 3566", wherever it appears.
84. Remove the citation "38 U.S.C. 101(4), 210(c)" and add in its place "38 U.S.C. 101(4), 501", wherever it appears.
85. Remove the citation "38 U.S.C. 521(h)(2)" and add in its place "38 U.S.C. 1521(h)(2)", wherever it appears.
86. Remove the citation "38 U.S.C. 3503 or 3504" and add in its place "38 U.S.C. 6103 or 6104", wherever it appears.
87. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.



88. Remove the citation "38 U.S.C. 3503" and add in its place "38 U.S.C. 6103", wherever it appears.
89. Remove the citation "38 U.S.C. 3504" and add in its place "38 U.S.C. 6104", wherever it appears.
90. Remove the citation "38 U.S.C. 212(a)" and add in its place "38 U.S.C. 512(a)", wherever it appears.
91. Remove the citation "38 U.S.C. 3004" and add in its place "38 U.S.C. 5104", wherever it appears.
92. Remove the citation "38 U.S.C. 3012(b)(6)" and add in its place "38 U.S.C. 5112(b)(6)", wherever it appears.
93. Remove the citation "38 U.S.C. 3012(b)(5)" and add in its place "38 U.S.C. 5112(b)(5)", wherever it appears.
94. Remove the citation "38 U.S.C. 3012" and add in its place "38 U.S.C. 5112", wherever it appears.
95. Remove the citation "38 U.S.C. 3106(a)" and add in its place "38 U.S.C. 5306(a)", wherever it appears.
96. Remove the citation "38 U.S.C. 3106(b)" and add in its place "38 U.S.C. 5306(b)", wherever it appears.
97. Remove the citation "38 U.S.C. 3003(a)" and add in its place "38 U.S.C. 5103(a)", wherever it appears.
98. Remove the citation "38 U.S.C. 3010(g)" and add in its place "38 U.S.C. 5110(g)", wherever it appears.
99. Remove the citation "38 U.S.C. 3002" and add in its place "38 U.S.C. 5102", wherever it appears.
100. Remove the citation "38 U.S.C. 3001(a)" and add in its place "38 U.S.C. 5101(a)", wherever it appears.
101. Remove the citation "38 U.S.C. 3010(b)(3)" and add in its place "38 U.S.C. 5110(b)(3)", wherever it appears.
102. Remove the citation "38 U.S.C. 3001(a)" and add in its place "38 U.S.C. 5101(a)", wherever it appears.
103. Remove the citation "38 U.S.C. 3001(b)(1)" and add in its place "38 U.S.C. 5101(b)(1)", wherever it appears.
104. Remove the citation "38 U.S.C. 3001(b)(2)" and add in its place "38 U.S.C. 5101(b)(2)", wherever it appears.
105. Remove the citation "38 U.S.C. 3001(e)" and add in its place "38 U.S.C. 5110(e)", wherever it appears.
106. Remove the citation "38 U.S.C. 3005" and add in its place "38 U.S.C. 5105", wherever it appears.
107. Remove the citation "38 U.S.C. 351" and add in its place "38 U.S.C. 1151", wherever it appears.
108. Remove the citation "38 U.S.C. 3010(a)" and add in its place "38 U.S.C. 5110(a)", wherever it appears.
109. Remove the citation "38 U.S.C. 3007" and add in its place "38 U.S.C. 5107", wherever it appears.
110. Remove the citation "38 U.S.C. 784" and add in its place "38 U.S.C. 1984", wherever it appears.
111. Remove the citation "38 U.S.C. 415 (b), (c), or (d)" and add in its place "38 U.S.C. 1315 (b), (c), or (d)", wherever it appears.
112. Remove the citation "38 U.S.C. 415(d)" and add in its place "38 U.S.C. 1315(d)", wherever it appears.
113. Remove the citation "38 U.S.C. 415" and add in its place "38 U.S.C. 1315", wherever it appears.
114. Remove the citation "38 U.S.C. 521, 541, 542" and add in its place "38 U.S.C. 1521, 1541, 1542", wherever it appears.
115. Remove the citation "38 U.S.C. 543" and add in its place "38 U.S.C. 1543", wherever it appears.
116. Remove the citation "38 U.S.C. 521(c)" and add in its place "38 U.S.C. 1521(c)", wherever it appears.
117. Remove the citation "38 U.S.C. 521(c)" and add in its place "38 U.S.C. 1521(c)", wherever it appears.
118. Remove the citation "section 542" and add in its place "section 1542", wherever it appears.
119. Remove the citation "38 U.S.C. 521(d)(1)" and add in its place "38 U.S.C. 1521(d)(1)", wherever it appears.
120. Remove the citation "38 U.S.C. 521 (b)(3) or (c)(3)" and add in its place "38 U.S.C. 1521 (b)(3) or (c)(3)", wherever it appears.
121. Remove the citation "38 U.S.C. 521(d)(2)" and add in its place "38 U.S.C. 1521(d)(2)", wherever it appears.
122. Remove the citation "38 U.S.C. 415(e) and 506(a)" and add in its place "38 U.S.C. 1351(e) and 1506(a)", wherever it appears.
123. Remove the citation "38 U.S.C. 415(g)(2); 503(b)" and add in its place "38 U.S.C. 1315(g)(2), 1503(b)", wherever it appears.
124. Remove the citation "38 U.S.C. 412(a)" and add in its place "38 U.S.C. 1312(a)", wherever it appears.
125. Remove the citation "38 U.S.C. 521(f)" and add in its place "38 U.S.C. 1521(f)", wherever it appears.
126. Remove the citation "38 U.S.C. 415(g), 503(a)(6)" and add in its place "38 U.S.C. 1315(g), 1503(a)(6)", wherever it appears.
127. Remove the citation "38 U.S.C. 503(15)" and add in its place "38 U.S.C. 1503(15)", wherever it appears.
128. Remove the citation "38 U.S.C. 503(a)(10)" and add in its place "38 U.S.C. 1503(a)(10)", wherever it appears.
129. Remove the citation "38 U.S.C. 415(g)" and add in its place "38 U.S.C. 1315(g)", wherever it appears.
130. Remove the citation "38 U.S.C. 503(a)(14)" and add in its place "38 U.S.C. 1503(a)(14)", wherever it appears.
131. Remove the citation "38 U.S.C. 415(g)(3); 503(c); 521(f)" and add in its place "38 U.S.C. 1315(g)(3), 1503(c), 1521(f)", wherever it appears.
132. Remove the citation "38 U.S.C. 503(a)(7)" and add in its place "38 U.S.C. 1503(a)(7)", wherever it appears.
133. Remove the citation "38 U.S.C. 503(a)(9)" and add in its place "38 U.S.C. 1503(a)(9)", wherever it appears.
134. Remove the citation "38 U.S.C. 503(a)(1)" and add in its place "38 U.S.C. 1503(a)(1)", wherever it appears.
135. Remove the citation "38 U.S.C. 210(c), 503(a)(1)" and add in its place "38 U.S.C. 501, 1503(a)(1)", wherever it appears.
136. Remove the citation "38 U.S.C. 503(a)(2)" and add in its place "38 U.S.C. 1503(a)(2)", wherever it appears.
137. Remove the citation "38 U.S.C. 503(a)(5)" and add in its place "38 U.S.C. 1503(a)(5)", wherever it appears.
138. Remove the citation "38 U.S.C. 503(a)(6)" and add in its place "38 U.S.C. 1503(a)(6)", wherever it appears.
139. Remove the citation "38 U.S.C. 503(a)(7)" and add in its place "38 U.S.C. 1503(a)(7)", wherever it appears.
140. Remove the citation "38 U.S.C. 503(a)(3)" and add in its place "38 U.S.C. 1503(a)(3)", wherever it appears.
141. Remove the citation "38 U.S.C. 503(a)(4)" and add in its place "38 U.S.C. 1503(a)(4)", wherever it appears.
142. Remove the citation "38 U.S.C. 618" and add in its place "38 U.S.C. 1718", wherever it appears.
142. Remove the citation "38 U.S.C. 618(f)" and add in its place "38 U.S.C. 1718(f)", wherever it appears.
143. Remove the citation "38 U.S.C. 521(h), 541(g)" and add in its place "38 U.S.C. 1521(h), 1541(g)", wherever it appears.
144. Remove the citation "38 U.S.C. 522(a)" and add in its place "38 U.S.C. 1522(a)", wherever it appears.
145. Remove the citation "38 U.S.C. 543(a)(1)" and add in its place "38 U.S.C. 1543(a)(1)", wherever it appears.
146. Remove the citation "38 U.S.C. 543(a)(2)" and add in its place "38 U.S.C. 1543(a)(2)", wherever it appears.
147. Remove the citation "38 U.S.C. 543(b)" and add in its place "38 U.S.C. 1543(b)", wherever it appears.
148. Remove the citation "38 U.S.C. 506(a)" and add in its place "38 U.S.C. 1506(a)", wherever it appears.
149. Remove the citation "38 U.S.C. 105, 310, 321, 331, 401, and 521(a)" and add in its place "38 U.S.C. 105, 1110, 1121, 1131, 1301, and 1521(a)", wherever it appears.
150. Remove the citation "38 U.S.C. 311" and add in its place "38 U.S.C. 1111", wherever it appears.

151. Remove the citation "38 U.S.C. 354(b)" and add in its place "38 U.S.C. 1154(b)", wherever it appears.

152. Remove the citation "38 U.S.C. 353" and add in its place "38 U.S.C. 1153", wherever it appears.

153. Remove the citation "38 U.S.C. 354" and add in its place "38 U.S.C. 1154", wherever it appears.

154. Remove the citation "38 U.S.C. 312" and add in its place "38 U.S.C. 1112", wherever it appears.

155. Remove the citation "38 U.S.C. 313" and add in its place "38 U.S.C. 1113", wherever it appears.

156. Remove the citation "38 U.S.C. 333" and add in its place "38 U.S.C. 1133", wherever it appears.

157. Remove the citation "38 U.S.C. 210(c), 310–331" and add in its place "38 U.S.C. 501, 1110–1131", wherever it appears.

158. Remove the citation "38 U.S.C. 501(a)" and add in its place "38 U.S.C. 1501(a)", wherever it appears.

159. Remove the citation "38 U.S.C. 210(c)(1)" and add in its place "38 U.S.C. 501", wherever it appears.

160. Remove the citation "38 U.S.C. 502(b), (c), 512" and add in its place "38 U.S.C. 1502(b), 1502(c), 1512", wherever it appears.

161. Remove the citation "38 U.S.C. 521(g)(2)" and add in its place "38 U.S.C. 1521(g)(2)", wherever it appears.

162. Remove the citation "38 U.S.C. 541(a) and 542(a)" and add in its place "38 U.S.C. 1541(a) and 1542(a)", wherever it appears.

163. Remove the citation "8 U.S.C. 502(a), 523(a)" and add in its place "38 U.S.C. 1502(a), 1523(a)", wherever it appears.

164. Remove the citation "38 U.S.C. 502(b), (c), 521" and add in its place "38 U.S.C. 1502(b), 1502(c), 1521", wherever it appears.

165. Remove the citation "sec. 5202(b)" and add in its place "sec. 8502(b)", wherever it appears.

166. Remove the citation "38 U.S.C. 1802, 1807, 1818" and add in its place "38 U.S.C. 3702, 3707", wherever it appears.

167. Remove the citation "38 U.S.C. 3103A" and add in its place "38 U.S.C. 5303A", wherever it appears.

168. Remove the citation "38 U.S.C. 1411(a)(1)(A)(ii), 1412(b)(1), 1602(1)(A), 1652(a)" and add in its place "38 U.S.C. 3011(a)(1)(A)(ii), 3012(b)(1), 3202(1)(A), 3452(a)", wherever it appears.

169. Remove the citation "38 U.S.C. 355" and add in its place "38 U.S.C. 1155", wherever it appears.

170. Remove the citation "38 U.S.C. 314 and 315" and add in its place "38 U.S.C. 1114 and 1115", wherever it appears.

171. Remove the citation "38 U.S.C. 3009, 3301(b)(1)" and add in its place "38 U.S.C. 5109, 5701(b)(1)", wherever it appears.

172. Remove the citation "38 U.S.C. 3113(c)" and add in its place "38 U.S.C. 5313(c)", wherever it appears.

173. Remove the citation "38 U.S.C. 363" and add in its place "38 U.S.C. 1163", wherever it appears.

174. Remove the citation "38 U.S.C. 502(a)" and add in its place "38 U.S.C. 1502(a)", wherever it appears.

175. Remove the citation "38 U.S.C. 502(a)(2)" and add in its place "38 U.S.C. 1502(a)(2)", wherever it appears.

176. Remove the citation "38 U.S.C. 363(a)" and add in its place "38 U.S.C. 1163(a)", wherever it appears.

177. Remove the citation "38 U.S.C. 314" and add in its place "38 U.S.C. 1114", wherever it appears.

178. Remove the citation "38 U.S.C. 314(k)" and add in its place "38 U.S.C. 1114(k)", wherever it appears.

179. Remove the citation "38 U.S.C. 314(l)" and add in its place "38 U.S.C. 1114(l)", wherever it appears.

180. Remove the citation "38 U.S.C. 314(a)" and add in its place "38 U.S.C. 1114(a)", wherever it appears.

181. Remove the citation "38 U.S.C. 314(o)" and add in its place "38 U.S.C. 1114(o)", wherever it appears.

182. Remove the citation "38 U.S.C. 315" and add in its place "38 U.S.C. 1115", wherever it appears.

183. Remove the citation "38 U.S.C. 314(r)" and add in its place "38 U.S.C. 1114(r)", wherever it appears.

184. Remove the citation "38 U.S.C. 314(m)" and add in its place "38 U.S.C. 1114(m)", wherever it appears.

185. Remove the citation "38 U.S.C. 314(n)" and add in its place "38 U.S.C. 1114(n)", wherever it appears.

186. Remove the citation "38 U.S.C. 314(p)" and add in its place "38 U.S.C. 1114(p)", wherever it appears.

187. Remove the citation "38 U.S.C. 314(r)(1)" and add in its place "38 U.S.C. 1114(r)(1)", wherever it appears.

188. Remove the citation "38 U.S.C. 314(r)(2)" and add in its place "38 U.S.C. 1114(r)(2)", wherever it appears.

189. Remove the citation "38 U.S.C. 314(s)" and add in its place "38 U.S.C. 1114(s)", wherever it appears.

190. Remove the citation "38 U.S.C. 521(d), (e)" and add in its place "38 U.S.C. 1521(d), (e)", wherever it appears.

191. Remove the citation "38 U.S.C. 315(1)(I)" and add in its place "38 U.S.C. 1115(1)(I)", wherever it appears.

192. Remove the citation "38 U.S.C. 411(c), 415(h)" and add in its place "38 U.S.C. 1311(c), 1315(h)", wherever it appears.

193. Remove the citation "38 U.S.C. 541(d)" and add in its place "38 U.S.C. 1541(d)", wherever it appears.

194. Remove the citation "38 U.S.C. 322" and add in its place "38 U.S.C. 1122", wherever it appears.

195. Remove the citation "38 U.S.C. 502(b)" and add in its place "38 U.S.C. 1502(b)", wherever it appears.

196. Remove the citation "38 U.S.C. 521(e)" and add in its place "38 U.S.C. 1521(e)", wherever it appears.

197. Remove the citation "38 U.S.C. 502(c), 521(e)" and add in its place "38 U.S.C. 1502(c), 1521(e)", wherever it appears.

198. Remove the citation "38 U.S.C. 541(e)" and add in its place "38 U.S.C. 1541(e)", wherever it appears.

199. Remove the citation "38 U.S.C. 210(c), 314(r)(2)" and add in its place "38 U.S.C. 501, 1141(r)(2)", wherever it appears.

200. Remove the citation "38 U.S.C. 722" and add in its place "38 U.S.C. 1922", wherever it appears.

201. Remove the citation "38 U.S.C. 3103(b)" and add in its place "38 U.S.C. 5303(b)", wherever it appears.

202. Remove the citation "section 620" and add in its place "section 1720", wherever it appears.

203. Remove the citation "38 U.S.C. 612(b)(3)" and add in its place "38 U.S.C. 1712(b)(3)", wherever it appears.

204. Remove the citation "38 U.S.C. 360" and add in its place "38 U.S.C. 1160", wherever it appears.

205. Remove the citation "38 U.S.C. 3010(a)" and add in its place "38 U.S.C. 5110(a)", wherever it appears.

206. Remove the citation "38 U.S.C. 3010(j)" and add in its place "38 U.S.C. 5110(j)", wherever it appears.

207. Remove the citation "38 U.S.C. 3010(d)" and add in its place "38 U.S.C. 5110(d)", wherever it appears.

208. Remove the citation "38 U.S.C. 3010(e)" and add in its place "38 U.S.C. 5110(e)", wherever it appears.

209. Remove the citation "38 U.S.C. 502(a)" and add in its place "38 U.S.C. 1502(a)", wherever it appears.

210. Remove the citation "38 U.S.C. 3010(i)" and add in its place "38 U.S.C. 5110(i)", wherever it appears.

211. Remove the citation "38 U.S.C. 3010(c)" and add in its place "38 U.S.C. 5110(c)", wherever it appears.

212. Remove the citation "38 U.S.C. 3010(a) and 3010(b)(2)" and add in its place "38 U.S.C. 5110(a) and 5110(b)(2)", wherever it appears.

213. Remove the citation "38 U.S.C. 103(d)(3), 3010(m)" and add in its place "38 U.S.C. 103(d)(3), 5110(m)", wherever it appears.

214. Remove the citation "38 U.S.C. 210(c), 3010(b)(1)" and add in its place "38 U.S.C. 501, 5110(b)(1)", wherever it appears.

215. Remove the citation "38 U.S.C. 210(c), 3010(d)" and add in its place "38 U.S.C. 501, 5110(d)", wherever it appears.

216. Remove the citation "38 U.S.C. 3010(n)" and add in its place "38 U.S.C. 5110(n)", wherever it appears.

217. Remove the citation "38 U.S.C. 3107" and add in its place "38 U.S.C. 5307", wherever it appears.

218. Remove the citation "38 U.S.C. 3203(b)(2)" and add in its place "38 U.S.C. 5503(b)(2)", wherever it appears.

219. Remove the citation "38 U.S.C. 3203(a)" and add in its place "38 U.S.C. 5503(a)", wherever it appears.

220. Remove the citation "38 U.S.C. 3203(b)" and add in its place "38 U.S.C. 5503(b)", wherever it appears.

221. Remove the citation "38 U.S.C. 3503(e); 3504(c); 3505(a)" and add in its place "38 U.S.C. 6103(e), 6104(c), 6105(a)", wherever it appears.

222. Remove the citation "38 U.S.C. 532, 534, or 536" and add in its place "38 U.S.C. 1532, 1534, or 1536", wherever it appears.

223. Remove the citation "38 U.S.C. 3012(b)" and add in its place "38 U.S.C. 5112(b)", wherever it appears.

224. Remove the citation "38 U.S.C. 3012(a)" and add in its place "38 U.S.C. 5112(a)", wherever it appears.

225. Remove the citation "38 U.S.C. 3108(a)" and add in its place "38 U.S.C. 5308(a)", wherever it appears.

226. Remove the citation "38 U.S.C. 3503(a)" and add in its place "38 U.S.C. 6103(a)", wherever it appears.

227. Remove the citation "38 U.S.C. 101(3), 3012(b)" and add in its place "38 U.S.C. 101(3), 5112(b)", wherever it appears.

228. Remove the citation "38 U.S.C. 3012(b)(6)" and add in its place "38 U.S.C. 5112(b)(6)", wherever it appears.

229. Remove the citation "38 U.S.C. 101(4); 210(c)(1)" and add in its place "38 U.S.C. 101(4), 501", wherever it appears.

230. Remove the citation "38 U.S.C. 3504 and 3505" and add in its place "38 U.S.C. 6104 and 6105", wherever it appears.

231. Remove the citation "38 U.S.C. 5101" and add in its place "38 U.S.C. 8301", wherever it appears.

232. Remove the citation "38 U.S.C. 3012(b)(3)" and add in its place "38 U.S.C. 5112(b)(3)", wherever it appears.

233. Remove the citation "38 U.S.C. 3012(b)(2)" and add in its place "38 U.S.C. 5112(b)(2)", wherever it appears.

234. Remove the citation "38 U.S.C. 3012(b)(5)" and add in its place "38 U.S.C. 5112(b)(5)", wherever it appears.

235. Remove the citation "38 U.S.C. 3203" and add in its place "38 U.S.C. 5503", wherever it appears.

236. Remove the citation "38 U.S.C. 3012(c)" and add in its place "38 U.S.C. 5112(c)", wherever it appears.

237. Remove the citation "38 U.S.C. 3012(b)(8)" and add in its place "38 U.S.C. 5112(b)(8)", wherever it appears.

238. Remove the citation "38 U.S.C. 411(a), 3012(b)(10)" and add in its place "38 U.S.C. 1311(a), 5112(b)(10)", wherever it appears.

239. Remove the citation "38 U.S.C. 3203(a)" and add in its place "38 U.S.C. 5503(a)", wherever it appears.

240. Remove the citation "38 U.S.C. 522(c)" and add in its place "38 U.S.C. 1522(c)", wherever it appears.

241. Remove the citation "section 314(1)" and add in its place "section 1114(l)", wherever it appears.

242. Remove the citation "section 314(m)" and add in its place "section 1114(m)", wherever it appears.

243. Remove the citation "section 314(n)" and add in its place "section 1114(n)", wherever it appears.

244. Remove the citation "38 U.S.C. 413(a)" and add in its place "38 U.S.C. 1313(a)", wherever it appears.

245. Remove the citation "38 U.S.C. 413(b)" and add in its place "38 U.S.C. 1313(b)", wherever it appears.

246. Remove the citation "38 U.S.C. 3108" and add in its place "38 U.S.C. 5308", wherever it appears.

247. Remove the citation "38 U.S.C. 3109" and add in its place "38 U.S.C. 5309", wherever it appears.

248. Remove the citation "38 U.S.C. 3109(b)" and add in its place "38 U.S.C. 5309(b)", wherever it appears.

249. Remove the citation "38 U.S.C. 358" and add in its place "38 U.S.C. 1158", wherever it appears.

250. Remove the citation "38 U.S.C. 507" and add in its place "38 U.S.C. 1507", wherever it appears.

251. Remove the citation "38 U.S.C. 103(d)(2), 3104(b)(3)" and add in its place "38 U.S.C. 103(d)(2), 5304(b)(3)", wherever it appears.

252. Remove the citation "38 U.S.C. 3010(h)" and add in its place "38 U.S.C. 5110(h)", wherever it appears.

253. Remove the citation "38 U.S.C. 321 or 341" and add in its place "38 U.S.C. 1121 or 1141", wherever it appears.

254. Remove the citation "38 U.S.C. 314(a)" and add in its place "38 U.S.C. 1114(a)", wherever it appears.

255. Remove the citation "38 U.S.C. 210(c), 3113" and add in its place "38 U.S.C. 501, 5313", wherever it appears.

256. Remove the citation "38 U.S.C. 3012(b)(7)" and add in its place "38 U.S.C. 5112(b)(7)", wherever it appears.

257. Remove the citation "38 U.S.C. 3104(a)" and add in its place "38 U.S.C. 5304(a)", wherever it appears.

258. Remove the citation "38 U.S.C. 3104(c)" and add in its place "38 U.S.C. 5304(c)", wherever it appears.

259. Remove the citation "38 U.S.C. 521(i)" and add in its place "38 U.S.C. 1521(i)", wherever it appears.

260. Remove the citation "38 U.S.C. 3104" and add in its place "38 U.S.C. 5304", wherever it appears.

261. Remove the citation "38 U.S.C. 3104(b)" and add in its place "38 U.S.C. 5304(b)", wherever it appears.

262. Remove the citation "38 U.S.C. 521, 541, or 542" and add in its place "38 U.S.C. 1521, 1541, or 1542", wherever it appears.

263. Remove the citation "38 U.S.C. 412(b)" and add in its place "38 U.S.C. 1312(b)", wherever it appears.

264. Remove the citation "38 U.S.C. 512(a)" and add in its place "38 U.S.C. 1512(a)", wherever it appears.

265. Remove the citation "38 U.S.C. 536" and add in its place "38 U.S.C. 1536", wherever it appears.

266. Remove the citation "38 U.S.C. 541" and add in its place "38 U.S.C. 1541", wherever it appears.

267. Remove the citation "38 U.S.C. 536 (a) and (b) and 544" and add in its place "38 U.S.C. 1536 (a) and (b) and 1544", wherever it appears.

268. Remove the citation "38 U.S.C. 541 and 544" and add in its place "38 U.S.C. 1541 and 1544", wherever it appears.

269. Remove the citation "38 U.S.C. 3105" and add in its place "38 U.S.C. 5305", wherever it appears.

270. Remove the citation "38 U.S.C. 560, 561" and add in its place "38 U.S.C. 1560, 1561", wherever it appears.

271. Remove the citation "38 U.S.C. 562" and add in its place "38 U.S.C. 1562", wherever it appears.

272. Remove the citation "38 U.S.C. 423" and add in its place "38 U.S.C. 1323", wherever it appears.

273. Remove the citation "38 U.S.C. 1785" and add in its place "38 U.S.C. 3565", wherever it appears.

274. Remove the citation "38 U.S.C. 1701(a)" and add in its place "38 U.S.C. 3501(a)", wherever it appears.

275. Remove the citation "38 U.S.C. 1902" and add in its place "38 U.S.C. 3902", wherever it appears.

276. Remove the citation "38 U.S.C. 801(a)" and add in its place "38 U.S.C. 2101(a)", wherever it appears.

277. Remove the citation "38 U.S.C. 801, 804" and add in its place "38 U.S.C. 2101, 2104", wherever it appears.

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278. Remove the citation "38 U.S.C. 801(b)" and add in its place "38 U.S.C. 2101(b)", wherever it appears.
279. Remove the citation "38 U.S.C. 802" and add in its place "38 U.S.C. 2102", wherever it appears.
280. Remove the citation "38 U.S.C. 362" and add in its place "38 U.S.C. 1162", wherever it appears.
281. Remove the citation "38 U.S.C. 411" and add in its place "38 U.S.C. 1311", wherever it appears.
282. Remove the citation "38 U.S.C. 1731(b)" and add in its place "38 U.S.C. 3531(b)", wherever it appears.
283. Remove the citation "38 U.S.C. 418" and add in its place "38 U.S.C. 1318", wherever it appears.
284. Remove the citation "38 U.S.C. 3202" and add in its place "38 U.S.C. 5502", wherever it appears.
285. Remove the citation "38 U.S.C. 3503(d) and 3505" and add in its place "38 U.S.C. 6103(d) and 6105", wherever it appears.
286. Remove the citation "38 U.S.C. 3503(b)" and add in its place "38 U.S.C. 6103(b)", wherever it appears.
287. Remove the citation "38 U.S.C. 3504(b)" and add in its place "38 U.S.C. 6104(b)", wherever it appears.
288. Remove the citation "38 U.S.C. 3503(e)" and add in its place "38 U.S.C. 6103(e)", wherever it appears.
289. Remove the citation "38 U.S.C. 3503(a)" and add in its place "38 U.S.C. 6103(a)", wherever it appears.
290. Remove the citation "38 U.S.C. 3503" and add in its place "38 U.S.C. 6103", wherever it appears.
291. Remove the citation "38 U.S.C. 3504(c)" and add in its place "38 U.S.C. 6104(c)", wherever it appears.
292. Remove the citation "38 U.S.C. 3503 (d), (e), 3504" and add in its place "38 U.S.C. 6103(d), 6103(e), 6104", wherever it appears.
293. Remove the citation "38 U.S.C. 3505" and add in its place "38 U.S.C. 6105", wherever it appears.
294. Remove the citation "38 U.S.C. 3503(c)" and add in its place "38 U.S.C. 6103(c)", wherever it appears.
295. Remove the citation "38 U.S.C. 3505(a)" and add in its place "38 U.S.C. 6105(a)", wherever it appears.
296. Remove the citation "38 U.S.C. 3404(c)" and add in its place "38 U.S.C. 5904(c)", wherever it appears.
297. Remove the citation "38 U.S.C. 905" and add in its place "38 U.S.C. 2305", wherever it appears.
298. Remove the citation "38 U.S.C. 359" and add in its place "38 U.S.C. 1159", wherever it appears.
299. Remove the citation "38 U.S.C. 314(q) and 356" and add in its place "38 U.S.C. 1114(q) and 1156", wherever it appears.
300. Remove the citation "38 U.S.C. 3021" and add in its place "38 U.S.C. 5121", wherever it appears.
301. Remove the citation "38 U.S.C. 3021(a)(1)" and add in its place "38 U.S.C. 5121(a)(1)", wherever it appears.
302. Remove the citation "38 U.S.C. 3021(c); 3012(b)" and add in its place "38 U.S.C. 5121(c), 5112(b)", wherever it appears.
303. Remove the citation "38 U.S.C. 3203" and add in its place "38 U.S.C. 5503", wherever it appears.
304. Remove the citation "38 U.S.C. 3021(b) and 3202(d)" and add in its place "38 U.S.C. 5121(b) and 5502(d)", wherever it appears.
305. Remove the citation "38 U.S.C. 3022" and add in its place "38 U.S.C. 5122", wherever it appears.
306. Remove the citation "38 U.S.C. 3203(b)" and add in its place "38 U.S.C. 5503(b)", wherever it appears.
307. Remove the citation "38 U.S.C. 3202(d)" and add in its place "38 U.S.C. 5502(d)", wherever it appears.
308. Remove the citation "38 U.S.C. 210, 902–905" and add in its place "38 U.S.C. 501, 2302–2305", wherever it appears.
309. Remove the citation "38 U.S.C. 907" and add in its place "38 U.S.C. 2307", wherever it appears.
310. Remove the citation "38 U.S.C. 902" and add in its place "38 U.S.C. 2302", wherever it appears.
311. Remove the citation "38 U.S.C. 902(a)" and add in its place "38 U.S.C. 2302(a)", wherever it appears.
312. Remove the citation "38 U.S.C. 210(c), 902" and add in its place "38 U.S.C. 501, 2302", wherever it appears.
313. Remove the citation "38 U.S.C. 903(a)" and add in its place "38 U.S.C. 2303(a)", wherever it appears.
314. Remove the citation "38 U.S.C. 601(4)" and add in its place "38 U.S.C. 1701(4)", wherever it appears.
314a. Remove the citation "38 U.S.C. 610 or 611(a)" and add in its place "38 U.S.C. 1710 or 1711(a)", wherever it appears.
315. Remove the citation "38 U.S.C. 620" and add in its place "38 U.S.C. 1720", wherever it appears.
316. Remove the citation "38 U.S.C. 903(b)" and add in its place "38 U.S.C. 2303(b)", wherever it appears.
317. Remove the citation "38 U.S.C. 903(b)(2)" and add in its place "38 U.S.C. 2303(b)(2)", wherever it appears.
318. Remove the citation "38 U.S.C. 902; 907" and add in its place "38 U.S.C. 2302, 2307", wherever it appears.
319. Remove the citation "38 U.S.C. 902(b)" and add in its place "38 U.S.C. 2302(b)", wherever it appears.
320. Remove the citation "38 U.S.C. 3504(c)(2), 3505(a)" and add in its place "38 U.S.C. 5904(c)(2), 5905(a)", wherever it appears.
321. Remove the citation "38 U.S.C. 906(d)" and add in its place "38 U.S.C. 2306(d)", wherever it appears.

**PART 4—SCHEDULE FOR RATING DISABILITIES**

1. Remove the citation "38 U.S.C. 355" and add in its place 38 U.S.C. 1155", wherever it appears.
2. Remove the citation "38 U.S.C. 210c" and add in its place 38 "U.S.C. 501" wherever it appears.
3. Remove the citation "38 U.S.C. 1502" and add in its place "38 U.S.C. 3102", wherever it appears.
4. Remove the citation "38 U.S.C. 315" and add in its place "38 U.S.C. 1115", wherever it appears.
5. Remove the citation "38 U.S.C. 314(L)" and add in its place "38 U.S.C. 1114(L)", wherever it appears.

**PART 6—UNITED STATES GOVERNMENT LIFE INSURANCE**

1. Remove the citation "section 781" and add in its place "section 1981", wherever it appears.
2. Remove the citation "section 742(b)" and add in its place "section 1942(b)", wherever it appears.
3. Remove the citation "38 U.S.C. 752(b)" and add in its place "38 U.S.C. 1952(b)", wherever it appears.
4. Remove the citation "section 752(b)" and add in its place "section 1952(b)", wherever it appears.
5. Remove the citation "section 748" and add in its place "section 1948", wherever it appears.
6. Remove the citation "Sections 721 and 757" and add in its place "Sections 1921 and 1957", wherever it appears.
7. Remove the citation "38 U.S.C. 210, 740–760, 781–788" and add in its place "38 U.S.C. 501, 1940–1960, 1981–1988", wherever it appears.
8. Remove the citation "38 U.S.C. 744" and add in its place "38 U.S.C. 1944", wherever it appears.
9. Remove the citation "38 U.S.C. 716" and add in its place "38 U.S.C. 1916", wherever it appears.
10. Remove the citation "section 746" and add in its place "section 1946", wherever it appears.
11. Remove the citation "38 U.S.C. 3101" and add in its place "38 U.S.C. 5301", wherever it appears.
12. Remove the citation "38 U.S.C. 752" and add in its place "38 U.S.C. 1952", wherever it appears.
13. Remove the citation "38 U.S.C. 706" and add in its place "38 U.S.C. 1906", wherever it appears.



14. Remove the citation "section 744" and add in its place "section 1944", wherever it appears.
15. Remove the citation "8 U.S.C. 761" and add in its place "38 U.S.C. 1961", wherever it appears.
16. Remove the citation "section 763" and add in its place "section 1963", wherever it appears.
17. Remove the citation "38 U.S.C. 763" and add in its place "38 U.S.C. 1963", wherever it appears.
18. Remove the citation "38 U.S.C. 744, 759" and add in its place "38 U.S.C. 1944, 1959", wherever it appears.
19. Remove the citation "section 760" and add in its place "section 1960", wherever it appears.
20. Remove the citation "38 U.S.C. 742 and 748" and add in its place "38 U.S.C. 1942 and 1948", wherever it appears.
21. Remove the citation "section 724" and add in its place "section 1924", wherever it appears.
22. Remove the citation "38 U.S.C. 746" and add in its place "38 U.S.C. 1946", wherever it appears.
23. Remove the citation "38 U.S.C. 750" and add in its place "38 U.S.C. 1950", wherever it appears.
24. Remove the citation "38 U.S.C. 784" and add in its place "38 U.S.C. 1984", wherever it appears.
25. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.
26. Remove the citation "38 U.S.C. 3202(a)" and add in its place "38 U.S.C. 5502(a)", wherever it appears.
27. Remove the citation "section 742(c)" and add in its place "section 1942(c)", wherever it appears.
28. Remove the citation "section 757" and add in its place "section 1957", wherever it appears.
29. Remove the citation "section 784" and add in its place "section 1984", wherever it appears.
30. Remove the citation "section 753" and add in its place "section 1953", wherever it appears.

**PART 8—NATIONAL SERVICE LIFE INSURANCE**

1. Remove the citation "section 717(e)" and add in its place "section 1917(e)", wherever it appears.
2. Remove the citation "section 712" and add in its place "section 1912", wherever it appears.
3. Remove the citation "section 722(a)" and add in its place "section 1922(a)", wherever it appears.
4. Remove the citation "section 723(b)" and add in its place "section 1923(b)", wherever it appears.
5. Remove the citation "section 725" and add in its place "section 1925", wherever it appears.
6. Remove the citation "38 U.S.C. 725" and add in its place "38 U.S.C. 1925", wherever it appears.
7. Remove the citation "38 U.S.C. 717(e)" and add in its place "38 U.S.C. 1917(e)", wherever it appears.
8. Remove the citation "section 715" and add in its place "section 1915", wherever it appears.
9. Remove the citation "section 781" and add in its place "section 1981", wherever it appears.
10. Remove the citation "section 704(b)" and add in its place "section 1904(b)", wherever it appears.
11. Remove the citation "section 724" and add in its place "section 1924", wherever it appears.
12. Remove the citation "section 722(b)" and add in its place "section 1922(b)", wherever it appears.
13. Remove the citation "38 U.S.C. 210, 701–724, 781–788" and add in its place "38 U.S.C. 501, 1901–1924, 1981–1988", wherever it appears.
14. Remove the citation "38 U.S.C. 602" and add in its place "38 U.S.C. 1702", wherever it appears.
15. Remove the citation "section 704(d)" and add in its place "section 1904(d)", wherever it appears.
16. Remove the citation "38 U.S.C. 704(d) and (e)" and add in its place "38 U.S.C. 1904(d) and (e)", wherever it appears.
17. Remove the citation "38 U.S.C. 712" and add in its place "38 U.S.C. 1912", wherever it appears.
18. Remove the citation "38 U.S.C. 704(b)" and add in its place "38 U.S.C. 1904(b)", wherever it appears.
19. Remove the citation "38 U.S.C. 702 and 706" and add in its place "38 U.S.C. 1902 and 1906", wherever it appears.
20. Remove the citation "38 U.S.C. 704(c)" and add in its place "38 U.S.C. 1904(c)", wherever it appears.
21. Remove the citation "38 U.S.C. 722(a)" and add in its place "38 U.S.C. 1922(a)", wherever it appears.
22. Remove the citation "38 U.S.C. 723(b)" and add in its place "38 U.S.C. 1923(b)", wherever it appears.
23. Remove the citation "38 U.S.C. 704, 706" and add in its place "38 U.S.C. 1904, 1906", wherever it appears.
24. Remove the citation "38 U.S.C. 725(b)" and add in its place "38 U.S.C. 1925(b)", wherever it appears.
25. Remove the citation "38 U.S.C. 725(c)" and add in its place "38 U.S.C. 1925(c)", wherever it appears.
26. Remove the citation "38 U.S.C. 704" and add in its place "38 U.S.C. 1904", wherever it appears.
27. Remove the citation "38 U.S.C. 781" and add in its place "38 U.S.C. 1981", wherever it appears.
28. Remove the citation "section 3202(f)" and add in its place "section 5502(f)", wherever it appears.
29. Remove the citation "38 U.S.C. 708" and add in its place "38 U.S.C. 1908", wherever it appears.
30. Remove the citation "38 U.S.C. 704 and 706" and add in its place "38 U.S.C. 1904 and 1906", wherever it appears.
31. Remove the citation "sections 704(c) and 722(a)" and add in its place "sections 1904(c) and 1922(a)", wherever it appears.
32. Remove the citation "38 U.S.C. 723(b) and 725" and add in its place "38 U.S.C. 1923(b) and 1925", wherever it appears.
33. Remove the citation "38 U.S.C. 797(c)" and add in its place "38 U.S.C. 1907(a)", wherever it appears.
34. Remove the citation "section 707(b)" and add in its place "section 1907(b)", wherever it appears.
35. Remove the citation "38 U.S.C. 702 and 706" and add in its place "38 U.S.C. 1902 and 1906", wherever it appears.
36. Remove the citation "38 U.S.C. 704(c)" and add in its place "section 1904(c)", wherever it appears.
37. Remove the citation "38 U.S.C. 704 and 723" and add in its place "38 U.S.C. 1904 and 1923", wherever it appears.
38. Remove the citation "section (c), (d), and (e)" and add in its place "section 1904((c), (d), and (e)", wherever it appears.
39. Remove the citation "38 U.S.C. 602(c) (2)" and add it its place "38 U.S.C. 0702(c) (2)", wherever it appears.
40. Remove the citation "section 725(c)" and add in its place "section 1925(c)", wherever it appears.
41. Remove the citation "38 U.S.C. 706" and add in its place "38 U.S.C. 1906", wherever it appears.
42. Remove the citation "38 U.S.C. 724" and add in its place "38 U.S.C. 1924", wherever it appears.
43. Remove the citation "38 U.S.C. 704(b)" and add in its place "38 U.S.C. 1904(b)", wherever it appears.
44. Remove the citation "sections 712 or 724" and add in its place "sections 1912 or 1924", wherever it appears.
45. Remove the citation "section 704(d)" and add in its place "38 U.S.C. 1904(d)", wherever it appears.
46. Remove the citation "38 U.S.C. 717(d)" and add in its place "38 U.S.C. 1917(d)", wherever it appears.
47. Remove the citation "section 707" and add in its place "section 1907", wherever it appears.
48. Remove the citation "sec. 3101(c)" and add in its place "sec. 5301(c)", wherever it appears.

49. Remove the citation "38 U.S.C. 3101" and add in its place "38 U.S.C. 5301", wherever it appears.

50. Remove the citation "section 716(b)" and add in its place "section 1916(b)", wherever it appears.

51. Remove the citation "38 U.S.C. 704 and 705" and add in its place "38 U.S.C. 1904 and 1905", wherever it appears.

52. Remove the citation "38 U.S.C. 712(b)" and add in its place "38 U.S.C. 1912(b)", wherever it appears.

53. Remove the citation "38 U.S.C. 784" and add in its place "38 U.S.C. 1984", wherever it appears.

54. Remove the citation "38 U.S.C. 808" and add in its place "38 U.S.C. 1908", wherever it appears.

55. Remove the citation "38 U.S.C. 717" and add in its place "38 U.S.C. 1917", wherever it appears.

56. Remove the citation "38 U.S.C. 706" and add in its place "38 U.S.C. 1906", wherever it appears.

57. Remove the citation "sections 702, 723 and 725" and add in its place "sections 1902, 1923 and 1925", wherever it appears.

58. Remove the citation "section 728" and add in its place "section 1928", wherever it appears.

59. Remove the citation "38 U.S.C. 726" and add in its place "38 U.S.C. 1926", wherever it appears.

60. Remove the citation "38 U.S.C. 728" and add in its place "38 U.S.C. 1928", wherever it appears.

61. Remove the citation "38 U.S.C. 705, 706" and add in its place "38 U.S.C. 1905, 1906", wherever it appears.

62. Remove the citation "38 U.S.C. 717(e)" and add in its place "38 U.S.C. 1917(e)", wherever it appears.

63. Remove the citation "38 U.S.C. 715" and add in its place "38 U.S.C. 1915", wherever it appears.

64. Remove the citation "38 U.S.C. 722" and add in its place "38 U.S.C. 1922", wherever it appears.

65. Remove the citation "38 U.S.C. 723" and add in its place "38 U.S.C. 1923", wherever it appears.

66. Remove the citation "38 U.S.C. 704 (c) and (e) and 725(b)" and add in its place "38 U.S.C. 1904 (c) and (e) and 1925(b)", wherever it appears.

67. Remove the citation "38 U.S.C. 704(e) and 725(b)" and add in its place "38 U.S.C. 1904(e) and 1925(b)", wherever it appears.

68. Remove the citation "38 U.S.C. 704 (c) and (e) and 725(c)" and add in its place "38 U.S.C. 1904 (c) and (e) and 1925(c)

69. Remove the citation "38 U.S.C. 704(c) and 725" and add in its place "38 U.S.C. 1904(c) and 1925", wherever it appears.

70. Remove the citation "38 U.S.C. 701, 703, 706 as to cash value, 710, 711, 717, 718, 719(a), 725, 783, 784, 785, and 787" and add in its place "sections 1901, 1903, 1906 as to cash value, 1910, 1911, 1917, 1918, 1919(a), 1925, 1983, 1984, 1985, and 1987", wherever it appears.

71. Remove the citation "38 U.S.C. 705, 706" and add in its place "38 U.S.C. 1905, 1906", wherever it appears.

## PART 9—SERVICEMEN'S GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

1. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.

2. Remove the citation "38 U.S.C. 766" and add in its place "38 U.S.C. 1966", wherever it appears.

3. Remove the citation "38 U.S.C. 766(b)" and add in its place "38 U.S.C. 1966(b)", wherever it appears.

4. Remove the citation "38 U.S.C. 767" and add in its place "38 U.S.C. 1967", wherever it appears.

5. Remove the citation "38 U.S.C. 768(b), 777(a)" and add in its place "38 U.S.C. 1968(b), 1977(a)", wherever it appears.

6. Remove the citation "38 U.S.C. 777" and add in its place "38 U.S.C. 1977", wherever it appears.

7. Remove the citation "38 U.S.C. 767(b)" and add in its place "38 U.S.C. 1967(b)", wherever it appears.

8. Remove the citation "38 U.S.C. 210(c), 767(c)" and add in its place "38 U.S.C. 501, 1967(c)", wherever it appears.

9. Remove the citation "38 U.S.C. 769" and add in its place "38 U.S.C. 1969", wherever it appears.

10. Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501", wherever it appears.

11. Remove the citation "Section 770(g)" and add in its place "Section 1970(g)", wherever it appears.

12. Remove the citation "38 U.S.C. 769(a)" and add in its place "38 U.S.C. 1969(a)", wherever it appears.

13. Remove the citation "38 U.S.C. 773" and add in its place "38 U.S.C. 1973", wherever it appears.

14. Remove the citation "38 U.S.C. 767(a) and 777" and add in its place "38 U.S.C. 1967(a) and 1977", wherever it appears.

## PART 10—ADJUSTED COMPENSATION

Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.

## PART 11—LOANS BY BANKS ON AND PAYMENT OF ADJUSTED SERVICE CERTIFICATES

Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.

## PART 12—DISPOSITION OF VETERAN'S PERSONAL FUNDS AND EFFECTS

1. Remove the citation "38 U.S.C. 210, 5210" and add in its place "38 U.S.C. 501, 8510", wherever it appears.

2. Remove the citation "38 U.S.C. 3202(e)" and add in its place "38 U.S.C. 5502(e)", wherever it appears.

3. Remove the citation "38 U.S.C. 5220(a)" and add in its place "38 U.S.C. 8520(a)", wherever it appears.

## PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

1. Remove the citation "38 U.S.C. 3203(b)(2)" and add in its place "38 U.S.C. 5503(b)(2)", wherever it appears.

2. Remove the citation "38 U.S.C. 3203(b)(1)" and add in its place "38 U.S.C. 5503(b)(1)", wherever it appears.

3. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.

4. Remove the citation "38 U.S.C. 212" and add in its place "38 U.S.C. 512", wherever it appears.

5. Remove the citation "38 U.S.C. 3103, 3202, 3203, 3311 and 5220" and add in its place "38 U.S.C. 5303, 5502, 5503, 5711 and 8520", wherever it appears.

6. Remove the citation "38 U.S.C. 3202" and add in its place "38 U.S.C. 5502", wherever it appears.

7. Remove the citation "38 U.S.C. 505(a)" and add in its place "38 U.S.C. 1505(a)", wherever it appears.

8. Remove the citation "38 U.S.C. 3501" and add in its place "38 U.S.C. 6101", wherever it appears.

9. Remove the citation "38 U.S.C. 3203(b)(3)" and add in its place "38 U.S.C. 5503(b)(3)", wherever it appears.

10. Remove the citation "38 U.S.C. 3203(b)(1)(A)" and add in its place "38 U.S.C. 5503(b)(1)(A)", wherever it appears.

11. Remove the citation "38 U.S.C. 3202(e)" and add in its place "38 U.S.C. 5502(e)", wherever it appears.

12. Remove the citation "38 U.S.C. 5220(a)" and add in its place "38 U.S.C. 8520(a)", wherever it appears.

13. Remove the citation "38 U.S.C. 3101(a)" and add in its place "38 U.S.C. 5301(a)", wherever it appears.

**PART 14—LEGAL SERVICES, GENERAL COUNSEL**

1. Remove the citation "38 U.S.C. 3401–3405" and add in its place "38 U.S.C. 5901–5905", wherever it appears.

2. Remove the citation "38 U.S.C. 210, 3401–3405" and add in its place "38 U.S.C. 501, 5901–5905", wherever it appears.

3. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.

4. Remove the citation "38 U.S.C. 4116" and add in its place "38 U.S.C. 7316", wherever it appears.

5. Remove the citation "38 U.S.C. 1820" and add in its place "38 U.S.C. 3720", wherever it appears.

6. Remove the citation "38 U.S.C. 3202(e)" and add in its place "38 U.S.C. 5502(e)", wherever it appears.

7. Remove the citation "38 U.S.C. 210(c)(1)" and add in its place "38 U.S.C. 501", wherever it appears.

8. Remove the citation "38 U.S.C. 218" and add in its place "38 U.S.C. 901", wherever it appears.

9. Remove the citation "38 U.S.C. 223" and add in its place "38 U.S.C. 515", wherever it appears.

10. Remove the citation "section 4116" and add in its place "section 7316", wherever it appears.

11. Remove the citation "section 4116(e)" and add in its place "section 7316(e)", wherever it appears.

12. Remove the citation "38 U.S.C. 4116(e)" and add in its place "38 U.S.C. 7316(e)", wherever it appears.

13. Remove the citation "section 236" and add in its place "section 515(b)", wherever it appears.

14. Remove the citation "38 U.S.C. 236" and add in its place "38 U.S.C. 515(b)", wherever it appears.

15. Remove the citation "38 U.S.C. 629" and add in its place "38 U.S.C. 1729", wherever it appears.

16. Remove the citation "38 U.S.C. 629(c)(1)" and add in its place "38 U.S.C. 1729(c)(1)", wherever it appears.

17. Remove the citation "38 U.S.C. 3402" and add in its place "38 U.S.C. 5902", wherever it appears.

18. Remove the citation "38 U.S.C. 210 (b)(1) and (c)(1) and 3402" and add in its place "38 U.S.C. 303, 501 and 5902", wherever it appears.

19. Remove the citation "38 U.S.C. 210(c), 3401, 3404" and add in its place "38 U.S.C. 501, 5901, 5904", wherever it appears.

20. Remove the citation "38 U.S.C. 3403" and add in its place "38 U.S.C. 5903", wherever it appears.

21. Remove the citation "38 U.S.C. 3402, 3403, 3404" and add in its place "38 U.S.C. 5902, 5903, 5904", wherever it appears.

22. Remove the citation "38 U.S.C. 3402, 3404" and add in its place "38 U.S.C. 5902, 5904", wherever it appears.

23. Remove the citation "38 U.S.C. 210(c), 3402, 3404" and add in its place "38 U.S.C. 501, 5902, 5904", wherever it appears.

24. Remove the citation "38 U.S.C. 233(a)(5)" and add in its place "38 U.S.C. 703(a)(5)", wherever it appears.

**PART 16—PROTECTION OF HUMAN SUBJECTS**

Remove the citation "38 U.S.C. 210(c)(1), 4131, 4134" and add in its place "38 U.S.C. 501, 7331, 7334", wherever it appears.

**PART 17—MEDICAL**

1. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.

2. Remove the citation "38 U.S.C. 601(5)" and add in its place "38 U.S.C. 1701(5)", wherever it appears.

3. Remove the citation "38 U.S.C. 662" and add in its place "38 U.S.C. 1762", wherever it appears.

4. Remove the citation "38 U.S.C. 601(6)(A)(i)" and add in its place "38 U.S.C. 1701(6)(A)(i)", wherever it appears.

5. Remove the citation "38 U.S.C. 601(6)" and add in its place "38 U.S.C. 1701(6)", wherever it appears.

6. Remove the citation "38 U.S.C. 101(28), 620(e)" and add in its place "38 U.S.C. 101(28), 1720(e)", wherever it appears.

7. Remove the citation "38 U.S.C. 601(8)" and add in its place "38 U.S.C. 1701(8)", wherever it appears.

8. Remove the citation "section 610" and add in its place "section 1710", wherever it appears.

9. Remove the citation "38 U.S.C. 601(4)" and add in its place "38 U.S.C. 1701(4)", wherever it appears.

10. Remove the citation "38 U.S.C. 4131" and add in its place "38 U.S.C. 7331", wherever it appears.

11. Remove the citation "38 U.S.C. 210, 621" and add in its place "38 U.S.C. 501, 1721", wherever it appears.

12. Remove the citation "38 U.S.C. 624" and add in its place "38 U.S.C. 1724", wherever it appears.

13. Remove the citation "38 U.S.C. 624(c)" and add in its place "38 U.S.C. 1724(c)", wherever it appears.

14. Remove the citation "38 U.S.C. 210(c)(1); 620(a)" and add in its place "38 U.S.C. 501, 1720(a)", wherever it appears.

15. Remove the citation "38 U.S.C. 611(a)" and add in its place "38 U.S.C. 1711(a)", wherever it appears.

16. Remove the citation "38 U.S.C. 634" and add in its place "38 U.S.C. 1734", wherever it appears.

17. Remove the citation "38 U.S.C. 351" and add in its place "38 U.S.C. 1151", wherever it appears.

18. Remove the citation "38 U.S.C. 610(e)" and add in its place "38 U.S.C. 1710(e)", wherever it appears.

19. Remove the citation "38 U.S.C. 610,622" and add in its place "38 U.S.C. 1710, 1722", wherever it appears.

20. Remove the citation "38 U.S.C. 5011" and add in its place "38 U.S.C. 8111", wherever it appears.

21. Remove the citation "38 U.S.C. 603, 610" and add in its place "38 U.S.C. 1703, 1710", wherever it appears.

22. Remove the citation "38 U.S.C. 610" and add in its place "38 U.S.C. 1710", wherever it appears.

23. Remove the citation "38 U.S.C. 610(b)" and add in its place "38 U.S.C. 1710(b)", wherever it appears.

24. Remove the citation "38 U.S.C. 610(a)" and add in its place "38 U.S.C. 1710(a)", wherever it appears.

25. Remove the citation "38 U.S.C. 503" and add in its place "38 U.S.C. 1503", wherever it appears.

26. Remove the citation "38 U.S.C. 601, 610" and add in its place "38 U.S.C. 1701, 1710", wherever it appears.

27. Remove the citation "38 U.S.C. 521" and add in its place "38 U.S.C. 1521", wherever it appears.

28. Remove the citation "38 U.S.C. 622" and add in its place "38 U.S.C. 1722", wherever it appears.

29. Remove the citation "38 U.S.C. 311(a)" and add in its place "38 U.S.C. 1111(a)", wherever it appears.

30. Remove the citation "38 U.S.C. 210 and 610" and add in its place "38 U.S.C. 501 and 1710", wherever it appears.

31. Remove the citation "38 U.S.C. 610, 621" and add in its place "38 U.S.C. 1710, 1721", wherever it appears.

32. Remove the citation "38 U.S.C. 629" and add in its place "38 U.S.C. 1729", wherever it appears.

33. Remove the citation "38 U.S.C. 1504(a)(9)" and add in its place "38 U.S.C. 3104(a)(9)", wherever it appears.

34. Remove the citation "38 U.S.C. 4133" and add in its place "38 U.S.C. 7333", wherever it appears.

35. Remove the citation "38 U.S.C. 210 and 621" and add in its place "38 U.S.C. 501 and 1721", wherever it appears.

36. Remove the citation "38 U.S.C. 603, 1504" and add in its place "38 U.S.C. 1703, 3104", wherever it appears.

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37. Remove the citation "38 U.S.C. 603" and add in its place "38 U.S.C. 1703", wherever it appears.

38. Remove the citation "38 U.S.C. 603, 610 and 612" and add in its place "38 U.S.C. 1703, 1710 and 1712", wherever it appears.

39. Remove the citation "38 U.S.C. 603(a)" and add in its place "38 U.S.C. 1703(a)", wherever it appears.

40. Remove the citation "38 U.S.C. 5053" and add in its place "38 U.S.C. 8153", wherever it appears.

41. Remove the citation "38 U.S.C. 610, 620" and add in its place "38 U.S.C. 1710, 1720", wherever it appears.

42. Remove the citation "38 U.S.C. 620" and add in its place "38 U.S.C. 1720", wherever it appears.

43. Remove the citation "38 U.S.C. 620(b)" and add in its place "38 U.S.C. 1720(b)", wherever it appears.

44. Remove the citation "38 U.S.C. 210(c)(1); 620(a)" and add in its place "38 U.S.C. 501, 1720(a)", wherever it appears.

45. Remove the citation "38 U.S.C. 612A" and add in its place "38 U.S.C. 1712A", wherever it appears.

46. Remove the citation "38 U.S.C. 529(f)(1)(A)" and add in its place "38 U.S.C. 1529(f)(1)(A)", wherever it appears.

47. Remove the citation "38 U.S.C. 620(f)(1)(A)(i)" and add in its place "38 U.S.C. 1720(f)(1)(A)(i)", wherever it appears.

47a. Remove the citation "38 U.S.C. 620(f)(A)(1)" and add in its place "38 U.S.C. 1720(f)(1)(A)", wherever it appears.

48. Remove the citation "38 U.S.C. 620(f)(1)(B)" and add in its place "38 U.S.C. 1720(f)(1)(B)", wherever it appears.

49. Remove the citation "38 U.S.C. 630" and add in its place "38 U.S.C. 1730", wherever it appears.

50. Remove the citation "38 U.S.C. 620A" and add in its place "38 U.S.C. 1720A", wherever it appears.

51. Remove the citation "38 U.S.C. 4132" and add in its place "38 U.S.C. 7332", wherever it appears.

52. Remove the citation "38 U.S.C. 613(a)" and add in its place "38 U.S.C. 1713(a)", wherever it appears.

53. Remove the citation "38 U.S.C. 613" and add in its place "38 U.S.C. 1713", wherever it appears.

54. Remove the citation "38 U.S.C. 613(c)" and add in its place "38 U.S.C. 1713(c)", wherever it appears.

55. Remove the citation "38 U.S.C. 613(b)" and add in its place "38 U.S.C. 1713(b)", wherever it appears.

56. Remove the citation "38 U.S.C. 524, 525, 1516" and add in its place "38 U.S.C. 1524, 1525, 1516", wherever it appears.

57. Remove the citation "section 351" and add in its place "section 1151", wherever it appears.

58. Remove the citation "38 U.S.C. 111 and 210" and add in its place "38 U.S.C. 111 and 501", wherever it appears.

59. Remove the citation "38 U.S.C. 503, 521(d), and 610(a)" and add in its place "38 U.S.C. 1503, 1521(d), and 1710(a)", wherever it appears.

60. Remove the citation "38 U.S.C. 617" and add in its place "38 U.S.C. 1717", wherever it appears.

61. Remove the citation "section 622" and add in its place "section 1722", wherever it appears.

62. Remove the citation "38 U.S.C. 611(c)(1)" and add in its place "38 U.S.C. 1711(c)(1)", wherever it appears.

63. Remove the citation "38 U.S.C. 601(6)(B)" and add in its place "38 U.S.C. 1701(6)(B)", wherever it appears.

64. Remove the citation "38 U.S.C. 612(i)" and add in its place "38 U.S.C. 1712(i)", wherever it appears.

65. Remove the citation "38 U.S.C. 612(j)" and add in its place "38 U.S.C. 1712(j)", wherever it appears.

66. Remove the citation "38 U.S.C. 612" and add in its place "38 U.S.C. 1712", wherever it appears.

67. Remove the citation "38 U.S.C. 4115" and add in its place "38 U.S.C. 7304", wherever it appears.

68. Remove the citation "38 U.S.C. 629(h)(i)" and add in its place "38 U.S.C. 1729(h)(i)", wherever it appears.

69. Remove the citation "38 U.S.C. 3301 and 4132" and add in its place "38 U.S.C. 5701 and 7332", wherever it appears.

70. Remove the citation "38 U.S.C. 611(c)" and add in its place "38 U.S.C. 1711(c)", wherever it appears.

71. Remove the citation "38 U.S.C. 624, 628" and add in its place "38 U.S.C. 1724, 1728", wherever it appears.

72. Remove the citation "38 U.S.C. 624, 628, 4115" and add in its place "38 U.S.C. 1724, 1728, 7304", wherever it appears.

73. Remove the citation "38 U.S.C. 210(c)(1)" and add in its place "38 U.S.C. 501", wherever it appears.

74. Remove the citation "38 U.S.C. 628" and add in its place "38 U.S.C. 1728", wherever it appears.

75. Remove the citation "38 U.S.C. 628, 4115" and add in its place "38 U.S.C. 1728, 7304", wherever it appears.

76. Remove the citation "38 U.S.C. 4115" and add in its place "38 U.S.C. 7304", wherever it appears.

77. Remove the citation "38 U.S.C. 5053" and add in its place "38 U.S.C. 8153", wherever it appears.

78. Remove the citation "38 U.S.C. 213" and add in its place "38 U.S.C. 513", wherever it appears.

79. Remove the citation "38 U.S.C. 212, 213, 4117, 5053" and add in its place "38 U.S.C. 512, 513, 7409, 8153", wherever it appears.

80. Remove the citation "38 U.S.C. 213 and 603" and add in its place "38 U.S.C. 513 and 1703", wherever it appears.

81. Remove the citation "38 U.S.C. 503" and add in its place "38 U.S.C. 1503", wherever it appears.

82. Remove the citation "38 U.S.C. 314(r)" and add in its place "38 U.S.C. 1114(r)", wherever it appears.

83. Remove the citation "38 U.S.C. 334" and add in its place "38 U.S.C. 1134", wherever it appears.

84. Remove the citation "38 U.S.C. 1902" and add in its place "38 U.S.C. 3902", wherever it appears.

85. Remove the citation "38 U.S.C. 1901, 1902" and add in its place "38 U.S.C. 3901, 3902", wherever it appears.

86. Remove the citation "38 U.S.C. 1903" and add in its place "38 U.S.C. 3903", wherever it appears.

87. Remove the citation "38 U.S.C. 1903(e)(3)" and add in its place "38 U.S.C. 3903(e)(3)", wherever it appears.

88. Remove the citation "38 U.S.C. 612(b)" and add in its place "38 U.S.C. 1712(b)", wherever it appears.

89. Remove the citation "38 U.S.C. 612" and add in its place "38 U.S.C. 1712", wherever it appears.

90. Remove the citation "38 U.S.C. 612(b)(1)(f)" and add in its place "38 U.S.C. 1712(b)(1)(f)", wherever it appears.

91. Remove the citation "38 U.S.C. 612(b)(5)" and add in its place "38 U.S.C. 1712(b)(5)", wherever it appears.

92. Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501", wherever it appears.

93. Remove the citation "38 U.S.C. 210, 641" and add in its place "38 U.S.C. 501, 1741", wherever it appears.

94. Remove the citation "38 U.S.C. 641, 210" and add in its place "38 U.S.C. 1741, 501", wherever it appears.

95. Remove the citation "38 U.S.C. 643" and add in its place "38 U.S.C. 1743", wherever it appears.

96. Remove the citation "38 U.S.C. 642(a)" and add in its place "38 U.S.C. 1742(a)", wherever it appears.

97. Remove the citation "38 U.S.C. 641" and add in its place "38 U.S.C. 1741", wherever it appears.

98. Remove the citation "38 U.S.C. 641, 642(a)" and add in its place "38 U.S.C. 1741, 1742(a)", wherever it appears.

99. Remove the citation "section 641(a)(1)" and add in its place "section 1741(a)(1)", wherever it appears.

100. Remove the citation "section 641(a)(2)" and add in its place "section 1741(a)(2)", wherever it appears.



101. Remove the citation "section 641(a)(3)" and add in its place "section 1741(a)(3)", wherever it appears.

102. Remove the citation "38 U.S.C. 642" and add in its place "38 U.S.C. 1742", wherever it appears.

103. Remove the citation "38 U.S.C. 5031–5037" and add in its place "38 U.S.C. 8131–8137", wherever it appears.

104. Remove the citation "38 U.S.C. 5031(a)" and add in its place "38 U.S.C. 8131(a)", wherever it appears.

105. Remove the citation "38 U.S.C. 5031(b)" and add in its place "38 U.S.C. 8131(b)", wherever it appears.

106. Remove the citation "38 U.S.C. 5031(c)" and add in its place "38 U.S.C. 8131(c)", wherever it appears.

107. Remove the citation "38 U.S.C. 5031(d)" and add in its place "38 U.S.C. 8131(d)", wherever it appears.

108. Remove the citation "38 U.S.C. 5034(1)" and add in its place "38 U.S.C. 8134(1)", wherever it appears.

109. Remove the citation "38 U.S.C. 5035(a)(3)" and add in its place "38 U.S.C. 8135(a)(3)", wherever it appears.

110. Remove the citation "38 U.S.C. 5035(b)(2)(D)" and add in its place "38 U.S.C. 8135(b)(2)(D)", wherever it appears.

111. Remove the citation "38 U.S.C. 5035(a)" and add in its place "38 U.S.C. 8135(a)", wherever it appears.

112. Remove the citation "38 U.S.C. 5035(a)(8)" and add in its place "38 U.S.C. 8135(a)(8)", wherever it appears.

113. Remove the citation "38 U.S.C. 5005" and add in its place "38 U.S.C. 8105", wherever it appears.

114. Remove the citation "38 U.S.C. 5035(a)(9)" and add in its place "38 U.S.C. 8135(a)(9)", wherever it appears.

115. Remove the citation "38 U.S.C. 5035" and add in its place "38 U.S.C. 8135", wherever it appears.

116. Remove the citation "38 U.S.C. 5035(b)" and add in its place "38 U.S.C. 8135(b)", wherever it appears.

117. Remove the citation "38 U.S.C. 5035(b)(4)" and add in its place "38 U.S.C. 8135(b)(4)", wherever it appears.

118. Remove the citation "38 U.S.C. 5035(b)(5)" and add in its place "38 U.S.C. 8135(b)(5)", wherever it appears.

119. Remove the citation "38 U.S.C. 5035(d)(1)" and add in its place "38 U.S.C. 8135(d)(1)", wherever it appears.

120. Remove the citation "38 U.S.C. 5035(e)" and add in its place "38 U.S.C. 8135(e)", wherever it appears.

121. Remove the citation "38 U.S.C. 5035(c)" and add in its place "38 U.S.C. 8135(c)", wherever it appears.

122. Remove the citation "38 U.S.C. 5036" and add in its place "38 U.S.C. 8136", wherever it appears.

123. Remove the citation "38 U.S.C. 5037" and add in its place "38 U.S.C. 8137", wherever it appears.

124. Remove the citation "38 U.S.C. 5034(2)" and add in its place "38 U.S.C. 8134(2)", wherever it appears.

125. Remove the citation "38 U.S.C. 5034(a)" and add in its place "38 U.S.C. 8134(2)", wherever it appears.

126. Remove the citation "38 U.S.C. 5011A" and add in its place "38 U.S.C. 8111A", wherever it appears.

127. Remove the citation "38 U.S.C. 612(f)" and add in its place "38 U.S.C. 1712(f)", wherever it appears.

128. Remove the citation "Sec. 210(cc) and 620(a)" and add in its place "Sec. 501 and 1720(a)", wherever it appears.

129. Remove the citation "38 U.S.C. 5053" and add in its place "38 U.S.C. 8153", wherever it appears.

130. Remove the citation "38 U.S.C. 5057" and add in its place "38 U.S.C. 8157", wherever it appears.

131. Remove the citation "38 U.S.C. 5055" and add in its place "38 U.S.C. 8155", wherever it appears.

132. Remove the citation "38 U.S.C. 4112(a)" and add in its place "38 U.S.C. 7312", wherever it appears.

133. Remove the citation "38 U.S.C. 631–634" and add in its place "38 U.S.C. 1731–1734", wherever it appears.

134. Remove the citation "38 U.S.C. 632" and add in its place "38 U.S.C. 1732", wherever it appears.

135. Remove the citation "38 U.S.C. 632(a)(2)" and add in its place "38 U.S.C. 1732(a)(2)", wherever it appears.

136. Remove the citation "38 U.S.C. 5073 and 5096" and add in its place "38 U.S.C. 8213 and 8241", wherever it appears.

137. Remove the citation "38 U.S.C. 5083(a)" and add in its place "38 U.S.C. 8223(a)", wherever it appears.

138. Remove the citation "38 U.S.C. 5071–5074" and add in its place "38 U.S.C. 8211–8214", wherever it appears.

139. Remove the citation "38 U.S.C. 5091–5093" and add in its place "38 U.S.C. 8221–8223", wherever it appears.

140. Remove the citation "38 U.S.C. 5051" and add in its place "38 U.S.C. 8151", wherever it appears.

141. Remove the citation "38 U.S.C. 5071" and add in its place "38 U.S.C. 8211", wherever it appears.

142. Remove the citation "38 U.S.C. 5072" and add in its place "38 U.S.C. 8212", wherever it appears.

143. Remove the citation "38 U.S.C. 5081" and add in its place "38 U.S.C. 8221", wherever it appears.

144. Remove the citation "38 U.S.C. 5091" and add in its place "38 U.S.C. 8231", wherever it appears.

145. Remove the citation "38 U.S.C. 5079(e)" and add in its place "38 U.S.C. 8201(e)", wherever it appears.

146. Remove the citation "38 U.S.C. 5081–5083 and 5091–5093" and add in its place "38 U.S.C. 8221–8223 and 8231–8233", wherever it appears.

147. Remove the citation "38 U.S.C. 5082" and add in its place "38 U.S.C. 8222", wherever it appears.

148. Remove the citation "38 U.S.C. 3305" and add in its place "38 U.S.C. 5705", wherever it appears.

149. Remove the citation "section 3305" and add in its place "section 5705", wherever it appears.

150. Remove the citation "38 U.S.C. 4132" and add in its place "38 U.S.C. 7332", wherever it appears.

151. Remove the citation "38 U.S.C. 3301" and add in its place "38 U.S.C. 5701", wherever it appears.

152. Remove the citation "38 U.S.C. 3301 or 4132" and add in its place "38 U.S.C. 5701 or 7332", wherever it appears.

153. Remove the citation "38 U.S.C. 3305" and add in its place "38 U.S.C. 5705", wherever it appears.

154. Remove "38 U.S.C. 4142", wherever it appears.

155. Remove the citation "38 U.S.C. 4141–4146" and add in its place "38 U.S.C. 7601–7655", wherever it appears.

156. Remove the citation "38 U.S.C. 4302(a)(1)(2)" and add in its place "38 U.S.C. 7602(a)", wherever it appears.

157. Remove the citation "38 U.S.C. 4142" and add in its place "38 U.S.C. 7452", wherever it appears.

158. Remove the citation "38 U.S.C. 4333" and add in its place "38 U.S.C. 7633", wherever it appears.

159. Remove the citation "38 U.S.C. 4302(a)(1), 4312(b)(1)" and add in its place "38 U.S.C. 7602(a)(1), 7612(b)(1)", wherever it appears.

160. Remove the citation "38 U.S.C. 4302(a)" and add in its place "38 U.S.C. 7602(a)", wherever it appears.

161. Remove the citation "38 U.S.C. 4312(c)(3)(B)" and add in its place "38 U.S.C. 7612(c)(3)(B)", wherever it appears.

162. Remove the citation "38 U.S.C. 4302(b)" and add in its place "38 U.S.C. 7602(b)", wherever it appears.

163. Remove the citation "38 U.S.C. 4312(b)(4) and 4303(b)(1)" and add in its place "38 U.S.C. 7612(b)(4) and 7603(b)(1)", wherever it appears.

164. Remove the citation "38 U.S.C. 4312(c)(1)(B)" and add in its place "38 U.S.C. 7612(c)(1)(B)", wherever it appears.

165. Remove the citation "38 U.S.C. 4312(b)(5)" and add in its place "38 U.S.C. 7612(b)(5)", wherever it appears.

166. Remove the citation "38 U.S.C. 4303(d)" and add in its place "38 U.S.C. 7603(d)", wherever it appears.

167. Remove the citation "38 U.S.C. 4312(d)(1)" and add in its place "38 U.S.C. 7612(d)(1)", wherever it appears.

168. Remove the citation "38 U.S.C. 4312(c)(1)(A) and 4314(3)" and add in its place "38 U.S.C. 7612(c)(1)(A) and 7614(3)", wherever it appears.

169. Remove the citation "38 U.S.C. 4303(d)" and add in its place "38 U.S.C. 7603(d)", wherever it appears.

170. Remove the citation "38 U.S.C. 4336" and add in its place "38 U.S.C. 7636", wherever it appears.

171. Remove the citation "38 U.S.C. 4313(b)" and add in its place "38 U.S.C. 7613(b)", wherever it appears.

172. Remove the citation "38 U.S.C. 4314(2)" and add in its place "38 U.S.C. 7614(2)", wherever it appears.

173. Remove the citation "38 U.S.C. 4313(c)" and add in its place "38 U.S.C. 7613(c)", wherever it appears.

174. Remove the citation "38 U.S.C. 4316(a)" and add in its place "38 U.S.C. 7616(a)", wherever it appears.

175. Remove the citation "38 U.S.C. 4316(b)" and add in its place "38 U.S.C. 7616(b)", wherever it appears.

176. Remove the citation "38 U.S.C. 4316(b)(3)(A)(ii)" and add in its place "38 U.S.C. 7616(b)(3)(A)(ii)", wherever it appears.

177. Remove the citation "38 U.S.C. 4316(a)(A)(i)" and add in its place "38 U.S.C. 7616(b)(3)(A)(i)", wherever it appears.

178. Remove the citation "38 U.S.C. 4316(b)(u)" and add in its place "38 U.S.C. 7616(b)(4)", wherever it appears.

179. Remove the citation "38 U.S.C. 4316(b)(u)(B)" and add in its place "38 U.S.C. 7616(b)(4)(B)", wherever it appears.

180. Remove the citation "38 U.S.C. 4316(b)(2)" and add in its place "38 U.S.C. 7616(b)(2)", wherever it appears.

181. Remove the citation "section 4107(b)(1)" and add in its place "section 7404(b)(1)", wherever it appears.

182. Remove the citation "38 U.S.C. 4118(h)" and add in its place "38 U.S.C. 7431–7440", wherever it appears.

183. Remove the citation "38 U.S.C. 4317(a)" and add in its place "38 U.S.C. 7617(a)", wherever it appears.

184. Remove the citation "38 U.S.C. 4317(b)(4)" and add in its place "38 U.S.C. 7617(b)(4)", wherever it appears.

185. Remove the citation "38 U.S.C. 4317(b)" and add in its place "38 U.S.C. 7617(b)", wherever it appears.

186. Remove the citation "38 U.S.C. 4317(c)(1)(2)" and add in its place "38 U.S.C. 7617(c)(1)(2)", wherever it appears.

187. Remove the citation "38 U.S.C. 4334(c)" and add in its place "38 U.S.C. 7634(c)", wherever it appears.

188. Remove the citation "38 U.S.C. 4334(a)" and add in its place "38 U.S.C. 7634(a)", wherever it appears.

189. Remove the citation "38 U.S.C. 4334(b)" and add in its place "38 U.S.C. 7634(b)", wherever it appears.

190. Remove the words "Veterans Health Services and Research Administration" and add in their place "Veterans Health Administration", wherever they appear.

## PART 18—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. Remove the citation "38 U.S.C. 641–643" and add in its place "38 U.S.C. 1741–1743", wherever it appears.

2. Remove the citation "38 U.S.C. 5031–5037" and add in its place "38 U.S.C. 8131–8137", wherever it appears.

3. Remove the citation "38 U.S.C. 3402(a)(2)" and add in its place "38 U.S.C. 5902(a)(2)", wherever it appears.

4. Remove the citation "38 U.S.C. 5051–5057" and add in its place "38 U.S.C. 8151–8157", wherever it appears.

5. Remove the citation "38 U.S.C. 244(1)" and add in its place "38 U.S.C. 7725(1)", wherever it appears.

6. Remove the citation "38 U.S.C. 613" and add in its place "38 U.S.C. 1713", wherever it appears.

7. Remove the citation "38 U.S.C. 620" and add in its place "38 U.S.C. 1720", wherever it appears.

8. Remove the citation "38 U.S.C. 620A" and add in its place "38 U.S.C. 1720A", wherever it appears.

9. Remove the citation "38 U.S.C. 1008" and add in its place "38 U.S.C. 2408", wherever it appears.

10. Remove the citation "38 U.S.C. 4141–4146" and add in its place "38 U.S.C. 7601–7655", wherever it appears.

11. Remove the citation "38 U.S.C. 641, 644, 5031–5037, 5055, 3402(a)" and add in its place "38 U.S.C. 1741, 1744, 8131–8137, 8155, 5902(a)(2)", wherever it appears.

12. Remove the citation "38 U.S.C. 244(4)" and add in its place "38 U.S.C. 7725(4)", wherever it appears.

13. Remove the citation "Section 5202(b)" and add in its place "section 8502(b)", wherever it appears.

14. Remove the citation "Section 613(a)" and add in its place "Section 1713(a)", wherever it appears.

15. Remove the citation "Section 613(c)" and add in its place "Section 1713(c)", wherever it appears.

16. Remove the citation "Section 610" and add in its place "Section 1710", wherever it appears.

17. Remove the citation "Section 1601" and add in its place "Section 3201", wherever it appears.

18. Remove the citation "Section 1651" and add in its place "Section 3451", wherever it appears.

19. Remove the citation "Section 1692(b)" and add in its place "Section 3492(b)", wherever it appears.

20. Remove the citation "Section 1692(a)" and add in its place "Section 3492(a)", wherever it appears.

21. Remove the citation "Section 1700" and add in its place "Section 3500", wherever it appears.

22. Remove the citation "Section 1701" and add in its place "Section 3501", wherever it appears.

23. Remove the citation "Section 1712" and add in its place "Section 3512", wherever it appears.

24. Remove the citation "Section 1736" and add in its place "Section 3536", wherever it appears.

25. Remove the citation "Section 1701(a)(1)(A)(ii)" and add in its place "Section 3501(a)(1)(A)(ii)", wherever it appears.

26. Remove the citation "Section 1713" and add in its place "Section 3513", wherever it appears.

27. Remove the citation "Section 1762" and add in its place "Section 3562", wherever it appears.

28. Remove the citation "Section 1763" and add in its place "Section 3563", wherever it appears.

29. Remove the citation "Section 1701(a)(1)(A)" and add in its place "Section 3501(a)(1)(A)", wherever it appears.

## PART 18a—DELEGATION OF RESPONSIBILITY IN CONNECTION WITH TITLE VI, CIVIL RIGHTS ACT OF 1964

1. Remove the citation "38 U.S.C. 210(c)(1)" and add in its place "38 U.S.C. 501", wherever it appears.

2. Remove the citation "38 U.S.C. sections 641, 5031–5037, and 5055" and add in its place "38 U.S.C. sections 1741, 8131–8137 and 8155", wherever it appears.

## PART 18b—PRACTICE AND PROCEDURE UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND PART 18 OF THIS CHAPTER

Remove the citation "38 U.S.C. 210(c)(1)" and add in its place "38 U.S.C. 501", wherever it appears.

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

1. Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501", wherever it appears.
2. Remove the citation "38 U.S.C. 1500" and add in its place "38 U.S.C. 3100", wherever it appears.
3. Remove the citation "38 U.S.C. 1502" and add in its place "38 U.S.C. 3102", wherever it appears.
4. Remove the citation "38 U.S.C. 1506" and add in its place "38 U.S.C. 3106", wherever it appears.
5. Remove the citation "38 U.S.C. 1507" and add in its place "38 U.S.C. 3107", wherever it appears.
6. Remove the citation "38 U.S.C. 1781(b)" and add in its place "38 U.S.C. 3681(b)", wherever it appears.
7. Remove the citation "38 U.S.C. 1795" and add in its place "38 U.S.C. 3695", wherever it appears.
8. Remove the citation "38 U.S.C. 1781" and add in its place "38 U.S.C. 3681", wherever it appears.
9. Remove the citation "38 U.S.C. 1502, 1517" and add in its place "38 U.S.C. 3102, 3117", wherever it appears.
10. Remove the citation "38 U.S.C. 3013" and add in its place "38 U.S.C. 5113", wherever it appears.
11. Remove the citation "U.S.C. 3001, 3013, 210(c)" and add in its place "38 U.S.C. 5101, 5113, 510", wherever it appears.
12. Remove the citation "38 U.S.C. 1501(1)" and add in its place "38 U.S.C. 3101(1)", wherever it appears.
13. Remove the citation "38 U.S.C. 1501(2)" and add in its place "38 U.S.C 3101(2)", wherever it appears.
14. Remove the citation "38 U.S.C. 1652(b)" and add in its place "38 U.S.C. 3452(b)", wherever it appears.
15. Remove the citation "38 U.S.C. 1501(4)" and add in its place "38 U.S.C. 3101(4)", wherever it appears.
16. Remove the citation "38 U.S.C. 1501(5)" and add in its place "38 U.S.C. 3101(5)", wherever it appears.
17. Remove the citation "38 U.S.C. 1501(6)" and add in its place "38 U.S.C. 3101(6)", wherever it appears.
18. Remove the citation "38 U.S.C. 1517" and add in its place "38 U.S.C. 3117", wherever it appears.
19. Remove the citation "38 U.S.C. 1501(7)" and add in its place "38 U.S.C. 3101(7)", wherever it appears.
20. Remove the citation "38 U.S.C. 1501(8), 1501(9)(A)(i)" and add in its place "38 U.S.C. 3101(8), 3101(9)(A)(i)", wherever it appears.
21. Remove the citation "38 U.S.C. 1501(9)" and add in its place "38 U.S.C. 3101(9)", wherever it appears.
22. Remove the citation "38 U.S.C. 1518(c)" and add in its place "38 U.S.C. 3118(c)", wherever it appears.
23. Remove the citation "38 U.S.C. 1652(c)" and add in its place "38 U.S.C. 3452(c)", wherever it appears.
24. Remove the citation "38 U.S.C. 1652(e)" and add in its place "38 U.S.C. 3452(e)", wherever it appears.
25. Remove the citation "38 U.S.C. 1515(a)" and add in its place "38 U.S.C. 3115(a)", wherever it appears.
26. Remove the citation "38 U.S.C. 1503(a)" and add in its place "38 U.S.C. 3103(a)", wherever it appears.
27. Remove the citation "38 U.S.C. 1503(b)(3)" and add in its place "38 U.S.C. 3103(b)(3)", wherever it appears.
28. Remove the citation "38 U.S.C. 1502(b)(2)" and add in its place "38 U.S.C. 3102(b)(2)", wherever it appears.
29. Remove the citation "38 U.S.C. 1503(c)" and add in its place "38 U.S.C. 3103(c)", wherever it appears.
30. Remove the citation "38 U.S.C. 1503(d)" and add in its place "38 U.S.C. 3103(d)", wherever it appears.
31. Remove the citation "38 U.S.C. 1505" and add in its place "38 U.S.C. 3105", wherever it appears.
32. Remove the citation "38 U.S.C. 1504" and add in its place "38 U.S.C. 3104", wherever it appears.
33. Remove the citation "38 U.S.C. 1503" and add in its place "38 U.S.C. 3103", wherever it appears.
34. Remove the citation "38 U.S.C. 1502(1)" and add in its place "38 U.S.C. 3102(1)", wherever it appears.
35. Remove the citation "38 U.S.C. 220, 1506(d), 1516" and add in its place "38 U.S.C. 523, 3106(d), 3116", wherever it appears.
36. Remove the citation "38 U.S.C. 1506(a)" and add in its place "38 U.S.C. 3106(a)", wherever it appears.
37. Remove the citation "38 U.S.C. 1502, 1503, 1515(a)" and add in its place "38 U.S.C. 3102, 3103, 3115(a)", wherever it appears.
38. Remove the citation "38 U.S.C. 1511" and add in its place "38 U.S.C. 3111", wherever it appears.
39. Remove the citation "38 U.S.C. 1501(1), 1502" and add in its place "38 U.S.C. 3101(1), 3102", wherever it appears.
40. Remove the citation "38 U.S.C. 1501(1)" and add in its place "38 U.S.C. 3101(1)", wherever it appears.
41. Remove the citation "38 U.S.C. 1505(d)" and add in its place "38 U.S.C. 3105(d)", wherever it appears.
42. Remove the citation "38 U.S.C. 1504(a)(1), 1506(a)" and add in its place "38 U.S.C. 3104(a)(1), 3106(a)", wherever it appears.
43. Remove the citation "38 U.S.C. 1504(a)(1), 1506(b)" and add in its place "38 U.S.C. 3104(a)(1), 3106(b)", wherever it appears.
44. Remove the citation "38 U.S.C. 1506(b)" and add in its place "38 U.S.C. 3106(b)", wherever it appears.
45. Remove the citation "38 U.S.C. 1506(c)" and add in its place "38 U.S.C. 3106(c)", wherever it appears.
46. Remove the citation "38 U.S.C. 1502, 1506" and add in its place "38 U.S.C. 3102, 3106", wherever it appears.
47. Remove the citation "38 U.S.C. 1502, 1511" and add in its place "38 U.S.C. 3102, 3111", wherever it appears.
48. Remove the citation "38 U.S.C. 1507(c)" and add in its place "38 U.S.C. 3107(c)", wherever it appears.
49. Remove the citation "38 U.S.C. 1504(a)" and add in its place "38 U.S.C. 3104(a)", wherever it appears.
50. Remove the citation "38 U.S.C. 1504(a), 1515(a)" and add in its place "38 U.S.C. 3104(a), 3115(a)", wherever it appears.
51. Remove the citation "38 U.S.C. 1515(a)(2)" and add in its place "38 U.S.C. 3115(a)(2)", wherever it appears.
52. Remove the citation "38 U.S.C. 1736, 1740, 1741, 1742, 1743" and add in its place "38 U.S.C. 3536, 3540, 3541, 3542, 3543", wherever it appears.
53. Remove the citation "38 U.S.C. 1795, 1505" and add in its place "38 U.S.C. 3695, 3105", wherever it appears.
54. Remove the citation "38 U.S.C. 1505(c)" and add in its place "38 U.S.C. 3105(c)", wherever it appears.
55. Remove the citation "38 U.S.C. 1795" and add in its place "38 U.S.C. 3695", wherever it appears.
56. Remove the citation "38 U.S.C. 1505(b)" and add in its place "38 U.S.C. 3105(b)", wherever it appears.
57. Remove the citation "38 U.S.C. 1506(a)" and add in its place "38 U.S.C. 3106(a)", wherever it appears.
58. Remove the citation "38 U.S.C. 1505(a), 1506(b)" and add in its place "[redacted] U.S.C. 3105(a), 3106(b)", wherever it appears.
59. Remove the citation "38 U.S.C. 1501(4), 1504(b)" and add in its place "38 U.S.C. 3101(4), 3104(b)", wherever it appears.
60. Remove the citation "38 U.S.C. 1505(d)" and add in its place "38 U.S.C. 3105(d)", wherever it appears.
61. Remove the citation "38 U.S.C. 1505(c)(1)(A)" and add in its place "38 U.S.C. 3105(c)(1)(A)", wherever it appears.
62. Remove the citation "38 U.S.C. 1505(c)(1)(B)" and add in its place "38

U.S.C. 3105(c)(1)(B)", wherever it appears.

63. Remove the citation "38 U.S.C. 1413, 1795" and add in its place "38 U.S.C. 3013, 3695", wherever it appears.

64. Remove the citation "38 U.S.C. 1505(c)(2)" and add in its place "38 U.S.C. 3105(c)(2)", wherever it appears.

65. Remove the citation "38 U.S.C. 1508(d)" and add in its place "38 U.S.C. 3108(d)", wherever it appears.

66. Remove the citation "38 U.S.C. 1508(d), 1517" and add in its place "38 U.S.C. 3108(d), 3117", wherever it appears.

67. Remove the citation "38 U.S.C. 1506, 1509" and add in its place "38 U.S.C. 3106, 3109", wherever it appears.

68. Remove the citation "38 U.S.C. 1508, 1780(g)" and add in its place "38 U.S.C. 3108(d), 3680(g)", wherever it appears.

69. Remove the citation "38 U.S.C. 1508(f)" and add in its place "38 U.S.C. 3108(f)", wherever it appears.

70. Remove the citation "38 U.S.C. 1508(c)" and add in its place "38 U.S.C. 3108(c)", wherever it appears.

71. Remove the citation "38 U.S.C. 1780(g)" and add in its place "38 U.S.C. 3680(g)", wherever it appears.

72. Remove the citation "38 U.S.C. 1507(a)" and add in its place "38 U.S.C. 3107(a)", wherever it appears.

73. Remove the citation "38 U.S.C. 220" and add in its place "38 U.S.C. 523", wherever it appears.

74. Remove the citation "38 U.S.C. 1505(c), 1507" and add in its place "38 U.S.C. 3105(c), 3107", wherever it appears.

75. Remove the citation "38 U.S.C. 1517(a)" and add in its place "38 U.S.C. 3117(a)", wherever it appears.

76. Remove the citation "38 U.S.C. 1507" and add in its place "38 U.S.C. 3107", wherever it appears.

77. Remove the citation "38 U.S.C. 1509" and add in its place "38 U.S.C. 3109", wherever it appears.

78. Remove the citation "38 U.S.C. 1504(b), 1520(a)" and add in its place "38 U.S.C. 3104(b), 3120(a)", wherever it appears.

79. Remove the citation "38 U.S.C. 1507(b)" and add in its place "38 U.S.C. 3107(b)", wherever it appears.

80. Remove the citation "38 U.S.C. 1501" and add in its place "38 U.S.C. 3101", wherever it appears.

81. Remove the citation "38 U.S.C. 1518" and add in its place "38 U.S.C. 3118", wherever it appears.

82. Remove the citation "38 U.S.C. 1515" and add in its place "38 U.S.C. 3115", wherever it appears.

83. Remove the citation "38 U.S.C. 1652(c)" and add in its place "38 U.S.C. 3452(c)", wherever it appears.

84. Remove the citation "38 U.S.C. 1504(a)(7)" and add in its place "38 U.S.C. 3104(a)(7)", wherever it appears.

85. Remove the citation "38 U.S.C. 1652(e)" and add in its place "38 U.S.C. 3452(e)", wherever it appears.

86. Remove the citation "38 U.S.C. 1514" and add in its place "38 U.S.C. 3114", wherever it appears.

87. Remove the citation "38 U.S.C. 1780(a)" and add in its place "38 U.S.C. 3680(a)", wherever it appears.

88. Remove the citation "38 U.S.C. 1504(c)" and add in its place "38 U.S.C. 3104(c)", wherever it appears.

89. Remove the citation "38 U.S.C. 1505" and add in its place "38 U.S.C. 3105", wherever it appears.

90. Remove the citation "38 U.S.C. 1504(a)(1)" and add in its place "38 U.S.C. 3104(a)(1)", wherever it appears.

91. Remove the citation "38 U.S.C. 1692" and add in its place "38 U.S.C. 3492", wherever it appears.

92. Remove the citation "38 U.S.C. 1504(a)(14)" and add in its place "38 U.S.C. 3104(a)(14)", wherever it appears.

93. Remove the citation "38 U.S.C. 1504(a)(13)" and add in its place "38 U.S.C. 3104(a)(13)", wherever it appears.

94. Remove the citation "38 U.S.C. 1504(a)(11)" and add in its place "38 U.S.C. 3104(a)(11)", wherever it appears.

95. Remove the citation "38 U.S.C. 1504(a)(10)" and add in its place "38 U.S.C. 3104(a)(10)", wherever it appears.

96. Remove the citation "38 U.S.C. 1504(a)(15)" and add in its place "38 U.S.C. 3104(a)(15)", wherever it appears.

97. Remove the citation "38 U.S.C. 1504(b)" and add in its place "38 U.S.C. 3104(b)", wherever it appears.

98. Remove the citation "38 U.S.C. 220, 1509, 1520" and add in its place "38 U.S.C. 523, 3109, 3120", wherever it appears.

99. Remove the citation "38 U.S.C. 1509, 1520" and add in its place "38 U.S.C. 3109, 3120", wherever it appears.

100. Remove the citation "38 U.S.C. 1520" and add in its place "38 U.S.C. 3120", wherever it appears.

101. Remove the citation "38 U.S.C. 1506(e)" and add in its place "38 U.S.C. 3106(e)", wherever it appears.

102. Remove the citation "38 U.S.C. 1506" and add in its place "38 U.S.C. 3106", wherever it appears.

103. Remove the citation "38 U.S.C. 1502(2)" and add in its place "38 U.S.C. 3102(2)", wherever it appears.

104. Remove the citation "38 U.S.C. 1506, 1507" and add in its place "38 U.S.C. 3106, 3107", wherever it appears.

105. Remove the citation "38 U.S.C. 1508" and add in its place "38 U.S.C. 3108", wherever it appears.

106. Remove the citation "38 U.S.C. 1504, 1508" and add in its place "38 U.S.C. 3104, 3108", wherever it appears.

107. Remove the citation "38 U.S.C. 1508(a)" and add in its place "38 U.S.C. 3108(a)", wherever it appears.

108. Remove the citation "38 U.S.C. 1509, 1510" and add in its place "38 U.S.C. 3109, 3110", wherever it appears.

109. Remove the citation "38 U.S.C. 1507, 1517" and add in its place "38 U.S.C. 3107, 3117", wherever it appears.

110. Remove the citation "38 U.S.C. 1510" and add in its place "38 U.S.C. 3110", wherever it appears.

111. Remove the citation "38 U.S.C. 1511" and add in its place "38 U.S.C. 3111", wherever it appears.

112. Remove the citation "38 U.S.C. 1508, 1511" and add in its place "38 U.S.C. 3108, 3111", wherever it appears.

113. Remove the citation "38 U.S.C. 1504(a), 2012" and add in its place "38 U.S.C. 3104(a), 4212", wherever it appears.

114. Remove the citation "38 U.S.C. 1504(a)(2)" and add in its place "38 U.S.C. 3104(a)(2)", wherever it appears.

115. Remove the citation "38 U.S.C. 1504(a)(12)" and add in its place "38 U.S.C. 3104(a)(12)", wherever it appears.

116. Remove the citation "38 U.S.C. 1504, 1511" and add in its place "38 U.S.C. 3104, 3111", wherever it appears.

117. Remove the citation "38 U.S.C. 1504, 1507" and add in its place "38 U.S.C. 3104, 3107", wherever it appears.

118. Remove the citation "38 U.S.C. 1515(b)" and add in its place "38 U.S.C. 3115(b)", wherever it appears.

119. Remove the citation "38 U.S.C. 1507, 1517" and add in its place "38 U.S.C. 3107, 3117", wherever it appears.

120. Remove the citation "38 U.S.C. 1501, 1506, 1516, 1517" and add in its place "38 U.S.C. 3101, 3106, 3116, 3117", wherever it appears.

121. Remove the citation "38 U.S.C. 1501, 1517" and add in its place "38 U.S.C. 3101, 3117", wherever it appears.

122. Remove the citation "38 U.S.C. 1517(a)(2)" and add in its place "38 U.S.C. 3117(a)(2)", wherever it appears.

123. Remove the citation "38 U.S.C. 1516, 1517" and add in its place "38 U.S.C. 3116, 3117", wherever it appears.

124. Remove the citation "38 U.S.C. 1504(a), 1508(f)" and add in its place "38 U.S.C. 3104(a), 3108(f)", wherever it appears.

125. Remove the citation "38 U.S.C. 1517(b)" and add in its place "38 U.S.C. 3117(b)", wherever it appears.

126. Remove the citation "38 U.S.C. 1508(f), 1516(b)" and add in its place "38 U.S.C. 3108(f), 3116(b)", wherever it appears.

127. Remove the citation "38 U.S.C. 1516(b)" and add in its place "38 U.S.C. 3116(b)", wherever it appears.

128. Remove the citation "38 U.S.C. 1504(a)(12)" and add in its place "38 U.S.C. 3104(a)(12)", wherever it appears.

129. Remove the citation "38 U.S.C. 1508(a), 1508(f), 1662(e)" and add in its place "38 U.S.C. 3108(a), 3108(f), 3462(e)", wherever it appears.

130. Remove the citation "38 U.S.C. 1508(h)" and add in its place "38 U.S.C. 3108(h)", wherever it appears.

131. Remove the citation "38 U.S.C. 1508(e)" and add in its place "38 U.S.C. 3108(e)", wherever it appears.

132. Remove the citation "38 U.S.C. 1504(a)(4), 1685" and add in its place "38 U.S.C. 3104(a)(4), 3485", wherever it appears.

133. Remove the citation "38 U.S.C. 1504(a)(4), 1508(f), 1685" and add in its place "38 U.S.C. 3104(a)(4), 3108(f), 3485", wherever it appears.

134. Remove the citation "38 U.S.C. 1512" and add in its place "38 U.S.C. 3112", wherever it appears.

135. Remove the citation "38 U.S.C. 1508(g), 1780(a)" and add in its place "38 U.S.C. 3108(g), 3680(a)", wherever it appears.

136. Remove the citation "38 U.S.C. 1508(g)" and add in its place "38 U.S.C. 3108(g)", wherever it appears.

137. Remove the citation "38 U.S.C. 1508(f), 1780(a)" and add in its place "38 U.S.C. 3108(f), 3680(a)", wherever it appears.

138. Remove the citation "38 U.S.C. 1501(a)" and add in its place "38 U.S.C. 3101(a)", wherever it appears.

139. Remove the citation "38 U.S.C. 1515, 1520" and add in its place "38 U.S.C. 3115, 3120", wherever it appears.

140. Remove the citation "38 U.S.C. 1508(c), 1515" and add in its place "38 U.S.C. 3108(c), 3115", wherever it appears.

141. Remove the citation "38 U.S.C. 1508(a), 1508(f)" and add in its place "38 U.S.C. 3108(a), 3108(f)", wherever it appears.

142. Remove the citation "38 U.S.C. 1508, 3013" and add in its place "38 U.S.C. 3108, 5113", wherever it appears.

143. Remove the citation "38 U.S.C. 3101" and add in its place "38 U.S.C. 5301", wherever it appears.

144. Remove the citation "38 U.S.C. 1503(b)" and add in its place "38 U.S.C. 3103(b)", wherever it appears.

145. Remove the citation "38 U.S.C. 3013" and add in its place "38 U.S.C. 5113", wherever it appears.

146. Remove the citation "38 U.S.C. 3012(b), 3013" and add in its place "38 U.S.C. 5112(b), 5113", wherever it appears.

147. Remove the citation "38 U.S.C. 1780(a)" and add in its place "38 U.S.C. 3680(a)", wherever it appears.

148. Remove the citation "38 U.S.C. 3503(a)" and add in its place "38 U.S.C. 6103(a)", wherever it appears.

149. Remove the citation "38 U.S.C. 1508(i)" and add in its place "38 U.S.C. 3108(i)", wherever it appears.

150. Remove the citation "38 U.S.C. 1507, 1517(a)" and add in its place "38 U.S.C. 3107, 3117(a)", wherever it appears.

151. Remove the citation "38 U.S.C. 3107(c)" and add in its place "38 U.S.C. 5307(c)", wherever it appears.

152. Remove the citation "38 U.S.C. 1780(d)" and add in its place "38 U.S.C. 3680(d)", wherever it appears.

153. Remove the citation "38 U.S.C. 1780(g)" and add in its place "38 U.S.C. 3680(g)", wherever it appears.

154. Remove the citation "38 U.S.C. 1780(a)" and add in its place "38 U.S.C. 3680(a)", wherever it appears.

155. Remove the citation "38 U.S.C. 1508(f), 1780" and add in its place "38 U.S.C. 3108(f), 3680", wherever it appears.

156. Remove the citation "38 U.S.C. 1411(a)" and add in its place "38 U.S.C. 3011(a)", wherever it appears.

157. Remove the citation "38 U.S.C. 1508(f), 1510" and add in its place "38 U.S.C. 3108(f), 3110", wherever it appears.

158. Remove the citation "38 U.S.C. 111, 1504(a)(13)" and add in its place "38 U.S.C. 111, 3104(a)(13)", wherever it appears.

159. Remove the citation "38 U.S.C. 1518(b)" and add in its place "38 U.S.C. 3118(b)", wherever it appears.

160. Remove the citation "38 U.S.C. 1519(a)" and add in its place "38 U.S.C. 3119(a)", wherever it appears.

161. Remove the citation "38 U.S.C. 1519(b)" and add in its place "38 U.S.C. 3119(b)", wherever it appears.

162. Remove the citation "38 U.S.C. 1519(c)" and add in its place "38 U.S.C. 3119(c)", wherever it appears.

163. Remove the citation "38 U.S.C. 1521(c)" and add in its place "38 U.S.C. 3121(c)", wherever it appears.

164. Remove the citation "38 U.S.C. 1521(a)" and add in its place "38 U.S.C. 3121(a)", wherever it appears.

165. Remove the citation "38 U.S.C. 214" and add in its place "38 U.S.C. 529", wherever it appears.

166. Remove the citation "38 U.S.C. 212(a)" and add in its place "38 U.S.C. 512(a)", wherever it appears.

167. Remove the citation "38 U.S.C. 212(a), 4003" and add in its place "38 U.S.C. 512(a), 7103", wherever it appears.

168. Remove the citation "38 U.S.C. 3012" and add in its place "38 U.S.C. 5112", wherever it appears.

169. Remove the citation "38 U.S.C. 3012, 3013" and add in its place "38 U.S.C. 5112, 5113", wherever it appears.

170. Remove the citation "38 U.S.C. 1515(a)(4)" and add in its place "38 U.S.C. 3115(a)(4)", wherever it appears.

**Subpart B—Veterans' Education Assistance Under 38 U.S.C. Chapter 34**

1. Remove the citation "38 U.S.C. 210, 1651–1687" and add in its place "38 U.S.C. 501, 3451–3493", wherever it appears.

2. Remove the citation "38 U.S.C. 1652(a)(3), 1682(b)" and add in its place "38 U.S.C. 3452(a)(3), 3482(b)", wherever it appears.

3. Remove the citation "38 U.S.C. 1684" and add in its place "38 U.S.C. 3484", wherever it appears.

4. Remove the citation "38 U.S.C. 1788" and add in its place "38 U.S.C. 3688", wherever it appears.

5. Remove the citation "38 U.S.C. 1602(1)" and add in its place "38 U.S.C. 3202(1)", wherever it appears.

6. Remove the citation "38 U.S.C. 1781" and add in its place "38 U.S.C. 3681", wherever it appears.

7. Remove the citation "38 U.S.C. 1671" and add in its place "38 U.S.C. 3471", wherever it appears.

8. Remove the citation "38 U.S.C. 3003(a)" and add in its place "38 U.S.C. 5103(a)", wherever it appears.

9. Remove the citation "38 U.S.C. 3001, 3013" and add in its place "38 U.S.C. 5101, 5113", wherever it appears.

10. Remove the citation "38 U.S.C. 1662(a)" and add in its place "38 U.S.C. 3462(a)", wherever it appears.

11. Remove the citation "38 U.S.C. 1662" and add in its place "38 U.S.C. 3462", wherever it appears.

12. Remove the citation "38 U.S.C. 1652" and add in its place "38 U.S.C. 3452", wherever it appears.

13. Remove the citation "38 U.S.C. 1602, 1652" and add in its place "38 U.S.C. 3202(1), 3452", wherever it appears.

14. Remove the citation "section 1652(a)(1)(B)" and add in its place "section 3452(a)(1)(B)", wherever it appears.

15. Remove the citation "38 U.S.C. 1662(a)(1)" and add in its place "38 U.S.C. 3462(a)(1)", wherever it appears.

16. Remove the citation "38 U.S.C. 1795" and add in its place "38 U.S.C. 3695", wherever it appears.

17. Remove the citation "38 U.S.C. 1786(a)" and add in its place "38 U.S.C. 3686(a)", wherever it appears.

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18. Remove the citation "38 U.S.C. 1661, 1677(b), 1786(a)" and add in its place "38 U.S.C. 3461, 3686(a)", wherever it appears.
19. Remove the citation "38 U.S.C. 1661" and add in its place "38 U.S.C. 3461", wherever it appears.
20. Remove the citation "38 U.S.C. 101, 1682" and add in its place "38 U.S.C. 101, 3462", wherever it appears.
21. Remove the citation "38 U.S.C. 1682, 3103" and add in its place "38 U.S.C. 3462, 5303", wherever it appears.
22. Remove the citation "38 U.S.C. 105, 1662" and add in its place "38 U.S.C. 105, 3462", wherever it appears.
23. Remove the citation "38 U.S.C. 1691(b)(2)" and add in its place "38 U.S.C. 3491(b)(2)", wherever it appears.
24. Remove the citation "38 U.S.C. 1691" and add in its place "38 U.S.C. 3491", wherever it appears.
25. Remove the citation "38 U.S.C. 1661, 1677(b), 1691" and add in its place "38 U.S.C. 3461, 3491", wherever it appears.
26. Remove the citation "38 U.S.C. 1661, 1677(b)" and add in its place "38 U.S.C. 3461", wherever it appears.
27. Remove the citation "38 U.S.C. 1682(e)" and add in its place "38 U.S.C. 3482(e)", wherever it appears.
28. Remove the citation "38 U.S.C. 1677(b)" and add in its place "38 U.S.C. 1677 (Repealed, Pub. L. 97–35, section 2003(b))", wherever it appears.
29. Remove the citation "38 U.S.C. 1787" and add in its place "38 U.S.C. 3687", wherever it appears.

**Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35**

1. Remove the citation "38 U.S.C. 210, 1700–1766" and add in its place "38 U.S.C. 501, 3500–3566", wherever it appears.
2. Remove the citation "38 U.S.C. 1711(a), 1733, 1741(b)" and add in its place "38 U.S.C. 3511(a), 3533, 3541(b)", wherever it appears.
3. Remove the citation "38 U.S.C. 1766(b)" and add in its place "38 U.S.C. 3566(b)", wherever it appears.
4. Remove the citation "38 U.S.C. 1700, 1701, and 1711" and add in its place "38 U.S.C. 3500, 3501, and 3511", wherever it appears.
5. Remove the citation "38 U.S.C. 1701(a)(4)" and add in its place "38 U.S.C. 3501(a)(4)", wherever it appears.
6. Remove the citation "38 U.S.C. 1701(b)" and add in its place "38 U.S.C. 3501(b)", wherever it appears.
7. Remove the citation "38 U.S.C. 1701(c)" and add in its place "38 U.S.C. 3501(c)", wherever it appears.
8. Remove the citation "38 U.S.C. 1701(a)(3) and (d), and 1712(a)" and add in its place "38 U.S.C. 3501(a)(3) and (d), and 3512(a)", wherever it appears.
9. Remove the citation "38 U.S.C. 1781" and add in its place "38 U.S.C. 3681", wherever it appears.
10. Remove the citation "38 U.S.C. 1713" and add in its place "38 U.S.C. 3513", wherever it appears.
11. Remove the citation "38 U.S.C. 3003(a)" and add in its place "38 U.S.C. 5103(a)", wherever it appears.
12. Remove the citation "38 U.S.C. 3001, 3013" and add in its place "38 U.S.C. 5101, 5113", wherever it appears.
13. Remove the citation "38 U.S.C. 1712" and add in its place "38 U.S.C. 3512", wherever it appears.
14. Remove the citation "38 U.S.C. 1712(a)" and add in its place "38 U.S.C. 3512(a)", wherever it appears.
15. Remove the citation "38 U.S.C. 1712(a)(3), 1712(d)" and add in its place "38 U.S.C. 3512(a)(3), 3512(d)", wherever it appears.
16. Remove the citation "38 U.S.C. 1701" and add in its place "38 U.S.C. 3501", wherever it appears.
17. Remove the citation "38 U.S.C. 301" and add in its place "38 U.S.C. 1101", wherever it appears.
18. Remove the citation "38 U.S.C. 101(a)(4), 1701" and add in its place "38 U.S.C. 101(a)(4), 3501", wherever it appears.
19. Remove the citation "38 U.S.C. 1712(a)(5)" and add in its place "38 U.S.C. 3512(a)(5)", wherever it appears.
20. Remove the citation "38 U.S.C. 1701(d)" and add in its place "38 U.S.C. 3501(d)", wherever it appears.
21. Remove the citation "38 U.S.C. 1711(a)" and add in its place "38 U.S.C. 3511(a)", wherever it appears.
22. Remove the citation "38 U.S.C. 1741(b), 1733(b)" and add in its place "38 U.S.C. 3541(b), 3533(b)", wherever it appears.
23. Remove the citation "38 U.S.C. 1692, 1733(b)" and add in its place "38 U.S.C. 3492, 3533(b)", wherever it appears.
24. Remove the citation "38 U.S.C. 1733(a)" and add in its place "38 U.S.C. 3533(a)", wherever it appears.
25. Remove the citation "38 U.S.C. 1734" and add in its place "38 U.S.C. 3534", wherever it appears.
26. Remove the citation "38 U.S.C. 1682(b), 1732(a)" and add in its place "38 U.S.C. 3482(b), 3532(a)", wherever it appears.
27. Remove the citation "38 U.S.C. 1734, 1787" and add in its place "38 U.S.C. 3534, 3687", wherever it appears.
28. Remove the citation "38 U.S.C. 1786(a)" and add in its place "38 U.S.C. 3686(a)", wherever it appears.
29. Remove the citation "38 U.S.C. 1671, 1732" and add in its place "38 U.S.C. 3471, 3532", wherever it appears.
30. Remove the citation "38 U.S.C. 1711" and add in its place "38 U.S.C. 3511", wherever it appears.
31. Remove the citation "38 U.S.C. 1712(b)" and add in its place "38 U.S.C. 3512(b)", wherever it appears.
32. Remove the citation "38 U.S.C. 1701(a)" and add in its place "38 U.S.C. 3501(a)", wherever it appears.
33. Remove the citation "38 U.S.C. 1711(b)" and add in its place "38 U.S.C. 3511(b)", wherever it appears.
34. Remove the citation "38 U.S.C. 1711(b), 1712(b) 1732, 1786" and add in its place "38 U.S.C. 3511(b), 3512(b), 3532, 3686", wherever it appears.
35. Remove the citation "38 U.S.C. 1740" and add in its place "38 U.S.C. 3540", wherever it appears.
36. Remove the citation "38 U.S.C. 1741(b), 1742" and add in its place "38 U.S.C. 3541(b), 3542", wherever it appears.
37. Remove the citation "38 U.S.C. 1743(b)" and add in its place "38 U.S.C. 3543(b)", wherever it appears.
38. Remove the citation "38 U.S.C. 1741(a)" and add in its place "38 U.S.C. 3541(a)", wherever it appears.
39. Remove the citation "38 U.S.C. 1743" and add in its place "38 U.S.C. 3543", wherever it appears.
40. Remove the citation "38 U.S.C. 1742(c)" and add in its place "38 U.S.C. 3542(c)", wherever it appears.
41. Remove the citation "38 U.S.C. 1741" and add in its place "38 U.S.C. 3541", wherever it appears.
42. Remove the citation "38 U.S.C. 1741, 1743(b)" and add in its place "38 U.S.C. 3541, 3543(b)", wherever it appears.
43. Remove the citation "38 U.S.C. 1742" and add in its place "38 U.S.C. 3542", wherever it appears.
44. Remove the citation "38 U.S.C. 1732, 1742, 1765" and add in its place "38 U.S.C. 3532, 3542, 3565", wherever it appears.

**Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36**

1. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.
2. Remove the citation "38 U.S.C. 212(a)" and add in its place "38 U.S.C. 512(a)", wherever it appears.
3. Remove the citation "38 U.S.C. 212(c)" and add in its place "38 U.S.C. 512(c)", wherever it appears.



4. Remove the citation "38 U.S.C. 1796" and add in its place "38 U.S.C. 3696", wherever it appears.
5. Remove the citation "38 U.S.C. 1434(a), 1641, 1783(a)" and add in its place "38 U.S.C. 3034(a), 3241, 3683(a)", wherever it appears.
6. Remove the citation "38 U.S.C. 1783" and add in its place "38 U.S.C. 3683", wherever it appears.
7. Remove the citation "38 U.S.C. 1434(a), 1641, 1783(b)" and add in its place "38 U.S.C. 3034(a), 3241, 3683(b)", wherever it appears.
8. Remove the citation "38 U.S.C. 1790" and add in its place "38 U.S.C. 3690", wherever it appears.
9. Remove the citation "38 U.S.C. 1780" and add in its place "38 U.S.C. 3680", wherever it appears.
10. Remove the citation "38 U.S.C. 3503" and add in its place "38 U.S.C. 6103", wherever it appears.
11. Remove the citation "38 U.S.C. 3503, 3504 and 3505" and add in its place "38 U.S.C. 6103, 6104 and 6105", wherever it appears.
12. Remove the citation "38 U.S.C. 1790(b)" and add in its place "38 U.S.C. 3690(b)", wherever it appears.
13. Remove the citation "38 U.S.C. 1785" and add in its place "38 U.S.C. 3685", wherever it appears.
14. Remove the citation "38 U.S.C. 1434(a), 1641, 1785" and add in its place "38 U.S.C. 3034(a), 3241, 3685", wherever it appears.
15. Remove the citation "38 U.S.C. 1795(a)" and add in its place "38 U.S.C. 3695(a)", wherever it appears.
16. Remove the citation "38 U.S.C. 1795(b)" and add in its place "38 U.S.C. 3695(b)", wherever it appears.
17. Remove the citation "38 U.S.C. 1781" and add in its place "38 U.S.C. 3681", wherever it appears.
18. Remove the citation "38 U.S.C. 1671, 1721" and add in its place "38 U.S.C. 3471, 3521", wherever it appears.
19. Remove the citation "38 U.S.C. 1663, 1720" and add in its place "38 U.S.C. 3520", wherever it appears.
20. Remove the citation "38 U.S.C. 1663" and add in its place "38 U.S.C. 1663 (Repealed; for Pub. L. 102–16)", wherever it appears.
21. Remove the citation "38 U.S.C. 1720, 1736, 1741, 1761" and add in its place "38 U.S.C. 3520, 3536, 3541, 3561", wherever it appears.
22. Remove the citation "38 U.S.C. 1733" and add in its place "38 U.S.C. 3533", wherever it appears.
23. Remove the citation "38 U.S.C. 1736, 1740–1743" and add in its place "38 U.S.C. 3536, 3540–3543", wherever it appears.
24. Remove the citation "38 U.S.C. 1761" and add in its place "38 U.S.C. 3561", wherever it appears.
25. Remove the citation "38 U.S.C. 1682, 1691, 1732, 1780(a)" and add in its place "38 U.S.C. 3482, 3491, 3532, 3680(a)", wherever it appears.
26. Remove the citation "38 U.S.C. 1780(a)" and add in its place "38 U.S.C. 3680(a)", wherever it appears.
27. Remove the citation "38 U.S.C. 1652" and add in its place "38 U.S.C. 3452", wherever it appears.
28. Remove the citation "38 U.S.C. 1681(a), 1780(a)" and add in its place "38 U.S.C. 3481(a), 3680(a)", wherever it appears.
29. Remove the citation "38 U.S.C. 1662(a), 1681(a), 1780(a)" and add in its place "38 U.S.C. 3462(a), 3481(a), 3680(a)", wherever it appears.
30. Remove the citation "38 U.S.C. 1772(a)" and add in its place "38 U.S.C. 3672(a)", wherever it appears.
31. Remove the citation "38 U.S.C. 3010(n)" and add in its place "38 U.S.C. 5110(n)", wherever it appears.
32. Remove the citation "38 U.S.C. 3010(f)(n)" and add in its place "38 U.S.C. 5110(f)(n)", wherever it appears.
33. Remove the citation "38 U.S.C. 1662(b)" and add in its place "38 U.S.C. 3462(b)", wherever it appears.
34. Remove the citation "38 U.S.C. 1682(g), 1732(e)" and add in its place "38 U.S.C. 3482(g), 3532(e)", wherever it appears.
35. Remove the citation "38 U.S.C. 3012, 3013" and add in its place "38 U.S.C. 5112, 5113", wherever it appears.
36. Remove the citation "38 U.S.C. 1434, 1790(b)" and add in its place "38 U.S.C. 3034, 3690(b)", wherever it appears.
37. Remove the citation "38 U.S.C. 3012(b), 3013" and add in its place "38 U.S.C. 5112(b), 5113", wherever it appears.
38. Remove the citation "38 U.S.C. 1772(a), 1790" and add in its place "38 U.S.C. 3672(a), 3690", wherever it appears.
39. Remove the citation "38 U.S.C. 1771(b), 1772(a), 1790" and add in its place "38 U.S.C. 3671(b), 3672(a), 3690", wherever it appears.
40. Remove the citation "38 U.S.C. 1711(b)" and add in its place "38 U.S.C. 3511(b)", wherever it appears.
41. Remove the citation "38 U.S.C. 3012(b)(10) and 3013" and add in its place "38 U.S.C. 5112(b)(10) and 5113", wherever it appears.
42. Remove the citation "38 U.S.C. 1780(a)(4)" and add in its place "38 U.S.C. 3680(a)(4)", wherever it appears.
43. Remove the citation "38 U.S.C. 1701" and add in its place "38 U.S.C. 3501", wherever it appears.
44. Remove the citation "38 U.S.C. 1682(e)" and add in its place "38 U.S.C. 3482(e)", wherever it appears.
45. Remove the citation "38 U.S.C. 1788" and add in its place "38 U.S.C. 3688", wherever it appears.
46. Remove the citation "38 U.S.C. 1677, 1682, 1786, 1787" and add in its place "38 U.S.C. 3482, 3686, 3687", wherever it appears.
47. Remove the citation "38 U.S.C. 1682" and add in its place "38 U.S.C. 3482", wherever it appears.
48. Remove the citation "38 U.S.C. 1682, 1787" and add in its place "38 U.S.C. 3482, 3687", wherever it appears.
49. Remove the citation "38 U.S.C. 1787(b)(3)" and add in its place "38 U.S.C. 3687(b)(3)", wherever it appears.
50. Remove the citation "38 U.S.C. 1780(d)(4)(B)" and add in its place "38 U.S.C. 3680(d)(4)(B)", wherever it appears.
51. Remove the citation "38 U.S.C. 1780(d)" and add in its place "38 U.S.C. 3680(d)", wherever it appears.
52. Remove the citation "38 U.S.C. 1780(a)(4)" and add in its place "38 U.S.C. 3680(a)(4)", wherever it appears.
53. Remove the citation "38 U.S.C. 1691" and add in its place "38 U.S.C. 3491", wherever it appears.
54. Remove the citation "38 U.S.C. 1682(g)" and add in its place "38 U.S.C. 3482(g)", wherever it appears.
55. Remove the citation "38 U.S.C. 1732, 1786" and add in its place "38 U.S.C. 3532, 3686", wherever it appears.
56. Remove the citation "38 U.S.C. 1732(c)(2)" and add in its place "38 U.S.C. 3532(c)(2)", wherever it appears.
57. Remove the citation "38 U.S.C. 1732(a)(2)" and add in its place "38 U.S.C. 3532(a)(2)", wherever it appears.
58. Remove the citation "38 U.S.C. 1732" and add in its place "38 U.S.C. 3532", wherever it appears.
59. Remove the citation "section 1733" and add in its place "section 3533", wherever it appears.
60. Remove the citation "38 U.S.C. 1732(e)" and add in its place "38 U.S.C. 3532(e)", wherever it appears.
61. Remove the citation "38 U.S.C. 1691, 1733" and add in its place "38 U.S.C. 3491, 3533", wherever it appears.
62. Remove the citation "38 U.S.C. 1780(f)" and add in its place "38 U.S.C. 3680(f)", wherever it appears.
63. Remove the citation "38 U.S.C. 1691, 1780" and add in its place "38 U.S.C. 3491, 3680", wherever it appears.
64. Remove the citation "38 U.S.C. 3107(c)" and add in its place "38 U.S.C. 5307(c)", wherever it appears.
65. Remove the citation "38 U.S.C. 1762" and add in its place "38 U.S.C. 3562", wherever it appears.

66. Remove the citation "38 U.S.C. 1685" and add in its place "38 U.S.C. 3485", wherever it appears.

67. Remove the citation "section 3101(a)" and add in its place "section 5301(a)", wherever it appears.

68. Remove the citation "38 U.S.C. 3101(a)" and add in its place "38 U.S.C. 5301(a)", wherever it appears.

69. Remove the citation "section 1676" and add in its place "section 3476", wherever it appears.

70. Remove the citation "section 1786" and add in its place "section 3686", wherever it appears.

71. Remove the citation "38 U.S.C. 1771(a)" and add in its place "38 U.S.C. 3671(a)", wherever it appears.

72. Remove the citation "38 U.S.C. 1771(b)(1)" and add in its place "38 U.S.C. 3671(b)(1)", wherever it appears.

73. Remove the citation "38 U.S.C. 212(a), 1761(b)" and add in its place "38 U.S.C. 512(a), 3561(b)", wherever it appears.

74. Remove the citation "38 U.S.C. 1772(c)" and add in its place "38 U.S.C. 3672(c)", wherever it appears.

75. Remove the citation "38 U.S.C. 1772(b)" and add in its place "38 U.S.C. 3672(b)", wherever it appears.

76. Remove the citation "38 U.S.C. 1773(a)" and add in its place "38 U.S.C. 3673(a)", wherever it appears.

77. Remove the citation "38 U.S.C. 1772, 1773, 1774" and add in its place "38 U.S.C. 3672, 3673, 3674", wherever it appears.

78. Remove the citation "38 U.S.C. 1773(b)" and add in its place "38 U.S.C. 3673(b)", wherever it appears.

79. Remove the citation "38 U.S.C. 1782" and add in its place "38 U.S.C. 3682", wherever it appears.

80. Remove the citation "38 U.S.C. 1774, 1774(a)" and add in its place "38 U.S.C. 3674, 3674(a)", wherever it appears.

81. Remove the citation "38 U.S.C. 1774" and add in its place "38 U.S.C. 3674", wherever it appears.

82. Remove the citation "38 U.S.C. 1774(b)" and add in its place "38 U.S.C. 3674(b)", wherever it appears.

83. Remove the citation "38 U.S.C. 1434, 1774" and add in its place "38 U.S.C. 3034, 3674", wherever it appears.

84. Remove the citation "38 U.S.C. 1774A(a)" and add in its place "38 U.S.C. 3674A(a)", wherever it appears.

85. Remove the citation "38 U.S.C. 1774A" and add in its place "38 U.S.C. 3674A", wherever it appears.

86. Remove the citation "38 U.S.C. 1774A(b)" and add in its place "38 U.S.C. 3674A(b)", wherever it appears.

87. Remove the citation "38 U.S.C. 1701(a)(6)" and add in its place "38 U.S.C. 3501(a)(6)", wherever it appears.

88. Remove the citation "38 U.S.C. 1652(e), 1701(a)(9)" and add in its place "38 U.S.C. 3452(e), 3501(a)(9)", wherever it appears.

89. Remove the citation "38 U.S.C. 1788(c)" and add in its place "38 U.S.C. 3688(c)", wherever it appears.

90. Remove the citation "38 U.S.C. 1780(a)(3)" and add in its place "38 U.S.C. 3680(a)(3)", wherever it appears.

91. Remove the citation "38 U.S.C. 1789(c)" and add in its place "38 U.S.C. 3689(c)", wherever it appears.

92. Remove the citation "38 U.S.C. 1780(g)" and add in its place "38 U.S.C. 3680(g)", wherever it appears.

93. Remove the citation "38 U.S.C. 1691(a)(2)" and add in its place "38 U.S.C. 3491(a)(2)", wherever it appears.

94. Remove the citation "38 U.S.C. 1673(d)" and add in its place "38 U.S.C. 3473(d)", wherever it appears.

95. Remove the citation "38 U.S.C. 1673, 1691(c)" and add in its place "38 U.S.C. 3473, 3491(c)", wherever it appears.

96. Remove the citation "38 U.S.C. 1673" and add in its place "38 U.S.C. 3473", wherever it appears.

97. Remove the citation "38 U.S.C. 1434, 1641, 1673(d)" and add in its place "38 U.S.C. 3034, 3241, 3473(d)", wherever it appears.

98. Remove the citation "38 U.S.C. 1780(d), 1784, 1785, 1798" and add in its place "38 U.S.C. 3680(d), 3684, 3685, 3698", wherever it appears.

99. Remove the citation "38 U.S.C. 1784(a)" and add in its place "38 U.S.C. 3684(a)", wherever it appears.

100. Remove the citation "38 U.S.C. 1784(a), 1788(a)" and add in its place "38 U.S.C. 3684(a), 3688(a)", wherever it appears.

101. Remove the citation "38 U.S.C. 1780(a)(2), 1788(a)(7)" and add in its place "38 U.S.C. 3680(a)(2), 3688(a)(7)", wherever it appears.

102. Remove the citation "38 U.S.C. 1674" and add in its place "38 U.S.C. 3474", wherever it appears.

103. Remove the citation "38 U.S.C. 1780(a)(7), 1780(g)" and add in its place "38 U.S.C. 3680(a)(7), 3680(g)", wherever it appears.

104. Remove the citation "38 U.S.C. 1434, 1641, 1784(c)" and add in its place "38 U.S.C. 3034, 3241, 3684(c)", wherever it appears.

105. Remove the citation "38 U.S.C. 1784(c)" and add in its place "38 U.S.C. 3684(c)", wherever it appears.

106. Remove the citation "38 U.S.C. 1784, 1798" and add in its place "38 U.S.C. 3684, 3698", wherever it appears.

107. Remove the citation "38 U.S.C. 1784" and add in its place "38 U.S.C. 3684", wherever it appears.

108. Remove the citation "38 U.S.C. 1434, 1641, 1784(b)" and add in its place "38 U.S.C. 3034, 3241, 3684(b)", wherever it appears.

109. Remove the citation "38 U.S.C. 1784(b)" and add in its place "38 U.S.C 3684(b)", wherever it appears.

110. Remove the citation "38 U.S.C. 1434, 1641, 1790(b)" and add in its place "38 U.S.C. 3034, 3241, 3690(b)", wherever it appears.

111. Remove the citation "38 U.S.C. 1671, 1721, 1790(b)" and add in its place "38 U.S.C. 3471, 3521, 3690(b)", wherever it appears.

112. Remove the citation "38 U.S.C. 1772" and add in its place "38 U.S.C. 3672", wherever it appears.

113. Remove the citation "38 U.S.C. 1434, 1644, 3690" and add in its place "38 U.S.C. 3034, 3242, 3690", wherever it appears.

114. Remove the citation "section 1796(b)" and add in its place "section 3696(b)", wherever it appears.

115. Remove the citation "38 U.S.C. 1652(b), 1670, 1691(a)" and add in its place "38 U.S.C. 3452(b), 3470, 3491(a)", wherever it appears.

116. Remove the citation "38 U.S.C. 1671" and add in its place "38 U.S.C. 3471", wherever it appears.

117. Remove the citation "38 U.S.C. 1721" and add in its place "38 U.S.C. 3521", wherever it appears.

118. Remove the citation "38 U.S.C. 1721, 1736" and add in its place "38 U.S.C. 3521, 3536", wherever it appears.

119. Remove the citation "38 U.S.C. 1736" and add in its place "38 U.S.C. 3536", wherever it appears.

120. Remove the citation "38 U.S.C. 1743(b)" and add in its place "38 U.S.C. 3543(b)", wherever it appears.

121. Remove the citation "38 U.S.C. 1682(a)(2) and 1732(b)" and add in its place "38 U.S.C. 3482(a)(2) and 3532(b)", wherever it appears.

122. Remove the citation "38 U.S.C. 1673(c)" and add in its place "38 U.S.C. 3473(c)", wherever it appears.

123. Remove the citation "38 U.S.C. 1791(b)" and add in its place "38 U.S.C. 3691(b)", wherever it appears.

124. Remove the citation "38 U.S.C. 1791" and add in its place "38 U.S.C. 3691", wherever it appears.

125. Remove the citation "38 U.S.C. 1690, 1691, 1693" and add in its place "38 U.S.C. 3490, 3491, 3493", wherever it appears.

126. Remove the citation "38 U.S.C. 1692" and add in its place "38 U.S.C. 3492", wherever it appears.

127. Remove the citation "38 U.S.C. 1692(b)" and add in its place "38 U.S.C. 3492(b)", wherever it appears.

128. Remove the citation "38 U.S.C. 1690, 1692, 1693" and add in its place "38 U.S.C. 3490, 3492, 3493", wherever it appears.

129. Remove the citation "38 U.S.C. 1691, 1733" and add in its place "38 U.S.C. 3491, 3533", wherever it appears.

130. Remove the citation "38 U.S.C. 1770" and add in its place "38 U.S.C. 3670", wherever it appears.

131. Remove the citation "38 U.S.C. 1772(a)" and add in its place "38 U.S.C. 3672(a)", wherever it appears.

132. Remove the citation "38 U.S.C. 1434, 1641, 1772" and add in its place "38 U.S.C. 3034, 3241, 3672", wherever it appears.

133. Remove the citation "38 U.S.C. 1641, 1676, 1723, 1772(b), 1772(c)" and add in its place "38 U.S.C. 3241, 3476, 3523, 3672(b), 3672(c)", wherever it appears.

134. Remove the citation "38 U.S.C. 1789(b)" and add in its place "38 U.S.C. 3689(b)", wherever it appears.

135. Remove the citation "38 U.S.C. 1789" and add in its place "38 U.S.C. 3689", wherever it appears.

136. Remove the citation "38 U.S.C. 1673(a), 1723(a)" and add in its place "38 U.S.C. 3473(a), 3523(a)", wherever it appears.

137. Remove the citation "section 1796" and add in its place "section 3696", wherever it appears.

138. Remove the citation "38 U.S.C. 1796" and add in its place "38 U.S.C. 3696", wherever it appears.

139. Remove the citation "38 U.S.C. 1775(a)" and add in its place "38 U.S.C. 3675(a)", wherever it appears.

140. Remove the citation "38 U.S.C. 1775(b)" and add in its place "38 U.S.C. 3675(b)", wherever it appears.

141. Remove the citation "38 U.S.C. 1775" and add in its place "38 U.S.C. 3675", wherever it appears.

142. Remove the citation "38 U.S.C. 1776(a)" and add in its place "38 U.S.C. 3676(a)", wherever it appears.

143. Remove the citation "38 U.S.C. 1776(b)" and add in its place "38 U.S.C. 3676(b)", wherever it appears.

144. Remove the citation "38 U.S.C. 1776" and add in its place "38 U.S.C. 3676", wherever it appears.

145. Remove the citation "38 U.S.C. 1776(c)" and add in its place "38 U.S.C. 3676(c)", wherever it appears.

146. Remove the citation "38 U.S.C. 1776(d)" and add in its place "38 U.S.C. 3676(d)", wherever it appears.

147. Remove the citation "38 U.S.C. 1780(a)(5)" and add in its place "38 U.S.C. 3680(a)(5)", wherever it appears.

148. Remove the citation "38 U.S.C. 1778" and add in its place "38 U.S.C. 3678", wherever it appears.

149. Remove the citation "38 U.S.C. 1779" and add in its place "38 U.S.C. 3679", wherever it appears.

150. Remove the citation "38 U.S.C. 1676" and add in its place "38 U.S.C. 3476", wherever it appears.

151. Remove the citation "38 U.S.C. 1787" and add in its place "38 U.S.C. 3687", wherever it appears.

152. Remove the citation "38 U.S.C. 1772(d)" and add in its place "38 U.S.C. 3672(d)", wherever it appears.

153. Remove the citation "38 U.S.C. 1777" and add in its place "38 U.S.C. 3677", wherever it appears.

154. Remove the citation "38 U.S.C. 1677(a)" and add in its place "38 U.S.C. 1677 (repealed, Pub. L. 97–35, section 2003(b))", wherever it appears.

155. Remove the citation "38 U.S.C. 1677" and add in its place "38 U.S.C. 1677 (repealed, "Pub. L. 97–35, Section 2003(b))", wherever it appears.

156. Remove the citation "38 U.S.C. 1671" and add in its place "38 U.S.C. 3471", wherever it appears.

157. Remove the citation "38 U.S.C. 1775(b) or 1776(c)(4)" and add in its place "38 U.S.C. 3675(b) or 3676(c)(4)", wherever it appears.

158. Remove the citation "38 U.S.C. 1671, 1684(d)" and add in its place "38 U.S.C. 3471, 3482(d)", wherever it appears.

159. Remove the citation "38 U.S.C. 1771, 1772" and add in its place "38 U.S.C. 3671, 3672", wherever it appears.

160. Remove the citation "38 U.S.C. 1789(b)(2)" and add in its place "38 U.S.C. 3689(b)(2)", wherever it appears.

161. Remove the citation "38 U.S.C. 1790(c)" and add in its place "38 U.S.C. 3690(c)", wherever it appears.

162. Remove the citation "38 U.S.C. 1652(b)" and add in its place "38 U.S.C. 3452(b)", wherever it appears.

163. Remove the citation "38 U.S.C. 1677(b)" and add in its place "38 U.S.C. 1677 (repealed, Pub. L. 97–35, section 2003(b))", wherever it appears.

164. Remove the citation "38 U.S.C. 1677, 1773(a)" and add in its place "38 U.S.C. 3673(a)", wherever it appears.

165. Remove the citation "38 U.S.C. 1673(d)" and add in its place "38 U.S.C. 3473(d)", wherever it appears.

166. Remove the citation "38 U.S.C. 1682, 1732" and add in its place "38 U.S.C. 3482, 3532", wherever it appears.

167. Remove the citation "38 U.S.C. 1788(b)" and add in its place "38 U.S.C. 3688(b)", wherever it appears.

168. Remove the citation "38 U.S.C. 4114(e)" and add in its place "38 U.S.C. 7407", wherever it appears.

169. Remove the citation "38 U.S.C. 1772, 1789(c)" and add in its place "38 U.S.C. 3672, 3689(c)", wherever it appears.

170. Remove the citation "38 U.S.C. 1788(a)(7)" and add in its place "38 U.S.C. 3688(a)(7)", wherever it appears.

171. Remove the citation "38 U.S.C. 1788(e)" and add in its place "38 U.S.C. 3688(e)", wherever it appears.

172. Remove the citation "38 U.S.C. 1682, 1732, 1777, 1787, 1788" and add in its place "38 U.S.C. 3482, 3532, 3677, 3687, 3688", wherever it appears.

173. Remove the citation "38 U.S.C. 1788(a), 1788(e)" and add in its place "38 U.S.C. 3688(a), 3688(e)", wherever it appears.

174. Remove the citation "38 U.S.C. 1788(b)" and add in its place "38 U.S.C. 3688(a)", wherever it appears.

175. Remove the citation "38 U.S.C. 1682(e)" and add in its place "38 U.S.C. 3482(e)", wherever it appears.

176. Remove the citation "38 U.S.C. 1741" and add in its place "38 U.S.C. 3541", wherever it appears.

177. Remove the citation "38 U.S.C. 1741(a)" and add in its place "38 U.S.C. 3541(a)", wherever it appears.

178. Remove the citation "38 U.S.C. 1743(a)" and add in its place "38 U.S.C. 3543(a)", wherever it appears.

179. Remove the citation "38 U.S.C. 1674 and 1724" and add in its place "38 U.S.C. 3474 and 3524", wherever it appears.

180. Remove the citation "38 U.S.C. 1786(a)" and add in its place "38 U.S.C. 3686(a)", wherever it appears.

181. Remove the citation "38 U.S.C. 1673, 1682, 1733" and add in its place "38 U.S.C. 3473, 3482, 3533", wherever it appears.

182. Remove the citation "38 U.S.C. 1682, 1732" and add in its place "38 U.S.C. 3482, 3532", wherever it appears.

183. Remove the citation "38 U.S.C. 1682, 1732, 1788" and add in its place "38 U.S.C. 3482, 3532, 3688", wherever it appears.

### Subpart E—Nondiscrimination in Vocational Rehabilitation and Education Programs—Title VI, Civil Rights Act of 1964

1. Remove the citation "38 U.S.C. 210(c)(1)" and add in its place "38 U.S.C. 501", wherever it appears.

2. Remove the citation "38 U.S.C. 3402(a)(2)" and add in its place "38 U.S.C. 5902(a)(2)", wherever it appears.

### Subpart F—Education Loans

1. Remove the citation "38 U.S.C. 210, 1686, 1737" and add in its place "38 U.S.C. 501, 3537", wherever it appears.

2. Remove the citation "section 1798" and add in its place "section 3698", wherever it appears.

3. Remove the citation "38 U.S.C. 1798" and add in its place "38 U.S.C. 3698", wherever it appears.

4. Remove the citation "38 U.S.C. 1798(c)" and add in its place "38 U.S.C. 3698(c)", wherever it appears.

5. Remove the citation "38 U.S.C. 1631, 1661" and add in its place "section 3231, 3461", wherever it appears.

6. Remove the citation "section 1685" and add in its place "section 3485", wherever it appears.

7. Remove the citation "38 U.S.C. 1798(b)" and add in its place "38 U.S.C. 3698(b)", wherever it appears.

8. Remove the citation "38 U.S.C. 1682A(e)" and add in its place "38 U.S.C. 1682A(e) (repealed, Pub. L. 100–689, section 124(a))", wherever it appears.

9. Remove the citation "section 1661" and add in its place "section 3461", wherever it appears.

10. Remove the citation "38 U.S.C. 1798(g)" and add in its place "38 U.S.C. 3698(g)", wherever it appears.

11. Remove the citation "section 1661 or 1711" and add in its place "section 3461 or 3511", wherever it appears.

12. Remove the citation "38 U.S.C. 1662, 1737, 1798" and add in its place "38 U.S.C. 3462, 3537, 3698", wherever it appears.

13. Remove the citation "38 U.S.C. 1671" and add in its place "38 U.S.C. 3471", wherever it appears.

14. Remove the citation "38 U.S.C. 1798(a)" and add in its place "38 U.S.C. 3698(a)", wherever it appears.

15. Remove the citation "38 U.S.C. 1798(e)(1)" and add in its place "38 U.S.C. 3698(e)(1)", wherever it appears.

16. Remove the citation "38 U.S.C. 1796, 1798(b)" and add in its place "38 U.S.C. 3696, 3698(b)", wherever it appears.

**Subpart F–1—Veterans' Job Training**

1. Remove the citation "38 U.S.C. 212(a)" and add in its place "38 U.S.C. 512(a)", wherever it appears.

2. Remove the citation "38 U.S.C. 1506(a)" and add in its place "38 U.S.C. 3106(a)", wherever it appears.

3. Remove the citation "38 U.S.C. 4004" and add in its place "38 U.S.C. 7104", wherever it appears.

**Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32**

1. Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501", wherever it appears.

2. Remove the citation "38 U.S.C. 1641" and add in its place "38 U.S.C. 3241", wherever it appears.

3. Remove the citation "38 U.S.C. 1601" and add in its place "38 U.S.C. 3201", wherever it appears.

4. Remove the citation "38 U.S.C. 1602(l)" and add in its place "38 U.S.C. 3202(l)", wherever it appears.

5. Remove the citation "38 U.S.C. 1602" and add in its place "38 U.S.C. 3202", wherever it appears.

6. Remove the citation "38 U.S.C. 1602; 1652" and add in its place "38 U.S.C. 3202, 3452", wherever it appears.

7. Remove the citation "38 U.S.C. 1622" and add in its place "38 U.S.C. 3222", wherever it appears.

8. Remove the citation "38 U.S.C. 1632" and add in its place "38 U.S.C. 3232", wherever it appears.

9. Remove the citation "38 U.S.C. 1621" and add in its place "38 U.S.C. 3221", wherever it appears.

10. Remove the citation "38 U.S.C. 1621(b)" and add in its place "38 U.S.C. 3221(b)", wherever it appears.

11. Remove the citation "38 U.S.C. 1631" and add in its place "38 U.S.C. 3231", wherever it appears.

12. Remove the citation "38 U.S.C. 1624" and add in its place "38 U.S.C. 3224", wherever it appears.

13. Remove the citation "38 U.S.C. 1602(5), 1652(e)" and add in its place "38 U.S.C. 3202(5), 3452(e)", wherever it appears.

14. Remove the citation "38 U.S.C. 1602(2), 1652(b)" and add in its place "38 U.S.C. 3202(2), 3452(b)", wherever it appears.

15. Remove the citation "38 U.S.C. 1602(2)" and add in its place "38 U.S.C. 3202(2)", wherever it appears.

16. Remove the citation "38 U.S.C. 1641" and add in its place "38 U.S.C. 3241", wherever it appears.

17. Remove the citation "38 U.S.C. 1641(a)" and add in its place "38 U.S.C. 3241(a)", wherever it appears.

18. Remove the citation "38 U.S.C. 105, 1632, 1662" and add in its place "38 U.S.C. 105, 3232, 3462", wherever it appears.

19. Remove the citation "38 U.S.C. 1781" and add in its place "38 U.S.C. 3681", wherever it appears.

20. Remove the citation "38 U.S.C. 1631, 1795" and add in its place "38 U.S.C. 3231, 3695", wherever it appears.

21. Remove the citation "38 U.S.C. 1641, 1781" and add in its place "38 U.S.C. 3241, 3681", wherever it appears.

22. Remove the citation "38 U.S.C. 1632, 1641, 1671" and add in its place "38 U.S.C. 3232, 3241, 3471", wherever it appears.

23. Remove the citation "38 U.S.C. 1602, 3103A" and add in its place "38 U.S.C. 3202, 5303A", wherever it appears.

24. Remove the citation "38 U.S.C. 1631(b)" and add in its place "38 U.S.C. 3231(b)", wherever it appears.

25. Remove the citation "38 U.S.C. 105, 1632" and add in its place "38 U.S.C. 105, 3232", wherever it appears.

26. Remove the citation "38 U.S.C. 1621, 1622" and add in its place "38 U.S.C. 3221, 3222", wherever it appears.

27. Remove the citation "38 U.S.C. 1622(d)" and add in its place "38 U.S.C. 3222(d)", wherever it appears.

28. Remove the citation "38 U.S.C. 1631(a)" and add in its place "38 U.S.C. 3231(a)", wherever it appears.

29. Remove the citation "38 U.S.C. 1621(a)" and add in its place "38 U.S.C. 3221(a)", wherever it appears.

30. Remove the citation "38 U.S.C. 1602(1), 1621" and add in its place "38 U.S.C. 3202(1), 3221", wherever it appears.

31. Remove the citation "38 U.S.C. 1602, 1621" and add in its place "38 U.S.C. 3202, 3221", wherever it appears.

32. Remove the citation "38 U.S.C. 101, 1625, 1632" and add in its place "38 U.S.C. 101, 3225, 3232", wherever it appears.

33. Remove the citation "38 U.S.C. 1621(d)" and add in its place "38 U.S.C. 3221(d)", wherever it appears.

34. Remove the citation "38 U.S.C. 1623" and add in its place "38 U.S.C. 3223", wherever it appears.

35. Remove the citation "38 U.S.C. 1602, 1623, 1632" and add in its place "38 U.S.C. 3202, 3223, 3232", wherever it appears.

36. Remove the citation "38 U.S.C. 101, 1623, 1632" and add in its place "38 U.S.C. 101, 3223, 3232", wherever it appears.

37. Remove the citation "38 U.S.C. 101, 1623" and add in its place "38 U.S.C. 101, 3223", wherever it appears.

38. Remove the citation "38 U.S.C. 1602, 1623, 1632, 3103A" and add in its place "38 U.S.C. 3202, 3223, 3232, 5303A", wherever it appears.

39. Remove the citation "38 U.S.C. 3021" and add in its place "38 U.S.C. 5121", wherever it appears.

40. Remove the citation "38 U.S.C. 1622(d), 1631" and add in its place "38 U.S.C. 3222(d), 3231", wherever it appears.

41. Remove the citation "38 U.S.C. 1641, 1691" and add in its place "38 U.S.C. 3241, 3491", wherever it appears.

42. Remove the citation "38 U.S.C. 1631(c) and add in its place "38 U.S.C. 3231(c)", wherever it appears.

43. Remove the citation "38 U.S.C. 1633(c)" and add in its place "38 U.S.C. 3233(c)", wherever it appears.

44. Remove the citation "38 U.S.C. 1631(d)" and add in its place "38 U.S.C. 3231(d)", wherever it appears.

45. Remove the citation "38 U.S.C. 1631(e)" and add in its place "38 U.S.C. 3231(e)", wherever it appears.

46. Remove the citation "38 U.S.C. 1634" and add in its place "38 U.S.C. 3234", wherever it appears.

47. Remove the citation "38 U.S.C. 1641, 1780" and add in its place "38 U.S.C. 3241, 3680", wherever it appears.

48. Remove the citation "38 U.S.C. 1641, 1663" and add in its place "38 U.S.C. 3241", wherever it appears.

49. Remove the citation "38 U.S.C. 1663" and add in its place "38 U.S.C. 1663 (repealed Pub. L. 102–16 § 2(b)(1))", wherever it appears.

50. Remove the citation "38 U.S.C. 1641, 1633" and add in its place "38 U.S.C. 3241, 3233", wherever it appears.

51. Remove the citation "38 U.S.C. 1641, 1780(a)" and add in its place "38 U.S.C. 3241, 3680(a)", wherever it appears.

52. Remove the citation "38 U.S.C. 1641, 1788" and add in its place "38 U.S.C. 3241, 3688", wherever it appears.

53. Remove the citation "38 U.S.C. 1621, 1631" and add in its place "38 U.S.C. 3221, 3231", wherever it appears.

54. " and add in its place "38 U.S.C. 3680(d)(4)(B) for 38 U.S.C. 1780(d)(4)(B)", wherever it appears.

55. Remove the citation "38 U.S.C. 1641, 1780(d)" and add in its place "38 U.S.C. 3241, 3680(d)", wherever it appears.

56. Remove the citation "38 U.S.C. 1631(b)" and add in its place "38 U.S.C. 3231(b)", wherever it appears.

57. Remove the citation "38 U.S.C. 1631, 1633" and add in its place "38 U.S.C. 3231, 3233", wherever it appears.

58. Remove the citation "38 U.S.C. 1633" and add in its place "38 U.S.C. 3233", wherever it appears.

59. Remove the citation "38 U.S.C. 1634, 1692" and add in its place "38 U.S.C. 3234, 3492", wherever it appears.

60. Remove the citation "38 U.S.C. 1634, 3001" and add in its place "38 U.S.C. 3234, 5101", wherever it appears.

61. Remove the citation "38 U.S.C. 1641, 1685" and add in its place "38 U.S.C. 3241, 3485", wherever it appears.

62. Remove the citation "38 U.S.C. 1641, 1770–1774, 1774A" and add in its place "38 U.S.C. 3241, 3670–3674, 3674A", wherever it appears.

63. Remove the citation "38 U.S.C. 1641, 1673(d)" and add in its place "38 U.S.C. 3241, 3473(d)", wherever it appears.

64. Remove the citation "38 U.S.C. 1641, 1790" and add in its place "38 U.S.C. 3241, 3690", wherever it appears.

65. Remove the citation "38 U.S.C. 1641, 1784" and add in its place "38 U.S.C. 3241, 3684", wherever it appears.

66. Remove the citation "38 U.S.C. 1641(a)(2)" and add in its place "38 U.S.C. 3241(a)(2)", wherever it appears.

67. Remove the citation 38 U.S.C. 1641, 1772" and add in its place "38 U.S.C. 3241, 3672", wherever it appears.

68. Remove the citation "38 U.S.C. 1641, 1789" and add in its place "38 U.S.C. 3241, 3689", wherever it appears.

69. Remove the citation "38 U.S.C. 1641, 1673" and add in its place "38 U.S.C. 3241, 3673", wherever it appears.

70. Remove the citation "38 U.S.C. 1641, 1775" and add in its place "38 U.S.C. 3241, 3675", wherever it appears.

71. Remove the citation "38 U.S.C. 1641, 1776" and add in its place "38 U.S.C. 3241, 3676", wherever it appears.

72. Remove the citation "38 U.S.C. 1641, 1786" and add in its place "38 U.S.C. 3241, 3686", wherever it appears.

73. Remove the citation "38 U.S.C. 1641, 1778" and add in its place "38 U.S.C. 3241, 3678", wherever it appears.

74. Remove the citation "38 U.S.C. 1641, 1779" and add in its place "38 U.S.C. 3241, 3679", wherever it appears.

75. Remove the citation "38 U.S.C. 1641, 1685" and add in its place "38 U.S.C. 3241, 3485", wherever it appears.

76. Remove the citation "38 U.S.C. 1641, 1772, 1789(c)" and add in its place "38 U.S.C. 3241, 3672, 3689(c)", wherever it appears.

77. Remove the citation "38 U.S.C. 1641, 1674" and add in its place "38 U.S.C. 3241, 3474", wherever it appears.

78. Remove the citation "38 U.S.C. 1641, 1673" and add in its place "38 U.S.C. 3241, 3473", wherever it appears.

79. Remove the citation "38 U.S.C. 1632, 1798(a)(2)" and add in its place "38 U.S.C. 3232, 3698(a)(2)", wherever it appears.

80. Remove the citation "38 U.S.C. 1798(a)(2)" and add in its place "38 U.S.C. 3698(a)(2)", wherever it appears.

**Subpart H—Educational Assistance Test Program**

1. Remove the citation "38 U.S.C. 3001, 3013" and add in its place "38 U.S.C. 5101, 5113", wherever it appears.

2. Remove the citation "38 U.S.C. 3103A" and add in its place "38 U.S.C. 5303A", wherever it appears.

3. Remove the citation "38 U.S.C. 1795" and add in its place "38 U.S.C. 3695", wherever it appears.

**Subpart I—Temporary Program of Vocational Training for Certain New Pension Recipients**

1. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.

2. Remove the citation "38 U.S.C. 524" and add in its place "38 U.S.C. 1524", wherever it appears.

3. Remove the citation "38 U.S.C. 524(a)(4)" and add in its place "38 U.S.C. 1524(a)(4)", wherever it appears.

4. Remove the citation "38 U.S.C. 524(a)" and add in its place "38 U.S.C. 1524(a)", wherever it appears.

5. Remove the citation "38 U.S.C. 524(b)" and add in its place "38 U.S.C. 1524(b)", wherever it appears.

6. Remove the citation "38 U.S.C. 524(d)(3)" and add in its place "38 U.S.C. 1524(d)(3)", wherever it appears.

7. Remove the citation "38 U.S.C. 524(b)(4)" and add in its place "38 U.S.C. 1524(b)(4)", wherever it appears.

8. Remove the citation "38 U.S.C. 524(b)(3)" and add in its place "38 U.S.C. 1524(b)(3)", wherever it appears.

9. Remove the citation "38 U.S.C. 524(b)(2)" and add in its place "38 U.S.C. 1524(b)(2)", wherever it appears.

10. Remove the citation "38 U.S.C. 524(b)(2)(A)" and add in its place "38 U.S.C. 1524(b)(2)(A)", wherever it appears.

11. Remove the citation "38 U.S.C. 524(b)(1)" and add in its place "38 U.S.C. 1524(b)(1)", wherever it appears.

12. Remove the citation "38 U.S.C. 524(a)(1)" and add in its place "38 U.S.C. 1524(a)(1)", wherever it appears.

13. Remove the citation "section 524" and add in its place "section 1524", wherever it appears.

14. Remove the citation "38 U.S.C. 524(a)(2)" and add in its place "38 U.S.C. 1524(a)(2)", wherever it appears.

15. Remove the citation "38 U.S.C. 524(a)(3)" and add in its place "38 U.S.C. 1524(a)(3)", wherever it appears.

16. Remove the citation "38 U.S.C. 524(a)(1)(2)" and add in its place "38 U.S.C. 1524(a)(1)(2)", wherever it appears.

17. Remove the citation "38 U.S.C. 1506(e)" and add in its place "38 U.S.C. 3106(e)", wherever it appears.

18. Remove the citation "38 U.S.C. 220, 524(b)" and add in its place "38 U.S.C. 523, 1524(b)", wherever it appears.

19. Remove the citation "38 U.S.C. 1504(a)" and add in its place "38 U.S.C. 3104(a)", wherever it appears.

20. Remove the citation "38 U.S.C. 524(b)(2)(B)(ii)" and add in its place "38 U.S.C. 1524(b)(2)(B)(ii)", wherever it appears.

21. Remove the citation "38 U.S.C. 524(d)" and add in its place "38 U.S.C. 1524(d)", wherever it appears.
22. Remove the citation "38 U.S.C. (b)(2)" and add in its place "38 U.S.C. 1524(b)(2)", wherever it appears.
23. Remove the citation "38 U.S.C. 212(a)" and add in its place "38 U.S.C. 512(a)", wherever it appears.

**Subpart J—Temporary Program of Vocational Training and Rehabilitation**

1. Remove the citation "38 U.S.C. 363" and add in its place "38 U.S.C. 1163", wherever it appears.
2. Remove the citation "38 U.S.C. 1504(a)(2)" and add in its place "38 U.S.C. 3104(a)(2)", wherever it appears.
3. Remove the citation "38 U.S.C. 1504(a)(5)" and add in its place "38 U.S.C. 3104(a)(5)", wherever it appears.
4. Remove the citation "38 U.S.C. 363(a)(2)(B)" and add in its place "38 U.S.C. 1163(a)(2)(B)", wherever it appears.
5. Remove the citation "38 U.S.C. 363(a)(2)(A)" and add in its place "38 U.S.C. 1163(a)(2)(A)", wherever it appears.
6. Remove the citation "38 U.S.C. 363(a)" and add in its place "38 U.S.C. 1163(a)", wherever it appears.
7. Remove the citation "38 U.S.C. 1504(a)(2)" and add in its place "38 U.S.C. 3104(a)(2)", wherever it appears.
8. Remove the citation "38 U.S.C. 363(b)" and add in its place "38 U.S.C. 1163(b)", wherever it appears.
9. Remove the citation "38 U.S.C. 363(c)(1)" and add in its place "38 U.S.C. 1163(c)(1)", wherever it appears.
10. Remove the citation "38 U.S.C. 363(c)" and add in its place "38 U.S.C. 1163(c)", wherever it appears.
11. Remove the citation "38 U.S.C. 363" and add in its place "38 U.S.C. 1163", wherever it appears.

**Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)**

1. Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501(c)", wherever it appears.
2. Remove the citation "38 U.S.C. 1401(1)" and add in its place "38 U.S.C. 3001(1)", wherever it appears.
3. Remove the citation "38 U.S.C. 1401" and add in its place "38 U.S.C. 3001", wherever it appears.
4. Remove the citation "38 U.S.C. 1416" and add in its place "38 U.S.C. 3016", wherever it appears.
5. Remove the citation "38 U.S.C. 1411, 1412" and add in its place "38 U.S.C. 3011, 3012", wherever it appears.
6. Remove the citation "38 U.S.C. 101(21), 1402(6)" and add in its place "38 U.S.C. 101(21), 3002(6)", wherever it appears.
7. Remove the citation "38 U.S.C. 1434, 1780(g)" and add in its place "38 U.S.C. 3034, 3680(g)", wherever it appears.
8. Remove the citation "38 U.S.C. 1434, 1780(a)" and add in its place "38 U.S.C. 3034, 3680(a)", wherever it appears.
9. Remove the citation "38 U.S.C. 1402(1)" and add in its place "38 U.S.C. 3002(1)", wherever it appears.
10. Remove the citation "38 U.S.C. 1421" and add in its place "38 U.S.C. 3021", wherever it appears.
11. Remove the citation "38 U.S.C. 1432" and add in its place "38 U.S.C. 3032", wherever it appears.
12. Remove the citation "38 U.S.C. 1434" and add in its place "38 U.S.C. 3034", wherever it appears.
13. Remove the citation "38 U.S.C. 1415(d)" and add in its place "38 U.S.C. 3015(d)", wherever it appears.
14. Remove the citation "38 U.S.C. 1402" and add in its place "38 U.S.C. 3002", wherever it appears.
15. Remove the citation "38 U.S.C. 1402(3), 1652(b)" and add in its place "38 U.S.C. 3002(3), 3452(b)", wherever it appears.
16. Remove the citation "38 U.S.C. 1434, 1780" and add in its place "38 U.S.C. 3034, 3680", wherever it appears.
17. Remove the citation "38 U.S.C. 1434, 1780(c)" and add in its place "38 U.S.C. 3034, 3680(c)", wherever it appears.
18. Remove the citation "38 U.S.C. 1434, 1788" and add in its place "38 U.S.C. 3034, 3688", wherever it appears.
19. Remove the citation "38 U.S.C. 1434, 1780(a)(1)" and add in its place "38 U.S.C. 3034, 3680(a)(1)", wherever it appears.
20. Remove the citation "38 U.S.C. 1402(3)" and add in its place "38 U.S.C. 3002(3)", wherever it appears.
21. Remove the citation "38 U.S.C. 1402(3), 1652(b)" and add in its place "38 U.S.C. 3002(3), 3452(b)", wherever it appears.
22. Remove the citation "38 U.S.C. 1434" and add in its place "38 U.S.C. 3034", wherever it appears.
23. Remove the citation "38 U.S.C. 1691(a)(2)" and add in its place "38 U.S.C. 3491(a)(2)", wherever it appears.
24. Remove the citation "38 U.S.C. 1402(5)" and add in its place "38 U.S.C. 3002(5)", wherever it appears.
25. Remove the citation "38 U.S.C. 1402(4)" and add in its place "38 U.S.C. 4002(4)", wherever it appears.
26. Remove the citation "38 U.S.C. 1434, 1786(a)(1)" and add in its place "38 U.S.C. 3034, 3686(a)(1)", wherever it appears.
27. Remove the citation "38 U.S.C. 1434, 1786" and add in its place "38 U.S.C. 3034, 3686", wherever it appears.
28. Remove the citation "38 U.S.C. 1434, 1787" and add in its place "38 U.S.C. 3034, 3687", wherever it appears.
29. Remove the citation "38 U.S.C. 105, 1431(d)" and add in its place "38 U.S.C. 105, 3031(d)", wherever it appears.
30. Remove the citation "38 U.S.C. 1402, 1682(a)" and add in its place "28 U.S.C. 3002, 3482(a)", wherever it appears.
31. Remove the citation "38 U.S.C. 1418" and add in its place "38 U.S.C. 3018", wherever it appears.
32. Remove the citation "38 U.S.C. 1434(a), 1671" and add in its place "38 U.S.C. 3034(a), 3471", wherever it appears.
33. Remove the citation "38 U.S.C. 1431(d)" and add in its place "38 U.S.C. 3031(d)", wherever it appears.
34. Remove the citation "38 U.S.C. 1411" and add in its place "38 U.S.C. 3011", wherever it appears.
35. Remove the citation "38 U.S.C. 1412" and add in its place "38 U.S.C. 3012", wherever it appears.
36. Remove the citation "38 U.S.C. 1433" and add in its place "38 U.S.C. 3033", wherever it appears.
37. Remove the citation "38 U.S.C. 1411, 1412, 1416" and add in its place "38 U.S.C. 3011, 3012, 3016", wherever it appears.
38. Remove the citation "38 U.S.C. 1411, 1412, 1418" and add in its place "38 U.S.C. 3011, 3012, 3018", wherever it appears.
39. Remove the citation "38 U.S.C. 1411(a)(1)(B)" and add in its place "38 U.S.C. 3011(a)(1)(B)", wherever it appears.
40. Remove the citation "38 U.S.C. 1412(b)" and add in its place "38 U.S.C. 3012", wherever it appears.
41. Remove the citation "38 U.S.C. 1421(a)" and add in its place "38 U.S.C. 3021(a)", wherever it appears.
42. Remove the citation "38 U.S.C. 1431(b)" and add in its place "38 U.S.C. 3031(b)", wherever it appears.
43. Remove the citation "38 U.S.C. 1431(c)" and add in its place "38 U.S.C. 3031(c)", wherever it appears.
44. Remove the citation "38 U.S.C. 105, 3031(d)" and add in its place "38 U.S.C. 105, 3031(d)", wherever it appears.
45. Remove the citation "38 U.S.C. 1414" and add in its place "38 U.S.C. 3014", wherever it appears.
46. Remove the citation "38 U.S.C. 1413" and add in its place "38 U.S.C. 3013", wherever it appears.
47. Remove the citation "38 U.S.C. 1413(a)" and add in its place "38 U.S.C. 3013(a)", wherever it appears.

48. Remove the citation "38 U.S.C. 1413(b)" and add in its place "38 U.S.C. 3013(b)", wherever it appears.

49. Remove the citation "38 U.S.C. 1433(b)" and add in its place "38 U.S.C. 3033(b)", wherever it appears.

50. Remove the citation "38 U.S.C. 1413(c)" and add in its place "38 U.S.C. 3013(c)", wherever it appears.

51. Remove the citation "38 U.S.C. 1423" and add in its place "38 U.S.C. 3023", wherever it appears.

52. Remove the citation "38 U.S.C. 1432(c), 1434(c)" and add in its place "38 U.S.C. 3032(c), 3034(c)", wherever it appears.

53. Remove the citation "38 U.S.C. 1432(d)" and add in its place "38 U.S.C. 3032(d)", wherever it appears.

54. Remove the citation "38 U.S.C. 1419" and add in its place "38 U.S.C. 3019", wherever it appears.

55. Remove the citation "38 U.S.C. 1434, 1663" and add in its place "38 U.S.C. 3034, 3463", wherever it appears.

56. Remove the citation "38 U.S.C. 1432, 1663" and add in its place "38 U.S.C. 3032, 3463", wherever it appears.

57. Remove the citation "38 U.S.C. 1414, 1423, 1434" and add in its place "38 U.S.C. 3014, 3023, 3034", wherever it appears.

58. Remove the citation "38 U.S.C. 1402(3), 1434, 1671" and add in its place "38 U.S.C. 3002(3), 3034, 3471", wherever it appears.

59. Remove the citation "38 U.S.C. 1434(b)" and add in its place "38 U.S.C. 3034(b)", wherever it appears.

60. Remove the citation "38 U.S.C. 1434, 1673(c)" and add in its place "38 U.S.C. 3034, 3473(c)", wherever it appears.

61. Remove the citation "38 U.S.C. 1434, 1791" and add in its place "38 U.S.C. 3034, 3691", wherever it appears.

62. Remove the citation "38 U.S.C. 1402(3), 1652" and add in its place "38 U.S.C. 3002(3), 3452", wherever it appears.

63. Remove the citation "38 U.S.C. 1434, 1673" and add in its place "38 U.S.C. 3034, 3473", wherever it appears.

64. Remove the citation "38 U.S.C. 1434, 1772" and add in its place "38 U.S.C. 3034, 3672", wherever it appears.

65. Remove the citation "38 U.S.C. 1402(3), 1434, 1652(b)" and add in its place "38 U.S.C. 3002(3), 3034, 3452(b)", wherever it appears.

66. Remove the citation "38 U.S.C. 1434, 1796" and add in its place "38 U.S.C. 3034, 3696", wherever it appears.

67. Remove the citation "38 U.S.C. 1434, 1673(d)" and add in its place "38 U.S.C. 3034, 3473(d)", wherever it appears.

68. Remove the citation "38 U.S.C. 1780(a)(4)" and add in its place "38 U.S.C. 3680(a)(4)", wherever it appears.

69. Remove the citation "38 U.S.C. 1402(3), 1434, 1772(a), 1780(a)" and add in its place "38 U.S.C. 3002(3), 3034, 3672(a), 3680(a)", wherever it appears.

70. Remove the citation "38 U.S.C. 1415, 1422, 1432" and add in its place "38 U.S.C. 3015, 3022, 3032", wherever it appears.

71. Remove the citation "38 U.S.C. 1414, 1423, 1434, 1722" and add in its place "38 U.S.C. 3014, 3023, 3034, 3672", wherever it appears.

72. Remove the citation "38 U.S.C. 1414, 1423" and add in its place "38 U.S.C. 3014, 3023", wherever it appears.

73. Remove the citation "38 U.S.C. 1434, 1671(a)" and add in its place "38 U.S.C. 3034, 3471(a)", wherever it appears.

74. Remove the citation "38 U.S.C. 3010(n)" and add in its place "38 U.S.C. 5110(n)", wherever it appears.

75. Remove the citation "38 U.S.C. 3012(b)" and add in its place "38 U.S.C. 5112(b)", wherever it appears.

76. Remove the citation "38 U.S.C. 1431(b)" and add in its place "38 U.S.C. 3031(b)", wherever it appears.

77. Remove the citation "38 U.S.C. 1434, 1682(g)" and add in its place "38 U.S.C. 3034, 3482(g)", wherever it appears.

78. Remove the citation "38 U.S.C. 1434, 1790" and add in its place "38 U.S.C. 3034, 3690", wherever it appears.

79. Remove the citation "38 U.S.C. 3012(b), 3013" and add in its place "38 U.S.C. 5112(b), 5113", wherever it appears.

80. Remove the citation "38 U.S.C. 1434(b), 1780" and add in its place "38 U.S.C. 3034(b), 3680", wherever it appears.

81. Remove the citation "38 U.S.C. 1434, 1780" and add in its place "38 U.S.C. 3034, 3680", wherever it appears.

82. Remove the citation "38 U.S.C. 1434, 1772(a)" and add in its place "38 U.S.C. 3034, 3672(a)", wherever it appears.

83. Remove the citation "38 U.S.C. 1434, 1771(b), 1772(a)" and add in its place "38 U.S.C. 3034, 3671(b), 3672(a)", wherever it appears.

84. Remove the citation "38 U.S.C. 1434, 1783" and add in its place "38 U.S.C. 3034, 3683", wherever it appears.

85. Remove the citation "38 U.S.C. 1415(c)" and add in its place "38 U.S.C. 3015(c)", wherever it appears.

86. Remove the citation "38 U.S.C. 1431(e)" and add in its place "38 U.S.C. 3031(e)", wherever it appears.

87. Remove the citation "38 U.S.C. 1434(a)" and add in its place "38 U.S.C. 3034", wherever it appears.

88. Remove the citation "38 U.S.C. 1415(c), 1415(f)" and add in its place "38 U.S.C. 3015(c), 3015(f)", wherever it appears.

89. Remove the citation "38 U.S.C. 1415(d), 1415(f)" and add in its place "38 U.S.C. 3015(d), 3015(f)", wherever it appears.

90. Remove the citation "38 U.S.C. 1415, 1432" and add in its place "38 U.S.C. 3015, 3032", wherever it appears.

91. Remove the citation "38 U.S.C. 1415(d), 1422, 1432(d)" and add in its place "38 U.S.C. 3015(d), 3022, 3032(d)", wherever it appears.

92. Remove the citation "38 U.S.C. 1415(c), 1432(c)" and add in its place "38 U.S.C. 3015(c), 3032(c)", wherever it appears.

93. Remove the citation "38 U.S.C. 1422(b), 1432(c)" and add in its place "38 U.S.C. 3022(b), 3032(c)", wherever it appears.

94. Remove the citation "38 U.S.C. 1422, 1432" and add in its place "38 U.S.C. 3022, 3032", wherever it appears.

95. Remove the citation "38 U.S.C. 1415" and add in its place "38 U.S.C. 3015", wherever it appears.

96. Remove the citation "38 U.S.C. 1434, 1786(a)(2)" and add in its place "38 U.S.C. 3034, 3686(a)(2)", wherever it appears.

97. Remove the citation "38 U.S.C. 1434, 1787(b)(3)" and add in its place "38 U.S.C. 3034, 3687(b)(3)", wherever it appears.

98. Remove the citation "38 U.S.C. 1780(d)(4)(B)" and add in its place "38 U.S.C. 3680(d)(4)(B)", wherever it appears.

99. Remove the citation "38 U.S.C. 1434, 1780(d)" and add in its place "38 U.S.C. 3034, 3680(d)", wherever it appears.

100. Remove the citation "38 U.S.C. 1434, 1780(f)" and add in its place "38 U.S.C. 3034, 3680(f)", wherever it appears.

101. Remove the citation "38 U.S.C. 1434, 1780(b)" and add in its place "38 U.S.C. 3034, 3680(b)", wherever it appears.

102. Remove the citation "38 U.S.C. 1417(b)" and add in its place "38 U.S.C. 3017(b)", wherever it appears.

103. Remove the citation "38 U.S.C. 1419, 1692" and add in its place "38 U.S.C. 3019, 3492", wherever it appears.

104. Remove the citation "38 U.S.C. 1419, 3001" and add in its place "38 U.S.C. 3019, 5101", wherever it appears.

105. Remove the citation "38 U.S.C. 1419, 1692" and add in its place "38 U.S.C. 3019, 3492", wherever it appears.

106. Remove the citation "38 U.S.C. 1434, 1790(b)" and add in its place "38

U.S.C. 3034, 3690(b)", wherever it appears.

107. Remove the citation "38 U.S.C. 1434, 1785" and add in its place "38 U.S.C. 3034, 3685", wherever it appears.

108. Remove the citation "38 U.S.C. 1434, 1685" and add in its place "38 U.S.C. 3034, 3485", wherever it appears.

109. Remove the citation "38 U.S.C. 1432, 1434, 1682(g), 1780, 1787" and add in its place "38 U.S.C. 3032, 3034, 3482(g), 3680, 3687", wherever it appears.

110. Remove the citation "38 U.S.C. 1434, 1674" and add in its place "38 U.S.C. 3034, 3474", wherever it appears.

111. Remove the citation "38 U.S.C. 1434, 1780, 1790, 3503" and add in its place "38 U.S.C. 3034, 3680, 3690, 6103", wherever it appears.

112. Remove the citation "38 U.S.C. 1434, 1770, 1771, 1772, 1773, 1774, 1774A" and add in its place "38 U.S.C. 3034, 3670, 3671, 3672, 3674, 3674A", wherever it appears.

113. Remove the citation "38 U.S.C. 1434, 1676, 1772, 1775, 1776, 1778, 1779, 1789" and add in its place "38 U.S.C. 3034, 3476, 3672, 3675, 3676, 3678, 3679, 3689", wherever it appears.

114. Remove the citation "38 U.S.C. 1434(d)" and add in its place "38 U.S.C. 3034(d)", wherever it appears.

115. Remove the citation "38 U.S.C. 1417" and add in its place "38 U.S.C. 3017", wherever it appears.

116. Remove the citation "38 U.S.C. 1417(a)(2)" and add in its place "38 U.S.C. 3017(a)(2)", wherever it appears.

117. Remove the citation "38 U.S.C. 1417(b)" and add in its place "38 U.S.C. 3017(b)", wherever it appears.

118. Remove the citation "38 U.S.C. 212(a)" and add in its place "38 U.S.C. 512(a)", wherever it appears.

119. Remove the citation "38 U.S.C. 212(a), 1434, 1796" and add in its place "38 U.S.C. 512(a), 3034, 3696", wherever it appears.

120. Remove the citation "38 U.S.C. 211" and add in its place "38 U.S.C. 511", wherever it appears.

121. Remove the citation "38 U.S.C. 1411(a), 1412(a)" and add in its place "38 U.S.C. 3011(a), 3012(a)".

**Subpart L—Educational Assistance for Members of the Selected Reserve**

1. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.

2. Remove the citation "38 U.S.C. 2136(b), 1789(g)" and add in its place "10 U.S.C. 2136(b); 38 U.S.C. 3689", wherever it appears.

3. Remove the citation "38 U.S.C. 1780(a)" and add in its place "38 U.S.C. 3680(a)", wherever it appears.

4. Remove the citation "38 U.S.C. 1780(g)" and add in its place "38 U.S.C. 3680(g)", wherever it appears.

5. Remove the citation "38 U.S.C. 1788(c)" and add in its place "38 U.S.C. 3688(c)", wherever it appears.

6. Remove the citation "38 U.S.C. 1780" and add in its place "38 U.S.C. 3680", wherever it appears.

7. Remove the citation "38 U.S.C. 1691(a)(2)" and add in its place "38 U.S.C. 3491(a)(2)", wherever it appears.

8. Remove the citation "38 U.S.C. 1788" and add in its place "38 U.S.C. 3688", wherever it appears.

9. Remove the citation "38 U.S.C. 1672" and add in its place "38 U.S.C. 3472", wherever it appears.

10. Remove the citation "38 U.S.C. 1671" and add in its place "38 U.S.C. 3471", wherever it appears.

11. Remove the citation "38 U.S.C. 1433(c)" and add in its place "38 U.S.C. 3033(c)", wherever it appears.

12. Remove the citation "38 U.S.C. 1412" and add in its place "38 U.S.C. 3012", wherever it appears.

13. Remove the citation "38 U.S.C. 1431(d)" and add in its place "38 U.S.C. 3031(d)", wherever it appears.

14. Remove the citation "38 U.S.C. 2136(b), 1633 10 U.S.C. 2136(b), 38 U.S.C. 3233", wherever it appears.

15. Remove the citation "38 U.S.C. 1663" and add in its place "38 U.S.C. 3967(a)", wherever it appears.

16. Remove the citation "10 U.S.C. 2136(b), 1663" and add in its place "10 U.S.C. 2136(b); 38 U.S.C. 3467(a)", wherever it appears.

17. Remove the citation "38 U.S.C. 1673(c)" and add in its place "38 U.S.C. 3473(c)", wherever it appears.

18. Remove the citation "38 U.S.C. 1791" and add in its place "38 U.S.C. 3691", wherever it appears.

19. Remove the citation "38 U.S.C. 1788(b)" and add in its place "38 U.S.C. 3688(b)", wherever it appears.

20. Remove the citation "38 U.S.C. 1772" and add in its place "38 U.S.C. 3672", wherever it appears.

21. Remove the citation "38 U.S.C. 2131 10 U.S.C. 2131", wherever it appears.

22. Remove the citation "38 U.S.C. 1796" and add in its place "38 U.S.C. 3696", wherever it appears.

23. Remove the citation "38 U.S.C. 1673(d)" and add in its place "38 U.S.C. 3473(d)", wherever it appears.

24. Remove the citation "38 U.S.C. 1772(a), 1780(a)" and add in its place "38 U.S.C. 3672(a), 3680(a)", wherever it appears.

25. Remove the citation "38 U.S.C. 1790" and add in its place "38 U.S.C. 3690", wherever it appears.

26. Remove the citation "38 U.S.C. 1790(b)" and add in its place "38 U.S.C. 3690(b)", wherever it appears.

27. Remove the citation "38 U.S.C. 1414, 1423" and add in its place "38 U.S.C. 3014, 3023", wherever it appears.

28. Remove the citation "38 U.S.C. 3012(b), 3013" and add in its place "38 U.S.C. 5112(b), 5113", wherever it appears.

29. Remove the citation "38 U.S.C. 1682(g)" and add in its place "38 U.S.C. 3482(g)", wherever it appears.

30. Remove the citation "38 U.S.C. 1772(a), 1790" and add in its place "38 U.S.C. 3672(a), 3690", wherever it appears.

31. Remove the citation "38 U.S.C. 1771(b), 1772(a), 1790" and add in its place "38 U.S.C. 3671(b), 3672(a), 3690", wherever it appears.

32. Remove the citation "38 U.S.C. 1674" and add in its place "38 U.S.C. 3474", wherever it appears.

33. Remove the citation "38 U.S.C. 1783" and add in its place "38 U.S.C. 3683", wherever it appears.

34. Remove the citation "38 U.S.C. 1780(d)" and add in its place "38 U.S.C. 3680(d)", wherever it appears.

35. Remove the citation "38 U.S.C. 3503" and add in its place "38 U.S.C. 6103", wherever it appears.

36. Remove the citation "38 U.S.C. 3504, 3505" and add in its place "38 U.S.C. 6104, 6105", wherever it appears.

37. Remove the citation "38 U.S.C. 3012(a), 3013" and add in its place "38 U.S.C. 5112(a), 5113", wherever it appears.

38. Remove the citation "38 U.S.C. 1780, 3101(a)" and add in its place "38 U.S.C. 3680, 5301(a)", wherever it appears.

39. Remove the citation "38 U.S.C. 1780(d)(4)(B)" and add in its place "38 U.S.C. 3680(d)(4)(B)", wherever it appears.

40. Remove the citation "38 U.S.C. 1433(a), 1781(b), 1795" and add in its place "38 U.S.C. 3033(a), 3681(b), 3695", wherever it appears.

41. Remove the citation "38 U.S.C. 1795" and add in its place "38 U.S.C. 3695", wherever it appears.

42. Remove the citation "38 U.S.C. 1781" and add in its place "38 U.S.C. 3681", wherever it appears.

43. Remove the citation "38 U.S.C. 1785" and add in its place "38 U.S.C. 3685", wherever it appears.

44. Remove the citation "38 U.S.C. 1785, 3102" and add in its place "38 U.S.C. 3685, 5302", wherever it appears.

45. Remove the citation "38 U.S.C. 1682(g), 1780" and add in its place "38 U.S.C. 3482(g), 3680", wherever it appears.

46. Remove the citation "38 U.S.C. 1784" and add in its place "38 U.S.C. 3684", wherever it appears.

47. Remove the citation "38 U.S.C. 1780, 1790, 3503" and add in its place "38 U.S.C. 3680, 3690, 6103", wherever it appears.

48. Remove the citation "38 U.S.C. 1788(a)" and add in its place "38 U.S.C. 3688(a)", wherever it appears.

49. Remove the citation "38 U.S.C. 1788(b)" and add in its place "38 U.S.C. 3688(b)", wherever it appears.

50. Remove the citation "38 U.S.C. 1775" and add in its place "38 U.S.C. 3675", wherever it appears.

51. Remove the citation "38 U.S.C. 1788(e)" and add in its place "38 U.S.C. 3688(e)", wherever it appears.

52. Remove the citation "38 U.S.C. 1770, 1771, 1772, 1774, 1774A" and add in its place "38 U.S.C. 3670, 3671, 3672, 3674, 3674A", wherever it appears.

53. Remove the citation "38 U.S.C. 4114(e)" and add in its place "38 U.S.C. 7407", wherever it appears.

54. Remove the citation "38 U.S.C. 1676, 1772, 1775, 1776, 1778, 1779" and add in its place "38 U.S.C. 3476, 3672, 3675, 3676, 3678, 3679", wherever it appears.

55. Remove the citation "38 U.S.C. 1673" and add in its place "38 U.S.C. 3473", wherever it appears.

56. Remove the citation "38 U.S.C. 212(a)" and add in its place "38 U.S.C. 512(a)", wherever it appears.

57. Remove the citation "38 U.S.C. 211" and add in its place "38 U.S.C. 511", wherever it appears.

## PART 36—LOAN GUARANTY

1. Remove the citation "38 U.S.C. 1812" and add in its place "38 U.S.C. 3712", wherever it appears.

2. Remove the citation "38 U.S.C. 1815" and add in its place "38 U.S.C. 3703(a)", wherever it appears.

3. Remove the citation "38 U.S.C. 210, 1812" and add in its place "38 U.S.C. 501, 3712", wherever it appears.

4. Remove the citation "38 U.S.C. 1802(d)" and add in its place "38 U.S.C. 3702(d)", wherever it appears.

5. Remove the citation "38 U.S.C. 1810 and 1814" and add in its place "38 U.S.C. 3710 and 3714", wherever it appears.

6. Remove the citation "38 U.S.C. 1814" and add in its place "38 U.S.C. 3714", wherever it appears.

7. Remove the citation "38 U.S.C. 1804(d); 1812(g)" and add in its place "38 U.S.C. 3704(d), 3712(g)", wherever it appears.

8. Remove the citation "38 U.S.C. 1810, 1811 or 1812" and add in its place "38 U.S.C. 3710, 3711, or 3712", wherever it appears.

9. Remove the citation "38 U.S.C. 1812(b)(1)" and add in its place "38 U.S.C. 3712(b)(1)", wherever it appears.

10. Remove the citation "38 U.S.C. 1812(a)(1)"and add in its place " 38 U.S.C. 3712(a)(1)", wherever it appears.

11. Remove the citation "38 U.S.C. 1812(a)(1)(F)" and add in its place "38 U.S.C. 3712(a)(1)(F)", wherever it appears.

12. Remove the citation "38 U.S.C. 1812(a)(4)" and add in its place "38 U.S.C. 3712(a)(4)", wherever it appears.

13. Remove the citation "38 U.S.C. 1812(a)(1)(G)" and add in its place "38 U.S.C. 3712(a)(1)(G)", wherever it appears.

14. Remove the citation "38 U.S.C. 1801(a)(2), 1812(c)(4)" and add in its place "38 U.S.C. 3701(a)(2), 3712(c)(4)", wherever it appears.

15. Remove the citation "38 U.S.C. 1812(a)(4)(C)" and add in its place "38 U.S.C. 3712(a)(4)(C)", wherever it appears.

16. Remove the citation "38 U.S.C. 1812(h)(1)" and add in its place "38 U.S.C. 3712(h)(1)", wherever it appears.

17. Remove the citation "38 U.S.C. 1812(e)(5)" and add in its place "38 U.S.C. 3712(e)(5)", wherever it appears.

18. Remove the citation "38 U.S.C. 1812(c)(1)" and add in its place "38 U.S.C. 3712(c)(1)", wherever it appears.

19. Remove the citation "38 U.S.C. 1803(c)(1)" and add in its place "38 U.S.C. 3703(c)(1)", wherever it appears.

20. Remove the citation "38 U.S.C. 1812(9)(f)" and add in its place "38 U.S.C. 3712(f)", wherever it appears.

21. Remove the citation "38 U.S.C. 1812(a)(1)(f)" and add in its place "38 U.S.C. 3712(a)(1)(F)", wherever it appears.

22. Remove the citation "38 U.S.C. 210(c), 1803(c)(1) and 1812(g)" and add in its place "38 U.S.C. 501, 3703(c)(1) and add in its place "3712(g)", wherever it appears.

23. Remove the citation "38 U.S.C. 3311" and add in its place "38 U.S.C. 5711", wherever it appears.

24. Remove the citation "38 U.S.C. 1820(a)" and add in its place "38 U.S.C. 3720(a)", wherever it appears.

25. Remove the citation "38 U.S.C. 210(c) or 1815(b)" and add in its place "38 U.S.C. 501 or 3715(b)", wherever it appears.

26. Remove the citation "38 U.S.C. 1821" and add in its place "38 U.S.C. 3721", wherever it appears.

27. Remove the citation "38 U.S.C. 210(c), 1820(a)(5)" and add in its place "38 U.S.C. 501, 3720(a)(5)", wherever it appears.

28. Remove the citation "38 U.S.C. 1812(a)(1)(A)" and add in its place "38 U.S.C. 3712(a)(1)(A)", wherever it appears.

29. Remove the citation "38 U.S.C. 1812(a)(1)(G)" and add in its place "38 U.S.C. 3712(a)(1)(G)", wherever it appears.

31. Remove the citation "38 U.S.C. 1802(b)" and add in its place "38 U.S.C. 3702(b)", wherever it appears.

32. Remove the citation "38 U.S.C. 1802(d)(1)" and add in its place "38 U.S.C. 3702(d)(1)", wherever it appears.

33. Remove the citation "38 U.S.C. 1802(d)(3)" and add in its place "38 U.S.C. 3702(d)(3)", wherever it appears.

34. Remove the citation "38 U.S.C. 1802(e)" and add in its place "38 U.S.C. 3702(e)", wherever it appears.

35. Remove the citation "38 U.S.C. 1812(a)(1)(b)" and add in its place "38 U.S.C. 3712(a)(1)(b)", wherever it appears.

36. Remove the citation "38 U.S.C. 1812(e)(4)" and add in its place "38 U.S.C. 3712(e)(4)", wherever it appears.

37. Remove the citation "38 U.S.C. 1812(g)" and add in its place "38 U.S.C. 3712(g)", wherever it appears.

38. Remove the citation "38 U.S.C. 1829(a)" and add in its place "38 U.S.C. 3729(a)", wherever it appears.

39. Remove the citation "section 1814" and add in its place "section 3714", wherever it appears.

40. Remove the citation "38 U.S.C. 1814, 1829" and add in its place "38 U.S.C. 3714, 3729", wherever it appears.

41. Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501", wherever it appears.

42. Remove the citation "38 U.S.C. 1829(b)" and add in its place "38 U.S.C. 3729(b)", wherever it appears.

43. Remove the citation "38 U.S.C. 210(c), 1803(c), and 1812(a)(1)(G)" and add in its place "38 U.S.C. 501, 3703(c) and 3712(a)(1)(G)", wherever it appears.

44. Remove the citation "38 U.S.C. 1814, 1929" and add in its place "38 U.S.C. 3714, 3729", wherever it appears.

43. Remove the citation "section 1802(b)(2)" and add in its place "section 3701(b)(2)", wherever it appears.

44. Remove the citation "38 U.S.C. 1829(c)" and add in its place "38 U.S.C. 3729(c)", wherever it appears.

45. Remove the citation "38 U.S.C. 210(c) and 1812(g)" and add in its place "38 U.S.C. 501 and 3712(g)", wherever it appears.

46. Remove the citation "38 U.S.C. 1804 and 1814" and add in its place "38 U.S.C. 3704 and 3714", wherever it appears.

47. Remove the citation "38 U.S.C. 210(c), 1803(c), 1812(g)" and add in its place "38 U.S.C. 501, 3703(c), 3712(g)", wherever it appears.

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48. Remove the citation "38 U.S.C. 1820(g)" and add in its place "38 U.S.C. 3720(g)", wherever it appears.
49. Remove the citation "38 U.S.C. 1813(a)" and add in its place "38 U.S.C. 3713(a)", wherever it appears.
50. Remove the citation "38 U.S.C. 1813, 1814" and add in its place "38 U.S.C. 3713, 3714", wherever it appears.
51. Remove the citation "38 U.S.C. 1817(a)" and add in its place "38 U.S.C. 3713(a)", wherever it appears.
52. Remove the citation "38 U.S.C. 1817(b)" and add in its place "38 U.S.C. 3713(b)", wherever it appears.
53. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501", wherever it appears.
54. Remove the citation "sections 1807 and 1802(a)(2)(c)" and add in its place "sections 3707 and 3702(a)(2)(c)", wherever it appears.
55. Remove the citation "38 U.S.C. 1803(c)(1), 1810(a)(1)" and add in its place "38 U.S.C. 3703(c)(1), 3710(a)(1)", wherever it appears.
56. Remove the citation "38 U.S.C. 1810 and 1814" and add in its place "38 U.S.C. 3710 and 3714", wherever it appears.
57. Remove the citation "38 U.S.C. 1802(c)" and add in its place "38 U.S.C. 3702(c)", wherever it appears.
58. Remove the citation "38 U.S.C. 1810(a)(6)" and add in its place "38 U.S.C. 3710(a)(6)", wherever it appears.
59. Remove the citation "38 U.S.C. 1810(a)(9)" and add in its place "38 U.S.C. 3710(a)(9)", wherever it appears.
60. Remove the citation "38 U.S.C. 1810(d)" and add in its place "38 U.S.C. 3710(d)", wherever it appears.
61. Remove the citation "38 U.S.C. 1810(a)(7)" and add in its place "38 U.S.C. 3710(a)(7)", wherever it appears.
62. Remove the citation "38 U.S.C. 1802(d) or 1803(a)(2)" and add in its place "38 U.S.C. 3702(d) or 3703(a)(2)", wherever it appears.
63. Remove the citation "38 U.S.C. 1803(c)(1)" and add in its place "38 U.S.C. 3703(c)(1)", wherever it appears.
64. Remove the citation "38 U.S.C. 1803(c)" and add in its place "38 U.S.C. 3703(c)", wherever it appears.
65. Remove the citation "38 U.S.C. 1832" and add in its place "38 U.S.C. 3732", wherever it appears.
66. Remove the citation "38 U.S.C. 1803(a)(2)" and add in its place "38 U.S.C. 3703(a)(2)", wherever it appears.
67. Remove the citation "38 U.S.C. 1804(d); 1812(g)" and add in its place "38 U.S.C. 3704(d), 3712(g)", wherever it appears.
68. Remove the citation "38 U.S.C. 1810(a)(9)" and add in its place "38 U.S.C. 3710(a)(9)", wherever it appears.
69. Remove the citation "38 U.S.C. 1810(A)(9)" and add in its place "38 U.S.C. 3710(a)(9)", wherever it appears.
70. Remove the citation "38 U.S.C. 1810(a)(5)" and add in its place "38 U.S.C. 3710(a)(5)", wherever it appears.
71. Remove the citation "38 U.S.C. 1810(a)(8)" and add in its place "38 U.S.C. 3710(a)(8)", wherever it appears.
72. Remove the citation "38 U.S.C. 1810(A)(6)" and add in its place "38 U.S.C. 3710(a)(6)", wherever it appears.
73. Remove the citation "38 U.S.C. 1810(a)(6)" and add in its place "38 U.S.C. 3710(a)(6)", wherever it appears.
74. Remove the citation "38 U.S.C. 1810(f)(2)" and add in its place "38 U.S.C. 3710(f)(2)", wherever it appears.
75. Remove the citation "38 U.S.C. 210(c), 1803(c)(1)" and add in its place "38 U.S.C. 501, 3703(c)(1)", wherever it appears.
76. Remove the citation "38 U.S.C. 1810" and add in its place "38 U.S.C. 3710", wherever it appears.
77. Remove the citation "38 U.S.C. 1803(a)" and add in its place "38 U.S.C. 3703(a)", wherever it appears.
78. Remove the citation "38 U.S.C. 1810(a)(8)" and add in its place "38 U.S.C. 3710(a)(8)", wherever it appears.
79. Remove the citation "38 U.S.C. 1803(a), 1812(c)(4)" and add in its place "38 U.S.C. 3703(a), 3712(c)(4)", wherever it appears.
80. Remove the citation "38 U.S.C. 3703(b)" and add in its place "38 U.S.C. 3703(b)", wherever it appears.
81. Remove the citation "38 U.S.C. 1810(e)(3)" and add in its place "38 U.S.C. 3710(e)(3)", wherever it appears.
82. Remove the citation "38 U.S.C. 1801(a)" and add in its place "38 U.S.C. 3701(a)", wherever it appears.
83. Remove the citation "38 U.S.C. 1803(a)(1)" and add in its place "38 U.S.C. 3703(a)(1)", wherever it appears.
84. Remove the citation "38 U.S.C. 1802(d)" and add in its place "38 U.S.C. 3702(d)", wherever it appears.
85. Remove the citation "38 U.S.C. 1802(d)(1)" and add in its place "38 U.S.C. 3702(d)(1)", wherever it appears.
86. Remove the citation "38 U.S.C. 1802(d), 1815" and add in its place "38 U.S.C. 3702(d), 3703(a)(2)", wherever it appears.
87. Remove the citation "38 U.S.C. 1804(c)" and add in its place "38 U.S.C. 3704(c)", wherever it appears.
88. Remove the citation "38 U.S.C. 1802(a), 1810(c)" and add in its place "38 U.S.C. 3702(a), 3710(c)", wherever it appears.
89. Remove the citation "sections 210(c), 1803(c)(1)" and add in its place "sections 501, 3703(c)(1)", wherever it appears.
90. Remove the citation "38 U.S.C. 1810(a)(5)" and add in its place "38 U.S.C. 3701(a)(5)", wherever it appears.
91. Remove the citation "38 U.S.C. 1810(e)(1) and 1810(h)" and add in its place "38 U.S.C. 3710(e)(1) and 3710(h)", wherever it appears.
92. Remove the citation "38 U.S.C. 1810(e)(1)" and add in its place "38 U.S.C. 3710(e)(1)", wherever it appears.
93. Remove the citation "38 U.S.C. 1810(a)(9)(B)(ii)" and add in its place "38 U.S.C. 3710(a)(9)(B)(ii)", wherever it appears.
94. Remove the citation "38 U.S.C. 1803(a)" and add in its place "38 U.S.C. 3703(a)", wherever it appears.
95. Remove the citation "38 U.S.C. 1803(d)(1)" and add in its place "38 U.S.C. 3703(d)(1)", wherever it appears.
96. Remove the citation "38 U.S.C. 1810(a)(9)(B)(i)" and add in its place "38 U.S.C. 3710(a)(9)(B)(i)", wherever it appears.
97. Remove the citation "38 U.S.C. 1810(a)(1)" and add in its place "38 U.S.C. 3710(a)(1)", wherever it appears.

### PART 39—STATE CEMETERY GRANTS

1. Remove the citation "38 U.S.C. 1008" and add in its place "38 U.S.C. 2408", wherever it appears.
2. Remove the citation "38 U.S.C. 1008(c)(2)" and add in its place "38 U.S.C. 2408(c)(2)", wherever it appears.
3. Remove the citation "38 U.S.C. 1008(c)(1)" and add in its place "38 U.S.C. 2408(c)(1)", wherever it appears.
4. Remove the citation "38 U.S.C. 1002" and add in its place "38 U.S.C. 2402", wherever it appears.
5. Remove the citation "38 U.S.C. 1008(b)(2)" and add in its place "38 U.S.C. 2408(b)(2)", wherever it appears.
6. Remove the citation "38 U.S.C. 1008(b)(3)" and add in its place "38 U.S.C. 2408(b)(3)", wherever it appears.
7. Remove the citation "38 U.S.C. 1008(a)(1)" and add in its place "38 U.S.C. 2408(a)(1)", wherever it appears.
8. Remove the citation "38 U.S.C. 1008(b)(1)" and add in its place "38 U.S.C. 2408(b)(1)", wherever it appears.
9. Remove the citation "38 U.S.C. 1008(d)" and add in its place "38 U.S.C. 2408(d)", wherever it appears.
10. Remove the citation "38 U.S.C. 1008(b)(4)" and add in its place "38 U.S.C. 2408(b)(4)", wherever it appears.

### PART 41—AUDITING REQUIREMENTS

Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501", wherever it appears.



### PART 43—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

1. Remove the citation "38 U.S.C. 210" and add in its place "38 U.S.C. 501" wherever it appears.
2. Remove the citation "38 U.S.C. 612" and add in its place "38 U.S.C. 1712" wherever it appears.
3. Remove the citation "38 U.S.C. 641–643" and add in its place "38 U.S.C. 1741–1743" wherever it appears.

### PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501" wherever it appears.

### PART 45—NEW RESTRICTIONS ON LOBBYING

Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501", wherever it appears."

Remove the citation "38 U.S.C. 210(c)" and add in its place "38 U.S.C. 501", wherever it appears."

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# Office of Management and Budget

**Federal Procurement Policy Office**

**Statement of Objectives, Policies and Concepts (May 1992); Notice**

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## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### Cost Accounting Standards Board; Statement of Objectives, Policies and Concepts (May 1992)

In May 1977, the Cost Accounting Standards Board, authorized under Public Law 91–379, published a Restatement of the objectives, policies and concepts within which the Board formulated the existing Cost Accounting Standards and related rules and regulations. The Board published that document to improve the general understanding of its fundamental objectives and concepts. Pursuant to Public Law 100–679, there is established within the Office of Federal Procurement Policy an independent board to be known as the Cost Accounting Standards Board. The Board is now publishing a Statement of its current objectives, policies and concepts. This Statement is intended to make known the current views of the Board, as it considers the cost accounting issues that come before it. As such, the Board intends for subsequent promulgations to be consistent with the objectives and concepts provided herein. Interested members of the public should, on the basis of this Statement, be better able to focus on the complex and difficult issues that the Board faces in promulgating and revising Cost Accounting Standards. Anticipating that the Board, from time-to-time, will revise this document, the Board welcomes the views of interested parties on the objectives, policies and concepts stated herein.

#### Objectives

The purpose of this Statement is to present the basic policies, procedures and objectives within which the Cost Accounting Standards Board carries out its functions under the authority of Public Law 100–679. The primary objective of the Board is to promulgate, amend, and revise Cost Accounting Standards designed to achieve (1) an increased degree of uniformity in cost accounting practices among Government contractors in like circumstances, and (2) consistency in cost accounting practices in like circumstances by individual Government contractors over periods of time. In accomplishing this primary objective, the Board takes into account (1) the advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning contracts, (2) the probable costs of implementation, including inflationary effects, if any, compared to the probable benefits of such Standards, and (3) the alternatives available.

Increased uniformity and consistency in accounting practices among Government contractors improves understanding and communications, reduces the incidence of contract disputes, increases the effectiveness of the contract administration process and facilitates equitable contract settlements. A Cost Accounting Standard is a statement formally issued by the Cost Accounting Standards Board that (1) enunciates a principle or principles to be followed, (2) establishes practices to be applied, or (3) specifies criteria to be employed in selecting from alternative principles and practices in estimating, accumulating and reporting costs under contracts subject to the rules of the Board. A Cost Accounting Standard may be stated in terms as general or as specific as the Board considers necessary to accomplish its purpose.

*Uniformity*

Uniformity relates to comparison of two or more accounting entities. The Board's objective in this respect is to achieve comparability of results of entities operating under like circumstances. The Board recognizes the impracticality of defining or attaining absolute uniformity, largely because of the problems related to defining like circumstances. The Board will, nonetheless, seek ways to attain a practical degree of uniformity in cost accounting practices among covered Government contractors.

Absolute uniformity would be achieved only if contractors in the same circumstances, with respect to a given subject, always followed the same cost accounting practices. The Board does not seek to establish a single uniform accounting system or chart of accounts for all the complex and diverse businesses engaged in Government contracting. Any increase in uniformity, however, will provide more comparability among contractors whose circumstances are similar. Therefore, if the Board were to be satisfied that circumstances among all concerned Government contractors were substantially the same in a given subject area, the Board would not be precluded from establishing a single cost accounting treatment for use in such circumstances.

*Consistency*

Consistency pertains to the use by one accounting entity of compatible cost accounting practices which permit comparability of contract results under similar circumstances over periods of time. Like uniformity, the attainment of absolute consistency can only be measured when like circumstances can be defined. Essentially, consistency relates to the allocation of costs, both direct and indirect, and to the treatment of cost with respect to individual cost objectives as well as among cost objectives in like circumstances. The Board believes that consistency within an entity enhances the usefulness of comparisons between estimates and actuals. It also improves the comparability of cost reports from one time period to another where there are like circumstances.

*Allowability and Allocability*

While the Board has exclusive authority for establishing Standards governing the measurement, assignment and allocation of costs, it does not determine the allowability of categories or individual items of cost. Allowability is a procurement concept affecting contract price and in most cases is established in regulatory or contractual provisions. An agency's policies on allowability of costs may be derived from law and are generally embodied in its procurement regulations. A contracting agency may include in contract terms, or in its procurement regulations, a provision that will refuse to allow certain costs incurred by contractors that are unreasonable in amount or contrary to public policy. In accounting terms, these same costs may be allocable to the contract in question.

The Board acknowledges that the Chairman, who also serves as Administrator for Federal Procurement Policy, has the authority under 41 U.S.C. 405 and 422 to ensure that the procurement regulations of the Executive Branch agencies are consistent with the Federal Acquisition Regulation and such other procurement policies as the Administrator shall determine (including Cost Accounting Standards promulgated by the Board). In addition, Public Law 100–679 specifies that costs that are subject to the Cost Accounting Standards shall not be subject to agency regulations which differ from the Standards in the areas of measurement, assignment or allocation of such costs. The Administrator may, in accordance with statutory authority, review cost allowability questions that are brought before the Office of Federal Procurement Policy. In such instances, the Administrator exercises his independent authority to make discretionary judgments on public policy

issues relating to the allowability of contract costs.

Allocability is an accounting concept involving the ascertainment of contract cost. It results from a relationship between a cost and cost objective such that the cost objective appropriately bears all or a portion of the cost. For a particular cost objective to have allocated to it all or part of a cost, there should exist a beneficial or causal relationship between the cost objective and the cost.

Cost Accounting Standards provide for the definition and measurement of costs, the assignment of costs to particular cost accounting periods, and the determination of the bases for the direct and indirect allocation of the total assigned costs to the contracts and other cost objectives of these periods. The use of Cost Accounting Standards has no direct bearing on the allowability of those individual items of cost which are subject to limitations or exclusions set forth in the contract or which are otherwise specified as unallowable by the Government.

The Board recognizes that contract costs are only one of several important factors which should be involved in negotiating contracts. Therefore, the promulgation of Cost Accounting Standards, and the determination of contract costs thereunder, cannot be considered a substitute for effective contract negotiation. It should be emphasized that where Cost Accounting Standards are applicable, they are determinative as to the costs allocable to contracts. It is a contracting agency's prerogative to negotiate the allowability of costs which are allocated to contracts. However, agency regulations should determine allowability based on reasonableness and/or public policy and not on the way a cost is measured, assigned, or allocated provided that such measurement, assignment, or allocation is consistent with the Cost Accounting Standards promulgated by the Board. The definition of Government contract costs, and how the amount thereof is to be allocated is a function of the Cost Accounting Standards.

*Fairness and Equity*

The Board considers a Cost Accounting Standard to be fair when in the Board's best judgment it provides equitable allocation of costs to contracts and shows neither bias nor prejudice to either party to affected contracts.

The results of contract pricing may ultimately be regarded as fair or unfair by either or both parties to a particular contract. But if the Cost Accounting Standards utilized in the negotiation, administration, and settlement of the contract provided the contracting parties with accounting data that are representative of the facts, the Standards themselves are fair. The concept of equity will be considered by the Board when a Standard is written and/or amended.

*Verifiability*

Verifiability is generally accepted as an important goal for information used in cost accounting. Contract cost accounting systems should provide for verifiability to the greatest extent practical. Contract costs should be auditable by examination of appropriate data and documents supporting such costs or by reference to the facts and assumptions used to allocate the costs to the contract.

The Board recognizes that under some Standards individual contractors may accumulate or allocate certain contract costs on a different basis, or in greater detail, than would otherwise be provided in a contractor's general books of account. The Board has stated in the prefatory comments of certain Standards that contractors may use memorandum accounting records to meet the requirements of Standards. These statements reflect the Board's intent that, for these Standards and elsewhere, only such detail of cost allocation and recordkeeping should be required as is necessary to provide the verifiability that is needed to satisfy regulatory contract cost audit requirements. Detailed contractor accounting records of contract costs should be reconcilable with the general books of account.

**Cost Allocation Concepts**

In order to achieve increased uniformity and consistency in accounting for costs of negotiated Government contracts, Cost Accounting Standards provide criteria for the allocation to cost objectives of the costs of resources used. As used in this discussion, cost is the monetary value of the resources used. A cost objective as defined by the Board is "a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc." Standards deal with all aspects of cost allocability, including:

1. The definition and measurement of costs which may be allocated to cost objectives,

2. The determination of the cost accounting period to which such costs are assignable, and

3. The determination of the methods by which costs are to be allocated to cost objectives.

The basic premise of good cost accounting is that the measurement, assignment, and allocation of costs to cost objectives be based on the beneficial or causal relationship between those costs and the cost objectives. In defining the proper measurement, assignment, and allocation of cost, certain accounting concepts such as materiality, the choice of an appropriate accounting method, and full costing should be carefully considered.

*Materiality*

Materiality must be considered in applying the Cost Accounting Standards because, as a practical matter, the cost of an accounting application should not exceed its benefit. Although uniformity and consistency in accounting are desired goals of the Cost Accounting Standards, the Board recognizes that the applications of accounting criteria must consider issues of practical application. Consequently, the application of Cost Accounting Standards in determining the measurement, assignment, and allocation of costs should not be so stringently interpreted that the desired benefits are negated by excessive administrative costs.

*Method of Accounting*

The accounting areas of interest to the Board include assignment of the costs of resources consumed to time periods. This accounting area is also of interest to other authoritative bodies established to issue pronouncements affecting accounting for financial and tax purposes. The Board will continue taking those other pronouncements into account to the extent it can do so in accomplishing its objectives. However, the Board recognizes that the purposes of these pronouncements are not intended to meet the objectives of contract costing. Therefore, the Board will retain and exercise full responsibility for meeting the objectives of contract costing.

As a practical matter, the simplest way to determine the period in which to recognize a cost is to select the period of cash payment. However, generally accepted accounting principles usually require deferral or accrual in order to recognize costs in periods other than those in which cash payment is made. Differences between the cash and accrual basis of accounting will occur with respect to the assignment of cost when liquidation of an obligation is deferred. Although the Board believes

that the accrual basis of accounting generally provides for a better matching of costs to the production of goods and services which gave rise to them, the assignment of costs to accounting periods for government contract costing purposes must be carefully evaluated to assure that the assignment shows neither bias nor prejudice to either party to the contract. The Board in individual Standards will provide guidance with respect to the use of accrual, cash or any other accounting methods for assigning costs to accounting periods.

*Full Costing*

The Board will adhere to the concept of full costing whenever appropriate. Full allocation of all costs of a period, including general and administrative expenses and all other indirect costs, is considered by the Board generally to be the basis for determining the cost of negotiated Government contracts.

Under the full costing concept, all costs initially allocated to intermediate cost objectives must be subsequently reallocated to final cost objectives. For this purpose, a final cost objective may be established to include unreasonable costs or costs unallowable for other reasons. The bases selected for allocating costs from intermediate cost objectives to final cost objectives are the devices used to associate costs with final cost objectives when such costs are not directly identifiable with those cost objectives. If the base selected is a reasonable measure of the relationship between the cost and cost objectives, the cost will be reasonably allocated to such cost objectives. The Board has referred to this conceptual relationship in the Standards as the beneficial or causal relationship between costs and cost objectives. In addition to the expression of this concept, the Cost Accounting Standards define in appropriate circumstances what criteria should be used to select the allocation base that best expresses this conceptual relationship.

*Hierarchy for Allocating Costs*

As an ideal, each item should be assigned to the cost objective that was intended to benefit from the resource represented by the cost or, alternatively, that caused incurrence of the cost. To approach this goal, the Board believes in the desirability of direct identification of costs with final cost objectives where the following allocation characteristics exist:

1. The beneficial or causal relationship between the incurrence of cost and cost objectives is clear and exclusive.

2. The amount of resource used is readily and economically measurable.

However, if all items of cost incurred for the same purpose in like circumstances do not have these characteristics, then none of these items should be identified directly with final cost objectives.

In addition, the Board recognizes that there are circumstances where although the units of resource used can be directly identified with a final cost objective, it would be inappropriate or unnecessary to directly identify the cost with the final cost objective. Where the units of resource used are interchangeable, as for example in the case of like machinery and equipment, consumption of materials and supplies or utility services, the amount of cost to be allocated to cost objectives may more appropriately be determined on the basis of an average cost and not on the actual cost of each unit used. The Board believes that this averaging concept should be applied in appropriate circumstances. Individual Cost Accounting Standards recognize specific instances where, although the incidence of resource use is directly identified with particular final cost objectives, the cost of the resource used should be determined on an averaging or indirect basis.

Where units of resource used are not directly identified with final cost objectives, the cost of such resources should be grouped into logical and homogeneous pools for allocation to cost objectives in accordance with a hierarchy of preferable techniques. Homogeneity means that the costs of functions allocated by a single base have the same or a similar relationship to the cost objectives for which the functions are performed, and the grouping of such costs in homogeneous pools for allocation to benefitted cost objectives results in a better identification of cost with cost objectives. There are circumstances where unlike functions will have the same or a similar relationship to cost objectives; it may be appropriate to group the cost of such functions and use a measure of the common relationship as the base for cost allocation purposes. Finally, where the final output of either goods or services is the same or similar (i.e., homogeneous), all indirect functions attributable to the common output may be grouped for allocation of the costs of those functions.

The Board believes that the preferable allocation techniques for distributing homogeneous pools of cost are as follows:

1. The preferred representation of the relationship between the pooled cost and the benefiting cost objectives is a measure of the activity (input) of the function or functions represented by the pool of cost. This relationship can be measured in circumstances where there is a direct and definitive relationship between the function or functions and the benefiting cost objectives. In such cases, a single unit of measure can generally represent the consumption of resources in performance of the activities represented by the pool of cost. Measures of the activity ordinarily can be expressed in such terms as labor hours, machine hours, or square footage. Accordingly, costs of these functions can be allocated by use of a rate, such as a rate per labor hour, rate per machine hour or cost per square foot of the support activity.

2. Where such measures are unavailable or impractical to ascertain, the basis for allocation can be a measurement of the output of the function or functions represented by the pool of cost. Thus the output becomes a substitute measure for the use of resources, and is a reasonable alternative where direct measurement of input is impractical. Output can be measured in terms of units of end product produced by the functions, as for example, number of printed pages for a print shop, number of purchase orders processed by a purchasing department, or number of hires by a personnel office.

3. Where neither activity (input) nor output of the functions can be measured practically, a surrogate must be used to measure the resources used. Surrogates used to represent the relationship generally measure the activity of the cost objectives receiving the service and should vary in proportion to the services received. For example, a personnel department may provide various services which cannot be measured practically on an activity or output basis. Number of personnel served may reasonably represent the use of resources of the personnel function for the cost objectives receiving the service, where this base varies in proportion to the services performed.

4. Pooled costs that cannot readily be allocated on measures of specific beneficial or causal relationship generally represent the cost of overall management activities. Such costs do not have a direct and definitive relationship to the benefiting cost objectives. These costs should be grouped in relation to the activities managed, and the base selected to measure the allocation of these indirect costs to cost objectives should be a base

representative of the entire activity being managed. For example, the total cost of plant activities managed might be a reasonable base for allocation of general plant indirect costs. The use of a portion of a total activity, such as direct labor costs or direct material costs only, as a substitute for a total activity base, is acceptable only if the base is a good representative of the total activity being managed.

In developing allocation techniques for individual Cost Accounting Standards, the Board will define the circumstances where direct identification or an appropriate level of the allocation hierarchy should be used.

*Accounting Standards and the Flow of Costs*

Cost Accounting Standards on cost allocation address the accounting for the flow of incurred costs as resources are used. The costs of resources used are initially allocated to a cost pool or to final cost objectives. The cost pools are intermediate cost objectives under the full costing concept of cost allocation used by the Board. Cost pools are either service centers, overhead pools or general and administrative (G&A) cost pools. Costs are allocated from cost pools to other cost pools and to final cost objectives until all costs are accumulated in final cost objectives, thus determining the total cost of those final cost objectives. Costs accumulated in service center pools can be allocated to other service center pools, to overhead pools, to G&A pools, and to final cost objectives. The costs accumulated in the overhead and G&A cost pools are allocated only to final cost objectives.

The particular distribution and cost flow characteristics of cost pools can be identified by relating the cost flow concept described above with the hierarchy of preferable allocation techniques described previously. Costs initially allocated to the various cost pools and final cost objectives are costs that can be directly identified with those cost objectives. Cost pools that are identified as service centers normally will distribute their costs on a base which measures the activity or output of the service center and, as a result, these costs can be allocated to any cost objective benefiting from that service including other cost pools. Cost pools that are identified as overhead pools will distribute their costs using an allocation base that measures the total activity of a period. These costs are allocated only to cost objectives that ultimately reflect that total activity, i.e., the final cost objectives of a business unit.

As Standards are promulgated for the treatment of pools of cost, each pool is categorized either as a function of general support (e.g., overhead pool) or specific support (e.g., service center). The classification is determined by the type of allocation base and flow of cost that is prescribed for that pool.

**Operating Policies**

The following descriptions of policies illustrate a number of important considerations that will be relevant to the Board as it seeks to achieve the objectives discussed previously.

*Relationship to Other Authoritative Bodies*

A number of authoritative bodies have been established to issue pronouncements affecting accounting and financial reporting. The Cost Accounting Standards Board views its work as relating directly to the preparation, use, and review of cost accounting data in the negotiation, administration, and settlement of Government contracts. The Board is the exclusive body established by law with the specific responsibility to promulgate, amend, and rescind Cost Accounting Standards designed to achieve uniformity and consistency in the cost accounting practices governing government contractors. Furthermore, Standards, rules, regulations, and interpretations promulgated or amended by the Board have the full force and effect of law in the negotiation, administration, and settlement of Government contracts.

The accounting areas of interest to the Board that are also of interest to others for financial and tax accounting purposes are: (1) definition and measurement of costs; (2) assignment of the cost of resources consumed to time periods; and (3) allocation of direct labor, direct material, and indirect costs to the goods and services produced in a period.

The Cost Accounting Standards Board seeks to avoid conflict or disagreement with other bodies having similar responsibilities and will, through continuous liaison, make every reasonable effort to do so. The Board will give careful consideration to the pronouncements affecting financial and tax reporting and, in the development of Cost Accounting Standards, it will take those pronouncements into account to the extent it can do so in accomplishing its objectives. The nature of the Board's authority and its mission, however, is such that it must retain and exercise full responsibility for meeting its objectives.

*Transition Method*

In consideration of the expanded application of the Cost Accounting Standards to civilian agency contracts, as well as the current application of the Standards to defense contracts, the Board is especially cognizant of the fact that the process of converting from preexisting cost accounting practices to the practices required by the Standards (or those required by the promulgation of a new Standard) could be a source of disagreement between the contracting parties. To assist in minimizing such disagreements, the Board expects that it will on occasion issue guidance so that the implementation of the Standards may be accomplished in such a manner as to place the contracting parties in a position where any amount of money that might be left to be dealt with by an equitable adjustment to the affected contract(s) would be immaterial. For other Standards, the impact of changes in cost accounting practices required by the implementation of the Standards, or by the promulgation of new Standards, will be accommodated by price adjustments for covered prime contracts and subcontracts through the equitable adjustment provisions provided for in the covered contracts.

*Single Government Representative*

To assure maximum uniformity of interpretation of its promulgations, the Cost Accounting Standards Board believes that it is highly desirable to have Federal agencies agree upon a single representative to deal with a given contractor regarding the application and administration of the contract requirements of the Board's rules and Standards. Because of its conviction of the merit of such a procedure, the Board recommended that agencies arrange for a single contracting officer for each contractor, or major component thereof, to be designated to negotiate as needed to achieve consistent practices relating to the application of the Cost Accounting Standards.

Both contractors and the Government will benefit from the establishment of procedures by which a Government contractor may be certain that only one contracting officer will deal with it to resolve issues that may arise under the contractor's Government contracts concerning the application of Cost Accounting Standards, rules, and regulations.

The Board believes experience has demonstrated the benefits to be derived by both the Government and contractors from this single-representative system

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and will work with the civilian agencies in order to encourage uniform contract administration of the Standards as these Standards become more widely applicable to the contracts of the civilian agencies.

*Responsibilities for Compliance*

The Board recognizes that the basic responsibility for securing compliance with Board promulgations, as with all contractual matters, rests with the relevant Federal contracting agencies. They are responsible for such matters as:

1. Incorporating all applicable Cost Accounting Standards Board promulgations into their procurement regulations;
2. Including the contract clause in all covered contracts;
3. Receiving Disclosure Statements;
4. Reviewing and approving the adequacy of such Statements;
5. Reviewing contractors' records to determine whether or not contractors have (a) followed consistently their disclosed cost accounting practices and (b) complied with the Cost Accounting Standards;
6. Making appropriate contract price adjustments because of changed accounting practices, failure to follow existing Standards, or the issuance of new Standards; and
7. Evaluating the validity of claims by contractors and subcontractors for exemptions from the requirements of the Standards as established in Public Law 100–679.

It should be noted that section 26(k) of the Office of Federal Procurement Policy Act gives to any authorized representative of the head of the agency concerned, or of the Offices of the Inspector General established pursuant to the Inspector General Act of 1978, or of the Comptroller General of the United States, the right to examine and make copies of any documents, papers, or records relating to compliance with the Board's rules.

Another element of compliance concerns the manner in which relevant contracting agencies implement the requirements established by the Board. Special and recurring reviews of agencies' compliance with Board promulgations should be performed by the agencies' internal review staffs, the agencies' Inspectors General, and by the U.S. General Accounting Office.

The Board must retain responsibility for evaluating the effectiveness of the Standards, rules, and regulations that it promulgates. Some of the Board's evaluative needs can be met by reviewing reports from contracting and audit organizations. However, the Board may also from time-to-time request reports and analyses concerning its rules from affected Federal agencies.

The Board also recognizes its responsibility for receiving evaluations of promulgated Standards, rules, and regulations from contractors, professional associations, and other associations and persons outside the Government who are concerned with the effectiveness of the Board's Standards, rules, and regulations, as well as the economy and efficiency of the Government procurement process in general. The Board will consider holding periodic conferences on promulgated Standards and regulations. Additionally, the Board welcomes comments and inquiries at any time.

*Interpretations*

The Board notes the existence of contractual and administrative provisions for the resolution or settlement of disputes arising under Government contracts. In particular, the Board notes that the Contract Disputes Act, 41 U.S.C. 601 *et seq.*, provides a mechanism for resolving disputes involving the Cost Accounting Standards. The Board will not seek to intervene or supersede this process. When there are widespread and serious questions of the Board's intention or meaning in its promulgations, however, the Board may, at its discretion, respond to requests for authoritative interpretations of its rules, regulations, and Cost Accounting Standards. Such interpretations are authorized pursuant to 41 U.S.C. section 422(f). Interpretations will be published in the **Federal Register**, and will be considered by the Board to be an integral part of the rules, regulations, and Cost Accounting Standards to which the interpretations relate. This formalized procedure does not preclude informal consultation between members of the public and the Executive Secretary and members of the Board's staff.

*Exemptions and Waivers*

The Board is authorized by law to grant exemptions to such classes or categories of contractors or contracts as it determines are appropriate and consistent with the purposes sought to be achieved by the Board's enabling legislation. In previous years, the Cost Accounting Standards Board used this authority to (1) exempt from its rules and regulations certain categories of contractors, (2) grant waivers of its requirements for certain individual contracts, (3) limit the requirements for formal disclosure of accounting practices to the larger Government contractors, (4) limit the application of some individual Standards either by exempting certain categories of contractors or by establishing a dollar threshold for the application of the Standard, and (5) exempt certain classes of contractors from the requirement to comply with Standards on the condition that they accept application of the Disclosure Statement regulations.

The Board anticipates that it will grant waivers only in rare and unusual cases. The Board notes that the granting of an exemption or a waiver from Cost Accounting Standards or the disclosure regulations reduces the extent to which the primary goals of increased uniformity and consistency are achieved.

**The Process of Developing Standards**

*Research and Development of Standards*

The promulgation of any Cost Accounting Standard is characterized by an in-depth study of the subject and by participation of various interested parties. The Board is not committed to any specific research process, but uses those techniques and resources which are appropriate to the topic. Typical research steps in the development of Standards are briefly described below.

1. Selection of topics—The Board's objectives are clearly set forth in Public Law 100–679; the Board seeks to develop Cost Accounting Standards to provide increased uniformity and consistency in cost accounting practices of Government contractors. Specific subjects for research and possible development of Cost Accounting Standards are selected after considering the nature and magnitude of the costing problems related to the subject, as well as the relationship of the subject to other Standards and other staff research projects. The Board has sought advice from interested parties in the selection of topics of research. Board approval of a work project or its continuance does not imply the ultimate promulgation of a Standard.

2. Reserch of concepts and existing practices—Early research generally involves review of the accounting concepts and existing practices. This review includes examination of available literature, and often involves discussions with representatives of professional accounting and other organizations. Early research also usually involves review of the treatment of the cost in connection with negotiated contracts. This requires examination of Government procurement regulations, and the decisions of courts and of Boards of Contract Appeals. It also involves meeting with representatives of procurement agencies and of contractors. Review may be made of Disclosure Statements and various reports received from Government agencies as to practices currently being followed. Personal interviews and plant visits may be made to review existing practices further in connection with contracts. The extent of this phase of the research and the amount of participation by interested parties depend on the nature of the topic.

3. Prior to promulgating, amending, or rescinding a Cost Accounting Standard or interpretation thereof, the Board is required to:

a. Take into account, after consultation and discussion with the Comptroller General, professional accounting organizations, contractors, government agencies and other interested parties:

(1) The probable costs of implementation, including inflationary effects, if any, compared to the probable benefits;

(2) The advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts; and

(3) The scope of, and alternatives available to, the action proposed to be taken;

b. Prepare and publish a report in the **Federal Register** on the issues reviewed under paragraph 3.a. above;

c. (1) Publish an advance notice of proposed rulemaking in the **Federal Register** in order to solicit comments on the report prepared pursuant to paragraph 3.b. above; and

(2) Provide all parties affected a period of not less than 60 days after such publication to submit their views and comments; and

d. Publish a notice of such proposed rulemaking in the **Federal Register** and provide all parties affected a period of not less than 60 days after such publication to submit their views and comments.

4. The **Federal Register** publication provides an opportunity for participation by all those who are interested in the work of the Board. The Board reviews the responses received, and determines what changes may be warrant in its proposal. Follow-up visits to Government agencies and contractors may be arranged in connection with particular comments received. Sometimes, interested members of the public may be invited to meet with individual Board Members or the Board's staff.

5. Consultation with the Comptroller General—Throughout the **Federal Register** publication phase described in paragraph 3, above, the Board will directly consult with and consider any recommendation the Comptroller General may make regarding the potential costs, benefits, advantages, disadvantages, and improvements anticipated regarding the Board's proposals to establish, amend, or rescind Cost Accounting Standards or interpretations thereof.

6. Promulgation—Rules, regulations, cost accounting standards, and modifications thereof promulgated or amended by the Board, shall have the full force and effect of law and shall become effective within 120 days after publication in the **Federal Register** in final form, unless the Board determines a longer period is necessary. Implementation dates for contractors and subcontractors shall be determined by the Board, but in no event shall such dates be later than the beginning of the second fiscal year of affected contractors or subcontractors after the Standard becomes effective. Rules, regulations, Cost Accounting Standards, and modifications thereof promulgated or amended by the Board shall be accompanied by prefatory comments and by illustrations, if necessary.

7. The functions of the Board described in paragraphs 1 through 6, above, are excluded by statute form the operations of sections 551, 553 through 559, and 701 through 706 of Title 5, United States Code.

8. Continuing review—The Board keeps informed on the operation of Standards in actual contract situations. The Board will publish authoritative interpretations in the **Federal Register** for comment when there are widespread and serious questions of the Board's intention or meaning in its promulgations. The Board will also modify any of its promulgations if experience shows that modification is desirable.

*Format of Standards*

The Board uses the same general format for all of its Cost Accounting Standards to facilitate their use.

The "Purpose" section normally provides a brief description of the goals of the Board in promulgating the Standard. The "Definition" section states, as referenced in the "Definitions" part of the Board's regulations, terms which are prominent in a particular Standard.

The "Fundamental Requirement" section contains the broad principles or practices to be applied in accounting for the cost covered by the Standard.

The "Techniques for Application" section provides criteria for the selection of alternative practices to implement the concepts contained in the "Fundamental Requirement." The techniques for application may describe the practices to be followed with respect to particular fundamental requirements or in particular circumstances. As a general rule, the techniques for application will narrow the accounting options in accordance with the concepts in the fundamental requirement. This section may also provide special techniques for applying the concepts of the fundamental requirement to give consideration to materiality or special circumstances.

Examples of how the Standard is to operate in specific circumstances appear under "Illustrations." Usually this section describes actual or hypothetical accounting practices and specifies whether or not such practices would comply with the provisions of the Standard. This section may also illustrate specific practices which may be followed in particular circumstances.

The final three sections of a Standard are "Interpretation," "Exemption," and "Effective Date." Where necessary, this format of a Standard may be supplemented by additional material, such as appendices, which also are an integral part of the Standard.

No one section of a Standard stands alone, and all sections must be read in the context of the Standard as a whole.

*Prefatory Comments*

The Board prefaces its issuance of Standards, rules, and regulations with analytical comments to provide additional insight into the process by which the issuance was developed and the factors which led to the provisions set out in the issuance. The prefatory comments summarize the comments received in response to the publication and explain the reasons for any significant changes made as well as the reasons for not making changes which were suggested. Although these prefatory comments are not a formal part of any promulgation, they nonetheless are authoritative statements by the Board. As such, the Board encourages their use as aids in applying Standards, rules, and regulations to specific situations.

*Comparing Costs and Benefits*

As previously mentioned, Public Law 100–679 requires the Board, in promulgating Standards, to take into account (1) "the probable costs of implementation, including inflationary effects, if any, compared to the probable benefits," (2) "the advantages, disadvantages, and improvements

anticipated in the pricing and administration of, and settlement of disputes concerning, contracts"; and (3) "the scope of, and alternatives to, the action proposed to be taken."

The Board views costs and benefits in a broad sense. All disruptions of contractors' and agencies' practices and procedures are viewed as costs. Prior to making a final promulgation decision, the Board makes specific inquiries into the likely costs of implementing proposed Standards, both for contractors and for affected agencies of the Government. In this inquiry, an effort is made to distinguish transitional costs from those that may persist on a recurring basis. Also, the Board makes a distinction between (1) incremental administrative costs, i.e., the cost of added activities over and above that which would otherwise have been incurred, and (2) costs that are absorbed in implementing and administering Standards, i.e., the cost of effort or resources diverted to the implementation and administration of Standards that otherwise would have been applied elsewhere. Out-of-pocket administrative expenses can be estimated, albeit with difficulty, and any increase in such expenses must be regarded as a cost.

Benefits from the application of the Cost Accounting Standards to Government contractors include reductions in the number of time-consuming controversies stemming from unresolved aspects of cost allocability, as well as greater equity to all concerned. The Board also believes that additional benefits accrue through simplified contract negotiation, administration, audit, and settlement procedures. In addition, the Standards should serve to reduce the opportunities for the manipulation of accounting methods alleged to have existed prior to the establishment of the Standards. Finally, and most importantly, the availability of better cost data stemming from the use of Cost Accounting Standards permits improved comparability of offers and facilitates better negotiation of resulting contracts. The Board believes that it would be extremely difficult, if not impossible, to quantify the benefits that accrue to Government and contractors alike from continued use of the Standards.

The Board is interested in data that will enable it to gauge the impact of a proposed Standard on the amount of costs that may result in a shift to or from Government contracts as a result of one or more Standards. The Board recognizes that a fair Cost Accounting Standard may result in a shift of cost either to or from Government contracts. In formulating Standards, the Board will not regard such shifts of costs as determinative.

The likely impact of a Cost Accounting Standard on a contractor is to modify the distribution of its costs among time periods or among its projects in a given time period. Standards may increase administrative costs, which if not offset by increased productivity in Government contracting, would contribute to inflation; the Board considers the total of benefits relative to the total cost.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202–395–3254).

**Allan V. Burman,**

*Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.*

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Part IV

# Department of Commerce

International Trade Administration

## Consortia of Businesses in the Newly Independent States of the Former Soviet Republics; Notice

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[Docket No. 920498-2098]**

**Consortia of American Businesses in the Newly Independent States**

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of a New Business Consortia Grant Program to Assist U.S. Firms Establish a Commercial Presence in the Newly Independent States of the former Soviet republics.

**SUMMARY:** A program has been designed to assist U.S. firms in establishing a commercial presence in the former Soviet republics through the formation of Consortia of American Businesses in the Newly Independent States (CABNIS). CABNISs are private and public non-profit organizations which will be formed to promote U.S. goods and services in the Newly Independent States (NIS). The participants in these consortia will be for-profit U.S. firms interested in trade with the former Soviet republics. CABNISs will establish offices and staff in the NIS to provide a broad range of services for their for-profit member firms, including market research, sales promotion, communication of sales opportunities, identification of and introduction to potential buyers and trade contacts, staging trade and technical missions and seminars, provision or arrangement of necessary legal services, and other export trade facilitation services. Grant funds will be awarded as seed money to pay the start-up costs of establishing and operating U.S. consortia offices in the NIS. CABNISs can be organized along a single industry line or represent more than one business sector. There is no limitation on the number of for-profit firms that a consortium may represent.

**SUPPLEMENTARY INFORMATION:**

**Program Objectives**

The consortia are intended to strengthen the U.S. business presence in the NIS. They will provide direct trade facilitation support for their member firms, stimulating increased U.S. exports to the NIS. The consortia will promote two-way trade and will be expected to support the privatization movement of host country economies through consortia assistance with defense plant conversion projects, finding markets for NIS products, promoting U.S. investment and U.S.-NIS joint ventures, and/or technical training.

**Funding Availability**

Pursuant to Section 531 and Section 632(b) of the Foreign Assistance Act of 1961, as amended, (the "Act") funding for the program will be provided by the Agency for International Development (A.I.D.). ITA will award financial assistance and administer the program pursuant to the authority contained in section 635(b) of the Act. The total amount of program grant funds available for CABNIS is $1 million for FY 1992 and an anticipated $3.5 million for FY 1993.

**Funding Instrument and Project Duration**

The Federal grant contribution will not exceed 50 percent of proposed eligible project costs with a maximum grant amount of $500,000 per consortium. Applicants are expected to provide the remaining share, preferably in cash. Federal funding will be a one-time injection with a grant period not to exceed three years. Assistance will be available for the period of time required to complete the scope of work but not to exceed three years from the date of the grant offer.

**Request for Applications**

Competitive Application kits (Application Kits) #110-0005-1 will be available from Commerce starting July 13, 1992.

To obtain a copy of the Application Kit #110-0005-1, please send a written request with two self-addressed mailing labels to Mr. George Muller, Director, Office of Export Trading Company Affairs, room 1800 HCHB, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Only written requests will be honored; telephone, fax, or walk-in requests will not be accepted. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester. Applications (Standard Form 424 (Rev. 4-88)) are to be received at the addressed designated in the Application Kit no later than 3 PM E.D.T. August 28, 1992. Commerce intends to award a minimum of two grants prior to the end of FY 1992 and, subject to availability of funds, award an anticipated minimum of seven grants during 1993. Applications which are not selected for funding in FY 1992 will be carried over automatically and be evaluated for possible funding in FY 1993—again subject to availability of FY 1993 funds.

*Eligibility*

Eligible applicants for the CABNIS grant program will be private and public non-profit U.S. organizations including non-profit corporations, associations and public sector entities established to represent the commercial interests of U.S. firms. Within the industry or industries represented by the consortium, membership in a consortium must be available on a non-discriminatory basis. For example, membership in a trade association cannot be a requirement for membership in a consortium. Only applicants proposing to open an office in one or more of the Newly Independent States are eligible for this program. Each application will receive an independent, objective review by one or more review panels qualified to evaluate the applications submitted under the program. Applications will be evaluated on a competitive basis in accordance with the selection criteria set below.

*Selection Criteria*

Consideration for financial assistance will be given to those CABNIS proposals which:

1. Demonstrate how proposed member firms' U.S. exports and consortia business activities will support privatization and private enterprise (e.g., through assistance with defense plant conversion projects, technical training, marketing assistance and investment promotion). Marketability of the proposed products and/or services in the NIS will be taken into account in evaluating applications.

2. Are proposed by non-profit organizations with the capacity, qualifications and staff necessary to successfully undertake the intended activities.

In addition, priority consideration will be given to those applications which:

3. Demonstrate the capability and intent of enlisting small and mid-sized U.S. firms as members of the consortium.

4. Provide a reasonable assurance that the proposed project can be continued on a self-sustained basis after expiration of the Federal grant expenditure period.

5. Contain a commitment to encourage, support and assist in the development of indigenous counterpart organizations (e.g. trade associations) and a well reasoned plan as to how that will be accomplished.

6. Present a realistic work plan detailing the services it will provide to the consortium member firms.

7. Present a reasonable, itemized budget for the proposed activities.



Selection criteria factors 1 and 2 will be weighted equally and will take precedence over priority consideration factors 3-7. Priority consideration factors 3-7 will be weighted equally.

The need for U.S. products and services and for assistance in the privatization process canvasses all of the former Soviet republics. Different geographic locations will be more suitable for different industries (e.g., oil production equipment versus medical equipment). In selecting grant recipients, ITA reserves the right to award grants in such a way to ensure a reasonably balanced distribution of consortia and the industry sectors that they represent among the NIS countries. Preference will be given to financial proposals which demonstrate the maximum allocation of Federal and non-Federal resources to program activities. ITA reserves the right to determine the level of funding for each grant awarded.

*Notifications*

All applicants are advised of the following:

1. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the deliquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

2. Primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Governmental Debarment and Suspension (Nonprocurement)" and the related section of the certification form prescribed above applies. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater. Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

3. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD-512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF-LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

4. A false statement on the application may be grounds for denial or termination of funds.

5. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

6. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

7. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

8. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

9. Awards under this program shall be subject to all Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.

10. The Standard Form 424 (Rev. 4-88) mentioned in this Notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348-0006.

11. Executive Order 12372 "Intergovernmental Review of Federal Programs" does not apply to this program.

Dated: July 8, 1992.

**George Miller,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 92-16336 Filed 7-10-92; 8:45 am]

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PART V

# Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 25 and 202
Mortgagee Review Board; Final Rule

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Secretary**

**24 CFR Parts 25 and 202**

**[Docket No. R-92-1499; FR-2801-F-03]**

**RIN 2501-AB01**

**Mortgagee Review Board**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule makes comprehensive changes in the Department of Housing and Urban Development's Mortgagee Review Board (Board) procedures. The purpose of the rule is to conform Board procedures to the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act of 1989).

**EFFECTIVE DATE:** August 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** For discussion of legal issues or matters of regulatory interpretation: Emmett N. Roden, III, Assistant General Counsel, Inspector General and Administrative Proceedings Division, Department of Housing and Urban Development, room 10251, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 708-3200.

For programmatic issues: William Heyman, Director, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, room 9146, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 708-1824. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

## I. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0450.

## II. In General

This rule amends part 25 of title 24, of the Code of Federal Regulations. It implements sections 202(c), 202(d), 203(s), and 536 of the National Housing Act (National Housing Act), (12 U.S.C. 1708 (c), (d), 1709(s) and 1735f-14) as added by sections 135, 142, and 107 of the Department of Housing and Urban Development Reform Act of 1989. (Pub. L. 101-235, approved December 15, 1989). Section 536 of the National Housing Act authorizes the Board to impose civil money penalties against mortgagees and lenders. Section 203(s) requires the Secretary to notify eight government or Federally chartered entities if the Secretary takes discretionary action to suspend or revoke the approval of any mortgagee to participate in any HUD/FHA mortgage insurance program. Section 202(c) of the National Housing Act established the Board. Section 202(d) requires the Government National Mortgage Association (GNMA) and (FHA) to coordinate withdrawal actions in their respective programs.

## III. Background

Section 202(c) of the National Housing Act establishes within FHA the Board which is composed of five HUD officials at the Assistant Secretary level, and the Department's Chief Financial Officer. The Board is authorized to initiate administrative actions against HUD/FHA approved mortgagees found to be engaging in activities in violation of Federal Housing Administration requirements or the Equal Credit Opportunity Act, the Fair Housing Act, or Executive Order 11063.

The Board is empowered to issue a letter of reprimand, place a mortgagee on probation, suspend, or withdraw the HUD/FHA approval of a mortgagee. The Board is required to follow statutory notice and hearing procedures when imposing administrative sanctions, except in the case of the issuance of a letter of reprimand. The Board also is authorized to enter into a settlement agreement with a mortgagee to resolve any outstanding grounds for an administrative action.

Section 202(c) further provides that the Board may request the Secretary of HUD to issue a temporary cease and desist order against a mortgagee where a violation of HUD/FHA requirements could result in a significant cost to the government or the public. In addition, section 202(c) requires that the Board, in consultation with the FHA Advisory Board, must annually make appropriate recommendations for regulatory or statutory changes to ensure the long term financial strength of the FHA mortgage insurance funds, and adequate support for home mortgage credit. This section also requires the Department to publish in the **Federal Register** administrative actions taken by the Board against mortgagees.

## IV. Discussion of Public Comments

*The Proposed Rule*

On April 4, 1991 (56 FR 13984) HUD published a proposed rule amending 24 CFR part 25 of the Code of Federal Regulations. Nine persons submitted comments on the proposed rule. The issues raised by the commenters are summarized below.

*Discussion of Section 25.2 Establishment of Board*

*Comment:* The provision in § 25.2 which states that "The Board may redelegate its authority to take administrative actions on the grounds specified in §§ 25.9 (e), (h) and (u) and to take all other nondiscretionary acts." should be deleted, or in the alternative, be modified to relate only to the instance when the administrative action to be imposed is a letter or reprimand.

*Response:* The Board may redelegate its authority to take administrative actions relating to nondiscretionary acts. Since §§ 25.9 (e), (h) and (u) relate to non-waivable lender approval requirements, if the Board determines that a violation of any one or more of these requirements warrants withdrawal of approval, the taking of this action is nondiscretionary.

*Comment:* These regulations should not apply to Title I lenders since the HUD Reform Act of 1989 did not grant authority to the Board to sanction such lenders.

*Response:* The intent of the HUD Reform Act of 1989 is to include title I lenders as entities against whom the Board may take an administrative action. For purposes of clarification, § 25.2 has been revised to reflect the authority of the Board in this regard by including lenders. This provision is consistent with existing regulations at 24 CFR 202.8 and in any event section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)) authorizes the Secretary to delegate his authority to sanction title I lenders to the Board.

*Discussion of Section 25.3 Definitions*

*Comment:* The definition of "Adequate Evidence" fails to explain the quantum of proof contemplated by this term.

*Response:* The definition of "Adequate Evidence" as stated in these regulations is consistent with rulings by the Department's Hearing Officers. Thus, the quantum of proof necessary has been determined to be within the discretion of the individuals making the determination as to whether adequate evidence exists in any particular instance.

*Comment:* The Definition of "Mortgagee" should not be expanded to include the term "Affiliates."

*Response:* The Department agrees with this comment and has revised these regulations accordingly.



*Comment:* The definition of "Reasonable Cause" should be clarified to provide objective standards upon which to justify the issuance of a Cease and Desist Order.

*Response:* The definition of "Reasonable Cause" as stated in these regulations reflects decisions rendered by the Department's Hearing Officers and is consistent with the provisions of the Act.

*Discussion of Section 25.4 Operations of the Mortgagee Review Board*

*Comment:* The reference to "designees" in this section should be modified to provide that only senior officials will serve in this capacity.

*Response:* This provision is consistent with the HUD Reform Act of 1989. It is the intention of the HUD Reform Act of 1989 to give full discretion to the Board members to choose their designees.

*Comment:* Board administrative actions should be determined by a unanimous vote of the Quorum.

*Response:* While in the past the Board has rendered its decisions with respect to suspensions and withdrawals by a unanimous vote, the HUD Reform Act of 1989 has increased the membership on the Board, and consequently, the Department believes that requiring a majority vote is more appropriate.

*Discussion of Section 25.5 Administrative Actions*

*Comment:* The provision stating that a letter of reprimand may only be issued once to a mortgagee without the Board taking further administrative action should be clarified.

*Response:* The HUD Reform Act of 1989 provides that a letter of reprimand may be issued by the Board only once to a mortgagee. The Department interprets this provision of the HUD Reform Act of 1989 to relate to specific violations. Thus, the Board may issue more than one letter of reprimand to a mortgagee, provided that each such letter of reprimand relates to a different violation.

*Comment:* The placing of a mortgagee on probation should not be effective until 30 days after the mortgagee receives notice and fails to contest the action, or in the alternative, should the mortgagee request an administrative hearing, until such time as the Hearing Officer affirms the Board's action.

*Response:* In response to this comment, the Department has amended these regulations so that the placing of a mortgagee on probation shall be effective upon receipt of notice by the mortgagee. Court decisions have affirmed the authority of the Board to take administrative actions against mortgagees and to determine that the effective date of an administrative action will occur before expiration of the 30-day notice period during which the mortgagee has the right to appeal, and, before the time that a Department Hearing Officer affirms the Board's action.

*Comment:* The provision stating that the Department will neither commit to insure nor endorse for insurance any mortgage originated by the suspended mortgagee should be modified.

*Response:* The Department has accepted this comment and has revised these regulations to provide that during the period of suspension, the mortgagee is without HUD approval, and HUD will not endorse any mortgage originated by the suspended mortgagee unless prior to the date of suspension a firm commitment has been issued relating to any such mortgage or unless a Direct Endorsement underwriter has approved the mortgagor for any such mortgage.

*Comment:* A suspension should not be effective until 30 days after the mortgagee receives notice and fails to request an administrative hearing to contest the action, or in the alternative, should the mortgagee request an administrative hearing to contest the action, until such time as the Hearing Officer affirms the Board's action.

*Response:* In response to this comment, the Department has revised these regulations so that the suspension of a mortgagee shall be effective upon receipt of notice by the mortgagee. Court decisions have affirmed the authority of the Board to take administrative actions against mortgagees and to determine that the effective date of the administrative actions should occur before the 30-day period within which the mortgagee has the right to appeal, and before a Department Hearing Officer affirms the Board's action.

*Comment:* The withdrawal of a mortgagee's approval by the Board should automatically incorporate a suspension of the mortgagee effective upon receipt of notice.

*Response:* These regulations provide that the Board may at its option withdraw a mortgagee's approval immediately upon receipt of notice.

*Comment:* The Board should not enter into a settlement agreement with a mortgagee when the mortgagee's alleged violations indicate that the mortgagee lacks responsibility.

*Response:* These regulations give the Board full discretion to determine the mortgagees with whom the Department will enter into settlement agreements.

*Comment:* Should the Board propose to enter into a settlement agreement with a mortgagee, the refusal of the mortgagee to sign such an agreement shall not constitute independent grounds for an administrative action.

*Response:* These regulations do not incorporate the concept that a mortgagee's refusal to enter into a settlement agreement is independent grounds for an administrative action.

*Comment:* The failure by a mortgagee to comply with the terms and provisions of a settlement agreement shall be a sufficient cause for suspension or withdrawal only in the event such failure is a material failure to comply with the terms and provisions of the settlement agreement.

*Response:* It is the Department's position that any breach of a settlement agreement may be sufficient cause for suspension or withdrawal of a mortgagee's approval.

*Discussion of Section 25.6 Notice of Violation*

*Comment:* The mortgagee's response to the Board should not be limited as to length.

*Response:* The Department disagrees, having determined that for the Board members to be in a position effectively to evaluate a mortgagee's response, the response should be limited in length as provided by these regulations.

*Discussion of Section 25.7 Notice of Administrative Action*

*Comment:* The Notice of Administrative Action should enumerate the specific reasons upon which an administrative action is based in addition to stating the violations upon which the administrative action is based.

*Response:* The Department has determined that the wording of these regulations is sufficiently broad to accommodate this comment.

*Comment:* The provision relating to supplemental notices should be modified to include specific restrictions.

*Response:* The Department has determined that there is no basis for restricting a supplemental notice, since a mortgagee is provided with the opportunity to submit a written response to the underlying facts that would be set forth in a supplemental notice.

*Discussion of Section 25.8 Hearings and Hearing Request*

*Comment:* Hearings on appeals of decisions of the Board are not required to be conducted under the Administrative Procedure Act and before Administrative Law Judges.

*Response:* The Department agrees with this comment and has revised these regulations accordingly.

*Comment:* The limitations on discovery are arbitrary and should be eliminated.

*Response:* The Department has determined that the importance of a hearing within a 30-day period should outweigh the mortgagee's interest in requesting voluminous discovery materials. Excessive discovery requests by the mortgagee would seriously jeopardize the Hearing Officer's ability to schedule a speedy hearing.

Because of the importance of a speedy hearing and the fact that the hearing provided the mortgagee is a trial de novo, the Department has determined that Board members shall not be subject to being deposed.

*Comment:* The provision that hearings on appeals of Board decisions generally be held in Washington, DC, should be eliminated.

*Response:* The Department has provided mortgagees the opportunity for a speedy hearing. For this to be accomplished, the hearing site should be Washington, DC, unless, as these regulations provide, extenuating circumstances exist.

*Discussion of Section 25.9 Grounds for Administrative Action*

*Comment:* Administrative actions should not be based on violations of HUD Handbooks or Mortgagee Letters.

*Response:* Since mortgagees have an affirmative obligation to know and follow the Department's requirements set out in HUD Handbooks or Mortgagee Letters, violations of the provisions of either or both are appropriate grounds upon which the Board may base administrative actions.

*Comment:* The provisions of § 25.9(n) are too broad and subjective.

*Response:* In response to this comment, the Department has amended 24 CFR 25.9 so that the term "employee" includes only those individuals who are or will be involved in HUD–FHA programs.

*Comment:* The provisions of § 25.9(p) are too broad and subjective.

*Response:* The Department does not agree that the provisions of this section of the regulations are too broad and subjective. The Department has given discretion to the members of the Board to make determinations with reference to administrative actions and will rely on the Board to apply the provisions of this section.

*Comment:* The provisions of § 25.9(y) should be removed as grounds for an administrative action.

*Response:* The Department has determined that its underwriting standards and requirements are adequately set forth in departmental issuances. Failure to perform underwriting functions properly in accordance with these standards and requirements should constitute grounds for an administrative action.

*Comment:* The provisions of § 25.9(bb) should be removed as grounds for an administrative action.

*Response:* The Department considers a Fiduciary duty to be in the nature of an agreement. A breach of any agreement by a mortgagee is potential evidence of the lack of responsibility, which the Board should take into consideration in determining whether an administrative action is appropriate.

*Comment:* The provision of § 25.9 which states that any one or more of the enumerated mortgagee violations may result in an administrative action is inconsistent with the provision in § 25.5 which states that when the Board determines that a mortgagee has committed a violation which is grounds for an administrative action, the Board shall take one of the enumerated actions.

*Response:* The Department has considered this comment and has determined that the provisions in these regulations, as currently drafted, are not inconsistent.

*Discussion of Section 25.10 Publication in Federal Register of Actions and Section 25.11 Notification to Other Agencies*

*Comment:* The provisions in those sections should be modified to provide specific criteria for disclosing Board actions to the public and other agencies, and such information should only be given after a mortgagee has exhausted all appeals.

*Response:* The publication in the **Federal Register** and notification to other agencies of Board actions before a mortgagee has exhausted all appeals is consistent with the provisions of these regulations in regard to the Board's statutory mandate to effectuate an administrative action before a mortgagee's appeal.

*Discussion of Section 25.12 Cease and Desist Order*

*Comment:* The Secretary should not have the ability to redelegate his or her authority to issue a Cease and Desist Order to the Chairperson of the Board.

*Response:* The proposed rule is consistent with other provisions in the Department's regulations and the statutory authority given to the Secretary to redelegate his or her authority.

*Discussion of Section 25.13 Civil Money Penalties*

*Comment:* The Department does not have authority to impose a civil money penalty solely on the basis of a party's being an affiliate of a mortgagee.

*Response:* As indicated in the discussion relating to § 25.3, above, the definition of "mortgagee" has been revised to exclude affiliates.

*Comment:* Civil money penalties should only be imposed for violations of law.

*Response:* The provisions of this section are consistent with the HUD Reform Act of 1989.

*Discussion of Section 25.16 Prohibition Against Modification of Board Orders*

*Comment:* The Department should reconsider the provision removing a Hearing Officer's discretion to modify an Order of the Board if the modification is deemed by the Hearing Officer to be in the best interests of the public.

*Response:* The Department has determined that it is in the best interest of the public and the Department that a Hearing Officer not be permitted to modify or otherwise disturb an order of the Board pending a final determination of a matter.

*Discussion of Section 25.17 Appeal to Secretary—Separation of Functions*

*Comment:* Since the HUD Reform Act of 1989 does not specifically provide for Secretarial review of a Hearing Officer's determination, this provision should be removed.

*Response:* Section 25.17 is consistent with similar provisions in other regulations of the Department. The Department believes that Secretarial review is in the best interests of the public and the Department.

*Discussion of Section 25.18 Retroactive Application of Board Regulations*

*Comment:* Mortgagee violations occurring before the effective date of the HUD Reform Act of 1989 (December 15, 1989) should not be subject to the provisions of these regulations.

*Response:* This provision is consistent with similar provisions in other HUD Regulations. The Department also believes that the Board should have the discretion to take administrative actions based on mortgagee violations, regardless of the date of occurrence of the violations.

**V. Finding and Certifications**

*Executive Order 12291*

This rule does not constitute a "major rule" as that term is defined in § 1(b), of

the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or Local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

*National Environmental Policy Act*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4331. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

*Regulatory Flexibility*

The Secretary in approving this rule for publication, certifies that under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), this rule does not have a significant economic impact on a substantial number of small entities. The rule implements statutory authority that is intended to protect the Department's programs from abusive practices, but it has no adverse economic impact on small businesses, nor would it be appropriate to provide differing procedures applicable to the practices of small businesses.

*Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule establishes an administrative regime for the prosecution of abuses of HUD programs but it has no impact on the family.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule does not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The rule's major effects are on individuals and businesses.

This rule was listed as item number 1114 in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804, 16816) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

**List of Subjects**

*24 CFR Part 25*

Administrative practice and procedure, Loan programs—housing and community development, organization and functions (Government agencies).

*24 CFR Part 202*

Administrative practice and procedure, approval of lending institutions, Credit insurance, Government contracts, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 25 and 202 are amended as follows: 1. Part 25, (consisting of §§ 25.1 through 25.18) is revised in its entirety, to read as follows:

## PART 25—MORTGAGEE REVIEW BOARD

Sec.

25.1 Scope of rules in this part.
25.2 Establishment of Board.
25.3 Definitions.
25.4 Operation of the Mortgagee Review Board.
25.5 Administrative actions.
25.6 Notice of violation.
25.7 Notice of administrative action.
25.8 Hearings and hearing request.
25.9 Grounds for an administrative action.
25.10 Publication in Federal Register of actions.
25.11 Notification to other agencies.
25.12 Cease and desist order.
25.13 Civil money penalties.
25.14 Coordination with GNMA.
25.15 Annual report.
25.16 Prohibition against modification of board orders.
25.17 Appeal to the Secretary.
25.18 Retroactive application of board regulations.

**Authority:** 12 U.S.C. 1708 (c) and (d), 1709(s), 1715b and 1734(f)—14); 42 U.S.C. 3535(d).

### § 25.1 Scope of rules in this part.

The rules in this part are applicable to the operation of the Mortgagee Review Board and to proceedings arising from administrative actions of the Mortgagee Review Board.

### § 25.2 Establishment of Board.

The Mortgagee Review Board was established in the Federal Housing Administration, which is in the Office of the Assistant Secretary for Housing—Federal Housing Commissioner, by section 202(c)(1) of the National Housing Act, (12 U.S.C. 1708(c)(1)), as added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235). Except as limited by this part, the Mortgagee Review Board shall exercise all of the functions of the Secretary with respect to administrative actions against mortgagees and lenders and such other functions as are provided in this part, except the authority to review decisions and orders of a Hearing Officer. The Mortgagee Review Board may, in its discretion, approve the initiation of a suspension or debarment action against a mortgagee or lender by any Suspending or Debarring Official under part 24 of this title. The Mortgagee Review Board shall have all powers necessary and incident to the performance of these functions. The Mortgagee Review Board may redelegate its authority to impose administrative actions on the grounds specified in §§ 25.9(e), (h) and (u) and to take all other nondiscretionary acts. With respect to actions taken against title I lenders, the Mortgagee Review Board may redelegate its authority to take administrative actions on the grounds specified in 24 CFR 202.3(j), 202.5(a), and 202.5(c) of this title (as incorporated in § 202.6(b)(1) of this title).

### § 25.3 Definitions.

*Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

*Administrative action.* A letter of reprimand, an order of probation, a suspension, a withdrawal of approval of a mortgagee or lender or a settlement agreement between the Mortgagee Review Board and a mortgagee or lender.

*Board.* The Mortgagee Review Board.

*Cease and desist order.* A temporary order issued by the Secretary or his or her designee requiring the mortgagee to stop violations as set forth in the order, and to take affirmative action to prevent such violations, or the continuation of such violations pending completion of proceedings of the Board with respect to such violations.

*Lender.* A financial institution which is approved for credit insurance, holds a valid title I contract of insurance that has not been terminated by the Secretary, and is approved by the Secretary under 24 CFR part 202 to originate and purchase, and to hold, service, and sell title I loans insured

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under 24 CFR part 201. In matters involving the imposition of civil money penalties, this term also includes a financial institution whose title I contract of insurance has been terminated, but, with the Secretary's approval, has been permitted to hold, sell or continue to service title I insured loans held in its portfolio prior to the contract's termination.

*Letter of reprimand.* A letter issued by the Board that explains a violation or violations to the mortgagee and describes the actions the mortgagee should take to correct the violations.

*Mortgagee.* The original lender under the mortgage (as that term is defined at sections 201(a) and 207(a)(1) of the National Housing Act, (12 U.S.C. 1707(a) and 1713(a)(1)) and its successors and assigns as are approved by the Commissioner. As used in this part, reference to the term *mortgagee* also includes *lender* as defined in this section.

*Notice of charges.* A notice, issued in conjunction with a cease and desist order of the Secretary pursuant to § 25.12, setting forth all statements and information that are required in a notice of administrative action issued pursuant to § 25.7.

*Party.* The Department of Housing and Urban Development or the mortgagee.

*Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized.

*Probation.* A period of time of up to six months during which a mortgagee is allowed under conditions as specified by the Board, to continue to participate in HUD/FHA mortgage insurance programs, while an evaluation is made of the mortgagee's compliance with HUD/FHA, Equal Credit Opportunity Act (ECOA), (15 U.S.C. 1601), Fair Housing Act (42 U.S.C. 3601–3619), or Executive Order 11063 requirements, or an order of the Board.

*Reasonable cause.* Such grounds as to justify the issuance of a cease and desist order, founded upon circumstances sufficiently strong to warrant a reasonable person to believe that a violation has or will occur.

*Secretary.* The Secretary of the Department of Housing and Urban Development or a person designated by the Secretary.

*Suspension.* The exclusion of the mortgagee from HUD/FHA mortgagee insurance programs for a temporary period of time of not less than six months, pending completion of an audit, review, investigation, or other administrative or legal proceedings.

*Withdrawal.* The exclusion of a mortgagee from participation in HUD/FHA mortgage insurance programs for a specified period of time. The withdrawal shall be not less than one year, and, where the Board has determined that the violation is egregious or willful, the withdrawal shall be permanent.

### § 25.4 Operation of the Mortgagee Review Board.

(a) *Members.* The Board consists of the following voting members: The Assistant Secretary for Housing—Federal Housing Commissioner who serves as chairperson; the General Counsel; the President of the Government National Mortgage Association (GNMA); the Assistant Secretary for Administration; the Chief Financial Officer of the Department; and, in cases involving violations of nondiscrimination requirements, the Assistant Secretary for Fair Housing and Equal Opportunity; or their designees.

(b) *Advisors.* The Inspector General or his or her designee, and the Director of the Office of Mortgagee Activities and Land Sales Registration (or such other position as may be assigned such duties), and such other persons as the Board may appoint, shall serve as nonvoting advisors to the Board.

(c) *Quorum.* Four members of the Board or their designees shall constitute a quorum.

(d) *Determination by the Board.* Any administrative action taken by the Board shall be determined by a majority vote of the quorum.

### § 25.5 Administrative actions.

When any report, audit, investigation or other information before the Board discloses that grounds for an administrative action against a mortgagee exist under § 25.9, the Board, depending upon the nature and extent of the violations, shall take one of the following actions:

(a) *Letter of reprimand.* The Board may issue a letter of reprimand to a mortgagee explaining the existence or occurrence of a violation and describing actions the mortgagee should take to bring and maintain its activities in conformity with all HUD/FHA requirements. The issuance of a letter of reprimand shall be effective upon receipt by the mortgagee in accordance with § 25.7. A letter of reprimand may only be issued once to a mortgagee in regard to specific violations without the Board taking action under paragraphs (b), (c) or (d) of this section in regard to these specific violations. Failure of the mortgagee to comply with a directive in the letter of reprimand may result in any other administrative action under this part that the Board finds appropriate.

(b) *Probation.* The Board may issue an order placing a mortgagee on probation for a specified period of time, not to exceed six months, for the purpose of evaluating the mortgagee's compliance with HUD/FHA requirements, compliance with the Equal Credit Opportunity Act (ECOA), (15 U.S.C. 1601), Fair Housing Act, (42 U.S.C. 3601–3619), Executive Order 11063, or an order of the Board. During a period of probation, the Board may impose reasonable additional requirements on the mortgagee to aid the Board in evaluating the mortgagee. Such additional requirements may include supervision of the mortgagee's activities by HUD/FHA, periodic reporting to HUD/FHA, or submission to HUD/FHA of internal audits, audits by an Independent Public Accountant or order audits or such other provisions as are deemed appropriate by the Board. If the Board determines that a mortgagee has failed to comply with the terms of an order or probation or otherwise commits a violation of HUD/FHA requirements, Equal Credit Opportunity Act, (15 U.S.C. 1601), the Fair Housing Act, (42 U.S.C. 3601–3619) or Executive Order 11063 requirements, the Board may take any other administrative action the Board determines appropriate. The placing of a mortgagee on probation shall be effective upon receipt of notice by the mortgagee.

(c) *Suspension*—(1) *General.* The Board may issue an order suspending a mortgagee's HUD/FHA approval temporarily if there exists adequate evidence of violation(s) under § 25.9, and if continuation of the mortgagee's HUD/FHA approval pending, or at the completion of, any audit, investigation, or other review, or other administrative or legal proceedings as may ensue, would not be in the public interest or in the best interests of the Department. Suspension shall be based upon adequate evidence.

(2) *Duration.* A suspension shall be for a specified period of time but not less than 6 months.

(3) *Effect.* During the period of suspension, the mortgagee is not approved and HUD will not endorse any mortgage originated by the withdrawn mortgagor unless prior to the date of withdrawal a firm commitment has been issued relating to any such mortgage or unless a Direct Endorsement underwriter has approved the mortgagor for any such mortgage.

(4) *Effective date of suspension.* The suspension of a mortgagee's approval shall be effective upon receipt of notice by the mortgagee.



(d) *Withdrawal.* (1) Where the Board makes a determination of a serious violation or a repeated violation by the mortgagee, the Board may issue an order withdrawing the HUD/FHA approval of the mortgagee.

(2) *Duration.* A withdrawal shall be for a reasonable, specified period of time, not less than one year, commensurate with the seriousness of the ground(s) for withdrawal. A withdrawal shall be permanent where the Board has determined that the violation is egregious or willful.

(3) *Effect.* (i) During the period of withdrawal, the mortgagee is not approved and HUD will not endorse any mortgage originated by the withdrawn mortgagor unless prior to the date of withdrawal a firm commitment has been issued relating to any such mortgage or unless a Direct Endorsement underwriter has approved the mortgagor for any such mortgage. The Board may limit the geographical extent of the withdrawal, or limit its scope to either the single family or multifamily activities of the withdrawn mortgagee.

(ii) Upon expiration of a stated period of withdrawal, the mortgagee may file a new application for approval with the Secretary under 24 CFR part 203.

(4) *Effective date of withdrawal.* The withdrawal of a mortgagee's approval shall be effective: (i) upon receipt of notice by the mortgagee if the board determines that continuation of mortgagee approval pending a hearing under § 25.8 would not be in the public interest or in the best interests of the Department;

(ii) At the expiration of the 30-day period specified in § 25.8, if the mortgagee has not requested a hearing; or

(iii) Upon receipt of a final determination under 24 CFR part 26.

(e) *Settlements.* The Board may at any time enter into a settlement agreement with a mortgagee to resolve any outstanding grounds for administrative action. Agreements may include but are not limited to provisions for cessation of any violation; correction or mitigation of the effects of any violation; repayment of sums of money wrongfully or incorrectly paid to the mortgagee by a mortgagor, a seller of HUD; actions to collect sums of money wrongfully or incorrectly paid by the mortgagee to a third party; indemnification of HUD/FHA for mortgage insurance claims on mortgages originated in violation of HUD/FHA requirements; modification of the length of any penalty; implementation of a quality control plan that meets HUD's requirements or other corrective measures acceptable to the Board; or such other provisions as are deemed appropriate by the Board. Failure of a mortgagee to comply with a settlement agreement shall be sufficient cause for suspension or withdrawal.

### § 25.6 Notice of violation.

(a) *General.* The Chairperson of the Board, or the Chairperson's designee, shall issue a written notice to the mortgagee at least thirty days prior to taking any probation, suspension or withdrawal action against a mortgagee. The notice shall state the specific violations that have been alleged, and shall direct the mortgagee to reply in writing to the Board within thirty days after receipt of the notice by the mortgagee. The notice shall also provide the address to which the response shall be sent. If the mortgagee fails to reply during such time period, the Board may make a determination without considering any comments of the mortgagee.

(b) *Mortgagee's response.* The mortgagee's response to the Board shall be in a format prescribed by the Secretary and shall not exceed 15 double-spaced typewritten pages. The response shall include an executive summary, a statement of the facts surrounding the matter, an argument and a conclusion. A more lengthy submission, including documents and other exhibits, may be simultaneously submitted to Board staff for review.

(Approved by the Office of Management and Budget under Control Number 2502–0450.)

### § 25.7 Notice of administrative action.

Whenever the Board takes an action to issue a letter of reprimand, place a mortgagee on probation, or to suspend or withdraw a mortgagee's approval, the Board shall promptly notify the mortgagee in writing of the determination. Except for a letter of reprimand, the notice shall describe the nature and duration of the administrative action, shall specifically state the violations and shall set forth the findings of the Board. The notice shall inform the mortgagee of its right to a hearing pursuant to 24 CFR part 26 and the manner and time in which to request a hearing, as required by § 25.8. The notice shall be served in accordance with 24 CFR 26.15. A supplemental notice may be issued in the discretion of the Board to add or modify the reasons for the action.

### § 25.8 Hearings and hearing request.

(a) *Hearing request.* In the case of probation, suspension or withdrawal action, a mortgagee is entitled to request a hearing before a Departmental Hearing Officer to challenge the action. If, within 30 days of receiving the notice of administrative action, the mortgagee requests a hearing, there shall be a hearing on the record regarding the violations within 30 days of receiving the request from the mortgagee. The mortgagee may voluntarily agree to have the hearing held more than 30 days after the request is received by HUD.

(b) *Procedure for request.* The request for hearing shall be made in writing within 30 days of receipt of the notice of probation, suspension or withdrawal. The request shall be filed in accordance with 24 CFR 26.14, addressed to the Board Docket Clerk, Department of Housing and Urban Development, at the address set out in the notice. Failure to request a hearing within 30 days shall be deemed a waiver of the mortgagee's opportunity for hearing and a waiver of its right to contest the probation, suspension or withdrawal, which shall then become final.

(c) *Procedural rules.* Hearings to challenge a probation, suspension or withdrawal action shall be conducted according to the applicable rules of 24 CFR part 26, except as modified by this part. Because of stringent time deadlines, facsimile machine filing is encouraged, pursuant to the provisions regarding the use of facsimile filing set forth in 24 CFR 30.425(b)(3).

(d) *Hearing location.* Hearings, if held within the 30-day period set forth in paragraph (a) of this section, shall generally be held in Washington, DC, unless undue hardship is otherwise shown. In cases where undue hardship is shown, the Hearing Officer may order the hearing, or a bifurcation of the hearing, in a location other than Washington, DC.

(e) *Limitation of discovery.* Discovery shall be conducted in accordance with subpart E of 24 CFR part 26, except as modified by this part. Discovery shall be limited to exclude requests for answers to interrogatories, requests for admissions, and production of documents that:

(1) Do not pertain to the appealing mortgagee; and

(2) Pertain to reviews or audits conducted by the Department, and administrative actions taken by the Board against mortgagees other than the mortgagee which is a party to the pending administrative action.

Because the hearing provided a mortgagee is a trial *de novo*, the members of the Board shall not be subject to being deposed.

### § 25.9 Grounds for an administrative action.

One or more of the following violations by a mortgagee may result in

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an administrative action by the Board under § 25.5. Except in cases where the Board's authority has been delegated in accordance with § 25.2, the Board will consider, among other factors, the seriousness and extent of the violations, the degree of mortgagee responsibility for the occurrences and any mitigating factors, in determining which administrative action, if any, is appropriate. Any administrative action imposed under § 25.5 shall be based upon one or more of the following grounds:

(a) The transfer of an insured mortgage to non-approved mortgagee, except pursuant to 24 CFR 203.433 or 203.435;

(b) The failure of a nonsupervised mortgagee to segregate all escrow funds received from mortgagors on account of ground rents, taxes, assessments and insurance premiums, or to deposit such funds in a special account with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation or by the National Credit Union Administration, except as otherwise provided in writing by the Assistant Secretary for Housing—Federal Housing Commissioner;

(c) The use of escrow funds for any purpose other than that for which they are received;

(d) The termination of a mortgagee's supervision by a governmental agency;

(e) The failure of a nonsupervised mortgagee to submit the required annual audit report of its financial condition prepared in accordance with instructions issued by the Secretary within 90 days of the close of its fiscal year, or such longer period as the Assistant Secretary of Housing—Federal Housing Commissioner may authorize in writing prior to the expiration of 90 days;

(f) The payment by a mortgagee of a referral fee to any person or organization; or payment of any thing of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person, including but not limited to an attorney, escrow agent, title company, consultant, mortgage broker, seller, builder or real estate agent, if that person has received any other compensation from the mortgagor, the seller, the builder or any other person for services related to such transactions or from or related to the purchase or sale of the mortgaged property, except compensation paid for the actual performance of such services as may be approved by the Assistant Secretary for Housing—Federal Housing Commissioner;

(g) Failure to comply with any agreement, certification, undertaking, or condition of approval listed on either a mortgagee's application for approval or on an approved mortgagee's branch office notification;

(h) Failure of an approved mortgagee to meet or maintain the net worth in assets required by 24 CFR part 203;

(i) Failure or refusal of an approved mortgagee to comply with an order of the Board, the Secretary or Hearing Officer under this part;

(j) Violation of the requirements of any contract with the Department, or violation of the requirements set forth in any statute, regulation, handbook, mortgagee letter, or other written rule or instruction;

(k) Submission of false information to HUD in connection with any HUD/FHA insured mortgage transaction;

(l) Failure of a mortgagee to respond to inquires from the Board;

(m) Indictment or conviction of a mortgagee or any of its officers, directors, principals or employees for an offense which reflects upon the responsibility, integrity, or ability of the mortgagee to participate in HUD/FHA programs as an approved mortgagee;

(n) Employing or retaining:

(1) An officer, partner, director or principal at such time when such person was suspended, debarred, ineligible, or subject to a limited denial of participation under 24 CFR part 24 or otherwise prohibited from participation in HUD programs, where the mortgagee knew or should have known of the prohibition;

(2) An employee who is not an officer, partner, director, or principal and who is or will be working on HUD/FHA program matters at a time when such person was suspended, debarred, ineligible, or subject to a limited denial of participation under 24 CFR part 24 or otherwise prohibited from participation in HUD programs, where the mortgagee knew or should have known of the prohibition;

(o) Violation by an approved mortgagee of the nondiscrimination requirements of the Equal Credit Opportunity Act (15 U.S.C. 1691–1691f), Fair Housing Act (42 U.S.C. 3601–3619), Executive Order 11063 (27 FR 11527), and all regulations issued pursuant thereto;

(p) Business practices which do not conform to generally accepted practices of prudent lenders or which demonstrate irresponsibility;

(q) Failure to cooperate with an audit or investigation by the Department's Office of Inspector General or an inquiry by HUD/FHA into the conduct of the mortgagee's HUD/FHA insured business or any other failure to provide information to the Secretary or a representative related to the conduct of the mortgagee's HUD/FHA business;

(r) Violation by an approved mortgagee of the requirements or prohibitions of the Real Estate Settlement Procedures Act (12 U.S.C. 2601–2617);

(s) Without regard to the date of the insurance of the mortgage, failure to service an insured mortgage in accordance with the regulations and any other requirements of the Secretary which are in effect at the time the act or omission occurs;

(t) Failure to administer properly an assistance payment contract under section 235 of the National Housing Act (12 U.S.C. 1715z);

(u) Failure to pay the application and annual fees required by 24 CFR 203.2(k);

(v) The failure of a coinsuring mortgagee:

(1) To properly perform underwriting, servicing or property disposition functions in accordance with instructions and standards issued by the Commissioner;

(2) To make full payment to an investing mortgagee as required by 24 CFR part 204;

(3) To discharge responsibilities under a contract for coinsurance;

(4) To comply with restrictions concerning the transfer of a coinsured mortgage to an agency not approved under 24 CFR part 250;

(5) To maintain additional net worth requirements, as applicable;

(w) Any other reasons the Board, Secretary of Hearing Officer, as appropriate, determine to be so serious as to justify an administrative sanction;

(x) Failure to remit, or timely remit mortgage insurance premiums, loan insurance changes, late charges or interest penalties to the Department;

(y) Failure to properly perform underwriting functions in accordance with instructions and standards issued by the Department;

(z) Failure to fund mortgage loans or any other misuse of mortgage loan proceeds;

(aa) Permitting the use of strawbuyer mortgagors in an insured mortgage transaction where the mortgagee knew or should have known of such use of strawbuyers;

(bb) Breach by the mortgagee of a fiduciary duty owed by it to any party, including GNMA and the holder of any mortgage-backed security guaranteed by GNMA, with respect to an insured loan or mortgage transaction.

(cc) Violation by title I lender, of any of the applicable enumerated provisions as stated in this section, or as stated in 24 CFR 202.6(b).

(dd) Failure to pay any civil money penalty, but only after all administrative appeals requested by the mortgagee have been exhausted.

(Approved by the Office of Management and Budget under Control Number 2502–0450.)



### § 25.10 Publication in Federal Register of actions.

The Secretary shall publish, in the **Federal Register**, a description of and the cause for each administrative action taken by the Board against a mortgagee. Such publication shall be made quarterly or more frequently in the discretion of the Secretary.

### § 25.11 Notification to other agencies.

Whenever the Board has taken any discretionary action to suspend and/or withdraw the approval of a mortgagee, the Secretary shall provide prompt notice of the action and a statement of the reasons for the action to the Secretary of Veterans Affairs; the chief executive officer of the Federal National Mortgage Association; the chief executive officer of the Federal Home Loan Mortgage Corporation; the Administrator of the Farmers Home Administration; the Comptroller of the Currency, if the mortgagee is a National Bank or District Bank or subsidiary or affiliate of such a bank; the Board of Governors of the Federal Reserve System, if the mortgagee is a State bank that is a member of the Federal Reserve System or a subsidiary or affiliate of such a bank, or a bank holding company or a subsidiary or affiliate of such a company; the Board of Directors of the Federal Deposit Insurance Corporation if the mortgagee is a State bank that is not a member of the Federal Reserve System, or is a subsidiary or affiliate of such a bank; and the Director of the Office of Thrift Supervision, if the mortgagee is a Federal or State savings association or a subsidiary or affiliate of a savings association.

### § 25.12 Cease and desist order.

(a) *Issuance of order.* Whenever the Secretary, upon the request of the Board, determines that there is reasonable cause to believe that a mortgagee is violating, has violated, or is about to violate a law, rule, regulation, or any written condition imposed by the Secretary or the Board, and that such violation could result in significant cost to the Federal Government or to the public, the Secretary may issue a temporary order requiring the mortgagee to cease and desist from any such violation, and to take affirmative action to prevent such violation or a continuation of such violation pending completion of proceedings of the Board with respect to such violation. Each cease and desist order shall include a notice of charges and shall be effective upon service on the mortgagee. A cease and desist order shall remain effective and enforceable for a period not to exceed 30 days pending the completion of proceedings of the Board regarding the violation, unless the mortgagee obtains an injunction as described in paragraph (b) of this section. If, after receiving the order, the mortgagee requests a hearing, there shall be a hearing on the record regarding the violation. The opportunity for the hearing before a Hearing Officer shall be provided for the mortgagee as soon as practicable, but no later than 20 days after the order has been served. The mortgagee's request for a hearing shall be filed with the Department within 10 days after the order has been served, otherwise the request shall be void. The request shall be filed with the Board Docket Clerk, Department of Housing and Urban Development, at the address set out in the order. Because of stringent time deadlines, facsimile machine filing is encouraged, pursuant to the provisions regarding the use of facsimile machine filing contained in 24 CFR 30.425(b)(3).

(b) *Application to U.S. District Court by mortgagee.* Within ten days after the mortgagee receives the order, the mortgagee may apply to the United States District Court in the judicial district in which the home office of the mortgagee is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting or suspending the enforcement, operation or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the mortgagee, and such court shall have jurisdiction to issue the injunction.

(c) *Application to U.S. District Court by HUD.* If the mortgagee violates, threatens to violate, or otherwise fails to obey a cease and desist order, the Secretary may apply to the United States District Court, or the United States Court of any territory, within the jurisdiction of which the home office of the mortgagee is located, for an injunction to enforce the order.

(d) *Special definitions.* For the purposes of this section, the term "mortgagee" includes a branch office or subsidiary of a mortgagee, or a director, officer, employee, agent or other person participating in the conduct of the affairs of the mortgagee; and the term "home office" means whatever the mortgagee has shown as its primary business address in its application for HUD/FHA approval.

(e) *Redelegation.* The Secretary may redelegate authority to issue a cease and desist order to the Chairperson of the Board.

(Approved by the Office of Management and Budget under Control Number 2502–0450.)

### § 25.13 Civil money penalties.

The Board is authorized pursuant to section 536 of the National Housing Act (12 U.S.C. 1735(f)–14) to impose civil money penalties on mortgagees and title I lenders, as set forth in 24 CFR part 30. The violations for which a civil money penalty may be imposed are listed at 24 CFR 30.320. Hearings to challenge the imposition of civil money penalties shall be conducted according to the applicable rules of 24 CFR part 30.

### § 25.14 Coordination with GNMA.

(a) *Notification to GNMA.* When the Board issues a notice of violation that could lead to withdrawing a mortgagee's approval, the Board shall:

(1) Notify GNMA in writing within 24 hours of the action taken;

(2) Provide GNMA with the factual basis for the action taken; and

(3) Publish the Board's decision in the **Federal Register** if the mortgagee's approval is withdrawn.

(b) *Notification by GNMA.* When GNMA notifies the Federal Housing Administration of an action that could lead to withdrawal of GNMA approval, the Board shall, within 60 days of receipt of such notice:

(1) Conduct and complete its own investigation;

(2) Provide GNMA written notification of the Board's decision and the factual basis for the decision; and

(3) If the Board withdraws the mortgagee's approval, publish its decision in the **Federal Register**.

(Approved by the Office of Management and Budget under Control Number 2502–0450).

### § 25.15 Annual report.

The Board, in consultation with the Federal Housing Administration Advisory Board, shall recommend annually to the Secretary amendments to statutes and regulations which the Board deems appropriate to ensure the long term financial strength of the Federal Housing Administration fund and adequate support for home mortgage credit.

### § 25.16 Prohibition against modification of board orders.

(a) Policy. The Board, before issuing orders, will carefully examine evidence

and undertake deliberation before reaching a decision.

(b) Modification of orders. Notwithstanding any provision contained in 24 CFR part 26, pending a final determination of a matter brought before a Departmental Hearing Officer, the Hearing Officer shall not modify or otherwise disturb in any way an order of the Board.

(c) In cases involving probation, suspension, or withdrawal actions where a Hearing Officer rules in a final determination that there was no legal basis for the Board's decision to take the administrative action, the Board's action shall be stayed pending an appeal, if any, to the Secretary.

**§ 25.17 Appeal to the Secretary.**

A party may petition for review of a determination or order of a hearing officer. The Secretary or designee, within 15 days upon receipt of a request for review of the Hearing Officer's determination or order under 24 CFR 26.25, shall issue a determination, in writing, granting or denying the request. The written determination of the Secretary or designee shall be issued within 45 days of receipt of the briefs filed by the opposing parties.

(Approved by the Office of Management and Budget under Control Number 2502–0450).

**§ 25.18 Retroactive application of board regulations.**

Limitations on participation in HUD mortgage insurance programs proposed or imposed prior to August 12, 1992, under an ancillary procedure shall not be affected by this part. This part shall apply to sanctions initiated after the effective date of the Department of Housing and Urban Development Reform Act of 1989 (December 15, 1989) regardless of the date of the cause giving rise to the sanction.

## PART 202—APPROVAL OF LENDING INSTITUTIONS UNDER TITLE I

2. The authority citation for part 202 is revised to read as follows:

**Authority:** 12 U.S.C. 1703, 1709, 1715b, 1751; 42 U.S.C. 3535(d).

3. Section 202.8 is amended by revising paragraph (a) introductory text, and paragraphs (b)(1), (c), and (d), to read as follows:

**§ 202.8 Administrative actions.**

(a) *General.* The provisions of 24 CFR part 25 shall be applicable to a lender participating in the Title I program. Administrative actions which may be applied are set forth in 24 CFR 25.5. Civil money penalties may also be taken against Title I lenders pursuant to 24 CFR 25.13 and part 30 of this title.

* * * * *

(b) * * *

(1) Failure to remain in compliance with the requirements for approval of lenders under this part.

* * * * *

(c) *Notice, hearing and hearing requests.* In the case of a probation, suspension or withdrawal action, a lender is entitled to notice and to request a hearing before a Hearing Officer to challenge the action, in accordance with the procedures in 24 CFR part 25. Hearings to challenge a probation, suspension or withdrawal action shall be conducted in accordance with the applicable rules of 24 CFR part 26.

(d) *Settlement agreements.* The Mortgagee Review Board may at any time enter into a settlement agreement with a lender to resolve any outstanding grounds for administrative action. Agreements may include but are not limited to provisions for cessation of any violation; correction or mitigation of the effects of any violation; repayment of sums of money wrongfully or incorrectly paid to the lender by a borrower or by HUD; actions to collect sums of money wrongfully or incorrectly paid by the lender to a third party; indemnification of HUD for insurance claims on title I loans originated in violation of HUD requirements; modification of any penalty; implementation of a quality control plan that meets HUD's requirements or other corrective measures acceptable to the Board; or such other provisions as deemed appropriate by the Board. Failure of a lender to comply with a settlement agreement shall be sufficient cause for suspension or withdrawal.

Dated: July 2, 1992.

**Jack Kemp,**

*Secretary.*

[FR Doc. 92–16200 Filed 7–10–92; 8:45 am]

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Monday
July 13, 1992

Part VI

# Environmental Protection Agency

**40 CFR Part 51**

**Vehicle Inspection and Maintenance Requirements for State Implementation Plans; Proposed Rule**

VOL 57 ISS 134 JL 13 1992 UMI

**Environmental Protection Agency**

**40 CFR Part 51**

**[FRL 4154-2]**

## Vehicle Inspection and Maintenance Requirements for State Implementation Plans

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Today's action proposes a rule establishing performance standards and other requirements for basic and enhanced vehicle inspection and maintenance (I/M) programs. Section 182 of the Clean Air Act Amendments of 1990 requires EPA to review, revise, and republish such guidance, taking into consideration investigations and audits of I/M programs, as well as the requirements set out in the Act for such programs.

**DATES:** Written comments on this proposed rule will be accepted until August 27, 1992. EPA will conduct a public hearing on this Notice of Proposed Rulemaking on August 12 and 13, 1992. The hearing will convene at 9 a.m. on August 12 and continue until 5 p.m. that day; it will resume at 9 a.m. on August 13 and continue until such time as all testimony has been presented. Further information on the public hearing can be found in Section IX, Public Participation.

**ADDRESSES:** Written comments on this proposed rule should be submitted (in duplicate if possible) to:

Environmental Protection Agency, The Air Docket, room M-1500 (LE-131), Waterside Mall, Attention: Docket No. A-91-75, 401 M Street SW., Washington, DC 20460.

The public hearing will be held in the Washington, DC area. The specific site will be announced in a separate document.

Materials relevant to this proposed rulemaking are contained in Docket No. A-91-75. The docket is located on the first floor of the above address and may be inspected from 8:30 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket material.

*Copies of the Regulation*: The proposed regulatory text is not being published in today's notice of proposed rulemaking but will be published in a supplemental notice in a few days. In the interim, copies of the proposed regulatory text may be obtained by calling the answering machine at (313) 741-7884 and leaving your name, organization name, address, and phone number. Requests may be faxed to (313) 668-4497 or sent to the address below.

**FOR FURTHER INFORMATION CONTACT:** Eugene J. Tierney, Office of Mobile Sources, Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. (313) 668-4456.

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## II. Summary of Proposal

Motor vehicle inspection and maintenance (I/M) programs are an integral part of the effort to reduce mobile source air pollution. Despite being subject to the most rigorous vehicle pollution control program in the world, cars and trucks still create about half of the ozone air pollution and nearly all of the carbon monoxide air pollution in United States cities, as well as toxic contaminants. Of all highway vehicles, passenger cars and light trucks emit most of the vehicle-related carbon monoxide and ozone-forming hydrocarbons. They also emit substantial amounts of nitrogen oxides and air toxics. Although we have made tremendous progress in reducing emissions of these pollutants, total fleet emissions remain high. This is because the number of vehicle miles travelled on U.S. roads has doubled in the last 20 years to 2 trillion miles per year, offsetting much of the remarkable technological progress in vehicle emission control over the same two decades. Projections indicate that the steady growth in vehicle travel is continuing. Ongoing efforts to reduce emissions from individual vehicles will be necessary to achieve our air quality goals.

Under the Clean Air Act as amended in 1990 (the Act), the U.S. Environmental Protection Agency is pursuing a three-point strategy for achieving major emission reductions from transportation sources. The development and commercialization of cleaner vehicles and cleaner fuels represent the first two points. It will be many years however before these cleaner cars dominate our vehicle fleet and none of these efforts will be successful unless we ensure that cars in use are properly maintained. The focus of today's action is the third point, in-use control, specifically I/M programs. The concept behind I/M is to ensure that cars are properly maintained in customer use. I/M produces emission reduction results soon after the program is put in place. I/M will also be critical if we are to fully realize the benefits of the new clean vehicles and clean fuels programs scheduled for phase-in over the next ten years.

To put I/M in perspective, it is important to understand that today's cars are absolutely dependent on properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly, and the average car on the road emits three to four times the new car standard. Major malfunctions in the emission control system can cause emissions to skyrocket. As a result, 10 to 30 percent of cars are causing the majority of the vehicle-related pollution problem.

Unfortunately, it is rarely obvious which cars fall into this category, as the emissions themselves may not be noticeable and emission control

malfunctions do not necessarily affect vehicle driveability.

Effective I/M programs, however, can identify these problem cars and assure their repair. We project that sophisticated I/M programs in the most polluted cities around the country would cut vehicle emissions by 28 percent, at a cost of about $12.50 per vehicle per year. This represents a major step toward the Act's requirement that the most seriously polluted cities achieve a 24 percent overall emissions reduction by 2000.

The Act requires that most polluted cities adopt either "basic" or "enhanced" I/M programs, depending on the severity of the problem and the population of the area. In total, I/M programs will be required in 162 areas, 54 of which do not now have I/M. The 80 moderate ozone nonattainment areas, plus marginal ozone areas with existing I/M programs, fall under the "basic" I/M requirements. Enhanced programs will be required in serious, severe, and extreme ozone nonattainment areas with urbanized populations of 200,000 or more; CO areas that exceed a 12.7 ppm design value with urbanized populations of 200,000 or more; and all metropolitan statistical areas with a population of 100,000 or more in the Northeast Ozone Transport Region.

Basic and enhanced I/M programs both achieve their objective by identifying vehicles that have high emissions as a result of one or more malfunctions, and requiring them to be repaired. An "enhanced" program covers more of the vehicles in operation, employs inspection methods which are better at finding high emitting vehicles, and has additional features to better assure that all vehicles are tested properly and effectively repaired.

The Act directs EPA to establish a minimum performance standard for enhanced I/M programs. The standard must be based on the performance achievable by annual inspections in a centralized testing operation. However, neither the Act's language nor EPA's performance standard requires states to implement annual, centralized testing. States have flexibility to design their own programs if they can show that their program is as effective as the "model" program used in the performance standard.

Of course, the more effective the program, the more credit a state will get towards the 24 percent emission reduction requirement discussed above. Furthermore, effective programs help to offset growth in vehicle use and allow for new industrial growth.

EPA and the states have learned a great deal about what makes an I/M program effective since the Clean Air Act, as amended in 1977, first required I/M programs for polluted cities. There are three major keys to an effective program:

- The ability to accurately fail problem cars and pass clean cars requires improved test equipment and procedures, given the advanced state of current vehicle design.
- Comprehensive quality control and aggressive enforcement are essential to assure that testing is done properly.
- Skillful diagnostics and capable mechanics are important to assure that failed cars are fixed properly.

These three factors are lacking in most of today's I/M programs. Specifically, the idle and 2500 rmp/idle short tests used in current I/M programs are not highly effective at identifying and reducing in-use emission from the types of vehicles which now and in the future will comprise the vehicle fleet. Second, covert audits by EPA and state agencies typically discover improper testing 50 percent of the time in test-and-repair stations, indicating that quality control is very poor and enforcement is lacking. Experience has shown that quality control at test-only stations is usually much better. Finally, diagnostics and mechanics education are often poor or nonexistent.

EPA and state audits as well as research at EPA's Motor Vehicle Emission Laboratory have shown that the simple idle test used in today's I/M programs has serious shortcomings. This type of test worked well for pre-1981, carbureted, non-computerized cars because typical emission control problems involved "rich" air/fuel mixtures that affected idle as well as cruising emissions. Today's high-tech cars with sensors and computers that continuously adjust engine operations are more effectively tested with procedures that include cycles of acceleration and deceleration under-loaded conditions. Sensor and computer operation and emissions must be tested during the high-emission acceleration and deceleration driving modes to most reliably identify high polluting cars. At the same time, the visual inspection of emission control devices is becoming less relevant. This is because tampering and misfueling rates have declined significantly with the phase-out of leaded gasoline and the difficulty of tampering with today's high-tech cars.

Another shortcoming of current I/M tests is the inability to detect excessive evaporative emissions. Over the last several years, EPA has learned that vapors which escape from various points in the vehicle fuel system present a huge source of hydrocarbon emissions, generally greater than tailpipe exhaust. No existing I/M program is testing for these evaporative emissions.

EPA has developed two new functional tests which can determine whether vehicle evaporative emission control systems are operating properly:

- A simple pressure check to find leaks in the fuel system (e.g., bad gas cap or cracked evaporative system hose). This test is simple and cheap.
- A check of the "purge" system that removes gasoline vapors stored in the charcoal canister and routes them to the engine where they can be burned as fuel. This test is done during transient testing, that is, while the vehicle is in a driving mode. The purge system does not operate during idle.

With these issues in mind, EPA is proposing in today's action, as part of the enhanced I/M program, a high-tech emissions test for today's high-tech cars. The test simulates actual driving and allows accurate measurement of tailpipe emissions and evaporative system purge. It can also accurately measure $NO_x$ emissions. This is especially useful in states where $NO_x$ control is important to address the ozone problem. The test reliably identifies vehicles needing repair.

The high-tech test is so effective that biennial test programs yield almost the same emission reduction benefits as annual programs. In EPA's research, doing the test right has proved much more important than doing it often.

The equipment required for high-tech testing costs about $140,000 per lane (although that estimate may be high), versus $15,000 to $40,000 for today's idle test equipment. The total test time (i.e., the time it takes from when you enter the lane until you leave) is also longer, 10 to 15 minutes versus about five minutes for today's test. But this does not have to translate to higher costs for drivers.

EPA estimates that a high-tech test in a high-volume system will cost about $17 per car, including oversight and administration costs. On a biennial basis though, the cost drops to about $9 per year. That is in line with the average cost of today's programs and is cheaper than many (today's average costs are about $18 for decentralized programs and about $8 for centralized programs). As with today's programs, there is also a cost to repair failed vehicles. But good diagnostics will make repairs efficient, and fuel economy savings of 7 to 13 percent that result from the repairs will largely offset these costs. In addition, manufacturer-provided warranties will cover the cost of repair for some vehicle owners.

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Centralized tests are run by states or by a single contractor in an area, while decentralized tests are run by small businesses in the city. High tech I/M testing can be done by independent, small businesses. Of course, since the testing equipment is more expensive, we would expect fewer, higher volume, test-only stations. Some such independent, high volume, test-only stations are now operating in several states (e.g., Texas and California). Regardless of whether the testing is decentralized or centralized, good quality control and enforcement are critical for a fair, effective program.

High-tech I/M is at least three times more effective than even the better-designed and well-run of today's I/M programs and remains much better even if evaporative system pressure checks are added to these existing, better programs. This high-tech program is so effective that it can be performed biennially, cutting testing costs and consumer time in half, while losing only about 3 percentage points of emission reductions.

As mentioned earlier, states with the most polluted cities are facing a Clean Air Act mandate to reduce overall emissions 24 percent by 2000. Effective high-tech I/M programs can make an enormous contribution toward this goal.

Not only is high-tech I/M one of the most effective air pollution control programs we know of, it's also the most cost effective. At $500 per ton on a biennial basis (excluding convenience costs), high-tech I/M is seven times more cost effective than more stringent new car tailpipe standards and at least 10 times more cost effective than additional controls beyond reasonably available control technology (RACT) on small and large industrial sources. It is cost effective even if no value is given to the CO and $NO_x$ reductions obtained. Biennial testing will effectively cut inconvenience costs in half from what they are in I/M programs today. If one assumes an inconvenience cost of $15 per motorist (based on 45 minutes of total time to drive to the station get a test and drive back, and a value of $20 per hour) high-tech I/M is still very cost effective, at $1,600 per ton.

To summarize, high-tech I/M provides many benefits:

- 28 percent reduction in vehicle VOC emissions plus 30 percent reduction in vehicle CO emissions, and 9 percent reduction in vehicle $NO_x$ emissions.
- Cost of $500 per ton, ten times less than most other options (excluding convenience costs).
- Biennial testing with less hassle and lower testing costs for car owners (resulting in an annual cost similar to or lower than today's norm).
- Fuel savings to help offset repair costs.
- A big step toward the minimum 24% overall VOC reduction required for the most polluted cities by 2000 and more room for industrial and vehicle miles travelled growth.

EPA's conclusions about the effectiveness and cost effectiveness of various I/M options are based on nearly 15 years of experience with I/M, along with ongoing research on a wide variety of mobile source emission control programs and technologies.

EPA is proposing today to establish performance standards (benchmark or model programs) for basic and enhanced I/M programs and to establish other requirements related to the design and implementation of I/M programs. The performance standard for basic I/M programs is proposed to remain the same as it has been since initial I/M policy was established in 1978, pursuant to the 1977 amendments to the Clean Air Act. The proposed performance standard for enhanced I/M programs is based on high-tech tests for new technology vehicles (i.e., those with closed-loop control and, especially, fuel-injected engines), including a transient loaded exhaust short test incorporating hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen ($NO_x$) cutpoints, an evaporative system integrity (pressure) test and an evaporative system performance (purge) test. Today's proposal also details various requirements for design and implementation of all I/M programs. These include improved enforcement, quality assurance, quality control, test procedures, on-road testing, and other aspects of the program. Some of these requirements apply to both basic and enhanced programs, and some to only enhanced programs. EPA also proposes in today's action to repeal appendix N, part 51, chapter I, title 40 of the Code of Federal Regulations, which contains obsolete provisions that have not been applied by EPA since the 1970s.

## III. Authority

Authority for the actions proposed in this notice is granted to EPA by section 182(a), 182(b), 182(c), 184(b), 187(a) and 118 of the Clean Air Act as amended (42 U.S.C. 7401 et seq.)

## IV. Background of Proposed Rule

### *A. Clean Air Act Amendments of 1990*

The Environmental Protection Agency (EPA) has had oversight and policy development responsibility for I/M programs since the passage of the Clean Air Act in 1970, which included I/M as an option for improving air quality. With the passage of the Clean Air Act Amendments of 1977, I/M was mandated for areas with long term air quality problems. EPA first established policy for I/M programs in 1978; this policy addressed the elements to be included in State Implementation Plan (SIP) revisions, minimum emission reduction requirements, administrative requirements, and schedules for implementation. Existing policy falls short of today's I/M program needs, however, due to the increasing sophistication of the vehicle fleet, advances in vehicle testing technology, and failure of established policy to keep pace with growing knowledge about actual program design and implementation.

Congress recognized this gap when developing the Clean Air Act Amendments of 1990, which gives EPA and the States some specific directives with regard to I/M programs. EPA must develop different performance standards for "basic" and "enhanced" I/M programs; enhanced I/M is required by the Act in areas with the worst air quality problems and in the Northeast Ozone Transport Region. The performance standard is the minimum amount of emission reductions, based on a model or benchmark program design, which a program must achieve. In addition to the performance standard, the Act directs EPA to address requirements for specific design elements and program implementation in both basic and enhanced programs.

Section 182(a)(2)(B) states that, within one year of enactment, the Administrator shall review, revise, update, and republish in the **Federal Register** the guidance for the States for motor vehicle inspection and maintenance programs required by this Act, taking into consideration the Administrator's investigations and audits of such programs. The guidance shall, at a minimum, cover the frequency of inspections, the types of vehicles to be inspected (which shall include leased vehicles that are registered in the nonattainment area), vehicle maintenance by owners and operators, audits by the State, the test method and measures, including whether centralized or decentralized, inspection methods and procedures, quality of inspection, components covered, assurance that vehicles subject to a recall notice from a manufacturer have complied with that notice, and effective implementation and enforcement, including ensuring that any retesting of a vehicle after a failure shall include proof of corrective

action and providing for denial of vehicle registration in the case of tampering or misfueling. The guidance which shall be incorporated in the applicable State implementation plans by the States shall provide the States with continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer.

Section 182(c)(3) requires guidance for enhanced I/M which includes a performance standard achievable by a [model or benchmark] program combining emission testing, including on-road emission testing, with inspection to detect tampering with emission control devices and misfueling for all light-duty vehicles and all light-duty trucks subject to standards under section 202; and program administration features necessary to reasonably assure that adequate management resources, tools, and practices are in place to attain and maintain the performance standard.

The concept of a performance standard provides state flexibility, as long as the numerical goal for emission reductions is attained. A State may choose to vary any of the design elements (except those required by the Act) of the model program provided the overall effectiveness is at least as great as the performance standard.

The Act further specifies that each enhanced I/M program shall include, at minimum, computerized emission analyzers, on-road testing devices, denial of waivers for warranted vehicles or repairs related to tampering, a $450 expenditure to qualify for waivers for emissions-related repairs not covered by warranty, enforcement through registration denial unless an existing program with a different mechanism can be demonstrated to have greater effectiveness, annual inspection unless a State can demonstrate that less frequent testing is equally effective, centralized testing unless the State can demonstrate that decentralized testing is equally effective, and inspection of the emission control diagnostic system. These are required design elements of each enhanced I/M program, not merely of the model or benchmark program. In addition, each enhanced I/M State must biennially submit to EPA a comprehensive evaluation of program effectiveness including an assessment of emission reductions achieved by the program. Enhanced I/M must achieve minimum reductions in HC (or volatile organic compound (VOC)) emissions and in $NO_x$ emissions from vehicles in the affected ozone nonattainment areas, and reduction in CO emissions in the affected CO nonattainment areas; the programs must be "in effect" two years from enactment and must comply in all respects with this rule.

*B. Guidance Versus Regulation*

In its relations with States under title I of the Act, EPA conventionally uses the term "guidance" to mean informational or interpretive policy adopted apart from notice and comment rulemaking, and lacking a fully binding legal effect. Section 182(a)(2)(B)(ii) requires EPA to issue "guidance" for I/M programs. Section 182(c)(3)(B) requires, however, that state enhanced I/M programs "comply in all respects" with EPA's guidance. Further, "such guidance shall include—(i) a performance standard." EPA interprets this language as requiring EPA, under Section 182(c) and the Administrative Procedures Act, to establish a binding performance standard with which States must comply when designing and implementing I/M programs. This type of binding standard can only be imposed through notice and comment rulemaking. See *PPG Industries* v. *Costle*, 659 F.2d 1239 (D.C. Cir. 1981), holding that EPA violated the Administrative Procedures Act by requiring continuous sulphur dioxide compliance monitoring through guidance without first providing public notice and opportunity for comment. Consequently, EPA today proposes to promulgate regulations defining the performance standard for enhanced I/M programs, and all of the characteristics of an approvable state enhanced I/M program to meet that performance standard.

As discussed earlier, section 182(a)(2)(B) similarly requires EPA to publish "guidance" addressing numerous aspects of basic I/M programs, and also requires states to incorporate the guidance into their SIPs. One interpretation of this requirement would be that EPA could merely publish nonbinding guidance on basic I/M programs. States could then incorporate the guidance into I/M programs by simply addressing the various aspects of the program described in EPA's guidance. Under this approach, states would not be bound to address such aspects in any specific manner. Alternatively, EPA could adopt binding regulations for basic I/M programs as well. Although this is not required by Section 182, EPA has the authority under that section and Section 301 of the Act to promulgate regulations as necessary to implement the statute. The experience over the last 15 years has shown that the lack of federal minimum requirements has led to less than fully effective I/M programs. This problem is discussed in great detail later in this preamble. EPA's Inspector General and the General Accounting Office have both cited the lack of regulations as a primary cause for the operating problems in existing I/M programs. These problems include ineffective testing, poor quality control, inadequate quality assurance, and weak enforcement. While EPA has been diligent about alerting the states to these problems when they are found during audits of operating I/M programs, the response on the part of these agencies has been constrained by resources and legal authority, and has been inadequate to solve the problems, especially in test-and-repair networks. EPA believes the only way to insure that states will implement effective and cost-effective programs is to promulgate binding regulations.

**V. Discussion of Major Issues**

*A. Development of New I/M Tests*

Studies conducted by EPA's Office of Mobile Sources, at the National Vehicle and Fuels Emission Laboratory and elsewhere, have shown that the idle and 2500 rpm/idle short tests used in current I/M programs are not highly effective at identifying and reducing in-use emissions from the types of vehicles which now do and in the future will comprise the vehicle fleet. For pre-1981 model year passenger cars, for which the I/M tests currently in use were developed and proven, idle testing worked well; typical problems involved rich air-fuel mixtures that affected idle as well as on-the-road emissions. Today's high-tech cars with sensors and computers that continuously adjust engine operations are most effectively tested with procedures that include cycles of acceleration and deceleration under loaded conditions.

EPA has developed a transient short test, also called the IM240 exhaust test, which more closely reflects how vehicles perform under actual driving conditions than do current idle, 2500 rpm/idle, or loaded steady-state emission tests. The transient test more accurately identifies high emitting vehicles, and provides greater assurance of effective repair. The transient test involves a brief driving cycle which is based upon the Federal Test Procedure (FTP), the driving cycle by which new vehicles are certified. This test is similar to the loaded, steady-state tests used in some I/M programs today, but differs in that emissions are measured during acceleration and deceleration of the vehicle. While no I/M program is currently running this test on a production basis, EPA believes there is no significant practical or technical impediment to wide-scale application of

the test. The transient test also allows accurate emission testing for $NO_x$ (see detailed discussion in the next section). By its nature, the transient test precludes test-defeating strategies that have been observed in I/M programs (e.g., holding down the accelerator pedal slightly during an idle test or disconnecting or crimping vacuum hoses to effect a passing result at idle or other steady-state condition). Such strategies may work with a steady-state test but would generally increase emissions of at least one pollutant on the transient test. As described in detail below, the enhanced I/M performance standard being proposed today assumes use of the transient test.

The performance standard being proposed today also includes tests of the vehicle's evaporative emission control system, an important source of pollutants which is not currently being effectively tested, though some current programs include a visual inspection for canister and gas cap presence. In fact, evaporative emissions rates today are often higher than excess tailpipe emissions. This is not a problem that has arisen on only newer vehicles, but rather its magnitude has only recently been realized through EPA testing. Two new functional tests are proposed to address this problem. The Evaporative System Integrity Test (hereafter referred to as the pressure test) checks whether the system has any leaks, and the Evaporative Performance Test (hereafter referred to as the purge test) checks whether captured fuel vapor is correctly removed from the canister and delivered to the engine during vehicle operation.

Significantly greater emission reductions can be gained through the transient, purge and pressure tests, due to higher identification rates of polluting vehicles and greater assurance of effective repair. Transient, purge and pressure testing may be performed in either centralized or decentralized inspection networks, although the cost per test will vary according to the throughput of vehicles in a station.

The transient test and the evaporative system checks being proposed in today's action represent EPA's best technical judgment on obtaining emission reductions from in-use motor vehicles. Nevertheless, some have suggested that alternative test procedures could conceivably achieve similar emission reductions, possibly at a lower cost. EPA is open to such alternatives and states may seek approval of alternative tests, contingent upon the state demonstrating to EPA that such alternatives are as effective as EPA's recommended tests and thus will achieve the performance standards. In addition to being effective at identifying vehicles for repair and assuring their repair, alternative tests cannot be accepted unless they maintain a low false failure rate similar to EPA's recommended tests and are similarly resistant to test-defeating strategies. It is of critical importance to consumers, motor vehicle manufacturers, EPA, and the States, that any tests employed in an I/M program be accurate, reliable, fair and effective.

One alternative test procedure, a loaded, steady-state purge test, has been of particular interest to several states. EPA staff developed a transient purge test instead of a steady-state test because our best engineering judgment suggests that steady-state purge testing would result in lower emission reduction benefits as well as a higher false failure rate and unnecessary consumer costs. This stems from the fact that purge strategies on high-tech vehicles vary considerably.

A loaded steady-state test has also been suggested as an alternative to the transient exhaust emission test. EPA's mobile source emission factor model includes emission reduction credits for this test for VOC and CO emission reductions. As mentioned above and discussed in detail in the next section, the Clean Air Act requires that enhanced I/M programs in ozone nonattainment areas achieve reductions in $NO_x$ emissions as well. EPA has found that $NO_x$ emission testing (as opposed to visual inspection of emission control devices—is essential for significant $NO_x$ emission reductions. Steady-state loaded testing may identify some high $NO_x$ emitters, and EPA will approve alternative test procedures submitted by states if well supported by data that show they accomplish the objectives stated above and meet the requirements for I/M tests in Section 207(b) of the Clean Air Act. Also, in the section below discussing the enhanced I/M performance standard, EPA requests comments on a model program that would incorporate steady-state tests.

*B. Basic I/M Performance Standard*

In today's section, EPA is proposing a model program for basic I/M areas that is unchanged from that required pursuant to the Clean Air Act as amended in 1977, and the policy that was in effect prior to enactment of the 1990 Amendments. This performance standard is based on the original I/M program that was operating in New Jersey in the earlier 1970s (see section C. for an explanation of the performance standard concept). The New Jersey program tested only light-duty passenger cars using a simple idle test. Since that time, light-duty trucks have become a significant part of the fleet and are included in nearly all I/M programs, and more sophisticated steady-state tests have been developed and used in I/M programs to improve the emission reduction performance. The basic I/M performance standard requires about a 5% reduction in highway mobile source VOC emissions. The most stringent I/M program can achieve an emission reduction of over 30%. EPA requests public comment on whether the basic I/M performance standard should be strengthened to require additional emission reductions, including whether high-tech tests should be required in basic I/M programs. EPA also requests comment on whether the basic performance standard should be revised to better reflect typical program operation in terms of waivers, compliance and the inclusion of light-duty trucks. Emission reductions from basic I/M programs that exceed those required can be used as offsets for other pollution control efforts.

*C. Enhanced I/M Performance Standard*

In today's action, EPA is proposing a "model" program for enhanced I/M areas, defined below as a specific set of program elements. It is estimated that a typical urban area adopting the model program described below will experience a 28% reduction in emissions of VOCs, a 31% reduction in CO emissions, and a 9% reduction in $NO_x$ emissions from highway mobile sources by 2000 when compared to what the area would experience without an I/M program. This estimate is based on EPA's most current mobile source emission factor model (MOBILE4.1) and is for illustrative purposes only. As described below, a state will have to use the most current version of EPA's mobile source emission factor model available at the time of SIP submission to demonstrate its program will reduce VOC, NOx, and/or CO emissions to levels that are equal to or less than those that would be achieved by the "model" program. In other words, the performance standard relates to emissions remaining in the fleet in a given year after application of the I/M program (and other strategies) not to reductions from a hypothetical non-I/M baseline. The pollutants for which a performance standard will apply depends upon the air quality classifications of the area, i.e., whether it is nonattainment for ozone, CO, or both. Since the Act requires a $NO_x$ performance standard, inspection

standards for $NO_x$ emissions must be established in enhanced I/M ozone nonattainment areas and in ozone transport regions. If the Administrator finds, under section 182(b)(1)(A)(1) of the Act pertaining to reasonable further progress demonstrations or section 182(f)(1) of the Act pertaining to provisions for major stationary sources, that $NO_x$ emission reductions are not beneficial in a given ozone nonattainment area, then EPA proposes to allow a waiver of the $NO_x$ performance standard requirement for enhanced I/M. EPA believes that a waiver would be appropriate in such areas because it would be unreasonable to require NOx reductions where they would not be beneficial. Although Section 182(c)(3) does not explicitly provide for such a waiver, EPA believes that Congress would not have intended to require NOx reductions where it would serve no purpose or be counterproductive. However, in light of the fact that the statute does not explicitly provide for such an exemption, EPA requests comment on the legality of providing an exemption under these circumstances.

Section 182(b)(1)(A)(i) of the Act requires moderate ozone nonattainment areas to show "reasonable further progress" in achieving emission reductions (later sections of the Act require serious and worse areas to do the same). A 15% reduction in VOC emissions is required by November 15, 1996, the date by which these areas are required to attain the standard. In addition to this requirement, serious or worse ozone nonattainment areas are required under section 182(c)(2) of the Act to provide for an additional 3% reduction each year after 1996 (averaged over each 3 year period after that year). That section also sets milestones of every three years after 1996 for states to demonstrate these reductions are actually occurring. Thus, serious ozone areas must achieve a total of a 24% reduction by November 15, 1999, and severe and extreme areas must continue to obtain a 3% per year reduction after 1999 until the relevant attainment date. Moderate CO areas are required to meet the ambient standards by December 31, 1995 and serious CO areas are required to attain by Decemer 31, 2000. EPA proposes in today's action to set these attainment and progress requirement dates as milestones for states to meet in designing and implementing the I/M program. In other words, a state's preferred I/M program must match the emission levels of the "model" program on each of these milestone dates, except as provided below.

In designing an I/M program to meet the emission targets for all of the milestones that apply, each affected area must determine the local emission levels predicted for the model program on these milestone dates. This is accomplished by selecting in the emission factor model all non-I/M inputs, (i.e., fleet size, fleet composition, ambient temperature, traffic speeds, fuel volatility, fuel reformulation, etc.) to reflect actual, local conditions and evaluating the resulting emission levels, on each milestone date, assuming that the model I/M program is implemented. This process is then repeated with the coal I/M program design and the resulting emission levels are compared to the model program scenario. The emission factor model accounts for other mobile source strategies, such as Tier 1 vehicles, reformulated gasoline, and oxygenated fuels. To the extent that these strategies will reduce emission factors, the model program/performance standard approach automatically accounts for these changes and for updated versions of the model. Once derived, the locally specific emission levels then become the emission targets which the enhanced I/M program areas must achieve or surpass for SIP approval.

Moderate ozone nonattainment areas must meet an emission reduction target for the basic I/M program by November 15, 1996. Serious or worse ozone areas that have to implement enhanced I/M are not required to meet an emission target by November 15, 1996, but they are required to meet various program phase-in schedules (see Implemenation Deadlines). These areas must meet the target on November 15, 1999. Severe and extreme ozone areas will also have to demonstrate that emission targets are being met both by November 15, 1999 and every three years after November 15, 1999 until the attainment date. In CO nonattainment areas, moderate enhanced areas must also meet the same phase-in requirements as enhanced ozone areas and serious CO areas must meet the emission reduction target by December 31, 2000.

The benefit of the model enhanced program has been expressed as a certain quantity of total mobile source VOC emissions, because it better reflects the impact that an effective I/M program can have across the full range of vehicle types and emissions sources. It also relates more closely to the emission reduction goals that nonattainment areas will be pursuing to meet attainment and reasonable further progress milestones.

This way of expressing the performance standard deserves some explanation, however, because the minimum benefit from a basic I/M program has often been expresed in the past as a 25 percent reduction in 1987 exhaust emissions from light-duty vehicles. The similarity between the previous 25 percent VOC reduction target for existing I/M programs and the new illustrative reduction of 28 percent for enhanced programs may cause some confusion. The previous 25 percent reduction figure is relative to a no-I/M baseline that only includes exhaust emissions from light-duty vehicles (passenger cars); the baseline does not include exhaust emissions from light-duty trucks or evaporative emissions from any vehicle category. Expressing the exhaust and evaporative emission reductions from enhanced I/M in terms of reductions in light-duty vehicle exhaust emission yields a benefit of 140 percent for VOCs, 62 percent for CO, and 32 percent for $NO_x$ (note that the VOC reduction is greater than 100 percent because exhaust and evaporative emission reductions from light-duty vehicles and light-duty trucks are being compared to light-duty vehicle exhaust-only emission levels).

In proposing the performance standard for enhanced programs, EPA considered a variety of options for specifying the "model" program which in turn establishes the minimum emission reduction requirement. In recent public meetings, EPA has included low, medium, and high options in the discussion of performance standards. In today's action, a high option program is being proposed for the enhanced I/M performance standard; however, EPA requests public comment on the low and medium options as well. Should public comment lead EPA to conclude that the low or medium option, or a somewhat different high option, would be more appropriate, EPA could proceed directly to final rulemaking on the components of this proposal that reflect those options.

The low, medium, and high options take an incremental approach to advanced technology testing, as did the four earlier options for the enhanced I/M performance standard which were included in the draft guidance document released in April, 1991. The low option is similar to the better programs currently operating pursuant to the 1977 amendments to the Clean Air Act, and yields a 10 percent reduction in highway mobile source VOCs and a 25 percent reduction in highway mobile source CO relative to a non-I/M baseline. The low option, as well as the medium option

discussed next, does not yield a net $NO_x$ emission reduction and these programs could in fact result in an increase in $NO_x$ emissions from in-use motor vehicles (actually, a return to design levels) as a side effect of repairs related to HC and CO failures. This subject is discussed in more detail at the end of this section. The medium option includes pressure testing of the evaporative system in addition to the elements included in the low option, and yields a 20 percent reduction in VOCs and a 25 percent reduction in CO relative to a non-I/M baseline (note that pressure testing is a VOC strategy that yields no CO benefit, making the low and medium options identical for CO). Finally, the high option includes a transient, mass-based, short test incorporating HC, CO, and $NO_x$ cutpoints, and both purge and pressure testing of the evaporative control system. The high option yields a 28 percent reduction in VOCs, a 31 percent reduction in CO, and a 9 percent reduction in $No_x$ relative to a non-I/M baseline. More detailed information about the low and medium options can be found in the technical support document.[1]

Recent testing on five (5) low mileage 1992 model year vehicles by ARCO indicates that a heavy-load, steady-state test may identify excess $NO_x$ emissions and may effectively test for evaporative system purge. ARCO suggests an equipment package consisting of a single power absorption curve dynamometer with no inertia simulation capability, a raw exhaust, concentration-type emission analyzer, and a mass flow measuring device. ARCO has not specified a specific flow measuring device and has suggested that its testing indicates that mass flow measurement may not be essential since an approximation can be made on the basis of engine size and dynamometer power absorption setting. This equipment may be substantially less expensive than the transient test equipment, which could in turn lead to a more cost-effective program, if the emission reduction benefits of the test were found to be comparable. However, a more complete test program will be necessary to assess the effectiveness of the procedure and the equipment arrangement ARCO suggests. The California Air Resources Board is testing this procedure and EPA plans to do so as well. EPA has expanded the test contract in the Arizona I/M program to include evaluation of the ARCO test. The program will be similar to that used for evaluating the IM240, where vehicles coming to the station for a regular I/M test will also be given an ARCO test and an IM240. EPA also plans to evaluate the performance of the test in ensuring adequate repairs.

If EPA concludes that the ARCO procedure is as effective as the IM240 procedure proposed here, the final rule will approve its use as a substitute. Moreover, if the ARCO procedure is somewhat less effective in obtaining emission reductions than the IM240, then EPA will consider the incremental loss in emission reductions, incremental cost difference and the cost-effectiveness of the proposed performance standard in relation to a less stringent performance standard that could be met by the test suggested by ARCO.

To assist it in consideration of this test procedure issue, EPA requests comment and any available test date regarding the feasibility and potential effectiveness of an inspection comprised of steady-state exhaust and steady-state purge tests in a test-only network. It has been suggested that the benefit of such an approach falls somewhere between the medium and high options. EPA believes that it could establish such a performance standard provided the program does produce some $NO_x$ reduction. A variant of this approach would be to combine a steady-state exhaust test, with a transient purge test. EPA requests comments and data on both of the two important aspects of inspection test effectiveness: identification of high emitting vehicles and enforcement of effective repairs. A steady-state loaded emission test might identify high emitters with a success rate of the same magnitude as the transient emission test. However, recent data collected by EPA indicate that the repair enforcement effectiveness assumptions associated with the two-speed and idle tests, and by implication and steady-state test, may be too high and may need to be adjusted.

Although this proposal specifically requests comment on the steady-state test, EPA plans to continue to evaluate the full range of I/M procedures even after issuing a final rule under this proposal, including the IM240 in a test-only format in actual I/M program settings, and, from time to time, will propose any changes to the emission factor model needed to accurately reflect the benefit of I/M on the current fleet.

Section 182(c)(3)(B) requires EPA to establish a performance standard for enhanced I/M programs, but does not specify the level of that performance standard. Both § 182(c)(3)(B) and § (c)(3)(C) provide statutory requirements that enhanced I/M programs must meet, thus establishing a minimum baseline for any performance standard EPA may promulgate. However, beyond that minimum, EPA believes that the statute gives EPA the discretion to establish whatever performance standard it concludes is reasonable and appropriate to produce cost-effective emission reductions while providing for state flexibility in program design and implementation.

The model program for enhanced I/M which EPA is proposing in today's action includes annual, centralized testing of 1968 and later model year light-duty vehicles and light-duty trucks rated up to 8500 pounds gross vehicle weight. It includes the transient IM240 exhaust emission test and the transient purge test on 1986 and later model year vehicles, pressure testing on 1983 and later model year vehicles, two-speed exhaust testing of 1981–1985 model year vehicles, and idle exhaust testing of pre-1981 model year vehicles. The inspection cut points in the model program have been selected to fail vehicles emitting well above (at least twice) their design standards, without failing vehicles that are properly operating.

The Act requires EPA to establish a performance standard based on an annual test program; it should be noted, however, that EPA strongly recommends that states implement biennial test programs that meet the required demonstration, described below. Biennial testing dramatically reduces both the test costs and consumer inconvenience of the I/M program. The Act allows for states to perform a biennial program if a demonstration can be made that such a program (alone or in combination with other features) would be equally effective. This demonstration shall be made using EPA's mobile source emission model which includes biennial and annual program credits. For example, using the current version of the emission factor model and assuming the same average characteristics stated earlier for the annual model program, a biennial program can achieve the 28% VOC reduction achieved by the annual model program by doing transient/purge testing on 1984 and later vehicles and pressure testing on 1971 and later vehicles, in addition to the tests in the model program. Given the added convenience and cost effectiveness of a biennial program, EPA recommends that states adopt the biennial high option since it clearly can achieve reductions equal to that of an annual program

[1] The technical support document is entitled Inspection and Maintenance Costs, Benefits, and Impacts and is included in the docket.

meeting the Act's requirements at a significantly lower cost to the consumers and state government. In addition, initial testing of new vehicles could be delayed until such vehicles are two or three years old, as the percentage of high emitting vehicles among newer cars is relatively small, thus avoiding the cost of testing such vehicles. It should be noted, however, that such a delay would result in less opportunity to make use of the comprehensive performance warranty coverage provided by the Clean Air Act for 2 years and 24,000 miles, although major specified emission control components would still be covered until 8 years and 80,000 miles.

The annual model program also includes a visual inspection of the catalyst and fuel inlet restrictor on 1984 and later vehicles; it should be noted, however, that the transient short test is capable of identifying vehicles that have important emission control components that are missing, disconnected, or inoperative, making a visual check unnecessary. Thus a program can be easily designed to meet the performance standard without employing visual checks, provided sufficient model years are covered by the transient test requirement. States may opt to conduct a visual check on vehicles that fail the tailpipe test for diagnosis or waiver purposes.

The waiver rate for the model program is set at 1% of failed vehicles because enhanced I/M programs may issue cost waivers only after a minimum expenditure of $450, adjusted for inflation, and only with careful administration of the waiver issuance process. Only a small percentage of vehicles failing the inspection are expected to be unrepairable within the $450 waiver cost expenditure requirement. The model program also assumes a high compliance rate of 98% because enhanced programs must adopt registration denial enforcement systems (unless a currently operating alternative system can be shown to be equally effective), and because today's proposal includes quality control and quality assurance requirements to maintain high compliance rates. It is EPA's belief that the states' pre-existing and vested interest in assuring comprehensive and current registration of on-road motor vehicles will support a registration denial enforcement system which can assure a high rate of compliance with inspection requirements.

EPA is requesting comment on whether the assumptions being used in the model program for waiver rate, compliance rate, stringency of emission standards, model year coverage of the various tests, and the like are appropriate. It should be noted that while some programs have excellent enforcement and others have few or no waivers, no existing I/M program currently achieves both a 98% compliance rate and a 2% waiver rate. Likewise, many I/M programs currently cover heavier trucks and more model years of vehicles than the proposed model program.

EPA is proposing in today's action, both in terms of design as well as performance, that enhanced I/M programs must include on-road testing of at least 0.5% of the subject vehicle population, in addition to the normal I/M test, to supplement the periodic inspection requirement. EPA believes this is a feasible first effort for I/M programs and may revise the on-road testing requirement as more experience and knowledge are gained regarding the potential of this approach. This effort could be accomplished through the use of remote sensing devices or through a pullover program that includes emission measurement. Remote sensing devices are emission detection instruments that can be used to estimate emissions from vehicles during operation on city streets. EPA and other organizations have performed evaluation studies that indicate that remote sensing technology is capable of accurately measuring instantaneous CO emissions. Recently, studies by the California Air Resources Board and others indicate that the accuracy of remote sensing devices for measuring hydrocarbon emissions, although, at present less accurate than for CO, is within a practical range for use in roadside monitoring. Development work continues, however, on improving the HC analyzer and on the technology and methods for measuring $NO_x$ emissions (as yet unavailable). EPA believes that remote sensing shows promise as a roadside screening and surveillance tool for use in supplementing periodic inspections, but does not propose that it replace these inspections. A more detailed discussion of this technology is included in the technical support document. EPA requests comments that provide data and experiences with the use of these devices and other technologies that may be useful for on-road testing.

Like on-road testing, onboard diagnostic (OBD) checks (which are discussed further in section IX of this preamble) must be made part of the "model" program and I/M programs must include testing of the vehicle's OBD system once vehicles equipped to meet federal OBD standards are old enough to be scheduled for inspection. EPA will promulgate rules specifying when OBD testing must begin and what OBD codes are grounds for failure and how codes are to be obtained from the OBD system.

Emission reduction credits have not yet been established in EPA's emission factor model for either OBD or on-road testing. EPA's emission factor model will be revised when sufficient data are available with which to establish credits and, in particular, when experience is gained in on-road testing. Meanwhile, since on-road testing and OBD inspections are both performance standard elements and specifically required components of the program, they neither can generate nor make use of emission reduction surpluses relative to the performance standard, i.e., they are not substitutes for achieving required emission reductions but rather supplements.

Today's action also proposes that owners of vehicles in enhanced I/M areas that are subject to EPA ordered or voluntary emissions recalls be required to have recalls completed as part of either the inspection process or the registration process, whichever approach the state chooses. Manufacturers will be required to provide EPA with a list of vehicles that are included in the recalls, as well as updated lists of vehicles that have had the recalls completed. These manufacturer-related requirements will be the subject of a separate rulemaking.

Today's notice is proposing for the first time an I/M performance standard for reducing $NO_x$ emissions from in-use motor vehicles in the more serious ozone nonattainment areas. Historically, I/M programs have been designed to reduce only emissions of VOCs and CO (and exhaust opacity in some areas). The Agency has not previously addressed in a formal way the test procedures and standards which would be necessary to identify high $NO_x$ emitting vehicles or the repairs which would be necessary to return them to lower $NO_x$ emission levels. Today's proposal addresses $NO_x$ reductions because they are required under section 182(c)(3)(A) of the Act for enhanced I/M areas, and because the testing technology has evolved to the point where the Agency feels that a $NO_x$ test on in-use vehicles can effectively be implemented in the field. $NO_x$ testing is also included because it is viewed as increasingly important for ozone attainment. Mobile sources contribute between 30% and 50% of the $NO_x$ emissions in the typical U.S. city.

In-use vehicle emission levels of $NO_x$ have not exceeded new car standards to the degree they have for HC and CO. High $NO_x$ emitters do exist, but not in as great a number nor with as high a magnitude as HC and CO emitters. Of course, this refers to vehicles built to a federal $NO_x$ standard of 1.0 gram per mile for light-duty vehicles. It may be that in-use compliance figures will be worse for cars which are designed to the new $NO_x$ standard of 0.4 grams per mile. In-use data from California would indicate that this is likely.

Measurement of $NO_x$ exhaust emissions requires that a vehicle be driven under load, a procedure which requires a dynamometer. Steady-state loaded testing may identify some of the high emitters, but EPA has found that the transient test proposed for HC and CO measurements is also very effective in identifying vehicles that need $NO_x$-related repairs.

The California I/M program currently requires a functional inspection of the exhaust gas recirculation (EGR) valve for proper connection. While such inspections should conceivably reduce EGR tampering and identify vehicles with $NO_x$ problems the EGR inspection in California is performed incorrectly more often than the inspection of other emission control components. Statistics from covert audits show that inspectors miss disconnected EGR valves very frequently, and EPA's tampering surveys currently indicate no difference in the rate of EGR tampering between areas which required EGR inspections and those which do not. In enhanced I/M areas, the tailpipe emission test for $NO_x$ will provide for and exceed the reductions the functional check was intended to achieve.

Due to the practical problems with visual or functional EGR inspections, and the lack of historical data which show a benefit, EPA does not include emission reduction credits for EGR inspections in its mobile source emission factor model. A small amount of $NO_x$ reduction is assumed where a program is successful in deterring tampering with three-way catalysts, or finding and fixing existing three-way catalyst tampering. The emission factor model in the past has not addressed the fact that repairs which are aimed at getting vehicles to pass an idle mode retest for HC and/or CO can often cause an increase in a vehicle's $NO_x$ emissions. This "increase" is really a return to the design $NO_x$ emission level, which typically is depressed somewhat by many malfunctions which cause high HC or CO. Repairs to correct HC or CO failures would not generally cause $NO_x$ emissions to increase beyond certification levels.

EPA has included in its study of transient testing for I/M some analysis of potential $NO_x$ cutpoints and of the costs and effectiveness of identifying and repairing high $NO_x$ emitters (as well as assuring that the vehicles which initially fail for HC or CO do not get only repairs which further sacrifice $NO_x$ levels). The test results are included in the technical support document. The current version of the mobile source emission factor model will be modified to properly account for the effect of HC and CO repairs on $NO_x$ emissions in idle mode programs and the impact of including a $NO_x$ component in the transient exhaust test. As noted earlier, the emission reduction from performing a transient test for $NO_x$, accounting for the increase associated with HC and CO repairs, is about 9% of total highway mobile source $NO_x$ emissions. The cost of $NO_x$ testing is discussed below in the section on Economic Impact.

Finally, it should be emphasized that today's action sets a minimum performance target for I/M programs which states are free to exceed. Additional emission reduction benefits over those required may be candidates for trading. EPA plans to issue guidance in the near future on trading of emission credits between mobile sources and stationary sources. EPA requests comments on innovative ways in which a state may utilize such emission credits trading to improve the overall effectiveness of its I/M program, for example, by instituting programs to facilitate the proper repair of failing autos.

*D. Inspection Network Types*

Two basic types of inspection networks have existed since the inception of I/M programs. A "centralized" network consists of inspection and retest at high-volume, multi-lane, usually highly automated, test-only stations, run by either a government agency or a single contractor within a defined area. A "decentralized" network consists of inspection and retest at privately owned, licensed facilities, such as gas stations and other shops which may also do repair work. I/M program design is usually determined by elected state or local officials who establish the necessary authorizing legislation. Program management is the responsibility of a State or local motor vehicle department or environmental agency. Many program features, including the system to insure that motorists comply with the testing requirement, the system for issuing waivers, quality assurance and quality control measures, vehicle coverage, emission standards, test procedures, and public information, are influenced by network type.

Recently, other network types have been suggested as alternatives to the traditional centralized and decentralized systems. Two examples of this include medium-to-high volume, test-only stations in decentralized, multi-participant systems, and the multiple contractor system with defined territories recently implemented in the State of Florida. In the decentralized multi-participant format, the high-volume, test-only stations are involved in no other automotive-related businesses or services beyond I/M testing, and are operated as privately owned "franchises" (franchised by the implementing agency) within a decentralized program area. The stations may be individually owned or one owner may own a chain of stations. Individual stations would compete for inspection business based on price, hours, location, and the like. In the Florida case, the State established six regions (one or two counties per region) in the three metropolitan areas involved in the program and eventually awarded contracts to three separate contractors (each with a different fixed fee reflecting the differing cost of inspection in each region). These "hybrid" systems provide alternatives that address many of the quality problems historically found in traditional decentralized inspection programs, which will be discussed in the following sections, yet can provide a means for small, local business participation in an effective I/M network.

The Act addresses the choice of network type for enhanced I/M programs. Section 182(c)(3)(C) states that enhanced programs must include, at a minimum, "operation of the program on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective." EPA must establish the criteria for such a demonstration, though the Act mentions "an electronically connected testing system, [and] a licensing system * * *" as minimal elements of an approvable program. It is clear that States may meet the performance standard with private or government-run centralized systems. EPA believes that the standard can also be met with test-only, high-volume decentralized multi-participant systems or with Florida-style, test-only, multi-contractor systems. EPA invites comments on the precise definition of "test-only" in the proposed rule, in light

of the various types of automotive and non-automotive businesses that might be interested in pursuing test-only activities at the same location or at other locations. The difficult question EPA has had to address in preparing this proposal is whether the Agency can approve a traditional, test-and-repair decentralized network, and if so, under what conditions.

EPA's emission factor model for I/M programs contains a set of default assumptions reflecting the fact that decentralized test-and-repair programs have in the past been significantly less effective than centralized programs with similar design features in finding and fixing emission problems. EPA believes it could not accept any of the currently operating decentralized programs as equally effective to centralized. With these effectiveness losses, it is not possible for a decentralized test-and-repair program to meet the proposed performance standard for enhanced I/M, regardless of the test type or vehicle class coverage.

Based on past performance, EPA believes that a decentralized test-and-repair program will not achieve emission reductions equal to that of a similarly designed, enhanced, centralized program. The fundamental problems with the test-and-repair approach, especially those related to conflict of interest, have not been successfully controlled in a test-and-repair program, to date. EPA has looked for strategies that would be sufficient to equalize test-and-repair program performance. Some have suggested that better emission analyzers would solve the problem, but it is clear from the experience in programs that have already adopted such equipment that this is not an adequate solution. Similarly, a few states have also implemented rigorous quality assurance programs, but still suffer from significant levels of improper testing. Clearly, performance can be substantially improved in the extremely poorly run test-and-repair programs. Better surveillance, more rigorous enforcement, and the like will reduce the egregious levels of improper testing found in these programs. Today's action establishes requirements to help bring about these improvements. Nevertheless, EPA is not convinced that they will be sufficient to adequately address the problem. On the other hand, Section 182(c) of the Clean Air Act allows a state to make a demonstration that a decentralized (i.e., test-and-repair) program is equally effective for the purposes of meeting the enhanced I/M requirement. EPA has always believed that program effectiveness depends a great deal on the seriousness of the state's intent and not just on the content of the official procedures and program requirements. Therefore, today's action proposes to grant states the opportunity to attempt to make an enhanced, test-and-repair system achieve the performance standard.

Since the first milestone for which a performance standard applies is November 15, 1999, states may choose to make a test-and-repair system demonstration, provided they commit to switch to a test-only network and complete at least one inspection cycle prior to the milestone, if the demonstration fails to show that the performance standard will be achieved. In order to approve a SIP for an enhanced I/M area with a test-and-repair program, EPA proposes to require the SIP to contain a legally enforceable back-up program. Specifically, the SIP would have to contain legislation signed by the Governor and fully adopted rules, regulations, and procedures that require a switch to a test-only network if the evaluation program required by these regulations does not show that the test-and-repair system is adequate (see Section J.8. for further discussion of program evaluation).

An enhanced, test-and-repair program would have to be operational by July of 1994, along with an approved evaluation system. In particular, vehicles of each model year must be subject from that date to final test procedures and emission standards with which the State proposed to achieve the performance standard. By July of 1996 (or July 1995 for an annual program), the State must begin to collect mass IM240 emission test data (or equivalent) on a representative, random sample of at least 0.1% of the fleet, in the second cycle but prior to repair. To insure objectivity, participation in the evaluation program would have to be mandatory. This sample would be used to assess emission rates from the subject fleet. By no later than January of 1997, the evaluation results must show the enhanced, test-and-repair system will achieve the performance standard. If an evaluation has not shown that program effectiveness, as indicated by the emission levels being achieved, is sufficient to meet the performance standard, then the contingent legal authority in the SIP would automatically trigger the switch to a test-only system by no later than January 1, 1999 (January 1, 1998, if biennial). The test-only program would become mandatory on that date and would have to be stringent enough to achieve the emission reductions required to meet the performance standard by November 1999. In the event that the effectiveness of the test-and-repair network was sufficiently close to that of a test-only system, EPA could allow the State to close the gap with I/M program coverage or stringency changes that could be demonstrated to ensure that the performance standard would be achieved by November 1999. Such changes could include expanded model year or vehicle class coverage (if available). Another option would be to address malmaintenance in the fleet through a scrappage program. EPA requests comment on whether other measures that would directly affect the in-use vehicle emissions, sufficient to make up any short-fall in any I/M program and not otherwise required in an area, such as reformulated gasoline or inherently low polluting vehicle requirements, should also be allowed to complement the back-up program or act as a fix in test-only programs.

With regard to reasonable further progress requirements under Section 182(b)(1)(A)(i) of the Act, EPA proposes to provide credit for alternative systems, based on actual performance demonstrated.

EPA requests comments on whether the demonstration option for test-and-repair decentralized programs is consistent with the requirements of the Clean Air Act for enhanced I/M areas.

Basic I/M areas are not required to be test-only, and the performance standard is such that a reasonably comprehensive, conventional test-and-repair system can meet the target. Most basic areas must achieve the ambient air quality standards either by 1993 (marginal areas) or by 1996 (moderate areas). Given the short time frame available to upgrade and implement basic I/M programs, there is not enough time for a state to run a demonstration program in a test-and-repair format and then switch to test-only in time to improve emission reductions by the 1996 milestone. For the purposes of submitting a SIP that meets the performance standard, today's action proposes to allow an area to claim additional credit beyond the default level assigned to test-and-repair programs, if past performance can be shown to exceed default performance levels.

*E. Convenience Issues*

One issue consistently raised in EPA's pre-proposal discussions of I/M policy with interested parties is that of motorist convenience. I/M programs need to be accepted and supported by

the public to be successful; therefore, public inconvenience associated with I/M programs needs to be minimized. Several features of an I/M program may affect convenience. As mentioned above, test frequency is the single most significant factor influencing I/M convenience. If motorists only have to get tested every other year instead of annually, inconvenience is cut in half. Apart from test frequency, other influential features include: cost, driving distance, certainty of service, hours of operation, wait times, and necessity for multiple trips. Each of these factors can be influenced to some degree by network type, i.e., whether the program is decentralized or centralized.

Decentralized networks usually have large numbers of gas stations, car dealerships, repair shops, and similar automotive service-related businesses which are licensed by the State to perform emissions testing. Typically, there are hundreds or thousands of stations, depending on the number of vehicles subject to the I/M requirement and the size of the program. The station-to-vehicle ratio in service station based networks is typically on the order of 1 to 1,000; e.g., in the New York City metropolitan area, 4,300 stations test approximately 4,600,000 vehicles annually. Typically, less than half of licensed test stations have the repair technician expertise to repair the vehicle engine and emission controls if the vehicle fails the test. At the stations that do have an engine/emission repair capability, the vehicle very often can complete the test-repair-retest process in one trip.

In existing centralized networks, performing steady-state emission tests and tampering checks, the ratio of test lanes to annual vehicles tested is about 1 to 35,000. Typically, these test facilities are strategically sited, fully automated, and designed to handle the high volumes of vehicles seeking inspection during peak times of the test cycle without long queues. Vehicle repairs or other business besides testing is not performed or permitted. Centralized systems are operated by government agencies or, more frequently, by a contractor that wins exclusive rights to provide testing services for an entire metropolitan area or state, in a bidding process that factors in convenience, as well as price and technical competence. Convenient, contractor-run, centralized programs are currently being operated in a wide range of large and small cities and result from good network design, contractual requirements to insure convenience, and competition in the bidding process.

Centralized programs necessarily require owners of failed vehicles to make an extra trip to obtain repairs; the percentage of owners so affected ranges between 10% and 20%. Some States use a hybrid system that allows decentralized retests after the centralized initial test for vehicles that fail and need repair. This eliminates the need to go back to the central test station if a repair shop is chosen that also is licensed to test. This approach increases the administrative burden and cost of the program, as well as the potential for losing emission reductions if repairs are not performed properly.

There are potential problems that arise with convenience in both centralized and decentralized test systems. There are some centralized systems that are not convenient to the motorist. In nearly all cases, this has been in government-run centralized systems. The problem occurs as the result of a combination of factors: Inadequate numbers of stations or lanes to handle peak volumes, poor station siting, under staffing so that all lanes cannot be opened when needed, insufficient resources, and inadequate equipment and technical expertise. For the most part, these safety inspection systems, to which emission testing were later added, were put into place decades ago and were not sufficiently upgraded over the years to handle more vehicles. EPA does not recommend the creation of any other government-run systems and has in the past encouraged existing systems to consider privatization. One other case of a centralized system which was reportedly perceived as inconvenient was the centralized change-of-ownership program in the South Coast Air Basin in California. Because the program inspected only about one-sixth of the vehicle population each year, stations were sited far apart to serve wider areas, resulting in longer trip times and long waits for vehicle owners. Extensive experience in designing convenient systems has been gained since that time.

In decentralized systems, convenience problems include having to wait excessive amounts of time for a test (excessive waits also occur in poorly designed centralized programs), having to leave the vehicle behind because testing on demand is not available, being refused testing, and having to return at another time or go to another station. Decentralized stations rarely originally designed for the purposes of testing and the manual nature of many of the operations that go on in the process can result in a much longer wait time than is generally supposed.

Adequate numbers of licensed test stations have been a problem in some decentralized programs, but this is mainly a function of the limited fee that a station in these programs has been allowed to charge the motorist for doing a test. Often the test includes safety as well as emission-related inspections and, when performed correctly, these tests can take as much as 20–30 minutes. Given the rise in shop labor rates over time, doing inspections in such state programs became a money loser for good repair shops that could better spend their time on higher value services. Thus, insufficient numbers of stations signed up to do testing. In States where there is no test fee cap, such as California, there is a lower vehicle-to-station ratio, indicating that there are more suppliers willing to enter the market.

In both centralized and decentralized systems, it is possible to design and run the systems such that a high level of convenience is maintained. While convenience is often a prospective concern of residents of an area about to implement a centralized program, once operating, most vehicle owners' actual experience is satisfactory to them. A majority of motorists in a recent survey reported that testing centers were conveniently located in both centralized and decentralized networks (Riter Research, "Attitudes and Opinions Regarding Vehicle Emission Testing," conducted for the Coalition for Safer Cleaner Vehicles, September 1991). EPA encourages State and local governments to build into the program design features necessary to insure motorist convenience. EPA has traditionally left it to the States to address these issues. Today's proposal includes specific recommendations to address convenience issues, but because of its importance, EPA is requesting comment on whether the I/M regulation should specify mandatory program design features that would help insure that convenient testing systems are established. For example, in high-volume test systems, EPA recommends and in the final rule could require that contracts include minimum design features for station siting such that 80% of all motorists are within 5 miles of a test facility, and 95% are within 12 miles of a test facility. Contracts should also include operational features that insure service delivery, including a provision that when there are more than 4 vehicles in a queue waiting to be tested, spare lanes be opened and additional staff employed to reduce wait times. Another feature of high-volume systems should be hot lines that motorists can call and

get information on station locations, hours of operation, current wait times and the like.

Another motorist convenience issue is the fact that in test-only networks motorists must go to separate facilities for tests and repairs. The next section discusses variety of approaches to encourage that repair facilities provide customers with the most convenient service possible, including taking the vehicle for initial testing and, if it fails, back to the test center for the retest after repairs. Included in this discussion are proposals to allow repair facilities to obtain free retests for their customers, to provide diagnostic assistance to repair facilities, and to give repair technicians priority access to test facilities, thereby allowing them to obtain a retest as quickly as possible. These ideas are discussed in more detail below, but they are intended to maximize convenience and ensure that motorists get effective repairs on their vehicles with a minimum of inconvenience.

It has been suggested to EPA that siting test facilities in densely populated areas, especially in the northeast United States where most enhanced I/M programs are located and in the Los Angeles area, might be impossible or very expensive. Experience to date has not indicated a problem in this regard. In centralized, contractor-run programs, the contractor purchases or leases the land upon which stations are built. The cost to the I/M program is the carrying cost of that property; the contractor will eventually recoup the value of the land at resale after the contract expires. Thus, the per-vehicle test cost is indicative of carrying the cost of the land, as well as the other costs associated with the program. The average cost of a test in a centralized system in the U.S. is $8.50; and that includes large cities such as Chicago, Miami, and Minneapolis. Probably the most recent example is the program in Vancouver, British Columbia. Vancouver is a densely populated, high land cost city, much like those in the northeast. A centralized, contractor-run program is being implemented there that will feature a wide variety of sophisticated tests that will result in lower through put than we find in typical I/M programs. The winning bid for the Vancouver program was for under $15 (U.S.) per test, indicating that even though some very expensive real estate is involved the impact on test fees does not result in prohibitively expensive testing.

*F. Mitigating the Motorist Impact of I/M Enhancements*

The high-tech testing system and administrative requirements in enhanced I/M areas need to be carefully designed and implemented to avoid or mitigate any adverse impacts that conceivably may occur from changing over an existing inspection network of starting a new one. The potential problems fall into two basic categories, one relating to the existing test industry, which will be dealt with in the next section, and the other relating to vehicle owners.

1. Ping-Pong Effect

In a high-tech test system, repair technicians will be faced with a more rigorous exhaust emission test procedure in the transient emission test. The procedure is more rigorous than the idle, two-speed or loaded steady-state tests now used in I/M programs in three respects. First, the transient emissions test more accurately and selectively determines which vehicles need repair. The steady-state tests pass more gross emitters and fail more vehicles that are close to or below the standards for which the vehicles were originally designed, than the transient test. Second, the transient test cannot be "fooled" by strategies aimed merely at passing a test, such as doping the gasoline with additives or disconnecting vacuum hoses. Third, typical repairs in responding to steady-state tests may not always sufficiently reduce emissions to allow a vehicle to pass a transient test. For example, vehicles without a catalyst or with an empty shell of a catalyst can pass a steady-state test if they are operating in a lean condition during the particular test mode. In actuality, however, such vehicles are gross emitters and could not pass the transient test. The real defects in the emission control system will have to be repaired in a transient test program.

Repairs to pass the transient test may require greater diagnostic proficiency on the part of technicians than what is generally needed in response to a steady-state test failure. Furthermore, some repair facilities may return a vehicle to its owner without verifying that it actually passes the transient exhaust test, due to lack of test equipment or unwillingness to get the vehicle retested at the State inspection station prior to owner pick-up. There is a risk that if the repair industry as a whole is unprepared or not able to respond adequately and in a timely manner to the challenge, motorists will be put in the awkward position of failing the retest at higher than necessary rates, requiring yet another trip to the repair facility and then to retest; this is often referred to as ping-ponging.

The other dimension to this problem is the cost to the motorist. The Clean Air Act requires that in enhanced I/M programs a minimum of $450 be spent on repairs which produce emission reductions before the I/M requirement may be waived. This is substantially higher than existing cost waivers in I/M programs, which are typically $50 to $75, although some range as high as $400. The potential exists for some motorists to be vulnerable for repair bills of $450 for repairs that were not actually needed. In rare cases, the repair that is needed to allow a vehicle to pass may be significantly more expensive than $450 and the owner would face the choice of paying for that repair or allowing or encouraging the technician to bill for $450 of repairs that were not helpful. (The cost waiver issue is discussed in more detail at the end of this section.)

A variety of strategies have been suggested as ways of dealing with ping-ponging. First and foremost is improving the capability of the repair industry. Today's proposal includes a wide range of requirements and recommendations related to improving repair effectiveness. Most states do not have repair technician certification programs; formation of such programs is a fundamental step that would provide recognition and support for qualified repair technicians. The repair community supports this step and EPA recommends that I/M programs establish a certification program that includes testing and training of repair technicians in the kinds of repairs needed to correct I/M failures.

Another problem has been the lack of adequate training available to independent repair technicians in I/M areas. Some existing I/M programs have worked with community colleges to run classes but others have not, and the technical level of these classes has not always been sufficient to meet the needs of the technician. Some I/M programs have established a technical assistance program to provide repair technicians with help in diagnosing or repairing specific problems. These programs typically have involved hot line services, newsletters, and other outreach programs. Today's proposal includes a requirement to establish technician outreach programs that provide a rapid source of technical assistance (telephone hot line) as well as routine informational programs (newsletters, workshops, etc.). Today's proposal also includes a technician

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performance monitoring program that would track the effectiveness of repairs performed by repair technicians in an I/M area. The purpose of this program is to provide the public, as well as technicians themselves, with objective information on the performance of the various repair facilities. Louisville, Kentucky has used such a system with positive results. EPA requests comments on whether a fair and simple system could be designed to achieve these objectives.

Another effective feature of some existing I/M programs has been the establishment of a monitoring or "report card" system of repair technician performance as measured by the test results of vehicles they have repaired and a feedback mechanism to let them know how well they are doing and to provide the public with objective information on repair performance of technicians in the area. Today's proposal requires all enhanced I/M programs to operate such a monitoring system.

In some areas, motorists that fail the test are given a variety of information, including a list of certified technicians, warranty information, and other consumer information. Some programs also provide motorists that fail the test a description of the possible causes of the particular failures that occurred based on an interpretation of the test results. Today's proposal includes requirements for providing this type of consumer information, especially the basic diagnostic information about what may be wrong with the vehicle. EPA would also like comment on whether to require that I/M programs supply more detailed diagnostic information upon request based on additional examination of the vehicle. This might involve down loading and interpreting diagnostic information stored in onboard computers on vehicles not already subject to an onboard diagnostic check (pre-1994 vehicles). It could also include an analysis of various engine functions using a standard engine analysis system. The motorist could use this information in repairing the vehicle or could provide it to a technician chosen to repair the vehicle. These additional services could be provided at inspection stations for free or for a fee, or the state could license or approve independent diagnostic facilities in the private sector. EPA would be interested in other ideas for providing consumers with objective information of this type.

As discussed earlier, EPA is in the process of developing final regulations requiring vehicles to be equipped with OBD systems. As these systems provide repair technicians with additional valuable diagnostic capability, repair of OBD-equipped vehicles will be easier. Also, as part of these OBD regulations, manufacturers are being required to improve the distribution of repair information necessary to make effective emission-related repairs. Improved information in the hands of repair technicians should greatly enhance their ability to make the most effective repairs and at the least cost to the consumer.

EPA believes the elements discussed above and proposed in today's action will go a long way towards improving repair effectiveness; but, the full impact of them may take time to be realized. Therefore, EPA would like suggestions for additional strategies for further mitigating impacts in the short or long term and requests comments on the following possible approaches.

The first approach would be to require that I/M programs establish special diagnostic centers which would be available to repair technicians. These centers would be staffed by expert repair technicians that are aware of failure and repair trends in the I/M program and are fully up-to-date on the latest repair and diagnostic techniques and problems being found among vehicles that fail the I/M tests. These technicians could access databases accumulated by the program on the kinds of repairs previously performed on particular vehicles in the program. The centers would include a full range of diagnostic and I/M test equipment and a library of diagnostic and repair aides, including service manuals, recall information, and technical service bulletins from vehicle manufacturers. In the event that a technician is having difficulty repairing a vehicle and the hot line service is not adequate to solve the problem, the technician could take the car to the diagnostic center and get help from the expert staff. These facilities might be State-run and staffed or might be contractor operated. The focus of the service would be to help repair technicians achieve the most cost-effective repairs possible on vehicles. These facilities could also serve other purposes, including training centers for mechanics, and waiver processing facilities.

Given the expense and spatial requirements for conducting highly accurate, transient emission tests, it is unlikely that many repair facilities would find it cost-effective to establish an in-house capability that would absolutely confirm the effectiveness of repairs. There are many ways for a technician to tell whether the true problem has been found and fixed short of replicating the test, such as reading all electronic trouble codes, observing idle and 2500 rpm emissions, and performing normal engine diagnostic procedures. Also, EPA believes that service equipment vendors will develop and sell simplified transient test equipment which will be adequate for use by repair facilities; EPA estimates that the cost could be as little as $15,000–$20,000 and that facilities' current exhaust analysis equipment could be incorporated into the new system.

The final assurance, of course, comes from passing the transient test itself. Consumers would be better served in the test-and-repair process if the repair technician had easy access to the official test equipment to verify that repairs were effective. If free retests were available to repair technicians, then repair shops would be more likely to provide the additional service of taking the vehicle to the station for a retest to verify the repairs were effective and at the same time obtain a certificate of compliance for the vehicle owner. In addition to a free test, if repair technicians had priority access to test facilities this might further encourage the retest service. This would help technicians refine their repair strategies by giving them direct feedback on the success of the repairs performed.

Free retesting for technicians might change the way testing costs are distributed in I/M programs, but the impact would likely be very low. The cost of the first retest is already included in the price of inspection in nearly all I/M programs, and the ongoing failure rate of a mature program with effective repairs should be quite low, about 9% per year. Since first attempts to repair the vehicles will be successful in the overwhelming majority of cases, the demand for extra retests should also be low. In multiple, independent-supplier networks, some mechanism might be needed to reimburse individual test facility owners that got more than a fair share of repair technicians requesting free retests.

Finally, there could be a mechanism to address the possibility that some vehicles may still have high tailpipe emissions after being repaired by a certified technician, even after the technician has performed all emission-related repairs identified as needed at the official diagnostic center discussed above and the vehicles pass all physical and functional checks. The mechanism in this case would be simple: if the vehicle had high tailpipe emissions in the retest, passed the physical and

function checks, and the official diagnostic center could not identify additional useful repairs, the owner would be given a certificate of compliance. Such vehicles would probably tend to be very close to the standards and even if repair had been possible, would yield little emission reduction benefit. In subsequent cycles, if the vehicle failed the initial test, it could go directly to the diagnostic center to see if updated techniques could identify effective repairs or if other problems had developed that need attention. EPA believes that this approach is consistent with the requirement to spend $450 prior to receiving a waiver for emission related repairs, without regard to the cost of repairs in this case, because the program could not identify any additional emission related repairs that could be performed. Thus, the vehicle would have made all appropriate repairs and would therefore not need a waiver for emission-related repairs. Rather, the performance standard would be set at a level that could accommodate retesting such vehicles only with the physical and functional tests, and not with the emission test.

In the long term, these systems should be adequate to protect individual owners from ping-ponging. It may be that additional protections are desired in the short term before it is known how quickly the repair industry will respond to the challenge. EPA is requesting comment on two mechanisms that would cover owners for the first cycle in a program's existence. These mechanisms may appear to conflict with the requirement of a $450 expenditure before a repair cost waiver can be granted. There is some possibility for abuse of this system due to collusion between motorists and repair technicians. EPA is requesting comments on how it could support the alternative in this respect.

In the first mechanism, owners who received repairs from a certified technician who provided a statement that the vehicle had been repaired to pass a state-approved test at the repair facility would receive a certificate of compliance upon official retest at the test-only station regardless of the outcome of that test. Since all retests would be conducted within the official system, it would be possible to monitor the performance of individual repair providers and to monitor the emission reduction impact of including this provision. It might turn out that repair providers would only infrequently send failing vehicles back for official retests, so that this system could be maintained over time without significantly reducing the program's emission reduction potential. Clearly, the I/M program would need to monitor technician performance and take action where problems arose, including training, disciplinary action, and ultimately decertification.

A second mechanism for the first cycle would be to license repair facilities to conduct a retest which would itself qualify the owner for a certificate of compliance. The requirements for obtaining such a license would include employing one or more certified repair technicians and having the capability to conduct a steady-state test meeting program specifications. The advantage to the vehicle owner is real, but there would also likely be some significant loss in program effectiveness, since the repair facility would not be conducting a transient exhaust or a purge test. For that reason, it would not be appropriate to continue this option beyond the first inspection cycle without making an explicit accounting of the emission reduction loss. If a program wanted to continue this option beyond the first cycle, the impact could be reduced by limiting the opportunity only to vehicles which were not showing a pattern of repeat failure at the initial test in each cycle. Programs adopting this approach would have to demonstrate that the program continues to meet the performance standard.

2. Repair Costs and Cost Waivers

Based on the testing programs it has conducted over the past few years, EPA estimates that the average cost of repairs for transient test failures will be $120, and the average cost for repairs to the evaporative control system will be $38 to $70 for pressure and purge failures respectively. These costs are not excessive in the context of current vehicle maintenance expenses and are offset significantly by the reduction in fuel consumption that is associated with repairs to malfunctioning high-tech systems. EPA believes, however, that it is important to consider the potential for adverse impact on two smaller segments of the vehicle population: those vehicles which are so old that the repair cost may exceed the blue book value, and those which cannot be repaired effectively within the waiver cost limits.

EPA specifically requests comment on whether the States should be required to establish programs to purchase and scrap vehicles that may not be cost effective to repair. There has been considerable interest around the country recently in scrappage programs for older vehicles. In 1991, UNOCAL ran a pilot program in Southern California which demonstrated the feasibility of such programs. To understand how such a program would work, consider a vehicle with a low market value that fails the test. If repairing the vehicle to pass or to qualify for the waiver would cost more than the market value of the vehicle, the owner would normally have three options: (1) Scrap the vehicle, (2) purchase repairs (at least to qualify for the waiver), or (3) sell the vehicle outside the I/M area. Owners of such vehicles might see these options as presenting severe economic hardship. Since such vehicles are also likely to be very high-emitting vehicles, the air quality benefit of removing these vehicles from the fleet is great and all participants in the air pollution control program would benefit. To address the difficulty of equitably disposing of such vehicles, the I/M program could have a standing offer to purchase and scrap older, high emitting vehicles, possibly at a set price of $400, for example. This buy-and-scrap program might be financed by a modest increase in the test fee or possibly through a market-based, privately-financed offset purchase program. Offsets especially from older vehicles could be attractive since such vehicles are typically emitting much more pollution than new vehicles. If such vehicles are assumed to otherwise receive waivers and continue to operate at high emission levels, offsets would appear appropriate. To avoid abuse, vehicles could be required to be driveable and to have been registered in the area for some minimum period (e.g., at least a couple of years) to qualify for the program.

While most vehicles which initially fail an I/M test can be repaired to meet emission standards with relatively inexpensive repairs, a small portion of the vehicle population might be faced with substantially higher cost repairs as discussed above. This might result from a variety of causes, including: the vehicle may need a variety of repairs that together amount to a substantial expense; the engine may need a major repair that is very costly, such as a valve job; or, the owner might have obtained ineffective repairs from an incompetent or unscrupulous repair provider. In the past, for these vehicles, most programs have provided for waivers, which allow vehicles that fail the emission test to comply with the I/M program requirement. Waivers, however, can be a significant source of emission reduction loss, as well as a potential escape route for any motorist wishing to circumvent the system. Many I/M programs have not controlled

waivers sufficiently. The problems include low cost limits which do not allow for meaningful repairs, improperly issuing waivers; cost limits based on estimates for work not yet actually performed which leads to inflated estimates in some cases, and applying repairs unrelated to the emission failure to the cost limit. Repairs attempted by unqualified mechanics or vehicle owners may also qualify a vehicle for a cost waiver without contributing to emissions reductions. The proposed regulations establish requirements for the issuance of waivers in order to address many of the problems identified: any available warranty coverage must be used to obtain repairs before expenditures can be counted towards the waiver; waivers must not be issued to vehicles with missing or disconnected emission control devices; and, repairs must be performed by recognized technicians (e.g., one employed by a going concern or in the yellow pages) and visually confirmed by the administering agency. Requirements are also included in today's proposal which are aimed at improving repair technician performance and consumer protection for motor vehicle owners.

The Act requires that in enhanced programs, motorists spend a minimum of $450 on repairs related to the emission test failure before being eligible to receive a waiver. This amount is to be adjusted annually based on the Consumer Price Index; EPA will annually notify states of the adjusted amount. The legislative history of the Act (Report of the Committee on Energy and Commerce on H.R. 3030, Report 101–490, pages 240–241) further supports this when it states "If waivers are otherwise allowed, the program must require a minimum expenditure of $450 for repairs, to be adjusted periodically for inflation." The legislative history indicates that the decision was based at least in part on past experience with cost waiver limits that were "often inadequate to ensure that vehicles received the basic repairs needed to bring the vehicle into compliance." The legislative history further clarifies Congress' position, stating that "poorly maintained vehicles that pollute, no matter how old, should be required, at a minimum, to meet the standards applicable to them when they were manufactured. If repairs are needed, they should be made."

EPA believes that the very large majority of vehicles will be repairable for much less than $450. As the Act states the $450 minimum was set by Congress "in view of the air quality purpose of the program." The challenge for EPA and the States is to determine how to best achieve significant air quality benefits in an equitable and cost-effective manner. The $450 minimum is not as significant an issue for newer vehicles which are more likely to be under warranty, fail less often, and have a high market value. It may, however, pose a greater hardship on owners of older vehicles. Therefore, EPA requests comment on whether programs should be allowed to offer a well-controlled, non-renewable, time extension beyond the scheduled compliance deadline, to give motorists additional time to pass the inspection or to sell the vehicle. This time extension is not a waiver—the vehicle owner is not in compliance until the repairs are made—it is just a question of timing. Neither the Act nor the legislative history addresses the question of extensions, even though the Act does specify various details about waiver requirements. Historically, EPA's I/M guidance has provided for time extensions to allow vehicle owners to make repairs or test vehicles. Section 182(a)(2)(B) appears to ratify EPA's past I/M guidance. Nothing in the amended Act leads EPA to conclude that this guidance should be changed. EPA believes that it is appropriate to interpret the Act as allowing EPA to provide a reasonable amount of time for motorists to comply with the $450 waiver requirement. EPA would require that, as a condition for such an extension, a designated State official shall make a thorough diagnosis and inspection of the vehicle, determine that all reasonable cost repairs have been properly performed, and confirm that reasonable additional repairs are not available to correct the inspection failure or further reduce on-road emissions for less than the $450 limit. EPA also requests comments on this proposed method for overseeing the issuance of such one-time extensions.

Based on experience with cost limits which are too low to effect meaningful repairs, EPA proposes in today's action that minimum cost expenditures be set for waivers in basic programs as well. In the regulations, EPA proposes to require a $75 minimum expenditure for pre-1981 vehicles and a $200 minimum expenditure for 1981 and later vehicles. Many operating programs already meet or exceed these minimums and have proven their practicality and public acceptability.

*G. Mitigating the Impact of Enhanced I/M on Existing Stations*

EPA also recognizes the need to mitigate impacts of implementing a high-tech test program on existing I/M stations in decentralized programs. These test stations have been in the emission test business for as long as 10 years and some derive a substantial portion of their revenue, either directly or indirectly, from emission testing. An investment was made in emission test equipment that may or may not be fully amortized. In any case, EPA is committed to assisting these businesses in making the transition to the high-tech test format and the additional repair business that will result from it.

Three potential approaches to resolve this transition problem are presented here. EPA requests comment on these and other possible approaches. The first approach would provide direct financial assistance to stations that might be adversely affected by the transition to a high-tech system, either in the form of cash for recently purchased test equipment or in the form of subsidized software or peripherals to give that equipment new functionality. The second would be to design the enhanced program to include transitional mechanisms to soften the impacts of the new system. The third would be for States to establish programs to assist stations and inspectors through retraining and retooling programs. The previous section discussed various strategies to encourage continuation of one-stop test-and-repair, where repair facilities could take vehicles to test facilities for initial tests and would be given free retests and priority access to retest lanes, as well as diagnostic and repair assistance. These strategies would also help existing I/M stations make the transition to a new program design.

The typical decentralized I/M test program is composed of a variety of facilities, including car dealerships, gasoline stations, and repair shops of different kinds. Dealerships are usually heavily involved in the general repair business and the inspection business represents a relatively small portion of total revenue. Gas stations and repair shops tend to vary widely in terms of the mix of revenue derived from inspection and repair. Some stations are not involved in engine repair and simply provide testing for the test revenue itself and have other business that provides significant income. Some repair shops, like dealerships, are heavily involved in sophisticated engine repair and offer testing mostly as a convenience to their customers. Then there are those in between that do some repairs but are generally not capable of performing the more sophisticated repairs. In some cases, stations exist whose only service is the inspection itself.

The transition to a high-tech, high-volume, test-only system would mean that many stations would have to give up testing. This would result in the loss of direct testing revenue, perhaps the loss of ancillary business, and perhaps investment in test equipment not yet fully depreciated.

In some States that are currently decentralized and will have to implement enhanced I/M, analyzers have been in use for 8 years or more and generally have little or no residual value. In States that upgraded to BAR90 equipment (California and New York), the equipment was purchased since 1990, and has years of useful life left. One mechanism to address the impact of switching to the high-tech tests would be to set up some type of State-supported analyzer buy-back program for stations that were no longer going to participate in either the test or repair business, possibly using funds obtained from inspection fees. BAR90 analyzers would be needed in the repair business both for diagnostic and repair work as well as to check whether repairs on old technology vehicles were effective. BAR90 analyzers could also be used to test older technology vehicles in test-only stations. Where such equipment were applicable to the enhance I/M role of the business, buy-backs would not be needed. However, this concept would allow stations that were planning to leave the I/M business to recover all or part of their capital investment for equipment that could not be used for diagnostics and repair. Such a buy-back program might allow a smoother transition to test-only status. The final section of this preamble discusses the potential number of facilities that might benefit from a buy-back program.

A related strategy would be for EPA, the states, and industry to support the development of new and improved uses for BAR90 analyzers so that current as well as future analyzer owners can use this technology more effectively in the repair process. In particular, it was California's intent in developing the BAR90 specification for the computer in the analyzer, which is an IBM-compatible 386 DOS-based system, to become a platform for vehicle diagnosis and repair databases and other technical assistance software. EPA, the states, and industry could potentially provide technical and financial support to speed the development of such software. They also could potentially subsidize the purchase of required peripherals, such as CD-ROM players and disks of service manuals and the like. This would not only make better use of the equipment in the field but would serve as an excellent mechanism for providing critical technical assistance and training to the repair community. Another expanded function for a BAR90 analyzer would be to serve as controller and analytical bench in a repair-shop level transient test system consisting of a simple dynamometer and exhaust collection device, adequate to judge the success of repairs in most cases. Such a system would not have to be as accurate as the actual test equipment required for the official test, only accurate and repeatable enough to be a good indicator of the effectiveness of repairs.

The second way to mitigate the impacts is to design transitional features into the program. One approach would be to allow test-and-repair shops to continue to do testing on vehicles not subject to the transient/purge test for some transitional period (note that EPA's recommended enhanced program would require biennial, transient/purge tests on 1984 and later model year vehicles, and biennial steady-state tests on older vehicles). Today's proposal would permit a phase-out of the decentralized test-and-repair portion of the program during 1994 and 1995 such that all vehicles would be inspected in test-only stations starting with the next inspection after January 1, 1996. This would allow these decentralized, test-and-repair stations to continue to obtain revenue to recover the investment made in testing equipment and to plan other strategies to replace the income to be lost from testing. Another approach, mentioned also in the previous section, is to allow vehicles that have failed initial inspections in test-only stations to be retested in existing test-and-repair stations using conventional test techniques during the first test-only inspection cycle. This would allow those stations to attract customers, perform repairs, and charge for a retest with the added benefit of sparing the customer from returning to the test-only station for the retest.

A third strategy would be to provide targeted assistance to stations to assure they were able to provide high-tech repair services. This would require pre-program start-up training to bring repair technicians in these stations up to speed on the high-tech tests, vehicle diagnosis, and engine repair. It might mean tuition grants or other financial assistance to make training feasible. This approach might also include financial assistance to stations for the purchase of equipment to perform sophisticated diagnosis and repair on new technology vehicles or to upgrade tools and equipment for more sophisticated diagnosis and repair.

EPA encourages all affected areas to consider these approaches and requests comments and recommendations for additional options that may mitigate the transition problem.

*H. Areas of Applicability*

I/M programs, either basic or enhanced, are required in both ozone and CO nonattainment areas, depending upon population and nonattainment classification and design value.

States or areas within an ozone transport region must implement enhanced I/M programs in any metropolitan statistical area (MSA), or portion of an MSA, with a population of 100,000 or more as defined by the Office of Management and Budget, regardless of the area's attainment classification. Any area in the nation designated as serious or worse ozone nonattainment, or as moderate or serious CO nonattainment with a design value greater than 12.7 ppm, and having a 1980 Census-defined urbanized area population of 200,000 or more, must implement enhanced I/M in the urbanized area. Serious or worse ozone nonattainment areas which have urbanized areas which were smaller than 200,000 population in 1980 must implement the basic I/M program required in moderate areas. EPA recommends that states expand geographic coverage of the program beyond urbanized area boundaries, to include areas that contribute in a significant way to the mobile source emission inventory in the nonattainment area.

All areas designated as marginal ozone nonattainment or moderate CO nonattainment with a design value less than 12.7 ppm must continue operating existing I/M programs (that is, those operating or part of an approved State Implementation Plan as of November 15, 1990) and must update those programs as necessary to meet the basic I/M program requirements of this regulation. In addition, all marginal ozone nonattainment areas required by the Act as amended in 1977 to have an I/M program must implement a basic program. Finally, any moderate ozone nonattainment area outside of an ozone transport region must implement a basic I/M program meeting the requirements of this regulation.

The statutory requirements for I/M programs are comprehensive but not without the need for interpretation when determining the applicability to specific types of areas. The discussions which follow detail the reasons that EPA has

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chosen the interpretations in today's proposal.

1. Moderate Ozone Areas

Section 182(b)(4) calls for basic I/M in "all" moderate ozone areas, and the legislative history of the House Bill (Report of the Committee on Energy and Commerce on H.R. 3030, Report 101–490, page 237) uses the term "without exception" to indicate that even moderate ozone areas presently without programs must implement I/M. This differs from EPA's 1978 policy of requiring I/M as a condition of an attainment date extension to 1987 (old section 172(B)(11)(b)) and only in urbanized areas as defined by the Census Bureau with a population of 200,000 or more. It also differs from EPA's post-1982 policy of accepting SIPs lacking I/M from some non-extension areas that did not attain by 1982. Despite the use of the phrase "all Moderate Areas," however, EPA believes that Congress did not intend to include rural moderate ozone nonattainment counties which contain no urbanized areas of any size. Section 182(b)(4) requires all moderate ozone nonattainment areas to adopt an I/M program "as described in subsection (182)(a)(2)(B)." That section requires certain marginal ozone nonattainment areas to adopt an I/M program of at least the stringency of the program required by the 1977 amendments to the Clean Air Act, "as interpreted in guidance issued by the Administrator" prior to the 1990 amendments to the Act. EPA's pre-1990 I/M guidance had required I/M programs only in urbanized areas. Thus, EPA believes that by referring to EPA's pre-1990 guidance, Congress ratified EPA's approach of requiring I/M programs only in urbanized areas. Further, enhanced I/M programs, which are based solely on statutory language rather than ratified agency guidance, are explicitly permitted to exclude surrounding rural portions of their nonattainment areas. EPA believes that it is consistent with Congressional intent to allow exclusion of rural moderate ozone nonattainment counties, and is, therefore, proposing that basic I/M programs be required in any 1990 Census-defined urbanized area in all moderate ozone nonattainment areas. This requirement is broader than previous basic I/M policy because it does not contain a population threshold. At the same time, the Act does not envision I/M programs in completely rural counties.

2. Census-Defined Urbanized Area Boundaries

In today's action, EPA proposes that basic I/M programs be required in all Census-defined urbanized areas in the affected nonattainment areas, based on the 1990 Census. This Act is clear in requiring that outside an ozone transport region, enhanced programs are required in areas that were defined by the Bureau of Census as urbanized areas with a population of 200,000 or more in 1980. EPA believes this criterion must be used to determine which urbanized areas are affected, but not the actual program boundaries themselves within those areas. To determine program boundaries, EPA proposes to use the more current 1990 Census data which better represent current urban land-use boundaries as affected by growth since 1980 and consequently the area making the greatest contribution to mobile source pollution.

3. Ozone Transport Regions

Section 184(b)(1)(A) contains somewhat different language on I/M program coverage in ozone transport regions. It states that "each area" in a region "that is a metropolitan statistical area or part thereof with a population of 100,000 or more [must] comply with the provisions of section 182(c)(2)(A) [sic] (pertaining to enhanced vehicle inspection and maintenance programs) * * *" (The incorrect reference should refer to Section 182(c)(3)). The legislative history uses slightly different wording in saying enhanced I/M is required "*in* metropolitan statistical areas" (emphasis added) and goes on to say "whether or not the areas are in nonattainment." In establishing the ozone transport region provisions, it seems that Congress intended to address emissions that could contribute to a violation of the standard anywhere in a region. Thus, it included attainment MSAs as well as nonattainment areas. Broad, sparsely settled rural areas with no MSAs or only MSAs under 100,000 population were not included, however, indicating an intent to balance the small emission reductions possible from these areas and the greater difficulty of implementing I/M programs in such areas.

EPA proposes that in an ozone transport region, enhanced I/M programs are required in areas that were designated as MSAs with a population of 100,000 or more in 1990. In the case of MSAs that cross an ozone transport region boundary (and are not otherwise required to implement enhanced I/M by virtue of air quality classification and population), enhanced I/M is required if the population of the MSA within the ozone transport region was at least 100,000 in 1990. The statutory language does not explicitly state that the MSA boundary must be the I/M coverage boundaries for MSAs over 100,000 in population. Consequently, EPA has considered various interpretations to see how well they fit with the intent of the ozone transport region provisions. EPA considered the urbanized area boundary approach, proposed for areas outside an ozone transport region. It does not seem consistent with an ozone transport region concept to limit the I/M program to this degree. For example, in the Northeast Ozone Transport Region (the only one established by the Act), there are MSAs with populations well above 100,000 that contain no urbanized areas or contain only a small portion of an adjacent MSAs urbanized area. EPA also considered requiring enhanced I/M throughout the entire MSA if it had a 1990 population of 100,000 or more. This would, however, result in the inclusion of some large, sparsely-settled rural counties in some MSAs. EPA believes it would not be cost effective to require I/M in such rural territory and their inclusion would contribute very little emission reduction benefit. Past EPA policy on I/M has provided for the exclusion of such rural areas even within a nonattainment area, and by establishing the criterion of 100,000 people or more in an MSA, the Act excludes many large rural areas in an ozone transport region. Further Section 184(b)(1)(A) requires transport areas to have the I/M program described in Section 182(c)(3), which is a program that applies only in urbanized areas. Therefore, EPA believes it is consistent with Congressional intent to propose that the enhanced I/M program be required in the entire MSA, except that largely rural counties with fewer than 200 persons per square mile.

4. Multi-State Areas

The Act does not address multi-state urbanized areas. Past de facto practice by EPA exempted portions of urbanized areas in bordering states if the urban population in that State were under 200,000. Multi-state moderate ozone nonattainment areas have portions that vary from under 50,000 to as much as 100,000 or more. In multi-state urbanized areas, EPA proposes that the appropriate level I/M program (as determined by the classification and population of the urbanized area as a whole) be required in the urbanized area within each of the affected states provided that the urbanized area

population within the state is 50,000 or more, as defined by the Bureau of Census in 1990.

*I. Geographic Coverage*

EPA's I/M policy prior to enactment of the amended Act included a "geographic bubble" that allowed programs to claim emission reduction credits for expanding the testing requirement to include non-urban portions of the nonattainment area surrounding the urbanized area. The extra emission reduction credits could be applied toward the minimum performance standard the program had to meet. The bubble was calculated using human population data instead of motor vehicle population because a reliable source of disaggregate data for the latter was not generally available. Thus, the bubble was defined as the number of people included in the actual I/M area divided by the number of people in the urbanized area. This calculation yielded a bubble factor that was multiplied by the emission reduction benefit of the program to account for the added benefit from testing non-urban vehicles. Due to the way urbanized areas and nonattainment areas are defined, the geographic bubble factors that are available are quite varied and frequently quite large, i.e., factors of 2 to 4. With such large bubbles, some I/M programs were designed to meet emission reduction requirements through broad geographic coverage, but had a very weak program design. Other areas had a strong design intent but were able to meet the minimum performance standard in operation despite serious operating problems. In essence, the geographic bubble effectively lowers the performance standard for areas which have large MSAs in relation to the urbanized area EPA does not believe that such weakening of the performance standard is consistent with the Act's intent of establishing more effective I/M programs. Therefore, in today's action EPA proposes that credit from expanding program coverage beyond the minimum required area boundaries can only be applied toward the "reasonable further progress" requirement or can be used as an offset, provided that the covered vehicles are operated in the nonattainment area.

Similarly, EPA's policy prior to enactment of the Act included a "geographic debubble" policy that allowed parts of an urban area to be excluded from the program as long as the emission reduction loss was made up in some other way. The purpose of this policy was to allow States to confine the program to county boundaries. Urbanized area boundaries do not correspond to county boundaries, making it difficult to establish a coherent administrative area based on the urban area. Also, in some cases, a very small fraction of a county might be included in the definition of an urbanized area. General practice has been to exclude these portions of the urbanized area to avoid having to include the entire county. In most cases, programs made up for these exclusions by including the non-urban portions of the counties central to the area, thereby effecting a one-to-one trade in population covered. In today's action, EPA proposes that exclusion of some urban population from I/M requirements continue to be allowed, as long as an equivalent number of contiguous non-urban residents who live within the same MSA are included in the program to compensate for the exclusion. EPA believes that it is appropriate to allow this bubble in recognition of administrative needs since such nearby non-urban vehicles can be expected to drive in the urbanized area and thus, emission reductions within the urbanized area will occur. EPA encourages States to rationalize their I/M boundaries by making them broader (especially to county lines) rather than narrower. This will contribute additional emission reductions and help insure expeditious attainment.

*J. Administrative Program Requirements*

1. Background

EPA has accumulated much information since the 1977 Amendments to the Act regarding effective design and implementation of I/M programs through audits, day-to-day work with I/M program managers and officials, roadside emission and tampering surveys, in-depth analyses of test data, and various studies by individual States and EPA. In 1984, EPA began auditing I/M programs as part of the National Air Audit System, using procedures developed jointly by EPA, the State and Territorial Air Pollution Program Administrators (STAPPA), and the Association of Local Air Pollution Control Officials (ALAPCO). These procedures are detailed in the National Air Audit System Guidance (EPA–450/2–88–002). To date, EPA has conducted 96 I/M program audits totaling 320 person days of on-site visits and several thousand person days of related activities.

This experience has shown that significant problems can exist in I/M programs which adversely impact the magnitude of air quality benefits that programs achieve. These problems include excessive waivers, motorist noncompliance, inadequate quality assurance and quality control measures, outdated test procedures, insufficient enforcement against inspectors that violate regulations, inadequate data collection and analysis, inadequate resources, and improper testing (see I/M Network Type: Effects on Emission Reductions, Cost, and Convenience, EPA–AA–TSS–I/M–89–2 in the docket). These problems reduce the emission reduction effectiveness of these programs, but generally do not reduce test costs. The intent of this proposed regulation is to address these problems, and insure to the extent possible that vehicles are tested accurately and repaired correctly, thus achieving the best emission reduction at the lowest possible cost.

The General Accounting Office has audited the I/M program several times and has consistently concluded that these problems exist and that tougher requirements are needed to correct the problems. EPA's Inspector General has also audited the I/M program and has come to similar conclusions. Both have strongly recommended the establishment of regulations, as opposed to guidance, as a means to address these problems. Reports by these organizations are included in the docket.

The intent of this proposed regulation is to address these problems, and insure to the extent possible that vehicles are tested accurately and repaired correctly, thus achieving the best emission reduction at the lowest possible cost.

In the past, decentralized programs have not been as effective as centralized programs in achieving emission reductions from inspection of motor vehicles. This inequality became apparent to EPA in a variety of ways. For example, EPA tampering surveys have shown existing decentralized programs to be less effective than centralized at preventing tampering. Of I/M areas, decentralized program areas have had the highest overall tampering rates, and centralized program areas have had the lowest rates. Analysis of the data for 1975–1983 model year vehicles in the 1987, 1988 and 1989 tampering surveys showed decentralized areas with rates 20% to 50% higher than centralized areas on fuel switching, catalyst, inlet, evaporative canister, and air system tampering, even though many centralized programs do not check underhood components. This suggests that centralized programs are more effective than decentralized programs at deterring tampering.

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Further, covert audits of decentralized programs, performed by States and by EPA, have shown that improper inspections occur routinely when vehicles are presented for inspection in decentralized programs and that these problems have not been fully resolved despite determined efforts by some states. In covert audits performed between January and April of 1991, in California and New York (programs which have BAR 90 type analyzers) inspectors passed failing vehicles 20% and 38% of the time, respectively. Even with advanced analyzer technology and the most intensive management of any decentralized program in the country, California has not been able to completely resolve its improper inspection problem. Preliminary data from the second round of self-evaluation required under California law show 30% of the vehicles being passed when they should fail at the first Smog Check station which is visited. Covert audits performed by decentralized programs with BAR84 test equipment typically show even higher numbers of inspectors passing failing vehicles, with rates between 34% and 82%. The limited number of covert visits EPA is able to make during program audits show similar results; between 8% and 75% of inspectors passed vehicles which should have failed in the six audits of decentralized programs performed in 1990. The number of inspectors performing some element of the test incorrectly, whether or not it resulted in a false pass, was much higher, between 25% and 100%.

In the audits and studies summarized here, the false passes most often involved incorrect visual or functional inspections of emission components, since defects in these are the easiest for enforcement agencies to introduce into audit vehicles. However, incorrect tailpipe testing is both technically possible and has been observed in audits as well. EPA believes it would be even more common in many decentralized programs than it is at present, except for the fact that a low cost waiver limit, loose control of compliance documents, and other laxities provide alternate means for owners to avoid repairs of cars that would fail a properly performed test or retest. As discussed previously, the Clean Air Act prohibits low cost waivers for enhanced I/M programs.

Centralized programs are not completely immune to these problems. Due to the automation in centralized systems, as well as on-site supervision, it is virtually impossible to improperly test a vehicle for tailpipe emissions. However, improper testing has been found on the visual emission control device checks in centralized programs. The important feature which sets centralized programs apart is the demonstrated ability to correct problems once found. When problems have been found in well-run centralized systems, the response by program management has led to virtual elimination of the problem in a relatively short period of time. The limited scope of the quality assurance problem, as compared to a decentralized system, makes this feasible. Of course, the durability of this improved performance must be ensured by continual monitoring. Suffice it to say that an effective on-going quality assurance program is equally essential in a centralized system and this action proposes to set minimum requirements to that end.

Covert audits with a vehicle set to fail the exhaust emissions test or the emission control device visual inspection show, to some degree, how actual initial testing takes place. They do not, however, provide realistic information on the objectivity and impartiality of retests. Based on overt audit findings and data analysis, EPA believes that improper testing in test-and-repair decentralized programs occurs more often on retest than on initial test. First, the option of an improper retest removes most of the incentive there might be for an improper initial test. Second, stations are aware that States use initial test failure rates to screen stations for additional surveillance; those with low initial failure rates are targeted for covert audits or other investigation. EPA believes that inspectors are ofte#n too ready to please a customer or unwilling to admit that the vehicle does not pass, even after repairs. In traditional centralized programs, the opportunity for a motorist to "shop around" for a false passing result or for an inspector to probe a clean vehicle or otherwise falsify the tailpipe emission test essentially does not exist. The tailpipe test is automated, inspectors are well supervised and have no stake in repairs, and the single contractor is assured of the test business regardless of test outcome. A multi-supplier test-only system should significantly reduce this problem as well.

To address these types of problems, the proposed regulations included in today's action set out specific requirements for both basic and enhanced areas for data collection and analysis, enforcement against stations and inspectors, and quality assurance. Today's action also proposes to require that all test systems in fully implemented enhanced I/M programs be electronically connected to allow real-time data transfer between stations and a host computer. It also requires computerized (BAR-90 quality) analyzers in basic I/M programs. EPA requests comments on whether the quality control, quality assurance and reporting requirements of the proposed rule could be met by upgrading existing (BAR84) computerized analyzers.

2. Data Collection and Analysis

EPA audits have indicated that problems exist with oversight, management, and test procedures in some I/M programs. Inspectors often perform inspections incorrectly even when they are aware of being observed by auditors. Auditors have also found missing stickers, lack of certificate security, poor record-keeping, and other administrative problems. Evidence of improper testing often appears in subsequent review of paperwork and records, in the count of stickers or certificates issued but not accounted for, and suspicious information in waiver and repair records.

For example, a station may claim to have charged the same amount for almost all repairs performed, or the same repair may be documented for most vehicles. Records also have shown very short times between tests and the same emission results on a series of tests, indicating that the same vehicle may have been tested repeatedly to provide passing results for a number of vehicles that need repair. Vehicle information (i.e., vehicle type or model year) may be changed between failing and passing tests on the same vehicle, indicating that the inspector changed the standards so the vehicle could pass. Again, the proposed regulations set out requirements for data collection and analysis to better address these types of problems.

Inconsistent data collection has often hampered analysis of program operation; some programs are unable to calculate basic statistics such as the number of vehicles tested and failed because of incomplete data collection. Of those programs that do collect data, some have not used data analysis extensively, despite the fact that it is important in managing program operations. In some cases the quality of the data collected is inferior, as a result of errors on the part of the inspector in entering data into the computer. Typically, data collection problems are more serious in decentralized programs, due to numerous, widely dispersed



stations, and varying levels of analyzer sophistication and maintenance. Therefore, the regulation being proposed today sets out specific data collection reqirements; the test data must clearly link specific test results to specific vehicles, vehicle owners, test sites, inspectors, and test parameters. Further, specific data reports on testing, quality assurance, quality control, and enforcement are required to insure adequate monitoring and evaluation of program operation.

3. Quality Assurance Audits

Experience has shown that quality assurance is an essential element of program management, particularly in decentralized systems, which involve numerous stations and inspectors. With a large, dispersed source of inspections, close management is both time consuming and labor intensive, and close attention to detail on the part of the program staff is required. Typically, adequate funding has not been available to carry out the level of quality assurance necessary to oversee the program, particularly in large decentralized networks. In today's proposed regulation, specific quality assurance objectives and requirements are set out, including regular overt and covert audits to determine whether procedures are being followed correctly, whether records are being maintained adequately, whether equipment is functioning properly, and whether other problems exist which hinder the effectiveness of the program.

4. Funding

Lack of adequate funding for management and oversight has hampered the effectiveness of many programs, and has been especially problematic in decentralized and government-run centralized programs. Underfunding tends to negatively impact all aspects of the program, and is one of the problems that is most difficult to address. Without adequate resources to hire personnel, purchase equipment, monitor stations, follow up on enforcement, conduct data analysis, and perform numerous other necessary functions, the efficiency of many programs has suffered. Therefore, the proposed regulation requires a demonstration that sufficient resources necessary to meet the quality assurance objectives and requirements of the I/M regulation are available. One critical factor in funding is the amount spent on quality assurance activities. Centralized programs currently spend about $1 to $2 per vehicle on all oversight related costs. Decentralized programs spend anywhere from 50¢ to $6 per vehicle, but they all suffer from quality control problems. California recently increased the amount it is spending from $6 per vehicle to $7 in an ongoing effort to address operating problems in the program.

5. Equipment Quality Control

The ability to insure good equipment quality control has also varied with network type, due to oversight capability, available resources, and equipment sophistication. EPA's audits have shown that analyzers frequently fail calibration and leak checks in decentralized networks, while these problems are rarely found in most centralized programs. The goal of the quality control requirements included in the proposed regulation is to insure that test equipment is calibrated and maintained properly, and that inspection and calibration records are created, recorded, and maintained accurately. These requirements include preventive maintenance of equipment; frequent checks on the sampling system; analyzer calibration; dynamometer and constant volume sampler calibration, if applicable; and document security measures.

6. Enforcing Motorist Compliance

Both centralized and decentralized programs have experienced problems, to varying degrees, with all of the approaches traditionally used to insure that motorists participate in the I/M program. The extent of the problem, however, is often difficult to quantify. For many programs, it is difficult to estimate the number of vehicles requiring testing due to problems in obtaining registration data for a defined area from the agency that collects it and with the quality of that data. It can also be difficult to determine how many vehicles have complied. The number of vehicles which programs report were tested may be overstated due to multiple initial tests, in decentralized programs especially. Data loss can also result in reported test rates that are incorrect.

Registration denial enforcement systems have been viewed as effective for the most part, although potentially significant problems do exist. For example, programs that are not state wide have reported problems with people registering vehicles with an address outside the subject area in order to avoid inspection. Similarly, in programs that do not test all vehicles, motorists may falsely register the vehicle with a weight rating, fuel type or model year that is not required to be tested. Test certificates are sometimes counterfeited, allowing people to escape program requirements. Most I/M programs do not have an effective means of auditing the registration denial process; this makes it difficult to monitor which clerks have been correctly rejecting applications not accompanied by the required test certificate. Registration denial enforcement has been found to be less effective in States in which a decentralized registration issuance system exists. As with emission testing, it is difficult to insure that registrations are properly denied when issued without unified control.

Sticker enforced programs have historically performed poorly, for a variety of reasons. Enforcement against motorists without stickers requires a substantial amount of effort and commitment from police departments, which have never placed I/M sticker enforcement as a priority. Unless sticker accountability is very tight, motorists can obtain a sticker without having an inspection at all. Also, counterfeiting has been found in most sticker enforced programs. If a program is not state wide, it is often impossible to determine whether a vehicle without a sticker is in fact subject to the I/M test without a police officer calling in the registration. Similarly, vehicle types and model years which are not required to be in the program may be difficult to distinguish from subject vehicles. Finally, the penalty for driving without a valid sticker is often not sufficient to deter non-compliance or is waived after compliance, thereby eliminating deterrence effects.

Computer matching systems have been successfully implemented in several areas, but experience shows that this approach can suffer from problems as well, especially in decentralized systems because of faulty data transfer from inspection stations to the enforcement agency. An effective approach requires sophisticated computer hardware and software and a substantial commitment of resources to operate the system. Program managers must also be willing and able to follow through and take whatever enforcement actions are available to ensure motorist compliance, without political interference.

The sections of the proposed regulation covering motorist compliance address the range of problems that programs may encounter in assuring that vehicles comply with the testing requirements. The Act requires that motorist compliance be ensured through the denial of motor vehicle registration in enhanced I/M programs; enhanced programs may use an existing alternative if it can demonstrate that the

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alternative is "more effective" than registration denial. For newly implementing enhanced areas, the Act does not provide any alternatives to registration denial enforcement. EPA policy has always required that alternative mechanisms be "as effective" as registration denial and that requirement is retained for basic I/M programs. The proposed regulation specifies the measures necessary to make such determinations. All programs must develop a system which insures that subject vehicles are easily identified, must adopt a test schedule which clearly determines when a vehicle is required to be tested, and must systematically enforce the program. The program also must develop quality assurance and quality control measures to monitor the effectiveness of the enforcement system.

7. Inspector and Station Enforcement

Lack of adequate enforcement authority against stations and inspectors has historically been a major stumbling block in attempts to implement effective programs, especially in decentralized systems. Even when programs have an effective effort to discover improper testing by stations and inspectors, there is rarely an adequate system in place to prevent the problem from continuing or recurring. Lack of authority, low fines or penalties, and lack of consistent and systematic penalty schedules have appeared as serious impediments to program enforcement in audits of decentralized programs across the country. Therefore, EPA proposes that all inspectors must receive formal training and be licensed or certified to perform inspections, and that such certification be a privilege rather than a right; in effect, programs must insure that inspectors who do not follow program requirements will be penalized fairly and systematically, and will lose their license or certification to perform inspections if problems are not corrected satisfactorily.

In sum, EPA believes that significant changes are needed in the design and oversight of decentralized programs. One factor in improving the performance of decentralized I/M programs can be separation of the test and repair function; historically, some evidence suggests that tests were more likely to be performed correctly if the testing agent did not have any interest or involvement in the repair of vehicles. Another important consideration is oversight of the multitude of stations found in low volume decentralized programs. Extensive quality assurance efforts are necessary due to the greater number of stations and inspectors, limited oversight capability, greater incentive for improper testing, and lack of effective enforcement mechanisms in many programs. Even very tightly designed and run quality assurance schemes in decentralized systems have not insured that proper inspections take place, that forms are adequately controlled, or that the program actually achieves estimated emission reductions. While advanced analyzer technology, such as BAR 90 systems, may improve the effectiveness of decentralized testing, the analyzer alone cannot eliminate the incentive for private station owners to perform tests improperly, or solve the quality assurance and oversight problems repeatedly identified in decentralized programs. Therefore, the additional measures listed above are needed to insure that claimed levels of emission reductions are actually achieved. While the proposed rule requires additional efforts in each of these areas, it generally allows States flexibility in the specific design of the I/M program.

8. Program Effectiveness Evaluations

To provide assurance that the in-use vehicle emission levels projected to be achieved by a given program are, in fact, being achieved, today's action proposes the implementation of a continuous, State-run effectiveness evaluation program for all I/M programs. The effectiveness evaluation would need to include, at a minimum, the special testing of a representative, random sample of the fleet, consisting of at least 0.1% of the subject vehicle population. That sample would be required to receive a State-administered or monitored IM240 transient exhaust test, purge test, and pressure test, or another test protocol approved by the Administrator as equivalent for the purposes of evaluation. This testing would take place at the time of these vehicles' scheduled initial inspections, before any repair. EPA believes this could be accomplished in a program which routinely requires IM240 testing by State personnel randomly visiting stations, double checking quality control, performing or closely observing the testing of vehicles which arrive for an initial inspection during the day, and flagging those vehicles tested as "evaluation" cars. Vehicles required to pass only a steady-state test (i.e., older cars) would need to also receive a transient IM240 test, or other approved test protocol, to accurately characterize tailpipe emissions. Test data from these vehicles would document the true state of maintenance and emissions performance of the in-use fleet. In a program in which not all stations are equipped for performing the required battery of evaluation tests a different approach would be needed. In this case, a random sample of vehicle owners would need to be notified in advance of their regularly scheduled inspection and required to report to a station which does have that capability and which will be state operated or monitored as previously described.

While the requirement for continuous evaluation covers all I/M programs, including centralized and test-only, multiple supplier systems in both basic and enhanced areas, it is especially important in enhanced I/M areas that choose test-and-repair, decentralized systems. In the event that the effectiveness of the test-and-repair network was sufficiently close to that of a test-only system, EPA could allow the State to close the gap with I/M program coverage or stringency changes that could be demonstrated to ensure that the performance standard would be achieved by November 1999. Otherwise, if the effectiveness evaluation revealed that the enhanced program were achieving less than full compliance with the performance standard the State would be required to implement a back-up test-only program. EPA believes such a back-up program with full legal authority in the SIP are necessary to allow provisional approval of a decentralized test-and-repair network.

The evaluation program described above would also determine the amount of emission reductions the state can credit retrospectively toward the reasonable further progress requirements discussed previously. The I/M performance target is to achieve a specific fleet-wide emission level (in grams per mile) after I/M and other mobile source strategies are implemented.

To isolate the impact of the performance of I/M programs, as opposed to other strategies such as new car standards or reformulated gasoline, EPA will evaluate the performance of centralized, test-only systems (the standard established by the Act) to determine the actual effectiveness of the program. This evaluation will be used to update the emission factor model which states will use to conduct the evaluation of the test-and-repair system. Thus, if any given mobile source strategy is more or less effective than MOBILE5 predicts, EPA's evaluation and model modifications will take that into consideration. For example, if reformulated gasoline is found to be more effective, the emission credits in the model will be adjusted accordingly. So, when an area using reformulated gas



evaluates fleetwide emissions, using the revised model will properly account for the actual effect of the program.

*K. State Implementation Plan (SIP) Submissions*

In today's action, EPA proposes that in order to be considered complete and fully approvable, I/M SIP submittals must include an analysis of the program using the most current EPA mobile source emission model demonstrating that the program meets the applicable performance standard; a description of the geographic coverage of the program; a detailed discussion of each required program element; the legal authority related to the implementation and operation of the I/M program; and the text of all implementing regulations, interagency agreements and memoranda of understanding. The following two deadlines are relevant to the SIP submittal process: by November 15, 1992, States must submit a plan which includes a formal commitment to the adoption and implementation of an I/M program meeting all the requirements of this action, including a schedule of program implementation milestones addressing the promulgation of draft and final regulations, the issuance of final specifications and procedures, the issuance of final Request for Proposals (where applicable), and all other relevant dates, including mandatory test dates. EPA will conditionally approve all such submittals under Section 110(k)(4). EPA believes that conditional approvals are appropriate in these circumstances because states cannot be expected to begin developing I/M programs meeting the requirements of these regulations until the regulations are finally adopted. EPA does, however, believe that states can adopt and implement I/M programs within one year of making the commitment described above. Therefore, as a condition of EPA's approval EPA proposes to require that by November 15, 1993, a complete SIP revision must be submitted which contains all of the elements listed above, including authorizing legislation and implementing regulations. Since EPA is not required to conditionally approve SIP revisions but merely has the discretionary authority to do so, EPA believes that in conditionally approving a SIP EPA has the authority to limit the time within which states must commit to submit fully approvable SIPs containing all necessary legislation and regulations. EPA believes that in balancing the congressional desire for promptly effective I/M programs with state needs to have EPA/s final I/M regulations prior to adopting and implementing programs, November 15, 1993 is a reasonable date to require submission of fully approvable I/M plans.

Various nonattainment areas were required to correct deficiencies in operating I/M programs. These areas must submit commitments to adopt needed changes as soon as possible but no later than the above SIP submittal schedule. The Act also requires basic I/M areas to continue to operate programs at least as stringent as what was in the SIP at the time of passage of the amended Act or the minimum basic requirement, whichever was greater. Today's action requires that areas meet this requirement but allows for changes in program design, as long as those changes result in a program that achieves at least as much or more reduction as the SIP-approved program at the time of passage of the amended Act or the minimum basic program required by these regulations, whichever is greater.

*L. Implementation Deadlines*

Basic I/M programs must be implemented as expeditiously as practicable, with full implementation by July 1, 1993, for decentralized programs or by January 1, 1994, for centralized programs. Additional phase-in time may be taken if the area opts to do an enhanced I/M program instead.

Today's action proposes that the enhanced I/M program requirements must be fully implemented with respect to all administrative details, such as enforcement and waivers, by July 1, 1994. However, today's action proposes that states have the option to phase in high-tech testing. The proposal calls for high-tech testing to start in July 1994, and to cover at least 30% of the vehicle model years present in the fleet at the time which according to the program design will eventually be subject to the high-tech test in order to meet the November 1999 milestone. The proposal also calls for all affected vehicles to be inspected using high-tech tests by January 1, 1996. Another phase-in proposal in today's action is to allow States to begin high-tech testing with looser cutpoints to allow the test system and repair tech tests by January 1, 1996. Another phase-in proposal in today's action is to allow States to begin high-tech testing with looser cutpoints to allow the test system and repair industry to adjust to the new requirement. This is important to allow the repair industry to build the skills necessary to fix vehicles that will fail the high-tech procedure. Full cutpoint phase-in for these vehicles must be completed by January 1, 1988. EPA is also concerned about the time that may be needed for programs which have established test-and-repair networks to make a transition to a test-only format without causing some portion of the currently licensed inspection stations to lose their investment in new I/M analyzers. Today's action proposes to allow enhanced I/M areas to continue testing vehicles, which are not among the 30% phased in to test-only, in a test-and-repair network until January 1, 1996, when the test-only system would be fully phased-in. EPA requests comment on alternative phase-in schedules. In states that attempt to demonstrate that a test-and-repair network is equally effective, full implementation of the program must occur by July of 1994 due to the time needed to assess the effectiveness of the program, and if needed, switch to a test-only system by January 1998 in biennial systems and January 1999 in annual systems.

Section 182(c)(3)(B) of the Act requires that enhanced I/M programs "take effect" by November 15, 1992, in compliance with EPA's enhanced I/M guidance. Had the Agency been able to promulgate full guidance by even the statutory date of November 15, 1991, states and local jurisdictions would still have been extremely hard pressed to enact legal authority, adopt rules, license or contract for the building of test-only facilities, and complete the myriad of tasks that are required to fully implement an effective program by November 15, 1992. It is clear that this date is now impossible to meet.

On the other hand, the sense of urgency incorporated in the statutory date is well justified, and the Agency has attempted to craft a combination of required SIP submittal dates and testing phase-in schedules which will require enhanced I/M areas to make an immediate commitment to a fully effective program and to proceed expeditiously with its dates and testing phase-in schedules which will require enhanced I/M areas to make an immediate commitment to a fully effective program and to proceed expeditiously with its implementation. The SIP commitment and schedule which must be submitted by November 15, 1992, will be enforceable by EPA and the courts. The subsequent submittal dates represent a significant challenge and will require priority focus on implementation of the enhanced I/M program. As stated above in the section on SIP submittal deadlines, EPA believes that states will need one year from initial SIP commitment submission to adopt all necessary statutory and regulatory authority. Once this is done, EPA concludes that the statutory

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requirement to have programs "take effect" will be satisfied. The implementation phase-in dates provide states the time needed to construct testing facilities and get the program fully operational.

**VI. Environmental and Health Benefits**

This rule will provide environmental and health benefits by decreasing in-use motor vehicle emissions of VOCs, CO, and $NO_x$. In 1985, motor vehicles were responsible for 70 percent of the nation's CO, 45 percent of the $NO_x$, and 34 percent of the VOCs. Ozone, the major component of smog, is produced by the photochemical reaction of VOC and $NO_x$ emissions. Motor vehicles are also a significant source of toxic air pollutants. Their contribution to toxics is decreased as hydrocarbon levels are lowered. All of these pollutants have significant adverse effects on human health and the environment.

Cabon monoxide interferes with the oxygen-carrying capacity of the blood. Exposure aggravates angina and other aspects of coronary heart disease and decreases exercise tolerance in persons with cardiovascular problems. Infants, fetuses, elderly persons, and individuals with respiratory diseases are also particularly susceptible to CO poisoning.

Nitrogen oxides, a family of gases including nitrogen dioxide ($NO_2$) and nitric oxide (NO), irritate the lungs, lower resistance to respiratory infections, and contribute to the development of emphysema, including nitrogen dioxide ($NO_2$) and nitric oxide (NO), irritate the lungs, lower resistance to respiratory infections, and contribute to the development of emphysema, bronchitis, and pneumonia. $NO_x$ contributes to ozone formation and can also react chemically in the air to form nitric acid.

HC emissions include VOC, which react with $NO_x$ to form ozone and other photochemical oxidants. Some VOCs, including benzene, formaldehyde, and 1,3-butadiene, are air toxics. They cause cancer and other adverse health effects, as well as toxic deposition in lakes and coastal waters.

As shown in the following table, when compared to the no-I/M case, current I/M programs obtain estimated total annual emission reductions of 116,000 tons of VOC and 1,566,000 tons of CO. Implementation of the (biennial high option) requirements of this proposed action would yield estimated annual emission reductions of 384,000 tons of VOC and 2,345,000 tons of CO from enhanced I/M programs, and 36,000 tons of VOC and 500,000 tons of CO from basic programs, as compared to the no-I/M case. Enhanced I/M programs would also reduce $NO_x$ emissions. The transient test with $NO_x$ cutpoints designed to fail 10% to 20% of the vehicles would yield estimated $NO_x$ reductions of 9% relative to emission levels with no program in place.

NATIONAL BENEFITS OF I/M

[Annual tons of emission reductions in 2000 compared to the no-I/M case]

| | VOC | CO |
|---|---|---|
| Reductions from continuing I/M unchanged: | | |
| Centralized | 55,540 | 775,228 |
| Decentralized | 60,476 | 791,167 |
| Current total | 116,016 | 1,566,395 |
| Expected reductions from proposal: | | |
| Enhanced areas | 384,130 | 2,345,278 |
| Basic areas: | | |
| Centralized | 23,289 | 326,290 |
| Decentralized | 12,996 | 174,186 |
| Basic total | 36,285 | 500,476 |
| Total future benefit | 420,415 | 2,845,754 |

Thus, enhanced I/M and improvements to existing and new I/M programs will result in national emission reductions substantially greater than current I/M programs.

**VII. Economic Costs and Benefits**

*A. Impacts on Motorists*

EPA has developed estimates of inspection and repair costs in a "high-tech" I/M program. The derivation of these estimates is detailed in the Regulatory Impact Analysis, included in the technical support documents for this rulemaking. A conventional steady-state I/M test including emission control device checks currently costs about $8.50 per vehicle on average in a centralized program, and $17.70 on average in decentralized programs. The test proposed for 1986 and later vehicles in today's action, including transient, purge, and pressure testing, is expected to cost approximately $17 per vehicle in an efficiently run, high-volume program. If the inspection were performed biennially (and extended to 1984 and 1985 vehicles) the estimated annual per vehicle cost would be about $9.

The cost to fix a transient test failure that would also fail the 2500/idle test is estimated at $75. The average cost to repair vehicles failing the transient test that would not fail the 2500/idle test is estimated to be $150. The overall average repair cost for transient failures is estimated to be $120. Average repair costs for pressure and purge test failures are estimated to be $38 and $70, respectively. Repairs for $NO_x$ failures are estimated to cost approximately $100 per vehicle. Data from a pilot program in Indiana indicate that it would be very rare for one vehicle to need all three of these repair costs. Also, some vehicles will be repaired at no charge to the owner, due to warranty coverage provided by the manufacturer.

These repairs have been found to produce fuel economy benefits that will at least partially offset the cost of repairs. Fuel economy improvements of 6.1% for repair of pressure test failures and 5.7% for repair of purge test failures were observed. Vehicles that failed the transient short test at the proposed cutpoints were found to enjoy a fuel economy improvement of 12.6% as a result of repairs. Fuel economy improvements persist beyond the year of the test.

Currently, there are an estimated 64 million vehicles subject to I/M nationwide. Of these, 24 million are in centralized programs and 40 million are in decentralized programs; some of these are annual programs and a few are biennial. EPA estimated the economic impact of continuing these programs as they exist today and evaluated this in the year 2000. Inspection fees would total an estimated $747 million annually, $182 million in centralized programs, and $153 million in decentralized programs. These costs are expressed in 1990 dollars but are not discounted since the costs and benefits of I/M accrue during each year the program is in operation.

As shown in the table below, estimates using EPA's cost effectiveness model show that total inspection costs in the year 2000 is enhanced I/M programs accounting for growth in the size of the inspected vehicle fleet due to expanded and additional program areas are expected to be $451 million, with repairs totaling $710 million assuming that programs are biennial. Fuel economy benefits are expected to total $825 million, with $617 million attributable to the tailpipe emissions test and $208 million due to the functional evaporative tests.

In basic I/M programs, total annual inspection costs in the year 2000 are estimated at $162 million, and repair costs are expected to be approximately $113 million.

Thus, despite significant increases in repair expenditures as a result of the program, the switch to biennial testing and the improved fuel economy benefits will result in a lower national annual cost of the inspection program.

If EPA were to establish the low option as the performance standard, states could continue the kinds of programs we see being run today. EPA believes that this would result in significantly higher direct and indirect costs to the nation. There would be the direct cost, discussed above, of about $350 million that would be avoided by the changes called for in today's action. The indirect cost has to do with the cost of achieving the emission reductions forgone by establishing the low option standard. EPA believes that alternative VOC emission reduction strategies will, on the margin, cost about $5000 per ton. Given this, the cost of getting the additional tons of benefit that the high option offers from these more expensive sources amounts to about $1.25 billion. Thus, the total cost of implementing a low option I/M program may be as much as $1.6 billion more than the approach proposed in today's action.



PROGRAM COSTS AND ECONOMIC BENEFITS

[Millions of annual dollars in 2000]

| | Test cost | Emission test repair cost | Evap repair cost | Emission test fuel economy savings | Evap fuel economy savings | Net cost* |
|---|---|---|---|---|---|---|
| Costs and Economic Benefits of Continuing I/M Unchanged | | | | | | |
| Central | $182 | 140 | na | ($82) | na | $230 |
| Decentral | $565 | $252 | na | ($153) | na | $664 |
| Total | $747 | $392 | | ($245) | | $894 |
| Expected Costs and Economic Benefits From Proposal | | | | | | |
| Enhanced Areas | $451 | $489 | $221 | ($617) | ($208) | $336 |
| Basic Areas: | | | | | | |
| Central | $67 | $80 | na | ($39) | na | $88 |
| Decentral | $95 | $53 | na | ($31) | na | $117 |
| Total | $162 | $113 | | ($70) | | $205 |
| Grand total | $613 | $602 | $221 | ($687) | ($208) | $541 |

*Net cost is derived by adding inspection and repair costs and subtracting fuel economy benefits.

*B. Impacts on the Inspection and Repair Industry*

EPA has determined that the regulations proposed today may have a significant impact on a substantial number of the small businesses that own and operate emission test facilities in states that currently have decentralized test networks and are required to implement enhanced I/M. Testing revenues in such states are currently about $300 million. In states which choose a multiple-independent supplier, test-only format for inspections, this impact will involve the small businesses having to choose between providing inspection-only services and repair-only services, and the associated costs of making such a transition. In some cases, the businesses may not be able to make the investment to become a test-only station, but may also be unable or unwilling to compete successfully in the high-tech repair market. The impact of this rule could potentially mean closure for some of these businesses that are otherwise marginal. This is discussed in more detail later in this section. EPA has outlined a set of mitigating measures, discussed in detail previously, as well as later in this section, intended to ease the transition to an enhanced I/M program that separates test and repair functions. Given the phase-in of I/M requirements that is proposed above, EPA anticipates any negative impacts will be ameliorated, if not eliminated. By contrast, many small businesses will be positively affected by the major increase in repair activity expected as a result of today's action. The volume of repair expenditures is expected to increase from current levels of about $392 million to approximately $823 million. This includes an increase of $211 million in areas that currently have decentralized programs, $100 million in areas that currently have centralized programs, and $120 million in areas that are not currently operating I/M programs but are required to by the Act.

The types of businesses that currently do inspections in decentralized I/M programs include car dealerships, service stations, general and specialized repair shops, and similar businesses. Equipment manufacturers were not examined here because such firms do not constitute small entities. In general, inspections are just one of many services these businesses provide, although some inspection stations are set up for the sole purpose of performing inspections and provide no other services. The average inspection station in decentralized programs tests about 1,025 vehicles per year. An average station has gross receipts of between $5,000 and $30,000 per year from providing emission testing services, depending on the allowable test fee in the state. After accounting for costs associated with purchasing and maintaining the analyzer, the test stations are left with a net gain of between $2,000 and $8,000 per year. Thus, it is clear that inspection services do not, by themselves, yield significantly high profit to the average inspection station. Even if the inspection labor is that of the owner of the station, which is often the case, an average test volume alone would not sustain the business by itself.

While the average profit is low, the distribution of inspection volume varies considerably, with some stations typically performing virtually no inspections at all ranging to some that perform over twice the average number of inspections. The best data available to EPA on this comes from California where equipment costs are high due to the transition to BAR90 analyzers in 1990 and inspection fees are high, as well. Obviously, the stations in California that report no inspection activity in a quarter (about 22% of the total) are losing money on the equipment and related costs of maintaining it (estimated loss of about $5,000 per year), and may be ready to abandon the test program in any case. Based on available information from California, net profit in stations that do over twice the average inspection volume (18% of the stations) in California is estimated to average about $29,000 per year.

As mentioned above, the adoption of test-only stations in enhanced I/M programs would force existing test-and-repair stations in decentralized programs to choose between the test business and the repair business. To opt for the test business, an investment of about $140,000 will be needed for the

equipment to perform the tests (EPA based this estimate on conversations with equipment manufacturers over the past year; however, more recent data indicate that a lower figure is more likely). This is a much larger investment than the $6,000–$8,000 cost of equipment in most current decentralized programs, and very large even compared to the cost of BAR90 analyzers which are about $10,000–$15,000. The stations that are most likely to opt for the test business are those that currently derive substantial profit from the test business and little or none from repairs. For the purposes of this analysis, it is assumed that the 23% of stations performing over 150% of the average test volume might opt into the test-only business, or, to the same effect, that there is a new entrant to the test-only business for each of these 23% that chooses to pursue the repair-only business instead. After withdrawals by other stations, as explained below, these stations would each do about 4,100 tests annually on average.

Car dealerships and repair shops, especially those that specialize in engine repair, will probably opt out of the test business but will compete for the additional repair business that enhanced I/M will create. Data available indicate that roughly 50% of test stations in current I/M programs fall into the dealership and engine-repair category. These stations also tend to do fewer tests than average because of their focus on repair, and some of them likely fall into the 22% of stations that report no test activity. For the purposes of this analysis, it is assumed that half of the licensed stations that do virtually no testing are repair-oriented shops. Much of the emission repair business for dealerships and repair shops is referrals from stations that do little or no emissions-related repair (data indicate that about half of the motorists that fail a test in a decentralized program go to another facility for repair). These businesses will be faced with the need to upgrade repair technician skills and to obtain equipment necessary to perform effective repairs on new technology vehicles. The emission analyzers owned by these stations will be useful in testing vehicles that will still be subject to steady-state testing and may also provide an indicator of repair success on vehicles receiving a transient emission test. In the case of BAR90 analyzers, this equipment was designed to down load OBD fault codes and to act as a platform for diagnosis of vehicle problems. The degree to which these businesses need to upgrade their skills and equipment will affect the number that can afford to perform emissions repairs and depends much upon the current resources employed.

The remaining 27% of the licensed station population (i.e., 100%—50% dealer/repair shops—23% high-volume test shops) are a mix of: service stations some of which do some engine repairs including I/M repairs on some of the cars they test, in addition to gasoline sales; non-engine service or repair shops, such as brake and muffler shops; and retailers. Assuming that the other half of the 22% of stations that show virtually no test activity fall into this group, then 16% of the licensed stations (27%—11%) in decentralized programs are now active and may opt not to engage in the test business (which would preclude their repair business) and also opt not to make up for the lost test revenue by seriously competing for some of the increased I/M-generated engine repair business. The 11% in this group that did no test business during the survey period are assumed to be unlikely to be adversely affected by this regulation since they are deriving no income from the inspection business at this time. The 16% that are doing test business all currently have other sources of income other than the inspection business, including non-emission related engine repairs, non-engine repairs, gasoline sales, and merchandising. Data are not available on the contribution of test business and associated repairs to total revenue in these businesses. Since these stations by definition perform less than 150% of the annual inspection volume, the lost profit should be less than $12,000 for inspections, plus about $5,000 from at most 200 I/M repairs each year. If 10% of the 16% of the stations comprising this category were so marginally profitable that the loss of inspection and associated repair revenue forced closure of the business it would amount to a total of 400 stations in enhanced inspection programs nationwide that would close as a result of this action. The discussion in Section V. F., above on mitigating impacts on inspection stations is especially intended to address the impact on this group of station owners.

If a state required to implement enhanced I/M chose to attempt to demonstrate that a test-and-repair program would be equally effective, the inspection and repair industry would be presented with a different set of choices with different ramifications. Under this scenario, existing test stations and other businesses in the repair industry would have to decide whether to enter or remain in the test business. To be competitive in the enhanced test-and-repair business, the station would require substantial resources to purchase sophisticated test equipment. As discussed above the equipment costs for transient, mass emission testing would be about $140,000 per lane; the alternative test suggested by ARCO (discussed above) would require an equipment investment of about $40,000, plus substantial operating expenses. In either case, some stations in existing test-and-repair networks would likely drop out of the system because they could not afford the investment in equipment (or could not qualify for a loan) or would have test-volumes too low to justify the expense. Thus, the impact of enhanced I/M on stations in the test-and-repair scenario may tend to fall more heavily on smaller, independent stations while car dealerships and chain-stores (such as Sears and Precision Tune) will be more likely to have the resources to make the investment and the marketing capability to insure a good return on that investment. It is likely that the stations that drop out of the test business would lose more than just the inspection and repair business related to the I/M test, but they may also lose business that occurs at the same time motorists get inspections (e.g., periodic servicing). Similarly, repair shops that are not official test stations and that currently do I/M-related repairs may loose more than just the I/M-related repair business if they do not opt into the test business. Overall, the impact of the test-and-repair option may tend to concentrate repair activity in a smaller range of shops, by virtue of better capitalized operations or high volumes (test or repair), such as car dealerships and chains.

If a single contractor, centralized program were instituted in an area where a decentralized program is currently operating, the option to become a test-only station would not be available to the 23% of the station population that would be likely to pursue it. Members of this group without profitable alternatives would also face the risk of closure.

The likelihood of closure would depend upon the fraction of incomes derived from inspections. Data on this is not available. Since many of these stations have other lines of business, such as gasoline sales, auto parts sales, or various types of vehicle repair and servicing, the loss of inspection business will not necessarily mean closure. As before, if 10% of these stations might close as a result of a switch to a single-contractor, centralized system, as well

as 10% of the 16% of stations identified previously as being at risk, then 977 stations might close nationwide if all decentralized programs in enhanced I/M areas switched to centralized, single-contractor systems. If the areas containing half of the current inspection stations were to switch to a single-contractor, centralized system, then potential closures would number about 489.

The most severely impacted would be the test-only stations, which in California comprise 2% of the test stations (about 160 stations in California). EPA believes California probably has many more test-only stations than other decentralized I/M states due to the fact that average test fees are higher making it feasible to have testing as a sole source of income (there is no cap on test fees in California, as there is in most other states). Given that they have no other lines of business to compensate for the loss of inspection revenue, these test-only stations would almost certainly close if the area were to switch to a centralized single contractor system, unless these stations were able to win the contract (some of these businesses have made it clear to EPA that they intend to do this).

Section V. F., above, regarding mitigating impacts on existing test stations, details ways states could minimize or eliminate the loss of jobs or closure of small businesses. EPA proposes a phase-in of the test-only requirement, by January 1996, to allow adequate time for small businesses to make the transition. As discussed in the section on mitigation, EPA requests comments on an analyzer buy-back program, software development to expand uses of existing equipment, hardware development to allow use of existing equipment for repair effectiveness testing, retesting at repair shops during a transition period, and programs to assist stations and inspectors through retraining and retooling.

These losses to the small business community and to labor would be offset by the increase in jobs resulting from a test-only program. Repair shop business is likely to increase and would require the services of additional mechanics, and test-only inspection stations would need additional inspectors. The $431 million in extra repair expenditures estimated in the section on Economic Costs is comprised of about 40% parts cost and the remainder for labor, profit and overhead. The additional parts demand has potential economic benefits for the parts manufacturers as well as retailers in the local community. The 60% remainder is estimated to be about 50% profit and overhead at the repair shop and 50% labor (for about $130 million total). EPA estimates that in a high volume enhanced I/M lane, 3–4 inspectors would be needed per lane instead of the 1–2 typically employed in current high volume systems. The table below shows that current jobs in I/M areas are about 11,400, with approximately 9,100 in the inspection sector and 2,300 in the repair sector. As a result of today's proposal EPA expects the total number of jobs in the repair sector to increase to 6,200 jobs for a gain of 3,900 repair technician jobs. The change in inspector jobs depends upon the type of systems states choose to implement. If states choose the decentralized, test-only approach with multiple, independent suppliers, it is expected that more jobs would result, a total of 10,500 inspectors would be required in addition to the 2,700 inspector jobs in basic I/M programs. If states chose a single-supplier contractor approach, then about 2,700 inspector jobs would be needed in enhanced I/M areas. Thus, total future inspector jobs would range from 5,400 to 13,200. In addition to inspector and repair technician jobs, the increased expenditure for auto parts and for setting up and servicing test-only stations, will result in construction industry jobs, parts manufacturing jobs, and service industry jobs. EPA estimates a total of 3,600 additional jobs in these sectors. Overall, EPA estimates that today's action will result in between 3,800 and 11,600 additional jobs, directly or indirectly related to testing and repair of motor vehicles as a result of the program. It is important to note that these may not represent a net increase in nationwide employment overall. The resources allocated to test and repair services may otherwise have been spent on other goods and services in the economy. Thus, it may be that other sectors of the economy would incur in employment loss.

Changes in jobs as a result of proposal

| | FTE |
|---|---|
| Current Test and Repair Jobs | |
| Inspector jobs: | |
| Decentralized programs | 6,600 |
| Centralized programs | 2,500 |
| Repair jobs: | |
| Decentralized programs | 800 |
| Centralized programs | 1,500 |
| Total Current Jobs | 11,400 |
| Future Test and Repair Jobs | |
| Enhanced I/M programs inspector jobs: | |
| Multiple independent supplier | 10,500 |
| Single contractor program | 2,700 |
| Inspector job subtotal | 2,700–10,500 |
| Repair jobs | 5,500 |
| Basic I/M programs: | |
| Inspector jobs | 2,700 |
| Repair jobs | 700 |
| Total future inspection and repair jobs | 11,600–9,400 |
| Other job gains: | |
| Equipment manufacturing | (*) |
| Parts manufacturing | 1,000 |
| Construction | 1,800 |
| Small business services | 800 |
| Total net gain in jobs | 3,800–11,600 |

EPA is requesting comments on three aspects of the foregoing analysis. First, EPA requests comments on the question of motorist inconvenience, especially as it relates to test-only versus test-and-repair networks. Second, EPA requests comment on the repair cost estimates used in the analysis. Finally, EPA requests comment on the repair effectiveness estimates as they relate to fuel economy benefits from the various I/M tests.

In conclusion, today's action may cause significant shifts in business opportunities. Small businesses that currently do both inspections and repairs in decentralized I/M programs may have to choose between the two. Significant new opportunities will exist in these areas for small businesses to continue to participate in the inspection and repair industry. This will mean shifts in jobs but an overall increase in jobs in the repair sector and a small to potentially large increase in the inspection sector, depending on state choices. Up to four years is provided by today's proposal for this transition. EPA believes this will provide ample time for these businesses and individuals to take advantage of the new program. In addition, EPA believes there are several other ways states can help test stations, inspectors, and repair technicians make the transition to an enhanced I/M program.

## VIII. Cost-Effectiveness

Based upon the inspection and repair costs and fuel economy benefits described above, a biennial high-tech I/M program satisfying the requirements

of this rule has an estimated net annual cost of $5,400,000 per year per million vehicles. If all program costs are allocated to VOC reductions the biennial high-tech program has an annual cost effectiveness of $880 per ton of VOC (without inconvenience assumptions); if performed annually the cost effectiveness of the high-tech program is $1,700 per ton of VOC. This compares with a cost effectiveness of $5,400 per ton for basic I/M, $4,400 per ton for the Low Option, and $2,600 for the Medium Option. If all of the program costs were allocated to CO, the biennial high option program would have a cost-effectiveness of $143 per ton, while the basic program would be $334 per ton. If all of the costs were allocated to $NO_x$ reductions (which only occur in the high option program), then the cost per ton for the annual high-tech program would be $6,298 per ton and for the biennial high-tech program $3,267 per ton of $NO_x$ benefit.

If program costs are allocated among all three pollutants as described in "Enhanced I/M Costs and Benefits," costs per ton of VOC reduction are estimated at $4,500 for Basic I/M, $3,700 for the Low Option, $2,200 for the Medium Option and $500 for the biennial high-tech program. If the high-tech program were performed on an annual basis, the cost effectiveness would be $1,300 per ton.

The cost-effectiveness estimates discussed above do not include the cost associated with the time it takes for a motorist to get through the inspection process (to allow for straightforward comparisons among I/M options). In a well-designed, high-volume system (the type being proposed here), the time to drive to the station, get tested, and drive home is estimated to be about 45 minutes. Assuming a time value of $20 per hour, that would add $15 to the cost. Assuming this, the biennial high-tech program would have a cost-effectiveness of $1,600 per ton, rather than $500 per ton (with cost split among the three pollutants). If all costs were allocated to VOC, then the cost effectiveness including the inconvenience assumption is $2,000 per ton of VOC (as opposed to $880 per ton of VOC without the inconvenience assumption).

### IX. Relationship to Other In-Use Control Strategies

Considerable emission control development effort has been expended in the last two decades by both the vehicle manufacturers and the federal government, and each new vehicle produced represents a monetary investment in terms of emission control components. These efforts and investment have caused the passenger cars and light-duty trucks produced in recent years to be much lower emitting than their predecessors, provided that they are properly operating and that the conditions of temperature, traffic speeds, etc. they encounter are the same as the conditions of the EPA compliance test. However, a large body of evidence has been accumulated showing that current generation vehicles are not all operating properly in actual service. Moreover, they are often used under other temperature and driving conditions, and significant excess emissions are released as a result. These facts have been true of every generation of vehicles to some extent and have always been recognized by policy makers and professionals in the field of motor vehicle emission control. However, as nearly total control over the emissions of properly functioning vehicles under standard test conditions has been achieved, the lack of equivalent control over malfunctions and during non-standard conditions has become more evident to all. The Clean Air Act Amendments of 1990 reflect a renewed realization of these two problems. The Amendments contain several provisions aimed at reducing them. This section explains these provisions and their interrelationships.

The Amendments address emissions performance under non-standard conditions by directing EPA to revise the procedures under which compliance is determined, for both exhaust and evaporative emissions. EPA is in the process of doing so, and has underway a number of studies and rulemakings in this area, some begun prior to the 1990 Amendments. When completed, these actions will ensure that properly functioning vehicles maintain excellent control of emissions at colder and hotter temperatures than now used in compliance testing, when left parked for several days, and in driving patterns that play a significant role in everyday traffic. For vehicles produced before these new requirements take effect, it is generally true that in-use strategies aimed at prevention or correction of malfunctions (discussed below) will achieve emission reductions even under conditions not well represented by the pre-amendment test procedures.

The problem of excess emissions due to in-use malfunctions is addressed by several provisions of the 1990 Amendments. First, the Amendments extend the useful life of light-duty vehicles to ten years or 100,000 miles. Manufacturers are responsible for recalling their vehicles of a given model when emissions testing performed within the first 7 years or 75,000 miles reveals that a substantial number of properly maintained vehicles fail to comply with standards. Previously, the useful life has been only 5 years or 50,000 miles. EPA believes that the extension of the recall period will lead to emission control systems that are more durable, with less frequent malfunctions. An extension of the emissions warranty period for catalysts and on-board emission control computers to 8 years or 80,000 miles will also lead to more durable designs for these components and to more frequent action by owners to have them replaced when needed. (The 1990 Amendments reduce the warranty coverage period for other components, striking a balance between the emissions control advantages of long warranty coverage and the disadvantages of the same in terms of competition in the vehicle service and repair markets.)

Second, section 182(c)(3) of the Act directs EPA to revise its I/M policy to achieve an enhanced level of effectiveness in certain metropolitan areas. EPA is also directed to enforce the requirement for a "basic" I/M program in more areas, and to reconsider its previous policy for the design and operation of such programs. Basic and enhanced I/M programs both achieve their objective by identifying vehicles that have high emissions as a result of one or more malfunctions, and requiring them to be repaired. An "enhanced" program is enhanced in the sense that it must cover more of the vehicles in operation than has been the case to date in many metropolitan areas, must employ inspection methods which are better at finding all high emitting vehicles, and must have additional features to better ensure that all vehicles are tested properly and properly repaired if failed by the tests. EPA in this notice is proposing specific requirements for each type of program in terms of vehicle coverage, test methods used to identify high emitting vehicles, etc.

Third, section 202(m) of the amended Act directs EPA to promulgate regulations requiring new vehicles to be equipped with on-board diagnostic (OBD) systems. On-board diagnostic systems have been incorporated into some vehicles at the manufacturers' initiative since 1980. The new regulations will require all manufacturers to install equipment that will monitor the performance of emission control equipment, the vehicle's fuel metering system and ignition system, and other equipment

and operating parameters for the purpose of detecting malfunction or deterioration in performance that would be expected to cause a vehicle to fail emission standards. When such problems are detected, a malfunction indicator lamp located in the dashboard of the vehicle will be illuminated, instructing the vehicle driver to "Service Engine Soon." Codes indicating the likely problem will also be stored in the vehicle's onboard computer for ready access by the servicing technician to aid in proper diagnosis and repair of the vehicle. The Agency has proposed onboard diagnostics regulations (September 24, 1991; FR48272) that would be phased in beginning with the 1994 model year. In accordance with section 202(m), the EPA proposal allows the opportunity for case-by-case waivers until the 1996 model year.

OBD systems will have their greatest benefit when the vehicle owner observes the warning signal and on his or her initiative obtains appropriate emission system repair promptly. Prompt action minimizes the time the vehicle is operated in a higher polluting condition, and the possibility of a prolonged malfunction in one component or subsystem causing secondary damage to another. EPA is hopeful that many owners will take such prompt voluntary action. There is, of course, no way to ensure that they do. Another way that OBD systems will have an emissions benefit is that vehicle repair technicians may access the OBD codes when vehicles are presented to them with symptoms of poor driveability or even just for routine servicing, and thereby discover emission malfunctions of which the owner was unaware. EPA hopes that in many such cases the owner will consent to an appropriate repair of the vehicle.

An appropriately designed OBD system also presents an opportunity to include a scan of the stored malfunction codes at the time of the periodic I/M test, to identify vehicles whose owners did not seek repairs when the warning signal first occurred. The presence of one or more codes in a vehicle indicates the current or recent existence of a malfunction with the potential to cause high emissions. Such a car should be failed and required to return after repair. Code inspections can be viewed as a supplement to the inspection regime which improves its effectiveness in finding high emitting vehicles, but also as a possible long-term replacement to the other tests for identifying high emitting vehicles. With the rapid connection and data transfer capabilities which have been developed by industry and are required by EPA's proposed OBD regulation, code inspections would not add significantly if at all to the time or cost for an inspection. The Act requires EPA to promulgate a rule which will require all I/M programs to include code inspections. Today's notice makes note here of this requirement, but does not actually propose that rule currently. EPA believes it would be inappropriate to do so prior to final adoption of OBD rules. EPA expects to make such a proposal on OBD inspection simultaneously with or soon after finalizing the regulation which requires OBD systems to be installed on new vehicles.

OBD systems, in addition to improving the identification of high emitting vehicles in an I/M program will also be of great utility in the repair of vehicles which fail the inspection, including the exhaust emission test. OBD will speed identification of the responsible component, and help avoid trial and error replacement of components which the repair technician cannot evaluate otherwise. The Clean Air Act requires that OBD inspections be performed in I/M programs once vehicles with mandated OBD systems become part of the fleet. At this point, EPA believes it is too early to be absolutely certain about the potential for OBD to replace existing or proposed test procedures or how long it will take to refine the technology to the point where it could substitute.

Fourth, the Act requires the sale of reformulated gasoline in many of the worst ozone nonattainment areas, with the option for others to elect to be subject to the program also. The Act also requires the sale of oxygenated gasoline in all carbon monoxide nonattainment areas. These special fuels will reduce the emissions of vehicles that are not operating properly due to a malfunction, as well as emissions from properly functioning vehicles. Reformulated fuels will only partially soften the effect of a malfunction in the emission control system. Similarly, changes in certification test procedures and new vehicle standards will not eliminate the need to inspect and repair in-use vehicles.

Finally, EPA is undertaking an initiative in response to the Act which may reduce the need for certain enhanced I/M emission checks. On October 3, 1991 (56 FR 50196), EPA proposed a program in which EPA would, at the manufacturer's option, certify specific vehicle models as "inherently low emitting vehicles" (ILEVs). The inherently low emitting character of these vehicles would arise mostly in regard to their evaporative emissions, which are required to remain very low even under malfunction conditions. EPA requests comments on whether such vehicles should be exempted from the evaporative system tests in enhanced I/M programs. EPA also requests comments on what exhaust-related certification requirements might be imposed for ILEVs which would make it appropriate to exempt them from exhaust testing also.

### X. Other Issues

Since the publication of EPA's draft I/M guidance in April 1991, the Agency has been made aware of a unique situation which concerns air quality planning for the City and County of El Paso, Texas. El Paso lies across the Rio from Ciudad Juarez, Mexico. The 1990 populations of the two cities are about 592,000 and 798,000 respectively. Efforts are underway to develop an emissions inventory for Ciudad Juarez and to execute an Integrated Border Environmental Plan (IBEP) involving both the United States and Mexico over the next few years. Although the emission inventories are not yet complete, it is believed that the mobile source contribution from Ciudad Juarez is greater than that from El Paso County.

El Paso is a serious ozone nonattainment area, which makes it subject to the enhanced I/M provisions of the Act. Its required attainment date for ozone is November 15, 1999, by which time it must also achieve a 24 percent reduction in adjusted 1990 baseline emissions in order to comply with the reasonable further progress requirements of Section 182(c)(2). Because of the influence of emissions from Ciudad Juarez, ozone attainment in El Paso is believed to be impossible without very significant new controls in that city, which despite progress on the IBEP are uncertain in the 1999 time frame. In recognition of this, Congress provided in § 179B for approval of plans from an area like El Paso that would otherwise be satisfactory to achieve attainment but for emissions emanating from outside the United States.

Nevertheless, the goal for El Paso should be to make as much progress as possible in reducing ambient ozone concentrations by 1999 and thereafter. In doing so, El Paso will also face additional obstacles due to the difficult economic situation in the area, the relatively long period for which vehicles are used before being retired, and the importance of vehicle emissions to the total inventory on the El Paso side of the

border. Because of its special circumstances, EPA believes that El Paso should be allowed to use its limited resources with as much flexibility as possible in how they are applied to the ambient ozone problem, subject to the Act's reasonable further progress requirements. EPA therefore has explored whether and how it might establish a unique requirement for enhanced I/M in El Paso, within the range of discretion it has under the Act in defining enhanced I/M in general. Specifically, EPA is proposing that provided the area can demonstrate that the 24% reasonable further progress requirement is being met, then the enhanced I/M program in El Paso should meet a performance standard which is achievable by a model program that is identical to that for other areas except in the following ways: the transient emission test and transient purge test are conducted on 1990 and later model year vehicles; two speed testing on 1981–89 model year vehicles, idle testing on 1968–81 model year vehicles, and pressure testing on 1971 and later model year vehicles. El Paso must match the emission reductions from this program in November 1999, and every three years thereafter until its attainment year. El Paso must meet the same SIP submittal deadlines discussed above as established for all other areas.

## XI. Public Participation

### *A. Comments and the Public Docket*

EPA welcomes comments on all aspects of this proposed rulemaking. While EPA is not publishing the text of the proposed regulation, EPA welcomes comments on it. EPA will be sending copies of the regulation to those people on the I/M mailing list but invites others to request a copy immediately. Copies of the regulation may be obtained by calling the answering machine at (313) 741–7884 and leaving your name, organization name, address, and phone number. One can also request a copy in writing to EPA (see "**FOR FURTHER INFORMATION CONTACT**") or by sending a fax to (313) 668–4497. Commenters are especially encouraged to give suggestions for improving the convenience and cost-effectiveness of I/M programs. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–91–75 (see "**ADDRESSES**").

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by—

- Labeling proprietary information "Confidential Business Information" and
- Sending proprietary information directly to the contact person listed (see "**FOR FURTHER INFORMATION CONTACT**") and not to the public docket.

This will help insure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

### *B. Public Hearing*

Anyone wishing to present testimony about this proposal at the public hearing (see "**DATES**") should, if possible, notify the contact person (see "**FOR FURTHER INFORMATION CONTACT**") at least seven days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first-come, first-serve basis to follow the previously scheduled testimony.

EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. A–91–75 (see "**ADDRESSES**").

The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding.

## XII. Administrative Requirements

### *A. Administrative Designation*

Under Executive Order 12291, EPA has determined that this regulation is major. A Regulatory Impact Analysis has been prepared and is available from the address provided under "**FOR MORE INFORMATION CONTACT.**"

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

### *B. Reporting and Record Keeping Requirement*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1613.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM–223Y); Washington, DC 20460 or by calling Sandy Farmer, (202) 260–2740.

Public reporting burden for this collection of information is estimated to vary from 43 to 127 hours per response with an average of 85 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (PM–223Y); Washington, DC 20460; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final Rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are

possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis. This analysis has been completed and is included in the docket. Issues related to this analysis have been addressed in various sections of this preamble.

Dated: July 9, 1992.

**William K. Reilly,**

*Administrator.*

[FR Doc. 92–16535 Filed 7–10–92; 8:45 am]

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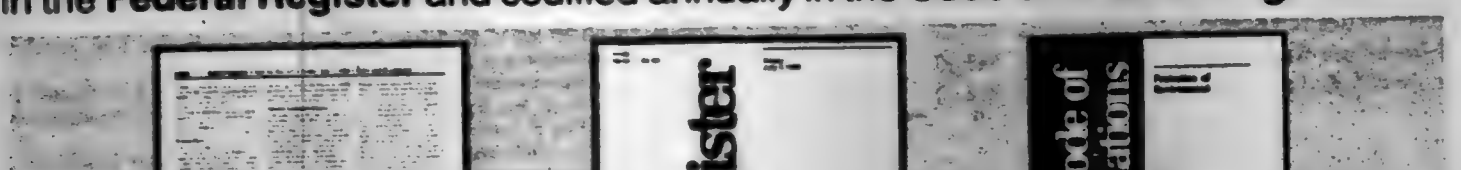


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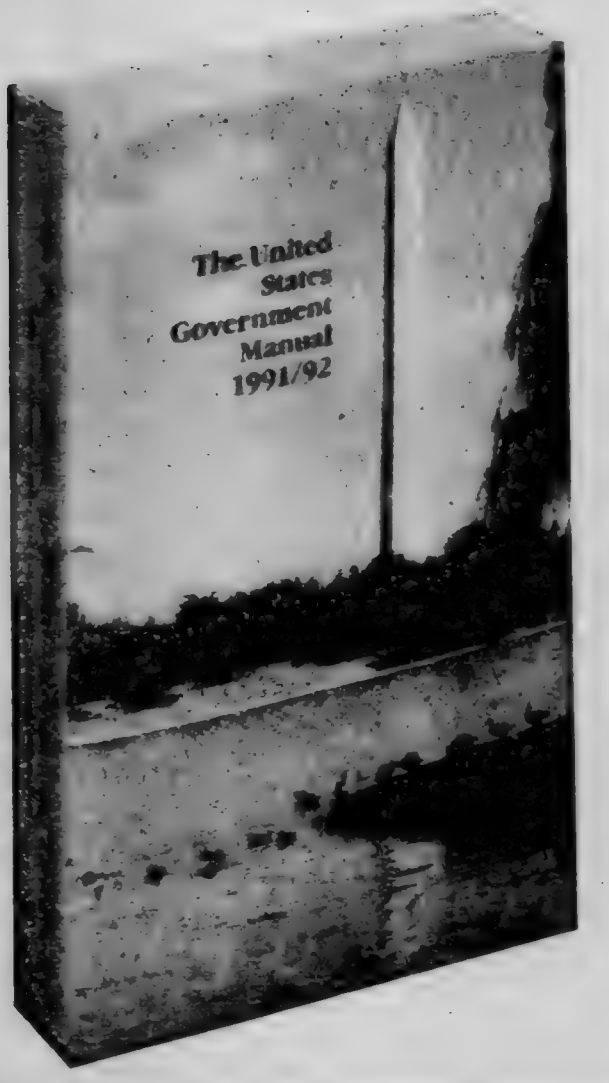


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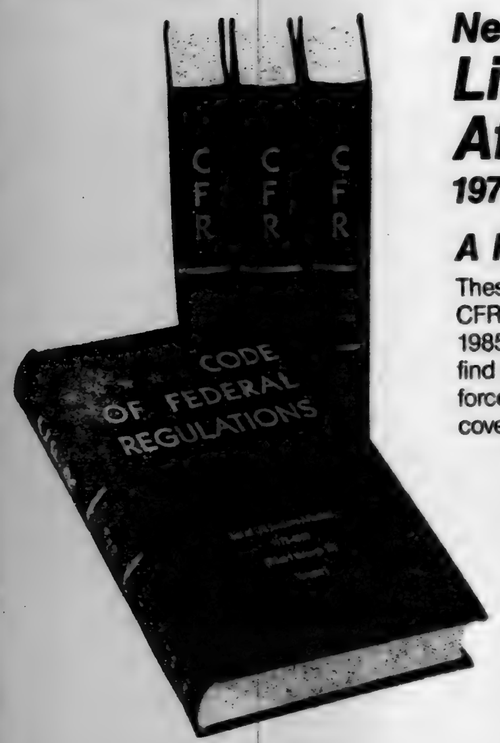


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Tuesday
July 14, 1992

**Briefing on How To Use the Federal Register**
For information on briefings in San Francisco, CA and Seattle, WA, see announcement on the inside cover of this issue.

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**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:

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4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### SAN FRANCISCO, CA

**WHEN:** July 22, at 9:00 am
**WHERE:** Federal Building and U.S. Courthouse, Conference Room 7209-A, 450 Golden Gate Avenue, San Francisco, CA
**RESERVATIONS:** Federal Information Center, 1-800-726-4995

### SEATTLE, WA

**WHEN:** July 23, at 1:00 pm
**WHERE:** Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA
**RESERVATIONS:** Federal Information Center, 1-800-726-4995

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# Rules and Regulations

Federal Register
Vol. 57, No. 135
Tuesday, July 14, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 905**

**[Docket No. FV-92-006FR]**

## Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Finalize Relaxed Handling Requirements for Valencia and Other Late Type Oranges and Honey Tangerines

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department is adopting as a final rule an interim final rule which: (1) Relaxed the minimum size requirement for export shipments of Valencia and other late type oranges to 2$^{11}/_{16}$ inches in diameter (size 163) from 2$^{9}/_{16}$ inches in diameter (size 125) through September 26, 1992; and (2) relaxed the minimum grade requirement for domestic and export shipments of Honey tangerines to Florida No. 1 Golden from Florida No. 1 through August 23, 1992. The relaxations were based on this season's current and prospective crop and market conditions, and on the grade, size, and maturity of the remaining supplies of these fruits.

**EFFECTIVE DATE:** August 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-5331.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major"rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 10,200 producers of these citrus fruit in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (committee), which administers the marketing order locally, met January 21, 1992, and unanimously recommended the relaxations for Valencia and other late type oranges and Honey tangerines. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the marketing order. Committee meeting are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

The interim final rule was issued on March 23, 1992, and published in the **Federal Register** (57 FR 10612, March 27, 1992), with an effective date of March 23, 1992, and a 30-day comment period ending April 27, 1992. No comments were received.

Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for Florida citrus. Such requirements for domestic shipments are specified in that section in Table I of paragraph (a), and for export shipments in Table II of paragraph (b).

The interim final rule relaxed the minimum size requirement for export shipments of Valencia and other late type oranges to 2$^{11}/_{16}$ inches in diameter (size 163) from 2$^{9}/_{16}$ inches in diameter (size 125) for the period March 23, 1992, through September 27, 1992. Relaxation of the minimum size requirements for Valencia and other late type oranges was designed to make smaller fruit available of acceptable maturity and flavor to meet consumer needs. The

Valencia and other late type orange shipping season in Florida normally begins in January and ends with shipment of late-bloom fruit during the following September.

The interim final rule also relaxed the minimum grade requirement for domestic and export shipments of Honey tangerines to Florida No. 1 Golden from Florida No. 1 for the period March 23, 1992, through August 23, 1992. The relaxation allowed slightly dryer fruit to be shipped to the fresh market, by permitting a one-quarter inch of dryness on the stem end of the fruit instead of the one-eighth inch previously permitted. This relaxation recognized the fact that this fruit tends to dry out during the latter part of the shipping season. This relaxation was designed to provide Florida shippers with the alternative of shipping Honey tangerines grading Florida No. 1 Golden to the fresh market, rather than diverting them to processing channels where returns may be lower than in the fresh market. This relaxation was designed to make increased supplies of fresh Honey tangerines available to consumers from this season's remaining crop.

The committee recommended these actions based on its analysis of the grade and size composition of this season's remaining Valencia and other late type orange and Honey tangerine crops. The committee anticipates that the demand will be good for size 163 Valencia and other late type oranges in the export market, and for Florida No. 1 Golden grade Honey tangerines in both the domestic and export markets during the remainder of the 1991–92 season, and that the fruit will meet consumer acceptance.

The minimum grade and size requirements under the marketing order are designed to provide fresh markets with fruit of acceptable quality, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is designed to increase returns to Florida citrus growers.

Under the marketing order for Florida citrus, handlers may ship up to 15 standards packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This action reflects the committee's and the Department's appraisal of the need to maintain the grade and size relaxations currently in effect. The Department's view is that this action will have a beneficial impact on producers and handlers since it will allow Florida citrus handlers to continue to ship those grades and sizes of fruit available to meet consumer needs consistent with this season's crop and market conditions.

Paragraph (a), Table I, column 4 of § 905.306 of the interim final set forth the correct minimum diameter requirement for Honey tangerines as 2$^{9}/_{16}$ inches, and this interim final rule maintains that action. That requirement was established for Honey tangerines shipped on and after August 16, 1986, by a rule published in the **Federal Register** (51 FR 15752, April 28, 1986). The minimum diameter requirement for Honey tangerines of 2$^{11}/_{16}$ inches cited in 7 CFR 905.306(a), Table 1 is incorrect, and the interim final rule corrected that error.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (57 FR 10612, March 27, 1992), will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 905**

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 905.306 [Amended]**

2. Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the **Federal Register** (57 FR 10612, March 27, 1992), is adopted as a final rule.

**Note:** This section will appear in the annual Code of Federal Regulations.

Dated: July 9, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–16387 Filed 7–13–92; 8:45 am]

BILLING CODE 3410–02–M

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**7 CFR Parts 916 and 917**

**[Docket No. FV–92–075IR]**

## 1992–93 Fiscal Year Expenses and Assessment Rates for the Marketing Orders Covering Nectarines and Peaches Grown in California

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenses and establishes assessment rates for the 1992–93 fiscal year (March 1–February 28) under Marketing Order Nos. 916 and 917. These expenses and assessment rates are needed by the Nectarine Administrative Committee and Peach Commodity Committee established under these marketing orders to pay their expenses and collect assessments from handlers to pay those expenses. This action will enable these committees to perform their duties and the marketing orders to operate.

**DATES:** This interim final rule becomes effective July 14, 1992. Comments which are received by August 13, 1992 will be considered prior to issuance of any final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331, or Kurt Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St.,

suite 102–B, Fresno, California 93721; telephone: (209) 487–5901.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Marketing Order Nos. 916 (7 CFR part 916) regulating the handling of nectarines grown in California, and 971 (7 CFR part 971) regulating the handling of fresh pears and peaches grown in California. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, nectarines and peaches grown in California are subject to assessments. It is intended that the assessment rate specified herein be made applicable to all assessable nectarines and peaches during the 1992–93 fiscal year, beginning March 1, 1992, through February 28, 1993. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court for the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 300 handlers of California peaches and nectarines subject to regulation under Marketing Order Nos. 916 and 917 and about 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

These marketing orders, administered by the Department, require that assessment rates for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by each marketing committee and submitted to the Department for approval. The members of these committees are producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by the packages of fresh fruit expected to be shipped under the order. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Nectarine Administrative Committee (NAC) met May 5, 1992, and unanimously recommended approval of a 1992–93 budget with expenses of $4,106,247 and an assessment rate of $0.1825 per 25-pound package of assessable nectarines handled. The 1992–93 nectarine budget is similar in scope to the one approved for 1991–92. Actual expenses for 1991–92 totaled $3,769,577, while the assessment rate was $0.1825.

The 1992–93 nectarine budget contains $569,940 for marketing order administration and miscellaneous items, $2,192,400 for market development, $125,322 for research, $1,009,085 for inspection, and $222,000 for uncollected assessment accounts. In comparison, actual expenditures for 1991–92 were $484,548 for marketing order administration and miscellaneous items, $2,090,590 for market development, $122,128 for research, $1,009, 519 for inspection, and $62,792 for uncollected assessment accounts.

Nectarine marketing order income for 1992–93 is expected to total $4,106,172, with assessment income estimated at $3,348,328, based on projected shipments of 18,347,000 packages of assessable nectarines. Other income includes $484,000 in Foreign Agriculture Service matching promotion program funds, $40,000 in other income including interest, and a $110,000 rebate from the inspection service from last season's inspection payment. The NAC's reserve amounted to $1,273,826 on March 1, 1992, an amount well within the maximum authorized under the marketing order.

The Peach Commodity Committee (PAC) met May 5, 1992, and recommended approval of a 1992–93 budget with expenses of $3,925,512 and an assessment rate of $0.19 per 25-pound package of assessable peaches handled. Eight members voted in favor of the proposed 1992–93 budget, while two members voted "no", because they favored a one-half cent lower assessment rate. The 1992–93 peach budget is similar in scope to the one approved for 1991–92. Actual expenses for 1991–92 totaled $3,626,005, while the assessment rate was $0.19.

The 1992–93 peach budget contains $550,270 for marketing order administration and miscellaneous items, $2,122,000 for market development, $125,322 for research $913,920 for inspection, and $214,000 for uncollected assessment accounts. In comparison, actual expenditures for 1991–92 were $436,886 for marketing order administration and miscellaneous items, $1,804,531 for market development, $130, 321 for research $1,226,304 for inspection, and $21,963 for uncollected assessment accounts.

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Peach marketing order income for 1992–93 is expected to total $4,224,017, with assessment income estimated at $3,404,800, based on projected shipments of 17,900,000 packages of assessable nectarines. Other income includes $484,000 in Foreign Agriculture Service matching promotion program funds, $32,000 in other income including interest, and a $100,000 rebate from the inspection service from last season's inspection payment. The PAC's reserve amounted to $911,156 on March 1, 1992, an amount well within the maximum authorized under the marketing order.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committees, and other information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) 1992–93 season California nectarines and peaches are currently being shipped to market; (2) this action should be expedited because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (3) the 1992–93 fiscal year for each marketing order began on March 1, 1992, and the marketing orders require that the rate of assessment for the fiscal year apply to all assessable California nectarines and peaches during the fiscal year; (4) handlers are aware of this action which was recommended by the committees at a public meeting and they will need no additional time to comply with these requirements; (5) the committees' financial reserves are expected to be depleted early in the 1992–93 season; and (6) the rule provides a 30-day comment period, and any written comments received will be considered prior to any finalization of this interim final rule.

**List of Subjects**

*7 CFR Part 916*

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

*7 CFR Part 917*

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

## PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 916.230 is added to read as follows:

**§ 916.230 Expenses and assessment rate.**

Expenses of $4,106,247 by the Nectarine Administrative Committee are authorized, and an assessment rate of $0.1825 per 25-pound package or equivalent of assessable nectarines is established for the fiscal year ending February 28, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

## PART 971—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

3. A new § 917.254 is added to read as follows:

**§ 917.254 Expenses and assessment rate.**

Expenses of $3,925,512 by the Peach Commodity Committee are authorized, and an assessment rate of $0.19 per 25-pound package or equivalent of assessable peaches is established for the fiscal year ending February 28, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

Dated: July 8, 1992.

**Charles R. Brader,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 92–16389 Filed 7–13–92; 8:45 am]

BILLING CODE 3410–02–M

**7 CFR Part 917**

**[Docket No. FV–92–041IFR]**

## Fresh Pears and Peaches Grown in California; Relaxation of Grade Requirements for Organic Pears for the 1992 Season

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule relaxes grade requirements for fresh shipments of Bartlett and Max-Red (Max-Red Bartlett, Red Bartlett) organic pears grown in California during the 1992 season. Organic pears are produced without the application of synthetically compounded fertilizers, pesticides, and growth regulators. The relaxation would facilitate the marketing of organic pears grown in California.

**DATES:** This interim final rule becomes effective July 14, 1992. Comments which are received by August 13, 1992 will be considered prior to issuance of any final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this interim final rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331, or Kurt Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St., suite 102–B, Fresno, California 93721; telephone: (209) 487–5901.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR part 917) regulating the handling of fresh pears and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 45 California pear handlers subject to regulation under the marketing order covering pears grown in California, and about 300 producers of pears in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

Handling regulations effective under this marketing order are effective on a continuing basis, subject to amendment, modification, or suspension as may be recommended by the Pear Commodity Committee (committee) and approved by the Secretary. The committee met February 6, 1992, and unanimously recommended that grade requirements for organic pears be relaxed to permit shipment of fruit with more appearance defects during the 1992 season.

Shipments of fresh California Bartlett and Max-Red (Max-Red Bartlett, Red Bartlett) pears are currently regulated by grade and size under § 917.461 (7 CFR 917.461, as amended at 56 FR 32062) of the marketing order. Under these requirements, such pears must grade at least U.S. Combination with 80 percent, by count, grading U.S. No. 1 and the balance grading U.S. No. 2. This rule relaxes these grade requirements to permit organic pears to be shipped if they grade at least U.S. Combination with 50 percent, by count, grading U.S. No. 1 and the remainder grading at least U.S. No. 2. Also, russeting, a discoloration of the skin of the fruit, would not be scored as a defect for organic pears.

Organic pears are defined in § 917.461 of the regulations as pears which are produced, harvested, distributed, stored, processed and packaged without the application of synthetically compounded fertilizers, pesticides or growth regulators. Additionally, no synthetically compounded fertilizers, pesticides or growth regulators shall be applied by the grower to the orchard in which the pears are grown for 12 months prior to the appearance of flower buds and throughout the entire pear growing and harvest season. Handlers who ship organic pears must provide, upon request, proof that such pears are grown in accordance with the provisions cited above.

The relaxation is expected to facilitate the marketing of organic pears, provide handlers with the opportunity to better meet the needs of organic pear consumers, and result in overall larger shipments of organic pears during the 1992 season. This relaxation is the same as relaxations made for organic pears for each of the past three seasons, and reflects the organic pear industry's experience in producing and marketing organic pears over that time.

Other handling requirements currently in effect for organic pears under § 917.461, including size, container and pack, remain in effect unchanged for 1992 season shipments.

This action reflects the committee's and the Department's appraisal of the need to relax the grade requirements for organic pear shipments. The Department's view is that the relaxation would not adversely affect marketing conditions for non-organic pears, particularly since organic fruit is normally sold in specialty markets.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the regulations set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Shipments of the 1992 crop are expected to begin in mid-July; (2) handlers are aware of the relaxed requirements and they need no additional time to prepare; (3) no useful purpose would be served by delaying the effective date of this action; and (4) the rule provides a 30-day comment period, and any written comments received will be considered prior to any finalization of this interim final rule.

**List of Subjects in 7 CFR Part 917**

Marketing Agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 917 is amended as follows:

## PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 917 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 917.461 is amended by revising paragraph (a)(1) to read as follows:

**Note:** This section will appear in the Code of Federal Regulations.

**§ 917.461 Pear Regulation 12.**

(a) No handler shall ship:

(1) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears which do not grade at least U.S.

Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1: *Provided*, That for the 1992 crop year, no handler shall ship organic pears of these varieties unless they grade at least U.S. Combination with not less than 50 percent, by count, grading at least U.S. No. 1 and the remainder grading at least U.S. No. 2, except that russeting shall not be scored as a defect for such organic pears. Handlers who intend to ship organic pears in accordance with this paragraph shall provide, upon request of the committee, with the approval of the Secretary, information to indicate that the pears were grown in accordance with the provisions of paragraph (b)(5) of this section.

* * * * *

Dated: July 8, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92-16388 Filed 7-13-92; 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Part 1220**

**[LS-91-004]**

## Soybean Promotion and Research Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts with changes the interim final rule which amended the Soybean Promotion and Research Order to modify the assessment collection procedures concerning soybeans pledged as collateral for loans issued by the Commodity Credit Corporation. This rule provides that the Commodity Credit Corporation would not collect assessments from proceeds of a loan unless a producer forfeits soybeans in lieu of loan repayment. The Commodity Credit Corporation as first purchaser would collect the assessments only on such forfeitures and remit to the Qualified State Soybean Board in the State where the soybeans were pledged, or if no Qualified State Soybean Board exists in such State, the Board. If a producer repays a loan and the soybeans are redeemed, the first purchaser of the redeemed soybeans would collect and remit the assessments or the producer would remit the assessment when the producer markets the soybeans as processed soybeans or soybean products of that producer's own production. These changes are designed to facilitate the assessment collection and remittance process and reduce the time and expense involved by eliminating the need for (1) the Commodity Credit Corporation to collect assessments from loans made to producers except in the case of forfeiture, and (2) Qualified State Soybean Boards to reimburse producers for assessments collected and remitted by the Commodity Credit Corporation upon disbursement of the loan.

**EFFECTIVE DATE:** July 14, 1992.

**ADDRESSES:** Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; AMS, USDA, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456. (Telephone: 202/720–1115).

**SUPPLEMENTARY INFORMATION:** Prior documents:

Final Rule—Soybean Promotion and Research Order published July 9, 1991 (56 FR 31043).

Interim Final Rule—Soybean Promotion and Research; Rules and Regulations published August 30, 1991 (56 FR 42923).

Interim Final Rule with request for comments published August 30, 1991 (56 FR 42921).

### Regulatory Impact

This final rule was reviewed in accordance with Executive Order No. 12291 and Departmental Regulation No. 1512–1 and has been classified as a "nonmajor" rule because it does not meet the criteria for a major rule as stated in the Order.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Soybean Promotion and Research Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The statute provides that the district court of the United States in any district in which the person who is a petitioner resides or carries on business has jurisdiction to review a ruling on the petition if a complaint for that purpose is filed not later than 20 days after the date of the entry of the ruling.

Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards. The exception provides that to ensure adequate funding of the operations of Qualified State Soybean Boards under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a Qualified State Soybean Board in that State may collect, and which is authorized to be credited under the Act.

This action also was reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). This rule modifies assessment collection procedures concerning soybeans pledged as collateral for loans issued by the Commodity Credit Corporation. The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small business entities.

### Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) the reporting and recordkeeping included in 7 CFR part 1220 were previously approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093 except that OMB No. 0581–0001 was assigned to an information collection requirement in § 1220.525(a)(2).

### Background

The Soybean Promotion, Research, and Consumer Information Act (Act) approved November 28, 1990, as subtitle E of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 provides for the establishment of a national program of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace, to maintain and expand existing domestic and foreign markets and uses for soybeans and soybean products, and to develop new markets and uses for soybeans and soybean products. This program will be financed by assessments on soybeans.

The Soybean Promotion and Research Order (Order), 7 CFR part 1220

published in the Federal Register on July 9, 1991, (56 FR 31043) in § 1220.223 defined the Commodity Credit Corporation as a "First Purchaser." Further, the Order provided that the Commodity Credit Corporation would deduct the assessments due pursuant to the Order prior to any loan proceeds being distributed to the producer. Designation of the Commodity Credit Corporation as a first purchaser in the case of all loans adds considerably to the administrative and clerical workload of the producer, the Commodity Credit Corporation, the Qualified State Soybean Boards and the United Soybean Board (Board). The procedure, as the Order is written, would require that the Commodity Credit Corporation deduct an assessment from the loan proceeds, remit it to the Qualified State Soybean Board or Board.

The Qualified State Soybean Board or the Board would refund the assessment to the producer upon notification from the Commodity Credit Corporation that the soybeans had been redeemed. The producer upon selling the redeemed soybeans would then pay an assessment to the first purchaser of the redeemed soybeans or the producer would remit the assessment when the producer markets the soybeans as processed soybeans or soybean products of that producer's own production. In most cases, the producer would not have received the refund of the assessment collected by the Commodity Credit Corporation by the time the producer would have to pay an assessment on the redeemed soybeans. This procedure is cumbersome and creates the opportunity for duplication and error. Under the loan program provisions of the Agricultural Act of 1949, the Commodity Credit Corporation is to minimize potential loan forfeitures.

The Board recommended that the remittance process would be greatly facilitated if the Commodity Credit Corporation were deemed to be the "First Purchaser" only when the producer forfeits soybeans pledged by that producer as collateral for said loan. The Commodity Credit Corporation, at the time of the loan settlement on the forfeited soybeans, would bill the producer for the assessments due based on 0.5 percent of the principal loan amount received by the producer and notify the producer to remit the specified amount of assessment to the Qualified State Soybean Board in the State in which the soybeans were pledged, or if no Qualified State Soybean Board exists in such State, the Board.

On August 30, 1991, the Agricultural Marketing Service published an interim final rule with request for comments (56 FR 42921) to amend the Order to provide that the Commodity Credit Corporation would be the first purchaser only when soybeans are forfeited in lieu of loan repayment.

The Department of Agriculture received five written comments concerning the amendment to the Soybean Promotion and Research Order. The commenters generally supported the amendment with certain qualifications.

The changes suggested by commenters are discussed below, together with a description of changes made by USDA as a result of the comments.

*Section 1220.223 Assessments*

Regarding section 1220.223(a)(5)(ii)(A), one commenter recommended that the Commodity Credit Corporation as first purchaser collect and remit assessments on soybeans forfeited in lieu of loan repayment instead of billing and notifying the producer to remit the assessment to the Qualified State Soybean Board or the Board. We believe this suggestion has merit. Therefore, we have amended this section to provide that the Commodity Credit Corporation must collect assessments, at the time of loan settlement, from producers who forfeit soybeans in lieu of loan repayment. Two commenters suggested changes in billing and notification procedures. However, due to adoption of the first suggestion eliminating the billing and notification procedures, these comments are not adopted.

Regarding § 1220.223(a)(5)(ii)(B), one commenter suggested adding the words "redeems and subsequently" to the first sentence after "If a producer * * *" We agree that adding the suggested words adds clarity to the sentence and this suggestion is therefore adopted.

These changes to the rule would further simplify the process by having the Commodity Credit Corporation collect and remit the assessment on soybeans forfeited in lieu of loan repayment.

The Commodity Credit Corporation would not be considered to be a first purchaser in instances where a producer has not forfeited the soybeans pledged as collateral for a loan. If a producer repays a loan and the soybeans are redeemed, the first purchaser of the redeemed soybeans would collect and remit the assessment or the producer would remit the assessment if the producer markets the redeemed soybeans as processed soybeans or soybean products of that producer's own production.

Accordingly, section 1220.223 is further amended to reflect these changes. Also, the definitions of first purchaser in § 1220.110 and of net market price in § 1220.115 are amended. Additional nonsubstantive changes are being made for clarity.

Pursuant to 5 U.S.C. 553 it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register.

The Soybean Promotion and Research Order was published as a final rule in the July 9, 1991, issue of the Federal Register (56 FR 31043). The Order was made effective on July 9, 1991, except that § 1220.223 concerning assessments was effective on September 1, 1991. This action amends § 1220.223 concerning assessments, and therefore, the revisions made herein should be made effective as soon as possible in order to facilitate the collection of assessments under the Order.

**List of Subjects in 7 CFR Part 1220**

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 1220 which was published at 56 FR 42921–42923 on August 30, 1991, is adopted as a final rule with the following changes:

## PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1220 continues to read as follows:

**Authority:** Title XIX, Pub. L. No. 101–624, 104 Stat. 3359,3881 (7 U.S.C. 6301–6311).

2. Section 1220.110 is amended by revising paragraph (b) to read as follows:

**§ 1220.110 First Purchaser.**

The term *first purchaser* means—

(a) * * *

(b) In any case in which soybeans are pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program and the soybeans are forfeited by the producer in lieu of loan repayment, the Commodity Credit Corporation.

3. Section 1220.115 is amended by revising paragraph (b) to read as follows:

**§ 1220.115 Net Market Price.**

The term *Net Market Price* means—

(a) * * *

(b) For soybeans pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program, and where the soybeans are forfeited by the producer in lieu of loan repayment, the principal amount of the loan.

4. Section 1220.223 is amended by revising paragraph (a)(5)(ii) to read as follows:

**§ 1220.223 Assessments.**

(a)(1) * * *

(5)(i) * * *

(ii)(A) If a producer pledges soybeans grown by that producer as collateral for a loan issued by the Commodity Credit Corporation and if that producer forfeits said soybeans in lieu of loan repayment, the Commodity Credit Corporation shall at the time of the loan settlement, collect from the producer the assessments due based on 0.5 percent of the principal loan amount received by the producer and remit the assessment to the Qualified State Soybean Board in the State in which the soybeans were pledged, or if no Qualified State Soybean Board exists in such State, the Board.

(B) If a producer redeems and subsequently markets soybeans which have been pledged as collateral for a loan issued by the Commodity Credit Corporation, the first purchaser shall collect and remit the assessments due pursuant to paragraph (a)(1) of this section; or if a producer markets such soybeans as processed soybeans or as soybean products, the producer shall remit the assessment pursuant to paragraph (a)(2) of this section.

* * * * *

Done at Washington, DC, July 8, 1992.

**John E. Frydenlund,**

*Deputy Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 92-16386 Filed 7-13-92; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 91-NM-217-AD; Amendment 39-8296; AD 92-15-03]**

### Airworthiness Directives; Boeing Model 737 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737 series airplanes, which requires that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this amendment are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program. This amendment is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway. An investigation revealed that eight out of ten brakes were near the maximum allowable wear limits before the RTO and were unable to absorb the required RTO energy, thus contributing to the accident. The actions specified by this AD are intended to prevent loss of brake effectiveness during a high energy RTO and cause further incidents/accidents.

**DATES:** Effective August 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of Federal Register as of August 18, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; and BFGoodrich Aerospace, Aircraft Wheels and Brakes Division, P.O. Box 340, Troy, Ohio 45373. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. David M. Herron, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (206) 227-2672; fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Boeing Model 737 series airplanes was published in the Federal Register on January 10, 1992 (57 FR 1124). That action proposed to require that all landing gear brakes be inspected for wear and be replaced if the wear limits prescribed in this amendment are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the rule as proposed.

One commenter requests that the proposed rule be revised to specify an interval for (repetitive) brake wear inspections. This commenter notes that the Boeing Maintenance Planning Document recommends that the brakes be inspected daily for wear; however, the commenter is concerned that brakes may wear beyond the maximum wear limit (mandated by the proposed AD) between two daily inspections during normal operations, especially if one or more high energy landings were made just after a scheduled brake wear inspection. The FAA infers that the commenter is requesting that the rule be changed to require a brake wear inspection prior to every flight. The FAA does not concur with such a request. The FAA recognizes that the commenter's concerns may be applicable to brakes toward the end of their wear life; however, to mandate such an inspection requirement would impose an undue economic burden on operators. By means of its maintenance inspection program, each operator establishes brake inspection and removal criteria based upon its individual operations. The intent of this AD is not to address any problem in the failure to detect wear, but to establish specific maximum limits for brake wear that have been validated as acceptable as they relate to the effectiveness of the brakes during a high energy RTO.

One commenter advises the FAA that, since the issuance of the notice, BFGoodrich has revised two service bulletins that were cited in the notice. The commenter requests that the changes described in the revised service bulletins be incorporated in the rule. The FAA concurs. Since the issuance of the notice, the FAA has reviewed and approved BFGoodrich Service Bulletin 2-1474-32-13, Revision 2, dated February 12, 1992, which changes the maximum brake wear limit for the 2-1474 series brakes from "1.0 to 1.3" inches to "1.0 to 1.4" inches depending on its build-up. The FAA has also reviewed and approved BFGoodrich Service Bulletin 2-1474-32-14, Revision 2, dated January 15, 1992, which improves clarity of the brake wear tables by adding headings. This service bulletin also changes the wear limit for the 2-1474 series brakes when used on Model 737-200 series airplanes from 1.55 inches to 1.50 inches. The following BFGoodrich brake part numbers are affected by the changes listed in the Revision 2 of these two service bulletins: 2-1474-5, 2-1474-3, 2-1474-2, 2-1474-1, and 2-1474. Both revisions were issued

as a result of wider and more accurate data related to service wear information. The FAA has changed the final rule to cite the latest revisions of these service bulletins.

The same commenter advises the FAA, that since issuance of the notice, Bendix has issued Service Bulletin No. 2606672–32–027, dated February 28, 1992. The commenter requests that operators be permitted to refer to this service bulletin for the listing of brake wear limits of Bendix brake part numbers 2606672–2, 2606672–3, and 2606672–4. The FAA concurs. Since the issuance of the notice, the FAA has reviewed and approved information in the service bulletin, described above. The brake wear limits called out are the same as those specified in the final rule. (The Bendix service bulletin is not referenced in the final rule, however.)

Paragraph (d)(2) of the notice contained a typographical error that has been corrected in this final rule. The service bulletin number was cited incorrectly as BFGoodrich Service Bulletin "2–1474–32–13." The correct service bulletin number is "2–1474–32–14."

Paragraph (e) of the final rule has been revised to clarify the procedure for requesting alternative methods of the compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,850 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimated that 882 airplanes of U.S. registry and 13 operators will be affected by this AD.

For 619 airplanes of U.S. registry, it will take approximately 15 work hours per airplane to accomplish the required actions, and the average labor cost will be $55 per work hour. In addition, the cost of parts to accomplish the change in wear limits for these 619 airplanes (the cost resulting from the requirement to change brakes before they are worn to their previously approved limits for a one-time change) is estimated to be an average of $2,270 per airplane.

For the remaining 263 airplanes there is no change to the currently recommended allowable wear limits and, therefore, no additional costs associated with this action.

Further, the FAA estimates that it will require 20 work hours per operator, at an average labor cost of $55 per work hour, to incorporate the requirements into an operator's FAA-approved maintenance inspection program.

Based on the figures discussed above, the total cost impact of the AD on U.S. operators is estimated to be $1,930,105.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

### List of Subject in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92–15–03. Boeing.** Amendment 39–8296. Docket 91–NM–217–AD.

*Applicability:* Model 737 series airplanes, equipped with brake part numbers (P/N) identified in paragraphs (a) through (d) of this AD, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after the effective date of this AD, accomplish the following:

(1) Inspect brakes having the brake part numbers shown below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within that limit.

| Brake Mfr. | Brake P/N | Boeing P/N | Max. wear limit |
|---|---|---|---|
| Bendix | 2601042–1 | 10–61063–12 | 1.36 inches. |
| Bendix | 2601042–2 | 10–61063–13 | 1.36 inches. |
| Bendix | 2601042–3 | 10–61063–14 | 1.36 inches. |
| Bendix | 2601042–4 | 10–61063–18 | 1.36 inches. |
| Bendix | 2601042–5 | 10–61063–21 | 1.63 inches. |
| Bendix | 2603442–2 | 10–61819–5 | 0.50 inch. |
| Bendix | 2603442–3 | 10–61519–5 | 0.50 inch. |
| Bendix | 2606672–1 | 10–61819–14 | 1.36 inches. |
| Bendix | 2606672–2 | 10–61819–17 | 1.60 inches. |
| Bendix | 2606672–3 | 10–61819–21 | 1.60 inches. |
| Bendix | 2606672–4 | 10–61819–28 | 1.60 inches. |
| BF Goodrich | 2–1521 | 10–62174–2 | 1.00 inch. |

(2) Incorporate the maximum brake wear limits specified in paragraph (a)(1) of this AD into the FAA-approved maintenance inspection program.

(b) For airplanes equipped with BFGoodrich Brake part number (P/N) 2–1444 (Boeing P/N 10–61819–11): Within 180 days after the effective date of this AD, accomplish the following:

(1) Accomplish the procedures described in paragraph 2.B(1) of the Accomplishment Instructions of BFGoodrich Service Bulletin 2–1444–32–5, dated January 24, 1991. If any brake is found to be worn more than the allowable brake wear limit specified in Table 1 of that service bulletin, prior to further flight, remove and replace the brake with a brake built in accordance with paragraph 2.B.(1)b. of that service bulletin, or with a brake having more than the allowable wear remaining as specified in Table 1 of that service bulletin.

(2) Incorporate the allowable wear limits specified in Column B of Table 1 of BFGoodrich Service Bulletin 2–1444–32–5, dated January 24, 1991, into the FAA-approved maintenance inspection program.

(c) For airplanes equipped with BFGoodrich Brake P/N 2–1474; 2–1474–1, –2, –2, –3, and –5 (Boeing P/N 10–61891–15, –22, –26, –27, and –31): Within 180 days after the effective date of this AD, accomplish the following:

(1) Accomplish one of the procedures described in paragraph 2.B.(1)a. of BFGoodrich Service Bulletin 2–1474–32–13, Revision 1, dated July 9, 1991 or Revision 2, dated February 12, 1992. If any brake is found to be worn more than the allowable brake wear limit specified in Table 1 of that service

bulletin, prior to further flight, remove and replace the brake with a brake built in accordance with paragraph 2.B.(1)b. of these service bulletins, or with a brake having more than the allowable wear specified in Table 1 of these service bulletins.

(2) Incorporate the procedures described in paragraph 2.B(1)b. of BFGoodrich Service Bulletin 2-1474-32-13, Revision 1, dated July 9, 1991 or Revision 2, dated February 12, 1992, into the FAA-approved maintenance inspection program.

(d) For brakes specified in paragraph (c) of this AD and used on Model 737-200 series airplanes only: As an alternative to the requirements of paragraph (c) of this AD, operators instead may accomplish the procedures specified in paragraphs (d)(1) and (d)(2) of this AD within 180 days after the effective date of this AD:

(1) Accomplish the procedures described in paragraph 2.B. (1)b of the Accomplishment Instructions of BFGoodrich Service Bulletin 2-1474-32-14, Revision 2, dated January 15, 1992. If any brake is found to be worn more than the allowable brake wear limit specified in Figure 1 of that service bulletin, prior to further flight, remove and replace the brake built in accordance with paragraph 2.B.(1)b. of that service bulletin, or with a brake having more than the allowable wear remaining as specified in Figure 1 of that service bulletin.

(2) Incorporate the procedures described in paragraph 2.B(1)b. of the Accomplishment Instructions of BFGoodrich Service Bulletin 2-1474-32-14, Revision 2, dated January 15, 1992, into the FAA-approved maintenance inspection program.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send if to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspection and replacement of landing gear brakes shall be done in accordance with the following service documents, as applicable: BFGoodrich Service Bulletin 2-1444-32-5, dated January 24, 1991; BFGoodrich Service Bulletin 2-1474-32-13, Revision 1, dated July 9, 1991; BFGoodrich Service Bulletin 2-1474-32-13, Revision 2, dated February 12, 1992; or BFGoodrich Service Bulletin 2-1474-32-14, Revision 2, dated January 15, 1992, which contains the following list of effective pages:

| Page No. | Revision level | Date |
|---|---|---|
| 1, 5 | 2 | January 15, 1992. |
| 2-4, 6-8 | 1 | July 9, 1991. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; and BFGoodrich Aerospace, Aircraft Wheels and Brakes Division, P.O. Box 340, Troy, Ohio 45373. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(h) This amendment becomes effective on August 18, 1992.

Issued in Renton, Washington, on June 22, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16524 Filed 7-13-92; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

**[Docket No. 91-NM-226-AD; Amendment 39-8284; AD 92-14-02]**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires inspection and modification of the life raft mooring line and inflation length. This amendment is prompted by reports of life rafts installed on freighters that do not have long enough mooring and/or inflation lines. The actions specified by this AD are intended to prevent damaged or unusable life rafts due to improper mooring line and inflation length on life rafts.

**DATES:** Effective August 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; or Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719-0180; or BFGoodrich Aerospace, Aircraft Evaluations Systems, 3414 South 5th Street, Phoenix, Arizona 85040; or Eastern Aero Marine, P.O. Box 593513, Miami, Florida 33159. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jayson B. Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2784; fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the Federal Register on January 15, 1992 (57 FR 1694). That action proposed to require inspection and modification of the life raft mooring line and inflation length.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

Two commenters request that service information released since the issuance of the notice be included in paragraph (a) of the rule as an acceptable means of compliance. The service information, which was issued by BFGoodrich, also provides specific cost estimates for accomplishing the proposed modification ($175 per life raft × 2 life rafts per airplane = $350 per airplane). The FAA concurs. Since the issuance of the notice, the FAA has reviewed and approved BFGoodrich Alert Service Bulletin No. 109102-25A-244, Dated December 13, 1991, that describes procedures for replacing the existing mooring/firing line of the life raft with one having a 33.5 foot inflation lanyard length and a 42 foot mooring lanyard length. These dimensions fall within the inflation and mooring lanyard length specifications required by paragraph (a) of this AD. The economic analysis paragraph, below, has been revised to include the parts costs listed in this service bulletin.

One commenter states that improper mooring/inflation line lengths on life rafts installed on Model 747 series airplanes used as freighters do not warrant AD action, since (1) an unusable life raft event due to the

unsafe condition has not occurred during test or in service; (2) the unsafe condition does not necessarily render an exit or escape system inoperable; and (3) to date, there have been no ditching incidents involving a Model 747 series airplane. The FAA does not concur. Although there have been no occurrences to date of ditching involving a Model 747 freighter, the potential always exists for such incidents to occur involving any airplane that conducts operations over bodies of water. Likewise, there have been no in-service incidents in which the life rafts have been rendered unusable due to the subject unsafe condition; however, a review of the design of the life raft's mooring line and inflation lanyard length, conducted by the manufacturers of the rafts, has revealed evidence that insufficient length of these components is an unsafe condition that could render the raft unusable when its use is required in the event of an emergency ditching. (The related details were explained fully in the preamble to the notice.) The fact that this unsafe condition may potentially exist on airplanes equipped with these life rafts justifies this AD action to eliminate the identified unsafe condition.

Several commenters request that the proposed compliance time of 6 months be extended to a period of time ranging from 12 to 18 months. This will allow the requirements of this AD to be accomplished during the time of a regularly scheduled "C" check. The commenter considers that the adoption of the proposed compliance time of 6 months would require operators to schedule special times for the accomplishment of the requirements of this AD, at additional expense. The FAA concurs with the commenter's request to extend the compliance time for the inspection requirement. Extending the compliance time by 6 additional months will not adversely affect safety, and will allow the required inspection and any necessary modification to be performed at a main base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available, if necessary. Paragraph (a) of the final rule has been revised to specify a compliance time of 12 months.

One commenter states that the rule should include the requirement for installation of an attachment fitting that is simple to operate and compatible with existing aircraft attachment provisions. The FAA does not concur. The FAA has determined, based on all data available to date, that there are no known problems with the attachment fittings on these airplanes.

One commenter asks that the rule permit operators to use a new service bulletin, recently released by Eastern Aero Marine, as a source of service information for procedures relevant to modifying the life rafts. The FAA concurs. The FAA has reviewed and approved Eastern Aero Marine Service Bulletin T9–25–1, dated January 31, 1992, that describes procedures for modifying certain life rafts that were manufactured by Eastern Aero Marine. Paragraph (a)(2)(iii) of the final rule has been revised to include this service document as an appropriate source of service information.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 175 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 75 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $350 per airplane ($175 per life raft × 2 life rafts per airplane). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $108,750 or $1,450 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92–14–02. Boeing:** Amendment 39–8284. Docket 91–NM–226–AD.

*Applicability:* Model 747 series airplanes operated as freighters, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent damaged or unusable life rafts due to improper mooring line and inflation length on life rafts, accomplish the following:

(a) Within 12 months after the effective date of this AD, inspect the life raft mooring line and inflation length. The mooring line length is measured from attachment fitting on the end of the mooring line to the connecting point on the raft. The mooring line must be no less than 39 feet long and no more than 44 feet long. The inflation length is the distance the life raft must be from its mooring line attachment point for inflation of the life raft to be initiated. Inflation should begin at not less than 33 feet and not more than 38 feet, as defined by the mooring line length.

(1) For life rafts with mooring line length and inflation length that meet the measurements specified in paragraph (a) of this AD, no additional action is required.

(2) For life rafts with mooring line length and inflation length that do not meet the measurements specified in paragraph (a) of this AD, accomplish the following prior to further flight:

(i) For life rafts listed in Air Cruisers Service Bulletin 35–25–3, dated October 22, 1990: Modify the life raft in accordance with that service bulletin.

(ii) For life rafts listed in Air Cruisers Service Bulletin 35–25–2, dated October 30, 1990: Modify the life raft in accordance with that service bulletin.

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(iii) For all other life rafts: Modify the life raft in accordance with BFGoodrich Alert Service Bulletin No. 100102–25A–244, dated December 13, 1991, or Eastern Aero Marine Service Bulletin T9–25–1, dated January 31, 1992, as applicable; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modifications shall be done in accordance with Air Cruisers Service Bulletin 35–25–3, dated October 22, 1990; Air Cruisers Service Bulletin 35–25–2, dated October 30, 1990; BFGoodrich Alert Service Bulletin No. 100102–25A–244, dated December 13, 1991; or Eastern Aero Marine Service Bulletin T9–25–1, dated January 31, 1992; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; Air Cruisers Company P.O. Box 180, Belmar, New Jersey 07719–0180; or BFGoodrich Aerospace, Aircraft Evaluations Systems, 3414 South 5th Street, Phoenix, Arizona 85040; or Eastern Aero Marine, P.O. Box 593513, Miami, Florida 33159. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment becomes effective on August 18, 1992.

Issued in Renton, Washington, on June 8, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–16523 Filed 7–13–92; 8:45 am]

BILLING CODE 4910–13–M

## 14 CFR Part 39

**[Docket No. 92–NM–04–AD; Amendment 39–8295; AD 92–15–02]**

## Airworthiness Directives; Beech Model 400 and Mitsubishi Models MU–300 and MU–300–10 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400 and Mitsubishi Models MU–300 and MU–300–10 airplanes, that requires replacement of all engine mount nuts and bolts with parts that have been inspected using required magnetic particle techniques. This amendment is prompted by a recent report that some engine mount nuts and bolts installed on these airplanes may not have been subjected to the required magnetic particle inspection prior to installation. The actions specified by this AD are intended to prevent reduced structural integrity of the engine mounting system.

**DATES:** Effective August 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. James M. Peterson, Aerospace Engineer, Propulsion Branch, ACE–140W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4145; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Beech Model 400 and Mitsubishi Models MU–300 and MU–300–10 airplanes was published in the **Federal Register** on April 8, 1992 (57 FR 11921). That action proposed to require replacement of all engine mount nuts and bolts with parts that have been inspected using required magnetic particle techniques.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

The FAA has determined that air safety and the public interest require the adoption of the rule with the change described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 154 Beech Model 400 and Mitsubishi Models MU–300 and MU–300–10 airplanes of the affected design in the worldwide fleet. The FAA estimates that 87 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $211 per airplane. Based on these figures, the total cost impact of the AD is estimated to be $32,712. This total cost figure has assumed that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92-15-02. Beech Aircraft Corporation:** Amendment 39-8295. Docket 92-NM-04-AD.

*Applicability:* Beech Model 400 airplanes, serial numbers RJ-1 through RJ-65, inclusive, Mitsubishi Model MU-300 airplanes, serial numbers A003SA through A091SA, inclusive; and Mitsubishi Model MU-300-10 airplanes, serial numbers A1001SA through A1011SA, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the engine mounting system, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, or at the next scheduled inspection interval, whichever occurs first, replace each engine mount nut and bolt with nuts and bolts that have been inspected using magnetic particle techniques (identified by green dye), in accordance with Beechcraft Service Bulletin 2408, dated June 1991 (for Beech Model 400 and Mitsubishi Model MU-300-10 airplanes); or Mitsubishi Service Bulletin 71-004, dated January 8, 1992 (for Mitsubishi Model MU-300 airplanes); as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manger, Wichita Aircraft Certification Office (ACO), ACE-115W, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manger, Wichita ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Beechcraft Service Bulletin 2408, dated June 1991 (for Beech Model 400 and Mitsubishi Model MU-300-10 airplanes); or Mitsubishi Service Bulletin 71-004, dated January 8, 1992 (for Mitsubishi Model MU-300 airplanes); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment becomes effective on August 18, 1992.

Issued in Renton, Washington, on June 22, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16525 Filed 7-13-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 92-NM-07-AD; Amendment 39-8283; AD 92-14-01]**

## Airworthiness Directives; SAAB-SCANIA Models SAAB SF340A and SAAB 340B Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain SAAB-SCANIA Models SAAB SF340A and SAAB 340B series airplanes, that requires inspections of the lower drag strut assembly to detect loose, damaged, or worn parts, and repair of discrepant parts. This amendment is prompted by recent field experience, which has revealed that the bolts and collars attaching the lower drag strut fitting have been losing their torque. The actions specified by this AD are intended to prevent loss of structural integrity of the powerplant installation and subsequent damage to the engine forward frame.

**DATES:** Effective August 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from SAAB-SCANIA AB, Product Support, S-581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain SAAB-SCANIA Models SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on March 4, 1992 (57 FR 7684). That action proposed to require inspections of the lower drag strut assembly to detect loose, damaged, or worn parts, and repair of discrepant parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Since issuance of the Notice, SAAB-SCANIA has issued Revision 2 to Service Bulletin 340-54-027, dated March 10, 1992, which corrects material information and certain costs associated with accomplishing the procedures described in the service bulletin. The FAA has revised the final rule to reflect this latest revision to the service bulletin as the appropriate service information source.

The FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 139 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,048. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92-14-01. SAAB-SCANIA** Amendment 39-8283. Docket 92-NM-07-AD.

*Applicability*: Model SAA SF340A series airplanes, serial numbers 004 through 159, inclusive; and Model SAAB 340B series airplanes, serial numbers 160 through 166, inclusive; certificated in any category.

*Compliance*: Required as indicated, unless accomplished previously.

To prevent loss of structural integrity of the powerplant installation and subsequent damage to the engine forward frame, accomplish the following:

(a) If, when accomplishing the inspections required by AD 90-05-10, Amendment 39-6530 (reference SAAB Service Bulletin 340-54-026), it was determined that MS21042 nuts had already been installed, and no change from collars to nuts had taken place, then accomplishment of this AD is not required.

(b) Except as provided in paragraph (a) of this AD, within 1,500 hours time-in-service after the effective date of this AD; and thereafter at intervals not to exceed 1,500 hours time-in-service; accomplish a visual inspection of the upper and lower drag strut attachment fittings and the adjacent skin area, the upper longeron and attaching frame, and the angle attaching the frame to the side wall to detect loose fasteners, loose fittings, and cracks; and accomplish a torque inspection of the MS21042 nuts, in accordance with section 1.B.(i) of SAAB Bulletin 340-54-027, Revision 2, dated March 10, 1992.

(1) If loose fasteners or fittings are found, prior to further flight, perform the detailed inspection required by paragraph (c) of this AD.

(2) If the installed MS21042 nuts are not loose, check the torque; and retorque, prior to further flight, if nuts are out of torque tolerance.

(3) If cracks are found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANN-113, FAA, Transport Airplane Directorate.

(c) Except as provided in paragraph (a) of this AD, within 3,000 hours time-in-service after the effective date of this AD; and thereafter at intervals not to exceed 3,000 hours time-in-service; inspect the drag strut attaching holes at each end of the drag strut (one upper and one lower attach fitting) to detect elongation, damage, and abnormal wear, in accordance with section 2.B.(ii) of SAAB Service Bulletin 340-54-027, Revision 2, dated March 10, 1992.

(1) If any holes are elongated or outside the specified tolerance, prior to further flight, repair in accordance with sections E. and F. of the service bulletin, as appropriate.

(2) If any damage found exceeds the limits of the modifications described in the service bulletin, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(d) Except as provided in paragraph (a) of this AD, prior to the total accumulation of 22,000 landings, or within 500 landings after the effective date of this AD, whichever occurs later, accomplish a detailed inspection of the lower drag strut attachment holes (Eddy Bolt/Hi-Lok) of the lower drag strut fitting, the inner side beam skin and the upper longerons, and the drag strut attachment holes in the upper and lower fittings, in accordance with section 2.D. of SAAB Service Bulletin 340-54-027, Revision 2, dated March 10, 1992.

(1) If the attaching holes are elongated or out of the specified tolerance, nmprior to further flight, repair in accordance with sections E. and F. of the service bulletin, as appropriate.

(2) If defects such as gouges, nicks, cracks, and creases are found, or if the damage found exceeds the limits of the modifications described in the service bulletin, prior to further flight, repair in a manner approved by the manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(e) Accomplishment of paragraph (d) of this AD constitutes terminating action for the requirements of paragraphs (b) and (c) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections and repair shall be done in accordance with SAAB Service Bulletin 340-54-027, Revision 2, dated March 10, 1992, which incorporates the following list of effective pages:

| Page No. | Revision level | Date |
|---|---|---|
| 1-3, 5-12,14... | 1 | July 4, 1991. |
| 4, 13 | 2 | March 10, 1992. |
| 15-20 | Original | Undated. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB-SCANIA AB, Product Support, S-581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(i) This amendment becomes effective on August 18, 1992.

Issued in Renton, Washington, on June 8, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16529 Filed 7-13-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 91-NM-250-AD; Amendment 39-8285; AD 92-14-03]**

## Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Model A320 series airplanes, that requires inspection, operational tests, and replacement of the hydraulic fire shut off valve actuator. This amendment is prompted by reports of the hydraulic fire shut off valve failing to close during maintenance checks. The actions specified by this AD are intended to prevent a short circuit of the hydraulic fire shut off valve actuator, which could result in the inability to isolate hydraulic fluid from an engine fire.

**DATES:** Effective August 18, 1992.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of August 18, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket No. 91–NM–250–AD, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Greg Holt, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Model A320 series airplanes was published in the Federal Register on February 12, 1992 (57 FR 5068). That action proposed to require inspection, operational tests, and replacement, of the hydraulic fire shut off valve actuator.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the compliance time for the replacement of hydraulic fire shut off valve actuators be extended from the proposed 3,000 hours time-in-service to 4,000 hours time-in-service, since the proposed timeframe is insufficient to remove and modify units. ATA maintains that the operational tests that would be required under proposed paragraph (c) will provide interim safety assurances to allow extension of the compliance period. The FAA concurs with this request. The FAA has received information indicating that the timeframe in which the vendor of the actuators can obtain, modify, and ship affected parts may exceed the proposed compliance time of 3,000 hours. For this reason, the FAA now considers that a compliance time of 4,000 hours time-in-service is warranted in order to provide adequate time for operators to comply with the requirements of this AD. The FAA has revised paragraph (d) of the final rule accordingly. The FAA has determined that this extension of the compliance time will not adversely affect safety.

Paragraph (e) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,940. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92–14–03. Airbus Industrie:** Amendment 39–8285. Docket 91–NM–250–AD.

*Applicability:* Model A320 series airplanes on which Modification 22155 has not been accomplished, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a short circuit of the hydraulic fire shut off valve actuator, which could result in the inability to shut off fuel to the engine in the event of an engine fire, accomplish the following:

(a) Within 400 hours time-in-service after the effective date of this AD, perform an inspection of the hydraulic fire shut off valve to ascertain the part number (P/N) of the actuator, in accordance with Airbus Industrie All Operator Telex (AOT) 29–04, Revision 1, dated June 1, 1991.

(b) If the actuator does not have P/N "EO 1100," without Amendment designation; or P/N "EO 1100, Amendment B": No further action is required.

(c) If the actuator has P/N "EO 1100," without Amendment designation; or P/N "EO 1100, Amendment B": Within 400 hours time-in-service after the effective date of this AD, perform an operational test of the fire shut off value in accordance with Chapter 29–10–00, page 501, of the airplane maintenance manual.

(1) If the value passes the operational test, repeat that operational test at intervals not to exceed 400 hours time-in-service.

(2) If the valve fails the operational test, prior to further flight, replace the actuator in accordance with Airbus Industrie All Operator Telex (AOT) 29–04, Revision 1, dated June 1, 1991.

(i) If the replacement actuator has P/N "EO 1100, Amendment A"; or P/N "EO 1100, Amendment AB"; or P/N "EO 1100, Amendment C"; or P/N "A06 A00": No further action is required.

(ii) If the replacement actuator has P/N "EO 1100," without Amendment designation; or P/N "EO 1100, Amendment B": Repeat the operational test at intervals not to exceed 400 hours time-in-service.

(d) Prior to the accumulation of 4,000 hours time-in-service after the effective date of this AD, replace each actuator that has P/N "EO 1100," without Amendment designation; or P/N "EO 1100, Amendment B"; with an actuator having P/N "EO 1100, Amendment A"; or P/N "EO 1100, Amendment AB"; or P/N "EO 1100, Amendment C"; or P/N "A06 A00." Accomplishment of this replacement constitutes terminating action for the repetitive operational tests required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspection and replacement shall be done in accordance with Airbus Industrie All Operator Telex (AOT) 29–04, Revision 1, dated June 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

(h) This amendment becomes effective on August 18, 1992.

Issued in Renton, Washington, on June 9, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–16526 Filed 7–13–92; 8:45 am]

BILLING CODE 4910–13–M

## 14 CFR Part 39

**[Docket No. 91–NM–211–AD; Amendment 39–8286; AD 92–14–04]**

## Airworthiness Directives; Fokker Model F–28 Mark 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F–28 Mark 0100 series airplanes, that requires a one-time inspection to detect cracks in the rivet holes of the vertical stabilizer, and repair, if necessary; and modification of the vertical stabilizer. This amendment is prompted by full-scale fatigue testing which revealed cracks in the surface and underlying structure of the vertical stabilizer. The actions specified by this AD are intended to prevent reduced structural capability of the vertical stabilizer.

**DATES:** Effecive August 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register and of August 18, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate,1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F–28 Mark 0100 series airplanes was published in the **Federal Register** on April 8, 1992 (57 FR 11926). That action proposed to require a one-time inspection to detect cracks in the rivet holes of the vertical stabilizer, and repair, if necessary; and modification of the vertical stabilizer.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Paragraphs (a) and (b) of the final rule have been revised to clarify the compliance time for the initial action.

Paragraph (c) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Currently, no airplanes of U.S. registry will be affected by this AD. However, should one of the affected airplanes be imported and placed on the U.S. Register in the future, it will take approximately 60 work hours per airplane to accomplish the required actions, and that the average labor rate will be $55 per work hour. Required parts will cost approximately $3,808 per airplane. Based on these figures, the total cost impact of the AD is estimated to be $7,108 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92–14–04. Fokker:** Amendment 39–8286. Docket 91–NM–211–AD.

*Applicability:* Model F–28 Mark 0100 series airplanes; serial numbers 11244, 11245, 11250 through 11256, inclusive, and 11268 through 11273, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent reduced structural capability of the vertical stabilizer, accomplish the following:

(a) For airplanes having serial numbers 11244, and 11250 through 11256, inclusive: Prior to the accumulation of 6,500 landings, or within 60 days after the effective date of this AD, whichever occurs later, disassemble the vertical stabilizer in accordance with part 1, Steps A. through C., of Fokker Service Bulletin SBF100-55-011, dated October 1, 1991.

(1) For airplanes that have accumulated 3,000 or fewer landings at the time the airplane is disassembled to comply with paragraph (a) of this AD, modify the vertical stabilizer, in accordance with part 1, Steps E. through G., of the service bulletin.

(2) For airplanes that have accumulated more than 3,000 landings at the time the airplane is disassembled to comply with paragraph (a) of this AD, inspect the rivet holes for cracks, in accordance with part 1, Step D., of the service bulletin.

(i) If no cracks are found, or if cracks are found that are less than 0.8 mm in length, modify the vertical stabilizer, in accordance with part 1, Steps E. through G., of the service bulletin.

(ii) If any crack is found that is 0.8 mm or longer, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(b) For airplanes having serial numbers 11245, and 11268 through 11273, inclusive: Prior to the accumulation of 6,500 landings, or within 60 days after the effective date of this AD, whichever occurs later, disassemble the vertical stabilizer in accordance with part 2, Steps A. through C., of Fokker Service Bulletin SBF100-55-011, dated October 1, 1991.

(1) For Airplanes that have accumulated 3,000 or fewer landings at the time the airplane is disassembled to comply with paragraph (b) of this AD, modify the vertical stabilizer, in accordance with part 2, Steps E. through G., of the service bulletin.

(2) For airplanes that have accumulated more than 3,000 landings at the time the airplane is disassembled to comply with paragraph (b) of this AD, inspect the rivet holes for cracks, in accordance with part 2, Step D., of the service bulletin.

(i) If no cracks are found, or if cracks are found that are less than 0.8 mm in length, modify the vertical stabilizer, in accordance with part 2, Steps E. through G., of the service bulletin.

(ii) If any crack is found that is 0.8 mm or longer, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(C) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and modifications shall be done in accordance with Fokker Service Bulletin SBF100-55-011, dated October 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

(f) This amendment becomes effective on August 18, 1992.

Issued in Renton, Washington, on June 9, 1992.

Bill R. Boxwell,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16530 Filed 7-13-92; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 15 CFR Parts 928 and 932

[Docket No. 910615-2061]

## Implementing the Coastal Zone Act Reauthorization Amendments of 1990; Phase One

**AGENCY:** Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements sections 6210 and 6212 of Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990. These sections amended the Coastal Zone Management Act of 1972 (CZMA) to authorize the making of coastal zone enhancement grants to the states, to revise the procedures applicable to review by the Secretary of Commerce, under section 312 of the CZMA, of a state's performance with respect to coastal management, and to authorize the Secretary to impose interim sanctions against a state. The regulations issued today set forth the criteria and procedures for applying for and awarding coastal zone enhancement grants, revise the procedures applicable to review by the Secretary of a state's performance with respect to coastal management, and set forth procedures for invoking and lifting interim sanctions.

**EFFECTIVE DATE:** August 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Vickie Allin, Policy Coordination Division (202/606-4100).

**SUPPLEMENTARY INFORMATION:**

### I. Authority

This final rule is issued pursuant to the authority of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451-1464).

### II. Availability of Comments

All comments received in response to the notice of proposed rulemaking for this rule (56 FR 52220, Oct. 19, 1991) are available for inspection at the Office of Ocean and Coastal Resource Management during normal business hours (8 a.m.-4:30 p.m.) in suite 701, Universal South Building, 1825 Connecticut Avenue, NW., Washington DC 20235.

### III. Regulatory Issues

#### *A. General Background*

The CZMA was enacted to encourage and assist coastal states and territories (states) in developing and implementing management programs to preserve, protect, develop and, where possible, restore or enhance the resources of our Nation's coast. On November 5, 1990, the President signed Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990. Subtitle C, known as the Coastal Zone Act Reauthorization Amendments of 1990 (1990 Reauthorization), of title VI of that Act, reauthorized and comprehensively amended the CZMA. The amendments include:

- A new Coastal Nonpoint Pollution Control Program, which requires each coastal state with a federally approved coastal zone management (CZM) program to develop a program, to be implemented through section 306 of the CZMA and section 319 of the Clean Water Act, to protect coastal waters from nonpoint source pollution. Program approval and oversight are shared between NOAA and the Environmental Protection Agency (EPA);
- A new enhancement grants program which encourages each coastal state to improve its CZM program in one or more of eight identified national priority areas: coastal wetlands management and protection, natural hazards management (including potential sea and Great Lakes level rise), public access improvements, reduction of

marine debris, assessment of cumulative and secondary impacts of coastal development, special area management planning, ocean resource planning, and siting of coastal energy and government facilities;

• A new "Coastal Zone Management Fund" (CZM Fund) consisting of Coastal Energy Impact Program loan repayments from which the Secretary of Commerce is directed to pay (subject to amounts provided in appropriation Acts) for the Federal administrative costs of the program and to fund special projects, emergency state assistance, and other discretionary CZM activities;

• New requirements for expanded public participation opportunities in the program evaluation process and expedited production of final evaluation findings, and new authority to impose interim sanctions involving suspension of financial assistance for 6 to 36 months if a state or national estuarine research reserve (reserve) designated under section 315 of the CZMA is failing to adhere to its federally-approved program or management plan or the terms of financial assistance awards;

• A new requirement for the Secretary to provide technical assistance and management-oriented research to support development and implementation of state CZM programs;

• Authorization for NOAA to make annual achievement awards to individuals and local governments for outstanding accomplishments in the field of coastal zone management;

• Clarification of the scope of the CZMA's Federal consistency provisions, which state that Federal actions in or affecting the coastal zone must be consistent with federally-approved state coastal management programs, and overturning the Supreme Court's 1984 decision in *Secretary of the Interior* v. *California*, in which the Court held that OCS oil and gas lease sales were not subject to Federal consistency;

• Modifications to the National Estuarine Research Reserve System under section 315 of the CZMA, including increasing the maximum amount of Federal financial assistance for land or water acquisition at an individual reserve from $4 to $5 million, and increasing the maximum Federal share of costs for managing reserves and supporting educational activities from 50 to 70 percent;

• Reorganization and consolidation of CZM program approval requirements and other technical changes, including new statements of findings and purpose, new and revised policies and objectives, and new and revised statutory definitions; and

• Three new program approval requirements regarding public participation in permitting processes, consistency determinations and other similar decisions, providing a mechanism to ensure that all state agencies will adhere to the program, and requiring enforceable policies and mechanisms to implement the applicable requirements of the new Coastal Nonpoint Pollution Control Programs, respectively.

*B. Approach to Rulemaking*

Because of the substantial scope of the amendments and the statutory requirement to promulgate regulations for the Coastal Zone Enhancement Grants Program by November 5, 1991, NOAA decided to undertake a phased rulemaking. The final rule issued today is the first phase. It implements sections 6210 and 6212 of the Omnibus Budget Reconciliation Act of 1990. These Sections amended the CZMA to authorize the making of coastal zone enhancement grants to the states, to revise the procedures applicable to review by the Secretary of Commerce, under section 312 of the CZMA, of a state's performance with respect to coastal management, and to authorize the Secretary to impose interim sanctions against a state.

NOAA believes it is premature to undertake rulemaking on most of the other amendments at this time. For example, NOAA needs more information before proceeding to rulemaking on program approvability requirements for the new nonpoint pollution control programs. This is because EPA must issue guidance on management measures for sources of nonpoint pollution on the basis of which States are to develop their programs. EPA has 18 months in which to develop this guidance. In addition, NOAA and EPA have joint approval authority for these programs. NOAA's regulations need to reflect agreement between NOAA and EPA on who will have authority to approve which parts of the program. Thus, rulemaking to implement the Coastal Nonpoint Pollution Control Program will be a later phase of the rulemaking process.

Similarly, NOAA will not proceed with rulemaking at this time to implement the new program approval requirements of section 306(d) (14), (15) and (16). This is because no state is required to meet these requirements until, at the earliest, 3 years from the date of enactment (or November 1993), and because the requirements of sections 306(d) (14) and (15) have been partially met already by existing state programs. NOAA will incorporate the requirements of sections 306(d) (14) and (15) into its program approval regulations and issue guidance to the States on meeting these requirements. The new requirement of section 306(d)(16) that state CZM programs contain enforceable policies to implement the new Coastal Nonpoint Pollution Control Programs will be incorporated into program approval regulations for these programs, when those regulations are developed.

NOAA will not issue regulations on the CZM Fund, the technical assistance program, or the CZM achievement awards at this time. Also, NOAA does not intend to revise its Federal consistency rules at this time. The changes to the Federal consistency provisions, except for overturning the Supreme Court's decision on outer continental shelf (OCS) oil and gas lease sales, merely codify NOAA's existing regulations. NOAA wishes to gain more experience with the new provisions, the issues likely to arise in their implementation, and the public and interagency concerns, before deciding how to address rulemaking on this subject.

The changes to the National Estuarine Research Reserve System (section 315 of the CZMA) are non-controversial conforming changes which will be included as a part of a separate rulemaking that will make other necessary clarifying changes to NOAA's existing section 315 regulations.

*C. Final Rule*

1. Coastal Zone Enhancement Grants Program

The 1990 Reauthorization amended section 309 of the CZMA to authorize a new Coastal Zone Enhancement Grants Program to encourage each coastal state to improve its CZM program in one or more of eight identified areas. Beginning in FY 1991, the Secretary is authorized to make grants (not less than 10 percent and not more than 20 percent of the amounts appropriated under sections 306 and 306A of the CZMA, up to a maximum of $10 million annually) to coastal states to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives. As part of this effort, the Secretary is required to evaluate and rank state proposals for funding, and make funding awards based on those proposals. The Secretary has the authority to suspend a state's eligibility for enhancement grant funding for at least one year, if the Secretary finds that the state is not

undertaking the actions committed to under the terms of the enhancement grant.

Section 309(d) requires NOAA to issue regulations relating to the new enhancement grants program that establish:

(1) Specific and detailed criteria that must be addressed by a coastal state (including the State's priority needs for improvement as identified by the Secretary after careful consultation with the State) as part of the State's development and implementation of coastal zone enhancement objectives;

(2) Administrative or procedural rules or requirements as necessary to facilitate the development and implementation of such objectives by coastal states; and

(3) Other funding award criteria as are necessary or appropriate to ensure that evaluations of proposals, and decisions to award funding, under this section are based on objective standards applied fairly and equitably to those proposals.

Since the statute required NOAA to implement the new enhancement grants program immediately, NOAA adopted an interim approach for FY 1991. This allowed time for development of the statutorily-mandated regulations and identification of each state's priority needs for improvement with regard to the coastal zone enhancement objectives. In FY 1991, NOAA set aside 10 percent of the funds allocated under section 318(a)(2) for section 309 purposes. These funds were allocated to states based on the formula and weighting factors at 15 CFR 927.1(c).

The process developed by NOAA for determining a state's priority needs has been set forth in NOAA guidance on "Section 309 Assessments and Strategies," issued on May 10, 1991. NOAA guidance is available from the Office of Ocean and Coastal Resource Management, Coastal Programs Division, Universal South Building, room 724, 1825 Connecticut Avenue, NW., Washington, DC 20235.

The process for determining a state's priority needs has two stages. First, each state develops a public assessment document ("Assessment") that reviews each enhancement objective as it applies to the state and identifies the relative importance of each objective. Based on the Assessment, NOAA, after careful consultation with the state, identifies the priority needs for improvement in the state.

Once NOAA has identified the priority needs, the second stage is development of a multi-year strategy ("Strategy"). The state, in consultation with NOAA, proposes, to NOAA for approval, a Strategy that identifies specific program changes that the state will seek to achieve in the identified priority areas. The Strategy guides the development of the state's FY 1992 and subsequent year section 309 grant proposals.

The final regulations implementing the new Coastal Zone Enhancement Grants Program under section 309 of the CZMA, as amended, assume that a state has completed an Assessment and Strategy in accordance with NOAA guidance. The final regulations are set forth at 15 CFR part 932, replacing the regulations currently at 15 CFR part 932.

The regulations at 15 CFR 932.1 set forth the basic eligibility requirements for receiving financial assistance under section 309. The objectives of assistance under section 309 (b), (c) and (d) are provided at 15 CFR 932.2.

Section 309(b) authorizes the Secretary to make grants to coastal States to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives. The term "program change" is defined at 15 CFR 932.3 to include state actions that change current management programs, such as the development of new or revised enforceable policies, authorities and state coastal land acquisition and management programs. NOAA believes the definition is generally flexible enough to fund many types of activities that will ultimately lead to a program change. However, NOAA will provide additional guidance to the states on eligible activities. Other key terms, such as "project of special merit," "fiscal needs" and "technical needs," are also defined at 15 CFR 932.3.

The regulations for allocating funds under section 309 are set forth at 15 CFR 932.4. NOAA will annually determine the amount of funds to be devoted to section 309, taking into account the amount appropriated under section 318(a)(2) of the CZMA, as amended. NOAA recognizes the need to maintain core funding for state coastal zone management programs and has modified its guidance accordingly.

NOAA will award section 309 funds by: (1) Weighted formula and (2) individual review of projects of special merit. Projects proposed for funding under both categories are not state entitlements and, therefore, would be required to meet the identified criteria discussed below. NOAA will annually determine the proportion of available funds to be awarded to all eligible coastal states by weighted formula and the proportion to be awarded to eligible coastal states based on NOAA's review of individual project proposals of special merit.

In response to comments received on the proposed regulations, NOAA will set a base allocation for section 306 and weighted formula funding. If funding allocations for sections 306 and 309 in any year are reduced, the reduction would first be taken from project of special merit funding, secondly from weighted formula funding and lastly from section 306 funding. This funding allocation scheme will be a part of the guidance document for the enhancement grant process.

Under the weighted formula approach, NOAA will establish state weighted formula funding targets. The weighted formula funding targets will be the state base allocation determined by operation of the formula at existing 15 CFR 927.1(c), multiplied by a weighting factor derived from NOAA's evaluation and ranking of the quality of the state's Strategy, as supported by the state's Assessment. The application of the weighting factor could result in a weighted formula funding target that is higher or lower than the state's base allocation.

Section 309 requires that the Secretary "evaluate and rank State proposals for funding." NOAA interprets the word "rank" to mean that a state's Strategy or project would be assigned a position or rank, relative to other state submissions, according to its satisfaction of the applicable criteria. NOAA anticipates that the ranking under the weighted formula approach could result in several ranking categories (so that some states would be assigned the same rank.)

NOAA will award the remaining section 309 funds, which are not awarded by the weighted formula approach, based on an annual review of projects of special merit. NOAA will limit the funding of projects of special merit to the highest ranked proposals based on criteria set forth at proposed 15 CFR 932.5(b). Competitive funding for projects of special merit is a new concept in distributing coastal zone management funding. However, NOAA believes that this is the CZMA's intent and will yield better projects.

The allocation process will allow each coastal state that has a NOAA approved Assessment and Strategy to pursue an enhancements program, while at the same time provide incentive for states to develop and submit more aggressive proposals which commit to making the greatest improvements toward the coastal zone enhancement objectives.

The regulations set forth the criteria for section 309 project selection at 15 CFR 932.5. States will be required to meet minimum criteria for projects that will be funded by weighted formula. For projects of special merit, states will be required to meet both minimum criteria

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and additional criteria that include the merit of the project. NOAA will evaluate and rank projects of special merit using a point system. Following the first year of funding under this part, NOAA will consider a state's past performance in assessing the merit of the state's individual project proposals.

The regulations also set forth pre-application procedures for financial assistance under section 309 at 15 CFR 932.6. As suggested in many of the comments received on the proposed regulations, the procedures have been simplified. States are encouraged but not required to annually consult with the Assistant Administrator or his/her designee. Further, only one submission prior to the final application is required. This "draft proposal" would include all of the information necessary to make grants for the section 309 projects the state proposes for funding during the next fiscal year and would be submitted on a schedule set by the Assistant Administrator.

The procedures for submission of formal applications and for reviewing and approving projects under section 309 are set forth at 15 CFR 932.7. Applications for financial assistance under section 309 will be included with applications for financial assistance under subpart J of existing 15 CFR part 923. States will be notified of their section 309 awards at the same time that they are notified of their section 306/306A awards.

The regulations set forth the procedures for revising a state's Assessment and Strategy at 15 CFR 932.8. States will be required to submit proposed revisions to the Assistant Administrator prior to the initiation of the contemplated change. Based on the extent to which the proposed revision(s) change the original scope of the state's Strategy, the Assistant Administrator may require the State to provide public review and comment on the proposed revision(s) in accordance with NOAA guidance.

2. Review of Performance (Program Evaluation)

Section 312 of the CZMA requires a continuing review of the performance of coastal states with respect to coastal management, and detailed written findings on the extent to which the state has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A)–(K) of the CZMA, and adhered to the terms of any grant or cooperative agreement. Section 312 further requires that a public meeting be conducted as part of each evaluation and that opportunity be provided for oral and written comment by the public. Evaluation reports must be issued following each review of state performance.

The 1990 Reauthorization mandated changes to the procedures for carrying out evaluations of state coastal management programs and national estuarine research reserves. (Any changes to procedures for evaluation of estuarine reserves will be included as a part of a separate rulemaking to revise NOAA's section 315 regulations.) These changes require: A 45-day notice for public meetings, written response to all written comments on the evaluation, and completion of the final evaluation report within 120 days of the last public meeting held in the state. The 1990 Reauthorization amended section 312 of the CZMA to authorize new interim sanctions which provide for suspension and redirection of any portion of financial assistance awards to state coastal management programs or estuarine reserves if the state is failing to adhere to its approved program or reserve management plan, or a portion of the program or plan. Final sanction provisions at section 312(d) require the Secretary to withdraw program approval and financial assistance if the state refuses to take corrective actions specified under section 312(c)(2).

The basic requirements for review of performance are set forth at existing 15 CFR part 928. They define key terms, such as "continuing review," and provide that evaluations will be conducted in the course of continuing reviews and that written findings will be prepared.

Specifically, these final regulations revise existing 15 CFR 928.4(b)(2) to require that notice of public meeting(s) be provided at least 45 days in advance. They revise existing 15 CFR 928.3(b)(7) to require that final findings be completed within 120 days of the last public meeting in the state. The regulation specifies that copies of the final findings document will be sent to all persons and organizations who participate in the evaluation. Persons who attend a public meeting or are interviewed during an evaluation may be asked to complete a card or sign-in sheet containing their name and address and indicating a desire to receive the final findings. A new regulation has been added at existing 15 CFR 928.3(b)(8) requiring that all final findings documents contain a section which specifically identifies, summarizes and responds to the written comments received during the evaluation process.

In addition, NOAA has determined that two of the statutory changes to section 312(b)—namely, the requirement to respond in writing to all written comments received and the requirement to complete the evaluation within 120 days of the last public meeting—will increase the workload associated with the evaluation process. To deal with this increased workload, the final regulations revise the definition of "continuing review" at existing 15 CFR 928.2(a) to state that evaluations of State coastal management programs will be conducted and written findings prepared at least once every three years, rather than at least once every two years as previously provided. (NOAA's estuarine reserve regulations at existing 15 CFR 922.40(b) already provide for evaluation of estuarine reserves at least once every three years.) The phrase "but not more than once every year" has been deleted, so as not to restrict unnecessarily NOAA's flexibility to conduct issue or problem specific evaluations, as described below.

In addition, because NOAA recognizes that significant changes can occur in three years, the final regulations at existing 15 CFR 928.3(b)(9) provide for issue or problem specific evaluations to be conducted between regularly scheduled evaluations. In response to public comment, the regulation has been revised to clarify the conditions under which an issue or problem specific evaluation will be held: (1) To follow-up on potentially serious problems or issues identified in the most recent scheduled evaluation, or (2) to evaluate evidence of potentially serious problems or issues that may arise during the day-to-day monitoring of state performance of grant tasks and other program implementation activities in the interim between scheduled evaluations. These issue or problem specific evaluations will still be subject to the public participation and other minimum requirements of section 312. States will be notified of an issue or problem specific evaluation in the same manner as they are notified of a regularly schedule evaluation.

The regulations set forth the process for invoking interim sanctions at existing 15 CFR 928.5(a). They replace the old regulations on reduction of financial assistance for failure to make significant improvements, which were deleted because the significant improvement provisions were deleted in the 1990 Reauthorization. The process for invoking interim sanctions includes notice to the state and opportunity to comment on and rebut the finding of non-adherence on which the sanctions are based before any action is taken. Indicators of non-adherence are

provided to inform states of what NOAA expects and on what basis interim sanctions might be invoked.

To implement the changes to section 312(d) of the CZMA made by the 1990 Reauthorization, existing 15 CFR 928.5(b) entitled "Withdrawal of Program Approval and Financial Assistance" replaces the references to "unjustifiable deviation" with the requirement that the Assistant Administrator withdraw program approval and financial assistance if he/she finds that a state has failed to take the actions required under the interim sanction provisions of section 312(c).

*D. Summary of Public Comments and Responses*

On February 22, 1991, OCRM distributed issue papers on the rulemaking for the Coastal Zone Enhancement Grants Program and Review of Performance to approximately 225 interested parties on a mailing list established for this rulemaking and maintained by OCRM. Thirty-eight comments were received. After considering these comments, NOAA published a Notice of Proposed Rulemaking (56 FR 52220, Oct. 19, 1991) which invited public comments for 45 days, ending December 2, 1991. A public meeting was held on November 20, 1991. Comments were received from 41 sources, including 1 Federal agency, 3 NOAA offices, 20 coastal states and territories (30 letters), 3 interest groups, 1 business, 2 members of the Coastal Ocean Policy Roundtable, and 1 Congressional committee. The majority of commenters submitted comments on the regulations proposed to govern the Coastal Zone Enhancement Grant Program. A summary of the significant comments received together with NOAA's response organized by applicable subheading appear below.

**A. Part 928—Review of Performance**

*Section 928.3 Procedures for Continuing Review of Approved State Coastal Zone Management Programs*

*Comment:* Three comments expressed concern with the proposed revisions to § 928.3(b)(7).

(a) One comment objected to the deletion of the phrase "state comments" which the commenter felt may indicate unwillingness on the part of the Assistant Administrator to respond to a state's position or reasoning.

*Response:* No such intention should be read into this revision. Subsection 928.3(b)(7) established the timeframe for completing final evaluation findings. Previously, that timeframe was measured from the date of receipt of state comments on the draft findings. The 1990 Amendments instituted a new requirement to complete the final findings within 120 days, measured from the date of the last public meeting in the state. The revisions simply implement the new requirement. They do not change the state's right to comment on the draft findings or NOAA's obligation to consider the state's comments.

(b) Another comment asked why the final evaluation findings should only be sent to those completing a card or sign-in sheet when the amendments call for the final findings to be sent to all participants in the evaluation.

*Response:* NOAA intends to send final findings to all who participate in evaluations. The purpose of the card or sign-in sheet is to verify the addresses and affiliations of persons who speak or are interviewed during the evaluation and to offer multiple individuals from the same organization the option of receiving individual copies or a single copy for the organization, as they wish. NOAA has modified the language of this regulation slightly to clarify its intent.

(c) One comment recommended that NOAA send a notice announcing the availability of the draft evaluation findings to all participants in the evaluation at the time the draft findings are sent to the state for review.

*Response:* NOAA disagrees. The draft findings contain preliminary conclusions and tentative recommendations and include material subject to revision. They are made available for review and comment to the organization responsible for the matters addressed.

*Comment:* One comment concerned proposed § 928.3(b)(8). That comment recommended that NOAA summarize and respond to oral comments made at the public meetings and attach the full text of the written comments it summarizes and responds to as an appendix to the final findings.

*Response:* NOAA disagrees. The statute requires NOAA to respond only to written comments, recognizing the difficulty of summarizing and responding to the vast amount of oral comment on evaluations. Even restricting a summary to oral comments at public meetings would require turning those informal meetings into formal hearings with written transcripts. This would add greatly to the cost and workload of evaluation without a corresponding benefit. Oral comments are considered in developing the findings and recommendations and are cited as appropriate in the findings document.

*Comment:* One comment sought criteria and a mechanism for notifying states of issue or problem-specific evaluations under the proposed revisions to § 928.3(b)(9).

*Response:* NOAA agrees and has revised the regulation to indicate when it would consider undertaking an issue or problem-specific evaluation. NOAA does not believe any change is needed regarding notification mechanism since the regulation states that the procedures of §§ 928.3 and 928.4 will be followed. This includes the notification procedure at § 928.3(b)(3).

*Section 928.5 Enforcement*

*Comment:* Several comments concerned the procedures for imposing interim sanctions.

(a) One comment stated that the enforcement section was onerous and dealt only with mandatory recommendations.

*Response:* The comment appears to confuse the regulations implementing the interim sanctions provisions with changes made by NOAA to the format of its evaluation findings. Recently, in conjunction with notifying states of its FY 1992 evaluation schedule, NOAA/OCRM informed them that it was making two changes to the format of the evaluation findings. One of these changes is to distinguish between suggested or necessary actions. Since the format of evaluations is not specified in regulation, the regulations are not affected by this change. The regulations at § 928.5 specify the procedures for invoking interim sanctions. These procedures will be invoked only if a state is found to be not adhering to all or a portion of its approved management program.

(b) One comment expressed concern that suspension and redirection of funds already allocated by the lead state agency through signed contracts could cause undue hardship.

*Response:* NOAA's procedures for invoking interim sanctions call for the state to develop a proposed workplan which may propose alternative actions and/or an alternative schedule to correct a non-adherence problem. NOAA expects that its consultations with the state on this workplan would serve to identify and provide a means to avoid the undue hardship identified by the commenter.

(c) One comment recommended that the state be required to provide for public review and comment on the workplan it submits pursuant to § 928.5(a)(vi).

*Response:* NOAA believes that public review and comment is inappropriate. Of course a state is free to solicit comments regarding its proposed workplan.

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(d) One commenter recommended that the "schedule of actions that should be undertaken by the State" in § 928.5(a)(1)(ii)(A) be one that is developed with due regard for the state's administrative ability to satisfy it.

*Response:* NOAA's procedures at § 928.5(a)(2)(vi) provide for the state to suggest an alternative schedule.

*Comment:* Several comments concerned the indicators of non-adherence that NOAA may consider in deciding whether to invoke interim sanctions.

(a) One comment called for the development of national standards for judging the performance of state coastal zone management programs.

*Response:* Given the statutory flexibility given to states in designing the content and organization of their programs, NOAA has concluded that national standards applicable to all programs are infeasible at this time. NOAA has included several indicators on non-adherence which encompass the various approvable organizational structures of approved programs and which provide guidance to the states on what NOAA expects and on what basis NOAA would consider imposing interim sanctions.

(b) One comment cautioned NOAA not to rely on the new requirements of Sections 306(d) (14), (15), and (16) in assessing state performance until guidance has been issued to the states and they have had a reasonable opportunity to comply.

*Response:* NOAA agrees and has revised its indicators at § 928.5(a)(3)(i)(B) and (E) accordingly.

(c) One commenter stated that the regulatory requirements at § 923.40 (as referenced in § 928.5(a)(3)(i)(B)) did not become legally binding until April 1, 1978, and therefore should not be applied to state programs approved before that date.

*Response:* Although not applied retroactively, states whose programs were approved prior to April 1, 1978, were given a reasonable time to bring their programs into conformance with the new requirements. At this time, all approved programs have been found to comply with § 923.40.

(d) One commenter requested that the statutory and regulatory basis for requiring notice that a management program decision would conflict with a local zoning ordinance be set forth in § 928.5(a)(3)(i)(E).

*Response:* NOAA has done so.

(e) One comment expressed concern that the review standard of "non-compliance of local coastal programs with the approved state program [including] local permitting or zoning decisions that are inconsistent with state standards or criteria * * *" may be outside a state coastal zone management program's control.

*Response:* This indicator refers only to state coastal programs that have chosen the local coastal program form of organization. All of these programs must be found to have a legally enforceable mechanism to assure local coastal programs they approve will adhere to state standards or criteria. Therefore, if this indicator were truly outside the state coastal management program's control, that program would no longer be approvable.

(f) One comment requested NOAA define what it meant by "in a timely fashion" at § 928.5(a)(3)(i)(G).

*Response:* NOAA has modified this indicator to clarify that program changes must be submitted within the timeframes specified at §§ 923.81 and 923.84.

(g) One commenter recommended adding to the indicator at § 928.5(a)(3)(ii) consideration of the magnitude of the injury or threat to coastal resources caused by the non-adherence.

*Response:* NOAA's indicators encompass both procedural and substantive aspects of program performance. Although NOAA does not believe it is appropriate to modify the section indicated, NOAA does agree that its consideration of the substantive aspects of program performance should consider the on-the-ground impacts of a possible non-adherence issue.

Therefore, NOAA has modified § 928.5(a)(3)(i)(A) to encompass such consideration.

*Comment:* One comment concerned the proposed revisions to the regulations on withdrawal of program approval and financial assistance. That comment recommended NOAA increase the period for states to respond to a proposed notice of withdrawal from a maximum of 60 days to a maximum of 90 days, in light of NOAA's proposal to increase the period between regularly scheduled evaluations from 2 to 3 years.

*Response:* There is no relationship between the period of time between regularly scheduled evaluations and the period of time allowed for state response to a notice of withdrawal of program approval. NOAA believes 60 days for state response to the proposed withdrawal notice is sufficient.

**B. Part 932—Coastal Zone Enhancement Grants**

NOAA received many comments that were critical of its proposed regulations. However, NOAA believes the basic structure of its regulations is sound. NOAA believes the allocation of some funds by weighted formula and some by individual project evaluation and ranking provides a reasonable accommodation to state needs for longer-term predictable funding while assuring that the funds will go to the best projects. Therefore, although some changes have been made to address specific suggestions and to simplify the requirements where possible, the basic provisions contained in the proposed regulations remain unchanged.

*Section 932.1 General*

*Comment:* Seven comments expressed opinions about the general nature of the regulations.

(a) Several comments supported the enhancement grants program. One of them stated, however, that a state should not be punished if it did not participate in the program.

*Response:* The enhancement grants program under § 309 is a voluntary program. Failure to participate will in no way affect funding of base programs under § 306.

(b) One comment expressed concerns about the use of a weighted formula for any portion of the grants. The comment stated that the proposed weighting formula was too cumbersome, unnecessarily complex, and not in the spirit of the original CZMA.

*Response:* NOAA believes that a weighted formula is an appropriate method of carrying out CZMA's intent for NOAA to "rank and evaluate" proposals.

(c) Several comments stated major concerns about the competitive nature of grant awards.

*Response:* NOAA believes that Congress intended that section 309 grants be awarded through a competitive process.

(d) One comment recommended that an alternative process for allocating funds under section 309 be instituted for FY 92, and that the majority of the money be distributed using the same formula as for section 306 funding. Another commented that the rules should be adopted as "interim final" and finalized after experience is gained.

*Response:* NOAA believes that proceeding with the adoption of these regulations will not interfere with the fair and timely issuance of grants under these regulations for FY 92. NOAA does not believe that the intent of the CZMA is for NOAA to distribute these funds through the use of the section 306 formula. NOAA believes that the issue of potential amendments to the regulations is premature and that the majority of issues can be addressed in periodic guidance documents.



*Section 932.2 Objectives*

*Comment:* Three comments concerned the objectives.

(a) Two comments stated that the regulations too narrowly defined the objectives in regards to demonstrable improvements in the way resources are managed. They cited section 309(a) and (d) to show that other methods of management may be warranted under the enhancement grant program.

*Response:* NOAA disagrees. The overriding factor in determining both the objectives and the definition of "program change" at § 932.3(a) is the use of the phrase "may make grants to coastal states to provide funding for development and submission for Federal approval of program changes." Therefore, no changes have been made to this section.

(b) One comment sought the addition of two objectives.

*Response:* The objectives in this section reflect the objectives in section 309(a) of the CZMA. NOAA does not believe that additional objectives can be added unless the CZMA is further amended.

*Section 932.3 Definitions*

*Comment:* Twenty-five respondents commented on the definition of "Program change". One comment stated that the definition should be tied directly to accomplishments such as routine program implementation (RPI) or program amendments and should not be used simply to implement existing programs. Twenty-three respondents (all coastal states and territories) felt the definition was much too narrow. The most frequent clarification was that the definition should include limited implementation of program improvements developed under section 309. Another frequently recommended expansion of the definition was to allow program improvements that were somehow under the threshold of RPI.

*Response:* NOAA believes that the objective of the enhancement grant program is "program changes", primarily enforceable policies. Historically, states have tended not to submit routine changes due to the amount of processing necessary to initiate these changes. NOAA will consider revising its guidance for routine program changes (called routine program implementation or RPI) to effectively reduce the amount of paperwork required of the states so that this enhancement grant program can run efficiently.

*Comment:* Two respondents offered comments on the definition of "Assessment".

(a) One commenter stated that the guidance for preparing an assessment should have to be submitted to public review just as the state must have public review as an integral part of the assessment process.

*Response:* NOAA routinely circulates draft guidance to the states and other interested parties for comment prior to initiating its use. The guidance is not of such a nature that it requires comment through a formal public notice process.

(b) One commenter stated that the proposed definition was too negative in that it only mentioned "problems" related to the enhancement objectives.

*Response:* NOAA agrees and has used the phrase "problems and opportunities" in the final regulations.

*Comment:* Two respondents offered comments on the definition of "Strategy". They felt that the strategy document was being too narrowly defined and that it should focus on a wider variety of issues and not necessarily identify all implementation methods that may be used. They pointed out that a part of the strategy may be to identify the tools.

*Response:* NOAA does not intend to exclude meaningful visionary elements from the strategy process, but must insist that the documents submitted have defined goals and objectives with paths and benchmarks to determine if the objectives are being met. While some "solutions" may not be evident at the beginning of the process, NOAA would like a clear, focused description of the process to be used to develop the enforceable policies required of the enhancement grant program.

*Comment:* Two respondents commented on the definition of "Fiscal needs". They stated that the definition combined with the requirements at § 932.6(b)(5)(i) are far greater than are required to adequately show fiscal need.

*Response:* NOAA is required to show that the Federal funds are needed by the state prior to making grant awards. The requirements at § 932.6(b) may seem extensive, yet are not meant to require lengthy analysis. Therefore, the language has been retained in the final regulations.

*Comment:* One respondent commented that the definition of "Assistant Administrator" needed to specifically define who would be the "designee".

*Response:* Delegation of Authority within NOAA will follow normal defined NOAA procedures. Accordingly, no change is needed to this definition.

*Section 932.4 Allocation of Section 309 Funds*

*Comment:* Twenty-one respondents commented that the base level of funding under section 306 should be maintained.

*Response:* NOAA agrees that a base dollar level of funding (based on FY 91 funding) should be maintained and will modify its guidance document accordingly. The guidance document is also being amended to reflect a three tier approach to funding: Base section 306 funding, a base weighted formula funding, and project of special merit (PSM) funding available annually on a competitive basis. Each of the three levels would be set annually after appropriation levels have been enacted. If less funds are appropriated than the previous year, the PSM funding would be reduced. If additional cuts are needed, weighted formula funding would be reduced, followed, as a last resort, by reductions in base section 306 funding.

*Comment:* Sixteen respondents commented on (b) the allocation of funds between sections 306 and 309. One party commented that the regulations should reflect Congressional intent by providing that the full 20 percent of CZM funding go to section 309 unless, due to lower than anticipated appropriations, base state programs would be impaired. Fifteen respondents recommended that the Assistant Administrator set the allocation to section 309 at the minimum (10 percent) level unless the base section 306 funding increased.

*Response:* NOAA believes that the funding levels should be set annually as a part of the guidance document after appropriation levels have been set by Congress. The rule merely repeats the language of section 309, and no change has been made.

*Comment:* Twenty-two respondents commented on (c) the allocation of funds between weighted formula and projects of special merit. Of these, one commenter recommended that at least 90 percent be allocated to weighted formula; four commented that at least 80 percent go to weighted formula; two stated 75 percent to weighted formula; one recommended at least 60 percent to weighted formula. The remainder stated that "as much as possible go to weighted formula" or "the allocation of funds be made as predictable as possible."

*Response:* NOAA is establishing, as a matter of policy, as previously stated in the response to comments on section 932.4(1) above, a base weighted formula

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dollar amount rather than a ratio between weighted formula and projects of special merit. This will give the states more predictability in funding multi-year strategies and projects. This funding criterion will also appear in the guidance document.

*Comment:* Several respondents commented on section (d) weighted formula funding.

(a) Several commented on the range of weights as applied in the guidance.

*Response:* Section 932.4(d)(4) merely states that the Assistant Administrator may set a range of weights. NOAA believes that the actual range of weights should be set forth in the guidance document, as opposed to the regulations, so that it can be readily amended to reflect changes in funding levels and experience with managing the program.

(b) Several commented that the weighted formula process was much too complicated and subjective.

*Response:* NOAA has revised this section to clarify the actual process to be followed in the review of weighted formula projects which will make it less complex. In regard to the subjectivity comment, NOAA believes that the detailed process outlined in these regulations and the guidance document will ensure the objective application of the standards.

*Comment:* Eighteen respondents commented on (e) funding for projects of special merit. Of these, seventeen expressed their concern about interstate competition, and one expressed support for the process and recommended that there not be any caps placed on the amount that any one state should be able to receive.

*Response:* NOAA continues to believe that the projects of special merit are a vital part of the enhancement grants program. We are refining the FY 92 guidance document to address the issue of caps on individual state grants under this program. We believe that increasing the amount of funds available under weighted formula funding has made the projects of special merit (with lower funding levels) even more competitive and thus caps for individual states may not seem appropriate at this time. The guidance document is the appropriate place for discussion of these caps.

*Section 932.5 Criteria for Section 309 Project Selection*

*Comment:* Twenty respondents commented on the general project selection criteria.

(a) Nineteen of these respondents commented that the procedures outlined in the proposed regulations were much too complex and cumbersome.

*Response:* In an effort to make the application procedures less complicated, in addition to the changes made at § 932.5, other changes have been made. In § 932.6, pre-submission consultation is made optional. The regulations also clarify that the initial or draft proposal is in the same format and will contain the same information as the final application at § 932.7.

(b) One commented that NOAA should avoid the urge to "over-quantify" the process.

*Response:* NOAA believes that the process outlined in § 932.5 is an objective and fair process without unnecessary reliance on quantification.

*Comment:* Several parties commented on (b) the criteria for projects of special merit.

(a) One commenter stated that interstate projects should be given higher priority.

*Response:* The former section 309 of the CZMA dealing with interstate grants was repealed as a part of the 1990 Reauthorization. Therefore, projects of this type are ineligible for funding under the new section 309; however, they are eligible for funding under the new section 308, the Coastal Zone Management Fund.

(b) One respondent commented that the terms "overall benefit of the project to the public" and "transferability" should either not be used or should be defined prior to their use as evaluation criteria. Another respondent commented that "technical needs" should not be used an evaluation criteria.

*Response:* NOAA believes that all three of these criteria are appropriate and necessary evaluation measures.

*Section 932.6 Pre-application Procedures*

*Comment:* As stated at § 932.5, many commenters stated their opinion that the evaluation and application processes were too complex.

*Response:* NOAA has simplified the process in the final regulations. The "pre-submission consultation" has been made an optional process due to the high level of consultation that will be required during the assessment and strategy preparation. Further, the "pre-proposal" process has been clarified by renaming it the "draft proposal" to indicate that no additional information is required for the final application.

*Comment:* Two respondents commented that travel should be an eligible expense under the enhancement grants.

*Response:* NOAA agrees and has revised § 932.6(b) to include travel as an allowable expense.

*Comment:* One commenter suggested that a public review step be added to both the pre-proposal process and the strategy revision process.

*Response:* Public participation in the strategy amendment process may be required by the Assistant Administrator at § 932.8 if the changes significantly revise the scope of the approved strategy. Public participation at the draft proposal stage is not necessary due to the direct linkages to the assessment and strategy development processes.

*Comment:* One respondent recommended amending § 932.6(b)(3) to allow expenses for capital projects.

*Response:* NOAA disagrees. Congressional intent clearly indicates that enhancements be developed for coastal zone management programs.

*Comment:* One respondent commented that § 932.6(b)(8) be amended to allow states to submit proposals for more money than the weighted formula funding target, so as to put a state at an advantage to use funds not used by other states.

*Response:* NOAA has clarified its regulations accordingly. However, NOAA retains the right to choose which projects are funded with weighted formula or project of special merit funds if additional funds are available.

*Comment:* One respondent recommended that an additional requirement be added to § 932.6(c)(2) to ensure that technical advisors have a knowledge of the specific geographic area upon which they are commenting.

*Response:* NOAA agrees as a matter of policy to ensure regional representation of any external reviewers.

*Section 932.7 Formal Application for Financial Assistance and Application Review and Approval Procedures*

*Comment:* Eight respondents commented that interim regulations should be followed for FY 92 funding, as the time periods outlined in the guidance cannot be met.

*Response:* These comments generally refer to issues considered in the FY 92 guidance document. NOAA believes that proceeding with adoption of these regulations will not interfere with the fair and timely issuance of section 309 grants for FY 92.

## IV. Other Actions Associated With the Notice of Proposed Rulemaking

*A. Executive Order 12291: Regulatory Impact Analysis*

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the Order and, "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. NOAA has concluded that this is not a "major" regulatory action, as defined by the Executive Order, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These rules will provide for enhancement of State CZM programs in eight national objective areas and will improve the evaluation of their performance. The rules only serve to strengthen the framework for making rational coastal management decisions and will not result in any major direct or indirect economic or environmental impacts. Therefore, preparation of an RIA is not required.

*B. Regulatory Flexibility Act Analysis*

The Regulatory Flexibility Act (RFA) requires Federal agencies to consider explicitly the effect of regulations on "small entities." A Regulatory Flexibility Analysis was not prepared for this regulatory action. This rule sets forth procedures for the Coastal Zone Enhancement Grants Program and review of performance. The rule affects only State governments, which are not "small government entities," as defined by the RFA. Since the rule will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 is not required.

*C. Paperwork Reduction Act*

The Paperwork Reduction Act is intended to minimize the reporting burden on the regulated community as well as minimize the cost of Federal information collection and dissemination. Information requirements of section 312—Review of Performance—embody existing procedures and do not constitute any increase in reporting on the part of any affected party.

The rule to implement section 309—Coastal Zone Enhancement Grants—contains a collection of information requirement subject to the Paperwork Reduction Act. This collection of information requirement is a one-time requirement for Assessments of State priority needs for improvement in the eight national priority areas and Strategies for making those improvements and is necessary to implement section 309(d) of the CZMA, as amended, which requires the Secretary of Commerce to identify each State's priority needs for improvement, after careful consultation with the States. These Assessments and Strategies will replace an existing reporting requirement (part C of the annual performance report) for FY 1991. Therefore, the paperwork burden has been minimized.

In addition, all States will be required to provide pre-proposals containing their proposed enhancement grant projects annually at the same time, in order that NOAA may carry out the individual evaluation and ranking of proposals required by statute and provide States with timely information on approved projects to include in their joint section 306/306A/309 financial assistance award applications. This procedure for pre-proposals will replace a similar procedure for interstate grants, authorization for which was repealed by the 1990 Reauthorization.

The request to collect this information has been approved by the Office of Management and Budget under section 3504(h) of that Act (OMB Control No. 0648–0119). Public reporting burden for this collection is estimated to average 480 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and developing the Assessments and Strategies. Comments on this estimate may be sent to:

The Office of Ocean and Coastal Resource Management, Policy Coordination Division, 1825 Connecticut Avenue, NW., Washington, DC 20235, Attention: Vickie A. Allin.

or

Office of Management and Budget, Paperwork Reduction Project (0648–0119), Washington, DC 20530.

*D. National Environmental Policy Act (NEPA)*

NOAA has determined that this regulatory action will not significantly affect the quality of the human environment. Therefore, an environmental assessment or environmental impact statement will not be prepared.

*E. Executive Order 12612*

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

**List of Subjects**

*15 CFR Part 928*

Administrative practice and procedure, Coastal zone, Grant programs—natural resources, and Natural resources.

*15 CFR Part 932*

Coastal zone, Grant programs—natural resources, Natural resources, and Reporting and recordkeeping requirements.

Dated: July 2, 1992.

**W. Stanley Wilson,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

Accordingly, NOAA amends 15 CFR chapter IX as set forth below.

## PART 928—REVIEW OF PERFORMANCE

1. The authority citation for part 928 is revised to read as follows:

**Authority:** Section 312 of the Coastal Zone Management Act, as amended (16 U.S.C. 1458).

2. Section 928.1 is revised to read as follows:

**§ 928.1 General.**

This part sets forth the requirements for review of approved State coastal zone management (CZM) programs pursuant to section 312 of the Act (16 U.S.C. 1458). This part defines "continuing review" and other important terms, and sets forth the procedures for:

(a) Conducting continuing reviews of approved State CZM programs;

(b) Providing for public participation;

(c) Invoking interim sanctions for non-adherence to an approved coastal zone management program or a portion of such program; and

(d) Withdrawing program approval and financial assistance.

3. Section 928.2 is amended by revising paragraphs (a), (c), (d), and (g) to read as follows:

**§ 928.2 Definitions.**

(a) *Continuing review* means monitoring State performance on an ongoing basis. As part of the continuing review, evaluations of approved CZM programs will be conducted and written findings will be produced at least once every three years.

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(c) *Interim sanction* means suspension and redirection of any portion of financial assistance extended to any coastal State under this title, if the Secretary determines that the coastal State is failing to adhere to the management program or a State plan developed to manage a national estuarine reserve, or a portion of the program or plan approved by the Secretary, or the terms of any grant or cooperative agreement funded under this title.

(d) *Approved CZM program* means those elements of the program approved by the Secretary, under 15 CFR part 923 (Development and Approval Provisions), including any changes to those elements made by approved amendments and routine program implementation.

* * * * *

(g) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

4. Section 928.3 is amended by revising the section heading, paragraphs (a), (b)(7), (c)(1)(ii), (c)(3) introductory text, and (c)(3)(iii); and by adding paragraphs (b) (8) and (9) to read as follows:

**§ 928.3 Procedure for conducting continuing reviews of approved State CZM programs.**

(a) As required by section 312(a), the Secretary shall conduct a continuing review of the performance of coastal States with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the State has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A) through (K), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title (16 U.S.C. 1451–1464).

(b) * * *

(7) The Assistant Administrator will issue final findings to the State CZM program manager and the head of the State CZM agency within 120 days of the last public meeting in the State. Copies of the final findings will be sent to all persons and organizations who participated in the evaluation. Participants may be asked to complete a card or sign-in sheet provided by the evaluation team indicating that they wish to receive the final findings. Notice of the availability of the final findings will also be published in the **Federal Register**.

(8) The final findings will contain a section entitled "Response to Written Comments." This section will include a summary of all written comments received during the evaluation and NOAA's response to the comments. If appropriate, NOAA's response will indicate whether NOAA agrees or disagrees with the comment and how the comment has been addressed in the final findings.

(9) The Assistant Administrator may conduct issue or problem-specific evaluations between scheduled evaluations of approved State CZM programs. Such issue or problem-specific evaluations will be conducted to follow-up on potentially serious problems or issues identified in the most recent scheduled evaluation or to evaluate evidence of potentially serious problems or issues that may arise during day-to-day monitoring of State performance of grants tasks or other program implementation activities in the interim between scheduled evaluations. If the Assistant Administrator conducts an issue or problem specific evaluation, he/she will comply with the procedures and public participation requirements of 15 CFR 928.3 and 928.4.

(c) * * *

(1) * * *

(ii) Addressed the coastal management needs identified in section 303(2) (A)–(K) (16 U.S.C. 1452); and

* * * * *

(3) Procedure for assessing how the State has addressed the coastal management needs identified in section 303(2) (A)–(K). The assessment of the extent to which the State has addressed the coastal management needs identified in section 303(2) (A)–(K) will occur as follows:

* * * * *

(iii) The findings concerning how the State has addressed the coastal management needs of section 303 will be used by the Assistant Administrator in negotiating the next financial assistance award.

* * * * *

5. Section 928.4 is amended by revising paragraphs (a), (b)(2), and (b)(3) to read as follows:

**§ 928.4 Public participation.**

(a) As required by section 312(b) of the Act, in evaluating a coastal State's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days notice of such public meetings by placing a notice in the **Federal Register**, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process.

(b) *Requirements.* (1) * * *

(2) Each State will issue a notice of the public meeting(s) in its evaluation by placing a notice in the newspaper(s) of largest circulation in the coastal area where the meeting(s) is being held and by taking other reasonable action to communicate with persons and organizations known to be interested in the evaluation, such as sending a notice of the meeting(s) to persons on its mailing list and publishing a notice in its newsletter, at least 45 days before the date of the public meeting(s). The State will provide a copy of such notice to the Assistant Administrator. States are encouraged to republish the newspaper notice at least 15 days before the date of the public meeting(s). The State will inform the public that oral or written comments will be accepted and that attendance at the public meeting(s) is not necessary for submission of written comments.

(3) Notice of the availability of final findings will be published in the **Federal Register**. The notice will state that copies of the final findings will be available to the public upon written request. Copies of the final findings will be sent to persons and organizations who participated in the evaluation, in accordance with 15 CFR 928.3(b)(7).

6. Section 928.5 is amended by revising paragraphs (a), (b)(1), and (b)(2) (i) and (iii) to read as follows:

**§ 928.5 Enforcement.**

(a) *Procedures and criteria for invoking and lifting interim sanctions.* (1) As required by section 312(c) of the Act:

(i) The Secretary may suspend payment of any portion of financial assistance extended to any coastal State, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal State is failing to adhere to—

(A) The management program or a State plan developed to manage a national estuarine reserve established under section 315 of the Act (16 U.S.C. 1461), or a portion of the program or plan approved by the Secretary; or



(B) The terms of any grant or cooperative agreement funded under this title (16 U.S.C. 1451–1464).

(ii) Financial assistance may not be suspended under paragraph (a)(1)(i) of this section unless the Secretary provides the Governor of the coastal State with—

(A) Written specifications and a schedule for the actions that should be taken by the State in order that such suspension of financial assistance may be withdrawn; and

(B) Written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal State to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(iii) The suspension of financial assistance may not last for less than 6 months or more than 36 months after the date of suspension.

(2) *Requirements.* (i) The Assistant Administrator will identify the need for interim sanctions through the continuing review process. The Assistant Administrator will use the criteria at 15 CFR 928.5(a)(3) in determining when to invoke interim sanctions.

(ii) The Assistant Administrator will issue the State a preliminary finding of non-adherence with the approved CZM program, or a portion thereof, and/or with a term or terms of a grant or cooperative agreement. This preliminary finding of non-adherence may be contained in the draft evaluation findings, or in a preliminary notification letter to the State CZM program manager. If the preliminary finding is contained in a preliminary notification letter, the Assistant Administrator will comply with the applicable public participation requirements of section 312(b) and NOAA's regulations at 15 CFR 928.4. The draft evaluation findings or preliminary notification letter containing a preliminary finding of non-adherence will explain that if the finding of non-adherence is issued, the State is subject to suspension of financial assistance and, if the State fails to take the actions specified pursuant to section 312(c) and this part, to withdrawal of program approval and financial assistance.

(iii) The State will be given 30 days from receipt of the draft evaluation findings or preliminary notification letter to comment on and rebut the preliminary finding of non-adherence. During this 30-day period, the State may request up to 15 additional days to respond, for a maximum of 45 days from receipt of the draft evaluation findings or preliminary notification letter.

(iv) After considering the State's comments, the Assistant Administrator will decide whether or not to issue a final finding of non-adherence. If the Assistant Administrator decides to issue a final finding of non-adherence, he/she will do so in the final evaluation findings issued pursuant to section 312(b) or in a final notification letter as provided by paragraph (a)(2)(ii) of this section. The Assistant Administrator may invoke interim sanctions provided by section 312(c) immediately or at any time after issuing the final evaluation findings or final notification letter containing the finding of non-adherence, but not later than the next regularly scheduled evaluation.

(v) If the Assistant Administrator decides to invoke interim sanctions, he/she will do so by sending the final evaluation findings or final notification letter to the Governor of the State and the State CZM program manager. The final evaluation findings or final notification letter will contain the information required in section 312(c)(2)(A) and (B). This information will include the amount of financial assistance to be suspended and redirected, the actions the State should take in order to have the suspension withdrawn, how the suspended funds shall be expended to take the required actions, and a schedule for taking the required actions. The final evaluation findings or final notification letter will also contain the length of the suspension, which may not last for less than 6 months or more than 36 months. The Assistant Administrator will establish the length of the suspension based on the amount of time that is reasonably necessary for the State to take the required actions. If the State can take the required actions faster than expected, the suspension can be withdrawn early (but not in less than six months).

(vi) The State must respond to the final evaluation findings or final notification letter by developing a proposed work program to accomplish the required actions on the schedule set forth in the final evaluation findings or final notification letter. The State may propose an alternative approach to accomplishing the required actions and/or an alternative schedule. The Assistant Administrator's approval of the State's work program will signify his/her agreement with the approach and schedule for accomplishing the actions necessary to withdraw the suspension.

(vii) The Assistant Administrator will monitor State performance under the work program. This may involve additional direction to the State through the grant administration process and/or a visit to the State by appropriate NOAA program staff, evaluation staff and/or other experts to work with the State on a specific problem or issue. The Assistant Administrator will consider proposals to revise the work program on a case-by-case basis, providing that the State will still be able to accomplish the necessary actions within a maximum of 36 months.

(viii) The State must document that it has taken the required actions on the schedule established under this section. The State must provide its documentation in writing to the Assistant Administrator. The Assistant Administrator may conduct a follow-up evaluation or otherwise revisit the State at his/her discretion.

(ix) If the Assistant Administrator determines that the required actions have been taken, the Assistant Administrator will promptly notify the Governor and the State program manager, in writing, that NOAA has withdrawn the suspension of financial assistance. If, however, the State does not take the required actions, then the Assistant Administrator will invoke the final sanction provisions of section 312(d) on program termination and withdrawal of all financial assistance.

(3) *Criteria for invoking interim sanctions.* (i) The Assistant Administrator may consider the following indicators of non-adherence to an approved State CZM program in determining whether to invoke interim sanctions.

(A) Ineffective or inconsistent implementation of legally enforceable policies included in the CZM program. Indicators of ineffective or inconsistent implementation could include: evidence of non-compliance with core authorities by the regulated community; insufficient monitoring and inspecting of coastal development to ensure that it conforms to program requirements and applicable conditions; or inadequate enforcement action when development is found not to be in compliance with the program or permit under which it is authorized or is found to be an unpermitted activity. In applying this indicator, NOAA will consider any available evidence of the impacts of ineffective or inconsistent implementation on coastal resources.

(B) Inadequate monitoring of the actions of State and local agencies for compliance with the program. Indicators of inadequate monitoring of these agencies could include: evidence of non-compliance of networked agencies with the CZM program, unresolved conflicts between agencies regarding what constitutes compliance with the program, or lack of a mechanism to ensure that all State agencies will

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adhere to the program or to approved local coastal programs pursuant to NOAA's regulations at 15 CFR 923.40 (and pursuant to new section 306(d)(15), after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance).

(C) Non-compliance of local coastal programs with the approved State program. Indicators of non-compliance could include: Local permitting or zoning decisions that are inconsistent with State standards or criteria, widespread granting of variances such as to render a zoning program ineffective in meeting State standards or criteria, changes to local comprehensive plans or zoning maps that are inconsistent with State standards or criteria, or inadequate monitoring and enforcement, as described in paragraph (a)(3)(i)(A) of this section.

(D) Ineffective implementation of Federal consistency authority. Indicators of ineffective implementation could include: Not reviewing Federal activities, Federal licenses and permits, including offshore oil and gas exploration and development, and Federal financial assistance to State and local governments for consistency with the approved CZM program or employing review procedures that are not in accordance with State and NOAA regulations.

(E) Inadequate opportunity for intergovernmental cooperation and public participation in management program implementation. Indicators of inadequate opportunity could include: not carrying out procedures necessary to insure adequate consideration of the national interest in facilities which are necessary to meet requirements which are other than local in nature, not implementing effectively mechanisms for continuing consultation and coordination, not providing required notice that a management program decision would conflict with a local zoning ordinance, decision or other action pursuant to section 306(d)(3)(B)(i) and 15 CFR 923.57, or not providing opportunities for public participation in permitting processes, consistency determinations and other similar decisions pursuant to new section 306(d)(14) after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance.

(F) Non-adherence to the terms of a grant or cooperative agreement, including the schedule for funded activities. The Assistant Administrator will also consider the extent to which priorities for expenditure of Federal funds reflect an appropriate priority for activities necessary to implement and enforce core program authorities effectively

(G) Not submitting changes to the approved program for Federal approval on a schedule developed pursuant to 15 CFR 923.81(c) and 923.84(b)(1)(i) or developing and implementing changes to the approved program without Federal approval which are inconsistent with the Act or the approved program or which result in a reduced level of protection of coastal resources.

(ii) The Assistant Administrator may consider whether an indication of non-adherence is of recent origin (in which case the State may be given a reasonable opportunity to correct it) or has been repeatedly brought to the State's attention without corrective action in determining whether to invoke interim sanctions.

(b) *Withdrawal of program approval and financial assistance.* (1) As required by sections 312(d) and 312(e) of the Act:

(i) The Secretary shall withdraw approval of the management program of any coastal State and shall withdraw financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal State has failed to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(ii) Management program approval and financial assistance may not be withdrawn under paragraph (b)(1)(i) of this section, unless the Secretary gives the coastal State notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under paragraph (b)(1)(i) of this section, the Secretary shall provide the coastal State with written specifications of the actions that should be taken, or not engaged in, by the State in order that such withdrawal may be canceled by the Secretary.

(2) *Requirements.* (i) If the Assistant Administrator determines that the State has not taken the actions required in 15 CFR 928.5(a)(2), the Assistant Administrator will provide the Governor and the State CZM program manager with written notice of this finding and NOAA's obligation to withdraw program approval and financial assistance under this title. The State will be given 30 days from receipt of this notice to respond with evidence that it has taken the actions specified pursuant to 15 CFR 928.5(a)(2). During this 30-day period, the State may request up to 30 additional days to respond, for a maximum of 60 days from receipt of notice.

(ii) * * *

(iii) If the State does not request a public hearing or submit satisfactory evidence that it has taken the actions specified pursuant to 15 CFR 928.5(a)(2) within 30 days of publication of this notice, and the Assistant Administrator determines that the State has failed to take the actions specified pursuant to 15 CFR 928.5(a)(2), the Assistant Administrator will withdraw program approval and financial assistance and will notify the State in writing of the decision and the reasons for it. The notification will set forth actions that must be taken by the State which would cause the Assistant Administrator to cancel the withdrawal.

* * * * *

7. Part 932 is revised to read as follows:

## PART 932—COASTAL ZONE ENHANCEMENT GRANTS PROGRAM

Sec.


932.1 General.
932.2 Objectives.
932.3 Definitions.
932.4 Allocation of section 309 funds.
932.5 Criteria for section 309 project selection.
932.6 Pre-application procedures.
932.7 Formal application for financial assistance and application review and approval procedures.
932.8 Revisions to assessments and strategies.


**Authority:** Section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456).

### § 932.1 General.

(a) The purpose of this part is to set forth the criteria and procedures for awarding coastal zone enhancement grants under section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456). This part describes the criteria States must address in developing and implementing coastal zone enhancement objectives, the procedures for allocating section 309 funds between weighted formula and individual review of proposals of special merit, how the amount of section 309 weighted formula grants will be determined, the criteria NOAA will use to evaluate and rank individual proposals of special merit, and the procedures for applying for financial assistance under section 309.

(b) A coastal State with an approved program under section 306 of the Coastal Zone Management Act (CZMA), as amended (16 U.S.C. 1455), is eligible for grants under this part if the State meets the following requirements:

(1) The State must have a NOAA approved Assessment and Strategy,



submitted in accordance with NOAA guidance and 15 CFR 932.8;

(2) The State must be found to be adhering to its approved program and must be making satisfactory progress in performing grant tasks under section 306, as indicated by not being under interim or final sanctions; and

(3) The State must be making satisfactory progress in carrying out its previous year's award under section 309.

(c) If the Assistant Administrator finds that a State is not undertaking the actions committed to under the terms of a section 309 grant, the Assistant Administrator shall suspend the State's eligibility for future funding under this section for at least one year.

(d) A State's eligibility for future funding under this section will be restored after the State demonstrates, to the satisfaction of the Assistant Administrator, that it will conform with the requirements under this part.

(e) Funds awarded to States under section 309 are for the enhancement of existing coastal zone management programs. A State which reduces overall State financial support for its CZM program as a result of having been awarded section 309 funding may lose eligibility for funding under section 309 in subsequent years.

(f) All applications for funding under section 309 of the CZMA, as amended, including proposed work programs, funding priorities and funding awards, are subject to the administrative discretion of the Assistant Administrator and any additional NOAA guidance.

(g) Grants awarded under section 309 may be used to support up to 100 percent of the allowable costs of approved projects under section 309 of the CZMA, as amended.

(h) All application forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1825 Connecticut Avenue, NW., suite 724, Washington, DC 20235.

### § 932.2 Objectives.

(a) The objective of assistance provided under this part is to encourage each State with a federally-approved coastal management program to continually improve its program in specified areas of national importance. The Secretary is authorized to make grants to a coastal State for the development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

(b) As required by section 309(a) of the Act, for purposes of this part, the term "coastal zone enhancement objective" means any of the following objectives:

(1) Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.

(2) Preventing or significantly reducing threats to life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lakes level rise.

(3) Attaining increased opportunities for public access, taking into account current and future public access needs, to coastal areas of recreational, historical, aesthetic, ecological, or cultural value.

(4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.

(5) Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.

(6) Preparing and implementing special area management plans for important coastal areas.

(7) Planning for the use of ocean resources.

(8) Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.

### § 932.3 Definitions.

(a) *Program change* means "routine program implementation" as defined in 15 CFR 923.84 and "amendment" as defined in 15 CFR 923.80, and includes the following:

(1) A change to coastal zone boundaries that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(2) New or revised authorities, including statutes, regulations, enforceable policies, administrative decisions, executive orders, and memoranda of agreement/understanding, that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(3) New or revised local coastal programs and implementing ordinances that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(4) New or revised coastal land acquisition, management and restoration programs that improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(5) New or revised Special Area Management Plans or plans for Areas of Particular Concern (APC), including enforceable policies and other necessary implementing mechanisms or criteria and procedures for designating and managing APCs that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(6) New or revised guidelines, procedures and policy documents which are formally adopted by a State and provide specific interpretations of enforceable CZM policies to applicants, local governments and other agencies that will result in meaningful improvements in coastal resource management and that will improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(b) *Assessment* means a public document, prepared by a State and approved by NOAA in accordance with guidance on Assessments and Strategies issued by NOAA (hereafter referred to as the guidance [1]), that identifies the State's priority needs for improvement with regard to the coastal zone enhancement objectives. The Assessment determines the extent to which problems and opportunities exist with regard to each of the coastal zone enhancement objectives and the effectiveness of efforts to address those problems. The Assessment includes the factual basis for NOAA and the States to determine the priority needs for improvement of management programs in accordance with this Part.

(c) *Strategy* means a comprehensive, multi-year statement of goals and the methods for their attainment, prepared by a State in accordance with NOAA guidance and these regulations and approved by NOAA, that sets forth the specific program changes the State will seek to achieve in one or more of the coastal zone enhancement objectives. The Strategy will address only the

[1] NOAA guidance is available from the Office of Ocean and Coastal Resource Management, Coastal Programs Division, Universal South Building, room 724, 1825 Connecticut Avenue, NW., Washington, DC 20235.

priority needs for improvement identified by the Assistant Administrator, after careful consultation with the State. The strategy will include specific task descriptions, cost estimates and milestones, as appropriate.

(d) *Weighted Formula Project* means a project or task for which NOAA awards funding based on the criteria at 15 CFR 932.5(a). Such tasks are essential to meeting the milestones and objectives of each state's strategy. As funding for weighted formula tasks is more predictable than for projects of special merit, basic functions necessary to achieve the objectives of the strategy, such as hiring of full time staff should be included in weighted formula tasks.

(e) *Projects of Special Merit (PSM)* means a project or task that NOAA will rank and evaluate based on criteria at 15 CFR 932.5(b). As PSM funds will be awarded competitively on an annual basis, these projects should further the objectives of the strategy but may not be essential to meeting specific benchmarks in the strategy. PSM projects should not be dependent on long term levels of funding to succeed.

(f) *Fiscal needs* means the extent to which a State must rely solely on Federal funds to complete a project under section 309 because State funds are not otherwise available.

(g) *Technical needs* means the extent to which a State lacks trained personnel or equipment or access to trained personnel or equipment to complete a project under section 309.

(h) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

**§ 932.4 Allocation of section 309 funds.**

(a)(1) As required by section 309(e) of the Act, a State will not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

(2) As required by section 309(f) of the Act, beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 306 and 306A of the Act shall be retained by the Secretary for use in implementing this section, up to a maximum of $10,000,000 annually.

(b) The Assistant Administrator will annually determine the amount of funds to be devoted to section 309, which shall be not less than 10 percent nor more than 20 percent of the total amount appropriated under section 318(a)(2) of the Coastal Zone Management Act, as amended (16 U.S.C. 1464), taking into account the total amount appropriated under section 318(a)(2). The total amount of funds to be devoted to section 309 shall not exceed $10,000,000 annually.

(c) Of the total amount determined in paragraph (b) of this section, the Assistant Administrator will annually determine the proportion to be awarded to eligible coastal States by weighted formula and the proportion to be awarded to eligible coastal States for projects of special merit. This determination will take into account the total amount appropriated under section 318(a)(2) of the CZMA, as amended.

(d) *Weighted formula funding.* (1)(i) A weighted formula funding target will be determined for each State that meets the eligibility requirements at 15 CFR 932.1(b). The weighted formula funding target will be the State base allocation determined by the application of the formula at 15 CFR 927.1(c), multiplied by a weighting factor derived from the Assistant Administrator's evaluation and ranking of the quality of the State's Strategy (as described in (d)(1) of this section), as supported by the State's Assessment.

(ii) The application of the weighting factor may result in a weighted formula funding target that is higher or lower than the State's base allocation. Each State's weighted formula funding target will be adjusted to reflect the funds available.

(iii) The Assistant Administrator may establish minimum and maximum weighted formula funding targets under 15 CFR 932.4(d).

(2) The Assistant Administrator will determine each State's weighting factor based on an evaluation and ranking of the State's Strategy that takes into consideration the following:

(i) The scope and value of the proposed program change(s) contained in the Strategy in terms of improved coastal resource management;

(ii) The technical merits of the Strategy in terms of project design and cost effectiveness;

(iii) The likelihood of success that the State will have in attaining the proposed program change(s), including an evaluation of the State's past performance and support for the Strategy; and,

(iv) The fiscal and technical needs of the State.

(3) Each State will be notified individually of its weighting factor, the reasons for assigning this weighting factor, and any changes thereto. In consultation with the Assistant Administrator, a State may choose to make substantive changes to its approved Assessment and Strategy to improve its weighting factor, in accordance with the procedures at 15 CFR 932.8.

(e) *Funding for projects of special merit.* The Assistant Administrator will award the remaining section 309 funds, which are not awarded under 15 CFR 932.4(d), to States based on an annual evaluation and ranking of projects of special merit, as defined in 15 CFR 932.3(d). Funding of projects of special merit will be limited to the highest ranked projects based on the criteria at 15 CFR 932.5(b).

(f) The Assistant Administrator will notify each State annually of the total amount of funds to be devoted to section 309 pursuant to 15 CFR 932.4(b), the proportion to be awarded by weighted formula pursuant to 15 CFR 932.4(c), the State's weighted formula funding target pursuant to 15 CFR 932.4(d), and the total amount of funds available for funding for projects of special merit pursuant to 15 CFR 932.4(e).

**§ 932.5 Criteria for section 309 project selection.**

(a) *Section 309 criteria for weighted formula funding.*

(1) For those projects that will be funded by weighted formula, the Assistant Administrator will determine that:

(i) The project is consistent with the State's approved Assessment and Strategy and advances the attainment of the objectives of the Strategy;

(ii) Costs are reasonable and necessary to achieve the objectives of both the project and the Strategy. Allowability of costs will be determined in accordance with the provisions of OMB Circular A–87: Cost Principles for State and Local Governments [2];

(iii) The project is technically sound;

(iv) The State has an effective plan to ensure proper and efficient administration of the project; and

(v) The State has submitted the required project information as specified in 15 CFR 932.6(b)(1).

(2) In reviewing projects that will be considered under the weighted formula, the Assistant Administrator will take into consideration the fiscal and technical needs of proposing States and the overall merit of each proposal in terms of benefits to the public.

(b) *Section 309 criteria for evaluation and ranking of projects of special merit.* (1) After determining those projects that

[2] OMB Circular A–87: Cost Principles for State and Local Governments is available from the Office of Ocean and Coastal Resource Management, Policy Coordination Division, Universal South Building, room 701, 1825 Connecticut Avenue, NW., Washington, DC 20235.

will be funded under weighted formula funding, the Assistant Administrator will evaluate and rank State funding proposals of special merit which may be funded under 15 CFR 932.4(e).

(2) In addition to meeting the criteria in paragraph (a)(1) of this section, proposals will be evaluated and ranked under this subsection using the following criteria:

(i) *Merit.* (90 points) The Assistant Administrator will review each application to determine the following:

(A) Degree to which the project significantly advances the program improvements and leads to a program change identified in the State's Strategy. In making this determination, the Assistant Administrator shall consider the weighting factor derived from the evaluation of the quality of the State's Strategy, as supported by the State's Assessment, relative to the weighting factors assigned to other eligible States;

(B) Overall benefit of the project to the public relative to the project's cost;

(C) Innovativeness of the proposal;

(D) Transferability of the results to problems in other coastal States; and

(E) The State's past performance under section 309.

(ii) *Fiscal needs.* (5 points) The Assistant Administrator will review each application to determine the "fiscal needs" of a State as defined in 15 CFR 932.3(e).

(iii) *Technical needs.* (5 points) The Assistant Administrator will review each application to determine the "technical needs" of a State as defined in 15 CFR 932.3(f).

(c) Section 309 funds not awarded to States under § 932.5(a) will be awarded to States under 15 CFR 932.5(b).

### § 932.6 Pre-application procedures.

(a) *Pre-submission consultation.* Each State is strongly encouraged to consult with the Assistant Administrator prior to the submission of its draft proposal (see 15 CFR 932.6(b)) and formal application for section 309 funding. The purpose of the consultation will be to determine whether the proposed projects are consistent with the purposes and objectives of section 309 and with the State's approved Strategy, to resolve any questions concerning eligibility for funding under section 309 (see 15 CFR 932.1(b)), and to discuss preliminarily the State's recommendations regarding which projects should be funded by weighted formula and which projects should be individually evaluated and ranked as projects of special merit.

(b) *Draft proposals.* States shall submit draft proposals for section 309 funding annually on a schedule to be determined by the Assistant Administrator. These draft proposals shall contain all of the information needed for final application, including the following:

(1) A clear and concise description of the projects that the State proposes to be funded under section 309. This description shall explain the relationship of each proposed project to the State's approved Assessment and Strategy and how each proposed project will accomplish all or part of a program change that the State has identified in its Strategy. In addition, each project description shall include:

(i) A specific timetable for completion of each project;

(ii) A description of the activities that will be undertaken to complete each project and by whom;

(iii) The identification of any subawardees, pursuant to 15 CFR 923.95(d)(3)(ii); and

(iv) The estimated total cost for each project.

(2) Section 309 funds may be used for any of the following allowable uses which support the attainment of a program change:

(i) Personnel costs;

(ii) Supplies and overhead;

(iii) Travel;

(iv) Equipment (pursuant to 15 CFR part 24);

(v) Projects, studies and reports; and

(vi) Contractual costs including subcontracts, subawards, personal service contracts with individuals, memoranda of agreement/understanding, and other forms of passthrough funding for the purpose of carrying out the provisions of section 309.

(3) Funds may not be used for land acquisition or low cost construction projects.

(4) The State may recommend which projects should be funded by weighted formula under 15 CFR 932.5(a) and which projects should be funded as projects of special merit under 15 CFR 932.5(b).

(5) The draft proposal shall contain documentation of fiscal needs and technical needs, if any. This documentation shall include:

(i) For fiscal needs, information on the current State budget (surplus or deficit), the budget of the applying agency (increase or decrease over previous fiscal year), future budget projections, and what efforts have been made by the applying agency, if any, to secure additional State funds from the Legislature and/or from off-budget sources such as user fees; and

(ii) For technical needs, identification of the technical knowledge, skills and equipment that are needed to carry out proposed projects and that are not available to the applying agency, and what efforts the applying agency has made, if any, to obtain the trained personnel and equipment it needs (for example, through agreements with other State agencies).

(6) The Assistant Administrator may request additional documentation of fiscal and technical needs.

(7) Following the first year of funding under section 309, the draft proposal shall describe how the past year's work contributed to the attainment of a program change as defined in 15 CFR 932.3(a) in one or more of the coastal zone enhancement objectives.

(8) If the sum of estimated project costs for projects the State recommends be funded under 15 CFR 932.5(a) exceeds the State's weighted formula funding target pursuant to 15 CFR 932.4(d), NOAA shall determine, in consultation with the State, which projects are appropriate for funding with weighted formula funds.

(c) *Review of draft proposals.* (1) The Assistant Administrator will make the final determination of which projects should be funded by weighted formula and which projects should be funded as projects of special merit, taking into account the State's recommendations.

(2) The Assistant Administrator may seek advice from technical experts in the fields of the coastal zone enhancement objectives as to the technical soundness and overall merit of section 309 project proposals.

(3) The Assistant Administrator will make the final determinations on project selection using the criteria at 15 CFR 932.5(a) and evaluate and rank projects of special merit based on the criteria at 15 CFR 932.5(b).

(4) If the Assistant Administrator determines that a State's project proposal(s) for weighted formula funding fails to meet the criteria at 15 CFR 932.5(a), the Assistant Administrator may either reduce or deny the amount available to the State under 15 CFR 932.4(d).

(5) Each state will be notified of the results of the review of draft proposals, as described in paragraphs (c) (3) and (4) of this section, in time to include approved section 309 projects in their applications for financial assistance pursuant to subpart J of 15 CFR part 923.

### § 932.7 Formal application for financial assistance and application review and approval procedures.

(a) Applications for financial assistance under this part must be developed and submitted on the same

schedule as applications for financial assistance under subpart J of 15 CFR part 923.

(b) Applications for financial assistance under this part must be in a separate section of the application and must contain the information specified at 15 CFR 932.6(b)(1) for each approved section 309 project.

(c) Applications will be reviewed for conformance with the regulations at subpart J of 15 CFR part 923.

(d) States will be notified of their section 309 awards at the time they are notified of their section 306/306A awards.

(e) If the Assistant Administrator seeks technical advice pursuant to 15 CFR 932.6(c)(2), anonymous copies of the project reviews provided to the Assistant Administrator on projects proposed by a State will be made available to the State upon request after October 1 of each year.

**§ 932.8 Revisions to assessments and strategies.**

(a) A State, in consultation with the Assistant Administrator, may propose to revise its approved Strategy. Revision(s) to an approved Strategy must be submitted to and approved by the Assistant Administrator prior to the initiation of the contemplated change.

(b) The Assistant Administrator will review such proposed revision(s) and determine if public review and comment is required. This determination will be based on the extent to which the proposed revision(s) changes the original scope of the State's Strategy.

(c) If the Assistant Administrator determines that public review and comment is necessary, he/she will notify the State of his/her determination. The State will be required to provide public review and comment in accordance with NOAA guidance.

(d) A State that wants to revise substantively the program changes identified in its approved Strategy or to address new enhancement objectives not identified as a priority in the original Assessment, also must revise the Assessment through a public process as described in NOAA's guidance.

(e) The Assistant Administrator, in consultation with the State, may reduce a state's weighting factor assigned to its Strategy as a result of failure to meet the milestones in its Strategy.

(f) The Assistant Administrator will notify the State of his/her decision to approve or deny the proposed revision(s) to the Strategy, and any change in the weighting factor assigned to its Strategy.

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BILLING CODE 3510-08-M

## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Part 250**

**[Release No. 35-25573; File No. S7-4-80]**

**RIN 3235-AF48**

## Exemption of Issuance and Sale of Certain Securities by Public-Utility Subsidiary Companies of Registered Public-Utility Holding Companies; Exemption of Acquisition of Public-Utility Subsidiary Company Securities by a Company in a Registered Public-Utility Holding Company System

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Final rule.

**SUMMARY:** The Commission is amending rule 52, which exempts certain financing transactions involving the securities of the public-utility subsidiary companies of a registered public-utility holding company from the requirement of prior Commission approval under the Public Utility Holding Company Act of 1935 ("Act"). The amendment deletes six of the eight conditions to the rule and broadens the types of securities within the exemption. The amendment also clarifies the scope of the rule in certain minor respects. The amendment is intended to eliminate unnecessary regulatory burdens and paperwork associated with seeking Commission approval for routine financings by the public-utility subsidiaries of registered holding companies.

**EFFECTIVE DATE:** August 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** William C. Weeden, Assistant Director, (202) 272-7676, Sidney L. Cimmet, Senior Special Counsel, (202) 272-7676, Joanne C. Rutkowski, Senior Special Counsel, (202) 504-2267, or Brian P. Spires, Staff Attorney, (202) 272-7688, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission is amending rule 52 (17 CFR 250.52) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) to delete certain of the conditions of the rule. Rule 52 exempts from prior Commission authorization under section 6(a) the issuance and sale of certain securities by public-utility subsidiary companies of registered holding companies. Rule 52 as amended also exempts from the requirement of prior Commission approval under section 9(a) the acquisition by a parent holding company of the securities issued by an existing public-utility subsidiary company pursuant to the rule.

In a companion release published today in the **Federal Register**, the Commission is requesting comment, among other things, on a proposal to further amend rule 52 to exempt other types of securities, as well as certain financing transactions of nonutility subsidiary companies, from the requirement of prior Commission approval. The Commission is also requesting comment on a proposed amendment to rule 45(b)(4) that would complement rule 52, as further amended.[1]

### Background

The Commission promulgated rule 52 under sections 6(b) and 9(c)(3) of the Act in 1990.[2] As adopted, the rule exempts from the requirement of prior Commission authorization under section 6(a) the issuance and sale of certain securities by public-utility subsidiary companies of registered public-utility holding companies. The rule also exempts from the requirement of prior Commission approval under section 9(a) the acquisition by a parent holding company of securities issued by a public-utility subsidiary under the rule.[3]

Under the present rule, no prior authorization of the Commission is required if the financing transaction:

(1) Is solely for the purpose of financing the business of the public-utility subsidiary company;

(2) Has been expressly authorized by the state commission of the state in which the public-utility subsidiary company is organized and doing business;

(3) Will not cause the capitalization of the public-utility subsidiary company or the holding company system to exceed certain specified debt limits or fall below certain common equity levels;

(4) Involves the issue and sale of preferred stock, first mortgage bonds, or general and refunding mortgage bonds,

[1] Rule 45(b)(4) exempts capital contributions and open account advances, without interest, by a registered holding company to its subsidiary company, provided that no subsidiary will receive more than $50,000 as a result of such transitions during any calendar year. The proposed amendment to rule 45(b)(4) would delete the $50,000 limitation.

[2] *See generally* 45 SEC Docket 1577 (Apr. 3, 1990), 55 FR 11382 (Mar. 28, 1990) (adopting rule 52).

[3] *See generally id.*

issued and sold in conformity with the Commission's Statements of Policy Regarding First Mortgage Bonds and Preferred Stock ("Statements of Policy"),[4] unless the company previously gives the Commission written notice of the proposed deviation and the Commission provides a written response that it has no objection;

(5) Involves an issue and sale to the holding company of common stock of the public-utility subsidiary company;

(6) Involves an issue and sale to nonassociated persons and financing at the holding-company level is limited to common stock and short-term debt;

(7) Involves an issue and sale which is either excepted from or made in compliance with rule 50,[5] or is made after the company has given the Commission written notice of its intention to issue and sell the securities pursuant to a negotiated offering and the Commission has provided a written response that it has no objection; and

(8) Involves a security that is not convertible into any other security and does not (except for stockholders' preemptive rights) entitle the holder to purchase or otherwise acquire any other security.

The first two conditions are mandated by the statute. The remaining six were drawn from orders issued by the Commission under section 6(b) before the adoption of the rule.

At the time the Commission adopted rule 52, it also requested comment as the appropriations of modifying or eliminating the six conditions to the rule that are not required by section 6(b). The Commission has received nine comment letters, six from registered electric holding companies [6] and three from registered gas holding companies.[7] Five of the commenters support the elimination of all six conditions. The remaining commenters have addressed the conditions selectively, and, in some instances, have raised special concerns.[8]

[4] Holding Co. Act Release Nos. 13105 and 13106 (Feb. 10, 1958), as amended in Holding Co. Act Release Nos. 16369 and 16758 (May 8, 1969 and June 22, 1970, respectively).

[5] Rule 50 requires competitive bidding, subject to certain exceptions, for the issue and sale of securities by a registered holding company and its subsidiaries.

[6] This group includes American Electric Power Company, Central and South West Corporation, General Public Utilities Corporation, New England Electric System, Northeast Utilities and The Southern Company.

[7] These commenters are The Columbia Gas System, Consolidated Natural Gas Company and National Fuel Gas Company.

[8] Certain of these concerns cannot be addressed under section 6(b) because it does not grant the requisite rulemaking authority to the Commission. One commenter noted the exemption is not available to its public-utility subsidiaries that are organized and doing business in a state that does not review security issuances. By its terms, however, section 6(b) does not permit an exemption for public-utility companies' issuances without state commission approval. Similarly, another commenter noted that rule 52 is unavailable where a public-utility subsidiary company is organized in one state but does business in another. Again, this restriction is required by the express language of section 6(b).

One commenter asked whether the rule would preclude an order of the Commission. In light of the flexibility afforded by rule 52, the Commission anticipates that companies generally will avail themselves of its exemption.

[9] Four commenters (the three registered gas holding companies and New England Electric System) recommended that the Commission go further and withdraw the Statements of Policy. The Columbia Gas System states that the Statements of Policy bring it no tangible benefit. It contends that the protections embodied in the Statements of Policy do not generate any price differential in the terms of the securities issued by its subsidiaries. Further, the three gas holding companies point out that since their external financing is done almost entirely at the holding company level, removal of the condition solely under rule 52 would not be of much assistance to them.

The Commission believes that a proposal to withdraw the Statements of Policy may require notice and opportunity for comment. In the meantime, as to those companies which cannot use rule 52 for the issuance of their securities, the Commission may continue to permit, on a case-by-case basis, the issuance of securities that do not conform to the Statements of Policy. *See, e.g., National Fuel Gas Co.*, Holding Co. Act Release No. 25116, 46 SEC Docket 1224 (July 24, 1990); *Massachusetts Elec. Co.*, Holding Co. Act Release No. 24782, 42 SEC Docket 515 (Dec. 13, 1988); *National Fuel Gas Co.*, Holding Co. Act Release No. 22670, 26 SEC Docket 705 (Nov. 2, 1982).

## Discussion

Condition (3) requires each public-utility subsidiary as well as the consolidated holding company system to maintain a debt/equity ratio of 65%/30%. All but one of the commenters urged that this condition be eliminated. That commenter, while not opposing elimination of the condition, explained that it has had no problem in maintaining the required ratio and that the limitation on debt, by enhancing investor confidence, may translate into reduced financing costs for the holding company system. The majority of commenters, however, pointed to the ability of state regulators to enforce appropriate capital ratios, and further contended that the debt/equity restriction is unnecessary because market forces or corporate policy will cause utilities to seek balanced amounts of debt and equity to maintain their credit ratings. The Commission agrees with this assessment.

Condition (4) requires that first mortgage bonds or preferred stock be issued and sold in compliance with the Commission's Statements of Policy. The eight commenters which addressed this condition urged that it be eliminated.[9] In the proposing release, the Commission indicated its belief that the Statements of Policy are no longer relevant to contemporary financial markets.[10] Accordingly, the Commission does not find it necessary that securities exempted under rule 52 be subject to the Statements of Policy.

Further, the Commission finds no basis to distinguish first mortgage bonds from other types of bonds, so long as the statutory requirement of state review is satisfied. The Commission therefore believes it is appropriate to include all mortgage bonds, including general and refunding mortgage bonds, in the exemption provided by rule 52.

Condition (5) requires that a public-utility subsidiary company issue and sell its common stock solely to its parent holding company. Five commenters supported the elimination of this condition. Two others, while not opposing elimination, believe that the proposal deserves further study. The Commission agrees with the majority of commenters that the limitation, while appropriate in 1935 when minority common stock shareholders had little ability to assess their investment, is no longer necessary to protect investors and shareholders.

Condition (6) provides that a public-utility subsidiary company may issue and sell securities to nonassociates only if its parent holding company has issued no securities other than common stock and short-term debt. All eight commenters that considered this condition recommended it be eliminated. They noted that it may be appropriate for a holding company to issue and sell long-term debt and that such a transaction is subject to prior Commission approval. They further observed that other controls, that did not exist when the statute was enacted, provide assurance that such financings will not lead to abuse. These include the likely adverse reaction of rating agencies to excessive amounts of debt at the parent holding company level and the disclosure required of companies seeking public capital. The Commission agrees with these observations and also notes the power of many state utility commissions to limit the ability of utility subsidiaries to service holding company debt by restricting the payment of dividends to the parent company. The Commission concludes that this requirement should be eliminated.

Condition (7) requires competitive bids for the issuance and sale of

[10] See Holding Co. Act Release No. 25089, 45 SEC Docket 1582 (Apr. 3, 1990), 55 FR 11380 (Mar. 28, 1990) (proposing amendment to rule 52).

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securities. The commenters supported the Commission's view that registered holding companies should have the flexibility to access the capital markets by the use of competitive binds, negotiated sales or private placements. The Commission concludes that this condition should be eliminated.

Condition (8) does not allow the issuance and sale of convertible securities. Most of the commenters agreed that this condition should be eliminated. Two, however, stated that, since convertible securities are not a significant alternative for registered holding companies, there is no need to eliminate the condition. On balance, the Commission believes that elimination of the condition would afford greater financing flexibility without harming investors or consumers.

In addition to these changes, the Commission has determined that the language of the rule should be modified in certain respects in order to clarify the type of securities that will be exempted under the rule and to make the language of the rule more precise. The text of the amended rule is modified in the following manner.

First, in paragraph (b), the word "calendar" is added to indicate that the filing of information on Form U–6B–2 may be done on a calendar quarterly basis in certain circumstances.

Second, paragraph (c) is modified to clarify that the exemption applies to the acquisition by any company in a registered holding company system of a security issued and sold by its public-utility subsidiary company pursuant to the rule.

Third, the phrase "and rules thereunder" is eliminated from the first sentence of the paragraph because there is no rulemaking authority in section 9(a) of the Act.

Finally, a proviso is added at the end of the paragraph to clarify that the exemption does not apply to any transaction involving the issuance of securities to form a new public-utility subsidiary company of a registered holding company. The Commission is including this clarification because section 9(c)(3), under which this provision of the rule is adopted, permits the Commission to exempt only acquisitions made in the "ordinary course of business." The issuance of securities to form a new public-utility subisidary company is not in the ordinary course of business.[11]

[11] *See, e.g., Michigan Cons. Gas Co.*, 44 S.E.C. 361, 366 (1970), *aff'd*, 444 F.2d 913 (D.C. Cir. 1971).

Four commenters, including the three gas holding companies, also recommended that the scope of rule 52 be expanded to cover other methods of financing between a parent holding company and its subsidiary companies. The Commission believes that the amended rule should be adopted essentially as proposed so as to permit the immediate realization of its benefits. The Commission believes, however, on the basis of the comments and its own additional analysis, that further expansion of rule 52 may be appropriate. The Commission is therefore requesting comment in a separate release issued today on a further amendment to rule 52. The proposed amendment would provide an exemption for other types of securities, including certain securities used in intrasystem financings, and would also expand the application of the rule to include the issuance and sale of securities by nonutility subsidiary companies of registered holding companies.

In addition, two commenters recommended that the rule 52 exemption be extended to include security issuances by nonutility subsidiary companies of registered holding companies.[12] The Commission has published notice in the **Federal Register** today seeking public comment on a proposal to extend the rule 52 exemption to nonutility subsidiary companies of registered holding companies.

## Conclusion

The Commission believes that the regulatory burden on registered holding-company systems should be further lessened by eliminating conditions (a)(3) through (a)(8) in present rule 52 and has, accordingly, amended the rule to eliminate those conditions, and to make the other revisions described above.

## Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments with respect to the Chairman's certification.

[12] Rule 52 as presented in the rulemaking petition also included an exemption for nonutility subsidiary companies; however, the Commission decided to defer action concerning the financing of nonutility subsidiaries pending further review. In addition, seven comment letters received in support of the adoption of present rule 52 recommended that the rule be expanded to include nonutility subsidiaries.

## Costs and Benefits

Amended rule 52 will decrease regulatory compliance costs for the registered holding companies. In fiscal year 1991, for example, 3 applications and 15 letter requests would not have been filed, had amended rule 52 been in place. Estimated savings would have been approximately $58,000, including the $2,000 filing fee per application, and associated legal, accounting, and management costs. Moreover, the reduction in Commission staff hours associated with reviewing and analyzing these applications and letters would have been approximately 85 hours. The only cost to the registered holding companies in complying with the amended rule will be the cost of completing a Form U–6B–2 after the issue or sale of any security. It is estimated that approximately one hour will be required to complete such a form.

## Paperwork Reduction Act

The Office of Management and Budget has approved the amended rule for use through July 31, 1995.

## List of Subjects in 17 CFR Part 250

Utilities.

## Text of Revised Rule 52

Part 250 of chapter II, title 17, of the Code of Federal Regulations is amended as set forth below:

## PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 is revised to read as follows:

**Authority:** 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

2. Section 250.52 is revised to read as follows:

**§ 250.52 Exemption of issue and sale of certain securities.**

(a) Any registered holding-company subsidiary which is itself a public-utility company shall be exempt from section 6(a) of the Act and rules thereunder with respect to the issue and sale of any common stock, preferred stock, mortgage bond, or note issued to a parent holding company (the interest rate and maturity date of which note are designed to parallel a debenture or preferred stock issued by the parent holding company), if:

(1) The issue and sale of such security are solely for the purpose of financing the business of such public-utility subsidiary company; and

(2) The issue and sale of such security have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business.

(b) Within ten days after the issue or sale or any security exempt under this section, the issuer or seller shall file with the Commission a Certificate of Notification on Form U–6B–2 containing the information prescribed by that form. However, with respect to exempt financing transactions between a parent holding company and a subsidiary which involve the repetitive issue or sale of securities or are part of an intrasystem financing program involving the issuance and sale of securities not exempted by this section, the filing of information on Form U–6B–2 may be done on a calendar quarterly basis.

(c) The acquisition by a company in a registered holding company system of any security issued and sold by its public-utility subsidiary company, pursuant to this section, is exempt from the requirements of section 9(a) of the of the Act; provided that the exemption granted by this paragraph (d) shall not apply to any transaction involving the issue and sale of securities to form a new public-utility subsidiary company of a registered holding company.

Dated: July 7, 1992.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92–16502 Filed 7–13–92; 8:45 am]

BILLING CODE 6010–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 271

**[Docket No. RM91–8–001; Order No. 539–A]**

### Qualifying Certain Tight Formation Gas for Tax Credit

July 7, 1992.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; order on rehearing.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is issuing an order on rehearing of Order No. 539 which amended the Commission's tight formation regulations. The order on rehearing extends the deadline for notices of Natural Gas Policy Act [NGPA] category determinations to be received by the Commission and affirms the Commission's determination that the arithmetic averaging methodology should be employed to make permeability determinations for "tight sands" gas formations. The order also denies the requests for a six-month extension of the December 31, 1992 deadline to submit applications for NGPA category determinations to the appropriate jurisdictional agencies.

**DATES:** The deadline for NGPA category determinations is extended from June 30, 1993 to September 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Sandra Elliott, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. (202) 208–0694.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street NE., Washington, DC.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street NE., Washington, DC 20426.

### Order on Rehearing

This order addresses the requests of Undersigned Producers (Producers),[1] Shell Western E&P Inc. (Shell), Maralex Resources, Inc. (Maralex), and The Albuquerque District Office, Bureau of Land Management (BLM) for rehearing and clarification of the Commission's April 9, 1992 order in Docket No. RM91–8–000 (Order No. 539).[2] Order No. 539 amended the Commission's tight formation regulations and clarified that the Commission would continue its existing practice of using only the arithmetic averaging method in reviewing permeability data contained in tight formation recommendations. Order No. 539 also stated that the Commission would review well category determinations received by the Commission by June 30, 1993, provided the underlying application was filed with the jurisdictional agency by December 31, 1992. As discussed below, the Commission is clarifying the order, granting rehearing in part and denying rehearing in part.

### Background

On March 20, 1991, the Commission issued a Notice of Proposed Rulemaking [3] in this proceeding proposing three minor amendments to the Commission's regulations to carry out Congress' intent in restoring the tax credit for gas produced from newly drilled tight formation wells. These amendments were proposed as a result of the provisions of the Revenue Reconciliation Act of 1990,[4] extending the tax credit for nonconventional fuels under section 29 of the Internal Revenue Code, and revising the terms of eligibility so that tight formation gas is eligible for the tax credit even though the price for such gas is no longer regulated. On February 6, 1992, the Commission issued a Request for Additional Comments [5] in this proceeding, seeking comments concerning the proper averaging methodology for establishing the permeability of a tight formation.

On April 9, 1992, the Commission issued Order No. 539 which amended the Commission's tight formation regulations as necessary to carry out Congress' intent in restoring certain tax credits for gas produced from tight formation wells. In that order, the Commission also, as a separate matter, clarified the permeability standard contained in its tight formation regulations by determining that it would continue its existing practice of using only the arithmetic averaging method in reviewing permeability data contained in tight formation recommendations.

The Commission also stated in the order that it will continue to process notices of well category determinations it receives by June 30, 1993, provided the underlying applications were filed with the jurisdictional agencies by December 31, 1992, to clarify the procedures the Commission would follow in light of the repeal by the Natural Gas Wellhead Decontrol Act of 1989 of the

[1] The Undersigned Producers are Texaco Inc. and ARCO Oil and Gas company.

[2] 59 FERC ¶ 61,036 (1992).

[3] 56 FR 13094 (Mar. 29, 1991), IV FERC Stats. & Regs. ¶32,479.

[4] Pub. L. No. 101–58, § 11301, 104 Stat. 1388–473 (1990).

[5] 58 FERC ¶ 61,126 (1992).

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Commission's authority to review jurisdictional agency well category determinations as of January 1, 1993. Producers, Shell, Maralex, and BLM have filed requests for rehearing and clarification of the April 9, 1992 order.

**Requests for Rehearing and Clarification**

In a letter dated May 5, 1992, Maralex states that it anticipates drilling at least thirty to forty more wells by December 31, 1992, and that it will be impossible for it to furnish all well logs, gas analyses and other well data along with the NGPA applications to the appropriate jurisdictional agencies prior to December 31, 1992. Therefore, Maralex requests a six-month extension to June 30, 1993, in which to submit the applications and well data to the jurisdictional agencies.

In its April 21, 1992 letter, BLM states that it is currently receiving NGPA well determination applications 18 to 24 months after the wells were spudded. It currently has 300 applications for coal seam wells and anticipates another 600 to 700 applications for coal seam wells before the Internal Revenue Service tax credit deadline of December 31, 1992. BLM argues that it will be a very difficult task for both the applicants and BLM to process all NGPA well determination applications before the deadlines imposed by Order No. 539. Therefore, BLM requests a six month extension of the December 31, 1992 and June 30, 1993 deadlines.

BLM also requests that the Commission clarify whether the deadlines in Order No. 539 pertain to all types of NGPA well determination applications or only to tight formation well determination applications.

Producers request clarification that the jurisdictional agencies should consider an NGPA well determination application to be sufficiently complete to establish a filing date if a Form No. 121 is provided and the spud date of the well is provided on the Form No. 121 or on a transmittal letter. Any additional data required could be provided to the jurisdictional agency after December 31, 1992. Producers contend that such a process will ensure that some jurisdictional agencies do not restrict the availability of the energy tax credit by making excessive demands on producers and avoid discriminatory treatment by the various jurisdictional agencies.

Producers also contend that an extension of the deadline by which the Commission must receive the jurisdictional agencies' NGPA determinations to December 31, 1993 is necessary to allow sufficient time for the jurisdictional agencies to process the determinations because: (1) For wells spudded in the later portion of 1992, the data the producer is required to submit may not be available to the producer and the jurisdictional agencies for several months; (2) with the tax credit incentive it is likely that there will be a significant increase in NGPA well determination applications during the remainder of 1992; and (3) with funding declines, the jurisdictional agencies' staffing will likely not allow an expedited handling of the numerous NGPA well determinations expected.

Shell asserts that the April 9, 1992 order erred by: (1) Exceeding the Commission's statutory authority set forth in Section 503 of the Natural Gas Policy Act of 1978 (NGPA) by determining the methodology used to review permeability data; (2) relying on sections 501 and 107(c) to conduct rulemaking with regard to the averaging methodology to be used by the Commission to determine permeability in reviewing tight sand applications; and (3) purporting to grant the right not to use the arithmetic averaging methodology to some persons in Order No. 539 which the Commission is not granting to all persons.

**Discussion**

*Applications after December 31, 1992*

The Commission must deny the requests of Maralex and BLM for a six-month extension of the December 31, 1992 deadline to submit applications for well category determinations to the appropriate jurisdictional agencies, but the Commission will grant certain other relief as discussed below. Section 503 of the NGPA, which sets forth the jurisdictional agencies' authority to make well category determinations, is repealed effective January 1, 1993, by the Natural Gas Wellhead Decontrol Act of 1989.[6] While both the jurisdictional agencies and the Commission have authority to complete the processing of applications for well category determination under section 503 which are pending on December 31, 1992, it is clear from the legislative history that the authority is limited to completing section 503 well category determination proceedings that are pending before jurisdictional agencies or the Commission on December 31, 1992 and not commencing new proceedings. The Senate Report on the 1989 Wellhead Decontrol Act [7] states in part, "The Committee intends the usual 'savings clause' interpretations, such as those in 1 U.S.C. 109, to be applied to this legislation * * *. The Committee intends that any incomplete section 503 procedures continue to be carried out by the state agencies and the FERC, so that the necessary determination can be made as to sales of gas delivered before contract expiration and decontrol." The House Report on the 1989 Wellhead Decontrol Act similarly states, "the gradual expiration of controls after enactment and before January 1, 1993, and their complete expiration on and after that date, will not affect civil or criminal proceedings pending at the time of decontrol, nor any action or proceeding based on pre-decontrol acts or conduct."[8] Therefore, the Commission believes Congress intended that the applications for well category determinations must be received by the jurisdictional agencies before decontrol on January 1, 1993 in order for the applications to be processed. Accordingly, the Commission will not grant an extension of the December 31, 1992 deadline for filing well determination applications with the jurisdictional agencies.

However, the Commission emphasizes that the jurisdictional agencies have the discretion to assign a filing date to an application for a well determination that is substantially complete and specify a post-December 31, 1992 date when a complete application must be filed. The Commission clarifies that the jurisdictional agencies also have the discretion to determine how much information they will accept as sufficient to constitute a substantially complete filing by the end of 1992. For example, a jurisdictional agency may assign a filing date based on the submission of the Commission's Form No. 121 (application for determination of the maximum lawful price) and establish a deadline by which the filing must be complete. The Commission will not, as requested by the Producers, interject itself into the jurisdictional agencies' administrative process of assigning filing dates to well category determinations.

Similarly, Maralex, BLM, and Producers request that the Commission grant a six-month extension of the June 30, 1993 deadline for well category determinations to be received by the Commission. In Order No. 539 the Commission again recognized its duty to continue processing requests for well category determinations, including tight formation designations, to allow

[6] Public Law No. 101-60, 103 Stat. 157 (1989).

[7] S. Rept. No. 39, 101st Cong., 1st Sess. (1989).

[8] H. Rept. No. 29, 101st Cong., 1st Sess. (1989).

producers to obtain the tax credit. The Commission also determined, based on the committee reports quoted above, that Congress did not intend that repeal of the NGPA Title I and section 503 would terminate the authority of the Commission to process tight formation applications filed with the jurisdictional agencies on or before December 31, 1992. Accordingly, the Commission stated that it would continue to process notices of determination received by the Commission on or before June 30, 1993. After considering the arguments on rehearing, the Commission has determined to extend the deadline for the Commission to receive well category determinations for a further three months in order to provide the applicants and jurisdictional agencies additional time to complete and process all the applications for well determinations filed by December 31, 1992. This should be sufficient time, since the filings still must be substantially complete by December 31, 1992, and the parties were originally notified in Order No. 523,[9] issued April 18, 1990, that the Commission would terminate the processing of well category determinations as of January 1, 1993. Therefore, the Commission will continue to process notices of determination which are filed with the jurisdictional agencies by December 31, 1992 and received by the Commission by September 30, 1993.

Finally, in light of the fact that—effective January 1, 1993—decontrol applies to all section 503 procedures carried out by the state agencies and the FERC, the Commission clarifies that the December 31, 1992 and September 30, 1993 deadlines pertain to all NGPA categories, not just applications and determinations under section 107(c)(5).

*Averaging Method for Determining the Permeability of a Tight Formation*

On rehearing, Shell argues that the Commission exceeded its authority in Order No. 539 by determining that the arithmetic averaging methodology should be employed to make permeability determinations for "tight sands" gas formations. Shell argues, as it did in its February 27, 1992 comments in this proceeding, that in *Williston Basin*[10] the court found that in enacting section 503 of the NGPA, Congress expressly limited the Commission's role in "tight sands" determination to that of an appellate body. Therefore, Shell states, the Commission's review must be on a substantial evidence basis and its observes that the Commission apparently recognized the limitation on its authority in *Travis Peak*.[11] Accordingly, Shell argues that the Commission cannot create for itself powers under section 501 which are clearly limited by section 503. Shell also argues that the Commission cannot change the plain meaning of § 271.703 [12] through its general rulemaking authority in section 501 of the NGPA.

The Commission finds that these issues were adequately and correctly addressed in Order No. 539. Accordingly, the Commission reaffirms that it has the authority under NGPA sections 107(c)(5) and 501 to establish the generally applicable criteria a formation must meet in order to be designated a tight formation, including the methodology that must be used in analyzing permeability data. Here the Commission is not adjudicating a specific case—as in *Travis Peak*—to determine whether the notice of determination of a state agency that a particular formation is tight is supported by substantial evidence. Rather, the Commission is interpreting the standards for determining whether formations are "tight" as set forth in the Commission's regulation at § 271.703. If the Commission can establish the standard for determining what qualifies as a tight formation under section 501 of the NGPA, it logically follows that the Commission may interpret that standard. Therefore, the Commission will deny Shell's request for rehearing.

Finally, Shell argues that the Commission has stated in Order No. 539 that the Commission may not require the parties to the *Travis Peak* case to use the arithmetic average and since, Shell asserts, all parties do not have this "same right" with respect to filings made prior to Order No. 539, the Commission's action constitutes undue discrimination. That is not precisely what the Commission said and it is not clear what "right" Shell believes the parties to *Travis Peak* have that is any different than the rights any party has to any other proceeding now that Order No. 539 has issued.[13] We will clarify our statements lest there by any confusion that different standards are being applied in different cases. The parties to *Travis Peak* do not have any "right" to use any methodology other than the arithmetic averaging methodology. What right they do have, which is exactly the same as any other party to any other tight sand proceeding, is the right to raise the issue of whether there are special circumstances that justify not applying or, more precisely, waiving the arithmetic average rule as to their particular case. That is a change from when *Travis Peak* issued as there was no formal rule mandating the use of that particular methodology at that time (there being only a general practice to that effect) and the Commission left open the averaging methodology question for determination by the state agencies in the first instance.

Thus, as a result of the Commission's action in Order No. 539 of formally incorporating the arithmetic averaging methodology in its rules, the Commission has, in some measure, changed the rights of all parties to all proceedings by applying that rule without regard to the date the filing for a tight sand well determination was made. The arithmetic averaging methodology is now a part of the Commission's formal rules and must be applied by the state agencies unless it is shown that special circumstances warrant use of some other method in an individual case. Accordingly, in discussing *Travis Peak* in Order No. 539, the Commission was merely clarifying that the issue of whether such special circumstances exist in *Travis Peak* would be resolved in that proceeding and not in the instant generic rulemaking proceeding. That will be the procedure in any tight sands determination. Therefore, we will deny Shell's request for rehearing on this issue.

**The Commission Orders**

The requests for rehearing and clarification are denied in part and granted in part, as discussed in the body of this order. By the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–16417 Filed 7–13–92; 8:45 am]

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[9] Order Implementing the Natural Gas Wellhead Decontrol Act of 1989, 55 FR 17425 (Apr. 25, 1990), III FERC Stats. & Regs. ¶ 30,687 at p. 31,760 (1990).

[10] *Williston Basin Interstate Company* v. *Federal Energy Regulatory Commission*, 816 F.2d 777 (D.C. Cir., 1987).

[11] Texas Railroad Commission, Travis Peak Formation, 41 FERC ¶ 61,213 (1987).

[12] 18 CFR 271.703.

[13] In Order No. 539 the Commission said, "Therefore the Commission affirms here that it is not making a determination on the specific method to apply to determine the average permeability in the *Travis Peak* case in this proceeding, but will permit parties to raise the issue whether there are special circumstances in that case that warrant not applying the interpretation here adopted, after notice and comment, to that case."

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

## Schedules of Controlled Substances; Removal of Thebaine-Derived Butorphanol from Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to remove thebaine-derived butorphanol from Schedule II of the Controlled Substances Act (CSA). This action is based on a recommendation from the Assistant Secretary for Health, Department of Health and Human Services (DHHS), that thebaine-derived butorphanol be decontrolled from Schedule II. As a result of this final rule, regulatory controls and criminal sanctions pertaining to Schedule II substances will not be applicable to thebaine-derived butorphanol.

EFFECTIVE DATE: July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Butorphanol is an agonist/antagonist, narcotic analgesic used to treat moderate to severe pain. To date, butorphanol marketed in the United States has been produced by totally synthetic means. When synthetic butorphanol was approved for marketing, no recommendation was made by DHHS for scheduling this drug under the CSA. In addition, there was no information indicating that butorphanol could be derived from thebaine, an opium constituent. As a result, synthetic butorphanol has never been considered a controlled substance under the CSA.

On May 16, 1990, a petition was filed with the DEA requesting that butorphanol derived from thebaine be decontrolled. The petitioner noted that new chemical manufacturing information indicated that butorphanol could be manufactured from thebaine. As such, the thebaine-derived butorphanol would be a Schedule II substance since 21 U.S.C. 812(c) Schedule II(a)(1) includes "opium and opiate, and any salt, compound, derivative or preparation of opium or opiate."

On February 15, 1991, in accordance with 21 U.S.C. 811(b), the Administrator of the DEA requested that the Assistant Secretary for Health conduct a scientific and medical evaluation of thebaine-derived butorphanol and provide the DEA with a recommendation concerning the scheduling of this drug. On October 28, 1991, following a review of relevant medical and scientific data, the Assistant Secretary for Health recommended that thebaine-derived butorphanol be decontrolled from Schedule II.

Accordingly, on April 3, 1992, the Administrator published a notice in the **Federal Register** proposing to remove thebaine-derived butorphanol from Schedule II of the CSA. The notice provided a 60-day period during which comments and objections to the proposed rulemaking could be sent to the Administrator. As of June 3, 1992 the Administrator did not receive any comments or objections regarding the proposal to remove thebaine-derived butorphanol from Schedule II of the CSA.

The Administrator of the DEA hereby certifies that this final rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.* This scheduling matter is a formal action required by statute to be made on the record after opportunity for an agency hearing. It is not a major rule for purposes of Executive Order (E.O.) 12291. Accordingly, it has not been submitted for review by the Office of Management and Budget (OMB) pursuant to the provisions of Executive Order 12291. This matter is not subject to those provisions of Executive Order 12778, which are contingent upon review by OMB. As a formal rulemaking, this action is not subject to the moratorium on regulations ordered by the President in his memorandum of January 28, 1992.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Preparation drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Administrator of the DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby orders that 21 CFR part 1308 be amended as follows:

### PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b)

2. Section 1308.12(b)(1) introductory text is revised to read as follows:

**§ 1308.12 Schedule II.**

* * * * *

(b) * * *

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

* * * * *

Dated: July 6, 1992.

Robert C. Bonner,

*Administrator, Drug Enforcement Administration.*

[FR Doc. 92–16485 Filed 7–13–92; 8:45 am]

BILLING CODE 4410–09–M

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[T.D. ATF–326; Re: Notice No. 725]

RIN 1512–AA94

## Standards of Fill for Distilled Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule.

SUMMARY: ATF is amending the standard of fill regulations for distilled spirits in 27 CFR part 5 to authorize a 355 milliliter (approximately 12 fluid ounces) size for cans only. The 375 milliliter size and larger sizes will no longer be permitted for cans.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dick Langford or Gail Hosey, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20091–0221, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

### Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act) 27 U.S.C. 205(e) authorizes the Secretary of the

Treasury to prescribe regulations relating to, among other things, the "size and fill" of alcoholic beverage containers, "as will prohibit deception of the consumer with respect to such products or the quantity thereof * * *." ATF has long held to the position that standards of fill are necessary for wine and distilled spirits and that without such standards there would be a proliferation of bottle sizes which would result in a number of bottle sizes that are similar in size and shape, thereby resulting in consumer confusion and deception.

Accordingly, ATF has prescribed metric standards of fill required for all bottles of domestic or imported distilled spirits in 27 CFR 5.47a(a) as follows:

1.75 liters
1.00 liter
750 milliliters
500 milliliters (Authorized for bottling until June 30, 1989.)
375 milliliters
200 milliliters
100 milliliters
50 milliliters

The term bottle is defined in § 5.11 as "any container, irrespective of the material from which made, used for the sale of distilled spirits at retail."

Metric standards of fill are likewise prescribed for wine in 27 CFR 4.73; however, the definition of wine in the FAA Act excludes those wine products which contain less than seven percent alcohol by volume. Consequently, the standards of fill for wine do not apply to low alcohol wine products such as "coolers." No standards of fill are prescribed in the regulations for malt beverages.

Coolers and similar ready-mixed alcoholic beverages are low-alcohol content products which are generally bottled at less than seven percent alcohol by volume, whether the base alcohol is derived from distilled spirits, wine or beer. As indicated above, such products, when produced from wine or beer, are not subject to standard of fill regulations under the FAA Act and are frequently put into cans which correspond to English units of measure. If the product is a spirits based product, however, it is subject to the metric standard of fill requirements in § 5.47a of the regulations.

ATF received a petition on behalf of Jim Beam Brands, Inc., to amend the distilled spirits standard of fill regulations in 27 CFR part 5 to permit the use of 355 milliliter (12 fluid ounces) cans for bottling distilled spirits products. The petitioner had developed a market for a low proof distilled spirits product packaged in 375 milliliter cans; however, due to recent changes in manufacturing standards made by the can industry, cans of a size which conforms to the 375 milliliter standard of fill were either not available or cost prohibitive.

Accordingly, the Bureau published Notice No. 725 (56 FR 49152, dated September 27, 1991) to solicit the views of the industry and public on the issue.

The Bureau proposed to establish a separate, 355 milliliter standard of fill for cans only. This proposal was based on the belief that cans are sufficiently distinct from other types of liquor bottles, in both shape and design, so that a different standard of fill would not be confusing to the consumer. Generally, cans are distinctly shaped, have a closure that is an integral part of the container, cannot be readily reclosed after opening, and are used only for ready-mixed products in single-serving sizes.

Accordingly, Notice No. 725 applied only to cans: standards of fill for bottles remained unchanged. For those containers with the general shape and design of a can, standards of fill larger than 355 milliliters are proposed to be eliminated.

## Public Participation—Written Comments

ATF received 336 responses to Notice No. 725. Three hundred and twenty-six of the comments, submitted by various dealers and producers of distilled spirits, one trade association and two can manufacturers expressed unqualified support for the proposal.

Representatives of two distilled spirits producers supported the proposal with the reservation that the use of 355 milliliter cans be restricted to low alcohol content products.

Representatives of three trade associations, one distilled spirits plant and one winery raised the objection that approval of the new size would lead to requests for additional non-standard container sizes and to a proliferation of bottle sizes. The rule does not authorize an additional option for container sizes. Rather, for cans of distilled spirits, it substitutes one standard size for another; consequently, there will be no greater number of sizes for either cans or bottles of spirit. Furthermore, while the approval of 355 milliliter cans for distilled spirits might encourage other bottlers of spirits to seek approval for additional sizes, we do not believe that the approval of the 355 milliliter size for cans would predispose the outcome of any future rulemaking on standards of fill for other containers.

Two trade associations commented that it would be an unwise precedent to set a standard of fill which was dependent on the shape of the container or on the material from which the container is made.

We believe this observation misses the significant distinction between cans and other liquor bottles. Cans, as described by this rule, have closures which are an integral part of the container and cannot be reclosed readily after opening. As such, cans would be suitable containers only for quantities of spirits products intended to be consumed in a single sitting. We do not believe it unreasonable to set standards of fill for cans that differ from those established for containers which may be reclosed and returned to the liquor cabinet.

Finally, two trade associations observed that the 355 milliliter can is an odd size which is not a multiple of any other size and would make price comparisons unnecessarily complicated. We believe this observation places too much importance on the ability to make price comparisons between various sizes. Almost by definition, distilled spirits products in cans will be in single serving sizes. While a consumer may be interested in comparing the prices of a single serving of pre-mixed martinis with that of a "cooler" type product, we would not anticipate a need to compare a single serving size of a product with, for example, half a serving of the same product.

## Final Rule

Accordingly, ATF is adopting the regulations as proposed in Notice No. 725.

## Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the final rule is not expected (1) To have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

## Executive Order 12291

It has been determined that this document is not a "major rule" within the meaning of Executive Order 12991, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government

agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1980, (Pub. L. 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR 1320, do not apply to this final rule because no requirement to collect information is proposed.

**Drafting Information**

The principal authors of this document are Dick Langford and Gail Hosey, Distilled Spirits and Tobacco Branch.

**List of Subjects in 27 CFR Part 5**

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

**Authority and Issuance**

Under the authority of 27 U.S.C. 205, 27 CFR part 5 is amended as follows:

**Paragraph. 1.** The authority citation for 27 CFR part 5 continues to read as follows:

**Authority:** 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

**Para. 2.** Section 27 CFR 5.47a paragraph (a) is revised to read as follows:

**§ 5.47a Metric standards of fill (distilled spirits bottled after December 31, 1979).**

(a) *Authorized standards of fill.* The standards of fill for distilled spirits are the following:

(1) For containers other than cans described in paragraph (a)(2), of this section—

1.75 liters
1.00 liter
750 milliliters
500 milliliters (Authorized for bottling until June 30, 1989)
375 milliliters
200 milliliters
100 milliliters
50 milliliters

(2) For metal containers which have the general shape and design of a can, which have a closure which is an integral part of the container, and which cannot be readily reclosed after opening—

355 milliliters
200 milliliters
100 milliliters
50 milliliters

* * * * *

Signed: May 7, 1992.

**Stephen E. Higgins,**

*Director.*

Approved: June 15, 1992.

**Peter K. Nunez,**

*Assistant Secretary (Enforcement).*

[FR Doc. 92–16341 Filed 7–13–92; 8:45 am]

BILLING CODE 4810-31-M

## POSTAL SERVICE

**39 CFR Part 601**

**Procurement Manual; Miscellaneous Amendments**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 5 of the Procurement Manual. The revisions are explained below in the Supplementary Information.

**EFFECTIVE DATE:** February 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Paul D. McGinn, (202) 268–4638.

**SUPPLEMENTARY INFORMATION:** The Procurement Manual which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), is amended by the issue of Transmittal Letter 5. This Transmittal Letter contains numerous substantive and editorial changes, including all revisions made to the Procurement Manual since January 1, 1991, when Transmittal Letter 4 was issued. Accordingly, it picks up all changes published in the Postal Bulletin.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Procurement Manual, see 39 CFR 601.104.)

**Summary of Changes**

*Chapter 1*

1.6.2 **Definitions.** A new paragraph i., Evaluation Factors, has been added to the definitions. The definitions following have been recodified.

1.7.2 **Contracts with Postal Employees.** Subparagraphs b.1–4 have been recodified due to the new policy concerning vehicle leases with Postal Service employees contained in Handbook AS–707C, *Contracting for Vehicle Leasing.* Paragraph c. also reflects this change; as does Subparagraph a.4 of Part 1.10.2, Document Numbering. Lastly, Exhibit 1.10.2.a.6.a has been deleted, and 1.10.3, *Document Registers,* has also been revised.

*Chapter 2*

This chapter has been completely revised for purposes of clarity. Only the substantive changes noted below are marked by change bars.

2.1.7 **Source Selection Plans.** Subparagraph a.2 has been revised to emphasize that source selection plans must focus on obtaining the best value for the Postal Service. Subparagraph c.3 has been revised to state that when the consideration of evaluation factors overlaps with determinations of responsibility, they must be kept separate.

2.2.4 **Warranties.** Paragraph g has been revised to state that when offerors are allowed to quote their own standard warranty, the solicitation may provide that the terms and conditions of the warranty will be considered as part of evaluating proposals.

2.3.3 **Technical Data Packages.** This new part has been added to increase Procurement Manual coverage of the use of technical data packages (TDPs).

*Chapter 3*

3.3.1 **Responsible Prospective Contractors.** Paragraph b, *General Standards,* has been revised to emphasize that certain key areas must be considered in determining responsibility.

*Chapter 4*

4.1.2 **Solicitations.** Subparagraph i.1 has been revised to direct users to 2.3.3 should they amend a solicitation dealing with a Technical Data Package (TDP).

4.1.4 **Evaluation of Proposals.** A new paragraph c, *Evaluation of Other Factors,* replaces the old paragraph c, *Technical Evaluation.*

4.1.5 **Contractor Selection Award.** Subparagraph b.1 has been revised to clarify that the Postal Service awards contracts to the firm or individual offering the best value to the Postal Service. Paragraph g has been revised to simplify what uncertainties may be resolved during discussions.

4.2.1 **General (Simplified Purchasing).** Paragraph d is revised as previously published in Postal Bulletin 21798, 9/19/91.

4.2.2 **Solicitations.** Paragraph g has been revised to direct users to 2.3.3 should they amend a solicitation dealing with a Technical Data Package (TDP).

4.2.5 Basic Pricing Agreements. Paragraph e, *Restrictions,* is revised as previously published in Postal Bulletin 21798, 9/19/91.

4.3.1 General (Noncompetitive Purchasing) is revised to exempt institutional memberships from noncompetitive purchasing procedures.

*Chapter 5*

5.1.2 Selection of Contract Type. Paragraph b is revised as was previously published in Procurement Manual Circular 91–1.

*Chapter 6*

6.2.3 Contract Monitoring. Subparagraph c.1 has been revised to direct users to 2.3.3 should a contractor submittal affect a Technical Data Package (TDP).

6.5.1 Contract Modifications. Subparagraph b.2 has been revised to direct users to 2.3.3 should a contract modification affect a Technical Data Package (TDP).

*Chapter 8*

Part 8.2.2 has been revised to match the new definition of consultant services contained in Management Instruction AS–710 92–3, *Contracting for Consultant Services.*

*Chapter 10*

Part 10.1.5 has been revised to exempt small businesses from submitting formal subcontracting plans.

*Appendix A*

Provision A–8, Contract Award. This provision has been changed to clarify that the Postal Service awards contracts to the firm or individual offering the best value to the Postal Service.

Provision 2–4, Brand Name or Equal. This provision has been revised to state that the Postal Service will consider for award proposals offering equal products that contain all of the essential characteristics of the brand name products referenced in the solicitation.

Provision 10–1, Notice of Small, Minority-owned and Woman-owned Business Subcontracting Requirements. This provision has been changed to exempt small businesses from submitting formal subcontracting plans.

*Appendix B*

Clause B–3 Contract Type. This new clause is added as a result of the changes made effective in Procurement Manual Circular 91–1. This change is reflected throughout Appendix B.

Clause B–29 Order of Precedence. This new clause is added as a result of the changes made effective in Procurement Manual Circular 91–1. This change is reflected throughout Appendix B.

Clause 2–22 Value Engineering. Paragraph b is revised to clarify the language.

Clause 4–1 Notice to Suppliers. Paragraph a has been revised for clarification.

Clause 10–2 Small, Minority-owned and Woman-owned Business Subcontracting Requirements. This clause has been changed to exempt small businesses from submitting formal subcontracting plans.

*Appendix F*

The Index is updated to reflect the changes in this Transmittal Letter.

**PART 601—[AMENDED]**

1. The authority citation for part 601 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

2. In consideration of the foregoing, the table at the end of § 601.105 is amended by adding at the end thereof the following:

**§ 601.105 Amendments to the Procurement Manual.**

* * * * *

Transmittal letter, for issue 5, **Federal Register** publication 57 FR [insert FR page number].

Dated: February 1, 1992.

**Stanley F. Mires,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 92–16436 Filed 7–13–92; 8:45 a.m.]

BILLING CODE 7710–12–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 675

**[Docket No. 911172–2021]**

### Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for rockfish of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the Bering Sea and Aleutian Island management area (BSAI). This action is necessary because the 1992 secondary bycatch allowance of Pacific halibut for the rockfish fishery in the BSAI has been caught.

**DATES:** Effective 12 noon, Alaska local time (A.l.t.), July 8, 1992, through 12 midnight, A.l.t., December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1992 secondary bycatch allowance of Pacific halibut to the rockfish fishery, which is defined at § 675.21(g)(4)(iv), was established by emergency rule (57 FR 11433, April 3, 1992; extended by 57 FR 29223, July 1, 1992) as 200 metric tons.

The Regional Director, Alaska Region NMFS, has determined, in accordance with § 675.21(h)(1)(iv), that U.S. fishing vessels have caught the secondary bycatch allowance of Pacific halibut for the rockfish fishery. Therefore, NMFS is prohibiting directed fishing for rockfish of the genera *Sebastes* and *Sebastolobus* in the aggregate by vessels using trawl gear in the BSAI from 12 noon, A.l.t., July 8, 1992, until 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

**Classification**

This action is taken under 50 CFR 675.21 and is in compliance with E.O. 12291.

**List of Subjects in 50 CFR Part 675**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 8, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92–16441 Filed 7–8–92; 4:42 pm]

BILLING CODE 3510–22–M

# Proposed Rules

Federal Register
Vol. 57, No. 135
Tuesday, July 14, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 318

[Docket No. 91-094]

### Fruits and Vegetables From Hawaii, Puerto Rico, and the Virgin Islands

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to allow fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands of the United States that are otherwise prohibited movement into or through the continental United States to transit a certain corridor of the continental United States en route to a foreign destination if certain safeguards are met. This amendment would provide growers and shippers in Hawaii, Puerto Rico, and the Virgin Islands additional cargo routes to foreign destinations, without significantly increasing the risk of introducing plant diseases and pests into the continental United States.

**DATES:** Consideration will be given only to comments received on or before August 13, 1992.

**ADDRESSES:** To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-094. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 am. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Peter Grosser, Senior Operations Officer, Permit Unit, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

**SUPPLEMENTARY INFORMATION:**

#### Background

We are proposing to amend two subparts in the "Hawaiian and Territorial Quarantine Notices" (7 CFR part 318). The regulations in 7 CFR part 318, among other things, quarantine Hawaii, Puerto Rico, and the Virgin Islands of the United States (referred to below as the Virgin Islands) to prevent the spread of dangerous plant diseases and insect infestations that are not widely prevalent or distributed within and throughout the United States. The two subparts we are proposing to amend are "Hawaiiam Fruits and Vegetables" (7 CFR 318.13 et seq.) and "Fruits and Vegetables from Puerto Rico or Virgin Islands" (7 CFR 318.58 et seq.). We refer to these regulations, respectively, as the Hawaii regulations and the Puerto Rico-Virgin Islands regulations.

The Hawaii regulations govern the movement of raw and unprocessed fruits and vegetables, cut flowers, rice straw, mango seeds, and cactus plants and cactus parts, from Hawaii into or through the continental United States, Guam, Puerto Rico, and the Virgin Islands. The Puerto Rico-Virgin Islands regulations govern the movement of raw and unprocessed fruits and vegetables from Puerto Rico and the Virgin Islands into or through Guam, Hawaii, and the continental United States. The Puerto Rico-Virgin Islands regulations also govern the movement of cactus plants and parts of cactus plants from the Virgin Islands into or through Guam, Puerto Rico, and the continental United States.

Of the articles governed by the Hawaii regulations and the Puerto Rico-Virgin Islands regulations, some are obsolutely prohibited movement into the continental United States. Others are prohibited such movement if they fail to meet certain qualifying criteria. The prohibition on movement into the continental United States includes a ban on movement through the continental United States in transit to another country. However, such a ban on transiting unfairly restricts the movement of domestic fruits and vegetables when compared to transit authorizations that are available under 7 CFR part 352 for prohibited fruits and vegetables moving in transit through the United States from foreign sources. The regulations in 7 CFR part 352 contain a number of safeguards to ensure that the articles transiting the United States do not pose a significant risk of introducing or spreading plant pests or diseases in the United States.

A number of parties involved in the growing and shipping of fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands have requested that we amend the regulations to allow movement of those fruits and vegetables into or through the continental United States for export to a foreign destination. Such a change would provide growers and shippers in those locations access to cargo routes similar to those available to foreign growers and shippers.

We believe that, with certain safeguards, fruits and vegetables otherwise prohibited movement into or through the continental United States from Hawaii, Puerto Rico, or the Virgin Islands can transit a certain corridor of the continental United States en route to a foreign destination without posing a significant plant pest or disease risk. Therefore, in this document, we are proposing to allow such movement, subject to the criteria and restrictions discussed in this "Supplementary Information," below. Shipments that are moved in accordance with the proposed criteria and restrictions would not be further restricted by the provisions of 7 CFR part 301, which impose restrictions on the interstate movement of certain articles to protect against the spread of plant pests and diseases. We believe that the stringent safeguards established by these proposed provisions would be sufficient to protect against the spread of such plant pests and diseases. For the same reason, shipments moved under these proposed regulations would not be further restricted by the provisions of 7 CFR 318.30 and 318.30a, which impose restrictions on the movement of sweetpotatoes from Hawaii, Puerto Rico, and the Virgin Islands of the United States to other parts of the United States.

#### Transit Permits

We are proposing that you would have to obtain a transit permit from us for the arrival, unloading, and movement into or through the continental United States of fruits and vegetables that are otherwise prohibited movement into or

through the continental United States from Hawaii, Puerto Rico, or the Virgin Islands. We would define "transit permit" as a written authorization issued by the Administrator for the movement into or through the continental United States of fruits and vegetables that are en route to a foreign destination and that are otherwise prohibited movement under the regulations. We would define "continental United States" to mean the 48 contiguous States, Alaska, and the District of Columbia. Transit permits would authorize one or more shipments over a designated period of time.

The application for a transit permit would have to indicate the following: (1) The specific types of fruits and vegetables to be shipped; (2) the means of conveyance to be used to transport the fruits and vegetables into and through the continental United States; (3) the port of arrival in the continental United States and the location of any subsequent stop; (4) the location of, and the time needed for, any storage in the continental United States; (5) any location in the continental United States where the fruits and vegetables would be "transloaded," which we would define as being transferred from one sealable container to another sealable container, from one means of conveyance to another means of conveyance, or from a sealable container directly into a means of conveyance; (6) the means of conveyance to be used for transporting the fruits and vegetables from the port of arrival in the continental United States to the port of export; (7) the estimated time necessary to accomplish exportation, from arrival at the port of arrival in the continental United States to exit at the port of export; (8) the port of export; and (9) the name and address of the applicant and, if the applicant's address is not within the territorial limits of the United States, the name and address in the United States of an agent whom the applicant names for acceptance of service of process.

The information on the application would allow us to determine whether the conditions described by the applicant would meet certain safeguards set forth in the proposed regulations, and whether Animal and Plant Health Inspection Service (APHIS) resouces at designated locations would be sufficient to provide the services necessary under the proposed reguations. The inclusion of a United States address, either that of the applicant or of an agent for acceptance of service of process, would facilitate our ability to communicate with the permittee regarding problems or violations.

The transit permit would allow us to monitor closely the shipments in the United States, by describing an itinerary that would have to be followed and setting forth a listing of means of conveyance to be used. However the transit permit would not specify the quantity of fruits and vegetables to be shipped, which might vary over time. That information would be included on a limited permit, discussed below.

A transit permit would be issued only if the following conditions are met: (1) APHIS inspectors are available at the port of arrival, port of export, and any locations at which transloading of cargo would take place, and, in the case of air shipments, at any other stop in the continental United States, as indicated on the application for the transit permit and authorized by the proposed reguations; (2) the information on the application indicates that the proposed movement would comply with the provision in this section applicable to the transit permit; and (3) during the 12 months prior to receipt of the application by APHIS, the applicant has not had a transit permit withdrawn under either § 318.13–16 or § 318.58–16, unless the transit permit has been reinstated upon appeal. This last provision would be necessary to ensure that applicants who have had a transit permit withdrawn under the procedures described in §§ 318.13–16 and 318.58–16 are not able to reapply immediately. We believe this provision is necessary to discourage violations of the regulations, and to ensure that plant pests and diseases are not introduced into the continental United States.

**Limited Permits**

In addition to obtaining a transit permit approving the movement, you would be required to obtain a limited permit to accompany the fruits and vegetables being shipped into or through the continental United States. We would provide that a limited permit would be issued by an APHIS inspector if he or she determines that the specific type and the quantity of the fruits and vegetables to be shipped are accurately described in the accompanying documentation (e.g., the manifest, waybill, and bill of lading), and establishes that the shipment has been prepared in compliance with the provisions we are proposing. To facilitate inspection by an inspector, we would require that the fruits and vegetables be assembled at whatever point and in whatever manner the inspector designates as necessary to comply with the requirements of the proposed provisions. A limited permit would be required for each specific shipment, in contrast to transit permits, which could cover multiple shipments over time. A copy of the limited permit would have to be presented to an inspector at the port of arrival and the port of export in the continental United States, and at any other location in the continental United States where a shipment is authorized to stop or where overland shipments change means of conveyance.

A limited permit would allow us to verify that shipments leaving Hawaii, Puerto Rico, or the Virgin Islands are in compliance with applicable provisions of the transit permit when shipped. Additionally, the limited permit would provide a means of documenting the movement of the shipment following issuance of the limited permit. This would be necessary to ensure that the cargo moves in compliance with the transit permit and to allow for documentation of violations.

**Marking Requirements**

Under the marking requirements in proposed §§ 318.13–17(c) and 318.58–12(c), each of the smallest units, including each of the smallest bags, crates, or cartons, containing fruits and vegetables for transit through the continental United States under the provisions we are proposing would be required to be conspicuously marked with a printed label that includes a description of the specific type and the quantity of the fruits and vegetables, the fact that they were grown in either Hawaii, Puerto Rico, or the Virgin Islands, as applicable, the transit permit number under which the fruits and vegetables are to be shipped, and the statement "Distribution in the United States in Prohibited."

We believe that the proposed marking requirements would dissuade shippers and brokers from diverting cargo prohibited distribution in the United States back into the United States for distribution, and would alert cargo handlers and others who might not be familiar with the restrictions in the transit permit and limited permit that the fruits and vegetables are not for distribution in the United States.

**Handling of Articles**

Fruits and vegetables moved into or through the continental United States under the proposed provisions would not be permitted to be commingled in the same sealed container with articles that are intended for entry and distribution into the continental United States. Because the proposed

regulations would require that the fruits and vegetables be moved in sealed containers (except during certain transloading of air shipments from container to container, as discussed below), there would be no need to require segregation of containers. Commingling in the same container of fruits and vegetables being moved under this proposal and articles that are to remain in the United States would pose a significant pest and disease risk.

**Movement of Fruits and Vegetables**

We would also require that shipments that arrive in the continental United States under these proposed provisions enter and leave the continental United States at ports staffed by APHIS inspectors. APHIS inspectors would need to be present to (1) verify and track movement of shipments by receiving copies of limited permits, (2) ensure that containers or means of conveyance are sealed, (3) supervise certain transloading and ensure that further movement is in compliance with the regulations, and (4) prescribe actions as permitted by the proposed regulations. Our proposal includes a footnote indicating where to obtain a list of ports staff by APHIS inspectors.

It would additionally be required that transportation through the continental United States be by the most direct route to the final destination of the shipment in the country to which it is exported, as determined by APHIS based on commercial shipping routes and timetables, and as set forth in the transit permit. Requiring movement by the most direct route would help ensure that any pest risk from the shipment would be minimized, by ensuring that shipments do not linger unnecessarily in the continental United States.

It should be noted that the most direct route to the final destination may not include the shortest route through the United States. For example, it is possible that a shipment that enters the United States at an east coast port for ultimate shipment to western Canada could move to that destination more directly across the United States to its west coast, then to western Canada, than it could by moving from the east coast port to eastern Canada, then across Canada. This would provide shippers with reasonable and practical routes that might be unavailable if the shipper were required to move the cargo directly out of the continental United States without regard to its final destination.

Any temporary storage in the continental United States of fruits and vegetables shipped under the proposed provisions would have to be in a location and for a duration set forth in the transmit permit. Areas used for such storage would have to be either locked or guarded at all times.

Only repackaging described in the transit permit would be allowed, except for that allowed in extenuating circumstances by an APHIS inspector upon determination by the inspector that the repackaging would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. No change in quantity from that described in the limited permit would be allowed. No remarking would be allowed. No diversion or delay of the shipment from the itinerary described in the transit permit and limited permit would be allowed unless authorized by an APHIS inspector upon determination by the inspector that the change would not significantly increase the risk of plant pests or diseases in the United States, and unless each port to which the shipment is diverted is staffed by APHIS inspectors. In order to ensure that shipments can be tracked and safeguarded, it is necessary for APHIS to know which route the cargo is taking through the continental United States, as set forth in the transmit permit. However, we believe that practical considerations, such as changes in shipping schedules and the opportunity for more expeditious or economical shipping routes, warrant our allowing alternative itineraries when approved by an inspector, as set forth in the regulations, when such diversion would not pose a pest or disease risk. All movement in the continental United States would have to be carried out within a specified area, as discussed in this Supplementary Information under the heading "Authorized Movement Area."

**Sealed Containers**

To guard against pest and disease introduction, it is necessary that fruits and vegetables transported under the proposed provisions be contained in sealed containers. We would define "sealed (sealable) container" to mean a completely enclosed container designed for the storage and/or transportation of commercial air, sea, rail, or truck cargo, and constructed of metal or fiberglass, or other similarly sturdy and impenetrable material, providing an enclosure accessed through doors that are closed and secured with a lock or seal. We would describe sealed containers for sea shipments as being distinct and separable from the means of conveyance carrying them when arriving in an in transmit through the continental United States. We would describe sealed containers used for air shipments arriving in the continental United States as being distinct and separable from the means of conveyance carrying them, and would describe sealed containers used for air shipments after transloading in the continental United States or for overland shipments in the continental United States as being either distinct and separable from the means of conveyance carrying them, or the means of conveyance itself. The rationale for each of these provisions in the definition is set forth below under the headings "Shipments by Sea," "Shipments by Air," and "Overland Shipments."

**Shipments by Sea**

Most of the provisions we are proposing would apply both to shipments to the United States by air and those by sea. However, we believe that the differences between air transport and sea transport make it necessary to set forth certain provisions that differ according to the method of transport.

The types of containers used for sea shipments can be transferred directly to another ship or a railcar, or be used as part of a trailer truck. (The lack of availability of air carriers at seaports would make transfer of sea shipments to aircraft impracticable). Therefore, we are proposing to prohibit cargo arriving by sea from Hawaii, Puerto Rico, or the Virgin Islands under this proposed rule from being removed from the sealed container containing the cargo when it arrives in the United States, except under extenuating circumstances and when authorized by an APHIS inspector upon determination by the inspector that transferring the cargo from the original container to another container would not significantly increase the risk of introducing plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. We believe that this prohibition is both warranted and necessary because the longer transit time associatied with sea shipments, combined with an anticipated high volume of sea shipments and the normal delays related to handling and opening sea containers, would contribute to an increased and unacceptable risk of pest introduction. We believe further that, under normal shipping conditions, it is unlikely that the removal of fruits and vegetables from the original sea container would be necessary or practical. For the same reasons, we would define "sealed

(sealable) container" with regard to sea shipments as being distinct and separable from the means of conveyance carrying the container—i.e., the sealed container would not be the ship itself.

The proposed provisions would allow sea shipments arriving from Hawaii, Puerto Rico, or the Virgin Islands into or through the continental United States under the porposal to be transloaded once from a ship to another ship or, alternatively, once from a ship to a truck or railcar at the port of arrival and once from a truck or railcar to a ship at the port of export. No other transloading of sea shipments would be allowed, except under extenuating circumstances (such as equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of introducing plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

In order to accommodate standard shipping practices, we believe it is appropriate to allow shipments transloaded from a ship to a truck or railcar at the port of arrival to be transloaded back to a ship at the port of export. An APHIS inspector would be present in each case to accept a copy of the limited permit, and would be able to ensure that shipments transloaded back to a ship at the port of export actually leave the continental United States. However, allowing additional transloading as the shipments transit the continental United States would occasion additional handling of the shipment that we believe is unnecessary under standard shipping practices, and that increases the risk of unauthorized diversion of the shipment. Because of limited APHIS personnel resources, it generally would not be possible to supervise and monitor transloading beyond the port of arrival and the port of export.

Transloading sea containers from a ship to another ship, or from a ship to a truck or railcar is the industry standard for the movement of sea containers. Certain trucks and railcars are specially designed to receive and transport sea containers overland, and both trucks and railcars can usually be brought alongside a ship for direct loading or unloading of sea containers. Typically, however, sea containers are not designed to be transloaded into aircraft, or an aircraft directly into a ship is possible. Therefore, we are not proposing to include this option.

Any storage in the continental United States of fruits and vegetables shipped under this proposed rule would have to be for a duration and in a location authorized under the conditions of the transit permit.

The requirements regarding the transloading of sea shipments would not be as extensive as those regarding air shipments, described below, because, as discussed above, it would be required that sea shipments remain in their original containers, except under extenuating circumstances. For the reasons discussed below, however, air shipments would be permitted to be removed from their original containers for transloading.

**Shipments by Air**

Containers for air shipments often cannot practically be transferred to other aircraft or other means of conveyance, either because of their size or configuration. This means that transferring cargo shipped by air to another means of conveyance may require transloading the cargo from the original shipping container into another container or directly into another means of conveyance, such as the hold of an aircraft or a truck trailer. To accommodate this need, while at the same time providing adequate safeguards against pest and disease introduction, we are proposing certain requirements for air shipments. We are proposing that shipments arriving in and moving through the continental United States by air under this proposed rule may be transloaded only once within the continental United States, except under extenuating circumstances (such as equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that inspectors are available to provide supervision. Transloading of air shipments would have to be done in the presence of an APHIS inspector. As with sea shipments, we believe the number and type of transloadings that would be allowed for shipments arriving by air would be the minimum necessary to accommodate standard shipping practices, while at the same time guarding against unauthorized diversion of the shipment.

Because, practically speaking, landing facilities are not located close enough to either railheads or shipping docks to allow for direct transloading into railcars or ships, we would provide that shipments arriving by air that are transloaded may be transloaded either into another aircraft or into a truck trailer for export by the most direct route to the final destination of the shipment. Such transloading would be authorized only if the following conditions are met: (1) The transloading is done into sealable containers; (2) the transloading is carried out within the secure area of the airport— *i.e.*, that area of the airport that is open only to personnel authorized by the airport security authorities; (3) any storage of the shipment is in an area that is within a permanent building, and the cargo is completely surrounded by a fence or wall that is closed and locked or guarded so as to prevent access by persons other than those who need to handle the cargo under the conditions of the transit permit; and (4) APHIS inspectors are available to provide the supervision required by the proposed provisions.

In our proposed definition of "sealed (sealable) container," we would provide that sealed (sealable) containers used for air shipments are distinct and separable from the means of conveyance carrying them when arriving in the continental United States, but that sealed (sealable) containers used for air shipments after transloading in the continental United States may either be distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself. Shipping air cargo arriving in the continental United States under this proposed rule in containers distinct and separable from the aircraft would be necessary for the cargo to be segregated from other cargo that may be offloaded in the continental United States.

We are also proposing to provide that shipments that continue by air from the port of arrival in the continental United States may be authorized by APHIS to stop at only one other port within the designated corridor, except as authorized by an APHIS inspector, upon determination by the inspector that another stop would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided the second port is staffed by APHIS inspectors. We believe that this extra stop would accommodate the practical needs of air shipments, such as refueling, without significantly increasing the risk of pest and disease spread or imposing a significant additional burden on APHIS resources. No transloading other than that described above would be allowed, except under extenuating circumstances (such as equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not

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significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

**Overland Shipments**

Our proposed definition of "sealed (sealable) container" would state that a sealed (sealable) container used for overland shipments in the continental United States may be either distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself. This definition would take into account the fact that shipments arriving in the continental United States by air under this proposal may be removed from a shipping container used on the aircraft and loaded into a truck trailer or railcar. As discussed above under "Shipments by Sea," cargo arriving by sea would have to remain in the sealed container in which they arrive, which, under standard industry practice, are used either as the trailer portion of a truck trailer, or are loaded intact onto a railcar.

**Temperature Requirement**

The risk of any plant pests that might be present in the shipment maturing or propagating is reduced by chilling the cargo. Chilling the cargo also generally retards the ripening of fruits and vegetables. Ripened fruits and vegetables are more attractive to pests and more conducive to propagation of pests. Therefore, we are proposing that, except for time spent on aircraft and except for up to 24 hours for transloading, fruits and vegetables moved into or through the continental United States under these proposed provisions mut, from the time they leave either Hawaii, Puerto Rico, or the Virgin Islands, as applicable, be kept in containers, means of conveyance, or facilities in which the temperature if 60° F or lower. We are not applying this requirement to fruits and vegetables on aircraft, for two reasons. First, aircraft are generally not equipped with refrigeration capabilities. Second, air shipments are generally of a relatively brief duration, so refrigeration in such cases would not contribute significantly to reducing the plant pest risk. We are allowing up to 24 hours for transloading without chilling of the fruits and vegetables to meet the practical needs of removing fruits and vegetables from means of conveyance or containers. If the temperature exceeds 60° F for 24 hours or less, the additional pest risk would be minimal.

**Authorized Movement Area**

Fruits and vegetables currently prohibited movement from Hawaii, Puerto Rico, and the Virgin Islands, if allowed movement into all parts of the continental United States, would pose the greatest risk in those areas of the United States where climate and host materials are most similar to those of the areas where the fruits and vegetables originated. For this reason, we are proposing that the port of arrival, port of export, ports for air stops, and overland movement of fruits and vegetables transiting the continental United States under these proposed provisions would be limited to a defined corridor that includes all States in the continental United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas (except as discussed below), and Virgina. Movement would be allowed through Dallas/Forth Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into the designated corridor by the shortest route. Shipments through the United States would have to begin and end their movement through the continental United States at locations staffed by APHIS personnel.

Dallas/Fort Worth would be included within the designated corridor because it is an important air cargo connection point, and because it is sufficiently distant from more tropical locations in Texas where pest establishment would be more likely. Movement from Dallas/Fort Worth into the designated corridor by the shortest route would be required to ensure that shipments arriving at Dallas/Fort Worth do not linger unnecessarily outside the corridor, thereby increasing the potential for pest or disease introduction.

**Prohibited Materials**

We are proposing provisions to make clear which persons would be responsible for ensuring that means of conveyance and containers brought into or through the continental United States from Hawaii, Puerto Rico, or the Virgin Islands en route to a foreign destination and those subsequently brought back into the United States from a foreign destination after transiting the United States are clean and free of materials prohibited entry into the continental United States under 5 CFR chapter III. We would provide that the person in charge of or in possession of a sealed container used for movement into or through the continental United States under this proposed rule would be responsible for ensuring that the sealed container is carrying only those fruits and vegetables authorized by the required transit permit.

We would also set forth provisions regarding means of conveyance and containers returned to the United States from a foreign destination after previously transiting the continental United States. Based on standard shipping practices, we expect that means of conveyance or containers used to transport fruits and vegetables into or through the continental United States under the proposed provisions would sometimes be sent back to the United States from their destination country empty for further use. To ensure that these means of conveyance or containers contained therein pose no risk of pest introduction upon their return to the United States, we are proposing to require that the person in charge of or in possession of such a means of conveyance or container would have to ensure that the means of conveyance or container is free of materials prohibited importation into the United States under the regulations in 7 CFR chapter III.

**Withdrawal of Transit Permits and Limited Permits**

We are also proposing to add provisions for withdrawal of transit permits in the Hawaii regulations, and for the withdrawal of transit permits and limited permits in the Puerto Rico-Virgin Islands regulations. We would provide that the document in question may be withdrawn, orally or in writing, if an inspector determines that its holder has not complied with all conditions under the regulations for the use of the document. The regulations would provide that if the cancellation is oral, the decision and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. We would allow the holder of the document 10 days after receipt of written notification of the withdrawal to appeal the decision. The appeal would have to state all of the facts and reasons upon which the person relies to show that the document was wrongfully withdrawn. We would provide that the Administrator shall grant or deny the appeal, in writing, stating the reasons for the decision, as promptly as circumstances allow. In cases where there is a conflict as to any material fact, a hearing would be held to resolve the conflict. Rules of practice concerning such a hearing would be adopted by the Administrator.

We would also provide that authorization by APHIS of movement of fruits and vegetables into or through the continental United States under the proposed regulations does not imply that the fruits and vegetables are enterable into the destination country. Shipments returned to the United States from the destination country would be subject to all applicable regulations, including "Subpart—Fruits and Vegetables" of 7 CFR part 319, and 7 CFR part 352.

**Responsibility for Compliance**

In order to facilitate enforcement of the regulations, we would provide that any restrictions and requirements under the proposed provisions with respect to the arrival, temporary stay, unloading, transloading, transiting, exportation, or other movement or possession in the United States of any fruits or vegetables under the proposed provisions would apply to any person who, respectively, brings into, maintains, unloads, transloads, transports, exports, or otherwise moves or possesses in the United States such fruits or vegetables, whether or not that person is the one who was required to have a transit permit or limited permit for the fruits or vegetables or is a subsequent custodian of the fruits or vegetables. Failure to comply with all applicable restrictions and requirements under the proposed regulations by such a person would be deemed to be a violation of the proposed provisions.

**Definitions**

We are proposing to add or revise certain definitions to clarify the meaning of the proposed regulations. We are also proposing to revise the definition of "person" in the Hawaii regulations to make it consistent with the definition of "person" elsewhere in 7 CFR, and we are proposing to revise the definition of "inspector" in the Hawaii regulations to make it consistent with the definition in the Puerto Rico-Virgin Islands regulations. Additionally, we are proposing to revise the definition of "limited permit" in the Hawaii and Puerto Rico-Virgin Islands regulations to reflect its proposed use for fruits and vegetables moved into or through the continental United States in accordance with the proposed regulations.

**Miscellaneous**

Current § 318.58–7 contains a reference to § 318.58–12. Currently, § 318.58–12 is reserved and contains no provisions. However, in this proposed rule, we are proposing to include certain new provisions under § 318.58–12, which we do not intend to be referenced by § 318.58–7. We are therefore proposing to amend current § 318.58–7 to remove the reference to § 318.58–12. We are also proposing to make nonsubstantive changes to §§ 318.13–10 and 318.58–10 to clarify the intent of these provisions regarding the attachment of certificates or limited permits.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities.

In accordance with 7 U.S.C. 162, the Secretary of Agriculture is authorized to promulgate regulations governing the interstate movement of plants and plant products from a State or territory of the United States that is quarantined to prevent the spread of a dangerous plant disease or insect infestation new to or not widely prevalent or distributed within or throughout the United States. This proposed rule would allow the movement into and through the continental United States of fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands that would otherwise be prohibited. This movement would have to be carried out under restrictions that appear necessary to prevent the spread of dangerous plant diseases and insect infestations. We believe that this amendment to the regulations would provide additional cargo routes to shippers in Hawaii, Puerto Rico, and the Virgin Islands, without significantly increasing the introduction of plant diseases and pests into the continental United States.

This proposed rule would primarily benefit growers and shipping businesses in Hawaii, Puerto Rico, and the Virgin Islands. Current regulations allow prohibited fruits and vegetables from foreign sources to be shipped, under certain conditions, through the United States in transit to a third country. However, these same routes are closed to prohibited fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands. Currently, cargo connections are such that very limited direct flights or shipping routes exist between the locations in question and Europe and Canada. The proposed provisions would provide growers and shippers in Hawaii, Puerto Rico, and the Virgin Islands access to cargo routes similar to those available to foreign growers and shippers.

Puerto Rican growers/shippers have indicated that Canada represents a significant potential market for their vegetable crops. Similarly, both Canada and Europe are potential markets for Hawaiian produce, particularly fruits. However, the current lack of economical shipping routes makes shipment of certain fruits and vegetables to these destinations cost-prohibitive. The amount of produce that might transit the continental United States under these proposed regulations is unknown. Most of the requests to APHIS have been from growers/shippers of major crops such as pineapples and papayas from Hawaii. It is anticipated that a market for other nontraditional and exotic crops will develop as regulations are relaxed.

We considered two alternatives to the proposed regulations. The first was to defer any regulatory action in anticipation of the development of more direct shipping and air cargo routes between the locations in question and Canada and Europe that would bypass the continental United States. If and when these routes were established, we would reexamine the need to allow otherwise prohibited materials to transit the continental United States. This alternative was ruled out because we believe the low risk of pest introduction from the proposed regulations does not warrant the length of time that is likely to be involved before more accessible cargo routes could be in operation. We also considered proposing no changes at any time to the current regulations. In light of the low risk of pest and disease introduction under the proposed regulations, this option was deemed unduly restrictive.

**Paperwork Reduction Act**

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule have been submitted for approval the Office of Management and Budget. Your written

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comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This proposed rule would allow fruits and vegetable from Hawaii, Puerto Rico and the Virgin Islands of the United States that are otherwise prohibited movement into or through the continental United States to transit a certain corridor of the continental United States en route to a foreign destination if certain safeguards are met. All State and local laws regarding such fruits and vegetable would be preempted. No retroactive effect is to be given to this proposed rule. This proposed rule would require administrative proceedings before parties may file suit in court with regard to the withdrawal of transit permits and limited permits as provided in proposed §§ 318.13–16 and 318.58–16. Thus, the administrative remedies set forth in §§ 318.13–16 and 318.58–16 must be exhausted before parties may file suit in court.

**List of Subjects in 7 CFR Part 318**

Agricultural commodities, Guam, Hawaii, Plant diseases, Plant pests, Plants (Agriculture), Puerto Rico, Quarantine, Transportation, Virgin Islands.

Accordingly, we are proposing to amend 7 CFR part 318 as follows:

## PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 318.13–1 would be amended by revising the definitions of "Inspector", "Limited permit" and "Person", and by adding defintions of "Continental United States", "Interstate", "Means of conveyance", Sealed (sealable) container", "State", "Transit permit", and "Transloading" in alphabetical order to read as follows:

**§ 318.13–1 Definitions.**

* * * * *

*Continental United States.* The 48 contiguous States, Alaska, and the District of Columbia.

* * * * *

*Inspector.* An inspector of the Plant Protection and Quarantine Programs, United States Department of Agriculture.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document issued by an inspector for the interstate movement of regulated articles to a specified destination for:

(1) Consumption, limited utilization or processing, or treatment, in conformity with a compliance agreement; or (2) Movement into or through the continental United States in conformity with a transit permit.

* * * * *

*Means of conveyance.* For the purposes of § 318.13–17 of this subpart, "means of conveyance" shall mean a ship, truck, aircraft, or railcar.

* * * * *

*Person.* Any individual, corporation, company, society, association, or other organized group.

* * * * *

*Sealed (sealable) container.* A completely enclosed container designed for the storage and/or transportation of commercial air, sea, rail, or truck cargo, and constructed of metal or fiberglass, or other similarly sturdy and impenetrable material, providing an enclosure accessed through doors that are closed and secured with a lock or seal. Sealed (sealable) containers used for sea shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments after transloading in the continental United States or for overland shipments in the continental United States may either be distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself.

*State.* Each of the 50 States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States, and all other territories and possessions of the United States.

*Transit permit.* A written authorization issued by the Administrator for the movement of fruits and vegetables en route to a foreign destination that are otherwise prohibited movement by the subpart into or through the continental United States. Transit permits authorize one or more shipments over a designated period of time.

*Transloading.* The transfer of cargo from one sealable container to another, from one means of conveyance to another, or from a sealable container directly into a means of conveyance.

* * * * *

3. Section 318.13–3 would be amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and by adding a new paragraph (c) to read as follows:

**§ 318.13–3 Conditions of movement.**

* * * * *

(c) *To a foreign destination after transiting the continental United States.* Fruits and vegetables from Hawaii otherwise prohibited movement from the State of Hawaii into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with § 318.13–17 of this subpart.

* * * * *

4. Section 318.13–4 would be amended by revising paragraph (d) to read as follows:

**§ 318.13–4 Conditions governing the issuance of certificates or limited permits.**

* * * * *

(d) *Limited permits.* (1) Limited permits may be issued by an inspector for the movement of noncertified regulated articles designated in § 318.13–3(b) of this subpart.

(2) Limited permits may be issued by an inspector for the movement of fruits and vegetables otherwise prohibited movement under this subpart, if the articles are to be moved in accordance with § 318.13–17 of this subpart.

* * * * *

5. Section 318.13–6 would be revised to read as follows:

**§ 318.13–6 Container marking and identity.**

Except as provided in § 318.13–17(c) of this subpart, shipments of regulated articles moved in accordance with this subpart must have the following information clearly marked on each container, or, for shipments of multiple containers or bulk products, on the waybill, manifest, or bill of lading accompanying the articles: Nature and quantity of contents; name and address of shipper, owner, or person shipping or forwarding the articles; name and address of consignee; shipper's identifying mark and number; and, the number of the certificate or limited permit authorizing movement, if one was issued.



**§ 318.13–8 [Amended]**

6. In § 318.13–8, in the first sentence, the words "the port of departure and/or the port of arrival." would be removed, and the words "the port of departure, the port of arrival, and/or any other authorized port." would be added in their place.

**§ 318.13–10 [Amended]**

7. In § 318.13–10, at the end of paragraph (f)(1), the reference "§ 318.13–3(d)" would be removed and "§ 318.13–3(e)" would be added in its place.

8. In § 318.13–10, paragraph (f)(2) introductory text would be revised and a new paragraph (f)(3) would be added to read as follows:

**§ 318.13–10 Inpection of baggage, other personal effects, and cargo.**

* * * * *

(f) * * *

(2) Cargo designated in paragraph (f)(1) of this section may be loaded without a USDA stamp or USDA inspection sticker, and without a certificate attached to the cargo or a limited permit attached to the cargo if the cargo is moved:

* * * * *

(3) Cargo moved in accordance with § 318.13–17 of this subpart that does not have a limited permit attached to the cargo must have a limited permit attached to the waybill, manifest, or bill of lading accompanying the shipment.

* * * * *

**§ 318.13–16 [Amended]**

9. In § 318.13–16, the section heading would be amended by adding "transit permits," immediately after "certificates,".

10. Section 318.13–16 would be amended by adding "transit permit," immediately after "certificate," in the first sentence and in the third sentence.

11. In § 318.13–16, the fourth sentence would be amended by removing the words "certificate or limited permit" and adding in their place the words "certificate, transit permit, or limited permit".

12. A new § 318.13–17 would be added to read as follows:

**§ 318.13–17 Transit of fruits and vegetables from Hawaii into or through the continental United States.**

Fruits and vegetables from Hawaii otherwise prohibited movement from the State of Hawaii into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with this section and any other applicable provisions of this subpart. Any additional restrictions on such movement that would otherwise be imposed by part 301 of this chapter and §§ 318.30 and 318.30a of this part shall not apply.

(a) *Transit permit.* (1) A transit permit is required for the arrival, unloading, and movement into or through the continental United States of fruits and vegetables otherwise prohibited by this subpart from being moved into or through the continental United States from Hawaii. Application for a transit permit must be made in writing.[9] The transit permit application must include the following information:

(i) The specific types of fruits and vegetables to be shipped;

(ii) The means of conveyance to be used to transport the fruits and vegetables into or through the continental United States;

(iii) The port of arrival in the continental United States, and the location of any subsequent stop;

(iv) The location of, and the time needed for, any storage in the continental United States;

(v) Any location in the continental United States where the fruits and vegetables are to be transloaded;

(vi) The means of conveyance to be used for transporting the fruits and vegetables from the port of arrival in the continental United States to the port of export;

(vii) The estimated time necessary to accomplish exportation, from arrival at the port of arrival in the continental United States to exit at the port of export;

(viii) The port of export; and

(ix) The name and address of the applicant and, if the applicant's address is not within the territorial limits of the United States, the name and address in the United States of an agent whom the applicant names for acceptance of service of process.

(2) A transit permit will be issued only if the following conditions are met:

(i) APHIS inspectors are available at the port of arrival, port of export, and any locations at which transloading of cargo will take place, and, in the case of air shipments, at any interim stop in the continental United States, as indicated on the application for the transit permit;

(ii) The application indicates that the proposed movement would comply with the provisions in this section applicable to the transit permit; and

(iii) During the 12 months prior to receipt of the application by APHIS, the applicant has not had a transit permit withdrawn under § 318.13–16 of this subpart, unless the transit permit has been reinstated upon appeal.

(b) *Limited permit.* Fruits and vegetables shipped from Hawaii into or through the continental United States under this section must be accompanied by a limited permit, a copy of which must be presented to an inspector at the port of arrival and the port of export in the continental United States, and at any other location in the continental United States where an air shipment is authorized to stop or where overland shipments change means of conveyance. An inspector will issue a limited permit if the following conditions are met:

(1) The inspector determines that the specific type and quantity of the fruits and vegetables being shipped are accurately described by accompanying documentation, such as the accompanying manifest, waybill, and bill of lading. The fruits and vegetables shall be assembled at whatever point and in whatever manner the inspector designates as necessary to comply with the requirements of this section; and

(2) The inspector establishes that the shipment of fruits and vegetables has been prepared in compliance with the provisions of this section.

(c) *Marking requirements.* Each of the smallest units, including each of the smallest bags, crates, or cartons, containing fruits and vegetables for transit into or through the continental United States under this section must be conspicuously marked, prior to the sealing of the container in Hawaii, with a printed label that includes a description of the specific type and quantity of the fruits and vegetables, the fact that they were grown in Hawaii, the transit permit number under which the fruits and vegetables are to be shipped, and the statement "Distribution in the United States is Prohibited."

(d) *Handling of fruits and vegetables.* Fruits and vegetables shipped into or through the continental United States from Hawaii in accordance with this section may not be commingled in the same sealed container with articles that

[9] Applications for transit permits should be submitted to the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

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are intended for entry and distribution in the continental United States. The fruits and vegetables must be kept in sealed containers from the time the limited permit required by paragraph (b) of this section is issued, until the fruits and vegetables exit the continental United States, except as otherwise provided in the regulations in this section. Transloading must be carried out in accordance with the requirements of paragraphs (a), (g), and (h) of this section.

(e) *Area of movement.* The port of arrival, the port of export, ports for air stops, and overland movement within the continental United States of fruits and vegetables shipped under this section is limited to a corridor that includes all States of the continental United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia, except that movement is allowed through Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into the designated corridor by the shortest route. Movement through the continental United States must begin and end at locations staffed by APHIS inspectors.[10]

(f) *Movement of fruits and vegetables.* Transportation through the continental United States shall be by the most direct route to the final destination of the shipment in the country to which it is exported, as determined by APHIS based on commercial shipping routes and timetables and set forth in the transit permit. No change in the quantity of the original shipment from the described in the limit permit is allowed. No remarking is allowed. No diversion or delay of the shipment from the itinerary described in the transit permit and limited permit is allowed unless authorized by an APHIS inspector upon determination by the inspector that the change will not significantly increase the risk of plant pests or diseases in the United States, and unless each port to which the shipment is diverted is staffed by APHIS inspectors.

(g) *Shipments by sea.* Except as authorized by this paragraph, shipments arriving in the continental United States by sea from Hawaii may be transloaded once from a ship to another ship or, alternatively, once to a truck or railcar at the port of arrival and once from a truck or railcar to a ship at the port of export, and must remain in the original sealed container except under extenuating circumstances and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(h) *Shipments by air.* (1) Shipments arriving in the continental United States by air from Hawaii may be transloaded only once in the continental United States. Transloading of air shipments must be carried out in the presence of an APHIS inspector. Shipment arriving by air that are transloaded may be transloaded either into another aircraft or into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second air stop within the designated corridor, as authorized in the transit permit and as provided in paragraph (h)(2) of this section. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. Transloading of air shipments will be authorized only if the following conditions are met:

(i) The transloading is done into sealable containers;

(ii) The transloading is carried out within the secure area of the airport—i.e., that area of the airport that is open only to personnel authorized by the airport security authorities;

(iii) The area used for any storage is within a permanent building, and the cargo is completely surrounded by a fence or wall that is closed and locked or guarded so as to prevent access by persons other than those who need to handle the cargo under the conditions of the transit permit; and

(iv) APHIS inspectors are available to provide the supervision required by paragraph (h)(1) of this section.

(2) Except as authorized by paragraph (f) of this section, shipments that continue by air from the port of arrival in the continental United States may be authorized by APHIS for only one additional stop in the continental United States, provided the second stop is within the designated corridor set forth in paragraph (e) of this section and is staffed by APHIS inspectors. As an alternative to transloading a shipment arriving in the United States into another aircraft, shipments that arrive by air may be transloaded into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second authorized air stop within the designated corridor. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(i) *Duration and location of storage.* Any storage in the continental United States of fruits and vegetables shipped under this section must be for a duration and in a location authorized in the transit permit required by paragraph (a) of this section. Areas where such fruits and vegetables are stored must be either locked or guarded at all times the fruits and vegetables are present.

(j) *Temperature requirement.* Except for time spent on aircraft, and except for up to 24 hours for transloading, fruits and vegetable moved into or through the continental United States under this section must, from the time they leave Hawaii, be kept in sealed containers, or the sealed containers kept in facilities, in which the temperature is 60° F or lower.

(k) *Prohibited materials.* (1) The person in charge of or in possession of a sealed container used for movement into or through the continental United States under this section must ensure that the sealed container is carrying only those fruits and vegetbles authorized by the

[10] For a list of ports staffed by APHIS inspectors, contact the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

transit permit required under paragraph (a) of this section; and

(2) The person in charge of or in possession of any means of conveyance or container returned to the United States without being reloaded after being used to export fruits and vegetables from the United States under this section must ensure that the means of conveyance or container is free of materials prohibited importation into the United States under this chapter.

(l) Authorization by APHIS of the movement of fruits and vegetbles into or through the continental United States under this section does not imply that the fruits and vegetbles are enterable into the destination country. Shipments returned to the United States from the destination country shall be subject to all applicable regulations, including "Subpart—Fruits and Vegetables" of part 319 of this chapter, and part 352 of this chapter.

(m) Any restrictions and requirements with respect to the arrival, temporary stay, unloading, transloading, transiting, exportation, or other movement or possession in the United States of any fruits or vegetables under this section shall apply to any person who, respectively, brings into, maintains, unloads, transports, exports, or otherwise moves or possesses in the United States such fruits or vegetables, whether or not that person is the one who was required to have a transit permit or limited permit for the fruits or vegetables or is a subsequent custodian of the fruits or vegetables. Failure to comply with all applicable restrictions and requirements under the proposed regulations by such a person shall be deemed to be a violation of the proposed provisions.

13. Section 318.58–1 would be amended by removing the paragraph designations, placing the definitions in alphabetical order, and adding new definitions of "Administrator," "Animal and Plant Health Inspection Service," "Continental United States", "Interstate", "Limited permit," "Means of conveyance", "Person," "Sealed (sealable) container", "State", "Transit permit," and "Transloading" in alphabetical order to read as follows:

**§ 318.58–1 Definitions.**

*Administrator.* The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other employee of the Animal and Plant Health Inspection Service authorized to act in the Administrator's stead.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

* * * * *

*Continental United States.* The 48 contiguous States; Alaska, and the District of Columbia.

* * * * *

*Interstate.* From any State into or through any other State.

*Limited permit.* A document issued by an inspector for the interstate movement of regulated articles to a specified destination for:

(1) Consumption, limited utilization or processing, or treatment, in conformity with a compliance agreement; or

(2) Movement into or through the continental United States in conformity with a transit permit.

*Means of conveyance.* For the purposes of § 318.58–12 of this subpart, "means of conveyance" shall mean a ship, truck, aircraft, or railcar.

* * * * *

*Person.* Any individual, corporation, company, society, association, or other organized group.

* * * * *

*Sealed (sealable) container.* A completely enclosed container designed for the storage and/or transportation of commercial air, sea, rail, or truck cargo, and constructed of metal or fiberglass, or other similarly sturdy and impenetrable material, providing an enclosure accessed through doors that can be closed and secured with a lock or seal. Sealed (sealable) containers used for sea shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments after transloading in the continental United States or for overland shipments in the continental United States may either be distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself.

*State.* Each of the 50 States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States, and all other territories and possessions of the United States.

*Transit permit.* A written authorization issued by the Administrator for the movement of fruits and vegetables en route to a foreign destination that are otherwise prohibited movement by this subpart into or through the continental United States. Transit permits authorize one or more shipments over a designated period of time.

*Transloading.* The transfer of cargo from one sealable container to another, from one means of conveyance to another, or from a sealable container directly into a means of conveyance.

14. Section 318.58–3 would be amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding a new paragraph (b) to read as follows:

**§ 318.58–3 Conditions of movement.**

* * * * *

(b) *To a foreign destination after transiting the continental United States.* Fruits and vegetables from Puerto Rico and the Virgin Islands of the United States that are otherwise prohibited movement from those territories into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with § 318.58–12 of this subpart.

* * * * *

15. Section 318.58–4 would be amended by revising the section heading and the introductory text, and by adding a new paragraph (c) to read as follows:

**§ 318.58–4 Issuance of certificates or limited permits.**

Under the following conditions, an inspector may issue a certificate or limited permit for the movement of regulated articles to be moved in accordance with this subpart:

* * * * *

(c) An inspector may issue a limited permit for the movement of fruits and vegetables otherwise prohibited movement under this subpart, if the articles are to be moved in accordance with § 318.58–12 of this subpart.

**§ 318.58–7 [Amended]**

16. In § 318.58–7, the reference "§§ 318–58–8 and 318.58–12," would be removed and a reference "§ 318.58–8," would be added in its place; and the designations "(a)", "b)", and "(c)" would be removed, and the word "and" would be added in place of the designation "(c)".

**§ 318.58–8 [Amended]**

17. In § 318.13–8, in the first sentence, the words "the port of departure and/or the port of arrival. "would be removed, and the words "the port of departure, the port of arrival, and/or any other authorized port." would be added in their place.

**§ 318.58–10 [Amended]**

18. In § 318.58–10, at the end of paragraph (f)(1), the reference "§ 318.58–3(c)" would be removed and "§ 318.58–3(d)" would be added in its place.

19. In § 318.58–10, paragraph (f)(2) introductory text would be revised and a new paragraph (f)(3) would be added to read as follows:

**§318.58–10 Inspection of baggage, other personal effects, and cargo.**

* * * * *

(f) * * *

(2) Cargo designated in paragraph (f)(1) of this section may be loaded without a USDA stamp or USDA inspection sticker and without a certificate attached to the cargo or a limited permit attached to the cargo, if the cargo is moved:

* * * * *

(3) Cargo moved in accordance with § 318.58–12 of this subpart that does not have a limited permit attached to the cargo must have a limited permit attached to the waybill, manifest, or bill of lading accompanying the shipment.

* * * * *

20. A § 318.58–12 would be added to read as follows:

**§ 318.58–12 Transit of fruits and vegetables from Puerto Rico and the Virgin Islands of the United States into or through the continental United States.**

Fruits and vegetables from Puerto Rico and the Virgin Islands of the United States that are otherwise prohibited movement from those territories into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with this section and any other applicable provisions of this subpart. Any additional restrictions on such movement that would otherwise be imposed by part 301 of this chapter and §§ 318.30 and 318.30a of this part shall not apply.

(a) *Transit permit.* (1) A transit permit is required for the arrival, unloading, and movement into or through the continental United States of fruits and vegetables otherwise prohibited by this subpart from being moved into or through the continental United States from Puerto Rico or the Virgin Islands of the United States. Application for a transit permit must be made in writing.[2] The transit permit application must include the following information:

(i) The specific types of fruits and vegetables to be shipped;

(ii) The means of conveyance to be used to transport the fruits and vegetables into or through the continental United States;

(iii) The port of arrival in the continental United States, and the location of any subsequent stop;

(iv) The location of, and the time needed for, any storage in the continental United States;

(v) Any location in the continental United States where the fruits and vegetables are to be transloaded;

(vi) The means of conveyance to be used for transporting the fruits and vegetables from the port of arrival in the continental United States to the port of export;

(vii) The estimated time necessary to accomplish exportation, from arrival at the port of arrival in the continental United States to exit at the port of export;

(viii) The port of export; and

(ix) The name and address of the applicant and, if the applicant's address is not within the territorial limits of the United States, the name and address in the United States of an agent whom the applicant names for acceptance of service of process.

(2) A transit permit will be issued only if the following conditions are met:

(i) APHIS inspectors are available at the port of arrival, port of export, and any locations at which transloading of cargo will take place, and, in the case of air shipments, at any interim stop in the continental United States, as indicated on the application for the transit permit;

(ii) The application indicates that the proposed movement would comply with the provisions in this section applicable to the transit permit; and

(iii) During the 12 months prior to receipt of the application by APHIS, the applicant has not had a transit permit withdrawn under § 318.58–16 of this subpart, unless the transit permit has been reinstated upon appeal.

(b) *Limited permit.* Fruits and vegetables shipped from Puerto Rico or the Virgin Islands of the United States into or through the continental United States under this section must be accompanied by a limited permit, a copy of which must be presented to an inspector at the port of arrival and the port of export in the continental United States, and at any other location in the continental United States where an air shipment is authorized to stop or where overland shipments change means of conveyance. An inspector will issue a limited permit if the following conditions are met:

(1) The inspector determines that the specific type and quantity of the fruits and vegetables being shipped are accurately described by accompanying documentation, such as the accompanying manifest, waybill, and bill of lading. The fruits and vegetable shall be assembled at whatever point and in whatever manner the inspector designates as necessary to comply with the requirements of this section; and

(2) The inspector establishes that the shipment of fruits and vegetables has been prepared in compliance with the provisions of this section.

(c) *Marking requirements.* Each of the smallest units, including each of the smallest bags, crates, or cartons, containing fruits and vegetables for transit into or through the continental United States under this section must be conspicuously marked, prior to the sealing of the container in Puerto Rico or the Virgin Islands of the United States, with a printed label that includes a description of the specific type and quantity of the fruits and vegetables, the fact that they were grown in Puerto Rico or the Virgin Islands of the United States, the transit permit number under which the fruits and vegetables are to be shipped, and the statement "Distribution in the United States is Prohibited."

(d) *Handling of fruits and vegetables.* Fruits and vegetables shipped into or through the continental United States from Puerto Rico or the Virgin Islands of the United States in accordance with this section may not be commingled in the same sealed container with articles that are intended for entry and distribution in the continental United States. The fruits and vegetables must be kept in sealed containers from the time the limited permit required by paragraph (b) of this section is issued, until the fruits and vegetables exit the continental United States, except as otherwise provided in the regulations in this section. Transloading must be carried out in accordance with the requirements of paragraphs (a), (g), and (h) of this section.

(e) *Area of movement.* The port of arrival, the port of export, ports for air stops, and overland movement within the continental United States of fruits and vegetables shipped under this section is limited to a corridor that includes all States of the continental United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia, except that movement is allowed through

[2] Applications for transit permits should be submitted to the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that subsequently transloaded into trucks for overland movement from Dallas/Forth Worth into the designated corridor by the shortest route.

Movement through the continental United States must begin and end at locations staffed by APHIS inspectors.[3]

(f) *Movement of fruits and vegetables.* Transportation through the continental United States shall be by the most direct route to the final destination of the shipment in the country to which it is exported, as determined by APHIS based on commercial shipping routes and timetables an set forth in the transit permit. No charge in the quantity of the original shipment from that described in the limited permit is allowed. No remarking is allowed. No diversion or delay of the shipment from the itinerary described in the transit permit and limited permit is allowed unless authorized by an APHIS inspector upon determination by the inspector the change will not significantly increase the risk of plant pests or diseases in the United States, and unless each port to which the shipment is diverted is staffed by APHIS inspectors.

(g) *Shipments by sea.* Except as authorized by this paragraph, shipments arriving in the continental United States by sea from Puerto Rico or the Virgin Islands of the United States may be transloaded once from a ship to another ship or, alternatively, once to a truck or railcar at the port of arrival and once from a truck or railcar to a ship at the port of export, and must remain in the original sealed container, except under extenuating circumstances and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(h) *Shipments by air.* (1) Shipments arriving in the continental United States by air from Puerto Rico or the Virgin Islands of the United States may be transloaded only once in the continental United States. Transloading of air shipments must be carried out in the presence of an APHIS inspector. Shipments arriving by air that are transloaded may be transloaded either into another aircraft or into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second air stop within the designated corridor, as authorized in the transit permit and as provided in paragraph (h)(2) of this section. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. Transloading of air shipments will be authorized only if the following conditions are met:

(i) The transloading is done into sealable containers;

(ii) The transloading is carried out within the secure area of the airport—*i.e.*, that area of the airport that is open only to personnel authorized by the airport security authorities;

(iii) The area used for any storage is within a permanent building, and the cargo is completely surrounded by a fence or wall that is closed and locked or guarded so as to prevent access by persons other than those who need to handle the cargo under the conditions of the transit permit; and

(iv) APHIS inspectors are available to provide the supervision required by paragraph (h)(1) of this section.

(2) Except as authorized by paragraph (f) of this section, shipments that continue by air from the port of arrival in the continental United States may be authorized by APHIS for only one additional stop in the continental United States, provided the second stop is within the designated corridor set forth in paragraph (e) of this section and is staffed by APHIS inspectors. As an alternative to transloading a shipment arriving in the United States into another aircraft, shipments that arrive by air may be transloaded into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second authorized air stop within the designated corridor. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(i) *Duration and location of storage.* Any storage in the continental United States of fruits and vegetables shipped under this section must be for a duration and in a location authorized in the transit permit required by paragraph (a) of this section. Areas where such fruits and vegetables are stored must be either locked or guarded at all times the fruits and vegetables are present.

(j) *Temperature requirement.* Except for time spent on aircraft, and except for up to 24 hours for transloading, fruits and vegetables moved into or through the continental United States under this section must, from the time they leave Puerto Rico or the Virgin Islands of the United States, be kept in sealed containers, or the sealed container kept in facilities, in which the temperature is 60°F or lower.

(k) *Prohibited materials.* (1) The person in charge of or in possession of a sealed container used for movement into or through the continental United States under this section must ensure that the sealed container is carrying only those fruits and vegetables authorized by the transit permit required under paragraph (a) of this section; and

(2) The person in charge of or in possession of any means of conveyance or container returned to the United States without being reloaded after being used to export fruits and vegetables from the United States under this section must ensure that the means of conveyance or container is free of materials prohibited importation into the United States under this chapter.

(l) Authorization by APHIS of the movement of fruits and vegetables into or through the continental United States under this section does not imply that the fruits and vegetables are enterable into the destination country. Shipments returned to the United States from the destination country shall be subject to all applicable regulations, including

[3] For a list of ports staffed by APHIS inspectors, contact the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

"Subpart—Fruits and Vegetables" of part 319 of this chapter, and part 352 of this chapter.

(m) Any restrictions and requirements with respect to the arrival, temporary stay, unloading, transloading, transiting, exportation, or other movement or possession in the United States of any fruits or vegetables under this section shall apply to any person who, respectively, brings into, maintains, unloads, transloads, transports, exports, or otherwise moves or possesses in the United States such fruits or vegetables, whether or not that person is the one who was required to have a transit permit or limited permit for the fruits or vegetables or is a subsequent custodian of the fruits or vegetables. Failure to comply with all applicable restrictions and requirements under the proposed regulations by such a person shall be deemed to be a violation of the proposed provisions.

**§ 318.58–16 [Amended]**

21. In § 318.58–16, the section heading would be revised to read "Cancellation of certificates, transit permits, or limited permits."

22. In § 318.58–16, the words ", transit permit, or limited permit" would be added immediately following the word "certificate" in the following places:

a. The first sentence;
b. The third sentence; and
c. The fourth sentence.

Done in Washington, DC, this 6th day of July 1992.

**Lennie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92–16149 Filed 7–9–92; 4:48 pm]

BILLING CODE 3410–34–M

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**Agricultural Marketing Service**

**7 CFR Part 928**

**[Docket No. FV–92–070PR]**

## Proposed 1992–93 Fiscal Year Expenses and Assessment Rate for the Marketing Order Covering Papayas Grown in Hawaii

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would authorize expenses and establish an assessment rate for the 1992–93 fiscal year (July 1–June 30) under Marketing Order No. 928. The proposed expenses and assessment rate are needed by the Papaya Administrative Committee (committee) established under this marketing order to pay its expenses and collect assessments from handlers to pay those expenses. The proposed action would enable the committee to perform its duties and the marketing order to operate.

**DATES:** Comments must be received by July 24, 1992.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement and Marketing Order No. 928 (7 CFR part 928) regulating the handling of papayas grown in Hawaii, hereinafter referred to as the marketing order. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, papayas grown in Hawaii are subject to assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable papayas during the 1992–93 fiscal year, beginning July 1, 1992, through June 30, 1993. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 120 handlers of Hawaiian papayas subject to regulations under the marketing order covering papayas grown in Hawaii and about 345 papaya producers in Hawaii. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural services firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable papayas handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The committee members are handlers and producers of Hawaiian papayas. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected pounds of assessable papayas shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The annual budget and assessment rate are usually acted upon by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The Papaya Administrative Committee (committee) met on April 30, 1992, and recommended a 1992–93 budget with expenses of $823,450 and an assessment rate of $0.0085 per pound of assessable papayas shipped. Eight members voted in favor of the proposed 1992–93 expenses and assessment rate, while one member voted "no" and one member abstained, because they favored a lower assessment rate. The proposed 1992–93 budget is similar in scope to the one approved for 1991–92. Budgeted expenses for 1991–92 totaled $746,650, while the assessment rate was $0.0085.

The proposed 1992–93 budget contains $368,450 for program administration, $410,000 for advertising and promotion, and $45,000 for research and development. In comparison, budgeted expenses for 1991–92 were $336,650 for program administration, $400,000 for advertising and promotion, and $10,000 for research and development. The 1992–93 advertising, promotion, and research projects will be submitted for approval as soon as the 1992–93 budget is approved.

Program income for 1992–93 is expected to total $831,660, with assessment income estimated at $552,500, based on projected shipments of 65,000,000 pounds of assessable papayas. Other income includes $200,000 in promotional grants from the Hawaii Department of Agriculture, $63,360 from the USDA's Foreign Agricultural Service, $7,800 from the Japan Inspection Program, and $8,000 from miscellaneous sources including interest. Projected 1992–93 income over expenses ($8,210) would be placed in the committee's operational reserve. This reserve is projected at $72,301 on June 30, 1993, an amount well within the maximum authorized under the marketing order.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers.

However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 fiscal year for the program begins on July 1, 1992, and marketing order requires that the rate of assessment for the fiscal year apply to all assessable Hawaiian papayas during the fiscal year. In addition, handlers are aware of this action which was unanimously recommended by the committee. Therefore, it is found and determined that comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

### List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 928 be amended as follows:

1. The authority citation for 7 CFR part 928 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 928.22 is added to read as follows:

## PART 928–PAPAYAS GROWN IN HAWAII

### § 928.222 Expenses and assessment rate.

Expenses of $823,450 by the Papaya Administrative Committee are authorized, and an assessment rate of $0.0085 per pound of assessable papayas is established for the fiscal year ending June 30, 1993. Any unexpended funds from the 1992–93 fiscal year may be carried over as a reserve.

Dated: July 8, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–16390 Filed 7–13–92; 8:45 am]

BILLING CODE 3410–02–M

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

### 10 CFR Part 1706

**[Docket No. RM–92–1]**

### Rules Governing Organization and Consultant Conflicts of Interest

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Defense Nuclear Facilities Safety Board (Board) proposes the guidelines, requirements, and procedures set forth in this NPRM to avoid conflicts of interests and potential conflicts of interests by those providing assistance to the Board under contracts with the Board. Organizational and consultant conflicts of interest should be avoided and, if they cannot be avoided, should be mitigated. The rules also cover arrangements for obtaining the expert services of personnel working for the National Laboratories under the cognizance of the Department of Energy. The Board invites comments from persons contracting with or who may seek to contract with the Board, other interested members of the public, and other federal agencies.

**DATES:** To be considered, comments must be mailed or delivered to the address listed below by 5 p.m. on August 13, 1992.

**ADDRESSES:** Comments on the proposed rule should be mailed or delivered to the Office of the General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. All comments will be placed in the Board's public files and will be available for inspection between 8:30 a.m. and 4:30 p.m., Mondays through Fridays (except on legal holidays), in the Board's Public Reading Room at the same address. Comments should state prominently that they are being filed in Docket No. RM–92–1.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Andersen, General Counsel, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004, telephone (202) 208–6387.

**SUPPLEMENTARY INFORMATION:**

### I. Background

By this NPRM, the Board proposes to issue rules, procedures, and guidelines for identifying, evaluating, and resolving organizational and consultant conflicts of interest. The Board is comprised of "* * * respected experts in the field of

nuclear safety with a demonstrated competence and knowledge relevant to the independent investigative and oversight functions of the Board." (42 U.S.C. 2286(b)(1).) In fulfilling its statutory responsibilities, the Board utilizes the expert judgment of its members in making determinations related to public health and safety at defense nuclear facilities. The statute also allows the Board to hire a staff to assist the Board in its work. Additionally, the Board finds it necessary, from time to time, to seek assistance from outside sources, particularly where expertise in specialized technical fields is involved. The independent technical capability inherent in the Board provides an important check against contractor work being improperly influenced by an organizational or consultant conflict of interest (OCI). Nevertheless, it is important for the Board to be aware of and make judgments respecting potential conflicts of interests of its offerors and contractors.

In contracting for such assistance the Board has considered it prudent to attempt to identify and avoid conflicts of interests and potential conflicts of interests. Where such conflicts could not be avoided, the Board has heretofore not entered into the proposed agreements or has terminated performance under the contracts, or, where the Board determined it to be in the Government's best interests, possible conflicts were sufficiently mitigated through additional contract stipulations.

Also, from time to time, the Board has found it advantageous to enlist the assistance of certain individuals employed by National Laboratories under the cognizance of the Department of Energy (DOE). These persons were and are selected because of their special competence in particular areas of concern to the Board. An administrative mechanism such as an interagency agreement, rather than a contract, is normally utilized to obtain their services. Nevertheless, before each use of National Laboratory personnel, the Board determined that such use was in the Government's best interests and that possible conflicts of interests would at least be sufficiently mitigated.

The proposed rules are designed to handle these and a variety of other OCI issues in a reasonable and orderly manner in the future.

## II. Summary of the Provisions of the Proposed Rule

The following is a basic outline of key aspects of the rule proposed by the Board.

- Anyone proposing to provide assistance to the Board under a contract with the Board will be required to inform the Board of any role, current or proposed activity, or relationship that could interfere with its ability or inclination to perform in an impartial, objective, and technically sound manner, unaffected by any conflicting interests. If the Board becomes aware that such problems exist, or that the proposer would be given an unfair advantage, it ordinarily will not enter into a contract with the proposer, or the Board will seek to avoid or sufficiently mitigate the problem through contract terms or other administrative action before entering into the contract. In exceptional circumstances, the Board reserves the right to waive the conflict of interest, even if it cannot be mitigated, if such action is in the best interests of the Government.
- Contracts with the Board will contain provisions requiring prompt advance notification to the Board of any change or contemplated change in the contractor's situation that could create a conflict of interest problem. If such a problem becomes apparent to the Board, the affected contract ordinarily will be terminated unless the conflict of interest or potential conflict of interest is avoided, or a waiver is issued in the best interests of the Government with such mitigating measures as the Board deems appropriate.
- Anyone engaged in performing work or services under a DOE contract or subcontract, particularly one relating to a defense nuclear facility, will be assumed to have a potential conflict of interest in regard to possible assistance to the Board. Unless the Board determines after further evaluation that there is no actual conflict, or that a conflict can be avoided, or that the conflict should be waived in the best interests of the Government (with mitigating measures when determined appropriate by the Board), the Board will normally not enter into contracts for assistance by such party. The same determination would have to precede any assistance by personnel of DOE's National Laboratories, normally secured by administrative arrangement rather than by contract; such assistance will be the subject of a notice published in the Federal Register.
- Subcontractors and consultants to prime contractors with the Board would also be evaluated for conflicts of interest and potential conflicts of interest.
- The rule would state the general Board policy of avoiding or mitigating OCIs in contract awards and contract performance.
- Waivers of OCIs would be granted only where such action would be in the best interests of the Government. If an OCI could be avoided, no waiver would be necessary. A waiver of an OCI would, however, be necessary where Board actions or instructions would be required in order to mitigate the OCI. In addition, any provision of the rule could be waived where the Board determines that such action would be in the best interests of the Government.
- A contract that would result in the offeror evaluating its own product or services provided directly or indirectly to the Board or to DOE, or evaluating products or services with which it had been, was then, or would be substantially involved, would normally not be awarded.
- Contractors would normally be barred from performing work under contract to the Board that stemmed directly from the contractor's performance of work under a previous Board contract in such a way as to pose an OCI.
- For task order contracts,[1] the Board could determine whether a contractor had an OCI with respect to a particular task at the time of consideration of issuance of the related task order.[2] Task order contractors would be required to disclose to the Board any proposed work for others that might pose an OCI, to allow the Board to take further appropriate action.
- In several areas relevant to the Board's review and analysis of design and operational data, it may be in the best interests of the Government to utilize the services of certain highly skilled individuals at the DOE National Laboratories. By their very nature, the DOE National Laboratories have developed a skill base which often does not exist elsewhere in research and technology associated with nuclear material such as plutonium, thorium, transuranics, and other fission productions. In order for the Board to provide proper oversight, it must have access to technical talent comparable to or better than that available to the DOE. Therefore, the Board sees a need to obtain consulting services from certain scientists and engineers who are

[1] Task order contracts are contracts that contain a broad scope of work but do not authorize performance of specific tasks within that broad scope until the contracting officer issues task orders.

[2] Nevertheless, the Board would not be precluded from disqualifying an offeror, based upon OCI considerations, at the pre-award stage, if the facts so justified.

conducting research and development at the National Laboratories. However, the Board would intend to avoid OCIs on specific projects by ordinarily not utilizing national laboratory professionals directly involved in the same defense nuclear facilities projects for DOE.

• During the term of any Board contract, the contractor would be prohibited from entering into consulting or other contractual arrangements with other entities that could create an OCI. Whenever a contractor or the Board had reason to believe that a proposed contract with others might create an OCI, the contractor would be required to disclose the proposed contract to the Board to allow the Board to take further appropriate action.

• The regulations would contain the following provisions to preclude unfair competitive advantage arising from access to non-public information, as described in the regulation, obtained through performance under a Board contract:

Such information could not be used for private purposes until publicly released;

Contractors could not use such information to compete for other Board contracts for six months after completion of the contract or after public release of the information, whichever first occurred, or to file an unsolicited proposal for a Board contract for one year after public release of such information, unless it were determined by the Board that it was in the best interests of the Government to permit such actions; and

Contractors could not release such information without prior Board approval, unless it had already been publicly released.

• The rule would require certificates from apparent successful offerors and disclosures by contractors in order to assure that the Board received necessary information regarding actual or potential OCIs. The Board would reserve the option of requiring such certificates in other circumstances, as appropriate. The rule would also specify the actions that could be taken when an OCI was identified and the process for Board determination of the appropriate actions.

**Paperwork Reduction Act**

This proposed rule would require "collections of information" within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* In accordance with that Act and the OMB implementing regulations set forth in 5 CFR part 1320, the Board has performed an analysis of the burdens on offerors that would be imposed by the proposed regulations. There would not be any additional recordkeeping burden on the offerors pursuant to Board competitive solicitations since offerors are already subject to conflicts of interests requirements under other laws and should have anticipated the need to maintain conflicts-related information in the event they were the apparent successful offeror. The Board reserves the right to require submittals or certificates from all offerors.[3] The Board estimates that two hours per offeror would be expended in preparation and filing of the certificate.

**Regulatory Flexibility Act**

As required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, the Board certifies that this rule would not have a significant economic impact upon a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared. Although some of the offerors to the Board may qualify as small entities, the proposed regulations would impose little, if any, additional burdens beyond those established by other applicable laws and regulations and would have a very minimal impact upon such entities.

**Executive Order 12291**

As required by Executive Order 12291 (February 17, 1981), the Board certifies that this proposal does not constitute a "major rule" because it is not likely to result in:

• An annual effect on the economy of $100 million or more;

• A major increment in costs; or

• A significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This conclusion is based on the very minimal burdens that would be imposed by the proposed rule.

**List of Subjects in 10 CFR Part 1706**

Government procurement.

**The Proposed Regulations**

Accordingly, chapter XVII of title 10 of the Code of Federal Regulations is proposed to be amended by adding a new part 1706 to read as follows:

[3] One of the offerors on each solicitation would presumably be selected for award and would, therefore, have to submit the certificate in any event. The only impact on it would be that it would have to submit the certificate earlier than would otherwise be required.

## PART 1706—ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTERESTS

Sec.

1706.1 Scope; statement of policy.
1706.2 Definitions.
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1706.4 Head of the contracting activity.
1706.5 General rules.
1706.6 Solicitation provisions.
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1706.8 Waiver.
1706.9 Examples.
1706.10 Remedies.
1706.11 Organizational conflicts of interest certificate—Advisory or assistance services.

**Authority:** 42 U.S.C. 2286b(c).

### § 1706.1 Scope; statement of policy.

(a) *Scope.* This subpart sets forth the guidelines, requirements, and procedures the Defense Nuclear Facilities Safety Board will follow in determining whether a contractor or offeror has an organizational or consultant conflict of interest (OCI) and in avoiding, neutralizing, or mitigating OCIs.

(b) *Policy.* It is the policy of the Board to identify and then avoid or mitigate organizational and consultant conflicts of interest. Normally, the Board will not award contracts to offerors who have OCIs and will terminate contracts where OCIs are identified following contract award. In exceptional circumstances, the Board reserves the right to waive conflicts of interest if it determines that such action is in the best interests of the Government, pursuant to § 1706.8, and to take such mitigating measures as it deems appropriate pursuant to such section.

### § 1706.2 Definitions.

*Advisory or assistance services* means services acquired by contract to advise or assist the Board, whether with respect to its internal functions or its oversight of defense nuclear facilities, or otherwise to support or improve policy development or decision-making by the Board, or management or administration of the Board, or to support or improve the operation of the Board's management systems. Such services may take the form of the provision of information, advice, reports, opinions, alternatives, conclusions, recommendations, training, direct assistance, or performance of site visits, technical reviews, investigation of health and safety practices or other appropriate services.

*Affiliates* means associated business concerns or individuals if, directly or indirectly, either one controls or can

control the other or a third party controls or can control both.

*Board* means, as the context requires, the Defense Nuclear Facilities Safety Board, its Chairman, or any other officer of the Defense Nuclear Facilities Safety Board to whom the appropriate delegation has been made under 42 U.S.C. 2286(c)(3).

*Contract* means any contract, agreement, or other arrangement with the Board, except as provided in § 1706.3.

*Contractor* means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or other entity, or any group of one or more of the foregoing, which is a party to a contract with the Board, and the affiliates and successors in interest of such party. The term "contractor" also includes the chief executive and directors of a party to a contract with the Board, the key personnel of such party identified in the contract, and current or proposed consultants or subcontractors to such party. The term "contractor" shall also include consultants engaged directly by the Board through the use of a contract.

*Defense nuclear facility* means any United States Department of Energy (DOE) defense nuclear facility, as defined in 42 U.S.C. 2286g, subject to the Board's oversight.

*Evaluation activities* means activities that involve evaluation of some aspect of defense nuclear facilities.

*Mitigating* means, with respect to an organizational or consultant conflict of interest, reducing or counteracting the effects of such a conflict of interest on the Board, but without eliminating or avoiding the conflict of interest.

*National Laboratories* means laboratories operated by educational institutions or business entities under management and operating contracts with DOE.

*Offeror* means any person, firm, unincorporated association, joint venture, partnership, corporation, or other entity, or any group of one or more of the foregoing, submitting a bid or proposal to the Board, solicited, unsolicited or otherwise invited by the Board, to obtain a contract, and the affiliates and successors in interest of such a bidder or proposer. The term "offeror" also includes the chief executive and directors of such a bidder or proposer, the key personnel of a bidder or proposer identified in the bid or proposal, and proposed consultants or subcontractors to such bidder or proposer.

*Organizational or consultant conflict of interest* means that, because of other past, present, or future planned activities or relationships, an offeror or contractor is unable, or potentially unable, to render impartial assistance or advice to the Board, or the objectivity of such offeror or contractor in performing contract work for the Board is or might be otherwise impaired, or such offeror or contractor has or would have an unfair competitive advantage. The term "organizational or consultant conflict of interest" shall include, but not be limited to, actions or situations that would preclude the award or extension of a contract under, or would be prohibited by, § 1706.5.

*Potential organizational or consultant conflict of interest* means a factual situation that indicates or suggests that an actual organizational or consultant conflict of interest may exist or arise from award of a proposed contract or from continuation of an existing contract. The term is used to signify those situations that merit conflicts review prior to contract award or that must be reported to the contracting officer for conflicts review if they arise during contract performance.

*Research* means any scientific, engineering, or other technical work involving theoretical analysis, exploration, or experimentation.

*Subcontractor* means any subcontractor of any tier which performs work under a prime contract with the Board.

*Task order contract* means a Board contract that contains a broad scope of work but does not authorize the contractor to perform specific tasks within that broad scope until the contracting officer issues task orders.

*Unfair competitive advantage* means an advantage obtained by an offeror or contractor to the Board by virtue of the relationship of the offeror or contractor with the Board or access to information not available to other offerors or contractors, and recognized in appropriate legal precedent as unfair.

In determining the meaning of any provision of this subpart, unless the context indicates otherwise, the singular includes the plural; the plural includes the singular; the present tense includes the future tense; and words of one gender include the other gender.

### § 1706.3 Applicability.

(a) *General applicability.* This subpart applies to contractors and offerors only, except as otherwise herein provided. This subpart shall be incorporated by reference and made a part of all Board contracts in excess of the small purchases threshold, except as provided in the last sentence of this § 1706.3(a). In addition, if determined appropriate by the contracting officer for the Board, this subpart may be incorporated by reference and made a part of Board contracts below the small purchases threshold, except as provided in the last sentence of this § 1706.3(a). This subpart does not apply to the acquisition of services, including, without limitation, consulting services, through the personnel appointment process or to Board agreements with other federal government agencies, but shall apply to Board agreements with the management and operating contractors (and subcontractors and consultants thereto) of the National Laboratories.

(b) *Subcontractors and consultants.* The requirements of this subpart shall also apply to subcontractors and consultants proposed for, or working on, a Board contact, in each case where the amount of the subcontract or consultant agreement under which such subcontractor or consultant is or will be working is expected to exceed $10,000, and in each other case where the contracting officer for the Board deems it appropriate to make the requirements of this subpart applicable to a subcontractor or consultant proposed for, or working on, a Board contract. The certificates or disclosures submitted by offerors or contractors pursuant to this subpart shall include certificates or disclosures from all subcontractors and consultants to contractor or offerors in those cases where this subpart applies by its terms to such subcontractors or consultants or has been applied to such persons by the contracting officer. Contractors and offerors shall assure that contract causes giving effect to this § 1706.3(b), satisfactory to the contracting officer, are included in subcontracts and consultant agreements of any tier involving performance of work under a prime contract covered by this subpart.

### § 1706.4 Head of the contracting activity.

The head of the contracting activity for the Board shall be the General Manager.

### § 1706.5 General rules.

(a) *Evaluation of offeror's own products or services.* Contracts shall generally not be awarded to an offeror:

(1) For any services where the award would result in the offeror evaluating products or services it has provided to the Board, is currently providing to the Board, or is currently offering to provide for the Board; or

(2) For evaluation activities or research related to the Board's oversight of defense nuclear facilities, where the award would result in the offeror evaluating products or services it has

provided, is providing, or is offering to provide to DOE or to contractors or subcontractors for defense nuclear facilities.

Paragraph (a) of this section also applies when award would result in evaluation of products or services of another entity where the offeror has been, is, or would be substantially involved in the development of the product or performance of the service, or has other substantial involvement regarding the product or services.

(b) *Subsequent related contracts.* (1) A Board contractor under a Board contract shall normally be ineligible to participate in Board contracts or subcontracts that stem directly from the contractor's performance of work under a previous Board contract, where the Board determines that an OCI would exist because:

(i) The expectation of receiving the subsequent contract is likely to diminish the contractor's capacity to give impartial assistance and advice, or otherwise result in a biased work product; or

(ii) An offeror on the subsequent contract would have an unfair competitive advantage by virtue of having performed the first contract.

(2) If a contractor under a Board contract prepares a complete or essentially complete statement of work or specifications in the performance of a contract, the contractor shall be ineligible to perform or participate in the initial contractural effort that is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications.

(c) *National Laboratory personnel.* The Board may engage personnel of the National Laboratories who have expertise needed by the Board in the performance of its oversight responsibilities, provided that prior to each such engagement, the Board determines either:

(1) That the nature of work performed by such personnel for DOE does not pose actual or potential OCIs with respect to the particular work covered by the Board contract, or

(2) That such engagement is in the Government's best interests and that a waiver should be granted pursuant to § 1706.8.

In all cases involving National Laboratory personnel, notice of the circumstances of the contract, stating the rationale for use of the personnel, shall be published in the Federal Register.

(d) *Work for others.* During the term of any Board contract, the contractor may not enter into consulting or other contractual arrangements with other persons or entities, the result of which could give rise to an OCI with respect to the work being performed under the contract. The prime contractor shall ensure that all of its employees, subcontractors, and consultants under the contract abide by this paragraph. If the contractor has reason to believe that any proposed arrangement with other persons or entities may involve an actual or potential OCI, it shall promptly inform the Board in writing of all pertinent facts regarding such proposed arrangement. In the case of task order contracts, this paragraph applies, subject to § 1706.7(c), only to specific ongoing tasks that the contracting officer authorizes the contractor to perform.

(e) *Contractor protection of Board information that is not publicly available.* If the contractor in the performance of a Board contract obtains access to information, such as Board plans, policies, reports, studies, or financial plans, or internal data protected by the Privacy Act (5 U.S.C. 552a), proprietary information, or any other data which has not been released to the public, the contractor shall not:

(1) Use such information for any private purpose until the information has been released or is otherwise made available to the public;

(2) Compete for work for the Board based on such information for a period of six months after either the contract has been completed or such information has been released or otherwise made available to the public, whichever occurs first, or submit an unsolicited proposal to the Government based on such information until one year after such information is released or otherwise made available to the public, unless a waiver permitting such action has been granted pursuant to § 1706.8; or

(3) Release the information without prior written approval of the contracting officer, unless such information has previously been released or otherwise made available to the public by the Board.

### § 1706.6 Solicitation provisions.

(a) *Advisory or assistance services.* There shall be included in all formal Board solicitations for advisory or assistance services where the contract amount is expected to exceed $25,000 (or the then applicable small purchases threshold), a provision requiring a certificate representing whether award of the contract to the offeror would present actual or potential OCIs. Apparent successful offerors will be required to submit such certificates, but the Board may also require such a certificate to be submitted in other circumstances, such as:

(1) Where the contracting officer has identified certain offerors who have passed an initial screening and has determined that it is appropriate to request the identified offerors to file the certificate in order to expedite the award process; or

(2) In the case of modification for additional effort under Board contracts, except those issued under the "changes" clause. If a certificate has been previously submitted with regard to the contract being modified, only an updating of such statement shall be required for a contract modification.

In addition, if determined appropriate by the contracting officer for the Board, such certificates may be required in connection with any other contracts subject to this subpart or in which this subpart has been incorporated by reference.

(b) *Marketing consultant services.* There shall further be included in all Board solicitations, except sealed bids, where the contract amount is expected to exceed $200,000, a provision requiring an organizational conflicts of interest certificate from any marketing consultants engaged by an offeror in support of the preparation or submission of an offer for a Board contract by that offeror.

### § 1706.7 Procedures.

(a) *Pre-award disclosure and resolution of OCIs.* If a certificate under § 1706.6 indicates, or the Board otherwise learns, that actual or potential OCIs could be, or would appear to be, created by contract award to a particular offeror, the Board shall afford the affected offeror an opportunity to provide in writing all relevant facts bearing on the certificate. If the Board thereafter determines that an actual or potential OCI exists, one of the following actions shall ultimately be taken:

(1) Disqualify the offeror;

(2) Include in the contract appropriate terms and conditions which avoid the conflict, in which case no waiver is required; or

(3) Make a finding that it is in the best interest of the Government to seek award of the contract under the waiver provisions of § 1706.8, and, where reasonably possible, include contract terms and conditions or take other measures which mitigate such conflicts.

(b) *Post-award disclosure and resolution of OCIs.* (1) If, after contract

award, the contractor discovers actual or potential OCIs with respect to the contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement shall include a description of the action that the contractor has taken or proposes to take to avoid or mitigate such conflicts.

(2) If a disclosure under this section indicates, or the Board otherwise learns, that actual or potential OCIs exist, the Board may afford the contractor an opportunity to provide all relevant facts bearing upon the problem. If at any time the Board determines that an actual or potential OCI exists, one of the following actions shall ultimately be taken:

(i) Terminate the contract, or, in the case of a task order contract, terminate the particular task;

(ii) Insist on appropriate contract terms and conditions which avoid the OCIs, in which case no waiver is required; or

(iii) Make a finding that it is in the best interests of the Government to permit the contractor to continue to perform the contract (or task) under the waiver provisions of § 1706.8, and, where reasonably possible, insist on appropriate contract terms and conditions or take other measures which mitigate the OCIs.

(c) *Task order contracts.* (1) Because a task order contract generally entails a broad scope of work, apparent successful offerors shall be required to identify in their certificates filed in accordance with § 1706.6 any actual or potential OCIs that come within the full scope of the contract. The Board may decline to award a task order contract to an offeror based upon such information or it may decline to approve performance of a particular task by the contractor if an actual or potential OCI is subsequently identified with respect to that particular task. The Board may also take the other actions identified in § 1706.7(a) to avoid or mitigate such conflicts.

(2) Contractors performing task order contracts for the Board shall disclose to the contracting officer any new work for others they propose to undertake that may present an actual or potential OCI with regard to the performance of any work under the full scope of the Board contract. Such disclosure shall be made at least 15 days prior to the submission of a bid or proposal for the new work. The disclosure shall include the statement of work and any other information necessary to describe fully the proposed work and contemplated relationship.

(3) If the Board has issued a task order or a letter request for proposal under the contract with a contractor who has disclosed to the contracting officer that it proposes to undertake new work for persons other than the Board as described in § 1706.7(c)(2), for services in the same technical area and/or at the same defense nuclear facility that is the subject of the proposed new work (including overlap based upon generic work performed for others by the contractor), the Board shall inform the contractor that entering into a contract for the new work may result in termination by the Board of the task order contract, if the Board determines that such work would give rise to an OCI and the Board does not grant a waiver.

(d) *Decisions on OCIs.* The contracting officer shall make recommendations to the General Manager regarding disqualification or actions to be taken by the Board to avoid or mitigate any actual or potential OCI.

(1) The General Manager shall have the authority to approve, modify, or disapprove such recommendations regarding avoidance of an actual or potential OCI. If an offeror or contractor disagrees with the actions approved by the General Manager and requests review of the action, the Chairman shall make the decision on the actions to be taken by the Board.

(2) Any recommended action respecting the best interests of the Government and mitigation measures to be taken with respect to an actual or potential OCI must be approved by the Chairman in conjunction with the decision to grant a waiver pursuant to § 1706.8, and any recommended action to terminate a contract or a particular task on account of an actual or potential OCI must be approved by the Chairman.

(3) Decisions on OCIs by the General Manager or the Chairman shall be made with the advice of the Office of the General Counsel.

### § 1706.8 Waiver.

(a) *Waiver of OCIs.* The need for a waiver of any OCI in connection with the award or continuation of specific contracts may be identified either by the contracting officer for the Board or other Board employee or by a written request filed by an offeror or contractor with the contracting officer. The request may be combined with the certificate or disclosure required under §§ 1706.6 or 1706.7, or with additional statements filed under § 1706.7 regarding matters raised in the certificate or disclosure. The contracting officer shall review all of the relevant facts brought to his attention and shall bring the matter to the General Manager, who shall make a written recommendation to the Chairman of the Board regarding whether a waiver should be granted for a contract award or for continuation of an existing contract.

(b) *Criteria for Waiver of OCIs.* (1) The Chairman is authorized to waive any OCI (and the corresponding provision of § 1706.5 where applicable) upon a determination that awarding or extending the particular contract, or not terminating the particular contract, would be in the best interests of the Government. Issuance of a waiver shall ordinarily be limited to those situations in which:

(i) The work to be performed under contract is vital to the Board program;

(ii) The work cannot be satisfactorily performed except by a contractor or offeror whose interests give rise to a question of OCI; and

(iii) Contractual and/or technical review and supervision methods can be employed by the Board to mitigate the conflict.

(2) The Chairman is also authorized to waive any OCI (and the corresponding provision of § 1706.5 where applicable), without regard to the foregoing factors, if the Chairman determines, notwithstanding the existence of the OCI, that it is in the best interests of the Government to award or extend the particular contract, or not to terminate, without compliance with § 1706.8(b)(1).

(c) *Waiver of Rules or Procedures.* The Chairman is also authorized to waive any rules or procedures contained in this subpart upon a determination that application of the rules of procedures in a particular situation would not be in the best interests of the Government. Any request for such a waiver must be in writing and shall describe the basis for the waiver.

(d) *Office of General Counsel.* Waivers of OCIs or of any rule or procedure contained in this subpart shall be made after consultation with the Office of General Counsel.

(e) *Federal Register.* Except as otherwise provided in § 1706.8(c), notice of each waiver granted under this section shall be published in the **Federal Register** with an explanation of the basis for the waiver. In the discretion of the Board, notices of instances of avoidance of OCIs may also be published in the **Federal Register**.

### § 1706.9 Examples.

The examples in this section illustrate situations in which questions concerning OCIs may arise. The examples are not all inclusive, but are intended to provide offerors and contractors with guidance on how this subpart will be applied.

(a) *Circumstances*—(1) *Facts.* A Board contractor for technical assistance in the review of a safety aspect of a particular defense nuclear facility proposes to use the services of an expert who also serves on an oversight committee for a contractor of other defense nuclear facilities.

(2) *Guidance.* Assuming the work of the oversight committee has no direct or indirect relationship with the work at the facility that is the subject of the Board's contract, there would not be an OCI associated with the use of this expert in the performance of the Board contract.

(b) *Circumstances*—(1) *Facts.* A Board contractor studying the potential for a chemical explosion in waste tanks at a defense nuclear facility advises the Board that it has been offered a contract with DOE to study the chemical composition of the waste in the same tanks.

(2) *Guidance.* The contractor would be advised that accepting the DOE contract would result in termination of its performance under its contract with the Board.

(c) *Circumstances*—(1) *Facts.* The Board issues a task order under an existing contract for the evaluation of the adequacy of fire protection systems at a defense nuclear facility. The contractor then advises the Board that it is considering making an offer on a solicitation by DOE to evaluate the same matter.

(2) *Guidance.* The contractor would be advised that entering into a contract with DOE on that solicitation could result in the contract with the Board being terminated.

(d) *Circumstances*—(1) *Facts.* A firm responding to a formal Board solicitation for technical assistance provides information regarding a contract it currently has with DOE. The effort under the DOE contract is for technical assistance work at DOE facilities not subject to Board oversight and outside its jurisdiction.

(2) *Guidance.* The Board would analyze the work being performed for DOE to ensure no potential or actual conflict of interest would be created through award of the Board contract. Should the Board determine that no potential or actual conflict of interest exists, the contractor would be eligible for award. If the Board determines that a potential or actual conflict of interest would arise through a contract award, it may disqualify the firm or, if the Board determines that such action is in the best interests of the Government, the Board may waive the conflict or the rules and procedures and proceed with the award.

(e) *Circumstances*—(1) *Facts.* The Board discovers that a firm competing for a contract has a number of existing agreements with DOE in technical areas which are unrelated to the Board's oversight authority. While these contracts may not represent a potential or actual conflict of interest regarding the substance of the technical effort, their total value constitutes a significant portion of the firm's gross revenues.

(2) *Guidance.* A conflict of interest may exist due to the firm's substantial pecuniary dependence upon DOE. Consequently, the Board may question the likelihood that the contractor would provide unbiased opinions, conclusions, and work products because of this extensive financial relationship. The Board will review and consider the extent of the firm's financial dependence on DOE, the nature of the proposed Board contract, the need by the Board for the services and expertise to be provided by the firm and the availability of such services and expertise elsewhere, and whether the likelihood of the firm's providing objective technical evaluations and opinions to the Board could be influenced in view of its DOE relationship. Based on this analysis, the Board may either determine that there is no conflict and make the award, waive the conflict if one is identified and establish procedures to mitigate it where possible, or disqualify the offeror.

(f) *Circumstances*—(1) *Facts.* The Board discovers that a firm competing for a contract has a substantial business relationship in technical areas unrelated to the Board's oversight authority with a contractor operating a defense nuclear facility under a DOE contract. Similar to the situation described in paragraph (e) of this section, the total value of the contracts with the DOE contractor constitutes more than half of the firm's gross revenues, even though those contracts do not represent a potential or actual conflict of interest regarding any of the particular matters to be covered by the contract with the Board.

(2) *Guidance.* The firm's substantial financial and business dependence upon the DOE contractor may give rise to a conflict of interest, in that the likelihood of the firm's rendering impartial, objective assistance or advice to the Board may be impaired by its extensive financial relationship with the DOE contractor. In this situation, the Board will review and consider the nature of the proposed Board contract, the need by the Board for the services and expertise to be provided by the firm and the availability of such services and expertise elsewhere. The Board will also review and consider the extent of the firm's financial dependence on the DOE contractor and whether the firm would be impartial and objective in providing technical evaluation and opinions to the Board, especially on matters in which the DOE contractor is involved, notwithstanding the relationship with the DOE contractor. Based on this analysis, the Board may determine that there is no actual conflict of interest and make the award. Alternatively, if the Board identifies a conflict that cannot be avoided, the Board may determine to waive the conflict in the best interests of the United States, with or without the establishment of procedures to mitigate the conflict, or it may disqualify the offeror.

### § 1706.10 Remedies.

The refusal to provide the certificate, or upon request of the contracting officer the additional written statement, required by §§ 1706.6 and 1706.7 in connection with an award shall result in disqualification of the offeror for that award. The nondisclosure or misrepresentation of any relevant information may also result in the disqualification of the offeror for that award. If such nondisclosure or misrepresentation by an offeror or contractor is discovered or occurs after award, or in the event of breach of any of the restrictions contained in this subpart, the Board may terminate the contract for convenience or default, and the offeror or contractor may also be disqualified by the Board from consideration for subsequent Board contracts and be subject to such other remedial actions as provided by law or the contract.

### § 1706.11 Organizational conflicts of interest certification-Advisory or assistance services.

As prescribed in or permitted by § 1706.6(a), insert the following provision in Board solicitations for advisory or assistance services:

Organizaitonal and Consultant Conflicts of Interest Certificate—Advisory and Assistance Services (Oct. 1990)

(a) An organizational or consultant conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) In order to comply with the Office of Federal Procurement Policy Letter 89–1, Conflict of Interest Policies Applicable to Consultants, the offeror shall provide the certificate described in paragraph (c) of this provision.

(c) The certificate must contain the following:

(1) Name of the agency number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the offeror.

(3) A description of the nature of the services rendered by or to be rendered on the instant contract.

(4) The name, address, and telephone number of the client or clients, a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12° months preceding the date of the certification, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter as the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable.

(5) A statement that the person who signs the certificate has made inquiry and that, to the best of his or her knowledge and belief, no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory or assistance services to be provided in connection with the instant contract, or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated in writing to the contracting officer or his or her representative; and

(6) The signature, name, employer's name, address, and telephone number of the person who signed the certificate.

(d) Persons required to certify but who fail to do so may be determined to be nonresponsible. Misrepresentation of any fact may result in suspension or debarment, as well as penalties associated with false certifications or such other provisions provided for by law or regulation.

[End of provision]

If approved by the head of the contracting activity, this period may be increased up to 36 months.

Dated: July 8, 1992.

John T. Conway,

*Chairman.*

[FR Doc. 92-16349 Filed 7-13-92; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 15 CFR Part 922

[Docket No. 920134-2034]

### National Marine Sanctuary Program Regulations

**AGENCY:** Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), NOAA, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Public Law No. 100-627, the National Marine Sanctuaries Program Amendments and Authorization of 1988 (MPRSA Amendments), amended Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA), by: (1) Modifying the sanctuary designation procedures to reduce the length of the process to two and one-half years, (2) requiring the Secretary of Commerce to promote and coordinate the use of marine sanctuaries for marine research by NOAA and other Federal and state agencies, (3) authorizing the Secretary of Commerce to issue special use permits for conducting specific activities in national marine sanctuaries and to assess fees for conducting activities under such permits, (4) allowing the Secretary of Commerce to enter into cooperative agreements with nonprofit organizations for the promotion of, and the solicitation of private donations for, education and scientific activities, and to accept donations for use in designating and administering marine sanctuaries, (5) making any person who destroys, causes the loss of, or injures any sanctuary resource liable to the United States for response costs and damages, and making recovered funds available for the restoration, replacement, or acquisition of, equivalent resources and for other sanctuary management purposes, and (6) expanding enforcement authority.

By this notice, NOAA is proposing revisions to its national marine sanctuary program regulations (15 CFR part 922) to implement the statutory amendments. Interested persons are invited to submit written comments.

**DATES:** Comments must be received by August 28, 1992.

**ADDRESSES:** Submit comments to: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., suite 701, Washington, DC 20235 (202-606-4100).

**FOR FURTHER INFORMATION CONTACT:** Vickie A. Allin, Chief, Policy Coordination Division (202-606-4100).

**SUPPLEMENTARY INFORMATION:**

### I. Authority

This notice of proposed rulemaking is issued under the authority of title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*

### II. Availability of Comments

All comments submitted in response to this notice of proposed rulemaking will be available for examination during normal business hours in Suite 701, Universal South Building, 1825 Connecticut Avenue, NW., Washington, DC 20235.

### III. General Background

A. Time Limit on Sanctuary Designation

Public Law No. 100-627 amended paragraph (1) of section 304(b) of the MPRSA (16 U.S.C. 1434(b)(1)) to require the Secretary of Commerce to either issue a notice of designation with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the Federal Register or publish a notice, by such date, as to why such designation notice has not been published.

The proposed regulations would revise existing 15 CFR 922.34(a) to incorporate this requirement.

*B. Promotion and Coordination of Research*

Public Law No. 100-627 added a new Section 309 to MPRSA. This Section states:

The Secretary shall take such action as is necessary to promote and coordinate the use of national marine sanctuaries for research purposes, including—

(1) requiring that the National Oceanic and Atmospheric Administration, in conducting or supporting marine research, give priority to research involving national marine sanctuaries; and

(2) consulting with other Federal and State agencies to promote use by such agencies of one or more sanctuaries for marine research.

Since this language is nearly identical to Section 315(d) of the Coastal Zone Management Act of 1972, as amended, which directs the Secretary to promote and coordinate the use of national estuarine research reserves for research purposes, and since the two sections serve the same purpose, for uniformity NOAA believes the same regulations should apply. Therefore, NOAA is proposing regulatory language similar to the language at 15 CFR 921.52, except for necessary changes to program references.

*C. Special Use Permits*

Public Law No. 100-627 added a new Section 310 to MPRSA which authorizes NOAA to issue special use permits for the conduct of specific activities in national marine sanctuaries if NOAA determines such permits are necessary to: (1) Establish conditions of access to and use of any sanctuary resource, or (2) to promote public use and

understanding of a particular sanctuary resource. The legislative history indicates this authority is intended to complement and not to supplant existing regulations and permitting procedures. NOAA may issue guidance or regulations on the implementation of this provision if the need arises.

*D. Cooperative Agreements and Donations*

Public Law No. 100–627 added a new Section 311 to MPRSA which authorizes the Secretary to enter into cooperative agreements with any nonprofit organization: (1) To aid and promote interpretive, historical, scientific and educational activities; and (2) for the solicitation of private donations for the support of such activities. Section 311 also authorizes the Secretary to accept donations of funds, property, and services for use in designating and administering national marine sanctuaries.

The Report of the Merchant Marine and Fisheries Committee of the House of Representatives explained these new provisions as follows:

> Section 311 * * * provides the Secretary of Commerce with explicit authority * * * to accept donations. Subsection (a) authorizes the Secretary to enter into cooperative agreements with any nonprofit organization to aid and promote certain sanctuary activities, and to allow a nonprofit organization to raise private contributions for the support of these activities. This provision confirms that the Secretary may authorize a nonprofit organization to assist the Secretary in the promotion of national marine sanctuaries and to solicit, with private money, private donations for the support of such activities. Under subsection (b), the Secretary is also authorized to accept donations of funds, property, and services for use in designating and administering national marine sanctuaries. This authority is not limited to donations provided by cooperating organizations, and includes the inherent authority to expend those donations on sanctuary purposes. H.R. Rep. 624, 100th Cong., 2d Sess. 21 (1988).

NOAA has concluded that existing guidance in the form of OMB Circular No. A–110 entitled "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations: Uniform Administrative Requirements (41 FR 32016) (July 30, 1976) is sufficient for administration of section 311(a). NOAA may issue guidance on the administration of these provisions.

*E. Destruction, Loss or Injury to Sanctuary Resources*

Public Law No. 100–627 added a new section 312 to MPRSA which makes any person who destroys, causes the loss of, or injures any sanctuary resource, with certain exceptions (defenses) liable to the United States for response costs and damages. The Section authorizes the Secretary of Commerce to take all necessary action to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss or injury. The Secretary is authorized to assess damages for injury to sanctuary resources and to request that the Attorney General commence civil actions in United States district court to recover response costs and damages. Recovered amounts may be retained by the Secretary in separate accounts and are available without further appropriation as follows:

(1) Twenty percent, up to a maximum balance of $750,000, to finance response actions and damage assessments;

(2) Any remaining amounts, to be used first, to restore, replace or acquire the equivalent of injured sanctuary resources, second, to manage and improve the sanctuary where the injured resources are located, and third, to manage and improve any other sanctuary.

The liability regime established by section 312 is similar to the liability regimes established by the Oil Pollution Act of 1990 (OPA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). It is likely that some incidents resulting in injury to or loss of sanctuary resources will fall within the scope of both Title III of the MPRSA and some other statutory regime.

It is NOAA's practice to seek redress under all available authorities. Therefore, the proposed regulations state that they are not intended to limit NOAA's action or recourse under other applicable law.

The Report of the Committee on Merchant Marine and Fisheries of the House of Representatives states that where the liability provisions are inconsistent, the MPRSA provisions shall control. H.R. Rep. No. 739, 100th Cong., 2d Sess., pt. 1, at 22 (1988). Accordingly, the proposed regulations state that where the liability provisions are inconsistent, the MPRSA provisions control.

Section 312 makes a person not liable if the person establishes that: (1) The destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care; (2) The destruction, loss, or injury was negligible; or (3) The destruction, loss, or injury was caused by an activity authorized by Federal or State law.

Regarding the third defense, as recognized in the Congressional debate on this provision, if read broadly, practically any activity likely to cause injury to sanctuary resources—navigation, fishing or diving, for instance—could be said to be authorized by Federal or state law. The Report of the Merchant Marine and Fisheries Committee of the House of Representatives stated that the purpose of this defense is

> * * * to preserve a simple sense of fairness for those who have been given permission explicitly by Federal or state authorities to undertake an activity which causes the damage. Where such permission is granted—most usually in the form of a license or permit—it would be unfair to impose liability upon the person where that person was acting in full compliance with the terms and conditions of the permit or license. H.R. Rep. 624, 100th Cong., 2d Sess. 21 (1988).

However, the Report goes on to state:

> This defense is intended to be construed narrowly, and the authorization giving rise to the defense must be for the specific activity giving rise to the damage. Thus, where a vessel runs aground within a sanctuary, it cannot use this provision to assert that the license to operate within the territorial waters of the United States entitles it to a defense because the authority to operate within territorial waters does not constitute the authority to run aground in a marine sanctuary. *Id.* at 22.

Relying on Congressional direction to construe this provision narrowly, NOAA's proposed regulations place the burden on anyone who destroys or injures sanctuary resources, and who asserts the defense of a Federal or state license or permit, to show that the license or permit specifically authorized the act that caused the injury. In addition, NOAA's proposed regulations define the scope of "activity authorized by Federal or state law" to exclude as a defense response actions or activities undertaken by or at the direction of NOAA or other authorized state or Federal entity, as long as that entity does not act in a negligent manner. Some necessary response actions, such as removing a vessel that is grounded on a coral reef, may result in some injury to sanctuary resources. The responsible party should be held fully accountable for that injury, as long as the response actions are conducted with due care.

Similarly, the Act does not define damage, loss or injury of a "de minimis" nature, but the Report of the Committee on Merchant Marine and Fisheries of the House of Representatives provides the general direction that the provision should be construed narrowly. *Id.* at 23. Under NOAA's proposed regulations,

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the Secretary will determine if the injuries are of a de minimis nature based upon the results of early field sampling and data collection.

Concerning the process of conducting damage assessments, NOAA proposes a three-phased approach. In Phase 1, NOAA would determine whether destruction, loss or injury to sanctuary resources occurred and assess and document the physical and other injury to the affected resources. In Phase 2, NOAA would develop the value of its claim for compensation for the injury to sanctuary resources. The claim would be based on: (a) Response costs incurred by the Secretary, (b) the costs of restoring, replacing or acquiring the equivalent of injured sanctuary resources, (c) the value of lost use of injured sanctuary resources from the time of injury to the time of restoration or replacement, and (d) the cost of the damage assessment. If the sanctuary resources cannot be restored or replaced, or the equivalent acquired, the value of the sanctuary resources in their pre-injury state and the cost of the damage assessment would be determined in Phase 2. In Phase 3, NOAA would define how it will use recovered amounts for the purposes defined and in the priority order enumerated in the statute.

Although these steps are similar to the process set forth in the Department of the Interior's (DOI's) damage assessment regulations under CERCLA, they are simpler and less detailed. In addition, the use of the term "phase" does not imply that one phase must be completed before the next phase begins. This approach is intended to retain agency discretion and flexibility regarding emergency restoration, sampling and data collection, assessment methodologies, the definition of natural resource values, and the use of recovered amounts.

Section 312 does not contain provisions requiring that the public be afforded an opportunity to participate in the damage assessment process. However, section 312(d)(4) does call for Federal/state coordination on the use of amounts recovered to restore sanctuary resources lying within the state's jurisdiction. Therefore, NOAA's proposed regulations require notification to affected states, Federal agencies and potentially responsible persons in order to coordinate response and damage assessment actions, and provide the option for NOAA to seek public comment and/or hold public meetings during the assessment process.

The proposed regulations would allow NOAA to coordinate the planning and undertaking of the damage assessment with other trustees or with states for sanctuary resources lying within their jurisdiction. If this is done, the proposed regulations would require NOAA and the state to enter into a written agreement specifying responsibilities and procedures for assessing damage to sanctuary resources.

Concerning the handling of recovered funds in cases where injured sanctuary resources lie within a state's jurisdiction, the proposed regulations would require NOAA and the state to develop a written agreement for use of the funds in accordance with the requirements of section 312(d)(2) (A) and (B).

*F. Enforcement*

The MPRSA Amendments expanded substantially NOAA's enforcement authority. The changes represent a movement toward a uniform enforcement authority for NOAA under all of its various marine resource protection statutes. The enforcement provisions of the Magnuson Fishery Conservation and Management Act were used as the model for MPRSA Amendments. The Report of the Merchant Marine and Fisheries Committee of the House of Representatives states,

> By having uniform enforcement standards, the Committee intends to avoid confusion by marine law enforcement agents when enforcing laws such as Title III [of the Marine Protection, Research, and Sanctuaries Act], the Lacey Act Amendments of 1981, the Marine Mammal Protection Act, and the Endangered Species Act. Standard enforcement provisions should also simplify the work of the Federal courts and reduce disparate treatment of violators. H.R. Rep. 624, 100th Cong., 2d Sess. 29 (1988).

Since NOAA's current marine sanctuary regulations refer to NOAA's consolidated civil procedures at 15 CFR part 904, which incorporate all of these new provisions, no change to the regulations is needed.

**IV. Other Actions Associated with the Rulemaking**

*A. Classification Under Executive Order 12291*

NOAA has concluded that these regulations are not major because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These proposed regulations would amend existing procedures for designating and managing national marine sanctuaries in accordance with the National Marine Sanctuaries Program Amendments and Authorization of 1988. They will not result in any direct or indirect economic or environmental impacts.

**B. Regulatory Flexibility Act Analysis**

A Regulatory Flexibility Analysis is not required for this notice of proposed rulemaking. The regulations set forth procedures for designating and managing national marine sanctuaries. These rules do not directly affect "small government jurisdictions" as defined by Public Law No. 96-354, the Regulatory Flexibility Act.

**C. Paperwork Reduction Act of 1980**

These regulations will impose no information collection requirements of the type covered by Public Law No. 96-511, the Paperwork Reduction Act of 1980.

*D. Executive Order 12612*

This rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

*E. National Environmental Policy Act*

NOAA has concluded that publication of this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, preparation an environmental impact statement is not required.

**List of Subjects in 15 CFR Part 922**

Administrative practice and procedure, Coastal zone, Environmental protection, Marine resources, Natural resources.

Dated: July 2, 1992.

**W. Stanley Wilson,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

## PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

Accordingly, NOAA proposes to amend 15 CFR part 922 as set forth below.

1. The authority citation for part 922 is revised to read as follows:

**Authority: Title III of the Marine Protection, Research, and Sanctuaries Act, as amended (16 U.S.C. 1431-1445).**



2. Section 922.2 is amended by redesignating paragraphs (c) through (h) as paragraphs (d) through (i), redesignating paragraphs (i) through (l) as paragraphs (l) through (o), and adding new paragraphs (c), (j) and (k) as follows:

**§ 922.2 Definitions**

* * * * *

(c) *Damages* includes: (1) Compensation for (i) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or (ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired; and

(2) The cost of damage assessments conducted in accordance with Section 312(b)(2) of the Act.

* * * * *

(j) *Response costs* means the costs of actions taken by the Secretary to minimize destruction or loss of, or injury to sanctuary resources, or to minimize the imminent risks of such destruction, loss or injury.

(k) *Sanctuary resource* means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the sanctuary.

* * * * *

3. Section 922.31(e) is revised to read as follows:

**§ 922.31 Development of designation materials.**

* * * * *

(e) The draft management plan and the DEIS shall be prepared as quickly as possible to allow for maximum public input and compliance with statutory timelines for designation.

* * * * *

4. Section 922.34(a) is revised to read:

**§ 922.34 Designation.**

(a) In designating an area as a National Marine Sanctuary, the Secretary shall publish a notice of the designation in the **Federal Register** not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the **Federal Register** pursuant to 15 CFR 922.30(b), or shall publish not later than such date in the **Federal Register** findings regarding why such notice has not been published. The notice of designation shall include the text of the final implementing regulations and shall also advise the public of the availability of the final management plan and the final EIS.

* * * * *

5. A new § 922.42 is added to read as follows:

**§ 922.42 Promotion and Coordination of Marine Research.**

(a) NOAA will promote and coordinate the use of National Marine Sanctuaries for marine research purposes.

(b) NOAA, will, in conducting or supporting marine research other than that authorized under Title III of the Marine Protection, Research, and Sanctuaries Act, give priority consideration to research that uses the National Marine Sanctuaries.

(c) NOAA will consult with other Federal and state agencies to promote the use of National Marine Sanctuaries when such agencies conduct marine research projects.

6. A new subpart E is added to read as follows:

## Subpart E—Destruction, Loss or Injury to Sanctuary Resources

Sec.

922.50 General.
922.51 Response costs and damage assessment costs.
922.52 Defenses to liability.
922.53 Response actions.
922.54 Damage assessment—general.
922.55 Sampling, resource surveys, data collection and testing.
922.56 Determination of injury.
922.57 Quantification of injury.
922.58 Feasibility of restoration or mitigation.
922.59 Determination of response costs and damages.
922.60 Use of recovered amounts.

## Subpart E—Destruction, Loss or Injury to Sanctuary Resources

**§ 922.50 General.**

(a) The Secretary, acting as trustee for Sanctuary resources, shall assess damages for the destruction, loss or injury to sanctuary resources.

(b) Subject to the statutory defenses to liability and § 922.52, any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury.

(c) Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury.

(d) Nothing in this Subpart is intended to limit the Secretary's action or recourse under other applicable law for injuries to sanctuary resources falling within the scope of that law. However, if there are inconsistencies between other applicable Federal law and its implementing regulations and this Act and its implementing regulations, the provisions of this Act and regulations shall control.

**§ 922.51 Response costs and damage assessment costs.**

The Secretary, acting as trustee for sanctuary resources, may recover the following:

(a) Damages as defined in § 922.2(c). This includes compensation for the costs of planning, implementing (including permitting) and monitoring the restored, replaced or newly acquired resources.

(b) Response costs, as defined in § 922.2(j). This includes personnel and administrative costs and expenses, including indirect costs and expenses, necessary to plan for and undertake the response actions.

(c) The costs of conducting the damage assessment, including but not limited to:

(1) Costs of field sampling, resource surveys, data collection and testing necessary to conduct the damage assessment pursuant to § 922.55 and

(2) Personnel and administrative costs and expenses, including indirect costs and expenses, necessary to plan for and conduct the damage assessment.

**§ 922.52 Defenses to Liability.**

In determining whether to initiate civil action for injuries to sanctuary resources, the Secretary shall consider the applicable defenses to liability provided for in section 312(a)(3) of the Act.

(a) In considering the applicability of the defense provided for in section 312(a)(3)(B) of the Act for activities authorized by Federal or state law, it shall be the responsibility of the person causing the injury to show that the injury was caused by an activity specifically authorized by Federal or state law. A general permission, such as authorization to navigate through the sanctuary or to fish within the sanctuary, shall not satisfy the specific authorization requirement of section 312(a)(3)(B). A person cannot rely on this defense to liability for response actions or activities conducted by, or on behalf of, the Secretary or other authorized state or Federal entity, provided that the response actions were conducted with due care.

(b) In considering the applicability of the defense provided for in section 312(a)(3)(C) of the Act for destruction, loss or injury of a de minimis nature, the

Secretary shall determine, based on the results of early field sampling and data collection pursuant to § 922.55(a), whether there is, in fact, no injury to sanctuary resources or whether the injury is so slight as to be de minimis. Where the Secretary determines that there is no injury or de minimis injury to sanctuary resources, the Secretary may not recover damages.

**§ 922.53 Response actions.**

(a) The Secretary may undertake all necessary response actions, inside or outside sanctuary boundaries, to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss or injury.

(b) If the actual or threatened destruction, loss or injury to sanctuary resources involves a discharge of oil or a release of a hazardous substance (as defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)), the Secretary shall immediately contact the National Response Center to report the actual or threatened discharge or release and to request that immediate response action be taken.

(c) The Secretary may undertake response actions alone, in cooperation with Federal, state or local government agencies, or through the use of the injunctive authority contained in section 307(i) of the Act.

(d) Response actions may include field sampling, data collection and testing necessary to facilitate the response.

(e) If the Secretary identifies or is informed of the destruction, loss or injury to sanctuary resources that appears to be the result of a previously unidentified or unreported incident, he/she shall make reasonable efforts to determine whether the incident in fact occurred. If the incident involves a discharge of oil or a hazardous substance, not yet reported or being investigated under the National Contingency Plan (NCP) under CERCLA and other applicable law, the Secretary shall report the discharge or release to the appropriate authority as designated in the NCP. The Secretary may take all necessary action to avoid or minimize actual or threatened destruction, loss or injury to sanctuary resources.

**§ 922.54 Damage assessment—general.**

(a) The Secretary shall assess damages to sanctuary resources in accordance with § 922.2(c).

(b) The objectives of the damage assessment are to:

(1) Determine whether destruction, loss or injury to sanctuary resources has occurred;

(2) Determine the nature and extent of the destruction, loss or injury and the person(s) responsible for that destruction, loss or injury;

(3) Determine the feasibility of restoring injured sanctuary resources or of replacing or acquiring the equivalent of destroyed or lost sanctuary resources; and

(4) Determine damages as that term is defined at § 922.2(c).

(c) Coordination with Other Trustees. With respect to natural resources for which other entities hold trustee responsibilities, the Secretary shall coordinate the planning and undertaking of the damage assessment with those entities. If the entities agree to coordinate the planning and implementation of the damage assessment, they shall enter into a written agreement specifying responsibilities and procedures for assessing the damages to sanctuary resources.

(d) The Secretary may hold one or more public meetings or hearings, or may otherwise solicit public comment during the conduct of the damage assessment, if the Secretary determines such public comment will assist the damage assessment process.

**§ 922.55 Sampling, resource surveys, data collection and testing.**

(a) The Secretary may conduct field sampling and data collection or coordinate with persons engaged in field sampling, data collection and response actions, prior to initiating the damage assessment in order to preserve data and materials that are likely to be lost if not collected at that time.

(b) The Secretary shall consider information contained in designation documents on the physical, chemical and biological conditions of sanctuary resources, including their quality and quantity, the productive capacity of sanctuary habitat, and other factors that give sanctuary resources the conservation, recreational, ecological, historic, research, educational and aesthetic values (sanctuary resource values) for which the sanctuary was designated.

(c) The Secretary may conduct all field sampling, resource surveys, data collection and testing he/she determines necessary for the damage assessment. Such sampling and testing should consider existing data and information from sanctuary research and monitoring activities. If necessary, the Secretary may establish a control area in a similar, but uninjured, part of the sanctuary, and may conduct necessary sampling, resource surveys, data collection and testing to supplement information on conditions of injured sanctuary resources.

**§ 922.56 Determination of injury.**

(a) The Secretary may determine that a person has caused the destruction, loss or injury to a sanctuary resource if the Secretary determines that the actions of that person resulted in a change in the sanctuary resource values, as established according to § 922.55.

(b) Criteria at 43 CFR 11.62 and criteria adopted by NOAA pursuant to Public Law No. 101–380 (the Oil Pollution Act of 1990), may be used as a guide in determining destruction, loss or injury to sanctuary resources caused by exposure to a discharge of oil or a hazardous substance, or exposure to a degradation product or a reaction product resulting from such discharge.

**§ 922.57 Quantification of injury.**

(a) For each sanctuary resource determined to be destroyed, lost or injured according to § 922.56, the Secretary should document the nature and the extent of the injury by measuring the total area, volume or numbers of affected resources; by considering how the contribution of the injured resources to sanctuary resource values has been reduced; and by assessing the ability of the injured resources to recover, expressed as the time required to restore the resource to its pre-injury condition, including the quantity and quality of the resource, the productive capacity of the affected habitat, and the full functioning of the sanctuary ecosystem, including its sanctuary resource values.

(b) Criteria at 43 CFR 11.71 and criteria adopted by NOAA pursuant to Public Law No. 101–380 (the Oil Pollution Act of 1990), may be used as a guide in quantifying the destruction, loss or injury to sanctuary resources caused by exposure to a discharge of oil or a hazardous substance, or exposure to a degradation product or a reaction product resulting from such discharge.

**§ 922.58 Feasibility of restoration or mitigation.**

(a) The damage assessment should evaluate the feasibility of restoring injured sanctuary resources and of replacing or acquiring the equivalent of injured, destroyed or lost sanctuary resources. The evaluation of feasibility may include field testing to determine whether or not a particular restoration technique is feasible at a particular site.

(b) Where restoration, replacement or acquisition are determined to be feasible, the damage assessment should consider alternatives (if they exist) for achieving such restoration, replacement or acquisition and the associated costs of each alternative. These costs must include the costs of planning, permitting and monitoring during and after implementation to determine if restoration, replacement or acquisition goals are being met and to make any needed adjustments.

(c) The damage assessment should identify the preferred alternative or combination of alternatives based on the method of achieving the most effective restoration, replacement or acquisition of lost or injured resources that will restore the quantity and quality of the resource, the productive capacity of the affected habitat, and the full functioning of the sanctuary ecosystem, including its sanctuary resource values.

**§ 922.59 Determination of response costs and damages.**

(a) The Secretary shall determine the cost of response actions in accordance with § 922.51(b).

(b) The Secretary shall determine the cost of replacing, restoring or acquiring the equivalent of sanctuary resources in accordance with § 922.58.

(c) The Secretary shall determine the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource using generally accepted and documented economic methodologies and other methods necessary to assess the full contribution of the resource to the sanctuary ecosystem. To the extent practicable, the determination of value shall include use and non-use values necessary to reflect the full value of the sanctuary resources, including but not limited to, the sum of the current and future values of their conservation, recreational, ecological, historic, research, educational and aesthetic functions.

(d) The Secretary shall determine the value of sanctuary resources that cannot be restored or replaced or where the equivalent of the resource cannot be acquired in the same manner as described in paragraph (c) of this section.

(e) The sum of paragraphs (a), (b) and (c) or (d) and the cost of conducting the damage assessment pursuant to § 922.51(c) shall be used to determine the appropriate amount of compensation for destruction, loss or injury to sanctuary resources in accordance with § 922.2(c).

**§ 922.60 Use of recovered amounts.**

(a) Twenty percent, up to a maximum balance of $750,000, of amounts recovered pursuant to these regulations shall be used to finance response actions and the damage assessment.

(b) Amounts remaining after compliance with § 922.59(a), shall be used, in order of priority, to:

(1) Restore, replace or acquire the equivalent of the sanctuary resources which were the subject of the damage assessment;

(2) Manage and improve the national marine sanctuary within which are located the sanctuary resources which were the subject of the damage assessment; and

(3) Manage and improve any other national marine sanctuary.

(c) Any civil penalties recovered in connection with this damage assessment pursuant to section 307 of the Marine Protection, Research and Sanctuaries Act shall be used to pay for the temporary storage, care and maintenance of any sanctuary resources or property and to reward any person who furnishes information leading to an assessment of a civil penalty or forfeiture of property for a violation of this title. Any remaining amounts recovered pursuant to § 307 shall be used for the purposes of paragraphs (b)(2) and (b)(3) of this section.

(d) Coordination with Other Trustees:

(1) Amounts recovered with respect to sanctuary resources lying within the jurisdiction of a state shall be used for the purposes of paragraphs (b)(1) and (b)(2) of this section in accordance with a written agreement entered into between the Secretary and the Governor of the State. The Secretary may also enter into written agreements with other trustee entities, if appropriate.

(2) Trustee entities and the Secretary may agree, and the written agreement may specify, that other trustees may perform the restoration, replacement, management or improvement for specified sanctuary resources. In that case, the agreement shall specify the respective roles of the trustee entities and the actions to be performed by each entity.

(3) The agreement may provide for the establishment of an account to contain recovered amounts that will be used pursuant to section 312(d)(2) of the Act and paragraph (b) of this section.

[FR Doc. 92-16100 Filed 7-13-92; 8:45 am]
BILLING CODE 3510-08-M

## CONSUMER PRODUCT SAFETY COMMISSION

**16 CFR Part 1205**

**Regulatory Flexibility Act; Review of Existing Rules**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of review of rules and availability of report.

**SUMMARY:** The Commission has completed its review of the performance requirements of the Safety Standard for Walk-Behind Power Mowers in accordance with provisions of the Regulatory Flexibility Act. The purpose of this review was to determine if those rules should be modified or revoked to minimize any significant economic impact they may have on small businesses.

The Commission has considered the provisions of these rules, their economic impact on the firms and organizations subject to the rules, and other relevant information. The Commission has determined that no further action with respect to any of these rules is warranted by the Regulatory Flexibility Act. A report on this rule review, entitled "Regulatory Flexibility Act Review, Performance Requirements for Walk-Behind Power Mowers," is available on request.

**ADDRESSES:** Requests for copies of the report should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Anthony C. Homan, Directorate for Economic Analysis, Consumer Product Safety Commission, Washington, DC 20207, telephone: (301) 504-0962; or Allen F. Brauninger, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone: (301) 504-0980.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) became effective on January 1, 1981, and generally requires Federal agencies to evaluate the economic impact of their rules on small entities. The term "small entity" is defined by the RFA to include small businesses, small not-for-profit organizations, and small counties, cities, and other local governmental jurisdictions. Section 610 of the RFA (5 U.S.C. 610) requires agencies to review all rules in existence on January 1, 1981, which have a significant economic impact on a substantial number of small entities. Section 610 of the RFA also

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requires agencies to review periodically those rules issued after the effective date of the RFA. The purpose of this review is to determine whether the rules under consideration should be continued without change, amended, or revoked, consistent with the purposes of the statutes which they implement, to minimize any significant economic impact which they may have on small entities. Section 610 of the RFA requires agencies to consider the following factors with respect to each of the rules under review:

(1) The continued need for the rule.

(2) The nature of complaints or comments about the rule received from the public.

(3) The complexity of the rule.

(4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and to the extent feasible, with rules of state and local governments.

(5) The length of time since the rule has been evaluated, or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

In the **Federal Register** of January 28, 1992 (57 FR 3147), the Commission announced that it would review the performance requirements of the Safety Standard for Walk-Behind Power Mowers in accordance with provisions of section 610 of the RFA. Those rules were issued under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) and are codified at 16 CFR 1205.4 and 1205.5. The Commission reviewed the labeling provisions of the power mower standard in 1986 as part of a review of 17 rules issued before 1981 under provisions of the CPSA.

The notice of January 28, 1992, gave a brief description of the provisions of the rules establishing performance requirements for walk-behind mowers, the need for those rules, and their legal basis. The notice also invited written comments on the rules under consideration. One comment was received.

After considering the provisions of the rules establishing performance requirements for walk-behind mowers, the comment submitted concerning those rules, and relevant information about their economic effect on the regulated industry, the Commission finds that they have not had a significant economic impact on a substantial number of small entities, including small businesses. For that reason, the Commission concludes that no further action with regard to the rules is warranted by section 610 of the RFA.

The Commission has prepared a report of this RFA rule review. This report, entitled "Regulatory Flexibility Act Review, Performance Requirements for Walk-Behind Mowers," is available without charge by writing to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or by calling (301) 504-0800.

Dated: July 8, 1992.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 92-16501 Filed 7-13-92; 8:45 am]

BILLING CODE 6355-01-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 229

**[Release Nos. 33-6941; 34-30914; File No. S7-16-92]**

**RIN 3235-AF34**

### Executive Compensation Disclosure; Correction

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Correction to proposed rules.

**SUMMARY:** This document contains a correction to the executive compensation disclosure proposed rules which were published on July 2, 1992 (57 FR 29582).

**FOR FURTHER INFORMATION CONTACT:** Catherine T. Dixon at (202) 272-2589 or Eric D. Kline at (202) 272-3097, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission proposed revised executive compensation disclosure rules on July 2, 1992. As published, the proposed rules inadvertently eliminated reference to disclosure of termination of employment and change of control arrangements that are in current Item 402(e) of Regulation S-K[1].

Accordingly, the proposed rules relating to executive compensation disclosure which were the subject of FR Doc 92-15250 are corrected as follows:

### PART 229—[CORRECTED]

On page 29607, in the third column, paragraph (l) is added to § 229.402 (Item 402 of Regulation S-K) after "Instructions to Item 402(k)" and immediately preceding "General Instructions to Item 402" to read as follows:

**§ 229.402 (Item 402) Executive compensation.**

* * * * *

Instructions to Item 402(k)

* * * * *

(l) Termination of employment and change of control arrangement. Describe any compensatory plan or arrangement, including payments to be received from the registrant, with respect to any named executive officers designated under paragraph (a)(3) of this section for the latest or then next preceding fiscal year, if such a plan or arrangement results or will result from the resignation, retirement or any other termination of such individual's employment with the registrant and its subsidiaries or from a change in control of the registrant or a change in the individual's responsibilities following a change in control and the amount involved, including all periodic payments or installments, exceeds $60,000.

* * * * *

Dated: July 10, 1992.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-16630 Filed 7-10-92; 3:16 pm]

BILLING CODE 8010-01-M

### 17 CFR Part 250

**[Release No. 35-25574; File No. S7-17-92]**

**RIN 3235-AF49**

### Exemption of Issuance and Sale of Certain Securities by Public-Utility and Nonutility Subsidiary Companies of Registered Public-Utility Holding Companies

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Proposed rules.

**SUMMARY:** The Commission, which today amended rule 52 under the Public Utility Holding Company Act of 1935 ("Act") in a companion release, is requesting comment upon a further amendment to the rule that would exempt certain other types of securities, and expand the rule to include certain financing transactions by nonutility subsidiary companies of registered holding companies. The Commission is also requesting comment on a proposed

[1] 17 CFR 229.402(e).

amendment to rule 45(b)(4) to remove the present dollar limitation of the rule. Rule 45(b)(4) provides an exemption from the requirement of prior Commission authorization under section 12(b) of the Act and rule 45(a) for certain capital contributions and open account advances by a parent company to its subsidiary company. The amendments are intended to further ease the regulatory and paperwork burdens associated with seeking Commission approval for routine financings by registered holding companies and their subsidiary companies.

**DATES:** Comments must be submitted on or before October 13, 1992.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–17–92. All comment letters received should refer to File No. S7–17–92. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** William C. Weeden, Assistant Director, (202) 272–7676, Sidney L. Cimmet, Senior Special Counsel, (202) 272–7676, Joanne C. Rutkowski, Senior Special Counsel (202) 504–2267, or Brian P. Spires, Staff Attorney, (202) 272–7688, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is requesting comment on proposed amendments to rules 52 and 45(b)(4) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*). Rule 52 exempts from the requirement of prior Commission approval under section 6(a) the issuance and sale of certain securities by a public-utility subsidiary company of a registered holding company, in accordance with the terms and conditions of the rule. Rule 52 also exempts from the requirement of prior Commission authorization under section 9(a) the acquisition by a parent holding company of the securities issued by an existing public-utility subsidiary company pursuant to the rule. The proposed amendment would broaden the rule to exempt certain other types of securities issued and sold by system public-utility subsidiary companies and would extend the exemption to certain financing transactions by system nonutility subsidiary companies.

Rule 45(b)(4) provides an exemption from the requirement of rule 45(a) under section 12(b) of prior Commission approval for capital contributions and loans by a registered holding company to its subsidiary companies. Present rule 45(b)(4) exempts up to $50,000 in capital contributions and open account advances, without interest, made to any subsidiary during a calendar year. The proposed amendment would delete the dollar limitation.

## Discussion

Rule 52 exempts from the requirement of prior Commission authorization under section 6(a) the issue and sale of certain securities by public-utility subsidiary companies of registered public-utility holding companies.[1] Rule 52 also exempts from the requirement of prior Commission authorization under section 9(a)(1) the acquisition by a parent holding company of the securities issued by an existing public-utility subsidiary company pursuant to the rules.[2]

The rule as adopted was limited to specified types of securities, and subject to eight conditions. The Commission has today amended the rule to delete the six nonstatutory conditions, and to expand the types of securities within the exemption.[3]

The Commission is proposing a further amendment of the rule to exempt a broad range of common intrasystem financing arrangements. The exemption would extend to both utility and nonutility subsidiary companies in a registered holding company system.

In addition, the Commission is proposing an amendment to rule 45(b)(4) to exempt certain other intrasystem financings not encompassed by rule 52.

### *1. Issue and Sale of Other Securities by Public-Utility Subsidiaries*

With respect to intrasystem financings, the present rule exempts notes issued to a parent holding company with interest rates and maturity dates that parallel those of the holding company's debentures or preferred stock. However, other forms of indebtedness are commonly used in intrasystem financings. The Commission believes that the rule is unduly restrictive, and proposes to amend the rule to broaden the range of exempted financing transactions to include securities with interest rates and maturities that are designed to parallel the effective cost of capital of the purchaser.[4] The Commission has permitted numerous declarations to become effective for the issuance and sale of such securities.[5] The Commission believes that this proposed expansion of the exemption is appropriate in view of the continuing requirement of prior state approval. The effective cost of capital would be the coupon rate of interest on debt plus all expenses, including, but not limited to, underwriters' compensation, discounts, fees and commissions associated with

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[1] Section 6(a) requires Commission approval under the standards of section 7 for the issue and sale of any security of a registered holding company or its subsidiary company.

Section 6(b) authorizes the Commission to exempt from the declaration requirements of section 6(a): the issue or sale of any security by any subsidiary company of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business.

The Congress intended "to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist." H.R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935).

See generally 45 SEC Docket 1577 (Apr. 3, 1990), 55 FR 11362 (Mar. 28, 1990) (adopting rule 52).

[2] Section 9(a)(1) requires prior Commission approval under the standards of section 10 for the acquisition of securities by a registered holding company or its subsidiary company. Section 9(c)(3) provides a limited exception from this requirement for the acquisition of: such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

The exemption under rule 52 does not apply to the issuance of securities to form a new public-utility subsidiary company of a registered holding company. Rule 52.

[3] Rule 52 as amended provides a conditional exemption from the requirement of prior Commission approval for the issue and sale by a public-utility subsidiary company of a registered holding company of common stock, preferred stock, mortgage bonds and any note issued and sold to the parent holding company, the interest rate and maturity date of which note parallel a debenture or preferred stock issued by the parent. To qualify for exemption under the rule, the issue and sale must be solely for the purpose of financing the business of the public-utility company and expressly authorized by the relevant state commission.

[4] The omission of common intrasystem financing transactions is of particular concern to the registered gas systems. Unlike registered electric systems, registered gas systems, with few exceptions, issue and sell debt to the public at the parent company level. The systems fund their subsidiary operations by several methods, including capital contributions, open account advances, money pool arrangements, purchases of common stock, and short- and long-term loans. As proposed to be amended, rules 52 and 45(b)(4) would exempt all of these intrasystem transactions.

[5] See, e.g., *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 25339 (June 28, 1991), 49 SEC Docket 449 (July 16, 1991), and Holding Co. Act Release No. 25110 (June 29, 1990), 46 SEC Docket 1124 (July 17, 1990) (cost to subsidiaries of borrowing from parent registered holding company tied to Federal Funds' rate for short-term debt and published bond index for long-term debt).

the issue and sale of such debt. In the event the purchaser has not recently issued debt securities, the purchaser's effective cost of capital may be tied to an appropriate index such as, but not limited to, the Federal Funds' rate or a published bond index. The Commission specifically requests comment on whether other factors may be appropriately considered in determining the effective cost of capital.

*2. Issue and Sale of Securities by Nonutility Subsidiaries*

In 1991, the Commission authorized the nonutility subsidiaries of the registered holding companies to sell debt securities totalling $739 million to nonassociates. The present rule, however, exempts only transactions involving securities of public-utility subsidiaries. The Commission believes the rule should encompass nonutility subsidiaries as well.[6]

Section 6(b) provides that the Commission shall exempt the issue and sale of a security of a nonutility subsidiary of a registered holding company for the purpose of financing the subsidiary's business, subject to such terms and conditions as the Commission deems appropriate in the public interest or for the protection of investors or consumers. In enacting section 6(b), Congress inended the Commission "to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist."[7]

In the past, the Commission has granted exemptions for nonutility financings by order on a case-by-case basis. The Commission, in 1989, also considered an exemption by rule for such financings. In the release proposing the original rule 52, the Commission deferred action, citing its concern "with the adverse consequences that potential growth of debt in the non-utility subsidiary companies could have for the holding-company system and the public-utility subsidiaries."[8]

Upon further consideration, however, the Commission is proposing to amend the rule to exempt unconditionally the issue and sale of certain securities by nonutility subsidiaries.[9] Because of the extensive reporting requirements imposed by the Act and other federal securities laws, and the far greater scrutiny of reporting companies generally since the passage of the Act fifty-seven years ago, the Commission believes that it may be appropriate to exempt unconditionally certain nonutility financings.

The Commission notes that the twelve registered holding companies that proposed original rule 52 suggested that a security issuance should not cause the holding company system to exceed a consolidated debt/equity ratio of 65%/30%.[10] The Commission thus requests comment as to whether this or any other condition is necessary to prevent excessive leveraging at the nonutility subsidiary or holding company level, which could affect utility subsidiaries and thus consumers.

Because the rule currently exempts only acquisitions of securities issued and sold by a public-utility subsidiary, the Commission further proposes to amend rule 52 to exempt from section 9 the acquisition of securities of a nonutility subsidiary exempted pursuant to the rule.

*3. Capital Contributions and Open Account Advances, Without Interest, to Subsidiary Companies*

Rule 52, as proposed to be amended, will not exempt certain other common intrasystem financing transactions. For example, capital contributions from a registered holding company to its subsidiary are regulated as intercompany loans under section 12(b) and rule 45.[11] Open account advances that do not bear interest are also subject to these provisions.

There is at present a limited exemption for these transactions. Rule 45(b)(4) exempts up to $50,000 in capital contributions and open account advances, without interest, made to any subsidiary during a calendar year.[12] The Commission proposes to remove the dollar limit from rule 45(b)(4).

The legislative history of the Act makes clear that the Congress, while concerned with holding company abuses, recognized that "[d]own-stream loans * * * may be legitimate sources of credit * * *," and concluded that "the subject is one in which the rule-making power of the Commission is required to meet a host of varying circumstances."[13] Capital contributions and open account advances, without interest, are routine transactions which serve to transfer funds from the parent to its subsidiary. Because the Commission will retain authority over the issue and sale of securities by the registered holding company, it no longer appears necessary to include a dollar limitation in the rule.

*4. Issuance of Other Securities*

Finally, the Commission requests comment on whether the amendments to rules 45 and 52 should be extended to exempt financing transactions involving other securities, in particular, guaranties of debt securities issued by other subsidiary companies.[14] Because guaranties are securities under the Act,[15] their issuance and sale are subject to the declaration requirement of section 6, unless exempted under section 6(b). At present, rule 52 does not extend to the issuance and sale of guaranties.

In addition, the guaranty by a subsidiary company of debt securities issued by another subsidiary company is subject to section 12(b) and rule 45 thereunder. Rule 45, with exceptions not

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[6] We have considered, in particular, that, absent further amendment of rule 52, routine gas intrasystem financings will remain subject to the requirement of prior approval. The nonutility operations of registered gas holding companies rival in size the utility operations, largely because the Act does not include transmission assets in the definition of a gas utility company.

[7] H.R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935).

[8] Holding Co. Act Release No. 24691, 43 SEC Docket 1667, 1668 (May 30, 1989), 54 FR 22314 (May 23, 1989) (proposing rule 52).

[9] The proposed rule would exempt financings by means of common stock, preferred stock, bonds, notes and other forms of indebtedness. The interest rates and maturity dates of any debt security issued to an associate company would be required to parallel the effective cost of capital of that associate company. See the textual discussion requesting comment on the definition of "effective cost of capital" found in section 1 above.

[10] This condition is drawn from section 7(d)(1) which requires the Commission, in reviewing an issuance of securities, to consider whether the security is reasonably adapted to the security structure of the company issuing the security and the other companies in the registered holding company system. Under that section, the Commission generally has required a registered holding company system and its public-utility subsidiaries to maintain a 65%/30% debt/common equity ratio, the balance generally being preferred equity. See e.g., *Columbia Gas Sys., Inc.*, Holding Co. Act Release No. 23971, 34 SEC Docket 1542 (Jan. 14, 1986), *aff'd sub nom. Gorsham* v. *SEC*, 804 F.2d 1248 (3d Cir. 1986); *Georgia Power Co.*, 45 S.E.C. 610, 615 (1974) (citing *Eastern Utils. Assoc.*, 34 S.E.C. 390, 444–45 (1952), and *Kentucky Power Co.*, 41 S.E.C. 39 (1961)).

[11] Section 12(b) and rule 45(a) generally require prior Commission approval for a registered holding company or its subsidiary company to "lend or in any manner extend its credit to or indemnify any company in the same holding-company system."

[12] Rule 45(b)(4) exempts:

[c]apital contributions or open account advances, without interest, to any subsidiary: *Provided*, That after giving effect to the transaction the total net amount which such subsidiary will have received during the calendar year as a result of such transactions will not exceed $50,000 (after deducting payments during the year regardless of the date of the advances).

The rule contained the $50,000 limitation when adopted in 1941. Holding Co. Act Release No. 2694 (Apr. 21, 1941).

[13] S. Rep. No. 621, 74th Cong., 1st Sess. 34–5 (1935).

[14] Section 12(a) prohibits the guaranty by subsidiary companies of debt issued by a registered holding company.

[15] See section 2(a)(16) (definition of security).

relevant here, prohibits the issuance of guaranties by a subsidiary company without the filing of a declaration.[16]

Guaranties of debt are commonly used today. Accordingly, the Commission believes it may be appropriate to amend rules 45 and 52 to permit the issuance of guaranties by subsidiary companies. Of course, for a guaranty to be exempted, the Act requires that the guaranty be solely for the purpose of financing the business of the subsidiary company and, if the subsidiary is a public-utility company, that the relevant state commission has authorized the guaranty. The Commission requests comment on whether any further conditions are appropriate to ensure the protection of investors and consumers. Commenters are specifically asked to address whether it may be appropriate to require the disclosure of aggregate intrasystem guaranties in Form U–6B–2.

### Conclusion

The Commission believes that the registered holding-company systems should have a greater ability to engage in routine financings without the regulatory burden of prior Commission authorization, and that this may be done without jeopardizing the interests the Act is designed to protect. The rule amendments proposed today are intended to accomplish this purpose.

### Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amended rules will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as exhibit A.

### Costs and Benefits

Rule 52, as proposed to be amended, will substantially decrease regulatory compliance costs for the registered holding companies. In fiscal year 1991, for example, 17 applications would not have been filed, and an additional 16 applications would have been abbreviated, had the proposed amended rule 52 been in place. Estimated savings per application would have been approximately $20,909 including the $2,000 filing fee per application, and related legal, accounting, and management costs. Thus, for 33 applications filed in fiscal year 1991 the aggregate savings would have been approximately $724,000. Moreover, the reduction in Commission staff hours associated with reviewing and analyzing these applications would have been approximately 3,212 hours. The only cost to the registered holding companies in complying with the amended rule will be the cost of completing a Form U–6B–2 after the issue or sale of any security. It is estimated that approximately one hour will be required to complete such a form.

[16] At present, rule 45(b)(6) exempts certain guaranties "in the ordinary course of business." The rule by its terms does not apply to a guaranty of a subsidiary's indebtedness for borrowed money.

### Paperwork Reduction Act

The proposed amended rules are subject to the Paperwork Reduction Act and have been approved by the Office of Management and Budget for use through July 31, 1995.

### List of Subjects in 17 CFR Part 250

Utilities.

### Text of Proposed Rules

Part 250 of chapter II, title 17, of the Code of Federal Regulations is proposed to be amended as follows:

## PART 250—[AMENDED]

1. The authority citation for part 250 is amended by adding the following citation.

**Authority:** 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

Section 250.45(b)(4) also issued under 15 U.S.C. 79*l*(b).

* * * * *

2. Section 250.45 is amended by revising paragraph (b)(4) to read as follows:

**§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.**

* * * * *

(b) *Exceptions.* * * *

(4) Capital contributions or open account advances, without interest, by a company to its subsidiary company.

* * * * *

3. Section 250.52 is revised to read as follows:

**§ 250.52 Exemption of issue and sale of certain securities.**

(a) Any registered holding-company subsidiary which is itself a public-utility company shall be exempt from section 6(a) of the Act and rules thereunder with respect to the issue and sale of any common stock, preferred stock, bond, note or other form of indebtedness, of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the business of such public-utility subsidiary company;

(2) The issue and sale of such security have been expressly authorized by the state commission of the state in which such subsidiary company is organized and doing business; and

(3) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

(b) Any subsidiary of a registered holding company which is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company or an investment company shall be exempt from section 6(a) of the Act and rules thereunder with respect to the issue and sale of any common stock, preferred stock, bond, note or other form of indebtedness, of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the existing business of such subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

(c) Within ten days after the issue or sale of any security exempt under this section, the issuer or seller shall file with the Commission a Certificate of Notification on Form U–6B–2 containing the information prescribed by that form. However, with respect to exempt financing transactions between associate companies which involve the repetitive issue or sale of securities or are part of an intrasystem financing program involving the issuance and sale of securities not exempted by this section, the filing of information on Form U–6B–2 may be done on a calendar quarterly basis.

(d) The acquisition by a company in a registered holding company system of any security issued and sold by an associate company, pursuant to this section, is exempt from the requirements of section 9(a) of the Act; provided that the exemption granted by this paragraph (d) shall not apply to any transaction involving the issue and sale of securities to form a new subsidiary company of a registered holding company.

Dated: July 7, 1992.
By the Commission.
Jonathan G. Katz,
*Secretary.*

**Exhibit A**

**Regulatory Flexibility Certification**

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to rules 45 and 52 under the Public Utility Holding Company Act, [15 U.S.C. 79 *et seq.*], concerning exemptions for certain financings by subsidiaries of registered holding companies, will not, if promulgated, have a significant impact on a substantial number of small entities. The reason for this certification is that it does not appear that any small entities would be affected by the proposed rule amendments.

Dated: June 3, 1992.
Richard C. Breeden,
*Chairman.*

[FR Doc. 92-16509 Filed 7-13-92; 8:45 am]
BILLING CODE 8010-01-M

## OFFICE OF NATIONAL DRUG CONTROL POLICY

**21 CFR Chapter III**

**Mandatory Declassification Review Program**

**AGENCY:** Office of National Drug Control Policy.

**ACTION:** Proposed rule and request for comments.

**SUMMARY:** Section 5.3(b) of Executive Order 12356 (April 2, 1982) requires agencies that originate or handle classified information to promulgate implementing regulations to carry out the Executive Order, and to publish those portions of the implementing regulations in the **Federal Register** that affect members of the public. The portions of an agency's security regulations that affect members of the public include, at a minimum, information relating to the agency's mandatory declassification review program and instructions for submitting suggestions or complaints regarding the agency's information security program.

On May 4, 1990, the President delegated to the Director of the Office of National Drug Control Policy (ONDCP) the authority to originally classify documents as Top Secret, Secret, or Confidential. The proposed regulations will fulfill the requirement that ONDCP, as an agency that originates classified information, publish the portion of its implementing regulations that affects the public. The proposed regulations describe how members of the public may request to have classified information reviewed for possible declassification, and how denials of requests for declassification may be appealed.

**DATES:** Comments must be submitted on or before September 14, 1992.

**ADDRESSES:** Written comments should be sent to the Office of the General Counsel, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500.

**FOR FURTHER INFORMATION CONTACT:** Paul Cellupica, Office of the General Counsel, Office of National Drug Control Policy, Washington, DC 20500, (202) 467-9540.

**SUPPLEMENTARY INFORMATION:** The Office of National Drug Control Policy (ONDCP) was created by the Anti-Drug Abuse Act of 1988, Public Law 100-690, 21 U.S.C. 1501 *et seq.*, and was charged with the development and coordination of national policy toward illegal drugs. On May 4, 1990, the President delegated to the Director of ONDCP the authority to originally classify documents as Top Secret, Secret, or Confidential (55 FR 19235).

**List of Subjects in 21 CFR Part 1402**

Classified information.

For the reasons set out in the preamble, title 21 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. A new chapter III consisting of parts 1400 to 1499 is established in title 21 of the Code of Federal Regulations to read as follows:

**CHAPTER III—OFFICE OF NATIONAL DRUG CONTROL POLICY**

Part
1400–1401 [Reserved]
1402 Mandatory declassification review
1403–1499 [Reserved]

2. A new part 1402 is added to newly established chapter III to read as follows:

**PART 1402—MANDATORY DECLASSIFICATION REVIEW**

Sec.
1402.1 Purpose.
1402.2 Responsibility.
1402.3 Information in the custody of ONDCP.
1402.4 Information classified by another agency.
1402.5 Appeal procedure.
1402.6 Fees.
1402.7 Suggestions and complaints.

**Authority:** Section 3.4, E.O. 12356 (3 CFR, 1982 Comp., p. 166), and Information Security Oversight Office Directive No. 1 (32 CFR 2001.32).

**§ 1401.1 Purpose.**

Other government agencies, U.S. citizens or permanent resident aliens may request that classified information in files of the Office of National Drug Control Policy (ONDCP) be reviewed for possible declassification and release. This part prescribes the procedures for such review and subsequent release or denial.

**§ 1402.2 Responsibility.**

All requests for the mandatory declassification review of classified information in ONDCP files should be addressed to the Security Officer, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500, who will acknowledge receipt of the request. When a request does not reasonably describe the information sought, the requester shall be notified that unless additional information is provided, or the scope of the request is narrowed, no further action will be taken.

**§ 1402.3 Information in the custody of ONDCP.**

Information contained on ONDCP files and under the exclusive declassification jurisdiction of ONDCP will be reviewed by the Director of the Office of Planning, Budget, and Administration of ONDCP and/or the office of primary interest to determine whether, under the declassification provisions of Section 3.1 of Executive Order 12356 (3 CFR, 1982 Comp., p. 166), the requested information may be declassified. If so, the information may not be released, in whole or in part, the requester shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to the Director of ONDCP, and a notice that such an appeal must be filed within 60 days in order to be considered.

**§ 1402.4 Information classified by another agency.**

When a request is received for information that was classified by another agency, the Director of the Office of Planning, Budget, and Administration of ONDCP will forward the request and a copy of the document(s) along with any other related materials, to the appropriate agency for review and determination as to release. Recommendations as to release or denial may be made if appropriate. The requester will be notified of the referral, unless the receiving agency objects on the grounds that its association with the information requires protection.

**§ 1402.5 Appeal procedure.**

Appeals reviewed as a result of a denial will be routed to the Director of ONDCP, who will take action as necessary to determine whether any part of the information may be declassified. If so, the Director shall notify the requester of this determination and shall make any information available that is declassified and is otherwise releasable. If continued classification is required, the requester shall be notified by the Director of ONDCP of the reasons therefore.

**§ 1402.6 Fees.**

There will normally be no fees charged for the mandatory review of classified material for declassification under this part.

**§ 1402.7 Suggestions and complaints.**

Suggestions and complaints regarding the information security program of ONDCP should be submitted, in writing, to the Security Officer, Office of National Drug Control Policy, Washington, DC 20500.

**Bob Martinez,**

*Director.*

[FR Doc. 92-16319 Filed 7-13-92; 8:45 am]

BILLING CODE 3180-02-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 914

### Indiana Regulatory Program Amendment

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of proposed changes to the Indiana Surface Mining Rules concerning ownership and control. The amendment defines what constitutes ownership and control of a surface mining operation; establishes actions to be taken to identify and correct improvidently issued permits; and resolves outstanding violations. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4 p.m. on August 13, 1992; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on August 10, 1992; and, requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 29, 1992.

**ADDRESSES:** Written comments and requests to testify at the hearing should be directed to Mr. Roger W. Calhoun, Acting Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226-6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232-1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Acting Director, Telephone (317) 226-6166.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Indiana Program**

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

**II. Discussion of the Proposed Amendment**

By letter dated May 11, 1989 (Administrative Record No. IND-0644), OSM informed Indiana of changes to the Federal regulations concerning ownership and control which may necessitate changes in the Indiana program.

By letter dated May 11, 1992, (Administrative Record No. IND-1080), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at 310 Indiana Administrative Code (IAC) 12-0.5, 12-3, and 12-6. The proposed amendment includes changes to the following Indiana rules:

*Rule Number and Subject (Intended Action)*

310 IAC 12-0.5-80.5 Definition of "owned or controlled". (New)
310 IAC 12-3-19 (Repeal)
310 IAC 12-3-19.1 Surface mining permit applications; identification of interests. (Replace; new)
310 IAC 12-3-20 Surface mining permit applications; compliance information. (Amend)
310 IAC 12-3-111 (Repeal)
310 IAC 12-3-111.1 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; review of permit applications. (New)
310 IAC 12-3-112 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit approval or denial. (Amend)
310 IAC 12-3-119.5 Administrative and judicial review of decisions by the director on permit applications; improvidently issued permits; general procedures. (New)
310 IAC 12-3-119.6 Administrative and judicial review of decisions by the director on permit applications; judicial review; improvidently issued permits; rescission procedures. (New)
310 IAC 12-6-5 State enforcement; cessation orders. (Amend)

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

**III. Public Comment Procedures**

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking

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comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

*Written Comments*

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on July 29, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

*Executive Order 12291 and the Regulatory Flexibility Act*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

*Executive Order 12778*

This rule has been reviewed under the principles set forth in Section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of * * *

* * * * *

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under "**ADDRESSES**." A summary of the meeting will be included in the Administrative Record.

**List of Subjects in 30 CFR Part 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 3, 1992.

**Jeffrey D. Jarrett,**

*Acting Assistant Director, Eastern Support Center.*

[FR Doc. 92-16438 Filed 7-13-92; 8:45 am]

BILLING CODE 4310-05-M

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**30 CFR Part 914**

**Indiana Regulatory Program Amendment**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule.

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**SUMMARY:** OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of proposed changes to the Indian Surface Mining rules concerning the reclamation fee. The amendment is intended to set forth the requirements for payment of the reclamation fee established by Indiana Code (IC) 13-4.1-3-2.

This document sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4 p.m. on August 13, 1992; if requested, a public hearing on the proposed amendment is schedule for 1 p.m. on August 10, 1992; and requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 29, 1992.

**ADDRESSES:** Written comments and requests to testify at the hearing should be directed to Mr. Roger W. Calhoun, Acting Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226-6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232-1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Acting Director, Telephone (317) 226-6166.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Indiana Program**

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed

explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, Federal Register (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

## II. Discussion of the Proposed Amendments

By letter dated May 7, 1992, (Administrative Record No. IND–1079), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at 310 Indiana Administrative Code 12. The proposed amendment would repeal 310 IAC 12–3–8, 12–3–9, 12–8–4, and 12–8–8. A new rule would be added at 310 IAC 12–9. The new rule would address the applicability of the fee, fee payment, and production records.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

## III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

*Written Comments*

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business on July 29, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue of the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under "ADDRESSES." A summary of the meeting will be included in the Administrative Record.

*Executive Order 12291 and the Regulatory Flexibility Act*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

*Executive Order 12778*

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of • • •

• • • • • •

**List of Subjects in 30 CFR Part 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 3, 1992.

**Jeffrey D. Jarrett,**

*Acting Assistant Director, Eastern Support Center.*

[FR Doc. 92–16445 Filed 7–13–92; 8:45 am]

BILLING CODE 4310–05–M

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**30 CFR Part 935**

## Ohio Permanent Regulatory Program; Revision of Administrative Rule

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSM is announcing the receipt of proposed Program Amendment Number 57 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to revise one rule in the Ohio Administrative Code to change the locations at which applicants must file copies of permit applications, revisions, and renewals in order to allow public inspection of those documents.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4 p.m. on August 13, 1992. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on August 10, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 29, 1992.

**ADDRESSES:** Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written

comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holiday. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone (614) 866–0578.

Ohio Department of Natural Resources Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

**II. Discussion of the Proposed Amendments**

By letter dated May 12, 1992 (Adminstrative Record No. OH–1698), Ohio submitted proposed Program Amendment Number 57. In this amendment, Ohio is proposing to change the locations at which applicants must file copies of permit applications, revisions, and renewals in order to allow public inspection of those documents. Ohio is revising Ohio Administrative Code (OAC) 1501:13–5–01 paragraph (A)(4)(a) to read:

(a) The applicant shall make a full copy of the complete application for a permit, a significant permit revision, or a permit renewal available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the Chief at the Division of Reclamation district office responsible for inspection of the proposed operation or the office of the Soil Conservation Service of the United States Department of Agriculture located in the county where the mining is proposed to occur. If neither such office is maintained in the county where the mining is proposed to occur, the applicant shall file a copy of the application with the county recorder of that county.

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on July 29, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

**Executive Order 12291 and the Regulatory Flexibility Act**

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

**Executive Order 12778**

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined, to the extent allowed by law, that this rule meets the applicable standards of section 2(a) and 2(b) of Executive Order 12778. Under SMCRA section 405 and 30 CFR part 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

**List of Subjects in 30 CFR Part 935**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 28, 1992.

**Ronald C. Recker,**

*Acting Assistant Director, Eastern Support Center.*

[FR Doc. 92–16446 Filed 7–13–92; 8:45 am]

BILLING CODE 4310–05–M

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 25, 260, 261, 262, 264, and 268**

**[FRL–4153–8]**

**Extension of Comment Period**

**AGENCY:** Environmental Protection Agency

**ACTION:** Notice of extension of comment period.

**SUMMARY:** EPA is formally extending the comment period of the Hazardous Waste Identification Rule (57 FR 21450) from July 20, 1992 until July 24, 1992. The proposed rule contained a number of different options for exempting low-toxicity wastes under Subtitle C of RCRA. This extension will allow interested parties who participated in the four, one-day Roundtable Discussions sponsored by the Agency on the proposed rule, as well as all other interested parties, four extra days to submit comments.

**DATES:** The formal comment period is extended from July 20, 1992 until July 24, 1992.

**ADDRESSES:** Consistent with the proposal, the public must send an original and two copies of their comments to: EPA RCRA Docket (S–212) (OS–305), 401 M Street, SW., Washington, DC 20460.

"Docket Number F–92–HWEP–FFFFF" must be placed on the comments. The RCRA Docket is located in room 2427 at the above address, and is open from 9 a.m. until 4 p.m., Monday through Friday, excluding Federal Holidays. The public must make an appointment to review docket materials by calling (202) 260–9327.The public may copy materials from any regulatory docket at a cost of $0.15 per page.

**FOR MORE INFORMATION CONTACT:** For information on substantive matters, please contact William A. Collins, Jr., of the Waste Identification Branch, at (202) 260–4791.

Dated: July 9, 1992.

Sylvia K. Lowrance,
*Director, Office of Solid Wastes.*

[FR Doc. 92–16488 Filed 7–13–92; 8:45 am]
BILLING CODE 6560–50–M

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**40 CFR Part 80**

**[AMS–FRL–4154–1]**

## Regulation of Fuels and Fuel Additives; Standards for Reformulated and Conventional Gasoline

**AGENCY:** Environmental Protection Agency.

**ACTION:** Extension of comment period.

**SUMMARY:** This document announces the extension of the comment period for the Supplemental Notice of Proposed Rulemaking (SNPRM) entitled "Regulation of Fuels and Fuel Activities; Standards for Reformulated and Conventional Gasoline" published on April 16, 1992 (57 FR 13416). As indicated in the Notice of Relocation and Rescheduling of Public Hearing and Extension of Comment Period published on May 28, 1992 (57 FR 22449), the comment period for this rule was extended until July 10, 1992. Due to the length of the hearing, the need to receive responses to the issues raised, and the volume of material submitted, the comment period for the Supplemental Notice has been extended to August 14, 1992, to allow interested parties to comment on any specific provisions contained in the SNPRM which were not in the Notice of Proposed Rulemaking (NPRM) for the rule published July 9, 1991 (56 FR 31176), or to submit information to supplement or rebut testimony presented at the hearing. The comment period for the NPRM is also extended until that date.

**DATES:** Comments on the NPRM and the Supplemental Notice described above will be accepted until August 14, 1992.

**ADDRESSES:** Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A–91–02 at the following address: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Joanne I. Goldhand, SDSB–12; U.S. EPA, Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, 313/668–4504.

**SUPPLEMENTARY INFORMATION:** For further information on this matter, please refer to EPA's April 16, 1992 **Federal Register** Supplemental Notice of Proposed Rulemaking at 57 FR 13416.

Dated: July 7, 1992.

Michael Shapiro,
*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 92–16487 Filed 7–13–92; 8:45 am]
BILLING CODE 6560–50–M

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**INTERSTATE COMMERCE COMMISSION**

**49 CFR Part 1180**

**[Ex Parte No. 282 (Sub-No. 15)]**

## Railroad Consolidation Procedures: Class Exemption for Transactions Subject to the Statutory Consolidation Provision

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes to expand the "nonconnecting carrier" class exemption to embrace all transactions subject to the statutory consolidation provision, with the exception of transactions falling within any of three readily ascertainable categories. Those categories encompass the following types of transactions: (1) Those involving the merger or control of at least two class I railroads; (2) those involving a reduction in the number of noncommonly-controlled railroads conducting operations between any two points; and (3) those involving a reduction from three to two in the number of noncommonly-controlled railroads serving any interchange point. Establishment of the broader exemption will relieve rail carriers of the burden of filing, and will relieve the Commission of the burden of handling, numerous individual requests.

**DATES:** Comments must be submitted by August 30, 1992.

**ADDRESSES:** Send an original and 10 copies of comments referring to Ex Parte No. 282 (Sub-No. 15) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927–5660 [TDD for hearing impaired: (202) 927–5721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To receive a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

### Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

### Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, we are required to examine the impact of a proposed action on small entities. We preliminarily conclude that the action proposed in this proceeding will not have a significant impact on a substantial number of small entities.

But, to the limited extent that the proposed action will have an impact on small entities, that impact will be a positive one. The general purpose of the proposed expansion of the § 1180.2(d)(2) class exemption is to minimize regulatory involvement in private sector rail transactions. The present § 1180.2(d)(2) class exemption has been

invoked, and the proposed new § 1180.2(d)(2) class exemption will be invoked for the most part, by class II and III rail carriers. The lessening of regulatory oversight of the transactions entered into by these carriers should reduce the expenses the carriers must incur to process the transactions.

We invite public comments on the issue of the economic impact of our proposal on small entities.

**List of Subjects in 49 CFR Part 1180**

Railroads.

Decided: June 23, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Vice Chairman McDonald commented with a separate expression. Commissioner Simmons concurred with a separate expression.

**Sidney L. Strickland, Jr.,**

*Secretary.*

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES**

1. The authority citation for part 1180 is proposed to be revised to read as follows:

**Authority:** 49 U.S.C. 10321, 10505, 11341, and 11343–11346; 5 U.S.C. 553 and 559; 11 U.S.C. 1172; and 45 U.S.C. 904 and 915.

2. In § 1180.2, paragraph (d)(2) is proposed to be revised to read as follows:

**§ 1180.2 Types of transactions.**

* * * * *

(d) * * *

(2) Any transaction that requires the approval and authorization of the Commission under 49 U.S.C. 11343, provided that the transaction does not involve:

(i) The merger or control of a least two class I railroads;

(ii) A reduction in the number of noncommonly-controlled railroads conducting operations between any two points; or

(iii) A reduction from three to two in the number of noncommonly-controlled railroads serving any interchange point.

* * * * *

[FR Doc. 92–16490 Filed 7–13–92; 8:45 am]

BILLING CODE 7035–01–M

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AB83**

## Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Four Endemic Puerto Rican Ferns

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine four endemic Puerto Rican ferns, *Adiantum vivesii* (no common name), *Elaphoglossum serpens* (no common name), *Polystichum calderonense* (no common name), and *Tectaria estremerana* (no common name), to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Adiantum vivesii and *Tectaria estremerana* have each been reported from only one locality in the limestone hills of northern Puerto Rico. *Elaphoglossum serpens* is found at a single site in the montane dwarf forest of the summit of Cerro Punta in the central mountains. *Polystichum calderonense* is known from only two localities, Monte Guilarte Commonwealth Forest and Cerrote Peñuelas. These ferns are threatened by destruction and modification of habitat, forest management practices, hurricane damage, and possible collection. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Adiantum vivesii*, *Elaphoglossum serpens*, *Polystichum calderonense*, and *Tectaria estremerana*. The Service seeks data and comments from the pubic on this proposal.

**DATES:** Comments from all interested parties must be received by September 14, 1992. Public hearing requests must be received by August 28, 1992.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marelisa Rivera at the Caribbean Field Office address (809/851–7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/331–3583 or FTS 242–3583).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Adiantum vivesii* was described by Dr. George R. Proctor in 1985 from specimens collected by Mr. Miguel Vives and Mr. William Estremera at Barrio San Antonio in the municipality of Quebradillas (Proctor 1989). At present, the species is only known from this locality. A single colony of an estimated 1000 plants, or growing species, has been reported from the locality (Proctor 1991). This species occurs in a deeply shaded hollow at the base of north-facing limestone cliffs at a lower to middle elevation of approximately 250 meters.

*Adiantum vivesil* is a gregarious colonial fern with creeping, nodose, and 2.5–3.0 mm thick rhizomes. The fronds are distichous and erect-spreading, approximately 0.5 cm apart and 45–71 cm long. The stipes or stalks are lustrous purple-black, 25–46 cm long, irregularly branched and have hairlike scales. The frond's blades are broad and irregular, 20–28 cm long, and 23–35 cm broad. The rachis and costae are more densely covered with hairlike scales than the stipe. The blades have 2 or 3 alternate or sometimes subopposite pinnae, with a larger terminal one. These are lance-oblong, 13–20 cm long, and 3.5–5 cm broad. The terminal pinna may be up to 7 cm broad, stalked, and is often somewhat inequilateral. Each pinna has 10–13 pairs of alternate, narrowly oblong-falcate pinnules, which are unequally cuneate at the base. The outer sterile margins of the pinna are irregularly serrulate and the tissue is dull green on both sides. Five elliptic to linear sori are borne along the basal half of acroscopic margin and they are close or contiguous but distinct. The indusioid is gray-brown, turgid, with an erose margin (Proctor 1989).

*A. vivesil* occurs on privately-owned land, and is known from only a single locality (Proctor 1991). Clearing or development of this area would result in elimination of the only known population. Also, this species could be an attractive item for collectors.

*Elaphoglossum serpens* was described by Maxon in 1947 from specimens on tree trunks at Monte Jayuya (Liogier and Martorell 1982), but the fern is now extirpated from this site due to construction of a communication facility. It was later found by Roy O. Woodbury and others on the summit of Cerro Punta (Proctor 1991). Most of the plants at the Cerro Punta site have been

destroyed by the construction of telecommunication towers (Proctor 1991). At present, 22 plants are known from the summit area, all occurring on the mossy trunks of only 6 trees (Proctor 1991). These trees are found in a patch of a montane dwarf forest at an elevation of about 1300 meters. This patch of forest is all that has survived the encroachment of telecommunication towers, and was badly damaged in 1989 by Hurricane Hugo (Proctor 1991).

*Elaphoglossum serpens* is an epiphytic fern with a wide-creeping, 1.5-2 mm thick rhizome. The apex and nodes bear lustrous reddish-brown scales with ciliate margins which are lanceolate to attenuate and 3–4 mm long. This species has only a few, distant, and erect fronds. Sterile fronds are 7–19 cm long and the stipes, from 3.5–11 cm in length, are usually as long or longer than the blades. The blades are ovate, 3.5–8 cm long and 2–3.5 cm broad, obtuse at the apex, cuneate at the base. The veins are free, reaching the margins of the blades. The coriaceous tissue is opaque with only scattered scales on the abaxial side. The fertile fronds are 8.5–18 cm long, and in contrast to the sterile fronds the stipes are about three times longer than the blades. The blades are lanceolate to elliptic-oblong with rounded or blunt apex, 2.5–4.5 cm long and 1–1.5 cm broad.

*Polystichum calderonense* was described by Dr. George Proctor in 1985 from specimens collected from the summit of La Silla de Calderón, Monte Guilarte Commonwealth Forest, in the municipality of Adjuntas (Proctor 1989). A second population was found in 1987 on Cerrote de Peñuelas, in the municipality of Peñuelas, by Dr. Proctor with Dr. Haneke (Proctor 1991). At present this species is known to occur only at these two localities. The plants grow on moist, shaded, non-calcareous ledges on mountain tops at elevations of 1000–1150 meters. Fifty-seven individual plants are known from the two localities: 45 (including juveniles) on La Silla de Calderón and 12 on Cerrote Peñuelas (Proctor 1991).

Both sites were identified by Proctor (1991) as vulnerable to indiscriminate cutting or fires. In Peñuelas, the plants are on private land which may be affected by industrial or residential development.

*Polystichum calderonese* is an evergreen terrestrial fern. It has a curved-ascending, 7 mm thick rhizome which is clothed at the apex with lanceolate to oblong, curved, shining black, marginate scales up to 10 mm long. Its fronds are erect to spreading and may reach 60 cm in length. The twice-pinnate blades are lanceolate, 25–40 cm long, 6–14 cm broad, and narrowed and truncate at the apex. Blades terminate in a scaly proliferous bud which is somewhat narrowed toward the base. This species has 30–36 pairs of oblique, short-stalked pinnae. It has a characteristic 4–7 cm long and 0.9–1.3 cm broad middle pinnae, with 8–10 pairs of free pinnules. The tissue is dark green, rigid, and opaque. From 1 to 5 sori are found dorsally on the veins of each pinnule, but are not clearly arranged in rows. The sori are covered by a light brown, deciduous, thin indusium.

*Tectaria estremerana* was described by Proctor and Evans in 1984 from specimens collected by William Estremera at Barrio Esperanza, Arecibo, in the vicinity of the Arecibo Radio Telescope (Proctor 1988). This species is found in moist shaded humus on and among limestone boulders on a wooded rocky hillside at an elevation of 250–300 meters (Proctor 1989). This fern is known only from this site, where a total of 23 individual plants were found. The site is about 200 meters south of the Arecibo Radio Telescope, and any expansion or development of the facilities may adversely affect the habitat of this endemic fern (Proctor 1991).

*Tectaria estremerana* has a woody, erect, 10–15 mm thick rhizome. The rhizome's apex bears a dense tuft of erect, brown, glabrous, narrowly deltate-at-tenuate scales about 15 mm long and 0.5–0.8 mm wide at the base. This fern has several loosely fasciculate, 65–80 cm long fronds. The light orange-brown stripes are shorter or nearly as long as the blades and are covered with pale jointed hairs. Scales up to 12 mm long clothe the base. The blades are oblong-ovate, 35–41 cm long, 20–25 cm broad below the middle, and acuminate at the pinnatifid apex. The rachis, the costae, and the costules are softly puberulous with articulate hairs on both sides. This fern has 3–4 pairs of free pinnae, and has several distal divisions which more or less adnate. The basal pair of pinnae is deltate-oblong, strongly inequilateral, 12–13 cm long, coarsely lobate or subpinnatifid. The lobes are from 9 to 13 mm broad except for the larger basal basiocopic ones. Its tissue is firmly herbaceous, glabrous, but the margins are ciliate. The sori are located nearer to the midvein than the margin of the pinna-lobes.

*Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana* were recommended for Federal listing in an interagency workshop held to discuss candidate plants in September 1988. The species were subsequently included as category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the February 21, 1990 (55 FR 6184) notice of review.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Adiantum vivesii* Proctor, *Elaphoglossum serpens* Maxon & Maxon ex Maxon, *Polystichum calderonense* Proctor, and *Tectaria estremerana* Proctor & Evans, are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

Destruction and modification of habitat may be the most significant factors affecting the numbers and distribution of these four endemic ferns. Three of the species (*Adiantum vivesii, Elaphoglossum serpens,* and *Tectaria estremerana*) are each known from only one site, all of which are privately-owned lands. The construction of communication facilities at Monte Jayuya destroyed the only other known population at *Elaphoglossum serpens* and such facilities encroach upon the population at Cerro Punta. It appears that this species is in extreme danger of extinction. Although one small population at *Polystichum calderonense* occurs within the Guilarte Commonwealth Forest, this population may be affected by forest management practices. These four fern species are rare, extremely restricted in distribution, and very vulnerable to habitat destruction or modification. The extreme rarity of these species makes the loss of any one individual even more critical.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Taking for these purposes has not been a documented factor in the decline of these fern species. However, these four species may be very attractive for collectors.

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*C. Disease or Predation*

Disease and predation have not been documented as factors in the decline of these species.

*D. The Inadequacy of Existing Regulatory Mechanisms*

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana* are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, enhance their protection and possibilities for funding needed research.

*E. Other Natural or Manmade Factors Affecting its Continued Existence*

Probably the most important factor affecting *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense, and Tectaria estremerana* is their limited distribution. The patch of forest where *Elaphoglossum serpens* is found was badly damaged in 1989 by Hurricane Hugo.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana* as endangered. Only one population each of *Adiantum vivesii, Elaphoglossum serpens,* and *Tectaria estremerana* is known. Only two populations of *Polystichum calderonense* are known to occur. Collecting may severely impact these populations. Habitat modification, including indirect effects that alter microclimatic conditions, may dramatically affect these four endemic fern species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. The number of populations of *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana* is sufficiently small that vandalism and collection could seriously affect the survival of these species. Taking is an activity that is difficult to control, and it is only regulated by the Act with respect to endangered plants in cases of (1) removal and reduction to possession of these plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying these plants in knowing violation of any State law or regulation, including State criminal trespass law. Publication of critical habitat descriptions and maps in the **Federal Register** would only increase the likelihood of such activities and would not provide offsetting benefits. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitats. Protection of these species' habitats will also be addressed through the recovery process and through the Section 7 jeopardy standard.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for these four fern species, as discussed above. Federal involvement is not anticipated where the species are known to occur.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for these four species will ever be sought or issued, since the species are not known to be in cultivation and are uncommon in the wild. Request for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358-2104).

**Public Comments Solicited**

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant dafa concerning any threat (or lack thereof) to *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense.* and *Tectaria estremerana;*

(2) The location of any aditional populations of these four fern species, and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject areas and their possible impacts on any of these four species.

Final promulgation of the regulations on *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana* will take into consideration the comments and any additional information received by the Service, and such communcations may lead to adoption of a final regulation that differs from this proposal.

The Endangered Spices Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean field Office, U.S. Fish and Wildlife Service, P.O. bOX 491, Boquerón, Puerto Rico 00622.

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**

Liogier, H.A., and L.F. Martorell. 1982. Flora of Puerto Rico and adjacent islands: a systematic synopsis. University of Puerto Rico, Rio Piedas, Puerto Rico. 342pp.

Proctor G.R.1968. Status of Puerto Rican Endemic Ferns. List presented in the Interagency Workshop on candidate plant species. Caribbean Islands National Wildlife Refuge, Boquerón, Puerto Rico.

Proctor, G.R. 1989. Ferns of Puerto Rico and the Virgin Islands. The New York Botanical Garden, Bronx, New York. 389pp.

Proctor, G.R. 1991. Puerto Rican Plant Species of Special Concern; Status and Recommendations. Publication Cientifica Miscelánea No. 2, Departamento de Recursos Naturales, San Juan, Puerto Rico. 196 pp.

**Author**

The primary author of this proposed rule is Ms. Marelisa Rivera, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. box 491, Boquerón, Puerto Rico 00622 (809/851-7297).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

**Proposed Regulations Promulgation**

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**Part 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625. Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding in alphabetical order the family Dryopteridaceae, the family Lomariopsidaceae, the family Sinopteridaceae, and the following entries to the List of Endangered and Threatened Plants:

**§ 17.2 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| Dryopteridaceae—Wood-fern family: | | | | | | |
| *Tectaria estremerana* | None | U.S.A. (PR) | E | | NA | NA |
| Lomariopsidaceae—Vine-fern family: | | | | | | |
| *Elaphoglossum serpens* | None | U.S.A. (PR) | E | | NA | NA |
| Polystichum calderonense | None | U.S.A. (PR) | E | | NA | NA |
| Sinopteridaceae Maiden-hair family: | | | | | | |
| *Adiantum vivesii* | None | U.S.A. (PR) | E | | NA | NA |

Dated: June 26, 1992.

**Richard N. Smith,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 92-16372 Filed 7-13-92; 8:45 am]

BILLING CODE 4310-55-M

# Notices

Federal Register
Vol. 57, No. 135
Tuesday, July 14, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 92-087-1]

### Proposed Interpretive Ruling in Connection with Calgene, Inc. Petition for Determination of Regulatory Status of FLAVR SAVR™ Tomato

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of proposed interpretive ruling.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from Calgene, Inc., seeking a determination regarding the regulatory status of its FLAVR SAVR™ tomato. APHIS is requesting comments on its proposal to issue an interpretive ruling that the FLAVR SAVR™ tomato does not present a plant pest risk, and therefore, would no longer be considered a regulated article under its regulations.

**DATES:** Consideration will be given only to written comments that are received on or before August 28, 1992.

**ADDRESSES:** To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-087-1. A copy of the Calgene submission and any written comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of the Calgene petition may be obtained by contacting Ms. Kay Peterson at 301-436-7601.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Lidsky, Deputy Director, or Sally L. McCammon, Chief, Domestic Programs Branch, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7601.

**SUPPLEMENTARY INFORMATION:** On June 2, 1992, the Animal and Plant Health Inspection Service (APHIS) received a "Petition for Determination of Regulatory Status" from Calgene, Inc. (Calgene), of Davis, CA. The Calgene petition seeks a determination from APHIS that its FLAVR SAVR™ tomato no longer be considered a "regulated article" under regulations in 7 CFR part 340 (the regulations).

The FLAVR SAVR™ tomato has been described by Calgene as a tomato cultivar or progeny of a tomato line which contains an antisense copy of the constituent polyglacturonase gene which, when transcribed, results in delayed ripening of the tomato fruit.

The Calgene petition states that the FLAVR SAVR™ tomato should no longer be regulated by APHIS because it does not present a plant pest risk. The FLAVR SAVR™ tomato is currently considered a regulated article under the regulations because it was developed through the use of vectors, promoters, and terminators from plant pathogenic sources. However, as indicated in the petition, the vectors used in producing the FLAVR SAVR™ tomato were disarmed, and the other plant pathogen derived elements did not present a risk of plant pest introduction or dissemination. The field testing of the FLAVR SAVR™ tomato indicates that it does not present a plant pest risk.

Under the regulations, a genetically engineered plant or other organism is a regulated article, subject to regulatory oversight by APHIS, if it is a plant pest or it is unclassified or the Deputy Administrator has reason to believe it is a plant pest. Based on reviews for a number of field tests of the FLAVR SAVR™ tomato and the information in the petition submitted by Calgene, APHIS believes that the FLAVR SAVR™ tomato is not a plant test, and that there is no reason to believe that it may be a plant pest or otherwise presents any plant pest risk. Therefore, APHIS is proposing to issue a ruling that the FLAVR SAVR™ tomato is not a regulated article under its regulations. APHIS is requesting comments on the petition and the proposed ruling.

After reviewing the data submitted by the petitioner, written comments received during the comment period, as well as other relevant literature, and interpreting the application of statutes and regulations to these data and comments, APHIS will issue its interpretive ruling regarding the regulatory status of the FLAVR SAVR™ tomato. A notice of the ruling and its availability will be published in the **Federal Register**.

Done at Washington, DC, this 8th day of July 1992.

**Robert Melland,**

*Administration, Animal and Plant Health Inspection Service.*

[FR Doc. 92-16348 Filed 7-13-92; 8:45 am]

BILLING CODE 3410-34-M

## Forest Service

### Katka Peak Timber Sales; Idaho Panhandle National Forests; Boundary County, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; cancellation of notice of intent to prepare an environmental impact statement.

**SUMMARY:** On April 3, 1989, notice was published in the **Federal Register** (FR 13395) that an environmental impact statement would be prepared to assess the effects of timber harvest and road construction within the Katka Peak roadless area on the Bonners Ferry Ranger District, Idaho Panhandle National Forests.

That notice is hereby cancelled.

Analysis of this project began on schedule, but was delayed due to budgetary constraints. Further data collection and analysis after that date indicated that the scope of the proposed action would significantly change. A new Notice of Intent to prepare an environmental impact statement will appear in the **Federal Register** later this month.

**DATE:** This action is effective on July 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mike Grant, NEPA Coordinator, Bonners Ferry Ranger District, Route 4 Box 4860, Bonners Ferry, Idaho 83805, (208) 267-5561.

Dated: July 6, 1992.

Debbie Henderson-Norton,

*District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forests.*

[FR Doc. 92-16429 Filed 7-13-92; 8:45 am]

BILLING CODE 3410-11-M

## Revised Land and Resource Management Plan for the National Forests in Florida; Baker, Columbia, Franklin, Lake, Leon, Liberty, Marion, Okaloosa, Putnam, Wakulla, and Walton Counties, Florida

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare a draft and final environmental impact statement for a proposed action to revise the National Forests in Florida Land and Resource Management Plan pursuant to 16 U.S.C. 1604(f)(5) and 36 CFR 219.12.

The agency invites written comments and suggestions within the scope of the analysis. In addition, the agency gives notice that a full environmental analysis and decision-making process will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

In accordance with 40 CFR 1501.6, the Bureau of Land Management will be a cooperating agency.

**DATES:** Comments concerning the analysis should be received by August 28, 1992, to ensure timely consideration.

**ADDRESSES:** Submit written comments and suggestions to: Steve Fitch, Forest Supervisor; National Forests in Florida, Suite 4061, 227 N. Bronough St., Tallahassee, Florida 32301.

**FOR FURTHER INFORMATION CONTACT:** Mark Warren, Planning Staff Officer, (904) 681-7265.

**SUPPLEMENTARY INFORMATION:** The Record of Decision for the current National Forests in Florida Land and Resource Management Plan (Forest Plan) was approved on January 6, 1988. That decision was appealed.

One appeal was dismissed. The Regional Forester entered into a period of negotiation with the other two appellants in an effort to reach a settlement agreement with them. It became evident that an agreement on all issues would not be reached. As a result, the Regional Forester directed the Forest Supervisor to prepare a supplement to the final environmental impact statement for the Forest Plan that would address issues discussed during the settlement negotiations and to accommodate other changes that were needed to reflect current conditions.

In 1990, while the Forest process was underway, the Regional Forester initiated a process to develop long-term direction for management of the red-cockaded woodpecker. It became apparent that the results of the latter process would have a major impact on management of large parts of the National Forests in Florida. Since one of the issues being addressed in the Florida supplement was red-cockaded woodpecker management, the Florida process was synchronized with the Regional process to avoid preemption of the decisions to be made in the Regional process.

The National Forests in Florida were scheduled to begin review and revision of the Forest Plan in 1993, with the goal of completing the revision process within ten years of the date of the current Forest Plan (1988). Because completion of the supplement to the final environmental impact statement would likely occur near the scheduled initiation of the revision, the Regional Forester has concluded that this current process of reevaluation of the Plan should be conducted within the context of a revision rather than as an amendment. Doing so will make better use of the public involvement and reassessment accomplished to date. Accordingly, on April 23, 1992, the Chief of the Forest Service authorized the Forest to revise the Forest Plan and directed that the current Forest Plan, as amended, will remain in effect and continue to be implemented during the re-analysis and preparation of the environmental impact statement.

The scope of the revision and decisions to be made include:

(1) Establishment of multiple-use goals and objectives;

(2) Establishment of forest-wide management requirements (standards and guidelines);

(3) Establishment of management areas and management area direction (management area prescriptions), which will include development of desired future condition statements for the management areas;

(4) Determination of land that is suitable for timber production;

(5) Establishment of allowable sale quantity for timber;

(6) Nonwilderness allocations or wilderness recommendations of roadless areas;

(7) Recommendations for Wild and Scenic River designations;

(8) Determination of lands that will be available for gas and oil leasing, specific lands for which consent to lease will be permitted, and stipulations for areas where surface occupancy will be restricted or prohibited; and

(9) Establishment of monitoring and evaluation requirements.

Preliminary issues have been identified as a result of the two appeals of the Forest Plan; the 5-year Review of the Forest Plan; and monitoring and evaluation of implementation of the Forest Plan. In order to address the preliminary issues that have been identified, the Forest will:

(1) Describe various acreages and criteria for locations where the native pine/wiregrass community will be managed, and the mixes of timber harvest, site preparation, reforestation and prescribed burning methods to be used in managing the community;

(2) Analyze different mixes of timber harvest, regeneration, and timber stand improvement on land suitable for timber harvest within forested communities including, among others, longleaf pine, slash pine, loblolly pine, sand pine, and hardwoods;

(3) Analyze different strategies for implementation of the Region 8 red-cockaded woodpecker management direction as will be described in a future decision by the Regional Forester (new information that becomes available after publication of that decision may also need to be considered);

(4) Examine various amounts of hardwood mast areas;

(5) Look at different levels of pine restoration on titi-encroached areas and the procedures for doing it;

(6) Analyze different methods for managing savannahs;

(7) Propose different procedures and mitigating measures for plowing firelines;

(8) Examine different combinations of areas where off-highway vehicle use would be regulated to various degrees; and

(9) Analyze different recreation experience levels for the developed recreation sites and dispersed recreation areas on the National Forests in Florida. Any additional significant issues identified during the scoping process will also be addressed.

In preparing the environmental impact statement, the Forest Service will develop, as a minimum, the following range of alternatives:

(1) The current program (no action);

(2) One that emphasized market opportunities;

(3) One that emphasizes nonmarket opportunities;

(4) One that emphasizes meeting the most recent RPA Program; and

(5) Other alternatives necessary to respond to the full range of public issues, management concerns, and resource use and development opportunities.

Public participation will be especially important at several points during the project analysis process. The first point in the analysis is the scoping process (40 CFR 1501.7). The scoping process includes:

(1) Identifying potential issues (other than those previously described).

(2) From these, identifying significant issues to be analyzed in depth.

(3) Eliminating from detailed study insignificant issues or those which have been covered by prior environmental review.

(4) Exploring additional alternatives, and

(5) Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

The Forest Service is seeking information, comments, and assistance from Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be utilized in the preparation of the draft environmental impact statement. Public participation will be solicited by notifying in person and/or by mail known interested and affected publics and key contacts, news releases will be used to give the public general notice, and scoping meetings will be conducted. The public will be notified of the time and location of the meetings at some time in the future.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency and to be available for public review by March 1993. At that time, the Environmental Protection Agency will publish a notice of availability of the draft environmental impact statement in the **Federal Register**.

The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the draft environmental impact statement, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by August 1993. The responsible official will consider the comments, responses, environmental consequences discussed in the final environmental impact statement, and applicable laws, regulations, and policies in making a decision regarding this revision. The responsible official will document the decision and reasons for the decision in the Record of Decision. The decision will be subject to appeal in accordance with 36 CFR part 217.

The responsible official is John E. Alcock, Regional Forester, Southern Region, 1720 Peachtreee Road, NW., Atlanta, Georgia 30367.

Dated: July 8, 1992.

**Marvin C. Meier,**

*Deputy Regional Forester.*

[FR Doc. 92-16461 Filed 7-13-92; 8:45 am]

BILLING CODE 3410-11-M

## Land and Resource Management Plan for the National Forests in Florida, Baker, Columbia, Franklin, Lake, Leon, Liberty, Marion, Okaloosa, Putnam, Wakulla and Walton Counties in Florida

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; Cancellation of intent to supplement an environmental impact statement.

**SUMMARY:** The Forest Service has withdrawn its Notice of Intent to supplement an environmental impact statement to amend the National Forests in Florida Land and Resource Management Plan.

The Notices of Intent, published in the **Federal Register** of March 21, 1990; and February 5, 1991; are hereby rescinded (55 FR 10476–10477, 56 FR 4594).

**FOR FURTHER INFORMATION CONTACT:** Mark Warren, Planning Staff Officer, National Forests in Florida, Suite 4061, 227 N. Bronough St., Tallahassee, Florida 32301; (904) 681–7265.

**SUPPLEMENTARY INFORMATION:** The Record of Decision for the current National Forests in Florida Land and Resource Management Plan (Forest Plan) was approved on January 6, 1986. That decision was appealed.

One appeal was dismissed. The Regional Forester entered into a period of negotiation with the other two appellants in an effort to reach a settlement agreement with them. It became evident that an agreement on all issues would not be reached. As a result, the Regional Forester directed the Forest Supervisor to prepare a supplement to the final environmental impact statement (FEIS) for the Forest Plan that would address issues discussed during the settlement negotiations and to accommodate other changes that were needed to reflect current conditions.

In 1990, while the Forest process was underway, the Regional Forester initiated a process to develop long-term direction for management of the red-cockaded woodpecker. It became apparent that the results of the latter process would have a major impact on management of large parts of the National Forests in Florida. Since one of the issues being addressed in the Florida supplement was red-cockaded woodpecker management, the Florida process was synchronized with the Regional process to avoid preemption of the decisions to be made in the Regional process.

The National Forests in Florida were scheduled to begin review and revision of the Forest Plan in 1993, with the goal

of completing the revision process within ten years of the date of the current Forest Plan (1986). Because completion of the supplement to FEIS would likely occur near the scheduled initiation of the revision, the Regional Forester has concluded that this current process of reevaluation of the Plan should be conducted within the context of a revision rather than as an amendment. Doing so will make better use of the public involvement and reassessment accomplished to date. Accordingly, on April 23, 1992, the Chief of the Forest Service authorized the Forest to revise the Forest Plan.

A notice will appear in the **Federal Register** announcing the Notice of Intent to prepare an environmental impact statement for a revision of the National Forests in Florida Land and Resource Management Plan.

Dated: July 8, 1992.

**Marvin C. Meier,**

*Deputy Regional Forester.*

[FR Doc. 92-16460 Filed 7-13-92; 8:45 am]

BILLING CODE 3410-11-M

## Rural Electrification Administration

### Public Meeting on Lien Accommodations; Official Record Held Open Until July 17, 1992

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Extension of official record to July 17, 1992, for public meeting on lien accommodations.

**SUMMARY:** This is to notify electric systems financed by the Rural Electrification Administration (REA), lenders, and other interested persons that the official record of the public meeting on lien accommodations held on June 30, 1992, will be kept open until July 17, 1992.

**DATES:** Anyone, whether or not they made a presentation at the public meeting, wishing to submit written comments or other written materials for inclusion in the official record must do so by July 17, 1992. Such materials must be received by REA as of that date, in order to be included in the official record of the meeting.

**ADDRESSES:** Written comments and other written materials should be sent to Blaine D. Stockton Jr., Assistant Administrator, Economic Development and Technical Services, Rural Electrification Administration, room 4025-S, 14th & Independence Avenue, SW., Washington, DC 20250-1500.

**FOR FURTHER INFORMATION CONTACT:** John H. Arnesen, Assistant Administrator—Electric, Rural Electrification Administration, room 4037-S, 14th & Independence Avenue, SW., Washington, DC 20250-1500. Telephone (202) 720-9545.

**SUPPLEMENTARY INFORMATION:** For further information, consult the notice of the meeting published in the **Federal Register** on June 1, 1992 (57 FR 23076). Beginning approximately July 9, 1992, a transcript of the meeting will be available for public inspection in room 2234-S at REA, 14th & Independence Avenue, SW., Washington, DC, during regular business hours.

**Authority:** 7 U.S.C. 901 *et seq.*

Dated: July 8, 1992.

**Administrator.**

*James B. Huff, Sr.,*

[FR Doc. 92-16477 Filed 7-13-92; 8:45 am]

BILLING CODE 3410-15-M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* 1993 New York City Housing and Vacancy Survey.

*Form Number(s):* H-100, H-105, H-106.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 9,014 hours.

*Number of Respondents:* 18,300.

*Avg Hours Per Response:* 26 minutes.

*Needs and Uses:* The Census Bureau will conduct this survey for the New York City Department of Housing Preservation and Development. New York Law requires a survey every three years to determine the supply, condition, and vacancy rate of housing in the city. The city will use the results of the survey to develop programs and policies that aim to improve housing conditions.

*Affected Public:* Individuals or households.

*Frequency:* One-time only.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 8, 1992.

**Edward Michals,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 92-16486 Filed 7-13-92; 8:45 am]

BILLING CODE 3510-07-F

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* 1992 Assets and Expenditures Survey.

*Form Number(s):* Various.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 93,200 hours.

*Number of Respondents:* 52,500.

*Avg Hours Per Response:* 1 hour and 48 minutes.

*Needs and Uses:* The Census Bureau will conduct the 1992 Assets and Expenditures Survey as part of the 1992 Economic Censuses which are the primary source of facts about the structure and functioning of the Nation's economy. In this survey, Census will collect information on assets and expenditures from a sample of business units that represent one or more domestic establishments in the wholesale, retail, and service industries. The survey will supplement the basic economic statistics produced by the 1992 Censuses of Wholesale Trade, Retail Trade, and Service Industries with estimates for value of depreciable assets, capital expenditures, and operating expenses. Further, it will provide measures of value produced for wholesale and retail trade. A more specific objective of this survey is to implement recommendations made by the Advisory Committee on Gross National Product Data Improvement (under the auspices of OMB) in their *Gross National Product Data Improvement Project Report*, 1977. This survey fills important gaps in underlying data for the national economic accounts, as identified by that report.

*Affected Public:* State or local governments, Businesses or other for-profit organizations, Non-profit

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institutions, Small businesses or organizations.

*Frequency:* Every 5 years.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 8, 1992.

Edward Michals,

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 92–16467 Filed 7–13–92; 8:45 am]

BILLING CODE 3510–07–F

## Bureau of Export Administration

### Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held August 6, 1992, 9:30 a.m., Herbert C. Hoover Building, room 1617–M, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

*Agenda: General Session*

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Review of Recent EAR Revisions Including General License GATS.
5. Review of Recent Jurisdictional Changes, Including Developmental Aircraft/Components, and Communicating Satellites.
6. Review of Revisions to the Missile Technology Control Regime.

*Executive Session*

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: U.S. Department of Commerce/BXA, Office of Deputy Assistant Secretary for Export Administration, 14th & Constitution Avenue, NW., room 1621, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 28, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call 202–377–4959.

Dated: July 9, 1992.

Betty A. Ferrell,

*Director, Technical Advisory Committee Unit Office of the Deputy Assistant Secretary for Export Administration.*

[FR Doc. 92–16468 Filed 7–13–92; 8:45 am]

BILLING CODE 3510–DT–M

## International Trade Administration

[C–333–502]

### Deformed Steel Concrete Reinforcing Bar From Peru; Termination of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of termination of countervailing duty administrative review.

**SUMMARY:** On December 23, 1991, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on deformed steel concrete reinforcing bar from Peru for the period January 1, 1990 through December 31, 1990. The Department has now decided to terminate this review.

**EFFECTIVE DATE:** July 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Stroup or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786 or 377–0883.

**BACKGROUND:** On December 2, 1991, the Department received a request for an administrative review of this countervailing duty order from the Government of Peru, for the period January 1, 1990 through December 31, 1990. On December 23, 1991, we published a notice initiating that administrative review (56 FR 66429). On May 6, 1992, the Government of Peru withdrew its request.

Section 355.22(a)(3) of the Department's Countervailing Duty Regulations (19 CFR 355.22(a)(3)) stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. This regulation also provides that the Secretary may extend the time limit for withdrawal of a request if it is reasonable to do so.

Because the Government of Peru's request does not unduly burden the Department under the circumstances presented in this review, we are waiving the 90-day requirement in 19 CFR 355.22(a)(3). Accordingly, we are terminating this review.

This notice is published pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(1)), and 29 CFR 355.22.

Dated: July 6, 1992.

Joseph A. Spetrini,

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 92–16507 Filed 7–13–92; 8:45 am]

BILLING CODE 3510–DS–M

[C–559–001]

### Certain Refrigeration Compressors From the Republic of Singapore; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. We preliminarily determine that the signatories have complied with the terms of the suspension agreement during the period April 1, 1990 through March 31, 1991. We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** July 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Megan Pilaroscia or Jean Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

**SUPPLEMENTARY INFORMATION:**

## Background

On November 7, 1991, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (56 FR 56982) of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore (48 FR 51167, November 7, 1983). On November 27, 1991, the petitioner, Tecumseh Products Company, requested an administrative review of the suspension agreement. We initiated the review, covering April 1, 1990 through March 31, 1991, on December 23, 1991 (56 FR 66429). The Department has conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review in this case were published on December 5, 1991 (56 FR 63713).

## Scope of Review

Imports covered by this review are shipments of hermetic refrigeration compressors rated not over one-quarter horsepower from Singapore. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 8414.30.40. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one producer and one exporter of the subject merchandise, Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS) and Asia Matsushita Electric (Singapore) Pte. Ltd. (AMS), respectively. These two companies, along with the Government of Singapore, are the signatories to the suspension agreement. The review covers the period April 1, 1990 through March 31, 1991, and three programs.

## Analysis of Programs

(1) The Economic Expansion Incentives Act—Part VI The Production for Export Programme under part VI of the Economic Expansion Incentives Act allows a 90 percent tax exemption on a company' export profit if the company is designated as an export enterprise. MARIS is so designated and used this tax exemption during the period of review.

MARIS receives this benefit on the production of refrigeration compressors and compressor parts, as well as other non-compressor related products. To calculate the benefit, we divided the tax savings under this program by the f.o.b. value of total exports of products receiving the benefit, for the period of review. On this basis, we preliminarily determine the benefit from this program during the review period to be 5.52 percent of the f.o.b. value of the merchandise.

MARIS' response to the Department's countervailing duty questionnaire indicated that MARIS deducted export charges in calculating exempt export profit for the review period. The deduction of export charges reduces the amount of MARIS' profit, and consequently the amount of the benefit. As a result, an export charge rate based on the reduced exempt export profit figure does not completely offset the amount of the net benefit from the Production for Export Programme. Under the terms of the suspension agreement, the amount of the net bounty or grant determined by the Department to exist with respect to the subject product is to be offset completely. Therefore, we added the amount of the export charge deduction back to MARIS' export profit in calculating MARIS' tax savings in order to offset the deduction of the export charges in the review period.

(2) Financing through the Monetary Authority of Singapore The suspension agreement prohibits MARIS and AMS from applying for or receiving any financing provided by the rediscount facility of the Monetary Authority of Singapore for shipments of the subject merchandise to the United States. We determined during the review that neither the signatory producer nor exporter received any financing through the Monetary Authority of Singapore on the subject merchandise exported to the United States during the review period. Therefore, we preliminarily determine that both companies have complied with this clause of the agreement.

(3) Operational Headquarters Program. Petitioner submitted comments after submission of the questionnaire response alleging that AMS receives a countervailable benefit from the Operational Headquarters (OHQ) program. In the last review, the Department examined this program, and verified that no benefits are conferred in connection with the subject merchandise (56 FR 42595, August 28, 1991; 56 FR 63713, December 5, 1991). Petitioner has not made any new allegations that are different from those made in the previous review. Therefore, we preliminarily determine that AMS does not receive any benefits under the OHQ program.

## Preliminary Results of Review

As a result of our review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement, including the payment of the provisional export charges in effect of the period April 1, 1990 through March 31, 1991. From April 1, 1990 through December 25, 1990, a provisional export charge rate of 4.95 percent was in effect, and from December 26, 1990 through March 31, 1991, a provisional export charge rate of 2.23 percent was in effect. We also preliminarily determine the net bounty or grant to be 5.52 percent of the f.o.b. value of the merchandise for the April 1, 1990 through March 31, 1991 review period. The suspension agreement states that the Government of Singapore will offset completely with an export charge the net bounty or grant calculated by the Department.

Following the methodology outlined in section B.4 of the agreement, the Department preliminary determines that, for the April 1, 1990 through December 25, 1990 portion of the review period, and for the December 26, 1990 through March 31, 1991 portion of the review period, positive adjustments must be made to the provisional export charge rates in effect. The positive adjustments will equal the difference between the provisional rates in effect during the review period and the rate determined in this review, plus interest. These rates, established in the notices of the final results of the third and fifth administrative reviews of the suspension agreement (53 FR 25647, July 8, 1988; 55 FR 53028, December 26, 1990) are 4.95 and 2.23 percent, respectively. The Government of Singapore shall collect, in accordance with section B.4.c of the agreement, the difference, plus interest, calculated in accordance with section 778(b) of the Tariff Act, within 30 days of notification by the Department. The Department will notify the Government of Singapore of these

adjustments after publication of the final results of this review.

The Department intends to notify the Government of Singapore that the provisional export charge rate on all exports to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 5.52 percent of the f.o.b. value of the merchandise.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject refrigeration compressors into the United States. Our information indicates that the two signatory companies accounted for 100 percent of imports into the United States of this merchandise during the review period.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication.

Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case briefs. Any hearing, if request, will be held seven days after the scheduled date for submission of rebuttal briefs. The hearing will be limited to arguments raised in the case and rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 355.38(e) of the Commerce regulations. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing. This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Department's regulations (19 CFR 355.22(1991)).

Dated: July 8, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-16508 Filed 7-13-92; 8:45 am]

BILLING CODE 3510-DS-M

## Exemption of Foreign Air Carriers From Customs Duties and Taxes; Request for Finding of Reciprocity (Singapore)

Notice is hereby given that the Department of Commerce is undertaking to determine, pursuant to sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), whether the Government of Singapore allows customs duties and tax exemptions to aircraft of U.S. registry in connection with international commercial operations substantially reciprocal to those exemptions granted in the United States to aircraft of foreign registry. The basis of this undertaking is the request of Singapore Airlines Limited (SIA) for a finding of such reciprocity effective June 1, 1992.

The Tariff Act of 1930, as amended, provides exemptions for aircraft of foreign registry from payment of import duties and certain internal revenue taxes on the import or purchase of supplies into the United States for such aircraft in connection with their international commercial operations. "Supplies" as used in this context covers a wide range of articles used by aircraft in international operations, including fuel and lubricants, spare parts, consumable supplies, and ground handling and support equipment. These exemptions are allowed upon a finding by the Secretary of Commerce, or her designee, and communicated to the Secretary of the Treasury, that such country allows, or will allow, "substantially reciprocal privileges" to aircraft of U.S. registry with respect to imports of supplies into that country.

Interested parties are invited to submit their views and comments concerning this matter in writing to Ms. Linda F. Powers, Deputy Assistant Secretary for Service Industries and Finance, room 1128, U.S. Department of Commerce, Washington, DC 20230. All submissions should be made in five copies and should be received no later than thirty (30) days following the publication of this notice.

Copies of all written comments received will be available for public inspection between the hours of 8:30 a.m. and 5 p.m. Monday through Friday in the Freedom of Information Records Inspection Facility, International Trade Administration, room 4102, U.S. Department of Commerce, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** C. William Johnson, Office of Service Industries, International Trade Administration, room 1120, U.S. Department of Commerce, Washington, DC 20230, or telephone (202) 377-5071.

Dated: July 7, 1992.

**Linda F. Powers,**

*Deputy Assistant Secretary for Service Industries and Finance.*

[FR Doc. 92-16469 Filed 7-13-92; 8:45 am]

BILLING CODE 3510-DR-M

## National Oceanic and Atmospheric Administration

## Mid-Atlantic Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's Squid, Mackerel, and Butterfish Committee will hold a meeting on July 21, 1992, at the Ramada Inn, 76 Industrial Highway, Essington, PA. The meeting will begin at 10 a.m., to develop the Atlantic mackerel, Loligo, Illex, and butterfish specifications for 1993.

For more information, contact John Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: July 8, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-16443 Filed 7-13-92; 8:45 am]

BILLING CODE 3510-22-M

## North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council (Council) will hold a public meeting on August 4-5, 1992, at the Baranof Hotel, Juneau, AK. The meeting will begin on August 4 at 8 a.m. The Council will review public comments received on a draft supplementary analysis of revised Amendment #18 to the Bering Sea/Aleutian Islands Groundfish Fishery Management Plan for allocation of pollock in the Bering Sea/Aleutian Islands between onshore and offshore industry segments.

The Council is scheduled to select a preferred alternative and approve the proposed amendment for resubmission to the Secretary of Commerce for review. The Council's Advisory Panel and Scientific and Statistical Committee are scheduled to meet at the same location August 3-4, 1992, beginning at 10 a.m. on August 3, to prepare recommendations for the Council on the proposed amendment.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: July 8, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-16444 Filed 7-13-92; 8:45 am]

BILLING CODE 3510-22-M

## Public Meeting on Final Management Plan for the North Inlet/Winyah Bay (NI/WB) National Estuarine Research Reserve (SC)

**AGENCY:** Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Public meeting notice.

**SUMMARY:** Notice is hereby given that the South Carolina Coastal Council and the Belle W. Baruch Institute, University of South Carolina, will hold a public meeting to present and discuss the Final Management Plan for the proposed North Inlet/Winyah Bay National Estuarine Research Reserve. The purpose of the meeting is to receive the comments of interested parties on the Final Management Plan. As part of the procedures leading to the designation of the Reserve, the State of South Carolina must submit the proposed Final Management Plan to NOAA for its review and approval. This notice is given pursuant to 15 CFR 921.21(h).

**DATES:** The public meeting will take place at 7 p.m. on Thursday, July 30, 1992, at the Georgetown County Public Library, Waccamaw Neck Branch, 15 Library Lane, Pawleys Island, South Carolina, 29448.

Copies of the Plan will be made available for review before the meeting by Wednesday, July 15, 1992, at the following libraries: Georgetown County Libraries in Georgetown, Pawleys Island, and Andrews, SC; and Charleston County Library in Charleston, SC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dolores A. Washington, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOAA/NOS, 1825 Connecticut Avenue, NW., Washington, DC 20235 (202) 606-4122 or Dr. F. John Vernberg, Belle W. Baruch Institute for Marine Biology and Coastal Research, University of South Carolina, Columbia, SC 29405 (803) 777-5288.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Estuarine Sanctuaries.

Dated: July 8, 1992.

**W. Stanley Wilson,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 92-16476 Filed 7-13-92; 8:45 am]

BILLING CODE 3510-08-M

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 92-4]

## Multi-Function Waste Tank Facility at the Hanford Site

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Notice; recommendation.

**SUMMARY:** The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning the Multi-Function Waste Tank Facility at the Hanford Site. The Board requests public comments on this recommendation.

**DATES:** Comments, data, views, or arguments concerning this recommendation are due on or before August 13, 1992.

**ADDRESSES:** Send comments, data, views or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208-6400.

Dated: July 8, 1992.

**John T. Conway,**

*Chairman.*

### Multi-Function Waste Tank Facility at the Hanford Site.

Dated: July 8, 1992.

As required by the Atomic Energy Act, the Defense Nuclear Facilities Safety Board (DNFSB), conducts reviews and evaluations of the design of new Department of Energy defense nuclear facilities before and during their construction. Under this statute, the DNFSB is also required to recommend to the Secretary of Energy, within a reasonable time, such modifications of the design as the DNFSB considers necessary to ensure adequate protection of public health and safety.

The Board has performed reviews of the Multi-Function Waste Tank Facility (MWTF) project to be located at the Hanford Site in the State of Washington. The MWTF is an element of the Hanford Tank Waste Remedial System (TWRS) Program which eventually will provide for the ultimate treatment and disposal of the Hanford Site tank waste. We have reviewed information received in the form of briefings and presentations by DOE Headquarters personnel, DOE Richland personnel, Westinghouse Hanford Company personnel, and Kaiser Engineers Hanford personnel as well as analysis of relevant documents. The Board's reviews to date have been concerned with such matters as the application of standards, including DOE orders and directives, and commercial nuclear industry practices as well as other aspects of the project which relate to ensuring adequate protection of the health and safety of the public.

The conceptual design of the MWTF project is now nearing completion. The Board believes that it is appropriate at this time to assure that the design of the MWTF and other new defense nuclear facilities incorporates engineering principles and approaches, detailed engineering criteria, and practices that are essential to ensure adequate protection of public health and safety. These include:

- The design needs to be appropriately conservative with respect to safety.
- The design bases (criteria) need to be clearly defined, coherent, and compatible with the facilities' perceived lifetime functions (i.e., Functional Design Criteria) and documented.
- The design bases the resulting facility design need to reflect and incorporate the requirements of appropriate standards as that term is used in the Board's enabling statute and thus including DOE orders and directives and commercial nuclear practices, as well as any other factors that may be required for the safe and reliable operation of the facility throughout its entire life.
- The design, construction, and start-up activities need to be performed by those who will ensure the completed project is of the quality necessary to provide adequate protection of public health and safety.
- The design effort needs to be organized such that there is continuity through all phases (conceptual design, preliminary design, final design, construction, testing) so that all aspects of the process that affect safety are clearly delineated and that line responsibility is clear.
- The DOE organization responsible for the project needs to have technically qualified personnel in numbers sufficient to provide direction and guidance to contractors performing all

phases of the effort and to assess the effectiveness of contractor efforts.

• The project organization and operations need to reflect a clear and effective chain of command with responsibility, authority, and accountability clearly defined and assigned to individuals within the respective project organizations.

• The functions and responsibilities of all DOE and contractor organizations involved in the project need to be delineated in writing in a single document.

The Board's view of the Hanford MWTF's conceptual design performed to date is that the design does not clearly present and delineate those aspects that ensure that the public health and safety can adequately be protected. In particular, the MWTF appears to be a project (1) without a well-defined mission or functional requirements (e.g., waste treatment or storage), (2) predetermined to consist of four one-million-gallon tanks regardless of their intended uses, and (3) managed without sufficient regard for technical issues and engineering involvement. The continuing phases of the design and construction are about to begin and the Board seeks to be assured that the design of the tanks as they are built incorporates the appropriate levels of nuclear safety. Further, the Board recognizes that many of the nuclear safety concepts and assurances would normally be provided in the series of facility Safety Analysis Reports and would include design bases, safety system analyses, analysis methods and accident analyses. However, to ensure that appropriate nuclear safety characteristics are included in the design efforts, the Board recommends the following to the Secretary of Energy:

1. Establish a plan and methodology that results in a project management organization for the MWTF project team that assures that both DOE and the contractor organization have personnel of the technical and managerial competence to ensure effective project execution. This should emphasize management aspects of the project necessary to ensure adequate protection of public health and safety and should include the integration of professional engineering and quality assurance as necessary into the project, the application of appropriate standards and approved Department of Energy requirements, and the establishment of clear lines of responsibility and accountability.

2. Identify the design bases and engineering principles and approaches for the MWTF project that provide the data and rationale to show that the design for the MWTF conservatively meets the quantitative safety goals described in the Departments' Nuclear Safety Policy (SEN–35–91). The Board believes that would include items related to standards, identification of safety related items, detailed design bases, functional design criteria, and safety analyses.

John T. Conway,
*Chairman.*

**Appendix—Transmittal Letter to the Secretary of Energy**

July 6, 1992.

The Honorable James H. Watkins,
*Secretary of Energy, Washington, DC 20585*

Dear Mr. Secretary: On July 1, 1992, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 92–4 which is enclosed for your consideration. Recommendation 92–4 deals with the Multi-Function Waste Tank Facility at the Hanford Site.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,
*Chairman.*

[FR Doc. 92–16465 Filed 7–13–92; 8:45 am]

BILLING CODE 6820–KD–M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before August 13, 1992.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Cary Green (202) 708–5174.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to preform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: July 8, 1992.

**Cary Green,**
*Director, Information Resources Management Service.*

**Office of Postsecondary Education**

*Type of Review*: Revision.
*Title*: Student Aid Report (SAR).
*Frequency*: Annually.
*Affected Public*: Individuals or households; non-profit institutions, business or other for-profit.

*Reporting Burden*

Responses: 13,103,260
Burden Hours: 2,331,273

*Recordkeeping Burden*

Recordkeepers: 7,300
Burden Hours: 599,486
*Abstract*: The Student Aid Report (SAR) is used to notify applicants of their eligibility to receive Federal financial

aid. The form is submitted by eligible students to the participating institution of their choice. The institution submits part 3 of the SAR to the Department to receive funds for the applicant.

**Office of Postsecondary Education**

*Type of Review*: Revision.
*Title*: Guaranteed Student Loan (GSL) Tape Dump Procedures (ED Form 1070) and PLUS/SLS Loan Tape Dump Procedures (ED Form 1071).
*Frequency*: Annually.
*Affected Public*: State or local government, non-profit institutions.

*Reporting Burden*

Responses: 67
Burden Hours: 3633

*Recordkeeping Burden*

Recordkeepers: 0
Burden Hours: 0
*Abstract*: The information is collected to describe the specific data of borrowers under the Guaranteed Student Loan (GSL) and PLUS/SLS programs. The data is used to describe the characteristics of the borrowers, monitors borrowers fraud and waste abuse; and to impact of various legislative, regulatory, and budgetary proposals. The Department uses this information to report to Congress.

**Office of Postsecondary Education**

*Type of Review*: Extension.
*Title*: Performance Report for the State Student Incentive Grant Program.
*Frequency*: Annually.
*Affected Public*: State or local government.

*Reporting Burden*

Responses: 57
Burden Hours: 313.5

*Recordkeeping Burden*

Recordkeepers: 57
Burden Hours: 85.5
*Abstract*: State Scholarship agencies use this performance report to account for yearly program performance under the State Student Incentive Grant Program. The Department uses the information collected to assess the accomplishment of the program goals and objectives.

**Office of Special Education and Rehabilitative Services**

*Type of Review*: Revision.
*Title*: Performance Report for Part B of the Individuals with Disabilities Education Act and Chapter 1—State Operated or Supported Programs for Handicapped Children.
*Frequency*: Annually.
*Affected Public*: State or local governments.

*Reporting Burden*

Responses: 58
Burden Hours: 261

*Recordkeeping Burden*

Recordkeepers: 0
Burden Hours: 0
*Abstract*: These performance reports are needed in order to determine whether States have used Federal program funds to meet the goals which Congress outlined in the statutes which authorize the issuance of grant funds.

**Office of Policy and Planning**

*Type of Review*: New.
*Title*: Evaluation of Upward Bound.
*Frequency*: Biennially.
*Affected Public*: Individuals or households, non-profit institutions.

*Reporting Burden*

Responses: 4,000
Burden Hours: 2,333

*Recordkeeping Burden*

Recordkeepers: 0
Burden Hours: 0
*Abstract*: Students and staff of the Upward Bound programs will complete the questionnaires for this study. The Department will use this information to evaluate the effectiveness of the Upward Bound programs.

[FR Doc. 92-16448 Filed 7-13-92; 8:45 am]
BILLING CODE 4000-1-M

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[CFDA No.: 84.214A-3]

## Migrant Education Even Start Program; Notice Inviting Applications For New Awards For Fiscal Year (FY) 1992

*Purpose of Program:* The Migrant Education Even Start Program supports grants to eligible SEAs for the cost of providing family-centered education projects to help parents of currently migratory children (as defined in 34 CFR 201.3) become full partners in the education of their children, to assist currently migratory children in reaching their full potential as learners, and to provide literacy training for their parents. This program supports efforts to address National Education Goals one and five.

*Eligible Applicants:* A State educational agency (SEA) or consortium of SEAs is eligible to receive a grant under the program for interstate or intrastate projects that serve migrant families who have children from birth through age seven.

*Deadline for Transmittal of Applications:* August 24, 1992.

*Deadline for Intergovernmental Review:* October 24, 1992.

*Applications Available:* July 15, 1992.

*Available Funds:* The Department estimates that about $800,000 will be available for new projects after continuation award have been made.

*Estimated Range of Awards:* $85,000–$210,000.

*Estimated Average Size of Awards:* $150,000.

*Estimated Number of Awards:* 4.

Note: The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 212, as published in the Federal Register on June 19, 1992 (57 FR 27556).

SUPPLEMENTARY INFORMATION: The Department is conducting a national evaluation of projects under Even Start, and successful projects are considered for dissemination through the National Diffusion Network. Grantees shall cooperate with the Department's efforts by adopting an evaluation plan that is consistent with the Department's national evaluation and with the grantee's responsibilities under § 75.590 of EDGAR. It is not expected that the application will include a complete evaluation plan because grantees will be asked to cooperate with the national evaluation of Even Start to be conducted by an independent contractor. Grantees may be required to amend their plans to conform with the national evaluation. However, the review panel's examination of the applicant's potential as a model, under 34 CFR 212.21(e) of the program regulations, will include an analysis of the approach the applicant expects to use to evaluate its project.

Each applicant should budget for evaluation activities as follows: a project with an estimated cost of up to $120,000 should designate $5,000 for this purpose; a project with estimated cost of over $120,000 should designate $10,000 for these activities. These funds will be used for expenditures related to the collection and aggregation of data required for the Department's national evaluation. Applicants must also budget for the cost of travel to Washington, DC, and two nights' lodging for the project director and project evaluator, for their participation in annual evaluation meetings.

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**FOR APPLICATIONS OR INFORMATION CONTACT:** Regina Kinnard, U.S. Department of Education, 400 Maryland Avenue, SW., room 2155, Washington, DC 20202–6134. Telephone: (202) 401–0742. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

**Program Authority:** 20 U.S.C. 2741–2749

Dated: July 8, 1992.

**John T. MacDonald,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 92–16449 Filed 7–13–92; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Financial Assistance Award Intent to Award a Grant to The Combustion Institute

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of unsolicited financial assistance award.

**SUMMARY:** The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(6), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.7(b)(2)(i)(B). This award will be made under Grant Number DE–FG01–92FE62588 to The Combustion Institute. The financial assistance will provide partial support of the Twenty-Fourth International Symposium on Combustion. The symposium will benefit the public by bringing together scientific researchers and practical engineers to explore a breadth of established disciplines in the combustion field. Knowledge gathered at this conference will provide valuable information for DOE's Combustion Program.

**SCOPE:** The grant will provide $20,000 in co-funding to The Combustion Institute to support the costs of conducting the conference. Other Federal Agencies and private industry are also providing funding.

**ELIGIBILITY:** Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to The Combustion Institute. DOE support of this activity would enhance the public benefits to be derived.

The term of the grant shall be until November 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Placement and Administration, ATTN: James F. Thompson, 1000 Independence Avenue, SW., Washington, DC 20585.

**Thomas S. Keefe,**

*Director, Operations Division "B", Office of Placement and Administration.*

[FR Doc. 92–16511 Filed 7–13–92; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. ER92–659–000, et al.]**

### Pennsylvania Power Company, et al.; Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

**1. Pennsylvania Power Company**

[Docket No. ER–92–659–000]

July 1, 1992.

Take notice that on June 18, 1992, Pennsylvania Power Company (Penn Power) pursuant to 18 CFR 35.13 tendered for filing four proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania boroughs (Boroughs) of New Wilmington, Wampum, Wampum, Zelienople, Ellwood City and Grove City, respectively. The filing proposes a decrease in the State Tax Adjustment Surcharge (Rider I) from 3.21% to 1.99% effective April 16, 1992. The second change is an increase in the Energy Cost Rate (ECR or Rider II) from $.001408/kWh to $.002358/kWh effective May 4, 1992. The third change are revisions to the language in Rider II to comply with FERC Accounting Release No. 14. The last change is the cancellation of Rider IV, Deferred Revenue Collection Rider. The revenue effect of these changes is to decrease revenues from the municipal resale class by $1,569,985.40 or 17.49% for the test year ending April, 1993.

The five municipal resale customers served by Penn Power entered into settlement agreements effective as of September 1, 1984. These agreements provide that these customers will be charged applicable retail rates as may be in effect during the terms of the agreements. Changes in rates were agreed to become effective as to these customers simultaneously with changes approved by the Pennsylvania Public Utility Commission (Pa. PUC). The proposed changes have been implemented as to Penn Power's retail customers pursuant to Pa. PUC orders and regulations. These settlement agreements were approved by the Federal Energy Regulatory Commission through a Secretarial letter dated December 14, 1984 in Docket Nos. ER77–277–007 and ER81–770–000. Waivers of certain filing requirements have been requested to implement the rate changes in accordance with the settlement agreements.

Copies of the filing were served upon Penn Power's jurisdictional customer and the Pa. PUC.

*Comment date:* July 14, 1992, in accordance with Standard Paragraph E at the end of this notice

**2. PSI Energy, Inc.**

[Docket No. ER92–653–000]

July 1, 1992.

Take notice that PSI Energy, Inc. (PSI) formerly named Public Service Company of Indiana, Inc., on June 22, 1992, tendered for filing the Ninth Supplemental Agreement, dated May 1, 1992, (1992 Agreement) to the Interconnection Agreement, dated May 1, 1962, between PSI and Indianapolis Power and Light Company (IPL).

The 1992 Agreement replaces the 1962 Agreement and provides for the following interchange service between IPL and PSI:

1. Service Schedule A—Emergency Service.

2. Service Schedule B—Interchange Energy.

3. Service Schedule C—Short Term Power and Energy

4. Service Schedule D—Carmel Southeast Tap Power and Energy Transfer.

In addition, 138 kV Facilities Agreement, dated May 1, 1992, and a Amendment No. 3, dated June 1, 1992, to a Facilities Agreement, dated August 16, 1977, between PSI and IPL were filed. The 1977 Agreement and the first two amendments were filed as contracts relating to Amendment No. 3.

IPL and PSI have requested waiver of the Commission's notice requirements to permit an effective date of July 1, 1992.

Copies of the filing were served on Indianapolis Power and Light Company and the Indiana Utility Regulatory Commission.

*Comment date:* July 15, 1992, in accordance with Standard Paragraph E at the end of this notice

**3. Ohio Valley Electric Corp.**

[Docket No. ER92–666–000]

July 1, 1992.

Take notice that on June 26, 1992, Ohio Valley Electric Corporation (OVEC) tendered for filing Modification No. 7, dated as of January 15, 1992, to the Inter-Company Power Agreement dated July 10, 1953 among OVEC and certain other utilities (the Inter-Company Power Agreement). The Inter-

Company Power Agreement bears the designation "Ohio Valley Electric Corporation Rate Schedule FPC No. 1-B."

This filing is primarily to provide for changes to the Inter-Company Power Agreement that correlate with the provisions of a modification of the agreement under which OVEC supplies retail electric service to a uranium enrichment plant located in Pike County, Ohio, and operated by the U.S. Department of Energy. The other changes to the Inter-Company Power Agreement contained in this filing include the deletion of a section that no longer has any application on amendments relating to additional facilities, spare parts and replacements.

OVEC has requested an effective date of 60 days after the date OVEC submitted the filing to the Commission.

Copies of the filing were served upon Appalachian Power Company, The Cincinnati Gas & Electric Company, Columbus Southern Power Company, the Dayton Power and Light Company, Indiana Michigan Power Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Monongahela Power Company, Ohio Edison Company, Ohio Power Company, Pennsylvania Power Company, The Potomac Edison Company, Southern Indiana Gas and Electric Company, The Toledo Edison Company, West Penn Power Company, the Utility Regulatory Commission of Indiana, the Public Service Commission of Kentucky, the Public Service Commission of Maryland, the Public Service Commission of Michigan, the Public Utilities Commission of Ohio, the Public Utility Commission of Pennsylvania, the State Corporation Commission of Virginia and the Public Service Commission of West Virginia.

*Comment date:* July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

**4. Northern States Power Co.**

[Docket No. ER92-375-000]

July 1, 1992.

Take notice that June 23, 1992, Northern States Power Company (Wisconsin) (NSPW) tendered for filing an Amendment to the Wholesale Electric Service Agreement, dated February 27, 1992 between NSPW and the city of Rice Lake (City), a municipal corporation in Barron County, Wisconsin.

NSPW states that the City and City and NSPW have executed the Amendment to provide that coordination services (Section 3.06 of the Agreement) are not in effect until such time, if ever, that the City elects to convert to partial requirements service.

NSPW requests waiver and an effective date of May 1, 1992.

A copy of the filing was served upon the City and the Public Service Commission of Wisconsin.

*Comment date:* July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

**5. Philadelphia Electric Co.**

[Docket No. ER92-654-000]

July 1, 1992.

Take notice that on June 22, 1992, Philadelphia Electric Company (PE) tendered for filing as an initial rate under Section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between PE and Orange and Rockland Utilities, Inc. (O&R) dated June 5, 1992.

PE states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economic advantages to O&R. In order to optimize the economic advantages to both PE and O&R, PE requests that the Commission waive its customary notice period and allow this Agreement to become effective on June 22, 1992.

PE states that a copy of this filing has been sent to O&R and will be furnished to the Pennsylvania Public Utility Commission and the New York Public Service Commission.

*Comment date:* July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

**6. Kansas Gas and Electric Co.**

[Docket No. ER92-656-000]

July 1, 1992.

Take notice that on June 22, 1992, Kansas Gas & Electric Company (KG&E) tendered for filing a Notice of Cancellation for Rate Schedule FERC No. 161 as filed with the Federal Energy Regulatory Commission by KG&E is to be canceled.

Notice of the proposed cancellation has been served upon KEPCO and the Kansas Corporation Commission.

*Comment date:* July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

**7. Florida Power & Light Co.**

[Docket No. ER92-519-000]

July 1, 1992.

Take notice that on June 25, 1992, Florida Power & Light Company submitted an amendment to its filing in the above referenced docket. The filing was amended to submit additional information in response to a request by the Federal Energy Regulatory Commission Staff.

*Comment date:* July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

**8. Carolina Power & Light Co.**

[Docket No. ER92-663-000]

July 1, 1992.

Take notice that Carolina Power & Light Company (Company), on June 25, 1992 tendered for changes to appendix A of Company's "Amendment to the Service Agreement Between the City of Fayetteville and Carolina Power & Light Company" (Amendment) dated January 16, 1986. The Company proposes that the filing become effective on July 1, 1992.

Copies of this filing have been sent to the Fayetteville Public Works Commission, North Carolina Utilities Commission, and the South Carolina Public Service Commission.

*Comment date:* July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

**9. Northern Electric Power Co., L.P.**

[Docket Nos. ER92-668-000 EC92-20-000, and ES92-46-000]

July 1, 1992.

Take notice that on July 1, 1992, Northern Electric Power Co., L.P. ("Northern Electric Power Co.") (c/o Lee M. Goodwin, Ballard Spahr Andrews & Ingersoll, 555 13th Street, NW., suite 900 East, Washington, DC 20004) tendered for filing, pursuant to 18 CFR 35.12, proposed Northern Electric Power Co., L.P. Rate Schedule No. 1, under which Northern Electric Power Co. will sell the power and energy to be produced by the 36.1 MW hydroelectric Project (Project No. 5276) to Niagara Mohawk Power Corporation ("Niagara Mohawk"), a New York utility. The Project is a qualifying small power production facility. The rates set forth in the proposed Rate Scheduled were negotiated.

In connection with its filing, Northern Electric Power Co. requests waiver of the Commission's regulations regarding the filing of cost support information and regarding all or part of the Commission's accounting, reporting, securities, property transfer, and interlocking director regulations and approval of the sale of an ownership interest in the Project. Northern Electric Power Co. requests that the Commission make the Rate Schedule effective on the date on which sales under the Rate Schedule commence, which is expected to occur in December, 1993.

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*Comment date:* July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

**10. Cambridge Electric Light Co.**

[Docket No. ER90-283-000]

July 1, 1992.

Take notice that on June 11, 1992, Cambridge Electric Light Comapny tendered for filing its compliance refund report pursuant to the Commission's order issued on December 6, 1990.

*Comment date:* July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

**11. Kansas Gas and Electric Co.**

[Docket No. ER92-508-000]

July 1, 1992.

Take notice that on June 22, 1992, Kansas Gas and Electric Company (KG&E) submitted an amendment to its April 20, 1992 filing in this docket. KG&E states that the amendment is necessary in order to insure the succession of two rate schedules previously approved by the Commission but inadvertently omitted from KG&E's original filing. KG&E also removes one rate schedule for which a Notice of Cancellation has been separately filed.

Copies of the filing were served upon the affected KG&E customers and the Kansas Corporation Commission.

*Comment date:* July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

**12. United Illuminating Co.**

[Docket No. ER92-434-000 and ER92-453-000]

July 1, 1992.

Take notice that on June 9, 1992, United Illuminating Company tendered for filing a Notice of Cancellations of Rate Schedules in the above-referenced dockets.

*Comment date:* July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

**13. Tucson Electric Power Co.**

[Docket No. ER92-657-000]

July 1, 1992.

Take notice that on June 23, 1992, Tucson Electric Power Company (Tucson) tendered for filing a Notice of Cancellation of its Certificate of Concurrence, Rate Schedule FERC No. 31, "Extension of Letter Agreement with Pacific Power & Light Company."

*Comment date:* July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

**14. Commonwealth Edison Co.**

[Docket No. ER92-45-000]

July 2, 1992.

Take notice that on June 29, 1992, Commonwealth Edison Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $1.4 billion of short-term promissory notes on or before December 31, 1994, with a final maturity date no later than December 31, 1995.

*Comment dote:* July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

**15. C. Calvert Knudsen**

[Docket No. ID-2410-001]

July 6, 1992.

Take notice that on May 27, 1992, C. Calvert Knudsen (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions: Director, Seafirst Corporation; Director, Seattle-First National Bank.

*Comment date:* July 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

**16. Donald E. Lasater**

[Docket No. ID-2729-000]

July 6, 1992.

Take notice that on June 17, 1992, Donald E. Lasater (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions: Director, Illinois Power Company; Director, A.P. Green Industries, Inc.

*Comment date:* July 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

**17. Interstate Power Co.**

[Docket No. ES92-44-000]

July 2, 1992.

Take notice that on June 29, 1992, Interstate Power Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $60 million of short-term promissory notes and/or commercial paper on or before December 31, 1993, with a final maturity date no later than December 31, 1994.

*Comment date:* July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

**18. Entergy Power, Inc.**

[Docket No. ER92-674-000]

July 6, 1992.

Take notice that Entergy Services, Inc., as agent for Entergy Power, Inc. (Entergy Power), on June 29, 1992, tendered for filing a capacity sale agreement between Entergy Power and Tennessee Valley Authority. Entergy Power requests an effective date of July 1, 1992, and also requests waiver of the notice requirements under § 35.11 of the Commission's regulations.

*Comment date:* July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

**19. Boston Edison Co.**

[Docket No. ER92-470-000]

July 6, 1992.

Take notice that on June 26, 1992, Boston Edison Company (Boston Edison) filed a letter supplementing its original filing in this docket by explaining that the contributions-in-aid-of-construction by the Towns of Concord and Wellesley (the Towns) which are the subject of this docket represent changes in existing rates for service to the Towns and, therefore, are not subject to the policy stated in Central Maine Power Co., 56 FERC ¶ 61,200 (1991).

*Comment date:* July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

**20. Arizona Public Service Co.**

[Docket No. ER92-673-000]

July 6, 1992.

Take notice that on June 29, 1992, Arizona Public Service Company (APS) tendered for filing Amendment No. 1 (Amendment) to the Wholesale Power Supply Agreement between APS and United States of America, Bureau of Indian Affairs on Behalf of the Colorado River Indian Irrigation Project (CRIIP) (APS-FPC Rate Schedule No. 65). The Amendment provides for the transfer of CRIIP from APS' load control area to the Western Area Power Administration (Western) load control area due to CRIIP's construction of the Headgate Rock Hydroelectric Project and their request to assign responsibility for load regulation and power scheduling to Western.

Copies of this filing have been served on CRIIP and the Arizona Corporation Commission.

*Comment date:* July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.



**21. Donald S. Perkins**

[Docket No. ID-2730-000]

July 6, 1992.

Take notice that on June 17, 1992, Donald S. Perkins (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions: Director, Illinois Power Company; Director, TBG, Inc., N.V.; Director, American Telephone and Telegraph Company; Director, Cummins Engine Co., Inc.

*Comment date:* July 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

**22. Crockett Cogeneration, A California Limited Partnership**

[Docket No. QF84-429-001]

July 6, 1992.

On June 26, 1992, Crockett Cogeneration, a California limited partnership (Applicant), submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is presently certified for approximately 195.8 MW [29 FERC ¶ 62,044 (1984)]. The instant recertification is requested to reflect changes in the ownership structure, configuration and date of installation of the facility, and an increase in the net electric power production capacity. Under the proposed ownership structure, PacifiCorp, an electric utility, will have an indirect ownership interest in the facility. The facility will now consist of a combustion turbine generator, a supplementary fired heat recovery boiler and a single automatic extraction/condensing steam turbine generator, with a net electric power production capacity of 240 MW. Startup of the facility is expected to begin in December of 1995.

*Comment date:* August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

**23. Ag-Energy, L.P.**

[Docket No. QF92-172-000]

July 6, 1992.

On June 25, 1992, Ag-Energy, L.P. (Applicant), of 135 East 57th Street, 23rd Floor, New York, New York 10022, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle generation facility will be located at the New York State St. Lawrence Psychiatric Center in Ogdensburg, New York, and will consist of two combustion turbine generators, two supplementally fired heat recovery boilers and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used for space heating and cooling, domestic hot water heating and laundry in the psychiatric center. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be 80 MW. Installation of the facility is expected to start in July 1992.

*Comment date:* August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

**24. The Empire District Electric Co.**

[Docket No. ER92-672-000]

July 6, 1992.

Take notice that The Empire District Electric Company (EDE), on June 29, 1992, tendered for filing a proposed change in the Agreement between The Southwestern Power Administration (SWPA) and The Empire District Electric Company, Contract Number 14-02-0001-1231.

The amendment provides for the exchange energy to be carried forward and returned the next year at the option of SWPA.

EDE requests an effective date of April 20, 1987 and requests waiver of the Commission's notice requirements. A copy of the filing was served upon the SWPA.

*Comment date:* July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

**25. Southwestern Public Service Co.**

[Docket No. ER92-675-000]

July 6, 1992.

Take notice that Southwestern Public Service Company (Southwestern) on June 29, 1992, tendered for filing a proposed initial rate schedule for partial requirements service to El Paso Electric Company (EPE).

On June 19, 1992, Southwestern and EPE entered into an agreement that provides for the sale of partial requirements electric power and energy from Southwestern EPE beginning July 1, 1992. Since the requested effective date is prior to sixty days from the filing, Southwestern has asked the Commission to grant a waiver of the notice requirement pursuant to § 35.11 of the Commission's rules.

Southwestern is proposing to charge EPE the same rate it currently charges the cities of Brownfield, Floydada and Tulia, Texas, Lubbock Power & Light Co. and Texas New Mexico Power Company for partial requirements service.

*Comment date:* July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

**26. Northern States Power Co.**

[Docket No. ER92-652-000]

July 6, 1992.

Take notice that on June 19, 1992, Northern States Power Company, Eau Claire, Wisconsin (NSPW) tendered for filing a new wholesale service agreement, dated June 9, 1992, between NSPW and the City of Barron (Barron), a municipal corporation in Barron County, Wisconsin. The City currently purchases power and energy from NSPW under an agreement dated January 14, 1981 and amended December 11, 1990.

NSPW states that, on the effective date of the new agreement, the January 14, 1981 agreement as amended, will be terminated. NSPW also states that the effect, if any, of the June 9, 1992 agreement will be to reduce the cost of wholesale electric service to the City.

A copy of the filing was served upon the City and the Public Service Commission of Wisconsin.

*Comment date:* July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

**27. Kansas Gas and Electric Co.**

[Docket No. ER92-655-000]

July 6, 1992.

Take notice that on June 22, 1992, Kansas Gas and Electric Company (KG&E) tendered for filing a Notice of Cancellation for Rate Schedule FERC No. 157 as filed with the Federal Energy Regulatory Commission.

Notice of the proposed cancellation has been served upon the City of Girard, Kansas, and the Kansas Corporation Commission.

*Comment date:* July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

**28. New York State Electric & Gas Corp.**

[Docket No. ER92-650-000]

July 6, 1992.

Take notice that New York State Electric & Gas Corporation (NYSEG), on June 17, 1992, tendered for filing Supplement No. 7 to its Agreement with Consolidated Edison Company of New York, Inc. (Con Edison), designated Rate Schedule FERC No. 87. The proposed changes would decrease revenues by $18,640 based on the twelve month period ending March 31, 1993.

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This rate filing, Supplement No. 7, is made pursuant to section 1 (e) and (f) and 2 (e), (f) and (g) of Article III of the August 23, 1983 Facilities Agreement—Rate Schedule FERC No. 87. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1991. In addition, Con Edison's pro rata share of the total annual carrying charges associated with the firm supply system is calculated based on the rate of Con Edison's one hour demand at Mohansic plus estimated NYSEG and Con Edison one hour peak input at Wood Street. The levelized annual carrying charges included in the calculation reflect a 11.70 percent return on equity which was approved by the New York State Public Service Commission's Opinion 91-1 in Cases 90-E-0138, 90-E-0139 and 90-G-0140, effective February 1, 1991.

NYSEG requests an effective date of April 1, 1992, and, therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Consolidated Edison Company of New York and on the Public Service Commission of the State of New York.

*Comment date:* July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

**20. Walter M. Vannoy**

[Docket No. ID-2728-000]

July 6, 1992.

Take notice that on June 17, 1992, Walter M. Vannoy (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions: Director, Illinois Power Company; Director, Figgie International, Inc.

*Comment date:* July 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16382 Filed 7-13-92; 8:45 am]

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**[Docket Nos. ER92-316-002, et al.]**

**Southern Co. Services, Inc., et al.**

**Electric Rate, Small Power Production, and Interlocking Directorate Filings**

July 7, 1992.

Take notice that the following filings have been made with the Commission:

**1. Southern Company Services, Inc.**

[Docket No. ER92-316-002]

Take notice that on June 29, 1992, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the Operating Companies) tendered for filing certain revisions to Service Schedule B of the Interchange Contract between the Operating Companies and Duke Power Company and the Allocation Methodology and Periodic Rate Computation Procedure Manual of the Operating Companies, as required by the Commission's May 29, 1992 order in Docket No. ER92-316-000.

*Comment date:* July 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

**2. Washington Water Power Co.**

[Docket No. ER92-660-000]

Take notice that on July 1, 1992 The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR part 35, a Capacity Sale Agreement between The Washington Water Power Company (WWP) and Portland General Electric (PGE). WWP requests that the Commission accept the Agreement for filing, effective September 1, 1992, and waive the requirement that agreements cannot be filed more than 120 days prior to the date service is to commence.

A copy of the filing was served upon Portland General Electric, The Washington Utilities and Transportation Commission and the Idaho Public Utilities Commission.

*Comment date:* July 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

**3. New England Power Pool**

[Docket No. ER92-662-000]

Take notice that on June 24, 1992, New England Power Pool tendered for filing a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by the Bozrah Light and Power Company. Bozrah Light and Power Company has its principal office in Bozrah, Connecticut. NEPOOL indicates that the New England Power Pool Agreement has previously been filed with the Commission as a rate schedule (designated NEPOOL FPC No. 1).

NEPOOL states that Bozrah Light and Power Company has joined the over 90 other electric utilities that already participate in the pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Bozrah Light and Power Company a participant in the pool.

*Comment date:* July 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

**4. Idaho Power Co.**

[Docket No. ER92-651-000]

Take notice that on June 18, 1992, Idaho Power Company (Idaho) tendered for filing a letter and attachments regarding a temporary rate increase for the period May 6, 1992 through May 5, 1993 to the following wholesale contracts:

1. Idaho Power-Sierra Pacific Company Agreement for a supply of Energy & Power, dated March 10, 1980, FERC Rate Schedule No. 30;

2. The City of Weiser-Idaho Power Company Agreement for Supply of Power, dated April 4, 1963, FERC Rate Schedule No. 42;

3. Idaho Power-Utah Associated Municipal Power Systems Agreement for Supply of Power & Energy, dated February 10, 1988, FERC Rate Schedule No. 75; and

4. Idaho Power Company-Washington City, Utah, Agreement for Supply of Power & Energy, dated July 6, 1987, FERC Rate Schedule No. 74.

*Comment date:* July 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

**5. Central Power and Light Co.**

[Docket No. ER92-679-000]

Take notice that on June 30, 1992, Central Power and Light Company (CPL) tendered for filing the following:

1. Index of purchasers to whom CPL has provided or may provide service under CPL's Electric Reliability Council of Texas (ERCOT) Interchange Sales Tariff (CPL's FERC Electric Tariff No. 4);

2. Unexecuted Service Agreements naming each of the entities listed on such Index of Purchasers as parties to transactions which may be conducted from time to time pursuant to and in accordance with the rates, terms and conditions of CPL's FERC Electric Tariff No. 4;

3. An index of purchasers to whom CPL has provided or may provide service under CPL's ERCOT Transmission Service Tariff For Large Utility Customers (CPL's FERC Electric Tariff No. 5);

4. Unexecuted Service Agreements naming each of the entities listed on such Index of Purchasers as parties to transactions which may be conducted from time to time pursuant to and in accordance with the rates, terms and conditions of CPL's FERC Electric Tariff No. 5;

5. An index of purchasers to whom CPL has provided or may provide service under CPL's ERCOT Transmission Service Tariff (CPL's FERC Electric Tariff No. 3); and

6. Unexecuted Service Agreements naming each of the entities listed on such Index of Purchasers as parties to transactions other than transactions involving Firm Power Transmission Service which may be conducted from time to time pursuant to and in accordance with the rates, terms and conditions of CPL's FERC Electric Tariff No. 3.

CPL has requested that the above listed indices of purchasers and unexecuted service agreements be made effective as of July 1, 1992 and, accordingly, has requested that the Commission waive its notice requirements. Copies of the filing have been posted in conformity with part 35 of the Commission's regulations.

*Comment date:* July 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

**6. West Texas Utilities Co.**

[Docket No. ER92-678-000]

Take notice that on June 30, 1992, West Texas Utilities Company (WTU) tendered for filing the following:

1. An index of purchasers to whom WTU has provided or many provide service under WTU's Electric Reliability Council of Texas (ERCOT) Interchange Sales Tariff (WTU's FERC Electric Tariff No. 4);

2. Unexecuted Service Agreements naming each of the entities listed on such Index of Purchasers as parties to transactions which may be conducted from time to time pursuant to and in accordance with the rates, terms and conditions of WTU's FERC Electric Tariff No. 4;

3. An index of purchasers to whom WTU has provided or many provide service under WTU's ERCOT Transmission Service Tariff For Large Utility Customers (WTU's FERC Electric Tariff No. 5);

4. Unexecuted Service Agreements naming each of the entities listed on such Index of Purchasers as parties to transactions which may be conducted from time to time pursuant to and in accordance with the rates, terms and conditions of WTU's FERC Electric Tariff No. 5;

5. An index of purchasers to whom WTU has provided or many provide service under WTU's (ERCOT) Transmission Service Tariff (WTU's FERC Electric Tariff No. 3); and

6. Unexecuted Service Agreements naming each of the entities listed on such Index of Purchasers as parties to transactions other than transactions involving Firm Power Transmission Service which may be conditioned from time to time pursuant to and in accordance with the rates, terms and conditions of WTU's FERC Electric Tariff No. 3.

WTU has requested that the above listed indices of purchasers and unexecuted service agreements be made effective as of July 1, 1992 and, acy, has requested that the Commission waive its notice requirements. Copies of the filing have been posted in conformity with part 35 of the Commission's regulations.

*Comment date:* July 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

**7. Central Maine Power Co.**

[Docket No. ER92-48-000]

Take notice that on June 30, 1992, Central Maine Power Company (CMP) tendered the following supplemental filing in the above referenced docket:

1. Energy Reservation Charge Rate Schedule (First Revision), effective as of April 26, 1980;

2. Amendment and Consent to Sales Agreement, effective as of May 1, 1984, between CMP and Boston Edison Company (BECO).

3. Amendment and Consent to Sales Agreement, effective as of April 2, 1983, between CMP and Central Vermont Public Service Corporation (CVPS);

4. Amendment and Consent to Sales Agreement, effective as of June 11, 1963, between CMP and Connecticut Municipal Electric Energy Cooperative (CMEEC);

5. Amendment and Consent to Sales Agreement, effective as of January 20, 1983, between CMP and Greene Mountain Power Corporation (GMP);

6. Amendment and Consent to Sales Agreement, effective as of September 17, 1963, between CMP and New England Power Company (NEP);

7. Amendment and Consent to Sales Agreement, effective as of May 1, 1983, between CMP and Massachusetts Municipal Wholesale Electric Company (MMWEC);

8. Amendment and Consent to Sales Agreement, effective as of April 26, 1960, between CMP and Northeast Utilities Company (NU);

9. Amendment and Consent to Sales Agreement, effective as of June 16, 1961, between CMP and Public Service Company of New Hampshire (PSNH); and

10. Amendment and Consent to Sales Agreement, effective as of April 22, 1991, between CMP and Unitil Power Corp. (Unitil).

CMP requests that the Commission waive its notice and filing requirements so as to permit the BECO, Unitil and BHE Agreements and the Energy Reservation Charge Rate Schedule to become effective in accordance with their terms.

CMP has served a copy of the filing on each affected customer and state regulatory commission.

*Comment date:* July 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16430 Filed 7-13-92; 8:45 am]

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[Docket Nos. CP92-559-000, et al.]

## Southern Natural Gas Co., et al.; Natural Gas Certificate Filings Take Notice That the Following Filings Have Been Made With the Commission

### 1. Southern Natural Gas Co.

[Docket No. CP92-559-000]

July 1, 1992.

Take nctice that on June 26, 1992, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP92-559-000 a request pursuant to § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to operate facilities to add a sales tap for delivery of gas to Mississippi Valley Gas Company (Mississippi Valley), under its blanket certificate issued in Docket No. CP82-406-000, pursuant to section 7(c) of the Natural Gas Act, respectively, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that at the request of Southern's existing customer, Mississippi Valley, Southern has agreed to operate a sales tap for delivery of gas to Mississippi Valley so that it may provide a certain end user with natural gas service. Southern states that it intends as use an existing one-inch tap located near mile post 12.5 on Southern's 4-inch Durant Branch Line, Holmes County, Mississippi. Southern states that Mississippi Valley has agreed pursuant to a letter agreement dated June 11, 1992, to reimburse Southern for any costs incurred in the activation or tie in of the sales tap to the metering and regulating facilities to be constructed by Mississippi Valley. Southern estimates average day deliveries of 100 Mcf. Southern states that the service rendered through the proposed facility would be within Southern's currently certificated entitlement to Mississippi Valley.

It is stated that the total contract demand to be delivered to Mississippi Valley after activation of the sales tap would not exceed the total volumes currently authorized. Southern also states that the gas would be sold to Mississippi Valley pursuant to the terms and conditions of the service agreement at the rate specified in Southern's Rate Schedule OCD-1.

*Comment date:* August 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

### 2. Williams Natural Gas Co.

[Docket No. CP92-557-000]

July 1, 1992.

Take notice that on June 26, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-557-000 a prior notice request with the Commission pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by reclaim two town border settings used in the sale and delivery of gas to The Kansas Power and Light Company (KPL Gas Service) and one town border setting serving a WNG direct sale customer; replace them with a single setting; and to abandon in place approximately 0.23 miles of 2-inch and 3-inch pipeline and appurtenant facilities, all in Anderson County, Kansas, under the blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

WNG proposes to replace the KPL Gas Service Welda town border setting; abandon by reclaim the KPL Gas Service East Welda town border setting and WNG's Welda School town border setting; transfer the volumes attributable to East Welda and Welda School to the new Welda town border setting; and to abandon in place approximately 0.23 miles of 2-inch and 3-inch pipeline. WNG states that the facilities that it proposes to abandon were originally installed in the 1930s and certificated in Docket No. G-298 (4 FPC 471).

WNG states that natural gas deliveries via the proposed replacement facilities would not exceed the volumes it delivers to its current facilities. WNG estimates that it would cost $3,050 to reclaim the two town border settings with a $2,069 salvage volume. WNG also states that it would pay the estimated $15,460 construction cost for the proposed replacement facilities with funds on hand. WNG states that its existing tariff does not prohibit this change and it has sufficient capacity to accomplish the specified deliveries without detriment or disadvantage to its other customers.

*Comment date:* August 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

### 3. Northwest Pipeline Corp.

[Docket No. CP92-548-000]

July 1, 1992.

Take notice that on June 22, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed in Docket No. CP92-548-000 a request pursuant to § § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new meter station (Unocal Lisbon Delviery Meter) in San Juan County, Utah pursuant to its blanket certificates issued in Docket No. CP82-433 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Northwest states that the proposed Unocal Lisbon Delivery Meter will be used to deliver up to 6,000 MMBtu per day of start-up and emergency fuel gas to Unocal Corporation (Unocal) for its Lisbon Gas Processing Plant. Northwest states that the proposed Unocal Lisbon Delivery Meter will be located within the Unocal Lisbon Meter Station in Section 22, Township 30 South, Range 24 East, San Juan County, Utah. Northwest estimates that the cost of the delivery meter will be $143,300. Northwest further states that the Unocal Lisbon Delivery Meter is being installed in conjunction with a new 2.78 mile, eight-inch diameter pipeline and meter station for receipt of up to 25,000 MMBtu per day of natural gas from the Unocal Lisbon Processing Plant. Northwest indicates that it will construct the receipt meter and lateral under automatic blanket authorization. Northwest states that it initially will pay for the installation of the described facilities, including the proposed delivery meter, since the estimated incremental revenues generated by the projected transportation service through the facilities will exceed the estimated incremental cost-of-service for the total project.

*Comment date:* August 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

### 4. Panhandle Eastern Pipe Line Co.

[Docket No. CP92-543-000]

July 1, 1992.

Take notice that on June 19, 1992, Panhandle Eastern Pipe Line (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed an application with the Commission in Docket No. CP92-543-000 pursuant to section 7(b) of the Natural Gas Act (NGA) for an order permitting and approving the suspension of service to five farm tap and irrigation customers in Kansas, Missouri, Oklahoma, and Texas, all as more fully set forth in the application which is open to the public for inspection.

Panhandle states that it seeks permission to suspend natural gas service to five customers who have not

paid or made satisfactory arrangements to pay the amount due. Panhandle also states that it sent each customer a "30-day notice" of past due on their accounts and a second letter, "Notice of Intent to Suspend Natural Gas Service." Panhandle alleges that these five customers have made no attempt to contact Panhandle or to make payment arrangements for the $19,000 on their cumulative delinquent accounts. Panhandle, however, states that it would recommence natural gas deliveries to these customers once they have either paid their bills or made satisfactory payment arrangements for the amounts due. Panhandle also states that it does not propose to abandon any facilities herein.

*Comment date:* July 23, 1992, in accordance with Standard Paragraph F at the end of this notice.

**5. Northern Border Pipeline Co.**

[Docket No. CP92-561-000]

July 6, 1992.

Take notice that on June 29, 1992, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed a prior-notice request with the Commission in Docket No. CP92-561-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate an existing valve setting as a new delivery point to Northern Natural Gas Company (Northern) in Kossuth County, Iowa, under the blanket certificates issued in Docket Nos. CP84-420-000 and CP86-395-000, all as more fully set forth in the application which is open to the public for inspection.

Northern Border proposes to operate an existing valve setting as a new delivery point to Northern (to be called the Ledyard delivery point). Northern Border would deliver up to 4,000 Mcf per day of natural gas and up to 182,500 Mcf annually at the proposed Ledyard delivery point to Northern. Northern would install measuring and regulating facilities, in addition to reimbursing Northern Border approximately $12,000 needed to install communications equipment at the proposed Ledyard delivery point.[1] Northern Border states that its tariff does not prohibit additional delivery points.

Northern Border states that the natural gas volumes it proposes to deliver to Northern are volumes it currently transports for Northern's account under a long-term firm transportation contract and pursuant to blanket transportation authorization. Northern Border further states that Northern would redeliver the natural gas volumes to Iowa Electric Light and Power Company (Iowa Electric) and Interstate Power Company (Interstate Power). In turn, Iowa Electric would provide natural gas service to the town of Armstrong, Iowa, while Interstate Power would serve the towns of Ledyard and Swea City, Iowa.

*Comment date:* August 20, 1992, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16416 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. CP92-563-000, et al.]

**Williams Natural Gas Co., et al.; Natural Gas Certificate Filing**

July 7, 1992.

Take notice that the following filings have been made with the Commission:

**1. Williams Natural Gas Co.**

[Docket No. CP92-563-000]

Take notice that on June 29, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 7401, filed in Docket No. CP92-563-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by reclaim the 850 horsepower Ellsworth compressor station located in Ellsworth County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, WNG requests authorization to abandon by reclaim the Ellsworth compressor station consisting of 5-170 horsepower Type 80 compressor units and appurtenant facilities, manifold and yard piping, and all above ground concrete and structures. The estimated cost of the proposed abandonment is $36,942 with an estimated salvage value of $2,000, it is stated.

WNG states that the Ellsworth compressor station was constructed to supply natural gas to local towns and the Superior Cement plant, all located along WNG's Superior line. WNG asserts that the population of the towns has decreased and the Superior Cement plant has decreased production, resulting in reduced demand for natural gas. WNG further asserts that the Ellsworth compressor station has not been used to meet peak day requirements for the past nine years.

[1] Northern filed its application on June 10, 1992, for authorization to install and operate its facilities at the Ledyard delivery point in Docket No. CP92-544-000.

WNG states that all natural gas demands in the area can be met without the Ellsworth compressor station.

*Comment date:* July 28, 1992, in accordance with Standard Paragraph F at the end of this notice.

**2. El Paso Natural Gas Co.**

[Docket No. CP92-572-000]

Take notice that on July 2, 1992, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP92-572-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the National Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point to permit delivery of natural gas to American Gathering, L.P. (American) under El Paso's blanket certificate issued in Docket No. CP82-435-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to install a 2-inch tap and valve assembly and a 2-inch orifice-type meter run, with appurtenances, to be known as the American Andrews Delivery Point. El Paso states that the delivery point would be located in Andrews County, Texas, on its 20-inch Goldsmith-Dumas Line. El Paso further states that American would reimburse it for the cost of the proposed facilities, estimated to be $39,070.

El Paso explains that, although the gas would be transported under a transportation agreement dated April 21, 1992, with Anthem Energy Company, L.P., the gas would be used by American for compressor fuel. El Paso indicates that peak day and annual quantities would amount to approximately 500 Mcf and 109,800 Mcf, respectively.

*Comment date:* August 21, 1992, in accordance with Standard Paragraph G at the end of this notice.

**3. Transcontinental Gas Pipe Line Corp.**

[Docket No. CP92-564-000]

Take notice that on June 30, 1992, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed an application with the Commission in Docket No. CP92-564-000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a firm transportation service it provides for Southern Natural Gas Company (Southern) under Transco's FERC Rate Schedule X-240, all as more fully set forth in the application which is open to public inspection.

Transco proposes to abandon, at Southern's request, a firm transportation service under Transco's Rate Schedule X-240 of up to 8,000 Mcf per day of natural gas.[1] Transco also requests a November 22, 1992, effective date for the abandonment, because the transportation agreement's ten-year primary term will expire then. Transco does not propose to abandon any facilities herein.

*Comment date:* July 28, 1992, in accordance with Standard Paragraph F at the end of this notice.

**4. El Paso Natural Gas Co.**

[Docket No. CP92-555-000]

Take notice that on June 25, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP92-555-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon, by sale to Southwest Gas Corporation (Southwest), certain delivery facilities, under El Paso's blanket certificate issued in Docket No. CP82-435-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, El Paso proposes to abandon, by sale to Southwestern a segment of its Parker Line extending from Valve No. 2 to its interconnection with Southwest's distribution facilities in La Paz County, Arizona. The Parker Line was originally constructed to provide service to Arizona Public Service Company, predecessor-in-interest to Southwest, for resale to the community of Parker, Arizona, it is stated.

El Paso states that the section of line to be abandoned provides a distribution service and not a transportation service. El Paso further states that it attempts to provide its transportation services through facilities not encumbered with duel service functions, *i.e.*, transportation and distribution. Accordingly, El Paso and Southwest have agreed to the abandonment by sale to Southwest by a letter agreement dated April 22, 1992, it is stated.

El Paso asserts that it will continue to provide transportation service to Southwest for service to Parker with deliveries to Southwest at Valve No. 2 El Paso states that no change in measurement facilities will be required since the Parker City Gate Meter Station is located on the portion of the Parker Line to be retained by El Paso.

*Comment date:* August 21, 1992, in accordance with Standard Paragraph G at the end of this notice.

**5. Northwest Pipeline Corp.**

[Docket No. CP92-568-000]

Take notice that on June 29, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP92-568-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to redesign its PGE Meter Station, authorized in Docket No. CP91-3164-000, under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that it was authorized to construct and operate the PGE Meter Station, in Cowlitz County, Washington, pursuant to the Commission's prior notice procedure in Docket No. CP91-3164-000, effective November 12, 1991. Northwest would utilize the meter station to deliver up to 192,000 MMBtu per day of natural gas to a pipeline to be built by Portland General Electric Company and KB Pipeline Company, it is stated.

Northwest states that the authorized design of the meter station included, among other things, two 8-inch control valves and 700 feet of 12-inch pipeline. Northwest asserts that subsequent to approval of its request, it determined that it could adequately control gas flow to the meter station with one control valve and that the connecting pipeline could be shortened and, that by increasing the diameter of the pipeline, the pressure drop over the pipeline could be reduced by approximately 12 psig.

Northwest now requests authorization to construct the PGE Meter Station using one 8-inch control valve instead of two 8-inch valves, and 600 feet of 16-inch pipeline instead of 700 feet of 12-inch pipeline.

Northwest asserts that the balance of the meter station design and the capacity, functions, environmental impacts and estimated costs of the meter station remain unchanged from the description in the original approved filing.

*Comment date:* August 21, 1992, in accordance with Standard Paragraph G at the end of this notice.

[1] The Commission order issued February 8, 1982, in Docket No. CP81-83-000, *et al.* (18 FERC ¶61,097), authorized Transco's transportation service for Southern.

**6. United Gas Pipe Line Co.**

[Docket No. CP92-558-000]

Take notice that on June 26, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP92-558-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by removal approximately 1,631 feet of 6-inch pipeline, located in Vermillion Parish, Louisana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United indicates that the pipeline was installed in 1936 to provide transportation service (authorized in Docket No. CP71-089-000 [2], exclusively for a direct sale to Arcadia/Vermillion Rice Irrigation Company (Arcadia/Vermillion). United contends that it mistakenly removed the segment of pipeline known as Index 205-7, as United believed the segment to be part of the facilities described in its original request for abandonment authorization.[3] Due to the misidentification, United's field personnel, on May 21, 1992, removed Index 205-7. As a result, United requests retroactive abandonment effective, May 21, 1992, to coincide with the erroneous removal of pipeline.

*Comment date:* July 28, 1992, in accordance with Standard Paragraph F at the end of the notice.

**7. Granite State Gas Transmission, Inc.**

[Docket No. CP92-552-000]

Take notice that on June 24, 1992, Granite State Gas Transmission, Inc. (Granite State) 300 Friberg Parkway, Westborough, Massachusetts 01581, filed an application for a temporary and permanent certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations thereunder authorizing a new storage service for Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) and a revision in the firm daily contract demands for the sales of gas to Bay State and Northern Utilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

According to Granite State, its proposal is directly related to a provision in the "cosmic" settlement in Tennessee Gas Pipeline Company's (Tennessee) Docket No. RP86-119, *et al.*, pursuant to which Tennessee offered customers, such as Granite State restricted in their purchases of Annual Quantity Limitations (AQL), a one-time election to convert to a storage service to provide for the difference between their average daily entitlement under the AQL and the Maximum Daily Quantity (MDQ) under their firm sales contracts with Tennessee. Tennessee proposes to provide the storage service under Rate Schedule SS-NE and upon the effectiveness of the election offered by Tennessee, the firm daily contract demand for sales of gas by Tennessee would be reduced by a quantity equivalent to the Maximum Daily Quantity of the storage service.

Granite State says that it made the election offered by Tennessee and upon the effectiveness of Tennessee's compliance with the terms of the settlement, its MDQ of 86,103 Dth under the sales contract with Tennessee will be reduced to 70,903 Dth a day and it will receive a storage service from Tennessee under Rate Schedule SS-NE providing for firm daily deliverability of 15,200 Dth and an associated annual storage capacity of 1,435,340 Dth.

According to Granite State, its current MDQ of 86,103 Dth under Tennessee's Rate Schedule CD-6 comprises 63.14 percent of the total firm daily system supply of natural gas supporting its firm daily obligations to Bay State and Northern Utilities. It is further stated that a reduction in the daily firm contract demands deliveries from Tennessee to 70,903 Dth requires Granite State to make proportional adjustments in its firm daily contract reduction in the contract demands for sales to Bay State and Northern Utilities. To offset the reduction in the contract demands for sales to its customers, Granite State says that it will make available to each customer a proportionate quantity of the daily deliverability under Tennessee's Rate Schedule SS-NE to each customer equal to the reduction in the daily contract demands for sales. The result is that neither customer will receive an actual reduction in maximum daily service from Granite State.

To accomplish the foregoing, Granite state requests authorization to change the firm daily contract demand levels for sales to Bay State and Northern Utilities that were established in Docket No. CP91-2373-000 [4] to the following levels:

| Bay State | Northern Utilities |
|---|---|
| 95,829 Dth/d | 22,970 Dth/d. |

In order to provide the storage service to its customers utilizing the storage service that will be rendered by Tennessee, Granite State proposes to establish a new Rate Schedule SS-NE in its FERC Gas Tariff, Second Revised Volume No. 1, which will be a mirror image of Tennessee's Rate Schedule SS-NE. Granite State further proposes to allocate the availability to the storage service to its customers as follows:

| | Bay State | Northern Utilities |
|---|---|---|
| Firm Daily Deliverability | 12,547 Dth/d | 2,653 Dth/d. |
| Seasonal Capacity | 1,184,855 Dth | 250,485 Dth. |

It is further stated that under the provisions of the "cosmic" settlement, Tennessee will direct bill each customer electing the Rate Schedule SS-NE service its proportionate share of the cost of gas storage inventory in place on the date that the service commences, estimated to be July 1, 1992. Grannite State further requests that it be authorized to passthrough the amount billed to it by Tennessee by direct billing its customers proportionately in relation to their respective entitlements to storage service.

Granite State says that through its Rate Schedule SS-NE, it will track the Tennessee rate for its Rate Schedule SS-NE and, since it will be a billing conduit for providing the service to its customers, it requests waiver of § 154.38(d)(3) and 154.63 of the Regulations in order to track the Tennessee rates. Granite further states that it has a rate settlement in Docket No. RP91-164-000 pending before the Commission. According to Granite State, the settlement proposes a new rate design for all its commodity charges. In establishing the initial rates for its Rate Schedule SS-NE service, Granite State proposes also to include a system handling charge consistent with the provisions of the rate settlement.

According to Granite State, the authorizations requested do not require the construction of any new facilities. It is further stated that the revised services for Bay State and Northern Utilities will result in substantially reduced annual costs for these customers. The conversion of the Tennessee Rate Schedule CD-6 service to the Rate Schedule SS-NE service will provide annual net savings to the distributors of

[2] 9 FERC ¶62,062.

[3] The Commission, in Docket No. CP87-215-000, authorized, among other things, the abandonment of the transportation service and the meter station serving Arcadia/Vermillion (42 FERC ¶61,056).

[4] (57 FERC ¶61,297) 1991.

$824,900 applying the *pro forma* rates in Tennessee's "cosmic" settlement and $1,123,700 applying Tennessee's currently effective rates in Docket No. CP91-203-000. It is further stated that the annual revenue income to Granite State from Rate Schedule SS-NE will be $16,500 under the settlement rate design in Docket No. RP91-164-000 which, according to Granite State is 3/10ths of a percent of the jurisdictional non-gas cost of service established in the settlement.

Because of the imminence of Tennessee's expected compliance with the provisions of the "cosmic" settlement, Granite State further requests a temporary certificate of public convenience and necessity authorizing the proposals in its application pending issuance of a permanent certificate. Granite State requests that the temporary certificate to make effective the changes in service for its customers be coincident with the date that the changes in Tennessee's service for Granite State become effective.

*Comment date:* July 28, 1992, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessary. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16431 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP92-199-000]**

## ANP Pipeline Company; Proposed Changes in FERC Gas Tariff

July 7, 1992.

Take notice that ANR Pipeline Company ("ANR"), on July 2, 1992 tendered for filing as part of its Original Volume Nos. 1, 1-A, 2 and 3 of its FERC Gas Tariff, six copies of the tariff sheets as listed in appendix A attached to the filing.

ANR states that the referenced tariff sheets are being submitted pursuant to § 2.104 of the Commission's Regulations to implement partial recovery of approximately $26.9 million of additional buyout buydown costs, part by a fixed monthly charge applicable to ANR's sales customers and part by a volumetric buyout buydown surcharge of $0.0034 per dth applicable to all throughout. In particular, this filing is being made pursuant to Article II of the Stipulation and Agreement filed by ANR on February 12, 1991 in Docket Nos. RP91-33-000 and RP91-35-000, as approved by the Commission on March 1, 1991. ANR has requested that the Commission accept the tendered tariff sheets to become effective August 2, 1992. ANR states that it intends to commence billing of the proposed fixed monthly charges and volumetric surcharge in October, 1992 for September, 1992 business.

ANR states that all of its Volume Nos. 1, 1-A, 2 and 3 customers and interested State Commissions have been apprised of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 N. Capitol Street, N.E., Washington, DC 20426 by July 14, 1992, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 214. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 91-16409 Filed 7-13-91; 8:45 am]

BILLING CODE 6717-01-M

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## Filing Deadlines for Applications for NGPA Category Determinations and Notices of NGPA Category Determinations

July 7, 1992.

### I. Introduction

The Natural Gas Wellhead Decontrol Act of 1989 [1] repealed the authority of the jurisdictional agencies to make and the Commission to review well category determinations under the Natural Gas Policy Act (NGPA) as of January 1, 1993. Therefore, the Commission gives notice that all applications for NGPA category determinations must be filed with the appropriate jurisdictional agencies on or before December 31, 1992, and all notices of NGPA category determinations must be filed with the Commission on or before September 30, 1993, in order for such filings to be processed. These deadlines apply to applications and notices of determination for any NGPA category.

### II. Deadlines for Filing Applications for NGPA Category Determinations

In Order Nos. 539 [2] and 539-A, [3] involving tax credits for certain tight

[1] Pub. L. 101-60, 103 Stat. 157 (1989).

[2] Qualifying Certain Tight Formation Gas for Tax Credit, FERC Stats. & Regs., Regulations Preambles ¶ 30,940 (1992).

[3] 59 FERC ¶ ____ (1992).

formation gas, the Commission stated that all applications for NGPA category determinations must be received by the jurisdictional agencies on or before December 31, 1992, in order for the applications to be processed. However, the Commission emphasized that the jurisdictional agencies have the discretion to assign a filing date to an application for a NGPA category determination that is substantially complete and specify a post-December 31, 1992 date when a complete application must be filed.

As discussed in Order Nos. 539 and 539–A, the filing deadlines established in those orders apply to all applications and notices of determination for any NGPA category and not just to proceedings for tight formation NGPA category determinations. Therefore, the Commission gives notice that all applications for NGPA category determinations must be received by the jurisdictional agencies on or before December 31, 1992, in order for the applications to be processed.

**III. Determinations for Jurisdictional Agencies to File Notices of Determinations**

In Order No. 539 the Commission stated that it would continue to process all jurisdictional agency NGPA category determinations received by the Commission on or before June 30, 1993. On rehearing of Order No. 539, the Commission determined to extend until September 30, 1993 the deadline for the Commission to receive from jurisdictional agencies notice of NGPA category determination. Therefore, the Commission gives notice that it will continue to process notices of NGPA category determination only if they are received by the Commission on or before September 30, 1993, and the underlying application is filed on or before December 31, 1992.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–16385 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TQ92–5–1–000]**

**Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment**

July 7, 1992.

Take notice that on July 1, 1992, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet with a proposed effective date of July 1, 1992:

32nd Revised Sheet No. 4

Alabama-Tennessee states that the filing is an out-of-cycle purchased gas adjustment (PGA) filing, the purpose of which is to correlate more precisely Alabama-Tennessee's projected gas costs with the rates of its upstream pipeline supplier, Tennessee Gas Pipeline Company (Tennessee).

Alabama-Tennessee states that copies of the filing were mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–16414 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM92–17–20–000]**

**Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff**

July 7, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on July 1, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the following revised tariff sheets:

Proposed to be effective June 1, 1992: 10 Rev Sheet No. 41, 10 Rev Sheet No. 42.

Algonquin states that the revised tariff sheets are being filed to flow through changes in Texas Eastern Transmission Corporation's Rate Schedules SS–2 and SS–3, which underlie Algonquin's Rate Schedules STB and SS–III. Pursuant to section 10 of Rate Schedule STB and section 9 of Rate Schedule SS–III in Algonquin's FERC Gas Tariff, Third Revised Volume No. 1, Algonquin is hereby filing the above sheets to track the latest changes filed by Texas Eastern on June 19, 1992 to be effective June 1, 1992.

Algonquin further states that the effect of the filed tariff sheets is to decrease the STB and SS–III demand charges by 0.1¢ per MMBtu.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–16411 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. OR92–7–000]**

**Bonito Pipe Line Co.; Petition for Declaratory Order**

July 8, 1992.

Take notice that on July 1, 1992, Bonito Pipe Line Company (Bonito) tendered for filing a petition for declaratory order pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207.

Bonito requests that the Commission declare that Bonito is not unconditionally required, pursuant to either the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331, *et seq.*, or the Interstate Commerce Act (ICA), 49 U.S.C. 1, *et seq.*, to interconnect with facilities built for, and commence transportation of crude oil for, Shell Oil Company (Shell Oil) upon the demand of the latter. Specifically, Bonito states that it has declined to permit an interconnection for Shell Oil and provide transportation of up to 50,000 barrels per day of anticipated production for sour crude, which if blended in Bonito's common stream will materially disadvantage the shippers (both proprietary and common carrier) on the Bonito system.

If the Commission ultimately determines that Bonito must interconnect with the proposed pipeline facilities of Shell Pipe Line Corporation

(Shell Pipe Line) and commence transportation service for Shell Oil notwithstanding the lack of statutory authority for such a determination, Bonito respectfully submits that the Commission must determine a proper methodology for allocating capacity and the appropriate methodology to compensate Bonito's existing shippers, taking into consideration the material disadvantage to its shippers which would be caused by the receipt of the Shell Oil production. The concerns which are raised by the present controversy involve not only transportation service and a pipeline company's obligation to interconnect to provide such service, but the financial consequences to existing shippers if Bonito is compelled to receive and transport the Shell Oil production. Notwithstanding the unstated motive of Shell Oil for attempting to introduce its sour crude oil into the Bonito common stream, Bonito respectfully requests that the Commission declare that, under the circumstances Bonito is not obligated to interconnect with the facilities built for, and unconditionally commence transportation service, for Shell Oil pursuant to the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331, *et seq.*, and the Interstate Commerce Act (ICA), 49 U.S.C. 1, *et seq.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16522 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA92-1-63-000 and TM92-5-63-000]**

## Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 8, 1992.

Take notice that on July 2, 1992, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Thirty-Fourth Revised Sheet No. 8,
Thirty-Fourth Revised Sheet No. 9,
Alt Thirty-Fourth Revised Sheet No. 8,
Alt Thirty-Fourth Revised Sheet No. 9.

Carnegie states that this filing is its annual Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") submitted pursuant to § 154.305 of the Commission's regulations and sections 23 and 26 of the General Terms and Conditions of its FERC Gas Tariff. The proposed effective date of the primary and alternate tariff sheets is September 1, 1992.

Carnegie proposes to adjust its sales rates to reflect changes in its projected purchased gas costs and related Account No. 858 costs for the quarterly PGA period, September 1, 1992 through November 30, 1992. The filing reflects a current estimated average cost of gas of $1.7994 per Dth, based upon total projected commodity costs of $12,002,219 and projected jurisdictional sales of 6,670,000 Dth, all of which Carnegie projects will be interruptible sales under its interruptible sales Rate Schedule SEGSS. Carnegie projects that it will realize zero firm sales during this first quarterly period.

Carnegie states that the base rates reflected on its proposed revised tariff sheets correspond with the respective base rate changes proposed in the primary and alternate tariff sheets filed by Carnegie in Docket No. RP92-190-000 on June 16, 1992. The proposed revised tariff sheets also reflect changes in Carnegie's sales rates as effected through the Current Adjustment and Surcharge Adjustment of the instant PGA filing. With respect to the Current Adjustment, the revised tariff sheets reflect a commodity rate decrease of $0.355 per Dth under Rate Schedules CDS, LVWS, and SEGSS, as compared to the rates established in Carnegie's last fully-supported out-of-cycle PGA filing in Docket No. TQ92-6-63-000. With respect to the Surcharge Adjustment, the revised tariff sheets reflect a demand surcharge of <$0.4098> per Dth, a commodity surcharge of $0.0000 per Dth, and a DCA surcharge of <0.0019> per Dth under Rate Schedules CDS and LVWS.

Carnegie also requests waiver of § 154.305 (d) and (e) of the Commission's regulations and § 23.8 of the General Terms & Conditions of its tariff to permit Carnegie to suspend its PGA commodity surcharge for the duration of the amortization period subject to this annual PGA filing. Carnegie requests such waivers because, in the instant filing, it proposes to transfer from its current deferral subaccount to its refund subaccount of Account No. 191 the full $1,741,745 balance in its current deferral subaccount as of April 30, 1992. As explained more fully in its filing, this request for transfer of the unrecovered commodity costs (and the necessary waivers to permit this transfer) are based on factors involving, among other things, Carnegie's projection that it will make little or no sales under its firm sales rate schedules, the effect of the Gas Supply Inventory Reservation Charges billed to Carnegie by its sole upstream supplier (Texas Eastern Transmission Corporation), anticipated refunds from Texas Eastern, and the Commission's pronouncements in Order No. 636.

Carnegie also requests waiver of § 26.8 of the General Term & Conditions of its FERC Gas Tariff to permit Carnegie to credit its Account No. 191 refund subaccount by transferring to that account $1,1452 in overcollected Account No. 858 costs.

Carnegie's filing also reflects that its actual costs of purchased gas exceed the 103 percent tolerance level established in § 154.308 of the Commission's regulations in three of the applicable four test intervals. As explained in more detail in its filing, Carnegie presents reasons as to why it exceeded the 103 percent test in each of the three test intervals. Based on these reasons, Carnegie requests approval of the Commission pursuant to § 154.306(a) to recover the costs in excess of the 103 percent level.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or protest said filing should file an intervention and/or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures (18 CFR 385.214 and 385.211). All such pleadings should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16517 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA92-1-22-000, RP92-201-000 and TM92-9-22-000]

## CNG Transmission Corp. Proposed Changes in FERC Gas Tariff

July 8, 1992.

Take notice that CNG Transmission Corporation ("CNG"), on July 2, 1992, pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's Regulations, and section 12 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

Twenty-First Revised Sheet No. 31,
Alt Twenty-First Revised Sheet No. 31,
Thirteenth Revised Sheet No. 32,
Seventh Revised Sheet No. 33,
Seventeenth Revised Sheet No. 34,
Alt Seventeenth Revised Sheet No. 34,
Twelfth Revised Sheet No. 35,
Original Sheet No. 201A,
Second Revised Sheet No. 202,
Second Revised Sheet No. 225,
Original Sheet No. 225A.

CNG requests effective dates for these proposed tariff sheets of September 1, 1992.

CNG states that under its primary filing, ACD/CD/RQ commodity rates would decrease by $0.2840 per Dt, and the ACD/CD/RQ D-1 rate would increase by $2.25 per Dt from current levels. CNG states that its TF demand rate will increase by $0.04 per Dt, its TF commodity rate will decrease by $0.0062 per Dt, and its GSS demand rate will decrease by $0.03 per Dt; other rates will change accordingly. CNG states that its proposed annual Transportation Fuel Adjustment would decrease the transportation fuel charge by $0.0046 per Dt, and maintain the fuel retention percentage of 2.28%.

In its primary filing, CNG seeks: (1) Waiver of § 154.305(e) of the regulations, to surcharge approximately $18.5 million of CNG's current commodity deferral balance over the annual period starting September 1, 1992; (2) waiver of § 154.305(h)(3)(ii)(D), to eliminate the "rolling weighted average adjustment" from computation of interest on Account No. 191 balances; and waiver of § 16.6 of CNG's tariff, to exclude a transportation fuel surcharge in this annual PGA.

CNG states that in its alternate filing ACD/CD/RQ commodity rates would increase by $0.2600 per Dt, and its ACD/CD/RQ D-1 rate would increase by $2.25 per Dt from current levels. CNG states that its TF demand rate will increase by $0.04 per Dt, its TF commodity rate will decrease by $0.0062 per Dt, and its GSS demand rate will decrease by $0.03 per Dt; other rates will change accordingly. CNG states that its annual Transportation Fuel Adjustment would be the same as in the primary filing.

In its alternate filing, CNG requests: (1) Waiver of § 154.305(h)(3)(ii)(D) of the regulations, to eliminate the "rolling weighted average adjustment" from computation of interest on CNG's Account No. 191 balance; and (2) waiver of § 16.6 of CNG's tariff, to exclude a transportation fuel surcharge in this annual PGA.

CNG states that its primary and alternate filings reflect demand surcharge recovery of Gas Inventory Charges ("GIC") from Texas Eastern Transmission Corporation ("Texas Eastern").

CNG states that it also proposes to revise the PGA/TCRA refund mechanism of its tariff to better match cost incurrence and cost recovery, by allowing CNG to offset debit balances in Account Nos. 191 and 186 with supplier refunds, as more fully described in CNG's filing.

CNG states that it is also filing an annual Transportation Cost Rate Adjustment surcharge, to reflect amortization of under and overrecoveries between January 10, 1991 and April 30, 1992.

CNG also states that for the period September, 1991 through November, 1991, CNG's actual purchase gas costs exceeded the tolerance amount under the regulations for assessment of past performance, by approximately $3.1 million; CNG seeks Commission approval to recover this amount through its commodity surcharge.

CNG states that documentation provided with this filing also provides information required by orders in Docket Nos. TA90-1-22 and TQ92-3-22, as more fully described in CNG's filing.

CNG states that copies of this filing were served upon CNG's customers as well as interested state commissions. Also, copies of this filing are available during regular business hours at CNG's main offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
*Secretary.*

[FR Doc. 92-16516 Filed 7-13-92; 8:45 am]
BILLING CODE 6717-01-M

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[Docket Nos. RP91-161-000, et al. and RP91-160-000, et al.]

## Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Informal Settlement Conference

July 8, 1992.

Take notice that an informal conference will be convened in this proceeding on Wednesday, July 22, 1992, for the purpose of exploring the possible settlement of the above-referenced dockets. The conference will be held at the Washington Hilton and Towers, 1919 Connecticut Avenue, NW., Washington, DC immediately following the Prefiling Conference scheduled for July 21 and July 22 in Docket Nos. RS92-6-000 *et al.* and RS92-6-000 *et al.*

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 208-0783, Lorna J. Hadlock at (202) 208-0737 or David R. Cain at (202) 208-0917.

Lois D. Cashell,
*Secretary.*

[FR Doc. 92-16513 Filed 7-13-92; 8:45 am]
BILLING CODE 6717-01-M

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[Docket Nos. TQ92-5-21-000 and TM92-12-21-000]

## Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1992

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 1, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective August 1, 1992:

Twentieth Revised Sheet No. 28,
Twelfth Revised Sheet No. 28.1,
Twentieth Revised Sheet No. 28A,
Twelfth Revised Sheet No. 28A.1,
Twentieth Revised Sheet No. 28B,
Eleventh Revised Sheet No. 28B.1,
Nineteenth Revised Sheet No. 28C,
Fifth Revised Sheet No. 28C.1,
Tenth Revised Sheet No. 28D,
Twentieth Revised Sheet No. 163.

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This filing represents Columbia's quarterly gas adjustment (PGA) and reflects a current PGA applicable to sales rate schedules; continuation of certain surcharges; a transportation fuel charge adjustment; and a transportation cost recovery adjustment (TCRA).

Columbia states that the sales rates set forth on Twelfth Revised Sheet No. 26.1 reflect an overall decrease of 0.04¢ per Dth in the commodity rate and an overall increase of $0.306 per Dth in the total demand rate when compared with the total CDS rates currently in effect. The TCRA commodity rate is increased by 0.12¢ per Dth and the TCRA demand rate is increased by $0.274 per Dth. Columbia states that the transportation rates set forth on Fifth Revised Sheet No. 26C.1 and Tenth Revised Sheet No. 26D reflect no change in the Fuel Charge component.

Columbia states that copies of the filing were served upon Columbia's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16412 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP92-195-000]**

## El Paso Natural Gas Co.; Tariff Filing

July 7, 1992.

Take notice that on July 1, 1992, El Paso Natural Gas Company ("El Paso"), tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in accordance with sections 22 and 21, Take-or-Pay Buyout and Buydown Cost Recovery, of El Paso's First Revised Volume No. 1-A and Second Revised Volume No. 1 FERC Gas Tariffs, respectively, certain tariff sheets to become effective August 1, 1992. Tariff sheets reflect a revision to the Monthly Direct Charge and Throughput Surcharge based on additional buyout and buydown costs associated with contracts that were in litigation or arbitration as of March 31, 1989 and have not been included in any of El Paso's previous filings to recover certain buyout and buydown costs.

El Paso states that it has proposed to amortize the direct bill portion (25%) of such additional amount included in its filing over a seven (7) month amortization period extending through February 28, 1993. This amortization period will permit the direct bill portion of such additional cost to be completely amortized during the same direct bill amortization period as applies to costs included in El Paso's prior filings in Docket Nos. RP90-81-000, RP91-26,000, RP91-162-000 and RP92-18-000. El Paso proposed that the Throughput Surcharge attributable to the recovery of the amount in the filing be amortized over a period commencing August 1, 1992 through March 31, 1996 which is consistent with El Paso's authorization at Docket No. RP92-115-000 to consolidate the amortization periods for the volumetric surcharge from each previous take-or-pay filing into a single amortization period terminating March 31, 1996.

El Paso further states that the adjustments proposed by the filing are for adjustments to El Paso's Monthly Direct Charge and Throughput Surcharge. The Throughput Surcharge has increased $0.0005 per dth, from $0.0388 per dth to $0.0393 per dth.

Pursuant to § 21.6 of El Paso's Volume No. 1 Tariff, El Paso is required to file with the Commission certain information supporting the buyout and/or buydown amounts paid. Accordingly, El Paso states that it is submitting concurrently, under separate cover letter, the schedules reflecting such information for which El Paso has requested confidential treatment.

El Paso respectfully requested that the Commission accept the tendered tariff sheets to become effective August 1, 1992.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation and sales customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16398 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA92-1-24-000]**

## Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

July 8, 1992.

Take notice that on July 1, 1992, Equitrans, Inc. (Equitrans), pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's Regulations (18 CFR part 154) and section 19 of the General Terms and Conditions of Original Volume No. 1 of Equitrans' tariff, Equitrans filed its third Annual Purchased Gas Adjustment, containing the following tariff sheets to Original Volume No. 1 to:

Thirty-Seventh Revised Sheet No. 10
Twenty-Seventh Revised Sheet No. 34

Equitrans states that the changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is a decrease in the demand cost of $0.2872 per dekatherm (Dth) and an increase in the commodity cost of $0.4584 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is an increase of $0.1833 per Dth. The GIC demand surcharge for Rate Schedule PLS is $0.6741 per dth, and is designed to recover an estimated $5,390,930 in Texas Eastern Transmission Corporation (TETCO) GIC charges.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 and 385.214 of the Commission's Rules of Practices and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16519 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP91-187-000 and CP91-2448-000]

## Florida Gas Transmission Co.; Informal Settlement Conference

July 6, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on July 21, 1992, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in this proceeding which relate to cost of service, incentive rates, throughout and bidding procedures for interruptible capacity.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Warren C. Wood at (202) 208-2091 or Donald Williams at (202) 208-0743.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16514 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RS92-16-000]

## Florida Gas Transmission Co.; Prefiling Conference

July 8, 1992.

Take notice that a prefiling conference will be convened in this proceeding on July 21, 1992, at 1:30 p.m., continuing on July 22, 1992, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of this conference is to address the summary of proposal prepared by Florida Gas Transmission Company to comply with Order No. 636. The pipeline was to serve all parties in the proceeding with the summary by July 7, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information, contact Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16528 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. TQ92-11-4-000 and TM92-17-4-000]

## Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

July 7, 1992.

Take notice that on July 1, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Frieberg Parkway, Westborough, Massachusetts 01581-5309 tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates and tariff provisions for effectiveness on July 1, 1992:

First Revised Fifteenth Revised Sheet No. 21,
First Revised Sixth Revised Sheet No. 22,
Second Revised Sheet No. 125,
Second Revised Sheet No. 128.

According to Granite State, its filing is a revision in its projected gas costs for the third quarter of 1992 reflecting primarily the changes in its service from Tennessee Gas Pipeline Company (Tennessee) resulting from the approval of Tennessee's "cosmic" settlement in Docket Nos. RP86-119, RP88-228, *et al.* It is stated that under the provisions of the settlement, Granite State's firm contract demand for purchases from Tennessee under Rate Schedule CD-6 have been reduced from 86,103 Dth/d to 70,903 Dth/d and the difference in the daily CD entitlement is replaced by 15,200 Dth/d of storage service under Tennessee's Rate Schedule SS-NE.

Granite State further states that is currently effective purchased gas cost adjustment tariff mechanism will enable it to passthrough to its customers immediately the reduction in the Demand costs attributable to the reduced Rate Schedule CD-6 contract demand. However, Granite State states that it lacks the tariff mechanism to recover the newly incurred Demand costs for the Rate Schedule SS-NE storage service.

According to Granite State, it has pending an application for a temporary and permanent certificate of public convenience and necessity in Docket No. CP92-552-000 requesting authorization to make the Rate Schedule SS-NE service directly available to its jurisdictional customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities). Granite State states that in a concurrent filing of a Petition for Temporary Waiver of the Purchased Gas Cost Regulations it has requested permission to track the Rate Schedule SS-NE Demand costs on a current basis through its purchased gas accounts.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional sales services rendered to Bay State and Northern Utilities. Granite State further states that copies of its filing were served upon its customers and the regulatory commission's of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16399 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TM92-15-4-000]

## Granite State Gas Transmission, Inc.; Proposed Changes in Rates

July 7, 1992.

Take notice that on July 1, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581 filed Fifth Revised Sheet No. 24 in its FERC Gas Tariff, Second Revised Volume No. 1, proposing changes in rates for effectiveness on July 31, 1992.

According to Granite State, its filing is submitted to passthrough to its customers the take-or-pay buydown and buyout costs directly billed to Granite State by Tennessee Gas Pipeline Company (Tennessee).

Granite State states that on June 30, 1992, among other changes, Tennessee filed revised tariff sheets to recover additional transition costs in its compliance filing in Docket Nos. RP88–228, *et al.* According to Granite State, its tariff sheet reflects the changes in Tennessee's allocation of take-or-pay costs to Granite State and also complies with the requirements of the reallocation of costs to small customers pursuant to Order No. 528–A.

According to Granite State the proposed rate changes are applicable to its jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. and to a sale to a direct customer, Pease Air Force Base. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–16406 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP92–197–000]**

## Granite State Gas Transmission, Inc. Petition for Temporary Waiver of Purchased Gas Cost Regulations

July 7, 1992.

Take notice that on July 1, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581 filed a Petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure for a Temporary Waiver of §§ 154.301 through 154.310 of the Regulations relating to purchased gas cost adjustment procedures.

According to Granite State, a major source of its firm system supply underlying its firm natural gas sales to its jurisdictional customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) is purchased from Tennessee Gas Pipeline Company (Tennessee) under the latters Rate Schedule CD–6. It is stated that in its "cosmic" settlement in Docket Nos. RP86–119 and RP88–228, *et al.*, Tennessee offered customers constrained by Annual Quantity Limitations (AQL) under its CD sales contracts a one time election to reduce the MDQ under their CD contracts to the level of the average daily quantity under the AQL and to subscribe for storage service under its Rate Schedule SS–NE for a daily quantity for storage service equal to the reduction in the CD sales contracts.

Granite State made the election offered by Tennessee, it is stated, and under its existing purchased gas cost adjustment tariff provisions it has the tariff mechanism to reflect immediately the reduction in the Demand costs for the reduced level of its Rate Schedule CD–6 purchases from Tennessee. However, Granite State states that it is without a tariff mechanism to recover the newly incurred Demand costs for the Rate Schedule SS–NE service.

According to Granite State, it has pending in Docket No. CP92–552–000 an application for a temporary and permanent certificate of public convenience and necessity for authority to reduce its contract demand obligations for firm sales to Bay State and Northern Utilities proportional to the reduction in its purchases from Tennessee and to replace the reductions by entitlements to Tennessee's Rate Schedule SS–NE service.

Granite State further states that its Petition requests a temporary waiver of the purchased gas cost regulations to enable it to track the Demand costs for the Tennessee Rate Schedule SS–NE service as deferred gas costs in its purchased gas cost accounts until the Commission grants its application in Docket No. CP92–552–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–16401 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos. RP91–143–013 and RP92–159–000]**

## Great Lakes Gas Transmission Limited Partnership; Technical Conference

July 7, 1992.

In the Commission's order issued on May 28, 1992, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Tuesday, July 21, 1992, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–16413 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos. RP92–50–000 and CP90–405–000]**

## High Island Offshore System; Informal Settlement Conference

July 7, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on July 17, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1991).

For additional information, please contact Irene E. Szopo at (202) 208–1602, or Anja M. Clark at (202) 208–2034.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–16397 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TA92–1–15–000]**

## Mid Louisiana Gas Co. Compliance Filing

July 8, 1992.

Take notice that Mid Louisiana Gas Company ("Mid Louisiana") on July 2, 1992, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the Tariff Sheet and proposed effective date as set forth below:

*Superseding*

Ninety-Second, Revised Sheet No. 3a
Ninety-First Revised Sheet No. 3a
September 1, 1992.

Mid Louisiana states that the purpose of the filing of the Tariff Sheet is to project a current cost of gas for the quarterly period beginning September 1, 1992, in compliance with the Commission's Regulations issued in Order Nos. 483 and 483-A. Mid Louisiana also states that Ninety-Second Revised Sheet No. 3a is to reflect a decrease of $0.0889 in Mid Louisiana's current cost of gas, exclusive of surcharge. Additionally, Mid Louisiana is reflecting a new surcharge rate for the annual period beginning September 1, 1992.

Mid Louisiana states that copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with sections 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such petitions or protests should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–16520 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP92–73–001]**

## National Fuel Gas Supply Corp.; Filing To Place Into Effect Revised Tariff Sheets

July 8, 1992.

Take notice that on June 30, 1992, National Fuel Gas Supply Corporation ("National") submitted for filing pursuant to section 4(e) of the Natural Gas Act, as amended, § 154.67 of the Regulations of the Federal Energy Regulatory Commission ("Commission") thereunder, a motion to place the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, into effect as of July 1, 1992, subject to refund:

*Second Revised Volume No. 1*

Sub. First Revised Sheet No. 1
Sub. Second Revised Sheet No. 2
Sub. Nineteenth Revised Sheet No. 5
Sub. Fifth Revised Sheet No. 6
Sub. First Revised Sheet No. 11
Sub. First Revised Sheet No. 17
Sub. First Revised Sheet No. 23
Sub. First Revised Sheet No. 148
Sub. Original Sheet No. 149
Sub. Original Sheet No. 150
Sub. Original Sheet No. 151
Sub. Original Sheet No. 152

Through the motion, National also seeks to place into effect the following sheets to its FERC Gas Tariff, First Revised Volume No. 2, as of July 1, 1992, subject to refund:

*First Revised Volume No. 2*

Sub. Eighth Revised Sheet No. 281
Sub. Tenth Revised Sheet No. 302
Sub. Eighth Revised Sheet No. 321
Sub. Eighth Revised Sheet No. 341
Sub. Seventh Revised Sheet No. 538
Sub. Third Revised Sheet No. 640
Sub. Fifth Revised Sheet No. 690
Sub. Third Revised Sheet No. 796
Sub. First Revised Sheet No. 825
Sub. Fourth Revised Sheet No. 857
Sub. First Revised Sheet No. 880
Sub. First Revised Sheet No. 881
Sub. First Revised Sheet No. 914
Sub. First Revised Sheet No. 915
Sub. First Revised Sheet No. 935

In the alternative, National seeks to make effective the First Alt. Sub. Nineteenth Revised Sheet No. 5 if its conversion on Tennessee Gas Pipeline Company from sales to transportation is made effective on July 1, 1992. On the other hand, if the Tennessee conversion is not made effective on July 1, 1992, National seeks to make effective the Second Alt. Sub. Nineteenth Revised Sheet No. 5.

National states that copies of National's filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–16515 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RS92–21–000]**

## National Fuel Gas Supply Corp.; Revised Date for Prefiling Conference

July 7, 1992.

Take notice that the prefiling conference previously scheduled to be convened in this proceeding beginning on July 21, 1992, is now scheduled to begin on July 20, 1992, at 10 a.m., in Washington, DC at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state the new location.

The purpose of the conference is to address National Fuel Gas Supply Corporation's summary of its proposal to comply with Order No. 636. The pipeline expects to serve the summary on all parties in this proceeding by July 7, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information, interested parties may call Donald Williams at (202) 208–0743.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–16396 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TQ92–6–16–000]**

## National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

July 7 1992.

Take notice that on June 30, 1992, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1:

Sub. Nineteenth Revised Sheet No. 5

The revised tariff sheets and alternative tariff sheets, are proposed to become effective on July 1, 1992 and implements interim purchased gas cost adjustment based on projected purchased gas costs for the month of July 1992.

National states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16395 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RS92-8-000]**

## Northern Natural Gas Co., Conference

July 7, 1992.

Take notice that on July 30, 1992 and, if necessary, July 31, 1992, the Commission staff is convening a conference concerning Northern Natural Gas Company's proposed Order No. 636 compliance filing. At this conference, representatives of Northern Natural will explain to the Commission staff and the intervenors in this proceeding the proposed compliance filing to be filed with the Commission on or before October 1, 1992.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Hearing room # 1, Washington, DC. The conference will begin at 10 a.m. on July 30, 1992. Attendance at the conference does not confer party status. Those planning to attend should contact Jane Wilson at (402) 398-7088.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16415 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TM92-4-55-000]**

## Questar Pipeline Co.; Tariff Filing

July 7, 1992.

Take notice that Questar Pipeline Company (Questar) on July 1, 1992, tendered for filing and acceptance First Revised Sheet No. 19A to Original Volume No. 1 of its FERC Gas Tariff:

Questar requests an effective date of August 1, 1992, for the proposed tariff sheet and states that this filing has been served upon all interested parties and the Utah and Wyoming public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16394 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP92-202-000]**

## Tennessee Gas Pipeline Co.; Filing

July 8, 1992.

Take notice on July 6, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Fourth Revised Volume No. 1 of its FERC Gas Tariff to be effective on August 1, 1992:

First Revised Sheet No. 161
First Revised Sheet No. 172
First Revised Sheet No. 184

Tennessee states that this filing is being made to amend the fuel provisions contained in Rate Schedules IT, FT-A and FT-B, to provide Tennessee the authority to discount the fuel component under those rate schedules. Tennessee requests authority to discount the fuel percentage to zero percent; provided that Tennessee will not discount below actual fuel costs for a transaction. Tennessee states that this authority to discount fuel is necessary to enable Tennessee to effectively compete for certain transportation business. Tennessee requests that the Commission waive the 30-day notice requirement to permit the tariff sheets to become effective on August 1, 1992.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16527 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP92-200-000]**

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 8, 1992.

Take notice that on July 2, 1992, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets with a proposed effective date of August 1, 1992:

Seventh Revised Sheet No. 529
Seventh Revised Sheet Nos. 530-580

Texas Eastern states that Seventh Revised Sheet No. 529 adds a new section 38 to the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. The proposed section 38 is submitted to make the currently effective open access blanket certificate imbalance resolution procedures in Texas Eastern's Tariff applicable to all imbalances under any of Texas Eastern's rate schedules whether filed as part of Volume No. 1 or Volume No. 2. In addition to being applicable to all imbalances arising after the effective date of section 38, the proposed section 38 would also apply to any imbalance existing prior to the effective date thereof. Such existing imbalances shall be subject to the penalty provisions of

section 6 of Rate Schedule IT-1 if Texas Eastern and such shipper have not reached agreement in writing, within forty-five (45) days after the effective date of section 38 of the General Terms and Conditions, as to the manner in which such imbalances shall be resolved.

Texas Eastern states that the copies of the filing were served upon Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16518 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ92-5-17-000]**

**Texas Eastern Transmission Corp., Proposed Changes**

July 7, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 1, 1992 tendered for filing as part of its FERC Gas Tariff six copies of the tariff sheets listed on Appendix A to the filing.

Texas Eastern states that these tariff sheets are being filed pursuant to section 23, Purchased Gas Cost Adjustment, and section 26, Electric Power Cost (EPC) Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. This filing constitutes Texas Eastern's FERC Gas Tariff. This filing constitutes Texas Eastern's regular quarterly PGA filing to be effective August 1, 1992 pursuant to 18 CFR 154.308. Texas Eastern states that in compliance with § 154.308 (b)(2) of the Commission's Regulations, a report containing detailed computations for the derivation of the current adjustment to be applied to Texas Eastern's effective rates is enclosed in the format as prescribed by FERC Form No. 542-PGA (Revised) and FERC's Notice of Criteria for Accepting Electronic PGA Filings dated April 12, 1991.

Texas Eastern states that the PGA changes proposed in this filing include a Demand current adjustment of $(0.018)/dth and a Commodity current adjustment of $0.0566/dth based upon the change in Texas Eastern's projected cost of purchased gas from Texas Eastern's May 8, 1992 out-of-cycle PGA filing in Docket No. TQ-92-5-17.

Texas Eastern states that this filing also constitutes Texas Eastern's semiannual adjustment to reflect changes in electric power costs pursuant to section 26. These changes in rates for Sales and Transportation services are based upon the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning August 1, 1992 and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account as of April 30, 1992.

Texas Eastern states that on April 15, 1992 the Commission approved Texas Eastern's August 19, 1991 Stipulation and Agreement, as supplemented December 10, 1991, in Docket Nos. RP90-119-010 and RP91-119-006 which resolved cost of service issues in those dockets. As a result, Texas Eastern filed tariff sheets on June 15, 1992 reflecting the settlement rates as prescribed in Article II of such Stipulation and Agreement. The substitute tariff sheets in this filing listed on appendix A reflect Texas Eastern's settlement rates adjusted for the PGA change proposed herein and the EPC change as recalculated pursuant to the settlement to be effective August 1, 1992.

The proposed effective date of these revised tariff sheets is August 1, 1992.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16407 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TM92-15-29-000]**

**Transcontinental Gas Pipe Line Corp.**

July 7, 1992.

Take notice that on July 1, 1992 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing Third Revised Sheet No. 60 to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheet is proposed to be effective August 1, 1992.

Transco states that the purpose of the instant filing is to revise the Great Plains Volumetric Surcharge (GPS) effective August 1, 1992 pursuant to section 39 of the General Terms and Conditions of Transco's FERC Gas Trafiff. The revised GPS Surcharge included in the instant filing consists of two components—the Current GPS Surcharge calculated for the period August 1, 1992 through July 31, 1993 and the Great Plains Deferred Account Surcharge which is based on the balance in the deferred account plus accumulated interest at April 30, 1992.

Attached in appendix A to the filing are workpapers supporting the calculation of the revised GPS Surcharge of 2.03¢ per dt reflected on the tariff sheet included therein.

Transco states that copies of the instant filing are being mailed to its customers, State Commissions and other interested parties. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available

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for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16403 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP92-198-000]**

## Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 7, 1992.

Take notice that Transwestern Pipeline Company ("Transwestern") on July 1, 1992 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

**Effective August 1, 1992**

4th Revised Sheet No. 53

The above referenced tariff sheet is being filed by Transwestern to revise its tariff language to state that Transwestern will deliver gas at the Pacific Gas & Electric Company ("PG&E") Topock interconnect point in San Bernardino County, California with a minimum total heating value of 995 Btus per cubic foot as measured at that delivery point out of Transwestern's system. Transwestern states that it seeks to make this reviston in order that it may comply with the quality requirement of the downstream pipeline at that interconnect point.

Transwestern requests waiver of any Commission Regulations and its tariff provisions as may be required to allow the tariff sheet referenced above to become effective on August 1, 1992.

Transwestern states that copies of the filing were served on its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16404 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TA92-1-30-000]**

## Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

July 8, 1992.

Take notice that Trunkline Gas Company (Trunkline) on July 2, 1992, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Ninety-Fourth Revised Sheet No. 3-A

The proposed effective date of this revised tariff sheet is September 1, 1992.

Trunkline states that the revised tariff sheet reflects no change in the commodity rate. This includes:

(1) A 2.55¢ per Dt increase in the projected purchased gas cost component; and

(2) A (2.55¢) per Dt decrease in the surcharge to recover the Current Deferred Account Balance at April 30, 1992 and related carrying charges.

Trunkline states that this filing is made in accordance with § 154.305 (Annual PGA filing) of the Commission's Regulations and pursuant to section 18 (Purchased Gas Adjustment Clause) of Trunkline's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Trunkline's jurisdictional sales rates effective September 1, 1992.

Trunkline states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16521 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TQ92-3-82-000]**

## Viking Gas Transmission Co.; Tariff Filing Pursuant to Tariff Rate Adjustment Provision

July 7, 1992.

Take notice that on July 1, 1992, Viking Gas Transmission Company ("Viking") filed the following tariff sheet to Volume No. 1 of its FERC Gas Tariff:

Twentieth Revised Sheet No. 6

Viking states that it is filing Twentieth Revised Sheet No. 6 to reflect quarterly purchased gas cost adjustments to its sales rates for the period of August 1 through October 31, 1992. Viking requests that this tariff sheet be made effective August 1, 1992. Twentieth Revised Sheet No. 6 reflects a $3.0084 per dekatherm decrease in the gas component of Viking's sales rates, and a $1.42 per dekatherm decrease in the demand component of those rates.

Viking states that copies of this filing have been mailed to all of its affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16402 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TQ92-3-43-000, TM92-7-43-000]**

## Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 7, 1992.

Take notice that Williams Natural Gas Company (WNG) on July 1, 1992 tendered for filing Tenth Revised Sheet No. 6, Eleventh Revised Sheet No. 6A, and Tenth Revised Sheet No. 9 to its FERC Gas Tariff, First Revised Volume No. 1.



WNG states that pursuant to the Purchased Gas Adjustment in Article 18 of its FERC Gas Tariff, it proposes a net reduction of $.6587 per Dth as measured against its rates in Docket No. TA92-1-43 which became effective May 1, 1992 and decreases in transportation fuel rates and in gathering fuel rates resulting from a decrease in purchase gas costs to be effective August 1, 1992.

WNG states that copies of its filing were served on all jurisdictional customers and intereated state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16408 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

## FARM CREDIT ADMINISTRATION

## Final Order Barring Claims, Discharging and Releasing the Farm Credit Bank of Omaha as Receiver and Cancelling Articles of Incorporation of Valentine Production Credit Association; Correction

**AGENCY:** Farm Credit Administration.

**ACTION:** Correction.

**SUMMARY:** In the notice document published in the **Federal Register** beginning on page 27974 in the issue of Tuesday, June 23, 1992, make the following correction:

The sixth line of the introductory paragraph located in the third column inaccurately referred to the Intermediate Credit Bank of Spokane. This should be changed to the Intermediate Credit Bank of Omaha.

Dated: July 8, 1992.

**Curtis M. Anderson,**

*Secretary, Farm Credit Administration.*

[FR Doc. 92-16534 Filed 7-13-92; 8:45 am]

BILLING CODE 6705-01-M

## FEDERAL MARITIME COMMISSION

## Port of Portland et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224-200541-001.

*Title:* Port of Portland/Kawasaki Kisen Kaisha/Mitsui O.S.K./Hyundai Merchant Marine Terminal Agreement.

*Parties:*

The Port of Portland
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Hyundai Merchant Marine Co., Ltd

*Synopsis:* The subject modification extends the term of the parties' terminal use agreement through September 27, 1992.

*Agreement No.:* 217-011295-002.

*Title:* Star/Gearbulk Reciprocal Space Charter Agreement.

*Parties:*

Star Shipping A/S Gearbulk, Ltd.

*Synopsis:* The proposed amendment will expand the geographic scope of the Agreement to include all U.S. ports and points and all foreign ports and points. The amendment also adds a new provision to the Agreement Authority permitting the parties to coordinate vessel sailings and adopt operational procedures to rationalize their services.

Dated: July 8, 1992.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92-16442 Filed 7-13-92; 8:45 am]

BILLING CODE 6730-01-M

**[Docket No. 92-43]**

## Accord Craft Co., Ltd. v. Asia North America Eastbound Rate Agreement; Filing of Complaint and Assignment

Notice is given that a complaint filed by Accord Craft Co., Ltd. ("Complainant") against Asia North America Eastbound Rate Agreement ("Respondent") was served July 7, 1992. Complainant alleges that Respondent engaged in violations of sections 8(c) and 10(b)(1), (6)(A), (10), (11) and (12), of the Shipping Act of 1984 ("Act"), 46 U.S.C. app. 1707(c) and 1709(b)(1), (8)(A), (10), (11) and (12), by entering into an invalid service contract without any binding service commitment, by attempting to collect deadfreight penalties for an alleged failure to ship the minimum volume, and by establishing lower independent action tariff rates, with no deadfreight liability, for use by the shipping public, including Complainant's competitors.

This proceeding has been assigned to Administrative Law Judge Frederick M. Dolan, Jr. ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 7, 1993, and the final decision of the Commission shall be issued by November 5, 1993.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92-16437 Filed 7-13-92; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

**[Docket No. R-0768]**

## Withdrawal From Priced Definitive Securities Safekeeping Service

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** The Board requests comment on a proposal by the Federal Reserve

Banks to withdraw from the priced definitive securities safekeeping service by year-end 1993. This proposal would eliminate the safekeeping of definitive securities pledged to state and local governments, but would not affect the safekeeping of collateral pledged to the discount window, to the Treasury Department, or to Federal Government agencies. Secondary market purchase and sale of securities, which is currently included in the definitive securities service line, will continue to be offered but will no longer be included under this service line after 1993.

**DATES:** Comments must be submitted on or before September 14, 1992.

**ADDRESSES:** Comments, which should refer to Docket No. R-0768, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to the Board's Mail Room between 8:45 a.m. and 5 p.m. All comments received at the above address will be included in the public file and may be inspected at room B-1122 between 8:45 a.m. and 5:15 p.m.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Bennett, Assistant Director (202/452-3442), or Donna A. DeCorleto, Program Leader (202/452-3958), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The definitive securities service line consists of the definitive securities safekeeping service and the purchase and sale service. Definitive securities safekeeping consists of the storage of certain types of physical securities, such as registered and bearer municipal securities, mortgage certificates, and other commercial paper, that are ineligible for Federal Reserve Bank book-entry securities safekeeping.[1] The purchase and sale service consists of performing secondary market securities purchases and sales on behalf of depository institutions. All of the Reserve Banks, with the exception of the Federal Reserve Bank of San Francisco, offer the priced definitive securities safekeeping service and most Reserve Banks also offer the purchase and sale service.

From the inception of pricing in 1981, the long-term role of the Federal Reserve Banks in priced definitive securities safekeeping was uncertain because the industry was slowly moving its municipal securities, which represented the bulk of Reserve Bank priced vault holdings, to depositories to facilitate secondary market trading and settlement of these securities. (Similarly, the purchase and sale service was evolving from the purchase and sale of definitive and book-entry securities to primarily book-entry securities.) In 1982, Congress passed the Tax Equity and Fiscal Responsibility Act which, in effect, eliminated the Federal tax advantages for bearer municipal securities issued after July 1, 1983. This change essentially shifted the demand for new issues of municipal securities from bearer, definitive form to book-entry form; the Reserve Banks do not offer book-entry municipal securities safekeeping. As a result, as the municipal securities held in Reserve Bank vaults matured or were moved to depositories, they were not replaced by new definitive securities. Consequently, the volume of priced definitive securities safekeeping holdings steadily declined and per-deposit costs began to rise. Reserve Banks continued their on-going efforts to contain safekeeping costs, but a large portion of the cost associated with operating a securities vault is fixed. Eventually, high fixed costs and declining volume necessitated fee increases in order to achieve full-cost recovery. It is now apparent that further fee increases will only accelerate withdrawals.

Total Reserve Bank holdings in priced definitive securities safekeeping declined by 65 percent between 1987 and 1991. Through cost containment efforts, higher fees, and revenue generated by vault withdrawals, the Reserve Banks in total were able to achieve full-cost recovery for the definitive securities service line until 1991, when the recovery rate declined to 91 percent. The recovery rate for the definitive securities service line in 1992 is currently projected to be approximately 84 percent; gross revenue for 1992 is projected to be $3.3 million. The definitive securities safekeeping service is projected to comprise 81 percent of the service line's total 1992 costs, but only 77 percent of its total revenue.

Given the definitive securities safekeeping service's declining volume and its negative impact on the service line's recovery rate, the Reserve Banks evaluated several alternatives. One alternative considered was for the Reserve Banks to join a depository and offer depository access. This alternative would have enabled the Reserve Banks to achieve full-cost recovery and would have promoted securities immobilization at a depository. The Reserve Banks concluded that this alternative, however, did not meet two of the Board's criteria for establishing new services or major service enhancements. Specifically, offering depository access would not provide a clear public benefit, given the small market share of eligible definitive securities held by the Reserve Banks. In addition, depository access is widely available either directly or indirectly through depository participants. Therefore, this service enhancement would not meet the criterion that the enhancement be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity.

The Reserve Banks considered remaining in the definitive securities safekeeping service at less than full-cost recovery. Under this alternative, the Reserve Banks could avoid the expense of withdrawing and shipping securities back to the depositor or to a successor custodian. In addition, this service would continue to share costs that would otherwise have to be redistributed to other priced and non-priced services. However, further analysis revealed that withdrawal from the definitive securities safekeeping service would increase the total costs borne by other priced and non-priced services by no more than 0.03 percent. Also, the Reserve Banks did not believe that they could remain in this service at less than full-cost recovery, as provided in section 11A(c)(3) of the Federal Reserve Act (12 U.S.C. 248a), because they believed that the definitive securities safekeeping service is available nationwide from a range of alternate service providers.

A third alternative considered was to increase fees further to offset the revenue lost through declining volume. This alternative had been successful until 1991, when the Reserve Banks did not achieve full-cost recovery despite fee increases. The Reserve Banks' experience with this service in recent years, however, indicates that 1991 was the pivotal year for this service and that, in the future, further fee increases will not achieve full-cost recovery, but instead will accelerate the volume decline and increase the shortfall for this service.

The fourth alternative considered was to move the purchase and sale service, which now involves primarily book-entry securities trades, to a different

[1] A book-entry security is a certificate-less security represented by an accounting entry maintained electronically on the books of the security issuer or the issuer's agent.

service line and to withdraw from the definitive securities service line and absorb the cost of returning the securities held in priced safekeeping to the depositors or the depositors' designated agent. The Federal Reserve Banks surveyed institutions regarding the possible impact of withdrawal from priced definitive securities safekeeping and determined that withdrawal would be acceptable to the majority of service users. Consequently, the Reserve Banks requested that the Board approve their request to move the purchase and sale service to another service line and withdraw from the definitive securities service line.

In light of the Reserve Banks' request to withdraw from the definitive securities service line, the Board believed that a consistent methodology for reviewing Reserve Bank proposals to withdraw from a priced service line would help ensure that any public policy issues arising from such proposals would receive appropriate consideration. Therefore, the Board has requested comment on factors that it would consider in its evaluation of a Reserve Bank proposal to withdraw from a priced service line. (See Docket No. R-0767 elsewhere in today's Federal Register.)

Since the definitive securities safekeeping service comprises the large majority of the costs and revenue of the definitive securities service line, the Board has evaluated the Reserve Banks' proposed withdrawal from the definitive securities safekeeping service in the context of these proposed factors and, based on this analysis, believes that the Reserve Banks should be permitted to withdraw. The Board requests comment on the application of the proposed factors or other appropriate factors to this proposal to withdraw. The Board will consider the factors, as finally adopted, in its evaluation of whether to approve the Reserve Banks' proposal to withdraw from the definitive securities safekeeping service.

*Factor 1:* It is likely that other service providers would supply an adequate level of the same service (*i.e.*, access, price, and quality) in the relevant market(s) if the Federal Reserve withdraws from the service.

Yes. The Reserve Banks' survey of service users indicated that a range of alternate service providers exists, including depository institutions and securities depositories.

*Factor 2:* If other service providers are not likely to provide an adequate level of the same service in the relevant market(s), it is likely that users of the service could obtain other substitutable services that could reasonably meet their needs.

Since other service providers can reasonably be expected to provide an adequate supply of definitive safekeeping services in the event of the Reserve Banks' withdrawal, a substitutable service is not needed.

*Factor 3:* Withdrawal from the service would not have a material, adverse effect on the Federal Reserve's ability to provide an adequate level of other services.

Withdrawal from priced definitive securities safekeeping should have no material, adverse effect on the Reserve Banks' ability to provide an adequate level of other services. A large percentage of the costs of this service are fixed. These costs, plus the cost of moving the securities to other custodians, would have to be redistributed to other services, priced and non-priced, but the additional costs that would be borne by the other services as a result of withdrawal would increase the total costs for these other services by no more than 0.03 percent. Approximately 10 percent of the volume in the noncash collection service comes from securities held in Reserve Bank vaults. The Reserve Banks anticipate that any increase in unit cost in the noncash collection service resulting from a volume decline attributable to withdrawal from the definitive securities safekeeping service would be offset by cost savings associated with the interdistrict consolidation of the noncash collection service.

*Factor 4:* Withdrawal from the service would not have a material, adverse effect on the Federal Reserve's ability to discharge other responsibilities.

There are no material linkages between this service and any other Federal Reserve responsibilities except non-priced (i.e. collateral) safekeeping. If the priced definitive securities safekeeping service is eliminated, securities held in priced safekeeping would no longer be immediately available on Reserve Bank premises for pledge, but could still be pledged using a depository institution or depository as third-party custodian.

*Factor 5:* There are no public benefits of continued Federal Reserve provision of the service that outweigh the reasons for withdrawing from the service. As part of priced definitive securities safekeeping, the Federal Reserve Banks serve as custodian for collateral pledged to state and local governments; however, Federal Reserve Bank withdrawal from priced safekeeping would not leave state and local governments without alternative custodians for their collateral. Institutions surveyed by the Reserve Banks indicated that there are numerous alternate service providers available to them. Further, the Board believes that the public may benefit from the Reserve Banks' withdrawal through accelerated migration of securities to depositories.

As noted earlier in this notice, the revenue from the Reserve Banks' definitive securities safekeeping service no longer fully recovers the costs of providing this service. The Board anticipates that the cost-recovery for this service will continue to decline in the future. The Board believes that full-cost recovery in this service cannot be achieved in 1993, even assuming significant price increases. Moreover, the Board is concerned that significantly higher fees may hamper an orderly withdrawal from this service by encouraging depositors to demand immediate relocation of their safekeeping holdings. The Board also considered pricing the definitive securities safekeeping service to recover only its variable costs during the transition year, but concluded that this alternative also would hamper an orderly withdrawal by encouraging depositors to delay movement of their securities until the Reserve Banks ceased offering this service. For these reasons, the Board believes that definitive securities safekeeping fees should be maintained at current levels until withdrawal is completed.

The Board requests comment on the proposal by the Federal Reserve Banks to withdraw from the priced definitive securities safekeeping service by year-end 1993 and to absorb the cost of returning securities held in priced safekeeping to the depositors or the depositors' agent.

By order of the Board of Governors of the Federal Reserve System, July 8, 1992.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 92-16464 Filed 7-13-92; 8:45 am]

BILLING CODE 6210-01-F

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[Docket No. R-0767]

## Factors for Evaluating Reserve Bank Requests to Withdraw From a Priced Service Line

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** The Board requests comment on proposed factors that would be used by the Board as part of its analytical framework for evaluating Reserve Banks' requests to withdraw from a

priced Federal Reserve service line. These factors were developed to provide the Board with a consistent methodology for reviewing withdrawal proposals so that any public policy issues arising from such proposals receive appropriate consideration.

**DATES:** Comments must be submitted on or before September 14, 1992.

**ADDRESSES:** Comments, which should refer to Docket No. R-0767, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to the Board's Mail Room between 8:45 a.m. and 5 p.m. All comments received at the above address will be included in the public file and may be inspected at room B-1122 between 8:45 a.m. and 5:15 p.m.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Bennett, Assistant Director (202/452-3442), or Donna A. DeCorleto, Program Leader (202/452-3956), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The Monetary Control Act of 1980 requires that the Federal Reserve price the services it provides to depository institutions in order to recover the costs incurred in providing those services. The legislative history of the Act indicates that, inter alia, Congress sought to encourage competition in order to assure provision of these services at the lowest cost to society; consequently, Congress charged the Board with adopting pricing principles that "give due regard to competitive factors and the provision of an adequate level of services nationwide."

The Board subsequently adopted pricing principles that incorporate both the specific statutory requirements of the Act and provisions intended to fulfill its legislative intent. The principles require among other things that services be explicitly priced, that fees be based on all direct and indirect costs actually incurred in providing the services, and that fees be set so that revenues for major service line categories match costs. If, in the interest of providing an adequate level of services nationwide, the Board determines to authorize a below-cost fee schedule for a service, the pricing principles require that the Board announce its decision. Finally, the principles direct that service arrangements and fee schedules be responsive to the changing needs for services in particular markets.

The pricing principles established an important foundation for the conduct of priced services, but did not specifically address the issues that should be considered when a service no longer could comply with the principles. The Board has indicated that any withdrawal from a service line would have to be undertaken in an orderly way, giving due regard to the transition problems associated with the discontinuation of a service. The Board, however, previously has not identified specific factors to consider in evaluating whether to withdraw from a service line.

The question of withdrawal from a priced service line has recently arisen with respect to one of the paper-based securities services offered by the Federal Reserve. The Board believes that a consistent methodology for reviewing Reserve Bank proposals to withdraw from a priced service line is needed to ensure that any public policy issues arising from such proposals receive appropriate consideration. The Board is proposing to use the following factors in evaluating Reserve Bank proposals to withdraw from a priced service line.

1. It is likely that other service providers would supply an adequate level of the same service (*i.e.*, access, price, and quality) in the relevant market(s) if the Federal Reserve withdraws from the service.

As noted above, Congress, in requiring that the Federal Reserve price its services, was attempting to encourage competition, provision of services at the lowest cost to society, and nationwide availability of an adequate level of service. This factor considers whether other service providers are likely to supply an adequate level of the same service in terms of access, price, and quality. Restricted access, prices significantly higher than Reserve Bank full-cost-based fees, or material degradation in the quality of service would weigh in favor of the Reserve Banks continuing to provide the service. A relevant market would be the region that is accessible to the depository institution using the service at a cost and within a time frame that is reasonable for the service involved.

2. If other service providers are not likely to provide an adequate level of the same service in the relevant market(s), it is likely that users of the service could obtain other substitutable services that could reasonably meet their needs.

A substitutable service would be an alternative service that would achieve the same or a comparable outcome for the service user at a cost commensurate with that service. For example, providing access to a securities depository could be considered a substitutable service to providing definitive securities safekeeping on premises. The existence of adequate substitutable services would weigh in favor of Reserve Banks withdrawing from the service even if adequate levels of the service were not available from alternate sources.

3. Withdrawal from the service would not have a material, adverse effect on the Federal Reserve's ability to provide an adequate level of other services.

A material, adverse effect would be any consequence of withdrawal that would seriously impede or undermine the Federal Reserve's ability to provide an adequate level of other services. For example, if withdrawal from one service caused a shift of large overhead costs to another service, it could necessitate a fee increase large enough to adversely affect provision of that other service. These circumstances would weigh in favor of the Reserve Banks continuing to provide the service.

4. Withdrawal from the service would not have a material, adverse effect on the Federal Reserve's ability to discharge other responsibilities.

A material, adverse effect would be any consequence of withdrawal that would seriously impede or undermine the Federal Reserve's ability to discharge its other responsibilities as central bank or fiscal agent of the United States. For example, if Federal Reserve withdrawal from a payment service would seriously jeopardize its ability to carry out its fiscal agency responsibilities, this circumstance would weigh in favor of the Reserve Banks continuing to provide the service.

5. There are no public benefits of continued Federal Reserve provision of the service that outweigh the reasons for withdrawing from the service.

The Board would consider whether there was any other public benefit, not addressed under the previous factors, that could be achieved through continued provision of the service. If any could be identified, the Board would consider whether the public benefit outweighed the withdrawal benefits.

In conclusion, all of these factors would serve as part of the analytical framework that the Board would consider when evaluating a proposal by a Federal Reserve Bank to withdraw from a priced service line. The Board would request comment the first time a

Federal Reserve Bank or Banks proposed withdrawing from any Federal Reserve priced service line. In addition, the Board would provide at least a 60-day transition period following approval of a request to withdraw from a priced service line to enable users and other providers of the service a reasonable period of time to prepare for the change. If the Board determined that withdrawal from a service line was inappropriate, the Board's pricing principles, including the principles applicable to cost recovery, would continue to apply to the service. The Board has applied these proposed factors in its request for comment on the proposal to withdraw from priced definitive securities safekeeping, which is also being issued today (see Docket No. R-0768 elsewhere in today's **Federal Register**).

The Board requests comments on the proposed factors that would be used by the Board as part of its analytical framework for evaluating Reserve Banks' requests to withdraw from a priced service line.

By order of the Board of Governors of the Federal Reserve System, July 8, 1992.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 92-16463 Filed 7-13-92; 8:45 am]

BILLING CODE 6210-01-F

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## Skandinaviska Enskilda Banken; Application to Engage in Nonbanking Activities

Skandinaviska Enskilda Banken, Stockholm, Sweden (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through its wholly owned subsidiary, Enskilda Securities Inc., New York, New York (Company), in the following activities: acting as agent for foreign issuers in the private placement of all types of securities, including providing related advisory services; and buying and selling in secondary market trading all types of securities on the order of investors as a "riskless principal".

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously approved the proposed private placement and riskless principal activities, and Applicant has stated that it will conduct these activities using the same methods and procedures and subject to the prudential limitations established by the Board in its previous orders. *See J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990); and *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989).

Applicant states that the proposed activities will benefit the public by promoting competition. Applicant also believes that approval of this application will allow Company to provide a wider range of services and added convenience to its customers, and to offer its customers securities not otherwise available for purchase in the United States. Applicant believes that the proposed activities will not result in any unsound banking practices in light of the prudential limitations subject to which Applicant will conduct the activities. Applicant also believes that any potential adverse effects are adequately addressed by the disclosure and anti-fraud provisions of federal and state securities laws, the NASD Rules of Fair Practice, state and federal fiduciary requirements, the anti-tying provisions of banking and antitrust laws, the Employee Retirement Income Security Act, and sections 23A and 23B of the Federal Reserve Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 10, 1992. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, July 8, 1992.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 92-16462 Filed 7-13-92; 8:45 am]

BILLING CODE 6210-01-F

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## FEDERAL TRADE COMMISSION

## Hart-Scott-Rodino Antitrust Improvements Act of 1976 and Regulations Thereunder; Clarification to Statement Concerning Hart-Scott-Rodino Filing Fees

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** On November 21, 1989, President Bush signed into law the Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill for Fiscal 1990. Section 605 of the statute, as enacted, requires the payment of a filing fee of $20,000 by each person acquiring voting securities or assets who is required to file a premerger notification by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and regulations promulgated thereunder. The Federal Trade Commission ("Commission") issued a statement (54 FR 48726, November 24, 1989) to advise the public about the filing fee obligation. The Commission is issuing this clarification to that statement to alleviate some misunderstandings regarding when a filing fee will be required.

**EFFECTIVE DATE:** The filing fee requirement is effective as of November 29, 1989. This clarification is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** John M. Sipple, Jr., Assistant Director, Premerger Notification Office, Bureau of Competition (Sixth Street and Pennsylvania Avenue NW., room 303), Federal Trade Commission, Washington, DC 20580, 202-326-2862.

**SUPPLEMENTARY INFORMATION:**

### Clarification to the Statement of the Federal Trade Commission on Hart-Scott-Rodino Filing Fees Issued November 21, 1989.

It has come to the attention of the Federal Trade Commission ("Commission") that some filing persons have misinterpreted the language in the November 21, 1989 Statement of the Federal Trade Commission on Hart-Scott-Rodino Filing Fees concerning the refund of filing fees. That language, set our in paragraph II(G) of the Commission's statement, reads as following:

"(G) Except as provided in this paragraph, no filing fee received by the Commission will be returned to the payor and no part of the filing fee shall be refunded. However, if it is determined that premerger notification was not required by the Act and Rules, the filing fee shall be returned."

The Commission issues this clarification to alleviate any misunderstanding regarding when a filing fee will be refunded.

As provided in the Commission's November 21, 1989 statement, the filing fee shall be refunded only if "it is determined that premerger notification was not required by the Act and Rules." That determination will be made by the Commission's Premerger Notification Office at the time notification is filed based on the information and representations contained in the filing persons' Notification and Report Forms.

If the Commission's staff determines, based on the persons' filings, that notification was not required it will notify the parties and refunded the filing fee. However, once the filings are complete, and the Commission's staff has determined that premerger notification was required, the filing fee shall not be refunded, even if the filing persons and/or the transaction do not meet the reporting thresholds at the time of consummation.

If the Commission's staff determines, based on the persons' filings, that premerger notification was not required, but the filing persons represent that premerger notification will be required at the time of consummation, premerger notification will be determined to be required and no part of the filing fee shall be refunded.

By direction of the Commission.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 92-16475 Filed 7-13-92; 8:45 am]

BILLING CODE 6750-01-M

## Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waitng period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 060892 AND 061992

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| John B. Sanfilippo & Son, Inc., John C. Taylor, Sunshine Nut Company, Inc. | 92-1012 | 06/09/92 |
| Willamette Industries, Inc., Boise Cascade Corporation, Boise Cascade Corporation | 92-1026 | 06/09/92 |
| The News Corporation Limited, News Corporation, American Entertainment Partners, I, L.P. | 92-1057 | 06/09/92 |
| C. Itoh & Co., Ltd., Sequa Corporation, Sequa Capital Corporation | 92-1060 | 06/09/92 |
| Granite Construction Incorporated, Tarmac PLC, Tarmac California Holdings, Inc. | 92-0996 | 06/10/92 |
| North American National Corporation, Howard Life Insurance Company, Howard Life Insurance Company | 92-1015 | 06/12/92 |
| General Electric Company, Marmon Holdings, Inc., Data Preference, Inc | 92-1024 | 06/12/92 |
| Tejas Power Corporation, Transco Energy Company, Transco Offshore Gathering Company, et al. | 92-1033 | 06/12/92 |
| Alco Standard Corporation, Richard L. Davis, Devico, Inc. | 92-1052 | 06/12/92 |
| The 1818 Fund, L.P., Nuevo Energy Company, Nuevo Energy Company | 92-1062 | 06/12/92 |
| Hanson PLC, American Electric Power Company, Inc., Southern Ohio Coal Company | 92-1071 | 06/12/92 |
| Kmart Corporation, Pacific Enterprises, Auburn Distribution Company and Pay'n Save Realty Corp | 92-1077 | 06/12/92 |
| General Electric Company, Marmon Holdings, Inc., Leasametric, Inc. | 92-1083 | 06/12/92 |
| The Leslie Fay Companies, Inc., Sandra E. Chilewich, Moskal & Chilewich, Inc | 92-1086 | 06/12/92 |
| The Leslie Fay Companies, Inc., Kathleen A. Moskal, Moskal & Chilewich, Inc | 92-1087 | 06/12/92 |
| United Asset Management Corporation, Hans Guenther Abromeit and Anna Alexandra Abromeit, Lehndorff U.S. Equities, Inc. | 92-1043 | 06/15/92 |
| United Asset Management Corporation, Johan Adam von Haeften, Lehndorff U.S. Equities, Inc | 92-1044 | 06/15/92 |
| Idemitsu Kosan Co., Ltd., John J. Moller, Isla Petroleum Corporation, Gasolinas de Puerto Rico | 92-1055 | 06/15/92 |
| Thomas B. Crowley, First Chicago Corporation, FNBC Leasing Corporation | 92-1084 | 06/16/92 |
| Columbia Hospital Corporation, Basic American Medical, Inc., Basic American Medical, Inc | 92-1093 | 06/16/92 |
| Franklin L. Jackson, Columbia Hospital Corporation, Columbia Hospital Corporation | 92-1094 | 06/16/92 |
| Ethan Jackson, Columbia Hospital Corporation, Columbia Hospital Corporation | 92-1095 | 06/16/92 |
| Barnes Hospital, The Washington University, The Washington University School of Medicine | 92-1003 | 06/17/92 |
| Time Warner, Inc., Lynx Oilfield Supply, Inc., Lynx Oilfield Supply, Inc | 92-1081 | 06/17/92 |
| Information Partners Capital Fund, L.P., Citicorp, I/B/E/S, Inc | 92-1091 | 06/17/92 |
| Harry B. Mathews, Jr. R/T, dated April 16, 1985, Scottish Heritable, Inc., Virginia Lime Company | 92-1018 | 06/18/92 |
| William Herbert Hunt Trust Estate, Chevron Corporation, Warren Petroleum Company | 92-1090 | 06/18/92 |
| Roger D. O'Shaughnessy, Clarity Holdings Corp., AFG-18, Inc | 92-1076 | 06/19/92 |
| Tultex Corporation, Universal Industries, Inc., Universal Industries, Inc. | 92-1101 | 06/19/92 |
| Telephone and Data Systems, Inc. Voting Trust, Roland G. and Bette B. Nehring, Arizona Telephone Company | 92-1103 | 06/19/92 |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 92–16474 Filed 7–13–92; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WO–323–09–4211–02]

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0009), Washington, DC 20503, telephone number 202–395–7340.

*Title:* Land Use Application and Permit.

*OMB Approval Number:* (1004–0009).

*Abstract:* The regulations at 43 CFR part 2920 provide for non-Federal use of bureau administered land via lease or permit. Uses include agriculture, trade or manufacturing concerns and business uses such as outdoor recreation concession. BLM will determine the validity of uses proposed by private individuals and other qualified proponents form information provided by the proponent on the Land Use Application and permit form.

*Bureau Form Number:* 2920–1.

*Frequency:* Once.

*Description of Respondents:* Individuals, State and local government entities, and other qualified proponents applying for use of Bureau administered land via lease or permit.

*Estimated Completion Time:* 7.43 hours.

*Annual Responses:* 435.

Annual Burden Hours: 3,230.

*Bureau Clearance Officer:* (Alternate) Gerri Jenkins, 202–653–6105.

Dated: April 21, 1992.

**H. James Fox,**

*Acting Assistant Director, Land and Renewable Resources.*

[FR Doc. 92–16427 Filed 7–13–92; 8:45 am]

BILLING CODE 4310–84–M

[AK–964–4230–15; F–32014]

### Alaska Native Claims Selection; Notice

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

In accordance with Departmental regulation 43CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to NANA Regional Corporation, Inc. for approximately 6,400 acres. The lands involved are in the vicinity of Kotzebue, Alaska, within T. 16 N., R. 18 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Arctic Sounder. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 13, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**Carolyn A. Bailey,**

*Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.*

[FR Doc. 92–16471 Filed 7–13–92; 8:45 am]

BILLING CODE 4310–JA–M

[UT–040–02–5101–09–XJAC]

### Intent to Prepare an Environmental Impact Statement on the Proposed Warm Springs Project, Iron and Kane Counties, Utah; and Clark County, Nevada

**AGENCIES:** Bureau of Land Management and Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement and the announcement of (i) a scoping period during which written comments will be accepted, (ii) six public scoping meetings during which oral statements will be accepted, and (iii) a public tour of the proposed mine site.

**SUMMARY:** Notice is hereby given that the Bureau of Land Management (BLM) and the Office of the Surface Mining Reclamation and Enforcement (OSM) intend to jointly prepare an environmental impact statement (EIS) on the proposed Warm Springs Project, including the proposed Smoky Hollow underground coal mine and its facilities, and two proposed coal-loadout facilities. Andalex Resources, Inc. (Andalex) has submitted a proposal to BLM's Cedar City District Office and OSM's Western Support Center, to develop and operate their proposed underground coal mine and the associated coal-loadout facilities. The proposed Smoky Hollow Mine would be located on a block of Federal and State coal leases in eastern Kane County, Utah. The proposed coal-loadout facilities would be located on public lands near Moapa, Nevada and Cedar City, Utah. The EIS will be prepared to assist BLM and OSM in making decisions on the various applications for right-of-way grants and on the approval of a mining plan, all necessary to complete the Warm Springs Project.

**DATES:** *Comment Period:* Written comments regarding the scope of the EIS analysis will be accepted through September 14, 1992 at either of the two locations listed below, under "**ADDRESSES**".

*Public Meetings:* The agencies will hold six public meetings for the receipt of oral statements regarding the scope of the EIS analysis. The first meeting will be held on August 17, 1992 at the City of Page Council Chambers, 697 Vista Avenue in Page, Arizona. Successive meetings will be held on August 18, 1992 at the Shilo Inn, Willows Room, 296 West 100 North in Kanab, Utah; August 19, 1992 at the Hurricane Senior Citizens Center, 95 North 300 West, in Hurricane, Utah; August 24, 1992 at the little

America Hotel, Wyoming Room, 500 South Main Street in Salt Lake City, Utah; August 25, 1992 at the Holiday Inn, Juniper #3 Conference room in Cedar City, Utah. The final public meeting will be held on August 26, 1992 at the Moapa Community Center, Highway 168 in Moapa, Nevada. All public meetings will begin at 7 p.m., local time.

*Public Tour of the Mine Site:* The agencies will lead a public tour of the proposed facilities area for the Smoky Hollow mine from 9 a.m. to 1 p.m. on August 18, 1992. Interested participants should meet at the Lake Powell Village gas station/convenience store in Big Water, Utah at 9 a.m. for a short introduction and overview. Agency representatives will lead a vehicle caravan to the proposed facilities area. Participants will be responsible for their own transportation and other arrangements: Four-wheel drive vehicles, clothing appropriate for the terrain and the weather, and lunch are recommended.

**ADDRESSES:** Written comments regarding the scope of the EIS analysis should be mailed or hand-delivered to either: (i) Gordon R. Staker, Cedar City District Manager, c/o Kanab Resource Area, Bureau of Land Management, 318 North 100 East, Kanab, Utah 84741, (Attention: Michael Noel); or (ii) Peter A. Rutledge, Chief, Federal Programs Division, Office of Surface Mining Reclamation and Enforcement, Western Support Center, Brooks Towers, Second Floor, 1020–15th Street, Denver, Colorado 80202, (Attention: Floyd McMullen).

**FOR FURTHER INFORMATION CONTACT:** Michael Noel, BLM, EIS Project Manager (telephone: 801–644–2672); or, Floyd McMullen, OSM, EIS Project Manager (telephone: 303–844–3104) at the Kanab, Utah and Denver, Colorado locations given under "**ADDRESSES**".

**SUPPLEMENTARY INFORMATION:** Andalex's proposed Smoky Hollow Mine would be a new underground coal mine located in eastern Kane County, approximately 10 miles northeast of Big Water, Utah. Andalex proposes to recover 75.0 million tons of coal from the mine over a 30-year period at an average rate of approximately 2.5 million tons per year, primarily using longwall methods. Throughout the life of the proposed mine, the coal would be hauled via contractor-supplied trucks over county and State roads to new unit-train loadout facilities that would be constructed along existing rail lines near Moapa, Nevada and Cedar City Utah. Once loaded on the rail, the coal would be delivered to developing markets in the southwest U.S. and Pacific Rim export destinations. Overall, the Warm Springs Project is expected to employ 370 people: 150 people associated with coal mining operations, and 220 people associated with truck haul operations.

Andalex expects the Smoky Hollow mine to eventually cover 9,776 acres of land in secs. 11 through 15, 23 through 25, and 36, T. 41 S., R. 3 E., and secs. 9, 16 through 21, and 29 through 32, T. 41 S., R. 4 E., all in the Salt Lake Principal Meridian. Approximately 43 of these acres, located in sec. 19, (T. 41 S., R. 4 E.), would be surfaced disturbed by mine-support facilities, including a coal stockpile, equipment and operation buildings, coal-processing and loadout facilities, sediment ponds, and subsoil/topsoil stockpiles. Another 6,160 of these acres could experience the surface effects of subsidence caused by the underground mining activities. The Andalex proposal to have a 69-KV powerline constructed from the Big Water substation to the mine would disturb an additional 34 acres outside the proposed 9,776-acre life-of-mine area.

Unit-train loading facilities would be constructed at two locations: (i) Adjacent to the Union Pacific Railroad right-of-way, southwest of Moapa, Nevada (secs. 17 and 18, T. 15 S., R. 65 E., Mount Diablo Principle Meridian); and, (ii) adjacent to the Union Pacific Railroad right-of-way, near Iron Springs, west of Cedar City, Utah (sec. 19, T. 35 S., R. 12 W., Salt Lake Principle Meridian). Each of the loadout facilities would be capable of handling the entire 2.5 million tons of annual production from the mine, but delivery could be split between loadouts, depending on market fluctuations and delivery schedules. Proposed construction and operation activities could disturb as much as 150 acres at the Moapa facility and 60 acres at the Cedar City facility. Each loadout facility would consist of a drive-over truck dump, a system of overland conveyors, a stockpile capable of storing at least 100,000 tons of coal, equipment and operation buildings, sediment ponds, and subsoil/topsoil stockpiles.

The EIS will analyze the probable impacts that would result should BLM and OSM approve the applications for, and Andalex subsequently develop, the proposed Warm Springs Project. The EIS will also analyze the probable cumulative impacts that would result from regional mining and transportation activities, not only at the proposed Smoky Hollow Mine, but also at other existing and proposed operations in its vicinity in southern Utah, northern Arizona, and southeastern Nevada. The major alternative actions BLM and OSM have thus far identified for consideration in the EIS include: (i) approval of the applicant's proposal, the pertinent right-of-way grants, and the mining plan, with such conditions, if any, necessary to assure compliance with requirements of the Federal Land Policy and Management Act of 1976, the Mineral Leasing Act of 1920, the Surface Mining Control and Reclamation Act of 1977, and other applicable State and Federal laws; (ii) disapproval of the applicant's proposal; and (iii) no action. The EIS will also evaluate other alternative actions that BLM and OSM may develop on the basis of comments they receive during the scoping process.

BLM and OSM are requesting that any interested party submit written comments, and/or attend the public meetings to submit oral statements, regarding the scope of the EIS analysis. Comments/statements received by BLM and OSM will assist those agencies in gathering information and in defining the scope of issues and concerns to be evaluated in the EIS.

Dated: July 2, 1992.

**Gordon R. Staker,**

*District Manager.*

**Acreage Information for Federal Register Notice—Warm Springs Project EIS—Notice of Intent**

*Total Project "Permitted" Acreage*

+ 9,776-acre life-of-mine "permitted" area
+ 829-acre other project "permitted" acreage

= 10,605 acres (approximate)

*Life-of-Mine "Permitted" Acreage*

+ 6,160-acre subsidence area (incl 45 deg angle-of-draw)
+ 3,616-acre buffer area

= 9,776 acres (approximate)

*Other Project "Permitted" Acreage*

+ 169-acre 69 KV powerline (14 mi x 100 ft, approx.)
+ 540-acre loadout at Moapa, NV
+ 120-acre loadout at Cedar City, UT

= 829 acres (approximate)

*Life-of-Mine Disturbance Acreage*

+ 43-acre facilities area
+ 6,160-acre (approx.) subsidence area

= 6,203 acres (approximate)

*Total Project Disturbance Acreage*

+ 43-acre facilities area
+ 6,160-acre (approx.) subsidence area
+ 34-acre 69 KV powerline dist. (14 mi x 20 ft, approx.)

+ 150-acre (approx.) loadout disturb. at Moapa, NV
+ 60-acre (approx.) loadout disturb. at Cedar City, UT.

= 6,447 acres (approximate)

[FR Doc. 92-16428 Filed 7-13-92; 8:45 am]
BILLING CODE 4310-DQ-M

[WY-060-91-4410-08]

## Availability of the Record of Decision for the Management Plan Nebraska Resource

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of the record of decision for the Nebraska Resource Management Plan Environmental Impact Statement (RMP EIS) and the approved Nebraska Resource Management Plan (RMP).

**SUMMARY:** The Bureau of Land Management (BLM) has completed the Record of Decision for the Nebraska RMP EIS and the approved Nebraska RMP. The decision and the RMP were signed on May 13, 1992, by the Wyoming BLM State Director and were distributed to the public on May 5, 1992. The Nebraska RMP will guide the management of the BLM administered public lands in the State of Nebraska. The term "public lands" means Federally-owned land surface and Federally owned minerals administered by the BLM.

The Nebraska RMP identifies the land and resource uses, management goals and constraints, and general management practices needed to manage the BLM administered public lands in Nebraska. It also contains off-road vehicle (ORV) designations for all BLM administered public land surface.

**SUPPLEMENTARY INFORMATION:** The BLM Newcastle Resource Area has the responsibility of managing all BLM administered public lands in Nebraska. BLM administered public land surface in Nebraska (about 6,700 acres) consists of 168 small and isolated tracts of land scattered through 30 of the 93 counties in the State. The parcels range in size from less than one acre to 240 acres. The majority of this public land surface is located in the western part of the State.

Some of the BLM administered Federal minerals in the State lie beneath the BLM administered public land surface. However, most of the BLM administered Federal mineral estate lies beneath land surface in private ownership or that is owned by the State of Nebraska (about 240,000 acres), or beneath Federally owned land surface that is managed by other Federal agencies.

The Nebraska RMP addresses the BLM administered public land surface, the BLM administered Federal mineral estate lying under the public land surface, and the BLM administered Federal mineral estate lying under non-Federally owned lands. The RMP does not address the Federal mineral estate under those Federal lands administered by other Federal agencies (about 260,000 acres) or under those lands withdrawn from BLM administration for purposes of other agencies (about 61,000 acres)—in these areas, the plans of those other agencies guide the management and administration of the Federal mineral estate.

**ADDRESSES:** Copies of the Nebraska RMP EIS Record of Decision and the Nebraska RMP are available from the BLM Newcastle Resource Area Office, at 1101 Washington Blvd., Newcastle, Wyoming 82701, or the BLM Casper District Office, at 1701 East E Street, Casper, Wyoming 82601.

**FOR FURTHER INFORMATION CONTACT:** Floyd Ewing, Newcastle Area Manager, or Gary Lebsack, RMP Team Leader, at the Newcastle office address or telephone (307) 746-4453.

Dated: July 2, 1992.

Gordon Schaffer,
*State Director.*

[FR Doc. 92-16472 Filed 7-13-92; 8:45 am]
BILLING CODE 4310-22-M

## National Park Service

## Mississippi National River and Recreation Area

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement for the Comprehensive Management Plan, Mississippi National River and Recreation Area, Minnesota.

**SUMMARY:** The National Park Service, in cooperation with the Mississippi River Coordinating Commission and other agencies, jurisdictions, organizations, and individuals in the St. Paul/Minneapolis metropolitan area and the state of Minnesota, will prepare a Comprehensive Management Plan (CMP) and an Environmental Impact Statement (EIS) for the Mississippi National River and Recreation Area (MNRRA), Minnesota, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 and Public Law 100-696.

Congress established the 72-mile segment of the Mississippi River and a 4-mile segment of the Mississippi River in the Twin Cities area in 1988 "* * * to protect, preserve, and enhance the significant values of the waters and land of the Mississippi River Corridor * * * encourage adequate coordination of all governmental programs affecting the land and water resources * * * and provide a management framework to assist the State of Minnesota and its units of local government in the development and implementation of integrated resource management programs for the Mississippi River Corridor in order to assure orderly public and private development in the area * * *" The 1988 legislation also established the Mississippi River Coordinating Commission to serve as a planning advisor to the Secretary of the Interior.

The CMP for MNRRA will address preservation, protection, and enhancement of recreational, natural, cultural, commercial, industrial, and residential values within the area. The plan will contain a description of the important resources of the corridor and provide general guidance on coordinating and managing future land and water use in the area. The comprehensive plan will incorporate and build on existing established policies and will not replace the need for individual communities to prepare and update area plans for their portion of the river corridor. The CMP will be a catalyst for initiating more detailed planning, necessary research, and implementation actions, and it will be a benchmark for assessing the appropriateness of other plans and specific proposals for the corridor.

Major issues/needs include the general management philosophy for the corridor, type of management to best implement the plan, use conflicts, barge fleeting, visual quality, bluffs, shorelines, vegetation, cultural resources, water quality, loss and fragmentation of habitat, amount and type of open space, economic development, and interpretation. The CMP/EIS will examine a full range of alternatives for resolving these issues, including a no action alternative.

The CMP/EIS will be prepared by the National Park Service with support and

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assistance from an interagency and interdisciplinary team composed of the coordinating commission and representatives from the State of Minnesota, the cities of St. Paul/Minneapolis and other communities within the MNRRA corridor.

The National Park Service has been working for about 2 years collecting data and working with Federal, State, and local agencies to scope the needs for the plan. Activities have included 10 commission meetings, several meetings with 5 work groups having a total of about 180 members, a series of meetings with cities and counties in the corridor, and many informal meetings with local interests. Newsletters have been published requesting input on a list of visions for the area and a set of preliminary alternative concepts and management options. With the extensive public involvement activities in the pre-EIS planning phases, no special meetings or publications are planned for the NEPA scoping process. However, this notice is being published in the **Federal Register** and sent to the project mailing list. A newsletter is planned for fall 1992 to identify a preferred alternative (preliminary proposed action). Meetings will be held when the draft CMP/EIS is published in the spring of 1993.

As part of the scoping process, the public is encouraged to send written comments and suggestions concerning preparation of the CMP/EIS, by September 30, 1992, to: Superintendent, Mississippi National River and Recreation Area, 175 East 5th Street, Suite 418, Box 41, St. Paul, Minnesota 55101.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Mississippi National River and Recreation Area, at the above address or at telephone number (612) 290–4160.

Dated: June 30, 1992.

**Don H. Castleberry,**

*Regional Director, Midwest Region.*

[FR Doc. 92–16027 Filed 7–13–92; 8:45 am]

BILLING CODE 4310–70–M

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 1, 1992. Pursuant to § 60.13 of 36 CFR part 60 writter comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 29, 1992.

**Beth L. Savage,**

*Chief of Registration, National Register.*

**CALIFORNIA**

**Los Angeles County**

Ralphs Grocery Store,
1142—54 Westwood Blvd., Los Angeles, 92000969

**Sacramento County**

Sacramento City Library, 828 I St., Sacramento, 92000967

**San Diego County**

Haines, Alfred, House, 2470 E St., San Diego, 92000966

**San Mateo County**

De Sabla, Eugene J., Jr., Teahouse and Tea Garden, 70 De Sabla Ave., San Mateo, 92000965

**Ohio**

**Geauga County**

Fox—Pope Farm, 17767 Rapids Rd., Welshfield vicinity, 92000971

**Medina County**

Paleo Crossing Site, Address Restricted. Sharon Center vicinity, 92000972

**Montgomery County**

Krug House, 3473 Sweet Potato Ridge Rd., Union vicinity, 92000973

**SOUTH CAROLINA**

**Aiken County**

Lookaway Hall, 103 W. Forest Ave., North Augusta, 92000962

**Chester County**

Colvin—Fant—Durham Farm Complex, SC 22 E side, approx. 1 mi. W of jct. with SC 16. Chester vicinity, 92000961

**Newberry County**

Folk—Holloway House, Jct. of Holloway [Columbia Hwy. or Co. Rt. 107] and Folk Sts., Pomaria, , 92000963

**TENNESSEE**

**Sumner County**

Bledsoe's Station, Address Restricted. Castalian Springs vicinity, 92000970

**VERMONT**

**Bennington County**

Squire, Frederick, House, 185 North St., Bennington, 92000964

[FR Doc. 92–16391 Filed 7–13–92; 8:45 am]

BILLING CODE 4310–70–M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 32088]**

### Kansas City Southern Railway Co.—Corporate Family Transaction Exemption—Louisiana & Arkansas Railway Co., et al.

The Kansas City Southern Railway Company (KCS) and its wholly owned subsidiaries—Louisiana & Arkansas Railway Company (L&A ), Fort Smith and Van Buren Railway Company (FS&VB), The Arkansas Western Railway Company (A&W), The Kansas and Missouri Railway and Terminal Company (K&M), and The Maywood and Sugar Creek Railway Company (Maywood), filed a notice of exemption to merge each and all of KCS's subsidiary corporations into KCS, with KCS as the surviving corporation. Under the agreement and merger, KCS will assume all rights, obligations and business functions of its subsidiaries. The merger can be consummated on or after July 6, 1992.[1]

Because KCS and its wholly owned subsidiaries are members of the same corporate family and the merger will not result in adverse changes in service levels, significant operational changes, or a change in competitive balance with carriers operating outside the corporate family, the transaction qualifies for the class exemption at 49 CFR 1180.29(d)(3).

To ensure that all employees who may be affected by the transaction are given the minimum protection under 49 U.S.C. 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on Richard P. Bruening and Robert K. Dreiling, 114 West 11th St., Kansas City, MO 64105.

Decided: July 8, 1992.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92–16491 Filed 7–13–92; 8:45 a.m.]

BILLING CODE 7035–01–M

[1] The parties indicated that consummation would occur on or after July 1, 1992. Under the class exemption invoked here, however, consummation may not occur until at least 1 week after the notice of exemption is filed. 49 CFR 1180.4(g)(1). This notice was filed with the Commission on June 29, 1992, thus making July 6, 1992 the earliest allowable consummation date.



**[Finance Docket No. 32094]**

### Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Co.

Southern Pacific Transportation Company (SPT) has agreed to grant trackage rights to Peninsula Corridor Joint Powers Board (JPB), for a period of 90 days, over approximately 4.7 miles of SPT line between Santa Clara Junction (milepost 44.0) and Tamien, CA (milepost 48.7). The trackage rights were to have become effective on July 1, 1992.

JPB and the San Mateo County Transit District recently instituted commuter rail operations on the San Francisco Peninsula over former SPT lines and right-of-way.[1] See Finance Docket No. 31980, *Peninsula Corridor Joint Powers Board and San Mateo County Transit District—Acq. Exemp.—Sou. Pac. Transp. Co.* (not printed), served January 17, 1992, and Finance Docket No. 31985, *Penin. Corr. Jt. Powers Bd.—Tr. Rts. Exemp.—Sou. Pac. Transp. Co.* (not printed), served January 17, 1992. SPT, which had provided freight and intercity passenger service on the owner of the lines, has continued to do so under a grant-back of trackage rights.[2]

One result of the acquisition and trackage rights transactions is that JPB and SPT now operate separate, parallel tracks between Santa Clara Junction and Tamien. Because each carrier is generally prohibited from using the other's tracks between those points, JPB and SPT have begun negotiations to determine whether a coordinated use agreement will enable them to achieve more efficient freight, intercity passenger, and commuter train operations between Santa Clara Junction and Tamien. Although they have not reached a final agreement, they have amended their previous trackage rights agreements to permit each carrier to operate the other's Santa Clara Junction-Tamien line.[3] This trackage rights agreement, however, is effective for 90 days only. The parties anticipate that the 90-day term will be sufficient to accommodate further negotiations and, at the same time, facilitate the July 1, 1992 transfer of commuter operations on JPB's lines from SPT to Amtrak.[4]

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: David J. Miller, Esq., Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market Street, Suite 2300, San Francisco, CA 94105.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: July 6, 1992.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92–16492 Filed 7–13–92; 8:45 am]

BILLING CODE 7035–01–M

[1] SPT initially provided the commuter service, as JPB's operator. Amtrak was to have replaced SPT as the operator, effective July 1, 1992.

[2] See Finance Docket No. 31983, *Sou. Pac. Transp. Co.—Tr. Rts. Exemp.—Peninsula Corr. Jt. Powers Bd. and San Mateo County Trans. Dist.* (not printed), served January 17, 1992.

[3] A separate notice of exemption has been filed in Finance Docket No. 32091 with regard to SPT's trackage rights over JPB's Santa Clara Junction-Tamien line.

[4] A notice of exemption under 49 CFR 1180.2(d)(7) must be filed if the trackage rights are modified, extended, or renewed.

## DEPARTMENT OF JUSTICE

### Consent Decree in Action Brought Under the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Hepworth, et al.*, Civil Action No. 91–0025–EJL, was lodged with the United States District Court for the District of Idaho on July 1, 1992. This Consent Decree resolves a Complaint filed by the United States against Gaius Cunningham pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413.

The United States Department of Justice brough this action on behalf of the U.S. Environmental Protection Agency, seeking to recover a civil penalty against defendant Gaius Cunningham for alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos HESHAP") during the 1988 demolition of the Peterson building in downtown Twin Falls, Idaho. As part of the settlement in this case, Gaius Cunningham will pay the United States a civil penalty of $5,000 and will conduct future demolition and renovation operations in compliance with the inspection, notification, and work practice requirements of the asbestos HESHAP.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Hepworth, et al.*, DOJ number 90–5–2–1–1377.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, District of Idaho, 550 West Fort Street, Boise, Idaho 83742, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region X, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the proposed Consent Decree may also be obtained from the Consent Decree Library, 601 Pennsylvania Avenue, Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Consent Decree, please enclose a check in the amount of $3.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

**John C. Cruden,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 92–16424 Filed 7–13–92; 8:45 am]

BILLING CODE 4410–01–M

### Loging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA)

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(i), and Departmental policy, 28 CFR 50.7, 38 FR 19029, (July 17, 1973), notice is hereby given that on June 29, 1992 a proposed Consent Decree in *United States of America* v. *Union Electric Company, et al*, Civil Action No. 1:92CV00078, was lodged with the United States District Court for the Eastern District of Missouri, Southeastern Division.

On June 29, 1992, the Complaint in this action was filed by the United States of America against the following Defendants under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, seeking injunctive relief and reimbursement of costs incurred by the United States in response to a release or

threatened release of hazardous substances from the Missouri Electric Works, Inc. Superfund Site ("Site") in Cape Girardeau, Missouri: A.P. Green Industries, Inc.; ARA Services, Inc.; Absorbent Clay Products, Inc.; Acme Electric Co., Inc.; Allied-Signal Inc.; Aluminum Company of America; American Charcoal Company; American Family Broadcast Group, Inc.; The Anna-Jonesboro Water Commission; Ariens Company; Vernon Bagwell; Barry Electric Cooperative; Barton County Electric Cooperative; Beazer East, Inc.; Belcher Electric, Inc.; Black River Electric Cooperative; The BOC Group, Inc.; Boone Electric Cooperative; Bridgestone/Firestone, Inc.; Brown & Root, Inc.; Bull Moose Tube Co.; Burlington Northern Railroad Company; Central Illinois Public Service Company; Chase Resorts, Inc.; Chevron Chemical Company; Citizens Electric Corporation; Citizens Utilities Company; City of Cabool; City of Cairo, Illinois; City of Cambell, Missouri; City of Carmi, Illinois; City of Casey; City of Charleston, Missouri; City of Farmington, Missouri; City of Fredericktown; City of Higginsville; City of Houston, Missouri; City of Jackson; City of Jacksonville, Illinois; City of Jefferson, Missouri; City of Madisonville, Kentucky; City of Malden Board of Public Works; City of Owensville, Missouri; City of Richmond; City of St. James; City of Salem, Missouri; City of Seymour; City of Shelbina, Missouri; City of Sikeston; City of Steelville, Missouri; City of Thayer, Thayer, Missouri; Clinton County Electric Cooperative, Inc.; Columbia Quarry Company, d/b/a Charles Stone Co.; Consolidated Aluminum Corporation; Costain Coal, Inc.; Damson Oil Corporation; Daviess-Martin County REMC; Decatur Industrial Electric, Inc.; Majorie H. Deimund; Delmarva Power & Light Company; The Dow Chemical Company; Dugger Electric Equipment Co.; East Perry Lumber Company; E.I. du Pont de Nemours and Co.; Electric Plant Board, City of Mayfield, Kentucky, d/b/a Mayfield Electric & Water Systems; Electric Supply Co., Inc.; Esselte Pendaflex Corporation; Essex Group, Inc.; Evansville Electric & Mfg. Co., Inc.; Farmers' Electric Cooperative, Inc.; Florida Power Corporation; Florida Rock Industries, Inc.; Fulton County REMC; General Cable Corporation; General Electric Company ("GE"); General Iron & Salvage Co., Inc.; Gold Fields American Corporation; Gunther-Nash Mining Construction Co.; H–J Enterprises, Inc.; Hancock County REMC; Hancock-Wood Electric Cooperative, Inc.; Harris Truck & Trailer Sales, Inc.; Himmelberger Harrison Co., Inc.; Geraldine F. Hirsch; James F. Hirsch; Oscar C. Hirsch; Robert O. Hirsch; Housing Authority of Johnson County; Howell-Oregon Electric Coop., Inc.; ITT Federal Services Corporation, formerly known as Federal Electric Corporation; Independent Electric Machinery Company; Ingram Barge Company Interlake Packaging Corporation; Jader Fuel Co., Inc.; Jefferson Smurfit Corporation; Jim Smith Contracting Co., Inc.; KBOA, Inc.; Kagmo Electric Motor Co.; Kaiser Aluminum & Chemical Corporation; Klein Armature Works, Inc.; Koerner Electric Motors of Indiana Inc.; Kopf Electric Motor Service, Inc.; The L.E. Myers Co. Group; Logan County Cooperative Power and Light Association, Inc.; Lowry Electric Company; MFA Incorporated; M.J.M. Electric Cooperative, Inc.; Magnetek Inc.; Marathon Oil Company; McCarthy Brothers Company; Menard Electric Cooperative; Midwest Electric, Inc.; Millstone Construction, Inc., d/b/a Knobel-Redman Construction Company; Mississippi Lime Company; Missouri Barge Line Company, Inc.; Missouri Dry Dock and Repair Company Inc.; Missouri Portland Cement Company; Mobil Oil Corporation; Morgan County R.E.M.C.; Mt. Carmel Public Utility Company; NL Industries, Inc.; New England Power Service Company; New-Mac Electric Cooperative, Inc.; North Central Missouri Electric Coop.; Otis Elevator Company; PSI Energy, Inc., formerly Public Service Company of Indiana, Inc.; Paragould Light & Water Commission; Paul Oberman and Company; Peabody Coal Company, Pemiscot-Dunklin Electric Coop.; Pet Incorporated; Phillips Petroleum Company; The Pittsburgh and Midway Coal Mining Co.; Plibrico Company; Pulaski County Housing Authority; Purolator Products NA, Inc., a/k/a Purolator Products Company; Quincy Soybean Company; Ralston Purina Company; Rathje Enterprises, Inc.; Richards Electric Motor Co.; Rural Electric Convenience Coop. Co.; S.D.I. Operating Partners L.P., d/b/a Philips & Company; Sac Osage Electric Cooperative, Inc.; Sachs Electric Company; St. Joe Minerals Corporation; St. Louis Steel Casting Inc.; St. Louis University; Sam Tanksley Trucking Co.; Sandner Electric Company; Scott-New Madrid-Mississippi Electric Coop.; Siemens Energy & Automation, Inc.; Southern Illinois Electric Coop.; Southern Illinois Materials Company; State of Missouri, Department of Mental Health, Southeast Missouri Mental Health Center; State of Missouri, Southeast Missouri State University; Steuben County REMC; Sullivan Electric Company; Swanson-Nunn Electric Co., Inc.; Teamsters Local 688 Insurance and Walfare Fund; Texas Eastern Products Pipeline Company; Texas Eastern Transmission Corporation; Textron, Inc.; Tipmont Rural Electric Membership Corporation; Toastmaster Inc.; Town of Paragon; Tucson Electric Power Company; The Union County Hospital District; Union Electric Company; Chester R. Upham, Jr.; Vaughn Electric Company, Inc.; Wayne County REMC; Wayne-White Counties Electric Cooperative; Webster County Coal Corporation; West Lake Quarry and Material Company; Westinghouse Electric Corporation; Westvaco Corporation; Wetterau Incorporated; Whirlpool Corporation; and Zeller Electric, Inc.

Under the terms of the Consent Decree, the Settling Defendants have agreed to conduct a soil remedial action and a groundwater investigation at the Site, and to reimburse the United States for all future response costs associated with this work. Some of the *De Minimis* Settling Defendants and the United States on behalf of the Settling Federal Agencies have agreed to pay estimated costs, including the United States' future response costs, for the soil remedial action and a groundwater investigation at the Site. Other *De Minimis* Settling Defendants have agreed to pay estimated costs, including future response costs, for the soil remedial action and an undetermined groundwater remedy. The United States also has agreed to pay the Agencies' share of past response costs. The United States has agreed that the Environmental Protection Agency will reimburse Settling Defendants from the Hazardous Substance Superfund for a portion of the costs associated with the soil remedial action and groundwater investigation.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Union Electric Company, et al.*, D.O.J. Ref. No. 90–11–2–614A.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Missouri, Southeastern Division, 325

Broadway, Second Floor, Cape Girardeau, Missouri 63701; the office of the United States Attorney, Eastern District of Missouri, U.S. Court and Custom House, 1114 Market Street, room 414, St. Louis, Missouri 63101; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66106; and the Consent Decree Library, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree can be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of either $125.50 for the Consent Decree with signature pages and exhibits or $80.50 for the Consent Decree without the signature pages but with exhibits (25 cents per page reproduction charge) payable to the Consent Decree Library.

**John C. Cruden,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.*

[FR Doc. 92–16426 Filed 7–13–92; 8:45 am]

BILLING CODE 4410–01–M

## Lodging of Consent Decree United States v. Union Pacific Railroad Company

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to section 122(d)(2) (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(d)(2)(B), notice is hereby given that a Consent Decree in *United States* v. *City of Corvallis, Oregon* Civil Action No. 92-6232-HO was lodged with the United States District Court for the District of Oregon on June 29, 1992. This action was brought under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The Consent Decree provides the Defendant, City of Corvallis, Oregon, will complete the cleanup of the United Chrome Superfund Site as required by the Record of Decision issued by the United States Environmental Protection Agency and pay $2,020,000 towards a portion of the costs incurred by the Environmental Protection Agency.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and National Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *City of Corvallis, Oregon,* D.O.J. Ref. No. 90-11-2-409

The Consent Decree may be examined at the Office of the United States Attorney, District of Oregon, 701 High Street, Eugene, Oregon 97401 and at the Region X Office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

A copy of the Consent Decree may also be examined at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004 (telephone number (202) 347-2072). A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. The proposed Consent Decree package consists of an eighty-one page Consent Decree and one hundred and one pages of appendices. You may request a copy of the Consent Decree with or without the appendices. Please specify in the request whether or not the appendices are requested. A request for a copy of the proposed Consent Decree with appendices should be accompanied by a check in the amount of $45.75 (25 cents per page reproduction charge) made payable to "Consent Decree Library." A request for a copy of the proposed Consent Decree without appendices should be accompanied by a check in the amount of $21.00.

**Roger Clegg,**

*Acting Assistant Attorney General, Environment and National Resources Division.*

[FR Doc. 92-16423 Filed 7-13-92; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *William D. Rogers, d/b/a Village Imports,* Civil Action No. 1:91CV00 112 was lodged on June 24, 1992, with the United States District Court for the Middle District of North Carolina. The Defendant conducted a business in which he imported motor vehicles into the United States and modified them so as to meet federal emission requirements, during the time periods set forth in the Complaint. Rogers improperly imported into the United States a number of foreign made vehicles, without valid certificates of authority for these vehicles in violation of section 203(a)(1) of the Act, 42 U.S.C. 7522(a)(1) and 40 CFR 85.1501 *et seq.*

He also improperly imported into the United States a 1988 Porsche 911 Carrera without a valid memorandum of exemption in violation of section 203(a)(1) of the Act, 42 U.S.C. 7522(a)(1) and 40 CFR 85.1511(b)(3). Rogers also violated 40 CFR 85.1510(b)(3) by requesting final admission for a 1984 Porsche 911 SC without the required warranty and insurance coverage.

Pursuant to the terms of the consent decree Rogers shall pay to the United States a civil penalty of $5,000.00 within 60 days of the date of entry of the decree, and he is prohibited from importing motor vehicles into the United States that do not conform to federal emission requirements as set forth in 40 CFR parts 85 and 86, and is further enjoined and prohibited from participating in or owning any interest in any business that modifies motor vehicles to conform to federal emissions standards.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *William D. Rogers d/b/a/ Village Imports,* DOJ ref. #90–5–2–1–1503.

The proposed consent decree may be examined at the Office of the United States Attorney, 324 West Market Street, Greensboro, North Carolina 27402; Manufacturers Operations Division, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**John C. Cruden,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 92–16425 7–13–92; 8:45 am]

BILLING CODE 4410–01–M

## Antitrust Division

## Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on June 9, 1992, pursuant to section 6(a) of the

National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), General Motors Corporation filed written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Low Emissions Technologies Cooperative Research and Development Partnership." The notification discloses (1) the identities of the parties to the project, and (2) the nature and objectives of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are: Chrysler Corporation, Highland Park, MI; Ford Motor Company, Dearborn, MI; and General Motors Corporation, Detroit, MI.

The parties intend to identify opportunities for joining aspects of their independent research and development efforts pertaining to technologies for future low emission motor vehicles. The objectives are to avoid inefficient duplication of effort and expense in research in this area, collect, exchange and, where appropriate, license analysis of emission control technology research information, coordinate the scientific investigations of each party into emission control technologies, accelerate the development of new emission control technologies and perform further acts allowed by the Act that would advance the Partnership's objectives.

**Party Contacts**

Mark P. Calcaterra, Chrysler Corporation, Highland Park, MI
John K. Dickerson, Ford Motor Company, Office of the General Counsel, Dearborn, MI; and
Steven J. Cernak, General Motors Corporation Legal Staff, Detroit, MI

Joseph H. Widmar,
*Director of Operations, Antitrust Division.*

[FR Doc. 92-16418 Filed 7-13-92; 8:45 am]
BILLING CODE 4410-01-M

## Pursuant to the National Cooperative Research Act of 1984—Hydrogen Chloride Joint Venture

Notice is hereby given that, on June 19, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Hydrogen Chloride Joint Venture filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of two parties to the Hydrogen Chloride Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Hydrogen Chloride Joint Venture advised that Mason Chemical Company, Chicago, Illinois, and The Proctor & Gamble Company, Cincinnati, Ohio, have become parties to the Joint Venture.

No other changes have been made in either the membership or planned activity of the Joint Venture. Membership in this Joint Venture remains open, and the members intend to file additional written notification disclosing all changes in membership.

On June 3, 1991, the Hydrogen Chloride Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on June 27, 1991 (56 Fed. Reg. 29500).

Joseph H. Widmar,
*Director of Operations, Antitrust Division.*

[FR Doc. 92-16422 Filed 7-13-92; 8:45 am]
BILLING CODE 4410-01-M

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on December 17, 1991, High Standard Products, 1100 West Florence Avenue, #B, Inglewood, California 90301, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Lysergic acid diethylamide (7315) | I |
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |
| Heroin (9200) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Secobarbital (2315) | II |
| Phencyclidine (7471) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Methadone (9250) | II |
| Morphine (9300) | II |

High Standard Products plans to procure or manufacture small quantities of deuterated substances in quantities from 10 to 20 grams annually.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: July 7, 1992.

Gene R. Haislip,
*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92-16486 Filed 7-13-92; 8:45 am]
BILLING CODE 4410-09-M

[Docket Nos. 90-11, 90-12, 90-13 and 90-14]

## Leonard Browder, R.Ph. d/b/a/ Lominick's Pharmacy; Family Pharmacy, Inc.; Aiken Drug Co.; Woodruff Drug Co.; Revocation of Registrations

On January 30, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued Orders to Show Cause to Leonard Browder, R.Ph., d/b/a Lominick's Pharmacy, 830 Richland Avenue West; Family Pharmacy, Inc., 333 Newberry Street; Aiken Drug Company, 101 Laurens Street; and Woodruff Drug Company, 130 Whiskey Road, all located in Aiken, South Carolina. The Orders to Show Cause proposed to revoke DEA Certificates of Registration, AL2636756, BF0300715, AB0340341, and AB0350656, previously issued to the aforementioned pharmacies, and to deny any pending applications for renewal of such registrations on the grounds that the continued registration of these pharmacies was inconsistent with the public interest.

By letter dated March 1, 1990, Leonard Browder, through counsel, requested a hearing on the issue raised by the Orders to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. On May 23, 1990, the matter was reassigned to Administrative Law Judge Mary Ellen Bittner. Following the completion of prehearing proceedings, Judge Bittner scheduled the hearing in this matter to begin on July 9, 1991. However,

commencement of the hearing was postponed to facilitate negotiations between the Government and the Respondent pharmacies.

By letter dated October 28, 1991, Respondent withdrew his request for a hearing and on December 2, 1991, filed a written statement of position. On December 3, 1991, Judge Bittner issued a Memorandum to Counsel and Order Terminating Proceedings. Accordingly, the Respondent is deemed to have waived his opportunity for a hearing on all matters of law and fact involved herein. 21 CFR 1301.54(d) and 1301.54(e). Pursuant to 21 CFR 1301.57, the Administrator now issues his final order in this matter, based on information contained in the investigative file and the Respondent's statement of position.

The Administrator finds that Leonard Browder is a registered pharmacist in the State of South Carolina. Leonard Browder was the owner of Aiken Drug Company, Woodriff Drug Company, and Lominick Pharmacy and part owner of Family Pharmacy. In 1987, the Drug Enforcement Administration and the South Carolina Department of Health and Environmental Control conducted an in-depth investigation of Respondent pharmacies. The investigation revealed that extensive violations of the Controlled Substances Act and its attendant regulations had been committed by Leonard Browder and other pharmacists whom he employed.

Investigators reviewed the prescription files at Respondent pharmacies and interviewed physicians whose names appeared on the prescriptions. Many of the physicians stated that they had not issued or authorized the prescriptions for controlled substances which had been filled at Respondent pharmacies. Others stated that while they had issued the basic prescriptions, they had not authorized the refills which had been dispensed by the Respondent pharmacies. Some of the physicians had not seen the patients during the period of time in which the prescriptions were supposedly issued. In several cases, the physicians has not seen the patients for a number of years. In numerous instances, the DEA registration numbers on the prescriptions were not those of the physicians who purportedly issued them. Some prescriptions had physician addresses which had not been correct for years. In one case, the physician was not even practicing medicine at the time prescriptions attributed to him were filled by Respondent's pharmacists.

The investigation further reveals that during an eighteen month period, one individual obtained approximately 7,000 dosage units of Didrex, a Schedule IV controlled substance. The majority of the Didrex had been dispensed from Respondent pharmacies. When interviewed by state investigators, the prescribing physician stated that while he issued many of the prescriptions, he also identified many that he had not authorized. Among those not issued or authorized by the physician were twelve call-in prescriptions, with 49 refills, all of which were filled at Respondent pharmacies. Some of these alleged "call-in" prescriptions were for quantities of ten, eighty and one hundred dosage units of Didrex.

When DEA Investigators interviewed the individual whose name appeared on the Didrex prescriptions, he admitted that he had no legitimate medical need for the drugs he obtained. He had many of the prescriptions filled at Respondent pharmacies and went to Aiken Drug Company most often because he knew Leonard Browder. The individual presented either a prescription or an empty prescription bottle. Neither Leonard Browder, nor any of the other pharmacists, ever questioned him about the large quantities of Didrex he received. The individual further stated that with the exception of one pill, all of the Didrex he obtained was given to his girlfriend.

In 1986, Dr. Allan Schifferli, an Aiken dentist, was convicted of 226 counts of unlawfully prescribing controlled substances. Dr. Schifferli has been indicted on 257 counts, all but two of which represented a prescription issued other than for a legitimate medical or dental purpose. Dr. Schifferli's prescriptions were for drugs including Demerol, Mepergan Fortis and Valium. Of the 255 prescriptions set out in Dr. Schifferli's indictment, approximately 146 were filled at Respondent's pharmacies.

The investigation further revealed that Leonard Browder obtained Ritalin, a Schedule II stimulant controlled substance, for his personal use pursuant to prescriptions which had not been issued in the legitimate course of medical practice. The prescriptions had been presigned by the physician and left with Mr. Browder. Mr. Browder claims that he had narcolepsy and that the physician authorized the prescriptions. However, the physician was very ill at the time and both his wife and his treating physician stated that he could not have authorized all of the prescriptions.

Federal law and regulations permit pharmacists to dispense Schedule V narcotics, primarily cough preparations containing codeine, without a prescription. The law prohibits the dispensing of the so-called "exempt narcotics" for other than legitimate medical purposes, limits the quantity dispensed to any one individual and requires that pharmacists obtain identification of the consumer and maintain a contemporaneous record of all such drugs dispensed. 21 CFR 1306.32. In the course of the investigation of the Respondent pharmacies, Investigators learned that the exempt narcotic books at Aiken Drug Company were forged for a two-month period, from January to March 1985, in an attempt to conceal entries showing the dispensing of terpin hydrate with codeine to a patient who had died of cardiac arrest. Investigators interviewed several employees who stated that Leonard Browder ordered them to rewrite the exempt narcotic record in order to delete the entries for the patient. The employees were instructed to use different colored pens and to skip around within the book to avoid detection for similar handwriting. As they eliminated the entries for the deceased individual, the employees made up new names and addresses, apparently to fill the voids in the pharmacy's accountability for the drugs. Mr. Browder then signed the altered book as the approving pharmacist.

During the course of the investigation, Investigators also learned of other violations of the Federal regulations. For example, one employee stated that she opened Aiken Pharmacy on Saturdays and some Sundays and filled prescriptions for both controlled and noncontrolled substances. Since the employee was not a licensed pharmacist, she held the prescriptions aside for Leonard Browder's signature. Additionally, Investigators found numerous violations relating to the emergency dispensing of Schedule II controlled substances. As a rule, drugs containing Schedule II controlled substances may only be dispensed pursuant to written prescriptions. 21 U.S.C. 829(a). In the event of an emergency, where the physician determines that immediate administration of the drug is required, that no alternative medication is available and that it is not reasonably possible to provide a written prescription at that time, the pharmacist may dispense, upon oral authorization of the physician, a quantity of the Schedule II drug adequate to treat the patient during the emergency period. The pharmacy must obtain a written prescription for the drugs so dispensed within 72 hours. See, 21 CFR 290.10 and 21 CFR 1306.11(d). Respondent pharmacies filled such "emergency" prescriptions for excessive quantities,

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without later obtaining the required written prescription, without valid DEA registration numbers and for drugs such as Seconal, Ritalin, Amytal and Tuinal, the emergency need for which is at best questionable.

Finally, the investigation revealed that Leonard Browder, and other pharmacists in his employ, dispensed less expensive generic substitute medications to Medicaid patients while they billed the Medicaid program for the trade name drugs. Pharmacists at Aiken Drug Company and Woodruff Drug Company used the initials "L" or "LTE" on such Medicaid prescriptions. It was also learned that Leonard Browder attempted to conceal evidence of the false Medicaid claims instructing employees to alter the pharmacy records.

During the course of the investigation, the Investigators interviewed two pharmacists who had formerly been employed at Respondent pharmacies. Both confirmed that controlled substances were dispensed without the knowledge or approval of the physician whose name appeared on the original prescription, that physicians were not contacted concerned refills and that the pharmacists added refills to prescriptions that had no refills authorized. Both of the former employees also confirmed that the Respondent pharmacies billed Medicaid for brand name drugs while dispensing the generic equivalents.

On April 20, 1989, a Grand Jury sitting in the United States District Court for the District of South Carolina returned a 153-count indictment charging Leonard Browder and others with felony violations of the Controlled Substances Act and fraud with respect to the Medicaid system. On July 10, 1989, Mr. Browder and two of his pharmacists entered pleas of guilty to two counts of the indictment and, on February 2, 1990, they were adjudged convicted of violations of 21 U.S.C. 843, felony offenses under the Controlled Substances Act, and 18 U.S.C. 2 and 1341, felonies relating to the Medicaid fraud offenses. The three defendants received suspended sentences and were placed on probation for a period of five years.

The South Carolina Board of Pharmacy suspended Leonard Browder's license to practice pharmacy for a period of six months, from June 1990 through December 1990, followed by a two year period of probation. Additionally, the United States Department of Health and Human Services excluded Mr. Browder and his two-codefendants from participation in the Medicaid program.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Administrator may revoke a DEA Certificate of Registration and may deny an application for renewal of such registration if he determines that continued registration would be inconsistent with the public interest. Section 823(f) provides for consideration of the following factors in determining where the public interest lies:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority;

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances;

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution or dispensing of controlled substances;

(4) Compliance with applicable State, Federal or local laws relating to controlled substances;

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive. That is, the Administrator may properly rely on any one or a combination of those factors, giving each the weight he deems appropriate in determining whether a registration should be revoked or an application denied. See, *Henry J. Schwartz, Jr., M.D.*, Docket No. 88-42, FR 16422 (1988). The Administrator finds that the second, third, forth and fifth factors are relevant to the adjudication of this matter. Additionally, Sections 824(a)(2) and 824(a)(5), provide, respectively, that a registration may be revoked for reason of conviction of a felony relating to controlled substances or mandatory exclusion from participation in the Medicaid program pursuant to 42 U.S.C. 1320a-7(a).

The investigative findings set forth at length above, amply document Respondent's numerous violations of the Controlled Substances Act and its attendant regulations, fraud offenses relating to both controlled substances and the Medicaid program, felony convictions arising from those violations, a general indifference to both the requirements of law governing the handling of controlled substances and the duties and responsibilities of a registrant and professional, and exclusion from participation in the Medicaid program. Accordingly, the Administrator concludes that there are lawful bases under 21 U.S.C. 823(f), 824(a)(2), 824(a)(4) and 824(a)(5) for the revocation of Respondent's registrations and for denial of any applications for renewal thereof.

In the written statement of position filed on behalf of the Respondent pharmacies, Mr. Browder at once consents to the revocation of these registrations; agrees to revocation, but asks that such sanction be for a finite period of time; asks that the registration not be revoked; and requests reissuance following a definite period of suspension. The documents filed on behalf of Mr. Browder show him to be an individual who has practiced pharmacy in South Carolina for almost forty-one years, beginning in 1951 as an employed pharmacist and ending in 1992 as the owner and operator of four pharmacies in Aiken, South Carolina. During the course of the criminal proceedings against him, over 150 people, including civic leaders, public officials, members of the health care industry and citizens representing all walks of life wrote letters to the Court in his behalf. These people uniformly portray Mr. Browder as an individual dedicated to his profession, family, church and community.

The evidence which emerged in the course of the investigation described above presents a very different picture. The evidence shows a person who has abandoned his professional responsibilities; the head of a group of pharmacists who dispensed controlled substances without authorization from a physician; dispensed controlled substances pursuant to prescriptions that they knew, or should have known, were issued for other than legitimate medical purposes; altered prescriptions to reflect greater numbers of refills; and otherwise falsified records required to be kept under the Controlled Substances Act. Under Leonard Browder, the pharmacies became a source for drugs, where individuals inclined to abuse drugs could obtain them without attracting attention. Under Mr. Browder, the pharmacies were used to defraud a program designed to provide for the medical needs of those least able to afford such care.

In filling the hundreds of prescriptions which led to their indictment and conviction, Mr. Browder and some of his pharmacists abdicated their responsibility as pharmacists and registrants. The practice of pharmacy, like that of medicine, is a profession to which society entrusts the responsibility for control over a force which, when properly used, has great benefit for mankind, but when abused is a force for evil and human destruction. It follows that society cannot tolerate in these professions the presence of individuals who abdicate their professional responsibility and permit themselves to be used as a conduit by which controlled substances reach the illicit market and become that force for evil.



See, *Vermont & 110th Medical Arts Pharmacy, et al.* v. *Board of Pharmacy*, 125 Cal. App. 3d 19 (1981). When such abdication of responsibility involves a DEA registrant, the public interest clearly requires that the registration be revoked.

The Administrator concludes that the dispensing practices of Leonard Browder indicate a callous disregard of his duties as a professional to obey the controlled substance laws and to protect the public health and safety. The Administrator concludes that revocation of the pharmacies' registrations is the only appropriate sanction which will adequately protect the public interest. Accordingly, Mr. Browder's plea for a less onerous sanction is denied. These registrations must, and will, be revoked.

During the course of these proceedings, counsel for the Government, the Respondents and for Leonard T. and Laurie Ann Browder, the son and daughter of Respondent, Leonard Browder entered into negotiations concerning the sale of the pharmacies. These negotiations led to an agreement whereby the subject pharmacies would be purchased by Leonard T. and Laurie Ann Browder in an arms-length transaction which would afford Leonard Browder no financial or other interest in the pharmacies. The agreement further excluded Mr. Browder from employment by the pharmacies in any capacity and from use of their facilities for the conduct of any other business. Additionally, the agreement prohibits the new registrants from employing those other pharmacists who were convicted along with Mr. Browder. While DEA normally suspects transfers between members of the same family as being sham transactions, it appears that this transfer of ownership is genuine and has been entered in good faith by all parties.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration, AL2636758, BF0300715, AB0340341 and AB0350556, previously issued to Leonard Browder, R.Ph., doing business as Lominick's Pharmacy, Family Pharmacy, Aiken Drug Company and Woodruff Drug Company, respectively, be, and they hereby are, revoked. The Administrator further orders that any pending applications for renewal of these registrations be, and they hereby are, denied. This order is effective August 13, 1992.

Dated: July 7, 1992.

**Robert C. Bonner,**

*Administrator of Drug Enforcement.*

[FR Doc. 92-16393 Filed 7-13-92; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-27, 137, et al.]

### BJ Services Co., USA a/k/a BJ Titan Services; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of BJ Serivces, Company, WA a/k/a BJ Titan Services, TA-W-27, 137 Pleasanton, Texas TA-W-27, 137A Houston, Texas and operating in the following States: TA-W-27,137B Alaska; TA-W-27,137C Colorado; TA-W-27,137D Alabama; TA-W-27,137E California; TA-W-27,137F Louisiana; TA-W-27,137G Florida; TA-W-27,137H Illinois; TA-W-27,137I Kansas; TA-W-27,137J Massachusetts; TA-W-27,137K Missouri; TA-W-27,137L Mississippi; TA-W-27,137M North Dakota; TA-W-27,137N New Mexico; TA-W-27,137O Oklahoma; TA-W-27,137P West Virginia; TA-W-27,137Q Wyoming; TA-W-27,137R Texas (except Pleasanton and Houston).

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 9, 1992, applicable to all workers of BJ Services Company in Pleasanton and Houston, Texas. The Notice was published in the **Federal Register** on June 30, 1992 (57 FR 29101).

At the request of the company the Department reviewed the certification for workers of BJ Services. New information from the company shows that worker separations occurred in the several States mentioned above. The additional findings show that the company changed its name in 1990 from BJ Titan Services to BJ Services Company, USA.

The intent of the Department's certification is to include all workers of BJ Services (BJ Titan Services) who were affected by increased imports of crude oil and natural gas.

The amended notice applicable to TA-W-27,137 is hereby issued as follows:

All workers of BJ Services Company, U.S.A., Pleasanton, and Houston, Texas and operating in the following states: Alaska; Alabama; California; Louisiana; Colorado; Florida; Illinois; Kansas; Missouri; Massachusetts; Mississippi; North Dakota; New Mexico; Oklahoma; Texas, except Pleasanton and Houston; West Virginia and Wyoming and who became totally or partially separated from employment on or after April 7, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of July 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-16495 Filed 7-13-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,237]

### Coltec Industries, Inc.; Engines Accessories Operations, Roscoe, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 11, 1992 in response to a worker petition which was filed on May 11, 1992 on behalf of workers at COLTEC Industries, Incorporated, Engines Accessories Operations, Roscoe, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 2nd day of July 1992.

**Ronald E. Puts,**

*Deputy Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-16496 Filed 7-13-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,942]

### John L. Cox, Oklahoma City, OK; Notice of Negative Determination Regarding Application for Reconsideration

By applications dated June 2, 1992 through June 24, 1992 the petitioners and the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 11, 1992 and was published in the **Federal Register** on May 28, 1992 (57 FR 22492).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake

in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the subject firm in this investigation is the Oklahoma City District (OCD) facility of John L. Cox. The findings show that layoffs occurred in February, 1992 and were for the exploration staff and landmen. Other findings show that the OCD facility explores only for its own account.

The petitioners state that the subject firm was certified in 1988 and that the present conditions remain the same as in 1988. It's also claimed that the Department's survey was inadequate. An additional list of customers was submitted.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements was not met. This test is usually demonstrated through a survey of the subject firm's customers.

The Department's survey of the OCD facility's major customers shows that none of them imported natural gas and the crude oil customers had declining purchases of imported oil in 1992. Further, some of the customers did not need to be contacted since the Department already had their recent import purchases on file from other investigations. The amended list of customers submitted by the company were not customers of the OCD facility but are corporate customers with no purchases from the OCD and, therefore, cannot be used.

In order to qualify for a worker group certification, there must be increased imports of articles that are like or directly competitive with those of the workers' firm. Further, the Act states that the increased imports must have contributed importantly to worker separations and declines in sales or production in the period relative to the petition. What the findings do show is that John L. Cox eliminated the exploration staff at Oklahoma City but still continues to produce oil and gas.

The Department's earlier certification for workers at the OCD facility (TA-W-22,289) would not provide a basis for a worker group certification under the subject petition, TA-W-26,942. The earlier certification was not only in a different time period but the purchasing patterns of its earlier customers were different than those submitted with the latter petition.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 2nd day of July 1992.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.*

[FR Doc. 92-16497 Filed 7-13-92; 8:45 am]

BILLING CODE 4510-30-M

## Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than July 24, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 24, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 29th day of June 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Secorp Industries, Inc. (Wkrs) | Lafayette, LA | 06/29/92 | 06/16/92 | 27,422 | Oilfield, Oilwell Services. |
| Pirelli Armstong Tire Corp. (URW) | Des Moines, IA | 06/29/92 | 06/16/92 | 27,423 | Tires. |
| Man Roland, Inc. (Wkrs) | Middlesex, NJ | 06/29/92 | 06/15/92 | 27,424 | Printing Presses. |
| Athenia Wire (IBWW) | E. Syracuse, NY | 06/29/92 | 06/15/92 | 27,425 | Steel Wire. |
| Ashland Forge & Machining, Inc. (UPIU) | Ashlands, WI | 06/15/92 | 06/11/92 | 27,426 | Scissors and Wrenches. |
| J. Gilmore Hill (Co) | Denver, Co | 06/29/92 | 06/15/92 | 27,427 | Oil and Gas. |
| Lee's Carpets (Wkrs) | Hillsville, VA | 06/29/92 | 06/15/92 | 27,428 | Carpet Yarn. |
| Wolf Energy (Co) | Denver, Co | 06/29/92 | 06/12/92 | 27,429 | Oil and Gas Exploration. |
| Pope & Talbot (IWA) | Ladysmith, WI | 06/29/92 | 06/24/92 | 27,430 | Toilet Tissue, Disposable Diaper Tissue. |
| Aberdeen Petroleum (USA) (Co) | Denver, CO | 06/29/92 | 06/26/92 | 27,431 | Exploration, Drilling for Oil, Gas. |
| Sojourner Drilling Corp. (Wkrs) | Abilene, TX | 06/29/92 | 06/24/92 | 27,432 | Oil, Gas Well Drilling. |
| ASARCO—Galena Unit (Wkrs) | Wallace, ID | 06/29/92 | 06/18/92 | 27,433 | Silver Mining. |
| Pittsburgh Forgings (USWA) | Coraopolis, PA | 06/29/92 | 06/16/92 | 27,434 | Forging Products. |
| Cook Bates Co. (Co) | Venice, FL | 06/29/92 | 06/16/92 | 27,435 | Manicure and Pedicure Implements. |
| Sterling Group (Wkrs) | Sewickley, PA | 06/29/92 | 06/19/92 | 27,436 | Electrical Varnishes. |
| Soricon Corp. (Wkrs) | Boulder, Co | 06/29/92 | 06/16/92 | 27,437 | Optical Recognition Devices. |
| Grace Petroleum Corp. (Co) | Oklahoma City, OK | 06/29/92 | 06/17/92 | 27,438 | Oil and Gas. |
| Grace Petroleum Corp. (Co) | Jackson, MS | 06/29/92 | 06/17/92 | 27,439 | Oil and Gas. |
| Geotrace Technologies, Inc. (Co) | Denver, CO | 06/29/92 | 06/19/92 | 27,440 | Seismic Data. |

APPENDIX—Continued

| Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Maghielse Tool Corp. (Wkrs) | Grand Rapids, MI | 06/29/92 | 06/15/92 | 27,441 | Tools and Dies. |
| Frontier Exploration, Inc. (Wkrs) | Englewood, CO | 06/29/92 | 06/10/92 | 27,442 | Oil and Gas Exploration. |
| United Technologies Automotive (Wkrs) | Troy, MO | 06/29/92 | 06/17/92 | 27,443 | Headliners for Automobiles. |
| National Semi-Conductor (Wkrs) | W. Jordan, UT | 06/29/92 | 06/18/92 | 27,444 | Semi-Conductors. |
| Louisiana Land & Exploration Co. (Co) | New Orleans, LA | 06/29/92 | 06/19/92 | 27,445 | Oil and Gas. |
| Louisiana Land & Exploration Co. (Co) | Houston, TX | 06/29/92 | 06/18/92 | 27,446 | Oil and Gas. |
| Louisiana Land & Exploration Co. (Co) | Denver, CO | 06/29/92 | 06/19/92 | 27,447 | Oil and Gas. |
| Louisiana Land & Exploration Co. (Co) | Oklahoma, City, OK | 06/29/92 | 06/19/92 | 27,448 | Oil and Gas. |
| Mt. Fir Lumber Co. (Wkrs) | Tygh Valley, OR | 06/29/92 | 06/11/92 | 27,449 | Pine Lumber. |
| Tektronix, Inc., CAX Center (Wkrs) | Beaverton, OR | 06/29/92 | 06/12/92 | 27,450 | Oscilloscopes and Analyzers. |

[FR Doc. 92-16498 Filed 7-13-92; 8:45 am]
BILLING CODE 4510-30-M

[Field Memorandum No. 47-92]

## Labor Certification Process for the Permanent Employment of Aliens in the United States: Amending Certified Labor Certification Applications

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration has issued a directive to provide instructions to Regional Certifying Officers for responding to requests to amend an Application for Alien Employment Certification (Form ETA 750) after it has been certified pursuant to 20 CFR Part 656—"Labor Certification Process for the Permanent Employment of Aliens in the United States". The attached directive, Field Memorandum No. 47–92, is being published in the Federal Register for the information of the general public.

**DATES:** Field Memorandum No. 47–92 was issued on May 7, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ms. Flora Richardson, Chief, Division of Foreign labor Certifications, United States Employment Service, Employment and Training Administration, United States Department of Labor, suite N–4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535–0163.

Signed at Washington, DC, this 8th day of July, 1992.

**Roberts T. Jones,**

*Assistant Secretary of Labor.*

U.S. Department of Labor, Employment and Training Administration, Washington, DC 20210

Classification: ES–Immigration
Correspondence Symbol: TEE
Date: May 7, 1992
Directive: Field Memorandum No. 47–92
To: All Regional Administrators
From: Donald J. Kulick, Administrator, Office of Regional Management
Subject: Amending Certified Labor Certification Applications
Rescissions: None
Expiration Date: April 30, 1993

1. *Purpose. To provide instructions for responding to requests to amend an Application for Alien Employment Certification* (Form ETA 750) after it has been certified.

2. *References.* 20 CFR Part 656; Section 203(b) as added to the Immigration and Nationality Act by Section 121 of the Immigration Act of 1990.

3. *Background.* Certifying Officers have indicated that they are receiving an increasing number of requests to amend labor certification applications after they have been certified. In view of the substantial increase in the number of such requests and the workload involved in responding to such requests, Certifying Officers have requested clarification of the procedures and policies to follow in responding to such requests. Requests to amend certified labor certification applications primarily involve the information furnished on the application form regarding the employer (Part A, Items 4 and 5) to which the certification had been issued and items relating to the employer's job requirements (Part A, Items 14 and 15).

A. *Change in Employer.*

After certification there may be a change in the employer specified on the application form for a variety of reasons; e.g., sale, merger, reorganization, movement to a new location, etc. It has been past policy that Certifying Officers may make appropriate changes relating to the name and address of the employer on a case-by-case basis. Certifying Officers could, if needed, request advice from the Division of Foreign Labor Certifications regarding the appropriateness of any such changes.

The Employment Service and the Immigration and Naturalization Service (INS) have entered into an agreement whereby all changes relating to the name and address of the employer will be made by INS. This agreement was entered into because of INS's extensive experience in determining whether an entity is the same employer after a change such as a sale, merger or reorganization, and to enhance consistency in administering immigration laws and policies. The INS has developed, and is continuing to develop, a body of extensive administrative case law in making determinations involving changes in employers on the various petitions filed with the Service. When the employer's location has changed, the INS may request advice from ETA regarding the application of the definition of "area of intended employment" as defined at 20 CFR 656.50.

B. *Changes in Job Requirements.*

Amendments made to the Immigration and Nationality Act by the Immigration Act of 1990 limited the number of visas that can be issued to unskilled workers—i.e., aliens immigrating to perform work that requires less than 2 years of training—to 10,000 workers in any fiscal year. Since the waiting time to obtain an unskilled visa number is substantial and growing, employers are with increasing frequency requesting Regional Certifying Officers to amend the employers' requirements entered in Part A, items 14 and 15, on a previously approved labor certification so that the alien can now qualify for a preference category that is more current; i.e., does not have as large a number of aliens waiting in line to obtain a visa number.

It is inappropriate for Certifying Officers to make amendments to any items on the certified ETA 750 that relates to the test of the labor market for U.S. workers. Such items, for example, include: rate of pay (item 12), job description (item 13), and job requirements (items 14 and 15). Changes in any of the items that relate to the labor market test could, in turn, have affected the number of available U.S. workers that applied for the job opportunity involved in the labor certification application. After a certification has been issued, exceptions should only be made in cases where the Certifying Officer made an error, as explained below, in processing the application.

4. *Action Required.* Administrators are requested to instruct Regional Certifying Officers to:

A. Reject a request for amendments to the information on the labor certification application that relates to the employer; i.e., name and address, if the request is made after issuance of the labor certification and does not involve correction of an error by ETA. All such requests are to be returned to employers with a letter explaining that any such requests along with appropriate supporting documentation should be submitted to the INS for consideration along with the visa petition.

B. Reject a request for amendments to items on the labor certification application

that involve employer job requirements or any other items that relate to the test of the labor market for U.S. workers, if the request is made after issuance of the labor certification and does not involve correction of an error. All such requests are to be returned to employers with a letter explaining that Certifying Officers have been instructed not to make amendments to items on the application that relate to the test of the labor market after a labor certification has been issued.

C. Accept a request for amendment(s) to an application after issuance of a labor certification when it is clear from the case record maintained in the Regional Office that a proper amendment was requested and not made before the certification was issued. For example, if the Certifying Officer failed to change an employer's experience requirements on the form pursuant to a proper request from the employer prior to its recruitment of U.S. workers, it would be appropriate for the Certifying Officer to amend a certified application to correct such an error.

5. *Inquiries.* Questions may be directed to Denis Gruskin on 202-535-0169.

[FR Doc. 92-16499 Filed 7-13-92; 8:45 am]

BILLING CODE 4510-30-M

## Office of the Secretary

### Advisory Council on Employee Welfare and Pension Benefit Plans; Announcement of Vacancies; Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (The Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of her functions under ERISA, and to submit to the Secretary, or their designee, recommendations with respect thereto.

The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to Congress on ERISA.

The terms of five members of the Council expire on Thursday, November 14, 1992. The groups or fields represented are as follows: Employee organizations, accounting field, insurance field, employers, and the general public.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to, Attention: William E. Morrow, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., suite N-5677, Washington, DC 20210.

Recommendations must be delivered or mailed on or before September 14, 1992. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should identify the candidate by name, occupation or position, telephone number and address. It should also include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purposes of Section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, DC this 8th day of July, 1992.

**David George Ball,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 92-16452 Filed 7-13-92; 8:45 am]

BILLING CODE 4510-29-M

## Occupational Safety and Health Administration

### Vermont State Standards; Notice of Approval

#### 1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On October 16, 1973, notice was published in the **Federal Register** (38 FR 28658) of the approval of the Vermont State Plan and the adoption of subpart U to part 1952 containing the decision.

The Vermont State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing for two (2) successive weeks, in three (3) newspapers having general circulation in the center, northern and southern parts of the State, an intent to amend the State Plan by adopting the standard(s).

b. Review of standards by the Interagency Committee on Administrative Rules, State of Vermont.

c. Approval by the Legislative Committee on Administrative Rules, State of Vermont.

d. Filing in the Office of the Secretary of State, State of Vermont.

e. The Secretary of State publishing, not less than quarterly, a bulletin of all standard(s) adopted by the State.

The Vermont State plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6, of the Act. By letters dated May 19, 1992 and May 20, 1992, from Dana J. Cole-Levesque, Commissioner, Vermont Department of Labor and Industry, to John B. Miles, Jr., Regional Administrator; and incorporated as part of the plan, the State submitted updated State standards identical to 29 CFR parts 1907; 1910; and 1928; and subsequent amendments thereto, as described below:

(1) Amendments to 29 CFR part 1910.7, Definition and Requirements for Nationally Recognized Testing Laboratory (53 FR 12120-12125, dated 4/12/88 and 53 FR 16838 dated 5/11/88). (By letter dated 5/19/92, from Dana Cole-Levesque, Commissioner, to John B. Miles, Jr., OSHA Regional Administrator, the State of Vermont advised that it will not established a laboratory accreditation program and will accept the Federal program as compliance with the State rules.)

(2) Amendments to 29 CFR part 1910, Electrical Safety-Related Work Practices (55 FR 32014, dated 8/6/90 and 55 FR 46052, dated 11/1/90).

(3) Amendment to 29 CFR part 1926, Safety Standards for Stairways and Ladders Used in the Construction Industry: Final Rule (55 FR 47687, dated 11/14/90).

(4) Amendment to 29 CFR 1926.1053, Safety Standards for Stairways and Ladders Used in the Construction Industry (56 FR 41794, dated 8/23/91).

These standards became effective on January 6, 1992 and April 30, 1992, pursuant to Section 224 of State Law.

**2. Decision**

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and are accordingly approved.

**3. Location of Supplement for Inspection and Copying**

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 133 Portland Street, Boston, Massachusetts, 02114; Office of the Commissioner, State of Vermont, Department of Labor and Industry 120 State Street, Montpelier, Vermont 05602, and the Office of State Programs, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

**4. Public Participation**

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Vermont State plan as proposed changes and making the Regional Administrator's approval effective upon publication for the following reasons:

a. These standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The Standards were adopted in accordance with the procedural requirements of the State Law which included Public comment, and further public participation would be repetitious.

This decision is effective July 14, 1992.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Boston, Massachusetts, this 5th day of June, 1992.

**John B. Miles, Jr.,**

*Regional Administrator.*

[FR Doc. 92-16500 Filed 7-13-92; 8:45 am]

BILLING CODE 4510-26-M

## NATIONAL SPACE COUNCIL

### Vice President's Space Policy Advisory Board; Establishment of Industrial Base Review Task Group

The Vice President has determined that the establishment of a sub-committee of the Vice President's Space Policy Advisory Board is necessary and in the public interest in connection with the performance of duties imposed upon the National Space Council by Executive Order 12675 of April 20, 1989 (3 CFR, 1989 Comp., p. 218).

*Name of Sub-Committee:* Vice President's Space Policy Advisory Board Industrial Base Review Task Group.

*Purpose:* The Industrial Base Review Task Group of the Vice President's Space Policy Advisory Board will assess the current strength of U.S. space-related industrial base and prospects for its health and vitality over the next decade. In conducting this assessment, the panel will consider the implications of declining defense spending, the nature and scope of international competition, current and projected national security needs as well as taking into account the changing trade relationship between the U.S. government, the U.S. private sector, and the republics of the former Soviet Union and their industries. The panel will also consider the emerging and long term implications of other space industry nations, such as China, Japan, and members of the European Space Agency.

*Balanced Membership Plans:* The Industrial Base Review Task Group shall be composed of between 5 and 8 individuals drawn from the members of the Vice President's Space Policy Advisory Board. As the Vice President's Space Policy Advisory Board represents a balanced membership of diverse backgrounds and experiences, so too will this Sub-Committee.

*Responsible National Space Council Official:* Courtney A. Stadd, National Space Council, Executive Office of the President, Washington, DC (202) 395-6175.

**Steven D. Harrison,**

*Committee Management Officer.*

[FR Doc. 92-16439 Filed 7-13-92; 8:45 am]

BILLING CODE 3128-01-M

### Vice President's Space Policy Advisory Board; Establishment of Space Launch Strategy Implementation Task Group

The Vice President has determined that the establishment of a subcommittee of the Vice President's Space Policy Advisory Board is necessary and in the public interest in connection with the performance of duties imposed upon the National Space Council by Executive Order 12675 of April 20, 1989 (3 CFR, 1989 Comp., p. 218).

*Name of Subcommittee:* Vice President's Space Policy Advisory Board Space Launch Strategy Implementation Task Group.

*Purpose:* The Space Launch Strategy Implementation Task Group will review the implementation of the National Space Policy Directive on National Space Launch Strategy.

*Balanced Membership Plans:* The Space Launch Strategy Implementation Task Group shall be composed of between 5 and 8 individuals drawn from the members of the Vice President's Space Policy Advisory Board. As the Vice President's Space Policy Advisory Board represents a balanced membership of diverse backgrounds and experiences, so too will this Subcommittee.

*Responsible National Space Council Official:* James Beale, National Space Council, Executive Office of the President, Washington, DC, (202) 395-6175.

**Steven D. Harrison,**

*Committee Management Officer.*

[FR Doc. 92-16440 Filed 7-13-92; 8:45 am]

BILLING CODE 3128-01-M

### Meeting of the Space Launch Strategy Implementation Task Group

**AGENCY:** National Space Council.

**ACTION:** Notice of meeting

**SUMMARY:** The Space Launch Strategy Implementation Task Group of the Vice President's Space Policy Advisory Board will meet July 30 and 31, 1992.

**DATES:** July 30 and 31, 1992.

**ADDRESSES:** 1215 Jefferson Davis Highway, Suite 800, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Stephen Hopkins, (703) 685-3307 or James Beale, National Space Council, Executive Office of the President, Washington, DC, (202) 395-6175.

**SUPPLEMENTARY INFORMATION:** The Space Launch Strategy Implementation Task Group of the Vice President's Space Policy Advisory Board will meet

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between 8:30 a.m. and 5 p.m. on July 30 and 31, 1992 at the ANSER Corporation, Suite 600, 1215 Jefferson Davis Highway, Arlington, Virginia. Persons interested in attending should contact Stephen Hopkins, ANSER, (703) 685-3307.

James R. Beals,
*Committee Action Officer.*

[FR Doc. 92-16505 Filed 7-13-92; 8:45 am]
BILLING CODE 3139-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Comments on this information collection must be submitted by August 13, 1992.

**ADDRESSES:** Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Service Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

**SUPPLEMENTARY INFORMATION:** The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* FY 94 Music Fellowships Application Guidelines.

*Frequency of Collection:* One-time.

*Respondents:* Individuals.

*Use:* Guideline instructions and applications elicit relevant information from individual artists that apply for funding under the Music Program Fellowships category. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

*Estimated Number of Respondents:* 715.

*Average Burden Hours per Response:* 20.

*Total Estimated Burden:* 14,300.

Judith E. O'Brien,
*Management Analyst, Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 92-16451 Filed 7-13-92; 8:45 am]
BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50-373 and 50-374]**

### Commonwealth Edison Co.; Withdrawal of Application for Amendment to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (the licensee) to withdraw its July 1, 1989, application for proposed amendment to Facility Operating License Nos. NPF-11 and NPF-18 for the LaSalle County Station, Unit Nos. 1 and 2, located in LaSalle County, Illinois.

The proposed amendment would have revised the Technical Specifications to allow periodic cycling of the pneumatically operated VQ valves in accordance with the manufacturer's recommendation.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 4, 1989 (54 FR 40925). However, by letter dated May 13, 1992, the licensee withdrew the proposed amendment.

For further details with respect to this action, see the application for amendment dated July 1, 1989, and the licensee's letter dated May 13, 1992, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the local public document room located at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois.

Dated at Rockville, Maryland this 1st day of July 1992.

For the Nuclear Regulatory Commission.

Byron L. Siegel,
*Project Manager, Project Directorate III-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 92-16489 Filed 7-13-92; 8:45 am]
BILLING CODE 7590-01-M

## OFFICE OF NATIONAL DRUG CONTROL POLICY

### President's Drug Advisory Council; Meeting

**AGENCY:** President's Drug Advisory Council; Office of National Drug Control Policy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix), of a meeting of the President's Drug Advisory Council.

**DATE AND TIME:** July 22, 1992 from 1 to 3:30 p.m.

**PLACE:** The meeting will be held in room 180 of the Old Executive Office Building (OEOB), Washington, DC 20500.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Cavanagh, Confidential Assistant, President's Drug Advisory Council, Executive Office of the President, Washington, DC 20500, (202) 466-3100.

**SUPPLEMENTARY INFORMATION:** The President's Drug Advisory Council was created by Executive Order 12696 of November 13, 1989 (54 FR 47507, November 15, 1989), with the general purpose of advising the President and the Director of the Office of National Drug Control Policy on the development, dissemination, explanation and promotion of national drug policy.

At the session on July 22, the Council will receive progress reports from its National Coalition Committee and its Drug-Free Workplace Committee.

Members of the public interested in attending the meeting should contact the President's Drug Advisory Council, (202) 466-3100, at least one day prior to the meeting. Callers should be prepared to give their birthdate and social security number over the telephone, in order to facilitate clearance into the Old Executive Office Building. Due to difficulties in scheduling a reception with the President on the morning of July 22, 1992, notice of this open meeting was delayed.

Terence J. Pell,
*Chief of Staff, Office of National Drug Control Policy.*

[FR Doc. 92-16509 Filed 7-9-92; 1:39 pm]
BILLING CODE 3180-02-M



## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-30698; File No. SR-PSE-90-44]**

### Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change, Including Amendment No. 1 to the Proposed Rule Change, and Filing and Order Granting Accelerated Approval to Amendment Nos. 2, 3, 4, 5, and 6 to the Proposed Rule Change, Relating to Listing Guidelines for Certain Unit Investment Trusts

July 7, 1992.

### I. Introduction

On December 10, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change to amend Rules 3.2 and 3.5 of the PSE Rule Book to provide listing guidelines for certain investment trusts that issue securities based on a portfolio of stocks included in a broad-based stock market index and/or portfolio of money market instruments or other debt securities.

The proposed rule change was published for comment in Securities Exchange Act Release No. 29805 (October 10, 1991), 56 FR 52108 (October 17, 1991). No comments were received on the proposed rule change.[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The proposal was amended on August 26, 1991, to provide customer suitability standards for investments in unit investment trust securities ("UIT interests") and to require that PSE members have all discretionary orders in UIT interests approved by proper supervisory personnel. This amendment was noticed in Securities Exchange Act Release No. 29805 (October 10, 1991), 56 FR 52108 (October 17, 1991). No comments were received on the amendment. The proposal was amended again on November 27, 1991, to clarify the listing standards for UIT interests and to require that the stock market index on which UIT interests may be based is a broad-based stock market index that is of the type the Commission previously has reviewed and approved for index products. The proposal was further amended on December 19, 1991 to require that trading in index UIT interests be halted when trading in index options has been halted. The proposal was further amended on February 5, 1992 to clarify how voting rights conferred by UIT interests would be divided between the securities component parts. The proposal was further amended on April 13, 1992, and April 15, 1992 to clarify the requirements applicable to the trustees of unit investment trusts and to require that a prospectus be delivered to every customer effecting a transaction in UIT interests. Finally, the proposal was amended on June 11, 1992, to eliminate a provision that gave the PSE the authority to list a UIT if the trust meets the minimum standards as established by another authorized national securities exchange.

### II. Description of Proposal

*A. Listing Requirement for Unit Investment Trusts*

The PSE proposes to amend Rules 3.2 and 3.5 of the PSE Rule Book to provide for the listing of unit investment trusts that issue securities based on a portfolio of stocks included in a domestic, broad-based stock market index, which is of the type the Commission has previously reviewed and approved for index products, and/or a portfolio of money market instruments or other debt securities. Under the proposal, these unit investment trusts may operate on an open or closed end basis and may permit investors to separate their securities into distinct trading components. These distinct trading components may represent interests in the income, capital appreciation potential, or other economic characteristics of the securities deposited in the unit investment trust.[4]

Under the proposal, a unit investment trust's eligibility for listing its securities will be subject to the following requirements. First, the unit investment trust must have assets in excess of $100 million. Second, the trust must have a minimum public distribution of 1 million shares or units held specifically by a minimum of 400 public holders. Third, the trust must have an aggregate market value of $18 million. Fourth, the trust must have a term of two years or as otherwise stated in the trust prospectus.

Under the proposal, the PSE will consider the suspension of trading in or withdrawal from listing of the securities of a unit investment trust if the aggregate market value of the trust is less than $1 million, or if the related security to which the cash payment of the trust at term is tied is delisted. The PSE will also consider the suspension of trading in, or removal from listing of, any unit investment trust if further dealings in such securities appears unwarranted due to the occurrence of any of the following circumstances: The trust has more than 60 days remaining until termination and there are less than 50 record and/or beneficial holders of shares, units or trading components thereof for 20 or more consecutive trading days; there has been a failure on the part of the trust and/or trustee to comply with the PSE's listing policies or agreements; or such other event occurs or condition exists that, in the PSE's opinion, makes further dealings on the Exchange inadvisable.

The proposal also requires that the trustee of a UIT interest be a trust company or banking institution having substantial capital and surplus. Such trustee may not have an executive officer who is also an officer of the issuing sponsor nor shall the trustee and issuer be under common control. If an individual is appointed as the trustee, the proposal requires that a qualified trust company or banking institution be appointed co-trustee.

*B. Trading of Unit Investment Trust Interests*

The proposal also provides for specific rules to govern the trading of the securities issued by a unit investment trust and their component parts ("UIT interests"). First, the proposal requires that a broker recommending a transaction in a UIT product (*i.e.*, securities issued by a unit investment trust and any distinct trading components of those securities) to determine that all aspects of the product, including its component parts, are not unsuitable for the customer and that the customer has the financial ability to bear the risk of the product, including its component parts, even if the recommendation is limited to a transaction in a whole UIT interest rather than any of the component parts. This suitability standard is substantially identical to the one that is applied to recommendations in options products.[5] Second, the PSE proposal requires that customers be provided with a statutory prospectus before effecting a transaction in a UIT interest.

Third, the PSE proposal includes rules governing the entering of discretionary

[4] The Commission recently approved similar proposals by the American Stock Exchange, Inc. ("Amex") and the Chicago Board Options Exchange, Inc. ("CBOE"). The Amex and the CBOE specifically had applied to list and trade securities, and their component securities, issued by unit investment trusts sponsored by Supershare Services Corporation, a majority owned subsidiary of Leland O'Brien Rubinstein Associates Incorporated, called SuperUnits and SuperShares. See Securities Exchange Act Release Nos. 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (order approving SR-Amex-90-06), and 30393 (February 21, 1992), 57 FR 7415 (March 2, 1992) (order approving SR-CBOE 90-13). The PSE rule filing is intended to provide the Exchange with the regulatory structure to trade SuperUnits and SuperShares. Of course, in order to actually trade SuperUnits and SuperShares, the PSE would need to apply for and be granted unlisted trading privileges for these securities.

[5] See PSE Rule 9.18(c).

orders in UIT interests. Currently, PSE rules prohibit a PSE member from exercising discretion in a customer's account unless the member obtains the prior written authorization of the customer and, in the case of an options account, the approval of a Senior Registered Options Principal.[6] In addition, all discretionary accounts are required to be reviewed by a general partner or principal executive officer of the PSE member at frequent intervals.[7] The proposal would add, for listed UIT interests that are separable into distinct trading components, an additional requirement that discretionary orders in such securities must be approved and initialled on the day entered by a person delegated such responsibility under PSE rules or, in accounts approved for options trading, by a Senior Registered Options Principal or Registered Options Principal.

Fourth, the PSE proposes that trading in an index UIT interest will be halted when trading in index options has been halted.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[8] Specifically, the Commission believes that providing for the exchange trading of securities issued by unit investment trusts based on a portfolio of stocks in a broad-based stock market index or a portfolio of money market instruments will offer a new and innovative means of participating in the securities markets. In particular, the Commission believes that the trading of UIT interests will accord investors flexibility in shaping their investment needs by providing (1) the means to trade open-end mutual funds on the secondary market, and (2) a mechanism to separate a stock or money market investment into component pieces.[9]

Moreover, the ability of investors to split a UIT interest into component parts should provide investors with flexibility to meet their investment needs. For example, a UIT interest separable into component parts representing the respective income and appreciation portion of the value of the UIT interest would permit an investor interested in maintaining low risk to hold on to the income portion of the UIT interest and sell the appreciation portion in the secondary market. Investors who could bear the risks of holding the appreciation portion also would have the ability to obtain differential rates of return on a capital outlay if the index on which the value of the appreciation component was based moved in a favorable direction above a specified amount.[10]

While a whole UIT interest is analogous to open-end index and money market funds, the components of that UIT interest are hybrid derivative securities having certain option-like characteristics and risks. Accordingly, the Commission has reviewed carefully the PSE's proposal to ensure that the rules for trading UIT interests and their component parts maintain and meet the Act's requirements for adequate investor protection.

Because UIT interests that can be divided into component parts involve a level of risk that is greater than the level of risk involved with traditional mutual fund securities, the Commission has several specific concerns regarding the trading of UIT interests. In particular, these UIT interests raise customer suitability, disclosure, and secondary market trading issues that must be addressed adequately. As discussed in detail below, the PSE has proposed safeguards that are designed to meet these investor protection concerns.

First, the PSE has addressed customer suitability concerns by proposing to add Commentary .02 to PSE Rule 3.2. As noted above, Commentary .02 would require a broker recommending a purchase of a UIT interest product (*i.e.*, securities issued by a unit investment trust and any district trading components of those securities) to determine that all aspects of the product, including its component parts, are not unsuitable for the customer and that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and special characteristics of the recommended transaction. The Commentary also requires that the recommending broker determine that the customer has the financial ability to bear the risk of the component parts, even if the recommendation is limited to purchasing a whole UIT interest rather than any of the component securities. This suitability standard is almost identical to the one that is applied and recommended for options products.[11]

As applied to UIT interests that are dividable into component parts, the Commission believes that the use of an options-like suitability standard to a recommendation to establish a position (either long or short) in a UIT interest will provide protection that the recommendation only will be made to those investors who can evaluate and bear the risks of the component securities. The Commission believes that applying this suitability standard to the entire product is necessary because a purchase of a whole UIT interest always involves the potential to separate the UIT interest later into component securities.

Second, the Commission has reviewed the appropriate account approval standards. For example, in order to trade options, an investor's account must be approved for options trading.[12] The PSE has not proposed to require or recommend that UIT interests, including those which are the component parts of a whole UIT interest, be sold only to options approved accounts. The Commission finds this acceptable because (1) UIT interests have some aspects that are more akin to equity than to options; and (2) the PSE has developed other adequate customer protection rules applicable to transactions in these products. For example, the PSE has proposed to require that discretionary transactions in UIT interests be approved by a Senior Registered Options Principal, a Registered Options Principal, or a Person delegated such responsibility under PSE rules governing the proper conduct and supervision of customer accounts.[13] By requiring review of all

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[6] See PSE Rules 9.6(a) and 9.18(e).

[7] See PSE Rule 9.6(b).

[8] In addition to the discussion set forth below, the Commission hereby incorporates the discussion set forth in Securities Exchange Act Release Nos. 30094 (February 21, 1992) (order approving SR–Amex–90–06), and 30093 (February 21, 1992) (order approving SR–CBOE 90–13), *supra* note 4.

[9] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[10] Of course, if the index on which the value of the appreciation component was based moved in the wrong direction, the appreciation component would expire worthless and the investor would have lost his entire investment.

[11] *See eg.* PSE Rule 9.18(c).

[12] These rules require member firms, among other things, to make certain inquiries about a customer's financial situation and investment objectives and verify, and maintain records containing, this background and financial information.

[13] As discussed in *"Trading of UIT Interests," supra*, PSE rules require discretionary orders in options-approved accounts to be approved by a Senior Registered Options Principal or a Registered Options Principal and discretionary orders in other

Continued

discretionary transactions in UIT interests on the day the transaction is executed, in addition to special supervisory controls to open a discretionary account, the proposal will ensure that discretionary transactions are appropriate for the account and that the account suitability standards are being met. Moreover, as noted above, the PSE has proposed special, heightened suitability standards for these products.

If the PSE obtains approval to trade the "SuperTrust" product [14] (*i.e.*, SuperUnits and SuperShares) through unlisted trading privileges at a future time,[15] the Commission believes that the options-like suitability standard applicable to the product and the special supervisory rules for discretionary transactions will provide adequate protection to investors. Accordingly, the Commission does not believe that it is necessary to limit the sale of the "SuperTrust" product, which has characteristics of debt, equity and options, to only those investors that meet the account eligibility requirements for options trading. The Commission emphasizes, however, that recommendations for SuperShares should be limited to investors who would qualify for options trading if they were to seek qualification.

Third, the PSE has addressed customer disclosure concerns by requiring, under proposed Commentary .02 to Exchange Rule 3.2, that PSE members provide customers with an explanation of any special characteristics and risks attendant to trading UIT interests. Further, the PSE will require, under proposed Commentary .02, that all investors in UIT interests be provided a prospectus, describing the UIT interests and the trust issuing such interests. Proposed Commentary .02 states that unless the member organization has a system in place which will verify that they previously delivered a prospectus to each investor, it will require a prospectus to be delivered in conjunction with each transaction in UIT interests. Accordingly, the Commission believes that investors in UIT interests will be provided with adequate disclosure.

Fourth, the PSE has addressed any market impact concerns in its proposal. Specifically, the PSE proposal only permits the listing of UIT interests on a portfolio of stocks if the stock market index on which it is based is a broad-based index that the Commission has reviewed and approved in another context.

Accordingly, because the index on which a UIT interest would be based already would be the subject of derivative instruments, the Commission believes it is less likely that the listing and trading of UIT interests would adversely impact U.S. securities markets.[16] Moreover, in the case of the "SuperTrust" product, the Commission notes that a variety of derivative instruments currently trading, including index options and index futures contracts, are based on the S&P 500 Index. The "SuperTrust" product, therefore, would be only one of a number of instruments that are based on the S&P 500 Index.

Finally, the Commission finds that the PSE has designed adequate rules and procedures to govern the trading of UIT interests, including UIT interests separable into component parts. Specifically, the Commission believes that the PSE's rules governing the trading of UIT interests provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

The Commission finds good cause for approving amendment Nos. 2, 3, 4, 5, and 6 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission finds that these amendments provide requirements applicable to the listing and trading of UIT interests that are identical to the requirements set forth in Amex and CBOE proposals to list and trade UIT interests and raise no new issues.[17] The Commission believes that approving these amendments on an accelerated basis will provide the PSE with the regulatory structure to compete with the Amex and the CBOE on an equal basis for orders in UIT interests if they decide to apply for uniform trading privileges in these products.

Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6(b)(5) of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning amendment Nos. 2, 3, 4, 5, and 6 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 4, 1992.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–PSE–90–44) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jonathan G. Katz,

*Secretary.*

[FR Doc. 92–16435 Filed 7–13–92; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34–30738; File No. SR–PSE–92–13]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Trading Restriction Associated With Financial Arrangements, Among PSE Members

May 28, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 13, 1992, the Pacific Stock Exchange, Inc. ("PSE" or

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accounts to be approved as provided in PSE Rule 9.6(a).

[14] For a description of the SuperTrust product, *see* Securities Exchange Act Release Nos. 30364 (February 21, 1992) and 30393 (February 21, 1992), *supra* note 4.

[15] *See supra* note 4.

[16] The PSE, of course, could submit proposals pursuant to section 19(b) of the Act to trade UIT interests based on other types of indexes. This will provide the Commission with an opportunity to determine if a particular index raises potential manipulation or other trading abuse concerns. See Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832 (October 12, 1988) (order approving listing and trading rules for index warrants). The Commission believes this approach is appropriate and consistent with its policy on the trading of other types of index products.

[17] These proposals were noticed in Securities Exchange Act Release Nos. 28095 (June 6, 1990), 55 FR 24016 (June 13, 1990) and 28132 (June 19, 1990), 55 FR 28038 (June 26, 1990), respectively. No comments were received on these proposals.

[18] 15 U.S.C. 78s(b)(2)(1988).

[19] 17 CFR 200.30–3(a)(12)(1991).

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"Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PSE proposes to broaden its Rule 6.40 governing trading restrictions imposed on financially affiliated market makers to include financial arrangements between market makers and any other PSE member of member organization and to expand the trading restriction to prohibit financially affiliated PSE members from trading in the same crowd without the approval of two floor officials. The text of the proposed rule change is attached as Exhibit A.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The PSE proposes to clarify and expand the existing trading restrictions on market makers who have financial arrangements with other Exchange members or member organizations. These restrictions are designed to prevent domination of trading crowds by groups of market makers with financial arrangements. They also are intended to enhance the competitiveness of each trading crowd on the trading floor.

Existing PSE Rules 4.18[2] and 6.40 require the disclosure to the Exchange of market maker financing arrangements. PSE Rule 4.18 specifies the types of financial arrangements that must be disclosed; direct financing of dealings on the Exchange; any direct equity arrangement or profit sharing arrangement; and the receipt of any consideration over five thousand dollars that constitutes a gift, loan, salary or bonus. Under the proposed rule change, market makers having financial arrangements as specified in Rule 4.18 and market makers trading for the same joint account would be subject to the trading restrictions as specified in Rule 6.40.

Currently, PSE Rule 6.40 provides that market makers with existing financial arrangements with other market makers may not bid, offer, purchase, sell, or enter orders in the same option series. The proposed rule change would broaden this restriction to prohibit market makers with financial arrangements from trading in the same trading crowd without written approval from two floor officials. Moreover, the PSE proposal provides that if two or more market makers are granted written approval to trade in the same trading crowd, they would still not be permitted to trade in the same option series at the same time or trade on the same order ticket.

Additionally, PSE Rule 6.40 currently governs financial arrangements between market makers and other market makers. The proposed rule change would broaden the scope of Rule 6.40 to cover financial arrangements between market makers and any other PSE members or member organizations. Finally, the PSE proposes in order to amend Rule 6.84(f) so that it cross references proposed Rule 6.40 in order to eliminate any possible ambiguity regarding trading restrictions on market makers trading for the same joint account.

The PSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it will prevent fradulent and manipulative acts and practices; will promote just and equitable principles of trade; will remove impediments to and perfect the mechanism of a free and open market and the national market system; and will, in general, protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the question above and should be submitted by August 4, 1992.

[1] The PSE amended its original proposal on May 4, 1992 in order to clarify references to other Exchange rules and to amend PSE 6.84(f) to reflect the proposed rule change. See letter from Michael D. Pierson, Staff Attorney, PSE to Thomas Gira, Branch Chief, Options Regulations, dated May 4, 1992.

[2] The Commission recently approved an amendment to PSE Rule 4.18, entitled "Disclosure of Financial Arrangements of Members." See Securities Exchange Act Release No. 29981 (Nov. 19, 1991), 56 FR 60144.



For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,
*Secretary.*

**Exhibit A**[4]

**Financial Arrangements of Market Makers**

Rule 6.40(a) *Financial Arrangements Defined. A Market Maker has a "financial arrangement" for purposes of this Rule if:*

*(1) The Market Maker is required to report the terms of a financial arrangement to the Exchange pursuant to Rule 4.18; or*

*(2) The Market Maker is trading for a joint account.*

*(b) Trading Restrictions. A Market Maker who has a "financial arrangement" with another Member or Member Organizations (as specified herein) and the Member or Member Organization having a "financial arrangement" with that Market Maker, shall together be subject of the following restrictions:*

*(1) They may not bid, offer and/or trade in the same trading crowd at the same time unless they obtain a written dispensation from two Floor Officials. Such dispensation shall be provided by two Floor Officials only on the basis of a demonstrated need to trade in the same crowd.*

*(2) They may not bid, offer and/or trade in the same option series at the same time.*

*(3) They may not trade on the same order ticket.*

*(c) Committee Review. The Options Floor Trading Committee shall review, on a regular basis, each dispensation granted pursuant to Rule 6.40(b)(1).*

*(d) Reporting to the Exchange.* [Each Market Maker who makes an arrangement to finance his transactions as a Market Maker, and each Market Maker who makes an arrangement to finance the transactions of another Market Maker, shall inform the Exchange of the name of the creditor/debtor and the terms of such arrangement. The Exchange shall be informed immediately of the intention of any party (1) to terminate or change any such arrangement, or (2) to issue a margin call. On a form prescribed by the Exchange, a Market Maker shall submit to the Exchange a monthly report of his use or extension of credit pursuant to this Section.] *Market Makers, Floor Brokers, Specialists, and Member Organizations are required to report the terms of their financial arrangements to the Exchange pursuant to Rule 4.18 ("Disclosure of Financial Arrangements of Members").*

Commentary:

[.01 Market Makers having existing financial arrangements with other Market Makers may not concurrently bid, offer, purchase, sell, or enter orders in the same option series.]

*.01* [.02] No change.

*.02* [.03]—No change.

Joint Accounts

Rule 6.84(a)–(e)—No change.

(f) Participants in a joint account [may not concurrently bid, offer, purchase, sell, or enter orders in the same option series] must comply with the trading restrictions provided in Rule 6.40.

(g)–(h)—No change.

Commentary .01–.07—No change.

[FR Doc. 92–16504 Filed 7–13–92; 8:45am]

BILLING CODE 8010-01-M

[3] 17 CFR 200.30–3(a)(12) (1989).

[4] Italics indicates language to be added; brackets indicate language to be deleted.

## Issuer Delisting; Application to Withdraw From Listing and Registration; (Gerber Products Company, Common Stock $2.50 Par Value; Common Share Purchase Rights) File No. 1–4007

July 8, 1992.

Gerber Products Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the company, it decided to withdraw the Common Stock and the Common Share Purchase Rights from listing on the PSE because the Company believes its needs, as well as those of its shareholders, are being adequately served by the listing of the securities on the New York Stock Exchange, Inc. and Midwest Stock Exchange, Inc.

Any interested person may, on or before July 29, 1992, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 92–16434 Filed 7–13–92; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD 92–032]

### South Florida Oil Spill Research Center

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of intent; Request for letters of interest; Third of three required notices.

**SUMMARY:** The Coast Guard intends to establish a Federally Funded Research and Development Center to address prevention, tracking and cleanup of oil discharges in the unique tropical and subtropical environment around South Florida. The Coast Guard is seeking letters of interest with capabilities statements from interested parties. This is the third of three required notices.

**DATES:** Letters of interest with capabilities statements must be received not later than July 28, 1992.

**ADDRESSES:** Letters of interest with capabilities statements may be mailed to Superintendent, U.S. Coast Guard Academy, 15 Mohegan Avenue, New London, CT 06320–4195, Attention: Ms. B. Burke, Procurement Office (Code FP), or may be delivered at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. Burke, Procurement Office, U.S. Coast Guard Academy, (203) 444–8242.

**SUPPLEMENTARY INFORMATION:** Congress has directed that the Coast Guard establish a research center to address prevention, tracking, and cleanup of oil discharges in the unique tropical and subtropical environment around South Florida. Research at the proposed Tropical/Subtropical Oil Spill Research Center will focus on improving the ability of the Federal government to monitor oil discharges around South Florida and other tropical and subtropical environments; predict and track their flow; predict oil spill behavior in warm waters; and make informed decisions concerning treatment and cleanup. Specific research areas may include, but not be limited to, satellite and airborne oil spill remote sensing; predicting and tracking their movement with trajectory models; predicting the physical properties and behavior of oil in warm waters; decision support systems for making informed decisions concerning treatment and cleanup; studying the impacts of oil discharges on public health, the socio-economic environment, and the natural environment; and developing advanced

technologies for cleaning up or mitigating the impact of oil spills on shorelines and open water including mechanical recovery, dispersants, bioremediation, and insitu burning. The Coast Guard is seeking capability statements from universities, colleges, and other research and education institutions. The universities, colleges, or institutions should be able to demonstrate strong capabilities in remote sensing from satellites and other modalities, and strengths in research, education, and training in geophysics, oceanography, marine biology, chemistry, ocean engineering, and computer science. The Coast Guard intends to establish the Center as a Federally Funded Research and Development Center (FFRDC) in accordance with Federal Acquisition Regulation 35.017, 48 CFR section 35.017. The institution will be required to provide no less than 20 percent of the annual total cost of the Center from institutional, private sector, and philanthropic sources. The expectation is that the research center will be located at an existing marine sciences institution in the appropriate tropical/subtropical environment and in close proximity to the Gulf Stream and to other unique tropical flora and fauna, but may draw upon faculty, facilities, and other resources from other institutions to build a comprehensive capability to conduct research in the prevention, tracking and cleanup of oil discharges.

Interested parties should send letters of interest with a capabilities statement. Capabilities statements should include institution research interests, a description of past and present research related to oil spill prevention, tracking, and cleanup, description of educational programs and courses related to marine pollution control, resumes of research faculty, list of facilities (vessels, laboratories, test tanks, etc.) that will be available for oil spill related research, and cooperative agreements with other private and government research institutions which augment the institution's on-site capabilities. Letters of interest with capabilities statement are limited to a total of 20 typewritten pages and are required not later than July 28, 1992.

Dated: July 8, 1992.

T. E. Omri,

*Acting Chief, Office of Engineering, Logistics and Development*

[FR Doc. 92-16493 Filed 7-13-92; 8:45 am]

BILLING CODE 4910-14-M

## Federal Railroad Administration

[FRA Docket No. H-92-1 and H-92-2]

### Petition for Waiver for Test Program; National Railroad Passenger Corporation Metro North Commuter Railroad

In accordance with 49 CFR part 211, notice is hereby given that the National Railroad Passenger Corporation (Amtrak) and Metro North Commuter Railroad (Metro North) submitted essentially identical petitions, dated April 27, 1992 and May 21, 1992, respectively, for a temporary waiver of compliance with specific requirements of certain parts of Title 49 of the Code of Federal Regulations in order to conduct a test and to provide a limited revenue service demonstration of a passenger trainset imported from abroad. The test and demonstration programs described in this notice would, if approved, involve two separate, but contiguous railroads in the same activity. Virtually identical trainset test and demonstration activities carried out between Boston and New York City would operate in sequence over the tracks of Amtrak and Metro North. When sequential operation occurs the same test plan would be in effect for each railroad.

The proposed program is meant to evaluate the curving performance of the trainset under certain conditions (test phase) and to assess the market response to the availability of advanced rail passenger transport of this nature (demonstration phase). The results of the test phase will provide guidance to FRA in the formulation of conditions to be applied to the revenue service demonstration phase.

The track safety standards in § 213.57(b) prescribe a speed limit, not distinguishing between freight and passenger rolling stock, at which trains may operate over curved track as a function of curve radius (curvature) and the installed superelevation. In the general case, for any combination of curvature and superelevation there is a specific ("balanced") speed at which the effect of centrifugal force is canceled resulting in passenger insensitivity to actual curve negotiation. This is an ideal outcome for passenger trains which usually operate considerably faster than freight trains and, as a consequence, would demand greater superelevation to produce the balance effect. The track standards permit the operation of trains on curves at speeds producing a conservative underbalance ("cant deficiency") in line with historic industry practice. (A more detailed discussion of cant deficiency can be found in 52 FR 38035, October 13, 1987.) On the other hand, successful passenger train operation in many places overseas is predicated on curve negotiation at train speeds developing significantly higher cant deficiencies than permitted by the U.S. track regulations. Authorities in Sweden and other countries have approved curving speeds for specially designed rolling stock that produce cant deficiencies at the upper end of the acceptable range without passengers incurring centrifugal force-induced discomfort.

Should this petition be approved, Amtrak and Metro North expect to schedule the test/demonstration program late this year or early 1993. The equipment proposed to be evaluated will consist of an "X2000" trainset composed of a locomotive, four coaches and a so-called "driving trailer" (in effect, a cabcontrol car for reverse running). This equipment is representative of the fleet of similar trainsets operated on a daily basis by Statens Järnvägar (SJ), the Swedish State Railways. The distinguishing feature of this trainset is that the coaches are tilted hydraulically on curves to compensate for centrifugal force. The presence of curved track, including acuteness of curvature, along with specific amounts of superelevation, is sensed by instrumentation which actuates the carbody tilting mechanism.

The X2000 trainset operates in daily revenue service in Sweden at up to 9 inches of cant deficiency and has been successfully operated during tests in Europe at up to twelve inches of cant deficiency. During the proposed test series, the trainset will be operated through test zones which contain track conditions similar to those over which future revenue service would be likely.

Petitioners intend to investigate the response of the X2000 trainset at curving speeds producing up to twelve inches of cant deficiency (seven-inch limit imposed by Metro North) if this can be accomplished safely. One or more RTL Turboliner power cars would be used to propel the train during portions of the test in non-electrified territory (between New Haven and Boston) at up to eight inches of cant deficiency. The utility of tilt-body equipment would also be investigated on the much less curved segment of the Northeast Corridor between New York City and Washington, DC.

The petitions contain seven individual requests for relief from compliance with various provisions of Title 49 of the Code of Federal Regulations. The following is a summary of the requests, in the order presented by the petitioners.

**Request 1—High Cant Deficiency and Train Speeds for Test Purposes**

This request seeks temporary relief from the requirements of § 213.9(c), "Classes of Track Operating Speed Limits" and § 213.57(b), "Curves; elevation and speed limitations" in order to establish the safe cant deficiency limits for the revenue service demonstrations discussed in Request 3.

Initial cant deficiency testing is proposed to be conducted between Harrisburg and Lancaster, Pennsylvania. Amtrak selected this location because it is electrified and contains curve and track conditions similar to those evident between New Haven and Boston on the Northeast Corridor. The availability of electric power assures attainment of the test train speeds of interest.

Amtrak states that it desires to operate the X2000 at the highest cant deficiency possible consistent with safety. According to Amtrak, in order for this technology to have a significant impact on New York to Boston trip times, Amtrak needs to operate at speeds developing approximately ten inches of cant deficiency. It is the intent of the petitioners to test this trainset on the Harrisburg corridor at progressively higher cant deficiencies starting at the currently authorized three inches and progressing to 11 inches if stop-test criteria are not exceeded.

After completion of these tests, the petitioners propose to run between Philadelphia and New York City at incrementally higher speeds and cant deficiencies, starting at 110 mph and seven inches of cant deficiency, and progressing to 150 mph at 11 inches of cant deficiency if test data analyses support this sequence.

The petitioners state that to perform the high cant deficiency tests, it will be necessary to exceed the present 110 mph speed limit imposed by 49 CFR 213.9(c). The petitioners state that this equipment presently operates at 125 in Sweden in daily scheduled revenue service.

The petitioners propose establishing the following safeguards for the tests: (1) A knowledgeable and independent third party will monitor data in real time; (2) the adjacent track(s) will be kept clear; (3) runs at the next higher speed will not be made until the data is reviewed and it is determined that is safe to do so; (4) a track geometry run will be made over the test tracks within the month preceding the X2000 tests; (5) the locomotive engineer and an on-board transportation supervisor will be given a written list of curve speeds for each series of tests. An accurate speedometer will be provided; (6) a designated railroad official, with full authority, will be on each run as the Test Director; and (7) two-way radio communications will be maintained between the Test Director and the locomotive engineer. A back-up radio will be provided to each.

FRA's approach to ensuring safety if this petition is granted, would be to require that sufficient instrumentation be installed on the trainset to enable comparison of equipment behavior during testing to predetermined derailment criteria and, also, to previously tested equipment of similar types known to be safe. FRA would require that attainment of maximum target curving speeds be in increments permitting a step-by-step analysis of applied forces and dynamic responses during and at the conclusion of each test run. The decision to proceed to the next level of cant deficiency or speed would be based on this analysis process and be subject to the approval of the on-board FRA test monitor.

**Request 2—RTL Turbine Locomotives at Eight-Inches of Cant Deficiency**

In order to haul the X2000 between New Haven and Boston, the petitioners are requesting a waiver from 49 CFR 213.57(b) to operate two of the RTL turbine power cars coupled to the X2000 trainset. The maximum speeds would be established on a curve-by-curve basis between Boston and Market Interlocking, and would generally produce eight inches of cant deficiency on Amtrak and seven inches on Metro North. Those speeds will be verified based on current track geometries. The same safety conditions as in Request 1 would apply. Additionally, the petitioners state that when operating near road crossings at grade at higher than normal speeds, Amtrak will flag those crossings to insure adequate protection.

**Request 3—High Cant Deficiency in Revenue Service Testing/Demonstration**

Based on a successful outcome of the previous tests, the petitioners are also requesting temporary relief from 49 CFR 213.57(b) to operate the X2000 in revenue service for approximately four months at cant deficiencies to be mutually established for various curves. An analysis of each curve would be provided to FRA for approval before starting revenue service.

**Request 4—150 mph for Test Purposes Only**

If warranted by the results of the High Cant Deficiency test progressed under Request 1, above, petitioners propose to conduct further tests on the Northeast Corridor between Trenton and New Burnswick in New Jersey at speeds up to 150 mph and 11 inches of cant deficiency. Tracks 2 and 3 of the proposed test zone have been used for conducting similar tests in the past and, although the actual 20-mile test zone in the Corridor includes four long-radii curves, it is mainly tangent track. This is the area used in 1969–71 for acceptance testing of newly-delivered Metroliners which had to demonstrate a capability of attaining 150 mph speed.

Truck stability and braking performance will be items of concern. The test will commence at 130 mph, proceed to 140 mph, and conclude at 150 mph if analysis of the on-board instrumentation data output supports these speed increases.

The petitioners state that the same safety conditions as in Request 1 would apply to these tests. In addition, adjacent tracks would be kept clear.

**Request 5—125 mph for Revenue Operation**

Based on a successful test at 125 mph, petitioners request a temporary waiver from 49 CFR 213.9(c) to operate at a maximum speed of 125 for the four month revenue service evaluation. This request is being made for those tracks currently authorized for such speed.

This request complements Request 3 in that both would be simultaneously operative in staging the four-month test/demonstration between New York and Washington. Amtrak now has approval to operate AEM–7 locomotives and Amfleet cars in revenue service between Washington and New York over certain curves of the railroad's own selection at train speeds developing four inches of cant deficiency and at a maximum speed of 125 mph, overall. (See 54 FR 27790, June 30, 1989).

**Request 6—Hand Brakes, Side and End Handholds and Uncoupling Levers (§ 231.12)**

Petitioners request relief from 49 CFR 231.12 for the duration of both the testing and revenue service evaluation of the X2000 trainset. Section 231.12 governs the number and manner of application of hand brakes, side and end handholds and uncoupling levers on passenger-train cars with wide vestibules.

The petitioners suggest that the parking brake system relied upon in Sweden is an adequate substitute for hand brakes designed according to U.S. practice. The X2000 system is claimed to be similar to that used here with the RoadRailer Mark V trucks and to that employed in turbine-powered trainsets regularly operating between New York City and western New York state. It is

further claimed that the X2000's parking brakes automatically apply when the brake pipe pressure falls to zero. The advantage of this effect over manually applied hand brakes is advanced as not having to depend on human intervention for appropriate brake application.

The petitioner recognizes that the X2000 trainset is to be used within a very limited, closely controlled operating environment and claims. As a consequence, that it is neither practical nor economically feasible to modify the carbodies with side and end handholds for a short test and evaluation program. Petitioners further content that since the X2000 will be used in very limited service and the cars will not be individually shifted, there will be no need to have handholds.

In support of petitioners request pertaining to uncoupling levers, petitioners state that the X2000 train set is semipermanently coupled and notes that it is a shop job to separate the coaches. It is further stated that field crews have no practical means of uncoupling cars. For the tests/demonstration operations in this country, petitioners intend to have an adapter coupler carried on-board in order to join the X2000 to a conventional locomotive in an emergency or to RTL turbine locomotives when operating between New York and Boston. According to the petition, when the adapter coupler is used, the work will be performed by SJ technicians assigned to the equipment.

**Request 7—Sanders (§ 229.131)**

Section 229.31 requires that locomotives be equipped with a method of sanding the rail running surface in front of the first set of powered wheels in the direction of travel as a means of enhancing wheel/rail adhesion when the locomotive (and following equipment) is in the braking mode. The petitioner advises that the use of sand, to augment adhesion in either the locomotive acceleration or braking modes, is not practiced in Sweden. Consequently, Swedish locomotives are not equipped with sanding devices. However, petitioners state that the X2000 locomotive will have a magnetic brake in addition to truck brakes and regenerative braking. It is the petitioner's position that this braking arrangement compensates for the absence of sanding capability.

**Public Comment**

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., FRA docket No. H–92–1 and H–92–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before August 25, 1992, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on July 7, 1992.

**Phil Olekszyk,**

*Deputy Associate Administrator for Safety.*

[FR Doc. 92–16432 Filed 7–13–92; 8:45 am]

BILLING CODE 4910–06–M

## DEPARTMENT OF VETERANS AFFAIRS

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420(202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before August 13, 1992.

Dated: July 6, 1992.

By direction of the Secretary.

**Frank E. Lalley,**

*Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.*

**Extension**

1. Financial Counseling Statement, VA Form 26–6544.
2. This form is completed by VA loan service representatives in counseling veteran obligors of seriously defaulted guaranteed home loans. The form solicits information necessary for the loan service representative to make recommendations to the veteran obligor in an effort to help cure the default status of the loan.
3. Individual or households.
4. 2,250 hours.
5. 45 minutes.
6. On occasion.
7. 3,000 respondents.

[FR Doc. 92–16454 Filed 7–13–92; 8:45 am]

BILLING CODE 8320–01–M

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20403, (202) 395–7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before August 13, 1992.

Dated: July 6, 1992.

By direction of the Secretary.

**Frank E. Lalley,**

*Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.*

**Extension**

1. Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

2. The form is used by veterans to apply for specially adapted housing grant. The information requested is used to determine the economic feasibility of residing in specially adapted housing and to compute the proper grant amount.

3. Individuals or households.

4. 110 hours.

5. 15 minutes.

6. On occasion.

7. 440 respondents.

[FR Doc. 92–16455 Filed 7–13–92; 8:45 am]

BILLING CODE 8320–01–M

## Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Office on or before August 13, 1992.

Dated: July 6, 1992.

By direction of the Secretary.

**Frank E. Lalley,**

*Associate Deputy, Assistant Secretary for Information, Resources Policies and Oversight.*

**Extension**

1. Statement of Purchaser or Owner Assuming Seller's Loan, VA Form 26–6382.

2. The requested information on this form is used to make determinations necessary for release of liability and substitution of entitlement of veteran-sellers to the government on guaranteed, insured and direct loans.

3. Individuals or households; Businesses or other for-profit.

4. 2,250 hours.

5. 15 minutes.

6. On occasion.

7. 9,000 respondents.

[FR Doc. 92–16456 Filed 7–13–92; 8:45 am]

BILLING CODE 8320–01–M

## Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before August 13, 1992.

Dated: July 6, 1992.

By direction of the Secretary.

**Frank E. Lalley,**

*Associate Deputy Assistant Secretary for Information, Resources Policies and Oversight.*

**Reinstatement**

1. Request for Supplies, VA Form 20–1905m.

2. This form is used to inform VA of supplies the veteran needs to continue his or her vocational rehabilitation program and to certify that the supplies are required, not merely desired, by the veteran.

3. Individuals or households; Businesses or other for-profit; Non-profit organizations; Small businesses or organization.

4. 1,000 hours.

5. 1 hour.

6. On occasion.

7. 1,000 respondents.

[FR Doc. 92–16459 Filed 7–13–92; 8:45 am]

BILLING CODE 8320–01–M

## Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before August 13, 1992.

Dated: July 6, 1992.

By direction of the Secretary.

**Frank E. Lalley,**

*Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.*

**Extension**

1. Request for Change of Program or Place of Training, VA Form 22-1995.
2. The form is used by veterans, servicepersons, and selected reservists receiving educational benefits to request a change of program or place of training.
3. Individuals or households.
4. 43,333 hours.
5. 20 minutes.
6. On occasion.
7. 130,000 respondents.

[FR Doc. 92-16457 Filed 7-13-92; 8:45 am]

BILLING CODE 8320-01-M

**Information Collection Under OMB Review**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before August 13, 1992.

Dated: July 6, 1992.

By direction of the Secretary.

**Frank E. Lalley,**

*Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.*

**Extension**

1. Monthly Record of Training and Wages, VA Form 20-1905c.
2. The requested information is used to verify the training history and to determine the continuing entitlement to benefits.
3. Individuals or households; Businesses or other for-profit; Small businesses or organizations.
4. 3,000 hours.
5. 15 minutes.
6. Monthly.
7. 400 respondents.

[FR Doc. 92-16458 Filed 7-13-92; 8:45 am]

BILLING CODE 8320-01-M

**Wage Committee; Meetings**

The Department of Veterans Affairs (VA), in accordance with Public Law 92-463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, July 29, 1992, at 2:30 p.m.
Wednesday, August 12, 1992, at 2:30 p.m.
Wednesday, August 26, 1992, at 2:30 p.m.
Wednesday, September 9, 1992, at 2:30 p.m.
Wednesday, September 23, 1992, at 2:30 p.m.

The meetings will be held in room 1161, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, room 1161, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: June 29, 1992.

By Direction of the Secretary.

**Diane H. Landis,**

*Committee Management Officer.*

[FR Doc. 92-16453 Filed 7-13-92; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 135
Tuesday, July 14, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 3:00 p.m., Friday, July 17, 1992.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 10, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-16646 Filed 7-10-92; 2:14 pm]

BILLING CODE 6210-01-M

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 11:00 a.m., Monday, July 20, 1992.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 10, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-16647 Filed 7-10-92; 2:15 pm]

BILLING CODE 6210-01-M

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of July 13, 20, 27, and August 3, 1992.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of July 13**

*Tuesday, July 14*

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of July 20—Tentative**

*Monday, July 20*

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of July 27—Tentative**

*Wednesday, July 29*

9:30 a.m.
Periodic Briefing on EEO Program (Public Meeting) (Contact: William Kerr, 301-492-4665)
11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
1:00 p.m.
Briefing on National Research Council Report: Nuclear Power—Technical and Institutional Options for the Future (Public Meeting)
3:00 p.m.
Discussion of Litigative and Related Matters (Closed—Ex. 9B and 10)

*Friday, July 31*

10:00 a.m.
Periodic Meeting with Advisory Committee on Medical Uses of Isotopes (Public Meeting) (Contact: Larry Camper, 301-504-3417)

**Week of August 3—Tentative**

*Tuesday, August 4*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 504-1661.

Dated: July 9, 1992.

**Andrew L. Bates,**

*Office of the Secretary.*

[FR Doc. 92-16645 Filed 7-10-92; 2:14 pm]

BILLING CODE 7590-01-M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meetings

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [57 FR 30532 July 9, 1992]

**STATUS:** Open meetings.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Tuesday, July 7, 1992.

**CHANGE IN THE MEETING:** Time change and additional meeting.

An open meeting scheduled for Wednesday, July 15, 1992, at 3:00 p.m., has been changed to 2:00 p.m., in Room 1C30. The following open items will be considered on Thursday, July 16, 1992, at 10:00 a.m., in Room 1C30:

1. Consideration of whether to publish for comment proposed changes to rules and forms under the Securities Act of 1933 designed to simplify Securities Act registration and to extend the availability of shelf registration. For further information, please contact Abigail Arms at (202) 272-2573.
2. Consideration of whether to propose for comment amendments to Rule 144A under the Securities Act of 1933 affecting qualification for the exemption. For further information please contact Brent Taylor or Michael Hyatte at (202) 272-3245.

Commissioner Schapiro, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted

or postponed, please contact: Chris Sakach at (202) 272-2300.

Dated: July 10, 1992

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-16602 Filed 7-10-92; 10:55 am]

BILLING CODE 6715-01-M

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§ 905.306

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# Corrections

Federal Register
Vol. 57, No. 135
Tuesday, July 14, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 905

[Docket No. FV-92-046IR]

### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Temporary Relaxation of Grade Requirements for Red and White Seedless Grapefruit

*Correction*

In rule document 92-10601 beginning on page 19518 in the issue of Thursday, May 7, 1992, make the following correction:

**§ 905.306 [Corrected]**

1. On page 19520, in § 905.306(a), in the table, in the second column, the second entry, "8/17/92-10/25/92", should be set on the same line as "Improved No. 2 (External)" the first time it appears; the third entry, "On and after 10/26/92", should be set on the same line as "Improved No. 2 (External)" the second time it appears; and the fifth entry, "On and after 8/17/92", should be set on the same line as "Improved No. 2 (External)" the third time it appears.

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 916

[Docket No. FV-92-003IR]

### Nectarines and Peaches Grown in California; Revision of Size, Maturity, Maturity Variance Procedure, and Container Marking Requirements for California Nectarines (M.O. 916) and California Peaches (M.O. 917)

*Correction*

In rule document 92-11509 beginning on page 20735 in the issue of Friday, May 15, 1992, make the following correction:

**§ 916.356 [Corrected]**

1. On page 20739, in the first column, in § 916.356(a)(1)(i), the first paragraph reading "Except not less...for the variety." should be moved to page 20738, in the third column, in § 916.356(a)(1)(i), in the first entry of the table, in the second column after "L".

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### 7 CFR Part 723

### Tobacco

*Correction*

In proposed rule document 92-15132 beginning on page 28801 in the issue of Monday, June 29, 1992, make the following corrections:

1. On page 28802, in the second column, under 3. Attachment, in the sixth line, "ASCA" should read "ASCS".

2. On the same page, in the 3rd column, in the 22nd line, "burly" should read "burley" and "1992" should read "1993.".

**§ 723.401 [Corrected]**

3. On page 28804, in the 3rd column, in § 723.401(b), in the 1st line, "Each" was misspelled and in the 22nd line, "[MA-79-2]." should read "[MQ-79-2].".

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Child and Adult Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1992-June 30, 1993

*Correction*

In notice document 92-15063 beginning on page 28853 in the issue of Friday, June 26, 1992, make the following corrections:

1. On page 28853, in the third column, in the first table, in the first column, in the fourth line from the bottom, "5 day" should read "50 day".

2. On the same page, in the same column, in the second table, in the second column, in the fourth line, "1900" should read ".1900".

3. On page 28854, in the first column, in the "**Authority**", in the fourth line, after "section 4(b)" insert "(1)".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-427-801, et al.]

### Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al; Final Results of Antidumping Duty Administrative Reviews

*Correction*

In notice document 92-14639 beginning on page 28360 in the issue of Wednesday, June 24, 1992, make the following corrections:

On page 28361, in the tables, in the second, third, and fourth columns, everywhere leaders appear should read "0.00".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Child Support Enforcement

### 45 CFR Part 303

RIN 0970-AA78

### Child Support Enforcement Program; Federal Parent Locator Service Fees

*Correction*

In rule document 92-14780 beginning on page 28103 in the issue of Wednesday, June 24, 1992, make the following corrections:

**PART 303 [CORRECTED]**

1. On page 28110, in the second column, in the **Authority**, in the second line, after "1396a(a)(25" insert ").".

**§ 303.3 [Corrected]**

2. On the same page, in the third column, in amendatory instruction 2., in

the second line, "receiving" should read "removing".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Plan for the Use of the Fort Peck Assiniboine and Sioux Indian Tribes Judgment Funds Awarded in Docket 31-85L Before the United States Claims Court

*Correction*

In notice document 92-15243 appearing on page 29162 in the issue of Tuesday, June 30, 1992, in the third column, in the first full paragraph, in the ninth line, after "allotted," insert "tribal and fee lands within large tracts to improve and".

BILLING CODE 1505-01-D

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federal register

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Part II

# Department of Commerce

## International Trade Administration

## Consortia of Businesses in the Newly Independent States; Notice

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[Docket No. 920496-2096]**

## Consortia of American Businesses in the Newly Independent States

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of a New Business Consortia Grant Program to Assist U.S. Firms Establish a Commercial Presence in the Newly Independent States of the former Soviet republics.

**SUMMARY:** A program has been designed to assist U.S. firms in establishing a commercial presence in the former Soviet republics through the formation of Consortia of American Businesses in the Newly Independent States (CABNIS). CABNISs are private and public non-profit organizations which will be formed to promote U.S. goods and services in the Newly Independent States (NIS). The participants in these consortia will be for-profit U.S. firms interested in trade with the former Soviet republics. CABNISs will establish offices and staff in the NIS to provide a broad range of services for their for-profit member firms, including market research, sales promotion, communication of sales opportunities, identification of and introduction to potential buyers and trade contacts, staging trade and technical missions and seminars, provision or arrangement of necessary legal services, and other export trade facilitation services. Grant funds will be awarded as seed money to pay the start-up costs of establishing and operating U.S. consortia offices in the NIS. CABNISs can be organized along a single industry line or represent more than one business sector. There is no limitation on the number of for-profit firms that a consortium may represent.

**SUPPLEMENTARY INFORMATION:**

### Program Objectives

The consortia are intended to strengthen the U.S. business presence in the NIS. They will provide direct trade facilitation support for their member firms, stimulating increased U.S. exports to the NIS. The consortia will promote two-way trade and will be expected to support the privatization movement of host country economies through consortia assistance with defense plant conversion projects, finding markets for NIS products, promoting U.S. investment and U.S.-NIS joint ventures, and/or technical training.

### Funding Availability

Pursuant to section 531 and section 632 (b) of the Foreign Assistance Act of 1961, as amended, (the "Act") funding for the program will be provided by the Agency for International Development (A.I.D.). ITA will award financial assistance and administer the program pursuant to the authority contained in section 635(b) of the Act. The total amount of program grant funds available for CABNIS is $1 million for FY 1992 and an anticipated $3.5 million for FY 1993.

### Funding Instrument and Project Duration

The Federal grant contribution will not exceed 50 percent of proposed eligible project costs with a maximum grant amount of $50,000 per consortium. Applicants are expected to provide the remaining share, preferably in cash. Federal funding will be a one-time injection with a grant period not to exceed three years. Assistance will be available for the period of time required to complete the scope of work but not to exceed three years from the date of the grant offer.

### Request for Applications

Competitive Application kits (Application Kits) #110-0005-1 will be available from Commerce starting July 13, 1992.

To obtain a copy of the Application Kit #110-0005-1, please send a written request with two self-addressed mailing labels to Mr. George Muller, Director, Office of Export Trading Company Affairs, room 1800 HCHB, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. Only written requests will be honored; telephone, fax, or walk-in requests will not be accepted. Only one copy of the Application Kit will be provded to each organization requesting it, but it may be reproduced by the requester. Applications (Standard Form 424 (Rev. 4-88)) are to be received at the address designated in the Application Kit no later than 3 p.m. e.d.t. August 28, 1992. Commerce intends to award a minimum of two grants prior to the end of FY 1992 and, subject to availability of funds, award an anticipated minimum of seven grants during FY 1993. Applications which are not selected for funding in FY 1992 will be carried over automatically and be evaluated for possible funding in FY 1993—again subject to availability of FY 1993 funds.

*Eligibility*

Eligible applicants for the CABNIS grant program will be private and public non-profit U.S. organizations including non-profit corporations, associations and public sector entities established to represent the commercial interests of U.S. firms. Within the industry or industries represented by the consortium, membership in a consortium must be available on a non-discriminatory basis. For example, membership in a trade association cannot be a requirement for membership in a consortium. Only applicants proposing to open an office in one or more of the Newly Independent States are eligible for this program. Each application will receive an independent, objective review by one or more review panels qualified to evaluate the applications submitted under the program. Applications will be evaluated on a competitive basis in accordance with the selection criteria set below.

*Selection Criteria*

Consideration for financial assistance will be given to those CABNIS proposals which:

1. Demonstrate how proposed member firms' U.S. exports and consortia business activities will support privatization and private enterprise (e.g., through assistance with defense plant conversion projects, technical training, marketing assistance and investment promotion). Marketability of the proposed products and/or services in the NIS will be taken into account in evaluating applications.

2. Are proposed by non-profit organizations with the capacity, qualifications and staff necessary to successfully undertake the intended activities.

In addition, priority consideration will be given to those applications which:

3. Demonstrate the capability and intent of enlisting small and mid-sized U.S. firms as members of the consortium.

4. Provide a reasonable assurance that the proposed project can be continued on a self-sustained basis after expiration of the Federal grant expenditure period.

5. Contain a commitment to encourage, support and assist in the development of indigenous counterpart organizations (e.g., trade associations) and a well reasoned plan as to how that will be accomplished.

6. Present a realistic work plan detailing the services it will provide to the consortium member firms.

7. Present a reasonable, itemized budget for the proposed activities.

Selection criteria factors 1 and 2 will be weighted equally and will take precedence over priority consideration factors 3-7. Priority consideration factors 3-7 will be weighted equally.

The need for U.S. products and services and for assistance in the privatization process canvasses all of the former Soviet republics. Different geographic locations will be more suitable for different industries (e.g., oil production equipment versus medical equipment). In selecting grant recipients, ITA reserves the right to award grants in such a way to ensure a reasonably balanced distribution of consortia and the industry sectors that they represent among the NIS countries. Preference will be given to financial proposals which demonstrate the maximum allocation of Federal and non-Federal resources to program activities. ITA reserves the right to determine the level of funding for each grant awarded.

*Notifications*

All applicants are advised of the following:

1. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

2. Primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Governmentwide Debarment and Suspension (Nonprocurement)" and the related section of the certification form prescribed above applies. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000 and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater. Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

3. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD-512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF-LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

4. A false statement on the application may be grounds for denial or termination of funds.

5. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

6. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

7. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

8. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

9. Awards under this program shall be subject to all Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.

10. The Standard Form 424 (Rev. 4-88) mentioned in this Notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348-0006.

11. Executive Order 12372 "Intergovernmental Review of Federal Programs" does not apply to this program.

Dated: July 8, 1992.

**George Muller,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 92-16337 Filed 7-13-92; 8:45 am]

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federal register

Tuesday
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Part III

# Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4150-7]

RIN 2060-AD50

# Protection of Stratospheric Ozone

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes standards and requirements for servicing of motor vehicle air conditioners, and restricts the sale of small containers of ozone-depleting substances, under section 609 of the Clean Air Act, as amended (Act). Specifically, the regulations require persons who repair or service motor vehicle air-conditioning units for consideration to be certified in refrigerant recovery and recycling and to properly use approved equipment when performing service involving the refrigerant. Finally, effective November 15, 1992, the regulations prohibit the sale of containers of ozone depleting substances under 20 pounds except to certified technicians.

**DATES:** This final regulation is effective August 13, 1992.

**Note:** Under Section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Circuit Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under Section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

**ADDRESSES:** Comments and materials supporting this rulemaking are contained in Public Docket No. A-91-41 in room M-1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Dockets may be inspected from 8:30 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Lena Nirk, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation (6202-J), 401 M Street SW., Washington, DC 20460. (202) 233-9147. The Stratospheric Ozone Information Hotline at 1-800-296-1996 can also be contacted for further information.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline:

I. Background
A. Statutory Authority
B. Ozone Depletion
C. Montreal Protocol
D. Excise Tax
E. London Amendments
F. Advance Notice of Proposed Rulemaking
G. Clean Air Act Amendments of 1990
H. September 4, 1991 Proposed Rule and April 22, 1992 Supplemental Proposal
II. Summary of Public Participation
III. Response to Major Public Comments
A. Definitions
B. Equipment Certification
C. Independent Standards Testing Organizations
D. Technician Training and Certification
E. Small Container Restrictions
F. Equipment Certification and Small Entity Certification
G. Relationship to State Regulations
H. Recordkeeping Requirements
IV. Summary of Today's Final Rule
V. Effective Date
VI. Summary of Supporting Analyses
A. Regulatory Impact Analysis
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## I. Background

### A. Statutory Authority

Section 609 of the Act requires the Administrator to promulgate regulations establishing standards and requirements regarding the servicing of motor vehicle air conditioners. This section also prohibits the sale of small containers of ozone depleting substances, except to certified technicians. Title VI of the Act is designed to protect the stratospheric ozone layer.

### B. Ozone Depletion

The stratospheric ozone layer protects the earth from the penetration of ultraviolot (UV-B) radiation. A national and international consensus exists that chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform must be restricted because of the risk of depletion of the stratospheric ozone layer through the release of chlorine and bromine. To the extent depletion occurs, penetration of UV-B radiation increases, resulting in potential health and environmental harm including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to plants including crops and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics. (See 53 FR 30566, August 12, 1988 for more information on the effects of ozone depletion.)

The original theory linking CFCs to ozone depletion was first proposed in 1974. Since then, the scientific community has made remarkable advances in understanding atmospheric processes affecting stratospheric ozone science. Model predictions in the late 1980s suggested that continued use of CFCs would lead to substantial ozone depletion in the middle of the next century. Despite the sophistication of these models, scientists were unable to predict the extent of the decrease in stratospheric ozone over Antarctica that was first reported in 1985. This seasonal loss of ozone over the south pole became known as the "Antarctic ozone hole". In 1988, the results of an international assessment of ozone trends were published in the Executive Summary of the Ozone Trends Panel Report. In addition to the ozone hole, this report stated that analysis of total-column ozone data showed measurable downward trends from 1969 to 1988 of 3 to 5 percent in the northern hemisphere in the winter. In early 1991, new scientific evidence indicated an annual loss of stratospheric ozone over the northern mid-latitudes during the past decade of 3 to 5 percent. This amount is 2 times greater than past studies suggested and illustrated the concern that ozone depletion appears to be occurring faster than theoretical models had predicted. The latest scientific assessment showed for the first time stratospheric ozone depletion in summertime over the continental United States.

### C. Montreal Protocol

In September 1987, the United States and 22 other countries signed the Montreal Protocol on Substances that Deplete the Ozone Layer. As originally drafted, the Protocol called for production and consumption of CFCs (CFC-11, 12, 113, 114, 115) and Halon-1211, -1301 and -2402 to be frozen at 1986 levels beginning July 1, 1989 and January 1, 1992 respectively, and for the CFCs to be reduced to 50 percent of 1986 levels by 1998. To date, 75 nations representing well over 90% of the world's production capacity have signed the Montreal Protocol. EPA promulgated regulations implementing the requirements of the 1987 Protocol through a system of tradable allowances (53 FR 30566, August 12, 1988). EPA apportioned the allowances to producers and importers of ozone depleting substances (controlled substances) based on their 1986 level of production and importation. It then

reduced the allowances for the controlled substances according to the schedule specified in the Protocol.

*D. Excise Tax*

As part of the Omnibus Budget Reconciliation Act of 1989, the U.S. Congress levied an excise tax on the sale of CFCs and other chemicals that deplete the ozone layer, with specific exemptions for exports and recycling. The tax has operated as a complement to EPA's regulations limiting production and consumption by increasing the costs of using virgin controlled substances. As a result of the tax, there is an added incentive for industry to shift out of controlled substances and to increase recycling activities. The tax has also stimulated the market for alternative chemicals and processes. The original excise tax was amended in 1991 to include methyl chloroform, carbon tetrachloride and other CFCs regulated by the amended Montreal Protocol and title VI of the Clean Air Act.

*E. London Amendments*

Since the signing of the Protocol in 1987, additional scientific evidence became available indicating that depletion of the stratospheric ozone layer was occurring more quickly than had been anticipated. In response to this evidence (i.e. the 1988 Ozone Trends Panel Report), the Parties to the Protocol at their meeting in London in June 1990 amended the Protocol schedule for CFCs and halons to require a complete phaseout by January 1, 2000. Methyl chloroform and carbon tetrachloride were added to the list of ozone depleting substances, with carbon tetrachloride phased out by January 1, 2000 and methyl chloroform phased out by January 1, 2005.

The parties also passed a non-binding resolution regarding the use of hydrochlorofluorocarbon (HCFCs). HCFCs have been identified as interim substitutes for CFCs because they add much less chlorine to the stratosphere than fully halogenated CFCs. The Parties were concerned, however, that rapid growth in the amount of use of these chemicals over time would still pose a threat to the ozone layer. As a result, the resolution calls for the phaseout of HCFCs by 2020 if feasible and no later than 2040 in any case.

*F. Advance Notice of Proposed Rulemaking*

On May 1, 1990, EPA published an advance notice of proposed rulemaking (ANPRM, 55 FR 18256) addressing issues related to the development of a national recycling program. This notice emphasized that in addition to delaying or reducing the release of ozone depleting substances, recycling is important for avoiding the cost of early retirement or retrofit of equipment requiring CFCs for service past the year in which production is eliminated. Although the Agency continues to investigate destruction of these chemicals, at this time it believes that continuing to use these substances through recycling in existing equipment can serve as a useful bridge to alternative products while minimizing disruption in the utilization of the current capital stock of equipment, preventing costly early retirement of equipment.

The ANPRM asked for comment on the feasibility of recycling in various CFC end uses and also asked for comment on methods, such as a deposit/refund system, that could be employed to further enhance recycling. The Agency received 110 public comments in response to the ANPRM. In general, most commenters recognized the need for recycling to help efforts to protect the ozone layer and to provide a source of supply to service existing capital equipment past the end of production.

The ANPRM also described the cooperative project undertaken between EPA, the Mobile Air Conditioning Society, the Motor Vehicle Manufacturers Association (MVMA), the Automotive Importers of America, the Society of Automotive Engineers (SAE), the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE), manufacturers of recover/recycling equipment, automotive industry representatives, and environmental groups to develop recycling of motor vehicle air conditioning refrigerant. This group participated in projects that led to the development of a purity standard for recycled refrigerant for motor vehicles (SAE J1991), a service procedure standard (SAE J1989), and a standard for the recycling equipment (SAE J1990). For a more detailed discussion of the voluntary program, see the NPRM published September 4, 1991 (56 FR 43842).

*G. Clean Air Act Amendments of 1990*

The Clean Air Act Amendments of 1990, signed November 15, 1990, include requirements for controlling ozone-depleting substances which are generally consistent with, but in some cases more stringent than those contained in the revised Montreal Protocol. For the substances covered by the revised Protocol's control measures ("class I" substances including fully halogenated CFCs, Halons, methyl chloroform, and carbon tetrachloride), title VI of the Act calls for a phase-out by January 1, 2000 with deeper interim reductions and, in the case of methyl chloroform, an earlier phaseout date (2002 instead of 2005). For the HCFCs ("class II" substances), title VI requires use restrictions, a production freeze in 2015 and a phaseout in 2030. EPA issued a temporary final rule on March 6, 1991 implementing the production and consumption limits contained in the Act for calendar year 1991. (See 56 FR 9516.) The Agency published proposed regulations for 1992 and beyond on September 30, 1991 (See 56 FR 49548).

In addition to the phaseout of ozone depleting substances, title VI includes provisions to reduce emissions of all ozone-depleting substances. Section 608 contains requirements for EPA to promulgate a regulation to achieve a "lowest achievable level" of emissions of controlled substances during use and disposal of appliances and industrial process refrigeration and bans intentional venting at service and disposal. Section 609, which today's notice implements, requires standards for certification of technicians and for equipment used in the servicing of motor vehicle air conditioners and restricts the sale of small containers of CFCs. A nonessential products ban and mandatory labeling are required in sections 610 and 611, respectively, and a program to review the safety of alternatives to controlled substances is required under section 612.

*H. September 4, 1991 Proposed Rule and April 22, 1992 Supplemental Proposal*

In a notice of proposed rulemaking published on September 4, 1991 (56 FR 43842), EPA discussed many of the important issues surrounding implementation of Section 609 of the Act. The proposal discussed various requirements, all designed to limit the release of refrigerant during the service of motor vehicle air conditioners. The following is a short description of the major components of the September 4 Notice.

EPA proposed definitions for the terms "motor vehicle," "motor vehicle air conditioner," "service for consideration," "service involving refrigerant," "approved refrigerant recycling equipment," and "properly using." These proposed definitions would apply only to regulations under section 609. In describing these definitions, EPA discussed the legal and policy aspects of the various options considered.

With respect to approved refrigerant recycling equipment, EPA proposed approval of two kinds of equipment—

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equipment that recovered and recycled the refrigerant, and equipment that only recovered the refrigerant. Standards for approval of recovery/recycle equipment were proposed in appendix A of the proposal. These standards consisted of the two SAE standards specifically mentioned in the Act (SAE J1990, SAE J1989). They contain appropriate service procedures for recycling refrigerant in motor vehicles, and equipment specifications for recover/recycle machines. Appendix A also contained the SAE standard of purity for refrigerant recycled on-site at a service establishment (SAE J1991).

Appendix B was reserved for the technical standard for recover only equipment. Proposed appendix B was published in a supplemental notice dated April 22, 1992 (57 FR 14763). This proposed standard closely resembles another SAE standard (SAE J2209) written specifically for equipment that removes refrigerant from motor vehicle air conditioners but does not purify it. That standard will be finalized, upon completion of the public comment period, in a separate rulemaking.

Under the proposal, an EPA approved "independent standards testing organization" would certify that equipment met the applicable standards. Upon such certification, the equipment would meet EPA's definition of approved refrigerant recycling equipment. The September proposal outlined the procedures for EPA approval of independent standards testing organizations. These approved organizations would test equipment and certify that equipment met the applicable standards. EPA proposed standards for the proper use of approved equipment, as well as a procedure for EPA determination of whether equipment was "substantially identical" to approved equipment.[1]

In addition to using approved equipment, service or repair technicians would have to be trained and certified by an approved technician training and certification program. The proposal described the standards for approval of such programs, as well as application procedures.

The January 1, 1992 effective date would be delayed for one year for small volume shops—entities that serviced less than 100 motor vehicle air conditioners during 1990. This one year delay would apply only for those small entities that filed a small entity certification with EPA on or before January 1, 1992. In addition, as of November 15, 1992, the sale or distribution of class I or class II substances suitable for use in motor vehicle air conditioners was restricted in containers of less than 20 pounds of such substances to persons who were properly trained and certified under the regulation, or who purchased them for resale only.

The Agency proposed certification and recordkeeping requirements needed for compliance monitoring. In addition to the statutorily required certification to the Administrator of small entity status and equipment ownership, the Agency proposed that service establishments retain records of service events and amounts of refrigerant purchased. The amount of refrigerant sent to reclamation facilities would have to be recorded and sellers of refrigerant would be required to record technician certification numbers and amounts sold.

In developing the proposed rule, the Agency received guidance from the Stratospheric Ozone Protection Advisory Council (STOPAC) subcommittee for Servicing of Motor Vehicle Air Conditioning. This subcommittee was made up of members of the original STOPAC that advised the Agency on the development of the production phase-out requirements and the international negotiations, as well as additional representatives from the automobile industry, environmental groups, and State and local government. Several members of the voluntary program described in section I.F. also participated. The Agency wishes to acknowledge their valuable assistance in the development of the proposal.

## II. Summary of Public Participation

A public hearing on the proposed rule was held on September 13, 1991. Six groups presented oral comments on the proposed requirements and submitted written testimony to the Agency. A transcript of the hearing is contained in the public docket.

The agency received a total of 68 letters on the proposed rule. The technician certification standards were frequently addressed. Commenters requested clarification of the term "independent testing authority". Many commenters addressed the effectiveness and validity of a minimum standard that allowed unproctored testing. Several commenters requested the option of developing their own training and certification programs. Commenters also frequently addressed the definition and use of approved equipment. In general, there was significant support for the Agency's option of allowing both recover only and recover/recycle equipment, although several comments expressed serious concern over misuse of equipment and refrigerant contamination.

Several commenters requested clarification of the recordkeeping requirements for their specific circumstances. Commenters also addressed the relationship between state and federal regulatory requirements. Many expressed concern about the continued sale of small containers of class I and class II substances and possible adverse consequences if alternative refrigerants are used in equipment. Other issues addressed in the comments included the substantially identical equipment determination and equipment testing and labeling.

## III. Responses to Major Public Comments

A document summarizing the public comments to this rulemaking is available in the public docket for this final rule. The major issues raised by the commenters and the Agency's responses to them are described below. Other comments are addressed in the comment response document also found in the public docket.

### *A. Definitions*

#### 1. Motor Vehicle Air Conditioners

Several commenters addressed EPA's proposed definitions of "motor vehicle" and "motor vehicle air conditioner." As proposed, motor vehicle would be defined as "any vehicle which is self-propelled and designed for transporting persons or property, including but not limited to passenger cars, light duty vehicles, heavy duty vehicles, farm vehicles and construction equipment." The definition of motor vehicle air conditioner was proposed as a "mechanical compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on vehicles for refrigerated cargo." While the hermetically sealed refrigeration system that cools the storage container of a refrigerated transport truck would be excluded, the unit that cools the driver or passenger compartment of such a truck would be included.

As proposed a broad array of vehicles would be defined as a motor vehicle for purposes of regulation under section 609 of the Act. Coverage would extend beyond the definition of motor vehicle used for purposes of title II, part A of the Act, and should include a wide variety of off-road equipment, trains, and

[1] Substantially identical equipment purchased on or before the date of EPA's proposal would be deemed to be approved equipment.

mining equipment. In the notice of proposed rulemaking, EPA noted that the passenger air conditioner units for these vehicles use CFC–12 as the refrigerant, with the possibility that future refrigerants such as HFC–134a would be used. EPA was concerned about the breadth of coverage in the proposed definition of motor vehicle, and therefore specifically requested comment on inclusion of off-road vehicles in the definition of motor vehicle.

Several commenters discussed this issue, and in general counseled caution in extending the section 609 regulations beyond the scope of vehicles defined as a motor vehicle for the purposes of title II of the Act. They argued that the proposed definition of motor vehicle was too broad, and should not include farm and construction equipment. They viewed the definition of motor vehicle in title II as controlling. In the alternative, they suggested EPA conduct a study of the contribution of CFC's from air conditioner servicing for such off-road vehicles, and the potential regulatory burdens of extending section 609 to them, before including such vehicles in the section 609 program. The commenters argued that the flexibility was needed, given the unique circumstances of off-road equipment dealers, the fact that repair and maintenance of off-road vehicles is often performed in the field, and the seasonal and sporadic demand for air conditioner repairs for these vehicles. At the same time, other commenters argued that EPA should include off-road equipment, aircraft, and marine vessels in its definition of motor vehicle, to provide broad coverage under section 609 regulations.

EPA has decided to limit the definition of motor vehicle for purposes of section 609 to include only those vehicles that meet the definition of motor vehicle under section 216(2) of the Act. While EPA does not believe that section 609 precludes a broader definition,[2] the Agency believes the best exercise of its discretion is to exclude off-road vehicles from the definition of motor vehicle at this time, given the significantly different circumstances presented by off-road vehicles.

EPA expects that implementation of the section 609 regulations adopted today will occur in a smooth and straightforward manner for on-road vehicles; the industry has been involved in a voluntary recycling effort for several years, and there is a general uniformity in the type of vehicle and air conditioner covered by the definition, as well as uniformity in service and repair circumstances. Off-road vehicles, however, present a different picture. These vehicles differ widely in nature, reflecting the broad array of industries in which they are used. Some are mobile but many are not, potentially leading to a wide variety of service and repair circumstances. Certain of these industries have been involved with the voluntary recycling program, but as a whole they have not been closely involved as the traditional motor vehicle sector.

As noted by the commenters, these differences pose a wide variety of potential problems, ranging from access to reclamation centers to difficulties in air conditioner servicing. EPA therefore believes it is appropriate at this time to confine the definition of motor vehicle for purposes of section 609 to on-road vehicles.[3] These vehicles encompass the overwhelming majority of vehicle air conditioners, and constitute the core group Congress meant to cover under section 609.

At the same time, EPA is aware that voluntary recycling is expanding in certain segments of the off-road sector, and supports such efforts. EPA will consider these off-road vehicles under the section 608 program, which extends to all uses of class I and II substances as refrigerants. For all of these reasons, EPA therefore believes that the definition of motor vehicle being promulgated as part of these regulations should have no adverse environmental effects.

The Agency would also like to clarify that the HCFC–22 air conditioner systems typically found in buses are not included in the definition of motor vehicle air conditioner at this time, because these systems are more akin to stationary units in their functioning and the type of refrigerant they use. In addition, the SAE standards referenced in the Act and the certified recycling equipment developed under those standards is not appropriate for use with HCFC–22 systems. EPA expects that such HCFC–22 air conditioning systems will be subject to the venting prohibition in section 608 of the Act and that the servicing of these systems will be covered by the regulations implementing section 608.

Finally, the Agency wishes to respond to comments from the Motor Vehicle Manufacturing Association (MVMA), Navistar, and the John Deere Company that questioned whether the charging and/or repair of motor vehicle air conditioners, prior to completion of final assembly of the vehicle, should be covered by this regulation. In additional comments received after the close of the comment period, MVMA highlighted that the type of equipment currently used in the manufacturing facility to recover refrigerant during repairs is "specialized production equipment singularly intended for high volume operation in delivering clean refrigerant to every unit, every time. Such large volume equipment is designed to be a permanent, stationary fixture in the plant * * *". The comments state further that "[i]ndustry equipment used during the manufacturing process clearly meets the substantive requirements of the proposed regulation even though, because of its in-line nature, Underwriter's Laboratory (UL) or other certification does not exist and is not appropriate." This type of equipment was contrasted to the small, low volume, moveable equipment found in the service sector. EPA believes the repair of newly manufactured units is not likely to be a common occurrence and when it does occur, the manufacturing facilities clearly use equipment to recover and recycle the refrigerant so that it may be reintroduced once the motor vehicle air conditioner is repaired. The equipment is significantly different from the kind of equipment covered by EPA's definition of approved equipment, yet serves the purpose of such equipment equally well. In addition, the technicians performing this operation are typically manufacturing employees, not service technicians. For all these reasons, the Agency believes it is not necessary at this time to extend the requirements of this servicing regulation into the assembly operation.

MVMA did note that the manufacturer's garages perform air conditioner service and repair activities on company-owned fleet vehicles that is akin to the service and repair performed by dealerships. EPA agrees with MVMA that such repair and service activities should be and are fully covered by today's regulation. EPA wants to be clear that this exclusion is limited to final assembly activities conducted by the vehicle's original manufacturer, and

[2] EPA is not persuaded by commenters' arguments that Section 609 is limited by law to motor vehicles as defined in section 216(2). First, the definition of motor vehicle found in Section 216(2) of the Act is explicitly limited in application to part A of title II. In addition, neither the statute nor the legislative history for Section 609 indicates that motor vehicle as used in that section is limited by law to those vehicles included in the title II part A definition.

[3] To avoid confusion, vehicles that otherwise meet the definition of motor vehicle are covered by these regulations notwithstanding their use, for example, on farms or construction sites.

does not include service or repair activities conducted, for example, by a dealer.

2. Refrigerant

This term is defined to mean any class I or class II substance used in a motor vehicle air conditioner and, effective November 15, 1995 (five years after enactment of the Act), any substitute substance, such as HFC–134a. For clarity, this additional provision of section 609(b)(1) was added to the definition.

The Agency emphasizes that any blend of substance that includes a class I or class II substances, such as R–176 (a blend of CFC–12, HCFC–142b and HCFC–22), is included under today's requirements and must be recovered or recycled at service. EPA also is evaluating the impact of alternative refrigerants, including R–176, on the effectiveness of its recycling efforts.

3. Service Involving Refrigerant

The Agency stated in the proposal that the intent of the Act is to require recycling of refrigerant in motor vehicle air conditioners whenever service is being performed that may release refrigerant to the atmosphere. This includes service of motor vehicle air conditioners and service of other motor vehicle components that may require some dismantling of the motor vehicle air conditioning system. Servicing of motor vehicle air conditioners, therefore, includes repairs, leak testing, and "topping off" of air conditioning systems low on refrigerant, as well as any other repair which requires some dismantling of the air conditioner. Each of these operations involves a reasonable risk of releasing refrigerant to the atmosphere.

Four commenters stated that if recovery of refrigerant at disposal is not required under section 609, it should be covered by the safe disposal program under section 608. As stated in the proposal, EPA would like to encourage recovery of refrigerant at disposal. The specific requirements for recovery at disposal, it any, may be addressed in the regulations implementing the safe disposal program under section 608 of the Act. The Agency will consider the commenters' suggestions on this issue when addressing the safe disposal requirements under section 608.

4. Service For Consideration

In the proposed rule, the Agency interpreted "service for consideration" to include persons who are paid to perform service on motor vehicle air conditioners, thus subjecting to regulation all service except that done for free. Several commenters questioned whether fleets are included. The Agency would like to clarify that fleets of vehicles, whether private, or federal, state or local government owned, are covered because the technicians doing the service are being paid. Other examples of establishments doing service covered by the regulations include, not are not limited to, independent repair shops, service stations, fleet shops, body shops, chain or franchised repair shops, new or used car and truck dealers, rental establishments, radiator repair shops, mobile repair operations, vocational technical schools (because instructors are paid), farm equipment dealerships, and fleets of vehicles at airports.

Two commenters suggested adding the recover, recycle, reclaim definitions to the rule language with the definition of service. The Agency did not propose this and will not be incorporating the definitions formally into rule language now. The meaning of these words may evolve over time with continued technological innovation. The Agency does not wish to impede this progress through inclusion of a definition of these terms in the regulations.

Comments from MVMA, Navistar, and the John Deere Company questioned whether the charging and/or repair prior to the completion of final assembly is covered under the "service for consideration" definition. As previously discussed in section III.A.1., a motor vehicle air conditioner is not subject to these regulations prior to the completion of final assembly of the vehicle by the original equipment manufacturer. While repair or service work on air conditioners in unfinished vehicles may well fit the definition of "service for consideration," the equipment and technician certification requirements of these rules do not apply as the motor vehicle air conditioner is not subject to these rules prior to completion of the final assembly process by the vehicle's manufacturer.

5. Properly Using

The Act requires that the Administrator establish standards for using equipment that shall be at least as stringent as the applicable standards of the Society of Automotive Engineers (SAE) in effect as of the date of enactment (November 15, 1990). The standard referred to, J1989, provides recommended service procedures for the containment of CFC–12. In the September 4, 1991 notice, the Agency proposed that the standard for "properly using" include J1989 and an additional requirement that if recover only equipment is used, the refrigerant must be sent off-site for reclamation or recycled on-site. The Agency also proposed that, as prescribed in the SAE J Standards, refrigerant received from an off-site reclamation facility that is intended for recharge of automobiles must been the Air-conditioning and Refrigeration Institute standard of purity (ARI Standard 700–88) for CFC–12.

The proposed definition of properly using was intended to apply to facilities that own an on-site recycle machine or an on-site recycle machine and several recover only machines (such as large establishments with many service bays) as well as small facilities that purchase one piece of recover only equipment. The Agency believes that the requirement that such equipment be properly used will ensure that recovered refrigerant is not vented to the atmosphere. The Agency wishes to highlight that under the properly using definition, refrigerant introduced into the system for the purpose of leak detection must be recovered and not vented.

Three commenters supported EPA's proposed properly using standard, stating that if EPA allowed recover only equipment to be used, the Agency should require that recovered refrigerant be either recycled on-site or sent off-site for reclamation as a means of minimizing prospects of contamination of motor vehicle air conditioners. These commenters suggested that the Agency consider methods to assure that the reclamation facilities have the capability to reclaim refrigerant to the ARI 700–88 standard. EPA does intend to consider requirements for reclamation facilities in the section 608 regulation under the Act.

Several commenters questioned whether several service establishments owned by a single owner may recover refrigerant and send the refrigerant to a central location for recycling to the SAE J1991 standard for CFC–12. The Agency believes that this practice may be a cost effective option in some situations. To minimize the risk of contamination (whether intentional or unintentional), this option will only be available when the owner of the recover only equipment is also the owner of the recover/recycle equipment and is therefore able to assure direct recycling of refrigerant from motor vehicles for use in motor vehicles serviced at his facilities. The equipment used to recycle the refrigerant must meet the standards for CFC–12 recycle machines adopted in appendix A.[4] Franchised or chain

[4] The equipment standards in Appendix A are designed for equipment that recovers and recycles

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service establishments (i.e. those service establishments that share a common name but are separately owned) may not use this option.

This is the only exception to the on-site requirement for recycling. In all other cases, if refrigerant leaves the service establishment then it must be reclaimed to the ARI 700–88 standard to assure purity. The on-site requirement is important because equipment certified to meet the SAE standards is only capable of cleaning CFC–12 to the SAE J1991 standard if that refrigerant has been removed from a motor vehicle; refrigerant from another type of air conditioning or refrigeration system may contain contaminants, such as acid formed in a compressor burn-out, that such equipment is not designed to remove. Introduction of this contaminated CFC–12 could result in severe damage to the motor vehicle air conditioner. This type of damage would destroy consumer confidence in recycled refrigerant and jeopardize the success of the recycling program.

*B. Equipment Certification*

1. Approved Equipment

In the September 4, 1991 Notice of Proposed Rulemaking, the Agency proposed defining the statutory term "approved refrigerant recycling equipment" to include two types of equipment. One type, recover/recycle equipment, both extracts refrigerant from the motor vehicle air conditioner and cleans the refrigerant on-site. The other type of equipment, recover only, extracts the refrigerant from the motor vehicle but does not clean the refrigerant. The refrigerant from these recover machines must be sent off-site for reclamation or recycled on-site. The Agency proposed this definition to provide flexibility to the regulated community and to maximize environmental protection while protecting air conditioning units from damage. The September 4, 1991 notice proposed Appendix A as the standards to which recover/recycle equipment would have to be certified. The supplemental notice published on April 22, 1992 proposed the standard for recover equipment as Appendix B.

The terms "extraction", "reclamation" and "recycle" are terms of art currently used by the industry, and refer to the removal of refrigerant (extraction), processing of the refrigerant off-site to a near virgin condition of purity (reclamation), or processing of the refrigerant on-site to a condition acceptable for reuse as a refrigerant in the same vehicle, without the need to send it off-site for reclamation (recycle).[5] The ANPRM published May 1, 1990 and the NPRM published September 4, 1991 defined these terms.

Seen against this background, the section 609 definition of "approved refrigerant recycling equipment" [6] is an ambiguous term, leaving EPA with the obligation to establish its meaning in a way that best effectuates the goals of this section. First, the statutory definition of "refrigerant recycling equipment" refers to equipment that "extracts and reclaims". The recycle equipment normally used in this context however is equipment that cleans the refrigerant on-site, but does not reclaim it. The latter term is reserved for refrigerant that is sent off-site for distillation to a higher standard of purity. At the same time, section 609(b)(2) references SAE J1990, which states that its purpose is to "provide equipment specifications for * * * recycling and/or recovery, and recharging systems." [7]

The legislative history fails to resolve this ambiguity in the statute. However, it does appear clear from the terms and structure of section 609 that Congress focused on activities conducted at the service establishment, whether recovery or recovery/recycle, and was not legislating specification for off-site equipment used to reprocess refrigerant to near virgin purity.

EPA, therefore, attempted to define "approved refrigerant recycling equipment" with the view of providing environmental protection, and providing the affected industry flexibility to meet the changing nature of refrigerants. For all the reasons described in the September 4, 1991 Notice, EPA proposed a definition including both types of equipment.

The comments submitted on this issue focused primarily on the feasibility and practicality of the proposed definition, and not on EPA's authority to include recover only equipment. One commenter, however, argued that SAE standard J1990 set the minimum requirements for "approved refrigerant recycling equipment." Since section 3.1 of this SAE standard established that the equipment must be able to extract and process refrigerant, recover only equipment could not meet the minimum requirements as stringent as J1990, and, therefore, could not be approved. Congress, by incorporating SAE J1990 in section 609, intended that EPA adopt the then existing automotive recycle program, which did not extend to recover only equipment. The commenter did seem to accept that EPA could approve recover only equipment in the future if such equipment was found to be necessary, for example with respect to future refrigerant blends.

The commenter's arguments do not persuade EPA that it lacks authority to interpret refrigerant recycling equipment as including recover only equipment. First, the portion of SAE J1990 noted above and quoted in the comments does no more than highlight an apparent inconsistency in that document. It does not remove the ambiguity present in this statutory term, and does not indicate a clear Congressional intent to exclude recover only equipment from approval under Section 609. In addition, the Agency's restrictions on the use of recover only equipment [8] tie it closely to the extraction, recycling or reclamation process. Finally, for the reasons discussed below, EPA believes that it is reasonable to interpret "approved refrigerant recycling equipment" to include recover only equipment.

As noted earlier, the majority of commenters focused not on the legal issue of statutory interpretation, but on the proper policy for EPA to follow; in effect, not whether it could approve such equipment, but whether it should do so. Seventeen commenters supported allowing both certified recover/recycle equipment and recover only equipment to meet the definition of approved equipment. The commenters cited the importance of allowing service establishments the flexibility to chose equipment that suits their individual circumstances. Commenters believed that this would increase compliance with the requirements. Many commenters noted that recover only equipment has a lower initial cost than recover/recycle equipment and that many service establishments are already using this type of equipment. This equipment is also used in conjunction with recover/recycle equipment, for example in service establishments with several service

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CFC–12 refrigerant. As necessary, EPA will adopt additional standards that will govern the approval of equipment designed to recover/recycle other refrigerants.

[5] Industry has adopted separate voluntary standards for the purity of refrigerant, depending whether it is sent off-site for reclamation (ARI 700–88) or is recycled on-site (SAE J1991).

[6] Section 609 defines the term as "equipment certified by the Administrator * * * to meet the standards established by the Administrator and applicable to equipment for the extraction and reclamation of [motor vehicle air conditioner] refrigerant * * *". The standards that EPA sets are to be as stringent as one set by the Society of Automotive Engineers, SAE J1990.

[7] See § 1. "Scope", SAE Standard J1990.

[8] For example, any recovered refrigerant must be recycled on-site or sent off-site for reclamation except for the limited situations described in III.A.5.

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bays. Commenters stated that the lower initial cost will become increasingly important in the future when different refrigerants (e.g. HFC–134a, blends) enter the motor vehicle servicing market. Commenters mentioned the importance of recover equipment for the salvaging of refrigerant from disposed automobiles (requirements that will be covered under section 608 of the Act) and that refrigerant sent off site for reclamation is actually purified to a higher standard than refrigerant recycled on-site. Commeters disputed claims that the use of recover only equipment would lead to an increased risk of venting refrigerant or contamination through the reuse of unrecycled refrigerant.

The Agency received five comments opposed to recover only equipment in the motor vehicle servicing sector. MVMA opposed recover equipment for several reasons. MVMA stated that approval of recover only equipment does not reflect Congressional intent or the intent of the automobile industry when they developed the voluntary program for CFC recycling. The Association suggested that recover only equipment would lead to venting of refrigerant. It would jeopardize the purity of refrigerant in the motor vehicle sector because of the economic incentives derived from the greater economic value of refrigerant ready for use in a car as compared to refrigerant sold for reclamation. MVMA also stated that the use of recover only equipment is not cost effective, whereas recover/recycle equipment is cost effective and more easily implemented. MVMA argued that the potential need for recovery of other refrigerant in the motor vehicle sector did not justify the use of recover only machines. Other commenters emphasized the need to require off-site reclamation if recover only equipment were allowed, and mentioned that the limited number of reclamation centers across the country could render the recover only option unworkable.

The Agency understands that the voluntary recycling program, which it supported, and the SAE standards were intended to establish and promote on-site recycling, and agrees that on-site recycling may well be an efficient option for most service entities because of the efficiency of the procedure. However, the Agency believes that approving two separate standards for equipment provides both environmental protection and needed flexibility to the regulated community. As stated in the proposal, the cost effectiveness of equipment is dependent on the number of service jobs performed and the price of virgin refrigerant. Some service establishments may find it more cost effective to comply with the regulations by purchasing recover only equipment.

As stated in the September 4, 1991 notice and the April 22, 1992 supplemental notice, the Agency examined the relative environmental consequences of using the two types of equipment. For example, the efficiency of removal of refrigerant is equivalent between the two types of equipment and both types of equipment separate the lubricant from refrigerant to indicate the amount of lubricant that must be returned to the system. Unlike recycling equipment, recover only equipment does not purge non-condensable gases during operation. Such purging in recover/recycle equipment may result in the loss of 5 percent of refrigerant in a purge. Recover only equipment therefore provides at least as much protection from the release of refrigerant as recover/recycle equipment.

Flexibility is also an important consideration for the potential need to recover other refrigerants in the motor vehicle sector in the future. Several automobile manufacturers have announced that HFC–134a is the designated replacement for motor vehicle air conditioners in new cars beginning as early as 1992 in some models. This substitute must be recycled under the Act, effective November 15, 1995. For retrofit of existing CFC–12 systems, research is currently underway to determine an appropriate substance and both HFC–134a and HCFC blends are being considered. Under the Act, blends containing HCFCs are subject to this regulation if they are used in motor vehicle air conditioners and recover only equipment approved for use with blends may be an attractive option in this case. The Agency does not wish, as a result of delays associated with the regulatory process, to impede the progress of the sector as it addresses the challenges of alternative refrigerants in the future.

The Agency is very concerned about the issue of contamination of refrigerant raised by MVMA's comments but believes that the option of two types of equipment will not increase the risk of contamination or venting. On the issue of contamination, the Agency notes that regardless of how the refrigerant is extracted, today's rule requires that it be purified to standards that allow its safe use in motor vehicle air conditioners before it is so used. Refrigerant recycled on-site must be cleaned to the SAE J1991 standard of purity for recycled refrigerant. Any refrigerant that leaves the site must be reclaimed to the ARI–700 standard of purity, a standard developed by the Air-conditioning and Refrigeration Institute that defines the level of quality for reclaimed refrigerants. The only exception to this is described in section III.A.5. under the definition of "properly using." Moreover, recharging motor vehicle air conditioners with used refrigerant that has not been purified in accordance with the applicable standard is prohibited.

The proposed standard for recover only equipment would make it highly unlikely that refrigerant extracted using recover only equipment would be reused in recharging motor vehicle air conditioners before being purified. That standard would require that "[t]he equipment discharge or transfer fitting shall be unique to prevent the unintentional use of extracted CFC–12 to be used for recharging auto air conditioners." In other words, recover only equipment would have to be designed so that it can be connected, for example, to a recover/recycle machine for recycling of extracted refrigerant, but could only be directly connected to the recharging equipment under circumstances of intentional tampering. It would therefore be extremely difficult for recover only machines to be misused in the way MVMA fears. In addition, it is unlikely that persons in the business to service motor vehicle air conditioners would knowingly use contaminated refrigerant since they have an interest in satisfying customers and not injuring the customer's air conditioner.

As for venting, EPA believes that there is little chance that use of recover only machines would lead to venting. First, such venting is prohibited by these regulations for both recover only and recover/recycle equipment. Second, recover only equipment users would have an economic incentive not to vent but to either recycle or reclaim the extracted refrigerant. Since unpurified extracted refrigerant may not be used to recharge motor vehicle air conditioners, recover only equipment users can be expected to either recycle the extracted refrigerant before recharging the air conditioner, or to sell it to reclaimers. Finally, any risk of venting or contamination from the use of recover only equipment should be minimized by the required technician training and certification, which will alert technicians to the proper procedures to be followed.

Several commenters questioned whether one owner with several service establishments using recover only equipment could ship refrigerant to a

central location for recycling, as opposed to reclamation where the same owner owns the recover only equipment and the recycling equipment. As discussed under the definition of "properly using" (section III.A.5), the Agency believes that this practice may be a cost effective option in some situations. The Agency wishes to clarify that because of the importance of protecting refrigerant and the inability to assure the source of the refrigerant once it leaves the service site, this is the only exception that can be made from the on-site recycling requirement. A company may also wish to set up a central reclamation facility if it wishes to assure the purity of refrigerant.

EPA shares the concern of commenters regarding the limited number of reclamation facilities in the country. Any service establishment considering the purchase of recover only equipment should first determine if refrigerant reclamation opportunities exist in their area and the cost of using such service. The Agency would like to encourage the development of reclamation operations with the capability to clean refrigerant to the ARI–700 standard. It is of utmost importance to the proper functioning of air conditioning equipment that all refrigerant sold by reclaimers meets the ARI–700 standard of purity. Therefore, the Agency will consider a reclaimer certification program under its section 608 requirements. In developing the requirements, the Agency will consider the commenters' concern for periodic inspections of refrigerant quality and any possible measures to facilitate the development of the reclamation network around the country.

SAE commented that the 1989 version of SAE standard J1990 has been revised by SAE to add clarity and specification. Changes include the following:

(1) Section 1 of J1990 was revised to clarify that the scope of the standard applies to recover/recycle equipment, and not to recover only equipment (this is consistent with the SAE draft standard J2209 which applies to recover only equipment);

(2) Section 3 of J1990 added a labeling requirement, referring to the standard;

(3) Section 4 of J1990 is more specific regarding purge devices required for non-condensable gases (NCG). The equipment must either have an automatic purge device to expel NCG, or have a device that warns the operator if the limit for NCG has been received. In addition, a limit was placed on the refrigerant loss from the purging of NCG; the limit was set at 5% by weight of the total refrigerant recovered;

(4) Section 7 of J1990 clarified the requirement in the 1989 version that the equipment reduce the system to a vacuum. Revised J1990 requires that the equipment reduce system pressure to a minimum mercury level (4 in./102 mm) below atmospheric pressure; and

(5) Section 7 of J1990 also clarified the section regarding the extraction of used lubricants, for example discussing the need to only use new lubricant to replace the amount removed. The equipment must take into account the amount of refrigerant dissolved in the lubricant to avoid indicating the recovery of more lubricant than actually removed.

EPA agrees that the final standard for recover/recycle equipment should include these revisions to J1990 because the Agency believes these changes are minor in nature, and are not a significant change to the 1989 version of J1990 that EPA proposed in the NPRM. For example, section 4 of J1990 (1989) required a device to alert the operator that the NCG level had been exceeded, if the equipment had a self-contained recovery tank. The 1991 version expands on this concept. With respect to the amount of refrigerant loss attributable to purge of NCG, EPA noted in the NPRM that UL estimated that CFC–12 releases were well under 5% in machines certified prior to that date. With respect to the specification of a vacuum level, the change clarifies an ambiguous term in the old standard but does not change the level of extraction efficiency. The same can be said for the changes regarding lubricant extraction.

While including the changes to J1990 in the standard for recover/recycle equipment, EPA will only apply this revised J1990 standard to recover/recycle equipment certified after February 1, 1992. The standard for equipment certified prior to that date shall be J1990 (1989), the version proposed in the NPRM. EPA is taking this action for several reasons. First, a large number of recover/recycle machines have already been purchased, with the overwhelming majority of them certified to J1990 (1989). It would impose a significant economic burden to require equipment owners to either recertify their equipment or purchase new equipment. Second, as discussed above, the changes made to the 1989 version of J1990 are minor in nature and do not reflect any significant increase in environmental protection. Third, the 1989 version of J1990 clearly meets the statutory requirement of Section 609(b)(2)(A)—that section of the Act refer, in fact, to the 1989 version of J1990 as the minimum standard for equipment. Fourth, February 1, 1992 is a reasonable date to use as Underwriters Laboratory started using revised J1990 for all equipment submitted for certification after that date.

Three commenters objected to the statement in the September 4, 1991 notice regarding the appropriate method to handle the lubricant removed from refrigerant by either recover/recycle or recover only equipment. In the proposal, the Agency stated that the lubricant should be handled in the same manner that the service establishment handles used oil. Since the publication of the September 4 notice, the Office of Solid Waste and Emergency Response published a Supplemental Notice of Proposed Rulemaking on used oil characterization and management standards (56 FR 48000, September 23, 1991). The Agency would like to clarify that the presence of CFCs in used lubricant may have implications for how the used lubricant should be handled. The Agency refers persons to that rulemaking for further information on this issue.

2. Substantially Identical Equipment

The Act states that equipment purchased before the proposal of regulations under this section shall be considered certified if it is "substantially identical" to approved equipment. In the NPRM, the Agency proposed a process for review of uncertified equipment that would rely primarily on the manufacturer submitting information, such as process flowsheets, lists of component, or laboratory tests, to the Agency for review. Owners of equipment may also submit information to the Agency if they are unable to establish the status of equipment through the manufacturer. The Agency stated that it would narrowly interpret the substantially identical clause in order to protect the air-conditioning units and the integrity of the recycling program.

Several commenters agreed that EPA should maintain a strict interpretation of the substantially identical clause while others stated that EPA should recognize industry efforts by not declaring equipment purchased and used in good faith to be obsolete. In response to the latter group of comments, EPA points out that Congress' clear intent in providing an exception for substantially identical equipment was to credit industry efforts undertaken before the development of regulations to the greatest extent possible without endangering the environment and air conditioning equipment.

The Agency would like to clarify that recover/recycle equipment that has

been design certified by Underwriters Laboratory [9] as meeting the SAE standards in appendix A is considered approved equipment for the purposes of this regulation. The first recover/recycle equipment was certified in September, 1989. Such equipment should be labeled with UL's "design certified to meet SAE Standards" sticker. This should not be confused with other UL listing stickers that indicate satisfactory performance in safety testing only. The Agency understands that the vast majority of recover/recycle equipment sold has been design certified by UL, and EPA maintains a list of the certified models. The list is available to the public upon request to the address that appears in § 82.36.

The Agency would also like to clarify that it can only review equipment to determine if it is substantially identical to certified equipment once applications for review have been received. One commenter's suggestion that the Agency inventory and review every model of equipment ever sold is resource intensive and impractical. The Agency encourages equipment manufacturers that have models that do not have UL certification to submit applications for equipment they believe to be substantially identical to certified models. This includes retrofit packages that the manufacturer believes will result in equipment performance to certified levels. The Agency's review will concentrate on the aspects of equipment that vary from certified models. As stated in the proposal, an essential element of such review is that recover/recycle equipment purify refrigerant to the SAE J1991 standard of purity. For recover only equipment, essential elements of review are that equipment remove refrigerant as efficiently as approved equipment under the SAE J2209 standard and also that equipment separate lubricant.

The Agency realizes that the statutory deadlines require quick review of the information submitted. As soon as determinations are made, equipment determined to be substantially identical will be placed on the approved equipment list as "approved if purchased before September 4, 1991" for recover/recycle equipment and "approved if purchased before April 22, 1992 for recover only equipment. While equipment that EPA has not reviewed may in fact be substantially identical, an EPA determination on this point is important so a regulated party may verify their compliance in advance.

*C. Independent Standards Testing Organizations*

1. Summary and Response to Comments

In the proposal, EPA stated that organizations interested in obtaining approval as independent standards testing organizations must apply to the Agency and demonstrate that they are capable of performing equipment testing to the applicable standards. One commenter stressed the importance of highly trained, qualified staff. In addition, commenters argued that the standards testing organization should not be owned or controlled by manufacturers or vendors of the product being tested, to promote objectivity and preclude conflicts of interest. In general, various commenters considered the criteria proposed in § 82.38(b)(1)–(5) lacking in detail and substance.

EPA agrees that staff expertise is very important, as are objectivity and lack of conflicts of interest. However EPA believes these factors are fully addressed in the proposed regulations. For example, the proposal required that the applicant must demonstrate "[e]xpertise in equipment testing and the technical experience of the organization's personnel." In addition, the organization could have no conflict of interest and receive no financial benefit from the outcome of certification testing." [10] These criteria provide adequate detail and substance for an applicant to prepare its submission and guide the agency in its determinations. Evidence supporting this are the detailed and substantive applications that have already been submitted. Accordingly, the Agency is adopting the criteria as proposed, excepting changes for purposes of clarification.

One commenter urged EPA to make clear that UL 1963 and the SAE standards apply only to motor vehicle air conditioning equipment. This commenter correctly points out that there are separate industry standards (ARI Standard 740–91) that apply for equipment used for recovery and recycling in the other air conditioning and refrigeration sectors.

Equipment that recovers and recycles refrigerant must be certified to meet the SAE standards in appendix A. While EPA is not promulgating a specific test procedure that each independent standards testing organizations must follow, EPA does want to emphasize that EPA's review of an application of an organization for approval under section 82.38 will include a review of the test procedure the organization intends to employ. The application for approval will need to include information on the proposed test procedure and an explanation of its adequacy. Any approval of an organization will be contingent on use of such test procedure. While EPA considers this implicit in the criteria proposed in the NPRM, EPA is clarifying the final regulation to reflect the above.

EPA notes that the approval of UL, discussed herein, is based in part on the testing protocol developed by UL known as UL1963. EPA expects that a UL testing protocol will also be developed for testing the ability of recover only equipment to comply with applicable SAE standards. The Agency anticipates that a UL testing procedure will also be developed for this equipment.

2. Approved Independent Standards Testing Organizations

The Agency received an application for approval for UL on October 21, 1991, and from ETL Testing Laboratories, Inc on November 27, 1991. The Agency has reviewed their applications in detail and has formally approved UL and ETL Testing Laboratories, Inc. as independent standards testing organizations. This approval will be effective as of August 13, 1992. EPA encourages applications from other facilities that are capable of testing equipment to the necessary standards. The Agency recognizes that since a large amount of equipment has already been certified, additional laboratories may not find it cost effective to enter the certification market for equipment certified under this section of the Act. The EPA will maintain a list of approved independent standards testing organizations available upon request at the address in § 82.38. As stated in the proposed notice, the Agency reserves the right to revoke approval if the testing organization violates any of the requirements contained in § 82.38.

*D. Technician Training and Certification*

In the September 4, 1991 notice, EPA proposed standards for training and certification in the proper use of approved refrigerant recycling equipment during service of motor vehicle air conditioners. The standards were designed to assure that all aspects

[9] EPA discusses its approval of Underwriters Laboratory (UL) under 40 CFR 82.36 as an "independent standards testing organization" in section III.C.

[10] In response to a comment seeking clarification, this condition clearly allows an independent standards testing organization to generate a reasonable profit margin. However, it would preclude, for example, charging a fee based on the results of a test, as well as ownership of the testing organization by a manufacturer or vendor of the equipment being certified.

of the use of approved equipment are covered by certification programs while preserving flexibility in testing mechanisms. The Agency believes flexibility in testing mechanisms is important in technician certification because of the large number of technicians that must be certified in a very short period of time. In addition, service technicians are employed in a wide variety of circumstances and businesses, such that no one program may be adequate for all the situations involved.

Several commenters suggested that EPA had exceeded the intent of the statute by proposing a training, test administration and certification process, and that uniform Federal certification standards are excessive and unworkable. The language and the intent of the statute, however, explicitly requires EPA to establish standards for certification and training. In specified circumstances, section 609 of the Act prohibits the service and repair of motor vehicle air conditioners except by properly trained and certified personnel.[11] Under Section 609(b)(4), EPA is to establish the standards for such training and certification, subject to a minimum stringency level set by statute. EPA proposed to accomplish this goal by establishing a process to approve technician training and certification programs. The proposed criteria for approval of such programs balances flexibility of program design with an assurance that adequate training would be provided.

Several commenters raised the issue of self-certification, especially employer self-certification of employees as in the DOT certification for fleet mechanics and drivers. The commenters appeared concerned that only a limited number of national training and certification programs could seek approval under the proposed regulations. In addition, they were concerned that these national organizations could not train and certify a large number of technicians in a short time.

The Agency would like to clarify that the two programs mentioned in the statute, the Mobile Air Conditioning Society (MACS) or the National Institute of Automotive Service Excellence (ASE), are not the only training and certification programs that can seek EPA approval. The Agency did consider these programs, in addition to other certification programs and consultation with industry, government officials, and environmentalists, in developing the minimum criteria as they appeared in the proposal. Companies do have the option of developing their own certification program for their technicians; however, the Agency must review these programs to assure that they conform to the minimum criteria. The intent of the criteria is to establish a framework for certification under which a variety of entities, including testing organizations, individual companies, fleets and vocational schools, may design certification programs.

The commenters did not provide details on the DOT program mentioned. EPA understands it to involve training at the service establishment, with the service establishment then maintaining records of training. DOT does not review and approve the individual service establishments' training programs. EPA has serious questions whether such a program meets the minimum requirements set forth in section 609(b)(4). In addition, as described above, the review and approval process under section 82.40 should provide the needed flexibility for a wide variety of organizations, from the national, state and local levels, to obtain approval as technician training and certification programs.

The Agency is aware that many technicians may find independent testing organizations a simple and cost effective mechanism to achieve certification. Also, many companies who train their technicians may choose to use an independent testing organization's program to test or certify their technicians after training. The Agency does not wish to discourage any company from developing its own training and certification program and will assure parity across programs through a review of how each program meets the criteria. Agency review is important to assure veracity of information and fairness in testing. For a discussion of the review status of the programs developed in advance of this final rule, see section D.7.

The Agency received several specific comments on the various criteria proposed for technician certification programs.

1. Training

EPA proposed that each approved program must provide adequate training, using one or more of various formats: On-the-job training, training through self-study of instructional material, or on-site training involving instructors, videos or a hands-on demonstration. Three commenters suggested that hands-on demonstrations should be required in each technician certification program. In developing the proposal, EPA reviewed the actual operation of recover/recycle and recover only equipment and determined that proper operation could be adequately described and demonstrated in self-study instructional material as well as other kinds of instructional material. This is because the skills needed to properly use such equipment do not differ substantially from the skills technicians already possess for servicing the motor vehicle air conditioner. There is no evidence to suggest that this determination is inaccurate and therefore the Agency will not require hands-on demonstrations as a minimum standard. The Agency recognizes that demonstrations are valuable and would like to encourage their use whenever possible, including manufacturer demonstrations of equipment upon purchase. The Agency is aware that some technician certification programs already incorporate demonstrations. The Agency does have the authority to revoke a certificate if a technician fails to demonstrate for an authorized representative of the Administrator his or her ability to properly use the equipment.

2. Test Subject Material

EPA proposed that certification tests adequately address the relevant SAE J standards established for the service and repair of motor vehicle air conditioners, anticipated future technological developments (such as the introduction of HFC–134a), environmental consequences of refrigerant release and the adverse effects of stratospheric ozone layer depletion. In addition, the certification tests were to cover the general regulatory requirements under section 609 to assure that technicians are familiar with the legal requirements regarding service.

EPA received comments requesting that EPA "grandfather" technicians that were trained and certified before the promulgation of this rule. The Agency is aware that thousands of technicians have been certified in advance of the effective date of this final rule in anticipation of the final requirements and also as part of the voluntary program developed several years ago. These technicians would not have had the opportunity to receive training on the specifics of either section 609 of the Act or of these implementing regulations.

EPA believes it is important that training address the requirements imposed by the Administrator under section 609 of the Act, and will require

[11] The effective date of this prohibition depends on the size of establishment and the filing of a proper small volume certificate. See the discussion in section I.H herein.

that all training conducted by approved programs include such subject material for training conducted after the effective date of these regulations. However, training conducted before the effective date of these regulations need not include the specifics of the final rule. EPA is taking this action for several reasons. First, EPA believes that training on the requirements imposed by the Administrator under section 609 of the Act is quite valuable, but is not necessary to meet the legal standards required under section 609(b)(4). This is shown by the Act's reference to the then existing MACs and ASE training programs, which could not have included the then future regulatory requirements imposed by EPA in implementing section 609. Second, large numbers of technicians have already been trained and certified, and it would be a great burden and perhaps impossible to quickly retrain and recertify all of these technicians. Third, EPA believes that many technician training and certification programs did include training material on the requirements of section 609 and EPA's proposed regulations as soon as such information was available.

As stated in the proposal, the technician certification program is not intended to test the technical skills of technicians regarding the diagnosis and repair of motor vehicle air conditioners. The basic goal of the technician training and certification program is to teach technicians how to properly recover and/or recycle refrigerant, and why it must be done to protect the stratospheric ozone layer.

The supplemental notice published April 22, 1992, proposed an additional equipment standard for motor vehicle air conditioner service. Once the standard for recover only equipment is finalized, technician training and certification programs will have to include training and testing on the proper use of such equipment. For a further discussion, see section III.D.7.

3. Test Administration

In the proposed criteria, the Agency did not specify details of certification tests such as the number of questions, the passing scores required, the format of questions or the number of versions of tests. EPA's goal was to stimulate the development of a number of certification programs designed to meet the diverse needs of the technician community. For example, the Agency is aware that several open-book, unproctored tests and closed-book, proctored programs have been developed. Some programs use video training, while others stress written material or hands-on demonstration. As stated in the proposal, the number and format of test questions may vary depending on the testing scheme employed. At the same time, the questions must be adequate to cover the subject material in sufficient depth and detail. Individual companies interested in providing a certification opportunity for their employees may develop a program that reflects their existing training structure and seek EPA approval under § 82.40. EPA's goal in reviewing programs will be to assess whether each program meets the minimum standards in § 82.40. The Agency encourages programs to surpass the minimum standards and develop superior programs, but this is not a requirement.

EPA specifically requested comment on the validity of open-book testing for technician certification. Most commenters supported open-book testing as a valid minimum testing procedure; however, many commenters stated that proctors should be required whether the tests are open-book or closed-book. Commenters questioned the validity and quality of unproctored testing.

In developing standards for the certification of technicians under section 609, the Agency examined existing industry certification programs such as ASE and MACS, as well as other types of testing formats, including correspondence courses. One program referred to in Section 609(b)(4), MACS, employs non-proctored exams. Given the large number of technicians dispersed through a multitude of cities and towns in the country, and the Act's short statutory timeframes, the Agency believes that requiring proctored exams would require technicians to travel to a limited number of testing locations and would be infeasible for many technicians.

The proposed test administration criteria would require that programs establish sufficient measures to assure that tests are completed honestly by technicians and that there are methods for assuring technician identity. Examples include requiring signatures of technicians on test forms, requesting social security numbers, using multiple versions of tests and use of proctors in testing situations. Proctored exams are one, but not the only available method and certification programs are free to develop their combination of methods to assure valid testing. The Agency commends the procedures of many of the programs that have already been submitted to the Agency as effective yet not burdensome.

In the September 4, 1991 notice, the Agency described how open-book testing, if structured properly, could result in technicians having the necessary knowledge to properly perform refrigerant recovery and recycling, a subset of the knowledge needed to perform effective service on motor vehicle air conditioners. Several certification programs that have been developed incorporate proctors and the Agency commends this action. As a minimum standard, however, the Agency will allow technicians access to unproctored testing such as mail-in programs, assuming the test program meets all the criteria in § 82.40.

The Agency received several comments on the proposed requirement that completed tests be sent to an independent testing authority for grading. Commenters questioned whether any real benefit was obtained from such a requirement, since open-book, unproctored tests would be allowed. The requirement was also considered costly and unnecessary. Commenters sought clarification on various points, such as whether a non-profit entity associated with the sponsoring certification program would be an independent testing authority for grading.

EPA originally proposed this requirement, on the advice of motor vehicle air conditioning industry representatives, to avoid certification programs that did not actually test learning of material presented but merely provided a "certificate of attendance". The Agency also sought to minimize the potential conflicts of interest that might arise, such as in certification programs that wish to guarantee certification or individual companies that have a vested interest in assuring all employees pass the test. The concept of an independent testing authority was based on both programs mentioned in section 609 of the statute, which incorporate grading services or computerized grading of their existing exams. The goal was to incorporate neutrality into the grading process.

The Agency continues to believe that neutrality in the grading process is an important goal. To clarify the regulatory language, § 82.40 will be changed to state "Completed tests must be graded by an entity or individual who receives no benefit from the outcome of testing; a fee may be charged for grading". Programs submitted for EPA approval must demonstrate that the grading entity is neutral. Examples of independent grading include a scoring establishment which is a separate non-profit association associated with the

sponsoring certification program, a contracted grading company or individual and computerized grading services.

The Agency wishes to clarify that although it supports certification programs making provisions for non-English speaking technicians (indeed there is a great need for these provisions in certain areas of the country), this is not a requirement. The Agency does commend the efforts of the programs that have already made progress in this area.

4. Technical Revisions

Two commenters stated that the proposed requirement to review certification programs periodically and submit a written summary of the review and any changes to the Administrator every two years was excessive. They recommended that review of program content should only be triggered by the introduction of new equipment or refrigerants. The Agency believes the nature of the motor vehicle air conditioning market is rapidly changing, as evidenced by the development of the SAE J2209 standard for recovery only equipment. In this context, EPA has determined to keep the review provision as proposed. The Agency fully anticipates that certification programs will review and revise their program content more often than every two years (for example, each time they order reprints of instructional material or tests) in order to stay current in the field. Requiring these updates to be reported to the Administrator assures accuracy of information and maintains parity among programs.

5. Recertification

Two commenters favored EPA's proposal that it would reserve the right to require recertification of technicians in the future, if necessary. Three commenters maintained that periodic recertification would be unnecessary, burdensome and beyond the intent of the Act.

EPA believes the need to retest and recertify technicians in the future should be limited because certification programs are required to address the anticipated changes in motor vehicle air conditioning and to periodically review their programs. However, the Agency believes it is important to reserve the right to require recertification if environmentally significant changes in equipment for motor vehicle air conditioning occur.

6. Proof of Certification

No commenters disagreed with the proposed requirement that each training and certification program offer individual proof of certification upon successful completion of the test. Proof of certification is essential for the purchase of small containers of class I or class II substances. Several commenters disagreed with or questioned the related proposal that unique numbers be provided for each certified technician by certification programs.

Several programs already use the technician's social security number as a unique number, while other programs number tests distributed for their own recordkeeping purposes and then assign that number to the technician when he or she successfully completes the exam. Agency inspectors may need access to technician certification numbers to verify compliance with the regulation. In addition, the Agency may need these numbers to prove non-compliance with the regulations in an enforcement action. Unique numbers will aid in meeting these compliance and enforcement activities. In addition, it presents little if any burden on these programs to provide such unique numbers. Unique numbers within programs are also needed to distinguish between technicians with the same name. Programs must only assure that the numbers assigned within their own programs are unique. EPA will not provide these numbers, and will not require that the numbers be reported to EPA by technician certification programs because of the administrative burden associated with this activity on a national basis, and the need to coordinate between several programs.

7. Approval of Programs

The Agency is aware of three technician certification programs that have already certified several thousand technicians. One program, given by the Mobile Air Conditioning Society, was developed as part of the voluntary program established before the 1990 amendments to the Act. Two programs, given by the International Mobile Air Conditioning Association and the National Institute of Automotive Service Exellence, were developed in advance of the proposed rule. Several programs, including these three, applied for approval under § 82.40. EPA has completed its review of these three applications, and based on this review, EPA has formally approved them as technician training and certification programs. This approval will be effective as of August 13, 1992.

Two aspects of this approval should be noted. First, in light of the fact that these programs have already trained and certified numerous technicians, training and certification conducted by these programs prior to the effective date of the approval will be considered valid for purposes of these regulations as long as the training and certification was conducted in conformity with the training and certification program approved by EPA. The earliest date for which the Agency will accept training under these requirements will be September, 1990, which the Agency understands to be the date that the first technicians were certified under the MACS program. Second, all training and certification conducted after the effective date of any standards adopted for recover only equipment (Appendix B) must cover such standards in the training and testing. Since the procedures for extraction of refrigerant are very similar for both recover/recycle equipment and recover only equipment, EPA expects that technicians trained and certified by these programs prior to the final adoption of recover only standards would not need to be retrained and recertified with respect to the appendix B standards. That issue, however, will be addressed when EPA promulgates the final appendix B standards At this time, the Agency believes that programs should incorporate the specifics of the labeling of containers of recovered refrigerant into certification programs as soon as possible. The Agency encourages recover only equipment salespersons to reiterate to technicians that equipment meeting the SAE J2209 standard does not clean refrigerant and thus refrigerant captured with these machines must be recycled or sent to a reclamation facility, as specified in EPA's definition for the proper use of such equipment.

Several commenters questioned whether programs approved by states or localities were automatically approved by the EPA. Commenters also suggested that EPA accept state approved programs where the state standards are either substantially equivalent or more stringent than the Federal requirements.

Certification by a state program is not a substitute for training and certification by a Federally approved program. The Federal requirements established by section 609 of the Act and these regulations are separate and distinct from any valid state laws or regulations that may apply. Compliance with one does not automatically guarantee compliance with the other. At the same time, state-approved programs may apply to EPA for approval under EPA's regulations. Approval by EPA of such a program will be based on compliance with the requirements of § 82.40, which

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may be more or less stringent than applicable state requirements.

The Agency is aware of three state or local technician certification regulations (Florida, Wisconsin, and the South Coast Air Quality Management District in California). EPA will work with the relevant entities to review the requirements of their regulations and the approval process of any technician certification programs not already reviewed by the Agency to assure that no program falls below the minimum Federal standards.

The Agency is aware that some states may have approved technician certification programs in advance of promulgation of the EPA requirements using criteria different than the proposed Federal criteria. EPA also believes these differences are limited to the Test Administration criteria contained in § 82.40. With this problem in mind, EPA believes it is reasonable to modify § 82.40 to authorize approval of a training and certification program that meets all but the Test Administration criteria of that section. This would be allowed, however, only if the program, when viewed as a whole, is as or more effective than a program that does meet all of those criteria.[12]

EPA is taking this action for several reasons. First, EPA is aware that the statute and these regulations require the training and certification of a large number of technicians in a short period of time. These state-approved programs, as well as a variety of other programs, have already started this process to meet Federal and/or state or local requirements. This provision should allow additional flexibility in meeting these training and certification requirements, and will avoid penalizing activities conducted prior to the promulgation of these regulations. Second, programs approved under this provision can be expected to provide the same or better quality of training and exhibit the same or better level of validity in the certification process, since the program will have to show EPA that when viewed as a whole it is as good or better than programs which meet all of the criteria.

EPA has decided to limit this provision, however, to training and certification provided prior to the effective date of these regulations. After that date, all programs will have had adequate notice of the Federal requirements. This is especially so given that little change is being made from the September proposal. Programs will also have received adequate time to conform their program to these requirements. Limitation of this provision to such earlier training will also help to ensure that all approved programs meet common requirements, increasing the consistency of test administration in approved programs. For more discussion of the relationship between state and Federal requirements, see section III.G.

Since the publication of the proposed rule, the Agency has received other technician certification program applications and these will be reviewed as quickly as possible upon receipt of complete application materials. To facilitate EPA review, each program requesting review should supply information illustrating how each element of the certification criteria in § 82.40 is met. This includes test questions, test administration and training information such as videos or self-study booklets. The Agency encourages submission of applications for approval from training certification programs and will make every effort to review programs quickly. EPA will maintain a list of all approved programs including both national testing programs and any individual company programs that are approved.

*E. Small Container Restrictions*

The Act makes it unlawful, effective November 15, 1992, for any person to sell or distribute, or offer for sale or distribution, any class I or class II substance suitable for use as a refrigerant in motor vehicle air conditioning systems in a container with less than 20 pounds of refrigerant except to certified technicians servicing motor vehicles for consideration. The Agency proposed an implementation approach distinguishing between purchasing refrigerant in small containers for use and purchasing refrigerant in small containers for the purpose of resale only. For resale, the Agency proposed that sellers obtain a signed statement from purchasers stating that the small containers are for resale only. At retail sales outlets, the Agency proposed that sellers review the technician certification and keep a record of the technician's name, technician certification number and program name, date of sale and the quantity (number and size) of containers purchased. The proposal also stated that outlets selling small containers must display a sign stating that it is unlawful to sell small containers to an individual who is not a properly trained and certified technician.

Six commenters believed the continued existence of small containers allowed too great a potential for "do-it-yourselfer" access to refrigerant and that therefore the containers should be eliminated. Three commenters stated that the availability of small containers of CFC–12 increases the likelihood that the refrigerant supply will be contaminated because HCFC–22 and HFC–134a are also available in small containers. One commenter mentioned that if sales to retail outlets were eliminated, the effectiveness of recycling efforts would be increased. Five commenters believed the sales restriction should be expanded to all size containers.

EPA does not have authority under section 609 of the Act to ban or otherwise eliminate all small containers. The regulatory language in subpart B is designed to implement a specific statutory provision concerning small containers. That provision does not ban, but only limits the sale of such small containers. The Agency, however, is concerned about the potential problems that the continued availability of small containers of refrigerants could cause, as suggested in the comments. Mixing refrigerants may lead to air conditioning systems failures and may also subsequently contaminate recycle and recover equipment. The Agency is also aware that do-it-yourselfers may lawfully purchase containers with over 20 pounds of refrigerant. EPA will review this situation after gaining some experience with the operation of today's rule. It is important to note that several states have completely banned the sale of small containers.

The Agency received one comment supporting the requirement that a sign be posted at the point of refrigerant sale for its educational and deterrence value. One comment stated that the requirement was redundant because the small containers would not be available to the general public, and one comment suggested that a label on the container was more appropriate than a sign. The Agency wishes to clarify that the intent of the retail sign is to alert the public to the sales restriction under section 609 of the Act. Labeling requirements alerting consumers to products containing or made with class I and class II substances are being developed under section 611 of the Act and will not be redundant with the section 609 sales restrictions. For these reasons, EPA has determined to keep the requirement for a retail sign. EPA has clarified the regulation to state that the sign must be located where the sales occur.

[12] To avoid confusion, it is important to note that although this provision is made in response to comments concerning state approved programs, the revision to the Test Administration criteria is not limited to such programs.

Several commenters addressed the proposed recordkeeping requirements. The Automative Refrigerant Products Institute (ARPI) suggested that, at the wholesale level, purchasers be permitted to offer a one-time signed statement stating that cans are intended for retail sale in situations where sellers and purchasers have several transactions over time. The seller would keep the statement on file. The Agency agrees that this would be an efficient implementation method. No changes have been made to the regulations, however, because such actions would be allowed under the regulations as written.

ARPI also suggested that equipment registration certifications, instead of technician certifications, be used in recordkeeping for small container purchases. Although service establishments must submit information to the Agency concerning the type of equipment they have purchased, the Agency will not send back a verified proof of equipment purchase. As a result, there is no equipment registration certification that could be used for recordkeeping as ARPI suggested. Proof of certification will be provided by the technician certification programs and therefore, other than the purchase for resale, certified technicians are the only individuals permitted to purchase small containers.

Two commenters stated that retail purchasers should be required to simply present valid proof of certification at the time of purchase, with no additional recordkeeping required at the retail level. Upon further consideration, the Agency agrees that the recordkeeping requirements are not essential to determine compliance and develop effective enforcement actions. For example, if necessary, EPA may review the normal records maintained by a business when circumstances lead EPA to believe a violation may have occurred. EPA has therefore deleted the recordkeeping for retail purchase from the final requirements published today.

The Agency received several comments on the residual amount of CFC–12 remaining in cans after use, the standard of purity used by small container manufacturers, and the dispensing mechanism of the containers themselves. The Agency continues to be concerned about this aspect of the use of small containers and will further consider these comments when developing lowest achievable emission levels under section 608 of the Act.

*F. Equipment Certification and Small Entity Certification*

1. Certification Dates

As noted earlier, the statute requires that, after January 1, 1992, no person repairing or servicing a motor vehicle for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant unless they properly use approved equipment. In addition, the repair or service personnel must have been properly trained and certified for such work. The statute grants a one year extension to small service establishments—establishments that performed less than 100 service jobs involving refrigerant in the year 1990. This one year extension is only available if the small service establishment certifies to the Administrator on or before January 1, 1992 that they meet the requirements for this extension.

All persons performing service on motor vehicle air conditioners for consideration, notwithstanding the size of the establishment, must certify to the Administrator on or before January 1, 1993 that they have purchased approved equipment and that authorized service personnel have been properly trained and certified.

One commenter expressed concern that the one year delay between the requirement to use approved equipment for servicing (except small shops) and the requirement to certify the purchase and use of such equipment could result in reduced compliance. The commenter recognized that the difference in dates stems from section 609(c) and 609(d), and suggested that EPA increase compliance through education and enforcement.

EPA would like to encourage establishments to certify that they own equipment before January 1, 1993. The Agency applauds the efforts of the hundreds of service entities that have already submitted their equipment registrations to the Agency. The Agency has also received hundreds of the small establishment certifications. Once the certifications are filed with the Agency, the small establishments have until January 1, 1993 to purchase equipment. As discussed in section V. on effective dates, EPA enforcement actions may be taken as of the effective date of this regulation.

Several commenters were concerned that the small entity extension is too easy to obtain. Two commenters suggested that the small establishments be required to submit substantially more information than proposed on the motor vehicle air conditioner service jobs they performed in 1990, such as vehicle make, model, engine size and CFC charge remaining, before they are granted an extension. The Agency believes that the intent of Congress in including this specific small establishment extension was to reduce the regulatory burden on small entities. Requiring small entities to supply substantially more information could significantly reduce the relief Congress sought to provide. Moreover, the additional information that commenters suggested EPA collect would not provide significantly greater assurance that the numbers of service jobs reported by small entities was accurate. The Agency will therefore not require the suggested service record submittal for small entities. However, the Agency may examine an establishment's records supporting its certification that it performed less than 100 service jobs in 1990. If warranted, appropriate enforcement action may be taken.

In additional comments received after the end of the comment period, the State of Oregon requested that EPA consider exempting very small service establishments from all requirements. They classify the very small establishments as those performing under 20 jobs involving refrigerant per year. Oregon is considering establishing this exemption in its own program based on several factors; the state's belief that small service establishments will not voluntarily undertake recycling because of the high cost of the equipment and the fact that the small number of service jobs the shop performs will make it difficult for them to make a return on their investment. The amount of refrigerant released by these shops would be small and Oregon suggests that the compliance rates for these shops will be low if an exclusion is not granted.

Congress clearly recognized that small service establishments merited special consideration and included the one year extension for the equipment requirements. By implication, Congress also considered that no further relief was necessary or appropriate. The Agency, moreover, does not believe the establishment of any "de minimis" number of service jobs is warranted. The Agency recognizes that small service establishments may determine that the small number of jobs involving refrigerant that they perform do not justify continuing to perform service and purchasing the equipment. They may choose to decline this type of work or arrange to have the refrigerant removed from the motor vehicle air conditioner at a service location that does have the appropriate equipment before they

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perform service. The small establishment may also consider the purchase of recover only equipment, which is typically less expensive than recover/recycle equipment. The sale of any recovered refrigerant to a reclamation facility will also help the entity recoup the cost of the investment. The Agency also wishes to highlight the fact that a significant amount of recover/recycle equipment was sold before enactment of the Act on the basis of the industry voluntary program. Although most of the equipment was purchased by larger service establishments such as dealerships, the estimates of the equipment sold indicate that some smaller service establishments also purchased equipment voluntarily. The Agency believes the flexible nature of this final regulation and the inclusion of the one year extension for small service establishments provide for appropriate relief for these entities and no further measures are necessary.

2. Example Form

In the proposed rule, EPA included an example form to illustrate the type of information necessary to certify equipment to the Agency. Equipment owners are not required to use the form to certify; it is provided as an example only. One commenter questioned whether the proposed example form can be used to certify recover only equipment to the Agency. To clarify that the example form may be used for either type of equipment, the form has been revised to include the words "or recover" wherever the form states recover/recycle equipment. It should be noted, however, that EPA has not yet finalized the standards for approval of recover only equipment. Until that time, the only equipment officially approved by EPA is recover/recycle equipment certified to meet the standards of appendix A. The only other change to the example form provided in the proposal is the replacement of the acronym "MACs" with the more accurate "MVAC" for motor vehicle air conditioner. One commenter mentioned that MACs could be confused with the name of the Mobile Air Conditioning Society (MACS). The revised form appears as Example A in today's notice. Any certifications received using the proposed form are acceptable because, as stated in the proposal, the form is intended for guidance and the Agency does not require establishments to report in this format. The data elements for reporting remain the same as the proposal: the serial number of each unit of equipment, the name of the purchaser of equipment and the address of the establishment where the equipment will be located, the manufacturer name, model number, date of manufacture, and a signed statement that each individual authorized to perform service using the equipment is properly trained and certified and that the equipment will be properly used in servicing motor vehicle air conditioners.

Small establishments may also use the example form to certify that they performed less than 100 service jobs involving refrigerant in 1990. All certifications, both equipment and small entity, should be sent to the following address: MVACs Recycling Program Manager, Stratospheric Ozone Protection Branch (6202–J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

*G. Relationship to State Regulations*

In the proposed notice, the Agency stated that the Act does not provide for Federal preemption of state requirements. The rule published here today represents the Federal requirements applicable to the servicing of motor vehicle air conditioners, and states or localities may establish programs with different requirements to the extent otherwise consistent with the United States Constitution. EPA is aware of several states with their own programs, e.g. Florida and Oregon, and in most cases the programs contain requirements that mirror the Federal program. The Agency would like to clarify that compliance with a state or local program may not in and of itself constitute compliance with the Federal standards. For example, regardless of state registration or permitting requirements, the service establishments must certify their equipment with EPA (see section III.F.). Conversely, service entities and technicians in states or localities with regulations that are effective in advance of the Federal program must comply with these earlier requirements in their state and locality.

Regarding technician certification, as stated in section III.D., in cases where the state or locality has approved programs, the Agency will work with the state or locality to minimize the burden of obtaining approval for these programs. The Agency encourages any programs that have been approved by a state or locality to submit those program for Federal approval. The Agency is aware that in many cases the programs approved at the Federal level may also be approved by the state or locality and, therefore, no conflict would exist.

The Agency is aware that some states have also performed "substantially identical equipment" reviews for equipment. Equipment in those states also must be reviewed for applicability with the Federal requirements and EPA will work with the states to determine if their review criteria were appropriate.

Eight commenters highlighted the importance of coordinated state and Federal activity and the Agency will work with states to coordinate and streamline the enforcement activities in states where programs exist.

One commenter asked whether the State of Oregon's inclusion of wrecking yards in their recycling program would be superseded by the Federal requirements. Although the regulations published today do not include removal of CFCs from automobiles at disposal, the Agency intends to include requirements under the Safe Disposal Program within section 608 of the Act. The Federal regulations promulgated today do not preempt Oregon's requirements and, in fact, supports the state's efforts to develop a program. Leak detection efforts by the states of Wisconsin and Florida are other examples of requirements that EPA's program do not preempt.

*H. Recordkeeping Requirements*

1. Certification

The proposed certification requirements were intended to establish records to assist EPA in its compliance and enforcement activities. Section 609(d) of the Act requires that persons performing service on motor vehicle air conditioners certify to the Agency that they have acquired and are properly using approved equipment. The Agency proposed that this certification include name and address of the establishment, the name of the manufacturer, the equipment model number, manufacturer date, and serial number. The proposed certificate also included a statement concerning the proper use of the equipment, and that authorized service personnel were properly trained and certified. Small service establishments must certify to the Agency that they did under 100 service jobs involving refrigerant in 1990 if they wish to qualify for the one year extension described in section III.F.

The Agency would like to clarify that the Agency will not issue permits or licenses to service establishments upon receipt of the equipment certification. Several commenters mistakenly suggested that permits or EPA certifications be used for the small container sales restrictions discussed in section III.E. As required in the Act, the small container sales restriction is based on the technician certification requirements. Service establishments

that wish to verify EPA's receipt of their certification may send the certification by certified mail. They may also wish to retain a copy.

2. Recordkeeping

In the proposal, EPA attempted to develop requirements similar, in most cases, to the typical invoice or purchasing records maintained by a service entity. The Agency proposed that invoices kept upon service of motor vehicle air conditioners include the fact that service was performed, the name, address, and phone number of the vehicle owners, and the year, make, model and license plate numbers of the vehicles serviced, date of service, and the odometer reading of the vehicle. Owners of approved equipment would retain records of the amount of refrigerant purchased and consumed each month and they retain records demonstrating that all persons authorized to use the approved equipment are properly certified. The Agency also proposed that owners of approved recover only equipment maintain records of the refrigerant sent to off-site reclaimers or recycled on-site.

For the small container sales restriction, the Agency proposed that purchasers attest in writing that they are properly trained and certified. This writing would include the name of the purchaser, their technician certification number, the date of sale, and the quantity of cans purchased. Under the proposal, the only exception to the requirement that purchasers of small containers be trained and certified is if the purchaser is purchasing the small containers for resale only and signs a statement to that effect.

Several industry commenters noted that the proposed recordkeeping requirements were written for the consumer vehicle repair industry and do not consider several specific circumstances. Examples include service on fleet vehicles and farm or construction equipment where license plates, vehicle owner, or routine invoice procedures do not exist. As stated above, the Agency intended the proposed requirements to be as similar as possible to the types of recordkeeping already being maintained for accounting purposes to minimize the burden of this regulation. The Agency acknowledges that the proposed requirements do not reflect all the servicing situations that may occur nationally.

Two commenters believed that the recordkeeping requirements were unnecessarily burdensome on small businesses that do not have the resources to create or complete new forms. One commenter specifically questioned whether the reconciliation of purchases and estimation of the volumes of recycled refrigerant was possible considering the various amounts of refrigerant that motor vehicle air conditioners may contain when they are serviced. The Agency's proposal included a provision requiring the maintenance of records on the amount of refrigerant purchased and consumed each month in order to allow the Agency to make a determination if refrigerant was actually being recycled. The Agency agrees with the commenter that this recordkeeping requirement will not necessarily aid in determining whether recycling actually occurred. This determination would be difficult to make because the Agency could only compare the records to statistics for the average amount of refrigerant remaining in motor vehicle air conditioners at service. The amount of refrigerant actually found in a particular system, however, is dependent upon the type of repair that must be made, for example automobiles involved in front-end accidents may well have lost their entire charge, while the amount of refrigerant lost during normal use will vary between manufacturers and models of motor vehicles. The requirement that service establishments keep invoices of service performed and record their purchases and consumption of refrigerant, therefore, has been deleted in today's final rule.

Several commenters addressed the tracking of off-site shipments to reclamation facilities, with some commenters suggesting more detailed tracking and others suggesting that all records of off-site shipments or on-site recycling were unnecessary. The Agency has determined that service establishments using recover only equipment should be required to keep records of where refrigerant is sent for reclamation. Shops using recover only equipment that will have the refrigerant recycled by the owner must keep the name and address of the owner on-site. The Agency has decided it would not require in this regulation that service entities keep records of amounts of refrigerant sent and dates the shipments have been made. The Agency would like to clarify that service establishments using recover equipment need not retain records of the amount of refrigerant recycled on-site, only the address of the off-site reclamation facility they are currently doing business with. Additional recordkeeping requirements proposed by EPA have been deleted as unnecessary. The records required by these regulations must be maintained on-site for three years for spot checks upon inspection. The records should not be submitted to the Agency.

As discussed in section III.E, the small container recordkeeping requirements will not remain the same as proposed. Sellers of small containers of refrigerant must review the technician certification of anyone purchasing small containers, however they are not required to maintain records of the technician name, technician certification program, technician certification number, the date of sale and the number of containers purchased. The only exception to this is if the purchaser is purchasing the cans for resale, then he must so certify to the seller in writing.

## IV. Summary of Today's Final Rule

This section briefly describes the provisions of today's final rule. Any changes made to the rule language as a result of the public comments are described. Various changes to the final rule that have been made for purposes of clarification are not described herein.

### *A. Authority*

The authority citation has been revised to reflect the most recent authority citation adopted by EPA for part 82.

### *B. Purpose and Scope (Section 82.30)*

This section states that these rules implement section 609 of the Act and apply to persons performing service for consideration on motor vehicle air conditioners. There were no changes to this section based on public comment. Minor editing changes were made for clarification.

### *C. Definitions (Section 82.32)*

This section contains the definition of the terms "approved independent standards testing organization", "approved refrigerant recycling equipment", "motor vehicle", "motor vehicle air conditioners", "properly using", "refrigerant", "service for consideration", and "service involving refrigerant".

The definitions for approved equipment and standards testing organization reference the sections of the rule (§ 82.36 and § 82.38) described below. The motor vehicle definition was limited to this subpart and the definition was changed to include those vehicles meeting the definition of motor vehicle used for purposes of title II of the Act. Also, the definition was clarified to specify motor vehicles where final assembly has been completed by the original equipment manufacturer. Motor vehicle air conditioner defines the type of systems covered by this regulation

and this definition was clarified to exclude buses using HCFC–22 refrigerant. The definition of refrigerant was clarified by including the language in the Act that states that effective November 15, 1995, refrigerant shall include any substitutes for class I or class II substance. Service involving refrigerant defines the activities regulated. The service for consideration definition is intended to exclude "do-it-yourselfers" from the requirements of the regulation.

The term "properly using" sets out the requirements for use of approved equipment. It states that technicians must follow the SAE J standard J1989 when operating equipment, as found in appendix A. For recover/recycle equipment, properly using includes recycling the refrigerant before reuse. For recover only equipment, properly using includes sending the refrigerant recovered to a reclamation facility or recycling it on-site if recycle equipment is available. Any refrigerant from reclamation facilities used for the purpose of recharging motor vehicle air conditioners must be at or above the ARI 700–88 standard of purity. The definition also states that intentional venting of refrigerant is an improper use of equipment.

The only change to the properly using definition is the addition of a provision allowing the owner of a piece of recover only equipment to transfer the refrigerant off-site and recycle it using a piece of recover/recycle equipment owned by the same person.

*D. Prohibitions (Section 82.34)*

There are three prohibitions in this final rule. The first requires that by January 1, 1992, persons performing service for consideration on motor vehicle air conditioners must properly use approved equipment. These persons must be trained and certified. The requirements of this prohibition do not apply until January 1, 1993, for service establishments that performed under 100 service jobs involving refrigerant in 1990, and so certify to EPA.

The second prohibition states that effective November 15, 1992, no person may sell or distribute any class I or class II substance in a container with less than 20 pounds of refrigerant that is suitable for use as a refrigerant in a motor vehicle air conditioner to any person unless that person is properly trained and certified, or certifies to the seller that the containers are intended for resale only.

The final prohibition states that no technician training program may issue certificates unless that program complies with all the standards in § 82.40. The three prohibitions remain as originally proposed, except for clarifying language changes.

*E. Approved Refrigerant Recycling Equipment (Section 82.36)*

This section describes the two types of equipment that meet the definition of approved equipment for use in servicing motor vehicle air conditioners. The first type of equipment recovers CFC–12 and recycles it on-site to the SAE standard J1991. The standards for certification of this type of equipment appear in appendix A.

The second type of equipment only recovers refrigerant. As stated in the properly using definition, the recovered refrigerant must be sent to a reclamation facility or recycled on-site. The standard for this equipment was proposed as Appendix B on April 22, 1992. The appendix will be finalized upon completion of the analysis of the public comments. In finalizing the standards for recover only equipment, appendix B, the Agency intends to also amend § 82.36 (a) and (b) to include references to appendix B.

This section also contains provisions allowing the Agency to determine if equipment is substantially identical to certified equipment. Equipment manufacturers or owners may submit applications for approval which contain information on the equipment that indicates its capability to meet the standards in appendix A. EPA anticipates that a substantially identical determination will apply to appendix B. That issue, however, will be addressed when EPA promulgates the final appendix B standards. The Agency will maintain a list of approved equipment. This list is available to the public.

*F. Approved Independent Standards Testing Organizations (Section 82.38)*

This section establishes the criteria for approval of testing laboratories or organizations for equipment. Organizations must demonstrate that they have the experience and the appropriate equipment to perform testing. Various changes to this section between the proposed notice and today's final regulation were made for purposes of clarification. In finalizing the standards for recover only equipment, appendix B, the Agency intends to also amend § 82.38 (a) and (b) to include references to appendix B.

*G. Technician Training and Certification (Section 82.40)*

This section establishes the standards for programs approved to train and certify technicians. The standards cover training, the subject material that must be covered by each program, and minimum test administration procedures. Summaries of reviews of programs must be submitted every two years and programs must offer technicians proof of certification upon successful completion of the test. Recertification of technicians is not required at this time.

One change to this section is clarification of the term independent testing authority to state "Completed tests must be graded by an entity or individual who receives no benefit from the outcome of testing; a fee may be charged for grading." This is not a substantive change in the requirements. Another change involves approval of organizations that meet all criteria except for the Test Administration criteria, if the program, when viewed as a whole, is as effective as a program that does meet all of these criteria. In finalizing the standards for recover only equipment, appendix B, the Agency intends to also amend § 82.40(a) to include references to appendix B.

The Administrator reserves the right to revoke approval if a program violates any of the requirements and inspectors may revoke a technician's certification if the technician is unable to properly use equipment upon inspection.

*H. Certification and Recordkeeping Requirements*

This section states that no later than January 1, 1993, establishments repairing or servicing motor vehicle air conditioners for consideration must certify to the Agency that they have acquired and are properly using approved equipment. The data elements required for certification include the name of the purchaser of the equipment, the address of the service establishment, the name of the manufacturer, the model number of equipment, the date of manufacture and serial number. The owner of the equipment or another responsible officer must sign the certification stating that equipment will be properly used by certified technicians. The certification must be sent to: MVACs Recycling Program Manager, Stratospheric Ozone Protection Branch (6202–J), U.S. Environmental Protection Agency, 401 M Ss)treet, SW., Washington, DC 20460.

The address is the same as proposed except the MACs acronym has been replaced with the more accurate MVAC acronym for motor vehicle air conditioners. Other clarifications have also been made. These are not substantive changes.

Service establishments that performed fewer than 100 service jobs involving

refrigerant in 1990 may qualify for a one year extension by submitting a small establishment certification by January 1, 1992. This submittal must contain the name and address of the service establishment and a signed statement that the establishment performed under 100 service jobs in 1990. The statement must be sent to the address shown above. Establishments must retain records to verify this, however those records should not be submitted to the Agency. The example form provided in the preamble may be used for both the equipment and small establishment certification, although use of the form is not required.

Recordkeeping requirements at the service establishment have been changed. The establishment need not retain invoices of motor vehicle air conditioner service. The requirement in the proposed rule to record the amount of refrigerant recycled on-site (if recover only equipment is used and the refrigerant is not sent to a reclamation facility) has been deleted. The proposed requirement that service establishments retain records of the amount of refrigerant purchased and consumed each month has also been deleted in today's final rule. The service establishments must retain records demonstrating that technicians authorized to use the equipment are certified and must maintain records identifying the reclamation facility that refrigerant is sent to.

The recordkeeping requirements for sales of containers of less than 20 pounds of refrigerant have been deleted. The only exception to this requirement is if the purchaser is purchasing the small containers for resale. In that case, the seller must receive a written statement from the purchaser that the cans are for resale only. In all other cases, the seller must verify that the purchaser is properly trained and certified, and must have a reasonable basis to believe the information presented by the purchaser is accurate. Finally, a sign must be displayed at the point of sale of small containers stating that it is a violation of federal law to sell containers of class I and class II refrigerant in containers of less than 20 pounds to anyone who is not properly trained and certified.

All records under this section must be retained for three years. EPA authorized representatives must be allowed access to records upon inspection.

*I. Appendix A and Appendix B*

Appendix A contains the three SAE standards used to certify recover/recycle equipment. The SAE standard J1990 (Extraction and Recycle Equipment for Mobile Automotive Air Conditioning Systems) has been revised by SAE and the revised version is incorporated into today's final rule. As discussed in section III.B.1, SAE J1990 (1991) includes minor changes from SAE J1990 (1989).

Appendix B was proposed on April 22, 1992. The appendix will be finalized after the completion of the public comment period.

## V. Effective Date

The effective date for today's rule is August 13, 1992. Section 82.34 of these regulations requires that after this date, no person repairing or servicing a motor vehicle for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant unless they properly use equipment approved pursuant to § 82.36 of these regulations. Any such repair or service personnel must have been properly trained and certified under § 82.40 of the regulations.

The effective date of these rules does not, however, limit the lawful effect of various statutory prohibitions in section 609 of the Act. These statutory prohibitions are not dependent on EPA rulemaking. For example, section 609(c) states that "[e]ffective January 1, 1992, no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner without properly using approved refrigerant recycling equipment and no such person may perform such service unless such person has been properly trained and certified." Section 609(c) also conditions the one year extension for small volume establishments on the filing of a certificate with the Administrator on or before January 1, 1992.

The Agency received several comments requesting a "grace period" to allow enough time to purchase equipment and certify technicians. EPA is aware that it may have been impossible in practice for persons to fully comply with the section 609(c) requirements, given that this final rule was not promulgated until after January 1, 1992. The Agency is also aware that numerous establishments purchased refrigerant recycling equipment in anticipation of these regulations, and had their technicians trained and certified. EPA has already received many equipment certificates as well as small volume establishment certificates. This program was developed in the context of a pre-existing voluntary recycling program that involved several industries, trade associations, and numerous business entities across the nation. In addition, Congress apparently envisioned a maximum of 45 days between promulgation of the regulation (November 15, 1991) and the effective date of the statutory prohibition (January 1, 1992). The Agency will consider all of these factors when deciding whether to commence an enforcement action for violations of section 609(c) that occurred after January 1, 1992, but before the effective date of this rule.

## VI. Summary of Supporting Analyses

*A. Regulatory Impact Analysis*

Executive Order No. 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency has determined that this regulation does not meet the definition of a major rule under E.O. 12291. However, the Agency has prepared an analysis to assess the impact of the regulation (see Costs and Benefits of MACs Recycling, May 24, 1991) which is available for review in the public docket for this rulemaking.

The Clean Air Act requires the EPA to promulgate regulations to phase out the production of ozone depleting substances by the year 2000 (2002 for methyl chloroform). EPA prepared a Regulatory Impact Analysis (RIA) under the requirements of E.O. 12291 to analyze the costs and benefits of the phaseout (see Regulatory Impact Analysis: Compliance with the Clean Air Act Provisions for the Protection of Stratospheric Ozone, December 21, 1990). A key result of this analysis is that with the imposition of the phase out of production coupled with an excise tax of CFCs (see Omnibus Trade Reconciliation Act, 1989), CFC–12 recycling would be fully implemented by service establishments by the year 1992 even without a specific regulatory requirement to do so. As a result, the overwhelming majority of costs of this regulation on CFC–12 recycling at service of motor vehicle air conditioners (e.g. capital cost of recycling equipment and annual operating costs) have

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already been attributed to the CFC phaseout and have been included in the Phaseout RIA. The Phaseout RIA does not, however, include the costs of motor vehicle air conditioner service technician certification as required under the Act. The total cost of this requirement is determined to be approximately $14.9 million, well under the $100 million cost threshold for a major rule. The Costs and Benefits of MAC Recycling provides some general costs and benefits that could be attributed to motor vehicle air conditioner recycling, however, these costs are not incremental to the costs of the phaseout.

One commenter asserted that the regulatory requirements will result in an annual effect on the economy of $100 million or more. The Agency reiterates that the $100 million figure is intended to address incremental costs as a result of regulation, and as stated above the majority of the costs for this rulemaking have already been determined as part of the phase-out of ozone depleting substances. Attributing the cost of equipment purchase to this regulation would result in double counting of costs.

The State of Oregon questioned the assumption within the phase-out RIA that service establishments would implement recycling absent a specific requirement to do so. At the time the phase-out RIA was developed, the Agency believed that service establishments would undertake recycling for both economic and non-economic reasons. Non-economic reasons could include customers' environmental concerns or development of industry service norms that include recycling (a result of the voluntary program). These assumptions have been verified to some extent by the fact that over 50,000 pieces of recover/recycle equipment were sold prior to the end of 1990.

*B. Regulatory Flexibility Analysis*

1. Purpose

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency has performed an initial regulatory flexibility analysis and determined that while this regulation affects a substantial number of small businesses, it does not impact a substantial number significantly. The analysis is found in appendix A in the Costs and Benefits of MAC Recycling and is available for review in the docket. The methodology and results of the analysis are presented below.

2. Methodology and Results

To examine the impacts on small businesses, EPA first characterized the regulated community by identifying the SIC codes that would be involved in the servicing and repair of motor vehicle air conditioners. After determining the number of these entities that are classified as small by the Small Business Act (SBA), the Agency performed impact tests using sales, profits and cash flow measures. The analysis included least expensive and most expensive private cost scenarios for compliance that were developed for the Costs and Benefits of MAC Recycling. The least expensive cost scenario assumed recover only equipment is purchased at a price of $1000 while the more expensive option assumes $3000 recycle equipment is acquired. The analysis also takes the cost of filter changes, sending refrigerant out for reclamation, labor, and cost savings from using recycled refrigerant into account.

The State of Oregon questioned the Agency's determination that 90 percent of establishments that perform service are small businesses and suggested that 50 percent is a more reasonable figure. Oregon offered no justification for the 50 percent figure, however and the Agency maintains that the original analysis, which closely followed the Small Business Administration guidelines for determination of small business when performing regulatory flexibility analysis, is accurate.

The analysis indicates that the number of small establishments impacted by the regulation ranges from 18 percent if the least expensive compliance option, purchasing equipment that recovers refrigerant for off-site reclamation, is chosen to 32 percent if the most expensive compliance option is chosen. The Agency believes that most small establishments will choose the least cost option. This analysis did not reflect the fact that over 50,000 machines have already been sold based on the voluntary program developed by industry. The establishments that have purchased these machines will only have the incremental regulatory burden of technician certification. In addition, Congress has already established some flexibility for small establishments, defined as those entities that performed under 100 motor vehicle service jobs in 1990, by providing a one year extension on the requirement to purchase equipment.

The Agency believes that the one year extension, the fact that some entities have already purchased equipment, and the existence of the lease cost option of purchasing recover only equipment will result in less than 18 percent of small establishments being significantly impacted by this regulation. The Agency frequently defines a "significant number" of small entities as approximately 20 percent or more of small establishments. As a result, the Agency certifies that this regulation will not have an impact on a significant number of small entities, pursuant to 5 U.S.C. 605(b).

*C. Paperwork Reduction Act*

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Informational Collection Request document has been prepared by EPA (ICR No. 1432.07) and a copy may be obtained by writing to the Information Policy Branch (PM–223y), U.S.EPA, 401 M Street SW., Washington, DC 20460 or by calling (202) 260–2740.

Send comments on the information collection requirements to Chief, Information Policy Branch, PM–223, U.S. EPA, 401 M Street, SW., Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project [2060–0170], Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

**List of Subjects in 40 CFR Part 82**

Chlorofluorocarbons, Clean Air Act Amendments of 1990, Motor vehicle air conditioning, Reporting and recordkeeping requirements, Reporting and certification requirements, Stratospheric ozone layer.

Dated: June 29, 1992.

**William K. Reilly,**

*Administrator.*

For the reasons set out in the preamble, EPA is hereby amending 40 CFR part 82 as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. Authority: The authority citation for part 82 is revised to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.



2. Part 82 is amended by designating the existing sections and appendices as subpart A and by adding a new subpart B to read as follows:

**Subpart A—Production and Consumption Controls**

* * * * *

**Subpart B—Servicing of Motor Vehicle Air Conditioners**

Sec.

82.30 Purpose and Scope.
82.32 Definitions.
82.34 Prohibitions.
82.36 Approved Refrigerant Recycling Equipment.
82.38 Approved Independent Standards Testing Organizations.
82.40 Technician Training and Certification.
82.42 Certification, Recordkeeping and Public Notification Requirements.

Appendix A to Part 82 Subpart B—Standard for Recycle/Recover Equipment

Appendix B to Part 82 Subpart B—Standard for Recover Equipment [Reserved]

**§ 82.30 Purpose and scope.**

(a) The purpose of these regulations is to implement section 609 of the Clean Air Act, as amended (Act) regarding the servicing of motor vehicle air conditioners.

(b) These regulations apply to any person performing service on a motor vehicle for consideration when this service involves the refrigerant in the motor vehicle air conditioner.

**§ 82.32 Definitions.**

(a) *Approved Independent Standards Testing Organization* means any organization which has applied for and received approval from the Administrator pursuant to § 82.38.

(b) *Approved Refrigerant Recycling Equipment* means equipment certified by the Administrator or an organization approved under § 82.38 as meeting either one of the standards in § 82.36. Such equipment extracts and recycles refrigerant or extracts refrigerant for recycling on-site or reclamation off-site.

(c) *Motor vehicle* as used in this subpart means any vehicle which is self-propelled and designed for transporting persons or property on a street or highway, including but not limited to passenger cars, light duty vehicles, and heavy duty vehicles. This definition does not include a vehicle where final assembly of the vehicle has not been completed by the original equipment manufacturer.

(d) *Motor vehicle air conditioners* means mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC–22 refrigerant.

(e) *Properly using* means using equipment in conformity with Recommended Service Procedure for the Containment of R–12 (CFC–12) set forth in appendix A to this subpart. In addition, this term includes operating the equipment in accordance with the manufacturer's guide to operation and maintenance and using the equipment only for the controlled substance for which the machine is designed. For equipment that extracts and recycles refrigerant, properly using also means to recycle refrigerant before it is returned to a motor vehicle air conditioner. For equipment that only recovers refrigerant, properly using includes the requirement to recycle the refrigerant on-site or send the refrigerant off-site for reclamation. Refrigerant from reclamation facilities that is used for the purpose of recharging motor vehicle air conditioners must be at or above the standard of purity developed by the Air-conditioning and Refrigeration Institute (ARI 700–88) (available at 4301 North Fairfax Drive, Suite 425, Arlington, Virginia 22203) in effect as of November 15, 1990. Refrigerant may be recycled off-site only if the refrigerant is extracted using recover only equipment, and is subsequently recycled off-site by equipment owned by the person that owns both the recover only equipment and owns or operates the establishment at which the refrigerant was extracted. In any event, approved equipment must be used to extract refrigerant prior to performing any service during which discharge of refrigerant from the motor vehicle air conditioner can reasonably be expected. Intentionally venting or disposing of refrigerant to the atmosphere is an improper use of equipment.

(f) *Refrigerant* means any class I or class II substance used in a motor vehicle air conditioner. Class I and class II substances are listed in part 82, subpart A, appendix A. Effective November 15, 1995, refrigerant shall also include any substitute substance.

(g) *Service for consideration* means being paid to perform service, whether it is in cash, credit, goods, or services. This includes all service except that done for free.

(h) *Service involving refrigerant* means any service during which discharge or release of refrigerant from the motor vehicle air conditioner to the atmosphere can reasonably be expected to occur.

**§ 82.34 Prohibitions.**

(a) Effective August 13, 1992, no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner

(1) Without properly using equipment approved pursuant to § 82.36; and

(2) Unless such person has been properly trained and certified by a technician certification program approved by the Administrator pursuant to § 82.40.

The requirements of this paragraph do not apply until January 1, 1993 for small entities who certify to the Administrator in accordance with § 82.42(a)(2).

(b) Effective November 15, 1992, no person may sell or distribute, or offer for sale or distribution, any class I or class II substance that is suitable for use as a refrigerant in motor vehicle air-conditioner and that is in a container which contains less than 20 pounds of such refrigerant to any person unless that person is properly trained and certified under § 82.40 or intended the containers for resale only, and so certifies to the seller under § 82.42(b)(4).

(c) No technician training programs may issue certificates unless the program complies with all of the standards in § 82.40(a).

**§ 82.36 Approved refrigerant recycling equipment.**

(a)(1) Refrigerant recycling equipment must be certified by the Administrator or an independent standards testing organization approved by the Administrator under § 82.38 to meet the following standard:

(2) Equipment that recovers and recycles refrigerant must meet the standards set forth in appendix A to this subpart (Recommended Service Procedure for the Containment of R–12, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems, and Standard of Purity for Use in Mobile Air Conditioning Systems).

(b) Refrigerant recycling equipment purchased before September 4, 1991 that has not been certified under paragraph (a) of this section shall be considered approved if the equipment is substantially identical to equipment certified under paragraph (a) of this section. Equipment manufacturers or owners may request a determination by the Administrator by submitting an application and supporting documents which indicate that the equipment is substantially identical to approved equipment to: MVACs Recycling Program Manager, Stratospheric Ozone Protection Branch (6202–J), U.S.

Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attn. Substantially Identical Equipment Review.

Supporting documents must include process flow sheets, lists of components and any other information which would indicate that the equipment is capable of cleaning the refrigerant to the standards in appendix A. Authorized representatives of the Administrator may inspect equipment for which approval is being sought and request samples of refrigerant that has been extracted and/or recycled using the equipment. Equipment which fails to meet appropriate standards will not be considered approved.

(c) The Administrator will maintain a list of approved equipment by manufacturer and model. Persons interested in obtaining a copy of the list should send written inquiries to the address in paragraph (b) of this section.

**§ 82.38 Approved independent standards testing organizations.**

(a) Any independent standards testing organization may apply for approval by the Administrator to certify equipment as meeting the standards in appendix A to this subpart. The application shall be sent to: MVACs Recycling Program Manager, Stratospheric Ozone Protection Branch (6202–J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(b) Applications for approval must document the following:

(1) That the organization has the capacity to accurately test whether refrigerant recycling equipment complies with the applicable standards. In particular, applications must document:

(i) The equipment present at the organization that will be used for equipment testing;

(ii) The expertise in equipment testing and the technical experience of the organization's personnel;

(iii) Thorough knowledge of the standards as they appear in appendix A of this subpart; and

(iv) The test procedures to be used to test equipment for compliance with applicable standards, and why such test procedures are appropriate for that purpose.

(2) That the organization has no conflict of interest and will receive no financial benefit based on the outcome of certification testing; and

(3) That the organization agrees to allow the Administrator access to verify the information contained in the application.

(c) If approval is denied under this section, the Administrator shall give written notice to the organization setting forth the basis for his or her determination.

(d) If at any time an approved independent standards testing organization is found to be conducting certification tests for the purposes of this subpart in a manner not consistent with the representations made in its application for approval under this section, the Administrator reserves the right to revoke approval.

**§ 82.40 Technician training and certification.**

(a) Any technician training and certification program may apply for approval, in accordance with the provisions of this paragraph, by submitting to the Administrator at the address in § 82.38 (a) verification that the program meets all of the following standards:

(1) *Training.* Each program must provide adequate training, through one or more of the following means: on-the-job training, training through self-study of instructional material, or on-site training involving instructors, videos or a hands-on demonstration.

(2) *Test Subject Material.* The certification tests must adequately and sufficiently cover the following:

(i) The standards established for the service and repair of motor vehicle air conditioners as set forth in Appendix A to this subpart. These standards relate to the recommended service procedures for the containment of refrigerant, extraction and recycle equipment, and the standard of purity for refrigerant in motor vehicle air conditioners.

(ii) Anticipated future technological developments, such as the introduction of HFC–134a in new motor vehicle air conditioners.

(iii) The environmental consequences of refrigerant release and the adverse effects of stratospheric ozone layer depletion.

(iv) As of August 13, 1992, the requirements imposed by the Administrator under § 609 of the Act.

(3) *Test Administration.* Completed tests must be graded by an entity or individual who receives no benefit based on the outcome of testing; a fee may be charged for grading. Sufficient measures must be taken at the test site to ensure that tests are completed honestly by each technician. Each test must provide a means of verifying the identification of the individual taking the test. Programs are encouraged to make provisions for non-English speaking technicians by providing tests in other languages or allowing the use of a translator when taking the test. If a translator is used, the certificate received must indicate that translator assistance was required.

(4) *Proof of Certification.* Each certification program must offer individual proof of certification, such as a certificate, wallet-sized card, or display card, upon successful completion of the test. Each certification program must provide a unique number for each certified technician.

(b) In deciding whether to approve an application, the Administrator will consider the extent to which the applicant has documented that its program meets the standards set forth in this section. The Administrator reserves the right to consider other factors deemed relevant to ensure the effectiveness of certification programs. The Administrator may approve a program which meets all of the standards in paragraph (a) of this section except test administration if the program, when viewed as a whole, is at least as effective as a program that does meet all the standards. Such approval shall be limited to training and certification conducted before August 13, 1992. If approval is denied under this section, the Administrator shall give written notice to the program setting forth the basis for his determination.

(c) *Technical Revisions.* Directors of approved certification programs must conduct periodic reviews of test subject material and update the material based upon the latest technological developments in motor vehicle air conditioner service and repair. A written summary of the review and any changes made must be submitted to the Administrator every two years.

(d) *Recertification.* The Administrator reserves the right to specify the need for technician recertification at some future date, if necessary.

(e) If at any time an approved program is conducted in a manner not consistent with the representations made in the application for approval of the program under this section, the Administrator reserves the right to revoke approval.

(f) Authorized representatives of the Administrator may require technicians to demonstrate on the business entity's premises their ability to perform proper procedures for recovering and/or recycling refrigerant. Failure to demonstrate or failure to properly use the equipment may result in revocation of the technician's certificate by the Administrator. Technicians whose certification is revoked must be recertified before servicing or repairing any motor vehicle air conditioners.

**§ 82.42 Certification, recordkeeping and public notification requirements.**

(a) *Certification requirements.* (1) No later than January 1, 1993, any person repairing or servicing motor vehicle air conditioners for consideration shall certify to the Administrator that such person has acquired, and is properly using, approved equipment and that each individual authorized to use the equipment is properly trained and certified. Certification shall take the form of a statement signed by the owner of the equipment or another responsible officer and setting forth:

(i) The name of the purchaser of the equipment;

(ii) The address of the establishment where the equipment will be located; and

(iii) The manufacturer name and equipment model number, the date of manufacture, and the serial number of the equipment. The certification must also include a statement that the equipment will be properly used in servicing motor vehicle air conditioners, that each individual authorized by the purchaser to perform service is properly trained and certified in accordance with § 82.40, and that the information given is true and correct. The certification should be sent to: MVACs Recycling Program Manager, Stratospheric Ozone Protection Branch (6202–J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(2) The prohibitions in § 82.34(a) shall be effective as of January 1, 1993 for persons repairing or servicing motor vehicle air conditioners for consideration at an entity which performed service on fewer than 100 motor vehicle air conditioners in calendar year 1990, but only if such person so certifies to the Administrator no later than August 13, 1992. Persons must retain adequate records to demonstrate that the number of vehicles serviced was fewer than 100.

(3) Certificates of compliance are not transferable. In the event of a change of ownership of an entity which services motor vehicle air conditioners for consideration, the new owner of the entity shall certify within thirty days of the change of ownership pursuant to § 82.42(a)(1).

(b) *Recordkeeping requirements.* (1) Any person who owns approved refrigerant recycling equipment certified under § 82.36(a)(2) must maintain records of the name and address of any facility to which refrigerant is sent.

(2) Any person who owns approved refrigerant recycling equipment must retain records demonstrating that all persons authorized to operate the equipment are currently certified under § 82.40.

(3) Any person who sells or distributes any class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air conditioner and that is in a container of less than 20 pounds of such refrigerant must verify that the purchaser is properly trained and certified under § 82.40. The seller must have a reasonable basis for believing that the information presented by the purchaser is accurate. The only exception to these requirements is if the purchaser is purchasing the small containers for resale only. In this case, the seller must obtain a written statement from the purchaser that the containers are for resale only and indicate the purchasers name and business address. Records required under this paragraph must be retained for a period of three years.

(4) All records required to be maintained pursuant to this section must be kept for a minimum of three years unless otherwise indicated. Entities which service motor vehicle air conditioners for consideration must keep these records on-site.

(5) All entities which service motor vehicle air conditioners for consideration must allow an authorized representative of the Administrator entry onto their premises (upon presentation of his or her credentials) and give the authorized representative access to all records required to be maintained pursuant to this section.

(c) *Public Notification.* Any person who conducts any retail sales of a class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air conditioner, and that is in a container of less than 20 pounds of refrigerant, must prominently display a sign where sales of such containers occur which states:

"It is a violation of federal law to sell containers of Class I and Class II refrigerant of less than 20 pounds of such refrigerant to anyone who is not properly trained and certified to operate approved refrigerant recycling equipment."

## Appendix A to Subpart B—Standard for Recycle/Recover Equipment

**Standard of Purity for Use in Mobile Air-Conditioning Systems**

*Foreword*

Due to the CFC's damaging effect on the ozone layer, recycle of CFC–12 (R–12) used in mobile air-conditioning systems is required to reduce system venting during normal service operations. Establishing recycle specifications for R–12 will assure that system operation with recycled R–12 will provide the same level of performance as new refrigerant.

Extensive field testing with the EPA and the auto industry indicate that reuse of R–12 removed from mobile air-conditioning systems can be considered, if the refrigerant is cleaned to a specific standard. The purpose of this standard is to establish the specific minimum levels of R–12 purity required for recycled R–12 removed from mobile automotive air-conditioning systems.

*1. Scope*

This information applies to refrigerant used to service automobiles, light trucks, and other vehicles with similar CFC–12 systems. Systems used on mobile vehicles for refrigerated cargo that have hermetically sealed, rigid pipe are not covered in this document.

*2. References*

SAE J1989, Recommended Service Procedure for the Containment of R–12

SAE J1990, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems

ARI Standard 700–88

*3. Purity Specification*

The refrigerant in this document shall have been directly removed from, and intended to be returned to, a mobile air-conditioning system. The contaminants in this recycled refrigerant 12 shall be limited to moisture, refrigerant oil, and noncondensable gases, which shall not exceed the following level:

3.1 *Moisture:* 15 ppm by weight.

3.2 *Refrigerant Oil:* 4000 ppm by weight.

3.3 *Noncondensable Gases (air):* 330 ppm by wright.

*4. Refrigeration Recycle Equipment Used in Direct Mobile Air-Conditioning Service Operations Requirement*

4.1 The equipment shall meet SAE J1990, which covers additional moisture, acid, and filter requirements.

4.2 The equipment shall have a label indicating that it is certified to meet this document.

*5. Purity Specification of Recycled R–12 Refrigerant Supplied in Containers From Other Recycle Sources*

Purity specification of recycled R–12 refrigerant supplied in containers from other recycle sources, for service of mobile air-conditioning systems, shall meet ARI Standard 700–88 (Air Conditioning and Refrigeration Institute).

*6. Operation of the Recycle Equipment*

This shall be done in accordance with SAE J1989.

*Rationale*

Not applicable.

*Relationship of SAE Standard to ISO Standard*

Not applicable.

*Reference Section*

SAE J1989, Recommended Service Procedure for the Containment of R–12

SAE J1990, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems
ARI Standard 700-88

*Application*

This information applies to refrigerant used to service automobiles, light trucks, and other vehicles with similar CFC-12 systems. Systems used on mobile vehicles for refrigerated cargo that have hermetically sealed, rigid pipe are not covered in this document.

*Committee Composition*

Developed by the SAE Defrost and Interior Climate Controls Standards Committee

W.J. Atkinson, Sun Test Engineering, Paradise Valley, AZ—Chairman
J.J. Amin, Union Lake, MI
H.S. Andersson, Saab Scania, Sweden
P.E. Anglin, ITT Higbie Mfg. Co., Rochester, MI
R.W. Bishop, GMC, Lockport, NY
D. Hawks, General Motors Corporation, Pontiac, MI
J.J. Hernandez, NAVISTAR, Ft. Wayne, IN
H. Kaltner, Volkswagen AG, Germany, Federal Republic
D.F. Last, GMC, Troy, MI.
D.E. Linn, Volkswagen of America, Warren, MI
J.H. McCorkel, Freightliner Corp., Charlotte, NC
C.J. McLachlan, Livonia, MI
H.L. Miner, Climate Control Inc., Decatur, IL
R.J. Niemiec, General Motors Corp., Pontiac, MI
N. Novak, Chrysler Corp., Detroit, MI
S. Oulouhojian, Mobile Air Conditioning Society, Upper Darby, PA
J. Phillips, Air International, Australia
R.H. Proctor, Murray Corp., Cockeysville, MD
G. Rolling, Behr America Inc., Ft. Worth, TX
C.D. Sweet, Signet Systems Inc., Harrodsburg, KY
J.P. Telesz, General Motors Corp., Lockport, NY

**Extraction and Recycle Equipment for Mobile Automotive Air Conditioning Systems**

SAE Recommended Practice, SAE J1990 (1991) [1]

*0. Foreword*

Due to the CFC's damaging effect on the ozone layer, recycle of CFC-12 (R-12) used in mobile air-conditioning systems is required to replace system venting during normal service operations. Establishing recycle specifications for R-12 will provide the same level of performance as new refrigerant.

Extensive field testing with the EPA and the auto industry indicates that R-12 can be reused, provided that it is cleaned to specifications in SAE J1991. The purpose of this document is to establish the specific minimum equipment specification required for recycle of R-12 that has been directly removed from mobile systems for reuse in mobile automotive air-conditioning systems.

*1. Scope*

The purpose of this document is to provide equipment specifications for CFC-12 (R-12) recycling equipment. This information applies to equipment used to service automobiles, light trucks, and other vehicles with similar CFC-12 air-conditioning systems. Systems used on mobile vehicles for refrigerated cargo that have hermetically sealed systems are not covered in this document. The equipment in this document is intended for use with refrigerant that has been directly removed from, and intended to be returned to, a mobile air-conditioning system. Should other revisions due to operational or technical requirements occur, this document may be amended.

*2. References*

2.1 Applicable Documents:

2.1.1 SAE Publications—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096-0001.

SAE J1991—Standard of Purity for Use in Mobile Air-Conditioning Systems
SAE J2196—Service Hose for Automotive Air-Conditioning

2.1.2 CGA Publications—Available from CGA, Crystal Gateway #1, Ste. 501, 1235 Jefferson Davis Hwy., Arlington, VA 22202

CGA Pamphlet S-1.1—Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases

*3. Specification and General Description*

3.1 The equipment must be able to extract and process CFC-12 from mobile air-conditioning systems. The equipment shall process the contaminated R-12 samples as defined in 8.4 and shall clean the refrigerant to the level as defined in SAE J1991.

3.2 The equipment shall be suitable for use in an automotive service environment and be capable of continuous operation in ambients from 10 to 49 °C.

3.3 The equipment must be certified by Underwriters Laboratories or an equivalent certifying laboratory.

3.4 The equipment shall have a label "Design Certified by (Company Name) to Meet SAE J1991". The minimum letter size shall be bold type 3 mm in height.

*4. Refrigeration Recycle Equipment Requirements*

4.1 Moisture and Acid—The equipment shall incorporate a desiccant package that must be replaced before saturated with moisture and whose mineral acid capacity is at least 5% by weight of total system dry desiccant.

4.1.1 The equipment shall be provided with a moisture detection device that will reliably indicate when moisture in the CFC-12 exceeds the allowable level and requires the filter/dryer replacement.

4.2 Filter—The equipment shall incorporate an in-line filter that will trap particulates of 15 μm or greater.

4.3 Noncondensable Gas.

4.3.1 The equipment shall either automatically purge noncondensables (NCGs) if the acceptable level is exceeded or incorporate a device to alert the operator that NCG level has been exceeded. NCG removal must be part of normal operation of the equipment and instructions must be provided to enable the task to be accomplished within 30 minutes.

4.3.2 Refrigerant loss from noncondensable gas purging during testing described in Section 8 shall not exceed five percent (5%) by weight of the total contaminated refrigerant removed from the test system.

4.3.3 Transfer of Recycled Refrigerant—Recycled refrigerant for recharging and transfer shall be taken from the liquid phase only.

*5. Safety Requirements*

5.1 The equipment must comply with applicable federal, state and local requirements on equipment related to the handling of R-12 material. Safety precautions or notices related to the safe operation of the equipment shall be prominently displayed on the equipment and should also state "Caution—Should Be Operated By Qualified Personnel".

*6. Operating Instructions*

6.1 The equipment manufacturer must provide operating instructions, necessary maintenance procedures, and source information for replacement parts and repair.

6.2 The equipment must prominently display the manufacturer's name, address and any items that require maintenance or replacement that affect the proper operation of the equipment. Operation manuals must cover information for complete maintenance of the equipment to assure proper operation.

*7. Functional Description*

7.1 The equipment must be capable of ensuring recovery of the R-12 from the system being service, by reducing the system pressure below atmospheric to a minimum of 102 mm of mercury.

7.2 To prevent overcharge, the equipment must be equipped to protect the tank used to store the recycled refrigerant with a shutoff device and a mechanical pressure relief valve.

7.3 Portable refillable tanks or containers used in conjunction with this equipment must meet applicable Department of Transportation (DOT) or Underwriters Laboratories (UL) Standards and be adaptable to existing refrigerant service and charging equipment.

7.4 During operation, the equipment shall provide overfill protection to assure the storage container, internal or external, liquid fill does not exceed 80% of the tank's rated volume at 21.1 °C (70 °F) per DOT standards, CFR title 49, § 173.304 and American Society of Mechanical Engineers.

7.4.1 Additional Storage Tank Requirements.

7.4.1.1 The cylinder valve shall comply with the standard for cylinder valves, UL 1769.

7.4.1.2 The pressure relief device shall comply with the Pressure Relief Device

[1] This standard is appropriate for equipment certified after February 1, 1992. This equipment may be marked design certified for compliance with SAE J1990 (1991). The standard for approval for equipment certified on or before February 1, 1992 is SAE J1990 (1989). This equipment may be marked design certified for compliance with SAE J1990 (1989). Both types of equipment are considered approved under the requirements of this regulation

Standard Part 1—Cylinders for Compressed Gases, CGA Pamphlet S–1.1.

7.4.1.3 The tank assembly shall be marked to indicate the first retest date, which shall be 5 years after date of manufacture. The marking shall indicate that retest must be performed every subsequent 5 years. The marking shall be in letters at least ¼ in high.

7.5 All flexible hoses must meet SAE J2196 hose specification effective January 1, 1992.

7.6 Service hoses must have shutoff devices located within 30 cm (12 in) of the connection point to the system being serviced to minimize introduction of noncondensable gases into the recovery equipment and the release of the refrigerant when being disconnected.

7.7 The equipment must be able to separate the lubricant from the recovered refrigerant and accurately indicate the amount removed during the process, in 30 ml units. Refrigerant dissolves in lubricant sample. This creates the illusion that more lubricant has been recovered than actually has been. The equipment lubricant measuring system must take in account such dissolved refrigerant to prevent overcharging the vehicle system with lubricant. Note: Use only new lubricant to replace the amount removed during the recycle process. Used lubricant should be discarded per applicable federal, state, and local requirements.

7.8 The equipment must be capable of continuous operation in ambient of 10 to 49 °C (50 to 120 °F).

7.9 The equipment should be compatible with leak detection material that may be present in the mobile AC system.

*8. Testing*

This test procedure and the requirement are used for evaluation of the equipment for its ability to clean the contaminated R–12 refrigerant.

8.1 The equipment shall clean the contaminated R–12 refrigerant to the minimum purity level as defined in SAE J1991, when tested in accordance with the following conditions:

8.2 For test validation, the equipment is to be operated according to the manufacturer's instructions.

8.3 The equipment must be preconditioned with 13.6 kg (30 lb) of the standard contaminated R–12 at an ambient of 21 °C (70 °F) before starting the test cycle. Sample amounts are not to exceed 1.13 kg (2.5 lb) with sample amounts to be repeated every 5 min. The sample method fixture, defined in Fig. 1, shall be operated at 24 °C (75 °F).

8.4 Contaminated R–12 Samples.

8.4.1 Standard contaminated R–12 refrigerant shall consist of liquid R–12 with 100 ppm (by weight) moisture at 21 °C (70 °F) and 45,000 ppm (by weight) mineral oil 525 suspension nominal and 770 ppm by weight of noncondensable gases (air).

8.4.2 High moisture contaminated sample shall consist of R–12 vapor with 1,000 ppm (by weight) moisture.

8.4.3 High oil contaminated sample shall consist of R–12 with 200,000 ppm (by weight) mineral oil 525 suspension viscosity nominal.

8.5 Test Cycle.

8.5.1 After preconditioning as stated in 8.3, the test cycle is started, processing the following contaminated samples through the equipment:

8.5.1.1 3013.6 kg (30 lb) of standard contaminated R–12.

8.5.1.2 1 kg (2.2 lb) of high oil contaminated R–12.

8.5.1.3 4.5 kg (10 lb) of standard contaminated R–12.

8.5.1.4 1 kg (2.2 lb) of high moisture contaminated R–12.

8.6 Equipment Operating Ambient.

8.6.1 The R–12 is to be cleaned to the minimum purity level, as defined in SAE J1991, with the equipment operating in a stable ambient of 10, 21, and 49 °C (50, 70, and 120 °F) and processing the samples as defined in 8.5.

8.7 Sample Analysis.

8.7.1 The processed contaminated sample shall be analyzed according to the following procedure.

8.8 Quantitative Determination of Moisture.

8.8.1 The recycled liquid phase sample of CFC–12 shall be analyzed for moisture content via Karl Fischer coulometer titration or an equivalent method. The Karl Fischer apparatus is an instrument for precise determination of small amounts of water dissolved in liquid and/or gas samples.

8.8.2 In conducting the test, a weighed sample of 30 to 130 grams is vaporized directly into the Karl Fischer analyte. A coulometer titration is conducted and the results are calculated and displayed as parts per million moisture (weight).

8.9 Determination of Percent Lubricant.

8.9.1 The amount of oil in the recycled sample of CFC–12 is to be determined by gravimetric analysis.

8.9.2 Following venting of noncondensable, in accordance with the manufacturer's operating instructions, the refrigerant container shall be shaken for 5 minutes prior to extracting samples for test.

8.9.3 A weighted sample of 175 to 225 grams of liquid CFC–12 is allowed to evaporate at room temperature. The percent oil is to be calculated from the weight of the original sample and the residue remaining after the evaporation.

8.10 Noncondensable Gas.

8.10.1 The amount of noncondensable gas is to be determined by gas chromatography. A sample of vaporized refrigerant liquid shall be separated and analyzed by gas chromatography. A Porapak Q column at 130 °C and a hot wire detector may be used for analysis.

8.10.2 This test shall be conducted on recycled refrigerant (taken from the liquid phase) within 30 minutes after the proper venting of noncondensable.

8.10.3 Samples shall be shaken for 8 hours prior to retesting while at a temperature of 24 ± 2.8 °C (75 ± 5 °F). Known volumes of refrigerant vapor are to be injected for separation and analysis by means of gas chromatography. A Porapak Q column at 130 °C (266 °F) and a hot wire detector are to be used for the analysis.

8.10.4 This test shall be conducted at 21 and 49 °C and may be performed in conjunction with the testing defined in Section 8.6. The equipment shall process at least 13.6 kg of standard contaminated refrigerant for this test.

8.11 Sample Requirements.

8.11.1 The sample shall be tested as defined in 8.7, 8.8, 8.9, and 8.10 at ambient temperatures of 10, 21, and 49 °C (50, 70 and 120 °F) as defined in 8.6.1.

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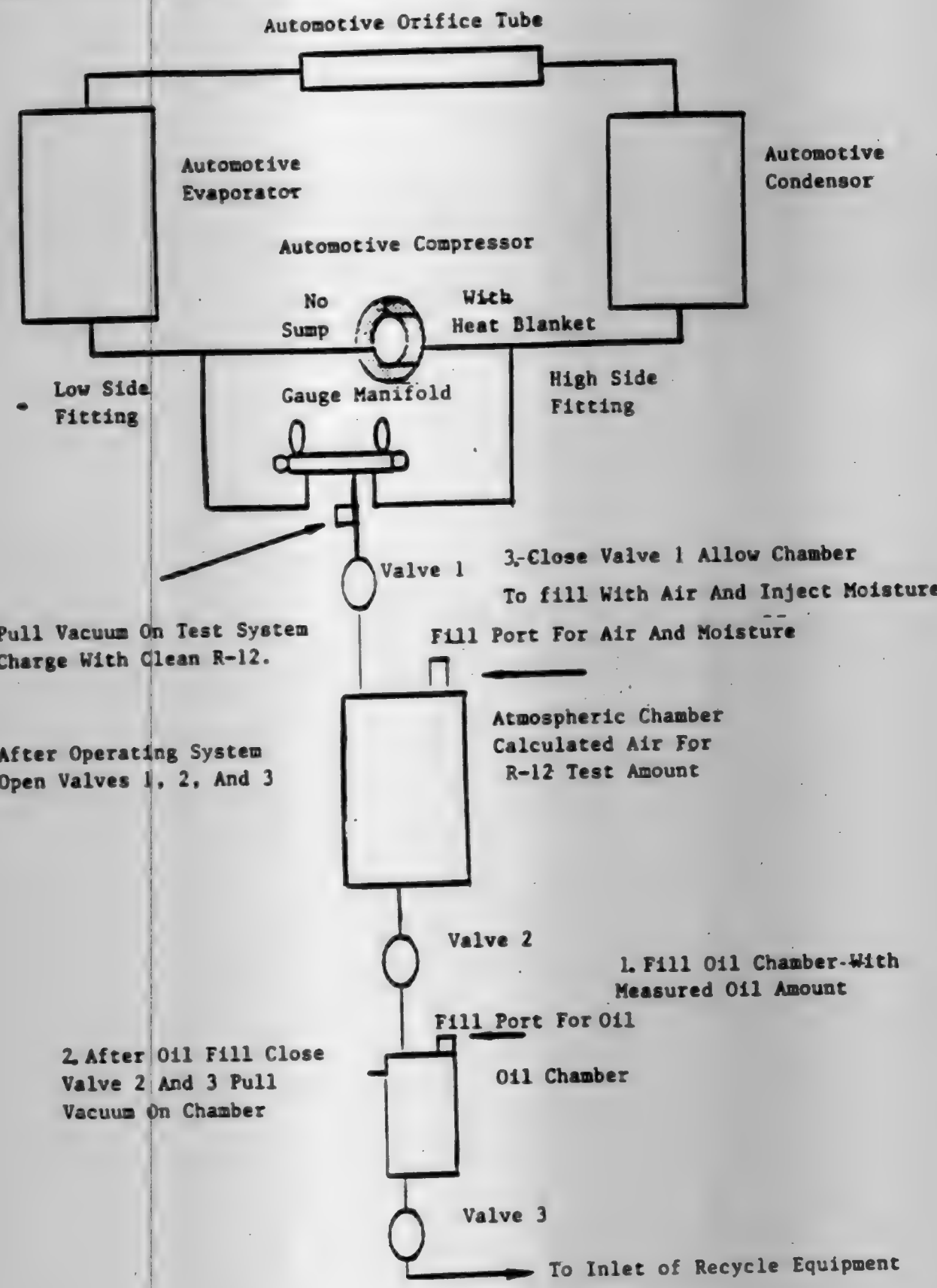
Automotive Orifice Tube
Automotive Evaporator
Automotive Condensor
Automotive Compressor
No Sump
With Heat Blanket
Low Side Fitting
Gauge Manifold
High Side Fitting
Valve 1
3. Close Valve 1 Allow Chamber To fill With Air And Inject Moisture
4. Pull Vacuum On Test System Charge With Clean R-12.
Fill Port For Air And Moisture
Atmospheric Chamber Calculated Air For R-12 Test Amount
5. After Operating System Open Valves 1, 2, And 3
Valve 2
1. Fill Oil Chamber With Measured Oil Amount
Fill Port For Oil
2. After Oil Fill Close Valve 2 And 3 Pull Vacuum On Chamber
Oil Chamber
Valve 3
To Inlet of Recycle Equipment

FIGURE 1

**Recommended Service Procedure for the Containment of R–12**

*1. Scope*

During service of mobile air-conditioning systems, containment of the refrigerant is important. This procedure provides service guidelines for technicians when repairing vehicles and operating equipment defined in SAE J1990.

*2. References*

SAE J1990, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems

*3. Refrigerant Recovery Procedure*

3.1 Connect the recovery unit service hoses, which shall have shutoff valves within 12 in (30 cm) of the service ends, to the vehicle air-conditioning system service ports.

3.2 Operate the recovery equipment as covered by the equipment manufacturers recommended procedure.

3.2.1 Start the recovery process and remove the refrigerant from the vehicle AC system. Operate the recovery unit until the vehicle system has been reduced from a pressure to a vacuum. With the recovery unit shut off for at least 5 min, determine that there is no refrigerant remaining in the vehicle AC system. If the vehicle system has pressure, additional recovery operation is required to remove the remaining refrigerant. Repeat the operation until the vehicle AC system vacuum level remains stable for 2 min.

3.3 Close the valves in the service lines and then remove the service lines from the vehicle system. Proceed with the repair/service. If the recovery equipment has automatic closing valves, be sure they are properly operating.

*4. Service With Manifold Gage Set*

4.1 Service hoses must have shutoff valves in the high, low, and center service hoses within 12 in (30 cm) of the service ends. Valves must be closed prior to hose removal from the air-conditioning system. This will reduce the volume of refrigerant contained in the service hose that would otherwise be vented to atmosphere.

4.2 During all service operations, the valves should be closed until connected to the vehicle air-conditioning system or the charging source to avoid introduction of air and to contain the refrigerant rather than vent open to atmosphere.

4.3 When the manifold gage set is disconnected from the air-conditioning system or when the center hose is moved to another device which cannot accept refrigerant pressure, the gage set hoses should first be attached to the reclaim equipment to recover the refrigerant from the hoses.

*5. Recycled Refrigerant Checking Procedure for Stored Portable Auxiliary Container*

5.1 To determine if the recycled refrigerant container has excess noncondensable gases (air), the container must be stored at a temperature of 65°F (18.3°C) or above for a period of time, 12 h, protected from direct sun.

5.2 Install a calibrated pressure gage, with 1 psig divisions (0.07 kg), to the container and determine the container pressure.

5.3 With a calibrated thermometer, measure the air temperature within 4 in (10 cm) of the container surface.

5.4 Compare the observed container pressure and air temperature to determine if the container exceeds the pressure limits found on Table 1, e.g., air temperature 70°F (21°C) pressure must not exceed 80 psig (5.62 kg/cm²).

TABLE 1

| Temp °F | Psig | Temp °F | Psig | Temp °F | Psig | Temp °F | Psig | Temp °F | Psig |
|---|---|---|---|---|---|---|---|---|---|
| 65 | 74 | 75 | 87 | 85 | 102 | 95 | 118 | 105 | 136 |
| 66 | 75 | 76 | 88 | 86 | 103 | 96 | 120 | 106 | 138 |
| 67 | 76 | 77 | 90 | 87 | 105 | 97 | 122 | 107 | 140 |
| 68 | 78 | 78 | 92 | 88 | 107 | 98 | 124 | 108 | 142 |
| 69 | 79 | 79 | 94 | 89 | 108 | 99 | 125 | 109 | 144 |
| 70 | 80 | 80 | 96 | 90 | 110 | 100 | 127 | 110 | 146 |
| 71 | 82 | 81 | 98 | 91 | 111 | 101 | 129 | 111 | 148 |
| 72 | 83 | 82 | 99 | 92 | 113 | 102 | 130 | 112 | 150 |
| 73 | 84 | 83 | 100 | 93 | 115 | 103 | 132 | 113 | 152 |
| 74 | 86 | 84 | 101 | 94 | 116 | 104 | 134 | 114 | 154 |

TABLE 1 (METRIC)

| Temp° C | Pres | Temp° C | Pres | Temp° C | Pres | Temp° C | Pres | Temp° C | PRres |
|---|---|---|---|---|---|---|---|---|---|
| 18.3 | 5.20 | 23.9 | 6.11 | 29.4 | 7.17 | 35.0 | 8.29 | 40.5 | 9.56 |
| 18.8 | 5.27 | 24.4 | 6.18 | 30.0 | 7.24 | 35.5 | 8.43 | 41.1 | 9.70 |
| 19.4 | 5.34 | 25.0 | 6.32 | 30.5 | 7.38 | 36.1 | 8.57 | 41.6 | 9.84 |
| 20.0 | 5.48 | 25.5 | 6.46 | 31.1 | 7.52 | 36.6 | 8.71 | 42.2 | 9.98 |
| 20.5 | 5.55 | 26.1 | 6.60 | 31.6 | 7.59 | 37.2 | 8.78 | 42.7 | 10.12 |
| 21.1 | 5.62 | 26.6 | 6.74 | 32.2 | 7.73 | 37.7 | 8.92 | 43.3 | 10.26 |
| 21.6 | 5.76 | 27.2 | 6.88 | 32.7 | 7.80 | 38.3 | 9.06 | 43.8 | 10.40 |
| 22.2 | 5.83 | 27.7 | 6.95 | 33.3 | 7.94 | 38.8 | 9.13 | 44.4 | 10.54 |
| 22.7 | 5.90 | 28.3 | 7.03 | 33.9 | 8.08 | 39.4 | 9.27 | 45.0 | 10.68 |
| 23.3 | 6.04 | 28.9 | 7.10 | 34.4 | 8.15 | 40.0 | 9.42 | 45.5 | 10.82 |

Pres kg/sq cm.

5.5 If the container pressure is less than the Table 1 values and has been recycled, limits of noncondensable gases (air) have not been exceeded and the refrigerant may be used.

5.6 If the pressure is greater than the range and the container contains recycled material, slowly vent from the top of the container a small amount of vapor into the recycle equipment until the pressure is less than the pressure shown on Table 1.

5.7 If the container still exceeds the pressure shown on Table 1, the entire contents of the container shall be recycled.

*6. Containers for Storage of Recycled Refrigerant*

6.1 Recycled refrigerant should not be salvaged or stored in disposable refrigerant containers. This is the type of container in which virgin refrigerant is sold. Use only DOT CFR title 49 or UL approved storage containers for recycled refrigerant.

6.2 Any container of recycled refrigerant that has been stored or transferred must be checked prior to use as defined in section 5.

*7. Transfer of Recycled Refrigerant*

7.1 When external portable containers are used for transfer, the container must be evacuated at least 27 in of vacuum (75 mm Hg absolute pressure) prior to transfer of the recycled refrigerant. External portable containers must meet DOT and UL standards.

7.2 To prevent on-site overfilling when transferring to external containers, the safe

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filling level must be controlled by weight and must not exceed 60% of container gross weight rating.

*8. Disposal of Empty/Near Empty Containers*

8.1 Since all the refrigerant may not be removed from disposable refrigerant containers during normal system charging procedures, empty/near empty container contents should be reclaimed prior to disposal of the container.

8.2 Attach the container to the recovery unit and remove the remaining refrigerant. When the container has been reduced from a pressure to a vacuum, the container valve can be closed. The container should be marked empty and is ready for disposal.

*Rationale*

Not applicable.

*Relationship of SAE Standard to ISO Standard.*

Not applicable.

*Reference Section*

SAE J1990, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems

*Application*

During service of mobile air-conditioning systems, containment of the refrigerant is important. This procedure provides service guidelines for technicians when repairing vehicles and operating equipment defined in SAE J1990.

*Committee Composition*

*Developed by the SAE Defrost and Interior Climate Control Standards Committee*

W.J. Atkinson, Sun Test Engineering, Paradise Valley, AZ—Chairman
J.J. Amin, Union Lake, MI
H.S. Andersson, Saab Scania, Sweden
P.E. Anglin, ITT Higbie Mfg. Co., Rochester, MI
R.W. Bishop, GMC, Lockport, NY
D.Hawks, General Motors Corporation, Pontiac, MI
J.J. Hernandez, NAVISTAR, Ft. Wayne, IN
H. Kaltner, Volkswagen AG, Germany, Federal Republic
D.F. Last, GMC, Troy, MI
D.E. Linn, Volkswagen of America, Warren, MI
J.H. McCorkel, Freightliner Corp., Charlotte, NC
C.J. McLachlan, Livonia, MI
H.L. Miner, Climate Control Inc., Decatur, IL
R.J. Niemiec, General Motors Corp., Pontiac, MI
N. Novak, Chrysler Corp., Detroit, MI
S. Oulouhojian, Mobile Air Conditioning Society, Upper Darby, PA
J. Phillips, Air International, Australia
R.H. Proctor, Murray Corp., Cockeysville, MD
G. Rolling, Behr America Inc., Ft. Worth, TX
C.D. Sweet, Signet Systems Inc., Harrodsburg, KY
J.P. Telesz, General Motors Corp., Lockport, NY

Note: This form will not appear in the Code of Federal Regulations.

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Appendix E Recover Eq

[FR Doc. 92-1

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# MVAC RECOVER/RECYCLE OR RECOVER EQUIPMENT CERTIFICATION FORM

**1** _____
Name of Establishment

_____
Street

_____
City, State, Zip Code

_____
(Area Code) Telephone Number

**2** _____
Name of Equipment Manufacturer and Model Number

_____
Serial Number(s) Year

**3** **I certify that I have acquired approved recover/recycle or recover equipment under Section 609 of the Clean Air Act. I certify that only properly trained and certified technicians operate the equipment and that the information given above is true and correct.**

_____ _____
Signature of Owner/Operator Date

_____
Name (Please Print) Title

**4** **Small Entity Certification.**

**I certify that fewer than 100 jobs involving refrigerant were performed at the establishment named in Part 1 of this form during 1990. I will purchase approved equipment and certify this to EPA by January 1, 1993.**

_____ _____
Signature Date

_____ _____
Name (Please Print) Title

**Send this form to:**
**MVACs Recycling Program Manager**
**Stratospheric Ozone**
**Protection Branch**
**(6202–J)**
**U.S. EPA**
**401 M Street, S.W.**
**Washington, D.C. 20460**

## MVAC RECOVER/RECYCLE OR RECOVER EQUIPMENT CERTIFICATION FORM INSTRUCTIONS

**Motor vehicle recover/recycle or recover equipment must be acquired by January 1,1992 and certified to EPA on or before January 1, 1993 under Section 609 of the Clean Air Act. To certify your equipment, please complete the above form according to the following instructions and mail to EPA at the following address: MVACs Recycling Program Manager, Stratospheric Ozone Protection Branch, (6202–J), U.S. EPA, 401 M Street, S.W., Washington , D.C. 20460.**

**1** *Please provide the name, address and telephone number of the establishment where the recover/recycle or recover equipment is located.*

**2** *Please provide the name brand, model number, year, and serial number(s) of the recover/recycle or recover equipment acquired for use at the above establishment.*

**3** *The certification statement must be signed by the person who has acquired the recover/recycle or recover equipment (the person may be the owner of the establishment or another responsible officer). The person who signs is certifying that they have acquired the equipment, that each individual authorized to use the equipment is properly trained and certified, and that the information provided is true and correct.*

**4** **Small Entity Certification.** *Service establishments that serviced fewer than 100 jobs involving refrigerant during 1990 are not required to purchase equipment until January 1, 1993. To qualify for this one year extension, the owner must fill out Part 1, sign the statement in Part 4 above, and send this form to EPA. Upon inspection, the owner must be able to prove it serviced fewer than 100 jobs in 1990. Small entities must buy approved equipment and certify to EPA by January 1, 1993.*

S25055–3

**Appendix B to Subpart B—Standard for Recover Equipment [Reserved]**

[FR Doc. 92–15861 Filed 7–13–92; 8:45 am]
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Part IV

# General Accounting Office

4 CFR Parts 22 and 30

**Procedures for Decisions on Appropriated Fund Expenditures Which Are of Mutual Concern to Agencies and Labor Organizations, Claims, General; Final Rule**

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**GENERAL ACCOUNTING OFFICE**

**4 CFR Parts 22 and 30**

**Procedures for Decisions on Appropriated Fund Expenditures Which Are of Mutual Concern to Agencies and Labor Organizations, Claims, General**

**AGENCY:** General Accounting Office.

**ACTION:** Final rule.

**SUMMARY:** Due to recent judicial decisions interpreting the Civil Service Reform Act, the General Accounting Office (GAO) is changing and redesignating its regulations to provide that it will no longer issue decisions or settle Federal employee's claims concerning matters which are subject to negotiated grievance procedures under collective bargaining agreements.

**EFFECTIVE DATE:** The amendments are effective as of July 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Higgins, (202) 275–6410.

**SUPPLEMENTARY INFORMATION:** Judicial decisions have held that, under the comprehensive scheme created by Congress in the Civil Service Reform Act of 1978, matters which are covered by negotiated grievance procedures should not be heard in another forum, except for matters specifically excluded from such procedures by the collective bargaining agreement or matters otherwise provided for by the Act. See *Carter* v. *Gibbs*, 909 F.2d 1452 (Fed. Cir. 1990), *cert. denied*, 111 S. Ct. 46 (1990); *Harris* v. *United States*, 841 F.2d 1097 (Fed. Cir. 1988); *Adams* v. *United States*, 20 Cl. Ct. 542 (1990); *Adkins* v. *United States*, 16 Cl. Ct. 294 (1989). These judicial decisions reply on the so-called "exclusivity" provision of the Civil Service Reform Act, 5 U.S.C. 7121(a)(1) (1988), which provides that collective bargaining agreements shall include procedures for the settlement of grievances, and, with certain exceptions, these procedures shall be the exclusive procedures for resolving grievances which fall within their coverage.

Comptroller General decisions and our regulations in 4 CFR part 22, which pre-dated the judicial decisions cited above, identified circumstances in which we would exercise jurisdiction over claims involving matters subject to negotiated grievance procedures, pursuant to our authority in 31 U.S.C. 3529 to issue decisions to Federal agency heads and accountable officers and our general claims settlement authority in 31 U.S.C. 3702. However, in our recent decision *Cecil E. Riggs, et al.*, B–222926.3, April 23, 1992, 71 Comp. Gen. _____, we held that the reasoning of *Carter* v. *Gibbs*, and the other judicial decisions cited above, applies equally with respect to GAO's authority under 31 U.S.C. 3720 and 3529.

Thus, *Riggs* overruled several of our prior decisions and recognized that changes were required in our regulations since we concluded therein that the negotiated grievance procedures under 5 U.S.C. 7121(a) provide the exclusive remedy for members of a collective bargaining unit with respect to matters covered by the collective bargaining agreement. Since the effect of *Riggs* is to take away our jurisdiction to decide most labor relations cases arising under part 22, we have decided to repeal part 22 rather than amend it. Any claims involving labor unions and agencies that arise outside of the negotiated grievance procedures may be processed under our General Claims Procedures in part 31. Also, notwithstanding the repeal of part 22, we will continue to issue decisions to accountable officers and agency heads, in accordance with 31 U.S.C. 3529, on questions that do not involve specific claims within the scope of negotiated grievance procedures and are not otherwise more appropriate for resolution under those procedures.

Accordingly, GAO's regulations at 4 CFR part 22, which provided procedures governing GAO decisions on matters of mutual concern to agencies and labor organizations, are being repealed.

We are also amending our regulations at 4 CFR part 30 to expressly provide that we will not take jurisdiction over claims that are subject to negotiated grievance procedures. We will continue to take jurisdiction under the claims procedures in part 31 over Federal employees' claims which are not subject to negotiated grievance procedures.

**List of Subjects in 4 CFR Part 22**

Claims, Administrative practice and procedure, Labor management relations, Government employees, Labor unions, Negotiated grievance and arbitration procedures.

**List of Subjects in 4 CFR Part 30**

Claims, Administrative practice and procedure, Labor management relations, Government employees, Labor unions.

For the reasons stated above, parts 22 and 30 title 4, Code of Federal Regulations, are amended as follows:

**PART 22 [REMOVED AND RESERVED]**

1. Part 22 is removed and reserved.

**PART 30—SCOPE OF SUBCHAPTER**

2. The authority citation for part 30 continues to read as follows:

**Authority:** 31 U.S.C. 711 and 3702.

3. Section 30.1 is amended by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b) as follows:

**§ 30.1 Coverage of regulations in Subchapter C.**

* * * * *

(b) Claims concerning matters which are subject to negotiated grievance procedures under collective bargaining agreements entered into pursuant to 5 U.S.C. 7212(a);

* * * * *

**Charles A. Bowsher,**

*Comptroller General of the United States.*

[FR Doc. 92–16384 Filed 7–13–92; 8:45 am]

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Part V

# Department of Transportation

Coast Guard
46 CFR Part 16

Federal Aviation Administration
14 CFR Part 121

Federal Highway Administration
49 CFR Part 391

Federal Railroad Administration
49 CFR Part 219

Research and Special Programs Administration
49 CFR Part 199

Drug Testing Requirements; Delay of International Application; Rules

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**46 CFR Part 16**

**[CGD 88-067f]**

**RIN 2115-AD74**

## Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Delay of Implementation Dates

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government. Under this final rule, employees must become subject to testing no later than January 2, 1995. This delay of implementation is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

**EFFECTIVE DATE:** This rule is effective July 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Mark Grossetti, Project Manager, Marine Investigation Division (G-MMI), Office of Marine Safety, Security and Environmental Protection, (202) 267-1421.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Mark Grossetti, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Helen Boutrous, Project Counsel, Office of Chief Counsel.

### Background and Purpose

On November 21, 1988, the Coast Guard, along with other agencies of the Department of Transportation (DOT), adopted regulations requiring pre-employment, post-accident, reasonable cause and random drug testing. Those individuals required under Federal law or regulation to have periodic medical examinations were also required to undergo a drug test at the same time. The drug testing required by the rule applies to some persons located outside of the United States. However, the rules provided that they would not apply outside the United States in any situation in which application of the rules violated foreign local laws or policies.

At the same time, the Coast Guard stated that the DOT and other elements of the government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. The Coast Guard stated that if, as a result of those discussions, it was found that amendments to the rule were necessary, timely amendments would be issued. An amendment was issued on December 21, 1989, and published on December 27, 1989 (54 FR 53286). Under that amendment, drug testing for persons onboard U.S. vessels in waters subject to the jurisdiction of a foreign government was scheduled to begin by January 1992. A Final Rule was published on April 24, 1991, delaying the implementation date to January 2, 1993 (56 FR 18982).

DOT has continued active discussions over the last two years with representatives of the Canadian Government, and with representatives of the nations of the European Community. The DOT's initial efforts in this area were focused on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. The Government of Canada completed a process under which it received and considered the recommendations and concerns of the House of Commons Standing Committee on Transport, as well as representations from the Canadian transportation industry and other interested Canadians, on a substance use policy. The culmination of that effort was an announcement by the Minister of Transport on November 7, 1990, on the Government of Canada's decision to proceed with what he describes as a "comprehensive series of measures to prevent and remedy substance use in safety-sensitive positions in the Canadian transportation network." The policy includes requirements for education, access to employee assistance programs, and alcohol and drug testing. The Government of Canada is continuing to work on necessary legislation and regulations to implement the program.

Because the requirements will apply to American companies operating in Canada, the Canadian Minister of Transport has asked the U.S. Secretary of Transportation to consider "the idea of a mutual recognition agreement." Senior officials from the U.S. and Canadian governments met on November 15, 1990, to discuss the new Canadian measures on substance use and the possibility of the mutual recognition agreement, and discussions are continuing.

During the past two years, discussions with other countries also have been held, and the difficulty of achieving effective bilateral agreements has become clear. Although the DOT could allow its regulations to take effect even for operations outside the U.S., the DOT continues to recognize that: (1) It would be difficult for U.S. carriers to effectively implement the regulations without cooperation from foreign governments; (2) in response, foreign governments could impose restrictions on U.S. operations; and, perhaps most importantly, (3) there are distinct advantages to be gained in aligning foreign measures and U.S. measures, especially as they relate to international transportation operations. For these reasons, the U.S. is continuing to pursue multilateral efforts; specifically, the U.S. is exploring the possibility of initiatives in the International Civil Aviation Organization and the International Maritime Organization on the problem of substance use.

In order to allow decisions and agreements to be reached in an orderly fashion, the Coast Guard has again determined that additional time is necessary. Another additional delay of approximately two years should provide sufficient time. Accordingly, the Coast Guard has determined to postpone again the date by which testing programs must commence for persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government.

The change in this final rule will delay the applicability of the regulations where they may conflict with foreign law or policy so that the DOT and other elements of the government can complete discussions with foreign governments to attempt resolve to any conflict between our rules and foreign government laws or policies. Accordingly, the Coast Guard finds that good cause exists under 4 U.S.C. 553(b) to publish this rule without notice and comment and to make this rule effective less than 30 days after publication in the **Federal Register**.

### Regulatory Evaluation

This final rule is not major under Executive Order 12291. However, because of public interest in, and concern for, a drug-free transportation environment, this final rule is considered significant under the DOT regulatory policies and procedures (44 CFR 11034; February 26, 1979). The economic impact of these changes is so minimal that further evaluation is not necessary. This final rule modifies the effective date for compliance with Coast Guard regulations governing drug

testing, insofar as those regulations would require testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government. It does not change the basic regulatory structure of that rule.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The amendment in this final rule only extends a compliance date. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to require programs for chemical drug and alcohol testing of commercial vessel personnel has been committed to the Coast Guard by Federal statutes. This final rule does, therefore, preempt State and local regulations regarding drug testing programs requiring the testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government.

**Environment**

The Coast Guard has considered the environmental impact of this final rule, and has concluded that, under section 2.B.2.1 of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. This final rule merely extends an implementation date.

**International Trade Impact**

This final rule extends that date by which an employer must ensure that employees outside the United States are in compliance with the final rule issued on November 21, 1988. Thus, the Coast Guard has determined that this final rule will not have an impact on trade opportunities on U.S. firms doing business overseas or on foreign firms doing business in the United States.

**List of Subjects in 46 CFR Part 16**

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, the Coast Guard amends 46 CFR part 16 as follows:

**PART 16—CHEMICAL TESTING**

1. The authority citation for part 16 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

2. Section 16.207(b) is revised to read as follows:

**§ 16.207 Conflict with foreign laws.**

* * * * *

(b) This part is not effective until January 2, 1995, with respect to any person onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government. On or before December 1, 1994, the Commandant shall issue any necessary amendment resolving the applicability of this part to such person on and after January 2, 1995.

Dated: June 10, 1992.

**R.C. North,**

*Captain, U.S. Coast Guard Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 92-16356 Filed 7-13-92; 8:45 am]

BILLING CODE 4910-14-M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 121**

**[Docket No. 25148; Amendment No. 121-229]**

**RIN 2120AE76**

## Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

**AGENCY:** Federal Aviation Administration, Transportation.

**ACTION:** Final rule; extension of compliance date.

**SUMMARY:** The Federal Aviation Administration (FAA) announces a delay in the effective date of the anti-drug rule for persons located outside the territory of the United States. Under this final rule, employees located outside the territory of the United States will be subject to the provisions of the anti-drug rule, including requirements for drug testing, on January 2, 1995. This extension of the effective date is adopted in order to allow negotiation with foreign governments and international organizations to continue in an orderly and effective fashion.

**EFFECTIVE DATE:** This final rule is effective on July 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** William McAndrew, Office of Aviation Medicine, Drug Abatement Branch (AAM-220), Federal Aviation Administration, 400 Seventh Street SW., Washington, DC 20590; telephone (202) 366-6710.

**SUPPLEMENTARY INFORMATION:** On November 21, 1988, the FAA was one of six Department of Transportation (DOT) agencies that adopted regulations requiring education, training, and drug testing of employees in the regulated industry of the respective agencies (53 FR 47024). The FAA's anti-drug rule required preemployment, post-accident, reasonable cause, random, and return to duty drug testing. Additionally, certain individuals who were required to have medical examinations under 14 CFR part 67 were required to undergo periodic drug testing.

The requirements of the FAA's anti-drug rule apply to all employees performing sensitive safety- or security-related functions directly for or by contract with a covered employer. As originally promulgated, the rule did not differentiate between employees located within or outside the territory of the United States. However, the rule provided that its provisions would not apply in any situation in which application of the rules would violate local law or policies.

In the preamble to the anti-drug rule, the FAA stated that DOT, FAA, and other elements of the government would enter into discussions with foreign governments to try to resolve any conflicts between our rules and foreign laws or policies. The final rule stated that the Administrator might further delay the effective date of the rule as necessary to enable discussions with other governments to be successfully completed.

The anit-drug rule has been amended on several occasions since its promulgation. Of significance to the current rulemaking, the rule has been amended on three prior occasions to defer the effective date of the rule with respect to employees located outside the territory of the United States. The last of

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these three amendments deferred the effective date to January 2, 1993.

The delays have permitted the FAA and the DOT to continue their discussions with representatives of the Canadian government, the European Economic Community, and the International Civil Aviation Organization (ICAO). During these discussions, it has become apparent that the difficulties associated with achieving effective bilateral agreements remain of concern. Further, the reasons for prior deferrals of unilateral imposition of the requirements of the anti-drug rule outside the territory of the United States, including the practical problems associated with implementation of the rule, and the possibility that foreign governments would impose adverse restrictions on U.S. operations, remain valid. A uniform multilateral anti-drug program that is supported by the international aviation community would best serve not only the affected employers but international aviation as well.

For these reasons, the United States has been pursuing initiatives in the ICAO on the problem of illegal drug use. As a first step in these initiatives, the ICAO (at the request of the United States) recently surveyed its Contracting States to determine the nature and scope of any substance abuse problem in the respective States. The survey results have been evaluated by the ICAO Council, and were released to the member States following the completion of the evaluation. Based on the results, the ICAO appears to be willing to consider substantive efforts to promote an international aviation community free of substance abuse. The United States will continue to make every effort to expedite the ICAO's handling of matters related to these substance abuse initiatives.

In light of the ICAO's demonstrated willingness to cooperate with the United States on initiatives to combat substance abuse, unilateral imposition of the requirements of the anti-drug rule would be premature and counterproductive. Accordingly, the FAA is postponing by two years the date on which the anti-drug rule becomes effective with respect to persons located outside the territory of the United States. The FAA notes, however, that while the rule will not become effective with respect to these employees until January 2, 1995, it will be incumbent upon affected employers to ensure that, sometime prior to the effective date, they have appropriate plans submitted to the FAA for implementation on that date.

**Availability of the Final Rule**

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

**Reason for No Notice**

This amendment to the anti-drug rule merely defers for two years the effective date of the anti-drug rule for persons located outside the territory of the United States. This minor change reflects the commitment made in the preamble to the final rule to "delay the effective date further * * * if such delay is necessary to permit consultation with any foreign governments to be successfully completed" (53 FR 46050; November 21, 1988). The FAA concludes that issuing a notice of proposed rulemaking would not result in the receipt of significant comments. Accordingly, the FAA has determined that notice and public comment procedures are unnecessary and contrary to public interest.

**Economic Assessment**

In accordance with the requirements of Executive Order 12291, the FAA reviewed the costs and benefits of the final anti-drug rule issued on November 14, 1988. At that time, the FAA prepared a comprehensive Regulatory Impact Analysis of the final anti-drug rule. The FAA also summarized and analyzed the comments submitted by interested persons on the economic issues in the final rulemaking document published in the **Federal Register** on November 21, 1988.

This amendment defers the effective date of the anti-drug rule for persons located outside the territory of the United States, but does not change the basic regulatory structure and requirements promulgated in the final anti-drug rule. The FAA is taking this action to provide additional time to pursue multilateral initiatives and negotiations with foreign governments on implementation of the anti-drug rule outside the territory of the United States. The FAA has also determined that costs and benefits associated with this rule will be minimal, and therefore has determined that a revision of the comprehensive Regulatory Impact Analysis is not necessary and the preparation of a separate economic analysis for this amendment is not warranted.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 requires a Federal agency to review any final rule to assess its impact on small business. The amendment contained in this final rule merely extends by two years the effective date of the rule outside the territory of the United States. In consideration of the nature of this amendment, the FAA has determined that the final rule will not have a significant economic impact, positive or negative, on a substantial number of small businesses.

**International Trade Impact Statement**

This final rule contains an amendment that defers until January 2, 1995, the effective date of the anti-drug rule issued on November 21, 1988, with respect to employees located outside the territory of the United States. The FAA has determined that this final rule will not have an impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the United States.

**Paperwork Reduction Act Approval**

The recordkeeping and reporting requirements of the final anti-drug rule, issued on November 14, 1988, were previously submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. The OMB approval is under control number 2120-0535. Because this final rule does not amend the recordkeeping and reporting requirements, it is not necessary to amend the prior approval received from OMB.

**Federalism Implications**

The final rule adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

**Conclusion**

This action defers the effective date of the anti-drug for employees located outside the territory of the United States. This rulemaking action is



intended to improve administration of the final anti-drug rule.

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. Because of the absence of any costs related to this amendment, the FAA has determined that the expected impact of this amendment is so minimal that it does not warrant a full regulatory evaluation.

**List of Subjects in 14 CFR Part 121**

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Drug testing, Narcotics, Pilots, Reporting and recordkeeping requirements, Safety, Transportation.

**The Amendment**

Accordingly, the FAA amends part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

**PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT**

1. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

2. Paragraph B of Section XII of Appendix I to Part 121 is revised to read as follows:

**Appendix I to Part 121—Drug Testing Program**

* * * * *

XII. *Conflict with foreign laws or international law.*

* * * * *

B. This appendix is effective with respect to any employee located outside the territory of the United States on January 2, 1995.

Issued in Washington, DC on June 30, 1992.

**Barry Lambert Harris,**

*Acting Administrator.*

[FR Doc. 92-16357 Filed 7-13-92; 8:45 am]

BILLING CODE 4910-13-M

**Federal Highway Administration**

**49 CFR Part 391**

**RIN 2125-AC50**

**Controlled Substances Testing; Delay of Implementation Dates**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule; extension of compliance date.

**SUMMARY:** The FHWA announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of foreign-based employees of foreign-domiciled motor carriers. Under this final rule, these persons must be tested no later than January 2, 1995. This delay is being adopted to allow negotiation with foreign governments to continue in an orderly and effective fashion.

**DATES:** This final rule is effective July 14, 1992. Compliance with requirement to test foreign-based employees of foreign-domiciled carriers for drug use is extended until January 2, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Miller, Office of Motor Carrier Standards (202) 366-2981, or Mr. David Sett, Office of the Chief Counsel (202) 366-1392, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:** On November 21, 1988, the FHWA, along with other agencies of the Department of Transportation, adopted regulations requiring preemployment/use, periodic, post-accident, reasonable cause and random drug testing.

The drug testing required by these rules applies to some persons located outside of the United States. However, the rules provided that they would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rules provided that 49 CFR part 391 would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rules raises questions of compatibility with that country's laws or policies. 53 FR 47134 (November 21, 1988).

On September 27, 1989, the FHWA issued a delay to the effective date to January 1, 1991. 54 FR 39546 (September 27, 1989).

On December 27, 1989, the FHWA published a revision to its drug testing rule to indicate that the rule would not be effective until January 2, 1992, with respect to any foreign-based employee of a foreign-domiciled carrier. 54 FR 53294 (December 27, 1989).

On April 24, 1991, the FHWA published a revision to its drug testing rule to indicate that the rule would not be effective until January 2, 1993, with respect to any foreign-based employee of a foreign-domiciled carrier. 56 FR 18994 (April 24, 1991).

The Department of Transportation and other elements of the U.S. Government have entered into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. The additional time that the FHWA is allowing would permit the Department to try to achieve our goals of a drug-free transportation system while respecting the national sovereignty of other countries.

In addition, this extension would comply with the intent of Congress in a recent Congressional mandate passed in October 1991, The Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V. This Act directs the Secretary of Transportation and the Secretary of State to discuss controlled substances and alcohol use testing with the International Civil Aviation Organization (ICAO), and to determine ways and means to accomplish the strengthening and enforcing of existing ICAO standards. The intent of Congress is to allow the Department to have further discussions with other countries. The FHWA is continuing multilateral discussions with Canada and Mexico to allow motor carriage of freight throughout these countries as unencumbered as possible.

To allow these discussions to progress in an orderly fashion, the FHWA and the DOT have determined that additional compliance time is necessary. An additional delay of approximately two years should provide sufficient time. Accordingly, this final rule postpones the date by which testing programs must commence for persons located outside the territory of the United States to January 2, 1995, including foreign-based employees of American companies (or their foreign subsidiaries.) This action does not postpone testing for any other person, including U.S.-based employees of foreign companies, including their American subsidiaries.

This delay is being adopted to allow negotiations with foreign governments to continue in an orderly and effective fashion. Further notice and opportunity for comment are not required under the regulatory policies and procedures of

the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information. Therefore, the FHWA finds good cause exists to publish this final rule without notice and comment, and to make it effective upon publication in the Federal Register.

**Rulemaking Analyses and Notices**

*Regulatory Impact*

The action taken by the FHWA in this document defers the effective date that the FHWA's controlled substances testing rules will apply to foreign-based employees of foreign-domiciled motor carriers. This delay is being adopted to allow discussions with foreign governments to continue in an orderly and effective fashion. The FHWA, therefore, finds good cause to promulgate the amendment as a final rule without prior notice and opportunity to comment.

*Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, the FHWA considers this document to be significant because of public interest in the drug testing program and the international impact of this document.

*Regulatory Flexibility Act*

It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

*Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.

*Paperwork Reduction Act*

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

*National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 and has determined that this action would not have any effect on the quality of the environment.

*Regulation Identifier Number*

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 391**

Alcohol abuse, Controlled substances, Drug abuse, Drug testing, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Safety, Transportation.

Issued on: June 30, 1992.

T.D. Larson,

*Administrator.*

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulation, Subtitle B, Chapter III, Part 391 as set forth below:

**PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]**

1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. App. section 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

**Subpart H—Controlled Substances Testing**

2. In § 391.83, paragraph (c) is revised to read as follows:

**§ 391.83 Applicability**

* * * * *

(c) This subpart is not applicable until January 2, 1995, with respect to any foreign-based employee of a foreign-domiciled carrier.

[FR Doc. 92-16358 Filed 7-13-92; 8:45 am]

BILLING CODE 4910-22-M

**Federal Railroad Administration**

**49 CFR Part 219**

**[FRA Docket No. RSOR-6, Notice No. 33]**

**RIN 2130-AA43**

**Alcohol/Drug Regulations: Postponement of International Application**

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FRA issues a final rule delaying to January 2, 1995, the application of random drug testing requirements to railroad personnel based outside the United States. This delay in implementation is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

**DATES:** This final rule is effective on July 14, 1992.

**ADDRESSES:** Any petition for reconsideration should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel (RCC-30), FRA, room 8201, 400 7th Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Patricia V. Sun, Trial Attorney (RCC-30), FRA, Washington, DC 20590 (Telephone: (202) 366-4002).

**SUPPLEMENTARY INFORMATION:** On November 21, 1988, the Federal Railroad Administration published random drug testing requirements. 53 FR 47102. The random testing rule amended § 219.3 of the existing rule to provide that subpart G of the regulation does not apply to any person for whom compliance with the subpart would violate the domestic laws or policies of another country and to provide that the random testing rule (subpart G) would not apply until January 1, 1990, with respect to certain foreign operations. On May 23, 1989, FRA amended the applicability provisions dealing with operations of foreign railroads (54 FR 22284; May 23, 1989) by extending to January 1, 1991, the date on which Subpart G would become effective with respect to any employee whose place of reporting or point of departure for rail transportation services is located outside the United States. In order to provide additional time for negotiations with foreign governments, FRA subsequently issued two more rules, the last of which extended this compliance date further to January 1, 1993. 56 FR 18990; April 24, 1991. (Operations of foreign carriers have been subject to FRA alcohol/drug regulations other than random testing

since implementation in 1986. 49 CFR part 219; 50 FR 31508; Aug. 2, 1985. This applicability is not affected by the action discussed here.)

The Department's initial efforts in this area were focussed on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. During the past year, discussions with other countries also have been held, and the difficulty of achieving effective bilateral agreements has become clear. Although the DOT could allow its regulations to take effect even for operations outside the U.S., the Department recognizes that (1) it would be difficult of U.S. carriers to effectively implement the regulations without cooperation from foreign governments; (2) in response, foreign governments could impose restrictions on U.S. operations; and, perhaps most importantly, (3) there are distinct advantages to be gained in aligning foreign measures and U.S. measures, especially as they relate to international transportation operations. For these reasons, the U.S. has decided to pursue multilateral efforts.

In order to facilitate this process, FRA is postponing application of the random drug testing requirements to foreign-based personnel until January 2, 1995. This schedule will apply to all such foreign operations, whether or not there have been formal notifications of conflicts with local law or policy. The postponement does not affect testing of U.S.-based employees.

**Regulatory Procedures**

FRA finds that notice and opportunity for comment are not necessary because the effect of the amendment is to provide additional time for compliance. FRA also finds that providing such notice would be contrary to the public interest because of the need to conduct ongoing international negotiations in an atmosphere of comity and cooperation. FRA finds that there is good cause for making this amendment effective less than 30 days from publication, since its effect is to provide additional time for compliance.

This rule has been evaluated in accordance with existing regulatory policies. It is not a "major" rule under Executive Order 12291 but is "significant" as defined under DOT policies and procedures. The amendment contained in the final rule does not have any significant paperwork, Federalism or economic impact. To the extent any such impact exists, the amendments will lessen regulatory burdens by increasing the time available to comply with regulations previously issued. Because the amendments do not have any significant economic impact, FRA has not prepared a regulation evaluation. It is certified that this final rule will not have significant economic impact on a substantial number of small entities under the provisions of Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*).

Therefore, in consideration of the foregoing, part 219, title 49, Code of Federal Regulations is amended as follows:

**List of Subjects in 49 CFR Part 219**

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

**PART 219—[AMENDED]**

1. The authority citation for part 219 continues to read as follows:

**Authority:** 45 U.S.C. 431, 437, and 438, as amended; Pub. L. No. 100–342; and 49 CFR 1.49(m).

2. Section 219.3 is amended by revising paragraph (c) to read as follows:

**§ 219.3 Application.**

* * * * *

(c)(1) Subpart G of this part shall not apply to any person for whom compliance with that subpart would violate the domestic laws or policies of another country.

(2) Subpart G is not effective until January 2, 1995, with respect to any employee whose place of reporting or point of departure ("home terminal") for rail transportation services is located outside the territory of the United States.

Issued in Washington, DC, on June 29, 1992.

**Gilbert E. Carmichael,**

*Federal Railroad Administrator.*

[FR Doc. 92–16359 Filed 7–13–92; 8:45 am]

BILLING CODE 4910–06–M

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**Research and Special Programs Administration**

**49 CFR Part 199**

**[Docket PS–102; Amdt. No. 7]**

**RIN 2127–AC**

## Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

**ACTION:** Final rule; modification of implementation date.

**SUMMARY:** RSPA announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of persons located outside the territory of the United States. Under this final rule, these persons must become subject to testing no later than January 21, 1995.

**EFFECTIVE DATE:** July 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Rippert, Alcohol and Drug Program Manager, Office of Pipeline Safety Enforcement (DPS–23), Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 (Tel. 202–366–6223).

**SUPPLEMENTARY INFORMATION:** On November 21, 1988, RSPA, along with other agencies of the Department of Transportation, adopted regulations requiring pre-employment, post-accident, reasonable cause, and random drug testing (53 FR 47084).

The drug testing required by these rules applies to some persons located outside of the United States. However, the rules provided that they would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rules provided that 49 CFR part 199 would not be effective until January 1, 1990, with respect to any person for whom foreign government contends that application of the rule raises questions of compatibility with that country's laws or policies.

At the same time, RSPA stated that the Department of Transportation and other elements of the U.S. government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. We stated that if, as a result of those discussions, we found that an amendment to the rules was necessary, we would issue the amendment by December 1, 1989.

On April 13, 1989, RSPA published an amendment to part 199 (Amdt. No. 199–1; 54 FR 14922) to provide that the rules would not be effective until January 1, 1991, with respect to such persons.

Similar amendments were published on December 27, 1989, extending the effective date until January 2, 1992 (Amdt. No. 19–3; 54 FR 53290), and April 24, 1991, extending the date until January 2, 1993 (Amdt. No. 199–5; 56 FR 18986). These amendments provided additional time while government-to-government discussions tried to reach a permanent resolution of this issue.

DOT has continued active discussions with representatives of the Canadian government and representatives of the

nations of the European Economic community. To allow decisions and agreements to be reached in an orderly fashion, we have determined that additional compliance time is necessary. Accordingly, this final rule postpones the date by which testing must commence for persons located outside the territory of the United States to January 2, 1995. Our action does not postpone testing for any other person, including U.S.-based employees of American subsidiaries of foreign companies.

This final rule delays the applicability of the Part 199 regulations for persons located outside the territory of the United States. Accordingly, RSPA finds that good cause exists under 5 U.S.C. 553(b) and 553(d) to publish this final rule without notice and comment, and to make it effective less than 30 days after publication in the Federal Register.

**Regulatory Analyses and Notices**

*Executive Order 12291 and DOT Regulatory Policies and Procedures*

This rule is not a major rule under Executive Order 12291, and is significant under DOT's Regulatory Policies and Procedures. This final rule modifies one of the compliance provisions contained in the final rule published on November 21, 1988, as modified on April 13, 1990, December 27, 1989, and April 24, 1991. It does not change the basic regulatory structure of that rule. The economic impact of this modification is so minimal that further evaluation is not necessary.

*Regulatory Flexibility Act*

This final rule modifies the effective date of Part 199 only with respect to persons outside the territory of the United States. Therefore, RSPA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

*Paperwork Reduction Act*

This final rule does not change the recordkeeping and reporting requirements of the final rule published on November 21, 1988.

*Executive Order 12612*

In accordance with Executive Order 12612, RSPA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

**List of Subjects in 49 CFR Part 199**

Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation.

In view of the foregoing, 49 CFR part 199 is amended as follows:

**PART 199—[AMENDED]**

1. The authority citation for part 199 is revised to read as follows:

**Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, and 2002; 49 CFR 1.53.**

2. Section 199.1(d) is revised to read as follows:

**§ 199.1 Scope and compliance.**

* * * * *

(d) This part is not effective until January 2, 1995, with respect to any employee located outside the territory of the United States.

Issued in Washington, DC, on July 2, 1992.

**Douglas B. Ham,**

*Acting Administrator, Research and Special Programs Administration.*

[FR Doc. 92-16360 Filed 7-13-92; 8:45 am]

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federal register

Tuesday
July 14, 1992

Part VI

# Department of Education

## Even Start Family Literacy Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

VOL 57 ISS 135 JL 14 1992 UMI

## DEPARTMENT OF EDUCATION

[CFDA No.: 84.258A]

### Even Start Family Literacy Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

*Note to Applicants:* This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

*Purpose of Program:* To provide the Federal share of the cost of family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literacy training for their parents. Even Start supports AMERICA 2000 by helping grantees address two of the National Education Goals: Goal 1—that all children will start school ready to learn; and Goal 5—that every adult will be literate, possess the knowledge and skills necessary to compete in a global economy, and exercise the rights and responsibilities of citizenship.

*Eligible Applicants:* The following are eligible for new awards under this competition: Indian tribes and tribal organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act.

*Deadline for Transmittal of Applications:* September 4, 1992.

*Available Funds:* $1,050,000.

*Estimated Range of Awards:* $75,000 to $200,000.

*Estimated Average Size of Awards:* $135,000.

*Estimated Number of Awards:* 8.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

*Applicable Regulations:*

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR part 212, as published in the **Federal Register** on June 19, 1992 (57 FR 27556–27569).

**SUPPLEMENTARY INFORMATION:** The Department is conducting a national evaluation of projects under Even Start, and successful projects are considered for dissemination through the National Diffusion Network. Grantees shall cooperate with the Department's efforts by adopting an evaluation plan that is consistent with the Department's national evaluation and with the grantee's responsibilities under § 75.590 of EDGAR. It is not expected that the application will include a complete evaluation plan because grantees will be asked to cooperate with the national evaluation of Even Start to be conducted by an independent contractor. Grantees may be required to amend their plans to conform with the national evaluation. However, the review panel's examination of the applicant's potential as a model, under 34 CFR 212.21(e) of the program regulations, will include an analysis of the approach the applicant expects to use to evaluate its project.

Each applicant shall budget for evaluation activities as follows: a project with an estimated cost of up to $120,000 must designate $5,000 for this purpose; a project with an estimated cost of over $120,000 must designate $10,000 for these activities. These funds will be used for expenditures related to the collection and aggregation of data required for the Department's national evaluation. Indian tribal entities shall also budget for the cost of travel to Washington, D.C., and two nights' lodging for the project director and the project evaluator, for their participation in annual evaluation meetings.

#### Selection Criteria

Selection criteria for the Even Start Family Literacy Program are found in the program regulations at 34 CFR 212.21.

#### Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.258), Washington, DC 20202–4725; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.258), room # 3633, Regional Office Building # 3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt with 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

#### Application Forms and Instructions

The appendix to this application is divided into five parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information-Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Part IV: Additional Program Information, Documentation, and Certifications.

*Additional Materials*

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding Lobbying; Debarment, Suspension, and Other

Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80-0014) and instructions.

(Note: ED Form 80-0014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on photostatic copies of the application, budget forms, assurances, and certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

**FOR FURTHER INFORMATION CONTACT:** Patricia McKee, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2017, Washington, DC 20202-6132. Telephone: (202) 401-1692. Deaf and hearing impaired individuals may call: (202) 732-4538 for TDD services, or in the Washington, DC 202 area code, telephone 708-9300 between 8 a.m. and 7 p.m., Eastern time.

**Program Authority:** 20 U.S.C. 2741-2749.

Dated: July 7, 1992.

**John T. MacDonald,**

*Assistant Secretary for Elementary and Secondary Education.*

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OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

| | |
|---|---|
| 2. DATE SUBMITTED | Applicant Identifier |
| 3. DATE RECEIVED BY STATE | State Application Identifier |
| 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 5 8
TITLE: Even Start Family Literacy Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

| | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

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Standard Form 424 (REV 2-88)
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## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this proje→

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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## BUDGET INFORMATION — Non-Construction Programs

### SECTION A - BUDGET SUMMARY

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

### SECTION B - BUDGET CATEGORIES

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) | (2) | (3) | (4) | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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**SECTION C - NON-FEDERAL RESOURCES**

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

**SECTION D - FORECASTED CASH NEEDS**

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

**SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT**

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

**SECTION F - OTHER BUDGET INFORMATION**

(Attach additional Sheets if Necessary)

| | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks | |

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## INSTRUCTIONS FOR THE SF-424A

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary**
**Lines 1-4, Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g.)**

*For new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

**Lines 1-4, Columns (c) through (g.) (continued)**

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** — Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i** — Show the totals of Lines 6a to 6h in each column.

**Line 6j** – Show the amount of indirect cost.

**Line 6k** – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

## INSTRUCTIONS FOR THE SF-424A *(continued)*

**Line 7** – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal-Resources**

**Lines 8-11** – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** – Enter the contribution to be made by the applicant.

**Column (c)** – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** – Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** – Enter totals of Columns (b), (c), and (d).

**Line 12** — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** – Enter the amount of cash needed by quarter from the grantor agency during the first year.

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**Line 14** – Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** – Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16 - 19** – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** – Provide any other explanations or comments deemed necessary.

**PART III—Application Narrative**

*Instructions for Application Narrative*

Before preparing the application narrative, applicants should read carefully the Even Start programmatic requirements in the Act, 20 U.S.C. 2741–49, and the applicable regulations (34 CFR part 212). The narrative should encompass each function or activity for which funds are being requested and should be presented in the following sequence—

A. Begin with an abstract; that is, a summary of the proposed project.

B. Address each selection criterion in the order in which the criteria are listed in 34 CFR 212.21.

C. Describe a plan of operation containing the following items required by section 1056(c) of the Act, 20 U.S.C. 2746(c). Where appropriate, the applicant should reference other parts of this narrative rather than repeat information here. The required items are as follows:

1. A description of the project goals and objectives. Express objectives in measurable terms against which the progress of the project can be evaluated.

2. A description of the activities and services that will be provided by the project, including a description of how the following seven program elements required by section 1054(b) of the Act, 20 U.S.C. 2744(b), will be implemented:

• The identification and recruitment of eligible children. Include a description of the outreach methods to be used to identify families not currently associated with the school of the LEA.

• The screening and preparation of parents and children, including testing, referral to necessary counseling, other developmental and support services, and related services.

• The design of programs and provision of support services (when unavailable from other sources) appropriate to the participants' work and other responsibilities, including—scheduling and location of services to allow joint participation by parents and children; child care for the period that parents are involved in the Even Start project; and transportation for the purpose of enabling parents and their children to participate in the Even Start project.

• The establishment of instructional programs that promote adult literacy, training parents to support the educational growth of their children, and preparation of children for success in regular school programs.

• The provision of special training to enable staff to develop the skills necessary to work with parents and young children in the full range of instructional services offered through Even Start (including child care staff in programs enrolling children of Even Start participants on a space available basis).

• The provision of and monitoring of integrated instructional services to participating parents and children through home-based programs.

• The coordination of the Even Start project with programs assisted under chapter 1 and any relevant programs under Chapter 2 of title I of the Act, the Adult Education Act, the Individuals with Disabilities Education Act, the Job Training Partnership Act, and with the Head Start program, volunteer literacy programs, and other relevant programs.

3. A description of the population to be served and an estimate of the number of participants.

4. If appropriate, a description of the collaborative efforts of the institutions of higher education, community-based organizations, the appropriate State educational agency, private elementary schools, or other appropriate nonprofit organizations in carrying out the project for which assistance is sought.

5. A statement of the methods that will be used—to ensure that the project will serve those eligible participants most in need of the Even Start activities and services; to provide Even Start services to special populations, such as individuals with limited English proficiency and individuals with disabilities; and to encourage participants to remain in the project for a time sufficient to meet project goals.

D. Include any other pertinent information that might assist the Secretary in reviewing the application.

E. Supply necessary information as requested in part IV.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 25 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications under this program generally meet this page limit. Supplemental documentation should be appended to the narrative and need not be counted as part of the 25 pages.

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**Part IV--Even Start Program**

A. Information on additional funds

(1) Estimate the additional funds necessary to meet the requirements of section 1054(c) of the Act, which provides that the Federal share of the total cost of the project may be no more than 90 percent in the first year of the project, 80 percent in the second year, 70 percent in the third year, and 60 percent in the fourth and any subsequent year. Additional funds may be obtained from any source other than funds made available for programs under Chapter 1 of the Act.

| Year | Requirement | Amount | Source of funds |
|---|---|---|---|
| 1..... | 10% | $_____ | _____ |
| 2..... | 20% | $_____ | _____ |
| 3..... | 30% | $_____ | _____ |
| 4..... | 40% | $_____ | _____ |

(2) If other Federal or State funds are listed as the source for additional funds, how will the applicant meet the requirements of section 1054(c) of the Act in the event that Federal or State funds are not available?

_____

_____

_____

_____

B. Documentation on personnel

Attach documentation to demonstrate that the applicant has the qualified personnel required--

(1) To develop, administer, and implement the project, and;

(2) To provide special training necessary to prepare staff for the project.

C. Certifications

(1) The applicant certifies that it has arranged for the services of an experienced evaluator to assist in the development of the applicant's evaluation plan and to coordinate that plan with the Secretary's independent evaluation.

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Authorized representative of applicant Indian tribe or tribal organization

Title

Date

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Instructions
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**Instructions for Estimated Public Reporting Burden**

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations amending the Act, the Department of Education requests comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651, and to the Office of Management and Budget, Paperwork Reduction Project, 1810–0540, Washington, DC 20503.

(Information collection approved under OMB control number 1810–0540. Expiration date: 5/95.)

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OMB Approval No. 0348-0040

## ASSURANCES — NON-CONSTRUCTION PROGRAMS

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

SF 424B (4-88) Back

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about –

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

## DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

_____

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| | |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| | |
| SIGNATURE | DATE |
| | |

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

# Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

## Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

## Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/86), which is obsolete)

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

**1. Type of Federal Action:**
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

**2. Status of Federal Action:**
☐ a. bid/offer/application
b. initial award
c. post-award

**3. Report Type:**
☐ a. initial filing
b. material change
**For Material Change Only:**
year _____ quarter _____
date of last report _____

**4. Name and Address of Reporting Entity:**
☐ Prime ☐ Subawardee
Tier _____, *if known:*
**Congressional District,** *if known:*

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**
**Congressional District,** *if known:*

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**
CFDA Number, *if applicable:* _____

**8. Federal Action Number,** *if known:*

**9. Award Amount,** *if known:*
$

**10. a. Name and Address of Lobbying Entity**
*(if individual, last name, first name, MI):*

**b. Individuals Performing Services** *(including address if different from No. 10a)*
*(last name, first name, MI):*

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**11. Amount of Payment** *(check all that apply):*
$ _____ ☐ actual ☐ planned

**12. Form of Payment** *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

**13. Type of Payment** *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**15. Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

**16.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**Signature:** _____
**Print Name:** _____
**Title:** _____
**Telephone No.:** _____ **Date:** _____

**Federal Use Only:**

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Standard Form - LLL

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5 If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send commens regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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## DISCLOSURE OF LOBBYING ACTIVITIES
### CONTINUATION SHEET

Approved by OMB
0348-0046

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Standard Form - LLL-A

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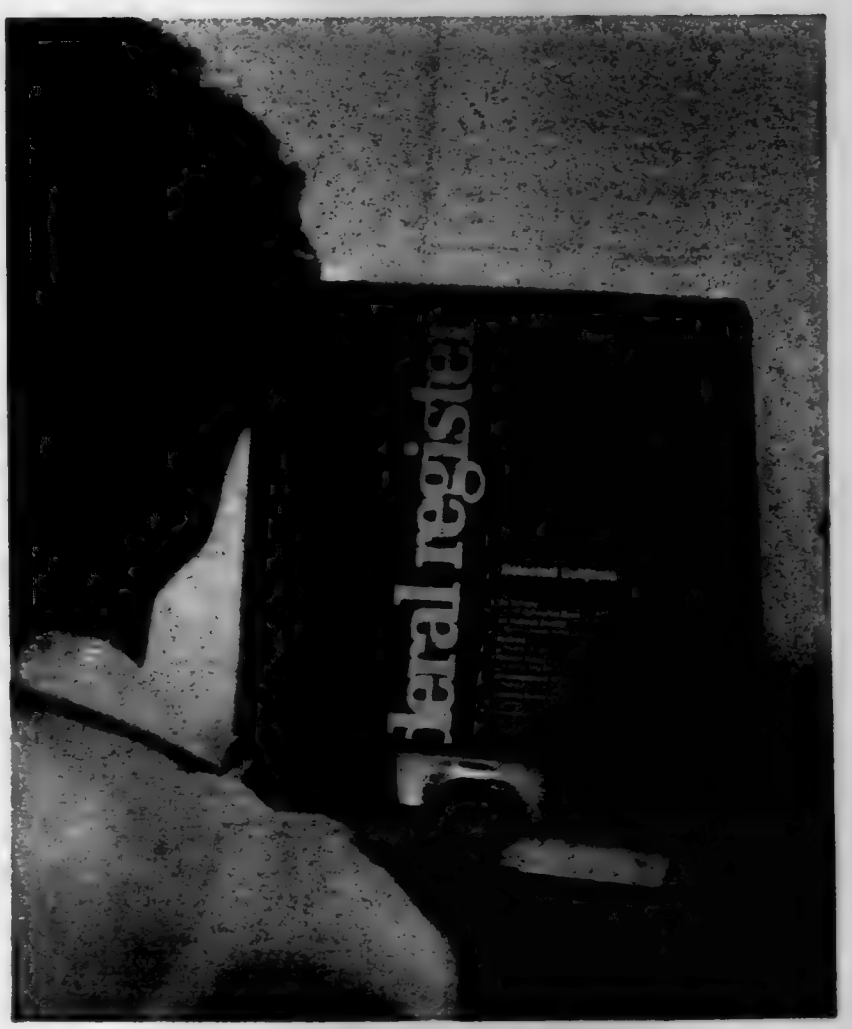


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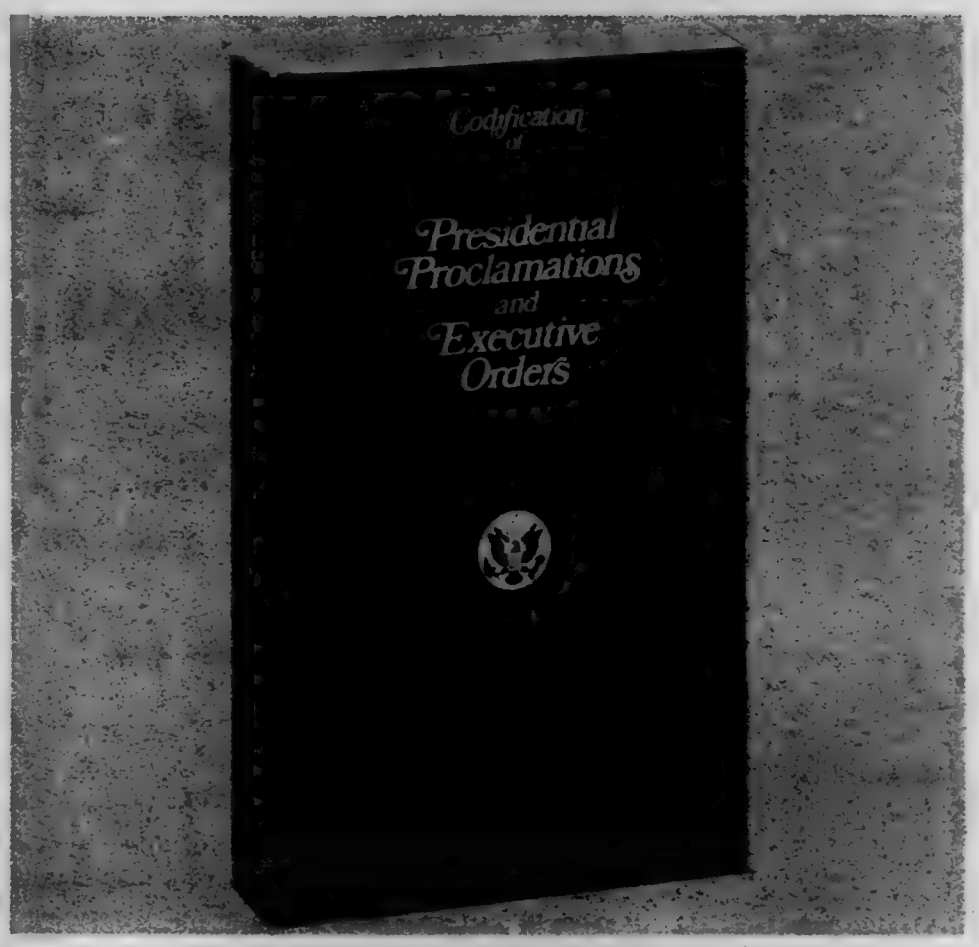


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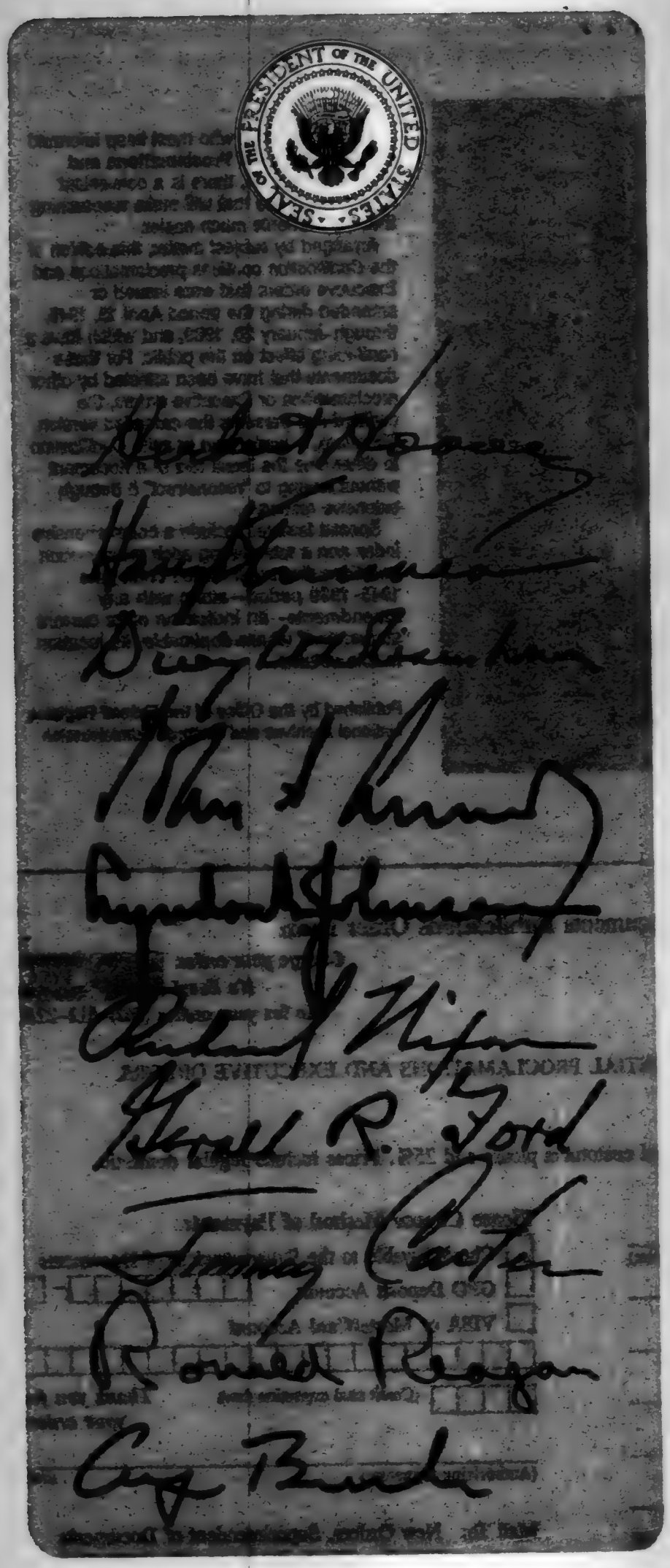

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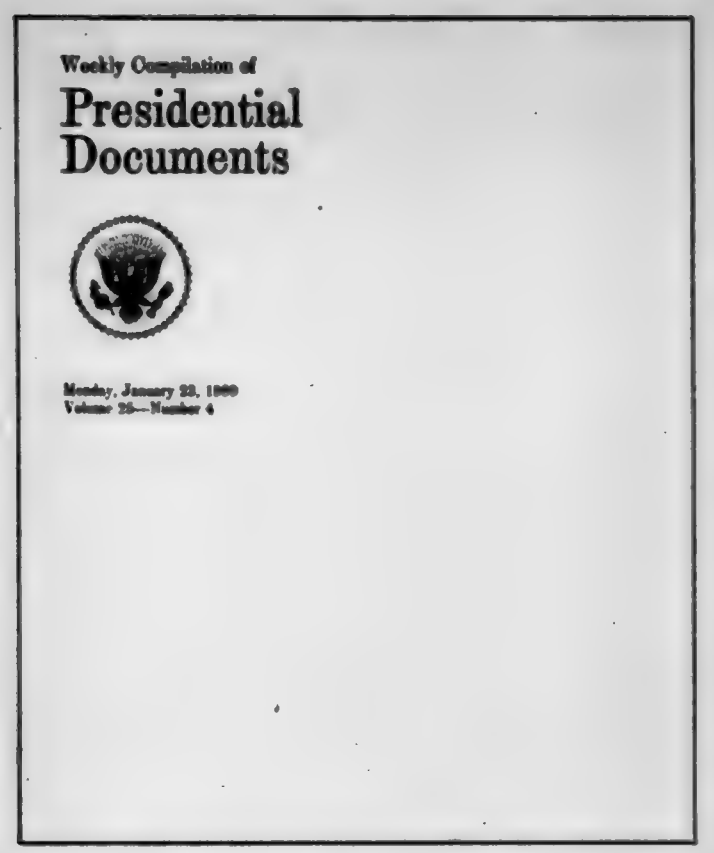


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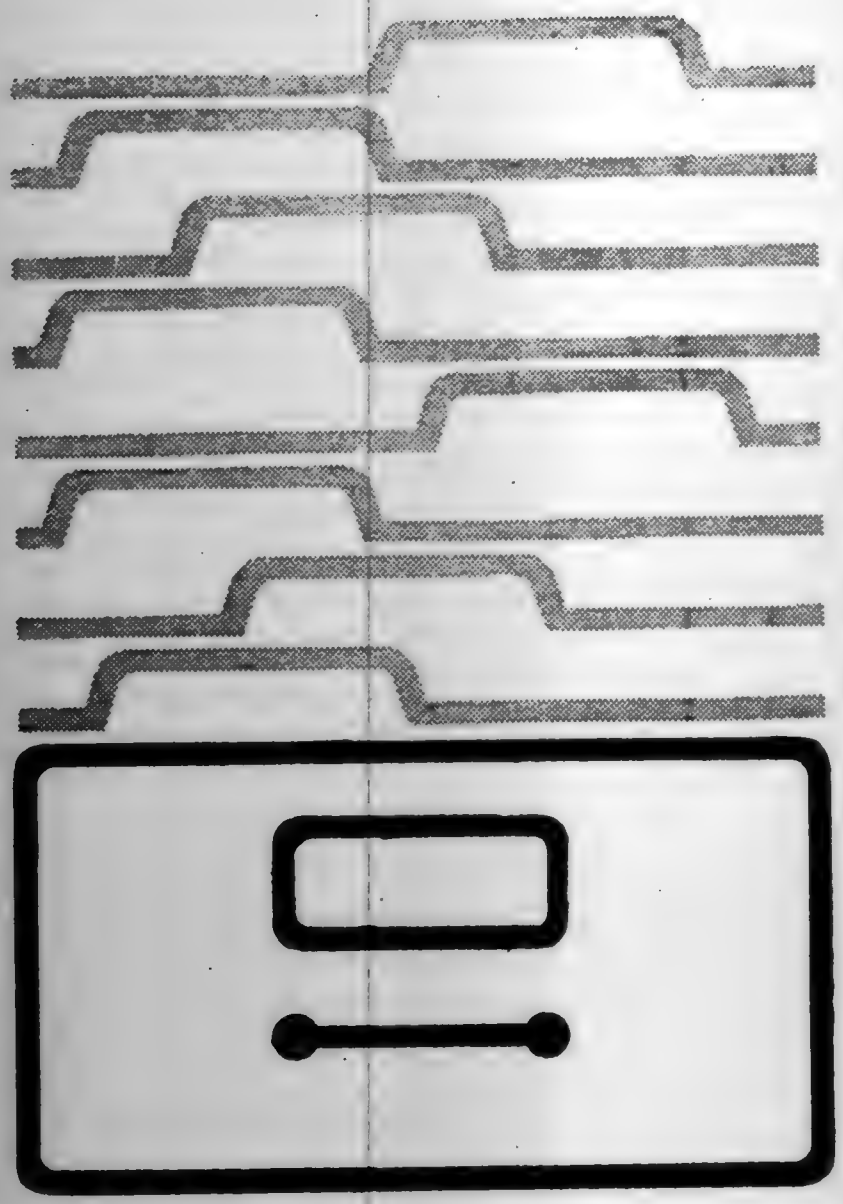

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**WHEN:** July 22, at 9:00 am
**WHERE:** Federal Building and U.S. Courthouse, Conference Room 7209–A, 450 Golden Gate Avenue, San Francisco, CA
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**WHEN:** July 23, at 1:00 pm
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DEPARTME

Animal and Service

7 CFR Part

[Docket No.

Pink Bollwo

AGENCY: An Inspection S

ACTION: Inte

SUMMARY: W bollworm re Clark and N the list of ge removing Ne quarantined bollworm; ( Louisiana fr areas and a nonregulate Parish, Loui suppressive and Mississ quarantined bollworm ar Crittenden, Monroe, Poi counties in A County in M suppressive necessary to pink bollwo and to relie on the inters articles from regulated ar

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# Rules and Regulations

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Wednesday, July 15, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

[Docket No. 92-006-1]

### Pink Bollworm Regulated Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the pink bollworm regulations by: (1) Removing Clark and Nye Counties in Nevada from the list of generally infested areas and removing Nevada from the list of States quarantined because of the pink bollworm; (2) removing Caddo Parish in Louisiana from the list of suppressive areas and adding a previously nonregulated portion of Concordia Parish, Louisiana, to the list of suppressive areas; (3) adding Arkansas and Mississippi to the list of States quarantined because of the pink bollworm and adding Clay, Craighead, Crittenden, Cross, Greene, Mississippi, Monroe, Poinsett, and St. Francis counties in Arkansas, and Washington County in Mississippi, to the list of suppressive areas. This action is necessary to prevent the movement of pink bollworm into noninfested areas, and to relieve unnecessary restrictions on the interstate movement of regulated articles from certain previously regulated areas.

**DATES:** Interim rule effective July 15, 1992. Consideration will be given to comments received on or before September 14, 1992.

**ADDRESSES:** To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 92-006. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Sidney E. Cousins, Senior Operations Officer, PPQ, APHIS, USDA, room 644, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

**SUPPLEMENTARY INFORMATION:**

#### Background

The pink bollworm, *Pectinophora gossypiella* (Saunders), is one of the world's most destructive pests of cotton. This insect spread to the United States from Mexico in 1917, and now exists throughout most of the cotton-producing States west of the Mississippi River.

The pink bollworm regulations contained in 7 CFR 301.52 *et seq.* (referred to below as the pink bollworm regulations) quarantine certain States and restrict the interstate movement of regulated articles from regulated areas in quarantined States for the purpose of preventing the spread of the pink bollworm.

Regulated areas for the pink bollworm are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the movement of the pink bollworm into noninfested areas. However, the eradication of the pink bollworm is undertaken as an objective only in places that are designated as suppressive areas.

Prior to the effective date of this document, Caddo Parish, Louisiana, was designated as a pink bollworm suppressive area. Based on trapping surveys conducted by inspectors of Louisiana State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), we have determined that pink bollworm has been eradicated from Caddo Parish, Louisiana. No evidence of pink bollworm infestations has been found in this area since November 16, 1988. We are therefore removing this area from the list of suppressive areas in § 301.52-2a.

Prior to the effective date of this rule, Clark and Nye Counties were the only areas in Nevada designated as generally infested areas. Because pink bollworm has been eradicated from these counties, there is no reason to continue regulating Clark and Nye counties for pink bollworm. We are therefore removing these counties from the list of generally infested areas in § 301.52-2a. Since these counties were the only remaining areas in Nevada regulated because of the pink bollworm, we are also removing Nevada from the list of States in § 301.52(a) quarantined because of the pink bollworm.

Prior to the effective date of this document, Clay, Craighead, Crittenden, Cross, Greene, Mississippi, Monroe, Poinsett, and St. Francis counties in Arkansas; Concordia Parish, Louisiana; and Washington County, Mississippi, contained no areas regulated because of pink bollworm. Surveys conducted by inspectors of the United States Department of Agriculture and State agencies of Arkansas, Louisiana and Mississippi, have established that pink bollworm has spread into areas in these counties. In order to prevent the spread of pink bollworm and to facilitate its ultimate eradication, we are amending the list of regulated areas in § 301.52-2a of the regulations by designating all or portions of these counties as pink bollworm suppressive areas. The descriptions of the areas designated as suppressive areas are set forth in the rule portion of this document. We are also adding Arkansas and Mississippi to the list of States in § 301.52(a) quarantined because of the pink bollworm.

#### Immediate Action

Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the artificial spread of pink bollworm to noninfested areas of the United States, and to remove unnecessary restrictions on the interstate movement of regulated articles.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make this rule effective upon publication. We will consider

comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation relieves restrictions on the interstate movement of regulated articles from areas in Louisiana and Nevada. Since cotton is not currently being produced in Nevada, there are no entities that will be affected by this rule. There are approximately 35 businesses in Caddo Parish, Louisiana, that will be affected by this rule; all are small entities. They will experience a modest economic benefit as a result of this rule, since they will no longer be required to comply with the treatment and handling requirements contained in the pink bollworm regulations. We estimate that each of these entities will save approximately $100 per year in compliance costs. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of Louisiana.

This regulation also restricts the interstate movement of regulated articles from Clay, Craighead, Crittenden, Cross, Greene, Mississippi, Monroe, Poinsett, and St. Francis counties in Arkansas; Concordia Parish, Louisiana; and Washington County, Mississippi. There are hundreds of small entities that move such articles interstate from nonregulated areas in the United States. Based on information compiled by the Department, it has been determined that there are 177 businesses that will be affected by the new restrictions. Approximately 125 of these businesses are small entities that move regulated articles interstate from the specified areas in these States.

Further, the overall economic impact from this interim rule is estimated to be approximately $250,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V).

**Executive Order 12778**

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

**Paperwork Reduction Act**

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. *3501 et seq.*).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Pink bollworm, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

**Authority:** 7 U.S.C., 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.52, paragraph (a), is revised to read as follows:

**§ 301.52 Quarantine; restriction on interstate movement of specified regulated articles.**

(a) *Notice of quarantine.* The following States are quarantined to prevent the spread of the pink bollworm (*Pectinophora gossypiella* (Saund.)): Arizona, Arkansas, California, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas.

* * * * *

3. In § 301.52–2a, in the list of generally infested areas and suppressive areas, the reference to Nevada and all of the material for Nevada thereunder are removed.

4. Section 301.52–2a is amended by revising the entry for Louisiana and adding entries in alphabetical order for Arkansas and Mississippi to read as follows:

**§ 301.52–2a Regulated areas; suppressive and generally infested areas.**

* * * * *

*Arkansas*

(1) *Generally infested area.* None.
(2) *Suppressive area.*
*Clay County.* The entire county.
*Craighead County.* The entire county.
*Crittenden County.* The entire county.
*Cross County.* The entire county.
*Greene County.* The entire county.
*Mississippi County.* The entire county.
*Monroe County.* The entire county.
*Poinsett County.* The entire county.
*St. Francis County.* The entire county.

* * * * *

*Louisiana*

(1) *Generally infested area.* None.
(2) *Suppressive area.*
*Concordia Parish.* That portion of the parish bounded by a line beginning at the intersection of the Concordia-Tensas Parish line and the Louisiana-Mississippi State line; then west along the Concordia-Tensas Parish line to a point 0.3 miles due east of the sourthern boundary line of Section 50, Range 10 East, Township 9 North; then west across the Mississippi River levee and along the southern boundary line of Sections 50 and 51, Range 10 East, Township 9 North, to its junction with the eastern border of the Lake St. John oil and gas field; then north along this border to the Concordia-Tensas Parish line; then west along the parish line to its junction with the northern edge of Lake St. John; then south along the western edge of Lake St. John to its junction with the southeast corner of the property line of the North Half of Lower Coosa Plantation in Section 34, Range 10 East, Township 9 North; then southwest along this property line to a point on the northern boundary line of Section 2, Range 9 East, Township 8 North, marked by a stake with pointers marked "X" (indicating the northwest property boundary of Pittsfield Plantation); then southeast in a straight line to the northeastern corner of Section 56, Range 9 East, Township 8 North; then

continuing along the eastern boundary line of this section across state highway 568 to the Lake Concordia levee; then southwest along the levee to the point where state road 900 intersects state highway 568 adjacent to the levee; then southeast in a straight line across Lake Concordia to the western edge of a natural tree row; then continuing southeast along the tree row to the point where the tree row makes a 90 degree turn toward the northeast; then extending southeast beyond this point to state road 3196; then northeast along state road 3196 to the point where the road intersects the Mississippi River levee; then southeast along a line at a 20 degree angle from this intersection to the Louisiana-Mississippi State line (this is inclusive of Mud Lake and the northern half of the Fairchilds Bend oil field); then north along the Louisiana-Mississippi State line to the point of beginning.

*Mississippi*

(1) *Generally infested area.* None.

(2) *Suppressive area.*

*Washington County.* That portion of the county lying within Township 18 North, Range 7 West, Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23 and 24, and Township 18 North, Range 6 West, Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, and 18.

* * * * *

Done in Washington, DC, this 9th day of July 1992.

**Robert Melland,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92-16508 Filed 7-14-92; 8:45 a.m.]

BILLING CODE 3410-34-M

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**7 CFR 301**

**[Docket No. 91-149-2]**

## Oriental Fruit Fly; Removal of Regulations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are removing the Oriental fruit fly regulations that designated portions of Los Angeles, Riverside, and San Bernardino Counties in California as quarantined areas and imposed restrictions on the interstate movement of regulated articles from those areas. The regulations were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from Los Angeles, Riverside, and San Bernardino Counties and that the regulations are no longer necessary. This rule relieves restrictions on the interstate movement of regulated articles from the previously quarantined areas in Los Angeles, Riverside, and San Bernardino Counties in California.

**DATES:** Interim rule effective July 9, 1992. Consideration will be given to comments received on or before September 14, 1992.

**ADDRESSES:** To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-149-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-8247.

**SUPPLEMENTARY INFORMATION:**

### Background

We established the Oriental fruit fly regulations (7 CFR 301.93 *et seq.*; referred to below as the regulations) and quarantined portions of Los Angeles, Riverside, and San Bernardino Counties, CA, in a document effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57579-57587, Docket No. 91-149). The regulations imposed restrictions on the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. The regulations also designated soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

Based on insect trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, USDA, we have determined that the Oriental fruit fly has been eradicated from the previously quarantined portions of Los Angeles, Riverside, and San Bernardino Counties, CA. The last finding of Oriental fruit fly in these areas was made on December 27, 1991.

Since then, no evidence of Oriental fruit fly infestations has been found in these areas. Based on Department experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that Oriental fruit fly infestations no longer exist in Los Angeles, Riverside, or San Bernardino Counties, CA. We are therefore removing the Oriental fruit fly regulations.

### Immediate Action

Robert B. Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Portions of Los Angeles, Riverside, and San Bernardino Counties, CA, were quarantined due to the possibility that the Oriental fruit fly could be spread from this area to noninfested areas of the United States. Since this situation no longer exists, the Oriental fruit fly regulations now impose an unnecessary regulatory burden on the public. We are therefore taking immediate action to remove these regulations.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, and because this rule relieves a regulatory restriction, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This interim rule relieves restrictions on the interstate movement of regulated articles from portions of Los Angeles, Riverside, and San Bernardino Counties in California. There is very little commercial activity in the previously quarantined areas that may be affected by this rule. The small entities that may be affected consist of approximately 3 commercial growers of tomatoes, peppers, and apples; 60 nurseries; 1 lemon packing house; 2 olive processors; 2 hobbyist wineries; 140 fruit stands; 2 swap meets; and 80 growers with a total of 600 acres of citrus and grapes. These small entities comprise less than one percent of the total number of similar small entities operating in the State of California.

Most of these small entities sold previously regulated articles primarily for local intrastate, not interstate, markets. The sale of these articles will therefore remain unaffected by the regulatory provisions we are removing. Also, many of these entities sold other items in addition to the previously regulated articles so that the effect, if any, of this regulation on these entities will be minimal.

The effect of this regulation on these entities that did move previously regulated articles interstate was minimized by the availability of various treatments specified in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations. The specified treatments, in most cases, allowed these small entities to move previously regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws, regulations, and policies that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Incorporation by reference, Oriental fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

**§§ 301.93 through 301.93–10 [Removed and Reserved]**

2. "Subpart—Oriental Fruit Fly" (7 CFR 301.93 through 301.93–10) is removed and reserved.

Done in Washington, DC, this 9th day of July 1992.

**Robert Melland,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92–16567 Filed 7–14–92; 8:45 am]

BILLING CODE 3410–34–M

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**7 CFR Part 318**

**[Docket No. 92–081–1]**

## Sharwil Avocados From Hawaii

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending "Subpart—Hawaiian Fruits and Vegetables" quarantine and regulations by removing the provision that allowed the interstate movement of untreated Sharwil avocados meeting certain harvest and handling conditions. The conditions were designed to ensure that the avocados did not contain certain fruit fly larvae, and we have determined that the conditions are not adequate to ensure this. This change will affect persons in Hawaii engaged in growing Sharwil avocados for interstate movement, and persons engaged in moving such avocados. This change is necessary to prevent the spread of certain fruit flies which are dangerous plant pests.

**DATES:** Interim rule effective July 15, 1992. Consideration will be given only to comments received on or before September 14, 1992.

**ADDRESSES:** To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 92–081–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Reeves, Operations Officer, Port Operations, PPQ, APHIS, USDA, room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Hawaiian Fruits and Vegetables Regulations (contained in 7 CFR 318.13 through 318.13–16 and referred to below as the regulations), govern, among other things, the interstate movement from Hawaii of avocados in a raw or unprocessed state. Regulation is necessary to prevent spread of the Mediterranean fruit fly (*Ceratitis capitata* (Wied.)), the melon fly (*Dacus cucurbitae* (Coq.)), and the Oriental fruit fly (*Bactrocera dorsalis* (Hendel) (Syn. *Dacus dorsalis*). These types of fruit flies are collectively referred to as Trifly.

Prior to the effective date of this interim rule, §§ 318.13–4(c) and 318.13–4h [1] of the regulations provided that the Animal and Plant Health Inspection Service (APHIS) would issue certificates allowing Sharwil avocados to be moved from Hawaii to other parts of the United States if the Sharwil avodados are harvested and handled in accordance with requirements specified in the regulations. These harvesting and handling requirements were designed to ensure that the avocados do not contain Trifly life stages. For Sharwil avoados to have been shipped interstate, § 318.13–4h required, among other things, that the fruit be picked directly from identified trees (as opposed to fallen fruit), with

[1] Due to an earlier rule (56 FR 59207), § 318.13–4h will be renumbered as § 318.13–4g effective July 1, 1992, and it appears in the 1992 Code of Federal Regulations under § 318.13–4g, with a note regarding the effective date of the renumbering.

the stem attached; that the fruit be packed in an approved packing facility maintained free of Trifly; and that the fruit be packed in Trifly-proof containers within 24 hours of the time the fruit is picked. The underlying basis for these conditions in the Sharwil avocado regulations is research performed by the Agricultural Research Service (ARS) from 1985–1987 [2], indicating that unblemished avocados on the tree are not subject to infestation by fruit flies.

On February 26, 1992, APHIS suspended certification of Sharwil avocados for shipment to the mainland United States. This action followed the discovery on February 25, 1992, of fruit fly larvae in an unblemished avocado picked by an APHIS inspector from a tree in an orchard that shipped Sharwil avocados to the mainland United States. This discovery called into question the reliability of the regulatory requirements for certifying Sharwil avocados.

In response to this discovery, ARS has recently completed a study which found additional fruit fly larvae and pupae in Sharwil avocados which met the regulatory requirements for interstate movement. Between March 2 and March 10, 1992, 1,104 Sharwil avocados were picked from trees from several APHIS-certified groves located in the vicinity of Kona, Hawaii. Upon examination, 7 of these fruit were found to be infested. Two of the infested fruit, containing a total of 22 Oriental fruit fly larvae and pupae, met all requirements of the regulations for interstate movement. These data indicate that a significant fruit fly infestation of avocado exists in the Kona area, and that the infestation affects at least some Sharwil avocados that could be shipped interstate under the regulatory requirements effective prior to the suspension implemented on February 26, 1992.

In view of this evidence that the regulatory restrictions are not adequate to protect against the possibility that Sharwil avocados moved interstate could spread Trifly, we are removing the regulations in §§ 318.13–4(c) and 318.13–4h that allow certification of untreated Sharwil avocados for interstate shipment. APHIS and ARS have already begun studies to determine what conditions allowed fruit flies to infest fruit that the earlier research indicated would not be subject to infestation. If these studies reveal ways the regulations could be changed to safely allow shipment of Sharwil avocados to resume, we may publish a proposal describing a new set of requirements for certifying Sharwil avocados for interstate shipment.

[2] Summaries of the research are available from the person identified in the "FOR FURTHER INFORMATION CONTACT:" section of this document.

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This interim rule removes the regulations that allowed untreated Sharwil avocados to be certified for interstate shipment from Hawaii.

The Hawaiian Sharwil avocado industry is small. The certification program for Sharwil avocados is in its second season. This season, over 17,000 pounds have been shipped by 3 packinghouses and 20 growers. Most shipments have been for the California and Colorado markets.

In contrast, the total annual United States avocado production is approximately 273,000 tons. Interstate shipments of Hawaiian Sharwil avocados account for less than one hundredth of one percent of the total annual United States avocado production.

Most of the persons growing Sharwil avocados are small business entities. Removing the Sharwil regulations is expected to have a negative impact on the Hawaiian Sharwil industry, since all but Hawaii is removed as a market for Sharwil avocados. The approximately 20 Sharwil producers in Hawaii are small entities, but are not considered to be a substantial number of small entities, as compared to approximately 200 Hawaiian small entities producing all varieties of avocados and thousands of small entities in Hawaii in other agricultural production operations. In addition, these approximately 20 Sharwil producers should be able to sell the avocados to markets for Hawaiian consumption or foreign export. Such sales would probably generate smaller profits for the producers than interstate sales.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, part 3015, subpart V).

### Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under this interim rule:

(1) all State and local laws and regulations that are inconsistent with this interim rule will be preempted;

(2) no retroactive effect will be given to this interim rule; and

(3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

### Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 7 CFR Part 318

Avocados, Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, 7 CFR part 318 is amended as follows:

## PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 continues to read as follows:

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 7 CFR 2.17, 2.51 and 371.2(c).

### § 318.13–4 [Amended]

2. Paragraph (c) of § 318.13–4 is removed; paragraphs (d) and (e) are redesignated as paragraphs (c) and (d); and in newly redesignated paragraph (d), the phrase "or (c)" is removed.

### § 318.13–4g [Removed and reserved]

3. Section 318.13–4g is removed and reserved.

Done in Washington, DC, this 9 day of July, 1992.

Robert Melland,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92–16571 Filed 7–14–92; 8:45 am]

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VOL 57 ISS 136 JL 15 1992 UMI

**Agricultural Marketing Service**

**7 CFR Part 1093**

**[DA-92-15]**

## Milk in the Alabama-West Florida Marketing Area; Order Suspending Certain Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rule.

**SUMMARY:** This action relaxes the limits on diversion of milk by proprietary handlers for an indefinite period beginning May 1, 1992, in the Alabama-West Florida milk order. The suspension increases the amount of fluid milk that may be shipped directly from farms to nonpool plants and still be priced under the order. The suspension was requested by Barber Pure Milk Company (Barber), a proprietary handler who has consolidated its Class I operations in separate plants from its Class II operations. The Class II plants are now nonpool plants. The suspension is necessary because of these changes in marketing conditions and to permit the efficient marketing of milk of dairy farmers who have historically supplied the market.

**EFFECTIVE DATE:** May 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6274.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued April 30, 1992; published May 7, 1992; (57 FR 19554).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Alabama-West Florida marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on May 7, 1992 (57 FR 19554) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Two comments in support were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that beginning May 1, 1992 for an indefinite period, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1093.13, paragraphs (c) (1), (2), and (4).

### Statement of Consideration

This action relaxes the limits on diversion of milk by proprietary handlers under the Alabama-West Florida order beginning May 1, 1992 for an indefinite period. The suspension allows more milk to be shipped directly from farms to nonpool plants and still be priced under the order.

The order provides that a proprietary handler may divert to nonpool plants all but four days' production of a producer during the months of February through August and all but ten days' production during the months of September through January. Diversions are further limited to 30 percent of the milk that is physically received at a pool plant.

The suspension increases the diversion allowance to a volume equal to the volume of producer milk actually received at the handler's pool plants and disposed of as route disposition from the handlers' pool plants during the month. This action makes the diversion limits more compatible with the order requirement that a distributing plant's route disposition, for pooling purposes, must not be less than 50 percent of the milk physically received at the plant or diverted from the plant.

Barber has requested that the order be amended to allow for "unit pooling" of Class I and Class II plants. Unit pooling would allow a handler to combine the receipts and dispositions of milk and milk products at its plants for pool plant qualification purposes. Pending such amendment proceeding, Barber requests this suspension.

Barber has consolidated its Class I operations at two of its four plants and has consolidated its Class II operations at the other two plants. Under the current diversion limits Barber is having difficulty pooling all of the milk that historically has been associated with its four plants in the Alabama-West Florida market. The suspension at this time, will eliminate the need for Barber to engage in costly and inefficient transportation and handling of milk (pumping milk into and out of pool plants) in order to keep its milk supplies pooled on the order.

Two comments in support (a cooperative association and a proprietary handler) were received. Both organizations stated that without the suspension they would have to engage in uneconomic movements of milk in order to pool milk supplies historically associated with this market.

Accordingly, it is appropriate to suspend the aforesaid provisions.

It is hereby found and determined that notice of proposed rulemaking, public procedure thereon, and thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that this action should obviate the need to inefficiently unload and reload milk at pool plants in order to keep it priced under the order.

(b) This suspension does not require of persons affected substantial or

extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Two comments in support were received.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in the **Federal Register.**

**List of Subjects in 7 CFR Part 1093**

Milk marketing orders.

*It is therefore ordered,* That the following provisions of the order (7 CFR part 1093) are hereby suspended beginning May 1, 1992 for an indefinite period.

**PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA**

1. The authority citation for 7 CFR Part 1093 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1093.13 [Suspended in Part]**

2. In § 1093.13, paragraphs (c) (1), (2), and (4) are suspended from May 1, 1992, for an indefinite period.

Dated: July 8, 1992.

**John E. Frydenlund,**

*Deputy Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 92–16632 filed 7–14–92; 8:45 am]

BILLING CODE 3410–02–M

**DEPARTMENT OF COMMERCE**

**Bureau of Export Administration**

**15 CFR Part 799**

**[Docket No. 910249–2157]**

**Revisions to the Commerce Control List: Equipment Related to the Production of Chemical and Biological Weapons; Biological Agents**

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Interim rule.

**SUMMARY:** The Bureau of Export Administration maintains the Commerce Control List (CCL) which appears in the Export Administration Regulations (EAR). This rule amends the CCL by revising Export Control Classification Numbers (ECCNs) 1B70E, 1C61B, 1E60C, and 1E61B. These ECCNs control dual-use items that can be used in the production of chemical and biological weapons (CBW). The changes made by this rule are intended to conform the list of CBW related items controlled by the United States to the agreed lists of items adopted by countries participating in the Australia Group.

**DATES:** This interim rule is effective July 15, 1992. Comments must be received by August 14, 1992.

**ADDRESSES:** Written comments (six copies) should be sent to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** For questions on foreign policy controls, call Toni Jackson, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone (202) 377–4531.

For questions of a technical nature on chemical weapon precursors, biological agents, and equipment that can be used to produce chemical and biological weapons agents, call James Seevaratnam, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–4777.

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 13, 1991, the Bureau of Export Administration (BXA) published in the **Federal Register** (56 FR 10760) an interim rule that imposed an individual validated licensing requirement on exports of certain dual-use equipment that can be used to produce:

(a) Chemicals or biological agents controlled by ECCNs 1C60C and 1C61B (formerly ECCNs 4798B, 4997B, or 4998B) on the CCL, or

(b) Chemical or biological warfare agents controlled on the U.S. Munitions List under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). Effective with the publication of that rule, such dual-use equipment required an individual validated license for export or reexport to Country Groups S and Z and to the regions and countries listed in Supplement No. 5 to part 778. The March 13, 1991, interim rule addressed some of the measures called for in President Bush's December 13, 1990, decision on the Enhanced Proliferation Control Initiative (EPCI) and included in Executive Order 12735 of November 16, 1990, on Chemical and Biological Weapons Proliferation.

BXA received more than seventy-five comments on the March 13, 1991, interim rule and two other EPCI rules that were published on the same date. The vast majority of those who commented on the new ECCNs added by the March 13, 1991, interim rule felt that the technical parameters describing the commodities controlled by these ECCNs were too broad and caught a large number of commodities that had broad commercial applications (e.g., food processing, water treatment) and that were not essential for the production of chemical and biological weapons.

Many commenters criticized the fact that all three EPCI rules contained unilateral export controls. They felt that the costs and delays of the licensing process would hurt the competitiveness of U.S. companies vis-á-vis foreign producers and that the unilateral controls would prove ineffective due to the widespread foreign availability of the controlled items. These commenters argued that foreign availability makes the imposition of multilateral controls the only realistic approach.

The Department is sensitive to the arguments against unilateral controls and has been working in cooperation with participating governments in the Australia Group to establish multilateral controls on CBW related equipment and materials similar to those identified for control in the March 13, 1991, interim rule. The twenty-two member Australia Group, in which the United States participates, seeks to prevent the proliferation of chemical and biological weapons.

At the May, 1991, meeting of the Australia Group, the delegates agreed, subject to approval by their governments, to establish a common control list, similar to the U.S. list, for exports of dual-use chemical manufacturing equipment and related technology data. On September 30, 1991, BXA published a rule in the **Federal Register** (56 FR 49441) that proposed to revise the U.S. chemical equipment list to conform to the chemical equipment list being considered for adoption by countries participating in the Australia Group. This rule requested comments on the proposed revisions to the U.S. list and on the trade impact of these changes for exports to regions and countries listed in Supplement No. 5 to part 778.

BXA received sixteen comments on the September 30, 1991, proposed rule. While the majority of commenters supported the adoption of a chemical equipment list by the Australia Group, a number of commenters were critical of the fact that several major producers of chemical equipment, located in countries not included in the Australia Group, would not be subject to comparable controls on their chemical equipment exports.

Other commenters were critical of the September 30, 1991, proposed rule

because they felt it would continue to control too broad a range of chemical equipment (i.e., equipment having a wide range of commercial applications). A number of commenters recommended that the list of countries requiring a validated license for chemical equipment be reduced to cover only those which seek to develop chemical and/or biological weapons capability or which present a threat to regional stability.

At the December, 1991, meeting of the Australia Group, the delegates made certain technical revisions in Australia Group's chemical equipment list and agreed to its adoption, subject to approval by their governments. Many of these revisions resulted from proposals made by the United States based on public comments. The changes agreed upon at the December, 1991, meeting have been approved by the member governments and are contained in this interim rule. Many of these changes refine the scope of the technical parameters describing chemical equipment that is controlled for export. For example, this interim rule revises ECCN 1B70E, which controls equipment that can be used in the production of chemical weapons precursors or chemical warfare agents, to except from control certain chemical equipment that is specially designed for use in civil applications, e.g., scrap surface heat exchangers used in the food processing industry.

This interim rule also revises the list of microorganisms described in ECCN 1C61B to conform with the list of organisms considered for adoption by the delegates at the December, 1991, Australia Group meeting. This marks the first time the Australia Group agreed in principle to establish export controls on biological items. Since February of 1969, the Commerce Department has maintained foreign policy controls on biological organisms useful in weapons development. For controlled organisms, an individual validated license is required for all destinations except Canada.

Specifically, this interim rule revises ECCNs 1B70E, 1C61B, 1E60C, and 1E61B as follows:

*ECCN 1B70E*

The most significant change in ECCN 1B70E is the addition of a Note stating that, except for toxic gas monitoring systems described in 1B70.f, the controls in 1B70E do *not* apply to equipment that is: (i) Specially designed for use in civil applications (e.g., food processing, pulp and paper processing, or water purification) and (ii) inappropriate, by the nature of its design, for use in storing, processing, producing or conducting and controlling the flow of chemical warfare agents controlled on the U.S. Munitions List or the chemical weapons precursors controlled by 1C60C.

Specific changes in the items controlled by 1B70E include the following:

(1) 1B70.a is revised by raising the control thresholds for reactor vessels and storage tanks and containers. Reactor vessels were previously controlled if they had a capacity greater than 5 liters, but now are controlled only if they have a total volume greater than 0.1 $m^3$ (100 liters) and less than 15 $m^3$ (15,000 liters). Storage tanks and containers were controlled if they had a capacity greater than 10 liters, but now are controlled only if they have a total volume greater than 0.1 $m^3$ (100 liters). In addition, distillation columns, which were previously controlled if they had a capacity greater than 2 liters per hour are now controlled only if they have a diameter greater than 0.1 m. Finally, 1B70.a now controls, not only equipment having flow contact surfaces made of nickel or alloys having more than 40% nickel by weight, but also equipment having flow contact surfaces that are made of any of the following: alloys with more than 25% nickel and 20% chromium by weight, glass, or graphite (for heat exchangers only).

(2) 1B70.b is revised to control remotely operated filling equipment with flow contact surfaces made of nickel, alloys having more than 40% nickel by weight, or alloys having more than 25% nickel and 20% chromium by weight. Previously, filling equipment was described in 1B70.d, which controlled equipment enclosed in an environmental barrier, or incorporating a nickel-lined or Hastelloy nozzle.

(3) 1B70.c is revised to control bellows valves, diaphragm valves, double seal valves, and multi-walled piping that incorporate leak detection ports and have flow contact surfaces made of any of the following: nickel, alloys with more than 40% nickel by weight, alloys with more than 25% nickel and 20% chromium by weight, or fluoropolymers (e.g., PTFE, PVDF, PFA). Previously, valves were described in 1B70.b, which controlled any valves designed to be vapor leak proof.

(4) 1B70.d is revised to control double-seal, canned drive, magnetic drive, bellows, or diaphragm pumps that have flow contact surfaces made of any of the following: nickel, alloys with more than 40% nickel by weight, alloys with more than 25% nickel and 20% chromium by weight, fluoropolymers (e.g., PTFE, PVDF, PFA), or tantalum. Previously, pumps were described in 1B70.b, which controlled any pumps designed to be vapor leak proof.

(5) 1B70.e is revised to control incinerators that have special handling facilities with an average combustion chamber temperature greater than 1000 °C and flow contact surfaces made from or lined with any of the following: nickel, alloys with more than 40% nickel by weight; alloys with more than 25% nickel and 20% chromium by weight; or ceramics. Previously, the control language in 1B70.e was less specific, referring only to specially designed incinerators for chemical weapons precursors, chemical warfare agents, or organophosphorus compounds.

(6) 1B70.f is revised to control toxic gas monitoring systems capable of: (i) Continuous operation; and (ii) detecting chemical warfare agents, or chemical weapons precursors; or (iii) detecting phosphorus, sulphur, fluorine, chlorine, and their compounds at a concentration less than 0.3 milligrams per cubic meter of air. Previously, the control level was a concentration of less than 0.1 milligrams per cubic meter of air. Toxic gas monitoring systems capable of detecting chemical compounds having an anticholinesterase function are also now controlled by 1B70.f. These systems were previously controlled by 1B70.g.

*ECCN 1C61B*

1C61B is totally revised to provide a positive list of viruses, rickettsiae, bacteria, genetically modified organisms, and toxins that are subject to control. Previously, 1C61B controlled all viruses and viroids not listed in Interpretation No. 25 of Supplement No. 1 to § 799.2 and all bacteria, fungi, and protozoa not listed in Interpretation No. 26 of Supplement No. 1 to § 799.2. As a result of the revisions to 1C61B, Interpretations 24 through 26 are removed from Supplement No. 1 to § 799.2.

*ECCN 1E60C*

This entry is revised to control technology for the disposal (as well as the production) of chemical precursors described in 1C60C. 1E60C continues to control technology for facilities designed or intended to produce chemicals described in 1C60C.

*ECCN 1E61B*

This entry is revised to control technology for the disposal (as well as the production) of microbiological commodities described in 1C61B.

**Rulemaking Requirements**

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0010, and 0694–0067.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourges interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close August 14, 1992. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–5653.

**List of Subjects in 15 CFR Part 799**

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

1. The authority citation for 15 CFR part 799 continues to read as follows:

**Authority:** Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 et seq.), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 28, 1991 (56 FR 48385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

**PART 799—[AMENDED]**

**Supplement No. 1 to § 799.1 [Amended]**

2. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), ECCN 1B70E is revised to read as follows:

**1B70E Equipment that can be used in the production of chemical weapons precursors and chemical warfare agents.**

**Requirements**

*Validated License Required:* SZ, Supp. 5 to Part 778 of this subchapter.
*Unit*: Number.
*Reason for Control*: CB.
*GLV*: $0.
*GCT*: No.
*GFW*: No.

**List of Items Controlled**

**Note:** The controls in 1B70.a to 1B70.e do not apply to equipment that is:

a. Specially designed for use in civil applications (e.g., food processing, pulp and paper processing, or water purification); and

b. Inappropriate, by the nature of its design, for use in storing, processing, producing or conducting and controlling the flow of chemical warfare agents controlled on the U.S. Munitions List or the chemical weapons precursors controlled by 1C60C.

a. Chemical processing equipment described in paragraph a.1 having any of the flow contact surfaces described in paragraph a.2:

a.1. Chemical processing equipment, as follows:

a.1.a. Reactor vessels, with or without agitators, having a total volume greater than 0.1 $m^3$ (100 l) and less than 15 $m^3$ (15,000 l);

a.1.b. Storage tanks and containers, with a total volume greater than 0.1 $m^3$ (100 l);

a.1.c. Heat exchangers;

a.1.d. Distillation columns, including packed columns, having a diameter greater than 0.1 m;

a.1.e. Condensers; or

a.1.f. Degassing equipment;

a.2. Where all surfaces that come into direct contact with the chemical(s) being processed or contained are made from any of the following materials:

a.2.a. Nickel, or alloys with more than 40% nickel by weight;

a.2.b. Alloys with more than 25% nickel and 20% chromium by weight;

a.2.c. Glass; or

a.2.d. Graphite (for heat exchangers only).

b. Remotely operated filling equipment in which all surfaces that come into direct contact with the fluid are made from any of the following materials:

b.1. Nickel, or allows with more than 40% nickel by weight; or
b.2. Alloys with more than 25% nickel and 20% chromium by weight;

c. Bellows valves, diaphragm valves, double seal valves, and multi-walled piping:

c.1. Incorporating a leak detection port; and
c.2. In which all surfaces that come into direct contact with the fluids are made from any of the following materials:
c.2.a. Nickel, or alloys with more than 40% nickel by weight;
c.2.b. Alloys with more than 26% nickel and 20% chromium by weight; or
c.2.c. Fluoropolymers, including PTFE, PVDF, PFA.

d. Double-seal, canned drive, magnetic drive, bellows or diaphragm pumps in which all surfaces that come into direct contact with the fluid are made from any of the following materials:
d.1 Nickel, or alloys with more than 40% nickel by weight;
d.2 Alloys with more than 25% nickel and 20% chromium by weight;
d.3 Fluoropolymers, including PTFE, PVDF, PFA; or
d.4 Tantalum.

e. Incinerators that are designed to destroy chemical warfare agents controlled on the U.S. Munitions List, or chemical weapons precursors controlled by ECCN 1C80, and that have special handling facilities with an average combustion chamber temperature greater than 1000 °C in which all surfaces in the waste supply system that come into direct contact with the waste products are made from or lined with any of the following materials:
e.1. Nickel, or alloys with more than 40% nickel by weight;
e.2. Alloys with more than 25% nickel and 20% chromium by weight; or
e.3. Ceramics.

f. Toxic gas monitoring systems:
f.1. Capable of:
f.1.a. Detecting chemical warfare agents controlled on the U.S. Munitions List or chemical weapons precursors controlled by ECCN 1C80, or detecting phosphorus, sulphur, fluorine, chlorine, and their compounds, at a concentration less than 0.3 milligrams per cubic meter of air; and
f.1.b. Continuous operation; or
f.2. Capable of detecting chemical compounds having an anticholinesterase function.

3. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), ECCN 1C61B is revised to read as follows:

**1C61B Microorganisms and toxins.**

**Requirements**

*Validated License Required:* QSTVWYZ.
*Unit:* $ value.
*Reason for Control:* CB.
*GLV:* $ 0.
*GCT:* No.
*GFW:* No.

Note: Genetically modified organisms containing polynucleotide sequences described in this entry are controlled.

**List of Items Controlled**

a. Viruses, as follows:
a.1. Chikungunya virus;
a.2. Congo-Crimean haemorrhagic fever virus;
a.3. Dengue fever virus;
a.4. Eastern equine encephalitis virus;
a.5. Ebola virus;
a.6. Hantaan virus;
a.7. Junin virus;
a.8. Lassa fever virus;
a.9. Lymphocytic choriomeningitis virus;
a.10. Machupo virus;
a.11. Marburg virus;
a.12. Monkey pox virus;
a.13. Rift Valley fever virus;
a.14. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);
a.15. Variola virus;
a.16. Venezuelan equine encephalitis virus;
a.17. Western equine encephalitis virus;
a.18. White pox;
a.19. Yellow fever virus; or
a.20. Japanese encephalitis virus.

b. Rickettsiae, as follows:
b.1. Coxiella burnetii;
b.2. Rickettsia quintana;
b.3. Rickettsia prowasecki; or
b.4. Rickettsia rickettsii.

c. Bacteria, as follows:
c.1. Bacillus anthracis;
c.2. Brucella abortus;
c.3. Brucella melitensis;
c.4. Brucella suis;
c.5. Chlamydia psittaci;
c.6. Clostridium botulinum;
c.7. Francisella tularensis;
c.8. Pseudomonas mallei;
c.9. Pseudomonas pseudomallei;
c.10. Salmonella typhi;
c.11. Shigella dysenteriae;
c.12. Vibrio cholerae; or
c.13. Yersinia pestis.

d. Genetically modified micro-organisms, as follows:
d.1. Genetically modified micro-organisms that contain DNA sequences associated with pathogenicity arising from aetiological agents, toxins, and source organisms identified in the CCL; or
d.2. Micro-organisms genetically modified to produce any of the toxins listed in paragraph e. of this ECCN.

e. Toxins, as follows:
e.1. Botulinum toxins;
e.2. Clostridium perfringens toxins;
e.3. Conotoxin;
e.4. Ricin;
e.5. Saxitoxin;
e.6. Shiga toxin;
e.7. Staphylococcus aureus toxins;
e.8. Tetrodotoxin;
e.9. Verotoxin; or
e.10. Microcystin (cyanogenosin).

4. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), ECCN 1E60C is amended by revising the ECCN heading to read as follows:

**1E60C Technology for the production and/or disposal of chemical precursors described in ECCN 1C60, and technology as described in the list below for facilities designed or intended to produce chemicals described in ECCN 1C60.**

5. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), ECCN 1E61B is amended by revising the ECCN heading to read as follows:

**1E61B Technology for the production and/or disposal of microbiological commodities described in ECCN 1C61.**

**Supplement No. 1 to § 779.2 [Amended]**

6. In Supplement No. 1 to § 779.2 (Interpretations), interpretations Nos. 24, 25, and 26 are removed.

Dated: July 7, 1992.
**James M. LeMunyon,**
*Acting Assistant Secretary for Export Administration.*

[FR Doc. 92-16192 Filed 7-14-92; 8:45 am]
BILLING CODE 3510-DT-M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 176**

**[Docket No. 89F-0315]**

## Indirect Food Additives: Paper and Paperboard Components

**AGENCY:** Food and Drug Administration, HHS.
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,2-dibromo-2,4-dicyanobutane as a preservative in defoaming agents used in the

manufacture of paper and paperboard intended to contact food. This action responds to a petition filed by Calgon Corp.

**DATES:** Effective July 15, 1992; written objections and requests for a hearing by August 14, 1992.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of August 14, 1989 (54 FR 33295), FDA announced that a food additive petition (FAP 9B4150) had been filed by Calgon Corp., Calgon Center, P.O. Box 1346, Pittsburgh, PA 15230. The petition proposed to amend § 176.210 *Defoaming agents used in the manufacture of paper and paperboard* (21 CFR 176.210) to provide for the safe use of 1,2-dibromo-2,4-dicyanobutane as a preservative in defoaming agents used in the manufacture of paper and paperboard intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe and that § 176.210(d)(3) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 14, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 176**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

## PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

**Authority:** Secs. 201, 402, 406, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 376).

2. Section 176.210 is amended in paragraph (d)(3) by alphabetically adding a new entry to read as follows:

**§ 176.210 Defoaming agents used in the manufacture of paper and paperboard.**

* * * * *

(d) * * *

(3) Miscellaneous:

* * * * *

1,2-Dibromo-2,4-dicyanobutane (CAS Reg. No. 35691–65–7), for use as a preservative at a level not to exceed 0.05 weight-percent of the defoaming agent.

* * * * *

Dated: July 7, 1992.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92–16539 Filed 7–14–92; 8:45 am]

BILLING CODE 4160–01–F

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**21 CFR Part 510**

## Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name for a new animal drug application (NADA) from Intervet America, Inc., to Intervet, Inc.

**EFFECTIVE DATE:** July 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8648.

**SUPPLEMENTARY INFORMATION:** Intervet, Inc., P.O. Box 318, 405 State St., Millsboro, DE 19966, has informed FDA of a change of sponsor name from Intervet America, Inc., to Intervet, Inc. Accordingly, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name.

**List of Subjects in 21 CFR Part 510**

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

**§ 510.600 [Amended]**

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Intervet America, Inc." and in the table in paragraph (c)(2) in the entry for "057926" by removing "Intervet

America, Inc." and adding in its place "Intervet, Inc."

Dated: July 7, 1992.

**Robert C. Livingston,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 92-16538 Filed 7-14-92; 8:45 am]

BILLING CODE 4160-01-F

## 21 CFR Part 524

## Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Change of Sponsor

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from SmithKline Beecham Animal Health, to Solvay Animal Health, Inc.

**EFFECTIVE DATE:** July 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8646.

**SUPPLEMENTARY INFORMATION:** SmithKline Beecham Animal Health, 1600 Paoli Pike, West Chester, PA 19380, has informed FDA that it has transferred ownership of, and all rights and interests in, approved NADA 32-319 for Furox Aerosol Powder (furazolidone) to Solvay Animal Health, Inc., 1201 Northland Dr., Mendota Heights, MN 55120. Accordingly, FDA is amending the regulations in 21 CFR 524.1005 to reflect the change of sponsor.

### List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

### PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

**§ 524.1005 [Amended]**

2. Section 524.1005 *Furazolidone aerosol powder* is amended in paragraph (b)(1) by removing "053571" and adding in its place "053501".

Dated: July 7, 1992.

**Robert C. Livingston,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 92-16537 Filed 7-14-92; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF JUSTICE

## 28 CFR Part 0

**[AG Order No. 1600-92]**

## Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service (FBI-DEA SES) in accordance with Public Law 100-325 (1988). With respect to personnel within the FBI, the Director of the FBI is authorized to administer the FBI-DEA SES. With respect to personnel within the DEA, the Deputy Attorney General is authorized to administer the FBI-DEA SES.

**EFFECTIVE DATE:** July 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** Paul Mathwin, Executive Secretary, Senior Executive Resources Board, Department of Justice, Main Building, room 1103, Tenth and Pennsylvania Avenue, NW., Washington, DC 20530; telephone (202) 514-4006.

**SUPPLEMENTARY INFORMATION:** The Department of Justice is formally establishing an FBI-DEA SES as provided for in Public Law 100-325 (1988), codified at 5 U.S.C. 3151. This rule establishes the basic structure of the FBI-DEA SES.

Because this rule does not require the collection of information from the public, the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply. This rule governs only employees of the FBI and DEA. Therefore, the requirements of 5 U.S.C. 553 do not apply, and the rule is made effective upon issuance. For this same reason, in accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291; nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

### List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

In order to ensure that the executive management of the FBI and DEA is responsive to the needs, policies, and goals of the Nation, and otherwise is of the highest quality, and in accordance with Public Law 100-325, I hereby direct that part 0 of title 28 of the Code of Federal Regulations be amended as follows:

### Part 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

2. Subpart X of part 0 is amended by adding § 0.157.

**§ 0.157 Federal Bureau of Investigation—drug enforcement administration senior executive service.**

(a) Pursuant to 5 U.S.C. 3151, there is established a personnel system for senior personnel within the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA) to be known as the FBI-DEA Senior Executive Service (FBI-DEA SES).

(b) The FBI-DEA SES is subject to the overall supervision and direction of the Deputy Attorney General.

(c) With respect to personnel within the FBI, and consistent with paragraph (b) of this section and § 0.137, the Director of the FBI is authorized to exercise the authority conferred upon the Attorney General by 5 U.S.C. 3151 and shall ensure that the FBI-DEA SES is designed and administered in compliance with all statutory and regulatory requirements.

(d) With respect to personnel within the DEA, the Deputy Attorney General is authorized to exercise the authority conferred upon the Attorney General by 5 U.S.C. 3151 and shall ensure that the FBI-DEA SES is designed and administered in compliance with all statutory and regulatory requirements.

Dated: July 6, 1992.

**William P. Barr,**

*Attorney General.*

[FR Doc. 92-16421 Filed 7-14-92; 8:45 am]

BILLING CODE 4410-01-M

**28 CFR Part 20**

**[AG Order No. 1601-92]**

## Authorization of Inclusion of Juvenile Records in the FBI Criminal History Information System

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule authorizes inclusion of juvenile records in the Federal Bureau of Investigation criminal history information system. The current provision excludes offenses committed by juvenile offenders unless a juvenile is tried as an adult. This change is necessary to implement an element of the comprehensive violent crime control initiative that was announced by President Bush in 1989. The pertinent element of the initiative calls on states to maintain records and report on all serious crimes committed by juveniles to facilitate the early identification of repeat offenders and recidivists.

**EFFECTIVE DATE:** July 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** Bennie F. Brewer, Assistant Section Chief, Correspondence and Special Services Section, Identification Division, room 10861, Federal Bureau of Investigation, Washington, DC 20537-9700, telephone (202) 324-5456.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 534(a)(1) of title 28, United States Code, provides that the Attorney General shall "acquire, collect, classify, and preserve identification, criminal identification, crime, and other records." The function of maintaining criminal history record information is delegated to the Federal Bureau of Investigation pursuant to 28 CFR 0.85(b) and 20.31.

This amendment, authorizing inclusion of juvenile records in the FBI records system, is necessary to implement an element of the President's comprehensive violent crime control initiative which calls on the states to "maintain records and report on all serious crimes committed by juveniles who frequently continue their criminal careers into adulthood, but often escape early identification as repeat offenders and recidivists because their juvenile records are not reported." White House Fact Sheet of May 15, 1989, at 6. The same point was endorsed by the Attorney General's Task Force on Violent Crime in 1981, Final Report at 82-83, which recommended that the states should be encouraged to make available criminal history information for juveniles convicted of serious crimes, and that such information should be entered into the FBI criminal records system.

Empirical data confirms that the unavailability of juvenile criminal records is a substantial concern in relation to serious offenders. For example, the Bureau of Justice Statistics has estimated that 55 percent of armed robbers in state prisons in 1986 had previously been sentenced to probation or incarceration as a juvenile, and that 15 percent had a prior juvenile, but no adult, sentence. Corresponding figures for other crime categories include the following:

| Offense | Prior juvenile sentence (percent) | Prior juvenile sentence only (percent) |
|---|---|---|
| Homicide | 38 | 13 |
| Sexual assault | 36 | 11 |
| Aggravated assault | 43 | 9 |
| Robbery | 54 | 15 |
| Kidnapping | 50 | 15 |
| Burglary | 58 | 9 |
| Larceny | 49 | 5 |
| Arson | 43 | 14 |

Similarly, information compiled by the Federal Bureau of Investigation in the Uniform Crime Reports shows that a substantial proportion of arrests for serious crimes involve juveniles. In 1988, for example, the figures for arrests reported to the FBI showed that persons under the age of 18 accounted for 1,634,790 arrests, comprising over 16 percent of the total. The corresponding figures concerning reported arrests for particular crimes in 1988 include the following:

| Offense | Arrests of persons under 18 | Percent of all arrests |
|---|---|---|
| Willful homicide | 1,765 | 11 |
| Forcible rape | 4,118 | 14 |
| Aggravated assault | 38,536 | 13 |
| Robbery | 24,337 | 22 |
| Burglary | 111,284 | 34 |
| Larceny-theft | 351,133 | 30 |
| Motor vehicle theft | 61,301 | 40 |
| Arson | 5,218 | 43 |

The availability of records of juvenile arrests and convictions for law enforcement purposes is currently limited, however, by section 20.32 to title 28, Code of Federal Regulations, which generally bars inclusion of juvenile records in the national system of criminal records maintained by the FBI. This amendment changes the rule to authorize the inclusion of juvenile records in the FBI records system.

Section 20.32 of title 28, Code of Federal Regulations, defines the offenses that will be accepted in the FBI records system. Paragraph (a) of the rule states that information is to be included concerning "serious and/or significant offenses." Paragraph (b) states that nonserious offenses are excluded, such as drunkenness, vagrancy, disturbing the peace, curfew violations, loitering, false fire alarm, non-specific charges of suspicion or investigation, and traffic infractions. However, the second sentence of paragraph (b) uniformly excludes offenses committed by juveniles, unless the juvenile was tried as an adult. The amendment deletes this sentence and makes a conforming change in paragraph (a) to make it clear that both "adult and juvenile" offenses are to be included.

A complementary change in 18 U.S.C. 5038, which governs reporting of records of juveniles who are federally prosecuted, has been proposed in section 601 of the Administration's proposed "Comprehensive Violent Crime Control Act of 1991." The statutory change would require reporting of records for federally prosecuted juveniles who are convicted of the serious violent crimes and drug crimes that support the exercise of federal jurisdiction pursuant to clause (3) of the first paragraph of 18 U.S.C. 5032. It would also authorize reporting of records as permitted by the law of the state in which a federal juvenile delinquency proceeding takes place.

### Rulemaking History

On June 5, 1991, the Department of Justice published a notice of proposed rulemaking in the **Federal Register** (56 FR 25842) setting out the change adopted in this rule. Comments were received from 24 individuals and organizations, representing participants in law enforcement, criminal records systems, probation, parole, juvenile justice, and criminal defense.

### Comments Received on the Proposed Rule

Both positive and negative comments were received concerning the proposed rule change, as well as comments that raised questions or made suggestions.

Many of the negative comments appeared to reflect a misapprehension that the proposed change would somehow compel the states to forward juvenile records to the FBI for inclusion in the national records system. However, the effect of the amendment is only to give the FBI the same authority to receive juvenile records and to include them in the national criminal records system that it currently has in relation to adult records. Whether a state forwards juvenile records to the

FBI for inclusion in the national records system—and if so, what class or classes of juvenile records are forwarded—will continue to depend on that state's law and policy.

This same consideration provides a response to many of the suggestions and questions raised in the comments. The types of records to be forwarded, who would be responsible for forwarding them, and other issues of this type would depend on state law and policy. Juvenile records forwarded to the FBI would be retained and made available on the same basis as adult records forwarded to the FBI. States would be aware of this, and would take it into account in deciding what records to forward.

Similarly, concerns that some juveniles might be unfairly prejudiced by retention and availability of records—such as juveniles charged with, or found guilty of, relatively minor misconduct—are adequately addressed under this approach. States would balance these concerns against the public interest in making the records of serious juvenile offenders available for law enforcement and judicial use, and for other legally authorized purposes, in deciding on what juvenile records to forward to the FBI.

Comparable decisions are now required of states in deciding what juvenile records should be retained and made available through state criminal records repositories. However, even if a state has decided to retain and make available certain juvenile records through its own repository, it cannot forward such records for inclusion in the national criminal records system maintained by the FBI, because the current regulation bars the FBI from receiving them. The rule change will remove this obstacle to the effectuation of state policies in this area.

The specific comments received were as follows:

Thomas J. McGreevy, custodian of Georgia's criminal identification records and computerized criminal history record files, submitted comments stating that the rule change will provide substantial benefits to the federal and state criminal justice systems, as described in the notice of proposed rulemaking. He further stated that the change will provide a clear signal to many state legislatures (including Georgia's) that current statutory restrictions on obtaining and retaining juvenile offenders' fingerprints can be lifted without conflicting with federal rules or practices.

Gaylord A. Sprauve, Drug Policy Advisor to the Governor of the Virgin Islands of the United States, submitted comments stating that the inclusion of juvenile records in the FBI records system "will provide meaningful data, offender profiles, and assist in effective planning for juvenile delinquency prevention services on a national and local level."

Cois Byrd, Sheriff of Riverside County, California, submitted comments stating that he is "heartily in favor of this change." He noted that complete criminal history information makes it possible to focus criminal justice resources on apprehending, prosecuting, and incarcerating persons whose criminal histories indicate that they pose the greatest threat to society. He stated that while the tendency in the past has been to keep secret the criminal histories of juvenile offenders, current experience shows that some juveniles have long histories of truly vicious crimes. He also noted that the extreme mobility of persons in modern America, together with the lack of available information about the juvenile records of such offenders, results in erroneous decisions by investigators, prosecutors and courts not to press forward on otherwise viable cases against newly adult career criminals.

Kathryn Barton, director of a program in South Carolina that deals with the diversion of first-time juvenile offenders from the court system to a community-based arbitration system, stated that the proposed rule change would be "another incentive for juveniles to go through diversion programs and make restitution to the victim and community, without receiving a court record."

R. G. Waldner, Chief of Police for Tukwila, Washington, stated that he "heartily support[s]" modification of the rule to be amended to include juvenile records in the FBI criminal records system.

Teresa Villa Ramirez, Assistant Executive Director of the Juvenile Probation Department of Harris County, Texas, forwarded a resolution adopted by that Department. The resolution states that the Department "would support a procedure such as the one proposed, but suggests that it be limited to convictions of a grade of felony only."

Joseph J. Casper, Chairman of the Governor's Juvenile Justice Advisory Council in South Carolina, submitted comments stating that "[i]n view of the increase in serious offenses by juveniles and the subsequent [] committing of major crimes by these juveniles, when they become adults, South Carolina feels that the Criminal Justice system will be better off by having this information available to the courts, prosecutors, and law enforcement."

Probation Officer E. B. Noble of Calaveras County, California, stated that inclusion of juvenile records for serious crimes in the FBI records system would be an advantage on a national level, but that the county was disallowed from sharing such information with the FBI by a court order enforcing provisions of state law regarding the confidentiality of certain juvenile records.

Mary Jo Williams, a parole analyst with the District of Columbia Board of Parole, stated that access to complete prior criminal history information is necessary, and that all serious prior convictions need to be assessed, including juvenile adjudications, in order to accurately assess a prisoner's suitability for parole. She further stated that inclusion of serious juvenile offenses in the FBI criminal records information system will promote equitable consideration for parole by providing greater uniformity in the availability of such information.

Laraine Koga, writing on behalf of the Department of the Attorney General of Hawaii, stated that police and prosecutors in the state responding to a call for comments anticipated no problems with the rules change and expressed support for it. However, representatives of the Family Courts and the Office of Youth Services in the state expressed concerns relating to several issues, including a prohibition under state law of including juvenile fingerprints in an automated fingerprint identification system, the need for expungement criteria, who will have access to the information and how it will be corrected if it is wrong, what offenses would be covered, whether arrest records or only adjudications would be included, and who would be responsible for providing the information.

Richard W. Friedman, Director of the Juvenile Justice Advisory Council in Maryland, and Robert W. McKeever, Chairman of the Criminal Justice Information Advisory Board in the same state, requested that action on the rule change be deferred so as to afford more time to assess it or to address its implications in the state. It should be noted in relation to these requests that action on this final rule has been deferred for several months beyond the close of the formal 30-day comment period, and that comments received after the close of the formal comment period, as well as those received within the period, have been considered by the Department of Justice and included in this summary.

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Gary L. Bush, writing on behalf of SEARCH, the National Consortium for Justice Information and Statistics, advised that the organization declined to take a formal position on the proposed rule change "because members concluded that the scope and impact of the proposed rule is unclear." However, Mr. Bush's letter advised that SEARCH members expressed support for the concept of including juvenile fingerprint records in the FBI record system for latent identification purposes; that some support was expressed for including, disseminating, and using juvenile history records for other criminal justice purposes; and that numerous members expressed strong reservations about the possible use and dissemination of such records for noncriminal justice purposes, particularly since many state laws prohibit or severely limit such use. Members raised many questions about the effect of the proposed rule on state repositories, such as how juvenile records are to be submitted to the FBI, whether such records will be indexed in the Interstate Identification Index (III) system, whether states participating in III will be required to make juvenile records available for criminal justice and possibly noncriminal justice purposes, and whether changes need to be made in the proposed Interstate Compact on III to accommodate the proposed rule change.

Guy Fournier, writing on behalf of the Vermont Children and Family Council for Prevention Programs, objected that the amendment is not limited to serious crimes; that it blurs the distinction between juveniles and adults and between felonies and misdemeanors; that it is contradictory to the purposes of the Juvenile Justice and Delinquency Prevention Act which provides jail separation rules for adult offenders and delinquent juveniles with differential rules depending on the seriousness of the charge; and that it is in conflict with state law provisions regarding the treatment of delinquent juveniles and juvenile records.

Carl Womack, Chief Probation Officer in Colusa County, California, expressed concerns relating to the confidentiality issues surrounding juvenile matters, how the reported information would be used or disseminated, and the possibility that an individual who has reformed will suffer repeated inequities as a result of a short period of wrongdoing early in life. He further stated that good investigation by police and probation staff will turn up the kind of ongoing criminal behavior that judges need to know about for adult sentencing.

Al Lick, Director of the North Dakota Division of Juvenile Services, indicated that the proposed rule change is contrary to the philosophy of North Dakota laws protecting the confidentiality of juvenile records.

Sheldon A. Gusky, Chairman of the Governor's Juvenile Justice and Delinquency Prevention Advisory Committee in Florida, stated that there is a long history of treating juvenile offenders differently from adult offenders, with primary emphasis on rehabilitation; that he "vehemently oppose[s]" including juvenile records with adult records unless the juvenile is tried and convicted as an adult; and that the proposed rule change threatens rehabilitative and sentencing programs dealing with juveniles.

Elliot C. Metcalfe, Jr., President of the Florida Public Defender Association, sent a letter on behalf of the elected public defenders in Florida that was essentially the same as the letter of Mr. Gusky, described above.

Joe R. Walden, Sr., Director of Juvenile Institutions in Fresno County, California, stated that he opposes the rule change because arrest records rather than convictions would apparently be included, because the offenses covered apparently would not be restricted to a limited number of highly serious crimes, and because federal agencies including the FBI would not be bound by state court orders requiring the sealing, expungement, or destruction of juvenile records.

Chief Probation Officer Edward F. Eden of Sutter County, California, objected to the proposed rule change on the grounds that it would be costly and time-consuming for counties to have to submit information on juvenile cases, that state court orders sealing juvenile records would become meaningless because they would not apply to a federal rap sheet, because federal rap sheets reach Sutter County too slowly to be useful, and because the definition of "serious and/or significant offense" would be problematic.

Chief Probation Officer Steven H. Lyman of Siskiyou County, California, stated that he felt that the proposed rule change would be detrimental to the purpose of juvenile law. He raised various questions relating to the change, including whether it would apply to juvenile citations that do not result in a formal adjudication, whether probation departments would have to fingerprint juveniles or transmit such fingerprints to the FBI, who would be responsible for determining which offenses are covered, whether records in the FBI system would be subject to sealing or removal of some period of time, how the system would be able to handle the addition of information on juveniles, and how the change would reduce crime. He further stated that a majority of his office's juvenile clients are in trouble because they lack "the proper guidance or tools available to them," and that most can be rehabilitated and can become productive members of society.

Robert J. Schack, Chair of the Subcommittee on Legislation of the Committee on Juvenile Justice and Child Welfare of the New York State Bar Association, submitted comments on behalf of the Committee, which objected that legislatures have not made comparable changes, that "the vast majority" of juvenile delinquents do not go to commit adult crimes, that adult criminals' juvenile records are located for use in sentencing without help from the FBI, that experience in states like New York that have begun maintaining juvenile records for the most serious crimes has shown that such records do not significantly improve clearance or conviction rates, that entry of records of juveniles into the national records system would do permanent damage to their ability to enter the armed forces and to obtain employment and credit, and that it would accordingly force many juveniles into lives of crime.

Lenore Gittis, writing on behalf of the Juvenile Rights Division of the Legal Aid Society of New York City, objected that the rule change will unnecessarily stigmatize youth deserving of a "fresh start" and hamper rehabilitation by limiting employment opportunities through the creation of permanent records of juvenile misconduct, that the change is contrary to standards proposed by the Institute of Judicial Administration and the American Bar Association, that New York State has laws which broadly provide for the sealing and destruction of juvenile records, that expansion of the federal records system will multiply the instances in which juvenile records are improperly retained, and that the existing authorization for including records of juveniles who are prosecuted as adults is adequate to provide federal authorities with information concerning juveniles who commit the most serious offenses.

Lydia S. Jackson, Executive Director of the Children and Youth Coordinating Council in Georgia, stated that Georgia could not transmit juvenile records to the FBI in light of existing provisions of state law, including a specific provision that juvenile fingerprint files may not be

sent to a central state or federal depository unless needed in the interest of national security. Ms. Jackson noted, however, that legislation had been introduced in the Georgia General Assembly that would allow the Georgia Criminal Information Center (GCIC) to routinely collect and make available the records of juvenile offenders for law enforcement purposes. She stated that such legislation, if passed, would probably allow for implementation of the proposed rule change since GCIC routinely forwards information to the National Crime Information Center operated by the FBI. She further stated that such a change would probably not have a negative impact on the treatment of juveniles in Georgia, since state law already allows for the inspection of juvenile records in the course of the pre-sentence investigation for adult offenders, and the proposed change would apparently just expedite the process. She suggested, however, consideration of provisions of purging juvenile records if the records have been sealed or if a juvenile offender has not re-offended during a specified period of time after becoming an adult.

In sum, the favorable comments received on the proposed rule change provide additional support for permitting the FBI to include juvenile records into the national criminal records system. The negative comments raised issues that are appropriately addressed to the states in their consideration of what class or classes of records should be entered into the national records system. As noted earlier, this rule change does not override state laws or policies, since the submission of juvenile records will be a matter of state discretion. Rather, the change will contribute to the effectuation of state policies by allowing the FBI to enter state juvenile records in the national criminal records system, where a state has concluded that such records should be retained and made available.

Having considered all of the comments received, the Department of Justice finds no adequate ground to refrain from promulgating the rule change as proposed. Rather, as noted in the President's violent crime initiative, the change is desirable as a means of permitting and encouraging the states to "maintain records and report on all serious crimes committed by juveniles who frequently continue their criminal careers into adulthood, but often escape early identification as repeat offenders and recidivists because their juvenile records are not reported."

**Regulatory Process Matters**

In accordance with 5 U.S.C. 605(b), it is certified that this rule will not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, and it does not have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

It is hereby certified that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

**List of Subjects in 28 CFR Part 20**

Classified information, Crime, Intergovernmental relations, Investigations, Law enforcement, Privacy.

Therefore, by virtue of the authority vested in me by law, including 28 U.S.C. 509, 510, and 534, and 5 U.S.C. 301, part 20 of title 28, Code of Federal Regulations, is amended as follows:

**PART 20—[AMENDED]**

1. The authority citation for part 20 is revised to read as follows:

**Authority:** 28 U.S.C. 534; Public Law 92–544, 86 Stat. 1115; 42 U.S.C. 3711, *et seq.*; Public Law 99–169, 99 Stat. 1002, 1008–1011, as amended by Public Law 99–569, 100 Stat. 3190, 3196.

**§ 20.32 [Amended]**

2. Section 20.32 is amended by inserting the words "adult and juvenile" before the word "offenses" in paragraph (a) and by removing the second sentence in paragraph (b).

Dated: July 6, 1992.

**William P. Barr,**

*Attorney General.*

[FR Doc. 92–16420 Filed 7–14–92; 8:45 am]

BILLING CODE 4410–01–M

## PENSION BENEFIT GUARANTY CORPORATION

**29 CFR Parts 2610 and 2622**

**Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning July 1, 1992. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in May through July 1992. These interest rates are established pursuant to section 4006 of the Employee Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone (202) 778–8850 ((202) 778–8859 for TTY and TTD). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** As part of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in appendix A to the premium regulation and appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning July 1, 1992, the interest charged on the underpayment of taxes will be at a rate of 8 percent. Accordingly, the PBGC is amending appendix A to 29 CFR part 2610 and appendix A to 29 CFR part 2622 to set forth this rate for the July 1, 1992, through September 30, 1992, quarter.

Under ERISA section 4006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium

regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in appendix B to the regulation.

The PBGC publishes these monthly interest rates in appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in appendix A. (The PBGC publishes the appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the appendix A rate, which is determined prospectively, the appendix B rate is not known until a short time after the first of the month for which it applies. Accordingly, the PBGC is hereby amending appendix B to Part 2610 to add the vested benefits valuation rates for plan years beginning in May through July of 1992.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in appendix B to part 2610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these amendments is a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

*29 CFR Part 2610*

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

*29 CFR Part 2622*

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, appendix A and appendix B to part 2610 and appendix A to part 2622 of chapter XXVI of title 29, Code of Federal Regulations, are hereby amended as follows:

## PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1306, 1307 (1988), as amended by sec. 7881(h), Pub.L. 101–239, 103 Stat. 2106, 2242.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning July 1, 1992, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

**Appendix A—Late Payment Interest Charges**

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

| From | Through | Interest rate (percent) |
|---|---|---|
| • | • | • |
| July 1, 1992 | September 30, 1992 | 8 |

3. Appendix B to part 2610 is amended by adding to the table of interest rates therein new entries for premium payment years beginning in May of 1992 through July of 1992, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

**Appendix B—Interest Rates for Valuing Vested Benefits**

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

| For premium payment years beginning in— | Required interest rate [1] |
|---|---|
| • | • |
| May 1992 | 6.27 |
| June 1992 | 5.31 |
| July 1992 | 5.27 |

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

## PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68, as amended by secs. 9312, 9313, Public Law 100–203, 101 Stat. 1330.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning July 1, 1992, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

**Appendix A Part 2622—Late Payment and Overpayment Interest Rates**

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

| From | Through | Interest rate (percent) |
|---|---|---|
| • | • | • |
| July 1, 1992 | September 30, 1992 | 8 |

Issued in Washington, DC, this 7th day of July 1992.

**James B. Lockhart III,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 92–16575 Filed 7–14–92; 8:45 am]

BILLING CODE 7708–01–M

*29 CFR Part 2619*

## Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning August 1, 1992. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or

after August 1, 1992, which will remain in effect until the PBGC issues new interest rates and factors.

**EFFECTIVE DATE:** August 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD only). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the Subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since July 1, 1992. This amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after August 1, 1992, which set reflects a decrease of ¼ percent in the immediate interest rate from 6¼ percent to 6 percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after August 1, 1992, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

**List of Subjects in 29 CFR Part 2619**

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 98 of appendix B is revised and Rate Set 99 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

**Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities**

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, $k_1$, $k_2$, $k_3$, $n_1$ and $n_2$ and defined in § 2619.45.

| Rate set | For plans with a valuation date | | Immediate annuity rate (%) | Deferred annuities | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $k_1$ | $k_2$ | $k_3$ | $n_1$ | $n_2$ |
| • | • | • | • | • | • | • | • | • |
| 98 | 7–1–92 | 8–1–92 | 6.25 | 1.0550 | 1.0425 | 1.0400 | 7 | 8 |
| 99 | 8–1–92 | | 6.00 | 1.0525 | 1.0400 | 1.0400 | 7 | 8 |

Issued in Washington, DC, on this 7th day of July, 1992.

**James B. Lockhart III,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 92–16574 Filed 7–14–92; 8:45 am]

BILLING CODE 7708–01–M

**29 CFR Part 2644**

**Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from July 1, 1992, to September 30, 1992.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 6½ percent, which will be effective from July 1, 1992 through September 30, 1992. This rate represents no change from the rate in effect for the second quarter of 1992. This rate is based on the prime rate in effect on June 15, 1992.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects in 29 CFR Part 2644**

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

## PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3) and 1399(c)(6).

*Appendix A—Amended*

2. Appendix A is amended by adding to the end of the table therein a new entry as follows:

| From | To | Date of quotation | Rate |
|---|---|---|---|
| • | • | • | • |
| 07/01/92 | 09/30/92 | 06/15/92 | 6½ percent. |

Issued in Washington, DC, on this 7th day of July 1992.

**James B. Lockhart III,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 92-16572 Filed 7-14-92; 8:45 am]

BILLING CODE 7708-01-M

## 29 CFR Part 2676

## Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of August 1992.

**EFFECTIVE DATE:** August 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The PBGC finds that notice of and public comment on this amendment would be impracticable and contary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**List of Subjects in 29 CFR Part 2676**

Employee benefit plans and pensions.

In consideration of the foregoing, part 2676 of Subchapter H of chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

**PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL**

1. The authority citation for Part 2676 continues to read as follows:

**Authority:** 29 U.S.C. §§ 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

**§ 2676.15 Interest.**

* * * * *

(c) *Interest Rates.*

| For valuation dates occurring in the month— | The values for $i_t$ are— | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $i_1$ | $i_2$ | $i_3$ | $i_4$ | $i_5$ | $i_6$ | $i_7$ | $i_8$ | $i_9$ | $i_{10}$ | $i_{11}$ | $i_{12}$ | $i_{13}$ | $i_{14}$ | $i_{15}$ | $i_n$ |
| August 1992 | .065 | .06375 | .0625 | .06125 | .06 | .05875 | .05875 | .05875 | .05875 | .05875 | .0575 | .0575 | .0575 | .0575 | .0575 | .055 |

Issued at Washington, D.C., on this 7th day of July 1992.

**James B. Lockhart III,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 92-16573 Filed 7-14-92; 8:45 am]

BILLING CODE 7708-01-M

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

**[CGD1 92-083]**

## Safety Zone; Wake Up America Fireworks, Boston Harbor, Boston, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone in Boston Harbor on July 15, 1992 for the Wake Up America Fireworks Display. The zone is needed to protect the fireworks barge and its attending tug, persons viewing the display, spectator craft, and personnel in the area from the safety hazard associated with the explosive-laden barge and the display itself. The implementation of this zone will close the affected portion of the Boston Main Channel to navigation by all other deep draft vessel traffic while this zone is in effect.

**EFFECTIVE DATES:** This regulation becomes effective on July 15, 1992 at 8 p.m. It terminates on July 15, 1992 at 11:59 p.m. local time, unless sooner terminated by the COTP Boston.

**ADDRESSES:** The docket for this rulemaking is available for inspection or copying at room 230, U.S. Coast Guard Marine Safety Office, 455 Commercial Street, Boston, MA 02109-1045, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Steve Garrity, USCG Marine Safety Office Boston, at (617) 223-3020.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Steve Garrity, project officer for the COTP Boston, and Lieutenant Commander John Astley, project attorney, First Coast Guard District Legal Office.

### Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after the **Federal Register** publication. The Coast Guard is implementing a safety zone in response to an application for approval of a marine event from the Wake Up America Committee, submitted on June 15, 1992, to conduct a fireworks display in the Boston Main Channel as part of the Christopher Columbus Festival to be held July 15, 1992. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury to the persons and vessels involved.

### Background and Purpose

On the evening of July 15, 1992, the Wake Up America Committee will sponsor its Wake Up America Fireworks Display to occur in the Boston Main Channel in the vicinity of pier 4, South Boston in approximate position 42-21-26 N., 071-02-22 W. Fireworks barges will be moved on site from Cashman's Shipyard in East Boston at 8 p.m. The fireworks are scheduled to take place between 10 p.m. and 10:30 p.m. For this event, the Coast Guard is establishing a safety zone from the Tobin Bridge, Mystic River to Castle Island, Boston Main Channel, including the waters on either side of the channel to the shoreline. This safety zone is in effect between 8 p.m. and 11:59 p.m. and will include special regulations requiring spectator craft to maintain at all times at least 300 yards safe distance from all fireworks barges and their attending tugs; requiring spectator craft to select and remain in position at least one-half hour before this event; restricting vessel operators to proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour; establishing traffic patterns to take effect upon the conclusion of the display; and prohibiting boaters from passing outbound patrol vessels showing blue lights. No rain date is planned for this event. This zone is needed to protect the fireworks barges and their attending tugs, persons viewing the display, spectator craft, and personnel in the area from the safety hazard associated with the explosive-laden barge and the display itself. Implementation of this zone closes the affected portion of the Boston Main Channel to navigation by deep draft vessels while this zone is in effect. Vessel movements within the zone will be as directed by on-scene Coast Guard patrol personnel.

### Regulatory Evaluation

This rule is not major under Executive Order 12291 on Federal Regulation and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. Costs to the shipping industry from these regulations, if any, will be minor and have no significant adverse financial effect on vessel operators as the event will be of less than four hours duration. Deep draft vessel traffic may experience slight delays in departures or arrivals during the fireworks display; however, mariners can adjust the time of their movements just ahead or just after the event, as appropriate.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard

must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since this action will cause only slight, intermittent delays in transits by deep draft vessel traffic, no significant adverse economic impact should result from this rulemaking. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded under section 2.B.2.c of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. In fact, implementation of this rulemaking should help to reduce the risk of collision or other marine accidents. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES**".

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Latest research, reporting, and record keeping requirements, Security measures, Waterways.

**Regulation**

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new section 165.T01–083 is added to read as follows:

**§ 165.T01–083 Safety Zone; Wake Up America Fireworks, Boston Harbor, Boston, MA**

(a) *Location.* The following area is a safety zone: The Mystic River, the Boston Main Channel, and Charles River bounded on the east by a line drawn from the McKay Monument, Castle Island to the end of the approach pier at Logan Airport, East Boston; bounded on the north by the Tobin Bridge, Mystic River; and bounded on the west by a line drawn from the eastern most point of the MDC Pier at Puopolo Park to the northeastern corner of Hoosac Pier, Charlestown, MA. The zone includes also the waters on either side of the channel to the shoreline.

(b) *Effective date.* This regulation becomes effective on July 15, 1992 at 8 p.m., when the Wake Up America Fireworks barge and its attending tug depart their East Boston, MA loading site to take position in the Boston Main Channel off pier 4, South Boston, in approximate position, 42–21–26 N, 071–02–22W. It terminates on July 15, 1992 at 11:59 p.m. when the vessels return and are safely moored at their respective East Boston, MA loading sites, unless sooner terminated by the COTP Boston.

(c) *Regulations.* The following special regulations apply:

(1) Vessels over 100 gross tons may not transit through the safety zone from 8 p.m. to 11:59 p.m., except as authorized by the COTP Boston.

(2) Vessel operators shall maintain at all time at least 300 yards from safe distance form the Wake Up America Fireworks barge and its attending tugboat.

(3) Vessel operators must transit to and select viewing positions before 9:30 p.m. and remain in position until the fireworks display ends at 10:30 p.m.

(4) Vessel operators may not maneuver between anchored vessels.

(5) Vessel operators must maneuver as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

(6) During the effective period operators of vessels transiting the safety zone shall proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour.

(7) Following the event, inbound vessels must keep to the starboard or "red" side of the channel; and outbound vessels to the port or "green" side.

(8) After completion of the fireworks display, vessel operators within the safety zone are prohibited from passing outbound patrol vessels showing blue lights.

Dated: July 3, 1992.

**W.H. Boland, Jr.,**

*Captain, U.S. Coast Guard Captain of the Port, Boston, Massachusetts.*

[FR Doc. 92–16612 Filed 7–14–92; 8:45 am]

BILLING CODE 4910–14–M

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**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 36**

**Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final regulations.

**SUMMARY:** The Department of Veterans Affairs (VA) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

**EFFECTIVE DATE:** July 8, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Judy Caden, Loan Guaranty Service (264), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3042.

**SUPPLEMENTARY INFORMATION:** The Secretary is required by section 3712(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by VA as he/she finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets

have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Secretary is also required by section 3703(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

**Regulatory Flexibility Act/Executive Order 12291**

For the reasons discussed in the May 7, 1981, Federal Register, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.118, 64.114, and 64.119)

These regulations are adopted under the authority granted to the Secretary by sections 501(c), 3703(c)(1), 3711(d)(1) and 3712 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending sections 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

**List of Subjects in 38 CFR Part 36**

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured Homes, Veterans.

Approved: July 2, 1992.

**Anthony J. Principi,**

*Deputy Secretary.*

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below:

**PART 36—LOAN GUARANTY**

1. The authority citation for §§ 36.4201 through 36.4287 continues to read as follows:

**Authority:** Sections 36.4201 through 36.4287 issued under 72 Stat. 1114, 84 Stat. 1110 (38 U.S.C. 501, 3712).

**§ 36.4212 [Amended]**

2. In § 36.4212, remove the date "February 24, 1992", wherever it appears, and add, in its place, the date "July 6, 1992".

3. In § 36.4212, paragraph (a)(1), remove the number "11", wherever it appears, and add, in its place, the number "10½"; in paragraphs (a)(2) and (a)(3), remove the number "10½", wherever it appears, and add, in its place, the number "10".

4. The authority citation for §§ 36.4300 through 36.4375 continues to read as follows:

**Authority:** Sections 36.4300 through 36.4375 issued under 72 Stat 1114 (38 U.S.C. 501).

**§ 36.4311 [Amended]**

5. In § 36.4311, remove the date "February 24, 1992", wherever it appears, and add, in its place, the date "July 6, 1992".

6. In § 36.4311, paragraph (a), remove the number "8½", wherever it appears, and add, in its place, the number "8"; in paragraph (b), remove the number "8¾", wherever it appears, and add, in its place, the number "8¼"; in paragraph (c), remove the number "10", wherever it appears, and add, in its place, the number "9½".

7. The authority citation for §§ 36.4500 through 36.4600 continues to read as follows:

**Authority:** Sections 36.4500 to 36.4600 issued under 72 Stat. 1114 (38 U.S.C. 501).

**§ 36.4503 [Amended]**

8. In § 36.4503, paragraph (a), remove the numbers "8½" and "10", wherever they appear, and add in their place, the numbers "8" and "9½", respectively.

[FR Doc. 92-16581 Filed 7-14-92; 8:45 am]
BILLING CODE 6320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 180**

**[PP 1E3925/R1150; FRL-4068-2]**

**RIN 2070-AB78**

## Pesticide Tolerance for Methidathion

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document establishes a tolerance for the insecticide methidathion in or on the raw agricultural commodity sugar apple at 0.2 part per million (ppm). This regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

**EFFECTIVE DATE:** This regulation becomes effective July 15, 1992.

**ADDRESSES:** Written objections, identified by the document control number, [PP 1E3925/R1150], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5310.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of March 25, 1992 (57 FR 10324), EPA issued a proposed rule

that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted a pesticide petition (PP) 1E3925 to EPA on behalf of the IR-4 and the Agricultural Experiment Station of Florida.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of the insecticide methidathion, *O,O*-dimethyl phosphorodithioate, *S*-ester with 4-(mercaptomethyl-2-methoxy-1,3,4-thiadiazolin-5-one), in or on the raw agricultural commodity sugar apple at 0.2 part per million (ppm). The general commodity term "sugar apple" is defined in 40 CFR 180.1(h) for tolerance purposes to include the raw agricutural commodities *Annona squamosa L.* (sugar apple, sweetsop, anon), its hybrid *A. squamosa L. X A. cherimola M.* (atemoya), and *A reticulata L.* (true custard apple). The rule establishing a commodity definition for sugar apple was published in the **Federal Register** of January 15, 1992 (57 FR 1647). The petitioner proposed that this use of methidathion be limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 29, 1992.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. By amending § 180.298(c) in the table therein by adding and alphabetically inserting the raw agricultural commodity "sugar apple" to read as follows:

**§ 180.298 Methidathion; tolerances for residues.**

* * * * *

(c) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Sugar apple | 0.2 |

[FR Doc. 92-16629 Filed 7-14-92; 8:45 am]

BILLING CODE 6560-50-F

**40 CFR Part 721**

**[OPPTS-50577F; FRL-4002-3]**

**RIN 2070-AB27**

## Benzenamine, 4,4'-[1,4-phenylenebis(1-methylethylidene)]bis[2,6-dimethyl- and Benzenamine, 4,4'[1,4-phenylenebis(1-methylethylidene)]bis[2,6-dimethyl-; Significant New Use Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substances benzenamine, 4,4'-[1,3-phenylenebis(1-methylethylidene)] bis[2,6-dimethyl- and benzenamine, 4,4'-[1,4-phenylenebis(1-methylethylidene)]bis[2,6-dimethyl- which were the subject of premanufacture notices (PMNs) P-86-501 and P-86-503, respectively, and both of which are subject to a TSCA section 5(e) consent order issued by EPA. This rule would require certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing any manufacturing or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

**DATES:** The effective date of this rule is September 14, 1992. This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on July 29, 1992.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. EB-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

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**SUPPLEMENTARY INFORMATION:** This SNUR would require persons to notify EPA at least 90 days before commencing manufacture, import, or processing of the chemical substances designated in PMNs P–86–501 and P–86–503 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

## I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

## II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354), and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

## III. Background

### *A. Proposed Rule*

EPA published a direct final SNUR for the chemical substances which were the subject of PMNs P–86–501 and P–86–503 in the **Federal Register** of June 26, 1990, (55 FR 26102). EPA received notice of intent to submit adverse comments during the 30 days following publication. Therefore, as required by § 721.160, the direct final SNUR for P–86–501 and P–86–503 was withdrawn in the **Federal Register** of March 28, 1991 (56 FR 12851), and a proposed SNUR published in the **Federal Register** of March 28, 1991 (56 FR 12880). EPA extended the comment period for 60 days on May 8, 1991 (56 FR 21351), and an additional 30 days on July 25, 1991 (56 FR 34047). The section numbers for § 721.782 and § 721.459 have been redesignated in the final rule as § 721.805 and § 721.1120, respectively.

### *B. Final Rule*

EPA received comments from three persons including the original PMN submitter. The comments received were directed only to the chemical substance in P–86–503. Only the final SNUR for P–86–503 will be affected by those comments and EPA's response to them. Therefore EPA is issuing a final SNUR for P–86–501 as it was proposed except as noted in the paragraph below. EPA has changed the specific use designation in § 721.80 from "(k)" (any use other than allowed in the section 5(e) consent order for the substances) to "(l)" (nonindustrial use) for both P–86–501 and P–86–503. The actual significant new use designation remains the same because the section 5(e) consent order for P–86–501 and P–86–503 allows industrial uses only. This change is based solely on the original PMN submitter waiving any confidentiality claims for the specific use for P–86–501 and P–86–503. The proposal designated § 721.80(k) only to protect information claimed to be confidential business information. By designating § 721.80(l) as a significant new use in the final rule all persons subject to the SNUR will know the significant new use designation without the delay of a *bona fide* procedure.

The proposed SNUR for P–86–503 contained the following new uses which are based on the provisions of the section 5(e) order for P–86–503: Any manner or method of manufacturing, importing, and processing the substance: (1) Without establishing a program of personal protective equipment for potentially exposed persons; (2) without establishing a hazard communication program in the workplace including specific worker training, labeling, MSDS, and warning statements; (3) any method of disposal other than incineration, landfill, or release to water after primary waste water treatment; and (4) specific uses other than those allowed by the section 5(e) order for P–86–503.

EPA has modified the rule for P–86–503 in response to public comments that indicated that a number of the proposed significant new uses for P–86–503 are currently ongoing. Specifically, one commenter noted that its hazard communication program previously did not include a cancer warning on the MSDS or warning label although the commenter stated that it was preparing to add the cancer warning. Another commenter noted that an exposed worker did not use protective equipment preventing dermal or inhalation exposure. In addition, it was noted by a commenter arguing against requiring dermal protective equipment that, according to EPA's analysis, skin absorption is expected to be rather poor and P–86–503 has been demonstrated not to be a skin irritant. Based on these comments EPA will not designate such uses as significant new uses and will modify the section 5(e) consent order for P–86–503 appropriately by deleting requirements for impervious dermal protection to exposed workers, respiratory protection to exposed workers, and cancer warning requirements on the MSDS and label.

EPA findings of a potential unreasonable risk of cancer to exposed workers remain for both the section 5(e) order and the SNUR for P–86–503. P–86–503 has already demonstrated chronic organ toxicity including liver toxicity in a chronic animal toxicity study. The only basis for not regulating P–86–503 as proposed is that certain uses were ongoing at the time EPA proposed a SNUR. All commenters are aware of the potential cancer risk and the demonstrated chronic toxicity risk. EPA expects that all potentially exposed

workers will be protected from and adequately informed of these risks.

*C. EPA's Authority*

Two commenters raised a number of questions relating to EPA's legal authority. The commenters argued that EPA lacks the legal authority to regulate an existing or ongoing use of a chemical by promulgating a significant new use rule. EPA's interpretation of "significant new use" as described in section (5)(a)(2) of TSCA is that to designate a use as a significant new use EPA must determine that the use is not existing or ongoing at the time EPA identifies the new use in the **Federal Register**.

The same two commenters further assert that since their respective clients had been importing and processing P–86–503 in the manufacture of polyamide resins for 6 months prior to the proposal of the SNUR, EPA lacks legal authority to regulate any ongoing use associated with P–86–503 in the manufacture of polyamide resins under section 5(a)(2) of TSCA. EPA agrees that it cannot designate such ongoing uses as significant new uses, for the reasons stated in the preceding paragraph. However, EPA can exercise authority under section 5(a)(2) of TSCA to identify significant new uses of substances that were already subject to commercial activity for other uses prior to proposal of the SNUR.

Section 5(a)(2) of TSCA provides that EPA's determination that a use of a chemical substance is a significant new use must be made after a consideration of all relevant factors:

(A) The projected volume of manufacturing and processing of a chemical substance.

(B) The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.

(C) The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

(D) The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

EPA construes the statute to allow consideration of any other relevant factors in addition to those enumerated in the statute. There are no criteria in section 5(a)(2) which prevent designating a use a significant new use merely because a chemical substance is already subject to commercial activity. Moreover, the statutory factors dealing with change in type, form, magnitude, and duration in exposure plainly apply in instances where commercial activity already has occurred. Additionally, the relevant conference report language confirms that SNUR notification requirements apply to "manufacturers and processors of *existing substances* for significant new uses." (H. Rept. 1679, 94th Cong. 2nd sess. (emphasis added)). Accordingly, it is reasonable to conclude that section 5(a)(2) applies to significant new uses of a substance that is already the subject of commercial activity.

A general allegation of previous commercial activity is not in itself adequate evidence to determine whether a specific use is new or ongoing. To decide if a particular use is ongoing EPA must consider specific evidence that a person has already engaged in that particular use.

One commenter criticized the interpretation of the term "use" upon which this rule is based. The commenter maintained that use of EPA's SNUR authority is to be decided with respect to classes of ongoing commercial activity, not distinctions regarding specific details of occupational health safeguards that accompany the existing use. EPA disagrees. As noted above, neither the statute nor the legislative history limit the Agency's authority to define new uses to only broad classes of activities. The statute does not define "use" or "significant new use". EPA's SNUR authority comes from section 5(a)(2), which as previously stated designates factors which EPA is to consider when designating significant new use rules, but does not otherwise specify or limit the definition of a significant new use. EPA's interpretation reasonably takes into account factors such as variations in worker protection and hazard communication which affect the exposures and risks presented by particular uses of a chemical. This interpretation is reasonable in light of the focus in section 5(a)(2) on factors relating to exposure to the chemical substance. In fact, the commenter's observation on page 23 of its comments, that, "the use of protective equipment, labeling, and other industrial hygiene practices could reduce inhalation and other types of exposure to MDA...." refers to the factors EPA considers when designating significant new uses.

In the case of P–86–503, EPA's determination fully complied with all of the statutory requirements. All of the significant new uses in the SNUR for P–86–503 are new because they are not allowed in the section 5(e) consent order and no other parties had demonstrated they were ongoing at the time of the publication of the direct final SNUR. Section 5(a)(2) allows EPA to consider all relevant factors. In addition to the four statutory factors, EPA also took into account the consideration that the original PMN submitter had been subject to a section 5(e) consent order to control a potential unreasonable risk. Based on this consent order, EPA believes it is reasonable to require other manufacturers, importers, and processors, to submit a notice prior to engaging in any of the significant new uses because they involve potential unreasonable risks.

EPA also considered the four statutory factors in making its determination. Specifically, when designating a significant new use of P–86–503 to be any manufacturing, importing, or processing without the hazard communication program specified in § 721.72, EPA considered that an effective hazard communication program addresses such factors in section 5(a)(2) as type, form, duration, and magnitude of exposure as well as methods of manufacturing, processing, and use. When designating nonindustrial use as a significant new use of P–86–503, EPA considered such factors in section 5(a)(2) as type, form, duration, and magnitude of exposure as well as methods of manufacturing, processing, and use.

When designating disposal other than landfill, incineration, or release to water without primary waste water treatment, EPA considered such factors in section 5(a)(2) as type, form, duration, and magnitude of exposure as well as methods of manufacturing, processing, and use.

One commenter stated that to require each item of personal protective equipment be impervious did not meet the level of significance required under section 5(a)(2) and that the difference between impervious gloves and rubber or PVC gloves would not constitute either a new use or a significant use. EPA disagrees. The difference may be significant, depending upon whether the gloves are actually impervious to the particular substance. Personal protective equipment that is impervious to a substance during normal and expected exposure implies no exposure or as close to zero exposure as possible. Rubber or PVC gloves may not be impervious to a particular substance and some exposure may occur. As previously noted, the SNUR provision that states it is a significant new use for exposed individuals not to wear impervious dermal protection directly addresses factors in section 5(a)(2) such as duration and magnitude, type, or form of exposure. However, use without impervious gloves was deleted from the final rule in response to other comments.

Two commenters stated that EPA's proposal did not consider the ongoing

uses of P–86–503. They noted that EPA should have been alerted by the *bona fide* inquiry for P–86–503 and the notice of commencement (NOC) for another PMN substance of which P–86–503 is a component. They argue that the NOC for the other PMN substance put the Agency on notice of an ongoing use for P–86–503.

When proposing the SNUR for P–86–503 on June 26, 1990, EPA considered the possibility that because of the *bona fide* inquiry and the notice of commencement for the other PMN substance, ongoing use outside the scope of the proposed SNUR might have occurred. However a *bona fide* inquiry only alerts EPA to potential commercial activity. It does not give detailed information on specific uses such as those in the proposed SNUR. In addition, when a *bona fide* inquiry is made EPA not only notifies the submitter of its inventory status, but also notifies the submitter of any potential unreasonable risks and any regulation concerning that chemical substance whether it applies to the submitter or not. One commenter asked if EPA considered asking the submitter of the *bona fide* about activities in which they were engaged with P–86–503. EPA cannot commit to individually contacting interested parties concerning upcoming rulemaking proceedings. EPA will consider information provided by interested parties (e.g., any information provided in the notice of intent to submit adverse comments on a direct final rule). EPA proposed the SNUR based on available information, and the rulemaking proceedings were designed to allow for public comments and public disclosure of information relevant to those proceedings. As discussed in Unit III. B., EPA has modified the proposal based on the public comments.

One commenter noted that EPA permitted a PMN substance, which is a final product for which P–86–503 is an intermediate, to pass through the PMN review process without regulation yet the proposed SNUR for P–86–503 might impose regulation on that PMN substance if enough residual of P–86–503 was present. The commenter's assessment is correct. Because EPA's analysis of the information in that PMN gave no evidence of residuals of P–86–503, EPA considered that the Agency had not been notified of potential residuals of P–86–503. If that PMN substance were in the future to contain residuals of P–86–503 that were not part of the original PMN submission, then the manufacturer or processor of the substance containing residuals of P–86–503 would have to notify EPA prior to manufacturing or processing the substance for a significant new use designated in the SNUR for P–86–503.

*D. Other Comments*

One commenter stated that EPA should defer this matter to OSHA under section 9 of TSCA as OSHA had primary responsibility for regulation in the workplace. The commenter stated that deference to OSHA was appropriate in light of the fact that EPA had already referred MDA to OSHA under section 9(a) of TSCA and MDA was the basis for EPA's potential cancer finding for P–86–503. The commenter also stated that regulation of P–86–503 should not be more stringent than for MDA. EPA does not agree that referral is mandated in this case, because the requirements of section 9(a) apply only in instances where EPA finds that a substance "presents or will present" a risk, section 9(a) does not apply in the case of actions taken under TSCA section 5. Regulation under section 5(e) of TSCA is designed to allow regulation of a substance when there is insufficient data to evaluate the risks presented by the substance. In the case of P–86–503 there is still insufficient data to evaluate its potential cancer risk. EPA had made the finding under section 5(e) that due to potential cancer concerns P–86–503 may present an unreasonable risk to human health. It is entirely within EPA's jurisdiction to regulate a new chemical substance or the new uses of a substance under section 5(e) of TSCA to prevent such a risk.

In addition, the commenter stated that OSHA requirements were adequate to protect potential risks to human health and the environment. EPA disagrees. OSHA has no standards for P–86–501 or P–86–503. In addition, for purposes of the OSHA hazard communication standard, a substance generally is considered a health hazard requiring warnings and notice of protective measures only if certain data requirements are met. A SNUR, in contrast, allows EPA the opportunity to review new uses of a substance and to assess exposures and risks in instances where there is a lack of data on the substance that would trigger OSHA requirements. Under section 5(e), EPA can impose restrictions to limit potential risks when the available information is insufficient to permit a reasoned evaluation of the health or environmental effects of the substance. With respect to P–86–501 and P–86–503, EPA considers that a notice is necessary for the specific uses identified in the SNUR, based on the potential exposures and risks that may accompany these uses. Such a notice will give EPA an opportunity to review the new use, the data that is available, and to take action to regulate the new use pending development of necessary data.

Two commenters stated that the toxicity data clearly showed that P–86–503 was less toxic than MDA, the substance used as an analogue to P–86–503 in EPA's analysis. In light of the gaps in the data base for P–86–503, EPA does not agree with that conclusion. MDA has been shown in animal studies to cause eye irritation, retinopathy, hepatotoxicity, mutagenicity, and cancer. As another commenter has noted, the data differentiating MDA from P–86–503 are short term studies on P–86–503 evaluating irritation, mutagenicity, and acute effects. These short term studies do not always predict and do not address long term effects. In addition a 90–day chronic inhalation study for P–86–503 showed internal organ effects including thyroid and liver toxicity which MDA has already demonstrated. Using MDA as a cancer analogue for P–86–503 meets the statutory requirement under section 5(e) to support a determination that P–86–503 may present an unreasonable risk of cancer until such time as sufficient data are available to evaluate the cancer risk. The only toxicity data that can be used to evaluate the potential carcinogenicity of P–86–503 are the results of a 2–year animal bioassay.

The commenters also asserted that regulating P–86–503 would discourage its use and encourage the use of the more toxic MDA. According to one commenter, workers use protective equipment to handle MDA and still suffer from the headaches, irritation, and odors associated with MDA. EPA does not agree that requiring similar protective equipment to prevent potential chronic toxicity for a substitute substance (P–86–503) will significantly encourage use of MDA, especially if the substitute is easier to handle and tends not to produce acute discomfort. EPA also believes that regulating the potential unreasonable risk for P–86–503 is important enough to warrant any possible discouragement of its use.

One commenter suggested that any toxicity results obtained for P–86–503 by the original PMN submitter could be due to the large number of impurities as described in the PMN. However, the original PMN submitter noted in its comments that the PMN substance was specially purified for the toxicity studies.

The original PMN submitter commented in support of the SNUR for P–86–503 as originally proposed, stating that the provisions would prevent any potential unreasonable risk. That

commenter also noted that should EPA modify the proposed SNUR in any way that conflicts with the section 5(e) order already signed and in effect, it could put the commenter subject to the order at a competitive disadvantage in the marketplace. In such a case the commenter would expect EPA to modify the section 5(e) order to reflect such changes prior to the SNUR's effective date. In the interest of equitable regulation for all parties concerning P–86–503, EPA will modify the section 5(e) consent order upon request by the original PMN submitter to reflect any changes in the proposed SNUR. However, EPA cannot guarantee modifications to the section 5(e) consent order before the effective date of the final SNUR.

## IV. Substances Subject to This Rule

EPA is issuing significant new use and recordkeeping requirements for the following chemical substances under part 721 subpart E.

### PMN number P–86–501.

*Chemical name:* Benzenamine, 4,4'-[1,3-phenylenebis(1-methylethylidene)]bis[2,6-dimethyl-.
*CAS number:* 2716–12–3.
*Effective date of section 5(e) consent order:* March 2, 1988.
*Basis for action:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
*Toxicity concern:* Similar substances have been shown to cause cancer and some systemic toxicity including effects to the liver and thyroid in laboratory animals. The substance has shown adverse effects to male reproductive organs.
*Recommended testing:* A 2–year two-species bioassay would help characterize the possible carcinogenic effects of the substance
*CFR citation:* 40 CFR 721.805.

### PMN number P–86–503.

*Chemical name:* Benzenamine, 4,4'-[1,4-phenylenebis(1-methylethylidene)]bis[2,6-dimethyl-.
*CAS number:* 2716–10–11.
*Effective date of section 5(e) consent order:* March 2, 1988.
*Basis for action:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
*Toxicity concern:* Similar substances have been shown to cause cancer and adverse effects to male reproductive organs in laboratory animals. The substance has demonstrated systemic toxicity including effects to the liver and thyroid in laboratory animals.
*Recommended testing:* A 2–year two-species bioassay would help characterize the possible carcinogenic effects of the substance.
*CFR citation:* 40 CFR 721.1120.

## V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of the **Federal Register** notice that first identifies the new use rather than as of the effective date of the rule. Because this SNUR was first published on June 26, 1990, as a direct final rule, that date will serve as the date after which uses will be considered to be new uses. If uses which had commenced between that date and the effective date of this final rule were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who began commercial manufacture, import, or processing of the substance for uses regulated through this SNUR after June 26, 1990, will have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who began commercial manufacture, import, or processing of the substances between the publication of the direct final SNUR and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

## VI. Economic Analysis

EPA evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances at the time of the direct final rule. Because the Agency is not promulgating some of the significant new uses included in the proposed rule for P–86–503, the costs associated with issuing the final rule will be lower than originally estimated. The Agency's complete economic analysis is available in the public record for this rule (OPPTS–50585F).

## VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50585F). The record includes basic information considered by EPA in developing this rule. EPA will supplement the record with additional information as it is received. The record includes the following information:

1. The premanufacture notice.
2. The **Federal Register** notice receipt of the PMN.
3. The section 5(e) order.
4. The direct final rule, withdrawal of direct final rule, and proposed SNUR.
5. The economic analysis of this rule.
6. The toxicology support document.
7. The engineering support document.
8. The exposure support document.
9. The risk assessment support document.
10. Toxicity data.
11. Public comments

A public version of the record, without any CBI, is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in rm. NE–G004, 401 M St., SW., Washington, DC.

## VIII. Regulatory Assessment Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for

submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule are likely to be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters are small firms.

*C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. However, EPA expects that the burden will be less for this rule than the direct final or proposed rules because several significant new uses found in the direct final and proposes rules are not established in this final rule.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

**List of Subjects in 40 CFR Part 721**

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 2, 1992.

Victor J. Kimm,

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, 40 CFR part 721 is amended as follows:

**PART 721—[AMENDED]**

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c)

2. By adding new § 721.805 to subpart E to read as follows:

**§ 721.805 Benzenamine, 4,4'-[1,3-phenylenebis(1-methylethyl idene)]bis[2,6-dimethyl-.**

(a) Chemical substances and significant new uses subject to reporting. (1) The chemical substance benzenamine, 4,4'-[1,3-phenylenebis(1-methyl ethylidene)]bis[2,6-dimethyl- (CAS Registry Number 2716–12–3; PMN P–86–501) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iv) through (a)(5)(xv), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), (c)(1), (a)(2), (b)(2), and (c)(2).

(v) *Release to water.* Requirements as specified in § 721.90(a)(2)(vi), (b)(2)(vi), and (c)(2)(vi).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified in § 721.125 (a) through (k) are applicable to manufacturers, importers, and processors of these substances .

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012]

3. By adding new § 721.1120 to subpart E to read as follows:

**§ 721.1120 Benzenamine, 4,4'-[1,4-phenylenebis(1-methylethylidene)]bis[2,6-dimethyl-.**

(a) Chemical substances and significant new uses subject to reporting. (1) The chemical substance benzenamine, 4,4'-[1,4-phenylenebis(1-methylethylidene)]bis- (CAS Registry Number 2716–10–1; PMN P–86–503) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), (c)(1), (a)(2), (b)(2), and (c)(2).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(2)(vi), (b)(2)(vi), and (c)(2)(vi).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), (j), and (k) are applicable to manufacturers, importers, and processors of these substances .

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012]

[FR Doc. 92–16258 Filed 7–14–92; 8:45 am]

BILLING CODE 6560–50–F

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 672**

**[Docket No. 911176-2018]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is establishing a directed fishing allowance and is closing the directed fishery for the shortraker/rougheye species group (SRRE) in the Central Regulatory Area (statistical areas 62 and 63) of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the total allowable catch (TAC) for SRRE in the Central Regulatory Area.

**EFFECTIVE DATES:** Effective 12 noon, Alaska local time (A.l.t.), July 10, 1992, through 12 midnight, A.l.t., December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** David R. Cormany, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The SRRE TAC in statistical areas 62 and 63 of the GOA was established by the final notice of specifications (57 FR 2844, January 24, 1992) as 1,290 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the SRRE TAC in statistical areas 62 and 63 of the GOA will soon be reached. Therefore, NMFS is establishing a directed fishing allowance of 1,097 mt for the Central Regulatory Area, and is setting aside the remaining 193 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, under § 672.20(c)(2), NMFS is prohibiting directed fishing for SRRE in statistical areas 62 and 63 of the GOA effective from 12 noon, A.l.t., July 10, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

### Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 10, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-16643 Filed 7-10-92; 3:32 pm]

BILLING CODE 3510-22-M

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**50 CFR Part 672**

**[Docket No. 911176-2018]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for pollock in Statistical Area 62 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), July 12, 1992, until 12 noon, A.l.t., September 28, 1992.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC for Statistical Area 62 is 4,245 metric tons, determined in accordance with § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(2), that the third quarterly allowance of pollock TAC for Statistical Area 62 will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 62, effective from 12 noon A.l.t., July 12, 1992, until 12 noon, A.l.t., September 28, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

### Classification

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 10, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-16642 Filed 7-10-92; 3:32 pm]

BILLING CODE 3510-22-M

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# Proposed Rules

Federal Register
Vol. 57, No. 136
Wednesday, July 15, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Part 351**

**RIN 2206-AF04**

**Reduction in Force**

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing regulations that add a permissive temporary exception to the order of release from a competitive level in a reduction in force. Agency use of this exception would allow an employee to remain on the agency's rolls, past the effective date of the reduction in force, in an annual leave status if, in so doing, the employee would attain eligibility for an immediate annuity. OPM also is proposing an addition to the notice requirements to help assure that agencies provide notice to employees about their eligibility to continue health benefits and life insurance after separation.

**DATES:** Written comments will be considered if received no later than September 14, 1992.

**ADDRESSES:** Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, room 6F08, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Leota Shelkey on 202–606–0960 (FAX 202–606–0390).

**SUPPLEMENTARY INFORMATION:**

Reductions in force are a last resort for agencies facing cutbacks, and OPM encourages agencies to undertake various initiatives to minimize adverse effects. The Department of Defense is facing major reductions due to base closures, downsizing, and reorganization. OPM has been very concerned about the potential disruption this could cause and has been working to provide alternatives to minimize the need for RIF actions and to alleviate the adverse impact on affected employees. These proposed regulations would allow the temporary retention of employees who might reach retirement eligibility soon and would provide notice to employees of eligibility to continue health and life insurance.

### Temporary Retention

Employees separated from Federal employment by reduction in force (RIF) may be very close to retirement eligibility on the effective date of the RIF. The purpose of this proposed regulation is to provide a means for employees to stay on an agency's rolls past the effective date of a RIF to reach their first retirement eligibility.

Employees who leave Federal employment are entitled to a lump sum payment for their annual leave balance. OPM is proposing that, in lieu of making a lump sum payment, agencies be permitted to keep an employee on the rolls in a annual leave status, at the employee's request, if the employee would reach first retirement eligibility during the period represented by his or her accrued and accumulated annual leave. To do this, OPM is proposing a permissive temporary exception in § 351.608(a)(3) to the regular order of RIF release. This alternative to the lump sum leave payment would serve the Government's interests by minimizing the adverse impact on individual employees of workforce reductions and would lessen the Government's short term costs by avoiding severance payments and unemployment compensation that otherwise would be payable to these employees.

The intent of this proposed exception is very different from our purpose in allowing use of sick leave under the existing exception in the current § 351.608(a)(3). The existing exception is intended to allow an agency to retain on sick leave an employee who is on approved sick leave on the scheduled effective date of the RIF. It would be inappropriate, however, to retain an employee on sick leave solely for the purpose of filing a disability retirement application, awaiting a decision on a previously filed disability retirement application, or allowing the person to meet age and service requirements for a nondisability retirement.

Also, agencies should weigh the costs involved with any potentially long term use of sick leave, particularly when a reason for the RIF is a shortage of funds. Furthermore, employees requesting sick leave under the current permissive exception must furnish acceptable evidence of incapacitation as required by 5 CFR part 630.

An employee's retention standing is determined as of the date of a RIF, even when an agency utilizes a permissive temporary exception to retain the employee past the RIF effective date. An employee temporarily retained under a permissive temporary exception is not entitled to any further RIF offer. For example, if a vacancy occurs after the RIF effective date but before the ending date of a permissive temporary exception, the employee retained under the temporary exception has no right to an offer of the vacancy. The agency would fill the vacancy in an appropriate manner as if the permissive temporary exception had not occurred, such as through internal position change or appointment from the Reemployment Priority List (5 CFR part 330, subpart B).

### Health Benefits and Life Insurance Coverage

When separated by RIF procedures, an employee who is enrolled in the Federal Employees Health Benefits Program may temporarily continue coverage for 18 months after separation if the employee pays both the employee's and the agency's share of the cost of the coverage plus a 2 percent administrative charge. (SEE 5 CFR part 890, subpart K.) An enrolled employee also has a 31-day extension of coverage, without charge, during which the employee may choose to convert to an individual policy. (See 5 CFR part 890, subpart D.) Similarly, an employee covered by the Federal Employees' Group Life Insurance Program has a 31-day extension of coverage, without charge, during which the employee may choose to convert to an individual policy. (See 5 CFR parts 870, 871, 872, and 873.)

Continuation of health benefits coverage can be vitally important for former employees and their families because it ensures continued access to health care while they seek new employment that provides group health coverage

through their employer. Some employers either do not provide health insurance or limit coverage when there are existing medical conditions. Similarly, continuation of life insurance may be significant for some employees. Those who want to continue these benefits must make their elections within strict timeframes. Therefore, it is critical that agencies provide timely notice of the right to continue benefits. Prompt notification and processing also helps to avoid lapses in coverage and potentially prohibitive retroactive premium bills from accumulating.

Agencies are required by parts 870, 871, 872, 873, and 890 to give timely notice to employees of these rights. However, it is preferable to provide notice before employees are separated so enrollment processing can begin as soon as possible. This is especially important in the case of a RIF where the agency's total personnel processing workload is extremely high and must be completed within a short time period.

To highlight these notice requirements and help assure that agencies provide timely notice, OPM is proposing to add the health benefits and life insurance notices to the types of information agencies are required to give employees along with the specific RIF notice. OPM proposes to add this provision to § 351.803(a). To more appropriately identify the contents of this section, we also propose to change its heading.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined in E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

**List of Subjects in 5 CFR Part 351**

Administrative practice and procedure, Government employees.

Office of Personnel Management.

**Constance Berry Newman,**

*Director.*

Accordingly, OPM proposes to amend part 351 of title 5, Code of Federal Regulations, as follows:

## PART 35—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3502, 3503.

2. In § 351.606, paragraph (a)(3) is revised to read as follows:

**§ 351.606 Permissive temporary exceptions.**

(a) * * *

(3) When the temporary retention of the lower standing employee does not adversely affect the right of any higher standing employee who is released ahead of the lower standing employee.

(i) A lower standing employee may be retained on sick leave as a permissive exception. This exception may exceed 90 days but may not exceed the date the employee's sick leave is exhausted.

(ii) A lower standing employee may be retained on annual leave as a permissive exception if the empoloyee has sufficient annual leave to his or her credit as of the effective date of the reduction in force to attain first eligibility for an immediate retirement benefit under 5 U.S.C. 8336 or 5 U.S.C. 8412 while on annual leave. This exception may exceed 90 days but may not exceed the date the employee first becomes eligible for immediate retirement.

* * * * *

3. In § 351.803, the heading and paragraph (a) are revised to read as follows:

**§ 351.803 Notice of eligibility for reemployment assistance and other benefits.**

(a) An employee who receives a specific notice of separation under this part must be given information concerning the right to reemployment consideration from subparts B (Reemployment Priority List) and C (Displaced Employee Program) of part 330 of this chapter. The employee also must be given information concerning how to apply for unemployment insurance through his or her appropriate State program. This information must be provided either in or with the specific reduction in force notice or as a separate supplemental notice to the employee. In addition, as required by § 870.501, § 871.501, § 872.501, § 873.501, § 890.401, and § 890.1104 of this chapter, an agency must give notice to an employee who is eligible to convert or continue health benefits enrollment or convert life insurance coverage.

* * * * *

[FR Doc. 92-16566 Filed 7-14-92; 8:45 am]

BILLING CODE 6325-01-M

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**5 CFR Part 831 and 843**

**RIN 3206-AE40**

## Children's Survivor Annuities During School Attendance

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing regulations concerning children's survivor annuities under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) during school attendance. These regulations would clarify the requirements for eligibility for payments during interim breaks, define full-time school attendance and make other minor changes in the rules governing survivor benefits paid to full-time students from 18 to 22 years of age. They are necessary to clarify the existing regulations and to address issues not covered in the current regulations.

**DATES:** Comments must be received on or before September 14, 1992.

**ADDRESSES:** Send comments to Andrea S. Minniear, Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Harold L. Siegelman, (202) 606-0775, extension 207.

**SUPPLEMENTARY INFORMATION:** Section 8341(e) of title 5, United States Code, authorizes payment of survivor annuities to children of deceased employees and retirees who were covered under the Civil Service Retirement System (CSRS). Generally, a child's eligibility for an annuity terminates at age 18. However, children who are full-time students may qualify for benefits until age 22. Section 8443 of title 5, United States Code, contains similar provisions for the Federal Employees Retirement System (FERS).

Section 831.616 and 843.410 of title 5, Code of Federal Regulations, contain OPM's current regulations concerning student children's annuities under CSRS and FERS, respectively. These proposed regulations would revise the regulations to address several previously-unaddressed policy issues relating to children's survivor annuities during school attendance. We are proposing identical provisions for both the CSRS and FERS regulations.

Paragraph (a) of each section states the requirements that a child starting at age 18 must satisfy to receive an annuity based on school attendance. It clarifies the first two sentences of the current § 831.616.

Paragraph (b) establishes standards for determining whether a course of

study is full-time. As under current regulations, we rely on the schools to determine whether a student's workload is sufficient to be considered a full-time course of study. In view of the great diversity in academic programs in the field of higher education, schools are in the best position to know if the workload and length of school year is "full-time" for the course of study in which the student is enrolled.

Paragraph (c) addresses certifications of full-time school attendance. OPM periodically requests the recipient of a child's annuity payments to furnish certification of school attendance. OPM furnishes the form on which the certification must be made. Under some circumstances, we allow the recipient to provide a self-certification of school attendance. In such cases, the recipient must complete and sign the certification form. In other circumstances, the recipient must also provide a certification by the school. School certifications must be signed by an official who is either in charge of the school or in charge of the school's records. The regulation expressly disallows certification forms signed by instructors, counselors, roommates, and others not in charge of the school or the records. Paragraph (c)(3) lists the titles of officials whose signatures on school certifications are acceptable.

Paragraph (c)(4) provides that facsimile signatures will be accepted if accompanied by a raised seal or other evidence that clearly demonstrates the authenticity of the certification. When the certification has a raised seal or provides other evidence that the signature stamp is under the control of the custodian of the records, we believe that it provides a reliable record that the child is actually enrolled.

Paragraph (d) concerns continuation of a child's survivor annuity during an interim break between school years. The statute does not require that the school year run from September to August. The definition of "child" at section 8341(a)(4) of title 5, United States Code, authorizes payment for interim breaks as follows:

> A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if he shows to the satisfaction of the Office of Personnel Management that he has a bona fide intention of continuing to pursue a course of study or training * * * immediately after the interim.

Paragraph (d)(1) states the three requirements that the statute establishes for continuation of benefits during a break in full-time attendance:

1. The student must be a full-time student at the end of the school term immediately before the break.

2. The break between the end of the previous term of full-time attendance and the return to full-time attendance must not exceed 5 months.

3. The student must show a bona fide intent to return immediately after the break.

Some schools admit students beginning with spring or summer terms with the expectation that these students will have an interim break at a time other than the summer. For example, some schools divide the academic year into quarters rather than semesters, allowing full-time students to pursue their education by attending year round, or any three out of four quarters per year. If a student is following a full-time course of study by attending during the summer quarter, we will not terminate benefits during an interim break occurring in a different quarter that is immediately followed by a return to full-time attendance. A student is allowed benefits during only one interim break per school year.

Paragraph (e)(1) states the rules for terminating a student child's annuity. Children's annuities for students born during July or August terminate on the last day of the month before the student reaches age 22. For others, the statute delays the termination date until June 30 following the date the student attains age 22. Paragraph (e)(2) states that we will apply the statutory deemed-age-22 rule to authorize benefits for a qualifying child who becomes a full-time student after his or her 22nd birthday, or whose parent dies after the student's 22nd birthday, but before the child is deemed age 22 under this rule.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

**List of Subjects**

*5 CFR Part 831*

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

*5 CFR Part 843*

Air traffic controllers, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.
**Constance Berry Newman,**
*Director.*

Accordingly, OPM proposes to amend subpart F of 5 CFR part 831 as follows:

## PART 831—RETIREMENT

1. The authority citation for part 831 continues to read as follows:

**Authority:** 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.503 also issued under sec. 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.621 also issued under sec. 201(d) of the Federal Employees Benefits Improvement Act of 1986, Public Law 99–251; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and sec. 6001, Public Law 100–203.

**Subpart F—Survivor Benefits**

2. Section 831.616 is revised to read as follows:

**§ 831.616 Annuity for a child age 18 to 22 during full-time school attendance.**

(a) *General requirements for an annuity.* (1) For a child age 18 to 22 to be eligible to receive an annuity as a full-time student, the child must also meet all other requirements applicable to qualify for an annuity by a child who has not attained age 18.

(2) In addition to the requirements of paragraph (a)(1) of this section, OPM must receive certification, in a form prescribed by OPM, that the child is regularly pursuing a full-time course of study in an accredited institution.

(b) *Full-time course of study.* (1) Generally, a full-time course of study is a noncorrespondence course which, if successfully completed, will lead to completion of the education within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned.

(2) A certification by an accredited institution that the student's workload is sufficient to constitute a full-time course of study for the program in which the student is enrolled is prima facie evidence that the student is pursuing a full-time course of study.

(c) *Certification of school attendance.* (1) OPM may periodically request the

recipient of a child's annuity payments to furnish certification of school attendance. The certification must be completed in the form prescribed by OPM.

(2) If OPM requests the recipient of a child's annuity payments to provide a self-certification of school attendance, the recipient must complete and sign the certification form.

(3) If OPM requests the recipient of a child's annuity payments to provide a certification by the school, the certification must be signed by an official who is either in charge of the school or in charge of the school's records. OPM will not accept certification forms signed by instructors, counselors, aides, roommates, or others not in charge of the school or the records.

(i) If the educational institution is above the high school level, the certification must be signed by the president or chancellor, vice president or vice chancellor, dean or assistant dean, registrar or administrator, assistant registrar or assistant administrator, or the equivalent.

(ii) If the educational institution is at the high school level, the certification must be signed by the superintendent of schools, assistant superintendent of schools, principal, vice principal, assistant principal, or the equivalent.

(iii) If the education institution is a technical or trade school, the certification must be signed by the president, vice president, director, assistant director, or the equivalent.

(4) OPM will accept a facsimile signature of a school official only if it is accompanied by a raised seal of the institution or other evidence clearly demonstrating the authenticity of the certification and making unauthorized use of the signature stamp unlikely.

(d) *Continuation of annuity during interim breaks.* A child's annuity continues during interim breaks between school years if the following conditions are satisfied:

(1) The student must have been a full-time student at the end of the school term immediately before the break.

(2) The break between the end of the last term of full-time attendance and the return to full-time attendance must not exceed 5 months. (*See* § 831.107, concerning calculation of this time period.)

(3) The recipient of a child's annuity payments must show that the student has a bona fide intent to return to school as a full-time student immediately after the break. The full-time certification for the prior term and the certification (in a form prescribed by OPM) by the recipient of a child's annuity payments that the student intends to return to school (immediately after the break) as a full-time student constitute prima facie evidence of a bona fide intent to return to school.

(e) *Benefits after age 22.* (1) A student's eligibility for a child's annuity terminates based on reaching age 22 on—

(i) June 30 of the calendar year of the child's 22nd birthday if the child's birthday is before July 1; or

(ii) The last day of the month before the child's 22nd birthday if the child's birthday occurs after June 30 but before September 1 of the calendar year; or

(iii) June 30 of the year after the one in which the child attains age 22 if the child's birthday is after August 31 of the calendar year.

(2)(i) An otherwise eligible child who becomes a full-time student after his or her 22nd birthday but before the date the annuity terminates under paragraph (e)(1) of this section is eligible for annuity while he or she is a full-time student until the termination date under paragraph (e)(1) of this section.

(ii) An otherwise eligible child who is a full-time student, and whose parent dies after the child's 22nd birthday but before the date the annuity terminates under paragraph (e)(1) of this section, is eligible for annuity while he or she is a full-time student after the death of the parent until ther termination date under paragraph (e)(1) of this section.

## PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

3. The authority citation for part 843 continues to read:

**Authority:** 5 U.S.C. 8461; §§ 843.205, 843.208, 843.209 also issued under 5 U.S.C. 8424; Section 843.309 also issued under 5 U.S.C. 8442; Section 843.406 also issued under 5 U.S.C. 8441.

### Subpart D—Child Annuities

4. Section 843.410 is revised to read as follows.

**§ 843.410 Annuity for a child age 18 to 22 during full-time school attendance.**

(a) *General requirements for an annuity.* (1) For a child age 18 to 22 to be eligible to receive an annuity as a full-time student, the child must also meet all other requirements applicable to qualify for an annuity by a child who has not attained age 18.

(2) In addition to the requirements of paragraph (a)(1) of this section, OPM must receive certification, in a form prescribed by OPM, that the child is regularly pursuing a full-time course of study in an accredited institution.

(b) *Full-time course of study.* (1) Generally, a full-time course of study is a noncorrespondence course which, if successfully completed, will lead to completion of the education within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned.

(2) A certification by an accredited institution that the student's workload is sufficient to constitute a full-time course of study for the program in which the student is enrolled is prima facie evidence that the student is pursuing a full-time course of study.

(c) *Certification of school attendance.* (1) OPM may periodically request the recipient of a child's annuity payments to furnish certification of school attendance. The certification must be completed in the form prescribed by OPM.

(2) If OPM requests the recipient of a child's annuity payments to provide a self-certification of school attendance, the recipient must complete and sign the certification form.

(3) If OPM requests the recipient of a child's annuity payments to provide a certification by the school, the certification must be signed by an official who is either in charge of the school or in charge of the school's records. OPM will not accept certification forms signed by instructors, counselors, aides, roommates, or others not in charge of the school or the records.

(i) If the educational institution is above the high school level, the certification must be signed by the president or chancellor, vice president or vice chancellor, dean or assistant dean, registrar or administrator, assistant registrar or assistant administrator, or the equivalent.

(ii) If the educational institution is at the high school level, the certification must be signed by the superintendent of schools, assistant superintendent of schools, principal, vice principal, assistant principal, or the equivalent.

(iii) If the educational institution is a technical or trade school, the certification must be signed by the president, vice president, director, assistant director, or the equivalent.

(4) OPM will accept a facsimile signature of a school official only if it is accompanied by a raised seal of the institution or other evidence clearly

demonstrating the authenticity of the certification and making unauthorized use of the signature stamp unlikely.

(d) *Continuation of annuity during interim breaks.* A child's annuity continues during interim breaks between school years if the following conditions are satisfied:

(1) The student must have been a full-time student at the end of the school term immediately before the break.

(2) The break between the end of the last term of full-time attendance and the return to full-time attendance must not exceed 5 months. (See § 841.109, concerning calculation of this time period.)

(3) The recipient of a child's annuity payments must show that the student has a bona fide intent to return to school as a full-time student immediately after the break. The full-time certification for the prior term and the certification (in a form prescribed by OPM) by the recipient of a child's annuity payments that the student intends to return to school (immediately after the break) as a full-time student constitute prima facie evidence of a bona fide intent to return to school.

(e) *Benefits after age 22.* (1) A student's eligibility for a child's annuity terminates based on reaching age 22 on—

(i) June 30 of the calendar year of the child's 22nd birthday if the child's birthday is before July 1; or

(ii) The last day of the month before the child's 22nd birthday if the child's birthday occurs after June 30 but before September 1 of the calendar year; or

(iii) June 30 of the year after the one in which the child attains age 22 if the child's birthday is after August 31 of the calendar year.

(2)(i) An otherwise eligible child who becomes a full-time student after his or her 22nd birthday but before the date the annuity terminates under paragraph (e)(1) of this section is eligible for annuity while he or she is a full-time student until the termination date under paragraph (e)(1) of this section.

(ii) An otherwise eligible child who is a full-time student, and those parent dies after the child's 22nd birthday but before the date the annuity terminates under paragraph (e)(1) of this section, is eligible for annuity while he or she is a full-time student after the death of the parent until the termination date under paragraph (e)(1) of this section.

[FR Doc. 92-16570 Filed 7-14-92; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Chapter I**

**[Docket No. 92-11]**

**FEDERAL RESERVE SYSTEM**

**12 CFR Chapter II**

**[Docket No. R-0766]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Chapter III**

**RIN 3064-AB13**

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Part 563**

**[Resolution No. 92-239]**

**RIN 1550-AA54**

## Standards for Safety and Soundness

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

**ACTION:** Joint advance notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board of Governors), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively "the agencies") solicit comments on all aspects of the safety and soundness standards required to be prescribed under section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) in order to assist them in the development of a proposed rule.

**DATES:** Written comments must be received on or before September 14, 1992.

**ADDRESSES:** Commenters may respond to any or all of the agencies. All comments will be shared among the agencies.

*OCC:* Communications Division, 250 E Street SW., Washington, DC 20219, attention: Docket No. 92-11. Comments will be available for public inspection and photocopying at the same location on business days between 9 a.m. and 5 p.m.

*Board of Governors:* Comments, which should refer to Docket No. R-0766, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. an 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

*FDIC:* Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to room F-402, 1776 F Street NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F-402 between 8:30 a.m. and 5 p.m. on business days. [FAX number (202) 898-3838]

*OTS:* Comments should be directed to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention: Docket No. [92-239]. These submissions may be hand delivered to 1770 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906-7753 or 7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed, or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street NW., Street Level.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Emily R. McNaughton, National Bank Examiner (202/874-5170), Office of the Chief National Bank Examiner; Jeff Mace, Attorney, Securities and Corporate Practices Division (202/874-5210); Laura H. Plaze, Attorney, Legal Advisory Services Division (202/874-5330), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Board of Governors:* Roger Cole, Assistant Director (202/452-2618), David Wright, Supervisory Financial Analyst (202/728-5854), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel

(202/452–3583), Gregory A. Baer, Senior Attorney (202/452–3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

*FDIC:* For supervisory issues, Robert F. Miailovich, Associate Director (202/898–6918) or Robert W. Walsh, Examination Specialist (202/898–6911), Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429; for legal issues, Lisa M. Stanley, Senior Attorney (202/898–7494), Jeffrey M. Kopchik, Counsel (compensation standards issues) (202/898–3872); or Nancy L. Alper, Counsel (compliance and enforcement issues) (202/898–3720), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

*OTS:* John C. Price, Jr., Deputy Assistant Director for Policy (202/906–5745), Robert Fishman, Program Manager (202/906–5672), Cherly Martin, Regional Coordinator (202/906–7869), Policy Office; V. Gerard Comizio, Deputy Chief Counsel for Securities and Corporate Structure (202/906–6411), James H. Underwood, Counsel (Banking and Finance) (202/906–7354), Chief Counsel's Office; Deirdre Kvartunas, Program Analyst, (202/906–7933), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

## I. Background and Information

Section 132 of the FDICIA, Public Law No. 102–242, added a new section 39 to the Federal Deposit Insurance Act (FDI Act) which requires each of the agencies to prescribe by regulation certain safety and soundness standards for the insured depository institutions and depository institution holding companies for which it is the primary Federal regulator. Standards must be prescribed in three principal areas: (1) Operational and managerial; (2) asset quality, earnings, and stock valuation; and (3) employee compensation. If an insured depository institution does not meet one of these standards, section 39 requires that the institution establish a plan to achieve compliance with the standard that is acceptable to the primary regulator of the institution. Final regulations implementing section 39 must be promulgated no later than August 1, 1993, and become effective no later than December 1, 1993.

Various questions and issues have arisen involving general and specific aspects of the required regulatory safety and soundness standards. The agencies are issuing this joint advance notice of proposed rulemaking for the purpose of gathering public comment on these issues to assist them in the development of a proposed rulemaking. The agencies intend to work together in formulating the proposed and final rulemaking.

The agencies are interested in receiving comments concerning all aspects of section 39 of the FDI Act. The overriding issue facing the agencies in adopting regulations pursuant to section 39 of the FDI Act is how to balance the objectives of the statute relating to safety and soundness standards with the important need to avoid establishing unrealistic and overly burdensome standards that unnecessarily raise costs within the regulated community. In light of the need to attract and retain capital and management talent in the banking and thrift industries, it is important that the standards not needlessly impose uncertainty or raise substantive issues with respect to their implementation by the agencies going forward.

Section 39 does not require, and the agencies do not intend to prescribe, inflexible standards specifying how depository institutions must be managed. Rather, the agencies intend to prescribe standards designed to prevent institutions from developing serious problems and thereby prevent loss to the deposit insurance funds. Thus, for each safety and soundness standard, commenters are requested to recommend specific regulatory language that fulfills the intent of section 39 of the FDI Act while leaving management appropriate latitude and flexibility.

In order to elicit comment on certain issues identified by the agencies, specific questions are set forth that address each subsection of section 39 of the FDI Act. Commenters are requested to number their responses to correspond to the question number. Questions need not be repeated, and commenters may respond to as many questions as they wish. Where a comment recommends a particular recordkeeping or reporting requirement, the commenter is requested to include an estimate of the number of hours necessary for an institution or holding company to comply.

## II. Operational and Managerial Standards

Section 39(a) of the FDI Act requires each of the agencies to prescribe for the institutions it regulates managerial and operational standards relating to:

- Internal controls, information systems, and internal audit systems;
- Loan documentation;
- Credit underwriting;
- Interest rate exposure;
- Asset growth;
- Compensation, fees, and benefits in accordance with subsection (c) of section 39; and
- Such other operational and managerial standards as the agency determines to be appropriate.

### *A. Internal Controls, Information Systems, and Internal Audit Systems*

Internal controls, information systems, and internal audit systems are generally designed to achieve compliance with laws and regulations, safeguard assets, promote operational efficiency, and encourage adherence to prescribed managerial policies. Institutions may define these systems and controls differently.

(1) Should these items be defined in the regulation, and what, if any, specific standards should the regulation include?

The bank and thrift regulatory agencies, as well as accounting, auditing, banking and thrift associations and others, have published guidelines, opinions, advisories, and other literature on standards for internal controls, information systems and internal audit systems.

(2) Which, if any, of these preexisting standards should be incorporated into the regulation?

### *B. Loan Documentation*

Each of the agencies currently reviews the loan files of the institutions it examines to determine the adequacy of loan documentation. The Office of Thrift Supervision has prescribed regulations that establish an item-by-item listing of loan documentation requirements. 12 CFR 563.170(c)(1).

(3) Should loan documentation standards for all financial institutions prescribe an item-by-item listing of requirements, or should loan documentation standards be general in nature and prescribe prudential documentation?

(4) Should documentation standards vary according to loan types or loan amounts, and, if so, how?

### *C. Credit Underwriting*

The agencies currently review the credit underwriting standards established by each depository institution in the examination process. In implementing section 39 of the FDI Act, the agencies seek comment on whether the regulation must prescribe general standards or specific requirements. General credit underwriting standards could, for example, require institutions to adhere to prudent standards as specified by the

institution's loan policies. More detailed credit underwriting standards could specify criteria—such as descriptions of collateral, cash flow coverage, working capital, and loan to value ratios—that should be employed in making sound credit decisions.

(5) Should the agencies prescribe general or specific underwriting standards?

(6) Should the regulation specify minimum acceptable ratios for credit underwriting criteria, and, if so, what minimum ratios would be appropriate?

Section 304(a) of FDICIA added a new section 18(o) to the FDI Act which requires each agency to adopt uniform regulations prescribing standards for extensions of credit related to real estate. FDICIA, section 304(a), 105 Stat. 2354 (12 U.S.C. 1828(o)). The agencies will also be promulgating regulations on section 304. Credit underwriting standards must also comport with the standards prescribed pursuant to this section.

(7) How should the agencies coordinate implementation of section 18(o) of the FDI Act with implementation of section 39?

*D. Interest Rate Exposure*

The FDICIA also requires the agencies to prescribe standards relating to interest rate exposure.

(8) How should interest rate exposure standards be defined and measured, and what should the standards prescribe?

(9) How and to what extent should the agencies consider the size of an institution or company in determining standards for interest rate exposure?

(10) Should the agencies consider the overall financial condition of the institution or company in establishing interest rate exposure standards, and if so, how?

Section 305(b) of the FDICIA requires each agency to revise its risk-based capital standards to ensure that those standards take adequate account of interest rate risk. FDICIA, section 305(b), 105 Stat. 2354.

(11) How does section 305(b) of the FDICIA affect the types of standards that need to be established pursuant to section 39 of the FDI Act?

*E. Asset Growth*

Under section 39 of the FDI Act, the agencies must prescribe standards relating to asset growth. The principal issues in prescribing asset growth standards are how asset growth should be defined and measured, and what limits, if any, should be established. The FDIC currently addresses "rapid growth" by requiring all insured depository institutions to give the appropriate FDIC regional director for supervision 30 days advance notice when planning to increase their assets by 7.5 percent or more during any three-month period through the solicitation, in any combination, of fully insured brokered deposits, fully insured out-of-territory deposits, or secured borrowings, including repurchase agreements. 12 CFR 304.6.

(12) What limits on asset growth should be established for purposes of section 39 of the FDI Act? Since a regulation to monitor rapid asset growth is in place, what other standards for asset growth, if any, should be prescribed under section 39?

(13) If other growth measures should be included, what should they consider? Should the regulation consider only the percentage change in total assets or also the mix and quality of asset growth?

(14) Should asset growth standards be different for depository institutions and depository institution holding companies?

(15) How should the agencies treat asset growth funding sources, supervisory ratings assigned by the primary regulator, and off-balance-sheet risk in establishing asset growth standards?

(16) Growth through merger is generally supervised by the agencies through applications received under the Bank Merger Act (12 U.S.C. 1828(c)), Bank Holding Company Act (12 U.S.C. 1941, *et seq.*), and Savings and Loan Holding Company Act (12 U.S.C. 1467a). Should standards for asset growth through merger be prescribed under section 39, and, if so, how?

(17) What is the appropriate time period for measuring asset growth—quarterly, yearly?

(18) Should asset growth standards differentiate between insitutions or companies based on factors such as capital adequacy, asset quality, or size, and, if so, how?

(19) Should the regulation permit exceptions, and, if so, under what circumstances?

## III. Asset Quality, Earnings, and Stock Valuation Standards

Section 39(b) of the FDI Act requires each of the agencies to prescribe standards specifying:

- A maximum ratio of classified assets to capital;
- Minimum earnings, sufficient to absorb losses without impairing capital;
- To the extent feasible, a minimum ratio of market value to book value for publicly traded shares of the institution or company; and
- Such other asset quality, earnings, and valuation standards as the agency determines to be appropriate.

*A. Asset Quality*

The statute requires that the agencies incorporate "classified assets" in the ratio. The agencies currently have a joint policy that defines "classified assets" as those assets considered substandard, doubtful, or loss.

(20) Is this definition appropriate for purposes of section 39 of the FDI Act, or should classified assets be weighted or adjusted in some other manner in calculating the ratio—that is, to weigh the more adverse classifications more heavily, or to include additional problem assets?

(21) How should capital be defined for purposes of establishing a maximum ratio of classified assets to capital?

(22) Should maximum ratios vary depending on an institution's size, earnings, or other factors?

(23) What other factors should be considered in determining a maximum ratio of classified assets to capital?

(24) How should the ratio be defined to discourage institutions that are approaching the maximum ratio from understating problem assets?

*B. Earnings*

The statute requires that the agencies specify earnings sufficient to avoid impairing capital.

(25) What is the appropriate earnings measure and time period for determining whether minimum earnings have been achieved without impairing capital?

(26) How should the term "impairing capital" be defined—as an absolute reduction in capital, as a reduciton in capital below the minimum required capital ratios, as earnings insufficient to maintain capital ratios, or otherwise?

(27) Should the quality of earnings be taken into account, and, if so, what factors should be considered?

(28) How should the regulation address the potential incentive for manipulation of short term earnings?

(29) Should an institution that is part of a holding company be subject to different earnings standards than an institution that is not part of a holding company?

*C. Market Value to Book Value*

Section 39(b)(1)(C) of the FDI Act requires the agencies to prescribe standards specifying a minimum ratio of market value to book value for publicly traded shares, "to the extent feasible." The market price of depository institutions' publicly traded common stock, like the stock price of all

companies, varies with the actual or perceived financial health and earnings power of the individual institution and the relative attractiveness of stocks in general as compared to alternative investments.

(30) Is a standard prescribing a minimum ratio of market value to book value feasible, and why or why not? Is it possible to adjust such a ratio for structural fluctuations in the stock market that may not be related to the market value of any individual depository institution's stock price? Would a minimum ratio of market value to book value encourage undesirable behavior by publicly traded depository institutions, and, if so, how may a ratio be defined to minimize such undesirable consequences?

(31) If a minimum ratio of market to book value were considered feasible, what should the minimum market to book ratio be? Should this ratio be tied to an industry or market index, and, if so, what index and how?

## IV. Compensation Standards

Section 39(c) of the FDI Act requires each of the agencies to prescribe for the institutions it regulates standards for determining when compensation paid to officers, directors, employees, and principal shareholders of insured depository institutions is excessive. The agencies must also prescribe standards prohibiting as an unsafe and unsound banking practice any employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, post-employment benefit, or other compensatory arrangement that either provides the recipient with excessive compensation, fees, or benefits, or could lead to material financial loss to the institution.

In prescribing these standards, the agencies must consider:

- The combined value of all cash and noncash benefits provided to the individual;
- The compensation history of the individual and other individuals with comparable expertise at the institution;
- The financial condition of the institution;
- Comparable compensation practices at comparable institutions;
- For post-employment benefits, the projected total cost and benefit to the institution;
- Any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the institution; and
- Any other factors that the agency determines to be relevant.

The agencies are concerned about achieving an appropriate balance between preventing excessive compensation, as the statute directs, and not unduly interfering with the business relationships between an institution and its officers, directors, and employees. In this regard, they have identified the following issues for consideration:

- Specificity of standards;
- "Excessive" based on performance and condition;
- "Excessive" based on form of compensation;
- "Excessive" based on connection to impropriety.
- "Compensation procedures and reviews;
- "Peer group comparisons; and
- Coverage of holding companies.

### *A. Specificity of Standards*

Section 39 of the FDI Act requires the agencies to establish standards specifying what constitutes excessive compensation "by considering" the above factors enumerated by statute and any other factors the agency determines to be relevant.

(32) Do the statutory factors need further clarification by regulation, or are they sufficient to give notice of what would constitute excessive compensation? If the statutory factors are not sufficient, what additional factors should the agencies include in determining whether compensation is excessive?

(33) Do troubled institutions require more scrutiny of compensation than other institutions, and should different standards for excessive compensation be established for troubled institutions?

(34) Should the standards reflect that troubled institutions may have to offer higher compensation to attract and retain management to resolve their problems, and, if so, how?

The agencies are concerned about the usefulness of applying such a regulation to lower level, non-official personnel where the likelihood of abusive practices would seem to be very low.

(35) While the statute addresses the compensation of all officers, directors, employees, and principal shareholders, should the standards be more specific regarding the compensation of senior executive officers and directors?

### *B. "Excessive" Based on Performance and Condition*

Section 39(c)(2)(C) of the FDI Act provides that unreasonable or disproportionate compensation shall be determined by considering, among other factors, the financial condition of the institution.

(36) How should the financial condition of the institution be considered in applying this standard?

(37) Could and should the regulation require that executive compensation be tied to and vary with an institution's profitability or its overall financial condition? If so, how should this be done? Should the agencies consider the supervisory rating assigned to an institution in determining its financial condition, or should other indicia of condition be considered? If the agencies were to consider profitability, how could this be done in a way that would not encourage management to sacrifice long term profitability for short term gain?

(38) Should the role of management in any deterioration of the financial condition of an institution be considered in applying this standard?

### *C. "Excessive" Based on Form of Compensation*

The statute lists various forms of compensation to be considered in determining whether the compensation of a director, officer, or employee is excessive.

(39) Should the definition of "excessive" vary according to the form of compensation to be received—for example, cash versus stock options? Should items of compensation be considered individually or in the aggregate?

(40) How should the agencies construe the word "perquisite" as it is used in section 39(c)(1) of the FDI Act? Should this term encompass preferential non-credit transactions and deposit accounts provided to officers, directors, and employees?

(41) Should the agencies establish different standards for what constitutes excessive compensation for outside directors—that is, directors who are not employees or officers?

### *D. "Excessive" Based on Connection to Impropriety*

The statute requires the agencies to consider "any connection between the individual and any fraudulent act or omission" in determining whether an individual's compensation is excessive.

(42) How should the agencies interpret this requirement?

### *E. Compensation Procedures and Reviews*

In complying with the compensation standards, institutions will need to determine and monitor the total compensation of their directors, officers, and employees.

(43) Should the agencies define "employment agreement," and, if so, how?

(44) Should employment agreements between institutions and executive officers and directors be required to be in writing?

(45) Should the institution's compensation records indicate all related direct and indirect payments, fees, and benefits which are provided to an executive officer?

(46) Should the institution's board of directors be required to review and approve all executive officer compensation?

*F. Peer Group Comparisons*

In arriving at compensation standards, section 39(c)(2)(D) of the FDI Act requires the agencies to consider a peer group comparison of compensation at comparable institutions defined by geographic location, asset size, and the complexity of the loan portfolio or other assets.

(47) Is information currently available to the industry through private data vendors sufficient for the industry and regulators to determine whether the compensation paid by a depository institution to its officers, directors, employees, and principal shareholders is comparable to the levels paid by comparable institutions? If not, what additional information would need to be gathered, from whom, and how?

*G. Coverage of Holding Companies*

Section 39(a) of the FDI Act requires that various operational and managerial standards be established for both insured depository institutions and depository institution holding companies, including standards for compensation "in accordance with subsection (c)." Section 39(c) of the FDI Act requires the agencies to prescribe compensation standards only "for all insured depository institutions." Accordingly, the agencies do not believe that they are required to prescribe compensation standards for depository institution holding companies.

(48) Should the agencies construe the statute as requiring the establishment of compensation standards for depository institution holding companies? Would this interpretation, or a contrary interpretation, create anomalies or problems in applying the statute?

**V. Failure to Meet Prescribed Standards**

Section 39(e) of the FDI Act requires an institution to submit an acceptable plan to the appropriate Federal banking agency whenever the agency determines that the institution has failed to meet any of the safety and soundness standards prescribed under subsections (a), (b), and (c) of section 39.

Plans must specify the steps the institution will take to correct the deficiency. Plans must be submitted within a reasonable time, as established by the agency, and generally not later than 30 days after the agency determines that the institution fails to meet a prescribed safety and soundness standard.

In the event that an institution fails to submit an acceptable plan within the time allowed or fails in any material respect to implement an accepted plan, section 39(e)(2) of the FDI Act requires the appropriate agency to issue an order requiring the institution or company to correct the deficiency, and authorizes the agency to take various other actions until the deficiency has been corrected. These actions include limiting asset growth, restricting interest rates paid, requiring an increase in the ratio of tangible equity to assets, and other actions that the agency determines will better carry out the purpose of section 38 of the FDI Act (prompt corrective action). Agencies are required to take certain of these actions whenever an institution fails to meet a prescribed standard and either has commenced operations or experienced a change in control during the 24-month period preceding the institution's failure to meet the standard, or has experienced extraordinary asset growth during the 18-month period preceding the institution's failure to meet the standard.

The agencies are concerned that the sanctions imposed on an institution not in compliance with a prescribed regulatory standard be consistent with the safe and sound operation of the institution. For example, a requirement to increase tangible equity to assets may induce certain institutions to shrink their balance sheets and could thereby adversely affect safety and soundness by increasing an institution's risk.

(49) How can the agencies avoid this risk?

Agencies monitoring compliance with the safety and soundness standards prescribed under section 39 of the FDI Act will rely on examinations, financial reports, and other tools, but will often not be able to determine immediately when an institution has failed to comply with those standards.

(50) Should a depository institution or depository institution holding company be required to notify its primary regulator when it has failed to comply with a safety and soundness standard under section 39? Would such a requirement aid enforcement of the statute? Would requiring such notification have any undesirable effects?

**VI. Additional Standards**

Section 39 of the FDI Act authorizes the agencies to prescribe safety and soundness standards relating to operation and management, asset quality, earnings, and stock valuation, and employee compensation, in addition to those enumerated in the statute.

(51) The agencies request comment on whether additional standards are necessary and feasible, and if so, which areas should be addressed and what standards should be implemented.

**VII. Holding Company Role**

The agencies anticipate that, in order to promote efficiency and cut costs, multi-bank or thrift holding companies may wish to establish safety and soundness standards for all their subsidiary institutions. So long as the standards are ratified by the board of the subsidiary institutions, the agencies believe that this procedure is a reasonable means of complying with the requirements of section 132 of FDICIA.

(52) Is such a procedure an adequate and advantageous way of complying with section 132 of FDICIA?

**VIII. Relationship to Other Statutory Provisions**

Section 39 of the FDI Act requires the agencies to prescribe safety and soundness standards by regulation in certain areas. Several other statutory provisions pertain to the same or similar safety and soundness standards—for example, section 304 of the FDICIA requires restrictions on real estate lending. Where appropriate, commenters are requested to specify how their interpretation of section 132 relates to other sections of FDICIA.

**IX. Issues Relating to Thrifts and Savings and Loan Holding Companies**

The OTS particularly solicits comment on the application of these safety and soundness standards to savings and loan holding companies. The Home Owners' Loan Act provides significant flexibility to unitary savings and loan holding companies whose thrift subsidiaries meet the "Qualified Thrift Lender" test and, in the case of multiple savings and loan holding companies, where all, or all but one, of the thrift subsidiaries were acquired in a supervisory transaction. These savings and loan holding companies (unlike similarly structured bank holding companies) may generally engage in any type of activity. This activity flexibility permits a wide range of commercial and

industrial firms to become diversified savings and loan holding companies. With these companies, only a small portion of their overall business may consist of the thrift and its activities.

The OTS's regulation of thrift holding companies concentrates on ensuring that subsidiary thrifts are well-managed and well-capitalized and that transactions and relationships between thrifts and their holding companies satisfy fiduciary requirements and do not negatively affect the thrift's safety and soundness. The OTS has not sought to regulate the way a holding company conducts its nonthrift business if these fundamental objectives are being met.

The OTS requests comment on the application of the Operational and Managerial Standards (Section II, above) and the Asset Quality, Earnings, and Stock Valuation Standards (Section III, above) to all savings and loan holding companies and requests that commenters address the following questions:

(53) Should the OTS's standards for savings and loan holding companies differ from the bank regulatory agencies' standards for bank holding companies and, if so, how?

(54) Should the OTS set different standards for diversified savings and loan holding companies versus non-diversified savings and loan holding companies and, if so, how?

(55) Should different standards be set for operating versus "shell" holding companies?

### X. Differential Regulation

The agencies request comment on the extent to which the regulatory standards for the areas described above should vary based on an institution's financial and managerial condition. The agencies request that commenters address this issue in their responses to the questions listed above.

Dated: June 24, 1992.

**Stephen R. Steinbink,**

*Acting Comptroller of the Currency.*

By Order of the Board of Governors of the Federal Reserve System.

Dated: June 26, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

By Order of the Board of Directors.

Dated at Washington, D.C. this 16th day of June, 1992.

**Hoyle L. Robinson,**

*Executive Secretary, Federal Deposit Insurance Corporation.*

By the Office of Thrift Supervision.

Dated: June 25, 1992.

**Timothy Ryan,**

*Director.*

[FR Doc. 92-16576 Filed 7-14-92; 8:45 am]

BILLING CODE 6720-01-M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

## [Docket No. 91-CE-14-AD]

## Airworthiness Directives; Piper PA-31 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would be applicable to Piper PA-31 series airplanes. The proposed action would require painting the color red on the aileron balance cable and the bellcrank lug of both aileron control systems. The Federal Aviation Administration (FAA) has received reports of improper connections of the aileron control systems on the affected airplanes. The actions specified in the proposed AD are intended to prevent improper connection of the aileron control systems, which could result in loss of lateral control of the airplane because the left and right ailerons could only move in the same direction.

**DATES:** Comments must be received on or before September 22, 1992.

**ADDRESSES:** Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-14-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567-4361. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Perry, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910; Facsimile (404) 991-3606.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-CE-14-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-14-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Discussion:** The FAA has received reports of improperly connected aileron control systems on Piper PA-31 series airplanes. When properly connected, the primary cable of an aileron control system is connected to the forward end of the bellcrank and the balance cable is connected to the rear end of the bellcrank. In two instances, these two cables were connected in reverse positions to the bellcrank. In both incidents, the airplane pilot experienced loss of lateral control of the airplane because the left and right ailerons could only move in the same direction.

The Piper Aircraft Corporation manufactured a limited number of the PA-31 series airplanes with red color-coded aileron control systems. The original color coding on some of these airplanes has peeled off.

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After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent improper connection of the aileron control systems, which could result in loss of lateral control of the airplane.

Since the condition described is likely to exist or develop in other Piper PA-31 series airplanes of the same type design, the proposed AD would require painting the color red on the aileron balance cable and the bellcrank lug on both aileron control systems.

The FAA estimates that 3,631 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour to perform the proposed action, and that the average labor rate would be $55 per hour. The estimated cost of parts is $20 per airplane. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $272,325.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

**Piper Aircraft Corporation:** Docket No. 91-CE-14-AD.

*Applicability:* PA-31 Series airplanes (all models and serial numbers), certificated in any category.

*Compliance:* Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent improper connection of the aileron control systems, which could result in loss of lateral control of the airplane, accomplish the following:

(a) Using red enamel paint, color code the aileron balance cable and the bellcrank lug of both aileron control systems in accordance with Figure 1 of this AD.

BILLING CODE 4910-13-M

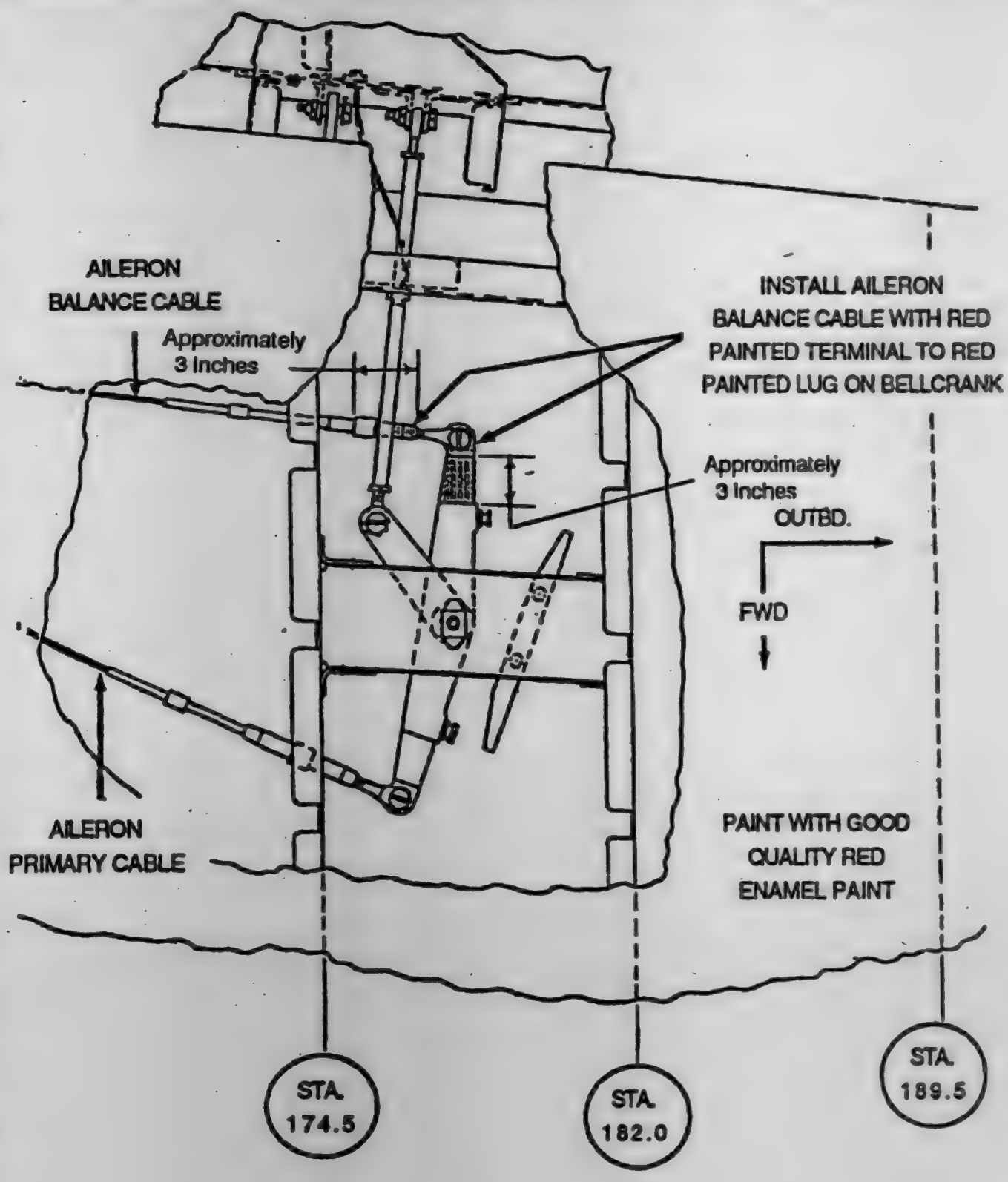


FIGURE 1

**VIEW LOOKING THRU TOP WING SKIN (LEFT WING)**
**RIGHT WING OPPOSITE**

BILLING CODE 4910-13-C

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate 1 airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of any information that is applicable to this AD upon request to Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567-4361. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 8, 1992.

**John R. Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16587 Filed 7-14-92; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[FI-90-91]

RIN 1545-AQ19

### Transferred Proceeds Allocations and Other Arbitrage Restrictions on Refunding Issues; Correction

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Correction to the correction to notice of proposed rulemaking.

**SUMMARY:** This document contains a correction to the correction to notice of proposed rulemaking (FI-90-91), which was published on Wednesday, April 15, 1992 (57 FR 13066). The proposed regulations relate to arbitrage restrictions applicable to tax exempt bonds issued by State and local governments.

**FOR FURTHER INFORMATION CONTACT:** William P. Cejudo, (202-566-3283, not a toll free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

The correction to notice of proposed rulemaking that is the subject of this document corrects the proposed amendments to the Income Tax Regulations (26 CFR part 1) that provide guidance on allocations of transferred proceeds and other restrictions on refunding issues for purposes of arbitrage yield restrictions under section 148, the arbitrage rebate requirement under section 148(f), and the advance refunding limitations under section 149(d) of the Internal Revenue Code.

**Need for Correction**

As published, the correction to notice of proposed rulemaking contains an error which may prove to be misleading and is in need of clarification.

**Correction of Publication**

Accordingly, the publication of the correction to notice of proposed rulemaking (FI-90-91), which was the subject of FR Doc. 92-8570, is corrected as follows:

On page 13067, column 1, the instructional "Par. 3." is withdrawn.

**Dale D. Goode,**

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 92-16022 Filed 7-14-92; 8:45 a.m.]

BILLING CODE 4830-01-M

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### 37 CFR Part 1

[Docket No. 920666-2166]

RIN 0651-AA59

### Changes in Practice Relating To Filing Patent Applications

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Patent and Trademark Office (Office) is proposing to amend the rules of practice in patent cases to provide a uniform practice with respect to an oath or declaration and filing fees in continuing applications.

**DATES:** Written comments must be received on or before August 14, 1992, to ensure consideration. An oral hearing will not be conducted.

**ADDRESSES:** Address written comments to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231, marked to the attention of Jeffrey V. Nase. Correspondence may be sent to FAX to the attention of Jeffrey V. Nase at (703) 305-8825.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey V. Nase by telephone at (703) 305-9282 or by mail marked to his attention and addressed to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231

**SUPPLEMENTARY INFORMATION:** A continuing application (i.e., a continuation or divisional application) filed under § 1.60 does not receive a filing date until a complete copy of the prior application is filed, including a true copy of the oath or declaration. Since the Office is in possession of the prior application's oath or declaration, it is proposed that § 1.60 be modified to be consistent with §§ 1.53 and 1.62 by permitting filing of a true copy of the oath or declaration within a time specified in a notice of missing parts mailed by the Office.

The specific revisions proposed are discussed below.

**(1) Correction Inventorship (Section 1.48)**

Section 1.48(a) is proposed to be amended to replace the designation by letter of various requirements therein with numbered designations so as to avoid confusion when making reference to this section.

**(2) Procedures for Completing Applications Filed Under Section 1.60**

Section 1.60 outlines one of the procedures that may be followed by applicants to file a continuation or divisional application. One of the requirements under this section is that applicants file a true copy of the complete parent application as filed, including the oath or declaration. Paragraph (c) of this section specifies that a filing date will not be granted if applicant fails to file a complete application under this section. A filing date would be granted as of the date of receipt of the missing item. It is proposed that this practice be modified to be similar to the procedures for filing continuing applications under § 1.53(d) and continuation-in-part applications under § 1.62. More specifically, a new paragraph (d) is proposed to be added in § 1.60 to indicate that if an application filed pursuant to § 1.60(b) is otherwise complete, but does not include the appropriate filing fee or a true copy of the oath or declaration from the prior application, a filing date will be granted. The true copy of the oath or declaration, as well as payment of the appropriate filing fee must be submitted within a time period specified in a notice of missing parts mailed by the Office. In a manner similar to the practice under §§ 1.53(d) and 1.62(d), the appropriate oath or declaration and/or filing fee as

well as the surcharge set forth in § 1.16(e) must be filed within the time period specified in the notice of missing parts in order to avoid abandonment of the application. Paragraphs (b) and (c) of this section are proposed to be amended to make reference to the exception specified in proposed paragraph (d) discussed above.

**Other Considerations**

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these proposed rule changes will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these proposed changes is to accord a filing date to certain continuing applications which, through oversight, fail to include certain papers which can be submitted after the filing date.

The Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individuals, industries, Federal, state or local government agencies, or geographic regions because most of the proposed changes reduce procedural burdens. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., since no recordkeeping or reporting requirements within the coverage of the Act are placed upon the public.

**List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, and pursuant to the authority contained in 35 U.S.C. 6, the Office proposes to amend 37 CFR part 1 as follows, wherein deletions are indicated by brackets ([]) and additions by arrows (> <):

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

**Authority:** 35 U.S.C. 6, unless otherwise noted.

2. Section 1.48, paragraph (a) is proposed to be revised to read as follows:

**§ 1.48 Correction of inventorship.**

(a) If the correct inventor or inventors are not named in an application for patent through error without any deceptive intention on the part of the actual inventor or inventors, the application may be amended to name only the actual inventor or inventors. Such amendment must be diligently made and must be accompanied by [(a)] >:

(1)< A petition including a statement of facts verified by the original named inventor or inventors establishing when the error without deceptive intention was discovered and how it occurred; [(b)]

>(2)< An oath or declaration by each actual inventor or inventors as required by § 1.63; [(c)]

>(3)< The fee set forth in § 1.17(h); and [(d)]

>(4)< The written consent of any assignee. When the application is involved in an interference, the petition shall comply with the requirements of this section and shall be accompanied by a motion under § 1.634.

* * * * *

3. In section 1.60, paragraph (b) and (c) are proposed to be revised and paragraph (d) is proposed to be added to read as follows:

**§ 1.60 Continuation or divisional application for invention disclosed in a prior application.**

* * * * *

(b) An applicant may omit signing of the oath or declaration in a continuation or divisional application (filed under the conditions specified in 35 U.S.C. 120 or 121 and § 1.78(a)) if:

(1) The prior application was a complete application as set forth in § 1.51(a),

(2) Applicant indicates that the application is being filed pursuant to this section and files a true copy of the prior complete application as filed including the specification ([including] >with< claims), drawings, oath or declaration showing the signature or an indication it was signed, and any amendments referred to in the oath or declaration filed to complete the prior application,

(3) The inventors named in the continuation or divisional application are the same or less than all the inventors named in the prior application, and

(4) The application is filed before the patenting or abandonment of or termination of proceedings on the prior application. The copy of the prior application must be accompanied by a statement that the application papers filed are a true copy of the prior application and that no amendments referred to in the oath or declaration filed to complete the prior application introduced new matter therein. Such statement must be by the applicant or applicant's attorney or agent and must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. Only amendments reducing the number of claims or adding a reference to the prior application (§ 1.78(a)) will be entered before calculating the filing fee and granting the filing date. If the continuation or divisional application is filed by less than all the inventors named in the prior application, a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the continuation or divisional application. [If] >Except as provided in paragraph (d) of this section, if< a true copy of the prior application as filed is not filed with the application or if the statement that the application papers are a true copy is omitted, the application will not be given a filing date earlier than the date upon which the copy and statement are filed, unless a petition with the fee set forth in § 1.17(i)(1) is filed which satisfactorily explains the delay in filing these items.

(c) If an application filed pursuant to paragraph (b) of this section is incomplete >for reasons other than those specified in paragraph (d) of this section<, applicant will be notified and given a time period within which to complete the application in order to obtain a filing date as of the date of filing the omitted item provided the omitted item is filed before the patenting or abandonment of or termination of proceedings on the prior application. If the omission is not corrected within the

time period set, the application will be returned or otherwise disposed of; the fee, if submitted, will be refunded less the handling fee set forth in § 1.21(n).

>(d) If an application filed pursuant to paragraph (b) of this section is otherwise complete, but does not include the appropriate filing fee or a true copy of the oath or declaration from the prior application, showing the signature or an indication it was signed, a filing date will be granted and applicant will be so notified and given a period of time within which to file the fee, or the true copy of the oath or declaration and to pay the surcharge as set forth in § 1.16(e) in order to prevent abandonment of the application. The notification pursuant to this paragraph may be made simultaneously with any notification pursuant to paragraph (c) of this section.<

Dated: July 8, 1992.

**Douglas B. Comer,**

*Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.*

[FR Doc. 92-16494 Filed 7-14-92; 8:45 am]

BILLING CODE 3510-16-M

## POSTAL RATE COMMISSION

### 39 CFR Part 3001

**[Docket RM92-2]**

### Rules of Practice and Procedure; Notice of Rulemaking Petition and Request for Comments

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice of rulemaking petition and request for comments.

**SUMMARY:** Several petitioners having requested initiation of a rulemaking proceeding to evaluate the impact of the United States Postal Service Automation Program on mail processing costs and the costing and ratemaking implications thereof, the Commission is requesting preliminary comments on the desirability of establishing such a proceeding.

**DATES:** Comments responding to this advance notice must be submitted on or before August 4, 1992.

**ADDRESSES:** Comments and correspondence should be sent to Charles L. Clapp, Secretary of the Commission, Suite 300, 1333 H Street NW., Washington, DC 20268-0001 (telephone: 202/789-6840).

**FOR FURTHER INFORMATION CONTACT:** David F. Stover, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street NW., Washington, DC 20268-0001 (telephone: 202/789-6820).

**SUPPLEMENTARY INFORMATION:** On June 26, 1992, Advertising Mail Marketing Association, Advo, Inc., Direct Marketing Association, Dow Jones & Company, Inc., Harte Hanks Direct Marketing, Magazine Publishers Association, Mail Order Association of America, and Time Warner, Inc. ("petitioners") filed a petition requesting the Commission to initiate a rulemaking proceeding.

Petitioners state that the automation program "has already raised the potential for short-term inefficiencies and cost distortions due to inefficient reallocation and utilization of personnel, and has the potential for long-term and unfair misallocation of costs with corresponding detrimental rate effects." They suggest that these cost distortions may threaten the validity of the traditional mail processing cost distribution methods used by the Postal Rate Commission in its costing analyses. For example, they question whether direct labor involved in processing automated mail requires a greater proportion of supervisor costs than other types of direct labor. Currently, it is assumed that supervisory costs are incurred in direct proportion to all direct labor regardless of whether the direct labor involves processing automated mail or other activities.

To avoid the "time constraints and multiple-issue demands of an omnibus rate proceeding," petitioners claim that these issues should be considered in advance of the next general rate case before the Commission. They propose that the rulemaking proceeding begin by allotting parties a period of time to obtain data from the Postal Service. Participants would then have an opportunity to indicate whether they are interested in submitting testimony and or comments bearing on the issues. At that point, the Commission would determine the need and type of hearing appropriate to further examine these issues.

Persons filing comments (in particular, those supporting the institution of a proceeding) should address what action, if any, they anticipate the Commission will take at the conclusion of the rulemaking proceeding and the legal ramifications of such action.

Following consideration of the comments solicited herein, the Commission will determine what further rulemaking proceedings are warranted and will give notice of its determination in the **Federal Register**.

Issued by the Commission on July 7, 1992.

**Charles L. Clapp,**

*Secretary.*

[FR Doc. 92-16601 Filed 7-14-92; 8:45 am]

BILLING CODE 7710-FW-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[OPP-300249; FRL-4058-2]**

### Aldicarb; Proposed Revocation of Tolerances

**AGENCY:** Environmental Protection Agency (EPA, the Agency).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes revocation of the tolerance for residues of the pesticide aldicarb [2-methyl-2-(methylthio)propionaldehyde O-(methylcarbamoyl) oxime] also known as Temik, and its cholinesterase-inhibiting metabolites 2-methyl 2-(methylsufinyl) propionaldehyde O-(methylcarbamoyl) oxime and 2-methyl-2-(methylsulfonyl) propionaldehyde O-(methylcarbamoyl) oxime in or on the raw agricultural commodity bananas pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA).

**DATES:** Written comments, identified by the OPP document control number [OPP-300249], must be received on or before October 13, 1992.

**ADDRESSES:** By mail, submit comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m until 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Karis North, Special Review and

Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Crystal Station #1, 3rd Floor, 2800 Jefferson Davis Highway, Arlington, VA. (703) 308–8036

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

Aldicarb (Temik) is a pesticide registered for use on a number of sites including a variety of food crops. It is a soil-incorporated carbamate pesticide applied in granular form to provide systemic control of insects, mites and nematodes. Rhone-Poulenc AG Company is the sole registrant of aldicarb and makes all of its worldwide supply of aldicarb in the United States.

## II. Legal Background

FFDCA [21 U.S.C. 301 et seq.] authorizes the establishment of tolerances (maximum legal residue levels) and exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408 [21 U.S.C. 346(a), 348]. Without such tolerances or exemptions, a food containing pesticide residues is "adulterated" under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce [21 U.S.C. 342]. To establish a tolerance or an exemption under section 408 of the FFDCA, the Agency must make a finding that the promulgation of the rule would "protect the public health" [21 U.S.C. 346a(b)]. For a pesticide to be sold and used in the production of a food crop or food animal, the pesticide must not only have appropriate tolerances under the FFDCA but, must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA, 7 U.S.C. 136 et seq.]. FIFRA requires the registration of pesticides which are sold and distributed in the United States.

## III. Regulatory Background

In June, 1988, the registrant submitted results of a market basket survey which measured residue levels of aldicarb in bananas (as well as a number of other commodities) collected in grocery stores. Residues were measured in composite samples (samples of more than one individual item of a commodity). Although none of the composite samples contained levels of aldicarb in excess of the tolerance, the Agency was concerned about the levels in commodities such as individual bananas, which are likely to be consumed whole. Consequently, the Agency required Rhone-Poulenc to analyze individual items of a commodity sampled in the market basket survey for aldicarb residues. Portions of sampled commodities not used as a composite had been frozen and retained by the registrant. Analyses of some of the individual bananas showed greater than tolerance residue levels. The Agency then required field trial residue studies to determine the reasons for these individually high residue levels. In May 1991, during these field trials, Rhone-Poulenc found further evidence of elevated residue levels. Specifically, levels up to 3.14 parts per million (ppm) were found on bananas, which have a tolerance of 0.3 ppm. The registrant has been unable to provide an explanation for these occurrences. As a result of these findings, Rhone-Poulenc stopped the sale of aldicarb for use on bananas worldwide in June 1991. Subsequently, Rhone-Poulenc has amended its maintenance fee payment for its FIFRA registration for aldicarb to exclude the registration for bananas.

## IV. Current Proposal

EPA is proposing to revoke the aldicarb tolerance for residues on bananas for several reasons. First, it is EPA's general policy to revoke tolerances associated with pesticide uses which have been canceled [40 CFR 180.32(b)]. Rhone-Poulenc, the sole registrant of aldicarb, withdrew payment for continued aldicarb use on bananas in March and the registrations are being canceled. Second, evidence submitted by Rhone-Poulenc shows that there is a likelihood that residues above the tolerance level would result following aldicarb applications at the established use rates. Finally, EPA is concerned about the potential risk of poisoning to the U.S. population consuming bananas containing aldicarb residues at levels up to those found in the market basket survey. Aldicarb poisoning results in neurotoxicity which is manifested in humans by a range of symptoms that can include malaise, muscle weakness, headache, dizziness, sweating, nausea, vomiting and diarrhea. Given these circumstances, EPA believes the aldicarb tolerance for bananas should be revoked immediately. Rhone-Poulenc withdrew world-wide use of aldicarb on bananas in 1991 and there has been no further use since that date. Therefore, EPA does not believe that there are any legally-treated domestic or international commodities still in the channels of trade.

## V. Public Comment Procedures

Interested persons are invited to submit written comments, information or data in response to this proposed rule. Comments must be submitted by (insert date 90 days after date of publication in the **Federal Register**). Comments must bear a notation indicating the document control number. Three copies of the comments should be submitted to either location listed under ADDRESSES. Documents considered and relied upon by EPA in reaching its decision and all written comments filed pursuant to this Notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except public holidays. Any person who has registered, or who has submitted an application for registration of aldicarb under FIFRA may request that this proposal be referred to an advisory committee. Such a request must be made within 90 days of the publication of this proposal. To satisfy requirements for analysis specified by Executive Order 12291 and the Regulatory Flexibility Act, EPA has analyzed the impacts of this proposal. This analysis is available for public inspection in Rm. 1128 at the Virginia address given above.

## VI. Other Regulatory Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not result in:

1. An annual effect on the economy of at least $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

3. Significant adverse effects on competition, employment, investment,productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposed rule has been reviewed by the Office of Management and Budget (OMB) as required by E.O. 12291.

### *B. Regulatory Flexibility Act*

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 [Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 et seq.] and EPA has determined that it will not have a significant economic impact on a substantial number of small businesses, small governments or small organizations. Accordingly, I certify that this proposed rule does not require a

separate regulatory flexibility analysis under the Regulatory Flexibility Act.

*C. Paperwork Reduction Act*

This proposed regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

**List Of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements,

Dated: May 20, 1992.

**Linda J. Fisher,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, it is proposed that 40 CFR, chapter I, part 180 be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

**§ 180.269 [Amended]**

2. Section 180.269 is amended by removing the entry "bananas", from the table.

[FR Doc. 92-16640 Filed 7-14-92; 8:45 am]

BILLING CODE 6560-50-F

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 552**

**Federal Motor Vehicle Safety Standards; New Pneumatic Tires—Inflation Pressures**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document denies a petition for rulemaking submitted by the European Tyre and Rim Technical Organisation (ETRTO) requesting an amendment to Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires* for passenger cars, concerning the grouping of all tires into categories with specific maximum inflation pressures for each category. The agency has decided to deny the petition because it is not aware of any technical data indicating either that there is a safety reason for the requested change or that there are problems with conducting the current performance testing of passenger car tires. Accordingly, there is no reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-4803.

**SUPPLEMENTARY INFORMATION:**

**Background**

Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires*, specifies dimensions for tires used on passenger cars and requirements for bead unseating resistance, strength, endurance, and high speed performance. The standard also defines tire load ratings and specifies labeling requirements for passenger car tires.

The standard requires that each passenger car must have a maximum permissible inflation pressure labeled on its sidewall (S4.3). Section 4.2.1(b) lists the permissible maximum pressures: 32, 36, 40, or 60 pounds per square inch (psi), or 240, 280, 290, 300, 330, 340, 350, or 390 kiloPascals (Kpa). A manufacturer's selection of a maximum pressure has the effect of determining the pressures at which its tire is tested. For each permissible maximum pressure, Table II of the standard specifies pressures at which the standard's tests must be conducted. The intent of this provision is to limit the number of possible maximum inflation pressures and thereby reduce the likelihood of having tires of the same size on the same vehicle with one maximum load value but with two different maximum permissible inflation pressures.

On February 10, 1992, the European Tyre and Rim Technical Organisation (ETRTO) petitioned the agency to amend Standard No. 109's requirements about maximum permissible inflation pressures. ETRTO submitted another petition on the same subject on February 21, 1992. Specifically, the petitioner requested that the test inflation pressures be changed from specified values (e.g., 32, 36 psi) listed in S4.2.1(b) to one test inflation pressure for each of its suggested load range categories of tires: "standard load tires," "reinforced/extra load tires," "T type temporary use spare tires," "CT standard load tires," and "CT reinforced tires." Under the petitioner's requested approach, the manufacturer could set the maximum permissible inflation pressure for any particular tire without affecting the test inflation pressures.

In support of its petition, ETRTO stated that its requested amendment would make the regulation more specific in respect to the relation between the tire type and the maximum permissible inflation pressure. The petitioner also stated that its petition would be consistent with the proceedings in the International Standardization Organisation (ISO).

*Agency Decision*

After reviewing the petition, NHTSA has decided to deny it for the reasons set forth below. The agency is not aware of any technical data supporting either a safety reason for the requested change or showing problems with conducting the current performance tests specified in the standard. Further, ETRTO's petition did not provide any data or information of any other sort to support the requested changes. In addition, the agency is not aware of complaints from manufacturers, test laboratories, or consumers about misinterpreting the maximum inflation pressures. The petition provided no rationale or classification criteria relative to performance characteristics for the categories of tires proposed in the petition. Further, ETRTO has not shown any unnecessary burdens in terms of testing difficulties or costs to manufacturers or testing facilities. Further, it has not shown that the requested changes would improve the testing of tires.

NHTSA believes that its current approach is preferable to the petitioner's approach because compared with that approach, the agency's approach results in a closer relationship between maximum permissible inflation pressures and the test inflation pressures. The agency notes that it previously denied a petition from the Rubber Manufacturers Association (RMA) requesting a similar amendment to Standard No. 109. (56 FR 47434, September 19, 1991)

In summary, NHTSA concludes that ETRTO has not shown that the agency should amend Standard No. 109. There is no reasonable possibility that the agency would issue the requested amendment at the conclusion of a rulemaking proceeding. For the reasons set forth above, the agency has decided to deny ETRTO's petition for rulemaking.

Issued on: July 8, 1992.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 92-16569 Filed 7-14-92; 8:45 am]

BILLING CODE 4910-59-M

# Notices

Federal Register
Vol. 57, No. 136
Wednesday, July 15, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research Service

### National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

*Name:* National Agricultural Research and Extension Users Advisory Board.

*Date:* August 14–18, 1992.

*Time:* 8:00 a.m.–7:30 p.m., August 14, 1992; 8:00 a.m.–5:30 p.m., August 15, 1992; 8:00 a.m.–7:30 p.m., August 16, 1992; 8:00 a.m.–5:30 p.m., August 17, 1992; 8:00 a.m.–12:00 p.m., August 18, 1992.

*Place:* Anchorage International Airport Inn, 3333 International Airport Road, Anchorage, Alaska, (907) 243–2233, Wedgewood Manor, 212 F CVB, Wedgewood Drive, Fairbanks, Alaska, (907) 452–1442.

*Type of Meeting:* Open to the public. Persons may participate in the meeting as time and space permit.

*Comments:* The public may file written comments before or after the meeting with the contact person below.

*Purpose:* To review animal, plant and forestry research and extension programs that address challenges and potential benefits for agriculture in high latitudes.

*Contact Person for Agenda and More Information:* Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; telephone (202) 720–3684.

Done in Washington, DC, this 29th day of June 1992.

**John Patrick Jordan,**

*Administrator.*

[FR Doc. 92–16564 Filed 7–14–92; 8:45 am]

BILLING CODE 3410–22–M

### Food and Nutrition Service

### Welfare Simplification and Coordination Advisory Committee Meeting

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice of meeting.

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Advisory Committee on Welfare Simplification and Coordination.

**DATE AND TIME:** August 20, 1992, 9 a.m., August 21, 1992, 2 p.m. and August 22, 1992, 9 a.m.

**ADDRESS:** Seattle Hilton, 1301 University Street, Seattle, Washington, 98101.

**PURPOSE OF MEETING:** Section 1778 of the Mickey Leland Memorial Domestic Hunger Relief Act (title XVII of Pub. L. No. 101–624) requires the Secretary of Agriculture to appoint, after consultation with federal, state, and local officials as well as recipient representatives, an Advisory Committee on Welfare Simplification and Coordination (Committee). The purpose of the Committee is to examine the different policies implemented in the Food Stamp Program, cash and medical assistance programs under the Social Security Act, and housing assistance programs, to determine the major reasons for the differing policies and the degree to which such differences hinder receipt of multiple program benefits and to recommend common or simplified policies to reduce difficulty in gaining access to more than one type of assistance. The Committee is to prepare and submit a final report to specified congressional committees no later than July 1, 1993. The primary purpose of this Committee meeting is the review and discussion of welfare conformity issues and to observe the Washington State Family Independence Program.

Meetings of the Committee are open to the public and the public may participate, as time permits. The public may file written statements with the Committee before or after the meeting.

Persons wishing to file written statements or to obtain additional information about this meeting should contact Ellen Henigan, Supervisor, Work Program Section, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 718, Alexandria, Virginia 22302, (703) 305–2762.

Dated: June 26, 1992.

**George A. Braley,**

*Acting Administrator.*

[FR Doc. 92–16637 Filed 7–14–92; 8:45 am]

BILLING CODE 3410–30–M

### Forest Service

### Exemption of Johnson Salvage Timber Sale, Jim Salvage Timber Sale, JC Salvage Timber Sale, Prong Salvage Timber Sale, RD Salvage Timber Sale, and Muir Salvage Timber Sale From Appeal, Wallowa-Whitman National Forest, OR

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice to exempt decisions from administrative appeal.

**SUMMARY:** This is a notification that the decisions to implement the Johnson Salvage Timber Sale, Jim Salvage Timber Sale, JC Salvage Timber Sale, Prong Salvage Timber Sale, RD Salvage Timber Sale, and the Muir Salvage Timber Sale located on the La Grande Ranger District of the Wallowa-Whitman National Forest are exempt from appeal. This is in conformance with provisions of 36 CFR part 217.4 (a)(11) as published January 23, 1989, at Vol. 54, No. 13, pages 3342–3370.

**DATE:** Effective on issuance of the Decision Notices for the Johnson Salvage Timber Sale, Jim Salvage Timber Sale, JC Salvage Timber Sale, Prong Salvage Timber Sale, RD Salvage Timber Sale, and Muir Salvage Timber Sale.

**FOR FURTHER INFORMATION CONTACT:** Bruce Kaufman, Timber Staff, Wallowa-Whitman National Forest, 1550 Dewey Avenue, Baker City, Oregon 97814.

**SUPPLEMENTARY INFORMATION:** A western spruce budworm epidemic began on the La Grande Ranger District in 1980. Within three years nearly all of the susceptible host type had become infested. Defoliation was especially severe from 1985 to 1987 and then again in 1989 and 1990. The many years of defoliation, combined with abnormally dry years created conditions favorable for the increase in Douglas-fir bark beetle activity during the last three years. Much of the infestation is located on the west side of the La Grande

District but has been slowly spreading onto the eastern side of the District over the last 3 years. Insect damage includes damage to vegetation, soils, and water resources.

The La Grande interdisciplinary (team IDT) and public comments received on the salvage program identified the need to salvage the timber which has died in as short a time as possible so the logs would remain merchantable. Although the size of merchantable timber varies within the different areas, white fir averages 11 inches in diameter at breast height (DBH), Douglas-fir averages 16-18 inches DBH, and the other species average 10-12 inches DBH. Deterioration of the merchantability of insect infested or killed trees due to "checking" and sap rot is dependent on the tree species and the average diameter. In general, the smaller the diameter of the tree the more rapidly it will deteriorate. Bark beetle killed Douglas-fir trees of less than 14 inches DBH were generally not selected for harvest in any of these salvage sales because they would not remain merchantable long enough to harvest them.

During the summer of 1990 and continuing on into 1991 the La Grande IDT began the process of scoping and analyzing the potential to salvage timber in all of the areas analyzed in the environmental assessments for these timber sales. After public meetings, press releases, and contacts with individuals, and State and Federal agencies, major issues were identified for each of the environmental assessments. In many cases the major issues related to the insect epidemic and salvage of dead and dying timber in all of the project areas were quite similar with the few expections noted in the following description of each major issue:

1. Forest Tree Health—Overall forest tree health is in very poor condition. What management practices should be utilized to modify, diversify, and rejuvenate the forested landscape in the project areas?

2. Visual Management—(Johnson Salvage)—Visual quality along Forest road 51, a level 1 sensitivity travel route, has been impacted by the insect infestation. The opportunity exists to improve the visual qualities in this area in the short and long term through sensitive management practices.

3. Riparian Habitat, Fish Habitat, and Water Quality—Any proposed activities must protect riparian and fish habitat and water quality. Of particular concern are those areas that support or are like-habitat of the sensitive and threatened fish species identified on the La Grande Ranger District.

4. Big Game/Wildlife Habitat—Due to the extensive nature of the insect infestation and past management practices on the District wildlife habitat has been severely impacted in both the long and short term. What will be the effects or benefits of salvage and rehabilitation of these dead stands of timber on big game and wildlife?

5. Economics/Cost Effectiveness—Any proposed harvest entry must be cost effective while protecting resource values. Salvage volume will be used to meet District sell targets but if not utilized this volume will be lost.

6. Timber Yield and Utilization—The extensive insect infestation has reduced timber yield below acceptable levels and the opportunity exists to utilize this material before lost and to rehabilitate stands in order to return them to their growth potential levels.

7. Beaver Creek Roadless Area—(JC Salvage)—How will management activities effect the principle elements of roadless character in this unroaded area that was considered for designation as roadless in the Forest Plan but was not selected in the preferred alternative?

8. La Grande Watershed—(JC Salvage)—Water quality objectives identified in the Forest Plan for this municipal watershed must be maintained or improved and all improvements associated with the water distribution.

9. Access Management—(Jim Salvage)—The road management plan for this project area needs to protect and enhance resource values within the area, achieve the standards set in the Forest Plan, and provide reasonable access to the area for public and administrative needs.

10. Fire Management—(Jim Salvage, Muir Salvage)—What management options could be utilized to reduce the high fuel loadings within these areas and the potential for large wildfires?

The IDT developed a range of three to seven alternatives for each of the project areas to analyze, including the No Action Alternative. The effects of these alternatives are disclosed for each project area in the appropriate Environmental Assessment prepared for these proposals. The Proposed Action for each of the projects listed above are described in the following table:

LA GRANDE RANGER DISTRICT SALVAGE SALES

| Descriptions | Johnson | Jim | JC | Prong | RD | Muir |
|---|---|---|---|---|---|---|
| Proposed action | Alt. 4 | Alt. 3 | Alt. 3B | Alt. 3B | Alt. 3 | Alt. 3 |
| Harvest acres | 805 | 208 | 138 | 662 | 872 | 166 |
| Harvest vol. (board feet) | 3,584,000 | 795,000 | 470,000 | 2,820,000 | 2,970,000 | 486,000 |
| Reforestation (acres) | 697 | 179 | 75 | 449 | 546 | 106 |
| New road const. (miles) | 0 | 4.83 | 0 | 0 | 0.53 | .30 |
| Road reconst. (miles) | 1.49 | 2.62 | 0 | 0 | 5.06 | 0.60 |
| Logging systems: | | | | | | |
| Tractor | 126 | 61 | 29 | 422 | 831 | 47 |
| Skyline | 77 | 117 | 0 | 0 | 41 | 36 |
| Helicopter (acres) | 602 | 0 | 109 | 260 | 0 | 83 |

Biological evaluations have been completed for all plant, wildlife, and fish Proposed, Endangered, Threatened, and Sensitive species within each of the project areas. Formal consultation has been initiated with National Marine Fisheries Service for spring-summer chinook salmon for all the projects. All biological evaluations indicated that the projects could proceed as planned.

These salvage sales were designed to accomplish their objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite these sales projects and the accompanying work, and to prevent delays by appeals, the process according to 36 CFR part 217 is being followed. Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System Lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to

exempt such decisions from review under this part.

Upon publication of this notice, The Decisions Notices for Johnson Salvage Timber Sale, Jim Salvage Timber Sale, JC Salvage Timber Sale, Prong Salvage Timber Sale, RD Salvage Timber Sale, and Muir Salvage Timber Sale will be signed by the La Grande District Ranger. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: July 9, 1992.

S.W. Carter, Jr.,

*Acting Regional Forester.*

[FR Doc. 92-16589 Filed 7-14-92; 8:45 am]

BILLING CODE 3410-11-M

## Camas Salvage Sales, Restoration, and Off-Highway Vehicle Trail Complex Projects, Umatilla National Forest, Umatilla and Union Counties, OR

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA Forest Service will prepare an environmental impact statement (EIS) for two to four salvage timber sales, rehabilitation projects, and an off-highway vehicle (OHV) trail complex project within the Camas and Bughunter planning areas. The OHV trail complex is included as part of the proposed action because of potential effects on elk security, elk harassment, and open road density, when combined with salvage harvest. The EIS will tier to the 1990 Land and Resource Management Plan FEIS for the Umatilla National Forest. The Forest Service proposed action will be consistent with the Land and Resource Management Plan (Forest Plan), which provides the overall management direction for the area. The combined project area is located on the North Fork John Day Ranger District, approximately 12 air miles east and northeast of Ukiah, Oregon, and includes 75,295 areas. The project area includes portions of Bear Wallow, Bowman, Butcherknife, Camas, Dry Camas, Frazier, Hideway, Lane, Owens, Rancheria, and Warm Spring Creek drainages which are tributary to the North Fork John Day River; and also includes portions of the Bear, Bridge, and West Birch Creek drainages which are tributary to the Umatilla River. The Forest Service proposal includes: (1) Salvage of insect- and disease-damaged timber, (2) development of connected road systems, (3) rehabilitation of areas of dead and dying trees, and (4) development of an OHV trail complex. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the planning process and final decision.

**DATES:** Comments concerning the scope of the analysis should be received in writing by July 31, 1992.

**ADDRESSES:** Send written comments and suggestions concerning the management of this area to Craig Smith-Dixon, District Ranger, North Fork John Day Ranger District, P.O. Box 158, Ukiah, Oregon 97880.

**FOR FURTHER INFORMATION CONTACT:** Address questions about the proposed action and EIS to Jeff Hammes, Project Team Leader, North Fork John Day Ranger District, phone (503) 427-3231.

**SUPPLEMENTARY INFORMATION:** The purpose of the Forest Service proposal is to salvage dead and dying timber resulting from a spruce budworm insect infestation, to initiate rehabilitation projects that will facilitate reaching the desired future condition of the area, and to develop an OHV trail complex to meet the growing recreational needs of the public. The proposed action will tier to the FEIS and will be consistent with the Forest Plan, as amended, which provides goals, objectives, standards, and guidelines for the various activities and land allocations on the forest.

The Forest Plan allocates lands in the project area into eleven management areas: (1) Timber and Big Game, 47% (timber harvest allowed); (2) Wildlife Habitat, 20% (timber harvest); (3) Big Game Winter Range, 7% (timber harvest); (4) Special Fish Management Area, 5% (timber harvest); (5) Viewshed 1, 5% (harvest timber); (6) Dedicated Old Growth, 3% (no timber harvest); (7) Riparian (Fish and Wildlife), 2% (limited timber harvest); (8) Viewshed 2, 2% (timber harvest); (9) Research Natural Area, 0.52% (no timber harvest); (10) Managed Old Growth, 0.82% (timber harvest); and (11) Developed Recreaton, 0.16% (limited timber harvest). Private lands (6,055 acres) are also included within the project area boundary (8% of the area). Although excluded from Forest Service activities, the condition of private lands will be considered when analyzing potential cumulative effects.

The two project areas were analyzed in separate environmental analyses. In the Spring of 1992, it was determined that a Finding of No Significant Impact could not be made. It was then decided that an EIS was needed for the combined project area in order to disclose potential significant cumulative effects. The proposed action for this EIS would harvest 41 million board feet of timber on 6,500 acres and would construct 4.4 miles of temporary road. The resulting salvage sales are scheduled for offering in fiscal year 1993.

The Key issues identified to date include: (1) Wildlife habitat (short-term and long-term considerations for game and nongame habitat), big game habitat effectiveness, open road density, and cover-to-forage ratios); (2) stand health (tree mortality, reduced tree stocking levels, progression to the desired future condition); and (3) water quality/riparian health (water quality, quantity, flow, temperature, and timing, and riparian vegetation condition.)

A range of project alternatives will be considered, including a non-action alternative. Based on the issues gathered through scoping, the action alternatives will vary in (1) the amount and location of acres considered for treatment, (2) the amount of road constructed for access, (3) the silvicultural and post-harvest treatments prescribed, (4) the number, type, and location of rehabilitation projects, (5) the amount and location of OHV trail developed, and (6) the amount of time needed to move the area towards its desired future condition.

Scoping was conducted for each environmental analysis through letters, newspaper advertisements, and a public meeting on January 20, 1990. The projects were also displayed at two District open houses in May and October of 1991. Continued scoping and public participation efforts will be used by the interdisciplinary team to identify new issues, determine alternatives in response to the issues, and determine the level of analysis needed to disclose potential biological, physical, economic, and social impacts associated with this project. The Forest Service will be seeking information, comments, and assistance from other agencies, tribes, organizations, and individuals that may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploration of additional alternatives based on the issues identified during the scoping process.
5. Identification of potential environmental effects of the proposed action and alternatives [i.e. direct, indirect, and cumulative effects and connected actions).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in August, 1992. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. The EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is important that those interested in the management of the Umatilla National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or merits of the alternatives formulated and discussed in the statement. (Reviewer may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled for completion by October 30, 1992. In the final EIS, the Forest Service is required to be responsible to comments received during the comment period for the draft EIS. The Forest Service is the lead agency. Jeff D. Blackwood, Forest Supervisory, is the responsible official. He will decide which, if any, of the proposed project alternatives will be implemented. His decision and reasons for the decision will be documented in the Record of decision. That decision will be subject to Forest Service appeal regulations (36 CFR 217).

Dated: July 7, 1992.

**Jeff D. Blackwood,**

*Forest Supervisor.*

[FR Doc. 92-16588 Filed 7-14-92; 8:45 am]

BILLING CODE 3410-11-M

## Federal Grain Inspection Service

### FGIS To Use Near Infrared Transmittance Instruments (NIRT) for Wheat Protein Analysis

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice.

**SUMMARY:** The Federal Grain Inspection Service (FGIS) is announcing the introduction of an additional type of technology to be used in its national wheat protein inspection program. FGIS currently uses Near Infrared Reflectance (NIRR) instruments to determine and certify protein in wheat in both domestic and export markets. FGIS has type-evaluated and approved (for official use) the Infratec 1225 and 1226 whole-grain Near Infrared Transmittance (NIRT) instruments for officially determining and certifying protein in wheat in both domestic and export markets.

**EFFECTIVE DATE:** July 15, 1992, FGIS will allow the use of the Infratec 1225 and 1226 NIRT instruments for official certification of protein for Hard Red Winter, Hard Red Spring, and Soft White wheats.

**FOR FURTHER INFORMATION CONTACT:** Ronald C. Bicsak, Asst. Chief, Quality Control and Test Branch, Quality Assurance and Research Division, Federal Grain Inspection Service, USDA, 10383 N. Executive Hills Blvd., Kansas City, MO 64153-1394 telephone (816) 891-8070.

**SUPPLEMENTARY INFORMATION:** FGIS has been using NIRR instruments for determining the protein content in wheat since May 1978. This technology requires that each wheat sample be ground to a consistent particle size.

A portion of the ground sample is packed into a sample holder before being analyzed in an NIRR instrument. This sample preparation procedure is operator dependent and can influence the protein results.

The NIRT instruments analyze whole grain samples, thereby reducing operator influence on the results. Eliminating the grinding requirement also reduces the analysis time.

FGIS has extensively tested the Infratec 1225/1226 and has demonstrated that these NIRT instruments are capable of providing accuracy equal to that of the existing NIRR instruments (with respect to Kjeldahl as the chemical reference method). Currently only Hard Red Winter, Hard Red Spring, and Soft White wheat calibrations have been developed for use. As other wheat calibrations are developed, FGIS will announce their release for use with the NIRT instruments.

**Authority:** 7 U.S.C. 71, *et seq.*

Dated: July 9, 1992.

**David R. Galliart,**

*Acting Administrator.*

[FR Doc. 92-16565 Filed 7-14-92; 8:45 am]

BILLING CODE 3410-EN-M

## ARCTIC RESEARCH COMMISSION

### Meeting

July 2, 1992.

Notice is hereby given that the Arctic Research Commission will hold its 28th Meeting in Nome, Alaska, August 10-11, 1992. On Monday, August 10, a business meeting open to the public will be held starting at 8:30 a.m. in the Board Room, Bering Straits Regional Corporation. Agenda items include: (1) Chairman's Report; (2) Comments from agencies and organizations; (3) Consideration of Submarines as Research Platforms; (4) Proposed Research—An Alaskan Perspective; (5) Status of National Park Service Research in Connection with the International Heritage Park; (6) Bering Sea Wildlife Research; (7) Comments on Needed Research by Attendees; and (8) Discussion Among Commission on Outline for Goals Report. The Commission will meet in Executive Session Tuesday, August 11, 1992.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: P.L. Johnson, Executive Director, U.S.

Arctic Research Commission, 202–371–9631 or TDD 202–357–9867.

Philip L. Johnson,

*Executive Director, U.S. Arctic Research Commission.*

[FR Doc. 92–16543 Filed 7–14–92; 8:45 am]

BILLING CODE 7555–01–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–101]

### Greige Polyester/Cotton Printcloth From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On May 26, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 21936) the preliminary results of its administrative review of the antidumping duty order on greige polyester/cotton printcloth from the People's Republic of China (PRC). The review covers one manufacturer/exporter of this merchandise to the United States and the period September 1, 1988, through August 31, 1989. The review indicates that there were no shipments of the subject merchandise to the United States during the review period.

We gave interested parties an opportunity to comment on the preliminary results; we received no comments. Consequently, the final results of the review are unchanged from those presented in the preliminary results.

**EFFECTIVE DATE:** July 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** Zev Primor or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4851.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 26, 1992, the Department published in the **Federal Register** (57 FR 21936) the preliminary results of its administrative review of the antidumping duty order on greige polyester/cotton printcloth from the PRC (48 FR 41614, September 16, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

#### Scope of the Review

Imports covered by this review are shipments of greige polyester/cotton printcloth, other than 80 x 80 type. Greige polyester/cotton printcloth is unbleached and uncolored printcoth. The term "printcloth" refers to plain woven fabric, not napped, not fancy or figured, of single yarn, not combed, of average yarn number 26 to 40, weighing not more than 6 ounces per square yard, of a total count of more than 85 yarns per square inch, of which the total count of the warp yarns per inch and the total count of the filling yarns per inch are each less than 62 percent of the total count of the warp and filling yarns per square inch. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item 5210.11.60. The HTS item number is provided for convenience and Customs purposes. The written# description remains dispositive.

The review covers one manufacturer/exporter of greige polyester/cotton printcloth from the PRC, Chinatex, and the period September 1, 1988 through August 31, 1989.

#### Final Results of the Review

We determined that Chinatex had no shipments to the United States during the review period. Consequently, we are continuing the deposit rate established in the final results of the last administrative review, published in the **Federal Register** on January 13, 1992 (57 FR 1254):

| Manufacturer/exporter | Margin/percent |
|---|---|
| Chinatex | [1] 22.4 |

[1] No shipments during the period; margin is from the last period in which there were shipments.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate established for the reviewed company will be that rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm with shipments in this administrative review, other than those firms receiving a rate based entirely on best information available (BIA). Since the only firm in this review had no shipments, the "all other" rate will be the highest non-BIA rate in the most recent review in which such a rate was established. The "all other" rate is 22.4 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrtive review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 2, 1992.

Alan M. Dunn,

*Assistant Secretary for Import Administration.*

[FR Doc. 92–16655 Filed 7–14–92; 8:45 am]

BILLING CODE 3510–DS–M

### U.S. Geological Survey, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Comments:* None received.

*Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used.

is being manufactured in the United States.

*Docket Number:* 92–052. *Applicant:* U.S. Geological Survey, Reston, VA 22092. *Instrument:* Mass Spectrometer, Model MAT 262. *Manufacturer:* Finnigan Corporation, Germany. *Intended Use:* See notice at 57 FR 21394, May 20, 1992. *Reasons:* The foreign instrument provides six adjustable Faraday cup collectors with a standard deviation of the mean less than 0.002% for 1 μg loads of NIST standard SRM–987 (strontium).

*Docket Number:* 92–056. *Applicant:* University of Maryland, College Park, MD 20742. *Instrument:* Mass Spectrometer, Model VG Sector 54. *Manufacturer:* VG Isotech Ltd., United Kingdom. *Intended Use:* See notice at 57 FR 21394, May 20, 1992. *Reasons:* The foreign instrument provides: (1) Seven Faraday cup collectors, (2) an electron multiplier and (3) precisions of 20 ppm, 50 ppm, 0.05% and 0.05%, respectively, for isotopic ratios of Nd, Sr, Pb and Os with samples of 10.0 ng or less.

*Docket Number:* 92–063. *Applicant:* University of Nebraska-Lincoln, Lincoln, NE 68583–0844. *Instrument:* Mass Spectrometer, Model "OPTIMA". *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 57 FR 21395, May 20, 1992. *Reasons:* The foreign instrument provides an internal precision of 0.01 per mil for 100 bar μ1 samples for $N_2$ and for $Ar/N_2$ using simultaneous multicollection.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 92–16656 Filed 7–14–92; 8:45 am]

BILLING CODE 3510–DS–M

## Foreign-Trade Zones Board

**[Docket 22–92]**

### Foreign-Trade Zone 75—Phoenix, AZ; Application for Subzone Wal-Mart Stores, Inc., Distribution and Processing Facility Buckeye, AZ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Phoenix, Arizona, grantee of FTZ 75, requesting special-purpose subzone status for a new distribution and processing facility of Wal-Mart Stores, Inc., Buckeye, Arizona, in the Phoenix port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 1, 1992.

Wal-Mart is a nationwide discount merchandiser, headquartered in Bentonville, Arkansas. The company employs 385,000 people and its total sales exceeded $44 billion in 1991.

Wal-Mart is planning to construct a new distribution/processing facility (145 acres, 2 mil. sq. ft.) at 23701 W. Southern Avenue, Buckeye, Arizona, some 24 miles west of Phoenix. The facility will be used to store, test, and distribute a wide range of consumer products, some of which are of foreign origin. There will be processing activity for some products. The application contains requests for authority to assemble stereo systems (duty rate 3.7%) and camera kits (duty rate 3.0%) under zone procedures. Items sourced from abroad for the stereo assembly operations include: tuners, amplifiers, and turntables (duty rate range 4.4%–6.0%). Items sourced abroad for the camera kit assembly operations include: Camera cases (plastic, leather, textile, and other), lenses, and film (duty rate range 3.7%—20.0%).

Zone procedures would exempt Wal-Mart from Customs duty payments on the foreign products that are reexported. It would be able to defer Customs duty payments on domestic sales, and choose the finished product duty rates on the above noted items processed at the facility. The application indicates that zone savings would help improve the international competitiveness of the distribution/processing facility.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 14, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 28, 1992).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Rm. 3412 Federal Building, 230 North 1st Avenue, Phoenix, Arizona 85025

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated July 6, 1992.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 92–16657 Filed 7–14–92; 8:45 am]

BILLING CODE 3510–DS–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

July 9, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 341 is being increased for special shift and carryforward. The limit for Category 641 is being reduced to account for the special shift being applied. As a result, the limit for Category 341, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of

the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 9, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 16, 1992, you are directed to amend further the November 22, 1991 directive to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels not in a group | |
| 341 | 737,975 dozen. |
| 641 | 1,169,321 dozen. |

[1] The limit has not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-16591 Filed 7-14-92; 8:45 am]

BILLING CODE 3510-DR-F

## Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

July 9, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6719. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58557, published on November 20, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 9, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1991, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 16, 1992, you are directed to amend further the directive dated November 15, 1991 to adjust the limits for the following categories, as provided under the terms of the bilateral agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Sublevels in Group I | |
| 218 | 19,497,977 square meters. |
| 225/317/326 | 34,606,857 square meters. |
| 613/614/615/617 | 17,429,960 square meters. |
| 619/620 | 12,611,291 square meters. |
| 625/626/627/628/629 | 15,574,336 square meters. |
| In Group I subgroup | |
| 314 | 25,540,766 square meters. |
| 361 | 1,252,231 numbers. |
| Sublevels in Group II | |
| 336 | 121,862 dozen. |
| 338/339 | 822,050 dozen. |
| 340 | 1,149,229 dozen. |
| 347/348 | 2,464,054 dozen of which not more than 1,185,524 dozen shall be in Categories 347-W/348-W [2]. |
| 359-C/659-C [3] | 1,418,689 kilograms. |
| 435 | 21,162 dozen. |
| 442 | 39,751 dozen. |
| 443 | 41,788 numbers. |
| 444 | 103,696 numbers. |
| 445/446 | 136,000 dozen. |
| 633/634/635 | 1,532,443 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 801,760 dozen shall be in Category 635. |
| 638/639 | 8,332,482 dozen. |
| 640 | 1,026,916 dozen of which not more than 281,710 dozen shall be in Category 640-Y [4]. |
| 642 | 777,141 dozen. |
| 644 | 920,447 numbers. |
| 647/648 | 5,346,249 dozen of which not more than 5,121,249 dozen shall be in Categories 647-W/648-W [5]. |
| 659-S [6] | 1,713,821 kilograms. |
| 835 | 17,548 dozen. |
| In Group II subgroup | |
| 341 | 287,580 dozen. |
| 342 | 201,699 dozen. |
| 351 | 402,015 dozen. |
| 447/448 | 20,395 dozen. |
| 636 | 340,719 dozen. |
| 641 | 766,661 dozen of which not more than 254,094 dozen shall be in Category 641-Y [7]. |
| 651 | 306,980dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 347-W: only HTS numbers 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-W: only HTS numbers 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[3] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010,

6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[5] Category 647-W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2010, 6203.49.2030, 6203.49.2040, 6203.49.2060, 6203.49.3030, 6210.40.1035, 6211.20.1525, 6211.29.20.3030 and 6211.33.0030; Category 648-W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.3030, 6204.69.9030, 6210.50.1035, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060.

[6] Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[7] Category 641-Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-16586 Filed 7-14-92; 8:45 am]

BILLING CODE 3510-DR-F

## Request for Public Comments on Bilateral Textile Consultations with Guatemala on Certain Cotton and Man-Made Fiber Textile Products

July 9, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories for which consultations have been requested, call (202) 377-3740.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 22, 1992, under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on July 31, 1991, the Government of the United States requested consultations with the Government of Guatemala with respect to cotton and man-made fiber woven shirts in Categories 340/640, produced or manufactured in Guatemala.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Guatemala, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber woven shirts in Categories 340/640, produced or manufactured in Guatemala and exported during the twelve-month period which began on June 22, 1992 and extends through June 21, 1993, at a level of not less than 796,980 dozen.

A summary market statement concerning Categories 340/640 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 340/640, or to comment on domestic production or availability of products included in these categories, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Guatemala.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 340/640. Should such a solution be reached in consultations with the Government of Guatemala, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Market Statement—Guatemala**

**Category 340/640—Men's and Boys' Cotton and Man-Made Fiber Woven Shirts**

**June 1992**

*Import Situation and Conclusion*

U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, from Guatemala reached 798,980 dozen during the year ending March 1992, 68 percent above the 474,954 dozen imported during the year ending in March 1991. During the first three months of 1992, imports of Category 340/640 from Guatemala surged to 257,310 dozen, almost 3 times the 93,289 dozen imported during the same period a year earlier.

The sharp and substantial increase in Category 340/640 imports from Guatemala is causing disruption in the U.S. market for men's and boys' cotton and man-made fiber woven shirts.

*U.S. Production, Import Penetration, and Market Share*

U.S. production of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined 28 percent, falling from 16,401,000 dozen in 1988 to 11,797,000 dozen in 1991. U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined in 1990 and 1991. However, Category 340/640 imports surged in 1992, reaching 7,155,498 dozen during the first three months of 1992, 28 percent above the level imported during the January-March 1991 period. If Category 340/640 imports continue to grow at this rate, they will reach a record 28,620,000 dozen in calendar year 1992.

The ratio of imports to domestic production increased from 157 percent in 1988 to 203 percent in 1991, while the domestic manufacturers' share of the market for men's and boys' cotton and man-made fiber woven shirts fell from 39 percent in 1988 to 33 percent in 1991. If imports continue to increase at their current rate of growth and domestic production remains at the 1991 level, the ratio of imports to domestic production would increase to 243 percent and the domestic manufacturers' share of the market for men's and boys' cotton and

man-made fiber woven shirts would fall to 29 percent in 1992.

*Duty-Paid Value and U.S. Producers' Price*

Approximately 74 percent of Category 340/640 imports from Guatemala during the year ending March 1992 entered the U.S. under HTSUSA numbers 6205.20.2025—men's cotton dress shirts, other than yarn dyed, 6205.20.2050—men's yarn dyed cotton shirts that are not napped, and not corduroy, 6205.20.2065—other men's cotton shirts, other than yarn dyed, and 6205.20.2075—other boys' cotton shirts. These shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable shirts.

[FR Doc. 92-16592 Filed 7-14-92; 8:45 am]

BILLING CODE 3510-DR-F

## Establishment of an Import Restraint Limit for Certain Wool Textile Products Produced or Manufactured in Myanmar

July 10, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing a limit.

**EFFECTIVE DATE:** July 17, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States has decided to establish a restraint limit for men's and boys' wool trousers, breeches and shorts in Category 447, produced or manufactured in Myanmar and exported during the twelve-month period which began on June 30, 1992 and extends through June 29, 1993.

A summary market statement concerning Category 447 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 447 or to comment on domestic production or availability of products included in Category 447, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Market Statement—Myanmar**

**Category 447—Men's and Boys' Wool Trousers, Slacks and Shorts**

**June 1992**

*Import Situation and Conclusion*

U.S. imports of men's and boys' wool trousers, slacks, and shorts, Category 447, from Myanmar reached 4,519 dozen during the year ending April 1992. Myanmar is a new supplier in this category with imports beginning in September 1991. In just eight months (September 1991 - April 1992) Myanmar has become the fourteenth largest supplier of men's and boys' wool trousers to the U.S., accounting for one and a half percent of total Category 447 imports.

The sharp and substantial increase in Category 447 imports from Myanmar is disrupting the U.S. market for men's and boys' wool trousers, slacks, and shorts.

*U.S. Production, Import Penetration and Market Share*

U.S. production of men's and boys' wool trousers, slacks, and shorts, Category 447, fell from 536,000 dozen in 1990 to 367,000 dozen in 1991, a decline of 32 percent. In contrast, U.S. imports of men's and boys' wool trousers, slacks, and shorts, Category 447, increased from 249,000 dozen in 1990 to 279,000 dozen in 1991, a 12 percent increase. Category 447 imports surged in 1992, reaching 107,000 dozen in the first four months, 30 percent above the January-April 1991 level. The domestic manufacturers' share of the men's and boys' wool trousers, slacks, and shorts market fell from 66 percent in 1990 to 57 percent in 1991, a decline of 11 percentage points. The ratio of imports to domestic production reached 76 percent in 1991, 29 percentage points above the 47 percent recorded in 1990.

*Duty-Paid Value and U.S. Producers' Price*

All of Category 447 imports from Myanmar in 1991 and 1992 entered under the HTSUSA number 6203.41.1010—men's wool trousers and breeches. These trousers and breeches entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable wool trousers and breeches.

**Committee for the Implementation of Textile Agreements**

July 10, 1992.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 17, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 447, produced or manufactured in Myanmar and exported during the period beginning on June 30, 1992 and extending through June 29, 1993, in excess of 4,519 dozen. [1]

Textile products in Category 447 which have been exported to the United States prior to July 1, 1992 shall not be subject to the limit established in this directive.

Textile products in Category 447 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-16636 Filed 7-14-92; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after June 29, 1992.

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Defense Contracting; Reporting Procedures on Defense Related Employment**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice.

**SUMMARY:** The document is the fiscal year 1991 list of major defense systems under 10 U.S.C. 2397b and 2397c. This document is published to assist present and former DoD employees, agency officials and defense contractors in complying with their obligations under these sections of the United States Code.

**EFFECTIVE DATE:** This listing is effective September 30, 1991.

**FOR FURTHER INFORMATION CONTACT:** Randi Elizabeth DuFresne, Office of the General Counsel of the Department of Defense, Standards of Conduct Office, room 3C960, The Pentagon, Washington, DC 20301-1600, telephone 703/697-5305.

**Major Defense Systems**

*Army*

1AAWS-M (Anti-Armor)
ADDS
AFAS
AGS (ASM)
AH-64A Apache
ASAS
ASM LOSAT
ASM (Armored System MOD)
ATACMS
ATCCS-CHS TAC C2 SYS
Avenger
BAT
Block III Tank
Bradley FVS
CH-47D
CSSCS
FAADS C2
FAADS LOS-F-H ADATS
FAADS NON LOS FOG-M
FARV-A (ASM)
FHTV/OLS (HVY TAC VEH)
FMTV (MED TAC VEH)
Follow-on to Lance
Hellfire (AGM-114A/B)
LH (Light Helo)
Longbow Hellfire
M1/M1A1 Abrams Tank
MCS (MNVR CNTRL SYS)
MLRS (Rocket Sys)
MSE COMM SYS
OH-58 D (AHIP)
Patriot Sam Sys
PLRS (POS LOC RPT)
SADARM SUB-MUN
Scamp
Scott
SINCGARS
Smart-T
Stinger (FIM-92A/B)
Stinger-RMP
Stingray AN(ALQ-XX)
Tacit Rainbow (JGL)
Tow 2 (M220E4)
UH-60A Blackhawk

*Navy*

A-6E Intruder UPGRD
A-12 ADV TAC ACFT
AAAM (advanced A-A MSL)
AIWS (ADV INTERD WPN)
AN/BSY-1
AN/BSY-2
AN/SQQ-89 ASW CS
AN/SQY-1 ASW CS
AR(X)-FAST Forward REP
ASPJ
ATS
AV-8b Harrier II
AX
CG-47
CIWS (Close-in WPN)
C/MH-53E
CVN-68
CVN-72/75 Carrier
DDG-51 Destroyer
E-2C Hawkeye
E-6A Tacamo
EA-6B Prowler
EMSP
F-14d Tomcat
F/A-18 Hornet
FDS (Fixed Dist Sys)
HARM (AGM88A)
HARPOON (A/R/UGM-84)
LCAC (Landing Craft)
LHD-(AMPHIB ASLT)
LRCSW (STD OFF WPN)
LSD-41 (Cargo Var)
LSD-41 Dock Landing
LX AMP AssaultShip
MK 15 PHALANX CIWS
MK 48 ADCAP Torpedo
MK 50 ALWT Torpedo
MCM-1 (Mine CM Ship)
MHC-1 Mine Hunter
MLR
NATF (ADV TAC FTR)
NATO AAW Combat Sys
P-3C (ORION)
P-7A (LRAACA)
Phoenix (Aim-54C)
ROTH-R (TPS-71)
Sea Lance (ASW SOW)
Sea Sparrow
Sealift
SH-60B Lamps MKIII
SH-60F CV HELO
SPARROW III
SSN-21 Attack Sub
SSN-688 Attack Sub
STD MSL 2, BLK II
T-45TS Goshawk
T-AGOS SURV SHIP
T-AGX SURV Ship
T-AO-187 Oiler
Tomahawk (BGM-109)
Trident II D5 MSL
Trident II SUB
UHF F/O SATCOM
V-22A Osprey
V-22 ASW Variant

*Air Force*

ACM (AGM-129A)
AMRAAM (AIM-120A)
ATARS
ATF
AWACS-RSIP
B-1B
B-2
C-17A
CAS (Close Air SPT)
CIS (MK XV IFF)
CSRL MSL Launcher
DMSP (DEF MET SAT)
DSCS III Space SEG
DSP (DEF SPT PROG)
F-15 Eagle
F-16 Fighting Falcon
F-16ADA Agile Falcon
JPATS
JSTARS (E-8B)
JTIDS
KC-135R MOD
Lantirn Infra-Red
Maverick (IIR)
MILSTAR
MSOW/JSOW
NAS
NASP (NAT AERO Plane)
NAVSTAR GPS
OTH-B RADAR
Peacekeeper ICBM
Peacekeeper Rail Garrison
SEAD (SUP AIR DEF)
SFW (W/SKEET)
Small Missile
Space Shuttle (IUS)
SRAM II AGM-131A
SRAM-T
Tacit Rainbow MSL
TASM (AIR TO SUR MSL)
Titan IV (CELV)

*Marine Corps*

AAAV ADV AMP ASLT VEH

*DISA*

ADI (AIR DEF INIT)
DMS (DEF MSG SYS)
SBWAS (SP BASED WAS)
WAM (WWMCCS ADP MOD)

*NSA*

AEPDS EAM P&D SYS

*SDIO*

ALS (ADV LNCH SYS)
NMD
SDS (STRAT DEF SYS)

*Joint Service*

ATM (ANTI-TAC MSL)

*OSD*

BRILLIANT PEBBLES

NLS

Dated: July 10, 1992.

**L. M. Bynum,**

*Alternate Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-16620 Filed 7-14-92; 8:45 am]

BILLING CODE 3810-01-M



**Defense Conversion Commission Public Hearing Schedule**

**AGENCY:** Defense Conversion Commission, DOD.

**ACTION:** Notice.

**SUMMARY:** The Defense Conversion will hold public hearings on the effects of reduced defense spending on the U.S. economy in Atlanta, Georgia on July 29-30, 1992; Long Beach, California on August 5-6 1992; St. Louis, Missouri on August 19-20, 1992; Dallas-Forth Worth, Texas on August 26-27, 1992; Groton, Connecticut on September 16-17, 1992; and Seattle, Washington on September 23-24, 1992.

**FOR FURTHER INFORMATION CONTACT:** The Defense Conversion Commission, suite 310, 1825 K Street NW., Washington, DC 20006, or call (202) 653-1627.

**SUPPLEMENTARY INFORMATION:** In keeping with the Commission's policy of open proceedings, the hearings will be public and transcripts will be available. Anyone who does not wish to testify, but has material for the Commission is encouraged to mail it to the address above. The Commission will consider all material received by October 1, 1992; after that, time may not permit a thorough evaluation.

Dated: July 9, 1992.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-16548 Filed 7-14-92; 8:45 am]

BILLING CODE 3810-01-M

**Department of Defense Wage Committee; Closed Meetings**

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, August 4, 1992; Tuesday, August 11, 1992; Tuesday, August 18, 1992; and Tuesday, August 25, 1992, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those" related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: July 9, 1992.

**L. M. Bynum,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-16546 Filed 7-14-92; 8:45 am]

BILLING CODE 3810-01-M

**Special Operations Policy Advisory Group; Meeting**

The Special Operations Policy Advisory Group (SOPAG) will meet on Thursday, July 23, 1992 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the developed and maintenance of effective Special Operations and Low-Intensity Conflict Forces.

In accordance with section 10 (d) of Public Law 92-463, the "Federal Advisory Committee Act," and section 552b (c) (1) of title 5, United States Code, this meeting will be closed to the public.

Dated: July 10, 1992.

**P.H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-16619 Filed 7-14-92; 8:45 am]

BILLING CODE 3810-01-M

**Membership of the Defense Contract Audit Agency (DCAA) Performance Review Boards**

**AGENCY:** Defense Contract Audit Agency, DOD.

**ACTION:** Notice of membership of the Defense Contract Audit Agency Performance Review Boards.

**SUMMARY:** This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA).The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

**EFFECTIVE DATE:** July 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** Dale R. Collins, Director, Personnel and Security Division, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, Virginia, 703-274-7325.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 4314 (c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

**Headquarters Performance Review Board**

Mr. John van Santen, Assistant Director, Resources, Defense Contract Audit Agency, Chairperson. Mr. Michael Thibault, Assistant Director, Policy and Plans, Defense Contract Audit Agency, member. Mr. William Sharkey, Assistant Director, Operations, Defense Contract Audit Agency, member.

**Regional Performance Review Board**

Mr. William Kraft, Regional Director, Mid-Atlantic, Defense Contract Audit Agency, Chairperson.

Mr. Robert Matter, Regional Director, Western, Defense Contract Audit Agency, member.

Mr. Richard Buhre, Deputy Regional Director, Central, Defense Contract Audit Agency, member.

Dated: July 9, 1992.

L.M. Bynum,

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 92-16547 Filed 7-14-92; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Army

## Performance Review Boards Membership

**ACTION:** Notice.

**SUMMARY:** Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

**EFFECTIVE DATE:** July 15, 1991.

**FOR FURTHER INFORMATION CONTACT:** Jeanne Raymos, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, room 2C670, Washington, DC 20310-0300.

**SUMMARY INFORMATION:** Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Materiel Command are:

1. Mr. Alfred D. Reeder, Director, Acquisition Center, U.S. Army Missile Command.
2. Dr. Kelly Grider, Director, Systems Simulation and Development Directorate, U.S. Army Missile Command.
3. Dr. Joseph W. Holmes, Director, Missile and Space Intelligence Center, Defense Intelligence Agency.
4. Mr. James L. Flinn, III, Director, Integrated Materiel Management Center, U.S. Army Missile Command.
5. Dr. Bennie H. Pinckley, Deputy Program Executive Officer, Army Acquisition Executive, Air Defense, Redstone Arsenal, Alabama.

The members of the Performance Review Board for the U.S. Army Corps of Engineers (USACE) are:

1. Major General C. E. Edgar III, Commanding General, USACE.
2. Mr. Barry Frankel, Director, Real Estate, Headquarters, USACE.
3. Major General Arthur E. Williams, Director, Civil Works, Headquarters, USACE.
4. Brigadier General Albert J. Genetti, Jr., U.S. Army Engineer Divison, Commander, Ohio River.
5. Mr. Henry Everitt, U.S. Army Engineer Division, Deputy Commander, Programs and Technical Management, Huntsville.
6. Mr. Don B. Cluff, Headquarters, USACE, Chief, Programs Division, Directorate of Civil Works.
7. Dr. Lewis E. Link, U.S. Army Cold Regions, Technical Director, Research & Engineering Laboratory.
8. Mr. David L. Fulton, U.S. Army Engineer Division, Director of Construction—South Pacific Operations.
9. Mr. John P. Elmore, Headquarters, USACE, Chief, Operations & Construction and Readiness Division, Directorate of Civil Works.
10. Mr. Kenneth R. Akers, U.S. Army Engineer Division, Director of Engineering, South Atlantic.
11. Dr. James R. Hanchey, U.S. Army Engineer Division, Director of Planning, Lower Mississippi Valley.
12. Mr. Arthur D. Denys, U.S. Army Engineer Division, Director of Engineering, Southwestern.
13. Mr. Jimmy Bates, Headquarters, USACE, Chief Planning Division, Directorate of Civilian Works.

The members of the Performance Review board for the U.S. Army Corps of Engineers (USACE) are:

14. Mr. Charles N. Dunnam, Headquarters, USACE, Deputy Chief Construction Division, Directorate of Military Programs.
15. Mr. Walter E. Boge, USACE Topographic Engineering Center, Technical Director.

The members of the Performance Review Board for the Department of the Army, Office of the Surgeon General are:

1. Major General Frederick N. Bussey, U.S. Army, Medical Corps, Deputy Surgeon General, Office of the Surgeon General.
2. Major General Thomas R. Tempel, U.S. Army, Dental Corps, Assistant Surgeon General for Dental Services and Chief, Army Dental Corps, Office of the Surgeon General.
3. Brigadier General Ronald R. Blanck, U.S. Army, Medical Corps, Director, Professional Services, and Chief, Medical Corps Affairs, Office of Surgeon General.
4. Brigadier General Nancy R. Adams, Director of Personnel, and Chief, Army Nurse Corps, Office of the Surgeon General.
5. Brigadier General Clara L. Adams-Ender, Deputy Commander, U.S. Army Military District of Washington, Fort Belvoir, Virginia.
6. Bhupendra P. Doctor, Ph.D., Director, Division of Biochemistry, Walter Reed Army Institute of Research.
7. Robert R. Engle, Ph.D., Deputy Director, Division of Experimental Therapeutics, Walter Reed Army Institute of Research.
8. Melvin H. Heiffer, Ph.D., Chief, Department of Pharmacology, Walter Reed Army Institute of Research.
9. Nelson S. Irey, M.D., Chairman, Department of Environmental and Drug Induced Pathology, Armed Forces Institute of Pathology.
10. Kamal G. Ishak, M.D., Chairman, Department of Hepatic Pathology, Armed Forces Institute of Pathology.
11. Fathollah K. Mostofi, M.D., Chairman, Department of Genitourinary Pathology, Armed Forces Institute of Pathology.

The members of the Performance Review Board for the Department of the Army, Office of the Surgeon General are:

12. Leslie H. Sobin, M.D., Associate Director, Center for Scientific Publications, Armed Forces Institute of Pathology.
13. Donald E. Sweet, M.D., Chairman, Department of Orthopedic Pathology, Armed Forces Institute of Pathology.

Kenneth L. Denton,

*Army Federal Register Liaison Officer.*

[FR Doc. 92-16551 Filed 7-14-92; 8:45 am]

BILLING CODE 3710-08-M

## Intent To Prepare a Joint Federal and State Draft Environmental Impact Statement for the North Kohala Light Draft Navigation Facility, Hawaii

**AGENCY:** U.S. Army Corps of Engineers, Honolulu Engineer, DOD District, DOD.

**ACTION:** Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

**SUMMARY:** Notice is hereby given that the U.S. Army Corps of Engineers in partnership with the State of Hawaii, Department of Transportation, intends to prepare an environmental impact statement (EIS) for a light draft navigation facility (boat launch) in the North Kohala area of the Island of Hawaii. Scoping meetings will be held to afford the public an opportunity to raise environmental issues and concerns related to the proposed project. The EIS will be prepared pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), as implemented by the President's Council on Environmental

Quality Requirements (40 CFR parts 1500–1508) and the State of Hawaii Chapter 343 Hawaii Revised Statutes.

In 1988 the Hawaii State Senate introduced a resolution for the creation of a "small boat launching ramp for the North Kohala District", on the Island of Hawaii to fulfill the needs of the small boat owners and fishermen in the area. The Kawaihae Boat Harbor is 12 miles south of the district and the public boat hoist at the Mahukoa Harbor is the only existing facility available.

In response to an April 10, 1989 letter request from the State of Hawaii, Department of Transportation, the U.S. Army Engineer District, Honolulu conducted a Reconnaissance Study for a boat launching facility. The purpose of the Reconnaissance Study was to investigate the problems, opportunities, and needs for a light draft navigation launching facility in the North Kohala District and to determine if Federal participation in detailed planning studies was warranted based on a preliminary appraisal of the Federal interest, cost, benefits, and environmental impacts.

The Reconnaissance Study, completed in April 1990, determined that Federal interest in proceeding to more detailed Feasibility Phase studies was warranted. Three alternative sites were identified during the Reconnaissance Phase—Lapakahi, Mahukona, and Kapa'a. The County Beach Park at Kapa'a was chosen as the tentatively selected site. The proposed plan of improvement at Kapa'a consists of an entrance channel 50 feet wide, −10.0 feet deep and 250 feet long; and excavated entrance (100 feet by 100 feet) and turning basin (100 feet by 100 feet), −8.0 feet deep; a 100 foot long wave spending beach (1V:3H); and a single lane launch ramp. Federal implementation cost for the proposed action at Kapa'a is estimated to be (excluding non-federal requirements) $1.6 million (Federal cost share $1.3 million; non-Federal cost share $0.3 million) with a benefit to cost ratio of 1.3.

**ADDRESS:** To ensure that the full range of issues related to the proposed project are addressed, the Army Corps of Engineers, and its local sponsor invite comments on the proposed action. Questions and comments about the proposed action and the Draft EIS can be addressed to: Ms. Margo Stahl, C.E.P. Environmental Resources Branch, U.S. Army Engineer District, Honolulu, Fort Shafter, Hawaii 96858.

**FOR FURTHER INFORMATION CONTACT:** Ms. Margo Stahl, C.E.P. Environmental Resources Branch, U.S. Army Engineer District, Honolulu, Fort Shafter, Hawaii 96858; telephone (808) 438–7006.

**SUPPLEMENTARY INFORMATION:** 1. The study is being conducted under the authority of section 107 of the River and Harbor Act of 1960, as amended.

2. Scoping to date: Meetings with boaters of the North Kohala District were conducted in September and October of 1988, August 1989 and March 1992. Additional scoping meetings shall be scheduled in 1992 and 1993.

3. Alternative sites to be evaluated in detail during the Feasibility Phase are Kapa'a County Beach Park and Mahukona County Beach Park only. Other sites evaluated in the Reconnaissance Phase such as Lapakahi State Historical Park, Keokea County Beach Park, Kaponaio, and Kauhola will not be considered in detail.

4. Environmental impacts to be evaluated include but are not limited to: water quality impacts associated with dredging, impacts to endangered species, particularly the Humpback Whale, archaeological and cultural resources which are prevalent in the areas being considered, impacts to fisheries resources, ciguatera, facility usage and user group conflicts.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 92–16720 Filed 7–14–92; 8:45 am]

BILLING CODE 3710–HN–M

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

### Hearing and Opportunity for Public Review and Comment; Proposed Implementation of a Resource Contingency Program Designed To Pay Preconstruction and Investigation Expenses for Selected Sponsors in the Pacific Northwest

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice, Request for comments. BPA File No.: RCP–6(c). All comments and documents submitted as part of the official record compiled in the process should contain the file number designation.

**SUMMARY:** Notice is given of a programmatic section 6(c) hearing on BPA's proposal to pay preconstruction or investigation expenses of sponsors of major resources in exchange for a future right from those sponsors to firm energy under BPA's Resource Contingency Program. Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Northwest Power Act), 16 U.S.C. § 839(c), requires BPA to hold a hearing on proposals to, *inter alia*, pay preconstruction or investigation expenses of sponsors of a major resource. The Administrator is also required, on the basis of the hearing, to determine whether such a proposal is consistent with the 1991 Northwest Conservation and Electric Power Plan (Plan) of the Pacific Northwest Electric Power and Conservation Planning Council (Council). 16 U.S.C. 839d(c)(1)(D)(i).

*Responsible Official:* John L. Elizalde, Director, Division of Resource Management, Office of Energy Resources, is the official responsible for the Section 6(c) hearing on the Resource Contingency Program.

**DATES:** A description of the Resource Contingency Program and supporting documentation is available at this time from BPA's Public Information Center, 905 N.E. 11th Avenue, Portland, Oregon 97232–4169, telephone number 503–230–3478.

Persons wishing to become a party to the hearing must submit a written petition to intervene. The written petition must be received by September 17, 1992, and should be addressed to Hearings Officer, Office of General Counsel—APG, Bonneville Power Administration, 905 N.E. 11th, Portland, Oregon 97232–4189.

A prehearing conference will be held before the hearing officer at 10 a.m. on September 22, 1992, at the BPA Rate Hearings Room, 2032 Lloyd Center, Portland, Oregon 97232. Registration for the prehearing conference will begin at 9:30 a.m. At the prehearing conference, the hearings office will establish the hearing schedule which will be mailed to all parties of record. BPA's direct testimony will be available at the prehearing conference and there after the from BPA's Public Information Center.

The hearing will commence at 10 a.m. on November 10, 1992, at the Bonneville Power Administration's Rate Hearings Room, 2023 Lloyd Center, Portland, Oregon 97232.

Persons who are not parties may submit oral and written comments to the BPA Public Involvement Office through November 19, 1992.

The Administrator's record of decision on the proposal will be completed by December 11, 1992. The hearings officer will establish the hearing schedule so as to enable the Administrator to meet this schedule.

The hearing will be conducted pursuant to the Section 6(c) Hearings Procedures adopted by the

Administrator on November 12, 1986. 51 FR 42902.

**ADDRESSES:** Written Comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Comments should be submitted to the Public Involvement Office at the following telephone numbers, 1-800-622-4519 toll-free nationwide, or 503-230-3478 in Portland, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Ms. Julie Pipher, BPA Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212, 503-230-5039. Telephone number voice/TTY, for the Public Involvement Office are 503-230-3478 in Portland, or toll-free 1-800-622-4519.

Information may also be obtained from:

Mr. Terence G. Esvelt, Puget Sound Area Manager, suite 400, 201 Queen Ann Avenue North, Seattle, Washington 98109-1030, 206-553-4130

Mr. George Bell, Lower Columbia Area Manager, 1500 N.E. Irving Street, Room 243, Portland, Oregon 97208, 503-230-4551

Mr. Robert Laffel, Eugene District Manager, room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-353-2518

Ms. Carol S. Fleischman, Spokane District Manager, room 112, U.S. Court House, 920 W. Riverside, Avenue, Spokane, Washington 99201, 503-353-2518

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, room 307, Wenatchee, Washington 98801, 509-662-4379

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6225

Ms. Ruth Bennett, Acting Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-2706

Mr. Jim Normandeau, Boise District Manager, 304 North 8th Street, room 450, Boise, Idaho 83702, 208-0334-9137.

**SUPPLEMENTARY INFORMATION:**

*I. Background*

Section 6(c) of the Northwest Power Act requires the Administrator (1) to conduct a public hearing on any BPA proposal to, *inter alia*, pay or reimburse preconstruction and investigation expenses of the sponsors of a major resource, and (2) to determine whether the proposed payment is consistent with the Council's Plan. 16 U.S.C. 839d(c)(1). A major resource is a resource having a planned capability greater than 50 average megawatts (aMW), and which BPA would acquire for a period of more than 5 years. 16 U.S.C. 839a(12). The Act also permits the Council to determine subsequently whether the action is consistent with the Council's Plan. 16 U.S.C. 839d(c)(2). If either the Administrator or the Council determines that the proposal is inconsistent with the Plan, BPA can proceed with the proposal only after receiving expenditure authorization from Congress.

*II. Proposed Major Resource Action*

BPA is implementing a Resource Contingency Program under which BPA proposes that it pay preconstruction or investigation expenses of sponsors of major resources in exchange for an option to acquire the resource. Preconstruction or investigation expenses are defined as expenses incurred by, or on behalf of, sponsors to obtain required regulatory approval. These expenses can include, but are not limited to, licenses and permits, environmental analysis/impact statements, land options, easements and right-of-way acquisition, sponsor's expenses during siting and licensing, geotechnical surveys, and architectural and engineering fees. These expenses do not include the procurement of capital equipment or the expenses of construction. BPA estimates that preconstruction or investigation expenses under the Resource Contingency Program will not exceed $10 million per year through 1988. BPA's Fiscal Year 1993 budget contains $6.7 million to use for payment of those expenses in the event that such payment is found consistent with the Plan.

Section 6(a)(2), 16 U.S.C. 839d(a)(2), authorizes the Administrator to acquire sufficient resources, in addition to conservation and renewable resources, to meet contractual obligations. Moreover, section 6(i), 16 U.S.C. 839d(i), direct the Administrator to structure acquisition contracts with terms and conditions that will ensure "timely construction, scheduling, completion and operation of resource."

The Resource Contingency Program calls for BPA to hold options on a portfolio of resources that can be called on, if necessary, to meet customer loads. This options concept, which allows for one "consistency" decision at the preconstruction or investigation stage, and a separate "consistency" decision at the resource acquisition stage, fulfills section 6(i)'s mandate by promoting timely scheduling and construction of resources.

Under the terms of the Resource Contingency Program, resource options offered to BPA must conform to certain threshold requirements. These requirements are described in Section IV of the Request for Energy Options program description (March 1992), which is available from the BPA Public Information Center.

Briefly, the resource options must have a minimum resource size of at least 20 aMW and must offer the resource for a contract term of 5 years for system sales and 10 years for all other resources. All preconstruction development tasks and approvals must be completed by December 31, 1995. The sponsor must be capable of delivering firm energy to BPA within 3 years from the date BPA decides to exercise the option. The proposed resources must be mature and commercially available. Sponsors must identify project locations and demonstrate capability in securing property rights. If a sponsor offers a new hydroelectric project, that resource must not be located in the Council's designated protected areas. Finally, firm energy from resources declared by BPA customer utilities as firm resources in their Power Sales Contracts is not eligible for consideration.

At this time, specific major resource proposals for which BPA may negotiate option agreements are not known. The deadline under the Resource Contingency Program for submission of the option proposals was May 8, 1992. As of that date, BPA received 64 proposals from 47 sponsors for a total of 7,842 aMW. Thirty-five projects were cogeneration, 13 natural gas-fired combustion turbines, 9 coal plants, 3 wind farms, 1 geothermal, 1 system sale, and two others. The short list of qualified sponsors will be announced in late June. Inasmuch as BPA will have announced the short list of qualified sponsors before the prehearing conference date, BPA's direct testimony will contain a list of types and sizes of those major resources for which BPA may negotiate an option and may pay preconstruction or investigation expenses.

*III. Relevant Statutory Provisions*

Bonneville Project Act, 16 U.S.C. 832 *et seq.*; Federal Columbia River Transmission System Act, 16 U.S.C. 838

*et seq.*; Northwest Power Act, 16 U.S.C. 839 et seq.

*IV. Procedures Governing Section 6(c) Hearings*

Section 6(c) Hearings Procedures were adopted by the Administrator on November 12, 1986. 51 FR 42902. The procedures are available upon request from the BPA Public Reference Room.

The 6(c) Hearing Procedures provide for publication of a notice of the proposed major resource action, a prehearing conference, a hearing, receipt of written or oral comments, compilation of a hearing record, preparation of a record of decision, which includes the Administrator's determination regarding consistency, and the transmittal of the record of decision to the Council.

The hearings procedures provide that the Administrator may approximate the amount of time available to the hearing officer to conduct the hearing, compile the hearing record, and permit the Administrator to prepare and complete his record of decision for transmittal to the Council.

A prehearing conference has been scheduled before an independent hearing officer on September 22, 1992, at 10 a.m., at the BPA Rate Hearings Room, 2032 Lloyd Center, Portland, Oregon 97232. Registration for the prehearing conference will begin at 9:30 a.m. Issues for discussion at the prehearing conference may include intervention of parties, discovery, the need for clarification sessions, scope of cross-examination, hearing schedule, and other pertinent matters.

During the prehearing conference, the hearing officer will act on all intervention petitions and oppositions to intervention petitions, establish additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with like interests into groups for purposes of jointly sponsoring testimony.

The prefiled testimony of BPA witnesses will be available at the prehearing conference. a copy of the testimony will be given to persons who may be requesting party status. During the 6(c) proceeding, copies of testimony, exhibits, studies, qualifications, attachments and other relevant documents will be available to any interested person for review in the Public Information Center, 905 NE. 11th Avenue, Portland, Oregon 97232–4189. The telephone number for the Public Information Center is 503–230–3478.

The Section 6(c) Hearing Procedures distinguish between "participants" and "parties." Those persons who wish to be "participants" in the hearing need only to submit written comments to the BPA Public Involvement Office. Participants' comments will become a part of the hearing record and their issues addressed in the record of decision. Participants are not entitled to cross-examine parties' witnesses, seek discovery, serve or be served with documents, and are not subject to the same procedural requirements as parties.

Persons who wish to be "parties" to the 6(c) hearing must file a petition to intervene, explaining their interests in sufficient detail to permit the hearing officer to determine whether they have a relevant interest in the hearing. A major resource sponsor or the Council may intervene and gain party status upon request. All petitions must specify the person's interests in the outcome of the hearing.

Intervention petitions must be filed with the Hearing Officer, c/o Office of General Counsel—APG, Bonneville Power Administration, 905 NE. 11th Avenue, Portland, Oregon 97232–4189, and served on BPA's Office of General Counsel—APG, c/o C. Clark Leone, at the above address. Petitions for intervention in this proceeding must be filed and served by September 17, 1992. Pursuant to section 1(c) of the hearing procedures, BPA waives the requirement in section 5(d) that an opposition to an intervention petition be filed and served at least 24 hours before the prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any party, including BPA, may oppose a petition to intervene.

Parties are subject to all procedural requirements contained in these hearing procedures and are entitled to service of documents from all other parties. Parties also may be cross-examined and are required to serve documents on the other parties. The hearing officer may allow BPA and the parties to engage in discovery subject to the time available for the hearing.

In order to facilitate any discovery, the hearing officer may order BPA, the parties, or both, to make witnesses available for clarifying sessions. The hearing officer may schedule cross-examination as appropriate. The hearing officer is encouraged to allow filing of surrebuttal testimony in lieu of cross-examination. At the close of cross-examination, parties may have the opportunity to file briefs. Oral argument will not be heard, unless all parties agree to substitute oral argument for a brief on exceptions.

Persons need not attend the hearings in order to have their views included in the record. Written comments may be included in the record if they are submitted by November 19, 1992. Procedures for submitting comments to BPA's Public Involvement Office are detailed in the Dates and Addresses sections of this notice.

The hearing record will include, among other things, transcripts of the hearing, testimony and exhibits, all comments submitted to BPA, briefs and pleadings, and any other materials and information submitted by BPA. The hearing officer will certify the record. From this record, the Administrator will prepare a record of decision which will identify and resolve each relevant major issue presented by BPA, parties, or participants in the hearing process. The record of decision will set forth the Administrator's decision on each of these issues.

The Administrator will make one primary determination in the record of decision. That decision is whether the proposal to pay preconstruction and investigation expenses of sponsors of major resources under the Resource Contingency Program is consistent or inconsistent with the Council's 1991 Plan. Upon completion of the record of decision, the Administrator will promptly provide a copy of the record of decision to the Council. The Administrator will also promptly serve copies of the record of decision on all parties to the proceeding. Copies will also be available to the participants upon request to BPA's Public Involvement Office.

Issued in Portland, Oregon, on July 1, 1992.

**Jack Robertson,**

*Deputy Administrator.*

[FR Doc. 92–16652 Filed 7–14–92; 8:45 am]

BILLING CODE 6450–01–M

## Hungry Horse-Columbia Falls Line Rebuild Floodplain and Wetlands Involvement Notification

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of Floodplain and Wetlands Involvement, Flathead County, Montana.

**SUMMARY:** BPA proposes to rebuild the existing 115-kV line to a 230-kV line from Hungry Horse Dam to the Columbia Falls Substation, a distance of approximately eight miles. The project crosses the South Fork of the Flathead River.

**DATE:** Any comments are due to the project address below by August 4, 1992.

**FOR FURTHER PROJECT INFORMATION CONTACT:** John Taves—EFBG, Bonneville Power Administration, P.O.

Box 3621, Portland, Oregon, 97208–3621, 503–230–4995.

**FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS OR THE STATUS OF THE RELATED NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REVIEW, CONTACT:** Carol Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756

**SUPPLEMENTARY INFORMATION:** This area of Flathead County Montana is not currently mapped or delineated for wetlands; however, wetland areas have been identified by field observation. The wetlands that would be crossed by this project are located in Township 30 North, Range 20 West, section 11. The area upstream from the Highway 2 crossing of the South Fork of the Flathead River has not been mapped for floodplains; however, the line rebuild would cross the river in two locations, indicating potential floodplain areas. These are located in Township 30 North, Range 19 West, sections 22 and 27, and Township 30 North, Range 19 West, section 16. The rebuild would be able to span wetlands or floodplain areas as the transmission poles or structures would be located on higher ground.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a floodplain/wetlands assessment on this proposed action. This floodplain/wetlands assessment will be included in the Environmental Assessment prepared in accordance with the requirements of NEPA and the Floodplain Statement of Findings will be included in the Finding of No Significant Impact or Final Environmental Impact Statement to be prepared for this project. Maps and further information are available from BPA at the address shown above.

Issued in Portland, Oregon, on July 2, 1992.

**Jack Robertson,**

*Deputy Administrator.*

[FR Doc. 92–16512 Filed 7–14–92; 8:45 am]

BILLING CODE 6450–01–M

## Northwest Montana/North Idaho Support Project Floodplain and Wetlands Involvement Notification

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of Floodplain and Wetlands Involvement, Bonner and Boundary Counties, Idaho, and Lincoln County, Montana.

**SUMMARY:** BPA proposes to replace a 59-mile 115-kV transmission line between its Bonners Ferry, Idaho, and Libby, Montana, substations with a double-circuit 230-kV line. BPA also proposes to build a new substation and microwave facility near Sandpoint in Bonner County, Idaho. Three alternative routes identified for the transmission line, and six sites for the substation, have the potential to impact a number of wetlands and floodplains, as listed below.

**DATES:** Any comments are due to the project address on or before August 4, 1992.

**FOR FURTHER PROJECT INFORMATION:** John Taves—EFBG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, (503) 230–4995.

**FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS OR THE STATUS OF THE RELATED NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REVIEW, CONTACT:** Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** Three alternative routes, each with sub-options and all with some common portions, are under consideration for the location of the transmission line. The routes leave the Bonners Ferry Substation and move northeasterly, crossing the Kootenai River before turning southeasterly and generally following the river to Libby, Montana. Six locations are under consideration for the new substation near Sandpoint, Idaho; three locations are also being considered for the microwave facility.

The following Table shows 100-year floodplains and wetlands, some of which may be crossed by the transmission line (or impacted by the new substation or microwave facility). The table is inclusive and lists all possible wetlands and floodplains crossed by any of the options.

TABLE 1

| Floodplain Name | Floodplain Locations |
|---|---|
| Sand Creek | Bonner Co., ID T58N R2W Sec. 25, 35, & 36. |
| Cow Creek | Boundary Co., ID T62N R2E Sec. 31 & 32. |

TABLE 1—Continued

| Floodplain Name | Floodplain Locations |
|---|---|
| Kootenai River | Boundary Co., ID T62N R2E Sec. 25. |
| | Boundary Co., ID T62N R3E Sec. 30. |
| Curley Creek | Boundary Co., ID T61N R3E Sec. 10. |
| Pine Creek | Lincoln Co., MT T33N R34W Sec. 26 & 27. |
| Yaak River | Lincoln Co., MT T32N R34W Sec. 4. |
| Kootenai River | Lincoln Co., MT T31N R33W Sec. 18 & 13. |
| | Lincoln Co., MT T30N R29W Sec. 4. |
| | Lincoln Co., MT T31N R32W Sec. 14. |
| | Lincoln Co., MT T31N R31W Sec. 33. |
| | Lincoln Co., MT T31N R32W Sec. 14, 15, 16, 17, & 18. |
| Quartz Creek | Lincoln Co., MT T31 R32W Sec. 13 & 24. |
| Bobtail Creek | Lincoln Co., MT T31N R31W Sec. 20. |
| Pipe Creek | Lincoln Co., MT T31N R31W Sec. 20. |
| Paramenter/Flower Creek. | Lincoln Co. MT T31N R31W Sec. 33. |

| Wetland Locations | No. of Wetlands |
|---|---|
| Boundary Co., ID T62N R2E Sec. 26, 27, 31, 32, & 33 | 6 |
| Boundary Co., ID T61N R3E Sec. 6 & 10 | 3 |
| Boundary Co., ID T62N R3E Sec. 33 | 1 |
| Lincoln Co., MT T33N R34W Sec. 8, 17, 20, 21, & 26 | 4 |
| Lincoln Co., MT T31N R32W Sec. 14, 15, & 17 | 3 |
| Lincoln Co., MT T31N R33W Sec. 1 | 1 |

It is BPA's practice to span floodplains and wetlands wherever possible and to avoid placing structures on roads in wetlands.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a floodplain/wetlands assessment on this proposed action. This floodplain/wetlands assessment will be included in the Draft Environmental Impact Statement (EIS), and the Floodplain Statement of Findings will be included in the Final EIS to be prepared for the project. The Notice of Intent to prepare an EIS was published in the **Federal Register** on August 23, 1991, scoping meetings were held in September, and the Draft EIS is scheduled to be circulated for public review and comment in November 1992. Maps and further information are available from BPA at the address shown above.

Issued in Portland, Oregon, on June 26, 1992.

**Jack Robertson,**

*Deputy Administrator.*

[FR Doc. 92-16510 Filed 7-14-92; 8:45 am]

BILLING CODE 6450-01-M

## Energy Information Administration

### Agency Information Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration.

**ACTION:** Notice of request submitted for review by the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC));

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number of responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed on or before August 14, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

**FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:** Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for review was:

1. Conservation and Renewable Energy.
2. CE-63A/B.
3. 1901-0292.
4. Annual Solar Thermal Collector Manufacturers Survey and Annual Photovoltaic Module Manufacturers Survey.
5. Revision.
6. Annually.
7. Mandatory.
8. Businesses or other for-profit.
9. 110 respondents.
10. 1 response.
11. 3 hours per response.
12. 330 hours.
13. CE-63A/B will collect data about the solar energy industry, e.g., which companies are manufacturing collectors, the type of collectors being manufactured, the quantity, use, and change in the industry. Data will be published. Respondents are manufacturers, importers, and exporters of solar thermal collectors and companies manufacturing photovoltaic modules.

**Statutory Authority:** Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC July 8, 1992.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 92-16654 Filed 7-14-92; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket No. TM92-8-22-000]

### CNG Transmission Corporation; Proposed Changes in FERC Gas Tariff

July 7, 1992.

Take notice that CNG Transmission Corporation (CNG) on July 1, 1992, filed the following tariff sheets for inclusion in its FERC Gas Tariff, First Revised Volume No. 1:

Twentieth Revised Sheet No. 31
Twelfth Revised Sheet No. 32
Sixteenth Revised Sheet No. 34
Eleventh Revised Sheet No. 35
Eighth Revised Sheet No. 44

CNG states that the purpose of Eighth Revised Sheet No. 44 is to reflect Tennessee's May 29, 1992, filing to recover new transition demand costs, effective July 1, 1992. CNG states that Tennessee's filing is more than offset by the reduction in applicable Commission interest rates; according to CNG, the combined result is to reduce bills to CNG's cutomers by $24,155 per month. CNG requests an effective date of July 31, 1992, for its Eighth Revised Sheet No. 44.

CNG states that the purpose of revisions to Sheet Nos. 31, 32, 34, and 35 is to suspend CNG's existing Take-or-Pay Commodity Volumetric Surcharge. CNG seeks an effective date of July 1, 1992 for these four revised tariff sheets. CNG states that in previous dockets, CNG has filed to recover 50% of $26.3 million in Direct Producer take-or-pay costs through this surcharge. CNG states that in the aggregate, it has now recovered these costs.

CNG states that copies of this filing are being served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available

for public inspection in the public reference room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16556 Filed 7-14-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP92-571-000, et al.]**

## Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

July 8, 1992.

Take notice that the following filings have been made with the Commission:

### 1. Northwest Pipeline Corp.

[Docket No. CP92-571-000]

Take notice that on July 1, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery meter, Columbia Meter Station, to provide deliveries to Columbia Power Associates (Columbia) for Columbia's new power generating facility, under Northwest's blanket certificate issued in Docket No. CP82-433-000 on September 1, 1982, all as more fully set forth in the request on file with the Commission and open to public inspection.

*Comment date:* August 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

### 2. Texas Eastern Transmission Corp.

[Docket No. CP92-575-000]

Take notice that on July 2, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP92-575-000 a request pursuant to § 157.205 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205), for authorization to construct and operate an 8-inch sales tap and to own and operate 500 feet of 8-inch pipeline to allow natural gas deliveries for Energy Marketing Exchange, Inc. (EME), under the certificate issued in Docket No. CP82-535-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Eastern requests authorization to construct, own and operate an 8-inch hot tap in Montgomery County, Texas. It is stated that Enercorp Gas Transmission Systems, Inc. (Enercorp) will construct 500 feet of 8-inch pipeline, which will be owned and operated by Texas Eastern and located between the hot tap and M&R in order to provide deliveries for EME at the proposed interconnection facilities with Enercorp. It is further stated that Enercorp will provide, own, operate and maintain a dual 8-inch measuring station.

It is stated that the cost of the facilities to provide this service is $93,000, which Texas Eastern will be reimbursed for such costs.

*Comment date:* August 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

### 3. Northern Natural Gas Co.

[Docket No. CP92-560-000]

Take notice that on June 26, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000 filed in Docket No. CP92-560-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase in sales entitlements under its Rate Schedule GS-1 to Circle Pines Utilities (Circle Pines), all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Northern proposes to increase the sales entitlement for Circle Pines under Rate Schedule GS-1 by 350 MMBtu of natural gas per day (from 675 MMBtu to 1,025 MMBtu per day). Northern states that Northern and Circle Pines have entered into a new GS-1 Service Agreement, dated May 15, 1992, (agreement) for the increased level of service and sales entitlement, starting with the 1992-93 winter heating season, for the City of Circle Pines, Minnesota. The agreement would become effective on October 1, 1992, or such date approved by the Commission, whichever is later, and would continue in effect through October 26, 1993. Northern submits that it has pending at Docket No. CP92-551-000 a prior notice filing for approval to upgrade its existing town border station serving the City of Circle Pines to accommodate increased transportation deliveries. Also, Northern states that it will construct approximately 0.5 mile of 20-inch pipeline looping on its Elk River branchline pursuant to its blanket authority in Docket No. CP82-401-000 and the automatic provisions of § 157.208(a) of the Commission's Regulations once the proposed authorization in the prior notice filing becomes effective. Lastly, Northern states that once the facilities authorized in Northern's prior notice application are in-place for the increase in transportation service, the small amount of incremental GS-1 service will not require any additional facilities.

*Comment date:* July 29, 1992, in accordance with Standard Paragraph F at the end of this notice.

### 4. Transcontinental Gas Pipeline Corp.

[Docket No. CP92-566-000]

Take notice that on June 30, 1992, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92-566-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the firm transportation service provided to National Fuel Gas Supply Corporation (National Fuel) under TGPL's Rate Schedule X-207, effective March 1, 1992, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

TGPL states that by order issued June 22, 1979, in Docket No. CP79-219, TGPL was authorized to transport up to 8,300 Mcf per day of natural gas for National Fuel under a service agreement dated January 31, 1979 (TGPL's Rate Schedule X-207). TGPL further states that the primary term of the service agreement expired August 9, 1989, but that the agreement continued from year to year thereafter until terminated by either party by giving one year prior written notice to the other. It is indicated that National Fuel advised TGPL, by letter February 7, 1991, that it no longer required the service.

*Comment date:* July 29, 1992, in accordance with Standard Paragraph F at the end of the notice.

### 5. Tennessee Gas Pipeline Co.

[Docket No. CP92-562-000]

Take notice that on June 29, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-562-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon in part a natural gas transportation service provided to Southern Natural Gas Company (Southern) under Tennessee's Rate Schedule T-173, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that by order issued February 20, 1985, in Docket No. CP84-133-000, Tennessee and Columbia Gulf Transmission Company (Columbia Gulf) were authorized to transport on a firm basis up to 24,000 Mcf per day for Southern through the jointly owned South Pass 77 facilities from offshore

Louisiana to Plaquemines Parish, Louisiana.

Tennessee indicates that Southern no longer uses or needs the full amount of transportation service provided under Rate Schedule T–173. As a result, Tennessee states that Southern has requested a reduction of Tennessee's portion of the maximum entitlement from 12,300 Dt [1] to 3,000 Dt per day. On the other hand, it is indicated that Tennessee received numerous conversion requests from customers who want to reserve firm capacity in the South Pass 77 facilities. As part of the elections under the "Cosmic Settlement", Tennessee states that it has agreed with Southern to reduce the maximum daily entitlement effective on the date of implementation of the stipulation and agreement filed by Tennessee in Docket No. RP88–228–000, *et al.* (Cosmic Settlement), which is anticipated to be July 1, 1992.

Tennessee requests that the abandonment of service to Southern be effective on the date of implementation of the Cosmic Settlement so that Southern's demand charge from Tennessee can be eliminated as of that date in accord with the parties' intent.

*Comment date:* July 29, 1992, in accordance with Standard Paragraph F at the end of this notice.

**6. ANR Pipeline Co.**

[Docket No. CP92–5490–000]

Take notice that on June 22, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92–549–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service with Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR request authorization to abandon an exchange service with Panhandle provided under ANR's Rate Schedule X–128. ANR states that Panhandle and ANR received authorization on March 16, 1982, in Docket No. CP82–90–000 to exchange natural gas produced from various sources within Fremont, Natrona and Sweetwater Counties, Wyoming. ANR states that Panhandle has provided written notice in a letter to ANR dated June 14, 1989, requesting termination of the exchange service. ANR further states that panhandle has filed to abandon its part of the exchange service in Docket No. CP92–434–000.

No facilities are proposed to be abandoned herein.

*Comment date:* July 29, 1992, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs:**

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–16555 Filed 07–14–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP92–198–000, TQ92–5–2–000 and RP91–204–008]**

**East Tennessee Natural Gas Co.; Rate Filing**

July 7, 1992.

Take notice that on June 30, 1992, East Tennessee Natural Gas Company filed the following review tariff sheets to amend its FERC Gas Tariff, with a proposed effective date of July 1, 1992:

**First Revised Volume No. 1**

Twenty-Third Revised Sheet Nos. 4 and 5
Sixth Revised Sheet No. 6
Second Revised Sheet No. 7
Fourth Revised Sheet No. 113 and 114
Original Sheet Nos. 114A and 114B
Fifth Revised Sheet No. 116
Third Revised Sheet No. 177
Second Revised Sheet No. 118

**Original Volume No. 1A**

Sixth Revised Sheet Nos. 6 and 7
Second Revised Sheet Nos. 131, 132, 133, 134 and 135
Second Revised Sheet Nos. 138–149

East Tennessee states that the revised tariff sheets implement and make effective as of July 1, 1992 the Stipulations and Agreements submitted by East Tennessee on March 20, 1992 in Docket Nos. RP91–204, et al., and Docket Nos. RP91–79, et al., as approved by the Commission on June 25, 1992. *East Tennessee Natural Gas Co.*, 59 FERC ¶ 61,355. East Tennessee submits that good cause exists to make the Stipulations effective at such time in order to expedite the benefits provided by those settlements and to coordinate the restructuring of services on its system with the implementation of Tennessee Gas Pipeline Company's "Cosmic Settlement" in Docket Nos. RP88–228, et al. See *Tennessee Gas Pipeline Co.*, 59 FERC ¶ 61,361 (1992). East Tennessee also states that the filing reflects a limited adjustment to its base tariff rates, as well as an out-of-cycle PGA filing, in order to flow through Tennessee storage and TGIC Docket Nos. RP92–198–000 *et al.*

Cost arising under the Cosmic Settlement

East Tennessee states that copies of the filing have been mailed to all of its

[1] Tennessee currently measures gas in dekatherms rather than Mcf, and 12,300 dekatherms is the thermal equivalent of 12,000 Mcf.

jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16557 Filed 7-14-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP92-577-000]**

## Ozark Gas Transmission System; Request Under Blanket Authorization

July 9, 1992.

Take notice that on July 6, 1992, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, suite 2100, Dallas, Texas 75201, filed in Docket No. CP92-577-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon two lateral line compressors under its blanket certificate issued in Docket No. CP85-134-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Ozark states that it owns and operates certain lateral line compressors as part of its jurisdictional transportation service. Ozark further states that two compressor units, the Cantrell Compressor (located in section 9, Township 9 North, Range 20 East, Haskell County, Oklahoma) and the Barnes Compressor (located in section 36, Township 10 North, Range 19 East, Muskogee County, Oklahoma) are no longer needed to provide service on their respective laterals. Ozark asserts that gas supply produced from the wells located behind these compressors may be delivered without these units and therefore, service will not be interrupted upon abandonment of these units.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16558 Filed 7-14-92; 8:45 am]

BILLING CODE 6717-01-M

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## Office of Fossil Energy

**[FE Docket No. 92-66-NG]**

## Sithe/Independence Power Partners, L.P.; Application To Export and Import Natural Gas to and From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of Application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Sithe/Independence Power Partners, L.P. (Sithe) on May 29, 1992, requesting authorization to export to Canada and import back to the United States up to 190,000 Mcf per day of domestic natural gas over a 20-year and 5-month period beginning no later than August 1, 1995. The gas would be consumed in a 1,000-megawatt (MW) cogeneration facility to be built by Sithe in Scriba, New York. The facility is scheduled to begin commercial operation on January 1, 1995.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 14, 1992.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6668.

**SUPPLEMENTARY INFORMATION:** Sithe is a Delaware limited partnership comprised of a general partner, Sithe/Independence, Inc., and two limited partners, Mitex, Inc., and Sithe Energies, U.S.A., Inc. Sithe, a wholly-owned subsidary of Sithe Energies U.S.A., has its principal office in New York City. Electricity from the proposed Independence Station Cogeneration Facility would be sold to Niagara Mohawk Power Corporation (Niagara Mohawk) and Consolidated Edison Company (Con Ed) while the steam generated by the facility would be sold to the Alcan Rolled Products Company.

The principal fuel for the powerplant would be domestic gas purchased from Enron Power Services, Inc. (Enron). Under the terms of a Gas Base Sales Agreement entered into on January 23, 1992, Sithe will purchase up to 195,000 Mcf of natural gas per day from Enron for a term of twenty years and five months. The agreement provides for a fixed price for the first five years of the contract term, and a market based rate for the remaining fifteen years and five months of the contract.

In the United States, Sithe has arranged with ANR Pipeline Company (ANR), Great Lakes Gas Transmission Limited Partnership (Great Lakes), Panhandle Eastern Pipe Line Company (Panhandle), Niagara Mohawk Power Corporation (Niagara Mohawk), and the proposed Empire State Pipeline System (Empire State) for firm transportation service. The gas would be shipped within Canada by TransCanada Pipe Line Limited (TransCanada) and Union Gas Limited (Union). Up to 125,000 Mcf of gas per day would be delivered by ANR to Great Lakes and exported to Canada at the interconnection of Great Lakes and Union near St. Clair, Michigan. The balance, up to 65,000 Mcf per day, would be delivered by Great Lakes to Panhandle and exported at the interconnection of Panhandle and Union near Ojibway, Ontario.

All of the gas would be imported back to the Unites States at the interconnection of TransCanada's proposed "Blackhorse Extension" and the proposed Empire System. The gas

transported through Empire would be transferred at a proposed interconnection with Niagara Mohawk near Phoenix, New York, for delivery to the cogeneration plant.

Sithe's import/export project cannot be accomplished without new pipeline construction. On July 9, 1991, FERC issued Empire a Presidential Permit and authority under section 3 of the NGA to construct and operate pipeline facilities at the international border between the United States and Canada (56 FERC ¶ 61,050). The National Energy Board of Canada reconsidered in a review hearing its previous denial of TCPL's proposed Blackhorse Extension and approved the extension on June 29, 1992. Great Lakes intends to file an application with FERC to construct additional facilities on its system to transport the volumes for Sithe. In addition, Niagara Mohawk filed an application with the New York State Public Service Commission on March 20, 1992, to build a 27-mile lateral pipeline from the Empire system to the cogeneration plant.

In support of its application, Sithe asserts that the domestic natural gas which it proposes to export and then reimport would be used to generate electricity at its plant. In addition, Sithe asserts that the proposed exports/imports will not have an adverse impact on gas availability in the markets served by ANR, Panhandle, Great lakes and Empire since these markets are also served by CNG Transmission Corporation, Iroquois Gas Transmission System, and the Tennessee Gas Pipeline Company.

The same gas would be exported and imported solely as part of a transportation arrangement, and would not be sold or stored in Canada. Therefore, DOE believes that it is not necessary to consider in its public interest evaluation domestic need for the gas with respect to the proposed export, nor competitiveness, need for the gas or security of supply with respect to the proposed import. The DOE will consider the impact of the transportation arrangement on the availability of gas in the markets served by Great Lakes, ANR, and Panhandle and by the proposed Empire State Pipeline.

### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. FERC has prepared an environmental assessment (EA) of the Empire pipeline project. Also, it is the lead Federal agency for preparing the environmental documentation examining the potential effects of the additional facilities proposed on the Great Lakes system to support Sithe's cogeneration project. DOE intends to review the FERC documentation and evaluate the environmental impact of the cogeneration plant and pipeline lateral proposed by Sithe and Niagara Mohawk. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures.

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notice of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notice of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant of this notice, in accordance with 10 CFR 590.316.

A copy of Sithe's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 8, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92–16853 Filed 7–14–92; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30339; FRL–4076–5]**

### Agriculture Division of Miles Inc.; Application to Register Pesticide Products

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments must be submitted by August 14, 1992.

**ADDRESSES:** By mail submit comments identified by the document control number [OPP–30339] and the registration/file number to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information"

(CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** PM 19, Dennis H. Edwards, Registration Division (H7505C), Office of Pesticide Programs, Rm. 207, CM #2, (703–305–6386).

**SUPPLEMENTARY INFORMATION:** EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

**Products Containing Active Ingredients Not Included In Any Previously Registered Products**

1. File Symbol: 3125–URU. Applicant: Miles, Inc., Agriculture Division, P.O. Box 4913, Kansas City, MO. 64120–0013. Product name: BAY NTN 33893 Technical. Active ingredient: imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinime 94%; inert ingredients 6%. Proposed use: For use in the manufacture of insecticides. (PM–19)

2. File Symbol: 3125–URL. Applicant: Miles, Inc., Agriculture Division, P.O. Box 4913, Kansas City, MO. 64120–0013. Product name: BAY NTN 33893 75% Concentrate. Active ingredient: imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinime 75%; inert ingredients 25%. Proposed use: For use in the manufacture of insecticides. (PM–19)

3. File Symbol: 3125–URI. Applicant: Miles, Inc., Agriculture Division, P.O. Box 4913, Kansas City, MO. 64120–0013. Product name: BAY NTN 33893 2 Systemic. Active ingredient: imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinime 21.4%; inert ingredients 78.6%. Proposed use: For insect control in turfgrass and ornamentals. (PM–19)

4. File Symbol: 3125–URT. Applicant: Miles, Inc., Agriculture Division, P.O. Box 4913, Kansas City, MO. 64120–0013. Product name: BAY NTN 33893 2.5% Granular. Active ingredient: imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinime 2.5%; inert ingredients 97.5%. Proposed use: For insect control in ornamentals. (PM–19)

5. File Symbol: 3125–URA. Applicant: Miles, Inc., Agriculture Division, P.O. Box 4913, Kansas City, MO. 64120–0013. Product name: NTN 33893 0.62% Granular. Active ingredient: imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinime 0.62%; inert ingredients 99.38%. Proposed use: For insect control in ornamentals. (PM–19)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

**Authority:** 7 U.S.C. 136.
Dated: June 29, 1992.

**Anne E. Lindsay,**
*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 92–16625 Filed 7–14–92; 8:45 am]
BILLING CODE 6560–50–F

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**[OPP–30337; FRL–4069–9]**

## Mobay Corp.; Applications to Register Pesticide Products

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments must be submitted by August 14, 1992.

**ADDRESSES:** By mail submit comments identified by the document control number [OPP–30337] and the registration/file number to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Attention PM 14, Registration Division (H7505C), Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** PM 14, Robert Forrest, Registration Division (H7505C), Office of Pesticide Programs, Rm. 211, CM #2, (703–305–6600).

**SUPPLEMENTARY INFORMATION:** EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

**Products Containing Active Ingredients Not Included In Any Previously Registered Products**

1. File Symbol: 3125–URE. Applicant: Mobay Corporation, Agricultural Chemicals Division, PO Box 4913, Kansas City, MO 64120. Product name: Aztec 2.1% Granular Insecticide. Insecticide. Active ingredients: Phostebupirim, *O*-[2-(1,1-dimethylethyl)-5-pyrimidinyl] *O*-ethyl *O*-(1-methylethyl) phosphorothioate 2.0 percent and Cyfluthrin, cyano (4-fluoro-3-phenoxyphenyl) methyl 3-(2,2-dichloroethyl)-2,2-dimethylcyclopropanecarboxylate 0.1 percent. Proposed classification/Use: General. For control of corn rootworms,

cutworms, and other soil insect pests in corn. (PM 14)

2. File Symbol: 3125–URR. Applicant: Mobay Corporation. Product name: Mat 7484 Technical. Insecticide. Active ingredients: Phostebupirim, *O*-[2-(1,1-dimethylethyl)-5-pyrimidinyl] *O*-ethyl *O*-(1-methylethyl) phosphorothioate 92 percent. Proposed classification/Use: General. For formulating use only. (PM 14)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

**Authority:** 7 U.S.C. 136.

Dated: June 1, 1992.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 92–16257 Filed 7–14–92; 8:45 am]

BILLING CODE 6560–50–F

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**[PF–566; FRL–4073–6]**

## Pesticide Tolerance Petition; Frost Technology Corp.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition (PP) proposing the establishment of regulations for an exemption from the requirement of a tolerance for residues of the biological pesticides *Pseudomonas fluorescens* and *Pseudomonas syringae* in or on all raw agricultural commodities when applied as a frost protection agent to growing crops according to good agricultural practices

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Susan T. Lewis, Product Manager (PM-21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-305-1900).

**SUPPLEMENTARY INFORMATION:** EPA has received PP 1F4015 from Frost Technology Corp., 6701 San Pablo Ave., Oakland, CA 94608-1239, which proposes to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance, residues of the biological pesticides *Pseudomonas fluorescens* and *Pseudomonas syringae* in or on all raw agricultural commodities when used to reduce populations of ice-nucleating bacteria on growing crops.

**Authority:** 7 U.S.C. 136a.

Dated: June 29, 1992.

**Ann E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 92–16628; Filed 7–14–92; 8:45 am]

BILLING CODE 6560–50–F

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**[OPPTS–00122; FRL–4077–3]**

## Forum on State and Tribal Toxics Action (FOSTTA); Coordinating Committee and Teams; Open Meetings

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Coordinating Committee and the five Projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings at the time and place listed below in this notice. The meetings are open to the public.

**DATES:** The meetings are scheduled as follows.

1. The Coordinating Committee and all the Projects will hold a meeting August 10 and 11.

2. The Projects will meet August 10 from 8 a.m. to 5 p.m. and August 11 from 8 a.m. to noon. The Coordinating Committee will meet on August 11 from noon to 2 p.m.

**ADDRESSES:** The meetings will be held at: The Holiday Inn, 480 King St., Alexandria, VA.

**FOR FURTHER INFORMATION CONTACT:** By mail: Shirley Pate, Office of Compliance Monitoring (EN–342), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or Sarah Hammond, Office of Pollution Prevention and Toxics (TS–799), at the same address. By telephone: Shirley Pate can be reached at (202) 260–8318 and Sarah Hammond at (202) 260–7258.

**SUPPLEMENTARY INFORMATION:** FOSTTA, a group of State toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the States and between the States and EPA's Office of Prevention, Pesticides and Toxics (OPPTS). FOSTTA currently consists of the Coordinating Committee and five issue-specific Projects. The Projects are: (1) The Chemical Information Management Project (formerly the TRI Team); (2) the State and Tribal Enhancement and Decentralization Project; (3) the Pollution Prevention Project (formerly the 33/50 Team); (4) the Chemical Management Project; and (5) the Lead (Pb) Project.

Dated: July 9, 1992.

**Michael M. Stahl,**

*Director, Office of Compliance Monitoring.*

[FR Doc. 92–16638 Filed 7–14–92; 8:45 am]

BILLING CODE 6560–50–F

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**[OPPTS–59944; FRL 4078–6]**

## Certain Chemicals; Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 2 such PMN(s) and provides a summary of each.

**DATES:** Close of review periods:

*Y 92–152,* July 15, 1992.

*Y 92–153,* July 19, 1992.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

**Y 92–152**

*Manufacturer.* P.D. George Company.

*Chemical.* (G) Propylene glycol; diethylene glycol; maleic anhydride.

*Use/Production.* (S) Potting compound for use in electrical ballasts. Prod. range: 100,800 kg/yr.

**Y 92–153**

*Manufacturer.* Akzo-Lanchem.

*Chemical.* (G) Acrylic resin solution.

*Use/Production.* (S) Resin used to manufacture industrial coatings. Prod. range: Confidential.

Dated: July 9, 1992.

**Steven Newburg-Rinn,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 92–16639 Filed 7–14–92; 8:45 am]

BILLING CODE 6560–50–F

**[OPPTS–51800; FRL 4078–8]**

## Certain Chemicals; Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 17 such PMNs and provides a summary of each.

**DATES:** Close of review periods:

P 92–1105, 92–1106, 92–1111, 92–1115, 92–1116, 92–1117, 92–1118, 92–1119, September 20, 1992.

P 92–1120, 92–1121, 92–1122, 92–1123, September 21, 1992.

P 92–1124, 92–1125, 92–1126, 92–1127, September 22, 1992.

P 92–1128, September 23, 1992.

Written comments by:

P 92–1105, 92–1106, 92–1111, 92–1115, 92–1116, 92–1117, 92–1118, 92–1119, August 21, 1992.

P 92–1120, 92–1121, 92–1122, 92–1123, August 22, 1992.

P 92–1124, 92–1125, 92–1126, 92–1127, August 23, 1992.

P 92–1128, August 24, 1992.

**ADDRESSES:** Written comments, identified by the document control number "(OPPTS–51800)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC, 20460, (202) 260–3532.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

**P 92–1105**

*Manufacturer.* Westvaco Corporation.

*Chemical.* (G) Modified rosin, hydrocarbon resin.

*Use/Production.* (S) Printing ink resin. Prod. range: Confidential.

**P 92–1106**

*Manufacturer.* Westvaco Corporation.

*Chemical.* (G) Modified rosin, hydrocarbon resin.

*Use/Production.* (S) Printing ink resin. Prod. range: Confidential.

**P 92–1111**

*Manufacturer.* Confidential.

*Chemical.* (S) Tri-*n*-propylorthoformate.

*Use/Production.* (S) Intermediate. Prod. range: Confidential.

*Toxicity Data.* Eye irritation: strong species (rabbit). Skin irritation: strong species (rabbit).

**P 92–1115**

*Manufacturer.* The Virkles Company.

*Chemical.* (G) Lanoline wax reacted with Eo/Po block polymers and Eo-Polyols.

*Use/Production.* (G) Fiber processing aid. Prod. range: Confidential.

**P 92–1116**

*Manufacturer.* The Virkler Company.

*Chemical.* (G) Lanolin wax reacted with polyols, $C_{10}$–$C_{18}$ alcohols and their ethoxylates, terphthalic acid adipic acid.

*Use/Production.* (G) Fiber processing aid. Prod. range: Confidential.

**P 92–1117**

*Manufacturer.* The Virkler Company.

*Chemical.* (G) Lanolin wax reacted with polyols, $C_{10}$–$C_{18}$ alcohols and their ethoxylates, terphthalic acid adipic acid.

*Use/Production.* (G) Fiber processing aid. Prod. range: Confidential.

**P 92–1118**

*Manufacturer.* The Virkler Company.

*Chemical.* (G) Monoethanoline neutralized phosphate mixture of $C_{12}$–$C_{18}$ and $C_{12}$–$C_{13}$ alcohols.

*Use/Production.* (G) Fiber processing aid. Prod. range: Confidential.

**P 92–1119**

*Importer.* Confidential.

*Chemical.* (G) Disubstituted diphenylsulfone.

*Use/Import.* (G) Image stabilizer. Import range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Statis

acute toxicity: LC50 > 1,000 mg/L 96h species (carp). Eye irritation: mild species (rabbit). Skin irritation: none species (rabbit). Mutagenicity: negative. Skin sensitization: negative species (guinea pig).

P 92-1120

*Manufacturer.* Confidential.
*Chemical.* (S) 1,3-Propanediol; dimethyl terephthalene.
*Use/Production.* (G) Structural material for manufacturing articles. Prod. range: Confidential.

P 92-1121

*Manufacturer.* Confidential.
*Chemical.* (S) 1,3-Propamdiol; terephthalene.
*Use/Production.* (G) Structural material for manufacturing articles. Prod. range: Confidential.

P 92-1122

*Manufacturer.* Confidential.
*Chemical.* (S) 1,3-Propanediol; terephthalene.
*Use/Production.* (G) Structural material for manufacturing articles. Prod. range: Confidential.

P 92-1123

*Importer.* Confidential.
*Chemical.* (G) Diazonapthoquinone photoactive compound.
*Use/Import.* (S) Intermediate used in manufacture of photoresist. Import range: Confidential.

P 92-1124

*Importer.* Nagase California Corporation.
*Chemical.* (G) Polymer of formaldehyde-methyl phenol and diazo salt.
*Use/Import.* (S) Coating polymer ingredient. Import range: Confidential.

P 92-1125

*Manufacturer.* Monsanto Company.
*Chemical.* (G) Substituted nitrobenzene.
*Use/Production.* (G) Manufacturing process intermediate. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 233 mg/kg species (rat). Acute dermal toxicity: > 5,000 mg/kg species (rabbit). Eye irritation: severe species (rabbit). Skin irritation: moderate species (rabbit). Mutagenicity: positive. Skin sensitization: positive species (guinea pig).

P 92-1126

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (S) Pressure sensitive adhesive. Prod. range: Confidential.

P 92-1127

*Manufacturer.* Tennessee Valley Performance Products.
*Chemical.* (G) Aromatic diol.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: ALD 500–5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: slight species (rabbit). Mutagenicity: negative.

P 92-1128

*Importer.* Ciba-Geigy Corporation.
*Chemical.* (G) Substituted azo triazine.
*Use/Import.* (G) Textile dye. Import range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit). Mutagenicity: positive. Skin sensitization: negative species (guinea pig).

Dated: July 8, 1992.

**Steven Newburg-Rinn,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 92-16626 Filed 7-14-92; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-948-DR]

### South Dakota; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**EFFECTIVE DATE:** July 2, 1992.

**SUMMARY:** This notice amends the notice of a major disaster for the State of South Dakota (FEMA-948-DR), dated July 2, 1992, and related determinations.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Marian L. Olson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Roger E. Free as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Wallace E. Stickney,**

*Director.*

[FR Doc. 92-16603 Filed 7-14-92; 8:45 am]

BILLING CODE 6718-02-M

## FEDERAL MARITIME COMMISSION

### Lake Charles Harbor & Terminal District et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.6 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

*Agreement No.:* 224-200686.

*Title:* Lake Charles Harbor & Terminal District and Lake Charles Stevedores, Inc., Stevedore Services Agreement.

*Parties:* Lake Charles Harbor & Terminal District ("Port of Lake Charles"), Lake Charles Stevedores, Inc.

*Filing Party:* Michael K. Dees, Esquire, McHale, Bufkin & Dees, PLC, 1901 Oak Park Blvd., Lake Charles, LA 70601-8991.

*Synopsis:* The Agreement provides for Lake Charles Stevedores, Inc., to perform stevedoring services at the Port of Lake Charles. The term of the Agreement is for one year.

Dated: July 9, 1992.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92-16580 Filed 7-14-92; 8:45 am]

BILLING CODE 6730-01-M

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**Request for Additional Information**

*Agreement No.:* 002-010893-005.

*Title:* Pacific Coast/American Samoa Rate Agreement.

*Parties:* South Seas Steamship Company, Blue Star Pace Ltd., Polynesia Line Ltd.

*Synopsis:* Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1705), has requested additional information from the parties to the Agreement in order to complete the statutory review of Agreement No. 002-010893-005 required by the Act. This action extends the review period as provided in section 6(c) of the Act.

Dated: July 9, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 92-16579 Filed 7-14-92; 8:45 am]

BILLING CODE 6730-01-M

**Jackson County Port Authority et al.; Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 301-200685.

*Title:* Pascagoula/Gearbulk Ltd. Terminal Agreement.

*Parties:* Jackson County Port Authority ("Port"), Gearbulk Ltd. ("Gearbulk").

*Synopsis:* The Agreement provides that the Port will pay a volume incentive award to Gearbulk based on the number of vessel calls and the amount of cargo handled at the Port of Pascagoula's public terminals.

Dated: July 9, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 92-16552 Filed 7-14-92; 8:45 am]

BILLING CODE 6730-01-M

**Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)**

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. § 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Carnival Cruise Lines, Inc., 3655 NW. 87th Avenue, Miami, FL 33178-2428, Vessel: IMAGINATION.

Dated: July 9, 1992.

Joseph C. Polking,

*Secretary.*

[FR Doc. 92-16578 Filed 7-14-92; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

**Board of Governors of the Federal Reserve System Agency Forms Under Review**

July 9, 1992.

**Background**

Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Board chooses to make this collection effective immediately with opportunity for subsequent public comment because it is essential that the Board identify representative offices as soon as possible to carry out its new regulatory and supervisory responsibilities under 12 U.S.C. 3107. For this reason, and because only minimal identifying information is sought, delaying implementation until the end of a comment period is impractical, unnecessary and contrary to the public interest. Anyone wishing to comment may do so on or before August 13, 1992.

**ADDRESSES:** Comments, which should refer to OMB Docket No. 7100-0256, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary. Comments addressed to the attention to Mr. Wiles may be delivered to the Board's mailroom between the 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202-395-7340).

**Final approval under OMB delegated authority of the implementation of the following report**

1. *Report title:* Foreign Representative Office Registration Report.

*Agency form number:* FR 3072.

*OMB docket number:* 7100-0256.

*Frequency:* One-time survey.

*Reporters:* U.S. representative offices of foreign banks.

*Annual reporting hours:* 78.5.

*Estimated average hours per response:* 10 minutes.

*Number of respondents:* 475. [small businesses not affected].

*General description of report:* This information collection is mandatory and is authorized by law [12 U.S.C. 3107]. Portions of FR 3072 are given confidential treatment [5 U.S.C. 552(b)(4)].

*Abstract:* This report collects basic data on the number and identity of U.S. representative offices of foreign banks. This information will be used by the Federal Reserve to conduct examinations of such representative offices pursuant to new statutory authority that was effective upon enactment.

Board of Governors of the Federal Reserve System, July 9, 1992.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 92-16590 Filed 7-14-92; 8:45 am]

BILLING CODE 6210-01-M



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Centers for Disease Control**

**[Program Announcement Number 262]**

**Cooperative Agreement To Enhance the Preparation of Primary Care and Public Health Physicians in the Areas of Health Promotion and Disease Prevention**

**Introduction**

The Centers for Disease Control, the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for a cooperative agreement with the Association of Teachers of Preventive Medicine (ATPM) to improve the development and preparation of primary care and public health physicians in the areas of health promotion and disease prevention.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Educational and Community-Based Programs and Clinical Preventive Services. (For ordering a copy of Healthy People 2000, see the section **Where To Obtain Additional Information.**)

**Authority**

This program is authorized under section 301(a) of the Public Health Service Act, (42 U.S.C. 241(a)), as amended.

**Eligible Applicants**

Assistance will be provided only to the Association of Teachers of Preventive Medicine (ATPM). No other applications will be solicited. ATPM is a professional organization of institutions and individuals who teach or have a professional interest in education in the field of preventive medicine. Its membership of 600 professionals includes teachers, researchers, practitioners, administrators, residents in the specialty of preventive medicine, and students from schools of medicine and public health, as well as from pubic health agencies. The diversity of its membership, its ability to reach beyond the bounds of public health, the quality of work performed by its members and staff, and the high esteem in which it is held within the profession place ATPM in a unique position to assist specialists and professionals in the field to be highly productive in the achievement of national goals in disease prevention and health promotion.

ATPM is the only organization which has a comprehensive data base related to teaching and other activities of all medical school departments of preventive medicine. Moreover, ATPM has developed and evaluated an inventory of essential skills and knowledge that all medical students should have in the areas of disease prevention and health promotion. Therefore, ATPM is uniquely situated to assess current disease prevention and health promotion instruction for medical students and to influence the development of additional essential information when needed.

**Availability of Funds**

Approximately $600,000 is available in FY 1992 to fund this award. It is expected that the award will begin on or about August 1, 1992, and is usually made for 12-month budget periods within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

**Use of Funds**

Funds may be spent for reasonable program purposes, such as personnel, travel, supplies, and services. Equipment may be purchased with the cooperative agreement funds; however, justification must be provided, which should include cost comparison of purchase with lease.

**Purpose**

The purpose of this cooperative agreement is twofold. In the short term, this agreement will provide a mechanism for ATPM and CDC professionals to explore health problems of urgent importance to the American public for the purposes of carrying out research (both that proposed by a Federal agency, and that initiated by an investigator on behalf of ATPM), revising instruction in preventing health problems, conducting training, and offering practical field experience in the contemporary practice of disease prevention and health promotion. Second, over the long term, this agreement will strengthen the work force of health professionals by ensuring that graduates of medical schools receive excellent didactic instruction and practical experience in the field of preventive medicine, regardless of the field of health care the graduate may pursue.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient, ATPM, shall be responsible for the activities under A., and CDC will be responsible for conducting activities under B., below:

*A. Recipient Activities*

1. ATPM will assist medical schools in the development of an increased number of academic units in the field of preventive medicine, developing criteria for setting priorities for the selection of schools as part of the process. This activity will strengthen the delivery of clinical preventive services.

2. ATPM will aid professional organizations and agencies in developing a program of contemporary and excellent instruction for the assemblage of prevention health professionals to assure that current practices are based on a common foundation of current knowledge.

3. ATPM will offer a wide variety of field experience in the practice of prevention medicine and public health for students in member institutions.

4. ATPM will help member institutions develop projects on prevention effectiveness related to the national objectives set forth in Healthy People 2000.

5. ATPM will work with medical schools and public health graduate programs to improve the collaboration with public health agencies in the same geographic areas thus improving the instruction and teaching of preventive medicine curriculum.

6. ATPM will be a clearinghouse for instructional materials and teaching techniques in prevention for health professionals, including instruction in both concepts and practices.

7. ATPM will sponsor and oversee (1) a national prevention meeting; (2) a professional publication in preventive medicine; (3) a detailed listing of graduate programs in preventive medicine; (4) the recruiting of well-qualified, developing professionals to the field of preventive medicine; and (5) meetings of professionals to exchange information and ideas relevant to enhancing instruction, practice, and research in the prevention of health problems.

8. ATPM will actively and energetically explore project ideas in instruction, practice, and research in prevention on a regular basis which respond to the health promotion disease prevention objectives as stated in Healthy People 2000.

*B. CDC Activities*

1. CDC will provide technical guidance to ATPM in the development of academic units at medical schools applying the experience of the CDC staff in the practice of prevention. This guidance will include assistance in identifying and collaborating with other professional organizations.

2. CDC will facilitate ATPM efforts to develop a group of prevention organizations which share a common interest in instruction in the concepts and practice of prevention.

3. CDC will actively participate with ATPM in expanding the opportunities for field experience in practice of preventive medicine and public health.

4. CDC will assist ATPM in identifying research problems which its members are uniquely able to investigate and which will help achieve the national health objectives stated in Healthy People 2000.

5. CDC will facilitate ATPM efforts to work with medical schools and public health agencies to strengthen instruction in the concepts and practice of preventive medicine.

6. CDC will offer technical assistance to ATPM for ventures in developing, coordinating, and distributing instructional materials for instruction in preventive practices and clinical preventive services.

7. CDC will assist ATPM in (1) developing a national prevention meeting; (2) publishing a professional journal; (3) distributing information on graduate programs in public health and preventive medicine at medical schools; (4) recruiting developing professionals, especially those who represent minority groups; and (5) exploring collaborative projects in instruction, intervention, effectiveness, evaluation, and research in the prevention of health problems as needed.

**Evaluation Criteria**

A. The application will be reviewed and evaluated according to the following criteria:

*1. Scientific and Technical Review Criteria of New Applications*

a. Proposed Program—40%

The extent to which the applicant's proposal addresses (a) the scientific merit of the proposed project, including approach, feasibility, adequacy, and rationale of the design; (b) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective as described in the PURPOSE section of this announcement and the technical merit of the methods and procedures (including quality assurance and quality control procedures) for the proposed project; and (c) the proposed project schedule, including clearly established project objectives for which progress toward attainment can and will be measured.

b. Program Personnel—40%

The extent to which the proposal has described the (1) qualifications, experience, and commitment of the principal investigator (or project director) and his/her ability to devote adequate time and effort to provide effective leadership; (2) competence of associates to accomplish the proposed activity and their commitment and time they will devote; and (3) the performance objectives on which each staff member will be evaluated for the purpose of ensuring the project will be completed at a satisfactory level of quality and in a timely manner.

c. Applicant Capability—20%

Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities as they relate to the objectives and schedule of the project so that performance of the proposed activity can be evaluated in terms of the likelihood of satisfactory and timely completion.

d. Program Budget—(not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of grant funds.

*2. Review of Continuation Applications*

Continuation awards within the project period will be made on the basis of the following criteria:

a. Availability of funds;

b. Satisfactory progress has been made in meeting project objectives and the availability of funds;

c. Objectives for the new budget period are realistic, specific, and measurable;

d. Proposed changes in objectives, methods of operation, need for grant or cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and

e. The budget request is clearly justified and consistent with the intended use of grant funds.

**Executive Order 12372 Review**

The application is not subject to review as governed by Executive Order 12372, entitled "Intergovernmental Review of Federal Programs."

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance number is 93.283.

**Application Submission and Deadline**

The ATPM must submit an original and two copies of the application PHS Form 5161-1 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia 30305, on or before July 20, 1992.

**Where to Obtain Additional Information**

If you are interested in obtaining additional information regarding this program, please refer to Announcement Number 262 and contact Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia 30305, (404) 842-6797 for business management technical assistance. Programmatic technical assistance may be obtained from Dr. Carl Tyler, Jr., Assistant Director for Academic Programs, Public Health Program Practice Office, Mail Stop E-42, Atlanta, Georgia 30333 (Telephone (404) 639-0400).

A copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the **Introduction** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Dated: July 8, 1992.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control.*

[FR Doc. 92-16585 Filed 7-14-92; 8:45 am]

BILLING CODE 4160-01-M

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**[Announcement 252]**

## Cooperative Agreement for Research Into the Prevention and Control of HIV Infection/Acquired Immunodeficiency Syndrome (AIDS) and Other Sexually Transmitted Diseases (STD) Community and Child Health Project Office, Ministry of Health, Government of Bolivia, La Paz, Bolivia; Availability of Funds for Fiscal Year 1992

**Introduction**

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year

(FY) 1992 funds for a cooperative agreement with the Community and Child Health Project Office, Ministry of Health, Government of Bolivia, for research into the prevalence of STD/HIV, characterization of sexual behaviors, and development and establishment of systems to (1) detect, treat, and counsel persons diagnosed with STDs, and (2) evaluate risk reduction and disease prevention strategies based on the collected research data.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection, Sexually Transmitted Diseases, Maternal and Infant Health, and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section **Where To Obtain Additional Information.**))

**Authority:** This program is authorized under Sections 301 (42 U.S.C. 241) and 307(a) (42 U.S.C. 242l(a)) of the Public Health Service Act, as amended; section 5 of the International Health Research Act of 1960 (22 U.S.C. 2101–2104); and Section 104 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b).

**Eligible Applicants**

Assistance will be provided only to the Community and Child Health Project Office (CCH), Ministry of Health, Government of Bolivia, for this project. No other applications will be solicited or will be accepted.

The Community and Child Health Project Office, Ministry of Health, Government of Bolivia, is the only appropriate and qualified institution to provide the services specified under this cooperative agreement for the following reasons:

1. On November 26, 1990, the governments of the United States and Bolivia entered into an agreement which supported collaborative scientific endeavors, including scientific research protocols, epidemiology training, short-term and long-term health training, and personnel exchange in the areas of expanded program in immunization, control of AIDS, Chagas' disease, and other diseases.

2. CCH carries out the United States Agency for International Development (USAID) project which seeks to reduce infant, child, and maternal mortality rates in Bolivia's health districts and to increase the capability to plan, implement, and sustain child, maternal, and other health services.

3. CCH is a fully-established, permanent, project division of the Bolivian Ministry of Health (MOH). As such, project data from other Ministry programs essential to the proposed research and data-based decision making is available. Access to this data makes CCH solely eligible for award.

**Availability of Funds**

It is anticipated that approximately $119,000 is available in FY 1992 to fund the cooperative agreement beginning on or about September 1, 1992, for a 12-month budget period within a 3-year project period. Funding estimates may vary and are subject to change.

Costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions with the following exceptions: (1) Alterations and renovations; (2) customs and import duties; and (3) indirect costs.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

**Purpose**

The purpose of this cooperative agreement is to assist and collaborate with CCH in acquiring information that can be used in developing intervention programs targeting, especially, appropriate high risk groups among the culturally diverse urban and rural Spanish-speaking populations. The scientific knowledge gained from this project will provide reciprocal and direct benefits to the United States and be applicable in the prevention of HIV/AIDS and STD among the multi-cultural Spanish-speaking populations in the United States, including both U.S.-born and immigrant populations, as well as among populations in other Latin American countries requesting future CDC technical assistance.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below and CDC will be responsible for conducting activities under B., below:

*A. Recipient Activities*

1. Conduct knowledge, attitude, and practice surveys of population subgroups, assess HIV/STD prevalence, and design and evaluate interventions targeting high-risk population subgroups (first, registered prostitutes; second, military and police; third, street children).

2. Establish and conduct collaborative HIV/AIDS and STD diagnostic, behavioral and prevention research activities with non-government organizations.

3. Provide regional laboratories in La Paz, Santa Cruz, and Cochabamba with a full range of standard STD diagnostic capabilities to support related project activities; ensure similar development among secondary laboratories, including laboratories at study sites and private laboratories.

4. Investigate condom logistics standardization and condom distribution to high-risk population subgroups and to the general population.

5. Design, deliver, and evaluate information, education, and communications activities directed towards two broad populations: high-risk groups, and the general population (particularly school-aged youth and university students). Modify intervention strategies based on an ongoing assessment of their effectiveness.

6. Conduct surveillance research: First, assess reporting systems at public and non-governmental facilities (clinics, hospitals, laboratories, and pharmacies); second, standardize data collection at these facilities; and third, summarize and evaluate the usefulness of these data.

7. Provide operational research and development support and consultation for institutions which deliver ongoing activities with high-risk population subgroups, including street children and unregistered prostitutes.

8. Investigate the safety of the national blood supply, including quality control procedures and HIV/AIDS and STD prevalence among populations at transfusion centers, to evaluate need for blood bank development and national quality control standardization.

*B. CDC Activities*

1. Through the assignment of a long-term advisor, provide assistance and guidance on program management and administrative matters related to the conduct of the operational and scientific aspects of the cooperative agreement.

2. Provide technical and scientific consultation, assistance, and training for the implementation of all research and operational activities conducted under the cooperative agreement.

3. Provide scientific consultation and assistance in formulating development and evaluation plans, based upon results of preceding research.

**Evaluation Criteria**

The application will be reviewed and evaluated according to the following criteria:

A. Technical Approach—60%.

The adequacy of the description and plan to carry out project activities, including research capabilities, epidemiologic analysis, surveillance, intervention activities, training, and overall project evaluation.

B. Understanding of the Problem—25%.

The applicant's understanding of the requirements and objectives for a successful program.

C. Program Personnel—15%.

The extent to which the proposal has described (1) the qualifications and commitment of the existing and proposed professional and non-professional and (2) the administrative support for the project.

D. Budget—Not scored

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

**Executive Order 12372**

The applicant is not subject to review under Executive Order 12372.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 93.253.

**Application Submission and Deadline**

The Community and Child Health Project Office, MOH, Bolivia, must submit an original and two copies of the application form PHS 5161–1 on or before August 1, 1992 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305.

**Where to Obtain Additional Information**

If you are interested in obtaining additional information regarding this program, please refer to Announcement Number 252 and contact Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E–14, 255 East Paces Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6796 for business management technical assistance. Programmatic technical assistance may be obtained from Jerry Brimberry, HIV Coordinator, Field Services Division, International Health Program Office, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–03, Atlanta, Georgia 30333, (404) 639–0233.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **Introduction** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–0325 (Telephone (202) 783–3238).

Dated: July 8, 1992.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control.*

[FR Doc. 92–16583 Filed 7–14–92; 8:45 am]

BILLING CODE 4160–18–M

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**[Program Announcement Number 259]**

## Cooperative Agreement for Birth Defects, Risk Factor Surveillance; Availability of Funds for Fiscal Year 1992

**Introduction**

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of cooperative agreement funds in fiscal year (FY) 1992 for Birth Defects Risk Factor Surveillance. The purpose of the cooperative agreement is to begin establishing a population-based network of collaborative institutions to bolster their capabilities of adding a birth defects risk factor surveillance program to their ongoing surveillance program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health, Maternal and Infant Health, and Alcohol and Other Drugs. (For ordering a copy of Healthy People 2000, see the section Where To Obtain Additional Information)

**Authority:** This program is authorized under sections 301 [42 U.S.C. 241] and 311 [42 U.S.C. 243] of the Public Health Service Act, as amended.

**Eligible Applicants**

Eligible applicants are state and local health departments, or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshal Islands, the Republic of Palau, and federally recognized Indian tribal governments. Applicant institutions must have ongoing access to data generated from a birth defects surveillance (ascertainment) program based on a population of not less than 30,000 live births per year. This access will provide the source of birth defect cases for participation in the risk factor surveillance. Applicants must also have a suitable source for obtaining controls from the same population from which cases derive.

**Availability of Funds**

Approximately $500,000 will be available in FY 1992 to fund two cooperative agreements. It is expected that the average award will be $250,000. The awards are expected to begin by September 30, 1992, and are usually made for a 12-month budget period within a project period up to 5 years. The funding estimate may vary and is subject to change.

Continuation awards will be based on satisfactory progress, need to continue the program, and the availability fo funds.

**Purpose**

The purpose of this cooperative agreement is to begin to establish a population-based network of collaborative institutions to bolster their capabilities of adding a birth defects risk factor surveillance program to their ongoing surveillance program. Initially, the collaborative institutions will develop and conduct parental interviews. Later, as experience is gathered and funds become available, they will inititate epidemiologic studies which involve clinical and laboratory data obtained from persons identified through their surveillance activity.

The following describes the rationale for the three phases of the Birth Defects Risk Factor Surveillance program.

1. *Clinical Approach:* Numerous studies have documented extensive etiologic heterogeneity in birth defect cases with similar anatomic problems. For example, neural tube defect cases with no associated defects have different epidemiologic characteristics and familial recurrence risk patterns from cases with additional defects. The presence of associated defects and accurate clinical description of the type of defect, could be used in classifying birth defect cases into subgroups that are etiologically and pathogenetically more homogeneous. Several known teratogens are associated with a spectrum of defects rather than a single defect. Accutane embryopathy and congenital rubella are notable examples.

The Birth Defects Risk Factor Surveillance will include a dysmorphologic clinical evaluation of infants with multiple birth defects. At CDC, this will be done systematically by a clinical geneticist to identify recognized syndromes (e.g., Mendelian and chromosomal) as well as to classify cases into subgroups for analyzing the association between exposures and birth defects.

2. *Laboratory Approach:* Interview instruments have so far been the major tool in the search for environmental causes of birth defects. Such tools have been limited for certain exposures due to problems of recognition and recall. The Birth Defects Risk Factor Surveillance program will work closely with CDC, to develop and use laboratory methods to examine specific exposures.

In addition to using laboratory methods to measure environmental exposures, the CDC will explore laboratory methods of blood sample DNA analysis to look for genetic-environmental interactions in the etiology of birth defects. These blood samples will be stored in a biologic specimen bank at CDC. Maintaining a biologic specimen bank will allow for testing as new hypotheses or improved technologies emerge.

Additionally, CDC will explore the potential of environmental sampling to qualify residential exposures. For example, the program may include sampling of water in the home to determine the levels of exposure to potentially harmful agents in the water (pesticides, nitrates, lead).

3. *Parental Interview Approach:* In previous follow-up investigations, CDC has used standardized parental interview instruments to evaluate specific risk factors for birth defects. Although these past parental interviews continue to provide useful etiologic information with respect to the causes of birth defects, the interview instrument has recently been updated and expanded.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and CDC will be responsible for conducting activites under B., below:

*A. Recipient Activities*

1. Develop an instrument for parental telephone interview. This instrument will contain a core that will be common to all collaborating institutions. Individual collaborating institutions may, at their option, develop a non-core section to account for local conditions.

2. Develop a plan for the selection of specific cases and controls for interview.

3. Develop a plan for conducting telephone interviews of cases and controls.

4. Develop a mechanism for reducing interview data to computer-readable form.

5. Interview parents in accordance with the plans developed under activities 1–4, above.

6. Develop a plan to implement (at some time in the future) a more refined clinical approach to the classification of birth defects for the purpose of improving risk factor surveillance.

7. Develop a plan to implement (at some time in the future) the laboratory phase of the risk factor surveillance program.

*B. CDC Activities*

1. Assist recipients in developing an instrument for parental telephone interview.

2. Assist recipient in developing a plan for the selection of specific cases and interview.

3. Assist recipient in developing a plan for conducting telephone interviews of cases and controls.

4. Assist recipient in developing a mechanism for reducing interview data to computer-readable form.

5. Assist the recipient to develop a plan to implement (at some time in the future) a more refined clinical approach to the classification of birth defects for the purpose of improving risk factor surveillance.

6. Assist recipient in developing a plan to implement (at some time in the future) the laboratory phase of the risk factor surveillance program.

**Evaluation Criteria**

Applications will be reviewed and evaluated according to the following criteria:

*A. Applicant's Understanding of the Problem (10%)*

The extent to which the applicant has a clear, concise understanding of the requirements, objectives, and purpose of the cooperative agreement. The extent to which the application reflects an understanding of the complexities surrounding a birth defects risk factor surveillance program.

*B. Organizational Experience (30%)*

The extent to which the applicant has the skills, experience, and access to data generated from a birth defects surveillance (ascertainment) program based on a population of not less than 30,000 live births per year. This access provides the source of birth defect cases for participation in the risk factor surveillance. Applicants must also have a suitable source for obtaining controls from the same population from which cases derive.

*C. Approach and Capability (40%)*

The extent to which the applicant has included a description of their approach to birth defects risk factor surveillance and their ability to implement such a program. The applicant shall describe and indicate the availability of facilities and equipment necessary to carry out this project.

*D. Program Personnel (20%)*

The adequacy of the description of present staff and capability to assemble competent and trained staff to conduct the three phases of the Birth Defects Risk Factor Surveillance program. The applicant shall identify all current and potential personnel who will be utilized to work on this cooperative agreement, including qualifications and specific experience as it relates to the requirements set forth in this request.

*E. Budget Justification and Adequacy of Facilities (not scored)*

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

**Executive Order 12372**

The Intergovernmental Review requirements of Executive Order 12372, as implemented by DHHS regulations in 45 CFR 100, are applicable to this program. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road,

N.E., Atlanta, Georgia 30305, not later than 30 days after the application deadline for new and competing continuation awards. [A waiver for the 60 day requirement has been requested.] The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

**Other Requirements**

*Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 Code of Federal Regulations 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

*Paperwork Reduction Act*

Data collection initiated under this cooperative agreement has been approved by the Office of Management and Budget under number 0920–0010, "Birth Defects and Adverse Reproductive Outcome Surveillance," Expiration date September 1992.

**Catalog of Federal Domestic Assistance Number (CFDA)**

The Catalog of Federal Domestic Assistance number is 93.283.

**Application Submission and Deadline**

The original and two copies of the application PHS Form 5161–1, must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, on or before August 3, 1992.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. received on or before the deadline date; or

B. sent on or before the deadline data and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications and will be returned to the applicant.

**Where to Obtain Additional Information**

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, (404) 842–6630. Programmatic technical assistance may be obtained from J. David Erickson, D.D.S., Ph.D., Chief, Birth Defects and Genetic Diseases Branch, Division of Birth Defects and Developmental Disabilities, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mail Stop F–45, Atlanta, Georgia 30333, Telephone: (404) 488–4967.

Please refer to Announcement Number 259 when requesting information or submitting the application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0 or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: July 8, 1992.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control.*

[FR Doc. 92–16584 Filed 7–14–92; 8:45 am]

BILLING CODE 4160–18–M

## Food and Drug Administration

**[Docket No. 92N–0231]**

## Bayou Plasma of Baton Rouge, Inc.; Revocation of U.S. License No. 1120

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 1120) and the product license issued to Bayou Plasma of Baton Rouge, Inc., for the manufacture of Source Plasma. In a letter to FDA dated September 13, 1991, the firm withdrew its request for a hearing on this matter and requested that its establishment and product licenses be revoked.

**DATES:** The revocation of the above establishment and product licenses became effective December 2, 1991.

**FOR FURTHER INFORMATION CONTACT:** Stephen Ripley, Center for Biologics Evaluation and Research (HFB–130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8188.

**SUPPLEMENTARY INFORMATION:** FDA has revoked the establishment license (U.S. License No. 1120) and the product license issued to Bayou Plasma of Baton Rouge, Inc., located at 4226 Plank Rd., Baton Rouge, LA 70805. The mailing address for Bayou Plasma of Baton Rouge, Inc., is 1444 Thibodeaux Ave., Baton Rouge, LA 70806.

FDA conducted an inspection of Bayou Plasma of Baton Rouge, Inc., from May 21, 1991, through June 4, 1991. This inspection revealed serious deviations from the applicable Federal regulations. These deviations included, but were not limited to, the following: (1) Records of overbleeds were inaccurate and not concurrent, and (2) failure to ensure that personnel were adequately trained to perform the critical steps involved in the plasmapheresis procedure. A concurrent investigation revealed additional deficiencies including direct reinfusion of whole blood into donor veins when whole blood was collected in excess of the maximum amount allowed, and the practice of multiple venipunctures using the same needle when blood flow was obstructed.

FDA inspection and investigation revealed serious deviations which FDA determined constituted a danger to public health. FDA suspended the firm's licenses by letter dated June 18, 1991. In a letter dated June 19, 1991, the firm requested that revocation of the licenses be held in abeyance. In a letter to Bayou Plasma of Baton Rouge, Inc., dated August 26, 1991, FDA denied the firm's request that revocation of the licenses be held in abeyance based on the seriousness and willfulness of the violations outlined above. In the same letter, FDA notified Bayou Plasma of Baton Rouge, Inc., that FDA intended to revoke U.S. License No. 1120 and offered an opportunity for a hearing. In a letter to FDA dated August 27, 1991, Bayou Plasma of Baton Rouge, Inc., requested an opportunity for a hearing on the matter. In a followup letter dated September 13, 1991, Bayou Plasma of Baton Rouge, Inc., withdrew its request for a hearing on the matter and requested that the licenses be revoked.

The agency granted the licensee's request by letter to the firm dated December 2, 1991, which revoked the establishment license (U.S. License No. 1120) and the product license for the manufacture of Source Plasma.

FDA has placed copies of the letters relevant to the license revocations on file under the docket number found in brackets in the heading of this document in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. These documents are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under 21 CFR 601.5, section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 1120) and the product license issued to Bayou Plasma of Baton Rouge, Inc., for the manufacture of Source Plasma were revoked, effective December 2, 1991.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: July 6, 1992.

**Gerald V. Quinnan, Jr.**

*Deputy Director, Center for Biologics Evaluation and Research.*

[FR Doc. 92–16536 Filed 7–14–92; 8:45 am]

BILLING CODE 4160–01–F

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## Health Care Financing Administration

### Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

**AGENCY:** Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Request for Termination of Premium Hospital and/or Supplementary Medical Insurance; *Form Numbers:* HCFA–1763; *Use:* Form HCFA–1763 is completed by individuals who wish to terminate their Medicare coverage and is used to notify the Social Security Administration Program Service Center of an individual's desire to withdraw from Medicare; *Frequency:* On occasion; *Respondents:* Individuals or households; *Estimated number of Responses:* 30,000; *Average Hours per Response:* .166; *Total Estimated Burden Hours:* 5,000.

2. *Type of Request:* New; *Title of Information Collection:* Medicare Physician Survey Form—Pilot; *Form Number:* HCFA–R–15; *Use:* The survey will be used to collect input from the physician community regarding Medicare contractors' services and used to produce improvements in the quality of services rendered by the contractors; *Frequency:* Annually; *Respondents:* Individuals/households; businesses/other for profit; and small businesses/organizations; *Estimated Number of Responses:* 2,500; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 625.

3. *Type of Request:* Revision; *Title of Information Collection:* Physician Financial Interest in Clinical Laboratories Survey Form; *Form Number:* HCFA–96 & 97; *Use:* These survey forms are used to determine physicians' ownership/financial interests or compensation/remuneration arrangements. Information obtained will be used to implement prohibitions on referrals of Medicare patients and payments for services to laboratories with such relationships with physicians; *Frequency:* On occasion; *Respondents:* Businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 3,000; *Average Hours per Response:* .75; *total Estimated Burden Hours:* 2,250.

4. *Type of Request:* Extension; *Title of Information Collection:* Prepaid Health Plan Cost Report; *Form Number:* HCFA–276; *Use:* The information on these forms is needed to establish the reasonable cost of providing covered services to the enrolled Medicare population of an HMO in accordance with section 1876 of the Social Security Act; *Frequency:* Quarterly; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 660; *Average Hours per Response:* 39.515; *Total Estimated Burden Hours:* 26,080 (reporting) and 17,600 (recordkeeping) for a total of 43,680.

5. *Type of Request* Extension; *Title of Information Collection:* Medicare Supplier Number Application; *Form Number:* HCFA–192; *Use:* Legislation requires all suppliers to disclose the names of owners and managing employees. This form establishes a standard for data collection that will be used to identify common ownership and management and sanctioned individuals in the Medicare and Medicaid programs; *Frequency:* On occasion; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 50,000; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 50,000.

*Additional Information or Comments:* Call the Reports Clearance Office on 410–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: July 8, 1992.

**William Toby, Jr.,**

*Acting Administrator, Health Care Financing Administration.*

[FR Doc. 92–16542 Filed 7–14–92; 8:45 am]

BILLING CODE 4120–03–M

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## National Institutes of Health

### National Cancer Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, Subcommittee on Activities and Agenda (Working Group), July 23, 1992 in the Oriole Room at the O'Hare Airport, Chicago, Illinois.

The entire meeting will be open to the public from 11 a.m. to 2 p.m. Attendance by the public will be limited to space available. Discussions will address the Board's format, agenda items and activities of the National Cancer Advisory Board.

Ms. Carole A. Frank, Committee Management Specialist, National Cancer Institute, 9000 Rockville Pike, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and a roster of Subcommittee members upon request.

Dr. Paulette S. Gray, Executive Secretary, Subcommittee on Activities and Agenda (Working Group), National Cancer Institute, National Institutes of Health, Westwood Building, room 850, 5333 Westbard Avenue, Bethesda, Maryland 20892 (301/496–7173) will furnish substantive program information.

Dated: July 10, 1992

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92–16685 Filed 7–14–92; 8:45 am]

BILLING CODE 4140–01–M

**Public Health Service**

**National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority**

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 57 FR 24262–3, June 8, 1992), is amended to reflect the following changes in the Office of the Director, National Institutes of Health (NIH) (OD/NIH): (1) Transfer the functions of the Office of Technology Transfer (OTT) (HNA432) from the Office of Intramural Affairs (OIA) (HNA43) to the Office of Science Policy and Legislation (OSPL) (HNA6) and abolish the OTT in the OIA; (2) revise the functional statement of the OIA; and (3) establish the Division of Technology Transfer (DTT) (HNA68) in the OSPL (HNA6). The transfer of the OTT to the OSPL will provide the NIH with a single focal point for the administration and direction of science policy and technology transfer.

*Section HN–B, Organization and Functions,* is amended as follows: (1) Under the heading *Office of Intramural Affairs (HNA4),* delete the functional statement in its entirety and substitute the following:

*Office of Intramural Affairs (HNA43).* (1) Advises the Deputy Director for Intramural Research on matters pertaining to the management of NIH intramural research programs; (2) formulates and recommends policies on such intramural research issues as personnel systems for scientists, research evaluation, use of humans and animals in research, outside work, commercialization of research findings, and scientific misconduct; (3) provides staff support to the Scientific Directors' meetings; (4) reviews intramural personnel actions, appointments to the Visiting Program, the NRC Associates Program, and the Intramural Research Training Award Program; (5) reviews outside work requests; (6) chairs and staffs the NIH Oversight Committee on the AAALAC Accreditation, and the Positron Emission Tomography/Policy Advisory Committee; (7) monitors the evaluation of intramural research programs by Boards of Scientific Counselors; (8) manages the annual reporting on intramural research achievements; the NIH Lecture Series, and the foreign work-study program; (9) represents the OD/NIH on the NIH Animal Care and Use Committee, the Radiation Safety Committee, the Medical Board, and the intramural program on task groups and ad hoc committee; (10) performs a variety of activities involving the interactions of universities and industry with intramural research; and (11) responds to inquiries concerning intramural research.

Under the heading *Office of Science Policy and Legislation (HNA6),* insert the following:

*Division of Technology Transfer (HNA68).* (1) Develops policy and procedures for the NIH, the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), and the Centers for Disease Control (CDC) to follow for the implementation of Cooperative Research and Development Research Agreements (CRADAs), patent licenses, and other technology transfers; (2) implements Patent Policy Board decisions and policies; (3) drafts, negotiates, and periodically revises model forms and agreements; (4) provides advice to the Institutes, Centers, and Divisions on problem licenses and agreements; (5) develops policy statements on various technology transfer issues; (6) tracks the DTT budget and prepares an annual status report to the OD/NIH; (7) provides coordination and management of goals, functions, and operations of the Technology Management Branch, Technology Licensing Branch, Technology Transfer Coordination Branch, and the Patent Branch; (8) coordinates and provides planning and liaison support for international CRADAs and technology transfers; (9) creates and implements special programs relating to technology transfer by State and local governments and universities; (10) drafts and presents Congressional testimony and technology transfer-related responses to other Congressional inquiries; (11) provides operational management activities; (12) assists the Office of the General Counsel (OGC) in evaluating patent-related litigation matters; (13) participates with OGC or independently negotiates settlements or contested matters with licensees or other parties involved with NIH, ADAMHA, and CDC in technology transfer or utilization matters; (14) represents the NIH, ADAMHA, and CDC in technology transfer or utilization matters; (15) represents the above agencies at a variety of professional conferences and other public fora; (16) investigates special issues; (17) evaluates the need for and develops new programs in technology management and technology transfer for the above agencies; (18) develops licensing strategies for NIH/ADAMHA/CDC intramural and CRADA inventions; (19) negotiates licenses and other technology transfers; (20) works with scientist inventors, contract attorneys and others in preparing patent applications and prosecuting these applications at the Patent Office level; (21) handles infringements in consultation with the OGC at the Patent Office level; and (22) makes recommendations to the OGC for referral of matters to the Department of Justice.

Dated: June 22, 1992.

**Bernadine Healy,**

*Director, NIH.*

[FR Doc. 92–16541 Filed 7–14–92; 8:45 am]

BILLING CODE 4140–01–M

**Agency for Toxic Substances and Disease Registry**

**[Program Announcement 227]**

**State Health Departments and Public Health Agencies To Conduct Public Health Assessments and Related Site-Specific Biological Testing; Amendment**

A notice announcing the availability of Fiscal Year 1992 funds for cooperative agreements for conducting Public Health Assessments and related site-specific biological testing was published in the **Federal Register** on June 16, 1992, (57 FR 26866). The notice is amended as follows:

On page 26870, first column, under the heading "Application Submission and Deadline," the first sentence should read: "The original and two copies of application PHS Form 5161–1 should be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before July 22, 1992."

All other information and requirements of the June 16, 1992, **Federal Register** notice remain the same.

Dated: July 9, 1992.

**William L. Roper,**

*Administrator, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 92–16562 Filed 7–14–92; 8:45 am]

BILLING CODE 4160-70-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

[Docket No. D-92-897; FR-3226-D-01]

### Delegation of Authority for Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of delegation of authority.

**SUMMARY:** This notice delegates to the Assistant Secretary for Community Planning and Development all the power and authority of the Secretary of Housing and Urban Development with respect to the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals and revokes that part of the delegation of authority to the Assistant Secretary for Public and Indian Housing at 56 FR 46627 concerning the program.

**EFFECTIVE DATE:** July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** James N. Forsberg, Director, Office of Special Needs Assistance Programs, room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708-4300. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** Section 441 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987) provides funding authority for the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals. Under the program, homeless individuals must be given a first priority for occupancy in assisted units.

On October 26, 1987, at 52 FR 40000, the authority for this program was delegated by the Secretary of Housing and Urban Development to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner. On September 13, 1991 at 56 FR 46627 the Secretary of Housing and Urban Development revoked all delegations of authority to the Assistant Secretary for Housing—Federal Housing Commissioner for Section 8 Moderate Rehabilitation, Rental Certificate and Rental Voucher programs, including the delegation of authority at 52 FR 40000 for the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals, and delegated authority for these programs to the Assistant Secretary for Public and Indian Housing.

This Notice revokes that part of the delegation of authority to the Assistant Secretary for Public and Indian Housing at 56 FR 46627 concerning the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals and delegates all authority for this program to the Assistant Secretary for Community Planning and Development. All of the Secretary's authority with respect to this Program is delegated, except the power to sue and be sued. The authority delegated includes the authority to redelegate powers and functions to employees of the Department, except for the authority to issue rules, regulations, notices, and other **Federal Register** documents, or to waive rules or notices, with respect to the program.

Accordingly, the Secretary delegates as follows:

*Section A. Authority Delegated*

The Assistant Secretary for Community Planning and Development is delegated all power and authority of the Secretary of Housing and Urban Development with respect to the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals, as authorized by section 441 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987), except as provided in section B, below. The power and authority delegated includes the power to perform all functions necessary to operate the program and the authority to issue rules, regulations, notices, and other **Federal Register** documents, and the authority to waive rules, or notices, with respect to the program.

*Section B. Authority Excepted*

There is excepted from the authority delegated under Section A the power to sue or be sued.

*Section C. Authority to Redelegate*

The Assistant Secretary for Community Planning and Development is authorized to redelegate to employees of the Department of Housing and Urban Development any of the power and authority delegated under section A, and not excepted under Section B of this delegation, except the authority to issue rules, regulations, notices, and other Federal Register documents, or to waive rules or notices, with respect to the program.

*Section D. Delegation Revoked in Part*

This delegation revokes that part of the Delegation of Authority from the Secretary of Housing and Urban Development to the Assistant Secretary for Public and Indian Housing issued on September 13, 1991 at 56 FR 46627 delegating the power and authority for the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals.

**Authority:** Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. § 3535(d).

Dated: July 9, 1992.

**Jack Kemp,**

*Secretary of Housing and Urban Development.*

[FR Doc. 92-16651 Filed 7-14-92; 8:45 am]

BILLING CODE 4210-32-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AK-967-4230-15; AA-50375-02]

### Alaska Native Claims Selection; Notice

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sections 12(c), 14(h)(8) and 22(f) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611(c), 1613(h)(8), 1621(f), and Sections 1302(h) and 1430(a) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), Public Law 92-487, 94 Stat. 2371, 2475, and 2531, will be issued to Chugach Alaska Corporation for 54,381.24 acres. The lands involved are in the vicinity of Silver Lake, Alaska.

**Copper River Meridian, Alaska**

T. 11 S., R. 6 W.
T. 12 S., R. 6 W.
T. 10 S., R. 7 W.
T. 11 S., R. 7 W.
T. 12 S., R. 7 W.
T. 10 S., R. 8 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the VALDEZ VANGUARD. Any public easements to be reserved and third-party interests involved are identified in the decision. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal Government or a regional corporation, shall have until August 14, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30

days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**Terry R. Hassett,**

*Chief, Branch of KCS Adjudication.*

[FR Doc. 92-16586 Filed 7-14-92; 8:45 am]

BILLING CODE 4310-JA-M

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[UT-040-02-4320-13]

## Cedar City District Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting of the Cedar City District Grazing Advisory Board.

**SUMMARY:** Notice is hereby given in accordance with Public Law 92-463 of a meeting of the Cedar City District Grazing Advisory Board. Agenda Items will include election of officers, summary of responsibilities, affected interest, insect control, land and grazing exchanges, Bowman hearing, and AMP development. A tour will be held in western Beaver County.

**DATES:** August 27, 1992. The meeting will begin at 9 a.m. at the Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah.

**FOR FURTHER INFORMATION CONTACT:** District Manager Gordon R. Staker, or Range Conservationist Brent Spackman, Cedar City District, 176 East D.L. Sargent Drive, Cedar City, Utah 84720. Telephone: 801-586-2401.

**SUPPLEMENTARY INFORMATION:** Advisory Council Meetings are open to the public. Interested persons may make oral statements or file written statements for the Council's consideration. Anyone wishing to make a statement notify the District Manager or the Range Conservationist by Friday, August 21, 1992. A time limit may be established by the District Manager. Persons attending the field trip should bring their own transportation and lunch.

Dated: July 6, 1992.

**Gordon R. Staker,**

*District Manager.*

[FR Doc. 92-16550 Filed 7-14-92; 8:45 am]

BILLING CODE 4310-DQ-M

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[ID-942-02-4730-12]

## Idaho; Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., July 7, 1992.

The plat representing the dependent resurvey of portions of the south, east, west, and north boundaries, and subdivisional lines, and the subdivision of certain sections, T. 10 S., R. 27 E., Boise Meridian, Idaho, Group No. 802, was accepted, July 1, 1992.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: July 7, 1992.

**Gary T. Oviatt,**

*Acting Chief Cadastral Surveyor for Idaho.*

[FR Doc. 92-16604 Filed 7-14-92; 8:45 am]

BILLING CODE 4310-GG-M

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[ID-943-4214-10; IDI-29282]

## Correction; Proposed Withdrawal and Opportunity for Public Meeting; ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice will correct an error in the legal description.

**EFFECTIVE DATE:** July 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 384-3166.

The legal description in the Proposed Withdrawal and Opportunity for Public Meeting, 57 FR 27267, June 18, 1992, is hereby corrected as follows:

In the Supplementary Information on page 27267, second column, fifth line from the bottom, which reads "Sec. 7, lots 1 to 4 inclusive, NW¼NE½ and" is hereby corrected to read "Sec. 7, lots 1 to 4 inclusive, NW¼NE¼ and", and page 27267, second column, sixteenth and seventeenth lines from the bottom which reads "Sec. 1, lot 5, E½, E½W½, SW¼NW½ and W½SW¼"; is hereby corrected to read "Sec. 1, those portions lying in Valley County".

Dated: July 6, 1992.

**William E. Ireland,**

*Chief, Realty Operations Section.*

[FR Doc. 92-16606 Filed 7-14-92; 8:45 am]

BILLING CODE 4310-GG-M

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## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-621 (Preliminary)]

## Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof From the People's Republic of China

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of a preliminary antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-621 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of certain ductile tube or pipe fittings of iron, and accessories thereof, suitable for use in waterworks, provided for in subheading 7307.19.30 of the Harmonized Tariff Schedule of the United States,[1] that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by August 24, 1992.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** July 8, 1992.

**FOR FURTHER INFORMATION CONTACT:** Woodley Timberlake (202-205-3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons Washington, DC 20436. Hearing-impaired person can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need

[1] Subheading 7307.19.30 of the Harmonized Tariff Schedule (HTS) pertains only to ductile fittings. Accessories (e.g., ductile iron glands, styrene butadiene rubber ("SBR") gaskets, or steel or ductile iron T-head bolts) are provided for by constituent material elsewhere in the HTS.

special assistance in gaining access to the Commissions should contact the Office of the Secretary at 202–205–2000.

**SUPPLEMENTARY INFORMATION:**

**Background**

This investigation is being instituted in response to a petition filed on July 8, 1992, by counsel on behalf of the U.S. Waterworks Fittings Producers Council and its individual members, Clow Water Systems Company (Coshocton, OH), Tyler Pipe Industries, Inc. (Tyler, TX), and Union Foundry Company (Anniston, AL).

*Participation in the Investigation and Public Service List*

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

*Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List*

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference*

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 29, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Woodley Timberlake (202–205–3188) not later than July 27, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written Submissions*

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 3, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: July 13, 1992.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92–16731 Filed 7–14–92; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–334]**

## Commission Decision To Review an Initial Determination Terminating the Investigation on Motions for Summary Determination

In the matter of Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles.

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Commission has determined to review the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation granting motions for summary determination and terminating the investigation.

**FOR FURTHER INFORMATION CONTACT:** Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098.

**SUPPLEMENTARY INFORMATION:** On December 12, 1991, Modine Manufacturing Company ("Modine") filed a complaint under section 337 of the Tarif Act of 1930 alleging infringement of claims 6, 8, 9, and 10 of U.S. Letters Patent 4,998,580 in the importation and sale of certain condensers used in automobile air conditioning systems. On January 13, 1992, the Commission voted to institute an investigation of Modine's complaint. The Commission's notice of investigation was published in the **Federal Register** on January 23, 1992. On February 12, 1992, respondent Showa Aluminum Corporation filed a motion for summary determination on the issue of noninfringement of the claims in controversy of the '580 patent. The motion was supported by respondents Mitsubishi Motors Corporation and Mitsubishi Motor Sales of America. On February 12, 1992, respondents Mitsubishi Heavy Industries, Ltd., and Mitsubishi Heavy Industries America, Inc. filed a similar motion. On March 2, 1992, the Commission investigative attorneys filed a response in opposition to the motions. Compliant Modine filed a separate response in opposition to the motion. On April 14, 1992, the presiding ALJ issued an ID granting the motions for summary determination, thereby terminating the investigation on the basis of no violation of section 337 of the Tariff Act of 1930. On April 28, 1992, Modine petitioned for review of the ID. On May 12, 1992, all respondents and the IAs filed oppositions to the petition for review.

The Commission has considered the petition for review and the responses thereto and determined to review the ID in its entirety. Specifically, the Commission is interested in determining whether any issue of material fact is in dispute to preclude summary determination.

**WRITTEN SUBMISSIONS:** The parties to the investigation are encouraged to file written submissions on the issues under review. Written submissions must be filed by July 20, 1992. Reply submissions are due by July 27, 1992.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above.

Authority for the Commission's action is contained in section 337 of the Tariff

Act of 1930, 19 U.S.C. 1337 and § 210.54 of the Commission's rules (19 CFR 210.54).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: July 6, 1992.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92–16617 Filed 7–14–92; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 731–TA–562 (Preliminary)]**

## Crushed Limestone From Mexico

### Determination

On the basis of record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of crushed limestone, provided for in subheading 2517.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

### Background

On May 20, 1992, a petition was filed with the Commission and the Department of Commerce by Texas Crushed Stone Co., Georgetown, TX, Parker LaFarge, Inc., Houston, TX, and Gulf Coast Limestone, Inc., Seabrook, TX, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of crushed limestone from Mexico. Accordingly, effective May 20, 1992, the Commission instituted antidumping investigation No. 731–TA–562 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 27, 1992 (57 FR 22255). The conference was held in Washington, DC, on June 10, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 6, 1992. The views of the Commission are contained in USITC Publication 2533 (July 1992), entitled "Crushed Limestone from Mexico: Determination of the Commission in Investigation No. 731–TA–562 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: July 7, 1992.

By Order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92–16615 Filed 7–14–92; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 332–326]**

## Economic Integration in East Asia: Implications for the United States

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and scheduling of public hearing.

**EFFECTIVE DATE:** June 30, 1992.

**SUMMARY:** Following receipt of a request on May 5, 1992 from the House Committee on Ways and Means, the Commission instituted investigation No. 332–326, Economic Integration in East Asia: Implications for the United States, investigation under section 332(g) of the Tariff Act of 1990 (19 U.S.C. 1332(g)).

**BACKGROUND:** As requested, the Commission's report will seek to evaluate the nature and extent of economic integration in the East Asian region, including the role of the United States and Japan as two of the largest traders and investors in that region, and how that role has changed in recent years. The Commission will also seek the views of experts on the implications of such trends for U.S. trade interests and policy. The Committee requested that the Commission submit the report by May 5, 1993.

In its request letter, the Committee noted that increasing attention is being focused on trade and investment in East Asia, and on the roles of the United States and other countries, such as Japan, in the region. The Committee also said that there are clear indications of growing economic integration among East Asian countries, including the Association of Southeast Asian Nations (ASEAN), China, Hong Kong, Taiwan, and South Korea; and a number of plans for more formal regional economic integration have been proposed. It noted further that concerns have been expressed by a number of observers about the relative decline in the U.S. trade and investment position in the region and its implications for U.S. trade interests and policy in the future.

More specifically, as requested by the Committee, the Commission will seek to provide information in its report on the following:

—Overall trends in and conditions for trade, investment and economic integration in East Asia (including intra-regional and extra-regional trade and investment);
—Host country policies and factors influencing those trends and conditions;
—External factors affecting the business activities of major traders and investors in the region (e.g., exchange rate changes; labor shortages and costs; and foreign government programs, such as official development assistance);
—The relationship between foreign direct investment in the region and the region's trade patterns with the United States and other countries;
—Energy needs and resources in the region, including the role of the United States and other countries;
—Environmental conditions, consequences, and opportunities for local and U.S. interests; and
—Current and proposed regional institutional arrangements.

Also as requested by the Committee, the Commission will include in its report case studies of several industries in which U.S. trade and investment activity in East Asia is substantial and in which the United States currently faces or is likely to face strong international competition.

In conducting its assessment of the causes and implications for the United States of increasing economic integration in East Asia, the Commission will seek expert views on such topics as: Are the trade and investment trends

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Newquist recused himself from this investigation.

something about which the U.S. private sector and government should be concerned; how do U.S. business and government activities and programs relating to U.S. trade and investment in East Asia compare to those of our major competitors in the region; and is there more that the U.S. private sector and government could or should be doing to strengthen U.S. participation in the growing economic integration of East Asia.

The countries that will be covered in the Commission's study include ASEAN (Indonesia, Malaysia, Philippines, Singapore, Thailand, and Brunei), Hong Kong, South Korea, China, and Taiwan. Information will also be obtained and provided for other major traders and investors in the region.

**PUBLIC HEARING:** Two public hearings in connection with this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on October 21 and October 28, 1992. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street. SW., Washington, DC 20436, no later than noon, October 8, 1992. Prehearing briefs (original and 14 copies) should be filed not later than noon, October 8, 1992. Post hearing briefs are required by November 10, 1992.

**WRITTEN SUBMISSIONS:** Interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than November 10, 1992. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC, 20436. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–252–1107. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: July 8, 1992.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92–16611 Filed 7–14–92; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. TA–201–63]**

## Extruded Rubber Thread

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation under section 202 of the Trade Act of 1974 (19 U.S.C. 2251, et seq.) (the act) and scheduling of hearings.

**SUMMARY:** Following receipt of a petition filed on June 18, 1992, as amended on June 23, 1992, by North American Rubber Thread Co., Inc., Fall River, MA, the United States International Trade Commission instituted investigation No. TA–201–63 under section 202 of the Trade Act of 1974 to determine whether extruded rubber thread of natural rubber latex, classified under heading 4007.00.00 of the Harmonized Tariff Schedule of the United States, is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206).

**EFFECTIVE DATE:** June 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert Carpenter (202–205–3172) or Lori Hylton (202–205–3199), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

**SUPPLEMENTARY INFORMATION:**

### Participation in the Investigation and Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 202.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

### Hearings on Injury and Remedy

The Commission has scheduled separate hearings in connection with the injury phase (including critical circumstances and provisional relief, if necessary) and the remedy phase of this investigation. The hearing on injury will be held beginning at 9:30 a.m. on September 11, 1992, in the Main Hearing Room of the U.S. International Trade Commission Building. In the event that the Commission makes an affirmative injury determination or is equally divided on the question of injury in this investigation, a hearing on the question of remedy will be held beginning at 9:30 a.m. on November 3, 1992. Requests to appear at the hearings should be filed in writing with the Secretary to the Commission on or before August 28, 1992, and October 26, 1992, respectively. All persons desiring to appear at the hearings and make oral presentations should attend prehearing conferences to be held at 9:30 a.m. on September 2, 1992, and October 29, 1992, respectively, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by §§ 201.6(b)(2) and 201.13(f) of the Commission's rules.

### Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs on injury is September 4, 1992; that for filing prehearing briefs on remedy, including any commitments pursuant to 19 U.S.C. 225(a)(6)(B), is October 27, 1992. Parties may also file posthearing briefs. The deadline for filing posthearing briefs on injury is September 18, 1992; that for filing posthearing briefs on remedy is November 10, 1992. In addition, any person who has not entered an appearance as a party to the investigation may submit a written

statement of information pertinent to the consideration of injury on or before September 18, 1992, and pertinent to the consideration of remedy on or before November 10, 1992. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the rules.

In accordance with § 201.16(c) of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under the authority of section 202 of the Trade Act of 1974. This notice is published pursuant to § 206.3 of the Commission's rules.

Issued: July 7, 1992.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92-16614 Filed 7-14-92; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigations Nos. 303-TA-23 (Preliminary) and 731-TA-565-570 (Preliminary)]**

## Ferrosilicon From Argentina, Kazakhstan, the People's Republic of China, Russia, Ukraine, and Venezuela

### Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 303 and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1303 and 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from Venezuela and allegedly less-than-fair-value (LTFV) imports from Argentina, Kazakhstan, the People's Republic of China, Russia, Ukraine, and Venezuela of ferrosilicon,[3] provided for in subheadings 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States.

### Background

On May 22, 1992, a petition was filed with the Commission and the Department of Commerce by AIMCOR, Pittsburgh, PA; Alabama Silicon, Inc., Bessemer, AL; American Alloys, Inc., Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland OH; Silicon Metaltech, Inc., Seattle WA; Oil, Chemical & Atomic Workers Union (local 389); United Autoworkers of America Union (local 523); and United Steelworkers of America Union (locals 2528, 3081, 5171, and 12646) alleging that an industry in the United States is materially injured by reason of subsidized imports of ferrosilicon from Venezuela and LTFV imports from Argentina, Kazakhstan, the people's Republic of China, Russia, Ukraine, and Venezuela. Accordingly, effective May 22, 1992, the Commission instituted countervailing duty and antidumping investigations Nos. 303-TA-23 (preliminary) and 731-TA-565-570 (preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 2, 1992 (57 FR 23244). The conference was held in Washington, DC, on June 12, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 6, 1992. The views of the Commission are contained in USITC Publication 2535 (July 1992), entitled "Ferrosilicon from Argentina, Kazakhstan, the People's Republic of China, Russia, Ukraine, and Venezuela: Determinations of the Commission in Investigations Nos. 303-TA-23 and 731-TA-565-570 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: July 7, 1992.

By Order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92-16613 Filed 7-14-92; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Brunsdale dissented with respect to China, Russia, and Ukraine; and Vice Chairman Watson and Commissioner Crawford Dissented with respect to Russia and Ukraine.

[3] For purposes of these investigations, the subject product is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than 8 percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorus, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

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**[Investigation No. 731-TA-522 (Final)]**

## Minivans From Japan

### Determination

On the basis of the record [1] developed in the subject investigation, the Commission [2] determines, pursuant to a section 735(b) of the Tariff Act of 1930 (29 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Japan of minivans, provided for in heading 8703 or 8704 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

### Background

The Commission instituted this investigation effective January 2, 1992, following a preliminary determination by the Department of Commerce that imports of minivans from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by the posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 23, 1992 (57 FR 2785). The hearing was held in Washington, DC, on May 21, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 2, 1992. The views of the Commission are contained in USITC Publication 2529 (July 1992), entitled "Minivans from Japan: Determination of the Commission in Investigation No. 522 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: July 6, 1992.

By Order of the Commission:

**Paul Bardos,**

*Acting Secretary.*

[FR Doc. 92-16618 Filed 7-14-92; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f))

[2] Chairman Newquist and Commissioner Nuzum dissenting.

[Investigation No. 701-TA-312 (Final) ]

## Softwood Lumber From Canada

### Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Canada of softwood lumber,[3] provided for in subheadings 4407.10.00, 4409.10.10, 4409.10.20, and 4409.10.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Canada.

### Background

The Commission instituted this investigation, effective March 6, 1992, following a preliminary determination by the Department of Commerce that imports of softwood lumber from Canada were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671(b)). Notice of the institution of the Commission's investigation and of public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 26, 1992 (57 FR 10498). The hearing was held in Washington, DC, on May 28, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 6, 1992. The views of the Commission are contained in USITC Publication 2530 (July 1992), entitled "Softwood Lumber from Canada: Determination of the Commission in Investigation No. 701-TA-312 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: July 9, 1992.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92-16609 Filed 7-14-92; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Brunsdale and Nuzum dissenting.

[3] For purposes of this investigation, "softwood lumber" means coniferous wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm, provided for in subheading 4407.10.00 of the HTS; and coniferous wood siding, flooring and other goods (except coniferous wood moldings and wood dowel rods; but including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated [rabbeted], chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed, provided for in HTS subheadings 4409.10.10, 4409.10.20 and 4409.10.90.

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[Investigations Nos. 731-TA-563 and 564 (Preliminary)]

## Certain Stainless Steel Butt-Weld Pipe Fittings From Korea and Taiwan

### Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Korea and Taiwan of certain stainless steel butt-weld pipe fittings,[2] provided for in subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

### Background

On May 20, 1992, a petition was filed with the Commission and the Department of Commerce by the Flowline Division, Markovitz Enterprises, Inc., New Castle, PA, alleging that an industry in the United States is materially injured by reason of LTFV imports of certain stainless steel butt-weld pipe fittings from Korea and Taiwan. Accordingly, effective May 20, 1992, the Commission instituted antidumping investigations Nos. 731-TA-563 and 564 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on May 28, 1992 (57 FR 22486). The conference was held in Washington, DC, on June 11, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 6, 1992. The views of the Commission are contained in USITC Publication 2534 (July, 1992), entitled "Certain stainless steel butt-weld pipe fittings from Korea and Taiwan: Determinations of the Commission in Investigations Nos. 731-TA-563 and 564 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: July 7, 1992.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92-16616 Filed 7-14-92; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] The merchandise covered by these investigations consists of stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches in inside diameter.

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[Investigation No. 731-TA-538 (Final)]

## Sulfanilic Acid From the People's Republic of China

**AGENCY:** United States International Trade Commission.

**AMENDMENTS:** FR Doc. 92-15640, published in the **Federal Register** beginning on page 29668 (vol. 57, no. 130) in the issue of Tuesday, July 7, 1992, is hereby amended. Specifically, the summary of agency action listed in FR Doc. 92-15640 should be deleted and replaced with the following summary: Upon request of respondents in the above-captioned final investigation, the Commission has unanimously determined to conduct a portion of its hearing scheduled for June 30, 1992, *in camera*. See Commission rules 207.23(a), 201.13, and 201.35 through 201.39 (19 CFR 207.23(a), 201.13, and 201.35 through 201.39). The remainder of the hearing will be open to the public. The Commission unanimously has determined that the 10-day advance notice of the change to a meeting was not possible. See Commission rules 201.35(c)(1) and 201.37(b) (19 CFR 201.35(c)(1) and 201.37(b)).

Issued: July 8, 1992.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92-16610 Filed 7-14-92; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32076]

### East Mahanoy & Hazelton Railroad Co.; Acquisition and Operation Exemption; Consolidated Rail Co.

East Mahanoy & Hazleton Railroad Company (EMHR), a non-carrier, has filed a notice of exemption to acquire and operate approximately 9.6 miles of rail line in Luzerne County, PA, owned by Consolidated Rail Corporation (Conrail) including: (1) Freeland Running Track, between Ashmore Junction (M.P. 141.0) and Pink Ash Junction (M.P. 144.0); (2) Ebervale Running Track, between Pink Ash Junction (M.P. 144.1) and the end of the line at Route 940 (M.P. 148.7); (3) Eckley Industrial Track, between the connection with the Freeland Running Track (M.P. 143.1) and the end of track (M.P. 144.4); and (4) Camp Running Track, between York Junction (M.P. 148.3) and Oneida Junction (M.P. 147.4). EMHR is also acquiring incidental trackage rights over 6.4 miles between Oneida Junction (Line Code 0515 M.P. 147.4) and Ashmore Junction (Line Code 0515 M.P. 141.3).

The transaction will also involve the issuance of securities by EMHR. Since EMHR will be a Class III carrier, the issuance of these securities is an exempt transaction under 49 CFR § 1175.1.

This Notice is related to Finance Docket No. 32074, which involves the petition of Reading Blue Mountain & Northern Railroad Company and Andrew M. Muller, Jr., for exemption under 49 U.S.C. § 10505 from 49 U.S.C. § 11343 for their continuance in control of EMHR.

The proposed transaction will be consummated at least 7 days after the filing of this notice, and after the effective date of the exemption sought in Finance Docket No. 32074.

Any comments must be filed with the Commission and served on: Eric M. Hocky, Rubin Quinn Moss & Patterson, P.C., 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

This notice is filed under 49 CFR 1150.31. If the notice contain false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 9, 1992.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92-16622 Filed 7-14-92; 8:45 am]

BILLING CODE 7035-01-M

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[Finance Docket No. 32102]

### Norfolk and Western Railway Co. Trackage Rights Exemption; Consolidated Rail Corp.

Consolidated Rail Corporation (CR) has agreed to grant overhead trackage rights to Norfolk and Western Railway Company (NW) between CR's connection with the Chicago and Northwestern Transportation Company near 14th Street and Ogden Avenue and its connection with NW in the vicinity of 40th Street and Normal Avenue, a distance of approximately 5.5-miles in Chicago, Cook County, IL. The trackage rights will become effective on or after July 20, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: James L. Howe III, Norfolk and Western Railway Company, Three Commercial Place, Norfolk, VA 23510-2191.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and as clarified in *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C. 2d 799 (1990), *aff'd sub nom. Railway Labor Executives Ass'n* v. *ICC*, 930 F.2d 511 (6th Cir. 1991).

Dated: July 9, 1992.

By the Commission, Joseph H. Dettmar, Acting Director, Office of roceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92-16623 Filed 7-14-92; 8:45 am]

BILLING CODE 7035-01-M

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[Finance Docket No. 32101]

### Norfolk and Western Railway Co; Trackage Rights Exemption; Indiana Harbor Belt Railroad Co.

Indiana Harbor Belt Railroad Company (IHB) has agreed to grant overhead trackage rights to Norfolk and Western Railway Company (NW) between IHB's junction with NW at Chicago Ridge, IL, and its junction with the Chicago and North Western Transportation Company (CNW) at Proviso Yard in Melrose Park, IL, a distance of 15.39 miles. NW will use these trackage rights to effectuate a direct connection with CNW at the involved location, thus facilitating the interchange of traffic between CNW and NW. The trackage rights will take effect on such date as the parties may agree in writing, but not sooner than July 20, 1992.

As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: James L. Howe III, Norfolk and Western Railway Company, Three Commercial Place, Norfolk, VA 23510-2191.

Decided: July 9, 1992.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92-16624 Filed 7-14-92; 8:45 am]

BILLING CODE 7035-01-M

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[Finance Docket No. 32075]

### Exemption; Reading Blue Mountain & Northern Railroad Co.; Acquisition and Operation Exemption; Schuylkill County Rail Transport Authority

Reading Blue Mountain & Northern Railroad Company (RBMN) has filed a notice of exemption to acquire and operate certain rail lines located in Pennsylvania. Two line segments totaling 13.3 miles are involved and they are being acquired from the Schuylkill County Rail Transport Authority (SCRTA), a municipal authority of the Commonwealth of Pennsylvania and a noncarrier. They are the Catawissa Branch, between East Mahanoy Junction (milepost 0.0) and Delano Junction (milepost 7.1), and the Shimer Running Track, between York Junction (milepost 148.3) and Delano (milepost 154.5).[1] The

[1] RBMN indicates that these lines were abandoned prior to their acquisition by SCRTA, that the lines have been operated by C&S Railroad Corporation under a modified rail certificate, and

Continued

proposed transaction was expected to be consummated on or after June 30, 1992.

Any comments must be filed with the Commission and served on: Eric M. Hocky, 1800 Penn Mutual Power, 510 Walnut Street, Philadelphia, PA 19106-3619.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 9, 1992.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92-16821 Filed 7-14-92; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Under the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on the 10th day of July, 1992, a proposed Consent Decree in *United States* v. *Huntway Refining Company, et al.*, C-91-2775-MHP, was lodged with the United States District Court for the Northern District of California. The Complaint was filed in this case for civil penalties and injunctive relief against Huntway Refining Company, Huntway Holdings, and Huntway Partners pursuant to section 309(b) and (f) of the Clean Water Act ("Act"), 33 U.S.C. 1319(b) and (f), for violations of the federal pretreatment regulations pertaining to refineries engaged in "topping" operations established by 40 CFR 419.15 and local standards adopted by the City of Benicia, California.

The proposed Consent Decree requires that the defendants pay $254,000 in settlement of the United States' claims for civil penalties. The defendant Huntway Partners has expended $750,000 on Supplemental Environmental Projects and, in recognition of those expenditures, the United States has agreed to waive addition civil penalties. The defendant, Huntway Partners, is subject to an injunction against future violation of the Act and/or federal or local pretreatment standards. The decree requires payment of stipulated penalties in the event of violation of pretreatment standards and reporting requirements.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree from persons who are not parties to the action. Comments should be addressed to the Acting Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Huntway Refining Company, et al.*, D.J. Ref. No. 90-5-2-1-1558.

The proposed Consent Decree may be examined at the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

Copies of the Consent Decree also may be examined at the Consent Decree Library, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, telephone number (202) 347-2072. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please tender a check in the amount of $4.25 (25 cents per page reproduction charge) payable to "Consent Decree Library."

**John C. Cruden,**

*Chief, Environmental Enforcement Section.*

[FR Doc. 92-16750 Filed 7-14-92; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202) 523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 (202-395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

**Extension**

*Employment Standards Administration*

Survivor's Notification of Beneficiary's Death
1215-0087
CM-1089
On occasion
Individuals or households
2,500 respondents; 333 total hours; 8 minutes per response;
1 form

The CM-1089 is used to gather information from a beneficiary's survivor to ensure that benefits due the survivor on behalf of a deceased miner are accurate so that payment of benefits will continue.

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that such operation of the lines and the acquisition by SCRTA are consistent with noncarrier status for SCRTA and handling of the present matter under 49 U.S.C. 10901. See 49 CFR 1150 subpart C, *Modified Certificates of Public Convenience and Necessity; Common Carrier Status of States, State Agencies*, 363 I.C.C. 132, 137-38 (1980).

VOL 57 ISS 136 JUL 15 1992 UMI



**Revision**

*Employment and Training Administration*

Unemployment Insurance Quality Control Program
1205–0245
ETA Handbook No. 395
Weekly
Individual or households; State or local governments; Businesses or other-for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
52 respondents; 130,921 total hours; 3 hours and 10 minutes per response

Benefits Quality Control is the only vehicle State Unemployment Insurance (UI) programs have to determine the accuracy of the UI benefit payments. Findings are used to improve UI operations and assist DOL in oversight and policy development. Claimants, businesses, and other parties may be contacted to verify information relevant to determining claimant activity.

**Extension**

*Employment and training Administration*

Interstate Claims Bypass Data Exchange
1205–0189
Weekly; Monthly
State or local governments
3 respondents; 748 total hours; 16 minutes per response; no forms

The Interstate Claims Bypass Data Exchange provides for the exchange of interstate claims counts and claimant characteristics among the States. This data is necessary to the operation of the Interstate Benefit Program and is needed for the ETA 5–39, ETA 5–159 and ES 203 reports. This request for approval does not involve the collection of any new data; it is a request for continuation of the currently approved requirements.

Signed at Washington, DC this 9th day of July, 1992.

Kenneth A. Mills,
*Departmental Clearance Officer.*

[FR Doc. 92–16633 Filed 7–14–92; 8:45 am]
BILLING CODE 4510–30–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (92–43)]

**Privacy Act of 1974; Amendment to an Existing Privacy Act System of Records**

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Amendment to existing Privacy Act system of records.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974 (Pub. L. 93–579), as amended, NASA is proposing to amend an existing Privacy Act system of records, "Health Information Management System, NASA 10HIMS." Background information about the proposed amendments to the system is in the Supplementary Information.

**EFFECTIVE DATE:** Amendments will become effective on August 14, 1992, unless NASA receives comments on or before that date which would result in a contrary determination.

**ADDRESSES:** Comments should be addressed to the System Manager, Director, Occupational Health Office, Code FO, NASA Headquarters, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Adria A. Lipka, (202) 453–1200.

**SUPPLEMENTARY INFORMATION:** NASA proposes to amend the existing system of records for NASA 10HIMS to add two new routine uses, modify another, and renumber the routine uses.

The first proposed new routine use provides for disclosure to the public of any *pre-space flight* information concerning an individual crewmember, limited to the crewmember's name and the fact that a medical condition exists.

The second proposed new routine use provides for the disclosure to the public of any *post-space flight* information concerning an individual crewmember, limited to the crewmember's name and the fact that a medical condition exists.

Modify routine use, "(7) disclosure of flight crew information as it relates to mission impact," to state that the *space* flight crew *inflight* medical information that impacted the mission would be disclosed to the public and be limited to the crewmember's name, diagnosis, treatment, and prognosis; and, renumber to (8).

The following amended notice is published in its entirety. The statement containing General Routine Uses applicable to most of NASA's systems of records is published at 49 FR 39758 (October 10, 1984).

Richard L. Daniels,
*NASA Privacy Officer.*

**NASA 10HIMS**

**SYSTEM NAME:**

Health Information Management System—NASA.

**SYSTEM LOCATION:**

In Medical Clinics/Units and Environmental Health Offices at locations 1 through 14 inclusive as set forth in Appendix A.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

NASA Civil Service employees and applicants; other Agency civil service and military employees working at NASA; visitors to Field Installations; on-site contractor personnel who receive job related examinations, have mishaps or accidents, or come to the clinic for emergency or first aid treatment; space flight personnel and their families.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

General medical records of first aid, emergency treatment, examinations, exposures, and consultations.

Information resulting from physical examinations, laboratory and other tests, and medical history forms; treatment records; screening examinations results; immunization records; administration of medications prescribed by private/personal physicians; statistical records; examination schedules; daily log of patients; correspondence; chemical, physical, and radiation exposure records; other environmental health data; alcohol/drug patient information; consultation records; Employee Assistance Program records; and health hazard and abatement data.

Astronauts and their families—more detailed and complex physical examinations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

42 U.S.C. 2473; 44 U.S.C. 3101; OMB Circular A–72; Pub. L. 92–255; Pub. L. 79–658; Pub. L. 92–155.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The information contained in this system of records is used within NASA for the following purposes: Reference by examining physicians in conduct of physical examinations; review by physicians, nurses, and other health care specialists in consideration of fitness for duty; evaluation for physical disability retirement; statistical data development; patient recall; in-space medical evaluation for astronauts; exposure data for radiation/toxic exposure limits, compliance and examinations; consultations; evaluation of employees, applicants, and contractor employees for specialized or hazardous duties; and for determining reliability pursuant to the Mission Critical Space Systems Personnel Reliability Program (14 CFR part 1214 subpart 1214.5, NASA Management Instruction 8610.13).

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Referral to private physicians designated by the individual when requested in writing; (2) Patient referrals; (3) Referral to OPM, OSHA, and other Federal agencies as required in accordance with these special program responsibilities; (4) Referral of information to a non-NASA individual's employer; (5) Evaluation by medical consultants; (6) Disclosure to the employer of non-NASA personnel, information affecting the reliability of such office or employee for purposes of the Mission Critical Space Systems Personnel Reliability Program; (7) Disclosure to the public of pre-space flight information having mission impact concerning an individual crewmember, limited to the crewmember's name and the fact that a medical condition exists; (8) Disclosure to the public of a summary of the space flight crew inflight information as it relates to mission impact, and limited to name, diagnosis, treatment, and prognosis; (9) during the time period following Shuttle landing and concluding with completion of the post-space flight return to duty medical evaluation, if a flight crewmember is for medical reasons unable to perform a scheduled public event, a disclosure to the public, limited to the crewmember's name and the fact that a medical condition exists; and (10) Standard routine use 4 as set forth in Appendix B.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are in file folders, punch cards, electrocardiographic tapes, x-rays, microfiche, and computer disks and tapes. They are handled between NASA Installations by telecommunications.

**RETRIEVABILITY:**

By name, date of birth, and social security number.

**SAFEGUARDS:**

Access limited to concerned medical environmental health personnel on a need-to-know basis. Computerized records are identified by code number and records are maintained in locked rooms or files. Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR part 1212.

**RETENTION AND DISPOSAL:**

In accordance with Office of Personnel Management regulations and NASA Record Control Schedules 1 and 8.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, NASA Occupational Health Office, Location 1.

Subsystem Managers: Medical Services Officer, Location 2; Medical Director, Medical Administrator, or Safety and Health Coordinator at Locations 4, 5, 6, 7, 8, 9, 10, 13, 14; Chief, Institutional Services Division, and Environmental Officer, Location 11; and Chief, Administration Office, Location 12. Locations are set forth in Appendix A.

**NOTIFICATION PROCEDURE:**

Information may be obtained from the cognizant system or subsystem manager listed above.

**RECORD ACCESS PROCEDURES:**

Requests from individual should be addressed to the same address as stated in the notification section above.

**CONTESTING RECORD PROCEDURES:**

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in 14 CFR part 1212.

**RECORD SOURCE CATEGORIES:**

Individuals, physicians, and previous medical records of individuals.

[FR Doc. 92-16600 Filed 7-14-92; 8:45 am]

BILLING CODE 7510-01

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by August 9, 1992, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Comments on this information collection must be submitted by July 31, 1992.

**ADDRESSES:** Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202-682-5401).

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

**SUPPLEMENTARY INFORMATION:** The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* FY 94/95 Dance Program Application Guidelines.

*Frequency of Collection:* Annually.

*Respondents:* Individuals, non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists that apply for funding under the Dance Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

*Estimated Number of Respondents:* 965.

*Average Burden Hours per Response:* 12.13.

*Total Estimated Burden:* 2,520.

**Judith E. O'Brien,**

*Management Analyst, Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 92-16560 Filed 7-14-92; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

### Meeting

**AGENCY:** National Commission on Severely Distressed Public Housing.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on Severely Distressed

Public Housing announces a forthcoming meeting of the Commission.

**DATES:** Friday, July 17, 1992, Full Commission Meeting, 10 a.m.–5 p.m..

**ADDRESSES:** Stouffer Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1111 18th Street, NW., suite 806, Washington, DC 20036 (202) 275–6933.

**TYPE OF MEETING:** Open.

Due to scheduling difficulties, this notice could not be published 15 days prior to the first meeting as required by the Federal Advisory Committee Act.

**Carmelita R. Pratt,**

*Administrative Officer.*

[FR Doc. 92–16644 Filed 7–14–92; 8:45 am]

BILLING CODE 6820–07–M

## PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Presidential Commission on the Assignment of Women in the Armed Forces.

**ACTION:** Request for expedited review.

**SUMMARY:** The Presidential Commission on the Assignment of Women in the Armed Forces gives notice that it is requesting expedited review from the Office of Management and Budget. In compliance with the Paperwork Reduction Act the request to collect information abstracted below has been forwarded to OMB.

**SUPPLEMENTARY INFORMATION:**

*Title:* Survey Research of the American Public Regarding the Assignment of Women in the Armed Forces

*Abstract:* Public Law 102–190, The National Defense Act for fiscal years 1992 and 1993 requires that the Presidential Commission on the Assignment of Women in the Armed Forces shall assess the laws and policies restricting the assignment of female service members and shall make findings on such matters. The statute requires the Presidential Commission to consider public attitudes in the United States on the use of women in the military. The statute specifically charges the Commission with the authority to conduct studies as required. The Presidential Commission has determined that a survey of public attitudes is required to assist Commissioners in making informed recommendations to President Bush in November 1992.

*Burden Statement:* The sample size is 1500 respondents nationwide. The estimated annual reporting or disclosure burden for this collection of information is 1050 hours and the annual recordkeeping burden is none.

Send comments regarding information collection to: Ed Springer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503

For information requests: contact Jacki McKimmy, Presidential Commission on the Assignment of Women in the Armed Forces, 1001 Pennsylvania Ave., NW., suite 275N, Washington, DC 20004–2505.

Dated: July 10, 1992.

**W.S. Orr,**

*Executive Director.*

[FR Doc. 92–16708 Filed 7–14–92; 8:45 a.m.]

BILLING CODE 6820–CO–M

## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 9, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Royal Appliance MFG Co.
Common Stock, $.01 Par Value (File No. 7–8725)

Bradless, Inc.
Common Stock, $.01 Par Value (File No. 7–8726)

Boston Edison Company
Depositary Shares, Cum. Pfd. $100 Par Value (File No. 7–8727)

Offshore Pipeline, Inc.
Cum. Conv. Exch. Pfd. Stock (File No. 7–8728)

Regency Health Services, Inc.
Common Stock, $.01 Par Value (File No. 7–8729)

Westmoreland Coal Company
Depositary Shares, Cv. Exch. Pfd. (File No. 7–8730)

Authentic Fitness Corporation
Common Stock, $.01 Par Value (File No. 7–8731)

Sport Supply Group, Inc.
Common Stock, $0.01 Par Value (File No. 7–8732)

Sport Supply Group, Inc.
Common Stock Purchase Warrants
(File No. 7–8733)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 30, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92–16553 Filed 7–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18840; 812–7941]

### Ohio National Equity Fund, Inc., et al; Application

July 9, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Ohio National Equity Fund, Inc. (the "Fund") and The O.N. Equity Sales Company ("ONESCO").

**RELEVANT ACT SECTIONS:** Conditional order requested under section 6(c) of the Act for an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek a conditional order that would permit applicants to impose a contingent deferred sales charge ("CDSC") on redemptions of Fund shares sold with no initial sales charge because of a volume discount, and to waive the CDSC under certain circumstances.

**FILING DATE:** The application was filed on June 11, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 3, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o The Ohio National Life Insurance Company, 237 William Howard Taft Road, Cincinnati, Ohio 45210.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Robertson, Staff Attorney, at (202) 504–2283, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicants' Representations**

1. The Fund is an open-end management investment company registered under the Act. The Fund currently has four diversified portfolios, but requests that the relief sought in the application also apply to any additional portfolios it may add in the future. ONESCO, a registered broker-dealer, is the Fund's principal underwriter. ONESCO also is a wholly-owned subsidiary of The Ohio National Life Insurance Company, a mutual life insurance company organized under the laws of Ohio.

2. Each Fund portfolio, other than its money market portfolio, offers its shares to the public at net asset value plus a front-end sales charge that ranges from 5 percent for purchases of less than $25,000 to .50 percent for purchases of $1 million or more. Each of the Fund portfolios has a 12b–1 plan under which a shareholder service fee of up to .30 percent (.17 percent for the money market portfolio) annually is paid to ONESCO and other qualified dealers to promote further selling efforts and to compensate them for providing certain services to shareholders. Such proceeds will not be used to reimburse ONESCO for dealer concessions paid in connection with sales of shares subject to CDSC.

3. Applicants propose to eliminate the .50 percent front-end sales change applicable to a purchase of $1 million or more (or a purchase of a lesser amount that is eligible for the .50 percent front-end sales charge because, when aggregated with other eligible purchases or holdings as described in the Fund's prospectus, such purchase equals $1 million or more) and, instead, impose a CDSC of .50 percent upon any redemption of those shares within two years of purchase.

4. The amount of the CDSC will be computed as a percentage of the lesser of the value of the redeemed shares at the time of purchase or at redemption. The CDSC will be deducted from the redemption proceeds otherwise payable to the shareholder and will be retained by ONESCO. In determining which, if any, redeemed shares are subject to the CDSC, any shares in the redeeming shareholder's account that my be redeemed without charge will be assumed to be redeemed prior to those subject to the CDSC. No CDSC would apply to shares purchased with reinstated income dividends or capital gains distributions, shares purchased more than two years prior to date of the redemption, shares on which a front-end sales charge was paid, shares purchased prior to the insurance of an order granting this application, and shares acquired through an exchange (unless the exchanged shares would have been assessed a CDSC upon redemption). Applicants will comply with rule 11a–3 under the Act in regard to any exchanges.

5. Applicants also propose to waive the CDSC that would otherwise be applicable to a redemption of shares in connection with: (a) lump-sum or other distributions from a qualified corporate or self-employed retirement plan following retirement, termination of employment, death, disability or following attainment of age 59½ of a plan participant; (b) the hardship of a plan participant to the extent permitted under the Internal Revenue Code of 1986 (the "Code"); (c) a loan made by a qualified corporate or self-employed retirement plan to a participating employee; (d) distributions and withdrawals (at regular intervals, of amounts based upon the remaining life expectancy of the recipient) from retirement plans or individual retirement accounts ("IRAs") or custodial accounts under section 403(b)(7) of the Code following attainment of age 59½; (e) a tax-free return of an excess contribution to an IRA; and (f) the combination of the Fund or any portfolio of the Fund with any other investment company by merger, acquisition or of assets, or otherwise.

**Applicants' Legal Analysis**

1. Section 2(a)(32) of the Act defines a "redeemable security" as "any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer * * * is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate shore of the issuer's current net assets, or the cash equivalent thereof. In addition, section 5(a)(1) of the Act defines an "open-end company," in relevant part, as a management company that offers for sale any redeemable security of which it is the issuer. Applicants contends that the CDSC will in no way restrict a shareholder from receiving his or her proportionate share of the current net assets of any Fund portfolio, but merely will defer the deduction of a sales charge and make it contingent upon an event that may never occur. However, to avoid any question regarding whether the CDSC would cause shares of any Fund portfolio not to be "redeemable securities;" thereby jeopardizing the portfolio's status as a open-end management company, applicants seek relief from section 2(a)(32) to the extent necessary to impose the CDSC.

2. Section 2(a)(35) of the Act defines the terms "sales load" as the difference between the price of a security to the public and that portion of the proceeds from the sale of the security that is received and invested or held for investment by the issuer. Applicants believe that the CDSC is consistent with the intent of the section 2(a)(35) definition to describe charges used to pay for sales of an investment company's shares. But for the timing of the imposition of the charge, the CDSC clearly would come within that definition. However, because the timing of the deduction might be deemed to take the CDSC outside the definition of sales charge, applicants seek an exemption from the provisions of section 2(a)(35) to the extent necessary to implement the CDSC.

3. Section 22(c) of the Act and rule 22c–1 thereunder require a registered investment company issuing redeemable securities to redeem those securities at a price based on the current net asset value of the securities that is next computed after receipt of the tender of the securities for redemption. When a redemption of Fund shares subject to the CDSC is effected, the price of the shares on redemption will be based on their

current net asset value. The CDSC merely will be deducted from the redemption proceeds in arriving at the shareholder's net proceeds payable on redemption. However, to avoid any possible questions about whether such a redemption would be at a price based on current net asset value, applicants seek relief from section 22(c) and rule 22c–1 to the extent necessary to permit the implementation of the CDSC.

4. Section 22(d) of the Act prohibits an investment company registered under the Act from selling its redeemable securities other than at a current public offering price described in the company's prospectus. Rule 22d–1 under the Act exempts a registered investment company from the provisions of section 22(d) to the extent necessary to permit the sale of those securities to particular classes of investors or in various kinds of transactions at prices that reflect scheduled variations in, or elimination of, the sales load. The requested exemptive relief would be consistent with the policies underlying rule 22d–1 because the Fund will fully disclose the CDSC and associated waivers in its prospectus and statement of additional information. Applicants seek an exemption from section 22(d) to the extent necessary to implement the exemption from section 22(d) to the extent necessary to implement the CDSC and waivers thereof as described above.

5. Section 6(c) of the Act provides in part that, upon application, the SEC may conditionally exempt any transaction from the provisions of the Act to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested exemptions meet the standards of section 6(c).

**Applicants' Condition**

Applicants agree that the exemptive order requested herein will be subject to the following condition:

Applicants will comply with the provisions of proposed rule 6c–10 under the Act as that rule is currently stated (Investment Company Act Release No. 16619 (Nov. 2, 1988)) and as it may be reproposed, adopted or modified in the future.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92–16554 Filed 7–14–92; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

[Public Notice 1655]

### Office of the Legal Adviser; Submission of Claims to the United Nations Compensation Commission

This notice concerns the procedures for filing a claim against Iraq with the United Nations Compensation Commission for losses, damage or injury suffered as a result of Iraq's illegal invasion and occupation of Kuwait. It supplements Public Notice 148 (56 FR 47979, September 23, 1991), Public Notice 1545 (57 FR 421, January 6, 1992), and Public Notice 1642 (57 FR 28897, June 29, 1992). For further information, and to obtain claim forms, contact the Office of the Assistant Legal Adviser for International Claims and Investment Disputes, 2100 K Street, NW., suite 402, Washington DC 20037–7180. Telephone (202) 653–2412.

The United Nations Compensation Commission has circulated "Form E" to be used in filing claims of corporations and other legal entities for losses sustained as a result of Iraq's illegal invasion and occupation of Kuwait. To make a claim, a corporation must fill out Form E and return it to the Office of the Assistant Legal Adviser for International Claims and Investment Disputes in the State Department. The Assistant Legal Adviser's office will consolidate the claims and submit them to the Commission. The Department will submit the claims of corporations which were incorporated under the laws of the United States at the time their claim arose.

As of July 1, 1993, the Commission will begin processing claims submitted by governments on Form E up to that date. The final deadline for the submission of these claims by Governments is January 1, 1994, but it is in a claimant's interest that its claim be submitted as soon as possible. The Department will need time to review the forms and documentation received, to follow up with claimants where necessary, and to prepare a consolidated statement summarizing the claims. Therefore, corporations wishing to ensure that their claim is considered as soon as possible should return a completed form by November 1, 1992. The Department urges claimants to file by this date, but in any event no later than July 1, 1993.

Dated: July 8, 1992.

**Ronald J. Bettauer,**

*Assistant Legal Adviser for International Claims and Investment Disputes.*

[FR Doc. 92–16607 Filed 7–14–92; 8:45 a.m.]

BILLING CODE 4710–08–M

### Bureau of Diplomatic Security

[Public Notice 1656]

### Public Information Collection Requirement Submitted to OMB for Review

**AGENCY:** Department of State.

**ACTION:** The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511.

**SUMMARY:** The proposed information collection is made necessary by The Hague Convention on the Civil Aspects of International Child Abduction and Public Law 100–300. The requested information will be used in evaluating applicants' claims, locating abducted children, and advising applicants about available legal remedies. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement. Originating office—Bureau of Consular Affairs. Title of information collection—Application for Assistance Under The Hague Convention on Child Abduction. Form No.—DSP–105. Frequency—On occasion. Respondents—Individuals. Estimated number of respondents—250. Average number of responses per respondent—1. Average hours per response—1 hour. Total estimated burden hours—250.

Section 3504(h) of Public Law 96–511 does not apply.

**ADDITIONAL INFORMATION OR COMMENTS:** Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed (OMB) Lin Liu (202) 395–7340.

Dated: July 7, 1992.

**Sheldon J. Krys,**

*Assistant Secretary for Diplomatic Security.*

[FR Doc. 92–16606 Filed 7–14–92; 8:45 am]

BILLING CODE 4710–43–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE–92–20]

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before August 4, 1992.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW.,Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

**Denise D. Castaldo,**

*Manager, Program Management Staff.*

**Petitions for Exemption**

*Docket No.:* 26773.
*Petitioner:* United Technologies Hamilton Standard.
*Sections of the FAR Affected: 14 CFR 21.325(b) (1) and (3).*
*Description of Relief Sought:* To allow United Technologies Hamilton Standard to issue export approvals for Class, I, II, and III propeller products manufactured and located at Ratier-Figeac, Figeac, France.

**Dispositions of Petitions**

*Docket No.:* 26865.
*Petitioner:* Air transport Association of America.
*Sections of the FAR Affected: 14 CFR 121.417 (d).*
Description of Relief Sought/ Disposition: To extend the compliance date for the training required by § 121.417(c) (1)(i) from July 31, 1992 until July 31, 1993, the date by which member airlines of the Air Transport Association of America and other similarly situated air carriers area required to complete the appropriate training.

Partial Grant, July 7, 1992, Exemption No. 5477.

[FR Doc. 92-16593 Filed 7-14-92; 8:45 am]

BILLING CODE 4910-13-M

**[Summary Notice No. PE-92-21]**

## Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before August 4, 1992.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on July 9, 1992.

**Denise D. Castaldo,**

*Manager, Program Management Staff.*

**Petitions for Exemption**

*Docket No.:* 24671.
*Petitioner:* Bell Helicopter Textron, Inc.
*Sections of the FAR Affected:* 14 CFR 21.231(a)(2).
*Description of Relief Sought:* To allow Bell Helicopter Textron, Inc., to apply for a delegation option authorization for the type, production, and airworthiness certification of transport category helicopters.

*Docket No.:* 25588.
*Petitioner:* The Soaring Society of America, Inc.
*Sections of the FAR Affected:* 14 CFR 45.11(a) and (d).
*Description of Relief Sought:* To extend Exemption No. 4986 that allows the Soaring Society owners, operators, and manufacturers of gliders to forego the requirement to secure an identification plate or display the model and serial number on the exterior of the aircraft at specified locations.

*Docket No.:* 26784.
*Petitioner:* Florida Aerial Advertising.
*Sections of the FAR Affected:* 14 CFR part 45.
*Description of Relief Sought:* To allow for 3-inch N numbers to be displayed on petitioner's Cessna 150 in lieu of 12-inch N numbers, as specified in the rule.

*Docket No.:* 26818.
*Petitioner:* Emily Griffith Opportunity School Aircraft Training Facility.
*Sections of the FAR Affected:* 14 CFR 65.71.
*Description of Relief Sought:* To allow Mr. Stephen Hart to qualify for a mechanic's certificate, even though he is hearing and speech impaired.

*Docket No.:* 26845.
*Petitioner:* Division of Flight Operations, University of North Dakota.
*Sections of the FAR Affected:* 14 CFR 141.65.

*Description of Relief Sought:* To add authorization of examining authority for graduates of the petitioner's flight instructor certification courses.

*Docket No.:* 26900.

*Petitioner:* Boeing Commercial Airplane Group.

*Sections of the FAR Affected:* 14 CFR 25.562(c)(5) and 25.562(c)(6).

*Description of Relief Sought:* To exempt front row seats, pilots' seats, and the first observer's seat on the Boeing Model 777–200 airplane from compliance with certain emergency landing dynamic conditions.

**Dispositions of Petitions**

*Docket No.:* 23653.

*Petitioner:* University of North Dakota.

*Sections of the FAR Affected:* 14 CFR part 141, appendices A, C, D, F, and H.

*Description of Relief Sought/ Disposition:* To extend Exemption No. 3825, as amended, that allows the University of North Dakota to graduate students who have been trained to achieve a specific performance level rather than the minimum flight time requirements of Part 141. Additionally, the petitioner requests that Exemption No. 3825, as amended, be further amended to grant this exemption without an expiration date.

Partial Grant, June 30, 1992, Exemption No. 3825F.

*Docket No.:* 23858.

*Petitioner:* Allison Gas Turbine Division, General Motors Corporation.

*Sections of the FAR Affected:* 14 CFR part 34 and 40 CFR 87.7(b).

*Description of Relief Sought/ Disposition:* To amend Exemption No. 5383 to allow Allison Gas Turbine Division of General Motors Corporation to produce a very twelve Model 501–D22 series commercial version of the T56 turboprop engines for installation on Lockheed L–100 aircraft to be exported from the United States.

Grant, June 23, 1992, Exemption No. 5383A.

*Docket No.:* 23869.

*Petitioner:* Strong Enterprises, Inc., and The Relative Workshop, Inc..

*Sections of the FAR Affected:* 14 CFR 105.43(a).

*Description of Relief Sought/ Disposition:* To extend Exemption No. 4943, as amended, that enables Strong Enterprises, Inc., and The Relative Workshop, Inc., to allow their respective employees, representatives, and other volunteer experimental parachute test jumpers under their direction and control to make parachute jumps, and permit pilots in command of aircraft involved in these operations to allow such persons to make parachute jumps wearing a dual harness, dual parachute packed in accordance with § 105.43(a).

Grant, June 19, 1992, Exemption No. 4943B.

*Docket No.:* 24256.

*Petitioner:* Dalfort Training.

*Sections of the FAR Affected:* 14 CFR 61.56(b)(1), 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157(d) (1) and (2) and (e) (1) and (2); appendix A of part 61; and appendix H of part 121.

*Description of Relief Sought/ Disposition:* To renew Exemption No. 4955B which grants Dalfort Training relief from §§ 61.56(b)(1), 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157(d) (1) and (2) and (e) (1) and (2); appendix A of Part 61; and appendix H of Part 121 of the Federal Aviation Regulations. In addition, to amend condition No. 6.c. by deleting the requirement for its simulator instructors to perform 2 hours of line observation flight training in the class and type of airplane for which the person instructs.

Grant, May 29, 1992, Exemption No. 4955C.

*Docket No.:* 25053.

*Petitioner:* Crew Pilot Training, Inc.

*Sections of the FAR Affected:* 14 CFR 61.56(b)(1); 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.167(d) (1) and (2); 61.157(e) (1) and (2); and appendix A of part 61.

*Description of Relief Sought/ Disposition:* To extend Exemption No. 5011 which permits Crew Pilot Training, Inc., and persons who contract for services from Crew Pilot Training, Inc., to use approved simulators to meet certain training and testing requirements of §§ 61.56(b)(1); 61.57 (c) and (d); 61.58(c) (1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.167(d) (1) and (2); 61.157(e) (1) and (2); and appendix A of part 61 of the Federal Aviation Regulations.

Grant, June 30, 1992, Exemption No. 5011C.

*Docket No.:* 25242.

*Petitioner:* Experimental Aircraft Association.

*Sections of the FAR Affected:* 14 CFR 61.58(c) and 91.4.

*Description of Relief Sought/ Disposition:* To extend Exemption No. 4941, as amended, which allows members of Experimental Aircraft Association to complete a training course in lieu of a pilot proficiency check.

Grant, June 23, 1992, Exemption No. 4941B.

*Docket No.:* 25789.

*Petitioner:* Martin Aviation, L.P.

*Sections of the FAR Affected:* 14 CFR 43.3(g).

*Description of Relief Sought/ Disposition:* To extend Exemption No. 5202 which enables Martin Aviation, L.P. to have its pilots perform the preventive maintenance function of removing aircraft passenger seats or installing approved stretchers in the aircraft it operates in air carrier service when certificated mechanics are not available.

Grant, June 26, 1992, Exemption No. 5202A.

*Docket No.:* 25990.

*Petitioner:* Wrangler Aviation, Inc.

*Sections of the FAR Affected:* 14 CFR 121.371(a) and 121. 378.

*Description of Relief Sought/ Disposition:* To extend Exemption No. 5180 which enables Wrangler Aviation, Inc., to contract with certain foreign companies for the maintenance, repair, overhaul, and modification of engines, propellers, and other systems and components of the Canadair CL–44 aircraft operated by Wrangler Aviation, Inc.

Partial Grant, June 24, 1992, Exemption No. 5180A.

*Docket No.:* 26120.

*Petitioner:* U.S. Department of Interior, Fish and Wildlife Service.

*Sections of the FAR Affected:* 14 CFR 45.29.

*Description of Relief Sought/ Disposition:* To extend Exemption No. 5196 which permits the U.S. Department of Interior to operate its Maule M–6 aircraft displaying 3-inch high nationality and registration marks in place of the 12-inch high marks required by the regulations.

Grant, June 26, 1992, Exemption No. 5196A.

*Docket No.:* 26175.

*Petitioner:* Experimental Aircraft Association.

*Sections of the FAR Affected:* 14 CFR 91.42(e) and 91.169(e).

*Description of Relief Sought/ Disposition:* To allow Experimental Aircraft Association and its members to apply for a substitution of a program of inspections acceptable to the Federal Aviation Administration in lieu of replacement times for life-limited parts of aircraft identified in the Aircraft Specifications, Type Certificate Data Sheets, or other documents approved by the Administrator.

Denial, June 2, 1992, Exemption No. 5476.

*Docket No.:* 26245.

*Petitioner:* Airline Crew Training Corporation.

*Sections of the FAR Affected:* 14 CFR 61.56(b)(1); 61.57 (c) and (d); 61.58(c) (1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.167(d) (1) and (2); 61.157(e) (1) and (2); and appendix A of part 61.

*Description of Relief Sought/ Disposition:* To extend Exemption No. 5183 which permits Airline Crew Training Corporation, and persons who contract for services from, for Airline Crew Training Corporation, to use approved simulators to meet certain training and testing requirements of §§ 61.56(d)(1); 61.57 (c) and (d); 61.58(c) (1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.167(d) (1) and (2); 61.157(e) (1) and (2); and appendix A of part 61 of the Federal Aviation Regulations.

Grant, June 29, 1992, Exemption No. 5183A.

*Docket No.:* 26624.

*Petitioner:* Geotech International, Ltd., and Mil Design Bureau.

*Sections of the FAR Affected:* 14 CFR 133.19 and 133.21.

*Description of Relief Sought/ Disposition:* To permit Geotech International, Ltd., and Mil Design Bureau to conduct external load rotorcraft operations within the United States with Soviet registered MI–26 helicopters and Soviet-licensed crews.

Denial, June 23, 1992, Exemption No. 5472.

*Docket No.:* 26816.

*Petitioner:* Mr. James R. Dull.

*Sections of the FAR Affected:* 14 CFR 61.39(a)(1).

*Description of Relief Sought/ Disposition:* To extend the validity period of written test results beyond 24 months.

Denial, June 1, 1992, Exemption No. 5466.

*Docket No.:* 26891.

*Petitioner:* Scandinavian Airlines System and ABX Air, Inc.

*Sections of the FAR Affected:* 14 CFR 91.805.

*Description of Relief Sought/ Disposition:* To allow the operation of five noncomplying Stage 1 DC–9–41 aircraft (Registration No. SE–DAM, Serial No. 47499; Registration No. SE–DAN, Serial No. 47464; Registration No. OY–KGI, Serial No. 47494; Registration No. LN–RLB, Serial No. 47497; and Registration No. SE–DAX, Serial No. 47631) from Oslo, Norway to Dayton, Ohio, for customs clearance, and then to Wilmington, Ohio, to obtain modification to bring the subject aircraft into compliance with Stage 2 noise levels under FAR part 36.

Grant, June 22, 1992, Exemption No. 5471.

*Docket No.:* 26904.

*Petitioner:* Kitty Hawk Air Cargo, Inc.

*Sections of the FAR Affected:* 14 CFR 121.358(c)(1).

*Description of Relief Sought/ Disposition:* To permit Kitty Hawk Air Cargo, Inc., to submit a request for approval of retrofit schedule for installation of windshear equipment after the June 1, 1990 deadline to the Flight Standards Division Manager in the region of the certificate holding district office.

Grant, June 19, 1992, Exemption No. 5470.

*Docket No.:* 26916

*Petitioner:* Kiwi International Airlines, Inc.

*Sections of the FAR Affected:* 14 CFR 121.358(c)(1).

*Description of Relief Sought/ Disposition:* To permit Kiwi International Airlines, Inc., to submit a request for approval of a retrofit schedule for installing windshear equipment after the June 1, 1990 deadline to the Flight Standards Division Manager in the region of the certificate holding district office.

Grant, July 6, 1992, Exemption No. 5474.

[FR Doc. 92–16594 Filed 7–14–92; 8:45 am]

BILLING CODE 4910–13–M

## Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee.

**DATES:** The meeting will be held on July 30, 1992, at 9 a.m. Arrange for oral presentations by July 17, 1992.

**ADDRESSES:** The meeting will be held in the Boardroom, Air Transport Association of America, suite 1100, 1301 Pennsylvania Avenue, NW., Washington, DC 20006–1707.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Emergency Evacuation Subcommittee to be held on July 30, 1992, in the Boardroom, Air Transport Association of America, suite 1100, 1301 Pennsylvania Avenue, NW., Washington, DC 20004–1701. The agenda for this meeting will include:

- A status report by the Performance Standards Working Group.
- Discussion of a "strawman" approach to developing performance standards.
- Future activities.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by July 17, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, DC, on July 9, 1992.

**William J. Sullivan,**

*Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.*

[FR Doc. 92–16595 Filed 7–14–92; 8:45 am]

BILLING CODE 4910–13–M

## Noise Exposure Map Notice; Melbourne Regional Airport, Melbourne, FL

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Melbourne Airport Authority for Melbourne Regional Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

**EFFECTIVE DATE:** The effective date of FAA's determination on the noise exposure maps is June 30, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397, (407) 648–6583.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for the Melbourne Regional Airport are in compliance with applicable requirements of part 150, effective June 30, 1992.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979

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(hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Melbourne Airport Authority. The specific maps under consideration are "Current (1992) DNL Contours, Map A" and "Future (1997) DNL Contours, Map B" in the submission. The FAA has determined that these maps for the Melbourne Regional Airport are in compliance with applicable requirements. This determination is effective on June 30, 1992. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information on plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397.

Melbourne Airport Authority, Melbourne Regional Airport, 1050 South Joe Walker Road, Melbourne, Florida 32901–1856.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT:**

Issued in Orlando, Florida, June 30, 1992.

John W. Reynolds, Jr.,

*Assistant Manager, Orlando Airports District Office.*

[FR Doc. 92–16596 Filed 7–14–92; 8:45 am]

BILLING CODE 4910–13–M

## Federal Highway Administration

### Environmental Impact Statement; Cowlitz, Lewis, and Thurston Counties, WA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Cowlitz, Lewis, and Thurston Counties, Washington.

**FOR FURTHER INFORMATION CONTACT:** B.F. Morehead, Division Administrator, Federal Highway Administration, 711 South Capital Way, suite 501, Olympia, Washington 98501–0943, Telephone: (206) 753–9413,

or

G.E. Smith, District Administrator, Washington State Department of Transportation, 4200 Main Street P.O. Box 1709, Vancouver, Washington 98668–1709 Telephone: (206) 696–6621.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Washington State Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve Interstate Route 5 (I–5) in Cowlitz, Lewis, and Thurston Counties, Washington. The proposed improvement would involve the reconstruction of existing I–5 between Toutle Park Road, (MP 52.65), and the State Route 12 (SR–12) Interchange, (MP 88.40), approximately 36 miles to the north. Improvements to the highway corridor are considered necessary to provide for the existing and projected traffic demand.

The proposed project will widen I–5 from four lanes to six through lanes, construct new interchanges at Labree Road, Hobson Road and Reynolds Avenue, improve existing interchanges, widen or replace all existing bridges and overpasses to accommodate roadway widening, repave roadway surfaces and upgrade drainage, signing, pavement markings and safety devices.

Alternatives under consideration include (1) Do nothing (maintain only); (2) Improve existing (widen only); (3) Improve existing (widen) plus the addition of new interchanges or partial interchanges at Labree Road, Hobson Road and Reynolds Avenue. The build alternatives will take into consideration design variations in grade and alignment and optional interchange configurations.

In July 1987, Districts 3 and 4 of the Washington State Department of Transportation prepared a study analyzing existing traffic conditions on I–5 between the Barnes Road Interchange (MP 52.65) and the Airdustrial Interchange (MP 101.30). The primary focus of the study was to determine the need for future improvements and to propose a planning guide for programming and implementation of improvements. The goal was to provide a safe, efficient and convenient transportation system to serve the traveling public through the year 1999 with a coordinated, facility-wide improvement program.

The study focused on the following criteria (A) Determine where and what type of improvements are needed to maintain a safe and smoothly operating transportation facility; (B) Determine when these improvements are needed; (C) Develop preliminary cost estimates for the needed improvements.

Using the above criteria, a table of projects was prepared to address existing deficiencies. These deficiencies

were based on known hazardous accident locations, bridge conditions ratings, pavement conditions ratings and traffic congestion (level of service). The project included in the table essentially widen this segment of I–5 by providing 5th and 6th lanes. Basically, the existing alignment and grade would be maintained. The preferred design would meet FHWA standards with a planned median width of 22 feet. Prior to a decision on whether to proceed with engineering design and implementation of these projects, it has been determined that an Environmental Impact Statement will be prepared.

The scoping meetings are tentatively scheduled for mid-August 1992, at Toldeo and Centralia. A public hearing will be held after the draft EIS is issued. Public notice will be given of the time and place of the meetings and hearing.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or WSDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 8, 1992.

**Amy Jackson,**

*Area Engineer.*

[FR Doc. 92–16569 Filed 7–14–92; 8:45 am]

BILLING CODE 4910-22-M

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 136
Wednesday, July 15, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION**

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, July 30, 1992.

The Commission was established pursuant to Public Law 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at the Cumberland Public Library, The Monastery, Diamond Hill Road, Cumberland, RI for the following reasons:

1. Report of Executive Committee Re: FY 92 Budget.
2. Report from the Town of Cumberland.
3. Voting on Demonstration Project Recommendations.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569. Telephone: (508) 278-9400.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address above.

**James Pepper,**

*Executive Director, Blackstone River Valley National Heritage Corridor Commission.*

[FR Doc. 92-16717 Filed 7-13-92; 10:11 am]

BILLING CODE 4310-70-M

**FOREIGN CLAIMS SETTLEMENT COMMISSION**

F.C.S.C. Meeting Notice No. 10-92; Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

*Date, Time, and Subject Matter*

Wed., July 22, 1992 at 10:30 a.m.—Consideration of Proposed Decisions on claims against Iran.

Wed., July 22, 1992 at 2:30 p.m.—Oral Hearing on objection to Proposed Decision issued on claims against Iran:*
—IR-0691—James C. Medlock

*The hearing site will be: 601 D Street, NW., Courtroom 1, Room 1000, Patrick Henry Building, Washington, DC.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, DC on July 10, 1992.

**Judith H. Lock,**

*Administrative Officer.*

[FR Doc. 92-16679 Filed 7-10-92; 5:03 pm]

BILLING CODE 4410-01-M

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

[USITC SE-92-20]

**TIME AND DATE:** July 21, 1992 at 2:30 p.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Petitions and complaints.
5. Inv. 731-TA-572 (Preliminary) (Certain Special Quality Carbon and Alloy Hot-rolled Steel Bars and Rods and Semifinished Products thereof from Brazil)—briefing and vote.
6. Continuation of discussion of APO matters.
7. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Paul R. Bardos, Acting Secretary, (202) 205-2000.

Dated: July 8, 1992.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92-16772 Filed 7-13-92; 11:16 am]

BILLING CODE 7020-02-M

**LEGAL SERVICES CORPORATION BOARD OF DIRECTORS**

Meeting Changes

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** July 10, 1992, 57 FR 30769.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** July 14, 1992, scheduled to commence at 9:00 a.m.

**PREVIOUSLY ANNOUNCED LOCATION OF MEETING:** The Drake University, Drake University Law School, The Neal and Bea Smith Law Center, 2400 University Avenue, The Law Library, Des Moines, Iowa 50311.

**CHANGES IN THE MEETING:**

**MATTERS TO BE CONSIDERED:** Agenda item number 5 regarding election of a vice chairman has been postponed until the Legal Services Corporation Board of Directors' August 10, 1992 meeting. In addition, another agenda item has been added which now appears as sub-part a. of item number 8 and relates to proposed rulemaking notices to be submitted to the **Federal Register**. The amended agenda appears below.

**OPEN SESSION:**

1. Approval of Agenda
2. Approval of Minutes of May 18, 1992 Meeting
3. Comments by a Representative of the Polk County Bar Association Regarding the Private Attorney Involvement Effort in the State of Iowa
4. Chairman's and Members' Reports
   a. Consideration of Report on the June 23, 1992 Senate Reauthorization Hearing
   b. Consideration of Motion to Conduct Board Meetings on Weekdays
5. Presentation by the Honorable Terry E. Branstad, Governor of the State of Iowa
6. President's Report
   a. Legislative Report
   b. Report on Migrant Ombudsman/Proteus Seminar Proposal
   c. Report on Staff Compensation Schedule
   d. Report on Board Travel Policies
7. Inspector General's Report
8. Consideration of Operations and Regulations Committee Report

a. Consideration of Proposed Rulemaking Notices for Submission to the Federal Register
9. Consideration of Provision for the Delivery of Legal Services Committee Report

**CLOSED SESSION:**[1]

10. Approval of Minutes of Executive Session Held on May 18, 1992
11. Consideration of Status Report by the Inspector General on Several On-going Investigations Involving Allegations of Criminal Laws
12. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is a Party
13. Consideration of Reports on Activities Undertaken in the Past Twelve-Month Period and Planned Activities for the Next Twelve-Month Period, Said Reports Being Presented, in Connection with Phase One of the Board's Two-Phase Performance Assessment Processes, by the:
    a. Corporation President; and
    b. Inspector General.

**OPEN SESSION:** (Resumed)

14. Consideration of and Action on Proposed Motions Indemnifying Certain Corporation Officials in the Matters of *Singh vs. the Legal Services Corporation, et al* and *Williams vs. the Legal Services Corporation, et al.*
15. Consideration of Audit and Appropriations Committee Report
16. Consideration of Office of the Inspector General Oversight Committee Report
17. Consideration of Other Business.

**CONTACT PERSON FOR INFORMATION:** Patricia D. Batie, Executive Office, (202) 336–8896.

Date Issued: July 13, 1992.

[FR Doc. 92–16773 Filed 7–13–92; 11:18 am]

BILLING CODE 7050–01–M

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**LEGAL SERVICES CORPORATION BOARD OF DIRECTORS**

Operations and Regulations Committee Meeting Changes

[1] It is anticipated that the executive session will conclude at approximately 1:45 p.m. The open session will reconvene immediately thereafter.

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** June 30, 1992; 57 FR 29117.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** July 13, 1992, scheduled to commence at 3:00 p.m.

**PREVIOUSLY ANNOUNCED LOCATION OF MEETING:** The Drake University, Drake University Law School, The Neal and Bea Smith Law Center, 2400 University Avenue, The Law Library, Des Moines, Iowa 50311.

**CHANGES IN THE MEETING:**

**MATTERS TO BE CONSIDERED:** The agenda announced previously has been amended to include agenda item number 4 regarding proposed rulemaking notices. The amended agenda appears below.

**OPEN SESSION:**

1. Approval of Agenda.
2. Approval of Minutes of May 18, 1992 Meeting.
3. Consideration of Report by Staff Regarding Competition Demonstration Projects.
4. Consideration of Proposed Rulemaking Notices for Submission to the Federal Register.

**CONTACT PERSON FOR INFORMATION:** Patricia Batie, Executive Office, (202) 336–8896.

Date issued: July 10, 1992.

**Patricia D. Batie,**

*Corporate Secretary.*

[FR Doc. 92–16718 Filed 7–13–92; 10:15 am]

BILLING CODE 7050–01–M

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**NATIONAL TRANSPORTATION SAFETY BOARD**

**TIME AND DATE:** 9:30 a.m., Tuesday, July 21, 1992.

**PLACE:** NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

**STATUS:** The first two items are open. The last item is closed under Exemption 10 of the Government in the Sunshine Act.

**MATTERS TO BE CONSIDERED:**

5812B—Aircraft Accident Report: Continental Airlines, Embraer EMB–120, Flight 2574, Eagle Lake, Texas, September 11, 1991

5803—Special Investigation Report: Piper Aircraft Corporation PA–46 Malibu/Mirage Accidents/Incidents, May 31, 1989 to March 17, 1991

5796—Opinion and Order: Administrator v. Quinlan, Docket SE–10445; disposition of respondent's appeal

**NEWS MEDIA CONTACT:** (202) 382–0660.

**FOR MORE INFORMATION CONTACT:** Bea Hardesty, (202) 382–6525.

Dated: July 10, 1992.

**Ray Smith,**

*Alternate Federal Register Liaison Officer.*

[FR Doc. 92–16683 Filed 7–10–92; 4:52 pm]

BILLING CODE 7535–01–M

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**NATIONAL TRANSPORTATION SAFETY BOARD**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Tuesday, June 30, 1992, 57 FR 29118.

**PREVIOUSLY ANNOUNCED TIME AND DATE:** 9:30 a.m., Wednesday, July 8, 1992.

**CHANGE IN MEETING:** A majority of the Board Members determined by recorded vote that the business of the Board required adding the following item to the agenda, which was discussed in closed session under Exemption 10 of the Government in the Sunshine Act.

5791—Opinion and Order: Administrator v. Saunders, Dockets SE–10104 and 10585; disposition of respondent's appeal

**CONTACT PERSON FOR MORE INFORMATION:** Bea Hardesty (202) 382–6525.

Dated: July 10, 1992.

**Ray Smith,**

*Alternate Federal Register Liaison Officer.*

[FR Doc. 92–16684 Filed 7–10–92; 5:04 pm]

BILLING CODE 7533–01–M

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# Corrections

Federal Register
Vol. 57, No. 136
Wednesday, July 15, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Public Land Order 6932

[AK-932-4214-10; F-14223]

### Modification of Public Land Order No. 5150, as Amended, for Selection of Lands by the State of Alaska; AK

*Correction*

In rule document 92-13983 beginning on page 24985 in the issue of Friday, June 12, 1992, make the following corrections:

1. On page 24985:

a. In the second column, under **Fairbanks Meridian (Unsurveyed)**, *Coldfoot Unit*, Parcel 1, in the first paragraph, in the last line, "corner No. 3" should read " corner No. 1".

b. In the third column, under T.29 N., R. 12W., in the fourth line, "are" should read "as".

c. In the same column, the same township, Parcel 1, in the first paragraph, in the sixth line from the bottom, "S. 23°48'" should read "N. 23°48'"; and in the thrid line from the bottom, "1,600 feet" should read "1,880 feet".

2. On page 24986, in the first column:

a. Under **Umiat Meridian (Unsurveyed)**, *Sagavanirktok Unit*, "Tps. N., Rs. 13, 14, and 14E." should read "Tps. N., Rs. 13, 14, and 15E."

b. Under *Sagavanirktok Unit*, in the last line, "671,616 acres" should read "617,616 acres".

c. In paragraph 3., in the last line, "5105, as amended" should read "5150, as amended".

BILLING CODE 1505-01-D

## DEPARTMENT OF TREASURY

### Office of Thrift Supervision

### 12 CFR Part 565

[No. 92-282]

RIN 1550-AA57

### Regulatory Capital; Prompt Corrective Action

*Correction*

In proposed rule document 92-15790 beginning on page 29826 in the issue of Tuesday, July 7, 1992, on page 29826, in the third column, under **DATES**, in the second line, "August 20, 1992" should read "August 21, 1992".

BILLING CODE 1505-01-D, 1992 / Corrections

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Part II

# Department of Commerce

## International Trade Administration

## Consortia of American Businesses in Newly Independent States; Notice

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DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 920498-2098]

## Consortia of American Businesses in the Newly Independent States

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a new business consortia grant program to assist U.S. firms establish a commercial presence in the Newly Independent States of the former Soviet republics.

SUMMARY: A program has been designed to assist U.S. firms in establishing a commercial presence in the former Soviet republics through the formation of Consortia of American Businesses in the Newly Independent States (CABNIS). CABNISs are private and public in-profit organizations which will be formed to promote U.S. goods and services in the Newly Independent States (NIS). The participants in these consortia will be for-profit U.S. firms interested in trade with the former Soviet republics. CABNISs will establish offices and staff in the NIS to provide a broad range of services for their for-profit member firms, including market research, sales promotion, communication of sales opportunities, identification of and introduction to potential buyers and trade contacts, staging trade and technical missions and seminars, provision or arrangement of necessary legal services, and other export trade facilitation services. Grant funds will be awarded as seed money to pay the start-up costs of establishing and operating U.S. consortia offices in the NIS. CABNISs can be organized along a single industry line or represent more than one business sector. There is no limitation on the number of for-profit firms that a consortium may represent.

SUPPLEMENTARY INFORMATION:

### Program Objectives

The consortia are intended to strengthen the U.S. business presence in the NIS. They will provide direct facilitation support for their member firms, stimulating increased U.S. exports to the NIS. The consortia will promote two-way trade and will be expected to support the privatization movement of host country economies through consortia assistance with defense plant conversion projects, finding markets for NIS products, promoting U.S. investment and U.S.–NIS joint ventures, and/or technical training.

### Funding Availability

Pursuant to section 531 and section 632(b) of the Foreign Assistance Act of 1961, as amended, (the "Act") funding for the program will be provided by the Agency for International Development (A.I.D.). ITA will award financial assistance and administer the program pursuant to the authority contained in section 635(b) of the Act. The total amount of program grant funds available for CABNIS is $1 million for FY 1992 and an anticipated $3.5 million for FY 1993.

### Funding Instrument and Project Duration

The Federal grant contribution will not exceed 50 percent of proposed eligible project costs with a maximum grant amount of $500,000 per consortium. Applicants are expected to provide the remaining share, preferably in cash. Federal funding will be a one-time injection with a grant period not to exceed three years. Assistance will be available for the period of time required to complete the scope of work but not to exceed three years from the date of the grant offer.

### Request for Applications

Competitive Application kits (Application Kits) #110–0005–1 will be available from Commerce starting July 13, 1992.

To obtain a copy of the Application Kit #110–0005–1, please send a written request with two self-addressed mailing labels to Mr. George Muller, Director, Office of Export Trading Company Affairs, room 1800 HCHB, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Only written requests will be honored; telephone, fax, or walk-in requests will not be accepted. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester. Applicants (Standard Form 424 (Rev. 4–88)) are to be received at the address designated in the Application Kit no later than 3 p.m. E.d.t. August 28, 1992. Commerce intends to award a minimum of two grants prior to the end of FY 1992 and, subject to availability of funds, award an anticipated minimum of seven grants during FY 1993. Applications which are not selected for funding in FY 1992 will be carried over automatically and be evaluated for possible funding in FY 1993—again subject to availability of FY 1993 funds.

### Eligibility

Eligible applicants for the CABNIS grant program will be private and public non-profit U.S. organizations including non-profit corporations, associations and public sector entities established to represent the commercial interests of U.S. firms. Within the industry or industries represented by the consortium, membership in a consortium must be available on a non-discriminatory basis. For example, membership in a trade association cannot be a requirement for membership in a consortium. Only applicants proposing to open an office in one or more of the Newly Independent States are eligible for this program. Each application will receive an independent, objective review by one or more review panels qualified to evaluate the applications submitted under the program. Applications will be evaluated on a competitive basis in accordance with the selection criteria set below.

### Selection Criteria

Consideration for financial assistance will be given to those CABNIS proposals which:

1. Demonstrate how proposed member firms' U.S. exports and consortia business activities will support privatization and private enterprise (e.g., through assistance with defense plant conversion projects, technical training, marketing assistance and investment promotion). Marketability of the proposed products and/or services in the NIS will be taken into account in evaluating applications.

2. Are proposed by non-profit organizations with the capacity, qualifications and staff necessary to successfully undertake the intended activities.

In addition, priority consideration will be given to those applications which:

3. Demonstrate the capability and intent of enlisting small and mid-sized U.S. firms as members of the consortium.

4. Provide a reasonable assurance that the proposed project can be continued on a self-sustained basis after expiration of the Federal grant expenditure period.

5. Contain a commitment to encourage, support and assist in the development of indigenous counterpart organizations (e.g. trade associations) and a well reasoned plan as to how that will be accomplished.

6. Present a realistic work plan detailing the services it will provide to the consortium member firms.

7. Present a reasonable, itemized budget for the proposed activities.

Selection criteria factors 1 and 2 will be weighted equally and will take precedence over priority consideration factors 3–7. Priority consideration factors 3–7 will be weighted equally.

The need for U.S. products and services and for assistance in the privatization process canvasses all of the former Soviet republics. Different geographic locations will be more suitable for different industries (e.g., oil production equipment versus medical equipment). In selecting grant recipients, ITA reserves the right to award grants in such a way to ensure a reasonably balanced distribution of consortia and the industry sectors that they represent among the NIS countries. Preference will be given to financial proposals which demonstrate the maximum allocation of Federal and non-Federal resources to program activities. ITA reserves the right to determine the level of funding for each grant awarded.

**Notifications:**

All applicants are advised of the following:

1. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Prospective participants (as defined at 15 CFR part 26, § 26.105) are subject to 15 CFR part 26, "Governmentwide Debarment and Suspension (Nonprocurement)" and the related section of the certification form prescribed above applies. Grantees (as defined at 15 CFR 26, § 26.605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies. Persons (as defined at 15 CFR 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

3. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

4. A false statement on the application may be grounds for denial or termination of funds.

5. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

6. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

7. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

8. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

9. Awards under this program shall be subject to all Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.

10. The Standard Form 424 (Rev. 4–88) mentioned in this Notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348–0006.

11. Executive Order 12372 "Intergovernmental Review of Federal Programs" does not apply to this program.

Dated: July 8, 1992.

**George Muller,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 92–16338 Filed 7–14–92; 8:45 am]

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Part III

# Environmental Protection Agency

## Premanufacture Notices; Monthly Status Report for June 1992

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**ENVIRONMENTAL PROTECTION AGENCY**

**[OPPTS-53156; FRL 4078-7]**

## Premanufacture Notices; Monthly Status Report for JUNE 1992

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for June 1992.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Docket Office NE-G004 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

**ADDRESSES:** Written comments, identified with the document control number "(OPPTS-53156)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC 20460, (202) 260-1532.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 260-3725.

**SUPPLEMENTARY INFORMATION:** The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during June; (b) PMNs received previously and still under review at the end of June; (c) PMNs for which the notice review period has ended during June; (d) chemical substances for which EPA has received a notice of commencement to manufacture during June; and (e) PMNs for which the review period has been suspended. Therefore, the June 1992 PMN Status Report is being published.

Dated: July 9, 1992.

**Steven Newburg-Rinn,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

### Premanufacture Notice Monthly Status Report for June 1992.

I. 126 Premanufacture notices and exemption requests received during the month:

PMN No.

P 92-1009 P 92-1010 P 92-1011 P 92-1012
P 92-1013 P 92-1014 P 92-1015 P 92-1016
P 92-1017 P 92-1018 P 92-1019 P 92-1020
P 92-1021 P 92-1022 P 92-1023 P 92-1026
P 92-1027 P 92-1028 P 92-1029 P 92-1030
P 92-1031 P 92-1032 P 92-1033 P 92-1034
P 92-1035 P 92-1037 P 92-1038 P 92-1039
P 92-1040 P 92-1041 P 92-1042 P 92-1043
P 92-1044 P 92-1045 P 92-1046 P 92-1047
P 92-1048 P 92-1049 P 92-1050 P 92-1051
P 92-1052 P 92-1053 P 92-1054 P 92-1055
P 92-1056 P 92-1057 P 92-1058 P 92-1060
P 92-1061 P 92-1062 P 92-1063 P 92-1064
P 92-1065 P 92-1068 P 92-1067 P 92-1068
P 92-1069 P 92-1070 P 92-1071 P 92-1072
P 92-1073 P 92-1074 P 92-1075 P 92-1076
P 92-1077 P 92-1078 P 92-1079 P 92-1080
P 92-1081 P 92-1082 P 92-1083 P 92-1084
P 92-1085 P 92-1086 P 92-1087 P 92-1088
P 92-1089 P 92-1090 P 92-1091 P 92-1092
P 92-1093 P 92-1094 P 92-1095 P 92-1096
P 92-1097 P 92-1098 P 92-1099 P 92-1100
P 92-1101 P 92-1102 P 92-1103 P 92-1104
P 92-1105 P 92-1106 P 92-1109 P 92-1110
P 92-1111 P 92-1112 P 92-1113 P 92-1114
P 92-1115 P 92-1116 P 92-1117 P 92-1118
P 92-1119 P 92-1120 P 92-1121 P 92-1122
P 92-1123 P 92-1124 P 92-1125 P 92-1126
P 92-1127 P 92-1128 Y 92-0142 Y 92-0143
Y 92-0144 Y 92-0145 Y 92-0146 Y 92-0147
Y 92-0148 Y 92-0149 Y 92-0150 Y 92-0151
Y 92-0152 Y 92-0153

II. 314 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 83-0237 P 84-0660 P 84-0704 P 84-1145
P 85-0433 P 85-0612 P 85-0619 P 85-1184
P 85-1331 P 86-0066 P 86-0334 P 86-0335
P 86-1315 P 86-1489 P 87-0323 P 88-0098
P 88-0999 P 88-1271 P 88-1272 P 88-1273
P 88-1274 P 88-1460 P 88-1753 P 88-1937
P 88-1938 P 88-1960 P 88-1982 P 88-1984
P 88-1985 P 88-1999 P 88-2000 P 88-2001
P 88-2100 P 88-2169 P 88-2212 P 88-2213
P 88-2228 P 88-2229 P 88-2230 P 88-2236
P 88-2484 P 88-2518 P 88-2529 P 88-2540
P 89-0254 P 89-0321 P 89-0396 P 89-0538
P 89-0632 P 89-0676 P 89-0721 P 89-0799
P 89-0775 P 89-0836 P 89-0837 P 89-0867
P 89-0957 P 89-0958 P 89-0959 P 89-0963
P 89-1038 P 89-1058 P 90-0002 P 90-0009
P 90-0158 P 90-0159 P 90-0211 P 90-0237
P 90-0248 P 90-0249 P 90-0261 P 90-0262
P 90-0263 P 90-0372 P 90-0441 P 90-0550
P 90-0558 P 90-0564 P 90-0581 P 90-0606
P 90-1280 P 90-1316 P 90-1319 P 90-1320
P 90-1321 P 90-1322 P 90-1358 P 90-1422
P 90-1527 P 90-1528 P 90-1529 P 90-1530
P 90-1531 P 90-1541 P 90-1564 P 90-1592
P 90-1635 P 90-1650 P 90-1687 P 90-1745
P 90-1840 P 90-1893 P 90-1937 P 90-1984
P 90-1985 P 91-0004 P 91-0043 P 91-0051
P 91-0101 P 91-0102 P 91-0107 P 91-0108
P 91-0109 P 91-0110 P 91-0111 P 91-0112
P 91-0113 P 91-0118 P 91-0228 P 91-0242
P 91-0243 P 91-0244 P 91-0245 P 91-0246
P 91-0247 P 91-0248 P 91-0260 P 91-0328
P 91-0358 P 91-0442 P 91-0487 P 91-0490
P 91-0503 P 91-0514 P 91-0521 P 91-0532
P 91-0540 P 91-0572 P 91-0584 P 91-0619
P 91-0659 P 91-0689 P 91-0701 P 91-0732
P 91-0818 P 91-0826 P 91-0853 P 91-0914
P 91-0915 P 91-0934 P 91-0939 P 91-0940
P 91-0941 P 91-0968 P 91-1000 P 91-1009
P 91-1010 P 91-1011 P 91-1012 P 91-1013
P 91-1014 P 91-1015 P 91-1077 P 91-1116
P 91-1117 P 91-1118 P 91-1131 P 91-1163
P 91-1190 P 91-1191 P 91-1206 P 91-1210
P 91-1243 P 91-1270 P 91-1280 P 91-1281
P 91-1282 P 91-1283 P 91-1289 P 91-1297
P 91-1298 P 91-1299 P 91-1321 P 91-1322
P 91-1323 P 91-1324 P 91-1328 P 91-1346
P 91-1367 P 91-1368 P 91-1369 P 91-1371
P 91-1372 P 91-1379 P 91-1384 P 91-1386
P 91-1394 P 91-1409 P 91-1456 P 91-1464
P 92-0002 P 92-0003 P 92-0031 P 92-0032
P 92-0033 P 92-0034 P 92-0035 P 92-0036
P 92-0044 P 92-0048 P 92-0066 P 92-0067
P 92-0068 P 92-0129 P 92-0156 P 92-0157
P 92-0159 P 92-0168 P 92-0177 P 92-0217
P 92-0244 P 92-0245 P 92-0246 P 92-0247
P 92-0248 P 92-0249 P 92-0250 P 92-0251
P 92-0266 P 92-0283 P 92-0294 P 92-0314
P 92-0329 P 92-0341 P 92-0396 P 92-0412
P 92-0445 P 92-0446 P 92-0471 P 92-0474
P 92-0475 P 92-0476 P 92-0477 P 92-0478
P 92-0505 P 92-0509 P 92-0545 P 92-0546
P 92-0547 P 92-0548 P 92-0549 P 92-0550
P 92-0561 P 92-0552 P 92-0595 P 92-0599
P 92-0606 P 92-0624 P 92-0625 P 92-0628
P 92-0649 P 92-0652 P 92-0655 P 92-0656
P 92-0657 P 92-0658 P 92-0659 P 92-0660
P 92-0681 P 92-0683 P 92-0686 P 92-0688
P 92-0690 P 92-0691 P 92-0692 P 92-0710
P 92-0711 P 92-0714 P 92-0733 P 92-0744
P 92-0745 P 92-0755 P 92-0769 P 92-0772
P 92-0774 P 92-0776 P 92-0777 P 92-0787
P 92-0793 P 92-0794 P 92-0804 P 92-0808
P 92-0809 P 92-0810 P 92-0811 P 92-0812
P 92-0813 P 92-0830 P 92-0831 P 92-0845
P 92-0854 P 92-0857 P 92-0858 P 92-0884
P 92-0886 P 92-0887 P 92-0913 P 92-0918
P 92-0919 P 92-0976 P 92-0988 P 92-0989
P 92-0998 P 92-1003

III. 125 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the Inventory).

PMN No.

P 87-1572 P 89-0536 P 89-0963 P 90-0237
P 90-0248 P 90-0249 P 90-1840 P 91-0358
P 91-0688 P 91-1328 P 91-1384 P 92-0034
P 92-0035 P 92-0036 P 92-0066 P 92-0067
P 92-0068 P 92-0156 P 92-0157 P 92-0159
P 92-0315 P 92-0341 P 92-0343 P 92-0344
P 92-0477 P 92-0478 P 92-0492 P 92-0505
P 92-0531 P 92-0532 P 92-0533 P 92-0582
P 92-0504 P 92-0623 P 92-0626 P 92-0627
P 92-0629 P 92-0630 P 92-0631 P 92-0632
P 92-0633 P 92-0634 P 92-0635 P 92-0636
P 92-0637 P 92-0638 P 92-0639 P 92-0640

P 92-0641
P 92-0645
P 92-0651
P 92-0656
P 92-0662
P 92-0666
P 92-0670

PMN No.

P 80-0018
P 85-0122
P 85-0565
P 85-0724
P 85-1331
P 86-0629
P 86-1492
P 87-0105
P 88-1269
P 88-1270
P 88-1460
P 88-2540
P 88-2616
P 89-0013
P 89-0422
P 89-0770

P 89-0868
P 89-1006
P 89-1062
P 90-0365
P 90-0607

P 90-0661
P 90-1279
P 91-0029
P 91-0043
P 91-0410
P 91-0562

P 91-0587
P 91-0654
P 91-0696
P 91-0948
P 91-0952
P 91-1110
P 91-1120
P 91-1122

P 91-1196
P 91-1239
P 91-1252
P 91-1253
P 91-1256
P 91-1335
P 91-1434
P 92-0038
P 92-0133
P 92-0142
P 92-0171
P 92-0188
P 92-0195
P 92-0229
P 92-0271
P 92-0284
P 92-0286
P 92-0288
P 92-0310
P 92-0316
P 92-0337
P 92-0345
P 92-0351
P 92-0359
P 92-0363
P 92-0383
P 92-0406
P 92-0410
P 92-0440
P 92-0452

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| P 92-0641 | P 92-0642 | P 92-0643 | P 92-0644 | P 92-0674 | P 92-0675 | P 92-0676 | P 92-0677 | P 92-0706 | P 92-0707 | P 92-0708 | P 92-0709 |
| P 92-0645 | P 92-0646 | P 92-0648 | P 92-0650 | P 92-0678 | P 92-0679 | P 92-0680 | P 92-0681 | P 92-0710 | P 92-0711 | P 92-0712 | P 92-0713 |
| P 92-0651 | P 92-0653 | P 92-0654 | P 92-0655 | P 92-0682 | P 92-0684 | P 92-0685 | P 92-0687 | P 92-0715 | P 92-0716 | P 92-0717 | Y 92-0138 |
| P 92-0656 | P 92-0657 | P 92-0658 | P 92-0661 | P 92-0688 | P 92-0689 | P 92-0692 | P 92-0693 | Y 92-0139 | Y 92-0140 | Y 92-0141 | Y 92-0142 |
| P 92-0662 | P 92-0663 | P 92-0664 | P 92-0665 | P 92-0694 | P 92-0695 | P 92-0696 | P 92-0697 | Y 92-0143 | Y 92-0144 | Y 92-0145 | Y 92-0146 |
| P 92-0666 | P 92-0667 | P 92-0668 | P 92-0669 | P 92-0698 | P 92-0699 | P 92-0700 | P 92-0701 | Y 92-0147 | | | |
| P 92-0670 | P 92-0671 | P 92-0672 | P 92-0673 | P 92-0702 | P 92-0703 | P 92-0704 | P 92-0705 | | | | |

## IV. 81 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

| PMN No. | Identity/Generic Name | Date of Commencement |
|---|---|---|
| P 90-0018 | 1-Pnitrobenzoyl-1(4-carboxypyridyl)hydrazide | January 7, 1992. |
| P 85-0122 | G Copolymer of vinyl amides and organic acid salt | April 3, 1992. |
| P 85-0565 | G Organo sulfonic acid, zinc salt | May 19, 1992. |
| P 85-0724 | G Ethoxylated thiol ether | January 27, 1987. |
| P 85-1331 | Naphthalene, 1,2,3,4-tetrahydro(1-phenylethyl) | June 19, 1987. |
| P 86-0829 | G Diazonium resin | May 22, 1992. |
| P 86-1492 | G Substituted alkyl peroxy-2-ethyl hexanoate | January 15, 1990. |
| P 87-0105 | G *N*-2-Hydroxy-3-substituted-propyl-*n*-*n*-dimethyl-3- substituted-propaninium chloride | April 27, 1992. |
| P 88-1269 | G 5,5',7-Indigotrisulfonic acid | August 30, 1991. |
| P 88-1270 | Propenedioic acid, neopotassium salt | February 4, 1989. |
| P 88-1460 | G 2,5-Dimercapto-1,3,4-thiadiazole reaction product | January 4, 1990. |
| P 88-2540 | G Nitrate esters | February 21, 1990. |
| P 88-2616 | G Saturated polyester | May 19, 1992. |
| P 89-0013 | G Thermoplastic saturated polyester | April 28, 1992. |
| P 89-0422 | G 2-Propenoic acid, 2-alkyl-alkyl ester | April 16, 1992. |
| P 89-0770 | G Oils, glyceridic, palm kernel (or coconut oil), reaction products with tetra-hydroxy branched alkane esters of tri-substituted benzene-propanoic acid. | February 1, 1990. |
| P 89-0868 | Higher alkyl carboxylic acid | May 9, 1992. |
| P 89-1006 | G Vinyl sulfonate, ammonium salt | May 19, 1992. |
| P 89-1062 | G Polyether amide | June 1, 1991. |
| P 90-0365 | G Aromatic diearboxylic acid triaromatic polyester | January 11, 1992. |
| P 90-0607 | G ((Dialkylcarbomonocyclic)amino)xanthylium salt, methyheteromonocyclic, phenylheteromonomocyclic formal polymer, alkanoic acid salt. | March 27, 1992. |
| P 90-0661 | G Ester of disubstituted monocarboxycycle | March 27, 1992. |
| P 90-1279 | G Alkyl ester | August 20, 1992. |
| P 91-0029 | G Disubstituted naphthlene carboxlic acid | May 19, 1992. |
| P 91-0043 | G Aromatic amine | April 16, 1992. |
| P 91-0410 | G Bis(armoatic dicarboxylic acid) | May 6, 1991. |
| P 91-0562 | 4,4'-Diphenylmethane diisocyanate; trimethylol propane; 1,3-benzenedicarboxylic acid, polymer with 2,2-dimethyl-1,3 propanediol and hexanedioic acid 1,3-benzenedicarboxylic acid, polymer with hexanedioic acid and 2,2'-oxo-bis(ethanol). | August 17, 1991. |
| P 91-0587 | G Substituted naphthalene disulfonic acid salt | April 17, 1992. |
| P 91-0654 | G Brominated polyimide | April 10, 1992. |
| P 91-0696 | G Alkyl acrylate | May 19, 1992. |
| P 91-0948 | G Complex phenyl aliphatic ester sulfonic acid | May 11, 1992. |
| P 91-0952 | G Vinyl chloride polymer with saturated and unsaturated esters of carboxylic acids and substituted alkene amide | April 11, 1992. |
| P 91-1110 | G Alkyl alicycle alcohol | May 4, 1992. |
| P 91-1120 | G Methylene bis(4-cyclohexylisocyanate), polymer with polyether polyols | March 19, 1992. |
| P 91-1122 | G ((Dialkylcarbomonocyclic)amino)xanthylium salt, methylhetero-monocycle, phenylheteromonocylic formal polymer, acid salt | December 9, 1991. |
| P 91-1196 | G Unsaturated polyester resin | March 29, 1992. |
| P 91-1239 | G Acetamide, 2-alkoxy-*N*-((chloro-cyano-substituted heteromonocycle)azo)-(dialkyamino)phenyl)- | May 18, 1992. |
| P 91-1252 | G Acrylic polyol | April 3, 1992. |
| P 91-1253 | G Acrylic polyol | April 3, 1992. |
| P 91-1256 | G Water dispersed polyether polyurethane | May 1, 1992. |
| P 91-1335 | G Diester of aryl acid and alkyl alcohol | March 25, 1992. |
| P 91-1434 | G Modified polystyrene | April 13, 1992. |
| P 92-0035 | G Polymetallocarbosilane | April 15, 1992. |
| P 92-0133 | Polyethylene-graft-poly(styrene-stat-2-hydroxyethyl methacrylate) | May 15, 1992. |
| P 92-0142 | Ethylene oxide; propylene oxide; glycerol; phenol,4,4'-(1-methylehylidene)bis-, polymer with chloromethyloxirane | May 9, 1992. |
| P 92-0171 | G Substituted TDI adduct | April 27, 1992. |
| P 92-0188 | G Propoxlated urethane acrylate | May 1, 1992. |
| P 92-0195 | G Silicate compound | March 30, 1992. |
| P 92-0229 | G Trimellitatewater | May 21, 1992. |
| P 92-0271 | G Halogenated alkyl nitrile | April 21, 1992. |
| P 92-0284 | G Urethane acrylic latex | April 2, 1992. |
| P 92-0286 | G Urethane acrylic latex | April 24, 1992. |
| P 92-0288 | G Thiolated divinyl benzene/styrene copolymer hydrogen ion form | May 7, 1992. |
| P 92-0310 | G Blocked aromatic polyisocyanate | April 27, 1992. |
| P 92-0316 | G Acrylate-acrylonitrile copolymer salt | May 15, 1992. |
| P 92-0337 | G Polyamine formaldehyde condensate | April 1, 1992. |
| P 92-0345 | G Polyurethane | May 19, 1992. |
| P 92-0351 | G Substituted polyhydroxy aromatic compound | March 31, 1992. |
| P 92-0359 | G Substituted polyhydroxy aromatic compound | April 2, 1992. |
| P 92-0363 | G Caprolactone dipentaerythritol polymer | April 28, 1992. |
| P 92-0383 | G Aliphatic phosphate ester salt | April 23, 1992. |
| P 92-0408 | G Azoic coupling product of a substituted aniline sulfonic acid and a substituted hydroxy naphthalenecarboxamide | April 16, 1992. |
| P 92-0410 | G Polyisobutylene amine | May 21, 1992. |
| P 92-0440 | G Polyurethane resin | May 29, 1992. |
| P 92-0452 | G Urea derivative | May 4, 1992. |

IV. 81 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

| PMN No. | Identity/Generic Name | Date of Commencement |
|---|---|---|
| P 92-0465 | G Diphenylsulfone-di-ether | May 27, 1992. |
| P 92-0466 | G Amine terminated polyether | May 21, 1992. |
| P 92-0502 | Lubricanting oils, used residues | May 7, 1992. |
| P 92-0506 | G Modified organoamine silicone | May 12, 1992. |
| P 92-0534 | G Acrylic polymer | May 20, 1992. |
| Y 90-0022 | G Modified acrylic polymer | January 20, 1990. |
| Y 90-0250 | G Acrylic polymer | May 12, 1992. |
| Y 90-0260 | G 1-Propene polymer with styrene | April 27, 1992. |
| Y 90-0292 | G Aliphatic polyurethane resin | May 7, 1992. |
| Y 91-0166 | G Polyester | May 7, 1992. |
| Y 91-0167 | Cellulose acetate propionate; succinic anhydride | April 21, 1992. |
| Y 92-0052 | G Polymer of styrene, alkyl acrylate and sulfoalky acrylate | April 29, 1992. |
| Y 92-0100 | G Styrene copolymer | May 18, 1992. |
| Y 92-0129 | G Nonvolatile acrylic copolymer | May 8, 1992. |
| Y 92-0130 | G Nonvolatile acrylic copolymer | May 19, 1992. |

V. 21 Premanufacture notices for which the period has been suspended.

PMN No.

P 90-0158 P 90-0159 P 90-1564 P 91-0826
P 92-0031 P 92-0032 P 92-0033 P 92-0492
P 92-0626 P 92-0649 P 92-0655 P 92-0656
P 92-0657 P 92-0658 P 92-0659 P 92-0660
P 92-0663 P 92-0666 P 92-0690 P 92-0691
P 92-0714

[FR Doc. 92-16641 Filed 7-14-92; 8:45 am]

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Wednesday
July 15, 1992

Part IV

# Department of Health and Human Services

**Administration on Aging**

**Grants for Supportive and Nutritional Services to Older Native Hawaiians; Notice**

VOL 57 ISS 136 JL 15 1992 UMI



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration on Aging**

**[Program Announcement 13655.892]**

**Grants for Supportive and Nutritional Services to Older Native Hawaiians**

**AGENCY:** Administration on Aging (AoA), OS, HHS.

**ACTION:** Announcement of availability of funds and opportunity to apply under the Older Americans Act, title VI, Grants for Native Americans, part B—Native Hawaiian Program.

**SUMMARY:** The Administration on Aging will accept applications for funding in Fiscal Year 1992 under the Older Americans Act, title VI, Grants for Native Americans, part B—Native Hawaiian Program.

**DATES:** August 31, 1992.

**ADDRESSES:** Applications must be sent to the Department of Health and Human Services, Administration on Aging, Region IX, Howard Williams, Acting RPD, 50 United Nations Plaza, Room 480, San Francisco, California 94102, (415) 556–6003, FAX (415) 556–3046).

**FOR FURTHER INFORMATION CONTACT:** M. Yvonne Jackson, Ph.D., Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Administration on Aging, Department of Health and Human Services, Wilbur J. Cohen Federal Building, room 4752, 330 Independence Avenue, SW., Washington, DC 20201, (202) 619–2957.

**SUPPLEMENTARY INFORMATION:**

**1. Background and Program Purpose**

The Administration on Aging is responsible for administering the Older Americans Act which provides for the delivery of supportive and nutritional services to older Americans who are 60 years of age or older. The Older Americans Act Amendments of 1987 established part B under title VI of the Act for the provision of supportive and nutrition services to Native Hawaiian elders who are 60 years of age or older.

The Act provides that a public or nonprofit private organization having the capacity to provide services for Native Hawaiians is eligible for assistance under title VI, part B if the organization will serve at least 50 Native Hawaiian individuals who have attained 60 years of age or older, and the organization demonstrates the ability to deliver supportive services and nutrition services.

For the purposes of title VI, part B, the term "Native Hawaiian" means an individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

Nutritional services and information and referral services are required by the Act. Nutritional services include congregate meals and home-delivered meals. Supportive services include information and referral, transportation, chore services, and other supportive services which contribute to the welfare of older Native Hawaiians. The information and referral services must be available for older Native Hawaiians living in the geographic boundaries of the title VI, part B service are proposed by the applicant organization and approved by the Commissioner.

Organizations receiving funds to provide services to older Native Hawaiians shall assure that all activities will be conducted in close coordination with the State Agency and the Area Agency on Aging.

**2. Eligibility and Funding Information**

A public or private nonprofit organization having the capacity to provide services for Native Hawaiians is eligible to receive a grant only if the organization will serve at least 50 Native Hawaiians who have attained 60 years of age or older, and the organization demonstrates the ability to deliver supportive and nutritional services.

**3. Available Funds**

Funds have been appropriated for Fiscal Year 1992 in the amount of $1,505,000. The amounts awarded will include funds for both direct and indirect costs.

Information is given below as an example of possible funding levels based on varying numbers of Hawaiian elders over age 60.

| Population range (number of older Native Hawaiians age 60 or older in a specified area of the State) | Possible award amount |
|---|---|
| 50 to 100 | $45,682 |
| 101 to 200 | 53,893 |
| 201 to 300 | 62,115 |
| 301 to 400 | 70,537 |
| 401 to 500 | 78,959 |
| 501 + | 87,381 |

In the event that a State agency, or a private nonprofit organization applying on behalf of the entire State with the recommendation of the State Agency on Aging, should make application under title VI, part B, the above examples would not apply. Rather the applicant agency would use the total number of older Hawaiians in developing their budget request. AoA would review such applications on a case by case basis.

For grants made in Fiscal Year 1992, the budget period will be one year, September 30, 1992 through September 29, 1993. The project period will be for four years, September 30, 1992 through September 29, 1996.

**4. Application Process**

Applicants should submit applications, describing their proposed plans for supportive and nutritional services for older Native Hawaiians for project period September 30, 1992 through September 29, 1996 as described in section 5 below, "Content of the Application." One signed original and one copy of the application including all attachments, must be submitted to the Department of Health and Human Services, Administration on Aging, Region IX, Howard Williams, Acting Regional Program Director, 50 United Nations Plaza, room 480, San Francisco, California 94102; (415) 556–6003, FAX (415) 556–3046.

**5. Content of the Application**

The application must meet the criteria in section 624(a) of the Older Americans Act, and title 45 of the Code of Federal Regulations, § 1328.19. The application may be presented in any format selected by the applicant. No standard Federal forms are required. The application must include the following information:

*A. Objectives and Need for Assistance*

This section must include objectives, expressed in measurable terms, which are related to the needs of the service population.

*B. Results or Benefits Expected*

The application should describe the results or benefits expected from each service proposed.

*C. Approach*

(1) Description and Method of Delivery of Each Service

(a) Nutrition–Nutrition services are required. There should be a description of the methods, facilities, and staff to be used in preparing, serving, and delivering meals, and the approximate number of persons to be served. Nutrition services must be substantially in compliance with the provisions of part C of title III. If no title VI, part B funds are to be used for nutrition services, the application must state how such services are provided in other ways, and how they are financed.

(b) Information and referral—Information and referral services are required. They must be available for older Native Hawaiians living in the title VI, part B service area. Include a description on how they will be provided. The approximate number of individuals to be served should be stated. If no title VI, part B funds are to be used for information and referral services, the application must state how much services are provided in other ways, and how they are financed.

(c) Other supportive services—The application must describe any other supportive services to be provided wholly or partly by title VI, part B funds. The approximate number of persons to be served by each service should be stated.

Legal assistance and ombudsman services may be provided, but are not required. However, if provided, they should be included under "Supportive Services."

If the applicant agency elects to provide legal services it must substantially comply with the requirements in title 45 of the Code of Federal Regulations § 1321.71, and all legal assistance providers must comply fully with the requirements in § 1321.71(d) through § 1321.71(k).

Transportation of persons to nutrition sites or other places is a part of "Supportive Services."

(d) Coordination with title III—The application should provide a description of how title VI and title III resources are to be coordinated within the title VI service area.

(2) Evaluation Criteria

The application must discuss the criteria to be used to evaluate the results and successes of the program, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in item B above are being achieved.

*D. Geographic Location*

The application must include a narrative description of the title VI, part B service area, and a map. The area to be served by title VI, part B must have clear geographic boundaries. There is no prohibition, however on its overlapping with areas served by title III.

*E. Additional Information*

(1) Program Assurances

Title VI, part B Program Assurances must be included in the application. The title VI, part B Program Assurances are those provisions identified in section 624(a) of the Older Americans Act, and in title 45 of the Code of Federal Regulations § 1328.19(d), issued August 31, 1988 (see appendix A). The public or nonprofit private organization must state that it agrees to abide by all the provisions for the entire project period being applied for in Fiscal Year 1992.

Copies of the title III and title VI current law and regulations, and of part 92, may be obtained from the Regional Program Director for the Administration on Aging.

(2) Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (c) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

(3) Identifying Information

Applications must identify the project director: Name, Title, Address including Zip Code, Telephone number, and if available, the FAX Number. The organization's EIN (Employer Identification Number) must also be included.

**6. Closing Date for Application**

To be eligible for consideration, applications must be received or postmarked on or before August 31, 1992. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark, or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

**7. Action on Applications**

Awards will be made by the Commissioner on Aging. Funding decisions will be announced as soon as possible.

Catalog of Federal Domestic Assistance Program # 93.655 Grants to Indian Tribes and Native Hawaiians. This Program Announcement is not subject to E.O. 12372.

Dated: July 9, 1992.

**Joyce T. Berry,**

*Commissioner on Aging.*

**Appendix A**

The Older Americans Act, section 624(a) provides that no grant may be made under this part unless the public or nonprofit private organization submits an application to the Commissioner which meets such criteria as the Commissioner may by regulation prescribe. Each such application shall—

(1) Provide that the organization will evaluate the need for supportive and nutrition services among older Native Hawaiians to be represented by the organization;

(2) Provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) Provide assurances that the organization will coordinate its activities with the State Agency on Aging;

(4) Provide that the organization will make such reports in such form and containing such information as the Commissioner may reasonably require, and comply with such requirements as the Commissioner may impose to ensure the correctness of such reports;

(5) Provide for periodic evaluation of activities and projects carried out under the application;

(6) Establish objectives, consistent with the purpose of this title, toward which activities described in the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the organization proposes to overcome such obstacles;

(7) Provide for establishing and maintaining information and referral services to assure that older Native Hawaiians to be served by the assistance made available under this part will have reasonably convenient access to such services;

(8) Provide a preference for Native Hawaiians 60 years of age and older for full or part-time staff positions wherever feasible;

(9) Provide that any legal or ombudsman services made available to older Native Hawaiians represented by the public or nonprofit private organization will be substantially in compliance with the provisions of title III relating to the furnishing of similar services; and

(10) Provide satisfactory assurance that the fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the public or nonprofit private organization, including any funds paid by the organization to a recipient of a grant or contract.

45 CFR 1328.19(d) requires that the application shall provide for assurances as prescribed by the Commissioner that:

(1) The eligible organization represents at least 50 older Native Hawaiians who have attained 60 years of age or older;

(2) The eligible organization shall conduct all activities on behalf of older Native Hawaiians in close coordination with the State Agency and Area Agency on Aging;

(3) The eligible organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(4) The eligible organization shall ensure that all services under this part are provided without use of any means tests;

(5) The eligible organization shall comply with all requirements set forth in § 1328.7 through § 1328.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under title III of the Act;

(7) Signature of the principal official of the eligible organization.

BILLING CODE 4130-01-M

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICE
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 US^C 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine

violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll' or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited n the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs, and,(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation or a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, of every grant officer or other designee on whose grant activity the convicted employee was working unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

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(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (Use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check___if there are workplaces on file that are not identified here.
Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human services, the, central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Signature_____Date_____

Title_____

Organization_____

DGMO Form #2 Revised May 1990



CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department of agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services" (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and

in all solicitations for lower tier covered actions.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSIONS - LOWER TIER COVERED TRANSACTIONS (To Be Supplied to lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions - Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Signature _____ Date _____
Title _____
Organization _____

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Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Organization

_____

Authorized Signature Title Date

Note: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001.

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Wednesday
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Part V

# Federal Election Commission

11 CFR Part 102
Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees: Final Rule

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**FEDERAL ELECTION COMMISSION**

**11 CFR Part 102**

**[Notice 1992-10]**

## Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees

**AGENCY:** Federal Election Commission.

**ACTION:** Final rule; transmittal of regulations to Congress.

**SUMMARY:** The Federal Election Commission is amending its regulations at 11 CFR part 102, to prohibit an unauthorized committee's use of a candidate's name in the title or other designation of any committee communication. Further information is provided in the supplementary information which follows:

**DATES:** Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, (202) 219-3690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing today the final text of revised regulations at 11 CFR 102.14. The new rules prohibit an unauthorized committee from using a candidate's name in the title or other designation of any committee communication.

The Federal Election Campaign Act ["FECA" or "the Act"] prohibits the use of a candidate's name in the name of an unauthorized political committee. 2 U.S.C. 432(e)(4); 11 CFR 102.14. In *Common Cause* v. *FEC*, 842 F.2d 436 (D.C. Cir. 1988), the United States Court of Appeals for the District of Columbia Circuit upheld the Commission's authority to interpret this prohibition as applying only to the name under which the committee registers with the Commission [the "registered name"], rejecting the argument that it had to be interpreted so as to also include the names of any fundraising projects sponsored by that committee.

Since that time, however, the Commission has become increasingly concerned over the possibility for confusion or abuse inherent in this interpretation. Accordingly, on April 15, 1992, the Commission published a Notice of Proposed Rulemaking requesting comments on amendments to the rules designed to minimize or eliminate this possibility. 57 FR 13058.

Section 438(d) of title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on July 10, 1992.

### Explanation and Justification

Questions surrounding the use of candidate names by unauthorized committees have been a focus of Commission concern for many years. The Common Cause decision grew out of the 1980 presidential election.

In that case, the Court of Appeals upheld the Commission's right to interpret 2 U.S.C. 432(e)(4) so as to permit use of candidates' names in the titles of unauthorized committee communications, since "[an] agency's construction, if reasonable, must ordinarily be honored." 842 F.2d at 439-40. However, the Court recognized that an interpretation imposing a more extensive ban on the use of candidate names by unauthorized committees was also reasonable.

In reaching its conclusion, the court examined the comprehensive text of the FECA, as well as the "sparse" legislative history of 2 U.S.C. 432(e)(4). 842 F.2d at 443. In addition, the court noted that the Commission has a responsibility to "allow the maximum of first amendment freedom of expression in political campaigns commensurate with Congress' regulatory authority." *Id.* at 448. In sum, it deferred to the Commission's judgment that, in trying to strike this balance, literal adherence to the language of 432(e)(4), coupled with the disclaimer requirement of 441d(a), struck the proper balance at that time. *Id.*

However, the situation today differs significantly from that of the early 1980's. In recent years the use of candidate names in the titles of projects or other unauthorized communications has increasingly become a device for unauthorized committees to raise funds or disseminate information. Under the former interpretation, a candidate who objected to the use of his or her name in this manner, who shared in none of the funds received in response to the solicitation, or who disagreed with the views expressed in the communication, was largely powerless to stop it. For example, in 1984 a United States Senator requested, and received, permission to obtain from Commission records the names and addresses of those who had responded to unauthorized solicitations made in his name, to inform these contributors that he had not authorized the solicitation. However, he could not suggest that contributors send donations instead to his campaign committee. See Advisory Opinion 1984-2.

For this reason, the Commission has become more concerned about the potential for confusion or abuse when an unauthorized committee uses a candidate's name in the title of a special fundraising project. A person who receives such a communication may not understand that it is made on behalf of the committee rather than the candidate whose name appears in the project's title. It is possible in these instances that potential donors think they are giving money to the candidate named in the project's title, when this is not the case.

The FECA requires, at 2 U.S.C. 441d(a)(3), that such communications include a disclaimer that clearly identifies who paid for the communication, and states whether it was authorized by any candidate or candidate's committee. However, this requirement is not, in and of itself, sufficient to deal with this situation.

For example, assume that the "XYZ Committee," a committee registered under that name with the Commission, establishes a special fundraising project called "Americans for Q." Although Q is a federal candidate, he has not authorized the XYZ Committee to use his name in this manner; and the committee plans to use contributions received from the special project for purposes other than the support of Q. Even if the solicitation contains the proper disclaimer, a potential donor might believe he or she was contributing to Q's campaign, when this was not so.

The NPRM proposed two amendments to Commission rules, to minimize this potential for confusion. Under the first, the political committee sponsoring the project would have been required to include in the required disclaimer the name of the committee paying for the project, as well as a statement whether the project has been authorized by the candidate whose name appeared in the title, or by any other candidate. As part of this proposal, the Commission also sought comments on whether disclaimer size and/or location requirements should be imposed. Second, a committee would not have been allowed to accept checks received in response to a special project solicitation, unless the checks were made payable to the registered name of the committee. Alternatively, the Commission sought comments on a

proposed ban on the use of a candidate's name in the project title of an unauthorized committee's special fundraising project, unless specifically permitted by the candidate.

The Commission received 14 comments in response to this Notice. Most came from party committees and political action committees ["PAC's"] that utilize this fundraising technique.

After reviewing these comments and the entire rulemaking record, the Commission has decided to adopt in its final rule a ban on the use of candidate names in the titles of all communications by unauthorized committees. The Commission believes the potential for confusion is equally great in all types of committee communications. While the focus of the Common Cause decision was on special fundraising projects, the decision equated solicitations with other committee communications for purposes of 2 U.S.C. 432(e)(4). A total ban is also more directly responsive to the problem at issue, and easier to monitor and enforce than the restrictions on check payees proposed in the NPRM. Accordingly, the Commission is today amending 11 CFR 102.14 to define "name" for the purpose of the 2 U.S.C. 432(e)(4) prohibition to include "any name under which a committee conducts activities, such as solicitations or other communications, including a special project name or other designation."

Comments that opposed any modifications to this standard argued that current disclaimer requirements are sufficient to minimize the potential for confusion in this area. However, an examination of the record in the current rulemaking, which contains information that was not available at the time the question originally arose, supports the conclusion that this balance has now shifted so as to justify a broader interpretation. For example, a comment from an authorized committee of a major party presidential candidate stated that an unauthorized project using that candidate's name raised over $10,000,000 during the 1988 presidential election cycle, despite the candidate's disavowal of and efforts to stop these activities. The same committee is raising money by means of a comparable project, using that same candidate's name, in the current election cycle.

This comment added that two other unauthorized projects by that same committee raised over $4,000,000 and nearly $400,000 in the name of two other presidential candidates in the 1988 election cycle. None of the named candidates received any of the money that was collected in their names. One of these candidates, a United States Senator, also submitted comments asking that the pertinent rules be strengthened.

In addition, a recent television documentary, a videotape of which was placed in the rulemakng record, detailed how an unauthorized Political Action Committee has, over several election cycles, established numerous projects whose titles included the names of federal candidates. The named candidates had no connection with the projects, had not authorized the use of their names in this manner, and received no money from the $9 million raised in response to these appeals. Program investigators found that elderly people are particularly vulnerable to being misled in this manner, since they may not notice or fail to fully comprehend the disclaimers included with the solicitations.

The commenters who opposed tightening the rules on use of candidates' names cited First Amendment concerns as the basis for their opposition. Some cited such cases as *Buckley* v. *Valeo*, 424 U.S. 1 (1976), and *FEC* v. *National Conservative Political Action Committee*, 4702 U.S. 480 (1985), to support their argument that independent expenditures enjoy full constitutional protection.

However, it is well established that First Amendment rights are not absolute when balanced against the government's interest in protecting the integrity of the electoral process. The cases cited involved total bans on independent expenditures, or certain types of independent expenditures. In contrast, this new rule is narrowly designed to further the legitimate governmental interest in minimizing the possibility of fraud and abuse in this situation. Committees are not barred from establishing specially designated projects: they are free to choose whatever project title they desire, as long as it does not include the name of a federal candidate. Also, committees may freely discuss any number of candidates, by name, in the body of a communication. The Commission notes, again, that the Court of Appeals has specifically stated that this new approach is a reasonable interpretation of the statutory language.

Some commenters argued that legislative action is necessary to effectuate this change, noting that the Commission has in the past included this issue in the legislative recommendations it submits to Congress each year. However, it is well established that courts will not rely on an agency's legislative recommendation to undermine the agency's construction of a statute as authorizing it to act. The Supreme Court has stated that holding an agency's legislative recommendation against it is disfavored, because "[p]ublic policy requires that agencies feel free to ask [Congress for] legislation," and this freedom to act would be chilled if such requests could later be held against them. *Wong Yang Sung* v. *McGrath*, 339 U.S. 33, 47 (1950); *see also, Warner-Lambert Co.* v. *FTC*, 562 F.2d 749, 758 n. 39 and cases cited therein (D.C. Cir. 1977), *cert. denied*, 435 U.S. 950 (1978).

The NPRM requested comments on whether party committees should be treated differently from other political committees in dealing with this situation, given party committees' interest in using the name of a candidate in a fundraising event for another candidate or as part of a general fundraising appeal. Most of the comments which responded on this point saw no justification for this disparate treatment, and the Commission agrees that the potential for confusion in this context is not significantly different whether a party or a non-party committee is involved. The final rule at § 102.14 thus does not distinguish between these two types of committees.

Finally, the NPRM proposed an amendment to 11 CFR 110.11(a)(1)(iv)(A), to bring that paragraph into conformance with 2 U.S.C. 441d(a)(3). This rule provides that, whenever an unauthorized committee solicits contributions through general public political advertising, the communication must include a disclaimer, "presented in a clear and conspicuous manner," that clearly identifies who paid for the solicitation. The Act, at 2 U.S.C. 441d, also requires the disclaimer to state whether the communication is authorized by any candidate or candidate's committee.

The proposed revision would have included this further statutory requirement in the text of 11 CFR 110.11(a)(1)(iv)(A); except that, because of their special circumstances, it would have not applied to national party committees. It was included in the Notice to help implement the expanded disclaimer requirements that were also proposed in the Notice.

Since these expanded disclaimer requirements have not been included in the final rule, the Commission has decided to reserve action on that aspect of the NPRM. A rulemaking which examines several aspects of the disclaimer requirements is currently in progress, and the Commission believes it is appropriate to incorporate this

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110.11(a)(1)(iv)(A) question into that rulemaking.

*Effective Date*

All of the comments which addressed this point asked that, if changes are made in this area, they not become effective until after the November 1992 elections. The Commission recognizes many committees will have largely planned their campaign communications for this election at the time the rules would ordinarily become effective. Accordingly, the Commission plans to include in its announcement of effective date a statement that the revisions contained in the Announcement will take effect on November 4, 1992.

**Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]**

These rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the requirements of the Act in these areas.

**List of Subjects in 11 CFR Part 102**

Campaign funds, Political candidates, Political committees and parties, Reporting requirements.

For the reasons set out in the preamble, subchapter A, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

## PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 continues to read as follows:

**Authority:** 2 U.S.C. 432, 433, 438(a)(8), 441d.

2. Section 102.14 is amended by revising paragraph (a) to read as follows:

**§ 102.14 Names of political committees (2 U.S.C. 432(e) (4) and (5)).**

(a) The name of each authorized committee shall include the name of the candidate who authorized such committee. Except as provided in paragraph (b) of this section, no unauthorized committee shall include the name of any candidate in its name. For purposes of this paragraph, "name" includes any name under which a committee conducts activities, such as solicitations or other communications, including a special project name or other designation.

* * * * *

Dated: July 10, 1992.

**Joan D. Aikens,**

*Chairman, Federal Election Commission.*

[FR Doc. 92-16587 Filed 7-14-92; 8:45 am]

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federal register

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July 15, 1992

Part VI

# Department of Health and Human Services

**Food and Drug Administration**

**Food and Drug Industry Exchange Meetings; Foods Derived From New Plant Varieties: Notice**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**[Docket No. 92N-0139]**

## Food and Drug Industry Exchange Meetings on a Policy Statement on Foods Derived From New Plant Varieties; Notice of Public Meetings

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Food and Drug Administration (FDA) will hold two industry exchange meetings. These meetings will provide a forum to discuss a new agency policy statement on foods derived from new plant varieties, including plants developed by recombinant deoxyribonucleic acid (DNA) techniques. This policy statement, which was published in the Federal Register of May 29, 1992 (57 FR 22984), was a clarification of FDA's interpretation of the Federal Food, Drug, and Cosmetic Act with respect to new technologies to produce foods and reflected FDA's current judgment based on new plant varieties now under development in agricultural research. This policy statement was issued to ensure that relevant scientific, safety, and regulatory issues are resolved prior to the introduction of such products into the marketplace.

**DATES:** The industry exchange meetings will be held on Tuesday, July 21, 1992, and Thursday, July 23, 1992, from 8:30 a.m. to 12:00 m.

**ADDRESSES:** The industry exchange meetings will be held at the following locations:

July 21, 1992: Hotel Sofitel, 5550 North River Rd., Rosemont, IL 60018.

July 23, 1992: Hubert H. Humphrey Bldg. Auditorium, 200 Independence Ave. SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Nathaniel L. Geary, Office of Small Business, Scientific, and Trade Affairs (HF-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6776.

Those persons interested in attending these meetings should call the contact person listed above to preregister. Early registration is suggested because meeting space is limited.

**SUPPLEMENTARY INFORMATION:** FDA is holding two industry exchange meetings to discuss the policy statement on foods derived from new plant varieties, including plants developed by DNA techniques. This policy statement was published in the Federal Register of May 29, 1992 (57 FR 22984), and it was issued to ensure that relevant scientific, safety, and regulatory issues are resolved prior to the introduction of such products into the marketplace.

Dated: July 13, 1992.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 92-16817 Filed 7-13-92; 8:45 am]

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**H.J. Res. 459/P.L. 102–319**
Designating the week beginning July 26, 1992 as "Lyme Disease Awareness Week". (July 8, 1992; 106 Stat. 319; 2 pages) Price: $1.00

**S. 1254/P.L. 102–320**
To increase the authorized acreage limit for the Assateague Island National Seashore on the Maryland mainland, and for other purposes. (July 10, 1992; 106 Stat. 321; 2 pages) Price: $1.00

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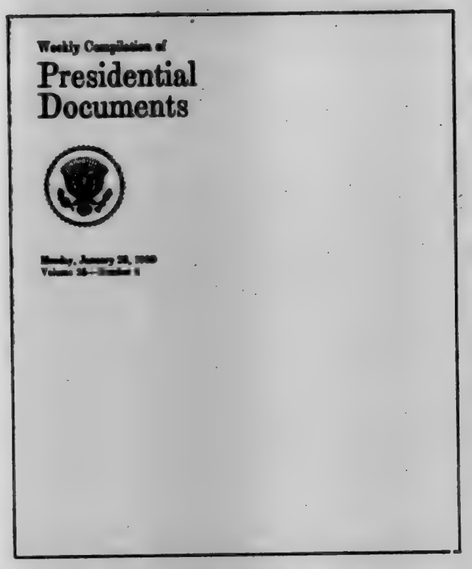


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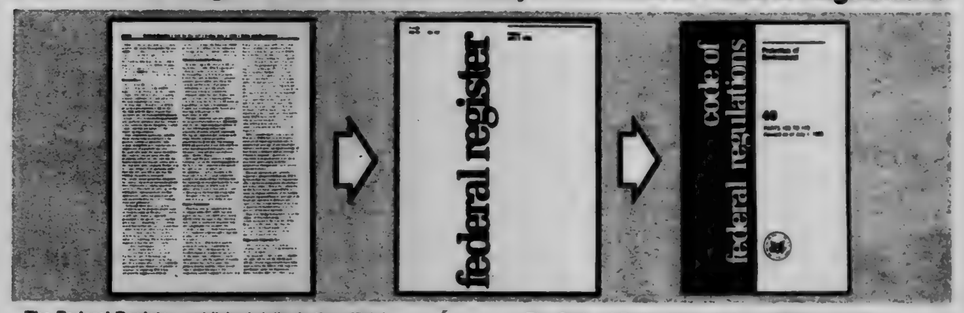


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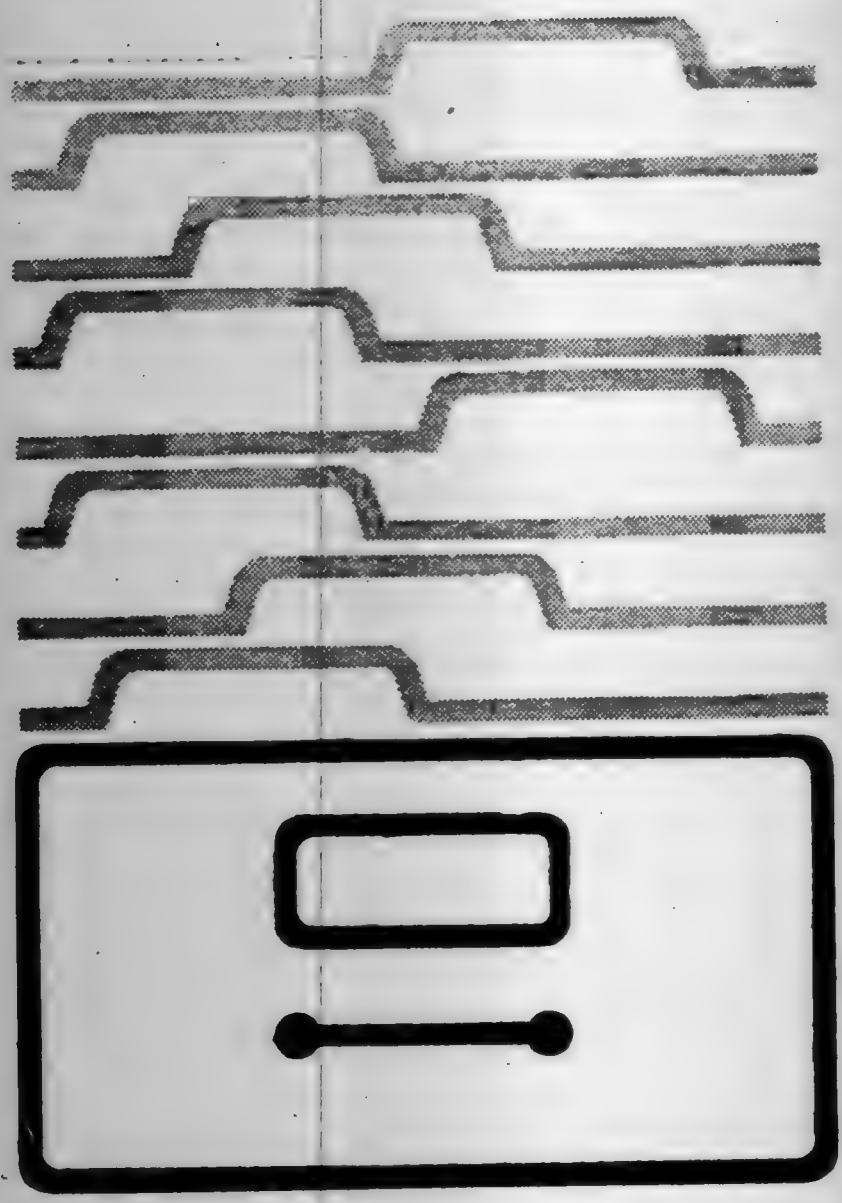

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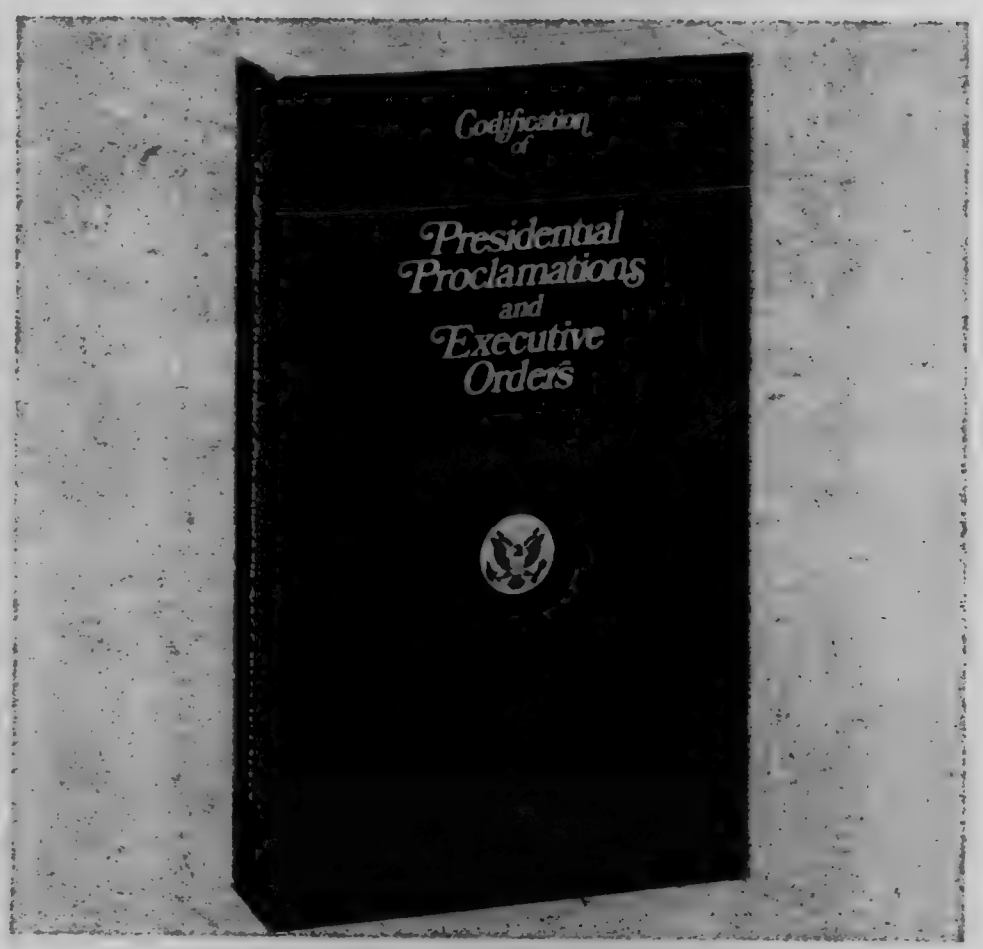


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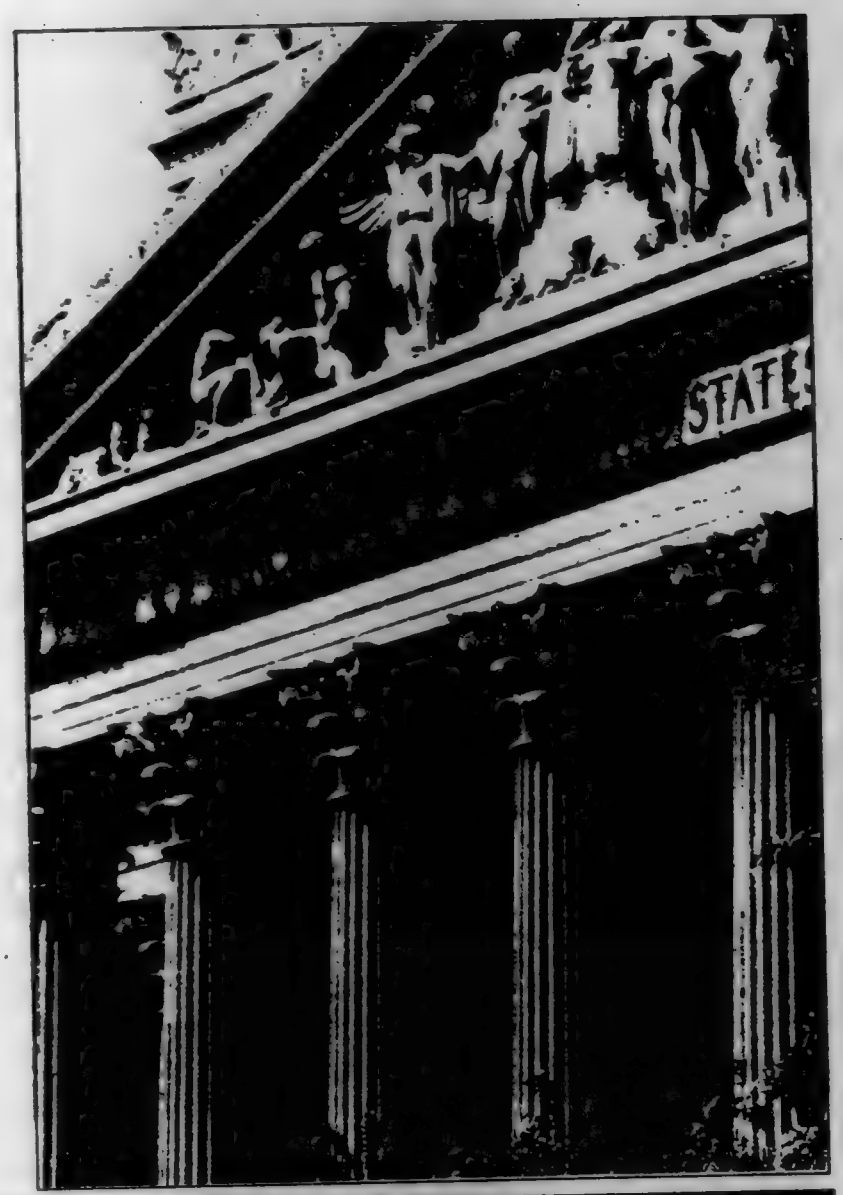


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# Rules and Regulations

Federal Register
Vol. 57, No. 137
Thursday, July 16, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 77**

**[Docket No. 92-066-1]**

## Tuberculosis in Cattle and Bison; State Designations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by lowering the designation of New York from an accredited-free State to a modified accredited State. We have determined that New York no longer meets the criteria for designation as an accredited-free State but meets the criteria for designation as a modified accredited State. This change is necessary to prevent the spread of tuberculosis in cattle and bison.

**DATES:** Interim rule effective July 16, 1992. Consideration will be given only to comments received on or before September 14, 1992.

**ADDRESSES:** To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782. Please state that your comments refer to Docket No. 92-066-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald A. Stenseng, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8715.

**SUPPLEMENTARY INFORMATION:**

### Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *mycobacterium bovis*. The tuberculosis regulations contained in 9 CFR part 77 (referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if those cattle or bison are moved from jurisdictions designated as accredited-free States or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations via incorporation by reference.

An accredited-free State, as defined in § 77.1 of the regulations, is a State that has had no findings of tuberculosis in any cattle or bison in the State for at least 5 years. The State must also comply with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited-free States. If tuberculosis is detected in any cattle or bison in the State, the State's accredited-free status is suspended; detection of tuberculosis in two or more herds in the State within 48 months will result in the revocation of the State's accredited-free status.

Before publication of the interim rule, New York was designated in § 77.1 of the regulations as an accredited-free State. However, because tuberculosis has recently been confirmed in two herds within the State, the Administrator has determined that New York no longer meets the criteria for designation as an accredited-free State, but instead meets the criteria for designation as a modified accredited State. Therefore, we are amending the regulations by removing New York from the list of accredited-free States in § 77.1 and adding it to the list of modified accredited States in that section.

### Miscellaneous

We are also amending § 77.1 of the regulations by revising the footnote to the definition for "Uniform Methods and Rules—Bovine Tuberculosis Eradication" to reflect the current APHIS organization.

In addition to the changes set forth above, we are correcting two typographical errors in the regulations.

### Immediate Action

Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. It is necessary to change the regulations so that they accurately reflect the current tuberculosis status of New York as a modified accredited State. This will provide prospective cattle and bison buyers with accurate and up-to-date information.

Because prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register** including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on

competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

New York has approximately 21,500 herds containing 1,555,000 cattle and bison. The marketability of cattle and bison from New York may be affected by this change in the State's status because some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. However, it has been our experience that lowering a State's designation from accredited-free to modified accredited status does not significantly affect interstate sales of cattle and bison. Consequently, we have determined that this action will not have a significant effect on marketing patterns in New York and will, therefore, not have a significant effect on those persons affected by this action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

**Paperwork Reduction Act**

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 9 CFR Part 77**

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR part 77 as follows:

## PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 77.1 [Amended]**

2. In § 77.1, the definition for "Accredited-free state," paragraph (1)(i), first sentence, the word "or" immediately before the word "tuberculosis" is removed and the word "of" is added in its place.

3. In § 77.1, the definition for "Accredited-free state," paragraph (2) is amended by removing "New York,".

4. In § 77.1, the definition for "Modified accredited state," paragraph (2) is amended by adding "New York," immediately before "North Carolina,".

5. In § 77.1, the definition for "Person," the term "com- pany," is corrected to read "company,".

6. In § 77.1, the definition for "Uniform Methods and Rules—Bovine Tuberculosis Eradication," footnote 1 is revised to read as follows:

[1] Copies may be obtained from the Administrator, c/o Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Done in Washington, DC, this 10th day of July 1992.

**Robert Melland,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92–16673 Filed 7–15–92; 8:45 am]

BILLING CODE 3410-34-M

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**9 CFR Part 78**

**[Docket No. 92–104–1]**

## Brucellosis in Cattle; State and Area Classifications

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Louisiana from Class B to Class A. We have determined that Louisiana now meets the standards for Class A status. This action relieves certain restrictions on the interstate movement of cattle from Louisiana.

**DATES:** Interim rule effective July 10, 1992. Consideration will be given only to comments received on or before September 14, 1992.

**ADDRESSES:** To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 92–104–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4918.

**SUPPLEMENTARY INFORMATION:**

**Background**

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail maintaining (1) a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughter establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds,

participation of all slaughtering establishment in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

Before the effective date of this interim rule, Louisiana was classified as a Class B State because of its herd infection rate and its MCI reactor prevalence rate.

To attain and maintain Class A status, a State or area must (1) not exceed a cattle herd infection rate, due to field strain *Brucella abortus*, of 0.25 percent, or 2.5 herds per 1,000, based on the number of reactors found within the State or area during any 12 consecutive months, except in States with 10,000 or fewer herds; (2) maintain for 12 consecutive months an MCI reactor prevalence rate not to exceed 0.10 percent, or one reactor per 1,000 cattle tested; (3) have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd; and (4) maintain the specified surveillance system.

After reviewing its brucellosis program records, we have concluded that the State of Louisiana meets the standards for Class A status. Therefore, we are removing Louisiana from the list of Class B States in § 78.41(c) and adding it to the list of Class A States in § 78.41(b). This action relieves certain restrictions on moving cattle interstate from Louisiana.

**Immediate Action**

Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause to publish this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Louisiana.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Louisiana from Class B to Class A will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from Louisiana. However, cattle from certified brucellosis-free herds moving interstate are not affected by this change.

There are approximately 21,500 cattle herds in Louisiana that could potentially be affected by this rule change. We estimate that 98 percent of these herds are owned by small entities. If the total cost of testing were distributed equally among all herds in Louisiana, this change in classification would save less than $18 per herd. Therefore, we believe that changing Louisiana's brucellosis status will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. [See 7 CFR part 3015, subpart V.]

**Executive Order 12778**

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

**Paperwork Reduction Act**

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 9 CFR Part 78**

Animal diseases, Bison Brucellosis, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

## PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

**Authority:** 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 78.41 [Amended]**

2. Paragraph (b) § 78.41 is amended by adding "Louisiana," immediately after "Kentucky,".

3. Paragraph (c) of § 78.41 is amended by removing "Louisiana,".

Done in Washington, DC, this 10th day of July 1992.

**Robert Melland,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92–16872 Filed 7–15–92; 8:45 am]

BILLING CODE 3410-34-M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 91–ASW–19; Amendment 39–8231; AD 92–09–06]**

### Airworthiness Directives; Bell Helicopter Textron, Inc., Model 214B and 214B–1 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is

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applicable to Bell Model 214B and 214B-1 helicopters. This action establishes a mandatory retirement life for the main transmission upper planetary carrier and requires the use of special life reduction factors for operators using these aircraft for external load operations. This amendment is prompted by retesting and analysis by the manufacturer. The actions specified in this AD are intended to prevent fatigue failure of the upper planetary carrier which, in turn, could result in failure of the main transmission and loss of the helicopter.

**DATES:** Effective August 13, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 13, 1992.

Comments for inclusion in the Rules Docket must be received August 31, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, Office of the Assistant Chief Council, Attention: Rules Docket No. 91-ASW-19, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Forth Worth, Texas 76101, Attention: Customer Support. This information may be examined at the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Scott A. Horn, FAA, Rotorcraft Certification Office, ASW-170, Fort Worth, Texas 76193-0170, telephone (817) 624-5177; fax (817) 740-3394.

**SUPPLEMENTARY INFORMATION:** Bell Helicopter Textron has recently completed additional testing and analysis on the retirement life of the main transmission upper planetary carrier (upper planetary carrier) installed in Bell Model 214B and 214B-1 helicopters. As a result, a 17,000 hour mandatory (fatigue) retirement life on the main transmission upper planetary carrier is being established. The tests and analysis revealed that this component is sensitive to power change events. The power change events of concern are those associated with ground-air-ground (GAG) cycles, repeated heavy lift (RHL) cycles, or similar operations involving a number of high power changes. Examples of RHL power change events are water dropping from buckets or belly tanks (fire fighting), tree logging, spraying, or other operations where external cargo is transferred at a high number of events per flight hour. Since the 17,000 hour mandatory retirement life is based on operations that result in up to four GAG cycles per hour, those helicopters performing high frequency RHL operations must adjust the actual upper planetary carrier time in service by factoring this time to obtain an equivalent time in service. The establishment of a mandatory retirement life is needed to prevent fatigue cracks, and possible failure of the upper planetary carrier, which could result in the loss of the helicopter.

Since this condition described is likely to exist or develop on other helicopters of the same type design, this AD is being issued to prevent possible fatigue failure of the upper planetary carrier, which could result in failure of the main transmission. This AD establishes a 17,000 hour mandatory retirement life on the upper planetary carrier and requires factoring the actual upper planetary carrier time in service to obtain reduced equivalent time in service when performing RHL operations. The inspections and replacements required are to be accomplished in accordance with the service bulletin described in this AD.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, for examination by interested persons. A report summarizing each FAA-public contact, concerned with substance of the proposed AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-ASW-19." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**AD 92-09-06 Bell Helicopter Textron, Inc. (BHTI):** Amendment 39-8231. Docket No. 91-ASW-19.

*Applicability:* All Model 214B and 214B-1 helicopters, certificated in any category.

*Compliance:* Required as indicated, unless already accomplished.

To prevent possible fatigue failure of the upper planetary carrier, part number (P/N) 214-040-077-007 and -101, which could result in failure of the transmission and subsequent loss of the helicopter, accomplish the following:

(a) Within the next 25 hours' time in service after the effective date of this AD, accomplish the following:

(1) Create a component history card for the upper planetary carrier, P/N's 214-040-077-007 and -101.

(2) Determine the equivalent service life of the upper planetary carrier in accordance with BHTI Alert Service Bulletin 214-91-45, dated August 1, 1991.

(3) Determine if a magnetic particle inspection (MPI) has been performed on the upper planetary carrier and the number of hours' time in service since the last inspection.

(4) If there is no record of an MPI on the upper planetary carrier, or, if more than 2,500 hours' time in service has elapsed since the last inspection, remove and inspect the carrier for cracks using an MPI or equivalent method before further flight.

(5) Replace any cracked upper planetary carrier before further flight.

(b) Thereafter, conduct the MPI at intervals not to exceed 2,500 hours' time in service from the last inspection until an equivalent service life of 17,000 hours' time in service is reached.

(c) Replace all upper planetary carriers at or before attaining an equivalent service life of 17,000 hours' time in service.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Rotorcraft Certification Office.

(f) The inspections and replacements required by this AD shall be done in accordance with Bell Helicopter Textron, Inc., Alert Service Bulletin 214-91-45, dated August 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, attention: Customer Support. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment becomes effective on August 13, 1992.

Issued in Fort Worth, Texas, on April 6, 1992.

**Henry A. Armstrong,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 92-16754 Filed 7-15-92; 8:45 am]

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**14 CFR Part 39**

**[Docket No. 92-NM-29-AD; Amendment 39-8269; AD 92-14-07]**

## Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with General Electric CF6-80C2 Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections for damage to the engine fire extinguishing tubes located in the number two and number three engine struts, and replacement or repair, if necessary, of the tubes and/or tube support clamps, and reorienting the clamp. This amendment will expand the number of effected airplanes and require a modification that will constitute terminating action for the currently required inspections. This amendment is prompted by multiple reports of support clamps in the number two and three engine struts chafing a hole in the engine fire extinguishing tubes. The actions specified by this AD are intended to prevent inadequate fire extinguishing agent concentration levels within the engine fire zone following engine fire system discharge.

**DATES:** Effective August 20, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 20, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Michael Collins, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2689; fax (206) 227-1181. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91-08-06, Amendment 39-6960 (56 FR 14303, April 9, 1991), which is applicable to Model 747 series airplanes, was published in the **Federal Register** on March 25, 1992 (57 FR 10301). The action proposed to expand the number of affected airplanes and require a modification that will constitute terminating action for the currently required inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 69 Boeing Model 747 series airplanes of the affected design in the worldwide fleet, including 16 additional airplanes included in this required AD action. Currently, there are no Model 747 series airplanes of the affected design on the U.S. registry. However, should an affected airplane be placed on the U.S. Register in the future, the FAA estimates that it will take approximately 24 work hours per airplane to accomplish the required actions, and that the average labor rate would be $55 per work hour. Required parts are available from the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD is estimated to be $1,320 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39-6960 (56 FR 14303, April 9, 1991), and by adding a new airworthiness directive (AD), amendment 39-8289, to read as follows:

**92-14-07. Boeing:** Amendment 39-8289. Docket 92-NM-29-AD. Supersedes AD 91-06-06, Amendment 39-6960.

*Applicability:* Model 747 series airplanes equipped with General Electric CF6-80C2 engines; as listed in Boeing Alert Service Bulletin 747-26A2179, dated February 28, 1991, and Revision 2, dated December 18, 1991; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent inadequate fire extinguishing agent concentration levels within the engine fire zone following engine fire system discharge, accomplish the following:

(a) For airplanes listed in Boeing Alert Service Bulletin 747-26A2179, dated February 28, 1991: Within 10 days after April 19, 1991 (the effective date of AD 91-06-06, Amendment 39-6960), accomplish the procedures specified in subparagraphs (a)(1), (a)(2), and (a)(3) of this AD in accordance with that service bulletin; or Revision 1, dated August 26, 1991; or Revision 2, dated December 18, 1991.

(1) Visually inspect the engine number two and number three fire extinguishing tubes and specified tube clamps within the engine strut.

(2) If damage is detected, prior to further flight, replace or repair the damaged engine fire extinguishing tubes, as applicable, in accordance with Boeing Alert Service Bulletin 747-26A2179, dated February 28, 1991; or Revision 1, dated August 26, 1991; or Revision 2, dated December 18, 1991. (The service bulletins specify three repair procedures, depending upon the amount of chafing damage to the tube.)

(3) Remove the specified tube clamp from the fixed strut structure (the clamp should remain attached to the tube), and reinstall the tube clamp to orient the legs away from any structure.

(b) For airplanes listed in Boeing Alert Service Bulletin 747-26A2179, Revision 2, dated December 18, 1991, and not subject to paragraph (a) of this AD: Within 20 days after the effective date of this AD, accomplish the procedures specified in subparagraphs (b)(1), (b)(2), and (b)(3) of this AD in accordance with "Part I—Inspection" of that service bulletin.

(1) Visually inspect the engine number two and number three fire extinguishing tubes and specified tube clamps within the engine strut.

(2) If damage is detected, prior to further flight, replace or repair the damage engine fire extinguishing tubes, as applicable, in accordance with the Boeing Alert Service Bulletin 747-26A2179, Revision 2, dated December 18, 1991. (The service bulletin specifies three repair procedures, depending upon the amount of chafing damage to the tube.)

(3) Remove the specified tube clamp from the fixed strut structure (the clamp should remain attached to the tube), and reinstall the tube clamp to orient the legs away from any structure.

(c) Repeat the inspection required by paragraph (a) or (b) of this AD at the interval specified in subparagraph (c)(1) or (c)(2) below, as applicable:

(1) For airplanes that have not used the extinguishing tube patch repair procedures to repair the tube in accordance with paragraph (a) or (b) of this AD: Repeat the inspection at intervals not to exceed 100 flight cycles or 400 hours time-in-service, whichever occurs first.

(2) For airplanes that have used the extinguishing tube patch repair procedures to repair the tube in accordance with paragraphs (a) or (b) of this AD: Repeat the inspection at intervals not to exceed 50 flight cycles or 175 hours time-in-service, whichever occurs first.

(d) For airplanes listed in Boeing Alert Service Bulletin 747-26A2179, Revision 2, dated December 18, 1991: Within 6 months after the effective date of this AD, accomplish the modification specified in "Part II—Terminating Action" of the service bulletin. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraphs (c) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections, repairs, replacement, and modification shall be done in accordance with Boeing Alert Service Bulletin 747-26A2179, dated February 28, 1991 (the date of this document appears only on page 1 of the document); or Boeing Alert Service Bulletin 747-26A2179, Revision 1, dated August 26, 1991) (the revision level and date of this document appear only on page 1 of the document); or Boeing Alert Service Bulletin 747-26A2179, Revision 2, dated December 18, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(h) This amendment becomes effective on August 20, 1992.

Issued in Renton, Washington, on June 17, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16751 Filed 7-15-92; 8:45 am]

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**14 CFR Part 39**

**[Docket No. 91-NM-275-AD; Amendment 39-8297; AD 92-15-04]**

## Airworthiness Directives; British Aerospace Model 125-800A Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model 125–800A series airplanes, that requires a modification of the main landing gear assembly, which consists of installing steel torque links and reducing axial clearances at torque link pins and knuckle joints. This amendment is prompted by recent reports of main landing gear vibration due to lack of stiffness in the caster mode. The actions specified by this AD are intended to prevent excessive wear and premature structural failure of the main landing gear.

**DATES:** Effective August 20, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 20, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington DC 20041–0414.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2113; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model 125–800A series airplanes was published in the Federal Register on January 23, 1992 (57 FR 2697). That action proposed to require a modification of the main landing gear assembly, which consists of installing steel torque links and reducing axial clearances at torque link pins and knuckle joints.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter considers that the proposed AD action is not warranted because the unsafe condition (main landing gear vibration) affects a relatively small number of airplanes, and the cause of the vibration has not yet been specifically identified. The commenter states that other operators have indicated that two airplanes, on which the proposed modification has already been installed, still experience main landing gear vibration. The commenter has accomplished the procedures described in six service bulletins issued by the manufacturer since December 1989 that relate to main landing gear issues, and has complied with one AD addressing main landing gear problems; however, the commenter's airplane has not yet experienced any main landing gear vibration. In addition, the commenter states that its airplane has accumulated less than 1,000 cycles, and suggests that the applicability of the proposed rule be changed to include variables, such as number of accumulated cycles, serial numbers, and operating conditions of the affected airplanes. The FAA does not concur. Available data have shown that the reason for the vibration occurrences is a lack of sufficient torsional stiffness in the main landing gear. Since all affected airplanes have nearly the same torsional stiffness of the main landing gear and the occurrence of vibrations is only somewhat effected by piloting technique, it is reasonable to assume that the vibrations may occur eventually on all affected airplanes. Installation of the steel torque links and reduction of the lateral free play in the torque link installation increases the needed torsional stiffness in the main landing gear. Although the increase may not be sufficient to eliminate main gear vibrations in all cases, installation of the steel torque links and reduction of torque link lateral free play has resulted in an immediate and significant improvement on airplanes currently experiencing the problem.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 137 airplanes of U.S. registry will be affected by this AD, that it will take approximately 17 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $128,095 or $935 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92–15–04. British Aerospace:** Amendment 39–8297. Docket 91–NM–275–AD.

*Applicability:* Model 125–800A series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent excessive wear and premature structural failure of the main landing gear, accomplish the following:

(a) Within 180 days after the effective date of this AD, install steel torque links on the right and left main landing gear, and reduce

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torque link and knuckle axial clearances, by installing British Aerospace Modification Number 253257SA in accordance with British Aerospace Service Bulletin SB.32-226-3257A, dated May 3, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation and modification shall be done in accordance with British Aerospace Service Bulletin SB.32-226-3257A, dated May 3, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington DC. 20041-0414. Copies may be inspected at the FAA,Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment becomes effective on August 20, 1992.

Issued in Renton, Washington, on June 24, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16753 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 92-NM-24-AD; Amendment 39-8288; AD 92-14-06]**

## Airworthiness Directives; British Aerospace Model Viscount 810 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model Viscount 810 series airplanes, that requires inspections of the lower skin panels of the elevator for skin quilting, corrosion, and delamination, and replacement, if necessary; application of water displacement fluid and anti-corrosion protective treatment to inner surfaces of the elevator lower skins; and rebalancing of the left and right elevators. This amendment is prompted by a report of delamination and corrosion found in a lower skin panel of the starboard elevator. The actions specified by this AD are intended to prevent loss of elevator structural integrity and reduced controllability of the airplane.

**DATES:** Effective August 20, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 20, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Model Viscount 810 series airplanes was published in the Federal Register on March 31, 1992 (57 FR 10836). That action proposed to require inspections of the lower skin panels of the elevator for skin quilting, corrosion, and delamination, and replacement, if necessary; application of water displacement fluid and anti-corrosion protective treatment to inner surfaces of the elevator lower skins; and rebalancing of the left and right elevators.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD is estimated to be $4,400. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92-14-06. British Aerospace:** Amendment 39-8288. Docket 92-NM-24-AD.

*Applicability:* Model Viscount 810 series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.



To prevent loss of elevator structural integrity and reduced controllability of the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, visually inspect the external surface of the left and right elevator lower skins for skin quilting, corrosion, and delamination, in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 196, dated March 1991.

(b) As a result of the inspection required by paragraph (a) of this AD, accomplish the procedures specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with British Aerospace Viscount Alert PTL 196, dated March 1991:

(1) If no discrepancies are detected, apply water displacing fluid and anti-corrosion protective treatment to the inner surfaces of the elevator lower skins, and rebalance the elevators.

(2) If any discrepancies are detected, prior to further flight, replace quilted, corroded, or delaminated skins with a single thickness skin; apply water displacing fluid and anti-corrosion protective treatment to the inner surfaces of the elevator lower skins; and rebalance the elevators.

(c) Repeat the visual inspection of the elevator skins required by paragraph (a) of this AD, and inspect the condition of the corrosion protective treatment inside the elevators, at intervals not to exceed 850 hours time-in-service or 12 months, whichever occurs first. Replace any quilted, corroded, or delaminated skins, and renew any deteriorated corrosion protective treatment, prior to further flight, in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 196, dated March 1991.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 196, dated March 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment becomes effective on August 20, 1992.

Issued in Renton, Washington, on June 17, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16757 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 92-NM-131-AD; Amendment 39-8298; AD 92-13-51]**

## Airworthiness Directives; CASA Model C-212 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) T92-13-51 that was sent previously to all known U.S. owners and operators of CASA Model C-212 series airplanes by individual telegrams. This AD requires repetitive functional tests of the backup blocking device associated with the power lever to ensure that it is operative. This amendment is prompted by tests that indicated that the blocking device was inoperable or operated only intermittently on some airplanes. The actions specified by this AD are intended to prevent failure of the backup blocking device, which could permit in-flight movement of the power levers below the flight idle position and lead to reduced controllability of the airplane.

**DATES:** Effective July 31, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-13-51, issued June 16, 1992, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 1992.

Comments for inclusion in the Rules Docket must be received on or before September 14, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-131-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The applicable service information may be obtained from Construcciones Aeronauticas S.A. (CASA), Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Hank Jenkins, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** On June 16, 1992, the FAA issued telegraphic AD T92-13-51, applicable to all CASA Model C-212 series airplanes, to require functional tests of the backup blocking device associated with the power levers to ensure that it is operative. Failure of the backup blocking device could permit in-flight movement of the power levers below the flight idle position and lead to reduced controllability of the airplane.

That action was prompted by the results of a preliminary investigation of a recent accident involving a CASA Model C-212 series airplane that had been modified in accordance with AD 91-03-10, Amendment 39-6883 (56 FR 3974, February 1, 1991). That AD requires modification of the propeller speed and pitch control system so that the control cannot be moved into reverse thrust while in flight. The modification involves a "backup blocking device" that is used in addition to the power lever triggers to prevent movement of the power levers to below the flight idle position during flight. Procedures for accomplishing this modification are described in CASA Service Bulletin 212-76-07, dated July 27, 1990.

Subsequent to the recent accident, the FAA requested one operator of CASA Model C-212 series airplanes to perform functional tests of the backup blocking devices installed in accordance with AD 91-03-10 on all eight airplanes in its fleet. As a result of these tests, the backup blocking devices on two of the operator's airplanes were found to be inoperative, and the backup device on one airplane operated only intermittently. Consequently, the FAA has determined that functional tests of these backup devices must be required to determine that they operate properly on other Model C-212 series airplanes.

If the flight idle stop gate triggers are lifted, failure of the backup blocking device could permit movement of the power levers below the flight idle position while the airplane is in flight.

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This situation could result in reduced controllability of the airplane.

This airplane model is manufactured in Spain and Indonesia and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since an unsafe condition (inoperative backup blocking devices) has been identified that is likely to exist or develop on other airplanes of this same type design registered in the United States, this airworthiness directive is issued to require repetitive functional tests of the backup blocking device to ensure that it is operative. If the devices are found to be inoperative, the operator must restore the backup blocking devices to the configuration described in the pertinent CASA service bulletin (described above) and re-test the system.

Additionally, operators are required to report results of functional tests to the FAA.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on June 16, 1992, to all known U.S. owners and operators of CASA Model C–212 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–131–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92–13–51. Construcciones Aeronauticas S.A. (CASA):** Amendment 39–8298. Docket No. 92–NM–131–AD.

Applicability: All Model C–212 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished within the last 300 hours time-in-service before the effective date of this AD.

To ensure proper operation of the backup blocking device, accomplish the following:

(a) Within 48 hours after the effective date of this AD, and thereafter at intervals not to exceed 300 hours time-in-service, accomplish the following:

(1) Jack up the airplane so that both main landing gear shock absorbers are fully extended.

(2) Move both power levers to the flight idle position or above.

(3) Without power applied to the auxiliary battery busbar and/or with circuit breaker KA55 open, lift the flight idle stop gate triggers and move both power levers into the ground idle position or below. It should be possible to freely move the power levers below the flight idle gate in this step of the test.

(4) Move the power levers to the flight idle position or above a second time.

(5) Apply power to the auxiliary battery busbar and ensure that circuit breaker KA55 is closed.

(6) Lift the flight idle stop gate triggers and attempt to move both power levers to ground idle position or below. It should be impossible to move the power levers below the flight idle position. If one or both power lever(s) can be moved below the flight idle position in this step of the test, the backup blocking device is not working properly. Prior to further flight, restore the backup blocking devices to the configuration described in CASA Service Bulletin 212–76–07, dated July 27, 1990; and re-test the system.

(b) Within 10 days after accomplishing the functional tests required by paragraph (a) of this AD, report the results of those tests, positive or negative, to the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; fax (206) 227–1320. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The restoration of the backup blocking devices to the proper configuration shall be done in accordance with CASA Service Bulletin 212-76-07, dated July 27, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas S.A. (CASA), Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(f) This amendment becomes effective on July 31, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-13-51, issued June 16, 1992, which contained the requirements of this amendment.

Issued in Renton, Washington, on June 24, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16756 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

**[Docket No. 92-CE-16-AD; Amendment 39-8316; AD 92-16-07]**

## Airworthiness Directives; Cessna Model 441 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Cessna Model 441 airplanes. This action requires repetitive inspections of the horizontal stabilizer forward attach bulkhead for cracks until the installation of a reinforcement modification; and replacement of the bulkhead and installation of this reinforcement modification if found cracked. The Federal Aviation Administration (FAA) has received reports of several of the affected airplanes developing cracks in the horizontal stabilizer forward attach bulkhead at Fuselage Station (FS) 387.22. The actions specified by this AD are intended to prevent loss of horizontal stabilizer front spar structural support caused by cracks in the fuselage bulkhead.

**DATES:** Effective August 30, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 30, 1992.

**ADDRESSES:** Service information that is applicable to this AD may be obtained from the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Abbott, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; Telephone (316) 946-4120; Facsimile (316) 946-4407.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain airplanes was published in the **Federal Register** on April 15, 1992 (57 FR 13062). The action proposed repetitive inspections of the horizontal stabilizer forward attach bulkhead for cracks until the installation of a reinforcement modification; and replacement of the bulkhead and installation of this reinforcement modification if found cracked. The actions would be done in accordance with the Accomplishment Instructions section of Cessna Attachment to Service Bulletin CQB91-1R1, and Cessna Service Kit SK441-103A, both dated June 21, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter, who is a pilot of one of the affected airplanes, does not object to the proposed rule and states that the reinforcement modification proposed by the AD has already been incorporated on the commenter's airplane.

No comments were received on the FAA's determination of the cost impact on the public.

After careful review of all available information including the comment discussed above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 362 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 34 workhours per airplane to accomplish the required inspections, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $676,940.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

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**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new AD:

**92-16-07 Cessna:** Amendment 39-8310; Docket No. 92-CE-16-AD.

*Applicability:* Model 441 airplanes (serial numbers 441-0001 through 441-0362), certificated in any category.

*Compliance:* Required initially upon the accumulation of 3,000 hours time-in-service (TIS) or within the next 200 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 2,000 hours TIS, unless already accomplished.

To prevent loss of horizontal stabilizer front spar structural support caused by cracks in the fuselage bulkhead, accomplish the following:

(a) Gain access to and dye penetrant inspect the horizontal stabilizer forward attach bulkhead at Fuselage Station (FS) 387.22 in accordance with the Accomplishment Instructions section of Cessna Attachment to Service Bulletin CQB91-1R1, dated June 21, 1991.

(b) If cracks are found as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace the horizontal stabilizer forward attach bulkhead at FS 387.22 and install Service Kit SK441-103A in accordance with the Accomplishment Instructions section of Cessna Service Kit SK441-103A, dated June 21, 1991.

(c) The installation of Service Kit SK441-103A in accordance with the Accomplishment Instructions section of Cessna Service Kit SK441-103A, dated June 21, 1991, is considered terminating action for the repetitive inspection requirements of this AD. Although not required, this installation may be accomplished at any time after the initial inspection.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(f) The inspections and possible installation required by this AD shall be done in accordance with Cessna Attachment to Service Bulletin CQB91-1R1, and Cessna Service Kit SK441-103A, both dated June 21, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

(g) This amendment (39-8310) becomes effective on August 30, 1992.

Issued in Kansas City, Missouri, on July 9, 1992.

**John R. Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16711 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 92-NM-32-AD; Amendment 39-8292; AD 92-14-10]**

## Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain de Havilland Model DHC-7 series airplanes, that currently requires repetitive functional checks of the ground spoiler control system to detect incorrect indications. This amendment requires modification of the ground spoiler control system. This amendment is prompted by an FAA determination that long-term continued operational safety should be assured by actual modification of the airplane rather than repetitive inspections. The actions specified by this AD are intended to prevent inadvertent deployment of the ground spoilers and loss of lift.

**DATES:** Effective August 20, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 20, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sol Maroof, Aerospace Engineer, Airframe Branch, ANE-172, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6220; fax (516) 791-9024.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 83-07-25, Amendment 39-4631 (48 FR 16036, April 14, 1983), which is applicable to certain de Havilland Model DHC-7 series airplanes, was published in the **Federal Register** on March 16, 1992 (57 FR 9077). The action proposed to require modification of the ground spoiler control system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in responded to the proposal or the FAA's determination of the cost to the public.

References to the amendment number, effective date, and **Federal Register** publication citation corresponding to AD 83-07-25 have been corrected in this final rule. The notice referred to the amendment number as "Amendment 39-4753;" however, the correct amendment number of AD 83-07-25 is "Amendment 39-4631." The notice referred to the effective date of AD 83-07-25 as "November 2, 1983;" however, the correct effective date of that AD is "April 25, 1983." The notice referred to the **Federal Register** publication citation of AD 83-07-25 as "(48 FR 48803, October 21, 1983);" however, the correct citation for that AD is "(48 FR 16036, April 14, 1983)."

Paragraph (f) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

The FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 42 airplanes of U.S. registry will be affected by this AD. The FAA has been advised that all 42 affected airplanes have been modified in accordance with the requirements of this AD. Therefore, currently, this AD action imposes no additional economic burden on any U.S. operator. However, should an unmodified airplane be imported and placed on the U.S. Register in the future, it will take approximately 2 work hours per airplane to accomplish the required actions, at an average labor rate of $55 per work hour. Required parts will be

supplied by the manufacturer to the operators at no cost. Based on these figures, the total cost impact of the AD is estimated to be $110 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39-4631 (48 FR 16036, April 14, 1983), and by adding a new airworthiness directive (AD), amendment 39-8292, to read as follows:

**92-14-10. De Havilland, Inc.:** Amendment 39-8292. Docket 92-NM-32-AD. Supersedes AD 83-07-25, Amendment 39-4631.

*Applicability:* Model DHC-7 series airplanes; as listed in de Havilland Service Bulletin 7-27-46, Revision B, dated December 17, 1982, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of the ground spoilers and loss of lift, accomplish the following:

(a) Within 15 hours time-in-service or 7 days after April 25, 1983 (the effective date of AD 83-07-25, Amendment 39-4631), whichever occurs first, perform a functional check of the ground spoiler control system, in accordance with the Accomplishment Instructions of de Havilland Alert Service Bulletin A7-27-46, Revision A, dated November 19, 1982; or de Havilland Service Bulletin 7-27-46, Revision B, dated December 17, 1982.

(b) If the check required by paragraph (a) of this AD shows incorrect indications, operate the airplane in accordance with the Airplane Flight Manual Minimum Equipment List Supplement No. 4 until the requirements of paragraph (d) of this AD are accomplished.

(c) Repeat the functional checks required by paragraph (a) of this AD at intervals not to exceed 15 hours time-in-service, or 7 days, whichever occurs first.

(d) Within 6 months after the effective date of this AD, accomplish either paragraph (d)(1) or (d)(2) of this AD, as applicable, in accordance with de Havilland Service Bulletin 7-27-46, Revision B, dated December 17, 1982:

(1) For airplanes having serial numbers 1 through 73, inclusive, that have been retrofitted with Modification No. 7/1732; and airplanes having serial numbers 74 through 83, inclusive, 85, 86, and 89: Incorporate Modification No. 7/2296, in accordance with the service bulletin.

(2) For airplanes having serial numbers 1 through 73, inclusive, that have not been retrofitted with Modification No. 7/1732; and airplanes having serial numbers 84, 87, 88, and 90 through 93, inclusive: Incorporate Modification No. 7/2294, in accordance with the service bulletin.

(e) Incorporation of Modification No. 7/2296 or 7/2294, as required by paragraph (d)(1) or (d)(2) of this AD, constitutes terminating action for the repetitive functional checks required by paragraph (c) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The functional checks and modifications shall be done in accordance with de Havilland Service Bulletin 7-27-46, Revision A, dated November 19, 1982; and de Havilland Service Bulletin 7-27-46, Revision B, dated December 17, 1982, which contains the following list of effective pages:

| Page No. | Revision level | Date |
|---|---|---|
| 1-4 | B | Dec. 17, 1982. |
| 5-7 | A | Nov. 19, 1982. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(i) This amendment becomes effective on August 20, 1992.

Issued in Renton, Washington, on June 17, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16755 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 91-NM-63-AD; Amendment 39-8291; AD 92-14-09]**

## Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 0100 series airplanes, that requires replacement of the currently-installed FMP with a modified FMP. This amendment is prompted by reports of changes in the FMP display values occurring without crew input, due to in-flight vibration that affects the rotary encoders. The actions specified by this AD are intended to prevent potentially inaccurate flight information (heading, altitude, and vertical speed displays) from being provided to the pilot and co-pilot.

**DATES:** Effective August 20, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 20, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained

from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F-28 Mark 0100 series airplanes was published in the **Federal Register** on April 17, 1992 (57 FR 13671). That action proposed to require replacement of the currently-installed FMP with one having "Modification 6" installed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Aside from these comments, the FAA has been advised that some affected operators already may have installed FMP panels containing Modification 6. Since the proposed AD action would have required the removal of the "currently-installed FMP" and replacement of it with an FMP having Modification 6 installed, the FAA considers that a situation may occur in which an operator might unnecessarily remove a correctly modified FMP panel (before checking to ascertain whether or not Modification 6 is already installed). For this reason, the final rule has been revised to clarify that operators must initially verify as to whether Modification 6 has been installed in the FMP that is currently installed on the airplane. Only those FMP panels without Modification 6 would have to be replaced in accordance with the AD.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $550. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92-14-09. Fokker:** Amendment 39-8291. Docket 91-NM-63-AD.

*Applicability:* Model F-28 Mark 0100 series airplanes, certificated in any category.

*Compliance:* Required within 180 days after the effective date of this AD, unless accomplished previously.

To prevent the pilot and co-pilot from receiving inaccurate flight information, accomplish the following:

(a) Inspect the flight mode panel (FMP), part number 622-7477-301 or 622-7477-401, to verify if Modification 6 has been installed.

(1) If Modification 6 has been installed, no further action is required.

(2) If Modification 6 has not been installed, remove the FMP and replace it with an FMP having Modification 6 installed in accordance with Fokker Service Bulletin SBF100-22-031, dated September 9, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal and replacement of the FMP shall be done in accordance with Fokker Service Bulletin SBF100-22-031, dated September 9, 1991. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the **Federal Register**, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment becomes effective on August 20, 1992.

Issued in Renton, Washington, on June 17, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16752 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-CE-05-AD; Amendment 39-8315; AD 92-16-06]

## Airworthiness Directives; Garrett AiRResearch Aircraft Starters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to all aircraft equipped with Garrett AirResearch aircraft starters. This action requires an inspection of owner/operator parts procurement records to determine if any aircraft starters have been procured from Classic Aviation, Inc., removal of any such installed aircraft starter, and replacement with an approved part. The Federal Aviation Administration (FAA) has received reports of improperly overhauled aircraft starters that were distributed by Classic Aviation being installed on the affected airplanes. The actions specified by this AD are intended to prevent in-service fatigue or structural failures of the aircraft starter, which could result in an in-flight fire or loss of control of the airplane.

**DATES:** Effective August 31, 1992.

**ADDRESSES:** Information that is applicable to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-6137; Facsimile (404) 991-3606.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to aircraft equipped with Garrett AirResearch aircraft starters was published in the **Federal Register** on February 27, 1992 (57 FR 6690). The action proposed (1) an inspection of the owner/operator parts procurement records to determine if any aircraft starters have been procured from Classic Aviation, Inc.; (2) removal of any such aircraft starter; and (3) replacement of any such starter with an approved part.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter agrees with the proposed rule. Two commenters believe that the proposed compliance time of 30 calendar days for the procurement record inspection/search is too short and one of these commenters recommends 90 calendar days as the compliance time for this inspection. The FAA concurs that the search of the aircraft procurement records could be somewhat time-consuming and has changed the compliance time for this inspection to 90 calendar days.

A commenter states that the 50-hour time-in-service (TIS) compliance time to remove any starter procured from Classic Aviation is too short. This commenter does not propose a specific time interval. The FAA does not concur and has determined that, in order to assure the safety of the affected aircraft, any starter procured from Classic Aviation should be removed and replaced within 50 hours TIS after the aircraft records inspection/search. It is noted that none of the airlines that commented object to the proposed removal time.

Three commenters believe the proposed rule would have a major operational and economic impact upon operators of Boeing Models 727 and 737 airplanes, and McDonnell Douglas Models DC-8, DC-9, and DC-10 airplanes. These commenters state that, if a large number of suspect starters are found as a result of the record search, then the normal complement of spare starters would not be adequate to replace the starters that are removed, which could cause grounding of a portion of the fleet. The FAA concurs that, in the situation described above, there could be a temporary grounding of a portion of the fleet; however, the FAA has determined that these unapproved parts are unsafe and, if not removed, the airworthiness of the affected aircraft is not assured. Therefore, the proposed AD remains unchanged as a result of these comments.

One of the above commenters suggests that the FAA should include a list of suspect starter serial numbers in the AD. As a result of this comment, the FAA is including a list of known suspect starter serial numbers; however, this listing may not include all suspect starters overhauled by Classic Aviation, Inc., and should not replace the thorough procurement records search.

Three commenters question whether the failure of the affected aircraft starters could result in an in-flight fire or loss of control of the aircraft as noted in the proposed rule. These commenters express that in-flight starter use is rare and, thus, exposure to in-flight failures is extremely remote. The FAA does not concur. It is the FAA's determination that (1) unauthorized repairs on the starter system components can lead to unpredictable failures that increase the risk of aircraft damage and personal injury; and (2) that an unauthorized repair of the starter turbine wheel could cause the wheel to break in one or more high-energy pieces with a potential damage to the aircraft outside of the starter system, which could cause a possible engine fire and potential loss of the airplane.

After careful review of all information related to this action, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for (1) the change in the compliance time of the procurement records inspection from 30 calendar days to 90 calendar days; (2) the addition of a NOTE that includes a known list of suspect starter serial numbers as an aide in the records procurement inspection; and (3) minor editorial corrections. The FAA has determined that these minor changes, additions, and corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The compliance time in paragraph (a) of the required AD is in calendar days to allow a grace period to inspect the procurement records. This grace period does not constitute FAA-approval that the part is safe for operation during this time.

The FAA has no way of determining how many airplanes may have these improperly overhauled aircraft starters installed. If an aircraft starter that was distributed by Classic Aviation, Inc., is found as a result of the proposed inspection of the procurement records as specified in paragraph (a) of the required AD, the installation of a new or approved overhauled aircraft starter will be required. The parts for this possible installation will cost approximately $7,500. The FAA estimates that it will take approximately .5 workhours to accomplish the possible installation at an average labor rate of $55. The possible replacement will cost approximately $7,527.50 (parts plus labor) per airplane. Because the FAA is unable to determine how many airplanes have these unapproved overhauled aircraft starters installed or how many have been distributed by Classic Aviation, Inc., a cost impact for all U.S. operators is not available.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance

with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new AD:

**92-16-06 Garrett AiResearch:** Amendment 39-8315; Docket No. 92-CE-05-AD.

*Applicability:* All aircraft equipped with Garrett AirResearch aircraft starters that are installed in, but not limited to, Boeing Models 707, 727, and 737 airplanes and McDonnell Douglas Models DC-8, DC-9, and DC-10 airplanes, certificated in any category.

*Compliance:* Required as indicated, unless already accomplished.

To prevent in-service fatigue or structural failures of the aircraft starter, which could result in an in-flight fire or loss of control of the airplane, accomplish the following:

**Note 1:** The 90-calendar day compliance time specified in paragraph (a) of this AD is a grace period and does not constitute FAA approval that the part is safe for operation during this time.

(a) Within the next 90 calendar days (see Note 1) after the effective date of this AD, inspect the owner/operator parts procurement records dated from January 1, 1987 to the effective date of this AD, and identify any of the following aircraft starter part numbers that have been distributed by Classic Aviation, Inc.:

355290-1-1
355740-1-1
355760-3-1
356364-1-1, 356364-8-2, and 356364-8-3
356564-3-1
383042-6-1
383152-1-2, 383152-16-1, and 383152-19-1
383222-1-1 and 383222-4-1
383342-1-1, 383342-3-1, and 383342-4-1
383350-1-1
383370-1-1, 383370-2-1, 383370-3-1, 383370-4-1, 383370-5-1, 383370-6-1, 383370-7-1, and 383370-8-1
383642-1-1
383780-1-1
384022-5-1 and 380422 (all dash numbers)

**Note 2:** The following serial numbers are known suspect starter serial numbers that have been procured from Classic Aviation, Inc.; however, this listing is provided for informational purposes only and may not include all suspect starters overhauled by Classic Aviation, Inc., and should not replace the thorough procurement records search:

89P1265 89P1281 89P1282 89P1425 89P1460
89P1476 89P1487 89P1488 90P1644 90P1503
90P1505 90P1507 90P1518 90P1522 90P1533
90P1551 90P1554 90P1561 90P1578 90P1624
90P1645 90P1646 90P1651 90P1664 90P1665
90P1670 90P1685 90P1694 90P1695 90P1696
90P1747 90P1760 90P1768 90P1802 90P1804
90P1837 90P1868 90P1874 90P1902 90P1907
90P1908 90P1927 90P1930 90P1934 90P1966
91P2034 91P2063 91P2191 91P2192 P12756
P10143CL P5244 P16601 P16726 P8633 40P475.

(b) If any of the starters referenced in paragraph (a) of this AD are identified as being distributed by Classic Aviation, Inc., within the next 50 hours time-in-service after the procurement records inspection required by paragraph (a) of this AD, replace any such installed aircraft starter with a new aircraft starter, or overhaul any such installed aircraft starter through an authorized repair station.

(c) This AD does not constitute FAA approval of Garrett AirResearch aircraft starters that have been distributed by Classic Aviation, Inc., and the affected aircraft is still subject to the maintenance, preventive maintenance, rebuilding, and alteration requirements of FAR 43.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) All persons affected by this directive may examine information that is applicable to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39-8315) becomes effective on August 31, 1992.

Issued in Kansas City, Missouri, on July 9, 1992.

**John R. Colomy,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16713 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 906**

**[Docket No. 920660-2160]**

**International Affairs**

**AGENCY:** National Weather Service, NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA is removing 15 CFR part 906 which describes NOAA's international training and foreign visitor's programs. The material in this part is informational rather than regulatory in nature and was inappropriately published as a regulation.

**EFFECTIVE DATE:** July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Julie Scanlon, Office of the General Counsel, National Oceanic and Atmospheric Administration, 1325 East West Highway, Room 18119, Silver Spring, MD 20910, (301) 713-0053.

**SUPPLEMENTARY INFORMATION:** 15 CFR part 906 describes NOAA's program to provide training to recipients of fellowships awarded by the United Nations and its specialized agencies, the Agency for International Development, the Military Assistance Program, and under bilateral agreements arranged with the Department of State and foreign governments. In addition, 15 CFR part 906 describes NOAA's foreign visitor's programs. The material in the part is informational rather than regulatory in nature. Accordingly, the part is being repealed. This repeal will not affect the programs.

NOAA finds for good cause that it is unnecessary to provide notice and comment and a delayed effective date under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, for this rule.

Because a notice of proposed rulemaking is not required by section

553 of the APA or by any other law, a regulatory flexibility analysis is not required pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603(a), 604(a).

**List of Subjects in 15 CFR Part 906**

Cultural exchange program, Science and technology.

Robert C. Landis,

*Deputy Administrator, National Weather Service.*

**PART 906—[REMOVED]**

For the reasons set forth in the preamble, 15 CFR part 906 is removed.

[FR Doc. 92-16758 Filed 7-15-92; 8:45 am]

BILLING CODE 3510-22-M

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**15 CFR Part 907**

**[Docket No. 920664-2164]**

**Environmental Affairs**

**AGENCY:** National Weather Service, NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA is removing 15 CFR part 907 which describes the type of environmental information gathered by NOAA, the types of documents NOAA publishes which contain such information, and how to purchase copies. The material in the part is informational rather than regulatory in nature and was inappropriately published as a regulation.

**EFFECTIVE DATE:** July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Julie Scanlon, Office of the General Counsel, National Oceanic and Atmospheric Administration, 1325 East West Highway, Room 18119, Silver Spring, MD 20910, (301) 713-0053.

**SUPPLEMENTARY INFORMATION:** 15 CFR part 907 describes the types of environmental information gathered by NOAA, the types of documents NOAA publishes which contain such information, and how to purchase copies. The material in this part is informational rather than regulatory in nature, and was inappropriately published as a regulation. Accordingly, the part is being removed.

NOAA finds for good cause that it is unnecessary to provide notice and comment and a delayed effective date under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, for this rule.

Because a notice of proposed rulemaking is not required by section 553 of the APA or by any other law, a regulatory flexibility analysis is not required pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603(a), 604(a).

**List of Subjects in 15 CFR Part 907**

Science and technology, Weather.

Robert C. Landis,

*Deputy Administrator, National Weather Service.*

**PART 907—[REMOVED]**

For the reasons set forth in the preamble, 15 CFR part 907 is removed.

[FR Doc. 92-16759 Filed 7-15-92; 8:45 am]

BILLING CODE 3510-22-M

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**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 240**

**[Release No. 34-30917; File No. S7-10-92]**

**RIN 3235-AF46**

**Amendment to Schedule 15G**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting an amendment to Schedule 15G under the Securities Exchange Act of 1934 ("Exchange Act") to include a brief description of a broker-dealer's obligations to its customers under Rule 15c2-6 in order to make the document more comprehensive. The Commission believes that the additional description is necessary because Rule 15c2-6 and the penny stock disclosure rules generally cover the same transactions in low-priced securities.

**EFFECTIVE DATE:** July 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert L. D. Colby, Chief Counsel, John M. Ramsay, Branch Chief, Belinda Blaine, Attorney, or Alexander Dill, Attorney, at (202) 504-2418, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-1, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The Commission today is adopting an amendment to Schedule 15G under the Exchange Act,[1] the risk disclosure document that broker-dealers are required to give to customers prior to effecting a transaction in a penny stock, by adding a brief description of broker-dealer responsibilities under Rule 15c2-6,[2] the Commission's "cold-calling" rule. On April 10, 1992, the Commission adopted Schedule 15G and Rule 3a51-1 and Rules 15g-1 through 15g-6,[3] which require broker-dealers to disclose certain specified information to their customers (Rule 3a51-1 and Rules 15g-1 through 15g-6 are referred to herein as the "Penny Stock Rules").[4] The Penny Stock Rules were issued pursuant to the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (the "Penny Stock Act").[5] The Schedule currently contains a discussion of broker-dealer obligations under the Penny Stock Rules.

The Commission believes that this additional description is necessary and appropriate in view of the fact that the Penny Stock Rules and Rule 15c2-6 generally cover the same transactions in low-priced securities.[6] Customers will benefit from a more comprehensive discussion in one document of the broker-dealer's duties with respect to these securities. The amendment to Schedule 15G is adopted as proposed.

**II. Comments**

In the Proposing Release, the Commission solicited comment on whether the language proposed to be added to Schedule 15G clearly communicated the obligations of a broker-dealer under Rule 15c2-6. Only the National Association of Securities Dealers, Inc. (the "NASD") submitted a comment to the Commission with respect to the proposed amendment to Schedule 15G. The NASD stated that the proposed revision to Schedule 15G is "clear and precise" and should "serve to

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[1] 17 CFR 240.15g-100.

[2] 17 CFR 240.15c2-6.

[3] 17 CFR 240.3a51-1, 240.15g-1—240.15g-6.

[4] Securities Exchange Act Release No. 30608 (April 28, 1992), 57 FR 18004 ("Penny Stock Adopting Release"). The Penny Stock Rules require broker-dealers, prior to effecting a transaction in a penny stock, to disclose to their customers certain information concerning the transaction and the penny stock market in general. Specifically, Rule 15g-2 requires broker-dealers to provide a risk disclosure document, as set forth in Schedule 15G; Rule 15g-3 requires disclosure of bid and ask quotations; Rules 15g-4 and 15g-5 require disclosure of any broker-dealer and associated person compensation in connection with the transaction; and Rule 15g-6 requires the provision of monthly account statements.

[5] Pub. L. 101-429, 104 Stat. 931 (1990). The Penny Stock Act was designed to address the lack of public information concerning penny stocks and problems of recidivism among promoters and other persons involved in penny stock offerings.

[6] On April 28, 1992, the Commission proposed for comment amendments to Rule 15c2-6 to conform its definitional and exemptive provisions with those of Rules 3a51-1 and 15g-1, respectively. Securities Exchange Act Release No. 30610 (April 28, 1992), 57 FR 18046 (the "Proposing Release"). The Commission anticipates that amendments to Rule 15c2-6 will be adopted soon. Because Schedule 15G becomes effective on July 15, 1992, the Commission believes that the addition to the Schedule described herein should be adopted now.

buttress strict compliance" with Rule 15c2–6.

### III. Description of the Amendment

Rule 15g–2 requires a broker-dealer that effects a transaction in a penny stock with or for the account of a customer to distribute to the customer, prior to effecting a transaction in a penny stock, a document describing the risks of investing in the penny stock market and other relevant information. The required risk disclosure document, as set forth in Schedule 15G, contains a brief description of a broker-dealer's obligations under the Penny Stock Rules. To make the document more comprehensive, Schedule 15G is being amended to include the following paragraph [7] describing the duties of a broker-dealer under Rule 15c2–6:

In addition to the items listed above, your brokerage firm must send to you:

• *A Written Statement of Your Financial Situation and Investment Goals.* In general, unless you have had an account with your brokerage firm for more than one year, or you have previously bought three different penny stocks from that firm, your brokerage firm must send you a written statement for you to sign that accurately describes your financial situation, your investment experience, and your investment goals, and that contains a statement of why your firm decided that penny stocks are a suitable investment for you. The firm also must get your written consent to buy the penny stock.

### IV. Conclusion

The Commission believes that the amendment to Schedule 15G furthers the purposes of investment protection under the Exchange Act and the Penny Stock Act.

Pursuant to section 4(c) of the Administrative Procedure Act,[8] publication of the amendment to Schedule 15G may not be made less than thirty days before its effective date, absent good cause. The effective date of Rule 15g–2 and Schedule 15G as originally adopted is July 15, 1992. To reduce the regulatory burden on broker-dealers of complying with additional forms, the Commission finds good cause that the amendment to Schedule 15G, as set forth in this release, shall become effective on July 15, 1992.

### V. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a) of the Exchange Act [9] requires that the Commission, in adopting rules under the Exchange Act, consider the anticompetitive effects of such rules, if any, and balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission is of the view that the amendment to Schedule 15G will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") pursuant to the requirements of the Regulatory Flexibility Act,[10] regarding the amendment. The FRFA indicates that the proposed amendment will not have any additional effect on small brokers or dealers or small issuers other than the effect described in the Regulatory Flexibility Analysis issued in connection with the adoption of Rule 15g–2 and Schedule 15G. A copy of the FRFA may be obtained from Alexander Dill, Attorney, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549, (202) 504–2418.

### List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

### VI. Statutory Basis and Text of Amendment

In accordance with the foregoing, the Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

2. By amending § 240.15g–100 to add to the section entitled "Your Rights," before the paragraph entitled *"Legal Remedies,"* the following paragraph:

**§ 240.15g–100 SCHEDULE 15G—Information to be included in the document distributed pursuant to 17 CFR 240.15g–2.**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, DC 20549**

*Schedule 15G*

* * * * *

**Your Rights**

* * * * *

• *A Written Statement of Your Financial Situation and Investment Goals.* In general, unless you have had an account with your brokerage firm for more than one year, or you have previously bought three different penny stocks from that firm, your brokerage firm must send you a written statement for you to sign that accurately describes your financial situation, your investment experience, and your investment goals, and that contains a statement of why your firm decided that penny stocks are a suitable investment for you. The firm also must get your written consent to buy the penny stock.

* * * * *

Dated: July 13, 1992.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–16865 Filed 7–15–92; 9:35 am]

BILLING CODE 8010–01–M

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## DEPARTMENT OF STATE

### Bureau of Consular Affairs

### 22 CFR Part 41

**[Public Notice 1657]**

### Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended; Subpart B—Classification of Nonimmigrants; Subpart F—Business and Media Visas

**ACTION:** Final rule.

**SUMMARY:** This final rule updates regulations in part 41 of title 22, Code of Federal Regulations, in order to add and/or revise existing regulations. This rule pertains to the documentation of certain nonimmigrant visa applicants as described in §§ 41.53, 41.54, 41.55, 41.56, and 41.57, and is mandated by statutory amendments to the Immigration and Nationality Act (INA), as amended.

In addition, this rule contains two sections which were inadvertently omitted from Interim Rule 1459. Section 41.11 contains new language exempting nonimmigrants described in INA 101(a)(15) (H)(i) and (L) from the presumption of being intending immigrants under the provisions of INA 214(b). Section 41.12 contains changes of

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[7] The paragraph is included in the section in Schedule 15G entitled "Your Rights."

[8] 5 U.S.C. 551 *et seq.*

[9] 15 U.S.C. 78w(a)(2).

[10] 5 U.S.C. 603.

an editorial or technical nature stemming from amendments to INA 101(a)(15).

Editorial changes have also been made to other sections in this rule.

**EFFECTIVE DATE:** October 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Stephen K. Fischel, Chief, Legislation and Regulations Division, 202–663–1204.

**SUPPLEMENTARY INFORMATION:** On August 19, 1991, the Department published interim rule 1459 at 56 FR 41068. That rule implemented changes to the INA, as amended by sections 205, 206, 207, and 208 of the Immigration Act of 1990, Public Law 101–649. Although sections 205 and 206 made significant changes to INA 101(a)(15)(H), temporary workers, and 101(a)(15)(L), intra company transferees, only modest changes were required to be made to the implementing regulations in §§ 41.53 and 41.54, as the statutory amendments focus on issues which must be addressed by the Immigration and Naturalization Service (INS) during the petition adjudication process. In regard to the new nonimmigrant visa classifications (the regulations at 22 CFR 41.55, "aliens with extraordinary ability"—INA 101(a)(15)(O), 22 CFR 41.56, "athletes, artists and entertainers"—INA 101(a)(15)(P), and 22 CFR 41.57 "international cultural exchange visitors"—INA 101(a)(15)(Q)), essentially the same language is used as in § 41.53 and § 41.54 as the allocation of responsibility is the same. The consular officer's responsibility for processing visa applications for a petition-based nonimmigrant visa classification is the same under each regulation, regardless of the requirements peculiar to each visa classification.

During the comment period the Department received only two comments regarding interim rule 1459, published on August 19, 1991.

**Analysis of Comments**

*Consular Discretionary Authority*

One commenter suggested that the language which is standard in all petition cases, immigrant and nonimmigrant, allows the consular officer too much discretion in denying visas. The regulatory language in question is "if the consular officer knows or has reason to believe that an alien applying for an H, L, O, P, or Q visa is not entitled to the classification as approved, then the consular officer shall suspend action in that case and return the petition to the approving office of the INS." The commenter proposes replacing "knows or has reason to believe" with "has definite knowledge or substantial reason to believe". The commenter considers the current language vague and suggests that the substitute language would more appropriately limit the consul's authority to the evaluation of the verity of the information provided INS in the petition and would not permit readjudication of the INS approved petition.

The Department understands the intent of the commenter but finds the language of the interim regulation adequate and the proposed language to be superfluous. The concepts of "knowing" and "reason to believe" are well established in the law and are frequently used in immigration law. Guidance in applying these standards is found, *inter alia*, (1) in 22 CFR 40.6 concerning INA 221(g), (2) in Volume 9 of the Foreign Affairs Manual (FAM), § 40.23 concerning INA 212(a)(2)(C) and, (3) in Volume 9 of the FAM, § 41.54 concerning INA 101(a)(15)(L).

The supplemental information to the interim rule explained fully the authority of consular officers in cases involving INS approved petitions and the officers' responsibility vis-a-vis such petitions. This explanation is consistently stated in instructions to consular officers, including the 9 FAM sections cited above. Consequently, the Department considers the language in the interim regulation to be adequate and appropriate. Thus, the interim language will be retained in this final rule.

The other commenter had three comments posed in the form of questions which are interrelated.

*Basis for Denial*

One comment, concerning § 41.53(d), queried the basis of denial of an H visa once a petition has been approved. As stated in the supplemental information to the interim rule, the consular officer has the responsibility to suspend action in a case and to return for reconsideration any approved petition if, in the course of visa processing, information comes to the officer's attention which provides him or her with knowledge or reason to believe that the applicant is not entitled to H visa classification. For instance, the consular officer could encounter facts inconsistent with those provided INS for petition adjudication and know or have reason to believe that the applicant is not entitled to H visa classification because of these facts. The consular officer's responsibility in such circumstances is to return the petition to INS for review.

*Immigrant Intent and Labor Attestation*

The commenter also questioned why immigrant intent was not made an element of the regulation and why no mention was made of labor attestation. The Department did not include the criteria of intent in the regulations concerning H visas as the statute imposes no affirmative responsibility on the consular officer to adjudicate intent. Indeed, Pub.L. 101–649 eliminated consideration of such intent from the consular officer's responsibilities. No reference was made to labor attestation in the regulation to § 41.53, because consular officers possess no adjudicative authority in the labor attestation process. Furthermore, as explained in the supplemental information published with the interim rule, the approval of a petition by INS constitutes prima facie evidence to the consular officer that the petition beneficiary has met all the requirements of the visa classification, including satisfaction of the labor condition requirement.

**Additional Amendments**

Due to an oversight, 22 CFR 41.11 was not included with the interim rule. Section 41.11 adds new language which exempts nonimmigrants described in INA 101(a)(15) (H)(i) or (L) from the presumption of being intending immigrants under the provisions of INA 214(b). In addition, 22 CFR 41.12, also not included, makes technical amendments to the classification symbols.

**Final Rule**

This final rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule does not require collection of information subject to the Paperwork Reduction Act.

**List of Subjects in 22 CFR Part 41**

Aliens, Artists and entertainers, Classification of nonimmigrants, Classification symbols.

Accordingly, part 41, Code of Federal Regulations, is amended to read as follows:

**PART 41—[AMENDED]**

1. The authority citation for part 41 is revised to read:

**Authority:** 8 U.S.C. 1104; Sec. 205(b), 206, 207, 208, 209, 104 Stat. 5025–5027, 8 U.S.C. 1101(a)(15).

2. Section 41.11, paragraph (b)(1), and § 41.12 are revised to read as follows:

**§ 41.11 Entitlement to nonimmigrant status.**

* * * * *

(b) *Aliens unable to establish nonimmigrant status.* (1) A nonimmigrant visa shall not be issued to an alien who has failed to overcome the presumption of immigrant status established by INA 214(b), except for an alien applying for a nonimmigrant visa under the provisions of INA 101(a)(15)(H)(i) or (L). An alien shall be considered to have established bona fide nonimmigrant status only if the consular officer is satisfied that his case falls within one of the nonimmigrant categories described in INA 101(a)(15) or is otherwise established by law or treaty.

* * * * *

**§ 41.12 Classification symbols.**

A visa issued to a nonimmigrant alien within one of the classes described in this section shall bear an appropriate visa symbol to show the classification of the alien. The symbol shall be inserted in the space provided in the visa stamp. The following visa symbols shall be used:

| Class | Section of law or treaty citation | Visa symbol |
|---|---|---|
| Ambassador, public minister, career diplomatic or consular officer, and members of immediate family. | 101(a)(15)(A)(i); 66 Stat. 167 | A–1. |
| Other foreign government official or employee, and members of immediate family. | 101(a)(15)(A)(ii); 66 Stat. 167 | A–2. |
| Attendant, servant, or personal employee of A–1 and A–2 classes, and members of immediate family. | 101(a)(15)(A)(iii); 66 Stat. 167 | A–3. |
| Temporary visitor for business | 101(a)(15)(B); 66 Stat. 167 | B–1. |
| Temporary visitor for pleasure | 101(a)(15)(B); 66 Stat. 167 | B–2. |
| Temporary visitor for business and pleasure | 101(a)(15)(B); 66 Stat. 167 | B–1 and B–2. |
| Alien in transit | 101(a)(15)(C); 66 Stat. 167 | C–1. |
| Alien in transit to United Nations Headquarters District under § 11.(3), (4), or (5) of the headquarters agreement with the United Nations. | 101(a)(15)(C); 66 Stat. 167 | C–2. |
| Foreign government official, members of immediate family, attendant, servant, or personal employee, in transit. | 212(d)(8); 66 Stat. 188 | C–3. |
| Crew member (ship or aircraft crew) and children | 101(a)(15)(D); 66 Stat. 167 | D |
| Treaty investor, spouse and children | 101(a)(15)(E)(i); and children | E–1. |
| Student (academic or language training program) | 101(a)(15)(E)(ii); 66 Stat. 168 | E–2. |
| Spouse and children of alien classified F–1 | 101(a)(15)(F)(i); 66 Stat. 168 75 Stat. 527 | F–1. |
| Principal resident representative of recognized foreign member government to international organization, representative's staff, and members of immediate family. | 101(a)(15)(F)(ii); 75 Stat. 527 | F–2. |
| Other representative of recognized foreign member government to international organization, and members of immediate family. | 101(a)(15)(G)(i); 66 Stat. 168 | G–1. |
| Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family. | 101(a)(15)(G)(ii); 66 Stat. 168 | G–2. |
| International organization officer or employee, and members of immediate family. | 101(a)(15)(G)(iii); 66 Stat. 168 | G–3. |
| Attendant, servant, or personal employee of G–1, G–2, G–3, and G–4 classes, and members of immediate family. | 101(a)(15)(G)(iv); 66 Stat. 168 | G–4. |
| Registered Nurse | 101(a)(15)(G)(v); 66 Stat. 168 | G–5. |
| Alien in specialty occupation (Profession) | 101(a)(15)(H)(i)(a); 102 Stat. 3909 | H–1A. |
| Temporary worker performing agricultural services unavailable in the U.S. (Petition filed on or after June 1, 1987). | 101(a)(15)(H)(i)(b); 104 Stat. 5020 | H–1B. |
| Temporary worker performing other services unavailable in the U.S. | 101(a)(15)(H)(ii)(a); 100 Stat. 3411 | H–2(A). |
| Trainee | 101(a)(15)(H)(ii)(b); 66 Stat. 168; 104 Stat. 5019 | H–2(B). |
| Spouse and children of alien classified H–1, H–2, or H–3 | 101(a)(15)(H)(iii); 66 Stat. 168; 84 Stat. 116 | H–3. |
| Representative of foreign information media, spouse and children | 101(a)(15)(H); 84 Stat. 168 | H–4. |
| Exchange visitor | 101(a)(15)(I); 66 Stat. 168 | I. |
| Spouse and children of alien classified J–1 | 101(a)(15)(J); 66 Stat. 167, 75 Stat. 527 | J–1. |
| Fiance(e) of U.S. citizen | 101(a)(15)(J); 75 Stat. 527 | J–2. |
| Children of alien classified K–1 | 101(a)(15)(K); 84 Stat. 116 | K–1. |
| Intracompany transferee (executive, managerial, and specialized personnel continuing employment with international firm or corporation). | 101(a)(15)(K); 84 Stat. 116 | K–2. |
| Spouse and children of alien classified L–1 | 101(a)(15)(L); 84 Stat. 116 | L–1. |
| Student (vocational or other recognized nonacademic) | 101(a)(15)(L); 84 Stat. 116 | L–2. |
| Spouse and children of alien classified M–1 | 101(a)(15)(M)(i); 95 Stat. 1611 | M–1. |
| Parent of an alien child classified SK–3 under section 101(a)(27)(I)(i) | 101(a)(15)(M)(ii); 95 Stat. 1611 | M–2. |
| Child of parent classified N–8 or of alien classified SK–1; SK–2; SK–4 under section 101(a)(27)(I)(ii), (iii), or (iv). | 101(a)(15)(N); 100 Stat. 3359 | N–8. |
| Principal permanent representative of Member State to NATO (including any of its subsidiary bodies) resident in the United States and resident members of permanent representative's official staff; Secretary General, Deputy Secretary General, Assistant Secretaries General and Executive Secretary of NATO; other permanent NATO officials of similar rank; and members of immediate family. | 101(a)(15)(N); 100 Stat. 3359 | N–9. |
| Other representatives of Member States to NATO (including any of its subsidiary bodies) including representatives, advisers and technical experts of delegations, and members of immediate family; dependents of member of a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement or in accordance with the provisions of the Protocol on the Status of International Military Headquarters; members of such a force if issued visas. | Art. 12, 5 UST 1094; Art. 20, 5 UST 1098 | NATO–1. |
| Official clerical staff accompanying a representative of Member State to NATO (including any of its subsidiary bodies) and members of immediate family. | Art. 13, 5 UST 1094; Art. 1, 4 UST 1794; Art. 3, 4 UST 1796. | NATO–2. |
| Officials of NATO (other than those classifiable under NATO–1) and members of immediate family. | Art. 14, 5 UST 1098 | NATO–3. |
| | Art. 18, 5 UST 1098 | NATO–4. |

| Class | Section of law or treaty citation | Visa symbol |
|---|---|---|
| Experts, other than NATO officials classifiable under the symbol NATO-4, employed on missions on behalf of NATO and their dependents. | Art. 21, 5 UST 1100 | NATO-5. |
| Members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement; members of a civilian component attached to or employed by an allied headquarters under the protocol on the status of international military headquarters set up pursuant to the North Atlantic Treaty; and their dependents. | Art. 1, 4 UST 1794; Art. 3, 5 UST 877 | NATO-6. |
| Attendant, servant, or personal employee of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6 classes, and members of immediate family. | Arts. 12-20, 5 UST 1094-1098 | NATO-7. |
| Aliens with extraordinary ability in sciences, arts, education, business or athletics. | 101(a)(15)(O)(i); 104 Stat. 5023) | O-1. |
| Accompanying alien | 101(a)(15)(O)(ii) | O-2. |
| Spouse or child of O-1 or O-2 | 101(a)(15)(O)(iii) | O-3. |
| Internationally recognized athlete or member of internationally recognized entertainment group. | 101(a)(15)(P)(i); 104 Stat. 5024 | P-1. |
| Artist or entertainer in a reciprocal exchange program | 101(a)(15)(P)(ii) | P-2. |
| Artist or entertainer in a culturally unique program | 101(a)(15)(P)(iii) | P-3. |
| Spouse or child of P-1, P-2, or P-3 | 101(a)(15)(P)(iv) | P-4. |
| Participant in an international cultural exchange program | 101(a)(15)(Q); 104 Stat. 5026 | Q-1. |
| Alien in a religious occupation | 101(a)(15)(R); 104 Stat. 5027 | R-1. |
| Spouse or child of R-1 | 101(a)(15)(R) | R-2. |

3. § 41.53 and § 41.54 are revised to read as follows:

**§ 41.53 Temporary workers and trainees.**

(a) *Requirements for H classification.* An alien shall be classifiable under INA 101(a)(15)(H) if:

(1) The consular officer is satisfied that the alien qualifies under that section; and

(2) With respect to the principal alien:

(i) the consular officer has received a petition approved by INS to accord such classification or an official notification of the approval thereof; or

(ii) The alien shall have presented to the consular officer official confirmation of the approval by INS of the petition to accord the alien such classification or of the extension by INS of the period of authorized stay in such classification; or

(3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Petition approval.* The approval of a petition by the Immigration and Naturalization Service does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section.

(d) *Alien not entitled to H classification.* The consular officer must suspend action on this alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(H) is not entitled to the classification as approved.

(e) *"Trainee" defined.* The term *Trainee*, as used in INA 101(a)(15)(H)(iii), means a nonimmigrant alien who seeks to enter the United States temporarily at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving instruction in any field of endeavor (other than graduate medical education or training), including agriculture, commerce, communication, finance, government, transportation, and the professions.

(f) *Former exchange visitor.* Former exchange visitors who are subject to the 2-year residence requirement of INA 212(e) are ineligible to apply for visas under INA 101(a)(15)(H) until they have fulfilled the residence requirement or obtained a waiver of the requirement.

**§ 41.54 Intracompany transferees (executives, managers, and specialists).**

(a) *Requirements for L classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(L) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) With respect to the principal alien:

(i) The consular officer has received an individual petition approved by INS to accord such classification to the alien or an official notification of the approval thereof; or

(ii) The alien shall have presented to the consular officer official confirmation of approval by Immigration and Naturalization Service (INS) of an individual petition according such classification to the alien or confirmation of the extension by INS of the alien's authorized stay in such classification; or

(iii) The alien shall have presented to the consular officer an approved blanket petition or a notification of approval listing those intracompany relationships and positions which were found to qualify under INA 101(a)(15)(L); or

(iv) The alien shall have presented to the consular officer a blanket petition to accord such classification to qualified aliens who are being transferred to qualifying positions identified in the approved blanket petition; or

(3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Petition approval.* The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* (1) The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2)(i) or (ii) of this section.

(2) The period of validity of a visa issued on the basis of paragraph (a) to this section is not limited to the period of validity indicated in the blanket petition, notification, or confirmation required in paragraphs (a)(2)(iii) or (iv) of this section.

(d) *Alien not entitled to L-1 classification under individual petition.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa as the beneficiary of an approved individual petition under INA 101(a)(15)(L) is not entitled to such classification as approved.

(e) *Alien not entitled to L-1 classification under blanket petition.* The consular officer shall deny L classification based on a blanket

petition if the documentation presented by the alien claiming to be a beneficiary thereof does not establish to the satisfaction of the consular officer that

(1) The alien has been continuously employed by the same employer, an affiliate or a subsidiary thereof, for 1 year within the 3 years immediately preceding the application for the L visa;

(2) The alien was occupying a qualifying position throughout that year; or

(3) The alien is destined to a qualifying position identified in the petition and in an organization listed in the petition.

(f) *Former exchange visitor.* Former exchange visitors who are subject to the 2-year foreign residence requirement of INA 212(e) are ineligible to apply for visas under INA 101(a)(15)(L) until they have fulfilled the residence requirement or obtained a waiver of the requirement.

4. Sections 41.55, 41.56, and 41.57, are revised to read as follows:

**§ 41.55 Aliens with extraordinary ability.**

(a) *Requirements for O classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(O) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) With respect to the principal alien:

(i) The consular officer has received a petition approved by INS to accord such classification or an official notification of the approval thereof; or

(ii) The alien shall have presented to the consular officer official confirmation of the approval by Immigration and Naturalization Service (INS) of the petition to accord the alien such classification or of the extension by INS of the period of authorized stay in such classification; or

(3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Approval of visa.* The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section.

(d) *Alien not entitled to O classification.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(O) is not entitled to the classification as approved.

**§ 41.56 Athletes, artists and entertainers.**

(a) *Requirements for P classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(P) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) With respect to the principal alien:

(i) The consular officer has received a petition approved by Immigration and Naturalization Service (INS) to accord such classification or an official notification of the approval thereof; or

(ii) The alien shall have presented to the consular officer official confirmation of the approval by INS of the petition to accord the alien such classification or of the extension by INS of the period of authorized stay in such classification; or

(3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Approval of visa.* The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, confirmation, or extension of stay required in paragraph (a)(2) of this section.

(d) *Alien not entitled to P classification.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(P) is not entitled to the classification as approved.

**§ 41.57 International cultural exchange visitors.**

(a) *Requirements for Q classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(Q) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) The consular officer has received a petition approved by INS to accord such classification or an official notification of the approval thereof; or

(3) The alien shall have presented to the consular officer official confirmation of the approval by Immigration and Naturalization Service (INS) of the petition to accord the alien such classification or of the extension by INS of the period of authorized stay in such classification.

(b) *Approval of petition.* The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa.* The period of validity of a visa issued on the basis of paragraph (a) to this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraphs (a)(2) or (a)(3) of this section.

(d) *Alien not entitled to Q classification.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(Q) is not entitled to the classification as approved.

Dated: June 19, 1992.

**Elizabeth M. Tamposi,**

*Assistant Secretary for Consular Affairs.*

[FR Doc. 92-16478 Filed 7-15-92; 8:45 am]

BILLING CODE 4710-06-M

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## DEPARTMENT OF LABOR

### Office of the Secretary

### 29 CFR Part 20

### Debt Collection Act of 1982; Organizational Change

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Department of Labor is amending its rules implementing the Debt Collection Act of 1982 to reflect the reassignment of certain responsibilities for debt collection from the Assistant Secretary for Administration and Management to the Chief Financial Officer. This reassignment has been made necessary by virtue of the passage of Chief Financial Officers Act of 1990, implemented in the Department by Secretary's Order 1-92.

**EFFECTIVE DATE:** July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert Barnhard, Office of Financial Policy and Systems, Office of the Comptroller, Office of the Assistant Secretary for Administration and Management, Department of Labor, room S-4502, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-6184.

**SUPPLEMENTARY INFORMATION:** The Department of Labor published in the Federal Register on February 6, 1985 (50 FR 5202) and February 5, 1987 (52 FR 3772) final regulations implementing the Debt Collection Act of 1982 (Act). Subpart A implements the credit

reporting provisions of the Act; Subpart B, administrative offset; Subpart C, assessment of interest, penalties and administrative costs; and Subpart D, salary offset. These regulations were duly published in the **Federal Register** as proposed rules, with comments considered and discussed during final rule-making.

The rules specify certain responsibilities of the Assistant Secretary for Administration and Management. With the passage of the Chief Financial Officers Act of 1990 (31 U.S.C. 901–903) as implemented in the Department by Secretary's Order 1–92, these responsibilities have been reassigned to the Department's Chief Financial Officer.

**Publication in Final**

The Department has determined that these amendments need not be published as a proposed rule, as generally required by the Administrative Procedure Act (5 U.S.C. 553) since this rule-making merely reflects agency organization, procedure, or practice. It is thus exempt from notice and comment by virtue of 5 U.S.C. 553(b)(A).

**Effective Date**

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the rule is technical and non-substantive and merely reflects agency organization, practice and procedure.

**Executive Order 12291**

This rule is not classified as a "rule" under Executive Order 12291 on Federal regulation, because it is a regulation relating to agency organization, management or personnel. See section 1(a)(3).

**Regulatory Flexibility Act**

Because no notice of proposed rule-making is required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility analysis do not apply to this rule. See 5 U.S.C. 601(2).

**Paperwork Reduction Act**

This final rule is not subject to Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirements.

**List of Subjects in 29 CFR Part 20**

Claims, Government employees, Loan programs, Reporting and recordkeeping requirements, Wages.

For the reasons set forth in the preamble, 29 CFR part 20 is amended as follows:

## PART 20—DEBT COLLECTION ACT OF 1982

1. The authority citation for part 20 is revised to read as follows:

**Authority:** 5 U.S.C. 5511 *et seq.*; 31 U.S.C. 901–903; 31 U.S.C. 3711 *et seq.*

2. In Part 20 all references to the "Assistant Secretary for Administration and Management" or "Assistant Secretary" are revised to read "Chief Financial Officer".

Signed at Washington, DC, this 9th day of July, 1992.

**Lynn Martin,**

*Secretary of Labor.*

[FR Doc. 92–16634 Filed 7–15–92; 8:45 am]

BILLING CODE 4510–23–M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 706

### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS ARLEIGH BURKE (DDG 51) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** June 29, 1992.

**FOR FURTHER INFORMATION CONTACT:** Captain R.R. ROSSI, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS ARLEIGH BURKE (DDG 51) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; Annex I, section 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; without interfering with its special function as a Navy ship. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (Water), and Vessels.

## PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

**§ 706.2 [Amended]**

2. In Table Four of § 706.2, the entry in paragraph 16 for USS ARLEIGH BURKE (DDG 51) is revised to read as follows:

| Vessel | Number | Obstruction angle relative ship's headings |
|---|---|---|
| USS ARLEIGH BURKE | DDG 51 | 100.00 thru 112.50 degree. |

3. In Table Five of § 706.2, the entry for USS ARLEIGH BURKE (DDG 51) is revised to read as follows:

TABLE FIVE

| Vessel | Number | Masthead lights not over all other lights and obstructions. Annex I sec. 2(f) | Forward masthead light not in forward quarter of ship. Annex I sec. 3(a) | After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a) | Percentage horizontal separation attained |
|---|---|---|---|---|---|
| USS ARLEIGH BURKE | DDG 51 | X | X | X | 20 |

Dated: June 29, 1992.
Approved:
**J.E. Gordon,**
*Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.*
[FR Doc. 92-16742 Filed 7-15-92; 8:45 am]
BILLING CODE 3810-01-M

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment**

**AGENCY:** Department of the Navy, DOD.
**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS JOHN BARRY (DDG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** June 19, 1992.

**FOR FURTHER INFORMATION CONTACT:** Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (703) 325-9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS JOHN BARRY (DDG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; Annex I, sec 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; and, Annex I, section 3(c) pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the ship in the athwartship direction; without interfering with its special function as a Navy ship. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights in this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (Water), and Vessels.

**PART 706—[AMENDED]**

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

**§ 706.2 [Amended]**

2. Table Four of § 706.2 is amended by adding the following vessel in paragraphs 15 and 16:

15. * * *

| Vessel | Number | Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction |
|---|---|---|
| * * * | * | * * |
| USS JOHN BARRY | DDG 52 | 1.94 meters. |

16. * * *

| Vessel | Number | Obstruction angle relative ship's headings |
|---|---|---|
| * * * | * | * * |
| USS JOHN BARRY | DDG 52 | 87.22 thru 104.01 degree. |

3. Table Five of § 706.2 is amended by adding the following vessel:

| Vessel | Number | Masthead lights not over all other lights and obstructions. Annex I, Sec. 2(f) | Forward masthead light not in forward quarter of ship. Annex I, Sec. 3(a) | After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, Sec. (3)(a) | Percentage horizontal separation attained |
|---|---|---|---|---|---|
| USS JOHN BARRY | DDG 52 | X | X | X | 13 |

Dated: June 19, 1992.

Approved:

J. E. Gordon,

*Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.*

[FR Doc. 92-16605 Filed 7-15-92; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[COTP Hampton Roads, Regulation 92-05-24]**

### Safety Zone Regulations; Chesapeake Bay, Cape Charles, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone in the vicinity of Cape Charles, Virginia around the Maritime Prepositioning Force (MPF) vessels S.S OBREGON and S.S. KOCAK. The purpose of this safety zone is to protect mariners from the hazards associated with explosives onboard the MPF vessels while they are anchored near Cape Charles. All vessels greater than 65 feet are prohibited from transiting within 1500 yards of the MPF vessels while they are anchored near Cape Charles. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representative.

**EFFECTIVE DATE:** This regulation is effective from 12 p.m. on July 7, 1992, and terminates at 12 midnight on August 31, 1992, unless terminated sooner by the Captain of the Port, Hampton Roads, Virginia.

**FOR FURTHER INFORMATION CONTACT:** ENS M. Marchione, Project Officer, USCG Marine Safety Office Hampton Roads, telephone number (804) 441-3290.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect mariners operating in the vicinity of the MPF vessels while anchored near Cape Charles.

#### Drafting Information

The drafters of this regulation are ENS M. Marchione, project officer for the Captain of the Port, Hampton Roads, and LT M.L. Lombardi, project attorney, Fifth Coast Guard District Legal Office.

#### Discussion of Regulation

The circumstance requiring this regulation is the need for the Military Sealift Command (MSC) to conduct lighterage and training operations in the Port of Hampton Roads. Each vessel carries approximately 1.2 million pounds of military explosives. The MPF vessels, which are military support vessels, will be anchored near Fort Story, Virginia in Anchorage "A" during active periods of lighterage and training operations. While anchored in Anchorage "A", the COTP may positively direct the movement of vessels under the authority of 33 CFR 110.168(f)(1), therefore a safety zone is not required. While the MPF vessels are anchored near Cape Charles, Virginia a safety zone is required to keep a safe distance between vessels over 65 feet and the MPF vessels to minimize the risk of personnel injury or damage to property as a result of an explosion on board the MPF vessels. This safety zone will be in effect from 12 p.m. on July 7, 1992, and terminates at 12 midnight on August 31, 1992, unless terminated sooner by the Captain of the Port, Hampton Roads, Virginia.

#### Regulatory Evaluation

This regulation is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979). The Captain of the Port is anticipating that the economic impact will be so minimal that a full regulatory evaluation will be unnecessary. This regulation is temporary in nature and will not impede the flow of normal commercial traffic that is currently allowed to transit the port of Hampton Roads. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities. The regulation contains no information collection or record keeping requirements.

#### Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

#### Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

### PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new section 165. T05-12 is added to read as follows:

**§ 165.T05-12 Safety Zone: Chesapeake Bay, Cape Charles, Virginia.**

(a) *Location.* The following area is a safety zone: The waters bound by a circle whose radius is 1500 yards around the MPF vessels while anchored near Cape Charles. Vessels greater than 65 feet are prohibited from entering this zone.

(b) *Effective date.* This regulation is effective from 12 p.m. on July 7, 1992, and terminates at 12 midnight on August 31, 1992.

(c) *Regulations.* (1) Entry into this safety zone is prohibited by all vessels greater than 65 feet unless authorized by the Captain of the Port, Hampton Roads, Virginia, or his designated representative. The general requirements of § 165.23 also apply to this regulation.

(2) Persons or vessels requiring entry into or passage through the safety zone must first request authorization from the Captain of the Port or his designated representative. The Captain of the Port, Hampton Roads can be contacted at telephone number (804) 441-3307 or may be contacted via Coast Guard Group, Hampton Roads, Virginia on VHF channels 13 and 16.

Dated: July 7, 1992.

G.J.E. Thornton,

*Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.*

[FR Doc. 92-16611 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[PP 1E3948/R1146; FRL-4076-2]**

### Pesticide Tolerances for Aluminum Tris (O-Ethylphosphonate); Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** EPA issued a final rule in the **Federal Register** of May 28, 1992 that revised the table of commodities listings in 40 CFR 180.415(a) and inadvertly omitted several commodities that had been added in a previous document. This technical correction document reinstates the commodities.

**EFFECTIVE DATE:** This correction is effective July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5310.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 28, 1992 (57 FR 22435), EPA amended 40 CFR 180.415(a) to add a nonregionally restricted registration of the fungicide aluminum tris (*O*-ethylphosphonate) in or on the raw agricultural commodity fresh ginseng root. The document set out a revised table for pargraph (a), but inadvertly omitted the commodities brassica (cole) leafy vegetables group, leafy vegetables (except brassica vegetable) group, and onions, dry bulb that had been added in a final rule issued in the **Federal Register** of April 1, 1992 (57 FR 10998). This technical correction document reinstates these commodities by reissuing the table in 40 CFR 180.415(a).

This document contains corrections and technical amendments only and does not require notice and comment, 5 U.S.C. 553.

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 26, 1992.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is corrected as follows:

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In § 180.415, the table in paragraph (a) is revised to read as follows:

**§ 180.415 Aluminum tris(O-ethylphosphonate); tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| Brassica (cole) leafy vegetables group | 55 |
| Caneberries | 0.1 |
| Citrus | 0.5 |
| Ginseng root, fresh | 0.1 |
| Leafy vegetables (except brassica vegetables) group | 50 |
| Pineapple | 0.1 |
| Pineapple fodder | 0.1 |
| Pineapple forage | 0.1 |
| Onions, dry bulb | 0.5 |

* * * * *

[FR Doc. 92-16831 Filed 7-15-92; 8:45 am]

BILLING CODE 6560-50-F

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 49 CFR Part 383

**RIN 2125-AC98**

### Commercial Driver's License Reciprocity With Mexico

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** Notice is hereby given that the Federal Highway Administrator has determined that a Licencia Federal de Conductor issued by the Mexican Federal Government meets the commercial driver testing and licensing standards contained in 49 CFR part 383. Accordingly, the Licencia Federal de Conductor, as described herein, will be considered to be the single commercial driver's license (CDL) for operation in the United States by Mexican drivers. Mexico will extend similar reciprocity to holders of CDLs issued by the States and the District of Columbia. Also, a Mexican driver holding a Licencia Federal de Conductor issued by Mexico will be prohibited from obtaining any driver's license from a State or the District of Columbia.

**EFFECTIVE DATE:** July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jill L. Hochman, Office of Motor Carrier Standards, (202) 366-4001, or Mr. David Oliver, Office of Chief Counsel, (202) 366-1350, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:** Effective April 1, 1992, no person shall operate a commercial motor vehicle (CMV) unless such person has a CDL. The standards for CDLs are found at 49 CFR part 383. In summary, this part requires a driver to take and pass knowledge and, if applicable, driving tests which meet Federal minimum standards to get a CDL. Also, CDLs are to be issued by the driver's State or jurisdiction of domicile.

An exception to this provision is found at 49 CFR 383.23(b). Under this exception, the Federal Highway Administrator is authorized to determine the compatibility of the commercial driver testing and licensing standards of foreign countries (foreign jurisdictions) with those of the United States. Any CMV operator who is domiciled in a foreign jurisdiction which, as determined by the Administrator, does not test drivers and issue a commercial driver's license (CDL) that is either in accordance with, or similar to, the standards in subparts F, G, and H of part 383, must obtain a nonresident CDL from a State which does comply with those standards. These drivers from foreign jurisdictions must possess a nonresident CDL in order to operate a CMV after April 1, 1992, in the United States.

Effective December 29, 1988, the FHWA Administrator determined that commercial drivers' licenses issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code are compatible with the CDL standards and are granted reciprocal status for purposes of United States law. A driver holding a commercial driver's license issued under the Canadian National Safety Code may drive in the United States on that license; at the same time the driver is prohibited from obtaining a nonresident CDL, or any other type of driver's license, from a State or other jurisdiction in the United States. This determination is codified as a footnote to 49 CFR 383.23(b).

Negotiations between representatives from the United States and the government of the United Mexican States culminated in a Memorandum of Understanding (MOU) on the issue of driver license reciprocity. The MOU was signed on November 21, 1991, by former Secretary of Transportation, Samuel K. Skinner, and Mexican Secretary of Communications and Transportation, Andres Caso Lombardo, and is attached as appendix A to this preamble. It

provides that the parties will issue licenses for CMV drivers that conform to these Federal minimum standards including knowledge and skills testing, disqualification and physical requirements of drivers. The most important provisions of the MOU are summarized below and provide essentially that:

1. The Licencia Federal de Conductor will be issued according to standards similar to the CDL testing and licensing standards.

2. On April 1, 1992, Mexican drivers of CMVs entering the United States will be required to have a new Licencia Federal de Conductor issued to comply with the standards set forth in the MOU.

3. The new Licencia Federal de Conductor will be recognized by all States and will be valid in the United States.

4. The United States and Mexico will exchange information on the disqualification, revocation, or cancellation of licenses.

5. CDLs issued by a State in the United States will be recognized by Mexico. (Access for United States drivers is currently being negotiated as part of the North American Free Trade Agreement.)

Accordingly, the Administrator has determined that the testing and licensing standards in Mexico for the Licencia Federal de Conductor meet the standards contained in 49 CFR part 383.

For holders of a current Licencia Federal de Conductor, the Mexican Authorities may issue a new Licencia Federal de Conductor based on passage of a new knowledge test, without requiring a skills test, if such applicant is currently employed as a driver and has a good driving record. This practice is consistent with the practice in the United States, as permitted by Federal regulation (49 CFR 383.77). After April 1, 1992, new license applicants will be required to take the skills test to obtain the new Licencia Federal de Conductor.

It should be noted that Mexican drivers must be medically examined every 2 years to receive and retain the Licencia Federal de Conductor; no separate medical card is required as in the United States for drivers in interstate commerce. As the Licencia Federal de Conductor cannot be issued to or kept by any driver who does not pass stringent physical exams, the Licencia Federal de Conductor itself is evidence that the driver has met medical standards as required by the United States. Therefore, Mexican drivers with a Licencia Federal de Conductor do not need to possess a medical card while driving a CMV in the United States.

The United States is considering the possibility of incorporating the medical qualification process into the CDL issuance. If and when that occurs, the CDL, like the Licencia Federal de Conductor, will be evidence that the driver has met medical standards.

After April 1, 1992, consistent with the MOU and to preserve the single license concept, United States licensing jurisdictions will not issue nonresident CDLs to drivers domiciled in Mexico. Mexico is extending similar reciprocity to holders of CDLs issued by the States in conformity with the United States standards.

This publication constitutes notice to the States that the same preemptive effect is present with respect to the Licencia Federal de Conductor as with a license issued by States of the United States. Therefore, all United States licensing jurisdictions are required by statute and regulation to grant reciprocity to the Mexican licenses. In addition, States which do not comply with the provisions of the MOU may have Federal highway funds withheld for each year that the State is in noncompliance starting in October of 1993.

The substance of this notice is incorporated as a footnote in regulatory text of 49 CFR part 383 by means of a technical amendment which is set forth below.

## Rulemaking Analyses and Notices

*Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The amendment in this document is primarily technical in nature and is needed solely to update the regulations to include an enabling agreement between the government of Mexico and the United States. For these reasons and since this rule imposes no additional burdens on the States or other Federal agencies, the FHWA finds good cause to make this regulation final without prior notice and opportunity for comments and without a 30-day delay in effective date under the Administrative Procedure Act. For the same reasons, and because it is not anticipated that such action would result in the receipt of useful information, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation.

Since the changes in this document are primarily technical in nature, the anticipated economic impact, if any, is minimal. Therefore, a full regulatory evaluation is not required.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 605(b)), the FHWA has evaluated the effects of this rule on small entities, and hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

*Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

*Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

*National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

*Regulation Identifier Number*

The regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

## List of Subjects in 49 CFR Part 383

Commercial driver's license documents, Commercial motor vehicles, Highways and roads, Motor carriers licensing and testing procedures, and Motor vehicle safety.

*Appendix A*

Note: This appendix will not appear in the Code of Federal Regulations.

**Memorandum of Understanding Between the Government of the United States of America and the Government of the United Mexican States Relating to the Recognition and Validity of Commercial Driver's Licenses and Licencias Federales de Conductor**

The government of the United States of America and the government of the United Mexican States, hereinafter referred to as the parties;

Having established the subgroup on Commercial Driver's Licenses and Licencias Federales de Conductor of the U.S.-Mexico transportation working group;

Recognizing the close commercial relationship between the two countries and desiring to facilitate dynamic transborder transportation;

Considering the understanding concerning a framework of principles and procedures for consultation regarding trade and investment relations signed on November 6, 1987;

Considering the review of the rules and regulations of both countries relating to the licensing of drivers engaged in commercial operations;

Desiring the harmonization of both parties' regulations;

Desiring the mutual acceptance of Commercial Driver's Licenses and Licencias Federales de Conductor; and

Seeking to further the objective of providing greater safety on the roadways of both countries;

Have agreed as follows:

*Article 1*

Definitions

For the purpose of this memorandum of understanding, including its Annex which forms an integral part thereof:

(A) *Commercial Driver's License* means a license issued by a State of the United States of America or the District of Columbia in accordance with U.S. statutory and regulatory requirements to an individual which authorizes the individual to operate a class of commercial motor vehicle;

(B) *Non-resident Commercial Driver's License* means a Commercial Driver's License issued to an individual domiciled in a foreign country;

(C) *Licencia Federal de Conductor* means a license issued by the Secretariat of Communication and Transport of the United Mexican States which authorizes a person to drive vehicles engaged in Federal public service and private vehicles of companies and industries which transport products requiring the use of Mexican Federal highways;

(D) *Driver* means an individual who operates a motor vehicle in interstate and foreign commerce in the territory of either party;

(E) *Resident* means a person who maintains in the territory of either party a true, fixed, and permanent home and principal place of living to which the person has the intention of returning whenever the person is absent; and

(F) *Subgroup* means the Subgroup on Commercial Driver's Licenses and Licencias Federales de Conductor established by the U.S.-Mexico Transportation Working Group.

*Article 2*

Mutual Recognition and Grant of Rights

(1) No later then April 1, 1992, each party shall require drivers, licensed pursuant to its authority, to: (1) Successfully complete a knowledge exam meeting the standards set forth in Article I(A) of the Annex, which forms an integral part of this MOU; (2) successfully complete a skills exam meeting the standards set forth in Article I(B) of the Annex; and (3) meet its established medical standards. Drivers fulfilling these requirements, if otherwise qualified to operate the appropriate class of vehicle, shall be issued a Commercial Driver's License or a Licencia Federal de Conductor, as appropriate, consistent with Article I(b)(3) of the Annex.

(2) On April 1, 1992, all Commercial Driver's Licenses and Licencias Federales de Conductor issued pursuant to Paragraph 1 shall be given complete recognition and validity by Federal and State authorities in both countries.

(A) A resident U.S. driver operating a motor vehicle who possesses a valid Commercial Driver's License issued pursuant to Paragraph 1 shall not be required to obtain a Licencia Federal de Conductor to operate in the United Mexican States.

(B) A resident Mexican driver operating a motor vehicle who possesses a valid Licencia Federal de Conductor issued pursuant to Paragraph 1 shall not be required to obtain a non-resident Commercial Driver's License to operate in the United States of America;

(C) Drivers possessing a Commercial Driver's License or a Licencia Federal de Conductor may drive only those classes of vehicles for which they have been tested and licensed to drive.

(3) Should either party be unable to implement the provisions of Paragraph 1, that party shall inform the other party. In such event, the parties shall consult for the purpose of agreeing upon a new date for the mutual recognition of Commercial Driver's Licenses and Licencias Federales de Conductor as provided for in Paragraph 2. In the interim, neither party shall be obligated to comply with the provisions of Paragraph 2.

*Article 3*

Medical Qualification

In recognition of the medical qualification program for a Licencia Federal de Conductor, the United States of America shall conduct a comprehensive study of processes for including driver medical qualification determinations within its commercial driver's licensing process.

*Article 4*

Application of Law

U.S. and Mexican drivers of motor vehicles referred to in Article 2(2) shall be subject to the applicable laws and regulations of the country in which they operate such motor vehicles.

*Article 5*

Exchange of Information

On a regular basis, but not less than annually, the parties shall exchange information relevant to suspensions or revocations of Commercial Driver's Licenses or Licencias Federales de Conductor, or convictions (either administrative or judicial) resulting from traffic violations. The parties shall exchange general information regarding Commercial Driver's Licenses and Licencias Federales de Conductor. The scope of the information exchanged shall be determined by the subgroup as set forth in Article II of the Annex.

*Article 6*

Continuation of Subgroup

The subgroup shall, unless otherwise agreed, verify the implementation of the requirements established by this memorandum of understanding. Article III of the Annex sets forth the future activities of the subgroup.

*Article 7*

Implementation

The agencies responsible for the implementation of the provisions of this memorandum of understanding shall be the Department of Transportation for the United States of America and the Secretariat of Communication and Transport for the United Mexican States.

*Article 8*

Consultations

Either party may, at any time, request consultations relating to the implementation of this memorandum of understanding. Such consultations shall begin at the earliest possible date, but not later than 60 days after a party makes a request, unless otherwise agreed. Each party shall prepare and present during such consultations relevant evidence in support of its position to facilitate consultations.

*Article 9*

Entry Into Force

This memorandum of understanding shall enter into force upon the date of signature.

*Article 10*

Termination

Either party may, at any time, give notice in writing to the other party of its decision to terminate this memorandum of understanding. Such termination shall take effect one hundred and eighty (180) days after such notice.

*Article 11*

Amendments

This memorandum of understanding may be amended at any time by the agreement of both parties. Any amendment shall enter into force upon an exchange of diplomatic notes.

In witness whereof, the undersigned, being duly authorized by their respective governments, have signed this memorandum of understanding.

Done in duplicate at Washington, DC in the English and Spanish languages, each of which shall be of equal authenticity, this 21st day of November, nineteen hundred and ninety one.

For the Government of the United States of America:

Samuel K. Skinner

For the Government of the United Mexican States:

Caso Lomabado

**Annex**

*I. Standards for the Licensing Process of Commercial Driver's Licenses and Licencias Federales de Conductor*

A. Driver's Knowledge Test

1. In accordance with Article 2 of the MOU, each party shall require its applicant for a Commercial Driver's license or a Licencias Federales de Conductor to successfully complete a driver's knowledge test. The Licencias Federales de Conductor will be issued in accordance with Article 126 of the Law of General Means of Communication and Articles 47 and 48 of the Transport Regulation on Federal Highways. The Commercial Driver's License shall be issued in accordance with 49 U.S. Code of Federal Regulations part 383. In both cases, the knowledge content areas of the driver's knowledge test shall be comparable to the knowledge content areas contained in the Commercial Driver's License standards as set forth in 49 U.S. Code of Federal Regulations part 383 and regulations to be promulgated by the United Mexican States before April 1992. An applicant shall only be tested on the portion of the knowledge content areas that are relevant to the type of vehicle the applicant will be licensed to drive.

2. The driver's knowledge test for applicants for a Licencia Federal de Conductor shall: (A) Include questions on each of the knowledge content areas referred to in Paragraph 1 above; (B) contain at least (80) questions; and (C) be based on a passing score of eighty (80) percent.

3. The format of the driver's knowledge test given by any state of the United States of America or the District of Columbia for Commercial Driver's Licenses and by the United Mexican States for the Licencia Federal de Conductor need not be similar. For example, the United States of America shall administer a "general knowledge" test to all commercial drivers regardless of the class of Commercial Driver's License for which the applicant applies. The United States of America shall also administer separate "air-brake" and "endorsement" tests to drivers of specialized vehicles. The "general knowledge", "air brake", and "endorsement" tests shall be based on the knowledge content areas referred to in Paragraph 1 above. The United Mexican States shall administer a separate test for each of the license classes that incorporates all of the knowledge content areas referred to in Paragraph 1 above for the types of vehicles that fall within the license class.

B. Driver's Skills Test

1. In accordance with Article 2 of the MOU, each party shall require its applicant for a Commercial Driver's License or a Licencia Federal de Conductor to successfully complete a driver's skills test. The Licencia Federal de Conductor will be issued in accordance with Article 126 of the Law of General Means of Communication and Articles 47 and 48 of the Transport Regulation on Federal Highways. The Commercial Driver's License shall be issued in accordance with 49 U.S. Code of Federal Regulations part 383. In both cases, the skills content areas of the driver's skills test shall be comparable to the skills content areas contained in the Commercial Driver's License standards as set forth in 49 U.S. Code of Federal Regulations part 383 and regulations to be promulgated by the United Mexican States before April 1992. The driver's skills test shall be: (a) Given in a commercial motor vehicle that is representative of the class of vehicles the driver will be licensed to drive; and (b) conducted in on-street conditions or a combination of on-street and off-street conditions.

2. The parties shall review the feasibility of incorporating the use of simulators in administering part of the skills test.

3. The Commercial Driver's License and the Licencia Federal de Conductor shall indicate on the document that it reflects the agreed upon standards referred to in paragraphs I (a)(1) and (b)(1).

*II. Exchange of Information*

1. In accordance with Article 5 of the MOU, the parties shall exchange information regarding Commercial Driver's Licenses and Licencias Federales de Conductor. The scope of the information exchanged shall be determined by the subgroup. With regard to information relevant to suspensions or revocations of a Commercial Driver's License or Licencia Federal de Conductor, or convictions (either administrative or judicial) resulting from traffic violations, the following information shall be exchanged: (a) Convictions (either administrative or judicial) that result from violations committed by drivers of one party while driving in the territory of the other party; and (b) suspensions and revocations of a resident driver's Commercial Driver's License or Licencia Federal de Conductor because of violations committed in the territory of the issuing party. Each party shall take appropriate action, consistent with its national laws, against its drivers based on this information.

2. At a minimum, the information shall contain the name of the driver, the driver's license number, the date of conviction, the specific offense, the location of the offense, and the State issuing the license for U.S. drivers.

*III. Activities of the Subgroup*

1. In accordance with Article 6 of the MOU, the subgroup shall be convened as necessary to discuss the effective implementation of the provisions of the MOU. The first meeting shall be held not later than March 1, 1992, to prepare for the full implementation of the MOU.

2. To facilitate the exchange of information required by Article 5 of the MOU and Article II of the Annex, the subgroup shall convene as necessary to determine the scope of information on Commercial Driver's Licenses and Licencias Federales de Conductor to be exchanged. The subgroup shall determine the methods and process for exchange of this information and information relevant to suspensions or revocation of a Commercial Driver's License or Licencias Federales de Conductor, or convictions (either administrative or judicial) resulting from traffic violations by December 31, 1991, or another date as mutually agreed.

3. By December 31, 1991, or another date as mutually agreed, the subgroup shall agree upon an indicator on the Commercial Driver's License and the Licencias Federales de Conductor to show that the license reflects the agreed upon standards referred to in paragraphs I (a)(1) and (b)(1) of the Annex.

4. In accordance with Article 3 of the MOU, and in recognition of the United Mexican States' Medical Qualification Program for the Licencias Federales de Conductor, U.S. members of the subgroup and other U.S. officials will visit the United Mexican States to observe its medical exam system and procedures for the Licencias Federales de Conductor, as well as to identify differences between the processes used by each party to review medical qualifications of drivers of commercial vehicles. The purpose of the visit is to help determine if the procedures used in the Mexican medical qualification program are adaptable to the U.S. commercial driver's licensing process.

Issued on: July 9, 1992.

**T.D. Larson,**

*Administrator.*

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, chapter III, subchapter B, as set forth below.

## PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES [AMENDED]

1. The authority citation for 49 CFR part 383 is revised to read as follows:

**Authority:** 49 U.S.C. 3102; 49 U.S.C app. 12701 *et seq*; 49 CFR 1.48.

**§ 383.23 [Amended]**

2. In § 383.23, paragraph (b) is amended by revising footnote number one to read as follows:

**§ 383.23 Commercial driver's license.**

* * * * *

(b) Exception.* * *[1]

[FR Doc. 92-16666 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-22-M

[1] Effective December 29, 1988, the Administrator determined that commercial drivers' licensees issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code are in accordance with the standards of this part. Effective November 21, 1991, the Administrator determined that the new Licencias Federales de Conductor issued by the United Mexican States are in accordance with the standards of this part.

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49 CFR Part 391

[FHWA Docket No. MC-92-27]

## Qualification of Drivers; Vision Waivers

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** The FHWA announces its decision to issue waivers of the vision requirements (49 CFR 391.41(b)(10)) to drivers who meet certain conditions set forth in this document. The FHWA will continue to process the applications already received, and waivers will be issued to eligible drivers in the order their applications were received by the FHWA. The FHWA will continue to accept applications for waiver of the vision requirements until September 21, 1992.

**EFFECTIVE DATE:** This document is effective on July 16, 1992.

**ADDRESSES:** Applications may be submitted to the Vision Waiver Program, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For program information about the waiver program, please contact Mr. Neill L. Thomas or Mrs. Eliane Viner, Office of Motor Carrier Standards at (202) 366-2981. If you have legal questions, you may contact Mr. Eric A. Kuwana or Mr. Raymond W. Cuprill, Office of Chief Counsel at (202) 366-0834. Both of the above offices are located at the Federal Highway Administration, Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:**

### Waiver Background

On March 25, 1992, the FHWA published a notice in the **Federal Register** (57 FR 10295) to announce its intent to accept applications for waiver of the vision requirements, as contained in the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR 391.41(b)(10). The March 25 notice sets forth the proposed program to waive the vision requirements for drivers who meet certain conditions. As a supplement to the March 25 notice, a June 3 notice modified some of the program's conditions, clarified some of its details, and requested comments (Docket No. MC-92-27) on the proposed vision waiver program. The comment period on the proposed waiver program closed on July 6, 1992. All comments received have been carefully analyzed during the process which led to the decision to proceed with the vision waiver program and to publish this notice of final disposition.

### Concurrent Rulemaking

This waiver program will complement the FHWA's efforts to review, and to eventually amend, its vision requirements through a rulemaking action. Drivers of commercial motor vehicles (CMVs) have been required to meet specific Federal vision requirements since 1937. Although the FHWA has spent many resources on studies to ascertain the effects of vision deficiencies on driving safety, the current vision requirements have not been modified since 1971.

As part of an ongoing process to reassess its regulations, the FHWA published an advance notice of proposed rulemaking (ANPRM) on February 28 of this year (57 FR 6793), to review the FHWA's vision requirements, as currently contained in the driver qualification requirements of the FMCSRs, 49 CFR part 391. Although the comment period on the ANPRM (Docket No. MC-91-1) remained open until April 28, 1992, the FHWA published its notice of intent to accept applications for waivers on March 25. The comments to the ANPRM and the June 3 notice have been analyzed by the FHWA and have been considered in the decision to issue vision waivers. This waiver program does not constitute a final disposition of the rulemaking initiated by the ANPRM of February 28.

As part of the concurrent rulemaking process initiated by the February 28 ANPRM, the FHWA contracted with Ketron, Inc. to study the relationship between visual disorders and commercial motor vehicle safety. Copies of the Ketron study, entitled "Visual Disorders and Commercial Drivers," are now available for distribution and a copy has been placed in the docket to the ANPRM. The Ketron study illuminated the lack of empirical data to establish a link between vision disorders and commercial motor vehicle safety. The study also failed to provide a sufficient foundation on which to propose a satisfactory vision standard for drivers of CMVs in interstate commerce.

As explained in the notices of March 25 and June 3, the waiver program will enable the FHWA to conduct a study comparing a group of experienced, visually deficient drivers with a control group of experienced drivers who meet the current Federal vision requirements. This study will provide the empirical data necessary to evaluate the relationships between specific visual deficiencies and the operation of CMVs. The data will permit the FHWA to properly evaluate its current vision requirement in the context of actual driver performance, and, if necessary, establish a new vision requirement which is safe, fair, and rationally related to the latest medical knowledge and highway technology.

### Comments

The FHWA received over 50 separate comments in response to the June 3 notice, a few of which bore multiple signatures of drivers in favor of the proposal. The FHWA has also received over 1,000 applications for waivers from visually deficient drivers. All but four of the comments supported the vision waiver program as proposed, or, in a few cases, with slight modifications. The Owner-Operator Independent Drivers Association supports the vision waiver program and its conditions because "[C]ommercial vehicle operators with visual deficiencies have proven to be safe and successful drivers in intrastate commerce and within commercial zones." Two presidents of local chapters of the International Brotherhood of Teamsters support the waiver program as proposed because it will allow some of their members, who have demonstrated safe driving records over many years, to retain their jobs. A member of Congress, an attorney representing a driver, and the Assistant Majority Leader for the Illinois House of Representatives wrote to support the vision waiver program on behalf of visually deficient drivers of CMVs. Comments from drivers were unanimous in support of the vision waiver program.

The Advocates for Highway and Auto Safety (AHAS), an association based in Washington, DC, submitted material for consideration along with its comments opposing the vision waiver program. The AHAS stated that the FHWA improperly invoked both the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 355, as amended) and the Americans with Disabilities Act of 1990 (ADA) (Pub. L. 101-336, 104 Stat. 327, as amended) to justify the vision waiver program. The FHWA fully acknowledges that neither of these acts mandates changes to the driver qualification requirements in the FMCSRs. Rather, the ADA contains general goals that Federal agencies,

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Therefore, under the single license provision of § 383.21, a driver holding a commercial driver's license issued under the Canadian National Safety Code or a new Licencia Federal de Conductor issued by Mexico is prohibited from obtaining nonresident CDL, or any other type of driver's license, from a State or other jurisdiction in the United States.

although not required, should consider when making policy decisions or taking actions which affect persons with disabilities. Individualized determinations and the use of qualified individuals with disabilities are unquestionably the goals of this legislation and should be important factors in the FHWA's decisionmaking process.

The AHAS and the Insurance Institute for Highway Safety (IIHS) assert that the FHWA's study, "Visual Disorders and Commercial Drivers" (November 1991), and other prior studies provide a sufficient basis for creating a new, more stringent vision requirement in the FMCSRs. To the contrary, the FHWA believes that the results of the Ketron study, and those before it, do not provide a sufficient nexus between the current vision requirements and driving performance. Therefore, the FHWA believes that the data collected from the research study accompanying the vision waiver program will provide the necessary information to proceed with rational, performance-oriented rulemaking.

The AHAS also challenges the vision waiver program as being inconsistent with the statutory responsibilities of the FHWA because its actions must "*enhance* the safety of commercial motor vehicle operations and the health of commercial motor vehicle drivers." This quote from the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2832, as amended) is taken out of context, and hence, is misleading. In the 1984 Act, Congress expressly authorized the Department of Transportation (DOT) to "waive, in whole or in part, application of any regulation issued under this section [section 206] with respect to any person or class of persons if the Secretary determines that such waiver is not contrary to the public interest and is *consistent* with the safe operation of commercial motor vehicles." (emphasis added.) Congress recognized that not all actions by the DOT could possibly increase the level of safety for CMV operations. By using the word "consistent," the Congress permitted the DOT to grant waivers in instances where the current level of CMV safety would remain constant. The FHWA believes that the vision waiver program will allow only those drivers who have an established record of safe CMV operations to drive in interstate commerce. Therefore, the level of safety for CMV operations will remain unchanged as a result of the vision waiver program.

The IIHS observed that the research study to be undertaken during the waiver program was not fully described. It provided much useful constructive criticism about how such a study should be conducted, including acceptable standards of epidemiologic study design. The FHWA is aware of the importance of this research, and fully intends to take every necessary precaution to assure its validity.

The National Private Truck Council (NPTC), which expressed strong support for the waiver program, also provided some useful observations on the conduct of the research study. The NPTC was concerned that the composition of the study group, which understandably is limited to experienced drivers with safe driving records, may compromise any conclusions, unless the control group is compatible. The NPTC was also concerned about the lack of any indication in the notices with respect to any action to be taken in the event the conditions which are required to be reported by the control group, in fact, occur. For example, the study group drivers are required to submit medical reports annually confirming that the vision capability has not worsened. If the condition does worsen, the notice does not indicate what action the FHWA will take concerning that driver. The answer is that the waiver will be withdrawn if the vision in the better eye falls below the minimum requirement. On the other hand, conviction of a moving violation or the occurrence of an accident during the study period will not necessarily terminate the waiver, unless the conviction or occurrence would be disqualifying under applicable regulations.

The American Trucking Association (ATA) offered that "[t]he trucking industry is opposed to the granting of waivers to drivers who are unable to meet the current vision standards." Originally, the ATA's opposition was largely based on the lack of an opportunity for public comment, but the June 3 notice provided for public comment. The ATA's current opposition centers on its belief that the existing vision requirements should not be relaxed in any manner. The FHWA is not relaxing its vision requirements, as contained in the FMCSRs (49 CFR 391.41(b)(10)). As authorized in the 1984 Act, the program permits conditional waivers from the regulatory requirements in order to test their efficacy. Moreover, this action relieves the burden on those drivers, many of whom have safely driven for decades with vision deficiencies, who became ineligible due to changes in the law (Commercial Driver's License requirement) unrelated to vision. At the same time, the waivers will provide necessary data for an empirical study. The FHWA strongly believes that the vision waiver program is consistent with its regulatory responsibilities and is well within its statutory authority.

**Statutory Authority**

The Congress authorized the Secretary of Transportation, after notice and an opportunity for comment, to waive application of any regulation with respect to any person or class of persons if the Secretary determines that such a waiver (1) is not contrary to the public interest and (2) is consistent with the safe operation of commercial motor vehicles. This authority was granted by section 206(f) of the Motor Carrier Safety Act of 1984. The FHWA Administrator is delegated this authority pursuant to 49 CFR 1.48(aa).

**Public Interest**

The FHWA believes that the waiver program is in the public interest. It is consistent with the national policy, as expressed in the Rehabilitation Act of 1973 and the ADA, to facilitate the employment of qualified individuals with disabilities. The vision waiver program removes a barrier that may unduly restrict individuals from pursuit of their chosen occupation. The program allows for individualized determinations based on performance standards that complement medical qualifications. In essence, an applicant's driving ability, past experience, and medical evaluation substitute for the stricter vision requirements.

**Safety Impact**

The FHWA believes that the waiver program's conditions enable the FHWA to find that such waivers are "consistent with the safe operation of commercial motor vehicles." All drivers eligible for a waiver have proven experience and have demonstrated their ability to safely operate a CMV for a number of years. The reporting requirements of the waiver program and the FHWA's Motor Carrier Management Information System, along with existing Commercial Driver's License standards applicable to waived drivers of heavier vehicles, ensure that unsafe, visually impaired drivers are removed from operation just as effectively as other unsafe drivers. The drivers who receive waivers will not be accorded any additional privileges which would allow them to operate in a manner different from other drivers of CMVs in interstate commerce.

In fact, the drivers eligible for vision waivers are being held to a slightly higher standard. These experienced

drivers must have driving records that not only equal their peers, but surpass them. Eligibility for the waiver program is based, first of all, on experience gained in a commercial motor vehicle, and further on a driving record much cleaner than presently required, even for a CDL. These conditions, along with the waiver program's reporting requirements, are not applied to drivers who meet the current vision requirements contained in the FMCSRs. The FHWA believes that the following conditions will effectively screen out unsafe drivers.

**Conditions**

The conditions which drivers must meet to be eligible for the waiver program remain as proposed. An applicant is required to have three years of driving experience in a CMV with a record that shows (1) no suspensions or revocations of his/her driver's license for operating violations in any motor vehicle; (2) no involvement in a reportable accident (in a CMV) in which the applicant was cited for a moving traffic violation; (3) no convictions for a disqualifying offense, as described in 49 CFR 383.51, (i.e., driving a commercial motor vehicle while under the influence of alcohol or a controlled substance, leaving the scene of an accident involving a commercial motor vehicle, or the commission of a felony involving the use of a commercial motor vehicle) or more than one serious traffic violation, as that term is defined in 49 CFR 383.5, (i.e., excessive speeding, reckless driving, improper or erratic lane changes, following the vehicle ahead too closely, or a violation arising in connection with a fatality, while driving a commercial motor vehicle); and (4) no more than two convictions for any other moving traffic violations while driving a commercial motor vehicle.

If the applicant is currently licensed to drive a CMV (e.g., holds a valid Commercial Driver's License), the four requirements in the "document in writing" section of this document must go back three years from the date of the application for waiver. If the applicant is not currently licensed to drive a CMV, the four requirements in the "document in writing" section must go back three years from the date (after April 1, 1990) when the applicant last possessed a valid license to operate a CMV. The documentation required must be in writing, and where applicable, be on forms or letterhead of the State licensing agency or the reviewing ophthalmologist or optometrist.

**Applications**

Many of the applications received to date are missing information necessary to make a decision whether to grant a waiver to that individual. Individuals with incomplete applications will be contacted by the FHWA and requested to resubmit their applications and include the missing information. The FHWA suggests that future applicants use plain paper (there is no prescribed application form), include all the supporting documents (such as the DMV record), and use the format set out below.

**Vital Statistics**

Name of applicant: (First name, middle initial, last name)
Address: (House number and street name) City, State, and zip code:
Telephone number: (Area code and number)
Sex: (Male or female)
Date of birth: (Month, day, and year)
Age:
Social Security number:
State driver's license number: (Issuing State and license number)
Driver's license classification code:
Driver's license date of issuance: (Month, day, and year)

**Experience**

Number of years driving straight trucks:
Approximate number of miles driving straight trucks:
Number of years driving tractor-trailer combinations:
Approximate number of miles driving tractor-trailer combinations;
Number of years driving buses:
Approximate number of miles driving buses:

**Anticipated post-waiver operations**

Employer's name: (If applicable)
Employer's address:
Employer's telephone number:
Type of vehicle to be operated: (Straight truck, tractor-trailer combination, bus)
Commodities to be transported: (e.g., general freight, liquids in-bulk (in cargo tanks), steel, dry-bulk, large heavy machinery, refrigerated products)
States in which you will drive:
Estimated number of miles you will drive per year:
Estimated number of daylight driving hours per week:
Estimated number of nighttime driving hours per week:

**Document In Writing**

(1) You now possess a valid "intrastate" CDL or possessed a license (non-CDL) to operate a CMV after April 1, 1990 (e.g., a photostatic copy of both sides of the driver's license or certification from the State licensing agency);

(2) You operated a CMV for the three-year period immediately preceding:

(i) The date of this application if you are currently licensed to drive a CMV; or

(ii) The date (after April 1, 1990) you last held a valid license to operate a CMV (e.g., a signed statement from the applicant's employer or a certified statement from the applicant, in the event the applicant was operating as a motor carrier);

(3) Your driving record for that three-year period:

(a) Contains no suspensions or revocations of your driver's license for the operation of any motor vehicle (including your personal vehicle);

(b) Contains no involvement in a reportable accident for which you received a citation for a moving traffic violation;

(c) Contains no convictions for a disqualifying offense or more than one serious traffic violation while driving a commercial motor vehicle during the three-year period, which disqualified, or should have disqualified, the applicant in accordance with the driver disqualification provisions of 49 CFR 383.51.

(d) Contains no more than two convictions for any other moving traffic violations in a commercial motor vehicle.

(4) You have been examined by an ophthalmologist or an optometrist and that person, in writing, has:

(a) Identified and defined the visual deficiency;

(b) Certified that the visual deficiency has not worsened since the last vision examination required by your State's driver licensing agency;

(c) Certified that your visual acuity is at least 20/40 (Snellen), corrected or uncorrected, in the better eye; and

(d) Certified that in his/her medical opinion, you are, with your vision deficiency, able to perform the driving tasks required to operate a commercial motor vehicle.

**Waivers**

The waivers will be issued in a prescribed form and signed by or for the Administrator. Instructions will be sent to eligible drivers that will contain all pertinent conditions. Failure to report the required information to the FHWA or comply with the other conditions of the waiver program will be cause for immediate revocation of a driver's vision waiver. All waivers will display a

unique number to identify the driver. State and Federal enforcement officials will have the authority and right to verify the authenticity of each waiver.

**Reporting Requirements**

There will be five reporting requirements which must be met in full during the term of any waiver issued to a vision deficient driver. Each driver will be required to:

(1) Report any citation for a moving violation involving the operation of a CMV to the Federal Highway Administration (FHWA) within 15 days following the issuance;

(2) Report the judicial/administrative disposition of such charge within 15 days following notice of disposition;

(3) Report any accident involvement whatsoever while operating a CMV to the FHWA within 15 days following the accident (include Federal, State, insurance company, and/or motor carrier accident reports);

(4) Submit documentation of an annual examination by an ophthalmologist or an optometrist to the FHWA at least 15 days before the annual anniversary of the effective date of the waiver. The documentation must contain the medical specialist's certification that the individual is still eligible under the waiver's vision criteria and the vision deficiency has not worsened since the last vision examination required by the waiver; and

(5) Report to the FHWA by the 15th calendar day of each month (not including the month in which the waiver becomes effective):

(a) The number of miles driving a CMV during the preceding month;

(b) The number of daylight hours and the number of nighttime hours driving a CMV during the preceding month; and

(c) The number of days a CMV was not operated during the preceding month.

All documentation described in items (1) through (5), above, must be mailed to the FHWA, Vision Waiver Program, 400 Seventh Street, SW., Washington, DC 20590. Failure to submit timely reports will be cause for cancellation of the waiver.

**Request for Control Group Participants**

The success of the research study, which is part of the vision waiver program, is dependent upon obtaining the voluntary participation of drivers without vision deficiencies. Effective comparative analysis can be performed only with a control group of drivers that is approximately twice the numerical size of the group of waived drivers. The FHWA, therefore, requests that drivers without vision deficiencies volunteer to participate in the control group. The control group will be requested to submit the same demographic information as is required of the waived driver group, except for the certification by the ophthalmologist or optometrist. Volunteers should write the Vision Waiver Program at the aforementioned address. They will be contacted directly thereafter. The control group would subsequently be asked to report, quarterly, the same type of accident and traffic conviction information as is required by the waived driver group. This voluntary action will enable the FHWA to conduct a valid study, which will be used in the decisionmaking process for concurrent rulemaking initiated by the February 28 ANPRM.

**Authority:** 49 U.S.C. app. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

Issued on: July 10, 1992.

**T.D. Larson,**

*Administrator.*

[FR Doc. 92-16770 Filed 7-15-92; 8:45 am]

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VOL 57 ISS 137 JUL 16 1992 UMI



# Proposed Rules

Federal Register
Vol. 57, No. 137
Thursday, July 16, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### 7 CFR Part 1942

RIN 0575-AB25

### Community Facility Loans

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farmers Home Administration proposes to amend the Agency's policies and procedures governing the administration of Community Facility loans. This action is necessary to change the requirement for audits based upon annual gross income and is necessary to extend the deadline for submission of audits based on annual gross income. The intended effect is to ease the reporting burden for smaller entities and provide flexibility in obtaining audit services.

**DATES:** Comments must be submitted on or before August 17, 1992.

**ADDRESSES:** Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250–0700.

**FOR FURTHER INFORMATION CONTACT:** Joyce Brooks, Program Management Branch, Community Facilities Division, RDA, USDA, room 6304–S, Washington, DC 20250, Telephone (202) 720–1490.

**SUPPLEMENTARY INFORMATION:**

#### Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor since the annual effect on the economy is less than $100 million and there will be no increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Executive Order 12778

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

#### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the Administrator has determined that this action would not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

#### Background

FmHA presently requires borrowers with annual gross income of $100,000 or more to submit annual audits no later than 90 days following the period covered by the audit. FmHA proposed this action to change the requirement for audits based upon annual gross income from the present threshold of $100,000 to $500,000 an to extend the deadline for submission of audits based on annual gross income from 90 days after the audit period to 150 days after the audit period. These changes will ease the reporting burden for smaller entities and provide borrowers more flexibility in obtaining audit services.

Conforming changes to other regulations will be implemented at the final rule stage.

#### Program Affected

This program, Community Facility loans, is listed in the Catalog of Federal Domestic Assistance as Community Facilities loans under Number 10.423. The FmHA program and projects which are affected by this instruction are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J.

#### List of Subjects in 7 CFR Part 1942

Communit development, Loan security, Mortgages, Rural areas, Waste treatment and disposal—domestic, Water supply—domestic.

### PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

#### Subpart A—Community Facility Loans

2. In § 1942.17, paragraphs (q)(4)(i)(B)(*1*) and (q)(4)(ii) introductory text are amended by revising "90" to read "150", the heading of paragraph (q)(4)(ii)(A) and the heading and introductory text of paragraph (q)(4)(ii)(B) are amended by revising $100,000" to read "$500,000", and paragraph (q)(4)(i)(A)(*2*)(*iii*) is revised to read as follows:

**§ 1942.17 Community Facilities.**

* * * * *

(q) * * *

(4) * * *

(i) * * *

(A) * * *

(*2*) * * *

(*iii*) Local governments and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from both OMB Circular A–128 audits and FmHA audit requirements, except for those based upon annual gross income which may apply in paragraph (q)(4)(ii) of this section. However, any audits performed shall be government by the requirements



prescribed by State or local law or regulation.

* * * * *

Dated: May 11, 1992

**La Verne Ausman**

*Administrator, Farmers Home Administration.*

**Mary Ann Baron,**

*Acting Administrator Rural Development Administration.*

Dated: May 12, 1992.

[FR Doc. 92–16563 Filed 7–15–92; 8:45 am]

BILLING CODE 3410–07–M

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 625

RIN 3052–AB11

### Application for Award of Fees and Other Expenses Under the Equal Access to Justice Act

**AGENCY:** Farm Credit Administration (FCA).

**ACTION:** Proposed rule.

**SUMMARY:** The FCA proposes regulations to implement the Equal Access to Justice Act (EAJA). In accordance with the EAJA, the proposed regulations establish conditions under which parties who prevail over the FCA in certain administrative proceedings may be awarded attorney fees and other expenses.

**DATES:** Comments must be submitted on or before July 16, 1992.

**ADDRESSES:** Comments should be mailed or delivered (in triplicate) to Jean Noonan, General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all comments received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:**

Anthony N. Torres, Attorney, Litigation and Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

or

William L. Larsen, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:** On August 5, 1985, Congress enacted Public Law 99–80, 99 Stat. 183, which reauthorized and amended the Equal Access to Justice Act, 5 U.S.C. 504. The EAJA provides for the award of attorney fees and other expenses to parties who prevail over Federal agencies in certain administrative proceedings. The EAJA requires Federal agencies, after consultation with the Chairman of the Administrative Conference of the United States (ACUS), to establish uniform procedures for the submission and consideration of applications for fee and expense awards. Accordingly, the FCA proposes to adopt the following rules implementing the EAJA. In general, the proposed rules follow the ACUS Model Equal Access to Justice Rules, 1 CFR part 315. The proposed rules do not apply to judicial awards of costs and fees in civil actions. See 28 U.S.C. 2412.

The FCA has considered the appropriateness of proceeding with this regulation in light of the President's 120-day regulatory review period and has determined that promulgation of EAJA implementing regulations will enhance the fairness of the FCA's administrative process with minimal economic impact on the institutions of the Farm Credit System.

#### Subpart-by-Subpart Analysis

*Subpart A—General Provisions*

The six sections in this subpart set forth the basic substance of the EAJA. Section 625.1 explains that the purpose of these rules is to implement the EAJA. Section 625.2 lists which FCA proceedings are covered and clarifies that the FCA "presiding officer" is equivalent to the "adjudicative officer" under the EAJA. Section 625.3 sets forth the statutory eligibility criteria for awards, including net worth limitations. Section 625.4 defines the standards for granting awards. Sections 625.5 sets forth the statutorily limited amount of allowable fees that can be claimed. The EAJA limits attorney or agent fees to a maximum of $75 per hour unless the agency determines by regulation that a higher fee is justified by an increase in the cost of living or by special circumstances. The FCA is not proposing an alternative fee structure in these regulations. Section 625.6 explains when awards may be granted against another Federal agency that participates in an adversary adjudication before the FCA.

*Subpart B—Applicant Information Required*

There are four sections in this subpart. Sections 625.10–625.12 outline in detail the contents of the fee application, including the net worth exhibit and the documentation of fees and expenses. Section 625.13 establishes when an application may be filed.

*Subpart C—Procedures for Considering Applications*

There are nine sections explaining FCA procedures for considering applications for fee and expense awards. Section 625.20 requires that even if a proposed settlement of the award has been reached between the plaintiff and the FCA counsel, an application must be filed to comply with the EAJA. Section 625.21 requires the application to be filed and served in the same manner as other pleadings in the underlying adversary adjudication. See FCA Rules of Practice and Procedure at 12 CFR 622.18 and 622.19. Section 625.22 provides for the FCA counsel's answer to the application. Section 625.23 governs the applicant's reply to that answer. Section 625.24 permits the presiding officer to order further proceedings if necessary for full and fair resolution of issues arising from the application. Section 625.25 requires the presiding officer to make a recommended decision to the FCA Board on the application and prescribes its minimum required contents. Section 625.26 provides that the FCA Board will make the final decision on an application. As described in § 625.27, the FCA Board's final decision on the application is subject to judicial review. Section 625.28, the final provision in this part, describes how successful applicants can obtain payment of an award.

#### List of Subjects in 12 CFR Part 625

Application, Attorney fees, Delegation, Equal Access to Justice Act, Organization and functions, and Procedures.

For the reasons stated in the preamble, part 625 is proposed to be added to chapter VI of title 12 of the Case of Federal Regulations to read as follows:

### PART 625—APPLICATION FOR AWARD OF FEES AND OTHER EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

#### Subpart A—General Provisions

Sec.
625.1 Purpose.
625.2 Proceedings covered.
625.3 Eligibility of applicants.
625.4 Standards for awards.
625.5 Allowable fees and expenses.
625.6 Awards against other agencies.

#### Subpart B—Applicant Information Required

625.10 Contents of application.
625.11 Net worth exhibit.
625.12 Documentation of fees and expenses.
625.13 When an application may be filed.

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Subpart C—Procedures for Considering Applications

625.20 Settlement.
625.21 Filing and service of documents.
625.22 Answer to application.
625.23 Reply.
625.24 Further proceedings.
625.25 Recommended decision.
625.26 Board decision.
625.27 Judicial review.
625.28 Payment of award.

Authority: 5 U.S.C. 504, 12 U.S.C. 2252.

## Subpart A—General Provisions

### § 625.1 Purpose.

These rules implement the Equal Access to Justice Act, 5 U.S.C. 504 (EAJA). The EAJA provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (designated by the EAJA as "adversary adjudications") before Federal agencies. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. The rules in this part explain how the EAJA applies to Farm Credit Administration (FCA) proceedings. The rules describe the parties eligible for awards, how such parties may apply for awards, and the procedures and standards that govern FCA consideration of applications.

### § 625.2 Proceedings covered.

(a) The EAJA applies to adversary adjudications conducted by the FCA either on its own behalf or in connection with any other agency of the United States that participates in or in any way is a part of the adversary adjudication. Adversary adjudications are:

(1) Adjudications under 5 U.S.C. 554 in which the position of the FCA or other agency is presented by an attorney or other representative who enters in appearance and participates in the proceeding; and

(2) Enforcement proceedings under 12 U.S.C. 2261–2273.

(b) The failure of the FCA to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes that the proceeding is covered by the EAJA; whether the proceeding is covered shall then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered and excluded from coverage by the EAJA, any award made will include only fees and expenses related to covered issues.

(d) Proceedings under this part may be conducted by the FCA Board (Board) or by the presiding officer (referred to as the "adjudicative officer" in the EAJA), as defined in § 622.2(f) of this chapter. Where the Board presides, the recommended decision under § 625.25 of this part will be omitted and the Board will make a final decision on the application in accordance with § 625.26 of this part.

### § 625.3 Eligibility of applicants.

(a) To be eligible for an award under the EAJA, an applicant must be a prevailing party named or admitted to the adversary adjudication for which an award is sought.

The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B of this part.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of $2 million or less;

(2) The sole owner of an unincorporated business who has both a net worth of $7 million or less (including personal and business interests), and 500 or fewer employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with 500 or fewer employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with 500 or fewer employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of $7 million or less and 500 or fewer employees.

(c) For eligibility purposes, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for that applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility unless the presiding officer determines that aggregation would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities.

(1) For purposes of this part, and affiliate is:

(i) Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant; or

(ii) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interests.

(2) The presiding officer may determine that financial relationships of the applicant other than those described in paragraph (f)(1) of this section constitute special circumstances that would make an award unjust.

(g) An applicant that participates in an adversary adjudication primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

### § 625.4 Standards for awards.

(a) If an eligible applicant prevails over the FCA in an adversary adjudication, or in a significant and discrete substantive portion thereof, the applicant may receive an award for fees and expenses incurred in the adjudication, or portion thereof, unless the position of the FCA over which the applicant prevailed was substantially justified.

(b) The position of the FCA includes:

(1) The position taken by the FCA in the adversary adjudication; and

(2) The action or inaction of the FCA upon which the adversary adjudication is based.

(c) Except as provided in paragraph (d) of this section, the FCA must prove that its position was substantially justified before an award may be denied to an otherwise eligible applicant.

(d) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the adversary adjudication or if special circumstances make the award sought unjust.

### § 625.5 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75 per hour. No award to compensate an expert witness may exceed $75 per hour. However, an award also may include the reasonable

expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the FCA shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, audit, engineering report, test, project, or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matte was necessary for the preparation of the applicant's case.

### § 625.6 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in or in any way is a part of an adversary adjudication before the FCA and that agency's position is not substantially justified, the award or an appropriate portion of the award shall be made against the agency.

## Subpart B—Applicant Information Required

### § 625.10 Contents of application.

(a) An application for an award of fees and other expenses under the EAJA shall identify the applicant and the adversary adjudication for which an award is sought. The application shall show that the applicant has prevailed in the adversary adjudication. If the application is made on the basis of significant and discrete substantive issues on which the applicant prevailed, the issues must be specifically identified. The application also shall identify each position of the FCA or other agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall describe briefly the type and purpose of its organization or business and state the number of persons employed.

(b) The application shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It states that it has 500 employees or fewer and attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) on the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on it exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with 500 or fewer employees.

(c) The application shall state the total amount of fees and other expenses for which an award is sought.

(d) The application may include any other relevant matters that the applicant wishes the FCA to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. The application must contain a written verification under oath or under penalty of perjury theta the information provided in the application and any supporting documents is accurate.

### § 625.11 Net worth exhibit.

(a) Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 625.3(f) of this part) as of the date when the adversary adjudication was initiated. The exhibit may be in any convenient form that provides full disclosure of the assets and liabilities of the applicant and its affiliates and is otherwise sufficient to demonstrate that the applicant qualifies under the standards in this part. The presiding officer may require an applicant to file additional information supporting its eligibility for an award.

(b) An applicant that objects to public disclosure of information in any portion of the net worth exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the presiding officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion under § 622.11 of this chapter to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the FCA, but need not be served on any other party to the application proceeding. If the presiding officer, or the FCA Board pursuant to § 622.11(e) of this chapter, finds that the information should not be withheld from disclosure, it shall be placed in the public record of the application proceeding. Otherwise, any request to inspect or copy the exhibit shall be treated in accordance with the FCA's procedures regarding release of information (12 CFR part 602).

### § 625.12 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, audit, engineering report, test, project, or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. Under § 625.24 of this part, the presiding officer may require the applicant to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed.

### § 625.13 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the adversary adjudication, or in a significant and discrete substantive portion thereof, but in no case later than 30 days after the FCA's final disposition of the adversary adjudication.

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the adversary adjudication is issued or any other complete resolution of the adversary adjudication, such as a

settlement or voluntary dismissal, becomes final and is unreviewable by the FCA, any other administrative body, or the courts.

(c) If review, reconsideration, or appeal is sought or taken of an adversary adjudication decision as to which an applicant believes it has prevailed, application proceedings for any award of fees and other expenses shall be stayed pending final disposition of the underlying controversy.

## Subpart C—Procedures for Considering Applications

### § 625.20 Settlement.

A prevailing party and the FCA through its counsel may agree on a proposed settlement of an award at any time, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If a prevailing party and the FCA counsel agree on a proposed settlement of an award, the proposed settlement must be submitted to the presiding officer for a recommended decision pursuant to § 625.25 of this part. If it has not been previously filed, the application must be submitted to the presiding officer along with the proposed settlement.

### § 625.21 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the adversary adjudication in the same manner as other pleadings in the adversary adjudication (*see* §§ 622.18 and 622.19 of this chapter), except as provided in § 625.11(b) of this part for confidential financial information.

### § 625.22 Answer to application.

(a) Within 30 days after service, counsel for the FCA may file an answer to the application, unless the FCA counsel requests an extension of time for filing or a statement of intent to negotiate under paragraph (c) of this section is filed.

(b) The answer shall set forth any objections to the requested award and identify the facts relied on in support of the FCA's position. If the answer is based on any alleged facts not already in the record of the adversary adjudication, the FCA counsel shall include with the answer either supporting affidavits or a request for further proceeding under § 625.24 of this part.

(c) If the FCA counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the presiding officer upon request by the FCA counsel and the applicant.

### § 625.23 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 625.24 of this part.

### § 625.24 Further proceedings.

(a) The determination of an award shall be made on the basis of the written record unless the presiding officer finds that the further proceedings are necessary for full and fair resolution of the issues arising from the application. Such further proceedings may be at the request of either the applicant or the FCA counsel, or on the presiding officer's own initiative, and shall be conducted as promptly as possible. Further proceedings may include an informal conference, oral argument, additional written submissions, or other actions required by the presiding officer, but may not include discovery or an evidentiary hearing with respect to the issue of whether the agency's position was substantially justified.

(b) Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(c) A request that the presiding officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

### § 625.25 Recommended decision.

The presiding officer shall file a recommended decision within 30 days after completion of proceedings on the application, and, promptly upon filing, shall serve a copy of the recommended decision upon each party to the proceedings. The decision shall include written findings and conclusions on the applicant's eligibility, status as a prevailing party, the recommended amount of the award, if any, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the FCA's position was substantially justified, whether the applicant unduly protracted the adversary adjudication, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

### § 625.26 Board decision.

Following filing of the recommended decision with the Board, the Board shall render a final decision on the application. The Board maintains full discretion to uphold, reverse, remand, or alter the recommended decision. The Board may order further proceedings (including those set forth in §§ 622.11 and 622.13 through 622.16 of this chapter) upon request by any party to the application proceeding or on its own initiative, but such proceedings may not include discovery or an evidentiary hearing with respect to the issue of whether the agency's position was substantially justified.

### § 625.27 Judicial review.

Judicial review of final FCA decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

### § 625.28 Payment of award.

An applicant seeking payment of an award shall submit to the Secretary to the Board a copy of the final decision granting the award, accompanied by a certification that the applicant will not seek judicial review of the decision. The required submission and certification should be sent to: Secretary to the Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

(b) The FCA will pay the amount awarded to the applicant within 60 days of receipt of the applicant's submission and certification.

Dated: July 13, 1992.

**Curtis M. Anderson,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 92–16787 Filed 7–15–92; 6:45 am]

BILLING CODE 6705–01–M

## CONSUMER PRODUCT SAFETY COMMISSION

**16 CFR Part 1204**

**Safety Standard for Omnidirectional Citizens Band Base Station Antennas; Regulatory Flexibility Act; Review of Existing Rules**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of review of existing rules.

**SUMMARY:** In accordance with provisions of the Regulatory Flexibility Act, the Commission is reviewing the Safety Standard for Omnidirectional Citizens Band Base Station Antennas. The purpose of this review is to determine if that standard should be continued without change, amended, or revoked, consistent with the objectives for which it was issued, in order to minimize any economic impact which the standard may have on small entities, including small businesses.

**DATES:** Interested persons are invited to submit written comments on the rule on or before September 14, 1992.

**ADDRESSES:** Comments and any accompanying material should be submitted to the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and captioned "Regulatory Flexibility Act Review of CB Antenna Standard."

**FOR FURTHER INFORMATION CONTACT:** Allen F. Brauninger, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0980.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) became effective January 1, 1981, and requires Federal agencies to evaluate and take into consideration the economic impact of their rules on "small entities," a term which includes small businesses.

Additionally, section 610 of the RFA (5 USC 610) requires agencies to review those rules issued after January 1, 1981, within ten years of their promulgation. The purpose of the review required by section 610 of the RFA is to determine whether the rules under consideration should be continued in effect without change, amended, or revoked, consistent with the objectives of the agency, to minimize any economic impact which they may have on small entities.

Section 610(c) of the RFA requires agencies to publish notice in the **Federal Register** of those rules to be reviewed under provisions of the RFA for economic impact on small businesses and other small entities within the next 12 months. Section 610(c) specifies that the notice shall include a brief description of those rules, the need for those rules, and their legal basis, and shall invite public comment on the rules under review. The following information is provided in accordance with provisions of section 610(c) of the RFA.

### Safety Standard for Omnidirectional Citizens Band Base Station Antennas

Omnidirectional citizens band base station antennas are non-mobile antennas which are used to obtain essentially uniform receiving and transmitting capabilities in all directions. In 1982, the Commission issued the Safety Standard for Omnidirectional Citizens Band Base Station Antennas to reduce risks of electrocution and serious injuries which may result if an antenna contacts an electric power line while the antenna is being erected or removed from its site.

The standard prescribes performance tests to demonstrate that an antenna will not transmit a harmful electric current if it contacts an electric power line with a voltage of 14,500 volts phase-to-ground. The standard also requires that instructions for omnidirectional base station antennas must include a statement warning users to keep the antenna away from overhead wires, and to let go of the antenna if it comes near any overhead wires.

The Safety Standard for Omnidirectional Citizens Band Base Station Antennas was issued under the authority of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*). That statute authorizes the Commission to issue consumer product safety standards to eliminate or reduce an unreasonable risk of injury associated with a consumer product.

A separate rule codified at 16 CFR part 1402 requires manufacturers and importers of omnidirectional citizens band based station antennas to provide performance and technical data relating to performance and safety of those products by means of labels and instructions. In 1986, the Commission reviewed that rule for economic impact on small businesses as part of a review of 17 rules issued under provisions of the CPSA. The Commission published a notice in the **Federal Register** of February 19, 1987 (52 FR 5079), to announce the completion of that review and the availability of a report of that activity.

### Review of Standard for Base Station Antennas

In accordance with provisions of section 610(c) of the RFA (5 U.S.C. 610(c)), the Commission hereby gives notice that during the next 12 months it will review the requirements of the Safety Standard for Omnidirectional Citizens Band Base Station Antennas codified at 16 CFR part 1204. The Commission invites all interested persons to submit comments on that standard by September 14, 1992.

Dated: July 10, 1992.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 92–16789 Filed 7–15–92; 8:45 am]

BILLING CODE 6355-01-M

## DEPARTMENT OF TRANSPORTATION

**Federal Highway Administration**

**23 CFR Part 140**

**[FHWA Docket No. 92–7]**

**RIN 2125–AC96**

**Reimbursement; Temporary Matching Fund Waiver**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FHWA is requesting comments on procedures for a temporary waiver of State matching fund requirements as mandated by section 1054 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Section 1054 allows a State to request an increase in the Federal share (normally 75 to 90 percent) of the construction costs of a qualifying Federal-aid highway project based upon a certification by the Governor of the State that sufficient funds are not available to pay the cost of the non-Federal share of the project. The provisions permit a State to receive up to 100 percent Federal funds on a project for a period through September 30, 1993.

**DATES:** Comments must be submitted on or before August 31, 1992.

**ADDRESSES:** Submit written, signed comments to FHWA docket No. 92–7, Federal Highway Administration, Office of the Chief Counsel, room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

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**FOR FURTHER INFORMATION CONTACT:** Mr. Max I. Inman, Chief, Federal/States Financial Management Branch, (202) 366-2853; or Mr. S. James Wiese, Office of the Chief Counsel, (202) 366-0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

**SUPPLEMENTARY INFORMATION:** The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102-240, 105 Stat. 1914 (1991), was signed by the President on December 18, 1991. Section 1054 of the ISTEA requires regulations to be established under which a State may request a waiver of its normal share of the construction cost of a qualifying Federal-aid highway project provided the Governor of the State certifies that sufficient funds are not available to pay the cost of the non-Federal share of the project. The regulation provides for an available period for the waiver through September 30, 1993, as well as repayment procedures. As passed, section 1054 provides that:

(a) Waiver of Matching Share.—Notwithstanding any other provision of law, the Federal share of any qualifying project approved by the Secretary under title 23, United States Code, and of any qualifying project for which the United States becomes obligated to pay under title 23, United States Code, during the period beginning on October 1, 1991, and ending September 30, 1993, shall be the percentage of the construction cost as the State requests, up to and including 100 percent.

(b) Repayment.—The total amount of increases in the Federal share made pursuant to (a) for any State shall be repaid to the United States by the State on or before March 30, 1994. Payments shall be deposited in the Highway Trust Fund and repaid amounts shall be credited to the appropriate apportionment accounts of the State.

(c) Deduction From Apportionments.—If a State has not made the repayment as required by (b), the Secretary shall deduct from funds apportioned to the State under title 23, United States Code, in each of the fiscal years 1995 and 1996, a pro rata share of each category of apportioned funds. The amount which shall be deducted in each fiscal year shall be equal to 50 percent of the amount needed for repayment. Any amount deducted under this subsection shall be reapportioned for fiscal years 1995 and 1996 in accordance with title 23, United States Code, to those States which have not received a higher Federal share under this section and to those States which have made the repayment required by subsection (b).

(d) Qualifying Project Defined.—For purposes of this section, the term "qualifying project" means a project approved by the Secretary after the effective date of this title, or a project for which the United States becomes obligated to pay after such effective date, and for which the Governor of the State submitting the project has certified, in accordance with regulations established by the Secretary, that sufficient funds are not available to pay the cost of the non-Federal share of the project.

**Discussion of Proposed Regulation**

*Section 140.301 Purpose*

This proposed section states the purpose of subpart C, which is to implement section 1054 of the ISTEA.

*Section 140.303 Applicability*

In proposed § 140.303, the increased Federal share would apply to qualifying projects, as defined in the regulations, which are authorized prior to September 30, 1993, as specified by the statute.

*Section 140.305 Definitions*

This proposed section defines "Governor" to clarify that this provision would be applicable to Puerto Rico and the District of Columbia, as well as the fifty States. The section takes the definition from section 1054 of the ISTEA of "qualifying project." Title 23 U.S.C. 106(a) is the provision for approval of plans, specifications, and estimates, 23 U.S.C. 117 is the certification acceptance provision, and 23 U.S.C. 133(e) is the provision for obligating Surface Transportation Program funds.

*Section 140.307 Submission of Certification by Governor*

This proposed section contains the statutory requirement for certification by the Governor which would be the initial step in requesting an increased Federal share. The certification must state that sufficient funds are not available to pay the cost of the non-Federal share of the project or projects. The format of the certification is not prescribed by this proposed regulation, thus providing the Governor with flexibility as to the type of certification best suiting the State's situation.

*Section 140.309 Request and Approval of Increase in Federal Share*

This section would establish the basic procedures for requesting an increase in the Federal share which vary little from the regular procedures for requesting Federal participation in a project. This section also clarifies that the amount waived is the amount of costs incurred by the State and reimbursed by FHWA during the waiver period. The waiver does not apply to the amounts obligated during the period. This is evident in the ISTEA which applies the waiver to "construction cost as the State requests." It further states that the increased Federal share shall be "repaid" and "deposited in the Highway Trust Fund." These terms refer to expenditures.

The FHWA recognizes that some qualifying projects will not be completed prior to September 30, 1993, at which time the State will be required to match its share of project costs. Paragraph (b) of this proposed section provides the State with an option to request an obligation of Federal funds, only on the increased Federal share, based on the amount of costs the State expects to incur prior to September 30, 1993, instead of the total project costs. The State is still required to fully obligate the regular Federal share. For example, the State requests 100 percent Federal participation on an Interstate project (normally 90 percent participation) with an estimated cost of $10 million. Federal funds of $9 million must be obligated for the regular Federal share. If the State estimates that only 50 percent of the project costs will be incurred by September 30, 1993, it may request that only 50 percent of the increased Federal share amount be obligated. In this case, instead of obligating $1 million of Federal funds on the increased Federal share, only $500,000 would be obligated. The State would still be reimbursed for 100 percent of project costs incurred until September 30, 1993.

Paragraph (c) of this proposed section requires a statement to be included on the project agreement, PR-2, submitted by the State which establishes the Federal share and amount of Federal funds requested by the State. The statement also establishes that claims paid after September 30, 1993, shall be at the regular Federal pro rata share.

Paragraph (d) of this proposed section would allow the State to use its normal billing procedures to claim reimbursement for the increased Federal share. The State would be required to pro rate the costs incurred to the regular Federal share, the increased Federal share, and the non-Federal share, if any. This is necessary for the FHWA to account for the amount reimbursed on the increased Federal share.



*Section 140.311 Repayment of the Increased Federal Share*

This proposed section reiterates the statute's requirements for repaying the increased Federal share. The State would have the option of repaying the increased Federal share paid to the State or having that amount deducted from its apportionments.

**Rulemaking Analyses and Notices**

*Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this action is not major within the meaning of Executive Order 12291 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 605(b)), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

*Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism assessment.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

*Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

*National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 140**

Accounting, Grant program-transportation, Highways and roads.

Issued on: July 8, 1992.

**T. D. Larson,**

*Administrator.*

The FHWA proposes to amend 23 CFR part 140, by adding Subpart C, Temporary Matching Fund Waiver, to read as follows:

## PART 140—REIMBURSEMENT

1. The authority citation for 23 CFR part 140 is revised to read as follows:

**Authority:** 23 U.S.C. 101(e), 114(a), 120, 121, 122 and 315; Sec. 1054, Pub. L. 102-240, 105 Stat. 2001; 49 CFR 1.48(b).

2. Part 140 is amended by adding a new subpart C to read as follows:

### Subpart C—Temporary Matching Fund Waiver

Sec.
140.301 Purpose.
140.303 Applicability.
140.305 Definitions.
140.307 Submission of certification by Governor.
140.309 Request and approval of increase in Federal share.
140.311 Repayment of the increased Federal share.

### Subpart C—Temporary Matching Fund Waiver

**§ 140.301 Purpose.**

The purpose of this regulation is to prescribe procedures for administering section 1054 of the Intermodal Surface Transportation Efficiency Act of 1991, providing for a temporary waiver of State matching fund requirements.

**§ 140.303 Applicability.**

The provisions of this subpart are applicable to qualifying projects as defined in § 140.305 during the period October 1, 1991, and ending September 30, 1993.

**§ 140.305 Definitions.**

As used in this subpart:

*Governor* means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

*Increased Federal share* means the portion of the approved Federal share which is in excess of the regular Federal share that would have been approved if a matching fund waiver had not been requested.

*Qualifying project* means a project approved after December 18, 1991, under 23 U.S.C. 106(a), or a project for which the United States becomes obligated to pay after December 18, 1991, under 23 U.S.C. 117 or 23 U.S.C. 133(e) for which the Governor has submitted a certification described in § 140.307.

**§ 140.307 Submission of certification by Governor.**

The Governor of the State shall submit a certification in writing to the Federal Highway Administration (FHWA) Division Administrator certifying that sufficient funds are not available to pay the cost of the non-Federal share of a qualifying project, taking into account all State and local funds that are available for obligation on Federal-aid highway projects. Funds encumbered or committed to other existing programs are considered unavailable for matching purposes.

**§ 140.309 Request and approval of increase in Federal share.**

(a) The State may submit a request in writing to the FHWA Division Administrator for an increase in the Federal share of a qualifying project up to and including 100 percent at the time the State submits a request for project approval or obligation. The request shall specify the Federal pro rata share, the amount of regular Federal funds and the amount of the increased Federal share desired.

(b) To maximize the obligation of Federal funds, the amount obligated for the increased Federal share may be based on the estimated costs to be incurred by the State before September 30, 1993, instead of the total estimated project costs.

(c) When submitting the project agreement, Form PR-2, pursuant to § 630.304 of this title, the State shall include in the agreement the following provision:

The Federal-aid participation is increased to _____ percent for reimbursement claims paid on or before September 30, 1993, in accordance with Public Law 102-240, section 1054. The additional Federal funds requested total $_____. Claims paid after September 30, 1993, shall be at the regular Federal pro rata share of _____ percent.

(d) The State may claim reimbursement for the increased Federal share as a part of its normal billing procedures. Participating costs incurred by the State on qualifying projects shall

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be charged on a pro rata basis to the regular Federal share, increased Federal share, and non-Federal share, if any.

**§ 140.311 Repayment of the increased Federal share.**

(a) The State shall repay the amount of the increased Federal share made pursuant to this subpart on or before March 30, 1994. If such repayment is not made by the State, the FHWA shall make the deductions as provided in paragraph (c) of this section.

(b) The FHWA shall deposit all repayments made by a State under paragraph (a) of this section to the Highway Trust Fund and shall credit the repayments to the appropriate apportionment accounts of the State.

(c) If the total amount of the increased Federal share is not repaid on or before March 30, 1994, deductions shall be made from the State's fiscal year 1995 and fiscal year 1996 apportionments. The total amount deducted shall be the amount reimbursed to the State on the increased Federal share of all qualifying projects. In each of the fiscal years, one-half of the total deduction shall be made from the following categories on a pro rata basis: National Highway System, Surface Transportation Program, Interstate Construction, Interstate Substitute, Interstate Maintenance Program, Bridge Program, and Congestion Mitigation and Air Quality Improvement Program.

(d) The total amount deducted in accordance with paragraph (c) of this section shall be reapportioned to those States which did not receive an increased Federal share under this subpart and to those States which have made repayment under this section. These reapportioned funds shall be credited to the same categories of funds on which the deductions occurred.

(e) Appropriate adjustments will be made to each State's obligation limitation to reflect the changes in apportioned funds required by paragraphs (c) and (d) of this section.

[FR Doc. 92-16689 Filed 7-15-92; 8:45 am]
BILLING CODE 4910-22-M

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**23 CFR Part 750**

**[FHWA Docket No. 92-22]**

**RIN 2125-AC99**

## Removal of Nonconforming Signs

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Withdrawal of notice of proposed rulemaking (NPRM) and closing of docket.

**SUMMARY:** The FHWA is withdrawing an NPRM published on May 8, 1992, at 57 FR 19824. The May 8 NPRM noted that the recently enacted Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) amended 23 U.S.C. 132 by making highway trust funds apportioned under 23 U.S.C. 104 available for the Federal share of just compensation to be paid to sign owners and landowners upon the removal of nonconforming signs. Consequently, the States were once again required to purchase nonconforming signs to comply with the Highway Beautification Act of 1965.

On June 22, 1992, however, the Congress further amended 23 U.S.C. 131(n), effectively giving the States the discretion as to whether to use highway funds for the removal of nonconforming signs. As a result, a portion of a March 6 notice (57 FR 8167) and the NPRM no longer reflect current law, as there can be no binding guidelines or deadlines set by the FHWA for the States to follow. The NPRM is therefore withdrawn. Also published in the Notices section of today's **Federal Register** is a notice rescinding a portion of the March 6 notice.

**DATES:** Withdrawal of NPRM effective on June 22, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger Kezar, Chief, Policy Development Branch, Office of Right-of-Way, HRW-11, (202) 366-2021; or Mr. Robert J. Black, Attorney, Office of Chief Counsel, HCC-31, (202) 366-1359, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except legal Federal holidays.

**SUPPLEMENTARY INFORMATION:** On March 6, 1992, the FHWA published a notice in the **Federal Register** entitled "Intermodal Surface Transportation Efficiency Act of 1991 Amendments to 23 U.S.C. 131, Control of Outdoor Advertising." The notice described the impact of section 1046 of the ISTEA, Public Law 102-240, 105 Stat. 1914, upon the States' existing procedures for effective control of outdoor advertising, which were instituted in accord with regulations previously issued by the FHWA in 23 CFR 750.705. Section 1046(a) of the ISTEA amended 23 U.S.C. 131(m), making funds apportioned under 23 U.S.C. 104 available to participate in the cost of outdoor advertising control. By this amendment, highway trust funds were now available for the removal of nonconforming signs. In the notice, the FHWA stated that, as a consequence of the ISTEA making funds available for participation, it believed the ISTEA required the States to begin immediate removal of nonconforming signs and to make reasonable progress in completing their removal expeditiously. The notice set a two year flexible goal for the removal of nonconforming signs and advised the States to submit plans for such removal by June 18, 1992. The notice also dealt with the removal of illegal signs and the prohibition of signs on scenic byways.

On May 8, 1992, the FHWA issued an NPRM to set forth criteria that the States should consider in developing their plans for the acquisition and removal of nonconforming signs. In addition, the FHWA wanted to establish a definite deadline for sign removal, with a procedure for extending the time limit if States were unable to meet it. Several options for implementing the removal of the remaining nonconforming signs were listed, and comments were solicited from all interested parties. As of this date, the FHWA has received numerous comments upon the options.

The need for the FHWA's rulemaking effort was obviated, when, on June 22, 1992, Public Law 102-302, 106 Stat. 248, was signed into law. Section 104 of Public Law 102-302 amended 23 U.S.C. 131(n), to make clear that while funds apportioned to a State under 23 U.S.C. 104 could be used for the acquisition costs of nonconforming signs, States are under no obligation to use such highway funds for nonconforming sign removal. Consequently, the May 8 NPRM, found at 57 FR 19824, which would have resulted in a rule requiring the establishment of a specific timetable for the removal of the remaining 92,000 nonconforming signs, is no longer appropriate and is hereby withdrawn and the docket closed.

In consideration of the foregoing, the March 6 notice, found at 57 FR 8167, is still in effect as regards the prohibition of signs on scenic byways and removal of illegal signs. That part of the March 6 notice dealing with the removal of nonconforming signs, however, is rescinded in a notice appearing in the Notices section of today's **Federal Register**. States are still required to maintain effective control of outdoor advertising pursuant to 23 CFR Part 750, and those States deciding to use highway funds for nonconforming sign removal should give careful consideration to the recommended priority of removals found at 23 CFR 750.304(a).

A regulatory information number [RIN] is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and

October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 750**

Advertising, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements, Signs and symbols.

(23 U.S.C. 131 and 315; Sec. 104 of Pub. L. 102-302, 106 Stat. 248)

Issued on: July 10, 1992.

**T.D. Larson,**

*Administrator.*

[FR Doc. 92-16768 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-72-M

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**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**30 CFR Part 202**

**RIN: 1010-AB57**

**Valuation of Gas Production Under Unitization or Communitization Agreements**

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Advance notice of proposed rulemaking, extension of public comment period.

**SUMMARY:** The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on its Advance Notice of Proposed Rulemaking which was published in the **Federal Register** on June 1, 1992, (57 FR 23068). In response to requests for additional time, MMS will extend the comment period from July 16, 1992, to August 17, 1992.

**DATES:** Comments must be received on or before August 17, 1992.

**ADDRESSES:** Written comments may be mailed to the Minerals Management Service, Mail Stop 3910, Denver, Colorado, 80225-0165, Attention: Dennis Whitcomb.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Whitcomb, Chief, Rules and Procedures Branch at (303) 231-3432.

Dated: July 10, 1992.

**Daniel Talbot,**

*Deputy Assistant Secretary for Land and Minerals Management.*

[FR Doc. 92-16798 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-MR-M

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 110**

**[CGD7 91-60]**

**Anchorage Regulation; Port Everglades, FL**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish two anchorage grounds off Port Everglades, Florida. The Florida State Department of Natural Resources, Port Everglades Authority, and the Ocean Research Institute have requested that the Coast Guard establish these anchorage grounds off the coast. Anchoring regulations are also being proposed at this time. The primary purpose of the federally designated anchorage grounds is to encourage large vessels to anchor within the anchorage grounds' boundaries so as to avoid causing reef damage with their anchors.

**DATES:** Comments must be received on or before August 31, 1992.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. First Ave., Brickell Plaza Bldg., Miami, FL 33131-3050. The comments will be available for inspection and copying at room 406 of the Seventh Coast Guard District. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander H. Van Houten, Seventh Coast Guard District, Aids to Navigation Branch, (305) 536-5621.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-60) and the specific section of this rule to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments, but plans no public hearing. Requests for a public hearing may be sent to the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

**Drafting Information**

The drafters of this notice are Lieutenant Commander H. Van Houten, project officer, Seventh Coast Guard District, Aids to Navigation Branch, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal Office.

**Discussion of the Regulation**

Accordingly to research conducted by the Ocean Research Institute, 614 SE. 19th St., Ft. Lauderdale, Florida, the "3rd" reef off Ft. Lauderdale is part of a worldwide shelf edge reef system built by shallow ater elkhorn coral several thousand years ago. Sea level has subsequently risen and the shallow water coral have died and have been covered by deep water coral species. Thirty-one species of stony coral have been identified on the reef. Evidence exists showing damage to the reefs caused primarily by anchors of large ocean going vessels.

The boundaries for the proposed anchorage grounds were originally developed by the Ocean Research Institute, the Florida Department of Natural Resources, the Port Everglades Authority, and the Coast Guard. The boundaries were refined based on an April 1992 side-scan sonar survey conducted by the Marine Resources Section of the Broward County Office of Natural Resource Protection. This survey shows neither natural nor artificial reefs lie in the proposed anchorage grounds.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**Environmental Impact**

The U.S. Coast Guard, the lead federal agency for purposes of the National Environmental Policy Act (NEPA), intends to prepare a Categorical Exclusion (CE) in accordance with its

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own NEPA implementing procedures. "Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementing NEPA regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Since the proposed anchorage grounds are located over nonsensitive ocean bottom for the purpose of avoiding reef damage caused by vessels' anchors, the effects on the environment are expected to be beneficial.

**Federalism**

This rule making has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule making does not have sufficient federalism implications to warrant the preparation of a Federalism Statement.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.186 is added to read as follows:

**§ 110.186 Port Everglades, Florida**

(a) *The anchorage grounds*—(1) *Anchorage A.* A rectangular area the center of which is approximately two miles northeast of the entrance to Port Everglades with the following coordinates:

| *Latitude* | *Longitude* |
|---|---|
| 26°07'46" N | 80°04'51" W |
| 26°07'46" N | 80°05'01" W |
| 26°06'20" N | 80°05'01" W |
| 26°06'20" N | 80°05'10" W |

(2) *Anchorage B.* The area to the eastward of a line connecting the points 26°07'16"N/80°04'38"W and 26°7'56"N/80°04'34"W; to the southward of a line bearing 090 from the point 26°7'56"N/80°04'34"W; and northward of a line bearing 090 from the point 26°07'16"N/80°04'38"W.

(b) *The regulations.* (1) Vessels in the Atlantic Ocean in the vicinity of and awaiting berthing space at Port Everglades, shall only anchor within the anchorage area hereby defined and established, except in cases of great emergency.

(2) Vessels anchoring under circumstances of great emergency outside the anchorage area shall be shifted to new positions within the anchorage area immediately after the emergency ceases.

Dated: June 30, 1992.

**K.M. Ballantyne,**

*Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.*

[FR Doc. 92–16812 Filed 7–15–92; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

**[CGD7 92–41]**

## Anchorage Regulation; Kings Bay, GA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering a proposal by the U.S. Navy to minimize the effect of passing vessels' wakes on U.S. Navy ships moored at the King's Bay Naval Submarine Base Magnetic Silencing Facility, Floating Dry Dock and Tender Refit Moors. At the U.S. Navy's request, the Coast Guard established a regulated navigation area in 1984 to minimize the effects of wakes on the drydock ARDM 1 OAKRIDGE. Since then, the construction of the Magnetic Silencing Facility and the related activities associated with it have increased the size the regulated navigation area which the U.S. Navy believes is necessary to protect workers. The proposed revision will extend by approximately 700 yards the southern boundary of the bare steerageway regulated navigation area in the vicinity of the entrance to King's Bay, Georgia.

**DATES:** Comments must be submitted on or before September 14, 1992.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. First Ave., Brickell Plaza Bldg., Miami, FL 33131–3050. The comments will be available for inspection and copying at room 406 of the Seventh Coast Guard District. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander H. Van Houten, Seventh Coast Guard District, Aids to Navigation Branch, (305) 536–5621.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her name and address, identify this notice as CGD7–92–41, and give the reasons for the comment. Persons desiring acknowledgment that their comment has been received should enclose a stamped self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned.

**Drafting Information**

The drafters of this notice are Lieutenant Commander H. Van Houten, project officer, Seventh Coast Guard District, Aids to Navigation Branch, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal office.

**Discussion of the Regulation**

The U.S. Navy requested the original rule to minimize the effects of wakes on the drydock ARDM–1 OAKRIDGE, moored in King's Bay, Georgia, 500 yards from the Atlantic Intracoastal Waterway. Wakes caused vessels inside the drydock to shift on their keelblocks. The regulation established a bare steerageway speed zone in the vicinity of King's Bay and Cumberland Sound. The restriction eliminated a substantial hazard to workers caused by vessel movement in the drydock. Since the original rule was adopted, the U.S. Navy has constructed a Magnetic Silencing Facility immediately to the south of the ARDM–1 OAKRIDGE. The U.S. Navy believes that the wakes of passing vessels have a similar effect on vessels moored at this facility. Extending the regulated navigation area will provide a safer work environment for these personnel.

The present regulated navigation area is enclosed within a line connecting the following points

| *Latitude* | *Longitude* |
|---|---|
| 30°47'58.5" N | 081°29'24.5" W |
| 30°46'44.0" N | 081°29'18.4" W |
| 30°47'35.0" N | 081°30'16.5" W |

and thence to the point of beginning.

The proposed zone would be enclosed within a line connecting the following points:"

| *Latitude* | *Longitude* |
|---|---|
| 30°48'00.0" N | 081°29'24.0" W |
| 30°46'19.5" N | 081°29'17.0" W |
| 30°47'35.0" N | 081°30'16.5" W |

and thence to the point of beginning.

The original Notice of Proposed Rule Making was published in the **Federal Register** on May 17, 1984, and the Final Rule became effective on December 10, 1984. A Final Rule to more accurately describe the boundaries of the Regulated Navigation Area was published in the **Federal Register** on May 12, 1989 and effective the same date.

**Economic Assessment and Certification**

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**Environmental Impact**

The Coast Guard, the lead federal agency for purposes of the National Environmental Policy Act (NEPA), intends to prepare a Categorical Exclusion in accordance with its own NEPA implementing procedures. "Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementing NEPA regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. The Coast Guard NEPA Manual (COMDTINST M16475.1B) specifically defines "actions performed as a part of Coast Guard operations to carry out statutory authority in the area of maritime safety" as being categorically excluded from further environmental documentation.

**Federalism**

This rule making has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule making does not have sufficient federalism implications to warrant the preparation of a Federalism Statement.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Vessels, Waterways.

**Final Regulation**

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is revised as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.730 is revised to read as follows:

**§ 165.730 King's Bay, Georgia—Regulated Navigation Area.**

Vessels transiting in the water bounded by the line connecting the following points must travel no faster than needed for steerageway:

| *Latitude* | *Longitude* |
|---|---|
| 30°46'00.0" N | 081°29'24.0" W |
| 30°46'19.5" N | 081°29'17.0" W |
| 30°47'35.0" N | 081°30'16.5" W |

and thence to the point of beginning.

Dated: June 25, 1992.

**Robert E Kramek,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 92–16766 Filed 7–15–92; 8:45 am]

BILLING CODE 4910–14–M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Chapter I**

**[AD–FRL–4154–3]**

**Intent to Form an Advisory Committee To Negotiate a Proposed Regulation for Architectural and Industrial Maintenance Coatings Under Section 183(e) of the Clean Air Act as Amended, and Announcement of Public Meeting**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Intent.

**SUMMARY:** The EPA is considering establishing an advisory committee to negotiate issues for the purpose of reaching a consensus that can serve as the basis of a notice of proposed rulemaking under section 183(e) of the Clean Air Act (the Act) as amended by the Clean Air Act Amendments of 1990 (CAAA). The advisory committee would be created under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act of 1990 (NRA), and would consist of representatives of the interests significantly affected by the outcome of the rule.

This notice describes the subject, scope and issues underlying the regulation that may be negotiated. It also lists the interests that the EPA believes will be significantly affected by the rule, and the persons or entities proposed to represent such interests in any negotiations.

The EPA requests comments on: (1) Whether negotiations are appropriate and feasible for development of the proposed regulation described, (2) whether the EPA has correctly and comprehensively identified the issues underlying the regulation and the interests that will be significantly affected by it, and, (3) whether the persons proposed for the advisory committee would adequately represent those interests. Any person or entity that believes its interests would not be adequately represented by those members proposed for the advisory committee may submit an application for membership in accordance with the procedures described below.

The EPA also announces that it will conduct a public meeting on the proposed use of negotiations for the regulation. The meeting will explore the feasibility of negotiating the proposed rule and the issues to be addressed by the advisory committee. Any person interested in the negotiation of the proposed rule is encouraged to attend.

**DATES:** The EPA conduct a public meeting concerning this notice on July 28–29, 1992, in Raleigh, NC. On July 28, the meeting will start at 10:30 a.m. and end at 6 p.m. On July 29, the meeting will start at 8:30 a.m. and run until completion, but no later than 4 p.m. Comments on the issues raised by this notice and any applications for membership on the advisory committee must be received by August 17, 1992.

**ADDRESSES:** The public meeting will be held at the Raleigh Marriott—Crabtree Valley, 4500 Marriott Drive, Raleigh, NC 27612, (919) 781–7000.

Comments pertaining to the regulations should be submitted (in duplicate if possible) to Air Docket Section, the EPA, Attention Docket #A–92–18, 401 M Street SW., Washington, DC 20460. A copy should also be sent to Ellen Ducey, the EPA, MD–13, Research Triangle Park, NC 27711.

Docket #A–92–18 contains the materials relevant to this notice and may be inspected at room 1500M, 1st Floor, Waterside Mall, 401 M Street SW., Washington, DC between 8:30 a.m. and noon, and 1:30 and 3:30 p.m. As provided in 40 CFR part 2, a reasonable fee may be charged for copying.

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**FOR FURTHER INFORMATION CONTACT:** For questions regarding the establishment of the advisory committee and associated administrative matters, contact: Chris Kirtz, Director, Consensus and Dispute Resolution Program, Regulatory Management Division, the EPA (PM–223Y), 401 M Street, SW., Washington, DC 20460, (202) 260–7565.

For questions regarding the regulation or underlying issues, contact: Ellen Ducey at the previously provided address or by phone, (919) 541–5406.

**SUPPLEMENTARY INFORMATION:**

## I. The EPA's Regulatory Negotiation Project

The EPA established the Regulatory Negotiation Project in 1983 to explore and demonstrate the value of negotiation and other consensus-building techniques for developing better regulations.

Negotiations are conducted through advisory committees chartered under the FACA. The goal of each advisory committee is to attempt to reach consensus on language or issues which can be used as the basis of a proposed rule. All procedural requirements of the Administrative Procedure Act and other applicable statutes apply.

The EPA has developed evaluation criteria for judging the negotiation potential of items based upon its experience with regulatory negotiations. Under the EPA's selection criteria, to qualify, an item must:

—Be planned for proposal;
—Have a relatively small number of identifiable parties, in an appropriate balance and mix, who have a good faith interest in negotiating;
—Present a limited number of related issues for which sufficient information is available for resolution; and
—Have a time factor that lends some urgency to reaching consensus.

Negotiations conducted to date have aided the Agency in better defining issues and in crafting better regulations. Regulatory negotiations have included:

1. Nonconformance penalties under the CAA; Final Rule: August 30, 1985.
2. Emergency Pesticide Exemptions under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Final Rule: January 15, 1986.
3. Farmworker Protection Standards for Agricultural Pesticides under FIFRA; Proposed rule: July 8, 1988.
4. Asbestos Containing Materials in Schools under the Asbestos Hazard Emergency Responsibility Act of 1986; Final Rule: October 30, 1987.
5. New Source Performance Standards for Woodburning Stoves under the CAA; Final Rule: February 26, 1988.
6. Underground Injection of Hazardous Waste under the Hazardous and Solid Waste Amendments of 1984; Final Rule: July 26, 1988.
7. Minor Permit Modifications under the Resource Conservation and Recovery Act; Final Rule: September 1988.
8. Control of Fugitive Emissions of Hazardous Air Pollutants for Equipment Leaks: Agreement in Principle: December 1990.
9. Coke Oven Battery Emissions: committee currently completing final deliberations.

The Program Evaluation Division of the EPA's Office of Policy, Planning and Evaluation conducted an assessment of the regulatory negotiations program in December 1986. The study confirmed that negotiation is especially appropriate in the development of rules involving the resolution of a limited number of related issues which do not include issues of fundamental value or extremely controversial national policy. The study further concluded that:

—Negotiated rules can produce sound and pragmatic environmental regulations that meet statutory requirements efficiently.
—Negotiated rules are also more likely to be acceptable to the impacted industries, the public interest sector, and State and local governments involved in developing them.
—Negotiation may also result in earlier implementation and compliance, and reduce the time it takes to proceed from proposed to final rulemaking.

Experience shows that the benefits to all parties from regulatory negotiation and other consensus-based processes

## II. The Negotiated Rulemaking Act of 1990

Congress enacted the Negotiated Rulemaking Act (NRA) to provide a framework for the conduct of negotiated rulemaking and to encourage agency use of the process when it enhances informal rulemaking. Modeled in large part on the EPA's own regulatory negotiations process, the NRA provides that an agency may establish a negotiated rulemaking advisory committee to negotiate and develop a proposed rule where the agency determines that use of the negotiated rulemaking procedure is in the public interest. In determining if negotiation is appropriate, agencies are to consider, among other things, whether:

—There are a limited number of identifiable interests that will be significantly affected by the rule.
—There is a reasonable likelihood they can convene an advisory committee with a balanced representation of individuals who can adequately represent the identified interests and who are willing to negotiate in good faith to reach consensus on the proposed rule;
—There is a reasonable likelihood that the advisory committee will reach a consensus on the proposed rule within a fixed period of time;
—The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule; and
—The agency, consistent with applicable law, will use the consensus of the advisory committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

The NRA authorizes use of independent conveners to assist the agency in identifying the interests that will be significantly affected by a rule. Through discussions with respresentatives of those interests, the convener assesses the feasibility and appropriateness of using the negotiated rulemaking approach. The convener then reports his or her findings to the agency.

If, after considering a convener's report or conducting its own assessment, the agency wants to proceed with negotiated rulemaking, it publishes a notice in the **Federal Register** describing the subject and scope of the proposed rule, the issues and interests involved, and the persons or entities that it proposes to include on the negotiated rulemaking advisory committee. The purpose of the notice is to give members of the public a chance to comment on use of negotiated rulemaking for the proposed rule, the agency's identification of the issues and interests involved, and the proposed membership of the advisory committee. The NRA provides for a 30-day period during which the public may submit any comments and applications for membership on the advisory committee. Today's notice fulfills this purpose and begins the 30-day comment period.

The agency proposing to use negotiated rulemaking must make a final determination on whether it is feasible and appropriate to do so in light of any comments received. Notice of the agency's decision is to be published in **Federal Register** and sent to anyone applying for advisory committee membership. The EPA will issue a notice either establishing the advisory committee or announcing why is has elected not to establish the advisory committee and not to negotiate the regulation after the public meeting and a review of the public comments received.

The procedures applicable to an advisory committee are described in a later section of this notice.

## III. Subject and Scope of Rule Proposed for Negotiation

The subject of the rule proposed for negotiation is the reduction of volatile organic compound (VOC) emissions from architectural and industrial maintenance (AIM) coatings. These coating are applied to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs. Industrial maintenance coatings are one of the many subcategories of architectural coatings for such substrates as steel, wood, and masonry. The scope will include consideration of traditional VOC limitations, market-based approaches, and phased-in approaches.

### *A. Statutory Provisions*

Title I, section 183(e) of the Act requires the EPA to conduct a study of emissions of VOC into the ambient air from consumer and commercial products (CCP's). The study is to determine the potential of these CCP's to contribute to ozone levels, and to establish criteria for regulating CCP's or classes or categories thereof. Upon completion of the study, but not later than 3 years after enactment of the CAAA (i.e., by November 1993), the EPA must submit a report to Congress that documents the results of the study. Based on this report, the EPA must list those CCP's which account for 80 percent of the VOC emissions on a reactivity-adjusted basis, divide the list into four groups, and regulate one group every 2 years until all four groups are regulated.

The AIM coatings are considered CCP's, and are therefore subject to the requirements of section 183(e). Based on currently available data, the EPA estimates that on a reactivity-adjusted basis, using the Agency's current definition of VOC that excludes negligibly reactive compounds, AIM coatings represent 20 percent of the VOC emissions from CCP's. Based on this estimated contribution, the regulation is being developed concurrent with information gathering for the study and report to Congress.

### *B. Anticipated Environmental Impact*

Based on available data, the EPA estimates that emissions from AIM coatings contribute approximately 400,000 tons of VOC emissions per year nationwide. It is one of the largest identifiable, Federally unregulated sources of VOC emissions. This national rule will achieve a reduction in these VOC emissions through requirements that will cause a change in the mix of products available for use in the market.

### *C. Anticipated Economic Impact*

A national rule is expected to promote uniformity in regulations across the country. A national regulation could reduce the burden on the paint industry that results from a multitude of divergent State rules, that is, to reformulate for specific regions, inventory its products separately, keep different records, and label product lines differently. The types of costs which may result from this rule include those associated with reformulation and changes in product demand. The level of impact will depend in part on the form of the standard. The data necessary to quantity the economic impact are expected to be gathered and discussed during the regulatory negotiation process.

### *D. Underlying Issues*

The underlying issues in developing the regulation include the following: means to promote uniformity, administrative requirements (labeling, recordkeeping), economic considerations including impacts upon small businesses, consideration of hazardous air pollutant emissions, and performance considerations.

## IV. Interests Significantly Affected by Proposed AIM Rules and Persons Proposed To Represent Those Interests

The identified interests are industry representatives, consumers, Federal Agencies, State and local representatives of air pollution agencies, environmental groups, and labor. The EPA proposes the following named persons and entities as members of the advisory committee if the Agency decides to proceed with the negotiations. These persons and entities have indicated their tentative willingness to participate:

*Industry Representatives*

Bernie Appleman, Executive Director, Steel Structures Painting Council
Earle K. Borman, Jr., Sr. Vice President, L&F Products
Jack J. Bracco, Market Development, Architecture & Industrial Maintenance Coatings, Miles, Inc.
J. Andrew Doyle, Executive Director, National Paint and Coatings Association
Marcel Gaschke, Group Marketing Manager, CIBA–GEIGY Corporation
Madelyn Harding, Administrator, Product Compliance and Registrations, The Sherwin-Williams Company
Al Heitkamp, Section Leader, Cargill, Inc.
Ned B. Kisner, President, Triangle Coatings, Inc.
Robert J. Klepser, Group Leader, Carboline Company
Carl Minchew, Division Operations Manager, Benjamin Moore & Co.
John Prinz, Vice President Research and Development, Sinclair Paint Company
Nick Roman, Technical Service Manager, Rohm and Haas Co.
Jim Sainsbury, Manager, Product Regulation, The Glidden Company
Christine Stanley, Ameron Protective Coatings
William Stewart, Director, Regulatory Affairs, The Valspar Corporation
Robert Wendoll, Chairman, Environmental, Legislative and Regulatory Advocacy Program, Dunn-Edwards Corp.
Richard Williamson, Executive Vice President, Trinity Coatings Co.

*Consumers*

Vincent R. Sandusky, Executive Vice-President, Painting and Decorating Contractors of America

*Federal Agencies*

Bill Feist, Forest Products Laboratory, Department of Agriculture
Todd Posey, Chief of Commodity, Management Branch, General Services Administration
Tim Race, Chemist, U.S. Army Corps of Engineers
John Peart, Research Chemist, Federal Highway Administration
John Seitz, Director, Office of Air Quality Planning and Standards, the EPA

*State and Local Representatives of Air Pollution Agencies*

S. William Becker, Executive Director, State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials
Dan Belik, Enforcement Program Supervisor, Rule Development, Bay Area Air Quality Management District (BAAQMD)
Ron Friesen, Assistant Division Chief, California Air Resources Board, Stationary Source Division
Robert Irvine, Senior Environmental Engineer, SIP Revision Unit; State of Michigan, Department of Natural Resources, Air Quality Division
Bob Warland, New York Regional Air Pollution Control Engineer, Region IV, DEC Regional Headquarters

*Environmental Groups*

David Hawkins, Senior Attorney, Natural Resources Defense Council
Joel Schwartz, Staff Scientist, Coalition for Clean Air
Ronald White, Deputy Director, National Programs, American Lung Association

*Labor*

Colleen Baker, Director of Health & Safety, Painters & Allied Trades

**V. Selection as Potential Negotiation Candidates**

The EPA believes that the AIM proposed rule may be appropriate for development through negotiation. With the help of three conveners, the EPA has made a preliminary inquiry of potential parties and representatives of identified interests to determine if the regulation satisfies the applicable selection criteria for negotiation. On the basis of this inquiry, the EPA believes that the regulation meets the selection criteria and that negotiations can be successful. Affected interests are relatively small in number and the initial meetings and conveners' interviews indicate that an appropriate balance and mix of groups will be willing to participate in good faith. The Agency also believes that a committee comprised of representatives of these groups can reach consensus and that the EPA can issue a proposed regulation on a timely basis. The EPA has adequate resources to devote to the negotiations, and, consistent with applicable law, it would use the consensus of the committee as the basis of the proposed rule. In sum, the EPA believes the regulation of AIM coatings is an appropriate and feasible subject to consider for negotiation. The Agency requests comments on whether the applicable criteria for use of negotiated rulemaking are met.

**VI. Formation of the Advisory Committee**

*A. Procedure for Establishing a Negotiated Rulemaking Advisory Committee*

Under the NRA, the EPA must comply with the FACA in establishing and administering an advisory committee, except as otherwise provided by the NRA. Under the FACA, the EPA can only establish an advisory committee, if, after consultation with the Administrator of the General Services Administration (GSA), the Agency determines that establishment of the committee is in the public interest in connection with the performance of duties imposed on the EPA by law. Timely notice of the Agency's determination must also be published in **Federal Register**. Moreover, the advisory committee can meet or take action only after a charter describing its objectives, duties, and duration has been filed with the Congressional standing committees having legislative jurisdiction over the EPA, and with the Library of Congress.

As described earlier, the NRA requires the EPA to publish this Notice of Intent to form an advisory committee and to provide a 30-day period during which comments and applications for advisory committee membership can be submitted. In light of the comments and applications received, the EPA will make a final determination as to whether to form an advisory committee and, if so, its membership. Additionally, the EPA will satisfy the requisite GSA consultation requirements if the choice is made to proceed with a negotiated rulemaking process. As mentioned above, the EPA will publish a notice of that final determination in the **Federal Register**.

*B. Participants*

The EPA estimates that the advisory committee will consist of approximately 30 members. A previous section of this notice identified the interests that the EPA believes will be significantly affected by the rule and the persons and entities proposed to represent those interests. One purpose of this notice is to solicit comments on whether the regulation the EPA is developing would substantially affect interests not identified or not adequately represented by the proposed participants. The EPA does not believe that each potentially affected organization or individual must necessarily have its own representative. However, each interest must be adequately represented. Moreover, the committee as a whole must reflect a proper balance and mix of interests.

*C. Requests for Representation*

Any person who may be significantly affected by the proposed rule discussed in this notice, and who believes that their interests will not be adequately represented by the persons or entities listed in Section III of this notice, may apply for membership on the advisory committee. As an alternative, such person may nominate another person for membership on the advisory committee. An application for membership or nomination must include the following:

1. The name of the applicant or nominee and a description of the interest(s) such person would represent;
2. Evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent;
3. A written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule or guideline under consideration; and
4. The reasons that the persons specified in Section III do not adequately represent the interests of the person submitting the application or nomination.

Send applications or nominations to Chris Kirtz, Director, Consensus and Dispute Resolution Program, Regulatory Management Division, Environmental Protection Agency (PM–223Y), 401 M Street SW., Washington, DC 20460, (202) 260–7585. Applications or nominations must be submitted on or before August 17, 1992.

The EPA will fully consider all applications or nominations. The decision to add a person or entity to the committee will be based on whether an interest of that person or entity will be significantly affected by the proposed rules or guidelines, whether such interest is already adequately represented on the committee, and, if not, whether the applicant or nominee would adequately represent such interest. If the EPA decides to proceed with the negotiated rulemaking, it will send a copy of the committee membership list to anyone who submitted an application for committee membership.

*D. Public Meeting on Establishing the Committee*

The EPA will conduct a public meeting on establishing an advisory committee, as discussed above. The purpose of this meeting is to consider: The appropriateness and feasibility of developing this regulation by negotiation; the issues the advisory committee will need to address; the optimal order in which to address the issues; data and information needs; the timing of any future meetings; operational committee ground rules; and committee membership. Anyone interested in the proposed negotiations is encouraged to attend.

*E. Tentative Schedule*

If the EPA decides to establish the advisory committee, and if its charter is approved, the Agency intends to hold the committee's first meeting in September 1992 in Raleigh, NC or Washington, DC. The EPA will announce the exact time, location, and starting and ending time of this meeting in the **Federal Register**. At this meeting, participants will begin to address items identified in the July meeting.

Subsequent meetings of the committee and any workgroups formed will be held on a schedule to be determined by the committee. As required by the FACA, the EPA will publish timely notice of the meetings in the **Federal Register**. The meetings will be open to the public, and interested persons will be permitted to file statements with the committee.

The EPA intends to hold monthly meetings so that consensus may be reached as quickly as possible.

**VII. Negotiation Procedures**

The following procedures and guidelines will apply to the committee, if formed, unless they are modified as a result of comments received on this notice or during the negotiating process.

*A. Facilitator*

The EPA will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to chair negotiating sessions; to help the negotiation process run smoothly; and to help participants define and reach consensus.

*B. Good Faith Negotiation*

Committee participants must be willing to negotiate in good faith and be authorized by their respective organizations or interest groups to do so. Consequently, each entity included on the committee must designate a senior official to represent its interests.

*C. Administrative Support and Meetings*

The EPA's Regulatory Management Division will supply logistical, administrative, and management support to the committee. To support the negotiations, the EPA will make technical support personnel and expertise available.

*D. Committee Procedures*

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, committee members will determine the most appropriate procedures for committee meetings.

*E. Defining Consensus*

The goal of the negotiating process is to achieve consensus. In the negotiations completed to date, consensus has meant that each participant or interest concurs in the result. The NRA defines consensus as unanimous concurrence among the interests represented on the committee. The advisory committee may agree to define consensus to mean a general but not unanimous concurrence, or agree upon another definition.

*F. Failure of Committee to Reach Consensus*

In the event the advisory committee is unable to reach consensus, the EPA will proceed with its own rule development approach.

Parties to the negotiation may withdraw at any time. If this happens, the remaining committee members and the Agency will evaluate whether the advisory committee should continue.

*G. Record of Meetings*

In accordance with the FACA and the NRA, the EPA will keep a record of all committee meetings, including minutes of the meetings and any records, reports, working papers or other documents made available to or prepared by the committee for the meetings. This record will be placed in the public docket identified above.

Dated: July 9, 1992.

**Bill Jordan,**

*Deputy Director, Office of Air Quality Planning and Standards.*

[FR Doc. 92-16792 Filed 7-15-92; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 52**

**[AD-FRL-4154-9]**

## Draft Lead and Particulate Matter Addendum to the General Preamble for Title I of the Clean Air Act Amendments of 1990 and Staff Work Products Providing Technical Guidance for PM-10 Best Available Control Measures

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice announcing availability of documents and of public meeting.

**SUMMARY:** This document announces the availability of a staff working draft of an addendum to the General Preamble for title I of the Clean Air Act (Act) Amendments of 1990, published on April 16, 1992 (57 FR 13498) and supplemented on April 28, 1992 (57 FR 18070). The addendum contains EPA's preliminary views of how it should interpret Title I with respect to State implementation plan (SIP) submittal requirements for serious PM-10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) nonattainment areas. In addition, the addendum will contain EPA's preliminary views of how Title I should be interpreted with respect to certain SIP submittal requirements for lead (Pb) nonattainment areas and supplements the Pb guidance already presented in the General Preamble. Because of the potential broad interest in the addendum and the complexities of the issues it will address, EPA intends to hold a public meeting on July 30, 1992 to provide the public with an opportunity to comment on its contents before preparation of a final document.

To assist in their review of the draft addendum, this notice also advises the public of the availability in the docket of staff work products issuing technical guidance on best available control measures (BACM) for three PM-10 source categories: urban fugitive dust, residential wood combustion, and prescribed silvicultural and agricultural burning. Because reasonably available control measures (RACM) guidance has been issued (57 FR 13541 (April 16, 1992) and 57 FR 18070 (April 28, 1992)), publication of final versions of these documents will satisfy EPA's requirement to issue RACM and BACM guidance for the three source categories identified under section 190 of the Act.

**DATES:** The public meeting will be held from 9 a.m. to 4:30 p.m. on July 30, 1992. If warranted, the meeting will continue on July 31, 1992 (see discussion below).

**ADDRESSES:** The public meeting will take place at the Zephyr Room, Executive Tower Inn, 1405 Curtis Street, Denver, Colorado. To assist EPA in planning the public meeting, persons interested in reserving time for oral comments should provide Ms. Linda Ferrell with a name and affiliation by July 23, 1992 at the Sulfur Dioxide/ Particulate Matter Programs Branch, Office of Air Quality Planning and Standards, MD-15, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5585, Fax (919) 541-5489.

*Comments:* The suggested time limit on oral comments at the public meeting is 10 minutes, although EPA reserves the right to limit or extend the time given to each person wishing to speak at the meeting depending on the number of requests. Commenters should bring written copies of their statements to the meeting to submit to EPA. Although a summary of the meeting will be prepared, oral presentations will not be transcribed verbatim. Written comments may also be submitted to the docket for up to 30 days following the public meeting. Written comments are due on, or before, August 30, 1992. Comments should be submitted to the docket in duplicate, if possible (see address below).

*Availability of documents:* The draft addendum to the General Preamble addressing additional SIP requirements for serious PM–10 nonattainment areas and for Pb nonattainment areas is available for copying from the docket (see address below). Single copies are available from the U.S. EPA Library, MD–35, Research Triangle Park, North Carolina 27711, telephone (919) 541–2777. In requesting copies from EPA's North Carolina office, please refer to "State Implementation Plans for Serious PM–10 Nonattainment Areas: Addendum to the General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990," and "State Implementation Plans for Lead Nonattainment Areas: Addendum to the General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990."

The staff work products are available for copying from the docket (see address below). Single copies of the three BACM staff work products are available from the U.S. EPA Library, MD–35, Research Triangle Park, North Carolina 27711, telephone (919) 541–2777. Copies of the final documents will be available in the future from the National Technical Information Service. In requesting the documents, please refer to "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures," "Residential Wood Combustion Technical Information Document for Best Available Control Measures," and "Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures." As new information becomes available, EPA intends to update the documents as appropriate. Any such additional information should be forwarded to Mr. Christopher Stoneman at the Sulfur Dioxide/Particulate Matter Programs Branch, Office of Air Quality Planning and Standards, MD–15, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**DOCKET:** Docket No. A–92–23, for PM–10, and Docket No. A–92–25, for Pb, are available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, Room M–1500, 1st Floor, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Woodard, telephone (919) 541–5697, for information pertaining to PM–10; Ms. Laurie Ostrand, telephone (919) 541–3277, for information pertaining to Pb; Mr. Christopher Stoneman, telephone (919) 541–0823, for concerns regarding the staff work products. Each of the persons listed above may also be contacted at the Sulfur Dioxide/Particulate Matter Programs Branch, MD–15, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:**

## I. Addendum to the General Preamble

Title I of the Clean Air Act Amendments of 1990 reaffirmed certain requirements and adopted certain additional requirements for areas that have not attained the national ambient air quality standards (NAAQS). On April 16, 1992, EPA published a General Preamble which described the Agency's preliminary views on how various provisions should be interpreted for the SIP revisions required for nonattainment areas (57 FR 13498). The General Preamble was supplemented on April 28, 1992 (57 FR 18070). These notices addressed, among other things, SIP requirements for PM–10 nonattainment areas which were classified as moderate, as well as certain requirements for areas which were designated as nonattainment for Pb. In the General Preamble, EPA indicated that guidance on requirements for PM–10 nonattainment areas that were subsequently reclassified as serious would be issued at a later date. In addition, EPA indicated that it would continue to evaluate the need for further guidance on SIP requirements for Pb nonattainment areas. The draft addendum to the General Preamble therefore presents EPA's preliminary interpretations of title I of the Act pertaining to serious PM–10 nonattainment areas and provisions pertaining to Pb nonattainment areas. In both instances, the addendum is intended to provide guidance to States and other interested parties regarding what EPA generally considers acceptable plan submittals in light of its preliminary views. The addendum will also serve as an advance notice to the public describing how EPA generally intends to take action on these SIP submittals in subsequent rulemakings. The following paragraphs provide both a context for this addendum and an overview of its contents.

Sixty-seven areas in the country were designated nonattainment PM–10 and classified as moderate by operation of law upon enactment of the 1990 Amendments ("initial" nonattainment areas), as provided in sections 107(d)(4)(B) and 188(a) (see 56 FR 56694 (November 6, 1991)). The EPA has authority to designate additional areas as moderate under section 188(a). Moderate PM–10 nonattainment areas may be reclassified to serious either before the applicable moderate area attainment date if at any time EPA determines the area cannot "practicably" attain the NAAQS for PM–10 by such date, or following the passage of the applicable moderate area attainment date if EPA determines the area has failed to attain the NAAQS, as discussed in the General Preamble (57 FR 13537). The EPA has proposed to reclassify some of the initial moderate nonattainment areas to serious (see 56 FR 58656 (November 21, 1991)). Section 188(c)(2) of the Act mandates that any initial area reclassified as serious must attain the PM–10 NAAQS by December 31, 2001. In addition to the applicable general requirements for nonattainment area plan submission in the subpart 1 provisions of Title I, and the requirements applicable to moderate areas under subpart 4 of Title I, States containing serious areas must meet the specific serious area SIP submittal requirements identified in section 189(b) of the Act. These include an attainment demonstration (or an alternative demonstration if the State is seeking an extension of the attainment date for the area under section 188(e)) and BACM. The draft addendum addresses certain key provisions applicable to serious areas. It also addresses provisions of the Act authorizing exclusions for certain serious area requirements which would otherwise be applicable, in particular, the section 188(f) waiver provisions and the section 179B international border area provisions.

With regard to Pb nonattainment areas, pursuant to new authority in the Act, EPA has designated 12 areas which were violating the Pb NAAQS as nonattainment (56 FR 56694 (November 6, 1991)) and intends to designate additional areas as warranted. States containing these initial areas must submit SIP's meeting the requirements of part D of Title I by July 6, 1993 (see section 191(a) of the Act). The EPA provided preliminary guidance to States on Part D requirements for Pb in the General Preamble (57 FR 13549). The draft addendum supplements this guidance to States by providing further information on meeting the Part D requirements for RACM, reasonable further progress (RFP), and contingency measures.

This addendum to the General Preamble will not be issued as a rule, but rather reflects EPA's preliminary views on the interpretation of these

requirements. The addendum will not supersede existing State regulations or approved SIP's, will not constitute final EPA action, and thus will not bind States or the public as a matter of law. The public will have further opportunity to comment on the SIP's developed by the States and their reliance on the guidance addressed in the addendum during the States' SIP adoption processes. The public will also have further opportunity to comment at the time that EPA proposes individual SIP's for approval or disapproval pursuant to notice-and-comment rulemaking. Thus, before EPA will give these preliminary interpretations any binding effect (i.e., apply them in Federal rulemakings on SIP submittals), EPA will thoroughly consider any particular factual circumstances presented and submissions made by any person.

In preparing the draft addendum, EPA consulted with experts within the Agency. The EPA would also like to provide the public with an opportunity to comment or raise questions. The EPA is therefore soliciting input on the issues addressed in the addendum at a public meeting in Denver, Colorado, on July 30, 1992. The public meeting will be informal, with an emphasis on encouraging comments and questions rather than on presenting detailed information. The meeting will begin with a brief summary of the draft addendum, followed by comments and questions. The EPA is also providing an opportunity to submit written comments for up to 30 days following the public meeting. In finalizing the addendum, EPA will carefully consider the input generated from this process. The EPA intends to produce a summary report to capture the significant comments and recommendations resulting from the public input process, as well as EPA's responses to such comments. The summary report will be placed in the docket referenced above at the time that EPA publishes a final addendum to the General Preamble.

In the interest of adhering to the public meeting's schedule and ensuring that all topics are covered, EPA suggests that formal comments delivered at the meeting be limited to 10 minutes in duration. The EPA reserves the right to adjust the time allowed depending on the number of commenters wishing to speak. The EPA requests that parties provide EPA with a written copy of their oral comments at the meeting to be included in the summary report. If the time allowed for oral comments proves insufficient, the meeting will be extended to July 31, 1992. However, persons wishing to make oral presentations should plan to attend the meeting on July 30, 1992, since EPA cannot forecast the need for an additional day at this time.

## II. BACM Staff Work Products

Section 190 of the Act requires EPA to issue technical guidance for RACM and BACM no later than 18 months from enactment of the 1990 Amendments to the Act for three PM–10 source categories: Urban fugitive dust, residential wood combustion, and prescribed silvicultural and agricultural burning. In conjunction with publication of the General Preamble, the EPA discharged the section 190 requirement to issue RACM technical guidance for each of these three source categories (57 FR 13541 and 57 FR 18070). To assist the public in its review of the addendum for PM–10, the BACM staff work products have been placed in the docket. The staff work products are not the subject of the public meeting. When issued in final form, taken together with EPA's previous issuance of RACM technical guidance, EPA's statutory obligation to issue RACM and BACM guidance for fugitive dust, residential wood combustion, and prescribed silvicultural and agricultural burning under section 190 of the Act will be wholly fulfilled.

The documents include information on the control measures EPA regards as among the most effective currently available for control of PM–10 and provide technical guidance to States and other interested parties regarding BACM for the source categories identified. The public will have an opportunity to comment on any actual BACM strategies developed by the States and their reliance on the documents during the States' SIP adoption processes. The public will have further opportunity to comment at the time that EPA proposes individual SIP's for approval or disapproval pursuant to notice-and-comment rulemaking. Thus, as with the addendum to the General Preamble, the technical guidance will not have a binding effect, and EPA will consider the submissions made by any person and the particular factual circumstances presented before the guidance is given any binding effect.

Section 190 also requires that EPA examine other source categories contributing to PM–10 nonattainment, determine whether additional guidance on RACM and BACM is needed, and issue any such guidance no later than November 15, 1993.

The EPA must take into account the PM–10 emissions reductions achieved, or expected to be achieved, under title IV and other provisions of the Act in issuing guidelines and making determinations under section 190. The EPA does not believe at this time that actual or expected reductions from title IV or other provisions of the Act will significantly reduce emissions from PM–10 source categories addressed in the staff work products. For example, the three source categories addressed in this notice constitute direct sources of PM–10 emissions and, as such, do not overlap with title IV-related reductions which focus on potential precursors, such as $SO_2$ and $NO_x$. Likewise, these three source categories do not appear to be regarded as major sources subject to maximum achievable control technology standards under title III. While emissions from other potential PM–10 source categories may in some fashion be impacted by titles III and IV provisions, any such impacts will be considered in determining whether additional guidance is needed under section 190 at the time that EPA develops and issues any such additional guidance.

The staff work products were developed in consultation with BACM task forces that included representatives from Federal, State, and local agencies involved in the control of the respective PM–10 source categories. As new information comes to light, EPA intends to update the documents as appropriate.

Dated: July 8, 1992.

**John S. Seitz,**

*Director, Office of Air Quality Planning and Standards.*

[FR Doc. 92–16698 Filed 7–15–92; 8:45 am]

BILLING CODE 6560–50–M

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**40 CFR Part 180**

**[PP 9F3798/P543; FRL–4055–2]**

**RIN 2070–AB78**

## Pesticide Tolerance for Lactofen

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to extend an interim tolerance for residues of the herbicide lactofen, 1-(carboethoxy)ethyl-5-(2-chloro-4-(trifluoromethyl) phenoxy)-2-nitrobenzoate, and its metabolites containing the diphenyl ether linkage on the raw agricultural commodity (RAC) cottonseed at 0.05 part per million (ppm). This tolerance was requested by the Valent U.S.A. Corp. (formerly Chevron Chemical Co.) and establishes

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the maximum permissible level for residues of the herbicide in or on this RAC. The interim tolerance expires on December 31, 1993.

**DATES:** Written comments, identified by the document control number, [PP 9F3798/P543], must be received on or before August 17, 1992.

**ADDRESSES:** Written objections, identified by the document control number, [PP 9F3798/R1144], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. M3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joanne I. Miller, Product Manager (PM 23), Registration Division (H7505C), Office of Pesticide Progams, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7830.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 14, 1990 (55 FR 24084), EPA established an interim tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for residues of the herbicide lactofen, 1-(carboethoxy)ethyl-5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate, and its associated metabolites containing the diphenyl ether linkage in or on the raw agricultural commodity (RAC) cottonseed at 0.05 part per million. This tolerance was requested by Valent U.S.A. Corp. (formerly Chevron Chemical Co.), 1333 N. California Blvd., P.O. Box 805, Walnut Creek, CA 94596-805, and establishes the maximum permissible level for residues of the herbicide in or on this RAC.

The tolerance was issued as an interim tolerance because EPA required animal metabolism studies and additional information on the cottonseed processing study. The tolerance expired on May 31, 1991. A petition for an extension of the tolerance was filed by Valent on March 4, 1992.

EPA's original review of the processing study resulted in a preliminary determination that the concentration did not occur in processed cottonseed products, but additional information on the study was required to confirm that determination. Additional data submitted by Valent have confirmed EPA's original conclusion. The animal metabolism studies were required to determine the nature of the residue in animals and the likelihood of secondary residues in meat, fat, milk, poultry, and eggs. After a review of animal metabolism studies received in November 1990, the Agency has tentatively concluded that the nature of the residue in animals is adequately understood. For the purposes of this tolerance with an expiration date, the Agency believes that the likelihood of finite residues in animal commodities is minimal based on the results of the short-term metabolism studies. However, for a permanent tolerance a long-term (i.e., minimum 28-day) ruminant feeding study is required to confirm the absence of residues in ruminant byproducts. Other requirements include data on the application procedures utilized in the cottonseed field trials and method validation of the revised analytical methodology for cottonseed. Since these data are still outstanding, EPA believes it is inappropriate to establish a permanent tolerance at this time. Nevertheless, EPA believes that the existing data support an extension of the interim tolerance to December 31, 1993.

There are no pending regulatory actions against the registration of this pesticide. The pesticide is useful for the purpose for which this tolerance is sought. Adequate analytical methodology (gas chromatography) is available for enforcement purposes. The additional residue data submitted to EPA suggest that the analytical methodology may overstate lactofen residues. EPA has required revisions to the method and validation testing; however, until these revisions and validations have been approved, EPA will treat the existing analytical method as an authoritative measure of lactofen residues. Prior to its publication in the Pesticide Analytical Manual, Vol. II., the enforcement methodology is being made available in the interim to anyone who is interested in pesticide residue enforcement when requested from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460. Office location and telephone number, Crystal Mall #2, rm. 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

Based on the information cited above, EPA has determined that the establishment of the tolerance by amending 40 CFR part 180 will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request, within 30 days after publication of this document in the **Federal Register**, that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9F3798/P543]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 29, 1992.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In § 180.432, by revising paragraph (b), to read as follows:

**§ 180.432 Lactofen; tolerances for residues.**

* * * * *

(b) An interim tolerance, set to expire on May 31, 1991, is extended and now expires on December 31, 1993, for residues of the herbicide lactofen, 1-(carboethoxy)ethyl-5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate, and its metabolites containing the diphenyl ether linkage in or on the following raw agricultural commodity:

| Commodity | Parts per million |
|---|---|
| Cottonseed | 0.05 |

[FR Doc. 92-16627 Filed 7-15-92; 8:45 am]
BILLING CODE 6560-50-F

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 572

[Docket No. 92-16]

### Conference Independent Action Provisions

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Maritime Commission ("Commission") proposes to amend its regulations governing the filing of agreements submitted to the Commission pursuant to section 5 of the Shipping Act of 1984 ("1984 Act" or "Act"). The proposed rule would amend the Commission's regulations to add new requirements concerning conference agreement independent action ("IA") provisions. The proposed rule would: (1) Interpret the term "adopt" as it pertains to the filing of IAs that match an originating carrier's IA; (2) specify the conditions under which conference members could adopt another member's IA time/volume rate ("TVR"); (3) prohibit conferences from establishing notice periods, other than the notice period required by section 5(b)(8) of the 1984 Act for taking initial IAs; (4) prohibit conference provisions that provide authority for allocation of costs on a usage basis for publishing and maintaining member lines' IAs; and (5) prohibit conference provisions that authorize automatic expiration dates for IAs. The purpose of the proposed rule is to preserve an unencumbered right of independent action by conference members as provided for in the 1984 Act.

**DATES:** Comments (original and 15 copies) must be received at the Commission on or before August 17, 1992. The date of mailing will not be accepted as the date of filing in this proceeding.

**ADDRESSES:** Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001.

**FOR FURTHER INFORMATION CONTACT:** Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5787.

**SUPPLEMENTARY INFORMATION:** Section 5 of the 1984 Act, 46 U.S.C. app. 1704, requires, among other things, that each conference agreement provide for independent action by a conference member on any rate or service item required to be filed in a tariff. Section 5(b)(8) of the Act, *id.* app. 1704(b)(8), specifically states that each conference agreement must provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provisions for that rate or service item.

Congress realized the importance of a strong requirement of independent action to counterbalance the enhanced economic power of conferences. The Conference Report which accompanied the 1984 Act states:

> A critical factor enabling the Conferees to agree on a more narrowly drawn general standard is the inclusion in this bill of numerous other provisions which address the nation's interest in competition in the ocean common carrier industry. * * * [T]he bill includes * * * specific and major procompetitive reforms that will affect the operation of ocean carriers and conferences—notably a strong requirement of independent action with a limited notice period. * * *

H.R. Report No. 600, 98th Cong. 2d Sess. at 33-34 (1984).

In Independent Action—Notice and Meeting Provisions in Conference Agreements, ____ F.M.C. ____, 23 S.R.R. 1022, 1026 (1986), the Commission took the opportunity to emphasize that:

> As the Conference Report makes clear, Congress intended independent action to be a procompetitive balance to the more narrowly drawn general standard. * * * Although Congress continued to allow for collective ratemaking by conferences, it provided for a strong, effective right of IA in the clearest of terms.

Section 5(b)(8) permits conferences to require a period of notice, not to exceed 10 days, as a condition for members lines taking independent action. That section does not specify any other condition, requirement, or limitation that may be imposed by a conference upon a member line wishing to take IA.

One of the purposes of the 1984 Act was to achieve a balance between shippers and carriers. By prohibiting a conference from restraining a member line that wishes to unilaterally establish its own rate, mandatory IA allows conference carriers to respond to rapidly changing trade conditions without leaving the conference and be more flexible in their responses to shippers. Conversely, a conference carrier's option to take IA on rate and service items provides shippers with greater flexibility in their dealings with conferences. In this manner, IA functions as a mediating mechanism between carrier and shipper.

On November 15, 1984, the Commission issued its Final Rule implementing the agreements provisions of the 1984 Act. Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984, ____ F.M.C. ____, 22 S.R.R. 1453. This Rule, among other things, removed from the Commission's regulations prescribed mandatory language for conference independent action provisions, and announced a policy that parties to conference agreements were free to develop their own provisions in accordance with the requirements of section 5(b)(8) of the Act. *Id.* at 1498-99. Subsequently, the Commission did limit conference discretion in this area by prescribing some IA safeguards. On April 25, 1986, in Independent Action—Notice and Meeting Provisions, the Commission revised its regulations to require conference agreements to: (1) Establish a maximum notice period of not more than ten days for member lines taking IA; (2) provide for a single notice to the conference of a member line's IA; and (3) state that a member line taking independent action was not required to attend a meeting, or to comply with other procedures, for the purpose of explaining, justifying or compromising a proposed IA.

This proceeding was initiated by an Advance Notice of Proposed Rulemaking ("Advance Notice") published in the **Federal Register**, 57 FR 14551 (April 21, 1992), requesting comment on certain conference policies and procedures concerning IA. The Advance Notice requested comment on five specific areas: (1) Conference agreement provisions that provide authority for member lines to adopt the independent action of another member line, but permit variations from the terms of the original IA; (2) conference agreement provisions that provide for the adoption of, and participation in, IA time/volume rates; (3) conference agreement provisions that impose notice-period conditions on member

lines other than the notice-period conditions specifically stated in section 5(b)(8) of the 1984 Act; (4) conference agreement provisions and conference policy/procedures that provide authority for the conference to assess its members the costs for processing and maintaining individual member lines' IA filings on a usage basis; and (5) conference procedures that impose an automatic expiration date on independent actions.

Twenty-one comments were received in response to the Advance Notice. Comments were submitted by the following conferences: The Asia North America Eastbound Rate Agreement, the "8900" lines and the Mediterranean North Pacific Coast Freight Conference ("ANERA *et al.*"); the South Europe/USA Rate Agreement ("SEUSA"); the North Europe-USA Rate Agreement and the USA-North Europe Rate Agreement ("NEC"); the Venezuelan American Maritime Association, Atlantic and Gulf/West Coast South America Conference, United States/Central America Liner Association, Central America Discussion Agreement, United States Atlantic & Gulf/Hispaniola Steamship Freight Association, Hispaniola Discussion Agreement, United States Atlantic Gulf/Southeastern Caribbean Steamship Freight Association, Southeastern Caribbean Discussion Agreement, Jamaica Discussion Agreement, United States/Panama Freight Association, PANAM Discussion Agreement, Puerto Rico/Caribbean Discussion Agreement, and the Caribbean and Central American Discussion Agreement ("Latin American Agreements"); the Trans-Pacific Freight Conference of Japan and the Japan-Atlantic and Gulf Freight Conference ("Japan Conferences"), the Inter-American Freight Conference ("IAFC"), and the Transpacific Westbound Rate Agreement ("TWRA").

Shipper comments were submitted by: The National Industrial Transportation League ("NIT League"); the Society of the Plastics Industry, Inc. ("SPI"); Westvaco Corporation ("Westvaco"); the Agriculture Ocean Transportation Coalition ("AgOTC"); the American Paper Institute, Inc. ("API"); E.I. du Pont de Nemours and Company ("Du Pont"); the First International Shippers Association ("FISA"); Dole Citrus ("Dole"); the United Fresh Fruit and Vegetable Association ("UFFVA"); Stone International Pulp Sales ("Stone Intl."); Corning Incorporated ("Corning"); and the Weyerhaeuser Paper Company ("Weyerhaeuser"). The Department of Justice ("DOJ") and the Department of Transportation ("DOT") also submitted comments. A number of commenters take essentially similar positions. Accordingly, we will make generalized representations without individual attribution, unless otherwise appropriate.

**The Meaning of "Adopt"**

Several conferences have filed amendments to their agreements which have raised the issue of whether an adopting IA can be different from the original IA. Both section 5(b)(8) of the 1984 Act and the Commission's rules governing IA use the term "adopt" when referring to one member taking on another member's initial IA. However, the term "adopt" never has been defined in the Commission's rules or in a Commission proceeding. Although the legislative history of the 1984 Act discusses the general concept of independent action, it is silent regarding the specifics of an adopting IA, including the meaning of the term "adopt." In *Modifications to the Trans-Pacific Freight Conference of Japan Agreement, the Japan-Atlantic and Gulf Freight Conference Agreement, and the Japan-Puerto Rico and Virgin Islands Freight Conference Agreement*, ___ F.M.C. ___ 23 S.R.R. 1391 (1986), the Commission stated: "The term 'adopt' signifies and action whereby a following member line takes the action of the initiating member line and makes it its own without any connotation of its having been another's." *Id.* at 1400 (footnote omitted). Nothing in that proceeding, however, specifically indicates how "adopt" should be defined.

The Advance Notice requested comments on whether an adopting IA can be different from an original IA. Eleven comments specifically address this issue. Most of these commenters agree with SEUSA that the term "adopt," "* * * is best defined to allow a member line to adopt the initial IA in whole or in part without change in the terms of the initial IA by the adopting member." SEUSA at 1. The commenters argue that member lines should *not* be required to adopt the IA in its entirety, but should be allowed the flexibility to adopt a portion of an initial IA that is applicable to its service. As one commenter states: "The word 'adopt,' should be interpreted to permit of [sic] some modicum of flexibility. Where, for example, an adoption action does not alter the rates or charges or terms and conditions, or add anything new that was not originally published, but does not embrace the entirety of the original IA action, such a partial matching should be regarded as a legally permissible adoption." Japan Conferences at 2. Commenters are careful to point out, however, that any portion adopted should be identical to that part of the original IA.

ANERA *et al.* and two shippers believe that the Commission should afford conference members the greatest flexibility possible in serving their customers' needs. These commenters would define the term "adopt" to permit a member line to adopt the initial IA but to adjust it as it applies to the adopting carrier. They view such an interpretation as "a liberalizing device" which would give individual carrier members additional flexibility.

DOJ asserts that any Commission interpretation of section 5(b)(8) of the 1984 Act should "not substantially reduce the incentives of conference members to exercise the right of independent action." DOJ at 2. DOJ also believes that the Commission must "* * * prevent impediments to the free exercise of the right of independent action." DOJ at 5. DOJ is in favor of the Commission seeking further comment on several specific questions on this issue.

The Commission believes that the term "adopt" should be confined to mean "identical" to whatever portion of an originating IA is being adopted. Both the terminology used in the statute and the possible adverse impact of altering initial IAs under the adoption process support this interpretation.

As stated previously, section 5(b)(8) of the Act provides that a conference must allow its member lines, if they so choose, to take independent action and to adopt the IAs of other members. Development of an appropriate definition for the term "adopt" with respect to IA requires an analysis of the use of the word "the" and its overall effect on section 5(b)(8) of the Act. "The" is defined as:

> —a function word to indicate that a following noun or noun equivalent is definite or has been previously specified by context or by circumstances.[1]

"The" is used in section 5(b)(8) in two separate places that deal with initial and adopting IA. Once a member line elects to initiate its own IA rate or service item, the conference must "* * * include *the* new rate or service item in its tariff for use by that member, * * * and by any other member" who "elects to adopt *the* independent rate or service item * * *" (emphasis added).

The statutory text that follows "the" clearly refers back to the original independent action rate or service item. That is, when a member line "elects to adopt the independent rate or service

[1] Webster's Ninth New Collegiate Dictionary 1222 (Merriam-Webster Inc., 1986).

item," it adopts that of the originating member. It follows that any change or alteration from the original IA results in a new independent action, and should not be considered an adoption of the original member's IA.

Nothing in the language of the statute supports the proposition that an adoption of an IA is anything more than the adoption of the identical IA of the originating member line. If Congress had intended otherwise, it would have avoided use of the word "the." Therefore, with respect to the adoption of IAs, it appears that the phrase "independent rate or service item" following the word "the" is definite, and requires adoption of the initial IA as it is specified.

In addition to an evaluation of the statutory text, it is important to point out three possible adverse effects of altering initial IAs under the adoption process. First, a member line could be inhibited from taking IA if another member line, in an adoption action, can alter the original member's IA. For example, assume a conference rate per twenty-foot container for toys from Hong Kong to Long Beach is $2,000 and Carrier A initiates an IA rate of $1,500 per twenty-foot container in response to a shopper's request. The shipper then solicits Carrier B for the same IA rate, but Carrier B cannot match the rate of Carrier A because it has higher operating costs due to a superior service. Carrier B then "adopts" Carrier A's rate at a level of $1,650 per twenty-foot container, slightly higher than Carrier A's rate but less than the conference rate. Since Carrier B's superior service justifies a $150 difference in the rate, the shipper chooses to ship its cargo with Carrier B instead of Carrier A.

Thus, the initiating carrier's future incentive to take IA may be diminished by the threat of other carriers working off its IA rate. Unlike an initial IA, the adoption of an IA is not restricted by a maximum ten-day waiting period. A carrier, working off an initiating carrier's IA but substantially altering the original IA, could achieve an advantage over the initiating carrier, as well as other conference carriers, that it would not have if it were required to file its IA as an initial IA and wait the maximum ten-day period before executing the rate.

Second, there would be nothing to keep an adopting IA carrier from lowering the original IA rate reduction, but without being restricted by the maximum ten-day notice period required of initial IAs. In such circumstances, an adopting IA could be used to undercut a weaker competitor that took the original IA. This could be particularly important in a situation where a block of attractive cargo is ready to be moved. Again, a carrier's incentive to initiate IA may be diminished.

Third, allowing an adopting member to alter an initial IA could cause ambiguity in the agreement process. If a member line does not adopt the original IA in its entirety, it becomes difficult to determine when an independent action is, in fact, a new or an adopting IA.

The Commission therefore proposes a rule that could explicitly affirm that any adoption of an independent-action rate or service item or a particular portion of such rate or service item must be identical to the initial independent action. The Commission views any change made to the original independent action by another member line as a new IA subject to the filing provisions of the applicable agreement. The proposed rule also specifies that, in order to comply with section 5(b)(8) of the 1984 Act, conference agreement provisions must use the term "adopt" when referring to the adoption of one member's independent action by another member line. The proposed rule interprets the word "adopt" to refer to the filing of independent action by carriers who wish to offer a rate or service which matches exactly the independent rate or service of the originating carrier, with the exception that in the case of an IA TVR, the actual dates offered by an adopting carrier may vary from the dates offered by the originating carrier, so long as the duration of the adopting IA is the same as the originating IA.

**Adoption of and Participation in Time/Volume Rates**

The Commission has received agreement filings which permit members to participate in the IA TVRs of other members by filing a "following independent action" notice with the conference office. These filings raise concerns regarding the adoptability of TVRs and whether participation in an originating carrier's IA TVR is permissible under the Act.

A TVR is a type of rate whereby a carrier or conference offers a shipper a special rate that varies with the volume of cargo shipped over a specified period of time. Should the shipper fail to ship the minimum level of cargo specified in the TVR within the time prescribed, the cargo carried from the beginning of the TVR time period is re-rated by the carrier at the otherwise applicable tariff rate. When a conference carrier breaks from a conference rate (whether it be a TVR or conventional rate) and sets its own rate, it exercises its right of independent action. If the carrier chooses to establish a TVR, such independent action is known as an IA TVR.

An adoption of an IA TVR occurs when a conference carrier adopts the TVR of another conference member who has filed an IA TVR. The adopt of an IA TVR can be implemented in at least two ways. First, an adopting carrier can participate in the original IA TVR ("participating IA TVR"). In this instance, the shipper receives the volume discount rate from the initiating and adopting IA carriers once its combined shipments among the IA and adopting IA carriers meet the IA TVR's volume commitment. For example, if the IA TVR required 500 containers to secure a rate of $2000 per container, and another carrier adopted that IA TVR, then the shipper would get the IA TVR discount once it shipped 500 containers, regardless of how the 500 containers was divided between the two carriers. In this scenario, the adopting IA-TVR carrier literally joined in the TVR of the originating IA-TVR carrier.

Another way IA TVR might be adopted would be for the adopting IA TVR carrier to give the shipper an identical, but separate arrangement from the originating IA TVR carrier, and to not join in the original IA TVR ("non-participating IA TVR"). Again, using the above example, if the originating IA-TVR carrier required 500 containers to meet the $2000 rate per container, the adopting IA-TVR carrier would also require 500 containers. The shipper would only get the $2000 per container rate from the carrier with whom it shipped 500 containers (or from both carriers if it shipped at least 500 containers with each). The shipper would not be permitted to combine shipments with both carriers to meet the 500-container requirement. In this situation, there is no joint IA TVR; the adopting IA-TVR carrier is simply offering a TVR identical to the originating carrier's IA TVR.

The 1984 Act and its legislative history are silent regarding the adopting of IA TVRs. To date, the Commission has not addressed the issue.

Section 5(b)(8) states in part that an IA shall be for use by that initiating carrier, and by any other member that notifies the conference that it elects to adopt the independent rate. The Advance Notice sought comment on whether section 5(b)(8) of the Act permits a carrier to participate in an IA TVR. Commenters were asked to address the issue's impact on conferences, independent carriers and shippers, as well as its legality under the 1984 Act.

The commenters fall into three groups: those in favor of adopting IA TVRs without restriction,[2] those who support prohibiting the adopts of IA TVRs,[3] and those who would restrict (but not abolish) the adoption of IA TVRs.[4]

Those in favor of adopting IA TVRs without restriction argue that the authority to adopt an IA TVR is essentially a guaranteed right under the Act.

> Allowing member lines to adopt and participate in the same IA time/volume rate ('TVR') as the initiating member line not only carries out the plain meaning of the Act, but is the only interpretation of the Act that gives maximum service options and competitive flexibility to all concerned. Any other view would restrict the flexibility of shippers and carriers and eviscerate the right of other members to exercise their statutory right to adopt IA TVRs.
>
> ANERA *et al.* at 2.

Those arguing for prohibiting the adoption of IA TVRs believe that permitting adopting IA TVRs creates disincentives to take IA.

> A Conference Agreement which allows an 'adopting carrier' to join in the original IA TVR with the shippers splitting shipments between the IA TVR carrier and the adopting IA TVR carrier(s), robs the originating IA TVR carrier of the benefits of its initiative. It thus serves as a major disincentive to IA TVRs, and therefore constitutes a restriction on independent action not envisioned or allowed by the Shipping Act.
>
> As to the question of whether an IA TVR may be adopted by another Conference carrier in a manner which would give the shipper an identical, but separate arrangement from the originating IA TVR carrier, the impact would seem to be the same—to threaten the cargo commitment expected by the originating carrier, and thus to have a chilling effect on any carrier considering an IA TVR.
>
> API at 9.

The third group is generally opposed to the adoption of participating IA TVRs, but would allow the adoption of non-participating IA TVRs.

> The Conferences recognize independent action [sic], including the right to 'adopt' the independent actions of others, applies equally to time/volume rates. Conference Report, p. 29. However, in the case of an IA TVR, this does not include the right to *join* in the IA filing made by the originating carrier and convert that independent filing into a joint holding out. It is simply the right to offer the same rate under the same terms and conditions as the originating carrier.
>
> Japan Conferences at 5–6 (emphasis in original).

The Commission believes that IA TVRs must be viewed as any other adopting IA rate action. Two issues arise in this context, however. The first is whether a carrier can adopt an identical IA TVR after it has become effective without altering the time period. Altering the time period no longer makes it identical. Under this circumstance, the statutory language requiring conferences to permit the adoption of an original IA after its effective date would appear to take precedence over an insistence that "adopt" always means "identical" as to the specific time period covered by the original IA where IA TVRs are concerned. In other words, the term "adopt" does not seem to require "identical" time periods in those instances where a carrier wishes to adopt an IA TVR after it has become effective.

The second issue IA TVRs raise is whether a conference carrier should be permitted to join in an IA TVR already filed by another member line. We believe not.

First, the adopting IA language in the statute would appear to cover a rate offering that is materially identical to the original IA offering—a rate offering that has material differences is simply treated as a new IA rate. When an adopting IA–TVR carrier participates with the original IA–TVR carrier, this changes the original IA TVR and would seem to be a new rate offering, not an adopting IA. A material change would exist because the originating carrier may be forced to give a shipper the discounted TVR even though the shipper may not tender that carrier the same volume of cargo specified in the originating IA TVR. Thus, the originating IA–TVR carrier would be forced into offering a participating TVR without its consent. The statute does not appear to sanction such a result.

Second, participation could reduce the amount of cargo and revenue the shipper provides to the carrier originating the IA TVR, and essentially require the carrier to give a volume discount without the volume. It would appear that the only protection a carrier would have from the possibility of being forced into such a situation would be to never file an original IA TVR. Therefore, permitting additional carriers to participate in the IA TVR of an originating carrier could inhibit the taking of an IA TVR in the first instance.

The Commission, therefore, proposes a rule that specifies the conditions under which conference members can adopt another member's IA TVR. The proposed rule provides that a member line can adopt an initiating member's IA TVR before its effective date, in its entirety, without change to any aspect of the original rate offering. Adoption of an initiating member's IA TVR after its effective date would be permitted, provided the adopting carrier appropriately adjusted the beginning and ending date of its adopting IA TVR to make the duration the same as the originating IA TVR. The proposed rule would prohibit member lines from participating in an IA TVR filed by another member line. Member lines may, however, offer joint TVRs if permitted to do so under the terms of their agreement. The proposed rule also allows any TVR participated in by another conference member and in effect prior to the effective date of any final rule in this proceeding to remain in effect until 90 days from the effective date of such fine rule.

**Notice Period**

The Advance Notice requested comment on whether conference agreement provisions that impose notice-period conditions on member lines, other than those specifically stated in section 5(b)(8) of the Act, should be permitted. For example, one conference requires a member to give the conference office forty-eight hours' notice of the withdrawal of an IA in order to meet a lower conference rate applicable to the same commodity or service item.

The Commission received eleven comments on this notice period issue. all commenting conferences oppose a Commission rule that would prohibit conferences form imposing on their member lines notice-period conditions not expressly allowed by section 5(b)(8) of the Act. They argue that they may establish other notice period requirements because section 5(b)(8) does not explicitly prohibit them. Some conferences contend that Congress did not intend to restrict conferences from imposing other notice period requirements on member lines. NEC states that, while it is not opposed to a rulemaking regarding particular types of IA notice provisions that may raise specific legal issues, it does not consider a rule prohibiting all conference IA notice provisions, other than those expressly stated in the Act, to be appropriate or necessary.

Some conferences believe that they can establish supplementary IA notice provisions as authorized by their respective agreements to apply to the

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[2] ANERA *et al.*, DOT, IAFC, Latin American Agreements, NEC, SEUSA and TWRA.

[3] AgOTC, API, Dole, UFTVA and Westvaco.

[4] DOJ, Japan Conferences and Weyerhaeuser. This group also includes Du Pont, which would permit adopting IA TVRs with the shipper's permission, and SPI, which would require the originating IA TVR carrier's permission in addition to the shipper's permission.

withdrawal, amendment, postponement or cancellation of a previous IA. These conferences contend that reasonable notice periods for the withdrawal, amendment, postponement or cancellation of an IA are permissible under section 5(b)(8) and the Commission's regulations. It is argued that the propriety and merit of such ancillary provisions should be determined by the Commission on a case-by-case basis.

Other conferences consider the withdrawal, amendment, postponement or cancellation of an IA to be an initial or new IA, and believe that such actions are subject to the "effective on not more than ten days' notice" requirements of section 5(b)(8). The Japan Conferences state: "Other than matching [adopting] actions, * * * every independent action taken is an *initial* independent action irrespective of whether it amends an existing IA, cancels an existing IA or initiates an entirely new IA." Japan Conferences at 6–7 (emphasis in original). A number of conferences contend that although no-notice periods for withdrawn, amended, postponed or canceled IAs might provide more flexibility for conference member lines, no-notice periods would make it administratively difficult, if not impossible, for the conference secretariat to administer the conference tariff.

In general, all commenting shippers are concerned that the right of conference carriers to exercise IA be preserved. Of the twelve shippers commenting, five address notice periods. They believe that conference provisions imposing a notice period on the withdrawal of an IA could be used to discourage the use of IA, which undermines the objectives of section 5(b)(8). "To permit further notice period requirements would allow conferences to place unnecessary obstacles before members who wish to undertake independent action." NIT League at 3. API noted that a notice period for the withdrawal of an IA serves only to discourage a member line from taking IA at the outset. A notice period requirement for the withdrawal of an IA is said to constitute * * * a threat to the member carrier who is thinking of taking IA. If the member carrier were to take IA * * * and subsequently the Conference were to reduce its tariff rate to a level below that of the IA, any notice period imposed upon the member which took the IA and now wishes to rejoin the Conference undermines the competitiveness of that member for the duration of the notice period." API at 5.

Some commenting shippers also argue that the 1984 Act's legislative history supports the prohibition of conference agreement provisions that impose requirements other than the maximum ten-day notice period. Others maintain that conferences should not have the authority to impose conditions on IA other than the ten-day notice period permitted by the statute, regardless of the characterization of the nature of the action.

DOJ and DOT believe that conference agreement provisions that impose advance notice requirements on IAs, other than that specifically stated in section 5(b)(8) of the Act, should be prohibited. Both note the Commission's past decisions that conferences may not impose additional restrictions on the exercise of the right of IA. DOT contends that additional restrictions would impede individual carrier flexibility, which Congress insisted upon in return for extending collective ratemaking authority. It also states that a notice period for actions such as the withdrawal of an IA "raises the possibility that the issuing conference is in fact simply trying to make the exercise of IA rights by its member lines more difficult." DOT at 4. DOJ argues that notice-period restrictions other than the ten-day waiting period authorized by the Act serve to penalize those who exercise their IA rights. It concludes that "The existence of such a threat poses a substantial disincentive to the exercise of the right of IA, and the imposition of such a burden on IA should be considered unlawful." DOJ at 11–12.

The act of adopting, withdrawing, amending, postponing or canceling an IA, although performed by an individual member line, does not appear to create a *new* independent rate action or service item separate from that of the conference. Therefore, the Act's maximum ten-day notice period associated with initial independent actions does not apply. Nor does section 5(b)(8) otherwise provide a period within which a conference member must notify the conference of its intent to adopt withdraw, amend, postpone or cancel an initial IA.

In *Independent Action—Notice and Meeting Provisions*, the Commission advised that:

> To argue that the Act's alleged silence permits other substantive requirements or conditions which would effectively add to the limited notice requirement, either as a precondition to or as a consequence of independent action, is contrary to the express language of the Act. Any condition, procedure or other mandatory requirement that in effect *adds* to the 10-day maximum notice requirement or places a mandatory burden on IA is, on its face, *per se* violative of section 5(b)(8).

23 S.R.R. at 1027 (emphasis added).

The Commission had earlier stated:

> The 1984 Act represents a legislative effort to balance the interests of carriers and shippers. In order to fulfill the Congressional purpose, it is necessary to ensure that the right of independent action is fully preserved and that no restrictions, other than those permitted by the statute, are placed on its exercise.
>
> * * * * *
>
> Preserving an unburdened right of independent action is in keeping with the Congressional purpose. Restricting, burdening, or making it more difficult to exercise independent action defeats the purpose of the Act and the legislative compromise that led to the Act's passage.

*Id.* at 1026.

Notice or waiting period requirements for actions taken that affect previously taken IAs or adopting IAs could hamper a conference member's right to independent action. Not only do notice periods delay adopting-IA filings, but they could also prevent a member line from filing an adopting IA in those instances where the initial IA is withdrawn prior to its intended effective date. Additionally, requiring member lines to adhere to a withdrawal notice period could serve to restrict IA by inhibiting a carrier from quickly reacting to the conference establishing a rate below that carrier's IA. Accordingly, the Commission in this proceeding proposes to prohibit conference agreement provisions that impose notice periods for adopting, withdrawing, amending, postponing or canceling IAs.

**Filing and Maintenance Fees**

Some conferences are assessing their individual member lines the costs incurred in processing IA's. These include initial IAs, matching or adopting IAs (if separately filed), and the maintenance of IAs. The Commission is concerned that the assessment of filing and maintenance fees on a usage basis may restrict a member's right to take independent action.

The Advance Notice requested comments on member lines being assessed conference costs incurred in processing tariff filings that were requested or initiated by individual lines for their own use, and how the costs should be assessed. The Commission was particularly interested in whether such filing and maintenance fees regarding IAs were legal under the 1984 Act, and their impact on conferences, independent carriers and shippers.

Comments on this issue fell into two categories: those who believe that

maintenance and filing fees should be permitted and those who believe such fees discourage a carrier from taking IA. Some commenters in the latter group could support fees, but on a *per capita* rather than a usage basis.

Conference commenters generally believe that conference agreements may legally provide for the assessment of the costs incurred in the processing and filing of IAs. Many conferences note that both section 5(b)(8) and the legislative history of the 1984 Act are silent with regard to the assessment of costs in the context of IAs. The IAFC argues that it would be beyond the Commission's authority to prohibit a conference from seeking reimbursement for the costs associated with processing and filing IAs for its members. Some conferences make the point that other members should not subsidize the costs associated with an IA filed by another member for its exclusive use.

Conference commenters also reject the notion that assessing a member line for the costs of filing its IAs would deter if from taking IA and would interfere with its statutory right of independent action.[8] First, they do not believe the cost of filing or processing an IA outweighs the potential revenue a carrier would earn by carrying cargo it would not have transported if it had not taken IA. Second, they argue that while a member line incurs additional costs with respect to each of its IAs, it avoids the costs associated with the IAs of the other conference members.

Many conferences maintain that the assessment of IA costs is an internal conference administrative affair that the Commission should not get involved in. Several conferences argue that it is not *per se* illegal for conferences to agree on how costs of conference operations should be allocated and that the Commission, if it has reason to believe that a particular activity has the effect of penalizing a carrier and hence thwarting its statutory right of mandatory IA, may take appropriate measures. TWRA and the Japan Conferences note that the Commission has addressed the question of IA fees to recover costs, and has taken no action based on its review of information submitted by certain conferences. The situation is said not to have changed and therefore, rulemaking on this issue is deemed unnecessary.

[8] TWRA indicates that it charges substantively less for IA filing fees than the incremental costs that are attributable only to tariff page preparation and filing of IAs. It knows of no instance in which a member which wanted to take IA did not do so or hesitated to do so because of IA filing fees.

Shipper commenters take the position that filing and maintenance fees could discourage a carrier from considering IA and that the Commission should prohibit any provisions or actions which may restrict IA. Many shippers are wary that a direct fee or charge, even if the costs are associated with processing IAs and regardless how "moderate" or reasonable, can be construed as a barrier to IA given the thousands of commodities considered for IA. Several shippers state that there is no express language in the 1984 Act or its legislative history allowing a conference to charge its members for costs associated with their IAs and, therefore, conferences should not be permitted to assess IA filing fees.

Other shipper commenters support the concept of assessing members a fee based upon reasonable processing and filing costs. One shipper would permit each conference member to be assessed the same rate regardless of the number of IAs it specifically requested.

DOJ and DOT argue that the Commission should ensure that conferences not penalize member lines for exercising their right of IA. DOT states: "The Commission's primary regulatory concern should be that proposed charges are reasonably related to the ministerial function performed, and not in fact a penalty imposed on member lines * * *." DOT at 4. DOJ submits that the imposition of conference charges for IA filings could be at least as burdensome as other requirements such as multiple notices and mandatory attendance at conference meetings, which the Commission has rejected as impermissible restrictions on the right of IA. DOJ states that a conference has an incentive to minimize IA; thus, there is a danger that excessive charges could be imposed as a means of deterring IA. "While nominal charges limited to recovering costs might be unobjectionable in theory, in practice, it could be very difficult to determine the reasonableness of charges to particular carriers." DOJ at 13. Thus, DOJ would not permit conferences to assess IA filing fees. Should conferences experience financial hardship as a result of their inability to impose such fees, it believes that the Commission could revisit this issue.

The statutory obligation of a conference to provide for IA should not be shifted to member lines exercising that right. Assessing members the cost of filing and maintaining IAs on a usage basis appears to do that. If a member line does not pay the conference publishing and maintenance fees associated with IAs, the line's proposed IA presumably would not be published by the conference, thus restricting the member's ability to engage an IA rate for its own use. Expenses incurred by the conference for filing or maintaining IAs should be considered administrative costs and shared, as other administrative costs, on a per capita basis rather than on a usage basis. By charging fees for processing IAs on a per capita basis, it would be clear that members were not being discouraged from taking IA or penalized for doing so.

Thus, the proposed rule prohibits conferences from assessing their member lines either filing fees or maintenance fees on a usage basis for expenses incurred by the conference in processing and administering independent action filings.

**Automatic Expiration Dates**

The Advance Notice advised that at least one conference had adopted the practice of assigning automatic expiration dates for IAs when none was specified. As the Commission understands the practice, if an initiating member line neglects to indicate a specific expiration date or does not indicate that it wishes no expiration date, a conference-imposed expiration date, for example ninety days, is automatically assigned to the IA. The Commission requested comments on whether conferences should be permitted to so assign automatic expiration dates for IAs.

The comments received on this issue were divided along industry lines. Conferences generally advocated that it was permissible for them to impose automatic expiration dates—with the understanding that member lines can "opt out" or amend the conference-imposed expiration date. Shippers, with DOJ and DOT concurring, took the position that the Commission should not allow conferences to impose automatic expirations dates on IAs.

The conference comments contain two basic arguments. First, they contend that the 1984 Act does not specifically prohibit conferences from assigning expiration dates to IAs. Second, they refer to the imposition of expiration dates as a "housecleaning" method to rid conference tariffs of outdated and unused IAs. They believe that automatic expiration dates are lawful under the 1984 Act, and point out that member lines would be free to change or amend the conference-imposed date.

Shipper comments generally challenge conference-imposed expiration dates as not permitted by the 1984 Act and as placing an extra burden upon member

lines taking IA. They urge the Commission not to allow conferences to impose automatic expiration dates on IAs.

DOT and DOJ agree with the shippers: "DOT does not believe that such provisions [automatic expiration dates] should be permitted. Carriers that take independent actions are solely responsible for the terms of their independent arrangements with shippers." DOT at 5. "Conference imposition of arbitrary termination dates on IAs * * * constitutes an unwarranted constraint on the right of independent action." DOJ at 13.

The Commission believes that the member line exercising IA, and not the conference, should be the party that initiates and decides the expiration date of an IA. The unilateral assignment of automatic expiration dates for IAs by conferences appears to restrict the exercise of IA, thereby undermining the purpose of section 5(b)(8) and the legislative compromise underlying the 1984 Act. As stated in Independent Action—Notice and Meeting Provisions, the only restrictions that may be placed on IA are those found in the statute. Notwithstanding the conferences' position that automatic expiration dates are permissible so long as the member line can "opt out," even such opting out of a conference-imposed date can be viewed as an added burden on a member's IA rights. There should be other methods conferences can employ to dispose of outdated rates in their tariffs that do not hinder a member's right to take independent action.

The Commission therefore, proposes to incorporate in its agreement rules a provision expressly prohibiting a conference from designating an expiration date for an IA in the absence of such a date designated by the carrier taking the IA.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the proposed rule in terms of this Order and has determined that the rule, if adopted, is not a "major rule" as defined because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. *et seq.*, the Commission certifies that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), as amended. Public reporting burden for this collection of information is estimated to vary from 18 to 22 hours per response, with an average of 20 hours per response, including time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Current independent action regulations contained in 46 CFR 572.502(a)(4) would be moved to a new subpart (Subpart H—Conference Agreements) and redesignated 46 CFR 572.801—Independent action. The new regulations recommended by this proposed rule would be added to the new subpart H. In addition, the Commission's current rules governing conference service contract provisions (46 CFR 572.502(a)(5)) would be moved to subpart H and redesignated 46 CFR 572.802—Service contracts.

**List of Subjects in 46 CFR Part 572**

Administrative practice and procedure, Antitrust, Maritime carriers, Rate and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 5, 6, and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1704, 1705, 1716, part 572 of title 46, Code of Federal Regulations, is proposed to be amended as follows:

## PART 572—[AMENDED]

1. The authority citation for part 572 continues to read:

**Authority:** 5 U.S.C. 533; 46 U.S.C. app. 1701–1707, 1709–1710, 1712, and 1714–1717.

2. Paragraphs (a)(4) and (a)(5) of § 572.502 are revised to read as follows:

**§ 572.502 Organization of conference and interconference agreements.**

(a) * * *

(4) Article 13—*Independent action.* The regulations for independent action are contained in § 572.801 of this part.

(5) Article 14—*Service contracts.* The regulations for service contracts are contained in § 572.802 of this part.

* * * * * *

3. A new subpart H is added to part 572 reading as follows:

**Subpart H—Conference Agreements**

Sec.
572.801 Independent action.
572.801 Service contracts.

## Subpart H—Conference Agreements

**§ 572.801 Independent action.**

(a) Each conference agreement shall specify the independent action procedures of the conference, which shall provide that any conference member may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the Act upon not more than 10 calendar days' notice to the conference and shall otherwise be in conformance with section 5(b)(8) of the Act.

(b) (1) Each conference agreement that provides for a period of notice for independent action shall establish a fixed or maximum period of notice to the conference. A conference agreement shall not require or permit a conference member to give more than 10 calendar days' notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the requirements of § 580.10(a)(2).

(2) A conference agreement shall not require notice from member lines for adopting, withdrawing, amending, postponing or canceling independent actions.

(c) Each conference agreement shall indicate the conference official, single designated representative, or conference office to which notice of independent action is to be provided. A conference agreement shall not require notice of independent action to be given by the proposing member to the other parties to the agreement.

(d) A conference agreement shall not require a member who proposes independent action to attend a conference meeting, to submit any further information other than that necessary to accomplish the filing of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying, or

compromising the proposed independent action.

(e) A conference agreement shall specify that any new rate or service item proposed by a member under independent action shall be included by the conference in its tariff for use by that member effective no later 10 calendar days after receipt of the notice and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date.

(f) (1) As it pertains to this part, adopt means the assumption in identical form of an originating member's independent action rate or service item, or a particular portion of such rate or item. In the case of an independent action time/volume rate ("IA TVR"), the dates of the adopting IA may vary from the dates of the original IA, so long as the duration of the adopting IA is the same as that of the originating IA. Furthermore, no term other than adopt (e.g., follow, match) can be used to describe the action of assuming as one's own an initiating carrier's IA. Additionally, if a party to an agreement assumes an IA of another party, but alters it, such action is considered a new IA and must be filed pursuant to the IA filing and notice provisions of the applicable agreement.

(2) An independent action time/volume rate ("IA TVR") filed by a member of a ratemaking agreement may be adopted by another member of the agreement, provided that the adopting member takes on the original IA TVR in its entirety without change to any aspect of the original rate offering (except beginning and ending dates in the time period) (i.e., a separate TVR with a separate volume of cargo but for the same duration). Any subsequent IA TVR offering which results in a change in any aspect of the original IA TVR, other than the name of the offering carrier or the beginning date of the adopting IA TVR, is a new independent action and shall be processed in accordance with the provisions of the applicable agreement. No carrier may participate with another carrier in an IA TVR already filed by another carrier. Member lines may, however, jointly file TVRs if permitted to do so under the terms of their agreement. Any currently effective TVR in which two or more member lines participate shall be permitted to remain in effect until [Insert Date 90 Days From the Effective Date of Final Rule].

(g) A conference agreement shall not require or permit individual member lines to be assessed on a per carrier usage basis the costs and/or administrative expenses incurred by the agreement in processing independent action filings.

(h) A conference agreement shall not permit the conference to designate a termination date for an independent action taken by a member line in the absence of an expiration date specified by the member line itself. Only a member line may determine the duration of its IA and establish an expiration date for such IA. If no specific expiration date is establish, the duration of the IA shall be deemed to be indefinite.

(i) All new conference agreements filed on or after the effective date of this section shall comply with the requirements of this section. All other conference agreements shall be modified to comply with the requirements of this section no later than [Insert Date 90 Days From the Effective Date of Final Rule].

(j) Any new conference agreement or any modification to an existing conference agreement which does not comply with the requirements of this section shall be rejected pursuant to § 572.601 of this part.

(k) If ratemaking is by sections within a conference, then any notice to the conference required by § 572.601 may be made to the particular ratemaking section.

### § 572.802 Service contracts.

(a) Each conference agreement that regulates or prohibits the use of service contracts shall specify its rules governing the use of service contracts by the conference or by individual members.

(b) Any change in conference provisions regulating or prohibiting the use of service contracts, whether accomplished by a vote of the membership or otherwise, shall not be implemented prior to the filing and effectiveness of an agreement modification reflecting that change.

(c) For the purpose of this section, conference provisions regulating or prohibiting the use of service contracts include, but are not limited to, those which permit or prohibit conference service contracts; permit or prohibit individual service contracts; permit or prohibit independent action on service contracts; permit or prohibit individual members to elect not to participate in conference service contracts; impose restrictions or conditions under which individual service contracts may be offered.

By the Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 92-16948 Filed 7-15-92; 8:45 am]

BILLING CODE 6732-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1037

[Ex Parte No. 502]

### Bulk Grain and Grain Products—Loss and Damage Claims

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes to eliminate its regulations at 49 CFR 1037.2 (a) and (c). Public comment is sought. Because bulk grain and grain products now move primarily in covered hopper cars, these boxcar rules no longer appear necessary.

**DATES:** Comments are due by August 17, 1992.

**ADDRESSES:** Send an original and 10 copies of all comments referring to Ex Parte No. 502 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Felder, (202) 927-5660 [TDD for hearing impaired: (202) 927-5721].

**SUPPLEMENTARY INFORMATION:** On July 31, 1991, the Commission issued an advance notice of proposed rulemaking published in the **Federal Register** on August 1, 1991 at (56 FR 36752) seeking comment on whether the rules at 49 CFR part 1037 [1] continue to serve any useful purpose and whether they should be eliminated, retained, or modified.

Eleven comments were received. Ten opposed elimination,[2] and one, filed by

[1] Rules for the Handling of Bulk Grain and Grain products in Interstate Commerce, and the Filing, Investigation, and Disposition of Claims for Loss and Damage Incident Thereto, Which Supersede the Rules Prescribed in Ex Parte No. 263, Loss and Damage Claims, 340 I.C.C. 515 (37 FR 20943).

[2] A joint comment was filed by Bunge Corporation, Continental Grain Company, and Louis Dreyfus Corporation. Individual comments were filed by the Kansas Grain and Feed Association, the Board of Trade of Kansas City, MO, Inc., the Grain Transportation Consultants of the Northwest, the Grain Dealers Association, the Board of Trade of the City of Chicago, the Secretary of the United States Department of Agriculture, Union Equity Cooperative Exchange, and Skill Transportation Consulting, Inc.

the Association of American Railroads, supported elimination.

Based on the comments received, we conclude that, with two exceptions, the rules continue to serve a useful purpose and should be retained. The two exceptions apply to the rules applicable to boxcar movements. Because bulk grain and grain products now move primarily in covered hopper cars, we propose to eliminate §§ 1037.2 (a) and (c) since they apply only to boxcar shipments. Further comment on this proposal is invited from interested persons.

The proposed action is intended to eliminate unnecessary regulation. We tentatively conclude that it will have no substantial adverse impact upon a significant number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**List of Subjects in 49 CFR Part 1037**

Claims, Grains, Railroads.

Decided: July 8, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

**Sidney L. Strickland, Jr.,**

*Secretary.*

For the reasons set forth in the preamble, title 49, chapter X, part 10347 of the code of Federal Regulations is proposed to be amended as follows:

## PART 1037—RULES FOR THE HANDLING OF BULK GRAIN AND GRAIN PRODUCTS IN INTERSTATE COMMERCE, AND THE FILING, INVESTIGATION, AND DISPOSITION OF CLAIMS FOR LOSS AND DAMAGE INCIDENT THERETO, WHICH SUPERSEDE THE RULES PRESCRIBED IN EX PARTE No. 263, LOSS AND DAMAGE CLAIMS, 340 I.C.C. 515 (37 FR 20943)

1. The authority citation for part 1037 continues to read as follows:

**Authority:** 49 U.S.C. 12 and 15.

**§ 1037.2 [Amended]**

2. Section 1037.2 is proposed to be amended by removing paragraphs (a) and (c) and by removing the paragraph designation from paragraph (b).

[FR Doc. 92-16762 Filed 7-15-92; 8:45 am]

BILLING CODE 7035-01-M

## 49 CFR Part 1039

**[Ex Parte No. 346 (Sub-No. 28)]**

## Rail General Exemption Authority: Export Corn and Export Soybeans

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is seeking public comment on whether to exempt from its regulation the rail transportation of export corn and export soybeans. The Commission has concluded, preliminarily, that regulation of the rail transportation of export corn and export soybeans is not necessary to carry out the rail transportation policy, and that such regulation is not needed to protect shippers from an abuse of market power. The exemption will allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail.

**DATES:** Comments must be submitted by August 17, 1992.

**ADDRESSES:** Send an original and 10 copies of comments referring to Ex Parte No. 346 (Sub-No. 28) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927-5660 [TDD for hearing impaired: (202) 927-5721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To receive a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927-7428. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

**Environmental and Energy Considerations**

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**Initial Regulatory Flexibility Analysis**

Pursuant to 5 U.S.C. 603, we are required to examine the impact of a proposed action on small entities. We preliminarily conclude that the action proposed in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the proposed action is to reduce regulation. No new reporting or other requirements are imposed, directly or indirectly, on small entities. The impact, if any, will be to reduce the amount of paperwork, tariff filing, and related activities.

We invite comment on the issue of the economic impact of our proposal on small entities.

**List of Subjects in 49 CFR Part 1039**

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: July 1, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Simmons commented with a separate expression.

**Sidney L. Strickland, Jr.,**

*Secretary.*

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 1039—EXEMPTIONS

1. The authority citation for part 1039 would continue to read as follows:

**Authority:** 49 U.S.C. 10321, 10505, 10706, 10761, 10762, 11105, 11902, 11903, and 11904; and 5 U.S.C. 553.

2. Section 1039.10 is proposed to be amended by redesignating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

**§ 1039.10 Exemption of agricultural commodities except grain, soybeans, and sunflower seeds.**

* * * * *

(b) *Exemption for export corn and export soybeans.* See § 1039.24.

3. A new § 1039.24 is proposed to be added to read as follows:

**§ 1039.24 Export corn and export soybeans.**

(a) The rail transportation of corn (STCC No. 01132) that originates at a point in the United States and moves from the United States to a destination outside the United States is exempt from the provisions of 49 U.S.C. subtitle IV, except that carriers must continue to comply with the Commission's accounting and reporting requirements. The STCC reference is to Standard Transportation Commodity Code Tariff 6001-T, effective January 1, 1992.

(b) The rail transportation of soybeans (STCC No. 01144) that originate at a point in the United States and move from the United States to a destination outside the United States is exempt from the provisions of 49 U.S.C. subtitle IV, except that carriers must continue to comply with the

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Commission's accounting and reporting requirements. The STCC reference is to Standard Transportation Commodity Code Tariff 6001-T, effective January 1, 1992.

(c) The exemptions stated in paragraphs (a) and (b) of this section will remain in effect unless modified or revoked by subsequent order of this Commission.

[FR Doc. 92-16764 Filed 7-15-92; 8:45 am]

BILLING CODE 7035-01-M

# Notice

This section contains doc proposed rul public. Notice investigations decisions an authority, filin applications organization of document

## DEPARTME

### Forms Und Managemen

July 10, 1992.

The Depa submitted t following p information Paperwork chapter 35) published. T proposals, r reinstateme following in

(1) Agenc collection; ( collection; ( applicable ( is requested asked to re number of r the total nu provide the telephone n person.

Question listing shou person nam Copies of th supporting from: Depa USDA, OIR Bldg., Wash 2118.

### Revision

*Agricultura Conservati*

7 CFR Part Disaster Assistan

ASCS-574, 441W, 44

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Charles Co

# Notices

Federal Register
Vol. 57, No. 137
Thursday, July 16, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

July 10, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

**Revision**

*Agricultural Stabilization and Conservation Service*

7 CFR Parts 777, 1477 and 1413—Disaster Payments and Disaster Assistance Programs
ASCS–574, 574–1, 658; CCC–441, 441A, 441W, 441SU, 441WR, 440
On occasion
Farms; 15,316,001 responses; 3,828,501 hours
Charles Cox (202) 720–6688

*Agricultural Marketing Service*

7 CFR Part 997—Peanuts Handled by Persons not Subject to the Peanut Marketing Agreement
Form FV–117 through Form FV–117–10
Recordkeeping; On occasion; Weekly; Monthly; Annually
Businesses or other for-profit; Small businesses or organizations; 2,480 responses; 884 hours
Mark Hessel (202) 720–9920

*Agricultural Stabilization and Conservation Service*

7 CFR Parts 795, 1497 and 1498—Farm Operating Plan for Payment Limitation Review and Determination of Eligibility of Foreign Individuals or Entities to Receive Program Benefits
ASCS–561, 561A, 561B, CCC–501A, 501B, 502A, 502B, 502C, 502D, 502E
Annually
Farms; 356,800 responses; 307,986 hours;
Dan McGlynn (202) 690–0926

*Agricultural Stabilization and Conservation Service*

7 CFR part 752—Water Bank Program Regulations
ASCS–691, ASCS–692, and ASCS–617
On occasion
Individuals or households; Farms; 7,000 responses; 1,466 hours
Millie Crabtree (202) 720–4053

**Extension**

*Food and Nutrition Service*

Requisition for Food Coupon Books
FNS–260
On occasion
State or local governments; 10,150 responses; 5,075 hours
Asher S. Bryte (703) 305–2949

*Foreign Agricultural Service*

Request for Vessel Approval/Request for Vessel Approval (Cotton)
Form CCC–105; Form CCC–105 (Cotton)
On occasion
Businesses or other for-profit; Small businesses or organizations; 251 responses; 314 hours
Judith A. Demetriades (202) 720–6711

**New Collection**

*Economic Research Service*

Survey of Buyers' Preference for Organic and Pesticide-Residue-Free Tomatoes
One time survey
Business or other for-profit; Small businesses or organizations; 50 responses; 38 hours
Steve Payson (202) 219–0450

*Food and Nutrition Service*

Simplified Application/Standardized Benefit Evaluation
One time survey
Individuals or households; State or local governments; 400 responses; 67 hours
Dr. Gary W. Bickel (703) 305–2125

**Reinstatement**

*Food and Nutrition Service*

Participation of Charitable Institutions in the Food Distribution Program
FNS Instruction 706–1
Annually
State or local governments; 54 responses; 108 hours
Robert DeLorenzo (703) 305–2560

*Soil Conservation Service*

Volunteer Program—Earth Team
SCS–PER–001, SCS–PER–002, SCS–PER–003, SCS–PER–004
On occasion
Individuals or households; Farms; Federal agencies or employees; Non-profit institutions; 7,500 responses; 750 hours
Jeff Anliker (202) 720–0430

Larry K. Roberson,
*Departmental Clearance Officer.*

[FR Doc. 92–16770 Filed 7–15–92; 8:45 am]
BILLING CODE 3410–01–M

## Forest Service

### Katka Timber Sale; Idaho Panhandle National Forests, Boundary County, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare an environmental impact statement.

**SUMMARY:** The notice is hereby given that J.W. Associates Inc., under contract to the Forest Service, is gathering information in order to prepare an Environmental Impact Statement (EIS) for a proposal to harvest timber and build roads in the Katka Ridge/Boulder Creek area. This area is located approximately eight air miles east of Bonners Ferry,Idaho, on the Bonners Ferry Ranger District. Part of the proposed timber harvest and road construction are proposed within the Katka Peak Roadless Area (No. 1–157).

**DATES:** A public meeting/open house will be held at the Bonners Ferry Firehall Conference Room in Bonners Ferry, Idaho, from 12 p.m. to 8 p.m. on August 6, 1992. Formal presentations regarding the proposal will be made at this meeting at the times of 12:15, 3, 5, and 7 p.m. Written comments concerning the scope of the analysis must be received on or before August 31, 1992.

**ADDRESSES:** Send written comments to Jessica Wald, J.W. Associates Inc., 2006 Broadway, suite 305, Boulder, CO 80302.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and EIS should be directed either to the Forest Service contact, Mark Grant, Bonners Ferry Ranger District, Route 4, Box 4860, Bonners Ferry, Idaho, 83805, Phone: (208) 267–5511, or to Jessica Wald, J.W. Associates Inc., Phone: (303) 447–1308.

**SUPPLEMENTARY INFORMATION:** These management activities would be administered by the Bonners Ferry Ranger District of the Idaho Panhandle National Forests in Boundary County, Idaho. The EIS is being prepared by J.W. Associates Inc. with input from the Forest Service. Representatives from both J.W. Associates Inc. and the Forest Service will be available for comment during scoping and preparation of the EIS. The Forest Service will issue the record of Decision.

This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) for achieving the desired future condition for this area. The purpose and need for the proposed action is to (1) foster forest regulation; (2) improve growth and yield of the desired species and size in the study area; and (3) provide for the area's share of the Allowable Sale Quantity. The process used in preparing the Draft EIS will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

J.W. Associates Inc., together with Forest Service, invites written comments and suggestions on the issues and management opportunities in the area being analyzed. Prior to submitting comments, however, it should be noted that this is a reissue of a notice originally published in the **Federal Register** on April 3, 1989. All comments which were previously received that addressed the original notice have been retained on file and will be considered during the current scoping process. For most effective use, any new comments should be sent to J.W. Associates Inc. within 45 days from the date of this publication in the **Federal Register** A public meeting to receive input from interested individuals or organizations will be held in Bonners Ferry, Idaho.

The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Standards and Guidelines, and Management Area direction. The potentially affected area is within the following Management Areas:

**Management Area 2**

Consists of lands designated for timber production within identified grizzly bear habitat. The management goal is to manage identified grizzly bear population while providing for the long-term growth and production of commercially valuable wood products as well as provide for soil and water protection, reduce potential for bear/human conflicts, provide for dispersed recreation opportunities consistent with grizzly bear habitat requirements and meet visual quality objectives;

**Management Area 3**

Consists of lands designated for timber production within identified grizzly bear habitat and big game winter range. The goal is to manage identified grizzly bear habitat to support the Idaho Panhandle National Forest's share of recovered grizzly bear population and projected big game populations through scheduled timber harvest as well as provide for soil and water protection, dispersed recreation consistent with wildlife habitat needs, and visual quality;

**Management Area 9**

Consists of areas of non-forest lands or lands not capable of timber production. Management goals are to maintain and protect existing improvements and resource productive potentials and meet visual quality objectives;

**Management Area 16**

Consists of primary riparian areas. The goal is to manage riparian areas to feature riparian dependent resources (fish, water quality, maintenance of natural channels, and certain vegetation and wildlife communities) while producing other resource outputs;

**Management Area 19**

Consists of lands which have a high value for semi-primitive recreation as well as timber production. Management goals are to manage the semi-primitive recreation setting in a near-natural appearing condition as well as manage wildlife habitat and timber through low levels of harvest with minimum interior roads, provide protection for soil and water protection, visual quality, and provide a semi-primitive environment and elk security area through road standards and management of long-term closure.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which the roadless character of the Katka Peak roadless areas would be maintained and timber harvest and associated road building would be deferred. Other alternatives will examine timber harvest and road construction in different locations and varied cutting methods and timber management intensities to achieve the purpose of the proposed action.

J.W. Associate Inc. will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. This will include an analysis of the effects of alternatives on the roadless character of the area affected. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation will be important during the analysis. People may visit with J.W. Associates Inc., or Forest Service officials, at any time during the analysis. Forest Service officials will remain available for consultation following publication of the Final EIS and prior to the decision. Two periods of time, however, are specifically identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process and in the review of the Draft EIS (April, 1993).

During the scoping process, J.W. Associates Inc., along with the Forest Service, is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

The Draft EIS (DEIS) is expected to be available for public review in April, 1993. The public comment period on the DEIS will be 45 days from the date the Environmental Protection Agency

publishes the notice of availability in the **Federal Register**. All of the comments received will be analyzed and considered by J.W. Associates Inc. in preparing the Final EIS (FEIS). The FEIS is scheduled to be completed by October, 1993. The FEIS will include responses to received comments. The Bonners Ferry District Ranger who is the Forest Service's responsible official for this EIS will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented by the Forest Service in a Record of Decision.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. V. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. is. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to J.W. Associates Inc. at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist J.W. Associates Inc. and the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

Dated: July 7, 1992.

**Debbie Henderson-Norton**

*District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forests.*

[FR Doc. 92-16748 Filed 7-15-92; 8:45 am]

BILLING CODE 3410-11-M

## Transfer of Administrative Jurisdiction; Eglin AFB, Florida

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of transfer of land.

**SUMMARY:** On May 28, 1991, the Secretary of the Air Force signed an order agreeing to the transfer of administrative jurisdiction of 510.5 acres of excess land at Eglin Air Force Base, Florida, consisting of 6 parcels, from the Department of the Air Force to the Department of Agriculture to be restored to National Forest System status. These lands previously had been a part of the Choctawhatchee National Forest.

This transfer was authorized by Public Law enacted in 1940, and an Executive Order executed on August 15, 1989.

**DATES:** This transfer was effective May 26, 1992.

**ADDRESSES:** A copy of the order of transfer as signed by the Secretary of Agriculture on May 26, 1992, accepting the return of this land is on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, Washington, DC 20090-6090.

**FOR FURTHER INFORMATION CONTACT:** David M. Sherman, Lands Staff, 4 South, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 205-1362.

Dated: July 7, 1992.

**Elizabeth Estill,**

*Associate Deputy Chief.*

[FR Doc. 92-16669 Filed 7-15-92; 8:45 am]

BILLING CODE 3410-11-M

## Proposed Fee Schedule for Communications Use Rental in the Pacific Northwest Region, Oregon and Washington

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** The Forest Service hereby gives notice that it is proposing a revised schedule of rental fees for communication uses on National Forest System lands located in the Pacific Northwest Region.

**DATES:** Written comments on the proposed regional fee schedules should be received by July 31, 1992.

**ADDRESSES:** Copies of the schedule may be obtained by writing to the Regional Forester, Pacific Northwest Region, Robert Duncan Plaza, 333 SW. First Avenue, (P.O. Box 3623), Portland, Oregon 97208-3623, Attention: Director, Lands and Minerals.

**FOR FURTHER INFORMATION CONTACT:** Lisa Freedman, Lands Staff, phone (503) 326-7140 or Jim Galaba, Lands Staff, phone (503) 326-2921, Pacific Northwest Region, Robert Duncan Plaza, 333 SW. First Avenue, (P.O. Box 3623), Portland, Oregon 97208-3623.

**SUPPLEMENTARY INFORMATION:** On December 11, 1986, the Pacific Northwest Region of the Forest Service published in the **Federal Register** a fee schedule for electronic communication sites (51 FR 44646). That schedule set forth the annual rental fees for different types and intensities of communication uses for areas or zones with similar fees in the States of Oregon and Washington. The fee schedule required that it be updated every 5 years based on an updated market analysis. On September 17, 1990, the Region published in the **Federal Register** a notice that it was preparing a market survey to adjust the existing schedule of rental fees, as required in the original schedule (55 FR 38123).

The market analysis was completed by the Forest Service by collecting transaction data from other agencies, private fee appraisers, communication specialists, private landowners who own land under communications sites, courthouse records, National Forest communications site holders and other sources. A letter was sent to all communications site permit holders, informing them of the market analysis and asking for comments. The analysis provided the basis for the establishment of fair annual rent estimates.

The proposed fee schedule provides a rental fee for communication uses based on type of use for a given area or zone. The schedule was developed using sound business management principles and the market survey. The fee schedule will be adjusted every ten years based on an updated market analysis. The schedule is in accordance with the Federal Land Policy and Management Act of 1976 which requires private users of public lands to pay the fair market value of the use authorized. The Regional Forester will accept comments until July 31, 1992 on this proposed rental fee schedule for communications use.

Dated: July 1, 1992.
John E. Lowe,
*Deputy Regional Forester.*
[FR Doc. 92-16663 Filed 7-15-92; 8:45 am]
BILLING CODE 3410-11-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Request for Public Comments on Bilateral Textile Consultations with the Government of Oman on Certain Cotton and Man-Made Fiber Textile Products

July 13, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories for which consultations have been requested, call (202) 377-3740.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 29, 1992, under the terms of Section 204 of the agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Oman with respect to cotton and man-made fiber woven shirts and blouses, produced or manufactured in Oman.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Oman, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 341/641, produced or manufactured in Oman and exported during the twelve-month period which began on June 29, 1992 and extends through June 28, 1993, at a level of not less than 113,871 dozen.

A summary market statement concerning Categories 341/641 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 341/641, or to comment on domestic production or availability of products included in Categories 341/641, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Oman.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 341/641. Should such a solution be reached in consultations with the Government of Oman, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

**Auggie D. Tantillo,**
*Chairman, Committee for the Implementation of Textile Agreements.*

**Market Statement—Oman**

**Category 341/641—Women's and Girls Shirts and Blouses**

**June 1992**

*Import Situation and Conclusion*

U.S. imports of women's and girls' cotton and man-made fiber woven shirts and blouses, Category 341/641, from Oman surged to 117,133 dozen in the year ending in April 1992, 82 percent above the 64,294 dozen imported during the year ending April 1991. During the first four months of 1992, imports of Category 341/641 from Oman reached 52,066 dozen, 62 percent above the 32,084 dozen imported in January-April 1991.

The sharp and substantial increase in Category 341/641 imports from Oman is causing disruption in the U.S. market for cotton trousers, slacks, and shorts.

*U.S. Production, Import Penetration, and Market Share*

U.S. production of women's and girls' cotton and man-made fiber woven shirts and blouses, Category 341/641, declined in every year since 1987, falling from 23,838,000 dozen in 1987 to 16,078,000 dozen in 1991, a decline of 33 percent. U.S. imports of women's and girls' cotton and man-made fiber woven shirts and blouses, Category 341/641, were volatile between 1987 and 1991, declining in 1988, increasing in 1989, dropping again in 1990, and increasing in 1991. In 1991, Category 341/641 imports were at a level of 21,451,000 dozen, 5.5 percent below the 22,706,000 dozen level in 1987. During this period the domestic manufacturers' share of the U.S. women's and girls' cotton and man-made fiber woven shirt and blouse market fell from 51 percent in 1987 to 43 percent in 1991. The import to domestic production ratio increased from 95 percent to 133 percent.

In 1992, Category 341/641 imports surged, reaching 9,720,000 dozen in the first four months, 22 percent above the January - April 1991 level. If Category 341/641 imports continue to grow at this rate, they would reach a record level 29,160,000 dozen in calendar year 1992, 36 percent above the 1991 level and 28 percent above the 1987 level. If 1992 imports reach this level and domestic productiion remains at its 1991 level, the ratio of imports to domestic production would increase to 181 percent and the domestic manufacturers' share of this market would fall to 35 percent in 1992.

*Duty-Paid Value and U.S. Producers' Price*

Approximately 78 percent of Category 341/641 imports from Oman during the year ending April 1992 entered under HTSUSA numbers 6204.29.2040—women's and girls' artificial fiber woven blouses and shirts, other than yarn dyed, imported as parts of ensembles, and 6206.40.3030—other women's man-made fiber woven blouses and shirts, other than yarn dyed. These blouses and shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable women's and girls' woven blouses and shirts.

[FR Doc. 92-16745 Filed 7-15-92; 8:45 am]
BILLING CODE 3510-DR-F

## Amending and Adjusting Import Limits and Announcing the Requirement of an Export Declaration (Form ITA–370P) for Certain Textile Products Produced or Manufactured in Mexico

July 13, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs amending and adjusting limits and requiring form ITA–370P for certain textile products.

**EFFECTIVE DATE:** July 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6711. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In exchange of letters dated July 1, 1992 and July 10, 1992, the Governments of the United States and the United Mexican States agreed to convert the specific limits for Categories 341/641, 635 and 669–B to designated consultation levels (DCLs) for 1992 and to increase the DCLs for certain categories. In addition, the current limits for Categories 317 and 604–A are being increased for special shift, reducing the limits for Categories 313 and 604–O/607–O, respectively, to account for the increases.

Further, the two governments agreed to establish a Special Regime specific limit for Categories 341/641 and 635, effective on January 1, 1993.

Beginning on September 1, 1992, U.S. Customs will start signing the first section of form ITA–370P for shipments of U.S. formed and cut fabric in Category 635 that are destined for Mexico and re-exported to the United States on and after January 1, 1993. On September 3, 1991, U.S. Customs began signing form ITA–370P for shipments of U.S. formed and cut fabrics in Categories 341/641 (see 56 FR 41830, published on August 23, 1991).

Shipments of goods in Categories 341/641 and 635 which are re-exported from Mexico prior to January 1, 1993 shall not be permitted entry under the Special Regime Program and shall be charged to the existing quota levels for Categories 341/641 and 635.

Textile products in Categories 341/641 and 635, which are assembled in Mexico from parts cut in the United States from fabric formed in the United States, are governed by Harmonized Tariff Schedule item 9802.00.8010, chapter 61 statistical note 5 and chapter 62 statistical note 3 of the Harmonized Tariff Schedule.

Interested parties should be aware that shipments of cut parts in Categories 341/641 and 635 must be accompanied by a form ITA–370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Mexico in order to qualify for entry under the Special Regime.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 65243, published on December 16, 1991.

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the exchange of letters, but are designed to assist only in the implementation of certain of their provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 13, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 13, 1992, you are directed to amend the limits for the categories listed below. The Special Regime limit for Category 633 remains unchanged.

| Category | Amended twelve-month limit [1] |
|---|---|
| Sublevels in Group I | |
| 313 | 23,090,000 square meters. |
| 317 | 16,287,966 square meters. |
| Limits not in a group | |
| 335 (Special Regime) | 270,000 dozen. |
| 341/641 | 1,100,000 dozen of which not more than 303,081 dozen shall be in Categories 341–Y/641–Y [2]. |
| 347/348/647/648 (Special Regime). | 5,400,000 dozen. |
| 351/651 (Special Regime). | 420,000 dozen. |
| 359–C/659–C [3] (Special Regime). | 2,450,000 kilograms. |
| 604–A | 2,120,556 kilograms. |
| 604–O/607–O [4] | 979,548 kilograms. |
| 635 | 350,000 dozen. |
| 669–B [5] | 1,000,000 kilograms. |
| 670 | 3,600,000 kilograms. |
| Normal Regime Categories (Not subject to the Special Regime) | |
| 335 (sublimit) | 100,000 dozen. |
| 347/348/647/648 | 1,000,000 dozen. |
| 351/651 | 120,000 dozen. |
| 359–C/659–C (sublimit) | 400,000 kilograms. |
| 633 (sublimit) | 12,000 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A); Category 607–O: all HTS numbers except 5509.53.0030 and 5509.53.0060 (Category 607–Y).

[5] Category 669–B: only HTS numbers 6305.31.0020 and 6305.39.0000.

Beginning on September 1, 1992, you are directed to begin signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Category 635 that are destined for Mexico and re-exported to the United States on and after January 1, 1993. In a letter dated August 19, 1991, you were directed to begin signing form ITA–370P for shipments of U.S. formed and cut parts in Categories 341/641. Shipments of goods in Categories 341/641 and 635 which are re-exported from Mexico prior to January 1, 1993 shall not be permitted entry under the Special Regime Program and shall be charged to the existing quota level for Categories 341/641 and 635.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Auggie D. Tantillo,
*Chairman, Committee for the Implementation of Textile Agreements.*
[FR Doc. 92-16809 Filed 7-15-92; 8:45 am]
BILLING CODE 3510-DR-F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### DOD Advisory Panel on Streamlining and Codifying Acquisition Laws; Public Comment

**AGENCY:** Defense Systems Management College, DOD.

**ACTION:** Notice for public comment.

**SUMMARY:** In the November 6, 1991 **Federal Register**, Vol. 56 No. 215, p. 56635, the DoD Acquisition Law Advisory Panel announced six general categories of statutes under review. As part of that review, the Panel has determined the need to specifically address those acquisition statutes governing and/or impacting the DoD international acquisition arena.

The panel is interested in inputs from both the acquisition community and the public at large relative to the following international acquisition issues:

(1) Buy American Act (Domestic Preferences) (41 U.S.C. chapter 1)
(2) Statutory/DoD Source Restrictions (Various Authorization and Appropriations Acts)
(3) Balance of Payments Program (10 U.S.C. chapter 148)
(4) Defense Production Act 50 U.S.C. appendix)
(5) Defense Industrial Base (10 U.S.C. chapter 148)
(6) Trade and Trade Agreements Acts (19 U.S.C. chapters 12 and 13)
(7) Cooperative Programs (10 U.S.C. chapter 138)
(8) Reciprocal Procurement Memoranda of Understanding (MOUs) (19 U.S.C. chapter 13)
(9) Foreign Military Sales (FMS) and Security Assistance (22 U.S.C. chapters 32 and 39)
(10) Export Controls and Licensing (50 U.S.C. appendix and 22 U.S.C. chapter 39]
(11) Technology Transfer and Offsets (10 U.S.C. chapter 148)
(12) Standardization and Competition (10 U.S.C. chapter 137 and 145)

Panel members are most desirous of information concerning the impacts of these statutes at the working level both within the government and within industry. Anyone having such information is encouraged to contact Mr. Bill Mounts, Defense Systems Management College/CM-AL, 8580 Cinderbed Road, suite 800, Newington, VA 22122, (703) 355-2865.

Dated: July 13, 1992.
Linda M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*
[FR Doc. 92-16743 Filed 7-15-92; 8:45 am]
BILLING CODE 3810-01-M

### DOD Advisory Panel on Streamlining and Codifying Acquisition Laws; Meeting

**AGENCY:** Defense Systems Management College.

**ACTION:** Notice of meeting.

**SUMMARY:** Open to the public on August 13, 1992 and August 25, 26 and 27, starting at 8:30 a.m. at the Defense Systems Management College in Building 184 on Fort Belvoir, VA. The panel will hear presentations and recommendations by the various panel working groups on the statutes they have reviewed to date.

For further information contact Linda Snellings at (703) 355-2865.

Dated: July 13, 1992.
L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*
[FR Doc. 92-16744 Filed 7-15-92; 8:45 am]
BILLING CODE 3810-01-M

## DEPARTMENT OF ENERGY

### Finding of No Significant Impact; Fermilab Main Injector, Fermi National Accelerator Laboratory; Batavia, IL

**AGENCY:** U.S. Department of Energy.

**ACTION:** Finding of No Significant Impact (FONSI).

**SUMMARY:** The U.S. Department of Energy (DOE) has prepared an Environmental Assessment (EA), DOE/EA-0543, for the proposed construction and operation of the Fermilab Main Injector (FMI) accelerator at the Fermi National Accelerator Laboratory (Fermilab) in Batavia, Illinois. The accelerator will be housed in a ring enclosure which would have a circumference of about two miles. The FMI complex will include the necessary beamlines to connect to existing facilities, service buildings, an assembly building, and a new 345 kV substation with connecting electric power lines. The proposed action will include cooling ponds, access roads, service utilities, and landscaping. The FMI construction will affect 135 acres of the 6800-acre Fermilab site. Completion of the proposed action will make it possible to realize the full scientific potential of Fermilab's high energy physics well into the 21st century.

On April 22, 1992, the DOE published a Proposed Finding of No Significant Impact on the proposed FMI project in the **Federal Register** (57 FR 14707) for a 30-day public comment period. The comment period closed on May 22, 1992. No comments were received.

Based on the analysis in the EA, the DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). Therefore, the preparation of an Environmental Impact Statement is not required.

### Description of the Proposed Action

The proposed action consists of the construction and operation at Fermilab of a 150 GeV Main Injector accelerator and associated facilities, including beamlines to connect to the existing Tevatron, Antiproton Source, and Fixed Target experimental areas. It will replace the 20-year-old Main Ring accelerator that is housed in the 4-mile circumference Tevatron ring enclosure. Many of the components of the Main Ring accelerator will be reused in the FMI.

Luminosity is a term used to measure the rate and density of interactions of counter-rotating beams of particles at their collision areas. The primary goal of the proposed project is to increase the luminosity of antiproton-proton interactions at the two existing Fermilab collider detector facilities by as much as five-fold. It will also increase the intensity of protons for fixed target Tevatron operations by about three-fold. Specifically provided for in the scope of the proposed project are:

a. Construction of the ring enclosure, service buildings, utilities, and fabrication of new technical components, including dipole magnets and power supplies.

b. Construction of beamline enclosures, service buildings, utilities, and technical components required to implement an 8 GeV Booster-to-FMI beam line, 150 GeV proton and antiproton FMI-to-Tevatron beam transfer lines, and a 120 GeV FMI-to-Antiproton Production Target beamline.

c. Fabrication of technical components required to implement the delivery of 120 GeV beam from the FMI to the Fixed Target research areas.

d. Modifications to the F-Zero section of the Tevatron which are required for

installation of the 150 GeV proton and antiproton transfer lines.

e. Construction of an assembly building to house the fabrication, assembly and quality assurance of technical components.

f. Construction of a new 345 kV substation and approximately 2½ miles of power lines for delivery of electric power to the FMI site.

**Alternatives**

Two alternatives to the proposed action are considered in the EA: (1) No action; and (2) construction at other sites within Fermilab. Taking no action would mean not constructing the FMI accelerator, and continuing operations at Fermilab under current management practices. The no action alternative would result in no alteration of wetlands or the floodplain of Indian Creek. Because of technical constraints associated with the design of beamlines, the FMI must be sited at one of the six straight sections of the Tevatron. Siting the FMI along a straight section of the Tevatron, inside of the main ring, would involve the disturbance of approximately 27 acres of wetlands, a site listed in National Register of Historic Places, and almost all of the reconstructed native prairie. This second alternative is technologically and environmentally unacceptable.

**Environmental Impacts**

The EA analyzes the impacts of construction and operation of the FMI. DOE has developed a Mitigation Action Plan (MAP) for implementation of mitigative measures designed to minimize the significance of potential impact. The MAP is included as appendix C of the EA. The following is a summary of the environmental consequences of the proposed action.

*Fllodplain and Wetlands Impacts/ Statement of Findings*

Because the proposed action is located in a floodplain/wetlands area, Executive Orders 11988 and 11990, and 10 CFR Part 1022, compliance with Floodplain/Wetlands Environmental Review Requirements, apply. This paragraph constitutes the Statement of Findings required by E.O. 11988 and 10 CFR 1022. The proposed action is described above; the location map is included as Figure 4.1.3.1 of the EA. Because of technical constraints associated with the design of beamlines, the FMI must be sited at one of the six straight sections of the Tevatron which encroach on the floodplain/wetlands. The selected alternative alters the least amount of wetland acres (7.14 acres). The construction of the FMI will require permanently filling about six acres of wetlands. The FMI has been designed to minimize the impact on wetlands. The plan is to construct about eight and one-half acres of new wetlands to offset the filled wetlands. On August 13, 1991, the U.S Army Corps of Engineers (COE) issued DOE a permit pursuant to Section 404 of the Clean Water Act to fill the wetlands. On June 4, 1991, the Illinois Environmental Protection Agency issued DOE a water quality certification pursuant to Section 401 of the Clean Water Act. The third agency involved in the joint permit application, the Illinois Department of Transportation/Division of Water Resources (IDOT/DWR), has reviewed the proposed alteration of Indian Creek and its floodplain, and has given preliminary approval. IDOT/DWR must approve the final construction drawings before ground breaking can commence. A Floodplain/Wetlands Assessment, incorporated in the EA, analyzes the proposed action's effect on the wetlands, and the compensatory measures that would be taken. The Floodplain/Wetlands Assessment analyzes the disturbance to Indian Creek's existing 100-year floodplain and the mitigation measures that will be taken to compensate for that disturbance. No negative impacts due to flooding are expected from construction of the FMI. In accordance with the DOE Regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements (10 CFR part 1022), a Notice of Floodplain and Wetland Involvement was published in the **Federal Register** on June 11, 1991 (56 FR 26806); no comments were received. Based on the analysis in the Floodplain and Wetlands Assessment, the DOE has found that the only practicable alternative is to site the FMI in a relatively small portion of the floodplain of Indian Creek. A replacement wetland (totaling 8.55 acre) will be constructed adjacent to Indian Creek. The new wetland will be constructed in the same watershed as the wetlands that will be disturbed. The replacement wetland will support hydric soils and will be graded to match the grade of the adjacent wetland to ensure sufficient hydrology for wetland establishment and success. Soil removed from the disturbed wetlands will be utilized to provide a seedbank for the created wetlands. Saplings of silver maple and other species that are characteristic of the adjacent wetlands will be planted. The FMI project will include the creation of 29 acre-feet of floodwater storage capacity to compensate for construction of the FMI within the floodplain. DOE will maintain the existing watershed characteristics within the project site and the surrounding areas. With the mitigation measures to compensate for the disturbance, no significant impacts are expected.

*Impacts to Ecology*

Experts in birds, plants, insects, amphibians, reptiles and mammals have conducted field surveys in the FMI construction area. Suitable habitat and the presence or absence of the listed species have been recorded; the reports are referenced in the EA. No threatened or endangered species will be affected by FMI construction or operation. As is discussed in the EA, particular attention has been paid to a great blue heron rookery inside the proposed FMI ring area, which was used until the summer of 1990. In 1991, the herons did not return to this area but used another nesting area on the Fermilab site. An ornithologist has formulated recommendations concerning the rookery inside the proposed FMI and other migratory fowl in the area. The recommendations (including a plan for construction date restrictions) will be followed by DOE as part of the proposed action if the herons return to the rookery inside the FMI area.

*Radiation Impacts*

Operation of the proposed FMI will result in insignificant amounts of radioactive emissions to the air and releases to soils. Fermilab's radionuclide emissions to the atmosphere after the FMI becomes operational would result in a dose to a hypothetical individual at the site boundary of 0.33 mrem/yr under typical operating conditions. The maximum dose at the site boundary from the current Tevatron operation with the Main Ring accelerator is estimated to be 0.029 mrem/yr. Even with conditions maximized, the cumulative emissions for Fermilab with the FMI will result in a dose to a hypothetical individual at the site boundary of 1.0 mrem/yr. Thus, Fermilab's radionuclide emissions as a result of FMI operations would result in a dose to a member of the public of less than about one-tenth of the U.S. EPA's standard of 10 mrem/yr for airborne radionuclide emissions from DOE facilities.

The proposed FMI has been designed to ensure ample protection to Fermilab employees and to the public from penetrating radiation. Appropriate shielding will be used to prevent any significant increase over historical levels. It is anticipated that FMI operations will not result in detectable levels of accelerator-produced radionuclides in surface waters,

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sediments, or groundwater. No significant off-site or on-site impact from an accident is expected.

*Cumulative Impacts*

No significant cumulative or long-term environmental effects are expected to result from the proposed action. The power consumption of Fermilab would be increased by 25% over that consumed in fiscal year 1990 but could be met by existing capacity.

**Determination**

Based on the analyses in the EA, the DOE has determined that the construction and operation of the FMI at Fermilab does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Therefore, an Environmental Impact Statement is not required.

**Public Availability**

Copies of this EA (DEA/EA–0543) are available from: Andrew E. Mravca, Manager, Batavia Area Office, U.S. Department of Energy, P.O. Box 500, Batavia, Illinois 60510 (708) 840–3281.

For further information regarding the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

Issued in Washington, DC, this 6th day of July, 1992.

**Peter Brush,**

*Principal Deputy Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 92–16801 Filed 7–15—92; 8:45 am]

BILLING CODE 6450–01–M

## Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Thursday, July 23, 1992, at the offices of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre Pascal, Paris, France, beginning at 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of a joint government/industry Design Group, which has been established by the IAE's Standing Group on Emergency Questions for the preparation of the Seventh IEA Allocation Systems Test (AST–7).

The agenda for the meeting is under the control of the Design Group. It is expected that the following draft agenda will be followed:

1. Summary Record of the last meeting.
2. Training program for members of the National Emergency Sharing Organizations (NESOs) and Reporting Companies.
3. Operational phase of AST–7; resolution of technical and organizational issues.
4. AST–7 Test Guide.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of the IAB, their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, July 13, 1992.

**Eric J. Fygi,**

*Acting General Counsel.*

[FR Doc. 92–16915 Filed 7–15–92; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Project Nos. 67–055, et al.]**

## Hydroelectric Applications (Southern California Edison Company, et al.); Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. *Type of Application:* Amendment of License.
b. *Project No:* 67–055.
c. *Date Filed:* April 23, 1992.
d. *Applicant:* Southern California Edison Company.
e. *Name of Project:* Big Creek No. 2A and No. 8 Project.
f. *Location:* The project is located on Big Creek and the South Fork San Joaquin River, in Fresno County, California.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. R.R. Schroeder, Southern California Edison Company, P.O. Box 800, 2244 Walnut Grove Avenue, Rosemead, CA 91770, (818) 302–1564.
i. *FERC Contact:* Mohamad Fayyad, (202) 219–2665.
j. *Comment Date:* August 20, 1992.
k. *Description of Amendment:* The licensee requests approval of an as-built revised exhibit M. The as-built exhibit M describes changes in the ratings of the main turbines, generators and transformers where they have occurred, and minor changes in the automated control systems.

The changes to project generating units, which occurred due to improvements to various turbines and generators between 1984 and 1987, are as follows:

- An increase in the total installed capacity of the project from the authorized 338,300 kW to 373,320 kW. While the total nameplate capacity rating of the generators is 384,820 kW, the project can only operate up to a capacity of 373,320 kW. This is due to the fact that the power output of some generating units is limited by the turbines capacities; some turbines' capacities are less than the generators capacities connected to them.
- A 20-kW turbine/generator unit installed in the Shaver Lake upper dam gallery, which is used to recover the energy of minimum flow water released from the reservoir through the dam.
- The total hydraulic capacity of the project increased by 216 cfs; due to efficiency improvements, the hydraulic capacities of some units decreased, and only the hydraulic capacity of unit No. 2 of Big Creek Powerhouse No. 8 increased by 240 cfs.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

2. a. *Type of Application:* Amendment of License.
b. *Project No:* 2175–005.
c. *Date Filed:* April 23, 1992.
d. *Applicant:* Southern California Edison Company.
e. *Name of Project:* Big Creek No. 1 and No. 2 Project.
f. *Location:* The project is located on Big Creek tributary to the San Joaquin River, in Fresno, Tulare, and Kern Counties, California.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. R.R. Schroeder, Southern California Edison Company, P.O. Box 800, 2244 Walnut Grove Avenue, Rosemead, CA 91770, (818) 302–1564.
i. *FERC Contact:* Mohamad Fayyad, (202) 219–2665.
j. *Comment Date:* August 20, 1992.



k. *Description of Amendment:* The licensee requests approval of an as-built revised exhibit M. The as-built exhibit M describes changes in the ratings of the main turbines, generators and transformers where they have occurred, and minor changes in the automated control systems.

The changes to project generating units, which occurred due to improvements to various turbines and generators between 1985 and 1991, are as follows:

- An increase in the total installed capacity of the project from the authorized 124,750 kW to 136,750 kW; While the total nameplate capacity rating of the generators is 138,250 kW, the project can only operate up to a capacity of 136,750 kW. This is due to the fact that the power output of some generating units is limited by the turbines capacities; some turbines' capacities are less than the generators capacities connected to them.
- The total hydraulic capacity of the project increased by 64 cfs.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

3a. *Type of Application:* Surrender of Exemption.
b. *Project No. :* 7614–003.
c. *Date Filed:* June 17, 1992.
d. *Applicant:* Howard E. Geer.
e. *Name of Project:* Shingle Mill.
f. *Location:* On the East Branch of the Ompompanoosuc River near West Fairlee in Orange County, Vermont.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Howard E. Geer, 6 Hope Drive, Darien, CT 06820.
i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.
j. *Comment Date:* August 21, 1992.
k. *Description of Application:* The project consists of: (1) The existing 9-foot-high Shingle Mill Dam; (2) a 0.45-acre reservoir at the normal maximum surface elevation of 93 feet msl with a storage capacity of 2.5 acre-feet; (3) a 40-foot-long, 3-foot-diameter penstock; (4) a powerhouse with an installed generating capacity of 12 kW; and, (5) a 300-foot-long transmission line.

The applicant states that at the present time, there is no possibility that the project can be operated without unacceptable financial losses.

l. *This notice also consists of the following standard paragraphs:* B and C.

4a. *Type of Application:* Minor License.
b. *Project No. :* 11217–000.
c. *Date Filed:* December 17, 1991.
d. *Applicant:* Richard G. MacKowiak.
e. *Name of Project:* Still River Hydroelectric Project.
f. *Location:* On the Still River, Windham County, Connecticut.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. (a)–825(r).
h. *Applicant Contact:* Mr. Richard G. MacKowiak, 7 Stone Mill Lane, Eastford, CT 06242, (203) 974–1803.
i. *FERC Contact:* Mary Golato (202) 219–2804.
j. *Comment Date:* September 7, 1992.
k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D4.
l. *Description of Project:* the proposed project would consist of the following facilities. (1) An existing concrete gravity dam about 70 feet long and 10 feet high, with a 70-foot-long overflow spillway; (2) an existing concrete abutment; (3) an existing 15-foot-long concrete intake structure with one 52-inch-wide by 45-inch-high gate, which controls inflow to the culvert; (4) an existing 4-foot-wide by 3-foot-high and 14-foot-long concrete culvert; (5) an existing 200-foot-long and 7-foot-wide intake canal, faced with stone walls; (6) a proposed trashrack 10 feet long and 6 feet wide, with 1.5 inch clear spacing, located at the end of the intake canal; (7) a proposed 70-foot-long and 4-foot-diameter steel penstock; (8) a proposed reinforced concrete powerhouse 12 feet by 12 feet by 15.5 feet high, with one 37.4-KW turbine-generator unit; (9) an approximately 400-foot-long and 10-foot-wide tailrace; (10) a proposed 300-foot-long overhead transmission line; and (11) appurtenant facilities.
m. *Purpose of Project:* All project energy generated would be utilized by the applicant for sale to its customers.
n. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D4.
o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. Richard G. MacKowiak, 7 Stone Mill Lane, Eastford, CT 06242.

5a. *Type of Application:* Preliminary Permit.
5b. *Project No.:* 11297–000.
5c. *Date Filed:* June 1, 1992.
5d. *Applicant:* City of Oglesby, Illinois.
5e. *Name of Project:* Marseilles Hydroelectric Project.
5f. *Location:* On the Illinois River, near Marseilles, La Salle County, Illinois.
5g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
5h. *Applicant Contact:* Mr. Ken Hach, 706 Putnam Street, Peru, IL 61354, (815) 224–4117.
5i. *FERC Contact:* Michael Dees (202) 219–2807.
5j. *Comment Date:* September 10, 1992.
5k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Marseilles Lock and Dam and would consist of: (1) An existing intake canal; (2) reconstructing an existing concrete powerhouse to house two to four hydropower units with a combined capacity of 10.0 MW; (3) a transmission line 400 feet long; and (4) appurtenant facilities. The estimated annual energy production is 60 GWh. The project energy would be used by the applicant or sold to utilities or private industry. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.
5l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

6a. *Type of Application:* Preliminary Permit.
6b. *Project No.:* 11298–000.
6c. *Date Filed:* June 1, 1992.
6d. *Applicant:* Blue Diamond North Associates.
6e. *Name of Project:* Blue Diamond North Pumped Storage Project.
6f. *Location:* Partially on lands administered by the Bureau of Land Management on and near Blue Diamond Hill approximately 5 miles west of Las Vegas in Clark County, Nevada. Sections 13, 14, 15, 16, 20, 21, 22, 23, and 24 in T21S, R59E; sections 16, 17, 18, 19, 20, and 21 in T21S, R60E.
6g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
6h. *Applicant Contact:* Mr. David K. Iverson, Synergics, Inc., 191 Main Street, Annapolis, MD 21401, (410) 268–8820.
6i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.
6j. *Comment Date:* September 11, 1992.
6k. *Description of Project:* The proposed pumped storage project would consist of: (1) A 56-foot-high concrete dam and 52-acre upper reservoir; (2) a 144-inch-diameter, 7,700-foot-long penstock connecting the upper reservoir with a lower reservoir; (3) a 34-foot-high concrete dam and 52-acre lower reservoir; (4) a powerhouse containing two 100-MW generating units; (5) a 5-mile-long transmission line; and (6) appurtenant facilities.

No new access roads will be needed to conduct the studies. The approximate cost of the studies would be $250,000.

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6l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11301–000.

c. *Date Filed:* June 8, 1992.

d. *Applicant:* Fall Line Hydro Company, Inc.

e. *Name of Project:* Carter's Reregulation Dam.

f. *Location:* At the U.S. Corps of Engineers Carters Reregulation Dam on the Coosawattee River near Calhoun in Murray County, Georgia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael P. O'Brien, P.O. Box 957285, Duluth, GA 30136, (404) 995–0891.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Comment Date:* September 4, 1992.

k. *Description of Project:* The proposed project would utilize the existing Corps dam and would consist of: (10 An 85-85-foot-long, 9-foot-diameter penstock; (20) a powerhouse containing one generating unit with an installed capacity of 3,500 kW; and, (3) a ½-mile transmission line. The estimated average annual energy production of the project is 16,500 MWh and the cost of the studies performed under the permit would be $5,000.

1. *Purpose of Project:* Power produced would be sold to the Municipal Electric Authority of Georgia.

m. *This notice also consists of the following standard paragraphs:* A3, A7, A9, A10, B, C, and D2.

**Standard paragraphs**

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development application desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an equivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION" "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An addition copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (September 8, 1992 for Project No. 11217–000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (October 20, 1992 for Project No. 11217–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters this title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: July 10, 1992 Washington, DC.

[FR Doc. 92–16826 Filed 7–15–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. JD92–07663T Texas–60]**

## State of Texas, NGPA Determination by Jurisdictional Agency Designating Tight Formation

July 10, 1992.

Take notice that on July 2, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Jicarilla (I–2) Formation underlying a portion of Hidalgo County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is located within Railroad Commission District 4 and lies within the northern parts of the N. Flores Survey, A–61, Porcion 75; the L. Flores Survey, A–576, Porcion 76; the P. Flores Survey, A–577, Porcion 77 and the D. Ramirez Survey, A–563, Porcion 78.

The notice of determination also contains Texas' findings that the referenced portion of the Jicarilla (I–2) Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–16818 Filed 7–15–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. JD92–07662T Texas–59]**

## State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

July 10, 1992.

Take notice that on July 2, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wilcox Formation (Wilcox Basal House, Wilcox Sand 4 and Wilcox Sand 5 Formations) underlying a portion of Duval County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is located within Railroad Commission District 4 and consists of approximately 7,000 acres including all or portions of the following surveys:

Dolores Irr. & Agri. Co. No. 78, A–654
J. Poitevent No. 201, A–919
Garcia No. 204, A–1845
J. Poitevent No. 205, A–921
Adams No. 206, A–1807
J. Poitevent No. 207, A–916
J. Poitevent No. 211, A–920
J. Foster, A–1641
S. Alexander, A–685
S.F. 13667

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92–16821 Filed 7–15–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. JD92–07656T Wyoming–31; Docket No. JD92–07657T Wyoming–32]**

## State of Wyoming; NGPA Determination by Jurisdictional Agency Designating Tight Formations

July 10, 1992.

Take notice that on July 6, 1992, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notices of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Baxter and Bear River Formations underlying a portion of Sublette County, Wyoming, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers two formations as described on the attached appendix.

The notice of determination also contains Wyoming's and the Bureau of Land Management's findings that the

referenced portions of the Baxter and Bear River Formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

**Appendix**

*JD92-7656T Baxter Formation*

Wyoming-31 Approximately 2798.3 acres—89.6% Federal leases

*Township 27 North, Range 112 West, 6th P.M.*

Section 12: SW/4
Section 13: W/2
Section 24: N/2, SW/4
Section 25: NE/4, SW/4
Section 26: All
Section 36: W/2

*Township 27 North, Range 111 West, 6th P.M.*

Section 31: S/2, NE/4
Section 32: SW/4

*JD92-7657T Bear River Formation*

Wyoming-32 Approximately 2240 acres—85.7 Federal leases

*Township 27 North, Range 112 West, 6th P.M.*

Section 12: SW/4
Section 13: W/2
Section 24: N/2, SW/4
Section 25: NE/4, SW/4
Section 26: All
Section 36: W/2

[FR Doc. 92-16810 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP91-2704-002]**

## Blue Lake Gas Storage Co.; Proposed Changes in FERC Gas Tariff

July 10, 1992.

Take notice that on June 30, 1992, Blue Lake Gas Storage Company (Blue Lake), 1 Woodward Avenue, Detroit, Michigan 48226, tendered for filing in Docket No. CP91-2704-002 the following tariff sheets which Blue Lake proposes to become effective September 1, 1992.

**Original Volume No. 1**

Original Sheet No. 1 through Original Sheet No. 158

Blue Lake states that these tariff sheets are being submitted to comply with the Commission's order issued May 1, 1992 in Docket No. CP91-2704-000. Blue Lake states that the proposed tariff sheets represents the terms and conditions under which Blue Lake will provide natural gas storage service.

Blue Lake requests a waiver of § 154.22 of the Commission's Regulations to place the tariff sheets into effect on September 1, 1992 or such other date as the Commission deems appropriate, provided that the Gas Tariff shall be made effective by the in-service date of the facilities, which is projected to be April 1, 1993.

Blue Lake states that this filing has been served upon all parties listed on the official service list compiled by the Office of the Secretary at the Commission.

Any person desiring to be heard or to protest the referenced filing should on or before July 31, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16822 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP90-95-003 and RP90-95-004]**

## Colorado Interstate Gas Co.; Compliance Filing

July 10, 1992.

Take notice that on June 22,1 992, Colorado Interstate Gas Company (CIG) tendered for filing a semiannual compliance filing consisting of work papers detailing accrued interest payments made by CIG to its affected customers resulting for the unused transportation credits in Docket No. RP90-95.

In its June 22, 1992 filing, CIG states that it is advising its customers and the Commission that it is in the process of recalculating certain of the interest payments made to customers electing to amortize their buyout-buydown obligations in the above-referenced docket. CIG states that it will make additional interest payments resulting from those recalculations, as appropriate, and will be submitting work papers detailing the recalculations.

On June 23, 1992, CIG submitted for filing work papers detailing the recalculations and disposition of interest payments by CIG to certain of its affected customers.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16825 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP91-164-005]**

## Granite State Gas Transmission, Inc.; Compliance Filing

July 10, 1992.

Take notice that on July 2, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5309 tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 2, containing changes in rates and tariff provisions for effectiveness on July 1, 1992:

**Second Revised Volume No. 1**

Sixteenth Revised Sheet No. 21
Fourteenth Revised Sheet No. 25
First Revised Sheet No. 32
Third Revised Sheet No. 36
First Revised Sheet No. 37
First Revised Sheet No. 38
First Revised Sheet No. 71
Third Revised Sheet No. 123
Third Revised Sheet No. 125
Second Revised Sheet No. 126
First Revised Sheet No. 127
Third Revised Sheet No. 128
Second Revised Sheet No. 129
Second Revised Sheet No. 130
First Revised Sheet No. 136
Second Revised Sheet No. 221

Second Revised Sheet No. 222

First Revised Volume No. 2

First Revised Sheet No. 8
Original Sheet No. 8A
Second Revised Sheet No. 18
Original Sheet No. 18A
First Revised Sheet No. 19
Fourth Revised Sheet No. 28
Third Revised Sheet No. 29
Second Revised Sheet No. 39
Original Sheet No. 39A
First Revised Sheet No. 40
First Revised Sheet No. 62
First Revised Sheet No. 63
First Revised Sheet No. 73

According to Granite State, its filing is submitted in compliance with the provisions of the Stipulation and Agreement approved, as modified, in an order issued by the Commission on June 29, 1992 in Docket No. RP91-164-000, *et al.* It is further stated that the Stipulation and Agreement provided for revised Base Tariff non-gas cost rates and a revised rate design for all of Granite State's firm sales and transportation services to be effective prospectively, in two phases. Granite State states that the Phase 1 settlement rates and tariff provisions are proposed to become effective on the first day of the month following Commission approval of the settlement in accordance with the provisions of the Stipulation and Agreement.

According to Granite State, the gas cost components of the sales rates on Sixteenth Revised Sheet No. 21 reflect the adjusted gas costs in Granite State's revised quarterly purchased gas cost adjustment filing on July 1, 1992 in Docket Nos. TQ92-11-4-000 and TM92-17-4-000.

It is stated that the proposed rate changes and tariff provisions in this compliance filing are applicable to Granite State's jurisdictional sales and transportation services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing wee served upon its customers, the regulatory commissions of the States of Maine, Massachusetts and New Hampshire and the intervenors in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before July 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16820 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CP89-1281-021]

## Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

July 10, 1992.

Take notice that on July 1, 1992, Natural Gas Pipeline Company of America (Natural) tendered for filing the tariff sheets listed on Appendix A attached to the filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective August 1, 1992.

Natural states the purpose of the filing is to comply with the Commission's order issued June 16, 1992 at Docket Nos. CP89-1281-019, *et al.* (June 16th Order). The June 16th Order approved as modified Natural's Stipulation and Agreement on Limited Extension of Gas Inventory Demand Charge filed April 3, 1992 in Docket No. CP89-1281-017. In addition, the Stipulation and Agreement revised the "availability" provision of Rate Schedules S-1, LS-2, and LS-3 so that any person is eligible to receive such service. Natural states that it also filed additional revisions to reflect wording revisions necessary because the availability provision was changed. These revisions are identified on Appendix B attached to the filing.

Natural has requested waiver of the Commission's orders and Regulations to the extent necessary to permit approval of these changes to become effective August 1, 1992.

Natural states that copies of the filing were served upon Natural's jurisdictional sales customers, and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary*

[FR Doc. 92-16824 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

## South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

[Docket No. RP89-225-017]

July 10, 1992.

Take notice that on July 1, 1992, South Georgia Natural Gas Company ("South Georgia") tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 1, 1991:

First Substitute Third Revised Sheet No. 16D
First Substitute Third Revised Sheet No. 16T

South Georgia states that the purpose of this filing is to comply with the Commission's Letter Order issued in the captioned docket on January 27, 1992, requiring South Georgia to clarify its volumetric take-or-pay surcharge as terminating the earlier of five years or upon the recovery of $1,700,000 of principal costs. This surcharge was approved by the Commission's order dated October 31, 1991, accepting South Georgia's uncontested settlement in this proceeding. South Georgia requests a waiver of the Commission's Regulations to make this filing at this time to correct South Georgia's inadvertent oversight of the Letter Order when it was issued.

South Georgia states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16819 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. RP85-209-033, et al. and RP91-198-000]

## United Gas Pipe Line Co.; Conference

July 9, 1992.

Pursuant to the Commission's order issued on July 2, 1992, an informal conference will be held to define and narrow the issues to be briefed in this

proceeding. The conference will be held on Monday, July 27, 1992, at 1 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16070 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA92-1-43-004, TF92-3-43-001]

## Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 10, 1992.

Take notice that Williams Natural Gas Company (WNG) on June 29, 1992, tendered the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 to be effective May 1, 1992:

Substitute Eighth Revised Sheet No. 6
Substitute Ninth Revised Sheet No. 6A
Second Substitute Ninth Revised Sheet No. 6
Second Substitute Tenth Revised Sheet No. 6A

WNG states that it made a compliance filing in the above referenced dockets on June 1, 1992. At the request of Commission staff, the instant filing is being made for pagination reasons and to make the dockets easier to track.

WNG states that copies of its filing were served on all jurisdictional purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16023 Filed 7-15-92; 8:45 am]

BILLING CODE 6717-01-M

## Office of Energy Research

## Mitigation Plan for the International Thermonuclear Experimental Reactor (ITER) Project

**AGENCY:** Energy Research Office, Department of Energy.

**ACTION:** Resolution of comments and availability of final plan.

**SUMMARY:** The U.S. Department of Energy published a notice of a proposed plan for mitigating potential conflicts of interest under the ITER project for comment on December 10, 1991. This project will be funded by the Department of Energy's Office of Fusion Energy in the Office of Energy Research. Two sets of comments were received from industry representatives. The changes described below accommodate the comments received. With the inclusion of these comments, the mitigation plan is considered to be in final form and available for use by the ITER project participants. Copies of the full text of the mitigation plan can be obtained from the information contact below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Warren Marton, Office of Fusion Energy, Office of Energy Research, Code ER-531, U.S. Department of Energy, Washington, DC 20585, (301) 903-4965.

**SUPPLEMENTARY INFORMATION:** ITER is a joint project of the United States, the European Communities, Japan, and the former Soviet Union. The goal of the project is the design and fabrication of scale model components for an engineering test reactor for fusion power development. The four parties are currently completing negotiations to enter the next phase of the project, Engineering Design Activities. These activities are expected to continue over a 6-year period (1992-1997) during which a detailed design and technology R&D will be carried out within the respective national programs.

The Mitigation Plan is proposed by the Department of Energy for the purpose of mitigating organizational conflicts of interest which might arise during the project. Copies of the final plan may be obtained from the information contact above.

The mitigation plan consists of the following sections:

I. Background (including organization).
II. Activities Relating to Hardware Procurements.
III. Participation on Joint Central Team.
IV. U.S. Home Team Activities (within the major categories of Physics Research, Design, and Technology Research).
V. Advisory Groups and Consultants (including responsibilities of the Home Team Leader to further mitigate any appearance of organizational conflicts of interest).

### Resolution of Comments

As stated above, comments were received from two industrial firms. The respondents expressed concerns regarding sole-source contracting, dissemination of information, the potential conflict inherent in the principal physicist and principal engineer positions, the impact of the plan on the construction phase of the project, the availability of technical reports, and other remarks of a more editorial nature. A summary of the major changes to be made to the mitigation plan follows: (1) Sole source contracting—the ITER program will utilize competition in the award of its contracts. Should a sole source contract be justified, it will be advertised in the *Commerce Business Daily* and reference the fact that it is a departure from the mitigation plan; (2) dissemination of information—the plan will include the statement that any non-proprietary, technical information pertaining to ITER-related activities of the U.S. Home Team will be made freely available to all interested U.S. organizations, including U.S. industry, on a timely basis, in accordance with Annex C of the international agreement covering the EDA; (3) potential conflict inherent in principal physicist and principal engineer positions—the duties described for these positions have been tightly defined so as to exclude the potential for conflict. The principal physicist advises on matters relating to issues of plasma physics and physics experimentation. The principal engineer advises on matters relating to the design and operation of the ITER facility. These advisors to the U.S. ITER Home Team Leader may attend all meetings of the ITER Steering Committee, U.S. ISCUS meetings, and all U.S. ITER National meetings. They will undertake specific studies and technical analyses as requested by the ITER Home Team Leader. These positions will be part-time and estimated at 2-4 days per month. These advisors will be excluded from all discussions of competition-sensitive material, including budget planning discussions of the ITER Home Team Management and will not receive any information relating to proposed procurements which is not made generally available; and (4) impact of the plan on the construction phase of the project—the following statement will be added to the plan: It is the intention of

this plan to maximize competition and to avoid situations which would require firms participating in the EDA to be excluded from engaging in construction activities during the construction phase of ITER.

Issued in Washington, DC on July 10, 1992.

James F. Decker,

*Deputy Director, Office of Energy Research.*

[FR Doc. 92-16803 Filed 7-15-92; 8:45 am]

BILLING CODE 6450-01-M

## Office of Fossil Energy

[FE Docket No. 92-80-NG]

## EMC Gas Transmission Co.; Application for Blanket Authorization to Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on June 23, 1992, by EMC Gas Transmission Company (EMC) requesting blanket authorization to import up to 30 Bcf of natural gas from Canada over a two-year term beginning on the date of first delivery. EMC intends to use existing facilities and will submit quarterly reports of its transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 17, 1992.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478.

**FOR FURTHER INFORMATION:**

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-070, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-0063.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** EMC is an Oklahoma corporation with its principal place of business in Detroit, Michigan. EMC is engaged in the business of buying and selling natural gas and currently holds an export authorization [DOE/FE Opinion and Order No. 610, 1 FE ¶ 70,570 (April 27, 1992)]. EMC requests authority to import gas from Canada, either for its own account or on behalf of others, for sale to a range of U.S. buyers including commercial and industrial end users, and local distribution companies. EMC will purchase the gas under short-term, market-responsive contracts, and will import the gas at existing points along the United States/Canada border.

The decision on EMC's request for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties should comment on the issue of competitiveness as set forth in those guidelines. EMC asserts in its application that the proposed arrangement is competitive. Parties opposing EMC's request for import authorization bear the burden of overcoming this assertion.

### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of EMC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 10, 1992.

Charles F. Vacek,

*Deputy Assistant Secretary for Fuels Programs, Office of Fuels Programs.*

[FR Doc. 92-16802 Filed 7-15-92; 8:45 am]

BILLING CODE 6450-01-M

## Office of Hearings and Appeals

## Issuance of Decisions and Orders; During the Week of May 18, Through May 22, 1992

During the week of May 18 through May 22, 1992 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the

Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeal**

*Chuck Hansen*, 05/19/92, *KFA-0277*

On April 13, 1989, Mr. Chuck Hansen filed an Appeal from a determination issued by the DOE's Albuquerque Operations Office (renamed the DOE Field Office/Albuquerque) in response to a request that Mr. Hansen submitted under the Freedom of Information Act (FOIA). In that determination, the Albuquerque Office withheld a portion of a document pursuant to Exemption 3 of the FOIA, on the basis that information concerning the design and capabilities of nuclear weapons is classified as Restricted Data under the Atomic Energy Act of 1954. On appeal, the DOE determined that (1) contrary to Mr. Hansen's assertion, the information has never been intentionally released by the DOE and the DOE has no knowledge of an inadvertent release and (2) the requested information in conjunction with other already released information would allow release of other valuable, classified information. Accordingly, the Appeal was denied.

*Dr. J.C. Laul*, 05/19/92, *LFA-0209*

Dr. J.C. Laul filed an Appeal from a determination issued by the DOE's Richland Operations Office (Richland). In his Appeal, Dr. Laul sought records pertaining to an internal personnel action taken by a DOE contractor. Dr. Laul had asked that the DOE obtain these records from the contractor and release them to him. The DOE found that the documents in question were not agency records and therefore were not subject to the FOIA's disclosure requirements. Accordingly, Dr. Laul's Appeal was denied.

*James L. Schwab*, 05/21/92, *LFA-0208*

James L. Schwab filed an Appeal from a denial, by the Deputy Director of the Office of Intergovernmental Affairs of the DOE's Albuquerque Field Office, of a fee waiver requested in conjunction with a Request for Information submitted under the Freedom of Information Act (FOIA) and the Privacy Act. In considering the Appeal, the DOE determined that when a Request for Information is made under both the FOIA and the Privacy Act, and both the initial determination and the fee waiver denial analyze the requests only under the FOIA, the DOE will review the denial of the fee waiver request only under the FOIA. The DOE also found that Mr. Schwab did not meet his burden of showing eligibility for a fee waiver under the FOIA. Specifically, the DOE stated that when a requester, like Mr. Schwab in this case, already has possession of the document on which a fee waiver is sought, the requester must make a reasonably specific correlation appropriate to the case between the particular material and the FOIA fee waiver criteria or explain special circumstances why a more generalized reason should suffice. The DOE found that Mr. Schwab had not met either of these standards. Accordingly, the Appeal was denied.

*The Advocate*, 05/20/92, *LFA-0198*

The Advocate filed an Appeal from a determination, issued by the Director of the Division of Regulatory Compliance of the DOE's Office of Environmental Restoration and Waste Management, that denied the newspaper's Request for Information under the Freedom of Information Act. The applicant had sought records concerning the testing of the radiological contents of wastes that had been shipped to Rollins Environmental Services by the DOE's Savannah River Facility and by facilities operated by Martin Marietta. In his determination, the Director identified and released a number of documents. The newspaper argued that additional documents must exist. In reviewing this matter, DOE contacted the personnel at the Savannah River facility and at the Oak Ridge Operations Office who had conducted the search for responsive documents. These individuals indicated that the search of the Oak Ridge Operations Office has not been completed and that additional responsive documents pertaining to the Savannah River facility may be in storage. Under these circumstances, the Appeal was granted in part, and the matter was remanded for a search for additional responsive documents.

**Refund Applications**

*Apex Oil Co., Clark Oil & Refining Corp./Eugene Maas et al., 05/19/92, RF342-12 et al.*

The DOE issued a Decision and Order granting 45 Applications for Refund filed in the Clark Oil & Refining Corp. special refund proceeding. All of the applicants based their claims on reasonable estimated purchase volumes. The refunds granted totalled $272,152.

*Masonite Corporation, 05/18/92, RF272-25593*

The DOE issued a Decision and Order granting an Application for Refund filed by Masonite Corporation, a manufacturer of hardboard building products, in the subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, the pulp and paper industry was above to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. In addition, Masonite was found to be ineligible for a refund for its purchases of paint during the refund period. The refund granted to the applicant was $360,168.

*Murphy Oil Corporation/Vine Hill Oil Company, Country Club Oil Company, Country Club Oil & Vine Hill, 05/22/92, RF309-1083, RF309-1084, RF309-1423*

The DOE issued a Decision and Order granting two Applications for Refund filed in the Murphy Oil Corporation special refund proceeding on behalf of Vine Hill Oil Company (Vine Hill) and Country Club Oil Company (Country Club) by Raymond Weyker, 50% stockholder of the two firms during the refund period. Mr. Weyker indicated in the applications that Inter City Oil Co., Inc. (Inter City) purchased Vine Hill and Country Club in 1976. Inter City subsequently filed a competing claim requesting a refund based upon the same purchases made by Vine Hill and Country Club during the refund period. The DOE determined from documents provided by Inter City that Inter City purchased certain assets of the two firms only, not the corporate stock, and that the right to a refund was not included among the assets sold. Therefore, Mr. Weyker and his partner, J.L. Hampson, retained the right to the refund for purchases made by Vine Hill and Country Club. The DOE determined that the application filed by Inter City be denied and the applications filed by Mr. Weyker on behalf of himself and J.L. Hampson's widow, Maxine Hampson, be granted based upon the firms' purchases of 1,275,422 gallons of Murphy products. The total amount of the refunds granted in this Decision and Order is $1,508 (comprised of $1,043 in principal and $465 in interest.

*Texaco Inc./J.E. Dees Texaco, Dees Petroleum Products*, 05/18/92, RF321-11734, RF321-11735

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding. The applications filed on behalf of J.E. Dees Texaco/Dees

Petroleum Products (Dees) contend that Dees was injured by Texaco's alleged violations of both the price and allocation regulations. Dees was granted a refund of $4,421 based on the motor gasoline allocation for two service stations which Texaco failed to supply. This refund was calculated by multiplying the 188,121 gallons which Texaco failed to supply (and Dees was unable to replace) by $0.0235 (the profit Dees was unable to realize on each gallon it failed to receive). The DOE concluded that Dees' general allocation claim, which involved various business practices of Texaco during the refund period, was covered by the presumption of injury for consignees adopted in the Texaco Decision as a general remedy for the allocation violations to which the Texaco consignees were subject. Therefore, Dees was eligible for a refund for its 9,720,098 consigned gallons based on the mid-range presumption of injury. Dees was also found eligible for a refund based on its jobber purchases of 1,235,579 gallons. In this case, Dees will receive $10,000 (since it is the larger of $10,000 or 50 percent of the combined allocable share for the consigned and purchased gallonage. The total refund granted to Dees was $18,421 principal plus $4,498 interest).

*Vickers Energy Corporation/Nebraska, National Helium Corporation/Nebraska, Coline Gasoline Corporation/Nebraska, Standard Oil Company (Indiana)/Nebraska,* 05/19/92, RQ1–578, RQ3–579, RQ2–580, RQ251–581

The DOE issued a Decision and Order concerning the Second-Stage Applications for Refund filed by the State of Nebraska (Nebraska) requesting second-stage monies from the following consent order firms: Vickers Energy Corporation (Vickers), National Helium Corporation (NHC), Coline Gasoline Corporation (Coline), and Standard Oil Company (Indiana) (Amoco II). Nebraska requested these second-stage monies in order to continue funding a revolving loan program that finances energy conservation measures on farms and ranches. While the DOE has not previously approved a revolving loan program to finance energy saving improvements on existing agricultural machinery and equipment, it has granted second-stage monies in separate decisions to revolving loan programs and agricultural energy conservation programs. Thus, Nebraska's proposal was approved. Accordingly, the State of Nebraska was granted $176,470 in Vickers funds ($72,695 principal and $103,775 interest), $77,245 in NHC funds ($24,114 principal and $53,131 interest), $7,572 in Coline funds ($2,059 principal and $5,513 interest), and $13,781 in Amoco II funds ($10,007 principal and $3,774 interest). The total refund granted to Nebraska was $275,068 ($108,875 and $166,193 interest).

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| | | |
|---|---|---|
| Arkla Chemical Corporation | RF272–65429 | 05/[illegible]/92 |
| Arkla Chemical Corporation | D272–65429 | |
| Atlantic Richfield Company/Jerry's ARCO Service Center *et al* | RF304–12414 | 05/[illegible]/92 |
| Coleman Co., Inc., R.V. Products Division | RF272–87175 | 05/[illegible]/92 |
| Enron Corp./Killeen Propane & Hardware | RF340–46 | 05/[illegible]/92 |
| Navasdota LP–Gas Co., Inc | RF340–50 | |
| Exxon Corporation/Route 27 Exxon | RF307–10209 | 05/[illegible]/92 |
| Farmers Union Cooperative Gas Co. *et al* | RF272–55515 | 05/[illegible]/92 |
| Gulf Oil Corporation/Duffy's Servicenter *et al* | RF300–12568 | 05/[illegible]/92 |
| Gulf Oil Corporation/Rainbow Oil Co., Inc. *et al* | RR300–66 | 05/[illegible]/92 |
| Gulf Oil Corporation/Stem Brothers, Inc | RR300–39 | 05/[illegible]/92 |
| Peter Kiewit Sons' Co | RF272–10505 | 05/[illegible]/92 |
| Peter Kiewit Sons' Co | RD272–10505 | |
| Sam's Super Service | RF272–76200 | 05/[illegible]/92 |
| Samson Management | RF272–14034 | 05/[illegible]/92 |
| Samson Management | RD272–14034 | |
| Texaco Inc./Andy's Texaco | RR321–8 | 05/[illegible]/92 |
| Texaco Inc./Bedenbaugh's Texas | RF321–16629 | 05/[illegible]/92 |
| Texaco Inc./Chet's Texaco Service *et al* | RF321–103 | 05/[illegible]/92 |
| Texaco Inc./Defense Logistics Agency | RF321–13932 | 05/[illegible]/92 |
| Texaco Inc./Denis' Texaco Station *et al* | RF321–7055 | 05/[illegible]/92 |
| Texaco Inc./Jim Davis Service Station *et al* | RF321–1608 | 05/22/92 |
| Texaco Inc./Ram Aviation, Inc. *et al* | RF321–7647 | 05/[illegible]/92 |
| Texaco Inc./West Park Texaco | RF321–1495 | 05/[illegible]/92 |
| Long's Texaco | RF321–2094 | |
| Texaco Inc./Wilkes Texaco Service *et al* | RF321–8710 | 05/[illegible]/92 |
| Westvaco Corporation | RF272–67310 | 05/[illegible]/92 |
| Westvaco Corporation | RF272–67310 | |

**dismissals**

The following submissions were dismissed:

*Name and Case No.*

A & C Carriers Inc.; RF272–75934
AFT Motor Freight, Inc.; RF272–75984
Aggregate Trucking; RF272–75988
Aller & Sharp, Inc.; RF272–75987
Apcoa, Inc.; RF272–75927
Arrow Industries, Inc.; RF272–75994
Baltimore Tank Lines, Inc.; RF272–75970
Bel-Red Arco; RF304–6390
Blue Ridge Trucking Co., Inc.; RF272–75991
Bruffey Trucking, Inc.; RF272–75954
California Tank Lines, Inc.; RF272–75932
Charlottesville Public Schools; RF272–76133
Cities Transit Inc.; RF272–75956
City of Columbia—Equipment; RF272–76278
Coastal Transport Co., Inc; RF272–75928
College Greens Texaco; RF321–16361
David W. Butts; RF304–10267
Dominic Cristinzio, Inc.; RF272–89486
East Lee Texaco; RF321–1598
Eastern Motor Transport, Inc.; RF272–75946
Elmer Borchardt, Inc.; RF272–75951
Errol's Texaco; RF321–17174
Eves Trucking Company; RF272–75977
Fleet Transport Co., Inc.; RF272–75945
Hatter Fuel Co.; RF304–11989
Hobbs Trucking Company; RF272–75963

Inter-State Truck Lines, Inc.; RF272–75980
Johnson County, IL; RF272–85467
L & M Petroleum Dist., Inc.; RF304–11984
L.W. Purkenson Trucking Co.; RF272–75962
McConnell & Son, Inc.; RF272–75926
Pilot Freight Carriers, Inc.; RF272–75942
Randolph Trucking Company; RF272–75965
Reinauer Transportation Cos.; RF272–75931
Rodco Gulf Service Station; RF300–11805
Sea Pines Plantation Co., Inc.; RF272–8099
Southern Trucking, Inc.; RF272–75961
Town of East Greenwich, RI; RF272–82666
Truckmen-Service Corp.; RF272–75952
Tyson Truck Lines, Inc.; RF272–75940
Waco, Inc.; RF272–75955
Westside Texaco; RF321–1504
Yellow Cab Co.; RF272–75975

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 9, 1992.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 92–16807 Filed 7–15–92; 8:45 am]

BILLING CODE 6450–01–M

## Issuance of Decisions and Orders During the Week of June 8, Through June 12, 1992

During the week of June 8 through June 12, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

### Appeals

*James L. Schwab, 6/9/92, LFA–0212*

James L. Schwab filed an Appeal from a denial by the Freedom of Information Officer (FOI Officer), Department of Energy Field Office, Albuquerque (DOE/AL), of a request for a waiver of fees which he had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that: (i) Because a search for documents responsive to Schwab's FOIA requests has not been conducted and it has not yet been determined what information can be released to Schwab under the FOIA, the FOI Officer's denial of the fee waiver request was premature; and (ii) after the FOI Officer has had the opportunity to review the releasable information to consider whether disclosure is likely to contribute significantly to public understanding of the operations or activities of government, she should issue a new determination on Schwab's fee waiver request. Accordingly, Schwab's request for a reversal of the FOI Officer's determination was denied and the matter was remanded to the FOI Officer for a new determination on the fee waiver request.

*James L. Schwab, 6/8/92, LFA–0213*

James L. Schwab filed an Appeal from an adverse determination issued by the Office of Intergovernmental and External Affairs of the Albuquerque Field Office (Albuquerque) of the Department of Energy (DOE) of a Request for a Fee Waiver in conjunction with a Request for Information submitted under the Freedom of Information Act and the Privacy Act. In considering the Appeal, the DOE determined that in his Appeal, Mr. Schwab had submitted information bearing on his ability to disseminate information to the public that had not been available to the person making the original fee waiver determination. The DOE found that Albuquerque should consider this information in the first instance. Accordingly, the Appeal was remanded to Albuquerque for a new determination contingent upon Mr. Schwab submitting the information to Albuquerque.

*Natural Resources Defense Council, 6/9/92, HFA–0290*

On May 28, 1985, the Natural Resource Defense Council (NRDC), filed an Appeal from a determination issued to it on May 8, 1985 by the Department of Energy's (DOE) Office of Military Application (OMA). In that determination, the OMA denied the NRDC's request for information filed pursuant to the Freedom of Information Act (FOIA). Specifically, the OMA denied the NRDC's request for a copy of a document entitled "Abstracts of Weapon Data Reports," Volume 11, No. 6, pursuant to FOIA Exemptions 1 and 3. In considering the Appeal, the DOE found that the determination to withhold the requested document was consistent with current classification guidelines. Accordingly, the DOE denied the NRDC's Appeal.

### Refund Applications

*Conoco Inc./Don's Conoco, 6/11/92, RF220–491*

The DOE issued a Decision and Order dismissing an application for refund from the Conoco Inc. consent order fund filed by Don's Conoco. The DOE determined that Don's Conoco had filed its application almost five years after the deadline for Conoco applications, and almost one year after the Conoco consent order fund had been closed with a zero balance pursuant to the terms of the Petroleum Overcharge Distribution and Restitution Act of 1986. In addition, the DOE found that Don's Conoco had not submitted good cause for its extraordinary late filing. Accordingly, the DOE dismissed the refund application.

*Crown Central Petroleum Corporation/Independence Crown; Shelby Petroleum Corporation, National Heat and Power, Pyramid Supply, Inc., 6/11/92, RF313–322, RF313–327, RF313–329, RF313–330*

The DOE issued a Decision and Order dismissing the final four refund applications in the Crown Central Petroleum Corporation Subpart V special refund proceeding. The DOE determined that all four of the applicants had filed their applications months after the final deadline in the Crown Central proceeding. In addition, at the time these applications were filed, there were no pending Crown Central applications, and the remaining money had either been transferred or earmarked for transfer under the Petroleum Overcharge Distribution and Restitution Act of 1986. Consequently, the DOE determined that all these applications were filed too late for consideration in the Crown Central proceeding. Finally, the DOE found that none of the applicants presented good cause for accepting an application so late in the refund process. The DOE also announced that it would no longer accept any applications in the Crown Central proceeding. Accordingly, the DOE dismissed the refund applications.

*Crown Central Petroleum Corporation/Shenandoah Oil Co.; Shenandoah Oil Co.; Shell Oil Company/Shenandoah Oil Co.; Shenandoah Oil Co., 6/8/92, RF313–331, RF313–332, RF315–6505, RF313–10211*

The DOE issued a Decision and Order concerning the Applications for refund filed by Shenandoah Oil Co., a petroleum jobber, in the Crown Central Petroleum Corporation special refund proceeding. The DOE found that Shenandoah Petroleum Co. was eligible for a refund of $1,121 from the Crown Central Petroleum Corporation consent order fund based on the firm's purchases of heating oil and gasoline during the consent order period. The DOE also discovered, however, that these applications had erroneously been

docketed as having been filed in the Shell Oil Company special refund proceeding, and that one of these applications had been inadvertently granted a refund of $109. Accordingly, the DOE granted the two Crown Central refund applications but reduced the amount granted in one of the applications by the $109 mistakenly granted in the Shell Oil proceeding. The DOE also revoked the erroneous Shell Oil refund grant, and dismissed the other Shell Oil application. Finally, the DOE instructed the DOE Controller to transfer $109 from the Crown Central consent order refund to the Shell Oil consent order fund to reimburse the latter for the prior erroneous refund.

*Frederick S. Wyle, 6/10/92, RF272–27769, RD272–27769*

The DOE issued a Decision and Order granting an Application for Refund filed in the subpart V crude oil refund proceeding by Frederick S. Wyle, as Trustee in Bankruptcy of Pacific Far East Line, Inc. (PFEL), an ocean carrier which was engaged in United States foreign and domestic commerce before ceasing operations in 1978. Rejecting arguments raised by a group of state governments the DOE concluded that the regulatory mechanisms of neither the Federal Maritime Commission nor the Interstate Commerce Commission operated so as to allow the Applicant automatically to pass through increased bunker fuel costs to its customers. Therefore, the DOE found that the States' filings were insufficient to rebut the presumption of injury for end-users in this case. Based upon PFEL's purchases of 152,307,616 gallons of petroleum products, the DOE granted a refund of $121,846. The DOE also denied a Motion for Discovery filed by the States for reasons discussed in previous Decisions.

*Seneca Petroleum Company, Inc., 6/10/92, RF272–25544, RD272–25544*

The DOE issued a Decision and Order granting an Application for Refund filed by Seneca Petroleum Company, Inc. (Seneca), a producer of specification asphalt and asphaltic concrete, in the subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, road construction firms were able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. With respect to Seneca's purchases of asphalt which was later resold as liquid asphalt to outside companies, the DOE found that the applicant could not rely on the end-user presumption, and had not provided evidence that it suffered a competitive disadvantage as a result of the purchases. Therefore, those purchases were found to be not eligible for a refund in this proceeding. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $20,532.

*Texaco Inc./LaRose Texaco Service, 6/10/92, RR321–7*

Irene LaRose, the owner of LaRose Texaco Service, filed a Motion for Reconsideration of a Decision and Order that denied duplicate Texaco refund applications that she had filed. In the Motion, Ms. LaRose stated that she had signed the second application, and certified in it that no other application had been filed, because she believed that this was necessary to supplement her refund claim. In considering the Motion, the DOE rejected the argument by Ms. LaRose's representative that the denial deprived Ms. LaRose of her property in violation of the 5th Amendment to the U.S. Constitution. However, the DOE granted the Motion, finding that Ms. LaRose erroneously filed the second application because she was confused by Texaco's sending her another application form. Accordingly, Ms. LaRose was granted a refund of $4,526.

*Texaco Inc./Robert E. Way, 6/8/92, RF321–16375*

The DOE issued an Order granting a refund to Robert E. Way. Specifically, the DOE determined that Mr. Way provided sufficient documentation to support his claim. Moreover, the DOE determined that a December 19, 1991 settlement agreement between Robert E. Way and Way Oil Company concerning Mr. Way's eligibility for a refund was equitable and in accord with DOE precedents. Accordingly, Robert E. Way was granted a refund of $13,018 ($9,923 principal plus $3,095 interest).

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Conference Room of the Office of Hearings and Appeals.

| | | |
|---|---|---|
| Atlantic Richfield Company/Burge's Corner *et al* | RF304–3783 | 06/12/92 |
| Atlantic Richfield Company/Cape Ann Marina, Inc. *et al* | RF304–12900 | 06/09/92 |
| Atlantic Richfield Company/Consolidated Freightways Corp. of Delaware | RF304–3311 | 06/06/92 |
| Atlantic Richfield Company/Gerlach's Arco *et al* | RF304–12876 | 06/08/92 |
| Atlantic Richfield Company/Southern States Cooperative, Inc | RF304–9029 | 06/11/92 |
| Champion Enterprises, Inc | RF272–40800 | 06/08/92 |
| Champion Enterprises, Inc | RD272–40800 | |
| Exxon Corporation/Country Club Exxon, Inc | RF307–10214 | 06/10/92 |
| Gulf Oil Corporation/East Innes Gulf *et al* | RF300–14362 | 06/10/92 |
| Gulf Oil Corporation/Meaders & Tatum, Inc | RF300–11775 | 06/10/92 |
| Meaders & Tatum, Inc | RF300–20019 | |
| Gulf Oil Corporation/New Castle Gulf Station | RF300–13371 | 06/12/92 |
| Gulf Oil Corporation/Ogburn Station Gulf | RF300–14210 | 06/10/92 |
| Morrison's Gulf | RF300–14552 | |
| Morrison's Gulf | RF300–16361 | |
| Gulf Oil Corporation/Pigeon Cooperative Oil Co | RR300–157 | 06/12/92 |
| Kenyon-Nerstrand Coop Oil Assoc | RF272–63814 | 06/11/92 |
| Swiss Valley Farms Co | RF272–78230 | |
| Swiss Valley Farms Co | RF272–78231 | |
| Fredericksburg Farmers Coop | RF272–78233 | |
| Nevada City School District *et al* | RF272–60079 | 06/12/92 |
| Padre Drilling Co., Inc | RF272–14020 | 06/08/92 |
| Padre Drilling Co., Inc | RD272–14020 | |

| | | |
|---|---|---|
| Quantum Chemical Corporation/Maxey Grossenbacher | RF330-18 | 06/10/92 |
| Quantum Chemical Corporation/Moyle Petroleum Co | RF330-65 | 06/12/92 |
| North Georgia Petroleum Co | RF330-86 | |
| Texaco Inc./Alice Aviation, Inc. *et al* | RF 321-6641 | 06/08/92 |
| Texaco Inc./B&M Super Service | RF321-9922 | 06/08/92 |
| Davis Texaco | RF321-16849 | |
| Texaco Inc./Dunbar Texaco Service *et al* | RF321-998 | 06/08/92 |
| Texaco Inc./Enron Gas Pipeline Operating Co | RF321-10746 | 06/11/92 |
| Burt Madden Oil Co | RF321-10758 | |
| Enron Corp | RF321-14558 | |
| Texaco Inc./Frank's Texaco *et al* | RF321-1621 | 06/10/92 |
| Texaco Inc./H.G. Hamilton Oil Co., Inc. *et al* | RF321-14257 | 06/10/92 |
| Texaco Inc./Herron Texaco | RF321-18668 | 06/12/92 |
| Texaco Inc./John DePalma *et al* | RF321-7009 | 06/12/92 |
| Texaco Inc./Ninotti's Texaco | RF321-18687 | 06/12/92 |
| Texaco Inc./ Randolph's Texaco *et al* | RF321-1781 | 06/10/92 |
| Texaco Inc./Rulon Texaco Service *et al* | RF321-1687 | 06/08/92 |
| Texaco Inc./Stephenson Texaco Station *et al* | RF321-9955 | 06/09/92 |
| Texaco Inc./ University Texaco | RF321-18690 | 06/12/92 |

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Allen E. Dillon | RF304-13009 |
| Beaver Texaco | RF321-9737 |
| Berthoud's Texaco | RF321-7990 |
| Canterberry's Texaco | RF321-5775 |
| Charles Grant Broderick Service Station. | RF304-12311 |
| Corey Oil Co | RF300-19998 |
| Darrel J. Westley | RF304-13001 |
| Deeb Batson | RF304-12988 |
| Dick's Texaco | RF321-9705 |
| Dobbs Houses, Inc | RF300-19896 |
| Earnest C. Anderson Gravel & Ready Mix, Inc. | RF300-18873 |
| Freeway Texaco | RF321-18689 |
| Fuel Services, Inc | LEE-0028 |
| H. Spadoni | RF304-12994 |
| James L. Schwab | LFA-0210 |
| Jim Thomas Enterprises | RF321-4752 |
| Leevac Petroleum Corp | RF300-19786 |
| Liquid Petroleum Corp | RF321-11640 |
| Lowell Packing Company | RF300-19712 |
| Lynn Kjorstad | RF312-15315 |
| McCutcheon's Arco | RF304-3980 |
| Oak Shell | RF315-961 |
| Panchak's Service | RF304-3996 |
| Papin Trucking | RF272-65887 |
| Ralston Purina Company | RF300-19788 |
| Reda's Service Station, Inc | RF300-19713 |
| Sid & Lee's Texaco | RF321-13347 |
| Smith Tank Lines | LEE-0020 |
| Smyth Auto Service | RF304-4213 |
| Smyth Auto Service | RF304-4212 |
| The Dalles School District #12 | RF304-5207 |
| Win's Gulf Service | RF300-19833 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commerically published loose leaf reporter system.

Dated: July 9, 1992.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 92-16806 Filed 7-15-92; 8:45 am]

BILLING CODE 6450-01-M

## Proposed Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of Proposed Implementation of Special Refund Procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $1,786,697, plus accrued interest, in alleged crude oil violation amounts obtained by the DOE under the terms of a settlement agreement entered into with the Texas International Company and the Texas International Petroleum Corporation, Case No. LEF-0045. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

**DATE AND ADDRESSES:** Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. All comments should display a reference to case number LEF-0045.

**FOR FURTHER INFORMATION CONTACT:** Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute crude oil overcharge funds obtained from the Texas International Company and the Texas International Petroleum Corporation. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has tentatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be used on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of

this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: July 8, 1992.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

**Proposed Decision and Order of the Department of Energy**

*Implementation of Special Refund Procedures*

Name of Firm: Texas International Co., Texas International Petroleum Corp.

Date of Filing: May 5, 1992.

Case Number: LEF–0045

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR § 205.81. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

**I. Background**

On September 14, 1984 the DOE entered into a consent order with Texas International Co. (TIC) and its wholly owned subsidiary, Texas International Petroleum Crop. (TIPCO) (hereinafter referred to collectively as the consent order firms). During the period September 1, 1973 through December 31, 1975, TIPCO was engaged in the production and sale of crude oil. The DOE audited the companies' compliance during this period with the Mandatory Petroleum Pricing and Allocation Regulations (the regulations) and issued a Proposed Remedial Order (PRO) to the consent order firms requiring refunds for alleged crude oil overcharges. Thereafter, the firms entered into a consent order which resolved the issues raised by the PRO.

On May 5, 1992, the ERA filed a Petition for the Implementation of Special Refund Procedures for alleged crude oil overcharges obtained from the consent order firms. In the present case, the consent order firms have remitted a total of $1,786,696.83 to the DOE in accordance with Consent Order 640C00181. An additional $796,452.82 in interest has accrued on that amount as of April 30, 1992. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR. Part 205, Subpart V. The Subpart V process may be used in situation where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, See Office of Enforcement, 9 DOE ¶ 82,508 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from TIPCO and TIC, and have determined that such procedures are appropriate in the present case.

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement In re: The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan. 1986), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of all crude oil overcharge funds will be refunded to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 Fed. Reg. 29689 (August 20, 1986). This order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This Notice was published at 52 FR 11737 (April 10, 1986) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the Subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. See City of Columbus, Georgia, 16 DOE ¶ 85,550 (1987). Additionally, we stated that crude oil refunds would be calculated on the basis of a per gallon (or "volumetric") refund amount, which is obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. The OHA has adopted the refund procedures outlined in April 10 Notice in numerous cases. See, e.g., Shell Oil Co., 17 DOE ¶ 85,204 (1988) (Shell); Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986) (Mountain Fuel).

**II. Refund Claims**

We will adopt the DOE's standard procedures to distribute the consent order funds. We have chosen to initially reserve twenty of these funds, plus accrued interest, for direct refunds to claimant in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims in a manner similar to that used in Subpart V proceedings to evaluate claims based on alleged refined product overcharges. *See Mountain Fuel,* 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations.

We will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. §§ 751–760h (1982). In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See Shell, 17 DOE at 88,409.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in some refined product refund cases. *Id.* These applicants may, however, use econometric evidence of the type found in the *OHA Report on Stripper Well Overcharges,* 6 Fed. Energy Guidelines ¶ 90,507 (1985). *See also* Petroleum Overcharge Distribution and Restitution Act § 3003(b)(2), 15 U.S.C. § 4502(b)(2).

If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for Subpart V crude oil refund monies. *See Mid-America Dairymen* v. *Herrington,* 878 F.2d 1448 (Temp. Emer. Ct. App. 1989), 3 Fed. Energy Guidelines ¶ 26,017 (1989); In re: Department of Energy Stripper Well Exemption Litigation, 707 F. Supp. 1267 (D. Kan. 1989), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($2,583,149.65) by the total consumption of petroleum products in the United States during the period of price controls. (2,020,997,335,000 gallons). Mountain Fuel, 14 DOE at 88,868, n.4. This yields a volumetric refund amount of $0.0000012781558891284 per gallon.

As has been stated in prior decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See, e.g., A. Tarricone, Inc., 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The deadline for filing an Application for

Refund from the current (fifth) pool of funds is June 30, 1994. It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1994, at the rate of $.0008 per gallon. While we anticipate that applicants which filed their claims by June 30, 1988, will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds.

**III. Payments to the Federal Government and the States**

Under the term of the MSRP, the remaining eighty percent of the alleged crude oil overcharge amounts subject to this Proposed Decision, plus accrued interest, will be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,667. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the state under the Stripper Well Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within thirty days of its publication in the Federal Register.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by Texas International Company and by Texas International Petroleum Corporation pursuant to the Consent Order entered into on July 3, 1984, will be distributed in accordance with the foregoing decision.

[FR Doc. 92-16806 Filed 7-15-92; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4155-1]

### Open Meeting of the Federal Facilities Environmental Restoration Dialog Committee

**AGENCY:** Environmental Protection Agency.

**ACTION:** FACA Committee Meeting—Federal Facilities Environmental Restoration Dialog Committee.

**SUMMARY:** As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the next meeting of the Federal Facilities Environmental Restoration Dialog Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss issued related to enhancing the Federal facilities environmental restoration process.

**DATES:** The meeting will be held on July 29, 1992, from 1 until 5 p.m. and on July 30, 1992, from 8:30 until 4 p.m.

**ADDRESSES:** The meeting will be held at Sheraton City Centre, 1143 New Hampshire Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Persons needing further information on any aspect of the Federal Facilities Environmental Restoration Dialog Committee should contact Nicholas Morgan, Office of Federal Facilities Enforcement, U.S. EPA (OE-2261), 401 M Street, SW., 20460, (202) 260-1270.

Dated: July 10, 1992.

**Nicholas Morgan,**

*Designated Federal Official.*

[FR Doc. 92-16902 Filed 7-15-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4154-7]

### Public Comment on National Environmental Education Report to Congress

**SUMMARY:** Under the leadership of the U.S. Environmental Protection Agency (EPA), the National Environmental Education Act of 1990 (Pub. L. 101-619) provides for the Federal government to promote and support the nation's environmental education efforts. Section 9 of the Act requires EPA to establish a National Environmental Education Advisory Council to advise the Administrator on how EPA implements the Act. This Council is comprised of expert environmental educators who represent schools and universities, states, non-profit organizations, the private sector, and senior Americans.

Section 9 also requires the Council to produce a bi-annual report to Congress assessing the state of environmental education nationally and offering recommendations for improvement. The first national report is due to Congress on November 16, 1992. In accordance with the Act, EPA is making available the first draft of the Council's report for public review and comment.

**OBTAINING FURTHER INFORMATION OR COPIES OF REPORT:** To obtain further information or a copy of the draft report for review and comment, please contact Kathleen MacKinnon by phone in EPA's Office of Environmental Education at 202-260-4951.

**DEADLINE FOR SUBMITTING COMMENTS:** Public comments must be submitted in writing and must be received no later than August 14, 1992. Comments must be directed to Kathleen MacKinnon, U.S. EPA, Office of Environmental Education (A-107/Northeast Basement-014), 401 M Street, SW., Washington, DC, 20460.

**SUPPLEMENTARY INFORMATION:** The report will assess the state of environmental education nationally and will offer recommendations for improvement. The report will include (1) background on the origin and need for the report and on its intended uses, (2) an assessment of the current status of environmental education in the U.S. and examples of ongoing programs and trends in government, schools, non-governmental organizations, and business and industry, (3) a discussion of obstacles to improving environmental education that include philosophical and conceptual problems, as well as implementation and attitudinal problems, and (4) recommendations to improve environmental education.

Dated: July 8, 1992.

Approved by:

**Chris Rice,**

*Special Assistant.*

[FR Doc. 92-16793 Filed 7-15-92; 8:45 am]

BILLING CODE 6560-50-M

[OPP-34031; FRL 4071-5]

### Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

**DATES:** Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on October 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305-5761

SUPPLEMENTARY INFORMATION:

## I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pecticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register. Thereafter, the Administrator may approve such a request.

## II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 19 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before October 14, 1992 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — Registrations With Requests for Amendments to Delete Uses in Certain Pesticide Registrations

| Registration No. | Product Name | Delete From Label |
|---|---|---|
| 000016-00131 | Dragon Benomyl Wettable | Roses, flowers, ornamentals, shade trees, drench treatment, preplant dip treatment, bulbs |
| 000100-00437 | Princep 80W | Asparagus, artichokes, sugarcane, noncropland use (industrial sites, highway medians & shoulders, railroad rights-of-way, lumberyards, petroleum tank farms, around farm building, around farm equipment and fuel storage areas, along fences, roadsides, and lanes) |
| 000100-00526 | Princep 4L | Asparagus, artichokes, sugarcane, noncropland use (industrial sites, highway medians and shoulders, railroad rights-of-way, lumberyards, petroleum tank farms, around farm buildings, around farm equipment and fuel storage areas, along fences, roadsides, and lanes) |
| 000100-00603 | Princep Caliber 90 | Asparagus, artichokes, sugarcane, noncropland use (industrial sites, highway medians & shoulders, railroad rights-of-way, lumberyards, petroleum tank farms, around farm building, around farm equipment and fuel storage areas, along fences, roadsides and lanes) |
| 000239-02562 | Ortho Formula 101 Insect Spray | Cabbage, peas, prunes, blackberries |
| 000279-02821 | Dimethoate 267 | Aerial application for control of cabbageworms and cabbage loopers, the rates of Dimethoate 267 given for beans, broccoli, cauliflower, cabbage, collards, endive (escarole), kale, leaf lettuce, mustard greens, spinach, swiss chard, turnips, head lettuce, melons, peas, peppers, potatoes, tomatoes & watermelons can be used in combination with endosulfan, malathion or parathion IAW manufacturer's direction. |
| 003125-00320 | Bayleton 50% Wettable Powder | Almonds |
| 004787-00004 | Cheminova Methyl Parathion Technical | Almonds, apples, apricots, beets, cherries, citrus, clover, cucumbers, eggplants, garlic (SLN), gooseberries, grapes, hops, kohlrabi, melons, nectarines, peaches, peanuts, pears, pecans, peppers, plums, prunes, pumpkins, rutabagas, safflower, squash, strawberries, sweet potatoes, tomatoes, forest, forest & christmas tree plantings |
| 006922-00024 | Perkacit Thiram-80 | All turf uses |
| 008340-00020 | Hoelon 3EC Herbicide | Acreage conservation reserve |
| 010163-00073 | Gowan Methyl Parathion 7.5 | Apples, apricots, artichokes, cherries, cucumbers, forest, gooseberries, grapes, hops, peanuts, pears, peppers, pine forests, plums, prunes, safflower, tobacco, tomatoes |
| 010163-00118 | Gowan Methyl Parathion 5EC | Tomatoes |
| 010163-00121 | Methyl Parathion 4EC | Artichokes, apples, apricots, gooseberries, hops, peaches, pears, peppers, plums, prunes, safflower, strawberries, tobacco, pine forests |
| 019713-00256 | Drexel 7-1/2 Lb. Methyl Parathion | Peaches, plums, prunes |
| 033955-00406 | Acme Fruit Tree Spray | Apples, apricots, peaches, plums |
| 034704-00497 | Methyl Parathion 25WP | Peppers, tomatoes |
| 043813-00002 | Fungaflor Technical | Formulation of seed treatment for cotton |
| 043813-00003 | Fecundal 10EC | Cotton |
| 064744-00001 | Funguran-OH | Wheat, barley |

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| EPA Company No. | Company Name and Address |
|---|---|
| 000016 | Dragon Corp., Box 7311, Roanoke, VA 24019. |
| 000100 | Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419. |
| 000239 | Chevron Chemical Co., Registration & Regulatory Affairs Dept., 940 Hensley Street, Richmond, CA 94804. |
| 000279 | FMC Corp., ACG Specialty Products, 1735 Market Street, Philadelphia, PA 19103. |
| 000125 | Miles Inc., Agriculture Division, Box 4913, Kansas City, KS 64120. |
| 004787 | Cheminova Holding A/S, Oak Hill Park, 1700 Route 23, Suite 210, Wayne, NJ 07470. |
| 008922 | AKZO Chemie America, 300 S. Riverside Plaza, Chicago, IL 60606. |
| 008340 | Hoechst Celanese Corp, c/o V A Door, Rt 202-206, Box 2500, Somerville, NJ 08876. |
| 010163 | Gowen Co., Box 5569, Yuma, AZ 85366. |
| 019713 | Drexel Chemical Co., Box 9306, Memphis, TN 38109. |
| 033955 | PBI Gordon Corp., Box 4090, Kansas City, MO 64101. |
| 034704 | Platte Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632. |
| 043813 | Janssen Pharmaceutica Inc., Plant Protection Division, 1125 Trenton-Harbourton Rd., Titusville, NJ 08560. |
| 054744 | Urania Agrochem GMBH, c/o K.J. O'Connors, 4580 Kenmore Ave., Suite 1018, Alexandria, VA 22304. |

**III. Existing Stocks Provisions**

The Agency has authorized registrants to sell or distribute products with the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: July 6, 1992.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 92-16797 Filed 7-15-92; 8:45 am]
BILLING CODE 6560-50-F

[OPP-180872; FRL-4059-2]

**Emergency Exemptions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted specific exemptions for the control of various pests to the 16 States as listed below. A crisis exemption was initiated by the Colorado Department of Agriculture and the Florida Department of Agriculture and Consumer Services. A quarantine exemption was also granted to the United States Department of Agriculture. These exemptions, issued during the months of February and March of 1992, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied specific exemption requests from the Alabama and Missouri Departments of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

**DATES:** See each specific, crisis, and quarantine exemption for its effective date.

**FOR FURTHER INFORMATION CONTACT:** See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-5806).

**SUPPLEMENTARY INFORMATION:** EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of hydrogen cyanamide on peaches as a growth regulator to promote uniform budbreak under conditions of inadequate winter chilling; February 5, 1992, to March 1, 1992. (Andrea Beard)

2. Alabama Department of Agriculture and Industries for the use of clomazone on sweet potatoes to control annual broadleaf weeds; March 26, 1992, to July 15, 1992. (Libby Pemberton)

3. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of Pro-Gro (30% carboxin/50% thiram) on onion seed to control onion smut; March 23, 1992, to May 31, 1992. California had initiated a crisis exemption for this use. (Susan Stanton)

4. California Environmental Protection Agency for the use of avermectin $B_1$ on strawberries to control two-spotted spider mites; March 21, 1992, to May 20, 1993. (Larry Fried)

5. California Environmental Protection Agency for the use of bifenthrin on cucurbits to control the sweet potato whitefly, blackbean aphid, and cotton aphid; March 12, 1992, to March 12, 1993. (Andrea Beard)

6. California Department of Food and Agriculture for the use of avermectin $B_1$ on celery to control serpentine leafminers; February 10, 1992, to November 19, 1992. (Libby Pemberton)

7. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of triadimefon on artichokes to control powdery mildew; February 28, 1992, to December 31, 1992. (Susan Stanton)

8. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of methyl bromide on sweet potatoes to control nematodes; February 26, 1992, to February 25, 1993. (Libby Pemberton)

9. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of fosetyl-aluminum (Aliette) on spinach to control downy mildew; February 29, 1992, to February 28, 1993. (Susan Stanton)

10. Florida Department of Agriculture and Consumer Services for the use of iprodione on tobacco to control target spot disease; March 30, 1992, to June 1, 1993. (Susan Stanton)

11. Georgia Department of Agriculture for the use of iprodione on tobacco to control target spot disease; March 10, 1992, to May 1, 1992. (Susan Stanton)

12. Idaho Department of Agriculture for the use of fosetyl-aluminum (Aliette) on hops to control downy mildew;

March 19, 1992, to September 1, 1992. (Susan Stanton)

13. Idaho Department of Agriculture for the use of sethoxydim on mint to control green foxtail and quackgrass; March 26, 1992, to September 1, 1992. (Susan Stanton)

14. Idaho Department of Agriculture for the use of clopyralid on peppermint and spearmint to control weeds; March 9, 1992, to November 30, 1992. (Susan Stanton)

15. Idaho Department of Agriculture for the use of amitraz in bee hives during non-honey flow periods to control tracheal mites; February 20, 1992, to May 30, 1992. A rebuttable presumption against registration (RPAR) on this chemical has been returned to the Registration Division. (Libby Pemberton)

16. Louisiana Department of Agriculture and Forestry for the use of amitraz in bee hives during non-honey flow periods to control tracheal mites; February 20, 1992, to May 30, 1992. A rebuttable presumption against registration (RPAR) on this chemical has been returned to the Registration Division. (Libby Pemberton)

17. Louisiana Department of Agriculture and Forestry for the use of pendimethalin on sugarcane to control itchgrass and brown top panicum; March 9, 1992, to June 30, 1992. (Larry Fried)

18. Michigan Department of Agriculture for the use of oxytetracycline on apples to control streptomycin-resistant fire blight; March 23, 1992, to July 1, 1992. (Susan Stanton)

19. Minnesota Department of Agriculture for the use of Pro-Gro (50% thiram/30% carboxin) on onion seed to control onion smut; February 20, 1992, to May 31, 1992. (Susan Stanton)

20. Minnesota Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; February 13, 1992, to July 31, 1992. (Susan Stanton)

21. Mississippi Department of Agriculture and Commerce for the use of clomazone on sweet potatoes to control annual broadleaf weeds; March 26, 1992, to July 15, 1992. (Libby Pemberton)

22. Mississippi Department of Agriculture and Commerce for the use of amitraz in bee hives during non-honey flow periods to control tracheal mites; February 20, 1992, to May 30, 1992. A rebuttable presumption against registration (RPAR) on this chemical has been returned to the Registration Division. (Libby Pemberton)

23. Montana Department of Agriculture for the use of amitraz in bee hives during non-honey flow periods to control tracheal mites; February 20, 1992, to December 31, 1992. A rebuttable presumption against registration (RPAR) on this chemical has been returned to the Registration Division. (Libby Pemberton)

24. Montana Department of Agriculture for the use of sethoxydim on mint to control green foxtail, quackgrass, wild oats, and volunteer barley and wheat; March 26, 1992, to November 1, 1992. (Susan Stanton)

25. Montana Department of Agriculture for the use of clopyralid on peppermint and spearmint to control weeds; March 30, 1992, to November 1, 1992. (Susan Stanton)

26. New York State Department of Environmental Conservation for the use of cyromazine on onions to control onion maggots; March 5, 1992, to May 15, 1992. (Susan Stanton)

27. North Carolina Department of Agriculture for the use of clomazone on sweet potatoes to control annual broadleaf weeds; March 26, 1992, to July 15, 1992. (Libby Pemberton)

28. North Carolina Department of Agriculture for the use of napropamide on sweet potato propagation beds to control annual broadleaf weeds; March 10, 1992, to April 30, 1992. (Libby Pemberton)

29. North Carolina Department of Agriculture for the use of iprodione on greenhouse-grown tobacco transplants to control target spot and collar rot; March 5, 1992, to June 1, 1992. (Susan Stanton)

30. Oregon Department of Agriculture for the use of sethoxydim on mint to control green foxtail, quackgrass, and wild oats; March 26, 1992, to July 15, 1992. (Susan Stanton)

31. Oregon Department of Agriculture for the use of clopyralid on peppermint and spearmint to control weeds; March 9, 1992, to November 15, 1992. (Susan Stanton)

32. Oregon Department of Agriculture for the use of cyfluthrin on pears to control pear psylla; February 26, 1992, to April 30, 1992. (Andrea Beard)

33. Oregon Department of Agriculture for the use of chlorothalonil on hazelnuts to control eastern filbert blight; February 11, 1992, to May 30, 1992. (Susan Stanton)

34. Oregon Department of Agriculture for the use of fosetyl-aluminum (Aliette) on hops to control downy mildew; March 19, 1992, to September 15, 1992. (Susan Stanton)

35. Oregon Department of Agriculture for the use of oxyfluorfen on blackberries to control primocanes; March 19, 1992, to July 31, 1992. (Larry Fried)

36. Oregon Department of Agriculture for the use of oxyfluorfen on raspberries to control primocanes; March 19, 1992, to May 15, 1992. (Larry Fried)

37. Texas Department of Agriculture for the use of cyfluthrin on sugarcane to control Mexican rice borer; March 5, 1992, to March 4, 1993. (Libby Pemberton)

38. Texas Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrip and western flower thrips; February 26, 1992, to February 26, 1993. (Andrea Beard)

39. Washington Department of Agriculture for the use of oxyfluorfen on raspberries to control primocanes; March 19, 1992, to June 1, 1992. (Larry Fried)

40. Washington Department of Agriculture for the use of sethoxydim on mint to control green foxtail, quackgrass, and Bermudagrass; March 26, 1992, to July 15, 1992. (Susan Stanton)

41. Washington Department of Agriculture for the use of oxytetracycline on apples to control streptomycin-resistant fire blight; March 23, 1992, to August 1, 1992. (Susan Stanton)

42. Washington Department of Agriculture for the use of clopyralid on peppermint and spearmint to control weeds; March 9, 1992, to November 30, 1992. (Susan Stanton)

43. Washington Department of Agriculture for the use of cyfluthrin on pears and apple/pear inter-plants to control pear psylla; February 26, 1992, to April 30, 1992. (Andrea Beard)

44. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of clomazone on cabbage to control velvetleaf; March 26, 1992, to December 31, 1992. (Libby Pemberton)

45. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sethoxydim on mint to control foxtail, crabgrass, barnyardgrass, and quackgrass; February 11, 1992, to July 15, 1992. (Susan Stanton)

Crisis exemptions were initiated by the:

1. Colorado Department of Agriculture on March 18, 1992, for the use of chlorothalonil on mushrooms to control verticillium diseases. The need for this program is expected to last until March 17, 1993. (Susan Stanton)

2. Florida Department of Agriculture and Consumer Services on February 14, 1992, for the use of fosetyl-aluminum (Aliette) on lettuce to control downy mildew. This program has ended. (Susan Stanton)

EPA has granted a quarantine exemption to the United States Department of Agriculture for the use of

ethylene oxide on imported bird seed shipments to eradicate and prevent the spread of certain plant pests new to, or not known to be widely distributed within and throughout, the United States and and its territories at various ports of entry; February 26, 1992, to February 20, 1995. (Andrea Beard)

EPA has denied specific exemption requests from the Alabama and Missouri Departments of Agriculture for the use of clomazone on cotton to control velvetleaf. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: June 19, 1992.

Douglas D. Campt,

*Director, Office of Pesticide Programs.*

[FR Doc. 92-16799 Filed 7-15-92; 8:45 am]

BILLING CODE 6560-50-F

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[OPP-34030; FRL 4069-6]

## Notice of Receipt of Request for Amendment to Delete Uses in Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by McLaughlin Gormley King Company to delete uses for the active ingredients *N*-Octyl bicycloheptene dicarboximide, *d*-trans allethrin and Esbiol.

**DATES:** Unless the request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on October 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5761.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

### II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from McLaughlin Gormley King Company (MGK) to amend the terms of registration for 5 manufacturing use products. These products contain the active ingredients *N*-Octyl bicycloheptene dicarboximide (MGK-264), *d*-trans Allethrin, and Esbiol. The amendments would limit the use of these products to the manufacture of end use pesticide products not labeled for the uses listed in Table 1 below. Although the listed uses do not appear explicitly on the current unamended MGK manufacturing use product labels, all are currently approved for end use products containing the ingredients in question.

Formulators or users of end use products containing these ingredients who desire continued use on crops or sites listed in Table 1 should contact the registrant before October 14, 1992 to discuss withdrawal of the applications for amendment. Interested members of the general public may also intercede with the registrant prior to Agency approval of the amendments. The registrant's name and address are: McLaughlin Gormley King Company, 8810 10th Avenue North, Minneapolis, MN 55427.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENT TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| Registration No. | Product Name | Delete Use On |
|---|---|---|
| 001021-00068 | MGK 264 Insecticide Synergist | Cranberries, grapes, citrus fruits, oranges, nut crops, almonds, filbert, walnuts, figs, guava, mangos, pineapples, cocoa (beverage crop), melons, cantaloupes, honeydew and/or honey ball melons, muskmelons,, watermelons, cucumbers, pumpkins, squash, eggplant, pepper (fruiting vegetable), tomatoes, broccoli, brussel sprouts,cabbage, cauliflower, collards, kale, endive,artichoke (globe), lettuce, mustard (leafy vegetable), parsley, spinach, carrot (root crop vegetable), garlic, onion (dry), potatoes, radishes, sweet potatoes, asparagus, barley, mushrooms, onions (green), grain crops, barley, oats, rye, sorghum, beans, beets, celery, corn, peanuts, peas, turnips, soybeans, vegetables (all or unspecified), fruits (all or unspecified), pastures, fruit trees, forest trees, forest lands, dairy animals, dairy cattle, farm animals, cattle, goats, sheep, beef cattle (meat animals), swine (meat animals), poultry (chickens), greenhouse environs and equipment (empty), mushroom house environs and equipment (empty), barns (use unspecified), greenhouses (in use), aquatic areas, swimming pool water systems, drainage systems, sewage systems, lakes, ponds impounded water, swamps, marshes, bogs, and standing water (permanent), intermittently flooded areas |
| 001021-01050 | D-trans Allethrin 90% Concentrate | Cranberries, grapes, strawberries, citrus fruits, crabapples, quince, figs, broccoli, cabbage, cauliflower, collards, kale, dandelion, lettuce, spinach, turnips, mushrooms, grain crops, mustard, peas, sunflowers, fruit trees, farm animals, greenhouses (in use) |
| 001021-01217 | D-trans Allethrin (Technical Grade) | Cranberries, grapes, strawberries, citrus fruits, crabapples, quince, figs, broccoli, cabbage, cauliflower, collards, kale, dandelion, lettuce, spinach, turnips, mushrooms, grain crops, mustard, peas, sunflowers, fruit trees, farm animals, greenhouses (in use) |
| 001021-01242 | Esbiol 90% Concentrate (F-1967) | Cranberries, citrus fruits, farm animals, green houses (in use), poultry |
| 001021-01291 | Esbiol Technical | Cranberries, citrus fruits, farm animals, green houses (in use), poultry |

**III. Existing Stocks Provisions**

The Agency has authorized registrant to sell or distribute products with the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: July 6, 1992.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 92-16798 Filed 7-15-92; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-948-DR]

### South Dakota; Notice of Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**EFFECTIVE DATE:** July 2, 1992.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA-948-DR), dated July 2, 1992, and related determinations.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 2, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from severe storms, tornadoes, and flooding on June 13-23, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Roger E. Free of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

Brookings, Buffalo, Deuel, Hamlin, and Harding Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Wallace E. Stickney,**

*Director.*

[FR Doc. 92-16680 Filed 7-15-92; 8:45 am]

BILLING CODE 6718-02-M

## FEDERAL RESERVE SYSTEM

### Al E. Birdwell, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 5, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. Al E. Birdwell*, Houston, Texas; to acquire an additional 0.48 percent, for a total of 10.29 percent, of the voting shares of Tomball National Bancshares, Inc., Tomball, Texas, and thereby indirectly acquire Tomball National Bank, Tomball, Texas.

*2. Puckett Willis and Rose Parker Willis*, Winnfield, Louisiana; to acquire an additional 6.835 percent, for a total of 26.92 percent, of the voting shares of Winn Bancshares, Inc., Winnfield, Louisiana, and thereby indirectly acquire Winn State Bank and Trust, Winnfield, Louisiana.

Board of Governors of the Federal Reserve System, July 10, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-16728 Filed 7-15-92; 8:45 am]

BILLING CODE 6210-01-F

### First Union Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 10, 1992.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. First Union Corporation*, Charlotte, North Carolina; to acquire Southeast Switch, Inc., Maitland, Florida, and thereby engage in providing data processing and transmission services to federally insured depository institutions who participate in Southeast Switch, Inc.'s neutral shared electronic funds transfer network and providing related services, including the administration and promotion of the network; providing data processing, transmission and related services to other electronic funds transfer networks; and providing bank management consulting advice to depository institutions, pursuant to §§ 225.25(b)(7) and (11) of the Board's Regulation Y.

*2. Wachovia Corporation*, Winston-Salem, North Carolina; to acquire Southeast Switch, Inc., Maitland, Florida, and thereby engage in providing data processing and transmission services to federally insured depository institutions who participate in Southeast Switch, Inc.'s neutral shared electronic funds transfer network and providing related services, including the administration and promotion of the network; providing data processing, transmission and related services to other electronic funds transfer networks; and providing bank management consulting advice to depository institutions, pursuant to §§ 225.25(b)(7) and (11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 10, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-16725 Filed 7-15-92; 8:45 am]

BILLING CODE 6210-01-F

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## Jefferson Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 1992.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

*1. Jefferson Bancorp, Inc.*, Miami Beach, Florida; to engage *de novo* through its subsidiary, Jefferson Capital Corporation, Miami Beach, Florida, in servicing loans and making or acquiring loans for its own account or for the account of others, and other extensions of credit (including issuing letters of credit) such as will be made by a mortgage, finance or factoring company and other extensions of credit for any person, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 10, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-16727 Filed 7-15-92; 8:45 am]

BILLING CODE 6210-01-F

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## Killbuck Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 10, 1992.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. Killbuck Bancshares, Inc.*, Killbuck, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Killbuck Savings Bank Company, Killbuck, Ohio.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Firstbank of Illinois Co.*, Springfield, Illinois; to acquire 100 percent of the voting shares of First Highland Corp., Highland, Illinois, and thereby indirectly acquire The First National Bank of Highland, Highland, Illinois.

**C. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. CS Bancshares, Inc.*, Chillicothe, Missouri; to acquire 94.5 percent of the voting shares of Ray County Bank, Richmond, Missouri. **Comments on this application must be received by August 5, 1992.**

*2. P.N.B. Financial Corporation*, Kingfisher, Oklahoma; to acquire 100 percent of the voting shares of Helena Bancshares, Inc., Helena, Oklahoma, and thereby acquire control of Helena National Bank, Helena, Oklahoma.

Board of Governors of the Federal Reserve System, July 10, 1992.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 92-16728 Filed 7-15-92; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Agency Information Collection Under OMB Review

**AGENCY:** Administration for Children and Families, Administration for Children, Youth and Families National Center on Child Abuse and Neglect, HHS.

**Notice**

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of an existing information collection entitled "Instructions for the Application for Child Abuse and Neglect Prevention Grants Program ("Challenge Grants"). This request for OMB clearance is made by the National Center on Child Abuse and Neglect of the Administration for Children, Youth and Families (ACYF) within the Administration for Children and Families (ACF).

**ADDRESSES:** Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

**Information on Document**

*Title:* ACF Program Instructions: Application for Child Abuse and Neglect Prevention Grant Funds "Challenge Grants".

*OMB No.:* 0980-XXXX.

*Description:* On October 12, 1984, Congress enacted Public Law 98-473, the continuing appropriation bill for FY 1985. Section 402 through 409 of that bill authorized the Secretary to make grants ("Challenge grants") to eligible States to encourage the establishment and maintenance of State trust funds, or other funding mechanisms, including appropriations, which are available only for child abuse and neglect prevention activities. The Child Abuse Prevention Challenge Grants Reauthorization Act of 1988, Public Law 101-126, reauthorized and transferred this program as a new Title II of the Child Abuse Prevention and Treatment Act (CAPTA), Public Law 100-294. Legislation to reauthorize and amend CAPTA was signed into law on May 28, 1992 (Public Law 102-295).

FY 1992 funds are available to those States that in FY 1991 had set up trust funds or other funding mechanisms or appropriations only for child abuse and prevention activities.

*Annual Number of Respondents*.....57
*Annual Frequency*.....1
*Average Burden Hours Per Response*.....32
*Total Burden Hours*.....1,824

Dated: June 29, 1992.

Naomi B. Marr,

*Director, Office of Information Systems Management.*

[FR Doc. 92-1665 Filed 7-15-92; 8:45 am]

BILLING CODE 4130-01-M

### Agency Information Collection Under OMB Review

**AGENCY:** Administration for Children and Families, Office of Policy and Evaluation.

**ACTION:** Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for continued use of an existing information collection for the Office of Policy and Evaluation of the Administration for Children and Families (ACF).

**ADDRESSES:** Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

**Information on Document**

*Title:* Standard Setting Requirements for Medical and Non-Medical Facilities Where SSI Recipients Reside

*OMB No.:* 0960-0141.

*Description:* Section 1616(e) of the Social Security Act, the Keys Amendment, and Sections 45 CFR 1397.10 and 1397.20 contain information collection requirements which specify that States and other eligible jurisdictions must:

(a) Maintain records of standards and enforcement procedures for residential facilities where SSI recipients reside and of waivers and violations of such standards;

(b) Make available for public review a summary of the standards for each type of facility;

(c) Make available to any interested individual a copy of a complete set of standards for each type of facility, the enforcement procedures, and waivers and violations;

(d) Inform the Social Security Administration of the facilities in violation of the standards; and

(e) Certify compliance with all requirements to the Secretary.

*Annual Number of Respondents*.....52.
*Annual Frequency*.....2.
*Average Burden Hours Per Response*.....4.
*Total Burden Hours*.....416.

Dated: May 25, 1992.

Naomi B. Marr,

*Director, Office of Information, Systems Management.*

[FR Doc. 92-16660 Filed 7-15-92; 8:45 am]

BILLING CODE 4130-01-M

## Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA)

### Comprehensive Residential Drug Prevention and Treatment Projects for Substance-Abusing Women and Their Children

**AGENCY:** Office for Substance Abuse Prevention, ADAMHA, DHHS.

**ACTION:** Notice of availability of funds for demonstration grant(s) to support residential program(s) that offer substance abuse treatment and prevention services for women and their children in Weed and Seed neighborhoods of South Central Los Angeles, (LA) and nearby areas directly affected by the recent riots.

**SUMMARY:** This notice is to provide information to the public that the office for Substance Abuse Prevention (OSAP), in accordance with the President's Weed and Seed strategy, is targeting $1 million to support residential substance abuse treatment for women and children in the LA Weed and Seed neighborhoods specified above. Because of the severity of the recent disturbances in LA, one or more grant awards will target special funding to assist specific LA neighborhoods affected by these disturbances.

Applications for the $1 million being set aside for this special initiative must meet all of the requirements in the original Request for Applications (RFA) for Comprehensive Residential Drug Prevention and Treatment Projects for Substance-Abusing women and their Children (RFA No. SP–92–02) as published in the **Federal Register** on April 16, 1992. In addition to the criteria listed in the RFA, proposed projects must be developed in collaboration with the LA Weed and Seed initiative. Funding will be provided only for comprehensive residential programs serving women and children in the *LA Weed and Seed neighborhoods* of South Central LA and nearby areas directly affected by the riots. Applications will be accepted only for new demonstration programs to be carried out by organizations that are already serving or willing and able to expand to the LA Weed and Seed service areas.

Application Procedures and Contact: A signed original and 2 copies of the completed application form PHS 5161–1 and appendices must be received on or before August 7, 1992. Applications must be sent to: Dr. Patricia Straat, Division of Research Grants Referral Office, Westwood Building, room 248, 5333 Westbard Avenue, Bethesda, MD 20892 (20816 is Zip code for express mail).

For information on application and submission procedures, to obtain an application kit, or to obtain a copy of the original RFA referenced above, contact the following individual: Dr. Averette Parker, Chief, Perinatal Addiction Prevention Branch, Division of Demonstrations and Evaluations, Office for Substance Abuse Prevention, telephone: 301–443–4564.

OSAP will conduct an objective review of applications received. The receipt, review, and award process will be handled in an expedited manner. It is anticipated that award(s) will be made in September 1992.

**Authority**

Award(s) will be made under the authority of section 509F of the Public Health Service Act and Public Law 102–141. The Catalog of Federal Assistance number for this program is 93.937.

**Joseph R. Leone,**

*Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 92–16722 Filed 7–15–92; 8:45 am]

BILLING CODE 4160–20–M

**Centers for Disease Control**

**National Institute of Occupational Safety and Health**

**[Program Announcement Number 263]**

## Reducing Work-Related Musculoskeletal Disorders Among Carpenters or Related Construction Workers; Availability of Funds for Fiscal Year 1992

**Introduction**

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year 1992 funds for a cooperative agreement to conduct surveillance for work-related musculoskeletal disorders and to develop and conduct ergonomic hazard identification programs, and ergonomic training programs among carpenters or related construction workers.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

**Authority**

This program is authorized under section 21(a) of the Occupational Safety and Health Act of 1990 (29 U.S.C. 670 (a)).

**Eligible Applicants**

Eligible applicants include non-profit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide agents or instrumentalities, and small, minority and/or women-owned businesses are eligible for this cooperative agreement.

**Availability of Funds**

Approximately $650,000 will be available in FY 1992 to fund up to three awards. It is expected that the awards will begin on or about September 30, 1992, for a 12-month budget period within a project period of up to three years. Each of the components for hazard assessment, surveillance and training should not exceed $150,000 and the longitudinal study should not exceed $50,000. Proposals for hazard assessment and training must include both of these components. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

**Purpose**

The overall goal of the cooperative agreement is to reduce work-related musculoskeletal disorders (WMD) of the upper and lower extremities and the back (e.g., tendinitis, arthritis, and nerve compression syndromes, such as carpal tunnel syndrome) among carpenters or related construction workers (e.g., carpenters helpers, dry wall installers, plasterers, etc.).

The recipient should focus on one or more of the following four tasks:

I. Develop, implement, and evaluate a national, health surveillance system for WMD among carpenters or related construction workers.

II. Develop, implement, and evaluate a Hazard Identification Program for carpenters or related construction workers.

III. Develop, implement, and evaluate ergonomic training programs for carpenters and related personnel who are instrumental in the prevention of WMD in carpenters or related construction workers. Once developed and tested, the program can be applied to carpenters nationally.

IV. Determine the feasibility of conducting longitudinal health studies of WMD among carpenters or related construction workers.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

*I. Develop a Health Surveillance Program*

The objectives of the surveillance program are to: 1) support the development and implementation of national, health surveillance activities for work-related musculoskeletal disorders (WMD) amomg carpenters or related construction workers; 2) encourage systematic and periodic evaluation of established or ongoing health surveillance activities for WMD; 3) explore the utility of suitable health surveillance systems in estimating incidence/prevalence rates of WMD among carpenters or related construction workers; and 4) encourage the dissemination of surveillance information to target ergonomic intervention strategies for prevention of

WMD among carpenters or related construction workers.

A. Recipient Activities

1. Develop, in collaboration with CDC, a protocol to design a national, health surveillance system for WMD among carpenters or related construction workers. Such a protocol would include:

a. An inventory of existing surveillance data sources. Possible surveillance data sources include: workers' compensation claims (WCC) data, health insurance data, pension records, and other available data. As part of this activity, the recipient should identify managers of local joint labor-management health insurance funds who would be willing to discuss implementation of a surveillance program

b. Criteria for selecting data sources appropriate for inclusion in a surveillance system.

c. Case definitions for various target disorders.

d. Procedures to ensure confidentiality of individual information.

e. Procedures to ensure that the available systems of data are compatible with automatic data processing (ADP) and, if not compatible, establish a plan for data extraction and conversion to ADP.

f. Procedures for ensuring the data quality.

g. Analysis plans for the assessment of each target disorder.

2. Collect data following protocol procedures.

3. Based on the protocol, perform data analysis to ascertain trends and patterns of importance.

4. Identify the high-risk work tasks and processes to provide guidance for intervention efforts.

5. Determine, over time, the effectiveness of intervention activities.

6. Seek publication of worthy findings in trade publications or peer-reviewed occupational health and safety journals.

B. CDC Activities

1. Collaborate in the protocol development.

2. Collaborate in the development of an appropriate data system and methodological approaches to analyzing the data.

3. Provide the recipient with assistance/consultations in conducting the analysis over time.

4. Assist in the development of quality assurance of reported data.

5. Assist in interpretation of the data analysis and their possible application toward intervention activities.

6. Collaborate in the dissemination of important surveillance findings.

*II. Develop A Hazard Identification Program*

The overall objective of WMD hazard identification is to summarize the existing information about WMD hazards encountered by carpenters or related construction workers through the conduct of a WMD Hazard Identification Workshop and the development of a Worksite Hazard Identification Program. The information from both the Workshop and the Worksite Hazard Identification Program will be used to develop the curriculum of the training program for the carpenters or related construction workers and for consideration of changes in work practices, tools, materials and other approaches to reducing the risks of WMD.

The objective of the WMD Hazard Identification Workshop is to convene researchers, carpenters, related construction workers, contractors and other interested parties to discuss currently identified hazards and risk factors of WMD, proposed solutions to WMD hazards to prevent WMD in carpenters, and produce a report summarizing the information.

The objective of the Worksite Hazard Identification Program is to develop a program to identify and characterize the worksite occupational hazards of carpenters or related construction workers associated with WMD. These hazards may include, but are not limited to: inadequate or insufficient knowledge of good work practices; improper materials handling (practices or materials); manner and use of tools and equipment which are not ergonomically designed (such as prolonged overhead work with tools); awkward movements, repetition, forceful postures, vibration, extreme temperatures; and adverse work organizational factors. The information obtained from the worksite hazard identification program will be integrated into the curriculum of the training program described in Section III. The worksite identification program may be conducted by a team of ergonomists, occupational health professionals, trained workers and other appropriate individuals.

A. Recipient Activities

1. Develop, in collaboration with CDC, a comprehensive written plan for the workshop including suggested topics, speakers, location of workshop, and dates.

2. Organize and carry out the workshop.

3. Prepare a written report within three months of the completion of the workshop summarizing the information on WMD in carpenters and related construction workers and proposing recommendations for controls of WMD, including possible interventions.

4. Develop, in collaboration with CDC, a comprehensive protocol describing the worksite hazard identification program. The protocol should contain:

a. A summary of information about workplace hazards for WMD among carpenters or related construction workers learned during the workshop.

b. Procedures for the use of focus groups and other types of meetings of working carpenters or related construction workers from sites throughout the country to obtain information on WMD hazards and recommendations for possible solutions.

c. Plans for a comprehensive, systematic Worksite WMD Hazard Identification Program based on the combined information learned from the workshop and focus groups. The plan should include: (1) Plans for selecting worksites, including number of sites, types of hazards to evaluate, etc.; (2) new or existing methods for assessment of worksite WMD hazards (e.g., checklists, videotapes); and (3) composition of the identification team, including trained ergonomists, occupational health professionals and carpenters or related construction workers.

d. Plans for evaluating the Hazard Identification Program, worksite data collection methods, and data collected through the program.

e. Plans for prioritizing hazards identified through the Hazard Identification Program based on prevalence of WMD hazards, feasibility of change, severity of related WMD, and other criteria to be determined.

f. Plans for developing possible solutions or interventions for hazards identified as high priority through the workshop and worksite hazard identification program.

5. Plans for conducting systematic identification of worksite WMD hazards following the approved protocol.

6. Evaluation of the data and data collection procedures.

7. Prioritization of hazards identified through the Worksite Hazard Identification Program as specified in the protocol.

8. Selection of the top 5–10 hazards (determined to be feasible), to develop possible solutions or interventions for integration and further development in the training programs described in section III. For example, worksite simulations in the apprentice program may provide a suitable environment for

implementing and evaluating the possible solutions.

9. Development of possible solutions and interventions for top 5–10 worksite hazards identified in II.C.1.e.

10. Development of a report suitable for publication, documenting the process of identifying hazards and possible solutions.

B. CDC Activities

1. Collaborate in the development of a comprehensive written plan for the workshop.

2. Collaborate in the development of a comprehensive protocol describing the Worksite Hazard Identification Program.

3. Assist in the evaluation of the data collected through the Hazard Identification Program.

4. Collaborate in the dissemination of important findings.

*III. Develop Ergonomic Training Program*

The training program will be designed to teach the principles and practices of ergonomics, describe hazards among carpenters or related construction workers, and present selected solutions and interventions.

Joint labor-management training programs in construction, such as apprentice programs, were selected as a target for the ergonomic training program because commitment on the part of both labor and management is essential for this program to be successful and because training may be more effective for less experienced workers. Historically, carpenters and related construction workers rarely work for prolonged periods at a single worksite, so that traditional methods of occupational health have been difficult to conduct successfully. Occupational health and ergonomic training modules can be incorporated in the training program. Hence, the training program provides a conduit for reaching a large number of carpenters or related construction workers and integrating principles of occupational health and ergonomics, including good work practices, tool designs, etc.

The goals of the ergonomic training course are to: (1) Reduce or eliminate WMD and associated hazards for carpenters or related construction workers; (2) enhance awareness of WMD among trainers, carpenters or related construction workers; (3) enhance awareness of job-related ergonomic stressors; (4) Enable carpenters or related construction workers to use systematic approaches to identifying job stressors; and (5) enable carpenters or related construction workers to formulate strategies or identify existing controls to reduce or eliminate job stressors.

A. Recipient Activities

1. Develop and implement, in collaboration with CDC, a comprehensive training program for carpenters or related construction workers.

The ergonomic training program will include:

a. Description and explanation of WMD.

b. Principles of ergonomics.

c. Risk factors and hazards for WMD associated with carpentry or related construction work as an occupation.

d. Techniques for work-site job analysis.

e. Techniques for identification of risk factors and hazards.

f. Control strategies.

g. Discussion and utilization of interventions and solutions to ergonomic problems and hazards, incorporating the information on the 5–10 top worksite hazards for carpenters or related construction workers and the appropriate solutions developed through the Worksite Hazard Identification Program.

2. Develop, in collaboration with CDC, a comprehensive protocol for the training program.

3. Following peer review of the program plans, pilot test the training program.

4. Evaluate the effectiveness of the pilot training program and modify the teaching materials and methods.

5. Implement the training program.

6. Evaluate the training program. Evaluation may include pre-testing and post-testing of students, student evaluation of the course, and longer term follow-up assessment of the course by both instructors and the students.

B. CDC Activities

1. Collaborate in the development of comprehensive training program for carpenters or related construction workers.

2. Collaborate in the development of the comprehensive protocol for the training program.

3. Collaborate in the organization of peer review of program plans and evaluation plans.

4. Provide on-site technical consultation during the pilot test of the training program with recommendations to assist the trainers.

5. Provide training materials, such as video tapes and published documents, to the recipient, when appropriate and available.

6. Provide technical assistance in the evaluation of the results and efficacy of the training program.

7. Assist in the dissemination of training information to appropriate personnel.

*IV. Determine the Feasibility of Conducting Longitudinal Health Studies of WMD Among Carpenters and Related Construction Workers*

The objective of this activity is to determine whether prospective epidemiological studies of carpenters or related construction workers can be facilitated by other components of the program.

A. Recipient Activities

1. Determine, in collaboration with CDC, if it is feasible to follow over time cohorts of carpenters or related construction workers, by estimating the number of workers at each training site, the turnover rate of workers in training, and whether it would be possible to build into the training program a periodic health examination of WMD of carpenters or related construction workers.

2. If feasible, describe methods to accomplish IV.A.1.

3. Develop a timetable for implementation of all components of the proposed project.

B. CDC Activities

1. Provide technical assistance and consultation during in the feasibility assessment.

2. Coordinate review of protocols for the longitudinal study by CDC and other occupational health experts.

3. Assist in the analysis and interpretation of data collected during the feasibility assessment.

**Evaluation Criteria**

Applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement including: (a) The applicant's understanding of the objectives of the proposed cooperative agreement, and (b) the relevance of the proposal to the objectives. (20%)

2. Feasibility of meeting the proposed goals of the cooperative agreement including: (a) the proposed schedule for initiating and accomplish among each of the activities of the cooperative agreement, and (b) the proposed method for evaluating the accomplishments. (20%)

3. Strength and comprehensiveness of the training program plan which addresses the distinct characteristics

and needs of the target audience and which includes the essential program elements for planning, conducting and evaluating training programs. (25%)

4. The ability to involve joint labor management training programs, such as apprentice programs, in construction. (10%)

5. The ability to conduct surveillance based on workers' compensation, health insurance data, and other surveillance data sources. (5%)

6. Experience in delivering occupational health and ergonomics programs for the target population, particularly in a labor-management cooperative environment. (10%)

7. The qualifications, expertise, experience and supporting bibliographies of proposed program staff, and time allotted for them to accomplish program activities; support staff available for the performance of this project; and the facilities, space and equipment available for performance of this project. (10%)

8. The budget will be evaluated to the extent it is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

**Executive Order 12372 Review**

Applications are not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Catalog of Federal Domestic Assistance Number (CFDA)**

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

**Other Requirements**

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**Application Submission and Deadline**

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before August 25, 1992.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where To Obtain Additional Information**

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 263. You will receive a complete program description, information on application procedures, and application forms.

If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6630. Programmatic technical assistance may be obtained from Marie Haring Sweeney, Ph.D., Industrywide Studies Branch, Division of Surveillance, Hazard Evaluation and Field Studies, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, (513) 841–4481.

Please refer to Announcement Number 263 when requesting information and submitting an application.

Potential applicants may obtain a copy of Health People 2000 (Full Report, Stock No. 017–001–00474–0) or Health People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone: 202–783–3238).

Dated: July 10, 1992.

**J. Donald Millar,**

*Director, National Institute for Occupational Safety and Health, Centers for Disease Control.*

[FR Doc. 92–16715 Filed 7–15–92; 8:45 am]

BILLING CODE 4160–19–M

## Public Health Service

### Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Administrator, Health Resources and Services Administration, on May 24, 1991, by the Assistant Secretary for Health, the Administrator has delegated to the officials indicated, the following authorities under title XXVI of the Public Health Service Act (42 U.S.C. 300ff *et seq.*), as amended hereafter, pertaining to the HIV Health Care Services:

1. To the Director, Bureau of Health Resources Development:

a. Authority under part A for Emergency Relief for Areas with Substantial Need for Services, excluding the authority under section 2601(b), pertaining to the Requirement Regarding Confirmation of Cases; and

b. Authority under part B for the Care Grant Program.

2. To the Director, Bureau of Health Care Delivery and Assistance:

Authority under part c, subpart II, for Categorical Grants.

3. To the Director, Maternal and Child Health Bureau:

Authority under part D, for General Provisions as they pertain to the functions assigned to the Maternal and Child Health Bureau, excluding the authority under sections 2671(c)(2) pertaining to the analysis and evaluation of research protocol, 2672 pertaining to provisions relating to blood banks, and 2673 pertaining to Research, Evaluation, and Assessment Program.

The delegation from the Assistant Secretary for Health excluded the authorities to issue regulations, submit reports to Congress or a congressional committee, establish advisory committees and councils, and select members to advisory councils.

**Redelegation**

These authorities may be redelegated.

**Prior Delegations**

The July 12, 1991 delegation has been superseded.

**Effective Date**

The delegation was effective on

Dated: July 7, 1992.

**R.G. Harmon,**

*Administrator, Health Resources and Services Administration.*

[FR Doc. 92–16723 Filed 07–15–92; 8:45 am]

BILLING CODE 4160–16–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AK-967-4230-15; AA-10494, AA-10499]

### Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of Section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1) will be issued to Sealaska Corporation. The lands involved are in the vicinity of Port Malmesbury and Security Bay, Kuiu Island, Alaska.

| Serial No. | Land description |
|---|---|
| AA-10494 | T. 64 S., R. 72 E., C.R.M. |
| AA-10499 | T. 58 S., R. 71 E., C.R.M. |

A notice of the decisions will be published once a week, in the *Wrangell Sentinel*. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until August 17, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

**Terry R. Hassett,**

*Chief, Branch of KCS Adjudication.*

[FR Doc. 92-16712 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-JA-M

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[WO-150-00-4830-11]

### National Public Lands Advisory Council; Meeting

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of meeting of the National Public Lands Advisory Council.

**SUMMARY:** Notice is hereby given that the National Public Lands Advisory Council will meet Monday, July 27, 1992, at the Anchorage Hilton Hotel, 500 West Third Avenue, Anchorage, Alaska, phone (907) 272-7411. Meeting hours will be 8 a.m. to 4 p.m. on Monday, July 27.

The proposed agenda for the meeting is:

Opening remarks by National Public Lands Advisory Council Chairman Mark Murphy and BLM Alaska State Director Ed Spang. Welcoming remarks by Honorable Tom Fink, Mayor of Anchorage, and Malcolm Roberts, Senior Advisor to the Governor of Alaska.

The Council presently has several ongoing task force groups. These groups advise and counsel the BLM regarding public land issues, such as mining and user fees. A summary will be given on the status of the work of each task force. The BLM will provide briefings for the Council on pertinent Alaska public land issues. During the week, the Council will visit various points of interest in Alaska to further their knowledge of the State and BLM Alaska.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council beginning at 1 p.m. on Monday, July 27. Speakers should address specific national public land issues and are encouraged to submit a copy of their written statements prior to oral delivery. Please send written comments to the BLM's Alaska State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

**DATES:** Monday, July 27, 1992—National Public Lands Advisory Council Meeting.

**ADDRESSES:** Copies of public statements should be mailed to: Mr. David Vickery, Alaska State Office (912), 222 West 7th Avenue, #13, Anchorage, Alaska 99513—7599, phone (907) 271-5555.

**FOR FURTHER INFORMATION CONTACT:** Nan Morrison, Washington, DC Office, BLM, telephone (202) 208-5101.

**SUPPLEMENTARY INFORMATION:** The Council advises the Secretary of the Interior through the Director, BLM, regarding policies and programs of a national scope related to the public lands and resources under the jurisdiction of BLM.

Date Signed: July 10, 1992.

**Susan Lamson,**

*Deputy Director.*

[FR Doc. 92-16661 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-84-M

### Salmon District Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Rescheduling of meeting.

**SUMMARY:** The Salmon District Advisory Council will meet on Wednesday, July 29, 1992, at the Library, in Leadore, Idaho. This meeting has been rescheduled from the originally announced date of July 8, 1992. The meeting will convene at 10 10 a.m.

**FOR FURTHER INFORMATION CONTACT:** The meeting is held in accordance with Public Laws 92-463 and 94-579. The purpose for the meeting is to discuss the proposed Federal Energy Regulatory Commission projects on Challis/Bear Creeks and Morgan Creek, the White Knob Trestle project, the status of the Challis Resource Management Plan, and current Salmon District issues.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 a.m. and 11:30 a.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Salmon District Office by July 24, 1992.

Summary minutes to the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy S. Jackson, District Manager, Salmon District BLM, Box 430, Salmon, Idaho 83467.

Dated: July 8, 1992.

**Jerry A. Wilfong,**

*Acting District Manager.*

[FR Doc. 92-16739 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-GG-M

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[OR-943-4212-13; GP2-313; OR-44812]

### Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action informs the public of the conveyance of 857.75 acres of public land out of Federal ownership. This action will also open 5,013.41 acres of reconveyed lands to surface entry and 2,795.05 acres to mining and mineral

leasing. The minerals in the 2,216.36-acre balance are not in Federal ownership.

**EFFECTIVE DATE:** August 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

**SUPPLEMENTARY INFORMATION:**

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 857.75 acres in Clackamas County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 6 S., R. 3 E.,
Sec. 7, lots 1, 2, 3, and 4, E½SW¼, W½SE¼, SE¼SE¼, and those portions of the W½NE¼, E½NW¼, and NE¼SE¼ as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
Sec. 16, W½NE¼, E½SW¼, W½SE¼, and SE¼SE¼;
Sec. 19, lots 2, 3, and 4, W½NE¼, E½W¼, and SE¼;
Secs. 30 and 31;
Sec. 32, W½W½.
T. 7 S., R. 3 E.,
Sec. 6, lots 2, 4, and 5, and SW¼NE¼;
Sec. 7, N½NE¼, SE¼NE¼, and NE¼SE¼;
Sec. 8, SE¼NE¼, SW¼NW¼, and S½;
Sec. 10, N½N½ and S½S½;
Sec. 15, S½NE¼, NW¼, N½SW¼, SE¼SE¼, and that portion of the N½SE¼ as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
Sec. 16, N½NE¼, SE¼NE¼, W½, E½SE¼, SW¼SE¼, and those portions of the SW¼NE¼ and NW¼SE¼ as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
Sec. 17, S½NE¼, N½NW¼, SE¼NW¼, and N½SE¼.

The areas described aggregate 5,013.41 acres in Clackamas County.

3. The minerals in Secs. 7, 8, 16, 15, 16, and 17, T. 7 S., R. 3 E., and that portion of lot 2 in Sec. 7, T. 6 S., R. 3 E., containing 1.36 acre as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office, are not in Federal ownership and will not be open to mining and mineral leasing.

4. At 8:30 a.m., on August 21, 1992, the lands described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on August 21, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

5. At 8:30 a.m., on August 21, 1992, the lands described in paragraph 2, except as provided in paragraph 3, will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 8:30 a.m., on August 21, 1992, the lands described in paragraph 2, except as provided in paragraph 3, will be opened to applications and offers under the mineral leasing laws.

Dated: July 7, 1992.

**Champ C. Vaughan,**

*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 92-16738 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-33-M

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[NM-930-02-4212-02]

## Redelegation of Authority for Lands Casework, New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Redelegation of authority.

**SUMMARY:** Pursuant to the authority in Bureau Manual 1203 dated July 17, 1990, the State Director, New Mexico State Office, has redelegated the authority for all Lands and Realty functions and responsibilities from NM (930) to NM (920).

**EFFECTIVE DATE:** July 12, 1992.

**ADDRESSES:** Comments should be sent to the New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, New Mexico 87502–7115.

**FOR FURTHER INFORMATION CONTACT:** Clarence F. Hougland, BLM, New Mexico State Office, 505–438–7583.

**SUPPLEMENTARY INFORMATION:** Due to a recent reorganization in the New Mexico State Office, all Lands and Realty functions and responsibilities in the Division of Lands and Renewable Resources are redelegated, effective July 12, 1992, to the Division of Lands and Minerals. All land patents, other conveyance documents, and disclaimers, including patents for Conveyances of Mineral Interest, will now be signed by the Deputy State Director for Lands and Minerals.

Dated: July 2, 1992.

**Monte G. Jordan, Associate,**

*State Director.*

[FR Doc. 92-16665 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-FB-M

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## Fish and Wildlife Service

## Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (FWS 0007), Washington, DC 20503, telephone 202–395–7340.

*Title:* Study of Landowner Attitudes and Perceptions of Prairie Pothole Region Wetlands.

*OMB Approval Number:* N/A.

*Abstract:* The perspectives and attitudes of landowners in the prairie pothole regions towards wetland preservation, restoration, conversion, and government wetland programs influence the effectivness of existing and future wetland programs of state and federal agencies. This study will allow the Service to obtain quantitative information on various approaches to implementation of wetland management, restoration, creation, and acquisition programs.

*Service Form Number:* N/A.

*Frequency:* One time only.

*Description of Respondents:* Individuals and households.

*Estimated Completion Time:* 20 minutes (0.33 hours).

*Annual Responses:* 6,000.

*Annual Burden Hours:* 2,000.

*Service Clearance Officer:* James E. Pinkerton, 703–358–1943, Mail Stop—224

Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: June 5, 1992.

Suzanne Mayer,

*Acting Regional Director, Region 8.*

[FR Doc. 92-16667 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-55-M

## Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (FWS-0002), Washington, DC 20503, telephone 202-395-7340.

*Title:* Study of the Economic Values Associated with Resident Hunting and Trapping in Prairie Pothole Region Wetlands.

*OMB Approval Number:* FWS 002.

*Abstract:* This is a research project designed to estimate the value of wetland related consumptive wildlife uses. Respondents supply information regarding wetland-related hunting and trapping activities and expenditures for the 1991 season. Such information is sought in order to assist the Service and other federal agencies in better implementing their wetland management programs and environmental assessment responsibilities.

*Service Form Number:* N/A.

*Frequency:* One time only.

*Description of Respondents:* Individuals and Households in North and South Dakota and Minnesota.

*Estimated Completion Time:* 20 minutes.

*Annual Responses:* 5,610.

*Annual Burden Hours:* 1,851.

*Service Clearance Officer.* James E. Pinkerton, 703-358-1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: June 5, 1992.

Suzanne Mayer,

*Acting, Regional Director, Region 8.*

[FR Doc. 92-16668 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-55-M

## National Park Service

## Order Adjusting the Boundary of Rocky Mountain National Park, CO, to Include Certain Lands

**AGENCY:** National Park Service.

**ACTION:** Boundary adjustment order.

**SUMMARY:** Pursuant to the authority contained in the Act of November 29, 1989, 103 Stat. 1700, 16 U.S.C. 192b-10, and as certain lands authorized for acquisition by the Secretary of the Interior have now been acquired, the boundaries of Rocky Mountain National Park are being adjusted accordingly.

**DATES:** The effective date of this order shall be July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Chief, Land Resources Division, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225-0287, (303) 969-2610.

**SUPPLEMENTAL INFORMATION:** The above-cited Act authorizes the Secretary of the Interior to acquire certain lands adjacent to Rocky Mountain National Park and, upon acquisition, to adjust the park boundary to include such lands within the park. The total acreage of Rocky Mountain National Park will be increased by 59.45 acres by this boundary adjustment.

Subject to valid existing rights, the following described lands are hereby added to Rocky Mountain National Park to be administered in accordance with the laws and regulations applicable thereto:

Township 4 North, Range 73 West, 6th Prinicipal Meridian, Larimer County, Colorado.

Lots 1,2,3 and 5 through 15, inclusive, Baldpate Estates, according to the plat thereof recorded April 3, 1986, at Reception No. 86016631.

Containing 59.45 acres, more or less.

Dated: July 6, 1992.

Boyd Evison,

*Acting Regional Director, Rocky Mountain Region.*

[FR Doc. 92-16708 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-70-M

## National Park Service

## Availability of the Draft Comprehensive River Conservation Study and Draft Environmental Impact Statement for the Hanford Reach of the Columbia River

**ACTION:** Notice of availability of the draft comprehensive river conservation study and draft environmental impact statement for the Hanford Reach of the Columbia River and schedule of public meetings.

Four management alternatives were developed to provide permanent protection to the Hanford Reach, in addition to the No Action alternative required by the National Environmental Policy Act. The Proposed Action recommends the Hanford Reach study area, 51 miles of river and approximately 86,000 acres of habitat, be designated as a National Wildlife Refuge and Wild and Scenic River, under U.S. Fish and Wildlife Service management. This alternative includes two options which impact the designating boundaries, Option 1 excludes private agricultural lands, and Option 2 includes private agricultural lands. The Hanford Reach is the last unimpounded segment of the Columbia River and includes critical spawning and rearing habitat for the fall chinook salmon, numerous historic and archaeological sites, biodiversity representative of the original Columbia Basin, threatened and endangered plant and animal species,and various recreational activities.

**DATES AND ADDRESSES:** The public is invited to comment on the Draft Comprehensive River Conservation Study and Draft Environmental Impact Statement. The public comment period will end Monday, September 7, 1992. Written comments should be mailed to Kristen Sycamore, National Park Service, Pacific Northwest Regional Office, 83 South King Street, suite 212, Seattle, Washington 98104. Comments received will be considered in the development of the final Comprehensive River Conservation Study and Environmental Empact Statement.

Public meetings to receive oral and written comments on this draft have been scheduled as follows:

Thursday, July 23, 1992 at 7 p.m.—Henry M. Jackson Federal Building, Room 168, 915 Second Avenue, Seattle, Washington

Monday, July 27, 1992 at 7 p.m.—Basin City Firehall, Road #170, Basin City, Washington

Tuesday, July 28, 1992 at 7 p.m.—Federal Building Auditorium, 825 Jadwin Avenue, Richland, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kristen Sycamore, National Park Service, Pacific Northwest Regional Office, 83 South King Street, suite 212, Seattle, Washington 98104, phone number (206) 553-5366. Reading copies will be available at the National Park Service, Pacific Northwest Regional Office (see above address); Seattle

Public Library (Government Publications Section), 1000 4th Avenue, Seattle, Washington; Department of Energy, Richland Field Office Reading Room, 825 Jadwin Avenue, Richland, Washington; Columbia National Wildlife Refuge, 735 East Main Street, Othello, Washington; U.S. Fish and Wildlife Service, 3704 Griffin Lane SE., suite 102, Olympia, Washington; Richland Public Library (Reference Section), 955 Northgate Avenue, Richland, Washington; and the Public Affairs Office, National Park Service, U.S. Department of the Interior, 18th and C Streets NW., room 3424, Washington, DC 20240.

Dated: June 26, 1992.

**Jonathan P. Deason,**

*Director, Office of Environmental Affairs.*

[FR Doc. 92-16703 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-70-M

## Niobrara/Missouri National Scenic Riverways; Intent to Prepare an Environmental Impact Statement

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement for the Missouri National Recreation River; Boyd and Knox Counties, Nebraska, and Charles Mix, Bon Homme, and Gregory Counties, SD.

**SUMMARY:** The National Park Service, in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq. and 42 U.S.C. 4332, as amended) and the Wild and Scenic River Act of 1968 (16 U.S.C. 1271 (et seq.), will prepare an environmental impact statement (EIS) to determine the boundary and future management practices for a 39-mile segment of the Missouri River between Ft. Randall dam and the head of the Lake Lewis and Clark, and also including the lower 25 miles of the Niobrara River east of the Knox County line and the lower eight miles of Verdigre Creek downstream of the town of Verdigre, Nebraska. In 1991, Congress designated the above river segments as a "recreation" unit of the National Wild and Scenic River System.

A range of alternatives will be considered in the EIS. These alternatives will analyze various management and protection practices and their impacts on natural resources, recreation use, and other current uses.

Federal, State, local agencies, and individuals or organizations are invited to participate in the scoping process. Nine public meetings were held in April and May, and a newsletter summarizing information gained will be mailed during the summer. Additional comments may be sent to the below address. The scoping process includes:

1. Identification of potential issues.

2. Identification of potential impact topics and topics to be analyzed in depth.

3. Determination of potential cooperating agencies and assignment of responsibilities.

The responsible official is Don H. Castleberry, Regional Director, Midwest Region, National Park Service, Omaha, Nebraska. The draft Environmental Impact Statement is expected to be available for public review in summer 1994.

As part of the scoping process, the public is encouraged to send written comments and suggestions concerning preparation of the Environmental Impact Statement, by October 1, 1992, to Mr. Warren H. Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, NE 68763-0591.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, NE 68763-0591, phone (402) 336-3970.

Dated: July 10, 1992.

**William W. Schenk,**

*Regional Director, Midwest Region.*

[FR Doc. 92-16813 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-70-M

## Niobrara/Missouri National Scenic Riverways; Intent To Prepare an Environmental Impact Statement

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement for Missouri National Recreational River; Cedar and Dixon Counties, Nebraska, and Yankton, Clay, and Union Counties, SD.

**SUMMARY:** The National Park Service, in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq. and 42 U.S.C. 4332, as amended) and the Wild and Scenic River Act of 1968 (16 U.S.C. 1271 et seq.), will prepare an environmental impact statement (EIS) to determine the boundary and future management practices for a 59-mile segment of the Missouri River between Gavins Point dam and Ponca State Park, Nebraska. In 1978, Congress designated the above river segment as a "recreation" unit of the Wild and Scenic River System, and a general management plan was approved in 1980. The river segment has been under management of the Army Corps of Engineers, by memorandum of agreement with the National Park Service.

The existing general management plan is in need of revision. A range of alternatives will be considered in the EIS. These alternatives will analyze various management and protection practices and their impacts on natural resources, recreation use, and other current uses.

Federal, State, local agencies, and individuals or organizations are invited to participate in the scoping process. Nine public meetings were held in April and May, and a newsletter summarizing information gained will be mailed during the summer. Additional comments may be sent to the below address. The scoping process includes:

1. Identification of potential issues.

2. Identification of potential impact topics and topics to be analyzed in depth.

3. Determination of potential cooperating agencies and assignment of responsibilities.

The responsible official is Don H. Castleberry, Regional Director, Midwest Region, National Park Service, Omaha, Nebraska. The draft Environmental Impact Statement is expected to be available for public review in summer 1994.

As part of the scoping process, the public is encouraged to send written comments and suggestions concerning preparation of the Environmental Impact Statement, by October 1, 1992, to Mr. Warren H. Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, NE 68763-0591.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, NE 68763-0591, phone (402) 336-3970.

Dated: July 9, 1992.

**William W. Schenk,**

*Regional Director, Midwest Region.*

[FR Doc. 92-16815 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-70-M

## Niobrara/Missouri National Scenic Riverways; Intent To Prepare an Environmental Impact Statement.

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement for the Niobrara National Scenic River; Brown, Cherry, Keya Paha, and Rock Counties, NE.

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**SUMMARY:** The National Park Service, in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq and 42 U.S.C. 4332, as amended) and the Wild and Scenic River Act of 1968 (16 U.S.C. 1271 et seq.), will prepare an environmental impact statement (EIS) to determine future management practices for the Niobrara National Scenic River east of Valentine, Nebraska. In 1991, Congress designated a 40-mile segment and a 30-mile segment between Borman Bridge and State Highway 137 bridge as a "scenic" unit of the National Wild and Scenic Rivers System. The six-mile connection between Chimney Creek and Rock Creek was included in this designation, but only if Congress does not authorize and appropriate funding for a water resource project on this segment within 5 years. This EIS will both determine whether the 6-mile segment meets criteria for inclusion in the National Wild and Scenic River System and determine future management practices should designation occur.

A range of alternatives will be considered in the EIS. These alternatives will analyze various management and protection practices and their impacts on natural resources, recreation use, and other current uses.

Federal, State, local agencies, and individuals or organizations are invited to participate in the scoping process. Nine public meetings were held in April and May, and a newsletter summarizing information gained will be mailed during the summer. Additional comments may be sent to the below address. The scoping process includes:

1. Identification of potential issues.
2. Identification of potential impact topics and topics to be analyzed in depth.
3. Determination of potential cooperating agencies and assignment of responsibilities.

The responsible official is Don H. Castleberry, Regional Director, Midwest Region, National Park Service, Omaha, Nebraska. The draft Environmental Impact Statement is expected to be available for public review in summer 1994.

As part of the scoping process, the public is encouraged to send written comments and suggestions concerning preparation of the Environmental Impact Statement, by October 1, 1992, to Mr. Warren H. Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, NE 68763-0591.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, NE 68763-0591, phone (402) 336-3970.

Dated: July 9, 1992.

**William W. Schenk**

*Regional Director, Midwest Region.*

[FR Doc. 92-16814 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-70-M

## Delaware and Lehigh Navigation Canal National Heritage Corridor; Meeting

**AGENCY:** National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

**DATES:** August 14, 1992 1:30 p.m.

**INCLEMENT WEATHER RESCHEDULE DATE:** None.

**ADDRESSES:** Carbon County Court House—Annex, Emergency Management Office, Lehigh Avenue, 3rd Floor, Jim Thorpe, PA.

**FOR FURTHER INFORMATION CONTACT:** Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, Room P-208, Bethlehem, PA 18018 (215) 861-9345.

**SUPPLEMENTARY INFORMATION:** The Commission was established by Public Law 100-692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA, 19106, attention: Deirdre Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

**Joseph W. Gorrell,**

*Acting Regional Director, Mid-Atlantic Region.*

[FR Doc. 92-16706 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-70-M

## Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m., on Wednesday, August 19, 1992, in the President's Conference Room on the 10th Floor of the Joseph Yenni Building, Jefferson Parish, 1221 Elmwood Park Boulevard, Harahan, Louisiana.

The Delta Region Preservation Commission was established pursuant to section 907 of Public Law 95-625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Superintendent's Report on all Units
—Update on Atchafalaya and Jazz Studies
—Discussion of Barataria Marsh Management
—Old Business
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130-2341, Telephone 504/589-3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: July 6, 1992.

**Richard W. Marks,**

*Acting Regional Director, Southwest Region.*

[FR Doc. 92-16616 Filed 7-15-92; 8:45 am]

BILLING CODE 4310-70-M

## Gettysburg National Military Park Advisory Commission; Meeting

**AGENCY:** Gettysburg National Military Park Advisory Commission, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the date of the fourth meeting of the Gettysburg National Military Park Advisory Commission.

**DATE:** July 30, 1992.

**TIME:** 2 p.m.–4 p.m.

**INCLEMENT WEATHER RESCHEDULE DATE:** None.

**ADDRESS:** Holiday Inn, 516 Baltimore Street, Gettysburg, Pennsylvania 17325.

**AGENDA:** To include, but not limited to, status of "Killer Angels", Sub-Committee reports to include a status briefing on the Historical Committee's public meeting, the Secretary's Battlefield Preservation Program update, and an operational update on the park.

**FOR FURTHER INFORMATION CONTACT:** Jose A. Cisneros, Superintendent, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 95 Taneytown Road, Gettysburg, Pennsylvania 17325.

**Joseph W. Gorrell,**

*Acting Regional Director, Mid-Atlantic Region.*

[FR Doc. 92–16704 Filed 7–15–92; 8:45 am]

BILLING CODE 4310-70-M

## Sudbury, Assabet and Concord Rivers Wild and Scenic Study, MA; Meeting of the Sudbury, Assabet and Concord Rivers Study Committee

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 s 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, July 30, 1992.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will convene at 7:30 p.m. at the Hunt Gymnasium, 90 Stow Street, Concord, MA, (to get to the gymnasium from Route 2 westbound, turn right onto Sudbury Road (first major intersection past Route 126). Follow Sudbury Road for 0.9 miles to Stow Street, which is the last left before Sudbury Road terminates at Main Street. The Hunt Gymnasium is at the end of the street on the right (parking on left).

**Agenda**

1. Welcome, introductions—Bill Sullivan;
2. Approval of minutes from 6/30 meeting;
3. Public Involvement Subcommittee report;
4. Resource Inventory update—Julia Blatt; A. Status Reports from Towns;
5. Overview of Wild and Scenic Rivers Act—Drew Parkin;
6. Opportunity for Public Comment;
7. Other Business;

A. Next Meeting Fates and Location.

Dated: July 6, 1992.

**John J. Burchill,**

*Acting Regional Director.*

[FR Doc. 92–16709 Filed 7–15–92; 8:45 am]

BILLING CODE 4310-70-M

## Completion of Inventory of Native American Human Remains and Associated Funerary Objects From the Dorchester Burials of Marlboro, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of the inventory of human remains and associated funerary objects from the four Dorchester burials of Marlboro, MA, now housed at the R.S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810. Representatives of culturally affiliated Indian tribes are advised that the human remains and associated funerary objects from the Dorchester burials will be retained by the museum until August 16, 1992, after which they may be repatriated to culturally affiliated groups.

The detailed inventory and assessment of the human remains and associated funerary objects from the Dorchester burials was made by Dr. Michael F. Gibbons, Jr. of the Department of Anthropology, University of Massachusetts, Boston, MA, in consultation with representatives of the Nipmuc Tribal Council. Osteological documentation of the remains indicates they are Native American. All four burials were found within the boundaries of the 17th century Indian Praying Town of Okommakamesit. The four burials appear to have been closely related, both spatially and culturally; all were extended, supine, and interred in coffins with no associated funerary objects, save nails, hinges, locks from the coffins. These traits are consistent with data from other Praying Indian mortuary sites in Massachusetts. The location and mortuary treatment argue strongly that these individuals were associated with the Okommakamesit Praying Town.

Cultural affiliation is difficult to determine for the occupants of the Praying Towns. Due to tremendous population loss and mixing during the 17th century, the cultural affiliation of the residents was not clear even at the time this Praying Town was occupied. Based on available sources, however, Nipmuc is the most appropriate tribal group. It is the considered opinion of the Massachusetts Commission on Indian Affairs that the Nipmuc are the most appropriate claimants.

Representatives of any Indian tribe believed to be culturally affiliated with the human remains and associated funerary objects from the Dorchester burials that have not been consulted should contact James W. Bradley, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover MA 01810, (508) 749–4490, before August 16, 1992.

Dated: July 6, 1992.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Chief, Archeological Assistance Division.*

[FR Doc. 92–16705 Filed 7–15–92; 8:45 am]

BILLING CODE 4310-70-M

## INTERNATIONAL TRADE COMMISSION

**[332-327]**

## Steel: Semiannual Monitoring Report; Investigation

**AGENCY:** United States International Trade Commission.

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**ACTION:** Institution of investigation.

**EFFECTIVE DATE:** July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nancy Fulcher, Office of Industries/Minerals and Metals Division (202–205–3434), or Mr. Mark Paulson, Office of Industries/Minerals and Metals Division (202–205–3429), U.S. International Trade Commission, Washington, DC 20436. Hearing-impaired persons are advised that information on this investigation can be obtained by contacting the Commission's TDD terminal on 202–205–2648.

**Background and Scope of Investigation**

Following receipt on June 11, 1992, of a request from the Committee on Ways and Means of the U.S. House of Representatives, the Commission on July 9, 1992, instituted investigation No. 332–327, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) concerning the status of, and prospects for, the U.S. steel industry for the period from January 1991 through December 1994.

As requested by the Committee, the Commission will provide semiannual reports in which it will seek to combine concise analysis of global industry trends and competitiveness issues with key product trade information. The reports will generally follow the format of, and contain trade data and information similar to that provided in, the reports on all carbon and alloy (including stainless steel) mill products which the Commission provided under investigation No. 332–228: Quarterly Report on the Status of the Steel Industry. In addition, each year one of the reports will contain an annual review focusing primarily on developments and conditions in the U.S. industry and will highlight significant developments in the industry's competitiveness since 1990 (e.g., operating performance, capital expenditures and R&D, technology, and environmental expenditures).

As requested by the Committee, the Commission intends to submit its first report under the new series no later than September 1992 (covering data from January through June 1992). Subsequent reports will be submitted in April and September, with the April report containing the annual review of the domestic industry. Reports will be provided through April 1995.

**Written Submissions**

Interested persons are invited to submit written statements concerning the matters to be addressed in the report containing the Commission's annual review of the domestic industry. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. (Generally, submission of separate confidential and public versions of the submission would be appropriate.) All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted to the Commission at the earliest practical date and should be received no later than February 26, 1993; February 25, 1994; and February 24, 1995. All submissions should be addressed to the Secretary to the Commission at the Commission's Office in Washington, DC.

By order of the Commission.

Issued: July 10, 1992.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92–16730 Filed 7–15–92; 8:45 am]

BILLING CODE 7020–02–M

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–55 (Sub #417X)]**

**CSX Transportation, Inc.—Abandonment Exemption—In Randolph County, WV**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904, the abandonment by CSX Transportation, Inc., of 4.58 miles of rail line between milepost BUL–0.00, near Norton, and milepost BUL–4.58, at Coalton, in Randolph County, WV subject to standard labor protective conditions.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 17, 1992. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by July 27, 1992, petitions to stay must be filed by July 31, 1992, and petitions for reconsideration must be filed by August 10, 1992. Requests for a public use condition must be filed by July 27, 1992.

**ADDRESSES:** Send pleadings referring to Docket No. AB–55 (Sub— No. 417X) to:

(1) Office of the Secretary Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Charles M. Rosenberger—J150, Senior Counsel, 500 Water Street, Jacksonville, FL 32202.

**FOR FURTHER INFORMATION CONTACT:** Richard Felder, (202) 927–5610 (TDD for hearing impaired: (202) 927–5721).

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 927–5721.)

*Decided:* July 8, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92–16765 Filed 7–15–92; 8:45 am]

BILLING CODE 7035–01–M

**[Finance Docket No. 32074]**

**Andrew M. Mueller, Jr., and Reading Blue Mountain and Northern Railroad Company—Continuance in Control—East Mahanoy & Hazleton Railroad Company**

**AGENCY:** Internstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission, under 49 U.S.C. 10505, exempts Andrew M. Muller, Jr. (Muller), and the Reading Blue Mountain and Northern Railroad Company, a class III rail carrier that is wholly owned by Muller, who also wholly owns the Blue Mountain and Reading Railroad Company, a class II rail carrier, from the prior approval requirements of 49 U.S.C. 11343 for their continuation in control of the East Mahonoy & Hazleton Railroad Company, which will become a class III rail carrier through the acquisition and operation of certain rail lines of Consolidated Rail Corporation, notice of which is expected to be filed in Finance Docket No. 32076.

**DATES:** This exemption will be effective on August 17, 1992. Petitions for reconsideration must be filed by July 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Felder, (202) 927–5610 (TDD for hearing impaired: (202) 927–5721).

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

*Decided:* July 8, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92–16763 Filed 7–15–92; 8:45 am]

BILLING CODE 7035–01–M

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).



## DEPARTMENT OF JUSTICE

**Lodging of Consent Decree Pursuant to Clean Air Act**

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 29, 1992 a proposed Consent Decree in *United States* v. *Asbestos Abatement and Disposal Corporation*, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleged violations of the Clean Air Act, the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Asbestos, 40 CFR part 61, subpart M., and Administrative Order No. EPA–5–87–113A(a)–14 (issued July 9, 1987). The Consent Decree requires the defendant to pay a civil penalty of $40,000 in full settlement of the claims set forth in the Complaint filed by the United States. The Consent Decree further requires the Defendant to cease all asbestos abatement activities.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Asbestos Abatement and Disposal Corporation*, D.J. Ref. No. 90–5–2–1–1381.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114–1748 (contact Assistant United States Attorney Arthur Harris); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Susan Tannenbaum); and (3) the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, Room 1541, 10th & Pennsylvania Avenue NW., Washington, DC. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, Box 1097, 601 Pennsylvania Avenue NW., Washington, DC 20004, telephone (202) 347–7829. For a copy of the Consent Decree please enclose a check in the amount of $2.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

**John C. Cruden,**

*Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 92–16737 Filed 7–15–92; 8:45 am]

BILLING CODE 4410–01–M

**Consent Decree in Action to Enjoin Violations of the Clean Air Act ("CAA")**

In accordance with Departmental Policy, 28 CFR 50.7, 36 FR 19029, notice is hereby given that two Consent Decrees in *United States* v. *Danto Environmental Corp., et al.*, (N.D. Ohio), Civil Action No. C–87–1752, were lodged with the United States District Court for the Northern District of Ohio on July 6, 1992. The Consent Decrees provide for penalties for violating sections 112(c) and 114 of the Clean Air Act, 42 U.S.C. 7412(c) and 7414, as amended on November 15, 1990 by P.L. 101–549, and the National Emission Standards for Hazardous Air Pollutants for asbestos (the "asbestos NESHAP"), 40 CFR part 61, Subpart M, and require Defendant Standard Oil Company of Ohio and Defendant Norfolk and Western Railway Company to immediately achieve full compliance with the asbestos NESHAP.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Danto Environmental Corp., et al.*, D.O.J. Ref. No. 90–5–2–1–1046.

The Consent Decrees may be examined at the Office of the United States Attorney, suite 500, 1404 East Ninth Street, Cleveland, Ohio, 44114–1704; at the Region V office of the U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois, 60604; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Washington, DC 20004 (202–347–2072). A copy of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $8.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

**John C. Cruden,**

*Chief, Environment and Natural Resources Division.*

[FR Doc. 92–16734 Filed 7–15–92; 8:45 am]

BILLING CODE 4410–01–M

**Lodging of Consent Decree Pursuant to the Clean Water Act**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *North American Philips Corp.* (D. Me.), Civil Action No. 92–234–P–C, was lodged on July 1, 1992, with the United States District Court for the Maine. The complaint alleges continual violations of the national categorical pretreatment standards in the Nonferrous Metals Forming Category, 40 CFR 471.54 and the Nonferrous Metals Manufacturing Category, 40 CFR 421.105, at defendant's metal manufacturing facility in Lewiston, Maine. The consent decree requires Philips to pay a civil penalty of $500,000, completely eliminate its discharge from the wastestreams that form the basis of the complaint, and construct a Supplemental Environmental Project worth $580,000. The Supplemental Environmental Project involves the installation of closed loop and evaporation systems that will enable Philips to drastically decrease the amount of water that it currently discharges to the local POTW and recycle, in solid form, much of the waste that it had been discharging in its wastewater.

The Department of Justice will receive, for a period of thirty (30) days

from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *North American Philips Corp.*, DOJ Ref. #90-5-1-1-3650.

The proposed consent decree may be examined at the Office of the United States Attorney, 100 Middle Street Plaza, East Tower, 6th Floor, Portland, ME 04101; the Regional I Office of the Environmental Protection Agency, One Congress Street, Boston, MA; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202-347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.25, payable to the Consent Decree Library.

**John C. Cruden,**

*Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 92-16735 Filed 7-15-92; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 18, 1992, a proposed Consent Decree in *United States of America* v. *Pacific American Asbestos Control Corporation*, was lodged with the United States District Court for the Eastern District of California.

The proposed Consent Decree resolves the United States' claims against Pacific American Asbestos Control Corporation ("Pacific American") under section 112(b) of the Clean Air Act, 42 U.S.C. 7412(b), as alleged in a complaint filed on May 17, 1991. The Complaint alleged Pacific American's violations of three different regulatory provisions of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, which is published at 40 CFR part 61 subpart M (1990). Under the proposed Consent Decree defendant Pacific American will pay a civil penalty to the United States of twenty-two thousand dollars and no cents ($22,000) and agrees with the NESHAP for asbestos in the future.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States of America* v. *Pacific American Asbestos Control Corporation*, DOJ Ref. No. 90-5-2-1-1511.

The proposed Consent Decree may be examined at the Office of the Untied States Attorney for the Eastern District of California, 3305 Federal Building, 650 Capitol Mall, Sacramento, California 95814, or at the Office of the Regional Counsel, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94103. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (tel.: (202) 347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of six dollars and fifty cents ($6.50) (25 cents per page reproduction costs) payable to Consent Decree Library.

**John C. Cruden,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 92-16733 Filed 7-15-92; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Pursuant to CERCLA

Notice is hereby given that a proposed consent decree in *United States* v. *U.T. Alexander et al.*, Civil Action No. G-86-267, was lodged on July 2, 1992 with the United States District Court for the Southern District of Texas.

The Complaint in this enforcement action was filed under sections 106 and 107 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9606 and 9607, on July 18, 1986, against numerous generators and transporters in the Texas City, Texas area. It seeks injunctive relief and reimbursement of costs incurred by the United States in responding to the release or threat of release of a hazardous substance from the Motco (formerly Petro Processors) site in Lamarque, Texas. The consent decree requires the six defendants, including Amoco Chemical Company, Amoco Production Company, Marathon Oil Company, Monsanto Company, Quantum Chemical Corporation and Texas City Refining, Inc., to pay the United States $314,652 in past response costs for the remediation of the MOTCO Site between April 1, 1986, and August 31, 1991.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *U.T. Alexander, et al.*, DOJ Ref. #90-11-3-74.

The proposed consent decree may be examined at the Office of the United States Attorney, Southern District of Texas 515 Rusk Avenue, Third Floor, Houston, Texas 77002; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202-347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Roger Clegg,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 92-16736 Filed 7-15-92; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree

In accordance the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint was filed on June 24, 1992, in *United States* v. *Western Kansas Asbestos Removal Inc.*, Civil Action No. 92-1334-K in the United States District Court for the District of Kansas, alleging that in August 1990, the defendant Western Kansas Asbestos Removal Inc. ("WKAR"), an asbestos removal contractor, failed to adequately wet friable asbestos material as it was being stripped or removed from the Minneola Elementary/High School in Minneola, Kansas, in violation of section 112 of the Clean Air Act ("the Act"), 42 U.S.C. 7412, and the National Emissions Standards for Hazardous Air pollutants for asbestos ("asbestos NESHAP"), 40 CFR 61.147(c). The complaint further alleged that defendant WKAR failed to

ensure that the friable asbestos material remained wet until collected for disposal and dropped asbestos-containing material on the work area in violation of the Act, 42 U.S.C. 7412, and the asbestos NESHAP, 40 CFR 61.147(e).

Contemporaneously with the filing of the complaint, a Consent Decree between the United States and defendant WKAR was lodged with the court. Under the terms of the proposed Consent Decree, the Defendant agrees to (a) obey all provisions of the asbestos NESHAP, 40 CFR part 61, subpart M, (b) develop and implement an Asbestos Control Program and complete Employee Training Requirements, (c) pay stipulated penalties for violations of the Consent Decree, and (d) pay the United States ten thousands dollars ($10,000.00) in penalty.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530. All comments should refer to *United States* v. *Western Kansas Asbestos Removal Inc.*, Civil Action No. 92-1334-K, D.J. Ref. No. 90-5-2-1-1668.

The proposed Consent Decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency:

*EPA Region VII*

Contact: Julie Van Horn, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 (913) 551-7010.

*United States Attorney's Office*, United States Attorney, Civil Division, 1200 Epic Center, 301 North Main, Wichita, Kansas, 67202 (316) 269-6481.

Copies of the proposed Consent Decrees may also be examined at the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20044, (202) 347-2072. A copy of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy of the Decrees, please enclose a check in the amount of $3.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**John C. Cruden,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 92-16749 Filed 7-15-92; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-27,259]

### Haight Enterprises, Forks, WA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 18, 1992, in response to a worker petition which was filed on May 18, 1992, on behalf of workers at Haight Enterprises, Forks, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 8th day of July, 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-16784 Filed 7-15-92; 8:45 am]

BILLING CODE 4510-30-M

### Adjustment Assistance for Workers Impacted By a Proposed North American Free Trade Agreement

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of consultation; request for comments.

**SUMMARY:** During deliberations on the extension of Fast Track authority for negotiation of the proposed North American Free Trade Agreement (NAFTA) with Mexico and Canada, the Administration's position on a worker adjustment program to respond to potential dislocations resulting from NAFTA was developed and outlined in the President's May 1, 1991, Message to Congress. Although studies show that the proposed NAFTA will result in a net gain of jobs for U.S. workers, some workers will be adversely affected. The Administration is fully committed to a worker adjustment program that is adequately funded and that ensures that workers who may lose their jobs as a result of the agreement will receive prompt, comprehensive, and effective services. Worker adjustment services, whether provided through the improvement or expansion of an existing program or through the creation of a new program, should be targeted to provide dislocated workers with appropriate services in a timely manner. Further, the Administration is committed to working with the Congress to ensure that the objectives outlined above are met and adequately funded. Any needed changes to U.S. law to implement such a program should be in place by the time the agreement enters into force and could appropriately be addressed in legislation implementing a NAFTA.

The Employment and Training Administration has begun the consultation process on a worker adjustment program, and as part of that process, has requested informed input from a variety of business, labor, and other interested parties. Responses from these parties will be used by the Administration as it works with the Congress to ensure that workers who may lose their jobs as a result of a North American Free Trade Agreement will receive prompt, comprehensive, and effective services. A copy of the letter being sent to these parties, and the Consultation Outline being used to guide the discussions, are published as attachments to this Notice. Individuals and organizations interested in providing input to the consultation process for the development of an adjustment program for workers impacted by a proposed NAFTA may use the Consultation Outline as a guide for their comments.

**DATES:** Comments should be submitted by July 31, 1992.

**ADDRESS:** Interested parties may submit comments to: Mr. James D. Van Erden, Administrator, Office of Work-Based Learning, Employment and Training Administration, U.S. Department of Labor, room N-4649, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Doug Holl.

**FOR FURTHER INFORMATION CONTACT:** Mr. James D. Van Erden, Administrator, Office of Work-Based Learning. Telephone: (202) 535-0540 (this is not a toll free number).

Signed at Washington, DC, this 10th day of July, 1992.

**Roberts T. Jones,**

*Assistant Secretary of Labor.*

### Attachment A

July 1, 1992.

Dear:

During the discussions leading to Congressional extension of the Fast Track Agreement for the proposed North American Free Trade Agreement (NAFTA), the Administration committed to work with the Congress to ensure that there is adequate assistance and effective retraining for dislocated workers. Such a program, newly developed, would be adequately funded and designed to provide prompt, comprehensive, and effective services to workers impacted by the NAFTA. This program would be put in place when an agreement enters into force.

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In order to develop a program that meets the desired goals, the Administration also agreed to carry out an extensive consultation process with the Congress, business, labor and other interested parties. Now that the framework of the proposed agreement is becoming clearer, the Department of Labor in conjunction with the United States Trade Representative has begun these consultations.

This process began in May and continues at this time with discussions with key Senate and House members and staff. We are now seeking additional input from many diverse organizations and interest groups that will help to further define the issues and possible program options.

I am asking for your input in this effort and for you to review the series of questions arrayed on the enclosed form. We would like your response within 15 days in order to ensure sufficient time for review. Should you have additional comments later, we would be glad to consider them if time allows. Thank you for your time.

Your response will help us develop a program that will assist impacted workers and allow them to successfully adapt to changes in the workforce as a result of the NAFTA.

Sincerely,

Roberts T. Jones,

*Assistant Secretary of Labor.*

Enclosure.

**Attachment B—Consultation Outline North American Free Trade Agreement (NAFTA)**

The Administration is committed to seeking broad input into the process to develop an adjustment program that can assist workers who may be adversely affected by a North American Free Trade Agreement. This Consultation Outline is designed to organize and guide the discussions around several key topics, and is being shared with a wide range of individuals and organizations. Comments regarding the issues identified under these topics will be factored into the Administration's ongoing consultation with the Congress. This is not a survey or a poll. The consultation process will not be served by focusing on the number or length of the responses, but your thoughtful insights and constructive comments to further the discussions on these important issues will be appreciated.

*I. Impact of a North American Free Trade Agreement*

A. What is your best estimate of the extent to which a Free Trade Agreement will result in worker dislocations?

B. How will the impacts of a Free Trade Agreement be differentiated by State or region? While States/areas will be most affected (e.g., border states and areas, urban areas, midwest industrial belt)?

C. How will the impacts of a Free Trade Agreement be differentiated by product, industry or sector? Which products, industries or sectors will be particularly affected?

1. Are any of the products, industries or sectors identified above already subject to significant structural adjustment and worker dislocations (stemming from competition, technological innovations, defense down-sizing, or other factors)?

2. Should particular industries or sectors be identified as "Adjustment Targets" for purposes of focusing worker assistance (e.g., industrywide certification)? Give pros and cons.

*II. Scope of an Adjustment Program*

A. Can or should this program address:

1. Only those dislocations caused by a Free Trade Agreement, or

2. Dislocations caused by a Free Trade Agreement and by future international economic integration, investment, and trade agreements, or

3. All dislocations caused by unfavorable trade balances, or

4. All dislocations resulting from legislative or federal decisions?

B. Can an effective adjustment program be designed when some or all of the potential impact may be several years in the future and spread out over several years? If so, how should it be constructed?

*III. Timing*

A. Can or should this program provide services in anticipation of impact by a Free Trade Agreement (i.e., prior to dislocation)? If so, under what conditions? How early?

1. For workers?

2. For firms?

3. For communities?

B. Should an adjustment program have provisions to avert layoffs that might be expected to occur as a result of a Free Trade Agreement? Under what conditions?

C. If different sectors are subject to different trade liberalization schedules under a Free Trade Agreement, should worker adjustment assistance be keyed in any way to those schedules?

D. Should worker adjustment assistance be available only during certain designated time periods on the assumption that Free Trade Agreement implementation schedules will be of particular significance during those periods?

*IV. Eligibility*

The Department of Labor currently administers two programs to help workers who lose their jobs through no fault of their own.

The Trade Adjustment Assistance program provides adjustment assistance to workers who are adversely affected by increased imports. When a petition is submitted to the Department of Labor, a determination must be made that increased imports contributed importantly to decreased sales and production, leading to worker separations in a particular company. Affected workers are entitled to services and benefits, including income support while in approved training for up to 52 weeks following exhaustion of Unemployment Insurance benefits.

The Economic Dislocation and Worker Adjustment Assistance program authorizes retraining and readjustment services for workers who have been laid off or terminated and are unlikely to return to their previous industry or occupation, without regard to the cause of the dislocation. Enrollment decisions are based on local priorities; eligible workers are not automatically entitled to receive assistance. Funds are made available to the states and substate areas which have the primary responsibility for program design and the delivery of services based on local decisions.

A. Should the following be eligible for programs and benefits:

1. Workers who lose their jobs when companies move to Mexico?

2. Workers who lost their jobs as a result of increased imports from Mexico?

3. Workers who lose their jobs because their work has been shifted to non-American workers (e.g., U.S. Truck drivers displaced by Mexican truck drivers)?

4. Workers who lose their jobs because of a loss of export markets or market share to foreign competitors?

5. Firms that are impacted by loss of markets or market share?

6. Communities that suffer significant economic impact?

7. Spouses and other family members?

B. Should program benefits be available where impacts are direct, indirect, or community based? (i.e., only those companies that are directly affected; service and supplier sectors; other workers or firms in an impacted community; etc.)

1. How will the impact be linked with a Free Trade Agreement? (e.g., defined as "contributed importantly," "substantial cause," * * *?)

C. Should a time limit be set for establishing eligibility based on the impact of a Free Trade Agreement?

D. Should workers be eligible for adjustment assistance if imports from Mexico supplant supplies from other countries with little overall change in the level of imports?

E. Should program services be provided to impacted workers who are on non-permanent layoffs? Which services?

F. Should there be special provisions for workers near retirement? Should these provisions entail relaxed eligibility requirements, special services, extended duration of benefits, and/or other features?

G. Should a worker dislocated by a Free Trade Agreement be required to be proactive while receiving benefits? If so, what constitutes proactive? Should this requirement be subject to modification or waiver? If so, when?

H. Who makes eligibility determinations? (e.g., Federal entity as with Trade Adjustment Assistance petitions, State/local entity as for Economic Dislocation and Worker Adjustment Assistance programs, or other?)

1. What standards should govern this process (timeliness, appeal procedures, etc.)?

2. What immediate assistance, if any, should be provided while a determination is in process? Who should provide this assistance?

I. Should a Free Trade Agreement certification apply to all workers in a firm or plant if only a portion of the firm or plant is directly impacted by the Free Trade Agreement?

J. If sufficient data to make certifications are not available, should new data collection efforts be undertaken? How extensive should such efforts be? (e.g. should firms be required to disclose proprietary information related to such events as moving facilities to Mexico?)

*V. Services and Benefits*

A. What services do you consider most important for workers who are impacted by a Free Trade Agreement? (List in order of importance)

B. How are appropriate services determined? What mechanism should guide this process?

C. Should a U.S. adjustment assistance program in response to a Free Trade Agreement be conditioned on whether or not Canada/Mexico also provide for similar worker assistance? If so, should a trinational body set standards for the types and levels of assistance that might be provided workers affected by a Free Trade Agreement?

D. Are the important services unique to Free Trade Agreement related impacts? If so, how would such services differ from those available under the Trade Adjustment Assistance program? under the Economic Dislocation and Worker Adjustment Assistance Program?

E. How should this adjustment assistance program link with existing programs (i.e., Trade Adjustment Assistance program, the Economic Dislocation and Worker Adjustment Assistance program, Employment Service activities, Unemployment Compensation program)? How should it link with existing forms of assistance available under other public and private programs such as Pell grants, employer-union training funds, etc.?

F. Should services be an entitlement for workers impacted by a Free Trade Agreement? Which workers?

G. Should affected workers automatically receive income support? (i.e., should income support be an entitlement? An option based on case-by-case decision?)

1. All affected workers?

2. Those on temporary lay-off?

3. Only those for whom suitable employment is not immediately available?

4. Only those enrolled in training?

5. Only those needing income support?

6. Those actively involved in seeking a new job?

H. What process should govern approval of support payments? How frequently should eligibility for payments be reviewed?

I. Should income support be an alternative or supplement to Unemployment Compensation or other entitlements? Or, be available only after other entitlements are exhausted?

J. Should there be a maximum benefit level? If so, should this level be set nationally? State by state? Locally?

1. What factors should be used to determine this level, and should the factors be determined on a local, State or national basis? (Possible factors: Average weekly wage, maximum weekly unemployment compensation benefit level, length of prior employment.)

K. Should there be a maximum duration for benefits payments? The same maximum duration for all participants?

L. What services are most important for firms that are impacted by a Free Trade Agreement?

1. Which of those services should be provided through Department of Labor (DOL) training and reemployment programs?

2. What other services should be provided through other Federal and State programs? How should these other programs be linked with services for workers affected by a Free Trade Agreement?

M. How should Federal programs and services be linked with State services?

N. What services are most important for communities that are impacted by a Free Trade Agreement?

O. How can training and reemployment services for workers affected by a Free Trade Agreement support the adjustment process for communities?

P. Which other Federal and State programs and services are important for community adjustment? How should these programs be linked with a DOL program for workers impacted by a Free Trade Agreement

Q. Who should be responsible for initiating action and overseeing delivery?

R. Who should actually provide services to workers, firms, and communities?

S. Should organized labor be involved in planning and delivery of services? Under what circumstances?

*VI. Funding*

A. How can an adequate level of funding be guaranteed for a program with potential delayed impact five or ten years hence? How can funds be provided to address events when and where they are needed?

1. How is the funding level to be estimated? What are the specific factors on which an estimate should be based?

2. Should funding be conditioned on actual impact of a Free Trade Agreement? Anticipated impact?

B. If the ultimate level of funding is insufficient to provide "full" services to all workers impacted by the Free Trade Agreement, how should services be limited?

1. Limit enrollment on the basis of need or other criteria?

2. Take in all eligible workers, but limit services? Which services?

3. First come, first served?

4. No limit on services, require supplemental appropriations?

C. To what extent, if any, should program beneficiaries (workers, firms, and/or communities) share the cost of an adjustment program? In particular, how should firms and communities contribute if the potential program outcome is financially advantageous?

VII. Performance and Oversight

A. What is (are) the program's goal(s) for affected workers? Provision of training, jobs, jobs that pay wages at a certain replacement level, job retention, or others?

B. How should we measure success in achieving these goals?

*VIII. Other Comments/Concerns/ Information*

A. Please attach additional sheets to provide any additional comments.

B. Please indicate your affiliation:

1. Academia.
2. Business.
3. Labor Organization.
4. Program Operator.
5. Federal Government.
6. State Government.
7. Local Government.
8. Other (Please specify).

C. Your Name (optional).

D. Name of Organization (optional).

E. Phone Number (optional).

Thank you for your cooperation.

[FR Doc. 92-16785 Filed 7-15-92; 8:45 am]

BILLING CODE 4510-30-M

## Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 27, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 27, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of July 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Phillips Petroleum Co. (Wkrs) | Bartlesville, OK | 07/06/92 | 06/23/92 | 27,451 | Advanced Composites. |
| H & H Star Energy, Inc. (Wkrs) | Houston, TX | 07/06/92 | 06/22/92 | 27,452 | Oil, and Gas Exploration. |
| Welltech, Inc. (Wkrs) | Dickinson, ND | 07/06/92 | 06/23/92 | 27,453 | Oil Well Services. |
| Franks Casing Crew & Rental Tools (Wkrs) | Winnie, TX | 07/06/92 | 05/15/92 | 27,454 | Leasing Oil Rig Tools & Equipment. |
| Noble Drilling (US), Inc. (Wkrs) | Lafayette, LA | 07/06/92 | 06/24/92 | 27,455 | Oil Drilling. |
| Conoco, Inc., Oklahoma City Div. (Wkrs) | Oklahoma City, OK | 07/06/92 | 06/18/92 | 27,456 | Drill, Produce and Sell Oil and Gas. |
| Wilmer, Inc. (ILGWU) | Bowmanstown, PA | 07/06/92 | 06/26/92 | 27,457 | Ladies' Dresses. |
| Resitech (Wkrs) | Houston, TX | 07/06/92 | 06/24/92 | 27,458 | Oil and Gas Consulting. |
| Trimfoot Co., (Co) | Potosi, MO | 07/06/92 | 06/19/92 | 27,459 | Children's Athletic Shoes & Dress Shoes. |
| Exxon Company USA (Wkrs) | Corpus Christi, TX | 07/06/92 | 06/19/92 | 27,460 | Gas Producers. |
| Transco Energy, Aviation Dept. (Wkrs) | Houston, TX | 07/06/92 | 06/08/92 | 27,461 | Natural Gas & Natural Gas Liquids. |
| Transco Energy Co. (Wkrs) | Houston, TX | 07/06/92 | 06/08/92 | 27,462 | Natural Gas & Natural Gas Liquids. |
| Clint Hurt Drilling, Inc. (Wkrs) | Midland, TX | 07/06/92 | 06/04/92 | 27,463 | Oil and Gas Drilling & Exploration. |
| Newfield Publications (Wkrs) | Columbus, OH | 07/06/92 | 06/23/92 | 27,464 | Packaging & Distribution of Publications. |
| Parker Hannifin, O-Ring Div. (Co.) | McAllen, TX | 07/06/92 | 06/23/92 | 27,465 | O-Rings. |
| General Electric Appliances (UAW) | Milwaukee, WI | 07/06/92 | 06/25/92 | 27,466 | Dishwashers and Trash Compactors. |
| Gallagher-Kaiser Corp. (SMW) | Detroit, MI | 07/06/92 | 06/16/92 | 27,467 | Paint Finishing Equipment. |
| Griffin, International (SMW) | Farmington, MI | 07/06/92 | 06/16/92 | 27,468 | Paint Finishing Equipment. |
| Haden-Schweitzer Corp. (SMW) | Madison Hts, MI | 07/06/92 | 06/16/92 | 27,469 | Paint Finishing Equipment. |
| A.B. Myr Sheet Metal Industries (SMW) | Belleville, MI | 07/06/92 | 06/16/92 | 27,470 | Paint Finishing Equipment. |
| Sheet Metal Industries, Inc. (SMW) | Milvindale, MI | 07/06/92 | 06/16/92 | 27,471 | Paint Finishing Equipment. |
| Tri-Mark Metal Corp. (SMW) | Detroit, MI | 07/06/92 | 06/16/92 | 27,472 | Sheet Metal Paint Finishing Equipment. |
| Vanderbush Industrial (SMW) | Mt. Clemens, MI | 07/06/92 | 06/16/92 | 27,473 | Industrial Paint Finishing Equipment. |
| Performance Semiconductor Corp. (Co.) | Sunnyvale, CA | 07/06/92 | 06/23/92 | 27,474 | Semiconductors. |
| Trimfoot Co. (Co.) | Farmington, MO | 07/06/92 | 06/19/92 | 27,475 | Infant's & Childrens' Shoes. |

[FR Doc. 92-16782 Filed 7-15-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,040]

## Vector Seismic Data Processing Co., Denver, CO; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Vector Seismic Data Processing Co., Denver, Colorado. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-27,040; Vector Seismic Data Processing Co., Denver, Colorado (June 30, 1992).

Signed at Washington, DC this 9th day of July 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-16783 Filed 7-15-92; 8:45 am]

BILLING CODE 4510-30-M

## Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The (DOL) is publis information, a health care faci employing noni These organiza on file with DO

**ADDRESSES:** Ar inspecting or re attestation may place of busine

Attestations explanatory sta available for in Immigration Nu Disclosure Roo Service, Emplo Administration room N4456, 20 NW., Washingt

Any complai attestation or a that attestation local office of t Division of the Administration Labor. The add found in many directories, or writing to the V Employment St Department of Constitution A DC 20210.

Jim Bushmiaer, Stu
Mary Harmann Har
Mr. Willis Buttje, He
Mr. David A. Seely,
Mr. Solomon Goldr
Mr. Fred Manchur,
Mr. William L. Gilbe
Mr. Dennis R. Brun
Ms. Mary Williams,
Mr. Steve Schmidt,
Mr. Ed Scott, Los A
Mr. A. Jason Geisi
Mr. Thomas G. Hol
Ms. Sharon Bailey,
Mr. Sean O'Neal, D
Ms. Makoto Nakay
Mr. A. Jason Geisi
Mr. David Lavinsoh
Mr. Reggie Panis,
Mr. John R. Cochr
Mr. A. Jason Geisi
Mr. A. Jason Geisi
Mr. A. Jason Geisi
Mr. Dyer Mitchell,
Mr. A. Jason Geisi
Mr. A. Jason Geisi
Mr. Robert Scharm
Mr. Jay Weinstein,
Mr. Frank V. Sacco

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

**ADDRESSES:** Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:**

**Regarding the Attestation Process:**

Chief, Division of Foreign Labor Certifications: U.S. Employment Service. Telephone: 202–535–0163 (this is not a toll-free number).

**Regarding the Complaint Process:**

Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–523–7605 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504. 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the

**ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the

**ADDRESSES** section of this notice.

Signed at Washington, DC., this 9th day of July 1992.

**Robert J. Litman,**

*Acting Director, United States Employment Service.*

## Division of Foreign Labor Certifications Approved Attestations

[06/01/92 to 06/30/92]

| CEO—Name/Facility name/Address | State | Approval date |
|---|---|---|
| Jim Bushmiaer, Stuttgart Memorial Hospital, P.O. Box 1905, Stuttgart, 72160, 501–673–3511 | AR | 06/26/92 |
| Mary Harmann Hams, St. Luke's Medical Center, 1800 E. Van Buren, Phoenix, 85006, 602–251–8400 | AZ | 06/12/92 |
| Mr. Willis Buttje, Helena Regional Med. Ctr., P.O. Box 788, Helena, 72342, 501–338–5882 | AZ | 06/19/92 |
| Mr. David A. Seely, Desert Hospital Corp., 1150 N. Indian Avenue, Palm Springs, 92262, 619–323–6267 | CA | 06/05/92 |
| Mr. Solomon Goldner, Santa Anita Convalescent Hosp., 5522 Gracewood Avenue, Temple City, 91780, 818–579–0310 | CA | 06/05/92 |
| Mr. Fred Manchur, San Joaquin Community Hosp., 2615 Eye Street, Bakersfield, 93301, 805–395–3000 | CA | 06/05/92 |
| Mr. William L. Gilbert, Merced Community Med. Ctr., 301 E. 13th Street, Merced, 209–385–7114 | CA | 06/05/92 |
| Mr. Dennis R. Brune, South Bay Hospital, 514 N. Prospect, Redondo Beach, 90277, 310–376–9474 | CA | 06/05/92 |
| Ms. Mary Williams, New Starts Homes, Inc., 9430 Topanga Canyon Blvd., Chatsworth, 91311, 818–341–5597 | CA | 06/09/92 |
| Mr. Steve Schmidt, Lancaster Community Hospital, 43830 North 10th St. West, Lancaster, 93534, 805–948–4781 | CA | 06/09/92 |
| Mr. Ed Scott, Los Angeles Community Hospital, 4081 East Olympic Blvd., Los Angeles, 90023, 213–267–0477 | CA | 06/09/92 |
| Mr. A. Jason Geisinger, Hillhaven San Leandro, First Healthcare Corp., d.b.a., San Leandro, 94577, 510–357–4015 | CA | 06/09/92 |
| Mr. Thomas G. Hennessy, Bay Harbor Hosp./Harbor Health Systems, Harbor City, 90710, 310–325–1221 | CA | 06/12/92 |
| Ms. Sharon Bailey, Registered Nursing Services, 41773 Jennifer Avenue, Hemet, 92544, 714–925–9167 | CA | 06/12/92 |
| Mr. Sean O'Neal, Delano Regional Med. Ctr., 1401 Garces Highway, Delano, 93216, 805–725–4800 | CA | 06/16/92 |
| Ms. Makoto Nakayama, San Gabriel Valley Med. Ctr., 218 South Santa Anita Street, San Gabriel, 91776, 818–570–6526 | CA | 06/16/92 |
| Mr. A. Jason Geisinger, Pine Towers Convalescent Hosp., 2707 Pine Street, San Francisco, 94115, 415–563–7600 | CA | 06/16/92 |
| Mr. David Levinsohn, Sherman Oaks Hosp. & Health C, 4929 Van Nuys Boulevard, Sherman Oaks, 91403, 818–981–7111 | CA | 06/16/92 |
| Mr. Reggie Panie, Good Samaritan Hospital, 901 Olive Drive, Bakersfield, 93308, 805–399–4461 | CA | 06/19/92 |
| Mr. John R. Cochran III, Martin Luther Hospital, 1830 Romneya, Anaheim, 92801, 714–491–5681 | CA | 06/26/92 |
| Mr. A. Jason Geisinger, Bay Pointe Nursing Pavillion, First Healthcare Corp., d.b.a. St. Petersburg, 33712, 813–867–1104 | FL | 06/05/92 |
| Mr. A. Jason Geisinger, Hillhaven Rehab. Ctr., First Healthcare Corp., d.b.a. Tampa, 33614, 813–872–2771 | FL | 06/05/92 |
| Mr. A. Jason Geisinger, Conval. Ctr. of the Palm Beach, First Healthcare Corp., d.b.a. West Palm Beach, 33401, 407–832–6409 | FL | 06/05/92 |
| Mr. Dyer Mitchell, Munroe Regional Med. Ctr., 131 S.W. 15th Street, Ocala, 32670, 904–351–7273 | FL | 06/05/92 |
| Mr. A. Jason Geisinger, Hillhaven Convel. Ctr. of Sara, First Healthcare Corp., d.b.a. Sarasota, 34238, 813–922–8009 | FL | 06/05/92 |
| Mr. A. Jason Geisinger, Boca Raton Convel. Ctr., First Healthcare Corp., d.b.a. Boca Raton, 33487, 407–391–5200 | FL | 06/05/92 |
| Mr. Robert Schermann, Abbey Delray South, 1717 Homewood Boulevard, Delray Beach, 33445, 407–272–9600 | FL | 06/09/92 |
| Mr. Jay Weinstein, Miami Beach Community Hospital, 250 63rd Street, Miami Beach, 33141, 305–868–2780 | FL | 06/09/92 |
| Mr. Frank V. Sacco, Memorial Hospital—Hollywood, 3501 Johnson Street, Hollywood, 33021, 305–987–2000 | FL | 06/12/92 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[06/01/92 to 06/30/92]

| CEO—Name/Facility name/Address | State | Approval date |
|---|---|---|
| Mr. Frank V. Secco, Memorial Hospital West, 703 N. Flamingo Road, Pembroke Pines, 33028, 305-985-3435 | FL | 06/12/92 |
| Mr. A. Jason Geisinger, Hillhaven Convalescent Ctr., First Healthcare Corp., d.b.a. Delray Beach, 33484, 407-495-3186 | FL | 06/16/92 |
| Mr. Arlen J. Reynolds, AMI/Palm Beach Gardens Med. C, 3360 Burns Rd., Palm Beach Gardens, 33410, 407-622-1411 | FL | 06/16/92 |
| Mr. James Simon/Carol Rogers, Lower Florida Key Health Syte, 5900 West Jr. College Road, Key West, 33040, 305-294-5531 | FL | 06/19/92 |
| Mr. Benjamin Everett, Sunrise Rehabilitation Hosp., Broward Health Corp., d.b.a Fort Lauderdale, 33361, 305-749-0300 | FL | 06/23/92 |
| Mr. A. Jason Geisinger, Hillhaven Healthcare Center, First Healthcare Corp., d.b.a. Sanford, 32771, 407-322-6566 | FL | 06/26/92 |
| Mr. David Buesone, Tampa General Hospital, Davis Blvd., Davis Islands, 33606, 813-251-7463 | FL | 06/26/92 |
| Mr. Jim Worm, Hialeah Hospital, a Not-For-P Versacare Medical Center, Hialeah, 33013, 305-693-6100 | FL | 06/26/92 |
| Ms. Kathleen T. DuCasse, Miami Heart Institute, 4701 Meridian Avenue, Miami Beach, 33140, 305-672-1111 | FL | 06/26/92 |
| Mr. Emil Miller, University General Hosp. of S, Community Health Systems, Inc., Seminole, 34648, 813-397-5511 | FL | 06/26/92 |
| Mr. Myers R. Kurtz, Central State Hospital, P.O. Box, Milledgeville, 31062, 912-453-4126 | GA | 06/05/92 |
| Mr. David L. Hill, Wahiawa General Hospital, 128 Lehua Street, Wahiawa, 96786, 808-621-8411 | HI | 06/26/92 |
| Mr. W. Alan Stevenson, Wood River Medical Center, Sun Valley Road, Sun Valley, 83353, 208-622-3323 | ID | 06/05/92 |
| Ms. Charlotte Kohn, Dobson Plaza, Inc., 120 Dodge, Evanston, 60202, 708-869-7744 | IL | 06/05/92 |
| Sam Gorenstein, Metropolitan Nursing Center, Elmwood Park, Inc., Elmwood Park, 60635, 708-452-9200 | IL | 06/05/92 |
| Ms. Joan Robinson Carl, Alden Mgmt. Services, Inc., 4200 West Peterson Avenue, Chicago, 60646, 312-286-3683 | IL | 06/12/92 |
| Ms. Flora Steinberg, York Convalescent Center, 127 W. Diversey, Elmhurst, 60126, 708-530-5225 | IL | 06/12/92 |
| Mr. Robert Hartman, Imperial Convalescent & Geria Ctr.—Claridge Imperial Ltd. d.b.a. Chicago, 60614, 312-935-7474 | IL | 06/12/92 |
| Richard Schuit, Rest Haven West Christian N.C, 3450 Saratoga Avenue, Downers Grove, 60515, 708-969-2900 | IL | 06/22/92 |
| Ms. Michelle Keen, Lake Cook Terrace Nursing Ctr., 222 Dennis Drive, Northbrook, 60062, 708-564-0505 | IL | 06/23/92 |
| Ms. Lucille Engelamen, Pershing Convalescent Home, I, 3900 South Oak Park Avenue, Stickney, 60402, 708-484-7543 | IL | 06/26/92 |
| Mr. Gary Grondin, North Central Dialysis Center, 55 East Washington Street, Chicago, 60602, 312-332-6892 | IL | 06/29/92 |
| Mr. Maurice I. May, Hebrew Rehab. Center for Aged, Roslindale, 02131, 617-325-8000 | MA | 06/16/92 |
| Mr. Ronald Marx, Leland Memorial Hospital, 4409 East/West Highway, Riverdale, 20737, 301-891-5652 | MD | 06/05/92 |
| Mrs. Joan Finnerty, Suburban Hospital, Inc., 8600 Old Georgetown Rd., Bethesda, 20814, 301-530-2060 | MD | 06/05/92 |
| Mr. Ronald R. Peterson, The Francis Scott Key Med. Ct., 4940 Eastern Avenue, Baltimore, 21224, 410-550-0100 | MD | 06/26/92 |
| Mr. A. Jason Geisinger, Bangor Convalescent C, First Healthcare Corp., d.b.a. Bangor, 04401, 207-947-8131 | ME | 06/23/92 |
| Mr. Paul H. Wunderlich, St. Luke's Episcopal-Presbyte Hospital, Chesterfied, 63017, 314-434-1500 | MO | 06/16/92 |
| Mr. A. Jason Geisinger, Hillhaven Rose Manor Conval. C, First Healthcare Corp., d.b.a. Durham, 27704, 919-477-9605 | NC | 06/05/92 |
| Mr. A. Jason Geisinger, Hillhaven Conval. Ctr. of Chapel Hill, Chapel Hill, 27514, 919-967-1418 | NC | 06/05/92 |
| Mr. Carl Underland, Voorhees Pediatric Facility, 1304 Laurel Oak Rd., Voorhees, 08043, 609-346-3300 | NJ | 06/12/92 |
| Mr. Warren E. Geger, William B. Kessler Mem. Hosp., 600 S. White Horse Pike, Hammonton, 08037, 609-561-6700 | NJ | 06/12/92 |
| Mr. William J. Monagle, Somerset Medical Center, 110 Rehill Avenue, Somerville, 08876, 908-685-2200 | NJ | 06/12/92 |
| Ms. Natalie Zanetich-Fatigati, Hamilton Park Health Care Ctr., 525-535 Monmouth Street, Jersey City, 07302, 201-653-6800 | NJ | 06/16/92 |
| Mr. Lowell Fein, Eagle Rock Convalescent Ctr., T/A West Caldwell Care Center, West Caldwell, 07006, 201-226-1100 | NJ | 06/23/92 |
| Mr. Stephen Lazovitz, Lakewood of Voorhees Associat, 1302 Laurel Oak Road, Voorhees, 08043, 609-346-1200 | NJ | 06/23/92 |
| Mr. John P. Ferguson, Hackensack Medical Ctr., 30 Prospect Avenue, Hackensack, 07601, 201-996-3801 | NJ | 06/26/92 |
| Mr. Sam Solasz, Bialystoker Home & Infirmary the Aged, New York, 10002, 212-475-7755 | NY | 06/09/92 |
| Mr. Gilbert Preira, Daughters of Jacob Geriatric, 1160 Teller Ave., Bronx, 10456, 212-293-1500 | NY | 06/09/92 |
| Mr. Gary Horan, Our Lady of Mercy Med Ctr., 600 East 233rd Street, Bronx, 10466, 212-920-9000 | NY | 06/19/92 |
| Mr. Arthur Wheeler, Windsor Employment Agency, In, One Cutter Mill Road, Great Neck, 11021, 516-487-2818 | NY | 06/19/92 |
| Mr. Gary Horan, Our Lady of Mercy Med. Ctr., Pelham Bay Division, Bronx, 10461, 212-430-6000 | NY | 06/19/92 |
| Mr. Alexander Hartman, Bainbridge Nursing Home, 3518 Bainbridge Avenue, Bronx, 10467, 212-655-1700 | NY | 06/23/92 |
| Mr. Alexander Eartman, Wayne Nursing Home, 3530 Wayne Avenue, Bronx, 10467, 212-655-1700 | NY | 06/23/92 |
| Ms. Marilyn J. Baader, Crouse Irving Memorial Hospit, 736 Irving Avenue, Syracuse, 13210, 315-470-7521 | NY | 06/26/92 |
| Mr. John P. Ellis, Deaconess Hospital, 5501 North Portland, Oklahoma City, 73112, 405-946-5581 | OK | 06/26/92 |
| Ms. Martha Jean Minnit, SNI Facilities Management, In, Flourtown Commons, Suite 112, Flourtown, 19031, 215-836-9000 | PA | 06/26/92 |
| Ms. Clem P. Ham, Marion County Hospital District, P.O. Drawer 1150, Marion, Marion, 29571, 803-423-8590 | SC | 06/23/92 |
| Mr. Kevin Hicks, Sun Towers Hospital, 1801 North Oregon, El Paso, 79902, 915-521-1200 | TX | 06/05/92 |
| Mr. Doug Streckert, Valley Reg'l Med. Ctr., 1 Ted Hunt Blvd., Brownsville, 78521, 512-831-9611 | TX | 06/05/92 |
| Mr. Bruce W. Reinhardt, Coronado Hospital, One Medical Plaza, Pampa, 79065, 806-665-3721 | TX | 06/12/92 |
| Mr. Glen Marshall, Doctors Hospital LTD, 1984, 5815 Airline Dr., Houston, 77076, 713-695-8041 | TX | 06/12/92 |
| Mr. Rex C. McRae, Arlington Mem. Hosp. Foundati, 800 West Randol Hill Road, Arlington, 76012, 817-548-6160 | TX | 06/19/92 |
| Mr. Art Layne, Brownwood Regional Hospital, P.O. Box 780, Brownwood, 76804, 915-646-8541 | TX | 06/22/92 |
| Mr. William A. Gregory, Diagnostic Center Hospital, 6447 Main, Houston, 77030, 713-790-0790 | TX | 06/23/92 |
| Mr. Steven G. Kelly, Community Memorial Hospital, 125 Buena Vista Circle, South Hill, 23970, 804-447-3251 | VA | 06/12/92 |
| Total Attestations: 85 | | |

[FR Doc. 92-16788 Filed 7-15-92; 8:45 am]

BILLING CODE 4510-30-M

## Mine Safety and Health Administration

### Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Area at Underground Coal Mines and Related Provisions; Meeting

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** This notice provides the date, time, place and agenda summary for the fifth meeting of the Mine Safety and Health Administration's Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Area at Underground Coal Mines and Related Provisions.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Ballston Tower #3, 4015 Wilson Boulvard, room 631, Arlington, Virginia 22203; phone (703) 235-1910.

**SUPPLEMENTARY INFORMATION:** Under sections 101(a) and 102(c) of the Federal Mine Safety and Health Act of 1977, a public meeting of the advisory committee will be held as follows:

August 3-5, 1992, from 8:00 a.m. until 4 p.m. at the Denver Marriott City Center (Denver Ballroom suite 1 and 2) located

at 1701 California Street, Denver, Colorado 80202.

The Secretary of Labor appointed this advisory committee to make recommendations on conditions under which belt entry air could be safely used in the face areas of underground coal mines.

The purpose of the meeting is to obtain information relative to: (1) The conditions under which belt haulage entries could be safely used as intake air courses to ventilate working places; (2) minimum velocities in conveyor belt haulageways; and (3) ventilation of escapeways.

The agenda for the fifth meeting will be the development of recommendations on conditions under which belt entry air could be safely used in the face areas of underground coal mines.

The public is invited to attend. During the meeting, the Chairperson will provide a half hour, twice each day, to allow interested persons to comment. Official records of the meeting will be available for public inspection at the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, room 631, Arlington, Virginia 22203.

Dated: July 9, 1992.

**Patricia S. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 92-16661 Filed 7-15-92; 8:45 am]

BILLING CODE 4510-43-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Presenting and Commissioning Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Presenting Organizations Panel A Section) to the National Council on the Arts will be held on August 4, 1992 from 9 a.m.—7 p.m., August 5-6 from 9 a.m.—6 p.m., and August 7 from 9 a.m.—5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 7 from 2 p.m.—5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on August 4 from 9 a.m.—7 p.m., August 5-6 from 9 a.m.—6 p.m., and August 7 from 9 a.m.—2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

**Yvonne M. Sabine,**

*Director, Panel Operations, National Endowment for the Arts.*

[FR Doc. 92-16740 Filed 7-15-92; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL SCIENCE FOUNDATION

### Permit Application Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Application Received Under the Antarctic Conservation Act of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 17, 1992. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESS:** Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

**FOR FURTHER INFORMATION CONTACT:** Thomas F. Forhan at the above address or (202) 357-7817.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. *Applicant:* G. A. McFeters, Department of Microbiology, Montana State University, Bozeman, MT 59717.

*Activity for Which Permit Requested*

Introduction of nonindigenous species into Antarctica. The applicant requests permission to take three bacterial cultures and one Phage culture to McMurdo Station to be used in a study of enteric bacteria in the antarctic environment. These cultures would be carried to McMurdo Station in sealed containers, suitable for shipping through the mail, by J.P. Howington. At McMurdo Station they will be handled in a safe manner according to established microbiological techniques using aseptic technique and will not be released into the environment. Following the experiments and before our return to the U.S., the cultures will be killed by autoclaving in the laboratory at McMurdo Station.

*Location*

McMurdo Station.

*Dates:* 08/22/92-01/15/93.

**Guy Guthridge**

*Manager, Polar Information Program, Division of Polar Programs.*

[FR Doc. 92-16828 Filed 7-15-92; 8:45 am]

BILLING CODE 7555-01-M

### Committee Management; Establishment

The Assistant Director for Computer and Information Science & Engineering has determined that the establishment of the Advisory Committee for

Computer and Information Science and Engineering (CISE), is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

**NAME OF COMMITTEE:** Advisory Committee for Computer and Information Science and Engineering (CISE)

**PURPOSE:** To provide advice, recommendations, and oversight to the Assistant Director (CISE) on matters relating to support of research, education, and infrastructure to facilitate policy deliberations, program development and management, and identification of disciplinary needs and areas of opportunity.

**BALANCED MEMBERSHIP PLAN:** The Advisory Committee for Computer and Information Science and Engineering will be composed of 15–20 leading scientists, engineers, and educators representing CISE disciplines. Members will be drawn from academia, industry, and appropriate governmental agencies to insure representation across disciplinary, geographic, institutional, and demographic lines. Consideration will be given to enhancing representation for women, minority, younger scientists, and scientists with disabilities.

**RESPONSIBLE NSF OFFICIAL:** Dr. A. Nico Habermann, Assistant Director, Computer and Information Science & Engineering, National Science Foundation, room 306, 1800 G Street, NW., Washington, DC 20550 (202) 357–7938.

Dated: July 13, 1992.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 92–16721 Filed 7–15–92; 8:45 am]

BILLING CODE 7555-01-M

## Investigator Financial Disclosure Policy

**AGENCY:** National Science Foundation

**ACTION:** Notice of proposed changes to award conditions and proposal content.

**SUMMARY:** The National Science Foundation (NSF) proposes to issue revised award conditions and revised requirements for proposal submission in order to require limited and targeted disclosure of investigator financial interests and to deal with any conflicts of interests revealed.

**DATES:** The National Science Foundation will welcome any comments on the proposed policy. In order to be assured consideration comments must be postmarked no later than September 14, 1992.

**ADDRESSES:** Comments may be addressed to Miriam Leder, Assistant General Counsel, National Science Foundation, Washington, DC 20550.

**FOR FURTHER INFORMATION CONTACT:** Miriam Leder, 202–357–9435

**SUPPLEMENTARY INFORMATION:** The requirement that awardee institutions collect information on possible investigator conflicts of interests and submit such information to the Foundation has been approved by the Office of Information and Regulatory Affairs under Paperwork Reduction Act Control Number _____. The Foundation estimates that preparing the required disclosure will take 20 minutes for each investigator listed on a grant proposal. Comments on the validity of the estimate are invited. The time required to comply with the information collection requirement will vary from institution to institution depending on the amount of information an institution elects to obtain, the timing of its collection, and the degree to which an institution already collects such information.

The proposed changes would create an NSF policy related to conflicts of interests and financial disclosure by faculty members, investigators and professional employees at grantee institutions who are involved in NSF-funded research and educational activities. The policy is intended to ensure that institutions supported by NSF responsibly review financial ties of those faculty and staff to ensure that institutional resources, student work, and NSF support are directed to their intended scientific and educational ends.

NSF favors and has actively encouraged increased involvement of academic researchers and educators with industry and with private entrepreneurial ventures. However, such involvements create increased risk of conflict between the private interests of individuals, or of the companies with which they are involved, and the public interest that NSF funding should serve.

These risks have aroused concern in the scientific and engineering communities, in the public media, and in Congress, as well as at NSF. The proposed policy would respond to those concerns. Further, though NSF believes that significant conflicts of interests are rare in the work that NSF funds, we have no data by which to demonstrate the point. The proposed policy would create a bank of data to serve as a reality check.

The proposed policy would have the following primary features:

A. A requirement that any NSF grantee employing more than fifty persons maintain "an appropriate written and enforced policy on conflict of interests". NSF intends to rely heavily on the policies and procedures of grantees to resolve conflicts issues.

B. Minimum requirements for what must be in an institution's policy. These include (a) limited and targeted financial disclosure by faculty and staff, (b) designation of persons to review the disclosures and resolve actual or potential problems revealed, (c) enforcement mechanisms, and (d) arrangements for informing research sponsors about problems and their resolution.

C. A requirement that with each proposal to NSF the applicant institution must indicate that the investigators have been required to disclose any significant financial ties they (or family or business associates) have with parties whose financial interests could be directly and significantly affected by the work to be funded. Any ties disclosed must be listed in an attachment to the proposal, which must also describe measures, if any, that would be taken to minimize risk of conflict of interests.

NSF particularly expects disclosure, and institutional review on which NSF can rely, where:

a. The proposed work would evaluate or further develop any commercial product or product line;

b. The research would have direct relevance to any off campus entrepreneurial venture (not the grantee) with which the investigator is involved; or

c. The research would have direct and immediate bearing on work the investigator does as a consultant.

D. A statement that financial ties revealed to NSF will not enter into NSF's evaluation of merit. The proposal attachment revealing such ties would be submitted to NSF in a sealed enveloped, which would be opened only after merit review and only if the responsible NSF program has recommended an award. Only then would NSF consider any conflict-of-interests issues. It would separately determine whether an award should be made and, if so, what conditions, if any, should be placed in the award (or what arrangements, if any, should be made with the grantee or the principal investigator) to deal with any issues raised.

The following indicates the changes that would be made to NSF issuances to establish and communicate the proposed policy. Copies of the NSF Grant General Conditions and the NSF publication Grants for Research and Education in Science and Engineering may be obtained from the contact listed above. Copies of the NSF Grant Policy Manual may be obtained from the Government Printing Office.

**What Would Be Required in Institutional Policies**

*Grnat General Conditions*

Insert a new paragraph 30:

If the grantee employs more than fifty persons, the grantee shall maintain an appropriate written and enforced policy on conflict of interests. See Grant Policy Manual *310.

Renumber subsequent paragraphs accordingly.

*Grant Policy Manual*

In GPM 518.3 "Consulting and Other Outside Activities of Principal Investigators Under NSF Awards", add to subparagraph "a.":

However, see GPM 310 on Conflict of Interests Policies.

Strike all after subparagraph "a.", including Exhibits V–1 and V–2.

Add a new GPM 310 "Conflict of Interests Policies":

a. NSF requires each grantee employing more than fifty persons to maintain an appropriate written and enforced policy on conflict of interests. Guidance for such policies has been issued by university associations and scientific societies.*

b. At minimum, an institutional conflict-of-interests policy should require that each faculty member or professional employee involved in NSF-funded research or educational activities disclose to a responsible representative of the institution:

- Any off-campus entrepreneurial venture or business (not the grantee) in which the individual is a principal;
- Any relevant consulting arrangement for pay or other employment for pay the individual has or expects to have with other organizations;
- Any significant financial ties with any firm or other entity that supplies or is likely to supply (other than by donation) equipment, materials, or services of significant value for work being performed at the institution by the individual or under the individual's direction;
- Any significant financial ties with, or research support from, any firm that markets, produces, or has in pre-market testing a commercial product or product line that the individual's work is intended either to evaluate or to further develop; and
- Any other significant financial ties with parties whose financial interests would be, or to a reasonable observer familiar with the facts would seem to be, directly and significantly affected by research or other work to be performed by the individual.

The disclosed ties should include any that immediate family or close business associates have with such parties as well as the individual's own ties, but need not include routine small holdings of common stock or other corporate securities.

c. The institutional policy should designate one or more persons to review such disclosures and to resolve actual or potential conflicts problems they reveal. It should include adequate enforcement mechanisms and arrangements for keeping federal and other sponsors of research and educational activities at the institution appropriately informed of such problems and their resolution.

* See On Preventing Conflicts of Interests in Government-Sponsored Research at Universities, a Joint Statement Of the Council of the American Association of University Professors and the American Council on Education (1964); Principles to Govern College and University Compensation Policies for Faculty Engaged in Sponsored Research, sponsored by the Association of American Universities, the American Council on Education, and the National Association of State Universities and Land-Grant Colleges (1978); and Managing Externally Funded Programs at Colleges and Universities, especially "Principle X. Research Ethics and Conflicts" issued by the Council on Government Relations (1989).

Renumber GPM 310–40 accordingly.

**What Would Be Required in Proposals**

*Grants for Research and Education in Science and Engineering*

In Part I, Guidelines For Preparation of Proposals, right after "Project Description":

Disclosure

The applicant institution must indicate on the proposal cover sheet that the investigators have been required to disclose any significant financial ties they (or immediate family or close business associates of the investigators) have with parties whose financial interests would be, or to a reasonable observer familiar with the facts would seem to be, directly and significantly affected by the work to be funded and that any ties disclosed are listed in an attachment to the proposal.

In particular, NSF expects disclosure of:

- Any significant financial ties with, or research support from, a firm that markets, produces, or has in pre-market testing a commercial product or product line that the research being proposed is intended either to evaluate or to further develop;
- Any off-campus entrepreneurial venture or other business (not the grantee) with which an investigator has significant financial ties, if what is learned or accomplished in the research or other work being proposed is likely to have direct relevance to the business or operations of that venture or business; and
- Any employment of an investigator as a consultant or otherwise, if what is learned or accomplished in the research or other work being proposed is expected to bear directly on the work the investigator does or expects to do for the employing firm or industry.
- If such ties are disclosed, the attachment should specify any arrangements that have been made to safeguard against conflict of interests.

Such ties, if they exist, may be entirely proper, particularly given the proposed safeguards. NSF will not consider them in evaluating the scientific, technical, or educational merit of the proposal. NSF will, however, consider them subsequently in deciding whether to make an award and possibly in formulating conditions for such an award.

In Appendix II, "Checklist for Proposal Submission", add a new box labeled "Disclosure of ties with interested parties (See p. 4)" under the box labeled "Current and pending support".

Vicki De Hullu,

*Legal Office Administrator.*

[FR Doc. 92–16777 Filed 7–15–92; 8:45 am]

BILLING CODE 7555–01–M

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**Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting**

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* August 3–4, 1992; 8:30 a.m. to 5 p.m.

*Place:* Room 543 (on August 3) and room 540 (on August 4), 1800 G Street, NW., Washington, DC.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Merrell L. Patrick, NSF HPCC Coordinator, CISE, rm. 306, National Science Foundation, 1800 G St.,

NW., Washington, DC 20550. Telephone: (202) 357–7936.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Grand Challenge Applications Group proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 13, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92–16804 Filed 7–15–92; 8:45 am]

BILLING CODE 7555-01-M

## Special Emphasis Panel in Science Resources Studies; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* August 6, 1992; 9 a.m. to 5 p.m.

*Place:* Room 543, 1800 G Street NW., Washington, DC.

*Type of Meeting:* Open.

*Contact Person:* Dr. Ann Lanier, Project Director for the Survey of Scientific and Engineering Research Facilities at Universities and Colleges, Division of Science Resources Studies, rm. 609–L, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 634–4300.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To advise on the preparation of the congressionally mandated report, *Scientific and Engineering Research Facilities at Universities and Colleges: 1992.*

*Agenda:* To review the draft of the report and suggest additions and/or modifications that would improve the presentation of the data.

Dated: July 13, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92–16805 Filed 7–15–92; 8:45 am]

BILLING CODE 7555-01-M

## NATIONAL TRANSPORTATION SAFETY BOARD

## Public Hearing in Austin, Texas, on Pipeline Accident

In connection with the investigation of the explosion and fire involving a petroleum products pipeline in Brenham, Texas, on April 7, 1992, the National Transportation Safety Board will convene a 2-day public hearing at 9 a.m. (local time), on Wednesday, July 29, 1992, at the Omni Austin Hotel, 700 San Jacinto, Austin, Texas. For more information, contact Mike Benson, Office of Public Affairs, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594, telephone (202) 382–0660.

Dated: July 8, 1992.

**Ray Smith,**

*Alternate Federal Register Liaison Officer.*

[FR Doc. 92–16702 Filed 7–15–92; 8:45 am]

BILLING CODE 7533-01-M

## NUCLEAR REGULATORY COMMISSION

## Fuel Cycle Licensee Workshop

**AGENCY:** Nuclear Regulatory Commission

**ACTION:** Notice of workshop meeting with fuel cycle facility licensees.

**SUMMARY:** The Nuclear Regulatory Commission will sponsor a fuel cycle licensee workshop to bring together NRC officials and fuel cycle licensee representatives to discuss various NRC programs and policies and to aid in the management and implementation of safety programs at fuel cycle facilities.

**DATES:** Workshop will be sponsored on September 15, 1992, from 8 a.m. to 5 p.m. through September 17, 1992, from 8 a.m. to 12 p.m.

**ADDRESSES:** Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Merri Horn, Office of Nuclear Material Safety and Safeguards (301) 504–2606 or Robert Wilson, Office of Nuclear Material Safety and Safeguards (301) 504–2126.

**SUPPLEMENTARY INFORMATION:** The workshop is designed to provide information on NRC policy and procedures applicable to fuel cycle licensees, develop an understanding of NRC program objectives, and provide an update on certain pending issues and policy matters. The workshop agenda will include such topics as integrated safety analyses, Bulletin 91–01, regulatory issues (NUREG–1324), decommissioning, and lessons learned from evens. Question and answer sessions will be held for each major topic.

Dated at Rockville, Maryland, this 8th day of July 1992.

For The Nuclear Regulatory Commission.

**Jerry J. Swift,**

*Acting Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.*

[FR Doc. 92–16780 Filed 7–15–92; 8:45 am]

BILLING CODE 7590-01-M

## Maintenance Inspection Guidance Meeting

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) will hold a public workshop to discuss revisions to an maintenance inspection procedure used by NRC inspectors during the interim period from the present until the implementation of the Maintenance Rule. The effective date of the Maintenance Rule (10 CFR 50.65) is July 1996.

**DATES:** Submit comments by August 25, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

The meeting will be held from 9 a.m.–5 p.m. on August 18, 1992, at Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852, telephone (301) 468–1100.

Persons planning to attend the workshop are requested to complete a registration form and sent it to Thomas Foley, M/S 10 A 19, U.S. Nuclear Regulatory Commission, Washington DC 20555 by August 3, 1992.

**ADDRESSES:** Send written comments to: David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, Washington, DC 20555, or hand deliver comments to 7920 Norfolk Avenue, Bethesda, MD between 7:45 a.m. and 4:15 p.m. on Federal workdays. The draft revision of the NRC Inspection Procedure IP 62703, "Monthly Maintenance Observation," and comments received, may be examined and/or copied for a fee at the NRC Public Document Room, 2120 L Street NW., Washington DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Thomas Foley, Office of Nuclear Reactor Regulation, Washington, DC 20555, telephone (301) 504–1038.

**SUPPLEMENTARY INFORMATION:** NRC Inspection Procedure IP 62703, "Monthly Maintenance Observation," has been revised to provide additional clarification and guidance to NRC inspectors and to de-emphasize the process-oriented approach to regulation and inspection of maintenance activities. This change organizes the procedure for the inspector in a manner that will better emphasize the overall objectives of this transition.

The NRC believes that it would be beneficial to obtain public comment on this guidance from all interested parties, including special interest groups at a public workshop. The workshop will consist of an opening plenary session, break-out sessions, and a closing summary session.

During the plenary session the NRC representatives will discuss the general contents of the interim maintenance inspection procedure. This will be followed by the four parallel break-out sessions where attendees will have the opportunity ask questions about the inspection procedure, or to make comments or suggestions for improvement. The break-out sessions are intended to provide attendees a better opportunity to participate in the discussions and provide their input into the development of the maintenance inspection procedure. Both headquarters and region based NRC staff will attend each break-out session to provide a balanced perspective on inspection of maintenance activities. The workshop will conclude with a summary session where the issues discussed during break-out sessions will be summarized.

The topic of discussion will be Inspection Procedure (IP) 62703. Since this procedure has been extensively revised, attendees are free to review and comment on all aspects of the document. Comments on individual inspection elements (and sub-elements), and additional areas where clarification of the inspection guidance could be beneficial, are also requested. Some of the major revisions to the document include the following:

1. The inspection activities § 02.01 was reorganized in a manner that was intended better emphasize to inspectors the overall objective of viewing the individual inspection requirements as being part of a larger, results-oriented objective rather than as individual, process oriented elements each unto themselves. The change involved the grouping of the inspection requirements into three categories:

a. Effectiveness of maintenance.
b. Safety of personnel.
c. Adequate control of plant risk.

2. The General Guidance section (page 3) was extensively revised. The section on Goals was enhanced to clarify that inspectors should concentrate on observation of significant inspection activities and should make use of Probabilistic Risk Assessment (PRA) data and risk-based inspection guides (RIGs) to help focus inspections. The section on inspection priorities was revised to emphasize inspection of maintenance activities rather than the program or procedures. The section on post maintenance testing was revised to emphasize the need for adequate testing prior to returning equipment to service. The section on shutdown risk was revised to emphasize the need for licensees to carefully plan and coordinate,anticipate outages of equipment to preclude the possible loss of shutdown core cooling.

3. The Specific Guidance section (page 6) was also extensively revised. This section provides additional inspection guidance for some of the inspection activities in § 02.01 (page 1). Guidance regarding the use of vendor supplied technical information was added to section a.7. Guidance regarding the training and qualification of contractor personnel was added to section a.8. Guidance regarding the importance of engineering support, root cause analysis, and trending of maintenance data was added to section a.9. Guidance on voluntary entry into a technical specification limiting conditions for operation (LCOs) action statement to perform maintenance was added to section c.1.

The NRC staff intends to prepare new maintenance inspection procedures which will be used after July 10, 1996, to verify implementation of the maintenance rule. Applicable inspection elements from IP 62703 may be incorporated into the new inspection procedures if appropriate. However it is premature at this time to determine which specific elements will be incorporated into the new procedures. The NRC staff intends to monitor the industry efforts to implement the maintenance rule and participate in the planned verification and validation of the industry guideline document. The inspection procedures will be developed by January 1996. The staff plans to hold another workshop at that time to permit interested members of the public to comment on the proposed procedures. The staff also plans to perform pilot inspections at several sites during the period from January 1996 to July 1996 to validate the inspection procedures. These pilot inspections will be performed at sites that have (essentially) implemented the maintenance rule. These pilot inspections will be performed for information only; no violations against the maintenance rule will be issued.

NRC management understands the importance of the continued oversight of maintenance activities and will afford it a high level of management attention during the interim period.

The public is asked to comment on the plans described above for the preparation of inspection procedures and performance of pilot inspections.

Dated at Bethesda, Maryland, this 10th day of July, 1992.

For the Nuclear Regulatory Commission.

**Thomas Foley,**

*Senior Operations Engineer, Performance and Quality Evaluation Branch, Division of Licensee Performance and Quality Evaluation, Office of Nuclear Reactor Regulation.*

**Registration Form United States Nuclear Regulatory Commission Maintenance Procedure Workshop August 18, 1992**

Name _____
Title _____
Position _____
Company/Organization _____
_____
_____
Address _____
_____
Telephone Number _____
Suggested Topics Related to "Monthly Maintenance Observation," IP 62703, to be Considered for Discussion:
_____
_____
_____
_____
_____

Send Registration Form to: Thomas Foley, M/S 10 A19, US Nuclear Regulatory Commission, Washington, DC 20555.

[FR Doc. 92-16761 Filed 7-15-92; 8:45 am]
BILLING CODE 7590-01-M

**[Docket No. 40-8027; Source Materials License No. SUB-1010]**

## Sequoyah Fuels Corp.; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby give that by letter dated May 11, 1992, Diane Curran, Esq., on behalf of Native Americans for a Clean Environment (NACE), filed a "Request for Emergency Enforcement Action" (Petition) with the U.S. Nuclear Regulatory Commission staff for consideration as a petition under 10 CFR 2.206. The Petition requests the NRC to

immediately order Sequoyah Fuels Corporation (SFC) to stop transporting liquid raffinate fertilizer off the SFC site. The Petition seeks relief based on the following contentions: (1) The raffinate contains potentially toxic radionuclides and heavy metals and is also very caustic; (2) on May 4, 1992, when Mr. Manuel Alvarez was driving his truck on a public highway past one of SFC's properties known as the "Old Monsanto Ranch" where raffinate was being sprayed from a truck onto a pasture, Mr. Alvarez's face and arms were sprayed with raffinate that was carried by the wind through the open window of this truck, and as a result, Mr. Alvarez suffered second and third degree burns; (3) in at least three other instances, persons, animals, or vegetation have been injured by exposure to the raffinate.

Petitioner's request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. By letter dated July 7, 1992, the Director, Office of Nuclear Material Safety and Safeguards, acknowledged receipt of the Petition and described the investigation that the NRC staff had already initiated prior to knowledge that NACE was submitted a Petition. The NRC staff first learned of the alleged incident involving Mr. Alvarez on Sunday, May 10, 1992, at which time the staff observed his injuries and was informed that he already received medical treatment. On May 11, 1992, the NRC staff contacted SFC and Mr. Alvarez. SFC agreed to investigate the matter, and also agreed to provide medical evaluation to Mr. Alvarez to assess the nature and cause of his injuries. Mr. Alvarez initially agreed to medical followup to be arranged by SFC, but apparently changed his mind on May 12, declined SFC's offer, and declined to make medical records related to his injuries available to NRC. SFC confirmed its offer of medical assistance in writing to Mr. Alvarez on May 19, 1992. As of June 15, 1992, Mr. Alvarez had not responded to SFC's offer of medical evaluation, but he did provide the NRC staff with copies of medical records related to his injuries.

On May 20, 1992, SFC submitted a preliminary response to the Petition. SFC maintains that it is unlikely that the fertilizer being sprayed that day could have reached the highway where Mr. Alvarez alleges he was injured, and, even if so, it is unlikely that the fertilizer could have caused such injuries.

The Petition does not allege any violation of NRC requirements, and there does not appear to be any. While the NRC staff is still evaluating the Petition, there is insufficient evidence at this time to conclude that Mr. Alvarez's injuries were caused by any SFC activity, or that there is a substantial public health hazard from SFC's use of raffinate fertilizer which would warrant the immediate enforcement action requested by the Petition. Therefore, the request for immediate action has been denied.

The NRC will take appropriate action on the Petition within a reasonable time. A copy of the Petition is available for inspection and copying in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and the Local Public Document Room, Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

Dated at Rockville, Maryland, this 7th day of July 1992.

For the Nuclear Regulatory Commission.

**Robert M. Bernero,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 92-16779 Filed 7-15-92; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Resolution of Complaint of Price-Undercutting of Subsidized Cheese Imports

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of Resolution of Complaint of Price-Undercutting of Subsidized Cheese Imports.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that the Government of Switzerland has provided the necessary assurances that the duty-paid wholesale price of imported industrial grade Swiss or Emmentaler cheese produced in Switzerland will not be less than the domestic wholesale market price of similar articles produced in the United States.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Seiger, Senior Economist (202) 395-3077, Office of the United States Trade Representative.

**SUPPLEMENTARY INFORMATION:** On June 18, 1992, The United States Trade Representative received a letter from the Secretary of Agriculture informing her of the Secretary's finding that subsidized imports of industrial grade Swiss or Emmentaler cheese produced in Switzerland were undercutting the wholesale price of Swiss cheese produced in the United States. During the investigation period, the average domestic wholesale market price for similar Swiss cheese produced in the United States was $1.56 per pound.

In accordance with section 702(c)(2) of the Trade Agreements Act of 1979 (the Act) (19 U.S.C. 1202 note), the Office of the United States Trade Representative notified the Government of Switzerland of the price undercutting determination made by the Secretary of Agriculture, requested that corrective action be taken, and asked for appropriate assurances concerning the commitments made in the Arrangement Between the United States and Switzerland Concerning Cheeses.

On July 7, 1992, the Government of Switzerland notified the United States Trade Representative that measures have been taken to ensure that the duty-paid wholesale price of imported Swiss or Emmentaler cheese produced in Switzerland will not be less than the domestic wholesale market price of similar cheese produced in the United States.

In addition, the Government of Switzerland gave assurance that it will respect the price commitments in the Arrangement. Since the above notification by the Government of Switzerland has occurred within the 15-day period provided in section 702(c)(3) of the Act, no further action is required pursuant to section 702.

Done at Washington, DC, this 10th day of July, 1992.

**Carla A. Hills,**

*United States Trade Representative.*

[FR Doc. 92-16771 Filed 7-15-92; 8:45 am]

BILLING CODE 3190-01-M

## PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

### Columbia River Basin Fish and Wildlife Power Plan Amendments

July 7, 1991.

**AGENCY:** Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

**ACTION:** Notice of extended comment period on proposed amendments to the Columbia River Basin Fish and Wildlife Program (measures for anadromous fish, phase 3).

**SUMMARY:** Pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council)

has proposed amendments to the Columbia River Basin Fish and Wildlife Program (program). The amendments propose major changes to the salmon and steelhead provisions of the program. An earlier deadline for written comments is being amended.

**BACKGROUND:** The Council is in the third phase of a four-part process to amend the Columbia River Basin Fish and Wildlife Program (program). In an earlier notice, the Council called for written comment to be submitted by 5 p.m. Pacific time, July 9, 1992. This deadline is extended to 5 p.m. Pacific time, July 23, 1992.

**OPPORTUNITY FOR COMMENT:** Commenters should submit written comments by 5 p.m. Pacific time on July 23, 1992. Comments should be clearly marked "Phase Three Comments," and submitted to the Council's Public Affairs Division, 851 S.W. Sixth Avenue, suite 1100, Portland, Oregon 97204.

**FOR FURTHER INFORMATION:** For copies of the proposed amendments (request document no. 92–16), contact the Council's Public Affairs Division, 851 S.W. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355.

**Bobbe Fendall,**
*Federal Register Liaison.*

[FR Doc. 92–16747 Filed 7–15–92; 8:45 am]
BILLING CODE [illegible]

## Columbia River Basin Fish and Wildlife; Power Plan Amendments

**AGENCY:** Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

**ACTION:** Notice of amended schedule for submitting recommendations to amend the Columbia River Basin Fish and Wildlife Program (resident fish and wildlife).

**SUMMARY:** Pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) has invited recommendations to amend the resident fish and wildlife provisions of the Columbia River Basin Fish and Wildlife Program (program). The deadline for written comments is being extended from 5 p.m. Pacific time, September 15, 1992, to November 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** For copies of the 1987 fish and wildlife, which contains existing resident fish measures (sections 207 and 900), or of the Council's wildlife rule adopted in 1989 (request document 89–35) contact the Council's Public Affairs Division, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355. Recommendations may be submitted in letter form or the Council will supply amendment recommendation forms, on request. Amendment recommendations should be marked "Resident Fish and Wildlife Recommendation."

**Edward W. Sheets,**
*Executive Director.*

[FR Doc. 92–16729 Filed 7–15–92; 8:45 am]
BILLING CODE [illegible]

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Report of Medicaid State Office on, Beneficiary's Buy-In Status.

(2) *Form(s) submitted:* RL–380–F

(3) *OMB Number:* New Collection.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* New Collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* See justification (Item 13)

(9) *Total annual responses:* 600.

(10) *Average time per response:* .166 hours.

(11) *Total annual reporting hours:* 100.

(12) *Collection description:* Under the RRA, the Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The collection obtains information needed to determine if certain railroad beneficiaries are entitled to receive Supplementary Medical Insurance Program coverage under a State buy-in agreement in States in which they reside.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

**Dennis Eagan,**
*Clearance Officer.*

[FR Doc. 92–16732 Filed 7–15–92; 8:45 am]
BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[International Series Release No. 414; File No. 265–16]**

### Emerging Markets Advisory Committee; Renewal

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of renewal of the Emerging Markets Advisory Committee.

**SUMMARY:** The Chairman of the Commission, with the concurrence of other members of the Commission, has renewed the Emerging Markets Advisory Committee which advises the Commission on steps that should be taken by the Commission and the U.S. financial services industry to assist efforts to create organized securities markets in foreign countries, including those in Eastern Europe.

**DATES:** July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Thomas Riesenberg, Assistant General Counsel, (202) 504–2427, or Susan Nash, Senior Counsel, (202) 272–2070, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the regulations thereunder, the Commission has ordered publication of this notice that Chairman Richard C. Breeden, with the concurrence of other members of the Commission, has renewed for a two-year period an advisory committee, under the Federal Advisory Committee Act, which is designated the "Emerging Markets Advisory Committee." The Emerging Markets Advisory Committee advises the Commission on steps that should be taken by the Commission and the U.S. financial services industry to assist efforts to create organized securities markets in foreign countries, including those in Eastern Europe.

By the Commission.
Jonathan G. Katz,
*Secretary.*
[FR Doc. 92-16874 Filed 7-15-92; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-30906; International Series No. 415; File No. S7-8-90]

## Options Price Reporting Authority; Filing and Immediate Effectiveness of Amendment to the National Market System Plan of OPRA

July 9, 1992.

Pursuant to rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on May 15, 1992, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"), establishing a six-month pilot program whereby the Philadelphia Stock Exchange ("Phlx") will disseminate to vendors outside of the OPRA system implied volatility quotations on selected foreign currency options.

OPRA has designated this proposal as concerned solely with the administration of the plan, permitting it to become effective upon filing, pursuant to Rule 11Aa3-2(c)(3)(ii) under the Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

### I. Description and Purpose of the Amendment

At the request of the Phlx, OPRA hereby requests approval of a six-month pilot program whereby Phlx will transmit directly to designated vendors of market information implied volatility quotations pertaining to selected at- and out-of-the-money foreign currency options traded on Phlx.[1] During this pilot, implied volatility quotations will not be transmitted over the OPRA system. OPRA treats this pilot as an amendment to the OPRA Plan for purposes of rule 11Aa3-2 under the Act, and has filed it with the Commission under the Rule.

The purpose of the amendment is to permit Phlx to accommodate those institutional investors in foreign currency options who desire to receive indications of the current state of the foreign currency options market expressed in implied volatility quotations. These quotations will serve only as indications of the state of the market; actual trading in foreign currency options will continue to be conducted through bids and offers expressed in terms of the prices at which options may be bought or sold, and price quotations will continue to be disseminated over the OPRA system. Because the existing specifications of the OPRA system were not designed to accommodate implied volatility quotations, OPRA has consented to Phlx's arranging for the transmission of this information through selected vendors. During the term of the pilot program, OPRA anticipates making the necessary modifications to its system specifications to enable it to transmit implied volatility quotations for foreign currency options and perhaps other categories of options.

### II. Solicitation of Comments

Pursuant to Rule 11Aa3-2(c)(3) under the Act, the amendment became effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refilling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 553, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing also will be available at the principal office of OPRA. All submissions should refer to File No. S7-8-90 and should be submitted by August 6, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(29).

Jonathan G. Katz,
*Secretary.*

[FR Doc. 92-16876 Filed 7-15-92; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-30901; File No. SR-CBOE-92-12]

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Modifications of Exchange Fees

July 8, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 19, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Effective July 1, 1992, the CBOE proposes to modify certain fees, including, among others, market-maker transaction fees, finger printing charges, trade match service charges and various trading floor fees. Specifically, among other things, the CBOE proposes to (i) increase market-maker transaction fees for equities, Standard & Poor's ("S&P") 100 Index options ("OEX"), and S&P 500 Index options ("SPX") to $0.05, $0.06, and $0.07 per contract, respectively; (ii) eliminate customer Retail Automatic Execution System ("RAES") fees for equities; (iii) increase certain trading floor charges, including charges for access badges, booth fees and telecommunications fees; (iv) increase the Exchange's inactive nominee status charge from $50 to $55 and raise the fingerprint processing and photograph fee from $25 to $35; and (b) impose a fee for electronic trade match reports. The text of the proposed fee exchanges is available at the office of the Secretary, CBOE and at the Commission.

[1] An "implied volatility quotation" is a measure of the volatility of the security underlying an option derived by solving a standard options valuation formula for the volatility factor at an assumed premium level.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

(1) Purpose

Effective July 1, 1992, the Exchange proposes to adjust certain fees to provide for an equitable distribution of costs associated with usage of the Exchange's services and facilities. Other than the elimination of the equity customer RAES fee ($0.25 per contract), all adjustments affect members and/or member firms. The CBOE explains that, in most instances, the fee increases represent "cost-of-living" increases to charges that have not been adjusted for several years.

Accordingly, the CBOE has decided to increase such charges as market-maker transaction fees, membership fees for fingerprinting and inactive nominee status charges, as well as certain floor related charges for such matters as telecommunications services, booth rental, and access badges. In addition, the CBOE has decided to begin charging for electronic trade match reports. Until now, in an effort to encourage member firms to convert to electronic media, the CBOE has assessed no charges for electronic trade processing reports, which became available in 1988. The Exchange has continued to assess charges for "paper" reports. Currently, over 80% of the CBOE's clearing firms utilize electronic media. Therefore, in order to equalize the fees for trade processing services, the Exchange is modifying the charges for paper reports and instituting similar charges for electronic data.

The Exchange also is instituting a fee reduction plan which will reduce market-maker transaction fees and trade match fees when the Exchange's volume exceeds specified predetermined thresholds. Specifically, if Exchange volume exceeds a predetermined threshold at the end of any quarter on a year to date basis, transaction fees will be reduced in the following quarter according to a schedule established by the Exchange. For example, if the Exchange's average daily contract volume on a year-to-date basis exceeds 535,000 contracts in one quarter, there will be a market maker fee reduction of $.020 and a trade match fee reduction of $.005 in the following quarter. All fees will be reset to their original levels at the beginning of each fiscal year regardless of volume in the preceding quarter, and the threshold for fee rebates will be reviewed by the Exchange each year.

(2) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by August 6, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 92–16795 Filed 7–15–92; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–30904; File No. SR–Phlx–92–08]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Rules 803 and 805 To Establish Two-Tier Listing Standards for Common Stock

July 9, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 11, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to amend Exchange Rules 803 and 805 concerning listing and maintenance standards for equity securities to reflect the establishment of two-tier listing standards for common stock.[1]

[1] The text of the proposal was attached to the filing as Exhibit B. Copies are available at the Phlx and at the Commission.

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**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Phlx proposes to establish two-tier standards for the listing of common stock. Specifically, the Phlx proposes to adopt as its "Tier I" listing standards the criteria established in connection with the North American Securities Administrators Association, Inc.'s ("NASAA") [2] Memorandum of Understanding ("MOU") on a uniform model marketplace exemption from state securities registration requirements for securities listed on the National Association of Securities Dealers, Inc. ("NASD") NASDAQ National Market System ("NASDAQ/NMS") and the national securities exchanges.[3] The Exchange will designate its current common stock listing standards in Exchange Rule 803 as its "Tier II" standards.[4]

The comparison of the Phlx's current common stock listing standards (Tier II standards), even as proposed to be revised, to the NASAA MOU standards (Tier I standards) shows that the latter, in most respects, reflect materially higher quantitative and nonquantitative (corporate governance requirements) criteria. Likewise, material differences exist between the Tier I and current and proposed Tier II maintenance criteria for continued listing.

All equity securities, regardless of the standards utilized for their admissions to listing, will be traded pursuant to the identical Exchange auction rules. Securities listed pursuant to the Tier I and Tier II standards, however, may be distinguished with respect to blue sky exemptions, transaction reporting and listing fees, among others.

The Phlx states that two-tier listing standards will provide flexibility to the Phlx in pursuing various listing objectives. In the Phlx's view, such standards appear to have served well the NASD with respect to developing its NASDAQ list and NASDAQ/NMS Securities list. The Amex recently received Commission approval to adopt listing standards for its Emerging Company Marketplace ("ECM"), which *de facto* establishes a two-tier listing standards system for Amex common stocks.[5] In this regard, the Amex has indicated that small companies that may not meet Amex's regular listing standards could raise capital via a listing on the Amex's ECM.

While the Amex proposal introduces a reduced tier of common stock listing standards, the instant Phlx proposal would establish a set of higher tier listing standards.

The Phlx has proposed to adopt, as its new Tier I standards, NASAA's MOU standards because the Phlx views these standards to have been well thought out and crafted to provide an exceptionally high level of investor/shareholder protection. In this regard, the Phlx has proposed to adopt not only NASAA's quantitative financial listing standards, but also has proposed to adopt in entirety NASAA's substantial corporate governance standards, which include requirements for independent directors, audit committees, shareholder quorums, shareholder approval, common stock voting rights [6] and conflicts of interest provisions.

The Phlx believes that adoption of NASAA's standards also will foster greater uniformity in marketplace listing standards and will establish acceptable standards upon which further state "blue sky" registration exemptions may be sought by the Phlx and Phlx listed companies.

Regardless of whether an issuer lists its security pursuant to the Phlx's Tier I or Tier II standards, all Exchange listed companies will be subject to filing annual and quarterly reports with the Phlx and the Commission, and will generally be held to the same corporate disclosure standards. Additionally, both Tier I and Tier II listings will be allocated to a specialist unit and will be subject to the same trading and market quotation rules. In this regard, the Phlx states that all listed securities will benefit from a regulated auction environment, subject to customer protection rules, short sale regulation and rigorous exchange market surveillance.

Finally, Tier I and Tier II securities will be eligible for order delivery and/or automated execution through the Phlx's Automated Communication and Execution System ("PACE"). PACE provides investors order execution guarantees at the Intermarket Trading System ("ITS") best bid or offer.

The Phlx will identify and distinguished at all times which securities were listed pursuant to the Tier I and Tier II standards. For example, Tier I securities will have the suffix ".TI" annexed to their ticker symbols. In addition, it is possible the closing prices in Tier I and Tier II securities will be carried in separate newspaper tables.[7] In this regard, if a Tier I listed security fails to satisfy Tier I maintenance standards for continued listing, the issue will be delisted. Thereafter, the issuer may seek to relist pursuant to the Exchange's Tier II standards. Moreover, if a Tier II listed security matures to the point that it could then meet the Tier I standards, the issuer must reapply and receive approval to list the security pursuant to the Tier I standards before the Exchange will deem such security to be a Tier I issue.

2. Statutory Basis

The proposed rule change is consistent with the Act, particularly section 6(b)(5) in that the proposal fosters cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest. The Phlx also believes the

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[2] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and ten Canadian provinces.

[3] The "MOU" which was approved by the NASAA membership on October 10, 1986 and published in Securities Exchange Act Release No. 6810 (December 16, 1988), 53 FR 52550, sets out criteria that must be met for a marketplace to receive the exemption, including numerical listing, corporate governance, voting rights, maintenance, decertification, and information sharing standards.

[4] Aside from this filing, the Exchange has pending before the Commission proposed revisions to its current common stock listing standards, among others, that would raise incrementally the level of those standards. See Securities Exchange Act Release No. 28358 (July 30, 1990), 55 FR 35228 (notice of filing of File No. SR–PHLX–90–07).

[5] See Securities Exchange Act Release No. 30445 (March 5, 1992), 57 FR 8903.

[6] The Phlx previously adopted a common stock voting rights listing standard rule that is substantially similar to the common stock voting rights policy in the MOU. See Phlx Rule 809.

[7] Conversation between Michele Weisbaum, Assistant General Counsel, Phlx, and Elizabeth Cosgrove, Attorney, SEC, on July 7, 1992 clarifying that the Exchange will use the suffixes, ".TI" for Tier I securities and ".TII" for Tier II securities annexed to the ticker symbols.

proposal is consistent with section 11A of the Act in that approval of the Tier I standards will aid in the development of the national market system by enhancing competition for equity listings.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 29549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-92-08 and should be submitted by August 6, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 92-16875 Filed 7-15-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-30906; International Series No. 416; File Nos. SR-PHLX-92-14 and SR-PHLX-92-15]**

**Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the Philadelphia Stock Exchange, Inc. Relating to Reducing the Contract Size of Cross-Rate Foreign Currency Options and the Strike Price Intervals for Certain German Mark/Japanese Yen Cross-Rate Foreign Currency Options**

July 9, 1992.

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes**

The PHLX hereby submits, pursuant to Rule 19b-4 of the Act, two proposed rule changes concerning cross-rate foreign currency options. First, in file SR-PHLX-92-14, the Exchange proposes to reduce the contract size of the three cross-rate foreign currency option contracts [2] that the Exchange currently is approved to trade.[3] Specifically, under the proposal, the contracts will be reduced to 1/10th of their current size. In conjunction with this reduction in contract size, the PHLX also proposes to increase position and exercise limits for cross-rate options consistent with the contract size reduction and to amend the minimum fractional change or "tick" of the BP/DM and BP/JY cross-rate foreign currency options contracts.

Second, in file SR-PHLX-92-15, the Exchange proposes to reduce the strike price interval for DM/JY contracts expiring in the first quarterly cycle month and the two near-term consecutive spot months. Specifically, the PHLX proposes to reduce the strike price interval from one Japanese yen to one half (.5) Japanese yen for these options series.

PHLX Rules 1001, 1002 and 1034 are the specific provisions to be amended by these proposals. The text of the proposed rule changes are available at the Office of the Secretary, PHLX, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes*

The current contract size for the foreign currency cross-rate option contracts are: 1,000,000DM for the DM/JY; 500,000BP for the BP/JY; and 500,000BP for the BP/DM. The PHLX has determined, however, that a smaller contract size would better meet the needs of cross-rate foreign currency option market participants. Accordingly, the Exchange proposes to reduce by a factor of sixteen (1/16) the contract size of its cross-rate foreign currency options. Except for modifications to position and exercise limits, the minimal fractional change or "tick" size regarding the BP/DM and BP/JY contracts and the strike price intervals for DM/JY contracts, the contract size

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[1] The Exchange filed SR-PHLX-92-14 and SR-PHLX-92-15 on April 28, 1992 and June 1, 1992, respectively.

[2] A cross-rate foreign currency option is an option to purchase or sell a foreign currency at an exercise price that is denominated in another foreign currency. The exercise price, therefore, represents an exchange rate between the two foreign currencies.

[3] On November 7, 1991, the Commission approved a PHLX proposal to list and trade three cross-rate foreign currency options. Specifically, the Commission approved the listing and trading of the German mark/Japanese yen ("DM/JY"), British pound/German mark ("BP/DM") and British pound/Japanese yen ("BP/JY") cross-rate options. At this time, however, the PHLX has only commenced trading in DM/JY cross-rate options. See Securities Exchange Act Release No. 29919 (November 1, 1991), 56 FR 56109 ("Cross-Rate Approval Order").

reductions will be made without adjustment to strike prices, expirations or other material contract terms or rules.[4]

Specifically, the proposal calls for an increase in position and exercise limits for cross-rate options under PHLX Rules 1001 and 1002 from 7,500 contracts to 100,000 contracts,[5] and a minimum fractional change or "tick" modification from .0001 to .0002DM for DM/JY contracts and from .01 to .02JY for BP/JY contracts. In addition, in order to be competitive with other markets for DM/JY cross-rate currency products, the Exchange has proposed to reduce from one Japanese yen to one half (.5) Japanese yen the strike price interval for the three nearest term expiration months in DM/JY options.

The PHLX believes that the proposed rule changes are consistent with section 6(b)(5) of the Act in that they are designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule changes will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants, or Others*

No written comments were either received or requested.

**III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

The Exchange has requested that the proposed rule changes be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[6]

The Commission believes that the Exchange's proposal to list reduced-size cross-rate foreign currency options will facilitate transactions in these options by providing investors with a mechanism that will allow them to better tailor their cross-rate foreign currency options positions to satisfy their investment objectives. Moreover, even though the Commission has no reason to believe that the premiums associated with the reduced-size cross-rate options will be proportionately smaller (*i.e.* 1/16th smaller) than the premiums associated with the current "full" size contracts, the Commission would expect that options on the reduced-size cross-rate foreign currency options will have smaller options premiums that are more affordable to investors. In addition, such smaller premiums may provide investors with a lower cost means to hedge their portfolios against foreign currency risk.

The Commission also believes that the trading of reduced-size cross-rate foreign currency options will not have any adverse market impacts or be readily susceptible to manipulation. In this regard, as noted above, the Commission previously has approved the trading of options on cross-rate foreign currencies.[7] Accordingly, the Commission does not believe that merely changing the contract size of cross-rate options to 1/16th of their current size will make trading in the contracts readily susceptible to manipulation. Moreover, the Commission notes that the PHLX is actually decreasing its position and exercise limits for cross-rate options in conjunction with this filing.[8] Thus, the Commission believes that the proposed position and exercise limits are reasonable and will serve to avoid trading abuse involving cross-rate foreign currency options.

In addition, the Commission finds that reducing the strike price intervals for DM/JY options in the three near-term expiration months is consistent with the Act because it will provide investors with greater flexibility to tailor their DM/JY positions to satisfy their investment objectives. In addition, based on representations from the Exchange, the Commission believes that narrower strike price intervals for DM/JY options will facilitate competition between the PHLX's currency options market and other foreign currency derivative markets. The Commission also notes that the proposed rule will not result in a proliferation of options series because it is limited to near-term DM/JY expiration months.

The Commission also finds that reducing the minimum fractional change or "tick" for reduced-size BP/DM and BP/JY cross-rate foreign currency options is reasonable because the new minimum ticks will correspond better to the minimum price fluctuations allowed for interbank foreign exchange price quotations.

Finally, based on representations from the PHLX, the Commission further believes that the Options Price Reporting Authority ("OPRA") will have sufficient capacity to adequately process quotations and trades in the reduced size cross-rate foreign currency options and accommodate the narrower strike price interval for DM/JY options. Specifically, the Exchange represents that "our systems and the OPRA lines will be more than adequate to accommodate the listing and trading of the split cross-rate currency options including the additional half point strike price intervals as proposed in [file] SR-PHLX-92-15."[9]

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The PHLX proposal to reduce the contract size of cross-rate currency options is very similar to a proposal by the American Stock Exchange to reduce by one-half the size of the Major Market Index option which the Commission previously approved.[10] Therefore, the Commission believes the PHLX's proposal presents no new regulatory issues and that it is

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[4] On the date that the size of the DM/JY contract is reduced, outstanding positions in DM/JY options will be increased by a factor of 16. In this regard, the Exchange has distributed a circular to all of its options members, member organizations and foreign currency options participants explaining the cross-rate option split.

[5] The proposed increase in position and exercise limits for cross-rate options corresponds to existing position and exercise limits for U.S. dollar denominated foreign currency options. In addition, the proposed position and exercise limits for cross-rate foreign currency options are less than 16 times greater than the current position and exercise limits. Therefore, since the contracts will be 1/16th of their original size, the position and exercise limits for cross-rate options will be effectively smaller under the proposal.

[6] 15 U.S.C. 78f(b)(5) (1982).

[7] See Cross-Rate Options Approval Order, *supra* note 3.

[8] Even though the PHLX proposes to raise position and exercise limits to 100,000 contracts from 7,500 contracts, the 100,000 contract limit is less than 16 times the current limit of 7,500. Therefore, the total amount of underlying foreign currency that can be "controlled" under the new, higher limits is less than the current limits because the position and exercise limits are being increased in smaller proportion than the contract size is being decreased (*i.e.*, 1/16th).

[9] See letter from Murray L. Ross, Secretary, PHLX, to Jeffrey P. Burns, Attorney, Division of Market Regulation, SEC, dated July 7, 1992.

[10] See Securities Exchange Act Release No. 29798 (October 8, 1991), 56 FR 51956.

appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can begin trading reduced-size cross-rate foreign currency options, which options will provide a lower cost hedge against foreign currency risk for the benefit of public investors. Moreover, with respect to the narrower strike price intervals for DM/JY options, the Commission believes it is appropriate to approve the proposal on an accelerated basis in order to facilitate the introduction of the reduced-size cross-rate options. In this regard, the Commission notes that the proposal is minor in nature and that it is limited to the three near-term expiration months. The Commission believes, therefore, that granting accelerated approval of the proposed rule changes is appropriate and consistent with Section 6 of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file numbers in the caption above and should be submitted by August 6, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule changes (SR–PHLX–92–14 and SR–PHLX–92–15) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92–16676 Filed 7–15–92; 8:45 am]

BILLING CODE 8010-01-M

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34-30903; File No. SR-PHLX-92-16]

**Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") Filed With the Securities and Exchange, Inc., Relating to the Filing of FOCUS Reports by Registered Options Traders**

July 9, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 15, 1992, the Philadelphia Stock Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PHLX proposes to amend Exchange Rule 703, "Financial Responsibility and Reporting," to (i) authorize a PHLX registered options trader ("ROTs") operating under a letter of guarantee from its clearing agent to file Financial and Operational Combined Uniform Single ("FOCUS") reports on a semiannual basis rather than a quarterly basis; and (ii) authorize the Exchange to require a member organization to file financial reports more frequently than currently required under its rules. The text of the proposal is available at the Office of the Secretary, PHLX and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The PHLX proposes to amend paragraph (c) of Exchange Rule 703, "Financial Responsibility and Reporting," to authorize ROTs operating under a letter of guarantee from their clearing agents to file FOCUS reports on a semiannual basis rather than a quarterly basis. The PHLX believes that the more limited FOCUS reporting is appropriate because the Exchange has come to rely more heavily on daily reports from these ROTs to monitor ongoing financial compliance. The PHLX notes, for example, that the current quarterly FOCUS reports provide less information than the daily statements filed with the Exchange's Examinations Department disclosing the equity in ROTs' trading accounts.

In addition, the PHLX proposes to amend paragraph (d) of Exchange Rule 703 to authorize the Exchange to require a member organization to file financial reports more frequently than currently required under its rules. For example, the PHLX states that a member firm might be subject to closer than normal surveillance based on the firm's equity level or excessive liabilities held outside of its clearing account. In that case, the PHLX may require that the member firm file reports more frequently than once each quarter.

The PHLX believes that the proposal is consistent with section 6(b)(5) of the Act in that it removes impediments to and perfects the mechanism of a free and open market, and because it fosters cooperation and coordination with persons engaged in regulating, facilitating and processing information with respect to transactions in securities.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 6, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-16677 Filed 7-15-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Investment Company Act Rel. No. 18841; 812-7912]**

## Seligman Capital Fund, Inc., et al., Notice of Application

July 10, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

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**APPLICANTS:** Seligman Capital Fund, Inc., Seligman Cash Management Fund, Inc., Seligman Common Stock Fund, Inc., Seligam Communications and Information Fund, Inc., Seligman Frontier Fund, Inc., Seligman Growth Fund, Inc., Seligman High Income Fund Series, Seligman Income Fund, Inc., Seligman International Fund Series, Inc., Seligman Mutual Benefit Portfolios, Inc., Seligman New Jersey Tax-Exempt Fund Series, Inc., Seligman Pennsylvania Tax-Exempt Fund Series, Seligman Tax-Exempt Fund Series, Inc., Seligman Tax-Exempt Series Trust, and any existing or future registered investment companies that may become a member of the Seligman group of investment companies and whose shares may be distributed on substantially the same basis as the above named funds (the "Funds"); J.&W. Seligman & Co. Incorporated (the "Adviser"); and Seligman Financial Services, Inc. (the "Distributor").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act for exemptions from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek a conditional order to permit the Funds to assess a contingent deferred sales charge ("CDSC") on redemptions of shares sold pursuant to a complete front-end sales load waiver applicable to large purchases, and to waive the CDSC in certain cases.

**FILING DATES:** The application was filed on April 27, 1992, and amended on June 10, 1992 and July 7, 1992. Counsel, on behalf of the applicants, has agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 130 Liberty Street, New York, New York 10006.

**FOR FURTHER INFORMATION CONTACT:** James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

**APPLICANTS' REPRESENTATIONS**

1. The Funds are open-end management investment companies registered under the Act. All the Funds are organized as Maryland corporations, except Seligman Pennsylvania Tax-Exempt Fund Series, which is a Pennsylvania unincorporated trust, and Seligman High Income Fund Series and Seligman Tax-Exempt Series Trust, which are Massachusetts business trusts. The Adviser provides investment advisory services, and the Distributor acts as principal underwriter, to the Funds.

2. All shares of the Funds, except shares of Seligman Cash Management, Inc., Seligman International Fund Series, Inc., and Seligman Mutual Benefit Portfolios, Inc., are currently offered to the public at their net asset value plus a front-end sales load calculated as a percentage of the offering price at the time on sale.[1] The sales load is reduced as the aggregate dollar amount invested increases. Investors are allowed to combine current, past, and proposed purchases in certain circumstances to qualify for a greater reduction. Some of the Funds also impose service fees of up to .25% per annum of a Fund's average daily net assets pursuant to distribution plans adapted under rule 12b-1 of the Act.

3. Under the proposed CDSC arrangement, applicants will eliminate the front-end sales load on all future purchases of Fund shares larger than an amount specified in each Fund's prospectus. If such shares are redeemed within a period, to be established at the Funds' discretion, a CDSC will be imposed. No CDSC will be imposed on shares purchased prior to the date the Commission grants the requested order. The amount of the CDSC and the length of the CDSC period for each Fund will be disclosed in its prospectus. Any changes to the CDSC period or the CDSC amount will be disclosed in the affected Fund's prospectus. Any such change will not affect the shares of that Fund which were issued prior to the disclosure of such change in the prospectus. The CDSC will be deducted from the redemption proceeds otherwise

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[1] Shares of Seligman Cash Management Fund, Inc., currently are offered to the public at net asset value without imposition of a sales charge. Shares of Seligman International Fund Series, Inc. currently are offered only to employees and advisory clients of the Adviser, and are sold at net asset value without imposition of a sales charge. Shares of Seligman Mutual Benefit Portfolios, Inc. are offered exclusively to an insurance company separate account, without imposition of a sales charge.

payable to the shareholder and will be retained by the Distributor to recover commissions paid on the sale of shares as well as promotional, service, and maintenance expenses associated with such sales.

4. The CDSC will be calculated as a specified percentage of the lesser of (a) the net asset value of the shares at the time of purchase, or (b) the net asset value of the shares at the time of redemption. No CDSC will be imposed on shares purchased through the reinvestment of dividends or capital gains distributions. In determining whether a CDSC is applicable, it will be assumed that a redemption is made, first, of shares not subject to the CDSC, and then in a manner that will result in the lowest CDSC being imposed at the time of redemption. No CDSC will be imposed on exchanges of Fund shares. No CDSC will apply to redemptions of Seligman Cash Management Fund, Inc. and Seligman International Series, Inc. unless such shares are acquired in exchange for shares of another Fund subject to a CDSC. In no event will a CDSC be imposed on redemptions of shares of Seligman Mutual Benefit Portfolios, Inc. If shares subject to a CDSC are exchanged for other shares which are subsequently redeemed during the CDSC period following the original investment, the applicable CDSC will be assessed on the acquired shares.

5. The CDSC will be waived or reduced in the following instances: (a) On redemptions following the death or disability of a shareholder, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"); (b) in connection with (i) distributions from retirement plans qualified under section 401(a) of the Code when such redemptions are necessary to make distributions to plan participants (such payments include, but are not limited to death, disability, retirement, or separation of service), (ii) distributions from a custodial account under Code section 403(b)(7) or an individual retirement account (an "IRA") due to death, disability, or attainment of age 59 1/2 and (iii) a tax-free return of an excess contribution to an IRA; (c) in whole or in part, in connection with shares sold to current and retired Trustees or Directors of the Funds; (d) in whole or in part, in connection with shares sold to any state, county, or city or any instrumentality, department, authority, or agency therof, which is prohibited by applicable investment laws from paying a sales load or commission in connection with the purchase of shares of any registered investment management company; (e) pursuant to an automatic cash withdrawal service; (f) in connection with the redemption of shares of any Fund that is combined with another Fund, or another similar reorganization transaction; and (g) in connection with any Fund's right to redeem or liquidate an account that holds below a certain minimum number or dollar amount of shares.

6. The Distributor may provide a credit for any CDSC paid by a redeeming shareholder in connection with a redemption of shares of a Fund followed by a reinvestment in any Fund. To qualify for the credit, such reinvestment must be effected within a certain number of days, not to be fewer than thirty, specified in each Fund's prospectus. In the event the reinvestment credit period is subsequently shortened with respect to any Fund, a shareholder who invested prior to the time the period was shortened will be allowed a reinvestment credit for the longer reinvestment credit in effect at the time the shareholder purchased his or her shares.

**APPLICANTS' LEGAL CONCLUSION:** Applicants submit that the proposal to impose a CDSC is fair, in the public interest and the interest of the Funds' shareholders, and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Act. Consequently, applicants request an order of the Commission pursuant to section 6(c) of the Act for an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to the extent necessary to permit the proposed CDSC arrangement.

**APPLICANTS' CONDITION:** Applicants agree to the following express condition to the requested exemptive relief:

If the requested exemptive relief is granted, the applicants agree to comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**
*Secretary.*

[FR Doc. 92–16794 Filed 7–15–92; 8:45 am]
BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of Reporting Requirements Submitted for Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Comments should be submitted on or before August 17, 1992. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

*Agency Clearance Officer:* Cleo Verbillis, Small Business Administration, 409 3d Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

*OMB Reviewer:* Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

*Title:* Disclosure Statement.

*SBA Form No.:* SBA Form 856.

*Frequency:* Biannually.

*Description of Respondents:* Small Business Investment Companies.

*Annual Responses:* 200.

*Annual Burden:* 200.

Dated: July 9, 1992.

**Cleo Verbillis,**
*Acting Chief, Administrative Information Branch.*

[FR Doc. 92–16699 Filed 7–15–92; 8:45 am]
BILLING CODE 8025–01–M

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**[Declaration of Disaster Loan Area #3567]**

### Alaska; Declaration of Disaster Loan Area

The Fairbanks North Star Borough and the area within the Unorganized Borough along the Yukon River from the Canadian border to, and including, Galena constitute a disaster area as a result of damages caused by flooding beginning on May 12, 1992. Applications

for physical damage may be filed until the close of business on September 3, 1992 and for economic injury until the close of business on April 2, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795 or other locally announced locations:

The interest rates are:

| For Physical Damage: | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.500 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 8.500 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 256706 and for economic injury the number is 765300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 2, 1992.

**Patricia Saiki,**

*Administrator.*

[FR Doc. 92–16690 Filed 7–15–92; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area #2568]**

## California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 2, 1992, and an amendment also dated July 2, I find that the Counties of San Bernardino and Riverside in the State of California constitute a disaster area as a result of damages caused by earthquakes and continuing aftershocks which began on June 28, 1992. Applications for loans for physical damage may be filed until the close of business on September 3, 1992, and for loans for economic injury until the close of business on April 2, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, California 95853–4795 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Imperial, Inyo, Kern, Los Angeles, Orange, Riverside and San Diego in State of California, La Paz and Mohave in the State of Arizona, and Clark County in the State of Nevada may be filed until the specified date at the above location.

The interest rates are:

| For Physical Damage: | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.500 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 8.500 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 256802 and for economic injury the numbers are 765400 for California, 765500 for Nevada, and 765600 for Arizona.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 7, 1992.

**Alfred E. Judd,**

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 92–16692 Filed 7–15–92; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area #2568]**

## Connecticut; Declaration of Disaster Loan Area

New Haven County and the contiguous counties of Fairfield, Litchfield, Hartford and Middlesex in the State of Connecticut constitute a disaster area as a result of damages caused by heavy rains, winds, and severe flooding which occurred June 5–8, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on Aug. 31, 1992, and for economic injury until the close of business on April 1, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd FL. Niagara Falls, NY 14303, or other locally announced locations

The interest rates are:

| For Physical Damage: | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.500 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 8.500 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 256606 and for economic injury the number is 765200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 1, 1992.

**Patricia Saiki,**

*Administrator.*

[FR Doc. 92–16691 Filed 7–15–92; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area #2563]**

## Indiana; Declaration of Disaster Loan Area

Madison County and the contiguous counties of Delaware, Grant, Hamilton, Hancock, Henry, and Tipton in the State of Indiana constitute a disaster area as a result of damages caused by severe storms, heavy rains, and flooding which occurred in the City of Alexandria on June 17 and 18, 1992. Applications for loans for physical damage may be filed until the close of business on August 31, 1992, and for economic injury until the close of business on March 30, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308 or other locally announced locations:

The interest rates are:

| For Physical Damage: | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.500 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 8.500 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 256306 and for economic injury the number is 764300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 30, 1992.

**Patricia Saiki,**

*Administrator.*

[FR Doc. 92-16694 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2564]**

## Minnesota; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 26, 1992, I find that the Counties of Lac Qui Parle, Lyon, Murray, Redwood, Renville, Wright, Yellow Medicine, Chippewa, and Kandiyohi in the State of Minnesota constitute a disaster area as a result of damages caused by severe storms, flooding, and tornadoes which occurred June 16–20, 1992. Applications for loans for physical damage may be filed until the close of business on August 26, 1992, and for loans for economic injury until the close of business on March 26, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia 30308 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Big Stone, Brown, Carver, Cottonwood, Hennepin, Jackson, Lincoln, McLeod, Meeker, Nicollet, Nobles, Pipestone, Pope, Rock, Sherburne, Sibley, Stearns, and Swift in the State of Minnesota and Deuel and Grant Counties in the State of South Dakota may be filed until the specified date at the above location.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.500 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 8.500 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 256412 and for economic injury the numbers are 764400 for Minnesota and 764500 for South Dakota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 30, 1992.

**Alfred E. Judd,**

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 92-16694 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2565]**

## South Dakota; Declaration of Disaster Loan Area

Buffalo County and the contiguous counties of Brule, Hand, Hyde, Jerauld, and Lyman in the State of South Dakota constitute a disaster area as a result of damages caused by tornadoes, hail, and flash flooding which occurred June 13–18, 1992. Applications for loans for physical damage may be filed until the close of business on September 4, 1992, and for economic injury until the close of business on April 6, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795 or other locally announced locations:

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.500 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 8.500 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 256512 and for economic injury the number is 765100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 6, 1992.

**Patricia Saiki,**

*Administrator.*

[FR Doc. 92-16696 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2569]**

## Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 2, 1992, I find that the Counties of Carson and Hutchinson in the State of Texas constitute a disaster area as a result of damages caused by severe thunderstorms and tornadoes which occurred on June 27, 1992. Applications for loans for physical damage may be filed until the close of business on September 1, 1992, and for loans for economic injury until the close of business on April 2, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, Texas 76155 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Armstrong, Donley, Gray, Hansford, Moore, Ochiltree, Potter, Randall, Roberts, and Sherman may be filed until the specified date at the above location.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.500 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 8.500 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 256912 and for economic injury the number if 765700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 7, 1992.

**Alfred E. Judd,**

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 92-16695 Filed 7-15-92; 8:45 am]

BILLING CODE 8025-01-M

## Region I Advisory Council Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting at 10 a.m. on Tuesday, September 15, 1992, at the Thomas P. O'Neill Federal Building, 10 Causeway Street, Conference Room 262, Boston, Massachusetts, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Joseph D. Pellegrino, District Director, U.S. Small Business Administration, 10 Causeway

Street, room 265, Boston, Massachusetts 02222–1093, (617) 565–5560.

Dated: July 9, 1992.

**Caroline J. Beeson,**

*Assistant Administrator, Office of Advisory Councils.*

[FR Doc. 92–16697 Filed 7–15–92; 8:45 am]

BILLING CODE 8025-01-M

### Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Albuquerque, will hold a public meeting at 9:30 a.m. on Tuesday, September 15, 1992, at 625 Silver SW., suite 320, Albuquerque, New Mexico, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Tom Dowell, District Director, U.S. Small Business Administration, 625 Silver SW., suite 320, Albuquerque, New Mexico 87102, (505) 766–1656.

Dated: July 8, 1992.

**Caroline J. Beeson,**

*Assistant Administrator, Office of Advisory Councils.*

[FR Doc. 92–16698 Filed 7–15–92; 8:45 am]

BILLING CODE 8025-01-M

**[Application No. 99000069]**

### CFB Venture Fund II, L.P.; Application for a Small Business Investment Company License

An application for a license to operate a Small Business Investment Company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended, (15 U.S.C. 661 *et seq.*), has been filed by CFB Venture Fund II, L.P. (the Applicant), 11 South Meramec Ave., suite 800, St. Louis, MO 63105, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1992).

The proposed officers, directors and partners of the Applicant will be as follows:

| Name | Title or position | Percent of ownership |
|---|---|---|
| General Partner: | | |
| CFB Partners, Inc., 11 South Meramec Ave., Suite 800, St. Louis, MO 63105 | General Partner | Wholly-owned subsidiary of Capital For Business, Inc. |
| James F. O'Donnell, 11 South Meramec Ave., Suite 800, St. Louis, MO 63105 | Chairman/Director | None |
| Bart S. Bergman, 11 South Meramec Ave., Suite 800, St. Louis, MO 63105 | President/Director | None |
| Stephen B. Braun, 11 South Meramec Ave., Suite 800, St. Louis, MO 63105 | Vice President/ Director. | None |
| Nathaniel E. Shor, 11 South Meramec Ave., Suite 800, St. Louis, MO 63105 | Investment Officer/ Director. | None |
| Limited Partners: | | |
| Commerce Bancshares, Inc. | Limited Partner | 50% |

There will be a total of 60 partnership units in CFB Venture Fund II, L.P. Except for Commerce Bancshares, Inc. owning 50% of the total Limited Partnership Units there will not be a single person or corporation that will own greater than 10% of the total limited partnership units.

The Applicant, a Missouri partnership, is expected to begin operations with $30,000,000 of private capital and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant intends to conduct its business activities in the State of Missouri, specifically the St. Louis and Kansas City metropolitan regions, and throughout the Midwest United States.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the existing company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of the notice shall be published in a newspaper of general circulation in St. Louis, Missouri.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 9, 1992.

**Wayne S. Foren,**

*Associate Administrator for Investment.*

[FR Doc. 92–16701 Filed 7–15–92; 8:45 am]

BILLING CODE 8025-01-M

**[License No. 02/02–5369]**

### Ibero-American Investors Corp.; Filing of Application for an Exemption Under the Conflict of Interest Regulation

Notice is hereby given that Ibero-American Investors Corporation (Ibero), 104 Scio Street, Rochester, New York 14604, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has applied to the Small Business Administration (SBA) pursuant to § 107.903(b) of the Regulations governing small business investment companies (13 CFR 107.903(b) (1992)) for an exemption from the provisions of the cited Regulation.

Ibero is seeking SBA approval of a credit accommodation to Carmen Irizarry to finance the opening of a retail grocery store in Rochester's inner city.

The proposed financing is brought within the purview of § 107.903(b) of the Regulations because Ms. Irizarry is a sister of Ana Maria Rivera—a member of Ibero's Board of Directors, and is consequently considered an Associate of Ibero as defined in § 107.3 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this notice, submit written comments on the transaction to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Rochester, New York area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 9, 1992.

**Wayne S. Foren,**

*Associate Administrator for Investment.*

[FR Doc. 92–16700 Filed 7–15–92; 8:45 am]

BILLING CODE 8025-01-M

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**Reports, Forms, and Recordkeeping Requirements**

**AGENCY:** Department of Transportation (DOT), Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

**DATES:** July 9, 1992.

**ADDRESSES:** Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

**FOR FURTHER INFORMATION CONTACT:** Copies of the DOT information collection requests submitted to OMB may be obtained from John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

*Items Submitted for Review by OMB*

The following information collection requests were submitted to OMB on July 9, 1992:

DOT No. 3653.
OMB No. 2137–0522.
*Administration:* Research and Special Programs Administration.
*Title:* Incident and Annual Reports for Gas Pipeline Operators.
*Need for Information:* These reports are necessary to identify significant failures which may require investigation and to initiate corrective measures to prevent further damage or loss of life.
*Proposed Use of Information:* The information is used to determine if an operator has acted or is acting in compliance with the Natural Gas Pipeline Safety Act of 1968 and to prepare the annual report to Congress.
*Frequency:* On occasion for incident reports; once yearly for annual reports.
*Burden Estimate:* 6,670 hours.
*Respondents:* Pipeline operators.
*Form(s):* RSPA F 7100.1, F 7100.2, F 7100.1–1, and F 7100.2–1.
*Average Burden Hours Per Response:* 2 hours and 43 minutes.

DOT No. 3654.
OMB No. 2137–0018.
*Administration:* Research and Special Programs Administration.
*Title:* Portable Tank Inspection and Testing.
*Need for Information:* Ascertain whether portable tanks have been tested and/or retested in accordance with the Department's regulations.
Proposed Use of Information: To verify that portable tanks have not deteriorated due to age or physical abuse to a degree that would render the tanks unsafe for the transportation of hazardous materials.
*Frequency:* Approximately 2–5 years depending on the type of test and container.
*Burden Estimate:* 51,220 hours.
*Respondents:* Owners.
*Form(s):* None.
*Average Burden Hours Per Response:* 1 hour.

DOT No. 3655.
OMB No. 2137–0586.
*Administration:* Research and Special Programs Administration.
*Title:* Hazardous Materials Public Sector Planning and Training Grants.
*Need for Information:* Implementation of a reimbursable grant program to enhance existing State and local emergency response programs.
Proposed Use of Information: Grant program is to increase State and Indian tribal effectiveness in handling accidents and incidents involving the transportation of hazardous materials.
*Frequency:* 3 years from the date grantee submits last expenditure request.
*Burden Estimate:* 4,082 hours.
*Respondents:* State and local governments (Indian Tribes).
*Form(s):* None.
*Average Burden Hours Per Response:* 68 hours.

DOT No. 3656.
OMB No. 2127–0539.
*Administration:* National Highway Traffic Safety Administration.
*Title:* 49 CFR Part 542, Procedures for Selecting Lines to be Covered by the Theft Prevention Standard.
*Need for Information:* To identify certain motor vehicles and their major replacement parts and to impede motor vehicle theft.
Proposed Use of Information: Manufacturers of passenger automobiles must identify new model introductions that are likely to be high-theft lines as defined in Title VI of the Motor Vehicle Information and Cost Savings Act.
*Frequency:* One-time only.
*Burden Estimate:* 2,720 hours.
*Respondents:* Vehicle manufacturers.
*Form(s):* None.
*Average Burden Hours Per Response:* 1 hour and 30 minutes.

DOT No. 3657.
OMB No. 2127–0042.
*Administration:* National Highway Traffic Safety Administration.
*Title:* 49 CFR Part 576, Record Retention.
*Need for Information:* To ensure records are kept by manufacturers for proper investigation of possible defects related to motor vehicle safety.
Proposed Use of Information: This regulation requires manufacturers to retain one copy of complaints, reports, and other records of malfunctions that may be related to motor vehicle safety. These records may be used to investigate possible defects and noncompliances.
*Frequency:* Recordkeeping.
*Burden Estimate:* 40,000 hours.
*Respondents:* Vehicle manufacturers.
*Form(s):* None.
*Average Burden Hours Per Response:* 1 hour and 30 minutes.

DOT No. 3658.
OMB No. 2130–0532.
*Administration:* Federal Railroad Administration.
*Title:* Railroad User Fees.
Need for Information: To determine a railroad's equitable share of the total industry user fee.

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**Proposed Use of Information:** To assure that each railroad is assessed its fair share of the industry-wide user fee.
*Frequency:* Annually and recordkeeping.
*Burden Estimate:* 2,631 hours.
*Respondents:* Railroads.
*Form(s):* FRA–F–6180.90 and FRA–F–6180.91.
*Average Burden Hours Per Response:* 4 hours and 17 minutes.

DOT No. 3659.
OMB No. 2125–0541.
*Administration:* Federal Highway Administration.
*Title:* Certification of Enforcement of Heavy Vehicle Use Tax.
*Need for Information:* For FHWA to obtain certification from each State as proof of payment of the heavy vehicle use tax.
*Proposed Use of Information:* For each State to certify proof of payment of heavy vehicle use tax and to provide supporting records for each vehicle subject to the tax.
*Frequency.* Annually.
*Burden Estimate:* 612 hours.
*Respondents:* State highway agencies.
*Form(s):* None.
*Average Burden Hours Per Response:* 2 hours for reporting; 10 hours per recordkeeper.

DOT No. 3660.
OMB No. 2127–0558.
*Administration:* National Highway Traffic Safety Administration.
*Title:* Production Reporting System for Side Impact Protection Compliance, 49 CFR Part 586.
*Need for Information:* To determine the extent to which manufacturers are complying with the phase-in period.
*Proposed Use of Information:* Motor vehicle manufacturers are required to specify the percentage of passenger cars and their LTV's that are in compliance with the extension of FMVSS No. 214 and phase-in period for Part 586.
*Frequency:* Annually.
*Burden Estimate:* 1,320 hours.
*Respondents:* Vehicle manufacturers.
*Form(s):* None.
*Average Burden Hours Per Response:* 39 minutes.

DOT No. 3661.
OMB No. 2106–0005.
*Administration:* Office of the Secretary of Transportation.
*Title:* Title 14 CFR part 212, Charter Rules for U.S. and Foreign Direct Air Carriers.
*Need for Information:* Regulatory compliance.
*Proposed Use of Information:* To enable the Department to monitor and confer economic authority for U.S. and foreign air carriers to conduct commercial charter services in international markets.
*Frequency:* On occasion.
*Burden Estimate:* 605 hours.
*Respondents:* Foreign air carriers.
*Form(s):* OST Form 4540.
*Average Burden Hours Per Response:* 22 minutes.

DOT No. 3662.
OMB No. 2115–0025.
*Administration:* U.S. Coast Guard.
*Title:* Oil Record Books for Ships.
*Need for Information:* This information collection is needed by the Coast Guard to ensure that the statutory requirements are met to prevent oil pollution from ships at sea.
*Proposed Use of Information:* Coast Guard will use this information to determine the level of compliance with MARPOL 73/78 and reinforce the discharge provisions. Actual recording of discharge information reinforces the intent of the regulation.
*Frequency:* On occasion.
*Burden Estimate:* 10,418 hours.
*Respondents:* Owners/operators of oceangoing vessels.
*Form(s):* CG 4602A.
*Average Burden Hours Per Response:* 2 hours and 30 minutes.

DOT No. 3663.
OMB No. 2115–0554.
*Administration:* U.S. Coast Guard.
*Title:* Advance Notice of Need for Reception Facilities.
*Need for Information:* This information collection is needed to ensure that the Coast Guard establishes regulations for determining the adequacy of reception facilities at ports and terminals. It will also be used to establish procedures whereby persons in charge of ports and terminals may request the Coast Guard to certify the adequacy of facilities. The reception facilities are needed to receive wastes which ships may not discharge at sea.
*Proposed Use of Information:* Coast Guard will use this information to determine when ships require reception facilities and to make such facilities available. This requirement is in lieu of requiring that terminals and personnel be available on a consistent basis.
*Frequency:* On occasion.
*Burden Estimate:* 1,256 house.
Respondents: Terminal operators.
*Form(s):* None.
*Average Burden Hours Per Response:* 15 minutes.

Issued in Washington, DC on July 9, 1992.

**Cynthia C. Rand,**
*Director of Information Resource Management.*

[FR Doc. 92–16686 Filed 7–15–92; 8:45 am]
BILLING CODE 4910–62–M

## Federal Highway Administration

### Intermodal Surface Transportation Efficiency Act of 1991 Amendments to 23 U.S.C. 131, Control of Outdoor Advertising

**AGENCY:** Federal Highway Administration (FHWA), DOT.
**ACTION:** Modification of notice.

**SUMMARY:** The FHWA is rescinding part of its March 6 notice in the **Federal Register** dealing with control of outdoor advertising, published on March 6, 1992, at 57 FR 8167. In addition, in the Regulations section of today's **Federal Register**, the FHWA is withdrawing a notice of proposed rulemaking (NPRM) published on May 8, 1992, at 57 FR 19824. Both the March 6 notice and the May 8 NPRM noted that the recently enacted Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) amended 23 U.S.C. 131 by making highway trust funds apportioned under 23 U.S.C. 104 available for the Federal share of just compensation to be paid to sign owners and landowners upon the removal of nonconforming signs. Consequently, the States were once again required to purchase nonconforming signs to comply with the Highway Beautification Act of 1965.

On June 22, 1992, however, the Congress further amended 23 U.S.C. 131(n), effectively giving the States the discretion as to whether to use highway funds for the removal of nonconforming signs. As a result, a portion of the March 6 notice and the NPRM no longer reflect current law, as there can be no binding guidelines or deadlines set by the FHWA for the States to follow. The relevant portion of the March 6 notice and the NPRM are therefore withdrawn.

**DATES:** Withdrawal of notice effective on June 22, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger Kezar, Chief, Policy Development Branch, Office of Right-of-Way, HRW–11, (202) 366–2021; or Mr. Robert J. Black, Attorney, Office of Chief Counsel, HCC–31, (202) 366–1359, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except legal Federal holidays.

**SUPPLEMENTARY INFORMATION:** On March 6, 1992, the FHWA published a notice in the **Federal Register** entitled "Intermodal Surface Transportation Efficiency Act of 1991 Amendments to 23 U.S.C. 131, Control of Outdoor Advertising." The notice described the impact of section 1046 of the ISTEA, Public Law 102–240, 105 Stat. 1914, upon

the States' existing procedures for effective control of outdoor advertising, which were instituted in accord with regulations previously issued by the FHWA in 23 CFR 750.705. Section 1046(a) of the ISTEA amended 23 U.S.C. 131(m), making funds apportioned under 23 U.S.C. 104 available to participate in the cost of outdoor advertising control. By this amendment, highway trust funds were now available for the removal of nonconforming signs. In the notice, the FHWA stated that, as a consequence of the ISTEA making such funds available for participation, it believed the ISTEA required the States to begin immediate removal of nonconforming signs and to make reasonable progress in completing their removal expeditiously. The notice set a two year flexible goal for the removal of nonconforming signs and advised the States to submit plans for such removal by June 18, 1992. The notice also dealt with the removal of illegal signs and the prohibition of signs on scenic byways.

On May 8, 1992, the FHWA issued an NPRM to set forth criteria that the States should consider in developing their plans for the acquisition and removal of nonconforming signs. In addition, the FHWA wanted to establish a definite deadline for sign removal, with a procedure for extending the time limit if States were unable to meet it. Several options for implementing the removal of the remaining nonconforming signs were listed, and comments were solicited from all interested parties. As of this date, the FHWA has received numerous comments upon the options.

The need for the FHWA's rulemaking effort was obviated, when, on June 22, 1992, Public Law 102–302, 106 Stat. 248, was signed into law. Section 104 of Public Law 102–302 amended 23 U.S.C. 131(n), to make clear that while funds apportioned to a State under 23 U.S.C. 104 could be used for the acquisition costs of nonconforming signs, States are under no obligation to use such highway funds for nonconforming sign removal. Consequently, the May 8 NPRM, found at 57 FR 19824, which would have resulted in a rule requiring the establishment of a specific timetable for the removal of the remaining 92,000 nonconforming signs, is no longer appropriate and is withdrawn (see Regulations section of today's **Federal Register**).

In consideration of the foregoing, the March 6 notice, found at 57 FR 8167, is still in effect as regards the prohibition of signs on scenic byways and the removal of illegal signs. That part of the March 6 notice dealing with the removal of nonconforming signs, however, is hereby rescinded. States are still required to maintain effective control of outdoor advertising pursuant to 23 CFR part 750, and those States deciding to use highway funds for nonconforming sign removal should give careful consideration to the recommended priority of removals found at 23 CFR 750.304(a).

(23 U.S.C. 131 and 315; Sec. 104 of Pub. L. 102–302, 106 Stat. 248)

Issued on: July 10, 1992.

**T. D. Larson,**

*Administrator.*

[FR Doc. 92–16769 Filed 7–15–92; 8:45 am]

BILLING CODE 4910-22-M

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## National Highway Traffic Safety Administration

**[Docket No. 88–06; Notice 20]**

## Federal Motor Vehicle Safety Standards; Side Impact Protection; Laboratory Test Procedure

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of availability.

**SUMMARY:** On August 16, 1991, NHTSA published in the **Federal Register** (56 FR 40937) a notice requesting public comments on a draft version of a Laboratory Test Procedure for use by contractors in testing vehicles for compliance with the side impact dynamic performance requirements of Federal Motor Vehicle Safety Standard No. 214, *Side Impact Protection.* The purpose of this notice is announce that the agency has placed in the public docket the final version of the Laboratory Test Procedure and the agency's response to the public comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey M. Giuseppe, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202–366–5756).

**SUPPLEMENTARY INFORMATION:** On August 16, 1991, NHTSA published in the **Federal Register** (56 FR 40937) a notice requesting public comments on a draft version of a Laboratory Test Procedure for use by contractors in testing vehicles for compliance with the side impact dynamic performance requirements of Federal Motor Vehicle Safety Standard No. 214, *Side Impact Protection.* The agency stated that it would consider any public comments before adopting a final Laboratory Test Procedure.

NHTSA has how completed its review of the public comments and prepared the final version of the Laboratory Test Procedure. The final Laboratory Test Procedure (TP–214D–02) and the agency's response to the public comments have been filed in Docket 88–06, under Notice 12.

NHTSA notes that, as discussed in the August 1991 notice, it decided to request comments on the draft Laboratory Test Procedure for Standard No. 214 because of the unusual complexity of and public interest in issues involved with the test procedure. The agency observed that it ordinarily does not request public comments on Laboratory Test Procedures and emphasized that it did not intend to signal a general change in this practice. NHTSA may chose to adopt or change any Laboratory Test Procedure without allowing an opportunity for public comment.

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 10, 1992.

**William A. Boehly,**

*Associate Administrator for Enforcement.*

[FR Doc. 92–16687 Filed 7–15–92; 8:45 am]

BILLING CODE 4910-59-M

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## Saint Lawrence Seaway Development Corporation

## Advisory Board Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2 p.m., August 4, 1992, at the Corporation's Administration Headquarters, room 5424, 400 Seventh Street, SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than July 22, 1992, March C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202/366–0091.

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Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on July 9, 1992.

**Marc C. Owen,**

*Advisory Board Liaison.*

[FR Doc. 92-16866 Filed 7-15-92; 8:45 am]

BILLING CODE 4810-21-M



# Sunshine Act Meetings

Federal Register
Vol. 57, No. 137
Thursday, July 16, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**DEPARTMENT OF DEFENSE**

**UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES**

Meeting Notice

**TIME AND DATE:** Full Board 8:00 a.m., August 19, 1992.

**PLACE:** Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

**STATUS:** Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

**MATTERS TO BE CONSIDERED:**

8:00 a.m. Meeting—Board of Regents

(1) Approval of Minutes—May 15, 1992; (2) Faculty Matters; (3) Report—Admissions; (4) Financial Report; (5) Associate Dean for Graduate Medical Education; (6) Report—President, USUHS; (7) Comments—Members, Board of Regents; (8) Comments—Chairman, Board of Regents; (9) Reports of Subcommittees on Planning and Oversight; New Business.

**CONTACT PERSON FOR MORE INFORMATION:** David S. Trump, M.D., Executive Secretary of the Board of Regents, 301/295-3886.

Dated: July 14, 1992.

**Linda Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-16951 Filed 7-14-92; 3:46 pm]

BILLING CODE 3810-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, July 14, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to probable failure of a certain insured bank.

Recommendation concerning an administrative enforcement proceeding.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,818—Silverado Banking, Savings and Loan Association, Denver, Colorado

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and concurred in by Vice Chairman Andrew C. Hove, Jr., Director Stephen R. Steinbrink (Acting Comptroller of the Currency), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require considereration of the matters in a meeting open to public observation; and that matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550, 17th Street, N.W., Washington, D.C.

Dated: July 14, 1992.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 92-16948 Filed 7-14-92; 3:38 pm]

BILLING CODE 6714-0-M

**FEDERAL HOUSING FINANCE BOARD**

**TIME AND DATE:** 10:00 a.m., Wednesday, July 22, 1992.

**PLACE:** Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**STATUS:** Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

**PORTIONS OPEN TO THE PUBLIC:** The Board will consider the following:

1. Monthly Reports
   A. District Banks Directorate
   B. Housing Finance Directorate

**PORTIONS CLOSED TO THE PUBLIC:** The Board will consider the following:

1. Approval of the June Board Minutes
2. Mid-year Review of Agency's Priorities
3. Office of Strategic Planning Update
   A. Strategic Plan
   B. System Efficiencies Task Force
4. Examination & Regulatory Oversight Reports
5. Board Management Issues

The above matters are exempt under one or more of sections 552b(c) (2), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c) (2), (8), (9)(A) and (9)(B).

**CONTACT PERSON FOR MORE INFORMATION:** Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

**J. Stephen Britt,**

*Executive Director.*

[FR Doc. 92-16864 Filed 7-14-92; 4:44 pm]

BILLING CODE 6725-01-M

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 10:00 a.m., Wednesday, July 22, 1992.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

July 14, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-16945 Filed 7-14-92; 3:37 pm]

BILLING CODE 6210-01-M

**INTERSTATE COMMERCE COMMISSION**

Commission Conference

**TIME AND DATE:** 10:00 a.m., Tuesday, July 21, 1992.

**PLACE:** Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423.

**STATUS:** The Commission will meet to discuss among themselves the following agenda item. Although the conference is open for the public observation, no public participation is permitted.

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**MATTER TO BE DISCUSSED:**
FY 94 Budget.

**CONTACT PERSON FOR MORE INFORMATION:** Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927-5350, TDD: (202) 927-5721.

Sidney L. Strickland, Jr.,
*Secretary.*

[FR Doc. 92-16886 Filed 7-14-92; 2:33 p.m.]
BILLING CODE 7535-01-M

## Corre

This section contains edi published Pr Rule, and N corrections the Federal corrections documents document c issue.

**DEPARTME**

**Animal and Service**

**9 CFR Part**

**[Docket No.**

**National Po and Auxilia**

*Correction*

In propos beginning o Tuesday, Ju following c

1. On pag the 6th full insert "indu the 11th lin "§ 145.1".

2. On pag column, in fourth line f "period" af

**§ 145.4 [Co**

3. On pag in § 145.4(d should read

**§ 145.33 [C**

4. On the column, in fourth line, days".

5. On pag in amendat line "145.23

**§ 147.11 [C**

6. On the column, in insert "(b)" *examinatio contaminat*

**§ 147.12 [C**

7. On pag in § 147.12( 1" should re

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# Corrections

Federal Register
Vol. 57, No. 137
Thursday, July 16, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**9 CFR Parts 145 and 147**

**[Docket No. 91-026-1]**

### National Poultry Improvement Plan and Auxiliary Provisions

*Correction*

In proposed rule document 92-15232 beginning on page 29044 in the issue of Tuesday, June 30, 1992, make the following corrections:

1. On page 29044, in the 3rd column, in the 6th full paragraph, in the 7th line, insert "industry" after "poultry"; and in the 11th line, "§ § 145.1" should read "§ 145.1".

2. On page 29045, in the second column, in the first paragraph, in the fourth line from the bottom, insert "period" after "incubation".

**§ 145.4 [Corrected]**

3. On page 29048, in the first column, in § 145.4(d), in the fourth line, "for" should read "from".

**§ 145.33 [Corrected]**

4. On the same page, in the third column, in § 145.33(d)(10(vii), in the fourth line, "30 days" should read "90 days".

5. On page 29049, in the first column, in amendatory instruction 15, in the first line "145.23" should read "145.53".

**§ 147.11 [Corrected]**

6. On the same page, in the third column, in § 147.11, in the fourth line, insert "(b)" before "*Bacteriologic examination of environmental and other contaminated specimens.*".

**§ 147.12 [Corrected]**

7. On page 29050, in the first column, in § 147.12(c)(2), in the last line, "milk 1 [1]" should read "milk[1]".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**50 CFR Parts 672 and 675**

**[Docket No. 920531-2131]**

**RIN 0648-AD76**

### Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands

*Correction*

In proposed rule document 92-12353 beginning on page 22695 in the issue of Friday, May 29, 1992, make the following corrections:

1. On page 22697, in the 1st column, under **Establish FMP * * *,** in the 1st paragraph, in the 12th line, "§ 675.29" should read "§ 657.20".

2. On page 22698, in the third column, in the eighth line from the bottom, "yellowfish" should read "yellowfin".

3. On page 22699, in the 1st column, in the 11th line from the bottom, "CSAI" should read "BSAI".

4. On the same page, in the third column, in the first paragraph, in the fifth line, "increase" should read "increases".

5. On page 22700, in the second column, in the first full paragraph, in the seventh line, "ensure" should read "ensue"

6. On the same page, in the third column, in the eighth line from the top, "ensuring" should read "ensuing".

**§ 672.22 [Corrected]**

7. On page 22703, in the second column, in § 672.22(a)(1)(iv), in the last line, "ground fish" should read "groundfish"; and in paragraph (a)(2)(i), in the second line, "stick" should read "stock".

**§ 672.26 [Corrected]**

8. On page 22704, in the second column, in § 672.26(b)(1), in the second line, remove "a".

**§ 675.26 [Corrected]**

9. On page 22706, in the third column, in § 675.26(d)(3)(i)(A)(*2*), beginning in the fourth line, remove the phrase "based on the round weight equivalent of the retained groundfish" the first time it appears.

10. On the same page, in the same column, in § 675.26(d)(3)(i)(C), in the fifth line from the bottom, insert "reporting periods in which the vessel was assigned to that fishery" after "weekly"; and in the last line, insert a period after "periods".

BILLING CODE 1505-01-D

## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Part 145**

### Commission Eastern Regional Office; Change of Address

*Correction*

In rule document 92-15309 appearing on page 29203 in the issue of Wednesday, July 1, 1992, in the third column, in amendatory instruction 5, in the second line, "(b)" should read "(g)".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**49 CFR Part 571**

**[Docket No. 89-16-18; Notice 6]**

**RIN 2127-AD75**

### Federal Motor Vehicle Safety Standards; Glazing Materials

*Correction*

In rule document 92-15868 beginning on page 30161 in the issue of Wednesday, July 8, 1992, make the following corrections:

1. On page 30161, in the third column, in the eighth line from the top, "of" the first time it appears should read "or".

2. On page 30163, in the first column, in the second full paragraph, in the last line, "rationable" should read "rationale".

3. On the same page, in the third column, in the third paragraph, in the fifth line from the bottom, "Text" should read "Test".

**§ 571.205 [Corrected]**

4. On page 30164, in the third column, in § 571.205, in S5.1.2.6, in the fifth line, after "4," insert "6,"; and in S5.1.2.10, at the end of paragraph (a), insert "* * *".

BILLING CODE 1505-01-D

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Part II

# Department of Labor

**Employment Standards Administration**
**Wage and Hour Division**

**41 CFR Part 50-201**
**General Regulations Under the Walsh-Healey Public Contracts Act; Final Rule**

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DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

41 CFR Part 50-201

RIN 1215-AA33

## General Regulations Under the Walsh-Healey Public Contracts Act

**AGENCY:** Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** The Department of Labor (Department or DOL) is amending the Walsh-Healey Public Contracts Act (PCA) regulations to provide an alternative regular dealer definition for "information systems integrators," firms that contract to provide fully operational information processing ("ADP") systems to the Federal Government. This alternative definition is being promulgated in order to alleviate Federal procurement problems and to encourage more competition for Federal contracts.

**EFFECTIVE DATE:** August 17, 1992.

**FOR FURTHER INFORMATION CONTACT:** Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8305. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Walsh-Healey Public Contracts Act (PCA) provides labor standards for employees working on Federal contracts over $10,000 calling for the manufacture or furnishing of materials, supplies, articles, or equipment. Section 1(a) of PCA provides that contracts subject to the Act may only be awarded to a manufacturer of, or a regular dealer in, the materials, supplies, articles, or equipment to be furnished under the contract. As defined in regulations, a "manufacturer" is "a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications." A "regular dealer" is "a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the contract are bought, kept in stock, and sold to the public in the usual course of business" (41 CFR 50-201.101(a) (1) and (2)). As provided in 41 CFR 50-206.53(b)(2), the stock maintained by a regular dealer must be "a true inventory from which sales are made."

In some situations the standard definitions do not accommodate the Government's needs and a particular industry's practices, and the statute and regulations allow for exceptions to be made in such cases when the Government's operations would be seriously impaired. In addition to a number of full and partial administrative exemptions from the eligibility requirements that have been adopted for certain types of contracts (see 41 CFR 50-201.603 and .604), special alternative definitions have been granted over the years for regular dealers in eleven particular products (including one for the procurement of used automatic data processing equipment), in order to recognize commercial practices existing in those industries (see 41 CFR 50-201.101(a)(2) (i) through (xi)). Common to all of these alternative definitions is the absence of a requirement that the dealer physically maintain a stock from which sales are made.

On June 22, 1989, DOL published in the **Federal Register** (54 FR 26212) a proposed alternative regular dealer definition for "information systems integrators," intending to amend the PCA regulations by adding a new subparagraph (a)(2)(xii) to 41 CFR 50-201.101 containing the new definition. In addition to establishing alternative qualifications for eligibility for a defined class of contracts, the special definition proposed to permit qualifying contractors in this industry to satisfy the statutory requirements without having to physically maintain a stock of inventory from which sales are made. The maintenance of physical inventory appeared to be inconsistent with this industry's practices. The proposed definition resulted from information furnished by representatives of contracting agencies and the industry indicating that information systems integrators play a crucial role in the economic and efficient acquisition of information processing resources by Federal agencies, and that uncertainty as to their eligibility under PCA could hamper agencies' operational capabilities that depend heavily on the performance of advanced technology computer systems.

Two favorable comments were received on the proposal during the initial comment period. In November 1989, the Subcommittee on Legislation and National Security of the Committee on Government Operations, U.S. House of Representatives, began a series of hearings on the Federal Government's purchase of ADP equipment, which included a review of some procurements awarded to systems integrators. The Department presented testimony at those hearings. Based on information brought out at the hearings and the fact that only two comments were received, the Department decided to reopen the comment period (to ensure an adequate rulemaking record) and to consider relevant information developed from the hearings in reaching decisions on formulating a final rule in the matter.

On November 27, 1990, the House Government Operations Committee ordered the printing of H.R. Rep. No. 101-967, 101st Cong., 2d Sess. (1990), entitled Acquisition of ADP Equipment—Questionable Practices by the Navy, Its Employees, the General Services Administration and IBM. The Committee recommendations include the following passage pertaining to the Department of Labor and its PCA rulemaking activities for "information systems integrators:"

> * * * e. The Committee continues to be concerned that the Walsh-Healey Act is being violated or circumvented by 'system integrators' that may not be eligible for contract awards under the Act as manufacturers or regular dealers. This situation is especially acute in the area of ADP procurement, where it is commonplace for a number of 'integrators' to offer identical equipment manufactured by the same manufacturer. It is clear that what results from these circumstances is not 'competition' as required by the Competition in Contracting Act. However, the Committee recognizes that bona fide systems integration contracts, which provide the government with substantial value added services, can improve the efficiency and effectiveness of Federal information resources management. Therefore, the Committee urges the Department of Labor to clarify the eligibility of systems integrators under the Walsh-Healey Act as soon as possible, in a manner that closes the loophole for sales to the government by 'bid brokers.'[1]

The Department reopened the comment period on the proposed special definition for sixty days, to ensure that interested parties had sufficient opportunity to comment, and to ensure that the Department had sufficient information in deciding what further rulemaking activity was appropriate (55 FR 50725; December 10, 1990). Commenters responding to this second Notice were invited to focus particular attention in the comments, in addition to commenting on the substance of the proposed definition itself, on the following two areas: (1) The extent to

[1] H.R. Rep. No. 101-967, 101st Cong., 2d Sess., pp. 42-43.

which the existing, standard PCA definitions for "manufacturer" and "regular dealer" present problems to the Federal Government in its ability to efficiently and effectively procure needed information processing systems and related ADP equipment; and, (2) whether the criteria specified in the proposed special definition were sufficient to prevent "bid brokering," or whether additional limitations or refinements were needed in the rule to ensure that pure "bid brokering" did not occur under the guise of systems integration.

**Summary of Comments**

The major issues presented in the comments received during the two comment periods are discussed below, followed by the Department's analysis and responses to those comments.

*Comments on June 22, 1989 NPRM*

The Department received written comments during the initial comment period from the Information Resources Management Service of the General Services Administration (GSA) and the Association of Data Processing Service Organizations (ADAPSO), a computer software and services industry association. One additional comment received from the U.S. Department of Agriculture after the close of the comment period was also included in the record. All comments generally supported the proposal.

GSA noted that, in distinguishing the types of solicitations and contracts to be within the intended scope of the information systems integrator definition, the proposal alternatively referred to only "functional" specifications on the one hand (within the definition), and to "specific make and model" specifications on the other (outside the definition). Under the Competition in Contracting Act of 1984 (Pub. L. 98–369), as implemented in the Federal Acquisition Regulations (48 CFR 10.002 (a)(4)) and the Federal Information Resources Management Regulations (41 CFR 201–30.013 (1989)), "performance" and "design" specifications are two additional types of specifications authorized for use in Government solicitations, provided their use in a particular procurement constitutes the best statement of the procuring agency's needs. GSA recommended that the proposed PCA regulation be revised to address the entire spectrum of Government specifications, and to include "performance and "design" specifications with "functional" specifications when describing the types of solicitations within the scope of the new systems integrator definition.

*Comments on December 10, 1990 Notice*

The Department reopened the comment period for sixty days beginning December 10, 1990 (55 FR 50725). Twenty-three comments were timely filed by Federal agencies, systems integrators and firms in the information technology field, consultants, associations representing the ADP industry and/or business equipment manufacturers, ADP equipment manufacturers, and others, as follows: Association of Data Processing Service Organizations (ADAPSO); Amdahl Corporation; Andersen Consulting; AT&T; BDM International, Inc.; Boeing Computer Services; Chartway Technologies; Computer and Business Equipment Manufacturers Association (CBEMA); Coalition of Minority Dealers (CMD); Department of Agriculture (USDA); Department of the Army (DOA); Department of Justice (DOJ); Department of Transportation (DOT); Department of Treasury, Internal Revenue Service (IRS); EDS; Federal Bar Association; Federation of Government Information Processing Councils; General Services Administration (GSA); Information Resources Management Service; International Business Machines Corporation (IBM); PRC Inc.; Professional Services Council; Sysorex Information System, Inc.; and Tektronix. The Farmers Home Administration (FmHA), Department of Agriculture (on behalf of the Interagency Committee on Information Resources Management and FmHA), and the Department of Housing and Urban Development each submitted general supporting comments after the comment period closed which were also included in the record. These commenters expressed universal support for the proposal generally, and some suggested particular changes. No comments objected to the adoption of a special definition for information systems integrators. A summary of these comments is presented below addressing the major points raised.

*Need for the Special Definition*

Commenters made the following observations concerning the need for the rule:

Revenues in 1989 for systems integrators operating in the Federal sector were placed at $5.3 billion (more than 50% of total U.S. systems integration revenues for 1989). It was suggested that the Federal share will exceed $10 billion by 1995 (future growth in the Federal sector was estimated at 19% per year).

The proposal is an important step in reconciling PCA with current government needs and ADP industry practices. The current rules have created uncertainty in government and industry. Hardware manufacturers have at times sought to exploit the uncertainty by threatening to challenge integrators' eligibility in an effort to reduce competition and limit an agency's choice among alternate systems.

The current rules adversely affect the government's procurement of information systems: they fail to recognize the uniqueness of the systems integrator industry, and were intended to avoid the historic broker relationship which is inappropriate for information systems procurements. The strictness of the existing definitions, read in conjunction with commercial practices in the industry, makes it difficult to prove eligibility. If systems integrators would be declared ineligible, it would be almost impossible for the government to meet its information processing systems needs. And reduced competition would be contrary to the goals of the Competition in Contracting Act.

The existing inventory requirement is costly—integrators deal in products not commonly held in inventory that are expensive, highly specialized, and purchased through special orders or by drop shipment. Few integrators have the resources to maintain inventories of expensive and highly sensitive equipment that is easily damaged during handling, storage and transit. For mainframes, storage and inventory costs are particularly prohibitive. Manufacturers often limit production of large items to orders on hand. Moreover, the product life cycle for ADP equipment is 18 months or less, a further disincentive for integrators to purchase and store equipment in advance of orders.

The inventory requirement excludes many firms from consideration that presently provide a value-added systems integration service, which creates an artificial difference between commercial business and government practices, increases the government's costs and reduces technical opportunities. Strictly applied, the current definition would qualify only manufacturers, which would limit competition, inhibit multiple-product, systems solutions, and increase costs. The change will promote competition and reduce the risk of costly and time-consuming bid protests due to the ambiguity in the existing definitions, and update PCA's definitions to specifically address information services procurement techniques that did not exist when PCA was enacted.

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Uncertainty as to PCA eligibility has caused certain integrators to maintain a stock of inventory (which they otherwise would not maintain) to qualify as a "regulator dealer." Others attempt to do some assembly work at their own plant (at greater expense than might otherwise be necessary) to qualify as an "assembler" (and thus as a "manufacturer"). Such actions are contrary to industry practice, make contractors less efficient, and drive up the cost for the government's information processing. The uncertainty has resulted in investigations of eligibility which take time and money, delay acquisitions, and divert resources from the government's underlying need for information processing.

Because this industry is so dynamic, the government cannot readily determine the most advantageous offer on a particular solicitation. The government needs the expertise of systems integrators to identify the best mix of available hardware and software to meet the government's needs. The proposal will encourage the contractor to tailor systems based upon government requirements and not merely sell items the contractor has on hand. Contracting with an outside firm to design and assemble a system enables the agency to focus on the goals of the system rather than its technical specifications, allowing effective use of limited resources.

Integrators play an important and crucial role in developing and implementing information processing systems in DOT, and add significantly to DOT effectiveness in managing and maintaining such systems. Integrators have played an important role in recent IRS ADP acquisitions. Large and increasingly complex systems required to meet Government needs demand new approaches to solving problems that integrators can often meet. The proposal promotes competition and maximizes access to ADP expertise in the private sector. Excluding integrators from upcoming IRS ADP procurements would have a negative impact on the Tax System Modernization effort.

For larger ADP systems, the buyer's unique requirements determine the make-up of the system. Components must be tailored to the user's needs, and one large ADP system does not usually contain the same components as another. Thus the systems generally are not assembled with parts from inventory. The exception, known as a "total package procurement," comes from the few large original equipment manufacturers (OEMs) that assemble systems using elements that only they produce. Such packages may not always be the best combination of hardware, software, maintenance and price to meet the government's needs.

Integrators represent a unique resource to the government: Because they have no vested interest in any one particular hardware or software product, they may select products based on the government's requirements only. Integrators can build a system to government specifications using sources from several vendors to produce optimal price and performance. This is encouraged by the Federal Information Resources Management Regulation (FIRMR), which directs agencies to avoid total package procurements by stating specifications in terms of performance or function rather than using sole source or "brand name or equal" specifications that rely exclusively on a particular maker's product line (FIRMR § 201-11.002-1 (1989)).

The existing definitions do not address the most significant "value added" by integrators: Professional know-how to track emerging product lines and combine products to serve different data processing requirements. Instead, the eligibility focus is on arbitrary, peripheral activities like manual replacement of computer chips on circuit boards or rewiring inside a computer cabinet. An integrator "produces" customized computer or telecommunications systems, adding value through skillfull engineering and design to the components fabricated by others. But, engineering, planning, design, inspection, quality control, testing, marking, packaging, and repackaging are not, alone or in combination, "manufacturing" under PCA (41 CFR 50-206.51(h)). The "assembler" definition does not fit because of the requirement that assembly must include "substantial and significant fabrication or production of the desired product."

Integrators benefit the government by providing fully integrated information processing systems, in the form of creatively designed, mixed-vendor systems in a competitive environment, which enhances cost-effectiveness. Federal agencies acquire specialized technical knowledge and project management skills from integrators that usually are not available from within the agency itself. Thus, integrators perform functions that are of foremost importance to the efficient and effective utilization of information processing technology for many Federal agencies. Without integrators, the government would assume the schedule and cost risks associated with integrating complex technologies.

The foregoing views expressed by commenters support the Department's earlier belief that circumstances exist to support the promulgation of a special definition for this industry under the authority granted by the Act for such actions. No comments were received questioning the need for a special definition. No comments were received asserting that the Government is able or would be able to meet its information processing requirements satisfactorily under the present definitions and in the absence of the special definition. Accordingly, the Administrator finds that in the absence of a special definition for "information system integrators," the conduct of Government business would be seriously impaired.

*Protection Against "Bid Brokering"*

Commenters offered the following points on whether the proposed special definition contains sufficient protections against bid brokering.

All commenters agreed that the proposal should prevent "bid brokering" because the types of integration responsibilities described in the rule adequately distinguish between the furnishing of true value-added services and simple bid brokering. "Fronts" cannot perform the specialized tasks of system design, selection and acquisition of components, assembly, and assumption of risk for a fully operational system. As proposed, vendors must meet a multi-step test with respect to a procurement to qualify: The contractor must be engaged in systems integration and have the sophistication to perform as genuine systems integrators; the solicitation must call for delivery of a fully operational system; and the contractor must add value through performance of the functions listed in the definition. "Front" organizations would not meet such demanding criteria. Brokers typically would not have the capacity to design, select and acquire components, assemble, provide, and in particular assume the risk for performance of a fully operational complex system as required by the rule.

The functional responsibilities described in the proposal were considered by several commenters to be more than adequate for agencies to determine whether an offeror is proposing valid "added value" integration services, as opposed to assuming a bid brokering role. Because the proposed criteria exclude specific make and model contracts, USDA believes the criteria will sufficiently prevent bid brokering and DOJ commented that the criteria are sufficient.

DOA commented that there is no risk in this industry of the type of broker relationship that the Act was intended to prevent. Congress sought to prevent "10 percenters" from purchasing for the government what the government could buy for itself. When the government seeks information systems, the integrator provides experience and expertise not available within the government. Special skills of integrators enhance the government's ability to obtain needed systems at the best possible cost.

In the Department's view, the intent behind the special definition was to recognize already established and growing practices in the ADP industry for large-scale, complex, computer systems contracts to be awarded to systems integrators, while at the same time preserving PCA's policy that "bid brokers" not be eligible for award of contracts subject to the Act. The proposed definition was written to only apply to procurements containing designated functional ADP system specifications, under which various manufacturers' products meeting the designated performance criteria would qualify, and to only those procurements calling for substantive integration functions to be performed. Procurements that specified particular makes or models of ADP equipment to be furnished, and those that did not call for integration functions to be performed, were intended not to be considered under the special definition. Instead, "brand name" of "make or model" specifications would continue to be subject to the standard PCA definitions for "manufacturer" or "regular dealer." The Department believes that this approach to the special definition will effectuate the policy of the PCA.

**GSA's Federal Information Resources Management Regulation**

In the Notice of Proposed Rulemaking published June 22, 1989 (54 FR 26212), the Department advised that the proposed PCA definition for "information systems integrator" was based in part on terms then codified in the Federal Information Resources Management Regulation (FIRMR) issued by the General Services Administration (GSA). The Department further advised that GSA had proposed to revise FIRMR part 201-2 (41 CFR part 201-2) to establish a definition for ADP entitled "Federal information processing resources," and that the Department would give full consideration to the final revisions in the FIRMR when the Department finalized its PCA rulemaking. The December 10, 1990 Notice reopening the comment period on the proposed special PCA definition advised that GSA had issued a final rule amending FIRMR part 201-2, which was published in the **Federal Register** on July 27, 1990, at 55 FR 30705. On December 28, 1990, at 55 FR 53386, GSA issued a final rule, effective April 29, 1991, that replaced the existing FIRMR with a new structure under the FIRMR Improvement Project. The new FIRMR continues to use the umbrella term "Federal information processing (FIP) resources" to identify ADP and telecommunications resources that are subject to GSA's exclusive procurement authority, and applies to all solicitations for FIP resources issued on or after April 29, 1991.

GSA revised the FIRMR (41 CFR chapter 201) to clarify the applicability of GSA's authority to the acquisition, management, and use of information resources by Federal agencies. The most recent amendment under the FIRMR Improvement Project replaced the existing FIRMR in the form of a republication of the chapter (see 55 FR 53386; December 28, 1990). The FIRMR uses the umbrella term "Federal information processing (FIP) resources" to identify ADP and telecommunications resources subject to GSA authority under the FIRMR. "Federal information processing (FIP) resources" is defined in FIRMR 201-4.001 (41 CFR 201-4.001) (and § 201-39.201) as automatic data processing equipment (ADPE) as provided in Public Law 99-500 (40 U.S.C. 759(a)(2)), as follows:

> Any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information by a Federal agency; or under a contract with a Federal agency which (1) requires the use of such equipment, or (2) requires the performance of a service or the furnishing of a product which is performed or produced making significant use of such equipment. Such term includes computers; ancillary equipment; software, firmware, and similar procedures; services, including support services; and related resources as defined by regulations issued by the Administrator for General Services.

As discussed earlier GSA suggested several changes in the proposed special definition to ensure its compatibility with the FIRMR. In particular, the proposed special PCA definition only expressly provided coverage where "functional" specifications were employed. GSA noted that "performance" and "design" specifications are also permissible (in addition to "functional"), provided they are the best statement of agency needs in a given procurement. As modified to include the broader range of specifications, the proposal would still require substantial value to be added by integrators, thereby retaining the protection from bid brokering. GSA suggested additional changes to use "FIP system" language in the definition, for "Federal Information Processing System," in lieu of the terms "information processing system" and "functional ADP system specifications" included in the proposed PCA special definition.

ADAPSO endorsed GSA's initial (7/24/89) comments on the original proposal for including within the definition the "entire spectrum of Government specifications, that is, [to] allow 'functional, performance and design specifications,' " and supported updating the proposed special definition to conform to recent changes in the FIRMR ("Federal information processing resources"). IBM commented that equipment performance specifications, compatible functionally equivalent specifications, or brand name or equivalent specifications are also valid for full and open competition procurements, and suggested that the rule should incorporate these forms of specification in addition to functional specifications.

The Department has determined that for purposes of the portion of the definition that describes the class of contracts included in the information systems integrator definition under PCA, performance specifications (ranges of acceptable characteristics, minimum acceptable standards, etc.) and/or design specifications (when these reflect the best statement of the Government's ADP mission needs in a particular procurement) may be added to or substituted for functional specifications. Appropriate revisions have been made in the final rule. The Department has also made editorial revisions in the final rule to ensure compatibility with terms used in the revised FIRMR. Make or model specifications are not appropriate as they are not compatible with the function of systems integrators and they create a potential for "bid brokering" which this rule intends to exclude.

Under applicable procurement law and regulations, agencies are required to base their specifications and purchase descriptions on minimum needs and the available market to satisfy those needs. Specifications and purchase descriptions can be stated in terms of function, so that a variety of products (or services) may qualify; performance,

including a range of acceptable characteristics or minimum acceptable standards; or design. Agency descriptions, whenever practicable, are to be stated in terms of functions to be performed or performance required. (FAR 10.002(a) & (b); FIRMR 201–20.103–3]

*Other Issues and Suggested Changes*

CMD recommended the inventory requirement be waived for *all* ADP contracts, not just integration contracts. Tektronix stated that the exemption should be expanded to cover systems integrators generally, not just in the ADP industry (e.g., high-technology, manufacturing test, scientific and medical industries). Providing relief for "systems integrators" (of all types) from the need to maintain stock from which sales are made would enable these businesses to incorporate the best available products and technologies when meeting functional system specifications, whether ADP, manufacturing test, medical, or scientific needs.

This rulemaking is concerned only with information systems integration contracts as such contracts are expressly defined in this rule, and only to the extent of providing an alternative means of qualifying for eligibility under contracts subject to PCA. The Department does not have information regarding the extent systems integration takes place in fields other than information systems. Nor does the Department have information that problems exist in other fields involving the acquisition and integration of materials, supplies, etc. The Department recognizes, however, that information systems integration contracts may be awarded by the Government in various fields of endeavor (including, for example, the fields of science and medicine among many others), and that there is an evolving interdependence between ADP and other developing technologies (as reflected in the FIRMR).

CBEMA and others expressed concern that the definition was too narrow in that it disqualified systems integrators when the government specifies a certain make or model to meet its requirements—"e.g. a bid for peripherals which must be compatible with an existing system." CBEMA suggested it may not be in the government's best interest to prohibit integrators from participating in these types of acquisitions.

A "bid for peripherals" would, in most cases, fall outside the intended scope of a system integration contract. By international design of the special definition, specific make or model acquisitions would continue to be subject to the standard "manufacturer" or "regular dealer" definitions, for the reasons already discussed. Otherwise, bid brokering of the "peripherals" (to the CBEMA's example) could occur under the guise of a system integration contract.

The definition's requirement that an integrator perform the entire range of integrator functions, such that the procurement must be for a fully operational system, was viewed by CMD as violative of existing FAR provisions that prohibit organizational conflicts of interest (FAR § 9.505–1 & –2). Further, CMD stated it was CMD's experience that integration contracts are not awarded as contemplated by the proposal.

The Department believes that CMD misreads the FAR provisions cited in relation to the proposed special definition, and misconceives the intent and effect of the proposed definition. By international design, in order to qualify for eligibility under the proposed special definition, a systems integrator contractor must have overall contractual responsibility for development, integration, assembly and checkout of the system, thus removing such procurements from the prohibitions stated in the FAR section cited by CMD. The prohibitions cited by CMD refer to systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production. The FAR provisions cited by CMD pertain to a contractor preparing specifications or work statements in the situation where such specifications or work statements will later be used in a subsequent, competitive acquisition for equipment. This would not be the case under the proposed PCA definition for systems integrators. (See also FAR 9.505–2(a)(3) regarding development work.)

FBA commented that the proposed structure provides for eligibility on the basis of the functions to be performed on a particular contract and not on the general nature of the integrator's business, which differs from the approach in previous special definitions (citing machine tools and dealers in used ADP equipment). FBA suggested this may have unintended results. An entity that has never performed integrated work could thus qualify according to FBA, and if bid brokering is a concern it would more likely occur with a company not generally established as a systems integrator. FBA suggested there appears to be nothing to prevent any person from qualifying on a particular contract so long as it involves systems integration.

Sysorex also commented that eligibility should be based on the nature of the integrator's regularly-conducted business, not the specific functions required under a given contract. As Sysorex read the proposal, firms that have not previously performed integration functions could qualify, based simply on the tasks required by the terms of a particular contract. Sysorex stated this is too generous and should be revised to limit the definition to established integrators. Tektronix recommended that a criterion be added to require that the business responding to the procurement request be an established business prior to the specific procurement request, perform such work on a "regular basis," and have a "legal business relationship" (which was not further defined) with the vendors whose products it will use in its "systems" solution.

These commenters appear to have misread the proposal. The definition applies only to "* * * a person or firm that owns, operates or maintains an established business which is engaged in contracting to provide fully operational information processing systems * * *" The definition is already based on the nature of the integrator's business (in addition to the nature of the class of contracts), and applies only to "established" firms.

Conversely, FBA noted that some bona fide systems integrators might be ineligible for a particular contract because the full range of systems integration functions are not required, which "would appear to exclude Multiple Award Schedule contracts, * * * [and there] is no reason to suppose that the labor standards that the PCA was designed to protect would in any way be comprised by allowing an otherwise bona fide systems integrator to compete for such contracts."

The references to "functional specifications" and "mission objectives" will tend to unnecessarily limit the applicability of the definition, according to FBA. Use of other than functional specifications and the absence of a statement of mission objectives do not mean that a procurement does not entail systems integration.

IRS recommended that the definition focus on the vendor and not depend on the particular requirements for a fully operational "systems" contract (an integrator could be excluded if the Government decides it needs less than a fully operational system). Alternatively, IRS recommended that "fully

operational information processing system" be further defined.

Sysorex suggested that "functional" and "mission objectives" be deleted—solicitations do not always state agency mission objectives or functional characteristics; the caveat that specifications may not simply describe make and model of equipment should be retained. The use of functional specifications and mission needs will limit eligibility to the few giants according to Sysorex—there should not be artificial, unnecessary and anti-competitive roadblocks to qualification favoring only a few firms.

The Department did not intend through this special definition to provide a blanket waiver of PCA's eligibility requirements for any and all firms capable of assuming the mantle of "integrator." PCA empowers the Secretary of Labor to administratively exempt "bids for a contract or class of contracts" from the eligibility requirements upon finding that it will be so difficult to obtain satisfactory bids for the contract(s) at issue under the stipulated restrictions that the conduct of Government business would be seriously impaired (41 CFR 50–201.101(a)(3)(ii); PCA § 6). Thus, there is an express need to limit the definition to the specific class of contracts for which the exigency finding is being made under the requirements of the statute, although some accommodation can be made through clarifications to address the comments with respect to "functional" and "mission objectives" (i.e., GSA's concerns, noted above; revisions have been made in the final rule to address "performance" and "design" standards). The proposed special definition is based on such an exigency finding for the class of contracts referred to as systems integration contracts, as the Department defines that class of contracts in this rule. Other types of contracts falling outside the definition provided by this rule are not affected by the rule. The remaining "limitations" of the definition are essential for purposes of accurately defining and delimiting the intended scope of the class of contracts for which the exigency finding is being made, in a manner that, in DOL's view, "* * * closes the loophole for sales to the government by 'bid brokers' * * *," to quote the House Government Operations Committee report. No similar finding of exigency or impairment of Government business has been suggested for extending the scope of the definition to include the procurement of ADP equipment under "Multiple Award Schedule contracts" referred to by FBA, or to any other types of procurements mentioned in the comments. The government, not the contractor, is the integrator when purchases are made from "Multiple Award Schedule contracts."

**Executive Order 12291**

This rule is not a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

**Regulatory Flexibility Act**

This rule will have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary of Labor certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect in connection with the proposed rule published June 22, 1989. Accordingly, no regulatory flexibility analysis is required. However, the new definition would relieve potential, qualifying contractors in this industry, both large and small, from having to maintain stock in a manner that is inconsistent with industry practices.

**Paperwork Reduction Act**

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not involve the collection of information from the public.

This document was prepared under the direction and control of Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

**List of Subjects in 41 CFR Part 50–201**

Administrative practice and procedures, Child labor, Government contracts, Government procurement, Minimum wages, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Wages.

For the reasons set forth in the preamble above, 41 CFR part 50–201 is amended as set forth below.

Signed at Washington, D.C., this 9th day of July, 1992.

**Lynn Martin,**

*Secretary of Labor.*

**Cari M. Dominguez,**

*Assistant Secretary for Employment Standards.*

**Karen R. Keesling,**

*Acting Administrator.*

## PART 50–201—GENERAL REGULATIONS

41 CFR part 50–201 is amended as follows:

1. The authority citation for part 50–201 continues to read as follows:

**Authority:** Sec. 4, 49 Stat. 2036; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40.

2. In § 50–201.101, paragraph (a) is amended by adding a new paragraph (a)(2)(xii) to read as follows:

**§ 50–201.101 Manufacturer or regular dealer.**

(a) *Definitions.* * * *

(2) * * *

(xii)(A) An "information systems integrator" is a person or firm that owns, operates or maintains an established business which is engaged in contracting to provide fully operational information processing systems, comprised of "Federal information processing resources" as defined in 41 CFR 201–4.001, that meet the contracting agency's designated information processing needs and program objectives stated in terms of functional, performance, and/or design requirements. An "information systems integrator" may qualify as a regular dealer under contracts which meet the following criteria:

(*1*) The government agency solicits to acquire a fully operational information processing system;

(*2*) The purchase description and system specifications are not expressed in a form so restrictive that only a specific make or model of a product, or a particular feature of a product peculiar to one manufacturer, would meet the Government's needs, but rather are expressed in terms which delineate functional, performance or design requirements provided they constitute the best statement of agency needs in a particular procurement, for the data processing or program objectives to be accomplished;

(*3*) The contractor assumes the responsibility for designing, delivering, implementing, and testing (and, where required by the contract, maintaining) a fully operational information processing

system that meets the agency's designated specifications; and

(4) The contractor bears the risk of, and is responsible to the agency for correcting, any system deficiencies or component failures regardless of the manufacturer of the component or components involved.

(B) An "information systems integrator" will, in accordance with the contract, perform substantially all of the following functions:

(1) Analyze the agency's requirements and needs;

(2) Assess currently-available technological offerings and identify/evaluate alternative system designs;

(3) Determine the composition of the system;

(4) Select and deliver the Federal information processing resources;

(5) Customize, modify, or configure components (hardware, software, and supporting equipment) if necessary to satisfy inter-connectibility/compatibility requirements and the agency's specialized information processing needs;

(6) Assemble, install, test, implement, and render operational the final information processing system.

* * * * *

[FR Doc. 92-16635 Filed 7-15-92; 8:45 am]

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Part III

# Department of Defense

Department of the Army

## Request for Nominations to the Inland Waterways Users Board; Notice

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**DEPARTMENT OF DEFENSE**

**Department of the Army**

**Assistant Secretary of the Army (Civil Works): Request for Nominations to the Inland Waterways Users Board**

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice in the Federal Register.

**SUMMARY:** Section 302 of Public Law 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its eleven members are appointed by the Secretary of the Army. This notice is to solicit nominations for five appointments or reappointments to two-year terms that will begin January 1, 1993.

**EFFECTIVE DATE:** July 15, 1992.

**ADDRESSES:** Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20310–0103. Attention: Inland Waterways Users Board Nominations Committee.

**FOR FURTHER INFORMATION CONTACT:** Dr. G. Edward Dickey, Acting Principal Deputy Assistant Secretary of the Army (Civil Works) (703) 697–4671.

**SUPPLEMENTARY INFORMATION:** The selection, service, and appointment of Board members are covered by provisions of section 302 of Public Law 99–662. The substance of those provisions is as follows:

**Selection**

Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterway commerce as determined by commodity ton-miles statistics.

**Service**

The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

**Appointment**

The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463 as amended) and Departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable.

The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

*Carriers and Shippers.* The law uses the terms "primary users and shippers." Primary users have been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user. *Geographical Representation.* The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Public Law 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake River System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

**Commodity Representation**

Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in

**Waterborne commerce of the United States**

In rank order they are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

Reflecting preceding selection criteria, the present representation by Board members is as follows: Members whose terms expire December 31, 1992, include two shipper representatives representing (1) the Upper Mississippi River region, and farm and food products, coal, and (2) the Columbia River region, and farm and food products; and, three carrier representatives representing (1) the Ohio River region (two carriers) and farm and food products, coal, petroleum, chemicals, minerals and metals, and (2) the Gulf Intracoastal Waterway in Louisiana and Texas, and petroleum.

Members whose terms expire December 31, 1993, include two shipper representatives representing (1) the Lower Mississippi River region, and farm and food products, and (2) the East Gulf region, and coal; two carrier representatives representing the Ohio River region, and coal, farm and food products, petroleum, chemicals, minerals, metals, and, two shipper/carrier representatives representing the Ohio River region, and coal.

Nominations to replace members whose terms will expire December 31, 1992, may be made by individuals, firms, or associations. Nominations should state the region to be represented and whether the nominee is to represent carriers or shippers. Information should be provided on the nominee's personal qualifications and the commercial operations of the carrier and/or shipper that the nominee is associated with. The latter information should show the actual or estimated ton-miles of commodities carried or shipped on inland waterways in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to last year's **Federal Register** notice published July 19, 1991, have been retained for consideration for appointment along with nominations received in response to this **Federal Register** notice. Renomination is not required but may be desirable. Two of the five members whose terms expire December 31, 1992, are eligible for reappointment.

*Deadline for Nominations:* All nominations must be received at the address shown above no later than August 15, 1992.

**Herbert H. Kennon,**

*Deputy Director of Civil Works.*

[FR Doc. 92–16719 Filed 7–15–92; 8:45 am]

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Part IV

# Environmental Protection Agency

## Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990; Notice

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4152-7]

## Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of initial list of categories of major and area sources.

**SUMMARY:** This notice publishes an initial list of categories of major and area sources of hazardous air pollutants (HAP's), as required under section 112(c)(1) of the Clean Air Act (CAA) as amended in 1990. The statute requires the Agency to promulgate regulations, over the 10 years following amendment of the CAA, establishing emission standards for each listed category of major sources and area sources.

Today's list does not constitute completion of the listing requirements under section 112(c)(3), pursuant to the area source program under section 112(k)(3)(B), or the listing requirements under section 112(c)(6), relating to sources of specific pollutants. Today's notice does not contain guidance or procedures for filing petitions to delete listed categories of sources, as allowed under section 112(c)(9)(B). Moreover, because of uncertainties in the available data bases concerning sources and emissions of HAP's, all categories of major and area sources meeting the listing criteria in section 112(c)(1) may not be included on today's list. In addition, all categories of sources may not be disaggregated to the extent necessary eventually for the establishment of emission standards. Descriptions of the categories on today's list are included in the docket, to identify industry sectors, processes and equipment that may constitute each listed category.

The Agency considers the listing of categories of sources under section 112(c)(1) to be an ongoing process. Under section 112(c)(1), the Agency is obligated to revise the list if appropriate, in response to public comment or new information, from "time to time, but no less often than every 8 years." The Agency intends to maintain the list as part of the regulatory development process of establishing emission standards and may revise the list on the basis of deletion determinations as part of the source category deletion process to be defined in a later **Federal Register** notice.

**EFFECTIVE DATE:** July 16, 1992.

**ADDRESSES:** Docket. Docket No. A-90-49, containing supporting information used in developing the notice, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the Agency's Air Docket, room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For information concerning categories of sources involving the production, handling, refining or use of chemicals or petroleum, or products thereof, contact Mr. David Svendsgaard, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541-2380.

For information concerning categories of sources involving fuel combustion, incineration, metals and minerals processing, contact Mr. William Maxwell, telephone number (919) 541-5430, Industrial Studies Branch, at the above address.

For general information concerning this notice, contact Mr. Thomas Lahre, Pollutant Assessment Branch, telephone number (919) 541-5668, at the above address.

**SUPPLEMENTARY INFORMATION:** The information presented in this notice is organized as follows:

I. Legislative Background Relating to the Initial Source Category List
II. Identification of Categories and Subcategories on June 21, 1991 Preliminary Draft List
III. Discussion of Major Issues and Responses to Comments
  A. Delineation of Categories and Subcategories
  B. Listing of Categories of Area Sources
  C. Data Base Quality
  D. Consistency With Section 112 and Section 129 Provisions Relating to Specific Categories of Sources
  E. Listing of Regulated Categories
  F. Judicial Review of List
IV. Finding of Threat of Adverse Effects for Categories of Area Sources
  A. Finding of Threat of Adverse Effects for Category of Commercial Sterilizers Using Ethylene Oxide
  B. Finding of Threat of Adverse Effects for Categories of Chromium Electroplaters and Anodizers
  C. Finding of Threat of Adverse Effects for Category of Commercial Perchloroethylene Dry Cleaners
  D. Finding of Threat of Adverse Effects for Category of Cleaners Using Halogenated Solvents
  E. Finding of Threat of Adverse Effects for Category of Asbestos Processing
V. Descriptions of Listed Categories
VI. Relationship of List to Definition of Source for Early Reduction
VII. Administrative Requirements
  A. Docket
  B. Executive Order 12291 Review
  C. Paperwork Reduction Act
  D. Regulatory Flexibility Act Compliance

**Table 1.—Initial List of Categories of Major and Area Sources of Hazardous Air Pollutants**

*Acronym List*

CAA = Clean Air Act
CFC-113 = trichlorotrifluoroethane
CFR = Code of Federal Regulations
CTG = Control Technology Guidelines
CNS = central nervous system
Cr(+3) = trivalent chromium
Cr(+6) = hexavalent chromium
CWA = Clean Water Act
DOE = Department of Energy
FR = Federal Register
GACT = generally available control technology
HAP = hazardous air pollutants
kg/yr = kilograms per year
MACT = maximum achievable control technology
lb/yr = pounds per year
MC = methylene chloride
Mg/yr = megagrams per year
MSHA = Mine Safety and Health Administration
NEDS = National Emissions Data System
NESHAP = national emission standards for hazardous air pollutants
NRC = Nuclear Regulatory Commission
NSPS = new source performance standards
OMB = Office of Management and Budget
OSHA = Occupational Safety and Health Administration
OTVC = open top vapor cleaners
PCE = perchloroethylene
ppm = parts per million
PM = particulate matter
POTW = publicly owned treatment works
PSD = prevention of significant deterioration
RACT = reasonably available control technology
RCRA = Resource Conservation and Recovery Act
SCC = source classification codes
SIC = Standard Industrial Classification
SOCMI = synthetic organic chemical manufacturing industry
TCA = 1,1,1-trichloroethane
TCE = trichloroethylene
tm = trademark
TRIS = Toxic Release Inventory System
tpy = tons per year
VOC = volatile organic compounds
U.S. = United States

### I. Legislative Background Relating to the Initial Source Category List

The Clean Air Act Amendments of 1990 (Pub. L. 101-549) require, under the revisions to section 112, that the Agency evaluate and promulgate regulations requiring control of emissions of HAP's from categories of major and area sources. The term "major source" is defined in paragraph 112(a)(1) to mean any stationary source or group of

stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants.

The term "stationary source," from section 111, means any building, structure, facility, or installation which emits or may emit any air pollutant. The Agency may establish a lesser quantity of pollutant emissions for the definition of a major source than that specified in the previous sentence, based on various characteristics of the pollutants being emitted (including potency, persistence, potential for bioaccumulation, or other relevant factors). The Agency may establish different criteria for the definition of a major source in the case of radionuclides. The term "area source," as defined in section 112(a)(2), means any stationary source of HAP's that is not a major source. Section 112(c) requires the Agency to list categories of major sources and area sources. Because most groupings of sources are based on process or product-oriented criteria, they may include a mix of both major and area sources. The distinction between categories of major and area sources is discussed in more detail later in this notice.

Section 112(b) includes a list of chemicals, compounds, or groups of chemicals deemed by Congress to be hazardous air pollutants. Section 112(c)(1) requires the Agency to publish, within 1 year of enactment of the CAA Amendments of 1990, a list of categories of major and area sources emitting one or more listed HAP. Categories of area sources may be listed subject to the additional requirements of section 112(c)(3), which require the Agency to find a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under (Section 112).

There are additional requirements for listing source categories under section 112(c)(3) and section 112(c)(6). Section 112(c)(3) refers to the area source strategy required under section 112(k). This strategy requires that the Agency list in 5 years, and subject to regulation in 10 years, sufficient categories of area sources to account for 90 percent of the aggregate emissions of each of 30 or more HAP's. These 30 or more HAP's shall be those determined to present the greatest threat to public health in the largest number of urban areas. Section 112(c)(6) requires the listing within 5 years of categories of sources assuring that at least 90 percent of the aggregate emissions of each of seven specific pollutants are subject to emission standards under section 112(d) within 10 years of enactment of the CAA Amendments. Although some of the categories that will be identified under these sections are probably already included on today's list, there are likely to be others which have not yet been identified. The publication of today's list does not constitute completion of the requirements of section 112(c)(3) or section 112(c)(6).

Other requirements in section 112(c) affect the listing of specific categories of sources. Section 112(c)(4) gives the Agency the discretion to list any category of sources previously regulated under section 112 before enactment of the CAA Amendments of 1990. Section 112(c)(7) requires the Agency to establish a separate category for research facilities as necessary to assure equitable treatment of such facilities. Section 112(c)(8) requires the Agency to list boat manufacturing as a separate subcategory when establishing emissions standards for styrene. In addition, there are provisions elsewhere in section 112 and section 129 that impose listing requirements on the Agency, both directly and indirectly. These provisions, and the Agency's resulting actions, are discussed in detail in sections III.D and III.E in today's notice.

Revisions to today's list may also result from deletion determinations under section 112(c)(9)(B). Under section 112(c)(9)(B), the Agency may delete a category from the list, based on petition of any person or on the Administrator's own motion, upon a determination that: (1) In the case of sources that emit HAP's that may result in cancer, no source in the category (or group of sources in the case of area sources) emits HAP's in quantities that may cause lifetime cancer risk greater than 1-in-1 million to the most exposed individual; or, (2) in the case of sources that emit HAP's that may result in non-cancer adverse health effects or adverse environmental effects, emissions from no source in the category (or group of sources in the case of area sources) exceed a level adequate to protect public health with an ample margin of safety and no adverse environmental effects will result. The Agency shall grant or deny a petition to delete a category within 1 year after the petition is filed. Procedures for such petitions will be addressed in a separate **Federal Register** notice. Under section 112(c)(9)(A), the Agency shall delete a source category if all pollutants emitted by that category have been deleted from the HAP list under section 112(b)(3)(C) or section 112(b)(3)(D).

Revisions to today's list may also arise from the establishment of lesser quantities for the definition of major sources, under section 112(a), resulting in additional categories of major sources. Special studies required under various provisions of section 112, or information gathered by the Agency during the regulatory development process, may also result in changes to the list.

Section 112(c)(2) requires the establishment of emission standards under section 112(d) for every category of sources included on the initial list published pursuant to section 112(c)(1). Emission standards established for categories listed under section 112(c) shall be promulgated according to the schedule for standards set forth in section 112(e). In determining where source categories should be placed on this schedule under section 112(e), the Agency shall consider the known or anticipated adverse effects of the emitted pollutants on health and the environment; the quantity and location of emissions; and the efficiency of grouping categories according to the pollutants emitted or the processes or technologies used. The schedule for promulgation of emission standards for each category of HAP sources is to be published, after an opportunity for comment, within 24 months of enactment.

## II. Identification of Categories and Subcategories on June 21, 1991 Preliminary Draft List

That list of categories of sources was made available for public comment on June 21, 1991 (56 FR 28548). The preliminary draft list was compiled from a number of data bases, described below, each having certain strengths and weaknesses.

1. The National Emissions Data System (NEDS) is an Agency data base of reported emissions from sources emitting more than 90.7 megagrams per year (Mg/yr) [100 tons per year (tpy)] of criteria air pollutants, including volatile organic compounds (VOC) and particulate matter (PM). The sources included in NEDS are classified by unique identifiers, termed source classification codes (SCC's). Speciation profiles have been assigned to each of the SCC's. These speciation profiles are an estimate of the chemical species comprising the total VOC or PM emissions for a category. In many cases, the chemical species constituents are HAP's. A category was included on the

preliminary draft list if HAP emissions were associated with a source classification code in NEDS, but only for species profiles having a data quality ranking of "A," "B," "C," or "D." Species profiles having an "E" ranking were not used, because of insufficient quality. (See Docket No. A–90–49, Items No. II–A–45 and 46 for published species profiles.)

2. Categories of the synthetic organic chemical manufacturing industry (SOCMI) were identified from literature describing SOCMI reactants and products. A SOCMI category was listed if it either manufactured a chemical on the list of HAP's or if it used one or more of the listed HAP's to produce another chemical.

3. Published production and consumption data for organic chemicals were used to identify organic chemical end-user processes emitting HAP's. There are a total of five general category groupings for which such data were used: Foam blowing processes, process solvent use, polymerization processes, pesticide production, and pharmaceutical production. Production and consumption data were obtained for each chemical from readily available literature. Each end use of a chemical was identified as a category.

4. The Agency's Toxic Release Inventory System (TRIS) was a fourth source of data that was used to identify HAP emitters. The TRIS data base contains emissions data reported by individual industrial facilities as required under Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986. Emissions data in TRIS are reported on a plant wide basis. Standard Industrial Classification (SIC) Codes are reported in TRIS but the entries are usually not specific enough to identify categories of sources. For this reason, it is difficult to use the TRIS data base for identifying categories, or to determine where there is overlap between the TRIS data base and the methods described above. The TRIS data base did, however, identify plants emitting listed pollutants not identified through the methods described above.

5. The list of categories developed by using the several data sources described above was augmented by reviewing existing studies by the Agency's Office of Air Quality Planning and Standards. A major portion of this effort consisted of reviewing data developed in support of previous **Federal Register** notices describing previous Section 112 regulatory decisions. For the most part, the methods described above had already identified most of the categories. However, in some cases additional categories were identified from these references and were added to the list.

Today's initial list in Table 1 is based on these same sources of data in addition to information supplied in response to the publication of the preliminary draft list.

## III. Discussion of Major Issues and Responses to Comments

In the preamble to the June 21, 1991, preliminary draft list (56 FR 28548), comments were requested on a number of issues. Over 140 comments were received from industry representatives, environmental groups, State and local air agencies, universities, other Federal Agencies, and various other public and private interests. In general, comments were received relating to: (1) The quality and inclusiveness of the data base, (2) the definition and disaggregation of various categories of sources, (3) the need for a finding of threat of adverse health or environmental effects before listing categories of area sources, and (4) alternatives for listing categories of steam electric generators and incinerators. Following is a summary of the major comments received along with responses to these comments. The selection of particular comment responses for discussion in today's notice is intended to indicate the Agency's position on the major issues raised by the commenters. (All comments and responses are contained in Docket No. A–90–49.)

### *A. Delineation of Categories and Subcategories*

Section 112(c)(1) states that the Administrator shall publish a list of all categories and subcategories of major sources and area sources. The terms "category" and "subcategory" are not defined in section 112, nor is the relation of either of these terms defined with respect to the term "source."

In the June 21, 1991, notice, comment was requested on the appropriate distinctions the Agency should make between categories and subcategories. In addition, information was requested for the division, or disaggregation, of listed groups of sources into categories and subcategories, along with accompanying documentation.

#### Relationship Between Source and Category of Source

Because of the undefined relationship between source and category of sources in the CAA, this relationship needs to be defined in the context of today's initial list of categories. Section 112(a)(3) provides that "stationary source" shall have the same meaning for purposes of this section as it has under section 111(a), which is any building, structure, facility, or installation which emits or may emit any air pollutant. As section 112 applies to all stationary sources emitting HAP's, any entity covered by this section must be a building, structure, facility or installation that emits HAP's. Whether such source is considered "major" will depend upon its size and configuration, or upon the size and configuration of the larger source of which it is a part.

A "category" of sources is a group of sources having some common features suggesting that they should be regulated in the same way and on the same schedule. Thus, for example, industrial process cooling towers would be considered a source category. Each tower emitting more than the amount of HAP's provided in section 112(a) as qualifying a source as a major source, or each tower located within a larger source emitting that amount of HAP's, would be subject to maximum achievable control technology (MACT) for major sources.

As a result, a large plant or facility, such as a refinery or chemical manufacturing plant, would clearly be a "major source," but would also comprise multiple source categories. For example, a large plant would likely contain stationary sources included within the industrial cooling tower source category, as well as sources within the process heater category, industrial boiler category, etc.

Categories having sources whose HAP emissions exceed the major source threshold in section 112(a), or having sources that are commonly located on the premises of major sources, are categories of major sources. Conversely, categories having sources which neither exceed the major source HAP emission threshold under Section 112(a), nor are commonly located on the premises of major sources, are categories of area sources.

#### Use of the Term "Category" or "Subcategory"

Several commenters suggested using only the term "category" rather than both "category" and "subcategory," for various reasons. Although the language in section 112 generally uses these terms together, seemingly interchangeably, the comments stated that there are several instances where only the term "category" is used. Sections 112(c)(9)(A) and 112(c)(9)(B)(i) provide for deleting of categories of sources only. Similarly, section 112(f)(2)(A) obligates the Administrator to promulgate standards to mitigate residual risk only for

categories of sources. In response to these comments, the Agency has decided to use the term "category" to designate all of the groupings of HAP-emitting sources in today's list. The exclusive use of the term "category" will clarify the applicable requirements of section 112. This decision does not affect the degree of disaggregation of industry groups in today's list of categories or the authority of the Agency to distinguish among classes, types, and sizes of sources in establishing emission standards. During the standard-setting process, the Agency may in some cases find it appropriate to combine several listed categories into one, or further divide a category. This decision does not affect the Agency's authority to define subcategories of sources at a later date.

An exception to the exclusive use of the term "category" has been made in the proposed rule establishing emission standards for perchloroethylene dry cleaning facilities (56 FR 64382), wherein subcategories were defined for each category to differentiate between the two major types of machines used in dry cleaning, i.e., "dry-to-dry" and "transfer." This is consistent with the Agency's strategy (discussed later in this Section) of identifying and listing disaggregated categories and/or appropriate subcategories as part of the rulemaking process, after gathering sufficient information to identify appropriate aggregations for standard-setting purposes.

Suggested Additions of Categories

Some commenters suggested adding specific categories to the list. In response, where the comments included reasonable documentation, the Agency has added the suggested categories.

Suggested Deletions of Categories

Many commenters suggested deleting categories that were on the draft preliminary list, for reasons summarized below.

Some commenters contended that all sources in certain categories are area sources, thereby requiring the Administrator to make a finding of threat of adverse health or environmental effect before listing those categories. The Agency agrees that such a finding or threat should precede listing categories of area sources (see section III.B for more discussion). Where commenters demonstrated the existence of no major sources of HAP emissions within categories, those categories were deleted from the preliminary draft list, as long as no finding of threat of adverse effects was made. The Agency may list such categories as area source categories later if a finding of threat of adverse effects can be made, per section 112(c)(3), or may list them under the area source strategy required under section 112(k).

Some commenters contended that no sources in certain categories emitted any HAP's, and therefore should not be listed. The Agency, in response, deleted categories if a commenter provided reasonable evidence of no HAP emissions and if the Agency's own data, upon review, could not support the existence of HAP emissions.

Some commenters contended that other provisions in amended section 112, or section 129, either preclude the listing of specific categories, or give the Agency the discretion not to list specific categories at this time. In response, the Agency acknowledges that its discretion to list or omit some categories of sources is limited by other provisions. Therefore, the Agency has attempted to make today's list consistent with these other provisions. These various other provisions are discussed in detail in section III.D of today's notice.

Some commenters contended that regulations exist or are being developed under other titles of the CAA or other statutes, either by EPA or other agencies, for many categories of sources on the preliminary draft list. These commenters further argued that categories subject to these other statutes should not be listed under section 112(c)1) and thus be subject to "dual regulation." In response, the Agency does not believe that the existence of another applicable regulation, or the imminent prospect of a regulation, either under the CAA or under another statute, gives the Agency general discretion to omit from today's list any category of sources under section 112(c)(1). (There are specific exceptions to this position, however, as is discussed in more detail in sections III.D and E of today's notice.) Moreover, listing does not necessarily lead to duplicate regulation because air emission regulations issued under another statute may become the basis for the "MACT floor," which is the minimum degree of emissions reduction prescribed for new and existing sources subject to emission standards under section 112(d).

Some commenters suggested deleting poorly defined and broadly overlapping categories of sources to avoid confusion when identifying sources subject to regulation in each category. Commenters most frequently criticized the following categories and groupings: "(product or chemical) use", "chemical intermediate," "primary and secondary metals, miscellaneous," "surface coating operations, general solvent uses," "in situ fuel use," and "TRIS production and use," the latter involving the production or use of HAP's as reported to the Agency's TRIS data base. In response, the Agency has removed a number of previously listed categories that were poorly defined and/or broadly inclusive. For example, most of the general "(product or chemical) use" categories have been deleted. As another example, the generic "waste treatment and disposal" category has been removed. As still another example, the broad category of "TRIS production and use" has likewise been deleted. Many of the operations covered under these deleted categories are still covered in today's list, but are included in the logical parent grouping instead of in a separate category. For instance, rather than listing wastewater treatment operations as part of a generic, stand-alone wastewater treatment grouping, these operations are now included under the listing of their respective production operations. Hence, even though many broad categories still remain on today's list, the Agency has eliminated many categories that were poorly defined and overlapping. (General descriptions of all categories of sources are located in Docket No. A-90-49, Item No. IV-A-55. See section V of today's notice for more discussion of these descriptions.)

Some commenters suggested not listing categories of sources where insufficient evidence existed to demonstrate that there were any major sources in those categories. In other words, the commenters suggesting only listing categories of sources that either exceeded the quantity of HAP's required to define a major source, pursuant to section 112(a), or which are commonly located on the premises of a major source. Upon review of all comments and the original data bases, the Agency has responded by only including categories of major sources where there was reasonable certainty that at least one stationary source in the category is a major source or where sources in the category are commonly located on the premises of major sources. In cases where sources in the category typically emit less than this threshold, the Agency may nevertheless list any such category as a category of major sources if sources in that category are commonly associated with major sources. For example, industrial process cooling towers, which individually emit chromium emissions in amounts less than 0.907 Mg/yr (1 typ), are listed as a category of major sources since such towers are commonly found on the premises of petroleum refineries, chemical manufacturing plants, and

other major sources. Thus, MACT standards set for the cooling tower major source category will be applicable to cooling towers that are a component of a larger major source, such as a refinery, even though no individual source in this category is itself a major source. This position is supported by the legislative history of the 1990 amendments. Senator Durenberger, one of the managers of the Senate Bill, stated that "[t]he managers' intent is * * * that where the entire plant is a major source, any portion thereof to which a MACT standard applies is subject to that standard regardless of the total emissions from that portion." 136 Cong. Rec. S. 16927 (October 27, 1990).

Note that any such category may also be listed as a category of area sources on today's list, if accompanied by a finding of threat of adverse effect, if the Agency elects to establish standards for sources in the same category that are not major sources. For example, chrome platers and anodizers are also listed as categories of area sources on today's list because many are not located on the premises of major sources. [The listing of categories of area sources is discussed later in section III.B.]

Appropriate Disaggregation of Categories

Many comments were received on the extent to which the Agency identified appropriate subdivisions of industry groups. Many commenters contended that insufficient or inappropriate categories were included on the draft preliminary list and that many categories on the draft list did not sufficiently differentiate among dissimilar processes based on variations in size, operations, raw materials, emissions, controllability, etc. The major rationale for further disaggregation, per the comments, are:

1. Disaggregation of broad categories affords the Agency with scheduling flexibility in promulgating standards under section 112(d). The Agency cannot, per language in section 112(d)(1), distinguish among classes, types, and sizes of sources within a category or subcategory in establishing standards for the purpose of delaying compliance with standards. Hence, the commenters argue that the Agency must list disaggregated categories in order to avoid having to establish standards for all categories within a broad group at the same time.

2. Disaggregation of broad categories reduces the likelihood that dissimilar categories will be considered together for the purposes of defining emission standards under section 112(d), or when determining the need for subsequent standards to address residual risk under section 112(f). The commenters argue that the definition of narrowly applicable categories of sources will promote more cost-effective, technically appropriate, and, in some cases, safer controls because any such controls would be based on a consideration of similar sources.

3. Disaggregation of broad categories into relatively narrow categories makes the source category deletion petition process more viable since the deletion criteria imposed under section 112(c)(9)(B) would have to be demonstrated for fewer sources in narrower industry groupings. Trade associations, in turn, would be better able to gather the necessary information for preparing deletion petitions if narrower industry groupings were made.

4. Disaggregation of broad categories into better resolved categories affords both industry and air agencies with a better indication of which sources may be affected by various regulatory provisions of section 112.

In contrast to the above comments, several commenters opposed excessive disaggregation of source categories. These commenters expressed concern that some categories might be disaggregated so finely as to result in the inclusion of only a few sources, which might result in MACT floors that would not result in effective emission standards.

In response to the many comments concerning appropriate disaggregation of source categories, the Agency acknowledges potential advantages and disadvantages of defining categories either very broadly or very narrowly. Ultimately, in accordance with section 112(d), the Agency will need to identify the "best controlled similar sources" when establishing emission standards for new sources in a category and "the best performing 12 percent" of sources when establishing emission standards for existing sources in a category. Hence, the Agency recognizes that further disaggregation of many listed categories of sources may be necessary prior to promulgation of emission standards. The Agency has the discretion to distinguish among classes, types, and sizes of sources within a category in establishing standards.

In general, the Agency has decided, at this time, in most cases, to list broad categories of major and area sources rather than very narrowly defined categories. The main reason for this decision is that, even considering the many comments received, the Agency has too little information to anticipate specific groupings of similar sources that are appropriate for defining MACT floors for the purpose of establishing standards. Criteria that may need to be considered in defining categories of similar sources include similarities in: Process operations (including differences between batch and continuous operations), emissions characteristics, control device applicability and costs, safety, and opportunities for pollution prevention. The Agency anticipates that all of the above criteria, and perhaps others, can be accounted for appropriately by the Agency only after gathering significant information for each listed category of sources during the course of establishing emission standards.

The Agency is aware of the potential disadvantages of listing broad categories of sources. The Agency believes that many of these disadvantages can be adequately overcome in several ways. First, a general description of each listed category is contained in the docket accompanying today's notice (Docket No. A-90-49, Item No. IV-A-55). This description assists in defining what industry sectors, operations, and/or equipment may be included in each listed category. Second, section 112(c) allows revisions to be made to the list, including additions and deletions, in response to public comment, new information, or through petition. In this regard, since the Agency initiates the development of standards years before expected promulgation, industry and the public have opportunities for considerable input to the process and can learn of the Agency's intentions for standards early in the process. Third, because of anticipated revisions to the list, the broad categories on today's initial list will not necessarily represent the pool of sources that will be considered for the purposes of identifying MACT floors for establishing emission standards under section 112(d) or for purposes of determining the need for residual risk standards under section 112(f). In this latter regard, MACT floors may be based on smaller pools of sources in instances where categories on today's list are disaggregated later during standard setting.

The Agency acknowledges that, by listing broad categories, it loses some flexibility in scheduling standards for different operations, or subcategories, within broad categories. The reason for this, as pointed out by several commenters, is that section 112(d) does not allow the Agency to distinguish among classes, types, and sizes of sources within a category where such action would lead to a delay of the

compliance date for any source within the broad category. Hence, once a broad category is initially defined, the Agency is obligated to establish standards for the entire category according to the schedule developed under section 112(e), regardless of how many classes, types, and sizes of sources are subsequently defined under that broad category.

While the Agency may not define subcategories within a category if such subcategories would result in a delay in compliance with standards, the Agency may, at its discretion, establish standards for listed categories or subcategories within a listed category sooner than scheduled under section 112(e). This option gives the Agency scheduling flexibility in a manner consistent with section 112(d)(1) and enables the Agency to consider broader categories for establishing standards and determining compliance. In this regard, the Agency may aggregate, into a single category on any revised list, categories or subcategories which have been disaggregated on the initial list. This may be done for the purpose of setting a single emission standard for the aggregated category. This would not result in the delay of the compliance date of any listed category.

The Agency also has the authority, under section 112(i), to establish compliance dates for existing sources up to 3 years following the effective date of any emission standards. This authority also provides some scheduling flexibility if the Agency decides to disaggregate a category of sources into subcategories.

The Agency acknowledges the existence of overlap in some categories on today's list. For example, synthetic organic chemical manufacturing is listed as a category, but so are process heaters and industrial process cooling towers, which can also be found on the premises of chemical manufacturing facilities. To avoid confusion in the regulatory schedule (required under section 112(e)) due to any such overlap in coverage, and to avoid confusion when establishing standards, a footnote has been added to today's list stating that "all listed categories are exclusive of any specific operations or processes included under other categories that are listed separately." This strategy allows the Agency to schedule the establishment of standards for overlapping categories at different times, at the Agency's discretion, based on the criteria for scheduling in section 112(e). Hence, in the above example, the Agency would have the discretion to schedule the promulgation of standards for process heaters and industrial process cooling towers separately from all other operations covered under the category of synthetic organic chemical manufacturing.

### Consistency With Section 111 and Part C

Several commenters noted that section 112(c)(3) requires that to the extent possible, the categories and subcategories listed under (section 112(c)) shall be consistent with the list of source categories established pursuant to section 111 and Part C of the CAA. One commenter mentioned that both major and area sources, per the language in section 112(a), are stationary sources that have the same meaning as such term has under section 111, i.e. any building, structure, facility or installation which emits or may emit any air pollutant. The latter commenter contended that this definition of stationary source excludes some operations (e.g., certain applications of architectural paints and coatings) which do not conform to this definition. One commenter noted that categories defined under section 111 and part C represent a "high order of aggregation," and therefore, in order to be consistent with these other parts of the CAA, today's list should not identify overly "fine-grained" categories of sources. Conversely, another commenter contended that the listing under section 111 has no relevance since there is no differentiation between major and area sources.

In response to these comments, the Agency reviewed the categories of sources established pursuant to section 111 and part C, along with many other data bases (see section II), when developing the initial list in today's notice. Many of the categories of sources in section 111 and part C are included on today's list. Some categories in section 111 and part C are not on today's list because the Agency did not have reasonable evidence that they: (1) Are categories of major sources, or (2) are categories of area sources which present a threat of adverse health or environmental effects warranting regulation under section 112. In general, the level of aggregation of categories on today's list is consistent with that level inherent in section 111 and part C.

The categories of sources on today's list are generally consistent with the definition of stationary sources in section 111. The Agency interprets this definition to include a wide variety operations and activities that emit HAP's, including categories of stationary sources that emit fugitive emissions. No categories of mobile sources are included on today's list.

### Consistency With Categorization Under Existing Clean Air Act (CAA) Standards

Several commenters contended that the Agency, in listing categories of sources under section 112(c), needs to consider adopting categories consistent with those already established under existing CAA regulations. Specifically, these commenters contended that today's list should conform to existing categories subject to the Agency's new source performance standards (NSPS), (40 CFR part 60), or in the Agency's control techniques guidelines (CTG's) for establishing reasonably available control technology (RACT). The rationale given was that this consistency would avoid confusion, unnecessary costs, and dislocation within the affected industries, and provide uniformity with the applications of the rules for the prevention of significant deterioration (PSD), NSPS, and nonattainment regulations. The commenters argued that the categories defined in setting NSPS and CTG's demonstrate reasonable subdivisions of categories already identified by the Agency as necessary for establishing appropriate controls for dissimilar processes. Hence, the commenters contend that this same level of categorization should be preserved on today's list and considered as a basis for promulgating standards under section 112(d).

In response, the Agency agrees that it is appropriate, when establishing standards for categories of sources on today's list, to consider categories of sources already defined under existing statutes, particularly categories regulated under the CAA. The Agency intends to consider consistency with categories subject to existing standards as one of many criteria to be considered when revising today's list prior to the establishment of emission standards under section 112(d).

### Consistency With Clean Water Act Categorization Process

Several commenters suggested that the Agency should use, as a starting point, categories of sources identified for effluent limitation guidelines under the Clean Water Act (CWA). The commenters contended that the lessons learned in the source categorization process under the CWA underscore the importance of identifying appropriate categories of sources for which specific emissions standards may need to be developed.

When compiling today's initial list, the Agency did not adopt the categories of sources identified under the effluent

limitation guidelines under the CWA. This decision was made for two reasons. First, the Agency made the decision not to define overly narrow categories in this initial list (see earlier discussion in section III). Second, the Agency is not certain, at this time, whether categories, identified for purposes relating to water effluent standards, would be appropriate for establishing air standards. Nevertheless, the Agency intends to consider the category definitions use in setting effluent guidelines when subsequently revising today's initial list and when developing emission standards.

*B. Listing of Categories of Area Sources*

Section 112(c)(1) of the CAA Amendments of 1990 requires the Agency to publish a list of all categories of major sources and area sources. This requirement for listing categories of area sources is modified in section 112(c)(3) with language stating: the Administrator shall list each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section.

Section 112(c)(3) also requires that the Agency shall, not later than 5 years after the date of enactment of the CAA Amendments of 1990 and pursuant to section 112(k)(3)(B), list categories of specific HAP's presenting a health threat in urban areas. Section 112(c)(3) further requires that, within 10 years after enactment of the CAA Amendments, the Agency must ensure that categories of certain area sources are subject to regulation, according to emission and risk reduction criteria prescribed in sections 112 (c) and (k). The categories of area sources on today's initial list of categories of area sources do not constitute completion of this requirement.

There are other requirements in Section 112 that may directly or indirectly result in the listing and promulgation of standards for categories of area sources. Section 112(c)(6) requires, by 1995, the listing of categories of sources of specific pollutants (alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodi-benzofurans, and 2,3,7,8-tetrachlorodibenzo-p-dioxin), assuring that sources accounting for 90 percent or more of the aggregate emissions of each pollutant are subject to standards within 10 years of enactment of the CAA Amendments. Section 112(k) requires the listing of categories of area sources as part of a national strategy to reduce emissions of not less than 30 HAP's and to achieve a reduction in cancer incidence of not less than 75 percent. Studies or analyses performed as part of the Great Lakes and Coastal Waters program under section 112(m), or as part of other studies under section 112 involving mercury emissions, oil and gas wells and pipeline facilities, hydrogen sulfide, and hydrofluoric acid, may all potentially result in the listing of additional categories of area sources at some later date.

Alternative Approaches for Listing Categories of Area Sources

In the draft preliminary list (56 FR 28548), many categories of area sources were listed and no distinction was made between categories of major and area sources. The Agency solicited comments on three approaches under consideration for addressing categories of area sources on today's list:

1. Constrain the list to include only categories of major sources and categories of area sources that are sufficiently well characterized to permit a finding of threat of adverse effects. Additional categories of area sources would be subsequently added at some later date when sufficient data were gathered to make a finding of threat of adverse effect.

2. Make an interim finding that all categories of area sources should be listed by virtue of any emissions of HAP's, but later delete any categories determined to be inappropriately listed, using the source category deletion process in section 112(c)(9)(B).

3. Develop a finding of threat of adverse effects that is based on limited available data that could be applied to all identified categories of area sources on the preliminary draft list. This finding would be less rigorous than the first approach due to data limitations and available time. This approach would result in a more comprehensive list than envisioned in the first approach.

Many comments were received on the approach that should be taken for including categories of area sources on today's list. The overwhelming majority of commenters, particularly industry representatives, favored the first approach cited above requiring a detailed finding of threat of adverse effects before listing a category of area sources. Many commenters contended that the language of section 112(c) clearly requires such a finding. Many of these same commenters further contended that Congress clearly did not intend a listing approach similar to the second or third options listed above. These commenters cited as evidence the requirement, both under sections 112(c) and 112(k), for an area source program and for specific reductions in area source emissions and associated cancer incidence only after considerable study. Furthermore, if no finding or a less rigorous finding were utilized for listing categories of area sources, these commenters asserted that the Agency and potentially regulated sources would be overwhelmed with rigid regulatory obligations bearing little relation to HAP emissions, exposures, or risks. Moreover, these commenters asserted that this course of action might result in the development and evaluation of many unneeded and onerous petitions to delete categories of sources.

Several commenters supported the second approach cited above wherein all categories of area sources are listed based on any level of HAP emissions. The rationale given by the commenters was that this approach would ensure that all categories of area sources would ultimately be examined before deletion from the list.

Several commenters suggested considering a *de minimis* emission cutoff so that very small sources within a category would not be subject to standards. Such a *de minimis* level could be defined specifically for each category of area sources or defined generically for all categories of area sources. The purpose of this, per the commenters, would be to assure that industry and Agency resources are not expended on sources that pose negligible risk to human health or the environment.

In response to these comments, the Agency agrees that the language of section 112(c)(3) clearly requires that a finding be made of threat of adverse effects to human health or the environment warranting regulation under section 112 in order for a category of area sources to be listed. Hence, the Agency has removed all categories from today's list for which: (1) The available information indicates that the category contains only area sources, and (2) the Agency has insufficient information at this time to make a finding of threat of adverse effects warranting regulation. The Agency has listed today a number of categories of area sources for which the Agency has adequate information to make a finding of threat of adverse effects warranting regulation under section 112. A finding of threat of adverse effects for these listed area source categories is presented in Section IV in today's notice.

Regarding the commenter's recommendation that the Agency consider *de minimis* levels, the Agency

has the discretion, when establishing standards, to distinguish among classes, types, and sizes of sources within categories in setting standards under section 112(d)(2). The Agency shall consider costs and non-air quality health and environmental impacts and energy requirements. In addition, the Agency may set generally available control technology (GACT) standards for area sources under section 112(d)(5). The Agency considers this discretion sufficient to avoid establishing unwarranted and inappropriate emission standards for very small emitters.

Applicability of Emission Standards to Categories of Major and Area Sources

The Agency identifies a category of major sources as one characterized either by the presence of at least one major source in the category, based on the HAP emission threshold defined in section 112(a), or by the common association of sources in the category with major sources. Because of this, all sources in many listed categories of major sources may not be major sources, and some will be area sources. It is the Agency's intent that if no finding of threat of adverse effects warranting regulation is made, then only major sources in a listed category are subject to regulation under section 112. A footnote accompanies the list of categories of major sources in today's list indicating that only major sources within any category shall be subject to emission standards under Section 112 unless a finding is made, for the area sources in a category, of threat of adverse effects to human health or the environment warranting regulation under Section 112.

In certain cases the Agency has determined, or may determine during the standards development process, that the area sources in a listed category of sources warrant regulation under section 112. In such cases, the Agency may make a finding of threat of adverse effects and add these categories of area sources to the list. As an alternative, the Agency may establish a lesser quantity emission rate for some or all HAP's, under section 112(a), which could have the effect of enabling the Agency to list certain categories as major sources that only contained area sources before the establishment of lesser quantity emission rates.

Alternatives for Making a Finding of Threat of Adverse Effects

Most commenters contended that a finding of threat of adverse health or environmental effects is necessary under the language of Section 112(c)(3); however, few comments were received on the specific nature of the finding. One commenter suggested using the deletion criteria in section 112(c)(9)(B) as the basis for this finding. The rationale for this comment is that, because those same criteria must be used by a petitioner to demonstrate that a category of sources should be deleted, they should be used to add categories of area sources. For example, since a petitioner would have to demonstrate that no source in a category caused a cancer risk exceeding one in a million to the maximally exposed individual in order to have a category of sources deleted from the list, the commenter argued that the Agency should have to show, conversely, that at least one source in a category exceeded this same risk level in order to demonstrate a threat of adverse health effects and list a category of area sources. In response to this comment, the Agency interprets the broad language of section 112 as allowing risk and other factors to be assessed in determining if a threat of adverse effects exists warranting regulation under section 112.

The Agency's criteria for area source findings, and the findings for each area source category included on today's list, are presented in section IV later in this notice.

*C. Data Base Quality*

Many comments were received on the quality of the data base used in developing the preliminary draft list published on June 21, 1991 (56 FR 28548). Most commonly, the commenters identified particular aspects of the data base that they felt were inadequate for listing many categories of sources.

Many commenters indicated that the Agency had inadequate data to demonstrate that at least one source in many categories was, in fact, a major source. In this regard, many commenters argued that the Agency needs to demonstrate the existence of at least one major source in a category before that category could be listed as a category of major sources.

In response, the Agency agrees that, in order to be listed as a category of major sources: (1) There must be at least one major source in that category, (2) or, as discussed in section III.A of today's notice, sources in the category of concern must commonly be located on the premises (i.e., within the contiguous area under common control) of a major source, as defined in section 112(a). Hence, when reviewing the data base used to develop the preliminary draft list, in light of comments received in this regard, the Agency considered the adequacy of the data showing the existence of at least one major source in each category or the common association of a category with major sources. Where reasonable evidence was available suggesting that these criteria are met, that category was included as a category of major sources on today's list. In many instances, the Agency sought out additional data from the Agency's TRIS and other internal Agency sources to confirm the existence of a major source in each listed category of major sources or the common location of a category on the premises of major sources.

As discussed in section II in today's notice, species profiles were used as an indicator of HAP emissions when compiling the preliminary draft list. These profiles have quality rankings ranging from "A" to "E," with "A" reflecting the best profile quality and "E" reflecting the poorest profile quality. Many comments were received concerning the use of species profiles with lesser quality for estimating HAP emissions. At the outset, profiles having "E" quality rankings were not used at all by the Agency because of insufficient quality. Some commenters suggested not using "D" ranked profiles, which were based on measured emissions from a single source or engineering calculations from more than one source. Some commenters suggested only using the highest quality species profiles that are ranked "A." Some commenters pointed out that particular species profiles, no matter the quality ranking, were inapplicable to the category to which they were applied.

In response to comments relating to species profiles, the Agency continues to believe that species profiles are an appropriate tool for identifying sources of HAP emissions and for estimating HAP emissions, when applied to particulate and volatile organic matter emissions. Hence, profiles having quality rankings of "A" through "D" were still considered in preparing today's list, with several qualifications. First, the Agency agrees that some species profiles were inappropriately applied to some categories on the preliminary draft list. Any categories that were included on the preliminary draft list, based solely on inappropriate profiles, were not included on today's list. Second, all categories on the preliminary draft list, regardless of profile quality ranking, were reviewed before being retained on today's list. Some of these categories are not included on today's list because the Agency could not verify the existence of at least one major source within the categories or the common location of the

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categories on the premises of major sources.

*D. Consistency With Section 112 and Section 129 Provisions Relating to Specific Categories of Sources*

Listing of Electric Utility Steam Generating Units

Many commenters contended that electric utility steam generating units should not be listed because of provisions under section 112(n)(1) requiring the Agency to perform a study of the hazards to public health from these units. Section 112(n)(1) further states that the Agency shall regulate these units under section 112 only if the Agency finds such regulation appropriate and necessary after considering the results of the study.

Some commenters suggested various reasons for listing electric utility steam generating units on today's initial list. These commenters stated that section 112(n)(1) does not preclude listing utilities. Only regulation of electric utility steam generating units is precluded before the Agency reviews the results of the requisite electric utility study. Other commenters also raised a fairness issue. These commenters contended that electric utility steam generating units should certainly be listed if smaller combustion units had to be listed and subject to standards. Some of these same commenters suggested, as an alternative, that non-utility combustion units should be included in the utility study, and not listed until the results of utility study were available.

In response to these comments, the Agency agrees that a study of hazards from electric utility steam generating units is required before regulating these units. Given this requirement, the Agency sees little benefit in listing these units unless this study demonstrates significant public health hazards, warranting regulation. Hence, electric utility steam generating units, as defined in section 112(a)(8), are not included on today's initial list of categories of major and area sources. The Agency has initiated the study of these units, as required under section 112(n)(1).

In response to comments suggesting that the Agency delete non-utility boilers from today's list, the Agency does not have the authority under section 112 to exclude other combustion units (except for certain solid waste incineration units, as described in the following subsection). The provisions of section 112(n)(1) only apply to electric utility steam generating units, as defined in section 112(a)(8). Moreover, the Agency has determined that several categories of non-utility boilers and units not meeting the definition of an electric utility steam generating unit are categories of major sources and are thus required to be included on today's list.

Listing of Solid Waste Incinerator Units

The term solid waste incineration unit, under section 129(g)(1), means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Section 129(h)(2) states that no solid waste incineration unit subject to performance standards under (section 129) and section 111 shall be subject to standards under section 112(d) of this Act. The Agency interprets section 129(h)(2) to preclude the inclusion on today's list (or any revision of this list) of solid waste incineration units combusting municipal waste, hospital waste, medical waste, infectious waste, commercial or industrial waste. The rationale for this is that section 129(a) specifically requires the Agency to promulgate standards for units combusting these particular wastes under section 111 and section 129. The Agency interprets section 129 as not requiring standards to be promulgated for sewage sludge incineration units under section 129, so these units are included on today's list.

Section 129(g)(5) states that an incineration unit shall not be considered to be combusting municipal waste for purposes of section 111 or (section 129) if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste. The Agency interprets this as allowing standards to be established for fuel combustion categories on today's list that combust up to 30 percent municipal waste. Today's list does not identify specific fuels or fuel mixtures associated with categories of fuel combustion.

Provisions in section 129(g)(1) exclude certain other categories of combustion from inclusion as solid waste incineration units. Excluded are metal recovery facilities (including primary or secondary smelters), qualifying cogeneration facilities burning homogeneous waste (such as tires, used oil, but not including refuse-derived fuel), certain air curtain incinerators, and incinerators permitted under section 3005 of the Solid Waste Disposal Act (Pub. L. 94–580). Any such combustion units are subject to listing under Section 112(c) if all other listing criteria in Section 112 are met. Of these categories, today's list includes several categories of smelters and hazardous waste incinerators.

No solid waste incineration units are included on today's list as categories of area sources.

A number of commenters agreed with the Agency's earlier position that various types of solid waste incinerators should not be included on today's list of categories because of the exclusion in section 129. As stated above, the Agency has not changed this position for most types of incineration in this notice.

Several commenters argued that sewage sludge incinerators should not be listed because they are already regulated under the CWA and by NSPS and NESHAP's. In response, the Agency does not consider sewage sludge incineration units to be covered under Section 129, so it has the authority to list and set standards for these units under Section 112. The Agency does not have the discretion to omit this category because of existing regulations under the CWA or existing NSPS. Moreover, section 112(c)(4) gives the Agency the authority to list any category of sources previously regulated by NESHAP's before the CAA Amendments of 1990.

Listing of Research Facilities

The Agency received two comments regarding the listing of research facilities under section 112(c)(7). Both commenters urged the Agency to recognize the unique qualities of research laboratories as expressed in section 112. Specifically, section 112(c)(7) requires the Agency to establish a separate category covering research or laboratory facilities, as necessary in order to assure the equitable treatment of such facilities.

The preliminary draft list of categories of sources did not include a category for research facilities or laboratories. At the time of publication of the draft list, the Agency had insufficient information to list research facilities as a category of major sources. The Agency did not receive, through public comment, any specific emissions data that support the addition of a category for research facilities. Due to this lack of evidence, the Agency did not add research facilities or laboratories to today's initial list of categories of sources.

Listing of Boat Manufacturing

The Agency has identified major sources of HAP emissions in the category of boat manufacturing, and has added boat manufacturing as a category of major sources on today's list.

Section 112(c)(8) of the CAA requires the Agency to list boat manufacturing as a separate subcategory, when establishing standards for styrene. However, as explained earlier in today's

notice, the Agency has interpreted the terms "subcategory" and "category" to be interchangeable in the context of today's initial list. Hence, boat manufacturing has been listed as a category of major sources. This meets the intent of the CAA that boat manufacturing be considered separately from any other category when establishing standards.

Listing of Radionuclide Emitters

The Agency received several comments on the listing of radionuclide emitters. The commenters noted that the Agency had omitted all categories of radionuclide emitters from the preliminary draft list and suggested the addition of underground and surface uranium mines, Department of Energy (DOE) facilities, as well as facilities already licensed by the Nuclear Regulatory Commission (NRC).

Categories of radionuclide emitters are not included on today's initial list because of several provisions in Section 112. At the outset, the Agency notes that no source of radionuclide emissions meets the major source threshold for HAP's. Section 112(a)(1) allows the Agency to define criteria for differentiating between major and area sources of radionuclide emitters that are different from the weight-based thresholds established for other HAP's. At this time, the Agency has not decided how to define these different criteria. Hence, because categories of major and area sources of radionuclide emissions are not differentiated at this time, and cannot be differentiated based on the 9.07/22.7 Mg/yr (10/25 tpy) threshold in section 112(a) or any existing lesser quantity emission rates, the Agency considers their inclusion on today's list inappropriate. Categories of radionuclide emitters may be added to the list at a later date.

Section 112(d)(9) authorizes the Agency not to regulate, under section 112, emissions from facilities licensed by the NRC if the Agency first determines by rule that the regulatory program implemented by the NRC provides an ample margin of safety to protect public health. At this time, the Agency is engaged in a variety of information gathering and rulemaking activities to determine whether the NRC programs are sufficient to provide an ample margin of safety. For instance, the Agency has proposed to rescind regulatory NESHAPS for nuclear power reactors and non-operational uranium mill tailing disposal sites licensed by NRC and is gathering information as to whether NESHAPS are necessary for the remaining NRC licensees. Hence, no categories of sources regulated by the NRC are listed on today's list because of radionuclide emissions. The Agency will decide whether or not to add any NRC-licensed categories once sufficient information has been gathered.

Section 112(q)(2) states that no standard shall be established under section 112, as amended, for radionuclide emissions from elemental phosphorous plants, grate calcination elemental phosphorous plants, phosphogypsum stacks, or any subcategory of the foregoing. Under section 112(q)(2), these source categories continue to be governed by the previous version of section 112. None of these categories has been listed due to emissions of radionuclides.

Section 112(q)(3) gives the Agency the discretion to regulate radionuclide emissions from: (1) Non-DOE facilities which are not licensed by the NRC, (2) coal-fired utility and industrial boilers, (3) underground and surface uranium mines, and (4) disposal of uranium mill tailings piles. These source categories are subject to NESHAPS and general rulemakings under the previous version of the CAA. The Agency has not listed any of these categories of sources due to their radionuclide emissions on today's list.

Listing of Coke Ovens

The Agency received few comments regarding the listing of coke ovens. The CAA Amendments, under section 112(d)(8), instruct the Agency to promulgate regulations establishing emission standards for coke oven batteries. In response, the Agency listed several categories of coke oven operations in the preliminary draft list under the industry group "ferrous metals processing."

Listing of Publicly Owned Treatment Works

In the preliminary draft list, the Agency included a category for "wastewater treatment systems" under the industry group "waste treatment and disposal." This category included both publicly owned treatment works (POTW's) and industrial waste water treatment plants.

Many commenters argued that the category "wastewater treatment systems" was too broad to address realistically the wide variation in existing facilities and, at a minimum, should be divided into two categories: POTW's and industrial waste water treatment plants. In addition, many commenters argued that this broad category overlapped with industry categories listed elsewhere. For example, the broad categories listed in the industry group "production of synthetic organic chemicals" already encompass wastewater treatment systems as well as many other operations such as process vents and equipment leaks.

In response to these comments, the Agency has eliminated the category "wastewater treatment systems." The Agency agrees that industrial wastewater treatment plants are logically covered under the respective industry groups on today's list, and do not need to be listed separately.

Two provisions in Section 112 affect the listing of POTW's. Section 112(e)(5) requires the Agency to promulgate standards for POTW's, pursuant to section 112(d), not later than 5 years after the date of enactment of the CAA. Section 112(n)(3) states that the Agency may provide for control measures that include: (1) Pretreatment of discharges causing HAP emissions or (2) process or product substitutions or limitations that may be effective in reducing such emissions.

The Agency has included a category of "POTW emissions" on today's list. The Agency has the discretion, under section 112(n)(3), to conduct studies to characterize POTW emissions and to demonstrate control measures, considering alternatives involving pretreatment of discharges and process or product substitutions or limitations. The Agency intends to conduct studies to characterize HAP emissions from industries discharging to POTW's and to identify industrial, commercial and residential discharges that contribute to such emissions. The Agency has the authority, under section 112(n)(3), to consider the efficacy of regulations involving pretreatment of discharges. When such information is obtained, the Agency will add to the source category list, if necessary, to insure regulation of POTW emissions.

Listing of Oil and Gas Wells and Pipeline Facilities

The Agency received numerous comments regarding the category "oil and gas production" in the preliminary draft list. The commenters stated that based upon section 112(n)(4), the Agency had erroneously included oil and gas production wells in the oil and gas production category. Commenters generally urged the Agency to delete production wells as either a category of area or major sources.

The Agency agrees with the commenters that the CAA Amendments mandate certain limitations regarding the listing of oil and gas production wells. Section 112(n)(4) limits the Agency's ability to list oil and gas wells

(and associated equipment) as categories of major or area sources.

Section 112(n)(4)(A) specifically requires that each oil and gas well (and associated equipment), pipeline compressor, and pump station at a source must be considered individually, rather than in aggregate across a common area under contiguous control, to determine whether such units or stations are major sources. The Agency has evidence that certain individual units can exceed the major source threshold. Such units would not be excluded from being a major source under section 112(n)(4)(A).

Section 112(n)(4)(B) requires the Agency to determine that HAP emissions from oil and gas production wells (with its associated equipment), present more than a negligible risk of adverse effects to public health before these categories can be listed as categories of area sources. Section 112(n)(4)(B) further limits any such category to only include sources located in any metropolitan statistical area with a population exceeding 1 million. The Agency has not made such a determination at this time. Hence, oil and gas wells (with its associated equipment), pipeline compressors, and pump stations are not listed as categories of area sources on today's list.

*E. Listing of Regulated Categories*

Several commenters questioned the listing of some categories of sources currently regulated under the CAA or another statute. In some cases, various commenters pointed out that certain categories of sources on the draft list are (or will be) controlled by NSPS under section 111, by previously defined NESHAP's under Section 112 before the CAA Amendments of 1990, by CTG's under the CWA, under the Resources Conservation and Recovery Act (RCRA), or under the Federal Insecticide, Fungicide and Rodenticide Act. The commenters contended that "dual regulation" would cause confusion and hardship to the regulated community.

In response to these comments, the Agency has no general discretion, under section 112, to exclude categories of sources from today's list if they are subject to other statutes. Moreover, with a few exceptions, discussed below, the Agency has no discretion to exclude categories that are subject to other CAA standards.

Section 112(c)(4) states that the Agency may, at the Administrator's discretion, list any category previously regulated under this section as in effect before the date of enactment of the CAA Amendments of 1990. This gives the Agency the discretion to list categories of sources if the Administrator decides that existing NESHAP's are inadequate. However, the "savings provision" under section 112(q)(1) obligates the Agency to review and, if appropriate, revise existing NESHAP's to comply with the requirements of section 112(d) within 10 years.

Section 112(n)(7) obligates the Agency to take into account and be consistent with any regulations under RCRA, also known as the Solid Waste Disposal Act.

The Agency has declined to list categories of radionuclide emitters in light of the CAA statutory provisions, discussed in section III.D of this notice, and because the Agency is still developing the criteria for differentiating between major and area sources of radionuclide emitters. Likewise, as described in section III.D of this notice, the language in section 129(h)(2) precludes the listing of many categories of solid waste incineration units that are subject to standards under sections 111 and 129 of the CAA.

Marine vessel loading and unloading facilities are not listed on today's list because the Agency intends to regulate HAP's as well as emissions of VOC's and other pollutants under authority of section 183(f) of the CAA. Section 183(f) requires that the Agency, in conjunction with the Coast Guard, establish emissions standards for emissions of VOC's and any other air pollutant from loading and unloading tank vessels. Given the Congressional mandate to consult with the Coast Guard and consider safety impacts in developing tank vessel standards, the Agency believes it advisable to address all tank vessel emissions in a comprehensive, multi-faceted manner under section 183(f).

In response to comments regarding "dual regulation," the Agency notes that the establishment of standards under section 112 does not necessarily lead to duplicate regulation. This is because air emission regulations issued under another statute would likely become the basis for MACT floors under section 112, which are defined by evaluating best performing existing sources within any category or best controlled similar sources for new sources.

*F. Judicial Review of List*

Section 112(e)(4) states notwithstanding Section 307 of this Act (dealing with administrative proceedings and judicial review), no action of the Administrator listing a source category or subcategory under subsection (c) shall be a final Agency action subject to judicial review, except that any such action may be reviewed under section 307 when the Administrator issues emission standards for such pollutant or category.

Therefore, today's list is not a final Agency action and is not subject to judicial review.

## IV. Finding of Threat of Adverse Effects for Categories of Area Sources

As discussed earlier in section III.B of this notice, in order to list categories of area sources the Agency must find a threat of adverse health or environmental effects warranting regulation under section 112. The Agency hereby lists the following categories of area sources for which a finding of threat of adverse effects warranting regulation under section 112 has been made: Commercial sterilizers using ethylene oxide, chromium electroplaters and anodizers, perchloroethylene dry cleaners, halogenated solvent cleaners, and asbestos processing. Additional area source categories may be listed from time to time as sufficient data become available to support a finding of threat of adverse effects warranting regulation under section 112.

Today's list includes some source categories which are listed twice, once for the major sources within the category and once for the area sources. This is necessary because some categories are comprised of both area and major sources. Where categories of area sources are listed, a finding is required of threat of adverse effects warranting regulation under section 112.

The language of section 112 provides limited guidance on the nature of the finding of threat of adverse effects to human health or the environment warranting regulation under (section 112). The term "adverse environmental effect" is defined in section 112(a) as any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

Section 112(a) contains no concomitant definition of adverse health effect. The area source provisions of section 112(k), however, are closely linked to section 112(c) and state that health effects considered under this program shall include, but not be limited to, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction and other acute and chronic effects including the

role of such pollutants as precursors of ozone or acid aerosol formation.

Moreover, the finding is one of a threat of adverse effect, not a demonstration of the adverse effect, per se.

In the findings accompanying the area source listings in today's notice, quantitative assessments of risk are an important consideration in assessing significant threats of adverse health effects. Quantitative risk assessment, in this context, means the estimation of a mathematical probability of an individual or population being subject to some adverse health effect, such as cancer. The Agency has historically developed assessments of cancer risks, both to maximally exposed individuals and populations, as part of its regulatory actions under section 112. Population risks are expressed in terms of the total number of cancer cases (i.e., cancer incidence) that could be expected to occur in a given time within a prescribed area, considering the exposure of the population within the area to ambient concentrations of toxic air pollutants. Most typically, in these findings, nationwide cancer incidence is expressed on an annual basis (i.e., cases per year). In contrast, a maximum individual "lifetime" risk is expressed as the risk of contracting cancer associated with an exposure for 70 years (an assumed life span) to the maximum, modeled, long-term concentration of the listed HAP's in the proximity of emitting sources. (The findings in today's notice do not demonstrate any threat of adverse environmental effects, only human health effects; future findings may be based on environmental effects as the appropriate information becomes available.)

Section 112(c) of the CAA Amendments of 1990 does not offer a "bright line" test for the Agency to use in making an area source finding. Instead, considering the language cited above, the Agency believes it has discretion to consider a range of health effects endpoints and exposure criteria in making a finding of a threat of adverse effects. In the findings for the listed categories of area sources given later in today's notice, the Agency considers factors such as the number of sources in a category, the quantity of emissions from sources individually or in aggregate, the toxicity of the HAP emissions, the potential for individual and population exposures and risks, and the geographical distribution of sources.

In determining what constitutes a significant threat of adverse effects, the Agency considers the risk criteria developed in the establishment of the benzene NESHAP in light of the DC Circuit Court's decision on the Agency's vinyl chloride emission standards to be an important precedent (*Natural Resources Defense Council, Inc.* v. *EPA*, 824 F.2d at 1146 [1987]) (the "*Vinyl Chloride*" decision). In the September 14, 1989 **Federal Register** implementing the *Vinyl Chloride* decision (54 FR 38044), the Agency presents an approach for providing for the protection of public health with an ample margin of safety under section 112 in protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level of no higher than approximately 1 in 1 million and (2) limiting to no higher than approximately 1 in 10 thousand the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

In the September 14, 1989 **Federal Register**, the Agency indicates that, as a first step in this process, it considers incidence (i.e., the numbers of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk the EPA believes that even if the MIR (maximum individual risk) is low, the overall risk may be unacceptable if significant numbers of persons are exposed to a hazardous air pollutant, resulting in a significant estimated incidence. Consideration of this factor would not be reduced to a specific limit or range but estimated incidence would be weighed along with other health risk information in judging acceptability.

In the September 14, 1989 **Federal Register**, the Agency indicates that attention will also be accorded to the weight of evidence of the potential human carcinogenicity or other health effects of a pollutant. The uncertainties, gaps in data, and science policy assumptions associated with any risk measures must also be weighed. As a second step in determining the appropriate level of control, the Agency will examine both these factors above and other relevant factors such as the extent of exposure, the incidence of adverse effect, and the cost of control. The Agency will use these factors in determining whether a regulation provides an ample margin of safety. The Agency believes that consideration of these additional factors is also appropriate in determining whether a category of area sources poses a significant threat of adverse health effects warranting regulation under section 112. This interpretation, however, does not supersede the statutory requirements of the area source program under section 112(k).

In summary, the Agency will not examine a single parameter or measure for making a finding of threat of adverse effects for the purpose of listing any category of area sources. Instead, in determining that a significant threat of adverse effects exists warranting regulation under section 112, the Agency will look to a collection of parameters and measures involving emissions, toxicities, numbers of facilities, the reasonableness of control measures, population exposures to HAP emissions, individual risks and population incidence. In determining what constitutes a significant threat, the Agency will consider the criteria for determining acceptable risks and an ample margin of safety arising from the establishment of benzene NESHAP's in light of the Vinyl Chloride decision. An important criterion in determining a significant threat is evidence that a category of area sources may pose a cancer risk to the maximally exposed individual(s) in excess of one in 10,000. Another important criterion is evidence that significant cancer incidence may result due to many persons exposed to HAP emissions from a category of area sources, even if the maximum individual risk to any individual is low. In addition, the Agency may consider a number of additional factors as appropriate.

As reflected in its interpretation of the Vinyl Chloride decision (54 FR 38044), the Agency recognizes uncertainties in current estimates of risk based on maximum, modeled concentrations and the use of conservative, upperbound risk assumptions (such as continuous exposures for 24 hours per day for 70 years). The Agency acknowledges that current cancer risk estimates do not necessarily reflect the true risk, but often represent a conservative risk level which is an upperbound that is unlikely to be exceeded. The Agency intends to improve its risk assessment procedures in accordance with guidance from its own Risk Assessment Council and through the risk assessment studies required under sections 112(f), 112(o), and 303 of title III of the CAAA.

Each finding detailed below is based on qualitative and quantitative information demonstrating a significant threat of adverse effects to health or the environment for such categories of sources individually or in the aggregate, as required under section 112(c)(3). Most data used in the area source findings were gathered from published reports. Summary information only is presented

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in each finding in today's notice. Information from references supporting today's findings is available in the docket (Docket No. A–90–49, Item No. IV–B–44).

*A. Finding of Threat of Adverse Effects for Category of Commercial Sterilizers Using Ethylene Oxide*

Ethylene oxide is widely used as a sterilant/fumigant in the production of medical equipment and in sterilization and fumigation operations. Current estimates indicate that there are about 190 facilities in the U.S. performing ethylene oxide commercial sterilization. Commercial sterilization is performed by medical equipment suppliers, pharmaceutical manufacturers, spice manufacturers, contract sterilizers, libraries, museums and archives, and laboratories. Emissions of ethylene oxide are estimated at 1.1 million kg/yr (2.4 million lb/yr) from commercial facilities.

The adverse health effects from ethylene oxide are well documented. Numerous studies exist which attest to the health effects from both acute and chronic exposures to ethylene oxide. Headaches, nausea, vomiting, and/or respiratory irritation are common symptoms resulting from acute inhalation exposure to ethylene oxide. Studies of subchronic and chronic exposures indicate that ethylene oxide has serious long-term effects. Plant workers exposed to high levels of ethylene oxide over a 1-week to 3-month periods reported the development of neurological abnormalities and cataracts.

Animal experiments and human epidemiological studies indicate that ethylene oxide is a probable human carcinogen. Animals exposed to ethylene oxide over long periods of time exhibit increased incidence of tumors, including brain neoplasms, and leukemia. Studies of persons occupationally exposed to ethylene oxide indicate the possibility of a significant association between exposure and cancer incidence, for both stomach cancer and leukemia.

The reproductive and teratogenic effects of ethylene oxide inhalation have been examined in laboratory animals. Studies indicate that exposure to ethylene oxide produces maternal toxicity, depression of fetal weight gain, fetal death, and fetal malformation in females and reduced sperm numbers and motility in males. Recent studies on ethylene oxide have also examined the mutagenicity associated with ethylene oxide and the ability of ethylene oxide-induced genetic damage to cause adverse reproductive impacts. Ethylene oxide has been shown to cause mutations in mammalian cells, both somatic and germ.

Due to the adverse effects associated with ethylene oxide observed in both animals and humans, the Agency is concerned about ethylene oxide emissions as well as the presence of ethylene oxide in the ambient air. Studies have confirmed the presence of ethylene oxide above background concentrations in many areas of the nation, including areas of high population. Many ethylene oxide sterilizers are located near population centers and may pose a threat to the surrounding public.

The Agency has conducted nationwide analyses of emissions, exposures, and cancer risks associated with commercial sterilizers using ethylene oxide. The Agency estimates that as many as three increased cancer cases arise in the U.S. annually from exposure to commercial sterilizers using ethylene oxide. The Agency estimates that the maximum individual lifetime cancer risk associated with any commercial sterilizer is as high as one in 100 ($1\times10^{-2}$). Furthermore, about 120,000 persons living in the proximity of commercial sterilizers are estimated to be subject to upper-bound lifetime individual risks possibly in excess of one in 10,000 ($1\times10^{-4}$); about 2,300,000 persons are subject to lifetime individual risks possibly in excess of one in 100,000 ($1\times10^{-5}$); and about 35,000,000 persons—or about one sixth the entire U.S. population—are subject to lifetime individual risks exceeding one in 1,000,000 (($1\times10^{-6}$).

Currently, there are no Federal regulations covering ethylene oxide sterilizer emissions, except Occupational Safety and Health Administration (OSHA) requirements for workplace exposure levels. Sixteen States and Puerto Rico have developed regulations; however, no national regulations currently exist that address all ethylene oxide emissions from commercial sterilizers.

Since there are few commercial sterilizers that exceed 9.07 Mg/yr (10 tpy) of ethylene oxide emissions, they must be listed as categories of area sources in order to be regulated under section 112(d). The Agency hereby finds that the high emission levels, documented exposures, and known and suspected adverse health effects associated with ethylene oxide emissions from commercial sterilizers present a threat of adverse effects to human health. The Agency thus includes this category on the list of categories of area sources on today's list.

*B. Finding of Threat of Adverse Effectives for Categories of Chromium Electroplaters and Anodizers*

The chromium electropating industry consists of hard chromium electroplaters, decorative chromium electroplaters, and anodizers. Hard chromium electropolating involves coating a base metal, such as steel, with a relatively thick layer of chromium, in order to provide a wear resistent surface. Hard plating is most often used on items such as hydraulic cylinders and rods, zinc die castings, plastic molds engine components, and marine hardware. Decorative plating, on the other hand, usually plates the base metal (i.e., brass, steel, aluminum, or plastic) with a layer of nickel and then a thin layer of chromium in order to produce a bright, wear- and tarnish-resistant surface. Decorative plating is most often used on automotive trim, bicycles, hand tools, and plumbing fixtures. A third type of chromium electroplater, anodizers, uses chromic acid to form an oxide layer on aluminum to provide corrosion resistance. Chromium anodizing is primarily used on aircaft parts and architectural structures that are subject to high stress and corrosive conditions. Although chromium may be used in other operations at metal finishing plants, today's notice only includes those processes that use chromic acid in an electrolytic cell to deposit chromium metal or to form an oxide film on a product.

The chromium electroplating industry is comprised of an estimated 1,540 hard electroplaters, 2,800 decorative electroplaters, and 680 chromic acide anodizers, or approximately 5,000 operations nationwide. These operations vary in size from small shops with only one or two small tanks to large shops with several tanks that are operated almost continuously. Some plating operations are done in stand-alone "job shops," whereas others are done on the premises of larger sources, and are called "captive shops." Although no single electroplating operation emits more than 9.07 Mg/yr (10 tpy) of chromium, electroplaters are estimated to emit 159 Mg/yr (175 tpy) of chromium per year nationwide.

Chromium electroplaters can present an adverse health threat to populations living near the source of emissions. Chromium electroplaters mostly emit the hexavalent form of chromium, Cr (+6), as chromic acid mist, and lesser amounts of trivalent chromium, Cr (+3). Current health effects data suggest that the hexavalent form of chromium is the most toxic of all chromium compounds. Both human case studies and epidemiological studies attest to the adverse health effects from inhalation of hexavalent chromium. Acute exposure to hexavalent chromium has been shown to cause nasal irritation in workers and other individuals. Intermediate and chronic inhalation exposure to chromium has been reported to cause adverse respiratory tract effects, including irritation and perforation of the nasal mucosa, decreases in lung function, and renal proteinuria. Animal studies of acute organ toxicity also suggest that chromium compounds may produce kidney and liver damage.

The carcinogenic health effects from chromium are also well documented. Hexavalent chromium is considered a Group A carcinogen because there is adequate evidence for its carcinogenicity in humans. Specifically, chronic occupational exposure to chromium has been associated with increased incidence of respiratory cancer in workers. The association of exposure to chromium and the induction of lung cancer is strengthened by the high lung cancer mortality ratios found in various epidemiological studies, the consistency of results across several studies, the increased tumors found in association with increasing doses, and the specificity of the tumor site. The role of trivalent chromium in carcinogenesis is presently unclear.

Reproductive studies on animals also suggest that chromium compounds may have some fetal and maternal toxicity effects. Although conclusive results can not be drawn from the available data, studies suggest that chromium compounds can adversely affect fetal development and male reproduction in experimental animals.

The Agency has developed nationwide emission and population exposure estimates associated with chrome platers and anodizers. Based on this analysis, the Agency estimates that chrome platers and anodizers contribute significantly to the total increased cancer incidence in the U.S. from airborne toxics. Hard chrome platers, decorative chrome platers, and acid anodizers may cause as many as 110 increased cancer cases per year in the U.S. In addition to significant population risks, chrome platers and anodizers contribute significantly to maximum individual cancer risks in the proximity of particular facilities. The Agency estimates that maximum, upper-bound individual risks range from two chances in 100,000 ($2\times10^{-5}$) for small acid anodizing plants to five chances in 1,000 ($5\times10^{-3}$) for large hard plating operations. All estimates of risk in this analysis are based on hexavalent chromium only, and not on trivalent chromium.

An Agency study of Southeast Chicago estimates that chrome platers contribute about one sixth of the total cancer incidence due to all sources of airborne toxics in the study area, including steel mills, road vehicles, and other industrial sources.

An Agency analysis of cancer incidence from air toxic emissions in five large U.S. cities shows that chrome platers contribute about one tenth of the total increased cancer incidence due to all sources of airborne toxics. Extrapolating the cancer rate in the five cities to the U.S. yields an estimate of as high as 90 increased cases per year.

Currently, the only Federal emission regulations for electroplaters are limited to OSHA workplace emission standards, designed specifically to limit worker exposures. Fourteen States have adopted or proposed regulations for controlling chromium emission from electroplaters.

The Agency hereby finds that the overall emissions, exposures, and known and suspected health impacts associated with chromium electroplaters and anodizers present a threat of adverse effects to human health. Based on the finding above, the Agency has included chromium electroplaters and anodizers on today's initial list as categories of area sources.

*C. Finding of Threat of Adverse Effects for Category of Commercial Perchloroethylene Dry Cleaners*

A finding of threat of adverse effects for commercial perchloroethylene dry cleaners is presented in a proposed rule to establish emission standards for perchloroethylene dry cleaners (56 FR 64382).

*D. Finding of Threat of Adverse Effects for Categary of Cleaners Using Halogenated Solvents*

Halogenated solvents are widely used throughout industry to clean the surface of metal parts, electronic components, and other nonporous substrates. The cleaning machines that use halogenated solvents are categorized as one of three types: Cold cleaners, open top vapor cleaners (OTVC's), and in-line or conveyorized cleaners. Machines, including maintenance cleaners, that use petroleum distillate type solvents are not included in this category of area sources at this time. The five largest industry users of halogenated solvents for cleaning, by Standard Industries Classification (SIC) Code, are SIC 25 (furniture and fixtures), SIC 34 (fabricated metal products), SIC 36 (electric and electronic equipment), SIC 37 [transportation equipment), and SIC 39 [miscellaneous manufacturing industries). In addition to these industry groups, many non-manufacturing industries (such as railroad, bus, aircraft, and truck maintenance facilities; automotive and electric tool repair shops; automobile dealers; and service stations) also use these solvents for cleaning.

In all of these industries, the most commonly used halogenated solvents are methylene chloride (MC), trichloroethylene (TCE), perchloroethylene (PCE), trichlorotrifluoroethane (CFC–113), and 1,1,1-trichloroethane (TCA). Use of these chemicals is found throughout many industries because they can dissolve many common residues from manufacturing processes, have little or no flammability, and can achieve a high degree of cleanliness on even small parts.

The Agency estimates that there are approximately 100,000 small cold cleaners, 25,000 to 35,000 OTVC's, and 2,500 to 4,000 in-line (cold and vapor) cleaners. Specific emission levels from each type of machine may vary; however, the Agency has estimated that emissions range from 2,500 to 6,000 kg/yr (5,520 to 13,250 lb/yr), depending on the schedule of operation. Most of the solvent losses from halogenated cleaners are to the air.

Due to the high usage and emissions of these cleaners throughout industry, as well as the large number of cleaners, there is a great potential for exposure to the HAP's used as solvents. Two degreasing solvents, CFC–113 and TCA, have also been implicated as causing stratospheric ozone depletion. The TCA has also been shown to be photochemically reactive and contribute to increases in tropospheric ozone levels. Both of these two chemicals, CFC–113 and TCA, will be phased out with other Agency regulations under title VI of the CAA.

The health effects associated with halogenated solvent cleaners are most well documented for MC, TCE, and PCE. Both MC and TCE are considered probable human carcinogens and are classified in Group B2, while PCE is still under review.

Evidence indicating the carcinogenicity of MC is available through animal studies. Animal inhalation studies on MC have shown significant increases in liver and lung adenomas and carcinomas in both males and females. Other animal studies have

indicated that exposure to elevated levels of MC can cause benign mammary tumors. Based upon this available animal evidence, the Agency has determined that MC is a probable human carcinogen. In addition to these adverse effects, short-term exposure to MC has been known to cause impairments in central nervous system (CNS) functioning. Case reports of exposure to MC have shown that humans exposed to MC exhibited narcosis, irritability, analgesia, and fatigue.

Both PCE and TCE are moderately toxic substances that appear to target the CNS, causing dizziness, headaches and slowing of mental activity. Over longer periods of exposure, these adverse effects may also be seen in the liver and kidneys as well as the eyes and upper respiratory tract. The carcinogenic effects from both these chemicals has also been investigated, mostly through animal experiments. Results of TCE tests indicate that inhalation may result in the formation of renal tumors. Other TCE studies suggest that inhalation is fetotoxic and may cause litter resorption and reduced fetal body weight.

An Agency analysis has been conducted of nationwide exposures, individual lifetime risks, and population incidence from halogenated solvent cleaners emissions. This analysis estimates that as many as six increased cancer cases are attributable to halogenated solvent cleaners, annually, in the U.S. This study also suggests that upper-bound maximum individual lifetime risks in the proximity of these cleaners range from as high as one in 1,000,000 ($1\times10^{-6}$) to one in 10,000 ($1\times10^{-4}$). Nationally, the maximum individual risk near a large facility with multiple conveyorized cleaners is as high as five in 10,000 ($5\times10^{-4}$).

Based upon the evidence presented, the Agency finds that cleaners using halogenated solvents present a threat of adverse impact to human health or the environment. The Agency therefore adds them to the categories of area sources on today's initial list.

*E. Finding of Threat of Adverse Effects for Category of Asbestos Processing*

The Agency is hereby listing one category of asbestos-related sources: Asbestos processing. Asbestos processing includes asbestos milling, manufacturing, and fabrication. Products that are manufactured or fabricated using asbestos include, but are not limited to, textiles, papers and felts, friction materials, cements, vinyl-asbestos floor tiles, gaskets and packings, shotgun shell wads, asphalt concrete, fireproofing and insulating materials, and chlorine.

Information on asbestos emissions has been limited by the lack of an appropriate measuring method. Therefore, engineering estimates of emission have been made from other available information, when appropriate, including process data and worker concentration data. Under the current NESHAP, emissions from asbestos processing are estimated at 1,020 kg/yr (2,240 lb/yr) given full compliance with the current NESHAP. This includes all emissions from milling, manufacturing, and fabricating. Due to the potency of asbestos and the well documented health hazards (described below), the Agency is concerned about these emissions even though exact amounts have not been quantified.

The health effects associated with exposure to asbestos are well documented. Numerous occupational exposure studies, supported by animal studies, clearly indicate that asbestos is a human (Group A) carcinogen. The major impacts associated with asbestos inhalation are lung cancer and mesothelioma. Studies have confirmed that death from lung cancer and mesothelioma is proportional to the cumulative exposure (duration times the intensity). Studies also indicate that asbestos is linked to gastrointestinal cancers, although these occur at a lower rate than that seen for lung cancer.

The Agency has completed an analyses of cancer incidence and maximum individual cancer risks associated with asbestos emissions from the category of asbestos processing. Available Agency estimates of maximum lifetime cancer risks in the vicinity of processing operations are based on early emission estimates that have since been revised to reflect more recent and improved information. However, estimates of maximum risk derived using these earlier estimates of emissions were evaluated and, for asbestos processing, appear to still be applicable. These available data suggest that upper-bound maximum individual lifetime risks are about two in 1,000 ($2\times10^{-3}$) for production in the manufacturing sector.

Regulations to control workplace exposures and/or emissions from asbestos have been established by OSHA, the Mine Safety and Health Administration (MSHA), EPA, and States. The most recent Agency NESHAP, promulgated November 20, 1990, amended the earlier NESHAP to enhance enforcement and promote compliance with the current standards without altering the stringency of existing controls. Since the initial promulgation in 1973, many States have adopted more stringent requirements than the Agency; therefore, no uniform standard now exists. The Agency intends to consult and coordinate with OSHA and other regulatory agencies to establish regulations that are more compatible and consistent than current regulations, as well as easier to understand. This should improve compliance with all regulations.

Based on emission and risk information discussed previously, and the known health effects of asbestos, the Agency has determined that asbestos processing presents a threat of adverse effects to human health. Emissions data from this category indicate that no sources emit greater than 9.07 Mg/yr (10 tpy) of asbestos. Based on the finding above, the Agency hereby includes the category of asbestos processing on today's list.

In addition to the finding of threat of adverse effects given above, the Agency has additional authority to list and establish standards for the category of asbestos processing under sections 112(c)(4) and 112(q)(1). Section 112(c)(4) gives the Agency the authority to list any category or subcategory of sources previously regulated under Section 112 as in effect before enactment of the CAA Amendments of 1990. Section 112(q)(1) obligates the Agency to review and, if appropriate, revise each standard previously promulgated under Section 112 before enactment, to comply with the requirements of section 112(d), within 10 years after the date of enactment of the CAA Amendments of 1990. Since the category of asbestos processing has a promulgated NESHAP, the Agency exercises its discretion to list this category under the authority of section 112(c)(4) and 112(q)(1).

**V. Descriptions of Listed Categories**

Because some of the categories on today's list encompass several industry sectors, operations, and/or types of equipment, the Agency recognizes the importance of describing what is included under each listed category. Hence, descriptions are included in the accompanying docket (Docket No. A–90–49, Item No. IV–A–55) for the purpose of delineating, to the extent currently possible with available data, the potential coverage of each category. The Agency recognizes that these descriptions, like the list itself, may be revised from time to time as better information becomes available. The Agency intends to revise these descriptions as part of the process of establishing standards for each category. Ultimately, a definition of each

listed category, or subsequently listed subcategories, will be incorporated in each rule establishing a NESHAP for a category. It is not the Agency's intent that the descriptions, in the docket accompanying today's notice, limit what may be included under each category for the purposes of establishing emission standards either under section 112(d) or, on a case-by-case basis under section 112(j), or for purposes relating to other parts of section 112 involving the definition of source or category of sources.

**VI. Relationship of List to Definition of Source for Early Reduction**

The identification of categories and subcategories of major sources in today's initial list has no bearing whether any particular facility or grouping is a "source" for purpose of the early reduction program under section 112(i)(5) or a major source for purposes of section 112(a)(1). The term "major source" is defined in section 112(a)(1) in such a way that it refers to the emissions occurring from a contiguous area under common control. By contrast, the Agency must identify "categories and subcategories" of major and area sources generically for the purposes of today's initial list and for establishing standards under section 112(d). In most cases, this identification will be made as product or process oriented groupings which will not affect the definition of "source" for purposes of either the early reduction under section 112(i)(5) or the definition of a "major source" under section 112(a)(1). The definition of source in the early reduction program is described in section II.B of the Proposed Regulations Governing Compliance Extensions for Early Reduction of Hazardous Air Pollutants (June 13, 1991, 56 FR 27338).

**VII. Administrative Requirements**

*A. Docket*

The docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of this initial list of categories of sources. The principal purpose of this docket is to allow interested parties to identify and locate documents that serve as a record of the process engaged in by the Agency to publish today's initial list.

*B. Executive Order 12291 Review*

Executive Order 12291 requires the Agency to determine whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional regulatory requirements. This notice was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and written EPA responses are available in the docket.

*C. Paperwork Reduction Act*

This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act, 55 U.S.C. 3501 et seq.

*D. Regulatory Flexibility Act Compliance*

Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements.

Dated: July 2, 1992.

Michael Shapiro,

*Acting Assistant Administrator for Air and Radiation.*

TABLE 1.—INITIAL LIST OF CATEGORIES OF MAJOR AND AREA SOURCES OF HAZARDOUS AIR POLLUTANTS [a]

| Category Name |
|---|
| **FUEL COMBUSTION** |
| Engine Test Facilities |
| Industrial Boilers [b] |
| Institutional/Commercial Boilers [b] |
| Process Heaters |
| Stationary Internal Combustion Engines [b] |
| Stationary Turbines [b] |
| **NON-FERROUS METALS PROCESSING** |
| Primary Aluminum Production |
| Secondary Aluminum Production |
| Primary Copper Smelting |
| Primary Lead Smelting |
| Secondary Lead Smelting |
| Lead Acid Battery Manufacturing |
| Primary Magnesium Refining |
| **FERROUS METALS PROCESSING** |
| Coke By-Product Plants |
| Coke Ovens: Charging, Top Side, and Door Leaks |
| Coke Ovens: Pushing, Quencing, and Battery Stacks |
| Ferroalloys Production |
| Integrated Iron and Steel Manufacturing |
| Non-Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation |
| Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation |
| Iron Foundries |
| Steel Foundries |
| Steel Pickling—HCl Process |
| **MINERAL PRODUCTS PROCESSING** |
| Alumina Processing |
| Asphalt/Coal Tar Application—Metal Pipes |
| Asphalt Concrete Manufacturing |
| Asphalt Processing |
| Asphalt Roofing Manufacturing |
| Chromium Refractories Production |
| Clay Products Manufacturing |
| Lime Manufacturing |
| Mineral Wool Production |
| Portland Cement Manufacturing |
| Taconite Iron Ore Processing |
| Wool Fiberglass Manufacturing |
| **PETROLEUM AND NATURAL GAS PRODUCTION AND REFINING** |
| Oil and Natural Gas Production |
| Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units |
| Petroleum Refineries—Other Sources Not Distinctly Listed |
| **LIQUIDS DISTRIBUTION** |
| Gasoline Distribution (Stage 1) |
| Organic Liquids Distribution (Non-Gasoline) |
| **SURFACE COATING PROCESSES** |
| Aerospace Industries |
| Auto and Light Duty Truck (Surface Coating) |
| Flat Wood Paneling (Surface Coating) |
| Large Appliance (Surface Coating) |
| Magnetic Tapes (Surface Coating) |
| Manufacture of Paints, Coatings, and Adhesives |
| Metal Can (Surface Coating) |
| Metal Coil (Surface Coating) |
| Metal Furniture (Surface Coating) |
| Miscellaneous Metal Parts and Products (Surface Coating) |
| Paper and Other Webs (Surface Coating) |
| Plastic Parts and Products (Surface Coating) |
| Printing, Coating, and Dyeing of Fabrics |
| Printing/Publishing (Surface Coating) |
| Shipbuilding and Ship Repair (Surface Coating) |
| Wood Furniture (Surface Coating) |
| **WASTE TREATMENT AND DISPOSAL** |
| Hazardous Waste Incineration |
| Municipal Landfills |
| Sewage Sludge Incineration |
| Site Remediation |
| Solid Waste Treatment, Storage and Disposal Facilities (TSDF) |
| Publicly Owned Treatment Works (POTW) Emissions |
| **AGRICULTURAL CHEMICALS PRODUCTION** |
| 2,4-D Salts and Esters Production |
| 4-Chloro-2-Methylphenoxyacetic Acid Production |
| 4,6-Dinitro-o-Cresol Production |
| Captafol Production |

TABLE 1.—INITIAL LIST OF CATEGORIES OF MAJOR AND AREA SOURCES OF HAZARDOUS AIR POLLUTANTS [a]—Continued

Captan Production
Chloroneb Production
Chlorothalonil Production
Dacthal (tm) Production
Sodium Pentachlorophenate Production
Tordon (tm) Acid Production

FIBERS PRODUCTION PROCESSES

Category Name
Acrylic Fibers/Modacrylic Fibers Production
Rayon Production
Spandex Production

FOOD AND AGRICULTURE PROCESSES

Category Name
Baker's Yeast Manufacturing
Cellulose Food Casing Manufacturing
Vegetable Oil Production

PHARMACEUTICAL PRODUCTION PROCESSES

Category Name
Pharmaceuticals Production

POLYMERS AND RESINS PRODUCTION

Category Name
Acetal Resins Production
Acrylonitrile-Butadiene-Styrene Production
Alkyd Resins Production
Amino Resins Production
Boat Manufacturing
Butadiene-Furfural Cotrimer (R-11)
Butyl Rubber Production
Carboxymethylcellulose Production
Cellophane Production
Cellulose Ethers Production
Epichlorohydrin Elastomers Production
Epoxy Resins Production
Ethylene-Propylene Elastomers Production
Flexible Polyurethane Foam Production
Hypalon (tm) Production
Maleic Anhydride Copolymers Production
Methylcellulose Production
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production
Neoprene Production
Nitrile Butadiene Rubber Production
Non-Nylon Polyamides Production
Nylon 6 Production
Phenolic Resins Production
Polybutadiene Rubber Production
Polycarbonates Production
Polyester Resins Production

TABLE 1.—INITIAL LIST OF CATEGORIES OF MAJOR AND AREA SOURCES OF HAZARDOUS AIR POLLUTANTS [a]—Continued

Polyethylene Teraphthalate Production
Polymerized Vinylidene Chloride Production
Polymethyl Methacrylate Resins Production
Polystyrene Production
Polysulfide Rubber Production
Polyvinyl Acetate Emulsions Production
Polyvinyl Alcohol Production
Polyvinyl Butyral Production
Polyvinyl Chloride and Copolymers Production
Reinforced Plastic Composites Production
Styrene-Acrylonitrile Production
Styrene-Butadiene Rubber and Latex Production

PRODUCTION OF INORGANIC CHEMICALS

Category Name
Ammonium Sulfate Production—Caprolactam By-Product Plants
Antimony Oxides Manufacturing
Chlorine Production
Chromium Chemicals Manufacturing
Cyanuric Chloride Production
Fume Silica Production
Hydrochloric Acid Production
Hydrogen Cyanide Production
Hydrogen Fluoride Production
Phosphate Fertilizers Production
Phosphoric Acid Manufacturing
Quaternary Ammonium Compounds Production
Sodium Cyanide Production
Uranium Hexafluoride Production

PRODUCTION OF ORGANIC CHEMICALS

Category Name
Synthetic Organic Chemical Manufacturing

MISCELLANEOUS PROCESSES

Category Name
Aerosol Can-Filling Facilities
Benzyltrimethylammonium Chloride Production
Butadiene Dimers Production
Carbonyl Sulfide Production
Chelating Agents Production
Chlorinated Paraffins Production
Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Dodecanedioic Acid Production

TABLE 1.—INITIAL LIST OF CATEGORIES OF MAJOR AND AREA SOURCES OF HAZARDOUS AIR POLLUTANTS [a]—Continued

Dry Cleaning (Petroleum Solvent)
Ethylidene Norbornene Production
Explosives Production
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Hydrazine Production
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines
Industrial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Industrial Process Cooling Towers
OBPA/1,3-Diisocyanate Production
Paint Stripper Users
Photographic Chemicals Production
Phthalate Plasticizers Production
Plywood/Particle Board Manufacturing
Polyether Polyols Production
Pulp and Paper Production
Rocket Engine Test Firing
Rubber Chemicals Manufacturing
Semiconductor Manufacturing
Symmetrical Tetrachloropyridine Production
Tire Production
Wood Treatment

CATEGORIES OF AREA SOURCES [c]

Asbestos Processing
Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Halogenated Solvent Cleaners
Hard Chromium Electroplating

[a] All categories in Table 1 are categories of major sources unless specifically identified as categories of area sources. Only major sources within any category shall be subject to emission standards under section 112 unless a finding is made, for the area sources in the category, of a threat of adverse effects to human health or the environment warranting regulation under section 112. All listed categories are exclusive of any specific operations or processes included under other categories that are listed separately.

[b] Sources defined as electric utility steam generating units under section 112(a)(8) shall not be subject to emission standards pending the findings of the study required under section 112(n)(1) and subsequent listing and regulation thereof.

[c] A finding of threat of adverse effects to human health or the environment warranting regulation under section 112 has been made for each category of area sources listed in Table 1.

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federal register

Thursday
July 16, 1992

Part V

## Department of the Treasury
**Office of the Comptroller of the Currency**
**12 CFR Part 34**

## Federal Reserve System
**12 CFR Parts 208 and 225**

## Federal Deposit Insurance Corporation
**12 CFR Part 365**

## Department of the Treasury
**Office of Thrift Supervision**
**12 CFR Part 563**

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**Real Estate Lending Standards; Proposed Rule**

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. 92-12]

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulation H; Regulation Y; Docket No. R-0764]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 365

RIN 3064-AB05

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 92-284]

RIN 1550-AA56

Real Estate Lending Standards

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), enacted December 19, 1991, requires the federal banking agencies, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, to adopt uniform regulations prescribing standards for real estate lending. FDICIA defines real estate lending as extensions of credit secured by liens on interests in real estate or made for the purpose of financing the construction of a building or other improvements to real estate, regardless of whether a lien has been taken on the property. In establishing these standards, the agencies are to consider: The risk posed to the deposit insurance funds by such extensions of credit; the need for safe and sound operation of insured depository institutions; and the availability of credit.

In order to implement section 304, the agencies are proposing to establish loan-to-value (LTV) ratio limitations on real estate lending by insured depository institutions. The Board of Governors of the Federal Reserve System also proposes to establish loan-to-value ratio limitations on real estate lending by bank holding companies and their nonbank subsidiaries. Certain transactions would be excluded from the LTV ratio limitations. Specifically, it is proposed that these limits would not apply to: Loans guaranteed or insured by the U.S. government or an agency thereof, or backed by the full faith and credit of a state government; loans facilitating the sale of real estate acquired by the lending institution in the ordinary course of collecting a debt previously contracted; loans where real estate is taken as additional collateral solely through an abundance of caution by the lender; loans renewed, refinanced, or restructured by the original lender(s) to the same borrower(s), without the advancement of new funds; or loans originated prior to the effective date of the proposed regulation. In addition, the agencies are considering exempting loans involving organizations or projects designed primarily to promote the economic rehabilitation and development of low-income areas. The proposal also includes provisions allowing lending institutions to make a limited amount of real estate loans that do not conform with the proposed LTV ratio limitations.

**DATES:** Comments must be submitted on or before August 31, 1992.

**ADDRESSES:** Office of the Comptroller of the Currency (OCC): Office of the Comptroller of the Currency, Communications Division, 250 E St. SW., Washington, DC 20219, attention: Docket No. 92-12. Comments will be available for public inspection and photocopying at the same location.

Board of Governors of the Federal Reserve System (Board): Comments, which should refer to Docket No. R-0765, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

Federal Deposit Insurance Corporation (FDIC): Comments should be directed to the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F-400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (Fax Number: (202) 898-3838). Comments will be available for inspection at the same address on business days between 9 a.m. and 4:30 p.m.

Office of Thrift Supervision (OTS): Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, attention: Docket No. 92-284. These submissions may be hand delivered to 1700 G Street NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late filed, misaddressed, or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street, NW., Street Level.

**FOR FURTHER INFORMATION CONTACT:** OCC: Frank R. Carbone, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874-5170; William W. Templeton, Attorney, Legal Advisory Services Division, (202) 874-5320; Mitchell Stengel, Financial Economist, Banking Research and Statistics, (202) 874-5240.

Board: Roger T. Cole, Assistant Director (202) 452-2618, Rhoger H Pugh, Manager (202) 728-5883, or Todd A. Glissman, Supervisory Financial Analyst (202) 452-3953, Division of Banking Supervision and Regulation; or Scott G. Alvarez, Associate General Counsel (202) 452-3583, or Brian E.J. Lam, Attorney (202) 452-2067, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202) 452-3544.

FDIC: Robert F. Miailovich, Associate Director, Division of Supervision, (202) 898-6918; Robert Walsh, Examination Specialist, Division of Supervision, (202) 898-6911; Garfield Gimber, Examination Specialist, Division of Supervision, (202) 898-6913; Martha L. Coulter, Counsel, Legal Division, (202) 898-7348, Federal Deposit Insurance Corporation, Washington, DC 20429.

OTS: John C. Price, Jr., Deputy Assistant Director for Policy, (202) 906-5745; Robert Fishman, Program Manager for Credit Risk, (202) 906-5672; William J. Magrini, Project Manager for Credit Policy, (202) 906-5744, Supervision

Policy; Ellen J. Sazzman, Counsel (Banking and Finance), (202) 906–7133, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

## A. Background

Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 [1] (FDICIA), enacted December 19, 1991, requires each federal banking agency to adopt uniform regulations prescribing standards for extensions of credit secured by liens on interests in real estate or made for the purpose of financing the construction of a building or other improvements to real estate, regardless of whether a lien has been taken on the property. In establishing these standards, the agencies are to consider: (a) The risk posed to the deposit insurance funds by such extensions of credit; (b) the need for safe and sound operation of insured depository institutions; and (c) the availability of credit. The agencies are to adopt uniform regulations within 9 months of the date of enactment of FDICIA. These regulations are to become effective within 15 months following enactment of FDICIA.

The legislative history of section 304 indicates that Congress desired to curtail abusive real estate lending practices to reduce risk to the deposit insurance funds and to enhance the safety and soundness of financial institutions. Congress considered placing explicit real estate lending restrictions in the form of loan-to-value (LTV) ratio limitations directly into the statute. In the end, however, Congress mandated that the federal banking agencies establish uniform real estate lending standards without specifying what these standards should entail.

To implement the requirements of section 304, the agencies propose to adopt uniform regulations prescribing certain real estate lending standards.[2] Specifically, the agencies propose to establish an LTV ratio framework for real estate lending. Moreover, in accordance with longstanding safe and sound banking practices and other regulatory requirements, the agencies would expect each real estate extension of credit to be based on proper loan documentation and a recent appraisal or evaluation of the real property financed by the credit, in conformance with the agencies' respective appraisal regulations and guidance.

## B. Loan-To-Value Ratio Framework

LTV ratios have long been a primary factor used by lending institutions in determining the extent to which an institution is willing to lend on a given real estate parcel or project. The agencies seek comment on whether LTV ratios represent a suitable standard for addressing the risks at which section 304 is aimed or whether some other standard would be more appropriate.

For the purposes of the standards mandated by Section 304, the agencies propose to define the LTV ratio by taking the total amount of credit to be extended and dividing by the appraised value or evaluation of the property, as appropriate, at the time the credit is originated. In situations where the lender does not hold a first lien position, the total amount of credit being extended would be combined with the amount of all senior liens when calculating this ratio. The agencies request comment on this "loan-to-value ratio" definition, including:

(a) The appropriateness of using the appraised value or evaluation of a property, as defined in the proposed regulations, when calculating the ratio;

(b) Whether the definition should take into consideration credit enhancements or other assets pledged as additional collateral in calculating the LTV ratio, and, if so, the types of credit enhancements or other assets that should be deemed acceptable and the way in which the LTV ratio should then be calculated; and

(c) Whether the definition should be applicable to the renewal, refinancing, or restructuring of existing credits, and, if so, how the terms renewal, refinancing, and restructuring should be defined.

The agencies also request comment on two alternative methods of establishing an LTV ratio framework for real estate lending: One in which lenders would individually establish LTV ratio limits, within or below a range of supervisory limits prescribed in uniform regulations and subject to supervisory review; and one in which the agencies would prescribe maximum LTV ratio standards for all insured depository institutions in uniform regulations. Comment on all aspects of the proposal is sought.[3] The agencies also ask for comment on whether other real estate lending standards should be adopted including, for example, loan documentation and credit review standards.

*Alternative 1*

Individual Lender Loan-To-Value Ratio Standards.

With this approach, the agencies propose to require management of lending institutions to establish prudent lending standards for specific categories of real estate loans, including internal LTV ratio lending limits, that are consistent with safe and sound banking practices under varying conditions. The LTV ratio lending limits would be set by lending institutions within or below ranges of maximum LTV ratios that the agencies propose to establish as follows:

| Category of real estate loan | Range of maximum permissible LTV ratios (percent) |
|---|---|
| Raw land | 50 to 65 |
| Pre-construction development | 55 to 70 |
| Construction and land development | 65 to 80 |
| Improved Property [1] | 65 to 80 |
| 1–to–4 family residential property (owner-occupied). | 80 to 95 [2] |
| Home equity | 80 to 95 [2] |

[1] Improved property loans include extensions of credit secured by one of the following types of real property: (a) Farmland committed to ongoing agricultural production; (b) non-owner-occupied 1-to-4 family residential property; (c) multi-family residential property; (d) completed commercial property; or (e) other income-producing property that has been completed and is available for occupancy and use.

[2] Any portion of a loan exceeding 85 percent LTV should be covered by private mortgage insurance.

Each lending institution would be required to establish maximum LTV ratios for each category of loans within or below the specified range. The agencies would view the low end of each supervisory range as a benchmark

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[1] Public Law No. 102–242, 105 Stat. 2236, 2354 (1991); 12 U.S.C. 1828(o); 12 U.S.C. 371(a).

[2] The Board proposes to apply the proposed standards to bank holding companies and their nonbank subsidiaries.

The FDIC and the Board are considering application of the proposed standards not only to insured depository institutions but also to their lending subsidiaries. Under the OCC's existing regulations, provisions of Federal banking statutes and regulations applicable to national banks are generally applicable to their operating subsidiaries and to bank service corporations. 12 CFR 5.34(d)(2) and 5.35(e)(3)(i) (1992). In addition, under section 24(d) of the Federal Deposit Insurance Act, 12 U.S.C. 1831a(d), as of December 19, 1992, subsidiaries of insured state banks will generally be prohibited from engaging in activities that are not permissible for subsidiaries of national banks unless the FDIC has determined that the activity does not pose a significant threat to the appropriate deposit insurance fund.

With regard to savings associations, the OTS is considering application of the proposed standards to all savings and loan service corporations and subsidiaries.

[3] The OTS currently has in place regulations that establish loan-to-value ratios for certain types of real estate loans. See e.g., 12 CFR 545.32(d), 545.33(d), 545.35(c), 563.97. The OTS intends to review its current regulations to ensure that they conform to the real estate lending requirements ultimately promulgated pursuant to this rulemaking and anticipates removal of duplicative or conflicting material. The OTS welcomes comments on the interaction between this rulemaking and its current regulations.

LTV ratio for that category of loan. However, each institution would be permitted to establish a higher maximum LTV ratio, within the supervisory range, for each category of loan based on the institution's demonstrated expertise in that particular type of lending, its assessment of local and regional market conditions, the institution's capital position, its asset quality, and other appropriate considerations.

After establishing maximum LTV ratios for each category of real estate lending, each lender would be expected to specify criteria that would be used to qualify loans at LTV ratio levels up to the institution's established maximums. In specifying these criteria, the lender should take into consideration individual lending factors, such as the financial strength of the borrower and any guarantor, the debt coverage ratio of the project, credit enhancements, "take out" commitments, and the like. Any portion of 1-to-4 family residential property loans and home equity lines of credit exceeding an 85 percent LTV ratio should, in any case, be covered with private mortgage insurance.

A lending institution should only make a loan at the upper end of the supervisory range of LTV ratios (for that lending category) when significant positive features that would mitigate the higher level of risk are present. For example, for a construction loan, the higher end of the range could potentially be used when the loan meets specified criteria such a certain level of pre-sales or pre-leases, or if the borrower has obtained a binding "take out" commitment for permanent financing.

Consistent with safe and sound banking practices, each lending institution would be expected to fully document its real estate lending standards, including applicable LTV ratio limits and other underwriting requirements, in its written policies. Such documentation would also be expected to include adequate justification of the LTV ratio limits set by the institution.The agencies also propose that these internal lending standards be approved by the lending institution's directors and be subject to examiner review to determine the institution's conformance with supervisory standards to be established by the agencies.

With regard to this approach, public comments are sought on:

(a) The appropriateness of the proposed real estate lending categories;

(b) What ranges of maximum LTV ratios should be established;

(c) What guidelines should be provided to lenders to implement a prudent internal LTV ratio framework;

(d) What criteria examiners should use in assessing the adequacy of LTV ratios used by lenders in light of regulatory guidance; and

(e) The means by which the agencies could ensure appropriate and consistent interpretation of LTV ratio guidance by both lenders and examiners.

*Alternative 2*

Uniform Loan-to-Value Ratio Standard.

With this approach, the agencies propose to establish uniform maximum LTV ratios for specific categories of real estate loans as follows:

| Category of real estate loan | Maximum LTV ratio (percent) |
|---|---|
| Raw land | 60 |
| Pre-construction development | 65 |
| Construction and land development | 75 (If certain conditions are met; otherwise, 65%) |
| Improved property | 75 (If the credit amortizes; otherwise, 65%) |
| 1-to-4 family residential property (owner-occupied) | 95 (With private mortgage insurance ("PMI"); otherwise, 80%) |
| Home equity | 95 (With PMI; otherwise, 80%) |

These standards would be prescribed for all lending institutions regulated by the agencies.

With regard to estblishing a maximum LTV ratio for each category of real estate loan as defined in the proposed regulation, the agencies request comment on:

(a) The appropriateness of the proposed real estate lending categories; and

(b) The level at which the LTV ratio limit should be set for each loan category.

The agencies also seek public comment on several particular items. For the "construction and land development loan" category, comment is sought on:

(a) The appropriateness of allowing a higher LTV ratio limit when substantial third-party commitments exist that place the lender in a more secure position;

(b) The criteria for determining that substantial third-party commitments exist; and

(c) The percentage of space in a real estate project that should be owner-occupied, pre-sold, or pre-leased to qualify the borrower for preferential LTV ratio treatment.

The agencies also seek comment on whether the maximum LTV ratio applicable to construction and land development loans should differentiate between residential and commercial properties and, if so, how.

For the "improved property laon" category, comment is sought on the appropriateness of implementing a stricter LTV ratio for nonamortizing credits and a level of amortization, if any, that should be required in order to receive preferential LTV ratio treatment.

**C. Other Considerations Applicable to Both Alternatives**

The agencies do not intend to apply this rule to loans to builders and developers that are used for general business purposes (such as payroll and similar expenses) and that are not related to any one project and are not secured by real estate.

Public comment is sought on the following issues not specifically raised in the discussion of the above approaches:

(a) Whether additional quantitative real estate lending standards, such as lending concentration limits and loan maturity limits, should be specified by the agencies in a regulation or policy guidance;

(b) Whether other lending standards should be implemented to enhance financial support provided by the developer in a commercial real estate transaction, such as requiring the developer to provide a legally enforceable guarantee and/or recourse to the developer's other assets; and

(c) Whether real estate developers should be required to inject a specific level of equity upfront into a real estate project (for example, cash, cash equivalents, or a substantial equity position in the underlying real property) relative to the appraised value or evaluation, as appropriate, and, if so, the approrpirate level and form of equity that should be required.

With specific regard to owner-occupied, 1-to-4 family residential property loans and home equity loans, comment is requested on:

(a) Whether LTV ratio ranges or limits should be established for each of these lending categories;

(b) Whether individual loans below a given threshold amount should be excluded from LTV ratio requirements, and if so, the level at which this threshold should be set; and

(c) Whether, in addition to private mortgage insurance, other legally-binding guarantees or insurance from financially-responsible third parties should be given credit for supporting the

portion of loans exceeding the specified LTV ratio, and, if so, what types should be permitted.

The agencies desire to accommodate credit needs within the context of safe and sound banking practices. In particular, the agencies recognize that situations may exist where it is considered prudent to extend credit beyond specified LTV ratio limits. Hence, under the text of the proposed regulation, the agencies are considering allowing lending institutions to make real estate loans that do not conform with established LTV ratio limits up to an amount not to exceed 15 percent of the institution's total capital. The agencies would expect nonconforming extensions of credit to be adequately documented, reviewed by senior management of the lending institution, and reported to the lender's board of directors.

The agencies seek public comment on providing exceptions for nonconforming loans. Specifically, for each of Alternatives 1 and 2 separately, the agencies seek comment on:

(a) Whether allowing an exception for nonconforming loans should be considered appropriate;

(b) The level of such an exception, if appropriate;

(c) Whether total capital is an appropriate measure for the exception;

(d) What documentation and review should be considered appropriate for nonconforming credits beyond the normal approval process; and

(e) Whether other prudential requirements or restrictions would be appropriate to limit the risks associated with excepted loans.

To further accommodate credit needs, the agencies seek comment on whether it would be appropriate to phase-in the real estate lending standards when they become effective, by Congressional mandate, in March 1993, and, if so, how they should be phased-in and within what timeframe.

The agencies also propose to exclude certain types of transactions from LTV ratio limitations. Specially, LTV ratio limitations would not apply to:

(a) Loans guaranteed or insured by the U.S. government or an agency thereof, or backed by the full faith and credit of a state government;

(b) Loans facilitating the sale of real estate acquired by the lending institution in the ordinary course of collecting a debt previously contracted;

(c) Loans where real estate is taken as additional collateral solely through an abundance of caution by the lender;

(d) Loans renewed, refinance, or restructured by the original lender(s) to the same borrower(s), without the advancement of new funds; or

(e) Loans originated prior to the effective date of the proposed regulation.

With regard to government-guaranteed or insured credits, comment is sought on how partially guaranteed or insured credits should be treated under this exclusion. The agencies request comment on whether the above provision on renewals, refinancing, and restructurings of loans, including the limitation on the advancement of new funds, provides institutions with sufficient flexibility to meet credit demands.

The agencies also request comment on whether the proposed real estate lending standards contain enough latitude to avoid hampering the lending programs that institutions have established to help fulfill their obligations under the Community Reinvestment Act, 12 U.S.C. 2901 *et seq.*, particularly those programs designed to provide credit to low and moderate income personal. Some of these programs involve loans with high LTV ratios but with other characteristics that enhance their safety such as government guarantees, public subsidies, charitable foundation support, equity substitutes, assured tenant demand, and the like. The agencies do not wish to restrict these programs, and seek comment on how they may be accommodated within the spirit of the Congressional directive to set general standards for real estate lending. One possibility would be to provide an exemption for extensions of credit involving organizations or projects designed primarily to promote the economic rehabilitation and development of low-income areas. Comment is sought on how such an exemption could be defined in order to prevent inappropriate interpretations.

The agencies request comment as to whether they may distinguish among lending institutions on the basis of the institutions' financial and managerial strength in implementing section 304. In particular, the agencies request comment on whether institutions that qualify as "well capitalized" for purposes of Prompt Corrective Action under section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o, should be given additional flexibility in the implementation of the proposed real estate lending standards, and, if so, what the nature of that flexibility should be. Further, the agencies seek comment on whether such flexibility, if deemed appropriate, should differentiate between the following two groups of lending categories, and, if so, in what manner:

(a) Raw land, preconstruction development, and construction and land development loans; and

(b) Improved property, 1-to-4 family residential property, and home equity loans.

The agencies solicit comment on the interaction of this proposed regulation with risk-based capital requirements. In addition, public comment is solicited on all other aspects of the two approaches being considered and the proposed regulation.

Finally, the Board is seeking comment on whether, to what extent, and the manner in which real estate lending standards should be imposed on bank holding companies and their nonbank subsidiaries. In the Board's view, it is not clear by virtue of the text of section 304 whether such standards are applicable to such entities.

**Regulatory Flexibility Act Analysis**

On the basis of the information available, the OCC, FDIC, and OTS independently certify that the proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In developing the proposed rule, it was the intent of the agencies to propose prudent standards that are currently used by sound institutions and, as such, would not significantly impact small entities. Nonetheless, the other agencies join the Board in inviting comments on the costs and benefits of the proposed regulation with regard to real estate lending operations at banking organizations, the impact on loan documentation and monitoring, possible reduction in losses on real estate lending, and the availability of credit.

**Executive Order No. 12291**

The OTS and the OCC have preliminarily determined that this proposal does not constitute a "major rule" within the meaning of Executive Order No. 12291. Accordingly, a regulatory impact analysis is not required. The OTS and the OCC will issue final regulations that accomplish the objectives of section 304 of FDICIA without imposing unnecessary costs on the economy. Toward that end, the OTS and the OCC will, in the near future, publish in the Federal Register a separate discussion of the costs and benefits of the regulatory approaches outlined in the proposed rule. Commenters are encouraged to take this supplementary analysis into account when providing their comments on this proposed rule.

To assist the OTS and the OCC in evaluating the magnitude of the proposed rule, the OTS and the OCC specifically invite commenters to provide any data they may have on the costs and benefits of the proposed rule with regard to real estate lending operations at bank organizations, the impact on loan documentation, monitoring and processing time, possible reduction in losses on real estate lending, and the availability of credit.

**Paperwork Reduction Act**

The collection of information contained in Alternative 1 of the proposed rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

If Alternative 1 of the proposed rule becomes final, insured depository institutions will be required to establish written maximum internal loan-to-value ratio lending limits for certain types of real estate loans within or below a permissible supervisory range. Each institution will be required to specify in writing the criteria it will use to qualify loans at loan-to-value ratio ranges up to its established loan-to-value ratio limits.

The annual reporting burden for the collection of information from insured depository institutions is estimated as follows:

| | |
|---|---|
| Estimated number of recordkeepers: | |
| National banks (OCC) | 3,750. |
| State member banks (Board). | 985. |
| State nonmember banks (FDIC). | 7,550. |
| Savings associations (OTS). | 2,200. |
| Estimated average burden per recordkeeper: | 20 hrs. |
| Estimated total annual recordkeeping burden: | |
| OCC | 75,000 hours. |
| Board | 19,700 hours. |
| FDIC | 151,000 hours. |
| OTS | 44,000 hours. |

No burden is estimated for Alternative 2 of the proposed rule since no new or additional collection of information are mandated beyond those already required.

Comments concerning the accuracy of this estimate and suggestions on reducing the burden should be sent to Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503; and to the appropriate agency, as follows:

OCC: Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219.

Board: Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Assistant Executive Secretary (Administration), room F-453, Federal Deposit Insurance Corporation, Washington, DC 20429.

OTS: Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**List of Subjects**

*12 CFR Part 34*

Mortgages, National banks, Real estate appraisals, Real estate lending standards, Reporting and recordkeeping requirements.

*12 CFR Part 208*

Accounting, Agriculture, Banks, banking, Confidential business information, Currency, Federal Reserve System, Real estate lending standards, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 225*

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Real estate lending standards, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 365*

Banks, banking, Credit, Mortgages, Real estate appraisals, Real estate lending standards, Savings associations.

*12 CFR Part 563*

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Authority and Issuance

**Office of the Comptroller of the Currency**

**12 CFR Chapter I**

For the reasons set out in the preamble, part 34 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

**PART 34—[AMENDED]**

1. The authority citation for part 34 is revised to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a; 12 U.S.C. 371; 12 U.S.C. 1701j-3; 12 U.S.C. 1828(o); 12 U.S.C. 3331 *et seq.*

2. For Alternative 1, a new "Subpart D—Real Estate Lending Standards" is proposed to be added to part 34 to read as follows:

**Subpart D—Real Estate Lending Standards**

Sec.
34.61 Purpose and scope.
34.62 Definitions.
34.63 Real estate lending loan-to-value restrictions.

**Subpart D—Real Estate Lending Standards**

**§ 34.61 Purpose and scope.**

This subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes ranges of maximum permissible loan-to-value ratios to be used by insured national banks in establishing their own internal loan-to-value ratios of real estate loans subject to this subpart.

**§ 34.62 Definitions.**

For the purposes of this subpart:

(a) The term *loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) The term *real property* or *real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term *extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term *credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the

same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term *loan origination* means the time of inception of an extension of credit.

(f) The term *appraised value or evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the OCC's appraisal regulations (12 CFR part 34, subpart C) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(h) The term *multifamily residential property* means residential property containing five or more individual dwelling units.

(i) The term *raw land loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(j) The term *pre-construction development loan* means an extension of credit, whether or not secured by real property, for the purposes of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(k) The term *construction and land development loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(l) The term *improved property loan* means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(m) The term *1-to-4 family residential property loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a 50 percent risk weight loan under the risk-based capital guidelines set forth in 12 CFR part 3, appendix A.

(n) The term *home equity loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(o) The term *nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 34.63 of this subpart.

**§ 34.63 Real estate lending loan-to-value restrictions.**

(a) *General rule.* An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this subpart are satisfied.

(b) *Loan-to-value ratios.* (1) Each insured depository institution shall establish internal loan-to-value ratio limits within or below the range of maximum permissible loan-to-value ratios contained in this paragraph for the categories of real estate loans specified.

(2) For all categories of real estate loans, the low end of each supervisory range of maximum permissible loan-to-value ratios is considered to be an appropriate benchmark loan-to-value ratio lending limit. For any particular category of real estate loans, an insured depository institution may establish an internal loan-to-value ratio lending limit above the lower end of the supervisory range of maximum permissible loan-to-value ratios if the institution's demonstrated expertise in that particular type of lending, its assessment of local and regional market conditions, its capital position and asset quality, and other pertinent factors clearly justify such a higher limit.

(3) Each insured depository institution shall specify in writing the criteria used by the institution to qualify loans at loan-to-value ratio levels up to the institution's established internal loan-to-value ratio lending limits.

(4) For each category of real estate loans, an insured depository institution shall only make a loan at the higher end of the supervisory range of loan-to-value ratios if significant positive features that would mitigate the higher level of risk are present.

(5) An insured depository institution's internal loan-to-value ratio standards shall be reviewed and approved at least annually by the institution's board of directors as being consistent with the safe and sound operation of the institution. These standards shall be subject to examiner review in order to determine the institution's compliance with this subpart.

(6) An extension of credit subject to this subpart, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any applicable internal loan-to-value ratio lending limit established by the institution under this subpart.

(7) Subject to the other provisions of this subpart, each insured depository institution shall establish, within or below the following supervisory ranges of maximum permissible loan-to-value ratios, internal loan-to-value ratio limits for the following types of loans, based on the appraised value or evaluation, as appropriate, of the real property securing or being improved by the loan, determined at the time of loan origination:

(i) For raw land loans, the maximum permissible loan-to-value ratio shall not exceed 50 percent to 65 percent of the appraised value or evaluation;

(ii) For pre-construction development loans, the maximum permissible loan-to-value ratio shall not exceed 55 percent to 70 percent of the appraised value or evaluation;

(iii) For construction and land development loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(iv) For improved property loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(v) For 1-to-4 family residential property loans, the maximum permissible loan-to-value ratio shall not

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exceed 80 percent to 95 percent of the appraised value or evaluation;

(vi) For home equity loans, the maximum permissible loan-to-value ratio shall not exceed 80 percent to 95 percent of the appraised value or evaluation; and

(vii) For 1-to-4 family residential property loans and home equity loans, any portion of these loans exceeding 85 percent of the appraised value or evaluation of the real property securing the loan must be covered by private mortgage insurance acceptable to the OCC.

(c) *Permissible nonconforming real estate loans.* An insured depository institution may make real estate loans that do not conform to the institution's internal loan-to-value ratio limits established pursuant to this subpart, provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in appendix A to part 3 of this chapter, and further provided that such nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

3. For Alternative 2, a new "Subpart D-Real Estate Lending Standards" is proposed to be added to Part 34 to read as follows:

**Subpart D—Real Estate Lending Standards**

Sec.
34.61 Purpose and scope.
34.62 Definitions.
34.63 Real estate lending loan-to-value restrictions.

**Subpart D—Real Estate Lending Standards**

**§ 34.61 Purpose and scope.**

This subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes maximum loan-to-value ratios applicable to real estate lending by insured national banks.

**§ 34.62 Definitions.**

For the purposes of this subpart:

(a) The term *loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) The term *real property* or *real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term *extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term *credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term *loan origination* means the time of inception of an extension of credit.

(f) The term *appraised value or evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the OCC's appraisal regulations (12 CFR part 34, subpart C) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term *financially-responsible guarantor* means a guarantor who has both the financial capacity and willingness to provide support for an extension of credit, and whose guarantee does in fact support, either in whole or in part, repayment of the extended credit before or upon maturity.

(h) The term *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(i) The term *multifamily residential property* means residential property containing five or more individual dwelling units.

(j) The term *raw land loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(k) The term *pre-construction development loan* means an extension of credit, whether or not secured by real property, for the purposes of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(l) The term *construction and land development loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(m) The term *improved property loan* means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;



(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(n) The term *1-to-4 family residential property loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a 50 percent risk weight loan under the risk-based capital guidelines set forth in 12 CFR Part 3, Appendix A.

(o) The term *home equity loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(p) The term *nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 34.63 of this subpart.

**§ 34.63 Real estate lending loan-to-value restrictions.**

(a) *General rule.* An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this subpart are satisfied.

(b) *Loan-to-value ratios.* An extension of credit subject to this section, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any of the following percentages of the real property's appraised value or evaluation, as appropriate, determined at the time of loan origination:

(1) For a raw land loan, 60 percent of the appraised value or evaluation;

(2) For a pre-construction development loan, 65 percent of the appraised value or evaluation;

(3) For a construction and land development loan, 75 percent of the appraised value or evaluation if it involves a project that:

(i) Will be at least 65 percent owner-occupied;

(ii) Is at least 65 percent pre-sold to a buyer(s) with sufficient financial capacity to complete the purchase transaction;

(iii) Is at least 65 percent pre-leased to a tenant(s) with sufficient financial capacity to fulfill all material obligations under the lease;

(iv) Has obtained a valid and binding take-out loan commitment from an established lender for its permanent financing;

(v) Has entered into a valid and binding agreement with a company that has an established reputation and sufficient managerial and financial resources to use or operate the property as a business and to fulfill all material obligations under the agreement; or

(vi) Has provided a legally enforceable guarantee(s) from a financially-responsible guarantor(s);

(4) For all other construction and land development loans, 65 percent of the appraised value or evaluation;

(5) For an improved property loan that amortizes over the life of the loan, 75 percent of the appraised value or evaluation;

(6) For an improved property loan that does not amortize over the life of the loan, 65 percent of the appraised value or evaluation;

(7) For a 1-to-4 family residential property loan, 95 percent of the appraised value or evaluation with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the OCC;

(8) For a 1-to-4 family residential property loan without private mortgage insurance, 80 percent of the appraised value or evaluation;

(9) For a home equity loan, 95 percent of the appraised value or evaluation with any amount exceeding 80 percent of appraised value or evaluation covered by private mortgage insurance acceptable to the OCC; and

(10) For a home equity loan without private mortgage insurance, 80 percent of the appraised value or evaluation.

(c) *Permissible nonconforming real estate loans.* An insured depository institution may make real estate loans that do not conform to the loan-to-value ratio limitations contained in paragraph (b) of this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in appendix A to part 3 of this chapter, and further provided that such nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

Dated: June 26, 1992.

**Stephen R. Steinbrink,**

*Acting Comptroller of the Currency.*

**Federal Reserve System**

**12 CFR Chapter II**

For the reasons set out in the preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as set forth below:

**PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM**

1. The authority citation for part 208 is revised to read as follows:

**Authority:** Sections 9, 11(a), 11(c), 19, 21, 25, and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321–338, 248(a), 248(c), 461, 481–486, 601, and 611, respectively); sections 4, 13(j), and 18(o) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814, 1823(j), and 1828(o), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3906–3909); sections 2, 12(b), 12(g), 12(i), 15B(c)(5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 781(b), 781(g), 781(i), 780–4(c)(5), 78q, 78q–1, and 78w, respectively); section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927; and sections 1101–1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331–3351).

2. For Alternative 1, a new "Subpart C—Real Estate Lending" comprising §§ 208.50 through 208.51 is proposed to be added to part 208, as proposed to be amended at 57 FR 29238, July 1, 1992, to read as follows:

**Subpart C—Real Estate Lending**

Sec.
208.50 Definitions.
208.51 Real estate lending loan-to-value restrictions.

**Subpart C—Real Estate Lending**

**§ 208.50 Definitions.**

For the purposes of this subpart:

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(a) The term *loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) The term *real property* or *real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term *extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term *credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of the credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term *loan origination* means the time of inception of an extension of credit.

(f) The term *appraised value or evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the Federal Reserve's appraisal regulations, subpart G to part 225 of this chapter, and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(h) The term *multifamily residential property* means residential property containing five or more individual dwelling units.

(i) The term *Raw Land Loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(j) The term *Pre-Construction Development Loan* means an extension of credit, whether or not secured by real property, for the purpose of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(k) The term *Construction and Land Development Loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(l) The term *Improved Property Loan* means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(m) The term *1-to-4 Family Residential Property Loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained prequalified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a category 3, 50 percent risk weight loan under the risk-based capital guidelines set forth in appendix A to part 208.

(n) The term *Home Equity Loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(o) The term *nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 208.51(b) of this part.

**§ 208.51 Real estate lending loan-to-value restrictions.**

(a) *General rule.* An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this section are satisfied.

(b) *Loan-to-value ratios.* (1) Each insured depository institution shall establish internal loan-to-value ratio limits within or below the range of maximum permissible loan-to-value ratios contained in this section for the categories of real estate loans specified.

(2) For all categories of real estate loans, the low end of each supervisory range of maximum permissible loan-to-value ratios is considered to be an appropriate benchmark loan-to-value ratio lending limit. For any particular category of real estate loans, an insured depository institution may establish an internal loan-to-value ratio lending limit above the lower end of the supervisory range of maximum permissible loan-to-value ratios if the institution's demonstrated expertise in that particular type of lending, its assessment of local and regional market conditions, its capital position and asset quality, and other pertinent factors clearly justify such a higher limit.

(3) Each insured depository institution shall specify in writing the criteria used by the institution to qualify loans at loan-to-value ratio levels up to the institution's established internal loan-to-value ratio lending limits.

(4) For each category of real estate loans, an insured depository institution shall only make a loan at the higher end of the supervisory range of loan-to-value ratios if significant positive features that would mitigate the higher level of risk are present.

(5) An insured depository institution's internal loan-to-value ratio standards shall be reviewed and approved at least annually by the institution's board of directors as being consistent with the safe and sound operation of the institution. These standards shall be subject to examiner review in order to determine compliance with this section.

(6) An extension of credit subject to this section, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any applicable internal loan-to-value ratio lending limit established by the institution under this section.

(7) Subject to the other provisions of this section, each insured depository institution shall establish, within or below the following supervisory ranges of maximum permissible loan-to-value ratios, internal loan-to-value ratio limits for the following types of loans, based on the appraised value or evaluation, as appropriate, of the real property securing or being improved by the loan, determined at the time of loan origination:

(i) For Raw Land Loans, the maximum permissible loan-to-value ratio shall not exceed 50 to 65 percent of the appraised value or evaluation;

(ii) For Pre-Construction Development Loans, the maximum permissible loan-to-value ratio shall not exceed 55 to 70 percent of the appraised value or evaluation;

(iii) For Construction and Land Development Loans, the maximum permissible loan-to-value ratio shall not exceed 65 to 80 percent of the appraised value or evaluation;

(iv) For Improved Property Loans, the maximum permissible loan-to-value ratio shall not exceed 65 to 80 percent of the appraised value or evaluation;

(v) For 1-to-4 Family Residential Property Loans, the maximum permissible loan-to-value ratio shall not exceed 80 to 95 percent of the appraised value or evaluation;

(vi) For Home Equity Loans, the maximum permissible loan-to-value ratio shall not exceed 80 to 95 percent of the appraised value or evaluation; and

(vii) For 1-to-4 Family Residential Property Loans and Home Equity Loans, any portion of these loans exceeding 85 percent of the appraised value or evaluation of the real property securing the loan must be covered by private mortgage insurance acceptable to the Board.

(c) *Permissible nonconforming real estate loans.* An insured depository institution may make real estate loans that do not conform to the institution's internal loan-to-value ratio limits established pursuant to this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in appendix A to part 208, and further provided that such nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

3. For Alternative 2, a new "Subpart C—Real Estate Lending" comprising §§ 208.50 through 208.51 is proposed to be added to part 208, as proposed to be amended at 57 FR 29238, July 1, 1992, to read as follows:

**Subpart C—Real Estate Lending**

Sec.
208.50 Definitions.
208.51 Real estate lending loan-to-value restrictions.

**Subpart C—Real Estate Lending**

**§ 208.50 Definitions.**

For purposes of this subpart:

(a) *Loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) *Real property* or *real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) *Extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) *Credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of the credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) *Loan origination* means the time of inception of an extension of credit.

(f) *Appraised value or evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the Federal Reserve's appraisal regulations, subpart G to part 225 of this chapter, and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) *Financially-responsible guarantor* means a guarantor who has both the financial capacity and willingness to provide support for an extension of credit, and whose guarantee does in fact support, either in whole or in part, repayment of the extended credit before or upon maturity.

(h) *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(i) *Multifamily residential property* means residential property containing five or more individual dwelling units.

(j) *Raw Land Loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(k) *Pre-Construction Development Loan* means an extension of credit, whether or not secured by real property, for the purpose of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(l) *Construction and Land Development Loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(m) *Improved Property Loan* means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(n) *1-to-4 Family Residential Property Loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained prequalified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a category 3, 50 percent risk weight loan under the risk-based capital guidelines set forth in appendix A to part 208.

(o) The term *Home Equity Loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(p) The term *nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 208.51(b) of this part.

**§ 208.51 Real estate lending loan-to-value restrictions.**

(a) *General rule.* An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this section are satisfied.

(b) *Loan-to-value ratios.* An extension of credit subject to this section, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any of the following percentages of the real property's appraised value or evaluation, as appropriate, determined at the time of loan origination:

(1) For a Raw Land Loan, 60 percent of the appraised value or evaluation;

(2) For a Pre-Construction Development Loan, 65 percent of the appraised value or evaluation;

(3) For a Construction and Land Development Loan, 75 percent of the appraised value or evaluation if it involves a project that:

(i) Will be at least 65 percent owner-occupied;

(ii) Is at least 65 percent pre-sold to a buyer(s) with sufficient financial capacity to complete the purchase transaction;

(iii) Is at least 65 percent pre-leased to a tenant(s) with sufficient financial capacity to fulfill all material obligations under the lease;

(iv) Has obtained a valid and binding take-out loan commitment from an established lender for its permanent financing;

(v) Has entered into a valid and binding agreement with a company that has an established reputation and sufficient managerial and financial resources to use or operate the property as a business and to fulfill all material obligations under the agreement; or

(vi) Has provided a legally enforceable guarantee(s) from a financially-responsible guarantor(s);

(4) For all other Construction and Land Development Loans, 65 percent of the appraised value or evaluation;

(5) For an Improved Property Loan that amortizes over the life of the loan, 75 percent of the appraised value or evaluation;

(6) For an Improved Property Loan that does not amortize over the life of the loan, 65 percent of the appraised value or evaluation;

(7) For a 1-to-4 Family Residential Property Loan, 95 percent of the appraised value or evaluation, with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the Board;

(8) For a 1-to-4 Family Residential Property Loan without private mortgage insurance, 80 percent of the appraised value or evaluation;

(9) For a Home Equity Loan, 95 percent of the appraised value or evaluation, with any amount exceeding 80 percent of appraised value or evaluation covered by private mortgage insurance acceptable to the Board;

(10) For a Home Equity Loan without private mortgage insurance, 80 percent of the appraised value or evaluation.

(c) *Permissible nonconforming real estate loans.* An insured depository institution may make real estate loans that do not conform to the loan-to-value ratio limitations contained in paragraph (b) of this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in Appendix A to part 208, and further provided that such nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s) without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

## PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 is revised to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818(b), 1828(o), 1831i, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, 3331–3351, and sec. 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)).

2. Concluding text is added at the end of paragraph (b)(1) of § 225.25 to read as follows:

**§ 225.25 List of permissible nonbanking activities.**

* * * * *

(b)(1) * * *

All loans or other extensions of credit made or acquired by a bank holding company or any non-bank subsidiary thereof, if secured by real property or made for the purpose of financing

permanent improvements to real property, must conform to the Real Estate Lending Loan-To-Value Restrictions set forth in § 208.51 of the Board's Regulation H, 12 CFR part 208.

* * * * *

Dated: June 26, 1992.

Jennifer J. Johnson,

*Associate Secretary of the Board of Governors of the Federal Reserve System.*

**Federal Deposit Insurance Corporation 12 CFR Chapter III**

For the reasons set forth in the preamble, the Board of Directors of the FDIC proposes to amend 12 CFR chapter III, subchapter B as set forth below:

1. For Alternative 1, part 365 is proposed to be added to read as follows:

## PART 365—REAL ESTATE LENDING STANDARDS

Sec.

365.1 Purpose and scope.

365.2 Definitions.

365.3 Real estate lending loan-to-value restrictions.

Authority: 12 U.S.C. 1828(o).

### § 365.1 Purpose and scope.

This part, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes ranges of maximum permissible loan-to-value ratios to be used by insured state banks that are not members of the Federal Reserve System in establishing their own internal loan-to-value ratios for real estate loans subject to this part.

### § 365.2 Definitions.

For purposes of this part:

(a) The term *loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) The term *real property* or *real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term *extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term *credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of the credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term *loan origination* means the time of inception of an extension of credit.

(f) The term *appraised value or evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the FDIC's appraisal regulations (12 CFR part 323) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements;

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(h) The term *multifamily residential property* means residential property containing five or more individual dwelling units.

(i) The term *raw land loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(j) The term *pre-construction development loan* means an extension of credit, whether or not secured by real property, for the purpose of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(k) The term *construction and land development loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(l) *Improved property loan* means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(m) *1-to-4 family residential property loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a category 3, 50 percent risk weight loan under the risk-based capital guidelines set forth in Appendix A to part 325 of this chapter.

(n) *Home equity loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(o) *Nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 365.3 of this part.

### § 365.3 Real estate lending loan-to-value restrictions.

(a) *General rule.* An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this part are satisfied.

(b) *Loan-to-value ratios.* (1) Each insured depository institution shall establish internal loan-to-value ratio limits within or below the range of maximum permissible loan-to-value ratios contained in this paragraph for the categories of real estate loans specified.

(2) For all categories of real estate loans, the low end of each supervisory

range of maximum permissible loan-to-value ratios is considered to be an appropriate benchmark loan-to-value ratio lending limit. For any particular category of real estate loans, an insured depository institution may establish an internal loan-to-value ratio lending limit above the lower end of the supervisory range of maximum permissible loan-to-value ratios if the institution's demonstrated expertise in that particular type of lending, its assessment of local and regional market conditions, its capital position and asset quality, and other pertinent factors clearly justify such a higher limit.

(3) Each insured depository institution shall specify in writing the criteria used by the institution to qualify loans at loan-to-value ratio levels up to the institution's established internal loan-to-value ratio lending limits.

(4) For each category of real estate loans, an insured depository institution shall only make a loan at the higher end of the supervisory range of loan-to-value ratios if significant positive features that would mitigate the higher level of risk are present.

(5) An insured depository institution's internal loan-to-value ratio standards shall be reviewed and approved at least annually by the institution's board of directors as being consistent with the safe and sound operation of the institution. These standards shall be subject to examiner review in order to determine the institution's compliance with this part.

(6) An extension of credit subject to this part, together with any senior liens on or interests in the real property securing or being improved by such credit; must not exceed any applicable internal loan-to-value ratio lending limit established by the institution under this part.

(7) Subject to the other provisions of this part, each insured depository institution shall establish, within or below the following supervisory ranges of maximum permissible loan-to-value ratios, internal loan-to-value ratio limits for the following types of loans, based on the appraised value or evaluation, as appropriate, of the real property securing or being improved by the loan, determined at the time of loan origination:

(i) For raw land loans, the maximum permissible loan-to-value ratio shall not exceed 50 percent to 65 percent of the appraised value or evaluation;

(ii) For pre-construction development loans, the maximum permissible loan-to-value ratio shall not exceed 55 percent to 70 percent of the appraised value or evaluation;

(iii) For construction and land development loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(iv) For improved property loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(v) For 1-to-4 family residential property loans, the maximum permissible loan-to-value ratio shall not exceed 80 percent to 95 percent of the appraised value or evaluation;

(vi) For home equity loans, the maximum permissible loan-to-value ratio shall not exceed 80 percent to 95 percent of the appraised value or evaluation; and

(vii) For 1-to-4 family residential property loans and home equity loans, any portion of these loans exceeding 85 percent of the appraised value or evaluation of the real property securing the loan must be covered by private mortgage insurance acceptable to the FDIC.

(c) *Permissible nonconforming real estate loans.* An insured depository institution may make real estate loans that do not conform to the institution's internal loan-to-value ratio limits established pursuant to this part, provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in Appendix A to part 325 of this chapter, and further provided that such nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

2. For Alternative 2, Part 365 is proposed to be added to read as follows:

## PART 365—REAL ESTATE LENDING STANDARDS

Sec.
365.1 Purpose and scope.
365.2 Definitions.
365.3 Real estate lending loan-to-value restrictions.

**Authority:** 12 U.S.C. 1828(o).

### § 365.1 Purpose and scope.

This part, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes maximum loan-to-value ratios applicable to real estate lending by insured state banks that are not members of the Federal Reserve System.

### § 365.2 Definitions.

For purposes of this part:

(a) The term *loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) The term *real property* or *real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term *extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term *credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of the credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the

same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term *loan origination* means the time of inception of an extension of credit.

(f) The term *appraised value or evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the FDIC's appraisal regulations (12 CFR part 323) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements;

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term *financially-responsible guarantor* means a guarantor who has both the financial capacity and the willingness to provide support for an extension of credit, and whose guarantee does in fact support, either in whole or in part, repayment of the extended credit before or upon maturity.

(h) The term *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(i) The term *multifamily residential property* means residential property containing five or more individual dwelling units.

(j) The term *raw land loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(k) The term *pre-construction development loan* means an extension of credit, whether or not secured by real property, for the purpose of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(l) The term *construction and land development loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(m) The term *improved property loan* means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(n) The term *1-to4 family residential property loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a category 3, 50 percent risk weight loan under the risk-based capital guidelines set forth in Appendix A to part 325 of this chapter.

(o) *The term home equity loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(p) *The term nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 365.3 of this part.

### § 365.3 Real estate lending loan-to-value restrictions.

(a) *General rule.* An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this part are satisfied.

(b) *Loan-to-value ratios.* An extension of credit subject to this part, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any of the following percentages of the real property's appraised value or evaluation, as appropriate, determined at the time of loan origination:

(1) For a raw land loan, 60 percent of the appraised value or evaluation;

(2) For a pre-construction development loan, 65 percent of the appraised value or evaluation;

(3) For a construction and land development loan, 75 percent of the appraised value or evaluation if it involves a project that:

(i) Will be at least 65 percent owner-occupied;

(ii) Is at least 65 percent pre-sold to a buyer(s) with sufficient financial capacity to complete the purchase transaction;

(iii) Is at least 65 percent pre-leased to a tenant(s) with sufficient financial capacity to fulfill all material obligations under the lease;

(iv) Has obtained a valid and binding take-out loan commitment from an established lender for its permanent financing;

(v) Has entered into a valid and binding agreement with a company that has an established reputation and sufficient managerial and financial resources to use or operate the property as a business and to fulfill all material obligations under the agreement; or

(vi) Has provided a legally enforceable guarantee(s) from a financially-responsible guarantor(s);

(4) For all other construction and land development loans, 65 percent of the appraised value or evaluation;

(5) For an improved property loan that amortizes over the life of the loan, 75 percent of the appraised value or evaluation;

(6) For an improved property loan that does not amortize over the life of the loan, 65 percent of the appraised value or evaluation;

(7) For a 1-to-4 family residential property loan, 95 percent of the appraised value or evaluation, with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the FDIC;

(8) For a 1-to-4 family residential property loan without private mortgage insurance, 80 percent of the appraised value or evaluation;

(9) For a home equity loan, 95 percent of the appraised value or evaluation, with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the FDIC; and

(10) For a home equity loan without private mortgage insurance, 80 percent of the appraised value or evaluation.

(c) *Permissible nonconforming real estate loans.* An insured depository institution may make real estate loans that do not conform to the loan-to-value ratio limitations contained in paragraph (b) of this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in Appendix A to part 325 of this chapter, and further provided that such

nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

Dated at Washington, DC, this 23rd day of June, 1992.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

*Executive Secretary.*

**Office of Thrift Supervision**

**12 CFR Chapter V**

For the reasons set forth in the preamble, The Office of Thrift Supervision hereby proposes to amend part 563, subchapter D, chapter V, title 12 of the Code of Federal Regulations, as follows:

## PART 563—OPERATIONS

1. The authority citation for part 563 is revised to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468; 12 U.S.C. 1817, 1828; 12 U.S.C. 3806; 42 U.S.C. 4106; Sec. 304, Pub. L. 102–242, 105 Stat. 2236.

2. For Alternative 1, new §§ 563.100, 563.101, and 563.102 are proposed to be added to subpart D of part 563 to read as follows:

**§ 563.100 Real estate lending standards; purpose and scope.**

This section, and §§ 563.101 and 563.102 of this subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribe ranges of maximum permissible loan-to-value ratios to be used by savings associations and their subsidiaries in establishing their own internal loan-to-value ratios for real estate loans subject to these sections.

**§ 563.101 Real estate lending standards; definitions.**

For the purposes of this section and §§ 563.100 and 563.102 of this subpart:

(a) *Loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) *Real property* or *real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) *Extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) *Credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) *Loan origination* means the time of inception of an extension of credit.

(f) *Appraised value* or *evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the Office of Thrift Supervision's appraisal regulations (12 CFR part 564) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(h) The term *multifamily residential property* means residential property containing five or more individual dwelling units.

(i) The term *raw land loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(j) The term *pre-construction development loan* means an extension of credit, whether or not secured by real property, for the purposes of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(k) The term *construction and land development loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(l) The term *improved property loan* means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(m) The term *1-to-4 family residential property loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a 50 percent risk weight loan under the risk-based capital guidelines set forth in part 567 of this chapter.

(n) The term *home equity loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(o) The term *nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 563.102 of this subpart.

**§ 563.102 Real estate lending; loan-to-value restrictions.**

(a) *General rule.* A savings association shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this section are satisfied.

(b) *Loan-to-value ratios.* (1) Each savings association shall establish internal loan-to-value ratio limits within or below the range of maximum permissible loan-to-value ratios contained in this paragraph for the categories of real estate loans specified.

(2) For all categories of real estate loans, the low end of each supervisory range of maximum permissible loan-to-value ratios is considered to be an appropriate benchmark loan-to-value ratio lending limit. For any particular category of real estate loans, a savings association may establish an internal loan-to-value ratio lending limit above the lower end of the supervisory range of maximum permissible loan-to-value ratios if the savings association's demonstrated expertise in that particular type of lending, its assessment of local and regional market conditions, its capital position and asset quality, and other pertinent factors clearly justify such a higher limit.

(3) Each savings association shall specify in writing the criteria used by the association to qualify loans at loan-to-value ratio levels up to the association's established internal loan-to-value ratio lending limits.

(4) For each category of real estate loans, a savings association shall only make a loan at the higher end of the supervisory range of loan-to-value ratios if significant positive features that would mitigate the higher level of risk are present.

(5) A savings association's internal loan-to-value ratio standards shall be reviewed and approved at least annually by the association's board of directors as being consistent with the safe and sound operation of the association. These standards shall be subject to examiner review in order to determine the association's compliance with this section.

(6) An extension of credit subject to this section, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any applicable internal loan-to-value ratio lending limit established by the savings association under this section.

(7) Subject to the other provisions of this section, each savings association shall establish, within or below the following supervisory ranges of maximum permissible loan-to-value ratios, internal loan-to-value ratio limits for the following types of loans, based on the appraised value or evaluation, as appropriate, of the real property securing or being improved by the loan, determined at the time of loan origination:

(i) For raw land loans, the maximum permissible loan-to-value ratio shall not exceed 50 percent to 65 percent of the appraised value or evaluation;

(ii) For pre-construction development loans, the maximum permissible loan-to-value ratio shall not exceed 55 percent to 70 percent of the appraised value or evaluation;

(iii) For construction and land development loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(iv) For improved property loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(v) For 1-to-4 family residential property loans, the maximum permissible loan-to-value ratio shall not exceed 80 percent to 95 percent of the appraised value or evaluation;

(vi) For home equity loans, the maximum permissible loan-to-value ratio shall not exceed 80 percent to 95 percent of the appraised value or evaluation; and

(vii) For 1-to-4 family residential property loans and home equity loans, any portion of these loans exceeding 85 percent of the appraised value or evaluation of the real property securing the loan must be covered by private mortgage insurance acceptable to the OTS.

(c) *Permissible nonconforming real estate loans.* A savings association may make real estate loans that do not conform to the association's internal loan-to-value ratio limits established pursuant to this section, provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the association's total capital, as defined in part 567 of this chapter, and further provided that such nonconforming real estate loans are reported as lending exceptions to the association's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the savings association, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

3. For Alternative 2, new §§ 563.100, 563.101, and 563.102 are proposed to be added to subpart D of part 563 to read as follows:

**§ 563.100 Real estate lending standards; purpose and scope.**

This section, and §§ 563.101 and 563.102 of this subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribe maximum loan-to-value ratios applicable to real estate lending by savings associations and their subsidiaries.

**§ 563.101 Real estate lending standards; definitions.**

For the purposes of this section and §§ 563.100 and 563.102 of this subpart:

(a) *The term loan-to-value ratio* means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the

extension of credit in determining the loan-to-value ratio.

(b) The term *real property* or *real estate* means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term *extension of credit* means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term *credit secured by real property* means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term *loan origination* means the time of inception of an extension of credit.

(f) The term *appraised value* or *evaluation* means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the Office of Thrift Supervision's appraisal regulations (12 CFR part 564) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term *financially-responsible guarantor* means a guarantor who has both the financial capacity and willingness to provide support for an extension of credit, and whose guarantee does in fact support, either in whole or in part, repayment of the extended credit before or upon maturity.

(h) The term *1-to-4 family residential property* means residential property containing less than five individual dwelling units.

(i) The term *multifamily residential property* means residential property containing five or more individual dwelling units.

(j) The term *raw land loan* means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(k) The term *pre-construction development loan* means an extension of credit, whether or not secured by real property, for the purposes of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(l) The term *construction and land development loan* means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(m) The term *improved property loan* means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(n) The term *1-to-4 family residential property loan* means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a 50 percent risk weight loan under the risk-based capital guidelines set forth in part 567 of this chapter.

(o) The term *home equity loan* means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(p) The term *nonconforming real estate loan* means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 563.102 of this subpart.

**§ 563.102 Real estate lending loan-to-value restrictions.**

(a) *General rule.* A savings association shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this section are satisfied.

(b) *Loan-to-value ratios.* An extension of credit subject to this section, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any of the following percentages of the real property's appraised value or evaluation, as appropriate, determined at the time of loan origination:

(1) For a raw land loan, 60 percent of the appraised value or evaluation;

(2) For a pre-construction development loan, 65 percent of the appraised value or evaluation;

(3) For a construction and land development loan, 75 percent of the appraised value or evaluation if it involves a project that:

(i) Will be at least 65 percent owner-occupied;

(ii) Is at least 65 percent pre-sold to a buyer(s) with sufficient financial capacity to complete the purchase transaction;

(iii) Is at least 65 percent pre-leased to a tenant(s) with sufficient financial capacity to fulfill all material obligations under the lease;

(iv) Has obtained a valid and binding take-out loan commitment from an established lender for its permanent financing;

(v) Has entered into a valid and binding agreement with a company that has an established reputation and sufficient managerial and financial resources to use or operate the property as a business and to fulfill all material obligations under the agreement; or

(vi) Has provided a legally enforceable guarantee(s) from a financially-responsible guarantor(s);

(4) For all other construction and land development loans, 65 percent of the appraised value or evaluation;

(5) For an improved property loan that amortizes over the life of the loan, 75 percent of the appraised value or evaluation;

(6) For an improved property loan that does not amortize over the life of the loan, 65 percent of the appraised value or evaluation;

(7) For a 1-to-4 family residential property loan, 95 percent of the

appraised value or evaluation with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the OTS;

(8) For a 1-to-4 family residential property loan without private mortgage insurance, 80 percent of the appraised value or evaluation;

(9) For a home equity loan, 95 percent of the appraised value or evaluation with any amount exceeding 80 percent of appraised value or evaluation covered by private mortgage insurance acceptable to the OTS; and

(10) For a home equity loan without private mortgage insurance, 80 percent of the appraised value or evaluation.

(c) *Permissible nonconforming real estate loans.* A savings association may make real estate loans that do not conform to the loan-to-value ratio limitations contained in paragraph (b) of this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the association's total capital, as defined in part 567 of this chapter, and further provided that such nonconforming real estate loans are reported as lending exceptions to the association's board of directors.

(d) *Excluded transactions.* The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the savings association, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

Dated: June 29, 1992.

By the Office of Thrift Supervision.

**Timothy Ryan,**

*Director.*

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PART VI

# Department of Education

**Research in Education of Individuals with Disabilities Program; Notice of Final Priorities and Notice Inviting Applications for New Awards**

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**DEPARTMENT OF EDUCATION**

**Office of Special Education and Rehabilitative Services**

**Research in Education of Individuals With Disabilities Program; Final Funding Priorities for FY 1992 and 1993**

**AGENCY:** Department of Education.

**ACTION:** Notice of final priorities for fiscal years 1992 and 1993 for Research in Education of Individuals with Disabilities Program.

**SUMMARY:** The Secretary announces final funding priorities for fiscal years (FYs) 1992 and 1993 for the Research in Education of Individuals with Disabilities Program. The Secretary announces these priorities to ensure effective use of program funds and to direct funds to areas of identified need during fiscal years 1992 and 1993.

**EFFECTIVE DATE:** These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3095, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 732–1099. Deaf and hard of hearing individuals may call (202) 732–6153 for TDD services.

**SUPPLEMENTARY INFORMATION:** The Research in Education of Individuals with Disabilities Program, authorized by part E of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1441–1443), provides support to advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals in regular education environments, to provide children with disabilities effective instruction and enable them to successfully learn; and research and related purposes, surveys, or demonstrations relating to physical education or recreation, including therapeutic recreation, for children with disabilities.

These priorities support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by improving our understanding of how to enable children and youth with disabilities to reach the high levels of academic achievement called for by the National Education Goals.

**Note:** This notice of final priorities does not solicit applications. A notice inviting applications under one of these competitions is published in a separate notice in this issue of the **Federal Register**.

On January 28, 1992, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (57 FR 3250–3257).

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the notice of proposed priorities, twenty-one parties submitted comments. An analysis of the comments and of the changes in the proposed priorities follows. Technical and other minor changes, and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority, are not addressed.

**Comments on Priority 1—Initial Career Awards**

*Comment:* One commenter encouraged the inclusion of psychoeducational assessments and intervention services, and the integration of services such as physical therapy, occupational therapy, speech therapy, etc., with educational programs as specific topics of interest under the priority.

*Discussion* As written, the priority supports projects to conduct research and related activities consistent with the purpose of the program as stated in the program regulations at 34 CFR 324.1. The purpose of the program is stated very broadly and includes support to (1) advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children with disabilities in regular education environments, to provide children with disabilities effective instruction and enable them to learn successfully; and (2) research and related activities, surveys or demonstrations relating to physical education or recreation, including therapeutic recreation, for children with disabilities. The Secretary concurs that the activities recommended by the commenter are important, and believes that they are included under the rubric of the broad purpose statements, and that to specify only those activities proposed by the commenter would be overly prescriptive.

*Changes:* None.

**Comments on Priority 2—Research on Self-Determination in Individuals With Disabilities**

*Comment:* One commenter recommended that (1) funding recognize the divergent needs of varying disability populations, particularly students with mental retardation and learning disabilities; (2) projects extend and augment the self-determination projects funded through the Secondary Education and Transition Services Branch; and (3) projects include the involvement of individuals with disabilities as well as their families.

*Discussion:* The priority, as written, recognizes the divergent needs of varying disability populations, and requires projects, in identifying the individual variables of self-determination, to be sensitive to individual characteristics affecting self-determination such as age, level of functioning, cultural differences, and nature of disability. Because self-determination has been identified as a goal by individuals with the full array of disabling conditions, including individuals with cognitive deficits, the Secretary believes that it should be left to the applicant to delineate the subject characteristics in its study.

In response to the commenter's second recommendation, the priority, as written, requires collaboration with other projects to maximize project benefits. The Secretary prefers not to limit or prescribe which projects are worthy of collaboration.

With respect to the commenter's third recommendation, the Secretary notes that the priority, as written, requires the participation of individuals with disabilities and parents of individuals with disabilities in project activities (e.g., in developing the conceptual framework and in identifying the individual variables of self-determination).

*Changes:* None.

*Comment:* One commenter stated that concepts such as self-determination are personal and subjective and heavily influenced by culture. The commenter recommended that in attempting to provide educators with a vehicle for defining and measuring self-determination as an explicit educational goal, the cultural background and language experience of a people must be validated.

*Discussion:* The Secretary believes that this concern is addressed in the development of the approach and its subsequent field testing. As written, the priority requires projects to be sensitive to individual characteristics affecting

self-determination, such as age, level of functioning, cultural differences, and nature of disability, and further requires projects to sample the domains of school, home, work, and community.

*Changes:* None.

**Comments on Priority 3—Including Children With Disabilities as a Part of Systemic Efforts To Restructure Schools**

*Comment:* One commenter recommended that the priority specifically state the school restructuring, whether at the State, district, or building level, must have the ultimate goal of ensuring that students with disabilities by fully included in all aspects of school life, including education provided in supported, heterogeneous, age-appropriate, regular classrooms with students who do not have disabilities, as well as in all other curricular and extra-curricular programs and activities of the school.

*Discussion:* The purpose of the priority is to develop and implement systemic changes at the school level required to incorporate effective practices for children with disabilities into broader school-based educational reform and restructuring initiatives. In the "Activities" section of the priority, projects are required to "* * * specify the diverse educational outcomes that the school is committed to achieving for *all children* (emphasis added), including children with disabilities." Also, an inclusionary orientation is reflected in the requirement under "Project Planning" that states that the reform and restructuring activities must reflect principles for effecting systemic change as well as systemic features that facilitate the participation and achieve better educational outcomes for children with disabilities. The Secretary believes that the priority, as written, provides for the inclusion of children with disabilities in all aspects of school life.

*Changes:* None.

*Comment:* One commenter recommended that the priority (1) encourage applicants to address the needs of children with disabilities who are included in restructured environments within inner city schools; (2) support and encourage research that will lead to the design of effective support systems to ensure success for students with disabilities in restructured environments; (3) permit a wide range of use of funds to provide supports such as personnel, consultation, technology, assistive devices, inservice training, travel, university collaboration, program development, and dissemination of results; (4) support funding for parent education, travel, purchase of reference materials, and childcare, in an effort to maximize opportunities for full parental participation; and (5) support active student involvement in the projects.

*Discussion:* The purpose of this priority is to support model projects, not research projects, that develop and implement systemic change at the school level. With the exception of research, the priority allows for an applicant to propose and justify the types of activities recommended by the commenter. The Secretary believes that the specific uses of funds and their justification should be left to the applicant. The potential benefits of those uses will be weighed in the review of applications.

*Changes:* None.

*Comment:* One commenter stated that system change should not result in the placement of all children with learning disabilities in regular classrooms because the nature of the disability in an individual child may be such that the child cannot learn appropriately in that setting.

*Discussion:* The Secretary concurs, and does not believe that the priority, as written, requires such an approach. Projects are broad based reflecting systemic change and would not govern individual cases.

*Changes:* None.

**Comments on Priority 4—Ombudsperson Services for Children and Youth With Disabilities**

*Comment:* Sixteen commenters expressed concern over the list of potential ombudspersons listed in the priority, and interpreted the priority to exclude advocates other than parent advocates. In general, the commenters felt the priority reflected a misunderstanding and negative bias towards "advocacy", and two commenters recommended that "advocacy case management" be specified as part of the concept for ombudspersons services.

*Discussion:* The Secretary agrees with the commenters that there are other groups from which knowledgeable and objective potential ombudspersons could be identified. The Secretary also agrees that impartial advocacy activities (i.e., activities that are objective, do not support any vested interests, and only want what is in the best interests of the child) should be allowable under this priority. Advocacy case management is only one of many approaches that can be used by an ombudsperson in helping to identify and resolve problems. The Secretary believes that it would be inappropriate to emphasize that approach over others that may be used. The priority, as written, was attempting to emphasize a mediational approach as opposed to the more formal, adversarial approaches.

*Changes:* The priority has been changed by adding to the list of potential ombudspersons the statutory language that includes persons with similar qualifications designated by the Secretary as potential ombudspersons. In addition, the language in the priority stating that ombudspersons do not perform individual advocacy has been deleted.

*Comment:* One commenter felt that the types of organizations eligible to apply needed to be identified.

*Discussion:* The eligible applicants for the Research in Education of Individuals with Disabilities Program remain the same for all priorities announced under the program. Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

*Changes:* None.

*Comment:* Three commenters raised concerns related to potential conflicts of interest. One commenter noted that the groups from which potential ombudspersons could be identified included special education personnel and social workers. The commenter questioned how special education personnel, or even social workers, could operate externally or impartially, or avoid susceptibility to system influence. The second commenter was concerned with a perceived supervision of the ombudsperson by school district staff. The third commenter stated that the priority failed to address an implied conflict of interest, and recommended that an ombudsperson should not be an employee or contractor with any State or local school system.

*Discussion:* The Secretary agrees with the commenter that the ombudsperson must function independently and objectively, and that any supervision cannot compromise the ombudsperson's independence or objectivity. It is the responsibility of potential applicants to provide supporting evidence and justification for their choices. One of the key features of the design is that the selected ombudspersons not have a personal stake in the actions, decisions, or policies being investigated—that they have not directly participated in these actions, decisions, or policies. Finally, the priority provides that selected individuals may not be employees of a governmental entity that directly or indirectly provides services for students with disabilities or their families.

*Changes:* The role of the ombudsperson has been clarified to emphasize his or her objectivity and

ability to function independently and objectively.

*Comment:* Seven commenters expressed concerns relating to the role of ombudspersons, the scope of their services, and the potential for confusion and delay with due process under the Individuals with Disabilities Education Act. Specific recommendations included (1) adding an enforcement component or making it clear that ombudspersons can appear before agencies that enforce the law or regulations, if appropriate; (2) making appropriate referrals to "relevant agencies" (e.g., the Legal Services Corporation and Protection and Advocacy Systems); and (3) soliciting letters of commitment from the Legal Services Corporation and Protection and Advocacy Systems.

*Discussion:* The purpose of these demonstration projects is to test the efficiency and efficacy of the ombudsperson approach, not to substitute for, preclude, or delay other due process systems already in place. With regard to the ombudsperson's ability to appear before agencies that enforce the laws or regulations, that ability should be clarified. The Secretary notes that the last two recommendations are already addressed by the priority in that it requires the ombudsperson to make timely referrals to "relevant agencies", and to solicit letters of commitment from "relevant agencies". The Secretary believes it would not be possible to list all relevant agencies, and believes it is the responsibility of potential applicants to provide supporting evidence and justification for their choices.

*Changes:* The priority has been clarified to include language stating that the ombudsperson is able to appear before agencies that enforce the laws or regulations.

*Comment:* One commenter recommended community involvement in the development of the ombudsperson demonstration program.

*Discussion:* The Secretary concurs that community involvement should be included in the development of the program.

*Changes:* The "Program Design and Development" section of the priority has been clarified to include community participation.

*Comment:* One commenter recommended that funding should be targeted to those States or regions where there is a higher than average number of complaints or concerns expressed by families, and to those places where there are barriers due to poverty, ethnicity, language, lack of geographical access and other reasons.

*Discussion:* The Secretary believes that the activities required in the "Site Description" section of the priority are responsive to the commenters' concerns. Projects are reviewed on the basis of evaluation criteria that allow applicants to address the importance and impact of their project. The Secretary does not believe it is necessary to "target" funds.

*Changes:* None.

*Comment:* One commenter recommended that (1) the "Technical Soundness" selection criterion be revised to include coordination with other service providers of advocacy case management services, including Protection and Advocacy Systems; and (2) the "Quality of Key Personnel" and the "Organizational Capability" selection criteria be revised to require consideration of qualifications to engage in alternative dispute resolution, knowledge of administrative and legal remedies, and knowledge of advocacy case management services.

*Discussion:* The "Technical Soundness" selection criterion lists coordination with other service providers, but does not prescribe the types of other service providers. The "Quality of Key Personnel" selection criterion considers experience and training of key personnel in fields related to the objectives of the project and other evidence that the applicant provides. The "Organizational Capability" selection criterion considers the applicant's experience in special education or early intervention services. Given the potential diversity among projects, the Secretary believes that it is the responsibility of the applicant to provide the necessary information on the types of providers and the reasons for their selection, and the Secretary prefers not to prescribe specific qualifications for personnel or organizations. The expert panel of reviewers will review applications for service provider information, personnel and organizational qualifications, and it is the responsibility of the applicant to provide supporting information and justification for all three criteria.

*Changes:* None.

*General Comments*

*Comment:* One commenter requested that an additional priority relating to the assistive technology needs of children with significant speech and motor challenges be added.

*Discussion:* The Secretary believes that a priority that focuses on assistive technology would be more appropriately announced and funded by the Technology, Educational Media, and Materials for Individuals with Disabilities Program. The Secretary notes that there are currently two competitions announced under the Technology, Educational Media, and Materials Program that provide applicants an opportunity to submit proposals related to assistive technology.

*Changes:* None.

**Priorities**

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under these competitions only applications that meet one of these priorities:

*Priority 1—Initial Career Awards (CFDA 84.023N)*

This priority supports awards to eligible applicants for the support of individuals who have completed a doctoral program and graduated no earlier than the 1987–1988 academic year for fiscal year 1992 awards. For fiscal year 1993 awards, individuals must have completed a doctoral program and graduated no earlier than the 1988–1989 academic year. Applicants are encouraged to recruit individuals who are members of racial or ethnic minority groups. This priority supports projects to conduct research and related activities focusing on early intervention services and special education consistent with the purpose of the program as stated in 34 CFR 324.1. This support is intended to allow individuals in the initial phases of their careers to initiate and develop promising lines of research that will improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. A line of research refers to a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish parameters for designing future studies extending beyond the support of this award. However, the projects supported under this priority are not intended to represent all inquiry related to the particular theory or conceptual framework. Rather, they are expected to initiate a new line or advance an existing one.

The project must demonstrate promise that the potential contribution of the line of inquiry will substantially improve early intervention services and special education. The project must include sustained involvement with nationally recognized experts having substantive or methodological knowledge and techniques critical to conducting the

proposed research. These experts do not have to be at the same institution or agency as the applicant. This interaction must be of sufficient frequency and duration for the researcher to develop the capacity to effectively pursue the research into mid-career activities. However, the experts' involvement must not usurp the project leadership role of the initial career researcher. An applicant may apply for up to three years of funding. At least 50 percent of the researcher's time must be devoted exclusively to the project.

Project procedures, findings, and conclusions must be prepared in a manner that is informative for other interested researchers, and is useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families. Project procedures, findings, and conclusions must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

*Priority 2—Research on Self-Determination in Individuals With Disabilities (CFDA 84.023J)*

Issue

Individuals with disabilities have identified self-determination, self-efficacy, self-advocacy, and maximum independence as major goals for the disability movement. These goals emphasize the need for individuals with disabilities to learn to make choices, set goals regarding their lives and the services they receive, and to initiate actions to achieve those goals. The ability of individuals to make choices may also be an important component in being perceived by others as independent and self-determining.

Self-determination has also been described as including one or more of the following: Goal setting, social interaction, communication, assertiveness, decision making, and self-advocacy. These behaviors (as well as others yet to be identified) and groups of behaviors overlap, making distinctions difficult. Comprehensive conceptual frameworks representing alternative perspectives are needed to advance the assessment of current school practices in relation to the development of self-determined behavior. There is a need to identify the relationships and influences of the major sub-components of self-determination in order to provide a stronger conceptual base on which to develop improved assessment. Procedures for defining, identifying, and validating assessment approaches need advancement.

Background

The value of participation in society by individuals with disabilities has prompted professionals and advocates to provide them with previously unavailable opportunities to participate in normalized environments and integrated community settings. While legislation, litigation, and publicly supported programs have promoted the inclusion of individuals with disabilities into the mainstream, many of the barriers to successful inclusion remain beyond the remedy of legislatures, courts, and professional advocacy. An increasing consensus by individuals with disabilities is that full inclusion will require the individual to overcome the stereotypes of disability. These stereotypes are viewed as promoting passive acceptance, learned helplessness, and political inaction. The keys to change are programs, parents, and education or rehabilitation professionals that emphasize independence as more than the performance of basic social and vocational skills. The development of individuality, self-esteem, goal oriented behavior, assertive behavior, and decision making ability are also critical outcomes.

The development of self-determined behavior and attitudes in students with disabilities has been hampered by lack of a definition of self-determination, limited models of programs or methodologies for achieving self-determination, limited expectations of parents and professionals, and emphasis on the development of services as opposed to the development of the individual. Although all of these factors have impeded the development of self-determination in students, none is more critical than the development of valid and operational definitions of self-determination. It is essential to develop approaches for assessing its level in order to include it as a component in program design and service delivery.

Purpose

The purpose of this priority is to support projects to provide an operational definition for self-determination and assessment approaches for determining the level of self-determination. The assessment approaches must also provide methodologies for improving the operational definition of self-determination.

Project activities must also develop a better understanding of self-determination as an outcome of schooling. The nature and scope of traditional outcome measurement must be broadened to assess the degree to which individuals with disabilities set goals and initiate and sustain actions to achieve those goals. It is anticipated that the development of a validated assessment of self-determination will provide for a better balance between societal and individual outcomes as well as provide educators a vehicle for defining and measuring self-determination as an explicit educational goal. Finally, project activities will result in a conceptual model and tool for assessing a program's contribution to developing self-determining behaviors and attitudes of individuals with disabilities.

Activities

Projects must (1) develop a conceptual framework of self-determination; (2) identify the individual characteristics and behaviors of self-determination; (3) develop, validate, and field test an assessment approach for operationally defining and measuring self-determination; (4) collaborate with other projects to maximize project benefits; and (5) disseminate project findings to individuals with disabilities and professionals involved in service delivery planning or evaluation.

*Develop a Conceptual Framework*

Several activities are required in developing a conceptual framework of the constructs of self-determination. Information must be gathered from multiple sources and methodologies to produce a conceptual framework that is comprehensive, sensitive to individual differences, and can provide the framework for the project. Sources must include (1) professional research and theoretical literature from education, rehabilitation, and other relevant disciplines; (2) interviews with individuals with disabilities exhibiting self-determination; and (3) interviews with service providers and researchers. Projects must analyze this information and develop a conceptual framework comprised of the constructs identified as a result of these activities. The conceptual framework must identify hypothesized relationships that may be correlated with identified variables of self-determination. After the conceptual framework has been developed, each project must convene a panel consisting of individuals with disabilities, parents of individuals with disabilities, instructional personnel, and other persons providing services in the area of disabilities. These panels must provide

input as to the validity of the conceptual framework in delineating the diverse concept of self-determination.

*Identify the Individual Variables of Self-Determination*

Once the conceptual framework has been developed, the projects must develop procedures for identifying the variables for each construct. These variables will serve as the basis for the development of an assessment approach to provide information regarding the individual characteristics relevant to self-determination. The approach may represent self-determination as developmental in nature or as demonstrated at particular points in time. From a developmental perspective self-determination might include the progressive stages of skills, attitudes, and knowledge representing identified constructs. These stages may be grade referenced (e.g., K–3, 4–6, etc.) or age referenced. For the latter approach, the individual's level of self-determination would be considered at a particular point in time for a specific purpose (e.g., choosing a roommate). The level could be determined by observation or a rating provided by an individual familiar with the individual's abilities and limitations. Regardless of the approach, the variables must be sensitive to individual characteristics affecting self-determination such as age, level of functioning, cultural differences, and nature of disability; and sample the domains of school, home, work, and community. The development of the assessment approach must include the active participation of the above-mentioned panel of individuals with disabilities in the identification and validation of variables associated with self-determined behavior. The participation of professionals (advocates, researchers, teachers, etc.) and parents must be included so as to ensure both the acceptance and usability of the assessment approach.

*Validate and Field Test Assessment Approach*

Projects must develop, validate, and field test an assessment approach to self-determination. An assessment approach must include the identification, definition, measurement, and validation of key constructs related to self-determination. The assessment approach must include a rationale and activities required to operationally define and measure self-determination. Projects must employ methodologies for deriving the self-determination variables that are consistent with the development of an assessment approach that will be sensitive to a range of individual student abilities, backgrounds, and situations. Field testing must provide a clear indication of the utility of the approach in school settings. The assessment approach must produce descriptions of student behaviors and characteristics that are useful in designing instructional units for the development of self-determination.

First, projects must pilot the assessment with individuals with disabilities. The pilot must include individuals representative of the age, functioning level, and environments of its intended consumers. The pilot must guide the revision of the approach prior to a full scale field test.

Following the pilot procedures, a larger scale field test of the assessment must be conducted. The sample for this activity must be large enough to allow the determination of the technical adequacy of the assessment, including reliability and validity.

*Collaboration Activities*

Projects must budget for a meeting to establish a collaborative relationship with other projects funded under this priority. This meeting serves as a forum for refining the self-determination variables proposed by each project and arranging a process for the exchange of project information and materials. It is anticipated that the collaboration activities will enhance conceptualization of self-determination by incorporating varying perspectives and methods of validation.

*Dissemination*

Projects must disseminate the project's findings and products, and provide opportunities for input by groups regarding the educational and programmatic implications of the findings of the projects and the continued refinement of the concept of self-determination. Input must be sought, at a minimum, from representatives of the following groups: individuals with disabilities, parents of students with disabilities, professionals involved in instruction and planning for individuals with disabilities, and other individuals relevant at a given stage of the individual with disabilities life (e.g., residential providers, rehabilitation counselors, employers, etc.).

*Additional Federal Requirements*

Projects must budget to attend the annual Project Directors' meeting to be held in Washington, D.C.

*Priority 3—Including Children with Disabilities as a Part of Systemic Efforts to Restructure Schools (CFDA 84.023R)*

Issue

Educational reform and restructuring initiatives intended to improve the educational outcomes of our Nation's children must be designed to accommodate the diverse characteristics and learning needs of children with disabilities. Educational reform and restructuring activities are stimulating changes in schools across the Nation. Restructuring represents systemic efforts to alter the policy, organizational, and belief frameworks of administrators, teachers, parents, and students to improve the learning and educational outcomes of students. The nature and focus of restructuring varies from school to school. Restructuring may occur on a State, district or building level. It may include site-based management approaches which emphasize the decentralization of control and decision making. In some schools, site-based management is being implemented in conjunction with modifications in curricular approaches, instructional patterns, and assessment. Current experimentation with providing parents and their children with greater "choice in education" represents, in some cases, another example of restructuring.

Background

The Division of Innovation and Development, Office of Special Education Programs (DID/OSEP), has focused previously upon identifying and implementing specific educational interventions and strategies in classrooms and schools. Since 1985, DID/OSEP has invested systematically in a program of research and development to improve the instruction, curricula, classroom management, and assessment of children with disabilities who are being educated in general classroom environments. Eight research competitions, comprising 41 projects, have been conducted in the past five years. These projects, however, have not addressed the question of how innovations that achieve meaningful participation and better results for children with disabilities in general school environments can become part of broader efforts to systematically restructure schools.

These projects provide direction, define practices, and chart implementation requirements for adopting specific innovations. Predominantly, these funded projects

have relied on external researchers rather than administrators and teachers to stimulate and support ongoing implementation of school innovation. These externally oriented models have not focused on the basic systemic changes required to incorporate these effective practices into broader system-wide, school-based educational reform and restructuring initiatives.

Innovations must be incorporated into the complex organizational system of the school. The processes required for generating innovations, developing effective applications, and determining implementation requirements are different from those needed to achieve broader systemic change in order to implement innovations. Too often, innovation activities have been supported, and dissemination activities encouraged, but little attention has been provided to the developmental stages and levels of implementation support required to achieve effective adoption of innovations.

Purpose

This priority supports projects to develop and implement systemic changes at the school level required to incorporate effective practices for children with disabilities into broader school-based educational reform and restructuring initiatives. Projects must identify the critical policy, organizational, administrative and operating features for transforming schools into learning organizations and systems that are capable of continually monitoring their activities and performance in order to achieve better educational outcomes for children with disabilities. Systemic variables must be identified and addressed. These include, for example, continuity of services for individual students (e.g., communication between multiple service providers), linkages among systems, fluidity of a system for facilitating movement of services and individuals between components (e.g., so that services can be provided regardless of setting), and preparedness of a system for effectively meeting the diverse characteristics that students present to schools. These features embody the dynamic, generative thinking and creative experimentation of organizations. These projects must identify essential systemic design features, specifications, and choices for schools engaged in educational reform and restructuring necessary for achieving better education outcomes for all children, including those with disabilities.

Educational outcomes must be broadly stated and must be valued by society for children with disabilities. The attainment of an educational outcome must reflect more than an incremental change in performance and be an accomplishment generally valued by society. Illustrations of such outcomes might include personal adjustment, social or communicative competence, productivity, physical or motoric achievements, quantitative thinking, reasoning, and achievements in the visual and performing arts.

Projects must (a) establish basic orienting premises to guide the systemic design for school sites to meet the needs of children with disabilities in the context of addressing the diverse conditions and complex learning needs of all children; (b) specify broad educational outcomes that are valued by society and reflect accumulated learning and accomplishments in diverse areas; (c) identify systemic design features required for all children including those with disabilities to achieve these educational outcomes; (d) develop a multi-year plan for effecting systemic changes; and (e) conduct case studies on the change processes, effects, and impact of implementing these systemic changes.

Activities

*Site Selection.* Projects must occur in schools that already are planning for or engaged in some substantive or procedural restructuring initiative. An individual school must demonstrate a commitment to both systemic changes as well as adoption of effective professional practices that will address the diversity and complexity of learning needs of children with disabilities. Projects must indicate the systemic changes and activities that funds from this grant will support in relation to their ongoing restructuring initiative. Schools must already have a number of children with disabilities integrated into regular classroom activities. Children with disabilities must represent a range in types of disability as well as severity.

*Project Planning.* An initial planning phase of up to one year is anticipated. Extensive efforts must be made during this time to involve faculty, parents, individuals with disabilities, regular and special education research experts, other community agencies, innovative practitioners, and others as appropriate. The plan must include systemic planning, change, and feedback activities that develop and maintain ongoing school administrative and faculty commitment to implementing their reform and restructuring initiatives. The reform and restructuring activities must reflect principles for effecting systemic change as well as systemic features that facilitate the participation and achieve better educational outcomes for children with disabilities. Initial planning activities must include the following:

(1) *Clarification and specification of the premises, goals, and outcomes of the project in relation to the school's current or planned reform and restructuring initiatives.* The project must refine its initial statements of basic orienting premises to guide the project. Goals of the project must specify systemic features, action required, and aim. Projects must specify the diverse educational outcomes that the school is committed to achieving for all children, including those with disabilities. Each site must demonstrate that the school's educational outcomes will reflect a diversity of areas and levels of potential accomplishment for children with disabilities.

(2) *Specification of the ongoing planning processes, procedures, and participants needed to govern, design, implement, and assess the project.* The project must develop and implement an operational plan that includes a planning process and procedures that provide for the participation of a substantial number or proportion of general education and special education teachers in the school, building and district administrators, school board representatives, support staff, parents, individuals with disabilities, community agency representatives, and regular and special education researchers. The operational plan must reflect the project's vision of the school as a system achieving its goals in conjunction with the school district and the community (e.g., regional health, mental, social, and correctional agencies; voluntary organizations; businesses; institutions of higher education; and families). Ongoing planning procedures must be related to: project premises, goals, systemic targets for change, systemic design features, systemic change, feedback on project progress, and evaluation of project effects and impact.

(3) *Refine operational plan and schedule of activities to be undertaken in order to achieve project goals.* This plan of operation must address, but is not limited to, the following restructuring activities: planning, organizational development, clarification of project basic orienting premises, project goals, specification of educational outcomes, system design activities, systemic change and project evaluation. For each of these restructuring activities the project must develop objectives, establish timelines, identify resources needed, identify barriers to be overcome, assign

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responsibilities for these activities, and establish performance measures to determine progress and problems related to implementation of each activity. The plan of operation must give particular attention to the dynamic nature of systemic change as the plan develops and progresses through levels of implementation.

(4) *Procedures to determine the effectiveness and impact of the project.* Procedures must include assessing all project activities, the effectiveness and impact of systemic design features, and the extent of attainment of project goals. Each project must develop and conduct rigorously designed evaluation activities that document or validate project findings, and provide new insights related to the varied aspects of designing and implementing systemic change.

*Implement and Evaluate Project Plans.* Projects must implement their operational plan and schedule of activities in a manner to achieve their goals within a 48-month period. It is expected that activities will be phased in over the four years of the project. Project progress, effectiveness, and impact must be assessed consistently with the design and measures developed and refined during the planning and implementation phases of the project.

*Collaboration.* Projects must budget for one meeting per year with other grantees from this competition, as well as for funds to attend the annual meeting of project directors for the Division of Innovation and Development. Projects must collaborate with other projects from the competition on an ongoing basis to determine joint products and activities that would be useful to other schools considering or engaged in educational reform and restructuring initiatives.

*Dissemination.* Projects must disseminate information about the project on an ongoing basis to other schools in their area, State, or region. Projects must also develop plans to disseminate findings of the project. Project dissemination must focus on basic orienting premises, systemic design features and their effectiveness and impact, and implications for school-based reform and restructuring initiatives in a form usable by such audiences as teachers and administrators.

***Priority 4—Ombudsperson Services for Children and Youth with Disabilities (CFDA 84.023M)***

**Issue**

The determination of the appropriateness of an educational program for students with disabilities is often a complex and emotional process involving students with disabilities, their parents, and an increasing number of professionals. It is not surprising that in some instances the process breaks down due to an inability to communicate and resolve issues; barriers consisting of lack of access, availability or appropriateness of services; or a host of other systemic reasons.

Currently, several State and local educational agencies have enacted mediation programs as part of the administrative remedy requirement under due process requirements. Although reactive mediation services may help to prevent formal due process reviews, they begin only after a conflict has arisen. Reactive programs tend to focus on individual problem resolution, often adding little to resolving or preventing underlying systemic issues.

Ombudsperson services represent the ability to proactively identify systemic problems and to initiate actions to prevent or lessen the impact on individuals with disabilities and their families. This priority would require that the ombudsperson identify the various key integrating systems in their community or region. These integrating entities would serve to refer individuals or identify recurrent problems that relate to individuals with disabilities and their families. This type of proactive impartial mediation would enable the ombudsperson to identify and solve systemic problems and issues.

**Background**

A variety of regulatory and organizational factors have often resulted in the service delivery system for individuals with disabilities lacking the capacity to be fully responsive to the needs of these individuals. One approach for addressing this unresponsiveness has been the ombudsperson model. This model was developed in Scandinavian countries and refers to individuals, often employed by a government entity such as the legislature, who assist citizens by investigating complaints against the government. For the purposes of this priority, an ombudsperson refers to any individual who acts as a liaison, to assist in and mediate interactions with a service system.

Ombudspersons operate independently, thereby avoiding apparent conflict of interest, partiality, or other susceptibility to system influence. Consistent with this concept, the role of the ombudsperson must be performed by persons who are objective, function independently, and who maintain a problem-solving mediational position. They participate in a variety of activities designed to "personalize" a service system by making it more responsive to individuals. Ombudspersons are not responsible for enforcing laws or regulations, but are intended to secure fairness in the government's interactions with citizens. They have no legal authority to enforce a decision or force action on the part of any party. However, they may exercise great systemic pressure by identifying service inequities and inadequacies and bringing these to the public's attention. Ombudspersons' power is that of impartiality, mediation, and social pressure derived, frequently, by focusing attention on a problem. While they are not considered responsible for solving problems between citizens and government, they can make recommendations to appropriate policy making entities.

**Purpose**

The purpose of this priority is to support and assess projects that will provide ombudsperson services to assist in resolving problems that are systemic barriers to appropriate educational, related services, or other services for children and youth with disabilities. Assistance is to be provided to children and youth with disabilities, their parents or guardians, special and regular education teachers, State and local education administrators, and related services personnel to resolve systemic problems in a timely manner. Participation in this ombudsperson program does not preclude or delay due process under Part B of IDEA.

Specific objectives of the projects are to (a) design an ombudsperson program within a local, regional, or State system; (b) develop and complete all preparation necessary to fully implement the ombudsperson program; (c) determine the feasibility of the ombudsperson role, function, and procedures; and (d) fully implement and evaluate the impact of the ombudsperson program for resolving problems that are related to the delivery of special education and related services, and mediating systemic conflicts involving students with disabilities and their families. This priority will be implemented in two phases.

**Phases and Activities**

*Phase 1.* This phase will support from five to seven projects for up to eighteen months to design, develop, and prepare for full implementation, and assess the feasibility of an ombudsperson program at the local, regional, or State level.

Each project must provide letters of commitment from relevant agencies, including schools, to participate in the Phase 1 design and development, and the Phase 2 full implementation and evaluation activities.

Projects must focus on designing proactive systems oriented strategies. In this approach, an ombudsperson serves as a catalyst for change on a system, agency, or institutional level. By focusing on a proactive approach, the ombudsperson program must anticipate and prevent problems in service delivery by identifying problem antecedents and consequences. The contributions of this program include identifying, defining, and resolving systemic issues related to the responsiveness and appropriateness of the service system to address the needs of students with disabilities. For example, the initial response to the identification of a systemic problem would be the clarification and communication of the problem to the affected parties. In many cases, this may be sufficient to make resolution or additional options possible. If this is unsuccessful, the ombudsperson may attempt to provide linkages between the interested parties, provide additional support, appear before agencies that enforce the law or regulations, or provide technical assistance. If this is ineffective, the ombudsperson may work with a State level representative, whose primary responsibilities are complaint management. Finally, the ombudsperson could work with the State Advisory Committee established under Part B of the IDEA, local interagency coordination councils, local and State Developmental Disabilities Councils, and Governor's councils or commissions on disability issues.

*Phase 1 Activities—Site Description.* During Phase 1, projects must prepare an indepth description of the project. These descriptions must include (a) the current organizational framework for the unit with which the ombudsperson will work (e.g., school, local educational agency, intermediate educational unit); (b) an overview of currently available services for students with disabilities in addition to those provided by the schools; (c) a description of current formal and informal patterns of interaction of the school with other service providers; (d) measures of consumer satisfaction with current services; and (e) other information that documents the current system improvement needs of the schools and their potential for pursuing innovative approaches to address those needs.

Each project must also identify the levels (local, regional, or State) for which the program will be fully implemented. The level selected must be appropriate for establishing an effective relationship with the organizational structure of current or potential service providers for children and youth with disabilities and their families (e.g., schools, social service providers, juvenile justice systems). Project sites must be selected where the fiscal and administrative experience would support the Phase 2 full implementation of the ombudsperson innovative program.

*Program Design and Development.* The ombudsperson service must not replace or replicate existing advocacy services or informational programs currently provided for under the Developmental Disabilities Act or provided by professional or parent organizations or associations. Under no circumstances should the activities of these projects alter access to redress under the due process requirements of the IDEA.

Each project's design must include a detailed process by which the ombudsperson roles, functions, and procedures will be defined and developed within the community and the current service system. The process must include the participation of the community and other potential service providers for children and youth with disabilities and their families in addition to the school system (e.g., mental health, social services, child welfare, court system, and juvenile correction providers).

Each project must identify and develop strategies to address the potential barriers and issues for implementing ombudsperson services. In addition, each project must design and develop strategies for how ombudsperson services will be made available and known to consumers and training ombudspersons. Projects must describe the process and procedures for gaining acceptance of the various service providers, including schools and parents, for the role, function, and procedures of the ombudsperson. Further, the design must include a procedure by which the activities of the ombudsperson may be supervised and the program held accountable.

This might entail direct reporting to State department level officials via a public annual report or some other method for monitoring the program activities.

Potential ombudspersons must be identified from the following groups: parent advocates, social workers, special education personnel, psychologists, and persons with similar qualifications designated by the Secretary. Selected individuals may not be employees of a governmental entity that directly or indirectly provides services for students with disabilities or their families. Consistent with the concept of ombudsperson services, this role must be performed by persons who function independently and who maintain an objective, problem solving mediational position. Each project must identify individuals who (a) are independent of the existing system of service delivery; (b) possess or will be trained in problem solving skills, mediational skills, and systemic change processes; and (c) are knowledgeable of issues related to the provision of an appropriate education program for students with disabilities, including issues related to the coordination and collaboration of services external to the school system.

Phase 1 activities must include obtaining information on available services, and current service eligibility requirements. This information must be made accessible and available to children and youth with disabilities and their families.

These ombudsperson services must be integrated within the prior scheme of service delivery so that they may be continued following the period of the award. Each project must provide evidence of support for obtaining resources following the Phase 1 funding period.

*Determining Feasibility of the Ombudsperson Program Design.* In Phase 1, each project must develop and implement procedures for (a) assessing the feasibility of the design and implementation requirements of the ombudsperson role, function, and procedures at the level (local, regional, or State) of the project; (b) determining the potential for the ombudsperson program to proactively resolve systemic improvement issues that are related to the delivery of special education and related services; and (c) determining the likelihood that they can successfully complete Phase 2 activities. Criteria for determining the feasibility of the program must include, but are not limited to policy, fiscal, administrative, procedural, personnel, attitudes, and participant support for ombudsperson services; and must include quantitative as well as qualitative methods such as simulation, case studies, or piloting of program features.

*Collaboration.* The Department has substantial interest in these projects being able to collectively contribute to

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advancing an understanding of the design features and implementation issues and solutions to developing ombudsperson services. All projects must collaborate with each other and with the Department to (a) synthesize their individual designs for ombudsperson roles, functions, and procedures; (b) identify issues, barriers, and solutions to fully implement the ombudsperson services; and (c) describe their feasibility findings for fully implementing ombudsperson services. Projects must budget three trips to Washington, D.C. for the purpose of developing a cross-project dissemination product.

Phase 2

This phase will provide continued support for between two to three projects from Phase 1 for an additional two years. The purpose of this phase is to fully implement and evaluate the effectiveness of ombudsperson services for proactively resolving systemic problems related to the delivery of special education and related services.

Phase 2 projects will be selected based on (a) the potential that the different project designs offer for contributing to the understanding of ombudsperson roles, functions, and procedures; (b) the increase in understanding of the implementation requirements for differing contexts; (c) evidence gathered during Phase 1 regarding the feasibility of ombudsperson designs and full implementation for proactively identifying systemic issues and responding to needs for system improvements; and (d) the ability of projects to obtain funding from local, regional, or State sources to continue activities following the Phase 2 funding period.

*Phase 2 Activities—Procedures for Assuring the Integrity of Implementation.* Each project selected for Phase 2 must have a schedule for full implementation of ombudsperson services. This schedule must reflect a sequence and progression of activities consistent with the extensive literature on achieving the full implementation and change associated with adoption of innovations. Critical commitments and participation for fully implementing ombudsperson services must be obtained. Procedures for assuring the integrity of implementation must be operative. The full implementation of the ombudsperson program must be achieved, and the documentation maintained that describes the participation of relevant parties as well as the process and stages of change.

*Evaluating Ombudsperson Services.* Projects must rigorously test the overall effectiveness of ombudsperson services. Key program designs and overall features must also be documented so that others interested in utilizing these designs and features could evaluate their applicability and potential for implementation in their school district and community.

The evaluation process must be multi-dimensional using quantitative and qualitative information to provide a detailed account of the project from a service provider's perspective, consumer's perspective, parent's perspective, and policy maker's perspective.

The evaluation plan must assess the effectiveness of proactive systems oriented ombudsperson services as a means for identifying and addressing needed systemic improvement, and for enhancing the responsiveness and appropriateness of services to meet the needs of children with disabilities.

*Collaboration.* The Department has substantial interest in projects awarded under this priority. This interest includes capturing across projects the effectiveness of solutions to the full range, nature, and context of implementation requirements for providing ombudsperson services. Projects must collaborate with each other and with the Department in designing their Phase 2 activities to permit cross-project summary of findings and lessons learned. Projects must also cooperate with the Department in working with coalitions of professional and parent organizations to develop cross-project dissemination materials for their respective membership.

*Project Dissemination.* Dissemination of project information is a significant aspect of Phase 2 activities. Each project must plan to disseminate information through existing professional and parent organizations, technical assistance providers, and other relevant information providers that disseminate to local, State, and national levels. These dissemination activities must also be incorporated with the project design to facilitate public awareness on the local and regional level.

Project Directors must plan to attend the two-day Project Directors' meeting to be held in Washington, D.C. each year of the project. In addition, two meetings will be scheduled with all Phase 2 projects prior to the end of their award period for the purpose of developing a cross-project dissemination product. These meetings will last for two days and be held in Washington, DC

**Selection Criteria**

The following selection criteria will be used to evaluate applications for projects submitted under this priority. The maximum score for all of the criteria is 100 points.

(a) *Innovativeness.* (10 points)

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides innovative design features in developing ombudsperson services for proactively resolving systemic problems involving students with disabilities and their families.

(b) *Importance and impact.* (10 points)

The Secretary reviews each application to determine—

(1) The extent to which the focus of ombudsperson services addressed by the proposed project is of significance to others in the Nation;

(2) The importance of the project in addressing the problem or issue; and

(3) The probable impact of ombudsperson services for proactively resolving systemic problems involving students with disabilities and their families (e.g., evidence of responsiveness and appropriateness of services, reduced legal costs, or reduced tension or conflict between schools and families).

(c) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) An effective plan of management that insures proper and efficient administration of the project;

(ii) A clear description of how the objectives of the project relate to the purpose of the program;

(iii) The way the applicant plans to use its resources and personnel to achieve each objective;

(iv) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition; and

(v) An effective performance measurement system for assessing project progress and implementation.

(d) *Technical soundness.* (20 points)

(1) The Secretary reviews each application to determine the procedural and methodological soundness of the plan for the development, and feasibility of full implementation of the project with respect to such matters as—



(i) The design and development process;

(ii) Procedures for establishing the integrity of project activity implementation in Phases 1 and 2;

(iii) Coordination with other service providers;

(iv) The design and measurement of Phase 1 system feasibility for resolving service delivery and systemic problems;

(v) The proposed site sample; and

(vi) The data analysis procedures for determining Phase 1 feasibility.

(e) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2)(i) and (ii) will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(f) *Organizational capability.* (10 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate;

(ii) The equipment and supplies that the applicant plans to use are adequate;

(iii) The applicant's experience in special education or early intervention services;

(iv) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively; and

(v) The strength of commitment to fully implement ombudsperson services.

(g) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(h) *Evaluation of ombudsperson services.* (15 points)

(1) The Secretary reviews each application to determine the quality of the Phase 2 evaluation plan.

(2) The Secretary looks for—

(i) Rigor of evaluation design and measurement for addressing implementation requirements and barriers;

(ii) Rigor of evaluation design and measurement for studying effectiveness of key features of ombudsperson services;

(iii) Analysis procedures for determining overall ombudsperson service effectiveness; and

(iv) Rigor of evaluation design and measurement for determining impact of ombudsperson services as a proactive systems oriented approach.

Applicable Program Regulations: 34 CFR part 324.

**Program Authority:** 20 U.S.C. 1441–1443.

(Catalog of Federal Domestic Assistance Number 84.023, Research in Education of Individuals with Disabilities Program)

Dated: June 9, 1992.

**Lamar Alexander,**

*Secretary of Education.*

[FR Doc. 92–16856 Filed 7–15–92; 8:45 am]

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## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.023M]**

### Research in Education of Individuals with Disabilities Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

*Purpose of Program:* To assist research and related activities, and to conduct research, surveys, or demonstrations, relating to the education of and early intervention services for infants, toddlers, children, and youth with disabilities.

*Eligible Applicants:* Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

*Deadline for Transmittal of Applications:* August 21, 1992.

*Applications Available:* July 16, 1992.

*Available Funds:* $700,000.

*Estimated Average Size of Awards:* $100,000 for 18 months.

*Estimated Number of Awards:* 7.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* up to 48 months (includes both Phase 1 and Phase 2).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 324, as amended on October 22, 1991, at 56 FR 54686–54706.

*Priority:* The notice of final priority for the Ombudsperson Services for Children and Youth with Disabilities, published elsewhere in this issue of the **Federal Register**.

This priority supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by improving our understanding of how to enable children and youth with disabilities to reach the high levels of academic achievement called for by the National Education Goals.

*For Applications or Information Contact:* Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 732–1099. Deaf and hard of hearing individuals may call (202) 732–6153.

**Program Authority:** 20 U.S.C. 1441–1443.

Dated: July 10, 1992.

**Robert R. Davila,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 92–16855 Filed 7–15–92; 8:45 am]

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Part VII

## The President

Proclamation 6457—Giant Sequoia in National Forests

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# Presidential Documents

Title 3—

The President

Proclamation 6457 of July 14, 1992

## Giant Sequoia in National Forests

By the President of the United States of America

A Proclamation

For centuries, groves of the Giant Sequoia have stimulated the interest and wonder of those who behold them. The Giant Sequoia is a tree that inspires emotion like no other and has mystically entered the hearts of humanity everywhere. Ancestors of Giant Sequoia trees have existed on Earth for more than 20 million years. Naturally occurring old-growth Giant Sequoia groves located in the Sequoia, Sierra, and Tahoe National Forests in California are unique national treasures that are being managed for biodiversity, perpetuation of the species, public inspiration, and spiritual, aesthetic, recreational, ecological, and scientific value.

This Nation's Giant Sequoia groves are legacies that deserve special attention and protection for future generations. It is my hope that these natural gifts will continue to provide aesthetic value and inspiration for our children, grandchildren, and generations yet to come.

So as to promote greater appreciation and awareness of our Giant Sequoia groves, such groves in the Sequoia, Sierra, and Tahoe National Forests should continue to be managed by the Secretary of Agriculture as unique objects of beauty and antiquity for the benefit and inspiration of all people.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim that naturally occurring old-growth Giant Sequoia groves within the Sequoia, Sierra, and Tahoe National Forests in the State of California shall be managed, protected, and restored by the Secretary of Agriculture, acting through the Forest Service, to assure the perpetuation of the groves for the benefit and enjoyment of present and future generations. The Secretary of Agriculture is directed to delineate the location of such Giant Sequoia groves, as set forth in the Sequoia National Forest Mediated Settlement Agreement, and subsequently to provide the Secretary of the Interior with a list of the designated groves and with a description of the boundaries of each of the groves. The Secretary of the Interior is hereby directed, to the maximum extent permitted by law, to segregate immediately and subsequently to withdraw the designated groves from all forms of location and entry under the general mining laws, and from any disposition under the mineral and geothermal leasing laws and laws pertaining to the disposal of mineral material, subject to valid existing rights.

The designated Giant Sequoia groves shall not be managed for timber production and shall not be included in the land base used to establish the allowable sale quantities for the affected national forests. The designated Giant Sequoia groves shall be protected as natural areas with minimal development. Consistent with the best scientific information available, the Secretary of Agriculture shall assure that any proposed development shall provide for aesthetic, recreational, ecological, and scientific value. Notwithstanding the foregoing, the Converse Basin Grove shall be managed as set forth in the Sequoia National Forest Mediated Settlement Agreement.

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This proclamation is not intended to create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this 14 day of July, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-17012
Filed 7-15-92; 11:44 am]
Billing code 3195-01-M

**Editorial note:** For the President's remarks on signing this proclamation, see issue 29 of the *Weekly Compilation of Presidential Documents.*



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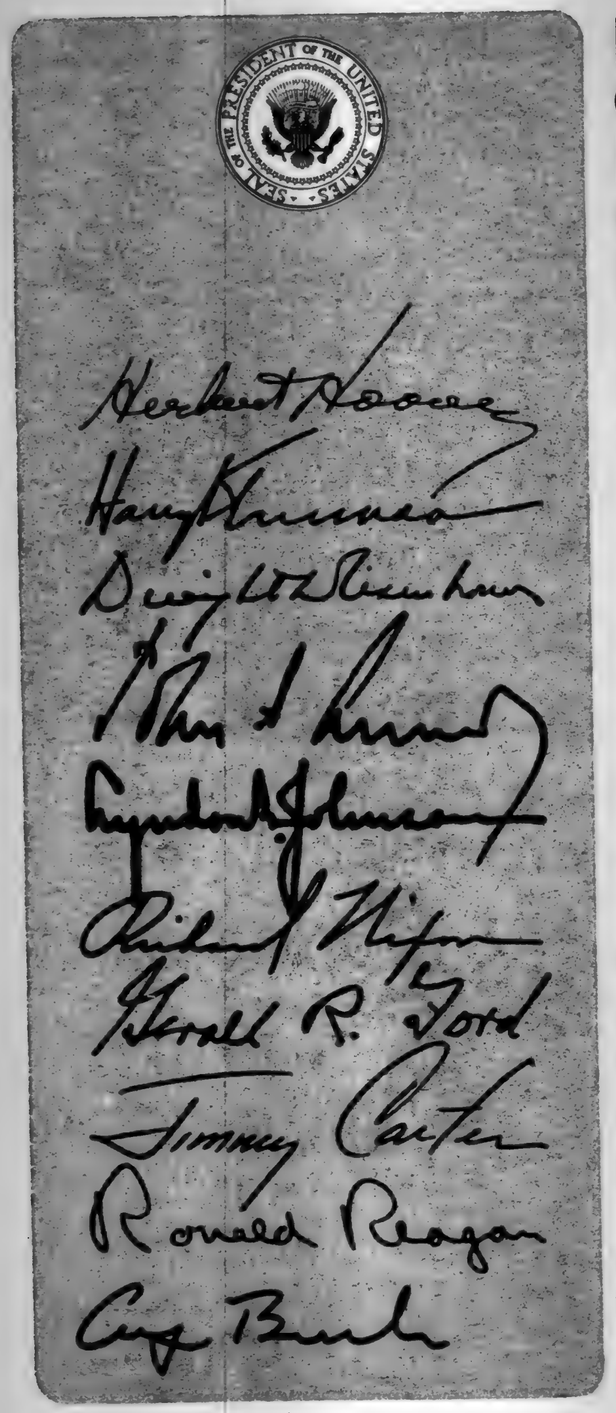


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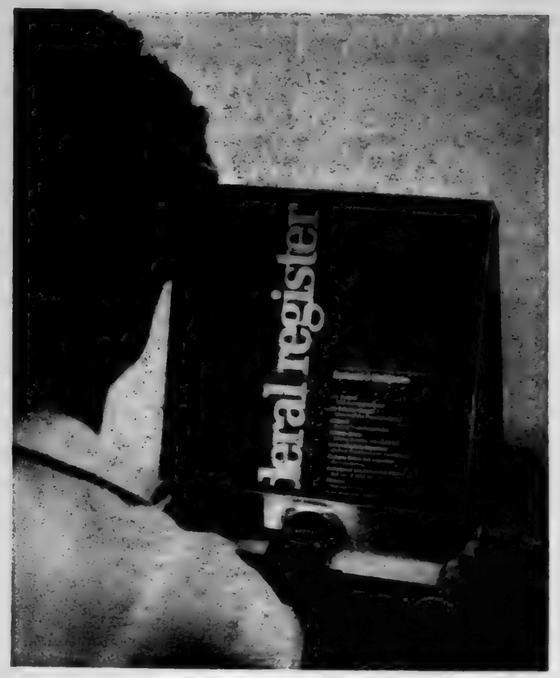


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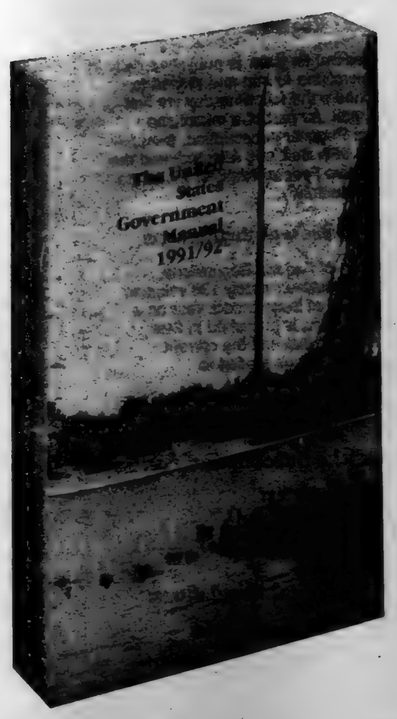


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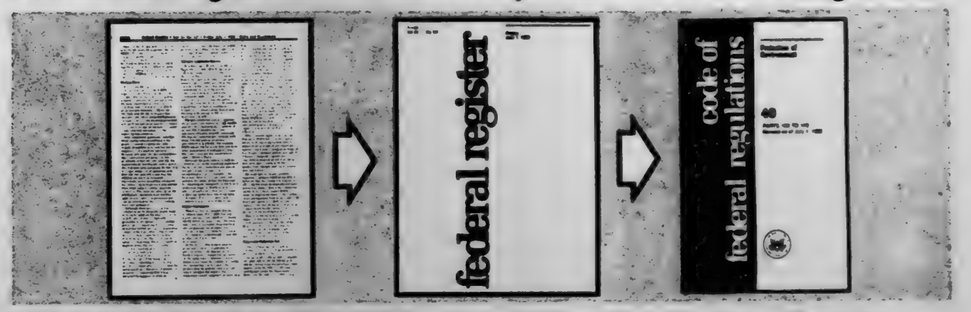


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# federal register

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Friday
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For information on briefings in San Francisco, CA and Seattle, WA, see announcement on the inside cover of this issue.

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**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:
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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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**WHERE:** Federal Building and U.S. Courthouse, Conference Room 7209–A, 450 Golden Gate Avenue, San Francisco, CA
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**WHERE:** Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA
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**5 CFR Part 5**

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**ACTION:** Final

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# Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 550**

**RIN 3206–AE29**

## Pay Administration (General); Premium Pay for Emergency Work

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations on the exception from the biweekly limitation on premium pay authorized by section 204 of the Federal Employees Pay Comparability Act of 1990 (FEPCA). The final rule: (1) Authorizes the head of an agency to pay premium pay up to an annual limitation of GS–15, step 10, to employees performing work in connection with an emergency involving a direct threat to life or property, including a forest wildfire emergency; (2) establishes an effective date for such entitlement; and (3) requires agencies to document each determination to pay premium pay under the annual limitation for work performed in connection with an emergency.

**EFFECTIVE DATE:** The final rule is effective on August 17, 1992.

**FOR FURTHER INFORMATION CONTACT:** JoAnn Perrini, (202) 606–2858.

**SUPPLEMENTARY INFORMATION:** On March 15, 1991, OPM published interim regulations on the exception from the biweekly limitation on premium pay authorized by section 204 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101–509, November 5, 1990). (See 56 FR 11059.) The 60-day comment period ended on May 14, 1991. Comments were received from nine agencies. Comments, as well as certain modifications and clarifications of the interim regulations, are summarized below.

Section 204 of FEPCA provides that employees who perform work in connection with an emergency involving a direct threat to life or property, including a forest wildfire emergency, will no longer be subject to the GS–15, step 10, biweekly maximum earnings limitation under 5 U.S.C. 5547(a), but will instead be subject to a GS–15, step 10, annual limitation under 5 U.S.C. 5547(b) during the period of time they perform work in connection with the emergency. Section 204 of FEPCA does not apply to certain law enforcement officers who are covered by a special biweekly limitation on premium pay under section 410 of FEPCA and 5 CFR 550.107.

### Delegation of Authority to Agencies

The interim regulations permitted heads of agencies or their designees to authorize payment of premium pay under the annual limitation for employees performing work in connection with a natural disaster posing a direct threat to human life or property, including a forest wildfire emergency. For emergencies other than a natural disaster, the interim regulations required the head of an agency, or his or her designee, to obtain OPM approval to authorize payment of premium pay under the annual limitation.

Seven agencies providing comments objected to the distinction between natural disasters and other emergencies and recommended that the authority be delegated to agency heads for all emergencies. The agencies observed that the statute made no distinction between natural disasters and other emergencies. One agency commented that the term "natural disaster" is open to interpretation. Another agency noted that the distinction between an emergency involving a natural disaster and an emergency other than a natural disaster is often difficult, if not impossible, to make. The agencies pointed out that they must respond quickly to disasters other than those resulting from "natural causes," such as industrial accidents, oil spills, power failures, train derailments, truck accidents, airplane crashes, mine and building collapses, and national security emergencies.

One agency noted that the determination as to whether outside approval must be sought could be delayed pending the results of an investigation to determine the cause of a disaster—i.e., whether the disaster is attributed to natural causes or human error or intervention. Two agencies noted that emergencies may involve sensitive or classified information and that, for reasons of national security, it would be impracticable to provide the requested information to OPM. Three agencies commented that the authority should be delegated to agency heads, since they must make decisions on the use of resources as soon as possible after disasters occur. The agencies felt that the time lag involved in preparing a request and obtaining approval from OPM is difficult to justify and that the requirement places an unnecessary burden on OPM and the agencies.

OPM has amended the final regulations in response to these concerns by revising the definition of "emergency" and removing the requirement that agency heads request approval from OPM to authorize payment of premium pay under the annual limitations. The final regulations provide that when the head of an agency, his or her designee, or OPM determines that an emegency exists, an employee who is performing work in connection with an emergency will be paid premium pay under the annual limitation.

### Effective Date of Entitlement

To ensure that heads of agencies make timely determinations on when an emergency exists, OPM has amended the regulations to require the head of an agency, or his or her designee, to make the determination as soon as practicable and to make entitlement to premium pay under the annual limitation effective as of the first day of the pay period in which the emergency began. These requirements ensure that the delegation will be exercised responsibly and that employees will be paid appropriately and in a timely manner for work performed in connection with an emergency.

### Agency Recordkeeping

In order for OPM to evaluate agencies' use of this delegated authority and to provide interested parties information regarding its use, the final rule requires

agencies to document each determination to pay premium pay under the annual limitation for work performed in connection with an emergency. In addition, agencies must make these records available to OPM upon request. In response to concerns expressed about providing information on national security emergencies, OPM will not require agencies to report information that is classified or protected from disclosure by statute.

**Effective Date of Regulations**

Two agencies requested that OPM reconsider the effective date of the interim regulations and allow the effective date to be the earliest date permitted by FEPCA—February 3, 1991. The agencies requested an earlier effective date to allow an additional period of coverage for employees involved in Operation Desert Storm. Section 204 of FEPCA amended 5 U.S.C. 5547(b) to allow the biweekly limitation on premium pay to be waived in emergency situations involving a direct threat to life or property, subject to regulations prescribed by OPM. OPM's interim regulations made this section of law effective on the first day of the first pay period beginning on or after March 15, 1991. The law does not allow this amendment to be applied retroactively.

**Miscellaneous**

The interim regulations limit eligibility for the annual premium pay limitation to those employees performing work that is directly related to resolving or coping with an emergency or its immediate aftermath. One agency suggested that the limitation be modified to provide agencies more discretion and flexibility. OPM believes this limitation provides a reasonable degree of discretion and latitude for judgment. Therefore, we have not adopted this suggestion.

An agency asked whether an employee subject to the annual limitation would be entitled to basic pay for the remainder of the calendar year if the employee's total pay had reached the maximum rate for GS–15 by December 1. Under 5 U.S.C. 5547(b)(2), no employee may be paid premium pay if the aggregate of the employee's basic pay and premium pay would exceed the maximum rate for GS–15 in effect at the end of the calendar year. Since an employee is entitled to receive basic pay for the entirety of the calendar year, agencies should project, early in the calendar year, the maximum dollar amount of premium pay that an employee may earn, and update that projection as employees receive increases (or reductions) in their rates of basic pay. Similarly, another agency requested additional guidance on projecting an employee's pay for the calendar year. OPM plans to issue additional guidance through the Federal Personnel Manual system.

An agency correctly noted that if a calendar year had 27 pay dates, the extra pay date could cause the employee to exceed the GS–15 annual maximum earnings limitation at an earlier point than in a year containing 26 pay dates. The agency also pointed out that if the maximum rate for GS–15 in effect on the last day of the calendar year was higher than the annual limit in effect in the pay period in which the emergency work was performed, employees could be entitled to retroactive adjustments. If there is an adjustment that results in an increase in the GS–15 maximum rate late in a calendar year, retroactive payments would be required. OPM plans to issue additional guidance on these matters through the Federal Personnel Manual system.

Finally, it should be noted that § 550.107 was adopted as final with changes at 57 FR 2431 on January 22, 1992. In addition, § 551.501(c) was redesignated as § 551.501(d) in the interim regulations at 56 FR 20339 on May 3, 1991, and will be adopted as final in a separate **Federal Register** notice.

**Executive Order 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

**List of Subjects in 5 CFR Part 550**

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

**Constance Berry Newman,**

*Director.*

Accordingly, the interim rule amending 5 CFR part 550 published on March 15, 1991, at 56 FR 11059 is adopted as final with the following changes:

## PART 550—PAY ADMINISTRATION (GENERAL)

1. The authority citation for subpart A is revised to read as follows:

**Authority:** 5 U.S.C. 5547, 5548, and 6101(c).

2. In § 550.103, paragraph (r) is revised and paragraph (s) is added to read as follows:

**§ 550.103 Definitions.**

* * * * *

(r) *Emergency* means a temporary condition posing a direct threat to human life or property, including a forest wildfire emergency.

(s) *Performing work in connection with an emergency* means performing work that is directly related to resolving or coping with an emergency or its immediate aftermath.

3. In § 550.105, paragraph (b)(1) is revised to read as follows:

**§ 550.105 Biweekly maximum earnings limitation.**

* * * * *

(b) * * *

(1) Any pay period during which an employee has been determined to be performing work in connection with an emergency under § 550.106(a);

* * * * *

4. Section 550.106 is revised to read as follows:

**§ 550.106 Annual maximum earnings limitation for work in connection with an emergency.**

(a) For any pay period in which the head of an agency, his or her designee, or the Office of Personnel Management on its own motion determines that an emergency exists, an employee shall be paid premium pay under the annual limitation described in paragraph (c) of this section, instead of under the biweekly limitation described in § 550.105(a) if the employee has been determined by the head of the employing agency, or his or her designee, to be performing work in connection with the emergency.

(b) The head of an agency, or his or her designee, shall make the determination under paragraph (a) of this section as soon as practicable after the emergency begins. Entitlement to premium pay under the annual limitation shall be effective on the first day of the pay period in which the emergency began.

(c) In any calendar year during which an employee has been determined to be performing work in connection with an emergency, he or she shall be paid premium pay under this subpart to the extent that the payment does not cause the total of his or her basic pay and premium pay for the calendar year to exceed the maximum rate for GS–15 in effect on the last day of the calendar year, including—

(1) A locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101–509); and

(2) A special salary rate established under 5 U.S.C. 5305.

(d) An agency shall keep a record of each determination made under paragraph (a) of this section, including a description of the emergency, the date the emergency began, an estimate of the number of employees affected, and the types of premium pay involved. Agencies shall make such records available for review upon request by the Office of Personnel Management.

(e) This section does not apply to—

(1) An employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under 5 U.S.C. 5546a; or

(2) A law enforcement officer within the meaning of 5 U.S.C. 8331(20) or 8401(17).

[FR Doc. 92–16850 Filed 7–16–92; 8:45 am]
BILLING CODE 6325–01–M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 971

[Docket No. FV–92–034]

### Suspension of Provisions of Marketing Order No. 971; Lettuce Grown in Lower Rio Grande Valley in South Texas

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension order.

**SUMMARY:** This action suspends, for three years, effective July 17, 1992, all provisions of and established pursuant to, Federal Marketing Order No. 971 for Lettuce grown in the Rio Grande Valley of South Texas. This suspension action is taken because the South Texas lettuce industry, at this time, consists of only one handler and three producers and is unable to meet certain administrative requirements required under the order. Also, with only one handler, there is no need for establishing marketing requirements. Thus, the order and its marketing regulations no longer tend to effectuate the declared policy of the authorizing legislation, the Agricultural Marketing Agreement Act of 1937, as amended (Act).

**EFFECTIVE DATES:** July 17, 1992 through July 17, 1995.

**FOR FURTHER INFORMATION CONTACT:** Belinda Garza, Southwest Marketing Field Office, 1133 East Hackberry, McAllen, Texas, 78501, telephone (512) 682–2834; or Sonia Jimenez, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC, 20090–6456, telephone (202) 205–2830.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 144 and Order No. 971 (7 CFR part 971) regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. This action is being taken under the provisions of section 8c(16)(A) of the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. During the 1991–92 season, there were as few as three producers and only one handler marketing lettuce in South Texas, all of which are small entities.

Marketing Order 971 has been in effect since November, 1960. The order provides for the establishment of grade, size, quality and quantity of lettuce shipped from the production area during any period. The order provides for packing holidays, as well as for pack, container, and inspection requirements. In addition, the order authorizes production and marketing research, and market development. Also, it provides for reporting and recordkeeping requirements on affected handlers. The production and marketing season runs from mid-November through March.

While lettuce shipment levels and size of the industry have fluctuated since promulgation of the order in 1960, there has been a downward trend in the number of lettuce producers and handlers, and in the acreage of lettuce planted and volume produced. Records indicate that in 1961, the first year the South Texas lettuce marketing order was in effect, there were 31 handlers and 68 producers who produced 1,793,500 cartons of lettuce on 6,842 acres. However, market share for South Texas lettuce has declined compared to other lettuce producing areas, mainly California and Arizona. During the 1990–91 marketing season, there were 11 handlers and 20 producers who produced 90,427 cartons of lettuce on 2,625 acres. There were reported to be only one handler and three producers of lettuce in South Texas active during the 1991–92 marketing season.

The South Texas Lettuce Committee (committee), the agency responsible for local administration of the order, met on May 29, 1991, and unanimously recommended that the handling regulations currently in effect under the marketing order be suspended for the 1991–92 lettuce season. The recommendation was based largely on the expectation that there would be only one entity producing and handling lettuce during the 1991–92 season. Moreover, the Texas lettuce industry is

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unable to nominate the required number of committee members specified under the order.

An interim final rule was published in the **Federal Register** on October 31, 1991 (56 FR 55986), suspending, for the 1991–92 season, container, pack, packing holiday, inspection, and certain reporting requirements currently in effect under the order. The interim final rule provided opportunity for interested persons to comment on the suspension action. No comments were received. The interim rule was finalized on December 23, 1991, and published in the **Federal Register** on December 30, 1991 (56 FR 67148).

Thus, it is determined that, at this time, Marketing Order 971 does not tend to effectuate the declared policy of the Act.

Because it has been determined that the order currently does not tend to effectuate the declared policy of the Act, this action suspends, for a three year period effective July 17, 1992 all provisions of Marketing Order 971 including:

(1) Provisions of the order dealing with the establishment and responsibilities of the committee and the administration of the order;

(2) The currently suspended container, pack, packing holiday, inspection and certain reporting requirements;

(3) The authority to establish volume, grade, size and quality requirements;

(4) The committee rules and regulations related to special purpose shipments; and

(5) Information reporting and collection requirements (In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), such requirements have been approved previously by the Office of Management and Budget and assigned OMB Control No. 0581–0065).

Pursuant to § 971.43(d) of the order, the committee may recommend to the Secretary that, during the suspension period, one or more trustees be appointed to oversee the administrative affairs of the order. The trustees will be responsible for completing the order's unfinished business, including ensuring termination of all outstanding agreements, contracts and the payment of all obligations. The trustees will be responsible for disposing of committee property, safeguarding the program assets, holding committee records, and arranging for a financial audit to be conducted. All such actions by the trustees during the period of suspension are subject to the approval of the Secretary. Those designated as trustees are Mr. Humberto Garcia, chairman of the committee, and Mr. Larry McLaughlin, committee member. In addition, Belinda Garza, Officer-In-Charge of the AMS, FV, McAllen Marketing Field Office in McAllen, Texas, and George Kelhart, Marketing Specialist of the AMS, FV, Marketing Order Administration Branch in Washington, DC, are hereby designated as trustees representing the Department of Agriculture. The trustees shall continue in their capacity until the order is reactivated, terminated or discharged by the Secretary.

Not more than $3,000 (three thousand dollars) currently in reserve funds will be held by the trustees to be used to cover unforeseen, outstanding expenses obligated by the committee. Such funds could also be used by the trustees to pay for necessary start-up costs should the order, at the determination of the Secretary, be reactivated. Remaining funds held in the reserve account will be returned, on a pro rata basis, to those handlers who paid assessments to M.O. 971 during one or more of the 1988–89, 1989–90 or 1990–91 marketing seasons. No assessment funds were collected during the 1991–92 marketing season.

During the first two years of the period of suspension, the Department will monitor lettuce production and the number of active producers and handlers in the production area. Evaluation of the situation over a two-year period is appropriate because that period is long enough to determine whether a reversal in the industry's downward trend in production and shipments, and the number of producers and handlers, is likely. If, at any time during the two year period, obstacles facing the industry are alleviated and if a significant number of producers and handlers resume commercial lettuce production and handling in the production area, the industry may petition the Secretary to reactivate the program. After conclusion of the two-year period, if no such production increase occurs, or if there appears to be no imminent alleviation of production and marketing conditions acting against the industry, the Secretary may initiate procedures to terminate the order.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give additional preliminary notice, or to engage in further public procedure with respect to this action, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relieves restrictions on handlers by suspending the requirements regulating the handling of Texas lettuce pursuant to M.O. 971; (2) an interim final rule suspending the regulations for the current marketing season was issued October 25, 1991, and was finalized in the **Federal Register** on December 30, 1991 (56 FR 67148); and (3) no useful purpose would be served by delaying the effective date until 30 days after publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 971**

Lettuce, Marketing Agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR 971 is amended as follows:

## PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

1. The authority citation for 7 CFR 971 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

**Note:** This will not appear in the Code of Federal Regulations.

## PART 971—[AMENDED]

2. Part 971—Lettuce Grown in the Lower Rio Grande Valley in South Texas (7 CFR part 971), and all provisions therein, is suspended for three years effective July 17, 1992 through July 17, 1995.

Dated: July 13, 1992.

**John E. Frydenlund,**

*Deputy Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 92–16881 Filed 7–16–92; 8:45 am]

BILLING CODE 3410–02–M

**7 CFR Part 989**

**[FV–92–033IFR]**

## Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1991–92 Crop Year for Natural (sun-dried) Seedless Raisins

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule invites comments on the establishment of final free and reserve percentages for Natural (sun-dried) Seedless (NS) raisins from California's 1991–92 raisin crop year production. The percentages are 79 percent free and 21 percent reserve. The 1991–92 crop year began August 1, 1991. These percentages are intended to stabilize supplies and prices and to help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. This action was



unanimously recommended by the Raisin Administrative Committee (Committee), which is responsible for local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California.

**DATES:** Interim final rule effective July 17, 1992. Comments which are received by August 17, 1992 will be considered prior to any finalization of this interim final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2020.

**SUPPLEMENATARY INFORMATION:**

This interim final rule is issued under marketing agreement and Order No. 989 [7 CFR part 989], both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This action establishes final free and reserve percentages for NS raisins for the 1991–92 crop year, beginning August 1, 1991, through July 31, 1992. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts for the last three years of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

The order prescribes procedures for computing trade demands and preliminary, interim, and final percentages for the various varietal types of California raisins that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

While this action may restrict the amount of raisins that enter domestic markets, the final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry (caused by substantial shifts of raisin grapes from winery use to NS raisin production), and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary, interim, and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, and authorizing sales of reserve raisins under certain conditions.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of these final percentages which release 100 percent of the NS raisin computed trade demand and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

Pursuant to § 989.54(a) of the order, the Committee met on August 12, 1991, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed, using a formula prescribed in that paragraph, a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. The order prescribes that the desirable carryout for each varietal type shall be the shipments of free tonnage raisins

from the prior year during the months of August, September, and one half of October.

In accordance with these provisions, the Committee computed and announced a trade demand of 279,185 tons for NS, 10,312 tons for Dipped Seedless, 500 tons for Oleate and Related Seedless, 3,334 tons for Zante Currant, 522 tons for Monukka, and 500 tons for Other Seedless, 17,328 tons for Golden Seedless, 500 tons for Muscat, and 500 tons for Sultana raisins. As required under § 989.54(b) of the order, the Committee met on October 10, 1991, computed and announced preliminary percentages for NS, Dipped Seedless, Oleate and Related Seedless, Zante Currant, Monukka, and Other Seedless raisins which released 65 percent of the computed trade demand. Field prices had not been firmly established at that time. The preliminary crop estimates and preliminary free and reserve percentages were as follows: 331,756 tons, and 55 percent free and 45 percent reserve for NS raisins; 11,869 tons, and 56 percent free and 44 percent reserve for Dipped Seedless raisins; 916 tons, and 35 percent free and 65 percent reserve for Oleate and Related Seedless raisins; 4,131 tons, and 69 percent free and 31 percent reserve for Zante Currant raisins; 1,083 tons, and 31 percent free and 69 percent reserve for Monukka raisins; and 1,628 tons, and 20 percent free and 80 percent reserve for Other Seedless raisins. The Committee also determined that free and reserve percentages were not needed for Golden Seedless, Muscat and Sultana raisins because supplies were expected to be in line with the computed trade demands.

The Committee met again, on November 15, 1991, and because field prices had been firmly established, revised its marketing policy to release 65 percent of the computed trade demand for NS raisins. The revised preliminary percentages were 72 percent free and 28 percent reserve. Also at that meeting, the Committee determined that its preliminary crop estimates for Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins were higher than actual deliveries, and that the available supplies of these varietal types would be in line with the computed trade demands. As a result, the Committee unanimously decided to eliminate volume percentage restrictions for these four varieties.

The Committee also recommended not to establish a reserve pool for the Other Seedless variety even though the production was expected to be somewhat higher than the computed trade demand. Because the estimated deliveries of this variety would comprise less than one percent of the total raisin market, it was felt that the lack of volume regulation for this varietal type would not adversely affect the Committee's objectives of stabilizing prices and supplies for the seedless varietal types covered under the marketing order.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. By that time, the Committee has more information available, including its final crop estimate and other information, on which to base the determination of final free and reserve percentages.

Pursuant to § 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type for which preliminary percentages have been computed and announced. Interim percentages for NS raisins of 78.75 percent free and 21.25 percent reserve were computed and announced on February 5, 1992. The interim percentages for NS raisins released 99.44 percent of the computed trade demand.

The Committee's final estimate of 1991–92 production of NS raisins totaled 352,545 tons (which is 20,789 tons more than the preliminary estimate). Dividing the computed trade demand of 279,185 tons by its final estimate of production results in a final free percentage of 79.19 percent. The Committee rounded that free percentage to 79 percent which results in a final reserve percentage of 21 percent.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations, and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 1991–92 crop year apply to all NS raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1991–92 crop raisins of the NS varietal type based on the interim free and reserve percentages in anticipation that the final free and reserve percentages will be approved; (3) this action must be taken promptly to achieve its purpose of fostering continued buyer confidence and stable marketing conditions by making the full trade demand quantity computed by the Committee available to handlers; and (4) handlers are aware of this action, which was recommended by the Committee at an open meeting, and need no additional time to comply with these percentages.

**List of Subjects in 7 CFR Part 989**

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

## PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.244 is added to Subpart—Supplementary Regulations to read as follows:

**Note:** This section will not appear in the annual Code of Federal Regulations.

**§ 989.244 Final free and reserve percentages for the 1991–92 crop year.**

The final percentages of standard NS raisins acquired by handlers during the crop year beginning on August 1, 1991, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

| | Percentage | |
|---|---|---|
| | Free | Reserve |
| Natural (sun-dried) Seedless | 79 | 21 |

Dated: July 13, 1992.

Robert O. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 92-16853 Filed 7-16-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1096

[DA-92-16]

## Milk in the Greater Louisiana Area; Order Suspending Certain Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rule.

**SUMMARY:** This action relaxes the limits on diversion of milk under the Greater Louisiana milk order. The suspension increases the amount of milk that may be shipped directly from farms to nonpool plants and still be priced under the order. The suspension was requested by Dairymen, Inc. (DI), a cooperative association that represents procedures who supply the market. The suspension is necessary to reflect current marketing conditions and to permit the efficient marketing of milk of dairy farmers who have historically supplied the market.

**EFFECTIVE DATE:** June 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Clayton, H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6274.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued May 6, 1992; published May 12, 1992 (57 FR 20209).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessons the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Greater Louisiana marketing area.

Notice of proposed rulemaking was published in the Federal Register on May 12, 1992 (57 FR 20209), concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Comments in support and in opposition were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1096.13 (d)(3) and (d)(4), the words "15 percent of".

### Statement of Consideration

This action suspends portions of the producer milk definition of the Greater Louisiana milk order. The suspension allows more milk to be shipped directly from farms to nonpool plants and still be priced and pooled under the order.

The order provides that a handler may divert a quantity of milk up to 15 percent of the quantity of producer milk that is received at pool plants. The suspension would increase the diversion allowance to a volume equal to one half of the volume of producer milk handled.

The suspension was requested by Dairymen, Inc. (DI), a cooperative association having a substantial amount of milk pooled on the Greater Louisiana market. DI contends that the 15 percent diversion provisions are inadequate at the present time and needs to be amended through the formal rulemaking procedure, which has been requested. The cooperative indicates that the normal seasonal variation in production of milk by producers associated with the market is far greater than the portion of producer milk that can be diverted to nonpool plants (a variation of approximately 32 percent of 1988 through 1991 when comparing the months of March, April and May to the months of July, August and September).

DI contends that in order to pool all of the producer milk during the spring months, it is necessary under these conditions, to inefficiently ship the milk to a pool plant, pump the milk into and out of the pool plant and then transfer the milk to a nonpool plant. DI stated that their cooperative association has submitted proposals that if heard should correct this problem.

A comment in support of the suspension was filed by another cooperative association. It stated that seasonal variation in milk production justifies the suspension.

A comment in opposition to the suspension was filed by a proprietary handler. The opponent stated that the suspension would lessen the ability of distributing plants to attract milk since it could result in a lower Greater Louisiana blend price.

An analysis of average daily deliveries by producers for the months of March, April and May of 1991, indicates average daily deliveries of 3,115 pounds. Average daily deliveries for the months of August, September and October 1991 indicates an average of 2,110 pounds or a variation of approximately 48 percent when comparing the two periods. Thus, the 15 percent diversion limit is far less than is needed to pool the market's seasonal reserve supply by diversion to nonpool plants. In fact, cooperatives have followed a practice of pooling much of this reserve supply on the New Orleans-Mississippi market by shipping it directly from farms to pool manufacturing plants under that order. This practice results in an unequitable seasonal disparity in blend prices between these adjacent markets. Relaxation of the diversion limits under the Greater Louisiana order would facilitate the pooling of the markets seasonal reserve milk supplies and thereby tend to alleviate the inequitable pooling of such milk on the New Orleans-Mississippi market.

Accordingly, it is appropriate to suspend the aforesaid provisions.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that this action should obviate the need to inefficiently unload and reload milk at pool plants in order to keep it priced under the order.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exits for making this order effective less than 30 days from the date of publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 1096**

Milk marketing orders.

It is therefore ordered, That the following provisions of the order (7 CFR part 1096) are hereby suspended.

**PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA**

1. The authority citation for 7 CFR part 1096 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1096.13 [Suspended in Part]**

2. In § 1096.13 (d)(3) and (d)(4), the words "15 percent of" are suspended.

Dated: July 13, 1992.

**John E. Frydenlund,**

*Deputy Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 92–16849 Filed 7–16–92; 8:45 am]

BILLING CODE 3410–02–M

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**Farmers Home Administration**

**7 CFR Part 1955**

**RIN 0575–AA81**

## Establishment of Wetland Conservation Easements on FmHA Inventory Property

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its insured loan regulations to implement a new provision of the Consolidated Farm and Rural Development Act (CONACT) added by the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), (FACT ACT) and, therefore, revises the procedure by which FmHA establishes wetland conservation easements on its suitable and surplus inventory property. On November 5, 1991, FmHA published a proposed rule in the **Federal Register** (56 FR 56474–56480) which explained the Agency's proposed regulations for implementing section 335(g) of the CONACT, which was added by section 1813(h) of the FACT ACT. This action is being taken to facilitate the placement of wetland conservation easements on wetlands located on FmHA inventory property. Inventory properties containing wetlands which have not been cropped to an agricultural commodity, have been cropped less than frequently, have been converted subsequent to December 23, 1985, or which do not have a history of haying or grazing, will be encumbered with full perpetual conservation easement coverage. Perpetual wetland conservation easements will also be placed on wetlands which have been converted prior to December 23, 1985, frequently cropped, or have a history of haying or grazing. However, not more than 10 percent of the cropland on the inventoried property that is prior converted and not more than 20 percent of the cropland on the inventoried property that is frequently cropped wetlands and prior converted wetlands will be so encumbered unless the purchaser waives these limitations. Not more than 50 percent of the existing forage lands on the inventoried property will be so encumbered unless the purchaser waives this limitation. The intended effect is to protect a substantial number of wetlands on FmHA inventoried properties while at the same time avoiding to the extent practicable an adverse impact on the productivity of croplands; and to maintain properties' marketability as agricultural production units for applicants with preservation servicing rights or beginning farmer applicants.

**EFFECTIVE DATE:** Final rule is effective July 17, 1992.

**FOR FURTHER INFORMATION CONTACT:** Arthur V. Hall, Director, Farmer Programs, Loan Servicing and Property Management Division, Farmers Home Administration, USDA, room 5449, Washington, DC 20250, Telephone (202) 720–4572.

**SUPPLEMENTARY INFORMATION:**

**Classification**

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of 100 million dollars or more.

**Programs Affected**

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.407—Farm Ownership Loans.

**Intergovernmental Consultation**

1. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of FmHA Programs and Activities" (December 23, 1983), Farm Ownership Loans are excluded with the exception of the nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, (Public Law 91–190), an Environmental Impact Statement is not required.

**I. Summary of Final Rule and Response to Comments**

*A. Background*

The purpose of this final rule is to implement the provisions of section 1813(h) of the FACT Act which added a new subsection (g) to section 335 of the CONACT. In the past, FmHA protected wetlands in accordance with Executive Order 11990. Section 335(g) of the CONACT largely supersedes the Executive Order insofar as the management and disposition of FmHA farm inventory property containing wetlands is concerned. Subject to certain limitations, section 335(g) provides for the establishment of perpetual wetland conservation easements to protect and restore wetlands, or converted wetlands, on FmHA suitable and surplus inventory properties containing wetlands. Included in the scope of this regulation are those properties which are subject to homestead protection rights under section 352 of the CONTACT. For administrative consistency in the management of farm inventory property—rather than to continue to impose full easements under E.O. 11990—the decision was made to treat homestead protection properties the

same as all other farm inventory properties, even though homestead protection properties are not disposed of under section 335 of the CONACT. In establishing wetland conservation easements on land that is considered to be cropland as of November 28, 1990, FmHA will, to the extent practicable, not adversely impact the productivity of the croplands as set forth in § 1955.137 (b), (c) and (d). Wetlands being cropped that were converted prior to December 23, 1985, and which have not been abandoned, will be encumbered with limited wetland conservation easements. These easements will not exceed 10 percent of the existing cropland on the particular inventory property. Wetlands which have been frequently cropped plus prior converted croplands will be encumbered with a wetland conservation easement not exceeding 20 percent of the existing cropland on the particular inventory property. Wetlands that have been abandoned (as determined by Soil Conservation Service (SCS)), whether prior converted or frequently cropped, will have full easement coverage. Wetlands which have a history of haying and grazing will be encumbered with a wetland conservation easement not exceeding 50 percent of the existing forage lands on the particular inventory property. Technical considerations of the potential functions and values of the wetlands on the property, as reflected in the U.S. Fish and Wildlife Service's (FWS) recommendations, will determine the size of the easements, up to these established limits. All other wetlands located on FmHA inventory property that are the subject of a technical recommendation by the FWS will be encumbered with full wetland conservation easement coverage. Purchasers of inventory property may waive the 10 percent and/or 20 percent limits and set higher limits on prior converted and frequently cropped wetlands, including 100 percent easements. Lessees, however, may not waive the limits to establish a higher percentage easement coverage. In the case of a beginning farmer or rancher, or in the case of a person having preservation servicing rights in accordance with subpart S of part 1951 of this chapter, the wetland conservation easement may be reduced on the prior converted wetland, and modified on the frequently cropped wetlands, when recommended by the Easement Review Team, in order to maintain an inventory property marketability and/or comparability in accordance with the provisions of the Act. The Easement Review Team consisting of Agency representatives from SCS, FWS, Agricultural Stabilization and Conservation Service (ASCS), and FMHA is established to assist in the wetland easement establishment process. The individual duties and responsibilities of the team members are set forth in a Memorandum of Understanding between the respective agencies. The FMHA State Director will make the final decision as to whether or not a property subject to the provisions of this subpart is marketable and/or comparable. The intent of this regulation change is to protect a substantial number of wetlands on inventoried properties while maintaining the properties' marketability and/or comparability as agricultural production units for applicants with preservation servicing rights and beginning farmer applicant/borrowers.

When determining whether an inventory property, with a recommended wetland easement in place, will continue to meet the marketability and comparability test, the Easement Review Team may consider a variety of factors. In general, this analysis will focus on whether the inventory farm with the recommended easements can be an economically viable farm, in comparison to a successful farm in the area that is comparable in size and productivity, and that produces the same or similar commodities. The Team will determine which factors/criteria are appropriate for a particular property on a case-by-case basis, and may include such items as: The overall size of the agricultural production unit being affected; the soil's productivity and potential crop yield of the property; the spacial location of the proposed easement in relationship to remaining cropland on the property; and a comparison of the productivity of the inventory farm, with the easements in place, with successful farms of the same basic enterprises in the community. These factors/criteria and others as determined by the team to be appropriate for a particular property will be described and recorded on a field data form and will serve as the basis for the final decision by the FmHA State Director relative to the potential for a wetland easement to adversely impact marketability of the agricultural production unit for comparable agricultural enterprises.

If the FmHA State Director determines that the initially recommended wetland easement would fail the marketability and/or comparability test, the FWS will be provided the opportunity to modify the easement recommendation to bring the proposal into compliance with the marketability and/or comparability requirements. Initially, the focus will be to consider the need to remove part or all of the easement previously recommended for areas that are classified as prior converted cropland. If additional modification of the easement proposal is warranted, easements being recommended for areas classified as frequently farmed wetlands will be considered for modification to allow cropping to the extent that such can occur under the present wetland conditions. Additional drainage of such wetlands would continue to be prohibited under the easement.

When determining which portions of a prior converted wetland to exempt from easement protection or which portions of a frequently farmed wetland to allow to be cropped, the FWS will consider a variety of technical and management factors/criteria. These factors will generally include such items as the present wetland productivity of the areas in question, potential for cost effective and timely restoration results to be achieved, spacial position of potential prior converted cropland and frequently farmed wetland easement areas to other wetlands on the property, and overall configuration of the potential easement in relationship to boundary delineation and management considerations. Additional site specific considerations may also become appropriate for consideration (*e.g.*, proximity to roads and habitable dwellings). To reemphasize, however, the State Director will make the final decision on reducing the easements based on the FWS recommendation.

In summary, the following steps will take place in determining the protection of wetlands on FmHA farm inventory property:

Step 1. Determination of Wetlands. A determination will be made as to the extent of wetlands on inventoried property by type, that is, converted, prior converted, frequently cropped or have historically been used for haying and grazing, and wetlands that are not cropped to an agricultural commodity or are cropped less than frequently. This determination will be made by SCS in accordance with title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*).

Step 2. Wetlands General. In the event an inventoried property contains wetlands converted after December 23, 1985, or wetlands that are not cropped to an agricultural commodity or are cropped less than frequently, all such wetlands will be deed restricted in their

use, as reflected in the FWS's recommendations.

Step 3. Frequently Cropped and Prior Converted. In the event an inventoried property contains frequently cropped wetlands (as defined by SCS), and no prior converted wetlands, no more than 20 percent of the existing cropland on an inventoried property will be deed restricted. Similarly, if the property contains prior converted wetlands, no more than 10 percent of the existing cropland on an inventoried property will be deed restricted. However, if the property contains both frequently cropped wetlands and prior converted wetlands, no more than 20 percent of the total cropland in these categories will be deed restricted.

Step 4. Haying and Grazing. In the event an inventoried property contains wetlands historically used for haying and grazing, no more than 50 percent of the existing forage land on an inventoried property will be deed restricted. Easements placed on wetlands that have a history of haying and grazing practices shall permit those practices which are in accordance with forage management standards that provide for the protection and restoration of wetlands functional values. The FWS and the SCS in consultation with Land Grant Professionals (Cooperative Extension Service) having experience in range and forage management shall jointly develop, agree and recommend to FmHA, the practices designed to protect these values, before the property is sold out of inventory.

Step 5. Preservation Servicing Rights—Beginning Farmers. For cases involving applicants with preservation servicing rights or sale to a beginning farmer or rancher, easements on prior converted wetlands or frequently planted cropland may be reduced below the established limits in order to maintain the farm as a marketable agricultural production unit of comparable type. The FmHA State Director shall make this determination and shall consult with the Easement Review Team in the reduction of easement coverage where such flexibility clearly must be exercised.

Step 6. Waiver by Purchaser. Subject to the waiver of the established size limits by the purchaser and the technical recommendations of the FWS, easements above the established limits will be placed. Only a purchaser, not a lessee, can waive the established limits.

*B. Response to Comments*

The Agency received 36 comments from 10 respondents, those comments and the Agency's responses are as follows:

One respondent commented that wetlands having "significant" wetland resources should remain in the possession of the Government and be protected as natural wetlands. The Agency must implement section 335(g) of the CONACT as written. Even so, FmHA presently has in place a program (unchanged with this regulation revision) which provides for the protection and continued Government ownership of properties containing special characteristics (which includes "significant" wetland resources). Under section 354 of the CONACT, FmHA is authorized to transfer properties having special characteristics to State and Federal Agencies for conservation purposes and does so on an on-going basis, after all preservation servicing rights are exhausted. For example, during Fiscal Year 1991, FmHA approved the transfer of 158 properties containing 56,610 acres for conservation purposes.

One respondent commented that there should not be a limit on the number of acres of wetlands encumbered with easements; nor should there be a limit on the percentage of cropland (located on wetlands) that is protected by easements. The Agency is unable to adopt this comment. Section 335(g) of the CONACT is explicit as to the percentage limitations and the amount of wetland acreage to be protected with conservation easements. The statute does not allow for administrative discretion on the part of the Agency on this issue.

One respondent commented that the definition of wetlands should be that set forth in the 1989 Wetland Delineation Manual (prior to the proposed revisions). An additional respondent commented that SCS, FWS, and ASCS each have their own definition of a wetland. Unless a uniform definition of a wetland is utilized by all services, there will be potential confusion and conflicts. The Agency believes that the statute (CONACT) is explicit, in that it sets forth, in section 335(g), that the wetland determinations for the establishment of wetland conservation easements on FmHA inventory property will be made in accordance with title XII of the Food Security Act of 1985. This statute and the resulting regulations are the bases for establishing wetland conservation easements on FmHA inventory property.

One respondent stated that the proposed rule is indeed a major Federal action significantly affecting the quality of the human environment and requested that FmHA complete all of the forms required by the National Environmental Policy Act of 1969 (NEPA). This respondent also commented that FmHA should publish an outline of the analysis used in making its determination as to whether or not the proposed rule is a major Federal action which will result in an annual effect on the economy of $100 million or more. The Agency does not believe that the implementation of the wetland conservation easement provisions (on FmHA inventory property) of section 335(g) of the CONACT is a major Federal action which will result in an annual effect on the economy of $100 million or more. The proposed rule on this regulation set forth, in the discussion section, the Agency's projections on the number of farms and the amount of acreage and scope of the wetlands to be affected by the establishment of wetland conservation easements. The study, conducted by FmHA for Congress in January 1991, provided data on the projected monetary impact of the regulations. The proposed rule specified that the study is available for public inspection by contacting the Office of the Chief, Regulations, Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agricultural Building, 14th & Independence Avenue, SW., Washington, DC 20250. We believe that these projections, and the study, provide adequate data to support the determination made. We do not believe it necessary to publish an outline of the analysis used in making this determination.

One respondent commented that once established, wetland conservation easements are always applicable. The respondent stated: "FmHA should not—and cannot according to the statute—retain the power to release the wetland easements." The Agency believes the respondent is correct and has amended this subpart to more clearly reflect that the wetland conservation easements are perpetual.

One respondent commented that it is important that wetlands be identified by the Soil Conservation Service in accordance with the Food Security Act of 1985, as it may be interpreted from time to time by the Secretary. The Agency agrees and believes that the proposed rule as drafted—and the final rule—make this clear.

One respondent commented that wetlands, not recommended for easement coverage by the U.S. Fish and Wildlife Service (FWS), should not be encumbered with a conservation easement. The Agency does not adopt

this suggestion. Section 335(g) of the CONACT is precise as to the establishment of wetland conservation easements. The statute does not allow the Agency the administrative latitude to arbitrarily exempt wetlands from conservation easements.

One respondent commented that it is important that the value (sales price) of a farm be reduced when easements are established to compensate for the acreage placed under easement in order to assure that it is not unfeasible to buy back the farm. The Agency agrees and believes that the proposed rule, this final rule, and existing FmHA regulations make that clear.

One respondent commented that the definition of a Beginning Farmer (Section 1955.103(8), of the proposed rule) should be changed by adding the word "immediate" in front of the word "family." The Agency included the definition of a Beginning Farmer in the wetlands proposed rule as a reference only, as the definition was not found in existing FmHA regulations at the time the wetlands proposed rule was published, but was set forth in a separate regulation package. The interim final rule on Beginning Farmer has been published and includes that definition. Any changes made to the definition as a result of comments are taken care of in the interim final rule. The Agency has made clear in this final rule that a beginning farmer, for the purposes of the scope of this rule, does not have to be eligible for an FO loan. This is because section 335(g) of the CONACT does not refer to "qualified" (that is, eligible) beginning farmers or ranchers as section 335(e)(1)(C)(v) of CONACT does.

One respondent commented that wetlands located on pasture lands should not be restricted from grazing. Many times these wetlands are the only source of water for the livestock, and fencing these areas may render the pasture useless and unsalable. This type of fencing could piecemeal tracts of land and decrease their values. Haying and grazing management standards should not require the fencing of potholes. The Agency does not adopt this suggestion. The statute (section 335(g) of the CONACT) is precise as to the establishment of wetland conservation easements. The statute does not allow the Agency the administrative latitude to arbitrarily exempt wetlands from conservation easements. However, the commenter's point that the easement (when fencing is used) must not unreasonably separate the water supply from the land used for grazing is valid and understood. The Agency believes that the regulation addresses this situation. Livestock grazing on the non-easement lands will not be separated from the livestock water supply.

One respondent commented that haying should be allowed after July 15th of each year on croplands (located on wetlands) placed under easement. The grazing practices on these lands should be in accordance with management standards that provide for wetland functions. The Agency incorporated the Conference Report provisions when developing this regulation, as the Report was an indication of Congressional intent on this particular point. The Conference Report provided for limited use of wetland forage producing lands (encumbered with easements) but did not provide for any type of use on those portions of the wetlands to be encumbered with easements on the prior converted and frequently cropped wetlands. Therefore, the Agency does not adopt this suggestion.

Two respondents commented that the rule must apply to all land in inventory (both suitable and surplus) on November 28, 1990, the date the FACT ACT was enacted. The commenters recommended that the rule be amended to clearly state to what inventory property the rule applies. The Agency adopts this comment. The rule is further clarified to clearly indicate that this regulation applies to all Farmer Programs inventory farm property (both suitable and surplus properties).

One respondent commented that abandoned wetlands should be defined as a wetland that had been farmed, but is not now, and the ditch or tile (the drainage system for the wetland) has not been maintained for 5 years or more; and ASCS should be the Agency which makes the abandonment determination. The Agency does not adopt this comment. Section 335(g) of the CONACT established title XII of the Food Security ACT of 1985 as the basis for identifying wetlands on which wetland conservation easements are to be established on FmHA inventory property. The determination as to whether cropland has been abandoned is part of the wetland determination process. SCS has published in the Federal Register a definition of abandonment. FmHA opted to use the SCS and their published definitions as they relate to wetlands due to the section 335(g) language.

One respondent expressed a concern that surplus designated property would be encumbered with full wetland conservation easement coverage even if it contained only frequently cropped wetlands, prior converted croplands, or forage producing wetlands. The Agency agrees that clarification on this issue is necessary.

One respondent commented that "Full wetland conservation easement coverage," is not defined. The terms, conditions and restrictions of full conservation easement coverage should be spelled out. The Agency does not believe that this is an issue or that further clarification is needed. The proposed rule provided that not more than 10 percent of the cropland on the inventoried property that is prior converted wetland, and not more than 20 percent of the cropland on the inventoried property that is frequently cropped wetlands and prior converted wetlands, and not more than 50 percent of the existing forage lands will be encumbered with wetland conservation easements. All other wetlands on the inventory property will receive "full wetland conservation easement coverage." The full easement coverage is meant to mean the acreage will be totally encumbered. The terms, conditions and restrictions of the easements will vary with different geographical areas of the country due to ecological variations in wetlands. The proposed rule spells out how these criteria will be established *i.e.*, on the cropland and on the non-forage producing areas, the U.S. Fish and Wildlife Service (FWS) recommendations will set forth the terms of the easement, whereas on the forage producing areas the SCS and FWS in consultation with Land Grant Professionals (Cooperative Extension Service) recommendations will set forth the terms of the easement, etc. The Agency believes the rule is quite specific on this.

One respondent commented that Exhibit M (to Subpart G of Part 1940) is not found in the rules to be reviewed, and should be included in the final rule so that there is no question about the restrictions and compliance requirements.

The Agency does not adopt this suggestion. Exhibit M to subpart G of part 1940 has been previously published in the **Federal Register** and is therefore presently incorporated into existing FmHA regulations. Because the Agency is not revising Exhibit M at this time, there is no reason to republish it.

One respondent commented that the identification of cropland and forage production areas should not be determined by SCS, but should instead be determined by ASCS. Another respondent commented that ASCS should be the Agency to make the determinations as to what wetlands are

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frequently cropped, or cropped less than frequently, and the terminology should be more clearly defined. The Agency does not adopt either comment. The Agency believes that SCS is the USDA Agency that has the technical knowledge and expertise necessary to identify the plants, soil types, and other characteristics which are associated with wetlands located on croplands (prior converted croplands and frequently cropped wetlands); or are located on forage producing wetlands. In most cases, this SCS determination will be made in consultation with ASCS.

One respondent commented that the definition of a "forage production area," as set forth in § 1955.103 is unacceptable. The respondent stated: "A person could have put an alfalfa crop on set aside land and under this definition, these lands would not be considered cropland. We recommend the definition be struck, and that it be rewritten to say, "those lands as determined or identified by ASCS." The Agency adopts this comment in part. We are informed by SCS that: "If land is set-aside, it is cropland." However, in order to avoid confusion or misinterpretation, the Agency will amend its definition of a "forage production area," by adding to the proposed definition, the words, "and are not recognized as cropland." This revision should clearly differentiate the two types of lands.

One respondent commented that they were in agreement with the proposed rule definition on, "marketable agricultural production unit comparable to that acquired." The Agency adopts this definition unchanged.

One respondent recommended that a document should be developed to outline the range and forage management practices designed to protect wetland values so that the prospective buyer as well as FmHA will have a clear idea of what is required; and that input be sought from ASCS, SCS, and FmHA County Committees. The Agency does not adopt this comment. The Agency does not believe it is appropriate to include USDA County Committee members in the easement development process. The Agency adopted the Conference Report provisions on section 1813(h) of the FACT ACT, which sets forth some fairly specific guidance as to what Congress intended as to the development of the forage management practices to be incorporated into the wetland conservation easements to be established on forage producing lands. In reference to establishing the management practices on forage producing lands, the Conference Report states: "The Managers believe the Fish and Wildlife Service and the Soil Conservation Service should jointly develop and agree to the practices designed to protect these values in consultation with Land Grant Professionals having experience in range and forage management." The Agency does not believe any more guidance is necessary.

However, the Agency is in full agreement with the respondent that it is important that the prospective purchaser, as well as FmHA, have a clear understanding as to the terms and conditions of the easement. In order to assure that this takes place, the regulation has been written to provide that the inventoried farm will not be offered for sale until after a determination has been made as to the establishment of the conservation easements.

One respondent indicated that they had previously provided comments to FmHA on Exhibit H to subpart S of part 1951, (a separate **Federal Register** proposed rule). The respondent indicated that they wished to have FmHA consider those comments in reference to this proposed rule.

Those comments were as follows: The respondent recommended that Exhibit H to subpart S of part 1951 be rewritten to provide: (1) A clear statement of appeal rights; (2) full disclosure of terms and conditions of the easement, including provisions for payment of property taxes; (3) uniform and consistent determinations of the value of the credit which directly relates to the loss in land value as a result of the easement as determined by the terms and conditions of the easement; (4) clear application procedures and timeframes for old and new applicants; (5) clear procedures for delineating the easement boundaries and determining the terms and conditions of the easement; (6) clear procedures for determining how the borrower's farm plan will be altered to reflect lost income due to the easement; (7) a clear statement of whether the credit is considered income, and subject to income tax; and (8) far less County Supervisor discretion. The Agency does not adopt these comments. Issues No. 1, 4, 6, and 7 of the above respondent's recommendations are exclusive to Exhibit H to subpart S of part 1951 and are not specific to this final rule. Comment No. 2 was raised by another respondent and is discussed above, except for the property tax issue. This issue is between the purchaser and the local county or parish treasurer. As to issue No. 3, the sale price of the inventory property takes into account the placement of the conservation easement. The sale price will reflect the easement determination and will be based upon the three value approaches to an appraisal: (1) Comparable sales, (2) capitalization value, and (3) summation value. Issue No. 5 was raised by another respondent and is addressed above. The regulation as proposed sets forth a clear method for developing the easements to protect the wetlands. As to issue No. 6, the County Supervisor's posture in the easement establishment process is limited to that of coordinator. The determinations as to the presence and the locations of wetlands are done by the SCS. The recommendations for the establishment of the individual easements come from the Easement Review Team. The final decision as to any reductions in the scope of a particular easement is left to the FmHA State Director. The County Supervisor is not in a decision making role in the wetland conservation easement establishment process.

One respondent commented that the Easement Review Team should include members of the ASCS, SCS and FmHA County Committee. An additional respondent commented that FmHA and ASCS County Committee members should be included on the Easement Review Team in order that a "farmer's view," be included in the determination process. A third respondent commented that a local farmer should be appointed to the team in order to add representation from production agriculture. The Agency does not adopt this comment. The Agency considered including non-USDA/FWS personnel in the formulation of the Easement Review Team at the time the proposed rule was drafted. However, an administrative determination was made to exclude non-USDA/FWS personnel as the Agency believes that the easement establishment process is technical in nature and should be formulated by persons having the appropriate technical knowledge and expertise.

One respondent commented that all easement determinations should be subject to appeal. The respondent further stated that all of the terms and conditions of the easement should be clearly spelled out in writing before the inventory property is offered back to the former owner (leaseback/buyback cases) and other prospective buyers. The respondent also stated that the determination of comparability and marketability should also be appealable. The Agency only partially adopts this suggestion. The Agency does not believe it is appropriate to allow the placement of conservation easements to be



appealable except for the two exceptions discussed below. When property comes into FmHA's inventory, it becomes Federal property. As such, it may become subject to certain technical considerations relative to the placement of conservation easements. The classification of the property as wetland, prior converted cropland, frequently cropped wetland, and forage-producing wetlands are made by SCS, not FmHA, and therefore are not subject to FmHA's administrative appeal procedures. The requirements for the establishment of these easements are set forth by statute and are separate and apart from a prospective purchaser's rights to the property. Likewise, the marketability and comparability determination is exclusive to the property and does not take into consideration the resources or liabilities of the prospective purchases. In general, we do not believe that a prospective purchaser should have input into the easement establishment process as the property is owned by the Government at that time. However, dispute over the terms and conditions of a lease or purchase agreement involving persons with preservation servicing rights are appealable under the CONACT. Therefore, a dispute concerning either the particular placement of an easement (that is, the actual acreage covered by the easement) or the percentage of an easement when the marketability issue is involved may be appealed by a purchaser (or lessee) with preservation servicing rights to the particular property.

One respondent recommended that FmHA develop a nationwide inventory of its inventory properties with proposed easements, on a county-by-county basis, in order to allow for assessment of the impact of the legislation. The Agency does not adopt this recommendation. The provisions of section 335(g) of the CONACT are specific, in that the Secretary is directed to establish wetland conservation easements on FmHA inventory property in a prescribed manner. The study is not relevant as to whether the easements are established.

One respondent commented: "This rule will eliminate valuable land from the production base in many counties." Additionally, the respondent stated: "To place a mandatory easement on these lands is senseless and ridiculous." The Agency does not adopt this comment. Section 335(g) of the CONACT is explicit as to the establishment of easements to protect wetlands on FmHA inventory property. The statute does not allow for administrative discretion on the part of the Agency on this issue.

One respondent commented that: "Although you will be limiting the percentage of land being taken, we are opposed to the taking of any land that can and will be used for the production of an agricultural commodity." The respondent also commented that: "The proposed rule will not only lower the market value of this land, but all land in general." The Agency does not adopt this comment. Again, section 335(g) of the CONACT is explicit as to the establishment of easements to protect wetlands on FmHA inventory property. The statute does not allow for administrative discretion on the part of the Agency on this issue.

One respondent commented that: "The use of deed restrictions or easements are equivalent to the taking of land by the Federal Government without due process. We are strongly opposed to this action." The Agency does not adopt this comment. This rule applies only to property after it is in FmHA's inventory (Government property). This rule does not apply to property in private ownership. There can be no "taking" of property which is already owned by the Government.

One respondent commented that a new Federal Manual for Identifying and Delineating Jurisdictional Wetlands is proposed. The respondent questioned: "Will FmHA remove the deed restrictions or easements if the original wetland determination is not correct?" We believe the respondent is questioning how FmHA will handle easements which are established on lands which may (at a later time) be determined not to be wetlands. The respondent closed by saying: "We can not find any value in the proposed rule; therefore we are opposed to its implementation." The Agency manages its inventory property based upon current statutes through the promulgation of regulations. As statutes (or the resulting regulations) change, so will the property management activities of the Agency. Section 335(g) of the CONACT provides in part : "the Secretary shall establish perpetual wetland conservation easements * * *". Thus, once established these easements will serve in perpetuity. As to the respondent's comments on not finding value in the proposed rule, the Agency has no choice but to promulgate regulations implementing section 335(g) as written.

One respondent commented, in response to the marketability issue, that the comparison of other farms in the area, to the subject inventory property, is not relevant when making this determination. The respondent stated that the Easement Review Team should simply assess the farming operation as it existed at the time that the property was taken into inventory, to determine if the conservation easement recommended for establishment on the inventory property, will substantially change the farming operation by reducing the farm's value as a marketable unit. The Agency does not adopt this suggestion. The Agency considered both sides of this issue (evaluating the subject properties' productivity with easements in comparison to the productivity that existed prior to the establishment of easements; or evaluating the subject property in comparison to other farms in the area) at the time the proposed rule was drafted. The Agency made a decision to evaluate the subject inventory farm in comparison to other similar farms in the area when making the marketability analysis. The Agency believes that this approach more accurately reflects Congressional intent to protect as much property as possible within certain specified limitations. Under the suggested approach, less land would probably end up being protected. Therefore no change to the proposed rule was made.

One respondent commented that FmHA must assure leaseback/buyback property along with property for beginning farmers is a marketable agricultural production unit, but there is no directive to assure that all inventory property is required to be a marketable agricultural production unit. The Agency does not adopt this suggestion. Section 335(g) of the CONACT is explicit. The easement variance, "to allow a marketable agricultural production unit, " is limited to persons with leaseback/buyback rights and beginning farmers.

One respondent commented that each Agency representative on the Easement Review Team having the final say for their respective component area of responsibility leaves much to be desired. If there is a disagreement within the team, both sides of the issue should be passed along to the State Director. The Agency adopts this suggestion. The State Director should be aware of both sides of the issue prior to making his/her decision when there is a disagreement among team members. The Agency has revised the regulation to further clarify this matter.

**List of Subjects in 7 CFR Part 1955**

Government property, Government property—management, Loan programs—housing and community

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development, Government property—Sale of Surplus Government property.

Accordingly, chapter XVIII, part 1955, title 7, Code of Federal Regulations is amended as follows:

## PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

### Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

**§ 1955.15 [Amended]**

1A. Section 1955.15(b)(3) is amended in the first sentence by changing the reference "§ 1955.137(b)" to "§ 1955.137(e)."

### Subpart B—Management of Property

**§ 1955.64 [Amended]**

1B. Section 1955.64(a)(3) is amended in the fifth sentence by changing the reference "§ 1955.137(c)(2)" to "§ 1955.137(f)(2)."

2. Section 1955.66 is amended by revising paragraph (a)(2)(iii)(F) to read as follows:

**§ 1955.66 Lease of real property.**

* * * * *

(a) * * *

(2) * * *

(iii) * * *

(F) The property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of subpart G of part 1940 of this chapter. All prospective lessees of inventory property will be notified in writing of the presence of highly erodible land, converted wetlands and wetland. This notification will include a copy of the completed and signed Form SCS–CPA–26, "Highly Erodible Land and Wetland Conservation Determination," which identifies whether the property contains wetland or converted wetlands or highly erodible land. The notification will also state that the lease will contain a restriction on the use of such property and that FmHA's compliance requirements for wetlands, converted wetlands, and highly erodible land are contained in Exhibit M of subpart G of part 1940 of this chapter. If converted wetlands are present, the notification will also state that FmHA will not lease converted wetlands for the purpose of producing an agricultural commodity, except as provided in § 1955.137 of subpart C of this part concerning prior converted cropland or frequently cropped wetlands. Additionally, a copy of the completed and signed Form SCS–CPA–26 will be attached to the lease and the lease will contain a special stipulation as provided on the FMI to Form FmHA 1955–20, "Lease of Real Property," prohibiting the use of the property as specified above.

* * * * *

### Subpart C—Disposal of Inventory Property

3. Section 1955.103 is amended by placing the definition of "Auction sale" after the definition of "Approval official" and by adding, in alphabetical order, the definitions of "Agricultural production unit," "Cropland," "Forage production area," and "Marketable agricultural production unit comparable to that acquired" to read as follows:

**§ 1955.103 Definitions.**

* * * * *

*Agricultural production unit.* An agricultural production unit is the sum total of all acreage obtained by FmHA from an owner.

* * * * *

*Cropland.* Those lands as determined or identified by the Soil Conservation Service (SCS).

* * * * *

*Forage production area.* Those lands determined or identified by SCS as having a history of being harvested for hay or grazed by domestic livestock within 3 out of 5 years prior to coming into FmHA's inventory, and are not recognized as cropland.

* * * * *

*Marketable agricultural production unit comparable to that acquired.* It is an economically viable production unit (taking into consideration the commodities which were being grown when the farm was acquired by FmHA) that is reasonably comparable to other agricultural production units of the same basic enterprise in the community which are successful. Maintaining a property's marketability is intended to mean maintaining sufficient productive cropland and/or forage areas on the property so that it is marketable for agricultural production purposes. Marketing the property comparable as acquired means marketing a property that can continue to function as the same basic enterprise as when it was acquired (*i.e.*, the production unit is marketable, taking into consideration the commodities which were grown when the property was acquired by FmHA, and is reasonably comparable to other agricultural production units of the same basic enterprise in the community which are successful).

* * * * *

4. Section 1955.137 is amended by revising the heading of paragraph (a), redesignating existing paragraphs (b), (c), (d) and (e) as (e), (f), (g) and (h), respectively, and by adding new paragraphs (b), (c) and (d) to read as follows:

**§ 1955.137 Real property located in special areas or having special characteristics.**

(a) *Real property located in flood, mudslide hazard, wetland (except for Farmer Program inventory farm property), or Coastal Barrier Resources System (CBRS).*

* * * * *

(b) *Wetlands located on farm inventory property (suitable and surplus)—Farmer Programs only.* Perpetual wetland conservation easements (restrictions in leases and encumbrances in deeds) to protect and/or restore wetlands or converted wetlands that exist on suitable or surplus inventory property will be established prior to sale or lease of such property. The provisions of paragraphs (a)(2) and (3) of this section also apply, as does paragraph (a)(1) of this section insofar as floodplains are concerned. This requirement applies to either cash or credit sales and all leases. Technical considerations of the potential functions and values of the wetlands on the property, as set forth in the U.S. Fish and Wildlife Service's (FWS) recommendations, will determine the size of the easements, not to exceed the following limits:

(1) All wetlands located on FmHA inventory property which have not been cropped to an agricultural commodity, are cropped less than frequently, were converted after December 23, 1985, or do not have a history of haying or grazing will receive full perpetual conservation easement coverage to protect and/or restore the wetlands. Prior converted cropland, frequently cropped wetlands, and wetlands having a history of haying and grazing will be handled as follows:

(i) Wetlands which were converted prior to December 23, 1985 (prior converted cropland), as identified by SCS, and which were not abandoned as of the time acquired by FmHA will be encumbered with a perpetual conservation easement not exceeding 10 percent of the existing cropland on the FmHA inventory property. Whether the prior converted cropland is abandoned, at the time the inventoried property is accepted into inventory or subsequent to that time, will be determined by SCS in accordance with its criteria for abandonment. In no case may the wetland conservation easement placed on the prior converted cropland represent more than 10 percent of the total cropland on the FmHA inventory property, unless increased by waiver in writing by the purchaser.

(ii) Wetlands which have been frequently cropped to agricultural commodities (as identified by SCS) but are not prior converted cropland and were not abandoned as of the time acquired by FmHA, will be encumbered with a perpetual wetland conservation easement not exceeding 20 percent of the existing cropland on the FmHA inventory property. Frequently cropped means that over a period of several years the wetland is cropped more often than not. The overall 20 percent limitation includes the 10 percent prior converted cropland easement limitation referenced in paragraph (b)(1)(i) of this section. In no case may the wetland conservation easement placed on the frequently cropped wetland and the prior converted cropland represent more than 20 percent of the total cropland on the FmHA inventory property, unless waived in writing by the purchaser. Whether the frequently cropped wetland is abandoned, at the time the farm is accepted into inventory or subsequent to that time, will be determined by SCS in accordance with its criteria for abandonment.

(iii) Wetlands which have a history of haying or grazing will be encumbered with a perpetual wetland conservation easement not exceeding 50 percent of the existing forage-producing lands on the FmHA inventory property. In no case may the wetland conservation easement placed on wetlands having a history of haying or grazing, exceed 50 percent of the forage-producing lands on any FmHA inventory property, unless waived in writing by the purchaser. Easements placed on wetlands that have a history of haying and grazing practices shall permit those practices which are in accordance with forage management standards that provide for the protection and restoration of wetland functional values. The FWS and the SCS in consultation with Land Grant Professionals (Cooperative Extension Service) having experience in range and forage management shall jointly develop, agree and recommend to FmHA the practices designed to protect these values, before the property is sold out of inventory.

(2) FmHA will request the SCS to identify the wetlands and wetland boundaries of each wetland, which are set forth as follows:

(i) Wetlands that have not been cropped to an agricultural commodity or are cropped less than frequently, and wetlands converted after December 23, 1985.

(ii) Prior converted cropland (wetland converted to cropland before December 23, 1985).

(iii) Wetlands that are frequently cropped.

(iv) Forage-production area wetlands (those wetlands having a history of haying and/or grazing).

(v) The wetlands in above categories shall reflect the wetlands definitions in use by SCS for Swampbuster purposes.

(3) The croplands used as buffer areas, which are established to protect the wetlands, are to be included in the calculation of the total amount of cropland that is placed under easement, and are therefore, subject to the 10 percent and 20 percent overall cropland acreage limitations irrespective of whether these contain prior converted cropland or frequently cropped wetlands. Areas classified other than cropland when used as buffer areas, will be in addition to the 10 and 20 percent limitation. Buffer areas adjacent to the wetland generally will not be more than 100 feet in average width.

(4) The wetland conservation easement will provide for access to other portions of the property as necessary for farming and other uses.

(5) The appraisal of the property must be updated to reflect the effect of the conservation easement on the property.

(6) The purchaser has the right to waive the wetland easement percentage limitations. To activate this process the purchaser shall request in writing, that FmHA include additional wetland acres in the easement. The request must be accompanied by a technical recommendation from the FWS supporting the placing of additional acres under easement. Acres eligible for additional easements include prior converted cropland, frequently cropped wetland, and haying/grazing wetlands. Other types of land may be eligible as additional easement acres where included in wetland buffer areas.

(7) Applicable restrictions will be incorporated into leases and encumbrances in quitclaim deeds with the advice and approval of OGC. A listing of these restrictions will be included in the notices required in paragraph (a)(2) of this section. Wetland conservation easements will be established by FmHA in accordance with the procedure in paragraphs VII (C) through (E), and (H) (except that Forms FmHA 1951–39 and FmHA 1951–39A will not be used) of Exhibit H of subpart S of part 1951 of this chapter. The characterization of property as wetland, prior converted cropland, frequently cropped wetland, etc. is not appealable. The determination as to the actual acreage covered by the easement also is not appealable, except by a purchaser (or lessee) with preservation servicing rights to the particular property.

(8) The FWS shall be responsible for easement management and administration responsibilities for such areas unless: The wetland easement area is an inholding in Federal or State property and that entity agrees to assume such responsibility, or a State fish and wildlife agency having counterpart responsibilities to the FWS is willing to assume easement management and administration responsibilities. The costs associated with such easement management responsibilities shall be the responsibility of the agency that assumes easement management and administration.

(c) *The County Supervisor will establish an Easement Review Team consisting of the appropriate field offices of the Agricultural Stabilization and Conservation Service (ASCS), Soil Conservation Service (SCS), and the U.S. Fish and Wildlife Service (FWS).* The Easement Review Team will be composed of an FmHA, ASCS, SCS, and FWS representative. The purpose of the Easement Review Team is to provide the FmHA State Director with a recommendation as to whether the inventoried property is a marketable agricultural production unit comparable to the property as acquired, taking into consideration any wetland easements. The FmHA representative selected by the FmHA State Director will coordinate the responsibilities of the Easement Review Team, schedule any site visits, maintain a running record of Team activity, and summarize and present the recommendations of the Team to the State Director. The individual duties and responsibilities of the Team members are set forth in a memorandum of understanding between the respective agencies. The SCS, ASCS, FWS and FmHA (jointly) documents its analysis and conclusions as to whether an inventory property is a marketable agricultural production unit in Exhibit F of this subpart (available in any FmHA office). (This exhibit will be completed and filed in the inventory property case file, and will be the basis for establishing conservation easements below the 10 and 20 percent levels on FmHA inventory properties which

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contain prior converted and/or frequently cropped wetlands). The FmHA State Director, after considering the Easement Review Team's recommendations, will make the final decision on all aspects of establishing the wetland conservation easements. If there is a disagreement within the team, the State Director will be provided both sides of the issue. It is the State Director who bears the ultimate responsibility for establishing perpetual wetland conservation easements on FmHA's suitable and surplus inventory property in accordance with the provisions of this subpart. The Survey to establish the location of the easement boundaries will be completed after the State Director makes the final determinations on the establishment of the easements.

(d) *Special provisions for persons having preservation servicing rights and for beginning farmers and ranchers on properties containing prior converted and/or frequently cropped wetlands.* The FmHA must assure that property with preservation servicing rights to it along with property for beginning farmers and ranchers are marketable agricultural production units comparable to those acquired. For the purposes of this paragraph, beginning farmers and ranchers are those farmers and ranchers who met the definition of "beginning farmer or rancher" found in § 1955.103 of this subpart except for the requirement of paragraph (1) of that definition. There are certain circumstances where the amount or location of wetland easements, in relation to other croplands on the property, would prevent the property with preservation servicing right to it or beginning farmer/rancher property, from being marketable as an agricultural production unit, comparable to the property as acquired. Under these circumstances the easements recommended for these properties may be reduced by the State Director, in consultation with the Easement Review Team, to the extent necessary to obtain marketability and comparability. This flexibility can be utilized only in situations where it can be shown that to do otherwise would result in the property not being comparable or marketable. This flexibility shall not be utilized to exercise administrative preference relative to providing full easement coverage up to the established percentage limits set forth in paragraph (b)(1) of this section. A recommendation will be made by the Easement Review Team to the State Director as to whether the inventory property is a comparable marketable agricultural production unit. THE STATE DIRECTOR WILL MAKE THE FINAL COMPARABILITY/MARKETABILITY DECISION. An agricultural production unit will be comparable and marketable if it is determined to be an economically viable production unit (taking into consideration the commodities which were being grown when the property was acquired by FmHA) that is reasonably comparable to other agricultural production units of the same basic enterprise in the community which are successful farming operations. For example, if the inventory property was utilized for the production of dairy products upon acquisition, a typical dairy farmer could be expected to successfully operate the property for dairy farming purposes with easements at the 10 and 20 percent levels. In such cases, the State Director would conclude that the property is a comparable marketable agricultural production unit, and the easements would be established at the 10 and 20 percent levels. THE SUBJECT OF THIS ANALYSIS IS THE AGRICULTURAL VALUE OF THE PROPERTY IN QUESTION AND NOT THE RESOURCES OR LIABILITIES OF THE PROSPECTIVE PURCHASERS OR OF THEIR FARMING OPERATIONS. If, however, the property is deemed by either the State Director or the Easement Review Team not to be a comparable marketable agricultural production unit with easements at the 10 and 20 percent levels, the Easement Review Team will further evaluate the property's viability as a comparable marketable agricultural production unit on the basis of reducing the easements below the 10 percent level on the prior converted acres; and if necessary to establish marketability/comparability, the easements on the frequently cropped acres will be modified (to allow crop production), until the property is deemed to be a comparable/marketable agricultural production unit. If the Easement Review Team recommends, and the State Director determines, that the establishment of easements at a level below the 10 and 20 percent levels is necessary to maintain a particular property as a comparable marketable agricultural production unit, the easements may be established below the 10 and 20 percent levels when the property is being sold or leased through leaseback/buyback to the previous owner, the immediate family of the prior owner, the previous operator of the farm, or through a sale to a beginning farmer or rancher. IF THE ANALYSIS CONCLUDES THAT, EVEN IF THE EASEMENT LEVELS WERE REDUCED TO 0 PERCENT, THE INVENTORY PROPERTY WOULD NOT BE A COMPARABLE/MARKETABLE AGRICULTURAL PRODUCTION UNIT, THE EASEMENTS WILL BE ESTABLISHED AT THE 10 AND 20 PERCENT LEVELS. The purchaser (not a lessee) will be able to waive the marketability and comparability determination and allow easements at or above the 10 and 20 percent levels. The final determination under paragraph (d) of this section as to what percentage of the property will be included in an easement is appealable by the purchaser (or lessee) with preservation servicing rights to the particular property. In all cases, the easements established on the wetlands which have a history of haying and grazing will be at the 50 percent level unless the limitation is waived by the purchaser.

* * * * *

**§ 1955.139 [Amended]**

4A. Section 1955.139(c)(2)(v) is amended in the first sentence by changing the reference "§ 1955.137(b)" to "§ 1955.137(e)."

5. Exhibit A to Subpart C is added to read as follows:

**Exhibit A—Notice of Flood, Mudslide Hazard or Wetland Area**

TO:_____
DATE:_____

This is to notify you that the real property located at _____ is in a floodplain, wetland or area identified by the Federal Insurance Administration of the Federal Emergency Management Agency as having special flood or mudslide hazards. This identification means that the area has at least one percent chance of being flooded or affected by mudslide in any given year. For floodplains and wetlands on the property, restrictions are being imposed. Specific designation(s) of this property is(are) (special flood) (mudslide hazard) (wetland)*. The following restriction(s) on the use of the property will be included in the conveyance and shall apply to the purchasers, purchaser's heirs, assigns and successors and shall be construed as both a covenant running with the property and as equitable servitude subject to release by the Farmers Home Administration (FmHA) when/if no longer applicable:

(INSERT RESTRICTIONS)

The FmHA will increase the number of acres placed under easement, if requested in writing, provided that the request is supported by a technical recommendation of the U.S. Fish and Wildlife Service. Where additional acreage is accepted by FmHA for conservation easement, the purchase price of the inventory farm will be adjusted accordingly.

_____
(County Supervisor, District Director or Real Estate Broker)
*ACKNOWLEDGEMENT*_____
*DATE:*_____

I hereby acknowledge receipt of the notice that the above stated real property is in a (special flood) (mudslide hazard) (wetland) * area and is subject to use restrictions as above cited. [Also, if I purchase the property through a credit sale, I agree to insure the property against loss from (floods) (mudslide) * in accordance with requirements of the FmHA.]

(Prospective Purchaser)

* Delete the hazard that does not apply.

Dated: June 26, 1992.

**La Verne Ausman,**

*Administrator, Farmers Home Administration.*

[FR Doc. 92-16648 Filed 7-16-92; 8:45 am]

BILLING CODE 3410-07-M

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**12 CFR Part 1102**

**[Docket No. AS92-1]**

## Appraisal Regulation; Rules of Practice for Proceedings

**AGENCY:** Appraisal Subcommittee, Federal Financial Institutions Examination Council.

**ACTION:** Final rule.

**SUMMARY:** The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) adopts Rules of Practice For Proceedings as part of its appraisal regulations. These Rules are designed to govern proceedings under section 1118 of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) for the nonrecognition of State real estate appraiser licensing and certification designations and systems and other proceedings to take such further action to carry out the purposes of Title XI under section 1119(c) of that Title. Congress intended Title XI of FIRREA and the ASC and the Federal Financial Institutions Regulatory Agencies and the Resolution Trust Corporation (RTC) (collectively "Agencies") to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser.

**EFFECTIVE DATE:** August 17, 1992.

**FOR FURTHER INFORMATION CONTACT:** Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel, at (202) 634-6520, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

On August 9, 1989, Congress adopted FIRREA,[1] including section 1102 [2] of title XI, which established the ASC and placed it within the FFIEC. The ASC consists of representatives appointed by the heads of the federal financial institutions regulatory agencies [3] and the Department of Housing and Urban Development. Congress intended title XI of FIRREA, the ASC and the Agencies to protect federal financial and public policy interests [4] in real estate-related financial transactions [5] requiring the services of an appraiser.[6-9]

The ASC has several statutory duties under title XI. Among other things, it must monitor the appraisal regulations adopted by the Agencies. Those regulations set out appraisal standards for federally related transactions [10] and define those federally related transactions requiring the services of a State certified or State licensed appraiser. The ASC also must monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation. And last, the ASC must monitor each State's certification and licensing programs for real estate appraisers [11] and must review each State's compliance with the requirements of title XI. It also is authorized by title XI to take action against non-complying States.[12]

### II. Statutory Authority

*A. Non-recognition Proceedings*

Pursuant to section 1118 [13] of title XI, financial institutions,[14] the Agencies, the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) generally must accept appraisals in federally related transactions performed by persons licensed or certified by a State agency. In monitoring State compliance with title XI, the ASC, however, can "disapprove" or "not recognize appraiser certifications and licenses from States whose appraisal policies, practices or procedures are found to be inconsistent with [Title XI]."[15]

Paragraph (b) of section 1118 describes what is meant by "non-recognition" in the context of title XI and sets out the grounds on which the ASC can order non-recognition. If the ASC were to order non-recognition of a State agency's certifications and licenses, the ASC, all Federal financial institutions, and the Agencies, together with FNMA and FHLMC, could not rely on appraisals prepared by persons who are licensed and/or certified to appraise federally related transactions within that State agency's jurisdiction. The ASC can order non-recognition only if it makes a written finding that the State is failing to meet one or more of these statutory duties:

(1) The [State agency must] recognize and enforce the standards, requirements, and procedures prescribed pursuant to [Title XI];

(2) The [State agency must be] granted authority by the State which is adequate to permit the agency to carry out its functions under [Title XI]; or

(3) Decisions concerning appraisal standards, appraiser qualifications and supervision of appraiser practices [must be] made in a manner that carries out the purposes of [Title XI].[16]

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[1] Pub. L. 101-73, 103 Stat. 183 (1989), as amended by Pub. L. Nos. 102-233, 105 Stat. 1761 (1991) and 102-242, 105 Stat. 2236 (1991).

[2] 12 U.S.C. 3310 (1990).

[3] These agencies are the Board of Governors of the Federal Reserve System ("FRS"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA"). See section 1122(6) of title XI, 12 U.S.C. 3350(6) (1990).

[4] Title XI's general purpose is to provide the Federal financial and public policy interests will be protected by requiring that certain real estate appraisals are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. See section 1101 of title XI, 12 U.S.C. 3331 (1990).

[5] See section 1121(5) of title XI, 12 U.S.C. 3350(5) (1990), for the definition of "real estate-related financial transaction."

[6-9] The Agencies have adopted appraisal regulations that, among other things, clarify the phrase, requires the services of an appraiser. See 12 CFR part 34 (OCC); part 225, subpart G (FRS); part 323 (FDIC); part 564 (OTS); part 722 (NCUA); and part 1606 (1991) (RTC).

[10] See section 1121(4) of title XI, 12 U.S.C. 3350(4) (1990), which defines a "federally related transaction."

[11] The ASC is required to monitor State appraiser regulatory agencies ("State agencies") for the purpose of determining whether the agency's policies, practices, and procedures are consistent with [Title XI]. See section 1118(a) of title XI, 12 U.S.C. 3347(a) (1990). See, also, section 1103(a)(1) of title XI, 12 U.S.C. 3332(a)(1) (1990). The ASC must maintain a national registry of all state certified and licensed appraisers who are eligible to perform appraisals in federally related transactions. Each State with an appraiser certifying and licensing agency is responsible for transmitting to the ASC a roster of those appraisers, long with an annual registry fee.

[12] See section 1118 of title XI, 12 U.S.C. 3347 (1990).

[13] Id.

[14] A "financial institution" is "an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act or an insured credit union as defined in section 101 of the Federal Credit Union Act." Section 1121(7) of title XI, 12 U.S.C. 3350(7) (1990).

[15] Section 1118(a) of title XI, 12 U.S.C. 3347(a) (1990).

[16] Section 1118(b) of Title XI, 12 U.S.C. 3347(b) (1990).

Paragraph (c) of section 1118 [17] provides a State with certain procedural protections before the ASC can choose not to recognize its appraiser certifications and licenses. First, the ASC must provide the offending State agency with a "written notice of [the ASC's] intention not to recognize the State's certified or licensed appraisers."[18] Second, the ASC must give the State agency "ample opportunity to provide rebuttal information or to correct the conditions causing the refusal."[19] Last, the ASC must "adopt written procedures for * * * [non-recognition] actions."[20]

*B. "Other Proceedings" under Section 1119(c) of Title XI*

Section 1119(c) [21] requires the ASC to "report any action of a State certified or licensed appraiser that is contrary to the purposes of [Title XI] * * * to the appropriate [State agency] for a disposition of the subject of the referral." The State agency then must provide the ASC "with a report on its disposition of the matter referred."[22] After receiving the report, the ASC "may take such further action, pursuant to written procedures, it deems necessary to carry out the purposes of [Title XI]." [23]

## III. Summary of Comments and Recommendations

The ASC published 12 CFR part 1102, subpart B (subpart B or subpart) for public comment at 57 FR 10146 (March 24, 1992) (Proposal). As discussed and analyzed in detail below, the ASC received a total of seven comment letters: five from financial industry trade associations and two from financial institutions in response to the Proposal. No comment letters, however, were received from State agencies even though they are most directly affected by the proposal.

Comment letters were received from the (1) American Bankers Association (ABA) [24]; (2) Independent Bankers Association (IBAA) [25]; (3) United States League of Savings Institutions (USL) [26]; (4) Mortgage Bankers Association of America (MBA) [27]; (5) Independent Community Banks of North Carolina (ICB) [28]; (6) The Fountain Trust Company (FT) [29]; and (7) Meridian Bancorp, Inc. (MB).[30] The ASC thanks the commenters for their thoughtful observations and suggestions.

Most of the commentators generally supported the adoption of subpart B, either by explicit statement or by implication. For example, the IBAA and the USL stated explicitly their support for adoption of the subpart, while others, like the MBA, signalled their general support by noting that "[i]n general, MBA believes the proposed rule strikes an appropriate balance between [outside input and the need to act expeditiously [31]]." Other commentators, like the ABA, focused on technical aspects of the proposed subpart and did not criticize it in a general way. The commentators' suggestions concentrated on: (1) The devastating effects of a non-recognition order; (2) the need to liberalize the proposed subpart's time frames; (3) the desirability of ensuring the broadest possible participation of affected persons in proceedings; and (4) the clarification of other, more technical, requirements. In response to those comments, the ASC today is adopting a modified version of subpart B.

## IV. Discussion of Comments and Responses

*A. The Devastating Effect of Non-recognition Findings and the Use of Out-of-State, Certified or Licensed Appraisers*

In the Proposal, the ASC described the effects of a non-recognition order in this manner:

[T]he State's real estate market in federally related transactions would be hindered, and Federally-insured banks and credit unions might have to bring in out-of-State certified or licensed appraisers (from complying States) to perform needed appraisals.[32]

Six of the seven commentators criticized the ASC for understanding the effects of a non-recognition order. Most of them commented that such an order would bring the State's real estate market to a "halt" and would be "devastating" to the State and its lenders, borrowers, real estate agents, builders and others.[33]

The ASC agrees with these observations and assures the commentators and other interested members of the public that it has been, and will remain, acutely aware of these likely consequences. Indeed, the entire structure of subpart B, i.e., the balancing of due process concerns with expeditious treatment, reflects the ASC's sensitivity to the severity of these consequences. The ASC, however, notes that Congress also must have been aware of these likely consequences when it crafted and adopted section 1118 of title XI. In fact, title XI, it is up to the States (and indirectly all persons involved in the State's marketplace for Federally related transactions, such as financial institutions, appraisers, purchasers and sellers) to comply full with those sections of title XI that concern them. And, it is certainly within each State's control to avoid a non-recognition order. In contrast, the Congress gave the ASC the responsibility to monitor each State's real estate appraiser licensing and

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[17] 12 U.S.C. 3347(c) (1990).

[18] Section 1118(c)(1) of title XI, 12 U.S.C. 3347(c)(1) (1990).

[19] Section 1118(c)(2) of title XI, 12 U.S.C. 3347(c)(2) (1990).

[20] Section 1118(c)(3), 12 U.S.C. 3347(c)(3), specifically makes ASC non-recognition decisions subject to judicial review.

[21] 12 U.S.C. 3348(c) (1990)

[22] Section 1119 of title XI also authorizes any other Federal agency or instrumentality, or any federally recognized entity to report questionable individual appraiser activities to State agencies and to receive disposition reports from those State agencies respecting those referrals.

[23] Only the ASC and any other Federal agency or instrumentality can take further action.

[24] May 26, 1992 letter from John C. Rasmus, Senior Federal Administrative Counsel Manager, ABA, to Edwin W. Baker, Executive Director, ASC.

[25] May 26, 1992 letter from Robert W. Hawkins, President, IBAA, to Edwin W. Baker, Executive Director, ASC.

[26] May 28, 1992 letter from Samuel E. Pincich, Vice President & Director, Real Estate Markets and Operations, USL, to Edwin W. Baker, Executive Director, ASC.

[27] May 26, 1992 letter from Robert M. O'Toole, Senior Staff Vice President, MBA, to Edwin W. Baker, Executive Director, ASC.

[28] May 20, 1992 letter from Terry J. Jorde, President, ICB, to Edwin W. Baker, Executive Director, ASC. The ASC received this letter on June 1, 1992, after the formal comment period closed.

[29] May 12, 1992 letter from Kip White, Executive Vice President, FT, to Edwin W. Baker, Executive Director, ASC.

[30] May 21, 1992 letter from Kathleen A. Wolfe, Assistant Vice President, MB, to Edwin W. Baker, Executive Director, ASC.

[31] In this regard, the ABA commented that "it is essential that the proposed regulation respond to the need for expeditious handling of a state's non-recognition status."

[32] 57 FR 10143, at 10144.

[33] Two of these commentators stated a concern that publications in a State that is the target of an ASC non-recognition proceeding would fail to provide adequate information to persons within the State about the proceeding. For example, one commentator stated that "it is very likely that lenders could wake up one morning and find out they no longer have certified appraisers." Given the potential adverse effects of a non-recognition decision on a State and its real estate market, as described by these and other commentators, the ASC believes that media within the State would provide prominent coverage of the proceeding. In any event, the ASC notes that, like all other Federal agencies, its significant formal actions will be published nationally in the Federal Register.

certification scheme and to take action, in a fair manner, under section 1118 of the title XI whenever such action is appropriate. While the ASC hopes that it will never have to order the non-recognition of a State's appraiser licenses or certifications, it must be prepared to do so. At the very least, the existence of the draconian remedy of non-recognition should help to assure that each State will: (1) Communicate, cooperate and coordinate its efforts with the ASC; (2) implement Title XI fully, promptly, efficiently and effectively; and (3) fairly and persistently enforce compliance with the spirit and letter of Title XI within its borders.

Four of the seven commentators criticized the ASC for its statement regarding the use of out-of-State licensed or certified appraisers. The commentators noted that the use of such appraisers would "impose significant delays and additional unnecessary costs * * * [and] be a practical impossibility" (ABA) and would "not be feasible" (ICB); and that those appraisers would "have no reason to travel to * * * a non-recognized state * * *." (IBAA), and "the price of [those] appraisers, when you could get them, would shoot up astronomically" (FT).

The ASC's remark merely was intended to remind the States and other interested persons that licensed or certified appraisers in other States may be available to reduce some of the hardships following a non-recognition order. The ASC agrees with the commentators that out-of-State licensed or certified appraisers will not alleviate to any substantial degree a "non-recognized" State's difficulties, and that significant delays in obtaining appraisals in Federally related transactions and higher appraisal costs would result. The possibility of these difficulties, however, serves a positive purpose under Title XI because they are necessary and foreseeable consequences of a State's failure to comply with title XI, i.e., Federal Law.

*B. ASC Sensitivity to Special State Considerations*

Three commentators noted the need for the ASC to be aware of considerations unique to the States when deciding whether to issue a non-recognition order. More specifically, the USL noted that the ASC "must be sensitive to the limitations to which individual states might be subject * * * [and be] aware of the problems faced by states in implementing a system which for most is a completely new undertaking [and evolving]." Further, the IBAA and, to some degree, the FT, underlined the need for the ASC to consider that "many states' legislatures meet only a few months a year and in some states only once every two years * * *," and that the real estate market in such an offending State could "be paralyzed for months" until corrective legislation can be passed. The IBAA further recommended that "the ASC allow financial institutions in such a State to continue to use licensed and certified appraisers from the state until the state legislature amends its appraiser laws * * *."

The ASC assures the commentators and other interested members of the public that it has been, and will remain, sensitive to special situations, whether mitigating or aggravating, existing in the States, and the evolutionary nature of appraisal reform. As the ASC noted in the Proposal at 10144, subpart B contains "provisions implementing the ASC's intentions to make a good faith effort, whenever possible, to work out all disputes, problems, issues, misunderstandings, and other difficulties * * * before * * * the commencement of formal proceedings." The ASC will make every effort to consider all relevant factors, including those presented by the commentators, in determining whether to commence a non-recognition proceeding against a particular State.

The ASC also will consider in its deliberations the infrequency in which some State legislatures meet. To ensure that the ASC has the flexibility to address these concerns, the ASC has amended § 1102.37 of subpart B to allow the ASC to issue a non-recognition order "containing specified terms and conditions as it deems appropriate." States, however, should not rely heavily on this new flexibility; the ASC believes that its remarks above in connection with the consequences from a non-recognition order are also applicable here. The States, together with other potentially affected persons within the States, can avoid the consequences of a non-recognition order by making a good faith effort to comply fully with title XI.

*C. The Proposed Subpart's Time Frames*

All of the commentators, except the ABA, recommended an extension of the time frames in §§ 1102.32, 1102.33(a), 1102.34 and 1102.36(b) of the proposed subpart.[34] As discussed below, the ASC agrees with the commentators and, in general, is extending the various time frames in subpart B. The ASC continues to believe, however, that its proceedings under subpart B should be vigorously and expeditiously pursued, given the fundamental interests involved. As noted above, the need for expeditious treatment was acknowledged by commentators.

More specifically, the IBAA and the ICB respectively suggested that the minimum 21 calendar day information gathering phase in § 1102.32 be extended to 30 working days and 60 calendar days. The ASC has determined to extend this time frame from 21 calendar days to 30 working days and has amended § 1102.32 accordingly. This additional two weeks or so should help to assure the ASC and the other parties to the proceeding that there is sufficient time to file and develop all pertinent information relating to the proceeding.

The MBA, USL, IBAA, FT and MB stated that the 15 calendar day deadline for filing a Rebuttal or a Notice Not To Contest was too brief. The MBA and USL respectively suggested that the period be extended to 20 and 30 days. The IBAA, however, recommended an extension to 20 working days. The ASC has determined to extend this time frame from 15 calendar days to 20 working days. This extension ordinarily should provide a party with an additional week to prepare a response to the Notice of Intention.

Finally, the MBA and MB criticized as too short the 10 calendar day period for responding to briefs, memoranda and statements under § 1102.34 of the subpart. The MBA suggested that the response period be lengthened to 20 calendar days. In response, and in keeping with the general change to working days, the ASC is amending § 1102.34's time period to 15 working days. This extension should provide the responding party with an additional week.

*D. Broader Participation in the Proceeding*

A number of the commentators requested that the ASC amend the subpart to allow the participation of all entities and individuals that will be directly affected by an adverse ASC decision.[35] For example, the IBAA commented:

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[34] The IBAA suggested that the ASC's use of calendar days (which includes Saturdays, Sundays and Federal holidays in § 1102.27 and elsewhere in the proposal), rather than working (or business) days, is undesirable. The ASC agrees with the IBAA and is amending subpart B accordingly. The ASC notes, however, that Saturdays, Sundays and Federal holidays were included in the proposal's time calculation only when the time period involved was seven calendar days or less.

[35] In a somewhat related comment, the MBA and MB stated that the ASC should not have the ability to exclude immediately from a proceeding any

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Because of the dramatic impact a decision of nonrecognition would have on a state's overall economy and in the "public interest[,]" the ASC must allow banks lenders, consumer groups, and residential and commercial building industries from the affected state to express their concerns to the ASC and participate in the proceedings.

In response, the ASC has amended § 1102.34 of the subpart. New paragraph (b) of the section allows "any person with *a demonstrable, direct* interest in the outcome of [a nonrecognition] proceeding" to file with the ASC's Secretary a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice of Intention.[36] [Emphasis added.]

Two features of paragraph (b) merit some discussion. First, the paragraph only relates to non-recognition proceedings, i.e., proceedings under section 1118 of title XI.[37] It does not apply to other ASC proceedings pursuant to section 1119(c) of that title.[38]

Second, the ASC and its staff will not assume that any person has a demonstrable, direct interest in the outcome of a non-recognition proceeding. The submitting person has that responsibility. Paragraph (b) authorizes the ASC's Chairperson or his or her designee not to accept any such document if the submitting person cannot demonstrate a direct interest in the outcome of the proceeding. For example, in a non-recognition proceeding against State A where the ASC is seeking non-recognition of State A's licenses and not its certifications, a letter from an appraiser who is certified in State A generally would not be accepted by the Chairperson or his or her designee. In all likelihood, rejection also would occur even if a licensed appraiser from State A submits a letter to the ASC but the appraiser fails to clearly identify his or her direct interest in the outcome of the proceeding. On the other hand, the ASC most likely would accept a submission from a financial institutions trade association, such as the ABA, which has members in State A, even though it may be headquartered in State B.

*E. The Burden of Proof*

The MBA and MB criticized the burden of proof standard in § 1102.31 of the subpart.[39] In pertinent part, the MBA said that it "does not believe it necessary to require a respondent [to] bear the ultimate burden of proof in all proceedings. Since the ASC would be taking action against a respondent for alleged violations of title XI, it seems more reasonable that the ASC should bear the burden of proof. Otherwise the ASC could successfully accuse a respondent of violating title XI without supplying evidence." MB similarly noted that the "burden of proof in matters heard by the ASC should not be on the respondent. The burden of proof should be on the ASC to establish a violation."

The ASC agrees with both commentators and notes that their comments and the standard § 1102.31 are consistent and in accord with Section 556(d) of the Administrative Procedure Act ("APA").[40] That section states, "[e]xcept as otherwise provided by statue, the proponent of a rule or order has the burden of proof." Courts have interpreted this section of the APA to require the proponent of the action, in this instance the ASC, to prove a *prima facie case*.[41] Such a case has been defined to be "of sufficient evidence in the type of case to get plaintiff past a motion for directed verdict in a jury case or motion to dismiss in a non-jury case; it is the evidence necessary to require the defendant to proceed with this case."[42] Thus, the ASC has to present sufficient evidence to prove the basic elements of its case, which, in a non-recognition proceeding, can be found in Section 1118(b) of Title XI.[43] After that point, the respondent "has the burden to go forward to persuade" the ASC otherwise.[44]

*F. Section 1102.38—Compliance Activities*

Two areas of § 1102.38 were of concern to the commentators, one substantive and the other technical. Turning to the substantive comment, the ABA noted that the language of § 1102.38, which enables the ASC staff to "commence an informal, preliminary inquiry" when "it appears that a person has violated, is violating or is about to violate title XI of FIRREA or the rules or regulations thereunder * * *," seems to authorize the ASC to initiate inquiries directed against banks, among other persons, who could be accused of noncompliance with rules and regulations administered by Federal agencies or instrumentalities other than the ASC. The ABA concluded that "[t]his rather broad mandate * * * appears to exceed the authority specifically granted to the [ASC] in section 1119(c)."

The ASC is amending proposed paragraph (a) of § 1102.38 for clarification purposes. As noted in the Proposal, the ASC and its staff receives information about potential violations of title XI from various sources. Some of these potential violations of title XI involve financial institutions that allegedly are not complying with one or more rules and regulations adopted by the Agencies pertaining to appraisals. In such a situation, the new language in paragraph (a) simply recognizes that the ASC staff can conduct an informal, preliminary inquiry into the matter. If that inquiry shows that the potential violation or violations concern regulations primarily administered by another Federal agency, then the ASC must refer the matter to the other agency for appropriate action. The ASC subsequently will retain a monitoring role pertaining to the referral consistent with the letter and spirit of its responsibilities under sections 1103(a)(2)[45] and 1119(c)[46] of title XI.

The ASC also has amended § 1102.38 in response to comments from the MBA and MB. Both commentators expressed a concern about making information public during the preliminary stages of an inquiry and about the ASC not being required to advise a target of an inquiry or investigation of its termination. Paragraph (c) no longer will allow the Secretary to place in a public file a written statement voluntarily submitted by a person involved in a preliminary inquire. As amended, the Secretary will place the statement in the public file only if the ASC commences a formal investigation or a proceeding under this subpart. In addition, paragraph (d) of § 1102.38 has been changed to require the ASC staff to advise a person of the termination on the staff's inquiry when the staff has concluded not to recommend the commencement of a formal investigation or a proceeding involving that person.

*G. Other Issues*

1. ASC Warnings

Three commentators suggested that the ASC provide advance warnings of consequences at two different times. First, the IBAA, recommended that the ASC should provide a State with a warning when it is approaching the threshold for ASC commencement of a non-recognition proceeding. This warning would provide the State an opportunity to correct its deficiencies and avoid such a proceeding.

The ASC believes that such a warning would be unnecessary. Barring extraordinary circumstances, the ASC cannot foresee a State or State agency ever being surprised by the commencement of a non-recognition proceeding. Indeed, the ASC will resort to instituting a non-recognition proceeding only as a last resort, *i.e.*, when all other reasonable avenues of reconciling the situation have been explored and closed. Moreover, the ASC believes that it already has addressed these concerns by including § 1102.39 into the subpart. That section requires the ASC "to cooperate"; that is, to "provide parties or persons ample opportunity to work out problems by consent, by settlement, or in some other manner."

Two of the commentators (MBA and MB) recommended that the ASC amend § 1102.33(d) to provide a party who fails to respond to the Notice of Intention an additional warning notice before the ASC can assume that the party has waived his or her opportunity to rebut and then find the facts as presented in the Notice of Intention and make a decision on those facts. The ASC does not believe such an additional formal notice is necessary. First, it is clear from the last sentence of § 1103.33(d) that a party may still avoid the effects of not responding to a Notice of Intention. The ASC, for good cause shown, will permit the filing of a Rebuttal after the prescribed time for doing so. Second, to ensure that the consequences of failing to respond to the Notice of Intention are clear to any party, the ASC is amending § 1102.32 of the subpart to require the ASC to include in the Notice of Intention a "bold-faced warning respecting the defect of a failure to file a Rebuttal or Notice Not To Contest under § 1102.33(d) * * *."

2. Commencement of a Proceeding

The IBAA requested a clarification of the exact time when a proceeding begins and suggested that it should "began no sooner than upon the * * * receipt of the Notice." The ASC agrees that this time frame needs clarification and is amending § 1102.32 to include the phrase, "and shall commence at the time of service," at the end of the second sentence of the proposed section. Thus, the time of commencement of a proceeding will be guided by §§ 1102.25, 1102.26 and 1102.27 of the subpart, which relate to methods of service, the effectiveness of service and how time frames are computed.

3. Conference Summaries

Both the MBA and MB commented on § 1102.29(f) of the subpart pertaining to how conferences are handled. Under that section, the Secretary is required to place in the proceeding's public file a memorandum summarizing the results of the conference. That memorandum controls the subsequent course of proceedings, unless the ASC for good cause modifies the results and instructs the Secretary to place an amendatory memorandum to that effect in the public file. The commentators noted that a party disagreeing with the substance of a memorandum would have no way to register his or her disagreement under this provision. While the ASC is of the view that the "for good cause" language would allow parties to obtain a modification of the memorandum, it also believes that some clarification may be useful. In that regard, the ASC has amended § 1102.29(f) by inserting the phrase, "by one or more parties to the conference," after the word, "shown," and before the word, "modifies."

4. Broader Notification of Proceeding

The IBAA recommended that "[b]ecause of the seriousness of a non-recognition decision, the State's Governor and the Secretary of the Department of Commerce should receive the Notice of Intention * * *. [This] would ensure that the state appraiser agency gives proper attention to the Notice and also serves to provide senior officials notice of a possible negative affect [sic] on the state economy." While the ASC agrees with the IBAA that benefits very well may accrue from sending the Notice of Intention to these State officials, the ASC believes that those benefits would be marginal. As discussed above, the ASC will use non-recognition only as a last resort. No one will be surprised, including the problem State's Governor. As also discussed above, absent extraordinary circumstances, the ASC will make every possible effort to be in contact with the Governor's office well before the commencement of a non-recognition proceeding. For these reasons, the ASC has determined not to amend this portion of the subpart.

5. Oral Presentations

The MBA and MB stated that the ASC should not have the discretion to deny a party the opportunity to make an oral presentation under § 1102.36(a). Both believe that parties should have a right to an oral presentation. The ASC believes that such discretion is necessary and appropriate in view of the need for expeditious handling of matters under the subpart and the new ability of persons with a demonstrable, direct interest in the outcome of a non-recognition proceeding to provide, in effect, written testimony on the matters at issue. However, to assure that requests for oral presentations will not be unreasonably denied, the ASC has amended this paragraph to say that a

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participant who engages in "improper language or conduct, refusal to comply with directions, use of dilatory tactics or refusal to adhere to reasonable standards of orderly and ethical conduct * * *." The commentators thought that the "reasonable standards" language was too broad and that exclusion should apply "only in the most egregious of circumstances." The ASC is sensitive to the commentators' concerns and will make every effort not to exclude participants. Nevertheless, the ASC believes that, given the seriouaness of proceedings under this subpart, the ASC must have the tools to ensure and enforce the orderly and professional conduct of those proceedings and participants therein.

[36] Paragraph (b) further provides that when a written brief, memorandum or other statement is accepted, the ASC's Secretary will copy the document and send one copy of it to each party to the proceeding. Parties then have ten days after service of the copy within which to file a written response with the Secretary. A responding party must simultaneously serve a copy of the response on other parties. The Secretary will place a copy of such brief, memoranda, statements and responses in the public file.

[37] 12 U.S.C. 3347 (1990).

[38] 12 U.S.C. 3348(c) (1990).

[39] The standard contained in § 1102.31 is identical to the burden of proof standard recently incorporated in the Uniform Rules of Practice and Procedure of the FDIC (12 CFR 308.114, 308.115(b), and 308.160(b)).

[40] 5 U.S.C. 556(d) (1991). The ASC notes that the APA, including section 556(d), does not formally apply to any ASC proceeding under the subpart. *See American Trucking Ass'ns* v. *U.S., AL & IN*, 344 U.S. 298 (1953).

[41] *Savage* v. *Commodity Futures Trading Commission*, 548 F.2d 192 (7th Cir. 1977). *See, also, Hazardous Waste Treatment Council* v. *U.S. E.P.A.*, *886 F. 2d 355 (D.C. Cir. 1989)*.

[42] *Black's Law Dictionary* 1100 (6th ed. 1990), citing *White* v. *Abrams*, 495 F.2d 724, 729 (9th Cir. 1974).

[43] As noted above, to make a non-recognition finding, the ASC must show that: (1) the State agency has failed to recognize and enforce the standards, requirements, and procedures prescribed pursuant to title XI; (2) the State agency is not granted authority by the State which is adequate to permit the agency to carry out its functions under Title XI; or (3) the decisions concerning appraisal standards, appraiser qualifications and supervision of appraiser practices are not made in a manner that carries out the purposes of Title XI.

[44] *See supra Savage. See also Steadman* v. *SEC*, 450 U.S. 91 (1981), in which the U.S. Supreme Court held, among other things, that Congress intended section 556(d) of the APA to require an agency of the Federal government "to weigh [evidence] and decide in accordance with the preponderance." *Steadman*, quoting H.R. Rep. No. 1980, 79th Cong., 2d Sess., at 37 (1946). Thus, the ASC will use this preponderance-of-the-evidence standard in deciding proceedings under the subpart.

[45] 12 U.S.C. 3332(a)(2) (1990). This portion of title XI requires the ASC to "monitor the requirements established by the [Agencies] with respect to—(A) appraisal standards for federal related transactions under their jurisdiction, and (B) determinations as to which federally related transactions under their jurisdiction require the services of a State certified appraiser and which require the services of a State licensed appraiser."

[46] 12 U.S.C. 3348(c) (1990). *See supra* text at II.B. The ASC believes that the intent of this section, which authorizes the ASC to "take such further action * * * it deems necessary to carry out the purposes" of title XI respecting a referred matter after its disposition, when read together with the balance of title XI, reaches alleged violators of title XI in a disposed matter than concerns a Federally regulated financial institution.

party's request to make an oral presentation may be denied only if such a denial is appropriate and reasonable under the circumstances.

**V. Conclusion**

On the basis of the foregoing, the ASC has determined to adopt the subpart as revised to reflect modifications to account for the commentators' suggestions.

**VI. Regulatory Flexibility Act Statement**

Pursuant to section 605(b) of the Regulatory Flexibility Act, the ASC certifies that this notice of adoption of subpart B of 12 CFR part 1102 is not expected to have a significant adverse economic impact on a substantial number of small business entities. Accordingly, a regulatory flexibility analysis is not required.

**VII. Paperwork Reduction Act Statement**

In accordance with the Paperwork Reduction Act of 1980,[47] the forms, reporting, and recordkeeping requirements included in final Subpart B were approved by the Office of Management and Budget (OMB) on July 7, 1992, through July 31, 1995, and were assigned OMB No. 3139–0006. On January 1, 1993, all federally insured financial institutions must use State licensed or certified appraisers in federally related transactions. About one-half of the States already have in place mandatory appraiser licensing and certification requirements.

The final Rule will enable the ASC to fulfill its compliance and enforcement duties under title XI of FIRREA. There is a total possible universe of 57 States and Territories that can be sanctioned by the ASC. It is very difficult to estimate the number of ASC enforcement actions at this early stage of title XI implementation. In addition, the ASC is authorized by title XI to take "further action" against State agencies respecting individual appraisers. We estimate conservatively that 75,000 appraisers eventually will be licensed or certified. Against this backdrop, the ASC estimates that it will initiate six proceedings per year under subpart B (one non-recognition proceeding, with the balance being "other proceedings"), each of them requiring on average about 60 hours of information collection burden. The annual burden of information collection therefore should total 360 hours. No commentators raised any cost implications. Therefore, this final Rule is considered to be nonmajor under Executive Order 12291.

[47] 44 U.S.C. 35 (1980).

**VIII. Statutory Basis of New Rules**

Subpart B is being adopted pursuant to Sections 1103, 1106, 1118 and 1119(c) of title XI of FIRREA.[48]

**List of Subjects in 12 CFR Part 1102**

Administrative practice and procedure, Appraisers, Banks, banking, Mortgages, Reporting and recordkeeping requirements.

**Text of the Rule**

Chapter XI, title 12 of the Code of Federal Regulations, is amended as set forth below:

## PART 1102—APPRAISER REGULATION

1. By adding new subpart B, consisting of §§ 1102.20 through 1102.39, to part 1102, to read as follows:

**Subpart B—Rules of Practice for Proceedings**

Sec.
1102.20 Authority, purpose and scope.
1102.21 Definitions.
1102.22 Appearance and practice before the Subcommittee.
1102.23 Formal requirements as to papers filed.
1102.24 Filing requirements.
1102.25 Service.
1102.26 When papers are deemed filed or served.
1102.27 Computing time.
1102.28 Documents and exhibits in proceedings public.
1102.29 Conduct of proceedings.
1102.30 Rules of evidence.
1102.31 Burden of proof.
1102.32 Notice of Intention to Commence A Proceeding.
1102.33 Rebuttal or Notice Not To Contest.
1102.34 Briefs, memoranda and statements.
1102.35 Opportunity for informal settlement.
1102.36 Oral presentations.
1102.37 Decision of the Subcommittee and judicial review.
1102.38 Compliance activities.
1102.39 Duty to cooperate.

**Subpart B—Rules of Practice for Proceedings**

**Authority:** 12 U.S.C. 3332, 3335, 3347, and 3348(c).

**§ 1102.20 Authority, purpose, and scope.**

(a) *Authority.* This subpart is issued under sections 1103, 1106, 1118 and 1119(c) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3332, 3335, 3347, and 3348(c)).

(b) *Purpose and scope.* This subpart prescribes rules of practice and procedure governing non-recognition proceedings under section 1118 of Title XI (12 U.S.C. 3347); and other proceeding necessary to carry out the purposes of Title XI under section 1119(c) of Title XI (12 U.S.C. 3348(c)).

[48] 12 U.S.C. § 3332, 3335, 3347, and 3348(c) (1989).

**§ 1102.21 Definitions.**

As used in this subpart:

(a) *Subcommittee* or *ASC* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, as established under section 1011 of Title XI (12 U.S.C. 3310).

(b) *Party* means the ASC or a person, agency or other entity named as a party, including, when appropriate, persons appearing in the proceeding under § 1102.22 of this subpart.

(c) *Respondent* means any party other than the ASC.

(d) *Secretary* means the Secretary of the ASC under its Rules of Operation.

**§ 1102.22 Appearance and practice before the Subcommittee.**

(a) *By attorneys and notice of appearance.* Any person who is a member in good standing of the bar of the highest court of any State or of the District of Columbia, or of any possession, territory, or commonwealth of the United States, may represent parties before the ASC upon filing with the Secretary a written notice of appearance stating that he or she is currently qualified as provided in this paragraph and is authorized to represent the particular party on whose behalf he or she acts.

(b) *By non-attorneys.* An individual may appear on his or her own behalf. A member of a partnership may represent the partnership, and an officer, director or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority. The partner, officer, director or employee must file with the Secretary a written statement that he or she has been duly authorized by the partnership, government unit, agency, institution, corporation or authority to act on its behalf. The ASC may require the representative to attach to the statement appropriate supporting documentation, such as a corporate resolution.

(c) *Conduct during proceedings.* All participants in a proceeding shall conduct themselves with dignity and in an orderly and ethical manner. The attorney or other representative of a party shall make every effort to restrain a client from improper conduct in connection with a proceeding. Improper language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct constitute grounds for immediate

exclusion from the proceeding at the direction of the ASC.

**§ 1102.23 Formal requirements as to papers filed.**

(a) *Form.* All papers filed under this subpart must be double-spaced and printed or typewritten on 8½" x 11" paper. All copies shall be clear and legible.

(b) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the ASC and of the filing party, the title and/or docket number of the proceeding and the subject of the particular paper.

(c) *Party names, signatures, certificates of service.* All papers filed must set forth the name, address and telephone number of the attorney or party making the filing, must be signed by the attorney or party, and must be accompanied by a certification setting forth when and how service has been made on all other parties.

(d) *Copies.* Unless otherwise specifically provided in the notice of proceeding or by the ASC during the proceeding, an original and one copy of all documents and papers shall be furnished to the Secretary.

**§ 1102.24 Filing requirements.**

(a) *Filing.* All papers filed with the ASC in any proceeding shall be filed with the Secretary, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

(b) *Manner of filing.* Unless otherwise specified by the ASC, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery; and

(3) Mailing the papers by first class, registered, or certified mail.

**§ 1102.25 Service.**

(a) *Methods; appearing party.* A serving party, who has made an appearance under § 1102.22 of this subpart, shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery; and

(3) Mailing the papers by first class, registered, or certified mail.

(b) *Methods; non-appearing party.* If a party has not appeared in the proceeding in accordance with § 1102.22 of this subpart, the ASC or any other party shall make service by any of the following methods:

(1) By personal service;

(2) By delivery to a person of suitable age and discretion at the party's last known address;

(3) By registered or certified mail addressed to the party's last known address; or

(4) By any other manner reasonably calculated to give actual notice.

(c) *By the Subcommittee.* All papers required to be served by the ASC shall be served by the Secretary unless some other person shall be designated for such purpose by the ASC.

(d) *By the respondent.* All papers filed in a proceeding under this subpart shall be served by a respondent on the Secretary and each party's attorney, or, if any party is not so represented, then upon such party. Such service may be made by any of the appropriate methods specified in paragraphs (a) and (b) of this section.

**§ 1102.26 When papers are deemed filed or served.**

(a) *Effectiveness.* Filing and service are deemed effective:

(1) For personal service or same-day commercial courier delivery, upon actual delivery; and

(2) For overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in, or delivery to, an appropriate point of collection.

(b) *Modification.* The effective times for filing and service in paragraph (a) of this section may be modified by the ASC in the case of filing or by agreement of the parties in the case of service.

**§ 1102.27 Computing time.**

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act, event or default from which the designated period of time begins to run is not included. The last day so computed is included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall not be included in the computation.

(b) *For service and filing responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time periods are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period; and

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period.

**§ 1102.28 Documents and exhibits in proceedings public.**

Unless and until otherwise ordered by the ASC or unless otherwise provided by statute or by ASC regulation, all documents, papers and exhibits filed in connection with any proceeding, other than those that may be withheld from disclosure under applicable law, shall be placed by the Secretary in the proceeding's public file and will be available for public inspection and copying at the address set out in § 1102.24 of this subpart.

**§ 1102.29 Conduct of proceedings.**

(a) *In general.* Unless otherwise provided in the notice of proceedings, all proceedings under this subpart shall be conducted as hereinafter provided.

(b) *Written submissions.* All aspects of the proceeding shall be conducted by written submissions only, with the exception of oral presentations allowed under § 1102.36 of this subpart.

(c) *Disqualification.* A Subcommittee member who deems himself or herself disqualified may at any time withdraw. Upon receipt of a timely and sufficient affidavit of personal bias or disqualification of such member, the ASC will rule on the matter as a part of the record and decision in the case.

(d) *User of ASC staff.* Appropriate members of the ASC's staff who are not engaged in the performance of investigative or prosecuting functions in the proceeding may advise and assist the ASC in the consideration of the case and in the preparation of appropriate documents for its disposition.

(e) *Authority of Subcommittee Chairperson.* The Chairperson of the ASC, in consultation with other members of the ASC whenever appropriate, shall have complete charge of the proceeding and shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings in accordance with this subpart.

(f) *Conferences.* (1) The ASC may on its own initiative or at the request of any party, direct all parties or counsel to meet with one or more duly authorized ASC members or staff at a specified time and place, or to submit to the ASC or its designee, suggestions in writing for the purpose of considering any or all of the following:

(i) Scheduling of matters, including a timetable for the information-gathering phase of the proceeding;

(ii) Simplification and clarification of the issues;

(iii) Stipulations and admissions of fact and of the content and authenticity of documents;

(iv) Matters of which official notice will be taken; and

(v) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of persons submitting affidavits or other documents and exhibits which may be introduced into the public file of the proceeding.

(2) Such conferences will not be recorded, but the Secretary shall place in the proceeding's public file a memorandum summarizing the results of the conference and shall provide a copy of the memorandum to each party. The memorandum shall control the subsequent course of the proceedings, unless the ASC for good cause shown by one or more parties to the conference, modifies those results and instructs the Secretary to place an amendatory memorandum to that effect in the public file.

(g) *Changes or extensions of time and changes of place of proceeding.* The ASC, in connection with initiating a specific proceedings under § 1102.32 of this subpart, may instruct the Secretary to publish in the **Federal Register** time limits different from those specified in this subpart, and may, on its own initiative or for good cause shown, issue an exemption changing the place of the proceeding or extending anytime limit prescribed by this subpart, including the date for ending the information-gathering phase of the proceeding.

(h) *Call for further briefs, memoranda, statements; reopening of matters.* The ASC may call for the production of further information upon any issue, the submission of briefs, memoranda and statements (together with written responses), and, upon appropriate notice, may reopen any aspect of the proceeding at any time prior to a decision on the matter.

### § 1102.30 Rules of evidence.

(a) *In general.* (1) Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted under this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may be deemed or ruled admissible in a proceeding conducted under this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Stipulations.* Any party may stipulate in writing as to any relevant matters of fact, law, or the authenticity of any relevant documents. The Secretary shall place such stipulations in the public file, and they shall be binding on the parties.

(c) *Official notice.* Every matter officially noticed by the ASC shall appear in the public file, unless the ASC determines that the matter must be withheld from public disclosure under applicable Federal law.

### § 1102.31 Burden of proof.

The ultimate burden of proof shall be on the respondent. The burden of going forward with a *prima facie* case shall be on the ASC.

### § 1102.32 Notice of Intention To Commence a Proceeding.

The ASC shall instruct the Secretary or other designated officer acting for the ASC to publish in the **Federal Register** a Notice of Intention To Commence A Proceeding (Notice of Intention). The Notice of Intention shall be served upon the party or parties to the proceeding and shall commence at the time of service. The Notice of Intention shall state the legal authority and jurisdiction under which the proceeding is to be held; shall contain, or incorporate by appropriate reference, a specific statement of the matters of fact or law constituting the grounds for the proceeding; and shall state a date no sooner than 25 days after service of the Notice of Intention is made for termination of the information-gathering phase of the proceeding. The Notice of Intention also must contain a bold-faced warning respecting the effect of a failure to file a Rebuttal or Notice Not To Contest under § 1102.33(d) of this subpart. The ASC may amend a Notice of Intention in any manner and to the extent consistent with provisions of applicable law.

### § 1102.33 Rebuttal or Notice Not To Contest.

(a) *When required.* A party to the proceeding may file either a Rebuttal or a Notice Not to Contest the statements contained in the Notice of Intention or any amendment thereto with the Secretary within 15 days after being served with the Notice of Intention or an amendment to such Notice. The Secretary shall place the Rebuttal or the Notice Not To Contest in the public file.

(b) *Requirements of Rebuttal; effect of failure to deny.* A Rebuttal filed under this section shall specifically admit, deny or state that the party does not have sufficient information to admit or deny each statement in the Notice of Intention. A statement of lack of information shall have the effect of a denial. Any statement not denied shall be deemed to be admitted. When a party intends to deny only a part or a qualification of a statement, the party shall admit so much of it as is true and shall deny only the remainder.

(c) *Notice Not To Contest.* A party filing a Notice Not To Contest the statement of fact set forth in the Notice of Intention shall constitute a waiver of the party's opportunity to rebut the facts alleged, and together with the Notice of Intention and any referenced documents, will provide a record basis on which the ASC shall decide the matter. The filing of a Notice Not To Contest shall not constitute a waiver of the right of such party to a judicial review of the ASC's decision, findings and conclusions.

(d) *Effect of failure to file Rebuttal or Notice Not To Contest.* Failure of a party to file a response required by this section within the time provided shall constitute a waiver of the party's opportunity to rebut and to contest the statements in the Notice of Intention and shall constitute authorization for the ASC to find the facts to be as presented in the Notice of Intention and to file with the Secretary a decision containing such findings and appropriate conclusions. The ASC, for good cause shown, will permit the filing of a Rebuttal after the prescribed time.

### § 1102.34 Briefs, memoranda and statements.

(a) *By the parties.* Until the end of the information-gathering phase of the proceeding, any party may file with the Secretary a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice of Intention. The filing party shall simultaneously serve other parties to the proceeding with a copy of the document. No later than ten days after such service, any party may file with the Secretary a written response to the document and must simultaneously serve a copy thereof on the other parties to the proceeding. The Secretary will receive documents and responses and will place them in the public file.

(b) *By interested persons, in non-recognition proceedings.* Until the end of the information-gathering phase of a proceeding under section 1118 of FIRREA (12 U.S.C. 3347), any person with a demonstrable, direct interest in the outcome of the proceeding may file with the Secretary a written brief,

memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice of Intention. The ASC's Chairperson or his or her designee may not accept any such written brief, memorandum or other statement if the submitting person cannot demonstrate a direct interest in the outcome of the proceeding. Upon acceptance of the written brief, memorandum or other statement, the Secretary shall make copies of the document and forward one copy thereof to each party to the proceeding. No later than ten days after such service, any party may file with the Secretary a written response to the document and must simultaneously serve one copy thereof on the other parties to the proceeding. The Secretary will place a copy of such briefs, memoranda, statements and responses in the public file.

**§ 1102.35 Opportunity for informal settlement.**

Any party may at any time submit to the Secretary, for consideration by the Subcommittee, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No offer or proposal shall be included in the proceeding's public file over the objection of any party to such proceeding. This paragraph shall not preclude settlement of any proceeding by the filing of a Notice Not To Contest as provided in § 1102.33(c) or by the submission of the case to the ASC on a stipulation of facts.

**§ 1102.36 Oral presentations.**

(a) *In general.* A party does not have a right to an oral presentation. Under this section, a party's request to make an oral presentation may be denied if such a denial is appropriate and reasonable under the circumstances. An oral presentation shall be considered as an opportunity to offer, emphasize and clarify the facts, policies and laws concerning the proceeding.

(b) *Method and time of request.* Between the commencement of the proceeding and ten days before the end of the information-gathering phase, any party to the proceeding may file with the Secretary a letter requesting that the Secretary schedule an opportunity for the party to give an oral presentation to the ASC. That letter shall include the reasons why an oral presentation is necessary.

(c) *ASC processing.* The Secretary must promptly forward the letter request to the Chairman of the ASC. The Chairman, after informally contacting other ASC members and the ASC's senior staff for their views, will instruct the Secretary to forward a letter to the party either: Scheduling a date and time for the oral presentation and specifying the allowable duration of the presentation; or declining the request and providing the reasons therefor. The party's letter request and the ASC's response will be included in the proceeding's public file.

(d) *Procedure on presentation day.* On the appropriate date and time, the party or his or her attorney (if any) will make the oral presentation before the ASC. Any ASC member may ask the party or the attorney, as the case may be, pertinent questions relating to the content of the oral presentation. Oral presentations will not be recorded or otherwise transcribed. The Secretary must enter promptly into the proceeding's public file a memorandum summarizing the subjects discussed during the oral presentation.

**§ 1102.37 Decision of the Subcommittee and judicial review.**

At a reasonable time after the end of the information-gathering phase of the proceeding, but not exceeding 35 days, the ASC shall issue a final decision, containing specified terms and conditions as it deems appropriate, in the matter and shall cause the decision to be published promptly in the **Federal Register**. The final decision shall be effective on issuance. The Secretary shall serve the decision upon the parties promptly, shall place it in the proceeding's public file and shall furnish it to such other persons as the ASC may direct. Pursuant to the provisions of chapter 7 of title 5 of the U.S. Code and section 1118(c)(3) of title XI of FIRREA (12 U.S.C. 3348(c)(3)), a final decision of the ASC is a prerequisite to seeking judicial review.

**§ 1102.38 Compliance activities.**

(a) Where, from complaints received from members of the public, communications from Federal or State agencies, examination of information by the ASC, or otherwise, it appears that a person has violated, is violating or is about to violate title XI of FIRREA or the rules or regulations thereunder, the ASC staff may commence an informal, preliminary inquiry into the matter. If, upon such inquiry, it appears that one or more allegations relate to possible violations of regulations administered by another agency or instrumentality of the Federal Government, then the matter shall be referred to that agency or instrumentality for appropriate action. The ASC, pursuant to its responsibilities under section 1103(a)(2) of title XI (12 U.S.C. 3332(a)(2)) and section 1119(c) of title XI (12 U.S.C. 3348)), shall monitor the matter. If, upon inquiry, it appears that one or more allegations are within the ASC's jurisdiction, then the ASC, in its discretion, may determine to commence a formal investigation respecting the matter and shall instruct the Secretary to create a public file for the formal investigation. The Secretary shall place in that file a memorandum naming the person or persons subject to the investigation and the statutory basis for the investigation.

(b) Unless otherwise instructed by the ASC or required by law, the Secretary shall ensure that all other papers, documents and materials gathered or submitted in connection with the investigation are non-public and for ASC use only.

(c) Persons who become involved in preliminary inquiries or formal investigations may, on their own initiative, submit a written statement to the Secretary setting forth their interests, positions or views regarding the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them and the amount of time that may be available for preparing and submitting such a statement prior to the presentation of a staff recommendation to the ASC. Upon the commencement of a formal investigation or a proceeding under this subpart, the Secretary shall place any such statement in the appropriate public file.

(d) In instances where the staff has concluded its inquiry of a particular matter and has determined that it will not recommend the commencement of a formal investigation or a proceeding under this subpart against a person, the staff shall advise the person that its inquiry has been terminated. Such advice, if given, must in no way be construed as indicating that the person has been exonerated or that no action may ultimately result from the staff's inquiry into the particular matter.

**§ 1102.39 Duty to cooperate.**

In the course of the investigations and proceedings, the ASC (and its staff, with appropriate authorization) must provide parties or persons ample opportunity to work out problems by consent, by settlement, or in some other manner.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: July 9, 1992.

Fred D. Finke,

*Chairman.*

[FR Doc. 92-16599 Filed 7-16-92; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 91-ANE-06; Amendment 39-8305, AD 92-15-11]

## Airworthiness Directives; Pratt & Whitney Canada PT6A Series Turboprop Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Pratt & Whitney Canada (PWC) PT6A series turboprop engines, that requires removal of the compressor delivery air line (P3) filter assembly. This amendment is prompted by aircraft flight test results that have revealed an engine configuration and a set of operating conditions where engine acceleration is insufficient to provide for required aircraft balked landing performance. The actions specified by this AD are intended to prevent excessive engine acceleration time that could result in an aircraft's inability to safety perform the required balked landing maneuver.

**EFFECTIVE DATE:** August 17, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Guyotte, Manager, Engine Certification Branch, ANE-142, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7080; fax (617) 270-2412.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Pratt & Whitney Canada (PWC) PT6A series turboprop engines was published in the **Federal Register** on March 1, 1991 (56 FR 8733). That action proposed to require inspection for and removal of the compressor delivery air line (P3) filter assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments contained in 23 comment letters received. All of the comments received are addressed in the following paragraphs.

Three comments reference the content of the Notice of proposed rulemaking (NPRM). One commenter states that too little technical information was provided to evaluate the merit of the proposed AD. The FAA disagrees. The detail of technical content in the Notice of proposed rulemaking (NPRM) is in accordance with prescribed FAA practices. Several comments contain detailed technical discussions relative to information contained in the NPRM. Therefore the FAA believes the NPRM adequately described the proposed action.

Two commenters state that the comment period was too short, and object to the FAA's denial of a request for an extension. The FAA disagrees. The NPRM 45 day comment period is in accordance with established FAA practices. Also, none of the comments provided justification to support the request. A number of comments were received after the comment period closing, and were considered in the decision making process.

One commenter also states that the NPRM was inadequately advertised. The FAA disagrees. Publication in the **Federal Register** is the official method by which proposed AD's are made known to the public.

Several comments address the service history of affected PWC PT6A engines, and question whether the data demonstrates a need for installation of P3 filters to prevent fuel control unit (FCU) pneumatic contamination. The FAA has reviewed available sources of information, and can find no pattern of engine failures or power losses in service due to FCU pneumatic contamination. In addition, Transport Canada, the responsible airworthiness authority, has reviewed their own service difficulty data base, and that of PWC, and cannot identify a service problem pattern relating to FCU pneumatic contamination. Lastly, the FAA has no information relative to any National Transportation Safety Board (NTSB) probable cause findings related to engine failures or power losses associated with FCU pneumatic contamination. The P3 filter option offered by PWC is intended for operations in harsh environments as a method for extending useful FCU installed life. However, FCU failure modes and effects due to pneumatic contamination are identical with or without P3 filter installation. One commenter describes one such harsh environment, noting FCU problems when operating in an area where pollutant particles from paper processing mills were discharged into the atmosphere. While the FAA concurs that a P3 filter could be useful when operating in such an environment, another commenter points out that service difficulty reports describe slow or no accelerations with clogged P3 filters.

Two commenters state that certain tests have shown a definitive need to install P3 filters. The FAA has no information of any of these tests, and none were submitted. As discussed above, existing service difficulty data does not support the conclusions stated in the comments. One commenter states that a "roll-back" or power loss event can result in a high propeller drag condition, leading to an accident. The FAA disagrees. An engine power loss due to FCU pneumatic contamination is no more severe than any single engine power loss for any other reason. The affected airplanes are all twin-engine airplanes, and must meet all applicable Civil Aviation Regulations (CAR) or Federal Aviation Regulations (FAR) requirements for single engine operation.

Two comments address the U.S. Navy's use of Beech Aircraft Company (BAC) T-34C (PWC PT6A powered) airplanes. The two comments state that the Navy had engine power loss problems related solely to the lack of P3 filters in BAC T-34C airplanes, and therefore P3 filters must be necessary. The FAA disagrees. The FAA does not have direct access to the Navy's service difficulty database, however, the FAA has identified nine BAC and PWC field service documents that pertain to a BAC T-34C power loss problem. Of this group, one action to address this problem was to install a P3 filter. Further research has shown that the most dramatic improvement to the BAC T-34C engine power loss problem was made by adjusting the torque controller setting, not installation of a P3 filter. The incorporation of these nine service documents, together, coincides with the apparent reduction in BAC T-34C engine power loss problems.

Also, it is significant that the BAC T-34C idle is 62% to 65% core speed (Ng).

while the idle of the affected airplanes is only in the 51% Ng range. Therefore, no engine acceleration problems associated with P3 filter installation would be expected on these higher idle installations. Lastly, there is little comparison of mission or operating environment between a single engine military trainer (T–34C), and a twin engine business type airplane. Therefore, the FAA has determined that the noted BAC T–34C service history is not relevant to this issue.

One commenter states that PWC issuance of a service bulletin offering the P3 filter as an option is sufficient evidence of the necessity of installing the filter. The FAA disagrees. As discussed previously, the FAA has determined that the service history data base does not indicate the need to require P3 filter installation. Also, PWC's publication of an optional service bulletin does not mean that operation of a PT6A engine without a P3 filter is unsafe.

Two comments address the airplane applicability of this AD. The comments question why other airplane types powered by affected PWC PT6A engines were not included in the AD action. The FAA agrees that other model airplanes are potentially affected, and has reviewed with appropriate airplane manufacturers the possible effects of P3 filter installation. At this time, the FAA has identified one additional model series (Cessna 406) that is directly affected. Flight tests similar to the final phase BAC tests have been completed on this model, yielding similar results of slow engine acceleration, and concurrent airplane handling difficulty during balked landing maneuvers. Corrective action for this model series airplane is being evaluated and additional rulemaking may follow.

Several comments address the controlling test parameters used during the final phase of the Beech test program, specifically idle Ng values and generator load factor. In particular, several comments question the use of 51% idle Ng inflight as not being an approved value. The FAA disagrees. The FAA has reviewed BAC and PWC service documents (*i.e.*, the Airplane Flight Manual (AFM) and Engine Installation Manual), and has determined that a ground or inflight idle Ng of 51% is approved in accordance with both manufacturers' limitations. Comments also state that the BAC King Air Model C90 AFM, Limitations Section, prohibits the use of generator load factor greater than 50% with an idle Ng below 57%. The FAA disagrees. The FAA has reviewed the AFM, and has determined that the Emergency Procedures Section instructions can allow, under certain circumstances, a maximum generator load factor while the engine is operated at low idle (51% Ng) during approach and landing. It has also been determined that the Ng/generator load limits address a generator cooling requirement as opposed to an engine operating concern, and that such a limit is actually not required on C90 aircraft. Also, the use of maximum generator load at 51% Ng is allowed by PWC limitations. Also, several comments state that the BAC fuel control adjustments were improper, exceeded approved limits, and were inappropriate for field service. The FAA disagrees. The FAA has reviewed the final phase BAC test FCU calibrations, and compared them to approved type design limits. All values (*i.e.*, Ng, acceleration fuel flow, etc.) have been found to be within approved type data limits. As to the appropriateness of the calibrations, the FAA believes that test calibrations represent a worst case approved configuration relative to engine acceleration. The fact that the FCU calibrations are not typical of in-service units does not affect the appropriateness of the worst case test configuration.

One commenter states that the BAC C90 AFM Limits Section "Minimum Ng vs. Generator Load" table is not related to starter-generator cooling requirements, but more closely related to engine operational considerations. The FAA disagrees. The noted limit table has been confirmed by BAC to be related to hot day (125°F) starter-generator cooling. Increased engine speeds increase the cooling air flow in order to keep the starter-generator within its component temperature limit. It must also be noted that the final phase BAC C90 tests were conducted within the horsepower and bleed extraction limits noted in the applicable PWC PT6A Installation Manual.

Several comments address inflight idle Ng, and whether a particular Ng value on the ground can be maintained during the subject flight conditions, and whether this value can change from flight-to-flight. The FAA has reviewed the PWC PT6A control system design, and has determined that the idle Ng value on the ground will be maintained ±1% inflight, up to the altitude (barometric pressure) where decreasing idle fuel flow equals the FCU mechanical stop minimum fuel flow. This is due to the FCU scheduling to maintain a specific Ng value within the range of its authority over low end fuel flow. Above that altitude, the previously constant (±1%) idle Ng becomes a variable, increasing with altitude. It is possible to reduce this idle Ng value with horsepower or bleed extraction, if the demand is beyond the range of FCU authority. In support of this review, the FAA has conducted several independent flight tests that verified the expected idle Ng profile with altitude. The FAA flight tests also verified that there were no significant flight-to-flight variations in the idle Ng values. It should also be noted that during the final phase BAC tests, idle Ng was never artificially adjusted to a lower value, either on the ground or inflight. One commenter also suggests that a typical in-service airplane (nominal FCU calibration) would be more representative for engine acceleration testing. The FAA disagrees, and believes the configuration tested in the last phase of the Beech program is a proper worst case configuration relative to approved type design data.

Four commenters state that the BAC test results were erroneous and invalid due to not meeting type design requirements. The FAA disagrees. The FAA has closely reviewed the airplane configuration tested in the final phase of BAC testing, and closely reviewed the demonstrated test conditions. The FAA has determined that the airplane configuration and test parameters meet type design data. The test configuration and test parameters represent a worst case relative to engine acceleration performance, and airplane balked landing performance.

Several comments address the final phase of BAC tests, specifically the flight test on August 17, 1990. One commenter states that the FAA observer log of engine acceleration time data did not agree with the BAC log. The FAA disagrees. The FAA has reviewed the logs for the last flight test on August 17, 1990, and finds that the two logs contain equivalent data. Also, the commenter identifies the August 17, 1990, test as BAC Flight No. 18, which is incorrect. The August 17, 1990, test is identified as BAC Flight No. 19. The BAC test report contains log sheets for both tests. BAC Flight No. 18 was flown on August 16, 1990. The noted test points were timed engine accelerations. BAC Flight No. 19 on August 17, 1990, also included several touch-and-go landings, which evaluated airplane handling. Another commenter states that there is a discrepancy in the target Ng engine speeds between various Flight No. 19 test conditions. In particular, the commenter questions the variation in Ng values encountered in a series of touch-and-go landings, and those reported by BAC during Conditions 3 and 4, which were

conducted in stabilized level flight conditions. The FAA has reviewed the test procedures and test results related to this comment. Flight No. 19 Conditions 3 and 4 allowed Ng to stabilize at the idle value of 51% Ng. The touch-and-go tests were conducted as a variation to the BAC Configuration 6 test procedures. Configuration 6 required a go-around procedure, initiated from 50 feet above the runway. Initial tests showed this to be an unacceptably dangerous procedure. Consequently, the FAA concurred with the BAC recommendation to alter the procedure to a touch-and-go test. For these tests, the airplane was landed in a normal manner with the condition levers at the low idle positions. After touchdown, the power control levers were moved to the idle positions, the flaps were retracted and the airplane retrimmed for takeoff. At that time, both power control levers were rapidly advanced to full power positions. The test site runway length precluded permitting the engines to decelerate fully to the idle 51% Ng speeds. Three tests were conducted, and the minimum recorded Ng values were 60%, 57%, and 54%, during the engine deceleration on the ground, and prior to throttle burst to full power and takeoff. The Condition 3 and 4 tests were conducted in an entirely different manner and for the purpose of collecting entirely different data than the modified Configuration 6 tests. Another commenter states that the final phase BAC tests were conducted without known FCU calibrations. The FAA disagrees. The FCU calibrations for the final phase BAC tests were forwarded to the FAA. The FAA has reviewed the FCU calibration reports and has determined that the FCU's were calibrated prior to the final phase BAC tests and that the FCU calibrations were within approved limits.

Another commenter states that BAC Flight No. 19 was invalid due to only one engine having a P3 filter installed. The FAA disagrees. There are no airplane or engine manual restrictions requiring that both engines be configurated the same relative to P3 filter installation. Since individual engine change-outs do occur on BAC models affected by this AD, it is reasonable to expect that some airplanes may be configured with only one engine having a P3 filter installed. The FAA is aware of at least one airplane affected by this AD that had incorporated the PWC P3 filter on only one engine. The commenter also states that no baseline testing exists for either engine, and surmises that the long acceleration times for the P3 filter equipped engine could only be due to an engine problem. The FAA disagrees. BAC Flight No. 19 was conducted using the same airplane and engines as was used for all of the BAC final phase tests. Therefore, baseline test data with and without P3 filters exists for both engines. Engine operation during BAC Flight No. 19 was very similar to the previous test flights, with the P3 filter configured engine demonstrating increased acceleration time consistent with those encountered in the previous tests. The engine not equipped with a P3 filter also performed very similarly to previous baseline flight tests. No unusual engine anomalies were noted during BAC Flight No. 19, other than the effect of having a P3 filter installed.

Several comments address the effect of a P3 filter on engine acceleration. Five commenters state that the installation of a P3 filter has no effect on engine acceleration. One commenter also states that generator load and ambient temperature are the only significant factors in the BAC engine acceleration tests. One commenter states that P3 filter installation can have a negative effect on engine acceleration, as shown by the final phase BAC tests. The FAA has determined by test that under certain combinations of ambient temperature, bleed air, horsepower extraction, and power setting, engine acceleration time can be negatively affected by P3 filter installation. One commenter suggests that the FAA should not rely on engine acceleration times alone in evaluating the effect of P3 filter installation. The FAA agrees. The primary criteria for acceptable engine acceleration is airplane handling during a balked landing maneuver, not a timed engine acceleration. One commenter states that Piper Aircraft Corporation (PAC) airplanes equipped with P3 filters have not experienced engine acceleration service problems as identified by the BAC tests. The FAA disagrees. The FAA does have records of PAC PWC PT6A powered airplanes that have had acceleration problems due to clogged P3 filters. However, there are no service problems on record indicating engine acceleration problems due to clean (unclogged) installed P3 filters.

Two commenters state that the P3 filter is effective in collecting pneumatic contamination. The FAA agrees that the P3 filter does perform its intended function of collecting pneumatic particle contaminants. One commenter also states that a *clogged* filter will manifest itself with slow accelerations or no-starts. The FAA agrees. The FAA is aware of engine no-starts, minimum-flow on start-up, slow accelerations and no accelerations with concurrent high inter-turbine temperature, and rollbacks to minimum-flow occurring due to clogged P3 filters. However, as stated earlier, there are no service difficulty records indicating a safety problem for PWC PT6A engines not equipped with P3 filters. The FAA has reviewed available sources of information, and can find no pattern of engine failures or power losses in service due to FCU pneumatic contamination for PWC PT6A engines not equipped with P3 filters. Lastly, the PWC PT6A FCU failure modes and effects due to pneumatic contamination are identical with or without a P3 filter.

One commenter states that additional BAC tests (Model A100) showed a left to right engine acceleration time difference of 2 seconds, with or without P3 filters installed, and questions why a 2 second difference is acceptable for A100 models. The FAA evaluation criteria for both tests was airplane handling performance during balked landing maneuvers, and not left to right engine acceleration time differentials. The supplemental BAC A100 tests were designed to fully evaluate airplane balked landing performance on a high minimum idle configuration (83% Ng range), with and without P3 filters installed. The FAA has determined that the effect of P3 filter installation on these installations is significantly less than on lower idle installations (51% Ng range), and that A100 handling during the balked landing maneuvers was acceptable. During the supplemental A100 tests, the maximum engine acceleration time increase due to P3 filter installation was 1.98 seconds, while the left to right engine acceleration time differential increased 0.84 seconds. During the final phase BAC Model C90 tests, which are the basis for this AD, the maximum engine acceleration time increase due to P3 filter installation was 25.04 seconds, while the maximum left to right engine acceleration time differential increased 14.99 seconds. The FAA evaluation criteria for both tests was airplane handling performance during balked landing maneuvers, as affected by increased engine acceleration time due to P3 filter installation. The FAA did not evaluate either airplane by a timed engine acceleration alone, nor solely by left to right engine acceleration time differentials.

One commenter questions why results from the initial phase of the BAC tests were not also considered in the AD action. They were not considered because the initial phase of BAC tests were conducted without benefit of a type design P3 system configuration and

known FCU calibration. Post-test inspection found the P3 system to be not in conformity with approved type design, and the FCU calibration to be in error. No definitive results were obtained from these tests for the above reason. This AD action is based on the final phase BAC tests that incorporated a worst case approved engine configuration relative to engine acceleration. All BAC final phase tests were fully coordinated with the FAA, and the FAA was invited to participate in all tests.

Several comments discuss the possibility of exploring methods by which a P3 filter may remain as a installed option. In particular, the commenters suggest either a redesign of the filter, or modification of certain engine operating limits so as to yield acceptable engine/airplane performance. As discussed earlier, no safety issues have been identified that would require that an AD be issued to require P3 filter installation, therefore the FAA cannot mandate that the manufacturers change either the filter design or associated operating limits. However, the AD process does provide a method by which an alternate means of compliance to AD requirements can be approved by the FAA. This method is available to any affected person. One comment suggests that an installed engine acceleration check would be sufficient to establish acceptable airplane performance. The FAA disagrees. FAA type design requirements are such that acceptable engine/airplane performance is required for the worse case certified configuration. Also, allowing an individual installed engine acceleration check does not account for engine or FCU deterioration or change out. One commenter states that BAC did not investigate engine acceleration performance at the maximum certified minimum idle value of 53% Ng. The comment is accurate. However, the tested configuration of the final phase BAC tests represents the worst case relative to engine acceleration. The BAC final phase tests were not intended to develop alternatives, but to investigate a potentially unsafe condition. One commenter questions what consideration has been given to the original intent to the PWC P3 filter option. The FAA has considered the original intent of the P3 filter option. The P3 filter is a method of dealing with atmospheric contamination, which can cause wear within the FCU. The P3 filter can, under certain conditions, reduce the expense of maintaining the FCU in an airworthy condition. It must also be noted that engine failure modes and operational effects are identical with or without a P3 filter installed. Also, as previously discussed, no safety issues have been identified which would require that P3 filters be mandated. However, relative to the original intent of the PWC P3 filter option, the FAA has coordinated with PWC to define a test program that may identify an engine configuration allowing P3 filters to remain as an option. This AD will be amended to include a P3 filter installation option if it is developed.

One commenter states that use of the engine inlet inertial separator can have a significant affect on engine acceleration characteristics. The FAA disagrees. The inertial separator is a device which promotes the bypass of airborne debris (ice, rain, hail, *etc.*) away from the engine inlet. The inertial separator does not significantly affect engine inlet airflow parameters. The type design approval by Transport Canada requires that PWC PT6A engines demonstrate fully acceptable operating characteristics with and without the inertial separator extended. Design requirements for the airframe portion of the engine inlet system are found in the applicable Installation Manual. The final phase BAC tests were conducted with the inertial separator retracted. The FAA does not concur that use of the inertial separator has a significant effect on engine acceleration characteristics.

One commenter questions whether the FAA has considered the increased maintenance cost associated with P3 filter removal. The FAA has determined that the fleet potential for increased FCU maintenance cost is believed to be minimal, primarily due to the low rate of installation of P3 filters in service, which is estimated to be less than 5% of the fleet.

One commenter states that if the BAC tests are valid, then the airplane is improperly certificated if it is unable to perform the balked landing maneuver, and should be grounded by emergency AD. The FAA disagrees. The FAA has determined that the affected aircraft were probably certificated with the P3 filter available as an engine option. The BAC tests are valid in that they establish that an unsafe condition under special operating conditions has developed due to the installation of the P3 filter. To date the only actual service problems identified with P3 filters on PWC PT6A engines are no-starts, minimum-flow on start-up, slow accelerations and no accelerations with concurrent high interturbine temperature, and rollbacks to minimum flow, all due to clogged P3 filters. Therefore, the FAA has determined that the proposed action is appropriate.

Two comments address pending class action litigation concerning P3 filter installation on certain PWC PT6A powered airplanes. The commenters suggest that the FAA should consider this pending civil action relative to this AD. The FAA is taking this action in response to the findings of an unsafe conditions. Further action may be taken if circumstances warrant.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the following change to the economic evaluation.

The FAA estimates that there are approximately 4,330 PWC PT6A series engines installed on aircraft of U.S. registry, and that approximately 225 engines have a P3 filter installed. The FAA estimates that for those 225 engines with a P3 filter installed it will take approximately 4 work hours to remove the filter at $55 per work hour. The FAA estimates also that there will be no part cost associated with this AD. Based on these figures, it is estimated that the total cost impact of this AD will be $49,500. Pratt & Whitney Canada has advised the FAA that they may assume any parts and labor costs to remove the subject filter assemblies from affected engines. Consequently, there should be minimal cost impact on U.S. operators for parts or labor.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92-15-11 Pratt & Whitney Canada:** Amendment 39-8305; Docket No. 91-ANE-06.

*Applicability:* Pratt & Whitney Canada (PWC) PT6A-6, PT6A-6/C20, PT6A-20, PT6A-20A, PT6A-21, PT6A-27, PT6A-28, PT6A-34, PT6A-34B, and PT6A-36 turboprop engines installed on Beech Aircraft Corporation Models 65-A90, 65-A90, 65-A90-1, 65-A90-2, 65-A90-3, 65-90-A4, 99, 100, 99A, B90, C90, C90A, E90, H90, A90, A99A, B99, and C99 aircraft.

*Compliance:* Required within the next 180 days after the effective date of this AD, unless accomplished previously.

To prevent excessive engine acceleration time that could result in an aircraft's inability to safely perform the balked landing maneuver required by Federal Aviation Regulations (FAR) part 23, paragraphs 23.75(d), 23.77 and 23.143(a)(5), accomplish the following:

(a) Perform a visual inspection to determine if a compressor delivery air line (P3) filter assembly has been installed on the engine.

**Note:** The compressor delivery air line assembly may have been installed on the engine as original equipment, or may have been installed per any of the following PWC Service Bulletins: 1205, 1253, 1290, 1294, 1330, 1343, or 1378.

(b) Remove from service, if installed, the P3 filter assembly.

**Note:** The engine compressor delivery air line assembly can be returned to an approved configuration without a P3 filter. For information, refer to the applicable PWC Maintenance Manual and Parts Catalog.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office, FAA, Engine and Propeller Directorate. The request should be forwarded through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained for the Engine Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on August 17, 1992. Issued in Burlington, Massachusetts, on June 29, 1992.

**Jay J. Pardee,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 92-16880 Filed 7-16-92; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### 15 CFR Parts 771 and 785

**[Docket No. 920777-2177]**

### Humanitarian Shipments to Vietnam; General License G-NGO

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** As further steps in the ongoing normalization of relations between the United States and Vietnam, the Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by adding a new General License G-NGO and revising policy to allow issuance of licenses for commercial exports of humanitarian goods. The general license authorizes donations of humanitarian items by non-governmental organizations to carry out humanitarian projects in Vietnam. The types of donations eligible for export under this general license are those described in the Humanitarian License procedure of the EAR. The types of goods that may be licensed for sale are also those eligible for the Humanitarian License. These new procedures should reduce paperwork and allow expanded trade in eligible items.

**EFFECTIVE DATE:** This rule is effective July 17, 1992.

**FOR FURTHER INFORMATION CONTACT:** Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4819.

**SUPPLEMENTARY INFORMATION:**

**Background**

The United States is engaged in a step-by-step process to normalize relations between the U.S. and Vietnam. On April 29, 1992, the State Department announced additional steps in the normalization process. The first is to permit commercial sales to meet basic human needs and the second is to lift restrictions on humanitarian projects by non-governmental, non-profit organizations in Vietnam. Effective May 11, 1992, the Department of the Treasury's Office of Foreign Assets Control (OFAC) amended the Foreign Assets Control Regulations (31 CFR part 500) by establishing a general license authorizing non-governmental organizations to engage in all transactions incident to the carrying out of humanitarian projects in Vietnam (57 FR 20765 of May 15, 1992). This OFAC rule also provides for case-by-case licensing of commercial sales of foreign-origin goods and services to meet basic human needs in Vietnam.

BXA is now issuing a final rule establishing General License G-NGO to authorize the export of certain donated items to support humanitarian projects in Vietnam. These donations may only be made by non-governmental, non-profit organizations that are registered with OFAC, and only commodities for humanitarian projects to meet basic human needs are eligible for export under this general license. This final rule also allows issuance of individual validated licenses on a case-by-case basis for exports or reexports to Vietnam of commercially-supplied goods to meet basic human needs. Previously, only exports of donated goods to meet basic human needs were allowed under a validated license.

**Rulemaking Requirements**

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information which have been approved by OMB under Control Numbers 0694-0005 and 0694-0048. The collection found in § 771.27(b) is estimated to average 30 minutes per response. This includes the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the data requirements, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington,

DC 20503, Attn: Paperwork Reduction Project.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Moreover, this rule liberalizes the licensing requirement for exports to Vietnam. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects**

*15 CFR Part 771*

Exports, Reporting and recordkeeping requirements.

*15 CFR Part 785*

Exports.

Accordingly, parts 771 and 785 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 771 continues to read as follows:

**Authority:** Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*.); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 28, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

2. The authority citation for 15 CFR part 785 continues to read as follows:

**Authority:** Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 28, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

**PART 771—[AMENDED]**

3. A new § 771.27 is added to read as follows:

**§ 771.27 General license G–NGO; commodities for humanitarian projects in Vietnam.**

(a) *Scope.* A general license G–NGO is established, subject to the provisions of this § 771.27, authorizing non-governmental, non-profit organizations to export donated commodities necessary to carry out small-scale humanitarian projects in Vietnam.

(b) *Eligible commodities.* (1) The commodities eligible for export under this general license are limited to those found in Supplement No. 7 to part 773 of this subchapter. An eligible donor organization using this general license is required to ensure that a given item to be exported is covered by this procedure. For example, even though "generators" are included in Supplement No. 7 to part 773 of this subchapter, only small generators suitable and necessary to administer and operate a humanitarian project are authorized for export under this general license.

(2) If an eligible donor organization is in doubt whether an item is included within the scope of one of the entries listed in the Supplement, or seeks authorization for items not included in the Supplement, a letter of inquiry should be submitted to the Office of Export Licensing, Special Licensing Division, room 2075, U.S. Department of Commerce, Washington, DC 20230. The request should describe the type of goods intended for export, the projects for which the goods will be used, and how the goods are intended to meet basic human needs.

(c) *Ineligible commodities.* Commodities not eligible under this general license, even though of a type described in Supplement No. 7 to part 773 of this subchapter, are those controlled for national security, nuclear, missile, or chemical/biological weapons proliferation, or crime control reasons as indicated in the "Reason for Control" paragraphs on the Commerce Control List (CCL) (Supplement No. 1 to § 799.1 of this subchapter), and communications intercepting devices (ECCN 5A80). Commodities not eligible for shipment under General License G–NGO must be authorized for shipment to Vietnam under an individual validated license.

(d) *Recordkeeping requirements.* Records of donations made under this general license must be kept in accordance with § 787.13 of this subchapter.

(e) *Special provisions.* (1) Only those items meeting the basic human needs and donations provisions described in § 773.5, (a) and (b) of this subchapter, are eligible for shipment under general license G–NGO.

(2) Only non-governmental, non-profit organizations carrying out humanitarian projects in Vietnam may use this general license. For purposes of this section, the term "non-governmental, non-profit organizations" is defined as any private voluntary organization accorded tax exempt status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), as well as any other non-profit organization engaged in voluntary charitable assistance activities that receives funding from private sources, including but not limited to accredited degree-granting institutes of education, private foundations, and research institutions.

(3) The non-governmental, non-profit organization and the humanitarian project must be registered with the Office of Foreign Assets Control, Department of the Treasury, pursuant to 31 CFR 500.572, before exporting goods for humanitarian projects in Vietnam under general license G–NGO.

(4) The non-governmental, non-profit organization must have a monitoring system that would alert the donor if eligible commodities exported under this general license have been or will be diverted to unintended recipients or unauthorized end-uses, end-users, or destinations.

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(f) *Definitions.* For purposes of this general license, the following definitions apply:

(1) *Basic human needs* is defined by § 773.5(a) of this subchapter.

(2) *Donations* is defined by § 773.5(b) of this subchapter.

(3)(i) *Humanitarian project* is any project that is to support basic human needs, is small-scale in nature, is strictly intended for the civilian population, and is not intended for comprehensive economic growth. Small-scale refers to a project that will benefit only a finite group of people (for example a small rural village, hospital, or orphanage), rather than the general population. Examples of small-scale humanitarian projects include donations of cloth or sewing machines to an orphanage to make clothes for their own use, small water pumps to improve irrigation or the drinking water supply in a rural village, medicines or medical supplies for hospitals, and educational supplies for schools. Examples of projects not eligible to receive commodities under General License G–NGO include donations of commodities for building a dam to supply electricity to the general population, large shipments of fabric for use in making clothing for the general population, large shipments of fabric for use in making clothing for the general public or for export, automobiles or other vehicles donated for use in a humanitarian project (these may be authorized for shipment under an individual validated license), and any commodity destined for use by the police or military.

(ii) In addition to the criteria in paragraph (f)(3)(i) of this section, a donor organization's project must also meet the following criteria:

(A) Have identified beneficiaries;

(B) Have identified specific needs of the beneficiaries;

(C) Have a long-term commitment to the humanitarian project;

(D) Have an established structure to ensure distribution or delivery of the donated items to the intended beneficiaries; and

(E) Have a system for monitoring the distribution and use of the donated items (see § 771.27(e)(4)).

**PART 785—[AMENDED]**

4. Section 785.1 is amended:

a. By revising the phrase "in North Korea" in the seventh sentence of paragraph (a) to read "in North Korea and Vietnam"; and

b. By adding a sentence following the third sentence in paragraph (a) to read as follows:

**§ 785.1 Country Group Z: [1] North Korea, Vietnam, and Cuba.**

(a) * * * Exports to Vietnam of donations to meet basic human needs by non-governmental, non-profit organizations may be authorized under General License G–NGO, as described in § 771.27 of this subchapter.* * * * * * * * *

Dated: July 13, 1992.

**William L. Clements,**

*Acting Assistant Secretary for Export Administration.*

[FR Doc. 92–16800 Filed 7–16–92; 8:45 am]

BILLING CODE 3510–DT–M

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## National Oceanic and Atmospheric Administration

### 15 CFR Part 945

**[Docket No. 920665–2165]**

### Rules for Guidance of the Public

**AGENCY:** National Weather Service, NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA is removing 15 CFR part 945 which contains a number of miscellaneous general regulations regarding the National Weather Service (NWS). Several of these provisions are informational rather than regulatory in nature and were inappropriately published as a regulation. One provision merely repeats a statutory prohibition and has no independent regulatory effect. Two provisions concerning certified NWS data for use in court and court appearances by NWS employees are redundant to provisions in 15 CFR part 909. Accordingly, 15 CFR part 945 is withdrawn.

NOAA finds for good cause that it is unnecessary to provide notice and comment and a delayed effective date under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, for this rule.

Because a notice of proposed rulemaking is not required by section 553 of the APA or by any other law, a regulatory flexibility analysis is not required pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603(a), 604(a).

**List of Subjects in 15 CFR Part 945**

Courts, Radio, Television, Weather.

**Robert C. Landis,**

*Deputy Administrator, National Weather Service.*

**PART 945—[REMOVED]**

For the reasons set forth in the preamble, 15 CFR chapter IX, subchapter C consisting of part 945 is removed, and the subchapter is reserved.

[FR Doc. 92–16760 Filed 7–16–92; 8:45 am]

BILLING CODE 3510–22–M

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

### 33 CFR Part 161

**[CGD 91–032]**

**RIN 2115–AD79**

### Prince William Sound Automated Dependent Surveillance System; Equipment Carriage Requirement

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rulemaking amends the Prince William Sound Vessel Traffic Service (VTS) regulations by incorporating the use of Automated Dependent Surveillance (ADS) using a Differential Global Positioning System (DGPS). The amended regulations will require tank vessels of 20,000 DWT or more, operating in Prince William Sound, to carry Automated Dependent Surveillance Shipborne Equipment (ADSSE). The ADSSE will automatically provide the Vessel Traffic Center (VTC) in Valdez, AK, with position information on tank vessels at greater distances than now available, allowing traffic management decisions to be made in a more timely and reliable fashion. The automatic feature will also enhance vessel safety by reducing the amount of

**EFFECTIVE DATE:** July 17, 1992.

**FOR FURTHER INFORMATION CONTACT:** Julie Scanlon, Office of the General Counsel, National Oceanic and Atmospheric Administration, 1325 East West Highway, room 18119, Silver Spring, MD 20910, (301) 713–0053.

**SUPPLEMENTARY INFORMATION:** NOAA is removing 15 CFR part 945 which contains a number of miscellaneous provisions regarding the National Weather Service (NWS). Several of these provisions are informational rather than regulatory in nature and were inappropriately published as a regulation. One provisions merely repeats a statutory prohibition and has no independent regulatory effect. Two provisions concerning certified NWS data for use in court and court appearances by NWS employees are

[1] See Supplement No. 1 to part 770 for a listing of Country Groups.

time the tank vessel's officers spend communicating by voice radio with the VTC.

**DATES:** This regulation is effective August 17, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 1992.

**FOR FURTHER INFORMATION CONTACT:** Bruce Riley, Project Manager, Vessel Traffic Services Division, Tel. (202) 267–0412.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The principal persons involved in drafting this document are Bruce Riley, Project Manager, and Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

**Regulatory History**

On September 26, 1991, the Coast Guard published a notice of proposed rulemaking entitled "Prince William Sound Automated Dependent Surveillance System, Equipment Carriage Requirement" in the **Federal Register** (56 FR 48771). The Coast Guard received five letters commenting on the proposal. A public hearing was not requested and one was not held.

**Background and Purpose**

Section 5004 of the Oil Pollution Act of 1990 (the Act), as codified in 33 U.S.C. 2734, directed the Coast Guard to acquire, install, and operate additional equipment, as necessary, to provide surveillance of tank vessels carrying oil from the Trans-Alaskan Pipeline through Prince William Sound.

While endeavoring to meet the requirements of the Act, the Coast Guard investigated various types of surveillance systems, including radar and dependent surveillance systems.

The Coast Guard determined an ADS system that uses DGPS will meet the Coast Guard's requirements without being cost prohibitive to the Government and the user. The shipboard portion of the system, the ADSSE, includes a 12 channel all-in-view DGPS receiver, a marine radiobeacon band receiver capable of receiving DGPS error correction messages, a VHF/FM transceiver using Digital Selective Calling (DSC), and a control unit.

The amended regulations will require tank vessels of 20,000 DWT or more by August 1, 1993, to carry an operating ADSSE while transiting Prince William Sound.

**Discussion of Comments and Changes**

Two comments recommended changing the requirement for the ADSSE to use a 4 or 6 channel DGPS receiver, rather than the required 12 channel DGPS receiver. The comments justified using the 4 or 6 channel receiver by stating that it would provide an acceptable accuracy level at a reduced cost. The comment stated that the Coast Guard was only using the 12 channel receiver to provide an increased level of accuracy. The Coast Guard is mandating the use of a 12 channel receiver for integrity reasons, not to increase accuracy. The 12 channel receiver ensures that the user's equipment will utilize the identical constellation that the Coast Guard's performance monitor station is using, thus preventing the user's equipment from being corrupted by a degraded satellite (a condition to which the monitor station is relatively immune). Additionally, with the 12 channel receiver, the user is less likely to lose position information due to shadowing by cliffs or other obstacles. Thus, the Coast Guard determined that the additional cost associated with a 12 channel receiver is justified.

Two comments expressed a concern that voice communications between the vessel and the VTC would cease to exist should the automatic position reporting system proposed by these rules be adopted. Voice communications between the vessel and the VTC will continue, but the frequency and length of the communications will be reduced, allowing more time for the ship's officers to concentrate on navigating the vessel.

Three comments indicated that the carriage requirement should not be limited to tank vessels. Section 5004 (1) of the Act, as codified in 33 U.S.C. 2734, specifically requires additional surveillance in Prince William Sound for the purpose of locating and tracking tank vessels carrying oil from the Trans-Alaska Pipeline. Additionally, 33 U.S.C. 1223(a)(3) exempts fishing vessels under 300 gross tons and recreational vessels 65 feet or less from any requirements to carry or use equipment or devices necessary to participate in a VTS. These regulations do not prohibit any vessel from purchasing, installing, and operating the ADS equipment necessary to participate in the VTS.

Two comments recommended that a vessel's course, speed, and Lloyd's registration number not be included with the position transmission to the VTC. Course and speed information is automatically determined by the processing unit and can be transmitted to the VTC without interfering with scheduled position transmissions. The Lloyd's registration number was chosen for ADS vessel identification because it is assigned to the vessel's hull. An International Radio Call Sign or the Global Maritime Distress and Safety System (GMDSS) number is assigned to and remains with the radio transceiver which can be moved from vessel to vessel. The Lloyd's number is the only identification that remains with the hull and it can provide access to a comprehensive database of particulars on the vessel. The Lloyd's database is also used by the Coast Guard's AMVER Center and, as a result, is kept current. Identification of the ADSSE equipped vessel using the Lloyd's number and a VTC database can be accomplished automatically, without intervention by the shipboard operator.

Another comment questioned the operational availability of the Global Positioning System (GPS) and whether it is a proven system or the best available technology. GPS probably will not be declared "operational" until it can perform all of the functions that it was designed to do. While not yet used in a VTS format, DGPS is currently being used in other maritime applications around the world with excellent results. GPS with differential corrections (DGPS), can provide unsurpassed performance in position determination, course and speed in marine applications. This was verified by the Coast Guard after seven years of testing. The differential aspect presently available greatly enhances the accuracy and integrity of GPS.

One comment addressed the issue of installing an additional radar site in the vicinity of Bligh Reef to track vessel and ice movements. The National Transportation Safety Board (NTSB) recommended this action following their investigation of the EXXON VALDEZ incident. While the operation of an additional radar in the vicinity of Bligh Reef would provide enhanced vessel tracking capabilities in the 12–15 miles surrounding the reef, it would not provide the anticipated security of tracking ice. Use of additional radar sites to locate and track tank vessels was investigated by the Coast Guard, but the cost for the construction and operation of the radar sites far outweighed any potential benefits.

One comment indicated that the proposed regulation did not comply with the Act since the regulation specifies 20,000 DWT as a limit, while the Act does not specify a limit. The use of the 20,000 DWT limit is consistent with current regulations which already require special requirements for tank vessels of this size. In addition, there are

currently no tank vessels less than 20,000 DWT transporting oil from the Trans-Alaskan Pipeline in Prince William Sound. Therefore, the Coast Guard added the ADS carriage requirements to the special requirements section.

One comment stated that the accuracy requirement should be deleted since accuracy is dependent upon the corrections supplied by the Coast Guard and the vessel cannot be held responsible for inaccuracies should the government supplied corrections be erroneous or nonexistent. The rule only addresses the required capabilities of the equipment, it does not state that the ADSSE or the shoreside equipment necessary to determine position must operate continuously, without failure. The rulemaking was revised by adding paragraphs (a)(5)(iv), (v), and (vi) to address procedures to be followed in the event of a failure of the ADSSE or non-availability of the position correction information.

One comment addressed the section of the NPRM that concerns the cost of the ADSSE as it relates to the financial status of the owners of the affected tankers. It was not the intention of this paragraph to infer that all tanker owners were wealthy oil companies, but rather to indicate that in relation to the total cost of a tanker, the cost of the ADSSE should not represent a financial burden to the owner. The cost of components which would be included in the ADSSE has been dropping steadily and total cost should be considerably less than the amount quoted in the NPRM.

Another comment questioned the availability of a reference station in Prince William Sound. The Coast Guard is installing a DGPS reference station and a performance monitor in Prince William Sound in conjunction with an upgrade of the VTC in Valdez. Should an equipment failure occur, alarms would notify the VTC and the user of possible erroneous signals.

One comment questioned the compatibility and reliability of VHF/FM channel 70 for use with DSC. After a full assessment of vessel traffic handled by the VTC in Valdez, the Coast Guard determined that adequate capacity exists on VHF/FM channel 70 for the transmission of vessel position information.

One comment noted that there should no longer be a need or a requirement to report at designated reporting points for ADSSE equipped vessels. The NPRM did not address the position reporting requirements for ADSSE equipped vessels. Paragraph (a)(5)(iii) has been added to § 161.378 of the rule to indicate that ADSSE equipped vessels will not be required to report positions by voice. Information other than position reports will continue to be required.

Following the word "Have" in section 161.376(a)(5) of the rule, the words "an operating" have been inserted. Following the number "3" in § 161.376(a)(5)(i)(B) of the rule, the number "5" has been inserted. These words and number were inadvertently left out of the NPRM.

### Incorporation by Reference

The Director of the Federal Register has approved the material in § 161.109 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

### Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rulemaking to be so minimal that a Regulatory Evaluation is unnecessary.

Recent indications are that the cost to outfit tank vessels with the required equipment may be less than the original estimate of $50,000 per vessel. A more reasonable estimate now would be approximately $30,000 per vessel. The Coast Guard estimates that 40 to 50 tank vessels will be affected by this rulemaking. Therefore, the Coast Guard estimates that the total cost of implementing this rule will be $1.5 million.

### Small Entities

This regulation will only affect owners and operators to tank vessels of 20,000 or more DWT operating in Prince William Sound and carrying oil from the Trans-Alaska Pipeline. The construction and operating costs of vessels of this size is such that their owners tend to be major corporations or subsidiaries of major corporations. Business entities with the capital and operating costs of this magnitude do not meet the definition of "small entities."

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rulemaking mandates the use of DGPS by tank vessels of 20,000 or more DWT transporting oil from the Trans-Alaska Pipeline. The authority to regulate concerning the carriage of specified electronic equipment necessary to comply with a vessel traffic service is committed to the Coast Guard by statute. Therefore, the Coast Guard intends to preempt State action addressing the same subject matter.

### Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. This rulemaking is intended to benefit the environment by reducing the potential for catastrophic oil spills which may result from tank vessels involved in groundings, rammings, or collisions. While this rulemaking may have a positive effect on the environment by minimizing the risk of environmental harm resulting from collisions and groundings, the impact is not expected to be significant enough to warrant further documentation. A Categorical Exclusion Determination is available for inspection or copying in the rulemaking docket.

### List of Subjects in 33 CFR Part 161

Harbors, Incorporation by Reference, Navigation (water), Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 161 as follows:

## PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for part 161 is revised to read as follows:

**Authority:** 33 U.S.C. 1231, 2734; 49 CFR 1.46.

2. Section 161.109 is added to read as follows:

**§ 161.109 Incorporation by reference.**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C.

552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Vessel Traffic Services Division, (G-NVT), 2100 2nd Street, SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

Radio Technical Commission for Maritime Services (RTCM), P.O. Box 19087, Washington, DC 20036
RTCM Recommended Standards for Differential NAVSTAR GPS Service, Version 2.0, RTCM Paper 134–89/SC 104–68, 1990.....161.376

3. Section 161.376 is amended by adding paragraph (a)(5) to read as follows:

**§ 161.376 Tank vessels in the VTS Area.**

(a) * * *

(5) Not later than August 1, 1993, have an operating Automated Dependent Surveillance Shipborne Equipment (ADSSE) consisting of a 12 channel all-in-view Differential Global Positioning System (DGPS) receiver, a marine band Non-Directional Beacon receiver capable of receiving differential GPS error correction messages, a VHF/FM transceiver using Digital Selective Calling (DSC) on channel 70 (156.525 MHz), and a control unit.

(i) The ADSSE must have the following capabilities:

(A) Using differential GPS, sense the position of the tank vessel and determine time of the position, Universal Coordinated Time (UTC).

(B) Fully utilize the broadcast type 1, 2, 3, 5, 6, 7, 9, and 16 messages as specified in RTCM Recommended Standards for Differential NAVSTAR GPS Service, Version 2.0, dated January 1, 1990, in determining the required information;

(C) Achieve a position error which is less than 10 meters (32.8 feet) 2 distance root mean square (2 drms) from the true North American Datum of 1983 (NAD 83) position as transmitted to the VTC;

(D) Achieve a course error which is less than 0.5 degrees from true course over ground as transmitted to the VTC and a speed error which is less than 0.05 knots from true speed over ground as transmitted to the VTC.

(E) Receive and act upon commands from the VTC broadcast as DSC messages on channel 70 (156.525 MHz);

(F) Transmit the vessel's position, which is tagged with the UTC at position solution, and the vessel's course over ground, speed over ground, and vessel's Lloyd's identification number to the VTC;

(G) Receive and act upon the RTCM messages which are broadcast as minimum shift keying modulated medium frequency signals in the marine radiobeacon band and supply the messages to the DGPS receiver;

(H) Display a visual alarm to indicate to shipboard personnel when a failure to receive or utilize the RTCM messages occurs;

(I) Display a separate visual alarm which is triggered by the VTC utilizing a DSC message to indicate to shipboard personnel when the VTS cannot provide the required system accuracy; and

(J) Display two RTCM type 16 messages, one of which must display the position error when it is broadcast.

(ii) The ADSSE will be considered to be non-operational should it fail to:

(A) Respond to the required VTS commands;

(B) Utilize broadcast messages; or

(C) Provide the VTS with the required information at the required accuracies.

(iii) ADSSE equipped vessels will not be required to make vessel position reports by voice radio as indicated in § 161.338(b). All other reports required by § 161.338 must be made unless otherwise indicated by the VTC.

(iv) Whenever a vessel's ADSSE equipment becomes non-operational, before entering or while underway in the VTS Area, the master shall:

(A) Notify the VTC;

(B) Make the required position reports in accordance with § 161.338; and

(C) Restore the ADSSE to operating condition as soon as possible.

(v) Whenever a vessel's ADSSE becomes non-operational due to loss of the position correction information, the master shall make the required position reports in accordance with § 161.338.

(vi) Whenever a vessel's ADSSE equipment becomes non-operational before getting underway in the VTS Area, permission to get underway must be obtained from the VTC.

* * * * *

Dated: June 12, 1992.

**W.J. Ecker,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 92–16767 Filed 7–16–92; 8:45 am]

BILLING CODE 4910-14-M

**33 CFR Part 165**

**[COTP Huntington 92–02]**

## Safety Zone; Ohio River, Mile 310.0–311.0

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone between mile 310.0 and 311.0 of the Ohio River. This safety zone will protect waterborne traffic from a potential hazard associated with an attempt by a stuntman to launch a motorcycle from a ramp on the Ohio bank across the Ohio River at mile 310.5 to a barge on the West Virginia Bank. Entry into this zone is prohibited unless authorized by the Captain of the Port, Marine Safety Office, Huntington, WV.

**EFFECTIVE DATE:** This regulation becomes effective on 5 September 1992 at 12:30 p.m. It terminates on 5 September 1992 at 4:30 p.m. unless sooner terminated by the Captain of the Port, Huntington, WV.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Diane J. Hauser, Project Officer, Port Operations Department, at (304) 529–5524.

**SUPPLEMENTARY INFORMATION:** On May 20, 1992, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** at 57 FR 21366. Interested persons were invited to participate in this rulemaking by submitting written views, data or arguments no later than June 19, 1992. No requests for a public hearing were received and none was held. No comments were received.

### Drafting Information

The drafters of this notice are Lieutenant Junior Grade Diane J. Hauser, Project Officer for the Captain of the Port, Huntington, West Virginia; and, Lieutenant Michael A. Suire, Project Attorney, District Legal Office, Second Coast Guard District, St. Louis, Missouri.

### Discussion of Proposed Regulations

The circumstances requiring this regulation result from the potential hazards associated with an attempt by a stuntman to launch a motorcycle from a ramp on the Ohio bank across the Ohio River at mile 310.5 to a barge on the West Virginia bank. This regulation is issued pursuant to 33 U.S.C 1225 and 1231 as set out in the authority citation for all of Part 165.

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**Economic Assessment and Certification**

This rule has been reviewed under the provisions of Executive Order 12291 and determined not to be a major rule. In addition, this rule is considered to be nonsignificant under the guidelines of DOT Order 2100.5 dated May 22, 1980, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An economic evaluation has not been conducted and is deemed unnecessary as the impact of these regulations is expected to be minimal. The above conclusions follow from the fact that the duration of the safety zone will be limited, anticipated to be no more than 4 hours. Pursuant to 5 U.S.C. 601, et seq., Regulatory Flexibility Act, it is certified that these regulations will not have a significant economic impact on a substantial number of small entities.

**Environmental Assessment and Certification**

This action has been reviewed by the Coast Guard and determined to be categorically excluded from further documentation in accordance with paragraph 2.B.2.c. of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion certification is available on the docket for public review.

**Federalism Assessment and Certification**

This action has been analyzed in accordance with the principles and criteria outlined in Executive Order 12612, and determined not to have sufficient federalism implications to warrant preparation of a Federalism Assessment. As noted above, the safety zone proposed by this rulemaking is anticipated to be of extremely limited duration.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (waters), Security measures, Vessels, Waterways.

**Final Rule**

In consideration of the foregoing, the Coast Guard is amending part 165 of title 33, Code of Federal Regulations as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and § 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–6, and 160.5.

2. A new § 165.T02013 is added to read as follows:

**§ 165.T02013 Ohio River, Mile 310.0 to 311.0—safety zone.**

(a) *Location.* The following is a safety zone: The waters of the Ohio River between mile 310.0 and mile 311.0.

(b) *Effective Date.* This regulation becomes defective on 5 September 1992 at 12:30 p.m. It terminates on 5 September 1992 at 4:30 p.m., unless sooner terminated by the Captain of the Port, Huntington, WV.

(c) *Regulations.* In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless authorized by the Captain of the Port, Huntington, WV.

Dated: June 23, 1992.

**J.T. Kuchin,**

*Commander, U.S. Coast Guard, Captain of the Port, Huntington, West Virginia.*

[FR Doc. 92–16885 Filed 7–16–92; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 493

[HSQ–177–CN]

RIN 0938–AE28

### Medicare Program; Clinical Laboratory Improvement Act—Program Fee Collection

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Correction notice.

**SUMMARY:** In the February 28, 1992 issue of the **Federal Register** (FR Doc. 92–4052) (57 FR 7188), we established the methodology used to determine the amount of fees laboratories must pay for various certificates that assure compliance with Federal requirements, as mandated by the Clinical Laboratory Improvement Amendments of 1988 (CLIA). This notice corrects typographical errors made in that document.

**EFFECTIVE DATE:** These regulations are effective on March 30, 1992.

**FOR FURTHER INFORMATION CONTACT:** Nola Petrovich, (410) 966–4671.

**SUPPLEMENTARY INFORMATION:** The final rule with comment period, "Clinical Laboratory Improvement Act Program Fee Collection," published in the **Federal Register** on February 28, 1992 (57 FR 7188) contained two typographical errors in the text of the regulations, as indicated below:

**PART 493—[CORRECTED]**

**§ 493.633 [Corrected]**

1. On page 7215, column three, in §493.633(b), line two, "laboratory's is changed to read "laboratory's".

**§ 493.639 [Corrected]**

2. On page 7216, column two, in § 493.639(b) introductory text, line 9, the cross reference to "§ 493.643(e)" is changed to read "§ 493.643(d)".

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 13, 1992.

**Neil J. Stillman,**

*Deputy Assistant Secretary for Information Resources Management.*

[FR Doc. 92–16882 Filed 7–16–92; 8:45 am]

BILLING CODE 4120–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 90–283; RM–7222, RM–7313, RM–7485, RM–7486]

### Radio Broadcasting Services; Southampton, Bridgehampton, Westhampton, Calverton-Roanoke, New York

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Harrison Gray, allots Channel 225A to Southampton, New York, as the community's second local commercial FM service. At the request of Garnet Tuttle, the Commission allots Channel 273A to Bridgehampton, New York, as the community's first local FM service. At the request of Calverton-Roanoke Broadcasting Company, the Commission allots Channel 287A to Calverton-Roanoke, New York, as the community's first local FM service. The Commission, at the request of Tern Communications, allots Channel 253A to Westhampton, New York. *See* 55 FR 23107, June 6, 1990 and *Supplementary Information, infra.* With this action, this proceeding is terminated.

**DATES:** Effective August 27, 1992. The window period for filing applications for each channel will open on August 28, 1992, and close on September 28, 1992.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90–283, adopted June 24, 1992, and released July 13, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Channel 225A can be allotted to Southampton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 40–53–18 and West Longitude 72–23–06. Channel 273A can be allotted to Bridgehampton with a site restriction of 13.7 kilometers (8.5 miles) southwest to avoid short-spacings to Station WVVE, Channel 272A, Stonington, Connecticut, and Station WCRB, Channel 273B, Waltham, Massachusetts, at coordinates 40–52–00; 72–26–00. Channel 253A can be allotted to Westhampton with a site restriction of 2.2 kilometers (1.4 miles) northeast to avoid a short-spacing to Station WRKS–FM, Channel 254B, New York, New York, at coordinates 40–50–12; 72–38–45. Channel 287A can be allotted to Calverton-Roanoke with a site restriction of 6.9 kilometers (4.3 miles) east to avoid a short-spacing to Station WMXV, Channel 286B, New York, New York, at coordinates 40–54–12; 72–39–45.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 225A at Southampton, by adding Bridgehampton, Channel 273A, by adding Calverton-Roanoke, Channel 287A, and by adding Westhampton, Channel 253A.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92–16831 Filed 7–16–92; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 92–88; RM–7962]**

**Radio Broadcasting Services; Great Falls, MT**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 233C for Channel 233C1 at Great Falls, Montana, and modifies the construction permit for Station KMON–FM to specify operation on Channel 233C in response to a petition filed by Staradio Corp. See 57 FR 14688, April 22, 1992. Canadian concurrence has been obtained for this allotment at coordinates 47–09–34 and 111–00–39. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** August 27, 1992.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 92–88, adopted June 29, 1992, and released July 13, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 233C1 and adding Channel 233C at Great Falls.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92–16928 Filed 7–16–92; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 92–84; RM–7925]**

**Radio Broadcasting Services; Ladson, SC**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of RJM Broadcasting, allots Channel 292A to Ladson, South Carolina, as the community's first local FM service. See 57 FR 14555, April 21, 1992. Channel 292A can be allotted to Ladson in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.6 kilometers (2.9 miles) south to avoid short-spacings to Stations WTUA–FM, Channel 291A, St. Stephen, South Carolina, and WSYN, Channel 293C2, Georgetown, South Carolina, at coordinates North Latitude 32–56–47 and West Longitude 80–05–39. Because the petition which resulted in this allotment was filed prior to October 2, 1989, applicants for channel 292A at Ladson may avail themselves of § 73.213(c)(1) with respect to Stations WTUA–FM, WSYN, and WFXH, Channel 291C2, Hilton Head, South Carolina. With this action, this proceeding is terminated.

**DATES:** Effective August 27, 1992. The window period for filing applications will open on August 28, 1992, and close on September 28, 1992.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 92–84, adopted June 29, 1992, and released July 13, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

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**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Ladson, Channel 292A.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92-16926 Filed 7-16-92; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 661

**[Docket No. 920412-2112]**

## Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure and inseason adjustments.

**SUMMARY:** NMFS announces the closure of the recreational salmon fishery for chinook salmon in the exclusive economic zone (EEZ) from Heceta Head to Humbug Mountain, Oregon. Also, the northern management boundary, which is currently at Florence South Jetty, has been moved north to Heceta Head (44°08'18" N. lat.). All of the 1992 annual recreational management measures that were applicable from Humbug Mountain to Florence South Jetty are now extended north to Heceta Head. This action is intended to ensure conservation of chinook salmon, to extend the duration of the season in this modified subarea, and to address enforcement concerns by moving the boundary separating two adjacent management areas, subject to different species retention restrictions, away from a major landing port.

**DATES:** Effective at 2400 hours local time, July 2, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23. Comments will be accepted through July 31, 1992.

**ADDRESSES:** Comments may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg.1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at (206) 526-6140.

**SUPPLEMENTARY INFORMATION:** The commercial and recreational salmon fisheries are managed under the Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP). Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) specify that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and preseason notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the recreational salmon fishery for all salmon species in the EEZ from Florence South Jetty to Humbug Mountain, Oregon, would have two seasons: May 3 through the earlier of June 11 or attainment of the subarea chinook salmon quota, and June 14 through the earliest of September 20 or attainment of the subarea chinook salmon quota or the overall coho salmon quota. The recreational fishery in this subarea is limited through August 31 by an impact quota (including hooking mortality associated with any all-except-chinook fishery) of 3,700 chinook.

Section 661.21(b)(v) provides authority to the Regional Director to modify boundaries inseason after consideration of appropriate factors. If the management subarea boundary were to remain at Florence South Jetty, there would be difficulties in enforcing the chinook retention restriction at the nearby port of Florence because landings of chinook salmon would be allowed by vessels fishing north of Florence South Jetty, but prohibited by vessels fishing south of Florence South Jetty. Therefore, NMFS moved the subarea boundary from Florence South Jetty northward to Heceta Head, avoiding the enforcement problem that may have been created by having a major port at the boundary of two adjacent management areas with different species retention restrictions. This adjustment is consistent with other provisions and requirements of the FMP.

The Florence South Jetty to Humbug Mountain subarea impact quota of 3,700 chinook is projected to be reached on August 31, 1992. The Regional Director closed the directed recreational chinook fishery in the Heceta Head to Humbug Mountain subarea as of midnight July 2, 1992. Closure on this date takes into account the estimated incidental hooking mortality associated with the all-except-chinook fishery, which will immediately follow through August 31, 1992, in accordance with the preseason notice of 1992 management measures. The Regional Director's determination to close was based on the best available salmon catch and effort data as of June 30, 1992, and was made in consultation with representatives of the Pacific Fishery Management Council (Council) and the Oregon Department of Fish and Wildlife.

For further clarification, possession and landing of chinook salmon in the recreational fishery is prohibited from Heceta Head to Humbug Mountain, Oregon, for the remainder of 1992. Heceta Head is located at (44°08'18" N. latitude.

In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to the times listed above by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Council and the Oregon Department of Fish and Wildlife regarding this action affecting the recreational fishery from Heceta Head to Humbug Mountain, Oregon. The State of Oregon will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through July 31, 1992.

### Classification

This action is authorized by 50 CFR 661.23 and is in compliance with E.O. 12291.

**List of Subjects in 50 CFR Part 661**

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 13, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-16918 Filed 7-16-92; 8:45 am]

BILLING CODE 3510-22-M

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# Proposed Rules

Federal Register
Vol. 57, No. 138
Friday, July 17, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 13

RIN 0560-AC23

### Excessive Manufacturing (Make) Allowance in State Marketing Orders for Milk

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This document announces a 60-day extension of the time for submitting comments on the proposed rule, published in the **Federal Register** on June 19, 1992, (57 FR 27371), for implementing section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended.

**DATES:** All comments on the proposed rule now must be received on or before September 18, 1992, in order to be assured of consideration.

**ADDRESSES:** Comments should be submitted to Dr. Charles N. Shaw, Director, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles N. Shaw, Director, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415, 202–720–7601.

**SUPPLEMENTARY INFORMATION:** Section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) provides that no State shall provide for (and no person shall collect, directly or indirectly) a greater allowance for the processing of milk ("make allowance") than is permitted under a Federal program to establish a Grade A price for manufacturing butter, nonfat dry milk, or cheese.

On June 19, 1992, a proposed rule was published to implement section 102. The proposed rule specified that comments had to be received by July 20, 1992, in order to be assured of consideration. Requests have been received from interested parties who indicate that they need additional time to prepare an analysis of the proposed rule. Based upon our review of those requests, it has been determined that an additional 60 days will be allowed for comment. Accordingly, comments on the proposed rule must now be received by September 18, 1992, in order to be assured of consideration.

### Notice

Notice is hereby given that the period of time for submitting comments on the proposed rule published on June 19, 1992 (57 FR 27371), is extended to September 18, 1992.

Signed this 13th day of July 1992 in Washington, DC.

**Ann M. Veneman,**

*Acting Secretary of Agriculture.*

[FR Doc. 92–16872 Filed 7–16–92; 8:45 am]

BILLING CODE 3410-05-M

## Federal Grain Inspection Service

### 7 CFR Part 800

### Certification of Additive-Treated Grain

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Grain Inspection Service (FGIS) is proposing to revise the regulations under the United States Grain Standards Act (USGSA) concerning the certification of additive-treated export grain at export port locations. The proposal would establish a requirement for showing a statement on official inspection and weight certificates whenever additives (except fumigants applied for the purpose of insect control) are applied to export grain at export port locations. FGIS is very concerned about potentially improper additive applications. This proposed action would ensure that buyers of export grain are properly informed when additives have been applied.

**DATES:** Comments must be submitted on or before August 3, 1992.

**ADDRESSES:** Written comments must be submitted to George Wollam, FGIS, USDA, room 0632 South Building, P.O. Box 96454, Washington, DC, 20090–6454; telemail users may respond to IRSTAFF/FGIS/USDA; telex users may respond to 7607351, ANS:FGIS UC; and telecopy users may respond to the automatic telecopier machine at (202) 720–4628.

All comments received will be made available for public inspection in room 0632, USDA South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** George Wollam, address as above, telephone (202) 720–0292.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

### Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

### Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because most users of the inspection and weighing services and those persons that perform these services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

**Information Collection Requirements**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in this rule have been previously approved by OMB under control number 0580–0013.

**Background**

In the March 4, 1987, **Federal Register** (52 FR 6493), FGIS amended the regulations under the United States Grain Standards Act (USGSA) to establish provisions for officially inspecting and weighing additive-treated grain. These provisions were established to offer the grain industry the opportunity to utilize available dust suppression technology, apply insect and fungi controls, and mark grain for identification purposes with Food and Drug Administration (FDA) approved additives.

Industry comments received during the rulemaking process supported the new provisions but also expressed concern over the possible misuse of additives. A total of 15 comments were received. Three commenters were in favor of the proposed regulations without any reservations. Two commenters were opposed to the proposed additive provisions, as related to dust-suppressing agents. They asserted, in part, that water may be added just to increase the weight of the grain. Additionally, three of the commenters who were in favor of the proposed provisions expressed concern about the potential for improper addition of additives for the purpose of adding weight to the grain.

The final rule specified that if additives are applied during loading to outbound grain after sampling or weighing for the purpose of insect or fungi control, dust suppression, or identification, the inspection and/or weight certificate must show a statement that describes the type and purpose of the additive application. A statement was not required to be shown when additives are applied prior to sampling and weighing outbound grain or after sampling and weighing inbound grain. All incidents or suspected incidents of unapproved additive usage or improper additive application would be reported to the appropriate Federal, State, or local authorities for action.

Recently, FGIS received several complaints from both foreign and domestic grain merchants concerning the application of water to grain. The complainants expressed concern over potential quality degradation due to water application, emphasized that alternative dust control techniques are available that are practical and effective, and contended that the primary purpose of applying water is to increase the weight of the grain and, thereby, gain a market advantage. They further expressed deep concern about possible negative market reaction by both domestic and foreign buyers of U.S. grain. That is, buyer confidence in U.S. grain quality will decline if concerns develop over potential quality degradation and "paying grain prices for water." Those who support allowing the application of water to grain contend that it is an effective method for reducing dust emissions.

FGIS is very concerned about potentially improper additive applications. Applying any substance for the purpose of increasing weight would be prohibited by the Food, Drug, and Cosmetic Act (see 21 U.S.C. 342(b)). FGIS has and will continue to report all incidents and suspected incidents of unapproved additive usage or improper additive application to FDA. In addition, FGIS is planning action to control or prohibit additives, especially water, that will address all grain handling activities, both export and domestic.

Even properly applied additives may affect the manner in which grain may be used or stored, particularly export grain that may be stored aboard an ocean-going vessel for extended periods. Therefore, to inform foreign buyers of export grain when additives have been applied, FGIS proposes to require a statement to be shown on all official export inspection and weight certificates whenever additives are applied to export grain, at export port locations, regardless of whether the additives are applied before or after sampling and weighing. The statement will describe the type of additive that was applied, the point in the handling process where it was applied, and the specific reason for its application.

FGIS is also proposing to revise the regulatory language concerning the use of fumigants as an additive. Fumigants are gaseous in nature and will not adversely affect the physical condition of grain. No statement would be required to be shown on official inspection and weighing certificates when the additive is a fumigant applied for the purpose of insect control.

FGIS is not proposing to require a statement on all official certificates when additives are applied to grain in the domestic market. A statement is already required to be shown on such certificates when additives are applied during loading to outbound grain after sampling or weighing, or during unloading to inbound grain before weighing or sampling.

**Proposed Action**

FGIS is proposing to revise:

1. Section 800.88(d) to require a statement on official inspection certificates whenever additives (except fumigants applied for the purpose of insect control) are applied to export grain, at export port locations, regardless of whether the additives are applied before or after sampling.

2. Section 800.96(c)(2) to require a statement on official weight certificates whenever additives (except fumigants applied for the purpose of insect control) are applied to export grain, at export port locations, regardless of whether the additives are applied before or after weighing.

It has been determined that a 15-day comment period to comment on this proposed action is appropriate because the proposed changes, if adopted, concerning additive-treated export grain at export port locations should be implemented as soon as possible so that buyers would be informed as to when additives have been applied.

**List of Subjects in 7 CFR Part 800**

Administrative practice and procedure, Grain, Export.

## PART 800—GENERAL REGULATIONS

For reasons set out in the preamble, 7 CFR part 800 is amended as follows:

1. The authority citation for part 800 continues to read as follows:

**Authority:** Pub.L. 94–582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*).

2. Section 800.88(d) is revised to read as follows:

**§ 800.88 Loss of identity.**

* * * * *

(d) *Additives.*[1]

(1) *General.* If additives are applied during loading to outbound grain after sampling or during unloading to inbound grain before sampling for the purpose of insect or fungi control, dust suppression, or identification, the inspection certificate shall show a statement showing the type and purpose of the additive application, except that no statement is required to be shown when the additive is a fumigant applied for the purpose of insect control.

(2) *Export grain.* If additives are applied to export grain, at export port locations, the inspection certificate shall show a statement indicating the type,

[1] Elevators, other handlers of grain, and their agents are responsible for the additive's proper usage and application. Compliance with this section does not excuse compliance with applicable Federal, State, and local laws.

purpose, and location of the additive application, except that no statement is required to be shown when the additive is a fumigant applied for the purpose of insect control.

3. Section 800.96(c)(2) is revised to read as follows:

**§ 800.96 Weighing procedures.**

* * * * *

(c) * * *

(2) *Additives.*[1]

(i) *General.* If additives are applied during loading to outbound grain after weighing or during unloading to inbound grain before weighing for the purpose of insect or fungi control, dust suppression, or identification, the weight certificate shall show the actual weight of the grain after the application of the additive for inbound grain or the actual weight of the grain prior to the application of the additive for outbound grain and a statement showing the type and purpose of the additive application as prescribed in the instructions, except that no statement is required to be shown when the additive is a fumigant applied for the purpose of insect control.

(ii) *Export grain.* If additives are applied to export grain, at an export port location, the weight certificate shall show a statement showing the type, purpose, and location of the additive application as prescribed in the instructions, except that no statement is required to be shown when the additive is a fumigant applied for the purpose of insect control.

* * * * * *

Dated: June 15, 1992.

**John C. Foltz,**

*Administrator.*

[FR Doc. 92-16671 Filed 7-16-92; 8:45 am]

BILLING CODE 3410-EN-M

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**Agricultural Marketing Service**

**7 CFR Part 910**

**[Docket No. FV-91-389FR]**

## Lemons Grown in California and Arizona; Withdrawal of Proposed Rule on Weekly Levels of Volume Regulation for the 1991-92 Season

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** This document withdraws a proposed rule concerning the need for regulation of the quantity of fresh California-Arizona lemons that may be shipped to domestic markets, the shipping schedule, and the application of volume regulation for the 1991-92 year. After a review of current marketing conditions, it is the U.S. Department of Agriculture's (Department) view that the implementation of volume regulation for the 1991-92 season will not be necessary.

**EFFECTIVE DATE:** July 17, 1992.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525, South Building, Washington, DC 20090-6456; telephone (202) 690-3670.

**SUPPLEMENTARY INFORMATION:** This action withdraws a proposed rule issued under Marketing Order 910, as amended [7 CFR part 910], regulating the handling of lemons grown in California and Arizona, hereinafter referred to as the "order." The order is effective pursuant to the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the "Act."

On July 1, 1991, a proposed rule was issued concerning the need for regulation of the quantity of fresh California-Arizona lemons that may be shipped to domestic markets, the shipping schedule, and the application of volume regulation for the 1991-92 season. The proposal was published in the **Federal Register** on July 8, 1991 [56 FR 30879], and was based on a marketing policy which was unanimously adopted by the Lemon Administrative Committee (committee) on May 7, 1991. The committee is responsible 'for local administration of the marketing order covering lemons grown in California and Arizona. The comment period on the proposed rule ended on August 7, 1991.

Considering the marketing conditions and the supply of lemons available during the current marketing season, it has become apparent to the Department, from the prevailing conditions, that volume regulation during the 1991-92 lemon season is not necessary to effectuate the purposes of the Act. In addition, the committee has recommended open movement since August 10, 1991. Therefore, the Department has found that volume regulations are not desirable for the remainder of the season, and the proposed rule published in the **Federal Register** on July 8, 1991 [56 FR 30879], is hereby withdrawn.

**List of Subjects in 7 CFR Part 910**

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

**PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA**

1. The authority citation for 7 CFR part 910 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

**§ 910.1048 [Removed]**

2. Section 910.1048 is removed.

Dated: July 13, 1992.

**Charles R. Brader,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 92-16852 Filed 7-16-92; 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Part 987**

**[Docket No. FV-92-073]**

## Domestic Dates Produced or Packed in Riverside County, California; Proposed Increase in Expenses for 1991-92 Fiscal Period

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would authorize an increase in expenditures for the California Date Administrative Committee (Committee), established under Marketing Order 987, for the 1991-92 fiscal year (October 1, 1991, through September 30, 1992). The expenses would be increased from $479,400 to $634,400. The $155,000 increase is needed to cover advertising and promotion expenditures in excess of those authorized in the Committee's 1991-92 budget.

**DATES:** Comments must be received by July 27, 1992.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Valerie L. Emmer, Marketing Specialist,

[1] Elevators, other handlers of grain, and their agents are responsible for the additive's proper usage and application. Compliance with this section does not excuse compliance with applicable Federal, State, and local laws.

Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S., Washington, DC 20090–6456, telephone (202) 205–2829.

**SUPPLEMENTARY INFORMATION:** This action is proposed under Marketing Order No. 987 [7 CFR part 987] regulating the handling of domestic dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. This proposed rule would authorize an increase in expenditures for the Committee for the remainder of the 1991–92 fiscal period. This proposed rule would not preempt any State or local laws, regulations or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California dates regulated under this marketing order each season, and approximately 135 date producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

A final rule establishing expenses in the amount of $479,400 for the Committee for the fiscal year ending September 30, 1992, was published in the **Federal Register** on October 8, 1991 [56 FR 50467]. That action also fixed the assessment rate to be levied on date handlers during the 1991–92 fiscal period. At a meeting held on April 23, 1992, the Committee unanimously voted to increase its budget of expenses from $479,400 to $634,400.

The proposed $155,000 increase is needed to cover additional expenses in the Committee's market promotion and advertising program.

No change in the assessment rate was recommended by the Committee. Adequate funds are available to cover the proposed increase in expenses that may result from this action. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget increase approval needs to expedited because the Committee needs to have authority to cover the additional expenses associated with its market promotion program.

**List of Subjects in 7 CFR Part 987**

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that § 987.336 be amended as follows:

**PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA**

1. The authority citation for 7 CFR part 987 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 987.336 is amended as follows:

**§ 987.336 [Amended]**

Section 987.336 is amended by changing "$479,400" to "$634,400."

Dated: July 13, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–16851 Filed 7–16–92; 8:45 am]

BILLING CODE 3410–02–M

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**Animal and Plant Health Inspection Service**

**9 CFR Parts 50, 51, 77, 78, and 92**

**[Docket No. 88–096–2]**

**Brucellosis and Tuberculosis Regulations That Require or Allow Hot-Iron Branding of Animals on the Jaw**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** withdral GE advance notice of proposed rulemaking.

**SUMMARY:** We are providing notice to the public of the results of our review of the regulations that require or allow animals to be hot-iron branded on the jaw as part of the Brucellosis and Bovine Tuberculosis Eradication Programs. We had requested public count on those regulations after receiving a petition asking that we initiate rulemaking proceedings with regard to all brucellosis and tuberculosis regulations that require or allow hot-iron branding. This notice will serve to inform the public of our decision not to proceed with rulemaking to change our current regulations.

**DATES:** The advance notice, of proposed rulenaking is withdrawn as of July 17, 1992.

**FOR FURTHER INFORMATION CONTACT:** Dr. James Davis, Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–4923.

SUPPLEMENTARY INFORMATION:

**Background**

In accordance with regulations in 9 CFR parts 50, 51, 77, 78, and 92, the Animal and Plant Health Inspection Service (APHIS) administers programs designed to control and eradicate brucellosis and tuberculosis in cattle and bison. Brucellosis, also called Bang's disease or undulant fever, is a contagious bacterial disease affecting cattle, bison, and other species, including humans. It can cause fever, sterility, slow breeding, abortion, and loss of milk production. Bovine tuberculosis is a contagious, infectious, and communicable disease of cattle, bison, and other species, including humans. Tuberculosis in affected animals causes weight loss and general debilitation.

Under the Brucellosis and Bovine Tuberculosis Eradication Programs, hot-iron branding on the jaw is required or allowed in the following cases: (1) To identify animals that have contracted or been exposed to one of the diseases, (2) to identify certain cattle or bison that have been immunized against brucellosis, and (3) to permanently identify, for tuberculosis surveillance purposes, steers imported from Mexico.

**Petition**

In December 1987, we received a petition requesting that APHIS initiate rulemaking regarding all regulations that require or allow hot-iron branding on the jaw under the Brucellosis and Bovine Tuberculosis Eradication Programs. The petition was filed on behalf of the American Society for the Prevention of Cruelty to Animals, the Animal Protection Institute, the Humane Society of the United States, the Fund for Animals, and the Massachusetts Society for the Prevention of Cruelty to Animals. These petitioners suggested that freezebranding, or an identification method comparable to freeze-branding, is more humane and should be substituted for hot-iron branding as the exclusive method of branding animals under the Brucellosis and Bovine Tuberculosis Eradication Programs. As an alternative to a complete ban on hot-iron branding, the petitioners suggested that the regulations be amended to allow animal owners the option of having animals identified by freeze-branding or an identification method similar to freeze-branding.

On February 12, 1988, we published a notice in the **Federal Register** (53 FR 4179, Docket No. 88-007) advising the public that we had received and were studying the petition.

**Comments**

In response to the petition, we published an advance notice of proposed rulemaking in the **Federal Register** on July 12, 1988 (53 FR 26262, Docket No. 88-098). In that notice, we asked for public comment on our current regulations that require or allow animals to be hot-iron branded on the jaw. We sought input from the public in order to gain as much information as possible on the subject, which would help us decide whether the regulations should be changed and, if so, how they should be changed. We required that comments be postmarked or received by September 12, 1988.

In response to our request, we received 395 letters of comment. The comments came from animal welfare groups, veterinarians and a veterinary medical association, private citizens, cattle industry associations, private agricultural organizations, State agricultural agencies, brand organizations, and several trade groups. Eighty-nine percent of the commenters opposed hot-iron branding and asked that APHIS consider alternative methods of identification such as freeze-branding. The remaining 11 percent supported the continued use of hot-iron branding on the grounds that it is the only effective method of identifying cattle and bison for the purposes of the Brucellosis and Bovine Tuberculosis Eradication Programs.

**Options**

Because the Brucellosis and Bovine Tuberculosis Eradication Programs deal with diseases that threaten humans and animals alike, our criteria for dealing with exposed and diseased animals are necessarily strict. In order that we may prevent the spread of these diseases, it is imperative that exposed and diseased animals be instantly recognizable from the time of their identification until they are slaughtered. To this end, APHIS requires that an identifier be easily seen and readable, instantly visible upon application, and permanent.

The petition and many of the commenters offered alternative methods of identifying exposed and diseased animals. Some of the suggestions were rejected because of their failure to satisfy the criteria mentioned above. After examining the remaining comments, APHIS considered four options: (1) Cattle or bison identified as diseased or exposed would be destroyed and disposed of on the premises; (2) cattle or bison identified as diseased or exposed would be transported directly to slaughter in a sealed vehicle; (3) freeze-branding would be recognized as the method of choice for identifying steers imported from Mexico and diseased and exposed cattle and bison; or (4) hot-iron branding would continue to be recognized as the method of choice for identifying steers imported from Mexico and diseased and exposed cattle and bison, but we would continue to search for effective alternatives.

The first and second options would eliminate the need for branding cattle and bison that have been exposed to or infected with tuberculosis or brucellosis. Under the terms of the first option, once an animal was identified as exposed or diseased, it would be destroyed and disposed of on the premises. This option, while it would eliminate the need for branding or moving the animals, would unreasonably deny the owners of exposed or diseased cattle and bison the opportunity to sell the animals through an approved slaughtering facility. Additionally, the disposal of carcasses on the premises of origin would have environmental implications that would require study.

The second option would have exposed or diseased animals transported, in a vehicle closed with an official seal, directly to slaughter without branding. The regulations in § 78.8(a)(2) currently allow brucellosis-exposed cattle to be moved interstate directly to a recognized slaughtering establishment in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by APHIS. Similarly, provisions in § 77.5(b)(1) allow tuberculosis-exposed cattle or bison to be moved interstate directly to slaughter in vehicles closed with official seals that are issued and removed by a Federal or State employee specifically designated by the Administrator of APHIS. If all cattle and bison exposed to or infected with brucellosis or tuberculosis were required to be moved directly to slaughter in a sealed vehicle, additional disease surveillance personnel would be needed to handle the increased workload. Additionally, some brucellosis exposed cattle or bison are currently allowed under § 78.8 to be moved interstate directly to a quarantined feedlot for feeding prior to slaughter. To require transport directly to slaughter would deny the owners of those animals the economic benefits of feeding them before slaughter.

The third and fourth options would require some type of branding. Under the terms of the third option, steers imported from Mexico and cattle and bison exposed to or infected with

tuberculosis or brucellosis would continue to be branded on the jaw, but with a liquid nitrogen or dry ice freeze brand. This is the option that was proposed in the petition and supported by the majority of those commenters who opposed hot-iron branding. A study of freeze branding sponsored by the U.S. Department of Agriculture and conducted by the Agricultural Research Service at its Clay Center, Nebraska, facility [1] showed that even a properly applied freeze brand takes 14–21 days to become clearly visible, and that freeze brands are often not easily visible on cattle with white facial hair. Additionally, freeze branding resulted in an unacceptable number of unreadable brands. As mentioned above, the needs of the Brucellosis and Bovine Tuberculosis Eradication Programs demand that an identifier be easily seen and readable, instantly visible upon application, and permanent.

The U.S. Department of Agriculture is not alone in its view that freeze branding fails to satisfy the first two of those criteria. The Mexican Government, for example, requires that slaughter steers imported from the United States be identified with either a hot-iron "U" on the left jaw or by a legible freeze-brand "U" on the left jaw that is applied at least 15 days prior to shipment. Even if the "instantly visible upon application" requirement were to be waived to allow freeze branding, the owners of diseased or exposed cattle and bison would have to keep those animals under quarantine for the 14–21 days that it takes for a freeze brand to become visible. That extra time on the farm would increase the chances that new animals might become exposed or infected. A central goal of the Brucellosis and Bovine Tuberculosis Eradication Programs is to identify diseased animals and get them away from unexposed animals before the disease can be spread. To require the animals to be kept on the farm runs counter to that goal. The owners of the quarantined cattle and bison would also be subject to economic losses associated with feeding and caring for the animals, potential drops in market prices, and animals dying before sale.

The fourth option, to retain hot-iron branding as the accepted method of identifying steers imported from Mexico and cattle and bison for the Brucellosis and Bovine Tuberculosis Eradication Programs, is the course of action that we have decided to follow. Until an acceptable alternative is found, hot-iron branding is the only method that results in an identifier that is easily seen and readable, instantly visible upon application, and permanent. Therefore, we will not proceed with rulemaking to change our current regulations.

APHIS is concerned that its identification methods be both humane and effective. We will consider any suggestions and continue our research in an effort to find other methods of identification that will meet the needs of the programs and be more acceptable from a humane standpoint.

Done in Washington, DC, this 2nd day of July 1992.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92-16147 Filed 7-16-92; 8:45 am]

BILLING CODE 3410-34-M

[1] Further details concerning this study may be obtained from the individual listed under "FOR FURTHER INFORMATION CONTACT."

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## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 607 and 618

**RIN 3052-AB19**

### Assessment and Apportionment of Administrative Expenses; General Provisions

**AGENCY:** Farm Credit Administration (FCA).

**ACTION:** Notice of meeting of FCA Assessment Regulations Negotiated Rulemaking Committee.

**SUMMARY:** In accordance with the Negotiated Rulemaking Act and the Federal Advisory Committee Act, the FCA hereby gives notice of the fourth meeting of the FCA Assessment Regulations Negotiated Rulemaking Committee, which has been convened to negotiate and develop proposed amendments to FCA assessment regulations. These regulations prescribe the method for assessing Farm Credit System (System) institutions for the FCA's annual expenses in administering the Farm Credit Act of 1971.

**DATES:** The fourth meeting of the Assessment Regulations Negotiated Rulemaking Committee will be a 2-day session. The meeting will be on July 20, 1992 from 10:30 a.m. to 5 p.m., continuing on July 21, 1992 from 8 a.m. to 3 p.m. All time are Central Daylight Savings Time.

**ADDRESSES:** The Committee will meet at the Stapleton Plaza Hotel, 3333 Quebec Street, Denver, Colorado. The location of the meeting room will be posted in the Stapleton Plaza Hotel lobby.

**FOR FURTHER INFORMATION CONTACT:**

Robert S. Child, Senior Credit Specialist, Office of Examination, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4189, TDD (703) 883-4444.

or

William L. Larsen, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Negotiated Rulemaking Act of 1990, 5 U.S.C. 581, 585, and the Federal Advisory Committee Act, 5 U.S.C. app. 2, section 10, the FCA gives notice of the fourth meeting of its Assessment Regulations Negotiated Rulemaking Committee. The meeting will be held at the Stapleton Plaza Hotel, Denver, Colorado, and will be open to the public.

The Committee is meeting to develop and negotiate proposed amendments to FCA assessment regulations. The agenda for the fourth meeting will continue to focus on development of an assement formula for banks, associations and banks for cooperatives of the System. The need for future meetings of the Committee will depend upon whether the Committee reaches consensus on the assessment formula and related issues.

On May 6, 1992, the FCA published notice of its intent to establish a negotiated rulemaking committee to develop and negotiate proposed amendments to its assessment regulations. 57 FR 19405. The Notice of Intent describes the negotiated rulemaking process and how it will apply to development of proposed assessment regulations.

The assessment regulations prescribe the method for assessing System institutions for the FCA's annual expenses in administering the Farm Credit Act of 1971, 12 U.S.C. 2001 *et seq.* A complete discussion of the current assessment procedures and the need for new regulations can be found in the FCA's Notice of Proposed Rulemaking published at 56 FR 13424, April 2, 1991.

As permitted by General Services Administration Federal Advisory Committee Act regulations (See 41 CFR 101-6.1015(b)(2)), this meeting notice will appear in the Federal Register less than 15 days before the meeting is to occur. This is due to the fact that the Committee scheduled this meeting at its July 8, 1992 meeting, only 11 days before the July 20-21 meeting. The FCA believes that all members of the public who attended the July 7-9, 1992 meeting received notice of the July 20-21 meeting. In addition, the FCA will post a public meeting notice.

Dated July 14, 1992.
Curtis M. Anderson,
*Secretary, Farm Credit Administration Board.*
[FR Doc. 92-16895 Filed 7-16-92; 8:45 am]
BILLING CODE 6705-01-M

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 150

### Exemption From Speculative Position Limits for Positions Which Have a Common Owner, but Which Are Independently Controlled

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Futures Trading Commission ("CFTC" or "Commission"), in October 1988, adopted Commission Rule 150.3(a)(4), 17 CFR 150.3(a)(4) (1989), an exemption from speculative position limits for positions which have a common owner, but which are independently controlled, 53 FR 41563 (October 24, 1988). This rule included a requirement that the Commission review and approve all applications for this exemption. In adopting this exemption, the Commission did not close the door on the possibility that, at some future date, this exemption could become selfexecuting, but indicated that it believed that a more cautious approach was warranted at that time. In April 1991, after a period of study of the operation of this rule, the Commission amended Commission Rule 150.3(a)(4) to broaden the scope of eligibility for this exemption, and to simplify the application process. The Commission is now proposing to amend Commission Rule 150.3(a)(4) to eliminate the requirement that the Commission review and approve applications for this exemption.

**DATES:** Comments must be received by August 17, 1992.

**ADDRESSES:** Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, and should make reference to "Speculative Position Limits Which Are Independently Controlled." Telephone (202) 254-3310.

**FOR FURTHER INFORMATION CONTACT:** John F. Fenton, Industry Economist, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 R Street NW., Washington, DC 20581, (202) 254-3310.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Statutory and Regulatory Framework*

Speculative position limits have been a tool for the regulation of futures markets for over half a century. See, section 4a(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6a(1). Generally, there are three elements to the Commission's regulatory framework of speculative position limits. They are the levels of the limits, the exemptions from them (in particular, for hedgers), and the policy on aggregating accounts. Since its creation, the Commission periodically has reviewed each of these policies pertaining to speculative position limits. For a discussion of the Commission's initiatives in revising its speculative position limit policies, see, 57 FR 12766-67 (April 13, 1992). The Commission's efforts in this regard are continuing. Most recently, the Commission proposed revisions to the Federal speculative position limits, 57 FR 12766, after considering the comments received in response to Petitions for Rulemaking by the Chicago Board of Trade and the New York Cotton Exchange to increase the levels of those Federal limits and to amend certain exemptions therefrom, 56 FR 37049 (August 2, 1991).

### *B. Exemption for Commonly-Owned, but Independently Controlled, Positions*

#### 1. The 1979 Aggregation Policy

In the 1979 Aggregation Policy Statement, the Commission provided guidance to futures commission merchants and others regarding the aggregation of positions for participants in controlled and guided account programs. Specifically, the 1979 Aggregation Policy provided guidance with respect to the meaning of the "control" criterion of the aggregation standard contained in section 4a of the Act. The 1979 Aggregation Policy stated that FCMs control all discretionary customer accounts and accounts which are part of a customer trading program unless specified conditions indicative of the absence of control exist.[1]

[1] That policy provided that with respect to commodity pools: The positions held in all commodity pools operated by a commodity pool operator, other than a commodity pool operator who is an officer, partner, or employee of a futures commission merchant, shall be considered positions controlled by such commodity pool operator unless: 1. A trader other than the commodity pool operator directs trading for such commodity pool; 2. The commodity pool operator maintains only such control over trading in the commodity pool as is necessary to fulfill its duty to supervise diligently all accounts of the pool; and 3. Each trading decision of the commodity pool is determined independently of all trading decisions in other commodity pools and positions in accounts which the commodity pool operator holds, has a financial interest in, or controls.—44 FR 33846. Unlike the relief granted to the guided account programs of FCMs, however, the 1979 Aggregation Policy did not relieve individual commodity pools from the requirement that they aggregate their positions, even if they used independent advisors to control their trading.

#### 2. Exemption From Speculative Limits Under Commission Rule 150.3(a)(4)

In 1988, the Commission promulgated Commission Rule 350.3(a)(4), an exemption from speculative position limits for the a positions of multi-advisor commodity pools and other similar entities which use independent account controllers. See, Commission Rule 150.3, 53 FR 41563 (October 24, 1988). Unlike the 1979 Aggregation Policy, the Commission determined not to amend directly its aggregation policies. Rather, in recognition of the growth of such multi-advisor commodity funds and to accommodate these changing market conditions, the Commission determined to exempt such entities, on a case-by-case basis, from speculative position limits, 53 FR 13290. The salient characteristics of the exemption adopted by the Commission included: Defined eligibility for the exemption, requirement that independent account controllers be unaffiliated, application of the exemption only to trading months outside of the spot month, case-by-case determinations, and the Commission's ability to condition or withdraw the exemption in its discretion.

Eligibility for this exemption was initially limited to commodity pool operators or the operators of similar entities excluded from the definition of "pool" or "commodity pool operator" under Commission Rule 4.5 that have delegated trading authority to independent account controllers. The Commission had proposed to limit the coverage of the exemption under Commission Rule 150.3(a)(4) to independent account controllers which were, by definition, "unaffiliated", 53 FR 13295. However, in response to comments received, the exemption adopted by the Commission permits otherwise affiliated account controllers to be deemed to be unaffiliated by demonstrating that they meet specified indicia of independence.[2]

In contrast to the 1979 Aggregation Policy, this exemption required the filing of an application. In determining to require an application process, the Commission noted at 53 FR 41567,

the issues concerning control of trading are dependent upon the circumstances of each

[2] These indicia of independence include appropriate screening procedures, separate registration and marketing, and a separate trading system, 53 FR 41568.

individual case. This is especially true in light of the Commission's determination to permit employees or other affiliates to demonstrate that specific conditions and procedures exist to rebut the presumption that affiliated account controllers do not possess the requisite independence to qualify for this exemption. That is not to say, however, that a self-executing application procedure could never be instituted; however, the Commission believes that a more cautious approach is warranted at this time.

After observing the operation of the exemption under Commission Rule 150.3(a)(4) for more than two years the Commission determined that the exemption process had worked well, but that eligibility for this exemption could be expanded to include commodity trading advisors and that the application procedures could be streamlined. Initially the exemption was not extended to commodity trading advisors. However, several commenters argued, that by virtue of their being Commission registrants who trade professionally on behalf of others, sometimes using multi-advisor structures, commodity trading advisors were similarly situated to commodity pool operators. These commenters also pointed out that the independent commodity trading advisors of a futures commission merchant are included under the Commission's 1979 Aggregation Policy and that commodity trading advisors not associated with a futures commission merchant should be accorded equivalent treatment by inclusion in the exemption relief.

The Commission also amended Commission Rule 150.3(b) to reduce the amount of documentation required to be filed as part of the application for exemptions, and to rely instead on affidavits to provide the basic information necessary to the Commission to make a routine determination on the application for exemption. The Commission noted that those submitting affidavits as part of their application should assume the responsibility for assuring themselves that the appropriate documentary and other factual evidence supports their statement of independence in the affidavit. In this regard, the Commission noted that under the 1979 Aggregation Policy, the Commission does not require the futures commission merchant or other trader to submit evidence that it meets the applicable standards prior to trading. Rather, the futures commission merchant must, itself, determine compliance in light of the indicia outlined in the Commission's policy statement.

## II. The Proposed Rule

The Commission has observed the application process for this exemption for more than three years, and the operation of the revised filing requirements for approximately one year. Twenty applications have been received during this three year period. These applications have been essentially routine in nature. Moreover, the circumstances of independence and the control of trading involved in these applications were essentially similar to that contemplated in the 1979 Aggregation Policy.

Based on this experience, the Commission believes that it now is appropriate to amend Commission Rule 150.3(a)(4) to make this exemption self-effectuating, by placing the responsibility for assuring that an entity meets the standards to be eligible for this exemption on the entity itself. This modification is in harmony with the approach that the Commission adopted under its 1979 Aggregation Policy in determining issues of independence. Under the proposed rule, the treatment of entities eligible for exemption from speculative position limits will be essentially the same as that afforded to commodity trading advisors of futures commission merchants under the 1979 Aggregation Policy.[3]

Specifically, the Commission is proposing to amend Commission Rule 150.3 (a)(4) to eliminate the requirements that entities eligible for the exemption file an application with the Commission and receive prior commission approval before being permitted to exceed speculative position limits. Under this proposal, the entities eligible for, and the standards for, relief would remain the same, but the eligible entities would themselves be responsible for ascertaining whether or not they qualify for the exemption and for monitoring continued compliance. No filing, other than a standard CFTC Form 40 which accurately reflected the control relationship, would be required with the Commission.

This proposal is a consistent extension of the direction of Commission policy with regard to this exemption. The Commission has progressively broadened the eligibility and reduced the filing requirements as it has gained experience in this area. With regard to the filing requirements for this exemption, initially, significant documentary evidence was required to demonstrate, among other things, the independence of the account controllers. As the Commission gained experience in this area, it determined that the documentary evidence it was receiving could be replaced with affidavits in which the applicants certified to meeting the standards required to be eligible for this exemption. This reduced an unnecessary filing burden on the applicant and resulted in a more rapid approval process.

The effect of the proposed rule would be to apply the speculative limit only to each independent account controller trading for the eligible entity, not to the eligible entity itself, so long as the eligible entity does not control trading done on its behalf. Currently, the Commission, in granting the exemption on a case-by-case basis, has determined maximum exemption levels for eligible entities, as a whole, which were sometimes less than the multiple of the speculative position limit based on the total number of independent account controllers. These overall levels were determined based on market conditions in each particular futures contract market. It appears, however, that the positions of eligible entities have been well below their overall maximum levels. The overall maximum limits, therefore, in practice have not been a constraining factor. In addition, the Commission points out that the exemption applies only to positions outside the spot month. Therefore, the Commission believes that the proposed change with regard to the maximum permissible position levels will not be detrimental to the market.

The Commission stresses that under the proposed rule entities must assume responsibility for assuring themselves that the appropriate documentary and other factual evidence supports their eligibility for this exemption. These standards will not be changed by the proposed rule. In particular, both the eligible entities and affiliated account controllers must continue to have in place procedures to assure the independence of the account controllers in order to meet the requirements of the exemption.

In addition, the Commission is also proposing to add § 150.3(b) which provides that, upon call by the Commission, the Director of the Division

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[3] The 1979 Aggregation Policy, in effect, disaggregated, for reporting and speculative limit purposes, positions of independent account controllers of futures commission merchants in any futures contract month. The current rule involves an exemption to speculative position limits, for independent account controllers of eligible entities, but not in the spot futures month if there is a position limit which applies to individual trading months during their expiration. Therefore, while generally in harmony, the 1979 Aggregation policy and the proposed Commission Rule 150.3(a)(4) result in differing treatment with regard to positions in the spot month if there is a position limit which applies to individual trading months during their expiration.

of Economic Analysis, or the Director's delegee, any entity exempt from speculative position limits under Commission Rule 150.3(a) must provide to the Commission such information as specified in the call, relating to the positions owned or controlled by that person, trading done pursuant to the claimed exemption, the futures, options, or cash market position which support the claim of exemption, and the relevant business relationships supporting a claim of exemption.

Although, under the proposed rule, the exemption will be self-executing, the Commission cautions that, to the extent market surveillance uncovers trading patterns between such independent account controllers which suggest actual trading together or otherwise lack of independence on the part of various account controllers, the Commission will take those regulatory or enforcement actions which are appropriate and warranted.

## III. Related Matters

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 et seq. requires that agencies, in proposing rule, consider the impact of these rules on small entities. The Commission has previously determined that "large traders" are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1962). These proposed rules are exemptions from limits on the size of speculative positions which typically may be held by the largest traders in these markets. Accordingly, if promulgated, these rules would have no significant impact on a substantial number of small entities. For the above reason, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invites comments from any firms or other persons which believe the promulgation of these amendments might have a significant impact upon their activities.

### *B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 et seq., imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget ("OMB"). OMB approved the collection of information associated with the rule on November 2, 1990 and assigned OMB control No. 3038–0013 to the rule. The burden associated with this entire collection including this proposed rule is as follows:

| | |
|---|---|
| Average burden hours per response | 3.00 |
| Number of respondents | 12 |
| Frequency of response | 1 |

Persons wishing to comment on the information which would be required by these proposed rules should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

## List of Subjects in 17 CFR Part 150

Agricultural commodities, Exemptions from speculative position limits, Position limits.

In consideration of the foregoing and pursuant to the authority contained in the Act and, in particular, sections 2(a)(11), 4a, and 8a(5) of the Act, 7 U.S.C. 4a(j), 6a, and 12a(5), the Commodity Futures Trading Commission hereby proposes to amend part 150 of chapter I of title 17 of the Code of Federal Regulations as follows:

## PART 150—LIMITS ON POSITIONS

1. The authority citation for part 150 continues to read as follows:

**Authority:** 7 U.S.C. 6a and 12a(5)(1988).

2. Section 150.1 is proposed to be amended by revising paragraph (e)(3), (e)(4) by redesignating current paragraph (e)(4) as paragraph (e)(5) and by adding a new paragraph to read as follows:

**§ 150.1 Definitions.**

* * * * *

(e) *Independent account controller* means a person—

(1) * * *

(3) Who trades independently of the eligible entity and of any other independent account controller trading for the eligible entity;

(4) Who has no knowledge of trading decisions by any other independent account controller; and

* * * * *

3. Section 150.3 is proposed to be amended by revising paragraph (a)(4), by adding new paragraph (a)(4)(i), and by revising paragraph (b) to read as follows.

**§ 150.3 Exemptions.**

(a) * * *

(4) Carried for an eligible entity as defined in § 150.1(d) of this part, in the separate account or accounts of an independent account controller, as defined in § 150.1(e) of this part, and not in the spot month if there is a position limit which applies to individual trading months during their expiration; *Provided however,* That the overall positions held or controlled by each such independent account controller may not exceed the limits specified in § 150.2 of this part.

(i) Additional Requirements for Exemption of Affiliated Entities. If the independent account controller is affiliated with the eligible entity or another independent account controller, each of the affiliated entities must:

(A) Have, and enforce, written procedures to preclude the affiliated entities from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities; *Provided however;* That such procedures may provide for the disclosure of information which is reasonably necessary for an eligible entity to maintain the level of control consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf;

(B) Trade such accounts pursuant to separately-developed and independent trading systems; and

(C) Market such trading systems separately and solicit funds for such trading by separate Disclosure Documents that meet the standards of § 4.21 or § 4.31 of this chapter, as applicable.

(b) Call for information. Upon call by the Commission, the Director of the Division of Economic Analysis or the Director's delegee, any person claiming an exemption from speculative position limits under this section must provide to the Commission such information as specified in the call relating to the positions owned or controlled by that person; trading done pursuant to the claimed exemption; the futures, options or cash market positions which support the claim of exemption; and the relevant

business relationships supporting a claim of exemption.

Issued in Washington, DC, this 13th Day of July, 1992, by the Commission.

Lynn K. Gilbert,

*Deputy Secretary of the Commission.*

[FR Doc. 92-16843 Filed 7-16-92; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 101

### Customs Field Organization—Boundaries of Washington and Norfolk Districts

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to change the field organization of the Customs Service by realigning the Washington District to include Frederick, Clarke, and Prince William Counties, Virginia, and by removing these counties from the Norfolk District. This would permit the airport at Winchester, Virginia, and the airport and a number of Customs bonded warehouses at Manassas, Virginia, to be served by Customs personnel in the Washington District, who are more closely situated to such facilities than are Customs personnel in the Norfolk District.

**DATES:** Comments must be received on or before September 15, 1992.

**ADDRESSES:** Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Peg Reyen, Office of Workforce Effectiveness and Development, Office of Inspection and Control (202)-566-8157.

**SUPPLEMENTARY INFORMATION:**

#### Background

As part of a continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs proposes to redefine the boundaries of its Washington and Norfolk Districts. Specifically, the Washington District would be revised to include Frederick, Clarke and Prince William Counties, Virginia, which counties would then be removed from the Norfolk District within whose boundaries they are currently included. The proposal would thus essentially establish a corridor in the Northern Virginia area which would fall within the boundaries of the Washington District.

The proposed realignment would permit personnel from the Washington District (particularly Dulles Airport) to service the airport at Winchester, Virginia, when the need arises. At present, any aircraft clearances required at the Winchester Airport are being handled by an inspector from the Port of Richmond, Virginia (Norfolk District). This, however, is not in Customs best interests inasmuch as it takes approximately two hours to travel from Richmond to Winchester, but considerably less from Dulles. Furthermore, there are an airport and a number of Customs bonded warehouses in Manassas, Virginia, which could more effectively be served by personnel from Dulles Airport or the Port of Alexandria which is also in the Washington District. Notably, other operational services in any of the affected locations would not be materially compromised or impaired should the proposed realignment become effective.

#### Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Customs Service. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC.

#### Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization and management, it is not subject to Executive Order 12291. Also, for the same reason, although Customs is soliciting public comments, no notice of proposed rulemaking is required under 5 U.S.C. 553 (a) (2). Accordingly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

#### List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Harbors, Imports, Organization and functions (Government agencies), Seals and insignia, Vessels.

#### Proposed Amendment

Accordingly, it is proposed to amend part 101, Customs Regulations (19 CFR part 101), as set forth below.

### PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 would continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedules of the United States), 1623, 1624.

§ 101.3 [Amended]

2. It is proposed to amend the list of Customs regions, districts and ports of entry in § 101.3(b) in the following manner:

a. In the Southeast Region directly opposite "Washington, D.C." (in the "Name and headquarters" column), the description in the "Area" column would be revised to read as follows: "The District of Columbia, the counties of Montgomery and Prince George's in the State of Maryland, the counties of Loudoun, Fairfax, Arlington, Frederick, Clarke, and Prince William, and the city of Alexandria in the State of Virginia, including any independent cities and towns within such boundaries of such counties."

b. In the Southeast Region directly opposite "Norfolk, Va." (in the "Name and headquarters" column), the description in the "Area" column would be revised to read as follows: "The State of Virginia, except the counties of Loudoun, Fairfax, Arlington, Frederick, Clarke, and Prince William, and the city of Alexandria, including any independent cities and towns within the boundaries of such counties, and the State of West Virginia."

Michael H. Lane,

*Acting Commissioner of Customs.*

Approved: June 29, 1992.

Peter K. Nunez,

*Assistant Secretary of the Treasury.*

[FR Doc. 92-16724 Filed 7-16-92; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[IL 12-7-5150; FRL-4133-1]**

**Approval and Promulgation of Implementation Plans; Illinois**

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Proposed rule.

**SUMMARY:** On June 29, 1990, USEPA promulgated Federal stationary source volatile organic compound (VOC) control measures representing reasonably available control technology (RACT) for emission sources located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry, and Will. USEPA also took final rulemaking action on certain VOC RACT rules previously adopted and submitted by the State of Illinois for inclusion in its State implementation plan (SIP).

Among the State rules that USEPA disapproved was 35 Illinois Administrative Code (35IAC) subpart F, § 215.204(m), which established VOC limits for "Existing Diesel-Electric Locomotive Coating Lines in Cook County." USEPA based this disapproval on its determination that the emission limits prescribed by the State did not represent RACT for EMD's locomotive coating operations. In lieu of this State rule, USEPA promulgated revised emission limits for diesel-electric locomotive coating operations. The only source affected by this rule is the General Motors (GM) Electro-Motive Division (EMD) facility in LaGrange (Cook County), Illinois.

In response to USEPA's actions, pursuant to section 307(d)(7) of the Clean Air Act (CAA), GM filed a petition for administrative reconsideration with the USEPA Regional Administrator for Region V.[1] GM requested that USEPA reconsider its decision to subject GM to 3.5 pounds VOC per gallon for its "topcoat" and "final repair coating" operations.[2]

USEPA has considered EMD's contentions concerning the locomotive coating operation and is presenting a discussion of the principal issues and a newly proposed rule applicable to EMD's locomotive coating operations. The Agency solicits public comments both on the issues being reconsidered and on USEPA's proposed rulemaking action.

**DATES:** Comments on this proposal must be received by August 17, 1992, at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a hearing should be submitted to J. Elmer Bortzer by August 17, 1992, at the address below. Interested persons may call Mr. Bortzer at (312) 886-1430 to see if a hearing will be held and the date and location of the hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

**ADDRESSES:** Written comments on this proposed action should be addressed to J. Elmer Bortzer, Chief, Regulation Development Section (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604. Again, comments should be strictly limited to the subject matter of this proposal.

*Docket:* Pursuant to sections 307(d)(1)(B) and (N) of the CAA, 42 U.S.C. 7607(d)(1) (B) and (N), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, 5-AR-91-2, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Gloria Butler before visiting the Washington, DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region V, Regulation Development Branch, Twenty Sixth Floor, Northeast, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

U.S. Environmental Protection Agency, Docket No. 5-AR-91-2, Air Docket (LE-131), room M1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460, (202) 245-3639.

**FOR FURTHER INFORMATION CONTACT:** Randolph O. Cano, Regulation Development Branch, U.S. Environmental Protection Agency, Region V, (312) 886-6036, at the Chicago address indicated above.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On December 30, 1982, the Illinois Pollution Control Board (IPCB) adopted VOC rules for a number of source categories that are covered by the second group (Group II) of Control Techniques Guideline (CTG) documents.[3] On July 11, 1985 (50 FR 28224), USEPA proposed to disapprove some of these GROUP II RACT rules, including the rule limiting VOC emissions from coatings applied to heavy off-highway vehicle products. This rule, to which EMD was subject, allowed a maximum of 4.3 pounds of volatile organic material (VOM) per gallon (lbs/gal) of coating for air-dried extreme performance topcoats and 4.8 lbs/gal for air-dried final repair coatings. USEPA based its disapproval on the fact that the CTG for miscellaneous metal parts and products (MMPP) (which covers coatings applied to heavy off-highway vehicle products, including locomotive coating operations) specifies a limit of 3.5 lbs/gal for both of these coating operations.[4]

On November 25, 1987, the IPCB adopted a rule applicable to existing diesel-electric locomotive coating lines in Cook County. As discussed above, the applicable CTG for Diesel-electric locomotive coating is the MMPP CTG. The IPCB rule, for which the EMD facility was the only subject source, specified limits of 4.3 and 4.8 lbs/gal for top coating and final repair coating, respectively (which are less stringent than the 3.5 lbs/gal limit specified in the MMPP CTG).

On July 29, 1988, Illinois submitted this revised rule to USEPA. USEPA proposed to disapprove the revised Illinois rule on December 28, 1989 (54 FR 53080), because Illinois had not demonstrated that its limits were consistent with RACT. In that same **Federal Register** notice, USEPA also proposed to promulgate Federal emission limits for diesel-electric locomotive coating operations for 40 CFR 52.741(e)(1)(i)(M). After reviewing public comments, including EMD's, USEPA published its final disapproval of the Illinois rule and the promulgation of its Federal rule on June 29, 1990 (55

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[1] GM also filed a petition for review of the Agency's June 29, 1990, action in the United States Court of Appeals for the Seventh Circuit, *General Motors Corporation* v. *EPA*, No. 90-2889. That action has been held in abeyance by the Court, pending USEPA action of EMD's petition for reconsideration.

[2] In its petition for reconsideration, GM also requested that USEPA reconsider the rules applicable to EMD's silicone rubber priming and electrical insulating varnish operations. These two issues are not being addressed in this rulemaking action.

[3] CTG documents have been prepared by USEPA to assist States in defining RACT for the control of VOC emissions from existing stationary sources. The Group II CTGs are those which were issued between January 1978 and January 1979. RACT is defined as the lowest emission limit that a particular Source is capable of meeting the application of control technology that is reasonable available considering technological and economic feasibility.

[4] The MMPP coating CTG (EPA-450/2-78-015) covers SIC Code major group 37, transportation equipment, which includes group 374, railroad equipment.

FR 26814). The Federal rule requires, *inter alia*, that EMD's locomotive topcoat and final repair operations meet a VOC emission limitation of 3.5 lbs/gal.

## II. EMD's Petition for Reconsideration

On March 2, 1990, EMD submitted extensive comments to USEPA concerning the Agency's December 27, 1989, proposed disapproval of Illinois rule 215.204(m) for locomotive topcoat and final repair coating operations, and on USEPA's proposed Federal rule specifying a limit of 3.5 lbs/gal for the coatings used in these operations. USEPA responded to these and the other public comments received on the proposal in a document entitled, "Public Comments and USEPA Responses on Notice of Proposed Rulemaking (54 FR 53080, December 27, 1989)", May 1990, as well as in the final rulemaking. The document was placed in docket 5A–89–01 for the Federal promulgation as item XXX–6, and was used to support USEPA's final action on June 29, 1990.

On August 28, 1990, EMD submitted a petition for reconsideration to USEPA, supported by its own technical support document (TSD). This TSD contained additional comments regarding the degree of support provided for the rule and on certain procedural aspects of the rulemaking. These comments can be considered under two main categories. First, EMD contended that USEPA's reliance on the MMPP CTG as support for the 3.5 lbs/gal emission limit was misplaced. Second, the company stated that the information received from General Electric Company (GE) on the locomotive coatings used at its Erie, Pennsylvania facility and relied upon by USEPA in its rulemaking was not made available for public review and that the information that was made available failed to demonstrate the successful use of 3.5 lbs/gal coatings as topcoats and final repair coats. These comments, along with USEPA's responses, are summarized below.

*Comment:* EMD repeated its contention that reliance on the MMPP CTG was improper, citing documents the company received in response to a Freedom of Information Act (FOIA) request to USEPA. EMD claimed that these documents indicate the USEPA had not considered locomotive coatings in developing the CTG, and that no coatings suitable for use on finished locomotives at a VOC content below 4.3 lbs/gal were recognized by USEPA as available as late as 10 years after the issuance of the CTG. EMD also believed that background documentation for this CTG should have been included in the rulemaking docket.

*Response:* The Agency continues to maintain that its reliance on the MMPP CTG in defining the presumptive norm of control applicable to EMD's coating operations was proper. When this CTG was developed, no representation was made that every sector in the broad MMPP industrial category had been thoroughly evaluated. As discussed in the next section, USEPA augmented its reliance on the CTG for MMPP by considering whether the MMPP facility most similar to EMD was in fact meeting the CTG presumptive norm. The Agency has examined the documentation in the CTG and all subsequent evidence, as well as the experience of the sole other source performing the same type of operations, and concludes that 3.5 lbs/gal as the locomotive topcoat and final repair coat VOC limit is reasonably available for EMD.

As a practical matter, USEPA often cannot locate, reproduce, and include all of the supporting documentation for its CTGs in its rulemaking dockets under the time and resource constraints of each project. Nor does the Agency consider this to be necessary, because the CTGs are written to reflect the pertinent information in the referenced materials.

*Comment:* EMD objected to USEPA's reliance on the information received from GE in response to a request under section 114 of the CAA. EMD pointed out that USEPA did not seek the data until after the public comment period had ended, and has still not made the data available for public review and comment. Under section 307(d)(6)(C) of the CAA, the Agency may not rely on information not in the docket at the time of promulgation.

EMD also believes that the record does not demonstrate, and no test data are available to show, that satisfactory results are being achieved at GE using paints with "as applies" VOC contents of 3.5 lbs/gal. EMD stated that it had acquired and tested samples of certain coatings ostensibly in use at GE and had achieved unsatisfactory results with regard to adhesion and surface quality.

*Response:* The timing issue of when USEPA sought and made available for review, data received from GE is moot in light of today's proposal. The material are now available and a new comment period has begun. Moreover, USEPA has relieved EMD of having to comply with the SIP rule promulgated pursuant to the June 29, 1990, rulemaking. By today's action, USEPA is proposing the rule to which EMD is subject.

During the comment period, EMD suggested that USEPA review data from GE. USEPA followed that advice and received a variety of information from GE. However, at the time of USEPA's promulgation (June 29, 1990), GE had requested that its submission be treated as Confidential Business Information (CBI), pursuant to 40 CFR Part 2, and USEPA has begun its review of the GE information with respect to its status as CBI. Due to GE's request to keep the information confidential, USEPA was legally barred at that time from divulging the information to any other party pending the results of its CBI investigation. In December 1990, USEPA completed its confidentiality determination, concluding that part of the information provided by GE was "emissions data", and thus was required to be disclosed pursuant to section 114(c) of the CAA, 42 U.S.C. 7414(c) and 40 CFR 2.208(d). Thus, the Agency is now free to discuss certain additional technical information on coating use at GE. This information is summarized under the section entitled "General Electric Data". In this rulemaking, USEPA has relied only upon information found not to be confidential and, therefore, information that is available to the public.

The information conclusively documents that GE is using, and has been using for some time, paints with as-applied VOC contents of 3.5 lbs/gal or less for locomotive topcoat and final repair coating operations. The record further demonstrates that each coating is required to pass the necessary company quality criteria tests, including tests for finish quality and adhesion, for regular use on its locomotive products. EMD has neither documented that it has carried out a comprehensive coating evaluation program as apparently was done by GE, nor documented that it has, in fact, tested the same coating system that is used by GE. Furthermore, it has not documented that the tests it used are appropriate for locomotive coatings.

## III. General Discussion of the Basis for USEPA's Determination

EMD, in its comments on the December 27, 1989, proposal, objected to USEPA Region V's supposed reliance on the SIP call issued to the Pennsylvania Department of Environmental Resources (DER) by USEPA Region III. However, this SIP call was not the fundamental basis for the Agency's determination that a coating emission limit of 3.5 lbs/gal represents RACT for locomotive coating operations. Instead, this SIP call, along with subsequent statements and actions by the State (as discussed below), reflects the feasibility of this emission limit at an operation very similar to the operation at EMD.

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EMD also objected to USEPA's reliance on the MMPP coating CTG, stating that the CTGs were developed as general guidance, without consideration of the unique problems and requirements of all industry segments such as the coating of assembled locomotives. In general, USEPA relies on its CTGs to identify the control levels determined to reflect RACT for various source categories. Since the CTGs have been prepared based on a careful and thorough evaluation of the capabilities and problems associated with the control approaches available to particular source categories of industry, USEPA believes that it may rely (and, in the past, has relied) solely on the CTGs to define the presumptive norm for RACT. Where a State finds the presumptive norm to not be applicable to an individual source, for economic or technological reasons, it may develop a site-specific RACT requirement.

EPA has determined that EMD has not made an adequate demonstration for an alternative RACT standard. EMD has not demonstrated that the EMD facility is substantially different from the industry norm (i.e., the GE plant). In supporting an alternative RACT determination the source should present the different technical and economic circumstances of the EMD facility. These might include such technical differences as: Whether the facilities' products differ substantially from the others in the industry; whether the facility has unique performance specifications; whether the conditions necessary to meet the standard are patented or otherwise unavailable;[5] and whether a facility utilizes substantially different coating equipment than others in the industry.

In terms of the differences in economic circumstances, a source might present information on the cost to develop RACT sufficient coatings; the additional cost of any capital equipment needed to meet RACT; the additional cost of using the necessary coatings in terms of additional applications or higher unit cost; and the cost effectiveness of alternative RACT standards. Consideration would be made on a case-by-case basis because of the difficulty of addressing the unique circumstances facing individual sources.

In selecting limits applicable to EMD, USEPA has relied on the CTG for MMPP and, as further support, has considered whether comparable companies are complying with the CTG or similar limitations. USEPA policy (as discussed in September 17, 1979, guidance on plan revisions for nonattainment areas at 44 FR 53761) is that, in determining RACT for an individual source or group of sources, the control agency, using the available guidance, should select the best available controls, deviating from those controls only where local conditions are such that they cannot be applied there and imposing even more stringent controls where conditions allow. The Agency believes that if a certain level of control technology is available to and being used by a comparable operation, and no unique "local conditions" are identified that would make this technology impracticable at the subject facility, then RACT for the two sources should be considered to be the same. The central issue is whether the only other locomotive manufacturing (and coating) operation in the United States, General Electric, is comparable for this purpose and whether any local conditions would prevent EMD from applying the same control technology that has allowed a satisfactory product to be manufactured at GE.

Upon reviewing the available information on both of these operations, USEPA has concluded that EMD has not made a showing that the performance requirements its topcoat and final repair coatings must meet are unique or exceptional with respect to those at GE. Further, the Agency has determined that GE is currently using coatings that comply with the CTG presumptive norm of 3.5 lbs/gal. The discussion below provides more specific support for the requirement to use, and the availability of, complying coatings.

## IV. USEPA Region III Actions

As part of a series of SIP calls made to several States, USEPA Region III sent a letter to the State of Pennsylvania on June 14, 1988, citing the 4.3 lbs/gal standard for locomotive (and heavy-duty truck) topcoats as deficient because it did not constitute RACT. As part of the Agency's effort to promote national regulatory consistency, the CTG presumptive norm limit of 3.5 lbs/gal was required for this source category.

## V. State of Pennsylvania Rulemaking

Pennsylvania's DER determined in facility inspections as far back as 1986 that the locomotive topcoats being used by GE are essentially in compliance with the 3.5 lbs/gal limit. Pennsylvania adopted revisions to its VOC regulations that included lowering the 4.3 lbs/gal limit for locomotive and heavy-duty truck topcoats to 3.5 lbs/gal. In a background document supporting (what were then) proposed rule revisions, the DER provided the following rationale:

*Reason for change:* The EPA identified the emission limit for top coats of locomotives and heavy-duty trucks as not complying with the CTG limit. The CTG did not provide for the 4.3 pound per gallon standard adopted by the Department. This standard had been justified as necessary for specialty coatings on these vehicles. In the seven years since this standard was adopted, the industry has converted to low solvent coatings as a means of compliance. The Department has surveyed users and has found that coatings meeting the 3.5 pound per gallon standard are available.

On July 25 and 30, and August 1, 1990, the State held public hearings on a proposal that included lowering its allowable locomotive topcoat VOC limit from 4.3 lbs/gal to 3.5 lbs/gal. Neither GE (the only source that would be directly affected by the new locomotive topcoat requirements), nor any other commenter objected to the proposed lower (and more stringent) emission limit. On March 19, 1991, the Pennsylvania Environmental Quality Board adopted the 3.5 lbs/gal limit as final rulemaking and on June 20, 1991, the Independent Regulatory Review Commission approved the rule package containing this revision. This rule revision has completed all steps in the State regulatory process and will be published in the Pennsylvania Bulletin and submitted to USEPA as a SIP revision.

## VI. General Electric Data

On February 7, 1990, EMD requested that USEPA use its authority under section 114 of the CAA to obtain accurate, up-to-date, and comprehensive data on the actual as-applied VOC content of the final locomotive topcoats and final repair coatings used by General Electric (docket item XXII–1). EMD further requested that this information be made available so that it could review it and provide comments.

In response to this request, USEPA on March 1, 1990, sent a letter to GE containing a request for comprehensive information on the company's locomotive coating operations (docket item XXVIII–10). On March 28, 1990, GE sent a letter to USEPA (docket item XXVIII–11) offering to provide the requested information, but asked that the information be considered confidential. USEPA replied in an April 6, 1990, letter to GE that the Agency would maintain the confidentiality of any information GE claimed to be confidential, pending a final determination as to its confidentiality

[5] A discussion of RACT determination when there is a question of product availability is contained in appendix A of the November 9, 1988, Federal Register notice (53 FR 45287) dealing with Essco Aluminum Corporation.

under 40 CFR part 2, subpart B, by USEPA (docket item XXVIII–12). On April 12, 1990, GE submitted a response to USEPA's request for information, repeating its request that the information be kept confidential (docket item XXVIII–13). A followup letter dated April 18, 1990, clarified some of the statements made in the original response letter (docket item XXVIII–15). (Almost all of the information received from GE was marked by the company as "Confidential". This material is listed in the June 29, 1990, promulgation docket index, but at promulgation was being kept in a separate, locked file in the USEPA Region V offices.)

USEPA stated in its original May 1990, EMD RACT analysis (docket item XXX–10) that the information received from GE was not being released to the public at that time, on the basis of the company's request that strict confidentiality for all submitted materials be maintained. However, the Agency did confirm in the RACT analysis that GE, in response to USEPA's request for information, had stated that:

1. Its topcoat paints are applied to final assembled locomotives at 3.5 lbs VOC/gal or less, and
2. Its final repair coats, for the final repair of assembled locomotives, are applied at 3.5 lbs VOC/gal or less.

On November 19, 1990, USEPA made its final CBI determination with regard to the GE submittal. Subsequent to comments by GE on December 3, 1990, and a letter from USEPA to GE on December 6, 1990, the Agency supplemented its CBI determination by making a few additional minor changes to finalize the determination.

USEPA has prepared an EMD RACT analysis, dated August 1991, to support this rulemaking action. This RACT analysis incorporates GE's April 12, 1990, letter with the confidential information deleted. It also includes the April 18, 1990, followup letter from GE, which emphasizes that the company applies both topcoat paints and repair coats to assembled locomotives at 3.5 lbs/gal VOC or less. This RACT analysis contains documents and other information that support this rulemaking, and the RACT analysis has been placed in the rulemaking docket. As discussed in the RACT Analysis (and Appendices) one of EMD's main technical contentions is that paint cracking results from high film builds. However, data provided by EMD showed no relation between film thickness and cracking.

The April 12, 1990, letter summarizes GE's sequential coating operations applicable to locomotives. Primer paint is first applied at 3.5 lbs VOC/gal. A sealer coat is also then applied as received at 3.5 lbs/gal. The topcoat materials are then applied, again at 3.5 lbs/gal. Finally, the information in the April 12 and April 18 letters makes it clear that final repair coats are applied at 3.5 lbs/gal VOC or less.

The enclosures for the April 12, 1990, GE letter (which are also included in the August 1991, EMD RACT analysis) provide additional details concerning the specific coatings in use for assembled locomotives at General Electric. The company provided "Specification and Properties" sheets that indicate coating type and use, and the maximum applied VOC content (3.5 lbs/gal for all primers, topcoats, and final repair coats). These enclosures also show that these coatings are required to pass the GE tests for adhesion, gloss/color, and other critical properties.

## VII. Compliance Date

On May 31, 1991, (56 FR 24722) the emission limitations and compliance date for EMD's "Topcoat" and "Final Repair Coating" operations were stayed until USEPA completes its reconsideration. As stated in that **Federal Register** notice, the stay is to remain in effect until withdrawn by a subsequent rule, but only if and as necessary to complete reconsideration. USEPA further indicated that, upon taking final rulemaking, it would publish a rule in the **Federal Register** notifying the public of the withdrawal of this stay.

USEPA also stated in its May 31, 1991, notice that if the reconsideration results in emission limitations and standards which are stricter than the existing and applicable Illinois rules, USEPA will propose a compliance period of one year from the date of final action on reconsideration.

Today USEPA is proposing emission limits for EMD that are more stringent than those contained in the applicable (on May 31, 1991) Illinois rule. Therefore, USEPA is proposing a compliance period of one year from the date of final action on reconsideration, for EMD to comply with 3.5 lbs VOC/gal "topcoat" and "final repair coat" limits. USEPA is also proposing to withdraw the May 31, 1991, stay pending reconsideration.

## VIII. Summary and Conclusions

USEPA's determination of RACT for EMD is based on several factors which clearly demonstrate the company's ability to apply topcoat and final repair coatings, which do not exceed 3.5 lbs VOC per gallon, to assembled locomotives. These factors are as follows:

- CTG Presumptive Norm is 3.5 lbs/gal. The MMPP coating CTG covers SIC Code Major Group 37 (Transportation Equipment), which includes Group 374, Railroad Equipment. The emission limit recommended for air-dried items, parts to which heat-sensitive materials are attached, certain assembled equipment, or parts that undergo outdoor or harsh exposure or require extreme performance characteristics, is 3.5 lbs/gal.
- Competitor Successfully Uses 3.5 lbs/gal Coatings. EMD's sole domestic competitor, GE–Erie, Pennsylvania, the only other original equipment locomotive coating facility in the country, performs the same types of coating operations. GE has extensively documented to USEPA that all of the topcoat and final repair coatings it uses for final assembled locomotives are applied at 3.5 lbs/gal or less. USEPA policy is to apply similar RACT requirements to similar sources. EMD has not demonstrated any relevant dissimilarities with respect to this other operation, nor would it be expected that there would be any for these two facilities, both of which coat new locomotives.
- SIP Call Was Issued to Pennsylvania. USEPA Region III in the 1988 SIP call cited a deficiency in Pennsylvania's rule for locomotive coating operations. The 4.3 lbs/gal limit was cited as a deficiency which must be changed to 3.5 lbs/gal.
- Pennsylvania has lowered the locomotive and heavy-duty truck topcoat limit to 3.5 lbs/gal based on a finding that such complying coatings are available to the industries involved. General Electric did not comment in opposition to this proposal during the comment period, and the Pennsylvania Environmental Quality Board adopted the 3.5 lbs/gal limit as final rulemaking on March 19, 1991. On June 20, 1991, the Independent Regulatory Review Commission approved the rule package containing this revision.
- EMD Has Not Supported Its Technical Arguments. One of EMD's main technical contentions is that paint cracking results from high film builds. However, data provided by EMD showed no relation between film thickness and cracking.

The factors outlined above support USEPA's contention that topcoats and final repair coats that can be satisfactorily applied to assembled locomotives at 3.5 lbs/gal or less are available and in use. General Electric's April 18, 1990, letter to USEPA confirms that:

1. The company's topcoat paints are applied to final assembled locomotives at 3.5 lbs VOC/gal or less, and
2. The coatings GE uses for the final repair of assembled locomotives are applied at 3.5 lbs VOC/gal or less.

Based on these factors, the Agency has concluded that the 3.5 lbs/gal emission limit represents RACT for these coating operations and is the appropriate limit for this proposed rule. Compliance with the 3.5 lbs/gal emission limit is required

one year from the date of final action on reconsideration. If, based upon public comments, final limits are promulgated for EMD which are not more stringent than the Illinois rules in effect in May 1991, then additional time will not be given to comply.

Public comment is solicited on the petition for reconsideration filed by EMD and on USEPA's proposed rulemaking action in response to it. Public comments received by the date shown above will be considered in the development of USEPA's final rule.

Under 5 U.S.C. 605(b), I certify that this action will not have a significant impact on a substantial number of small entities (See 46 FR 8709). No new requirements are imposed and only a single entity is involved, EMD.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: May 6, 1992.

**William K. Reilly,**

*Administrator.*

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows.

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

**Subpart O—Illinois**

2. Section 52.741 is amended by revising paragraphs (e)(5), and (z)(1), and adding paragraph (e)(7) to read as follows:

**§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry and Will Counties.**

* * * * *

(e) * * *

(e)(5) *Compliance schedule.* Except as specified in paragraph (e)(7) of this section, every owner or operator of a coating line (of a type included within paragraph (e)(1)(i) of this section) shall comply with the requirements of paragraph (e)(1), (e)(2) or (e)(3) of this section and paragraph (e)(6) of this section in accordance with the appropriate compliance schedule as specified in paragraph (e)(5)(i), (ii), (iii) or (iv) of this section.

(i) No owner or operator of a coating line which is exempt from the limitations of paragraph (e)(1) of this section because of the criteria in paragraph (e)(3)(i) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (e)(6)(i) of this section. Wood furniture coating lines are not subject to paragraph (e)(6)(i) of this section.

(ii) No owner or operator of a coating line complying by means of paragraph (e)(1)(i) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(i) and (e)(6)(ii) of this section.

(iii) No owner or operator of a coating line complying by means of paragraph (e)(1)(ii) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(ii) and (e)(6)(iii) of this section.

(iv) No owner or operator of a coating line complying by means of paragraph (e)(2) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(2) and (e)(6)(iv) of this section.

* * * * *

(7) *Compliance schedule for diesel electric locomotive coatings.* Notwithstanding any other provision of this subpart, the compliance date for the emission limitations and standards for "topcoat" and "final repair coat" operations only as applied to General Motors Corporation at their diesel electric locomotive coatings lines in Cook County, Illinois, codified at 40 CFR 52.741(e)(1)(i)(M)(*2*) and (*3*) is specified in this paragraph (e)(7). Compliance with the requirements of paragraph (e)(1), (e)(2) or (e)(3) of this section and paragraph (e)(6) of this section must be in accordance with the appropriate compliance schedule as specified in paragraph (e)(7)(i), (ii), (iii) or (iv) of this section.

(i) No owner or operator of a coating line which is exempt from the limitations of paragraph (e)(1) of this section because of the criteria in paragraph (e)(3)(i) of this section shall operate said coating line on or after [one year from 30 days after **Federal Register** publication of final rule], unless the owner or operator has complied with, and continues to comply with, paragraph (e)(6)(i) of this section.

(ii) No owner or operator of a coating line complying by means of paragraph (e)(1)(i) of this section shall operate said coating line on or after [one year from 30 days after **Federal Register** publication of final rule], unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(i) and (e)(6)(ii) of this section.

(iii) No owner or operator of a coating line complying by means of paragraph (e)(1)(ii) of this section shall operate said coating line on or after [one year from 30 days after **Federal Register** publication of final rule], unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(ii) and (e)(6)(iii) of this section.

(iv) No owner or operator of a coating line complying by means of paragraph (e)(2) of this section shall operate said coating line on or after [one year from 30 days after **Federal Register** publication of final rule], unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(2) and (e)(6)(iv) of this section.

* * * * *

(z) *Rules stayed.* Not withstanding any other provision of this subpart, the effectiveness of the following rules is stayed as indicated below.

(1) The following rules are stayed from July 1, 1991, until USEPA completes its reconsideration as indicated:

(i) 40 CFR 52.741 (u) and (v), including 40 CFR 52.741 (u)(4) and (v)(4) only as applied to Viskase Corporation's cellulose food casing manufacturing facility in Bedford Park, Illinois; and

(ii) 40 CFR 54.741(u), including 40 CFR 52.741 (u)(4), only as applied to Allsteel, Incorporated's adhesive lines at its metal furniture manufacturing operations in Kane County, Illinois.

When USEPA concludes its reconsideration, it will publish its decision and any actions required to effectuate that decision in the **Federal Register**.

[FR Doc. 92–14750 Filed 7–16–92; 8:45 am]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**45 CFR Part 96**

**Block Grant Programs**

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the regulations on block grant programs to: Modify the definition of a State; require periodic financial reports on block grant obligations and expenditures; make certain clarifications regarding direct funding of Indian tribes and tribal organizations; provide due dates for completion of applications from Indian tribes and tribal organizations for certain block grants; clarify procedures related to withholding of funds; modify the reallotment requirements for the Low-Income Home Energy Assistance Program; establish procedures for termination, reduction, and suspension of funding under the Community Services Block Grant; require grantee application and reporting procedures under the Alcohol, and Drug Abuse and Mental Health Service Block Grant; and modify the standard principle for interpretation of statutory requirements as it is applied to the latter program.

**DATES:** Comments must be submitted by September 15, 1992.

**ADDRESSES:** Send comments to Glenn Kamber, Office of the Secretary for Planning and Evaluation, room 447D, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. The comments received in response to this notice may be inspected or reviewed at the same address, Monday through Friday, between 8 a.m. and 4:30 p.m., beginning one week after the close of the comment period.

**FOR FURTHER INFORMATION CONTACT:** Glenn Kamber (202) 254–7316.

**SUPPLEMENTARY INFORMATION:**

## Background

The Omnibus Budget Reconciliation Act of 1981 established seven blocks grants to be administered by the Department of Health and Human Services (HHS). Subsequent legislation repealed the Primary Care Block Grant. An interim final regulation to implement the block grants was published in the Federal Register on October 1, 1981 (46 FR 48582) and the final regulation was issued on July 6, 1982 (47 FR 29472). Subsequent legislation changed certain provisions of the block grants and the regulation was modified on October 13, 1987 (52 FR 37957) and again on March 3, 1988 (53 FR 6824). A notice of proposed rule making of April 5, 1990 (55 FR 12678), addresses reporting requirements for the Social Services Block Grant.

Based on our experience in administering the block grants, we have identified several aspects of the block grant rule that require, or would benefit from, clarification. These are discussed below.

## Section-by-Section Analysis of Changes in the Regulations

*Section 96.2 Definitions*

The Federated States of Micronesia and the Republic of the Marshall Islands were until 1986 components of the Trust Territory of the Pacific Islands. In that year, compacts of free association were adopted by those entities and the United States. Under the compacts, most Federal assistance programs were phased out over a three-year period. However, legislation approving the compacts provided that programs of the Public Health Service would be continued in the new jurisdictions. Palau was expected to approve a similar compact; however, it has not yet done so. As a result, Palau is the sole remaining entity encompassed by the term, "Trust Territory of the Pacific Islands." To take account of these changes in the Trust Territory, we are proposing to modify the definition of "State" as used in the block grant rule.

## Subpart B—General Procedures

*Section 96.10 Prerequisites To Obtain Block Grant Funds*

In general, the block grant statutes provide states and other grantees with substantial discretion in preparing applications and related forms. Thus, the current § 96.10(a) reads: "No particular form is required for a State's application or the related submission required by statute." This language may be misleading, however, inasmuch as some block grant statues do, in fact, require grantees to submit applications and other information in a particular form in order to ensure that the information is useful for statutorily intended purposes, e.g., congressional oversight. An example is the application requirements for the Alcohol and Drug Abuse and Mental Health Services block grant. Therefore, we are proposing to modify this section to allow the Department to specify the form of an application when this is required or clearly contemplated by the authorizing statute.

## Subpart C—Financial Management

*Section 96.30 Fiscal and Administrative Requirements*

We propose to add a new paragraph to § 96.30 that would require block grant recipients to submit information on the obligation and expenditure status of each block grant allocation. For block grants whose statutory authorizations include time limits on both obligation and expenditure of funds, this information would include: (1) The dollar amount of the funds obligated by the recipient and the date of the last obligation; and (2) the dollar amount of the funds expended by the recipient and the date of the last expenditure.

For block grant statutes which have time limits on the obligation of funds but not on the expenditure of funds, this information would include the dollar amount of the funds obligated during the period funds were available for obligation and the date of the last obligation.

For block grant statutes which have time limits only on the expenditure of funds, this information would include the dollar amount of the funds expended and the date of the last expenditure.

The information would be required for each block grant award allocation after the close of the statutory period(s) for obligation of funds and/or expenditure of funds.

The proposed rule would require recipients to answer an inquiry issued to the recipient by the Department's Office of Payment Management Systems. This letter would be sent at the end of the statutory period for obligation or expenditure of funds. Recipients would have 90 days after the end of the applicable statutory period (or 90 days after receipt of the letter, whichever is the later date) to return the letter with the required information.

This information would allow HHS and the recipient to verify the financial status of block grant funds and allow the Department to determine aggregate obligation, expenditures, and available balances. The reporting requirement would not affect a recipient's right to subsequent reimbursement or to draw down funds for authorized obligations or expenditures made within the statutory periods.

We do not believe the proposed requirement would be a significant burden on block grant recipients, as they are already required to maintain this information under current requirements of § 96.30. Section 96.30 states that recipients are to maintain information sufficient to: "* * * (b) permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of the statute authorizing the block grant."Furthermore, the Department now periodically sends recipients letters indicating the status of their block grant funds and asks recipients to confirm this information.

We are interested in obtaining the views of block grant recipients regarding

this proposed rule change and the reporting burden associated with it. See discussion of burden estimate under the topical heading "Paperwork Reduction Act" below.

**Subpart D—Direct Funding of Indian Tribes and Tribal Organizations**

*Section 96.41 General Determination*

Each of the block grant statutes provides direct funding for States and territories. Statutes for four block grant—Low-Income Home Energy Assistance Program (LIHEAP), Community Services (CSBG), Preventive Health and Health Services, and Alcohol and Drug Abuse and Mental Health Services—authorize the Secretary to fund certain Indian tribes and tribal organizations directly if the Secretary determines that tribal members would be better served by the tribe than by the State(s) in which the tribe is located. These four statutes provide that the funds for grants to tribes and tribal organizations that request funding directly from the Department are to be offset from the allotments of the State(s) in which the tribes and tribal organizations are located.

Section 96.14(a) provides that the Department will award block grant funds directly to an eligible Indian tribe or tribal organization upon receipt of a complete application for funds that meets the statutory requirements. The preamble to the original block grant final rule (47 FR 29480, July 6, 1982) states the Department's policy on direct funding of Indian tribes as follows:

"By regulation, the Secretary has determined that members of Indian tribes and tribal organizations would be better served by direct Federal funding than by funding through the States in every instance that the Indian tribe or tribal organization requests direct funding."

This language reflects our view that, as a general rule, tribal rather than State priorities and program administration will result in better service to tribal members. The final rule established the primacy of the Indian tribe in determining the services to provide and how best to provide them. It avoids the need for a Departmental assessment of the relative efficiency and effectiveness of alternative services systems, lodges primary responsibility with the tribe for administering the programs, and establishes the tribe's accountability for providing appropriate services to its service population.

The proposed rule would add a paragraph (c) to the existing rule to clarify that under certain limited circumstances, the Secretary may use his or her discretionary authority to determine that the members of a particular Indian tribe eligible for block grant funds would be better served by the State in which the tribe is located. The proposed amendment clarifies the rule and applies only to the circumstances specified in paragraph (c):

(1) The Department has determined that the tribe has not used its block grant funds substantially in accordance with the block grant statute;

(2) The Department has withheld block grant funds from the tribe based on that determination and in accordance with procedures established by the block grant regulations; and

(3) The tribe has not provided sufficient evidence that it has taken action to correct the problems leading to the withholding of funds.

The Secretary's determination to award funds to the State rather than directly to the tribe would be limited to the situations described above. If a tribe is located in more than one State, funds that had been set aside for a direct grant to the tribe would be awarded to these States in the same proportion as they were offset from the States' allotments for direct award to the tribe. When the Department withholds block grant funds from a tribe, the Department would make the determination to award funds to the State only after allowing as much time as it determines to be reasonable for the tribe to correct the conditions that led to withholding, consistent with provision of timely and meaningful services to the tribe's service population during the fiscal year. For example, if LIHEAP funds were withheld from a tribe effective October 1, the first day of the Federal fiscal year, but funds were not yet available to the Department for distribution to grantees, the Department probably would allow additional time for the tribe to correct these conditions. However, if LIHEAP funds were withheld effective December 1, during the winter heating season, and funds were available for distribution to grantees, the Department probably would make the determination to award funds to the State when it took the official withholding action.

To assure that well-planned, uninterrupted, and timely services are provided to the service population of a tribe from which funds are withheld, the State would receive all remaining funds reserved for the tribe for that fiscal year and all funds for subsequent fiscal years until the Secretary determines that the tribe has corrected the problems which resulted in the withholding. Where funds have been withheld and the tribe has not taken satisfactory corrective action by the first day of the following fiscal year, all of the funds to serve the tribe's service population for the following fiscal year will be awarded to the State. The State is then responsible for serving the tribe's service population.

If the tribe takes satisfactory corrective action during the following fiscal year, the tribe may receive direct funding for that fiscal year with the concurrence of the State. This is consistent with 45 CFR 96.42(e), which provides for acceptance of a tribal application submitted after September 1 only with the concurrence of the State(s) in which the tribe is located. For example, if the State had provided LIHEAP services for a fiscal year to the tribe's service population before the tribe took corrective action, the State would be unlikely to concur in the acceptance of an application from the tribe for this fiscal year. This proposal is intended to clarify responsibility for serving these tribal households and assure that services will be provided in a timely manner. It is intended to provide clear, published notice so that all parties concerned—including the tribe or tribal organization, the tribe's service population, and the State—will understand the actions that the Department will take and understand the State's responsibility to serve the tribal service population while funds are withheld from the tribe or tribal organization.

The preamble to the original block grant final rule affirms the Department's commitment to continue the government-to-government relationship between the United States and Indian tribes and affirms the policy of self-determination for tribes. The Department continues to be committed to these policies; it is neither the intent nor the effect of this clarification to change them.

The Department will withhold block grant funds from a grantee only after determining, in accordance with the due process procedures specified in the block grant statutes and regulations, that the grantee is not using its block grant funds substantially in accordance with statutory requirements to which the grantee had agreed. In such a case, the grantee has violated its agreement to abide by the terms and conditions of the grant, and the Department must act, in accordance with the law, to assure accountability for public funds.

The proposed rule also would amend paragraph (a) to clarify that paragraph (c) constitutes a limited exception to the principle of direct funding of Indian

tribes and tribal organizations. The proposed rule would apply when funds are withheld from a tribal organization, as well as from a tribe. (A tribe that was to be served by a separate tribal organization from which funds are withheld may rescind its resolution authorizing that role for the tribal organization and, consistent with statutory and regulatory requirements including § 96.42(e), may request direct funding for itself—on its own—or through another tribal organization. Because the tribal organization would be the grantee from which funds are withheld, a tribe separate from the tribal organization would be eligible for its own funding.)

We anticipate there would be very few instances in which the exception to the Department's policy on direct tribal funding would apply. Over the past nine years of HHS administration of the four block grants with direct tribal funding—with over 100 tribes and tribal organizations receiving direct funding each year—there has been only one instance in which the Department has withheld block grant funds from a tribe. The proposed rule is consistent with the actions taken by the Department in that case.

*Section 96.42 General Procedures and Requirements*

Paragraph (f) of Subpart D, § 96.42 of the block grant regulations, provides that a State receiving block grant funds is not required to use those funds to provide tangible benefits (e.g., cash or goods) to Indians who are within the service population of an Indian tribe or tribal organization that received direct funding from the Department under the same block grant program for the same fiscal year. A State, however, may not deny Indians access to intangible services funded by block grant programs (e.g., treatment at a community health center) even if the Indians are members of a tribe receiving direct funding for a similar service.

The original preamble to the regulations (July 6, 1982, 47 FR 29482) provides the following clarification of this provision.

"Thus, for example, States are not required to provide cash payments or weatherization assistance to Indians included in the service population of a tribe receiving funds under the low-income home energy assistance program."

The proposed amendment would clarify that tribes receiving direct block grant funding are not required to use those funds to provide tangible benefits to non-Indians residing within the tribe's service area, unless a written tribe-State agreement so provides. In the case of tangible benefits such as those provided under the LIHEAP block grant, where the service unit is the household, the clarification would apply to non-Indian households.

The justification for this policy is clear. The LIHEAP statute authorizes the direct funding of Indian tribes for the provision of benefits to Indian households. The statue specifies that a tribe with reservation is eligible to receive LIHEAP funds based on the number of Indian households eligible for the program and residing on the tribe's reservation or adjacent trust land, as a proportion of the eligible households in the State, or a larger amount based on agreement between the tribe and its State. The tribe's allotment is to be offset from the allotment of the State. Unless a tribe-State agreement provides otherwise, the tribe's LIHEAP allotment is not based on the total eligible population of its reservation and nearby trust land. The tribe does not receive LIHEAP funds to serve non-Indian households residing in these areas. This is the responsibility of the State. Similarly, the statute provides that a tribe without a reservation is to receive LIHEAP funds based on the number of Indian households eligible for the program, as determined by the Secretary in consultation with the tribe and its State.

Thus, unless a tribe-State agreement provides otherwise, tribes receive LIHEAP funds based only on the number of eligible Indian households in their service areas.

The proposed amendment, therefore, would clarify that States have the responsibility to serve the non-Indian households residing in the service area of a direct-grant tribe, unless the tribe and the State agree that the tribe will do so.

*Section 96.49 Due Date for Receipt of All Information for Completion of Applications for the Community Services and Low-Income Home Energy Assistance Block Grants*

We propose to add a new § 96.49 to establish due dates for receipt of all information necessary to complete applications under the Community Services Block Grant and the Low-Income Home Energy Assistance Programs for Indian tribes and tribal organizations. A deadline of June 30 for the Community Services Block Grant is proposed because it would allow HHS to release funds to a State—following a tribe's failure to submit information necessary to complete its application—prior to the expiration of the fiscal year and the lapse of those funds. A deadline for completed LIHEAP application would allow the Department to provide sufficient notice to States that they must provide LIHEAP assistance to the service population of a tribe that has not completed its application for a direct grant. Because most LIHEAP funds are spent for winter heating assistance, it is important that States know by mid-winter, at least, whether they will be required to serve a tribe's service population. Therefore, under the proposed rule, the due date for receipt of all information necessary to complete LIHEAP tribal applications would be January 31.

*Section 96.53 Length of Withholding*

Five of the six block grant statutes provide for withholding of funds from grantees under certain circumstances. (The Social Services Block Grant has no provision for withholding of funds.)

The Preventive Health and Health Services and the Alcohol and Drug Abuse and Mental Health Service statutes provide that the Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not use its allotment in accordance with the requirements of the statute or the certification provided under the statute. The Secretary shall withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

The Maternal and Child Health Services Block Grant statute provides that the Secretary may, after notice and opportunity for a hearing, withhold payment of funds to any State which is not using its allotment under this title in accordance with this title. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

The LIHEAP and the Community Services statutes provide that the Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not utilize its allotment substantially in accordance with the provisions of this statute and the assurance such State provided under the statute.

The proposed new § 96.53, under Subpart E—Enforcement, would clarify that, under LIHEAP and the Community Services Block Grant, the Secretary may withhold funds until the Secretary finds that the reason for withholding has been

removed. It would put grantees on notice concerning authority which is implicit in the LIHEAP and CSBG statutes. The proposed language is similar to that of the other three statutes which provide for withholding of funds.

**Subpart H—Low-Income Energy Assistance Program (LIHEAP)**

*Section 96.81 Reallotment*

Section 2607(b)(2) of Public Law 97–35, as amended, provides that Low-Income Home Energy Assistance Program grantees may hold available for use in the following fiscal year to 10 percent of the amount payable to them in a fiscal year and not transferred to another HIS block grant. Section 2607(b)(1) provides for reallotment in the following fiscal year of any amounts unused (unobligated) as of the end of a fiscal year which exceed the amount which may be held available (carried over) for use in the following fiscal year.

Currently, § 96.81 of the block grant regulations provides that LIHEAP grantees must submit to HHS by August 1 of each year a reallotment report which includes information on the amount of the grantee's funds, if any, which are subject to reallotment in the following fiscal year. Section 2607 of Public Law 97–35 requires HHS to notify the chief executive officer of a grantee with funds subject to reallotment and to publish notice in the **Federal Register** that, after a 30-day comment period, these excess funds may be reallotted. Section 2607 also requires HHS to notify the chief executive officer and publish in the **Federal Register** any final decision to reallot funds. Because of the time required for a grantee to determine the exact amount available for reallotment and for HHS to meet the notification and publication requirements, any excess funds are not actually available for reallotment until well into the following fiscal year.

In FY 1986, HHS reallotted among LIHEAP grantees $251,247 in unobligated FY 1985 LIHEAP funds. In FY 1987, $16,706 in unobligated FY 1986 LIHEAP funds were available for reallotment, and in FY 1988, $2,858 in unobligated FY 1987 funds were available for reallotment. If these funds had been reallotted, a large number of grantees would have received grant awards of less than $1; many others would have received awards of less than $25. HHS determined that it would not have been cost effective for HHS to award these small amounts or for grantees to account for and expend them. For these reasons, HHS published notices in the **Federal Register** announcing the Secretary's decision that no funds from FY 1986 or FY 1987 would be reallotted. There were no FY 1988 LIHEAP funds available for reallotment. A grantee returned $3,288 in FY 1989 funds to HHS, because they exceeded the amount the grantee could carry forward to FY 1990. HHS did not reallot these funds because the amount was small; and we did not learn that the funds were available for reallotment until January, 1990.

Because a similar situation may occur in the future, we proposed to amend § 96.81 of the block grant regulations to state that HHS will not reallot LIHEAP funds if less than $25,000 is available. If $25,000 or more is available, HHS would reallot these funds. However, HHS would not award less than $25 in reallotted funds to a grantee. If a tribe's share of reallotted funds would be less than $25, the tribe's share would be awarded to the State (or, proportionately, to the States) in which the tribe is located. If a territory's share of reallotted funds would be less than $25, the territory's share would be distributed proportionately among the other territorial grantees receiving shares of $25 or more. If $25,000 were available for reallotment, all States would receive at least $25.

The current § 96.81, which describes the annual reallotment report required of grantees, would be redesignated at § 96.81(b). The substance of this paragraph would not be changed. The proposed amendment would be designated at §§ 96.81(a) and (c).

**Subpart I—Community Services Block Grant**

Section 96.92 of Title 45 of the Code of Federal Regulations sets out the process followed by the Department in reviewing allegations that a State has terminated funding to a grantee without notice and an opportunity for a hearing on the record as required by section 675(c)(11) of the CSBG Act. Section 676A of the Act, as amended by section 203(d) of Public Law 98–558 and section 104 of Public Law 101–501, further requires that whenever a State violates section 675(c)(11) and terminates or reduces disproportionately the funding of certain entities without adequate notice and an opportunity for a hearing and prior to the Secretary's review as required by section 676A of the CSBG Act, the Secretary must assume responsibility for providing financial assistance to the entity affected. Section 676A also requires the Secretary to reduce a State's current allotment by the amount of the funds to be provided to the affected entity.

The proposed regulation would define "termination" and "reduction"; establish uniform procedures which will be implemented when States are alleged to have violated the assurances contained in section 675(c)(11); describe procedures for requesting direct funding from the Department as mandated in section 676A; and provide for partial withholding of funds from a State.

*Section 96.92 Definition of Termination of Funding*

Section 96.92 of the current regulation describes the process to be followed by States in notifying an organization of an opportunity for a hearing on the record prior to terminating Community Services block Grant funding. It establishes a time frame within which the Department must confirm or reject a State's decision when the grantee requests a review. The proposed rule would redesignate the current § 96.92, Termination of Funding, as § 96.93, and add a new § 96.92, Definition of Termination and Reduction of Funding. The new § 96.92 proposes to define "termination" as the permanent withdrawal of funds, i.e., for more than 30 days, as well as the refusal of a State to renew the funding of a community action agency or a migrant and seasonal farm workers organization. A State and its grantees often are able to resolve compliance disputes through informal negotiations without initiating a formal complaint under 45 CFR Part 96.50 or the filing of litigation. In order to continue to encourage these informal negotiations, we propose that States be given the latitude to temporality withhold funding, up to thirty days (30) prior to instituting the formal termination procedures under section 675(c)(11) of the Community Services Block Grant Act. Many States have independently interpreted section 675(c)(11) to allow for such a temporary withholding of funds. This section would also clarify circumstances which do not constitute a termination of funding. Also, this section incorporates the statutory definition of "reduction" as found in Public Law 101–501.

*Section 96.94 Petition to direct fund*

It is the Department's view that direct funding is a temporary measure until such time that a State resumes compliance with the assurances contained in section 675(c)(11) of the Community Service Block Grant Act. Since the States will continue to be responsible for grant funds received through direct funding, the initial award amount shall be limited so as not to exceed one-fourth of the affected agency's allocation and shall be based on the affected agency's current allocation or the allocation for the previous year, as determined by the

State. This is consistent with the block grant principles that a State will be afforded the maximum flexibility to resume responsibility for administering the program, including budget negotiation, monitoring, and audit resolution.

*Section 96.95 Partial withholding*

The proposed amendment would add a new § 96.95, Partial Withholding. This would permit the Department to withhold a portion of funds for a State. If, as a result of a hearing conducted under section 679, the Secretary find that a State is in violation of CSBG assurances, it may be more appropriate to withhold a portion of the funds rather than the entire allotment, until the reason for the withholding has been resolved. For example, this may be appropriate when a State violates assurances in section 675(c)(2)(A) by funding—out of the 90 percent restricted portion of its allotment—an entity that is not an eligible entity under in section 673(1).

**Subpart L—Alcohol and Drug Abuse and Mental Health Service Block Grant**

*Section 96.121, 96,122, 96.123*

We propose to delete the current text of § 96.121, dealing with earmarks related to new or expanded services. This provision is no longer necessary because of recent statutory changes.

The Department is proposing three new provisions in Subpart L governing the Alcohol and Drug Abuse and Mental Health Services block grant. These provisions implement significant statutory changes enacted by the Anti-Drug Abuse Act of 1988, Public Law 100-690, and help support Departmental effort to enhance treatment for substance abuse. Specifically, we proposed to add new § 96.121, *Application for Funding*, 96.122, *Needs assessment, intended use, plan,* and 96.123, *Reports.*

Section 96.121, *Application for Funding*, would authorize the Secretary to prescribe the form, manner, and time of submission of State applications under the Alcohol, and Drug Abuse, and Mental Health Services Block Grant and require States to submit with the application additional data, information, or reports. This provision is authorized by § 1916(a) of the Public Health Service Act, 42 U.S.C. 300x-4(a), and is necessary to allow the Department to collect the data and other information which is currently collected from States under OMB § 0930-0080 (exp. 1/1/92), 55 FR 224, Nov. 22, 1990.

New § 96.122, *Needs assessment; intended use; plan,* would implement sections 1916(c)(10) and (21) and (d) of the Public Health Service Act, 42 U.S.C. 300x-4(c)(10) and (21) and (d), that require each State to describe its needs assessment for alcohol, drug abuse, and mental health services, describe how those needs will be met through its intended use of block funds, and provide, at the Secretary's request, a plan which describes how the State could provide alcohol, drug abuse, and mental health services to all individuals in need of such services if the resources were available and an estimate of the resources necessary to do so. With respect to mental health services, we do not intend that the requirements of § 96.122 duplicate the planning which States already perform under sections 1924-1927 of the Public Health Service Act, 42 U.S.C. §§ 300x-10-x-13, and thus, the information provided under the latter sections of the Act will meet the requirements of this section.

The new § 96.123, *Reports,* would require States to submit reports and other information required by sections 1916(f) and 1917(a) of the Public Health Service Act, 42 U.S.C. 300x-4(f) and 300x-5(a), in such form, manner, and times as the Secretary prescribes.

The Department has engaged in extensive consultation with States over the past two years in the development of a standardized format for applications and reports for the Alcohol, Drug Abuse and Mental Health Services Block Grant Program. The Department has worked with individual State officials and the National Association of State Alcohol and Drug Abuse Directors to refine current application and report formats to ensure that they are reasonable in terms of burden, and evolving State data collection and reporting capabilities. In fiscal year 1991, twenty six States voluntarily submitted all or part of applications in accord with a new format developed by the Department. Based upon experience with the 1991 process, and in response to comments received from a number of States and national organizations, the Department revised and simplified the applications format and instructions. In August, 1991, a revised version of the new application format was sent to all States and other block grant jurisdictions for review and comment. Sixteen States submitted comments. In September, 1991, two focus groups involving representatives from thirty States were conducted by the Department to gather additional comments on the application format and its instructions. Followup discussions were held with representatives from all States at a national conference in December, 1991. Additional refinements have been made to the application format as a result of these consultations.

The Department intends to continue this process of close and continuous consultation with States in the evolution of application and reporting requirements for the Alcohol, Drug Abuse and Mental Health Services Block Grant Program. Detailed information collection requirements shall be as jointly agreed upon by this Department and the States, consistent with applicable law and Administration policy Technical assistance, in the form of written materials, workshops, and Federally-financed consultants, will continue to be made available to States as they refine and strengthen needs assessment, planning, data collection and reporting activities.

The public should be aware that Congress is in the process of considering legislation that would spell out more specific requirements pertaining to Block Grant information submissions by States, including needs assessment, applications for funding, and post-expenditure reports. If and when these contemplated changes in Block Grant reporting requirements are enacted into law, the Department will propose additional regulations implementing the new requirements.

*Section 96.124*

In resolving any issue raised by a complaint or a Federal audit the Department will defer to a State's interpretation of its assurances and of the provisions of the block grant statutes unless the interpretation is clearly erroneous.

The proposed new section 96.124 would modify the "clearly erroneous" provision only as it applies to the alcohol and drug abuse and mental health services block grant. The proposed change is based on an amendment to the statute that eliminates from the program statute a provision that prohibited the Secretary from specifying the manner of a state's compliance with selected provisions of the statute. The new rule provides that there may be instances in which the Department determines that a State's interpretation is contrary to Federal law or regulation. In doing so, the Department will give appropriate consideration to written opinions of the State's attorney general. We are interested in receiving comments from states on the proposed provision and whether it should be applied to the other HHS block grants.

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**Executive Order 12291**

The regulation would implement legislative or administrative changes which are minor or technical in nature. None would involve a substantial cost. Therefore, this is not a major rule under Executive Order 12291.

**Regulatory Flexibility Act**

The Department of Health and Human Services certifies that this regulation would have no significant impact on a substantial number of small entities, small businesses, small organizational units, or small governmental jurisdictions. The rule principally affects State administration of block grant funds. States are not "small entities" for purposes of the Act, and the regulation would not have any substantial or significant effects on other eligible entities.

**Paperwork Reduction Act**

The proposed rule contains information collection requirements regarding grantee obligation and expenditure of funds. The public reporting burden related to these requirements is estimated to be less than an hour each for a grantee, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Proposed new requirements for the Alcohol, Drug Abuse and Mental Health Services Block Grant, including §§ 96.121, *Application for Funding*, 96.122, *Needs assessment, intended use, plan*, and 96.123, *Reports*, may require that each grantee spend 400 hours on complying with application and needs assessment reporting requirements, and an additional 300 hours in preparing required reports, for a total of 700 hours per grantee, or 42,000 hours for all 60 grantees. These estimates are similar to those made under the current authority for the Department to collect this data and other information under OMB § 0930–0080 (exp. 1/31/93). Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: OS Reports Clearance Officer, Division of Organization and Management Analysis, room 4300, 330 Independence Avenue, SW., Washington, DC, 20201; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503, Attention: Jenny Main, Desk Officer for ADAMHA.

**List of Subjects in 45 CFR Part 96**

Administrative practice and procedure, Aged, Alcoholism, Child welfare, Community action program, Drug abuse, Energy, Grant programs-energy, Grant programs-health, Grant programs-Indians, Grant programs-social programs, Health, Indians, Individuals with disabilities, Investigations, Low and moderate income housing, Maternal and child health, Mental health programs, Public health, Reporting and record keeping requirements, Social security.

(Catalog of Federal Domestic Assistance Program Numbers: 93.667, Social Services Block Grant; 93.028, Low-Income Home Energy Assistance Program; 93.031, Community Services Block Grant; 93.991, Preventive Health and Health Services Block Grant; 93.992, Alcohol and Drug Abuse and Mental Health Services Block Grant; 93.994, Maternal and Child Health Block Grant)

For the reasons set forth in the preamble, part 96 of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 96—[AMENDED]**

1. The authority for part 96 of title 45 is revised to read as follows:

**Authority:** 42 U.S.C. 300w *et seq.*; 42 U.S.C. 300x *et seq.*; 42 U.S.C. 300y *et seq.*; 42 U.S.C. 701 *et seq.*; 42 U.S.C. 8621 et seq.; 42 U.S.C. 9901 *et seq.*; 42 U.S.C. 1397 *et seq.*; 31 U.S.C. 1243 note.

**Subpart A—Introduction**

2. Section 96.2, is amended by revising paragraph (d) to read as follows:

**§ 96.2 Definitions.**

* * * * *

(d) *State* includes the fifty States, the District of Columbia, and as appropriate with respect to each block grant, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands comprised of Palau, and for purposes of the block grants administered by the Public Health Service, the Federated States of Micronesia and the Republic of the Marshall Islands.

**Subpart B—General Procedures**

3. Section 96.10 is amended by revising paragraph (a) to read as follows:

**§ 96.10 Prerequisite to obtain block grant funds.**

(a) Except where prescribed elsewhere in this rule, no particular form is required for a State's application or the related submission required by statute.

* * * * *

**Subpart C—Financial Management**

4. Section 96.30 is amended by designating text of the current paragraph as paragraph (a) and by adding a new paragraph (b) to read as follows:

**§ 96.30 Fiscal and administrative requirements.**

* * * * *

(b) Financial Summary of Obligation and Expenditure of Block Grant Funds.

(1) *Block grants containing time limits on both the obligation and the expenditure of funds.* After the close of each statutory period for the obligation of block grant funds and after the close of each statutory period for the expenditure of block grant funds, each recipient shall report to the Department:

(i) Total funds obligated and total funds expended by the recipient during the applicable statutory periods; and

(ii) The date of the last obligation and the date of the last expenditure.

(2) *Block grants containing time limits only on obligation of funds.* After the close of each statutory period for the obligation of block grant funds, each recipient shall report to the Department:

(i) Total funds obligated by the recipient during the statutory period; and

(ii) The date of the last obligation.

(3) *Block grants containing time limits only on expenditure of funds.* After the close of each statutory period for the expenditure of block grant funds, each recipient shall report to the Department:

(i) Total funds expended by the recipient during the statutory period; and

(ii) The date of the last expenditure.

(4) *Request for information.* The Department will request the information required by paragraph (b) (1), (2), and (3) of this section, in a letter of inquiry sent to the recipient at the close of the applicable statutory periods. Recipients are to respond by providing the requested information within 90 days of the close of the applicable period or 90 days after the receipt of the letter of inquiry, whichever is later.

5. Section 96.41 is amended by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

**§ 96.41 General determination.**

(a) The Secretary has determined that, with the exception of the circumstances addressed in paragraph (c) of this section, Indian tribes and tribal organizations would be better served by means of grants provided directly by the

Secretary to such tribes and organizations out of their State's allotment of block grant funds than if the State were awarded its entire allotment. Accordingly, with the exception of situations described in paragraph (c) of this section, the Secretary will, upon request of an eligible Indian tribe or tribal organization and where provided for by statute, reserve a portion of the allotment of the State(s) in which the tribe is located, and, upon receipt of a complete application and related submission meeting statutory and regulatory requirements, grant it directly to the tribe or organization.

* * * * * *

(c) The Secretary has determined that Indian tribal members eligible for the funds or services provided through the block grants would be better served by the State(s) in which the tribe is located rather than by the tribe, where:

(1) The tribe has not used its block grant allotment substantially in accordance with the provisions of the relevant statute(s);

(2) Following the procedures of 45 CFR 96.51, the Department has withheld tribal funds because of those deficiencies; and

(3) The tribe has not provided sufficient evidence that it has removed or corrected the reason(s) for withholding.

In these cases, block grant funds reserved or set aside for a direct grant to the Indian tribe will be awarded to the State, and the State will provide block grant services to the service population of the tribe. Before awarding these funds to the State(s), the Department will allow as much time as it determines to be reasonable for the tribe to correct the conditions that led to withholding, consistent with provision of timely and meaningful services to the tribe's service population during the fiscal year. If a State is awarded funds under this paragraph (c), the State will receive all remaining funds set aside for the tribe for the Federal fiscal year for which the award is made. Where the Department has withheld funds from a tribe and the tribe has not taken satisfactory corrective action by the first day of the following fiscal year, all of the funds to serve the tribe's service population for the following fiscal year will be awarded to the State. The State is responsible for providing services to the service population of the tribe in these cases. This paragraph (c) also applies when funds are withheld from a tribal organization.

6. Section 96.42 is amended by adding a new sentence to the end of paragraph (f) to read as follows:

**§ 96.42 General procedures and requirements.**

* * * * *

(f) * * * A tribe receiving direct block grant funding is not required to use those funds to provide tangible benefits to non-Indians living within the tribe's service area unless the tribe and the State(s) in which the tribe is located agree in writing that the tribe will do so.

7. Section 96.49 is added to subpart D to read as follows:

**§ 96.49 Due date for receipt of all information required for completion of applications for the Community Services and Low-income Home Energy Assistance Block Grants.**

(a) For the Community Services Block Grant, Indian tribes and tribal organizations who make direct requests for funding from the Secretary must insure that all information necessary to complete their applications is received by June 30, for a given fiscal year. After June 30, funds will revert to the State(s) in which the tribe is located.

(b) For the Low-Income Home Energy Assistance Program, Indian tribes and tribal organizations who make direct requests for funding from the Secretary must insure that all information necessary to complete their applications is received by January 31, for a given fiscal year. After January 31, funds will revert to the State(s) in which the tribe is located.

8. Section 96.53 is added to subpart E to read as follows:

**§ 96.53 Length of withholding.**

Under the Low-Income Home Energy Assistance and Community Services Block Grants, the Secretary may withhold funds until the Secretary finds that the reason for the withholding has been removed.

9. Section 96.81 is revised to read as follows:

**§ 96.81 Reallotment.**

(a) *Scope.* This section concerns reallotment of funds pursuant to section 2607 of Pub. L. 97–35 (45 U.S.C. 8626).

(b) *Reallotment report.* Each recipient of funds must submit a report to the Secretary by August 1 of each year containing the following information:

(1) The amount of funds that the grantee desires remain available for obligation in the succeeding fiscal year, not to exceed 10 percent of the funds payable to the grantee and not transferred pursuant to section 2604(f) of Public Law 97–35 (42 U.S.C. 8623(f));

(2) A statement of the reasons that this amount to remain available will not be used in the fiscal year for which it was allotted;

(3) A description of the types of assistance to be provided with the amount held available; and

(4) The amount of funds, if any, to be subject to reallotment.

(c) *Conditions for reallotment.* If the total amount available for reallotment for a fiscal year is less than $25,000, the Department will not reallot such amount. If the total amount available for reallotment for a fiscal year is $25,000 or more, the Department will reallot such amount, except that the Department will not award less than $25 in reallotted funds to a grantee.

10. Section 96.92, *Termination of funding,* is redesignated as § 96.93.

11. Section 96.92 is added to read as follows:

**§ 96.92 Definition of termination and reduction of funding.**

(a) Termination of funding means the permanent withdrawal by the State of the authority of a community action agency or migrant and seasonal farmworkers organization to obligate previously awarded funds before that authority would otherwise expire. Permanent is defined as a suspension of more than 30 days from the date the State withdraws the authority of a community action agency or migrant and seasonal farmworkers organization to obligate previously awarded funds. Termination also means the refusal of a State to renew funding of a community action agency or migrant and seasonal farmworkers organization.

(b) The voluntary relinquishment of present or future funding is not a termination, provided a written acknowledgement is provided by the community action agency or migrant and seasonal farmworkers organization. Termination also does not include:

(i) Suspension of 30 days or less;

(ii) Recovery of unobligated balances after the expiration of the project period; or

(iii) The refusal of the State to provide continued financial support for discretionary or special projects.

(c) Reduction of funding is defined statutorily as a decrease in a community action agency's or a migrant and seasonal farmworkers organization's CSBG funding level below the proportional share of funds received in the previous fiscal year.

12. Section 96.94 is added to read as follows:

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**§ 96.94 Petition for direct funding.**

(a) Petitions to direct fund must be submitted in writing to the Department within 10 days from the date the eligible organization receives an official notice of termination or reduction of funding from the State. Such petitions must specify the date when the alleged termination occurred and explain in what way the State violated section 675(c)(11) of the Community Services Block Grant (CSBG) Act or provide details surrounding the alleged disproportionate funding reduction.

(b) The Department shall within 7 working days after receiving a petition furnish a copy of the petition to the State by certified mail. At the same time, the State will be notified that the allotment for the State may be reduced by an amount of funds necessary to fund the affected grantee.

(c) The State will be given 10 working days from the receipt of the copy of the petition to provide written comments to the Department or to comply with the assurances in section 675(c)(11) of the CSBG Act. A State may resume funding at any time.

(d) Within 7 days of receipt of written comments from the State, the Department shall issue to the State and the affected organization a written statement based on the information provided. At this time, if it appears that the State did not comply with section 675(c)(11) of the CSBG Act, the State will be offered an opportunity for a hearing, to be conducted within 7 days.

(e) Within 14 days from the date of the hearing, the Department will provide a written determination. If the State is found in violation of section 675(c)(11) of the CSBG Act, the Department shall fund the affected agency directly and immediately. The award amount shall not exceed one-fourth of the affected agency's allocation as determined by the State. The amount will be based on the affected agency's current or previous year's allocation.

(f) At the time of the start of direct funding and in accordance with § 96.93, the Department shall instruct the State to give notice and an opportunity for a hearing on the termination or reduction of funding to the community action agency or migrant and seasonal farmworkers organization and issue a decision within 30 days of the hearing.

(g) If the State finds, and the Department confirms, that there was cause to terminate an organization, the effective termination date is the date the direct funding will cease. If the State or the Department does not find that there is cause for termination, the State will be ordered to resume funding immediately.

(h) If the State finds, and the Department confirms, that there was just cause for a disproportionate reduction in the CSBG funding level, the new funding level as determined will be official. Cause is statutorily defined as:

(1) A statewide redistribution of funds to respond to

(i) The results of the most recently available census or other appropriate data;

(ii) The establishment of a new eligible entity;

(iii) Severe economic dislocation; and

(2) The failure of an eligible entity to comply with the terms of its agreement to provide CSBG services. If the State, or the Department, does not confirm that there was cause for the reduction of funding, the State will be ordered to provide the eligible entity its proportional share of the State's CSBG allotment.

(i) The State will be responsible for the auditing of funds received through direct funding.

13. Section § 96.95 is added to read as follows:

**§ 96.95 Partial withholding.**

Partial withholding may occur in circumstances in which the Secretary finds as a result of a hearing conducted under section 679 of the CSBG Act that a State has failed to carry out assurances in accordance with section 675(c) of the CSBG Act. A specific circumstance where partial withholding after a hearing may occur would include the funding of an ineligible entity by the State.

14. Section 96.121 is revised to read as follows:

**§ 96.121 Application for funding.**

In accordance with the provisions of sections 1911–1927 of the Public Health Service Act, 42 U.S.C. 300x–300x–13, including section 1916(a), 42 U.S.C. 300x–4(a), each application by a State for an alcohol and drug abuse and mental health services block grant shall be in such form, contain such information, and be submitted by such date as the Secretary shall prescribe. The Secretary may require, as part of such application or at the same time as such application, such additional information, reports, or data as the State is required to provide under the statutory authority or the provisions of this part, including any data which the Secretary collects under the authority of sections 509D and 1916(c)(20) of the Public Health Service Act, 42 U.S.C. 290aa-11 and 300x4(c)(20).

15. Section 96.122 is added to read as follows:

**§ 96.122 Needs assessment; intended use; plan.**

In accordance with sections 1916(c) (10) and (20) and (d) of the Public Health Service Act, 42 U.S.C. 300x–4(c) (10) and (21) and (d), each State which receives an alcohol and drug abuse and mental health services block grant shall provide in such form and manner, containing such information, and at such time as the Secretary prescribes—

(a) A detailed description of those populations, areas, and localities in the State which the State has identified have a need for mental health, alcohol abuse and alcoholism, and drug abuse services;

(b) A detailed description of the intended use of the payments the State will receive under the block grant, including information on the programs and activities to be supported and services to be provided;

(c) A plan that describes how the State can provide services to all individuals seeking mental health, alcohol abuse and alcoholism, and drug abuse treatment services if sufficient resources are available and an estimate of the financial and personnel resources necessary to provide such treatment; and,

(d) Such other information as the Secretary determines is necessary and appropriate to meet the requirements and objectives of sections 1916(c) (10) and (21) and (d) of the Public Health Service Act 42, U.S.C. 300x–4(c) (10) and (21) and (d) and paragraphs (a), (b), and (c) of this section.

16. Section 96.123 is added to read as follows:

**§ 96.123 Reports.**

In accordance with sections 1916(f) and 1917(a) of the Public Health Service Act, 42 U.S.C. 300x–4(f) and 300x–5(a), each State which receives an alcohol and drug abuse and mental health services block grant shall submit, in such form and manner, containing such information, and at such time as the Secretary shall prescribe—

(a) Information which describes how funds received under the block grant were expended in accordance with statutory authority and consistent with the needs within the State identified in accordance with sections 1916(c)(10) of the Public Health service Act, 42 U.S.C. 300x–4(c)(10) and § 96.122(a) of this part;

(b) A detailed description of the activities of the State under the block grant;



(c) A detailed description of the new or expanded programs and services initiated and provided in accordance with sections 1916(c) (2), (14), and (15) of the Public Health Service Act, 42 U.S.C. 300x–4(c)(2), (14), and (15);

(d) A detailed description of the purposes for which funds were spent, of the recipients of such funds, and of the progress made toward achieving the purposes for which the funds were provided; and

(e) Such other information as the Secretary determines is necessary and appropriate to meet the requirements and objectives of sections 1916(f) and 1917(a) of the Public Health Service Act, 42 U.S.C. 300x–4(f) and 300x–5(a).

17. Section 96.124 is added to read as follows:

**§ 96.124 Interpretation of requirements.**

(a) This section applies to the Department's interpretation of sections 1911–1927 of the Public Health Service Act, 42, U.S.C.–300x–300x–13, in lieu of the provisions of § 96.50(e) of this part.

(b) The Department will accept a State's interpretation of the Alcohol, Drug Abuse and Mental Health Services block grant statute unless the Department determines that the State's interpretation is contrary to Federal law or regulation. In making this determination, the Department will give due consideration to any written opinion provided by the Attorney General of the State which supports the State's interpretation. Such opinion, if any, must be provided to the Department with the comments which are submitted by the State under § 96.50(c) of this part in response to any complaint of noncompliance. Any determination by the Department that a State's interpretation is not contrary to Federal law or regulation shall not preclude or otherwise prejudice the State auditor's consideration of the question.

Dated: March 27, 1992.

**Louis W. Sullivan,**

*Secretary.*

[FR Doc. 92–16662 Filed 7–16–92; 8:45 am]

BILLING CODE 4150–04–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 92–143, RM–8010]**

**Radio Broadcasting Services; Eagle, ID**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Eagle Broadcasting, Inc., requesting the substitution of Channel 300C for Channel 300C2 at Eagle, Idaho, and modification of its license for Station KRVG (FM) to specify the higher powered Channel. Channel 300C can be allotted to Eagle in compliance with the Commission's minimum distance separation requirements at the construction permit site, without the imposition of a site restriction. The coordinates are North Latitude 43–45–18 and West Longitude 116–05–52.

**DATES:** Comments must be filed on or before September 1, 1992, and reply comments on or before September 16, 1992.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gerald Stevens-Kittner, Lisa E. Kopf, Arter & Hadden, 1801 K Street, NW., Suite 400K, Washington, DC 20006 (Attorneys for Eagle Broadcasting, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, Docket No. 92–143, adopted June 22, 1992, and released July 10, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st, Street, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92–16829 Filed 7–16–92; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 92–147, RM–7951]**

**Radio Broadcasting Services; Fruitland and Weiser, ID**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Treasure Valley Broadcasting Company, licensee of Station KWEI (FM), Channel 257A, Weiser, Idaho, seeking the substitution of Channel 258C1 for Channel 257A, the reallotment of Channel 258C1 from Weiser, Idaho, to Fruitland, Idaho, and the modification of its license to specify Fruitland as its community of license, in accordance with § 1.420(i) of the Commission's rules. The coordinates are North Latitude 44–03–44 and West Longitude 116–54–22.

**DATES:** Comments must be filed on or before September 3, 1992, and reply comments on or before September 18, 1992.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard R. Zaragoza, John Joseph McVeigh, Fisher, Wayland, Cooper & Leader, 1255 23rd Street, NW., suite 800, Washington, DC 20037–1125 (Attorneys for Treasure Valley Broadcasting Company).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, Docket No. 92–147, adopted June 30, 1992, and released July 13, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

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Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92-16830 Filed 7-16-92; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 92-142, RM-8014]**

**Radio Broadcasting Services; Brighton, NY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Renard Communications Corp. seeking the allotment of Channel 231A to Brighton, New York, as the community's first local FM service. Channel 231A can be allotted to Brighton in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.1 kilometers (5 miles) east to avoid a short-spacing to Station WACZ, Channel 230A, Dansville, New York, at coordinates North Latitude 43-08-55 and West Longitude 77-27-04. Canadian concurrence in the allotment is required since Brighton is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

**DATES:** Comments must be filed on or before September 1, 1992, and reply comments on or before September 16, 1992.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Craig L. Fox, President, Renard Communications Corp., 4853 Manor Hill Drive, Syracuse, New York 13215-1336 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No.92-142, adopted June 19, 1992, and released July 10, 1992.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92-16832 Filed 7-16-92; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 92-73; RM-7954]**

**Radio Broadcasting Services; Warrenton, GA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal of.

**SUMMARY:** This document dismisses a petition filed by William P. Eaton which proposed an allotment of Channel 254A to Warrenton, Georgia. See 57 FR 13328, April 16, 1992. Petitioner failed to file a continuing expression of interest in the allotment. Petitioner's petition for reconsideration, on which the proposed rule making was based, is also dismissed. With this action, this proceeding is terminated.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Beaty, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 92-73, adopted June 22, 1992, and released July 10, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio Broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92-16925 Filed 7-16-92; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 92-71, RM-7926]**

**Radio Broadcasting Services; Longwood, NC**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal of.

**SUMMARY:** The Commission dismisses the request of Longwood Broadcasters to allot Channel 237A to Longwood, North Carolina, as the community's first local FM service. See 57 FR 14554, April 21, 1992. Neither Longwood Broadcasters nor any other party filed comments expressing a continuing interest in applying for the channel. With this action, this proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 92-71, adopted June 29, 1992, and released July 13, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor,



Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92-16927 Filed 7-16-92; 8:45 am]

BILLING CODE 6712-01-M

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## INTERSTATE COMMERCE COMMISSION

**49 CFR Part 1180**

**[Ex Parte No. 282 (Sub-No. 12)]**

**Transfer or Operation of Lines of Railroads in Reorganization**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission modifies the notice of proposed rulemaking published on September 25, 1991 at 56 FR 48510. As now proposed, transfers or operations of lines of bankrupt carriers under plans of reorganizations under 11 U.S.C. 1172 would be governed by the Commission's regular procedures.

**DATES:** Comments must be submitted by August 17, 1992.

**ADDRESSES:** Send an original and 10 copies of comments referring to Ex Parte No. 282 (Sub-No. 12) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Felder, (202) 927-5610 (TDD for hearing impaired: (202) 927-5721).

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927-7428. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. It will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 49 CFR Part 1180**

Railroads.

*Decided:* July 3, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

**Sidney L. Strickland, Jr.,**

*Secretary.*

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES**

1. The authority citation for part 1180 is proposed to be revised to read as follows:

**Authority:** 49 U.S.C. 10321, 10505, 11341, 11343-11346; 5 U.S.C. 553 and 559; and 11 U.S.C. 1172.

2. Subpart B of part 1180 is proposed to be revised to read as follows:

**Subpart B—Transfer or Operation of Lines of Railroads in Reorganization**

**§ 1180.20 Procedures.**

(a) Transactions under 11 U.S.C. 1172, for the transfer or operation of lines of bankrupt railroads under a plan of reorganization are governed by the following procedures:

(1) If the buyer or operator is not a carrier, the Notice of Exemption procedures in subpart D of part 1150 of this title.

(2) If the buyer or operator is a carrier, either:

(i) The application procedures in subpart A of this part; or

(ii) The procedures in Part 1121 of this title for a petition to exempt the transaction from prior approval requirements of 49 U.S.C. 11343, *et seq.*

(b) The Commission will establish or modify its existing procedures and deadlines as necessary in each proceeding to comply with appropriate orders of the Bankruptcy Court.

(c) Under 11 U.S.C. 1172(c)(1), the Commission is required to provide affected employees with adequate protection. The Commission will impose the minimum levels required by 49 U.S.C. 11347, unless a need is shown for different levels of protection.

[FR Doc. 92-16887 Filed 7-16-92; 8:45 am]

BILLING CODE 7035-01-M

# Notices

Federal Register
Vol. 57, No. 138
Friday, July 17, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ACTION

### Information Collection Request Submitted to the Office of Management and Budget (OMB) for Review

**AGENCY:** ACTION

**ACTION:** Information collection request submitted to the Office of Management and Budget (OMB) for review.

**SUMMARY:** This notice provides information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency, covered under the Paperwork Reduction Act (44 U.S.C. chapter 35), currently under review by OMB.

**DATES:** OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements received on or before August 17, 1992. Copies of the proposed forms and supporting documents may be obtained by contacting ACTION.

**ADDRESSES:** Send comments to both—

Janet A. Smith, Clearance Officer, ACTION, 1100 Vermont Ave., NW., Washington, DC 20525, (202) 606–5245.

Steve Semenuk, Desk Officer for ACTION, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503.

**SUPPLEMENTARY INFORMATION:**

*Office of Action Issuing Proposal:* Office of Policy Research and Evaluation/Program Analysis and Evaluation Division.

*Title of Forms:* VISTA Project Supervisor Mail Questionnaire, VISTA Volunteer Mail Questionnaire, VISTA Community Mail Questionnaire and VISTA Former Project Supervisor Mail Questionnaire.

*Need and Use:* ACTION's legislation requires it to evaluate its programs every three years. These forms are needed to conduct an evaluation of the VISTA program. Information gathered in the evaluation will be used to examine the effects of VISTA in the following areas: success in addressing the needs of low-income communities, what supports a successful Volunteer experience, benefit accruing to Volunteers and low-income communities, resource mobilization practices and project sustainability.

*Type of Request*: New request.

*Respondent's Obligation to Reply:* Voluntary.

*Frequency of Collection:* One time only.

*Estimated Number of Responses:* 2,300.

*Average Burden Hours Per Response:* 0.4 hours.

*Estimated Annual Reporting or Disclosure Burden:* 927 hours.

**Regulatory Authority:** 42 U.S.C. 5056(a).

**Dated:** July 14, 1992.

**Jane A. Kenny,**

*Director, ACTION.*

[FR Doc. 92–16949 Filed 7–16–92; 8:45 am]

BILLING CODE 6050–28–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Middle Fork Timber Sales; Nez Perce National Forest; Idaho County, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice, intent to prepare environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a proposal to harvest timber and construct and reconstruct roads in the Little Tinker Creek, Tahoe Creek, Number One Creek, Lodge Creek, and Decker Creek drainages located about 22 air miles northeast of Grangeville, Idaho. This EIS will tier to the Nez Perce National Forest Land and Resource Management Plan and EIS, which provide overall guidance for achieving the desired forest condition of the area. The purpose of the proposed action is to help satisfy short-term demands for timber and to move toward an equal distribution of timber age classes on suitable lands.

**DATE:** Written comments and suggestions should be received on or before August 17, 1992.

**ADDRESS:** Send written comments to Cynthia Lane, District Ranger, Selway Ranger District, HC 75, Box 91, Kooskia, Idaho 83539.

**FOR FURTHER INFORMATION CONTACT:** Jerry Bird, Planning Assistant, (208) 926–4258.

**SUPPLEMENTARY INFORMATION:** The timber management activities under consideration would occur within a 13,913-acre analysis area which includes all 10,170 acres of Inventoried Roadless Area 1842. The analysis area is immediately adjacent to the Selway and Middle Fork Clearwater Rivers, both of which have been classified Recreational Rivers under the Wild and Scenic Rivers Act.

The proposed action would harvest about 15.8 million board feet from 20 harvest units totalling 688 acres. Six miles of new road would be constructed and 2 miles of existing road would be reconstructed. About 35 percent of the roadless area would be directly or indirectly affected. None of the proposed roads would be visible from the river corridor.

Preliminary scoping, including public and agency participation, was initiated in May, 1988, and has continued through this year. Until recently, an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) were envisioned. However, it became apparent to the Interdisciplinary Team that impacts on Roadless Area 1842 could be significant. In such cases, an EIS is required.

The principal environmental issues identified to date are related to:

1. Impacts on Roadless Area 1842; including impacts on old-growth and second-growth vegetative patterns;
2. Impacts on the Selway and Middle Fork Clearwater Recreational Rivers, including view-sheds from U.S. Highway 12;
3. Impacts on fish habitat and water quality, including management and compliance with Best Management Practices;
4. Impacts on threatened and endangered wildlife and fish species, including the threatened grizzly bear, the endangered bald eagle, the endangered Northern Rocky Mountain gray wolf, and the threatened Snake River fall chinook salmon; and
5. Impacts on elk summer and winter habitat.

Development of alternatives is underway, and additional comments or

questions are being solicited at this time. Among the tentative alternatives is one which would schedule timber management outside the roadless area but not inside it. Helicopter yarding is being considered for all, part, and none of the project. Different harvest configurations on elk winter range are being analyzed. One tentative alternative would confine timber management to areas which can be reached by existing roads; another would require use of low-standard, temporary roads which would be obliterated as soon as possible.

Consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service will be initiated with regard to listed species. The Idaho Department of Health and Welfare Division of Environmental Quality, the Idaho Department of Fish and Game, and the Nez Perce Indian Tribe have been and will continue to be consulted.

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the Environmental Protection Agency and available for public review in September, 1992. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final EIS, which is expected to be filed in January, 1993. A Record of Decision will be issued not less than 30 days after publication of a Notice of Availability of the final EIS in the **Federal Register**.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement.

Dated: July 8, 1992.

**Michael King,**

*Forest Supervisor, Nez Perce National Forest, Route 2, Box 475, Grangeville ID 83530.*

[FR Doc. 92-16839 Filed 7-16-92; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held August 4, 1992, 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

**Agenda**

*General Session*

1. Opening remarks by the Chairman.
2. Approval of minutes.
3. Presentation of papers or comments by the public.
4. Report on status of U.S. implementation of Core List.
5. Status of COCOM negotiations, including Segment A proposals.

*Executive Session*

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, ODAS/EA/BXA, room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2583.

Dated: July 14, 1992.

**Betty Anne Ferrell,**

*Director, Technical Advisory Committee Unit.*

[FR Doc. 92-16903 Filed 7-16-92; 8:45 am]

BILLING CODE 3510-DT-M

### International Trade Administration

### Export Trade Certificate of Review

**ACTION:** Notice of application.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Director, Office of Export Trading Company Affairs, International

Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue an Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92–00009." A summary of the application follows.

*Summary of the Application*

*Applicant:* Northern Textile Export Trading Company, Inc. ("NTETC"), 230 Congress Street, Third Floor, Boston, Massachusetts 02110, Contact: Karl Spilhaus, President, Telephone: (617) 542–8220.

*Application No.:* 92–00009.

*Date Deemed Submitted:* July 10, 1992.

*Members (in addition to applicant):* Cascade Woolen Mill, Inc., Oakland, Maine; L.W. Packard & Co., Inc., Ashland, New Hampshire; Charles W. Fifield, Jr. Co., Inc., Hingham, Massachusetts; and Woolrich, Inc., Woolrich, Pennsylvania.

*Export Trade*

*1. Products*

Fibers, yarns and fabrics for both commercial and apparel uses in every segment of the textile industry including, but not limited to, man-made fiber, wool, cotton, elastic, flock, felt and luxury fiber products.

*2. Services*

Engineering, design and affiliated services related to the Products and to articles that incorporate the Products.

*3. Technology Rights*

Patents, trademarks, service marks, copyrights, trade secrets, technical expertise, physical and computer modeling and designs associated with Products, Services, or Export Trade Facilitation Services.

*4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)*

Technical service; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; testing and certification of products; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing, and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. NTETC and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and/or Services in the Export Markets and allocate any proceeds resulting from such arrangements;

b. Establish export prices for sales of Products and/or Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to specifications and engineering requirements demanded by specific potential customers for Products and Services for Export Markets;

d. With respect to Products and/or Services, refuse to quote prices for, or to market or sell in, Export Markets;

e. Provide and/or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit Non-Members to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of NTETC and/or its Members;

g. Coordinate with respect to the servicing of Products and/or services in Export Markets;

h. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing and enhancing existing or new Export Market opportunities;

i. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product requirements of specific export customers or Export Markets;

j. Operate joint ventures and/or jointly owned entities, such as for-profit corporations and partnerships and/or other joint venture entities owned exclusively by Members, for the purpose of engaging in the Export Trade Activities and Methods of Operation herein described. NTETC and/or one or more of its Members may establish contractual methods of distribution in the Export Markets with Non-Members including, but not limited to, sales agents, exclusive or non-exclusive distributors and joint ventures;

k. Provide Export Trade Facilitation Services as an exclusive or non-exclusive Export Intermediary for the Members whereby NTETC and/or more or more of the Members may:

i. Arrange to have NTETC and/or one or more of the Members and/or Non-Members act as an exclusive or non-exclusive Export Intermediary for the Members;

ii. Establish an entity owned jointly and exclusively by Members to act as an exclusive or non-exclusive Export Intermediary for the Members;

iii. Act as an Export Intermediary negotiating and concluding licenses and sub-licenses of Technology Rights which are consistent with subparagraph n, as set forth below.

l. Agree that any information obtained pursuant to this Certificate shall not be provided to any Non-Member;

m. Forward inquiries to the appropriate individual Members concerning requests for information received from entities in the Export Markets;

n. Individually license and sub-license Technology Rights in the Export Markets. Such licenses and sub-licenses may:

i. Convey exclusive or non-exclusive rights in the Export Markets;

ii. Impose requirements as to the prices at which Products and/or Services incorporating or manufactured, or produced, using Technology Rights may be sold or leased in the Export Markets;

iii. Impose requirements as to pricing and other terms and conditions of

licenses or sub-licenses of Technology Rights in the Export Markets;

iv. Restrict licensees and sub-licensees as to the field of use, or maximum sales or operations, in the Export Markets;

v. Impose territorial restrictions relating to any Export Market on foreign licensees and sub-licensees;

vi. Require the assignment back or exclusive or non-exclusive grant back to the licensor Member of rights in the Export Market to all improvements in Technology Rights, whether or not such improvement falls within the field of use authorized in such license;

vii. Require package licensing of Technology Rights; and

viii. Require products and/or services (including, but not limited to, Products and/or Services) to be used, sold, or leased as a condition of the license of Technology Rights.

o. Refuse to provide Export Trade Facilitation Services or participation in Export Trade, Export Trade Activities and Methods of Operation to Non-Members;

p. Individually purchase Products and/or Services for export to the Export Markets;

q. Enter into agreements whereby one or more Members, or an entity owned jointly and exclusively by Members, will provide transportation services to Members, such as the chartering and space chartering of vessels, the negotiation and utilization of intermodal rates with common and contract carriers for inland freight transportation for export shipments to the United States export terminal, port or gateway;

r. Provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products, Services, or Technology rights to Export Markets. This may be accomplished by NTETC itself, or by agreement with Members of other parties;

s. Meet to engage in the Export Trade, Export Trade Activities and Methods of Operation certified herein;

t. Agree, that in the case of withdrawal, the former Member will not, directly or indirectly, sell to, through, or with the assistance of any customer, consultant, employee, co-venturer, distributor, sales agent, or other representative of NTETC the Product or Service it has made available for commercialization concerning Export Market for a period of two years. This prohibition, however, shall not apply to restrict a Member from resuming a business relationship with any party with whom the Member was doing business prior to becoming a Member. The Members shall have an option to sell all of their equity shares to NTETC. The price shall be at "book value" except that in the event a Member exercises its option within two (2) years after its purchase of the stock, then the price shall be the lesser of "book value" or one half of the purchase price paid by the Member.

2. NTETC and/or its Members may exchange and discuss the following types of information:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic, sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods; that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services and the transfer of Technology Rights to and in the Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products, Services, and Technology Rights available from competitors for sale or transfer to particular Export Markets; and the prices and value for such Products, Services, and Rights; and customer specifications for Products, Services, and Rights, in the Export Markets;

c. Information about export prices, quality, quantity, source, ability to supply Products, Services, and Technology Rights in sufficient form to meet an export opportunity, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to Product quantity, source, export prices, ability to supply in sufficient form shall be on a transaction-by-transaction basis only and shall relate solely to Products, Services, and Technology Rights intended for or available for export and involve only those Members who are participating or have a genuine interest in participating in that particular transaction or trade opportunity;

d. Information about terms and conditions on contracts for sales in Export Markets to be considered and/or bid on by NTETC and/or its Members;

e. Information about joint bidding, selling or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales or transfers to Export Markets;

h. Information about NTETC or its Members' export operations, including without limitation sales and distribution networks established by NTETC and/or its Members in Export Markets, and prior export sales or transfers by Members (including export price information); and

i. Information necessary to the conduct of Export Trade Activities and Methods of Operation in the Export Markets.

Dated: July 13, 1992

**George Muller,**

*Director, Office of Export trading Company Affairs.*

[FR Doc. 92-16909 Filed 7-16-92; 8:45 am]

BILLING CODE 3510-DR-M

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## National Oceanic and Atmospheric Administration

## Proposed Boundary Expansion for the Narragansett Bay (Rhode Island) National Estuarine Research Reserve

**AGENCY:** Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice with request for comments.

**SUMMARY:** Notice is hereby given that the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce is considering the State of Rhode Island's request to expand the boundary of the Narragansett Bay National Estuarine Research Reserve.

**FOR FURTHER INFORMATION CONTACT:** Ms. Annie Hillary or Ms. Cheryl A. Graham at (202) 606-4122.

**SUPPLEMENTARY INFORMATION:** The Narragansett Bay National Estuarine Research Reserve (Reserve) was designated in 1980 pursuant to section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The Reserve includes more than 1,110 acres of land and tidal wetlands and mroe than 1,600 acres of water adjoining the islands to the 18-foot isobath.

The State of Rhode Island recently requested NOAA approval to amend the Reserve's boundary to include all state-owned land on Prudence Island managed by the Department of Environmental Management as well as the proposed 454 acres of land at the southern end of Prudence Island currently owned by the Heritage Trust of Rhode Island. The Reserve boundaries for Hope Island and Patience Island would remain unchanged.

The Reserve expansion would enhance the opportunities for research and education as well as enhancing the State's resource protection efforts around Narragansett Bay.

The expansion proposes inclusion of 454 acres of land at the southern end of Prudence Island currently owned by the Heritage Trust of Rhode Island. Negotiations are currently underway between the Nature Conservancy, the state and the Prudence Conservancy for the purchase of this property. This property includes a vast forested area with mixed stands of oak and maple. This woodland supports a dense understory of shrubs and vines, providing excellent cover or wildlife. The tract also contains "Schoolhouse Swamp", the largest freshwater wetland on Prudence Island. It is a forest wetland with a red maple overstory. Drainage is both north, toward the "Barre" property which is within the Reserve, and south into "Crow Swamp" which is in the "Jiacovelli" parcel, also included in this boundary expansion proposal.

The proposed properties include 600 acres at the southern tip of Prudence Island, that is currently in state ownership. The site contains a mix of woodland, open fields, freshwater wetlands and approximately 2½ miles of shoreline on Narragansett Bay. A large wharf extending far out into the Bay provides a platform for education programs and recreational fishing. A smaller dock in a protected cove is used by recreational boaters to access the site and may be used as a ferry dock as it has been in the past. A few buildings on the property may be easily refurbished to serve as a lab and an office.

The proposed expansion also includes the 27 acre "Gallagher" parcel and the 140 acre "Jiacovelli" parcel which are in state ownership. These two parcels contain upland habitat, freshwater wetland habitat, and frontage on Narragansett Bay. They provide a wildlife corridor connecting the 454 acre Heritage Trust parcel and the 600 acre South Prudence parcel.

Any person wishing to comment on the proposed boundary expansion may forward written comments to Ms. Annie Hillary, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., suite 714, Washington, DC, 20235. Comments must be submitted no later than thirty (30) calendar days from issuance of this notice.

(Federal Assistance Catalog Number 11.420 Coastal Zone Management—Estuarine Sanctuaries)

Dated: July 8, 1992.

**W. Stanley Wilson,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 92-16778 Filed 7-16-92; 8:45 am]

BILLING CODE 3510-08-M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List Proposed Addition

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed Addition to Procurement List.

**SUMMARY:** The Committee has received a proposal to add to the Procurement List a commodity to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** August 17, 1992.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverely Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action. If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from a nonprofit agency employing individuals who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the commodity to the Government.

2. The action will result in authorizing a small entity to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List:

Heater, Flameless, 8970-01-321-9153

*Nonprofit Agency:* Consolidated Products and Services, Inc. North Quincy, Massachusetts.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 92-16922 Filed 7-16-92; 8:45 am]

BILLING CODE 6820-33-M

### Procurement List Proposed Addition

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed Addition to Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List a service to be furnished by nonprofit agencies employing persons with severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** August 17, 1992.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to

procure the service listed below from the designated nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on the current contractor for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following service to the Procurement List for provision by the designated nonprofit agency:

Janitorial/Custodial, (excluding buildings 4543, 5155, 5224, 5167 and 4714), Barksdale Air Force Base, Louisiana.

*Nonprofit Agency:* North Louisiana Goodwill Industries, Rehabilitation Center, Inc., Shreveport, Louisiana.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 92–16923 Filed 7–16–92; 8:45 am]

BILLING CODE 6820–33–M

## Procurement List Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** August 17, 1992.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** On April 24 and May 22, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 15059 and 21768) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity or services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity or services.

3. The action will result in authorizing small entities to furnish the commodity or services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity or services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

### Commodity

Mask, Extreme Cold Weather, 8415–01–161–1398.

### Services

Janitorial/Custodial, Federal Aviation Administration, Air Route Traffic Control Center, 326 E. Lorain Street, Oberlin, Ohio.

Janitorial/Custodial, Tacoma Union Station Federal Building, 1733–1739 Pacific Avenue, Tacoma, Washington.

Switchboard Operation, Keesler Air Force Base, Mississippi.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 92–16924 Filed 7–16–92; 8:45 am]

BILLING CODE 6820–33–M

## COMMODITY FUTURES TRADING COMMISSION

### Regulatory Coordination Advisory Committee; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2. 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Regulatory Coordination Advisory Committee will conduct a public meeting in the new Hearing Room at the Commission's Washington, DC headquarters located at level B–1, 2033 K Street, NW., Washington, DC 20581, on Wednesday, August 12, 1992, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

**Agenda**

1. Report from the Working Group on International Competitiveness on Risk-Based Capital.

2. Report from the Working Group on Clearance and Settlement.

3. Report on regulatory barriers to the use of futures and derivatives by pension plans including discussion of ERISA issues.

4. Follow-up on issues discussed at earlier Committee meetings including Reports on Beginning Net Asset Value and Excellence 2000.

5. Other issues for Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on the agenda matters listed above. The Advisory Committee was created by the commodity Futures Trading Commission for the purpose of advising the Commission on ways to improve coordination and to facilitate cross market transactions, including cross border transactions. The purposes and objectives of the Advisory Committee are more fully set forth in the April 15, 1992 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Chairman Wendy L. Gramm, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a

copy of the statement to the attention of: The Commodity Futures Trading Commission Regulatory Coordination Advisory Commodity Committee, c/o Ms. Kate Hathaway or Mr. Robert Zwirb, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Ms. Hathaway or Mr. Zwirb in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on July 13, 1992.

Lynn K. Gilbert,

*Deputy Secretary of the Commission.*

[FR Doc. 92-16842 Filed 7-16-92; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Title, Applicable Form, and Applicable OMB Control Number:* The U.S. Army Survey of Registered Nurses and Nursing Students.

*Type of Request:* New collection.

*Average Burden Hours/Minutes Per Response:* 30.96 minutes.

*Responses per Respondent:* 1.

*Number of Respondents:* 5,000.

*Annual Responses:* 5,000.

*Annual Burden Hours:* 2,580.

*Needs and Uses:* This survey is to help the Federal Government learn more about the work environment, beliefs, and aspirations of nurses and nursing students, and their knowledge and view of the Army Nurse Corps.

*Affected Public:* Individuals or households.

*Frequency:* One time.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: July 13, 1992.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-16844 Filed 7-16-92; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Navy

### Privacy Act of 1974; Alter a Record System

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Alter a record system.

**SUMMARY:** The Department of the Navy proposes to alter an existing system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The alteration will be effective on August 17, 1992, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Gwendolyn Aitken at (703) 614-2004.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy systems of records notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the **Federal Register** as follows:

51 FR 12908, Apr. 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, Jun. 3, 1986
51 FR 30377, Aug. 26, 1986
51 FR 30383, Aug. 26, 1986
51 FR 45931, Dec. 23, 1986
52 FR 2147, Jan. 20, 1987
52 FR 2149, Jan. 20, 1987
52 FR 8500, Mar. 18, 1987
52 FR 15530, Apr. 29, 1987
52 FR 22671, Jun. 15, 1987
52 FR 45846, Dec. 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun. 8, 1988
53 FR 25363, Jul. 6, 1988
53 FR 39499, Oct. 7, 1988
53 FR 41224, Oct. 20, 1988
54 FR 8322, Feb. 28, 1989
54 FR 14378, Apr. 11, 1989
54 FR 32682, Aug. 9, 1989
54 FR 40160, Sep. 29, 1989
54 FR 41495, Oct. 10, 1989
54 FR 43453, Oct. 25, 1989
54 FR 45781, Oct. 31, 1989
54 FR 48131, Nov. 21, 1989
54 FR 51794, Dec. 18, 1989
54 FR 52976, Dec. 26, 1989
55 FR 21910, May 30, 1990 (Updated Mailing Addresses)
55 FR 37930, Sep. 14, 1990
55 FR 42758, Oct. 23, 1990
55 FR 47508, Nov. 14, 1990
55 FR 48678, Nov. 21, 1990
55 FR 53167, Dec. 27, 1991
56 FR 424, Jan. 4, 1991
56 FR 12721, Mar. 27, 1991
56 FR 27503, Jun. 14, 1991
55 FR 28144, Jun. 19, 1991
56 FR 31394, Jul. 10, 1991 (DOD Updated Indexes)
56 FR 40877, Aug. 16, 1991
56 FR 46167, Sep. 10, 1991
56 FR 59217, Nov. 25, 1991
56 FR 63503, Dec. 4, 1991
57 FR 2719, Jan. 23, 1992
57 FR 2726, Jan. 23, 1992
57 FR 2898, Jan. 24, 1992
57 FR 5430, Feb. 14, 1992
57 FR 9246, Mar. 17, 1992
57 FR 12914, Apr. 14, 1992
57 FR 14698, Apr. 22, 1992
57 FR 18472, Apr. 30, 1992
57 FR 24622, Jun. 10, 1992
57 FR 28821, Jun. 16, 1992

The altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on July 6, 1992, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: July 13, 1992.

L. M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**N05520-5**

**SYSTEM NAME:**

Navy Joint Adjudication and Clearance Systems (NJACS), (52 FR 22671, June 15, 1987).

**CHANGES:**

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with "Primary: (System Control) - Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388-5029; (System Computer Facility) - Defense Investigative Service, Personnel Investigations Center, 2200 Van Deman Street, Baltimore, MD 21224-6603.

Decentralized Segments: Headquarters, Naval Security Group Command, 3801 Nebraska Avenue, NW, Washington, DC 20390–5210; Headquarters, Naval Intelligence Command (NIC–04), Room 282, NIC Building, 4600 Silver Hill Road, Suitland, MD 20389–5000; and, Headquarters, Naval Investigative Service Command, Washington, DC 20388–5000.

Additionally, duplicate portions of records may be held at the security office at the activity to which the individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices."

**CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:**

Delete entry and replace with "All Department of the Navy (DON) military personnel and civilian employees and certain 'affiliated employees' whose duties require a DON security clearance or assignment to sensitive positions. 'Affiliated employees' include contractors, consultants, nonappropriated fund employees, USO personnel and Red-Cross volunteers and staff."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with "The system contains records that include an individual's name, Social Security Number, date and place of birth, citizenship status and the identification code (UIC) of the individuals's unit of assignment. Other data elements track the individual's status in the clearance adjudication process and records the final determination. Data files will also include duty-assignment designations, such as cryptographic information access or participation in the Personnel Reliability Program. The system also includes correspondence and documentation related to the adjudication decision."

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "5 U.S.C. 7311; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013; and Executive Orders 10450 and 9397."

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with "The system maintains NJACS records on persons as long as they continue to be employed by or affiliated with the DON. Computer data records are purged one year after an individual terminates DON employment or affiliation. Documents supporting adverse adjudicative actions which are not part of a Department of Defense or Federal investigative file are transferred to the Naval Investigative Service Command for retention. Files are retained for 25 years and then destroyed."

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5029."

**NOTIFICATION PROCEDURE:**

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5029.

Individuals requesting personal records must provide a notarized statement or an unsworn declaration subscribed to be true under penalty of perjury, full identifying data and mark the letter and envelope containing the request 'Privacy Act Request'. Proposed amendments to the information must be directed to the agency which conducted the investigation."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5029.

The letter and envelope should be clearly marked "Privacy Act Request" and should include the full name of the requester, nature of the record sought, approximate date of the record, and provide the required verification of identity or a notarized statement or an unsworn declaration subscribed to be true under penalty of perjury for release to a third party."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

**EXEMPTIONS CLAIMED FOR THIS SYSTEM:**

Delete entry and replace with "Parts of this record system may be exempt pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager."

* * * * *

**N05520–5**

**SYSTEM NAME:**

Navy Joint Adjudication and Clearance System (NJACS).

**SYSTEM LOCATION:**

Primary: (System Control) - Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5029; (System Computer Facility) - Defense Investigative Service, Personnel Investigations Center, 2200 Van Deman Street, Baltimore, MD 21224–0603.

Decentralized Segments: Headquarters, Naval Security Group Command, 3801 Nebraska Avenue, NW, Washington, DC 20390–5210; Headquarters, Naval Intelligence Command (NIC–04), Room 282, NIC Building, 4600 Silver Hill Road, Suitland, MD 20389–5000; and, Headquarters, Naval Investigative Service Command, Washington, DC 20388–5000.

Additionally, duplicate portions of records may be held by: Chief of Naval Personnel (Pers 81), Washington, DC 20370–5000; Director, Office of Civilian Personnel Management, 800 N. Quincy Street, Arlington, VA 22203–1998; Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149–7800; Commandant, Headquarters, U.S. Marine Corps (Code MIF), Navy Department, Washington, DC 20380–0001; and, the security office at the local activity to which the individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Department of the Navy (DON) military personnel and civilian employees and certain 'affiliated employees' whose duties require a DON security clearance or assignment to sensitive positions. Individuals adjudicated as a result of interservice and interagency support agreements. 'Affiliated employees' include

contractors, consultants, nonappropriated fund employees, USO personnel and Red-Cross volunteers and staff.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains records that include an individual's name, Social Security Number, date and place of birth, citizenship status and the identification code (UIC) of the individuals's unit of assignment. Other data elements track the individual's status in the clearance adjudication process and records the final determination. Data files will also include duty-assignment designations, such as cryptographic information access or participation in the Personnel Reliability Program. The system also includes correspondence, investigatory and other documentation related to the adjudication decision.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 7311; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013; and Executive Orders 10450 and 9397.

**PURPOSE(S):**

To provide a comprehensive system to manage information required to adjudicate the eligibility of DON military, civilian, and certain affiliated employees for security clearances and to provide a record of those adjudications.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Automated records are stored on magnetic tapes, disks, and drums. Paper records, microfiche, printed reports, and other related documents supporting the system are filed in cabinets and stored in controlled access areas.

**RETRIEVABILITY:**

By name, Social Security Number, and date and place of birth.

**SAFEGUARDS:**

Controls have been established to restrict computer output only to authorized users at all system locations. Specific procedures are also in force for the disposal of computer output. Computer files are kept in secure, continually manned areas and are accessible only to authorized computer operators, programmers, and adjudicators who are directed to respond to valid official requests for information. This access is controlled and monitored by the security system. Files transferred to NIS for storage are monitored and stored on open shelves and filing cabinets located in secured areas accessible to only authorized personnel.

**RETENTION AND DISPOSAL:**

The system maintains NJACS records on persons as long as they continue to be employed by or affiliated with the DON. Computer data records are purged one year after an individual terminates DON employment or affiliation. Documents supporting adverse adjudicative actions which are not part of a Department of Defense or Federal investigative file are transferred to the Naval Investigative Service Command for retention. Files are retained for 25 years and then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5029.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5029.

Individuals requesting personal records must provide a notarized statement or an unsworn declaration subscribed to be true under penalty of perjury, full identifying data and mark the letter and envelope containing the request 'Privacy Act Request'. Proposed amendments to the information must be directed to the agency which conducted the investigation.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5029.

The letter and envelope should be clearly marked "Privacy Act Request" and should include the full name of the requester, nature of the record sought, approximate date of the record, and provide the required verification of identity or a notarized statement or an unsworn declaration subscribed to be true under penalty of perjury for release to a third party.

**CONTESTING RECORD PROCEDURES:**

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information in this system comes from the cognizant security manager or other official sponsoring the security clearance/ determination for the subject and from information provided by other sources, e.g., personnel security investigations, personal financial records, military service records and the subject.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Parts of this record system may be exempt under 5 U.S.C. 552a(k)(1) and (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. 92–16878 Filed 7–16–92; 8:45]

BILLING CODE 3810-01-F

## DEPARTMENT OF ENERGY

### Noncompetitive Financial Assistance Award

**AGENCY:** U.S. Department of Energy, Bartlesville Project Office.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** the Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7(b)(2)(i) (A) and (D), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center (PETC) to the National Academy of Science for the continuation of their effort entitled "Future Directions in Fundamental Advanced Extraction and Process Technology."

**SUPPLEMENTARY DATA:**

*Grant No.:* DE–FG22–91BC14836.

*Title:* Support of "Future Directions in Fundamental Advanced Extraction and Process Technology."

*Awardee:* National Academy of Science.

*Term:* 6 months.

*Cost:* Total estimated cost is $121,000.

*Scope:* Based upon the authority of 10 CFR600.7(b)(2)(i) criteria (A) and (D), the objective of this proposed activity is to provide financial assistance to the National Academy of Science by means of a renewal grant, which will allow the Academy to develop and advance new concepts and technology in the Advanced Extraction and Process Technology Program. The purpose of this renewal grant is to request the assistance of the National Academy of Science in a more complete information gathering process. The process by which this input is gathered will obtain essential input and feedback from many different constituencies of the AEPT program. The report itself will be disseminated widely to the scientific and technical communities that have an interest in the program.

The Cooperative research program extends an unique opportunity to complete research with well-recognized institute research personnel which can have a major impact on the projects for assessing and identifying future direction in advanced extraction and process technology and has a very high probability of success.

The transaction of this project will benefit the public such that it will facilitate the cooperation between DOE personnel and the Academy for solutions to future directions in advanced extraction and process technology, and it will provide for the fruitful exchange of ideas between various members of the scientific community.

**FOR FURTHER INFORMATION WRITE TO:** U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: Ms. Cynthia Mitchell, Contract Specialist, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940.

Dated: July 2, 1992.

**Dale A. Siciliano,**

*Chief, Contracts Group I, Acquisition and Assistance Div.*

[FR Doc. 92–16913 Filed 7–16–92; 8:45 am]

BILLING CODE 6450–01–M

## Advisory Committee on Environmental Restoration and Waste Management; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

*Name:* Environmental Restoration & Waste Management Advisory Committee (EMAC).

*Date and Time:* Wednesday, August 5, 1992, 10 a.m. to 6 p.m., Thursday, August 6, 1992, 8:30 a.m. to 4 p.m.

*Place:* The Sheraton Washington Hotel—Maryland Room, 2660 Woodley Road & Connecticut Avenue, NW., Washington, DC 20008.

*Contact:* James T. Melillo, Executive Secretary, EMAC, AC–21, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4400.

*Purpose of the Committee:* The purpose of the Committee is to provide the Assistant Secretary, Environmental Restoration and Waste Management (EM) with advice and recommendations on both the substance and the process of the EM Programmatic Environmental Impact Statement (PEIS) and other EM projects from the perspectives of affected groups and State and local Governments. The EMAC will help to improve the Environmental Restoration and Waste Management Program to assisting in the process of securing consensus recommendations, and providing the department's numerous publics with opportunities to make their views known on the Environmental Restoration and Waste Management Program.

**Tentative Agenda**

*Wednesday, August 5, 1992*

10 a.m. Chairman Glenn Paulson Opens Meeting
Opening Remarks Assistant—Secretary Leo Duffy on EMAC and over all EM Program
Environmental Restoration/Waste Management/Technology Development Presentations
Noon Lunch
1 p.m. Continuation of Presentations
6 p.m. Meeting Adjourned Until Next Day

*Thursday, August 6, 1992*

8:30 a.m. EM Public Participation Policy & Practice
Programmatic Environmental Impact Statement (PEIS)
12:30 p.m. Lunch
1:30 p.m. Public Comment Session
2:30 p.m. Committee Business
4 p.m. Meeting Ends

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Transcripts:* The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on July 13, 1992.

**Marcia L. Morris,**

*Deputy Advisory Committee Management Officer*

[FR Doc. 92–16916 Filed 7–17–92; 8:45 am]

BILLING CODE 6450–01–M

## Bonneville Power Administration

## Taylor Lakes Area Relocation Project Floodplain and Wetland Involvement Notification

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of Floodplain and Wetland Involvement, Wasco County, Oregon.

**SUMMARY:** BPA proposes to relocate tower structures on the Big Eddy-Chenoweth No. 1 and No. 2 230-kilovolt (kV) transmission lines and the Dalles-Goldendale No. 1 115-kV transmission line in order to remove existing structures from wet conditions and improve maintenance accessibility in the Taylor Lakes area, just north of the Chenoweth Substation in Wasco County, Oregon. BPA would remove 13 wood pole structures and rebuild with two new wood pole and two steel structures within ½ mile of the existing right-of-way. A new access road system would be designed in order to maintain the structures. The road system would be both within and outside of the right-of-way. Wetlands and the 100-year floodplain of the Columbia River occur in the area. No alternative locations for the poles or the access road system have been identified at this time.

**DATES:** Any comments are due on or before August 4, 1992.

**FOR FURTHER INFORMATION CONTACT:** John Taves—EFBG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, 503–230–4995.

**FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW PROCEDURES OR THE STATUS OF A NEPA REVIEW, CONTACT:** Carol Brogstrom, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–4600 or 800–472–2756.

**SUPPLEMENTARY INFORMATION:** Portions of the project would be located in the 100-year floodplain in sections 21 and 36 within Township 2 North, Range 13 East bounded by Interstate Route 84N to the

west and the Columbia River to the east. All wooden structures would be removed from existing wet conditions and replaced with structures located in upland areas out of the 100-year floodplain. A portion of the access road system would be located in the 100-year floodplain.

Lacustrine and palustrine wetlands occur within the previously cited sections. Towers would be placed in the upland areas in order to minimize impacts to wetlands, while the line itself would span the wetlands. Most of the access road system would also be located in upland area. Approximately 1500 square feet of road would cover a semi-permanent wetland that is diked with vegetation ranging from persistent emergents to broad-leaved, deciduous scrub/shrub.

In accordance with DOE regulations for compliance with floodplain and wetland environmental review requirements (10 CFR part 1022), BPA will prepare a floodplain/wetland assessment on this proposed action. If the project can be categorically excluded from further National Environmental Policy Act review, the results of the floodplain/wetland assessment will be included in the categorical exclusion and the floodplain statement of findings will be published in the **Federal Register**. If the project requires an environmental assessment or an environmental impact statement, the floodplain/wetland assessment would be included in the appropriate environmental document and the floodplain statement of findings will be included in the Finding of No Significant Impact or the Record of Decision. Maps and further information are available from BPA at the address shown above.

Issued in Portland, Oregon, on July 2, 1992.

**John S. Robertson,**

*Deputy Administrator.*

[FR Doc. 92–16912 Filed 7–16–92; 8:45 am]

BILLING CODE 6450–01–M

## Energy Information Administration

### Agency Information Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of requests submitted for review by the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

**DATES:** comments must be filed on or before August 17, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

**FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:** Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

**SUPPLEMENTARY INFORMATION:** The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FPC–14.
3. 1902–0027.
4. Annual Report for Importers and Exporters of Natural Gas.
5. Extension.
6. Annually.
7. Mandatory.
8. Businesses or other for-profit.
9. 46 respondents.
10. 1 response.
11. 3.1 hours per response.
12. 142 hours.
13. The purpose of this report/filing requirement is to collect data used to assist in the monitoring and regulation of natural gas imports and exports in the United States.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–73.
3. 1902–0019.
4. Oil Pipeline Service Life Data.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 15 respondents.
10. 1 response.
11. 40 hours per response.
12. 600 hours.
13. FERC–73 data are used to perform service life analysis for oil pipeline properties. These data are necessary to determine book depreciation rates.

**Statutory Authority:** Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC July 9, 1992.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 92–16919 Filed 7–16–92; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

[Docket Nos. ER92–685–000, et al.]

### PacifiCorp, et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 10, 1992.

Take notice that the following filings have been made with the Commission:

**1. PacifiCorp**

[Docket No. ER92–685–000]

Take notice that on July 1, 1992, PacifiCorp, tendered for filing, in accordance with section 35 of the Commission's Rules and Regulations, Eleventh revised Sheet No. 3.0 to

PacifiCorp's FERC Electric Tariff, Original Volume No. 5 (Tariff) and Service Agreements under Service Schedule TS–5 to the Tariff with the following utilities:

Utah Municipal Power Agency (UMPA)
Deseret Generation & Transmission Co–Operative (Deseret)
City of Bountiful, Utah (Bountiful)

The Service Agreements provide for non-firm transmission service under the Tariff.

PacifiCorp respectively requests, pursuant to § 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of August 1, 1992 be assigned to the UMPA Service Agreement, such date being consistent with the effective date agreed to in the Service Agreement. PacifiCorp requests that the Deseret and Bountiful Service Agreements be accepted for filing effective sixty days after receipt of this filing. The waiver will have no effect upon purchasers under other rate schedules.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Utah Public Service Commission.

*Comment date:* July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

**2. Niagara Mohawk Power Corp.**

[Docket No. ER92–684–000]

Take notice that on July 1, 1992, Niagara Mohawk Power Corporation ("Niagara Mohawk") tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 176, an agreement between Niagara Mohawk and the Rochester Gas & Electric Corporation.

Rate Schedule No. 176 provides for the wheeling of certain loads by Niagara Mohawk to RG&E. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1992. In support thereof, Niagara Mohawk states that RG&E has consented to this proposed effective date.

Copies of this filing were served upon the following:

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223; and Rochester Gas & Electric Corporation, 89 East Avenue, Rochester, NY 14649.

*Comment date:* July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

**3. Central Illinois Public Service Co.**

[Docket No. ER92–304–000]

Take notice that on June 30, 1992, Central Illinois Public Service Company (CIPS) tendered for filing a Letter Agreement, dated June 1, 1992, amending in minor respects the Power Supply and Transmission Services Agreement, dated January 9, 1992, between CIPS and Wabash Valley Power Association, Inc. (Wabash Valley) filed in this docket January 31, 1992. CIPS also provided additional information sought by the Staff.

Copies of the filing have been served on Wabash Valley, the Illinois Commerce Commission and the Indiana Utility Regulatory Commission.

*Comment date:* July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

**4. Public Service Company of New Mexico**

[Docket No. ER92–676–000]

Take notice that on June 30, 1992, Public Service Company of New Mexico (PNM) tendered for filing a Notice of Termination of the Interconnection Agreement and Service Schedules A–1 and B–1 thereto between PNM and Utah Power and Light Company (predecessor to PacifiCorp) (PNM Rate Schedule FPC No. 17).

PNM requests that the Interconnection Agreement and Service Schedules thereto be terminated effective as of the date of the Commission's acceptance for filing of the Notice of Termination.

Copies of the filing have been served upon PacifiCorp and the New Mexico Public Service Commission.

*Comment date:* July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

**5. Niagara Mohawk Power Corp.**

[Docket No. ER92–681–000]

Take notice that on July 1, 1992, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 165, an agreement between Niagara Mohawk and the New York State Electric & Gas Corporation.

Rate Schedule No. 165 provides for the wheeling of certain loads by Niagara Mohawk to NYSEG. The proposed change revises the rates and the annual effective date for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1992. In support thereof, Niagara Mohawk states that NYSEG has consented to this proposed effective date.

Copies of this filing were served upon the Public Service Commission of the State of New York and the New York State Electric & Gas Corp.

*Comment date:* July 24, 1992, in accordance with Standard Paragraph E end of this notice.

**6. Northern States Power Co.**

[Docket No. ER92–452–000]

Take notice that on July 6, 1992, Northern States Power Company (NSP) tendered for filing a proposed rate for Short Term Power for inclusion in the Interconnection and Interchange Agreement dated March 31, 1992, between NSP and the Central Minnesota Municipal Power Agency. This revised rate schedule constitutes an amendment to NSP's original filing dated April 9, 1992.

The Interconnection and Interchange Agreement (Agreement) between NSP and CMMPA provides for certain sales of power and/or energy between NSP and CMMPA pursuant to service schedules attached to the Agreement, including the terms and conditions of such services. The proposed amendment will establish a weekly rate cap for daily service for Service Schedule B—Short Term Power.

NSP requests that the Agreement (as amended) be accepted for filing effective May 1, 1992, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

*Comment date:* July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

**7. Pacific Gas and Electric Co.**

[Docket Nos. ER91–337–002 and EL91–031–001]

Take notice that on June 25, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing a compliance report in FERC Docket Nos. ER91–337–000 and EL91–31–000. FERC Docket No. ER91–337–000 included reduced rates to the Western Area Power Administration (Western) due to the Tax Reform Act of 1986, for the period July 1987 through March 1991. The Commission required that PG&E submit a compliance report showing the return of the revenues in excess of the Tax Reform Act of 1986 rates with interest. After reviewing the calculations with Western, PG&E has submitted its compliance report, showing all monies were refunded with interest as of November, 1991.

Copies of this filing were served upon Western, the California Public Utilities Commission and the parties to the Service List to FERC Docket Nos. ER91–337–000 and EL91–31–000.

*Comment date:* July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

**8. The United Illuminating Co.**

[Docket No. ER92-677-000]

Take notice that on June 30, 1992, The United Illuminating Company (UI) tendered for filing a rate schedule for a short-term, coordination involving the sale of capacity entitlements to UNITIL Power Corp. (UPC). The rate schedule corresponds to a letter agreement, dated June 10, 1991, between UI and UPC. The commencement date for service under the agreement is June 16, 1992. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy from UI's Bridgeport Harbor Station Unit #2.

*Comment date:* July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

**9. Niagara Mohawk Power Corp.**

[Docket No. ER92-683-000]

Take notice that on July 1, 1992, Niagara Mohawk Power Corporation ("Niagara Mohawk") tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 142, an agreement between Niagara Mohawk and the Long Island Lighting Company.

Rate Schedule No. 142 provides for the wheeling of certain loads by Niagara Mohawk to LILCO. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1992 and requests waiver of the Commission's notice requirements. In support thereof, Niagara Mohawk states that LILCO has consented to this proposed effective date.

Copies of this filing were served upon the following:

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223; and
Long Island Lighting Company, 157 East Old Country Road, Hicksville, NY 11801.

*Comment date:* July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

**10. Niagara Mohawk Power Corp.**

[Docket No. ER92-682-000]

Take notice that on July 1, 1992, Niagara Mohawk Power Corporation ("Niagara Mohawk") tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 141, an agreement between Niagara Mohawk and the Central Hudson Gas and Electric Corporation.

Rate Schedule No. 141 provides for the wheeling of certain loads by Niagara Mohawk to CHG&E. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1992. In support thereof, Niagara Mohawk states that CHG&E has consented to this proposed effective date.

Copies of this filing were served upon the following:

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223; and
Central Hudson Gas & Electric Corporation, 284 South Avenue, Poughkeepsie, NY 12601.

*Comment date:* July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16857 Filed 7-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-573-000, et al.]

## Transcontinental Gas Pipe Line Corp. et al.; Natural Gas Certificate Filings

July 10, 1992.

Take notice that the following filings have been made with the Commission:

**1. Transcontinental Gas Pipe Line Corp.**

[Docket No. CP92-573-000]

Take notice that on July 2, 1992, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92-515-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to abandon the firm and interruptible transportation services for United, which were authorized by the Commission in Docket No. CP78-298 and carried out according to the provisions of Transco's Rate Schedule X-166. Transco proposes to replace the services with comparable service under blanket authorization pursuant to Transco's blanket certificate issued in Docket No. CP88-328-000. In order to protect United's priority as a shipper, Transco requests a waiver of the priority queue provisions of its tariff.

*Comment date:* July 31, 1992, in accordance with Standard Paragraph F at the end of this notice.

**2. Panhandle Eastern Pipe Line Co.**

[Docket No. CP92-565-000]

Take notice that on June 30, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-565-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon partially sales to 6 existing jurisdictional sales customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon sales by reducing contract demand as follows:

| Customer | Current annualized CD (Mcf) | Annualized reduction CD (Mcf) | Proposed annualized CD (Mcf) |
|---|---|---|---|
| Central Illinois Light Company | 23,065,300 | 9,746,100 | 13,339,200 |
| Ohio Gas Company | 4,013,000 | 604,000 | 3,409,000 |
| Union Electric Company | 22,605,000 | 3,495,675 | 19,109,325 |
| Central Illinois Public Service Company | 28,697,000 | 8,381,000 | 20,316,000 |
| Illinois Power Company | 24,400,000 | 5,198,261 | 19,201,739 |

| Customer | Current annualized CD (Mcf) | Annualized reduction CD (Mcf) | Proposed annualized CD (Mcf) |
|---|---|---|---|
| Citizens Gas and Coke Utility | 22,285,000 | 5,038,000 | 17,247,000 |

Panhandle states that it would replace the existing service agreements with the customers listed above with new service agreements to take effect November 1, 1992, for terms ending October 31, 1993. It is stated that the partial abandonments requested would allow the customers to reduce their contract demand and demand charges to better reflect their actual needs. It is asserted that no customers would lose service as a result of the proposed abandonment. It is further asserted that no facilities would be abandoned as a result of the proposal.

*Comment date:* July 31, 1992, in accordance with Standard Paragraph F at the end of the notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-16863 Filed 7-16-92; 8:45 am]

BILLING CODE 6717-01-M

## Western Area Power Administration

### Floodplain/Wetlands Involvement Determination for Lingle Substation Repairs and Oil Spill Containment; Goshen County, Wyoming

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Statement of findings.

**SUMMARY:** The Western Area Power Administration (Western) proposes to repair structures and provide oil spill containment at the existing Lingle Substation in Goshen County, Wyoming. According to the Federal Emergency Management Agency floodplain maps, the proposed action is located near the floodplain of the North Platte River. According to 10 CFR 1022.3(b), DOE shall incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decision-making processes. Executive Order 11988, "Floodplain Management," states that if an agency proposes to allow an action to be located in a floodplain, the agency is required to consider alternatives to avoid adverse effects in the floodplain. Therefore, Western prepared a Floodplain/Wetlands Assessment for the project. Executive Order 11990, "Protection of Wetlands," requires a finding (1) that there is no practicable alternative to such construction and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

Currently the substation transforms power for the cities of Fort Laramie, Lingle, and Torrington, Wyoming. The Lingle Substation is located 2.0 miles south and 1.0 mile west of the town of Lingle, Wyoming. It is situated south of the North Platte River.

Western is proposing to replace and repair concrete structures and foundations within the Lingle Substation. Concrete structures and foundations would be repaired in place within the substation boundaries. Proposed repairs at the substation and location of the new oil containment tank would be 14 feet above the 100-year floodplain elevation. The tank, sized to accommodate oil spills from transformers and circuit breakers, would be located underground immediately adjacent to or within the fenced substation yard.

Construction of the proposed action is unavoidable since there are no practicable alternatives. The no action alternative would result in unacceptable conditions at the site relative to soil erosion and oil spill containment. Relocating the substation would be very expensive and would still require crossings or construction in the floodplain, resulting in greater environmental consequences than the proposed action.

No applicable floodplain protection standards would be violated. Surface disturbance associated with the proposed action is not expected to alter the floodplain storage volume or cause a local increase in the flood stage. No watercourses would be altered or relocated as a result of the project. Disturbed areas will be revegetated with species recommended by the U.S. Soil Conservation Service.

A freshwater pond is located immediately adjacent to the site. This wetland formed in the tailrace of the old powerplant after it was abandoned. Because accidental oil spills within the substation would be contained by the retention tank, no effects to this wetland are expected.

Prior to implementing a proposed floodplain action, DOE shall endeavor to allow at least 15 days of public review after publication of the statement of findings.

**FOR FURTHER INFORMATION OR COPIES OF THE FLOODPLAIN/WETLANDS ASSESSMENT CONTACT:**

Mr. Robert H. Jones, Acting Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539-3003, (303) 490-7200.

Mr. Bill Karsell, Director, Division of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401-3398, (303) 231-1706.

Issued at Golden, Colorado, June 30, 1992.
William H. Clagett,
*Administrator.*
[FR Doc. 92-16914 Filed 7-16-92; 8:45 am]
BILLING CODE 6450-01-M

## Central Valley Project—Proposed Power Rate Adjustments, Revenue Adjustment Clause Evidentiary Hearing

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Hearing Procedures, Western File No. 1993 Central Valley Project Revenue Adjustment Clause Hearing.

**SUMMARY:** Under a separate **Federal Register** notice published elsewhere in this issue, the Western Area Power Administration (Western) has proposed a power rate adjustment for the Central Valley Project (CVP), a multipurpose Federal water project with ten hydroelectric generation plants, located in northern California. Power rates are set as low as possible consistent with sound business principles and must, by law, also be sufficient to recover the annual power expenses plus repay the power and certain nonpower investments of the CVP within the prescribed time periods. Western adopted a Revenue Adjustment Clause (RAC) as part of its CVP Rate Schedule CV-F6, which was approved by the Federal Energy Regulatory Commission (FERC) on October 21, 1988. The RAC effective period was May 1, 1988, through April 30, 1993. The RAC periodically adjusts estimated purchased power expenses to actual and, at the same time, adjusts estimated revenues from capacity an energy sales to actual. The difference between the estimated and actual purchased power expenses when combined with the difference between the estimated and actual revenues is either collected from or refunded to the customers on a 6-month cycle, with a $15 million limit each cycle.

Because the RAC could allocate revenue credits to the CVP customers during times that the CVP repayment was showing deficits and could allocate surcharges during times when the CVP repayment was showing surpluses, Western amended the RAC to include a qualifier that would remedy this. The amended RAC was approved by FERC on May 8, 1992, and was effective May 1, 1992.

Western has proposed a revision to the RAC as part of its rate adjustment to be effective May 1, 1993. The RAC would annually compare estimated net revenue (the amount of annual revenue remaining after paying annual expenses, including interest) to actual net revenue. The net result of the comparison would be a surcharge or credit to the CVP customers' subsequent bills for over or under collections. Billing adjustments would occur on a 9-month cycle (January through September). The limit to any adjustment would be $20 million during the 9-month cycle. Any amount greater than $20 million would be carried over to the next fiscal year, to be included in that year's RAC calculation.

Unlike other Western projects, the CVP power marketing program is significantly supported by power purchases made from various sources including the Pacific Northwest and the Pacific Gas and Electric Company. Changes in the hydrology of the CVP system and costs or amounts associated with these purchases can have a major impact on the CVP annual expenses. The RAC will be used to collect adequate revenues to repay CVP expenses in a timely manner, without over or under collection of revenues in any 1 year.

The CVP annually sells over 500 million kilowatthours of electric energy for purposes other than resale. Because of the CVP's volume of this type of sale, Western is required to comply with certain provisions of the Public Utilities Regulatory Policies Act (PURPA), 16 U.S.C. sections 2601–2645. Since the proposed RAC fits the statutory definition of an automatic adjustment clause found in PURPA section 2625(e)(B)(3), Western is required to make a determination whether it is appropriate to implement a RAC in the proposed CVP power rates. PURPA sections 2623 and 2625(e) require the nonregulated electric utility to give public notice and conduct an evidentiary hearing, in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 500–576, prior to adopting any standard.

Western will conduct a hearing under PURPA section 2602(6)(B) and the APA, 5 U.S.C. 554 and 556–557, in revising the RAC. Opportunities will be available for interested persons to review the proposed RAC, to participate in the hearings, and to submit written testimony. During the development of the record for the RAC, Western will evaluate all written and oral testimony submitted during the hearings. A Findings of Fact and Law will be issued to determine if the revised RAC is appropriate to be placed in the rate after all testimony is submitted.

The document entitled "Western Area Power Administration United States Department of Energy Rules of Procedure Governing PURPA Hearings" (Procedures) has been prepared specifically for this RAC evidentiary hearing and will be mailed to all CVP customers on or about the date of publication of this **Federal Register** notice. Also, a copy of these Procedures will be provided to anyone upon request directed to the Area Manager or General Counsel listed below.

**DATES:** Persons wishing to become a formal party to the proceedings must file a motion to intervene to be received by August 18, 1992, addressed as follows: Hearing Officer, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825-1097.

**FOR FURTHER INFORMATION CONTACT:**

Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825-1097, (916) 649-4418, or

Mr. Michael S. Hacskaylo, General Counsel, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401-3398, (303) 231-1534.

Western requests that all comments and documents submitted as part of the Official Record compiled in the process of developing the revenue adjustment clause contain the file number designation: 1993 CVP RAC Hearing.

**ACTIVITIES:** A prehearing conference will be held before the Hearing Officer at 3 p.m. on August 18, 1992, at the Holiday Inn-Holidome, 5321 Date Street, Sacramento, California 95841 (following the public information forum on the proposed rate adjustment). Registration for the prehearing conference will begin at 2:30 p.m.

The evidentiary hearing will be held before the Hearing Officer at 10 a.m. on August 25, 1992, at the Western Area Power Administration, Sacramento Area Office, 1825 Bell Street, suite 105, Sacramento, California 95825.

Both the prehearing conference and the evidentiary hearing will be documented by transcript.

During the discovery period, scheduled to begin July 17, 1992 through August 17, 1992, customers or interested parties may:

1. Request data from Western which is to be provided to the requestor, to the extent possible, within 5 working days.

2. Obtain party status by filing a motion to intervene and may file written testimony, thereby obtaining full judicial rights (e.g., right to comment, cross examine, etc.).

3. Obtain participant status by providing written comments on the RAC, or make oral or written comments

at the evidentiary hearing. A participant shall not have full judicial rights.

For item 1 above, the request for data should be directed to the Area Manager of the Sacramento Area Office at the address given above. For items 2 and 3, letters, comments, and testimony, as appropriate, should be sent to the Hearing Officer at the address given above.

Western's written testimony on the RAC will be distributed during the discovery period to all CVP customers, previously identified parties, and other interested parties who request testimony from the Sacramento Area Office at the address shown above during the discovery period.

**SUPPLEMENTARY INFORMATION:** Under section 553(b)(3)(A) of the APA, "rules of agency organization, procedure, or practice" are exempt from notice and comment rulemaking procedures (5 U.S.C. 553(b)(3)(A)). In *Southern California Edison* v. *FERC*, 770 F. 2d 779 (9th Cir. 1985), the court held that the procedural rules of agency organization, procedure, or practice are exempt from the notice and comment requirement of the APA. Western finds that these are also procedural rules exempt from notice and comment rulemaking procedures. Accordingly, these rules are effective upon publication, for the PURPA hearing, to determine if the revised RAC is appropriate to be placed in the 1993 CVP rate.

Issued at Golden, Colorado, July 7, 1992.

**William H. Clagett,**

*Administrator.*

[FR Doc. 92-16921 Filed 7-16-92; 8:45 am]

BILLING CODE 6450-01-M

## Central Valley Project—Proposed Commercial Firm Power Rates, Firm and Nonfirm Transmission Service Rates, and Peaking Capacity Rates

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Proposed Central Valley Project Commercial Firm Power Rate, Firm and Nonfirm Transmission Rate, and Peaking Capacity Rate Adjustments.

**SUMMARY:** The Western Area Power Administration (Western) is proposing rate adjustments (Proposed Rates) for commercial firm power, firm and nonfirm transmission service, and peaking capacity for the Central Valley Project (CVP), a multipurpose Federal water project with ten hydroelectric generation plants, located in Northern California. The power repayment study (PRS) and other analysis indicate that the Proposed Rates are necessary to provide sufficient revenue to pay all annual costs (including interest expense), plus repayment of required investment within the allowable time period. The rate impacts are detailed in a rate brochure to be distributed to all interested parties. The Proposed Rates are expected to become effective May 1, 1993.

The Proposed Rates for commercial firm power are based on composite rates consisting of base energy rates up to 70-percent load factor, tier energy rates over 70-percent load factor, and capacity rates.

The Proposed Rates are designed to recover 45 percent of the revenue requirements from the capacity rate and 55 percent from the energy rate through fiscal year (FY) 1995. Thereafter, the rates will recover 40 percent from capacity and 60 percent from energy.

The Proposed Rates provide for composite rate increases beginning on May 1, 1993; October 1, 1995; and October 1, 1997. The Proposed Rates and applicable revenue requirement split are provided in Table 1. Table 2 provides the percentage increases in rates.

The Proposed Rates for commercial firm power are subject to adjustment upward or downward prior to approval of Provisional Rates if the Project Dependable Capacity dispute with Pacific Gas and Electric Company (PG&E) is settled or decided by a court ruling before Provisional Rates are approved or if it is determined that the California drought will have a more severe impact on the rates than projected.

TABLE 1.—PROPOSED COMMERCIAL FIRM POWER RATES

| Effective period | Total composite (mills/kWh) | Capacity ($/kW) | Energy (mills/kWh) | | Capacity/energy split |
|---|---|---|---|---|---|
| | | | Base | Tier | |
| 05/01/93 to 09/30/93 | 36.90 | 8.60 | 20.29 | None | 45/55 |
| 10/01/93 to 09/30/95 | 33.50 | 7.83 | 17.75 | 27.23 | 45/55 |
| 10/01/95 to 09/30/97 | 34.70 | 7.23 | 20.00 | 31.48 | 40/60 |
| 10/01/97 to 04/30/98 | 36.40 | 7.58 | 20.94 | 33.61 | 40/60 |

The Tier Rate will be applied to the commercial firm energy at 70-percent load factor and above with the load factor based on the lessor of the customer's (1) maximum demand or, if a scheduling customer, scheduled demand; or (2) contract rate of delivery for commercial firm power.

A 13.2-percent composite rate increase is proposed for the 5-month period of May 1, 1993, to September 30, 1993, due to the projected impact that the California drought and wildlife protection measures will have on CVP generation. Reduced generation requires additional power purchases to serve the CVP customer load. The 5-month rate increase is necessary to compensate for higher purchased power costs in FY 1992, which causes a projected deficit in FY 1992 and in the first 7 months of FY 1993. The higher rates in FY 1993 along with projected Revenue Adjustment Clause (RAC) surcharges in FY 1992 and FY 1993 are needed to prevent the CVP repayment remaining deficit in the first fiscal year of the rate adjustment period.

The PRS results indicate that this 5-month rate increase will provide adequate revenues to repay all annual expenses in FY 1993. The rates can be reduced after FY 1993 because the proposed rates will be applied for a full year to provide adequate revenues to repay all projected costs.

The Deputy Secretary, U.S. Department of Energy (DOE), approved the existing rate schedules on an interim basis on March 7, 1988, and the Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedules on a final basis on October 21, 1988. The existing rate schedules were effective on May 1, 1988. The existing CVP commercial firm power composite rate (before adjusting for contract dependable capacity (CDC) credits) is 32.60 mills per kilowatthour (mills/kWh). The existing energy rate is 16.30 mills/kWh and the capacity rate is $7.74 per kilowatt-month (kW-mo). Table 2 provides a comparison of CVP existing rates and the Proposed Rates:

TABLE 2.—PERCENTAGE CHANGE IN COMMERCIAL FIRM POWER RATES

| Effective period | Total composite (mills/kWh) | Percent change | Capacity ($/kW-mo) | Percent change | Energy composite (mills/kWh) | Percent change |
|---|---|---|---|---|---|---|
| Existing Rates 10/01/91 to 04/30/93 | 32.60 | | 7.74 | | 16.30 | |
| Proposed Rates 05/01/93 to 09/30/93 | 36.90 | 13.2 | 8.60 | 11.1 | 20.29 | 24.5 |
| 10/01/93 to 09/30/95 | 33.50 | (9.2) | 7.83 | (9.0) | 18.43 | (9.2) |
| 10/01/95 to 09/30/97 | 34.70 | 3.6 | 7.23 | (7.7) | 20.82 | 13.0 |
| 10/01/97 to 04/30/98 | 36.40 | 4.9 | 7.58 | 4.9 | 21.84 | 4.9 |
| Total Percentage Change | | 11.7 | | (2.1) | | 34.0 |

**Special Adjustment Clauses Associated With the Proposed CVP Power Rates**

*Power Factor Adjustment Clause*

Western's Integration Agreement with PG&E requires Western's customers to maintain a 95-percent power factor at their points of delivery. Western proposes to amend its surcharge for noncompliance with this power factor requirement to bill on kilovars, rather than a percentage of the total power bill. Western is proposing that the kilovars at 95-percent power factor be compared to actual kilovars. The customer will be charged for the excess kilovars.

*Revenue Adjustment Clause*

The CVP power marketing program is significantly supported by power purchases made from the Pacific Northwest and PG&E. Due to the dynamic nature of these purchased power expenses, Western is proposing to continue its RAC. However, the proposed RAC will measure against net revenue, rather than the existing method that measures only purchased power expenses and firm power revenues. The net result of these adjustments would be surcharged or credited to the CVP customer's subsequent bills based on the customer's contribution to the revenue collected during the RAC period, the same as the existing RAC. It is proposed that adjustments would occur on an annual cycle. The limit to any annual adjustment would be $20 million overall.

*Low Voltage Loss Adjustment*

The billed amounts for low-voltage customers' (below 44 kV) deliveries on the PG&E system will be the metered amounts of energy and capacity at the point of delivery, multiplied by a loss adjustment factor of 1.035. This is identical practice to that presently required by CVP Rate Schedule CV–F6 and is designed to account for the fact that deliveries to the low-voltage customers incur 8-percent losses, while high-voltage customers incur 4.5-percent losses.

**Rate Schedule for CVP Transmission**

The Proposed Rate for firm transmission is $0.43 per kW-mo., a 10.6-percent reduction in the existing rate of $0.481 per kW-mo. The Proposed Rate for nonfirm transmission is 1.23 mills/kWh, a 20.4-percent increase from the existing 1.022 mills/kWh rate. The Proposed Rates for CVP transmission are applicable to third parties requesting service over the CVP transmission system for other than CVP power. The Proposed Rates for transmission service are based on the revenue required to pay certain network transmission system costs for facilities associated with third-party transmission.

**Rate Schedule for CVP Power Transmission by Others**

Transmission service charges incurred by Western in the delivery of CVP power over a third-party's transmission system to a CVP customer will be directly passed through to that customer. Rates under this schedule are proposed to be automatically adjusted as third-party transmission charges are adjusted.

**Rate Schedule for Peaking Capacity**

The Proposed Rates for peaking capacity are the same as proposed for commercial firm capacity, as follows:

TABLE 3.—PROPOSED PEAKING CAPACITY RATES

| Effective period | Firm ($/kW-mo) |
|---|---|
| 05/01/93 to 09/30/93 | 8.60 |
| 10/01/93 to 09/30/95 | 7.83 |
| 10/01/95 to 09/30/97 | 7.23 |
| 10/01/97 to 04/30/98 | 7.58 |

Since the Proposed Rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend the Proposed Rates for approval on an interim basis by the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) of the DOE.

**DATES:** The consultation and comment period will begin July 17, 1992 and will end not less than 90 days later, or October 15, 1992. A public information forum will be held on August 18, 1992, beginning at 10 a.m. at the Holiday Inn-Holidome, 5321 Date Street, Sacramento, California 95841. A pubic comment forum at which Western will receive oral and written comments will be held on September 3, 1992, beginning at 10 a.m. at the Holiday Inn-Holidome, 5321 Date Street, Sacramento, California 95841.

In addition to the public information and comment forums, Western is scheduling an evidentiary hearing regarding the merits of the proposed RAC. This hearing is required by the Public Utility Regulatory Policies Act. The hearing will be held at 10 a.m. on August 25, 1992, at the Western Area Power Administration, Sacramento Area Office, 1825 Bell Street, Suite 105, Sacramento, California 95825. Further information regarding the hearing dates and procedures for participation in the hearing published in a separate **Federal Register** notice elsewhere in this issue and to be distributed to all CVP customers and interested parties.

Written comments should be received by Western by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

**ADDRESSES:** David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825-1097, (916) 649-4418.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jerry Toenyes, Assistant Area Manager for Power Marketing, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street,

suite 105, Sacramento, CA 95825-1097, (916) 649-4421.

SUPPLEMENTARY INFORMATION: Power and transmission rates for the CVP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Act of May 28, 1954 (Ch. 241, 68 Stat. 143).

By Amendment No. 2 to Delegation Order No. 0204-108, published August 23, 1991 (56 FR 41835), the Secretary of DOE delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC.

The procedures for public participation in rate adjustments for power and transmission service marketed by Western, which are found at 10 CFR part 903, were published in the Federal Register at 50 FR 37835 on September 18, 1985.

### Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the Prosposed Rates for commercial firm power, firm and nonfirm transmission service, and peaking capacity are and will be made available for inspection and copying at the Sacramento Area Office, located at 1825 Bell Street, suite 105, Sacramento, California 95825.

### Regulatory Flexibility

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the CVP firm power and firm and nonfirm transmission service rate adjustements are related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the CVP commercial firm power, firm and nonfirm transmission service, and peaking capacity rates are of limited applicability, no flexibility analysis is required.

### Determination Under Executive Order 12291:

DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of the Executive Order 12291 (46 FR 13193), published February 19, 1981. In addition, Western has an exemption from section 3, 4, and 7 of said Order 12291 and, therefore, will not prepare a regulatory impact statement.

### Paperwork Reduction Act of 1980:

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided in the proposed rules for the interested public to participate with the power marketing administration in the development of rates. Nevertheless, this is at their sole selection. There is no requirement that members of the public participating in the development of the CVP firm power and firm and nonfirm transmission service rates supply information about themselves to the Government. It follows that the CVP firm power and firm and nonfirm transmission service rates are exempt from the Paperwork Reduction Act.

### Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508), and DOE guidelines published at 57 FR 15122 on April 24, 1992, Western conducts environmental evaluations of the CVP commercial firm power, firm and nonfirm transmission service, and peaking capacity rate adjustments and develops the appropriate level of environmental documentation prior to the implementation of any rate adjustment.

Issued at Golden, Colorado, July 7, 1992.

William H. Clagett,
*Administrator.*

[FR Doc. 92-16920 Filed 7-16-92; 8:45 am]
BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4155-3]

### Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 17, 1992. For futher information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260-2740.

SUPPLEMENTARY INFORMATION:

### Office of Pesticides and Toxic Substances

*Title:* Preliminary Assessment Information Rule (PAIR)—(EPA ICR No. 0586.06; OMB #2070-0054). This is an extension of the expiration date of a currently approved collection.

*Abstract:* The Preliminary Assessment Information Rule (PAIR) was promulgated under Section 8(a) of the Toxic Substances Control Act (TSCA). PAIR gives EPA, as well as other Federal agencies, The authority to request information on specific chemical products that are subject to TSCA Section 8(a) regulations. Manufacturers or importers of chemicals listed under the Section 8(a) rule, must report to the Agency and keep records of production, import, use, environmental releases, and exposure data. The information that the EPA receives from a PAIR report is, in most cases, sufficient to support preliminary risk determination, or decision to require testing of a chemical.

*Burden Statement:* The public burden for this collection of information is estimated to average 35.3 hours per response for reporting and 2.1 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, complete the form, and review the collection of information.

*Respondents:* Chemical Manufactures and importers

*Estimated No. of Respondents:* 63.

*Estimated No. of Responses per Respondent:1.*

*Estimated Total Annual Burden on Respondents:* 2,781 hours.

*Frequency of Collection* On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401M Street, SW., Washington, DC 20460

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs 725 17th Street, NW., Washington, DC 20503.

Dated: July 10, 1992.

**Richard Westlund,**

*Acting, Director, Regulatory Management Division.*

[FR Doc. 92–16901 Filed 7–16–92; 8:45 am]

BILLING CODE 6560–50–M

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**[ER–FRL–4154–6]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 29, 1992 Through July 02, 1992 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities At (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

### Draft EISs

ERP No. D–AFS–L65167–AK Rating EC2, Alaska Pulp Corporation (APC) Long-Term Timber Sale Contract, Implementation, Southeast Chicago Project Area, Tongass National Forest, AK.

*Summary:* EPA expressed environmental concerns regarding the sales potential impacts to water quality. Additional information monitoring to ensure that best management practices will be implemented and water quality standards will be met was requested by EPA.

ERP No. D–FAA–E51043–TN Rating EC2, Memphis International Airport, Construction and Operation, Runway 18L–36R, Relocation of Swinnea Road, portion of Winchester Road and Shelby Drive, Airport Layout Plan (ALP) Approval, Funding and section 404 Permits, Shelby County, TN.

*Summary:* EPA reviewed the DEIS and found that the information provided in the document was not sufficient to adequately assess all noise impacts and noise mitigation issues.

ERP No. D–FHW–E50288–AL Rating EC2, William S. Keller Bridge Replacement on US–31 across the Tennessee River, City of Decatur, Funding, Coast Guard Bridge Permit, COE Section 404 Permit and TVA section 26a Permit, Morgan and Limestone Counties, AL.

*Summary:* EPA requested additional information on wetland mitigation and toxic spill measures to adequately assess the project impacts.

ERP No. D–FHW–E54009–NC Rating EC2, US 117 Corridor Improvement Project, US 13/70 at Goldsboro, north to US 301 in Wilson, Funding and section 404 Permit, Wayne and Wilson Counties, NC.

*Summary:* EPA expressed concerns for wetlands impacts, noise mitigation and water quality impacts and asked for additional information in the final EIS. EPA also identified alternative 1 as the environmentally preferred alternative.

ERP No. D–FHW–K40186–AZ Rating E02, AZ–87/Beeline Highway Upgrading, Saguaro Lake Road to near the Maricopa-Gila County Line, Funding, Land Exchange with the Forest Service and COE section 404 Permit Issuance, Maricopa County, AZ.

*Summay:* EPA expressed objections concerning impacts on water quality, wetlands and biological resources. EPA requested that the final EIS provide additional information on these issues.

ERP No. D–FHW–K40187–CA Rating L02, CA–17 at Lexington Reservoir Interchange Project, Interchange and Frontage Roads Construction, south of the Town of Los Gatos, Funding and section 404 Permit, Santa Clara County, CA.

*Summary:* EPA requested additional wetland data be included in the Final EIS. The final EIS should clearly identify the total acreage of wetlands and other waters of the US that will be filled under the various build alternatives and the mitigation to be adopted to compensate for unavoidable loss of wetlands and other waters of the US. The final EIS should also identify the least environmentally damaging practicable alternative under the Clean Water Act.

ERP No. D–FHW–L40179–AK Rating EC2, Third Street Widening Project, Improvement, Old Steese Highway and Hamilton Avenue, Funding and Right-of-Way Acquisition, Fairbanks North Star Borough, AK.

*Summary:* EPA expressed concern regarding the air quality analysis and requested that additional supporting data be included in the final EIS.

ERP No. D–FRC–H05023–NB Rating 3, Kingsley Dam Project (FERC. No. 1417) and North Platte/Keystone Diversion Dam (FERC. No. 1835 Hydroelectric Project, Application for Licenses, Near the confluence of the North/South Platties, Keith, Lincoln, Garden, Dawson and Gasper Counties, NE

*Summary:* EPA determined that the EIS was inadequate due to its failure to discuss all alternatives, present currently analyzed alternatives in a quantitative fashion and to meet the requirement under sections 404 and 313 of the Clean Water Act.

ERP No. D–SFW–C36069–NJ Rating EC2, Delaware River Watershed Basin, Introduction of an Anadromous Salmonid Species, Implementation, Funding, Delaware River, NJ.

*Summary:* EPA had environmental concerns with the proposed project because of the potential for water quality and endangered species impacts and its potential conflict with the NASCO policies governing salmonid introductions. Moreover, the proposed project's monitoring effort does not consider the potential impacts of chinook straying outside the Musconetcong River or contingency measures. Accordingly, we request that additional information be provided in the final EIS to address these issues.

ERP No. D–UAF–H10003–MO Rating L01, Whitman Air Force Base (AFB) Minuteman II of the 351st Missile Wing Deactivation, Implementation, Johnson County, MO.

*Summary:* EPA had no objections to the proposed project and recommended that the final EIS contain specific detailed language regarding the storage, removal transport and ultimate disposition of any toxic and/or hazardous materials.

ERP No. DS–COE–A35046–IA Rating L01, Perry Creek Flood Control Project. Construction of Channelization and Conduit Systems, Implementation, Souix City and Woodbury Counties, IA.

*Summary:* EPA recommended that riffle structures and the use of native prairie plant materials be included in the flood control structure design.

ERP No. DS–NOA–L91007–AK Rating EC2, Halibut and Sablefish Fixed Gear Fisheries Individual Fishing Quota Management (IFQ) Alternative, Additional Information on the specific IFQ Program recommended by the Council in December 1991, Approval and Implementation, Gulf of Alaska and Bering Sea/Aleutian Islands, AK.

*Summary:* EPA raised environmental concerns based on the potential for adverse impacts on sablefish and halibut stocks from high grading and under reporting. Additional information was requested to clarify whether these activities could put the halibut and sablefish stocks at risk.

**Final EISs**

ERP No. F-AFS-K61112-CA Sugar Bowl Ski Resort Master Plan, Development and Expansion, Tahoe National Forest, Special Use Permit and section 404 Permit, Placer and Nevada Counties, CA.

*Summary:* EPA felt that the FEIS addressed most of the concerns raised on the DEIS. EPA suggested that the Forest Service consider preparing additional NEPA documentation at the operations plan phase so that plans for mitigation, erosion control and monitoring would be available for public review and comment.

ERP No. F-BOP-E81031-NC Butner Federal Correctional Institution Complex, Construction and Operation, Durham-Granville County Line, NC.

*Summary:* EPA concerns on most impacts in the DEIS stage were addressed in the FEIS. Minor unresolved issues are related to noise impacts from construction and from operational traffic.

ERP No. F-COE-C32034-00 Delaware River Comprehensive Navigation Channel Improvement, Beckett Street Terminal in New Jersey through Philadelphia Harbor, Implementation, Several Counties, NJ, DE and PA.

*Summary:* EPA indicated that the implementation of the proposed project, which will incorporate the results of the supplementary studies performed and documentation developed during the upcoming preconstruction engineering and design phase, will not pose significant adverse environmental impacts. Moreover, the project will be in compliance with the Clean Water Act section 404(b)(1) Guidelines.

ERP No. F-COE-D36109-PA Lackawanna River Basin Flood Protection Plan, Funding, Implementation, Borough of Olyphant, City of Scranton, Lackawanna County, PA

*Summary:* EPA had no objections to the proposed project given the Corps' plans to minimize adverse environmental impacts by: (1) Managing construction activities to reduce erosion, (2) replanting vegetation immediately following construction and (3) creation of a permanent greenway.

ERP No. F-COE-K36103-CA Sacramento Metropolitan Area Flood Control Plan, Implementation, Yolo and Sacramento Counties, CA.

*Summary:* EPA noted that the FEIS was responsive to several concerns raised in EPA's comments on the DEIS. However, EPA expressed its continuing belief that a single programmatic evaluation of a comprehensive flood protection system for the Sacramento metropolitan area would have been a more appropriate means to evaluate assurance of adequate flood protection for the area. A programmatic NEPA document could have more accurately portrayed the collective environmental impacts of numerous interim and long-term flood control projects, including the subject EIS.

ERP No. F-FHW-B40070-NH New Hampshire Route 101/51 Corridor Improvement, Eppington to Hampton, Funding, COE section 10 and 404 Permits and U.S. Coast Guard Permit, Rockingham County, NH.

*Summary:* EPA supported the FEIS and the 404 permit issuance. EPA made additional recommendations for commitments to be included in the ROD to protect wetland creation sites and drinking water supplies.

ERP No. F-FHW-E40733-NC West Charlotte Outer loop Construction, I-77 South near Westinghouse Boulevard to NC-27, Funding and section 404 Permit, Mecklenburg County, NC.

*Summary:* EPA continued to have concerns about the lack of mitigation for noise impacts and recommended that additional consideration be given to providing noise relief to the affected homeowners where noise barriers are not deemed cost effective.

ERP No. F-FHW-K40173-CA CA-267 Bypass Construction, between I-80 and Truckee Area Bypass, Funding and section 404 Permit, Nevada County, CA.

*Summary:* Review of the Final EIS was not deemed necessary. No formal letter was sent to the preparing agency.

ERP No. F-SCS-H36103-MO Town Branch Watershed Protection Plan, Flood Reduction and Fish and Wildlife Improvements, Funding and section 404 Permit, City of Albany, Gentry County, MO.

*Summary:* Review of the Final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the preparing agency.

ERP No. F-SCS-H36104-KS Doyle Creek Watershed Protection Plan, Funding and Implementation, Possible 404 Permit, Arkansas-White-Red River Basin, Harvey and Marion Counties, KS.

*Summary:* EPA reviewed the Final EIS and found the project to be satisfactory. No formal letter was sent to the preparing agency.

ERP No. F-SFW-K60021-CA Stone Lakes National Wildlife Refuge Management Plan, Land Acquisition and Easement, Possible COE section 10 and 404 Permits, Central Valley, Sacramento County, CA.

*Summary:* Review of the Final EIS was not deemed necessary. No formal letter was sent to the preparing agency.

ERP No. F1-COE-D36109-PA Lackawanna River Basin at Olyphant, Flood Protection Plan, Funding and Implementation, Borough of Olyphant, Lackawanna County, PA.

*Summary:* EPA lacked objections to the proposed project given the Corps' efforts to minimize adverse impacts. EPA acknowledges COE's efforts to minimize adverse environmental impacts in the following ways: (1) Use of BMP during construction, (2) construction of drainage structures to minimize residual flooding impacts and (3) landscaping in the riparian corridor where EPA recommended that a variety of species be planted and will be available to provide assistance in restoration planning.

Dated: July 15, 1992.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 92-17016 Filed 7-16-92; 8:45 am]

BILLING CODE 6560-50-M

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**[ER-FRL-4154-5]**

**Environmental Impact Statements; Availability**

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075. Availability of Environmental Impact Statements Filed July 06, 1992 Through July 10, 1992 Pursuant to 40 CFR 1506.9.

*EIS No. 920267,* Draft EIS, FHW, OK, OK-99/OK-3E/US 377 North of Ada Transportation Corridor Reconstruction, Funding, Section 404 and NPDES Permits, Pontotoc and Seminole Counties, OK, Due: August 31, 1992, Contact: Gary E. Larson (405) 231-4724.

*EIS No. 920268,* Draft EIS, AFS, WY, Strawberry Gulch Timber Sale, Timber Harvest and Road Construction, Implementation, Medicine Bow National Forest, Hayden Ranger District, Carbon County, WY, Due: August 31, 1992, Contact: Michael B. Murphy (307) 327-5461.

*EIS No. 920269,* Final EIS, UMT, NY, Queens Subway Improvement Options Study, 63rd Street to Archer Avenue, Funding, Queens, NY, Due:

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August 17, 1992, Contact: Steve Faust (212) 264–8162.

*EIS No. 920270*, Final EIS, BIA, CA, AZ, NV, Fort Mojave Indian Reservation Planned Community Development, Mojave Valley Resort, Lease Approval and Site Selection, Section 404 Permit and Coast Guard Permit, San Bernardino Co., CA, Clark Co., NV and Mohave Co., AZ, Due: August 17, 1992, Contact: George R. Farris (202) 208–4791.

*EIS No. 920271*, Draft EIS, AFS, CO, Routt National Forest Oil and Gas Exploration and Development, Approval and Leasing, Routt, Moffat, Jackson, Grand, Garfield and Rio Blanco Counties, CO, Due: August 31, 1992, Contact: Richard Hall (303) 879–1722.

*EIS No. 920272*, Draft EIS, SCS, NV, Moapa Valley Unit, Irrigation Systems, Irrigation Water Management and Delivery System Improvements, Colorado River Salinity Control Program, Funding and Possible Section 404 Permit, Clark and Lincoln Counties, NV, Due: August 31, 1992, Contact: William D. Goddard (702) 784–5863.

*EIS No. 920273*, Final EIS, AFS, UT, East Fork Black Forks Multiple Use Management Project, Implementation, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT, Due: August 17, 1992, Contact: Steve Ryberg (307) 789–3194.

*EIS No. 920274*, Final EIS, BLM, CO, NM, TransColorado Gas Pipeline Transmission Project, Construction, Operation and Maintenance, Section 404 and 10 Permits, Right-of-Way Grants and Special Use Permit, La Plata, Delta, Dolores, Garfield, Mesa, Montezuma, Montrose, Rio Blanco, San Miguel Counties and San Juan County, NM, Due: August 17, 1992, Contact: Chuck Finch (303) 249–7791.

*EIS No. 920275*, Draft EIS, AFS, CO, Martinez Creek Timber Sale, Timber Harvest and Road Construction, Implementation, San Juan National Pagosa Ranger District, Archuleta County, CO, Due: August 15, 1992, Contact: Sam Sanga (303) 259–3027.

*EIS No. 920276*, Final EIS, GSA, MD, Internal Revenue Service National Office Consolidation and Construction, Site Selection, First Capital Realty Site, Meridan Site, Riverside Site or Metroview Site, Prince George's, MD, Due: August 17, 1992, Contact: Sonia Rivera-Hersha (202) 708–5334.

**Amended Notices**

*EIS No. 920213*, Draft EIS, AFS, CO, Trout Mountain Analysis Area Timber Harvest, Road Construction and Aspen Management Plan Projects, Implementation, Trout and Decker Creeks, Del Norte Ranger District, Rio Grande National Forest, Rio Grande National Forest, Rio Grande and Mineral Counties, CO, Due: July 27, 1992, Contact: James B. Webb (719) 852–5941.

Published FR–06–05–92—Review period extended.

Dated: July 14, 1992.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 92–16917 Filed 7–16–92; 8:45 am]

BILLING CODE 6560–50–M

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**[OPPTS–42052K; FRL–4078–9]**

## Opportunity to Initiate Negotiations for TSCA Section 4 Testing Consent Agreements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice invites manufacturers of chemical substances who wish to participate in testing negotiations for various chemicals to develop and submit testing program proposals to EPA. Public meetings to initiate testing negotiations for selected chemicals will be announced in a separate notice.

**DATES:** Submit written request to be designated an interested participant along with your testing proposals on or before September 15, 1992.

**ADDRESSES:** Submit testing proposals to: Gary E. Timm, Chief, Chemical Testing Branch, Office of Pollution Prevention and Toxics (TS–778), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** EPA's procedures for requiring the testing of chemical substances under section 4 of the Toxic Substances Control Act (TSCA) include the adoption of enforceable consent agreements and the promulgation of test rules. EPA has on numerous occasions been approached by chemical companies interested in negotiating consent agreements for testing ITC chemicals or chemicals which are the subject of proposed test rules. By this notice, EPA is establishing an "open season" or period of time to receive industry testing proposals for consent agreement consideration for all chemical substances for which the Agency has not yet issued final test rules. The procedures EPA will follow are outlined below.

1. *Submission of testing proposals for consent agreement negotiations.* Following publication of this notice, manufacturers have 60 days to develop testing proposals for chemical substances they wish EPA to consider as candidates for consent agreement negotiations. The testing proposals should describe the testing to be performed in detail (test guideline or protocol, including route of administration, species, etc.) and explain in detail where there are deviations from tests proposed by EPA or recommended by the Interagency Testing Committee (ITC). The Agency suggests as a model, the testing proposal submitted on acrylic acid by the Basic Acrylic Monomer Manufacturers on April 5, 1991 [Docket number OPTS–42146A]. This document is available from the Environmental Assistance Division by calling 202–554–1404.

2. *Agency selection of most likely candidates for the program.* EPA will review the submissions and select the most promising submissions as candidates for negotiation. Submissions which fully address the EPA's or ITC's concerns will have a higher chance of success than those which do not fully address all data needs issues. In some cases, where pollution prevention or risk minimization is within the control of the manufacturer, this may be offered as a substitute for more in-depth testing.

3. *Formal solicitation of "interested parties" in the* **Federal Register**. If EPA selects a proposal as a candidate for negotiation, such negotiations will be conducted pursuant to the procedures described in 40 CFR 790.22. Accordingly, EPA will publish a notice in the **Federal Register** soliciting persons interested in participating in or monitoring negotiations for the development of a consent agreement, to notify the Agency in writing. Those individuals and groups who respond to EPA's notice by the deadline established in the notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiation process. These "interested parties" will not incur any obligations by being designated "interested parties." Submitters of testing proposals will be considered interested parties and need not respond to the solicitation notice.

4. *Negotiation of testing program and development of a testing consent agreement.* Negotiations will be



conducted in meetings open to the public. EPA will conduct separate negotiations on each individual chemical substance or related group of chemical substances (e.g. chemical category). Notification of meetings will be given only to persons identified as interested parties. The first negotiation meeting will establish the period for negotiation. If agreement is not reached within this prescribed time limit and EPA chooses not to extend the negotiation period, negotiations will be terminated and testing will be required under a rule.

5. *Approval of the testing consent agreement by interested parties and EPA and publication of a notice in the* **Federal Register** announcing approval of the consent agreement. After EPA and interested parties have agreed in principle on the terms of the consent agreement, the consent agreement text will be sent for approval to interested parties who are actual participants in the negotiation. Subsequent to approval of the agreement, EPA will publish a notice in the **Federal Register** summarizing the testing program and announcing that the Agency has accepted the consent agreement in lieu of a test rule.

Specific information about the testing protocols, and the negotiations may be obtained by contacting Gary E. Timm, Chief, Chemical Testing Branch, at (202) 260–8130.

Authority: 15 U.S.C. 2603.

Dated: July 7, 1992.

**Joseph A. Carra,**

*Acting Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 92–16896 Filed 7–16–92; 8:45 am]

BILLING CODE 6560–50–F

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## FEDERAL COMMUNICATIONS COMMISSION

**[DA 92–792]**

## Commission Establishes Random Selection Procedures for Lotteries Where Mass Filings Must Be Rank Ordered for Processing

June 18, 1992.

Congress has authorized the use of lotteries to randomly select successful applicants for certain classes of applications filed with the Federal Communications Commission. Communications Amendments Act of 1982, Public Law No. 97–259, 47 U.S.C. 309(i). Generally, one of two basic tools, dependent upon the circumstances, are employed when random selection procedures are used: Either (1) a plexiglas raffle drum, complete with capsules, or (2) a forced air ping-pong ball blower. See FCCINST 1159.1B.

The random selection tools can be employed and licenses granted expeditiously when the number of licenses to be granted in a given geographic area is limited. When, however, as in the case of the over 58,000 applications received for non-nationwide licenses in the 220 MHz land mobile radio service and the over 39,000 applications received for licenses in the 900 MHz multiple address service (MAS), large numbers of applications are filed for an unspecified number of licenses over a wide area, it is necessary to rank order all of the applications received during the relevant filing window to begin processing. Under these circumstances, the most efficient method for rank ordering applications is through the use of computer assisted random selection techniques. To select successful applicants from among a large number of applications using a plexiglas raffle drum or forced air ping-pong balls could take many months, if not years, to complete. This abnormal length of time, coupled with the numerous security problems presented to the agency to protect the integrity of the procedure, precludes using or traditional tools for selecting among competing applications. Therefore, instead of using a plexiglas raffle drum or forced air ping-pong balls, a random number generator that employs the Data Encryption Standard of the National Institute of Standards and Technology (NIST) will be used in Commission lotteries involving the non-nationwide 220 MHz land mobile and the 900 MHz MAS applications, as well as similar situations that may arise.

The NIST Date Encryption Standard (DES) (*See* Federal Information Processing Standards, Publication 46–1), which is normally used to encrypt data, also functions as an excellent random number generator. It uses a 55 bit binary key to determine a randomized mapping of a 64 bit input to a 64 bit output. The algorithm has excellent statistical properties of randomness. By drawing 40 balls numbered 0 through 7, a 120 binary key will be selected. The first 56 bits of this key will serve as the key or "seed number" for the Data Encryption Standard. The other 64 bits will seed a 64-bit feedback shift register for input to the DES. The feedback shift register assures that the period before repetition in the generated random numbers has maximal length. The generated random numbers will be used to permute the list of applicants into a random sequence that is solely determined by the sequence of 40 balls drawn. This permuted sequence will determine applicant ranking in the lottery. The cryptologic complexity of DES assures that sequencing of applicants will be completely unbiased. The fact that the algorithm is publicly documented will allow results based on the random 40 balls to be independently confirmed by any interested parties. A copy of the computer program that will select the random numbers and associate them with applications is available for public inspection in room 424, 1919 M St. NW., Washington DC 20554.

The NIST data Encryption Standard computer program will be used, when appropriate, to rank order large numbers of applications filed in response to Commission announcements for new services, including the 220 MHz land mobile radio service and the 900 MHz multiple address service. As noted above, the random number program to be employed requires the input of a "seed number" to initiate the generation of numbers. This number will be selected through the use of forced air ping-pong balls at the beginning of the random selection process. The computer will then generate a series of random numbers that will be associated with the file number of each application. During the rank ordering session, the computer will print out the results of the rank ordering exercise, which will be made available for public inspection. The entire random selection process will be held in the Commission Meeting Room and be open for public viewing.

The Commission will issue further Public Notices announcing the time and date of the random selection process for these lotteries.

For information, contact Michael Gilbride of the Office of Managing Director, 202–632–7132, or Edward R. Jacobs, Private Radio Bureau, 202–632–7597.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 92–16879 Filed 7–16–92; 8:45 am]

BILLING CODE 6712–01–M

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## Hearing Designation for Richard A. Burton, Harbor City, CA

**[PR Docket 92–144; DA 92–876]**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of designation.

**SUMMARY:** This action designates for hearing the application for Amateur Radio Service station and operator licenses for Mr. Richard A. Burton. It is

necessary to determine whether in light of previous license revocation/suspension and convictions that the application should be granted. The effect is to determine whether the public interest, convenience and necessity would be served by granting the application.

**FOR FURTHER INFORMATION CONTACT:** Thomas Fitz-Gibbon, Private Radio Bureau, Federal Communications Commission, Washington, DC, 20554, (202) 632–4964.

**SUPPLEMENTARY INFORMATION:** 1. Mr. Richard A. Burton has applied for Amateur Radio Service station and operator licenses. For the reasons stated below, his application will be designated for a hearing to determine whether the application shall be granted.

2. On September 11, 1981, the Commission revoked Burton's license for amateur station WB6JAC and affirmed the suspension of his General Class amateur operator license. These actions were based on Burton's willful and repeated violations of the Commission's Rules.

3. In *United States of America* v. *Richard A. Burton*, No. CR 82–378–R (C.D. Calif. June 28, 1982), Burton was convicted in the U.S. District Court for Central District of California (District Court) on four counts of transmitting without a license, in violation of section 318 of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. 318, [1] and on two counts of transmitting obscene, indecent or profane words, language or meaning, in violation of 18 U.S.C. 1464.[2] The District Court sentenced Burton to eight years of imprisonment, of which six months were to be served in a jail-type institution and the remainder suspended. Burton was also placed on probation for five years and required to devote 1,500 hours to a charitable organization approved by his probation officer.

4. Upon appeal, the U.S. Court of Appeals for the Ninth Circuit (Court of Appeals) affirmed Burton's conviction of having violating 47 U.S.C. 318, and reversed his conviction concerning 18 U.S.C. 1464. *United States of America* v. *Richard A. Burton*, No. 82–1391 (9th Cir. October 25, 1983). On January 16, 1984, the District Court resentenced Burton. On or about October 1, 1984, the Court of Appeals ruled that the January 16, 1984, resentencing was invalid. On December 17, 1984, the District Court again resentenced Burton. Burton was sentenced to four concurrent one year terms of imprisonment, of which six months was to be served in a jail-type institution and the remainder suspended. Burton was also placed on probation for five years. On December 31, 1984, Burton violated the terms of his probation by operating radio apparatus without a license. As a result, his sentence was modified on May 1, 1985, to include therapy during the period of his probation.

5. On March 17, 1990, Burton again transmitted without a license. In *United States of American* v. *Richard A. Burton*, No CR–90–357–RMT (C.D. Calif. October 1, 1990), Burton was again convicted to having violated 18 U.S.C. 318. Burton was sentenced to one year of probation and a fine of $2,000.

6. In view of the amateur license revocation/suspension and the criminal convictions described above, it appears that Burton may lack the requisite qualifications to become an amateur service licensee. Certainly, his convictions for unlicensed operation are relevant to evaluating the likelihood that he will comply with the Commission's Rules as a licensee in the amateur service. See Character Qualifications, 5 FCC Rcd 3252 (199); *TeleSTAR, Inc.*, 3 FCC Rcd 2860, 2866 (1988); Character Qualifications, 102 FCC 2d 1179, 1183, *recon. denied*, 1 FCC Rcd 421, 424 (1986).

7. Section 309 (e) of the Communications Act, 47 U.S.C. 309 (e), requires the Commission to designate an application for hearing of its is unable to find that granting the application would serve the public interest, convenience and necessity. Accordingly, the application of Richard A. Burton for amateur station and operator licenses is hereby Designated for Hearing pursuant to section 309(e) of the Communications Act. If Burton desires to present evidence at a hearing, he must file a notice of appearance within 20 days from the release of this order. A time, place, and Presiding judge will be designated, if necessary, by later order. If Burton does not file a timely notice appearance, his application will be subject to dismissal under § 1.961(b) of the Commission's Rules, 47 CFR 1.961(b).

8. Based upon the above information, this case will be decided upon the following issues.

(a) To determine whether, in light of the license revocation/suspension and the convictions described above, Richard A. Burton is qualified to become a Commission licensee.

(b) To determine, in light of the foregoing issue, whether granting Richard A. Burton's application would serve the public interest, convenience and necessity.

Federal Communications Commission.

**Robert H. McNamara,**

*Chief, Special Services Division.*

[FR Doc. 92–16827 Filed 7–16–92; 8:45 am]

BILLING CODE 6712–01–M

[1] 47 U.S.C. 318 provides, in pertinent part: "The actual operation of all transmitting apparatus in any radio station for which a station license is required by this Act shall be carried on only by a person holding an operator's license issued hereunder, and no person shall operate any such apparatus in such station except under and in accordance with an operator's license issued to him by the Commission . . ."

[2] 18 U.S.C. 1464 provides: "Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than $10,000 or imprisoned not more than two years, or both."

## FEDERAL MARITIME COMMISSION

### Agreements Filed; Southeastern Caribbean Discussion Agreement; et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 203–011038–014.

*Title:* Southeastern Caribbean Discussion Agreement.

*Parties:* United States Atlantic and Gulf/Southeastern Caribbean Conference, West Indies Shipping Corporation, Blue Caribe Line, Seafreight Line.

*Synopsis:* The proposed amendment will add Bernuth Lines as a party to the Agreement. The parties have requested a shortened review period.

*Agreement No.:* 224–200060–022.

*Title:* Port of New Orleans/Coastal Cargo Terminal Agreement.

*Parties:* The Port of New Orleans ("Port") Coastal Cargo Company ("Coastal").

*Synopsis:* The amendment acknowledges Coastal's options to cancel ten sections of leased premises at the Galvez Street Wharf located at the Port and to have Coastal's rent reduced proportionately.

*Agreement No.:* 224–200259–002.
*Title:* Jacksonville Port Authority/TMT/Amtrans, Terminal Agreement.
*Parties:*
Jacksonville Port Authority ("JPA")
Trailer Marine Transport and Affiliates ("TMT/Amtrans")
*Synopsis:* This modification extends the term of the Agreement between JPA and TMT/Amtrans for one year and makes adjustments to the various rents and charges currently in effect.

*Agreement No.:* 224–200370–002.
*Title:* Georgia Ports Authority/Star Shipping Terminal Agreement.
*Parties:*
Georgia Ports Authority
Star Shipping A/S
*Synopsis:* The amendment provides for successive annual renewals of the Agreement until cancelled by either party.

*Agreement No.:* 224–200520–002.
*Title:* Georgia Ports Authority/Independent Line Terminal Agreement.
*Parties:*
Georgia Ports Authority
Pan American Independent Line
*Synopsis:* The amendment established a new rate schedule applicable to the Agreement.

*Agreement No.:* 224–200687–001.
*Title:* City of Los Angeles/Crescent Warehouse Company, Ltd. Terminal Agreement.
*Parties:*
City of Los Angeles ("City")
Crescent Warehouse Company, Ltd. ("Crescent")
*Synopsis:* This modification extends for no more than 120 days the term of the current agreement between the parties which permits Crescent to offer public warehouse services in City owned facilities at the port of Los Angeles.

Dated: July 13, 1992.
By Order of the Federal Maritime Commission.
**Joseph C. Polking,**
*Secretary.*
[FR Doc. 92–16833 Filed 7–16–92; 8:45 am]
BILLING CODE 6730–01–M

## Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Commodore Cruise Line Limited and Olympia Caribbean Shipping Co., Inc., 800 Douglas Road, Coral Gables, Florida 33134, Vessel: CROWN JEWEL.

Dated: July 13, 1992.
**Joseph C. Polking,**
*Secretary.*
[FR Doc. 92–16834 Filed 7–16–92; 8:45 am]
BILLING CODE 6730–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### New Examination for Alien Foreign Medical Graduates Visa Requirement

Section 601 of the Health Professions Educational Assistance Act of 1976 (Pub. L. 94–484) amended section 212 of the Immigration and Nationality Act to, among other things, provide that certain aliens who are graduates of foreign medical schools coming to the United States principally to perform services as members of the medical profession or to receive graduate medical education, shall be excluded from entering the United States unless, in addition to meeting other requirements, they have passed the National Board of Medical Examiners' (NBME) Parts I and II examinations, or an equivalent examination, as determined by the Secretary of Health and Human Services.

Notice was given on July 18, 1983, that the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS), prepared by the NBME, had been determined by the Secretary of Health and Human Services to be equivalent to the NBME Parts I and II examinations for purposes of section 212 of the Immigration and Nationality Act (8 U.S.C. 1182).

The Federation of State Medical Boards (FSMB) and the NBME have announced that all current licensure programs will be replaced by a single examination program. The new three-step examination will be called the United States Medical Licensing Examination (USMLE) and will replace the FSMB's Federation Licensing Examination, and certification by the NBME. The Educational Commission for Foreign Medical Graduates (ECFMG) has announced that the FMGEMS will be replaced by the Step 1 and Step 2 USMLE examinations. The FMGEMS and the NBME Parts I and II examinations will be discontinued on a planned schedule between now and 1993. Current plans of the ECFMG are to administer the FMGEMS for the last time in 1993. It is expected that Step 1 of the USMLE will be administered for the first time in June 1992, and that the USMLE Step 2 examination will be initially administered in September 1992. Notice is hereby given that Step 1 and Step 2 of the USMLE, prepared by the NBME and the FSMB, have been recognized by the Secretary of Health and Human Services to be equivalent to the NBME Parts I and II examinations for purposes of Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) as amended by Title VI, Section 601 of Public Law 94–484. For purposes of Public Law 94–484 and with the phasing out of the NBME Parts I and II and the FMGEMS examinations, the Step 1 and Step 2 examinations of the USMLE have been determined to be equivalent to the NBME Parts I and II examinations in their power to assess medical knowledge. Like the NBME Parts I and II examinations, Step 1 and Step 2 of the USMLE assess understanding and application of key concepts in the basic biomedical and clinical sciences requisite for individuals seeking to practice medicine or to enter postgraduate medical education training in the United States.

The Secretary has further determined that the FMGEMS will retain its current equivalency status for as long as it is offered for purposes of Public Law 94–484.

Persons interested in obtaining information concerning this Notice should contact: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville Maryland, 20857. Telephone: (301) 443–6190.

Dated: July 8, 1992.
**Louis W. Sullivan,**
*Secretary.*
[FR Doc. 92–16835 Filed 7–16–92; 8:45 am]
BILLING CODE 4160–15–M

### Office of the Assistant Secretary for Health

### Public Health Service; Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions and

Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 57 FR 24262–3, June 8, 1992) is amended to reflect more accurately the functions within the Division of Property Management, Administrative Services Center, Office of Management, Office of the Assistant Secretary for Health (ASC/OM/OASH).

*Office of the Assistant Secretary for Health*

Under Chapter HA, Office of the Assistant Secretary for Health, Section HA–20, Functions, Office of Management (HAU), Administrative Services Center (HAU1), Division of Property Management (HAU17), in the first sentence delete "PHS-wide" and insert "OASH-wide."

Dated: July 7, 1992.

**Wilford J. Forbush,**

*Director, Office of Management.*

[FR Doc. 92–16863 Filed 7–16–92; 8:45 am]

BILLING CODE 4160–17–M

## Administration for Children and Families

### President's Committee on Mental Retardation; Meeting

**AGENCY HOLDING THE MEETING:** President's Committee on Mental Retardation.

**TIME AND DATE:** Executive Committee meeting; Monday, August 31, 1992 8 a.m.—9 a.m.; Full Committee meeting: August 31—September 1, 1992, 9:30 a.m.–5 p.m.

**PLACE:** Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

**STATUS:** Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

**MATTERS TO BE CONSIDERED:** Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

**THE PCMR:** (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons with mental retardation; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect persons with mental retardation.

**CONTACT PERSON FOR MORE INFORMATION:** Sambhu N. Banik, Ph.D., Wilbur J. Cohen Building, room 5325, 330 Independence Avenue, SW., Washington, DC 20201–0001. (202) 619–0634.

Dated: July 8, 1992.

**Sambhu N. Banik,**

*Executive Director, PCMR.*

[FR Doc. 92–16837 Filed 7–16–92; 8:45 am]

BILLING CODE 4130–01–M

## Centers for Disease Control

**[Announcement Number 254]**

### Availability of Funds for Fiscal Year 1992 for Cooperative Agreements To Advance the Understanding of the Health of Racial and Ethnic Populations or Subpopulations

#### Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for new competing cooperative agreements to advance the understanding of the health of racial and ethnic populations or subpopulations in the United States. There are two areas of research: (1) Special studies and analyses to improve existing knowledge; and (2) improvements in existing research methodologies or testing of innovative methodological techniques used to gather information on these groups.

These activities are pursuant to fulfilling the provisions of the Disadvantaged Minority Health Improvement Act of 1990 (Pub. L. 101–527) and the need for improved data to monitor objectives of Healthy People 2000.

A range of methodological, financial, cultural, and logistical problems have hindered study of minority health issues, especially among subpopulations. The authors of the Disadvantaged Minority Health Improvement Act of 1990 (Pub. L. 101–527) recognized these difficulties and included mandates to refine and supplement existing data systems to focus on subpopulations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

**Authority:** This program is authorized under Public Health Service Act, Section 306(n) [42 U.S.C. 242k(n)], as amended.

#### Eligible Applicants

Eligible applicants include public and private nonprofit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, and state and local health departments or their bona fide agents or instrumentalities are eligible to apply for these cooperative agreements.

Any of the following is acceptable evidence of nonprofit status:

- A reference to the applicant's organization in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code;
- A copy of a currently valid IRS tax exemption certificate;
- A statement from a state taxing body, state attorney general, or other appropriate state official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals;
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status; or
- Any of the above proof for a state, regional, or national parent organization. Affiliates of state, regional or national organizations must also submit a statement signed by the parent organization that the applicant is a local nonprofit affiliate and is authorized to apply for funds.

Proof of nonprofit status must be provided with the application. No application will be accepted without proof of nonprofit status.

#### Availability of Funds

Approximately $900,000 will be available in FY 1992 to fund approximately 10–15 awards. It is expected that the awards will range from $50,000 to $200,000. It is expected that the awards will begin on or about September 30, 1992, and are usually made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Applications requesting funds greater than an upper limit of $250,000 for any 12-month budget period will be returned to the applicant without review. Continuation awards within the project period will be made on the basis of an acceptable

application, satisfactory progress, and the availability of funds.

**Purpose**

The purpose of this program is to increase the quality and quantity of available information on the health of racial and ethnic populations or subpopulations in the United States. Funds will be awarded for the purpose of conducting (1) special studies and analyses; and (2) improvements in existing research methodologies or development of innovative methodological techniques used to gather information on such groups.

A CDC/NCHS-sponsored workshop was convened on December 4–6, 1991, to provide an opportunity for leading experts in minority health and minority health statistics to assist in setting research priorities which address the critical issues affecting current and future efforts to collect and analyze data on racial and ethnic minority populations. Approximately 85 minority health experts representing community-based organizations, academic institutions, and state, local, and Federal health agencies participated. CDC/NCHS intends that the research topics, opportunities, and priorities identified at this workshop will generate efforts that can be supported under this announcement and that proposals under this announcement will address workshop recommendations. A sample of key priority research areas that were identified during the workshop follows.

*Sampling, Enumeration, and Denominator Issues*

- Conduct research in development of new approaches to sampling frames for specific minority populations, for example, use of other data sources such as administrative records (INS, motor vehicle, etc.) and lists (telephone, etc.);
- Develop and improve techniques to update sampling frames in order to study minority populations between censuses;
- Conduct research to develop and/or evaluate alternative methods (e.g., non-probability case studies, network sampling, etc.) to improve enumeration of minorities who are not sampled or are under-sampled in national surveys (e.g., black males, urban Native Americans, and special populations such as undocumented migrants);
- Conduct research on new approaches for obtaining intercensual subpopulation and geographic-specific denominator data, especially for smaller subgroups;
- Conduct research designed to understand and improve self-reporting of race and ethnicity, including:
- How minority populations select and report (cognitive process, etc.); and
- Address mixed parentage;
- Test the reliability of race and ethnic information on vital and medical records (self-reports vs. proxy reports with a focus on mortality statistics and under-reporting); and
- Conduct research on what can be developed to improve the way health care providers record and report race and ethnicity of these patients.

*Special, Analytic, and Data Studies*

- Conduct special studies and or analysis to understand the health of racial and ethnic populations where there are known data gaps including:
- Age, gender, ancestry and generation/birthplace effects on health status;
- Social, economic, neighborhood, and psychological factors affecting health status;
- Mental health and stress;
- Payor sources;
- Cultural factors affecting health status (e.g., acculturation, assimilation, etc.); or
- Alternative health care.
- Conduct research to develop additional or enhanced predictors of health status that can explain observed differences between race and ethnic populations, including SES status measures such as:
- Generational status;
- Measures of family structure and living arrangements;
- Wealth;
- Per capital income;
- Labor force participation (including women);
- Socioeconomic status in early life;
- Income to needs ratios; and
- Other variables such as cultural, environmental, and societal.
- Develop and test analytical approaches to better understand the relationship between race, ethnicity, and SES as they pertain to or affect health outcomes.
- Study the appropriateness, reliability, and validity of health measures for particular ethnic groups by:
- Developing and testing new approaches for administering questionnaires that elicit comparable information between different racial and ethnic subgroups while allowing variation in the form of questioning to account for cultural differences, and
- Developing and testing alternative techniques to ask sensitive questions peculiar to specific race/ethnic groups.
- Develop and test instruments to measure and describe the use of non-traditional health care by various race/ethnic groups.
- Conduct special studies targeted to small groups not normally covered in national surveys or are of inadequate sample size to give estimates of events or attributes (e.g., rare populations or populations in transition).

*Synthesizing Existing Research*

- Conduct a critical synthesis of past theoretical and empirical research on a specific subgroup, analytic or methodological area; for example, synthesize current knowledge on the practicality and feasibility of using telephone survey methods in different racial and ethnic groups.

For a more complete report on the proceedings of the workshop, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

*A. Recipient Activities*

1. Involve community members, official community tribal representatives and researchers from universities or private non-profit organizations throughout the research process. Involvement in these activities may include research design, implementation, analysis, and dissemination of research results.

2. Determine whether their proposed projects meet the criteria of the Protection of Human Subjects (45 CFR 46) requiring review by an institutional review board (IRB). If an IRB review is required and the applicant does not have the capacity to perform an IRB review, the applicant is strongly encouraged to enter into a partnership with universities or other organizations with the capacity to conduct an IRB review.

3. Address the activities in one or both of the following areas, as appropriate:

a. Special studies or analyses—

(1) Identify a problem or population where there is a unique opportunity to conduct special studies or there are gaps in existing information as identified through the research literature, Healthy People 2000, and/or the report of the agenda setting conference.

(2) Identify and define available sources of information and assistance for performing special studies or analyses (e.g., NCHS and other Federal organizations, state health departments,

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universities, survey research organizations, existing Centers of Excellence, community organizations, etc.)

(3) Develop the research design, implementation and analytic plans for the conduct of special studies or analysis. Applicants should consider the professional acceptability of methodological approach (peer review journals/statistical standards, etc.), specific expectations of methods used, comparability to national data sources, and generalizability to other groups or subgroups.

(4) Execute the planned study.

(5) Develop and execute a plan to keep community representatives informed of the status of the study.

(6) Disseminate research findings in publications, reports, etc., and within the respective community.

b. Methodological Research—

(1) Examine existing methods for meeting defined data needs.

(2) Identify shortcomings, data gaps, state of the art methodologies, and limitations in methods as identified through the research literature and/or the priorities in the report of the agenda setting conference.

(3) Define research objectives, develop methodological approaches.

(4) Execute planned study.

(5) Disseminate findings in publications, reports, etc.

*B. Centers for Disease Control Activities*

1. Assist in the refinement of analytic and research plans.

2. Make available other information and technical assistance from government sources, as appropriate.

3. Provide liaison with other government agencies, as appropriate.

4. Provide technical assistance on individual analytic and research projects, including those conducted by contractors, as appropriate.

**Evaluation Criteria**

The initial application for the proposal to advance the understanding of the health of racial and ethnic populations or subpopulations will be reviewed on the evaluation criteria listed below:

A. The likelihood that the new knowledge that may be gained will subsequently help to improve the health of racial and ethnic populations and subpopulations, as well as contribute to the ability of the scientific community to identify and meet the data needs of the future. Factors to be considered include: uniqueness of the project objectives and their consistency with program priorities; the extent to which the proposed project responds to opportunities and priorities identified at the workshop; and the generalizability of the project findings to the population under study; (30 points)

B. Understanding the technical and substantive issues and the research priorities the project proposes to address; clarity, feasibility, and practicality of the goals and objectives of the project as well as the plan to meet them; (20 points)

C. Soundness, practicality, and feasibility of the technical approach to the work, including how the tasks are to be carried out, anticipated problems and proposed solutions; conformance with accepted scientific standards, principles and techniques; involvement of members of minority populations in the design and execution of the research project; links to existing research networks and infrastructures at the local, state and/or national level; feasibility and appropriateness of the proposed evaluation plan and mechanism; (30 points) and

D. Capabilities of the proposed investigators, including qualifications, relevant experience in the content and execution of the proposed project, ties of the community, and adequacy of project management to keep project on track and on schedule. (20 points)

A second level program review will be conducted by senior Federal staff on applications referred from the initial review. All referred applications will be evaluated on an individual basis according to the criteria below:

A. Results of the initial review;

B. Balance in addressing the various racial and ethnic groups and geographic areas;

C. Non-duplication of currently supported research activities;

D. Generalizability and comparability of research results;

E. Match with available technical assistance; and

F. Impact on program budget.

**Executive Order 12372 Review**

Applications are not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance Number is 93.283.

**Other Requirements**

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**Application Submission and Deadline**

The original and five copies of the application PHS Form 398 must be submitted to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before August 14, 1992. States and local governments may use PHS form 5161–1, however PHS form 398 is preferred. If using PHS form 5161–1, submit an original and two copies to the address stated above.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Preapplication Letter of Intent**

Although not a prerequisite of application, non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted by August 3, 1992, to the Grants Management Specialist (whose name is given in the **"WHERE TO OBTAIN ADDITIONAL INFORMATION"** section). The letter should identify the announcement number responded to, indicate the name and address of the organization and principal investigator, and specify the area addressed by the proposed project (e.g., methodological research, analysis of existing data, or special studies issues). The letter of intent does not influence review or funding decisions, but it will enable NCHS to plan the review more efficiently, and will ensure that each applicant receives relevant information prior to application submission.

**Where to Obtain Additional Information**

A complete program description and information on application procedures are contained in the application package. Business management assistance may be obtained from Eddie L. Wilder, Grants Management

Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6805. Information regarding the proceedings from the Agenda-Setting Workshop referenced in the **PURPOSE** section of this announcement is included in the application kit. Programmatic technical assistance may be obtained from Marjorie S. Greenberg or Lynnette S. Araki, National Center for Health Statistics, room 1100, 6525 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–7142.

Please refer to Announcement Number 254 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0 or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **INTRODUCTION** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Information regarding the Directory of Minority Health Data Resources of the Public Health Service, referenced in the **PURPOSE** section may be obtained from an information specialist at the Office of Minority Health Resource Center, P.O. Box 3733, Washington, DC 20013–7337 (Telephone 1–800–444–6472).

Dated: July 14, 1992.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control.*

[FR Doc. 92–16975 Filed 7–16–92; 8:45 am]

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## Public Health Service

## National Toxicology Program (NTP), Final Report of the Advisory Review by the NTP Board of Scientific Counselors; Request for Comments

### Introduction

Established 14 years ago within the Public Health Service of the Department of Health and Human Services (DHHS), the National Toxicology Program (NTP) develops and provides data used to estimate human health hazards of environmental exposures. The Program coordinates pertinent toxicology activities of the National Institute of Environmental Health Sciences (NIEHS), NIH; the National Center for Toxicological Research (NCTR), FDA; and the National Institute for Occupational Safety and Health (NIOSH), CDC.

Dr. Kenneth Olden, Director of the NTP, has as one of his major goals to assure that the program serves the public health by strengthening its role as the Nation's premier toxicology research and testing program. To accomplish this goal and to assure the NTP's vitality well into the future, Dr. Olden proposed to have specific aspects of the function or purpose of the NTP reviewed by a special advisory group. The NTP Executive Committee, composed of the heads of Federal research and regulatory agencies, provides primary program oversight. The Committee recommended that the NTP Board of Scientific Counselors be asked to conduct such a review.

### Background

Accordingly, the NTP Board assisted by *ad hoc* expert consultants met in public session at the NIEHS, Research Triangle Park, North Carolina, on April 14 and 15, 1992, to review and give advice to Dr. Olden and the Executive Committee on three specific issues. The charge to the Board was to make recommendations on how:

- To improve the quality of chemicals nominated for testing by assuring that they have the greatest public health significance;
- To assure that emphasis is placed on studies of the mechanisms of toxicity and carcinogenicity; and
- To develop and validate alternate assays that may reduce the need for long-term testing in animals.

The Board, composed of 25 members who are recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, mutagenesis, carcinogenesis, neurotocicology, reproductive and developmental toxicology, and biostatistics, is the primary scientific oversight body for the NTP.

Because the issues were considered to be toxicology endpoint specific, the major work of the Board and consultants during the meeting was performed by three work groups in (1) carcinogenesis, (2) reproduction and heritable effects, and (3) other toxicities and disposition. Opportunity was provided for public comments on these issues both prior to and during the meeting.

A fourth issue, for which advice was sought, was concerned with how to improve the procedures for alerting regulatory agencies and the public about test results on chemicals (particularly data which suggest potential hazard to humans from chemicals of widespread importance). Since this was considered to be a generic operational issue, the NTP Executive Committee was asked to review this topic separately.

The Advisory Review concluded on April 15 with a plenary session at which members of the three work groups presented summaries of their findings and recommendations. The Chairman of the Board and the chairmen of the three work groups completed draft reports of the Advisory Review which subsequently were sent to all reviewers for editing and corrections. The Chairman submitted a final report to Dr. Olden in June. A copy of the report with a listing of the Board members and consultants is appended here.

### Action

The NTP seeks comments and views on the report and its recommendations. Additionally, comments on the fourth issue, having to do with improving procedures for early data release, will be accepted. Suggestions of other activities to improve the NTP also are welcomed. Comments should be specific and as brief as possible and should be addressed to the Executive Secretary, NTP Board of Scientific Counselors, Dr. Larry G. Hart, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709.

A further opportunity for comment will be provided by a public meeting to be held on September 11, 1992, in the first floor auditorium of the Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC. The meeting will begin at 9 a.m. with NTP agency scientific staff present to take public comments on the report as well as suggestions of other activities to improve the NTP.

For further information regarding the meeting, please contact Dr. Hart by mail at the above address, by FAX to 919/541–2260, or by telephone at 919/541–3971.

Dated: July 13, 1991.

**Kenneth Olden,**

*Director, National Toxicology Program.*

Attachment

### NTP Advisory Review

### Introduction

**This report reflects the NTP advisory review conducted on April 14 and 15, 1992, by the 22 members of the NTP Board of Scientific Counselors and 16 ad hoc consultants who are listed at the end of the report. The report was prepared by dividing the review committee into three working groups who focused on Carcinogenesis (Dr. Jay Goodman, Chair); Reproduction and**

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Heritable Changes (Dr. Richard Miller, Chair); and Other Toxicities and Disposition (Dr. Curtis Klaassen, Chair). Each group addressed issues under three major headings, and commented to some extent on other specific questions raised in the "Synopsis" prepared by the Program. The three major areas that were addressed respond to the charge:

- To improve the quality of chemicals or other environmental agents or factors nominated for testing by assuring that they have the greatest public health significance;
- To assure that emphasis is placed on studies of the mechanisms of toxicity and carcinogenicity; and
- To develop and validate better assays that may reduce the need for long-term testing in animals.

*Summary of Recommendations*

In general, the three working groups were consistent in supporting the need to expand and refine the basis and process for nominating and selecting chemicals and agents for testing. Nominated agents should be prioritized and entered into targeted pathways for evaluation in regard to (1) reproductive toxicity, (2) other toxicity, and/or (3) carcinogenicity testing. Nomination for testing by the NTP now primarily carries the connotation of testing for carcinogenicity. Efforts should be made to increase the nomination of chemicals because of the potential for reproductive or other toxicities.

There is some difference in recommendations for setting priorities for testing among the three working groups. Testing of concepts or selection on the basis of gaps in data for compounds of some structural groups was given more weight in selection of agents for evaluation of toxicities other than carcinogenicity, whereas the potential for human exposure was given greatest weight in regard to selection for the two-year bioassay. In view of the relative costs for different types of tests, this difference in perspective seems practical.

The three groups concurred strongly that evaluation of mechanisms of toxicity and carcinogenesis should be supported. Mechanistic studies should pervade the activities of the NTP and might form part of initial evaluations that precede any long-term studies, be overlaid on and be part of long-term studies, or be undertaken in response to a positive result from a screening test in the late phase of evaluation of an agent. With this emphasis, the NTP should be able to strengthen its interpretation of test results in context of human health. Such interpretation should become part of reports issued by the NTP.

There was a general feeling that short-term assays, pharmacokinetic studies, structural analysis, mathematical modeling, and other alternate test systems (in vitro studies and non-mammalian species) will continue to be important primarily for analysis of mechanisms, dose selection, and extrapolation of results. The NTP should foster the development and validation of new test systems. For toxicity endpoints other than carcinogenesis, such systems may yield definitive data. Use of such approaches can improve the selection of agents for two-year bioassays in rats and mice, and perhaps reduce the number of animals required for the bioassays of some agents. But, the group felt that such approaches cannot be substituted for chronic toxicity testing or the long-term bioassay in rodents in regard to evaluation of carcinogenicity.

The group feels that one of the strengths of the NTP that should be preserved is the simultaneous involvement of talented scientists in (1) testing and (2) methods development or mechanistic research. We also favor increased involvement of scientists from the NIEHS intramural program and from the extramural scientific community in addressing research needs of the NTP. Studies of mechanism and methods development are especially appropriate areas for involvement of scientists from the intramural program, academia, and other research centers.

Reports of the three working groups follow. No effort has been made to remove redundancy or repetition of recommendations from the three reports because this would diminish the sense of concurrence among the groups on several points.

**Report of the Carcinogenesis Working Group**

Reviewers: Mr. Louis S. Beliczky, Drs. Kowetha A. Davidson, Robert H. Garman, Jay I. Goodman (Chairperson), David W. Hayden, Lawrence A. Loeb, Daniel S. Longnecker, Barbara McKnight, *Ad Hoc Reviewers:* Joseph D. Brain, Arnold L. Brown, John C. Harshbarger, James Swenberg, Jerrold Ward, James L. Whittenberger.

*Summary Statement—Mechanisms*

The National Toxicology Program (NTP) places too much emphasis on testing *per se*, and not enough emphasis on providing the mechanistic insight required for a realistic interpretation of the significance of the testing results with regard to human health. This should be changed. The carcinogen bioassay is a qualitative test, designed to ask if a chemical is or is not carcinogenic to laboratory animals under the conditions of the test employed (e.g., dose, species and strain of the test animal used).The bioassay is not a risk assessment. Studies directed towards discerning the mechanisms(s) of action of the chemical of interest need to be incorporated into, and juxtaposed with, the bioassay in order to place its results into proper perspective. Tests which place an emphasis on sensitivity over specificity (i.e., the extent to which noncarcinogens yield negative results) are not appropriate.

The major recommendations are:

(A) There should be a requirement that results of the bioassay be discussed with regard to their biological significance concerning human health coupled with the requirement to facilitate this by incorporating hypothesis-driven mechanistic research into the testing program.

(B) A sustained level of testing is important. We are concerned that the number of carcinogen bioassays might be decreasing below a critical mass.

(C) There should be a mechanism through the NIH RO1 program for initiatives by individual investigators to perform hypothesis-driven research designed to provide the mechanistic insight required for both methods development and the realistic interpretation of bioassay results.

(D) When possible, the program-project type approach towards research should be employed in the intramural research program. The ability of NTP investigators to share animals treated in the same fashion would permit a more complete evaluation of different endpoints in the same group of animals and should tend to maximize the quality of the information obtained. In addition this will result in a decrease in the number of animals used.

(E) Short-term alternative animal tests are not adequate for use as primary test for carcinogens. They should be investigated in a research mode and reported in the peer reviewed literature. These "tests" should not detract from the need to place an emphasis on research oriented towards discerning the mechanism of action of the chemicals of interest.

(F) Provision should be made for the use of flexible protocols so that, for example, the bioassay of genotoxic compounds need not have to be performed in exactly the same manner as non-genotoxic compounds.

(G) Improved interpretation of testing results is where the NTP should place its emphasis. Indeed, NTP should strive to be a world class center in this regard. This involves the need to strive for excellence in research areas which include toxicokinetics, cell replication and a focus upon defining genotoxic v. non-genotoxic mechanisms that may play a role in carcinogenesis.

The integration of a testing program with hypothesis-driven mechanistic research designed to support both the development of improved tests and the capacity to interpret bioassay data in a more realistic fashion provides the NTP and the NIEHS with a unique role that is totally compatible with their mission to assess possible adverse human health consequences following exposure to chemicals in the environment, including the work place, food and drugs.

*Overall Statement—Mechanisms*

There is an opportunity here to transform the National Toxicology Program, which indeed is a good program, into a truly great program. In this context, let us keep in mind the fact that the NTP is an integral component of the NIEHS and in many quarters the NIEHS and the NTP are so closely associated that they are considered as one. Therefore, what is good for the NTP is good for the NIEHS and vice versa.

A considerable amount of high quality basic research is being conducted within NIEHS and the NTP. Although, one can make the point that much of the basic research performed at NIEHS could be carried on at other institutes within the NIH. However, the NIEHS has the ability to integrate basic research into the portion of its human health oriented mission concerning the assessment of the toxicity that chemicals might pose. This would lead to a focus upon the crucial issues regarding the development of the scientific basis required in order to evaluate critically the possible hazards which chemicals in the environment might pose. Indeed, this pivotal role is what makes the NIEHS unique among the various institutes which comprise the NIH and accepting this as a major goal can make the NIEHS the flagship of the NIH in regard to environmental toxicology.

The overall objective of the NTP is both to conduct high quality toxicity testing and to develop valid testing procedures. This includes providing the means for a realistic interpretation of the results obtained. We want to attain the ability to make valid predictions from the results of laboratory tests to address the question as to what hazard a chemical might reasonably be expected to pose towards people. It is not appropriate to simply try to develop tests that yield a "yes" or "no" result. Furthermore, any attempt to place an emphasis on sensitivity over specificity presents an impediment to real progress. One of the most important goals is to achieve the ability to prioritize concerns regarding various chemicals so that we may separate the "mountains" from the "mole hills" from the "ant hills" from the "no hills".

There are four principal points that should be considered when asking what potential toxicity (including, for example, carcinogenicity) a given chemical might pose. These are (1) distinguishing an effect from an adverse (i.e., toxic) effect; (2) defining the dose response relationship (including the criteria for selection of the high dose, the shape of the dose response curve at low doses, and the possibility of the existence of a threshold); (3) species to species extrapolation; and (4) interaction of chemicals (e.g., short-term studies designed to discern mechanisms). These should be thought of as "tools" which can be employed to characterize the chemical under investigation within a context that facilitates the placement of a realistic perspective on the test results.

A rational approach towards assessing the risk that a chemical might pose requires mechanism-of-action-oriented research keyed to one or more of the four principal points noted above. For example, let us look at the maximum tolerated dose (MTD). In this context it should be noted that approximately two-thirds of the NTP carcinogens would not be positive, i.e., not be considered as carcinogens, if the MTD was not used. The implicit assumptions underlying extrapolation from the MTD are: (a) Pharmacokinetics are not dose dependent; (b) dose-response is linear; (c) DNA repair is not dependent upon dose; (d) the response is not age-dependent; and (e) a test dose need not bear a relationship to human exposure. These assumptions do not appear to be valid. Therefore, both the criteria for selection of the high dose used and the default criteria that are employed or extrapolation from high-dose to low-dose must be re-evaluated in a critical manner.

The principal points, noted above, should be viewed as specific aims towards which the research component of the testing program should be addressed, in a context that includes a consideration of:

- Pharmacokinetics/Metabolism (including the concept of target site dosimetry); and
- Genotoxic vs Non-genotoxic mechanisms; and
- Toxicity; and
- Cell proliferation; and
- Unique susceptibility.

The NTP should be conducted as a program project involving both testing and research components. In addition to increasing the quality of the science, the program project approach involving sharing of animals treated in the same manner should result in a decrease in the number of animals used. In this regard, for example, the Background Working Paper prepared by Dr. M. Cunningham ("Chemical-induced cell proliferation and carcinogenesis.") provides an excellent example of a high quality research project that could be expanded into a program project that includes the research described in the Background Working Papers provided by Drs. Mauldin & Caspary, Caspary et al, Zeiger & Tennant, and Tennant.

Most research projects should include a section indicating the potential significance of the work with regard to its ability to shed light upon one or more of the principal points (i.e., specific aims) noted above. This would facilitate the development and maintenance of a synergistic relationship between the testing and research components. Furthermore, test results should be reported along with a discussion of the manner in which the data may be used, in a realistic fashion, to assess the conditions of exposure under which a chemical (or agent, e.g., electromagnetic fields) might cause toxicity.

*Summary Statement—Alternate Assays to Replace or Complement Mammalian Studies*

The current two-year studies have defined the toxic and carcinogenic potency of a wide variety of chemicals. In addition, the past studies provide a valuable data base that can guide the planning of future studies and aid in their interpretation. This data base should now permit us to lower the number of animals used for some studies. Moreover, the promulgation of compounds to be tested should permit the sharing of tissues from animals and, given the archival retrieval power of the polymerase chain reaction, it should be possible to address mechanistic questions using stored tissue and/or DNA from tumors.

1. We are heavily reliant on the use of current protocols and inbred rodent strains for bioassays. This should not be viewed as a limitation but as an important standard for comparison that should now allow us to restrict the use of animals in future studies.

2. Mechanism studies and pharmacokinetic/metabolism studies conducted prior to chronic testing should be encouraged. It might be possible to reduce greatly the number of animals used for each study by using either two species/one sex or one species/both sexes. Moreover,

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pharmacokinetic studies should be an important parameter in setting dose range. In the case of selected genotoxic compounds for which a positive bioassay is anticipated with confidence, consideration should be given to using one species/one sex over a wide dose range.

3. NIEHS should continue the exploration and validation of alternative systems including non-mammalian species. In particular, investigation of their use in assaying non-genotoxic compounds and mixtures should be extended.

4. The development of transgenic animals containing mutated positive oncogenes, deleted tumor suppressor genes and human oncogens should be encouraged. This may provide new sensitive systems that will reduce the number of animals in each test or may allow extensive studies of more compounds. The long range goal should be to narrow the number of candidate transgenic strains to a few on which extensive background validation data is collected, thus, enabling their use in mechanistic studies and bioassays.

5. The NIEHS should announce compounds to be tested and immediately organize and support small meetings of active investigators who have worked with these compounds as well as members of regulatory agencies. This may permit the design of protocols to utilize the tissue resources that are obtained from the large scale bioassays more efficiently for multiple purposes as well as to initiate mechanistic studies that parallel these bioassays.

*Summary Statement—Nomination (Carcinogenesis)*

This section is organized to respond to questions presented to the NTP Board of Scientific Counselors by the Program in a synopsis:

*(a) Question*

How to better define the criteria for nomination, selection and prioritization of chemicals. Are new principles for federally funded studies needed?

*Response*

The criteria for nomination: (1) Suspicion of carcinogenicity or other toxicity; (2) significant potential for human exposure; and (3) the need to develop data for gaps in knowledge are all valid criteria. Highest priority should be given to chemicals for which there is significant potential for human exposure as defined by high numbers of people exposed, high tonnage exposure or high environmental persistence, and where the chemical is readily absorbed by at least one common route of exposure. Suspicion of carcinogenicity/toxicity based on *in vitro* and structure/activity information is also important, as long as adequate information about carcinogenicity/toxicity is not available for other chemicals in the same class. (See b).

*(b) Question*

How can chemical nominations be performed in a more systematic manner? Are studies of chemical classes—use classes, structural classes, or mechanism classes—the best way to identify nomination? Are there other means of systematically identifying chemical nominations?

*Response*

The NTP should encourage nominations from a wider constituency than currently submits them. Some portion of NTP funds should be committed to soliciting nominations from trade associations, consumer groups and other special interest groups, and to educating the public about its ability to nominate chemicals.

Studies of chemical classes are not the best way to identify chemicals to be nominated. Instead, the NTP should consider developing a priority scale like the one below into which all nominated chemicals will be placed.

1. Top Priority. Chemicals to which large numbers of people will be exposed (or to which fewer people will be exposed to very high doses) and for which some suspicion of carcinogenicity and/or high tendency to cause toxicity exists. If more chemicals in this group are proposed than can be tested, the selection will depend on the degree of human exposure, including the potential for bioaccumulation.

2. Very High Priority. Chemicals which, because of unique structure or biologic activity, provide unique opportunities to advance the program's knowledge of carcinogenic/toxicologic mechanism.

3. High Priority. Chemicals belonging to a class for which there is insufficient carcinogenicity/toxicity data, but for which some suspicion of carcinogenicity and/or high tendency to cause toxicity exists.

4. Medium Priority. Chemicals which are strongly considered to be carcinogenic/toxic based on *in vitro* tests and the carcinogenicity/toxicity of other chemicals in the same class, but which may currently be regulated to the point of minimal human exposure or environmental contamination or the use of which can easily be eliminated.

5. Low Priority. Chemicals for which sufficient data are present from *in vitro* tests and studies of other chemicals in the same class so that they might be expected to be non-carcinogenic and/or relatively non-toxic.

6. Lowest Priority. Chemicals with essentially no human or environmental exposure.

*(c) Question*

How do we identify chemicals of greatest potential public health importance for testing or research efforts?

*Response*

Redundant. See (a) and (b).

*(d) Question*

If we want to test concepts rather than chemicals, how do we prioritize ideas on the basis of relevance to the field of toxicology?

*Response*

We do not want to test concepts rather than chemicals. Priorities should be based on the classification system outlined under (b). We want to test hypotheses in addition to chemicals to help us interpret the bioassay data we obtain, but mechanistic considerations should be considered secondary to the public health importance of the chemical. If two chemicals are considered to have similar public health importance, first priority should be given to members of poorly categorized classes that have produced some evidence of genotoxicity or other toxicity; second priority should be given to members of classes where some other members have been shown in bioassays to be carcinogenic/toxic, but where the member to be tested has a sufficiently different structure from the well-characterized members that predictions about its carcinogenicity/toxicity are doubtful.

*(e) Question*

How do we match the best ideas about mechanisms of toxicity with the most relevant chemicals (on the basis exposure and toxicity) to test those hypotheses?

*Response*

Priority chemicals, as outlined under b) should be tested, and any hypotheses about mechanisms for each such chemical should be examined.

*(f) Question*

NTP efforts can impact regulatory and public health decisions on the basis of short-term goals (testing individual chemicals) and long-term goals (testing ideas and hypotheses). What is a proper balance of these two goals to have the greatest impact on public health and science?

*Response*

NTP priorities should be for testing individual chemicals of public health importance, as outlined under b), and tests of hypotheses about mechanisms should be incorporated in the bioassays to help interpret the results.

*(g) Question*

How do we raise the level of awareness for the need to nominate chemicals for endpoints of toxicity other than carcinogenesis? What is the proper allocation of resources between various areas of toxicology?

*Response*

NTP should make a greater effort to educate nominating agencies, and their subsidiaries, trade unions, consumer protection groups and other special groups of its interest in studying chemicals for toxic endpoints other than carcinogenicity.

Allocation of resources should be based on the level of human exposure and the degree of suspicion that the chemical causes cancer or other non-reversible toxic effects, rather than by a fixed percentage allowed to each category of suspected toxic outcome.

*(h) Question*

How do we better anticipate the development of new industries which introduce new chemicals into the environment?

*Response*

The NTP should employ chemists/chemical engineers whose primary responsibility is to review the literature and attend meetings to learn the state of the art for new technologies. These individuals should periodically review the registry of newly synthesized chemicals and keep in frequent contact with representatives from industry and trade unions, as well as regulatory agencies to monitor the production and use of new chemicals.

*(i) Question*

Production volume has been used as a surrogate for estimating human exposure in the past (one criterion for nominations). What other information could we use or develop to better define human exposure to chemicals?

*Response*

NTP should make a greater effort to obtain accurate exposure data. OSHA, NIOSH, trade unions and industry should be actively consulted for data on occupational exposure. EPA and state and local agencies should be consulted about the level of environmental exposure. FDA (for drugs) and industry should be consulted about production and sales volume, and any surveillance data. The European community should be contacted for the amounts of the chemical sold by European firms to U.S. subsidiaries. Where possible, exposure information should include the route of human exposures and the degree of bioaccumulation in the food chain and in humans as well as data on the stability of the chemical and its likelihood of biotransformation.

*(j) Question*

What emphasis should be placed on the study of the toxicity of natural substances, including constituents of food?

*Response*

Emphasis equal to that of any industrially produced chemical with equivalent potential for human exposure and equivalent suspicion of carcinogenicity/toxicity should be given to natural substances.

**Report of the Reproductive, Developmental and Heritable Effects Working Group**

Reviewers: Drs. James Allen, Elaine Faustman, Claude Hughes, Robert Kavlock, Arthur Levin, Donald R. Mattison, Richard Miller (Chair), Sally Perreault, Louise Ryan, Barbara Sanborn, Mary Jo Vodicnik, and Frank Welsch

*Introduction*

This report is organized to provide recommendations to the Director of NTP concerning three specific issues of the operation and function of NTP as follows:

A. Quality of Chemical Nominations and Selection for Testing/Research.
B. Emphasis on Mechanistic Work.
C. Development of Alternate Assays to Replace or Complement Mammalian Studies.

The Reproductive, Developmental and Heritable Effects (RDHE) Program at the National Toxicology Program is a unique international Toxicological testing and research activity. The issues of birth defects, pregnancy loss, infant mortality and altered fertility for both male and female are national public and medical concerns. The leading cause of infant mortality in the US is birth defects which now accounts for 21 percent of the total. These NTP RDHE testing and research programs within the context of the developing national strategy for Public Health Protection play a critical role in addressing specific reproductive issues which are separate and distinct from carcinogenesis and are at least of equal importance. It has become apparent that within the field of toxicology there needs to be greater emphasis on endpoints other than carcinogenesis. It has been apparent to this Review Committee that RDHE programs have provided not only national but also international leadership in the development of new testing protocols, the conduct of quality, state of the art testing and the performance of important mechanistic investigations to understand how reproductive and developmental toxicants are producing their actions. Such a national resource requires continued encouragement and financial resource investment to extend the frontiers in testing, development of testing protocols and mechanistic research for the immediate future as well as into the 21st Century.

A. Quality of Chemical Nominations and Selection for Testing/Research

The Review Committee was concerned about the quality of the chemical nominations and noted the desirability of having greater diversity of institutions and individuals providing such nominations. It was apparent to the committee that announcing the chemical nomination process more widely at scientific meetings, in appropriate journals and to appropriate groups, e.g., physicians, public organizations, trade unions, will increase the diversity of nominating organizations and individuals, and in addition, increase the visibility of the National Toxicology Program to the public at large.

The nomination process for chemicals should utilize a selection system to conserve the limited resources available for conducting such investigations. In particular, the Review Committee recognizes that some chemicals may require a detailed and complete examination based upon the volume of production, actual and potential human exposure and possible adverse reproductive and developmental effects based upon SAR and other information; however, there are many agents which may not have such justification based upon the above criteria. It may be appropriate to consider the different screening tests for these compounds to provide initial information for a larger number of compounds with the implicit understanding that some of the agents will require additional detailed evaluations.

The Reproductive, Developmental and Heritable Effects evaluations performed currently by the NTP have been

internationally recognized for current hazard identification in these fields of Toxicology; however, due to the limited resources available for testing it continues to be critical to evolve the evaluation process to include (1) individual chemicals, which meet selected criteria (as defined below) and (2) concept evaluations for mechanisms of toxic action for classes of chemicals. This evaluation should utilize current state of the art standardized testing with inherent flexibility to pursue additional evaluations to answer mechanistic and other critical issues, which arise during the testing process.

For individual agent evaluation, the criteria for the selection should continue to include human exposure information, pharmacokientics (ADME) in animals and humans (if available), structural alerts, screening information, mechanistic information and epidemiology. The development of a sufficient database to define the potential magnitude of human exposure or risk before initiating extensive animal evaluations is encouraged.

It is essential to formalize these Reproductive, Developmental and Heritable Effects evaluations to raise national visibility and to focus attention on this process to make it an issue that defines not only chemical data deficiencies, but also concept gaps, i.e., information on potential mechanisms or associations with developmental, reproductive and heritable effects. To achieve these goals it would be especially useful to perform a historical evaluation of the chemicals nominated within the program and the outcomes and implications of performing or not performing testing.

B. Emphasis on Mechanistic Work

It is recognized by the Review Committee that the definition of mechanistic work may not be equally appreciated by all scientists or laypersons. Thus, the Committee has used the following definition to focus the discussions:

*Mechanism Research* is the conduct of investigations to understand how a chemical produces its effects from its metabolism and distribution to its cellular and molecular interactions.

Such a definition requires an armamentarium of special technical protocols and personnel to answer specific inquiries in addition to the general testing protocols.

Within this mechanistic framework, the RDHE programs have functioned especially well in providing the nation not only the best specific testing information but also additional research which addresses the mechanism by which selected chemicals may be toxic to reproduction and development. The mechanistic data will provide a basis obtaining an understanding of the risks posed by the identified reproductive and genetic toxicants. As the RDHE programs have evolved it has become apparent that professional time has been better allocated to allow for the NTP to respond to issues of mechanisms, which allows for the considerations of species to species extrapolation, classes of chemicals and sites of toxic insult.

The NTP is encouraged to maintain each professional's balance between testing and/or contract supervision and the effort expended for mechanism/new protocol development. It would be hoped that the individual professional commitment to research activities would be no less than 50 percent. Such a distribution is likened to the academic environment, where research is conducted within the framework of teaching, clinical care and administrative obligations. With the merging of all professionals into one intramural program at NIEHS, it is a major concern of this Review Committee that this balance may be upset. This balance brought the NTP to its outstanding level of international recognition and should be maintained.

The Review Committee most strongly supports the continued emphasis on mechanistic investigations and recognized the utility of having testing and mechanistic work performed in tandem by these investigators. The mechanistic work is helping to answer today's questions and may aid in future toxicologic evaluations as well. The Committee is impressed that the RDHE programs provide in many instances the first evidence of reproductive, developmental and heritable effects for individual chemicals or classes of compounds upon which basic/mechanistic investigations must be performed. It was apparent to the Committee that continuing collaborations between NIEH/NTP and the NIOSH and NCTR are exemplary in the fields of reproductive and Developmental Toxicology; however, collaborations between the intramural scientists at NIEHS and within the NTP have not been optimized. With the restructuring of the NIEHS, it is anticipated by this Committee that the ability of the NTP to identify important chemicals with human health risk will lead to the continued investigation of mechanistic action for these agents by the NTP personnel. Further, as additional issues and investigations demand additional mechanistic investigations, the researchers within the Intramural Program should be encouraged to embrace collaborative investigations to provide not only specific expertise but also to establish important collaborative linkages for future questions raised by the activities of the NTP. Utilization of extramural resources within academia and the private sector has proven essential in the conduct of many testing protocols, validation of procedures and development of new methods. Such extramural activities obviously must be continued to provide the optimal use of NTP professional time. The concept of routine testing being conducted by contract and the mechanistic investigations/methods development being conducted by the NTP/NIEHS personnel is strongly supported by the Review Committee.

C. Development of Alternate Assays to Replace or Complement Mammalian Studies

It is recognized by the Review Committee that the development of alternate assays to replace or complement mammalian studies is of both scientific and social importance. It is also apparent that some fields are already utilizing such protocols, while other fields utilize such protocols for essential mechanistic investigations but have not determined a single or a battery of such assays that will replace the current mammalian tests.

*Reproduction/Developmental Effects.* Regarding alternate testing for reproductive and developmental toxicity, the 28 day screen (developed recently at the NTP) is an example of how these national concerns have been addressed by the NTP. This modified testing scheme will be used following final validation with the Organization of Economic Cooperation and Development (OECD) in the testing process to increase the efficiency of compound testing to derive at least a modest amount of data about a large number of chemicals before undertaking extensive testing. The developmental toxicity study is one such assay that could be retrospectively examined for application to this purpose.

Of central importance to this alternative testing process is the development of a categorization of chemicals concerning their potential for developmental toxicity in the human (Smith List) and also such a list concerning male and female reproductive toxicants and their potential sites of action. It is acknowledged that a revision of the list for developmental toxicity in the human is currently under consideration by the

NTP; however, the Committee encourages the development of lists for Reproductive Toxicity, which could be used as a standard for alternate test development.

Alternative tests that do not involve treatment of the whole animal have potential utility:

1. For defining mechanism of toxicant action including extrapolation between animals and humans, and

2. For preliminary screening of chemicals once categories of toxicant actions have been elucidated. Such apical testing must be compared to established tests by blinded trials of accepted positive and negative compounds so that test performance characteristics can be determined.

Presently, the technologies available do not allow for the use of in vitro screens for the individual problems for male and female endocrine and fertility regulation, male and female germ cell development, and developmental toxicity/teratogenicity. Research on test development and mechanisms of toxicity in these areas needs to be encouraged by approaches including the extramural granting process (RFA and RFP). Use of the latter mechanisms could take advantage of any newly available funding for these problems to explore the potential for developing useful new testing methods while bypassing limitations of time available among the intramural professional staff.

*Heritable Effects.* The Heritable Effects program is on a course of increasing vitality and productivity (regarding chemical test data and mechanisms research important to risk assessment) with decreasing use of laboratory animals. There are several pre-screens that are already in place which effectively serve to reduce the numbers of animals that are used for germ-cell/heritable effects testing. For example, there is initial testing, which does involve the use of animals, to determine if the test agent is mutagenic. If positive results are obtained, this is followed by relatively small scale screening to determine if it is mutagenic in vivo. Positive results again would lead to testing for effects in germ cells using a progression of assays which are triggered by specific test results.

There is currently research emphasis given to the development of new methods for germ cell testing, e.g., transgenic systems, and the improvement of existing tests, e.g., use of chromosome-painting probes. These efforts should result in test methodologies with improved effectiveness and further reductions in the use of experimental animals. The Committee believes that this development of improved methods as well as the existing test capabilities should continue to be supported.

The Committee observes a need to support research to increase the power (efficiency) of existing reproductive, developmental and heritable effects studies. As the number of endpoints is increased (e.g., number of specific loci examined, use of cataract test to capture more than one mutation at a time or 28 day screen with its increasing number of reproductive endpoints), statistical models should be developed for utilizing the additional information—such as the best way to combine endpoints. Such statistical evaluations should enable the NTP to increase the power of a particular study design and thereby justify reducing the number of animals required in a given study. Furthermore, analyses that investigate relationships between multiple outcomes may improve the mechanism of action studies. Current efforts to establish multiple endpoint assays, e.g., work with the electrophoretic specific locus test and the morphological specific locus test, are commendable and should continue to be supported. These tests provide important data for mutagenesis risk assessment (performed by various agencies), while minimizing the use of laboratory animals for the information gained.

Summary of Part (C)

It is recommended that the development and implementation of in vitro methods and alternate test systems should be explored to answer issues of mechanisms of action in order to better understand the toxicities involved. In reproductive and developmental toxicity testing, there continue to be reservations concerning the use of in vitro tests as pre-screens for definitive screening of agents. It is strongly recommended that the NTP should provide the standard for evaluation, coordinate validation of such tests and foster the involvement of the broader scientific community in the process.

**Report of the Other Toxicities/ Disposition Working Group**

Reviewers: Drs. Paul Bailey, John Barnett, Linda Birnbaum, Harold Davis, Curtis Klaassen (Chairman), Fumio Matsumura, Joe Mauderly, Ellen Silbergeld, Roberts Taylor, Matthew Van Zwieten, Anthony Verity, and Lauren Zeise.

*Introduction: National toxicology Strategy*

The nation needs a national toxicology strategy, just as it needs a health care strategy, energy strategy, etc. If this is to become a reality, some organization should have a mandate to develop and champion that strategy. There is a critical need for national oversight and coordination of toxicology research. Thus, as a long term goal NTP could become the nation's principal coordinating center for toxicologic issues, with in-house expertise in certain key areas. The development of the strategy requires the input from both the regulatory and research community. Serving this coordinating and leadership function, the NTP could support the development of needed research at "centers of excellence" which could be established in other federal and academic institutions, and the NTP could further encourage, influence and coordinate research and routine testing in industry and academia. The adoption of this recommendation would require a major organizational change.

*Emphasis on Mechanistic Work (Subgroup Report)*

1. *Balancing Descriptive and Mechanistic Work:* Mechanistic studies should be tightly integrated into the testing program, having both an impact on and being responsive to the testing program. The subcommittee discussed their critical role in selecting chemicals for in-depth testing, interpreting test results, selecting appropriate animal models, developing alternative test systems and implementing screening activities. The strength of the NTP has been the tight connection between NTP testing and mechanistic activities. The subcommittee encouraged continued involvement of individual research staff (e.g. toxicologists, biostatisticians, pathologists) in both activities. Expansion of mechanistic studies would benefit from involvement of the intramural scientists at NIEHS. In addition, a vast amount of mechanisms expertise could be obtained through a "granting process"which does not presently exist in the NTP. The need for testing and mechanistic studies to be an iterative process cannot be over emphasized. The need and design of mechanistic studies should be considered on a case by case basis.

2. *Non-Cancer Endpoints:* The subcommittee recognized the greater need for routine testing and mechanistic research on non-cancer endpoints. The subcommittee recognizes the interdependence and similarities in underlying mechanisms of multiple toxic endpoints, including cancer. Some important toxicities are almost entirely ignored by the scientific and testing community (e.g., cardiotoxicity). The subcommittee found the specific areas

of toxicologic investigation recently added to the NTP to be important, and encourages continued research in these areas. However, the NTP should be mindful in developing these and others areas of the importance of creating a critical mass in-house. The subcommittee recognized that at present, a critical mass does not exist in some areas (e.g., developmental neurotoxicology), and supported the continued development of these areas within the NTP/NIEHS complex, but only with the provision of additional resources.

3. *Pharmacokinetics and Disposition:* In order for test results to be predictive, not only must mechanisms be understood, but dose-response relationships must be elucidated. In addition, pharmacokinetics should be considered in selecting dose levels for in-depth bioassays. Studies of disposition and metabolism both experimental and mathematical modeling, should be undertaken for each chemical. Resources for these activities should be increased. The specific protocols should be tailored to the chemical and question being addressed. The issues concerning variability, both within human and animal populations require greater attention. The issue of sensitive human population, either due to exposure or inherent susceptibility, should be considered.

4. *Model Development:* The development and evaluation of animal and other models for toxicologic determinations is inherent to the mission of NTP. Selection of an appropriate model is a normal step in resolving a particular toxicologic issue. NTP's overall efforts in model development should be opportunistic and issue driven. Thus, 1) NTP should look for appropriate models and not just employ models of past use; these models can be of three types: *in vivo, in vitro,* and mathematical. *In vivo* models should not be limited to mammalian models; 2) NTP should look for opportunities for model validation by testing responses against known human responses; 3) NTP should take the initiative to insure that, if there is the potential for model validation with human data, it should be done.

5. *Screening Versus In-Depth Bioassays:* NTP should not abdicate its responsibility for broad screening of chemicals and identifying potential hazards to the public. Development of mechanistic data will enhance the predictive use of hazard identification data. This has the potential to decrease the requirement for extensive screening through the 2-year bioassay, reserving in-depth efforts for only a select group of materials. The development and implementation of screening alternatives to the long-term bioassay is required. Every agent giving positive results in a screening assay need not necessarily be evaluate using the full range of assays. Hazard identification on the basis of screening and other ancillary data may be sufficient. By incorporating information on toxicokinetics and mechanisms, there should be opportunities to extend the assessment of hazards and perhaps even dos-response relationships across members of families of closely-related agents for which in-depth information is available for some members. For example, appropriate attention to disposition and mechanisms may allow conclusions to be drawn about the chronic toxicity of some agents without having to conduct chronic 2-year bioassays.

*Alternate Assays (Subgroup Report)*

The subgroup's discussion was based on two general assumptions: first, one of the critical strengths of the NTP is the interactive integration of activities related to testing and those related to mechanistic (hypothesis driven) research; and second, the central criterion for evaluating this topic—and others—is that of good science.

Alternate assays are defined as the broad set of testing and research methods *other than* the defined acute, subchronic, chronic, and two year bioassays in rodents and tests currently used by NTP. Alternates to these tests include other whole animal tests; in vitro tests; and nonbiological methods such as mathematical and molecular modeling (including SAR). The WG unanimously concludes that no single alternate exists that fully substitutes for all of the standard NTP tests listed above. Moreover, alternates cannot be reliably used by themselves to screen chemicals for selection into these standard tests. In some cases, information on disposition, metabolism, or mechanism (derived from alternate tests) can guide decisions as to the necessity for the two year bioassay. The subgroup supports continued research to identify increased opportunities for using alternate tests for hazard identification.

At present, the most valuable use of alternate tests is to study mechanisms. Human tissues, defined culture systems, and transgenic mice are examples of alternate tests that can be very useful in mechanistic studies. Mathematical models are useful to develop hypotheses and on which to base extrapolations. Scientific criteria should determine the selection and use of these methods to answer specific questions.

The WG considered how the NTP could be involved in several ways with alternate tests: NTP could develop and/or sponsor research to develop test methods; NTP could validate tests for their predictability and utility; NTP could be a clearinghouse for information on alternate tests. The WG concluded that NTP should not be the national center for alternate test development, validation, or application. NTP should coordinate its activities in this area with existing centers, such as the Center for Alternatives to Animal Testing (CAAT) at Johns Hopkins. However, NTP should continue to be involved in the validation of promising new methods, including alternate tests. The WG noted that another limit on the use of alternate methods is uncertainty as to their acceptability by regulatory agencies. The subgroup suggests that an interagency coordinating group on alternate test methods could facilitate communication on both development and use, which would increase confidence as to the acceptability of alternate test results by agencies such as EPA, FDA, and CPSC.

Some of the questions directed to the WG relate to the development of alternate tests to replace or complement the 2-year carcinogenesis bioassay. The subgroup concludes that at present there is no substitute for the carcinogenesis bioassay, but that in other areas of toxicology there are urgent needs to develop and validate test methods. Neurotoxicity is in great need of methods development for both hazard identification and mechanistic research, including mathematical modelling. Noting the almost total lack of toxicology research and testing relating to cardiovascular endpoints, the subgroup notes the availability of well-studied in vitro systems for studying aspects of cardiac function. As an example, these tests could be applied to increase our knowledge of mechanisms or dose:response of the observed associations in humans between lead and hypertension. The use of structure-activity-relationships (SAR) for predicting toxic effects should also be encouraged.

*Nominations (Subgroup Report)*

Nomination, prioritization and selection processes clearly play the key role in deciding the overall direction and the nature of research activities of NTP. Since each full fledged carcinogenicity test costs so much, under the current systems as much as 75 percent of the entire budget of NTP goes to in vivo

carcinogenicity tests on those selected substances. Because of fiscal constraints, the number of nominated as well as selected chemicals has been steadily declining in recent years. Despite the fact that NTP's mission is not totally limited to carcinogenicity testing, the nomination process in the past clearly has favored this particular aspect of NTP. One of the reasons appears to be the high number of nominations NCI traditionally generates, as compared to other agencies, and the "quality" of their nominations (i.e., well prepared and well documented background information on each compound). The prospect of a low selection probability also must have discouraged other agencies and the public to nominate chemicals of their choice, even if they are meant for noncarcinogenic toxicity testing. While such an emphasis on in vivo carcinogenicity testing was necessary at the beginning, some change from these past practices appears to be wise at this stage of the NTP program. Noncarcinogenic toxicity studies as well as short term in vitro testing ("prechronic") are far less costly per chemical. Furthermore, the public would like to know more about the meaning of positive results in rodent tests to human health, as well as effects of chemicals on other toxic endpoints that are affecting many individuals (e.g., heart disease, Alzheimers disease, developmental, immunotoxicological effects, etc.).

Therefore, to achieve the goal of NTP to satisfy the national needs with respect to providing vital information to important human health issues or problems, the nomination and selection processes must be improved to accommodate a higher number of nominations by including noncarcinogenic studies and "prechronic" studies, and making a wider choice of study approaches (e.g. mechanistic models) available to the public. Such a change may be made possible by reducing the number of full fledged carcinogenicity tests and/or increasing funding to other studies.

To improve the "quality" of chemicals nominated and selected for testing, we recommend the following:

1. Modification of current nomination and selection processes to emphasize options for testing of various non-cancer endpoints (e.g. mechanistic studies). The current system favors long-term expensive in vivo testing.

2. Establishment of an independent committee to judge priorities and selection process of nominated chemicals. In addition, this committee should be responsible for recommending the testing program. Current practice involves selection of chemicals not on scientific merit, but of interest to a particular agency or individual(s).

3. Some nominations should be to improve scientific understanding of structure-activity relationships in the absence of evidence of substantial human exposure, and thereby assist in defining the toxicity groups or classes of particular chemicals.

4. Chemical nominations should be accompanied by some sort of justification or reason for testing (e.g., mechanistic issues, chemical class issues, and political issues). Nomination of chemicals solely on production volume and potential for human exposure may not be the best criteria (e.g. drugs).

5. There is a need to define clearly the nomination and selection process for noncarcinogenic types of toxicity testing.

6. There should be a greater focus on the performance of multiple short-term tests versus long term-testing.

7. Improve the public awareness of the nomination and selection process. People do not feel that they have access to the NTP.

**National Toxicology Program**

Board of Scientific Counselors

Members attending NTP Advisory Review of April 14–15, 1992:

Dr. Paul T. Bailey, Mobil Oil Corporation, Toxicology Division, P.O. Box 1029, Princeton, NJ 08543–1029, 609/737–5511.

Mr. Louis S. Beliczky, Director of Industrial Hygiene, Dept. of Industrial Hygiene, United Rubber Workers Intl. Union, 87 South High Street, Akron, OH 44308, 216/376–6181 (B) 216/585–2046 (H).

Dr. Kowetha A. Davidson, Health and Safety Research Division, Oak Ridge National Laboratory, Building 2001, MS–6050, Oak Ridge, TN 37831–6050, FTS 624–7799, Comm. 615/574–7799.

Dr. Harold Davis, DET4, AL/VSP, Brooks Air Force Base, TX, 78235–5301, 512/536–3554.

Dr. Robert H. Garman, Consultants in Veterinary Pathology, P.O. Box 68, Murrysville, PA 15668, 412/733–5154.

Dr. Jay I. Goodman, Professor, Department of Pharmacology and Toxicology, Michigan State University, East Lansing, MI 48824, 517/353–9346.

Dr. David W. Hayden, Professor, Department of Veterinary Pathobiology, College of Veterinary Medicine, University of Minnesota, 1971 Commonwealth Avenue, St. Paul, MN 55108, 612/625–3132.

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Dr. Robert Kavlock, U.S. EPA, Director, Developmental Toxicology Div., Highway 54 & Alexander Drive, MD–71, Research Triangle Park, NC 27711, 919/541–2326.

Dr. Curtis D. Klaassen, Professor, Dept. of Pharmacology and Toxicology, University of Kansas Medical Center, 39th and Rainbow Boulevard, Kansas City, KS 66103, 913/588–7714.

Dr. Arthur Levin, Department of Toxicology, Hoffmann-LaRoche, Inc., 340 Kingsland Street, Nutley, NJ 07110–1199, 201/235–2734.

Dr. Lawrence A. Loeb, Professor and Director, Gottstein Memorial Laboratory and Department of Pathology SM–30, University of Washington D–525 HSB, Seattle, WA 98195, 206/543–6015.

Dr. Daniel S. Longnecker, Professor, Department of Pathology, Dartmouth Medical School, Lebanon, NH 03756, 603/650–7899.

Dr. Fumio Matsumura, Professor, Institute of Toxicology & Env. Health, University of California, Old Davis Road, Davis, CA 95616, 916/752–4251.

Dr. Barbara McKnight, Associate Professor, Department of Biostatistics, University of Washington SC–32, Seattle, WA 98195, 206/543–1044 or 467–5170.

Dr. Richard Miller, Department of Obstetrics & Gynecology, University of Rochester Medical Center, 601 Elmwood Avenue, P.O. Box 668, Rochester, NY 14642, 716/275–2520.

Dr. Barbara Sanborn, University of Texas Medical School, Department of Biochemistry, P.O. Box 20708, Houston, TX 77225, 713/792–5600.

Dr. Ellen K. Silbergeld, University of Maryland Medical School, Howard Hall—544, 660 West Redwood Street, Baltimore, MD 21201, 301/328–8196.

Dr. Matthew J. van Zwieten, Senior Director, Safety Assessment, Merck, Sharp & Dohme Research Laboratories, Department of Safety Assessment, WP 45–236, West Point, PA 19486, 215/661–7903.

Dr. Mary Jo Vodicnik, Lily Research Laboratories, Toxicology Research Laboratories, Bldg. 240 GL–45, P.O. Box 708, Greenfield, IN 46140, 317/277–4928.

Dr. Frank Welsch, CIIT, 6 Davis Drive, P.O. Box 12137, Research Triangle Park, NC 27709, 919/541–2070.

Dr. Lauren Zeise, California Environmental Protection Agency, Office of Environmental Health, Hazard Assessment, 2151 Berkeley Way, Annex 11, Berkeley, CA 94704, 510/540–3221.

**Ad Hoc Consultants Attending NTP Advisory Review of April 14–15, 1992**

Dr. James Allen, Genetic Toxicology Division, U.S. EPA, MD–68, Highway 54 & Alexander Drive, Research Triangle Park, NC 27711, 919/541–4778.

Dr. John Barnett, Dept. of Microbiology & Immunology, West Virginia University, 209 Health Sciences North, Morgantown, WV 26506, 304/293–2849.

Dr. Linda J. Birnbaum, Director, Environmental Toxicology Division, U.S. EPA, Highway 54 & Alexander Drive, MD–66, Research Triangle Park, NC 27711, 919/541–2555.

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Dr. Arnold L. Brown, University of Wisconsin Medical School, Room 1217, 1300 University Avenue, Madison, WI 53706, 608/265-2406.
Dr. Elaine Faustman, Department of Environmental Health, University of Washington, F561, 1705 N.E. Pacific, Seattle, WA 98105, 206/685-2289.
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Dr. Donald R. Mattison, Graduate School of Public Health, University of Pittsburgh, Room 111, Parran Hall, 130 DeSoto Street, Pittsburgh, PA 15261, 412/624-3000.
Dr. Joe Mauderly, Inhalation Toxicology Research Institute, Building 9200, Area Y, Kirtland AFB—East, Albuquerque, NM 87116, 505/845-1124.
Dr. Sally Perreault, U.S. EPA, MD-72, Highway 54 & Alexander Drive, Research Triangle Park, NC 27711, 919/541-3826.
Dr. Louise Ryan, Division of Biostatistics, Dana-Farber Cancer Institute, 44 Binnery Street, Boston, MA 02115, 617/732-3601.
Dr. James Swenberg, Dept. of Environmental Science & Engineering, University of North Carolina, Room 357 Rosenau Hall, South Columbia Street, Chapel Hill, NC 27599, 919/966-6139 or 6142.
Dr. Robert E. Taylor, Department of Pharmacology, Howard University College of Medicine, Room 3412, 520 W Street, N.W., Washington, DC 20059, 202/806-6311.
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Dr. Jerrold Ward, National Cancer Institute, Frederick Cancer Research, Development Center, Fort Detrick Post, Building 538, Frederick, MD, 21702-1201, 301/846-1239.
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[FR Doc. 92-16904 Filed 7-16-92; 8:45 am]
BILLING CODE 4145-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1971; FR-2934-N-57]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** July 17, 1992.

**ADDRESSES:** For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing-and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 10, 1992.

**Randall H. Erben,**

*Acting Assistant Secretary.*

[FR Doc. 92-16650 Filed 7-16-92; 8:45 am]
BILLING CODE 4210-29-M

### Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3448; FR-3283-N-02]

### NOFA for Lead-Based Paint (LBP) Risk Assessments; Correction

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Correction.

**SUMMARY:** In the notice of funding availability FR document 92-15046 beginning on page 28910 in the issue of Monday, June 29, 1992, make the following correction:

On page 28925, in the second column, footnote 1 below the table in paragraph A(3) of Section I, is corrected to read as follows:

"[1] Per 500 units, plus 1 for each additional increment of 50 units."

Dated: July 14, 1992.

**Grady J. Norris,**

*Assistant General Counsel for Regulations.*

[FR Doc. 92-16969 Filed 7-16-92; 8:45 am]
BILLING CODE 4210-33-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-050-4410-08]

### Draft Stateline Resource Management Plan and Environmental Impact Statement; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public hearing and extension of public comment period for the Draft Stateline Resource Management Plan (RMP) and Environmental Impact Statement (EIS).

**SUMMARY:** Due to requests by the public, a public hearing has been scheduled and the public comment period extended 15 days for the Draft Stateline RMP and EIS.

**DATES:** A public hearing will be held on Wednesday, August 5, 1992 from 7 to 10 p.m. at the Cashman Field Center in Las Vegas, Nevada. The public comment period has been extended from September 15, 1992 to September 30, 1992. All written comments for this Draft document must be postmarked no later than this extended date.

**ADDRESSES:** The public hearing will be held at the Cashman Field Center, 850 North Las Vegas Blvd., Las Vegas, Nevada. Written comments should be addressed to: Stateline Area Manager, Attn: RMP Team Leader, Bureau of Land Management, 4765 Las Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126.

**FOR FURTHER INFORMATION CONTACT:** Jerry Wickstrom, RMP Team Leader, at the above Bureau of Land Management (BLM) address or telephone (702) 647-5000.

**SUPPLEMENTARY INFORMATION:** As requested by members of the public at meetings held during early July 1992, the Las Vegas District of the BLM has scheduled a public hearing to receive comments concerning the Draft Stateline RMP and EIS. This meeting will be structured to allow members of the public to present oral comments during a three hour period. Depending on the number who may wish to present comments, a time limit may need to be imposed on each presentation. The public is encouraged to address their comments to only those items discussed in the Draft RMP.

Due to the scheduling of this public hearing, the comment period has been extended 15 days to allow the public additional time to submit their written comments for this Draft planning document.



Dated: July 13, 1992.

**Daniel C. B. Rathbun,**

*Acting State Director, Nevada.*

[FR Doc. 92-16866 Filed 7-16-92; 8:45 am]
BILLING CODE 4310-HC-M

[OR-943-4212-13; GP2-309; OR-39411]

### Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action informs the public of the conveyance of 198.76 acres of public land out of Federal ownership. This action will also open 201.24 acres of reconveyed lands to surface entry and 152.85 acres to mining and mineral leasing. The minerals in the 46.39-acre balance are not in Federal ownership.

**EFFECTIVE DATE:** August 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, 97208, 503-280-7171.

**SUPPLEMENTARY INFORMATION:**

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 198.76 acres in Lane County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

**Willamette Meridian**

T. 15 S., r. 6 W.,
Sec. 33, SW¼NW¼.
T. 16 S., R. 7 W.,
Sec. 20, beginning at a point on the north line of the SW¼SW¼ that is 430 feet east of the west line of said Sec. 20;
Thence south on a line parallel to and 430 feet distance from the west line of Sec. 20 a distance of 470 feet to the true point of beginning of the tract of land herein to be described;
Thence continue south on a line parallel to and 430 feet distance from the west line of Sec. 20 to a point of the south line of Sec. 20;
Thence west along the south line of Sec. 20 to the southwest corner thereof;
Thence north along the west line of Sec. 20 to a point that is westerly along a line parallel to and 470 feet south of the north line of the SW¼SW¼ of said Sec. 20 from the true point of beginning;
Thence easterly along a line parallel to and 470 feet south of the north line of the SW¼SW¼ of said Sec. 20 a distance of 430 feet to the true point of beginning;
Sec. 30, NE¼NE¼ and that portion of the NW¼NE¼ as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.
T. 16 S., R. 8 W.,
Sec. 28, S½SE¼.

The areas described aggregate 201.24 acres in Lane County.

3. The minerals in Sec. 33, T. 15 S., R. 6 W., and Sec. 20, T. 16 S., R. 7 W., are not in Federal ownership and will not be open to mining and mineral leasing.

4. At 8:30 a.m., on August 20, 1992, the lands described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on August 20, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

5. At 8:30 a.m., on August 20, 1992, the lands described in paragraph 2, except as provided in paragraph 3, will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 8:30 a.m., on August 20, 1992, the lands described in paragraph 2, except as provided in paragraph 3, will be opened to applications and offers under the mineral leasing laws.

Dated: July 6, 1992.

**Champ C. Vaughan,**

*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 92-16873 Filed 7-16-92; 8:45 am]
BILLING CODE 4310-33-M

[CA-060-43-7122 08 1016; CACA 28549]

### Realty Action, California Desert District, Exchange of Public and Private Lands in San Bernardino and Los Angeles Counties, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action CACA 28549, exchange of public and private lands, San Bernardino and Los Angeles Counties, California.

**SUMMARY:** BLM proposes to exchange public and private land in order to achieve more efficient management of the public land through consolidation of ownership. The following described public lands, located in San Bernardino and Los Angeles Counties, have been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, (43 U.S.C. 1716):

**San Bernardino Meridian, California**

T.9 N., R. 1 W.,
Sec. 10, SE¼SW¼;
Sec. 15, W½NE¼NW¼, W½NW½, SE¼NW¼, and N½N½SW¼;
T. 4 N., R. 8 W.,
Sec. 10, E½NE¼NW¼, E½W½N E¼NW¼, N½NE¼SW¼NW¼, and SE¼NW¼;
Comprising 295.00 acres, more or less.

In exchange for these lands the United States will acquire from New Owl Rock Products of Arcadia, California, the following offered private lands located within the Western Mojave Land Tenure Adjustment Consolidation Area:

**Mount Diablo Meridian, California**

T.32 S., R. 45 E.,
Sec. 9, All;
Sec. 15, All;
Sec. 17, All;

The offered non-Federal lands are comprised of 1,920.00 acres, more or less; and will be acquired by the United States in fee simple, surface and all minerals.

The purpose of this exchange is to acquire non-Federal lands within the Western Mojave Land Tenure Adjustment Project Area Consolidation Zone. Acquisition of the offered parcels is specified in an adopted plan for this area as prescribed in the California Desert Conservation Area Plan, as amended.

Disposal of the isolated and fragmented selected land parcels is consistent with the land tenure adjustment objectives of the Western Mojave Land Tenure Adjustment Project and the California Desert Conservation Area Plan, as amended. The exchange would benefit the general public and the private sector. The public interest would be well served by the completion of the proposed exchange.

The lands to be transferred from the United States will be subject to the following terms and conditions.

*A. Reservations to the United States*

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. A right-of-way for public highway purposes granted to the State of California, Division of Highways, by right-of-way Serial No. CARI–01241, pursuant to the Act of August 27, 1958 (23 U.S.C. 317), as to the N½SE¼, sec. 10 T. 9 N., R. 1 W., SBM.

3. A right-of-way for public highway purposes granted to the State of California Division of Highways, by right-of-way Serial No. CARI–01727, pursuant to the Act of November 9, 1921 (23 U.S.C. 18) as to the N½SE¼SW¼, sec. 10 T. 9 N., R. 1 W., SBM.

There will be no mineral reservation to the United States. The mineral estate to be conveyed has no known value with the exception of sand and gravel. Portions of the selected public lands have potential for sand and gravel, the value of which will be included in the appraised fair market value of the land. All minerals will be conveyed in the exchange patent.

*B. Third Party Rights*

The public lands would be patented subject to:

1. Those rights for the construction, operation and maintenance of an electrical transmission line granted to the Southern California Edison Company, its successors or assigns, by right-of-way Serial No. CARI–414, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961), as to the N½SE¼ of sec. 10. T. 9 N., R. 1 W., SBM.

2. Those rights for the construction, operation and maintenance of a buried natural gas pipeline granted to the Southern Gas Corporation, its successors or assigns, right-of-way Serial No. CALA–090439, pursuant to the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 185) as to the N½SE¼, sec. 10, T. 9 N., R. 1 W., SBM.

3. Those rights for the construction, operation and maintenance of a buried telephone line to Continental Telephone Company, its successors or assigns, by right-of-way Serial No. CARI–02816, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961) as to the N½NW¼, sec. 15, T. 9 N., R. 1 W., SBM.

4. Those rights for the construction, operation and maintenance of a buried telephone line to Continental Telephone Company, its successors or assigns, by right-of-way Serial No. CACA–21474, pursuant to the Act of October 21, 1976, as amended (43 U.S.C. 1761), as to the N½SE¼, sec. 10, T. 9 N., R. 1 W., SBM.

On June 6, 1991 all of the selected public land described above within section 10, T. 4 N., R. 8 W., SBM was segregated from appropriation under the public land laws and the mining laws, but not the mineral leasing laws, by publication of the exchange base segregation notice for the Western Mojave Land Tenure Adjustment Project (56 FR 109, pp. 26137–26139). The period of segregation is for a two year period ending June 5, 1993.

As provided in 43 CFR 2201.1(b), the publication of this notice in the **Federal Register** shall segregate, subject to existing valid rights, the selected public lands described above within section 10 and 15, T. 9 N., R. 1 W., SBM from all other forms of appropriation under the public land laws including the mining laws but not the mineral leasing laws. The segregative effect will terminate upon issuance of a conveyance document(s), upon publication in the **Federal Register** of a termination of the segregation, or two years from the date of this publication, whichever occurs first.

The exchange will be on an equal value basis. The exchange will be equalized by acreage adjustment, by cash payment from New Owl Rock Products in an amount not to exceed 25 percent of the fair market value of the selected public lands to be patented, or by waiver of excess value owed by the United States.

**SUPPLEMENTARY INFORMATION:** Additional information about this exchange is available at the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 (619) 256–3591 and the California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507–0714.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, California District, California Desert District, at the above address. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: June 30, 1992

**Richard E. Crowe,**

*Acting, District Manager.*

[FR Doc. 92–16874 Filed 7–16–92; 8:45 am]

BILLING CODE 4310–40–M

## Office of Environmental Affairs

**[CO–030–91–5101–09–YCKD; FES 92–14]**

## Availability of the Final Environmental Impact Statement for the TransColorado Gas Transmission Project

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** The Bureau of Land Management, Montrose District, has prepared the Final Environmental Impact Statement (FEIS) for the TransColorado Gas Transmission Project in accordance with the National Environmental Policy Act of 1969, and 40 CFR part 1500. This document is now available to the public.

**SUMMARY:** The proposed TransColorado Gas Transmission Project would involve the construction and operation of a new natural gas pipeline system in western Colorado and Northwestern New Mexico. At the Blanco gas treatment plant near Bloomfield, New Mexico gas would be commingled with that from other sources, and then distributed to Southern California and Midwest markets via existing interstate natural gas pipelines.

Major project actions and components consist of construction and operation of a 306-mile pipeline and appurtenant facilities. Approximately 264 miles of pipe would be 22-inch diameter, and approximately 42 miles would be 24-inch diameter. The project is designed to transport 300 million cubic feet of natural gas per day. Six new compressor stations, and expansion of one existing station would be required. The pipeline would be constructed within a 75-foot wide construction right-of-way (ROW). The permanent ROW would be 50 feet.

The applicants have applied to the U.S. Department of the Interior, Bureau of Land Management (BLM), for ROW grants and permits to cross federal land managed by the BLM and Forest Service. The BLM has been delegated the administrative lead for preparation of the FEIS. The Office of Environmental Affairs is responsible for filing the FEIS with the Environmental Protection Agency.

In addition to the Proposed Action, the Agency Preferred Alternative and the No Action Alternative have been evaluated. Pipeline route segment variations that may be substituted for portions of the Proposed Action were also analyzed.

**DATES:** There will be a 30-day waiting period as required by Council on Environmental Quality (40 CFR 1506.10) before a Record of Decision (ROD) can be issued by the Authorized Officer. The ROD will select one of the alternatives, or a combination thereof, that have been analyzed in the FEIS.

**FOR FURTHER INFORMATION CONTACT:** Interested parties may obtain a copy of the FEIS by writing to Chuck Finch, Project Manager, Bureau of Land Management, 2465 South Townsend

Avenue, Montrose, Colorado 81401, or by calling Mr. Finch at 303–249–7791.

Dated: June 19, 1992.

**Alan L. Kesterke,**

*District Manager.*

Approved:

**Willie R. Taylor,**

*Acting Director, Office of Environmental Affairs.*

[FR Doc. 92–16540 Filed 7–16–92; 8:45 am]

BILLING CODE 4310–JB–M

## Fish and Wildlife Service

### Availability of a Draft Recovery Plan for the Concho Water Snake for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Concho water snake (*Nerodia harteri paucimaculata*). This nonpoisonous snake was listed as threatened on September 3, 1986 (51 FR 31422). It is restricted to the Concho and Colorado Rivers and certain tributaries in central Texas. The Service solicits review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before August 31, 1992, to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, Ecological Services Field Office, 611 East 6th Street, room 407, Austin, Texas 78701, (512) 482–5436.

Written comments and materials regarding the plan should be addressed to the State Administrator at the above address. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Patrick Connor, Fish and Wildlife Biologist, telephone (512) 482–5436, (see address above).

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring endangered or threatened plants and animals to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take all comments into account in the course of implementing approved recovery plans.

The Concho water snake is currently listed as threatened. Presently, the Concho water snake occupies about 172 river-miles of the Concho and Colorado Rivers in central Texas. Additionally, it occurs in Elm and Bluff Creeks and Ballinger Municipal Lake in Runnels County, E.V. Spence Reservoir in Coke County, and O.H. Ivie Reservoir in Coleman and Concho Counties. The primary threat to the Concho water snake is loss of suitable habitat.

The objective of this recovery plan is to set forth actions that will provide for the long-term survival of the Concho water snake. Criteria are provided in the plan to delineate the standards by which progress to recovery will be judged. Actions outlined in the draft plan include habitat protection, monitoring, reintroduction, and study of existing populations and habitat throughout its range.

#### Public Comments Solicited

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 13, 1992.

**Joseph P. Mazzoni,**

*Acting Regional Director.*

[FR Doc. 92–16906 Filed 7–16–92; 8:45 am]

BILLING CODE 4310–55–M

### Availability of a Draft Recovery Plan for the Golden-Cheeked Warbler for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Golden-cheeked Warbler (*Dendroica chrysoparia*). The golden-cheeked warbler is a neotropical migratory bird. This endangered species' breeding range is restricted to parts of the Edwards Plateau, Lampasas Cut-Plain, and Llano Uplift regions in central Texas. Currently, it breeds in 31 counties. This species' winter range includes southern Mexico (Chiapas), Guatemala, Honduras, and Nicaragua. The Service solicits review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before August 3, 1992, to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, Ecological Services, Austin Field Office, 611 E. Sixth Street, room 407, Austin, Texas 78701; (512) 482–5436. Written comments and materials regarding the plan should be addressed to the State Administrator at the above address. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Carol Beardmore, Wildlife Biologist, telephone (512) 482–5436 (see **ADDRESSES** above).

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring endangered or threatened plants and animals to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is endeavoring to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting them.

and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires the public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The golden-cheeked warbler was listed as endangered on December 27, 1990 (55 FR 53153). This small, insectivorous bird nests exclusively in mixed oak-juniper woodlands or forests in central Texas. The golden-cheeked warbler is threatened by habitat loss and fragmentation, which result from urban encroachment, water development projects, and some agricultural practices. The results from two studies indicate a 35 percent loss of habitat since 1962. Nest parasitism by the brown-headed cowbird (*Molothrus ater*) is also a threat, which probably increases in magnitude as the habitat becomes more fragmented.

The objective of the Draft Golden-Cheeked Warbler Recovery Plan is delisting. Downlisting to threatened and delisting criteria are given in the plan. Recovery efforts outlined in the draft recovery plan focus on different means of habitat protection, habitat management, and public education and information. Other recovery efforts outlined include conducting research on the biological and ecological requirements of the species, creating a recovery team, and enforcing the provisions of the Endangered Species Act.

### Public Comments Solicited

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 13, 1992.

**Joseph P. Mazzoni,**

*Acting Regional Director.*

[FR Doc. 92-16907 Filed 7-16-92; 8:45 am]

BILLING CODE 4310-55-M

## Availability of the Draft Recovery Plans for the Large-Fruited Sand-Verbena and Hinckley's Oak for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service, (Service) announces the availability for public review of draft recovery plans for the large-fruited sand-verbena (*Abronia macrocarpa*) and Hinckley's oak (*Quercus hinckleyi*). The large-fruited sand-verbena occurs on deep sandy soils in Freestone, Leon, and Robertson Counties of eastern Texas. Hinckley's oak occurs on arid limestone slopes in Presidio County of western Texas. The Service solicits review and comment from the public on these draft plans.

**DATES:** Comments on the draft recovery plans must be received on or before August 31, 1992, to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plans may obtain copies by contacting the U.S. Fish and Wildlife Service, Ecological Services, Austin Field Office, 611 E. Sixth Street, room 407, Austin, Texas 78701; (512) 482-5436. Written comments and materials regarding the plans should be addressed to the State Administrator at the above address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Kennedy, Botanist; telephone (512) 482-5436 (see **ADDRESSES** above).

**SUPPLEMENTARY INFORMATION:**

### Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective measurable criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species.

Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The large-fruited sand-verbena was listed as endangered on September 28, 1988 (53 FR 37978). This herbaceous perennial plant occurs in unstable openings in the Post Oak Savannah on deep sandy soils in a relatively restricted area of eastern Texas. All known locations occur on private land. This species faces threats from residential development, recreation, removal for commercial use or sale, and modification of habitat through soil stabilization, and fire suppression.

Hinckley's oak was listed as threatened on August 26, 1988 (53 FR 32827). Currently only 10 populations are known, nine of these occur on Big Bend Ranch State Natural Area. This species is threatened by possible hybridization with other oaks, roadway construction and maintenance, taking by plant collectors, and wildlife and insect damage.

The objective of the draft recovery plans is to recover the species to the point where they can be delisted. Preliminary criteria for downlisting to threatened and delisting are given in the plans. Recovery efforts outlined in the draft plans focus on maintaining the current populations and their habitats, conducting inventories of suitable habitat for additional populations, studying life history and habitat requirements, and locating sites for potential introduction and establishment of new populations

### Public Comments Solicited

The Service solicits written comments on the draft recovery plans described. All comments received by the date specified above will be considered prior to approval of the plans.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 13, 1992.

Joseph P. Mazzoni,

*Acting Regional Director.*

[FR Doc. 92-16905 Filed 7-16-92; 8:45 am]

BILLING CODE 4310-55-M

## Availability of Draft Recovery Plan for Mount Graham Red Squirrel for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Mount Graham Red Squirrel (*Tamiasciurus hudsonicus grahamensis*). This squirrel, which the Service listed as an endangered species on June 3, 1987 (52 FR 20999), occurs in the Pinaleno Mountains of Graham County, Arizona. The Service solicits review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before September 15, 1992 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3616 W. Thomas Road, suite 6, Phoenix, Arizona 85019. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Lesley Fitzpatrick, Fish and Wildlife Service Biologist; Telephone (602) 379-4720 (See **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

### Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote conservation of a particular species. Section 4(f) of the Act, amended in 1988, requires that public notice and an opportunity of public review and comment be provided during the recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Mount Graham red squirrel is an endangered species with one existing population. This squirrel inhabits mixed conifer and spruce-fir forests in the Pinaleno Mountains of Graham County in southeastern Arizona. Major threats to the habitat include logging and opening of the forest for roads, recreation uses, and astrophysical facilities. Introduction of non-native squirrels has also affected the Mount Graham red squirrel.

Currently, the Mount Graham red squirrel population barely meets the viability level; the chances of long-term persistence of the species is classified as moderate to low.

The Mount Graham red squirrel recovery plan has been extensively reviewed. The plan will be issued as final following incorporation of comments and material received during this comment period.

### Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

**Authority:** The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 13, 1992.

Joseph P. Mazzoni,

*Acting Regional Director.*

[FR Doc. 92-16906 Filed 7-16-92; 8:45 am]

BILLING CODE 4310-55-M

## Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-709794

*Applicant:* National Zoological Park, Washington, DC.

The applicant requests a permit to import one captive-born male leopard cat (*Felis b. bengalensis*) from the Royal Melbourne Zoo, Victoria, Australia, for reproductive research and artificial breeding techniques.

PRT-709752

*Applicant:* New York Zoological Society, Bronx, New York.

The applicant requests a permit to import blood samples collected from 9 wild born Sumatran rhinoceros (*Dicerorhinus sumatrensis*) being held in captivity at the Melaka Zoo, Malaysia, for DNA studies.

PRT-709642

*Applicant:* Woodland Park Zoological Garden, Seattle, WA 98103.

The applicant requests a permit to import a pair of captive-hatched red-crowned cranes (*Grus japonensis*) from the Japan & Oji Zoo, Kobe, Japan for captive breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: July 10, 1992.

Susan Jacobsen,

*Acting Chief, Branch of Permits Office of Management Authority.*

[FR Doc. 92-16838 Filed 7-16-92; 8:45 am]

BILLING CODE 4310-55-M

## National Park Service

## Availability of Final Environmental Impact Statement, Roanoke River Parkway, Bedford, Franklin, and Roanoke Counties, Virginia

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability of Final Environmental Impact Statement.

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**SUMMARY:** Congress authorized funding for a 10-mile extension of the Blue Ridge Parkway as a demonstration project under the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17). The action was further defined in a memorandum of agreement among the National Park Service, the Federal Highway Administration and the Virginia Department of Transportation. In that memorandum, the extension was referred to as the Roanoke River Parkway, extending from the Roanoke/Vinton city limits near Tinker Creek to the Hardy Ford area of Bedford and Franklin Counties.

The Draft Environmental Impact Statement (DEIS) described the potential impacts of three alternatives for a Roanoke River Parkway. The park road was to be a limited-access road, with connections at the two termini, the Blue Ridge Parkway and the Explore Park (a 1,700-acre State project proposed to be developed east of the Blue Ridge Parkway). Three alternative alignment corridors were analyzed with alignment 2 as the proposed action. Five alternative sites were also analyzed for a visitor center to orient visitors on the Blue Ridge and Roanoke River Parkways to the Roanoke Valley. Site 3 was the proposed action.

In response to public comments, the range of alternatives was expanded in the FEIS to include a minimum action alternative to construct a 1.5-mile spur road from the Blue Ridge Parkway to the proposed Virginia's Explore Park. The minimum action alternative (alternative 4) is the preferred alternative. The proposed spur road alignment will cross an existing regional landfill but will not cross the Roanoke River. The visitor center will be on the north side of the Roanoke River as was proposed in the DEIS (Site 3), and access will be provided from the Blue Ridge Parkway; no connection between the visitor center and the spur road is proposed.

**DATES:** Due to the change in the proposed action from the Draft Environmental Impact Statement (EIS) to the Final EIS, the required 30-day no-action period that follows the Environmental Protection Agency's notice of availability of the Final EIS is being extended. The Record of Decision will be prepared on September 30.

**FOR FURTHER INFORMATION CONTACT:**

Superintendent, Blue Ridge Parkway, c/o Roanoke River Parkway Project Office, Post Office Box 949, Vinton, Virginia 24179, (703) 345–3959.

Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303, (404) 331–5835.

A limited number of individual copies of the Final EIS may be obtained from the Superintendent at the above address. Copies are available for inspection at local libraries in the Roanoke area and also at the above locations.

Dated: July 7, 1992.

**C.W. Ogle,**

*Acting Regional Director, Southeast Region.*

[FR Doc. 92–16707 Filed 7–16–92; 8:45 am]

BILLING CODE 4310–70–M

## Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PDT) on Thursday, July 30, 1992, at Building 201, Fort Mason, San Francisco, California. The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R.H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams
Mr. Mel Lane

The main agenda item at this public meeting will be a public hearing on the Sutro Comprehensive Design Plan and an accompanying Historic Landscape Evaluation and Environmental Assessment for the Cliff House, Sutro Baths, and Sutro Heights areas of the Golden Gate National Recreation Area.

This public meeting is opened to all environmental, neighborhood, and community groups and others interested in being involved in the planning process for these GGNRA areas.

On February 27, 1992, an initial public meeting was held to provide guidance to the GGNRA planning team and to the design firm of EDAW, Inc., consultants contracted by the National Park Service to prepare design plans for these areas of the park.

A second agenda item will be reports from the Marin Committee of the Advisory Commission on Phase II of the Bay Area Discovery Museum project at East Fort Baker and on a temporary structure to be erected for lifeguards and support staff at Stinson Beach.

A seven-point resolution approving the first phase of the Bay Area Discovery Museum project was passed on December 7, 1989 by the GGNRA Advisory Commission. The Advisory Commission requested that the Phase II plans be presented at a separate public meeting.

A new structure at Stinson Beach will be reviewed by the Commission. A new structure is needed in order to better manage this area and to better accommodate employees at Stinson Beach. It is proposed as a temporary structure and will be erected near the present ranger station. It will contain 1,500 square feet of space. An Environmental Assessment has been released to the public. Plans call for the structure to be installed in July or August 1992.

The meeting will also contain a Superintendent's Report.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after August 21, 1992. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: July 2, 1992.

**Lewis Albert,**

*Acting Regional Director, Western Region.*

[FR Doc. 92–16647 Filed 7–16–92; 8:45 am]

BILLING CODE 4310–70–M

## National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 4, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the

National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by August 3, 1992.

**Beth L. Savage,**

*Acting Chief of Registration, National Register.*

**ARKANSAS**

**Benton County**

*Bella Vista Water Tank (Benton County MRA),* Jct. of Suits Us Dr. and Pumpkin Hollow Rd., Bella Vista vicinity, 92000985
*Sunset Hotel (Benton County MRA),* W of US 71, Bella Vista, 92000986

**CALIFORNIA**

**Amador County**

*Chichizola Family Store Complex,* 1316-1330 Jackson Gate Rd., Jackson vicinity, 92000970

**San Benito County**

*Downtown Hollister Historic District,* Roughly bounded by Fourth, East, South and Monterey Sts., Hollister, 92000974

**NEW JERSEY**

**Burlington County**

*Bishop—Irick Farmstead,* 17 Pemberton Rd., Southampton Township, Vincentown vicinity, 92000975
*Cropwell Friends Meeting House (Evesham Township MPS),* 810 Cropwell Rd., Evesham Township, Cropwell, 92000976
*Evans, William and Susan, House (Evesham Township MPS),* 2 Bill's Ln., Evesham Township, Marlton vicinity, 92000978
*Hollinshead, Thomas, House (Evesham Township MPS),* 18 W. Stow Rd., Evesham Township, Marlton vicinity, 92000977

**TEXAS**

**De Witt County**

*Wofford—Finney House (Cuero MRA),* 202 E. Prairie St., Cuerro, 92000984

**Potter County**

*Curtis, Alice Ghormley, House,* 1626 S. Washington St., Amarillo, 92000980
Jons—Gilvin House, 1500 S. Buchanan St., Amarillo, 92000983
*Kouns—Jackson House,* 1118 S. Harrison St., Amarillo, 92000981
*Sanborn, Henry B. and Ellen M. House,* 1311 S. Madison St., Amarillo, 92000982

[FR Doc. 92-16774 Filed 7-16-92; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

### Intent to Engage in Compensated Intercorporate Hauling Operations; Notice

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: International Multifoods Corporation, 33 South Sixth Street, P.O. Box 2942, Minneapolis, MN 55402-0942.

2. Wholly owned subsidiaries which will participate in the operations, and States of incorporation:

i. Cream of the Valley, Inc., a California Corporation.
ii. Fantasia Confections, Inc., a California Corporation.
iii. International Multifoods Foodservice Corp., a Delaware Corporation.
iv. JAC Creative Foods, Inc., a California Corporation.
v. Multifoods Bakery Distributors, Inc., a Delaware Corporation.
vi. Multifoods Transportation, Inc., a Delaware Corporation.
vii. Prepared Foods, Inc., a Delaware Corporation.
viii. Prepared Foods, Inc., a Texas Corporation.
ix. VSA, Inc., a Colorado Corporation.
x. Vendors Supply of America Corporation, a Delaware Corporation.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92-16888 Filed 7-16-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 1100X)]

### Consolidated Rail Corporation—Abandonment Exemption—in Alliance, Ohio; Notice

Applicant has filed notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 1.28-mile of line of railroad, the Benton Industrial Track, between the bridge over the Mahoning River at milepost 24.18± and the termination point at milepost 22.90±, in Alliance, OH.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to the use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 17, 1992 (unless stayed). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 27, 1992.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 6, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Six Penn Center Plaza, room 1138, Philadelphia, PA 19103-2959.

If the notice of exemption contains false or misleading information, use of the exemption is void *ad initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by July 22, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927-6248. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raise by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act of the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Asist.,* 4 I.C.C. 2d 164 (1987)

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

imposed, where appropriated, in a subsequent decision.

Decided: July 13, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 92-16889 Filed 7-16-92; 8:45 am]

BILLING CODE 7035-01-M

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[Docket No. AB-167 (Sub-No. 1101X)]

**Consolidated Rail Corporation—Abandonment Exemption—Crawford Industrial Track in Orange County, NY; Notice**

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon approximately 2.9 miles of line in Orange County, NY. The segment to be abandoned, the Crawford Industrial Branch, extends from a point south of the undergrade bridge over Conrail's Southern Tier Line near Middletown (Washington Heights), NY, at approximately milepost 2.0, to the end of the branch at approximately milepost 4.9, in Fair Oaks, NY.

Conrail has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local government agency acting on behalf of such user) regarding cessation of service on the line either is pending with the Commission or any U.S.District Court or has been decided in favor of the complainant within the 2-year period. Conrail also has certified that it has complied with the notice requirements at 49 CFR 1105.12 and 49 CFR 11521.50(d)(1).

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective August 17, 1992, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 27, 1992.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 6, 1992 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to Conrail's representative: Robert S. Natalini, Consolidated Rail Corporation, room 1138, Six Penn Center Plaza, Philadelphia, PA 19103-2959.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by July 24, 1992. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, historic preservation, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

*Decided:* July 10, 1992.

By the Commission, Richard B. Felder, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 92-16890 Filed 7-16-92; 8:45 am]

BILLING CODE 7035-01-M

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 91-35]

**John S. Major, D.M.D.; Suspension of Registration**

On July 31, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John S. Major, D.M.D. (Respondent) of 1344 S. Chambers Road, Aurora, Colorado 80017, proposing to revoke his DEA Certificate of Registration, BM1293682, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4). The Order to Show Cause also alleged that Respondent had been convicted of a felony relating to controlled substances, as that term is used in 21 U.S.C. 824(a)(2), in Arapahoe County District Court, State of Colorado, on November 17, 1989.

Respondent, through counsel, timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held on January 8 and 9, 1992, in Denver, Colorado.

On April 10, 1992, Judge Tenney issued his opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that Respondent's DEA Certificate of Registration be suspended for Schedule II controlled substances only, except in the case of a valid medical emergency and that such suspension should terminate upon the Respondent's successful completion of his probation term pursuant to his criminal conviction in the State of Colorado. Subsequently, pursuant to 21 CFR 1316.66, Government counsel filed exceptions to the administrative law judge's opinion and recommended ruling, findings of fact, conclusions of law and decision. Respondent's counsel did not file any response to the Government's exceptions.

On May 15, 1992, Judge Tenney transmitted the record of the proceedings, including the Government's exceptions, to the Administrator. The Administrator has considered the record in its entirety and adopts, in part, the findings of fact and conclusions of law recommended by the administrative law judge, and makes independent findings and conclusions of his own. The Administrator also rejects the recommended ruling of the administrative law judge. Pursuant to 21 CFR 1316.67, the Administrator issues his final order in the matter based upon findings of fact and conclusions of law as set forth below.

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[1] A stay will be routinely issued by the Commission in those instances where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made prior to the effective date of the notice of the exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay based on environmental concerns is encouraged to file promptly so that the Commission may act on its request before the effective date.

[2] See *Exempt of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests as long as it retains jurisdiction to do so.

The Administrator finds that Respondent became a close friend of Gary Ungerman in or about 1979 while the two were enrolled at pharmacy school at the University of Colorado in Boulder, Colorado. The friendship continued when the two returned to Denver, Colorado. On December 11, 1988, Mr. Ungerman was arrested on a charge of driving under the influence of alcohol. Respondent was a passenger in the car at the time of Mr. Ungerman's arrest and Respondent was questioned by the police concerning 117 various controlled substances found in Mr. Ungerman's possession at the time of his arrest.

On March 7, 1989, Respondent was arrested after he presented a forged prescription to a pharmacy. At that point he was charged with unlawful possession of and conspiracy to unlawfully possess Percocet, a Schedule II controlled substance.

On January 23, 1990, Respondent pled guilty to one felony count of conspiracy to possess a Schedule II controlled substance in the State of Colorado based upon his arrest and the ensuring charges. He was sentenced to four years probation with conditions including therapy for drug counseling. Based upon this conviction, the Colorado Dental Board and the Colorado Pharmacy Board ordered that Respondent's license to practice dentistry and license to practice pharmacy be suspended for a period of 30 days and each Board imposed probation terms that were simultaneous to the probation terms of the State criminal conviction probation.

In addition to the forgery which led to the criminal conviction, there were approximately 43 other instances where Respondent either forged prescriptions to obtain controlled substances for his own addiction or provided Gary Ungerman with blank prescription pads. Mr. Ungerman then forged prescriptions to obtain controlled substances for himself and his friends, some of whom used the controlled substances to "come down" from a cocaine "high". This scheme continued from 1984 until Respondent's arrest on March 7, 1989. During this period, Respondent experimented with controlled substances such as cocaine and Dexedrine and was addicted to Percocet. During this time, Respondent was a licensed pharmacist and a licensed dentist in the State of Colorado.

In evaluating whether Respondent's continued registration by the Drug Enforcement Administration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 824(a)(4), the Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(a) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See *David E. Trawick, D.D.S.*, Docket No. 88-69, 53 FR 5326 (1988).

The administrative law judge found there could be a basis for revocation of Respondent's DEA Certificate of Registration under 21 U.S.C. 824(a)(4) based upon the recommendation of the Colorado Dental and Pharmacy Boards, his controlled substance prescribing practices which had been poor and his controlled substance felony conviction in the State of Colorado. But, the administrative law judge found that Respondent was presently in full compliance with respect to prescribing controlled substances and had made a genuine and substantial effort towards rehabilitation. Moreover, the administrative law judge found Repondent's past conduct to be the result of youthful indiscretion. The administrative law judge therefore found that Respondent's continued registration would not be inconsistent with the public interest. In view of Respondent's serious violations, however, the administrative law judge recommended that Respondent's Certificate of Registration be suspended for Schedule II controlled substances only, except in the case of a valid medical emergency, while Respondent remained on probation for the criminal conviction in the State of Colorado.

The Administrator has carefully reviewed the entire record and finds that all five public interest factors apply. Respondent's experience in dispensing controlled substances is egregious based upon his history of forging prescriptions and diverting controlled substances not only to support his own addiction and experimental use, but to supply other drug abusers as well. This conduct was anything but an isolated event, inasmuch as it occurred over a five year period. The Administrator also finds that Respondent was convicted in the State of Colorado for the offense of conspiring to obtain a Schedule II controlled substance and that the State Boards suspended Respondent's professional licenses for thirty (30) days. The Administrator gives limited weight to the Boards' orders, however, since they were based solely on Respondent's sole criminal conviction and not on the ongoing scheme to fraudulently obtain controlled substances for himself and others.

The Administrator disagrees that Respondents has made genuine and substantial efforts towards rehabilitation. Initially, Respondent was compelled to enter a plea to the state felony charge and comply with court-ordered drug therapy as part of the probation sentence or else face trial on numerous charges and potential incarceration. Moreover, during the probation term, Respondent missed appointments with his probation officer and his therapist. Also of significance is the fact that the probation officer testified that she would not recommend Respondent for early release from probation even though he was eligible and that his therapist believed, at the time of the hearing, that therapy needed to continue for another three months.

The Administrator also disagrees with the Administrative law judge's characterization of Respondent's behavior as youthful indiscretion. Not only did Respondent possess two professional state licenses during the five year period when he was engaged in the forged prescription scheme, he also held a DEA Certificate of Registration. The fact that Respondent was in his late twenties at the time of these events is hardly a mitigating circumstance in light of the fact that he sought and had been entrusted with the grave responsibility of handling controlled substances by Federal and State authorities. Nor was this forged prescription scheme an isolated event; as noted previously the conspiracy continued for above five years.

Based upon these circumstances the Administrator cannot agree with the administrative law judge's recommendation entirely. Respondent's past negative experience with controlled substances, along with his problems with rehabilitation, leads to the conclusion that Respondent cannot be entrusted with the responsibilities of a

DEA registration and that his continued possession of a registration would be contrary to the public interest. Therefore, the Administrator concludes that the Respondent's registration must be suspended for the duration of his original probation term as ordered by the District Court, Arapahoe County, State of Colorado, on January 23, 1990. The suspension will remain in effect until January 22, 1994, unless Respondent's probation is extended, in which case the suspension will terminate when Respondent has successfully completed the extended probation term. Respondent also must notify the DEA of successful completion of probation before the suspension is terminated.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BM 1293682, previously issued to John S. Major, D.M.D., be, and it hereby is, suspended until January 22, 1994, or until John S. Major, D.M.D., has successfully completed probation under the probation order of the District Court, Arapahoe County, State of Colorado, Case number 89 CR1244, Division 6, whichever is later. The Administrator also orders that John S. Major, D.M.D., must notify the Drug Enforcement Administration of successful completion of probation before such suspension is terminated. The Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective July 17, 1992.

Dated: July 9, 1992.

**Robert C. Bonner,**

*Administrator of Drug Enforcement.*

[FR Doc. 92-16845 Filed 7-16-92; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment Standards Administration/Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Alabama:
- AL91-32 (Feb. 22, 1991)..... p. 61.

Connecticut:
- CT91-1 (Feb. 22, 1991)..... p. 63, p. 65.
- CT91-3 (Feb. 22, 1991)..... p. 78a, p. 78b.
- CT91-4 (Feb. 22, 1991)..... p. 78g, p. 78h.

Florida:
- FL91-15 (Feb. 22, 1991)..... p. 135, p. 136.

Massachusetts:
- MA91-1 (Feb. 22, 1991)..... p. 421, pp. 422, 426-427.

New Jersey:
- NJ91-2 (Feb. 22, 1991)..... p. 701, p. 707.
- NJ91-3 (Feb. 22, 1991)..... p. 721, pp. 726-727.

New York:
- NY91-2 (Feb. 22, 1991)..... p. 777, p. 783.
- NY91-5 (Feb. 22, 1991)..... p. 817, p. 821.
- NY91-8 (Feb. 22, 1991)..... p. 857, p. 863.
- NY91-12 (Feb. 22, 1991)..... p. 893, pp. 894-897.
- NY91-16 (Feb. 22, 1991)..... p. 931, pp. 932-942.
- NY91-19 (Feb. 22, 1991)..... p. 943, pp. 945, 948.
- NY91-20 (Feb. 22, 1991)..... p. 949, pp. 950-953.

Virginia:
- VA91-20 (Feb. 22, 1991)..... p. All.
- VA91-65 (Feb. 22, 1991)..... p. All.

West Virginia:
- WV91-2 (Feb. 22, 1991)..... p. 1421, pp. 1423, 1442, 1426.

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Alaska:
AK91-1 (Feb. 22, 1991)..... p. All.
Arkansas:
AR91-8 (Feb. 22, 1991)..... p. All.
AR91-8 (Feb. 22, 1991)..... p. All.

Illinois:
IL91-8 (Feb. 22, 1991)..... p. 145, pp. 147, 149.
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IL91-11 (Feb. 22, 1991)..... p. 163 pp. 164, 170.
IL91-12 (Feb. 22, 1991)..... p. 171, p. 173.
IL91-13 (Feb. 22, 1991)..... p. 183, pp. 184, 190.

Kansas:
KS91-9 (Feb. 22, 1991)..... p. All.
KS91-10 (Feb. 22, 1991)..... p. All.
KS91-11 (Feb. 22, 1991)..... p. All.
KS91-12 (Feb. 22, 1991)..... p. All.

Ohio:
OH91-2 (Feb. 22, 1991)..... p. 821, pp. 822, 828, 835-836.

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None.

## General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of July 1992.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 92-16649 Filed 7-16-92; 8:45 am]

BILLING CODE 4510-27-M

## Employment and Training Administration

[TA-W-27,257]

## Fair Shake Co., Inc., Forks, Washington; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 18, 1992, in response to a worker petition which was filed on May 18, 1992, on behalf of workers at Fair Shake Co., Inc., Forks, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 9th day of July, 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-16661 Filed 7-16-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,999]

## Upjohn Company, North Haven, CT; Negative Determination Regarding Application for Reconsideration

By applications dated June 26, 1992, the company and the Communications Workers Union (CWU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 15, 1992 and was published in the **Federal Register** on May 28, 1992 (57 FR 22492).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company states that the workers should be re-certified because the conditions are the same as those which justified the earlier certification, TA-W-24,041 and there is not sufficient work remaining to sustain the facility.

Investigation findings show that the workers were certified on April 11, 1990 under petition TA-W-24,041. That certification was based on the fact that Upjohn's major customers were increasing their import purchases of industrial chemicals while decreasing their purchases from Upjohn. Upjohn ceased production of industrial chemicals in 1990 when the Fine Chemical Division ceased to exist at North Haven. Worker separations resulting from this cessation of production were covered under certification TA-W-24,041.

The subject petition was filed on behalf of workers producing intermediate pharmaceuticals at North Haven. These products are integrated into the production at other domestic facilities of the Upjohn Company. Consequently, workers at North Haven may be certified for TAA only if their separations were caused importantly by a reduced demand for their production from a corporately-affiliated manufacturing facility whose workers independently meet the statutory criteria for certification. These conditions have not been met for workers producing intermediate pharmaceutical products at North Haven.

The only other activity at North Haven is the decommissioning of the facility. This activity would not form a basis for a worker group certification. Also, the fact that there is not sufficient work remaining at the facility to warrant its remaining in operation would not form a basis for a certification.

### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of July 1992.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.*

[FR Doc. 92-16892 Filed 7-16-92; 8:45 am]

BILLING CODE 4510-30-M

## LIBRARY OF CONGRESS

## National Film Preservation Board; Nominations for At-Large Members to the National Film Preservation Board and Film Selections for 1992

**AGENCY:** Library of Congress, National Film Preservation Board.

**ACTION:** Notice of inquiry.

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**SUMMARY:** This notice of inquiry is issued to inform the public that the Librarian of Congress pursuant to Public Law 102–307, The National Film Preservation Act of 1992, 106 Stat. 264, is soliciting public nominations for:

(A) Up to two at-large members for the newly created National Film Preservation Board; and

(B) Films eligible for inclusion in the National Film Registry for 1992.

**DATES:** Comments should be received on or before August 14, 1992.

**ADDRESSES:** Copies of written comments with regard to this notice of inquiry should be addressed to: Dr. James H. Billington, The National Film Registry, The Library of Congress, Washington, DC 20540.

**FOR FURTHER INFORMATION CONTACT:** Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone: (202) 707–8350.

**SUPPLEMENTARY INFORMATION:** On June 26, 1992, President Bush signed into law Public Law 102–307, The National Film Preservation Act of 1992. This Act reauthorizes The National Film Preservation Act of 1988 (Public Law 100–446) which expired on September 27, 1991. The 1992 reauthorization will continue the activities of a newly created Board for four years from the date of enactment. The main focus of the new National Film Preservation Act will shift to the development of a comprehensive national film preservation program.

The Librarian, after consultation with the Board, must complete a major study for Congress on the current state of film preservation activities nationwide, in conjunction with the nation's other film archives. The Librarian, in consultation with the new Board, will then assist in the coordination of national film preservation efforts—assuring that public and private sector activities are complementary and generating public awareness of and support for these activities. The Act establishes a new Board consisting of the organizations represented on the original thirteen member Board with new additions: a cinematographer, a representative of the theater owners, a film archivist, and up to two at-large members—bringing the total Board to eighteen members.

The Board will continue to select up to twenty-five films a year (for four more years—a total of 100, plus the 75 selected in the first three years under the 1988 Act). One copy of each film selected will be collected "in archival quality" by the Library of Congress for the National Film Registry Collection.

**1. Nominations for At-Large Members to the Board**

The 1992 reauthorization requires the Librarian to reconstitute a new National Film Preservation Board consisting of 18 members—sixteen from designated organizations and up to two at-large members. In accordance with section 204 of the Act, The Librarian of Congress, Dr. James H. Billington, is directed to appoint up to 2 members at large. The Librarian shall select the at-large members from names submitted by organizations in the film industry, creative artists, producers, film critics, film preservation organizations, academic institutions with film study programs, and others with knowledge of copyright law and of the importance, use, and dissemination of films. The Librarian shall, in selecting 1 such member-at-large, give preference to individuals who are responsible for commercial film libraries. The Librarian shall also select from the names submitted under this paragraph an alternate for each member at-large, who may attend those meetings to which the member at-large cannot attend.

The public is encouraged to submit the names of individuals or organizations meeting these criteria to facilitate the selection by the Librarian of the two at-large members. All nominations should be submitted in writing, by mail, to the Librarian of Congress no later than August 14, 1992. All nominations should be mailed to: Dr. James H. Billington, The National Film Registry, The Library of Congress, Washington, DC 20540.

**2. Nominations for Films for 1992**

The 1988 Act resulted in the selection of seventy-five films into the National Film Registry in the Library of Congress. Archival copies of each of the films have been or are being collected by the Library for this special collection in the Library of Congress. The 1992 Act continues the selection process of up to twenty-five films a year.

The Librarian is soliciting public nominations of films so that after consultation with the Board, he can select twenty-five films for inclusion in the Registry in 1992. All public nominations received after August 14, 1992 will be considered during the selection process in 1993.

There are changes from the 1988 selection process. The 1992 Act kept the requirement that the film be at least 10 years old (from its first publication), but dropped the requirement that the film be feature-length and that it have had a theatrical release in order to be included. This will allow for a broader selection of films beginning in 1992.

All films nominated must reflect the congressional mandate for the selection process, which reads in relevant part in section 202 of the Act, that the National Film Registry maintain and preserve films that are "culturally, historically, or aesthetically significant." These criteria are intended to be read broadly so that as many films are possible will be eligible for inclusion in the Registry.

All nominations for inclusion of films into the National Film Registry for 1992 must be submitted in writing, by mail, to the Librarian of Congress no later than August 14, 1992. All nominations should be mailed to: Dr. James H. Billington, The National Film Registry, The Library of Congress, Washington, DC 20540.

Dated: July 10, 1992.

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 92–16862 Filed 7–16–92; 8:45 am]

BILLING CODE 1410–16–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### Cooperative Agreement for the Administration of Site Visits

**AGENCY:** National Endowment for the Arts, NFAH.

**ACTION:** Notification of availability.

**SUMMARY:** The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement with a qualified organization or individual to assist the Endowment's Locals Program in the administration of on-site evaluations of local arts agencies applying for funding under the Locals Program, Local Government Incentive Category of support. Duties include: Advising Evaluators on the payment reimbursement process and restrictions on travel and expenses; receive and review Travel Expenditure reports; disbursement of funds; maintaining records; and submitting reports. Those interested in receiving the Solicitation package should reference the Program Solicitation PS 92–09 in their written request and include two (2) self-addressed mailing labels. Verbal requests for the Solicitation will not be honored.

**DATES:** Program Solicitation PS 92–09 is scheduled for release approximately August 3, 1992 with proposals due on September 3, 1992.

**ADDRESSES:** Requests for the Solicitation should be addressed to

National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Anna Mott or William T. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202 682–5482).

**Anna L. Mott,**
*Contract Specialist.*

[FR Doc. 92–16741 Filed 7–16–92; 8:45 am]
BILLING CODE 7537–01–M

## National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on July 31, 1992 from 8:30 a.m.–5:15 p.m. and on August 1 from 9 a.m.–4:30 p.m. in room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include opening remarks, Legislative update, FY 94 Budget, Reauthorization, cultural diversity, and Program Review and/or Guidelines and/or Application Review for the Arts in Education, Challenge/Advancement, Dance, Design Arts, Expansion Arts, Folk Arts, International, Literature, Locals, Media Arts, Museum, Music, Policy, Planning and Research, Presenting & Commissioning, State & Regional, Theater, and Visual Arts Programs.

If in the course of application review it becomes necessary for the Council to discuss non-public financial information about individuals, such as salary information, submitted with grant applications, the Council will go into closed session for that limited purpose only pursuant to subsection (c)(4 of section 552b of title 5, United States Code. Such closure would be in accordance with the determination of the Chairman of March 6, 1991.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: July 13, 1992.

**Yvonne M. Sabine,**
*Director, Panel Operations, National Endowment for the Arts.*

[FR Doc. 92–16846 Filed 7–16–92; 8:45 am]
BILLING CODE 7537–01–M

## NATIONAL SPACE COUNCIL

## Meeting of the Industrial Base Review Task Group

**AGENCY:** National Space Council.

**ACTION:** Notice of meeting.

**SUMMARY:** The Industrial Base Review Task Group of the Vice President's Space Policy Advisory Board will meet August 6 and 7, 1992.

**DATES:** August 6 and 7, 1992.

**ADDRESSES:** 1215 Jefferson Davis Highway, suite 800, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Eva Czajkowski, (703) 685–3568, or Courtney Stadd, National Space Council, Executive Office of the President, Washington, DC, (202) 395–6175.

**SUPPLEMENTARY INFORMATION:** The Industrial Base Review Task Group of the Vice President's Space Policy Advisory Board will meet between 8:30 a.m. and 5 p.m. on August 6 and 7, 1992, at the ANSER Corporation, suite 800, 1215 Jefferson Davis Highway, Arlington, Virginia. Persons interested in attending should contact Eva Czajkowski, ANSER, (703) 685–3568.

**Courtney Stadd,**
*Committee Action Officer.*

[FR Doc. 92–16884 Filed 7–16–92; 8:45 am]
BILLING CODE 3125–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–255]**

## Consumers Power Company; Palisades Plant; Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Consumers Power Company (the licensee), to withdraw its November 13, 1989, application for an amendment to Facility Operating License No. DPR–20, issued to the licensee for operation of the Palisades Nuclear Plant, located in Van Buren County, Michigan. Notice of Consideration of Issuance of this amendment was published in the Federal Register on March 21, 1990 (55 FR 10531).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to incorporate new requirements into section 3.7, Electrical Systems.

Subsequently, the licensee informed the staff that the amendment is no longer requested. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 13, 1989, and additional information provided in a letter dated April 27, 1989, and (2) the staff's letters dated June 26, 1992 and July 10, 1992.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Van Wylen Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, 10th day of July 1992.

For the Nuclear Regulatory Commission.

**Armando Masciantonio,**
*Project Manager, Project Directorate III–1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–16884 Filed 7–16–92; 8:45 am]
BILLING CODE 7590–01–M

**[Docket No. 50–309]**

## Maine Yankee Atomic Power Company; Maine Yankee Atomic Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–36 issued to Maine Yankee Atomic Power Company (the licensee) for operation of the Maine Yankee Atomic Power Station, located in Lincoln County, Maine.

### Environmental Assessment

*Identification of Proposed Action*

The proposed amendment would delete Facility Operating License Condition 2.B.7(a), which has been satisfied. This amendment would also

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revise License Section 2.A by deleting the words "740-acre" from the general site description.

The proposed action is in accordance with the licensee's application for amendment dated April 3, 1992, as supplemented on May 18, 1992.

*The Need for the Proposed Action*

1. License Condition 2.B.7(a)

License Condition 2.B.7(a) was placed on Maine Yankee's full power operating license "* * * for the protection of the environment: * * *" at its issuance on June 29, 1973. License Condition 2.B.7(a) states, "The licensee will develop and implement as soon as practicable a plan of action for removal of Cowseagan Causeway and replacement with an appropriate bridge."

The Cowseagan Causeway was removed in 1974, and was replaced by the present overwater bridge to Westport Island.

2. License Section 2.A

Section 2.A of the Facility Operating License states, "This amended license applies to the Maine Yankee Atomic Power Station, a pressurized, light water moderated and cooled reactor, and associated electric generating equipment (the facility), owned by the Maine Yankee Atomic Power Company. The facility is located on the licensee's 740-acre site on the west shore of the Back River, in Lincoln County, Maine, approximately 3.9 miles south of Wiscasset, Maine, and is described in the Final Safety Analysis Report as supplemented and amended (Amendments 14 through 36) and the Environemantal Report as supplemented and amended (supplements 1 through 3)."

The "740-acre" specific site descriptor is removed from License Section 2.A, because this site detail is not part of the Technical Specifications and is beyond the requirements of 10 CFR part 100.

Technical Specification 1.2 describes the site, in terms of the significant aspects that cannot be altered without prior (Nuclear Regulatory Commission) approval, as follows:

"The station shall be located on property owned by Maine Yankee Atomic Power Company on and surrounding Bailey Point in the Town of Wiscasset, Lincoln County, Maine. The minimum distance to the boundary of the exclusion area, as defined in 10 CFR 100.3, shall be 2000 feet."

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed changes to the Facility Operating License. The proposed revisions do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the Technical Specifications involves systems located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 13, 1992 (57 FR 20513). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or grater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in not meeting NRC requirements.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Maine Yankee Atomic Power Station, dated July 1972.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment, dated April 3, 1992, as supplemented on May 18, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 10th day of July 1992.

For the Nuclear Regulatory Commission.

**Victor Nerses,**

*Acting Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–16892 Filed 7–16–92; 8:45 am]

BILLING CODE 7590–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Manchester Airport, Manchester, NH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before August 17, 1992.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Alfred Testa, Jr., Airport Director of the Manchester Airport at the following address: Manchester Airport, Ammon Terminal, Manchester, New Hampshire 03103.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Manchester Airport Authority under § 158.23 of part 158.



**FOR FURTHER INFORMATION CONTACT:** Priscilla A. Soldan, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 273–7054. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 7, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by Manchester Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The Faa will approve or disapprove the application, in whole or in part, no later than October 9, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date:
November 1, 1992.
Proposed charge expiration date:
December 31, 1996.
Total estimated PFC revenue: $5,587,000.
Brief description of proposed projects:

**Impose and Use Projects**

Construct Apron, Taxiway G and Connectors (Terminal Area)
Runway 6–24 Grooving
Purchase Snow Removal Equipment (2)
Purchase Aircraft Rescue and Fire Fighting Vehicle

**Impose Only Projects**

Runway 6–24 Upgrades
Reconstruct Taxiways A, B, C and F
Extend Taxiway D
Aviation Easements for Runway 17 Instrument Landing System
Noise Mitigation Program (Soundproofing/Acquisition)
Drainage Replacement
Construct Aircraft Rescue and Fire Fighting Station

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA regional Airports office located at: 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Manchester Airport.

Issued in Burlington, Massachusetts on July 7, 1992.

**Vincent A. Scarano,**

*Manager, Airports Division, New England Region.*

[FR Doc. 92–16841 Filed 7–16–92; 8:45 am]

BILLING CODE 4910–13–M

### RTCA, Inc.; Special Committee 147; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the fortieth meeting of Special Committee 147 to be held August 10–12, 1992, in the RTCA conference room; 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of minutes of the thirty-ninth meeting held on April 1 and 2, 1992, RTCA paper No. 403–92/SC147–514; (4) Reports of working group activities; (a) Pilot Working Group; (b) Separation Assurance Task Force; (c) Requirements Working Group; (d) TCAS I Working Group; (5) Report on FAA TCAS program activities; (a) TCAS I; (b) TCAS II; (c) TCAS III; (6) Discussion and review of change 6.04; (7) Review and update of verification and validation process; (8) Discussion of TCAS I MOPS; (9) Review of action items from last meeting; (10) Other business; (11) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 9, 1992.

**Joyce J. Gillen,**

*Designated Officer.*

[FR Doc. 92–16840 Filed 7–16–92; 8:45 am]

BILLING CODE 4910–13–M

## National Highway Traffic Safety Administration

### Discretionary Cooperative Agreements To Support Vehicle Occupant Protection Systems Research

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Announcement of Discretionary Cooperative Agreement to Support Vehicle Occupant Protection Systems Research.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to support research studies to evaluate potential improvements in occupant protection during motor vehicle crashes and solicits applications for projects under this program.

**DATES:** Applications must be received no later than August 31, 1992.

**ADDRESSES:** Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), Attn: S. Peter Shultz, 400 Seventh Street, SW., room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–92–Y–07336, and identify the program area for which the application is submitted. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

**FOR FURTHER INFORMATION CONTACT:** General administrative questions may be directed to S. Peter Shultz, Office of Contracts and Procurement, at (202) 366–9561. Programmatic questions relating to this cooperative agreement program should be directed to Jerome M. Kossar, Safety Systems Engineering & Analysis Division (NRD–11), 400 Seventh Street, SW., room 6226, Washington, DC 20590 (202/366–4722).

**SUPPLEMENTARY INFORMATION:**

**Background and Objectives**

The National Highway Traffic Safety Administration is mandated with the responsibility for devising strategies to save lives and reduce injuries from motor vehicle crashes. The purpose of this cooperative agreement program is to promote the improvement of traffic safety for the public through research studies designed to evaluate potential improvements in occupant protection during vehicle crashes as a means of expanding the base of scientific knowledge in this field and to provide

for the coordinated exchange of scientific information collected as a result of the studies conducted.

Occupant protection research employs the principles of mechanics to discover the means of reducing impact severity to the human body during various vehicle crash scenarios. Generally, the teams doing the research are comprised of individuals from different disciplines: engineering, physiology, restraints design, electronics, materials development, pyrotechnics and others. The team studies existing state-of-the-art occupant protection systems, primarily inflatable occupant restraints, seats and/or occupant compartment interior surface padding systems, focusing on one or more. Applications of occupant protection technologies to reduce struck pedestrian injuries may also be considered. Team size and range of disciplines available within the team should be established based on the requirements of the proposed efforts. The studies shall encompass either or both the evaluation of available crash and injury statistics and mathematical modelling of the crash victim. The studies must lead to identification of circumstances which result in opportunities for improved protection for the occupant or pedestrian and guidance as to potential improvement methods. Prototype development and testing of improved occupant or pedestrian protection systems along with incremental cost estimates in projected production quantities would be then accomplished by the team.

The focus of this cooperative research effort is the study of current occupant protection systems employed in vehicles, identification of areas which are amenable to improvement and the conception/development of prototype systems demonstrating the occupant or struck pedestrian protection improvements achieved and providing reliable basis for production cost to achieve the improvements.

Proposers should identify the program area(s) which the proposed cooperative agreement would address. Program areas of current interest include but are not limited to the following:

(a) Techniques to improve accommodation of various size and age occupants in contact with or close to deploying air bags.

(b) Techniques to improve gases and/or respirable particulate discharge from air bags.

(c) Techniques to automatically modify or control air bag deployment based on feed back and information of occupant size and/or occupant precrash position relative to the air bag.

(d) Techniques to advantageously alter deployment path or bag array during air bag unfurling during early phases of deployment.

(e) Techniques to enhance occupant protection with air bags/inflatables at higher crash speeds.

(f) Techniques to couple inflatables and energy management foams, stationary or pre-crash deployable structures, re-inflatables, etc., to attain improved protection for the occupant from impact on hard or intruding surfaces within the passenger compartment during car crash.

(g) Techniques to sense and delineate crash intensity/threat to occupant to allow timely adjustment to air bag deployment initiation timing and/or air bag fill rates to achieve minimum bag deployment aggressiveness consistent with the required occupant crash protection.

(h) Techniques to achieve precrash anticipatory crash sensing and methods of implementing such achievement to provide improved occupant protection in frontal, side impact occupant, and rollover protection.

(i) Techniques to design improved seating and/or vehicle control concepts to provide more efficient occupant restraints (inflatables and/or belts) which provide more accommodation of full range of occupant sizes and provide more riding comfort for the belted occupant.

(j) Inflatable manual or automatic belt systems.

(k) Application of air bags to other than frontal crashes.

(l) Application of air bags for rear seat occupants.

(m) Application of air bags in motorcycles, heavy duty, and other motor vehicles.

(n) Application of exterior air bags or movable structures for pedestrian protection, intrusion protection, crash sensors, etc.

The above list of potential program areas constitutes only a sampling and applicants are encouraged to suggest from these and others those which are believed by the applicant to provide the potential for practical improvement of current occupant crash protection and are most amenable to the special skills and experience of the applicant.

It is envisioned that three broad phases may be applicable to these programs: (1) Preliminary studies identifying the system performance improvement desired, an estimate of additional production costs related to the improvement, the benefits to be appreciated from such improvement, and the approximate magnitude of national injuries and fatalities now occurring due to the absence of the improvement. (2) Prototype development and establishment of reliable production costs. (3) Prototype demonstration. The duration of each phase will vary according to current state-of-the-art and in some instances may be overlapped.

**NHTSA Involvement**

The NHTSA, Safety Systems & Analysis Division, will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide one professional staff person, to be designated as the Contracting Officer's Technical Representative (COTR), to participate in the planning and management of the cooperative agreement and coordinate activities between the cooperative agreement participant organization and the NHTSA.

2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR.

3. Provide liaison with other government agencies and organizations as appropriate.

4. Stimulate the exchange of ideas, problems, and solutions among cooperative agreement recipients who agree to such sharing, and, if appropriate, NHTSA contractors and other interested parties; and

5. Share nonproprietary information developed at Government expense with the scientific and industrial community.

**Period of Support**

The research and development effort described in this notice may be supported through the award of a cooperative agreement. The NHTSA reserves the right to make multiple cooperative agreement awards for the effort described in this notice depending upon the relative merit of the applications received and the Federal resources and amount of Federal funding available.

Contingent upon the availability of funds and satisfactory performance, a cooperative agreement(s) will be awarded to an eligible organization(s) for project periods of up to five years. It is currently intended that no cooperative agreement awarded as a result of this notice shall exceed $30,000 per year.

**Eligibility Requirements**

In order to be eligible to participate in this cooperative agreement program, an applicant must be a for-profit business organization (small or large), a non-profit organization, or an educational institution. Consortiums of organizations

may apply and/or NHTSA may assist in the formation of consortiums among agreeing applicants if feasible and desirable. Regardless of the type of organization applying for Federal funding assistance, no fee or profit will be allowed.

**Application Procedure**

Each applicant must submit one original and two copies of their application package to: Office of Contracts and Procurement (NAD–30), NHTSA, 400 Seventh Street, SW., room 5301, Washington, DC 20590. Applications are due no later than 45 days after the appearance of this announcement in the **Federal Register**. Only complete application packages received by the due date shall be considered. Submission of three additional copies will expedite processing; but is not required. The applicant shall specifically identify any information in the application which is to be treated as proprietary, in accordance with the procedures of 49 CFR part 512, Confidential Business Information.

**Application Contents**

The application package must be submitted with a Standard Form 424 (rev. 4–88), Application for Federal Assistance, which shall include the certified assurances, and provide a program narrative statement which addresses the following:

1. A description of the research to be pursued which addresses:

a. The objectives, goals, and anticipated outcomes of the proposed research effort;

b. The method or methods that will be used;

c. The source of crash and injury statistics to be used;

d. The primary occupant protection system (e.g., inflatable or padded interior) which will be most probably benefitted;

2. The proposed program director and other key personnel identified for participation in the proposed research effort, including a description of their qualifications and their respective organizational responsibilities.

3. A description of the vehicle occupant population and crash modes to be addressed, test facilities and equipment currently available or to be obtained for use in the conduct of the proposed research and development effort.

4. A description of the applicant's previous experience or on-going research program that is related to this proposed research effort.

5. A detailed schedule and budget for the proposed research effort, including any cost-sharing contribution proposed by the applicant as well as any additional financial commitments made by other sources.

6. A statement of any technical assistance which the applicant may require of NHTSA in order to successfully complete the proposed program.

**Review Process and Criteria**

Initially, all applicants will be reviewed to confirm that the application contains all of the information required by the Application Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated and ranked using the following criteria:

1. The applicant's understanding of the purpose and unique problems represented by the research objectives of this cooperative agreement program as evidenced in the description of their proposed research and development effort. Specific attention shall be placed upon the applicant's stated proposed development and demonstration effort.

2. The potential of the proposed research effort accomplishments to make a timely and an innovative and/or significant contribution to occupant protection technology knowledge as it may be applied to saving lives and reducing injuries resulting from motor vehicle crashes.

3. The technical and financial merit of the proposed research effort, including the feasibility of the approach, practicality, planned methodology, and anticipated results. Financial merit will be estimated by the cost of the cooperative agreement to be borne by NHTSA compared to the anticipated benefits to vehicle crash occupants or struck pedestrians.

4. The adequacy of test facilities and equipment identified to accomplish the proposed research effort.

5. The adequacy of the organizational plan for accomplishing the proposed research effort, including the qualifications and experience of the research team, the various disciplines represented, and the relative level of effort proposed for professional, technical, and support staff.

**Terms and Conditions of the Award**

1. The protection of the rights and welfare of human subjects in NHTSA-sponsored experiments is established in NHTSA Orders 700–1 and 700–3. Any recipient must satisfy the requirements and guidelines of the NHTSA Orders 700 series prior to award of the cooperative agreement. A copy of the NHTSA Orders 700 series may be obtained from the information contact designated in this notice.

2. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 29—Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug Free Workplace (Grants).

3. During the effective period of the cooperative agreement(s) awarded as a result of this notice, the agreement(s) shall be subject to NHTSA's General Provisions for Assistance Agreements; the cost principles of OMB Circular A–21, A–122, or FAR 31.2, as applicable to the recipient, and the requirements of 49 CFR part 29. Each agreement with a non-profit organization or an educational institution shall also be subject to the general administrative requirements of OMB Circular A–110.

4. Cooperative agreement(s) awarded as a result of this notice will include the provisions of Federal Acquisition Regulation (FAR) Part 52 contract clauses under 52.227–11 Patent Rights Retention by the Contractor (Short Form) as applicable to and agreed to by the contractor.

**Reporting Requirements**

*a. Written Research Reports*

The recipient shall submit bimonthly research reports suitable for public dissemination which shall be due 15 days after the reporting period, and a final research report within 45 days after the completion of the research effort. An original and three copies of each of these research reports shall be submitted to the COTR.

*b. Oral Briefings*

The recipient shall conduct semiannual oral presentations of research results for the COTR and other interested NHTSA personnel. For planning purposes, assume that these presentations will be conducted at the NHTSA Office of Crashworthiness Research, Washington, DC. An original and three copies of briefing materials shall be submitted to the COTR.

*c. Data Reports*

The dynamic and other data measured in research, development, and prototype evaluation and demonstration tests will be provided by the recipient(s) within three (3) weeks after the test is run in the format of a data package as described below. The recipient may be relieved of the data package report

requirement for certain of tests by agreement from the COTR.

A data package consists of high speed film, paper test report, and magnetic tape complying with NHTSA Data Tape Reference Guide, Volume III: Component Data Base. The NHTSA Safety Systems Engineering & Analysis Division, maintains a Vehicle Crash Test and a Component Data Base which provide information, upon request, to the public, including educational institutions and other research organizations.

To facilitate the input of data as well as the exchange of information, any recipient of a cooperative agreement awarded as a result of this notice must provide the magnetic tape in the format specified in the "NHTSA Data Tape Reference Guide." A copy of this document may be obtained from the programmatic information contact designated in this notice.

Issued on: July 10, 1992.

**George L. Parker,**

*Associate Administrator for Research and Development.*

[FR Doc. 92-16830 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-59-M

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**[Docket No. 92-34; No. 1]**

## Mack Trucks, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Mack Trucks, Inc. (Mack) of Allentown, Pennsylvania, has determined that some of its vehicles fail to comply with 49 CFR 571.108, "Lamps, Reflective Devices, and Associated Equipment" Federal Motor Vehicle Safety Standard No. 108, and has filed an appropriate report pursuant to 49 CFR part 573. Mack has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.* on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

During the period of December 1, 1991 through March 26, 1992, Mack installed front-mounted turn signal lamps on approximately 1,000 RB, RD, RM, DM, and DMM model trucks. The turn signal lamps on these vehicles do not comply with the photometric requirements of Standard No. 108.

Effective December 1, 1991, section 5.1.1 of Standard No. 108 was amended to incorporate by reference Society of Automotive Engineers Standard J1395 April 1985. Paragraph 5.3.2. of J1395 states that the functional lighted lens area of a single lamp, each compartment of a multiple compartment, and each lamp of a multiple lamp arrangement shall be at least 75 $cm^2$ (11.625 $in^2$). The subject lamps have an effective projected luminous lighted area of 72 $cm^2$ (11.18 $in^2$).

Mack supports its petition for inconsequential noncompliance with the following:

Mack Trucks, Inc. has utilized the lamps in question . . . since approximately 1979 without problem.

Each lamp provides 11.18 square inches (slightly more than 72 square centimeters) of functional lighted lens area compared to the required 75 square centimeters (equivalent to 11.625 square inches), a difference of less than 3 square centimeters (0.445 square inch).

Mack Trucks, Inc. believes that, based on the subject lamps' minimal difference (less than 4%) from the required functional lighted lens area and our use of these same lamps for more than ten (10) years on the same vehicle models without problem, the noncompliance . . . does not affect the safety of our vehicles and is, therefore, inconsequential.

Interested persons are invited to submit written data, views, and arguments on the petition of Mack, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 17, 1992.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on July 13, 1992.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 92-16875 Filed 7-16-92; 8:45 am]

BILLING CODE 4910-59-M

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## DEPARTMENT OF THE TREASURY

### Office of the Secretary

**[Supplement to Department Circular—Public Debt Series—No. 22-92]**

## Treasury Notes, Series G-1999

Washington, July 9, 1992.

The Secretary announced on July 8, 1992, that the interest rate on the notes designated Series G-1999, described in Department Circular—Public Debt Series—No. 22-92 dated July 1, 1992, will be 6⅝ percent. Interest on the notes will be payable at the rate of 6⅝ percent per annum.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 92-16897 Filed 7-16-92; 8:45 am]

BILLING CODE 4810-40-M

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## Public Information Collection Requirements Submitted to OMB for Review

Date: July 10, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

### Internal Revenue Service

*OMB Number:* 1545-0242
*Form Number:* IRS Form 6197
*Type of Review:* Extension
*Title:* Gas Guzzler Tax
*Description:* Form 6197 is used to compute the gas guzzler tax on automobiles whose fuel economy does not meet certain standards for fuel economy. The tax is reported quarterly on Form 720. Form 6197 is filed each quarter with Form 720 for manufacturers. Individuals can make a one-time filing if they import a gas guzzler auto for personal use. The IRS uses the information to verify computation of the tax and compliance with the law.
*Respondents:* Individuals or households, Businesses or other for-profit, Small businesses or organizations
*Estimated Number of Respondents/ Recordkeepers:* 485

*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—4 hours, 18 minutes
Learning about the law or the form—12 minutes
Preparing, and sending the form to the IRS—17 minutes
*Frequency of Response:* Quarterly
*Estimated Total Reporting/Recordkeeping Burden:* 2,892 hours.
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports, Management Officer.*
[FR Doc. 92–16859 Filed 7–16–92; 8:45 am]
BILLING CODE 4830–01–M

## Public Information Collection Requirements Submitted to OMB for Review

Date: July 10, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW. Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* New
*Form Number:* None
*Type of Review:* New Collection
*Title:* Survey—New Business Newsletter
*Description:* Information gathered will be considered in determining the value of "Tax Tips", a tax newsletter for new businesses, in assisting business taxpayers to meet their tax obligations.
*Respondents:* Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 1,160
*Estimated Burden Hours Per Respondent:* 15 minutes
*Frequency of Response:* Other (one-time survey)
*Estimated Total Reporting Burden:* 290 hours
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 92–16860 Filed 7–16–92; 8:45 am]
BILLING CODE 4830–01–M

## Public Information Collection Requirements Submitted to OMB for Review

Date: July 10, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0782
*Regulation ID Number:* LR–7 Final (T.D. 8629)
*Type of Review:* Extension
*Title:* Limitation on Reduction in Income Tax Liability Incurred to the Virgin Islands
*Description:* The Tax Reform Act of 1986 repealed the mandatory reporting and recordkeeping requirements of section 934(d) (1954 Code). The prior exception to the general rule of section 934 (1954 Code) to prevent the Government of the Virgin Islands from granting tax rebates with regard to taxes attributable to income derived from sources within the U.S. was contingent upon the taxpayers' compliance with the reporting requirement of section 934(d). The changes imposed by the Tax Reform Act of 1986 should reduce the number of responses to approximately 500.
*Respondents:* Individuals or households, Businesses or other for-profit
*Estimated Number of Respondents:* 500
*Estimated Burden Hours Per Respondent:* 12 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 184 hours
*OMB Number:* 1545–1016
*Form Number:* IRS Form 8613
*Type of Review:* Extension
*Title:* Return of Excise Tax on Undistributed Income of Regulated Investment Companies
*Description:* Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under section 4982. IRS uses the information to verify that the correct amount of tax has been reported.
*Respondents:* Businesses or other for-profit
*Estimated Number of Respondents/Recordkeepers:* 1,500
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping: 6 hours, 13 minutes
Learning about the law or the form: 1 hour, 59 minutes
Preparing and sending the form to the IRS: 2 hours, 10 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting/Recordkeeping Burden:* 15,570 hours
*OMB Number:* 1545–1190
*Form Number:* IRS Form 8824
*Type of Review:* Revision
*Title:* Like-Kind Exchanges
*Description:* Form 8824 is used by individuals, corporations, partnerships, and other entities to report the exchange of business or investment property, and the deferral of gains from such transactions under section 1031. It is also used to report the deferral of gain under section 1043 by members of the executive branch of the Federal government
*Respondents:* Individuals or households, Businesses or other for-profit
*Estimated Number of Respondents/Recordkeepers:* 200,000
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping: 26 minutes
Learning about the law or the form: 28 minutes
Preparing the form: 1 hour, 2 minutes
Copying, assembling, and sending the form to the IRS: 27 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting/Recordkeeping Burden:* 353,884 hours
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and

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Budget, room 3001, New Executive Office Building, Washington, DC 20503

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 92-16861 Filed 7-16-92; 8:45 am]

BILLING CODE 4830-01-M

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Treasures of the Vatican Library" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Library of Congress, Washington, DC from on or about January 6, 1993, to on or about April 30, 1993 is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 14, 1992.

**Alberto J. Mora,**

*General Counsel.*

[FR Doc. 92-16910 Filed 7-16-92; 8:45 am]

BILLING CODE 8230-01-M

## DEPARTMENT OF VETERANS AFFAIRS

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before August 17, 1992.

Dated: July 10, 1992.

By direction of the Secretary.

**Frank E. Lalley,**

*Association Deputy Assistant Secretary for Information Resources Policies and Oversight.*

**Revision**

1. Eligibility Verification Reports (EVR)
   a. EVR Instructions, VA Form 21-0510
   b. Old Law EVR (Surviving Spouse), VA Form 21-0511S
   c. Old Law EVR (Surviving Spouse), VA Form 21-0511S-1
   d. Old Law EVR (Veteran), VA Form 21-0511V
   e. Old Law EVR (Veteran), VA Form 21-0511V-1
   f. Section 306 EVR (Surviving Spouse), VA Form 21-0512S
   g. Section 306 EVR (Surviving Spouse), VA Form 21-0512S-1
   h. Section 306 EVR (Veteran), VA Form 21-0512V
   i. Section 306 EVR (Veteran), VA Form 21-0512V-1
   j. Old Law and Section 306 EVR (Children Only), VA Form 21-0513
   k. Old Law and Section 306 EVR (Children Only), VA Form 21-0513-1
   l. DIC Parent's EVR, VA Form 21-0514
   m. DIC Parent's EVR, VA Form 21-0514-1
   n. Improved Pension EVR (Veteran with no Dependents), VA Form 21-0515
   o. Improved Pension EVR (Veteran with no Dependents), VA Form 21-0515-1
   p. Improved Pension EVR (Veteran with Spouse), VA Form 21-0516
   q. Improved Pension EVR (Veteran with Spouse), VA Form 21-0516-1
   r. Improved Pension EVR (Veteran with Children), VA Form 21-0517
   s. Improved Pension EVR (Veteran with Children), VA Form 21-0517-1
   t. Improved Pension EVR (Surviving Spouse with no Children), VA Form 21-0518
   u. Improved Pension EVR (Surviving Spouse with no Children), VA Form 21-0518-1
   v. Improved Pension EVR (Surviving Spouse and/or Children), VA Form 21-0519
   w. Improved Pension EVR (Surviving Spouse and/or Children), VA Form 21-0519-1

2. These forms are used by VA regional offices to verify continued eligibility for pension and parents' Dependency and Indemnity Compensation (DIC) and to determine whether adjustments in the rate of payment are necessary. These forms are also used for developing supplemental income and estate information from claimants who have previously filed a formal application for pension or DIC.
3. Individuals or households.
4. 766,800 hours.
5. 30 minutes per form.
6. On occasion and Annually.
7. 1,022,400 respondents.

[FR Doc. 92-16867 Filed 7-16-92; 8:45 am]

BILLING CODE 8320-01-M

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by August 17, 1992.

Dated: July 10, 1992.

By direction of the Secretary.

**Frank E. Lalley,**

*Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.*

**Revision**

1. Offer to Rent on Month-to-Month Basis and Credit Statement of Prospective Tenant, VA Form 26-6725.
2. The form is completed by prospective tenants of properties owned by VA and serves as the rental offer and credit statement. The information collected provides the basis for acceptable or rejection of offers to rent.
3. Individuals or households; Businesses or other for-profit.
4. 33 hours.
5. 20 minutes.
6. On occasion.
7. 100 respondents.

[FR Doc. 92-16869 Filed 7-16-92; 8:45 am]

BILLING CODE 8320-01-M

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by August 17, 1992.

Dated: July 10, 1992.

By direction of the Secretary.

**Frank E. Lalley,**

*Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.*

**Reinstatement**

1. Report and Certification of Loan Disbursement, VA Form 26-1820.
2. This form is completed by lenders closing VA loans under the automatic or prior approval procedure subsequent to issuance of guaranty.
3. Individuals or households.
4. 125,000 hours.
5. 30 minutes.
6. On occasion.
7. 250,000 respondents.

[FR Doc. 92-16871 Filed 7-16-92; 8:45 am]

BILLING CODE 8320-01-M

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by August 17, 1992.

[1] A copy of this list may be obtained by contacting Ms. Luise Alvarez of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547

Dated: July 10, 1992.

By direction of the Secretary.

**Frank E. Lalley,**

*Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.*

**Extension**

1. Request for Details of Expenses, VA Form 21–8049.
2. This form is used to obtain the necessary information to determine the amount of any deductible expenses paid by the claimant and/or commercial life insurance received to calculate the current rate of pension payable.
3. Individuals or households.
4. 5,700 hours.
5. 15 minutes per form.
6. On occasion.
7. 22,800 respondents.

[FR Doc. 92–16868 Filed 7–16–92; 8:45 am]

BILLING CODE 8320–01–M

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**Sunsh**

This section contains notic under the "G Act" (Pub. L.

**NEIGHBORHO CORPORATIO**

Regular Mee Directors

**TIME AND DA** July 29, 1992

**PLACE:** Neigh Corporation Floor Board 20005.

**STATUS:** Op

**CONTACT PE INFORMATIO** Counsel/Se

**AGENDA:**

I. Call to Ord

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 138
Friday, July 17, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**NEIGHBORHOOD REINVESTMENT CORPORATION**

Regular Meeting of the Board of Directors

**TIME AND DATE:** 8:30 a.m., Wednesday, July 29, 1992.

**PLACE:** Neighborhood Reinvestment Corporation, 1325 G Street, NW., 8th Floor Board Room, Washington, DC 20005.

**STATUS:** Open.

**CONTACT PERSON FOR MORE INFORMATION:** Jeffrey T. Bryson, General Counsel/Secretary, (202) 376–2441.

**AGENDA:**

I. Call to Order
II. Approval of Minutes, May 21, 1992, Annual Meeting
III. Budget Committee Report:
  a. Proposed FY '92 Revisions
  b. Proposed FY '93 Request
  c. Proposed FY '94 OMB Submission
IV. Treasurer's Report
V. Executive Director's Quarterly Management Report
VI. Adjourn

**Jeffrey T. Bryson,**
*General Counsel/Secretary.*

[FR Doc. 92–17004 Filed 7–15–92; 11:02 am]
BILLING CODE 7570-01-M

**STATE JUSTICE INSTITUTE**

**TIME AND DATE:**

12 noon to 3 p.m., July 23, 1992
6:30 a.m. to 3:00 p.m., July 24, 1992
6:30 a.m. to 2:00 p.m., July 25, 1992

**PLACE:** Embassy Suites Resort, 104 Kaanapali Shores Place, Lahaina, Maui, HI.

**STATUS:** The meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

**PORTIONS OPEN TO THE PUBLIC:** Meeting with the Conference of Chief Justices and Conference of State Court Administrators; discussion of FY 1992 grant applications and FY 1993 Grant Guideline.

**PORTIONS CLOSED TO THE PUBLIC:** Discussion of internal personnel matters.

**CONTACT PERSON FOR MORE INFORMATION:** David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

**David I. Tevelin,**
*Executive Director.*

[FR Doc. 92–16972 Filed 7–15–92; 11:00 am]
BILLING CODE 6820-SC-M

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# Corrections

Federal Register
Vol. 57, No. 138
Friday, July 17, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Fiscal Year 1992 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications; and Request for Public Comment on the Proposed Developmental Disabilities Priorities for Projects of National Significance for Fiscal Year 1993

*Correction*

In notice document 92-13356 beginning on page 24850 in the issue of Thursday, June 11, 1992, on page 24867, in the second column, under *Federal Share of Project Costs*, in the third line, "22 month" should read "12 month".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 821

[Docket No. 91N-0296]

### Medical Devices; Device Tracking

*Correction*

In proposed rule document 92-12622 beginning on page 22971 in the issue of Friday, May 29, 1992, make the following corrections:

**§ 821.3 [Corrected]**

1. On page 22978, in the third column, in § 821.3(f), in the last line, "explanation" should read "explantation".

**§ 821.25 [Corrected]**

2. On page 22979, in the third column, in § 821.25(a)(2), in the sixth line, "implant" should read "implants".

BILLING CODE 1505-01-D

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### 24 CFR Parts 25 and 202

[Docket No. R-92-1499; FR-2801-F-03]

RIN 2501-AB01

### Mortgagee Review Board

*Correction*

In rule document 92-16200 beginning on page 31046 in the issue of Monday, July 13, 1992, in the first column, the **EFFECTIVE DATE** "August 1, 1992" should read "August 12, 1992".

BILLING CODE 1505-01-D

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1201

[Ex Parte No. 492]

### Montana Rail Link, Inc. and Wisconsin Central Ltd., Joint Petition for Rulemaking

*Correction*

In rule document 92-14358 beginning on page 27184 in the issue of Thursday, June 18, 1992, make the following correction:

**Subpart A—[Corrected]**

1. On page 27185, in the second column, in Subpart A, under **General Instructions**, in the second paragraph, in the second line, "or $250 million" should read "of $250 million".

BILLING CODE 1505-01-D

## NUCLEAR REGULATORY COMMISSION

### Two-Year Trial Program for Conducting Open Enforcement Conferences; Policy Statement

*Correction*

In notice document 92-16233 beginning on page 30762 in the issue of Friday, July, 10, 1992, on page 30762, in the second column, under **DATES**, beginning in the fifth line, "July 11, 1992" should read "July 11, 1994".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 92-NM-50-AD]

### Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

*Correction*

In proposed rule document 92-14066 beginning on page 26798 in the issue of Tuesday, June 16, 1992, make the following correction:

**§ 39.13 [Corrected]**

1. On page 26799, in the third column, in § 39.13(a), in the second line, "MCM00716B" should read "HCM00716B".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 162

[T.D. 92-69]

### Disposition of Low Value Seized Property

*Correction*

In rule document 92-16155 beginning on page 30639 in the issue of Friday, July 10, 1992, on page 30640, in the second column, in the signature line, insert "**Carol Hallett**, *Commissioner of Customs.*" before "**Peter Nunez**, *Assistant Secretary of the Treasury.*".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[T.D. 8420]

RIN 1545-A090

### Low-Income Housing Credit

*Correction*

In rule document 92-13683 beginning



on page 24749 in the issue of Thursday, June 11, 1992, under **Explanation of Provisions**, in the 2d column, in the 11th line "section 813" should read "section 183".

BILLING CODE 1505-01-D

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federal register

Friday
July 17, 1992

Part II

# Environmental Protection Agency

## Federal Agency Hazardous Waste Compliance Docket; Notice

VOL 57 ISS 138 JL 17 1992 UMI

**ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-4145-7]**

**Federal Agency Hazardous Waste Compliance Docket**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of sixth update of the Federal Agency Hazardous Waste Compliance Docket pursuant to CERCLA section 120(c).

**SUMMARY:** Section 120(c) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket that contains certain information regarding Federal facilities that manage hazardous waste or from which hazardous substances may be or have been released. (As defined by CERCLA 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every 6 months as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in the sixth update of the docket (that is, facilities not previously listed on the docket and reported to EPA since the last update to the docket, 56 FR 64898, December 12, 1991, which was current as of June 1, 1991). EPA policy specifies that for each Federal facility that is included on the docket during an update, the responsible Federal agency must complete a preliminary assessment (PA) and, if warranted, a site inspection (SI), within 18 months of publication of this notice. Such remedial site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the docket additions list, this notice includes a section comprising revisions (that is, corrections and deletions) to the previous docket list and a new list of the facilities on the docket that have been evaluated and determined not to be appropriate for NPL listing at this time (the No Further Response Action Planned [NRFAP] list). At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 1,709.

**DATES:** This list is current as of March 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Federal Facilities Docket Hotline, Telephone: (800) 548-1016 toll free, or (703) 883-8577.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction.
II. Revisions to the previous docket.
III. Process for compiling the updated docket.
IV. Facilities not included.
V. Information contained on docket listing.
VI. Facility status reporting.

## I. Introduction

The Federal Agency Hazardous Waste Compliance Docket ("docket") was required to be established under section 120(c) of CERCLA, 42 U.S.C. 9620(c), as amended by SARA. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency ("EPA" or "the Agency") under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators, transporters, and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal Agencies own or operate. CERCLA section 103(a) requires notification to the National Response Center (NRC) of a release; CERCLA section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated or disposed and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves, among others, three major purposes: (1) To identify the universe of Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the NPL; (2) to compile and maintain the information submitted to EPA on these facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make this information available to the public.

The initial list of Federal facilities to be included in the docket was published on February 12, 1988 (53 FR 4280). Updates to the docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); and December 12, 1991 (56 FR 64898). This notice constitutes the sixth update of the docket.

Today's notice is divided into four major sections: (1) Corrections, (2) deletions, (3) additions, and (4) the NFRAP list. The docket corrections section lists changes to information on facilities already listed on the docket. The deletions section lists facilities that EPA is deleting from the docket. The additions section lists newly identified facilities that have been reported to EPA since the last update and are now being included on the docket. The NFRAP list is the list of all docket facilities to which EPA has assigned a status of No Further Response Action Planned.

The information submitted to EPA on each Federal facility is contained in the docket repository located in the EPA Regional office of the Region where the facility is found. (See 53 FR 4280 (February 12, 1988) for a description of the information required under these provisions). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. A complete national index of the information found in the Regional docket repositories is maintained at EPA Headquarters in Washington, D.C., and made available to the public. The index for each Region is available for public review at each Regional repository. Contact the Federal Facilities Docket Hotline (800-548-1016) for information on repository locations and arrangements for reviewing and copying specific documents.

## II. Revisions to the Previous Docket

### *1. Corrections*

Changes necessary to correct the previous docket were identified by both EPA and Federal agencies. These changes vary from simple address and spelling changes to facility name and ownership corrections. In addition, some facility name changes were made to make the nomenclature consistent on the docket. Many are simply typographical errors. For each facility with a correction, the original entry as it appeared in the February 12, 1988, notice, or subsequent updates, is shown directly above the corrected entry for easy comparison.

### *2. Deletions*

Today, 10 facilities are being deleted from the docket for various reasons, such as incorrect reporting of hazardous

waste activity, change in Federal ownership, and exemption as a small quantity generator (SQG) under RCRA (40 CFR 262.44). Facilities being deleted will no longer be subject to the requirements of CERCLA section 120(d).

*3. Additions*

Today, 66 facilities are being added to the docket primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). For all facilities being added in this section, it is EPA's policy that the responsible agency must complete the required PA, and, if warranted, an SI, within 18 months from the date of this publication.

Of the 66 facilities being added to the docket, 6 are facilities that have reported the release of a reportable quantity (RQ) of a hazardous substance to the NRC. Under section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Release reports received by the NRC, the U.S. Coast Guard, and EPA are electronically transmitted to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) database. ERNS is a national computer database and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket that have an ERNS report have the notation of "103(a)" in the "Reporting Mechanism" column.

It is EPA's policy generally not to list on the docket facilities that are SQGs and have never generated more than 1,000 kg of hazardous waste in any month. If a facility has ever generated more than 1,000 kg of hazardous waste in any month, (that is, is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs but have reported releases under CERCLA section 103, or hazardous waste activities pursuant to another reporting mechanism, will be listed on the docket, and will undergo remedial site evaluation activities, such as a PA and, where appropriate, an SI. All such facilities will be listed on the docket regardless of whether they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is today adding to the docket are SQGs that had not been previously listed on the docket but have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted a PA report, an SI report, a Department of Defense Installation Restoration Program report, or another Federal agency environmental restoration program report, but had not submitted a CERCLA section 103 notification form. Section 120(c)(3) of CERCLA requires that EPA include information submitted under section 103 in the docket. In general, section 103 requires certain persons to provide notice of certain releases of hazardous substances. The aforementioned Federal agency environmental restoration program reports contain information similar to information provided pursuant to CERCLA section 103 and are considered equivalent forms of notification for purposes of the docket. Thus, the Agency believes that facilities that have provided information equivalent to a CERCLA section 103 notification, such as a Federal agency environmental restoration program report, should be included on the docket regardless of the absence of formal section 103 notification. Therefore, some of the facilities that EPA is adding today are being placed on the docket because of the above-mentioned reports.

In addition, EPA has decided to include privately owned, government-operated (POGOs) facilities on the docket at this update. These facilities had previously been excluded from docket listing. Therefore, some of the facilities that EPA is adding to the docket are POGO facilities that had been previously removed from the docket but are now being restored because of the new policy outlined above.

## III. Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, Hazardous Waste Data Management System (HWDMS), Resource Conservation and Recovery Information System (RCRIS), and Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS)—that contain Federal facility information submitted under the four provisions listed in CERCLA section 120(c).

Extensive computer checks compared the current docket list with the information obtained from the above databases to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, it is possible that State-owned or privately owned facilities, that are not operated by the Federal government, may have been included. These problems are the result of historical procedures used to report and track Federal facility data; the Agency is working to resolve them. Federal agencies are requested to write to EPA's Docket Coordinator at the following address if revisions to this update information are necessary: Federal Facilities Docket Coordinator, Office of Federal Facilities Enforcement (OE–2261), U.S. EPA, 401 M Street SW., Washington, DC 20460.

## IV. Facilities Not Included

As explained in the original docket preamble (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, where appropriate, be listed on the NPL):

1. Facilities formerly owned by a Federal agency and now privately owned. However, facilities that are now owned by another Federal agency will remain on the docket, with responsibility for conducting PAs and SIs resting with the current owner.
2. SQGs that have never produced more than 1,000 kg in any month and have not reported releases under CERCLA section 103 or other hazardous waste activities under RCRA section 3016.
3. Facilities that are solely transporters as reported under RCRA section 3010.

## V. Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities being deleted from the docket. The third section comprises corrections to the docket. Each facility listed as part of the update has been assigned a code that indicates a more specific reason(s) for the addition, deletion, or correction. The code key precedes the lists.

It is EPA's policy that all facilities on the additions list to this sixth docket update must submit a PA, and, if warranted, an SI, to EPA within 18 months of the date of this publication. A PA must include existing information about a site and its surrounding environment, including a thorough examination of the human, food-chain, and environmental targets, the potential waste sources, and migration pathways.

Based upon information in the PA, or other information coming to EPA's attention, EPA will determine whether a followup SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data that is used to determine if further action or investigation is appropriate. This policy includes any facility changing responsible agencies. These reports should be submitted to the Federal Facilities Coordinator in the appropriate EPA Regional Office.

The facilities listed in each section are organized by State and then grouped alphabetically within each State by the Federal agency responsible for the facility. Under each State heading is listed the facility name and address, the statutory provision(s) under which the facility was reported to EPA, the EPA Region where the facility is located, and the correction codes.

The statutory provision(s) under which a facility reported are listed in a column titled "Reporting Mechanisms." Each facility has its applicable mechanisms listed, separated by a comma; for example: 3010,3016,103(c).

The complete list of Federal facilities that now makes up the docket is not being published today. However, the list is available to interested parties and can be obtained by calling the Federal Facilities Docket Hotline (800–548–1016 or 703–883–8577). As of today, the total number of Federal facilities that appear on the docket is 1,709.

## VI. Facility Status Reporting

In response to numerous Federal agency requests, EPA has expanded the docket database to include information on the status of docket facilities. A prevalent concern has been the inability to identify facilities that, after submitting all necessary site assessment information, were found to warrant no further EPA involvement at this time. Accordingly, EPA has expanded the docket database to include a column indicating the facility's status.

The status codes are as follows:

U=Undetermined
N=No Further Response Action Planned (NFRAP)
P=Currently Proposed for the NPL
F=Currently Final on the NPL
R=Removed from the Proposed NPL and No Longer Considered for the Final NPL
D=Deleted from the Final NPL

NFRAP is a term used in the Superfund site assessment program to identify facilities where EPA has found that, based on currently available information, listing on the NPL is not likely and further assessment is not appropriate at this time. NFRAP status does not represent an EPA determination that there are no environmental threats present at the facility or that no further environmental response action of any kind is necessary. As stated, NFRAP status is intended to mean only that the facility does not appear to warrant NPL listing based on the information available to EPA at this time, and that therefore no further involvement by EPA in site assessment or cleanup at the facility is anticipated. However, additional CERCLA response actions by the agency that owns or operates the facility, whether remedial or removal actions, may be necessary at a facility with NFRAP status. The status information contained in the docket is the result of regional evaluation of information taken directly from CERCLIS. (CERCLIS is a database that helps EPA Headquarters and Regional personnel with site, program, and project management. It contains the official inventory of all CERCLA [NPL and non-NPL] sites and supports all site planning and tracking functions. It also integrates financial data from preremedial, remedial, removal, and enforcement programs). The status information was taken from CERCLIS and sent to the Regional Docket Coordinators for review. The results of their reviews were incorporated into the status field in the docket. Subsequently, a list of all facilities with a NFRAP status (containing an "N" in the status field) was generated; this list is being published today.

• Important limitations apply to this NFRAP status list. First, the information is accurate only as of March 1, 1992. Second, a facility's status may be subject to change at any time due to any number of factors, including new site information or changing EPA policies. Finally, the NFRAP status list is based on regional review of CERCLIS data, is provided for information purposes only, and should not be considered binding upon either the agency responsible for the facility or EPA.

The status information in the docket will be reviewed and a new list of NFRAP facilities will be published at each docket update.

Dated: June 9, 1992.

**Ted McCall,**

*Acting Assistant Administrator for Enforcement.*

## I. Docket Revisions

Categories of Revisions for Docket Update by Correction Code

Categories for Facility Deletion *

(1) Small Quantity Generator
(2) Not Federally Owned
(3) Formerly Federally Owned
(4) No Hazardous Waste Generated
(5) (This correction code is no longer used)
(6) Redundant Listing/Site on Facility
(7) Combining Sites Into One Facility/ Entries Combined
(8) Does Not Fit Facility Definition (All Are Vessels)
(9) No Hazardous Waste (Responsible Agency Changed)
(10) Small Quantity Generator (Responsible Agency Changed)
(11) No Hazardous Waste (Temporary Storage Only)
(12) Not Federally Owned (Small Quantity Generator)
(13) Redundant Listing/Site on Facility (Agencies Will Coordinate)
(14) Small Quantity Generator (Never Actually Built)

Categories for Facility Addition

(15) Small Quantity Generator with Either a RCRA 3016 or CERCLA 103 Reporting Mechanism
(16) One Entry Being Split into Two/ Agency Responsibility Being Split
(17) New Information Obtained Showing That Facility Should be Included
(18) Facility Was a Site on a Facility That Was Disbanded, Now a Separate Facility
(19) Sites Were Combined into One Facility
(19A) New Facility

* Further information on category definitions can be obtained by calling the Docket Hotline.

Categories for Corrections to Facility Information

(20) Reporting Provisions Change
(20A) Typo Correction/Name Change/ Address Change
(21) Changing Responsible Agencies (New Responsible Agency Has 18 Months to Submit PA)
(22) Changing Responsible Agencies and Title (New Responsible Agency Has 18 Months to Submit PA)
(23) New Reporting Mechanism Added at Update
(24) Reporting Mechanism Determined to be Not Applicable after Regional File Review

FEDERAL FACILITIES DOCKET—DOCKET ADDITIONS

| Facility name | Facility address | City | State | Zip Code | Agency | Reporting mechanism | Correction code |
|---|---|---|---|---|---|---|---|
| Chelsea Postal Service Incoming Mail Cente. | 307 Becham St | Chelsea | MA | | Postal Service | 103c | 19A |
| Lowell Postal Service | Post Office Square | Lowell | MA | | Postal Service | 103c | 15 |
| South Boston Naval Annex | Marine Industrial Park Drydock Ave. | Boston | MA | | Navy | 103c | 19A |
| Port Monmouth Evans Area #1 | Marconi Road | Wall Township | NJ | 07719 | Army | 3010 3016 103c | 19A |
| Jamaica Vehicle Maintenance Facility | 160–66 Liberty Avenue | Jamaica | NY | 11433 | Postal Service | 3010 | 19A |
| New York Postal MGMF | W 29th St & 9th Ave | New York | NY | 10001 | Postal Service | 3010 | 19A |
| Rochester Naval Industrial Reserve Ordinance Plant. | 121 Lincoln Avenue | Rochester | NY | 14853 | Navy | 103c | 19A |
| National Arboretum | 3501 New York Avenue NE. | Washington | DC | 20002 | Agriculture | 103c | 19A |
| FWS-Bombay Hook National Wildlife Refuge. | Marshtown Road | Little Creek | DE | 19977 | Interior | 103c | 19A |
| National Marine Fisheries Service | South Morris Street Ext | Oxford | MD | 21654 | Commerce | 103c, 3010 | 19A |
| Patuxent Wildlife Research Center | Rt 197 and Powdermill Rd. | Laurel | MD | 20708 | Agriculture | 103c, 3010 | 19A |
| Schlegel Maryland, Inc | Bldg 115 Lynchburg Dr | Chestertown | MD | 21620 | Interior | 3010 | 19A |
| Butler Medical Center | 325 New Castle | Butler | PA | 16001 | Veterans Administration | 103a, 3010 | 19A |
| Fypon, Inc | 22 W Pennsylvania Ave | Stewartstown | PA | 17363 | | 3010 | 19A |
| Internal Revenue Service Center | 11601 Roosevelt Blvd | Philadelphia | PA | 19255 | Treasury | 3010 | 19A |
| Arlington Service Center | South Courthouse Road | Arlington | VA | 22204 | Navy | 103c, 3010 | 19A |
| Chesapeake Naval Security Group Activity. | Northwest | Chesapeake | VA | | Navy | 103c | 19A |
| Herndon | 925 Springvale Road | Herndon | VA | 22070 | Defense Mapping Agency. | 103c | 19A |
| Iaeger PCB Site | Near Lick Branch | Iaeger | WV | | | 103c | 19A |
| Martinsburg Hospital | Route 9 | Martinsburg | WV | 25401 | Veterans Administration | 103c | 19A |
| Windfield Locks & Dams | RFD #1 Box 530 | Red House | WV | 25168 | Corps of Engineers, Civil. | 103c 3010 | 15 |
| ORP, EERF | 1890 Federal Drive | Montgomery | AL | 36109 | EPA | 103c | 19A |
| Orlando Naval Training Center | Main Base Bennett & Maquire. | Orlando | FL | 32813 | Navy | 3010 | 19A |
| Garden City Air National Guard Training Site. | Savannah International Airport. | Garden City | GA | 31408 | Army | 3010 | 19A |
| Fairground Street Fuel Depot | | Vicksburg | MS | | Justice | 103c | 19A |
| North Charleston Post Office | 0.7 Mile North of Aviation. | North Charleston | SC | 29410 | Postal Service | 103c | 19A |
| AMSA 48 G | 3523 W Farmington Rd | Peoria | IL | 61604 | Army | 3010 | 19A |
| Lawrenceville COE-Chicago District | Rte 4 P O Box 195 | Lawrenceville | IL | 62439 | Army | 3010 | 19A |
| Engineering District Lou Monroe | 1620 E Monroe Dam Ct | Bloomington | IN | 47401 | Army | 3010 | 19A |
| Camp Grayling | I–75 | Grayling | MI | | Army | 103c | 19A |
| Keweenaw Field Station | Keweenaw Field | Keweenaw Bay | MI | | Army | 103c | 19A |
| Pontiac Storage Facility | Address Unreported | Pontiac | MI | | Army | 103c | 19A |
| Saginaw Post Office | 1233 S Washington | Saginaw | MI | 48605 | Postal Service | 3010 | 19A |
| Troy Postal Service | 2844 Livernois | Troy | MI | 48099 | Postal Service | 3010 | 19A |
| Rickenbacker Air National Guard Base | Rickenbacker ANGB | Rickenbacker ANGB | OH | | Army | 103c | 19A |
| Mike Monroney Aeronautical Center | 5500 South Macarthur | Oklahoma City | OK | 73179 | Transportation | 3010 3016 | 15 |
| AMSA #4 | 6903 Perimeter Park | Houston | TX | 77041 | Army | 3010 | 19A |
| DEA-Austin | 4310 Far W Blvd #220 | Austin | TX | 78731 | Justice | 3010 | 19A |
| DEA-Dallas | 1880 Regal Row | Dallas | TX | 75235 | Justice | 3010 | 19A |
| NPS-Padre Island | 9405 S Padre Island Dr | Corpus Christi | TX | 78418 | Interior | 3010 | 19A |
| Atkins Farm | 1.5 Mi W on Hwy 16 then S ½ Mi. | Canton | MO | | Agriculture | 103c | 19A |
| BR-Colbran Project | RR #1 | Colbran | CO | 80631 | Interior | 103a | 19A |
| Jr Applications | Building 1439 | Great Falls | MT | 59402 | Air Force | 3010 | 19A |
| BLM-Glendale Landfill | Glendale Ave & 115th Ave B. | Glendale | AZ | 85307 | Interior | 103c | 19A |
| DEA-Phoenix | 3010 N 2nd Street | Phoenix | AZ | 85002 | Justice | 103a | 19A |
| WAPA-Parker Dam | Lat-340942/Long 1141635. | Parker | AZ | 85344 | Energy | 103a 3010 | 19A |
| BLM-Adin Transfer Station | 1 Mi SE of Adin T.39N, R9E, Sec 27. | Adin | CA | | Interior | 103c | 19A |
| GLM-Aurora Canyon Millsite | Nearest City Bridgeport | Bridgeport | CA | | Interior | 103c | 19A |
| BLM-Blackrock Mine | Nearest City Bishop | Bishop | CA | | Interior | 103c | 19A |
| BLM-Bodie Mine | Nearest City Bridgeport | Bridgeport | CA | | Interior | 103c | 19A |
| BLM-Horse Corrals | Hwy 395 @ Viewland, 6 Mi NW of Wendel. | Wendel | CA | 96136 | Interior | 103c | 19A |
| BLM-Kern Valley Sanitary Landfill | T25S, R33E, N ½ SW ¼ SEC 35, MDM. | Kernville | CA | | Interior | 103c | 19A |
| BLM-Salambo Mine | Nearest City Coulterville | Coulterville | CA | | Interior | 103c | 19A |

## FEDERAL FACILITIES DOCKET—DOCKET ADDITIONS—Continued

| Facility name | Facility address | City | State | Zip Code | Agency | Reporting mechanism | Correction code |
|---|---|---|---|---|---|---|---|
| BLM-Swansea Site | T 16S, R. 37E., Sec 24, SE SW, Mt Diablo M. | Kocker | CA | | Interior | 103c | 19A |
| Chocolate Mountain Seal Camp Area. | Niland Nearest Town | Imperial County | CA | | Navy | 103c | 16 |
| Fresno Post Office | 1900 E Street | Fresno | CA | 93706 | Postal Service | 3010 | 19A |
| Los Padres National Forest (Black Bob Mine Tail.). | Aprx 5 Mi. SW of Lebec, Sec 10T. 9N-R.20W. | Lebec | CA | | Agriculture | 103c | 19A |
| Los Padres National Forest (Gibraltar Mining Co.). | 6144 Calle Real | Goleta | CA | | Agriculture | 103c | 19A |
| Maritime Administration Suisun Bay Res Fit. | Lake Herman Rd Foot/ Suisun B. | Benicia | CA | 94510 | Transportation | 3010 | 19A |
| Narcotics Task Force Laboratory | 2461 Impala | Carlsbad | CA | 92008 | Justice | 103a | 19A |
| BLM-Closed Caliente Landfill | T3S, R67E, Sec 26 | Lincoln County | NV | 89008 | Interior | 103c | 19A |
| Las Vegas Vehicle Maintenance Facility | 1001 E. Sunset Road | Las Vegas | NV | 89199 | Postal Service | 103a | 19A |
| FAA-Farewell Facilities | Farewell Airport Area | Farewell | AK | 99695 | Transportation | 3010 | 19A |
| FAA-Moses Point Facility | Moses Point Airfield Nav Aids. | Moses Point | AK | 99825 | Transportation | 3010, 3016 | 19A |
| BLM-Boise District-Reeder Airstrip | T8S R13E Sec6 NESW | Hagerman | ID | 83332 | Interior | 3010 | 19A |
| Lynnwood Vehicle Maintenance Facility | 6817 208th St SW | Lynnwood | WA | 98036 | Postal Service | 3010 | 19A |
| Spokane Army Reserve Center | N 3800 Sullivan Rd | Spokane | WA | 99216 | Army | 3010 | 19A |

## FEDERAL FACILITIES DOCKET—DOCKET DELETIONS

| Facility name | Facility address | City | State | Code | Agency | Reporting mechanism | Correction code |
|---|---|---|---|---|---|---|---|
| FWS-Sachuest Point Dump | Sachuest Point Road | Middletown | RI | 02840 | Interior | 103c | 6 |
| Dunkirk Light Coast Guard | 235 North Point Rd | Dunkirk | NY | 14048 | Transportation | 3010 | 4 |
| Sodus Point Coast Guard Station. | Foot of Wickam Blvd Box 126. | Sodus Point | NY | 14555 | Transportation | 3010 | 4 |
| Anguilla Landfill | Anguilla Landfill | Fredericksted | VI | | EPA | 103a | 2 |
| DEA-Atlanta | 75 Spring St Suite 740 | Atlanta | GA | 30303 | Justice | 3010 | 1 |
| Lexington Medical Center | Cooper Drive Division | Lexington | KY | 40511 | Veterans Administration | 3010 | 1 |
| BP-Unicor Fed Prison Ind Inc | 4002 Arkona | Milan | MI | 48197 | Justice | 3010 103a | 1 |
| Mission | 681 County Road | Mission | TX | 77553 | Corps of Engineers, Civil. | 103a | 3 |
| Farewell Air Navigation Site | Farewell Air Field | Farewell | AK | 99695 | Transportation | 3016 103c | 6 |
| Lake Washington Ship Canal | 3015 NW 54th St | Seattle | WA | 98107 | Corps of Engineers, Civil. | 3010 103c | 6 |

## Federal Facilities Docket—Docket Corrections

| Facility name | Facility address | City | State | Zip code | Agency | Reporting mechanism | Correction codes |
|---|---|---|---|---|---|---|---|
| C Fort Devens | Buena Vista St | Ayer | MA | 01432 | Army | 3005 3010 3016 103c 103a | 23 |
| O Fort Devens | Buena Vista St | Ayer | MA | 01432 | Army | 3005 3010 3016 103c | |
| C Fort Monmouth | Tinton & Pinebrook | Tinton Falls | NJ | 07724 | Army | 3010 3016 103c | 20A |
| O Fort Monmouth | Marconi Road | Fort Monmouth | NJ | 07724-5000 | Army | 3010 3016 103c | |
| C Picatinny Arsenal | Off Route 15 | Dover | NJ | 07801 | Army | 3005 3010 3016 103c | 20A |
| O Picatinny Arsenal | Off Route 15 | Dover | NJ | 07801-5000 | Army | 3005 3010 3016 103c | |
| C Fort Drum #8 | Btwn Rts 3 & 11 | Watertown | NY | 13601 | Army | 3005 3010 3016 103c 103a | 23 |
| O Fort Drum #8 | Btwn Rts 3 & 11 | Watertown | NY | 13601 | Army | 3005 3010 3016 103c | |
| C Youngstown Test Annex | Balmer Rd | Porter Center | NY | 14131 | Air Force | 103c | 20A |
| O Youngstown Tenn Ann | Balmer Rd | Porter Center | NY | 14131 | Air Force | 103c | |
| C Bureau of Engraving & Printing. | 14th & C Sts SW | Washington | DC | 20228 | Treasury | 3005 3010 103c 103a | 23 |
| O Bureau Of Engraving & Printing. | 14th & C Sts SW | Washington | DC | 20228 | Treasury | 3005 3010 103c | |
| C Food & Drug Administration FB 8. | 200 C St SW HFF-14 Rm 6025. | Washington | DC | 20204 | Health and Human Services. | 3010 103c | 21 |
| O Food & Drug Administration FB 8. | 200 C St SW HFF-14 Rm 6025. | Washington | DC | 20204 | General Services Admin. | 3010 103c | |
| C Washington Naval Research Laboratory. | 4555 Overlook Ave | Washington | DC | 20375 | Navy | 3005 3010 3016 103c 103a | 23 |

## Federal Facilities Docket—Docket Corrections—Continued

| Facility name | Facility address | City | State | Zip code | Agency | Reporting mechanism | Correction codes |
|---|---|---|---|---|---|---|---|
| O Washington Naval Research Laboratory | 4555 Overlook Ave | Washington | DC | 20375 | Navy | 3005 3010 3016 103c | |
| C Annapolis Naval Station | Naval Station Complex Annapolis. | Annapolis | MD | 21402 | Navy | 3010 103c | 20A |
| O Annapolis Naval Station | Naval Station Complex | Annapolis | MD | 21402 | Navy | 3010 103c | |
| C David Taylor Research Center. | Carderock Laboratory | Bethesda | MD | 20084 | Navy | 3010 103c | 20A |
| O David W. Taylor Naval Ship RPD Center. | Carderock Laboratory | Bethesda | MD | 20084 | Navy | 3010 103c | |
| C Letterkenny Army Depot | N Franklin St Ext | Chambersburg | PA | 17201 | Army | 3005 3010 3016 103c 103a | 23 |
| O Letterkenny Army Depot | N Franklin St Ext | Chambersburg | PA | 17201 | Army | 3005 3010 3016 103c | |
| C Fort Pickett | Fort Pickett | Blackstone | VA | 23824 | Army | 3010 103c 103a | 23 |
| O Fort Pickett | Fort Pickett | Blackstone | VA | 23824 | Army | 3010 103c | |
| C GS-Reston | 12201 Sunrise Valley Dr. | Reston | VA | 22092 | Interior | 3010 | 21 |
| O GS-Reston | 12201 Sunrise Valley Dr. | Reston | VA | 22092 | General Services Admin. | 3010 | |
| C John H. Kerr Reservoir | Route 1, Box 76ERVOIR. | Boydton | VA | 23917-9801 | Corps of Engineers, Civil. | 3010 103c | 20A |
| O US Army Engineer District—Wilmington. | John H. Kerr Reservoir | Boydton | VA | 23917-9801 | Corps of Engineers, Civil. | 3010 103c | |
| C Langley Air Force Base | 1 CSG/DE | Langley AFB | VA | 23665 | Air Force | 3005 3010 3016 103c 103a | 23 |
| O Langley Air Force Base | 1 CSG/DE | Langley AFB | VA | 23665 | Air Force | 3005 3010 3016 103c | |
| C Oceana Naval Air Station | Public Works Department. | Virginia Beach | VA | 23460 | Navy | 3005 3010 3016 103c 103a | 23 |
| O Oceana Naval Air Station | Public Works Department. | Virginia Beach | VA | 23460 | Navy | 3005 3010 3016 103c | |
| C Woodbridge Research Facility. | Dawson Beach Rd | Woodbridge | VA | 22191 | Army | 3016 103c | 20A |
| O Harry Diamond Laboratories—Woodbridge. | Dawson Beach Rd | Woodbridge | VA | 22191 | Army | 3016 103c | |
| C BLM-Phoenix Construction Services, Inc. | Natchez Trace Parkway Rte. 2. | Florence | AL | 35633 | Interior | 3010 | 21 |
| O BLM-Phoenix Construction Services, Inc. | Natchez Trace Parkway Rte. 2. | Florence | AL | 35630 | Transportation | 3010 | |
| C Jacksonville Naval Air Station. | Code 184 Public Wks Dept Box 5. | Jacksonville | FL | 32212 | Navy | 3005 3010 3016 103c 103a | 23 |
| O Jacksonville Naval Air Station. | Code 184 Public Wks Dept Box 5. | Jacksonville | FL | 32212 | Navy | 3005 3010 3016 103c | |
| C Jacksonville Navy Fuel Depot. | Somers Road | Jacksonville | FL | 32208 | Navy | 103c 3005 | 23 |
| O Jacksonville Navy Fuel Depot. | Somers Road | Jacksonville | FL | 32208 | Navy | 103c | |
| C Patrick Air Force Base | 6550 ABG/DEEV | Patrick AFB | FL | 32925 | Air Force | 3005 3010 3016 103c 103a | 23 |
| O Patrick Air Force Base | 6550 ABG/DEEV | Patrick AFB | FL | 32925 | Air Force | 3005 3010 3016 103c | |
| C Pensacola Naval Air Station | US Naval Air Station | Pensacola | FL | 32508 | Navy | 3005 3010 3016 103c 103a | 23 |
| O Pensacola Naval Air Station | US Naval Air Station | Pensacola | FL | 32508 | Navy | 3005 3010 3016 103c | |
| C Saufley Field NETPSA | | | FL | | Navy | 103c 3010 103c | 23 |
| O Saufley Field NETPSA | | | FL | | Navy | | |
| C Albany Marine Corps Logistics Base. | Fleming Rd | Albany | GA | 31704 | Navy | 3005 3010 3016 103c 103a | 23 |
| O Albany Marine Corps Logistics Base. | Fleming Rd | Albany | GA | 31704 | Navy | 3005 3010 3016 103c | |
| C Centers for Disease Control | 4770 Buford Hiway | Chamblee | GA | | Health and Human Services. | 103c | 20A |
| O Centers for Disease Control | 4470 Buford Hiway | Chamblee | GA | | Health and Human Services. | 103c | |
| C Kings Bay Naval Submarine Base. | GA State Hwy Spur | Kings Bay | GA | 31547 | Navy | 3005 3010 3016 103c 103a | 23 |
| O Kings Bay Naval Submarine Base. | GA State Hwy Spur | Kings Bay | GA | 31547 | Navy | 3005 3010 3016 103c | |
| C Fort Bragg | AFZA-DE-D | Fort Bragg | NC | 28307 | Army | 3010 3016 103c 103a | 23 |
| O Fort Bragg | AFZA-DE-D | Fort Bragg | NC | 28307 | Army | 3010 3016 103c | |
| C 926th Tactical Unit | Chicago O'Hare Airport | Chicago | IL | 60666 | Air Force | 3010 3016 103a | 23 |
| O 926th Tactical Unit | Chicago O'Hare Airport | Chicago | IL | 60666 | Air Force | 3010 3016 | |
| C Crane Naval Weapons Support Center. | Bldg 2516 Code 092V Martin County. | Crane | IN | 47522 | Navy | 3005 3010 3016 103c 103a | 23 |
| O Crane Naval Weapons Support Center. | Bldg 2516 Code 092V Martin County. | Crane | IN | 47522 | Navy | 3005 3010 3016 103c | |

## Federal Facilities Docket—Docket Corrections—Continued

| Facility name | Facility address | City | State | Zip code | Agency | Reporting mechanism | Correction codes |
|---|---|---|---|---|---|---|---|
| C Grissom Air Force Base | 305th CSG/DE | Grissom AFB | IN | 46971 | Air Force | 3005 3010 3016 103c 103a | 23 |
| O Grissom Air Force Base | 305th CSG/DE | Grissom AFB | IN | 46971 | Air Force | 3005 3010 3016 103c | |
| C Plum Brook | Taylor & Columbus Rd Erie County. | Sandusky | OH | 44870 | NASA | 3010 3016 103c 103a | 23 |
| O Plum Brook | Taylor & Columbus Rd Erie County. | Sandusky | OH | 44870 | NASA | 3010 3016 103c | |
| C Portsmouth Gaseous Diffusion Plant. | US Rte 23S Pike County. | Piketon | OH | 45661 | Energy | 3005 3010 3016 103c 103a | 20A |
| O Portsmouth Gaseous Diffusion Plant. | US Rte 23S Pike County. | Piketon | OH | 45661 | Energy | 3005 3010 3016 103c 103a | |
| C Badger Army Ammunition Plant. | US Hwy 12 S Sauk County. | Baraboo | WI | 53913 | Army | 3005 3010 3016 103c 103a | 23 |
| O Badger Army Ammunition Plant. | US Hwy 12 S Sauk County. | Baraboo | WI | 53913 | Army | 3005 3010 3016 103c | |
| C New Orleans Naval Air Station. | 32 Belle Chase Hwy | Belle Chasse | LA | 70037 | Navy | 3010 103c 103a | 23 |
| O New Orleans Naval Air Station. | 32 Belle Chase Hwy | Belle Chasse | LA | 70037 | Navy | 3010 103c | |
| C BLM-Hatch Landfill | T14SR3WSEC4LOT1 | Hatch | NM | 87937 | Interior | 103c | 20A |
| O BLM-Hatch Landfill | T14SR3WSEC4LOT1 | | NM | | Interior | 103c | |
| C BLM-Loco Hills Landfill | T17SR30ESEC22—Eddy County. | Loco Hills | NM | 88255 | Interior | 103c 3016 | 20A |
| O BLM-Loco Hills Landfill | T17SR30ESEC22—Eddy County. | | NM | | Interior | 103c 3016 | |
| C BLM-Mesilla Landfill | T24WR1ESec14 | Mesilla | NM | 88046 | Interior | 103c 3016 | 20A |
| O BLM-Mesilla Landfill | T24WR1ESec14 | | NM | | Interior | 103c 3016 | |
| C Longhorn Army Ammunition Plant. | Highway 419 East | Karnack | TX | 75661 | Army | 3005 3010 3016 103c 103a | 23 |
| O Longhorn Army Ammunition Plant. | Highway 419 East | Karnack | TX | 75661 | Army | 3005 3010 3016 103c | |
| C Fort Riley 1st Infantry Div (M). | Bldg 330 | Fort Riley | KS | 66442 | Army | 3005 3010 3016 103c 103a | 23 |
| O Fort Riley 1st Infantry Div (M). | Bldg 330 | Fort Riley | KS | 66442 | Army | 3005 3010 3016 103c | |
| C Kansas Army Ammunition Plant. | 3 miles east of town | Parsons | KS | 66757 | Army | 3005 3010 3016 103c 103a | 23 |
| O Kansas Army Ammunition Plant. | 3 miles east of town | Parsons | KS | 66757 | Army | 3005 3010 3016 103c | |
| C Leavenworth Penitentiary | 1300 Metropolitan Avenue. | Leavenworth | KS | 66048 | Justice | 3016 103c 3010 103a | 23,20A |
| O Leavenworth Penitentiary | USP—Leavenworth | Leavenworth | KS | 66048 | Justice | 3016 103c 3010 | |
| C Sunflower Army Ammunition Plant. | 33425 W. 103 rd Street | Desoto | KS | 66018 | Army | 3005 3010 3016 103c 103a | 23 |
| O Sunflower Army Ammunition Plant. | 33425 W. 103 rd Street | Desoto | KS | 66018 | Army | 3005 3010 3016 103c | |
| C Lake City Army Ammunition Plant. | JCT MO Hwy 7 & Hwy 78. | Independence | MO | 64051-0330 | Army | 3005 3010 3016 103c 103a | 23 |
| O Lake City Army Ammunition Plant. | JCT MO Hwy 7 & Hwy 78. | Independence | MO | 64051-0330 | Army | 3005 3010 3016 103c | |
| C Malmstrom Air Force Base | Facility 1501 Perimeter Rd. | Great Falls | MT | 59402 | Air Force | 3005 3010 3016 103c 103a | 23 |
| O Malmstrom Air Force Base | Facility 1501 Perimeter Rd. | Great Falls | MT | 59402 | Air Force | 3005 3010 3016 103c | |
| C Ellsworth Air Force Base | 44 CSG/CC | Ellsworth AFB | SD | 57706 | Air Force | 3005 3010 3016 103c 103a | 23 |
| O Ellsworth Air Force Base | 44 CSG/CC | Ellsworth AFB | SD | 57706 | Air Force | 3005 3010 3016 103c | |
| C Arizona Air National Guard 162 Tactical FTR Group. | 1500 E. Valencia Road | Tucson | AZ | 85706 | Air Force | 3010 103c 3016 3005 | 23 |
| O Arizona Air National Guard 162 Tactical FTR Group. | 1500 E. Valencia Road | Tucson | AZ | 85706 | Air Force | 3010 103c 3016 | |
| C BIA-Wide Ruins Dip Vat | 35 25' 03" : 109 29' 32". | Wide Ruins | AZ | 86502 | Interior | 103c | 20A |
| O BIA-Wide Ruins Dip Vat | 35 25' 03" : 109 29' 32". | Wide Ruins | AZ | | Interior | 103c | |
| C BLM-Golden Valley Landfill | Hwy 68 1 Mi. W. of Hwy 93 Jct. | Kingman | AZ | 86401 | Interior | 103c | 20A |
| O BLM-Golden Valley Landfill | T21NR17WSEC17 | Kingman | AZ | 86401 | Interior | 103c | |
| C Angeles National Forest | Los Pinetos Storage Rt 1. | Saugus | CA | 91350 | Agriculture | 103c 3010 | 20A |
| O Angeles National Forest | Los Pinetos Storage Rt 1. | Saugus | CA | | Agriculture | 103c 3010 | |
| C BLM-Newberry Dump | Hwy 66 & Mt View | Newberry Springs | CA | 92365 | Interior | 103c | 20A |
| O BLM-Newberry Dump | N½, NW¼, NW¼ Sec 15, T8N, R3E. | Newberry Springs | CA | | Interior | 103c | |
| C BLM-Osage Industries | 60th West | Rosamond | CA | 93560 | Interior | 103c | 20A |
| O BLM-Osage Industries | 60th West | Rosamond | CA | | Interior | 103c | |

## Federal Facilities Docket—Docket Corrections—Continued

| Facility name | Facility address | City | State | Zip code | Agency | Reporting mechanism | Correction codes |
|---|---|---|---|---|---|---|---|
| C Chico Municipal Airport | Cohassett Hwy, T23NR1E S33,34,4, 3 North of Chico. | Chico | CA | 95926 | Air Force | 103c | 20A |
| O Chico Arpt | Cohassett Hwy | Chico | CA | | Air Force | 103c | |
| C Cleveland National Forest | 12500 Pomerado Rd | San Diego | CA | 92131 | Agriculture | 103c 3010 | 20A |
| O Cleveland National Forest | 12500 Pomerado Rd | San Diego | CA | | Agriculture | 103c 3010 | |
| C March Air Force Base | 22CSG/CC | March AFB | CA | 92518 | Air Force | 3005 3010 3016 103c 103a | 23 |
| O March Air Force Base | 22CSG/CC | March AFB | CA | 92518 | Air Force | 3005 3010 3016 103c | |
| C McClellan Air Force Base | SM-ALC/EM | Sacramento | CA | 95652 | Air Force | 3005 3010 3016 103c 103a | 23 |
| O McClellan Air Force Base | SM-ALC/EM | Sacramento | CA | 95652 | Air Force | 3005 3010 3016 103c | |
| C NPS-El Portal Barium Tailings. | Int of Forest & Barium Mine Rd. | El Portal | CA | 95318 | Interior | 103c | 20A |
| O NPS-El Portal Barium Tailings. | Int of Forest & Barium Mine Rd. | El Portal | CA | | Interior | 103c | |
| C Plant #42 (Rockwell International). | 20th St. & E Ave. O&M | Palmdale | CA | 93550-0678 | Air Force | 3005 3010 3016 103c | 20A |
| O Plant #42 (Rockwell International). | 20th & E Street Aves D & M. | Palmdale | CA | 93550-0678 | Air Force | 3005 3010 3016 103c | |
| C San Diego Naval Station | Bldg 3275 P.O. Box 113, Camp Elliot 92106. | San Diego | CA | 92136 | Navy | 3005 3010 3016 103c 103a | 23 |
| O San Diego Naval Station | Bldg 3275 P.O. Box 113, Camp Elliot 92106. | San Diego | CA | 92136 | Navy | 3005 3010 3016 103c | |
| C San Diego Naval Submarine Base. | 140 Sylvester Rd, Naval Station Building 545. | San Diego | CA | 92106 | Navy | 3010 3016 103c | 23 |
| O San Diego Naval Submarine Base. | 140 Sylvester Rd, Naval Station Building 545. | San Diego | CA | 92106 | Navy | 3010 3016 | |
| C Stanford Linear Accelerator Center. | 2575 Sandhill Rd | Menlo Park | CA | 94305 | Energy | 3010 3016 103c 103a | 23 |
| O Stanford Linear Accelerator Center. | 2575 Sandhill Rd | Menlo Park | CA | 94305 | Energy | 3010 3016 103c | |
| C Treasure Island Naval Station Hunters Point Annex. | Shipyard | San Francisco | CA | 94130 | Navy | 3010 3016 103c 103a | 23 |
| O Treasure Island Naval Station Hunters Point Annex. | Shipyard | San Francisco | CA | 94130 | Navy | 3010 3016 103c | |
| C Tustin Marine Corps Air Station. | MCAS Tustin | Tustin | CA | 92719 | Navy | 3005 3016 103a | 23 |
| O Tustin Marine Corps Air Station. | MCAS Tustin | Tustin | CA | 92719 | Navy | 3005 3016 | |
| C Hilo Army Aviation Support Facility #2. | General Lyman Field Bldg 619. | Hilo | HI | 96720 | Army | 103c | 20A |
| O Hilo Army Aviation Support Facility #2. | General Lyman Field Bldg 619. | Hilo | HI | | Army | 103c | |
| C Makua Military Reservation Ordinance Disposal Area. | Makua Military Reservation. | Waianae | HI | 96792 | Army | 3016 | 20A |
| O Makua Military Reservation Ordinance Disposal Area. | | Waianae | HI | 96792 | Army | 3016 | |
| C BLM-Argentum Mill | T3NR36ESEC17 | Esmerelda County | NV | 89010 | Interior | 103c | 20A |
| O BLM-Argentum Mill | T3NR36ESEC17 | | NV | | Interior | 103c | |
| C BLM-BAR Resources Inc. Buckhorn Mine. | T26NR49ESEC30 | Carlin | NV | 89822 | Interior | 103c | 20A |
| O BLM-BAR Resources Inc. Buckhorn Mine. | T26NR49ESEC30 | | NV | | Interior | 103c | |
| C BLM-Bunker Hill Company | T1NR67ESEC29 | Lincoln | NV | 89043 | Interior | 103c 3016 | 20A |
| O BLM-Bunker Hill Company | T1NR67ESEC29 | Lincoln | NV | | Interior | 103c 3016 | |
| C BLM-Candelaria Partners OMC. | T34NR35ESEC2233435 | Mina | NV | 89422 | Interior | 3010 103c | 20A |
| O BLM-Candelaria Partners OMC. | T34NR35ESEC2233435 | | NV | | Interior | 3010 103c | |
| C BLM-Carlin Gold Mine | T35NR50ESEC14 | Carlin | NV | 89822 | Interior | 103c | 20A |
| O BLM-Carlin Gold Mine | T35NR50ESEC14 | Eureka | NV | | Interior | 103c | |
| C BLM-Chromalloy Mining & Milling. | T42NR63ESEC11 | Elko | NV | 89801 | Interior | 103c | 20A |
| O BLM-Chromalloy Mining & Milling. | T42NR63ESEC11 | Elko | NV | | Interior | 103c | |
| C BLM-Cortez Joint Venture | T27NR47ESEC13 | Beowawe | NV | 89821 | Interior | 3010 103c | 20A |
| O BLM-Cortez Joint Venture | T27NR47ESEC13 | | NV | | Interior | 3010 103c | |
| C BLM-Crescent Mining Ltd (Rest Mine). | T28SR1ESEC31 | Searchlight | NV | 89046 | Interior | 103c | 20A |
| O BLM-Crescent Mining Ltd (Rest Mine). | T28SR1ESEC31 | Lander | NV | | Interior | 103c | |
| C BLM-Crescent Valley Mill | T29NR48ESEC24 | Crescent Valley | NV | 89821 | Interior | 103c | 20A |

## Federal Facilities Docket—Docket Corrections—Continued

| Facility name | Facility address | City | State | Zip code | Agency | Reporting mechanism | Correction codes |
|---|---|---|---|---|---|---|---|
| O BLM-Crescent Valley Mill | T29NR48ESEC24 | Eureka | NV | | Interior | 103c | |
| C BLM-D&Z Exploration Company. | T28NR34ESEC32 | Lovelock | NV | 89419 | Interior | 103c | 20A |
| O BLM-D&Z Exploration Company. | T28NR34ESEC32 | Pershing | NV | | Interior | 103c | |
| C BLM-DEE Gold Mining Company. | T37NR50ESEC8 | Elko | NV | 89801 | Interior | 103c | 20A |
| O BLM-DEE Gold Mining Company. | T37NR50ESEC8 | Elko County | NV | | Interior | 103c | |
| C BLM-Double Eagle Inc., Lower Rochester. | T28NR34ESEC18 | Lovelock | NV | 89419 | Interior | 103c | 20A |
| O BLM-Double Eagle Inc., Lower Rochester. | T28NR34ESEC18 | Pershing | NV | 89419 | Interior | 103c | |
| C BLM-Douglas County Landfill | T12NR21ESEC18 | Gardnerville | NV | 89410 | Interior | 103c | 20A |
| O BLM-Douglas County Landfill | T12NR21ESEC18 | Douglas | NV | 89410 | Interior | 103c | |
| C BLM-Dresser Minerals, Greyston Mine. | T28NR46ESEC16 | Battle Mountain | NV | 89820 | Interior | 103c | 20A |
| O BLM-Dresser Minerals, Greyston Mine. | T28NR46ESEC16 | Lander | NV | 89820 | Interior | 103c | |
| C BLM-Duval Corp. Mine Site | T31NR43ESEC23,24,25 | Battle Mountain | NV | 89820 | Interior | 103c | 20A |
| O BLM-Duval Corp. Mine Site | T31NR43ESEC23,24,25 | Lander | NV | | Interior | 103c | |
| C BLM-Elsman Chemical Company. | T34NR62ESEC32 | Carlin | NV | 89822 | Interior | 103c | 20A |
| O BLM-Elsman Chemical Company. | T34NR62ESEC32 | Eureka | NV | | Interior | 103c | |
| C BLM-Ely Crude Oil Company | T9NR57ESEC35 | Ely | NV | 89301 | Interior | 103c | 20A |
| O BLM-Ely Crude Oil Company | T9NR57ESEC35 | Nye | NV | 89301 | Interior | 103c | |
| C BLM-Gold Strike Mine | T36NR50ESEC29,30 | Eureka | NV | 89316 | Interior | 103c | 20A |
| O BLM-Gold Strike Mine | T36NR50ESEC29,30 | Eureka | NV | | Interior | 103c | |
| C BLM-Imco Services Inc | T28NR44ESEC4 and T28NR46ESEC32. | Battle Mountain | NV | 89820 | Interior | 103c | 20A |
| O BLM-Imco Services Inc | T28NR44ESEC4 and T28NR46ESEC32. | | NV | 89820 | Interior | 103c | |
| C BLM-Intermountain Exploration. | T26SR64ESEC9 | Boulder City | NV | 89005 | Interior | 103c | 20A |
| O BLM-Intermountain Exploration. | T26SR64ESEC9 | Clark | NV | 89005 | Interior | 103c | |
| C BLM-Jupiter Gold Company | T33NR37ESEC1 | Winnemucca | NV | 89445 | Interior | 103c | 20A |
| O BLM-Jupiter Gold Company | T33NR37ESEC1 | Pershing | NV | 89445 | Interior | 103c | |
| C BLM-Kemco Buster Mine | T5SR39ESEC25,26 | Goldfield | NV | 89013 | Interior | 103c | 20A |
| O BLM-Kemco Buster Mine | T5SR39ESEC25,26 | Esmeralda | NV | 89001 | Interior | 103c | |
| C BLM-McDermitt Mine | T47NR37ESEC20212729 | McDermitt | NV | 89421 | Interior | 103c 3010 | 20A |
| O BLM-McDermitt Mine | T47NR37ESEC20212729 | Humboldt | NV | | Interior | 103c 3010 | |
| C BLM-Minerals Management, Inc.-Argentum Mill. | T3NR36555EC65-Between Hwy 6 & 95. | Columbus Marsh | NV | 89010 | Interior | 103c | 20A |
| O BLM-Minerals Management, Inc.-Argentum Mill. | T3NR36555EC65-Between Hwy 6 & 95. | Esmeralda | NV | 89049 | Interior | 103c | |
| C BLM-Montello Shellite | T40NR69ESEC34 | Montello | NV | 89830 | Interior | 103c | 20A |
| O BLM-Montello Shellite | T40NR69ESEC34 | Montello | NV | | Interior | 103c | |
| C BLM-Mt. Hope Mine | T22NR51ESEC12 | Ely | NV | 89301 | Interior | 103c | 20A |
| O BLM-Mt.-Hope Mine | T22NR51ESEC12 | White Pine | NV | 89301 | Interior | 103c | |
| C BLM-Multi-Metallics Inc | T37NR1ESEC25 | Winnemucca | NV | 89445 | Interior | 103c | 20A |
| O BLM-Multi-Metallics Inc | T37NR1ESEC25 | Humboldt | NV | 89445 | Interior | 103c | |
| C BLM-Nevada Barth Corporation. | T31NR51ESEC7,8 | Palisade | NV | 89822 | Interior | 103c | 20A |
| O BLM-Nevada Barth Corporation. | T31NR51ESEC7,8 | Eureka | NV | 89822 | Interior | 103c | |
| C BLM-New Pass Resources Inc. | T20NR40ESEC10 | Austin | NV | 89310 | Interior | 103c | 20A |
| O BLM-New Pass Resources Inc. | T20NR40ESEC10 | Lander | NV | 89310 | Interior | 103c | |
| C BLM-Ormsby Landfill | T15NR20-21ESEC1,12, 7700 Hwy 50E. | Carson City | NV | 89701 | Interior | 103c | 20A |
| O BLM-Ormsby Landfill | T15NR20-21ESEC1,12 | Ormsby | NV | 89701 | Interior | 103c | |
| C BLM-Quinn River Valley | T43NR36ESEC18 | Humboldt County | NV | 89445 | Interior | 103c 3016 | 20A |
| O BLM-Quinn River Valley | T43NR36ESEC18 | Humboldt | NV | 89445 | Interior | 103c 3016 3016 | |
| C BLM-Rio Tinto Copper Mine | SEC 10 & 11 T45N R5JE MDM. | Mountain City | NV | 89831 | Interior | 103c | 20A |
| O BLM-Rio Tinto Copper Mine | SEC 10 & 11 T45N R5JE MDM. | Mountain City | NV | | Interior | 103c | |
| C BLM-Smokey Valley Mining Company. | T10NR44ESEC18-30,29. | Round Mountain | NV | 89045 | Interior | 103c | 20A |
| O BLM-Smoking Valley Mining Company. | T10NR44ESEC18-20,29. | Nye | NV | 89045 | Interior | 103c | |
| C BLM-Standard Gold Mine | T30NR33ESEC1 | Imlay | NV | 89416 | Interior | 103c | 20A |
| O BLM-Standard Gold Mine | T30NR33ESEC1 | Pershing | NV | | Interior | 103c | |
| C BLM-Universal Gas Inc. | R35NR50ESEC10 | Eureka | NV | 89316 | Interior | 103c | 20A |
| O BLM-Universal Gas Inc. | R35NR50ESEC10 | Eureka | NV | | Interior | 103c | |

## Federal Facilities Docket—Docket Corrections—Continued

| Facility name | Facility address | City | State | Zip code | Agency | Reporting mechanism | Correction codes |
|---|---|---|---|---|---|---|---|
| C BLM-Utah International Inc. | T34NR34ESEC35,36 | Imlay | NV | 89418 | Interior | 103c | 20A |
| O BLM-Utah International Inc. | T34NR34ESEC35,36 | Pershing | NV | | Interior | 103c | |
| C BLM-Veta Grande Mining Company. | T11NR21ESEC3,4,9, Hwy 395S. | Gardnerville | NV | 89410 | Interior | 103c | 20A |
| O BLM-Veta Grande Mining Company. | T11NR21ESEC3,4,9, Hwy 395S. | Douglas | NV | | Interior | 103c | |
| C BLM-West Coast Oil & Gas Corp. | T19NR22ESEC26,36, 20 Mi E Of Reno off HWY 50. | Storey County | NV | 89400 | Interior | 3010 103c | 20A |
| O BLM-West Coast Oil & Gas Corp. | T19NR22ESEC26,36 | Storey | NV | | Interior | 3010 103c | |
| C Las Vegas Postal Service Main Office. | 1001 Circus Dr | Las Vegas | NV | 89114 | Postal Service | 3010 | 20A |
| O Las Vegas Postal Service Main Office. | 1001 Circus Dr | Las Vegas | NV | 89114 | Postal Service | 3010 | |
| C Tonopah Test Range (Sandia National Laboratory). | PO Box 10359 | Tonopah | NV | 89049 | Energy | 3005 3010 103c 103e | 23 |
| O Tonopah Test Range (Sandia National Laboratory. | PO Box 10359 | Tonopah | NV | 89049 | Energy | 3005 3010 103c | |
| C DNA Johnston Atoll | Johnston Atoll Pacific Ocean. | Lat 16 44 N Lon 169 31 W. | TT | 96305 | Air Force | 3005 3010 103a | 23 |
| O DNA Johnston Atoll | Johnston Atoll Pacific Ocean. | Lat 16 44 N Long 169 31 W. | TT | 96305 | Air Force | 3005 3010 | |
| C BLM-Farewell Air Navigation Site. | Farewell Lake | Farewell | AK | 99695 | Interior | 103c 3016 | 23 |
| O BLM-Farewell Air Navigation Site. | Farewell Lake | Farewell | AK | 99695 | Interior | 103c | |
| C Cape Lisburne Air Force Station. | 11 TCW/CC | Elmendorf AFB | AK | 99506 | Air Force | 3010 103c 3016 | 23 |
| O Cape Lisburne Air Force Station. | 11 TCW/CC | Elmendorf AFB | AK | 99506 | Air Force | 3010 103c | |
| C Kodiak Coast Guard Support Center. | Womans Bay Kodiak Isl. | Kodiak | AK | 99619 | Transportation | 3010 103c 3016 | 23 |
| O Kodiak Coast Guard Support Center. | Womans Bay Kodiak Isl. | Kodiak | AK | 99619 | Transportation | 3010 103c | |
| C Kotzebue White Alice Site | NW Corner of Baldwin Peninsula. | Kotzebue | AK | 99752 | Air Force | 103c 3016 3010 | 23 |
| O Kotzebue White Alice Site | NW Corner of Baldwin Peninsula. | Kotzebue | AK | 99752 | Air Force | 103c 3016 | |
| C Fremont National Forest | 524 North G Street | Lakeview | OR | | Agriculture | 103c 3016 | 23 |
| O Fremont National Forest | 524 North G Street | Lakeview | OR | | Agriculture | 103c | |
| C Willamette | West Linn | West Linn | OR | 97068 | Corps of Engineers, Civil. | 103c 3016 | 23 |
| O Willamette | West Linn | West Linn | OR | 97068 | Corps of Engineers, Civil. | 103c | |
| C BLM-Oroville Landfill | T40NR27ESEC18 | Oroville | WA | 98844 | Interior | 103c 3016 | 23 |
| C BLM-Oroville Landfill | T40NR27ESEC18 | Oroville | WA | 98844 | Interior | 103c | |
| C BPA-Ross Complex | 5411 NE Hwy 99 | Vancouver | WA | 98663 | Energy | 3010 3016 103c 103e | 23 |
| O BPA-Ross Complex | 5411 NE Hwy 99 | Vancouver | WA | 98663 | Energy | 3010 3016 103c | |
| C BR-Fort Simcoe Job Corps Center. | W end of Hwy 220 T10N R16E S21. | White Swan | WA | 98952 | Interior | 3010 | 22,20A |
| O BR-Fort Simcoe Job Corps Center. | W end of Hwy 220 T10N R16E S21. | White Swan | WA | 98952 | Labor | 3010 | |

## Federal Facilities Docket—NFRAP Status Facilities

| Facility name | Facility address | City | State | Zip code | Agency | Reporting mechanism |
|---|---|---|---|---|---|---|
| East Lyme Naval Underwater Systems Center. | Dodge Pond Field Station | East Lyme | CT | 06357 | Navy | 3010 |
| Knolls Atomic Power Laboratory-Windsor Site. | Prospect Hill Road | Windsor | CT | 06095 | Energy | 3005 3010 3016 103c |
| New London Naval Underwater Systems Center. | New London Laboratory | New London | CT | 06320 | Navy | 3010 103c |
| Stratford Engine Plant | 550 South Main Street | Stratford | CT | 06497 | Army | 3005 3010 3016 |
| Bedford Hospital Wells 76 & 77 | Westview Street | Lexington | MA | 02173 | Veterans Administration | 3010 103c |
| Boston Postal Service | 135 A Street | Boston | MA | 02210 | Postal Service | 3010 |
| Woods Hole Coast Guard Base | Little Harbor Road | Falmouth | MA | 02543 | Transportation | 3010 |
| Casco Bay Defense Fuel Support Point. | Rt 123 | South Harpswell Neck | ME | 04070 | Defense Logistics Agency. | 3010 3016 103c |
| Gouldsboro Naval Security Group Activity. | Bldg 41 (Operations Site) | Gouldsboro | ME | 04624 | Navy | 103c |
| Seal Island | C/O Seal Island National Wildlife Refuge. | Millbridge | ME | 04658 | Defense | 103c |

FEDERAL FACILITIES DOCKET—NFRAP STATUS FACILITIES—Continued

| Facility name | Facility address | City | State | Zip code | Agency | Reporting mechanism |
|---|---|---|---|---|---|---|
| Searsport Defense Fuel Support Point. | Trundy Road Box 112 | Searsport | ME | 04974 | Defense Logistics Agency. | 3010 3016 103c |
| Winterharbor Naval Security Group Activity. | Route 186 | Winterharbor | ME | 04693 | Navy | 3010 103c |
| Newington Defense Fuel Support Point. | Patterson Lane | Newington | NH | 03801 | Defense Logistics Agency. | 3010 3016 103c |
| Beavertail Point Radar Station | Off Beavertail Road | Jamestown | RI | 02835 | Defense | 3016 |
| Bayonne Military Ocean Terminal. | Foot of 32nd Street | Bayonne | NJ | 07002 | Army | 3005 3010 3016 103c 103a |
| East Orange Medical Center | Tremont Ave. | East Orange | NJ | 07019 | Veterans Administration | 3010 |
| Fort Monmouth | Tinton & Pinebrook | Tinton Falls | NJ | 07724 | Army | 3010 3016 103c |
| FWS-Great Swamp National Wildlife Refuge. | RD 1, Box 152 | Basking Ridge | NJ | 07920 | Interior | 3016 103c |
| Hillsborough Supply Depot | Route 206 | Hillsborough Twp | NJ | 08853 | Veterans Administration | 103c |
| Lyons Medical Center | Knollcraft Road | Lyons | NJ | 07939 | Veterans Administration | 3010 103c |
| NOAA/NMFS/NEFC | Sandy Hook Laboratory | Highlands | NJ | 07732 | Commerce | 3005 3010 |
| NPS-Gateway National Recreational Area. | Fort Hancock | Sandy Hook—Brooklyn | NJ | 07732 | Interior | 3010 3016 103c |
| SFC NV Brittan Army Reserve Center. | 39th and Federal Street | Camden | NJ | 08105 | Army | 3010 |
| Somerville Depot | Route 206 | Somerville | NJ | 08876 | General Services Admin. | 103c |
| Storck Army Reserve Center | Shore Road | Northfield | NJ | 08225 | Army | 3010 |
| Stryker Reserve Center | 2150 Nottingham Way | Trenton | NJ | 08619 | Army | 3010 |
| Aids to Navigation Team | 7063 Lighthouse Drive | Saugerties | NY | 12477 | Transportation | 3010 |
| Baltimore Maintenance Facility | 2755 Maple Ave | Bellmore | NY | 11710 | Army | 3010 |
| BLM-Pennsylvania Ave/Fountain Ave Landfills. | Pennsylvania Ave, Shore Pkwy | Brooklyn | NY | 11207 | Interior | 3010 |
| Brooklyn Information Agency | 29th & 3rd Ave, Door 15 | Brooklyn | NY | 11232 | General Services Admin. | 3010 |
| Brooklyn Naval and Marine Corps Reserve Center. | Floyd Bennett Field | Brooklyn | NY | 11234 | Navy | 103c |
| Colonie Interim Storage Site | 1130 Central Ave | Colonie | NY | 12205 | Energy | 3005 3010 3016 |
| Emmanuel Cellard Federal Bldg. 225CA. | 225 Cadman Plaza | Brooklyn | NY | 11201 | General Services Admin. | 3010 |
| Federal Building | 252 7th Ave | New York | NY | 10001 | General Services Admin. | 3010 |
| Fort Hamilton | Ft Hamilton | Brooklyn | NY | 11252 | Army | 3010 103c |
| Fort Totten | Bayside | Queens | NY | 11359 | Army | 3010 103c |
| FWS-Iroquois National Wildlife Refuge. | Casey Rd. | Alabama | NY | 14003 | Interior | 3016 103c |
| FWS-Montezuma National Wildlife Refuge. | 3395 Route 5 & 20 East | Seneca Falls | NY | 13148 | Interior | 3010 3016 103c |
| Hancock Field | Taft and Thompson Roads | North Syracuse | NY | 13212 | Air Force | 3010 3016 103c |
| Merchandise Control Sales Section. | 6 World Trade Center | New York | NY | 10048 | General Services Admin. | 3010 |
| Mitchel Field Housing Facility | NAVSTA New York Housing Office, Bldg. 19, West Road, Mitchel Field. | Garden City | NY | 11530 | Navy | 103c |
| Mitchel Manor Housing Facility | NAVSTA New York Housing Office, 85 A Mitchel Avenue. | East Meadow | NY | 11554 | Navy | 103c |
| New York | 201 Varick St | New York | NY | 10014 | General Services Admin. | 3010 |
| New York Naval Station | 207 Flushing Avenue | Brooklyn | NY | 11251 | Navy | 3010 103c |
| Niagara Falls Air Force Reserve Facility. | 914 TAG/DE PO Box F La-Salle Station. | Niagara Falls, IAP | NY | 14304 | Air Force | 3005 3010 3016 103c |
| NPS-Gateway National Recreational Area. | Floyd Bennett Field | Brooklyn | NY | 11234 | Interior | 103c |
| Plant #38 | Porter & Balmer Rds | Porter Twp | NY | 14131 | Air Force | 3005 3010 3016 103c |
| Plum Island Animal Disease Center. | Plum Island | Orient Point | NY | 11957 | Agriculture | 3016 103c |
| Roosevelt Army Reserve Center | 101 Oak St. | Hempstead | NY | 11550 | Army | 3010 |
| Support Center Governor's Island. | C/O US Coast Guard Group | Governor's Island | NY | 10004 | Transportation | 3010 103c |
| Verona Defense Fuel Support Point. | Main St. | Verona | NY | 13478 | Defense Logistics Agency. | 3010 3016 103c |
| Watervliet Arsenal | Broadway | Watervliet | NY | 12189 | Army | 3005 3010 3016 |
| West Point Military Academy | Stewart Army Subpost | West Point | NY | 10996 | Army | 3016 |
| West Point Military Academy | Rt 9W-Bldg 733 | West Point | NY | 10996 | Army | 3005 3010 3016 103c |
| Borinquen Coast Guard Air Station. | Ramey Air Force Base | Aquadilla | PR | 00604 | Transportation | 3010 103c |
| Camp Garcia #1 | Vieques | Vieques | PR | 00765 | Navy | 103c |
| Ceiba Naval Station | Roosevelt Roads | Ceiba | PR | 00635 | Navy | 3005 3010 3016 103c |
| Fort Allen | Route 1 | Juana Diaz | PR | 00665 | Army | 103c |
| Roosevelt Roads Naval Station | Villa Verde Street Drydock & Repair Facility. | Miramar | PR | 00903 | Navy | 3005 3010 3016 |
| Bureau of Engraving & Printing | 14th & C Sts SW | Washington | DC | 20228 | Treasury | 3005 3010 103c 103a |
| Customs Field Office | 1200 Pennsylvania Avenue | Washington | DC | 20004 | General Services Admin. | 3010 |
| Fort McNair | 350 P Street, S.W. | Washington | DC | 20319 | Army | 3010 103c |

FEDERAL FACILITIES DOCKET—NFRAP STATUS FACILITIES—Continued

| Facility name | Facility address | City | State | Zip code | Agency | Reporting mechanism |
|---|---|---|---|---|---|---|
| Soldiers and Airmens Home | Michigan Ave. N.E. | Washington | DC | 20317 | Defense | 3010 3016 |
| Washington Naval Research Laboratory. | 4555 Overlook Ave. | Washington | DC | 20375 | Navy | 3005 3010 3016 103c 103a |
| Canal Site | Main St, North St Georges | Newcastle | DE | 19733 | Corps of Engineers, Civil | 3016 103c |
| Annapolis Naval Academy | Annapolis Naval Complex | Annapolis | MD | 21402 | Navy | 3005 3010 3016 103c |
| Curtis Bay Depot | 710 Ordnance Road | Baltimore | MD | 21226 | General Services Admin. | 3005 3010 3016 |
| Goddard Space Flight Center | Greenbelt Road | Greenbelt | MD | 20771 | NASA | 3010 |
| Harry Diamond Laboratories-Adelphi. | 2800 Powder Mill Rd | Adelphi | MD | 20783 | Army | 3005 3010 3016 103c |
| National Bureau of Standards | Quince Orchard Rd | Gaithersburg | MD | 20760 | Commerce | 3005 3010 103c |
| National Naval Medical Center | 8901 Wisconsin Ave | Bethesda | MD | 20814 | Navy | 3005 3010 3016 |
| NIH-Bethesda | 9000 Rockville Pike | Bethesda | MD | 20892 | Health and Human Services. | 3005 3010 3016 103c |
| Bettis Atomic Power Laboratory | PO Box 109 Bettis Rd | West Mifflin Borough | PA | 15122-0109 | Energy | 3005 3010 3016 |
| Chas Kelly Support Center | US Army | Oakdale | PA | 15071 | Army | 3010 103c |
| Greater Pittsburgh International Airport. | 911 TAG/DE | Pittsburgh | PA | 15231 | Air Force | 3016 103c |
| NPS-Gettysburg National Military Park. | RD 1 | Gettysburg | PA | 17325 | Interior | 103c |
| NPS-Valley Forge National Historic Park. | Rte 23 | Valley Forge | PA | 19481 | Interior | 103c 3010 |
| Philadelphia Defense Personnel Support Center. | 2800 S 20th St | Philadelphia | PA | 19101 | Army | 3005 3010 3016 |
| Arlington Hall Station | U.S. Army | Warrenton | VA | 22186 | Army | 3010 103c |
| Arlington Marine Corps Battalion Headquarters Arl. | Henderson Hall | Arlington | VA | 22214 | Navy | 103c |
| Oyster Point Development Corp | 610 Thimble Shoals Blvd | Newport News | VA | 23601 | Air Force | 103c |
| Roanoke Navy and Marine Corps Reserve. | 5301 Barnes Ave | Roanoke | VA | 24019 | Navy | 3010 103c |
| Aviation Center and Fort Rucker | Bldg 1404 | Fort Rucker #36362-5000 | AL | 36362 | Army | 3005 3010 3016 103c |
| Bellefonte Nuclear Plant | Off US Hwy 72 | Hollywood | AL | 35401 | Tennessee Valley Authority. | 3005 3010 103c |
| Browns Ferry Nuclear Plant | US Hwy 72 | Athens | AL | 35611 | Tennessee Valley Authority. | 3010 |
| Guntersville Hydropower Plant | Off US Hwy 431,11 Mi. NW of Guntersville. | Guntersville | AL | 35976 | Tennessee Valley Authority. | 3010 |
| Muscle Shoals Power Stores | AL Hwy 133 | Muscle Shoals | AL | 35660 | Tennessee Valley Authority. | 3005 3010 3016 103a |
| Widows Creek Fossil Plant | Off US Hwy 72 W | Stevenson | AL | 35772 | Tennessee Valley Authority. | 3005 3010 103c |
| Wilson Hydropower Plant | AL Hwy 133 | Florence | AL | 35660 | Tennessee Valley Authority. | 3010 |
| AFA 49-A Orlando | 8601 Ave B McCoy NTC Annex. | Orlando | FL | 32812 | Army | 3005 3010 |
| BLM-Olustee Dump | Hwy 90 & Olustee Battlefield Rl. | Olustee | FL | | Interior | 103c |
| Colonel Frank M. Williams Army Reserve Center. | 11700 NW 27th Ave | Miami | FL | 33167 | Army | 3005 3010 |
| Fort Lauderdale Naval Underwater Systems Center. | 1650 Southwest 39th Street | Fort Lauderdale | FL | 33315 | Navy | 3010 |
| Gulf Breeze Environmental Research Laboratory. | Sabine Island | Gulf Breeze | FL | 32561 | EPA | 3010 3016 |
| Hurlburt Field | 834 CSG/CC | Hurlburt Field | FL | 32544 | Air Force | 3005 3010 103c |
| Kennedy Space Center | NASA Mail Code DF-EMS | Kennedy Space Center | FL | 32899 | NASA | 3005 3010 3016 103c 103a |
| Key West Coast Guard Station | | Key West | FL | 33040 | Transportation | 3010 |
| Lynn Haven Defense Fuel Support Point. | W end of 10th Street | Lynn Haven | FL | 32444 | Defense Logistics Agency. | 3010 3016 103c |
| Mayport Coast Guard Base | PO Box 385 | Mayport | FL | 32267 | Transportation | 3010 103c |
| Mayport Naval Air Station | PO Box 265 Naval Station | Mayport | FL | 32228 | Navy | 3005 3010 3016 103c 103a |
| Miami Beach Coast Guard Base | 100 MacArthur Cswy | Miami Beach | FL | 33139 | Transportation | 3005 3010 |
| NPS-Everglades National Park | Route 9336 | Homestead | FL | 33030 | Interior | 3010 |
| Osceola National Forest | National Forests of Florida | Unincorporated Lake City | FL | 32055 | Agriculture | 3016 |
| Palatka Army Maintenance Support Activity-55M. | 4300 St Johns Ave | Palatka | FL | 32077 | Army | 3010 |
| Pinellas Plant | 7887 Bryan Dairy Rd | Largo | FL | 34649-2900 | Energy | 3005 3010 3016 |
| St. Petersburg Coast Guard Station. | 600 8th Ave SE | St. Petersburg | FL | 33701 | Transportation | 3010 |
| Tampa Defense Fuel Support Point. | Box 13736 | Tampa | FL | 33611 | Defense Logistics Agency. | 3010 3016 103c |
| W. Palm Beach Naval Underwater Systems Center. | 801 Clematis Street | W Palm Beach | FL | 33402 | Navy | 3010 |
| Wildlife Research Field Station | 2820 E University Ave | Gainesville | FL | 32601 | Agriculture | 103c |
| Atlanta Medical Center | 1670 Clairmont Road | Decatur | GA | 30033 | Veterans Administration | 3005 3010 3016 |

FEDERAL FACILITIES DOCKET—NFRAP STATUS FACILITIES—Continued

| Facility name | Facility address | City | State | Zip code | Agency | Reporting mechanism |
|---|---|---|---|---|---|---|
| Augusta Army Maintenance Support Activity-54G. | 3311 Wrightsboro Rd | Augusta | GA | 30904 | Army | 3010 |
| Centers for Disease Control | 4770 Buford Hiway | Chamblee | GA | | Health and Human Services. | 103c |
| Dobbins Air Force Base | 94 CSG/DE | Marietta | GA | 30069 | Air Force | 3016 103c |
| Fort Gillem | Attn AFZK-EH-C | Forest Park | GA | 30330 | Army | 3005 3010 3016 103c |
| Fort Campbell | AFZB-FE-ECE | Fort Campbell | KY | 42223 | Army | 3005 3010 3016 103c |
| Lexington Blue Grass Depot Activity. | US Hwy 421 | Richmond | KY | 40475 | Army | 3005 103c |
| Lexington-Bluegrass Army Depot. | Haley Rd | Lexington | KY | 40511 | Army | 3005 3010 3016 103c 103a |
| Paducah Gaseous Diffusion Plant. | PO Box 1410 Hobbs Road | Paducah | KY | 42001 | Energy | 3005 3010 3016 103a |
| John C. Stennis Space Center | SSC Bldg 1100 | Stennis Space Center | MS | 39529 | NASA | 3005 3010 3016 103c |
| Cherry Point Marine Corps Air Station. | NC Hwy 101 | Cherry Point | NC | 28533 | Navy | 3005 3010 3016 103c |
| Nantahala National Forest Landfill. | Post & Otis Streets, Box 2750 | Asheville | NC | 28802 | Agriculture | 103c |
| National Institute of Environmental Health Scienc. | S on Alexander Dr | Research Triangle Park | NC | 27709 | Health and Human Services. | 3005 3010 103c |
| National Marine Fisheries Service. | Pivers Island Off US Hwy 70 West. | Beaufort | NC | 28512 | Commerce | 3010 3016 |
| Pope Air Force Base | 317 CSG/CC | Pope AFB | NC | 28308 | Air Force | 3005 3010 103c 3016 |
| Seymour Johnson Air Force Base. | 4 CSG/DE | Seymour Johnson AFB | NC | 27531 | Air Force | 3005 3010 3016 103c |
| Technology Center | Hwy 54 & Alexander Drive | Research Triangle Park | NC | 27711 | EPA | 3005 3010 |
| Beaufort Marine Corps Air Station. | Lafrene Road | Beaufort | SC | 29904 | Navy | 3005 3010 3016 103c |
| Beaufort Naval Hospital | SC Highway 280 | Beaufort | SC | 29902 | Navy | 3010 |
| Charleston Naval Shipyard | Viaduct Road | Charleston | SC | 29408 | Navy | 3005 3010 3016 |
| Charleston Air Force Base | 437 ABG/CC | Charleston AFB | SC | 29404 | Air Force | 3005 3010 3016 103c |
| Charleston Defense Fuel Supply Point. | N Rhett Ave | Hanahan | SC | 29406 | Defense Logistics Agency. | 3010 3016 |
| Myrtle Beach Air Force Base | 354 CSG/DE | Myrtle Beach | SC | 29577 | Air Force | 3005 3010 3016 |
| Parris Island Marine Corps Recruit Depot. | Marine Corps Recruit Depot | Parris Island | SC | 29905 | Navy | 3005 3010 3016 |
| Shaw Air Force Base | 363 CSG/DE | Shaw AFB | SC | 29152 | Air Force | 3005 3010 3016 103c |
| Training Center and Fort Jackson. | Jackson Blvd. | Fort Jackson | SC | 29207 | Army | 3005 3010 3016 |
| Arnold Engineering Development Center. | TN Hwy 127 | Arnold Air Force Base | TN | 37389 | Air Force | 3005 3010 3016 103c 103a |
| Bull Run Fossil Plant | Edgemoor Rd., 6 Mi SE of Oak Ridge. | Oak Ridge | TN | 37830 | Tennessee Valley Authority. | 3010 |
| Cumberland Fossil Plant | TN Highway 149 South | Cumberland City | TN | 37050 | Tennessee Valley Authority. | 3010 |
| Holston Army Ammunition Plant | West Stone Drive | Kingsport | TN | 37660 | Army | 3005 3010 3016 103c |
| Danville Medical Center Hospital | 1900 E Main St | Danville | IL | | Veterans Administration | 103c |
| Fermi National Accelerator Laboratory. | Route 16 & 59 Kane County | Batavia | IL | 60510 | Energy | 3005 3010 3016 103c |
| Former Jeffersonville Quartermaster Depot. | Located on Segrams Property Clark County. | Jeffersonville | IN | 47130 | Army | 3016 103c |
| New Haven Defense Logistics Agency Depot. | State Rt. 14 | New Haven | IN | 46774 | Defense Logistics Agency. | 3010 |
| Ann Arbor Motor Vehicle Emesion Laboratory. | 2565 Plymouth Road | Ann Arbor | MI | 48105 | EPA | 3010 |
| Harrisville Defense Fuel Support Point. | US Hwy 23 | Harrisville | MI | 48740 | Defense | 103c |
| Tank Automotive Command | 6501 E. 11 Mile Rd. Macomb County. | Warren | MI | 48090 | Army | 3005 3010 3016 103c |
| Minneapolis St. Paul Bulk Mail Center. | 3165 S. Lexington Ave | St. Paul | MN | 55121 | Postal Service | 3010 |
| Andrew W. Breidenbach Environmental Research Ctr. | 26 W. St. Clair Street | Cincinnati | OH | 45268 | EPA | 3005 3010 3016 |
| Center Hill Hazardous Waste Engrg Research Lab. | 5595 Center Hill Road | Cincinnati | OH | 45268 | EPA | 3005 3010 3016 |
| Cincinnati Defense Fuel Support Plant. | 4820 River Rd. Hamilton County. | Cincinnati | OH | 45233 | Defense Logistics Agency. | 3010 3016 103c |
| Columbus Defense Construction Supply Center. | 3990 E. Broad St. Franklin County. | Columbus | OH | 43215 | Army | 3005 3010 3016 103c |
| Electronic Supply Center | 1507 Wilmington Pike Montgomery County. | Dayton | OH | 45444 | Defense | 3010 3016 103c |

FEDERAL FACILITIES DOCKET—NFRAP STATUS FACILITIES—Continued

| Facility name | Facility address | City | State | Zip code | Agency | Reporting mechanism |
|---|---|---|---|---|---|---|
| Lima Defense Plant Representative Office. | Defense Logistics Agency, DPRO General Dynamics—Lima, 1155 Buckeye Rd. | Lima | OH | 45804-1898 | Army | 3010 3016 103c |
| Testing and Evaluation Facility | 1600 Gest Street | Cincinnati | OH | 45203 | EPA | 3005 3010 3016 |
| FS-Forest Production Laboratory | 502 Walnut Street | Madison | WI | 53705 | Agriculture | 3005 3010 |
| Combustion Research Facility | NCTR Bldg. 45 | Jefferson # 72079 | AR | 72079 | EPA | 3005 3010 3016 |
| Eaker Air Force Base | 97 CSG/DEEV | Eaker AFB | AR | 72315-5000 | Air Force | 3005 3010 3016 103c |
| Fort Chaffee | Building 239 | Fort Chaffee | AR | 72905 | Army | 3005 3010 3016 103c |
| FWS-Hope Wildlife Area | 4 Miles North off Hwy 32 | Hope | AR | | Interior | 103c |
| Millwood Reservation | Route 1 | Ashdown | AR | | Corps of Engineers, Civil | 103c |
| FWS-Lacassine National Wildlife Refuge. | Route 1 | Lake Arthur | LA | 70549 | Interior | 103c |
| Martin Marietta Aerospace | 13800 Old Gentilly Road | New Orleans | LA | 70129 | NASA | 3005 3010 3016 103c |
| New Orleans Naval Air Station | 32 Belle Chase Hwy | Belle Chasse | LA | 70037 | Navy | 3010 103c 103a |
| SPR-Weeks Island | 2 Mi NW of Cypremont | Cypremont | LA | 70560 | Energy | 103c |
| SPR-West Hackberry Site | 3.6 Mi W of Hackberry, Hwy [illegible]90. | Hackberry | LA | | Energy | 103c |
| BLM-Flora Vista Landfill | T30NR12WSEC3 | Flora Vista | NM | 87415 | Interior | 3016 103c |
| BLM-Hyde Mine | 35/32/46 & 108/41/26 | Gallup | NM | 87301 | Interior | 103c |
| BLM-South Farmington Sanitary Landfill. | T29NR13WSEC20 | Farmington | NM | 87401 | Interior | 3016 103c |
| BLM-Standard Transpipe Corp | T17SR9ESEC18, 19 | Alamogardo | NM | 88310 | Interior | 103c |
| BLM-Waterflow Landfill | T30 NR 16W SEC35 | Waterflow | NM | 87421 | Interior | 103c |
| Cibola National Forest | Cibola National Forest | Magdalena | NM | 87825 | Agriculture | 103c |
| Fort Wingate Depot Activity | 10 Miles East of Gallup on I-10. | Gallup | NM | 87310 | Army | 3005 3010 3016 103c |
| Gasbuggy | T29N, R4W S36; 55 M E. of Farmington. | Dulce (Near) | NM | | Energy | 103c |
| La Bajada Mine | 1.25 Mi Upstream From La Bajada. | La Bajada | NM | | Agriculture | 103c |
| Lovelace Inhalation Toxicology Research Institute. | Bldg. 9200, Kirtland AFB East | Albuquerque | NM | 87185 | Energy | 103c 3016 |
| BIA-Caddo County Landfill #1 | SE/4 SEC7 T5N R11W SW/4 SEC8. | Apache | OK | | Interior | 103c |
| Air Defense Center & Fort Bliss | Pershing Drive | Fort Bliss | TX | 79916 | Army | 3005 3010 3016 103c 103a |
| Canyon Lake Recreation Area | North Side of Canyon Lake (By Dam). | San Antonio | TX | 78234 | Army | 103c |
| Corpus Christi Army Maintenance Support Activity. | 2022 Saratoga | Corpus Christi | TX | 78415 | Army | 3005 3010 103c |
| Dyess Air Force Base | 96 CSG/CC | Abilene | TX | 79607 | Air Force | 3005 3010 3016 103c |
| Galveston Coast Guard Base | Ferry Road | Galveston | TX | 77550 | Transportation | 3010 |
| Houston Laboratory | 6606 Hornwood Dr. | Houston | TX | 77074 | EPA | 3010 103c |
| L.B. Johnson Space Center | 2101 NASA Road | Houston | TX | 77058 | NASA | 3005 3010 3016 103a |
| NPS-Padre Island National Seashore Bone Yard. | Park Road 22 | Corpus Christi | TX | 78418 | Interior | 3010 3016 103c |
| Unidentified Site | US Forest Service Property | Huntsville | TX | | Agriculture | 103c |
| WAPA-Hinton | PO Box 1012 | Hinton | IA | 51024 | Energy | 3005 3010 3016 |
| Atchison Defense Industrial Plant Equipment Facil. | Old Rte 1 | Atchison | KS | 66002 | Army | 103c |
| Region 7, Environmental Services Division Lab. | 25 Funston Road | Kansas City | KS | 66115 | EPA | 3005 3010 3016 103c |
| BM-Rolla Research Center | 1300 Bishop Ave | Rolla | MO | 65401 | Interior | 103c |
| Defense Mapping Agency-FEE | 3200 S. Second Street | St. Louis | MO | 63118 | Defense Mapping Agency. | 3010 |
| Defense Mapping Agency-FEE | 8900 S. Broadway | St. Louis | MO | 63118 | Defense Mapping Agency. | 3010 |
| MO-AVCRAD | 2501 Lester Jones Ave | Springfield | MO | | Army | 103c |
| Mobile Incinerator | SE ¼ NW¼ NW¼ SEC 20 | McDowell | MO | 65769 | EPA | 3010 103c |
| Schuster Farm | SEC58 S17 T55N R33W | Gower | MO | | Agriculture | 103c |
| St. Louis | 1222 Spruce | St. Louis | MO | 63103 | General Services Admin. | 3005 3010 |
| Lincoln Naval Reserve Center | 1625 N 10th St | Lincoln | NE | 68508 | Navy | 103c |
| Omaha Naval and Marine Corps Reserve Center. | Fort Omaha | Omaha | NE | 68102 | Navy | 103c |
| Section 5 Impoundment | SW¼ NW¼ SE¼ of SEC 5 | Glenvil Township | NE | | Agriculture | 103c |
| BLM-Fremont | T48NR12SEC19 | Cata Paxi | CO | | Interior | 103c |
| BLM-Montrose County Dump | T48NR19WSEC22 | Montrose | CO | | Interior | 103c |
| BLM-Placerville Tram Site | T44NR11WSEC35 Hwy 62 | Placerville | CO | 81430 | Interior | 103c |
| BLM-San Miguel Landfill #1 | T44NR15WSEC26 | Naturita | CO | | Interior | 103c |
| BLM-San Miguel Landfill #2 | T44NR17WSEC18 | Slick Rock | CO | | Interior | 103c |
| BLM-Sawpit Tram Site (Ore Storage). | T43NR10WSEC18 | Saw Pit | CO | 81435 | Interior | 103c |
| BLM-Town of Mesa Landfill | T19SR96WSEC22 | Molina | CO | | Interior | 103c |
| BR-Loveland | 910 Van Buren | Loveland | CO | 80537 | Interior | 3010 103c |

FEDERAL FACILITIES DOCKET—NFRAP STATUS FACILITIES—Continued

| Facility name | Facility address | City | State | Zip code | Agency | Reporting mechanism |
|---|---|---|---|---|---|---|
| Central Direct Fed. Division Materials-FHWA. | 6th St., Bldg. 52, DFC | Denver | CO | 80225 | Transportation | 3005 3010 103c |
| Colorado Springs Academy | AFA/DE | Colorado Springs | CO | 80840 | Air Force | 3010 103c |
| Denver Bulk Mail Center | 7755 E. 56th Ave. | Denver | CO | 80236 | Postal Service | 3016 103c |
| Fort Carson | DFAE Bldg. 304, AFZC-FE-EQ. | Ft. Carson | CO | 80913 | Army | 3005 3010 3016 103c |
| Grand Junction Projects Office | 3597 B-¾ RD PO2567 | Grand Junction | CO | 81502-5504 | Energy | 3016 103c |
| GS-Denver, NWQL | 5293 Ward Rd. | Denver | CO | 80225 | Interior | 3010 |
| National Enforcement Investigation Center. | DFC | Denver | CO | 80225 | EPA | 3010 |
| NPS-Denver Service Center | 755 Parfet St., Box 25287 | Denver | CO | 80225 | Interior | 3016 103c |
| Peterson Air Force Base | 1003 SSG/CC | Peterson AFB | CO | 80914 | Air Force | 3005 3010 103c |
| Solar Energy Research Institute | 1617 Cole Blvd. | Golden | CO | 80401 | Energy | 3005 3010 3016 103c |
| Transportation Test Center | 21 Miles NE Pueblo Mem Airport. | DOT Test Track Rd | CO | 81001 | Transportation | 3005 3010 3016 |
| WAPA-Power Operations | 1800 S. Rio Grande Ave. | Montrose | CO | 81401 | Energy | 103c |
| BLM-Jet Fuel Refinery Site | T14NR31E 4Mi E of Mosby | Mosby | MT | | Interior | 103c |
| BLM-Roundup Landfill | 1.5 Miles Northwest of Roundup. | Roundup | MT | | Interior | 103c |
| BLM-Sluice Gulch Leaking Adit | T6SR15WSEC5 | | MT | | Interior | 103c |
| BLM-Thorium City Waste Dump | T105R15WSEC21,22,27,28 | Grant | MT | 59734-3016 | Interior | 3016 103c |
| BLM-Tungsten Mill Tailings | T45W9WSEC4,5,9 | Glen | MT | 59732 | Interior | 103c |
| FWS-Charles M. Russell Refuge | T21N, R2E, Sec.15 | Turkey Joe Landing | MT | 59457 | Interior | 3010 103c |
| Malmstrom Air Force Base | Facility 1501 Perimeter Rd. | Great Falls | MT | 59402 | Air Force | 3005 3010 3016 103c 103a |
| Concrete Missile Early Warning Station. | Det 1 57 AD/DE | Concrete | ND | 58221 | Army | 103c 3010 3005 |
| Grand Forks Defense Fuel Support Point. | Grand Forks AFB 42nd Street | Grand Forks | ND | 58201 | Defense Logistics Agency. | 3010 3016 103c |
| Minot Air Force Base | 41 CSG/CC | Minot AFB | ND | 58705 | Air Force | 3005 3010 3106 103c |
| North Dakota Agricultural Experiment Station. | 1605 W. College St. | Fargo | ND | 58105 | Agriculture | 3010 3016 103c |
| Silver King Mines, Inc | US Hwy. 18 | Edgemont | SD | 57735 | Tennessee Valley Authority. | 3010 103c |
| BLM-Chevron Red Wash Unit | T7SR7ESEC22 | Vernal | UT | 84078 | Interior | 3016 103c |
| BLM-Desert Mound Mine | T35NR13WSEC35 | Cedar City | UT | 84720 | Interior | 3016 103c |
| BLM-Frye Canyon Tailing | T36SR16ESEC34 | Hite | UT | 84511 | Interior | 3016 103c |
| BLM-Ore Buying Station-Moab | T26SR22ESEC8PARCLABC | Moab | UT | 84532 | Interior | 3016 103c |
| WAPA-Casper Field Br | W of Mt View on Spider Rd. | Mills | WY | 82644 | Energy | 103c |
| Guam Naval Magazine | Apra Hbr Hts Area by Fena Reev. | Apra Harbor | AQ | 96910 | Navy | 103c |
| Fort Huachuca | RCRA Units | Fort Huachuca | AZ | 85613 | Army | 3010 3016 103c 103a |
| Sky Harbor International Airport | 2001 S. 32nd St | Phoenix | AZ | 85034 | Air Force | 3010 |
| Civil Engineering Laboratory | NCBC | Port Hueneme | CA | 93043 | Navy | 3010 103a |
| Crows Landing Naval Air Logistics Force. | NALF Crows Landing | Crows Landing | CA | 95313 | Navy | 3010 3016 |
| Fallbrook Naval Weapons Station Annex. | Seal Beach | Fallbrook | CA | 92028 | Navy | 103c |
| Imperial Beach Naval Communications Station. | Outlying Landing Field Bldg 162 Rt 75 & Palm Ave. | Imperial Beach | CA | 92032 | Navy | 3005 3010 103c 103a |
| Lawrence Berkeley Laboratory | 1 Cyclotron Rd. | Berkeley | CA | 94720 | Energy | 3005 3010 3016 |
| Norwalk Defense Fuel Supply Center. | 15306 Norwalk Blvd. | Norwalk | CA | 90650 | Defense Logistics Agency. | 3010 3016 103c |
| Oakland Naval Regional Medical Center. | 8750 Mountain Blvd | Oakland | CA | 94627 | Navy | 3010 103c |
| Plant #19 | 4297 Pacific Coast Hwy | San Diego | CA | 92101-5001 | Air Force | 103c 3016 3010 |
| Point Sur Naval Facility | Naval Facility Point Sur | Big Sur | CA | 93920 | Navy | 3010 |
| San Diego Naval Facilities Engineering Command. | Western Division | San Diego | CA | 92136 | Navy | 103c |
| Sierra National Forest | 1130 O St. Room 3017 | Fresno | CA | 93721 | Agriculture | 103c 3016 |
| Skaggs Island Naval Security Group Activity. | Skaggs Island | Sonoma | CA | 95476 | Navy | 3010 3016 |
| Stanford Linear Accelerator Center. | 2527 Sandhill Rd. | Menlo Park | CA | 94305 | Energy | 3010 3016 103c 103a |
| Guam Naval Hospital | Naval Hosp Guam | Naval Hosp Guam | GU | 96538 | Navy | 103c |
| Pearl Harbor Naval Submarine Base. | | Pearl Harbor | HI | 96860 | Navy | 3010 103a |
| Pearl Harbor Naval Supply Center. | Naval Base | Pearl Harbor | HI | 96860 | Navy | 3005 3010 103c 3016 |
| Pearl Harbor Navy Public Works Center. | Naval Station Area | Pearl Harbor | HI | 96860 | Navy | 3005 3010 3016 103c |
| BLM-Henderson Landfill | T21S R63E Section 28, 29 | Henderson | NV | | Interior | 103c |

FEDERAL FACILITIES DOCKET—NFRAP STATUS FACILITIES—Continued

| Facility name | Facility address | City | State | Zip code | Agency | Reporting mechanism |
|---|---|---|---|---|---|---|
| BLM-Rio Tinto Copper Mine | SEC 10 & 11 T45N R53E MDM. | Mountain City | NV | 89831 | Interior | 103c |
| Tonopah Test Range (Sandia National Laboratory). | PO Box 10359 | Tonopah | NV | 89049 | Energy | 3005 3010 103c 103a |
| BLM-Red Devil Mine Waste Ponds. | L61-10-12 L149-56-48 | | AK | | Interior | 3016 103c |
| BLM-Sagwon Airstrip | T5R4ESEC10-11 | Sagwon | AK | 99513 | Interior | 3016 103c |
| Dewline Site Bar-Main | Barter Isl., ½ Mi E of NE Shr | Kaktovik | AK | 99747 | Air Force | 103c |
| Dewline Site L1Z-3 | Kuk River & Chukchi Sea | Wainwright | AK | 99782 | Air Force | 3010 103c |
| Dewline Site LIZ-2 | Kasegaliik Lagoon-Chukchi Sea | Point Lay | AK | 99766 | Air Force | 3010 103c |
| Dewline Site POW-1 | Lonely, Pitt Point, E of Smith Bay. | Lonely | AK | 99999 | Air Force | 3010 103c |
| Dewline Site POW-2 | Simpson Lagoon-Beaufort Bay | Oliktok | AK | 99599 | Air Force | 3010 103c |
| Dewline Site POW-Main | Point Barrow Between N Salt Lagoon & Imikpuk. | Point Barrow Station | AK | 99723 | Air Force | 3010 103c |
| BLM-Blue Dome Unauthorized Dump. | T10NR30ESEC30 | Blue Dome | ID | 83464 | Interior | 103c |
| BLM-Central Cove Landfill | T3NR4WSEC8,9 | Caldwell | ID | | Interior | 3016 103c |
| BLM-Champaigne Creek Mine | T3N R24E SEC15 | Grouse | ID | 83242 | Interior | 3016 103c |
| BLM-Delamar Silver Mine | T.15.S.R.35.E. | Owyhee | ID | | Interior | 103c |
| BLM-Elk City | T29NR8ESEC23 | Elk City | ID | 83525 | Interior | 3016 103c |
| BLM-Howe Dumpsite | T6NR29ESEC31 | Howe | ID | 83244 | Interior | 103c |
| BLM-Menan Unauthorized Dump. | T6NR38ESEC26&27 | Madison | ID | | Interior | 103c |
| BLM-Morgan's Pasture | T1N R35E SEC 33 & 34 | Shelly | ID | 83274 | Interior | 3010 103c |
| BLM-Owyhee Co. Grandview Landfill. | T6SR4ESEC14 | Bruneau | ID | 83604 | Interior | 103c |
| BLM-Owyhee Co. Marshing/Homedale Landfill. | Johnson Rd. T4N R5W S32 SW ¼. | Marsing-Homedale | ID | 83639 | Interior | 103c |
| BLM-Owyhee Co. Wilson Creek Landfill. | T1SR34ESEC13 | Marsing | ID | 83639 | Interior | 103c |
| BLM-Pestcide Dump Site, Reynolds. | T2SR3W SEC31 | Reynolds | ID | 83650 | Interior | 103c |
| BLM-Pesticide Dumpsite Sec. 5 | Boise Dist Sec. 5 | Murphy | ID | 83650 | Interior | 103c |
| BLM-Pullman Mine | T29N R4W S14 | Cottonwood | ID | 83522 | Interior | 103c |
| BLM-Springfield Dumpsite | T3SR32ESEC12 | Springfield | ID | 83277 | Interior | 103c |
| BLM-Springfield Unauthorized Dumpsite. | T35NR32ESEC15 | Springfield | ID | 83277 | Interior | 103c |
| BLM-Minexco Millsite | T9SR42ESEC8 | Baker | OR | 97814 | Interior | 3016 103c |
| BLM-Slides Dump Site | T15SR46ESEC35, Lots 1,2 | Ontario | OR | 97914 | Interior | 3016 103c |
| Willamette | West Linn | West Linn | OR | 97068 | Corps of Engineers, Civil | 103c 3016 |
| BLM-Enlo Powerhouse AKA Similkameen. | T40NR27ESEC13 | Oroville | WA | 98844 | Interior | 103c |

[FR Doc. 92-14752 Filed 7-16-92; 8:45 am]

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Friday
July 17, 1992

Part III

# Environmental Protection Agency

40 CFR Parts 141 and 142

National Primary Drinking Water Regulations; Synthetic Organic Chemicals and Inorganic Chemicals; Final Rule

VOL 57 ISS 138 JL 17 1992 UMI



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 141 and 142**

**[WH-FRL-4137-3]**

# Drinking Water; National Primary Drinking Water Regulations—Synthetic Organic Chemicals and Inorganic Chemicals; National Primary Drinking Water Regulations Implementation

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** By this document, EPA is promulgating maximum contaminant level goals (MCLGs) and National Primary Drinking Water Regulations (NPDWRs) for 18 synthetic organic chemicals (SOCs) and 5 inorganic chemicals (IOCs). The NPDWRs consist of maximum contaminant levels (MCLs) for the SOCs and IOCs. The NPDWRs also include monitoring, reporting, and public notification requirements for these chemicals. Regulation of sulfate, one of the contaminants in the proposed rule, has been deferred. This document includes the best available technology (BAT) upon which the MCLs are based and the BAT for the purpose of issuing variances.

**DATES:** The effective date for revisions and additions to §§ 141.32, 141.40, 141.50 (except 141.50(b)(28)), 141.51 141.61 (except 141.61(c)(26)), 141.62, 142.16, and 142.62 is January 17, 1994. The effective date for revisions and additions to §§ 141.2, 141.6, 141.12, 141.23, 141.24, 141.50(b)(28), 141.60, 141.61(c)(26), and 141.89 is August 17, 1992. In accordance with 40 CFR 23.7, this regulation shall be considered final Agency action for the purposes of judicial review at 1 p.m., Eastern time on July 31, 1992.

**ADDRESSES:** Copies of the public comments received, EPA responses, and all other supporting documents (including references included in this notice) are available for review at the U.S. Environmental Protection Agency (EPA), Drinking Water Docket, 401 M Street, SW., Washington, DC 20460. For access to the docket materials, call 202–260–3027 between 9 a.m. and 3:30 p.m. Any document referenced by an MRID number is available by contacting Susan Lawrence, Freedom of Information Office, Office of Pesticide Programs, at 703–557–4454.

Copies of health criteria, analytical methods, and economic impact analysis documents are available for a fee from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800–336–4700, local: 703–487–4650. Additionally, they can be reviewed at the EPA regional offices listed below.

**FOR FURTHER INFORMATION CONTACT:** Gregory Helms, Regulation Management Branch, Drinking Water Standards Division, Office of Ground Water and Drinking Water (WH–550D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 202–260–8049, or one of the EPA Regional Office contacts listed below. General information may also be obtained from the EPA Drinking Water Hotline. Callers within the United States may reach the Safe Drinking Water Hotline at 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 8:30 a.m. to 4 p.m. Eastern Time.

*EPA Regional Offices*

I. JFK Federal Bldg., Room 2203, One Congress Street, 11th floor, Boston, MA 02203, Phone: (617) 565–3610, Jerry Healey
II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212) 264–1800, Walter Andrews
III. 841 Chestnut Street, Philadelphia, PA 19107, Phone: (215) 597–9800, Dale Long
IV. 345 Courtland Street, N.E., Atlanta, GA 30365, Phone: (404) 347–3633, Wayne Aronson
V. 77 West Jackson Boulevard, Chicago, IL 60604, Phone: (312) 353–2000, Ed Watters
VI. 1445 Ross Avenue, Dallas, TX 75202, Phone: (214) 655–7155, Tom Love
VII. 726 Minnesota Ave., Kansas City, KS 66101, Phone: (913) 276–7032, Ralph Langemeier
VIII. One Denver Place, 999 18th Street, Suite 500, Denver, CO 80202–2466, Phone: (303) 293–1413, Patrick Crotty
IX. 75 Hawthorne Street, San Francisco, CA 94105, Phone: (415) 744–1855, Steve Pardieck
X. 1200 Sixth Avenue, Seattle, WA 98101, Phone: (206) 553–1225, Jan Hastings

**SUPPLEMENTARY INFORMATION:**

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**Abbreviations Used in This Rule**

AA: Direct Aspiration Atomic Absorption Spectroscopy
ACS: American Chemical Society
ADI: Acceptable Daily Intake
ASDWA: Association of State Drinking Water Administrators
ASTM: American Society for Testing Materials
BAT: Best Available Technology
BTGA: Best Technology Generally Available
CRAVE: Cancer Risk Assessment Verification Enterprise
CAA: Clean Air Act
CAG: Cancer Assessment Group
CUR: Carbon Usage Rate
CWS: Community Water System
DWEL: Drinking Water Equivalent Level
EBCT: Empty Bed Contact Time
EIA: Economic Impact Analysis
EMSL: Environmental Monitoring Systems Laboratory (Cincinnati)
EPA: Environmental Protection Agency
FDA: Food and Drug Administration
FR: Federal Register
GAC: Granular Activated Carbon
GFAA: Graphite Furnance Atomic Absorption Spectroscopy
HPLC: High Pressure Liquid Chromatography
HSDB: Hazardous Substances Data Base
ICP–AES: Inductively Coupled Plasma-Atomic Emission Spectroscopy
IE: Ion Exchange
IMDL: Inter-Laboratory Method Detection Limit
IOC: Inorganic Chemical
IRIS: Integrated Risk Information System
LOAEL: Lowest-Observed-Adverse-Effect Level
LOQ: Limit of Quantitation
MCAWW: Methods for Chemical Analysis of Water and Wastes
MCL: Maximum Contaminant Level (expressed as mg/1)[1]
MCLG: Maximum Contaminant Level Goal
MDL: Method Detection Limit
MF: Modifying Factor
MGD: Million Gallons per Day
NAS: National Academy of Sciences
NCWS: Non-Community Water System
NIPDWR: National Interim Primary Drinking Water Regulation
NOA: Notice of Availability
NOAEL: No-Observed-Adverse-Effect Level
NOEL: No-Observed-Effect Level
NPDES: National Pollution Discharge Elimination System
NPDWR: National Primary Drinking Water Regulation
NTIS: National Technical Information Service
NTNCWS: Non-Transient Non-Community Water System
O&M: Operations & Maintenance
OPP: Office of Pesticide Programs
ORD: Office of Research and Development
OW: Office of Water
OX: Oxidation (Chlorine or Ozone)
PAC: Powdered Activated Carbon
PAHs: Polynuclear Aromatic Hydrocarbons
Pathco: Pathology Working Group
PE: Performance Evaluation
POE: Point-of-Entry Technologies
POU: Point-of-Use Technologies
PQL: Practical Quantitation Level
PTA: Packed Tower Aeration
PWS: Public Water System
RCRA: Resource Conservation Recovery Act
RfC: Reference Concentration
RfD: Reference Dose (formerly termed Acceptable Daily Intake (ADI))
RIA: Regulatory Impact Analysis
RMCL: Recommended Maximum Contaminant Level
RO: Reverse Osmosis
RSC: Relative Source Contribution
SDWA: Safe Drinking Water Act, or the "Act," as amended in 1986
SMCL: Secondary Maximum Contaminant Level
SMF: Standardized Monitoring Framework
SOC: Synthetic Organic Chemical
T&C: Technology & Costs
TEF: Toxic Equivalency Factors
TEM: Transmission Electron Microscopy
TWS: Transient Non-Community Water System
UF: Uncertainty Factor
UIC: Underground Injection Control
USDA: U.S. Department of Agriculture
VOC: Volatile Organic Chemcial
WHP: Wellhead Protection
WHPA: Wellhead Protection Area
WS: Water Supply

[1] 1,000 micrograms (μg) = 1 milligram (mg).

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**I. Summary of Today's Action**

TABLE 1.—MCLGs AND MCLs FOR INORGANIC CONTAMINANTS

| Chemical | Proposed MCLGs (mg/l) | Final MCLGs (mg/l) | Proposed MCLs (mg/l) | Final MCLs (mg/l) |
|---|---|---|---|---|
| (1) Antimony | 0.003 | 0.006 | [1]0.01/0.005 | 0.006 |
| (2) Beryllium | Zero | 0.004 | 0.001 | 0.004 |
| (3) Cyanide | 0.2 | 0.2 | 0.2 | 0.2 |
| (4) Nickel | 0.1 | 0.1 | 0.1 | 0.1 |
| (5) Sulfate | [1]400/500 | Deferred | 400/500 [1] | Deferred |
| (6) Thallium | 0.0005 | 0.0005 | [1]0.002/0.001 | 0.002 |

[1] Alternative MCLG/MCL options were proposed in the July 25, 1990 notice.

TABLE 2.—MCLGs AND MCLs FOR ORGANIC CONTAMINANTS

| Chemical | Proposed MCLGs (mg/l) | Final MCLGs (mg/l) | Proposed MCLs (mg/l) | Final MCLs (mg/l) |
|---|---|---|---|---|
| VOCs: | | | | |
| Dichloromethane | Zero | Zero | 0.005 | 0.005 |
| 1,2,4-Trichlorobenzene | 0.009 | 0.07 | 0.009 | 0.07 |
| 1,1,2-Trichloroethane | 0.003 | 0.003 | 0.005 | 0.005 |
| Pesticides: | | | | |
| Dalapon | 0.2 | 0.2 | 0.2 | 0.2 |
| Dinoseb | 0.007 | 0.007 | 0.007 | 0.007 |
| Diquat | 0.02 | 0.02 | 0.02 | 0.02 |
| Endothall | 0.1 | 0.1 | 0.1 | 0.1 |
| Endrin | 0.002 | 0.002 | 0.002 | 0.002 |
| Glyphosate | 0.7 | 0.7 | 0.7 | 0.7 |
| Oxamyl (Vydate) | 0.2 | 0.2 | 0.2 | 0.2 |
| Picloram | 0.5 | 0.5 | 0.5 | 0.5 |
| Simazine | 0.001 | 0.004 | 0.001 | 0.004 |
| Other organic contaminants: | | | | |
| Benzo(a)pyrene | Zero | Zero | 0.0002 | 0.0002 |
| Di(2-ethylhexyl)adipate | 0.5 | 0.4 | 0.5 | 0.4 |
| Di(2-ethylhexyl)phthalate | Zero | Zero | 0.004 | 0.006 |
| Hexachlorobenzene | Zero | Zero | 0.001 | 0.001 |
| Hexachlorocyclopentadiene | 0.05 | 0.05 | 0.05 | 0.05 |
| 2,3,7,8-TCDD (Dioxin) | Zero | Zero | $5 \times 10^{-8}$ | $3 \times 10^{-8}$ |

TABLE 3—BEST AVAILABLE TECHNOLOGIES TO REMOVE INORGANIC CONTAMINANTS

| Inorganic contaminant | Best available technologies | | | | | | |
|---|---|---|---|---|---|---|---|
| | Activated alumina | Coagulation/filtration | Lime softening [1] | Ion exchange | Reverse osmosis | Chlorine oxidation | Electrodialysis |
| Antimony | | X | | | X | | |
| Beryllium | X | X | X | X | X | | |
| Cyanide | | | | X | X | X | |
| Nickel | | | X | X | X | | |
| Thallium | X | | | X | | | |

[1] Not 1415 BAT for small systems for vanances unless treatment is currently in place.

TABLE 4—BEST AVAILABLE TECHNOLOGIES TO REMOVE SYNTHETIC ORGANIC CONTAMINANTS

| Chemical | GAC [1] | PTA [2] | OX [3] |
|---|---|---|---|
| VOCs: | | | |
| Dichloromethane | | X | |
| 1,2,4-Trichlorobenzene | X | X | |
| 1,1,2-Trichloroethane | X | X | |
| Pesticides: | | | |
| Dalapon | X | | |
| Dinoseb | X | | |
| Diquat | X | | |
| Endothall | X | | |
| Endrin | X | | |
| Glyphosate | | | X |
| Oxamyl (Vydate) | X | | |
| Picloram | X | | |

TABLE 4—BEST AVAILABLE TECHNOLOGIES TO REMOVE SYNTHETIC ORGANIC CONTAMINANTS—Continued

| Chemical | GAC [1] | PTA [2] | OX [3] |
|---|---|---|---|
| Simazine | X | | |
| Other Organic Contaminants: | | | |
| Benzo(a)pyrene | X | | |
| Di(2-ethylhexyl)adipate | X | X | |
| Di(2-ethylhexyl)phthalate | X | | |
| Hexachlorobenzene | X | | |
| Hexachlorocyclopentadiene | X | X | |
| 2,3,7,8-TCDD (Dioxin) | X | | |

[1] GAC = Granular activated carbon.
[2] PTA = Packed tower aeration.
[3] OX = Oxidation (Chlorine or Ozone).

TABLE 5.—COMPLIANCE MONITORING REQUIREMENTS [1]

| Contaminant | Base requirement | | Trigger that increases monitoring | Waivers [2] |
|---|---|---|---|---|
| | Ground water | Surface water | | |
| 4 Inorganics | 1 Sample/3 years | Annual sample | MCL | Yes, based on analytical results of 3 rounds. |
| | 1 Sample/9 years after 3 samples <MCL | | | |
| Cyanide | 1 Sample/3 years | Annual sample | >MCL | Yes, based on vulnerability assessment. |
| | 1 Sample/9 years after 3 samples <MCL | | | |
| 3 VOCs | [3] | [3] | <0.0005 mg/1 | Yes, based on vulnerability assessment. |
| 15 Pesticides/SOCs | [4] | [4] | Detection (as specified in the rule). | Yes, based on vulnerability assessment. |

[1] The compliance monitoring requirements apply to community water systems and non-transient non-community water systems.
[2] Two types of waivers are available: waivers by rule and vulnerability waivers. Waivers by rule are based on prior monitoring results. They reduce but do not eliminate monitoring. Vulnerability waivers eliminate monitoring for pesticides and will reduce monitoring requirements for volatile organic contaminants, but must be renewed, usually every three years (see Section III.C for additional information).
[3] Quarterly/year; annual after one year of no detect; every 3 years after 3 rounds
[4] 4 quarterly samples every 3 years; after 1 round of no detect: systems 3,300 reduce to 2 samples/year every 3 years, systems <3,300 reduce to 1 sample every 3 years

TABLE 6.—ANALYTICAL METHODS FOR INORGANIC CHEMICALS

| Contaminant | Methodology [1] |
|---|---|
| Antimony | Atomic absorption; furnace inductively-coupled plasma-mass spectrometry, hydride-atomic absorption. |
| Beryllium | Atomic absorption; furnace inductively-coupled plasma, inductively-coupled plasma-mass spectrometry. |
| Cyanide [3] | Distillation, spectrophotometric [2] distillation, automated, spectrophotometric [2], distillation, selective electrode [2], distillation, amenable, spectrophotometric [4]. |
| Nickel | Atomic absorption; furnace inductively-coupled plasma, inductively-coupled plasma-mass spectrometry. |
| Thallium | Atomic absorption; furnace inductively-coupled plasma-mass spectrometry. |

[1] See rule for specific references.
[2] Screening method for total cyanides.
[3] MCLG/MCL applies to "free" cyanides.
[4] Measures amenable or "free" cyanides.

TABLE 7.—ANALYTICAL METHODS FOR VOLATILE ORGANIC CHEMICALS

| Contaminant | EPA methods |
|---|---|
| Dichloromethane | 502.1, 502.2, 524.1, 524.2. |
| 1,2,4-Trichlorobenzene | 502.2, 503.1, 524.2. |

TABLE 7.—ANALYTICAL METHODS FOR VOLATILE ORGANIC CHEMICALS—Continued

| Contaminant | EPA methods |
|---|---|
| 1,1,2-Trichloroethane | 502.1, 502.2, 524.1, 524.2. |

TABLE 8.—ANALYTICAL METHODS FOR PESTICIDES/SOCs

| EPA methods | Contaminants |
|---|---|
| 505 | Endrin.<br>Hexachlorobenzene.<br>Hexachlorocyclopentadiene.<br>Simazine. |
| 506 | Di (2-ethylhexyl) adipate.<br>Di (2-ethylhexyl) phthalate. |
| 507 | Simazine. |
| 508 | Endrin.<br>Hexachlorobenzene. |
| 515.1 | Dalapon.<br>Dinoseb.<br>Picloram. |
| 531.1 | Oxamyl (Vydate). |
| 1613 | 2,3,7,8–TCDD (Dioxin). |
| 547 | Glyphosate. |
| 548 | Endothall. |
| 549 | Diquat. |
| 550/550.1 | Benzo (a) pyrene. |

TABLE 8.—ANALYTICAL METHODS FOR PESTICIDES/SOCs—Continued

| EPA methods | Contaminants |
|---|---|
| [1]525.1 | Benzo (a) pyrene.<br>Di (2-ethylhexyl) adipate.<br>Di (2-ethylhexyl) phthalate.<br>Endrin.<br>Hexachlorobenzene.<br>Hexachlorocyclopentadiene.<br>Simazine. |

[1] Method 525.1 may be used if adequate sensitivity is demonstrated. See Section IIIB for additional information.

TABLE 9.—LABORATORY CERTIFICATION CRITERIA

| | |
|---|---|
| *IOCs:* | |
| Antimony | ±30% at ≥ 0.006 mg/l. |
| Beryllium | ±15% at ≥ 0.001 mg/l. |
| Cyanide | ±25% at ≥ 0.1 mg/l. |
| Nickel | ±15% at ≥ 0.01 mg/l. |
| Thallium | ±30% at ≥ 0.002 mg/l. |
| *VOCs:* | |
| | ±20% at ≥ 0.01 mg/l. |
| | ±40% at < 0.01 mg/l. |
| *SOCs:* | |
| Endrin | ±30%. |
| All other SOCs | 2 standard deviations based on study statistics. |

## II. Background

### A. Statutory Authority

These regulations are among a continuing series of rules mandated by the 1986 Amendments to the Safe Drinking Water Act. As this final rule demonstrates, EPA is committed to effective implementation of the laws established by Congress. It should be noted that EPA's development and promulgation of these rules is now being coordinated with a number of other EPA activities intended to ensure protection of public health while responsibly addressing the economic challenge of the ever-growing list of regulatory requirements on States and water systems. To the extent that the results of this coordination call for change in the law, we will make that known to the Congress. It is a commitment of EPA, however, to understand where legitimate local implementation concerns exist.

EPA is working with a recently convened Governors' Forum on Environmental Management that is reviewing means to ensure health protection while balancing the need for State regulatory flexibility to address the States' highest priorities with available resources. EPA's Environmental Financial Advisory Board is developing alternative financing mechanisms with particular attention on small community concerns. In addition, EPA is in the third year of an initiative to identify and promote low-cost solutions to drinking water protection. These include consolidation of water systems to spread costs over a larger consumer base; pooling of several systems' water samples to reduce monitoring cost; and low-cost treatment technologies that can cut water bills in very small water systems to as much as one-half what might arise with traditional engineering solutions.

In addition, EPA is considering greater reliance on risk-based priority-setting within State compliance programs. That approach would focus limited State and Federal resources on those elements of the public water supply supervision program having the greatest potential for reducing risk and promoting public health protection. Again, EPA would only take action in this area to the extent consistent with law.

The Safe Drinking Water Act (SDWA or "the Act"), as amended in 1986 (Pub. L. 99-339, 100 Stat. 642), requires EPA to publish "maximum contaminant level goals" (MCLGs) for contaminants which, in the judgment of the Administrator, "may have any adverse effect on the health of persons and which [are] known or anticipated to occur in public water systems" (section 1412(b)(3)(A)). MCLGs are to be set at a level at which "no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety" (section 1412(b)(4)).

At the same time EPA publishes an MCLG, which is a non-enforceable health goal, it must also promulgate a National Primary Drinking Water Regulation (NPDWR) which includes either (1) a maximum contaminant level (MCL), or (2) a required treatment technique (section 1401(1), 1412(a)(3), and 1412(b)(7)(A)). A treatment technique may be set only if it is not "economically or technologically feasible" to ascertain the level of a contaminant (Sections 1401(1) and 1412(b)(7)(A)). An MCL must be set as close to the MCLG as feasible (section 1412(b)(4)). Under the Act, "feasible" means "feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions (taking cost into consideration)" (section 1412(b)(5)). In setting MCLs, EPA considers the cost of treatment technology to large public water systems with relatively clean source water supplies [132 *Cong. Rec.* S6287 (daily ed., May 21, 1986)].[1] Each NPDWR that establishes an MCL must list the best available technology, treatment techniques, and other means that are feasible for meeting the MCL (BAT) (section 1412(b)(6)). NPDWRs include monitoring, analytical and quality assurance requirements, specifically, "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels * * *" (section 1401(1)(D)). Section 1445 also authorizes EPA to promulgate monitoring requirements.

Section 1414(c) requires each owner or operator of a public water system to give notice to persons served by it of (1) any failure to comply with a maximum contaminant level, treatment technique, or testing procedure required by a NPDWR; (2) any failure to comply with any monitoring required pursuant to section 1445 of the Act; (3) the existence of a variance or exemption; and (4) any failure to comply with the requirements of any schedule prescribed pursuant to a variance or exemption.

Under the 1986 Amendments to the SDWA, EPA was to complete the promulgation of NPDWRs for 83 listed contaminants, in three phases, by June 19, 1989. After 1989, an additional 25 contaminants must be regulated every three years (section 1412(b)).

In the 1986 Amendments to the SDWA, Congress required that MCLGs and MCLs be proposed and promulgated simultaneously (section 1412(a)(3)). This change streamlined development of drinking water standards by combining two steps in the regulation development process. Section 1412(a)(2) renamed recommended maximum contaminant levels (RMCLs) as maximum contaminant level goals (MCLGs).

### B. Regulatory History

On June 25, 1990, EPA entered into a consent order with the Bull Run Coalition in response to a citizen suit. This consent order requires proposal for contaminants in today's notice by June 29, 1990 and promulgation by February 29, 1992. The promulgation date was extended to May 18, 1992. The promulgation of today's regulations partially fulfills the terms of the consent decree between EPA and the Bull Run Coalition.

On July 25, 1990, EPA proposed MCLGs and MCLs for 24 inorganic and organic chemical contaminants. Today's notice takes final action on 23 of those proposed regulations (excluding sulfate). Where today's rule promulgates MCLGs, MCLs, analytical methods, best available technology, monitoring requirements, and State implementation requirements that differ from the proposal, the changes result from public comments and/or additional data that were submitted during the comment period or which the preamble indicated were under development or analysis. The technical and/or policy basis for these changes are explained in this notice.

Section 1412(b)(1) of the SDWA directed EPA to publish MCLGs and promulgate NPDWRs for nine contaminants by June 19, 1987, for 40 additional contaminants by June 19, 1988, and for the rest of the 83 contaminants by June 19, 1989. The Agency has previously published MCLGs and promulgated NPDWRs for eight VOCs and fluoride by June 19, 1987 [see 52 FR 25690, 51 FR 11396, and 50 FR 47142]. On June 29, 1989, EPA finalized regulations for coliform and other microbiological contaminants [54 FR 27544 and 54 FR 27468]. Regulations for 38 inorganic and organic contaminants from the List of 83 were promulgated on January 30, 1991 [56 FR 3526], and on July 1, 1991 [56 FR 30266], and on June 7, 1991 [56 FR 26460] for lead and copper. The Agency also proposed regulations for radionuclides on July 18, 1991 [56 FR 33050]. Development of drinking water

[1] EPA also evaluates the costs to smaller systems in its analysis of economic impacts.

standards is specifically required under the SDWA for 22 of the 23 contaminants in today's rule [see SDWA section 1412(b)(1), 42 U.S.C. 300g–1(b)(1)]. Hexachlorobenzene, although not on the statutory list of contaminants to be regulated, is being regulated because it has been found in drinking water and may cause adverse human health effects.

*C. Applicability*

The MCLs promulgated by today's rule apply to all community and non-transient non-community PWS.

*D. Public Comments on the Proposal*

EPA requested comments on all aspects of the July 25, 1990 proposal. A summary of the major comments and the Agency's response to the issues raised are presented in the following section. The Agency's detailed response to the comments received are presented in the document "Response to Comments Received on the Proposed Requirements for 24 Contaminants of July 25, 1990 and Notice of Availability of November 29, 1991," which is in the public docket for this rule.

EPA received approximately 138 comments on the proposed MCLGs and MCLs in the July 1990 proposal. These comments represented the views of 66 industrial/commercial groups, 25 State governments, 36 local governments and public water systems, 2 public interest groups, 3 Federal agencies, as well as comments from individual citizens and academic interests.

EPA held a public hearing on the proposed rule September 25, 1990 in Washington, DC. Six individuals representing three organizations made oral presentations at the public hearing. A transcript of the hearing is available in the docket [USEPA, 1990j].

EPA published a Notice of Availability (NOA) on November 29, 1991 for public review and comment on new information received by the Agency and analyses of the information, which was being considered in establishing final regulations for these contaminants.

EPA received approximately 34 comments on the NOA. These comments represented the views of 14 industrial/commercial groups, 10 State governments, and 10 local governments and public water systems.

**III. Explanation of Today's Action**

*A. Establishment of MCLGs*

Most of the MCLGs promulgated today are at the same level as proposed in July 1990. However, the MCLGs for antimony, beryllium, simazine, di(2-ethylhexyl)adipate and 1,2,4-trichlorobenzene are different from those proposed in that notice. Changes result from public comments and/or new information received by the Agency. The change in the MCLG for antimony is due to a reevaluation of the relative source contribution based on public comments. The change in the MCLG for beryllium is due to a reevaluation of its categorization for setting the MCLG (i.e., EPA revised its classification from Category I to Category II based on public comments and reevaluation of the data). The MCLGs for simazine, di(2-ethylhexyl)adipate and 1,2,4-trichlorobenzene changed because new health information became available for these three compounds since the July 1990 proposal. The new health data and other information pertinent to this rule was made available to the public for review and comment in the November 1991 NOA [56 FR 60949]. A full explanation of these changes is included below in the sections for each specific contaminant. The draft health criteria documents prepared in support of the proposed rules have all been finalized and placed in the public docket and through NTIS, with the exception of documents for dioxin and sulfate. Dioxin is being regulated based on the information in the draft criteria document, pending Agency review of dioxin health effects. Regulation of sulfate has been deferred.

Most of the MCLs promulgated today are at the same level as proposed in July, 1990. The MCL for thallium, for which options of 0.002 mg/l and 0.001 mg/l were proposed, is being finalized as 0.002 mg/l. Based on additional analytic chemistry data presented in the NOA, the proposed dioxin MCL of $5\times10^{-8}$ mg/l is being reduced to $3\times10^{-8}$ mg/l in this final rule. The MCLG and MCL for sulfate are being deferred pending further study. The justification for this action is discussed in section III.B.5 of this notice. Sulfate will be addressed in a future action.

In today's rule, EPA is responding to the major issues raised by the public in reference to the July 1990 proposal [55 FR 30370] and the November 1991 NOA [56 FR 60949]. For EPA's complete response to all issues raised in comments on both the July 1990 and November 1991 notices, EPA refers the reader to the Comment/Response Document found in the Phase V docket [USEPA, 1992a].

1. How MCLGs Are Developed

MCLGs are set at concentration levels at which no known or anticipated adverse health effects occur, allowing for an adequate margin of safety. Establishment of an MCLG for each specific contaminant depends on the evidence of carcinogenicity from drinking water exposure or the Agency's reference dose (RfD) based on noncarcinogenic data.

The cancer classification for a specific chemical and the reference dose are adopted by two different Agency groups. Decisions on cancer classifications are made by the Cancer Risk Assessment Verification Endeavor (CRAVE) Work Group, which is composed of representatives of various EPA program offices. Decisions on EPA RfDs (using non-cancer endpoints only) are made through the Agency RfD/RfC work group, also composed of representatives of various EPA program offices. Decisions by CRAVE and the RfD/RfC groups represent consensus on risk assessments for the Agency and can be used by the respective regulatory programs as the basis for regulatory decisions. Summaries of the decisions by these two groups are published in the Agency's Integrated Risk Information System (IRIS). This system can be accessed by the public by contacting Mike McLaughlin of DIALCOM, Inc. at 202–488–0550.

The RfD (expressed in mg/kg/day) is an estimate, with uncertainty spanning perhaps an order of magnitude, of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious health effects during a lifetime. The RfD is derived from a no- or lowest-observed-adverse-effect level (called a NOAEL or LOAEL, respectively) that has been identified from a subchronic or chronic scientific study of humans or animals. The NOAEL or LOAEL is then divided by uncertainty factor(s) to derive the RfD.

Uncertainty factors are used in order to estimate the comparable "no-effect" level for a larger heterogeneous human population. The use of uncertainty factors accounts for intra- and inter-species variability, the small number of animals tested compared to the size of the population, sensitive subpopulations and the possibility of synergistic action between chemicals (see 52 FR 25690 for further discussion on the use of uncertainty factors).

The use of an uncertainty factor (UF) is important in the derivation of the RfD. EPA has established certain guidelines (shown below) to determine how to apply uncertainty factors when establishing an RfD [USEPA, 1986].

**Uncertainty Factors (UFs)**

- Use a 1- to 10-fold factor when extrapolating from valid experimental results from studies using prolonged

exposure to average healthy humans. This factor is intended to account for the variation in sensitivity among the members of the human population.

• Use an additional 10-fold factor when extrapolating from valid results of long-term studies on experimental animals when results of studies of human exposure are not available or are inadequate. This factor is intended to account for the uncertainty in extrapolating animal data to the case of humans.

• Use an additional 10-fold factor when extrapolating from less than chronic results on experimental animals where there are no useful long-term human data. This factor is intended to account for the uncertainty in extrapolating from less than chronic NOAELs to chronic NOAELs.

• Use an additional 10-fold factor when deriving a RfD from a LOAEL instead of a NOAEL. This factor is intended to account for the uncertainty in extrapolating from LOAELs to NOAELs.

An additional uncertainty factor may be used according to scientific judgment when justified.

• Use professional judgment to determine another uncertainty factor (also called a modifying factor, MF) that is greater than zero and less than or equal to 10. The magnitude of the MF depends upon the professional assessment of scientific uncertainties of the study and data base not explicitly treated above, e.g., the completeness of the overall data base and the number of species tested. The default value for the MF is 1.

From the RfD, a drinking water equivalent level (DWEL) is calculated. The DWEL represents the drinking water lifetime exposure at which adverse health effects are not expected to occur over a lifetime. The DWEL is calculated by multiplying the RfD by an assumed adult body weight (generally 70 kg) and then dividing by an average daily water consumption of 2 liters per day [NAS, 1977]. The DWEL assumes the total daily exposure to a substance is from drinking water exposure. The MCLG is determined by multiplying the DWEL by the percentage of the total daily exposure expected to be contributed by drinking water, called the relative source contribution. Generally, EPA assumes that the relative source contribution form drinking water is 20 percent of the total exposure, unless other exposure data for the chemical are available [see 54 FR 22089 and 56 FR 3535]. The relative source contribution may be as high as 80 percent. The calculation below expresses the derivation of the MCLG:

$$\text{RfD} = \frac{\text{NOAEL or LOAEL}}{\text{uncertainty factor(s)}} = \text{mg/kg body weight/day} \quad (1)$$

$$\text{DWEL} = \frac{\text{RfD x body weight}}{\text{daily water consumption in l/day}} = \text{mg/l} \quad (2)$$

$$\text{MCLG} = \text{DWEL x drinking water contribution} = \text{mg/l} \quad (3)$$
$$\text{(rounded to one significant figure)}$$

For chemicals suspected to be carcinogenic to humans, the assessment for non-threshold toxicants consists of the weight of evidence of carcinogenicity in humans, using bioassays in animals and human epidemiological studies as well as information that provides indirect evidence (i.e., mutagenicity and other short-term test results). The objectives of the assessment are (1) to determine the level or strength of evidence that the substance is a human or animal carcinogen and (2) to provide an upperbound estimate of the possible risk of human exposure to the substance in drinking water. A summary of EPA's general carcinogen classification scheme is [USEPA, 1986]:

*Group A*—Human carcinogen based on sufficient evidence from epidemiological studies.

*Group B1*—Probable human carcinogen based on limited evidence of carcinogenicity in humans.

*Group B2*—Probable human carcinogen based on a combination of sufficient evidence in animals and inadequate data in humans.

*Group C*—Possible human carcinogen based on limited evidence of carcinogenicity in animals in the absence of human data.

*Group D*—Not classifiable based on lack of data or inadequate evidence of carcinogenicity from animal data.

*Group E*—No evidence of carcinogenicity for humans (no evidence for carcinogenicity in at least two adequate animal tests in different species or in both epidemiological and animal studies).

EPA follows a three-category approach in developing MCLGs for drinking water contaminants (Table 10).

TABLE 10.—EPA'S THREE-CATEGORY APPROACH FOR ESTABLISHING MCLGS

| Category | Evidence of carcinogenicity via drinking water | MCLG approach |
|---|---|---|
| I | Strong evidence considering weight of evidence, pharmacokinetics, potency and exposure. | Zero. |
| II | Limited evidence considering weight of evidence, pharmacokinetics, potency and exposure. | RfD approach with added safety margin of 1 to 10 or $10^{-5}$ to $10^{-6}$ cancer risk range. |
| III | Inadequate or no animal evidence. | RfD approach. |

Each chemical is evaluated for evidence of carcinogenicity via ingestion. For volatile contaminants, inhalation data should also be considered. EPA takes into consideration the overall weight of evidence for carcinogenicity,

pharmacokinetics, potency and exposure.

EPA's policy is to set MCLGs for Category I chemicals at zero. The MCLG for Category II contaminants is calculated by using the RfD approach with an added margin of safety to account for possible cancer effects. If adequate data are not available to calculate an RfD, the MCLG is based on a cancer risk range of $10^{-5}$ to $10^{-6}$. MCLGs for Category III contaminants are calculated using the RfD/DWEL approach.

The MCLG for Category I contaminants is set at zero because it is assumed, in the absence of other data, that there is no known threshold for carcinogenicity. Category I contaminants are those for which EPA has determined that there is strong evidence of carcinogenicity from drinking water. In the absence of other data (e.g., oral) on the potential cancer risk from drinking water ingestion, chemicals classified as Group A or B carcinogens are generally placed in Category I.

Category II contaminants include those contaminants which EPA has determined that there is limited evidence of carcinogenicity from drinking water considering weight of evidence, pharmacokinetics, potency and exposure. In the absence of ingestion data, chemicals classified by the Agency as Group C chemicals are generally placed in Category II. For Category II contaminants, two approaches are used to set the MCLG: Either (1) setting the MCLG based upon noncarcinogenic endpoints of toxicity (the RfD) then applying an additional safety factor of 1 to 10, or (2) setting the MCLG based upon a theoretical lifetime excess cancer risk range of $10^{-5}$ to $10^{-6}$ using a conservative mathematical extrapolation model. EPA generally uses the first approach; however, the second approach is used when valid noncarcinogenic data are not available to calculate an RfD and adequate experimental data are available to quantify the cancer risk.

EPA requested comment on the appropriateness of these approaches for establishing MCLGs in the July 25, 1990 proposal (see 55 FR 30404–05). Two comments were received on this issue. One commenter stated that the MCLGs and the MCLs should be set at levels able to protect against carcinogenic risk. The other commenter stated that Group C contaminants are not suitable for evaluation by EPA's cancer risk assessment process, and supported EPA's use of non-carcinogenic data for establishing the MCLG for these chemicals. EPA believes that the present approach for Category II contaminants is protective of non-cancer effects as well as potential carcinogenic risk. Therefore, because adequate non-carcinogenic data are available, the MCLGs promulgated today for Category II contaminants (beryllium, di(2-ethylhexyl)adipate, simazine and 1,1,2-trichloroethane) use the first option, i.e., they are based on the RfD with an application of an additional safety factor.

Category III contaminants include those contaminants for which there is inadequate evidence of carcinogenicity from drinking water. If there is no additional information to consider, contaminants classified as Group D or E chemicals are generally placed in Category III. For these contaminants, the MCLG is established using the RfD approach.

2. Occurrence and Relative Source Contribution

Most of the comments received on occurrence/exposure and relative source contribution (RSC) were related to current EPA policy. The Agency has addressed many of the questions raised by these commenters in the Comment Response Document for this rule. Below is a summary of the major issues raised and EPA's response.

EPA received some comments questioning the need to regulate a chemical if there are little occurrence data available, if the chemical occurs infrequently or at low levels, or if the RSC is below 20 percent. The Agency has the statutory mandate, under Section 1412 of the SDWA, to regulate contaminants "which are known or anticipated to occur in public water systems." The Agency believes that the contaminants in today's rulemaking have either been found or potentially may occur in public water supplies and that they may pose a health risk to consumers. Also, development of drinking water standards is specifically required under the Safe Drinking Water Act (SDWA) for 22 of the 23 contaminants in today's rule (see SDWA Section 1412(b)(1), 42 U.S.C. 300g–1(b)(1)).

Several commenters questioned why EPA was regulating hexachlorobenzene, since it is not on the list of 83 contaminants nor on the Drinking Water Priority List (DWPL). Hexachlorobenzene, although neither on the statutory list of contaminants to be regulated nor on the DWPL, is being regulated because it has been found in drinking water and may cause adverse human health effects.

As described in the background occurrence document for hexachlorobenzene [USEPA, 1989b], it has been widely detected in water, albeit at low levels. Of 1,053 observations of ground water in STORET, 1,028 samples had detectible (although not quantifiable) levels of hexachlorobenzene. In surface water STORET samples, 48 of 54 samples had detectible (although not quantifiable) levels of hexachlorobenzene. The potential for hexachlorobenzene occurrence in public water supplies is corroborated by more recent information reported in EPA's "National Survey of Pesticides in Drinking Water Wells" [USEPA, 1990i], which detected hexachlorobenzene in several samples and projected that 470 PWS wells (range 61–1, 630 wells) may have detectible levels (the minimum reporting limit for the NPS was 0.060 μg/l). EPA therefore believes that although levels may be low, there is ample evidence to conclude that hexachlorobenzene is known or anticipated to occur in public water systems as required by the SDWA.

Several comments were received on the current policy related to the use of a 20 percent floor and 80 percent ceiling for the RSC in setting the MCLG. Some commenters objected to using a 20 percent floor and 80 percent ceiling for the RSC when actual data are available and suggested percent contributions above or below these levels. Others suggested using an RSC of less than 20 percent if available data indicate a drinking water contribution below this percentage, assuming 100 percent contribution from drinking water in the absence of data, and assuming 50 percent contribution from inorganics and some pesticides in the absence of data.

The Agency continues to believe the 20 percent floor and 80 percent ceiling are prudent and protective of public health. The 20 percent floor represents a level below which additional incremental protection is negligible. In addition, below 20 percent RSC from water is a clear indication that control of other more contaminated media will result in a significantly greater reduction in exposure. EPA believes the 80 percent ceiling is required because it ensures that the MCLG will be low enough to provide adequate protection for those individuals whose total exposure to a contaminant is higher than indicated by available data. This approach, in effect, results in a slightly lower MCLG and increases the margin of safety. EPA utilizes the actual percentage when adequate exposure data exist and indicate an RSC between 20 and 80 percent, but when data are not adequate, 20 percent is generally used

as a default value that is protective of public health. In addition, the Agency does not believe that assuming a 50 percent RSC is appropriate for inorganics or pesticides in the absence of data, as suggested by a commenter. In fact, there have been numerous inorganics (such as lead or mercury) and pesticides regulated by EPA in public drinking water supplies for which the available data from all sources indicate that drinking water likely contributes less than 50 percent to total exposure and, in some cases, less than 20 percent. Therefore, there is no basis for automatically assuming 50 percent from drinking water when data are not available.

There were three chemical-specific issues regarding setting the RSC. One RSC issue concerned cyanide. Several commenters suggested the use of an 80 to 100 percent RSC because they felt that drinking water represents essentially all exposure. The Agency has decided to use a 20 percent RSC for this contaminant because the available data on dietary exposure are inadequate, and the Agency therefore could not adequately characterize overall exposure to cyanide.

Another commenter claimed that the Agency misinterpreted a USDA study [Miller-Ihli and Wolf, 1986] on the dietary intake, and that EPA should have used more appropriate data regarding intake of nickel from food and air to calculate the MCLG. The Agency agrees that the study relied upon in the proposed rule was inappropriate for calculating dietary exposure for nickel because that study analyzed foods that were freeze-dried, which resulted in elevated nickel concentrations (higher than one would determine in fresh foods). The Agency has recalculated the dietary contribution using an FDA diet study by Pennington and Jones (1987). Unlike the Miller-Ihli and Wolf study, which involved an analysis of freeze-dried foods, the Pennington Diet Study program [Pennington and Jones, 1987] is appropriate for estimating overall exposure. The revised calculation indicates again that drinking water contributes less than 20 percent of the daily intake. Therefore, the Agency is using 20 percent as the RSC in the calculation of the final MCLG for nickel following present policy of a 20 percent floor. Two commenters on the NOA urged EPA to revise the RSC for nickel and base a new RSC on analysis of actual data, as was done for antimony. As discussed above, EPA has done this and believes the available data, in conjunction with EPA's policy on RSC, supports the use of the 20 percent value.

The third issue is related to EPA's proposal to use a 20 percent RSC for antimony as a default value. The Agency agrees with the commenter that there is information available on which the RSC can appropriately be based. The Agency has decided to use an occurrence study by Greathouse and Craun (1978) and has estimated typical levels of 2 μg/l antimony in drinking water. This study was chosen due to its large sampling base and representativeness of antimony levels nationwide. The Agency has also recalculated the dietary intake of antimony using a different food study by Cunningham and Stroube (1987). The dietary contribution of 4.7 μg/day of antimony calculated from this study is lower than previously estimation. The Cunningham and Stroube report was judged adequate for determining the overall exposure estimation. This study, conducted by the FDA, uses the methodology of their Total Diet Study program [Cunningham and Stroube, 1987]. By using an inhalation contribution of 0.7 μg/day and the 4.7 μg/day from the diet, along with a mean drinking water contribution of 2 μg/l (or 4 μg/day), the resulting RSC is 40 percent (rounded from 42.6 percent). The NOA requested comment on revision of the antimony RSC, and several commenters supported the proposed revision. The final MCLG for antimony reflects this change in the RSC.

The Agency refers readers to the Comment Response Document [USEPA, 1992a] for additional detailed information on the issues discussed above, and for a discussion of other exposure/RSC related comments raised during the public comment period.

3. Inorganic MCLGs

a. *Antimony.* EPA proposed an MCLG of 0.003 mg/l for antimony in the July 25, 1990 proposal [55 FR 30377]. Antimony has been classified in Group D (inadequate evidence of carcinogenicity in humans) by EPA guidelines. The proposed MCLG was derived from a DWEL of 0.015 mg/l, applying a 20 percent contribution from drinking water. The MCLG was based upon a LOAEL of 0.43 mg/kg/day for noncarcinogenic effects in a lifetime drinking water study in rats [Schroeder et al., 1970]. An uncertainty factor of 1,000 was applied to the LOAEL derived from a lifetime animal study (which is in accordance with NAS/EPA guidelines).

No new toxicological data that would change the conclusions presented in the July 25, 1990 proposal have become available since its publication. However, the Agency has revised its calculation of the relative source contribution for antimony after reconsidering the occurrence/exposure data, as discussed in the "Relative Source Contribution" section above. Based on this reassessment of the available occurrence/exposure data, the final RSC for antimony has been set at 40 percent. This change in the RSC results in a doubling of the final MCLG from 0.003 to 0.006 mg/l for antimony.

*Public Comments:* In response to the July 25, 1990 notice, one individual or organization commented on the MCLG proposal for antimony. The commenter indicated that an online computer search of the Hazardous Substances Data Base (HSDB) showed that antimony causes marked weight loss, hair loss, dry scaly skin, eosinophilia, myocardial failure, vomiting, diarrhea and stomatitis in animals orally exposed.

*EPA Response:* EPA agrees with the commenter that antimony causes the above mentioned effects when used in high doses in animal tests. These effects were discussed in the Health Criteria Document for antimony supporting the July 1990 proposal [USEPA, 1990d, finalized as USEPA, 1992b]. However, the effects reported in the July 1990 notice are effects associated with the critical endpoint of toxicity used to establish the lowest-observed-adverse-effect level (LOAEL) for antimony. The effects described by the commenter are acute effects noted at much higher dose levels than the dose causing the critical effects described in the July 1990 notice. Since the critical effects are the basis of the DWEL and MCLG calculations for antimony, only these effects were discussed in the July 1990 proposal. Detailed descriptions of antimony toxicity at different dose levels and in different animal species are documented in the Antimony Health Criteria Document prepared in support of the July 1990 notice [USEPA, 1990d, finalized in USEPA, 1992f]. This document is available in the EPA Public Docket, Office of Water. Based on the available toxicological information and on the relative source contribution reassessment, the Agency is promulgating today an MCLG of 0.006 mg/l for antimony.

b. *Beryllium.* EPA followed a Category I approach for beryllium and proposed an MCLG of zero for beryllium in drinking water [55 FR 30378] based on the evidence of carcinogenic potential from drinking water. The Agency requested comment on setting the MCLG at zero for beryllium given that the oral exposure bioassays are not adequate to conclusively demonstrate a dose-response relationship. Beryllium is

classified in Group B2, probable human carcinogen, based on the positive carcinogenic findings in several animal species exposed to beryllium by inhalation and injection. In addition, available data indicate tumor induction by several beryllium compounds and genotoxic activity in animal studies. Since the dose-response evidence of carcinogenicity specifically by ingestion is limited, the Agency requested public comments on setting the MCLG of beryllium at zero.

*Public Comments:* Eleven commenters responded to the beryllium proposal. One significant area of comment in response to the proposal deals with the carcinogenicity of beryllium via the oral route of exposure. The commenters disagreed with the Agency on the classification of beryllium in Group B2. The commenters stated that cancer studies performed with beryllium sulfate in drinking water [Schroeder et al., 1970] or in feed [Morgareidge, 1977] are inadequate because the tumors observed in these studies were statistically not significant when compared with those in controls. One commenter suggested that since statistical significance was not observed in these studies, beryllium should be classified as a Group C carcinogen and the MCLG should be recalculated using the options for Group C compounds. The commenter stated that the Agency has been inconsistent in its proposed regulation for beryllium in drinking water because MCLGs have been set at non-zero levels for nickel, chromium, cadmium, antimony and asbestos, which are classified by the Agency in Group A or B, via inhalation but in Group C or D by the oral route.

In addition, one commenter sent two additional studies of beryllium toxicity to EPA during the comment period for the November 29, 1991 NOA.

*EPA Response:* EPA establishes MCLGs for drinking water contaminants by placing them in three categories, as discussed above. With regard to the oral carcinogenicity of beryllium, EPA has reconsidered the data and agrees with the comments regarding the oral beryllium studies in that the induction of tumors was statistically not significant when compared with the controls. However, the Agency believes that these studies show a suggestive tumorigenic response which are consistent with the hazard seen in other portions of the beryllium data base. In the July 1990 proposal, the Agency indicated that these studies were limited in their usefulness to evaluate carcinogenic potential in animals because the Schroeder et al. study (1970) used only one dose, and the Morgareidge study did not reflect a traditional dose-response relationship. In the Morgareidge study, there was an increase in reticulocyte tumors in rats at 5 and 50 ppm but not at 500 ppm. Taken together, the available studies show a limited carcinogenic potential from drinking water ingestion. This may relate in part to poor absorption of beryllium from ingestion. It has been postulated that ingested beryllium is precipitated in the gastrointestinal tract as beryllium phosphate, making it inaccessible for absorption.

In general, the mechanisms of absorption of metallic ions are not well understood and do not follow a dose-response relationship. On the other hand, there is clear evidence of carcinogenicity of beryllium via inhalation or injection in monkeys, rats and rabbits. Studies in animal species exposed to beryllium by inhalation or injection showed tumors at sites different from the route of exposure [IRIS, 1989]. Because beryllim produces tumors in several species (rats, monkeys, and rabbits) via inhalation or injection, the Agency has concluded that the overall weight of evidence provides sufficient evidence of carcinogenicity; therefore beryllium is classified by the Agency in Group B2 as discussed in the proposal. However, EPA has also placed beryllium in drinking water Category II (rather than Category I, as proposed) for regulation.

In response to public comments, EPA reevaluated the categorization of beryllium by reconsidering its potency, exposure, and pharmacokinetics. EPA changed its categorization of beryllium from Category I to Category II based on several factors. This contaminant is poorly absorbed from the gastrointestinal tract, and the majority of the ingested beryllium passes through the gut unabsorbed with less than one percent being absorbed. Also it is noted that, while the carcinogenic potential for beryllium is viewed as Group B2 based on the overall weight of evidence of the inhalation and ingestion data, the dose-response analysis for ingestion exposure does not provide adequate evidence of carcinogenicity from a drinking water source, as is true with many of the other B2 contaminants. Therefore, in setting an MCLG for beryllium in drinking water, EPA believes that a Category II approach (which includes a safety factor for possible carcinogenic potential) is appropriate based on the weight of evidence for carcinogenicity via ingestion, and also based on the potency, exposure and pharmacokinetics of this chemical. EPA believes that these factors justify changing the categorization of beryllium from Category I to Category II.

For Category II contaminants, EPA generally sets the MCLG based upon noncarcinogenic endpoints (using the RfD approach) with a safety factor ranging from 1 to 10 applied to account for possible carcinogenicity. As stated in the July 1990 notice (55 FR 30378), EPA selected a lifetime oral study in rats (Schroeder et al., 1970) to derive the RfD and the DWEL for beryllium. An RfD of 0.005 mg/kg/day was derived from this study using an uncertainty factor of 100 (per NAS/EPA guidelines for use with a chronic study). This results in a DWEL of 0.2 mg/l and an MCLG of 0.004 mg/l. The derivation of the beryllium MCLG is given below:

$$\text{DWEL} = \frac{0.5\ \text{mg/kg/day} \times 70\ \text{kg}}{100 \times 2\ \text{liters/day}} = 0.2\ \text{mg/l}$$

$$\text{MCLG} = \frac{0.2\ \text{mg/l}}{10} \times 0.2 = 0.004\ \text{mg/l}$$

The DWEL is based on a 70-kg adult consuming 2 liters of drinking water per day. The MCLG includes an additional safety factor of 10 to account for possible carcinogenic potential of this contaminant via ingestion and assumes a drinking water contribution to total intake of 20 percent.

The Agency disagrees with the comment alleging inconsistencies with other drinking water regulations. To set regulations (including those for nickel, cadmium, chromium, antimony, and asbestos, as well as the MCLG for beryllium), each contaminant was evaluated independently to assess the available health effects data for drinking water. EPA considered the overall weight of evidence to determine carcinogenic potential. The factors considered included carcinogenic potential by ingestion in addition to other factors, e.g., cancer potency, pharmacokinetics, and exposure. The above inorganic contaminants are all classified in Group A or B according to the Agency's classification scheme, but were placed into different drinking water categories from those that would typically apply to the particular classifications. The commenter is mistaken that EPA classified these contaminants as Group C or D carcinogens by the oral route of exposure. Asbestos (cancer classification A) was placed in drinking water Category II due to limited evidence of carcinogenicity from drinking water; cadmium (cancer classification B1) was assigned to

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drinking water Category III due to lack of evidence of carcinogenicity from drinking water (56 FR 3536). MCLGs for chromium (as chromium VI) (56 FR 3537) and nickel (as refinery dust) (55 FR 30382) (proposed), both belonging to cancer classification A based on the inhalation route of exposure, were set following a Category III approach since data by the oral route show no evidence of carcinogenicity. In short, a case-by-case decision on the categorization of a contaminant with respect to its carcinogenicity from drinking water ingestion is made based on the strength and overall weight of evidence.

EPA also received two health effects studies on beryllium submitted during the December 1991 NOA comment period. The comment period for beryllium closed in October 1990. No additional comments were solicited on beryllium during the NOA period. In addition, both studies do not appear to be peer-reviewed as published. Results of a preliminary review of these studies do not indicate they would lead to a change in the RfD or MCLG for beryllium.

One of the studies, by Morgareidge (1976), reported that in dogs, a maximum tolerated dose was likely just above 1 mg/kg/day, a level higher than the 0.54 mg/kg/day NOAEL from the Schroeder et al. (1970) study above. The other study, by Ward et al. (undated), is an epidemiology study of beryllium workers which presents no dose response information.

Consequently, after review of the timely public comments and a reassessment of the information on cancer and other toxicity concerns, EPA is placing beryllium in Category II for the reasons stated above, and promulgating an MCLG of 0.004 mg/l.

c. *Cyanide.* EPA followed a Category III approach and proposed an MCLG of 0.2 mg $CN^-$/1 for cyanide in the July 25, 1990 proposal [55 FR 30379]. The Agency has classified cyanide in Group D since there are insufficient human and animal studies for an assessment of its carcineogenicity. A DWEL of 0.76 mg $CN^-$/1 was derived using a NOAEL value of 10.8 mg $CN^-$/kg/day from a two-year dietary study in which rats were administered diets containing hydrogen cyanide [Howard and Hanzal, 1955]. In calculating the DWEL, an uncertainty factor of 100 was applied (in accordance with NAS/EPA guidelines for a lifetime animal study). An additional modifying factor of 5 was used to account for the possibility that cyanide would be absorbed more readily from drinking water than from food. The 0.2 mg $CN^-$/1 proposed MCLG is a rounded value (from 0.15 mg $CN^-$/1) derived from the DWEL and assuming a relative source contribution of 20% due to exposure from drinking water.

*Public Comments*: A total of eight individuals or organizations provided comments in response to the MCLG proposal regarding cyanide. Six commenters raised the issue of cyanide speciation. These commenters stated that while the proposed MCLG is based on "free cyanides," the proposed analytical methods imply that "total cyanides" will be regulated. While "free cyanides" are readily bioavailable and extremely toxic, "total cyanides" contain all cyanides, including those low-toxicity, inert species that are undissociable (to $CN^-$) and not absorbable (see the Analytical Methods Section for additional information).

Two commenters questioned the appropriateness of the NOAEL (10.8 mg $CN^-$/kg/day) that was selected for the MCLG calculation. One commenter suggested that the study by Howard and Hanzal (1955) is not preferable since no effects were observed in rats at the highest test dose level of 10.8 mg $CN^-$/kg/day, and studies should be designed to show an effect at the highest dose tested. Thus, this commenter claims that no NOAEL was identified. The other commenter stated that the rat $LD_{50}$ (reported range of 1–4 mg $CN^-$/kg) is lower than the NOAEL(10.8 mg $CN^-$/kg/day) used in the MCLG calculation. The commenter questioned whether the proposed MCLG will pose an acute hazard if a large amount of water was ingested at one time. Also, two commenters questioned the necessity of using a modifying factor of 5 in the derivation of the MCLG since the actual bioavailability of cyanide was not measured upon oral exposure through diet or drinking water.

*EPA Response*: In response to the comments concerning cyanide speciation, EPA is promulgating today an MCLG and MCL for cyanide that apply only to free cyanide. The Agency agrees with the commenters that only free cyanides should be regulated because these are the species of health concern due to their bioavailability and toxicity. The analytical methods issue is fully addressed in the Analytical Methods section of this rule. In summary, EPA is specifying the use of the "cyanide amendable to chlorination" test for determining the "free cyanide" concentrations, while the "total cyanide" analytical technique is being allowed to screen samples. If the "total cyanide" results are greater than the MCL, then the analysis for free cyanide would be required to determine whether there is an exceedance of the MCL.

EPA considers the NOAEL selected to be appropriate and to be protective against adverse health effects over a lifetime of exposure. The selection of a NOAEL of 10.8 mg $CN^-$/kg/day is based on sensitive endpoint of toxicity and is consistent with a study that found a NOAEL of 30 mg/kg $CN^-$ per day for weight loss, thyroid effects, and myelin degeneration in rats reported in a 11.5-month dietary study using KCN [Philbrick et al., 1979]. The commenter noted that the reported low $LD_{50}$ in rats, was lower than the selected NOAEL. However, the rat lethal dose of cyanide was an acute effect obtained by administering cyanide in bolus form by gavage. The NOAEL chosen is from a two-year chronic dietary study. Studies have shown that rats (and humans) can tolerate higher doses of cyanide (80 mg $CN^-$/kg/day) when mixed in the diet [Kreutler et al., 1978] than when administered in bolus form by gavage in aqueous solution ($LD_{50}$=4 mg $CN^-$/kg/day) [Ferguson, 1962]. Rats also tolerated a higher oral dose of cyanide (12 mg $CN^-$/kg/day for 21 days that was administered in drinking water; Palmer and Olson, 1979). The intermittent ingestion of low doses over a day would allow for sufficient detoxification.

Using the NOAEL chosen, an uncertainty factor of 500 was used in the calculation of the DWEL. This includes an uncertainty factor of 100 (for use of a NOAEL derived from a Chronic Study) and a 5-fold modifying factor to account for the fact that the NOAEL is from a dietary study.

The fatal oral dose of cyanide in humans reported by several investigators ranged from 0.5 to 3.5 mg/kg $CN^-$. The $LD^{50}$ values and LOAELs for various acute (1–14 days) and subacute (90 days) effects in tested animals were reported in the same range as the human lethal levels or higher [USEPA, 1988b, finalized as USEPA, 1992h]. Assuming an average human body weight of 70 kg, the approximate fatal dose of $CN^-$ would be no less than 35 mg (0.5 mg/kg×70 kg). At the final MCL of 0.2 mg/l promulgated today, a person would need to ingest 175 liters of water (35 mg÷0.2 mg/l) in one short time interval to obtain an acutely toxic dose, an unrealistic volume to consume. Therefore, EPA believes the derived MCLG is protective of both acute and chronic toxic effects of cyanide in drinking water.

After review of the comments, the Agency believes that the proposed MCLG is supported by the available health data and is promulgating today an MCLG of 0.2 mg/l for free cyanide.



d. *Nickel.* On July 25, 1990, EPA proposed an MCLG of 0.1 mg/l for nickel [55 FR 30381]. The MCLG was based on the Ambrose et al. 1976 study where rats were fed nickel sulfate hexahydrate in their diet for 2 years. Effects noted in the animals included decreased body weight in male and female rats, as well as increased relative heart weight and decreased relative liver weight in female rats. Other studies reported decreased body weight gains and organ weight effects. A NOAEL of 5 mg Ni/kg body weight was identified in the Ambrose study. This NOAEL is supported by a short term gavage study [American Biogenics, 1986].

Nickel refinery dust and nickel subsulfide are classified in Group A: Human carcinogen based on human epidemiolcgic data from occupational exposure via inhalation. Nickel was not demonstrated to be carcinogenic by the oral route of exposure in several animal studies. The soluble nickel salts that may be found in drinking water have not been classified as to their carcinogenic potential. Nickel is considered to be an essential trace element for some animal species, although it has not been shown to be essential for humans. It is found as a normal constituent in the human diet, with average intakes of 100 to 500 μg/day. EPA proposed an MCLG for nickel following a Category III approach considering the lack of evidence of carcinogenicity by ingestion.

*Public Comments:* Comments are requested on the MCLG for nickel and the carcinogenicity potential for nickel in drinking water. Fourteen comments were received. Comments were received on the derivation of the MCLG which discussed the choice of study and toxic endpoint as the basis for the MCLG, use of uncertainty factors, assumed volume of water consumed daily, exposure from water and carcinogenic potential for ingested nickel.

One commenter stated that the dose of 5 mg/kg/day should be considered a no-observed-effect level (NOEL) instead of a no-observed-adverse-effect level (NOAEL) since no effects, adverse or otherwise, were noted. They also noted that the next highest dose (50 mg/kg/d) could arguably be called a NOAEL instead of a LOAEL since the effect of decreased body weight could be the result of decreased food consumption possibly due to taste aversion.

A few comments were received on the use of a 3-fold modifying factor in the RfD calculation. These commenters said that EPA should not use the additional factor of 3 to account for deficiencies in the data base for reproductive effects because the factor of 100 is already conservative and the available reproductive data demonstrated a NOAEL comparable to the Ambrose study. It was suggested that EPA defer establishing an MCLG for nickel until all reviews of reproductive studies are completed, which would eliminate the need for a modifying factor of 3.

Comments were received which discussed consideration of reproductive or dermatitis studies related to nickel in drinking water as the basis for the MCLG. These studies suggest that reproductive or dermatological endpoints may be more sensitive than the Ambrose feeding study. The commenters agreed with EPA's position that the reproductive and dermatitis studies were not appropriate to serve as the sole basis for the RfD due to problems with the study design. The commenters stated further that EPA has been more than conservative in using the NOAEL from the Ambrose feeding study, that there may be a potential for differential absorption from food versus water, and that the reproductive and dermatological studies in fact support the current RfD estimated from the Ambrose feeding study. Another commenter indicated that ingested nickel exerts its toxicity through irritation to the gastrointestinal tract and not inherent toxicity due to low intestinal absorption.

One commenter indicated that the DWEL should not be adjusted by a relative source contribution from water in that the DWEL is already conservative and that actual exposure data should be used. Because actual data show less exposure than EPA's default relative source contribution, the MCLG should be 5 to 6 times higher than it is. They further stated that the volume of 2 liters of water per day was an overestimate and that a value of 1.4 liters/day taken from the recommendations of the EPA Exposure Assessment Group should be used.

Several commenters supported EPA's position not to treat nickel as a carcinogen in drinking water.

*EPA Response:* EPA maintains that the 5 mg/kg/day dose level in the Ambrose feeding study is appropriately considered a NOAEL and that the higher dose of 50 mg/kg/day is a LOAEL. In females given the dose of 50 mg/kg/day, decreased body weight, increased relative heart weight and decreased relative liver weight were all statistically significant. Therefore, based on scientific judgment and statistical significance (concurred in by SAB), 50 mg/kg/day is considered the LOAEL. All of the above effects were also observed at the lower dose level of 5 mg/kg/day but were not statistically significant. Thus, the 5 mg/kg/day level is a NOAEL.

EPA agrees that nickel may be irritating to the gastrointestinal tract; however, there is evidence to indicate systemic effects following chronic low dose exposure. Therefore, EPA disagrees that nickel lacks inherent toxicity.

EPA disagrees that the modifying factor of 3 is not justified. While the existing reproductive studies are not adequate for use as the sole basis for the RfD and DWEL, they do indicate a potential reproductive hazard that may result from oral exposure to nickel. A modifying factor of 3 accounts for the uncertainties for the equivocal nature of the dose-response data from the existing reproductive studies.

EPA agrees with the comments that the dermatological studies should not be the basis for the NOAEL in that oral nickel challenge studies ideally should be conducted in a double blind manner. The commentators and EPA agree, however, that the dermatological and reproductive studies support the RfD and DWEL in a weight-of-evidence approach.

The Agency disagrees with the commenter who stated that the DWEL should not be adjusted by a relative source contribution but that actual exposure data showing lower exposure should be used. EPA agrees that available data indicate that drinking water contributes less than 20 percent of the daily intake, but EPA uses 20 percent as a minimum percentage in these cases (see "Relative Source Contribution" section above).

In response to the commenter's suggestion to use 1.4 liters/day as the assumed water consumption instead of 2 liters/day, EPA continues to believe that the use of 2 liters/day is appropriate in setting the MCLGs, as recommended by NAS (1977). The Agency has consistently used 2 liters/day as an assumed consumption in past drinking water regulations. The NAS estimate was based on a survey of nine different literature sources which gave an overall average per capita water (liquid) consumption per day of 1.63 liters. It also concluded that the volume of 2 liters/day represented the intake of the majority of water consumers. In order to be conservative and allow for an adequate margin of safety, EPA uses the 2 l/day value. Further, the use of 1.4 l/day in the EPA Exposure Assessment Group handbook is not inconsistent with EPA's approach of using 2 l/day in this and other drinking water rules. The 1.4 l value is an overall average of a number of studies, some of which did not

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necessarily consider indirect water consumption (such as use in cooking). Therefore, to best account for all exposures related to the occurrence of contaminants in drinking water, EPA believes use of 2 liters daily water intake is conservative and appropriate. The Exposure Assessment Group Handbook also notes that 2 liters intake is a reasonable worst case estimate.

With respect to a factor to account for potential differences in absorption of nickel from food and water, EPA acknowledges that data are available which suggest a potential for differential absorption. However, these differences are not clearly reflected in the dose-response relationships from the toxicity studies. In particular, the gavage study [American Biogenics, 1986] exposed rats to nickel chloride dissolved in water. This study identified the same NOAEL (5 mg Ni/kg/day) as the dietary study [Ambrose et al., 1976] which serves as the basis for the RfD. Thus, application of a modifying factor to account for differential absorption is not considered to be justified by the existing data.

After review of the public comments, EPA is promulgating the MCLG for nickel at 0.1 mg/l, as proposed.

e. *Sulfate.* In the July 25, 1990 notice, EPA proposed two alternative MCLGs of 400 and 500 mg/l for sulfate. People who continually ingest high levels of sulfate in their drinking water generally acclimate to the sulfate and are resistant to its laxative properties. Even though promulgation of the MCLG is being deferred, for reasons discussed in Section III.B.5 of this notice, a discussion of comments received and EPA's response follows below.

*Public Comments:* There were 15 separate comments concerning sulfate. Several commenters believed that EPA should not regulate sulfate due to a lack of adequate health data, lack of chronic effects and because of acclimatization (refractoriness to the laxative effects) to sulfate. Eleven commenters stated that the sulfate regulation should be higher than 500 mg/l (between 600 and 1,000 mg/l). Six commenters stated that 500 mg/l was protective, while three others believed that the 400 mg/l option would be better. One commenter stated that the usual approach for deriving the MCLG—an RfD and DWEL calculation—should be used for sulfate. Another commenter cited a 1989 letter dated July 17, 1989 from the Metals Subcommittee of the Science Advisory Board's Environmental Health Committee to the Administrator stating that the Subcommittee could not support the setting of an acute DWEL. Other commenters urged no regulation of sulfate, stating that: a secondary MCL is sufficient for sulfate, infants as well as adults acclimate to sulfate, sulfate is present in food, and the WHO guidelines are based on taste and not on health effects.

*EPA Response:* As noted above, EPA is deferring action on the sulfate MCLG and MCL. Some commenters noted that no chronic health effects have been associated with long-term exposure to high levels of sulfate. However, sulfate can have acute adverse effects on non-acclimated persons. The critical health effect that results from exposure to sulfate in drinking water is diarrhea. Diarrhea has been reported at a level as low as 630 mg/l. The population most likely to experience this effect consists of travelers and infants not accustomed to high sulfate levels. This laxative effect eases and disappears (i.e., the person acclimatizes to the effects of sulfate) with continued exposure to high levels of sulfate in water. Little or no information is available on how quickly people, particularly infants, acclimate to the effects of sulfate.

Due to the acute nature of the critical effect, an RfD and chronic DWEL were not determined. Available data indicate that infants may be the most sensitive subpopulation since they may be at risk of becoming dehydrated (which may be serious if not properly treated) as a result of prolonged diarrhea [Chien et al., 1968].

The Metals Subcommittee of the Science Advisory Board's Environmental Health Committee recommended additional study before regulation but noted that, if regulated, an MCLG of 400 mg/l [Loehr, 1989] was more appropriate than the 200 mg/l recommended at the time by the Agency. The basis for the SAB recommendation was that (1) the mode of action of sulfate is fairly well known, and (2) some human data are available which indicate that ill effects occur only at concentrations above 600 mg/l.

At the time EPA proposes a decision on sulfate, it will present a discussion of its science assessment, including any new information which may become available.

f. *Thallium.* EPA proposed an MCLG of 0.0005 mg/l for thallium in the July 1990 proposal [55 FR 30383]. The MCLG was derived using a NOAEL of 0.2 mg thallium/kg/day from a 13-week dietary study in rats [Stoltz et al., 1986]. Based on this NOAEL, a DWEL of 0.0023 mg/l was calculated. An uncertainty factor of 1,000 was applied (in accordance with NAS/EPA guidelines for a subchronic study). An additional uncertainty factor of 3 was used to account for the lack of adequate reproductive data. EPA has classified thallium in Group D since there is inadequate evidence of carcinogenicity. No new data that would change the conclusions presented in the July 1990 notice have become available since its publication.

*Public Comments:* In response to the July 1990 notice, three individuals or organizations commented on the proposed MCLG for thallium. The most significant area of comment was the claim that the uncertainty factor of 3,000 used to establish the MCLG for thallium is overly conservative given the nature of the health effects data involved, and that an uncertainty factor of 1,000 should be sufficient. The commenter did not believe that an extra uncertainty factor of 3 was warranted for protection from potential reproductive effects.

*EPA Response:* EPA disagrees that the uncertainty factor of 3,000 is overly conservative. The only data available are from subchronic exposure of rodents. A factor of 1,000 is generally used with a NOAEL derived from an animal study of less-than-lifetime duration (the 1986 Stoltz et al. study was 13 weeks in length). The additional uncertainty factor of 3 was applied in the risk assessment to compensate for the lack of adequate reproductive data. In light of the results from Formigli et al. (1986) in which thallium induced testicular toxicity in rats at 0.74 mg thallium/kg/day administered in the drinking water for 8 weeks, EPA believes it is appropriate to use an additional uncertainty factor of 3 since the possibility that this effect may occur at doses at or below the selected NOAEL of 0.2 mg thallium/kg/day cannot be ruled out. Detailed descriptions of thallium toxicity at different dose levels and in different animal species are documented in the thallium Health Criteria Document prepared in support of this regulation [USEPA, 1990g, finalized in USEPA, 1992c]. Accordingly, based on the available information, the Agency is promulgating today an MCLG of 0.0005 mg/l for thallium.

4. Organic MCLGs

a. *Benzo(a)Pyrene and other PAHs.* In the July 1990 notice, EPA discussed the available information on the health effects, occurrence and human exposure for 15 Polynuclear Aromatic Hydrocarbons (PAHs) [55 FR 30396]. Of the 15 PAHs, seven were presented in greater detail because of their carcinogenic potential (all classified as Group B2, probable human carcinogen), and were proposed for regulatory consideration. These included: Benz[a]anthracene (BaA), benzo[a]pyrene (BaP), benzo[b]fluoranthene (BbF), benzo[k]fluoranthene (BkF), chrysene (CHY), dibenz[a,h]anthracene (DBA), and indeno[1,2,3-c,d]pyrene (IPy). In the proposal, EPA presented alternative approaches for controlling exposures: (1) Setting MCLG of zero for BaP alone, based on its carcinogenic potential, and (2) setting an MCLG of zero for each of the seven carcinogenic PAHs. Only for BaP are sufficient data available to make a quantitative estimate of cancer potency. In a study wherein mice were fed BaP in the diet, treatment-related gastric tumors developed, another dietary study in rats produced similar results. Data from these studies form the basis for the quantitative estimate of cancer potency [Neal and Rigdon, 1967]. BaP is mutagenic in *vitro* mutagenicity tests, and has been found to produce reproductive effects in animals. Skin painting studies in animals indicate that the effectiveness of inducing skin cancer of the other six PAHs are equal to or less than that of BaP (see studies cited in Criteria Document [USEPA, 1988c, finalized as USEPA, 1991f]). The **Federal Register** notice solicited public comments on: The Agency's two alternative options; regulation of other PAHs; and alternative approaches for evaluating the carcinogenic potency for BaP. The major comments are discussed below.



*Public Comments:* There were 17 comments submitted to the Agency concerning health-based issues on the proposal to regulate PAHs. Eight of the comments stated that the Agency should limit the regulation to BaP only. Three of the comments suggested regulating all seven of the Group B2 PAHs using a comparative potency approach, with comparison to BaP. One comment indicated that individual MCLGs should be established after the comparative potencies are validated. The validation method was not specified. There were several comments which suggested that the Agency should not regulate PAHs. The basis claimed for this recommendation was either that data to determine health effects were not sufficient, or that exposure to PAHs in drinking water was negligible when compared to other sources. There also were comments that did not agree with the Agency's approach of selecting Category I and setting a zero MCLG for contaminants that show evidence of carcinogenicity via ingestion. Some commenters described the Agency's approach as being overly conservative; overestimating risk; and not accounting for a threshold of carcinogenicity. Specific suggestions were: (1) To set MCLGs/MCLs at a *de minimus* level (e.g., $10^{-4}$) or at background levels; (2) use a biologically based (e.g., two-stage or fitted multistage) model to estimate cancer risk, instead of the linearized multistage model; and (3) use body weight scaling, instead of surface area, to extrapolate animal data to human exposures for estimating cancer risk.

*EPA Response:* EPA has decided to establish an MCLG (and MCL) for BaP only. There are extensive and sufficient data to support regulating BaP. It has been shown to be carcinogenic in animals by many routes, including by ingestion, and has been classified by the Agency as a Group B2, probable human carcinogen. Even though less than one percent of PAH exposure may come from drinking water, PAHs have been found in some drinking water sources.

The Group B2 classifications and frequency of association of the other six PAHs with BaP as a mixture in drinking water suggest that it may be appropriate to regulate these others also. The Agency is considering regulating BaA, BbF, BkF, CHY, DBA, and IPy using a comparative cancer potency approach; the individual potencies would be compared to that of BaP. Such regulation may be proposed at a future date when EPA has established a policy for how such a comparative approach would be conducted, or when other appropriate data become available for any or all of the six PAHs.

The EPA approach to estimating cancer risk for drinking water contaminants (i.e., weight-of-evidence determination and non-threshold low-dose extrapolation) is considered to be the most prudent approach that is protective of human health. The Agency considers and evaluates alternative methods for assessing human health risks to chemicals. Risk estimates using a variety of models (including two-stage, linearized multistage, and Weibull methods) have been applied to the BaP data. In the interest of using more of the available data, the slope factor of 5.76 $(mg/kg/day)^{-1}$ was derived. This slope factor is the geometric mean of all the models used. While data on the potential mechanism of action of an agent are considered in the weight-of-evidence judgment, evidence of a nongenotoxic mechanism, while pertinent, would not always exclude classification of a chemical as a probable human carcinogen. The appropriate scaling factors for interspecies extrapolation are being reviewed currently by the EPA and other Federal agencies. However, the Agency will continue to use surface area scaling to estimate cancer risks until there is sufficient evidence to support a change and until another approach is fully approved and adopted.

Based on the above discussion, which considers the toxicity, carcinogenicity, occurrence, and exposure of BaP, BaA, BbF, BkF, CHY, DBA, and IPy, EPA has concluded that only BaP should be regulated at this time. In most cases, the Agency places Group B2 contaminants into EPA Category I when there is strong evidence of carcinogenicity via ingestion. EPA's policy is to set MCLGs for Category I chemicals at zero. Based on the weight-of-evidence for carcinogenicity, the Agency places BaP in Category I and is promulgating today an MCLG of zero for this contaminant.

b. *Dalapon.* In the July, 1990 proposal [55 FR 30385], EPA proposed an MCLG of 0.2 mg/l for dalapon based on a two-year feeding study in rats [Paynter et al., 1960]. A NOAEL of 8 mg/kg/day was identified from this study. From the NOAEL, a DWEL of 0.93 mg/l was derived. An uncertainty factor of 100 was applied to the NOAEL following NAS/EPA guidelines for a lifetime study. An additional uncertainty factor of 3 was used to account for possible inadequacy of the available animal data.

*Public Comments:* Three comments were received on the health effects of dalapon that were editorial in nature. There was no major disagreement between any of the commenters and EPA. One commenter misread the uncertainty factor of 300 as 800. The second commenter agreed on the value but suggested the use of the term "uncertainty factor" be used consistently to account for inadequacy of toxicological data instead of the term "modifying factor." The third commenter needed clarification on the title of a reference.

*EPA Response:* EPA agrees with the commenter that suggested that "3" is an uncertainty factor (which is synonymous with "modifying factor") to account for the inadequacy of the data base. Because none of the comments affect the proposed MCLG, based on the available information, the Agency is promulgating today an MCLG of 0.2 mg/l for dalapon.

c. *Dichloromethane (Methylene chloride).* In the July 1990 notice [55 FR 30386], EPA proposed an MCLG of zero for dichloromethane. This MCLG was based on the classification of this contaminant as a Group B2 carcinogen. EPA requested comments on whether the available carcinogenicity data by ingestion are adequate to classify dichloromethane in Group B2, and on the proposed MCLG.

*Public Comments:* Eleven comments were received in response to the

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proposed regulation of dichloromethane. The majority of the commenters questioned the classification of dichloromethane in Group B2—probable human carcinogen. One commenter suggested that EPA should not regulate dichloromethane as a known human carcinogen since no human data are available. Several commenters argued for the classification in Group C while others favored a classification in Group D. These commenters stated that there are limited or inadequate data to classify dichloromethane as a Group B2 carcinogen. One commenter agreed with the EPA cancer classification in Group B2 for dichloromethane.

*EPA Response:* EPA disagrees with the comment that the Agency is regulating dichloromethane (DCM) as a known human carcinogen (i.e., Group A carcinogen). The Agency has classified dichloromethane in the cancer classification of Group B2, probable human carcinogen. EPA has placed dichloromethane in Category I to set the MCLG because there is sufficient evidence of carcinogenicity in animals from drinking water exposure.

EPA disagrees with the commenters supporting classification of dichloromethane in Group C (possible human carcinogen) or Group D (inadequate evidence for classification). EPA believes that there is sufficient evidence that dichloromethane induces tumors in animals. In drinking water studies [Serota et al., 1986a,b], a statistically significant increase in the incidence of combined hepatocellular carcinoma and neoplastic nodules when compared with matched controls was observed (female rats). Male mice had an increased incidence of combined neoplastic modules and hepatocellular carcinoma. In an inhalation experiment [IRIS, 1991a], statistically increased incidences of mammary adenomas and fibroadenomas were observed in male and female rats. Mice also showed increased incidence of hepatocellular adenomas and carcinomas. These data support the classification of dichloromethane in Group B2 and provide specific evidence for ingestion exposure hazard.

Consequently, based on the information available to the Agency and the public comments received, EPA has concluded that dichloromethane should be placed in Category I, and that an MCLG of zero, as proposed, is appropriate.

d. *Di(2-ethylhexyl) adipate.* In the July 1990 proposal [55 FR 30384], EPA proposed an MCLG of 0.5 mg/l for di(2-ethylhexyl) adipate (DEHA). This MCLG was derived from an NTP 2-year dietary study in rats and mice which resulted in a NOAEL of 700 mg/kg/day [NTP, 1982a]. An uncertainty factor of 100, and an extra uncertainty factor of 10 for lack of adequate reproductive effects data, were applied to the NOAEL to derive a DWEL of 25 mg/l. The MCLG of 0.5 mg/l was calculated for DEHA from this DWEL, by applying an additional safety factor of 10 in accordance with OW policy for Group C carcinogens, and by assuming a 20 percent contribution from drinking water to total exposure.

Based on new health information (see discussion below), EPA has recalculated the proposed MCLG for DEHA. A full discussion on the basis for the revised MCLG for DEHA was given in the November 19, 1991 Notice of Availability [56 FR 60953].

*Public Comments:* Two commenters responded to the July 1990 proposal. Both commenters questioned the use of an extra uncertainty factor of 10 in the calculation of the DWEL to account for the lack of data on reproductive effects. One commenter claimed that the extra uncertainty factor of 10 should not be used because there are the 1988 ICI teratology and reproductive studies available for this chemical [ICI, 1988a,b].

One commenter on the NOA asserted that the 3-fold additional uncertainty factor should not be justified in part by the observation of dilated ureters in fetuses in the ICI study [ICI, 1988a], because the noted effect was not statistically significant. If these data were used to justify use of an uncertainty factor, a value less than 3 should be used, according to the commenter.

*EPA Response:* As discussed in the November 29, 1991 Notice of Availability, EPA has reviewed the 1988 ICI teratology and reproductive studies and considers them adequate, and suitable to serve as the basis for the MCLG for DEHA.

In the teratogenicity study, Wistar-derived pregnant rats (24/group) were fed diets containing DEHA to 0, 300, 1,800 or 12,000 ppm corresponding to dosages of 0, 28, 170 or 1,080 mg/kg/day on gestational days 1–22 [ICI, 1988a]. At the high dose, slight reductions in maternal body weight gain and food consumption were observed, and reduced ossification and kinked or dilated ureters were found in the fetuses. Slightly dilated ureters were also seen in a few fetuses at 170 mg/kg/day but the incidence did not reach statistical significance. The LOAEL and the NOAEL for this study were 1,080 mg/kg/day, and 170 mg/kg/day, respectively.

In a companion one-generation reproductive study [ICI, 1988b], groups of Wistar-derived rats (15 males/dose; 30 females/dose) were administered DEHA in their diets at the same levels (0, 28, 170 or 1,080 mg/kg/day). After 10 weeks on the diet, the animals were mated to produce one generation of offspring that was reared to day 36 post partum. Test diets were fed continuously throughout the study (approximately 18–19 weeks of exposure). No effects were seen on male or female fertility. However, at the highest dosage level, there was a reduction in the body weight gain of the dams during gestation; an increase in liver weight in both male and female parents; and reductions in offspring weight gain, total litter weight and litter size. The NOAEL for this study was also 170 mg/kg/day.

Based on the NOAEL of 170 mg/kg/day, an RfD of 0.6 mg/kg/day and a DWEL of 20 mg/l is calculated for a 70-kg adult consuming 2 liters of water per day using an overall uncertainty factor of 300.

$$RfD = \frac{170\ mg/kg/day}{3 \times 100} = 0.56\ mg/kg/day \text{ (rounded to } 0.6\ mg/kg/day)$$

$$DWEL = \frac{0.6\ mg/kg/day \times 70\ kg}{2\ l/day} = 21\ mg/l$$



where:
- 70 kg is the assumed body weight of an adult person
- 100 is the uncertainty factor following EPA guidelines for a NOAEL obtained in a study using laboratory animals
- 3 is the additional uncertainty factor used because of data base deficiencies including lack of a multi-generation reproductive study.

In the November 29, 1991 Federal Register Notice, EPA presented this recalculated DWEL and the proposed MCLG for DEHA based on the DWEL of 21 mg/1, an additional safety factor of 10 in accordance with EPA policy for Category II contaminants, and an assumed drinking water contribution of 20% to total exposure.

$$MCLG = \frac{21\ mg/l}{10} \times 0.2 = 0.4\ mg/l$$

EPA agrees that because the effect on fetal ureters in the ICI study [ICI, 1988a] was not statistically significant, this effect should not be used in justifying the additional 3-fold uncertainty factor. However, EPA believes the data gap cited (lack of a multi-generation study) does warrant use of the additional 3-fold uncertainty factor.

Therefore, based on the new toxicity data, EPA is placing DEHA in Category II (Group C) and promulgating an MCLG of 0.4 mg/1 in today's notice. This MCLG of 0.4 mg/1 corresponds to a theoretical cancer risk level of $1.3 \times 10^{-5}$.

e. *Di(2-ethylhexyl)phthalate.* In the July 1990 notice [55 FR 30398], EPA discussed the available information on the health effects, occurrence and human exposure for four phthalates: di(2-ethylhexyl)phthalate (DEHP), butyl benzyl phthalate (BBP), dibutyl phthalate (DBP) and diethylphthalate (DEP). In that notice, EPA proposed to set an MCLG of zero for DEHP based on its classification as a Group B2 carcinogen. The Agency based on the cancer classification on a weight-of-evidence approach for sufficient evidence of carcinogenicity in animals. DEHP caused hepatocellular adenomas and carcinomas in both sexes of rats and mice fed DEHP in the diet. The Agency discussed three regulatory options which included: regulating only DEHP based on its carcinogenicity; regulating DEHP and BBP, the latter based on a systemic toxic endpoint; and regulating all four phthalates separately, based on systemic endpoints for all except DEHP. Based on toxicity, occurrence, and exposure considerations, the Agency proposed that only DEHP should be regulated. The available occurrence data indicate that DEHP has been found most often in drinking water while the three other phthalates have rarely been found, and the reported levels of the others are below levels of health concern. Also, drinking water is a minor route of exposure to phthalates in general, further adding to the likelihood of low risk. The Federal Register notice solicited public comments on the Agency's proposal to regulate only DEHP and also on the other options. The major comments are discussed below.

*Public Comments:* There were five comments submitted to the Agency concerning health-based issues on the proposal to regulate DEHP and other options. There were no comments addressing the third option, i.e., regulating all four phthalates separately. One commenter agreed with the EPA proposal to regulate DEHP only. Another commenter suggested that the MCLG for DEHP should be based on the DWEL rather than on its carcinogenicity because the evidence for carcinogenicity is insufficient. In support of this position, the commenter stated that: (1) DEHP's classification as a Group B2 carcinogen has been considered but never finalized by the Agency; (2) based on scientific uncertainty (e.g., with mechanism of action, structure activity relationships, potency, genotoxicity, species differences, etc.) a B2 classification is inappropriate; and, (3) the European community has concluded that DEHP is not a human carcinogen.

The other three comments were about BBP. The comments on BBP were: (1) That the MCL should be set only for DEHP until sufficient data exists to set MCLs for BBP and other phthalates; (2) that the classification of BBP in Group C (possible human carcinogen) is not sufficient to warrant its regulation; and (3) that the NOAEL to calculate the DWEL and MCL is quantitatively incorrect and should be increased by a factor of 3 because no dose/response relationship was found.

*EPA Response:* EPA does not agree with the position that there is a lack of evidence for classifying DEHP as a probable human carcinogen. According to the Agency's Guidelines for Carcinogen Risk Assessment [USEPA, 1986], the overall weight-of-evidence provides sufficient evidence in animals to classify DEHP as a Group B2 (probable human) carcinogen. EPA's CRAVE verified the Group B2 classification for DEHP on November 7, 1987. The classification was based upon the NTP study [NTP, 1982b], which resulted in a statistically significant increased incidence of hepatocellular carcinomas and adenomas in female rats and both sexes of mice. Additionally, there was a statistically significant increase in the combined incidence of neoplastic nodules and hepatocellular carcinomas in high dose male rats. The 13 factors presented in the comment, to support the view that DEHP does not have an appreciable cancer risk, do not conclusively support an absence of cancer risk to humans (see comment response document for detailed discussion). The EPA approach, i.e., weight-of-evidence consideration and non-threshold low-dose extrapolation, is considered protective of human health and EPA has concluded that the weight of evidence for DEHP warrants classification in Group B2, according to the EPA Guidelines for Carcinogen Risk Assessment. In most cases, the Agency places Group B2 contaminants into EPA Category I and sets MCLGs at zero when there is strong evidence of carcinogenicity from drinking water. EPA's policy is to set MCLGs for Category I chemicals at zero. The fact that the European communities have concluded that DEHP is not a human carcinogen is noted, but it does not necessitate that EPA adopt such a position, especially in the context of setting drinking water regulations according to the strict standard in the SDWA ("no known or anticipated" human health effects with an "adequate margin of safety"). After reviewing the public comments, EPA has concluded that an MCLG of zero, as proposed, based on the available evidence of carcinogenicity in animals, is appropriate for DEHP.

With regard to the comments on BBP, EPA believes that to set an MCL for BBP alone would incorrectly suggest (as discussed above) that the available data are not adequate to regulate DEHP as a carcinogen. A DWEL for BBP was determined based upon systemic toxic effects to the liver, kidney, and testes. When selecting a NOAEL, EPA does not necessarily rely upon the conclusions published with the study. The NOAEL for BBP was based upon liver weight change and the value selected was corroborated by evidence from other studies. The rationale for selecting the NOAEL can be reviewed in the health criteria document for phthalates [USEPA, 1991g]. An additional uncertainty factor for limited cancer evidence was incorporated to develop the proposed MCLG for BBP; however, the Agency is not finalizing the MCLG at this time.

Considering the toxicity, occurrence, and exposure of DEHP and BBP, EPA has decided to regulate DEHP only because it appears more likely to occur in drinking water and is more toxic. Based on the weight-of-evidence on

carcinogenicity, the Agency is promulgating today an MCLG of zero for DEHP, as proposed.

f. *Dinoseb.* In the July 1990 proposal [55 FR 30387], EPA proposed an MCLG of 0.007 mg/l for dinoseb based on a two-year study in rats [Hazleton, 1977]. A LOAEL of 1 mg/kg/day was identified from this study. An uncertainty factor of 1,000 (as per NAS/EPA guidelines for a LOAEL) was used in the derivation of the DWEL of 0.035 mg/l. This LOAEL of 1 mg/kg/day was also supported by a 100-week mouse study [Brown, 1981] and a 3-generation reproductive study in rats [Irvine, 1981]. The proposed MCLG was based upon this DWEL and an assumed drinking water contribution of 20 percent of the total intake. Dinoseb was placed in Category III (Group D) based on the lack of evidence of carcinogenicity.

*Public Comments:* One comment was received on the health effects of dinoseb. The commenter agreed with EPA that dinoseb should be placed in Group D (inadequate evidence of carcinogenicity). However, this commenter questioned the rationale for using 1,000 instead of 100 as the uncertainty factor in the calculation of the DWEL.

*EPA Response:* The Agency used an uncertainty factor of 1,000 in the calculation of the DWEL in accordance with the NAS/EPA guidelines for use of a LOAEL, in the absence of a NOAEL, from an animal study. Therefore, based on the available toxicological data for dinoseb, EPA is promulgating today an MCLG of 0.007 mg/l for dinoseb, as proposed.

g. *Diquat.* EPA proposed an MCLG of 0.02 mg/l for diquat in the July 1990 proposal [55 FR 30389] following a Category III approach. The MCLG of 0.02 mg/l was derived from a chronic feeding study in rats [Colley et al., 1985]. A NOAEL of 0.22 mg/kg/day was identified from this study. A DWEL of 0.08 mg/l was calculated by applying an uncertainty factor of 100. The MCLG of 0.02 mg/l assumes a drinking water contribution of 20 percent of the total intake. EPA has placed this contaminant in Category III based on the lack of information on its carcinogenicity. No new data that would change the conclusions presented in this notice have become available since its publication.

*Public Comments:* EPA received one comment on the proposed MCLG for diquat. The commenter indicated that an online computer search of the Hazardous Substances Data Base (HSDB) showed that diquat causes nausea, vomiting, diarrhea, possible liver and kidney damage, dyspnea, and pulmonary edema. The commenter also noted that diquat appears to affect epithelial tissues primarily and may attack those of the kidney or lens of the eye preferentially.

*EPA Response:* EPA agrees with the commenter that diquat causes the above mentioned effects when used at high doses in animal tests. These effects were discussed in the Health Criteria Document for diquat prepared in support of the July 1990 proposal [USEPA, 1990e; finalized as USEPA, 1992g]. However, the effects reported in the **Federal Register** notice are effects associated with the critical endpoint of toxicity used to establish the no-observed-adverse-effect level (NOAEL) for diquat. The effects described by the commenter are acute effects noted only at much higher dose levels than the dose causing the critical effects described in the notice. Therefore, based on the available health information, the Agency is promulgating today an MCLG of 0.02 mg/l for diquat, as proposed.

h. *Endothall:* EPA proposed an MCLG of 0.1 mg/l for endothall in the July 1990 proposal [55 FR 30390]. The MCLG was derived from a 24-month feeding study in beagle dogs [Keller, 1965]. This study identifies a NOAEL of 2 mg/kg/day. A DWEL of 0.7 mg/l was derived for the 70-kg adult by applying an uncertainty factor of 100 (in accordance with NAS/EPA guidelines). The MCLG for endothall was then calculated at 0.1 mg/l by applying a 20 percent contribution from drinking water. EPA has placed this contaminant in Category III (Group D) based on the lack of adequate data on its carcinogenic potential. No new data that change the conclusions presented in this notice have become available since its publication.

*Public Comments:* EPA received one comment on the proposed MCLG for endothall. This commenter indicated that there is a one-year dog study [Greenough et al., 1987] with a higher NOAEL of 6 mg/kg/day that the commenter believes would be more suitable for the calculation of the reference dose than the 2 mg/kg/day NOAEL from the two-year dog study by Keller (1965) used by the Agency. He further indicated that the effects noted by the Agency in the Keller study (increased organ weight and organ-to-body weight ratios) are not, in his opinion, "clearcut adverse effects" because no effects on body weight gain or food consumption were seen at any dose level.

*EPA Response:* The Agency agrees with this commenter that the additional one-year dog study on endothall [Greenough et al., 1987; MRID #407452-02], which was not available at the time the MCLG was proposed, should be considered. The data from this study are summarized below.

In a 12-month dietary study in dogs, disodium endothall was fed to groups of four male and four female beagle dogs at levels of 0, 150, 450, or 1,350 ppm [Greenough et al., 1987]. After 6 weeks of dosing, the dietary level at the highest dose was reduced to 1,000 ppm because of anorexia, decreased food consumption and body weight loss. Compound intake in the low-, mid- and high-dose groups was approximately 6, 18 and 35.8 mg/kg/day endothall disodium. After the highest dose had been reduced to 1,000 ppm, a partial recovery of the weight loss was observed, but the overall weight gain remained lower than in controls. No effects on weight gain were observed at 150 or 450 ppm. However, based on the histologic changes in the liver and reactive hyperplastic response in the gastric mucosa, the LOAEL is 450 ppm (14.4 mg/kg/day endothall ion), and considering the marginal effects on the stomach at the lowest level, the NOAEL is probably slightly lower than 6 mg/kg/day endothall disodium (equivalent to 4.8 mg/kg/day endothall ion).

The Agency notes that the lowest dose tested in the Greenough et al. dog study of 4.8 mg/kg/day endothall ion (150 ppm) provides supportive evidence that the noted low grade epithelial irritation may contribute to more remarkable effects when the animals are exposed to endothall for a longer period of time as noted in the two-year dog feeding study by Keller (1965). Although no effects were observed on body weight gains or on food consumption in the two-year dog feeding study [Greenough et al., 1987], the increased weights and organ-to-body weight ratios for the stomach and intestine in this study were dose-dependent and must be considered in the risk assessment of this chemical, considering that it is an irritant.

The dog appears to be more sensitive to adverse effects from endothall than the other animal species tested (as discussed in the proposal). EPA has concluded that the Keller (1965) study is the most appropriate study based on the effects noted above. Accordingly, the Agency is promulgating today an MCLG of 0.1 mg/1 for endothall, as proposed.

i. *Glyphosate.* EPA proposed an MCLG of 0.7 mg/1 for glyphosate in the July 1990 proposal [55 FR 30392]. The MCLG of 0.7 mg/1 was derived from a three-generation rat study [Biodynamics, 1981a]. This study showed a statistically significant increase in kidney lesions. The NOAEL was identified at 10 mg/kg/

day. A DWEL of 3.5 mg/1 was derived by applying an uncertainty factor of 100, which is in accordance with NAS/EPA guidelines. The MCLG of 0.7 mg/1 for glyphosate was calculated by applying a 20 percent contribution from drinking water.

Several additional toxicity studies on glyphosate submitted to the Agency since publication of the July 1990 notice have been evaluated. However, these studies do not provide new information that would change the MCLG proposed in that notice. The proposal noted that EPA has classified glyphosate as a Category III (Group D) chemical. In today's notice, the Agency still places glyphosate in Category III (Group D) for establishing the MCLG.

*Public Comments:* In response to the July 1990 notice, two individuals or organizations commented on the MCLG proposal for glyphosate. One commenter noted that over-exposure to glyphosate may result in mucous membrane irritation, abdominal pain, vomiting, hypertension, oliguria, and anuria. The other commenter claimed that the July 1990 notice did not document adequately the results of some of the toxicological studies with glyphosate and did not include the most recent data on this chemical, such as a new two-generation rat reproduction study [Reyna, 1990], which concerned much higher doses than the 1981 three-generation rat study by Biodynamics that was used in establishing the proposed MCLG. This commenter also claimed that the oral $LD_{50}$ in mice is 10 g/kg and that information on the toxicokinetics of glyphosate is not "very limited" as stated in the July 1990 notice. The commenter requested that the discussion of the chronic rat study of 1981b by Biodynamics be revised as follows:

> Because of the absence of a dose-dependent effect, the lack of preneoplastic changes, the wide variability in the spontaneous incidence of this tumor, the similarity in incidence between the high dose group and historical controls, the lack of any evidence of genotoxicity, it was concluded that the observed incidence *did not demonstrate an oncogenic response* (emphasis added).

and that the statement on the three generation rat study of 1981a by Biodynamics also be corrected to:

> In the three-generation rat reproduction study and addendum, the most significant finding was focal, unilateral, renal tubular dilation in the kidneys of male pups for the $F_{3b}$ generation of high-dose dams [30 mg/kg/day]. The NOEL for this effect was 10 mg/kg/day. No effects on fertility or *reproductive* parameters were noted" (emphasis added).

*EPA Response:* In response to the first commenter, the Agency notes that acute effects are already discussed in the Health Criteria Document for glyphosate [USEPA, 1990f]. The preamble to the proposal generally discussed only effects noted at the lowest effect level and not the acute toxicity effects that may occur at much higher dose levels.

In response to the second commenter, the Agency agrees to include the revised language quoted above in the Public Comment Response Document [USEPA, 1992a] with respect to both the three-generation rat reproduction study [Biodynamics, 1981a] and the chronic rat study [Biodynamics, 1981b]. The Agency believes that this revised language is appropriate. It does not change the bases for the MCLG. The criteria document [USEPA, 1992b] discusses these issues in detail.

On reconsideration, the Agency agrees with this commenter that the data on the toxicokinetics of glyphosate is not "very limited". The available information as documented in the updated Health Criteria Document for glyphosate (1991) indicate the 97.5 percent of the absorbed dose by rats is eliminated in urine and feces. The alpha half-lives ranged from 2.11 to 7.52 hours for males and 5 to 6.44 hours in females while the beta half-lives ranged from 69 to 181 hours and 80 to 337 hours for males and females, respectively.

In response to the commenter's statement that the $LD_{50}$ in mice is 10 g/kg, a lower $LD_{50}$ in mice of 1.6 g/kg was reported by Bababunmi et al. (1978), as noted in the proposal.

The Agency also notes that a new lifetime rat feeding study [Stout and Ruecker, 1990, MRID #416438-01, volumes 1-6] was recently submitted to the Agency and is being reviewed. As per the commenter's recommendation to use the new two-generation rat study [Reyna, M.S., 1990, MRID #416215-01], for the MCLG calculations, this study was submitted to the Agency only recently and is fully described in the updated Health Criteria Document [USEPA, 1992b] prepared in support of today's rule. This new study is still under evaluation by the Agency. It is unlikely that this study will be considered an appropriate basis for the NOAEL and MCLG because the NOAEL in this study is 500 mg/kg/day, whereas adverse effects were noted at a much lower dose level (30 mg/kg/day) in the three-generation reproduction study in rats [Biodynamics, 1981a].

Therefore, EPA has concluded that the three-generation study in rats [Biodynamics, 1981a] is appropriate for the derivation of the MCLG for glyphosate, and is promulgating today an MCLG of 0.7 mg/l for this contaminant, as proposed.

j. *Hexachlorocyclopentadiene (HEX).* EPA proposed an MCLG of 0.05 mg/l for hexachlorocyclopentadiene in the July 1990 proposal [55 FR 30394]. The MCLG of 0.05 mg/l was derived from a 13-week oral toxicity study in rats [SRI, 1981]. The only effect reported was slight depression of body weight. A NOAEL of 10 mg/kg/day was identified from this study. A DWEL of 0.25 mg/l was calculated by applying an uncertainty factor of 1,000, which is appropriate for use with a NOAEL derived from animal study data that are significantly less-than-lifetime in duration. The MCLG of 0.05 mg/l was calculated from the DWEL of 0.025 mg/l by applying 20 percent contribution from drinking water. No new data that would change the conclusions presented in this notice have become available since its publication.

*Public Comments:* EPA received one comment on the proposed MCLG for hexachlorocyclopentadiene in the July 1990 notice. The commenter indicated that the toxicity data in the SRI study are inadequate to justify setting an MCLG and suggested that EPA postpone regulation of hexachlorocyclopentadiene until adequate toxicity studies are available.

*EPA Response:* Although EPA realizes that the toxicity data base is not as extensive as for some contaminants, EPA believes that there are sufficient toxicity data to regulate hexachlorocyclopentadiene. The SRI data were reviewed by the Agency's Reference Dose (RfD) Workgroup, which verified the Reference Dose using these data. In addition, EPA is required by the 1986 amendments to the SDWA to regulate hexachlorocyclopentadiene. Therefore, based on the available data, the Agency is promulgating today an MCLG of 0.05 mg/l for hexachlorocyclopentadiene, as proposed.

k. *Simazine.* EPA proposed an MCLG of 0.001 mg/1 for simazine in the July 1990 proposal [55 FR 30402]. The MCLG was derived from a DWEL of 0.058 mg/l (rounded to 0.06 mg/l), applying a 20 percent contribution from drinking water and an additional 10-fold safety factor by considering the classification of simazine in Category II (limited evidence of carcinogenicity from drinking water). The MCLG was based upon a NOAEL of 0.5 mg/kg/day for non-carcinogenic effects in a 2-year rat chronic feeding/oncogenic study [McCormick et al., 1988, MRID #406144-05] and was supported by a NOAEL of 0.7 mg/kg/day in a 1-year dog feeding

study [McCormick and Green, 1988, MRID #406144-02].

Several uncertainty factors were applied to this NOAEL: 10-fold to account for interspecies extrapolation and another 10-fold to account for intraspecies variability, plus an additional 3-fold factor to account for the absence of an adequate study (data gap) to assess the potential toxic effects of simazine on reproduction. The proposal also indicated that if the data gap for reproduction is filled before finalizing the simazine MCLG and if the data from this study would not raise any specific toxicological concerns at the dose used in the calculation of the MCLG, 0.5 mg/kg/day, the 3-fold uncertainty factor may be dropped and the DWEL would then be 0.2 mg/l and the MCLG would be 0.004 mg/l [55 FR 30404, footnote]. This MCLG lies in the range of $10^{-5}$ cancer risk estimates.

As noted in the November 29, 1991 Notice of Availability, subsequent to the July 1990 proposal, the data gap concerning reproduction effects has been filled. The Agency recently received a two-generation rat reproduction study [Epstein, 1991, MRID #418036-01] where simazine was tested at 10, 100 and 500 ppm (these doses are equivalent to 0.5, 5 and 25 mg/kg/day using Lehman (1959) conversion from ppm to mg/kg/day) assuming rats consume 5 percent of their body weight daily. No effects were noted in this reproduction study at the dose level (0.5 mg/kg/day) used to calculate the MCLG. In light of these data, EPA indicated in the Notice of Availability of November 29, 1991 that it was considering dropping the 3-fold uncertainty factor from the calculation of the DWEL and the MCLG for simazine as EPA had indicated it would do in the proposal [55 FR 30404, Footnote]. EPA has now decided in today's final rule to drop the 3-fold uncertainty factor. Accordingly, the proposed DWEL and MCLG of 0.06 and 0.001 mg/l, respectively, are modified and finalized (after rounding) at 0.2 and 0.004 mg/l, respectively.

*Public Comments:* Two individuals or organizations commented on the MCLG for simazine. One commenter questioned the reliability of the current animal studies for simazine if the Agency has to use an additional 3-fold uncertainty factor in the calculation of the DWEL. This commenter was also concerned that the chemical may have been placed in Group C (possible human carcinogen) based on the similarity between simazine and atrazine or propazine. He claims that the justification for the cancer classification of simazine being placed in Group C should be made solely on the basis of animal data.

The second commenter agreed that EPA should use the non-carcinogenic data for establishing the MCLG for Group C chemicals. This commenter added that Group C contaminants are not suitable for the quantitative cancer risk assessment process.

Several comments on the NOA were received which discussed this issue. All of the commenters on the NOA supported use of the Epstein study [Epstein et al., 1991] and dropping the additional 3-fold uncertainty factor.

*EPA Response:* In response to the first commenter, EPA believes that the animal studies used in the calculation of the DWEL for simazine are adequate studies and provide reliable information to calculate the DWEL. The additional 3-fold uncertainty factor was originally applied to account for the absence of an adequate reproduction study. As discussed above, the 3-fold uncertainty factor is not being used in the final DWEL or MCLG calculation in today's notice.

As to this commenter's concern that simazine should be placed in Group C based only on animal data and not on the similarity with atrazine or propazine, the Agency notes that simazine has been placed in Category II based on the weight-of-evidence approach and not only because of the structure-activity relationship with atrazine and propazine. Simazine has been found to cause mammary gland tumors in Sprague-Dawley rats. This effect was also noted with other analogues: atrazine, propazine, and recently with cyanazine. This fact adds to the weight-of-evidence of the carcinogenicity of simazine in this animal species and supports EPA's classification of simazine in Group C.

In response to the second commenter's contention that all Group C contaminants are unsuitable for quantitative cancer risk assessment, the Agency disagrees. In some cases, adequate dose-response data from a single study may be available, even though the weight of evidence is inadequate for a Group B classification.

In the July 1990 proposal the Agency described two options for the calculation of the MCLG for Category II (i.e., Group C) contaminants such as simazine, one using the RfD approach, with an additional safety factor, and another using the cancer quantification approach.

Many drinking water contaminants placed in Category II have been classified as Group C, possible human carcinogen, due to the limited nature of the weight of evidence for carcinogenicity. For Group C, the existing cancer risk assessment guidelines [USEPA, 1986] allow some flexibility as to whether to quantify the risk. Quantification should be carried out on a case-by-case basis, depending on various factors, including the adequacy of the data.

For Group C contaminants, the MCLG is usually based on the RfD approach when sufficient non-carcinogenic data are available. An additional 1- to 10-fold safety factor is used to account for the possible carcinogenicity. The resulting MCLG can then be compared to the cancer risk if the data are quantifiable. If adequate data are not available to determine an RfD, then the MCLG is set at the $10^{-5}$ to $10^{-6}$ excess cancer risk level where such quantification is appropriate.

EPA under FIFRA examines the risk for Group C contaminants like simazine using both an RfD approach and quantification of cancer risk using the cancer potency. Either method may be an appropriate method for risk management decisions.

As noted in the July 1990 proposal, carcinogenic potency for simazine at $1.2 \times 10^{-1}$ mg/kg/day$^{-1}$ was determined from the incidence of mammary gland tumors in female Sprague-Dawley rats [McCormick et al., 1988; MRID #406144-05]. Based on this carcinogenic potency, simazine concentrations of 0.003 and 0.0003 mg/l were associated with theoretical cancer risk levels of $10^{-6}$ and $10^{-6}$, respectively.

The Agency also has sufficient non-carcinogenic data to determine an RfD. Using the RfD and a 10-fold safety factor, EPA calculated an MCLG of 0.004 mg/l. This MCLG corresponds to a theoretical cancer risk level of $1 \times 10^{-5}$. The 10-fold safety factor used by EPA to calculate this MCLG is justified based on the possible cancer risk associated with this chemical as expressed in the rat chronic/oncogenic study [McCormick et al., 1988; MRID #406144-05]. This study was used for both the calculation of the cancer potency based on mammary gland tumors and the derivation of the RfD based on a NOAEL of 0.5 mg/kg/day for other systemic toxicity, like the noted reduction in the female body weight gain and the significant changes in the hematology parameters. This RfD is also supported with the NOAEL of 0.7 mg/kg/day from a one-year dietary exposure study in the dog [McCormick and Green, 1988; MRID #406144-02].

Using the RfD approach with an additional safety factor, the Agency is promulgating today an MCLG of 0.004

mg/l for simazine assuming a daily consumption of 2 liters of water by a 70 kilogram adult and applying a 20 percent relative source contribution from drinking water. This MCLG of 0.004 mg/l corresponds to the theoretical cancer risk level of $1 \times 10^{-6}$.

l. *1,2,4-Trichlorobenzene.* EPA proposed an MCLG of 0.009 mg/l for 1,2,4-trichlorobenzene (TCB) in the July 1990 proposal [55 FR 30405]. The MCLG of 0.009 mg/l was derived from a subchronic inhalation study in rats [Watanabe et al., 1978]. A NOAEL of 1.31 mg/kg/day and a DWEL of 0.046 mg/l were identified, resulting in an MCLG of 0.009 mg/l when applying a 20 percent contribution from drinking water.

*Public Comments:* In response to the July 1990 notice, three individuals or organizations commented on the MCLG proposed for 1,2,4-trichlorobenzene. Each commenter criticized EPA's use of an inhalation study to derive a health assessment value and regulatory standard for drinking water ingestion.

*EPA Response:* In response to the public comments received for the July 1990 proposal, EPA has reexamined the database for trichlorobenzene. The Agency agrees with the public comments stating that in the case of 1,2,4-trichlorobenzene the oral RfD should not be based upon the Watanabe inhalation study [Watanabe et al., 1978]. Upon reexamination of the oral studies, EPA determined that the Robinson et al. (1981) study provides the best scientific basis for determination of an RfD for 1,2,4-trichlorobenzene, as discussed in the November 1991 Notice of Availability [56 FR 60953]. This study was a multi-generation reproductive study in rats that were dosed with 0, 25, 100 and 400 ppm 1,2,4-trichlorobenzene added to the drinking water for 95 days per generation for two generations and examination of the offspring of the $F_1$ rats. The only compound-related changes seen in the dams or offspring were significant increases in adrenal gland weights of the $P_0$ and $F_1$ generations.

To more specifically characterize the changes noted in this study, an in-house EPA study was performed. It was found that the increased adrenal weights were associated with the histopathologic lesion, vacuolization of the zona fasciculata of the cortex. The Robinson study determined a NOAEL at the 100 ppm dose (14.8 mg/kg/day). Based on this study and applying an uncertainty factor of 1,000 to account for sensitive human subpopulations, extrapolation from an animal study, and for use of a study which was less than lifetime, the RfD is 0.01 mg/kg/day and the DWEL is 0.35 mg/l (verified by the RfD/RfC Workgroup [USEPA, 1991b]). Applying a relative source contribution of 20 percent, EPA is today promulgating an MCLG of 0.07 mg/l based upon the Robinson study, as proposed in the Notice of Availability.

EPA received two comments on the NOA, both of which supported EPA's use of the Robinson study [Robinson et al., 1981] as the basis for the 1,2,4-trichlorobenzene RfD and MCLG.

m. *1,1,2-Trichloroethane.* EPA proposed an MCLG of 0.003 mg/l for 1,1,2-trichloroethane in the July 1990 proposal [55 FR 30406]. The MCLG of 0.003 mg/l was derived from two 90-day drinking water studies in mice [Sanders et al., 1985; White et al., 1985]. A NOAEL value of 3.9 mg/kg/day was used to calculate a DWEL of 0.14 mg/l, by applying an uncertainty factor of 1,000 (per NAS/EPA guidelines for a NOAEL derived from a less-than-lifetime study). The proposed MCLG of 0.003 mg/l was calculated from the DWEL by applying an additional safety factor of 10 because of the classification of 1,1,2-trichloroethane in Group C (limited evidence of carcinogenicity as evidenced by the presence of hepatocellular carcinomas and adrenal pheochromocytomas in mice but not rats) and by applying 20 percent contribution from drinking water.

*Public Comments:* In response to the July 1990 notice, two individuals commented that the use of an uncertainty factor of 1,000 indicated that reliable data do not exist for the development of a DWEL. Another commenter was confused about the use of an extra 10-fold safety factor for a chemical classified as a Group C chemical and asked for clarification about the use of an extra safety factor and the rationale for its use.

*EPA Response:* In response to the comments about the use of a 1,000 uncertainty factor, EPA prefers to use data from lifetime studies to set DWELs and MCLGs. However, EPA often regulates chemicals that do not have a complete data base; for example, there may be no lifetime studies in animal species. In such cases, an additional 10-fold uncertainty factor is applied to account for the "data gap," per NAS/EPA guidelines.

As described previously in today's notice, EPA has developed a three-category approach for setting MCLGs for chemicals in drinking water. For chemicals in Category II (compounds having limited evidence or carcinogenicity via drinking water), the MCLG is usually based on the use of the RfD approach with an additional safety factor of 1 to 10 to account for possible carcinogenicity. If the data are not sufficient to calculate an RfD, then the MCLG is set in the $10^{-5}$ to $10^{-6}$ lifetime cancer risk range. Since the Agency has verified an RfD for 1,1,2-trichloroethane (verification date 8/01/90) [IRIS, 1991h], EPA has used the RfD approach with an additional safety factor of 10 (to account for possible carcinogenic effects) to derive the MCLG for 1,1,2-trichloroethane. Based on this approach and after consideration of public comment, EPA is promulgating today an MCLG of 0.003 mg/l for 1,1,2-trichloroethane, as proposed. This MCLG of 0.003 mg/l corresponds to the theoretical cancer risk of $10^{-5}$.

n. *2,3,7,8-Tetrachlorodibenzo-p-dioxin.* EPA proposed an MCLG of zero for 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD; dioxin) in the July 1990 proposal (55 FR 30384). This proposal MCLG was based on the classification of 2,3,7,8-TCDD in Group B2; probable human carcinogen. New data [i.e., Fingerhut et al., 1991 and other studies] have become available to EPA since the publication of the July 1990 notice. Critical reviews of much of these data, including reassessments of critical cancer studies and new epidemiology studies are under way but have not been completed by the Agency to date. The Agency is undertaking a complete reassessment of the risks from dioxin which includes a review of the entire health effects data set for 2,3,7,8-TCDD as well as additional laboratory studies. The Agency expects to complete its reassessment including a full peer review by 1993.

Until that time, the Agency believes it is appropriate to proceed to regulate 2,3,7,8-TCDD in drinking water using the existing health data and the current peer-reviewed risk assessment. Consequently, the Agency is regulating 2,3,7,8-TCDD based on the risk assessment presented in the July 1990 proposal. Once EPA has completed its critical review of the new health information, the Agency will initiate a process to determine whether the MCLG for 2,3,7,8-TCD should be revised.

*Public Comments:* In response to the notice of July 1990, 12 individuals or organizations commented on the MCLG proposal for 2,3,7,8-TCDD. Several commenters believed EPA's proposed MCLG was too stringent and several believed the MCLG was appropriate, but that the MCL was too lenient.

Four commenters believe that the cancer potency of 2,3,7,8-TCDD has been overstated by the Agency and cited the re-review of the Kociba cancer slides by the EPA Pathology Working Group (PATHCO) as evidence [Kociba

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et al., 1978]. The PATHCO's panel of experts found two-thirds fewer tumors than the original Kociba study, and concluded that those found were correlated with toxicity, suggesting a threshold mechanism. These commenters also indicated that the PATHCO findings have already been recognized by EPA as scientifically defensible since the Agency approved the Maryland Water Quality Standard, which relied on these findings.

One commenter stated that there is a large body of epidemiological evidence on 2,3,7,8-TCDD which has found no association between dioxin and human cancer, and that the Agency is therefore not justified in basing all its mathematical extrapolations on cancer data from rat studies. This commenter also stated that the linear multistage model used to qualify cancer risk for 2,3,7,8-TCDD was the incorrect model since the reexamination of the Kociba et al. (1978) data indicates no linear dose response and evidence of a threshold cancer response.

The same commenter urged EPA to revise the cancer potency factor based on the most recent reexamination of the Kociba et al. (1978) data done by the PATHCO.

Two commenters criticized the fact that the MCLG/MCL applies only to 2,3,7,8-TCDD, even though the Agency acknowledges that other isomers of polychlorinarted dibenzo-p-dioxin (PCDD) and polychlorinated dibenzofurans (PCDF) have similar toxic properties as estimated by the 2,3,7,8-TCDD toxic equivalency factor (TEF) methodology. The commenter claims that the MCLG/MCL should be based on the TEF approach.

One commenter believes that EPA's proposal of a zero MCLG for 2,3,7,8-TCDD is inappropriate since data indicate that the chemical promotes cancer through a receptor mediated mechanism, thus indicating it is a threshold carcinogen. The commenter indicated that 2,3,7,8-TCDD is not a tumor initiator but is more likely a tumor promoter.

One commenter stated that the average dioxin exposure among the general population exceeds EPA's calculated reference dose (RfD) and that it is unacceptable for EPA to allow any further dioxin exposure. The commenter also stated that the Agency failed to consider more recent data showing adverse reproductive effects for 2,3,7,8-TCDD at doses lower than those cited in the July 1990 proposal. The commenter claims that an up-to-date RfD would be 10 times more stringent than the RfD cited in the July 1990 proposal.

*EPA Response:* EPA disagrees with the commenters who stated that the MCLG for 2,3,7,8-TCDD is too stringent. The Agency has placed this compound in Category I and is setting the MCLG at zero based on its carcinogenic potential.

EPA disagrees with the commenters who alleged that EPA has already approved the Kociba et al. (1978) re-read as part of its approval of the Maryland water quality standard for 2,3,7,8-TCDD. Maryland did not incorporate a re-read of the Kociba study in developing their water quality standard for 2,3,7,8-TCDD. Instead, Maryland used the FDA cancer potency estimate for this contaminant.

In response to the concerns raised about the cancer potency, EPA is presently reviewing the cancer potency of 2,3,7,8-TCDD as part of its complete reassessment of dioxin. The Agency is also investigating the mechanism of carcinogenicity, including assessing the likelihood of a potential threshold mechanism and appropriateness of the current extrapolation model. However, at this time, the Agency has not completed its risk assessment or subjected it to peer review and therefore has made no decisions to change its assessment of the cancer potency or the possible threshold mechanism for dioxin. As stated above, the Agency expects to complete its reassessment in 1993. Given this time frame and the legal mandate to regulate 2,3,7,8-TCDD in drinking water, the Agency has relied on the data available at the time of the July 1990 proposal.

EPA does not agree with the commenter who stated that there is a large body of epidemiology data on 2,3,7,8-TCDD which has found no association between dioxin and human cancer. EPA stated in the July 1990 proposal that taken together, the epidemiology studies based on exposure to 2,3,7,8-TCDD by themselves are inadequate to establish a relationship between 2,3,7,8,-TCDD and the development of tumors in humans. More recent data, however (including Fingerhut 1991 and studies from Germany and Italy), are being evaluated together with the previous epidemiology studies as part of the overall reassessment of dioxin, and EPA expects to reach its conclusions within the timeframe noted above.

EPA is considering revising the cancer potency based on the re-read of the Kociba et al. (1978) data and other data such as body weight/surface area corrections. In addition, EPA will assess the entire data base, including the issue of threshold carcinogenicity, and possible immunotoxicity and reproductive toxicity at low levels, before embarking on a change in the cancer risk characterization. Because dioxin is currently considered a B2 carcinogen by the Agency, the MCLG is being set at zero.

EPA agrees that new data published since development of the proposed criteria document might support a different RfD. As part of an overall reassessment of dioxin toxicity, EPA is reviewing studies on immunotoxicity and reproductive effects in addition to the cancer data. The RfD and DWEL would become relevant to setting the MCLG for dioxin only if it were determined that this compound is in fact a threshold carcinogen with a potency so low that other non-cancer effects become the most sensitive endpoints of toxicity. This point will be considered in the re-evaluation of the risk assessment of 2,3,7,8-TCDD.

In response to the commenter who stated that EPA should regulate all isomers of polychlorinated dibenzo-p-dioxin (PCDD) and polychlorinated dibenzofurans (PCDF) using the toxic equivalency factors (TEF) approach, EPA is not considering the regulation of other related compounds at this time. The Agency has no indication that these compounds are found in public water supplies. The Agency is regulating 2,3,7,8-TCDD in today's rule because it is the most potent isomer and it is included in the list of 83 contaminants to be regulated under the SDWA.

In response to the claim that EPA should not propose an MCLG of zero for 2,3,7,8-TCDD because it is a threshold carcinogen, the Agency's reassessment, again, is reviewing all the health effects data on 2,3,7,8-TCDD in an effort to update the cancer risk characterization of 2,3,7,8-TCDD. However, until the Agency has completed its reassessment, the Agency will continue to consider 2,3,7,8-TCDD to be a non-threshold contaminant and, thus, maintain an MCLG of zero for 2,3,7,8-TCDD. Because the analytic limitation for drinking water compliance monitoring for dioxin is at 30 ppq, a significant change in the risk assessment, and consequently the MCLG, would be needed before an increase in the final MCL would result.

Detailed descriptions of 2,3,7,8-TCDD toxicity at different dose levels and in different animal species are documented in the 2,3,7,8-TCDD Health Criteria Document prepared in support of this regulation [USEPA, 1988d]. This document is available in the Drinking Water Public Docket.

Based on the available information, EPA is promulgating today an MCLG of zero for 2,3,7,8-TCDD.

o. *Endrin, hexachlorobenzene, oxamyl, picloram.* For four



contaminants, no significant issues were raised and no new health effects information was obtained by the Agency that would cause it to change the MCLGs from the level proposed in July 1990. Therefore, for these contaminants (endrin, hexachlorobenzene, oxamyl and picloram), final MCLGs are promulgated in today's notice as proposed, as presented in Table 2.

B. Establishment of MCLs

1. Methodology for Determination of MCLs

The SDWA directs EPA to set the MCL "as close to" the MCLG "as is feasible." The term "feasible" means "feasible with the use of the best technology, treatment techniques, and other means, which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking costs into consideration)." (SDWA section 1412(b)(5)). Each National Primary Drinking Water Regulation that establishes an MCL lists the technology, treatment techniques, and other means which the Administrator finds to be feasible for meeting the MCL (SDWA section 1412(b)(6)).

The present statutory standard for "best available technology" (BAT) under 1412(b)(5) represents a change from the provision prior to 1986, which required EPA to judge feasibility on the basis of "best technologies generally available" (BTGA). The 1986 Amendments to the SDWA changed BTGA to BAT and added the requirement that BAT must be tested for efficacy under field conditions, not just under laboratory conditions. The legislative history explains that Congress removed the term "generally" to assure that MCLs "reflect the full extent of current technology capability" [S. Rep. No. 56, 99th Cong., 1st Sess. at 6 (1985)]. Read together with the legislative history, EPA has concluded that the statutory term "best available technology" is a broader standard than "best technology generally available," and that this standard allows EPA to select a technology that is not necessarily in widespread use, as long as its performance has been validated in a reliable manner. In addition, EPA believes that the technology selected need not necessarily have been field tested for each specific contaminant but, rather, that the operating conditions may be projected for a specific contaminant using a field tested technology from laboratory or pilot systems data.

Based on the statutory directive for setting the MCLs, EPA derives the MCLs based on an evaluation of (1) the availability and performance of various technologies for removing the contaminant, and (2) the costs of applying those technologies. Other technology factors that are considered in determining the MCL include the ability of laboratories to measure accurately and consistently the level of the contaminant with available analytical methods. For Category I contaminants, the Agency also evaluates the health risks that are associated with various levels of contaminants, with the goal of ensuring that the maximum risk at the MCL falls within the $10^{-4}$ to $10^{-6}$ risk range that the Agency considers protective of public health, therefore achieving the overall purpose of the SDWA.

EPA's initial step in deriving the MCL is to make an engineering assessment of technologies that are capable of removing a contaminant from drinking water. This assessment determines which of those technologies are "best." EPA reviews the available data to determine technologies that have the highest removal efficiencies, are compatible with other water treatment processes, and are not limited to a particular geographic region.

Based on the removal capabilities of the various technologies, EPA calculates the level of each contaminant that is achievable by their application to large systems with relative clean raw water sources. [See H.R. Rep. 1185, 93rd Cong., 2nd Sess. at 13 (1974); 132 Cong. Rec. S6287, May 21, 1986, statement of Sen. Durenberger.]

When considering costs to control the contaminants in this rule, EPA analyzed whether the technology is reasonably affordable by regional and large metropolitan public water systems [*See* H.R. Rep. No. 93–1185 at 18 (1974) and 132 Cong. Rec. S6287 (May 21, 1986) (statement of Sen. Durenberger)]. EPA also evaluated the total national compliance costs for each contaminant considering the number of systems that will have to install treatment in order to comply with the MCL. The resulting total national costs vary depending upon the concentration level chosen as the MCL. The more stringent the MCL, the greater the number of systems that may have to install BAT in order to achieve compliance and the higher the national cost. In today's rule, EPA has determined that costs for large systems and total national compliance costs at the final MCLs are reasonable, affordable and, therefore, feasible.

One commenter urged EPA to apply cost-effectiveness analysis in selecting the MCLs for the contaminants in this rule. EPA did consider the relative cost-effectiveness of regulatory alternatives in selecting the proposed MCLs for radionuclides in a recent notice (July 18, 1991 [56 FR 33050]). In the radionuclides proposal, EPA collectively analyzed the regulated contaminants based on the fact that all cause cancer by delivering ionizing radiation to body tissue. Ionizing radiation is itself classified as a group A carcinogen. Comparing the relative cost effectiveness of controlling different sources of ionizing radiation dose formed the basis for choosing the most cost-effective alternative for proposal in the radionuclides rule. While EPA sought public comment on broader use of cost-effectiveness analysis, the Agency did not suggest that it would be applying a similar analysis to all other drinking water regulations, and EPA does not believe that cost-effectiveness analysis should be applied to the MCL selections in today's rule since the factors that made this analysis appropriate in the radionuclide proposal radionuclides notice are not present here.

The feasibility of setting the MCL at a precise level is also influenced by laboratory ability to measure the contaminant reliably. EPA derives practical quantitation levels (PQLs) which reflect the level that can be measured by good laboratories under normal operating conditions with specified limits of precision and accuracy. Because compliance with the MCL is determined by analysis with approved analytical techniques, the ability to analyze consistently and accurately for a contaminant at the MCL is important to enforce a regulatory standard. Thus, the feasibility of meeting a particular level is affected by the ability of analytical methods to determine with sufficient precision and accuracy whether such a level is actually being achieved. This factor is critically important in determining the MCL for contaminants for which EPA sets the MCLG at zero, a number of which by definition can be neither measured nor attained. Limits of analytical detection require that MCL be set at some level greater than the MCLG for these contaminants. In these cases, EPA examined the treatment capability of BAT and the accuracy of analytical techniques as reflected in the PQL to establish the appropriate MCL level.

EPA also evaluates the health risks that are associated with various contaminant levels in order to ensure that the MCL adequately protects the

public health. For drinking water contaminants, EPA sets a maximum reference risk range of $10^{-4}$ to $10^{-6}$ excess individual risk from a carcinogen over a lifetime. This policy is consistent with other EPA regulatory programs that generally target this range using conservative models that are not likely to underestimate the risk. Since the underlying goal of the Safe Drinking Water Act is to protect the public from adverse effects due to drinking water contaminants, EPA seeks to ensure that the health risks associated with MCLs for carcinogenic contaminants are not significant.

Below is a discussion of how today's MCLs were determined, including the Agency's response to comments on the proposed rule.

2. Inorganic Analytical Methods

In the July 1990 notice, the Agency proposed a list of analytical methods for measuring the five inorganic chemicals (IOCs) in today's rule. These analytical methods are considered to be economically and technologically feasible for compliance monitoring. In the November 29, 1991 notice of availability (NOA), new information received by the Agency on these methods was made available for public comment. The NOA included new and updated versions for analytical methods, performance data on the proposed methods and corrections to some of the information included in the proposal related to the method detection limits. The NOA also addressed several issues that were raised during the public comment period for the July 1990 proposal. EPA has analyzed the available information and has considered the public comments on the proposal and the NOA in arriving at the final selection of the inorganic methods and their associated MDLs and PQLs.

The analytical methods being promulgated today are in some respects revised from those proposed, as indicated in the NOA, and as discussed below. These methods were selected based on the following factors: (1) Reliability (i.e., precision/accuracy) of the analytical results; (2) specificity in the presence of interferences; (3) availability of enough equipment and trained personnel to implement a national monitoring program (i.e., laboratory availability); (4) rapidity of analysis to permit routine use; and (5) cost of analysis to water supply systems.

Table 11 lists the analytical methods that EPA is approving today for use to comply with the monitoring requirements in this rule. EPA has updated the references to the most recent editions of the relevant manuals, including the atomic absorption, emission, and mass spectrometric methods for metals, the spectrometric and electrode methods for cyanide. These newer editions are generally very similar, and in some cases identical, to the methods proposed in the July 1990 notice.

TABLE 11.—APPROVED METHODOLOGY FOR INORGANIC CONTAMINANTS AND METHOD DETECTION LIMITS (MDLS)

| Contaminant | Method | MDL (mg/l) |
|---|---|---|
| Antimony | Atomic absorption, Furnace | 0.003 |
| | Atomic Absorption, Platform | [4] 0.0008 |
| | ICP-Mass Spectrometry | 0.0004 |
| | Hydride-Atomic Absorption | 0.001 |
| Beryllium | Atomic Absorption, Furnace | 0.0002 |
| | Atomic Absorption, Platform | [4] 0.00002 |
| | Inductively Coupled Plasma [1] | 0.0003 |
| | ICP-Mass Spectrometry | 0.0003 |
| Nickel | Atomic Absorption, Furnace | 0.001 |
| | Atomic Absorption, Platform | [4] 0.0006 |
| | Inductively Coupled Plasma [1] | 0.005 |
| | ICP-Mass Spectrometry | 0.0005 |
| Thallium | Atomic Absorption, Furnace | 0.001 |
| | Atomic Absorption, Platform | [4] 0.0007 |
| | ICP-Mass Spectrometry | 0.0003 |
| Cyanide | Distillation, Spectrophotometric [2] | 0.02 |
| | Distillation, Automated, Spectrophotometric [2] | 0.005 |
| | Selective Electrode [2] | 0.05 |
| | Distillation, Amenable, Spectrophotometric [3] | 0.02 |

[1] Using a 2X preconcentration step as noted in Method 200.7. Lower MDLs may be achieved when using a 4X preconcentration.
[2] Screening method for total cyanides.
[3] Measures "free" cyanides.
[4] Lower MDLs are reported using stabilized temperature graphite furnace atomic absorption.

The reliability of analytical methods used for compliance monitoring is critical at the MCL. Therefore, EPA evaluates the analytical methods with respect to accuracy and recovery (lack of bias) and precision (good reproducibility) at the MCL level.

When NPDWRs are revised or new regulations are proposed, the Agency examines available methods and only those methods which meet all the necessary criteria are proposed. Public comments on the applicability of these methods are taken into consideration when the rule is finalized.

a. *Metals (antimony, beryllium, nickel and thallium).* Atomic Absorption Methods—Several parties commented on whether it was appropriate to use the four-times concentration procedure, described in Appendix to Method 200.7, for furnace techniques. They questioned whether EPA should allow the use of this concentration procedure in conjunction with the furnace techniques for the analyses of antimony and thallium. After reconsideration, EPA agrees with these commenters that adequate data to support the use of this procedure in conjunction with the furnace technique for the analysis of antimony and thallium are not available. EPA has, therefore, revised the table of approved methods by eliminating the use of the concentration step for the analysis of antimony and thallium. However, this concentration step is being approved for use in conjunction with Method 200.7 for the analysis of nickel and beryllium.

The corresponding method detection limits (Table 11) for these techniques, as well as others as discussed in the NOA, have been corrected to reflect the MDLs listed in the referenced analytical methods. There were several commenters who were supportive of

these corrections. However, they had concerns on how the resulting corrections would be used in the setting of the PQLs. This issue is addressed below in the PQL discussion.

ICP–Mass Spectrometric Method (EPA Method 200.8)—Several commenters had concerns with the listing of EPA Method 200.8 as an approved method because of the following: (1) the absence of an interlaboratory method validation study, (2) the limited availability in laboratories, and (3) the high acquisition cost of the instrumentation. With respect to the first point, the Agency recognizes the usefulness of interlaboratory performance data and has recently completed an interlaboratory method validation study (Determination of Trace Elements in Water by Inductively Coupled Plasma-Mass Spectrometry: Collaborative Study by J.E. Longbottom et al., 1991), which was made available for public comment with the NOA. The resulting study data indicate that laboratories using the ICP–MS method are quite capable of meeting the performance criteria (i.e., MDL, PQL and acceptance limits) designated for the metal contaminants in this rule. EPA received no public comments on these data.

With respect to the second point regarding the limited availability of laboratories, the Agency believes that laboratory capability will expand with time. Although ICP–MS is not currently widely used, EPA expects a progressive evolution of the technique and an increase in its use analogous to the development and use of another mass spectrometry technique, gas chromatography/mass spectrometry (GC/MS). When GC/MS was first introduced, it was considered state-of-the-art and few labs had the expertise or instrumentation to employ the technique. However, its use expanded quite rapidly and today there are very few laboratories that do not have the GC/MS instrumentation and employ this technique for routine analyses. The change in availability of GC/MS is attributed mostly to advantages and benefits for multi-analyte techniques, as discussed below. EPA believes this trend will also occur with the ICP–MS technique. Furthermore, this technique is only one of many being approved for use in the analyses of the metals in today's rule. Laboratories with the ICP–MS capability may use it for analysis of the metals in this rule, and those labs without it may use another method or consider acquiring ICP–MS instrumentation.

In response to the third point regarding high acquisition costs of instrumentation, EPA believes that while ICP–MS represents a substantial capital investment for labs, there are a number of cost advantages associated with having ICP–MS capability, i.e., sensitivity, multiple metals analysis capability and high volume sample throughput. ICP–MS is a stable and precise technique capable of excellent accuracy and very low detection limits, thus providing a laboratory with the option of performing multielement analysis using one technique. Another cost advantage can be realized when comparing the cost of running each individual metal analysis on an atomic absorption spectrophotometer versus the cost of simultaneous multiple metals analyses on ICP–MS. Despite the high initial capital cost, ICP–MS capability is cost-effective because of the speed of analysis it provides, thus reducing operational costs. EPA believes that these advantages will allow laboratories using ICP–MS to expand their capabilities and expertise and increase their productivity.

In conclusion, EPA has determined that ICP–MS is both technically and economically feasible for routine compliance monitoring and is designating it as one of the approved analytical methods for conducting monitoring for the metals in today's rule.

Digestion for Metals—Commenters to the NOA expressed concerns about the clarity of EPA's requirements for the use of the "total metals" technique and for digestion of drinking water samples prior to metals analysis. The commenters noted, first, that pp. 3–5 of Section (3030) of the seventeenth edition of the Standard Methods for the Examination of Water and Wastewater [USEPA, 1983], states:

"Colorless, transparent samples (primarily drinking water) containing a turbidity of <1 NTU, no odor, and single phase may be analyzed directly by atomic absorption spectroscopy or inductively coupled plasma spectroscopy for total metals without digestion * * * ."

The commenter also noted that EPA's 1983 "Method for Chemical Analysis of Water and Wastes" (MCAWW) on page Metals-5 states:

"Drinking water samples containing suspended material and settleable material should be prepared using the total recoverable procedure (4.1.4) * * * .", which includes a digestion step.

The commenters believe that, in light of these statements, samples without suspended and settleable materials may not have to be digested. The commenters stated that they recognize that, under certain circumstances, both digested and undigested drinking water samples should be compared to verify that metals are being properly recovered.

EPA agrees that the requirements for the use of the "total metals" technique and for digestion of drinking water samples may not be clear, which could result in different interpretations by different analysts. In addition to the notes above, page Metals-1 of the "Method for Chemical Analysis of Water and Wastes" (MCAWW) states that:

"While drinking waters free of particulate matter may be analyzed directly, domestic and industrial wastes require processing to solubilize suspended material."

While digestion may be necessary for turbid water samples, EPA does not believe it is critical for non-turbid, clean drinking water samples. The current methodologies being cited for metal analyses of drinking water samples are applicable for samples of other matrices. However, EPA agrees the guidance cited above on whether to digest or not to digest drinking water samples may not be very clear. EPA believes that results from analyses using the approved total element techniques, i.e., graphite furnace AA and ICP, can be reported as "total metals" for non-turbid (<1 NTU) samples that have been properly preserved (conc $HNO_3$ to pH <2), because under these circumstances the "total metals" result is equal to the "dissolved metals", since the concentration of the "suspended metals" would be negligible. However, samples containing a turbidity greater than one (>1 NTU) even though properly preserved, require digestion using the total recoverable technique as defined in the approved methods, and can be reported as "total metals". Therefore, to provide clarity for the "total metals" technique and to determine whether to digest or not to digest drinking water samples, EPA is amending the current requirement as footnoted in the tables of approved methodology. The revised footnotes will state:

"Samples that contain less than 1 NTU (nephelometric turbidity unit) and which are properly preserved (conc HNO3 to pH <2) may be analyzed directly (without digestion) for total metals; otherwise, digestion is required. Turbidity must be measured on the preserved samples just prior to the initiation of metal analysis. When digestion is required, the total recoverable technique as defined in the method must be used.

[10] For the gaseous hydride determination of Sb and Se, or for determination of Hg by the cold vapor technique, the proper digestion technique as defined in the method must be followed to ensure the element is in the proper chemical state for analyses.

EPA believes that this revision will provide clarity for "total metals" analysis and a means for determining whether digestion is required when performing metals analyses in this rule. To provide consistency for all metals analyses for drinking water samples, EPA is also incorporating these footnotes, when applicable, by amending the tables of approved methodology in § 141.23(k)(4), which includes the metals in the January, 1991 rule, and § 141.89(a), which includes lead and copper.

b. *Anions (cyanide and sulfate).* (1). *Cyanide.* In the November 29, 1991 NOA, EPA addressed an issue raised in response to the July 1990 notice stating that although the proposed MCLG was based on "free" cyanide, the proposed analytical methods determine "total" cyanide. EPA concurred with commenters that it was appropriate to include methods that determined cyanide amenable to chlorination, or "free" cyanide. For this reason, the NOA proposed to add a methodology for amenable cyanide to the list of approved methods, and this notice finalizes the addition. The "total" cyanide methods are listed as well because they are adequate to screen samples for cyanide. If the "total" cyanide levels are greater than the MCL, then analysis for "free" cyanide should be performed to determine whether there is an MCl exceedance. The "total" cyanide analysis is still recommended as an initial test because it is cheaper than the amenable cyanide method. There are several commenters to the NOA who supported this action.

Several commenters had concerns with the approval of the titrimetric method for cyanide because of its lack of sensitivity (detection limit of 1 mg/l) with respect to the PQL, which was proposed to be set at 0.2 mg/l. EPA agrees with these commenters and has rescinded the approval of this method and deleted it from the list of approved methods. The spectrophotometric method has been added to the list of approved methods for cyanide because this method has adequate sensitivity. This change was indicated in Table 6 of the NOA. Comments received by EPA supported these revisions.

(2) *Sulfate.* A number of comments on sulfate analytic methods were received. Commenters objected to the absence of the methylthymol blue method from the list of approved methods and to the fact that the "non-suppressed" column is not stated as an acceptable option in Method 300, an ion chromatography method, for sulfate analysis [USEPA, 1989d].

EPA agrees with the commenters that the methylthymol blue method is adequate. However, there are no data to support the use of the non-suppressed column and the commenters submitted no data to support it.

Commenters to the NOA objected to the presence of the chloranilate method for sulfate analysis and stated that the chloranilate method has several problems. They stated that the required reagent (anhydrous chloranilate) is hard to find and that only a single vendor from England sells this form of the reagent. Second, the analytical equipment called for in the method is no longer available from the manufacturer. In addition, ASTM has dropped this method from its most recent edition of published methods and EMSL/CINN (EPA) is considering doing this as well. EPA agrees with the commenters on all these points.

However, as discussed above, EPA is deferring promulgation of a final regulation for sulfate, and so is not promulgating analytic methods for sulfate in today's final rule.

c. *Method detection limits and practical quantitation levels.* In the July 1990 notice, there were some inconsistencies and errors in the listed method detection limits (MDLs) of the cited methodologies for some of the inorganic contaminants. Several commenters to the proposal and the NOA expressed concerns with these errors and inconsistencies. The Agency addressed those concerns in the November 29, 1991 NOA and in this final rule, respectively, by making the appropriate corrections, as shown in the NOA, and by clarifying how the MDLs were used in setting the PQLs, as discussed below.

EPA determines practical quantitation levels (PQLs) for each substance for the purpose of integrating analytical chemistry data into regulation development. This becomes particularly important where MCLGs are zero or a very low concentration, near or below the detection limit. The PQL yields a limit on measurement and identifies specific precision and accuracy requirements which EPA uses to develop regulatory requirements. As such, PQLs are a regulatory device rather than a standard that labs must specifically demonstrate they can meet. The following is a discussion of how EPA determined the PQLs for the inorganic contaminants in today's rule.

The proposed PQLs in the July 1990 notice for cyanide and nickel were determined based upon MDLs and results from water pollution (WP) performance evaluation (PE) data as these data were available for concentrations near the MCLGs. There were no PE data available at the proposed MCLG levels for antimony, beryllium and thallium. Therefore, the proposed PQLs for these contaminants were estimated from the respective MDLs by using "five or ten times the MDL" to set the PQL. Only the proposed PQL for thallium was affected by the corrected MDLs discussed in the NOA.

Several commenters had concerns with EPA using the "five or ten times the MDL" to set the PQLs for antimony, beryllium and thallium. They asserted that it is not feasible to measure these contaminants at these PQLs. As discussed in other FR notices, EPA prefers to set PQLs based on PE data or multi-laboratory collaborative study data; however, when such data are not available, EPA uses the generalized rule of "5 to 10 times the MDL" to set the PQL. Where data becomes available, EPA evaluates the data to verify the generalization or make the appropriate change(s) dictated by the data.

EPA believes that the proposed PQLs for the inorganic contaminants are technologically and economically feasible and that in general the "5 to 10 times the MDL" rule is a good estimate of laboratory practical quantitation capability for drinking water analyses. This assertion has now been corroborated by evaluations of Water Supply (WS) performance data for the five inorganic contaminants in today's rule.

Several commenters to the NOA had concerns on how the WS performance data would be used. EPA has used the data in setting the PQLs in this rule as it has for most of the regulated inorganics, as discussed below.

The final PQLs for all five inorganics were derived from data gathered in recent Water Supply (WS) PE studies, using the procedure described in 54 FR 22100, May 22, 1989. The use of this procedure has been well documented. The final acceptance limits and PQLs for antimony, beryllium and thallium are based on EPA and State data from Water Supply PE studies #024–027 [USEPA, 1991d]. These PE studies were also evaluated to verify the earlier PE data on which EPA based the proposed acceptance limits and PQLs for cyanide and nickel. The new study data, made available for public comment in the November 29, 1991 NOA, indicated (1) for antimony and thallium, for which

two options were proposed, that their PQLs be set at 0.006 mg/1 and 0.002 mg/1, respectively (2) that the PQLs for nickel and cyanide should be lowered (the proposed PQLs for nickel and cyanide were already at levels that were at or below the proposed MCLGs) and (3) that the PQL for beryllium should remain the same as proposed.

The PQL procedure, described in the aforementioned May 22, 1989 notice, generates acceptance ranges, i.e., a range of acceptable variation in the analytical results compared to the known or "true" value. The acceptance limits for the inorganics in today's rule were generated using the procedure used to derive PQLs and the laboratory performance data generated in Water Supply Studies 24–27, which were discussed in the NOA. The PQLs were set at a concentration where it was estimated that at least 75 percent of the EPA and State labs are within the specified acceptance ranges. The final acceptance limits (1) are tighter than proposed for cyanide, (2) are based on the data rather than two standard deviations for antimony, beryllium and thallium and (3) remained the same for nickel as proposed. The resulting PQLs and acceptance limits are shown in Table 12.

TABLE 12.—INORGANIC CONTAMINANT ACCEPTANCE LIMITS AND PRACTICAL QUANTITATION LEVELS

| Inorganic contaminant | MCL (mg/1) | Acceptance limits (plus or minus % of the true value) | PQL (mg/1) |
|---|---|---|---|
| Antimony | 0.006 | 30 | 0.006 |
| Beryllium | 0.004 | 15 | 0.001 |
| Cyanide | 0.2 | 25 | 0.1 |
| Nickel | 0.1 | 15 | 0.01 |
| Thallium | 0.002 | 30 | 0.002 |

d. *Inorganic chemical sample preservation, container, and holding times.* The requirements for sample preservation, containers and holding times listed in Table 13 were proposed for the inorganic contaminants in this rule. One commenter on the NOA mentioned that the addition of 0.6 gram of ascorbic acid in the preservation of cyanide is not applicable to all samples, and that the specific procedure in the methods should be followed to determine the measure of ascorbic acid required. EPA agrees with the commenter and has amended the table accordingly.

No other comments were received on these requirements. Therefore, the Agency is promulgating these requirements today, as listed.

TABLE 13.—INORGANIC CONTAMINANT SAMPLE PRESERVATION, CONTAINER, AND HOLDING TIME REQUIREMENTS

| Contaminant | Preservative [1] | Container [2] | Maximum holding time [3] |
|---|---|---|---|
| Antimony | Conc $HNO_3$ to pH <2 | P or G | 6 months. |
| Beryllium | Conc $HNO_3$ to pH <2 | P or G | 6 months. |
| Cyanide | Cool, 4°C, NaOH to pH >12[4] | P or G | 14 days. |
| Nickel | Conc $HNO_3$ to pH <2 | P or G | 6 months. |
| Thallium | Conc $HNO_3$ to pH <2 | P or G | 6 months. |

[1] Samples that cannot be acid preserved at the time of collection because of sampling limitations or transportation restrictions should be acidified with nitric acid to a pH <2 upon receipt in the laboratory. Following acidification, the sample should be held for 16 hours before withdrawing an aliquot for sample processing and/or analysis.

[2] P = plastic, hard or soft; G = glass, hard or soft.

[3] In all cases, samples should be analyzed as soon after collection as possible.

[4] Ascorbic acid should only be used in the presence of residual chlorine.

### 3. Organic Analytical Methods

A minimum of eight of the 17 methods included in today's rule are needed to measure the 18 organic contaminants (Table 14). Eleven methods have been in use or promulgated in other rules; there were no significant comments on them. Four methods are single-analyte methods (i.e., they measure only one analyte). Most systems will conduct compliance monitoring for contaminants to which they are vulnerable using one of the volatile organic chemical (VOC) methods and one to three other methods—Methods 515.1, 525.1 and 531.1—all of which may be used to measure the organic contaminants regulated in two previous rules promulgated on July 8, 1987 [52 FR 25690] and January 30, 1991 [56 FR 3526].

Some commenters asked that when EPA permits flexibility in method selection by citing more than one method for a contaminant, that the detection limit, practical quantitation limit (PQL) and maximum contaminant limit (MCL) be set differently for each method; EPA disagrees. Although method detection limits (MDLs) as calculated by the procedures in 40 CFR 136, appendix B may sometimes differ for an analyte measured with different methods, for regulatory purposes EPA must set a single PQL and MCL. Since laboratories can sometimes achieve lower MDLs than those cited for a specific listed method, EPA believes that a laboratory which routinely achieves the detection limits specified for a contaminant (Table 14), should be permitted to use that method for compliance monitoring.

EPA also received comments recommending the use of alternate analytical procedures. Because reliable compliance data are necessary for enforcement of the regulations, EPA continues to cite only methodologies included in EPA regulations, as summarized in the guidance contained in the laboratory certification manual. However, EPA recognizes that improvements in analytical technology may occur frequently. Thus, the Agency is developing a regulatory process to expedite the revision and updating of older methods and the inclusion of new methods for drinking water compliance analysis.

TABLE 14.—ANALYTICAL METHODS, DETECTION LIMITS, MDLS, PQLS, MCLS AND MCLGS FOR ORGANIC CHEMICALS [1]

| EPA method No. [3] | Contaminant | MDL | PQL | MCL | MCLG [2] |
|---|---|---|---|---|---|
| 502.1, 502.2, 524.1, 524.2 | Dichloromethane | 0.0002 | 0.005 | 0.005 | zero |
| 502.2, 503.1, 524.2 | 1, 2, 4-Trichlorobenzene | 0.0003 | 0.005 | 0.07 | 0.07 |
| 502.1, 502.2, 524.1, 524.2 | 1, 1, 2-Trichloroethane | 0.0001 | 0.005 | 0.005 | 0.003 |
| 1613 [2] | 2, 3, 7, 8-TCDD (Dioxin) | $5 \times 10^{-9}$ | $3 \times 10^{-8}$ | $3 \times 10^{-8}$ | zero |
| 525.1, 550, 550.1 | Benzo (a) pyrene | 0.00002 | 0.0002 | 0.0002 | zero |
| 506, 525.1 | Di (2-ethylhexyl) adipate | 0.0006 | 0.006 | 0.4 | 0.4 |
| 506, 525.1 | Di (2-ethylhexyl) phthalate | 0.0006 | 0.006 | 0.006 | zero |
| 505, 508, 525.1 | Endrin | 0.00001 | 0.001 | 0.002 | 0.002 |
| 505, 508, 525.1 | Hexachlorobenzene | 0.0001 | 0.001 | 0.001 | zero |
| 505, 525.1 | Hexachlorocyclopentadiene | 0.0001 | 0.001 | 0.05 | 0.05 |
| 505, 507, 525.1 | Simazine | 0.00007 | 0.0007 | 0.004 | 0.004 |
| 515.1 | Dalapon | 0.001 | 0.01 | 0.2 | 0.2 |
| 515.1 | Dinoseb | 0.0002 | 0.002 | 0.007 | 0.007 |
| 515.1 | Picloram | 0.0001 | 0.001 | 0.5 | 0.5 |
| 531.1 | Oxamyl (Vydate) | 0.002 | 0.02 | 0.2 | 0.2 |
| 547 | Glyphosate | 0.006 | 0.06 | 0.7 | 0.7 |
| 548 | Endothall | 0.009 | 0.09 | 0.1 | 0.1 |
| 549 | Diquat | 0.0004 | 0.004 | 0.02 | 0.02 |

[1] All concentrations are in mg/1.
[2] Method 1613 [USEPA, 1990l].
[3] All 500 Level Methods [USEPA, 1988e and USEPA, 1990k].

a. *Method-specific comments.* Some comments were received on individual chemicals—phthalates, adipates, 2,3,7,8-TCDD (dioxin), dalapon, dichloromethane, endothall and polynuclear aromatic hydrocarbons (PAHs)—and on certain methods being approved for drinking water regulations for the first time—Methods 506, 547, 548, 549, 550, 550.1, 513 and 1613 [USEPA, 1988e and 1990k].

Several commenters believe that not enough laboratories will be certified to timely conduct compliance monitoring analyses; EPA disagrees. These comments were similar to those raised and answered in 56 FR 3550 in the rule promulgated on January 30, 1991. EPA also received a comment on the NOA [56 FR 60949] about the effect of starting the monitoring on January 1, 1993 rather than January 1, 1996. EPA recognizes that an earlier compliance monitoring start-date accelerates the need for certification. EPA also believes there is some confusion about the criteria for obtaining laboratory certification.

EPA acknowledges that fewer laboratories currently are proficient with some of the single-analyte methods and the 2,3,7,8-TCDD Method 1613 than with older pesticide and volatile organic chemical methods. These same concerns were raised by commenters when EPA included newer methods in the rule promulgated January 30, 1991. EPA again expects systems to use vulnerability assessments as a cost affective way to characterize trends in their water quality and thereby be eligible for renewable monitoring waivers. For these and other reasons stated in the 1991 rule (56 FR 3550) EPA believes an adequate number of laboratories will have opportunity to obtain certification or provisional certification for these contaminants in today's rule.

Some commenters were concerned that high background contamination or interferences would make reliable detection and precise measurement of adipates, phthalates and dichloromethane difficult or impossible at the detection and MCL concentrations listed in the July 1990 notice. They believe that many false positives for dichloromethane, in particular, would occur due to ambient air conditions in the laboratory or sample collection site. All EPA methods detailed careful procedures that must be followed to minimize or eliminate interferences or contamination that can occur in sample collection, shipment, storage and analysis. In EPA's laboratory performance evaluation studies more than 75 percent of the laboratories have routinely and successfully analyzed samples with dichloromethane at concentrations near the practical quantification level of 0.005 mg/1. This affirms that laboratories appear to be taking precautionary steps outlined in the methods.

Based on public comment and further testing, EPA has modified Method 506 for the analysis of adipates and phthalates. EPA switched from ternary solvent mixture to the binary methylene chloride and hexane solvent mixture, which is used in a previously promulgated EPA method, EPA Method 606. Using this modification, a very good precision of ±6 percent was obtained in replicate measurements at concentrations near the practical quantification level.

EPA acknowledges that methods can often be improved and the Agency works to refine them and to adopt new analytic technology and techniques. For example, EPA's Environmental Monitoring Systems Laboratory in Cincinnati is working to change derivatization procedures that use diazomethane for the measurement of several chemicals, including dalapon. Dalapon is now measured with Method 515.1. EPA plans to include dalapon in the next version of Method 552, which will be named 552.1. Method 552.1 replaces diazomethane with acidic methanol in the derivatization step, and liquid-liquid extraction is replaced by liquid-solid extraction. This should reduce interferences and improve the precision of the analysis.

EPA also plans to change the procedure (Method 548) for measurement of endothall. The new method would be named Method 548.1. It would replace pentafluorophenylhydrazine with acidic methanol in the derivatization step, and liquid-solid extraction is used. The electron capture detector is replaced with a flame ionization detector in the new method. Data and method write-ups were not available in time for these methods (552.1 and 548.1) to be included in today's rulemaking. However, EPA anticipates adopting these methods for compliance monitoring of dalapon and endothall as soon as possible after they are released by the Environmental Monitoring Systems Laboratory.

An early success is EPA Method 1613, which is a consolidated method for the measurement of 2,3,7,8-TCDD (dioxin) in all matrices. It replaces Method 513, which had been cited in the July 25, 1990 proposal and as the method for monitoring dioxin as an unregulated contaminant in the rule promulgated January 30, 1991 [56 FR 3592,

§ 141.40(n)(11)]. This rule promulgates its use only for drinking water. Its use in other media will be promulgated as part of the appropriate regulations.

EPA agrees with commenters who stated that only one polynuclear aromatic hydrocarbon (PAH), benzo(a)pyrene, should be regulated at this time (see earlier discussion in Section III–4). Three analytical methods were proposed in the July 1990 notice for the measurement of benzo(a)pyrene. Method 550 and 550.1 use high pressure liquid chromatography (HPLC). Method 525 uses a gas chromatograph connected to a mass spectrometer. No significant comments were received on these methods. Methods 550 and 550.1 are included in today's rule for compliance analyses [USEPA, 1990k].

Several commenters asked for more mass spectrometer methods to increase the number of analytes in an analysis and to decrease the probability of interferences that can cause false positives. EPA proposed multi-analyte mass spectrometric Method 525 in the July 25, 1990 proposal. As discussed in an earlier **Federal Register** notice (56 FR 30272, July 1, 1991), EPA improved the method, renumbered and adopted it as Method 525.1. Because Method 525.1 supersedes Method 525, EPA is adopting 525.1 for seven organic chemicals in today's rule.

Method 525.1 has the potential to measure a large number of organic chemicals; the question is whether the required sensitivity can be achieved. As always, laboratories using this method (and other methods) for compliance analysis must demonstrate an ability to achieve the detection limits specified in Section 141.24 using the procedure described in 40 CFR part 136, appendix B.

Some commenters requested that EPA consolidate methods across all EPA programs and in all media. EPA realizes the difficulty laboratories may have in conducting certified analyses for the same organic chemical in several matrices over a wide range of concentrations using similar yet different EPA methods. Through EPA's Environmental Methods Management Council, EPA is working to consolidate methods, performance requirements and definitions of quantitation and detection. Regulatory, quality assurance, enforcement and other issues make this a complicated task.

b. *Responses to comments specific to Method 1613 for dioxin.* EPA has received comments related to the application of Method 1613 to the measurement of chlorinated dioxins and furans in drinking water. Some of these comments address a narrow range of issues, primarily the Method Detection Limit (MDL) and practical quantitation limit (PQL). Others are very extensive in that nearly every aspect of the technical details in Method 1613 are addressed. In organizing its response to the comments submitted, the Agency has responded to general issues first, then to comments specific to the technical details of Method 1613.

*Some comments on Method 1613 overall are incorporated into these comment replies.* Many commenters were concerned about the performance of Method 1613 on sample matrices other than drinking water, particularly on treated and untreated industrial wastewaters, paper pulp, and sludge from wastewater treatment processes. EPA stated in the proposal of this rule [55 FR 30426] that Method 1613 was developed for these matrices. In 1991 EPA proposed Method 1613 for analysis of these matrices by industrial discharges under the Clean Water Act (proposed amendment to 40 CFR part 136 in 56 FR 5090, February 7, 1991), and solicited comments on that proposal. To date, EPA has not responded to the comments received on that proposal. Because EPA desires to move quickly on today's drinking water rule, EPA is responding to comments on Method 1613 related to application of the method to drinking water prior to responding to comments on the February 7, 1991 proposal of Method 1613.

*General issues concerning Method 1613.* A commenter noted that Method 1613 has not been promulgated. EPA agrees. As mentioned above, EPA proposed Method 1613 under section 304(h) of the FWPCA at 40 CFR part 136 on February 7, 1991, accepted comments at that time, and has not promulgated Method 1613 in part 136 as of today's date. EPA has used data from its studies of Method 1613 to support the practical quantitation limit (PQL), the Method Detection Limit (MDL), and other technical aspects of the regulation of dioxin in drinking water, in the same way that EPA references other documents in support of its rules. The Agency is not required to use promulgated methods for reference purposes.

A commenter stated that EPA Office of Water Method 1613 and Office of Solid Waste SW–846 Method 8290 are significantly different, contradicting recommendations to Congress in the report titled "Availability, Adequacy and Comparability of Testing Procedures for the Analysis of Pollutants Established Under section 304(h) of the Federal Water Pollution Control Act" [USEPA, 1988f]. The commenter provided a block diagram showing differences in these two methods. EPA agrees that the two methods are different in exact technical detail, but the measurement principle of the two methods is the same. In developing testing methods for its regulatory programs, such methods evolve at different rates for different purposes. For example, Method 1613 was originally developed primarily for use in treated and untreated effluents, but is applicable to pulps, sludges, drinking water and other solid and semi-solid matrices. Similarly, EPA Method 8290 was developed for use primarily in solid and semi-solid matrices, but is applicable to analysis of water. EPA is in the process of consolidating methods for dioxin measurement in air, water, and solid waste, consistent with the recommendations in the report that the commenter references. However, such a merger cannot take precedence over EPA's development of methods to meet specific program needs and for regulatory programs with Congressional deadlines and court-ordered timetables.

A commenter stated that, although EPA used Method 1613A for analysis of more than 500 samples, there have been many versions of this method and the data produced using these versions were inaccurate. EPA acknowledges that some data produced with early versions of Method 1613 may have been less accurate than data produced with more recent versions. Much of these earlier data were developed using complex matrices, such as industrial effluents, and were generated as the method was being developed. The method and MDL proposed in the November 1991 notice, and being finalized here, are based not on these early data but on later data generated using reagent water, which is a matrix more similar to drinking water. The accuracy of analytic methods usually improves with experience in using the method. However, the fact that data become more accurate as a function of time does not mean that earlier data are necessarily unsuitable for their intended purpose. The Agency is careful to consider in its rulemaking the effects of the variability of the analytical data. For example, in this rulemaking, data variability is accounted for in the determination of the MDL, and is considered in setting the PQL.

A commenter noted that Method 1613 calls for instrument calibration to be verified at a high level, but that calibration should be verified instead at the minimum level, because of uncertainties at that level. EPA disagrees that calibration should be verified at the minimum level. In method

1613, calibration is verified at the mid-point of the analytical range. This verification is common and accepted practice for analytical methods (see e.g., the methods in 40 CFR 136, appendix A). The generally accepted practice followed by EPA is to verify calibration in a region where error is a constant proportion of the level being measured. This may not be the case if calibration were done at the minimum level.

A commenter stated that the MDL tests for Method 1613 use reagent water for tests of initial precision and recovery (IPR) and on-going precision and recovery (OPR), and that this practice is inappropriate for methods that must rely on extensive cleanup. Reagent water is water in which the analyte(s) of interest and interfering compounds are not detected by the method being used. EPA disagrees that reagent water is inappropriate for the IPR, OPR, and other tests. EPA believes that in the case of dioxin in drinking water, reagent water and drinking water are nearly equivalent matrices, in that the concentrations of potentially interfering compounds in drinking water are extremely low.

A commenter stated that allowing the analyst the flexibility to modify the method may adversely affect method performance on real world samples, and cited as examples that the performance test solution used to evaluate the particular columns in Method 1613 will not work with other columns, and that reducing the solvent volumes to elute the dioxin from the AX–21 cleanup column would prevent analysts from meeting the detection limits specified in the method. EPA disagrees. In developing and promulgating the 40 CFR part 136, appendix A methods, EPA has received comments in the past similar to this one that the methods should allow no flexibility in procedures [49 FR 43246]. EPA also received comments that there should be great leeway to modify the methods [49 FR 43245]. EPA's general response to those comments and to this comment is that flexibility is permitted only in discretionary elements of the test procedures, and that the data generated must meet all stated performance criteria.

For the specific examples that the commenter cited, EPA believes that the requirement for an alternate gas chromatographic column to meet not only the specifications for the performance test solution but also to meet the relative retention time criteria in Method 1613 effectively precludes any column with inferior performance, and that reducing the solvent volumes used with the AX–21 column to the point where native dioxin becomes non-detectable would probably cause the recovery of the labeled compounds to fall below the recovery specifications in the Method; therefore, this would not be allowed.

EPA notes that the objective of permitting flexibility in certain discretionary parts of its methods is to allow for improvements in technology while requiring all performance specifications in the method to be met.

A commenter included with its comments approximately 40 pages of suggested technical modifications of Method 1613 to improve the reliability of the Method. EPA appreciates these suggestions. This commenter has participated in EPA's validation studies, has conducted validation studies of its own, has scrutinized the details of Method 1613 and other EPA methods, and has provided many valuable suggestions for improvements to these methods. EPA has considered all of these suggestions, as well as the suggestions of others, in its continuing evolution and upgrading of analytical methods, and shall continue to work with all interested parties to assure that these methods are as state-of-the-art as possible. Many of the suggestions relate to analyses of more complex non-drinking water matrices and are not relative to analysis of drinking water samples.

*1613 Inter-laboratory study.* A commenter said that EPA had not completed its inter-laboratory study of Method 1613 at time of proposal of the drinking water regulation for dioxin, and that EPA is premature in proposing Method 1613 without validating it first. EPA has relied only on the MDL studies on Method 1613 in determining the MDL and the PQL. Inter-laboratory validation studies are on-going and EPA will make them public when complete. However, EPA is not required by statute or policy to use inter-laboratory data to establish MDLs or PQLs.

Two commenters stated that EPA's inter-laboratory study used extracts of samples but not real-world samples. Both commenters are correct. However, this rule relies on an MDL study as the basis for the PQL, and not the inter-laboratory studies. Therefore, this is not a relevant issue for this rule. EPA used extracts of real-world samples because the shipment of large volumes of dioxin-containing water both intra- and internationally was deemed to be too great a risk to human health and the environment, and because of the difficulty in producing a homogeneous mixture of dioxins in such large water volumes. EPA understands the commenters' argument and concerns that performing an inter-laboratory study on extracts of water rather than water itself could possibly result in less bias and greater precision than if water had been used, but EPA believes that the risk of using raw waste water samples was unacceptable. EPA has recently collected and received a large volume of data on application of Method 1613 to paper industry wastewater and believes that the matrix effects associated with extraction of dioxin from water are fairly well quantified at this point. EPA believes that its international inter-laboratory validation study will be valuable in assessing method and laboratory performance, even though the study will not be conducted on raw wastewater. However, the complex matrix effects these data are intended to identify and help resolve are not relevant to drinking water samples.

*SDS extraction.* A commenter stated that the Soxhlet/Dean-Stark (SDS) extraction procedure for solids has only been tested to a limited extent on one municipal sludge. The commenter was correct at the time of this comment in that EPA had performed limited testing of the SDS extraction procedure on a limited number of samples. Since that time, EPA and others have extracted many samples using the SDS technique, and although some data show that some of the higher isomers and congeners of dioxin may not be extracted as efficiently as other extraction techniques, EPA has not confirmed these results. However, SDS extraction is not a method that would be used on drinking water samples, and so this comment is not relevant to the present rulemaking.

A commenter noted that use of liquid-solid extraction using 3M's Empore Disk is approved by EPA for Method 525.1, and is included in dioxin Method 513. The commenter suggested that EPA include the option of using the Empore Disk in Method 1613. EPA is currently evaluating the Empore disk as an extraction device for aqueous samples in Method 1613. EPA's Environmental Monitoring Systems Laboratory in Cincinnati, Ohio (EMSL–Ci) has performed extensive testing of liquid-solid extraction devices. EPA will continue to study the Empore disk and similar devices because of their potential for reducing solvent use in the laboratory, and will incorporate such devices into Method 1613 and other EPA methods if the performance of these devices is demonstrated to be equivalent to extraction devices presently in these methods. Nationwide

application for an alternate test procedure may be made under 40 CFR 136.5.

*Labeled compound recovery.* A commenter stated that recovery of labeled compounds in Method 1613 do not adequately correct for incomplete recovery of the native analytes because it is nearly impossible to spike the labeled compound into the sample in such a fashion that it distributes itself identically to the native analyte. EPA has chosen the isotope dilution technique for quantification because it is the most precise analytic technique currently available to measure dioxin. EPA is aware that in some instances the labeled compounds are not distributed identically to the native analytes, but believes that the advantages of the isotope dilution technique far outweigh any limited imprecision and reduced accuracy that may occur when external standard quantitation techniques are used. Nearly all analytical methods for dioxin employ isotope dilution to provide the highest accuracy and greatest precision.

*Method Detection Limit (MDL) and minimum level.* A commenter stated that Method Detection Limits (MDL's) of 5 and 10 ppq for Methods 1613 and 513, respectively, have not been demonstrated and that it is not possible for even the best laboratories to attain the MDL developed by EPA. EPA disagrees. EPA has now demonstrated that the MDL = 5 ppq using Method 1613, as described in the NOA.

A commenter stated that the proposed standard for dioxin is based upon detection limits associated with outmoded analytical methods that are thousands of times less sensitive than the most advanced methods available, that methods developed by Christoffer Rappe, University of Umea, Sweden are capable of detecting TCDD at 0.001–0.020 ppq in drinking water, and that Canadian methods achieve MDL's of 2 ppq in pulp mill effluents and could be extended to achieve 0.2 ppq in drinking water. EPA is aware that it is possible to achieve lower detection limits by revising the dioxin methods to use sample volumes 10 to 1,000 times (or more) larger than the existing methods. At present, most dioxin methods employ a one liter sample. This sample is shipped from field locations to laboratories that have HRGC/HRMS instruments. Samples will need to continue to be shipped from remote locations to laboratories. Most sample shipments are by overnight courier so that the samples can be maintained refrigerated from the time of collection until extraction. Shipping 10 to 1,000 liters presents unique logistics problems and is prohibitively costly (a 1,000 liter sample weighs approximately 2,500 lbs., and costs $1.50/lb. to ship for a total of $4,500 per sample). Also, while large volume samples might theoretically result in a lower MDL, increased interferences are likely to result. EPA is aware of no data demonstrating that lower MDLs may be achievable. An alternative would be to collect the samples on a liquid-solid extraction device at the remote location and ship the device to the laboratory. However, EPA has not developed or validated this sampling means at this time. EPA is aware of the methods proposed for regulatory use in Canada, and believes that the improvements in sensitivity suggested by the commenter are simply the result of differences in terminology and reporting practices. The Canadian methods use the term "MDL" to mean the sample-specific detection limit that is calculated solely on the basis of signal-to-noise measurements. In contrast, EPA uses the term MDL to refer to the statistically determined value that results from replicate measurements, as described in 40 CFR part 136, appendix B. EPA will continue to study devices and procedures for lowering the detection limit to levels commensurate with the Agency's measurement and regulatory needs.

*1613 Method Detection Limit (MDL) study.* A commenter stated that the 5 ppq MDL in Method 1613 was calculated from a single-shot experiment that does not represent a real work estimate of the MDL. It alleges that a real world estimate of the MDL is at least 10 ppq based on the 104 mill study and an estimate by Georgia-Pacific. EPA agrees that the MDL in Method 1613 was obtained by a single use of the MDL procedure [40 CFR part 136, appendix B]. As described in the proposal of Method 1613, the MDL procedure was followed as prescribed, with a result of 5 ppq. EPA has reviewed the data submitted by the contract laboratory that performed the MDL procedure and believes that the tests were performed properly and that the 5 ppq MDL is valid. EPA believes that if the MDL procedure were performed in other qualified laboratories, similar results would be obtained using Method 1613, although some laboratories might obtain slightly higher or slightly lower results. However, the MDL is by definition a single laboratory single operator concept. EPA is unaware of any samples in the 104 Mill study that were analyzed at least seven times, or that conformed to other requirements of the procedure for determining the MDL. The commenter provided no specific data for analysis. Moreover, the 104 Mill study analyses concern pulp, sludge and industrial wastewater matrices and so the MDL derived in that study is not necessarily the lowest that could be obtained in samples that more closely resemble drinking water matrices.

Two commenters claim that the MDL study cited was conducted with reagent water and, therefore, the MDL study is not relevant. As EPA stated in its response above to the use of reagent water for initial and on-going precision and recovery and other quality control tests, EPA believes that in the case of dioxin in drinking water, reagent water and drinking water are nearly equivalent matrices, in that the concentrations of potentially interfering compounds in drinking water are extremely low.

A commenter said that no data are presented in the Federal Register notice [56 FR 5090] other than for reagent water. Therefore, the proposed minimum levels for solid matrices are insupportable. For the purpose of the regulation of dioxin in drinking water, data on matrices other than on reagent water or drinking water are unnecessary.

A commenter said that the MDL experiment is inappropriate due to the high spike levels chosen for the study, that the variability increases as the concentration levels approach the MDL, and that the only way to truly determine the MDL is to perform the experiment at the exact level of the MDL. EPA notes that the 25 ppq level was chosen as described in EPA's proposal of Method 1613 [56 FR 5095]. As stated earlier, EPA believes that its contract laboratory followed the MDL procedure correctly, including the use of 25 ppq as the spiking level. EPA agrees that the variability increases as the concentration levels approach the MDL. However, one of the tenets of the concept of the MDL is that the relationship between the level and the standard deviation of the measurement becomes approximately constant in the region of the MDL and the spiking level is not critical in this region. In addition, EPA believes that spiking at too high a level will tend to overestimate the MDL rather than underestimate it. EPA is also in the process of contracting for additional MDL studies in a variety of matrices and at other spiking levels appropriate to the matrices. These data will be made available at a later date.

Two commenters stated that it is well known that a break in the calibration curve occurs at approximately 5 ppq. Consequently, extrapolation from 25 or

12 ppq to 5 ppq is not technically valid. Extrapolation must be made at or below the break point. One of the commenters stated further that extrapolation of the instrument calibration far beyond demonstrated performance is not sound science and provided a graph showing relative standard deviation as a function of corresponding effluent concentration for native dioxin in calibration standards. EPA agrees that calibration error increases as concentration levels approach the MDL, but believes that the measurement of the MDL in Method 1613 was made in a valid region of the calibration curve and was made according to the MDL procedure, as detailed in the proposal of Method 1613 [56 FR 5095] and the support documents for the NOA. EPA has reviewed the graph provided by the commenter and believes that the graph supports the validity of an MDL of 5 ppq. The graph shows data points at equivalent concentrations of approximately 3, 5, 12, 100, 1,000 and 5,000 ppq, associated with relative standard deviations of approximately 16, 8, 7, 5, 2 and 2 percent, respectively. Calculating the relative standard deviation (RSD) of these values results in standard deviations of 0.48, 0.40, 0.84, 5, 20, and 100 ppg, respectively, for the concentrations. Assuming that the RSD's are the result of three replicate determinations, the Student's t multiplier used in the MDL procedure is 6.97, resulting in MDL values of 3.4, 2.8, 5.9, 35, 140, and 700 ppq. (If more than three replicates were used, the MDL values would be lower). These data clearly show that in the region of the MDL (2–10 ppq), the MDL is approximately constant, but rises rapidly as the spike level increases. Thus, the use of a high spike level would tend to overstate the MDL, the opposite of what is argued by the commenters. Further, the data provided clearly show that measurements can be made in the range of 5 ppq because data were reported in this range.

Two commenters stated that dioxin was not detected in one of seven replicates in EPA's test of the MDL for Method 1613. EPA believes that in EPA's studies of the MDL for Method 1613, EPA's contract laboratory performed the study improperly in its first attempt. In this attempt, the laboratory spiked the native analytes into the blank that was a part of the quality control associated with the MDL test. Also, as pointed out by the commenters, the laboratory failed to detect dioxin in one of the seven replicates. EPA rejected the data from this MDL study, and had the laboratory determine the MDL under the controlled conditions that EPA requires. The MDL of 5 ppq that EPA states for Method 1613 is the result of the properly conducted study. EPA did not formally release the results of the improperly conducted study, but has made all results of all studies available to all interested parties.

*MDL/POL issues.* A commenter said that the lowest level that can be measured is the PQL. EPA disagrees. EPA has demonstrated that measurements can be made as low as the MDL, but has defined the concept of the PQL as the lowest level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions [50 FR 46902]. Thus, the PQL provides an allowance for the degree of measurement precision and accuracy that EPA estimates can be achieved across laboratories. If EPA desires a level of measurement precision and accuracy that is high, the PQL is set slightly higher (on the order of 10 times the MDL); whereas if the Agency desires a slightly lesser level of measurement precision and accuracy (in exchange for reduced health risks), EPA will set the PQL level somewhat lower (on the order of 5 times the MDL), but EPA believes that measurements can be made in the range between the PQL and MDL.

A commenter stated that finalization of the PQL should await completion of an appropriately designed inter-laboratory study because the PQL is intended to reflect performance of multiple laboratories. The commenter also noted that the preferred method of determining the PQL would be to utilize performance evaluation data from as many labs as possible. EPA believes that inter-laboratory studies, whether method validation or performance evaluation, are useful in establishing the PQL, but also believes that a multiplier of 5 –10 times the MDL is an effective way to establish the PQL. In estimating the PQL, EPA takes into consideration all data available, including single laboratory, multi-laboratory, performance evaluation, and other data, as well as regulatory needs to protect human health and the environment. In the regulation of dioxin in drinking water, EPA has reviewed the data from its study of Method 1613, as well as data submitted by commenters. EPA has established the PQL for this rule after a review of technical data from method studies and from health risk considerations.

A commenter said that decreasing the PQL from 50 ppq to 30 ppq represents a very slight decrease in the level of risk that does not justify the drastic increase in the level of uncertainty that would occur. EPA disagrees that there is a drastic increase in the level of uncertainty between 50 and 30 ppq. As the data submitted by the commenter demonstrate, the uncertainty attributable to calibration increases from approximately six percent to approximately seven percent when the level decreases from the equivalent of 50 to 30 ppq.

A commenter stated that it is a longstanding practice within the scientific community to use a 3-fold multiplier in establishing the limit of quantitation. The American Chemical Society (ACS) uses the concepts of the Limit of Detection (LOD) and Limit of Quantitation (LOQ) in discussions of the lower limits of analytical measurements. The LOD is approximately equivalent to EPA's MDL and the LOQ is approximately 3.3 times the MDL. As EPA has stated in previous discussions of the PQL [50 FR 46902], the MDL and LOQ are single laboratory concepts, whereas the PQL is the lowest level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions. EPA uses a multiplier of 5 to 10 times the MDL as well as other factors to establish the PQL. EPA is presently in the process of reviewing its approach to establishing the limits of analytic chemistry for drinking water samples and the use of this information in setting drinking water standards. EPA may propose revisions to its general approach in a later **Federal Register** notice. The ACS concepts are among those that will be considered in this process. EPA will review its MCLs at that time to determine whether revisions are appropriate.

A commenter stated that the PQL should be set at 10 times the MDL since the carcinogenic risks do not justify less precision in dioxin measurement. As EPA has noted in response to other comments, EPA has set the PQL at approximately five times the MDL based on technical and health risk considerations. The PQL is a regulatory tool that may include consideration of health risk. EPA also reiterates that the precision of the dioxin measurement is not significantly degraded between 50 and 30 ppq.

c. *Detection and quantitation levels; laboratory performance criteria.* Many comments were received on EPA's procedures for determining MDLs and PQLs. Calculation of method detection limits (MDLs) by procedures set forth at 40 CFR Part 136 Appendix B is understood and generally accepted by

the laboratory community. A few commenters wrote that since some MDLs cited in EPA methods are a one time determination by one analyst, the results may not generally be achievable by the number of laboratories needed to handle compliance monitoring on a routine basis. EPA believes that laboratory performance improves as an analysis progresses from being novel to routine. The purpose of the PQL concept is to allow for this inter-laboratory variability and ensure that the majority of good laboratories can adequately measure contaminants. EPA has also provided relief for most contaminants in today's rule by permitting performance evaluation samples to be judged by the results of the group of laboratories participating in each study rather than on an absolute scale (i.e. the pass criteria are two standard deviations from the average result rather than within a fixed ±percentage of the spiked concentration).

The selection of practical quantitation levels (PQLs) has been discussed at 55 FR 30370 and references therein. EPA received comments on PQLs identical or similar to those received and responded to in earlier rules [55 FR 30370, and 56 FR 3547–3552 and 30269–30271]. Some commenters on the July 1990 proposal wrote that some PQLs were too low for most laboratories to quantify a contaminant with acceptable precision because EPA relied too much on performance by the "best" laboratories in setting the PQLs. Some commenters objected to the PQL for dioxin that was proposed at five times the method detection limit. They suggested all PQLs be ten or more times the MDL even if this required that a maximum contaminant level (MCL) be increased; EPA disagrees. EPA recognizes that use of a five-fold multiplier, rather than ten-fold, may result in some loss of precision and accuracy in performing analyses. However, EPA believes it is sometimes appropriate to accept somewhat greater imprecision and inaccuracy when necessary to achieve health risks within EPA's target risk range. EPA makes such judgments on a case-by-case basis.

Other commenters stated that some PQLs were too high, especially for contaminants with zero or very low maximum contaminant level goals. These commenters suggested that PQLs and MCLs could be lowered significantly to reduce risk, thereby allowing only the best laboratories to perform compliance analysis. However, EPA believes this is impractical, due to the large number of compliance samples that are required to be analyzed by these rules.

In response to this interest in detection and quantitation levels, EPA, the American Chemical Society (ACS) and the American Society for Testing and Materials (ASTM) are working on standard definitions of analytical detection and quantitation levels for chemical analyses in any matrix. The definitions, if adopted by EPA, would be only a part of the process used to determine the feasibility of measuring a contaminant with acceptable precision at the MCL. The Agency is also developing criteria to define what data should be collected to set interlaboratory performance standards.

EPA has determined, however, that it is appropriate to set PQLs for today's contaminants using the procedures discussed in the proposal (55 FR 30370 and references therein) rather than waiting for the results of the new definitions. The maximum contaminant level goal (MCLG) for several of the organic chemicals in today's rule is significantly greater than the MDL listed for each contaminant in the EPA methods. This means setting MCLs equal to MCLG does not pose the same problem as when reliable detection and quantification is desirable near or below MDLs.

For sixteen regulated organic chemicals in today's rule, the PQLs are based on laboratory performance data. As discussed earlier, considerable variation in interlaboratory performance was observed. For this reason, the PQLs for benzo(a)pyrene and 2, 3,7,8-TCDD are respectively estimated at ten times and five times the method detection limit (as defined at 40 CFR part 136, appendix B). Table 15 lists MCLs, PQLs and laboratory acceptance limits for each organic contaminant. The ranges of concentrations included in EPA's laboratory performance samples are also listed.

TABLE 15.—MCLs, PQLs AND ACCEPTANCE LIMITS DETERMINED FROM LABORATORY PERFORMANCE STUDIES

| Contaminant | MCL (mg/l) | PQL (mg/1) | ±Acc. Lim. |
|---|---|---|---|
| 1,2,4-Trichlorobenzene | 0.07 | 0.005 | ±40%. |
| 1,1,2-Trichloroethane | 0.005 | 0.005 | ±40%. |
| Benzo(a)pyrene | 0.0002 | 0.0002 | 2 Std. Dev |
| Dalapon | 0.2 | 0.01 | 2 Std. Dev/ |
| Dichloromethane | 0.005 | 0.005 | ±40%. |
| Di (2-ethylhexyl) adipate | 0.4 | 0.006 | 2 Std. Dev. |
| Di (2-ethylhexyl) phthalate | 0.006 | 0.005 | 2 Std. Dev. |
| Dinoseb | 0.007 | 0.002 | 2 Std. Dev. |
| Diquat | 0.02 | 0.004 | 2 Std. Dev. |
| Endothall | 0.1 | 0.09 | 2 Std. Dev. |
| Endrin | 0.002 | 0.001 | ±30%. |
| Glyphosate | 0.7 | 0.06 | 2 Std. Dev. |
| Hexachlorobenzene | 0.001 | 0.001 | 2 Std. Dev. |
| Hexachlorocyclopentadiene | 0.05 | 0.001 | 2 Std. Dev. |
| Oxamyl (Vydate) | 0.2 | 0.02 | 2 Std. Dev. |
| Picloram | 0.5 | 0.001 | 2 Std. Dev |
| Simazine | 0.004 | 0.0007 | 2 Std. Dev. |
| 2,3,7,8-TCDD (Dioxin) | $3\times10^{-8}$ | $3\times10^{-8}$ | 2 Std. Dev. |

In the July 1990 proposal only the PQLs for the VOCs were based on an analysis of EPA-sponsored laboratory performance studies. The remaining PQLs were calculated as multiples of the MDL. More performance study data, which was cited in the November 29, 1991 notice, has now been obtained and evaluated. The final acceptance limits to successfully analyze the samples were generally set at plus or minus two standard deviations (±2 std. dev.) from the average value measured in each study.

With the exception of endrin and three volatile organic chemicals (1,2,4-trichlorobenzene, 1,1,2-trichloroethane, and dichloromethane), EPA agrees with

commenters that the performance by the current pool of laboratories does not warrant setting pass/fail criteria within fixed plus or minus percentage limits of the true concentration and acceptance limits for the other organic contaminants in today's rule remain at ±2 standard deviations. EPA disagrees with the comment that regulation be delayed until fixed acceptance ranges can be determined by interlaboratory performance. EPA believes performance will improve as laboratories routinely use a method to maintain certification for compliance monitoring analyses. The new methods are based on the same basic analytic techniques as many existing methods (such as GC, GC-MS, HPLC). EPA's experience in applying these techniques to other analytes has been that laboratory proficiency improves as laboratories become more experienced with the basic technique and specific individual methods.

Although the data are insufficient to change the proposed certification acceptance limits, they are sufficient to examine the relationship between study-generated PQLs and PQLs calculated by multiplying MDLs by a factor. In today's rule, EPA has set PQLs for 16 organic contaminants after considering an analysis of the performance from EPA-sponsored laboratory studies and MDL data. In most cases the PQLs are ten times the MDL. For four contaminants, the PE data were adequate for establishing the PQLs. For the remainder, PQLs were established on the generalization of 10 times the MDL. For many of these contaminants, a limited number of laboratories participated in the PE studies, and EPA therefore believes these data do not adequately represent likely performance over time. For other cases, while there were a considerable number of laboratories participating, the regression-derived acceptance limits were broad (> ±50%), and the PQL was based on 10 times the MDL, with acceptance limits set at ±2 standard deviations, to allow for improvement in the future. EPA found that federal and State laboratories, which were more experienced with the methods performed better. EPA therefore believes the other laboratories' performance will improve over time and use of 10 times the MDL to set the PQL is appropriate.

For dioxin (PQL=5 MDL) and benzo(a)pyrene (PQL=10 MDL), PQLs could not be derived from an analysis of the limited laboratory performance database. The commenter correctly notes that in most studies, benzo(a)pyrene was not tested near the final maximum contaminant level of 0.0002 mg/1. However, in the November 29, 1991 notice and in today's rule, EPA discusses a two-laboratory study of this contaminant. The precision obtained in samples spiked at 0.0002 mg/1 was excellent—±6 percent or better. A similar study, which is discussed in today's rule, for dioxin using Method 1613 was conducted with good results. Thus, the PQL for dioxin and benzo(a)pyrene are today specified respectively as five and ten times the MDL.

The final PQLs for di(2-ethylhexyl)adipate and di(2-ethylhexyl)phthalate are set at ten times the MDL. This is consistent with EPA's general guidelines that calculated PQLs be equal to five to ten times the MDL. The commenter refers to the relatively poor performance in some of EPA's cited studies. However, in the November 29, 1991 notice and in today's rule, EPA discusses an improvement in the Method 506 eluant mixture, which has been tested in samples spiked near the final maximum contaminant levels. EPA believes these data warrant setting a PQL at ten times the MDL.

EPA notes that PQLs that are based on an evaluation of the concentration at which about 75 percent of the laboratories participating in a study can successfully analyze a sample use a criterion that is more stringent than setting a pass criterion of ±2 std. dev. Using this approach, the final PQLs for volatile organic chemicals are very close to ten times the MDL. This is consistent with the performance observed with other regulated volatile organic chemicals, all of which can be measured in the same sample by an identical analytical procedure. Since analyses for dioxin, pesticides and other organic chemicals in today's rule use several different analytical techniques, EPA expected laboratory performance would be less homogeneous than for the VOC chemicals, which used the now-routine purge and trap method. Use of study-dependent laboratory criteria is consistent with the requirement to achieve the lowest feasible MCL.

EPA disagrees that performance sample data need to be normally distributed in order to proceed with a determination of the suitability of a method for compliance measurements. It is not practical or necessary to benchmark interlaboratory performance on anything but a standard matrix. Each analytical method notes if and how the analyst should check a compliance sample or laboratory reagents for possible interferences. As discussed in today's rule, the available data indicate that laboratories have done so even with potentially difficult analytes such as dichloromethane.

EPA agrees with the comment that when analytical variability poses a problem, the system should have the opportunity to use multiple samples and average the results. EPA's monitoring requirements already provide this relief. The requirements permit confirmation of sample results, and the elimination (with State concurrence) of spurious analytical results. And more than one confirmation sample may be taken, provided the State concurs.

EPA notes that for most of the analytes presented in the table with relatively high confidence intervals, the PQLs and MDLs are significantly less than the final MCLGs and MCLs, so imprecision of the analysis is not as likely to lead to resource-wasting false positives.

The PQLs for most of the contaminants are identical to the PQLs proposed on July 25, 1990. The PQL for 2, 3, 7, 8–TCDD decreased based on an evaluation of data from an interlaboratory study that used Method 1613. The data were cited and discussed [56 FR 60952–60953] in the November 29, 1991 notice of availability.

For the reasons cited elsewhere in this rule and in the July 25, 1990 proposal [55 FR 30416], the final MCLG for 2, 3, 7, 8–TCDD (dioxin) remains at zero mg/l, and the final PQL is estimated as five, rather than 10, times the MDL. As discussed in the November 29, 1991 notice, MDLs of $6\times10^{-9}$ mg/l and $4\times10^{-9}$ mg/l were obtained with a precision of ±12% in an EPA-sponsored study. Considering the zero MCLG, the high relative health risk, and the low probability of occurrence in finished drinking water, the final PQL has been set at five times the average of the two MDLs. The average MDL is $5\times10^{-9}$ mg/l—five times this MDL is $2.5\times10^{-8}$ mg/l, which rounded up becomes the final PQL of $3\times10^{-8}$ mg/l. The final MDL is 50% lower than the proposed MDL of $10\times10^{-9}$ mg/l. The final PQL for dioxin is 40% less than the proposed PQL of $5\times10^{-8}$ mg/l.

The important use of laboratory performance data is to help EPA set fixed ranges of ± acceptance limits (Table 15) for laboratories to obtain and maintain certification. For fourteen of the organics covered by today's notice, EPA has set the acceptance limits for certification samples at two standard deviations based on performance sample study statistics rather than defining fixed acceptance limits.

These limits will permit a reasonable number of laboratories to obtain

certification for compliance monitoring analyses while ensuring continued progress toward more efficient analysis.

Laboratory performance data for the remaining five organic contaminants were obtained in the following studies, which were also cited in the November 29, 1991 notice. In the first study, the lowest concentration of benzo(a)pyrene tested in an EMSL study was 0.002 mg/l, which is ten times greater than the proposed MCL. Rather than extrapolate these data, two EPA laboratories tested Method 550 for benzo(a)pyrene at the proposed MCL of 0.0002 mg/l [USEPA, 1991c]. They achieved a very good precision of ±6 percent or better. The second study concluded that the precision for adipate and phthalate analysis with Method 506 was relatively poor in EMSL PE studies [USEPA, 1991c]. With the solvent changes discussed in Section III–B–3a, an EMSL laboratory obtained very good precision of ±6 percent or better in samples spiked near the MCLs. Based on these results EPA is citing Methods 506, 550 and 550.1 as compliance methods in today's rule, and is permitting individual performance evaluation sample study statistics to determine the acceptance limits (ranges) by setting them at two standard deviations around the average concentration (Table 15).

For endrin and the volatile organic chemicals, an analysis of laboratory performance evaluation data, the most recent of which were cited in the November 29, 1991 NOA, affirms that laboratory performance warrants using fixed limits of ±30 percent for endrin. The data also support using the fixed acceptance limits of ±40 percent for three volatile organic chemicals included in today's rule—dichloromethane, 1,2,4-trichlorobenzene and 1,1,2-trichloroethane. These are the same limits listed in Table 16 of the July 25, 1990 notice.

Several commenters on the NOA data for the SOC contaminants expressed concern about broad confidence intervals (near ±100 percent) and stated doubts about PQLs based on such wide bands. EPA agrees that the data for some contaminants showed broad acceptance bands, and for those contaminants, EPA has established acceptance limits as ±2 standard deviations of the data developed in PE studies. As laboratory performance with these methods improves, as is EPA's experience with new methods, the confidence intervals will narrow.

4. *Laboratory certification.* Several commenters expressed concern about the resources needed and the time constraints to achieve full certification prior to the initial monitoring period for newly regulated contaminants. EPA understands that certification for all parameters in time to comply with the initial monitoring deadlines (specifically, the January 1993–December 1995 period in today's rule) may present some difficulties in some areas. To alleviate this, EPA is recommending that States and Regions grant provisional certification, but only for recently regulated analytes. The provisional certification criteria are not regulatory in nature. Guidelines for granting provisional certification are described in EPA's "Manual for the Certification of Laboratories Analyzing Drinking Water" [USEPA, 1990m].

States and Regions are encouraged to begin certifying laboratories for analytes as soon as MCLs and certification requirements for those analytes have been promulgated. It is not necessary to wait for MCLs to become effective or for the State or Region to become certified. Under the Certification Manual, a State is to grant a laboratory provisional certification only for newly regulated analytes until the next regularly scheduled on-site audit after the effective date of the MCLs or until the end of the first monitoring period, whichever comes first. Also, according to the Certification Manual, in order to be granted provisional certification a laboratory should currently be certified to test for other drinking water parameters, pass an annual performance evaluation sample containing the analytes of interest, and meet all the other criteria stated in the rule. States may add additional requirements that they deem appropriate. In addition, States may set criteria for certifying a laboratory for the measurement of dioxin (2,3,7,8–TCDD) with EPA Method 1613.

EPA wishes to clarify the effective date of promulgated analytical methods in this rule. A promulgated method or method update must be used for those analytes for which it was promulgated as soon as the MCLs become effective, which is usually 18 months after promulgation. However, the methods may and should be used starting 30 days after promulgation of the rules for analyzing samples. This will enable laboratories to be well prepared and at least provisionally certified when the MCLs and monitoring requirements become effective.

5. Selection of Best Available Technology

a. *Inorganics.* On July 25, 1990, EPA proposed the best available technologies (BATs) for the removal of the five inorganic contaminants from drinking water [55 FR 30416]. Today's notice finalizes these determinations. Table 16 summarizes the final BATs for the five inorganic contaminants.

TABLE 16.—FINAL BAT FOR INORGANIC CONTAMINANTS

| Contaminant | BAT [1] |
|---|---|
| Antimony | C/F; RO |
| Beryllium | AA, IE; RO, LS, C/F |
| Cyanide | IE; RO; CH |
| Nickel | IE; RO; LS. |
| Thallium | AA, IE. |

[1] Best Available Technology (BAT)
AA = Activated Alumina.
IE = Ion Exchange.
LS = Lime Softening.
RO = Reverse Osmosis.
C/F = Coagulation/Filtration.
CH = Chlorine Oxidation.

The BATs presented in this notice are the same as in the proposal with one exception: ion exchange for cyanide removal is amended to require pH adjustment for better removal efficiency. This issue is discussed below in further detail with the discussions of the other major concerns expressed during the public comment period for the proposed rule regarding the BATs for the IOCs.

(1) *BAT field demonstrations.* Several commenters stated that the proposed BATs have not been demonstrated specifically for some of the inorganic contaminants under field conditions. These commenters were concerned that the reliance upon bench-scale and pilot-scale data in the absence of field studies might not meet the requirements of BAT for these contaminants under section 1412(b)(5) of the SDWA.

The Agency does not believe that the SDWA requires field studies as a prerequisite to establishing BAT for a contaminant. The SDWA directs EPA to set the MCL as close to the MCLG as "feasible." The SDWA defines "feasible" as "feasible with the use of the best technology which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, [is] available (taking costs into consideration)." Section 1412(b)(3)(D). EPA interprets this provision to require field trials for a technology, not for the application of that technology to each individual contaminant. Consequently, EPA has not required full-scale field validation of a technology's feasibility for treating a specific contaminant if its effectiveness has been demonstrated at bench or pilot scale for that compound. The technology, however, must reasonably be expected to perform in a similar manner under field conditions regardless of aberrations due to scale-up factors.

It should also be noted that many of the 83 contaminants for which Congress required EPA to establish NPDWRs by June 19, 1989 had never been regulated by EPA or treated by public water systems. Thus for many of the contaminants which Congress required EPA to regulate, the data which the commenter asserts are a prerequisite to selecting a technology as BAT do not yet exist. The commenter's arguments suggest that Congress required EPA to regulate many new contaminants within 3 years of the 1986 amendments but effectively precluded EPA from selecting any technologies as BAT for the regulations. Therefore, EPA believes it is appropriate to consider pilot plant and laboratory studies to project the removal efficiencies for these inorganics that would be achieved by technologies that have been in full-scale use by public water systems for other similar contaminants. A detailed discussion of the efficiencies of each of the treatments can be found in the July 1990 proposal and in the "Technology and Costs for the Removal of Phase V Inorganic Contaminants from Potable Water Sources" [USEPA, 1990b].

While some of the treatments listed as BATs in Table 16 are not currently in full-scale use to treat specifically for the inorganic contaminants in today's notice, they are demonstrated technologies currently in use to treat a variety of drinking water contaminants, including previously regulated inorganic contaminants. Further, in each case, high quality bench- or pilot-scale data obtained under verifiable conditions which replicate typical drinking water treatment conditions have been provided. These data confirm that the treatment efficiencies of these technologies are high and that these technologies may be properly designated as BAT for the inorganic contaminants.

(2) *Potential for antimony leaching from tin/antimony solder.* Several commenters were concerned that antimony could leach from tin/antimony solder joints similar to lead leaching from lead/tin solder joints.

EPA has determined that antimony leaching from tin/antimony solder does not present a contamination problem. EPA has based this determination upon a theoretical analysis of the potential for leaching and on three studies that investigated antimony levels in water in contact with tin/antimony-soldered copper pipe joints [Herrera et al., 1981, Subramanian et al., 1991, and USEPA, 1988a].

When different types of metals are in contact with each other, galvanic corrosion can occur. In a galvanic couple, one metal will serve as the anode, which will deteriorate, and the other metal will serve as the cathode. For copper pipes soldered with either lead/tin solder or tin/antimony solder, three galvanic couples can exist. For lead/tin-soldered copper pipe joints, the three couples which exist are: copper-tin, copper-lead, and lead-tin. The strongest galvanic couple of these three will be the copper-lead couple and lead will serve as the sacrificial anode. Thus, galvanic corrosion would promote lead leaching from a lead/tin-soldered copper plumbing joint. For the tin/antimony-soldered copper pipe joint, the three couples which may exist are: copper-antimony, copper-tin, and tin-antimony. The strongest galvanic couple of these three will be the copper-tin couple and tin will serve as the sacrificial anode. Thus, galvanic corrosion would promote tin leaching, rather than antimony leaching, from a tin/antimony-soldered copper pipe joint and very little antimony would be expected to leach. In addition, tin can be passivated by tin oxide, which could form a passivating film to further inhibit antimony leaching from a tin/antimony solder joint.

Laboratory experiments and field tests were conducted to verify the theory on the potential for antimony leaching from tin/antimony solder joints (Seattle Distribution System Corrosion Control Study: Volume III. Potential for Drinking Water Contamination from Tin/Antimony Solder prepared by Herrera et al. for USEPA (August, 1981) [Seattle, 1981] and also reported in Herrera et al., Journal of the American Water Works Association, July 1982) [Herrera et al., 1982].

The laboratory experiments evaluated antimony levels from tin/antimony-soldered copper coupons with stagnation times between one-half hour to 98 hours. Two coupons of pure antimony were also tested with a stagnation time of 70 hours for comparative purposes. The coupon tests demonstrated that antimony dissolution was several orders of magnitude lower than the dissolution from pure antimony metal even though the stagnation time was longer (98 hours versus 70 hours). The highest antimony concentration observed in the tin/antimony coupon testing was 3.7 μg/1, which is below the MCLG promulgated in this noticed for antimony. In addition, tin oxides were found adhering to areas on the solder, which may provide additional inhibition of antimony leaching from tin/antimony solder.

Field tests were conducted at the University of Washington where tin/antimony solder has been used for building plumbing systems since 1968. Samples (0.9 liter) were taken at the point where the distribution system entered the building to obtain the characteristics of the inflow water. Several commenters stated that these were the only type of samples taken and claimed that the study did not evaluate the leaching potential of the plumbing. However, overnight standing samples (0.9 liter) were taken at the tap located the furthest distance from the entry point to the building. The plumbing systems ranged from 1 to 10 years in age. Thus, the contribution of antimony leaching from tin/antimony soldered copper pipe joints was evaluated by comparing the results from the overnight tap sampling with the building inflow sampling results. A difference in antimony concentrations between the overnight tap sample and the building inflow sample was observed in only one of the eight buildings where sampling was conducted. The concentration of antimony in that overnight tap sample was below the MCLG. All of the other antimony concentrations were below the detection limit. In addition, tin oxide films were found on three solder joints which were removed from a building's plumbing system. These films could have contributed to the inhibition of antimony leaching from these joints [Herrera et al., 1981].

The commenters noted that the study conducted at the University of Washington evaluated only one type of water quality. However, Seattle's finished water quality, at the time of this study, was corrosive, yet significant antimony leaching from tin/antimony solder was not observed under these conditions. In fact, all of the antimony concentrations measured in this study were below the MCLG and most were below the detection limit. The amount of antimony leaching from tin/antimony solder would be even less in non-corrosive waters.

This was confirmed by another study which evaluated the impact of several water qualities on antimony leaching from tin/antimony solder with various stagnation times (Impact of Lead and Other Metallic Solders on Water Quality, prepared by Murrell for USEPA, July, 1988) [USEPA, 1988a]. In this study, a pipe loop was constructed with tin/antimony-soldered joints to evaluate the effect of water quality or antimony leaching from tin/antimony solder. Four waters with the following characteristics were evaluated with varying stagnation times to determine their effect on antimony leaching from tin/antimony solder: (1) pH between 5.1 and 5.3; (2) pH between 6.3 and 6.6; (3)

pH 7.4; and (4) pH between 8.5 and 8.6. The stagnation times evaluated in this study were 4 hours, 8 hours, 12 hours, 24 hours, and 4 weeks. Six samples were taken at each pH and stagnation time combination.

For the two higher pH ranges, where the pH was above pH 7.0, all of the samples had antimony concentrations below 4 μg/l for stagnation times up to 24 hours. All of the samples for the lowest pH range also had antimony concentrations below 4 μg/l for stagnation times up to 24 hours. For the second lowest pH range (pH between 6.3 and 6.6), results at 4 μg/l and above were observed at stagnation times below 24 hours. One of the six samples with a stagnation time of 12 hours exceeded the final MCLG and three of the six samples with a 24-hour stagnation time exceeded the MCLG. However, EPA believes that systems with such a low pH would likely fail to meet the requirements of the recently promulgated lead and copper rule (June 7, 1991, **Federal Register** [56 FR 26460]). Those systems would therefore likely need to increase the pH of the finished water to comply with that regulation. Finished water with a pH above pH 7 did not produce antimony concentrations above the MCLG in this study and this water quality is a likely minimum necessary to comply with the lead and copper rule.

EPA also believes that this study addresses several commenters' concerns about antimony leaching from newly soldered joints. The commenters apparently believe that antimony leaching from tin/antimony solder could be similar to lead leaching from lead/tin solder and thus were concerned that significant concentrations of antimony could leach from newly soldered joints. As discussed above, antimony leaching from newly soldered joints was *not* observed in non-acidic waters which will predominate as systems comply with the lead and copper rule requirements.

The effect of water quality on antimony leaching from tin/antimony solder was also investigated in Subramanian, Conner and Meranger, Journal of Environmental Science and Health, 1991 [Subramanian et al., 1991]. This study investigated the effect of three water qualities on metals leaching from four non-lead-based solders. The amount of metals leaching from newly soldered joints was evaluated using high purity, tap, and well water samples with various standing times. The pH of the high-purity water was 6.8. The pH and alkalinity of the tap water was 7.8 and 30 mg/l (as $CaCO_3$). The pH and alkalinity of the well water was 8.1 and 155 mg/l (as $CaCO_3$).

The amount of antimony leached into samples was at or below the detection limit of 1.2 mg/l for standing times up to 7 days, regardless of the water quality. For the high-purity and well water samples, there was no detectable leaching of antimony with standing times longer than 7 days. However, the amount of antimony leached into tap water after 14, 28, and 90 days of contact was 2.0, 3.7, and 7.3 μg/l, respectively. EPA does not believe that such unusually long standing times are typically encountered in public water supplies. Thus, this study supports EPA's position that antimony leaching from tin/antimony solder joints should not be a problem.

(3) *Disposal of wash brines from ion exchange and reverse osmosis treatments in water-scarce areas.* Commenters expressed concerns regarding the potential costs associated with disposal of wastes (particularly brine wastes) generated by treatment processes which remove inorganics. Of particular concern are waste brines generated by reverse osmosis (RO) and ion exchange (IE) processes. One commenter expressed concern about the environmental impacts as well as the potential impact of waste water treatment on water conservation concerns in water-scarce regions. For example, reverse osmosis results in loss of a percentage of the influent water as brine.

EPA does not agree with the commenter's assertion that environmental impacts (discussed below) would be extreme if a low sulfate standard (i.e., 400 mg/l) were promulgated. The Agency believes that water wastage could be minimized by treating only a portion of source water containing elevated sulfate levels, blending the treated water with source water, and by further treating brine wastes. Waste volume reduction and waste handling options appear not to have been fully considered by commenters. Other very conservative assumptions were employed by the commenter which led to conclusions not shared by EPA. The commenter's assumptions include: An increase in Colorado River sulfate levels beyond recent historical levels; and the overall importance of that source to the Southern California supplier, when competing entitlements to that river source may diminish the supplier's share of available river water.

One commenter stated that there are potential economic impacts where limited disposal options exist. The Agency agrees with the commenter that cheaper options (such as direct discharge into a receiving body of water) are not always available. For these reasons, EPA has included several waste treatment and waste disposal options in its analysis and incorporated costs for all projected systems in the Regulatory Impact Analysis (RIA) Document developed for this rule [USEPA, 1992d]. These costs are a substantial part of the overall estimated treatment costs for meeting the drinking water MCLs.

Commenters raised questions about competition for scarce water in certain regions, the need for source water protection measures (i.e., pollution prevention), and waste quantity and quality that may limit disposal options. EPA has addressed these concerns in this rulemaking and in previous actions (**Federal Register**, Vol. 56, No. 20, pp. 3553–3554) and does not believe that the data and assertions presented in response to the July 1990 proposal are sufficient to raise regulatory concerns.

(4) *Alkaline chlorination treatment for cyanide.* Several commenters were concerned about the potential for increased concentration of trihalomethanes resulting from the alkaline chlorination treatment for cyanide. For systems whose raw water has a high trihalomethane formation potential, EPA agrees that this treatment could exacerbate the problem. However, systems can choose to install ion exchange or reverse osmosis, which would be less likely to significantly increase trihalomethanes. As stated in the proposal, the highest observed occurrence level for cyanide in drinking water (8 μg/l) is considerably lower than the MCL for cyanide (200 μg/l). Therefore, EPA expects that few, if any, systems would need to install treatment for cyanide and that increased trihalomethanes resulting from a cyanide BAT is unlikely to be a widespread problem.

(5) *Ion exchange as BAT for cyanide.* Several commenters stated that anion exchange would not remove cyanide because at the near-neutral pH values for most drinking waters, cyanide is much more likely to be present as HCN rather than CN. EPA agrees with the commenters' assertions that anion exchange would only likely remove cyanide that is present as CN. EPA believes, however, that systems that need to can increase the pH of their water to further dissociate HCN to CN. The ion exchange data presented in the Technology and Cost Document indicate that ion exchange can efficiently remove dissociated cyanide [USEPA, 1990b].

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Cyanide is dissociated at lower pH levels than those cited in some of the studies in the Technology and Cost Document. EPA has provided the treatment costs for pH adjustment (see Lead and Copper in Drinking Water as a Result of Corrosion: Evaluation of Occurrence, Cost and Technology, 1991 [USEPA, 1991a]). An option for systems using ion exchange for cyanide removal would be to adjust the pH to dissociate and remove the cyanide and then lower the pH somewhat prior to chlorination and distribution. EPA believes this approach to be a more effective way to address cyanide removal in waters with significant trihalomethanes (THM) formation potential than alkaline chlorination. Nevertheless, for the reasons provided in the discussion of alkaline chlorination, EPA does not believe that increased trihalomethanes resulting from a cyanide BAT will be a widespread problem when using that method.

(6) *Sulfate reverse osmosis costs.* Several commenters questioned why the total treatment costs for sulfate removal by reverse osmosis were lower than the total treatment costs for the inorganic contaminants in this rule. The MCLs proposed for sulfate were several orders of magnitude higher than the MCLs for the inorganic contaminants in this rule. EPA assumed that systems would blend a treated portion and an untreated portion to reduce the total production costs for sulfate. EPA believes that only in extreme cases would systems require both high removal efficiency and treatment of the entire influent flow. Thus, systems were only assumed to treat a part of the product water to remove sulfate rather than the entire product flow as is assumed in the T&C document for the other inorganic contaminants. However, as was noted in the July 1990 proposal, blending to reduce total treatment costs is an option for systems using RO for the other IOCs. Since a smaller volume of water is being treated, capital costs and operation and maintenance costs would be lower, resulting in lower treatment costs than estimated.

(7) *Sulfate ion exchange costs.* Several commenters questioned why the total production costs for sulfate removal by anion exchange were higher than the total production costs for cyanide removal by anion exchange. The difference in the total production costs for these two inorganic contaminants resulted from higher operation and maintenance costs for sulfate removal associated with resin regeneration. The increased regeneration costs are due to faster saturation of the resin because of the significantly higher levels of sulfate that would be treated to meet the proposed MCL levels compared to the levels of cyanide.

b. *Synthetic organic contaminant.* MCLs In the 1986 SDWA amendments, Congress specified in section 1412(b)(5) that "Granular activated carbon is feasible for the control of synthetic organic chemicals, and any technology, treatment technique, or other means found to be best available for the control of synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as granular activated carbon." On July 25, 1990, the Agency proposed the best available technology (BAT) for the removal of the 18 synthetic organic chemicals (SOCs) from drinking water [55 FR 30420]. Today's notice promulgates the final rule for these contaminants, including identification of the Bat. Table 17 provides a summary of the proposed and final BATs.

TABLE 17.—PROPOSED AND FINAL BAT FOR ORGANIC CONTAMINANTS

| Contaminant | Proposed BAT | Final BAT |
|---|---|---|
| Di-(2-ethylhexyl) adipate | GAC/PTA | GAC or PTA |
| Dalapon | GAC | GAC |
| Dichloromethane | PTA | PTA |
| Dinoseb | GAC | GAC |
| Diquat | GAC | GAC |
| Endothall | GAC | GAC |
| Endrin | GAC | GAC |
| Glyphosate | GAC | OX |
| Hexachlorobenzene | GAC | GAC |
| Hexachlorocyclo-pentadiene | GAC/PTA | GAC or PTA |
| Oxamyl | GAC | GAC |
| Benzo (a) pyrene | GAC | GAC |
| Di-(2-ethylhexyl) phthalate | GAC | GAC |
| Picloram | GAC | GAC |
| Simazine | GAC | GAC |
| 2, 3, 7, 8-Tetrachloro-dibenzo-p-dioxin | GAC | GAC |
| 1, 2, 4-Trichlorobenzene | GAC/PTA | GAC or PTA |
| 1, 1, 2-Trichloroethane | GAC/PTA | GAC or PTA |

GAC—Granular Activated Carbon.
PTA—Packed Tower Aeration.
OX—Oxidation (Chlorine or Ozone)

With one exception, the BAT presented in today's notice is the same as proposed in July 1990. The exception is glyphosate. The BAT for glyphosate was proposed as granular activated carbon (GAC) but has been finalized as oxidation. This change is discussed below.

The BATs for organics in today's final rule listed in Table 17 are discussed in detail in the Technology and Cost (T&C) document contained in the rulemaking docket [USEPA, 1992e]. In the T&C document the available technologies are discussed, a summary of the literature documenting treatment performance is provided, and the cost estimates of BAT are detailed. The information presented in the T&C document, including the availability of a technology, its performance, and an estimated cost of compliance of using the technology are all considered and form the basis for determining the final BATs for the SOCs in today's rule.

The following discussion addresses the major concerns expressed during the public comment period for the July 25, 1990 proposed rule regarding the proposed BATs for the SOCs.

(1) *BAT field evaluations.* A number of commenters expressed concern that the BAT proposed for the SOCs had not been demonstrated to be effective according to the criteria set forth by the SDWA. They recommended that the Agency conduct field testing of all the SOCs under various conditions to determine the effectiveness of the BATs as proposed.

The SDWA directs EPA to set the MCL as close to the MCLG as "feasible." The SDWA defines "feasible" as "feasible" with the use of the best technology . . . which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, [is] available (taking costs into consideration)." As mentioned above, EPA interprets this provision to require field trials for a technology, not for the application of that technology to each individual contaminant. Consequently, EPA has not required full-scale field validation of a technology's effectiveness for treating a specific contaminant if its effectiveness has been demonstrated at bench or pilot scale for that compound. The technology, however, must reasonably be expected to perform in a similar manner under field conditions after considering aberrations due to scale-up factors.

For three of the contaminants in the July 1990 proposal (di(2-ethylhexyl)adipate and endothall and 2,3,7,8-TCDD), EPA relied on model predictions based on the compounds' physical/chemical characteristics, to specify GAC as BAT. At the time of proposal, treatment performance data were not available due to analytical difficulties with (di(2-ethylhexyl)adipate and endothall. Since proposal, however, the Agency has obtained treatment performance data for these two compounds. The treatment performance studies and data for both (di(2-ethylhexyl)adipate, endothall are included in the Technology and Cost Document contained in the rulemaking docket [USEPA, 1992e]. The results of the studies on these two compounds support earlier BAT determinations of GAC made using the model. Further, the SDWA states that GAC is feasible for the control of SOCs.

With respect to dioxin, there is a pilot-scale treatment performance study indicating removal of dioxin from Agent Orange using GAC [Chemical Eng., 1977]. This study has limited applicability since the solvent is not water, but due to the associated health risks during analysis of dioxin, the treatment performance of GAC was determined based solely on the model predictions.

The Agency is designating GAC as BAT for dioxin in today's rule in spite of the lack of performance data. GAC has been statutorily designated as "feasible for the control of synthetic organic chemicals" [section 1412(b)(5), SDWA) and the results from model predictions based on the physical/chemical properties of dioxin support this determination. In light of the SDWA statement that GAC is feasible and the fact that GAC has proven to be effective in the laboratory and under full-scale conditions for other synthetic organic contaminants of similar characteristics, the Agency believes it is appropriate to establish GAC as BAT.

*Cost considerations.* One commenter stated that a BAT must be evaluated and applied to site-specific conditions and that estimated costs might not be representative of actual operating conditions.

In response, costs at specific sites may be higher than estimated in the Cost and Technology Documents. The design and costs of the treatment technologies evaluated as part of the T&C document pertain to an average system (not worst case), and are meant to be used for a system's preliminary planning purposes, for generating national cost estimates and for determining affordability for typical systems. Worst-case cost estimates are not used because the Agency does not believe that such estimates would accurately represent the affordability of treatment for large water suppliers on a national basis. Individual systems should develop a more complete and detailed design and cost evaluation based on pilot-plant testing and site-specific considerations. The cost estimates presented in the T&C document provide a basis that can be used by any system regardless of water quality.

*Use of other technologies.* One commenter noted that treatment facilities are free to choose technologies other than BAT to meet the MCL. Other technologies may be chosen in lieu of BAT because they may be more cost effective or better suited to the specific operating conditions of the particular site to meet the MCL. Making the choice not to use BAT, however, means that a system will not be eligible for a variance under SDWA section 1415. For example, if a facility does not install GAC where it is the designated BAT, but uses PAC instead, and fails to meet the MCL, the facility would not be eligible for a variance. On the other hand, the same facility may be eligible for an exemption under SDWA § 1416 if for example GAC could not be installed due to an inability to obtain financing and PAC was used instead, and the facility failed to meet the MCL.

EPA agrees with commenters that GAC, and any other treatment technology for that matter, can create problems if not properly maintained and operated. Again, technologies other than GAC, PTA or OX can be used if they seem better suited to site-specific conditions in order to achieve the MCL.

*Carbon disposal costs.* Some commenters were concerned that the cost of disposal of spent carbon was not taken into account at all in the costing assumptions for the design and operation and maintenance (O&M) for a facility. The cost of carbon "disposal" is essentially the cost of regenerating the spent carbon (and replacing the 12 to 15 percent lost in the process). For plants whose daily carbon use is less than 1,000 pounds per day, EPA assumes that the carbon would be regenerated off-site by the carbon supplier and that cost is included in the cost of replacement carbon. For plants whose carbon demand is more than 1,000 pounds per day, it is generally economical to regenerate on-site. The cost of the incinerator used to regenerate the carbon and its operation and maintenance costs are part of the facility capital and O&M costs already factored into total costs. The revised model that EPA now uses in developing costs [Adams and Clark, 1989] factors into total costs the expense of carbon regeneration and replacement.

When powdered activated carbon (PAC) is used, it is usually disposed of with the alum sludge in a sanitary landfill. Because this rule does not consider PAC to be BAT, EPA is not addressing the issue of PAC costs, including the costs of disposal.

*PTA and air emissions.* One commenter stated that it is possible to transfer risk from water to air when using PTA. As the commenter points out, there is a possibility of transferring the risk associated with VOCs from water to air when using PTA as a treatment technology (and that increased costs may result from a requirement to also treat the PTA emissions). EPA agrees that control of such air emissions may be required by regulations outside the SDWA (e.g., local or State regulations) and could increase the costs of this technology. Consequently, the cost of controlling emissions was estimated as a separate cost item in Table 13 of the July 1990 notice and was included in chapter 7 of the proposed and final T&C document [USEPA, 1992e]. These emission control costs can be added to the PTA costs to get an estimate of the total costs. The costs are based on treatment by vapor-phase GAC.

*Empty bed contact time.* A number of commenters expressed concern about the use of an empty bed contact time (EBCT) of 7.5 minutes and urged field studies to identify an EBCT or range of EBCT values. A reference cited in the July 1990 proposal on general information about the parameters of the cost model may have misled these commenters. The values used to satisfy the variables of the parameters were stated in the T&C document. The EBCT was used for estimating cost of GAC removal of SOCs in the July 1990 proposal and in today's rule, and the EBCT was assumed to be 10 minutes, not 7.5 minutes. For additional information on the basis for the use of a 10-minute contact time, EPA refers readers to the January 30, 1991 rule [56 FR 3555] and supporting documents.

*Carbon usage rate.* Some commenters stated that natural organic matter is a major contributor to the carbon use rate (CUR). The concern was that costs of carbon replacement and regeneration would be much higher in actual practice than those calculated in theory. The Agency agrees with these commenters that natural organics contributes to the CUR. To account for the competitive adsorption and fouling of GAC by these organics present in the water matrix, EPA used an adjusted CUR in both the proposed and final rules. The CURs are calculated using an equation derived from the Freundlich isothermal relationship and a mass balance for each specific SOC based on distilled water isotherm data. The CUR is then adjusted by comparison of field to distilled water usage rates to account for the competing effects of natural organics. The method used to determine and adjust the CUR is presented in Chapter 4 of the Technology & Cost Document [USEPA, 1992e] and is a reasonable approximation of the effects of natural organics. The CUR as well as the adjusted CUR provide a mechanism

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to compare relative absorbabilities, and ultimately, relative costs. The Agency recommends that each system use its own water quality and geographical conditions, as well as the appropriate EBCT and CURs as part of their design considerations. EPA discussed these same issues in its Phase II final regulation (January 30, 1991 [56 FR 3556]).

*Powdered activated carbon as BAT.* One commenter suggested that PAC be considered BAT since it can be used for removal of pesticide contamination in surface waters and is the same substance as GAC. EPA's position is that the use of PAC may be an appropriate choice of technology in certain instances. PAC treatment of surface water that is only intermittently contaminated by pesticides or other SOCs could be both economical, in combination with an existing filtration plant, and effective.

While PAC has proven effective in taste and odor control, its efficacy for trace SOC removal in drinking water is variable due to factors such as carbon particle size, background organics, and plant efficiency. Therefore, EPA does not believe that PAC is as effective as GAC overall, and the Agency has not designated it as BAT. If application of PAC will reduce the contaminant below the MCL in particular cases, it may be used in lieu of the designated BAT (for example, if the utility finds that PAC is more cost effective). See discussion above on use of these technologies in lieu of BAT.

*BAT for glyphosate.* As presented earlier in today's notice, the BAT proposed for glyphosate was GAC. One commenter stated that GAC is not BAT for glyphosate and indicated that conventional treatment is more effective in removing this compound from drinking water. Conventional treatment typically combines disinfection (usually chlorine), coagulation, flocculation, sedimentation, and filtration. EPA agrees that other technologies appear to provide better treatment removal efficiencies for glyphosate than GAC, and conducted additional bench- and pilot-scale studies to evaluate and determine the BAT. As the commenter suggests, and as we determined from subsequent study, GAC is not effective in removing glyphosate from drinking water. Bench-scale treatability studies documented by Speth [Speth, 1990] indicate that oxidation using chlorination (potentially as part of conventional treatment) or ozonation were significantly more effective treatment techniques for glyphosate than is GAC. EPA stated in the November 1991 NOA [56 FR 60954] that it was considering designating these technologies instead of GAC as BAT for glyphosate. Today, EPA is identifying oxidation (using chlorination or ozonation) instead of GAC as BAT for glyphosate.

The proposed BAT was based on treatment evaluations conducted using distilled water and a limited number of data points. Subsequent bench-scale analyses [Speth, 1990] revealed that glyphosate's behavior in natural waters is unlike that of any of the other SOCs associated with this rulemaking. Glyphosate exhibits very different treatability characteristics in distilled water than in natural waters. This is thought to be due to extremely slow kinetics and the influence of organo/metallic complexation. These additional studies also provided a preliminary examination of the effectiveness of various other treatment methods for removing glyphosate. The results indicated that carbon did not remove glyphosate under raw water conditions, but oxidation, specifically chlorine or ozone, was very effective. These bench-scale studies also seemed to suggest that under some conditions glyphosate could be removed by membranes and coagulation/filtration. These bench scale studies were completed too late for inclusion in the July 1990 proposal. EPA made these bench-scale studies available for public comment in the November 1991 NOA.

During 1991, the Agency conducted pilot-scale studies to further evaluate the effectiveness of conventional treatment (including chlorination and ozonation). The results of the pilot studies demonstrated that lower levels of glyphosate were detected after chlorination or ozonation. The pilot study also showed, however, that conventional treatment, which typically combines disinfection (usually by chlorine), coagulation/flocculation/sedimentation and filtration, has not added effect over chlorination or ozonation. The results of these pilot-scale studies were too late to be included in the November 29, 1991 NOA [56 FR 60954].

One commenter raised a number of concerns in response to the November 1991 NOA regarding the designation of oxidation as BAT for glyphosate. The commenter argues that by selecting chlorination (or oxidation by chlorine) as BAT the oxidation by-products themselves may present health risks and may need to be regulated under the SDWA in the future. The commenter goes on the state that the costs associated with the treatment modifications that would be required to accommodate an oxidation process could be appreciable. In addition, public water suppliers already have to contend with the Surface Water Treatment Rule (SWTR); disinfection by-product (DBP) concerns, and upcoming DBP regulation. The commenter also states that the bench-scale studies included in the public docket of the NOA [Speth, 1990] indicated that conventional coagulation/flocculation/sedimentation was being overlooked by the Agency, and that additional studies should be conducted, beyond bench-scale, to evaluate the effects of pH, coagulant, water matrix, etc., on the removal of glyphosate by conventional methods.

As mentioned earlier in response to comments, the Agency conducted follow-up pilot studies to evaluate the effectiveness of the various treatment alternatives identified by Speth [Speth, 1990]. While chlorination used as a treatment method could raise concerns of associated health risks due to disinfection by-products (DBPs), these concerns can be addressed through effective precursor removal. This approach is fully consistent with EPA's anticipated approach in the upcoming DBP regulations. To the degree existing disinfection also accomplishes oxidation of glyphosate, little or no cost would be incurred. Installation of new disinfection has been costed and the cost considered acceptable. Further, the option to choose a treatment technology other than the BAT to meet the MCL when necessitated by specific conditions is available (see earlier discussion of selection of technologies other than BAT). Also, consistent with the commenter's recommendation to do additional pilot-scale studies to evaluate conventional treatment, including coagulation/filtration/sedimentation, EPA has now conducted such studies as described above, and based on these studies, EPA has decided not to identify those technologies as BAT.

The BAT for glyphosate is determined to be oxidation. Details of the treatability studies conducted in support of selecting a BAT for glyphosate can be found in the Technology & Cost Document [USEPA, 1992e] for the SOCs.

*BAT for Di(2-ethylhexyl)adipate and endothall.* As stated earlier in today's notice, proposed BAT for di(2-ethylhexyl)adipate and endothall was GAC and is not being changed by today's notice. One commenter stated that EPA should use treatability study data instead of relying solely on model predictions to select BAT for di(2-ethylhexyl)adipate. The proposed BAT for di(2-ethylhexyl)adipate and endothall was based on model predictions due to analytical problems encountered during the earlier treatment evaluations. The Agency recently conducted additional treatability studies to provide additional support for the selection of GAC as BAT for these compounds.

The treatability studies for di(2-ethylhexyl)adipate and endothall demonstrate that GAC is as effective in removing these compounds from drinking water as predicted by the model. In addition, the SDWA section 1412(b)(5) states that GAC is feasible for the control of SOCs. Therefore, the BAT for these compounds remains GAC. Details of the treatability studies conducted for di(2-ethylhexyl)adipate and endothall can be found in the Technology & Cost Document for the SOCs [USEPA, 1992E].

*BAT for Benzo(a)pyrene.* One commenter suggested that PAC should be used to remove PAHs. As indicated in the T&C document, however, PAHs can be removed more effectively using GAC than by other technologies; therefore, the Agency has defined only GAC as BAT for PAHs. However, any other technology that seems better suited to the particular operating conditions of the particular site can be chosen as long as the MCL for the particular SOC is met. See above for a discussion of the use of other technologies in lieu of BAT.

6. Determination of MCLs

EPA proposed MCLs for 24 chemicals based upon an analysis of several factors, including:

(1) The effectiveness of BAT in reducing contaminant levels from influent concentrations to the MCLG.

(2) The feasibility (including costs) of applying BAT. EPA considered the availability of the technology and the costs of installation and operation for large systems.[1]

(3) The performance of available analytical methods as reflected in the PQL for each contaminant. In order to ensure the precision and accuracy of analytical measurement of contaminants at the MCL, the MCL is set at a level no lower than the PQL.

After taking into account the above factors, EPA then considered the risks at the MCL level for the EPA Group A and B carcinogens to determine whether they would be adequately protective of public health. EPA considers a target risk range of $10^{-4}$ to $10^{-6}$ to be safe and protective of public health when calculated by the conservative linear multistage model. The factors EPA used in its analysis are summarized in Table 18 for the Category I and Table 19 for the Category II and III contaminants, respectively.

a. *Inorganic contaminant MCLs.* The MCLs for the inorganic contaminants promulgated today are at the same level as the promulgated MCLG for each contaminant, except for thallium (see Table 1). Also, EPA is deferring action on sulfate, and no sulfate MCL is promulgated today.

The July 1990 notice proposed alternative PQLs or MCLs for antimony and thallium. Alternative PQLs/MCLs of 0.005 mg/l and 0.01 mg/l were proposed for antimony based on multiples of 5 and 10 times the MDL. As discussed above, however, the final PQL for antimony is not being set as a multiple of the MDL but rather is being set at 0.006 mg/l based on new PE data [USEPA, 1991d]. This PQL is equal to the final MCLG for antimony, as discussed in section III–A. The Agency is, therefore, finalizing the MCL at the same level as the promulgated MCLG of 0.006 mg/l for this contaminant.

The Agency proposed alternative MCLGs/MCLs for sulfate of 400 mg/l and 500 mg/l. Today EPA is deferring promulgation of a sulfate MCL because the Agency believes it needs to consider innovative approaches to regulating sulfate. The length of this deferral period will be determined in the course of ongoing litigation with an interested citizen's group concerning EPA's legal deadlines for establishing regulations for drinking water contaminants. Unlike most drinking water pollutants, sulfate appears to be primarily of concern for unacclimated transient populations (as well as for infants).

Because of the high cost of regulating sulfate, its relatively low risk, and its impact primarily on the transient consumer, EPA is deferring the promulgation of the sulfate MCLG and MCL. In the interim, EPA intends to resolve the following issues: (1) Whether further research is needed on how long it takes infants to acclimate to high sulfate-containing water, (2) whether new regulatory approaches need to be established for regulating a contaminant whose health effect is confined largely to transient populations, and (3) whether the Agency should revise its definition of Best Available Technology for small systems (i.e., what should be considered affordable for transient noncommunity water systems).

During this deferral period, the Agency also intends to consider ways to expedite the process for granting potential exemptions and variances to ease the impact of eventual regulations on small systems. Also in the interim, the Agency plans to issue a Health Advisory and encourage States where sulfate levels may be high to conduct additional monitoring and encourage the use of alternative water supplies where appropriate.

For thallium, alternative PQLs/MCLs of 0.002 mg/l and 0.001 mg/l were proposed in the July 1990 notice based on 5 and 10 times the MDL. As discussed above, however, the final PQL and MCL for thallium is being set today at 0.002 mg/l based on new PE data [USEPA, 1991d]. The MCL for thallium is limited by the sensitivity of available analytical methods (i.e., it is being set at the PQL). The PQL constraint results in an MCL higher than the 0.0005 mg/l MCLG by a factor of 4. However, the Agency has concluded that the promulgated MCL is adequately protective of health because the MCLG includes a large cumulative safety factor of 3,000. Thus, EPA believes that the health risks of exceeding the MCLG up to the MCL are minimal.

EPA has determined that each inorganic contaminant has one or more BATs to reduce contaminant levels to the MCLG, and that the BAT(s) is feasible (as defined by the Act), analytical methodologies are available to ensure accurate and precise measurement for each MCL, and each MCL adequately protects public health. EPA also calculated the household cost for water suppliers to remove IOC contaminants to or below the MCLs, based on the identified BATs. The inorganic contaminants are not expected to occur in the very large water systems and household costs were not estimated for them. In the largest systems where they may occur (25,000–50,000 population), costs were approximately $100/household per year, and would likely be lower for larger systems. EPA believes these costs are reasonable. Also, the national costs associated with the MCLs for these contaminants, as shown in the RIA, are considered reasonable. Also, the national costs associated with the MCLs for these contaminants, as shown in the RIA, are considered reasonable.

B. *Synthetic organic contaminant MCLs*—(1) *Category I contaminants.* EPA considered the same factors in determining the proposed MCLs for Category I contaminants as for Category II and III contaminants. However, the proposed MCLGs for Category I contaminants are zero, a level that by definition is not "feasible" because no analytical method is capable of determining whether a contaminant

[1] EPA also evaluates the national costs and costs to smaller systems in its analysis of economic impacts.

level is zero. The lowest level that can be reliably measured is the PQL. EPA calculated PQLs for these contaminants from available analytical performance data, as described above.

In developing MCLs, the Agency attempts to attain a level as close to the MCLG as is feasible. For carcinogens, EPA evaluates the cancer risk at various contaminant levels in order to ensure that the MCL adequately protects public health. The Agency targets a reference cancer risk range of $10^{-4}$ to $10^{-6}$ excess individual risk from lifetime exposure using conservative models which are not likely to underestimate the risk. Since the underlying goal of the Safe Drinking Water Act is to protect the public from adverse health effects due to drinking water contaminants, EPA seeks to ensure that the health risks associated with carcinogenic contaminants are not significant.

For most contaminants regulated today, the PQL is identical to that proposed in the July 1990 notice. In the case of dioxin, EPA lowered the PQL based upon a new MDL study using Method 1613 [USEPA, 1990h]. This study identifies an MDL of $5\times10^{-9}$ mg/l, which is exactly twice as low as the MDL of $1\times10^{-8}$ mg/l that EPA identified in the July 1990 proposal. EPA provided this new information through the November 29, 1991 Notice of Availability. Based on the new information, EPA has decided to set the PQL at five times the MDL, or at $3\times10^{-8}$ mg/l.

In the July 25, 1990 proposed regulation for dioxin [55 FR 30416], EPA proposed to set the PQL (and MCL) at five times the MDL, rather than ten times the MDL, because of concerns about the health risk posed at the concentration corresponding to ten times the MDL. EPA recognized that some loss of analytic precision would likely result from this, but believed it was warranted by the additional health protection that would be ensured by the lower MCL. In soliciting public comment on the new dioxin analytic method (1613) and MDL, EPA asked for comment on this same issue, of whether the additional health protection afforded by a lower MCL warranted the likely reduction in analytic precision. Several commenters expressed concern about likely reduction in analytic precision. In using a multiplier of five rather than ten in setting the PQL (based on the new data), estimated lifetime cancer risks would be reduced from $2.5\times10^{-4}$, to $1.3\times10^{-4}$. EPA believes this reduction in risk is warranted, because it brings the MCL closer to the $1\times10^{-4}$ target maximum risk that EPA uses for national primary drinking water regulations. Also, as discussed above, EPA believes that the degradation in analytic precisional accuracy is not unreasonable in going from 50 to 30 ppq.

EPA also calculated the annual household costs for large systems to remove the SOC contaminants to or below the MCL using GAC, PTA or oxidation. As Table 18 shows, these costs are estimate to be generally about $20 per household per year for large systems to install and operate any of these technologies. Cost estimates have not changed from the estimates in the proposal. No significant comments on unit treatment costs were submitted. EPA believes these costs are reasonable, as are the associated national costs as shown in the RIA. EPA therefore promulgates the MCLs at the levels listed in Table 18.

Pursuant to SDWA section 1412(b)(10), the effective date for all MCLs promulgated today (except for the MCL for endrin) is 18 months after publication of today's notice (see the beginning of today's notice for the exact date). The effective date for the MCL for endrin is set at 30 days after publication of today's notice. The MCL for endrin promulgated today represents a relaxation of the existing MCL for endrin (from 0.0002 mg/l to 0.002 mg/l). Even though SDWA section 1412(b)(10) calls for the effective date of MCLs to be 18 months after promulgation, EPA interprets this provision not to apply in the case of an existing MCL that is being revised to a higher level, since utilities do not need time to prepare to meet the revised level (they are, in effect, already required to be meeting it).

TABLE 18—MCL ANALYSIS FOR CATEGORY I SYNTHETIC ORGANIC CONTAMINANTS

| SOC contaminant | Final MCLG [1] (mg/l) | Final MCL (mg/l) | $10^{-4}$ risk (mg/l) | PQL (mg/l) | Annual household costs [2] | | Notes |
|---|---|---|---|---|---|---|---|
| | | | | | GAC | PTA | |
| Dichloromethane | 0 | 0.005 | 0.05 | 0.005 | ..... | 18.00 | |
| Di(2-ethylhexyl)phthalate | 0 | 0.006 | 0.4 | 0.006 | 520.00 | ..... | |
| Hexachlorobenzene | 0 | 0.001 | 0.002 | 0.001 | 20.00 | ..... | |
| Benzo(a)pyrene | 0 | 0.0002 | 0.0002 | 0.0002 | 20.00 | ..... | |
| 2,3,7,8-TCDD | 0 | $3\times10^{-8}$ | $2\times10^{-8}$ | $3\times10^{-8}$ | 20.00 | ..... | MCL is at $1.3\times10^{-4}$ risk. |

[1] EPA policy is that for all Category I carcinogens the MCLG is zero.
[2] For large systems.

(2) *Category II and III contaminants.* For the Category II and III SOC contaminants listed in Table 19, each of the MCLs was proposed equal to its proposed MCLG. Because the MCLGs for di(2-ethylhexyl)adi-pate and simazine have changed from the levels proposed in July 1990, as discussed above, the MCLs have also changed. The MCL for di(2-ethylhexyl)adipate changed from 0.5 to 0.4 mg/l and the MCL for simazine changed from 0.001 to 0.004 mg/l. The MCL for 1,2,4-trichlorobenzene changed from 0.009 to 0.07 mg/l. Both of these changed MCLs are equal to the final MCLGs, which were revised based on a reassessment of the health data as discussed above.

Section 1412 of the SDWA requires EPA to set MCLs as close to the MCLGs as is feasible (taking costs into consideration). EPA believes that it is feasible to set the MCLs at the MCLGs for the Category II and Category III contaminants because (1) the PQL for each contaminant is at or below the level established by the MCLG; (2) BAT can remove each contaminant to a level equal to or below the MCLG; and (3) the annual household cost to install BAT in large systems is reasonable. Final estimated costs are the same as were established for the proposal. EPA believes that these costs are affordable for large systems. EPA also believes the associated national costs, as shown in the RIA, are reasonable. Therefore, EPA promulgates the MCLs for the non-carcinogenic contaminants equal to their MCLGs.

TABLE 19.—MCL ANALYSIS FOR CATEGORY II AND III SYNTHETIC ORGANIC CONTAMINANTS

| SOC contaminant | Final MCLG (mg/l) | Final MCL (mg/l) | PQL (mg/l) | Annual household costs using BAT [1] | | |
|---|---|---|---|---|---|---|
| | | | | GAC | PTA | OX |
| Dalapon | 0.2 | 0.2 | 0.01 | $35.00 | | |
| Di(2-ethylexyl)adipate | 0.4 | 0.4 | 0.005 | 25.00 | $17.00 | |
| Dinoseb | 0.007 | 0.007 | 0.002 | 20.00 | | |
| Diquat | 0.02 | 0.02 | 0.004 | 25.00 | | |
| Endothall | 0.1 | 0.1 | 0.09 | 35.00 | | |
| Endrin | 0.002 | 0.002 | 0.001 | 20.00 | | |
| Glyphosate | 0.7 | 0.7 | 0.4 | | | $1.50–9.00 |
| Hexachlorocyclopentadiene | 0.05 | 0.05 | 0.001 | 20.00 | 17.00 | |
| Oxamyl (Vydate) | 0.2 | 0.2 | 0.05 | 25.00 | | |
| Picloram | 0.5 | 0.5 | 0.002 | 25.00 | | |
| Simazine | 0.004 | 0.004 | 0.001 | 20.00 | | |
| 1,2,4-Trichlorobenzene | 0.07 | 0.07 | 0.005 | 20.00 | 17.00 | |
| 1,1,2-Trichloroethane | 0.003 | 0.005 | 0.005 | 25.00 | 42.00 | |

[1] For large systems.

### *C. Compliance Monitoring Requirements*

#### 1. Introduction

The proposed compliance monitoring requirements [55 FR 30427] included specific monitoring requirements for inorganic contaminants (IOCs), volatile organic contaminants (VOCs); and non-volatile synthetic organic chemicals (SOCs). EPA proposed that all community and non-transient non-community water systems comply with the monitoring requirements for all contaminants. EPA also requested comment on whether the MCL for sulfate and the associated monitoring requirements should apply to transient, non-community system since this contaminant is associated with acute effects. The compliance monitoring requirements promulgated in today's rule apply to all community and non-transient non-community water systems. The compliance monitoring requirements that EPA is promulgating today are the minimum currently necessary to determine whether a public water supply delivers drinking water that meets the MCLs.

The proposed compliance monitoring requirements for the contaminants in the July 25, 1990 notice were similar to the monitoring requirements proposed in a May 1989 notice [54 FR 22124] for 38 inorganic and synthetic organic contaminants. In the July 1990 proposal [55 FR 30428], EPA explained that the Agency's goal in promulgated compliance monitoring requirements is to standardize the requirements and to synchronize the schedules to minimize overall sample collection and analysis efforts. In keeping to that goal, the Agency further stated in that notice [55 FR 30429] that changes to the monitoring requirements in the final rule to the May 1989 proposal would likely affect the final requirements for the contaminants in today's notice.

EPA promulgated final regulations for the contaminants in the May, 1989 proposed rule on January 30, 1991 and July 1, 1991 [56 FR 3526 and 56 FR 30266, respectively]. In the January 1991 final rule, EPA described a standard monitoring framework that was developed by the Agency based on the proposed monitoring requirements and on the comments received by EPA in response to the May 1989 notice. The final rule, and the November 1991, NOA concerning today's rule, indicated that EPA intends to apply this framework to future requirements for source-related contamination (i.e., inorganics, VOCs, SOCs and radionuclides), as appropriate. The framework and how it applies to today's rule is described in more detail below.

The contaminants in today's rule usually occur at limited frequencies, thereby justifying flexible monitoring requirements. In general, the possible occurrence of these contaminants in drinking water may be predictable to some extent based upon a multiplicity of factors such as geological conditions, use patterns (e.g., pesticides), presence of industrial activity in the area, type of source or historic record. Therefore, EPA believes that States should be allowed the discretion to increase or decrease monitoring based on established criteria and site-specific conditions. As part of today's rule EPA is withdrawing these contaminants from the unregulated contaminant monitoring requirements of § 141.40 since they will now be monitored as regulated contaminants under §§ 141.23 and 141.24.

In developing the compliance monitoring requirements for these contaminants, EPA considered:

(1) The likely source of drinking water contaminants,

(2) The nature of the potential adverse health effects, i.e., chronic versus acute effects,

(3) Differences between ground and surface water systems,

(4) How to collect samples that are representative of consumer exposure,

(5) Sample collection and analysis costs,

(6) The use of historical monitoring data to identify vulnerable systems,

(7) The limited occurrence of some contaminants, and

(8) The need for States to tailor monitoring requirements to system- and area-specific conditions.

EPA monitoring requirements are designed to ensure that compliance with the MCLs is met and to efficiently utilize State and utility resources. EPA's goal in today's rule is to ensure these monitoring requirements are consistent with monitoring requirements promulgated previously by EPA and with known occurrence trends. The monitoring requirements promulgated today focus monitoring in individual public water systems on the contaminants that are likely to occur, an approach that includes:

- Allowing States to reduce monitoring frequencies based upon system vulnerability assessments for the organic chemicals listed in § 141.61 (a) and (c).
- Allowing States to target monitoring to those systems that are vulnerable to a particular contaminant.
- Allowing the use of recent monitoring data in lieu of new data if the system has conducted a monitoring program generally consistent with today's requirements and using reliable analytical methods.
- Encouraging the States to use historical monitoring data meeting specific quality requirements and other

available records to make decisions regarding a system's vulnerability.

- Requiring all systems to conduct repeat monitoring unless they demonstrate through an assessment or other data that they are not vulnerable.
- Designating sampling locations and frequencies that permit simultaneous monitoring for all regulated source-related contaminants, whenever possible.
- Phase-in monitoring requirements based on system size. For systems with 150 or more service connections, monitoring begins in the first compliance period (January 1, 1993 to December 31, 1995). For those systems with less than 150 service connections, monitoring begins in the second compliance period (January 1, 1996 to December 31, 1998).

Although base monitoring requirements for surface and groundwater systems are the same for all contaminants, groundwater systems will qualify more frequently for reduced monitoring and return more quickly to the base monitoring requirements because (1) the sources and mechanisms of contamination for ground and surface water systems are different, (2) the overall quality of surface waters tends to change more rapidly with time than does the quality of ground waters, and (3) seasonal variations tend to affect surface waters more than ground waters. Spatial variations are more important in ground waters than in surface waters since groundwater contamination can be a localized problem confined to one or several wells within a system. Therefore, monitoring frequency is an important factor to determine baseline conditions for surface water systems, while sampling location within the system generally is more important for groundwater systems. Today's monitoring requirements generally require surface water systems to monitor at an increased frequency for longer periods than groundwater systems.

2. Effective Date

In the July 25, 1990 **Federal Register** Notice, EPA proposed to allow an additional 12 months after the effective date of the rule taking final action on the proposal for public water systems to complete the first round of sampling and analysis and to report the results of such monitoring to the States. The effective date of the rules is by statute, 18 months from promulgation. EPA also proposed to allow an additional 12 months after the effective date of the final regulations for the States to complete vulnerability assessments.

Most commenters supported extending the initial monitoring and reporting period as well as the date to complete vulnerability assessments. They claimed that the 18 months compliance schedule is too rigorous, especially since extensive investigation is required. Some commenters claimed there is a lack of laboratory capacity for conducting analyses using the new analytical methods and a lack of qualified staff as a rationale for extending the first round of monitoring and the reporting of the results of such monitoring to the States. Other commenters cited the impact on State resources to properly notify water systems regarding the new monitoring requirements, develop the necessary guidance and procedures, train staff, to review vulernability assessments, reduced monitoring decisions, etc., and to be prepared to administratively handle the data generated, as the rationale for allowing States sufficient time to initiate the monitoring requirements. One commenter suggested that small systems be given more time to comply with the requirements because of the cost burden on these systems. Another commenter suggested that the systems should be allowed to submit to the State their own schedule for compliance for State approval.

In the November 29, 1991 NOA, EPA stated that it was considering requiring that monitoring begin during the first compliance period following promulgation. This change would synchronize the monitoring schedule for the 23 contaminants with those promulgated for other SOCs and IOCs in the January 30, 1991 notice. Two commenters supported this change. However, 14 commenters disagreed with the change since they felt it effectively moved monitoring up three years from what was proposed, there would be a lack of time to conduct vulnerability assessments, inadequate time for laboratories to become certified, and increased cost to States and public water systems.

EPA agrees with the commenters that problems may occur in the early stages of implementing the monitoring requirements. These problems are alleviated to some extent, however, by the fact that this rulemaking is adopting the Agency's Standard Monitoring Framework (which EPA originally adopted in the January 30, 1991 rule setting regulations for 33 contaminants), and is adopting a phased approach for initial monitoring. Specifically, the Agency has decided to require that monitoring for the contaminants in today's rule be completed (1) during the first compliance period, as specified in the Standard Monitoring Framework, which begins January 1, 1993 and ends December 31, 1995 for systems with 150 or more service connections, and (2) during the period beginning January 1, 1996 and ending December 31, 1998 for systems with fewer than 150 connections. In addition, all vulnerability assessment decisions must be completed prior to the calendar year when the initial monitoring must be completed. Laboratories can be granted provisional certification to perform analyses for the contaminants in today's rule during the 1993–1995 compliance period. See the discussion under Laboratory Certification.

EPA believes this phased-in time frame allows adequate time for implementation of the monitoring requirements since for larger systems it provides for more than two additional years after the effective date of today's rule for completion of the first round of sampling and analysis and for small systems it provides three years additional time. This monitoring schedule also coincides with the sampling and analysis schedule for 38 contaminants previously regulated (56 FR 3526 and 56 FR 30266). By allowing systems with less than 150 service connections to begin initial monitoring in the second compliance period (January 1, 1996 to December 31, 1998), more time is allowed for States, laboratories, and small systems to be fully prepared (i.e., conduct vulnerability assessments, find funding).

EPA believes that the earlier 1993–1995 compliance period for those systems with 150 or more service connections is appropriate, to better protect health. These systems would have been required to begin monitoring for these contaminants under unregulated monitoring requirements of the January 30, 1991 rule. Since many of the previously unregulated contaminants are contaminants being regulated in today's rule, the Agency believes the 1993 monitoring will result in only minor increased monitoring impact. Those individual contaminants moving from "unregulated" to "regulated" status are being deleted from the unregulated contaminant monitoring requirements.

States have the discretion, and may well choose, to require a percentage (e.g., one-third) of the required systems to monitor during each year of the three-year compliance period. States have the option to prioritize monitoring based on system size. EPA has decided not to allow systems to submit their own monitoring schedule for State approval as some commenters suggested. EPA believes States need to control the flow of samples and data to them in order to

ensure orderly implementation and enforcement, within the regulatory requirements and avoid undue administrative burdens and potentially unmanageable enforcement problems.

3. Standard Monitoring Framework

In response to the May 1989 notice covering a different set of contaminants, EPA received extensive comments stating that the proposed monitoring requirements were complex and would lead to confusion and misunderstanding among the public, water utilities, and State personnel. Commenters also cited the lack of coordination among various regulations. Many commenters suggested that EPA simplify, coordinate, and synchronize the proposed regulation with previous regulations. In response to these comments, EPA developed a Standard Monitoring Framework to reduce the complexity of the monitoring requirements, coordinate the requirements among various regulations, and synchronize the monitoring schedules. This framework is discussed extensively in the January 30, 1991 final rulemaking to the May 1989 Notice [56 FR 3560]. The Agency also indicated that this framework will serve as a guide for future source-related monitoring requirements. The framework was developed based on the proposed requirements, the options and requests for comments EPA discussed in the proposal, and the comments received by EPA.

The use of a Standard Monitoring Framework for the contaminants in today's rule was supported by many of the comments received. Commenters cited the efficient use of resources as the major reason to synchronize the monitoring requirements.

EPA believes that using a Standard Monitoring Framework satisfies the comments that recommended reducing the complexity of the requirements, synchronizing monitoring schedules, standardizing regulatory requirements, and giving regulatory flexibility to States and systems to manage monitoring programs. EPA believes these changes will reduce costs by combining monitoring requirements for the contaminants regulated by the January 30, 1991 rule and today's rule (i.e., the presence of multiple contaminants can be evaluated in a single laboratory sample and analysis, or by a single vulnerability assessment) and will promote greater voluntary compliance by simplified and standardized monitoring requirements.

Use of the framework envisions a cooperative effort between EPA and States. The monitoring requirements promulgated today are the minimum federal requirements necessary to ascertain systems' compliance with the MCLs. In some cases, States will increase the monitoring frequencies beyond the federal minimums to address site-specific conditions.

For all contaminants contained in today's rule, minimum (or base) monitoring requirements requirements may be increased or decreased by States based upon prior analytical results and/or the results of a vulnerability assessment. The monitoring requirements outlined today follow to a large extent the requirements proposed on July 25, 1990. In the July 1990 proposal EPA stated as a goal to efficiently utilize State and utility resources and be consistent with monitoring requirements previously promulgated by EPA. EPA believes that today's requirements meet that goal.

a. *Three-, six-, nine-year cycles.* In order to standardize the monitoring schedule for different regulations, EPA has established nine-year compliance cycles. Each nine-year compliance cycle consists of 3 three-year compliance periods. All compliance cycles and periods run on a calendar year basis (i.e., January 1 to December 31). The January 30, 1991 rule established the first nine-year compliance cycle beginning January 1, 1993 and ending December 31, 2001; the second cycle beginning January 1, 2002 and ending December 31, 2010; etc. Within the first nine-year compliance cycle (1993 to 2001), the first compliance period begins January 1, 1993 and ends December 31, 1995; the second begins January 1, 1996 and ends December 31, 1998; and the third begins January 1, 1999 and ends December 31, 2001.

In the January 1991 Notice, EPA required that initial monitoring (which was defined as the first full three-year compliance period beginning 18 months after the promulgation date of a rule) must begin in the first full compliance period after the effective date of the final rule. EPA solicited comments on this issue in the November 29, 1991 NOA and is modifying initial monitoring, as described above. For today's regulation, the effective date is January 17, 1994. The next full three-year compliance period after this effective date begins January 1, 1996. After reviewing comments received, the Agency has decided that systems serving 150 or more service connections must conduct initial monitoring during the January 1, 1993 to December 31, 1996 period and those serving less than 150 service connections must conduct initial monitoring during the January 1, 1996 to December 31, 1998 period. EPA believes the phase-in of monitoring based on system size will increase public health protection to the public by identifying noncompliance earlier for larger systems which serve a large fraction of the population (and which would have been required to monitor these contaminants in any event under the "unregulated contaminant" requirements of the January 1991 rule). At the same time, the phase-in will allow States, small systems, and laboratories more time to effectively implement today's rule for small systems. EPA believes this is an appropriate balancing of the need to identify noncomplying systems through monitoring, and the implementation burden on States and laboratories. This change would synchronize the monitoring schedule for the 23 contaminants in this rule with those promulgated for other SOCs and IOCs in the January 30, 1991 notice.

Under the July 1990 proposal, monitoring for the contaminants in this rulemaking would have been required to be initiated no later than November 1993 (i.e., the effective date of this rulemaking). EPA does not believe that changing the initial monitoring schedule to begin January 1993 instead of November 1993 for systems with 150 or more service connections will significantly affect costs for those systems. Under this schedule, States must establish an enforceable monitoring schedule for each system during the initial three-year compliance period. States have the discretion to schedule systems by size, vulnerability, geographic location, laboratory access, or by other factors. In some cases systems will not need to conduct monitoring until the latter part of the first three-year period, rather than needing to start monitoring immediately as of January 1993 (see discussion of the Standard Monitoring Framework at 56 FR 3560). In addition, EPA believes there will be a decrease in costs due to the effects of synchronizing the monitoring requirements in this rule with those of earlier rules—e.g., there will be a cost savings resulting from a system's ability to evaluate the presence of multiple contaminants with the analysis of a single sample, and to perform vulnerability assessments covering multiple contaminants.

Several commenters believed that States would be unable to develop adequate certified laboratory capacity in order to monitor during the 1993–1995 period. EPA has responded to this concern by encouraging provisional certification of laboratories, as discussed above.

b. *Base monitoring requirements.* In order to standardize the monitoring

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requirements, EPA has established base (or minimum) monitoring frequencies for all systems at each sampling point. These base monitoring frequencies apply to all community and non-transient water systems. In cases of detection or non-compliance, EPA has specified increased monitoring frequencies from the base. These increases are explained below. Systems will also be able to decrease monitoring frequencies from the base requirements by obtaining waivers from the State where a State permits such waivers. Decreases from base monitoring requirements through waivers are discussed in general under the section on decreased monitoring and in the discussion of monitoring frequency for each class of contaminants.

In most cases, these increased or decreased frequencies are similar to the frequencies proposed in July 1990. Specific changes are discussed below under each contaminant group.

Inorganic contaminant base requirements are the same as proposed—one sample at each sampling point every three years for groundwater systems and annually for surface water systems. Modification of base requirements for VOCs is discussed below in the section on VOC monitoring frequency.

For the non-volatile synthetic organic compounds (SOCs), EPA proposed that monitoring was not required unless the State determined that the system was vulnerable based upon a State-conducted assessment. EPA requested comment on the appropriate time frame for completing these assessments. If the State determined that a system was vnlerable to these SOCs, systems would be required to monitor on a three- or five-year schedule depending upon system size and whether contaminants were detected.

The July 1990 notice also included an alternative monitoring scheme which would require all CWSs and non-transient, non-community water systems (NCWSs) to monitor for the non-volatile SOCs at specified (base) frequencies. Most comments EPA received opposed a round of initial monitoring by all systems. These commenters cited the lack of occurrence of these contaminants in drinking water and the expense of monitoring. Several commenters questioned the availability of sufficient laboratory capacity.

After reviewing and evaluating the comments on monitoring for the SOCs in the May 1989 Notice, EPA adopted an alternative monitoring approach which requires systems to monitor at specified base frequencies unless the requirements are waived (either reduced or eliminated) by the State. The reasons for this change are given in the January 1991 rule [56 FR 3560]. In summary, the requirement that all systems monitor for these contaminants is more protective of health than were the proposed requirements because systems will be required to monitor if the State does not conduct a vulnerability assessment, or does not approve a vulnerability assessment conducted by the system. The result of this change is that there will always be an enforceable requirement in the absence of a State waiver.

In today's rule EPA is adopting the same monitoring approach for the SOCs. EPA believes that the cost impact of this approach is the same as under the proposed scheme provided a vulnerability assessment is conducted and a waiver is granted.

EPA has combined the above change with the provision that public water systems may conduct their own vulnerability assessments and, at the State's discretion, may obtain a waiver if they are determined not to be vulnerable (see waiver discussion below). EPA has shifted the responsibility to conduct vulnerability assessments from States to systems because the vulnerability assessment is a monitoring activity that historically has been a system responsibility. Each individual system can decide whether to conduct a vulnerability assessment (rather than simply going right to monitoring) based on cost, previous monitoring history, and coordination with other vulnerability type assessments (i.e., sanitary surveys, Wellhead Protection Assessments). In addition, because of States' indicated resource shortfalls, many States might not conduct vulnerability assessments. Though EPA is permitting systems to conduct vulnerability assessments, approval of waivers based on those vulnerability assessments rests with the States. EPA believes the changes outlined above address, in part, the State resource issue and will result in adequate monitoring and enforceable drinking water standards.

Based on limited occurrence data, EPA anticipates that most systems would qualify for a waiver from monitoring for most SOCs in today's rule. In cases where a system is not granted a waiver by the State, it will be required to monitor at the specified base frequency. In sum, for the reasons specified above, all systems will be required to monitor for all SOCs with an opportunity for reduced monitoring based upon a vulnerability assessment.

c. *Volatile Organic Chemicals (VOCs).* In order to standardize the monitoring requirements for all VOCs, EPA promulgated on July 1, 1991 some modifications to the monitoring requirements for the 18 VOCs in two previous rules (July 8, 1987 and January 30, 1991 **Federal Register** Notices). The comments submitted to EPA during the comment period for the January 1991 notice revealed support for synchronization of the monitoring requirements and schedules. Therefore, the monitoring requirements in today's rule are identical to the requirements for these previously regulated VOCs [56 FR 39267].

d. *Increased monitoring.* In general, today's rule requires monitoring frequencies to increase when a contaminant is measured at a certain concentration. These concentrations are specified in each rule, and vary by class or toxicity of the contaminant. In today's rule, consistent with the monitoring requirements set forth in the January 1991 rule for other inorganic contaminants, VOCs, and SOCs, these "trigger" concentrations are set at (1) the MCLs for the inorganic contaminants; and (2) the analytical detection limits for VOCs and SOCs. The detection limit for each VOC is 0.0005 mg/1. The SOC detection limits are the method detection limits given in Table 14 and § 141.24(i)(18). The rationale for varying the detection limits for increased monitoring is addressed in each section for the contaminant monitoring frequencies below (also see the January 1991 rule, 56 FR 3560–68).

After exceeding the trigger concentration for each contaminant, systems must immediately increase monitoring to quarterly (beginning in the subsequent quarter after detection) to establish a baseline of analytical results. Groundwater systems are required to take a minimum of two samples and surface water systems must take four samples before the State may permit less frequent monitoring. EPA is requiring surface water systems to take a minimum of four samples (rather than the two samples required for groundwater systems) because surface water is generally more variable than ground water and, consequently, additional sampling is required to determine that the system is "reliably and consistently" below the MCL. Today's rule allows a State, after a baseline is established, to reduce the quarterly monitoring frequency if the system is "reliably and consistently" below the MCL. "Reliably and consistently" means that the State has enough confidence that future sampling results will be sufficiently below the MCL to justify reducing the quarterly

monitoring frequency. At a minimum, all individual samples should be below the MCL. Systems with widely varying analytical results or analytical results that are just below the MCL would not meet this criterion. In all cases, the system remains on a quarterly sampling frequency until the State determines that the system is "reliably and consistently" below the MCL. EPA is adopting this approach based on comments received on the May 1989 and July 1990 proposed rules that suggested the EPA allow States to modify the monitoring schedules in those systems which are less than the MCL. EPA believes this approach will result in consistency among the regulatory requirements for the different classes of contaminants.

In the July 1990 proposal, EPA requested comment on whether EPA should reduce the three year quarterly monitoring requirement to one year of quarterly monitoring in situations where initial monitoring shows particularly low levels of detection relative to the levels of concern (i.e., MCLs) or in situations where cleanup activities have resulted in low levels of detection. Several commenters indicated that a minimum of 12 quarters after monitoring had been increased by a trigger level was too long and supported a reduction in the monitoring requirements in cases such as these. These commenters suggested that EPA should require sufficient monitoring to establish a baseline. In the January 1991 Notice EPA prescribed a minimum of two samples for groundwater systems and four samples for surface water systems to establish a baseline. EPA is adopting the same approach today because the Agency agrees with commenters who pointed out that systems whose analytical results remain below the MCL do not pose a health threat.

In the July 1990 proposal, the Agency proposed to reduce the repeat monitoring requirements when a contaminant is consistently detected at less than 50 percent of the MCL. Many commenters objected to this trigger, stating that it was "arbitrary". The Agency modified this requirement in the January 1991 notice with respect to other contaminants to give States additional flexibility to reduce monitoring for those systems whose analytical results are "reliably and consistently less than the MCL" (see §§ 141.23(c)(8), 141.24(f)(11)(ii) and 141.24(h)(7)(ii) 56 FR 3560–68, 3590, 3594, 3596). EPA has decided that systems meeting this criteria are also eligible for reductions from the increased monitoring frequency requirements for the contaminants in today's rule.

e. *Decreased monitoring.* Systems may decrease monitoring from the base requirement by receiving a waiver from the State. State waivers may either eliminate the monitoring requirement for that compliance period (for SOCs) or reduce the frequency (for inorganics and VOCs). Waivers are either based on a review of established criteria ("a waiver by rule") or by a vulnerability assessment.

A "waiver by rule" is based simply on meeting certain criteria set out in EPA regulations and based, for example, on previously collected analytical results. For example, § 141.23(c) (originally adopted in the January 1991 notice and, by this notice, applicable to the contaminants in today's rule) specifies that States may grant "waivers by rule" to systems for five inorganic contaminants. The waivers are effective for up to nine years (or one compliance cycle). In order to qualify for a waiver, a system must have a minimum of three previous samples (including one taken after January 1, 1990) with all analytical results below the MCL. The State must consider a variety of issues in making a "waiver by rule" determination, such as: (1) Reported concentrations from all previous monitoring, (2) degree of variation in reported concentrations, and (3) other factors which may affect contaminant concentrations such as groundwater pumping rates, changes in the system's configuration, changes in the system's operating procedures, or changes in stream flows or characteristics.

A "waiver by vulnerability assessment" may take one of two forms. The first involves a determination as to whether a given contaminant which does not occur naturally is or was used, manufactured, and/or stored in an area nearby the system. If the contaminant is not used, manufactured, and/or stored nearby, the system can receive a "use waiver." Second, if a "use waiver" cannot be granted, a system may conduct a thorough assessment of the water source to determine the system's susceptibility to contamination. Susceptibility considers: (1) Prior analytical and/or vulnerability assessment results, (2) environmetal persistence and transport, (3) how well the source is protected, (4) wellhead protection program reports, and (5) elevated nitrate levels. Systems with no known susceptibility to contamination (based upon an assessment of the above factors) may be granted a "susceptibility waiver."

All waivers must be granted on a contaminant-by-contaminant basis. However, systems and States will find it economical to apply for and grant the waiver for those contaminants that may be analyzed using the same analytical methods. This packaging of assessments and State decision making will yield significant cost savings to both systems and State primacy programs.

Waivers for the SOCs and VOCs may be granted after the system conducts a vulnerability assessment and the State determines the system is not vulnerable based on that assessment. A waiver must be renewed during each compliance period. Waivers for inorganic contaminants may be granted for up to nine years. If a system does not receive a waiver by the beginning of the year in which it is scheduled to monitor, it must complete the base monitoring requirement.

One change that EPA is adopting in § 142.92 is that EPA may rescind waivers issued by a State where the Agency determines that the State has issued a significant number of inappropriate waivers. EPA does not intend to utilize this provision except in special situations where the State has not followed its own established and EPA-approved protocols and procedures (see also the discussion on State primacy requirements). If a waiver is resinded, the system must monitor in accordance with the base requirements in today's rule.

f. *Vulnerability assessments.* EPA received numerous comments on the issue of vulnerability assessments. In the July 1990 Notice, EPA requested comment on several alternatives for the process of making vulnerability decisions. One option involved requiring States to assess the overall hydrogeological vulnerability of each water source supplying a PWS instead of making contaminant-specific determinations for each contaminant at each PWS. Another option was to assess the overall use of each contaminant within specific regions, focusing on potential sources of contamination within a defined region. EPA also requested comment on whether systems should be required to monitor for all contaminants that are subject to the same analytical technique. EPA proposed to allow States to conduct area-wide assessments (based on contaminant use information) or one assessment of the water source susceptibility to contamination (based on hydrogeological information).

Commenters generally supported the use of vulnerability assessments as a first step in lieu of requiring all systems to monitor. Different opinions were expressed regarding how to conduct these assessments.

Some commenters indicated that EPA should provide detailed guidelines that States would use to make vulnerability determinations. Examples cited included the development of environmental fate documents, identification and characterization of the available sources of information regarding the presence of contaminants, and disposal facilities that may impact water sources, among others. Other commenters questioned whether State agencies would have sufficient financial and human resources to collect the necessary information to conduct an assessment of a water system's vulnerability.

EPA has decided that a detailed protocol for what is usually a very site-specific analysis is not appropriate. Instead, EPA desires that each State develop its own specific vulnerability assessment procedures that use the general guidelines established by EPA. The Agency believes that the States are in the best position to develop detailed protocols. If a State chooses not to develop these procedures, systems cannot receive waivers and must monitor at the base requirements.

In the proposal, EPA listed the following criteria systems must consider in conducting vulnerability assessments for SOCs: Previous analytical results; proximity of the system to sources of contamination; environmental persistence; protection of the water source; and nitrate levels as an indicator of potential contamination by pesticides. For VOCs, the criteria were previous monitoring results, number of people served, proximity to a large system, proximity to commercial or industrial use, storage or disposal of VOCs, and protection of the water source.

EPA received comments on the process of how to make vulnerability decisions. Comments ranged from allowing the use of area-wide assessment to contaminant-specific assessment for individual supplies. One commenter suggested combining two options proposed (assessing the overall hydrological vulnerability of the water supplies and assessing the overall contaminant use). EPA agrees with this comment and, as part of the earlier rulemaking for 38 contaminants, has made several changes to the vulnerability assessment criteria and the process to simplify the procedure [56 FR 3562]. Today's rule also adopts these changes. First, a two-step waiver procedure is available to all systems. Step #1 determines whether the contaminant that does not occur naturally is or was used, manufactured, stored, transported, or disposed of in the area. In the case of some contaminants an assessment of the contaminant's use in the treatment or distribution of water may also be required. "Area" is defined as the watershed area for a surface water system or the zone of influence for a groundwater system and includes effects in the distribution system.

If the State determines that the contaminant was not used, manufactured, stored, transported, or disposed of in the area, then the system may obtain a "use" waiver. If the State cannot make this determination, a system may not receive a "use" waiver but may receive a "susceptibility" waiver, discussed below. Systems receiving a "use" waiver are not required to continue on to Step #2 to determine susceptibility. EPA anticipates that obtaining a "use" waiver will apply mostly to the SOCs where use can be determined more easily than for VOCs. Obtaining a "use" waiver for the VOCs will be limited because VOCs are used extensively in the United States. If a "use" waiver cannot be given, a system may conduct an assessment to determine susceptibility, Step #2.

Susceptibility considers prior occurrence and/or vulnerability assessment results, environmental persistence and transport of the chemical, the extent of source protection, and Wellhead Protection Program reports. Systems with no known "susceptibility" to contamination based upon an assessment of the above criteria may be granted a waiver by the State. If "susceptibility" cannot be determined, a system is not eligible for a waiver. A system must receive a waiver by the beginning of the calendar year in which it is scheduled to begin monitoring.

Several commenters requested that EPA permit "area wide" or geographical vulnerability assessment determinations. Though EPA at this time is skeptical that "area wide" determinations can be conducted with sufficient specificity to predict contamination over a large area, the final rule allows this option when States submit their procedures for conducting vulnerability assessments to determine "use" waivers.

EPA's goal is to combine vulnerability assessment activities in other drinking water programs with today's requirements to create efficiencies. EPA also desires to use the results of other regulatory program requirements, such as Wellhead Protection Assessments, to determine a system's vulnerability to contamination. Systems and States may schedule today's assessments with sanitary surveys required under the Total Coliform Rule [54 FR 27546], watershed assessments, and other water quality inspections so that all regulatory, operational, and managerial objectives are met at the same time.

In the July 25, 1990 Notice, EPA solicited comments on whether the contaminant source assessments conducted under State Wellhead Protection Programs (see section 1428 of the SDWA) could be used for the vulnerability assessments and what the relationship of the two assessments should be. Commenters were supportive of this concept but requested that specific guidance be developed to determine how this might be accomplished and where it is appropriate.

EPA intends to issue a guidance that will give flexibility to States in conducting vulnerability assessments and allow them and local public water systems to meet these and similar requirements under the Wellhead Protection Program, satisfying the requirements of both programs with one assessment. Additionally, this combined assessment approach may be used to meet similar requirements under the evolving Underground Injection Control (UIC)—Shallow Injection Well Program.

g. *Relation to the Wellhead Protection (WHP) program.* As stated in the January 1991 Notice, the Agency plans to integrate particular elements of the Public Water System, Wellhead Protection, and UIC programs related to contaminant source assessments around public water supply wells. Specifically, the Agency plans to prepare a guidance document on groundwater contaminant source assessment that merges the vulnerability assessment of the PWS program for SOCs and VOCs with the wellhead delineation and contaminant source which can be used to establish priorities of UIC wells. This integration is expected to assist State and local drinking water program managers responsible for groundwater supplies to more efficiently and effectively administer the portion of their programs addressing source protection and will be the basis for determining monitoring frequency. The guidance will give States flexibility in revising vulnerability/contaminant source assessments.

Section 1428 of the SDWA requires each State to submit a WHP program for EPA review and approval in order to be eligible for grant funds to support the State's wellhead protection efforts. The implementation of WHP programs by States may be phased in to allow resources to be used most effectively. This matter can be addressed in the State WHP submittal.

When States submit WHP programs for approval in the future, program documents should address how the State will phase requirements for Wellhead Protection Areas (WHPAs) with other PWS regulations. In some States, to be most effective, this program integration may need to be accomplished through a coordinating agreement or other mechanism among several State agencies. The guidance would allow States to tailor their program provisions to conditions in the States, within broad guidelines. Information from the other related groundwater programs (such as Superfund, RCRA) will be useful in this assessment. This information also includes identification of sources not regulated under Federal programs, but perhaps regulated by States, such as septic tanks. Therefore, States may be able to meet similar requirements of these three programs through following a general set of guidance procedures.

A State may choose from several methods to delineate WHPAs. As long as the method is determined to be protective, a State may choose a simplified method described in "Guidelines for the Delineation of Wellhead Protection Areas" [USEPA, 1987a]. If a State desires more information for use in the decision-making process, it may choose more sophisticated methods identified in the "Guidelines." EPA has made available to States and local agencies computer software and training for use of the "Guidelines" to make the process of WHPA delineation less difficult.

WHPAs may incorporate recharge areas as long as they are within the jurisdiction of the agencies identified in the EPA-approved programs. However, WHPAs must meet the requirements of this rule if they are to be used to make monitoring waiver determinations. The State cannot accept a WHP program in lieu of a vulnerability assessment if the recharge area is not covered to meet all the requirements of this rule.

Once a WHPA is delineated, a State may desire to apply a range of assessment measures to define hydrogeologic vulnerability within the delineated area. A State may decide on a method of assigning priorities to the public water systems based on vulnerability, size, or other criteria acceptable to EPA.

EPA's Ground-Water Protection Division has developed a document entitled "Managing Ground Water Contamination Sources in Wellhead Protection Areas: A Priority Setting Approach" [USEPA, 1991h] to help States and local water supply managers prioritize potential contaminant sources in carrying out their programs for resource protection, a concern of one commenter. This system could also be used in setting monitoring priorities but was not designed specifically for that application. The States may use the regulatory mechanisms available to them (e.g., RCRA permits, NPDES permits) to determine the point sources of regulated, and potentially contaminating, substances in or near areas needing protection, such as wellhead and recharge areas.

h. *Ground water policy.* The Agency now has a new, integrated ground-water policy. In July, 1990, EPA established a Ground-Water Task Force to review the Agency's ground-water protection policies. The outcome of this effort is the Ground-Water Task Force Report, which includes EPA's Ground-Water Protection Principles [USEPA, 1991e]. The Principles are intended to foster more effective and consistent decision-making in all Agency decisions affecting ground water.

With respect to prevention, the Principles call for ground water to be protected to ensure that the nation's currently used and reasonable expected drinking water supplies, both public and private, do not present adverse health effects and are preserved for present and future generations. Ground water should also be protected to ensure that ground water that is closely hydrologically connected to surface waters does not interfere with the attainment of surface water quality standards, which are designed to protect the integrity of associated ecosystems. Ground-water protection should be achieved through a variety of means including: pollution prevention programs aimed at eliminating and minimizing the amount of pollution that could potentially affect ground water, source control, siting controls, the designation of wellhead protection areas and future water supply areas, and the protection of aquifer recharge areas. Efforts to protect ground water must consider the use, value, and vulnerability of the resource, as well as social and economic values.

With respect to remediation, the Principles call for activities to be prioritized to minimize human exposure to contamination risks first, and then to restore currently used and reasonably expected sources of drinking water and ground water closely hydrologically connected to surface waters, whenever such restorations are practicable and attainable.

With respect to Federal, State, and local responsibilities, under the Principles, the primary responsibility for developing and implementing comprehensive ground-water protection programs continues to be vested with the States. An effective ground-water protection program must link Federal, State, and local activities into a coherent and coordinated plan of action. EPA should continue to improve coordination of ground-water protection efforts within the Agency and with other Federal agencies with ground-water responsibilities.

This rule responds to the Ground-Water Protection Principles in the following ways. With respect to the Principles' emphasis on prevention, this rule sets MCLs and monitoring frequencies for 18 synthetic organic and five inorganic chemicals. These MCLs will be used for ground water protection (i.e., as an indication of possible need for source control) as well as surface water protection. The rule also recognizes State wellhead protection areas as a method of prevention and a basis for granting waivers.

With respect to the allocation of Federal, State, and local responsibilities, this rule gives States the authority to grant reductions in monitoring frequency, based on a vulnerability assessment. The guidance document for this rule will give flexibility to the States in conducting vulnerability assessments. As a method of coordination among the PWS, UIC, and Wellhead Protection Programs, the guidance document will allow States to use the methods and approaches of the Wellhead Protection Program in meeting the requirements for vulnerability assessments.

i. *Initial and repeat base monitoring.* Initial monitoring is defined as the first full three-year compliance period that occurs after the regulation is effective. As described in the January 1991 Notice [56 FR 3564], under the standard monitoring framework, States have flexibility to schedule monitoring for each system during the three-year compliance period. As discussed earlier, all systems must monitor at the base monitoring frequency unless a waiver is obtained. The initial monitoring period for today's regulation begins January 1, 1993 and ends December 31, 1995 for public water systems having 150 or more service connections. For systems having less than 150 connections, the initial monitoring period will be from January 1, 1996 through December 31, 1998. After the system fulfills the initial (or first) base monitoring requirement, it must monitor at the repeat base frequency. Generally the repeat base frequency is the same as the initial monitoring frequency but in some instances the base monitoring frequency may be

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reduced based on previous analytical results.

Also, under today's rule, EPA is requiring the States to establish a sampling schedule that may result in approximately one-third of the systems monitoring during reach of the three years of a compliance period at the State's discretion. States will have the flexibility to designate which systems must monitor each year based upon criteria such as system size, vulnerability, geographic location, and laboratory access. EPA believes that allowing States the discretion to schedule monitoring for each system during the compliance monitoring period will enable States to manage their drinking water programs more efficiently.

In cases where EPA is the primacy authority for today's regulation (i.e., where the State has not adopted regulations corresponding to the NPDWRs in today's rule by its effective date, and in States and on Indian lands where EPA retains primary enforcement responsibility), systems will be required to complete monitoring within 12 months after notification by EPA. In such cases, EPA intends to use a prioritizing scheme similar to the kind that the States will use. This should minimize the disruption to the regulated community when the State does adopt the requirements and begins to develop its own monitoring schedules for systems within the State.

Once a system is scheduled for the first, second, or third year of a compliance period, the repeat schedule is set for future compliance periods. For example, if a system is scheduled by the State to complete the initial base requirement by the end of the first year, all subsequent repeat base monitoring for that system must be completed by the end of the first year in the appropriate three-year compliance period. This is necessary to prevent systems from monitoring in the first year of the first compliance period and the third year of the repeat base period.

4. Monitoring Frequencies

a. *Inorganics*—(1) *Initial and repeat base requirements.* In the July 1990 Notice, EPA proposed that surface water systems monitor annually and groundwater systems monitor every three years. Some commenters supported that frequency. Other commenters suggested that the Agency should allow waivers based on vulnerability assessments for the initial round of monitoring. The monitoring frequencies in today's rule are identical to these proposed frequencies. EPA disagrees with commenters regarding the issuance of waivers in lieu of an initial round of monitoring. A reduction in monitoring frequency may be appropriate if the levels found are reliably and consistently below the MCL (see discussion on decreased monitoring below). Systems with 150 or more service connections will be required to take the initial base sample for each inorganic during the initial compliance period of 1993 to 1995 (subject to State scheduling). Surface water systems with 150 or more service connections that are on an annual sampling schedule are required to start in 1993.

(2) *Increased monitoring.* In the January 1991 Notice, EPA added a requirement that systems that exceed the MCL (either in a single sample or with the average of the original and repeat sample) and which, consequently, are out of compliance must immediately (i.e., the next calendar quarter after the sample was taken) begin monitoring quarterly. Systems must continue to monitor quarterly until the primacy agent determines that the system is "reliably and consistently" below the MCL. Groundwater systems must take a minimum of two samples and surface water systems must take a minimum of four samples after the last analytical result above the MCL, before the State can reduce monitoring frequencies back to the base requirement (i.e., annually for surface systems and every three years for groundwater systems).

EPA made this change for several reasons. First, it is consistent with the monitoring requirements contained elsewhere in this rule that more frequent monitoring occur in instances of non-compliance. Second, EPA believes that systems that are out of compliance should, in general, monitor more frequently to determine the extent of the problem. If EPA has not made this change, groundwater systems that exceed the MCL could continue to monitor every three years. EPA believes the previous frequencies for ground and surface systems were not adequate to protect the public in those cases where systems exceeded the MCL.

(3) *Decreased monitoring.* In both the May 1989 and the July 1990 Notices, EPA proposed that systems be allowed to reduce the monitoring frequency to no less frequent than once every 10 years between monitoring episodes provided a system had previously taken three samples that were all less than 50 percent of the MCL. States would base their decision on prior analytical results, variation in analytical results, and system changes such as pumping rates or stream flows/characteristics.

EPA received numerous comments on the 50 percent trigger for reduced monitoring with most commenters opposing the 50 percent trigger, calling it arbitrary. In the January 1991 notice, EPA decided to eliminate the 50 percent trigger and change the condition for reduced monitoring to require three compliance samples, all of which are "reliably and consistently" less than the MCL, to give the States additional flexibility to decide which systems are eligible for reduced monitoring. Systems meeting this criterion are also eligible for reduced monitoring for the contaminants in today's rule. While States have discretion in making this determination, EPA believes that as a minimum, all individual samples should be below the MCL before the determination should be made.

Most commenters supported the 10-year time frame as a reasonable monitoring frequency for reduced monitoring. Because EPA has adopted a 3/6/9-year compliance cycle, EPA has changed the maximum reduced monitoring frequency from the proposed 10 years to 9 years to gain consistency in its regulations. EPA believes this change will have a minimal impact on systems. EPA is requiring at least one of the three previous samples to be taken since January 1, 1990. The other two samples could be taken at any time after January 1, 1988. Because the reduction in monitoring to every nine years begins in the 1993–2001 compliance cycle, EPA believes that one sample must be recent (i.e., taken after January 1, 1990 for systems scheduled to monitor in 1993) to preclude unduly long time frames occurring between samples. Data obtained to satisfy monitoring requirements for unregulated contaminants specified in the January 1991 notice may be used to reduce the monitoring frequencies. Systems receiving a waiver may monitor at any time during the nine-year compliance cycle, as designated by the State.

b. *Cyanide.* In the July 1990 Notice, EPA proposed monitoring requirements for the IOCs applicable to all community (CWS) and non-transient non-community water systems. Several commenters disagreed with the requirement to monitor for cyanide at non-vulnerable systems. They argued that the main sources of cyanide contamination are industrial and manufacturing processes, not natural occurrence, and that it would be more appropriate to regulate cyanide under the requirements that apply to synthetic organic compounds (SOCs), which distinguish vulnerable and non-vulnerable systems.

The Agency agrees with these commenters and has changed the requirement for cyanide to require only

vulnerable systems to monitor, provided a waiver (by vulnerability assessment) is available and has been granted by the State.

Other commenters stated that the monitoring requirements for all the IOCs in today's notice should apply to vulnerable systems only, and that EPA should allow waivers based on vulnerability assessments for the initial round of monitoring. EPA disagrees with these commenters (except for cyanide because it does not occur naturally at concentrations near the MCL) because some minimum monitoring requirements for the inorganic contaminants will provide a baseline of data on the natural background levels expected for these contaminants. Systems may qualify for reduced monitoring once a baseline of data shows levels that are reliably and consistently below the MCL, thus decreasing the monitoring burden.

c. *Volatile Organic Contaminants (VOCs)*—(1) *Initial and repeat base requirements.* In the rule promulgated in July 1987 setting MCLs for eight VOCs, EPA required all systems to take four consecutive quarterly samples. Groundwater systems that conducted a vulnerability assessment and were judged not vulnerable, however, could stop monitoring after the first sample provided no VOCs were detected in that initial sample. Repeat frequencies for all systems vary by system size, detection, and vulnerability status.

On July 1, 1991, EPA amended the monitoring requirements for VOCs to streamline the requirements and to make all VOC requirements consistent [56 FR 30267]. For the contaminants in today's rule, the July 1990 proposal made distinctions in base requirements for VOCs between ground and surface water systems, less than and more than 500 service connections, and vulnerable and non-vulnerable systems. In today's final rule, to be consistent with the July 1991 rule, and for the reasons discussed there [56 FR 30267], EPA is requiring all groundwater systems as well as surface water systems to initially take four quarterly samples for the VOCs (dichloromethane, 1,2,4-trichlorobenzene, and 1,1,2-trichloroethane), regardless of size or vulnerability status. Systems that do not detect VOCs in the initial round of four quarterly samples are required to monitor annually beginning in the next calendar year after quarterly sampling is completed. For example, systems which complete quarterly monitoring in calendar year 1993 are required to begin annual monitoring in 1994. The State may allow groundwater systems which conducted three years of sampling and have not detected VOCs to take a single sample every three years thereafter. The reasons for these changes are further explained in the January 1991 notice [56 FR 3566].

In the May 1989 proposal covering 38 contaminants, EPA requested comment on whether vulnerable systems may take only one sample if no VOCs are detected in the initial year of monitoring. EPA's intent was to require quarterly sampling in vulnerable systems, but most commenters opposed a change to more frequent monitoring. Based on the comments received on that notice, EPA specified in the January 1991 final rule for 33 of the 38 contaminants that vulnerable systems will be required to take one annual sample (instead of four quarterly samples) if no VOCs were detected in the initial (or subsequent) monitoring. For consistency, EPA has adopted this same requirement for the VOCs in today's rule.

(2) *Increased monitoring.* In the proposal, systems detecting VOCs (defined as any analytical result greater than 0.0005 mg/1) were required to monitor quarterly. In today's rule, EPA is requiring systems that detect VOCs to monitor quarterly until the State determines that the system is "reliably and consistently" below the MCL. However, groundwater systems must take a minimum of two samples and surface water systems must take a minimum of four samples before the State may reduce the monitoring to the base requirement (i.e., annual sampling).

Systems remain on an annual sampling frequency even if VOCs are detected in subsequent samples, unless an MCL is exceeded (or if the State otherwise specifies). In this case, the system returns to quarterly sampling in the next calendar quarter until the State determines that the new contamination has decreased below the MCL and is expected to remain reliably and consistently below the MCL. This determination shall again require a minimum of four quarterly samples for surface water systems and two quarterly samples for groundwater systems.

EPA has made this change because some systems may detect VOCs at a level slightly above the detection limit. EPA believes that where the State can determine that contamination is "reliably and consistently" less than the MCL, those systems should be able to return to the base monitoring requirement (i.e., annually). Giving States the discretion to determine whether systems meet this criterion may allow States to give monitoring relief to some systems.

(3) *Decreased monitoring.* States may grant waivers to systems that are not vulnerable and did not detect VOCs while conducting base monitoring. Vulnerability must be determined using the criteria specified above in the discussion of vulnerability assessments. EPA anticipates that most systems will not be able to qualify for a "use" waiver because of the ubiquity of VOCs. However, systems conducting an assessment that considers prior occurrence and vulnerability assessments (including those of surrounding systems), environmental persistence and transport, source protection, Wellhead Protection Assessments, and proximity to sources of contamination may apply to the State for a "susceptibility" waiver. If the waiver is granted, systems are required to take one sample and update the current vulnerability assessment during two consecutive compliance periods (i.e., six years). The vulnerability assessment update must be completed by the beginning of the second compliance period. EPA has increased the time frame from five to six years to bring the five-year monitoring frequency in the proposal in line with the 3/6/9-year frequencies specified in the standard monitoring framework.

States have the discretion to set subsequent frequencies in systems that did not detect VOCs in the initial round of four quarterly samples and that are designated as not vulnerable based on assessment. The repeat monitoring frequency for groundwater systems meeting this criteria shall be not less than one sample every six years as discussed above. For surface water systems meeting this criteria, the repeat frequency is at State discretion.

d. *Synthetic Organic Chemicals (SOCs)*—(1) *Initial and repeat base requirements.* In the proposal, systems were not required to monitor for the non-volatile SOCs unless the State, on the basis of a vulnerability assessment, determined the system to be vulnerable. Once determined vulnerable by the State, a system would be required to take four consecutive quarterly samples. EPA requested comment on an alternative approach that would require all systems to monitor for all contaminants. As discussed below, today's requirements specify that all systems monitor for all SOCs by taking four quarterly samples every three years, unless decreased or increased monitoring requirements apply. All systems are eligible for waivers from the quarterly monitoring requirement, as

discussed in the section on decreased monitoring below.

Most comments on the proposal revolved around two issues—the requirement that systems monitor quarterly and the requirement that all systems monitor at the time of highest vulnerability. Many commenters stated that quarterly monitoring was not necessary to detect changes in contamination. Many commenters recommended annual monitoring for pesticides. After reviewing the information and comments submitted, EPA believes that quarterly monitoring remains the best scheme to determine contamination. Occurrence information available to EPA indicates that seasonal fluctuations from runoff and applications of pesticides may occur; thus, quarterly monitoring is better than annual monitoring to determine pesticide contamination. In some cases, States may consider it appropriate to require monitoring at greater frequencies than those specified by today's rule to better determine exposure. States have the option to require monitoring at greater frequencies than the federal minimums in today's rule. Systems, of course, may always monitor more frequently when they deem it prudent.

Most commenters opposed the requirement to monitor at the time of highest vulnerability, stating the highest vulnerability, stating that highest vulnerability cannot be predicted or determined. Several commenters stated that the requirement to monitor at the time of highest vulnerability was unenforceable. EPA agrees and eliminates this requirement from today's rule. However, States are advised to examine sampling practices of systems to assure that periods of likely contamination are not avoided. This is especially true for surface water systems monitoring for pesticides after rainfall and/or application of pesticides.

EPA proposed that systems conduct repeat monitoring every three or five years, depending on system size and ground/surface distinctions. In today's rule, the repeat monitoring frequency for all systems is set at four consecutive quarterly samples each three-year compliance period, unless decreased or increased monitoring requirements apply. EPA has made several adjustments for systems that do not detect contamination in the initial compliance period. After the initial monitoring round is completed, systems that serve 3,300 or more persons may reduce the sampling frequency to two samples in one year during each compliance period. Systems serving less than 3,300 persons may reduce the sampling frequency to one sample per compliance period. EPA has increased the frequency at which small systems must monitor in this rule from every five years to every three years, because EPA believes that this change will offer greater health protection. EPA believes that every five years is too long an interval to determine changes in consumer exposure.

EPA has made the granting of "use" waivers for pesticides easier in this rule by permitting States to grant "area wide" or "Statewide" waivers based upon pesticide use information. EPA anticipates that many systems will be able to obtain a "use" waiver. Therefore, the impact of the increased monitoring frequency discussed in the above paragraph should be minimal. For those systems not able to obtain a waiver (i.e., vulnerable systems), EPA believes it is appropriate to monitor at three-year intervals to determine contamination.

(2) *Increased monitoring.* EPA proposed that systems with 500 or less service connections that detect SOCs contamination monitor annually, while systems with more than 500 service connections that detect SOCs would monitor quarterly. EPA defined detection as greater than 50 percent of the MCL. Many comments revolved around the 50 percent trigger. Consistent with the above discussion concerning VOCs, EPA is redefining detection for SOCs to mean the method detection limit (as specified in the approved analytical method). EPA believes it is appropriate to use the method detection limit as the trigger for increased monitoring because detection implies that the potential for increasing contamination exists. Consequently, additional monitoring is required to determine the extent and variability of SOCs contamination. In today's rule, all systems that detect SOCs must comply with the baseline monitoring requirements (i.e., waivers are not available).

As described in the proposal, upon detection, all systems must immediately begin quarterly monitoring. The State may reduce the requirements to annual monitoring for SOCs after determining that samples are "reliably and consistently" below the MCL. A reduction to annual monitoring may occur after a minimum of two samples for groundwater and four samples for surface water systems. After three years of annual monitoring which remains "reliably and consistently" below the MCL, systems can return to the base monitoring requirement for SOCs (i.e., four quarterly samples every three years).

(3) *Decreased monitoring.* Systems that obtain a waiver from the monitoring requirements are not required to monitor. All systems are eligible for waivers in the first three-year compliance period of 1993 to 1995. As discussed above, EPA has simplified the vulnerability assessment procedures by allowing the system to assess whether the contaminant has been used, transported, mixed, or stored in the watershed or zone of influence. Where previous SOCs use in the area can be ruled out, systems may apply to the State for a use waiver. EPA's intent in promulgating this change is to make it easier for systems to obtain waivers in those situations where the chemical has not been used. States may be able to determine that the entire State or specific geographic areas of the State have not used the contaminant and consequently grant "area wide" waivers. Systems that cannot determine use may still qualify for a waiver by evaluating susceptibility according to the criteria discussed in the VOC section above. Waivers must be renewed every three years.

e. *Sulfates.* Some commenters believed that systems violating the sulfate MCL should not be required to monitor quarterly, because sulfate levels are stable, and additional monitoring would provide no new information. EPA has collected additional data on sulfate levels and agrees with the comment. However, as discussed above, EPA is not setting a final MCL for sulfate today and is, therefore, not setting final monitoring requirements for sulfate. For the time being, monitoring for sulfate will continue to be required under the provisions for monitoring of unregulated contaminants established in the January 1991 rulemaking.

5. Other Issues

a. *Compliance determinations.* One commenter opposed the use of a single sample to determine compliance with the IOC MCLs for systems that monitor yearly or less frequently. The commenter argued that this procedure provides an advantage to the system required to monitor quarterly, because if an annual average is the basis for compliance an entire year may go by before the system monitoring quarterly is deemed out of compliance and public notification is required, whereas the system monitoring annually is deemed out of compliance immediately if it violates the MCL once. The commenter recommended that all systems monitor

on a quarterly basis with compliance based on a running average.

EPA believes that quarterly monitoring is not generally necessary for the IOCs and is no longer requiring initial quarterly monitoring. However, if the system exceeds the MCL at any sampling point, then the system is out of compliance (based on the original and one confirmation sample, at State discretion) and quarterly monitoring is thereafter required. For those systems monitoring more frequently than annually, the Agency requires that if any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately and public notification is required. In addition, a system, if it wishes, may apply to the State to conduct more frequent monitoring of the IOCs than the minimum frequencies specified in this regulation (see § 141.23(h)). Under § 141.23(i), systems that are monitoring at a greater than annual frequency determine their compliance by a running annual average of results.

EPA believes that this approach puts emphasis on monitoring on those systems that are of greatest concern while providing cost savings to most systems.

b. *Confirmation samples.* Several commenters stated that collection of a confirmation sample within 14 days of the original sample is unrealistic. EPA continues to believe that the 14-day period is reasonable for the collection of a confirmation sample since it is important to get a conclusive determination of any MCL exceedance as soon as possible. In addition, one commenter stated that confirmation of negative samples should not be required due to cost constraints. In response, the collection of confirmation samples is not a federal requirement, but a State option. The Agency agrees that States should consider costs in making decisions about confirmation samples, especially for negative results.

c. *Compositing.* EPA proposed to allow systems, at the discretion of the State, to composite up to five samples. Compositing must be done in the laboratory. Some commenters supported compositing as a methodology to cut costs. In this final rule, EPA is limiting compositing among different systems to only those systems serving fewer than 3,300 people. Systems serving greater than 3,300 persons will be allowed to composite but only within their own system. EPA also requested comments on whether State discretion on compositing is necessary or whether systems can composite automatically without State approval. Several States opposed this change; consequently, the final rule is unchanged from the proposal. EPA believes that compositing is to be used only when cost savings are important and systems alone should not make that determination. Today's rule limits compositing to those contaminants where the MDL is less than one-fifth of the MCL, in order to avoid situations where compositing of five samples would mask the presence of a contaminant in one sample by dilution with the other samples.

d. *Polynuclear Aromatic Hydrocarbons (PAHs).* In the July 1990 proposal, EPA requested comments on the following monitoring issues related to the PAHs: (1) Should fluoranthene and naphthalene be used as indicators of the potential presence of carcinogenic PAHs; (2) should EPA require sampling at the tap; and (3) should PAH monitoring be at State discretion if the State bans the use of coal tar in distribution systems. Below is a summary of the comments on these issues and EPA's response.

*Use of indicators:* Commenters generally opposed the use of non-regulated PAHs such as naphthalene and fluoranthene to determine a system's vulnerability to PAH contamination and recommended that systems monitor only for BaP (and any other PAHs the Agency decides to regulate). For the reasons stated earlier in today's notice, EPA is promulgating an MCLG and an MCL for BaP only at this time. On reconsideration, EPA agrees that naphthalene and fluoranthene are not necessarily good indicators for the presence of BaP in water. On reconsideration of the data, EPA acknowledges that BaP is much less soluble than naphthalene and fluoranthene, and has not been found to co-occur with them. Therefore, EPA has decided against the use of these PAHs as indicators of BaP contamination in drinking water. This is consistent with the commenters' recommendations.

*Sampling at the tap:* EPA received numerous comments on this issue. Most commenters opposed sampling at the tap, claiming that it is neither acceptable nor appropriate to sample at the tap for PAHs. These commenters argued that coal tar, which may be a major source of PAH contamination in the distribution system, is not used in home plumbing and that the tap is a location beyond the control of the water utility. Some commenters suggested, however, that sampling in the distribution system, downstream of the lined section of the system, may be appropriate. One commenter further stated that monitoring for PAHs originating from the distribution system should be a "one-time effort" under worst case conditions.

Elsewhere in today's rulemaking, EPA has explained that it is regulating only BaP within the group of PAHs. MCLs have not been set for other PAHs that the proposal indicated EPA was considering regulating.

Further, there are data indicating that BaP does not leach from materials in the water delivery system (i.e., distribution system pipe materials, storage tanks), as noted by one commenter. Survey of data on leaching of BaP from U.S. water storage/distribution systems has revealed that data are available for at least 36 U.S. cities. In these studies water samples were collected from the treatment site as well as from one or more locations in the storage and/or distribution system. The increase in concentration of BaP from distribution systems in these studies has ranged from none to 2.9 ppt [Saxena et al., 1978; Robeck, 1978; Zoldak, 1978; McClanahan, 1978; Alben, 1980; Basu et al., 1987]. Laboratory studies involving exposure of tap water to panels coated with coal tar coating support these findings [Alben, 1980; Lampo, 1980]. Higher BaP concentration (78–110 ppt) in the water was reported only in one laboratory study where rigorous leaching conditions not representing actual distribution/storage system exposure were used [Sorrell et al., 1980]. In addition, coal tar and asphaltic linings are not generally used in home plumbing which is usually copper, galvanized, or plastic piping.

Based on these studies, EPA has concluded that contribution of BaP from coal tar-lined storage and distribution systems is very small overall and is only a small percentage of the final BaP MCL. Therefore, EPA has decided that there is no need to set controls for BaP contributions from the materials in the water delivery system. This contaminant is appropriately controlled by controlling its levels in source water, as is true for the other contaminants in today's rule. Consequently, EPA has determined that there is no need for today's rule to require monitoring at the tap or anywhere else in the distribution system.

*Coal tar ban/States' discretion for monitoring.* Commenters generally opposed banning the use of coal tar and asphaltic linings in the distribution system and storage tanks at this time. One commenter suggested that additional evaluation of the potential risks due to the use of coal tar linings in water distribution systems is necessary before recommending discontinuation of their use. Another commenter stated

that the banning of the use of coal tar may not be warranted, especially in light of the ubiquitousness of PAHs in foodstuffs and consumer products. One commenter indicated that its water supplier had halted the further use of coal tar materials in the late 1970s. This commenter indicated it has found cost-effective alternatives for both pipes and tanks.

As noted above, the Agency finds that the contribution of BaP from coal tar lined pipes and storage tanks is generally very small relative to dietary sources, as one commenter stated. It is possible, however, that there may be leaching of PAHs other than BaP due to coal tar in the distribution system. Thus, the Agency believes that States should carefully evaluate any actions related to this potential source of contamination (such as banning the further use of coal tar) to be sure that action is warranted.

With respect to State discretion concerning monitoring requirements if it bans the use of coal tar, one commenter stated that vulnerable systems should still be required to monitor, while another commenter indicated that monitoring should be at State discretion, and a third commenter recommended that monitoring at the tap be at State discretion. EPA has carefully considered these comments and is not requiring that systems monitor for BaP in the distribution system, as discussed above.

*D. Variances and Exemptions*

1. Variances

Under section 1415(a)(1)(A) of the SDWA, EPA or a State that has primacy may grant variances from MCLs to those public water systems that cannot comply with the MCLs because of characteristics of their water sources. At the time a variance is granted, the State must prescribe a compliance schedule and may require the system to implement additional control measures. The SDWA requires that variances may only be granted to those systems that have installed BAT (as identified by EPA). However, in limited situations a system may receive a variance if it demonstrates that the BAT would only achieve a *de minimis* reduction in contamination (see § 142.62(d)). Before EPA or a State issues a variance, it must find that the variance will not result in an unreasonable risk to health.

Under section 1413(a)(4) of the Act, States with primacy that choose to issue variances must do so under conditions and in a manner that is no less stringent than EPA allows under section 1415. Before a State may issue a variance, it must find that there were no opportunities for the system to (1) join another water system, or (2) develop another source of water and thus comply fully with all applicable drinking water regulations.

The Act permits EPA to vary the BAT established under section 1415 from that established under section 1412 based on a number of findings such as system size, physical conditions related to engineering feasibility, and the cost of compliance. Paragraph 142.62 of this rule lists the BAT that EPA has specified under section 1415 of the Act for the purposes of issuing variances. This list mirrors the proposed list except that oxidation (chlorination or ozonation) is considered BAT for glyphosate, as discussed in "Selection of Best Available Technology" above. Tables 20 and 21 provide a list of the section 1415 BATs for the inorganic and organic compounds in this rule.

TABLE 20.—SECTION 1415 BAT FOR INORGANIC COMPOUNDS

| Chemical | BATs |
|---|---|
| Antimony | 2,7 |
| Beryllium | 2,5,6,7 |
| Cyanide | 5,7,10 |
| Nickel | 5,6,7 |
| Thallium | 5,7 |

Key to BATs in Table 2:
[2] = Coagulation/Filtration (not BAT for systems with <500 service connections).
[5] = Ion Exchange.
[6] = Lime Softening (not BAT for systems with <500 service connections).
[7] = Reverse Osmosis.
[10] = Chlorine.
[11] = Ultraviolet.

TABLE 21.—SECTION 1415 BAT FOR ORGANIC COMPOUNDS

| Chemical | PTA [1] | GAC [2] | OX [3] |
|---|---|---|---|
| Benzo(a)pyrene | | X | |
| Dalapon | | X | |
| Dichloromethane | X | | |
| Di(2-ethylhexyl)adipate | X | X | |
| di(2-ethylhexyl)phthalate. | | X | |
| Dinoseb | | X | |
| Diquat | | X | |
| Endothall | | X | |
| Endrin | | X | |
| Glyphosate | | | X |
| Hexachlorobenzene | | X | |
| Hexachlorocyclo-pentadiene. | X | X | |
| Oxamyl (Vydate) | | X | |
| Picloram | | X | |
| Simazine | | X | |
| 1,2,4-Trichlorobenzene | X | X | |
| 1,1,2-Trichloroethane | X | X | |
| 2,3,7,8-TCDD (Dioxin) | | X | |

[1] PTA = Packed tower aeration.
[2] GAC = Granular activated carbon.
[3] OX = Oxidation (Chlorination or Ozonation).

2. Exemptions

Under section 1416(a), a State or EPA may grant an exemption extending deadlines for compliance with a treatment technique or MCL if it finds that (1) due to compelling factors (which may include economic factors), the PWS is unable to comply with the requirement; (2) the exemption will not result in an unreasonable risk to human health; and (3) the system was in operation on the effective date of the NPDWR, or, for a system not in operation on that date, no reasonable alternative source of drinking water is available to the new system.

In determining whether to grant an exemption, EPA expects the State to determine whether the facility could be consolidated with another system or whether an alternative source could be developed. It is possible that very small systems may not be able to consolidate or find a low-cost treatment. EPA anticipates that States may wish to consider granting an exemption when the requisite treatment is not affordable.

Under section 1416(b)(2)(B) of the Act, an exemption may be extended or renewed (in the cases of systems that serve 500 or less service connections and that need financial assistance for the necessary improvements) for one or more two-year periods provided that no unreasonable risk to the health of persons would result from granting the exemption.

3. Point-of-Use Devices, Bottled Waters and Point-of-Entry Devices

Under sections 1415(a) and 1416(b) of the SDWA, when the State grants a variance or exemption, it must prescribe an implementation schedule and any additional control measures that the system must take. States may require the use of point-of-use (POU) devices, bottled water, point-of-entry (POE) devices and other mitigating devices as "additional" control measures if an "unreasonable risk to health" would otherwise exist. Sections 142.57 and 142.62 allow these measures as an interim control measure while a variance or exemption is in effect.

4. Public Comments

EPA received several comments regarding the issuance of variances and exemptions. Comments were concerned about the high cost of the proposed BAT technologies (reverse osmosis and ion exchange) for sulfate for small systems that may need to obtain variances under section 1415 of the SDWA. One commenter states that variances and exemptions are temporary and that systems will still be required to comply at some point. This commenter further states that any cost saving due to granting of temporary variances or

exemptions must be reduced by the costs of complying with the "interim control measures" required under the Act and the transaction costs of documenting and applying for exempt status.

Another commenter argued that health protection is not ensured because systems may be granted variances and exemptions due to the prohibitive cost to implement available technology to achieve lower sulfate levels. This commenter recommended the use of a monitoring program and public notification for sulfates instead of an MCL.

Two commenters stated that EPA should allow States the discretion to grant variances from the sulfate MCL for all systems (large as well as small), as long as the variance does not result in an unreasonable risk to health. These commenters recommend that concerns about the water supply and availability should be considered to be pertinent "characteristics of raw water sources" and that provision of public information and alternate water supplies for sensitive populations could be regarded to be appropriate BATs for granting variances.

*EPA Response:* In response to the commenters concerned about the high costs of reverse osmosis and ion exchange for sulfate removal, the Agency agrees that these costs are high for very small systems. A majority of the systems which would have been affected had EPA not deferred the sulfate rule serve 500 or less persons. Exemptions for these systems could have been renewed as long as the system qualifies for an exemption under section 1416(b) of the SDWA. The costs given in the Regulatory Impact Analysis (RIA) for regulating sulfate assumed no variances and exemptions are granted (i.e., that all systems treat). Thus, the Agency believes that costs to meet a sulfate regulation would have been lower than those projected in the RIA, after consideration of costs associated with granting variances and exemptions.

In response to the commenter that alleged lack of health protection because variances and exemptions will be granted, a variance or exemption can only be granted if it will not result in an unreasonable risk to health. In addition, the associated public notification requirements whenever an MCL exceedance occurs would have provided additional protection to consumers.

In response to the commenters that recommended allowing the States discretion to grant variances to all systems regardless of size, States do have the discretion to grant variances to all public water systems that cannot comply with the MCLs because of characteristics of their source waters. Variances generally can only be granted if the systems have installed BAT and have failed to meet the MCL. In granting variances, the State may prescribe interim control measures such as public information or provision of alternate water supplies (e.g., bottled water).

The population served by transient water systems is likely to be at greatest risk of suffering from the adverse effects of sulfate. Because populations that regularly consume water containing sulfate will acclimate to its effects, it is people using higher sulfate water on a transient basis that make up the population at risk. This group is largely travelers, i.e., visitors to communities or facilities that are non-transient non-community public water systems, or visitors to facilities such as gas stations, campgrounds or other recreational facilities that serve an almost exclusively transient population. It is this latter group of facilities or public water systems that are most likely to serve water to non-acclimated persons who are at risk from high sulfate.

Sulfate's high treatment cost, low risk, and impact primarily on the transient consumer, combine to create a different set of regulatory challenges than posed by most other drinking water contaminants. For these reasons, EPA is deferring the sulfate standard for a current undetermined period. Specifically, EPA is seeking to extend the legal deadline for establishing the sulfate standard for a period that would allow the Agency to resolve the following issues: (1) Whether further research is needed on how long it takes infants to acclimate to high sulfate-containing water, (2) whether new regulatory approaches need to be established for regulating a contaminant whose health effect is confined largely to transient populations, and (3) whether the Agency should revise its definition of Best Available Technology for small systems (i.e., what should be considered affordable for transient noncommunity water systems). During this deferral period, the Agency also intends to consider ways to expedite the process for granting potential exemptions and variances to ease the impact of these regulations on small systems. Also in the interim, EPA plans to issue a Health Advisory for sulfate and to encourage States where sulfate levels may be high to conduct additional monitoring and encourage the use of alternative water supplies where appropriate.

*E. Public Notice Requirements*

1. General Comments

Two comments were received on the general issue of public notification requirements. One commenter stated that the required public notifications should provide a more accurate and balanced explanation of potential health effects. The second commenter stated that public notification should not be required unless contaminant levels remain excessive after BAT has been installed.

*EPA Response:* EPA believes that the public notification language prescribed is, and should be, simple and non-technical in nature while providing sufficient information to the public about the health implications. EPA believes that the statements are accurate and balanced. The Agency also believes that the public has the right to know whenever there is a violation of a standard. The public water system may supplement the notice with additional information such as the steps being taken to meet the standards as long as the notice informs the public of the health risks which EPA has associated with violation of the standards and the mandatory health effects language remains intact.

2. Contaminant-Specific Comments

Two commenters provided specific suggestions on changes for the public notification language for several contaminants. These changes were editorial in nature.

*EPA Response:* EPA has made most of the changes suggested, as appropriate.

*F. Secondary MCL for Hexachlorocyclopentadiene*

EPA proposed a secondary maximum contaminant level (SMCL) based upon odor detection levels for hexachlorocyclopentadiene (HEX). Odor detection for this organic chemical has been reported at levels lower than the MCL of 0.05 mg/l. The July 1990 notice proposed to set the SMCL for this compound at 0.008 mg/l.

EPA received two comments on the proposed SMCL for HEX. One commenter stated that an SMCL for HEX will "erode the public's confidence in the overall quality of the drinking water," and recommended against an SMCL for this compound. Another commenter opposed the proposed SMCL alleging it is based on an inadequate experimental basis. The commenter argued that the literature citation [Amoore and Hautala, 1983] was based on theoretical extrapolation (from air odor thresholds), and the levels have not

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been confirmed by any published literature.

After reviewing the public comments, EPA has decided to defer promulgating an SMCL for HEX. EPA disagrees with the first comment and believes that taste and odor problems do have an adverse impact on consumers' confidence in the drinking water supply. However, the Agency agrees with the second commenter that additional work is necessary to determine appropriate levels for aesthetic effects. Accordingly, the Agency may initiate in the future a "National Task Force of Experts" to review and assess the data, information and opinions available with respect to taste and odor problems in public water supplies [as noted at 56 FR 3572, January 30, 1991].

*C. State Implementation*

The Safe Drinking Water Act provides that States may assume primary implementation and enforcement responsibilities. Fifty-five out of 57 jurisdictions have applied for and received primary enforcement responsibility (primacy) under the Act. To implement the federal regulations for drinking water contaminants, States must adopt their own regulations which are at least as stringent as the federal regulations. States must also comply on the requirements in 40 CFR 142.12 on revising approved primacy programs. This section of today's rule describes the regulations and other procedures and policies States must adopt or have in place to implement the new regulations.

To implement today's rule, States will be required to adopt the following regulatory requirements when they are promulgated: § 141.23, Inorganic Chemical Sampling and Analytical Requirements; § 141.24, Organic Chemicals Other Than Total Trihalomethanes, Sampling and Analytical Requirements; § 141.32, Public Notice Requirements (i.e., mandatory health effects language to be included in public notification or violations); § 141.61 (a) and (c), Maximum Contaminant Levels for Inorganic and Organic Chemicals.

In addition to adopting drinking water regulations no less stringent than the federal regulations listed above, EPA is requiring that States adopt certain requirements related to this regulation in order to have their program revision application approved by EPA. In various respects, the NPDWRs provide flexibility to the State with regard to implementation of the monitoring requirements under this rule. Because State determinations regarding vulnerability and monitoring frequency will have a substantial impact with implementation of this regulation, today's rule requires States to submit, as part of their State program submissions, their policies and procedures in these areas. This requirement will serve to inform the regulated community of State requirements and also help EPA in its oversight of State programs. These requirements are discussed below under the section on special primacy requirements.

1. Special State Primacy Requirements

To ensure that the State program includes all the elements necessary for an effective and enforceable program, the State's request for approval must contain a plan to ensure that each system monitor for the contaminants listed in this rule by the end of each compliance period.

In general, commenters supported the proposed primacy requirements. Most of the comments were very similar to those made on a previous proposed rulemaking (May 22, 1989, [54 FR 22135]), including the following: The States do not have enough resources, States should not have to report vulnerability assessments to EPA, and records should be kept for less than the 40-year requirement. These issues were all addressed in the January 1991 rule [56 FR 3574].

Numerous comments were made regarding requirements for sulfates. One commenter was concerned about the cost impacts on small systems trying to achieve compliance with the proposed MCL options of 400 mg/l and 500 mg/l. Under the SDWA, exemptions may be granted by a State which would have helped alleviate the cost impact of compliance for sulfate. Another commenter claimed that if variances and exemptions were allowed for sulfates, a significant portion of the population would not be protected. Under sections 1415 and 1416, before a State may grant a variance or exemption it must determine that the variance or exemption will not result in an unreasonable risk to health. In addition, a State must notify the public and provide an opportunity for a public hearing before a variance or exemption is granted. Also, the State may require that bottled water, POU devices, or POE devices be used as a condition for granting the variance or exemption. In this manner, EPA believes that public health would have been protected where variances and exemptions were granted for sulfate. To comply with today's rule, States may update their monitoring plan submitted under the January 1991 rule or they may simply note in their application that they will use the same monitoring plan for this group of contaminants.

In general, States may use their discretion to schedule when, within the overall three-year compliance period, each system will need to perform its one-year-long initial monitoring. For example, States may decide to schedule approximately one-third of the systems for monitoring during each of the three years, to provide for an even flow of samples through State-certified laboratories. States will be able to establish their own criteria to schedule the systems to monitor but the schedules must be enforceable under State law.

If a State does not have primacy for today's rule at the time the initial compliance period begins (i.e., January 1, 1993), then EPA will be the primacy agent. Because water systems must monitor, EPA has established procedures (§§ 141.23(k), 141.24(f)(23), and 141.24(h)(18)) that require systems to monitor at the time designated by the State. If EPA implements today's provisions because a State has not yet adopted the regulatory requirements in today's rule, EPA intends to use the State's monitoring schedule to schedule systems during each compliance period. EPA believes this approach will reduce confusion over the required monitoring schedule that might occur upon the eventual transfer of primacy from EPA to the State.

2. State Recordkeeping Requirements

Some commenters characterized the proposed recordkeeping requirements as burdensome and unwarranted. Similar comments were received in reference to the May 1989 proposed rules [54 FR 22135]. Similar comments were received in reference to the May 1989 proposed rules. In response to comments received on that proposal, EPA modified the State recordkeeping requirements to alleviate the State burden. These changes are explained in the January 1991 rule at 56 FR 3575. No additional changes have been made in today's rule to the recordkeeping requirements.

3. State Reporting Requirements

Generally, commenters characterized the proposed State reporting requirements as burdensome and useless. Similar comments were received in response to the May 1989 proposed regulations [54 FR 22136]. In finalizing those regulations, EPA deleted the proposed reporting requirements (except for unregulated contaminants), having determined that the core reporting requirements of the Primacy Rule (December 20, 1989 [54 FR 52126]) would be sufficient (see 56 FR 3576).

Today's rule similarly deletes the proposed reporting requirements and relies on the core reporting requirements of the Primacy Rule.

## IV. Economic Analysis

In accordance with Executive Order 12291, the Environmental Protection Agency (EPA) has performed a Regulatory Impact Analysis (RIA) which is required for all "major" regulations. A rule is considered "major" if it is expected to cause:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An economic analysis, titled Economic Impact Analysis of Proposed National Primary Drinking Water Standards for 24 Inorganic and Synthetic Organic Chemicals (Revised Final) April 1990, was prepared [USEPA, 1990c]. An addendum to the EIA, dated May 15, 1990, reclassified the rule as a "major" rule [USEPA, 1990a]. The EIA indicated that national costs may exceed $100 million if stringent options were exercised. If stringent options were not employed, then costs may not exceed $100 million and the rule may be classified as minor. Another addendum to the EIA which revised the waste disposal costs for sulfate was added to the public docket on August 3, 1990.

Today's final rule is accompanied by a Regulatory Impact Analysis, titled the Regulatory Impact Analysis of Proposed Phase V Synthetic Organic and Inorganic Chemical Regulations [USEPA, 1992d]. However, with the deferral of the sulfate portion of the rule, total costs are projected substantially below those shown in the Regulatory Impact Analysis. The Regulatory Impact Analysis contains sulfate costs because the document was completed before the decision to defer sulfate was made.

In order to estimate the economic impacts these analyses used the following data, where available, for each of the 23 contaminants:

- Occurrence data, to determine the number of systems violating MCLs;
- Treatment and waste disposal cost data and corresponding probabilities that systems will select each of the various treatment and disposal options, to estimate the system level and aggregate costs of achieving the proposed MCLs; and
- Monitoring costs, to estimate aggregate costs of the monitoring requirements.

Occurrence data adequate to estimate the number of systems likely to violate the MCLs are available for 15 of these 23 contaminants. For the remaining 87 contaminants (endothall, diquat, di(2-ethylhexyl) phthalate, glyphosate, hexachlorobenzene, hexachlorocyclopentadiene, 1,1,2-trichloroethane, and 2,3,7,8-TCDD) cost impacts could not be evaluated because national occurrence data are not available. In response to public comments, impacts of the rule are not based on extrapolation from other SOC contaminant occurrence, as in the proposal.

The EIA supporting the proposed rule estimated treatment costs for SOCs to be $11 million per year and also estimated the rule would affect 900 systems. Treatment costs for IOCs varied depending upon the MCL used for sulfate. Treatment costs for IOCs, estimated in the EIA dated April 1990 and modified by the Addendum dated August 3, 1990, were projected to be $60 million and to affect 1,397 systems with a sulfate MCL of 400 mg/1. An estimated 795 systems were projected to spend about $28 million per year to achieve compliance with a sulfate MCL of 500 mg/1. Monitoring costs for the proposed rule, detailed in the Information Collection Request for: Proposed National Primary Drinking Water Regulations For Phase V SOCs and IOCs [USEPA, 1989a], were estimated to be about $6 million per year. Thus, the total annualized cost of the proposed regulations were estimated to be $87 million per year with an MCL of 400 mg/1, and $50 million per year at an MCL of 500 mg/1.

With the receipt of new data or information, EPA made several changes to the proposed economic analysis which would have resulted in an overall increase in the projected compliance costs for the final rule if sulfate has not been deferred. In addition, revised unit cost and occurrence data were incorporated into the final RIA. These changes, and their corresponding effects on the original cost estimates, are described below.

### *A. Costs of the Final Rule*

Treatment and waste disposal costs associated with the final rule are estimated based on occurrence information available for 15 of 23 contaminants in this regulation. For the other 8 contaminants costs were not estimated because adequate occurrence data are not available. Monitoring and State implementation cost estimates include a consideration of all 23 contaminants.

Annualized total water treatment and waste disposal costs are estimated at $31 million per year (Table 22). Monitoring costs are estimated to be about $5 million per year. The annual cost to State drinking water programs to implement the final rule is estimated to be $10 million. Thus, the total annualized compliance cost to the nation is estimated to be $46 million per year. Further, given the uncertainty associated with the inputs used to estimate costs for the 16 contaminants for which occurrence data are available, the total annual cost of this rule could range from approximately $1 million to $128 million. These cost estimates would increase if the 8 contaminants for which costs have not currently been estimated were included.

Of the 23 contaminants covered by this rulemaking, endrin is the only contaminant regulated by an existing National Primary Drinking Water Regulation. The final MCL for endrin promulgated today is greater than the previously existing MCL. No systems are projected to fail the final MCL for endrin. Therefore, no incremental costs of meeting the new MCL are anticipated. However, costs associated with regulating the other 22 contaminants in this rulemaking do represent an increased cost burden.

Table 23 shows the benefits of today's rule. Most contaminants are being regulated on the basis of non-carcinogenic effects. Five contaminants are being regulated on the basis of their carcinogenicity. These are: dichloromethane, benzo(a)pyrene, di(2-ethylhexyl)phthalate, hexachlorobenzene, and 2,3,7,8-TCDD. Insufficient occurrence data were available to estimate the number of cancer cases avoided for these contaminants. For the regulated contaminants that are not carcinogens, the adverse effects associated with exposure are discussed in both the proposed rules and these final rules, under the portions of the preamble that describe derivation of the MCLGs. The benefits of reduced exposure to these contaminants relates to reducing the possibility that water consumers may experience these adverse effects. For example, antimony caused shortened life spans, weight loss, increased cholesterol levels, and reduced blood glucose levels in test animals. The possibility of any of these effects occurring in exposed populations would be reduced by reducing antimony exposure to below the MCL.

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TABLE 22.—SUMMARY OF COST ESTIMATES FOR FINAL RULE

| | Best estimate | Low estimate | High estimate |
|---|---|---|---|
| Number of Systems Affected | 256 | 30 | 795 |
| Cost in millions of Dollars | 238 | 2 | 925 |
| Capital Water Treatment and Waste Disposal | 14 | <1 | 65 |
| Operation and Maintenance | 30 | 1 | 126 |
| Annualized Cost @3% | 5 | N/A | N/A |
| Monitoring Costs | 10 | N/A | N/A4 |
| State Implementation Costs | 46 | 1 | 128 |
| Annual cost: Total | | | |

TABLE 23.—SUMMARY OF BENEFITS ESTIMATES FOR FINAL RULE

| | Best estimate | Low estimate | High estimate |
|---|---|---|---|
| Benefits ($ Millions): | | | |
| Population with Reduced Exposure (thousands) | 340 | 4 | 1,729 |
| Cancer Deaths Avoided | [1] 0.0 | N/A | N/A |

[1] Of the five carcinogenic contaminants regulated in this package, occurrence data are only available for dichloromethane, and these data indicate that MCL exceedences are unlikely. The estimate here does not include the other 4 carcinogens, nor does it reflect the fact that other contaminants in this package are group "C" possible human carcinogens, but are not being regulated on the basis of carcinogenicity.

*B. Comparison to Proposed Rule*

The costs and benefits of today's final rule are compared to those estimated for the proposal (Table 24). The differences in the cost estimates are attributable to a variety of changes in the rule and in the available input data used in the analysis. Among the more important changes are the following.

1. Monitoring Requirements

The Agency has developed a standardized monitoring framework (SMF) to address the issues of complexity, coordination of monitoring requirements between various regulations, and synchronization of monitoring schedules. The monitoring requirements in today's rule are somewhat different from those included in the proposed rule, resulting in reduction in annual national monitoring costs of approximately $1 million, for all contaminants, excluding sulfates. The estimated monitoring cost of the final rule is $5 million annually.

In this regulation, EPA is requiring that initial monitoring begin in the first compliance period after the promulgation date for systems having 150 or more service connections. The initial monitoring period for these systems is from January 1, 1993 through December 31, 1995. For systems with fewer than 150 service connections, initial monitoring is from January 1, 1996 to December 31, 1998. All systems must monitor at the base monitoring frequency unless a waiver is obtained. Systems may decrease monitoring from the base requirement upon receiving a waiver from the state. In cases of detection or noncompliance, EPA has specified increased monitoring frequencies.

2. Changes in MCLs

Several MCLs in the final rule have changed from those that were proposed. As discussed above, regulation of sulfate has been deferred and no final MCL has been set. The MCL for di(2-ethylhexyl)adipate is more stringent based on a new health study which resulted in a revised reference dose. The MCL for 2,3,7,8-TCDD changed from $5 \times 10^{-8}$ mg/l to $3 \times 10^{-8}$ mg/l because of recently available analytic chemistry data and the MCL for di(2-ethylhexyl)phthalate changed from 0.004 mg/l to 0.006 mg/l based on reevaluation of the chemistry data. The MCL for beryllium was revised from 0.001 mg/l to 0.004 mg/l based on public comments and because there are inadequate data to justify the more stringent proposal. The MCL for 1,2,4-trichlorobenzene was revised because EPA agrees with public comments that the oral RfD should not be based on an inhalation study, particularly because insufficient pharmacokinetic data are available for route-to-route extrapolation, changing from 0.009 mg/l to 0.07 mg/l. The MCL for antimony was revised based on a reassessment of the relative source contribution, and simazine was revised based on new health effects data which allowed elimination of an uncertainty factor included to account for a data gap.

TABLE 24.—COMPARISON OF COSTS FOR PROPOSED AND FINAL RULES

[Dollar Figures in Millions]

| Contaminants | Proposed | | Final | |
|---|---|---|---|---|
| | Systems affected | Total cost (annualized) $ millions | Systems affected | Total cost (annualized) $ millions |
| Sulfate (400 mg/l) | 1,087 | 67 | N/A | N/A |
| Sulfate (500 mg/l) | 485 | 30 | N/A | N/A |
| IOCs (Excluding Sulfate) | 310 | 3 | 207 | 30 |
| SOCs (including pesticides and VOCs | 900 | 11 | 49 | 1 |
| Annualized treatment costs | 2,297 | 81 | 256 | 31 |
| Monitoring costs | 78,703 | 6 | 78,703 | 5 |
| State Implementation costs | 54 States and Territories. | Not estimated | 54 States and Territories. | 10 |



TABLE 24.—COMPARISON OF COSTS FOR PROPOSED AND FINAL RULES—Continued

[Dollar Figures in Millions]

| Contaminants | Proposed | | Final | |
|---|---|---|---|---|
| | Systems affected | Total cost (annualized) $ millions | Systems affected | Total cost (annualized) $ millions |
| National annualized cost ($M/Yr) | | 87 | | 40 |

Note: Totals may not tally due to independent rounding. MCLs of 400 mg/l and 500 mg/l were proposed for sulfate.

3. Changes in Occurrence Data

Some occurrence data used in the final RIA have been changed. A re-evaluation of the National Inorganics and Radionuclides Survey data resulted in revised antimony occurrence estimates and estimates of systems exceeding the MCL. The number of systems estimated to exceed the beryllium MCL changed as a result of MCL changes. Further review of the EPA occurrence document resulted in a revised occurrence estimate for dichloromethane. For di(2-ethylhexyl)adipate, the occurrence estimate has been changed to reflect a re-evaluation of available occurrence data and a change in the MCL. For 8 contaminants (endothall, diquat, di(2-ethylhexyl) phthalate, glyphosate, hexachlorobenzene, hexachlorocyclopentadiene, 1,1,2-trichloroethane, and 2,3,7,8-TCDD) adequate data are not available. In the EIA accompanying the proposed rule, approximately 62 systems were assumed to fail the MCL for each contaminant and to be required to install treatment equipment. EPA currently believes that there are inadequate data with which to estimate number of systems exceeding the MCLs for these contaminants and that an estimate of 82 systems for each contaminant is potentially inaccurate. While EPA is unable to estimate the number of systems potentially exceeding the MCL it is recognized that an unknown number of systems may be required to install treatment for each contaminant.

4. Changes in Unit Treatment Cost Estimates

The differences between unit treatment costs in today's rule and in the proposed rule are due to differences in the treatment alternatives included, the assumed percentage of production flow treated, and the discount rate used in annualizing capital costs. Capital costs in the proposed rule were annualized over 20 years at a 10% interest rate to derive annual costs. The 3% interest rate used in today's final rule was selected in order to make the costs of the Phase V regulations comparable to cost estimates prepared for earlier rules.

*C. Cost to Systems*

Table 25 indicates that relatively few water systems and consumers will be affected by the regulations. However, costs will vary depending upon the specific chemical contaminant and the size of the public water system.

Systems serving 500 or less people will incur higher per household costs because they do not benefit from engineering economies of scale. Households served by these systems would have to pay significantly more, should their system have contamination greater than the MCL.

TABLE 25.—INCREASED COST OF COMPLIANCE IN SELECTED SYSTEM SIZE CATEGORIES

| System Size | 25–100 | | | 101–500 | | | 3,301–10,000 | | | 25,001–50,000 | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Contaminant | Annual Cost per Household | Cost per System | Number of Systems | Annual Cost per Household | Cost per System | Number of Systems | Annual Cost per Household | Cost per System | Number of Systems | Annual Cost per Household | Cost per System | Number of Systems |
| Antimony | $3,651 | $49,500 | 89 | $1,721 | $102,900 | 57 | $274 | $521,000 | 10 | $137 | $1,935,000 | 2 |
| Nickel | 1,747 | 25,000 | 4 | 717 | 43,300 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |
| Dichloromethane | 353 | 4,400 | 16 | 138 | 7,300 | 11 | 12 | 25,000 | 2 | 0 | 0 | 0 |
| Dinoseb | 984 | 12,500 | 4 | 343 | 20,000 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |

Note: For systems serving over 1,000,000 people, no MCL exceedance or cost is estimated.

*D. Cost to State Programs*

In 1988, EPA and the Association of State Drinking Water Administrators (ASDWA) conducted a survey of State primacy program resource needs for implementing the 1986 SDWA amendments. State implementation costs for the Phase V rule were not included in the ASDWA survey. State implementation costs of previously regulated Phase II inorganic and synthetic organic chemicals are estimated to be $21 million during the initial phase. An additional $17 million is estimated to be required for States to annually conduct enforcement actions, assist in the expansion of laboratory capabilities, and manage compliance schedules. Laboratory expansion undertaken to implement Phase II regulations will largely satisfy the monitoring needs of this rule. Total State implementation costs are anticipated to be in the range of $7 million to $12 million. A gross point estimate of $10 million per year has been selected for today's final rule.

**V. Other Requirements**

*A. Regulatory Flexibility Analysis*

The Regulatory Flexibility Act requires EPA to consider the effect of regulations on small entities [5 U.S.C. 602 et seq.]. If there is a significant economic effect on a substantial number of small entities, the Agency must prepare a Regulatory Flexibility Analysis (RFA) describing significant alternatives that would minimize the impact. The Agency had determined that the proposed rule, if promulgated would not have a significant economic impact

on a substantial number of small entities.

According to EPA guidelines for conducting RFA assessments, less than 20 percent of a regulated population is not considered a substantial number. The RFA for the final rule indicates that of 77,910 community and non-transient non-community water supplies serving 50,000 or fewer people, about 253 (<1 percent) are estimated to exceed the final MCLs promulgated in today's rule. Therefore, today's rule does not affect a substantial number of such small systems.

Compliance costs for the 253 systems serving 50,000 or fewer people required to install treatment are about $31 million per year for capital and operational maintenance. This is less than one percent of the total national operating expense for such systems. Therefore, at a national aggregate level, the Phase V rule would not have a significant impact on small systems. This finding does not change if the costs of monitoring to these systems, $6 million per year, are included.

The Agency's determination of no significant economic impact on a substantial number of small systems would remain unchanged under a more stringent definition of small systems. Defining systems serving 3,300 or fewer people as small, today's rule would affect 235 of the 65,766 public systems in this size category. This represents less than one percent of such systems. Costs would increase $16 million, or approximately one percent of the total operating expense for all systems in this category. The inclusion of monitoring costs of less than $4 million for such systems does not alter this finding.

EPA's determination of no significant economic impact on a substantial number of small systems would likely also remain the same if occurrence data on the eight contaminants not currently included in this analysis became available. While it is not possible to estimate the number of systems exceeding the MCLS for these contaminants the number is potentially small as these contaminants have rarely been found in drinking water.

Although there will not be a significant economic impact on a substantial number of small systems on the whole, a small number of individual systems may find their costs increasing sharply, depending on the specific contaminant in their water. For example, it can be seen from Table 25 that a system serving 25–100 people with antimony-contaminated water is expected to incur additional annual costs of $49,500. EPA is concerned about such systems. Under the Safe Drinking Water Act, small systems may obtain an exemption for national primary drinking water regulation requirements if they can demonstrate that the granting of the exemption would not result in an unreasonable risk to health, among other conditions. Other aspects of the regulatory scheme that serve to reduce impacts on small systems are described in the proposal (55 FR 30436) and earlier in this notice.

*B. Paperwork Reduction Act*

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act [44 U.S.C. 3501 et seq.]. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

Public reporting burden for this collection of information is estimated to average 0.6 hours per response for public water systems and 13.6 hours for States to compile each response. These estimates include time for reviewing instructions, searching existing data sources, gathering the information needed, and completing and reviewing the collection of information as well as start-up activities such as staff training. Comments regarding the burden estimate of any other aspect of this collection of information, including suggestions for reducing this burden, should be sent to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

*C. Federalism Review*

Executive Order 12612 requires all federal agencies to consider legislative and regulatory proposals and other major policy actions to determine if they have substantial effects on federalism goals and principles as set forth in the Executive Order. According to EPA's Guidelines for Implementing Executive Order 12612: Federalism, "[i]f an EPA action is mandated or the necessary means to carry it out are implied by statute, then no further federalism assessment is required." Twenty-two of the 23 contaminants regulated today are included in the list of 83 contaminants for which EPA is required to promulgate National Primary Drinking Water Standards. Therefore, a federalism assessment is not required to support this rule for these listed contaminants.

For hexachlorobenzene, which is not on the list of 83 contaminants, a federalism assessment is not required because today's regulation will not have a substantial direct effect on States, the relationship between the Federal Government and the States or on the distribution of power and responsibilities among the various levels of government.

## VI. References


40 CFR Part 136, Appendix A

40 CFR Part 136, Appendix B

Adams, J.Q., and R.M. Clark. 1989. Cost Estimates for GAC Treatment Systems. JAWWA 1:35–42. [Adams and Clark, 1989]

Alben, K. 1980. Coaltar Coatings of Storage Tanks. A Source of Contamination of the Potable Water Supply. Environ. Sci. Technol. 14:468–470. [Alben, 1980]

Ambrose, A.M., P.S. Larson, J.R. Borzelleca and G.R. Hennigar, Jr. 1976. Long-term Toxicologic Assessment of Nickel in Rats and Dogs. J. Food Sci. Technol. 13:181–187. [Ambrose et al., 1976]

American Biogenics Corp. 1986. Ninety day gavage study in albino rats using nickel. Draft Final Report Submitted to Research Triangle Institute, P.O. Box 12194, Research Triangle Park, NC 27709. [American Biogenics, 1986]

Amoore, John E. and Earl Hautala. Odor as an Aid to Chemical Safety: Odor Thresholds Compared with Threshold Limit Values and Volatilities for 214 Industrial Chemicals in Air and Water Dilution. Journal of Applied Toxicology. Vol. 3, No. 6. 1983. 19 pp. [Amoore and Hautala, 1983]

Bababunmi et al., 1978. Toxicology and Applied Pharmacology 45:319–370. [Bababunmi et al., 1978]

Basu, D.K., J. Saxena, F.W. Stoss, J. Santodonato, M.W. Neal and F.C. Kopfler. 1987. Comparison of Drinking Water Mutagenicity with Leaching of Polycyclic Aromatic Hydrocarbons from Water Distribution Pipes. Chemsphere 16, No. 10–12, p. 2595. [Basu et al., 1987]

Biodynamics, Inc. 1981a. A three-generation reproduction study in rats with glyphosate. Project No. 77–2063 for Monsanto Co., St. Louis, MO. EPA Accession No. 245909 and 247793. (CBI) [Biodynamics, 1981a]

Biodynamics, Inc. 1981b. Lifetime Feeding Study of Glyphosate (Roundup Technical). Project No. 77–2062 for Monsanto Co., St. Louis, MO. EPA Accession Nos. 246617 and 246621. (CBI) [Biodynamics, 1981b]

Brown, D. 1981. Dinoseb: A 100-Week Oral (Dietary) Toxicity and Carcinogenicity Study in the Mouse. Hazleton Laboratories Europe, Ltd. Prepared for Dow Chemicals Pacific, Ltd., Hong Kong. MRID 00152764. [Brown, 1981]

Chemical Engineering & News. 1977. Method Rids Agent Orange of TCDD Contamination. 55(11):25. [Chemical Eng., 1977]

Chien, L., H. Robertson and J.W. Gerrard. 1968. Infantile Gastroenteritis Due to Water with High Sulfate Content. Can. Med. Assoc. J. 99:102–104. [Chien et al., 1968]

Colley, J. et al. 1985. Reference Doses (RfDs) for Oral Exposure. U.S. EPA. Study by Huntington Research Centre. England. [Colley et al., 1985]

Congressional Record. 1974. House of Representatives 93–1185, at 18. The 93rd Congress, Second Session. 13. Microfilm #H503–28.

Congressional Record. 1974. House of Representatives 1185, 93rd Congress, Second Session—Microfilm #H503–28.

Congressional Record. 1986. Vol. 132, 99th Congress, Second Session, No. 69, May 21, 1986. p. S6287. Statement by Senator Durenberger. [132 *Cong. Rec.*]

Congressional Record. 1985. Senate Report No. 56, 99th Congress, First Session at 6. Microfilm #S323–10.

Cunningham, W.C. and W.B. Stroube. 1987. Application of an Instrumental Neutron Activation Analysis Procedure to Analysis of Food. Division of Contaminants Chemistry, Food and Drug Administration, Washington, DC. In: The Science of the Total Environment, Vol. 63, pp. 29–43. [Cunningham and Strobe, 1987]

Epstein, D. L., et al. 1991. Two generation Reproductive Toxicology Study In Rats EPA Guidelines No. 83–4. Research Dept., Pharmaceuticals Division. CIBA-Geigy Corp. Study No. 882095. Vol. 1. Feb. 12, 1991. MRID #418036–01. [Epstein et al., 1991]

**Federal Register:** U.S. Environmental Protection Agency. Vol. 49 No. 209. October 26, 1984. [49 FR 43246]

**Federal Register:** U.S. Environmental Protection Agency. National Primary and Secondary Drinking Water Regulations; Volatile Synthetic Organic Chemicals; Final and Proposed Rule; Vol. 50, No. 219, Wednesday, November 13, 1985. pp. 46880–46933. [50 FR 46880]

**Federal Register:** U.S. Environmental Protection Agency. National Primary Drinking Water Regulations; Fluoride Final and Proposed Rule; Vol. 50, No. 220, Thursday, November 14, 1985—Part II. pp. 11396–11412.

**Federal Register:** U.S. Environmental Protection Agency. National Primary and Secondary Drinking Water Regulations; Fluoride Final Rule; Vol. 51, No. 63, Wednesday, April 2, 1986—Part II. pp. 11396–11412. [41 FR 11396]

**Federal Register** U.S. Environmental Protection Agency. National Primary Drinking Water Regulations—Synthetic Organic Chemicals; Monitoring for Unregulated Contaminants; Final Rule; Vol. 52, No. 130, Wednesday, July 8, 1987—Part II. 29 pp. [52 FR 25690]

**Federal Register:** U.S. Environmental Protection Agency. National Primary and Secondary Drinking Water Regulations; Proposed Rule; Vol. 54, No. 97, Monday, May 22, 1989—Part II. 100 pp. [54 FR 22136]

**Federal Register:** U.S. Environmental Protection Agency. Drinking Water; National Primary Drinking Water Regulations; Filtration, Disinfection, Turbidity, *Giardia Lamblia*, Viruses, *Legionella*, and Heterotrophic Bacteria; Final Rule; Vol. 54, No. 124, Thursday, June 29, 1989—Part II. 57 pp. [54 FR 27468]

**Federal Register:** U.S. Environmental Protection Agency. Drinking Water; National Primary Drinking Water Regulations; Total Coliform; Final Rule; Vol. 54, No. 124, Thursday, June 29, 1989—Part III. pp. 27544–27568. [54 FR 27544]

**Federal Register:** U.S. Environmental Protection Agency. Drinking Water; National Primary Drinking Water Regulations Implementation; Primary Enforcement Responsibility; Final Rule; Vol. 54, No. 243, Wednesday, December 20, 1989—Part III. pp. 52126–52140. [54 FR 52126]

**Federal Register:** U.S. Environmental Protection Agency. National Primary Drinking Water Regulations; Synthetic Organic Chemicals and Inorganic Chemicals; Proposed Rule; Vol. 55, No. 143, Wednesday, July 25, 1990-Part II. pp. 30370–30448. [55 FR 30370]

**Federal Register:** U.S. Environmental Protection Agency. Water Programs; Guidelines Establishing Test Procedures for the Analysis of Pollutants. Thursday, Feb. 7, 1991. No. 56 Vol 126. [56 FR 5094].

**Federal Register:** U.S. Environmental Protection Agency. National Revised Drinking Water Regulations—Synthetic Organic Chemicals and Inorganic Chemicals; Monitoring for the Unregulated Contaminants; National Primary Drinking Water Regulations; National Secondary Drinking Water Regulations. Vol. 56, No. 20, Wednesday, January 30, 1991. pp. 3525–3597. [56 FR 3526]

**Federal Register** U.S. Environmental Protection Agency. Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper; Final Rule; Vol. 56, No. 110, Friday, June 7, 1991—Part II. pp. 26460–26564. [56 FR 26460]

**Federal Register** U.S. Environmental Protection Agency. Drinking Water; National Primary Drinking Water Regulations; Monitoring for Volatile Organic Chemicals; MCLGs and MCLs for Aldicarb, Aldicarb sulfoxide, Aldicarb sulfone, Pentachloropenol, and Barium; Vol. 56, No. 128, Thursday, July 1, 1991—Part XII. pp. 30266–30281. [56 FR 30266]

**Federal Register** U.S. Environmental Protection Agency. Drinking Water; National Primary Drinking Water Regulations; Radionuclides; Proposed Rule; Vol. 56, No. 138, Thursday, July 18, 1991. pp. 33050–33127. [56 FR 33050]

**Federal Register** U.S. Environmental Protection Agency. National Primary Drinking Water Regulations—Notice of Availability; Vol. 56, No. 230, Friday, November 29, 1991. [56 FR 60949]

Ferguson, H.C. 1962. Dilution of Dose and Acute Oral Toxicity. Toxicol. Appl. Pharmacol. 4:759–762. [Ferguson, 1962]

Fingerhut, Marilyn A., William E. Halperin, David A. Marlow, et al. 1991. Cancer Mortality in Workers Exposed to 2,3,7,8–Tetrachlorodibenzo-*p*-dioxin. New England J. Med. 324:212–218. January 24, 1991. [Fingerhut et al., 1991]

Formigli, L., R. Scelsi, P. Poggi, C. Gregotti, A. Di Nucci, E. Sabbioni, L. Gottardi and L. Manzo. 1986. Thallium-Induced Testicular Toxicity in the Rat. Environ. Res. 40:531–539. [Formigli et al., 1986]

Greathouse and Craun. 1978. Cardiovascular Disease Study—Occurrence of Inorganics in Household Tap Water and Relationships to Cardiovascular Mortality Rates. Health Effects Research Laboratory. U.S. Environmental Protection Agency. In: Trace Elements In Environmental Health—XII. 1978. A symposium. D.D. Hemphill, Ed. University of Missouri, Columbia. [Greathouse and Craun, 1978]

Greenough, R] et al. 1987. Disodium Endothall 52 week oral (dietary) Toxicity study in dogs. June 1987. MIRD 407452–02. [Greenough et al., 1987]

Hazleton. 1977. Hazleton Laboratories America, Inc. 104-Week Dietary Study in Rats: Dinoseb DNBP. Prepared for the Dow Chemical Co., Midland, MI. EPA MRID 00025582. [Hazleton, 1977]

Herrera, Carlos E., John F. Ferguson and Mark K. Benjamin. 1981. Contamination of Drinking Water from the corrosion of Tin/Antimony Solder. Proceedings AWWA Annual Conference. pp. 1285–1293. [Herrera et al., 1981]

Herrera, Carlos E., John F. Ferguson and Mark K. Benjamin. 1982. Evaluating the Potential for Contaminating Drinking Water from the Corrosion of Tin/Antimony Solder. J. AWWA. July 1982. pp. 368–375 [Herrera et al., 1982]

Howard, J.W., and R.F. Hanzal. 1955. Chronic Toxicity for Rats of Food Treated with Hydrogen Cyanide. J. Agric. Food Chem. 3:325–329. [Howard and Hanzal, 1955]

ICI. 1988a. ICI Central Toxicology Laboratory. Di-2-ethylhexyl adipate: Tetatogenicity Study in the Rat. Report CTL/P/2119 (unpublished study). [ICI, 1988a]

ICI. 1988b. ICI Central Toxicology Laboratory. Di-2-ethylhexyl adipate (DEHA) Fertility Study in Rats. Report CTL/P/2229 (unpublished study). [ICI, 1988b]

IRIS. U.S. EPA. 1989. U.S. Environmental Protection Agency. Integrated Risk Information System (IRIS): Reference Dose (RfD) for Oral Exposure for Beryllium. Online. (Verification Date 12/02/85). Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH. [IRIS, 1989]

IRIS. U.S. EPA 1991a. U.S. Environmental Protection Agency. Integrated Risk Information System (IRIS) Dichloromethane. Online. Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH. [IRIS, 1991a]

IRIS. U.S. EPA. 1991b. U.S. Environmental Protection Agency. Integrated Risk Information System (IRIS) Phthalates. Online. Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH. [IRIS, 1991b]

IRIS. U.S. EPA. 1991c. Environmental Protection Agency. Integrated Risk Information System (IRIS) 1,1,2-Trichloroethane. Online. Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH. [IRIS, 1991c]

Irvine, L.F.H. and A. Armitage. 1981. 2-Secbutyl-4-,6-Dinitrophenol (Dinoseb): Three generation Reproductive

Performance Study in the Rat (Dietary). Hazleton Laboratories Europe, Ltd. Prepared for Agricultural Chemical, Dow Chemicals Pacific, Ltd., Hong Kong. EPA Accession No. 259499. [Irvine, 1981]

Keller, J. 1985. Two Year Chronic Feeding Study of Disodium Endothall to Beagle Dogs. EPA Pesticide Petition 6G0503. EPA Accession No. 080586. Exhibit 7. [Keller, 1985]

Kociba, R.J., D.G. Keyes, J.E. Beyer, et al. 1978. Results of a Two-Year Chronic Toxicity and Oncogenicity Study of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin in Rats. Toxicol. Appl. Pharmacol. 46(2):279–303. [Kociba et al., 1978]

Kreutler, P.A., et al. 1978. Interaction of Protein Deficiency, Cyanide and Thiocyanate on Thyroid Function in Neo-Natal and Adult Rats. Amer. J. Clin. Nutrit. 31:282–289. [Kreutler, 1978]

Lampo. 1978. Personal communication. Cited in NAS 1982, p. 88. [Lampo, 1978].

Lehman, A.J. 1959. Appraisal of the Safety of Chemicals in Foods, Drugs and Cosmetics. Assoc. Food Drug Officials United States. [Lehman, 1959]

Longbottom, James E., K.W. Edgell, S.E. Long, M.R. Plantz, B.E. Warden and T.D. Martin. Determination of Trace Elements in Water by Inductively Coupled Plasma-Mass Spectrometry: Collaborative Study., USEPA, Technology Applications, WMI EML, Inc. Nov. 1991. [Longbottom et al., 1991]

Lopez-Avila, Vicorica et al. 1990. Gas Chromatographic-Electron Capture Detection Method for Determination of 29 Organochlorine Pesticides in Finished Drinking Water: Collaborative Study. J. Assoc. Anal. Chem. (Vol. 73, No. 2), 1990. NPS Method 2. [Lopez-Avila, 1990]

McClanahan, M. 1978. Water Supply Branch, EPA Region IV. Memorandum on Coal Tar Pitch Coating, Pascagoula, MS. to J.A. Cotruvo, USEPA, Washington, DC. Cited in NAS, 1982. [McClanahan, 1978]

McCormick, G.C., A.T. Arthur and J.D. Green. 1988. Simazine Technical: 104-Week Oral Chronic Toxicity and Carcinogenicity Study in Rats. Ciba-Geigy Corp., MRID no. 406144–05. Greensboro, NC. [McCormick et al., 1988]

McCormick, G.C. and J.D. Green. 1988. Simazine Technical: A 52-Week Oral Feeding Study in Dogs. Study No. 87122. Ciba-Geigy Corp., MRID No. 406144–02 Greensboro, NC. [McCormick and Green, 1988]

Miller-Ihli, N.J., and W.R. Wolf. 1986. Characterization of a Diet Reference Material for 17 Elements. Nutrient Composition Laboratory, U.S. Department of Agriculture, Beltsville, MD. In: Anal. Chem., Vol. 58, pp. 3225–3230. [Miller-Ihli and Wolf, 1986]

Morgareidge, K., et al. 1977. Chronic Feeding Studies with Beryllium Sulfate in Rats. Food and Drug Research Laboratories, Inc. Final Report to the Aluminum Company of America, Pittsburgh, PA 15219. (Abstract) [Morgareidge et al., 1977]

NAS (National Academy of Sciences). 1977. Drinking Water and Health. Vol. 1. NAS, Washington, DC p. 19–63. [NAS, 1977]

NAS (National Academy of Sciences). 1982. Drinking Water and Health. Vol. 4. NAS, Washington, DC, p. 18–107. [NAS, 1982]

Neal, J., and R.H. Rigdon. 1967. Gastric Tumors in Mice Fed Benzo[a]pyrene—A Quantitative Study. Tox. Rep. Biol. Med. 25:553–557. [Neal & Rigdon, 1967]

NTP. 1982a. National Toxicology Program. Carcinogenesis Bioassay of Di(2-Ethylhexyl) Adipate in F344 Rats and B6C3F Mice. National Cancer Institute. Research Triangle Park, NC. [NTP, 1982a]

NTP. 1982b. National Toxicology Program. Carcinogenesis Bioassay of di-(2-Ethylhexyl) Phthalate (CAS No. 117–81–7) in F344 Rats and B6C3F, Mice (Feed Study). NTP Tech. Rep. NIN/PUB–82–1773. NTP–80–37. NTIS PB82–184011. [NTP, 1982b]

Palmer, I.S., and O.E. Olson. 1979. Partial Prevention by Cyanide of Selenium Poisoning in Rats. Biochem. Biophys. Res. Commun. 90(4):1379–1386.

Paynter, O.E., T.W. Tusing, D.D. McCollister and V.K. Rowe. 1960. Toxicology of Dalapon Sodium (2,2-Dichloropropionic Acid, Sodium Salt). Agric. Food Chem. 8:47–51. [Paynter et al., 1960]

Pennington, J.A.T., and J.W. Jones. 1987. Molybdenum, Nickel, Cobalt, Vanadium, and Strontium in Total Diets. Division of Nutrition and Division of Contaminants Chemistry, Center for Food Safety and Applied Nutrition, Food and Drug Administration, Washington, D.C. In: Journal of the American Dietetic Association, Vol. 87, No. 12, December 1987, pp. 1644–1650. [Pennington and Jones, 1987]

Philbrick, D.J., J.B. Hopkins, D.C. Hill, J.C. Alexander and R.G. Thomson. 1979. Effects of Prolonged Cyanide and Thiocyanate Feeding in Rats. J. Toxicol. Environ. Health. 5:579–592. [Philbrick et al., 1979)

Reyna, MS. 1990. Two Generation Reproduction Feeding Study with Glyphosate in Sprague-Dawley Rats. Monsanto Agricultural Company. August 27, 1990. MRID #416215–01. [Reyna, 1990]

Robeck, C.G. 1978. Health Effects of PAHs. Memorandum to J. Garner, Director, Health Effects Research Laboratory, USEPA, Washington, DC. Cited in NAS, 1982. [Robeck, 1978]

Robinson Kathy S., Robert J. Kavlock, Neil Chernoff, and L. Earl Gray. 1981. Multigeneration Study of 1,2,4 Trichlorobenzene in Rats. J. Toxicol. Environ. Health. 6:489–500. [Robinson et al., 1981]

Sanders, V.M., K.L. White, C.M. Shopp and A.E. Munson. 1985. Humoral and Cell-Mediated Immune Status of Mice Exposed to 1,1,2-Trichloroethane. Drug Chem. Toxicol. 8:357–372. [Sanders et al., 1985]

Saxena, J., D.K. Basu and D.J. Schwartz. 1978. Method Development and Monitoring of Polynuclear Aromatic Hydrocarbons in Selected U.S. Waters, pp. 119–126, *in* J. Albaiges, ed., Proceedings of the International Congress Analytical Techniques in Environmental Chemistry, Barcelona, Spain, Nov. 27–30, 1978, Pergamon Press, N.Y. [Saxena et al., 1978]

Schroeder, H.A., M. Mitchener and A.P. Nasor. 1970. Zirconium, Niobium, Antimony, Vanadium and Lead in Rats: Lifetime Studies. J. Nutr. 100:59–66. [Schroeder et al., 1970]

Seattle Distribution System Corrosion Control Study. 1981. Volume III: Potential for Drinking Water Contamination from Tin/Antimony Solder. Prepared by Herrera et al. Seattle Dept. of Water, Seattle, WA. Prepared for Municipal Environmental Research Lab, Cincinnati, OH. [Seattle, 1981]

Serota, D.G., A.K. Thakur, B.M. Ulland, J.C. Kirschman, N.M. Brown and R.H. Coots. 1986a. A Two-Year Drinking-Water Study of Dichloromethane in Rodents. I. Rats. Food Chem. Toxicol. 24:951–958. [Serota et al., 1986a]

Serota, D.G., A.K. Thakur, B.M. Ulland, J.C. Kirschman, N.M. Brown and R.H. Coots. 1986b. A Two-Year Drinking-Water Study of Dichloromethane in Rodents. II. Mice. Food Chem. Toxicol. 24:959–963. [Serota et al., 1986b]

Sorrell, R.K., H.J. Brass and R. Reding. 1980. A Review of Occurrences and Treatment of Polynuclear Aromatic Hydrocarbons. Environ. Int. 4:245–254. [Sorrell et al., 1980]

Speth, Thomas S. 1990. The Removal of Glyphosate from Drinking Water. [Speth, 1990]

Speth, Thomas S. 1991. The Removal of Glyphosate from Potable Waters. DWRD, Cincinnati, OH. [Speth, 1991]

SRI. 1981. Southern Research Institute. Subchronic Toxicity Report on Hexachlorocyclopentadiene (C53607) in Fischer–344 Rats. Unpublished Report for NTP. 144 pp. [SRI, 1981]

Stoltz, M.L., M.A. Stedham, L.K. Brown, L. Laber and A. Elhawari. 1986. Subchronic (90-day) Toxicity of Thallium (I) Sulfate in Sprague-Dawley Rats. U.S. EPA. Office of Solid Waste, Washington, DC. [Stoltz et al., 1986]

Stout, LD, and FA Ruecker. 1990. Chronic Study of Glyphosate Administered in Feed to Albino Rats. Monsanto Environmental Health Laboratory. Monsanto Company September 26, 1990. MRID #416438–01. [Stout and Ruecker, 1990]

Subramanian, K.S., J.W. Connor and J.C. Meranger. 1991. Leaching of Antimony, Cadmium, Copper, Lead, Silver, Tin and Zinc from Copper Piping With Non-Lead-Based Solder Joints. J. Environ. Sci. Health A26(6):911–929. [Subramanian et al., 1991]

U.S. EPA. 1983. Method for Chemical Analysis of Water and Wastes. [USEPA, 1983]

U.S. EPA. 1986. U.S. Environmental Protection Agency. Guidelines for Carcinogen Risk Assessment. Federal Register. 51(185):33992–34003. [USEPA, 1986]

U.S. EPA. 1987a. Guidelines for Delineation of Wellhead Protection Areas. Office of Ground-Water Protection, U.S. Environmental Protection Agency. EPA–440/6–87–010. 220 pp. [USEPA, 1987a]

U.S. EPA. 1987b. Method 200.7, Appendix. "Inductively Coupled Plasma, Atomic Emission Analyses of Drinking Water." Rev. 1.3 (March, 1987). [USEPA, 1987b]

U.S. EPA. 1988a. Impact of Lead and Other Metallic Solders on Water Quality. Prepared by N.E. Murrell for USEPA. July 28, 1988. 96 pp. [USEPA, 1988a]

U.S. EPA. 1988b. Final Draft for Drinking Water Criteria Document on Cyanide. Environmental Criteria and Assessment Office, Office of Health & Environmental Assessment. Sept. 1988. [USEPA, 1988b]

U.S. EPA. 1988c. Final Draft for Drinking Water Criteria Document on Polycyclic Aromatic Hydrocarbons. ECAO, Cincinnati. (ECAO–CIN–D010). Sept. 1988. 303 pp. [USEPA, 1988c]

U.S. EPA. 1988d. External Review Draft for Drinking Water Criteria Document for *2,3,7,8-Tetrachlorodibenzo-P-Dioxin*. Environmental Criteria and Assessment Office, Office of Health and Environmental Assessment. April, 1988. 361 pp. [USEPA, 1988d]

U.S. EPA. 1988e. "Methods for the Determination of Organic Compounds in Drinking Water," Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268 (1988). EPA/600–4–88/039 [USEPA, 1988e]

U.S. EPA. 1988f. Report to Congress. Availability, Adequacy, and Comparability of Testing Procedures for the Analysis of Pollutants Established Under Section 304(h) of the Federal Water Pollution Control Act. Environmental Monitoring Systems Laboratory, Cin., September 1988. EPA/600/9–87/030. [USEPA, 1988f]

U.S. EPA. 1989a. Information Collection Request for: Proposed National Primary Drinking Water Regulations for Phase V SOCs and IOCs (Final). Prepared by Wade Miller Associates for U.S. EPA, Office of Drinking Water. Sept. 28. [USEPA, 1989a]

U.S. EPA. 1989b. Occurrence and Exposure Assessment of Hexachlorobenzene in Public Drinking Water Supplies. Office of Drinking Water. May 15, 1989. [USEPA, 1989b]

U.S. EPA. 1989c. Method 200.8, "Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma/Mass Spectrometry," Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268 (Sep., 1989). 44 pp. [USEPA, 1989c]

U.S. EPA. 1989d. Method 300.0, "The Determination of Inorganic Anions in Water by Ion Chromatography," Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268 (Dec., 1989). 20 pp. [USEPA, 1989d]

U.S. EPA. 1990a. Addendum to Economic Impact Analysis of Proposed. National Primary Drinking Water Standards for 24 Inorganic and Synthetic Organic Contaminants (Revised Final) April 1990. Transmittal memo from Betsy Tam, Office of Drinking Water to Phase V Rule Public Docket File. Aug. 3, 1990. 9 pp. [USEPA, 1990a]

U.S. EPA. 1990b. Criteria and Standards Division, Office of Drinking Water. Technologies and Costs for the Removal of Phase V *Inorganic Contaminants* from Potable Water Sources. January, 1990. 95 pp. [USEPA, 1990b]

U.S. EPA. 1990c. Economic Impact Analysis of Proposed National Primary Drinking Water Standards for 23 Inorganic and Synthetic Organic Chemicals (Revised Final) April 1990. [USEPA, 1990c]

U.S. EPA. 1990d. Final draft for Drinking Water Criteria Document on *Antimony*. Dynamac Corporation, for Criteria and Standards Division, ODW, EPA. April, 1990. 96 pp. [USEPA, 1990d]

U.S. EPA. 1990e. Final draft for Drinking Water Criteria Document on *Diquat*. Dynamac Corporation, for Criteria and Standards Division, ODW, EPA. April, 1990. 92 pp. [USEPA, 1990e]

U.S. EPA. 1990f. Final draft for Drinking Water Criteria Document on *Glyphosate*. Dynamac Corporation, for Criteria and Standards Division, ODW, EPA. April, 1990. 56 pp. [USEPA, 1990f]

U.S. EPA. 1990g. Final draft for Drinking Water Criteria Document on *Thallium*. Dynamac Corporation, for Criteria and Standards Division, ODW, EPA. April, 1990. 105 pp. [USEPA, 1990g]

U.S. EPA. 1990h. Method Detection Limit (MDL) Study for Method 1613 Determination of 2,3,7,8-TCDD and 2,3,7,8-TCDF. July 1990. [USEPA, 1990h]

U.S. EPA. 1990i. National Survey of Pesticides in Drinking Water Wells. Phase I Report. EPA–570/9–90–05. Office of Water, Office of Pesticides and Toxic Substances. November 1990. [USEPA, 1990i]

U.S. EPA. 1990j. Transcript: Public Hearing. National Primary and Secondary Drinking Water Regulations; Proposed Rule. Washington, D.C. Tuesday, September 25, 1990. [USEPA, 1990j]

U.S. EPA. 1990k. "Methods for the Determination of Organic Compounds in Drinking Water," Supplement One, Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268 (1990). EPA/600–4–90/020 [USEPA, 1990k]

U.S. EPA. 1990l. Method 1613, "Tetra-through Octa-Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS, Office of Water Regulations and Standards, Industrial Technology Division (1990). 46 pp. [USEPA, 1990l]

U.S. EPA. 1990m. Manual for the Certification of Laboratories Analyzing Drinking Water. Criteria and Procedures Quality Assurrance. 3rd ed. EPA/570/9/9–90/008. [USEPA, 1990m]

U.S. EPA. 1991a. Lead and Copper in Drinking Water as a Result of Corrosion: Evaluation of Occurrence, Cost, and Technology. Criteria and Standards Division, Office of Drinking Water. April 1991. 238 pp. [USEPA, 1991a]

U.S. EPA. 1991b. Memorandum from Charles Abernathy to HRAB Staff. Report on December RfD/RfC Workgroup Meeting in RTP. [USEPA, 1991b]

U.S. EPA. 1991c. Multilaboratory Method Validation Study Data, National Pesticide Survey (NPS). 1991. [USEPA, 1991c]

U.S. EPA. 1991d. Water Supply (PE) Studies 21–27 (study number varies based on contaminant). 1991. [USEPA, 1991d]

U.S. EPA. 1991e. Protecting The Nation's Ground Water: EPA's Strategy for the 1990's. The Final Report of the EPA Ground-Water Task Force. Office of the Administrator. 21Z–1020. July 1991. [USEPA, 1991e]

U.S. EPA. 1991f. Drinking Water Criteria Document for Polycyclic Aromatic Hydrocarbons (PAHs). Environmental Criteria & Assessment Office, Office of Health & Environmental Assessment. December 1991. [USEPA, 1991f]

U.S. EPA. 1991g. Drinking Water Criteria Document for Phthalic Acid Esters (PAEs). Environmental Criteria & Assessment Office, Office of Health & Environmental Assessment. August 1991. [USEPA, 1991g]

U.S. EPA. 1991h. Managing Ground Water Contamination Sources in Wellhead Protection Areas: A Priority Setting Approach. EPA Office of Water. EPA–570/9–91–023. [USEPA, 1991h]

U.S. EPA. 1991i. Methods for the Determination of Metals in Environmental Samples. Environmental Monitoring Systems Laboratory. 1991. EPA/600/4–91/010

U.S. EPA. 1992a. Comment/Response Document for Phase V contaminants. Office of Ground Water and Drinking Water. May 1992. [USEPA, 1992a]

U.S. EPA. 1992b. Final Drinking Water Criteria Document for *Glyphosate*. Office of Science and Technology, Office of Water. January 1992. [USEPA, 1992b]

U.S. EPA. 1992c. Final Drinking Water Criteria Document for *Thallium*. Health & Ecological Criteria Division, Office of Science & Technology, Office of Water. January 1992. [USEPA, 1992c]

U.S. EPA. 1992d. Regulatory Impact Analysis of Proposed Phase V Synthetic Organic and Inorganic Chemicals Regulations. February 1992. [USEPA, 1992d]

U.S. EPA. 1992e. Technologies and Costs for the Removal of Phase V *Synthetic Organic Chemicals* from Potable Water Supplies. Drinking Water Standards Division, Office of Ground Water and Drinking Water. May 1992. [USEPA, 1992e]

U.S. EPA. 1992f. Final Drinking Water Criteria Document for Antimony. Health & Ecological Criteria Division, Office of Science & Technology, Office of Water. January 1992. [USEPA, 1992f]

U.S. EPA. 1992g. Final Drinking Water Criteria Document for Diquat. Health & Ecological Criteria Division, Office of Science & Technology, Office of Water. January 1992. [USEPA, 1992g]

U.S. EPA. 1992h. Drinking Water Criteria Document for Cyanide. Health & Ecological Criteria Division, Office of Science & Technology, Office of Water. January 1992. [USEPA, 1992h]

Watanabe, P.G., R.J. Kociba, R.E. Hefner, Jr., H.O. Yakel and B.K.J. Leong. 1978. Subchronic Toxicity Studies of 1,2,4-Trichlorobenzene in Experimental Animals. Toxicol. Appl. Pharmacol. 45(1):332-333. [Watanabe et al., 1978]

White, K.L., V.M. Sanders, D.W., Barnes, G.M. Shoup and A.E. Munson. 1985. Toxicology of 1,1,2-Trichloroethane in the Mouse. Drug Chem. Toxicol. 8:333-355. [White et al., 1985]

World Health Organization. 1984. Guidelines for Drinking-Water Quality. Vol. 2. Health Criteria and Other Supporting Information. Geneva. pp. 290–292. [WHO, 1984]

Zoldak, J.J. 1978. Analysis of Drinking Water for Trace Level Quantities of Organic Pollutants. Thesis. Miami University, Oxford, OH. Cited in NAS, 1982. [Zoldak, 1978]

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**List of Subjects in 40 CFR Parts 141 and 142.**

Administrative practice and procedure, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting, recordkeeping requirements, Water supply.

Dated: May 18, 1992.

**F. Henry Habicht II,**

*Administrator.*

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

## PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

**Authority:** 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4 and 300j–9.

2. Section 141.2 is amended by revising the definition for "Initial compliance period" to read as follows:

**§ 141.2 Definitions.**

* * * * *

*Initial compliance period* means the first full three-year compliance period which begins at least 18 months after promulgation, except for contaminants listed at 141.61(a) (19)–(21), (c)(19)–(33), and 141.62(b) (11)–(16), initial compliance period means the first full three-year compliance period after promulgation for systems with 150 or more service connections [January 1993–December 1995), and first full three-year compliance period after the effective date of the regulation (January 1996–December 1998) for systems having fewer than 150 service connections.

* * * * *

3. Section 141.6 is amended by adding paragraph (h), to read as follows:

**§ 141.6 Effective Date.**

* * * * *

(h) Regulations for the analytic methods listed at § 141.23(k)(4) for measuring antimony, beryllium, cyanide, nickel, and thallium are effective August 17, 1992. Regulations for the analytic methods listed at § 141(f)(16) for dichloromethane, 1,2,4-trichlorobenzene, and 1,1,2-trichloroethane are effective August 17, 1992. Regulations for the analytic methods listed at § 141.24(h)(12) for measuring dalapon, dinoseb, diquat, endothall, endrin, glyphosate, oxamyl, picloram, simazine, benzo(a)pyrene, di(2-ethylhexyl)adipate, di(2-ethylhexyl)phthalate, hexachlorobenzene, hexachlorocyclopentadiene, and 2,3,7,8-TCDD are effective August 17, 1992. The revision to § 141.12(a) promulgated on July 17, 1992 is effective on August 17, 1992.

4. Section 141.12 is amended by removing and reserving paragraph (a) in the table to read as follows:

**§ 141.12 Maximum contaminant levels for organic chemicals.**

* * * * *

(a) [Reserved]

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5. Section 141.23, which will be effective, is amended by revising the introductory text to paragraph (a)(4), by revising the introductory text to a (a)(4)(i), (a)(4)(i) table, by adding paragraph (a)(4)(iii), by revising paragraph (c) introductory text, (c)(1), and (i)(1), by redesignating (k)(5) as (k)(6) and revising it, redesignating (k)(4) as (k)(5) and revising it, and by adding a new (k)(4) to read as follows:

**§ 141.23 Inorganic chemical sampling and analytical requirements.**

* * * * *

(a) * * *

(4) The State may reduce the total number of samples which must be analyzed by allowing the use of compositing. Composite samples from a maximum of five samples are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory.

(i) If the concentration in the composite sample is greater than or equal to one-fifth of the MCL of any inorganic chemical, then a follow-up sample must be taken within 14 days at each sampling point included in the composite. These samples must be analyzed for the contaminants which exceeded one-fifth of the MCL in the composite sample. Detection limits for each analytical method and MCLs for each inorganic contaminant are the following:

DETECTION LIMITS FOR INORGANIC CONTAMINANTS

| Contaminant | MCL (mg/l) | Methodology | Detection limit (mg/l) |
|---|---|---|---|
| Antimony | 0.006 | Atomic Absorption, Furnace | 0.003 |
| | | | 0.0008 [6] |
| | | ICP-Mass Spectrometry | 0.0004 |
| | | Hydride-Atomic Absorption | 0.001 |
| Asbestos | 7 MFL [2] | Transmission Electron Microscopy | 0.01 MFL |
| Banum | 2 | Atomic Absorption; furnace technique | 0.002 |
| | | Atomic Absorption; direct aspiration | 0.1 |
| | | Inductively Coupled Plasma | 0.002 |
| | | | (0.001) [1] |
| Beryllium | 0.004 | Atomic Absorption; Furnace | 0.0002 |
| | | | 0.00002 [6] |
| | | Inductively Coupled Plasma [3] | 0.0003 |
| | | ICP-Mass Spectrometry | 0.0003 |
| Cadmium | 0.005 | Atomic Absorption; furnace technique | 0.0001 |
| | | Inductively Coupled Plasma | 0.001 [1] |
| Chromium | 0.1 | Atomic Absorption; furnace technique | 0.001 |
| | | Inductively Coupled Plasma | 0.007 |
| | | | (0.001) [1] |
| Cyanide | 0.2 | Distillation, Spectrophotometric [4] | 0.02 |
| | | Distillation, Automated, Spectrophotometric [4] | 0.005 |
| | | Distillation, Selective Electrode [4] | 0.05 |
| | | Distillation, Amenable, Spectrophotometric [5] | 0.02 |
| Mercury | 0.002 | Manual Cold Vapor Technique | 0.0002 |
| | | Automated Cold Vapor Technique | 0.0002 |
| Nickel | 0.1 | Atomic Absorption; Furnace | 0.001 |
| | | | 0.0006 [6] |
| | | Inductively Coupled Plasma [3] | 0.005 |
| | | ICP-Mass Spectrometry | 0.0005 |

DETECTION LIMITS FOR INORGANIC CONTAMINANTS—Continued

| Contaminant | MCL (mg/l) | Methodology | Detection limit (mg/l) |
|---|---|---|---|
| Nitrate | 10 (as N) | Manual Cadmium Reduction | 0.01 |
| | | Automated Hydrazine Reduction | 0.01 |
| | | Automated Cadmium Reduction | 0.05 |
| | | Ion Selective Electrode | 1 |
| | | Ion Chromatography | 0.01 |
| Nitrite | 1 (as N) | Spectrophotometric | 0.01 |
| | | Automated Cadmium Reduction | 0.05 |
| | | Manual Cadmium Reduction | 0.01 |
| | | Ion Chromatography | 0.004 |
| Selenium | 0.05 | Atomic Absorption; furnace | 0.002 |
| | | Atomic Absorption; gaseous hydride | 0.002 |
| Thallium | 0.002 | Atomic Absorption; Furnace | 0.001 |
| | | | 0.0007 [6] |
| | | ICP-Mass Spectrometry | [illegible] |

[1] Using concentration technique in Appendix A to EPA Method 200.7.
[2] MFL = million fibers per liter >10 μm.
[3] Using a 2X preconcentration step as noted in Method 200.7. Lower MDLs may be achieved when using a 4X preconcentration.
[4] Screening method for total cyanides.
[5] Measures "free" cyanides.
[6] Lower MDLs are reported using stabilized temperature graphite furnace atomic absorption.

* * * * *

(iii) If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling. The duplicates must be analyzed and the results reported to the State within 14 days of collection.

* * * * *

(c) The frequency of monitoring conducted to determine compliance with the maximum contaminant levels in § 141.62 for antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium and thallium shall be as follows:

(1) Groundwater systems shall take one sample at each sampling point once every three years. Surface water systems (or combined surface/ground) shall take one sample annually at each sampling point.

* * * * *

(i) * * *

(1) For systems which are conducting monitoring at a frequency greater than annual, compliance with the maximum contaminant levels for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium and thallium is determined by a running annual average at any sampling point. If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average.

* * * * *

(k) Inorganic analysis

(4) Analysis for the listed inorganic contaminants shall be conducted using the following methods:

| Contaminant | Methodology | EPA [1,2,12] | ASTM [2] | SM [3] | USGS [4] | Other |
|---|---|---|---|---|---|---|
| Antimony | Atomic Absorption; Furnace [6] | [1] 204.2 | | 3113 | | |
| | Atomic Absorption; Platform [6] | [5] 220.9 | | | | |
| | ICP-Mass Spectrometry [6] | [5] 200.8 | | | | |
| | Hydride-Atomic Absorption [6] | | D-3697-87 | | | |
| Asbestos | Transmission Electron Microscopy | [12] EPA | | | | |
| Barium | Atomic Absorption; Furnace [6] | [1] 208.2 | | 3113B | | |
| | Atomic Absorption; Direct [6] | [1] 208.1 | | 3111D | | |
| | Inductively Coupled Plasma [6] | [5] 200.7 | | 3120 | | |
| Beryllium | Atomic Absorption; Furnace [6] | [1] 210.2 | D-3645-84B | 3113 | | |
| | Atomic Absorption; Platform [6] | [5] 200.9 | | | | |
| | Inductively Coupled Plasma [6] | [5] 200.7 | | 3120 | | |
| | ICP-Mass Spectrometry [6] | [5] 200.8 | | | | |
| Cadmium | Atomic Absorption; Furnace [6] | [1] 213.2 | | 3113B | | |
| | Inductively Coupled Plasma [6] | [5] 200.7 | | | | |
| Chromium | Atomic Absorption; Furnace [6] | [1] 218.2 | | 3113B | | |
| | Inductively Coupled Plasma [6] | [5] 200.7 | | 3120 | | |
| Cyanide | Distillation, Spec. | [1] 335.2 | D-2036-89A | 4500-CN-D | I-3300-85 | |
| | Distillation, Automated, Spec. | [1] 335.3 | | 4500-CN-E | | |
| | Distillation, Selective Electrode | | D-2036-89A | 4500-CN-F | | |
| | Distillation, Amenable, Spec. | [1] 335.1 | D-2036-89B | 4500-CN-G | | |
| Mercury | Manual Cold Vapor Technique [9] | [1] 245.1 | D3223-86 | 3112B | | |
| | Automated Cold Vapor Technique [9] | [1] 245.2 | | | | |
| Nickel | Atomic Absorption; Furnace [6] | [1] 249.2 | | 3113 | | |
| | Atomic Absorption; Platform [6] | [5] 200.9 | | | | |
| | Atomic Absorption; Direct [6] | [1] 249.1 | | 3111B | | |
| | Inductively Coupled Plasma [6] | [5] 200.7 | | 3120 | | |
| | ICP-Mass Spectrometry [6] | [5] 200.8 | | | | |
| Nitrate | Manual Cadmium Reduction | [1] 353.3 | D3867-90 | 4500-$NO_3$-E | | |
| | Automated Hydrazine Reduction | [1] 353.1 | | | | |
| | Automated Cadmium Reduction | [1] 353.2 | D3867-90 | 4500-$NO_3$-F | | |

| Contaminant | Methodology | EPA [1, 5, 12] | ASTM [2] | SM [3] | USGS [4] | Other |
|---|---|---|---|---|---|---|
| | Ion Selective Electrode | | | | | WeWWG/ 5880 [7] |
| | Ion Chromatography | [11] 300.0 | | | | B-1011 [8] |
| Nitrite | Spectophometric | [1] 354.1 | | | | |
| | Automated Cadmium Reduction | [1] 353.2 | D3867-90 | 4500-$NO_3$-F | | |
| | Manual Cadmium Reduction | [1] 353.3 | D3867-90 | 4500-$NO_3$-E | | |
| | Ion Chromatography | [11] 300.0 | | | | B-1011 [8] |
| Selenium | Hydride-Atomic Absorption [9] | | D3859-84A | 3114B | | |
| | Atomic Absorption; Furnace [6, 10] | [1] 270.2 | D3859-88 | 3113B | | |
| Thallium | Atomic Absorption; Furnace [6] | [1] 279.2 | | 3113 | | |
| | Atomic Absorption; Platform [6] | [5] 200.9 | | | | |
| | ICP-Mass Spectrometry [6] | [5] 200.8 | | | | |

[1] "Methods of Chemical Analysis of Water and Wastes." EPA Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268 March 1983. EPA-600/4-79-020.

[2] Annual Book of ASTM Standards, Vols. 11.01 and 11.02, 1991, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

[3] "Standard Methods for the Examination of Water and Wastewater," 17th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1989.

[4] Techniques of Water Resources Investigations of the U.S. Geological Survey, "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments," Book 5, Chapter A-1, Third Edition, 1989. Available at Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

[5] "Methods for the Determination of Metals in Environmental Samples." Available at NTIS, PB 91-231498.

[6] Samples that contain less than 1 NTU (nephelometric turbidity unit) and are properly preserved (conc $HNO_3$ to pH <2) may be analyzed directly (without digestion) for total metals, otherwise, digestion is required. Turbidity must be measured on the preserved samples just prior to the initiation of metal analysis. When digestion is required, the total recoverable technique as defined in the method must be used.

[7] "Orion Guide to Water and Wastewater Analysis." Form WeWWG/5880, p. 5, 1985. Orion Research, Inc., Cambridge, MA.

[8] "Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography, Method B-1011, Millipore Corporation, Waters Chromatography Division, 34 Maple Street, Milford, MA 01757.

[9] For the gaseous hydride determinations of antimony and selenium and for the determination of mercury by the cold vapor techniques, the proper digestion technique as defined in the method must be followed to ensure the element is in the proper state for analyses.

[10] Add 2 ml of 30% $H_2O_2$ and an appropriate concentration of matrix modifier $Ni(NO_3)_2 \cdot 6H_2O$ (nickel nitrate) to samples.

[11] "Method 300. Determination of Inorganic Anions in Water by Ion Chromatography." Inorganic Chemistry Branch, Environmental Monitoring Systems Laboratory. August 1991.

[12] "Analytical Method For Determination of Asbestos Fibers in Water," EPA-600/4-83-043, September 1983, U.S. EPA Environmental Research Laboratory, Athens, GA 30613.

**(5) Sample collection for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium under this section shall be conducted using the sample preservation, container, and maximum holding time procedures specified in the table below:**

| Contaminant | Preservative [1] | Container [2] | Time [3] |
|---|---|---|---|
| Antimony | Conc $HNO_3$ to pH <2 | P or G | 6 months. |
| Asbestos | Cool, 4°C | P or G | |
| Barium | Conc $HNO_3$ to pH <2 | P or G | 6 months. |
| Beryllium | Conc $HNO_3$ to pH <2 | P or G | 6 months. |
| Cadmium | Conc $HNO_3$ to pH <2 | P or G | 6 months. |
| Chromium | Conc $HNO_3$ to pH <2 | P or G | 6 months. |
| Cyanide | Cool, 4°C, NAOH to pH >12, | P or G | 14 days. |
| Fluoride | None | P or G | 1 month. |
| Mercury | Conc $HNO_3$ to pH <2 | P or G | 28 days. |
| Nickel | Conc $HNO_3$ to pH <2 | P or G | 6 months. |
| Nitrate | | | |
| Chlorinated | Cool, 4°C | P or G | 28 days. |
| Non-chlorinated | Conc $H_2SO_4$ to pH <2 | P or G | 14 days. |
| Nitrite | Cool, 4°C | P or G | 48 hours. |
| Selenium | Conc $HNO_3$ to pH <2 | P or G | 6 months. |
| Thallium | Conc $HNO_3$ to pH <2 | P or G | 6 months. |

[1] If $HNO_3$ cannot be used because of shipping restrictions, sample may be initially preserved by icing and immediately shipping it to the laboratory. Upon receipt in the laboratory, the sample must be acidified with conc $HNO_3$ to pH <2 and held for 16 hours before analysis.

[2] P=plastic, hard or soft; G=glass, hard or soft.

[3] In all cases, samples should be analyzed as soon after collection as possible.

[4] See method(s) for the information for preservation.

**(6) Analysis under this section shall only be conducted by laboratories that have been certified by EPA or the State. Laboratories may conduct sample analysis under provisional certification until January 1, 1996. To receive certification to conduct analyses for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite and selenium and thallium, the laboratory must:**

**(i) Analyze Performance Evaluation samples which include those substances provided by EPA Environmental Monitoring Systems Laboratory or equivalent samples provided by the State.**

**(ii) Achieve quantitative results on the analyses that are within the following acceptance limits:**

| Contaminant | Acceptance limit |
|---|---|
| Antimony | 6#30 at ≥0.006 mg/1 |
| Asbestos | 2 standard deviations based on study statistics. |
| Barium | ±15% at ≥0.15 mg/1 |
| Beryllium | ±15% at ≥0.001 mg/1 |
| Cadmium | ±20% at ≥0.002 mg/1 |
| Chromium | ±15% at ≥0.01 mg/1 |
| Cyanide | ±25% at ≥0.1 mg/1 |
| Fluoride | ±10% at ≥1 to 10 mg/1 |
| Mercury | ±30% at ≥0.0005 mg/1 |
| Nickel | ±15% at ≥0.01 mg/1 |
| Nitrate | ±10% at ≥0.4 mg/1 |
| Nitrite | ±15% at ≥0.4 mg/1 |

| Contaminant | Acceptance limit |
|---|---|
| Selenium | ±20% at ≥0.01 mg/1 |
| Thallium | ±30% at ≥0.002 mg/1 |

* * * * *

6. Section 141.24 is amended by revising paragraph (f) introductory text, paragraphs (f) introductory text, paragraphs (f)(4), (f)(5), (f)(7), and (f)(10), (f)(11), introductory text, (f)(12), the introductory texts of (f)(14), (f)(15) and (f)(16) revising (f) (17) and (18), (h)(10), (h)(12)(ii)–(iv), (h)(12)(vi)–(viii), (h)(18), (h)(19)(i)(B), and adding paragraphs (h)(12)(ix)–(xiv) to read as follows:

**§ 141.24 Organic chemicals other than total trihalomethanes, sampling and analytical requirements.**

* * * * *

(f) Beginning with the initial compliance period, analysis of the contaminants listed in § 141.61(a) (1) through (21) for the purpose of determining compliance with the maximum contaminant level shall be conducted as follows:

* * * * *

(4) Each community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in § 141.61(a) (2) through 21 during each compliance period, beginning in the initial compliance period.

(5) If the initial monitoring for contaminants listed in § 141.61(a) (1) through (8) and the monitoring for the contaminants listed in § 141.61(a) (9) through (21) as allowed in paragraph (f)(18) has been completed by December 31, 1992, and the system did not detect any contaminant listed in § 141.61(a) (1) through (21), then each ground and surface water system shall take one sample annually beginning with the initial compliance period.

* * * * *

(7) Each community and non-transient ground water system which does not detect a contaminant listed in § 141.61(a) (1) through (21) may apply to the State for a waiver from the requirements of paragraphs (f)(5) and (f)(6) of this section after completing the initial monitoring. (For purposes of this section, detection is defined as >0.0005 mg/l.) A waiver shall be effective for no more than six years (two compliance periods). States may also issue waivers to small systems for the initial round of monitoring for 1,2,4-trichlorobenzene.

* * * * *

(10) Each community and non-transient surface water system which does not detect a contaminant listed in § 141.61(a) (1) through (21) may apply to the State for a waiver from the requirements of (f)(5) of this section after completing the initial monitoring. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Systems meeting this criterion must be determined by the State to be non-vulnerable based on a vulnerability assessment during each compliance period. Each system receiving a waiver shall sample at the frequency specified by the State (if any).

(11) If a contaminant listed in § 141.61(a) (2) through (21) is detected at a level exceeding 0.0005 mg/l in any sample, then:

* * * * *

(12) Systems which violate the requirements of § 141.61(a) (1) through (21), as determined by paragraph (f)(15) of this section, must monitor quarterly. After a minimum of four consecutive quarterly samples which show the system is in compliance as specified in paragraph (f)(15) of this section the system and the State determines that the system is reliably and consistently below the maximum contaminant level, the system may monitor at the frequency and times specified in paragraph (f)(11)(iii) of this section.

* * * * *

(14) The State may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collection.

* * * * *

(15) Compliance with § 141.61(a) (1) through (21) shall be determined based on the analytical results obtained at each sampling point.

* * * * *

(16) Analysis for the contaminants listed in § 141.61(a) (1) through (21) shall be conducted using the following EPA methods or their equivalent as approved by EPA. These methods are contained in Methods for the Determination of Organic Compounds in Drinking Water, EPA/600/4–88/039, and are available from the National Technical Information Service (NTIS) NTIS PB91–231480 and PB91–146027, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800–336–4700.

* * * * *

(17) Analysis under this section shall only be conducted by laboratories that are certified by EPA or the State according to the following conditions (laboratories may conduct sample analysis under provisional certification until January 1, 1996):

(i) To receive certification to conduct analyses for the contaminants in § 141.61(a) (2) through (21) the laboratory must:

(A) Analyze Performance Evaluation samples which include these substances provided by EPA Environmental Monitoring Systems Laboratory or equivalent samples provided by the State.

(B) Achieve the quantitative acceptance limits under paragraphs (f)(17)(i) (C) and (D) of this section for at least 80 percent of the regulated organic chemicals listed in § 141.61(a) (2) through (21).

(C) Achieve quantitative results on the analyses performed under paragraph (f)(17)(i)(A) of this section that are within ±20% of the actual amount of the substances in the Performance Evaluation sample when the actual amount is greater than or equal to 0.010 mg/l.

(D) Achieve quantitative results on the analyses performed under paragraph (f)(17)(i)(A) of this section that are within ±40 percent of the actual amount of the substances in the Performance Evaluation sample when the actual amount is less than 0.010 mg/l.

(E) Achieve a method detection limit of 0.0005 mg/l, according to the procedures in Appendix B of Part 136.

(ii) To receive certification for vinyl chloride, the laboratory must:

(A) Analyze Performance Evaluation samples provided by EPA Environmental Monitoring Systems Laboratory or equivalent samples provided by the State.

(B) Achieve quantitative results on the analyses performed under paragraph (f)(17)(ii)(A) of this section that are within ±40 percent of the actual amount of vinyl chloride in the Performance Evaluation sample.

(C) Achieve a method detection limit of 0.0005 mg/l, according to the procedures in appendix B of part 136.

(D) Obtain certification for the contaminants listed in § 141.61(a)(2) through (21).

(18) States may allow the use of monitoring data collected after January 1, 1988, required under section 1445 of the Act for purposes of initial monitoring compliance. If the data are generally consistent with the other requirements of this section, the State may use these data (i.e., a single sample rather than four quarterly samples) to satisfy the initial monitoring requirement of

paragraph (f)(4) of this section. Systems which use grandfathered samples and did not detect any contaminant listed § 141.61(a)(2) through (21) shall begin monitoring annually in accordance with paragraph (f)(5) of this section beginning with the initial compliance period.

* * * * *

(h) * * *

(10) The State may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collection.

* * * * *

(12) * * *

(ii) Method 505, "Analysis of Organohalide Pesticides and Commercial Polychlorinated Biphenyl Products (Aroclors) in Water by Microextraction and Gas Chromatography." Method 505 can be used to measure alachlor, atrazine, chlordane, endrin, heptachlor, heptachlor epoxide, hexachlorobenzene, hexachlorocyclopentadiene, lindane, methoxychlor, toxaphene and simazine. Method 505 can be used as a screen for PCBs.

(iii) Method 507, "Determination of Nitrogen- and Phosphorus-Containing Pesticides in Ground Water by Gas Chromatography with a Nitrogen-Phosphorus Detector." Method 507 can be used to measure alachlor, atrazine and simazine.

(iv) Method 508, "Determination of Chlorinated Pesticides in Water by Gas Chromatography with an Electron Capture Detector." Method 508 can be used to measure chlordane, endrin, heptachlor, heptachlor epoxide, hexachlorobenzene, lindane, methoxychlor and toxaphene. Method 508 can be used as a screen for PCBs.

* * * * *

(vi) Method 515.1, "Determination of Chlorinated Acids in Water by Gas Chromatography with an Electron Capture Detector." Method 515.1 can be used to measure 2,4-D, dalapon, dinoseb, pentachlorophenol, picloram and 2,4,5-TP (Silvex).

(vii) Method 525.1, "Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction and Capillary Column Gas Chromatography/Mass Spectrometry." Method 525.1 can be used to measure alachlor, atrazine, chlordane, di(2-ethylhexyl)adipate, di(2-ethylhexyl)phthalate, endrin, heptachlor, heptachlor epoxide, hexachlorobenzene, hexachlorocyclopentadiene, lindane, methoxychlor, pentachlorphenol, polynuclear aromatic hydrocarbons, simazine, and toxaphene.

(viii) Method 531.1, "Measurement of N-Methyl Carbamoyloximes and N-Methyl Carbamates in Water by Direct Aqueous Injection HPLC with Post-Column Derivatization." Method 531.1 can be used to measure aldicarb, aldicarb sulfoxide, aldicarb sulfone, carbofuran and oxamyl.

(ix) Method 1613, "Tetra- through Octa- Chlorinated Dioxins and Furans by Isotope Dilution." Method 1613 can be used to measure 2,3,7,8-TCDD (dioxin). This method is available from USEPA-OST, Sample Control Center, P.O. Box 1407, Alexandria, VA 22313.

(x) Method 547, "Analysis of Glyphosate in Drinking Water by Direct Aqueous Injection HPLC with Post-Column Derivatization" Method 547 can be used to measure glyphosate.

(xi) Method 548, "Determination of Endothall in Aqueous Samples." Method 548 can be used to measure endothall.

(xii) Method 549, "Determination of Diquat and Paraquat in Drinking Water by High Performance Liquid Chromatography with Ultraviolet Detection." Method 549 can be used to measure diquat.

(xiii) Method 550, "Determination of Polycyclic Aromatic Hydrocarbons in Drinking Water by Liquid-Liquid Extraction and HPLC with Coupled Ultraviolet and Fluorescence Detection". Method 550 can be used to measure benzo(a)pyrene and other polynuclear aromatic hydrocarbons.

(xiv) Method 550.1, "Determination of Polycyclic Aromatic Hydrocarbons in Drinking Water by Liquid-Solid Extraction and HPLC with Coupled Ultraviolet and Fluorescence Detection". Method 550.1 can be used to measure benzo(a)pyrene and other polynuclear aromatic hydrocarbons.

* * * * *

(18) Detection as used in this paragraph shall be defined as greater than or equal to the following concentrations for each contaminant.

| Contaminant | Detection limit (mg/l) |
|---|---|
| Alachlor | .0002 |
| Aldicarb | .0005 |
| Aldicarb sulfoxide | .0005 |
| Aldicarb sulfone | .0008 |
| Atrazine | .0001 |
| Benzo[a]pyrene | .00002 |
| Carbofuran | .0009 |
| Chlordane | .0002 |
| Dalapon | .001 |
| Dibromochloropropane (DBCP) | .00002 |
| Di (2-ethylhexyl) adipate | .0006 |
| Di (2-ethylhexyl) phthalate | .0006 |
| Dinoseb | .0002 |
| Diquat | .0004 |
| 2,4-D | .0001 |
| Endothall | .009 |
| Endrin | .00001 |
| Ethylene dibromide (EDB) | .00001 |
| Glyphosate | .006 |
| Heptachlor | .00004 |
| Heptachlor epoxide | .00002 |
| Hexachlorobenzene | .0001 |
| Hexachlorocyclopentadiene | .0001 |
| Lindane | .00002 |
| Methoxychlor | .0001 |
| Oxamyl | .002 |
| Picloram | .0001 |
| Polychlorinated biphenyls (PCBs) (as decachlorobiphenyl) | .0001 |
| Pentachlorophenol | .00004 |
| Simazine | .00007 |
| Toxaphene | .001 |
| 2,3,7,8-TCDD (Dioxin) | .000000005 |
| 2,4,5-TP (Silvex) | .0002 |

* * * * *

(19) * * *

(i) * * *

(B) Achieve quantitative results on the analyses that are within the following acceptance limits:

| Contaminant | Acceptance limits (percent) |
|---|---|
| DBCP | ±40 |
| EDB | ±40. |
| Alachlor | ±45. |
| Atrazine | ±45. |
| Benzo[a]pyrene | 2 standard deviations. |
| Carbofuran | ±45. |
| Chlordane | ±45. |
| Dalapon | 2 standard deviations. |
| Di(2-ethylhexyl)adipate | 2 standard deviations. |
| Di(2-ethylhexyl)phthalate | 2 standard deviations. |
| Dinoseb | 2 standard deviations. |
| Diquat | 2 standard deviations. |
| Endothall | 2 standard deviations. |
| Endrin | ±30. |
| Glyphosate | 2 standard deviations. |
| Heptachlor | ±45. |
| Heptachlor epoxide | ±45. |
| Hexachlorobenzene | 2 standard deviations. |
| Hexachlorocyclopentadiene | 2 standard deviations. |
| Lindane | ±45. |
| Methoxychlor | ±45. |
| Oxamyl | 2 standard deviations. |
| PCBs (as Decachlorobiphenyl) | 0-200. |
| Picloram | 2 standard deviations. |
| Simazine | 2 standard deviations. |
| Toxaphene | ±45. |
| Aldicarb | 2 standard deviations. |
| Aldicarb sulfoxide | 2 standard deviations. |
| Aldicarb sulfone | 2 standard deviations. |
| Pentachlorophenol | ±50. |
| 2,3,7,8-TCDD (Dioxin) | 2 standard deviations. |
| 2,4-D | ±50. |
| 2,4,5-TP (Silvex) | ±50. |

* * * * *

7. Section 141.32 is amended by adding paragraphs (e)(53) through (75) to read as follows:

**§ 141.32 Public notification.**

* * * * *

(e)* * *

(53) *Antimony.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that antimony is a health concern at certain levels of exposure. This inorganic chemical occurs naturally in soils, ground water and surface waters and is often used in the flame retardant industry. It is also used in ceramics, glass, batteries, fireworks and explosives. It may get into drinking water through natural weathering of rock, industrial production, municipal waste disposal or manufacturing processes. This chemical has been shown to decrease longevity, and altered blood levels of cholesterol and glucose in laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for antimony at 0.006 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to antimony.

(54) *Beryllium.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that beryllium is a health concern at certain levels of exposure. This inorganic metal occurs naturally in soils, ground water and surface waters and is often used in electrical equipment and electrical components. It generally gets into water from runoff from mining operations, discharge from processing plants and improper waste disposal. Beryllium compounds have been associated with damage to the bones and lungs and induction of cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. There is limited evidence to suggest that beryllium may pose a cancer risk via drinking water exposure. Therefore, EPA based the health assessment on noncancer effects with an extra uncertainty factor to account for possible carcinogenicity. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for beryllium at 0.004 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to beryllium.

(55) *Cyanide.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that cyanide is a health concern at certain levels of exposure. This inorganic chemical is used in electroplating, steel processing, plastics, synthetic fabrics and fertilizer products. It usually gets into water as a result of improper waste disposal. This chemical has been shown to damage the spleen, brain and liver of humans fatally poisoned with cyanide. EPA has set the drinking water standard for cyanide at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to cyanide.

(56) *Nickel.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nickel poses a health concern at certain levels of exposure. This inorganic metal occurs naturally in soils, ground water and surface waters and is often used in electroplating, stainless steel and alloy products. It generally gets into water from mining and refining operations. This chemical has been shown to damage the heart and liver in laboratory animals when the animals are exposed to high levels over their lifetimes. EPA has set the drinking water standard at 0.1 parts per million (ppm) for nickel to protect against the risk of these adverse effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to nickel.

(57) *Thallium.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that thallium is a health concern at certain high levels of exposure. This inorganic metal is found naturally in soils and is used in electronics, pharmaceuticals, and the manufacture of glass and alloys. This chemical has been shown to damage the kidney, liver, brain and intestines of laboratory animals when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for thallium at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to thallium.

(58) *Benzo[a]pyrene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that benzo[a]pyrene is a health concern at certain levels of exposure. Cigarette smoke and charbroiled meats are common source of general exposure. The major source of benzo[a]pyrene in drinking water is the leaching from coal tar lining and sealants in water storage tanks. This chemical has been shown to cause cancer in animals such as rats and mice when the animals are exposed at high levels. EPA has set the drinking water standard for benzo[a]pyrene at 0.0002 parts per million (ppm) to protect against the risk of cancer. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to benzo[a]pyrene.

(59) *Dalapon.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dalapon is a health concern at certain levels of exposure. This organic chemical is a widely used herbicide. It may get into drinking water after application to control grasses in crops, drainage ditches and along railroads. This chemical has been shown to cause damage to the kidney and liver in laboratory animals when the animals are exposed to high levels over their lifetimes. EPA has set the drinking water standard for dalapon at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to dalapon.

(60) *Dichloromethane.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dichloromethane (methylene chloride) is a health concern at certain levels of exposure. This organic chemical is a widely used solvent. It is used in the manufacture of paint remover, as a metal degreaser and as an aerosol propellant. It generally gets into drinking water after improper discharge of waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for dichloromethane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe with respect to dichloromethane.

(61) *Di (2-ethylhexyl)adipate.* The United States Environmental Protection Agency (EPA) sets drinking water

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standards and has determined that di(2-ethylhexyl)adipate is a health concern at certain levels of exposure. Di(2-ethylhexyl)adipate is a widely used plasticizer in a variety of products, including synthetic rubber, food packaging materials and cosmetics. It may get into drinking water after improper waste disposal. This chemical has been shown to damage liver and testes in laboratory animals such as rats and mice exposed to high levels. EPA has set the drinking water standard for di(2-ethylhexyl)adipate at 0.4 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standards is associated with little to none of this risk and should be considered safe with respect to di(2-ethylhexyl)adipate.

(62) *Di(2-ethylhexyl)phthalate.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that di(2-ethylhexyl)phthalate is a health concern at certain levels of exposure. Di(2-ethylhexyl)phthalate is a widely used plasticizer, which is primarily used in the production of polyvinyl chloride (PVC) resins. It may get into drinking water after improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice exposed to high levels over their lifetimes. EPA has set the drinking water standard for di(2-ethylhexyl)phthalate at 0.004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to di(2-ethylhexyl)phthalate.

(63) *Dinoseb.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dinoseb is a health concern at certain levels of exposure. Dinoseb is a widely used pesticide and generally gets into drinking water after application on orchards, vineyards and other crops. This chemical has been shown to damage the thyroid and reproductive organs in laboratory animals such as rats exposed to high levels. EPA has set the drinking water standard for dinoseb at 0.007 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to dinoseb.

(64) *Diquat.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that diquat is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into drinking water by runoff into surface water. This chemical has been shown to damage the liver, kidney and gastrointestinal tract and causes cataract formation in laboratory animals such as dogs and rats exposed at high levels over their lifetimes. EPA has set the drinking water standard for diquat at 0.02 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to diquat.

(65) *Endothall.* The United States Environmental Protection Agency (EPA) has determined that endothall is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into water by runoff into surface water. This chemical has been shown to damage the liver, kidney, gastrointestinal tract and reproductive system of laboratory animals such as rats and mice exposed at high levels over their lifetimes. EPA has set the drinking water standard for endothall at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endothall.

(66) *Endrin.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that endrin is a health concern at certain levels of exposure. This organic chemical is a pesticide no longer registered for use in the United States. However, this chemical is persistent in treated soils and accumulates in sediments and aquatic and terrestrial biota. This chemical has been shown to cause damage to the liver, kidney and heart in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for endrin at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endrin.

(67) *Glyphosate.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that glyphosate is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control grasses and weeds. It may get into drinking water by runoff into surface water. This chemical has been shown to cause damage to the liver and kidneys in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for glyphosate at 0.7 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to glyphosate.

(68) *Hexachlorobenzene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that hexachlorobenzene is a health concern at certain levels of exposure. This organic chemical is produced as an impurity in the manufacture of certain solvents and pesticides. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed to high levels during their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for hexachlorobenzene at 0.001 parts per million (ppm) to protect against the risk of cancer and other adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to hexachlorobenzene.

(69) *Hexachlorocyclopentadiene.* The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that hexachlorocyclopentadiene is a health concern at certain levels of exposure. This organic chemical is used as an intermediate in the manufacture of pesticides and flame retardants. It may get into water by discharge from production facilities. This chemical has been shown to damage the kidney and the stomach of laboratory animals when exposed at high levels over their lifetimes. EPA has set the drinking water standard for hexachlorocyclopentadiene at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to hexachlorocyclopentadiene.

(70) *Oxamyl.* The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that oxamyl is a health concern at certain levels of exposure. This organic chemical is used as a pesticide for the control of insects and other pests. It may get into drinking water by runoff into surface water or leaching into ground water. This chemical has been shown to damage the kidneys of laboratory animals such as rats when exposed at high levels over their lifetimes. EPA has set the drinking water standard for oxamyl at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to oxamyl.

(71) *Picloram.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that picloram is a health concern at certain levels of exposure. This organic chemical is used as a pesticide for broadleaf weed control. It may get into drinking water by runoff into surface water or leaching into ground water as a result of pesticide application and improper waste disposal. This chemical has been shown to cause damage to the kidneys and liver in laboratory animals such as rats when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for picloram at 0.5 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to picloram.

(72) *Simazine.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that simazine is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control annual grasses and broadleaf weeds. It may leach into ground water or runs off into surface water after application. This chemical may cause cancer in laboratory animals such as rats and mice exposed at high levels during their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for simazine at 0.004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to simazine.



(73) *1,2,4-Trichlorobenzene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2,4-trichlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a dye carrier and as a precursor in herbicide manufacture. It generally gets into drinking water by discharges from industrial activities. This chemical has been shown to cause damage to several organs, including the adrenal glands. EPA has set the drinking water standard for 1,2,4-trichlorobenzene at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to 1,2,4-trichlorobenzene.

(74) *1,1,2-Trichloroethane.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined 1,1,2-trichloroethane is a health concern at certain levels of exposure. This organic chemical is an intermediate in the production of 1,1-dichloroethylene. It generally gets into water by industrial discharge of wastes. This chemical has been shown to damage the kidney and liver of laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for 1,1,2-trichloroethane at 0.005 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to 1,1,2-trichloroethane.

(75) *2,3,7,8-TCDD (Dioxin).* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dioxin is a health concern at certain levels of exposure. This organic chemical is an impurity in the production of some pesticides. It may get into drinking water by industrial discharge of wastes. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for dioxin at 0.00000003 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe with respect to dioxin.

8. Section 141.40 is amended by revising paragraph (e), revising paragraph (f), revising paragraphs (g) and (h), and revising paragraphs (n) (11) and (12) including the tables to read as follows:

**§ 141.40 Special monitoring for organic chemicals.**

* * * * *

(e) Community water systems and non-transient, non-community water systems shall monitor for the following contaminants except as provided in paragraph (f) of this section:

(1) Chloroform
(2) Bromodichloromethane
(3) Chlorodibromomethane
(4) Bromoform
(5) Chlorobenzene
(6) m-Dichlorobenzene
(8) 1,1-Dichloropropene
(9) 1,1-Dichloroethane
(10) 1,1,2,2-Tetrachloroethane
(11) 1,3-Dichloropropane
(12) Chloromethane
(13) Bromomethane
(14) 1,2,3-Trichloropropane
(15) 1,1,1,2-Tetrachloroethane
(16) Chloroethane
(17) 2,2-Dichloropropane
(18) o-Chlorotoluene
(19) p-Chlorotoluene
(20) Bromobenzene
(21) 1,3-Dichloropropene

(f) [Reserved]

(g) Analysis under this section shall be conducted using the recommended EPA methods as follows, or their equivalent as determined by EPA: 502.1, "Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography," 503.1, "Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography," 524.1, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography/Mass Spectrometry," 524.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography/Mass Spectrometry, or 502.2, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series." These methods are contained in "Methods for the Determination of Organic Compounds in Finished Drinking Water and Raw Source Water," September 1986, available from the Drinking Water Public Docket or the National Technical Information Service (NTIS). NTIS PB91-231480 and PB91-146027, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800-336-4700.

(h) Analysis under this section shall only be conducted by laboratories approved under § 141.24(g)(11).

* * * * *

(n) * * *

(11) List of Unregulated Organic Contaminants:

| Organic contaminants | EPA analytical method |
|---|---|
| Aldrin | 505, 508, and 525. |
| Butachlor | 507, 525. |
| Carbaryl | 531.1. |
| Dicamba | 515.1. |
| Dieldrin | 505, 508, and 525. |
| 3-Hydroxycarbofuran | 531.1. |
| Methomyl | 531.1. |
| Metolachlor | 507, 525. |
| Metribuzin | 507, 508, and 525. |
| Propachlor | 507, 525. |

(12) List of Unregulated Inorganic Contaminants:

| Inorganic contaminants | EPA analytical method |
|---|---|
| Sulfate | Colorimetric. |

9. Section 141.50 is amended by adding paragraphs (a)(19) through (a)(23) and paragraphs (b)(21) through (b)(33) in the table in paragraphs (b) as follows:

**§ 141.50 Maximum contaminant level goals for organic chemicals.**

(a) * * *

(19) Benzo[a]pyrene

(20) Dichloromethane (methylene chloride)

(21) Di(2-ethylhexyl)phthalate

(22) Hexachlorobenzene

(23) 2,3,7,8-TCDD (Dioxin)

(b) * * *

| Contaminant | MCLG (mg/l) |
|---|---|
| * * * * * | |
| (21) Dalapon | 0.2 |
| (22) Di(2-ethylhexyl)adipate | .4 |
| (23) Dinoseb | .007 |
| (24) Diquat | .02 |
| (25) Endothall | .1 |
| (26) Endrin | .002 |
| (27) Glyphosate | .7 |
| (28) Hexachlorocyclopentadiene | .05 |
| (29) Oxamyl (Vydate) | .2 |
| (30) Picloram | .5 |
| (31) Simazine | .004 |
| (32) 1,2,4-Trichlorobenzene | .07 |
| (33) 1,1,2-Trichloroethane | .003 |

10. Section 141.51 is amended by adding entries (b)(11) through (b)(15) as follows:

**§ 141.51 Maximum contaminant level goals for inorganic contaminants.**

(b) * * *

| Contaminant | MCLG (mg/l) |
|---|---|
| * * * * * | |
| (11) Antimony | 0.006 |
| (12) Beryllium | .004 |
| (13) Cyanide (as free Cyanide) | .2 |
| (14) Nickel | .1 |
| (15) Thallium | .0005 |

11. Section 141.60 is amended by adding paragraphs (a)(3) and (b)(3) to read as follows:

**§ 141.60 Effective dates.**

(a) * * *

(3) The effective date for paragraphs (a)(19) through (a)(21) and (c)(19) through (c)(33) of § 141.61 is January 17, 1994.

(b) * * *

(3) The effective date for paragraphs (b)(11) through (b)(15) of § 141.62 is January 17, 1994.

12. Section 141.61 is amended by adding paragraphs (a)(19)–(21); by revising paragraph (b) including the table; by revising the introductory text to paragraph (c); and by adding paragraphs (c)(19)–(33).

**§ 141.61 Maximum contaminant levels for organic contaminants.**

* * * * *

| CAS No. | Contaminant | MCL (mg/l) |
|---|---|---|
| * * * * * | | |
| (19) 75-09-2 | Dichloromethane | 0.005 |
| (20) 120-82-1 | 1,2,4-Trichlorobenzene | .07 |
| (21) 79-00-5 | 1,1,2-Trichloroethane | .005 |

(b) The Administrator, pursuant to section 1412 of the Act, hereby identifies as indicated in the Table below granular activated carbon (GAC), packed tower aeration (PTA), or oxidation (OX) as the best technology treatment technique, or other means available for achieving compliance with the maximum contaminant level for synthetic organic contaminants identified in paragraphs (a) and (c) of this section:

BAT FOR ORGANIC CONTAMINANTS LISTED IN SECTION 141.61(A) AND (C)

| CAS No. | Contaminant | GAC | PTA | OX |
|---|---|---|---|---|
| 50-32-8 | Benzo[a]pyrene | X | | |
| 75-99-0 | Dalapon | X | | |
| 75-09-2 | Dichloromethane | | X | |
| 103-23-1 | Di (2-ethylhexyl) adipate | X | X | |
| 117-81-7 | Di (2-ethylhexyl) phthalate | X | | |
| 88-85-7 | Dinoseb | X | | |
| 85-00-7 | Diquat | X | | |
| 145-73-3 | Endothall | X | | |
| 72-20-8 | Endrin | X | | |
| 1071-53-6 | Glyphosate | | | X |
| 118-74-1 | Hexachlorobenzene | X | | |
| 77-47-3 | Hexachlorocyclopentadiene | X | X | |
| 23135-22-0 | Oxamyl (Vydate) | X | | |
| 1918-02-1 | Picloram | X | | |
| 122-34-9 | Simazine | X | | |
| 120-82-1 | 1,2,4-Trichlorobenzene | X | X | |
| 79-00-5 | 1,1,2-Trichloroethane | X | X | |
| 1746-01-6 | 2,3,7,8-TCDD (Dioxin) | X | | |

(c) The following maximum contaminant levels for synthetic organic contaminants apply to community water systems and non-transient, non-community water systems:

* * * * *

| | CAS No. | Contaminant | MCL (mg/l) |
|---|---|---|---|
| • | • | • | • |
| (19) | 50-32-8 | Benzo[a]pyrene | 0.0002 |
| (20) | 75-99-0 | Dalapon | 0.2 |
| (21) | 103-23-1 | Di(2-ethylhexyl) adipate | 0.4 |
| (22) | 117-81-7 | Di(2-ethylhexyl) phthalate | 0.006 |
| (23) | 88-85-7 | Dinoseb | 0.007 |
| (24) | 85-00-7 | Diquat | 0.02 |
| (25) | 145-73-3 | Endothall | 0.1 |
| (26) | 72-20-8 | Endrin | 0.002 |
| (27) | 1071-53-6 | Glyphosate | 0.7 |
| (28) | 118-74-1 | Hexachlorbenzene | 0.001 |
| (29) | 77-47-4 | Hexachlorocyclopentadiene | 0.05 |
| (30) | 23135-22-0 | Oxamyl (Vydate) | 0.2 |
| (31) | 1918-02-1 | Picloram | 0.5 |
| (32) | 122-34-9 | Simazine | 0.004 |
| (33) | 1746-01-6 | 2,3,7,8-TCDD (Dioxin) | $3 \times 10^{-8}$ |

3. Section 141.62 is amended by revising the introductory text to paragraph (b); by adding paragraphs (b)(11) through (b)(15); and by revising paragraph (c), including the table, to read as follows:

**§ 141.62 Maximum contaminant levels for inorganic contaminants.**

• • • • •

(b) The maximum contaminant levels for inorganic contaminants specified in paragraphs (b)(2)—(6), (b)(10), and (b)(11)—(15) of this section apply to community water systems and non-transient, non-community water systems. The maximum contaminant level specified in paragraph (b)(1) of this section only applies to community water systems. The maximum contaminant levels specified in (b)(7), (b)(8), and (b)(9) of this section apply to community water systems; non-transient, non-community water systems; and transient non-community water systems.

| Contaminant | MCL (mg/l) |
|---|---|
| • • • • • • • | |
| (11) Antimony | 0.006 |
| (12) Beryllium | 0.004 |
| (13) Cyanide (as free Cyanide) | 0.2 |
| (14) Nickel | 0.1 |
| (15) Thallium | 0.002 |

(c) The Administrator, pursuant to Section 1412 of the Act, hereby identifies the following as the best technology, treatment technique, or other means available for achieving compliance with the maximum contaminant levels for inorganic contaminants identified in paragraph (b) of this section, except fluoride:

BAT FOR INORGANIC COMPOUNDS LISTED IN SECTION 141.62(B)

| Chemical Name | BAT(s) |
|---|---|
| Antimony | 2,7 |
| Asbestos | 2,3,8 |
| Barium | 5,6,7,9 |
| Beryllium | 1,2,5,6,7 |
| Cadmium | 2,5,6,7 |
| Chromium | 2,5,6 [2],7 |
| Cyanide | 5,7,10 |
| Mercury | 2 [1],4,6 [1],7 [1] |
| Nickel | 5,6,7 |
| Nitrate | 5,7,9 |
| Nitrite | 5,7 |
| Selenium | 1,2 [3],6,7,9 |
| Thallium | 1,5 |

[1] BAT only if influent Hg concentrations ≤ 10μg/1.
[2] BAT for Chromium III only.
[3] BAT for Selenium IV only.

*Key to BATS in Table*

1=Activated Alumina
2=Coagulation/Filtration
3=Direct and Diatomite Filtration
4=Granular Activated Carbon
5=Ion Exchange
6=Lime Softening
7=Reverse Osmosis
8=Corrosion Control
9=Electrodialysis
10=Chlorine
11=Ultraviolent

14. Section 141.89(a) table is amended by revising footnote 9 to read as follows:

**§ 141.89 Analytical methods.**

• • • • •

[9] For analyzing lead and copper, the technique applicable to total metals must be used and samples cannot be filtered. Samples that contain less than 1 NTU (nephelometric turbidity unit) and are properly preserved (conc $HNO_3$ to pH <2) may be analyzed directly (without digestion) for total metals; otherwise, digestion is required. Turbidity must be measured on the preserved samples just prior to when metal analysis is initiated. When digestion is required, the 'total recoverable' technique as defined in the method must be used.

• • • • •

## PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

**Authority**: 42 U.S.C. 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4 and 300j–9.

2. Section 142.16 is amended by revising the introductory text to paragraph (e), and revising paragraph (e)(2) to read as follows:

**§ 142.16 Special Primary Requirements.**

• • • • •

(e) An application for approval of a State program revision which adopts the requirements specified in §§ 141.11, 141.23, 141.24, 141.32, 141.40, 141.61 and 141.62 must contain the following (in addition to the general primacy requirements enumerated elsewhere in this Part, including the requirement that State regulations be at least as stringent as the federal requirements):

(2) A monitoring plan for the initial monitoring period by which the State will assure all systems complete the required initial monitoring within the regulatory deadlines.

**Note:** States may update their monitoring plan submitted under the Phase II Rule or simply note in their application that they will use the same monitoring plan for the Phase V Rule.

(i) The initial monitoring plan must describe how systems will be scheduled during the initial monitoring period and demonstrate that the analytical workload on certified laboratories for each of the three years has been taken into account, to assure that the State's plan will result in a high degree of monitoring compliance and that as a result there is a high probability of compliance and will be updated as necessary.

(ii) The State must demonstrate that the initial monitoring plan is enforceable under State law.

3. Section 142.62 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 142.62 Variances and exemptions from the maximum contaminant levels for organic and inorganic chemicals.**

(a) The Administrator, pursuant to section 1415(a)(1)(A) of the Act hereby identifies the technologies listed in paragraphs (a)(1) through (a)(54) of this section as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for organic chemicals listed in §§ 141.61 (a) and (c):

| Contaminant | Best available technologies | | |
|---|---|---|---|
| | PAT [1] | GAO [2] | OX [3] |
| (1) Benzene | X | X | |
| (2) Carbon tetrachloride | X | X | |
| (3) 1,2-Dichloroethane | X | X | |
| (4) Trichloroethylene | X | X | |
| (5) para-Dichlorobenzene | X | X | |
| (6) 1,1-Dichloroethylene | X | X | |
| (7) 1,1,1-Trichloroethane | X | X | |
| (8) Vinyl chloride | X | | |
| (9) cis-1,2-Dichloroethylene | X | X | |
| (10) 1,2-Dichloropropane | X | X | |
| (11) Ethylbenzene | X | X | |
| (12) Monochlorobenzene | X | X | |
| (13) o-Dichlorobenzene | X | X | |
| (14) Styrene | X | X | |
| (15) Tetrachloroethylene | X | X | |
| (16) Toluene | X | X | |
| (17) trans-1,2-Dichloroethylene | X | X | |
| (18) Xylense (total) | X | X | |
| (19) Alachlor | X | X | |
| (20) Aldicarb | | X | |
| (21) Aldicarb sulfoxide | | X | |
| (22) Aldicarb sulfone | | X | |
| (23) Atrazine | | X | |
| (24) Carbofuran | | X | |
| (25) Chlordane | | X | |
| (26) Dibromochloropropane | X | X | |
| (27) 2,4-D | | X | |
| (28) Ethylene dibromide | X | X | |
| (29) Heptachlor | | X | |
| (30) Heptachlor epoxide | | X | |
| (31) Lindane | | X | |
| (32) Methoxychlor | | X | |
| (33) PCBs | | X | |
| (34) Pentachlorophenol | | X | |
| (35) Toxaphene | | X | |
| (36) 2,4,5-TP | | X | |
| (37) Benzo[a]pyrene | | X | |
| (38) Dalapone | | X | |
| (39) Dichloromethane | X | | |
| (40) Di(2-ethylhexyl)adipate | X | X | |
| (41) Di(2-ethylhexyl)phthalate | | X | |
| (42) Dinoseb | | X | |
| (43) Diquat | | X | |
| (44) Endothall | | X | |
| (45) Endrin | | X | |
| (46) Glyphosate | | | X |
| (47) Hexachlorobenzene | | | X |
| (48) Hexachlorocyclopentadiene | X | X | |
| (49) Oxamyl (Vydate) | | X | |
| (50) Picloram | | X | |
| (51) Simazine | | X | |
| (52) 1,2,4-Trichlorobenzene | X | X | |
| (53) 1,1,2-Trichloroethane | X | X | |
| (54) 2,3,7,8-TCDD (Dioxin) | | X | |

[1] Packed Tower Aeration
[2] Granular Activated Carbon
[3] Oxidation (Chlorination or Ozonation)

(b) The Administrator, pursuant to section 1415(a)(1)(A) of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum

contaminant levels for the inorganic chemicals listed in § 141.62:

BAT FOR INORGANIC COMPOUNDS LISTED IN § 141.62(B)

| Chemical name | BAT(s) |
|---|---|
| Antimony | 2,7 |
| Asbestos | 2,3,6 |
| Barium | 5,6,7,9 |
| Beryllium | 1,2,5,6,7 |
| Cadmium | 2,5,6,7 |
| Chromium | 2,5,6 [2],7 |
| Cyanide | 5,7,10 |
| Mercury | 2 [1],4,6 [1],7 [1] |
| Nickel | 5,6,7 |

BAT FOR INORGANIC COMPOUNDS LISTED IN § 141.62(B)—Continued

| Chemical name | BAT(s) |
|---|---|
| Nitrite | 5,7,9 |
| Nitrate | 5,7 |
| Selenium | 1,2 [3],6,7,9 |
| Thallium | 1,5 |

[1] BAT only if influent Hg concentrations ≤ 10μg/1.
[2] BAT for Chromium III only.
[3] BAT for Selenium IV only.

*Key to BATS in Table*

1=Activated Alumina
2=Coagulation/Filtration (not BAT for systems <500 service connections)
3=Direct and Diatomite Filtration
4=Granular Activated Carbon
5=Ion Exchange
6=Lime Softening (not BAT for systems <500 service connections)
7=Reverse Osmosis
8=Corrosion Control
9=Electrodialysis
10=Chlorine
11=Ultraviolet

* * * * *

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Part IV

# Department of Defense

## Department of the Army

32 CFR Part 516
Litigation; Proposed Rule

VOL 57 ISS 138 JL 17 1992 UMI



**DEPARTMENT OF DEFENSE**

**Department of the Army**

**32 CFR Part 516**

**Litigation**

**AGENCY:** Department of the Army, DOD.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Army announces a revision of 32 CFR part 516, to bring it in line with changes which will be promulgated in Army Regulation 27–40, Litigation. This part prescribes policy and procedures for litigation in civilian court proceedings, including the following: providing representation of the Army and its personnel in federal and state court proceedings; remedies for procurement fraud; environmental litigation; bankruptcy; prosecution in federal court of offenses in which the Army has an interest; release of information and appearance of witnesses in criminal and civil court actions; procedures to follow when soldiers are summoned for jury duty; and, procedures for cooperation with the Office of Special Counsel.

**DATES:** Comments must be received on or before August 17, 1992.

**ADDRESSES:** Mail comments to Office of the Judge Advocate General, ATTN: Litigation Division (DAJA–LT/LTC William S. Trivette), 901 North Stuart Street, Arlington, VA 22203–1837.

**FOR FURTHER INFORMATION CONTACT:** LTC William S. Trivette, (703) 696–1610.

**SUPPLEMENTARY INFORMATION:** This part also prescribes policies and procedures for: defensive and affirmative litigation in federal and state civilian courts where the Army or DOD has an interest in the matter; proceedings before federal or state administrative bodies, such as utility rate commissions; release of official information and testimony by DA personnel with regard to litigation; prosecution of individuals committing crimes on military installations in federal district court before either a district judge or a magistrate judge; remedies for procurement fraud and corruption; and proceedings before the Office of Special Counsel. This part does not apply to DA or DOD proceedings such as courts-martial or administrative boards.

**Executive Order 12291**

This proposed rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the rule on the economy will be less than $100 million.

**Regulatory Flexibility Act**

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

**Paperwork Reduction Act**

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

Accordingly, it is proposed that 32 CFR part 516 be revised as follows:

## PART 516—LITIGATION

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516.35 Referral to Litigation Division.
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516.57 Expert witnesses.
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516.70 Litigation reports in civil recovery cases.
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**Subpart J—Cooperation with the Office of Special Counsel**

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**Appendix A to Part 516—References**

**Appendix B to Part 516—Mailing Addresses**

**Appendix C to Part 516—Sample Answer to Judicial Complaint**

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**Appendix I to Part 516—Testing Defective Items Under Criminal or Civil Investigation**

**Appendix J to Part 516—Department of Defense Directive 5505.5**

**Appendix K to Part 516—Memorandum of Understanding, Felony Prosecution Program**

**Appendix L to Part 516—Figures**

**Appendix M to Part 516—Glossary**

**Authority:** 5 U.S.C. 552; 10 U.S.C. 218, 1037, 1089, 1552, 1553, 2306; 18 U.S.C. 219, 3401; 28 U.S.C. 50.15, 50.16, 515, 513, 543; 28 U.S.C. 543, 1696, 1733, 1746, 1761, 1783, 2415, 2671, 2679; 31 U.S.C. 3711, 3729; 33 U.S.C. 400, 1344; 41 U.S.C. 51; 42 U.S.C. 290, 2651; 43 U.S.C. 666; 32 CFR part 250, E.O. 12778, 56 FR 55195, 3 CFR, 1991 Comp., p. 359.

## Subpart A—General

### § 516.1 Purpose.

(a) This regulation prescribes policies and procedures for the following:

(1) Defensive and affirmative litigation in federal and state civilian courts where the Army or DoD has an interest in the matter.

(2) Proceedings before federal or state administrative bodies, such as utility rate commissions.

(3) Release of official information and testimony by DA personnel with regard to litigation.

(4) Prosecution of individuals committing crimes on military installations in federal district court before either a district judge or a magistrate judge.

(5) Remedies for procurement fraud and corruption.

(6) Proceedings before The Office of Special Counsel.

(b) This regulation does not apply to DA or DoD proceedings such as court-martials or administrative boards.

### § 516.2 References.

Applicable publications and forms are in appendix A to this part.

### § 516.3 Explanation of abbreviations and terms.

(a) The glossary contains explanations of abbreviations and terms.

(b) The masculine gender has been used throughout this regulation for simplicity and consistency. Any reference to the masculine gender is intended to include women.

### § 516.4 Responsibilities.

(a) United States Department of Justice (DOJ). DOJ defends litigation, in domestic and foreign courts, against the United States, its agencies and instrumentalities, and employees whose official conduct is involved. The various U.S. Attorney Offices, under the oversight of the Attorney General, conduct much of the representation.

(b) The Judge Advocate General (TJAG). Subject to the ultimate control of litigation by DOJ (including the various U.S. Attorney Offices), and to the general oversight of litigation by the Army General Counsel, TJAG is responsible for all litigation in which the Army has an interest. Only TJAG has the authority to settle or compromise cases against DA.

(c) Assistant Judge Advocate General For Civil Law and Litigation (AJAG–CL). Responsible to TJAG for litigation issues; supervises Chief, Litigation Division.

(d) Chief, Litigation Division. Reports to AJAG–CL and is responsible for the following:

(1) Supervises litigation in which the Army has an interest.

(2) Acts for TJAG and Secretary of the Army on litigation issues; delegates to an SJA or legal adviser the authority to work directly with DOJ on select cases.

(3) Serves as primary liaison with DOJ on litigation matters.

(e) Special Assistant U.S. Attorneys (SAUSAs) and DOJ Special Attorneys. Army Judge Advocates and civilian attorneys may be appointed as SAUSAs under 28 U.S.C. 543 to represent the Army's interests in either criminal or civil matters in federal court.

(1) Felony and misdemeanor prosecutions in federal court. In accordance with guidance in Subpart G, Army attorneys at the installation level can be appointed to prosecute cases in which the Army has an interest in federal court. Army attorneys who prosecute criminal cases will not represent the United States in civil litigation without authorization from Chief, Litigation Division.

(2) SAUSAs for civil litigation. With the approval of the U.S. Attorney, TJAG can assign a Judge Advocate to a U.S. Attorney's office to represent the government in litigation in which the Army or DoD has an interest. These Judge Advocates have the same general authority and responsibility as an Assistant U.S. Attorney.

(3) Special Attorneys assigned to DOJ. With concurrence of the appropriate DOJ official, TJAG can assign Judge Advocates to work as Special Attorneys for DOJ, usually in Washington, DC. Special Attorneys are authorized to represent the United States in civil litigation in which the Army or DoD has an interest.

(f) Attorneys at Army activities or commands. SJAs or legal advisers, or attorneys assigned to them, will represent the United States in litigation only if authorized by this regulation or delegated authority in individual cases by the Chief, Litigation Division.

(g) Commander, U.S. Army Claims Service (USARCS). The Commander, USARCS and attorneys assigned thereto are authorized, subject to AR 27–20, chapter 4, to maintain direct liaison with DOJ in regard to administrative settlement of claims under the Federal Tort Claims Act.

(h) Chief, Contract Law Division, OTJAG. The Chief, Contract Law Division, attorneys assigned thereto, and other attorneys designated by the Chief, Contract Law Division, are authorized in litigation involving taxation to represent DA in negotiation, administrative proceedings, and litigation, and to maintain liaison with DOJ and other governmental authorities.

(i) Legal Representatives of the Chief of Engineers. The Office of Chief Counsel, attorneys assigned thereto, and

other attorneys designated by the Chief Counsel may maintain direct liaison with DOJ in litigation and administrative proceedings arising from the navigation, civil works, Clean Water Act section 404 permit authority, and real property functions of the U.S. Army Corps of Engineers.

(j) Chief Trial Attorney, Contract Appeals Division, USALSA. The Chief Trial Attorney, attorneys assigned to the Contract Appeals Division, and attorneys designated by the Chief Trial Attorney will represent the government before the Armed Services Board of Contract Appeals and The General Services Board of Contract Appeals. They will maintain direct liaison with DOJ concerning appeals from ASBCA and GSBCA decisions. The Chief Trial Attorney will present to the ASBCA all DA cases, except that COE attorneys will act as trial attorneys in connection with COE contract cases.

(k) Chief, Regulatory Law Office, USALSA. The Chief, Regulatory Law Office, attorneys assigned thereto, and other attorneys designated by the Chief, will represent DA consumer interests in all regulatory matters before state and federal administrative agencies and commissions, including but not limited to proceedings involving rates and conditions for the purchase of services for communications (except long-distance telephone), transportation, and utilities (gas, electric, water and sewer).

(l) Chief, Intellectual Property Law Division, USALSA. The Chief, Intellectual Property Law Division and the attorneys assigned thereto will represent DA in matters pertaining to patents, copyrights, and trademarks. They will maintain direct liaison with DOJ concerning intellectual property issues.

(m) Chief, Labor and Employment Law Office, OTJAG. The Chief, Labor and Civilian Personnel Law, attorneys assigned thereto, and attorneys identified as labor counselors are authorized to represent DA in matters pertaining to labor relations, civilian personnel, and federal labor standards enforcement before the following: Federal Labor Relations Authority; Merit Systems Protection Board; Equal Employment Opportunity Commission; Department of Labor; National Labor Relations Board; and, state workmen's compensation commissions. In the event that any individual mentioned in this subparagraph intends to make a recommendation to DOJ concerning an appeal of any case to a U.S. Court of Appeals, such recommendation will first be coordinated with Litigation Division.

(n) Chief, Procurement Fraud Division, USALSA. The Chief, Procurement Fraud Division, attorneys assigned thereto, and other attorneys designated by the Chief will represent DA in all procurement fraud and corruption matters before the Army suspension and debarment authority and before any civil fraud recovery administrative body. They will maintain liaison and coordinate remedies with DOJ and other agencies in matters of procurement fraud and corruption.

(o) Chief, Environmental Law Division, USALSA. The Chief, Environmental Law Division, attorneys assigned thereto, and other attorneys designated by the Chief will maintain direct liaison with DOJ in all environmental and natural resources litigation and administrative proceedings involving missions and functions of DA, its major and subordinate commands, all installations presently or previously managed by DA, and all other sites or issues in which DA has a substantial interest.

(p) Chief, Criminal Law Division, OTJAG. The Chief, Criminal Law Division, will have general oversight over felony and magistrate court prosecutions conducted by Army lawyers acting as Special Assistant U.S. Attorneys. (See Subpart G). The Chief will coordinate with DOJ and other governmental agencies concerning the overall conduct of these prosecutions.

### § 516.5 Restriction on contact with DOJ.

(a) General rule. Except as authorized by TJAG, the Chief of Litigation Division, or this regulation, no Army personnel will confer or correspond with DOJ concerning legal proceedings in which the Army has an interest.

(b) Exceptions. This prohibition does not preclude contact with DOJ required by the Memorandum of Understanding between DOJ and DOD relating to the investigation and prosecution of certain crimes. (See AR 27–10, paragraph 2–7). In addition, an installation SJA or legal officer is expected to maintain a working relationship with the U.S. Attorney in each district within his geographical areas. An SJA or legal adviser should request the U.S. Attorney to advise him immediately when litigation involving DA or its personnel is served on the U.S. Attorney.

### § 516.6 Appearance as counsel.

(a) General. Military personnel on active duty and DA civilian personnel will not appear as counsel before any civilian court or in any preliminary proceeding, e.g., deposition, in litigation in which the Army has an interest without the prior written approval of TJAG, except under one of the following conditions:

(1) The appearance is authorized by this regulation.

(2) The individual is a party to the proceeding.

(3) The appearance is authorized under an expanded legal assistance program (See AR 27–3).

(4) The individual is a Judge Advocate assigned or detailed by TJAG to DOJ to represent the United States in civil or criminal cases, e.g., a Special Assistant U.S. Attorney.

(5) The attorney is assigned to one of the following OTJAG organizations and is acting within the authority set out in § 516.4: Litigation Division; Contract Appeals Division; Environmental Law Division; Regulatory Law Division; Intellectual Property Division; Procurement Fraud Division; or, Contract Law Division.

(b) Procedure. All requests for appearance as counsel will be made through Litigation Division to the Personnel, Plans and Training Office, OTJAG. Requests for DA military or civilian attorneys to appear in any civilian court or proceeding on behalf of a soldier who is also facing UCMJ action will be delivered to the SJA, legal adviser, or Regional Defense Counsel, as appropriate. The SJA or legal adviser will forward the request to Litigation Division with an evaluation of the case and recommendation. Regional Defense Counsel should send requests for USATDS counsel to Chief, USATDS, who will forward the request to Litigation Division. Privileged or otherwise sensitive client information should only be submitted through USATDS channels.

### § 516.7 Mailing addresses.

Mailing addresses for organizations referenced in this regulation are in appendix B to this part.

## Subpart B—Service of Process

### § 516.8 General.

(a) Defined. Process is a legal document that compels a defendant in an action to appear in court or to comply with the court's demands, e.g., in a civil case a summons or subpoena, or in a criminal case, a warrant for arrest, indictment, contempt order, subpoena, or summons. Service of process is the delivery of the document to a defendant to notify him of a claim or charge against him.

(b) Policy. DA personnel will follow the guidance of this chapter when civil officials attempt to serve civil or criminal process on individuals on federal property.

(c) Procedures. Provost marshals shall ensure that installation law enforcement personnel are adequately trained to respond to situations which arise with regard to service of civil and criminal process. SJAs or legal advisers shall provide advice to law enforcement personnel in these matters.

**§ 516.9 Service of criminal process within the United States.**

(a) Surrender of personnel. Detailed guidance for surrender of personnel to law enforcement officials is in Chapter 7 of AR 630–10 and AR 190–9. Army officials will cooperate with civilian law enforcement authorities who seek the surrender of a soldier in connection with criminal charges. Special rules apply when a bail bondsman or other surety seeks custody of a soldier.

(b) Requests for witnesses or evidence in criminal proceedings. See subpart H.

**§ 516.10 Service of civil process within the United States.**

(a) Policy. DA officials will not prevent or evade the service or process in legal actions brought against the United States or against themselves in their official capacities. If acceptance of service of process would interfere with the performance of military duties, Army officials may designate a representative to accept service. DA personnel sued in their individual capacity should seek legal counsel concerning voluntary acceptance of process.

(b) Requests for witnesses or evidence in civil proceedings. See subpart H.

(c) Process of federal courts. Subject to reasonable restrictions imposed by the commander, civil officials will be permitted to serve federal process. (See Fed. R. Civ. P. 4, 45).

(d) Process of state courts.

(1) In areas of exclusive federal jurisdiction that are not subject to the right to serve state process, the commander or supervisor will determine whether the individual to be served wishes to accept service voluntarily. A JA or other DA attorney will inform the individual of the legal effect of voluntary acceptance. If the individual does not desire to accept service, the party requesting service will be notified that the nature of the exclusive federal jurisdiction precludes service by state authorities on the military installation.

(2) On federal property where the right to serve process is reserved by or granted to the state, in areas of concurrent jurisdiction, or where the United States has only a proprietary interest, Army officials asked to facilitate service of process will initially proceed as provided in the preceding subparagraph. If the individual declines to accept service, the requesting party will be allowed to serve the process in accordance with applicable state law, subject to reasonable restrictions imposed by the commander.

(e) Process of foreign courts. A U.S. District Court may order service upon a person who resides in the judicial district of any document issued in connection with a proceeding in a foreign or international tribunal. (28 U.S.C. 1696). In addition, the U.S. State Department has the power to receive a letter rogatory issued by a foreign or international tribunal, to transmit it to a tribunal, officer or agency in the United States and to return it after execution. (28 U.S.C. 1781). Absent a treaty or agreement to the contrary, these provisions will govern.

(f) Seizure of personal property. State and federal courts issue orders (e.g., writ of attachment) authorizing a levy (seizure) of property to secure satisfaction of a judgment. DA personnel will comply with valid state or federal court orders commanding or authorizing the seizure of private property to the same extent that state or federal process is served.

**§ 516.11 Service of criminal process outside the United States.**

Army Regulation 630–10 and international treaties, such as status of forces agreements, govern the service of criminal process of foreign courts and the surrender of soldiers to foreign civilian law enforcement officials.

**§ 516.12 Service of civil process outside the United States.**

(a) Process of foreign courts. In foreign countries service of process issued by foreign courts will be made under the law of the place of service, as modified by status of forces agreements, treaties or other agreements. In foreign areas under exclusive U.S. jurisdiction, service of process issued by foreign courts will be made under the law specified by appropriate U.S. authority.

(b) Process of federal courts. Service of process on U.S. citizens or residents may be accomplished under the following provisions: The Hague Convention, reprinted in 28 U.S.C.A. Federal Rules of Civil Procedure, following Rule 4; Fed. R. Civ. P. 4(i); 28 U.S.C. 1781 and 1783; and, the rules of the federal court concerned. If a DA official receives a request to serve federal process on a person overseas, he will determine if the individual wishes to accept service voluntarily. Individuals will be permitted to seek counsel. If the person will not accept service voluntarily, the party requesting service will be notified and advised to follow procedures prescribed by the law of the foreign country concerned.

(c) Process of state courts. If a DA official receives a request to serve state court process on a person overseas, he will determine if the individual wishes to accept service voluntarily. Individuals will be permitted to seek counsel. If the person will not accept service voluntarily, the party requesting service will be notified and advised to follow procedures prescribed by the law of the foreign country concerned. (See, e.g., The Hague Convention, reprinted in 28 U.S.C.A. Federal Rules of Civil Procedure, following Rule 4).

(d) Suits against the United States. DA personnel served with foreign civil process will notify the appropriate SJA or legal adviser, who will return the document to the issuing authority explaining the lack of authority to accept service for the United States. Service on the United States must be made upon DOJ through established diplomatic channels.

**§ 516.13 Assistance in serving process overseas.**

(a) Europe. For information and assistance concerning service of process of persons assigned to or accompanying U.S. forces in Europe, contact the International Criminal Jurisdiction and Civil Process Branch, Administrative Law Division, Office of The Judge Advocate, HQ U.S. Army Europe And Seventh Army, (Heidelberg, Germany) APO AE 09014.

(b) Korea. For information and assistance concerning service of process of persons assigned to or accompanying U.S. forces in Korea, contact Staff Judge Advocate, HQ, US Forces Korea, Seoul, Republic of Korea, APO San Francisco 96301–0009.

(c) Panama, Central and South America. For information and assistance concerning service of process of persons assigned to or accompanying forces in the U.S. Army Southern Command, contact Staff Judge Advocate, HQ, US Army South, Fort Clayton, Panama, APO AA 34004–5000.

## Subpart C—Reporting Legal Proceedings to HQDA

**§ 516.14 General.**

(a) Legal proceedings requiring reporting. Actions must be taken upon commencement of litigation or administrative proceedings in which DA has an interest. Typically, the Secretary of the Army, DA, the United States, or DA personnel are named as defendant in a lawsuit or as respondent in an

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administrative proceeding. A nonexclusive listing of cases in which DA has an interest include the following:

(1) Suits for damages, injunctive relief, or other action filed against the government or against DA personnel in their official capacity.

(2) Suits alleging individual liability arising from performance of official duties by DA personnel.

(3) Actions affecting DA operations or which might require official action by DA personnel.

(4) Actions arising out of DA contracts, subcontracts, or purchase orders wherein the government might be required to reimburse a contractor for litigation expenses.

(5) Bankruptcy proceedings involving government contractors in which DA or its instrumentalities may have an interest.

(b) Command and agency responsibility. Commanders and supervisors of Army units, installations, or organizations will ensure reports required by this section are promptly submitted.

(c) Reports to HQDA. Reports required by this regulation will be made telephonically or mailed to the responsible organization at DA. Appendix B to this part contains mailing addresses for these offices. Except in the situations described below, all reports required by this chapter will be made to Litigation Division:

(1) Actual or potential litigation (or administrative infringement claims) involving patents, copyrights, or trademarks will be made to Intellectual Property Law Division.

(2) Reports of pending or prospective litigation involving taxation will be made to Contract Law Division.

(3) Communications, transportation, and utility services reports will be made to Regulatory Law Division.

(4) Reports involving environmental and natural resource litigation and administrative proceedings will be made to Environmental Law Division.

(5) Potential civil recovery reports in cases of procurement fraud and corruption will be made to Procurement Fraud Division.

(6) Reports involving the felony prosecution program and magistrate court prosecutions will be made to Criminal Law Division, OTJAG.

(7) Cases before the Armed Services Board of Contract Appeals and the General Services Board of Contract Appeals will be made to Contract Appeals Division.

(d) Classified information. Information required by this regulation will be submitted in an unclassified form if possible. If downgrading or declassification is not feasible, the classified material should be separated from the report and forwarded under separate cover.

(e) Other reporting requirements. Reports required by this chapter are in addition to and do not satisfy any other reporting requirement, such as the following: notifying the FBI of offenses pursuant to AR 27–10; submitting serious incident reports pursuant to AR 190–40; reporting procurement fraud or other irregularities per Defense Federal Acquisition Regulation Supplement, section 9.406–3; or, reporting the exercise of criminal jurisdiction by foreign tribunals over U.S. personnel pursuant to AR 27–50.

(f) Reports control exemption. The reports required herein are exempt from reports control under AR 335–15, paragraphs 3–3a(5) and 5–2e(4).

### § 516.15 Individual and supervisory responsibilities upon commencement of legal proceedings.

(a) Individual responsibilities. DA personnel served with civil or criminal process concerning a proceeding in which DA has an interest (See § 516.14) will immediately inform his supervisor and furnish copies of process and pleadings. There is no requirement to notify supervisors of purely private litigation.

(b) Supervisory responsibilities. When supervisors learn that legal proceedings in which DA has an interest have commenced, the supervisor will forward a copy of all process and pleadings, along with other readily available information, to the SJA or legal adviser. If no legal officer is available locally, the documents will be forwarded to the SJA or legal adviser of the next higher headquarters.

### § 516.16 SJA or legal adviser responsibilities.

(a) Immediate notice to HQDA. When an SJA or legal adviser learns of litigation in which the United States has an interest, and it appears that HQDA is not aware of the action, the SJA or legal adviser will telephonically notify the responsible HQDA office. (See § 516.14(c)). Immediate notice is particularly important when litigation involves one of the following: a lawsuit against an employee in his individual capacity; a motion for a temporary restraining order or preliminary injunction; a habeas corpus proceeding; a judicial or administrative proceeding involving less than 60 days to file an answer; and, actions with possible Congressional, Secretarial, or Army Staff interest. For legal proceedings instituted in foreign tribunals, the SJA or legal adviser will also notify the major overseas commander concerned and the appropriate U.S. Embassy or Legation. A telephonic report to HQDA should include the following:

(1) Title or style of the proceeding.

(2) Full names and addresses of the parties.

(3) Tribunal in which the action is filed, date filed, docket number, when and on whom service of process was made, and date by which pleading or response is required.

(4) Nature of the action, amount claimed or relief sought.

(5) Reasons for immediate action.

(b) Transmission of process, pleadings, and related papers. Unless instructed otherwise by HQDA, the SJA or legal adviser will FAX or mail HQDA a copy of all process, pleadings, and related papers. Use of express mail or overnight delivery service is authorized.

(c) Notice to U.S. Attorney. If the legal proceeding is instituted in the United States, the SJA or legal adviser, unless instructed otherwise by HQDA, will notify the appropriate U.S. Attorney and render assistance as required.

### § 516.17 Litigation alleging individual liability.

See subpart D for procedures to follow when DA personnel, as a result of performance of official duties, are either sued in their individual capacities or face criminal charges.

### § 516.18 Injunctive relief.

(a) General. Plaintiffs can attempt to force government action or restraint in important operational matters or pending personnel actions through motions for temporary restraining orders (TRO) or preliminary injunctions (PI). Because these actions can quickly impede military functions, immediate and decisive action must be taken.

(b) Notification to HQDA and U.S. Attorney. The SJA or legal adviser will immediately notify Litigation Division or other appropriate office at HQDA when a motion for TRO or PI has been, or is about to be, filed. The SJA or legal officer will also notify the responsible U.S. Attorney.

(c) Actions by SJA or legal adviser. The SJA or legal adviser will assist the DOJ or DA attorney responsible for the litigation. Installation attorneys or support personnel should begin accumulating relevant documentary evidence and identifying witnesses. If requested, installation attorneys will prepare a legal memorandum concerning the motion, giving particular attention to

the following issues relevant to a court granting injunctive relief:

(1) Plaintiff's likelihood of success on the merits.

(2) Whether plaintiff will be irreparably harmed if injunctive relief is not granted.

(3) Harm to defendant and other parties if injunctive relief is granted.

(4) The public interest.

**§ 516.19 Habeas corpus.**

(a) General. A soldier may file a writ of habeas corpus to challenge his continued custody (usually in a post court-martial situation) or retention in the Army. As is the case with injunctive relief in the preceding paragraph, installation SJAs and legal advisers must take immediate action.

(b) Notification to Litigation Division and U.S. Attorney. The SJA or Legal Officer will notify Litigation Division and the responsible U.S. Attorney's Office immediately upon learning that a petition for writ of habeas corpus has been filed. All relevant documentary evidence supporting the challenged action should be assembled immediately.

(c) Procedures in habeas corpus. Upon the filing of a petition for a writ of habeas corpus, the court will dismiss the petition, issue the writ, or order the respondent to show cause why it should not be granted. If a writ or order to show cause is issued, the SJA or legal adviser should be prepared to assist the responsible Litigation Division or DOJ attorney in preparing a return and answer. If so directed, the SJA will also prepare a memorandum of points and authorities to accompany the return and answer. The government's response should cover the following: whether the Army has custody of petitioner; whether respondent and petitioner are within the judicial district; and, whether appellate or administrative remedies have been exhausted.

(d) Writs or orders issued by state courts. No state court, after being judicially informed that a petitioner is in custody under the authority of the United States, should interfere with that custody or require that petitioner be brought before the state court. A deserter, apprehended by any civil officer having authority to apprehend offenders under the laws of the United States or of any state, district, territory, or possession of the United States, is in custody by authority of the United States. If a writ of habeas corpus is issued by a state court, the SJA or legal adviser will seek guidance from Litigation Division.

(e) Foreign court orders. A foreign court should not inquire into the legality of restraint of a person held by U.S. military authority. If a foreign court issues any process in the nature of a writ of habeas corpus, the SJA or legal adviser will immediately report the matter to the appropriate U.S. forces commander and to Litigation Division.

**§ 516.20 Litigation against government contractors.**

(a) General. A contract might require that the government reimburse a contractor (or subcontractor) for adverse judgments or litigation expenses. Unless a contractor or subcontractor facing a lawsuit requests representation by DOJ, the Army presumes the contractor will obtain private counsel to defend the case. If the contract so allows, however, the contractor may request and HQDA may recommend that DOJ represent the contractor if it is in the best interests of the United States.

(b) Actions by SJA or legal adviser. If a contractor or subcontractor faces litigation and the underlying contract with the government requires reimbursement for adverse judgments or costs of the litigation, the SJA or legal adviser, through the contracting officer, should determine if the contractor desires representation by DOJ. If so, the contractor or authorized agent will sign a request for representation. (See Figure 516.1, appendix L). The SJA or legal adviser will determine whether, in his opinion, representation by DOJ should be granted. He will prepare a memorandum to support his recommendation, especially concerning any issue regarding the government's obligation to reimburse the contractor under the contract. The SJA or legal adviser will forward his memorandum, along with the contractor's request, to Litigation Division.

(c) Actions by Litigation Division. The Chief, Litigation Division will evaluate the submission and decide if it is in the Army's best interest that the request be granted. He will prepare a memorandum supporting his decision and send the packet to DOJ. The Chief, Litigation Division's decision constitutes the final DA position on the matter. If DOJ grants the contractor's request, the Chief, Litigation Division will ensure that the contractor is notified through the SJA or legal adviser and the contracting officer.

(d) Private Counsel. A contractor represented by DOJ may ask that private counsel assist the DOJ attorney in the litigation. The DOJ attorney will remain in control of the litigation, and the fees for private counsel will not be reimbursable except under unusual circumstances. The contractor must seek both DOJ and DA approval to employ private counsel when DOJ representation has been granted. Even if DOJ and DA grant authority to employ private counsel, the contracting officer will determine whether a contractor will be reimbursed under the contract for private counsel.

(e) Settlement. The contractor, unless the contract specifies otherwise, will ultimately decide whether to compromise a suit. Reimbursement under the contract is determined by the contracting officer, with the advice of his attorney.

**§ 516.21 Miscellaneous reporting requirements.**

SJAs or legal advisers will comply with the directives cited below concerning actual or prospective litigation involving the following types of cases:

(a) Taxation. (1) Contractor transactions (FAR and DFARS, part 29).

(2) Army and Air Force Exchange Service (AAFES) activities. (AR 60–20).

(3) Purchase or sale of alcoholic beverages. (AR 215–2).

(4) Nonappropriated fund and related activities. (AR 215–1).

(5) Open messes and other military sundry associations and funds. (AR 215–1).

(b) Tort and contract claims, insurance and litigation involving nonappropriated fund activities. (AR 215–1).

(c) Annexation of Army lands. (AR 405–25).

(d) Communications, transportation, and utility services administrative proceedings. Any contracting officer or other Army official responsible for the acquisition of communications, transportation, utilities (gas, electric, water and sewer), or military mail services, who becomes aware of any action or proceeding of interest to the Army, will promptly refer the matter to the SJA or legal adviser, who will take the actions prescribed in § 516.16. Examples of actions requiring referral follow: New or amended rates, regulations, or conditions of service; applications for authority to discontinue or initiate service; changes in electromagnetic patterns causing adverse communications interference; or, zoning proposals affecting historic or aesthetic preservation. In addition, the SJA or legal adviser will transmit the following to Regulatory Law Division:

(1) The names and addresses of any parties intervening and the substance of their positions.

(2) Names of government users affected by any change.

(3) Copy of any proposed rates, rules, or regulations.

(4) A recommendation whether the Army should intervene in the action or proceeding. If intervention is recommended, provide a memorandum to support the recommendation.

(e) Legal proceedings overseas. Foreign communications, transportation, and utility service proceedings need not be reported. In other legal proceedings instituted in a foreign country, the SJA or legal adviser will take the actions prescribed in § 516.16.

(f) Maritime claims. Admiralty and maritime claims within the purview of chapter 8, AR 27–20, which have been investigated and processed under AR 55–19 or other applicable regulations, will be referred to USARCS.

(g) Army and Air Force Exchange Service litigation. The SJA or legal officer will send a copy of all documents relating to litigation against AAFES to General Counsel, AAFES, P.O. Box 660202, Dallas, TX 75266–0202.

**§ 516.22 Litigation reports.**

The SJA or legal adviser will prepare a litigation report when directed by HQDA. The report will contain the following sections: Statement of Facts; Setoff or Counterclaim; Responses to Pleadings; Memorandum of Law; Witness List; and, Exhibits.

(a) Statement of Facts. Include a complete statement of the facts upon which the action and any defense thereto are based. Where possible, support facts by reference to documents or witness statements. Include details of previous administrative actions, such as the filing and results of an administrative claim. If the action is predicated on the Federal Tort Claims Act, include a description of the plaintiff's relationship to the United States, its instrumentalities, or its contractors. Also include a statement whether an insurance company or other third party has an interest in the plaintiff's claim by subrogation or otherwise and whether there are additional claims related to the same incident.

(b) Setoff or Counterclaim. Discuss whether setoff or counterclaim exists. If so, highlight the supportive facts.

(c) Responses to Pleadings. Prepare a draft answer or other appropriate response to the pleadings. (See appendix C to this part, Sample Answer). Discuss whether allegations of fact are well-founded. Refer to evidence that refutes factual allegations.

(d) Memorandum of Law. Include a brief statement of the applicable law with citations to legal authority. Discussions of local law, if applicable, should cover relevant issues such as measure of damages, scope of employment, effect of contributory negligence, or limitations upon death and survival actions. Do not unduly delay submission of a litigation report to prepare a comprehensive memorandum of law.

(e) Potential witness information. List each person having relevant information to the case and provide their office address and telephone number. If there is no objection, also give the individual's social security account number, home address, and telephone number. This is "core information" required by Executive Order No. 12778 (Civil Justice Reform). Finally, summarize the information or potential testimony that each person listed could provide.

(f) Exhibits. (1) Attach a copy of all relevant documents. This is "core information" required by Executive Order No. 12778 (Civil Justice Reform). Unless otherwise directed by HQDA, each exhibit should be tabbed and internally paginated. References to exhibits in the litigation report should be to page numbers of particular exhibits.

(2) Copies of relevant reports of claims officers, investigating officers, boards or similar data should be attached, although such reports will not obviate the requirement for preparation of a complete litigation report.

(3) Prepare an index of tabs and exhibits.

(4) Where a relevant document has been released pursuant to a FOIA request, provide a copy of the response, or otherwise identify the requestor and the records released.

(g) Distribution and number of copies. Unless HQDA directs otherwise, SJAs or legal advisers will mail (first class) an original and one copy of the litigation report to the responsible HQDA office (See § 516.14) and one copy to the U.S. Attorney's Office handling the case.

**§ 516.23 Preservation of evidence.**

Because documents needed for litigation or administrative proceedings are subject to routine destruction, the SJA or legal adviser will ensure that all relevant documents are preserved.

**§ 516.24 DA Form 4.**

(a) General. The DA Form 4 (See Figure 516.2) is used to authenticate Army records or documents. Documents attached to a properly prepared and sealed DA Form 4 are self-authenticating. (See Fed. R. Evid. 902).

(b) Preparation at the installation level. A DA Form 4 need not be prepared until the trial attorney presenting the government's case identifies documents maintained at the installation level which he will need at trial. Once documents are identified, the custodian of the documents will execute his portion of the DA Form 4. (See Figure 516.2). The custodian certifies that the documents attached to the DA Form 4 are true copies of official documents. Documents attached to each form should be generally identified; each document need not be mentioned specifically. Only the upper portion of the form should be executed at the local level.

(c) Actions at HQDA. Upon receipt of the DA Form 4 with documents attached thereto, HQDA will affix a ribbon and seal and deliver it to The Office of The Administrative Assistant to The Secretary of the Army. That office will place the official Army seal on the packet.

**§ 516.25 Unsworn declarations under penalty of perjury.**

(a) General. Under the provisions of 28 U.S.C. 1746, whenever any matter is required or permitted to be established or proven by a sworn statement, oath or affidavit, such matter may also be established or proven by an unsworn written declaration under penalty of perjury. Because such declaration does not require a notary or other official to administer oaths, individuals preparing statements for use in litigation should consider using this format. (See Figure 516.3).

(b) When executed within the United States. Place the following at the end of the witness statement:

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. 1746)
Executed on (date)
(Signature)

(c) When executed outside the United States.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 U.S.C. 1746).
Executed on (date)
(Signature)

## Subpart D—Individual Liability

**§ 516.26 Scope.**

This chapter provides guidance when DA personnel, as a result of the performance of their official duties, are either sued in their personal capacity, or are charged in a criminal proceeding. Examples of civil actions alleging individual liability include the following: A medical malpractice lawsuit against health care providers; suits resulting from motor vehicle accidents; constitutional torts; or, common law torts such as assault, libel, or intentional

infliction of emotional distress. Likewise, state or federal criminal charges can arise from the performance of official duties, including environmental crimes or motor vehicle accidents.

**§ 516.27 Policy.**

(a) Responsibility. Commanders, supervisors, and SJAs or legal advisers will give highest priority to compliance with the requirements of this chapter with regard to current or former DA personnel who face criminal charges or civil litigation against themselves individually as a result of performance of their official duties.

(b) DOJ policy on representation. If in the best interest of the United States, upon request of the individual concerned and upon certification by his agency that he was acting within the scope of his employment, DOJ may represent present and former DA personnel sued individually as a result of actions taken within the scope of their employment. Representation can be declined for a variety of reasons, including but not limited to the following: The employee was not acting within the scope of his office; there is a conflict of interest; or, actions were not taken in a good faith effort to conform to law.

**§ 516.28 References.**

(a) Federal Tort Claims Act (FTCA). (28 U.S.C. 2671 *et seq.*). A waiver of sovereign immunity which, with certain exceptions, makes the United States liable for tort claims in the same manner as a private individual.

(b) Federal Employees Liability Reform and Tort Compensation Act of 1988 (FELRTA or The Westfall Act). FELRTA, by amending the Federal Tort Claims Act, makes the FTCA the exclusive remedy for common law tort claims arising from actions taken by federal employees acting within the scope of employment. The law was passed to eliminate problems caused by *Westfall* v. *Erwin*, 108 S.Ct. 580 (1988).

(c) 10 U.S.C. 1089 (Defense of certain suits arising out of medical malpractice). This provision, commonly referred to as the Gonzales Act, makes the FTCA the exclusive remedy for suits alleging medical malpractice against a military health care provider.

(d) 28 CFR 50.15 (Representation of federal officials and employees by Department of Justice attorneys [* * *] in civil, criminal, and congressional proceedings in which federal employees are sued, subpoenaed, or charged in their individual capacities). These DOJ regulations set out the policy and procedures for requesting representation in individual liability cases. See also 28 CFR part 15 (Defense of Certain Suits Against Federal Employees, etc.).

(e) 28 CFR 50.16 (Representation of federal employees by private counsel at federal expense).

(f) AR 27–50 (Status of Forces Policies, Procedures, and Information).

**§ 516.29 Procedures for obtaining certification and DOJ representation.**

(a) SJA or legal adviser responsibilities. When an SJA or legal adviser learns of a criminal charge or of a lawsuit alleging individual liability against DA personnel as a result of performance of official duties, he will take the following actions:

(1) Immediately notify Litigation Division and the appropriate U.S. Attorney and FAX or express deliver copies of process and pleadings to each office. Where time for response is limited, request that the U.S. Attorney either petition the court for an extension of time, or provide temporary counsel and representation pending formal approval.

(2) Investigate whether the employee was acting within the scope of his office or employment. Obtain, if possible, statements from the defendant, supervisors, and witnesses.

(3) Advise the individual defendant of the rights and conditions set out in 28 CFR 50.15, which include the following:

(i) His right to request representation by a DOJ attorney and, in appropriate cases, certification that he was acting within the scope of employment. (See 28 U.S.C. 2679; 28 CFR 50.15).

(ii) The right to request private counsel at government expense, subject to the availability of funds. (See 28 CFR 50.16).

(iii) That the United States is not obligated to pay or indemnify defendant for any judgment rendered against him in his individual capacity.

(4) If the defendant desires certification or DOJ representation, have him sign a request. (See Figure 516.4, Appendix L). Obtain a signed scope of employment statement from the defendant's supervisor. (See Figure 516.5, Appendix L).

(5) Prepare a report with, at a minimum, the following information: Facts surrounding the incident for which defendant is being sued and those relating to scope of employment; the SJA or legal adviser's conclusions concerning scope of employment; and, a recommendation whether certification by the Attorney General or representation by a DOJ attorney should be granted.

(6) Send the report, request for representation, and scope of employment statements to Chief, Litigation Division.

(b) Chief, Litigation Division responsibilities. The Chief, Litigation Division, will review the report and evidence regarding representation and scope of employment and will determine DA's position whether certification and representation is appropriate. He will send his recommendation to the appropriate U.S. Attorney's office or other branch at DOJ. The Chief, Litigation Division, will notify the defendant of DOJ's decision.

**§ 516.30 Private counsel at government expense.**

(a) General. DA personnel, sued in their individual capacity or facing criminal charges as a result of performance of official duties, have no right to employ a private sector counsel at government expense or to expect reimbursement for the same. For proceedings in the United States, a request for employment of counsel at government expense may be approved by DOJ, contingent among other things upon availability of funds and a determination that employment of private counsel at government expense is in the best interests of the United States. (See 28 CFR 50.16). Special rules apply in overseas areas. (See § 516.30(e)).

(b) Individual responsibilities. The individual will prepare a request that private counsel be employed for him at government expense. The request must also contain the following statement: "I understand that the United States is not required to employ private counsel on my behalf, and that I may be responsible for expenses incurred prior to proper authorization by the Department of Army or the Department of Justice."

(c) Supervisory and legal adviser responsibilities. The request will be submitted through the individual's supervisors, who will make a recommendation and forward the packet to the local SJA or legal adviser. The SJA or legal adviser will prepare his own recommendation and forward the matter to Litigation Division.

(d) Chief, Litigation Division responsibilities. If the Chief, Litigation Division, determines that the request for private counsel is meritorious, he will prepare an appropriate recommendation and forward the packet to Civil Division, DOJ, for final approval.

(e) Special actions in foreign countries. Employment of private counsel in foreign proceedings is governed by AR 27–50 (Status of Forces Policies, Procedures, and Information). Under the authority of 10 U.S.C. 1037,

soldiers, as well as employees or those accompanying the armed forces overseas, may be granted individual counsel in civil and criminal proceedings, under the criteria of AR 27–50.

**§ 516.31 Requests for indemnification.**

(a) Policy. An individual liable for a judgment rendered against him in his individual capacity has no right to reimbursement from DA. DA will consider, however, a request for indemnification from DA personnel where conduct within the scope of official duties has resulted in personal liability and indemnification is in the best interests of the United States. Indemnification is strictly contingent upon an appropriation to pay the judgment, as well as availability of such funds.

(b) Individual responsibilities. An individual against whom an adverse judgment has been rendered may request indemnification. The request must include, at a minimum, the following: how the employee was acting within the scope of his employment; whether the requestor has insurance or any other source of indemnification; and, how reimbursement is in the best interests of the United States. The request must also contain the following statements: "I understand that acceptance of this request for indemnification for processing by DA does not constitute an acceptance of any obligation to make such a payment. I also understand that payment is contingent on availability of funds and that it will only be made if such is determined to be in the best interests of the United States." The individual should attach a copy of relevant documents, e.g., court's opinion, judgment, and other allied papers.

(c) Supervisory and SJA responsibilities. The request for indemnification will be submitted through supervisory channels to the local SJA or legal adviser, each of whom will make a recommendation on the propriety of reimbursement.

(d) Chief, Litigation Division responsibilities. Requests for indemnification will be forwarded to Chief, Litigation Division. The Chief, Litigation Division will examine the submission and, after consultation with DOJ or other agencies, forward the packet with his own recommendation to the Army General Counsel. The General Counsel will obtain a final decision by the Secretary of the Army or his designee on the matter. There is no administrative appeal of the Secretary's (or his designee's) decision.

## Subpart E—Legal Proceedings Initiated by the United States

### Medical Care and Property Claims

**§ 516.32 General.**

(a) Authorities. (1) Federal Medical Care Recovery Act (42 U.S.C. 2651). The act provides for the recovery of medical care expenses incurred because of a tortfeasor's actions.

(2) Federal Claims Collection Act (31 U.S.C. 3711). The act provides for the collection of claims for money or property arising from the activities of federal agencies.

(3) Executive Order No. 12788, 56 FR 207 (1991), Civil Justice Reform. This order establishes several requirements on federal agencies involved in litigation or contemplating filing an action on behalf of the United States.

(4) AR 27–20, Claims. Chapter 14 (Affirmative Claims) contains comprehensive guidance for Recovery Judge Advocates (RJAs) in the administrative determination, assertion, collection, settlement, and waiver of claims in favor of the U.S. for property damage and for medical care claims.

(b) Responsibility. In accordance with Chapter 14, AR 27–20, Commander, USARCS has supervisory responsibility over the administrative processing of property and medical care claims by RJAs. Litigation Division, in conjunction with DOJ and U.S. Attorneys, is responsible for pursuing through litigation claims not resolved administratively. DOJ is ultimately responsible for initiating litigation for the United States. (28 U.S.C. 515).

(c) Assertion of claims on behalf of the United States by private attorneys. The Army incurs potentially recoverable expenses when it provides medical care to soldiers or dependents injured by tortfeasors (e.g., a soldier is hospitalized after an automobile accident). When injured personnel employ a private attorney to sue the tortfeasor, it may be in the government's best interests to enter into an agreement with the private attorney to include the Army's medical care claim.

(d) Statute of limitations. There is a three year statute of limitations for actions in favor of the U.S. for money damages founded upon tort. (28 U.S.C. 2415(b)). Limitations periods can vary, however, depending upon the theory of liability and the jurisdiction involved. RJAs must be alert to the applicable period of limitations. A case referred for litigation should arrive at Litigation Division at least 6 months before the expiration of the limitations period.

(e) Reporting of recoveries. Amounts recovered through litigation will be reported to USARCS by Tort Branch, Litigation Division or, where referred directly to a U.S. Attorney or the Nationwide Central Intake Facility (NCIF), by the responsible RJA.

**§ 516.33 Referral of medical care and property claims for litigation.**

(a) Criteria for referral. The RJA will forward the claims file and a litigation report (See § 516.34) through USARCS to Litigation Division when the claim has not been resolved administratively and any of the following conditions exist:

(1) The claim exceeds $5,000;

(2) It involves collection from the injured party or his attorney;

(3) The claim raises an important question of policy; or,

(4) There is potential for a significant precedent.

(b) Alternative methods. When none of the conditions cited in the preceding subparagraph are present, the RJA may refer the claim directly to the U.S. Attorney for the district in which the prospective defendant resides. Similar property claims may be referred through USARCS to DOJ's Nationwide Central Intake Facility (NCIF) rather than directly to the U.S. Attorney. Notice of all such referrals shall be provided through USARCS to Tort Branch, Litigation Division. The RJA should be ready to provide support to the U.S. Attorney if requested.

(c) Closing files. A file referred directly to the U.S. Attorney will be closed if the U.S. Attorney determines further action is unwarranted. If the RJA disagrees, the file should be forwarded with the RJA's recommendation through USARCS to Litigation Division.

**§ 516.34 Preparation of claims for litigation.**

(a) General. In preparing a referral for litigation the RJA will ensure the file contains at least the following:

(1) A litigation report (See § 516.22) that demonstrates a factual basis for the claim and a theory of recovery under applicable state law. (See Fed. R. Civ. P. 11).

(2) Copies of all medical records and bills reflecting the reasonable value of the medical care furnished to the injured party, including DA Form 2631–R (Medical Care-Third Party Liability Notification), and DA Form 3154 (MSA Invoice and Receipt). These documents should be authenticated as necessary on a DA Form 4.

(3) Copies of all documents necessary to establish the value of lost or damaged property.

(b) Transmittal letter. The letter of transmittal referring the claim for

litigation should briefly summarize the facts giving rise to the claim and the collection actions previously taken by the Army and the injured party.

**Assertion of Other Claims**

**§ 517.35 Referral to Litigation Division.**

(a) General. The majority of cases filed on behalf of the United States will fall under Section I above. All other civil cases which cannot be resolved administratively or by direct referral to DOJ will be forwarded through channels to Litigation Division with a litigation report. (See § 526.22).

(b) Government contractors. It may be in the government's best interest to authorize a government contractor, whose contract provides for the reimbursement of necessary legal expenses, to employ private counsel to initiate legal proceedings against a third party. To obtain authorization to employ private counsel in such instances the contractor should follow the procedures in § 516.20(c).

**§ 516.36 Proceedings to repossess government real property or quarters or to collect delinquent rent.**

(a) General. U.S. Attorneys are authorized to accept a federal agency's request for the following purposes: to initiate an action to recover possession of real property from tenants, trespassers, and others; to enjoin trespasses on federal property; and, to collect delinquent rentals or damages for use and occupancy of real property for amounts less than $200,000.

(b) Procedures. When eviction or an action to collect delinquent rent is necessary, the SJA or legal adviser will notify General Litigation Branch, Litigation Division, of the situation. If approved by Litigation Division, the SJA or legal adviser may ask the U S. Attorney to file suit. A copy of the complaint will be sent to Litigation Division. DOJ can take action to evict the occupants for violation of the terms of occupancy and collect delinquent rent or other charges. Once the matter has been referred to the U.S. Attorney, payments for rent should be sent to the U.S. Attorney. (See AR 210–50, chap 2.)

**Subpart F—Environmental Litigation**

**§ 516.37 Scope.**

This chapter contains guidance, policies, and procedures for DA environmental and natural resource litigation and administrative proceedings. The nature of environmental issues involves DA, not only in current missions and functions, but also in installations or sites previously managed by DA or property in which DA has or had a substantial interest. In this chapter, "litigation" includes civil administrative proceedings.

**§ 516.38 Responsibilities.**

(a) Water rights. Environmental Law Division will conduct direct liaison with DOJ and will represent DA in state and federal litigation relating to availability and allocation of surface and ground water and the establishment and protection of water rights. This will include litigation in state general adjudications of water rights under the McCarran Amendment, 43 U.S.C. 666. Such litigation relating solely to COE real estate activities or its civil works projects will be handled by attorneys under the technical supervision of the Chief Counsel, COE. With respect to any general adjudication which could affect the civil works or real property functions of COE, The Judge Advocate General, through the Chief, Environmental Law Division, and Chief Counsel, COE will jointly determine which office should maintain primary direct liaison with DOJ and will coordinate with each other and with the General Counsel with respect to that litigation.

(b) Navigable waters; The Chief Counsel, COE will conduct direct liaison with DOJ and represent DA in litigation involving activities in or across navigable waters of the United States or other activities regulated under the Rivers and Harbors Act of 1899, 33 U.S.C. 400 *et seq.*

(c) Waters of the United States. The Chief Counsel, COE will conduct direct liaison with DOJ and represent DA in litigation involving The Clean Water Act section 404 (See 33 U.S.C. 1344) permit authority of COE over the discharge of dredged or fill material into waters of the United States.

(d) Enforcement. Environmental Law Division will conduct direct liaison with DOJ and represent DA in litigation involving citizen or state enforcement of all requirements for control of pollution and management of hazardous wastes.

(e) Environmental response. (1) Environmental Law Division will conduct direct liaison with DOJ and represent DA in litigation seeking declaratory or injunctive relief or involving claims of Army liability for the costs of response at facilities controlled by DA and, except as otherwise provided in this regulation, at all other sites where the Army is a potentially responsible party.

(2) The Chief Counsel, COE will conduct direct liaison with DOJ and represent DA in litigation seeking declaratory or injunctive relief or involving claims of Army liability for the costs of response at civil works facilities, at former defense sites or at other sites where the Army is a potentially responsible party.

(f) Fish and wildlife, and plants. Environmental Law Division will conduct direct liaison with DOJ and represent DA in litigation involving citizen or state enforcement of applicable laws governing conservation of plant, fish and wildlife resources at facilities controlled by DA. Such litigation relating solely to the real estate, civil works, navigation and Clean Water Act section 404 (See 33 U.S.C. 1344) permit functions and activities of the COE will be supervised by Chief Counsel, COE.

(g) Toxic torts. (1) Environmental Law Division will conduct direct liaison with DOJ and represent DA in litigation involving claims of tort liability for exposure to environmental contamination emanating from federal facilities controlled by DA.

(2) Litigation Division will conduct liaison with DOJ and represent DA in litigation involving tort claims for discrete incidents of exposure to environmental contamination emanating from any facility controlled by DA.

(3) The Chief Counsel, COE will conduct direct liaison with DOJ and will represent the Army in litigation involving claims of tort liability for exposure to environmental contamination (including singular and discrete incidents) emanating from any civil works activities under the jurisdiction of the Secretary of the Army.

(4) The Chief Counsel, COE and Chief, Environmental Law Division will confer and jointly determine which office will conduct direct liaison with DOJ and represent DA in litigation involving all other claims of toxic tort liability.

**Subpart G—Prosecution of Criminal Offenses in Federal Courts**

**§ 516.39 Scope.**

(a) This chapter contains policies and procedures for prosecutions in the United States District Courts before either a District Judge or a Magistrate Judge for violations of federal law committed on Army installations or which involve Army interests or property.

(b) An individual (whether civilian or military) who violates federal law within the territorial limits of the United States can be prosecuted in U.S. District Court or Magistrate Division. These prosecutions can include, but are not limited to, the following situations: A

civilian, not subject to the UCMJ, violates federal law on an installation; routine traffic violations, whether the offender is military or civilian, are referred to the local U.S. Magistrate Division; or, DOJ seeks a federal indictment and prosecution for a serious offense committed by a soldier, despite existing UCMJ jurisdiction. (c) This chapter does not apply to military courts-martial.

**§ 516.40 Authority.**

The following authorities apply to this chapter:

(a) 18 U.S.C., ch. 219 (Trial By United States Magistrate Judges).

(b) 28 U.S.C. 515 (Authority For Legal Proceedings; Commission, Oath, And Salary For Special Attorneys).

(c) 28 U.S.C. 543 (Appointment of Special Attorneys by The Attorney General).

(d) Rule 58, Federal Rules of Criminal Procedure (Procedures for Misdemeanors and Other Petty Offenses).

(e) AR 190–29 (Misdemeanors and Uniform Notices Referred to US Magistrate or District Courts).

**§ 516.41 Felony prosecution programs.**

(a) General. DOJ is responsible for prosecuting federal offenses in U.S. District Court, whether before a District or a Magistrate Judge. It is often beneficial to both the Army and DOJ, however, to prosecute offenses in which the Army has an interest through a felony prosecution program, whereby one or more Army attorneys are appointed Special Assistant U.S. Attorneys. A felony prosecution program can promote rapid and efficient prosecutions of offenses in which the Army has an interest.

(b) Authorization. If an installation SJA or legal adviser believes a felony prosecution program would be in the Army's best interest, he will seek the views of the appropriate U.S. Attorney. If the U.S. Attorney agrees, the installation SJA or legal adviser will draft a mutually agreeable Memorandum of Understanding. (See appendix K to this part). The SJA will forward the MOU and a request to begin the program to the Criminal Law Division, OTJAG.

(c) Appointment of Army Attorneys as Special Assistant U.S. Attorneys. (See § 516.43).

(d) Reports. Installation SJAs or legal advisers will send a report quarterly to their MACOM SJA concerning prosecutions in federal magistrate court and felony prosecutions. The MACOM SJA will consolidate these reports and send it to Criminal Law Division, OTJAG, within 30 days after the end of each quarter. This report will provide the following information:

(1) The number of indictments filed.

(2) The number of misdemeanors tried by Army attorneys serving as SAUSAs.

(3) Results of any felony prosecutions tried by Army attorneys, to include a copy of any judgment or conviction, and sentence.

(4) Results of prosecutions of felonies in which the Army has an interest which are tried by the U.S. Attorney's office, to include a copy of any judgment or conviction, and sentence.

**§ 516.42 Misdemeanors.**

(a) General. An individual, military or civilian, who commits a misdemeanor or infraction on a military installation or on federal property can be prosecuted before a Magistrate Judge. The Magistrate system is particularly well adapted to dispose of traffic cases.

(b) Petition to District Court. If no Magistrate Judge has been designated to try misdemeanors committed on an installation, the SJA or legal adviser should request that the U.S. Attorney petition the U.S. District Court to designate a Magistrate Judge for that purpose. Criminal Law Division, OTJAG should be notified of any unsuccessful attempts to have a Magistrate Judge designated.

(c) Appointment of Army Attorneys as Special Assistant U.S. Attorneys. Army Attorneys can represent the United States before a Magistrate Judge if appointed as a SAUSA. (See § 516.43).

(d) Complaints, warrants, and citations. A Magistrate Judge has authority to issue arrest warrants based upon complaints filed with the court. AUSAs and SAUSAs prepare complaints and warrants in accordance with local court rules and procedures. (See Figure 516.6, appendix L). Petty offenses may be prosecuted on a citation or violation notice. (See Fed. R. Grim. P. 58(b)(1)).

(e) Consent to be tried. A person charged with a misdemeanor may elect to be tried before a District Judge rather than before a Magistrate Judge. (18 U.S.C. 3401). The defendant must be informed of this right. (See Figure 516.7, appendix L). Assuming there is a MOU permitting it (See § 516.41), an Army SAUSA may prosecute misdemeanors before a District Judge when a defendant declines to consent to be tried by the Magistrate Judge.

(f) Procedure. Attorneys designated to prosecute cases before a Magistrate Judge must familiarize themselves with the local rules of court and Rule 58, Federal Rules of Criminal Procedure. (See also Moore's Federal Practice Rules Pamphlet, Magistrate Court Rules).

(g) Memorandum of Understanding and request for authorization. The SJA or legal adviser should execute a MOU with the U.S. Attorney covering responsibilities and procedures for trials in Magistrate court. If the installation has a felony prosecution program (See § 516.41, then any specific procedures for Magistrate Court should be included into one MOU. (See Appendix K to this part). If the installation only has a Magistrate Court program, then a MOU should be prepared and forwarded to Criminal Law Division, OTJAG for approval of the program.

(h) Reports. (See § 516.41(d)).

**§ 516.43 Army Attorneys as Special Assistant U.S. Attorneys.**

(a) General. Prosecutions in federal court are a DOJ responsibility. SJAs or legal advisers often find it beneficial, however, to have one or more Judge Advocates or DA civilian attorneys appointed as Special Assistant U.S. Attorneys under 28 U.S.C. 543 to prosecute crimes in which the Army has an interest.

(b) Procedure. The appropriate United States Attorney must agree to appointment of an Army attorney as a SAUSA. The U.S. Attorney may find such an appointment to be in his best interest, because he gains an additional prosecutor at no additional expense to DOJ. If the U.S. Attorney agrees, he will forward the request for appointment to the Attorney General for approval. (28 U.S.C. 543).

(c) Supervision. Army attorneys acting as SAUSAs will be supervised in that role primarily by the U.S. Attorney's office. SAUSAs will perform their duties consistent with the Memorandum of Understanding between the U.S. Attorney and the SJA or legal adviser. SJAs and legal advisers will monitor prosecutions conducted by SAUSAs and will, if necessary given DOJ's primary role, provide additional supervision.

(d) Civil litigation. SAUSAs appointed to prosecute criminal cases will not undertake representation of the United States in civil litigation unless authorized by Chief, Litigation Division.

**§ 516.44 Witness expenses.**

In felony prosecutions SAUSAs will follow the procedures outlined in the U.S. Attorneys' Manual for obtaining witnesses and funding for their travel. In misdemeanor prosecutions, however, SAUSAs will obtain funding through the local Army installation.

## Subpart H—Release of Information and Appearance of Witnesses—Scope

### § 516.45 General.

(a) Introduction. This chapter implements DoD Directive 5405.2 (See appendix D to this part). It governs the release of official information and the appearance as witnesses of present and former DA personnel in response to subpoenas and other litigation-related requests and orders for information, interviews, or attendance at judicial or quasi-judicial proceedings. Requests for records, if not in the nature of legal process, should be processed under AR 25–55 (The Department of the Army Freedom of Information Act Program) or AR 340–21 (The Army Privacy Program). This chapter pertains to the following: civil cases; criminal proceedings; private litigation; and, litigation in which the United States has an interest.

(b) Definitions. (1) *DA personnel* includes soldiers, USMA cadets, civilian employees, nonappropriated fund employees, foreign nationals who perform services for DA overseas, and other individuals hired by or for DA.

(2) Deciding official is the SJA, legal adviser, or Litigation Division attorney who makes the final determination concerning release of official information.

(3) Official information is information of any kind, however stored, that is in the custody and control of the Department of Defense, relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces. (See appendix D to this part).

### § 516.46 Policy.

(a) General rule. Except as authorized by this Chapter, present or former DA personnel will not disclose official information in response to subpoenas, court orders, or requests.

(b) Exception. Present DA personnel may make the disclosures described in paragraph (a) of this section, only with the prior written approval of their SJA or legal adviser or Litigation Division. Former DA personnel may make such disclosures only with the prior written approval of Litigation Division.

(c) Referral to deciding official. If DA personnel receive a subpoena, court order, request for attendance at a judicial or quasi-judicial proceeding, or request for an interview related to actual or potential litigation, and it appears the subpoena, order, or request seeks disclosures described in paragraph (a) of this section, the individual should immediately advise the appropriate SJA or legal adviser. If the SJA or legal adviser cannot informally satisfy the subpoena, order, or request in accordance with §§ 516.48 through 516.55, he should immediately notify Litigation Division. When former DA personnel receive such a subpoena, order, or request, they should immediately notify Litigation Division.

(d) Requesters' responsibilities. Individuals seeking official information by subpoena, order, or litigation-related request, must set forth in writing and with specificity the nature and relevance of the official information sought. (Requesters should be referred to 32 CFR part 97 for detailed instructions.) Subject to § 516.51(a), present and former DA personnel may only produce, disclose, release, comment upon, or testify concerning those matters specified in writing and properly approved by the SJA or legal adviser or Litigation Division. (See *United States ex. rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).)

(e) Litigation in which the United States has an interest. If a subpoena, order, or request relates to litigation in which the United States has an interest and for which litigation responsibility has not been delegated, the SJA or legal adviser will coordinate with Litigation Division under § 516.47.

(f) Motions to stay or quash subpoenas. A subpoena should never be ignored, and an SJA or legal adviser should seek assistance from Litigation Division or the U.S. Attorney's office. If a response to a subpoena or order is required before a release determination can be made or before Litigation Division or the U.S. Attorney can be contacted, the SJA or legal adviser will do the following:

(1) Furnish the court or tribunal a copy of this regulation and applicable case law;

(2) Inform the court or tribunal that the requesting individual has not complied with this subpart H, as set out in 32 CFR part 97, or that the subpoena or order is being reviewed; and,

(3) Seek to stay the subpoena or order pending compliance with this chapter or final determination.

(g) If the court or other tribunal declines to quash or stay the subpoena or order, Litigation Division will decide whether to challenge the subpoena or order. If Litigation Division decides not to challenge the subpoena or order, the affected personnel will comply with the subpoena or order. If Litigation Division decides to challenge the subpoena or order, it will direct the affected personnel to respectfully decline to comply with the subpoena or order. (See *United States ex. rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).)

(h) Classified or sensitive information. Only Litigation Division may authorize the release of official information or appearance of DA personnel as witnesses in litigation involving terrorism, espionage, nuclear weapons, or intelligence means or sources.

### § 516.47 Reference to Litigation Division.

(a) General. Matters requiring approval or action by Litigation Division under this chapter will be immediately submitted by the most expeditious means to General Litigation Branch, Litigation Division, with the following exceptions:

(1) Those involving a case assigned to another branch of Litigation Division will be submitted to that branch (Appendix B of this part).

(2) Those involving affirmative litigation under subpart E will be submitted to Tort Branch.

(3) Those involving patents, copyrights, privately developed technical information, or trademarks will be submitted to Intellectual Property Law Division.

(4) Those involving taxation will be submitted to Contract Law Division.

(5) Those involving communication, transportation, or utility service proceedings will be submitted to Regulatory Law Division.

(6) Those involving environmental matters will be submitted to Environmental Law Division.

(b) Information to be submitted. When referring matters pursuant to paragraph (a) of this section, the following data should be provided:

(1) Parties (named or prospective) to the proceeding, their attorneys, and case number, where appropriate.

(2) Party making the request (if a subpoena, indicate moving party) and his attorney.

(3) Name of tribunal in which the proceeding is pending.

(4) Nature of the proceeding.

(5) Date of receipt of request or date and place of service of subpoena.

(6) Name, grade, position, and organization of person receiving request or served with subpoena.

(7) Date, time, and place designated in request or subpoena for production of information or appearance of witness.

(8) Nature of information sought or document requested, and place where document is maintained.

(9) A copy of each document requested (contact the appropriate office at HQDA if this would be both unduly

burdensome and unnecessary to a decision whether to release, redact, or withhold a particular document).

(10) Analysis of the problem with recommendations.

**Release of Records in Connection With Litigation**

**§ 517.46 Release of Army and other agency records.**

(a) Preservation of originals. Unless otherwise directed by Litigation Division, to preserve the integrity of DA records, DA personnel will not furnish originals of documents or other records to any person or agency for use in legal proceedings. DA personnel will submit properly authenticated copies of government records in place of originals. (See 28 U.S.C. 1733.)

(b) Authentication of copies. Copies of DA records approved for release will, when necessary, be authenticated for introduction in evidence by use of DA Form 4. (See § 516.24). After the custodian has executed his or her certificate, the preparing agency will forward the DA Form 4 and a copy of the record to the Army staff agency indicated below for authentication by the Secretary of the Army.

(1) Records maintained in U.S. Army Engineer Districts and Divisions will be forwarded to HQDA(DAEN–CCK), WASH DC 20314–1000.

(2) All other records will be forwarded to the official designated in AR 340–17 as the Initial Denial Authority (IDA) for the records.

(c) Fees and charges. AR 37–60 prescribes the schedule of fees and charges for searching, copying, and certifying Army records for release in response to litigation-related requests.

(d) Release of records of other agencies. Normally an individual requesting records originating in agencies outside DA (i.e., FBI reports, local police reports, civilian hospital records) that are also included in Army records should be advised to direct his inquiry to the originating agency.

**§ 516.49 Determination of release authorization.**

(a) Policy. DA policy is to make official information reasonably available for use in federal and state courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected from public disclosure.

(b) Releasability factors. In deciding whether to authorize release of official information, the deciding official should consider the following:

(1) Has the requester complied with DA policy governing the release of official documents in § 516.46(d)?

(2) Is the request unduly burdensome or otherwise inappropriate under the applicable court rules?

(3) Is the disclosure appropriate under the rules of procedure governing the matter in which the request arose?

(4) Would the disclosure violate a statute, executive order, regulation, or directive?

(5) Is the disclosure appropriate under the relevant substantive law concerning privilege?

(6) Would the disclosure reveal information properly classified pursuant to the DoD Information Security Program under AR 380–5, unclassified technical data withheld from public release pursuant to 32 CFR 250, or other matters exempt from unrestricted disclosure?

(7) Would disclosure have one or more of the following effects: Interfere with ongoing enforcement proceedings; compromise constitutional rights; reveal the identity of an intelligence source or confidential informant; disclose trade secrets or similarly confidential commercial or financial information; or, otherwise be inappropriate under the circumstances?

**§ 516.50 Records determined to be releasable.**

If the deciding official, after considering the factors set forth in § 516.49, determines that all or part of requested official records are releasable, copies of the records (authenticated if necessary) should be furnished to the requester, court, or other appropriate authority.

**§ 516.51 Records determined not to be releasable.**

(a) General. If the deciding official, after considering the factors in § 516.49, determines that all or part of requested official records should not be released, he will promptly communicate directly with the attorney or individual who caused the issuance of the subpoena, order, or request and seek to resolve the matter informally. If the subpoena or order is invalid, he should explain the basis of the invalidity. The deciding official should also explain why the records requested are privileged from release. The deciding official should attempt to obtain the agreement of the requester to withdraw the subpoena, order, or request or to modify the subpoena, order, or request so that it pertains only to records which may be released.

(b) Information protected by the Privacy Act. (1) A subpoena duces tecum or other legal process signed by an attorney or clerk of court for records protected by the Privacy Act, 5 U.S.C. 552a, does not justify the release of the protected records. The deciding official should explain to the requester that the Privacy Act precludes disclosure of records in a system of records without the written consent of the subject of the records or "pursuant to the order of a court of competent jurisdiction." (See 5 U.S.C. 552a(b)(11)). An "order of the court" for the purpose of subsection 5 U.S.C. 552a(b)(11) is an order or writ requiring the production of the records, signed by a judge or magistrate.

(2) Unclassified records otherwise privileged from release under 5 U.S.C. 552a may be released to the court under either of the following conditions:

(i) The subpoena is accompanied by an order signed by a judge or magistrate, or such order is separately served, that orders the person to whom the records pertain to release the specific records, or that orders copies of the records delivered to the clerk of court, and indicates that the court has determined the materiality of the records and the nonavailability of a claim of privilege.

(ii) The clerk of the court is empowered by local statute or practice to receive the records under seal subject to request that they be withheld from the parties until the court determines whether the records are material to the issues and until any question of privilege is resolved.

(3) Subpoenas for alcohol abuse or drug abuse treatment records must be processed under 42 U.S.C. 290d–3 and 290ee–3, and Public Health Service regulations published at 42 CFR 2.1–2.67.

(4) Upon request, SJAs and legal advisers may furnish to the attorney for the injured party or the tortfeasor's attorney or insurance company a copy of the narrative summary of medical care that relates to a claim under subpart E. If additional medical records are requested, only those that directly pertain to the pending action will be furnished. If furnishing copies of medical records would prejudice the cause of action, the matter will be reported to Litigation Division.

(c) Referral to Litigation Division. If the SJA or legal adviser is not able to resolve a request for Army records informally, he should contact Litigation Division.

(1) Litigation Division may respond to subpoenas or orders for records privileged from release by informing the local U.S. Attorney about the subpoena and requesting that office file a motion to quash the subpoena or a motion for a protective order. The records privileged from release should be retained by the custodian pending the court's ruling upon the government's motion.

(2) When a motion to quash or for a protective order is not filed, or the motion is unsuccessful, and the appropriate DA official has determined that no further efforts will be made to protect the records, copies of the records (authenticated if necessary) will be submitted to the court (or to the clerk of court) in response to the subpoena or order.

(d) Classified and privileged materials. Subpoenas duces tecum, and other legal process from DOJ, U.S. Attorneys, or attorneys for other governmental entities for records which are classified or otherwise privileged from release will be referred to Litigation Division. (See § 516.46(h)).

**DA Personnel as Witnesses in Private Litigation**

**§ 516.52 Response to subpoenas, orders, or requests for witnesses.**

(a) Policy. The involvement of present PA personnel in private litigation is solely a personal matter between the witness and the requesting party, unless one or more of the following conditions apply:

(1) The testimony involves information contained in DA files, or information which was acquired in the performance of official duties, or because of the official status of the witness.

(2) The witness is to testify as an expert.

(3) The absence of the witness from duty will seriously interfere with the accomplishment of a military mission.

(b) Former DA personnel. Former DA personnel may freely respond to requests for interviews and subpoenas except in instances involving paragraph (a)(1) of this section. In those instances, the subject of the request or subpoena should take the action specified in § 516.46(c) and § 516.47.

(c) Present DA personnel. Present DA personnel will refer all requests for interviews and subpoenas for testimony in private litigation to their commander or supervisor. Except in instances involving paragraphs (a)(1) through (a)(3) of this section, the commander or supervisor may permit the requested interview or attendance.

(d) Discretion to testify. If a present DA personnel does not desire to grant the interview or testify, he may seek the advice of an Army attorney on the legal consequences, if any, of refusal. Civilian employees and former military members not otherwise entitled to legal assistance should consult private counsel regarding any consequences of such a refusal.

**§ 516.53 Official information.**

(a) In instances involving § 516.52(a)(1), the matter will be referred to the SJA or legal adviser serving the organization of the individual whose testimony is requested, or to Litigation Division. The deciding official will determine whether to release the information sought under the principles established in § 516.49. If funding by the United States is requested, see § 516.50(d).

(b) If the deciding official determines that the information may be released, the individual will be permitted to be interviewed, deposed, or to appear as a witness in court provided such interview or appearance is consistent with the requirements of § 516.54 and § 516.55. A JA or DA civilian attorney should be present during any interview or testimony to act as legal representative of the Army. In the case of former DA personnel, Litigation Division will arrange for an Army attorney stationed near the location of the interview, deposition, or testimony to act as legal representative. If a question is asked for information not previously authorized for release, the legal representative will advise the witness not to answer. If necessary to avoid release of the information, the legal representative will advise the witness to terminate the interview or deposition, or in the case of testimony in court, advise the judge that DoD directives and Army regulations preclude the witness from answering without Litigation Division approval. Every effort should be made, however, to substitute releasable information and to continue the interview or testimony as to other subjects.

**§ 516.54 Expert witnesses.**

(a) General rule. Present DA personnel will not provide, with or without compensation, opinion or expert testimony either in private litigation or in litigation in which the United States has an interest for a party other than the United States. Former DA personnel will not provide, with or without compensation, opinion or expert testimony concerning official information, subjects, or activities either in private litigation or in litigation in which the United States has an interest for a party other than the United States. All requests for present or former DA personnel as opinion or expert witnesses will be forwarded to Litigation Division under § 516.47, unless paragraph (c) of this section applies.

(b) Exception. (1) If a requester can show:

(i) Exceptional need or unique circumstances and (ii) That the anticipated testimony will not be adverse to the interests of the United States,

Litigation Division may grant special written authorization for present or former DA personnel to testify as expert or opinion witnesses at no expense to the United States.

(2) In no event, may present or former DA personnel furnish expert or opinion testimony in a case in which the United States has an interest for a party whose interests are adverse to the interests of the United States.

(c) Testimony of AMEDD personnel. Members of the Army medical department or other qualified specialists may testify in private litigation with the following limitations:

(1) The litigation involves patients they have treated, investigations they have made, laboratory tests they have conducted, or other actions taken in the regular course of their duties.

(2) They limit their testimony to factual matters, such as the following: Their observations of the patient or other operative facts; the treatment prescribed or corrective action taken; course of recovery or steps required for repair of damage suffered; and, contemplated future treatment.

(3) Their testimony may not extend to hypothetical questions or to a prognosis.

(d) Court-ordered expert or opinion testimony. If, despite an adverse final determination by Litigation Division, a court of competent jurisdiction, or other appropriate authority, orders expert or opinion testimony, the witness will immediately notify Litigation Division. If Litigation Division determines it will not challenge the subpoena or order, the witness will comply with the subpoena or order. If directed by Litigation Division, however, the witness will respectfully decline to comply with the subpoena or order. (See *United States ex. rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).)

(e) Expert witness fees. All fees tendered to present DA personnel as an expert or opinion witness, to the extent they exceed actual travel, meals, and lodging expenses of the witness, will be remitted to the Treasurer of the United States.

**§ 516.55 Interference with mission.**

If the absence of a witness from duty will seriously interfere with the accomplishment of a military mission, the SJA or legal adviser will refer the matter to Litigation Division.

**Litigation in Which the United States Has an Interest**

**§ 516.56 Response to subpoenas, orders, or requests for witnesses.**

(a) Referral to a deciding official. Requests for interviews with or subpoenas for testimony of present DA personnel in litigation or potential litigation in which the United States has an interest will be immediately referred to the SJA or legal adviser serving the organization of the individual whose interview or testimony is requested. Except as in paragraph (b) of this section, the SJA or legal adviser will promptly refer the matter to Litigation Division. This requirement includes requests received from DOJ. Since each request or subpoena involves a question of release of information, the SJA or legal adviser will ensure that this aspect of the request or subpoena is also presented in the referral to Litigation Division. Former DA personnel will immediately refer such requests to Litigation Division under § 516.47.

(b) Approval by SJA or legal adviser. The SJA or legal adviser may authorize the appearance of present DA personnel requested by DOJ attorneys or by attorneys representing the interests of the United States in the following situations:

(1) The request or subpoena does not require travel by the witness outside the judicial district (unless the distance to be traveled is less than 100 miles) or overseas theater in which the witness is stationed, assigned, or employed.

(2) The testimony of the witness does not involve information which must be withheld under the principles in §§ 516.48 through 516.51, Release of Records in Connection with Litigation of this subpart H.

(c) Reassignment of witnesses. When requested by the U.S. Attorney, the SJA or legal adviser will ensure that no witnesses are reassigned or otherwise removed from the judicial district without first advising the DOJ attorney. If a witness is vital to the government's case, and trial is imminent, the SJA or legal adviser should make informal arrangements to retain the witness in the command until trial. If this is not feasible, or if a satisfactory arrangement cannot be reached with the DOJ attorney, the SJA or legal adviser should notify Litigation Division.

**§ 516.57 Expert witnesses.**

Requests for present or former DA personnel as expert or opinion witnesses from the DOJ attorneys or other attorneys representing the interests of the United States will be referred to Litigation Division unless the request involves a matter that has been delegated by Litigation Division to an SJA or legal adviser. In no event, may present or former DA personnel furnish expert or opinion testimony in a case in which the United States has an interest for a party whose interests are adverse to the interests of the United States.

**§ 516.58 News media and other inquiries.**

News media inquiries regarding matters in litigation or potential litigation will be referred to the appropriate public affairs office. DA personnel will not comment on any matter actually or potentially in litigation without proper clearance. Local public affairs officers will refer press inquiries to HQDA (SAPA), WASH DC 20310–1500, with appropriate recommendations for review and approval by the Office of the Chief of Public Affairs. All releases of information regarding matters actually or potentially in litigation will be coordinated with Litigation Division prior to release.

**Status, Travel, and Expenses of Witnesses**

**§ 516.59 Witnesses for the United States.**

(a) Status of witness. A military member authorized to appear as a witness for the United States, including those authorized to appear under § 516.60(d), will be placed on temporary duty. The status of a civilian employee will be determined under Federal Personnel Manual 630.10. DA personnel who appear as necessary witnesses for a party asserting the government's claim for medical care expenses are witnesses for the United States, provided the government's claim is large enough to justify the expenditure.

(b) Travel arrangements. Travel arrangements for witnesses for the United States normally are made by DOJ through Litigation Division for other than local travel. Litigation Division will issue instructions for this travel including fund citation, to the appropriate commander. A U.S. Attorney, or an attorney asserting the government's medical care claim under subpart D of this part, may make arrangements for local travel through the SJA or legal adviser for attendance of a witness who is stationed at an installation within the same judicial district, or not more than 100 miles from the place where testifying. Other requests, including those under § 516.60(d), will be referred to Litigation Division. The instructions from Litigation Division, or the request from the U.S. Attorney or the attorney asserting the government's claim, will serve as a basis for the issuance of appropriate travel orders by the local commander.

(c) Travel and per diem expenses. The witness' commander or supervisor should ensure that the witness has sufficient funds to defray expenses. The SJA or legal adviser will provide assistance as required.

(1) Where local travel is performed at the request of a U.S. Attorney and the testimony does not involve information acquired in the performance of duties, transportation arrangements and any per diem expenses are the responsibility of the U.S. Attorney.

(2) An attorney asserting the government's medical care or property claim may be required to advance local travel expense money to the witness requested and to include these in recoverable costs where the government's claim is not large enough to justify expenditures of government travel funds.

(3) Other local travel and per diem expense for cases involving Army activities or claims are proper expenses of the command issuing the orders.

(4) Litigation Division will furnish travel expense and per diem funds for other than local travel and will receive reimbursement from DOJ or other government agencies as appropriate.

**§ 516.60 Witnesses for a state or private litigant.**

(a) Status of witness. If authorized to appear as a witness for a state or private litigant, and the testimony to be given relates to information obtained in the performance of official duties, a military member will attend in a permissive TDY status. If authorized to appear as a witness, but the testimony does not relate to information obtained in the performance of official duties, a military member may be granted a pass or permissive TDY under AR 630–5, or be required to take ordinary leave. The status of a civilian employee will be determined under Federal Personnel Manual 630.10.

(b) Travel arrangements. The requesting party or state agency will make all travel arrangements for attendance of DA personnel authorized to appear as witnesses for a state or private litigant. The local commander may issue appropriate orders when necessary.

(c) Travel expenses. The United States may not pay travel, meals, and lodging expenses of the witness, other than normal allowances for subsistence pursuant to the DoD Military Pay and Allowances Entitlements Manual. These expenses are solely a matter between

the witness and the party seeking his appearance. Witnesses ordinarily should be advised to require advance payment of such expenses. Military personnel authorized to appear in a pass or permissive TDY status are not entitled to receive witness attendance fees, but may accept travel, meals, and lodging expense money from the requesting litigant. All witness fees tendered the military member, to the extent they exceed such actual expenses of the member, will be remitted to the Treasurer of the United States. A civilian employee authorized to appear in his or her official capacity will accept the authorized witness fees, in addition to the allowance for travel and subsistence, and make disposition of the witness fees as instructed by his or her personnel office.

(d) Funding by the United States. Requests for DA personnel to appear at government expense as witnesses in state or local proceedings for a party other than the United States, including cases involving domestic violence or child abuse, will be referred to Litigation Division. Litigation Division may authorize travel and per diem expenses under § 516.59 when the case is one in which the United States has a significant interest.

**§ 516.61 Witnesses before foreign tribunals.**

(a) Referral to the SJA. Requests or subpoenas from a foreign government or tribunal for present DA personnel stationed or employed within that country to be interviewed or to appear as witnesses will be forwarded to the SJA of the command exercising general court-martial jurisdiction over the unit to which the individual is assigned, attached, or employed. The SJA will determine the following:

(1) Whether a consideration listed in § 516.52(a) (1) through (3) applies.

(2) Whether the information requested is releasable under the principles established in § 516.48 through 516.51, Release of Records in Connection with Litigation of this subpart H.

(3) Whether the approval of the American Embassy should be obtained because the person is attached to the Embassy staff or a question of diplomatic immunity may be involved.

(b) United States has an interest in the litigation. If the SJA determines that the United States has an interest in the litigation, the commander may authorize the interview or order the individual's attendance in a temporary duty status. The United States will be deemed to have an interest in the litigation if it is bound by treaty or other international agreement to ensure the attendance of such personnel.

(c) United States has no interest in the litigation. If the SJA determines that the United States does not have an interest in the litigation, the commander may authorize the interview or the appearance of the witness under the principles established in § 516.52 through 516.55, DA Personnel as Witnesses in Private Litigation of this subpart H.

(d) Witnesses located outside the country. If the requested witness is stationed in the United States, or in a country other than that which is seeking the witness' testimony, the matter will be referred to Litigation Division.

## Subpart I—Remedies in Procurement Fraud and Corruption

**§ 516.62 Purpose.**

This chapter delineates the policies, procedures, and responsibilities for reporting and resolving allegations of procurement fraud or irregularities (PFI) within DA. It implements DoD Directive 7050.5. (See appendix E to this part.)

**§ 516.63 Policies.**

(a) Procurement fraud and irregularities will be promptly and thoroughly addressed whenever encountered. Reports will be initiated in a timely manner and will be supplemented as appropriate.

(b) Investigations will be monitored to see that interim corrective action is taken and that final action is taken as expeditiously as possible.

(c) This regulation establishes the Procurement Fraud Division (PFD), U.S. Army Legal Services Agency, as the single centralized organization within the Army to coordinate and monitor criminal, civil, contractual, and administrative remedies in significant cases of fraud or corruption relating to Army procurement.

(d) The key elements of the Army's procurement fraud program follow: Centralized policy making and program direction; fraud remedies coordination; decentralized responsibility for operational matters, such as reporting and remedial action; continuous case monitorship by PFD from the initial report until final disposition; and, command-wide fraud awareness training.

(e) Remedies for PFI will be pursued in a timely manner and properly coordinated with other agencies. Every effort will be made to support criminal investigation and prosecution of fraudulent activity.

(f) A specific remedies plan will be formulated for each significant case of fraud or corruption involving procurement.

(g) Coordination on the status and disposition of cases will be maintained between PFD, OTJAG, PFI Coordinators at MACOMs, and Procurement Fraud Advisers at subordinate commands. Coordination of procurement and personnel actions will be accomplished with investigative agencies as required by those agencies.

(h) Training which relates to fraud and corruption in the procurement process is a significant element of this program.

**§ 516.64 Responsibilities.**

(a) TJAG has overall responsibility for the coordination of remedies in procurement fraud and corruption within the Army. This responsibility has been delegated to PFD. Functions of PFD will include the following:

(1) Serving as the single centralized organization in the Army to monitor the status of, and ensure the coordination of, criminal, civil, contractual, and administrative remedies for each significant case of fraud or corruption.

(2) Receiving reports of procurement fraud and corruption from any source including, but not limited to the following: DoD criminal investigative organizations; audit agencies; contracting officers; inspectors general of the executive branch; correspondence from the public; and, commanders. This provision does not repeal any other reporting requirement but establishes PFD as a recipient of PFI information at the earliest possible time.

(3) Establishing a monitoring system within OTJAG for all cases of fraud and corruption that relate to Army procurement.

(4) Discussing regularly with the U.S. Army Criminal Investigation Command (USACIDC) or the assigned DoD criminal investigative organization the current status of significant fraud or corruption cases and their coordination with prosecutive authorities.

(5) Ensuring that all criminal, civil, contractual, and administrative remedies are considered in each significant fraud or corruption case and that timely and applicable remedies are undertaken by commanders, contracting officers, and suspension and debarment authorities. For example, consideration of suspension or debarment of a contractor or individual should normally be initiated within 30 days of indictment or conviction.

(6) Coordinating, as appropriate, with other DoD components affected by a significant fraud or corruption case being monitored by the Army.

(7) Developing, with the responsible DoD investigative organization, Procurement Fraud Coordinators and Advisers, and other involved agencies, a specific comprehensive remedies plan for each significant fraud or corruption case.

(8) Coordinating remedies with DOJ. In the case of ongoing criminal investigations, coordinate these through, or with the prior knowledge of, the DoD criminal investigative organization responsible for the case.

(9) In significant fraud or corruption cases, identifying and documenting any known adverse impact on a DoD mission, and including the information in any remedies plan.

(10) Providing the appropriate DoD criminal investigative organization with information concerning final remedies as a result of an investigation by that organization.

(11) Receiving notifications from criminal investigative agencies concerning substituted, defective, and counterfeit hardware in which a serious hazard to health, safety or operational readiness is indicated; ensuring that appropriate safety, procurement and program officials are informed in accordance with enclosure 3 of DoD Directive 7050.5. PFD will specifically ensure that contract reviews (DD 350 reports) and adverse impact statements (See § 516.69(c)(2) are prepared, and that such information is used to determine if further inquiry is warranted to prevent reoccurrence and to detect other possible fraud. Impact statements will not be released to prosecutive agencies until reviewed by PFD. When appropriate, PFD will coordinate with other DoD agencies to establish a lead agency for victim impact statements in multi-DoD agency cases.

(b) The Commanding General, USACIDC, will take the following actions:

(1) Notify PFD of any investigations involving fraud or corruption related to procurement activities.

(2) Notify other DoD component criminal investigative organizations when investigations involving fraud or corruption affect that component. This includes evidence of fraud by a contractor, subcontractor, or employee of either, on current or past contracts with, or affecting, that component.

(3) Notify the Defense Investigative Service of any investigations that develop evidence which affects DoD cleared industrial facilities or personnel.

(4) Determine the effect on any ongoing investigations or prosecutions of any criminal, civil, contractual, or administrative actions being considered by a centralized organization and advise of any adverse impact.

(5) Promptly provide commanders, contracting officers, Procurement Fraud Advisers, and suspension and debarment authorities, when needed to allow consideration of applicable remedies, any court records, documents, or other evidence of fraud or corruption from ongoing or completed criminal investigations. In cases of indictment or conviction of a contractor or individual, the information will be provided in time for initiation, if appropriate, of suspension or debarment action within 30 days of the indictment or conviction.

(6) Provide prosecutive authorities and centralized organizations with timely information on the adverse impact on a DoD mission of fraud or corruption that relates to DoD procurement activities. This information will be obtained from individuals such as the head of the contracting agency, appropriate commanders, and staff agencies. Some examples of adverse impact on a DoD mission are endangerment of personnel or property, monetary loss, compromise of the procurement process, or reduction or loss of mission readiness.

(7) Discuss regularly with Procurement Fraud Advisers the status of significant investigations of fraud or corruption and their coordination with prosecutive authorities and provide documents and reports resulting from the investigations.

(c) Commanders of service schools conducting procurement or procurement-related training (such as The Judge Advocate General's School, the U.S. Military Police School, and the U.S. Army Logistics Management Center) will ensure the following:

(1) All procurement and procurement-related training includes a period of instruction on fraud and corruption in the procurement process. The length of the period of instruction will be appropriate to the duration and nature of the training.

(2) Training materials are developed to support that training.

(3) Training materials developed will be sent to MACOM PFI Coordinators.

(d) MACOM commanders and heads of contracting activities will ensure the following:

(1) Substantial indications of fraud or corruption relating to Army contracts or Army administered contracts is reported promptly to the supporting USACIDC element and The Procurement Fraud Division.

(2) Information provided includes reports by contracting officers under DFARS 9.406–3.

### § 516.65 Procurement fraud and irregularities programs at MACOMs.

(a) Command counsel and SJAs at MACOMs will develop a program and appoint an attorney as PFI Coordinator for their command. Chief counsel and SJAs at commands with procurement advisory responsibility will appoint an attorney as a Procurement Fraud Adviser (PFA) to manage the PFI program at their installations as well.

(b) Provision may be made for activities not having sufficient attorney assets to obtain assistance from nearby installations that have a PFA.

(c) Reports and recommendations will be transmitted through command channels to the PFI coordinator for the affected MACOM.

(d) Command counsel, chief counsel, and SJAs will exercise supervisory authority to ensure effective operation of the fraud program and coordination of remedies within their organizations.

(e) The MACOM PFI Coordinator will have overall responsibility for the design and implementation of the MACOM's procurement fraud program.

(f) PFAs and PFI Coordinators will coordinate with the appropriate local CID or Defense Criminal Investigative Service (DCIS) activity to assure the prompt notification and coordination of all Procurement Fraud cases.

### § 516.66 Reporting requirements.

(a) Typical fraud indicators during the procurement cycle are listed in appendix F to this part. The mere presence of one or more of these indicators does not, by itself, require reporting under paragraph (b) of this section. Reports should be submitted if there is a reasonable suspicion of procurement fraud or irregularity or the procuring agency refers the matter for investigation.

(b) "Procurement Flash Reports" will be transmitted by FAX directly to PFD whenever a PFI Coordinator or PFA receives notice of a PFI involving the Army. To facilitate filing, a separate sheet should be used for each case reported. These reports will provide a succinct summary of the following available information:

(1) Name and address of contractor.

(2) Known subsidiaries of parent firms.

(3) Contracts involved in potential fraud.

(4) Nature of potential fraud.

(5) Summary of pertinent facts.

(6) Possible damages.

(7) Investigative agencies involved.

(8) Local PFAs (name and phone numbers).

Any of the above categories that cannot be completed will be annotated as "unknown at present."

(c) When a report is required by DFARS or is requested by PFD, the provisions of DFARS 9.406–3 will be followed. That paragraph provides the basic content and format for PFI reports.

(d) All personnel will cooperate to ensure that investigations and prosecutions of procurement fraud are completed in a timely and thorough manner. Requests for assistance from federal prosecutors should be processed through the local PFA whenever possible. Requests for federal investigators will be processed through the supporting USACIDC and the PFA will be notified. When the conduct of criminal investigations and prosecutions conflict with the progress of procurements, reasonable deference will be given to criminal investigators and prosecutors whenever possible. Any serious conflict that cannot be resolved at a local level will be immediately reported to the PFI Coordinator or PFD for action.

(e) PFI Coordinators and PFAs may request access to information obtained during criminal investigations that is not protected by Fed. R. Crim. P. 6(e) and use this information to assist them in taking appropriate administrative, contractual, and civil remedies. Requests for this information should be made directly to the appropriate federal investigative agency. The investigative organization may withhold requested information if release would compromise an investigation. Difficulties in obtaining information which cannot be resolved locally will be referred to PFD for appropriate action.

(f) USACIDC will notify, in writing, local PFAs as well as PFD within 30 days, of initiation of a significant investigation of fraud or corruption related to Army procurement activities. Such notification will include the following:

(1) Case title.

(2) USACIDC Report of Investigation number.

(3) Responsible investigative agency or agencies.

(4) Office of primary responsibility.

(5) Date opened.

(6) Summary of facts.

(7) Suspected offense.

(g) The transmission of the information in paragraph (f) of this section, may be delayed if the Commanding General, USACIDC, or the head of another DoD criminal investigation organization determines the transmission would compromise the success of any case or its prosecution. The prosecutive authorities dealing with the case will be consulted, when appropriate, in making such determinations.

(h) USACIDC will obtain the following information at the earliest possible point in an investigation of fraud or corruption that relates to DoD procurement activities, without reliance on grand jury subpoenas:

(1) The individuals suspected to be responsible.

(2) The suspected firm's organizational structure.

(3) The firm's financial and contract history.

(4) The firm's organizational documents and records.

(5) Statements of witnesses.

(6) Monetary loss to the government.

(7) Other relevant information.

This information will be provided to PFD or other cognizant DoD centralized organization.

(i) PFD will provide written notification to the Defense Investigative Service of all suspension or debarment actions taken by the Army.

### § 516.67 PFD and HQ USACIDC coordination.

PFD and HQ USACIDC will coordinate as follows:

(a) Discuss the status of significant procurement fraud or corruption investigations being conducted by USACIDC and possible remedies. These discussions should take place on a regular basis, but not less than once a quarter.

(b) Discuss the coordination of possible criminal, civil, contractual, or administrative remedies with prosecutive authorities.

(c) PFD will maintain liaison with other DoD centralized organizations and will coordinate remedies with those centralized organizations affected by a significant investigation of fraud or corruption that relates to DoD procurement activities.

(d) Ascertain the effect on any ongoing investigation of the initiation of civil, contractual, or administrative remedies as follows:

(1) PFD will maintain liaison with USACIDC and other DoD criminal investigative organizations in order to determine the advisability of initiating any civil, contractual, or administrative actions.

(2) USACIDC will advise PFD of any adverse effect on an investigation or prosecution by the initiation of civil, contractual, or administrative actions.

### § 516.68 Coordination with DOJ.

(a) PFD will establish and maintain liaison with DOJ and the Defense Procurement Fraud Unit on significant fraud and corruption cases to accomplish the following:

(1) Monitor criminal prosecutions.

(2) Initiate litigation for civil recovery.

(3) Coordinate administrative or contractual actions while criminal or civil proceedings are pending.

(4) Coordinate settlement agreements or proposed settlements of criminal, civil, and administrative actions.

(5) Respond to DOJ requests for information and assistance.

(b) In cases where there is an ongoing criminal investigation, coordination with DOJ by any member of the Army normally will be accomplished by or through USACIDC or the cognizant DoD criminal investigative organization, or with the investigative organization's advance knowledge. This does not apply to the routine exchange of information between government attorneys in the course of civil litigation or the routine referral of cases to DOJ for civil recovery.

(c) Initial contact by any attorney associated with the U.S. Army with a U.S. Attorney's office or DOJ, whether initiated by the Army attorney or not, will be reported to PFD. Activity after the initial contact will only be reported to PFD when the Army attorney feels there has been a significant event in the case. If the Army attorney is not a PFI Coordinator or a PFA, the matter should be referred to one of these two latter attorneys as soon as possible. Routine exchanges between Army attorneys and U.S. Attorney's offices or DOJ do not need to be brought to the attention of PFD.

### § 516.69 Comprehensive remedies plan.

(a) A specific, comprehensive remedies plan will be developed in each significant investigation involving fraud or corruption that relates to Army procurement activities. When possible, these plans should be forwarded with the DFARS 9.406–3 reports. In no case, however, should the report be delayed an appreciable time pending completion of the plan. The format for a remedies plan is at appendix G to this part.

(b) The plan will be developed initially by the PFA with the participation of the appropriate criminal investigators and other relevant personnel such as the contracting officer. In significant cases the PFA should also coordinate a remedies plan early with PFD. Defective product/product substitution remedies plans must comply with the requirements of appendix E to this part.

(c) A comprehensive remedies plan will include at a minimum the following information and considerations:

(1) Summary of allegations and investigative results.

(2) Statement of any adverse impact on a DoD mission. DoD investigative organizations, commanders, or procurement of officials will also provide this information to prosecutive authorities to enhance prosecution of offenses or to prepare a victim impact statement pursuant to Fed. R. Crim. P. 32(c)(2).

(3) The impact upon combat readiness and safety.

(4) Consideration of each criminal, civil, contractual, and administrative remedy available, and documentation of those remedies, either planned, in progress, or completed.

(5) Restrictions on the pursuit of any remedies such as grand jury information or possible compromise of the investigation.

(d) When remedies plans are received by PFD they will be coordinated with the headquarters of the appropriate DoD criminal investigative organization involved.

(e) Testing necessary to support the investigation and remedies plan should comply with appendix I to this part.

**§ 516.70 Litigation reports in civil recovery cases.**

(a) All substantiated PFI cases will be evaluated by PFAs to determine whether it is appropriate to recommend civil recovery proceedings.

(b) Recovery should be considered under both statutory and common law theories, including but not limited to the following:

(1) False Claims Act, 31 U.S.C. 3729.

(2) Anti-Kickback Act, 41 U.S.C. 51.

(3) Sherman Act, 15 U.S.C. 1–7.

(4) Racketeer Influenced and Corrupt Organizations, 18 U.S.C. 1961.

(5) Common law fraud.

(6) Unjust enrichment.

(7) Constructive trust.

(8) Cases where contracts have been procured in violation of the conflict of interest statute, 18 U.S.C. 218. See *K&R Engineering Co.* v. *United States*, 616 F.2d 469 (Ct. Cl., 1980).

(c) When civil recovery appears possible, PFD should be consulted to determine if a litigation report is necessary. If requested by PFD the report should summarize the available evidence and applicable theories of recovery and be prepared under § 516.22 of this part. To avoid unnecessary duplication of effort, recovery reports may include and make liberal references to other reports previously prepared on a given case such as the DFARS 9.406–3 report.

(d) The PFA will monitor all civil fraud recovery efforts throughout the command and will provide training and technical assistance as required. Monthly status reports of all civil fraud recovery efforts will be provided through channels to PFD.

**§ 516.71 Administrative and contractual actions.**

(a) The following remedial options should be considered in response to confirmed fraudulent activity:

(1) Contractual. (i) Termination of contract for default.

(ii) Nonaward of contract based upon a finding of contractor nonresponsibility. (If this appears to be a valid option, a DFARS 9.406–3 report must be prepared where contractor nonresponsibility is based on lack of integrity).

(iii) Rescission of contract.

(iv) Revocation of acceptance.

(v) Use of contract warranties.

(vi) Withholding of payments to contractor. In the case of withholding pursuant to DFARS 32.173, the Chief, PFD is the Army Remedy Coordinating Official.

(vii) Offset of payments due to contractor from other contracts.

(viii) Revocation of facility security clearances.

(ix) Increased level of quality assurance.

(x) Refusal to accept nonconforming goods.

(xi) Denial of claims submitted by contractors.

(xii) Removal of contract from automated solicitation or payment system.

(2) Administrative. (i) Change in contracting forms and procedures.

(ii) Removal or reassignment of government personnel.

(iii) Review of contract administration and payment controls.

(iv) Revocation of warrant of contracting officer.

(v) Suspension of contractor.

(vi) Debarment of contractor.

(b) In cases which are pending review or action by DOJ, PFAs should coordinate with the DOJ attorney handling the case prior to initiating any contractual or administrative remedy. In the case of ongoing criminal investigations, this coordination will be accomplished through the appropriate DoD criminal investigation organization.

**§ 516.72 Overseas cases of fraud or corruption.**

(a) Commanders of overseas major commands will establish procedures, similar to this regulation and consistent with regulations and directives of their respective unified commands, for reporting and coordination of available remedies in overseas procurement fraud and corruption cases involving foreign firms and individuals. Overseas major commands will also maintain liaison with PFD and provide periodic reports of remedies coordination results.

(b) Suspension and debarment of foreign firms and individuals are governed by DFARS 9.403. The names of all foreign firms and individuals suspended or debarred will be expeditiously forwarded to PFD for inclusion on the List of Parties Excluded From Federal Procurement or Nonprocurement Programs.

(c) Overseas cases of fraud or corruption related to the procurement process that involve U.S. firms or U.S. citizens will be referred to PFD for coordination of remedies under this regulation.

**§ 516.73 Program Fraud Civil Remedies Act (PFCRA).**

(a) PFCRA was enacted on 21 October 1986 (Pub. L. 99–509). It was implemented by DoD on 30 August 1988 (DoD Directive 5505.5). (See appendix J of this part.)

(b) PFCRA expands the capability of the government to deter and recover losses from false, fictitious or fraudulent claims and statements. It is also applicable to program fraud and provides an administrative remedy in addition to those otherwise available to the Army in procurement fraud or pay and entitlements fraud cases.

(c) As part of the Army implementation, the Secretary of the Army's duties and responsibilities under PFCRA as Authority Head are delegated to the Army General Counsel. The Chief, Intellectual Property Law Division is the Army's Reviewing Official within the meaning of PFCRA. Army implementation also requires DA to follow the policies and procedures prescribed in enclosure 2 of DoD Directive 5505.5. (See appendix J of this part.)

(d) The DoD Inspector General (IG) is the Investigating Official within DoD. The duties of this position will be performed by the Assistant IG For Investigations. This individual is vested with the authority to investigate all allegations of liability under PFCRA. That authority includes the power to task subordinate investigative agencies to review and report on allegations that are subject to PFCRA. If the Investigative Official concludes that an action under PFCRA is warranted in an Army case, the official will submit a report containing the findings and conclusions of such investigation

through PFD to the Army Reviewing Official.

(e) Pursuant to DoD IG guidance, USACIDC will forward appropriate cases that appear to qualify for resolution under PFCRA to the Investigating Official in a timely manner. Additionally, USACIDC will forward current information regarding the status of remedies pending or concluded. USACIDC may obtain remedies information by coordinating with PFD and the cognizant command.

(f) In pay and entitlement or transportation operation fraud cases, USACIDC will coordinate with the Office of the Secretary of the Army, Financial Management, Review and Oversight Directorate (SAFM–RO) to determine the status of any pending or proposed action under the Debt Collection Act. This information, in addition to information obtained under § 516.73(e) of this section, will be forwarded with appropriate cases to the Investigating Official.

(g) In those cases where the Investigating Official has submitted a report to the Army Reviewing Official for action under PFCRA, PFD will, at the direction of the Reviewing Official, prepare all legal memoranda as necessary to transmit the Reviewing Official's intention to issue a complaint. As part of this responsibility PFD will do the following: coordinate with the affected command or agency to ensure that all appropriate remedies have been considered; evaluate the overall potential benefits to the Army; and, ensure that action under PFCRA is not duplicative of other remedies already taken. In order to fully supplement the Reviewing Official's file, PFD may request a litigation report.

(h) PFD will coordinate all cases involving transportation operations emanating from Military Traffic Management Command (MTMC) activity, under the military transportation exception to the FAR, and all cases involving pay and entitlements fraud with SAFM–RO, for comments and recommendations. These matters will be forwarded with the case file to the Reviewing Official.

(i) If the Attorney General approves the issuance of a complaint, PFD, at the direction of the Army Reviewing Official, shall prepare the complaint and all necessary memoranda as required. PFD shall also designate attorneys to represent the Authority in hearings under PFCRA.

## Subpart J—Cooperation with the Office of Special Counsel

### § 517.74 Introduction.

This chapter prescribes procedures for cooperation with the Office of Special Counsel (OSC) when OSC is investigating alleged prohibited personnel practices or other allegations of improper or illegal conduct within DA activities.

### § 516.75 Policy.

(a) DA policy follows:

(1) Civilian personnel actions taken by management officials, civilian and military, will conform to laws and regulations implementing established merit system principles and will be free of any prohibited personnel practices.

(2) Management officials will take vigorous corrective action when prohibited personnel practices occur. Disciplinary measures under AR 690–700, chapter 751, may be initiated after consultation and coordination with appropriate civilian personnel offices.

(b) DA activities will cooperate with OSC in the following ways:

(1) Promoting merit system principles in civilian employment programs within DA.

(2) Investigating and reporting allegations of improper or illegal conduct forwarded to the activity by HQDA.

(3) Facilitating orderly investigations by the OSC of alleged prohibited personnel practices and other matters assigned for investigation to the OSC, such as violations of the Freedom of Information Act or Hatch Act.

### § 516.76 Responsibilities.

(a) *DA General Counsel.* The DA General Counsel is responsible for the following:

(1) Provide overall guidance on all issues concerning cooperation with OSC, including the investigation of alleged prohibited personnel practices and allegations of improper or illegal conduct.

(2) Review for adequacy and legal sufficiency each OSC report of investigation that must be personally reviewed by the Secretary of the Army.

(3) Ensure compliance with the Civil Service Reform Act of 1978 by obtaining a suitable investigation of allegations of improper or illegal conduct received from OSC. This includes compliance with time limits for reporting results of the investigation and personal review of the report by the Secretary of the Army when required.

(4) Forward to the DoD Inspector General (IG) copies of each allegation of improper or illegal conduct referred to DA by OSC.

(5) Delegate to The Judge Advocate General (TJAG) the authority to act on behalf of the DA General Counsel in all OSC investigations of prohibited personnel practices.

(b) *Chief, Labor and Employment Law Office.* The Chief, Labor and Employment Law Office, OTJAG (DAJA–LE) is responsible for the following:

(1) Act for TJAG as the Senior Management Official in cooperating with OSC. As Senior Management Official, the Chief, DAJA–LE, through TJAG, will be responsible to the DA General Counsel for administration of the policies and procedures contained in this chapter.

(2) Promptly inform the DA General Counsel of any OSC investigation and consult with the DA General Counsel on any legal or policy issue arising from an OSC investigation.

(3) Serve as the HQDA point of contact in providing assistance to OSC.

(4) Act as DA attorney-of-record in administrative matters initiated by OSC before the MSPB which arise from an OSC investigation. As DA attorney-of-record, the Chief, DAJA–LE will file necessary pleadings and make necessary appearances before the MSPB to represent DA interests.

(5) Monitor ongoing OSC investigations within DA.

(6) Ensure that appropriate DA personnel are fully apprised of their rights, duties and the nature and basis for an OSC investigation.

(7) Review and prepare recommendations to the General Counsel concerning any OSC recommended corrective action referred to DA. Such review and recommendations will address whether disciplinary action should be taken against DA civilian employees or military members, and whether the information warrants referral to appropriate authorities for corrective and disciplinary action.

(8) Seek OSC approval of DA proposed disciplinary action against an employee for an alleged prohibited personnel practice or other misconduct which is the subject of or related to any OSC investigation.

(9) Review and prepare recommendations for DA General Counsel concerning requests for counsel, to include identifying available DA attorneys to act as individual representatives. Upon approval of DA General Counsel, detail DA civilian and military attorneys, to include attorneys from the U.S. Army Materiel Command

and the Corps of Engineers, to represent individual military members or employees.

(10) Determine, to the extent practicable, whether an investigation is being or has been conducted which duplicates, in whole or in part, a proposed or incomplete OSC investigation, and convey that information to the OSC whenever it might avoid redundant investigative efforts.

(11) Provide guidance and assistance to activity Labor Counselors in fulfilling their duties as Liaison Officers.

(c) Activity Labor Counselor. The activity Labor Counselor will do the following:

(1) Act as Liaison Officer for OSC investigations arising within the command, activity or installation serviced by the Labor Counselor's Client Employment Office.

(2) Promptly inform the Chief, DAJA–LE of any OSC inquiry or investigation.

(3) Act as the legal representative of the command, activity, or installation.

(4) Assist the OSC investigator with administrative matters related to the investigation, such as requests for witnesses and documents.

(5) Process all OSC requests for documents.

(6) Make appropriate arrangements for OSC requests to interview civilian employees and military members.

(7) Ensure that personnel involved are advised of the nature and basis for an OSC investigation, the authority of the OSC, and their rights and duties.

(8) Consult with the Chief, DAJA–LE on policy and legal issues arising from the OSC investigation.

(9) Keep the Chief, DAJA–LE informed of the status of the OSC investigation.

(10) Act as agency representative before the MSPB in actions initiated by employees (individual right of action appeals).

**§ 516.77 Procedures.**

(a) *Witnesses and counsel for consultation.*

(1) DA military and civilian managers, supervisors, and employees who are requested by OSC for an interview will be made available in accordance with arrangements the Labor Counselor will establish. Requests for the testimony of IGs will be coordinated with the Inspector General Legal Office, SAIG–ZXL, DSN 227–9734 or Commercial (703) 697–9734.

(2) The Labor Counselor will ensure that witnesses are aware of their obligation to answer OSC questions, their potential to be considered "suspects" in OSC investigations, and their right to the assistance of counsel during interviews with OSC representatives. If the requested witness is not an "accused" or "suspected" individual and the witness asks for assistance of counsel, a DA attorney will be made available for the limited purpose of consultation regarding the witness' rights and obligations. An attorney-client relationship will not be established.

(3) The Labor Counselor will arrange for individual counsel from local assets. If local assets are not sufficient, assistance may be requested from other DoD activities in the area or from HQDA, DAJA–LE. DA attorneys tasked to consult with one or more witnesses individually will not be tasked to represent the DA activity concerned.

(4) The Labor Counselor, as the legal representative of the activify, is precluded from assisting or representing individual witnesses during OSC interviews.

(b) *"Accused" or "suspected" DA personnel.*

(1) If the OSC identifies a DA civilian employee or a military member as an "accused" or "suspected" individual, or if the Labor Counselor concludes that an individual is a "suspect," the Labor Counselor will inform the individual. The Labor Counselor also will advise the employee of the availability of counsel for representation upon approval by DA General Counsel.

(2) If the "suspected" employee desires legal representation by DA, the employee must request counsel by submitting a written request through DAJA–LE to DA General Counsel. (See appendix H of this part.)

(3) During the investigation but prior to DA General Counsel approval of the request for counsel, an "accused" or "suspected" employee will be provided the assistance of counsel for consultation in the same manner as any other OSC requested witness. "Accused" or "suspected" individuals who do not request counsel for representation will be provided counsel for consultation in the same manner as any other OSC requested witness.

(4) If the DA General Counsel approves the request for counsel, the Chief, DAJA–LE will assign a DA attorney to represent the employee. This assignment may be made telephonically but will be confirmed in writing. The Chief, DAJA–LE will make appropriate coordination with MACOM SJAs and command counsel to confirm availability of the attorney.

(5) An attorney assigned by DA may represent the civilian employee in any proceeding initiated by OSC before the MSPB. However, counsel provided by DA may not represent the employee in any proceeding initiated by DA, in any appeal from a final decision by the MSPB, or in any collateral proceeding before any forum other than the MSPB.

(6) OSC may not bring a disciplinary action before the MSPB against a military member. Accordingly, DA counsel will not be required to represent the military member in any MSPB disciplinary proceeding. However, counsel may represent the member during the OSC investigation with the understanding that the evidence obtained by OSC may be referred to the member's command for possible disciplinary action under the UCMJ or appropriate regulations. If DA initiates action against the military member for misconduct disclosed in the OSC investigation, the member will obtain counsel as provided under the UCMJ or relevant regulations.

(c) *Records.*

(1) OSC requests for records must be in writing. The Labor Counselor will assist OSC representatives in identifying the custodian of specific records sought during the inquiry.

(2) Generally, requested records should be furnished to OSC representatives if such records would be released under AR 25–55 or AR 340–21 to other government agencies in the normal course of official business. Records constituting attorney work product should not be released without approval of the Chief, DAJA–LE. IG records will not be released without the approval of the Inspector General (AR 20–1, para 1–30). The Labor Counselor should seek guidance from the Chief, DAJA–LE if there is any doubt concerning the release of records.

(3) If, after completion of the OSC investigation, the OSC files a complaint against DA or a DA employee, release of records and other information will be accomplished pursuant to MSPB rules of discovery (5 C.F.R. 1201, subpart B).

(d) *Funding.* The command, activity, or installation within which the allegations of misconduct arose will provide funding for travel, *per diem* and other necessary expenses related to the OSC investigation. These expenses may include appropriate funding for witnesses, counsel for assistance at interviews, and DA General Counsel approved counsel for representation.

**§ 516.78 Assistance from HQDA.**

Labor Counselors may seek guidance on questions arising from implementation of this subpart J, by calling the Chief, DAJA–LE, DSN 225–9476/9481 or Commercial (703) 695–9476/9481.

## Subpart K—Soldiers Summoned to Serve on State and Local Juries

### § 516.79 General.

This chapter implements 10 U.S.C. 982 and DOD Directive 5525.8. It establishes Army policy concerning soldiers on active duty who are summoned to serve on state and local juries.

### § 516.80 Policy.

(a) Active duty soldiers should fulfill their civic responsibility by serving on state and local juries, so long as it does not interfere with military duties.

(b) The following active duty soldiers are exempt from complying with summons to serve on state and local juries:

(1) General officers.

(2) Commanders.

(3) Active duty soldiers stationed outside the United States, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

(4) Active Duty soldiers in a training status.

(5) Active duty soldiers assigned to forces engaged in operations.

(c) Other active duty soldiers may be exempted from serving on local juries if compliance with such summons would have either of the following effects:

(1) It would unreasonably interfere with performance of the soldier's military duties; or,

(2) It would adversely affect the readiness of a summoned soldier's unit, command, or activity.

### § 516.81 Exemption determination authority.

(a) The commander exercising special court-martial convening authority (SPCMCA) over a unit has the authority to determine whether a soldier of that unit, who has been served with a summons, is exempt from serving on a state or local jury unless that authority has been limited or withheld in accordance with paragraphs (b) or (c) of this section. This authority may not be delegated to a subordinate commander who does not exercise SPCMCA.

(b) A commander superior to the SPCMCA, who also exercises SPCMCA or general court-martial convening authority (GCMCA) over a unit, may limit or withhold the exemption determination authority of subordinate commanders.

(c) A GCMCA, who orders a unit or soldier assigned to one command to be attached or detailed to another command for disciplinary purposes (e.g., "for administration" or "for administration of military justice"), may reserve exemption determination authority to the commander exercising SPCMCA in the chain of command to which the unit or soldier is assigned rather than the chain of command to which the unit or soldier is attached or detailed.

### § 516.82 Procedures for exemption.

(a) Active duty soldiers served with a summons to serve on a state or local jury will promptly advise their commander and provide copies of pertinent documents.

(b) Unit commanders will evaluate the summons considering both the individual soldier's duties and the unit mission. Coordination with the servicing judge advocate or legal adviser and with the appropriate state or local official may be necessary to determine any impact on the soldier's duties or on unit readiness.

(1) If the soldier is not exempt under § 516.80 (b) or (c), the commander will process the soldier for permissive TDY in accordance with AR 630–5, Leave, Passes, Permissive Temporary Duty, and Public Holidays.

(2) If the soldier is exempt under § 516.80 (b) or (c), the commander will forward the summons and any related documentation, with recommendations, through the chain of command to the commander with exemption determination authority over the soldier concerned.

(c) The commander with exemption determination authority over the soldier concerned will determine whether the soldier is exempt. His determination is final.

(d) The exemption determination authority will notify responsible state or local officials whenever a soldier summoned for jury duty is exempt. The notification will cite 10 U.S.C. 982 as authority.

### § 516.83 Status, fees, and expenses.

(a) Soldiers who are required to comply with summons to serve on state or local juries will be placed on permissive TDY under the provisions of AR 630–5.

(b) Jury fees accruing to soldiers for complying with the summons to serve on state and local juries must be turned over to the appropriate finance office for deposit into the U.S. Treasury. Commands will establish procedures with local authorities and their servicing finance and accounting activity to ensure that such jury fees are so deposited. Soldiers, however, may keep any reimbursement from state or local authority for expenses incurred in the performance of jury duty, including transportation, meals, and parking.

### Appendix A to Part 516—References

These publications may be obtained from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, or may be reviewed at any Army public library.

*Required Publications*

AR 25–55
The Department of the Army Freedom of Information Act Program. (Cited in § 516.44(a), § 516.76(c)(2))

AR 27–20
Claims. (Cited in § 516.4(g), § 516.20(f), § 516.31(a)(4), § 516.3(b))

AR 37–60
Pricing for Material and Services. (Cited in § 516.47(c))

AR 215–1
Administration of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities. (Cited in § 516.20(a) (4) and (5)(b))

AR 215–2
The Management and Operation of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities. (Cited in § 516(a)(3))

AR 340–17
Release of Information and Records from Army Files. (Cited in § 516.47(b)(2))

AR 340–21
The Army Privacy Program. (Cited in § 516.44(a), § 516.76(c) (2))

AR 380–5
Department of the Army Information Security Program. (Cited in § 516.48(b)(5))

AR 405–25
Annexation. (Cited in § 516.20(d))

AR 630–5
Leaves, Passes, Permissive Temporary Duty, and Public Holidays. (Cited in § 516.59(a), § 516.81(b)(1), § 516.82(a))

*Related Publications*

A related publication is merely a source of additional information. The user does not have to read it to understand the regulation.

AR 20–1
Inspector General Activities and Procedures

AR 27–1
Judge Advocate Legal Service

AR 27–3
Legal Assistance

AR 27–10
Military Justice

AR 27–50
Status of Forces Policies, Procedures, and Information

AR 27–60
Patents, Inventions, and Copyrights

AR 37–103
Finance and Accounting for Installations: Disbursing Cperations

AR 37–60
Pricing for Materiel and Services

AR 37–103
Finance and Accounting for Installations: Disbursing Operations

AR 37–104–3
Military Pay and Allowances Procedures

AR 37–105
Finance and Accounting for Installations: Civilian Pay Procedures

AR 55–19
Marine Casualties

AR 60–20
Operating Policies
AR 190–9
Military Absentee and Deserter Apprehension Program
AR 190–29
Misdemeanors and Uniform Violation Notices Referred to U.S. Magistrates or District Courts
AR 190–40
Serious Incident Report
AR 210–47
State and Local Taxation of Lessee's Interest in Wherry Act Housing (Title VIII of the National Housing Act).
AR 210–50
Family Housing Management
AR 215–1
Administration of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities
AR 215–2
The Management and Operation of Army Morale, Welfare and Recreation Programs and Nonappropriated Fund Instrumentalities
AR 335–15
Management Information Control System
AR 405–25
Annexation
AR 600–40
Apprehension, Restraint, and Release to Civil Authorities
AR 600–50
Standards of Conduct for Department of the Army Personnel
AR 630–10
Absence Without Leave and Desertion
AR 690–700
Personnel Relations and Services

*Prescribed Form*

DA Form 4
Department of the Army Certification for Authentication of Records. (Cited in § 516.23 (a) and (b))

*Referenced Forms*

DA Form 2631–R
Medical Care—Third Party Liability Notification
DA Form 3154
MSA Invoice and Receipt

**Appendix B to Part 516—Mailing Addresses**

U.S. Army Claims Service, ATTN: JACS–PC, Fort George G. Meade, MD 20755–5360.
Contract Appeals Division, HQDA(DAJA–CA), 901 North Stuart Street, Arlington, VA 22203–1837.
Contract Law Division, HQDA(DAJA–KL), Wash., DC 20310–2208.
Criminal Law Division, HQDA(DAJA–CL), Wash., DC 20310–2200.
Environmental Law Division, HQDA(DAJA–EL), 901 North Stuart Street, Arlington, VA 22203–1837.
Litigation Division, HQDA(DAJA–LT), 901 North Stuart Street, Arlington, VA 22203–1837.
(1) Civilian Personnel Branch, HQDA(DAJA–LTC), 901 North Stuart Street, Arlington, VA 22203–1837.
(2) General Litigation Branch, HQDA(DAJA–LTG), 901 North Stuart Street, Arlington, VA 22203–1837.
(3) Military Personnel Branch, HQDA(DAJA–LTM), 901 North Stuart Street, Arlington, VA 22203–1837.
(4) Tort Branch, HQDA(DAJA–LTT), 901 North Stuart Street, Arlington, VA 22203–1837.
Personnel, Plans, and Training Office, HQDA(DAJA–PT), Wash., DC 20310–2206.
Procurement Fraud Division, HQDA(DAJA–PF), 901 North Stuart Street, Arlington, VA 22203–1837.
Intellectual Property Division, HQDA(JALS–IP), 901 North Stuart Street, Arlington, VA 22203–1837.
Regulatory Law Division, HQDA(JALS–RL), 901 North Stuart Street, Arlington, VA 22203–1837.
U.S. Army Trial Defense Service, HQDA(JALS–TD), Nassif Building, Falls Church, VA 22041–5013.

**Appendix C to Part 516—Sample Answer To Judicial Complaint**

In the United States District Court for the Southern District of Texas Corpus Christi Division

In the Matter of John Doe, Plaintiff v. Michael P.W. Stone, Secretary of the Army, Department of the Army, Defendant.

[NO. C–90–100]

*First Affirmative Defense*

The Complaint is barred by laches.

*Answer*

For its answer to the complaint, defendant admits, denies and alleges as follows:

1. Admits.
2. Denies.
3. Denies.
4. The allegations contained in paragraph 4 are conclusions of law to which no response is required; to the extent they may be deemed allegations of fact, they are denied.
5. Denies the allegations contained in the first sentence of paragraph 5; admits the allegations contained in the second sentence of paragraph 5; denies the remainder of the allegations in paragraph 5.
6. Denies the allegations in paragraph 6 for lack of knowledge or information sufficient to form a belief as to their truth.
7. Denies each allegation in the complaint not specifically admitted or otherwise qualified.

*Prayer for Relief*

The remainder of plaintiff's Complaint contains his prayer for relief, to which no answer is required. Insofar as an answer is required, denies that plaintiff is entitled to any relief whatsoever.

Defendant respectfully prays that the Court dismiss plaintiff's Complaint and award to defendant costs and such further relief as the Court deems proper.

Respectfully Submitted,

Ronald M. Ford, United States Attorney.

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Roy A. Andersen,
Assistant United States Attorney,
606 N. Carancua,
Corpus Christi, Texas 78476,
(512) 884–3454.

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Captain Christopher N. Jones,
Department of the Army,
Office of the Judge Advocate General,
901 N. Stuart St., Suite 400,
Arlington, Virginia 22203–1837,
(703) 696–1666.

*Certificate of Service*

I hereby certify that a true and correct copy of Defendant's Answer has been placed in the mail, postage prepaid, this _____day of_____, 1991, addressed to plaintiff's counsel as follows: Mr. Eugene Henderson, 777 Fourth Street, Corpus Christi, TX 78888.

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Roy Anderson, Assistant United States Attorney.

**Appendix D to Part 516—Department of Defense Directive 5405.2**

Department of Defense Directive

July 23, 1985
NUMBER 5405.2
GC, DOD

*Subject:* Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses

References:

(a) Title 5, United States Code, Sections 301, 552, and 552a
(b) Title 10, United States Code, Section 133
(c) DoD Directive 5220.6, "Industrial Personnel Security Clearance Program," December 20, 1976
(d) DoD Directive 5200.1–R, "Information Security Program Regulation," August 1982, authorized by DoD Directive 5200.1, June 7, 1982
(e) DoD Directive 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure," November 6, 1984
(f) DoD Instruction 7230.7, "User Charges," January 29, 1985
(g) DoD Directive 5400.7–R, "DoD Freedom of Information Act Program," December 1980, authorized by DoD Directive 5400.7, March 24, 1980

**A. Purpose**

Under Section 301 reference (a) and reference (b), this Directive establishes policy, assigns responsibilities, and prescribes procedures for the release of official DoD information in litigation and for testimony by DoD personnel as witnesses during litigation.

**B. Applicability and Scope**

1. This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components"), and to all personnel of such DoD Components.
2. This Directive does not apply to the release of official information or testimony by DoD personnel in the following situations:
a. Before courts-martial convened by the authority of the Military Departments or in

administrative proceedings conducted by or on behalf of a DoD Component;

b. Pursuant to administrative proceedings conducted by or on behalf of the Equal Employment Opportunity Commission (EEOC) or the Merit Systems Protection Board (MSPB), or pursuant to a negotiated grievance procedure under a collective bargaining agreement to which the Government is a party;

c. In response to requests by Federal Government counsel in litigation conducted on behalf of the United States;

d. As part of the assistance required in accordance with the Defense Industrial Personnel Security Clearance Program under DoD Directive 5220.6 (reference (c)); or

e. Pursuant to disclosure of information to Federal, State, and local prosecuting and law enforcement authorities, in conjunction with an investigation conducted by a DoD criminal investigative organization.

3. This Directive does not supersede or modify existing laws or DoD programs governing the testimony of DoD personnel or the release of official DoD information during grand jury proceedings, the release of official information not involved in litigation, or the release of official information pursuant to the Freedom of Information Act, 5 U.S.C. 552 (reference (a)) or the Privacy Act, 5 U.S.C. 552a (reference (a)), nor does this Directive preclude treating any written request for agency records that is not in the nature of legal process as a request under the Freedom of Information or Privacy Acts.

4. This Directive is not intended to infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States in appropriate cases.

5. This Directive does not preclude official comment on matters in litigation in appropriate cases.

6. This Directive is intended only to provide guidance for the internal operation of the Department of Defense and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law against the United States or the Department of Defense.

**C. Definitions**

1. Demand. Subpoena, order, or other demand of a court of competent jurisdiction, or other specific authority for the production, disclosure, or release of official DoD information or for the appearance and testimony of DoD personnel as witnesses.

2. DoD Personnel. Present and former U.S. military personnel; Service Academy cadets and midshipmen; and present and former civilian employees of any Component of the Department of Defense, including nonappropriated fund activity employees; non-U.S. nationals who perform services overseas, under the provisions of status of forces agreements, for the United States Armed Forces; and other specific individuals hired through contractual agreements by or on behalf of the Department of Defense.

3. Litigation. All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards (including the Armed Services Board of Contract Appeals), or other tribunals, foreign and domestic. This term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving litigation.

4. Official Information. All information of any kind, however stored, that is in the custody and control of the Department of Defense, relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces.

**D. Policy**

It is DoD policy that official information should generally be made reasonably available for use in federal and state courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected from public disclosure.

**E. Responsibilities**

1. The General Counsel, Department of Defense (GC, DoD), shall provide general policy and procedural guidance by the issuance of supplemental instructions or specific orders concerning the release of official DoD information in litigation and the testimony of DoD personnel as witnesses during litigation.

2. The Heads of DoD Components shall issue appropriate regulations to implement this Directive and to identify official information that is involved in litigation.

**F. Procedures**

*1. Authority to Act*

a. In response to a litigation request or demand for official DoD information or the testimony of DoD personnel as witnesses, the General Counsels of DoD, Navy, and the Defense Agencies; the Judge Advocates General of the Military Departments; and the Chief Legal Advisors to the JCS and the Unified and Specified Commands, with regard to their respective Components, are authorized—after consulting and coordinating with the appropriate Department of Justice litigation attorneys, as required—to determine whether official information originated by the Component may be released in litigation; whether DoD personnel assigned to or affiliated with the Component may be interviewed, contacted, or used as witnesses concerning official DoD information or as expert witnesses; and what, if any, conditions will be imposed upon such release, interview, contact, or testimony. Delegation of this authority, to include the authority to invoke appropriate claims of privilege before any tribunal, is permitted.

b. In the event that a DoD Component receives a litigation request or demand for official information originated by another Component, the receiving Component shall forward the appropriate portions of the request or demand to the originating Component for action in accordance with this Directive. The receiving Component shall also notify the requestor, court, or other authority of its transfer of the request or demand.

c. Notwithstanding the provisions of paragraphs F.1.a. and b., the GC, DoD, in litigation involving terrorism, espionage, nuclear weapons, intelligence means or sources, or otherwise as deemed necessary, may notify Components that GC, DoD, will assume primary responsibility for coordinating all litigation requests and demands for official DoD information or the testimony of DoD personnel, or both; consulting with the Department of Justice, as required; and taking final action on such requests and demands.

*2. Factors to Consider*

In deciding whether to authorize the release of official DoD information or the testimony of DoD personnel concerning official information (hereinafter referred to as "the disclosure") pursuant to paragraph F.1., DoD officials should consider the following types of factors:

a. Whether the request or demand is unduly burdensome or otherwise inappropriate under the applicable court rules;

b. Whether the disclosure, including release in camera, is appropriate under the rules of procedure governing the case or matter in which the request or demand arose;

c. Whether the disclosure would violate a statute, executive order, regulation, or directive;

d. Whether the disclosure, including release in camera, is appropriate or necessary under the relevant substantive law concerning privilege;

e. Whether the disclosure, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified pursuant to the DoD Information Security Program under DoD 5200.1–R (reference (d)), unclassified technical data withheld from public release pursuant to DoD Directive 5230.25 (reference (e)), or other matters exempt from unrestricted disclosure; and,

f. Whether disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or similarly confidential commercial or financial information, or otherwise be inappropriate under the circumstances.

*3. Decisions on Litigation Requests and Demands*

a. Subject to paragraph F.3.e., DoD personnel shall not, in response to a litigation request or demand, produce, disclose, release, comment upon, or testify concerning any official DoD information without the prior written approval of the appropriate DoD official designated in paragraph F.1. Oral approval may be granted, but a record of such approval shall be made and retained in accordance with the applicable implementing regulations.

b. If official DoD information is sought, through testimony or otherwise, by a litigation request or demand, the individual

seeking such release or testimony must set forth, in writing and with as much specificity as possible, the nature and relevance of the official information sought. Subject to paragraph F.3.e., DoD personnel may only produce, disclose, release, comment upon, or testify concerning those matters that were specified in writing and properly approved by the appropriate DoD official designated in paragraph F.1. See United States ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951).

c. Whenever a litigation request or demand is made upon DoD personnel for official DoD information or for testimony concerning such information, the personnel upon whom the request or demand was made shall immediately notify the DoD official designated in paragraph F.1. for the Component to which the individual contacted is or, for former personnel, was last assigned. In appropriate cases, the responsible DoD official shall thereupon notify the Department of Justice of the request or demands. After due consultation and coordination with the Department of Justice, as required, the DoD official shall determine whether the individual is required to comply with the request or demand and shall notify the requestor or the court or other authority of the determination reached.

d. If, after DoD personnel have received a litigation request or demand and have in turn notified the appropriate DoD official in accordance with paragraph F.3.c., a response to the request or demand is required before instructions from the responsible official are received, the responsible official designated in paragraph F.1. shall furnish the requestor or the court or other authority with a copy of this Directive and applicable implementing Regulations, inform the requestor or the court or other authority that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the Component concerned.

e. If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken pursuant to paragraph F.3.d., or if such court or other authority orders that the request or demand must be complied with notwithstanding the final decision of the appropriate DoD official, the DoD personnel upon whom the request or demand was made shall notify the responsible DoD official of such ruling or order. If the DoD official determines that no further legal review of or challenge to the court's ruling or order will be sought, the affected DoD personnel shall comply with the request, demand, or order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. See United States ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951).

*4. Fees*

Consistent with the guidelines in DoD Instruction 7230.7 (reference (f)), the appropriate officials designated in paragraph F.1. are authorized to charge reasonable fees, as established by regulation and to the extent not prohibited by law, to parties seeking, by request or demand, official DoD information not otherwise available under the DoD Freedom of Information Act Program (reference (g)). Such fees, in amounts calculated to reimburse the Government for the expense of providing such information, may include the costs of time expended by DoD employees to process and respond to the request or demand; attorney time for reviewing the request or demand and any information located in response thereto and for related legal work in connection with the request or demand; and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. See *Oppenheimer Fund, Inc.* v. *Sanders*, 437 U.S. 340 (1978).

5. Expert or Opinion Testimony. DoD personnel shall not provide, with or without compensation, opinion or expert testimony concerning official DoD information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice. Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the Department of Defense or the United States, the appropriate DoD official designated in paragraph F.1. may, in writing, grant special authorization for DoD personnel to appear and testify at no expense to the United States. If, despite the final determination of the responsible DoD official, a court of competent jurisdiction, or other appropriate authority, orders the appearance and expert or opinion testimony of DoD personnel, the personnel shall notify the responsible DoD official of such order. If the DoD official determines that no further legal review of or challenge to the court's order will be sought, the affected DoD personnel shall comply with the order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. See United States ex rel. *Touhy* v. *Rogen*, 340 U.S. 462 (1951).

**G. Effective Date and Implementation**

This Directive is effective immediately. Forward two copies of implementing documents to the General Counsel, DoD, within 120 days.

Signed by William H. Taft, IV

*Deputy Secretary of Defense.*

**Appendix E to Part 516—Department of Defense Directive 7050.5**

Department of Defense Directive

June 7, 1989
NUMBER 7050.5
IG, DoD

**SUBJECT**: Coordination of Remedies for Fraud and Corruption Related to Procurement Activities

References:

(a) DoD Directive 7050.5, subject as above, June 28, 1985 (hereby canceled)
(b) Public Law 97–291, "The Victim and Witness Protection Act of 1982," October 12, 1982
(c) Defense FAR Supplement (DFARS), Subpart 4.6, "Contract Reporting"
(d) DoD Instruction 4105.61, "DoD Procurement Coding Manual," May 4, 1973
(e) DoD 4105.61–M, "Procurement Coding Manual" (Volume I), October 1988, authorized by DoD Instruction 4105.61 May 4, 1973

**A. Reissuance and Purpose**

This Directive reissues reference (a) to update policies, procedures, and responsibilities for the coordination of criminal, civil, administrative, and contractual remedies stemming from investigation of fraud or corruption related to procurement activities. More effective and timely communication of information developed during such investigations will enable the Department of Defense to take the most appropriate of the available measures.

**B. Applicability**

This Directive applies to the Office of the Secretary of Defense (OSD); the Inspector General, Department of Defense (IG, DoD); the Military Departments; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

**C. Definitions**

1. *DoD Criminal Investigative Organizations.* Refers to the U.S. Army Criminal Investigation Command; the Naval Investigative Service Command; the U.S. Air Force Office of Special Investigations; and the Defense Criminal Investigative Service, Office of the IG, DoD (OIG, DoD).

2. Significant. Refers to all fraud cases involving an alleged loss of $100,000, or more; all corruption cases related to procurement that involved bribery, gratuities, or conflicts of interest; and any investigation into defective products or product substitution in which a SERIOUS HAZARD to health, safety, or operational readiness is indicated, regardless of loss value.

**D. Policy**

It is DoD policy that:

1. Each of the DoD Components shall monitor, from its inception, all significant investigations of fraud or corruption related to procurement activities affecting its organizations, for the purpose of ensuring that all possible criminal, civil, administrative, and contractual remedies in such cases are identified to cognizant procurement and command officials and that appropriate remedies are pursued expeditiously. This process shall include appropriate coordination with all other affected DoD Components.

2. All investigations of fraud or corruption related to procurement activities shall be reviewed to determine and implement the appropriate contractual and administrative actions that are necessary to recover funds lost through fraud or corruption and to ensure the integrity of DoD programs and operations.

3. Appropriate civil, contractual, and administrative actions, including those set forth in enclosure 1, shall be taken expeditiously. During an investigation and before prosecution or litigation, and when based in whole or in part on evidence developed during an investigation, such actions shall be taken with the advance knowledge of the responsible DoD criminal investigative organization and, when necessary, the appropriate legal counsel in

the Department of Defense and the Department of Justice (DoJ). When appropriate, such actions shall be taken before final resolution of the criminal or civil case.

**E. Responsibilities**

1. The *Heads of DoD Components* shall:

a. Establish a centralized organization (hereafter referred to as "the centralized organization") to monitor and ensure the coordination of criminal, civil, administrative, and contractual remedies for each significant investigation of fraud or corruption related to procurement activities affecting the DoD Component.

b. Establish procedures requiring the centralized organization to discuss regularly with the assigned DoD criminal investigative organization(s) such issues as the current status of significant investigations and their coordination with prosecutive authorities.

c. Establish procedures requiring that all coordination involving the DoJ, during the pendency of a criminal investigation, is accomplished by or with the advance knowledge of the appropriate DoD criminal investigative organization(s).

d. Establish procedures to ensure appropriate coordination of actions between the centralized organizations of any DoD Components affected by a significant investigation of fraud or corruption related to procurement activities.

e. Establish procedures to ensure that all proper and effective civil, administrative, and contractual remedies available to the Department of Defense are, when found applicable and appropriate, considered and undertaken promptly by the necessary DoD officials (e.g., commanders, programs officials, and contracting officers). This includes initiation of any suspension and debarment action within 30 days of an indictment or conviction. The centralized organization shall ensure that all proposed actions are coordinated with appropriate investigative organization.

f. Establish procedures to ensure that a specific comprehensive remedies plan is developed for each significant investigation involving fraud or corruption related to procurement activities. These procedures shall include the participation of the appropriate DoD criminal investigative organization in the development of the plan.

g. Establish procedures to ensure that in those significant investigations of fraud or corruption related to procurement activities when adverse impact on a DoD mission can be determined, such adverse impact is identified and documented by the centralized organization. This information is to be used by the centralized organization of the DoD Component concerned in development of the remedies plan required in paragraph E.1.f., above, and shall be furnished to prosecutors as stated in paragraph E.2.e., below. The information shall also be used by the centralized organizations in development and preparation of "Victim Impact Statements" for use in sentencing proceedings, as provided for Public Law 97–291 (reference (b)). Some examples of adverse impact on a DoD mission are as follows:

(1) Endangerment of personnel or property.

(2) Monetary loss.

(3) Denigration of program or personnel integrity.

(4) Compromise of the procurement process.

(5) Reduction or loss of mission readiness.

h. Ensure training materials are developed on fraud and corruption in the procurement process, and that all procurement and procurement-related training includes a period of such instruction appropriate to the duration and nature of the training.

i. Establish procedures enabling the centralized organization to ensure that safety and readiness issues are examined and appropriately dealt with for all cases in which a notice is required under paragraph E.2.i., below. The minimum procedures to be followed by the centralized organization are in enclosure 3.

j. Ensure that appropriate command, procurement, and investigative organizations are provided sufficient information to determine if further inquiry is warranted on their part to prevent reoccurrence and detect other possible fraud within their activity.

(2) The Secretaries of the Military Departments and the Inspector General, Department of Defense (IG, DoD), or their designees, shall establish procedures that ensure that their respective criminal investigative organizations will:

a. Notify, in writing, the centralized organization for the affected DoD Component of the start of all significant investigations involving fraud or corruption that are related to procurement activities. Initial notification shall include the following elements:

(1) Case title.

(2) Case control number.

(3) Investigative agency and office of primary responsibility.

(4) Date opened.

(5) Predication.

(6) Suspected offense(s).

(b) Notify expeditiously the Defense Investigative Service (DIS) of any investigations that develop evidence that would impact on DoD-cleared industrial facilities or personnel.

(c) Discuss regularly with the centralized organization such issues as the current status of significant investigations and their coordination with prosecutive authorities. If the DoD criminal investigative organization has prepared any documents summarizing the current status of the investigation, such documents shall be provided to the centralized organization. Completed reports of significant investigations also should be provided to the centralized organization.

(d) Provide to the appropriate procurement officials, commanders, and suspension and debarment authorities, when needed to allow consideration of applicable remedies, any court records, documents, or other evidence of fraud or corruption related to procurement activities. Such information shall be provided in a timely manner to enable the suspension and debarment authority to initiate suspension and debarment action within 30 days of an indictment or conviction.

(e) Provide expeditiously to prosecutive authorities the information regarding any adverse impact on a DoD mission, that is gathered under paragraph E.1.g., above, for the purpose of enhancing the prosecutability of a case. Such information also should be used in preparing a victim impact statement for use in sentencing proceedings as provided for in Public Law 97–291 (reference (b)).

(f) Gather, at the earliest practical point in the investigation, without reliance on grand jury subpoenas whenever possible, relevant information concerning responsible individuals, the organizational structure, finances, and contract history of DoD contractors under investigation for fraud or corruption related to procurement activities, to facilitate the criminal investigation as well as any civil, administrative, or contractual actions or remedies that may be taken. Some available sources of such information are listed in enclosure 2.

(g) Provide timely notice to other cognizant DoD criminal investigative organizations of evidence of fraud by a contractor, subcontractor, or employees of either, on current or past contracts with, or affecting, other DoD Components.

(h) Ascertain the impact upon any ongoing investigation or prosecution of civil, contractual, and administrative actions being considered and advise the appropriate centralized organization of any adverse impact.

(i) Obtain a DD 350 report in every investigation into defective products or product substitution in which a SERIOUS HAZARD to health, safety, or operational readiness is indicated. Timely notification shall be made to the centralized organization of each DoD Component that is identified as having contract actions with the subject of the investigation.

(j) Obtain a DD 350 report in all significant fraud investigations, as defined in subsection C.2. above, whether or not the case involved defective products or product substitution. Timely notification shall be made to the centralized organization of each DoD Component that is identified as having contract actions with the subject of the investigation.

3. The Inspector General, Department of Defense (IG, DoD), shall:

a. Develop training materials relating to fraud and corruption in procurement related activities which shall be utilized in all procurement related training in conjunction with training materials developed by the DoD Components. (See paragraph E.1.h., above.)

b. Establish procedures for providing to the DoD criminal investigative organizations, through the Office of the Assistant Inspector General for Auditing (OAIG–AUD), reports of data contained in the Individual Procurement Action Report (DD Form 350) System.

**F. Procedures**

Transmissions of information by DoD criminal investigative organizations required by subsection E.2., above, shall be made as expeditiously as possible, consistent with efforts not to compromise any ongoing criminal investigation. The transmission of the information may be delayed when, in the judgment of the head of the DoD criminal investigative organization, failure to delay would compromise the success of any investigation or prosecution. The prosecutive

authorities dealing with the investigation shall be consulted, when appropriate, in making such determinations.

**G. Effective Date and Implementation**

This Directive is effective immediately. Forward two copies of implementing documents to the Inspector General, Department of Defense, within 120 days.

**Donald J. Atwood,**

*Deputy Secretary of Defense.*

Enclosures—3

1. Civil Contractual and Administrative Actions That Can Be Taken in Response to Evidence of Procurement Fraud
2. Source of Information Relating to Government Contractors
3. Actions to be Taken in Product Substitution Investigations

**Civil, Contractual, and Administrative Actions That Can Be Taken in Response to Evidence of Procurement Fraud**

*A. Civil*

1. Statutory

a. False Claims Act (31 U.S.C. 3729 et seq.).
b. Anti-Kickback Act (41 U.S.C. 51 et seq.).
c. Voiding Contracts (18 U.S.C. 218).
d. Truth in Negotiations Act (10 U.S.C. 2306(f)).
e. Fraudulent Claims-Contract Disputes Act (41 U.S.C. 604).
f. *Nonstatutory*
g. Breach of contract.
h. Breach of warranty.
i. Money paid under mistake of fact.
j. Unjust enrichment.
k. Fraud and/or Deceit.
l. Conversion.
m. Recision and/or Cancellation.
n. Reformation.
o. Enforcement of performance bond/guarantee agreement.

2. Contractual

a. Termination of contract for default.
b. Termination of contract for convenience of Government.
c. Termination for default and exemplary damages under the gratuities clause.
d. Recision of contract.
e. Contract warranties.
f. Withholding of payments to contractor.
g. Offset of payments due to contractor from other contracts.
h. Price reduction.
i. Correction of defects (or cost of correction).
j. Refusal to accept nonconforming goods.
k. Revocation of acceptance.
l. Denial of claims submitted by contractors.
m. Disallowance of contract costs.
n. Removal of the contractor from automated solicitation or payment system.

3. Administrative

a. Change in contracting forms and procedures.
b. Removal or reassignment of Government personnel.
c. Review of contract administration and payment controls.
d. Revocation of warrant contracting officer.
e. Suspension of contractor and contractor employees.
f. Debarment of contractor and contractor employees.
g. Revocation of facility security clearances.
h. Nonaward of contract based upon a finding of contractor nonresponsibility.
i. Voluntary refunds.

**SOURCE OF INFORMATION RELATING TO GOVERNMENT CONTRACTORS**

| Type of information | Possible source |
|---|---|
| 1. Location, dollar value, type, and number of current contracts with the Department of Defense. | a. DD Form 350 Report.[1]<br>b. Defense Logistics Agency's (DLA) "Contract Administration Defense Logistics Agency's (DLA) Contract Administration Report (CAR Report) on contracts DLA administers. |
| 2. Financial status of corporation, history of corporation, owners, and officers. | a. Dunn and Bradstreet Reports.<br>b. Corporate filings with local secretaries of the State, or corporate recorders.<br>c. Securities and Exchange Commission (public corporations).<br>d. Small Business Administration (SBA) (small businesses).<br>e. General Accounting Office (bid protests, and contractors indebted to the Government).<br>f. Armed Services Board of Contract Appeals (ASBCA) or court litigation.<br>g. List of Contractors Indebted to the United States (maintained, published and distributed by the U.S. Army Finance and Accounting Center, Indianapolis, Indiana 46249). |
| 3. Security clearance background information on facility and officers. | a. Defense Investigative Service. |
| 4. Performance history of contractor. | a. Local contracting officers.<br>b. Defense Contract Administration Service preaward surveys.<br>c. SBA Certificate of Competency records. |
| 5. Name, location, offense alleged, and previous investigative efforts involving DLA-awarded or DLA- administered contracts. | DLA Automated Criminal Case Management System. (Available through field offices of the DLA Counsel's office.) |
| 6. Bid protests, litigation, and bankruptcy involving DLA-awarded or DLA-administered contracts. | Field offices of the DLA Counsel's office. |

[1] A determination as to the contract history of any DoD contractor with contracts in excess of $25,000 annually can be made through a review of the "Individual Procurement Action Report" (DD Form 350) system, as prescribed by Subpart 4.6 of the DoD FAR Supplement, DoD Instruction 4105.61, and DoD—4105.61-M (references (c), (d), and (e)).

*Actions to be Taken in Product Substitution Investigations*

A. The centralized organization, in all cases involving allegations of product substitution in which a SERIOUS HAZARD to health, safety, or operational readiness is indicated shall:

1. Review the notice of the case immediately after receiving it from the Defense criminal investigative organization. Review the notice to determine any potential safety or readiness issues indicated by the suspected fraud.

2. Notify all appropriate safety, procurement, and program officials of the existence of the case.

3. Obtain a complete assessment from safety, procurement, and program officials of the adverse impact of the fraud on DoD programs and operations.

4. Ensure that the DoD Component provides the Defense criminal investigative organization with full testing support to completely identify the defective nature of the substituted products. Costs associated with the testing shall be assumed by the appropriate procurement program.

5. Prepare a comprehensive impact statement describing the adverse impact of the fraud on DoD programs for use in any criminal, civil, or contractual action related to the case.

B. In all cases involving allegations of product substitution that affect more than one DoD Component, that centralized organizations of the affected DoD Components shall identify a lead Agency. The lead centralized organization shall ensure that information on the fraud is provided to the centralized organization of all other affected DoD Components. The lead centralized organization shall ensure compliance with the requirements of section A., above. The lead centralized organization shall then be responsible for preparing a comprehensive "Victim Impact Statement" as required by paragraph E.1.g. of this Directive.

C. In all cases involving allegations of product substitution, the Defense Criminal Investigative Organization shall:

1. Immediately notify the appropriate centralized organization of the beginning of the case.

2. Continue to provide to the centralized organization any information developed during the course of the investigation that indicates substituted products have been, or

might be, provided to the Department of Defense.

3. Ensure that any request for testing of substituted products is provided to the centralized organization.

**Appendix F to Part 516—Procurement Fraud Indicators**

**F–1. During the Identification of the Government and Services**

a. Need determinations for items currently scheduled for disposal or reprocurement, or which have predetermined reorder levels.

b. Excessive purchase of "expendables" such as drugs or auto parts.

c. Inadequate or vague need assessment.

d. Frequent changes in the need assessment or determination.

e. Mandatory stock levels and inventory requirements appear excessive.

f. Items appear to be unnecessarily declared excess or sold as surplus, while same items are being reprocured.

g. It appears that an item or service is being purchased more as a result of aggressive marketing efforts rather than in response to a valid requirement.

h. Need determination appears to be unnecessarily tailored in ways that can only be met by certain contractors.

i. Items and services are continually obtained from the same source due to an unwarranted lack of effort to develop second sources.

**F–2. During the Development of the Statements of Work and Specifications**

a. Statements of work and specifications appear to be intentionally written to fit the products or capabilities of a single contractor.

b. Statements of work, specifications, or sole source justifications developed by or in consultation with a preferred contractor.

c. Information concerning requirements and pending contracts is released only to preferred contractors.

d. Allowing companies and industry personnel who participated in the preparation of bid packages to perform on subsequent contracts in either a prime or subcontractor capacity.

e. Release of information by firms or personnel participating in design or engineering to companies competing for prime contract.

f. Prequalification standards or specifications appear designed to exclude otherwise qualified contractors or their productions.

g. Requirements appear split up to allow for rotating bids, giving each contractor his or her "fair share."

h. Requirements appear split up to meet small purchase requirements (i.e., $25,000) or to avoid higher levels of approval that would be otherwise required.

i. Bid specifications or statement of work appear inconsistent with the items described in the general requirements.

j. Specifications appear so vague that reasonable comparisons of estimate would be difficult.

k. Specifications appear inconsistent with previous procurements of similar items of services.

**F–3. During the Presolicitation Phase**

a. Sole source justifications appear unnecessary or poorly supported.

b. Statements justifying sole source or negotiated procurements appear inadequate or incredible.

c. Solicitation documents appear to contain unnecessary requirements which tend to restrict competition.

d. Contractors or their representatives appear to have received advanced information related to the proposed procurement on a preferential basis.

**F–4. During the Solicitation Phase**

a. Procurement appears to be processed so as to exclude or impede certain contractors.

b. The time for submission of bids appears to be unnecessarily limited so that only those with advance information have adequate time to prepare bids or proposals.

c. It appears that information concerning the procurement has been revealed only to certain contractors, without being revealed to all prospective competitors.

d. Bidders conferences are conducted in a way that apparently invites bid rigging, price fixing, or other improper collusion between contractors.

e. There is an apparent intentional failure to fairly publish notice of the solicitation.

f. Solicitation appears vague as to the details such as time, place and manner, of submitting acceptable bids.

g. There is evidence of improper communications or social contract between contractors and government personnel.

h. Controls over the number and destination of bid packages sent to interested bidders appear inadequate.

i. Indications that government personnel or their families may own stock or have some other financial interest in either a contractor or subcontractor.

j. Indications that government personnel are discussing possible employment for themselves or a family member with a contractor or subcontractor or indications that a proposal for future employment from a contractor or subcontractor to a government employee or his or her family members has not been firmly rejected.

k. Indications that any contractor has received special assistance in preparation of his or her bid or proposal.

l. It appears that a contract is given an expressed or implied reference to a specific subcontractor.

m. Failure to amend solicitation to reflect necessary changes or modifications.

**F–5. During the Submission of Bids and Proposals**

a. Improper acceptance of a late bid.

b. Documents, such as receipts, appear falsified to obtain acceptance of a late bid.

c. Improperly attempting to change a bid after other bidders prices are known.

d. Indications that mistakes have been deliberately planted in a bid to support correction after bid opening.

e. Withdrawal by a low bidder who may later become a subcontractor to a higher bidder who gets the contract.

f. Apparent collusion or bid rigging among the bidders.

g. Bidders apparently revealing their prices to each other.

h. Required contractor certifications appear falsified.

i. Information concerning contractor's qualifications, finances, and capabilities appears falsified.

**F–6. During the Evaluation of Bids and Proposals**

a. Deliberately losing or discarding bids of certain contractors.

b. Improperly disqualifying the bids or proposals of certain contractors.

c. Accepting apparently nonresponsive bids from preferred contractors.

d. Unusual or unnecessary contacts between government personnel and contractors during solicitation, evaluation, and negotiation.

e. Any apparently unauthorized release of procurement information to a contractor or to non-government personnel.

f. Any apparent favoritism in the evaluation of the bid or proposal of a particular contractor.

g. Apparent bias in the evaluation criteria or in the attitude or actions of the members of the evaluation panel.

**Appendix G to Part 516—Preparation of a Remedies Plan**

(Date of Plan)

**Section I (Administrative Data)**

A. Subject of Allegation.

B. Principal Investigative Agency.

C. Investigative Agency File Number.

D. Subject's Location.

E. Location Where Offense Took Place.

F. Responsible Action Commander.

G. Responsible MACOM.

H. Contract Administrative Data (If Applicable):

1. Contract Number.

2. Type of Contract.

3. Dollar Amount of Contract.

4. Period of Contract.

I. Principal Case Agent (Name and Telephone Number).

J. Civilian Prosecutor (If Applicable) (Name, Address, and Telephone Number).

K. Is Grand Jury Investigating This Matter? If So, where is Grand Jury Located?

L. Audit Agency Involved (If Applicable). Name and Telephone Number of Principal Auditor.

M. Suspense Date for Update of This Plan.

**Section II (Summary of Allegations and Investigative Results to Date)**

(Provide sufficient detail for reviewers of the plan to evaluate the appropriateness of the planned remedies. If information is "close-hold" or if grand jury secrecy applies, so state.)

_____

_____

_____

_____

_____

**Section III (Adverse Impact Statement)**

(Describe any adverse impact on the DA/DOD mission. Adverse impact is described in DOD Directive 7050.5, paragraph E.1.g. Identify impact as actual or potential. Describe the impact in terms of monetary loss, endangerment to personnel or property, mission readiness, etc. This information should be considered in formulating your remedies as described below and provided to prosecutors for their use in prosecution of the offenses.)

**Section IV (Remedies Taken and/or Being Pursued)**

A. Criminal Sanctions. (As a minimum, address the following: Are criminal sanctions appropriate? If so, which ones? If not, why not? Has the local U.S. Attorney or other civilian prosecutor been notified and briefed? What actions have been taken or are intended? If and when action is complete, describe action and final results of the action. Other pertinent comments should be included.)

B. Civil Remedies. (As a minimum address the following: Which civil remedies are appropriate? Has the local U.S. Attorney or other civilian prosecutor been notified and briefed? How, when, where and by whom are the appropriate civil remedies implemented? If and when action is completed, describe action and final results. Other pertinent comments should be included.)

C. Contractual/Administrative Remedies. (As a minimum, address the following: Are contractual and administrative remedies appropriate: If so, which ones? If not, why? If contractual or administrative remedies are considered appropriate, describe how, when, and by whom the remedies are implemented. If and when action is completed, describe action and results of the action. Other pertinent comments should be included.)

D. Restrictions on Remedies Action. (Comment as to why obvious remedies are not being pursued. For example, the U.S. Attorney requests suspension action held in abeyance pending criminal action.)

**Section V (Miscellaneous Comments/Information)**

**Section VI (Remedies Plan Participants)**

Name

Grade

Organization

Telephone No.

**Section VII (MACOM Coordination Comments)**

Name and date

Grade

Office symbol

Telephone no.

(Signature)
(Date)

MACOM Focal Point

**Section VIII (Coordination/Comments)**

Name

Grade

Office symbol

Telephone no.

Date

**Appendix H to Part 516—Legal Advice And Representation Before Office of Special Counsel**

**H–1. Overview**

a. DA employees or military members asked to provide information (testimonial or documentary) to OSC may obtain legal advice through the Labor Counselor from DA attorneys concerning their rights and obligations. This includes assistance at any interviews with OSC investigators. However, an attorney-client relationship will not be established unless the employee or military member—

(1) Is suspected or accused by the OSC of committing a prohibited personnel practice or other illegal or improper act; and

(2) Has been assigned counsel by the DA General Counsel.

b. Any military member or employee who reasonably believes that he or she is suspected or has been accused by OSC of committing a prohibited personnel practice or other illegal or improper act may obtain legal representation from DA. The counsel assigned will be from another DOD component whenever a DA attorney is likely to face a conflict between the attorney's ethical obligation to the client and DA, or when the suspected or accused individual has requested representation from another DOD component. Outside legal counsel may be retained by DA on behalf of the member or employee under unusual circumstances and only with the personal approval of the DOD General Counsel.

c. The DA General Counsel will determine whether a conflict is likely to occur if a DA attorney is assigned to represent a military member or civilian. If the DA General Counsel determines a conflict may occur, or if the suspected or accused employee has requested representation from another DOD component, the DA General Counsel will seek the assistance of another General Counsel in obtaining representation outside DA.

**H–2. Requests for Representation**

a. To obtain legal representation, military members or civilian employees must—

(1) Submit a written request for legal representation through DAJA–LE to DA

General Counsel, explaining the circumstances that justify legal representation. Copies of all process and pleadings served should accompany the request.

(2) Indicate whether private counsel, at personal expense, has been retained.

(3) Obtain written certification from their supervisor that—

(a) They were acting within the scope of official duties; and

(b) DA has not initiated any adverse or disciplinary action against them for the conduct being investigated by the OSC.

b. Requests for DA legal representation must be approved by the DA General Counsel.

c. The conditions of legal representation must be explained and accepted in writing by the member or employee.

**H–3. Limitations on Representation**

a. DA will not provide legal representation with respect to a DA initiated disciplinary action against a civilian employee for committing or participating in a prohibited personnel practice or for engaging in illegal or improper conduct. This prohibition applies regardless of whether the participation or conduct is also the basis for the disciplinary action proposed by the OSC.

b. In certain situations, counsel provided by DA may be limited to representing the individual only with respect to some of the pending matters, if other specific matters of concern to the OSC or MSPB do not satisfy the requirements contained in this regulation.

**H–4. Attorney-Client Relationship**

a. An attorney-client relationship will be established and continued between the suspected or accused individual and assigned DA counsel.

b. In representing a DA employee or military member, the DA attorney designated as counsel will act as a vigorous advocate of the individual's legal interests before the OSC or MSPB. The attorney's professional responsibility to DA will be satisfied by fulfilling this responsibility to the employee or military member. Legal representation may be terminated only with the approval of the DA General Counsel and normally only on the basis of information not available at the time the attorney was assigned.

c. The attorney-client relationship may be terminated if the assigned DA counsel determines, with the approval of the DA General Counsel, that—

(1) The military member or civilian employee was acting outside the scope of his or her official duties when engaging in the conduct that is the basis for the OSC investigation or charge; and

(2) Termination is not in violation of the rules of professional conduct applicable to the assigned counsel.

d. The DA attorney designated as counsel may request relief from the duties of representation or counseling without being required to furnish explanatory information that might compromise confidential communications between the client and the attorney.

**H–5. Funding**

This regulation authorizes cognizant DA officials to approve requests from military members or civilian employees for travel, per diem, witness appearances, or other departmental support necessary to ensure effective legal representation by the designated counsel.

**H–6. Status**

A military member's or civilian employee's' participation in OSC investigations, MSPB hearings, and other related proceedings will be considered official departmental business for time and attendance requirements and similar purposes.

**H–7. Advice to Witnesses**

The following advice to military members and civilian employees questioned during the course of an OSC investigation may be appropriate in response to these frequent inquiries:

a. A witness may decline to provide a "yes" or "no" answer in favor of a more qualified answer when this is necessary to ensure accuracy in responding to an OSC interviewer's question.

b. Requests for clarification of both questions and answers are appropriate to avoid misinterpretation.

c. Means to ensure verifications of an interview by OSC investigators are appropriate, whether or not the military member or civilian employee is accompanied by counsel. Tape recorders may only be used for this purpose when—

(1) The recorder is used in full view.

(2) All attendees are informed.

(3) The OSC investigator agrees to record the proceeding.

d. Any errors that appear in a written summary of an interview prepared by the investigator should be corrected before the member or employee signs the statement. The military member or civilian employee is not required to sign any written summary that is not completely accurate. A military member or civilian employee may receive a copy of the summary as a condition of signing.

**Appendix I to Part 516—Testing Defective Items Under Criminal or Civil Investigation**

1. Under no circumstances is testing to proceed unless the command has committed sufficient funding to cover the entire cost of the projected testing.

2. No testing will be initiated unless there has been a written request for the testing to the appropriate Procurement Fraud Advisor from a criminal investigator or Assistant United States Attorney or Department of Justice Attorney (AUSA is used in these procedures to indicate either an AUSA or Department of Justice attorney). If they have not already done so, criminal investigators should be requested to coordinate their testing requests with the AUSA overseeing the investigation.

3. Barring extraordinary circumstances, only one test will be conducted to support the criminal and civil recovery efforts of a procurement fraud/irregularity matter. Early coordination with the Civil Division of Department of Justice or the local United States Attorneys Office is necessary to ensure that testing funds are not wasted.

4. The request for testing should include a clear, concise statement of the purpose of the testing to include a statement of the allegations made and the contact number(s) involved. Any test plan which requires destructive testing must be approved by the AUSA.

5. No testing will be initiated unless a test plan has been developed which states the following:

a. The contract number(s) involved

b. The National Stock Number (NSN) of the item to be tested

c. The purpose of the testing

d. The alleged defect or the contractual requirement violated

e. The CID report of investigation (ROI) number of the DCIS case number

f. Cost of the test (a cost proposal should be an attachment to the test plan)

g. Where the test will be conducted

h. How the test will be conducted

i. The name and telephone number of the test team leader

j. The names of all test team members

k. The approximate dates of the testing

l. The date that completion of the test is required

m. A clear statement of the desired product (i.e. test report, raw data, analysis of results, evaluation of test results)

n. The PRON to fund the testing

o. A retention plan.

6. The test plan shall be coordinated with the concurrence received in advance from the appropriate personnel in the Procurement Directorate, Product Assurance and Test Directorate, the Procurement Fraud Advisor, and the investigator/AUSA requesting the test. No testing will be initiated until the criminal investigator/AUSA who requested the testing has approved the test plan.

7. If the items tested are to be retained as evidence, the criminal investigator should arrange for retention of the evidence. While the Command will support evidence retention, this is primarily the responsibility of the criminal investigators. Agents should be advised that putting items in Code L or similar non-use status is insufficient to protect it from being released to the field. A decision not to retain the tested items as evidence must have the approval of the AUSA.

8. All items to be tested should be from a statistically valid random sample. The sample should conform with the inspection requirements of the contract or be in conformance with a random sample specifically developed for the instant test plan. It is recommended that a statistician be consulted to determine the feasibility of a random sample specifically created to support the test plan.

9. Results of testing should be available to Command and DA personnel for appropriate contractual and administrative remedies. Any request for testing results that indicates that dissemination of the testing results will be limited by rule 6(e) of the Federal Rules of Criminal Procedure is to be forwarded through the MACOM or AMC Procurement Fraud Coordinator to DA Procurement Fraud Division prior to the initiation of any testing.

10. Resolution of problems associated with testing requests should be conducted at the local level. In AMC the authority to refuse a testing request resides with the Office of Command Counsel. Any disputes which cannot be resolved at the local level will be forwarded to the AMC or MACOM Procurement Fraud Coordinator for resolution. This includes disputes regarding funding or any time sensitive issues.

11. Second requests for testing of the same item due to a change in the investigative plan require coordination by the PFA with the investigator and AUSA overseeing the investigation to determine the deficiencies in the earlier test. Disputes which cannot be resolved between the AUSA, PFA, and investigator regarding testing are to be forwarded simultaneously to the MACOM Procurement Fraud Coordinator and PFD for resolution. The procedures established in paragraphs 5 and 6 apply for second requests for testing with the additional requirement that the Assistant United States Attorney must be requested to approve the test plan.

**Appendix J to Part 516—DoD Directive 5505.5**

DoD Directive 5505.5 is contained in 32 CFR Part 277.

**Appendix K to Part 516—Memorandum of Understanding, Felony Prosecution Program**

Memorandum of Understanding Between the United States Attorney for the Western District of _____ and the Staff Judge Advocate Fort _____

Subject: Fort _____ Felony Prosecution Program

1. *Purpose:* This memorandum establishes a felony prosecution program for offenses committed on Fort _____ or which involve substantial Army interests.

2. *Policy:* The United States Attorney (USA) bears primary responsibility for the prosecution of federal offenses committed within the special maritime and territorial jurisdiction of the United States. The Fort _____ Staff Judge Advocate (SJA) will assist in this task by recommending prosecution of appropriate felony offenses committed on Fort_____. In addition, the SJA will nominate Special Assistant United States Attorneys (SAUSA) to prosecute these offenses. Such prosecutions will be executed using guidelines established by this agreement.

3. *Responsibilities:*

a. The USA retains supervisory responsibility for all prosecutions initiated under this agreement. The USA will provide logistical support to the SAUSA for items not available through military channels. The SJA will provide the SAUSA with word-processing equipment compatible with that in use in the U.S. Attorney's Office.

b. The SJA will select Army attorneys who, with the approval of the USA, will be appointed a SAUSA. Each SAUSA will have an expected two-year remainder on his military tour in this District, at the time of his appointment. The SJA will provide clerical and administrative support to the SAUSA.

c. The SAUSA performs his duties under the supervision of the USA or his appointed representative. The SAUSA will prosecute felonies and misdemeanors as described in this agreement. The SAUSA will not be used by the USA to prosecute cases unrelated to the interests of the Department of the Army, except during the training period described below in paragraph 4d. Army SAUSA will not represent the United States in any civil litigation absent approval of Chief, Army Litigation Division.

4. *Procedures:*

a. Warrants. The SAUSA will review all requests from law enforcement agencies for warrants in connection with crimes committed on Fort _____. If the SAUSA determines that a warrant request is supported by probable cause, he will notify the supervising AUSA and seek approval to apply for a warrant. Upon obtaining approval of the supervising AUSA, the SAUSA will then contact the appropriate Magistrate Judge for issuance of the warrant.

b. Detention Hearings. Military law enforcement authorities will notify the SAUSA when a civilian is apprehended for a felony offense or is believed to be a flight risk. The SAUSA will review the case to determine whether detention is appropriate, and will obtain the approval of the supervising AUSA before detention is sought. The SAUSA may authorize detention until such time as the U.S. Marshal can take custody of the suspect. Suspects detained before trial will be brought before the appropriate Magistrate Judge at the first reasonably available time. The SAUSA will represent the government at the detention hearing.

c. Presentation of Case. The U.S. Army Criminal Investigation Division and Military Police will normally present cases for prosecution to the SAUSA. The SJA, after consultation with the SAUSA, will make the recommendation to the USA as to appropriate disposition of the case. The USA or his designated representative will make the final charging decision.

d. Training. The USA will attempt to send SAUSAs to the Trial Advocacy Course in Washington, DC, at Army expense. In addition, the SJA agrees to detail each SAUSA appointed to the United States Attorney's Office for a period of one (1) month, as soon after appointment as practicable. During the one-month period, the USA will assign the SAUSA to the Complaint Unit of the Criminal Division, and provide the SAUSA with training in federal practice, grand jury practice, and familiarization with the U.S. Attorney's Office and the U.S. District Court.

e. All other procedures employed will be in accordance with the appropriate provisions of the U.S. Attorney's Manual.

5. This memorandum remains in effect until rescinded by either party or their successors.

Dated:

---

United States Attorney
Western District of

---

Colonel, United States Army
Staff Judge Advocate

**Appendix L to Part 516—Figures**

Figures which are referenced within the text of part 516 are included in this appendix.

FIGURE 516.1—FORMAT FOR CONTRACTOR REQUEST FOR REPRESENTATION

**Request for Representation**

I am the President of XYZ Corporation. I request the Attorney General of the United States designate counsel to defend me and my company in *Doe* v. XYZ, *Inc.*, now pending in the U.S. District Court for the Eastern District of North Carolina.

I understand that the assumption by the Attorney General of the defense of this case does not alter or increase the obligations of the United States under United States Contract No. WP–70–660415.

I further agree that such representation will not be construed as waiver or estoppel to assert any rights which any interested party may have under said contract.

---

D.D. Tango,
President, XYZ, Inc.

BILLING CODE 3710-08-M

# United States of America

**DEPARTMENT OF THE ARMY**

*El Paso, Texas* (PLACE) *25 June 1992* (DATE)

**I HEREBY CERTIFY that** *the document, attached hereto consisting of 9 pages, is a true and exact copy of the Narrative Summary, Standard Form 502, pertaining to the hospitalization of Jane Doe during the period 3-6 January 1992, an official document in the custody of the Registrar of William Beaumont Army Medical Center.*

*JOHN SMITH*
*Captain, MS*
*Registrar*

**I HEREBY CERTIFY that** , who
**signed the foregoing certificate, is the** , and

**that full faith and credit should be given to his certification.**

**IN TESTIMONY WHEREOF I,** .
**Secretary of the Army, have hereunto caused the seal of the Department of the Army to be affixed and my name to be subscribed by the Administrative Assistant of the said Department, at the City of Washington, this** day of , 19

*Secretary of the Army.*

By *Administrative Assistant.*

**DA FORM 1 MAR 66 4** REPLACES EDITION OF 1 OCT 47, WHICH WILL BE USED

*Figure 516.2 - Sample DA Form 4*

BILLING CODE 3710-08-C

FIGURE 516.3—UNSWORN DECLARATION UNDER PENALTY OF PERJURY EXECUTED WITHIN THE UNITED STATES

**Declaration Under Penalty of Perjury**

I am Private Paul Jones, currently assigned to Company B, 4th Battalion, 325th Parachute Infantry Regiment, Fort Bragg, North Carolina. I have personal knowledge of the following matters.

On the evening of 3 June 1970, I was present at the company party at Lake Popolopen when the accident occurred. I saw a bright, full moon that evening.

I declare under penalty of perjury that the foregoing is true and exact. (28 U.S.C. 4746).

Executed on:_____

Paul Jones,
Private, U.S. Army

FIGURE 516.4—FORMAT FOR A REQUEST FOR REPRESENTATION USING AN UNSWORN DECLARATION UNDER PENALTY OF PERJURY EXECUTED WITHIN THE UNITED STATES

**Request for Representation (*and certification*)**

I request that the Attorney General of the United States, or his agent, designate counsel to defend me in my official and individual capacities in the case of *John Doe* v. *Private Paul Jones*, now pending in the U.S. District Court for the Eastern District of North Carolina. (*if appropriate insert, I also request that the Attorney General or his designee certify that I was acting within the scope of my official duties at the time of my actions.*) I have read the complaint filed in this case and I declare that all my actions were performed in my official capacity, within the scope of my official duties, and in a good faith belief that my actions conformed to the law. I am not aware of any pending related criminal investigation.

I understand the following: if my request for representation is approved, I will be represented by a U.S. Department of Justice attorney; that the United States is not required to pay any final adverse money judgment rendered against me personally, although I can request indemnification; that I am entitled to retain private counsel at my own expense; and, that the army expresses no opinion whether I should or should not retain private counsel.

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. 1746).

Executed on:_____
Paul Jones,
Private, U.S. Army

FIGURE 516.5—FORMAT FOR SCOPE OF EMPLOYMENT STATEMENT USING AN UNSWORN DECLARATION UNDER PENALTY OF PERJURY EXECUTED OUTSIDE THE UNITED STATES

**Declaration**

I am currently the Commander of HHC, 6th armored Division, Bad Vilbel, Germany. I have read the allegations concerning Private Paul Jones in the complaint of *John Doe* v. *Private Paul Jones*, now pending in the U.S. District Court for the Eastern District of North Carolina.

At all times relevant to the complaint, I was Private Jones' company commander. His actions relevant to this case were performed within the scope of his official duties as Assistant Charge of Quarters, Company B, 4th Battalion, 325th Parachute Infantry Regiment, Fort Bragg, North Carolina.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 U.S.C. 1746.)

Executed on:_____

John Smith,
Captain, Infantry

AO 91 (Rev. 5/85) Criminal Complaint

FIG. 516.6—CRIMINAL COMPLAINT

*United States District Court*

District of

UNITED STATES OF AMERICA V.
(Name and Address of Defendant)
Criminal Complaint
Case Number:

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about _____ in _____ county, in the _____ District of _____ defendant(s) did, (Track Statutory Language of Offense) in violation of Title _____ United States Code, Section(s) _____. I further state that I am a(n) _____, Official Title and that this complaint is based on the following facts:

Continued on the attached sheet and made a part hereof: ☐ Yes ☐ No

Signature of Complainant

Sworn to before me and subscribed in my presence,

Date

at

City and State

Name & Title of Judicial Officer

Signature of Judicial Officer

AO 86A (Rev. 5/85) Consent to Proceed—Misdemeanor

*United States District Court*

District of

UNITED STATES OF AMERICA V.
Consent to proceed before United States magistrate in a misdemeanor case
Case Number:

The United States magistrate has explained to me the nature of the offense(s) with which I am charged and the maximum possible penalties which might be imposed if I am found guilty. The magistrate has informed me of my right to the assistance of legal counsel. The magistrate has also informed me of my right to trial, judgment, and sentencing before a United States district judge or a United States magistrate.

I Hereby: Waive (give up) my right to trial, judgment, and sentencing before a United States district judge and I consent to trial, judgment, and sentencing before a United States magistrate.

X_____

Defendant

Waiver of Right to Trial by Jury

The magistrate has advised me of my right to trial by jury.

I Hereby: Waive (give up) my right to trial by jury.

Defendant

Consented to by United States

Signature

Name and Title

Waiver of Right to Have Thirty Days to Prepare for Trial

The magistrate has also advised me of my right to have at least thirty days to prepare for trial before the magistrate.

I Hereby: Waive (give up) my right to have at least thirty days to prepare for trial.

X_____

Defendant

Defendant's Attorney (if any)

Approved By:

U.S. Magistrate

Date

**Appendix M to Part 516—Glossary**

**Abbreviations**

AAFES—Army and Air Force Exchange Service
AMEDD—Army Medical Department
AFARS—Army Federal Acquisition Regulation Supplement
ASBCA—Armed Services Board of Contract Appeals
AUSA—Assistant United States Attorney
C.F.R.—Code of Federal Regulations
COE—United States Army Corps of Engineers
DA—Department of the Army
DA personnel—Unless the context clearly demonstrates otherwise, DA personnel includes soldiers, USMA cadets, civilian employees of DA, nonappropriated fund employees, foreign nationals who perform services for DA overseas, and other individuals hired by or for the Army
DFARS—Defense Federal Acquisition Regulation Supplement
DOD—Department of Defense
DOJ—Department of Justice. In this regulation, reference to DOJ means either United States Attorneys' Offices or The

(main) Department of Justice in Washington, D.C.
DCIS—Defense Criminal Investigative Service
e.g.—An abbreviation for *exempli gratia*, meaning "for example"
*et seq.*—An abbreviation for *et sequentes*, meaning "and the following"
FAR—Federal Acquisition Regulation
FAX—Facsimile Transmission
FBI—Federal Bureau of Investigation
Fed. R. Civ. P.—Federal Rules of Civil Procedure
Fed. R. Crim. P.—Federal Rules of Criminal Procedure
FOIA—Freedom of Information Act
GAO—General Accounting Office
HQDA—Headquarters, Department of the Army
i.e.—An abbreviation for *id est*, meaning "that is"
IG—Inspector General
JA—Judge Advocate
MACOM—Major Command
MSPB—Merit Systems Protection Board
NAF—Nonappropriated Fund
OTJAG—Office of The Judge Advocate General
OSC—Office of Special Counsel
PFA—Procurement Fraud Advisor
PFCRA—Program Fraud Civil Remedies Act
PFD—Procurement Fraud Division
PFI—Procurement Fraud or Irregularities
RJA—Recovery Judge Advocate
SAUSA—Special Assistant U.S. Attorney
SJA—Staff Judge Advocate
TDY—temporary duty
TJAG—The Judge Advocate General
UCMJ—Uniform Code of Military Justice
USACIDC—U.S. Army Criminal Investigation Command
USALSA—U.S. Army Legal Services Agency
USARCS—U.S. Army Claims Service
USATDS—U.S. Army Trial Defense Service
USMA—United States Military Academy
U.S.C.—United States Code

**Terms**

**Active Army**

Full-time duty in the active military service of the United States. Includes: full-time training duty; annual training duty; active duty for training; attendance, while in the active military service, at a school designated as a Service School by law or by the Secretary of the military department concerned; and, attendance, while in the active military service, at advanced civil schooling and training with industry. It does not include full-time National Guard duty under title 32, United States Code.

**Army Activities**

Activities of or under the control of the Army, one of its instrumentalities, or the Army National Guard, including activities for which the Army has been designated the administrative agency, and those designated activities located in an area in which the Army has been assigned single service claims responsibility by DOD directive.

**Army Property**

Real or personal property of the United States or its instrumentalities and, if the United States is responsible therefore, real or personal property of a foreign government which is in the possession or control of the Army, one of its instrumentalities, or the Army National Guard, including property of an activity for which the Army has been designated the administrative agency, and property located in an area in which the Army has been assigned single service claims responsibility.

**Centralized Organization**

That organization of a DOD component responsible for coordinating and monitoring of criminal, civil, contractual, and administrative remedies relating to contract fraud. For DOD components other than the Army, the Centralized organizations are as follows: The Office of General Counsel, Department of the Air Force; the Office of the Inspector General, Department of the Navy; and the Office of General Counsel, Defense Logistics Agency.

**Claim**

The Government's right to recover money or property from any individual, partnership, association, corporation, governmental body, or other legal entity (foreign and domestic) except an instrumentality of the United States. A claim against several joint debtors or tortfeasors arising from a single transaction or incident will be considered one claim.

**Claims Officer**

A commissioned officer, warrant officer, or qualified civilian employee designated by the responsible commander and trained or experienced in the conduct of investigations and the processing of claims.

**Corruption**

Practices that include, but are not limited to, solicitation, offer, payment, or acceptance of bribes or gratuities; kickbacks; conflicts of interest; or unauthorized disclosure of official information related to procurement matters.

**Counsel for Assistance**

An attorney, provided by DA at no expense to the military member or civilian employee, who will provide legal advice to the witness concerning the authority of OSC, the nature of an OSC interview and their individual rights and obligations. The counsel may accompany the witness to the interview and advise the witness during the interview. No attorney-client relationship is established in this procedure.

**Counsel for Representation**

An attorney, provided by DA at no expense to the military member or civilian employee, who will act as the individual's lawyer in all contacts with the MSPB and the OSC during the pendancy of the OSC investigation and any subsequent OSC initiated action before the MSPB. An attorney-client relationship will be established between the individual and counsel for representation.

**Debarment**

Administrative action taken by a debarring authority to exclude a contractor from Government contracting and Government-approved subcontracting for a specified period.

**DOD Criminal Investigation Organizations**

Refers to the USACIDC; the Naval Investigative Service; the U.S. Air Force Office of Special Investigations; and the Defense Criminal Investigative Service, Office of the Inspector General, DOD.

**Fraud**

Any intentional deception of DOD (including attempts and conspiracies to effect such deception) for the purpose of inducing DOD action or reliance on that deception. Such practices include, but are not limited to, the following: Bid-rigging; making or submitting false statements; submission of false claims; use of false weights or measures; submission of false testing certificates; adulterating or substituting materials; or conspiring to use any of these devices.

**Improper or Illegal Conduct**

a. A violation of any law, rule, or regulation in connection with Government misconduct; or

b. Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

**Information Exempt From Release to the Public**

Those categories of information which may be withheld from the public under one or more provisions of law.

**Judge Advocate**

An officer so designated (AR 27–1).

**Legal Advisor**

A civilian attorney who is the principal legal adviser to the commander or operating head of any Army command or agency.
Litigation in which the United States has an interest:

a. A suit in which the United States or one of its agencies or instrumentalities has been, or probably will be, named as a party.

b. A suit against a military member or DA employee and arises out of the individual's performance of official duties.

c. A suit concerning an Army contract, subcontract, or purchase order under the terms of which the United States may be required to reimburse the contractor for recoveries, fees, or costs of the litigation.

d. A suit involving administrative proceedings before federal, state, municipal, or foreign tribunals or regulatory bodies that may have a financial impact upon the Army.

e. A suit affecting Army operations or purport to require, limit, or interfere with official action by a military member or civilian employee.

f. A suit in which the United States has a financial interest in the plaintiff's recovery.

g. Foreign litigation in which the United States is bound by treaty or agreement to ensure attendance by military personnel or civilian employees.

**Litigation**

Legal action or process involving civil proceedings, i.e., noncriminal.

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**Medical Care**

Includes hospitalization, outpatient treatment, dental care, nursing service, drugs, and other adjuncts such as prostheses and medical appliances furnished by or at the expense of the United States.

**Misdemeanor**

An offense for which the maximum penalty does not exceed imprisonment for 1 year. Misdemeanors include those offenses categorized as petty offenses (18 U.S.C. 3559).

**Official Information**

All information of any kind, however stored, that is in the custody and control of the Department of Defense, relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces.

**Operating Forces**

Those forces whose primary missions are to participate in combat and the integral supporting elements thereof. Within DA, the operating forces consist of tactical units organized to conform to tables of organization and equipment (TOE).

**Personnel Action**

These include—

a. Appointment.

b. Promotion.

c. Adverse action under 5 U.S.C. 7501 et seq. or other disciplinary or corrective action.

d. Detail, transfer, or reassignment.

e. Reinstatement.

f. Restoration.

g. Reemployment.

h. Performance evaluation under 5 U.S.C. 4301 *et seq.*

i. Decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action.

j. Any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

**Private Litigation**

Litigation other than that in which the United States has an interest.

**Process**

The legal document that compels a defendant in an action to appear in court; e.g., in a civil case a summons or subpoena, or in a criminal case, a warrant for arrest, subpoena or summons.

**Prohibited Personnel Practice**

Action taken, or the failure to take action, by a person who has authority to take, direct others to take, recommend, or approve any personnel action—

a. That discriminates for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation, as prohibited by certain specified laws.

b. To solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests, or is under consideration for, any personnel action, unless the recommendation or statement is based on the personal knowledge or records of the person furnishing it, and consists of an evaluation of the work performance, ability, aptitude, or general qualifications of the individual, or an evaluation of the character, loyalty, or suitability of such individual.

c. To coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.

d. To deceive or willfully obstruct any person with respect to such person's right to compete for employment.

e. To influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.

f. To grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

g. To appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 3110) of the employee, if the position is in the agency in which the employee is serving as a public official or over which the employee exercises jurisdiction or control as an official.

h. To take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for being a whistleblower, as defined below.

i. To take or fail to take a personnel action against an employee or applicant for employment as a reprisal for the exercise of any appeal right granted by law, rule, or regulation.

j. To discriminate for or against any employee or applicant for employment on the basis of conduct that does not adversely affect the performance of the employee or applicant or the performance of others.

k. To take or fail to take any other personnel action if the taking of, or failure to take, such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. 2301.

**Prosecutive Authorities**

These include—

a. A U.S. Attorney;

b. A prosecuting attorney of a state or other political subdivision when the U.S. Attorney has declined to exercise jurisdiction over a particular case or class of cases; and

c. An SJA of a general court-martial convening authority considering taking action against a person subject to the UCMJ.

**Recovery JA**

A JA or legal adviser responsible for assertion and collection of claims in favor of the United States for property claims and medical expenses.

**Significant Case of Fraud and Corruption**

A procurement fraud case involving an alleged loss of $100,000 or more; all corruption cases related to procurement that involve bribery, gratuities, or conflicts of interest; any defective products or product substitution in which a serious hazard to health, safety or operational readiness is indicated, regardless of loss value; and any procurement fraud case that has received or is expected to receive significant media coverage.

**Staff Judge Advocate**

An officer so designated (AR 27–1). The SJA of an installation, a command or agency reporting directly to HQDA, or of a major subordinate command of the U.S. Army Materiel Command, and the senior Army JA assigned to a joint or unified command.

**Subpoena**

A process to cause a witness to appear and give testimony, e.g., at a trial, hearing, or deposition.

**Suspension**

Administrative action taken by a suspending authority to temporarily exclude a contractor from Government contracting and Government-approved subcontracting.

**Suspension and Debarment Authorities**

Officials designated in DFARS, § 9.403, as the authorized representative of the Secretary concerned.

**Tortfeasor**

A wrongdoer; one who commits a tort.

**Whistleblower**

A present or former Federal employee or applicant for Federal employment who discloses information he or she reasonably believes evidences—

a. A violation of any law, rule, or regulation.

b. Mismanagement, a gross waste of funds, or an abuse of authority.

c. A substantial or specific danger to public health or safety. Such disclosure is protected from reprisal if it is not specifically prohibited by statute and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

[FR Doc. 92–15926 Filed 7–16–92; 8:45 am]
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federal register

Friday
July 17, 1992

Part V

# Environmental Protection Agency

**40 CFR Part 86**

**Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Final Rule**

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-4138-6]

RIN 2060-AC50

# Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Cold Temperature Carbon Monoxide Emissions From 1994 and Later Model Year Gasoline-Fueled Light-Duty Vehicles and Light-Duty Trucks

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes cold temperature carbon monoxide (CO) exhaust emission standards for light-duty vehicles (LDVs) and light-duty trucks (LDTs). The emission standards at 20°F, applicable for a 50,000 mile useful life will be: 10.0 g/mi for LDVs; 10.0 g/mi for LDTs with 3,750 lbs or less loaded vehicle weight (LVW); and 12.5 g/mi for LDTs with a LVW greater than 3,750 lbs. These standards will be phased in over a period of three years. In 1994, 40% of each manufacturer's sales volume of LDVs and LDTs will be required to meet the cold CO standards. This percentage increases to 80% and 100% in 1995 and 1996, respectively. Vehicles produced by small-volume manufacturers (less than 10,000 units/year) are exempt until 1996 when 100 percent of these vehicles must comply.

Motor vehicle CO emissions continue to contribute to unacceptable CO air quality, with many urban areas exceeding the eight hour CO national ambient air quality standard (NAAQS). In recognition of this persistent problem, the Clean Air Act Amendments of 1990 (CAAA) mandate cold temperature CO control of LDVs and LDTs. This rule will address the mandate of the CAAA and assist noncompliant areas in meeting the CO NAAQS. Mobile source CO emissions will be reduced an estimated 20–29% when measured at 20°F. Averaging over all temperatures, it is estimated that this rule will reduce annual CO emissions by 2.6–3.1 million tons by the year 2000 and 5.8–7.7 million tons after complete fleet turnover.

**DATES:** This final rule is effective August 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 1992.

**ADDRESSES:** Materials relevant to this rulemaking are contained in Docket No. A–89–01. The docket is located at The Air Docket, 401 M Street, SW., Washington, DC 20460, and may be viewed in room M–1500 from 8 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying.

**FOR FURTHER INFORMATION CONTACT:** Christine M. Mikolajczyk, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, telephone (313) 668–4403.

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

On September 17, 1990 (55 FR 38250), EPA published a notice of proposed rulemaking (NPRM) proposing regulations requiring motor vehicles to meet cold temperature CO emission standards for their useful life. The proposed regulations were based on levels of control that are feasible in the near term. The NPRM also stated that the final rule would include any relevant requirements resulting from then pending legislative revisions to the Clean Air Act (CAA) that did not require another notice of proposed rulemaking and specifically invited comments regarding legislative developments.

On November 1, 1990, EPA held a public hearing concerning the proposed regulations. Comments from that hearing were considered in developing this final rule and are included in the public docket.

On November 15, 1990, amendments to the CAA were enacted. These amendments added a new section to the CAA, section 202(j), that requires EPA to promulgate regulations controlling cold CO emissions.

New section 202(j) provides for the establishment of cold CO standards for LDVs and LDTs in two phases. The final rule being announced today implements the first phase of those standards, which the statute requires EPA to promulgate by November 15, 1991, and to phase-in beginning with model year 1994. Section 202(j) also sets forth a specific standard (10.0 gpm) for LDVs and requires that EPA set standards of comparable stringency for LDTs. With respect to the second phase of cold CO standards, EPA is to undertake a study of the need for and achievability of additional CO reductions, which is to be completed by June 1, 1997. Furthermore, section 202(j)(2)(B) provides that a specified second phase of standards is to be implemented beginning with model year 2002 LDVs and LDTs if, as of June 1, 1997, six or more CO nonattainment areas have a CO design value of 9.5 or greater. Section 202(j)(3) sets the useful life period for these standards at 5 years or 50,000 miles, but authorizes EPA to establish a longer useful life period if EPA determines a longer period is feasible. Finally, section 202(j)(4) authorizes EPA to establish cold CO standards for heavy-duty vehicles and engines. While EPA's NPRM was consistent with the new section 202(j) in most respects, as suggested by the preamble of the NPRM, some changes from the NPRM, primarily concerning the timing of the implementation of the cold CO standards, were necessitated by the amendments to the CAA. Those changes will be discussed below.

## II. Background

Exceedances of the national ambient air quality standard (NAAQS) for CO primarily occur between November and February, during cool or cold ambient periods which are often accompanied by low winds and atmospheric temperature inversions. In the past, it was thought that exceedances of the CO NAAQS were primarily due to localized conditions. However, evidence is accumulating which indicates that there is an associated area-wide component to CO nonattainment. (See Chapter 1 of the Regulatory Support Document.)

Compared to vehicles produced over twenty years ago, newer vehicles have substantially improved emission performance. However, as demonstrated by recent EPA tests, proportional improvements in emission performance under colder temperatures have not occurred in recent model year vehicles. The tests revealed that CO levels in newer vehicles were 75% lower than those of a group of 1969–74 model year vehicles when measured at around 75 °F.[1] However, levels were only 51% lower for the same vehicles when measured at 20 °F.[2] EPA has also determined that cold temperature emission performance varies, with some vehicles exhibiting low cold temperature CO emissions and others exhibiting high cold temperature CO emissions.

European countries also have a problem with excess CO emissions. As a result, the European Economic Community is currently considering cold temperature CO controls.

## III. Requirements of the Final Rule

### A. Vehicle Standards

EPA is promulgating CO standards of 10.0 g/mi for LDVs; 10.0 g/mi for LDTs with 3,750 lbs or less LVW; and 12.5 g/mi for LDTs with a LVW greater than 3,750 lbs. As proposed in the NPRM, these standards apply only to gasoline-fueled vehicles. These standards are based on the 10.0 g/mi LDV standard at 50,000 miles which was proposed and is also mandated by CAA section 202(j)(1) for LDVs. Further, in accordance with that section of the CAA, the standard for LDTs must be a level comparable in stringency to the standard required for LDVs. As stated in the NPRM, EPA's analysis indicates that for a given fuel system type and engine size, light trucks and passenger cars have comparable CO emissions. However, the proposed LDT standards were for a full useful life of 120,000 miles, rather than the useful life of 50,000 miles being adopted today. Therefore, the proposed standards for LDTs have been adjusted to reflect a comparable stringency to the 10 g/mi LDV standard and a useful life of 50,000 miles. The above standards will apply when the vehicle is tested at 20 °F according to a revised Federal Test Procedure (FTP), also being announced today.

High-altitude standards for cold CO emissions are patterned after current FTP high-altitude provisions for LDVs. Therefore, all LDVs and LDTs are required to comply with the cold CO standards at all altitudes.

### B. Effective Dates

The standards established in this final rule for LDVs and LDTs are to be phased in over the 1994 through 1996 model years as follows:

| Model year | LDVs and LDTs |
|---|---|
| 1994 | 40% |
| 1995 | 80% |
| 1996 | 100% |

This phase-in schedule represents a delay of one year compared to the proposal for LDVs and light LDTs. This delay in the implementation schedule was required by section 202(j)(1) of the CAA.

In the NPRM, EPA proposed a four year lead time for heavy light-duty trucks (HLDT) unless the new CAAA removed the four-year lead time requirement for such vehicles. That would have meant that no HLDTs would have had to comply in 1993 and 1994, but 100 percent would have had to comply in 1995. Section 202(j) of the CAA specifically applies the cold CO requirement to all LDTs pursuant to the same implementation schedule. Consequently, EPA is treating the HLDTs in the same manner as other LDTs, and HLDTs must meet the same phase-in as other LDTs: 40% in 1994, 80% in 1995, and 100% in 1996.

The cold CO standards apply to all manufacturers. However, manufacturers that meet the EPA definition of small-volume manufacturer are exempted from the phase-in percentage requirements until the final year of the phase-in, that is, 1996. In that year, small-volume manufacturers, like other manufacturers, will have to comply at a 100 percent level. Small-volume manufacturers include independent commercial importers as defined in 40 CFR part 85, subpart P. This is consistent with both the NPRM and the approach taken by EPA in the Tier 1 regulations promulgated earlier this year.[3]

### C. Phase-in Compliance Procedures

Phase-in compliance encompasses a number of important elements, including the use of actual sales as the basis for phase-in compliance, the legitimacy of using production data in lieu of actual sales data, credit for vehicles certified for sale in California or states adopting California emission standards, and whether certification for entire engine families are to be voided for phase-in noncompliance. These issues are only of significance where the phase-in percentages are less than full compliance; once the compliance requirement reaches 100 percent, the additional reporting requirements, and enforcement with respect to the phase-in disappear. The final rule contains some changes from the NPRM necessitated by the statutory language of the cold CO provision added to the CAA by the 1990 Amendments, as well as changes responsive to comments presented to EPA during the cold CO rulemaking. Due to the close similarity of the statutory provisions underlying the cold CO rule and the Tier 1 rule, this portion of the cold CO rule is virtually identical to the analogous portions of the Tier 1 rule in many respects.

To meet the phase-in percentage specified for each year during the phase-in period, manufacturers will be allowed to select any combination of LDV or LDT families at the time of certification. For example, in model year 1994, 40 percent of LDVs and 40 percent of LDTs combined must comply, not 40 percent of LDVs and 40 percent of LDTs. Only entire engine families can be included when determining the sales volume subject to cold CO standards.

During the phase-in period, compliance with the specified percentage of sales volume will be based upon actual sales of each engine family. EPA is taking this approach because the pertinent statutory language of section 202(j), concerning the cold CO standards, is the same as that contained in section 202(g) and 202(h), concerning the Tier 1 standards. The cold CO provision, like the Tier 1 provisions, describes the phase-in requirements in terms of "a percentage of each manufacturer's sales volume." As with the Tier 1 provisions, EPA's review of the statutory language and legislative history has led it to the conclusion that Congressional intent was to base phase-in compliance on actual sales.

Also consistent with its Tier 1 regulations, EPA believes that in most cases production data will be equivalent to sales data. Therefore, while compliance with the phase-in of Cold CO standards will be determined based upon actual sales, this final rule allows a manufacturer to request permission to submit actual production data rather than actual sales data, so long as the manufacturer can demonstrate to EPA that production and sales data are expected to be functionally equivalent.

In order to use production data rather than actual sales, a manufacturer must petition the Agency by providing information demonstrating functional equivalence of production and sales data. Such petition shall be made to EPA's Manufacturers Operations Division no later than 30 days following the end of the model year. Approval of the use of production data will be presumed unless otherwise notified by the Agency within 30 days of submittal.

[1] Robert E. Larson, "Vehicle Emission Characteristics Under Cold Ambient Conditions," SAE Paper 890021, January 9–11, 1989.

[2] Ibid.

[3] 56 FR 25724, June 5, 1991.

EPA retains the authority to determine actual sales data independently to confirm that there is no significant discrepancy between actual sales and production numbers. Also in accordance with the Tier 1 regulations, EPA has defined actual sales as sales to dealers, distributors, fleet operators, brokers, or any other entity which comprises the point of first sale.

Another phase-in compliance issue concerns the creditability of vehicles sold in California or any states that adopt California's emission standards pursuant to section 177 of the Clean Air Act ("section 177 states") in accordance with California's motor vehicle emission standards towards compliance with the phase-in percentages. Section 202(j) of the Act, like the provisions setting forth the Tier 1 standards, does not explicitly exclude California and section 177 vehicles from being creditable towards cold CO compliance. EPA believes, therefore, that the Act permits such vehicles (in the event they comply with the federal cold CO standard) to be counted towards compliance with the federal cold CO standard. Consequently, in the final rule, EPA is permitting manufacturers to have the choice of crediting towards phase-in compliance all vehicles that are certified to the federal cold CO standard, even if they are sold in California or section 177 states. This implies, however, that if a manufacturer elects to credit vehicles sold in California and section 177 states towards phase-in compliance, then all vehicles sold in California or section 177 states, including those not certified to the federal cold CO standards, must be included in the overall vehicle count used as the denominator for calculating compliance with the phase-in percentages. If a manufacturer does not choose this option, then vehicles sold in California and section 177 states will be excluded from both the numerator and denominator in determining compliance with the phase-in percentages.

This method is consistent with that adopted in the Tier 1 rule, which provides manufacturers with the option of crediting towards compliance with the phase-in of the federal Tier 1 standards vehicles sold in California and section 177 states that are certified to the California equivalents of the federal Tier 1 standards. In the cold CO context, however, at the present time California has no standard equivalent to the federal cold CO standard. Consequently, EPA is requiring that, to be counted towards compliance, vehicles sold in California or section 177 states be certified to the federal cold CO standard to provide adequate assurance that they in fact meet the standard.

The preceding discussion is predicated on the assumption that California has not adopted a cold CO standard equivalent to the federal standard, but still has a waiver of federal preemption under section 209 of the CAA for its motor vehicle emission standards. That is the situation as it currently stands, as EPA has granted waiver of federal preemption to California for its most recent LDV and LDT standards for model years 1993 and later. See 53 FR 36488 (September 20, 1988); 55 FR 43028 (October 25, 1990). EPA may reconsider the issuance of those waivers in light of the changes in the federal emission standards that have occurred since the waivers were issued, e.g., the promulgation of the Tier 1 standards and the cold CO standards promulgated today. If EPA does decide to reevaluate the waivers issued to California, it will do so through a notice and comment proceeding instituted through a separate Federal Register notice.

Enforcement of the phase-in percentages will be based on a per vehicle basis. For sales percentages not meeting or exceeding the necessary phase-in percentages, the number of additional vehicles necessary to reach the minimum phase-in percentage will be considered the number of vehicles in violation of the terms in which the certificate of conformity was issued, and therefore, as a vehicle which is not covered by a certificate of conformity for purposes of the Act. This approach departs from that proposed in the NPRM, which contemplated the voiding *ab initio* of certificates of conformity on an engine family basis, but is the same as that adopted in the Tier 1 rule. It is also responsive to manufacturer comments critical of the NPRM's proposed approach.

EPA will apply the same enforcement policy to violations of the cold CO phase-in schedule as it announced for the Tier 1 phase-in schedule. Thus, while the existence of a violation will depend solely on whether the manufacturer achieves the applicable phase-in percentage, the Agency reserves the right to exercise enforcement direction in the assessment of civil penalties for that violation. The EPA recognizes that a manufacturer, notwithstanding it best efforts, may fail to achieve the required phase-in percentage due to circumstances beyond its control (e.g., a fire at a plant that produces vehicles designed to comply with the phase-in standards). Thus, in seeking civil penalties for a violation, EPA will exercise its enforcement discretion according to the circumstances surrounding a violation. In practice, EPA does not intend to bring an enforcement action against a manufacturer if both of the following circumstances exist; the shortfall in actual sales from the required percentage is less than or equal to ten percent of the required phase-in percentage, and there is no indication that shortfall resulted from bad faith on the part of the manufacturer.

For example, when a 40 percent phase-in requirement applies, ten percent of the phase-in requirement would be four percent. Thus, the lower bound for the first criterion would be 36 percent (40 percent less four percent). In this case, EPA does not intend to bring an enforcement action against a manufacturer if the manufacturer obtained cold CO sales of 36 percent during the model year, and there was no indication that any shortfall was a result of bad faith. By a similar computation for a case where the phase-in requirement is 80 percent, EPA would not initiate enforcement action if the cold CO sales were 72 percent or greater and there was no indication that the shortfall was a result of bad faith on the part of the manufacturer. As mentioned above, application of this enforcement policy applies only to cases where the phase-in levels are below 100 percent; in the full-compliance years, all vehicles must comply with the applicable standards.

If the Agency determines that an enforcement action is appropriate, EPA would, of course, have some discretion in choosing the appropriate penalties. Such penalties would be assessed on the basis of the deviation between the required phase-in percentage (for example, 40 or 80 percent) and the percentage of cold CO sales actually achieved.

### *D. Cold CO Test Procedure*

The cold CO test procedure is similar to the Federal Test Procedure (FTP) in that it uses the same Urban Dynamometer Driving Schedule for the operation of the test vehicle and the same analytical technique for the determination of carbon monoxide emissions. The cold CO test procedure differs from the FTP procedure in the following areas:

1. *Test fuel.* A fuel which is representative of a winter grade fuel is used for testing that is conducted by EPA. The manufacturer has the option of using an FTP-type fuel, provided cold CO emissions are not decreased.

2. *Temperature.* A temperature of 20°F is used by EPA for preconditioning,

soaking, and testing vehicles. The lower limit for cold temperature emission testing is set at 15°F (20° minus 5°F tolerance). The manufacturer has the option of using wider temperature tolerances during vehicle preconditioning and/or warmer preconditioning temperatures provided CO emissions are not decreased.

3. *Dynamometer roll configuration.* A 48-inch diameter single roll dynamometer is used for testing that is conducted by EPA. The manufacturer has the option of using dynamometer configurations which it determines do not decrease Cold CO emissions.

4. *Dynamometer power absorption.* An electrical power absorption unit is used for simulation of road load power for testing that is conducted by EPA.

5. *Dynamometer adjustment.* When testing is conducted by EPA, the dynamometer is adjusted to simulate the operation of a vehicle on the road at 20°F. Such adjustment is based on a determination of the road load force profile at 20°F. Alternatively, the adjustment is based on a 10% decrease in the target coastdown time that is used for FTP testing.

6. *Air conditioner load simulation.* The dynamometer load setting is not increased to simulate the load that the air conditioner imposes on the engine of the test vehicle.

7. *Heater and defroster usage.* The vehicle heater and/or defroster may be optionally used within their adjustable ranges.

8. *Measurement of other exhaust emissions.* The measurement of oxides of nitrogen, particulate matter and evaporative emissions is not required.

9. *Engine compartment cooling.* An air handling system that is integral with the test cell may be used in lieu of a separate fan if comparable air movement is obtained. The manufacturer has the option of using a variable speed fan and closed hood operation if cold CO emissions are not decreased.

Manufacturers have the optional test procedures listed above for manufacturer conducted certification testing, provided cold CO emissions are not decreased. These optional test procedures do not apply to Selective Enforcement Audit testing unless, as specified at 86.608–94 and 86.1008–94, they have been approved by the Administrator prior to SEA testing.

*E. Certification Testing*

A single data vehicle from the set of emission data vehicles within each engine family must be tested at cold temperatures. The vehicle selected must be the one expected to emit the highest levels of CO at 20°F in the relevant engine family. At EPA's option, the Administrator may designate the test vehicle. The emission data vehicle selected will be tested by the manufacturer using the test procedure announced today or an alternative procedure requested by the manufacturer and approved in advance by the Administrator. However, even if an alternative test procedure for manufacturer testing is approved by the Administrator, EPA reserves the right to conduct confirmatory testing prior to certification using the test procedure announced today. Further, EPA reserves the right to require confirmatory testing of any emission-data or fuel economy data vehicle at low or high altitude.

EPA may also elect to test any fuel economy data vehicle for compliance with the cold temperature CO standard. Like emission-data vehicles, the fuel economy data vehicles must be in compliance with the cold temperature CO standards. In other words, at 20°F, with the deterioration factors (DF) applied, a fuel economy data vehicle's test results must be less than or equal to the applicable standard. Failure of a fuel economy data vehicle to comply with the cold CO standard will be a sufficient reason to reject the vehicle for fuel economy purposes and will be used by EPA to investigate the calibration of similar vehicles for emissions noncompliance.

Cold CO confirmatory testing for certification will occur at 20°F at EPA's Motor Vehicle Emission Laboratory or another test facility designated by EPA for confirmatory testing. The emission-data vehicles tested will be those selected according to current regulations. EPA will not require additional certification vehicles specifically selected for evaluation of compliance with the cold temperature CO standard. Failure of a certification or running change vehicle to meet the cold CO standards, with DF applied, will be sufficient evidence to deny certification for that engine family.

EPA also expects that all vehicles will achieve proportional emission control at all temperatures between the standard FTP and cold CO test conditions (i.e., between 68° and 25°). EPA will regulate control of CO emissions at intermediate temperatures by using an amended defeat device policy. For intermediate temperature cold CO testing, vehicles must have either CO emissions less than the guideline levels determined by a linear interpolation of the cold CO standard applicable at 25°F and the CO standard applicable at 68°F; or demonstrate, in light of an exceedance, that reasonable CO emission control in reference to the linear guideline was engineered and achieved across the temperature range. For control of CO emissions at cold temperature driving conditions not exactly duplicated by the FTP driving cycles, any incongruous emission control strategy which results in a reduction in effectiveness of the emission control system may be considered a defeat device.

Manufacturers may use the same or, at the manufacturers option, a higher DF for cold temperature compliance as that used for certifying a vehicle to the 68°F–86°F FTP standard. In addition, a manufacturer may also elect to test a durability data vehicle at 20°F to generate a cold temperature CO DF. In the latter case, a manufacturer may use a cold temperature CO DF which is lower than the DF used to demonstrate compliance with the 68°F–86°F CO standard.

*F. In-Use Enforcement*

The enforcement provisions of sections 206 and 207 of the CAA apply to the cold CO standards. All LDV and LDT production will be subject to 20°F selective enforcement audits (SEAs). To ensure that manufacturers have access to sufficient cold temperature testing capabilities, the cold temperature CO SEA program does not begin until model year 1996. During SEA testing, manufacturers have the same options available as described in section D above, provided that these options have been approved by the Administrator prior to SEA testing.

In addition, effective with the 1994 model year, all LDVs and LDTs certified in compliance with the cold CO standards being adopted today will be subject to a 20°F in-use compliance program for CO similar to existing programs at 68°F–86°F for HC, CO, NOx, and particulates. In-use enforcement will also apply at high-altitude. In-use compliance enforcement testing will be conducted according to the test procedures being adopted today, regardless of the optional procedures the manufacturer may have followed for its certification or SEA program tests.

## IV. Public Participation

EPA initiated development of this rulemaking through a public workshop held on March 8–9, 1988. Subsequently, on March 15, 1989, the major domestic manufacturers and several foreign manufacturers, under the auspices of their trade organizations, the Motor Vehicle Manufacturers Association (MVMA) and the Association of Imported Automobile Manufacturers (AIAM) (formerly AIA), met with EPA to

propose a voluntary cold CO program. That proposal was described in the NPRM, which was published on September 17, 1990. On November 1, 1990, a public hearing was then held on the proposal. The period for the submission of written comments closed on December 3, 1990, but EPA accepted comments submitted after that date. The comments were received from manufacturers and their associations, state agencies, and private consultants. The following sections briefly summarize comments on the major issues. For the complete response to the comments, see the "Response to Comments on the Cold Temperature CO NPRM." Copies of this document and all comments are available from the public docket (see "ADDRESSES").

## V. Discussion of Comments and Issues

### *A. Useful Life*

#### Summary of Proposal

The NPRM provided that the applicable useful life for vehicles would be 50,000 miles for LDVs and 120,000 miles for LDTs. Those useful life periods were proposed because they were the normal useful life periods for those vehicle categories under the CAA as it stood at the time of the proposal. Subsection 202(j)(3) of the CAA, added by the amendments, states that the useful life for the cold CO standards shall be 50,000 miles for LDVs and LDTs, except that the Administrator "may extend" the useful life period "if he determines that it is feasible for vehicles and engines subject to such standards to meet such standards for a longer useful life." If the Administrator does extend the useful life period, he is authorized to make appropriate adjustments to the standards for the extended useful life. The extension may not be beyond the period provided under subsection 202(d).

#### Comments

EPA received several comments that asserted that section 202(j) of the CAA limited cold CO useful life for all LDVs and LDTs to 50,000 miles pending additional study. Ford Motor Company stated that since Congress specified a useful life of 5 years/50,000 miles for cold temperature CO, Congress intended that the Agency make extensions only "pursuant to a substantial study and evidence of feasibility." In addition, Nissan and Ford argued that, presently, insufficient data exists to extend the useful life for LDVs and LDTs beyond the 5 years/50,000 miles period, and that actual experience in implementing the standard is needed before the feasibility of an extended useful life can be determined. Further, Honda maintained that with so many new requirements facing manufacturers under the 1990 Amendments, more time is needed to ensure that vehicles operate satisfactorily in the customers' hands.

The State of Alaska commented that EPA should adopt the 50,000 miles useful life period for LDTs as designated by the CAAA. However, it did not argue against the feasibility of extending the useful life.

#### EPA Response

EPA has the authority to extend the useful life if EPA determines that compliance during the longer useful life period beyond 50,000 miles is feasible. Such an extension is discretionary. As indicated in the NPRM, EPA is confident that technology exists to justify full useful life standards for LDTs. No objections were received showing any inadequacies in the EPA rationale for extrapolating higher mileage standards from those required at 5 years/50,000 miles as stated in the NPRM. Specifically, no comments were received suggesting that a full useful life standard would be more difficult to achieve technologically than 50,000 mile standard when adjusted for the mileage difference. However, for these interim standards EPA believes that an extension of 50,000 miles to full useful life would place an additional unnecessary compliance demonstration burden on manufacturers. Consequently, the useful life for the standards promulgated today is 5 year/50,000 miles for both LDVs and LDTs.

The Agency believes that CO emission control systems that experience problems beyond 50,000 miles will be flagged during warm temperature recall programs. The Agency's certification compliance program evaluates emission control durability under FTP conditions for the full useful life of the vehicle. EPA's in-use compliance program includes recall testing authority up thru 75,000 miles. While both programs are conducted under normal warm temperature FTP conditions, EPA expects that the types of problems which would result in high emissions under warm temperature FTP testing would be subject to subsequent recall. Therefore, a warm temperature high mileage compliance program should adequately monitor and correct problems which would cause high mileage cold CO non-compliance. It is expected that most manufacturers will not have specific cold CO deterioration problems. Therefore, EPA believes that full useful life demonstration at 20 °F should not be necessary to assure durable cold CO controls. Based on the above rationale the Agency has decided to adopt the useful life of 50,000 miles for all LDVs and LDTs. However, EPA will continue to evaluate vehicles and may extend the useful life in the future.

### *B. Standards*

#### Summary of Proposal

The cold CO standards proposed in the NPRM were 10.0 g/mi for LDVs, 12.0 g/mi for LDTs up to 3750 lbs (LDT1) and 15.0 g/mi for LDTs greater than 3750 lbs (LDT2). The LDV standards were proposed for up to 50,000 miles useful life while both LDT standards were proposed for a useful life up to 120,000 miles. As explained in the NPRM, the proposed LDT standards were selected because they were comparable in stringency to the 10.0 g/mi LDV standard.

#### Summary of Comments

Only a few comments were received on the proposed standards. One manufacturer recommended EPA adopt standards of 10.0 g/mi for LDVs, 10.0 g/mi for LDT1s, and 12.5 g/mi for LDT2s. The LDT standards resulted from an adjustment of the proposed standards to reflect a 50,000 mile useful life for all categories. Another manufacturer recommended a 10.0 g/mi standard for light-duty vehicles and 10.0 g/mi for 0-3750 lbs LVW (LDT 1). In addition, this manufacturer also recommended 12.5 and 14.2 g/mi for LDT2s having 3751–5750 lbs test weight and >5750 lbs test weight respectively. One engine manufacturer also suggested that EPA set the LDV standard at 3.0 g/mi because this would be a feasible standard for its compressed air 2-stroke engine.

#### EPA Response

In response to the suggestion of a 3.0 g/mi standard, EPA has no data on which to support widespread feasibility of such a standard nor has EPA determined such a stringent standard is needed. EPA agrees with the recommended standards of 10.0 g/mi for LDVs, 10.0 g/mi for LDT1s, and 12.5 g/mi for LDT2s. In response to the comment regarding split test weight classes for LDT2s, the CAAA require two heavy LDT classes for Tier 1 but do not require the two classes for cold CO. As mentioned in the requirements section of this document, these new standards are a result of adjusting the proposed standards to reflect a 50,000 useful life. These standards are in accord with section 202(j), which specifies a standard of 10.0 g/mi for LDV, and standards of "comparable stringency" for LDTs.

*C. Small Volume Manufacturer Exemption*

In the NPRM, EPA proposed to allow small volume manufacturers an exemption of up to 10,000 vehicles until the last year of the phase-in schedule, which at that time was the 1995 model year.

Comments

A number of foreign manufacturers, under the auspices of their trade organization, the Association of Imported Automobile Manufacturers, and Rolls-Royce endorsed the proposal to allow the small volume exemption. In support of their position, they noted the small-volume manufacturers reliance on larger manufacturers for technology and, in this case, testing facilities. With the current shortage of testing facilities, small volume manufacturers also argued that they would be at a competitive disadvantage. Further, they asserted that without an exemption, most small volume manufacturers would be unable to take advantage of the phase-in period. In other words, due to the limited diversity in their product line, some small-volume manufacturers would have to be in 100% compliance in model year 1994. This would subject those manufacturers affected to an economic hardship. Finally, they indicated that a small-volume manufacturer exemption would be consistent with the CAA and Congress' prior practice of granting exemptions for small-volume manufacturers.

Conversely, Alaska opposed this exemptionasserting that it was precluded by the language of the CAAA.

EPA Response

The cold CO standards are written to apply to all manufacturers. However, the Agency recognizes that small-volume manufacturers with a limited number of families would be granted little or no flexibility by the phase-in. In addition, the reliance of these manufacturers on larger companies for vehicle components limits their vehicle design options. In a given year the small-volume manufacturer may be unable to produce their vehicles. As a result, a strict requirement that each manufacturer meet the phase-in percentage could place the small-volume manufacturers at a competitive disadvantage that the EPA believes was not intended by Congress. Alternatively, the Agency is concerned that small-volume manufacturers may experience inappropriate pressure to reach subsidiary agreements with larger manufacturers as a means to avoid a phase-in noncompliance they may face as an independent company. Again, the Agency believes this would create a non-competitive situation.

Finally, because the proportion of annual U.S. sales attributable to small-volume manufacturers is negligible (<0.1% of 1990 MY fleet), EPA considers the air quality effects of delayed applicability to be minimal. Therefore, EPA is adopting rules such that manufacturers that meet the EPA definition of small-volume manufacturer are exempted from the phase-in percentage requirements until the final year of the phase-in; that is, 1996. Small-volume manufacturers include independent commercial importers as defined in 40 CFR part 85, subpart P.

This exemption parallels one adopted for small-volume manufacturers in the Tier I rule. As explained there, EPA believes that it has the authority to grant such an exemption pursuant to its authority to exempt *de minimis* situations from statutory commands. See *Alabama Power Co* v. *Costle*, 636 F. 2d 323, 360–61 (D.C. Cir. 1979).

In *Alabama Power*, the court indicated that EPA had the implicit authority under the CAA to exempt *de minimis* situations. The court stated that "(c)ategorical exemptions may also be permissible as an exercise of agency power, inherent in most statutory schemes, to overlook circumstances that in context may fairly be considered *de minimis*." 636 F.2d at 360. The court emphasized, however, that the ability "to exempt *de minimis* situations from a statutory command is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design." *Id.* The Agency believes that this authority provides a basis for establishing a small volume exemption from the phase-in requirements for the reasons described above.

*D. CO Emission Control at Intermediate Temperatures*

Summary of Proposal

EPA proposed that CO emissions be reduced at all temperatures below the standard FTP, not just 20°F. The NPRM proposed that all vehicles should be capable of achieving, at a minimum, a level of emission control meeting a linear projection between the respective standards at 25°F (the upper end of the 20°F temperature tolerance) and 68°F (the lower end of the standard FTP temperature tolerance). EPA indicated two options were being considered for regulating emissions over this intermediate temperature range. A function described by a linear interpolation between the respective standards at 25°F and 68°F was used in both options. The first option would have created a proportional standard from this function. The second option proposed amending the defeat device policy with this same intermediate temperature function used as CO emission level guidance.

Comments

No comments disputed the basic premise that vehicles can be designed to have CO emissions below this intermediate temperature function. Comments received from several manufacturers mainly concerned the costs and testing complexities that intermediate proportional standards would necessitate. These manufacturers stated that the cost of achieving CO emission reduction across the temperature range would be reduced under a defeat device policy regulation of CO emissions at intermediate temperatures. The manufacturers pointed out that the same amount of CO emission reduction could be achieved by a defeat device policy.

Conversely, comments were received from the State of Alaska that supported proportional standards in conjunction with more explicit defeat device policy guidance. Alaska strongly advocated certification and confirmatory testing by EPA at all temperatures using standards, not a policy approach. It stated that "certification and in-use compliance should depend on actual test results; a failed test should not merely raise a 'presumption' that a defeat device is being employed, as suggested in EPA's second enforcement option in the NPRM." However, Alaska also supported more explicit language regarding cold CO defeat devices (or strategies). It noted that the present defeat device program does not require sufficient documentation to make an appropriate judgment of defeat device program compliance. It recommended revising the defeat device policy to explicitly address applicable parameters. Also, the State recommended that manufacturers not be allowed to simply state their compliance with the defeat device policy in the application for certification.

Comments received from MVMA specifically stated its belief that EPA does not have the statutory authority to promulgate emission standards or require testing at temperatures between temperature ranges in which standards are legislated. However, the State of Alaska provided comments supporting EPA's position regarding the legality of emission standards at temperatures below 68°F.

EPA Response

EPA considered adopting the proportional standards option presented in the NPRM. EPA believes that it has the authority under section 202(a) to adopt that option but EPA concluded that such a level of regulatory control should not be necessary at this time to achieve the desired emission reductions. The imposition of a proportional standard (essentially an infinite number of standards) could add unnecessary administrative and testing burdens to document strict compliance. The Agency expects that a properly designed emission control strategy will achieve emission control over the intermediate temperature range equal to or better than that represented by a line drawn between the 68°F and 25°F CO levels applicable via the FTP and 20°F CO standards. EPA believes the ability to achieve such CO control is straightforward and should not present additional testing burdens. Therefore, the only reason to exceed the line would be the incorporation of a defeat device or defeat strategy. An amended defeat device policy, appropriately implemented by EPA, should be adequate to handle this situation. If, subsequent to the implementation of this regulation, EPA determines that significant evidence is available that a substantial number of vehicles are exceeding the intermediate temperature function, then EPA will revisit the need to adopt intermediate temperature standards.

With this rule, beginning in model year 1994, EPA will assure the proportional control of CO emissions at intermediate temperatures by using an amended defeat device policy. Under this amended policy, vehicles with properly designed CO emission control systems will be expected to attain CO emissions equal to or better than that represented by the intermediate temperature function.

This rule requires that vehicles be designed with at least linear proportional CO control at intermediate ambient temperatures. The criteria for acceptability will be based upon design evaluation as well as test data. As described in the following text, the test data will be used as an indicator of a potential defeat device design strategy and, when indicated, would be followed by further design evaluation with the potential for additional testing. This approach is similar to the current $NO_x$ defeat device investigation criteria in Advisory Circular 24–2. If on an intermediate temperature test the emission of the vehicle exceeds the linear guideline, then the vehicle will be subjected to investigation under the defeat device policy.

The defeat device policy was initiated on December 11, 1972, with the issuance of Advisory Circular 24. This advisory circular clarified the intent of a letter dated July 12, 1972. This letter notified all manufacturers of light-duty motor vehicles that sensors and devices which may adversely affect emission control under conditions or during operations likely to occur in use would be inconsistent with the intent of the Clean Air Act. The Act's intent is that vehicles be designed, built, and equipped to reduce emissions to the extent indicated by the prescribed standards when operated during the vehicle's useful life. Even though it may not be practicable to test prototype or production vehicles to assure reductions under the many conditions which the vehicle will encounter, this does not imply that intentional elimination of these reductions outside the parameters of the test procedure is consistent with the Act.

Advisory Circular 24 addresses elements of design (Auxiliary Emission Control Devices (AECD's)) which sense any parameter related to the operation of any part of the emission control system. A defeat device is an AFCD that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use. The AECD may not be considered a defeat device if:

(1) Such conditions are substantially included in the Federal emission test procedure; or

(2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; or

(3) The AECD does not go beyond the requirements of engine starting.

This policy was further clarified in 1978, when EPA issued Advisory Circular 24–2. At that time, electronic control and module devices were rapidly being introduced into the design of vehicles. Advisory Circular 24–2 clarified EPA's policy that emission control system logic (including on-board computer software), calibrations, and hardware items are all auxiliary emission control devices and must be evaluated as potential defeat devices.

Given the complicated nature of evolving technology and the difficulty of evaluating the overall emission impact of multiple, continuously variable emission control system parameters, an optional procedure was developed. The purpose of this procedure was to assist manufacturers in receiving timely and consistent evaluation of this complex new technology. Advisory Circular 24–2 set forth objective guidelines which could be used by manufacturers to demonstrate that an AECD is not a defeat device with respect to $NO_x$ on the Highway Fuel Economy Test within FTP temperatures.

EPA intends to evaluate CO emission control at ambient temperatures between test conditions at 25°F and 68°F in a similar way to the $NO_x$ defeat device guidance in Advisory Circular 24–2. As discussed in the NPRM, the guideline for intermediate temperature CO emissions will be a line which connects the CO standard at the upper end of the 20°F test temperature tolerance (25°F) to the CO standard at the lower end of the FTP temperature tolerance (68°F). This line will be used as a defeat device investigation "trigger." Vehicles which exhibit emission levels at or below this line when tested over the FTP driving cycle will be deemed to not have a defeat device adversely impacting CO emission performance over these driving conditions. Emission control strategies or lack thereof which result in CO emissions that exceed the guideline may indicate an unacceptable emission reduction across the temperature range (i.e., not a reduction in CO emissions to the extent intended by the CAAA and these regulations). In light of this exceedence, if the manufacturer cannot demonstrate to EPA's satisfaction that reasonable CO emission control in reference to the linear guideline was engineered and achieved across the temperature range, then the system will be deemed to incorporate a defeat device. As ambient temperature decreases, any intermediate temperature cold test which results in emissions above the 20 °F standard value will automatically be considered the result of a defeat device strategy without further investigation.

Test procedures at intermediate temperatures below 50 °F will be the same as at 20 °F. For tests conducted at intermediate temperature of 50 °F and above, FTP test procedures will be followed. EPA recognizes that there may be a discontinuity at 50°F in the emission temperature function for a particular engine family due to the change in test procedure. If the guideline is exceeded, the manufacturer may prove in the defeat device investigation any significant procedural effect for a particular engine family.

For the intermediate temperature range, the manufacturer will not be required to submit test data along with the certification application. However,

the manufacturer must submit a statement of compliance which attests to the fact that they have assured themselves that the engine family complies to the intermediate temperature cold testing defeat device guidance. The manufacturer must briefly summarize the methodology for determining compliance. EPA has the authority to test or require testing at any temperature. The selection of test vehicles, temperature, and number of tests will be determined by the EPA. Also, the EPA may require manufacturers to supply vehicles to test for defeat device evaluation according to authority granted the Administrator in the Clean Air Act section 206 (a) and (b).

Any exceedence of the linear guideline will require an explanation by the manufacturer or the vehicle will be considered to include a defeat device. Optimally, the manufacturer will provide an explanation which demonstrates that comparable CO emission control in reference to the linear guideline was engineered and achieved for this emission control system across the temperature range. However, manufacturers will have the burden of proving to EPA's satisfaction why emission levels above the guideline are reasonable, do not result in unnecessary excess emissions, and therefore, should not be considered the result of a defeat device. EPA may require additional information and test results from the manufacturer. The following are examples of possible criteria or information which could be utilized in such an explanation or which could be requested by the EPA. This should not in any way be viewed as an all inclusive listing of areas of concern.

- Demonstration of how the emission control system was designed to provide CO control throughout the temperature range. This may require a review of computer control logic as it responds to ambient starting temperature.
- An explanation of the fuel scheduling strategy across the temperature range.
- An explanation of any timers or switches and the resultant effect upon CO emissions.
- A description of any open loop strategy.
- A review of parameters sensed and parameters controlled and how they should interact.
- An explanation of any timing of air injection delay.
- Submission of test data to support defeat device justification for safety or catalyst protection strategies.

With the promulgation of these cold CO regulations, an objective guideline is created to compare the significance of the reduction in effectiveness of emission control outside the FTP temperature range. A significant reduction in effectiveness occurs when the guideline is exceeded on an intermediate temperature cold test. If this exceedance is caused by an AECD strategy which operates in a manner which is incongruous with the operation of the strategy on the standard FTP and 20 F modes, the AECD may be considered a defeat device.

For example:

- The delay of closed loop initiation for an incongruous time period at a temperature just outside of FTP temperatures.
- Incongruous delay of air injection at temperatures different than FTP conditions.

An incongruous strategy means a strategy whose operation does not correspond to what is right, proper, or reasonable with regard to its operation under test conditions and driving cycles used to comply with standards. To illustrate the point, if the time of delay of closed loop operation is longer at 20 °F operating mode than at the standard FTP operating mode, EPA would consider the operation congruous at intermediate temperatures if the time increased gradually as temperature decreased. The time of delay of closed loop operation would be incongruous if the time increased suddenly just below standard FTP temperatures to the level at 20 °F. Alternatively, EPA would consider the operation incongruous if the time of air injection delay at intermediate temperatures exceeded the time during 20 °F FTP testing. These examples should not be viewed as an inclusive list of incongruous strategies.

Likewise, an AECD strategy whose operation during other driving cycles is incongruous with operation on FTP driving cycles may be considered a defeat device. Because the linear emission guideline described above applies to vehicle operation on intermediate temperature cold FTP tests, satisfying this guideline criteria does not necessarily indicate that the vehicle has no defeat devices on non-FTP driving cycles and conditions. Examples of operating conditions not found on the FTP driving cycles are long idles and cruises, speeds higher than 62 mph, maintaining high speeds for long periods of time, variations in loads placed on the vehicle, or other changes in operating conditions such as an increase in the amount of fuel in the fuel tank. Any incongruous strategy which is triggered by sensing a change in such conditions may be a defeat device.

In addition, manufacturers should utilize current technology which provides emission benefits without the use of defeat devices rather than employing outdated technology which necessitates the use of defeat devices. An example of such outdated technology is poor control of the air-fuel ratio through the use of old non-feedback carburetor technology. In this strategy the secondary air injection is substantially delayed for protection of the catalyst from overheating during cold start. In years past, this was allowed under the justification of protection of the catalyst. Currently, this justification would be mitigated by the fact that better air-fuel ratio control can be achieved with the current feedback technology. The use of non-feedback technology is inappropriate. Therefore, systems which, for example, necessitate excessive delay of secondary air injection, could be considered as a whole a defeat device.

*E. Emission Averaging Program*

In the NPRM, EPA solicited comments regarding an emission averaging program, although it did not propose such a program. EPA also indicated that it would issue an additional proposal regarding an averaging program before adopting final rules for such a program. Comments were received both in support and in opposition to averaging.

The averaging concept allows some engine families to emit at levels above that of the standard, as long as other engine families produced by the manufacturer within a specified averaging set can offset these higher emission levels by emitting at levels below that of the standard. Each engine family must comply, of course, with the family's individual emission standards. This averaging concept, then, allows manufacturers to optimize their emission control systems between different engine families. This reduces control costs while achieving the same overall emission reduction required by the non-averaged standards.

EPA has had substantial experience applying the emission averaging concept to emissions from heavy duty engines. Based in part on this experience, application of the averaging concept to the cold ambient temperature CO standards could yield important cost savings while achieving the emission reductions required under the standards in today's final rule. Based upon EPA's analysis of the comments to date, EPA will publish a proposal regarding an averaging program within the next few weeks.

*F. Selective Enforcement Audit Program*

Summary of Proposal

In the NPRM, EPA proposed a full enforcement program including a cold temperature Selective Enforcement Audit (SEA) testing program which applies at both the cold temperature and current FTP temperature ranges. This program was to begin within two years after the cold temperature CO standards first came into effect to allow manufacturers adequate time to secure sufficient cold temperature testing capability.

Comments

Comments submitted by manufacturers and their associations opposed the adoption of SEA testing with the exception of comments submitted by Ford Motor Company. Ford supports SEA testing provided EPA adopts interim in-use cold CO emission standards. Commenters emphasized the high cost and labor burdens in establishing cold temperature testing facilities due to the lack of present test capability. Manufacturers also argued the high cost and short time period to construct a test facility for SEA which would have a relatively low usage rate, would represent an inefficient use of scarce resources.

EPA Response

EPA acknowledges the concerns regarding costs associated with the construction of cold temperature test facilities for SEA. However, most manufacturers will have to construct and/or contract for a cold temperature test facility to handle development and certification of their 1994 model year engine families. Since the Cold CO SEA program will not begin for two years after the first model year that this rule becomes effective, manufacturers will have completed their third certification cycle before an SEA could occur. A significant portion of the initial development testing should already have been completed. Subsequently, manufacturers should have adequate testing capacity and capability to perform SEAs. In addition if a manufacturer has not or is unable to construct adequate testing facilities, independent test facilities will be available.

EPA believes that assembly line testing is an integral part of the overall enforcement program, especially with the implementation of new standards. The SEA testing program provides an incentive for manufacturers to focus on assuring adequate cold temperature CO performance across the range of vehicle designs produced.

As a result, all LDV and LDT production will be subject to potential 20°F SEAs, but the cold temperature CO SEA program will not start until the 1996 model year to allow manufacturers adequate time to secure sufficient cold temperature testing capability. As proposed, vehicles will be exempt from SEA testing at high-altitude locations.

*G. In-use Compliance*

Summary of Proposal

EPA proposed implementation of an enforcement program including in-use compliance testing to begin with the 1993 model year.

Comments

Several manufacturers are opposed to the proposed in-use enforcement of cold CO emission standards and requested alternative, higher standards applicable in use and delayed compliance with high altitude standards. Manufacturers are concerned that they have not been given enough time to collect cold temperature CO test data to assure themselves of adequate control in-use.

EPA Response

The Agency believes that delayed in-use compliance is not necessary. The cold temperature CO standards are not technology forcing. The standards represent CO emission reductions achievable in the very near future. Prior to the NPRM EPA collected in-use data from several EPA testing programs. These data indicated that the standards could be met using currently available technology.

Therefore, EPA will implement the in-use testing program as proposed in the NPRM. In-use testing for this program will begin with the 1994 model year because of the change in the phase-in schedule mandated by the CAAA. As proposed, LDVs and LDTs will be expected to comply at both low and high-altitude.

*H. Test Procedures*

Comments were received on several test procedure issues. These specific comments are discussed in detail in the Response to Comments document included in the docket. Of all test procedure issues, the issue of dynamometer specifications caused the most concern and generated the most significant comments. The following presents a discussion of the dynamometer issue.

Dynamometer Specifications

*Summary of proposal.* The NPRM specified the use of a dynamometer which utilizes twin-rollers that are 20.0 inches in diameter, spaced 24 inches apart, and synchronized by a mechanical coupling device.

*Comments.* In their written comments, most manufacturers objected to the NPRM proposal and requested that EPA specify the small diameter, uncoupled twin-roll type of dynamometer which is currently used for FTP testing. Manufacturers objections to the change to the larger coupled rolls concerned increased costs, insufficient lead time, and correlation problems. However, several manufacturers agreed that the use of an electrical power absorption unit is preferable to use of the hydrokinetic unit.

*EPA response.* Subsequent to the publication of the NPRM, the CAA was revised to require EPA review of testing procedures to assure vehicle testing reflected in-use conditions. In response to this revision, member companies of the MVMA and the Association of International Automobile Manufacturers (AIAM) recommended in a December 21, 1990, letter that EPA install a single roll dynamometer in its new cold facility test. Subsequently, in a letter dated January 31, 1991, the MVMA and AIAM recommended the use of a 48-inch roll diameter which would optimize the function and cost of the dynamometer and which appeared to be the "best compromise to simulate actual vehicle road load conditions." After careful review of the issue, EPA decided to equip its new cold temperature test facility with a 48-inch diameter single-roll dynamometer rather than the coupled 20-inch twin-roll dynamometer specified in the NPRM.

As a result, today's rule specifies the use of a 48-inch diameter, single roll dynamometer for cold temperature testing that is performed by EPA. This specification is consistent with the NPRM as the 48-inch single roll and 20-inch coupled twin-roll can be operated to yield comparable results.[4] Today's rule also allows cold CO testing at the manufacturer facility with other types of dynamometers which the manufacturer determines will yield comparable results. As always, EPA reserves the right to confirmatory test at its emission laboratory.

## VI. Economic/Environmental Impact

No comments were received on the economic or environmental impacts as presented in the NPRM. As stated in the NPRM, consumers can expect a fuel economy benefit from this rule. The overall estimated average total cost

[4] It is also consistent with the FTP test procedure which allows the optional use of a 48 inch single roll dynamometer.

increases per vehicle of this rule to consumers, including fuel economy benefits, are:

(a) $.93 for Scenario I (air pump strategies)

(b) −$12.27 (MPI strategies)

The complete analysis, including the methodology used in the calculations, is contained in chapter V of the Regulatory Support Document.

The emission reduction benefits of this rule are estimated to be a 20–29 percent reduction in mobile source CO emissions at 20 °F. Averaging over all temperatures the rule is estimated to reduce annual CO emissions by 2.6–3.1 million tons by the year 2000 and 5.6–7.7 million tons after complete fleet turnover.

## VII. Administrative Requirements

### *A. Administrative Designation*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement that a Regulatory Impact Analysis (RIA) be prepared. Since EPA has determined that this regulation is not major, an RIA has not been prepared. However, a regulatory support document indicating the environmental impact, economic impact, and cost-effectiveness study was prepared.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

### *B. Paperwork Reduction Act*

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq* and have been assigned control number 2060–0104.

Public reporting burden for this collection of information is estimated to be an average of 29 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M Street SW. (PM–223Y), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

### *C. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities. This regulation will affect only manufacturers of motor vehicles and motor vehicle engines, a group which does not contain a substantial number of small entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

## VIII. Legal Authority

EPA proposed the cold CO standards pursuant to its discretionary standard-setting authority under section 202(a) of the CAA. As discussed above, however, Congress added a new section 202(j) to the CAA in November of 1990 specifically requiring EPA to issue the cold CO standards contained in this final rule for LDVs and LDTs. As explained above, new section 202(j) provides the basis for the standards, their phase-in, and the useful life period.

**List of Subjects in 40 CFR Part 86**

Administrative practice and procedure, confidential business information, Incorporation by reference, labeling Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: May 21, 1992.

**William K. Reilly,**

*Administrator.*

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

## PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

**Authority:** Secs. 202, 203, 205, 206, 207, 208, 215, 216, and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a).

2. Section 86.091–28 is amended by adding a new paragraph (e) to read as follows:

**§ 86.091–28 Compliance with emission standards.**

* * * * *

(e) Unless a manufacturer develops specific cold temperature deterioration factors, 68–86°F deterioration factors shall be used to determine compliance with cold temperature emission standards.

3. Section 86.094–2 is amended by adding the following definitions in alphabetical order to read as follows:

* * * * *

**§ 86.094–2 Definitions.**

* * * * *

*Defeat device* means an auxilary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

(1) Such conditions are substantially included in the Federal emission test procedure;

(2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; or

(3) The AECD does not go beyond the requirements of engine starting.

*Element of design* means any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.

* * * * *

*Intermediate Temperature Cold Testing* means testing done pursuant to the driving cycle and testing conditions contained in 40 CFR part 86, subpart C, at temperatures between 25°F (−4 °C) and 68 °F (20 °C).

* * * * *

4. Section 86.094–7 is amended by revising paragraph (h) and by adding a parenthetical at the end of the section to read as follows:

**§ 86.094–7 Maintenance of records; submittal of information; right of entry.**

* * * * *

(h) (1) The manufacturer (or contractor for the manufacturer, if applicable) of any model year 1994 through 1997 light-duty vehicle or light light-duty truck or model year 1994 through 1998 heavy light-duty truck that is certified shall establish, maintain, and retain the following adequately

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organized and indexed records for each such vehicle:

(i) EPA engine family;

(ii) Vehicle identification number;

(iii) Model year and production date;

(iv) Shipment date;

(v) Purchaser; and

(vi) Purchase contract.

(2) In addition, the manufacturer (or contractor for the manufacturer, if applicable) of each certified engine family shall establish, maintain, and retain adequately organized records of the actual U.S. sales volume for the model year for each engine family. The manufacturer may petition the Administrator to allow actual volume produced for U.S. sale to be used in lieu of actual U.S. sales. Such petition shall be submitted within 30 days of the end of the model year to the Manufacturer Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that actual production volume is functionally equivalent to actual sales volume.

(3) The manufacturer (or contractor for the manufacturer, if applicable) shall retain all records required to be maintained under this section for a period of eight (8) years from the due date for the applicable end-of-model year report. Records may be retained as hard copy or reduced to microfilm, ADP film, etc., depending on the manufacturer's record retention procedure, provided that in every case all the information contained in the hard copy is retained.

(4) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer shall submit to him the information that is required to be retained.

(6) *Voiding a certificate.* (i) EPA may void ab initio a certificate for a vehicle certified to Tier 0 certification standards for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(ii) EPA may void ab initio a certificate for a 1994 or 1995 model year light-duty vehicle or light-duty truck that is not certified in compliance with the cold temperature CO standard for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(iii) Any voiding ab initio of a certificate under § 86.094–7(c) and paragraph (h) of this section will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614 for light-duty vehicles or under § 86.1014 for light-duty trucks and heavy-duty engines.

(Approved by the Office of Management and Budget under control number 2060–0104)

5–6. Section 86.094–8 is amended by revising paragraphs (b) through (h) and by adding paragraph (k) to read as follows:

**§ 86.094–8 Emission standards for 1994 and later model year light-duty vehicles.**

* * * * *

(b) Fuel evaporative emissions from 1994 and later model year light-duty vehicles shall not exceed (compliance with these standards is optional for 1994 model year methanol-fueled engines):

(1) *Hydrocarbons (for gasoline-fueled vehicles).* 2.0 grams per test.

(2) *Organic Material Hydrocarbon Equivalent (for methanol-fueled vehicles).* 2.0 grams carbon per test.

(3) The standards set forth in paragraphs (b) (1) and (2) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1994 and later model year Otto-cycle or methanol-fueled diesel light-duty vehicle.

(d) through (f) [Reserved]. For guidance see § 86.090–8.

(g) Any 1994 and later model year light-duty vehicle that a manufacturer wishes to certify for sale shall meet the emission standards under both low- and high-altitude conditions as specified in § 86.082–2, except as provided in paragraphs (h) and (i) of this section. Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. Any emission control device used to meet emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(h) The manufacturer may exempt 1994 and later model year vehicles from compliance at high altitude with the emission standards set forth in paragraphs (a) and (b) of this section if the vehicles are not intended for sale at high altitude and if the requirements of paragraphs (h) (1) and (2) of this section are met.

(1) A vehicle configuration shall only be considered eligible for exemption under paragraph (h) of this section if the requirements of either paragraph (h)(1) (i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle-speed ratio (N/V)) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the equivalent vehicle test weight expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$, where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(C) The exemption line is then defined by the equation, $N/V = C(0.84\ D/W)^{-0.9}$, where the constant, C, is the same as that found in paragraph (h)(1)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (h)(1)(i) of this section and by using the product line $N/V = C(hp/W)^{-0.9}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349, June 1990, Engine Power Test Code—Spark Ignition and Compression Ignition—Net Power Rating. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be

obtained from SAE International, 400 Commonwealth Drive, Warrendale, PA, 15096–0001. Copies may be inspected at U.S. EPA, OAR, 401 M Street, SW., Washington, DC, 20460, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (h)(1)(ii) of this section to any manufacturer that has exempted vehicle configurations as set forth in paragraph (h)(1)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 miles per hour to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in making this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicle configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (h)(1)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraphs (h)(1)(iii) (A) and (B) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (h)(1)(iii) of this section.

(2) A vehicle shall only be considered eligible for exemption under this paragraph (h) if at least one configuration of its model type (and transmission configuration in the case of vehicles equipped with manual transmissions, excluding differences due to the presence of overdrive) is certified to meet emission standards under high-altitude conditions as specified in paragraphs (a) through (c) and (g) of this section. The Certificate of Conformity (the Certificate) covering any exempted configuration(s) will also apply to the corresponding non-exempt configuration(s) required under this paragraph (h)(2). As a condition to the exemption, any suspension, revocation, voiding, or withdrawal of the Certificate as it applies to a non-exempt configuration for any reason will result in a suspension of the Certificate as it applies to the corresponding exempted configuration(s) of that model type, unless there is at least one other corresponding non-exempt configuration of the same model type still covered by the Certificate. The suspension of the Certificate as it applies to the exempted configuration(s) will be terminated when any one of the following occurs:

(i) Another corresponding non-exempt configuration(s) receive(s) coverage under the Certificate; or

(ii) Suspension of the Certificate as it applies to the corresponding non-exempt configuration(s) is terminated; or

(iii) The Agency's action(s), with respect to suspension, revocation, voiding, or withdrawal of the Certificate as it applies to the corresponding non-exempt configuration(s), is reversed.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (h) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

* * * * *

(k) *Cold Temperature Carbon Monoxide (CO) Standards.* (1) For gasoline-fueled light-duty vehicles, a minimum of the percentage shown in Table A94–16 of a manufacturer's sales of the applicable model year's light-duty vehicles shall not exceed the applicable cold temperature CO standard of 10.0 grams per mile for an intermediate useful life of 50,000 miles, as measured and calculated under the provisions set forth in subpart C of this part. This standard applies under both low and high altitude conditions. At the manufacturer's option, the manufacturer may combine the sales of gasoline-fueled light-duty vehicles and gasoline-fueled light-duty trucks in determining compliance with the required 1994 and 1995 model year phase-in percentages as included in Table A94–16.

(2) (i) Sales percentages for the purposes of determining compliance with paragraph (k)(1) of this section shall be based on total actual and, at the manufacturer's option, combined U.S. sales of light-duty vehicles, light light-duty trucks, and heavy light-duty trucks of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(ii) The manufacturer may petition the Administrator to allow actual volume produced for U.S. sales to be used in lieu of actual U.S. sales for purposes of determining compliance with the implementation schedule sales percentages of Table A94–16. Such petition shall be submitted within 30 days of the end of the model year the Manufacturers Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that actual production volume is functionally equivalent to actual sales volume.

(iii) The manufacturer may count towards the sales percentages those light-duty vehicles, light light-duty trucks, and heavy light-duty trucks of the applicable model year sold in the state of California or in jurisdictions which have adopted the California emission standards under section 177 of the Clean Air Act if those light-duty vehicles, light light-duty trucks, and heavy light-duty trucks certified have been to meet the federally mandated cold CO standards. If this option is taken, all light-duty vehicles, light light-duty trucks, and heavy light-duty trucks sold in California and such jurisdictions shall be counted toward the total upon which the sales percentage is based. If this option is not taken, light-duty vehicles, light light-duty trucks, and heavy light-duty trucks sold in California or such jurisdictions are to be excluded from counting toward either the total upon which the sales percentage is based or the sales percentage itself.

(iv) Small volume manufacturers, as defined in § 86.092–14(b) (1) and (2), are exempt from the implementation schedules of Table A94–16 for model years 1994 and 1995. This exemption does not apply to small volume engine families as defined in § 86.092–14(b)(5).

(v) The manufacturer must state at the time of applying for the Certificate, based on projected U.S. sales or projected production for U.S. sale, which engine families will be used to attain the required implementation schedule sales percentages.

* * * * *

7. Section 86.094–9 is amended by adding paragraph (k) to read as follows:

**§ 86.094–9 Emission standards for 1994 and later model year light-duty trucks.**

* * * * *

(k) *Cold Temperature Carbon Monoxide (CO) Standards*—(1) *Light light-duty trucks.* Exhaust emissions from 1994 and later model year gasoline-fueled light light-duty trucks with a loaded vehicle weight of 3,750 lbs or less

shall meet a cold temperature CO standard of 10.0 grams per mile and gasoline-fueled light light-duty trucks with a loaded vehicle weight of greater than 3,750 lbs shall meet a cold temperature CO standard of 12.5 grams per mile, both for an intermediate useful life of 50,000 miles and according to the implementation schedule in Table A94–16. This standard applies under both high and low altitude conditions. At the manufacturer's option, the manufacturer may combine the sales of gasoline-fueled light-duty vehicles, light-duty trucks, and heavy light-duty trucks in determining compliance with the required 1994 and 1995 model year phase-in percentages as included in Table A94–16.

TABLE A94–16.—IMPLEMENTATION SCHEDULE FOR COMBINED SALES OF LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS FOR COLD CO

| Model year | Sales percentage |
|---|---|
| 1994 | 40 |
| 1995 | 80 |
| After 1995 | 100 |

(2) *Heavy light-duty trucks.* Exhaust emissions from 1994 and later model year gasoline-fueled heavy light-duty trucks shall meet a cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles and according to the implementation schedule in Table A94–16. This standard applies under both low and high altitude conditions. At the manufacturer's option, the manufacturer may combine the sales of gasoline-fueled light-duty vehicles, light light-duty trucks, and heavy light-duty trucks in determining compliance with the required 1994 and 1995 model year phase-in percentages as included in Table A94–16.

(3) (i) Sales percentages for the purposes of determining compliance with paragraphs (k)(1) and (k)(2) of this section shall be based on total actual and, at the manufacturer's option, combined U.S. sales of light-duty vehicles, light light-duty trucks, and heavy light-duty trucks of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(ii) The manufacturer may petition the Administrator to allow actual volume produced for U.S. sales to be used in lieu of actual U.S. sales for purposes of determining compliance with the implementation schedule sales percentages of Table A94–16. Such petition shall be submitted within 30 days of the end of the model year to the Manufacturers Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that actual production volume is functionally equivalent to actual sales volume. Approval of the use of production data will be presumed unless otherwise notified by the Agency within 30 days of submittal of the petition.

(iii) The manufacturer may count towards the sales percentages those light-duty vehicles, light light-duty trucks, and heavy light-duty trucks of the applicable model year sold in the state of California or in jurisdictions which have adopted the California emission standards under section 177 of the Clean Air Act if those light-duty vehicles, light light-duty trucks, and heavy light-duty trucks have been certified to meet the federally mandated cold CO standards. If this option is taken, all light-duty vehicles, light light-duty trucks and heavy light-duty trucks sold in California and such jurisdictions shall be counted toward the total upon which the sales percentage is based. If this option is not taken, light-duty vehicles, light light-duty trucks, and heavy light-duty trucks sold in California or such jurisdictions are to be excluded from counting toward either the total upon which the sales percentage is based or the sales percentage itself.

(iv) Small volume manufacturers, as defined in § 86.092–14(b) (1) and (2), are exempt from the implementation schedules of Table A94–16 for model years 1994 and 1995. This exemption does not apply to small volume engine families as defined in § 86.092–14(b)(5).

(v) The manufacturer must state at the time of applying for the Certificate, based on projected U.S. sales or projected production for U.S. sale, which engine families will be used to attain the required implementation schedule sales percentages.

8. A new § 86.094–16 is added to read as follows:

**§ 86.094–16 Prohibition of defeat devices.**

(a) No new gasoline-fueled light-duty vehicle or light-duty truck shall be equipped with a defeat device.

(b) The Administrator may test or require testing on any vehicle at a designated location, using driving cycles and conditions which may reasonably be expected to be encountered in normal operation and use, for the purposes of investigating a potential defeat device.

(c) For cold temperature CO emission control, the Administrator will use a guideline to determine the appropriateness of the CO emission control at ambient temperatures between 25 °F (−4 °C) and 68 °F (20 °C). The guideline for CO emission congruity across the intermediate temperature range is the linear interpolation between the CO standard applicable at 25 °F (−4 °C) and the CO standard applicable at 68 °F (20 °C). For vehicles that exceed this CO emissions guideline upon intermediate temperature cold testing:

(1) If the CO emission level is greater than the 20 °F (−7 °C) emission standard, the vehicle will automatically be considered to be equipped with a defeat device without further investigation.

(2) If the CO emission level does not exceed the 20 °F emission standard, the Administrator may investigate the vehicle design for the presence of a defeat device under paragraph (d) of this section.

(d) For vehicle designs designated by the Administrator to be investigated for possible defeat devices:

(1) The manufacturer must show to the satisfaction of the Administrator that the vehicle design does not incorporate strategies that unnecessarily reduce emission control effectiveness exhibited during the Federal emissions test procedure when the vehicle is operated under conditions which may reasonably be expected to be encountered in normal operation and use.

(2) Information Submissions Required:

(i) The manufacturer will provide an explanation containing detailed information (including information which the Administrator may request to be submitted) regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies incorporated for operation both during and outside of the Federal emission test procedure.

(ii) For purposes of investigations of possible cold temperature CO defeat devices under this paragraph (d), the manufacturer shall provide an explanation which must show, to the satisfaction of the Administrator, that CO emissions are reasonably controlled in reference to the linear guideline, across the intermediate temperature range.

(Approved by the Office of Management and Budget under the control number 2060–0104)

9. Section 86.094–21 is amended by revising paragraphs (a) through (b)(1) and (b)(5)(i)(C) through (b)(7) and by adding paragraph (g) to read as follows:

§ 86.094–21 Application for certification.

* * * * *

(a) A separate application for a Certificate of Conformity shall be made for each set of standards (or family emission limits, as appropriate) and each class of new motor vehicles or new motor vehicle engines. Such application shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment.

(b) The application shall be in writing, signed by an authorized representative of the manufacturer, and shall include the following:

(1)(i) Identification and description of the vehicles (or engines) covered by the application and a description of their engine (vehicles only), emission control system, and fuel system components. This description will include:

(A) A detailed description of each Auxiliary Emission Control Device (AECD) to be installed in or on any vehicle (or engine) covered by the application.

(B) A detailed justification of each AECD (described in paragraph (b)(1)(i)(A) of this section) which results in a reduction in effectiveness of the emission control system. Such a justification may be disapproved by consideration of currently available technology, whereupon the application for certification may be disapproved under § 86.094–22(b) for the incorporation of a defeat device.

(C) The manufacturer must submit a Statement of Compliance in the application for certification which attests to the fact that they have assured themselves that the engine family is designed to be within the intermediate temperature cold testing defeat device guidance as described in § 86.094–16 of this subpart.

(*1*) This Statement of Compliance will be supported by a brief description of the vehicle's technological method of controlling CO emissions at intermediate temperatures.

(*2*) The manufacturer will determine a method (e.g., a test program, an engineering evaluation) which is adequate to support their Statement of Compliance. The manufacturer will support this Statement with a brief summary of the chosen method. Further details must be made available upon the Administrator's request.

(ii) (A) The manufacturer shall provide to the Administrator in the application for certification:

(*1*) A list of those parameters which are physically capable of being adjusted (including those adjustable parameters for which access is difficult) and that, if adjusted to settings other than the manufacturer's recommended setting, may affect emissions;

(*2*) A specification of the manufacturer's intended physically adjustable range of each such parameter, and the production tolerances of the limits or stops used to establish the physically adjustable range;

(*3*) A description of the limits or stops used to establish the manufacturer's intended physically adjustable range of each adjustable parameter, or any other means used to inhibit adjustment;

(*4*) The nominal or recommended setting, and the associated production tolerances, for each such parameter.

(B) The manufacturer may provide, in the application for certification, information relating to why certain parameters are not expected to be adjusted in actual use and to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are effective in preventing adjustment of parameters on in-use vehicles to settings outside the manufacturer's intended physically adjustable ranges. This may include results of any tests to determine the difficulty of gaining access to an adjustment or exceeding a limit as intended or recommended by the manufacturer.

(C) The Administrator may require to be provided detailed drawings and descriptions of the various emission related components, and/or hardware samples of such components, for the purpose of making his determination of which vehicle or engine parameter will be subject to adjustment for new certification and Selective Enforcement Audit testing and of the physically adjustable range for each such vehicle or engine parameter.

* * * * *

(5) * * *

(i) * * *

(C) For engine families provided an alternative useful-life period under paragraph (f) of this section, a statement of that alternative period and a brief synopsis of the justification.

(ii) For heavy-duty diesel engine families, a statement of the primary intended service class (light, medium, or heavy) and an explanation as to why that service class was selected. Each diesel engine family shall be certified under one primary intended service class only. After reviewing the guidance in § 86.090–2, the class shall be determined on the basis of which class best represents the majority of the sales of that engine family.

(iii) (A) For each light-duty truck engine family and each heavy-duty engine family, a statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines) covered by a Certificate of Conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(B) A description of vehicle adjustments or modifications necessary, if any, to assure that light-duty vehicles and light-duty trucks covered by a Certificate of Conformity conform to the regulations while being operated at any altitude locations, and a statement of the altitude at which the adjustments or modifications apply.

(iv) At the option of the manufacturer, the proposed composition of the emission-data test fleet or (where applicable) the durability-data test fleet.

(6) *Participation in Averaging Programs*—(i) *Particulate Averaging.* (A) If the manufacturer elects to participate in the particulate averaging program for diesel light-duty vehicles and/or diesel light-duty trucks or the particulate averaging program for heavy-duty diesel engines, the application must list the family particulate emission limit and the projected U.S. production volume of the family for the model year.

(B) The manufacturer shall choose the level of the family particulate emission limits, accurate to one-hundredth of a gram per mile or one-hundredth of a gram per brake horsepower-hour for heavy-duty engines.

(C) The manufacturer may at any time during production elect to change the level of any family particulate emission limit(s) by submitting the new limit(s) to the Administrator and by demonstrating compliance with the limit(s) as described in § 86.090–2 and § 86.091–28(b)(5)(i).

(ii) *Nox Averaging.* (A) If the manufacturer elects to participate in the NOx averaging program for light-duty trucks or the NOx averaging program for heavy-duty engines, the application must list the family NOx emission limit and the projected U.S. production volume of the family for the model year.

(B) The manufacturer shall choose the level of the family NOx emission limits, accurate to one-tenth of a gram per mile or to one-tenth of a gram per brake horsepower-hour for heavy-duty engines.

(C) The manufacturer may at any time during production elect to change the level of any family NOx emission limit(s) by submitting the new limits to

the Administrator and by demonstrating compliance with the limit(s) as described in § 86.088–2 and § 86.091–28(b)(5)(ii).

(7)(i) For Otto-cycle heavy-duty engines, the application must state whether the engine family is being certified for use in all vehicles regardless of their Gross Vehicle Weight Rating (see § 86.091–10 (a)(1)(i) and (a)(3)(i)), or only for use in vehicles with a Gross Vehicle Weight Rating greater than 14,000 pounds.

(ii) If the engine family is being certified for use in all vehicles and is being certified to the emission standards applicable to Otto-cycle engines for use only in vehicles with a Gross Vehicle Weight Rating over 14,000 pounds under the provisions of paragraph (a)(3) of § 86.091–10, then the application must also attest that the engine family, together with all other engine families being certified under the provisions of paragraph (a)(3) of § 86.091–10, represent no more than 5 percent of model year sales of the manufacturer of all Otto-cycle heavy-duty engines for use in vehicles with Gross Vehicle Weight Ratings of up to 14,000 pounds.

* * * * *

(g) The manufacturer shall identify those families which will not comply with cold temperature carbon monoxide standards.

* * * * *

10. A new § 86.094–22 is added to read as follows:

**§ 86.094–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit, adequacy of limits, and physically adjustable ranges.**

(a) After a review of the application for certification and any other information which the Administrator may require, the Administrator may approve the application and select a test fleet in accordance with § 86.094–24.

(b) Disapproval of application. (1) The Administrator may disapprove in whole or in part an application for certification for reasons including incompleteness; inaccuracy; inappropriate proposed mileage (or service) accumulation procedures, test equipment, or fuel; or incorporation of defeat devices in vehicles (or on engines) described by the application.

(2) The issuance of a certificate of conformity does not exempt the covered vehicles from further evaluation or testing for defeat device purposes as described in § 86.094–16 of this subpart.

(c) Where any part of an application is rejected, the Administrator shall notify the manufacturer in writing and set forth the reasons for such rejection. Within 30 days following receipt of such notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing and signed by an authorized representative of the manufacturer, and it shall include a statement specifying the manufacturer's objections to the Administrator's determinations and data in support of such objections. If, after the review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(d) Approval of test procedures. (1) The Administrator does not approve the test procedures for establishing the evaporative emission deterioration factors for light-duty vehicles and light-duty trucks. The manufacturer shall submit the procedures as required in § 86.094–21(b)(4)(i) prior to the Administrator's selection of the test fleet under § 86.094–24(b)(1), and if such procedures will involve testing of durability data vehicles selected by the Administrator or elected by the manufacturer under § 86.094–24(c)(1), prior to initiation of such testing.

(2) Light-duty trucks and heavy-duty engines only. The Administrator does not approve the test procedures for establishing exhaust emission deterioration factors. The manufacturer shall submit these procedures and determinations as required in § 86.090–21(b)(4)(iii) prior to determining the deterioration factors.

(3) Heavy-duty vehicles equipped with gasoline-fueled or methanol-fueled engines only. The Administrator does not approve the test procedures for establishing the evaporative emission deterioration factors. The test procedure will conform to the requirements in § 86.094–23(b)(3).

(e) Parameter adjustment requirements. When the Administrator selects emission data vehicles for the test fleet, he will at the same time determine those vehicle or engine parameters which will be subject to adjustment for certification, Selective Enforcement Audit and Production Compliance Audit testing, the adequacy of the limits, stops, seals, or other means used to inhibit adjustment, and the resulting physically adjustable ranges for each such parameter and will then notify the manufacturer of his determinations.

(1) Determining parameters subject to adjustment. (i) Except as noted in paragraph (e)(1)(iv) of this section, the Administrator may determine to be subject to adjustment the idle fuel-air mixture parameter on Otto-cycle vehicles (or engines) (carbureted or fuel-injected); the choke valve action parameter(s) on carbureted, Otto-cycle vehicles (or engines); or any parameter on any vehicle (or engine) (Otto-cycle or diesel) which is physically capable of being adjusted, may significantly affect emissions, and was not present on the manufacturer's vehicles (or engines) in the previous model year in the same form and function.

(ii) The Administrator may, in addition, determine to be subject to adjustment any other parameters on any vehicle or engine which is physically capable of being adjusted and which may significantly affect emissions. However, the Administrator may do so only if he has previously notified the manufacturer that he might do so and has found, at the time he gave this notice, that the intervening period would be adequate to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period. In no event will this notification be given later than September 1 of the calendar year two years prior to the model year.

(iii) In determining the parameters subject to adjustment, the Administrator will consider the likelihood that, for each of the parameters listed in paragraphs (e)(1)(i) and (e)(1)(ii) of this section, settings other than the manufacturer's recommended setting will occur on in-use vehicles (or engines). In determining likelihood, the Administrator may consider such factors as, but not limited to, information contained in the preliminary application, surveillance information from similar in-use vehicles (or engines), the difficulty and cost of gaining access to an adjustment, damage to the vehicle (or engine) if an attempt is made to gain such access and the need to replace parts following such attempt, and the effect of settings other than the manufacturer's recommended setting on vehicle (or engine) performance characteristics including emission characteristics.

(iv) Manual chokes of heavy-duty engines only will not be considered a parameter subject to adjustment under the parameter adjustment requirements.

(2)(i) The Administrator shall determine a parameter to be adequately inaccessible or sealed if:

(A) In the case of an idle mixture screw, the screw is recessed within the carburetor casting and sealed with lead, thermosetting plastic, or an inverted elliptical spacer or is sheared off after

adjustment at the factory and the inaccessibility is such that the screw cannot be accessed and/or adjusted with simple tools in one-half hour or for $20 (1978 U.S. dollars) or less.

(B) In the case of a choke bimetal spring, the plate covering the bimetal spring is riveted or welded in place, or held in place with nonreversible screws.

(C) In the case of a parameter which may be adjusted by elongating or bending adjustable members (e.g., the choke vacuum break), the elongation of the adjustable member is limited by design or, in the case of a bendable member, the member is constructed of a material which when bent would return to its original shape after the force is removed (plastic or spring steel materials).

(D) In the case of any parameter, the manufacturer demonstrates that adjusting the parameter to settings other than the manufacturer's recommended setting takes more than one-half hour or costs more than $20 (1978 U.S. dollars).

(ii) The Administrator shall determine a physical limit or stop to be an adequate restraint on adjustability if:

(A) In the case of a threaded adjustment, the threads are terminated, pinned, or crimped so as to prevent additional travel without breakage or need for repairs which take more than one-half hour or cost more than $20 (1978 U.S. dollars).

(B) The adjustment is ineffective at the end of the limits of travel regardless of additional forces or torques applied to the adjustment.

(C) The manufacturer demonstrates that travel or rotation limits cannot be exceeded with the use of simple and inexpensive tools (screwdriver, pliers, open-end or box wrenches, etc.) without incurring significant and costly damage to the vehicle (or engine) or control system or without taking more than one-half hour or costing more than $20 (1978 U.S. dollars).

(iii) If manufacturer service manuals or bulletins describe routine procedures for gaining access to a parameter or for removing or exceeding a physical limit, stop, seal or other means used to inhibit adjustment, or if surveillance data indicate that gaining access, removing, or exceeding is likely, paragraphs (e)(2)(i) and (e)(2)(ii) of this section shall not apply for that parameter.

(iv) In determining the adequacy of a physical limit, stop, seal, or other means used to inhibit adjustment of a parameter not covered by paragraph (e)(2)(i) or (e)(2)(ii) of this section, the Administrator will consider the likelihood that it will be circumvented, removed, or exceeded on in-use vehicles. In determining likelihood, the Administrator may consider such factors as, but not limited to, information contained in the preliminary application; surveillance information from similar in-use vehicles (or engines); the difficulty and cost of circumventing, removing, or exceeding the limit, stop, seal, or other means; damage to the vehicle (or engine) if an attempt is made to circumvent, remove, or exceed it and the need to replace parts following such attempt; and the effect of settings beyond the limit, stop, seal, or other means on vehicle (or engine) performance characteristics other than emission characteristics.

(3) The Administrator shall determine two physically adjustable ranges for each parameter subject to adjustment:

(i)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator may include within the physically adjustable range applicable to testing under this subpart (certification testing) all settings within the production tolerance associated with the nominal setting for that parameter, as specified by the manufacturer in the preliminary application for certification.

(B) In the case of other parameters, the Administrator shall include within this range all settings within physical limits or stops determined to be adequate restraints on adjustability. The Administrator may also include the production tolerances on the location of these limits or stops when determining the physically adjustable range.

(ii)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator shall include within the physically adjustable range applicable to testing under subpart G or K (Selective Enforcement Audit and Production Compliance Audit) of this part only the actual settings to which the parameter is adjusted during production.

(B) In the case of other parameters, the Administrator shall include within this range all settings within physical limits or stops determined to be adequate restraints on adjustability, as they are actually located on the test vehicle (or engine).

(f) *Submittal of advance information.* (1) If the manufacturer submits the information specified in § 86.094–21(b)(1)(ii) in advance of its full preliminary application for certification, the Administrator shall review the information and make the determinations required in paragraph (e) of this section within 90 days of the manufacturer's submittal.

(2) The 90-day decision period is exclusive of the elapsed time during which EPA may request additional information from manufacturers regarding an adjustable parameter and the receipt of the manufacturers' response(s).

(g) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (e) of this section, the manufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, and signed by an authorized representative of the manufacturer, and it shall include a statement specifying the manufacturer's objections to the Administrator's determinations and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

11. A new § 86.094–24 is added to read as follows:

**§ 86.094–24 Test vehicles and engines.**

(a) *General.* This paragraph (a) applies to the grouping of vehicles or engines into families.

(1) The vehicles or engines covered by an application for certification will be divided into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following respects:

(i) The cylinder bore center-to-center dimensions.

(ii)–(iii) [Reserved]

(iv) The cylinder block configuration (air cooled or water cooled: L–6, 90°, V–8, etc.).

(v) The location of the intake and exhaust valves (or ports).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (e.g., intercoolers and after-coolers) for diesel heavy-duty engines.

(3)(i) Engines identical in all respects listed in paragraph (a)(2) of this section may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(A) The bore and stroke.

(B) The surface-to-volume ratio of the nominally dimensioned cylinder at the top dead center positions.

(C) The intake manifold induction port sizes and configuration.

(D) The exhaust manifold port size and configuration.

(E) The intake and exhaust valve sizes.

(F) The fuel system.

(G) The camshaft timing and ignition or injection timing characteristics.

(ii) Light-duty trucks and heavy-duty engines produced in different model years and distinguishable in the respects listed in paragraph (a)(2) of this section shall be treated as belonging to a single engine family if the Administrator requires it, after determining that the engines may be expected to have similar emission deterioration characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a)(2) and (a)(3) of this section, the Administrator will establish families for those engines based upon those features most related to their emission characteristics. Engines that are eligible to be included in the same engine family based on the criteria in paragraph (a)(2) and (a)(3)(i) of this section may be further divided into different engine families if the manufacturer determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(i) The dimension from the center line of the crankshaft to the center line of the camshaft.

(ii) The dimension from the center line of the crankshaft to the top of the cylinder block head face.

(iii) The size of the intake and exhaust valves (or ports).

(5) The gasoline-fueled and methanol-fueled light-duty vehicles and light-duty trucks covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) For gasoline-fueled or methanol-fueled light-duty vehicles and light-duty trucks to be classed in the same evaporative emission family, vehicles must be similar with respect to:

(i) Type of vapor storage device (e.g., canister, air cleaner, crankcase).

(ii) Basic canister design.

(iii) Fuel system.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed in paragraph (a)(2) of this section, the Administrator will establish families for those vehicles based upon the features most related to their evaporative emission characteristics.

(8) If the manufacturer elects to participate in the Alternative Durability Program, the engine families covered by an application for certification shall be grouped based upon similar engine design and emission control system characteristics.

(i) Each of these groups shall constitute a separate engine family group.

(ii) To be classed in the same engine family group, engine families must contain engines identical in all of the following respects:

(A) The combustion cycle.

(B) The cylinder block configuration (air-cooled or water-cooled; L–6, V–8, rotary, etc.).

(C) Displacement (engines of different displacement within 50 cubic inches or 15 percent of the largest displacement and contained within a multi-displacement engine family will be included in the same engine family group).

(D) Catalytic converter usage and basic type (non-catalyst, oxidation catalyst only, three-way catalyst equipped).

(9) Engine families identical in all respects listed in paragraph (a)(8) of this section may be further divided into different engine family groups if the Administrator determines that they are expected to have significantly different exhaust emission control system deterioration characteristics.

(10) A manufacturer may request the Administrator to include in an engine family group engine families in addition to those grouped under the provisions of paragraph (a)(8) of this section. This request must be accompanied by information the manufacturer believes supports the inclusion of these additional engine families.

(11) A manufacturer may combine into a single engine family group those light-duty vehicle and light-duty truck engine families which otherwise meet the requirements of paragraphs (a)(8) through (a)(10) of this section.

(12) Those vehicles covered by an application for certification which are equipped with gasoline-fueled and methanol-fueled heavy-duty engines will be divided into groupings of vehicles on the basis of physical features which are expected to affect evaporative emissions. Each group of vehicles with similar features shall be defined as a separate evaporative emission family.

(13) For gasoline-fueled or methanol-fueled heavy-duty vehicles to be classified in the same evaporative emission family, vehicles must be identical with respect to:

(i) Method of fuel/air metering (i.e., carburetion versus fuel injection).

(ii) Carburetor bowl fuel volume, within a 10 cc range.

(14) For vehicles equipped with gasoline-fueled and methanol-fueled heavy-duty engines to be classified in the same evaporative emission control system, vehicles must be identical with respect to:

(i) Method of vapor storage.

(ii) Method of carburetor sealing.

(iii) Method of air cleaner sealing.

(iv) Vapor storage working capacity, within a 20g range.

(v) Number of storage devices.

(vi) Method of purging stored vapors.

(vii) Method of venting the carburetor during both engine off and engine operation.

(viii) Liquid fuel hose material.

(ix) Vapor storage material.

(15) Where vehicles equipped with gasoline-fueled or methanol-fueled heavy-duty engines are types which cannot be divided into evaporative emission family-control system combinations based on the criteria listed above, the Administrator will establish evaporative emission family-control system combinations for those vehicles based on features most related to their evaporative emission characteristics.

(b) *Emission data*—(1) *Light-duty truck emissions data vehicles.* This paragraph (b)(1) applies to light-duty truck emission data vehicles.

(i) Vehicles will be chosen to be operated and tested for emission data based upon engine family groupings. Within each engine family, one test vehicle will be selected based on the following criteria: The Administrator shall select the vehicle with the heaviest equivalent test weight (including options) within the family. If more than one vehicle meets this criteria, then within that vehicle grouping the Administrator shall select, in the order listed, the highest road-load power, largest displacement, the transmission with the highest numerical final gear ratio (including overdrive), the highest numerical axle ratio offered in that engine family, and the maximum fuel flow calibration.

(ii) The Administrator shall select one additional test vehicle from within each engine family. The additional vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family. If all vehicles within the engine family

are similar the Administrator may waive the requirements of this paragraph.

(iii) Within an engine family and exhaust emission control system, the manufacturer may alter any emission data vehicle (or other vehicles such as current or previous model year emission data vehicles, fuel economy data vehicles, and development vehicles provided they meet emission data vehicles' protocol) to represent more than one selection under paragraph (b)(1)(i), (ii), (iv), or (vii) of this section.

(iv) If the vehicles selected in accordance with paragraphs (b)(1)(i) and (ii) of this section do not represent each engine-system combination, then one vehicle of each engine-system combination not represented will be selected by the Administrator. The vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family.

(v) For high-altitude exhaust emission compliance for each engine family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the vehicle expected to exhibit the highest emissions from the nonexempt vehicles selected in accordance with paragraphs (b)(1)(ii), (iii), and (iv) of this section; or

(B) In lieu of testing vehicles according to paragraph (b)(1)(v)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such high altitude emission testing as the manufacturer deems appropriate—

(*1*) That all light-duty vehicles not exempt under § 86.094–8(h) comply with the emission standards at high altitude; and

(*2*) That light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements and that all light-duty trucks sold at low altitude, which are not exempt under § 86.094–9(h), are capable of being modified to meet high-altitude standards.

(vi) If 90 percent or more of the engine family sales will be in California, a manufacturer may substitute emission data vehicles selected by the California Air Resources Board criteria for the selections specified in paragraphs (b)(1)(i), (ii), and (iv) of this section.

(vii) Vehicles will be chosen to be operated and tested for evaporative emission data based upon evaporative emission family groupings as defined in paragraphs (a)(12), (a)(13), (a)14), and (a)(15) of this section.

(A) Vehicles of each evaporative emission family will be divided into evaporative emission control systems.

(B) The Administrator will select the vehicle expected to exhibit the highest evaporative emissions from within each evaporative family to be certified. This vehicle is selected from among the vehicles chosen using the exhaust emission data selection criteria for the engine family, unless evaporative testing has already been completed, as part of another engine family's testing, on the vehicle expected to exhibit the highest evaporative emissions for the evaporative family.

(C) If the vehicles selected in accordance with paragraph (b)(1)(vii)(B) of this section do not represent each evaporative emission control system then the Administrator will select the highest expected evaporative emission vehicle from within the unrepresented evaporative system.

(viii) For high-altitude evaporative emission compliance for each evaporative emission family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the one nonexempt vehicle previously selected under paragraphs (b)(1)(vii)(B) or (C) of this section which is expected to have the highest level of evaporative emissions when operated at high altitude; or

(B) In lieu of testing vehicles according to paragraph (b)(1)(viii)(A) of this section, a manufacturer may provide a statement in its application for certification that based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate—

(*1*) That all light-duty vehicles not exempt under § 86.094–8(h) comply with the emission standards at high altitude; and

(*2*) That light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements and that all light-duty trucks sold at low-altitude, which are not exempt under § 86.094–9(h), are capable of being modified to meet high-altitude standards.

(ix) Vehicles selected for high altitude exhaust emission testing under paragraph (b)(1)(v)(A) of this section may be used to satisfy the evaporative emission testing requirements of paragraph (b)(1)(viii)(A) of this section.

(x) *Light-duty trucks only.* (A) The manufacturer may reconfigure any of the low-altitude emission data vehicles to represent the vehicle configuration required to be tested at high altitude.

(B) The manufacturer is not required to test the reconfigured vehicle at low altitude.

(xi) For cold temperature CO exhaust emission compliance for each engine family, the Administrator will select for testing the vehicle expected to emit the highest emissions from the vehicles selected in accordance with paragraphs (b)(1)(i), (ii), (iii), and (iv) of this section. This vehicle shall be tested by the manufacturer in accordance with the test procedures in subpart C of this part or with alternative procedures requested by the manufacturer and approved in advance by the Administrator.

(2) *Otto-cycle heavy-duty emission data engines.* This paragraph (b)(2) applies to Otto-cycle heavy-duty engines.

(i)–(ii) [Reserved]

(iii) The Administrator shall select a maximum of two engines within each engine family based upon features indicating that they may have the highest emission levels of the engines in the engine family as follows:

(A) The Administrator shall select one emission data engine first based on the largest displacement within the engine family. Then from those with the largest displacement the Administrator shall select, in the order listed, highest fuel flow at the speed of maximum rated torque, the engine with the most advanced spark timing, no EGR or lowest EGR flow, and no air pump or lowest actual flow air pump.

(B) The Administrator shall select one additional engine, from within each engine family. The engine selected shall be the engine expected to exhibit the highest emissions of those engines remaining in the engine family. If all engines within the engine family are similar the Administrator may waive the requirements of this paragraph.

(iv) If the engines selected in accordance with paragraph (b)(2) (ii) and (iii) of this section do not represent each engine displacement-exhaust emission control system combination, then one engine of each engine displacement-exhaust emission control system combination not represented shall be selected by the Administrator.

(v) Within an engine family/displacement/control system combination, the manufacturer may alter any emission data engine (or other engine including current or previous model year emission data engines and development engines provided they meet the emission data engines' protocol) to represent more than one selection under paragraph (b)(2)(iii) of this section.

(3) *Diesel heavy-duty emission data engines.* This paragraph (b)(3) applies to diesel heavy-duty emission data vehicles.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into groups based upon their exhaust emission control systems. One engine of each system combination shall be run for smoke emission data and gaseous emission data. Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine system combinations, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

(iii) The Administrator may select a maximum of one additional engine within each engine-system combination based upon features indicating that it may have the highest emission levels of the engines of that combination. In selecting this engine, the Administrator will consider such features as the injection system, fuel system, compression ratio, rated speed, rated horsepower, peak torque speed, and peak torque.

(iv) Within an engine family control system combination, the manufacturer may alter any emission data engine (or other engine including current or previous model year emission data engines and development engines provided they meet the emission data engines' protocol) to represent more than one selection under paragraphs (b)(3) (ii) and (iii) of this section.

(c) *Durability data*—(1) *Light-duty vehicle durability data vehicles.* This paragraph (c)(1) applies to light-duty vehicle durability data vehicles.

(i) A durability data vehicle will be selected by the Administrator to represent each engine-system combination. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with that control-system combination in that engine family and will be designated by the Administration as to transmission type, fuel system, inertia weight class, and test weight.

(ii) A manufacturer may elect to operate and test additional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system and inertia weight class as the vehicle selected for that engine-system combination in accordance with the provisions of paragraph (c)(1)(i) of this section. Notice of an intent to operate and test additional vehicles shall be given to the Administrator no later than 30 days following notification of the test fleet selection.

(2) *Light-duty trucks.* This paragraph (c)(2) applies to vehicles, engines, subsystems, or components used to establish exhaust emission deterioration factors for light-duty trucks.

(i) The manufacturer shall select the vehicles, engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether vehicles, engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use vehicles, based on good engineering judgment.

(ii) [Reserved]

(3) *Heavy-duty engines.* This paragraph (c)(3) applies to engines, subsystems, or components used to establish exhaust emission deterioration factors for heavy-duty engines.

(i) The manufacturer shall select the engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use engines, based on good engineering judgment.

(ii) [Reserved]

(d) For purposes of testing under § 86.092–26 (a)(9) or (b)(11), the Administrator may require additional emission data vehicles (or emission data engines) and durability data vehicles (light-duty vehicles only) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section, Provided That the number of vehicles (or engines) selected shall not increase the size of either the emission data fleet or the durability data fleet by more than 20 percent or one vehicle (or engine), whichever is greater.

(e)(1) [Reserved]

(2) Any manufacturer may request to certify engine families with combined total sales of fewer than 10,000 light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines utilizing the procedures contained in § 86.092–14 of this subpart for emission data vehicle selection and determination of deterioration factors. The deterioration factors shall be applied only to entire engine families.

(f) In lieu of testing an emission data or durability data vehicle (or engine) selected under paragraph (b) or (c) of this section, and submitting data therefore, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data and/or fuel evaporative emission data, as applicable on a similar vehicle (or engine) for which certification has previously been obtained or for which all applicable data required under § 86.094–23 has previously been submitted.

(g)(1) This paragraph (g) applies to light-duty vehicles and light-duty trucks, but does not apply to the production vehicles selected under paragraph (h) of this section.

(2)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, may be equipped with an item (whether that item is standard equipment or an option), the full estimated weight of that item shall be included in the curb weight computation of each vehicle available with that item in that carline, within that engine-system combination.

(ii) Where it is expected that 33 percent or less of the carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option), no weight for that item will be added in computing the curb weight for any vehicle in that carline, within that engine-system combination, unless that item is standard equipment on the vehicle.

(iii) In the case of mutually exclusive options, only the weight of the heavier option will be added in computing the curb weight.

(iv) Optional equipment weighing less than three pounds per item need not be considered.

(3)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items shall actually be installed (unless excluded under paragraph (g)(3)(ii) of this section) on all emission data and durability data vehicles of that carline, within that engine-system combination, on which the items are intended to be offered in production. Items that can reasonably be expected to influence

emissions are: Air conditioning, power steering, power brakes, and other items determined by the Administrator.

(ii) If the manufacturer determines by test data or engineering evaluation that the actual installation of the optional equipment required by paragraph (g)(3)(i) of this section does not affect the emissions or fuel economy values, the optional equipment need not be installed on the test vehicle.

(iii) The weight of the options shall be included in the design curb weight and also be represented in the weight of the test vehicles.

(iv) The engineering evaluation, including any test data, used to support the deletion of optional equipment from test vehicles, shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(4) Where it is expected that 33 percent or less of a carline within an engine-system combination will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, that item shall not be installed on any emission data vehicle or durability data vehicle of that carline, within that engine-system combination, unless that item is standard equipment on that vehicle or specifically required by the Administrator.

(h) *Alternative Durability Program durability data vehicles.* This paragraph (h) applies to light-duty vehicle and light-duty truck durability data vehicles selected under the Alternative Durability Program described in § 86.085–13.

(1) To update the durability data to be used to determine a deterioration factor for each engine family group, the Administrator will select durability data vehicles from the manufacturer's production line. Production vehicles will be selected from each model year's production for those vehicles certified using the Alternative Durability Program procedures.

(i) The Administrator shall select the production durability data vehicle designs from the designs that the manufacturer offers for sale. For each model year and for each engine family group, the Administrator may select production durability data vehicle designs of equal number to the number of engine families within the engine family group, up to a maximum of three vehicles.

(ii) The production durability data vehicles representing the designs selected in paragraph (h)(1)(i) of this section will be randomly selected from the manufacturer's production. The Administrator will make these random selections unless the manufacturer (with prior approval of the Administrator) elects to make the random selections.

(iii) The manufacturer may select additional production durability data vehicle designs from within the engine family group. The production durability data vehicles representing these designs shall be randomly selected from the manufacturer's production in accordance with paragraph (h)(1)(ii) of this section.

(iv) For each production durability data vehicle selected under paragraph (h)(1) of this section, the manufacturer shall provide to the Administrator (before the vehicle is tested or begins service accumulation) the vehicle identification number. Before the vehicle begins service accumulation the manufacturer shall also provide the Administrator with a description of the durability data vehicle as specified by the Administrator.

(v) In lieu of testing a production durability data vehicle selected under paragraph (h)(1) of this section, and submitting data therefrom, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data from a production vehicle of the same configuration for which all applicable data has previously been submitted.

(2) If, within an existing engine family group, a manufacturer requests to certify vehicles of a new design, engine family, emission control system, or with any other durability-related design difference, the Administrator will determine if the existing engine family group deterioration factor is appropriate for the new design. If the Administrator cannot make this determination or deems the deterioration factor not appropriate, the Administrator shall select preproduction durability data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles with the new design under the provisions of paragraph (h)(1) of this section.

(3) If a manufacturer requests to certify vehicles of a new design that the Administrator determines are a new engine family group, the Administrator shall select preproduction durability data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles of that design under the provisions of paragraph (h)(1) of this section:

12. Section 86.094–35 is amended revising paragraphs (a) introductory text through (a)(1)(iii)(E), (a)(2)(iii)(L) through (a)(3)(iii)(H), (a)(3)(iii)(J) through (b), (d)(2) through (h), and by adding paragraph (a)(1)(iii)(k) to read as follows:

**§ 86.094–35 Labeling.**

* * * * *

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards (and family emission limits, as appropriate) of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a Certificate of Conformity under § 86.091–30(a).

(1) *Light-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches or liters), engine family identification, and evaporative family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family emission limits, as applicable), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection

Agency regulations which apply to light-duty vehicles;

* * * * *

(K) If applicable, a statement that the vehicle is exempt from cold temperature carbon monoxide standards.

* * * * *

(a)(2)(iii)(L) The vacuum hose routing diagram applicable to the vehicles if the vehicles are equipped with vacuum actuated emission and emission-related components. The manufacturer may, at its option, use a separate label for the vacuum hose routing diagram provided that the vacuum hose diagram is placed in a visible and accessible position as provided by this section.

(M) Vehicles granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(N) If applicable, a statement that the vehicle is exempt from cold temperature carbon monoxide standards.

(3) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle.

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: Important Engine Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches or liters) and engine family and model designations;

(D) Date of engine manufacture (month and year). The manufacturer may, in lieu of including the date of manufacture on the engine label, maintain a record of the engine manufacture dates. The manufacturer shall provide the date of manufacture records to the Administrator upon request;

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation;

(F) For Otto-cycle engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), and valve lash;

(G) For diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in mm $^3$/stroke, valve lash, initial injection timing, and idle speed;

(H) The prominent statement: "This engine conforms to U.S. EPA regulations applicable to 19XX Model Year New Heavy-Duty Engines."

* * * * *

(J) *For diesel engines.* The prominent statement: "This engine has a primary intended service application as a XXX heavy-duty engine." (The primary intended service applications are light, medium, and heavy, as defined in § 86.090–2.)

(K) *For Otto-cycle engines.* One of the following statements, as applicable:

(*1*) For engines certified to the emission standards under § 86.091–10(a)(1)(i) or (iii), the statement: "This engine is certified for use in all heavy-duty vehicles."

(*2*) For gasoline-fueled engines certified under the provisions of § 86.091–10(a)(3)(i), the statement: "This engine is certified for use in all heavy-duty vehicles under the special provision of 40 CFR 86.091–10(a)(3)(i)."

(*3*) For engines certified to the emission standards under § 86.091–10(a)(1)(ii) or (iv), the statement: "This engine is certified for use only in heavy-duty vehicles with a gross vehicle weight rating above 14,000 lbs."

(L) For diesel engines which are included in the diesel heavy-duty particulate averaging program, the family particulate emission limit to which the engine is certified.

(M) For any heavy-duty engines which are included in the heavy-duty NOx averaging program, the family NOx emission limit to which the engine is certified.

(N) Engines granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(iv) The label may be made up of one or more pieces: *Provided,* That all pieces are permanently attached to the same engine or vehicle part as applicable.

(4) *Gasoline-fueled and methanol-fueled heavy-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment. If such vehicles do not have an engine compartment, the label required in this paragraph (a)(4) and paragraph (g)(1) of this section shall be affixed in a readily visible position on the operator's enclosure or on the engine.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the Certificate of Conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Evaporative family identification;

(D) The maximum nominal fuel tank capacity (in gallons) for which the evaporative control system is certified; and

(E) One of the following, as appropriate:

(*1*) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to gasoline-fueled heavy-duty vehicles;

(*2*) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to methanol-fueled heavy-duty vehicles;

(F) Vehicles granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

* * * * *

(d) * * *

(2) *Heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions.* "This heavy-duty vehicle conforms to the U.S. EPA regulations applicable to 19XX Model Year Light-Duty Trucks under the special provision of 40 CFR 86.085–1(b) when it does not exceed XXX pounds in curb weight, XXX pounds in gross vehicle weight rating, and XXX square feet in frontal area."

(e) Incomplete heavy-duty vehicles having a gross vehicle weight rating of 8,500 pounds or less shall have one of the following statements printed on the label required by paragraph (a)(3) of this section in lieu of the statement required by paragraph (a)(3)(iii)(H) of this section: "This engine conforms to U.S.

EPA regulations applicable to 19XX Model Year Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area of greater than 45 square feet."

(f) The manufacturer of any incomplete light-duty vehicle or light-duty truck shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR part 568.

(g) *Incomplete vehicle fuel tank capacity.* (1)(i) Incomplete gasoline-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Gasoline-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed XXX gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.092–35(g)(2)."

(ii) Incomplete methanol-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Methanol-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed XXX gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.091–35(g)(2)."

(2) Persons wishing to add fuel tank capacity beyond the maximum specified on the label required in paragraph (g)(1) of this section shall:

(i) Increase the amount of fuel tank vapor storage material according to the following function:

$$Cap_f = Cap_i \left( \frac{\text{T. Vol.}}{\text{Max. Vol.}} \right)$$

Where:

$Cap_f$ = final amount of fuel tank vapor storage material, grams.

$Cap_i$ = initial amount of fuel tank vapor storage material, grams.

T. Vol. = total fuel tank volume of completed vehicle, gallons.

Max. Vol. = maximum fuel tank volume as specified on the label required in paragraph (g)(1) of this section, gallons.

(ii) Use, if applicable, hosing for fuel vapor routing which is at least as impermeable to hydrocarbon vapors as that used by the primary manufacturer.

(iii) Use vapor storage material with the same absorptive characteristics as that used by the primary manufacturer.

(iv) Connect, if applicable, any new hydrocarbon storage device to the existing hydrocarbon storage device in series such that the original hydrocarbon storage device is situated between the fuel tank and the new hydrocarbon storage device. The original hydrocarbon storage device shall be sealed such that vapors cannot reach the atmosphere. The elevation of the original hydrocarbon storage device shall be equal to or lower than the new hydrocarbon storage device.

(v) Submit a written statement to the Administrator that paragraphs (g)(2)(i) through (g)(2)(iv) of this section have been complied with.

(3) If applicable, the Administrator will send a return letter verifying the receipt of the written statement required in paragraph (g)(2)(v) of this section.

(h) *Notification of nonconformance penalty.* (1) Light-duty trucks and heavy-duty vehicles and engines for which nonconformance penalties are to be paid in accordance with § 86.1113–87(b) shall have the following information printed on the label required in paragraph (a) of this section. The manufacturer shall begin labeling production engines or vehicles within 10 days after the completion of the production compliance audit (PCA).

(i) The statement: "The manufacturer of this engine/vehicle will pay a nonconformance penalty to be allowed to introduce it into commerce at an emission level higher than the applicable emission standard. The compliance level (or new emission standard) for this engine/vehicle is XXX." (The manufacturer shall insert the applicable pollutant and compliance level calculated in accordance with § 86.1112–87(a).)

(2) If a manufacturer introduces an engine or vehicle into commerce prior to the compliance level determination of § 86.1112–87(a), it shall provide the engine or vehicle owner with a label as described above to be affixed in a location in proximity to the label required in paragraph (a) of this section within 30 days of the completion of the PCA.

* * * * *

13. Section 86.095–24 is amended by revising paragraphs (a) through (b)(1)(iv), (b)(2) through (h) and by adding paragraph (b)(1)(xi) to read as follows:

**§ 86.095–24 Test vehicles and engines.**

* * * * *

(a) *General.* (1) The vehicles or engines covered by an application for certification will be divided into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following respects:

(i) The cylinder bore center-to-center dimensions.

(ii)—(iii) [Reserved]

(iv) The cylinder block configuration (air cooled or water cooled; L–6, 90° V–8, etc.).

(v) The location of the intake and exhaust valves (or ports).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (e.g., intercoolers and after-coolers) for diesel heavy-duty engines.

(3)(i) Engines identical in all the respects listed in paragraph (a)(2) of this section may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(A) The bore and stroke.

(B) The surface-to-volume ratio of the nominally dimensioned cylinder at the top dead center positions.

(C) The intake manifold induction port size and configuration.

(D) The exhaust manifold port size and configuration.

(E) The intake and exhaust valve sizes.

(F) The fuel system.

(G) The camshaft timing and ignition or injection timing characteristics.

(ii) Light-duty trucks and heavy-duty engines produced in different model years and distinguishable in the respects listed in paragraph (a)(2) of this section shall be treated as belonging to a single engine family if the Administrator requires it, after determining that the

engines may be expected to have similar emission deterioration characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a)(2) and (a)(3) of this section, the Administrator will establish families for those engines based upon those features most related to their emission characteristics. Engines that are eligible to be included in the same engine family based on the criteria in paragraphs (a)(2) and (a)(3)(i) of this section may be further divided into different engine families if the manufacturer determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(i) The dimension from the center line of the crankshaft to the center line of the camshaft.

(ii) The dimension from the center line of the crankshaft to the top of the cylinder block head face.

(iii) The size of the intake and exhaust valves (or ports).

(5) The gasoline-fueled and methanol-fueled light-duty vehicles and light-duty trucks covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) For gasoline-fueled or methanol-fueled light-duty vehicles and light-duty trucks to be classed in the same evaporative emission family, vehicles must be similar with respect to:

(i) Type of vapor storage device (e.g., canister, air cleaner, crankcase).

(ii) Basic canister design.

(iii) Fuel system.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed above, the Administrator will establish families for those vehicles based upon the features most related to their evaporative emission characteristics.

(8)(i) If the manufacturer elects to participate in the Alternative Durability Program, the engine families covered by an application for certification shall be grouped based upon similar engine design and emission control system characteristics. Each of these groups shall constitute a separate engine family group.

(ii) To be classed in the same engine family group, engine families must contain engines identical in all of the following respects:

(A) The combustion cycle.

(B) The cylinder block configuration (air-cooled or water-cooled; L–6, V–8, rotary, etc.).

(C) Displacement (engines of different displacement within 50 cubic inches or 15 percent of the largest displacement and contained within a multi-displacement engine family will be included in the same engine family group).

(D) Catalytic converter usage and basic type (non-catalyst, oxidation catalyst only, three-way catalyst equipped).

(9) Engine families identical in all respects listed in paragraph (a)(8) of this section may be further divided into different engine family groups if the Administrator determines that they are expected to have significantly different exhaust emission control system deterioration characteristics.

(10) A manufacturer may request the Administrator to include in an engine family group, engine families in addition to those grouped under the provisions of paragraph (a)(8) of this section. This request must be accompanied by information the manufacturer believes supports the inclusion of these additional engine families.

(11) A manufacturer may combine into a single engine family group those light-duty vehicle and light-duty truck engine families which otherwise meet the requirements of paragraphs (a)(8) through (a)(10) of this section.

(12) The vehicles covered by an application for certification equipped with gasoline-fueled and methanol-fueled heavy-duty engines will be divided into groupings of vehicles on the basis of physical features which are expected to affect evaporative emissions. Each group of vehicles with similar features shall be defined as a separate evaporative emission family.

(13) For gasoline-fueled or methanol-fueled heavy-duty vehicles to be classified in the same evaporative emission family, vehicles must be identical with respect to:

(i) Method of fuel/air metering (i.e., carburetion versus fuel injection).

(ii) Carburetor bowl fuel volume, within a 10 cc range.

(14) For vehicles equipped with gasoline-fueled and methanol-fueled heavy-duty engines to be classified in the same evaporative emission control system, vehicles must be identical with respect to:

(i) Method of vapor storage.

(ii) Method of carburetor sealing.

(iii) Method of air cleaner sealing.

(iv) Vapor storage working capacity, within a 20g range.

(v) Number of storage devices.

(vi) Method of purging stored vapors.

(vii) Method of venting the carburetor during both engine off and engine operation.

(viii) Liquid fuel hose material.

(ix) Vapor storage material.

(15) Where vehicles equipped with gasoline-fueled or methanol-fueled heavy-duty engines are types which cannot be divided into evaporative emission family-control system combinations based on the criteria listed above, the Administrator will establish evaporative emission family-control system combinations for those vehicles based on features most related to their evaporative emission characteristics.

(b) *Emission data*—(1) *Light-duty truck emission-data vehicles.* This paragraph (b)(1) applies to light-duty vehicle and light-duty truck emission-data vehicles.

(i) Vehicles will be chosen to be operated and tested for emission data based upon engine family groupings. Within each engine family, one test vehicle will be selected based on the following criteria: The Administrator shall select the vehicle with the heaviest equivalent test weight (including options) within the family. Then within that vehicle the Administrator shall select, in the order listed, the highest road-load power, largest displacement, the transmission with the highest numerical final gear ratio (including overdrive), the highest numerical axle ratio offered in that engine family, and the maximum fuel flow calibration.

(ii) The Administrator shall select one additional test vehicle from within each engine family. The vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family. If all vehicles within the engine family are similar the Administrator may waive the requirements of this paragraph.

(iii) Within an engine family and exhaust emission control system, the manufacturer may alter any emission-data vehicle (or other vehicles such as including current or previous model year emission-data vehicles, fuel economy data vehicles, and development vehicles provided they meet emission-data vehicles' protocol) to represent more than one selection under paragraphs (b)(1) (i), (ii), (iv), or (vii) of this section.

(iv) If the vehicles selected in accordance with paragraphs (b)(1) (i) and (ii) of this section do not represent each engine-system combination, then one vehicle of each engine-system combination not represented will be selected by the Administrator. The vehicle selected shall be the vehicle expected to exhibit the highest

emissions of those vehicles remaining in the engine family.

* * * * *

(b)(1)(xi) For cold temperature CO exhaust emission compliance for each engine family, the Administrator will select for testing the vehicle expected to emit the highest emissions from the vehicles selected in accordance with paragraphs (b)(1) (i), (ii), (iii), and (iv) of this section. This vehicle shall be tested by the manufacturer in accordance with the test procedures in subpart C of this part or with alternative procedures requested by the manufacturer and approved in advance by the Administrator.

(2) *Otto-cycle heavy-duty emission-data engines.* This paragraph (b)(2) applies to Otto-cycle heavy-duty engines.

(i)–(ii) [Reserved]

(iii) The Administrator shall select a maximum of two engines within each engine family based upon features indicating that they may have the highest emission levels of the engines in the engine family as follows:

(A) The Administrator shall select one emission-data engine first based on the largest displacement within the engine family. Then within the largest displacement the Administrator shall select, in the order listed, highest fuel flow at the speed of maximum rated torque, the engine with the most advanced spark timing, no EGR or lowest EGR flow, and no air pump or lowest actual flow air pump.

(B) The Administrator shall select one additional engine, from within each engine family. The engine selected shall be the engine expected to exhibit the highest emissions of those engines remaining in the engine family. If all engines within the engine family are similar the Administrator may waive the requirements of this paragraph.

(iv) If the engines selected in accordance with paragraphs (b)(2) (ii) and (iii) of this section do not represent each engine displacement-exhaust emission control system combination, then one engine of each engine displacement-exhaust emission control system combination not represented shall be selected by the Administrator.

(v) Within an engine family/displacement/control system combination, the manufacturer may alter any emission-data engine (or other engine including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraph (b)(2)(iii) of this section.

(3) *Diesel heavy-duty emission-data engines.* This paragraph (b)(3) applies to diesel heavy-duty emission-data vehicles.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into groups based upon their exhaust emission control systems. One engine of each system combination shall be run for smoke emission data and gaseous emission data. Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine system combinations, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

(iii) The Administrator may select a maximum of one additional engine within each engine-system combination based upon features indicating that it may have the highest emission levels of the engines of that combination. In selecting this engine, the Administrator will consider such features as the injection system, fuel system, compression ratio, rated speed, rated horsepower, peak torque speed, and peak torque.

(iv) Within an engine family control system combination, the manufacturer may alter any emission-data engine (or other engine including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraphs (b)(3) (ii) and (iii) of this section.

(c) *Durability data*—(1) *Light-duty vehicle durability-data vehicles.* This paragraph (c)(1) applies to light-duty vehicle durability-data vehicles.

(i) A durability-data vehicle will be selected by the Administrator to represent each engine-system combination. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with that control-system combination in that engine family and will be designated by the Administrator as to transmission type, fuel system, inertia weight class, and test weight.

(ii) A manufacturer may elect to operate and test additional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system and inertia weight class as the vehicle selected for that engine-system combination in accordance with the provisions of paragraph (c)(1)(i) of this section. Notice of an intent to operate and test additional vehicles shall be given to the Administrator no later than 30 days following notification of the test fleet selection.

(2) *Light-duty trucks.* This paragraph (c)(2) applies to vehicles, engines, subsystems, or components used to establish exhaust emission deterioration factors for light-duty trucks.

(i) The manufacturer shall select the vehicles, engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether vehicles, engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use vehicles, based on good engineering judgment.

(ii) [Reserved]

(3) *Heavy-duty engines.* This paragraph (c)(3) applies to engines, subsystems, or components used to establish exhaust emission deterioration factors for heavy-duty engines.

(i) The manufacturer shall select the engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use engines, based on good engineering judgment.

(ii) [Reserved]

(d) For purposes of testing under § 86.092–26(a)(9) or (b)(11), the Administrator may require additional emission-data vehicles (or emission-data engines) and durability-data vehicles (light-duty vehicles only) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section, *Provided* that the number of vehicles (or engines) selected shall not increase the size of either the emission-data fleet or the durability-data fleet by more than 20 percent or one vehicle (or engine), whichever is greater.

(e)(1) [Reserved]

(2) Any manufacturer may request to certify engine families with combined total sales of fewer than 10,000 light-duty vehicles, light-duty trucks, heavy-

duty vehicles, and heavy-duty engines utilizing the procedures contained in § 86.092–14 of this subpart for emission-data vehicle selection and determination of deterioration factors. The deterioration factors shall be applied only to entire engine families.

(f) In lieu of testing an emission data or durability data vehicle (or engine) selected under paragraph (b) or (c) of this section, and submitting data therefore, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data and/or fuel evaporative emission data, as applicable on a similar vehicle (or engine) for which certification has previously been obtained or for which all applicable data required under § 86.091–23 has previously been submitted.

(g)(1) This paragraph (g) applies to light-duty vehicles and light-duty trucks, but does not apply to the production vehicles selected under paragraph (h) of this section.

(2)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, may be equipped with an item (whether that item is standard equipment or an option), the full estimated weight of that item shall be included in the curb weight computation of each vehicle available with that item in that carline, within that engine-system combination.

(ii) Where it is expected that 33 percent or less of the carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option), no weight for that item will be added in computing the curb weight for any vehicle in that carline, within that engine-system combination, unless that item is standard equipment on the vehicle.

(iii) In the case of mutually exclusive options, only the weight of the heavier option will be added in computing the curb weight.

(iv) Optional equipment weighing less than three pounds per item need not be considered.

(3)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items shall actually be installed (unless excluded under paragraph (g)(3)(ii) of this section) on all emission-data and durability-data vehicles of that carline, within that engine-system combination, on which the items are intended to be offered in production. Items that can reasonably be expected to influence emissions are: Air conditioning, power steering, power brakes, and other items determined by the Administrator.

(ii) If the manufacturer determines by test data or engineering evaluation that the actual installation of the optional equipment required by paragraph (g)(3)(i) of this section does not affect the emissions or fuel economy values, the optional equipment need not be installed on the test vehicle.

(iii) The weight of the options shall be included in the design curb weight and also be represented in the weight of the test vehicles.

(iv) The engineering evaluation, including any test data, used to support the deletion of optional equipment from test vehicles, shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(4) Where it is expected that 33 percent or less of a carline within an engine-system combination will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, that item shall not be installed on any emission-data vehicle or durability-data vehicle of that carline, within that engine-system combination, unless that item is standard equipment on that vehicle or specifically required by the Administrator.

(h) *Alternative Durability Program durability-data vehicles.* This paragraph (h) applies to light-duty vehicle and light-duty truck durability-data vehicles selected under the Alternative Durability Program described in § 86.085–13.

(1) To update the durability data to be used to determine a deterioration factor for each engine family group, the Administrator will select durability-data vehicles from the manufacturer's production line. Production vehicles will be selected from each model year's production for those vehicles certified using the Alternative Durability Program procedures.

(i) The Administrator shall select the production durability-data vehicle designs from the designs that the manufacturer offers for sale. For each model year and for each engine family group, the Administrator may select production durability-data vehicle designs of equal number to the number of engine families within the engine family group, up to a maximum of three vehicles.

(ii) The production durability-data vehicles representing the designs selected in paragraph (h)(1)(i) of this section will be randomly selected from the manufacturer's production. The Administrator will make these random selections unless the manufacturer (with prior approval of the Administrator) elects to make the random selections.

(iii) The manufacturer may select additional production durability-data vehicle designs from within the engine family group. The production durability-data vehicles representing these designs shall be randomly selected from the manufacturer's production in accordance with paragraph (h)(1)(ii) of this section.

(iv) For each production durability-data vehicle selected under paragraph (h)(1) of this section, the manufacturer shall provide to the Administrator (before the vehicle is tested or begins service accumulation) the vehicle identification number. Before the vehicle begins service accumulation the manufacturer shall also provide the Administrator with a description of the durability-data vehicle as specified by the Administrator.

(v) In lieu of testing a production durability-data vehicle selected under paragraph (h)(1) of this section, and submitting data therefrom, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data from a production vehicle of the same configuration for which all applicable data has previously been submitted.

(2) If, within an existing engine family group, a manufacturer requests to certify vehicles of a new design, engine family, emission control system, or with any other durability-related design difference, the Administrator will determine if the existing engine family group deterioration factor is appropriate for the new design. If the Administrator cannot make this determination or deems the deterioration factor not appropriate, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles with the new design under the provisions of paragraph (h)(1) of this section.

(3) If a manufacturer requests to certify vehicles of a new design that the Administrator determines are a new engine family group, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles of that design under the provisions of paragraph (h)(1) of this section.

* * * * *

14. Section 86.095–35 is amended by revising paragraphs (a) introductory text through (a)(1)(iii)(E), (a)(2)((iii)(L) through (a)(3)(iii)(H), (a)(3)(iii)(J) through (b), (d)(2) through (h) and by adding paragraphs (a)(1)(iii)(L) and (a)(2)(iii)(K) to read as follows:

**§ 86.095–35 Labeling.**

* * * * *

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards (and family emission limits, as appropriate) of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a Certificate of Conformity under § 86.091–30(a).

(1) *Light-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the Certificate of Conformity for such vehicle, in such manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches or liters), engine family identification, and evaporative family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family emission limits, as applicable), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to light-duty vehicles;

* * * * *

(L) If applicable, a statement that the vehicle is exempt from cold temperature carbon monoxide standards.

(2) * * *

(iii) * * *

(K) The vacuum hose routing diagram applicable to the vehicles if the vehicles are equipped with vacuum actuated emission and emission-related components. The manufacturer may, at its option, use a separate label for the vacuum hose routing diagram provided that the vacuum hose diagram is placed in a visible and accessible position as provided by this section.

(L) [Reserved]

(M) Vehicles granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(N) If applicable, a statement that the vehicle is exempt from cold temperature carbon monoxide standards.

(3) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle.

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: "Important Engine Information.";

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches or liters) and engine family and model designations;

(D) Date of engine manufacture (month and year). The manufacturer may, in lieu of including the date of manufacture on the engine label, maintain a record of the engine manufacture dates. The manufacturer shall provide the date of manufacture records to the Administrator upon request;

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation;

(F) For Otto-cycle engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), and valve lash;

(G) For diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in $mm^3$/stroke, valve lash, initial injection timing, and idle speed;

(H) The prominent statement: "This engine conforms to U.S. EPA regulations applicable to 19XX Model Year New Heavy-Duty Engines.";

* * * * *

(J) *For diesel engines.* The prominent statement: "This engine has a primary intended service application as a XXX heavy-duty engine." (The primary intended service applications are light, medium, and heavy, as defined in § 86.902–2.);

(K) *For Otto-cycle engines.* One of the following statements, as applicable:

(*1*) For engines certified to the emission standards under § 86.091–10 (a)(1)(i) or (iii), the statement: "This engine is certified for use in all heavy-duty vehicles.";

(*2*) For gasoline-fueled engines certified under the provisions of § 86.091–10(a)(3)(i), the statement: "This engine is certified for use in all heavy-duty vehicles under the special provision of 40 CFR 86.091–10(a)(3)(i).";

(*3*) For engines certified to the emission standards under § 86.091–10(a)(1) (ii) or (iv), the statement: "This engine is certified for use only in heavy-duty vehicles with a gross vehicle weight rating above 14,000 lbs.";

(L) For diesel engines which are included in the diesel heavy-duty particulate averaging program, the family particulate emission limit to which the engine is certified;

(M) For any heavy-duty engines which are included in the heavy-duty $NO_x$ averaging program, the family $NO_x$ emission limit to which the engine is certified;

(N) Engines granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(iv) The label may be made up of one or more pieces: Provided, That all pieces are permanently attached to the same engine or vehicle part as applicable.

(4) *Gasoline-fueled and methanol-fueled heavy-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment. If such vehicles do not have an engine compartment, the label required in paragraphs (a)(4) and (g)(1)

of this section shall be affixed in a readily visible position on the operator's enclosure or on the engine.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the Certificate of Conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Evaporative family identification;

(D) The maximum nominal fuel tank capacity (in gallons) for which the evaporative control system is certified; and

(E) One of the following, as appropriate:

(*1*) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to gasoline-fueled heavy-duty vehicles;

(*2*) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to methanol-fueled heavy-duty vehicles;

(F) Vehicles granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

* * * * *

(d) * * *

(2) *Heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions.* "This heavy-duty vehicle conforms to the U.S. EPA regulations applicable to 19XX Model Year Light-Duty Trucks under the special provision of 40 CFR 86.085–1(b) when it does not exceed XXX pounds in curb weight, XXX pounds in gross vehicle weight rating, and XXX square feet in frontal area."

(e) Incomplete heavy-duty vehicles having a gross vehicle weight rating of 8,500 pounds or less shall have one of the following statements printed on the label required by paragraph (a)(3) of this section in lieu of the statement required by paragraph (a)(3)(iii)(H) of this section: "This engine conforms to U.S. EPA regulations applicable to 19XX Model Year Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area of greater than 45 square feet."

(f) The manufacturer of any incomplete light-duty vehicle or light-duty truck shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR part 568.

(g) *Incomplete vehicle fuel tank capacity.* (1)(i) Incomplete gasoline-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Gasoline-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed XXX gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.092–35(g)(2)."

(ii) Incomplete methanol-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Methanol-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed XXX gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.091–35(g)(2)."

(2) Persons wishing to add fuel tank capacity beyond the maximum specified on the label required in paragraph (g)(1) of this section shall:

(i) Increase the amount of fuel tank vapor storage material according to the following function:

$$Cap_f = Cap_i \left( \frac{T.\ Vol.}{Max.\ Vol.} \right)$$

Where:

$Cap_f$ = final amount of fuel tank vapor storage material, grams.

$Cap_i$ = initial amount of fuel tank vapor storage material, grams.

T. Vol. = total fuel tank volume of completed vehicle, gallons.

Max. Vol. = maximum fuel tank volume as specified on the label required in paragraph (g)(1) of this section, gallons.

(ii) Use, if applicable, hosing for fuel vapor routing which is at least as impermeable to hydrocarbon vapors as that used by the primary manufacturer.

(iii) Use vapor storage material with the same absorptive characteristics as that used by the primary manufacturer.

(iv) Connect, if applicable, any new hydrocarbon storage device to the existing hydrocarbon storage device in series such that the original hydrocarbon storage device is situated between the fuel tank and the new hydrocarbon storage device. The original hydrocarbon storage device shall be sealed such that vapors cannot reach the atmosphere. The elevation of the original hydrocarbon storage device shall be equal to or lower than the new hydrocarbon storage device.

(v) Submit a written statement to the Administrator that paragraphs (g)(2)(i) through (g)(2)(iv) of this section have been complied with.

(3) If applicable, the Administrator will send a return letter verifying the receipt of the written statement required in paragraph (g)(2)(v) of this section.

(h) *Notification of nonconformance penalty.* (1) Light-duty trucks and heavy-duty vehicles and engines for which nonconformance penalties are to be paid in accordance with § 86.1113–87(b) shall have the following information printed on the label required in paragraph (a) of this section. The manufacturer shall begin labeling production engines or vehicles within 10 days after the completion of the PCA. This statement shall read: "The manufacturer of this engine/vehicle will pay a nonconformance penalty to be allowed to introduce it into commerce at an emission level higher than the applicable emission standard. The compliance level (or new emission standard) for this engine/vehicle is XXX." (The manufacturer shall insert the applicable pollutant and compliance level calculated in accordance with § 86.1112–87(a).)

(2) If a manufacturer introduces an engine or vehicle into commerce prior to the compliance level determination of § 86.1112–87(a), it shall provide the

engine or vehicle owner with a label as described above to be affixed in a location in proximity to the label required in paragraph (a) of this section within 30 days of the completion of the PCA.

* * * * *

15. Section 86.096–8 is amended by revising paragraphs (b) through (h) and by adding paragraph (k) to read as follows:

**§ 86.096–8 Emission standards for 1996 and later model year light duty vehicles.**

* * * * *

(b) Fuel evaporative emissions from 1996 and later model year light-duty vehicles shall not exceed (compliance with these standards is optional for 1994 and 1995 model year methanol-fueled engines):

(1) *Hydrocarbons (for gasoline-fueled vehicles).* 2.0 grams per test.

(2) *Organic Material Hydrocarbon Equivalent (for methanol-fueled vehicles).* 2.0 grams carbon per test.

(3) The standards set forth in paragraphs (b) (1) and (2) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1994 and later model year Otto-cycle or methanol-fueled diesel light-duty vehicle.

(d) through (f) [Reserved].

(g) Any 1994 and later model year light-duty vehicle that a manufacturer wishes to certify for sale shall meet the emission standards under both low- and high-altitude conditions as specified in § 86.082–2, except as provided in paragraphs (h) and (i) of this section. Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. Any emission control device used to meet emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(h) The manufacturer may exempt 1994 and later model year vehicles from compliance at high altitude with the emission standards set forth in paragraphs (a) and (b) of this section if the vehicles are not intended for sale at high altitude and if the requirements of paragraphs (h) (1) and (2) of this section are met.

(1) A vehicle configuration shall only be considered eligible for exemption under paragraph (h) of this section if the requirements of either paragraph (h)(1) (i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle-speed ratio (N/V)) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the equivalent vehicle test weight expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$, where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(C) The exemption line is then defined by the equation, $N/V = C(0.84\ D/W)^{-0.9}$, where the constant, C is the same as that found in paragraph (h)(1)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (h)(1)(i) of this section and by using the product line $N/V = C(hp/W)^{-0.9}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349, June 1990, Engine Power Test Code—Spark Ignition and Compression Ignition—Net Power Rating. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAE International, 400 Commonwealth Drive, Warrendale, PA, 15096–0001. Copies may be inspected at U.S. EPA, OAR, 401 M Street, SW., Washington, DC, 20460, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (h)(1)(ii) of this section to any manufacturer that has exempted vehicle configurations as set forth in paragraph (h)(1)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 miles per hour to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in making this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicle configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (h)(1)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraphs (h)(1)(iii) (A) and (B) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (h)(1)(iii) of this section.

(2) A vehicle shall only be considered eligible for exemption under this paragraph if at least one configuration of its model type (and transmission configuration in the case of vehicles equipped with manual transmissions, excluding differences due to the presence of overdrive) is certified to meet emission standards under high-altitude conditions as specified in paragraphs (a) through (c) and paragraph (g) of this section. The Certificate of Conformity (the Certificate) covering any exempted configuration(s) will also apply to the corresponding non-exempt

configuration(s) required under this paragraph (h)(2). As a condition to the exemption, any suspension, revocation, voiding, or withdrawal of the Certificate as it applies to a non-exempt configuration for any reason will result in a suspension of the Certificate as it applies to the corresponding exempted configuration(s) of that model type, unless there is at least one other corresponding non-exempt configuration of the same model type still covered by the Certificate. The suspension of the Certificate as it applies to the exempted configuration(s) will be terminated when any one of the following occurs:

(i) Another corresponding non-exempt configuration(s) receive(s) coverage under the Certificate; or

(ii) Suspension of the Certificate as it applies to the corresponding non-exempt configuration(s) is terminated; or

(iii) The Agency's action(s), with respect to suspension, revocation, voiding, or withdrawal of the Certificate as it applies to the corresponding non-exempt configuration(s), is reversed.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (h) of this section will be considered a violation of Section 203(a)(1) of the Clean Air Act.

* * * * *

(k) *Cold Temperature Carbon Monoxide (CO) Standards. Light light-duty trucks.* Exhaust emissions from 1998 and later model year gasoline-fueled light-duty vehicles shall not exceed the cold temperature CO standard of 10.0 grams per mile for an intermediate useful life of 50,000 miles, as measured and calculated under the provisions set forth in Subpart C of this part. This standard applies under both low and high altitude conditions.

* * * * *

16. Section 86.097-9 is amended by adding paragraph (k) to read as follows:

**§ 86.097-9 Emission standards for 1997 and later model year light-duty trucks.**

* * * * *

(k)(1) *Cold Temperature Carbon Monoxide (CO) Standards—Light light-duty trucks.* Exhaust emissions from 1997 and later model year light light-duty trucks with a loaded vehicle weight of 3,750 lbs or less shall not exceed the cold temperature CO standard of 10.0 grams per mile and light light-duty trucks with a loaded vehicle weight of greater than 3,750 lbs shall not exceed a cold temperature CO standard of 12.5 grams per mile, both for an intermediate useful life of 50,000 miles and as measured and calculated under the provisions set forth in subpart C of this part. This standard applies under both low and high altitude conditions.

(2) *Heavy light-duty trucks.* Exhaust emissions from 1997 and later model year heavy light-duty trucks shall not exceed the cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles, as measured and calculated under the provisions set forth in subpart C of this part. This standard applies under both low and high altitude conditions.

* * * * *

17. A new subpart C is added to Part 86 to read as follows:

**Subpart C—Emission Regulations for 1994 and Later Model Year Gasoline-Fueled New Light-Duty Vehicles and New Light-Duty Trucks; Cold Temperature Test Procedures**

Sec.


86.201–94 General applicability.
86.202–94 Definitions.
86.203–94 Abbreviations.
86.204–94 Section numbering; construction.
86.205–94 Introduction; structure of this subpart.
86.206–94 Equipment required; overview.
86.207–94 [Reserved]
86.208–94 Dynamometer.
86.209–94 Exhaust gas sampling system; gasoline-fueled vehicles.
86.210–94 [Reserved]
86.211–94 Exhaust gas analytical system.
86.212–94 [Reserved]
86.213–94 Fuel specifications.
86.214–94 Analytical gases.
86.215–94 EPA urban dynamometer driving schedule.
86.216–94 Calibrations, frequency and overview.
86.217–94 [Reserved]
86.218–94 Dynamometer calibration.
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86.221–94 Hydrocarbon analyzer calibration.
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86.225–94 [Reserved]
86.226–94 Calibration of other equipment.
86.227–94 Test procedures; overview.
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86.229–94 Road load force, test weight, and inertia weight class determination.
86.230–94 Test sequence; general requirements.
86.231–94 Vehicle preparation.
86.232–94 Vehicle preconditioning.
86.233–94 [Reserved]
86.234–94 [Reserved]
86.235–94 Dynamometer procedure.
86.236–94 Engine starting and restarting.
86.237–94 Dynamometer test run, gaseous emissions.
86.238–94 [Reserved]
86.239–94 [Reserved]
86.240–94 Exhaust sample analysis.
86.241–94 [Reserved]
86.242–94 Records required.
86.243–94 [Reserved]
86.244–94 Calculations; exhaust emissions.
86.245–94 [Reserved]
86.246–94 Intermediate temperature testing.


**Subpart C—Emission Regulations for 1994 and Later Model Year Gasoline-Fueled New Light-Duty Vehicles and New Light-Duty Trucks; Cold Temperature Test Procedures**

**§ 86.201–94 General applicability.**

(a) This subpart describes procedures for determining the cold temperature carbon monoxide (CO) emission from 1994 and later model year new gasoline-fueled light-duty vehicles and light-duty trucks.

(b) All of the provisions of this subpart are applicable to testing conducted at a nominal temperature of 20°F (−7°C).

(c) The provisions that are specially applicable to testing at temperatures between 25°F (−4°C) and 68°F (20°C) are specified in § 86.246–94 of this subpart.

**§ 86.202–94 Definitions.**

The definitions in subpart A of this part apply to this subpart.

**§ 86.203–94 Abbreviations.**

The abbreviations in subpart A of this part apply to this subpart.

**§ 86.204–94 Section numbering; construction.**

(a) In the section number, the two digits following the hyphen designate the first model year for which a section is effective. A section remains effective until superseded.

(b) *Example.* Section 86.204–94 applies to the 1994 and subsequent model years until superseded. If a § 86.204–96 is promulgated it would take effect beginning with the 1996 model year; § 86.204–94 would apply to model years 1994 through 1995.

**§ 86.205–94 Introduction; structure of this subpart.**

(a) This subpart describes the equipment required and the procedures to follow in order to perform gaseous exhaust emission tests on gasoline-fueled light-duty vehicles and light-duty trucks. Subpart A of this part sets forth testing requirements and test intervals necessary to comply with EPA certification procedures.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model years.

(c) Three topics are addressed in this subpart. Sections 86.206 through 86.215

set forth specifications and equipment requirements; §§ 86.216 through 86.226 discuss calibration methods and frequency; test procedures and data requirements are listed (in approximate order of performance) in §§ 86.227 through 86.245.

**§ 86.206–94 Equipment required; overview.**

This subpart contains procedures for exhaust emission tests on gasoline-fueled light-duty vehicles and light-duty trucks. Equipment required and specifications are as follows:

(a) *Exhaust emission tests.* Exhaust from gasoline-fueled vehicles is tested for gaseous emissions using the Constant Volume Sampler (CVS) concept (§ 86.209). Equipment necessary and specifications appear in §§ 86.208 through 86.214.

(b) *Fuel, analytical gas, and driving schedule specifications.* Fuel specifications for exhaust emission testing for gasoline-fueled vehicles are specified in § 86.213. Analytical gases are specified in § 86.214. The EPA Urban Dynamometer Driving Schedule (UDDS) for use in gasoline-fueled emission tests is specified in § 86.215 and appendix I to this part.

**§ 86.207–94 [Reserved]**

**§ 86.208–94 Dynamometer.**

(a) For testing that is conducted by the Administrator, the dynamometer shall have a single roll with a nominal diameter of 48 inches (1.22 meters), an electrical power absorption unit for simulation of road load power, flywheels or other means for simulating the inertia weight as specified in § 86.229, and a roll or shaft revolution counter or other means for determining distance driven.

(b) For certification testing that is conducted by the manufacturer, a dynamometer with different characteristics may be used provided cold CO emissions are not decreased.

**§ 86.209–94 Exhaust gas sampling system; gasoline-fueled vehicles.**

The provisions of § 86.109–90 apply to this subpart.

**§ 86.210–94 [Reserved]**

**§ 86.211–94 Exhaust gas analytical system.**

The provisions of § 86.111 apply to this subpart, except that the $NO_x$ analyzer is optional.

**§ 86.212–94 [Reserved]**

**§ 86.213–94 Fuel specifications.**

Gasoline having the following specifications will be used by the Administrator. Gasoline having the specifications set forth in the table in this section, or substantially equivalent specifications approved by the Administrator, may be used by the manufacturer except that the octane specification does not apply. In lieu of using gasoline having these specifications, the manufacturer may, for certification testing, use gasoline having the specifications specified in § 86.113–90 provided the cold CO emissions are not decreased. Documentation showing that cold CO emissions are not decreased shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

TABLE.—COLD CO FUEL SPECIFICATIONS

| Item | ASTM test | Cold CO low octane value or range | Cold CO high octane [1] value or range |
|---|---|---|---|
| (RON + MON)/2, min | D2699 | 87.8±.3 | 92.3±0.5 |
| Sensitivity, min | D2699 | 7.5 | 7.5 |
| Distillation range: | | | |
| IBP, °F | D86 | 76–96 | 76–96 |
| 10% point, °F | D86 | 98–118 | 105–125 |
| 50% point, °F | D86 | 179–214 | 195–225 |
| 90% point, °F | D86 | 316–346 | 316–346 |
| EP, max, °F | D86 | 413 | 413 |
| Sulfur, wt. % | D3120 | 0.035±0.015 | 0.020±0.015 |
| Phosphorous, g/U.S gal, max | D3231 | 0.005 | 0.005 |
| Lead, g/gal, max | | 0.01 | 0.01 |
| RVP, psi | D4953 | 11.5±.3 | 11.5±.3 |
| Hydrocarbon composition | D1319 | | |
| Olefins, vol. pct | | 12.5±5.0 | 10.0±5.0 |
| Aromatics, vol. pct | | 26.4±4.0 | 32.0±4.0 |
| Saturates | | Remainder | Remainder |

[1] Gasoline having these specifications may be used for vehicles which are designed for the use of high-octane premium fuel.

**§ 86.214–94 Analytical gases.**

The provisions of § 86.114–94 apply to this subpart.

**§ 86.215–94 EPA urban dynamometer driving schedule.**

The provisions of § 86.115–78 apply to this subpart.

**§ 86.216–94 Calibrations, frequency and overview.**

The provisions of § 86.116–94 apply to this subpart.

**§ 86.217–94 [Reserved]**

**§ 86.218–94 Dynamometer calibration.**

The provisions of § 86.118–78 apply to this subpart.

**§ 86.219–94 CVS calibration.**

The provisions of § 86.119–90 apply to this subpart.

**§ 86.220–94 [Reserved]**

**§ 86.221–94 Hydrocarbon analyzer calibration.**

The provisions of § 86.121–90 apply to this subpart.

**§ 86.222–94 Carbon monoxide analyzer calibration.**

The provisions of § 86.122–78 apply to this subpart.

**§ 86.223–94 Oxides of nitrogen analyzer calibration.**

The provisions of § 86.123–78 apply to this subpart if $NO_x$ measurements are optionally made.

**§ 86.224–94 Carbon dioxide analyzer calibration.**

The provisions of § 86.124–78 apply to this subpart.

**§ 86.225–94 [Reserved]**

**§ 86.226–94 Calibration of other equipment.**

The provisions of § 86.126 apply to this subpart.

**§ 86.227–94 Test procedures; overview.**

The provisions of § 86.127–94 (a), (b), and (e) apply to this subpart.

**§ 86.228–94 Transmissions.**

The provisions of § 86.128–79 apply to this subpart.

**§ 86.229–94 Road load force, test weight, and inertia weight class determination.**

(a) Flywheels, electrical forces, or other means of simulating test weight as shown in the table in this paragraph shall be used. If the equivalent test weight specified is not available on the dynamometer being used, the next higher equivalent test weight (not to exceed 250 pounds) available shall be used. Light-duty vehicles over 5750 lbs. loaded vehicle weight shall be tested at a 5,500 lb. equivalent test weight.

| Loaded vehicle weight (pounds) | Equivalent test weight (pounds) | Inertia weight class (pounds) |
|---|---|---|
| Up–1,062 | 1,000 | 1,000 |
| 1,063–1,187 | 1,125 | 1,000 |
| 1,188–1,312 | 1,250 | 1,250 |
| 1,313–1,437 | 1,375 | 1,250 |
| 1,438–1,562 | 1,500 | 1,500 |
| 1,563–1,687 | 1,625 | 1,500 |
| 1,688–1,812 | 1,750 | 1,750 |
| 1,813–1,937 | 1,875 | 1,750 |
| 1,938–2,062 | 2,000 | 2,000 |
| 2,063–2,187 | 2,125 | 2,000 |
| 2,188–2,312 | 2,250 | 2,250 |
| 2,313–2,437 | 2,375 | 2,250 |
| 2,438–2,562 | 2,500 | 2,500 |
| 2,563–2,687 | 2,625 | 2,500 |
| 2,688–2,812 | 2,750 | 2,750 |
| 2,813–2,937 | 2,875 | 2,750 |
| 2,938–3,062 | 3,000 | 3,000 |
| 3,063–3,187 | 3,125 | 3,000 |
| 3,188–3,312 | 3,250 | 3,000 |
| 3,313–3,437 | 3,375 | 3,500 |
| 3,438–3,562 | 3,500 | 3,500 |
| 3,563–3,687 | 3,625 | 3,500 |
| 3,688–3,812 | 3,750 | 3,500 |
| 3,813–3,937 | 3,875 | 4,000 |
| 3,938–4,125 | 4,000 | 4,000 |
| 4,126–4,375 | 4,250 | 4,000 |
| 4,376–4,625 | 4,500 | 4,500 |
| 4,626–4,875 | 4,750 | 4,500 |
| 4,876–5,125 | 5,000 | 5,000 |
| 5,126–5,375 | 5,250 | 5,000 |
| 5,376–5,750 | 5,500 | 5,500 |
| 5,751–6,250 | 6,000 | 6,000 |
| 6,251–6,750 | 6,500 | 6,500 |
| 6,751–7,250 | 7,000 | 7,000 |
| 7,251–7,750 | 7,500 | 7,500 |
| 7,751–8,250 | 8,000 | 8,000 |
| 8,251–8,750 | 8,500 | 8,500 |
| 8,751–9,250 | 9,000 | 9,000 |
| 9,251–9,750 | 9,500 | 9,500 |
| 9,751–10,000 | 10,000 | 10,000 |

(b) A dynamometer which meets the specifications of § 86.208–94(a) shall be adjusted to simulate the operation of a vehicle on the road at 20 °F (−7 °C). Such adjustment may be based on a determination of the road load force profile at 20 °F (−7 °C). Alternatively, the adjustment may be based on a 10 percent decrease in the target coastdown time that is used for FTP testing.

**§ 86.230–94 Test sequence: general requirements.**

(a) *Sequence steps.* Figure C94–1 shows the steps encountered as the test vehicle undergoes the procedures subsequently described, to determine conformity with the standards set forth.

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## Figure C94-1

## Cold CO Test Procedure

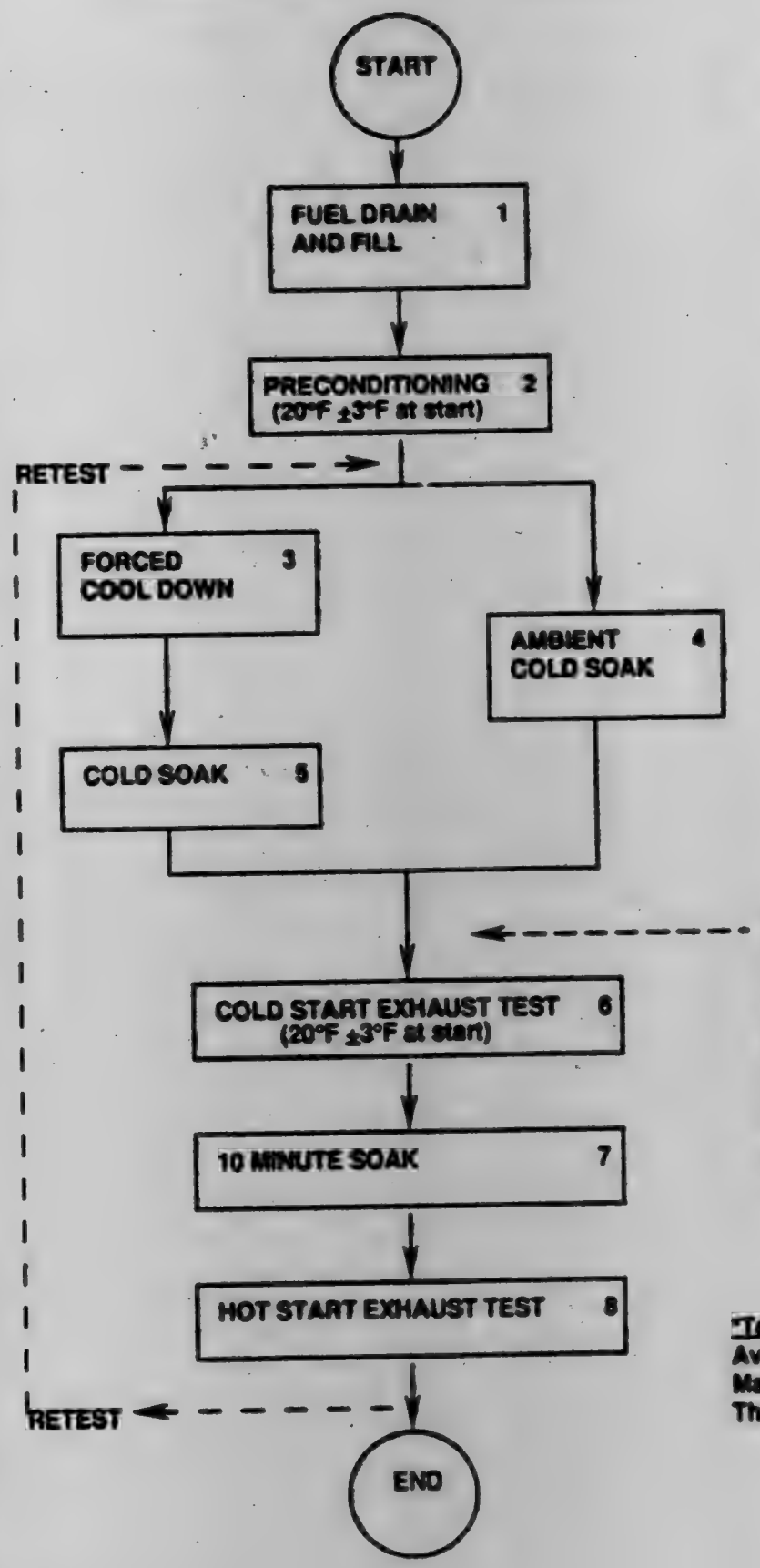


| STEP | NOTE |
|---|---|
| 1 | Winter grade fuel (Optional use of FTP fuel by manufacturer) |
| 2* | Full UDDS (Optional use of higher temp by manufacturer) |
| 3 | • No time specifications<br>• Uniform vehicle cooling<br>• Oil Temp. at 20°F ±3°F |
| 4* | 12-36 hours |
| 5* | 1 hour minimum |
| 6* | Full UDDS |
| 7 | On dynamometer |
| 8* | Partial UDDS (505 sec.) |

NOTE: If vehicle leaves 20° soak area to transiler to 20° test area and passes through a warm area (>25°F) it must be restabilized in the test cell for six times the period it was exposed to the warmer temperature.

| *Temperature Specifications | |
|---|---|
| Average | 20°F ±5°F |
| Maximum excursions | 10°F min., 30°F max. |
| Three-minute excursions | 15°F min., 25°F max. |

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(b) *Driving schedule.* The Urban Dynamometer Driving Schedule (UDDS) test procedure (see § 86.115 and Appendix I to this part) is used for vehicle preconditioning and testing.

(c) *Ambient temperature level.* (1) Ambient temperature levels encountered by the test vehicle shall average 20 °F±5 °F (−7 °C±2.8 °C) and shall not be less than 10 °F (−14 °C) nor more than 30 °F (−1 °C) during vehicle preconditioning, except for preconditioning performed in accordance with § 86.232(a)(7), and during all emission testing.

(2) The ambient temperature reported shall be a simple average of the test cell temperatures measured at constant intervals no more than one minute apart. Before the driving cycle may begin, the test cell temperature shall be 20 °F±3 °F (−7 °C±1.7 °C) when measured in accordance with paragraph (e)(2) of this section. The temperature may not exceed 25 °F (−4 °C) or fall below 15 °F (−9 °C) for more than three consecutive minutes during the test.

(d) *Vehicle positioning.* The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

(e) *Engine compartment cooling.* (1) Fixed speed air cooling of the engine compartment with the compartment cover open shall be utilized during testing that is conducted by the Administrator and, optionally for certification testing, by the manufacturer. If a separate movable fan is used, it shall be squarely positioned within 12 inches (30.5 centimeters) of the front of vehicles with front engine compartments. In the case of vehicles with rear engine compartments (or if special designs make the normal front engine positioning impractical), the cooling fan shall be placed in a position to provide sufficient air to maintain vehicle cooling. The fan capacity shall normally not exceed 5,300 cfm (2.50 cubic meters per second). If, however, the manufacturer showed (as provided in § 86.135–94(b)) that additional cooling is necessary, the fan capacity may be increased or additional fans used if approved in advance by the Administrator. The cooling air temperature shall be measured at the inlet to the fan.

(2) In lieu of using a separate fan, an air handling system that is integral with the test cell may be used provided comparable air movement is obtained. The cooling air temperature shall be measured in the center of a vertical plane that is located approximately 2 feet in front of the vehicle.

(3) The manufacturer may use, for certification testing, alternative engine compartment cooling fans or systems, including those which provide a variable air flow, if the manufacturer has determined that comparable results are obtained.

(f) *Heater and defroster usage.* The heater and defroster may be used at any temperature and fan settings.

**§ 86.231–94 Vehicle preparation.**

The provisions of § 86.131–90 apply to this subpart.

**§ 86.232–94 Vehicle preconditioning.**

(a) The vehicle shall be moved to the test area and the following operations performed:

(1) The fuel tank(s) shall be filled to approximately the prescribed "tank fuel volume" with the test fuel specified § 86.213. If the existing fuel in the fuel tank(s) does not meet the specifications contained in § 86.213, the existing fuel must be drained prior to the fuel fill. The test fuel shall be at a temperature less than or equal to 60 °F. For the operations in this paragraph (a)(1), the evaporative emission control system shall neither be abnormally purged nor abnormally loaded.

(2) For operation on a 48-inch (1.22 metre) diameter single roll dynamometer, the drive wheel tires shall be inflated to the pressure recommended by the tire manufacturer. For operation on a twin-roll dynamometer, the drive wheel tires may be inflated to a gauge pressure of 40 psi (276 kPa). The drive wheel tire pressures shall be reported with the test results.

(3) The fuel in the vehicle shall be stabilized at 20 F°±10 °F (−7 °C±5.6 °C) prior to the start of the driving cycle except when vehicle peconditioning is performed in accordance with paragraph (a)(7) of this section.

(4) The vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one UDDS cycle.

(5) For those unusual circumstances where additional preconditioning is desired by the manufacturer, such preconditioning may be allowed with the advance approval of the Administrator.

(6) The Administrator may also choose to conduct additional preconditioning. The additional preconditioning shall consist of one or more driving cycles of the UDDS, as described in paragraph (a)(4) of this section.

(7) The manufacturer may, for certification testing, precondition vehicles at temperatures above 20 °F (−7 °C) and with temperature tolerances greater than those specified in § 86.230(a) if the manufacturer has determined that such preconditioning does not decrease CO emissions during the testing specified in § 86.237.

(b) Within five minutes of completion of preconditioning, the vehicle shall be shut off. During this five minute period, the vehicle shall not experience ambient temperatures less than 10 °F (−12 °C) nor more than 30 °F (−1 °C).

(c) One of the following two methods shall be utilized to stabilize the vehicle before the emissions test:

(1) *Storing at cold temperatures.* The vehicle shall be stored for not less than 12 hours nor for more than 36 hours prior to the cold start exhaust test. The ambient temperature (dry bulb) during this period shall be maintained at an average temperature of 20 °F±5 °F (−7 °C±2.8 °C) during each hour of this period and shall not be less than 10 °F (−12 °C) nor more than 30 °F (−1 °C). The ambient temperature reported shall be a simple average of the test cell temperature measured at constant intervals no more than one minute apart. In addition, the temperature may not exceed 25 °F (−4 °C) or fall below 15 °F (−9 °C) for more than three consecutive minutes.

(2) *Force-cooling or warming.* (i) The vehicle shall be stored for no more than 36 hours prior to cooling or warming for the cold start exhaust test. The vehicle shall not be stored at ambient temperatures which exceed 86 °F (30 °C) during this period.

(ii) Vehicle cooling may be accomplished by either force-cooling or force-warming the vehicle to the test temperature. If cooling is augmented by fans, the fans shall be placed in a vertical position for maximum drive train and engine cooling, not primarily oil pan cooling. Fans shall not be placed under the vehicle.

(iii) The ambient temperature need only be stringently controlled after the vehicle has been cooled to 20 °F±3 °F (−7 °C±1.7 °C), as determined by a representative bulk oil temperature. A representative bulk oil temperature is the temperature of the oil measured near the middle of the oil, not at the surface or at the bottom of the oil pan. If two or more diverse locations in the oil are monitored, they must all meet the temperature requirements.

(iv) The vehicle must be stored for at least one hour after it has been cooled to 20 °F±3 °F (−7 °C±1.7 °C) prior to the cold start exhaust test. The ambient temperature (dry bulb) during this period shall average 20 °F±5 °F (−7 °C±2.8 °C) and shall not be less than 10 °F (−12 °C) nor more than 30 °F (−1 °C). In addition, the temperature may not exceed 25 °F (−4 °C) or fall below 15 °F (−9 °C) for more than three consecutive minutes.

(d) If the vehicle is stabilized at 20 °F (−7 °C) in a separate area and is moved through a warm area to the test cell, the vehicle must be restabilized in the test cell for at least six times the period the vehicle is exposed to warmer temperatures. The ambient temperature (dry bulb) during this period shall average 20 °F±5 °F (−7 °C±2.8 °C) and shall not be less than 10 °F (−12 °C) nor more than 30 °F (−1 °C). In addition, the temperature may not exceed 25 °F (−4 °C) or fall below 15 °F (−9 °C) for more than three consecutive minutes. The maximum time for moving a vehicle through a warm area shall be 10 minutes.



**§ 86.233–94 [Reserved]**

**§ 86.234–94 [Reserved]**

**§ 86.235–94 Dynamometer procedure.**

(a) *Overview.* The emission sampling is completed over two test sequences, a "cold" start test after a minimum 12-hour and a maximum 36-hour soak according to the provisions of § 86.232 and a "hot" start test following the "cold" start test by 10 minutes. Engine startup, operation over the UDDS, and engine shut-down make a complete cold start test. Engine startup and operation over the first 505 seconds of the driving schedule complete the hot start test. The exhaust emissions are diluted with ambient air and a continuously proportional sample is collected for analysis during each phase. The composite samples collected in bags are analyzed for hydrocarbons, carbon monoxide, carbon dioxide, and, optionally, other pollutants. A parallel sample of the dilution air is similarly analyzed for carbon monoxide and, optionally, hydrocarbons, carbon dioxide, and oxides of nitrogen.

(b) As long as an emission sample is not taken, practice runs over the prescribed driving schedule may be performed at test point for the purpose of finding the minimum throttle action to maintain the proper speed-time relationship or to permit sampling system adjustment.

(c) Humidity should be set low enough to prevent condensation on the dynamometer rolls.

(d) The dynamometer shall be warmed as recommended by the dynamometer manufacturer and using procedures or control methods that assure stability of the residual frictional horsepower.

(e) The time between dynamometer warming and the start of the emission test shall be no longer than 10 minutes if the dynamometer bearings are not independently heated. If the dynamometer bearings are independently heated, the emission test shall begin no longer than 20 minutes after dynamometer warming.

(f) If the dynamometer horsepower must be adjusted manually, it shall be set within one hour prior to the exhaust emission test phase. The test vehicle shall not be used to make the adjustment. Dynamometers using automatic control of preselectable power settings may be set anytime prior to the beginning of the emission test.

(g) The driving distance, as measured by counting the number of dynamometer roll or shaft revolutions, shall be determined for the transient cold start, stabilized cold start, and transient hot start phases of the test.

(h) Four-wheel drive vehicles will be tested in a two-wheel drive mode of operation. Full-time four-wheel drive vehicles will have one set of drive wheels temporarily disengaged by the vehicle manufacturer. Four-wheel drive vehicles which can be manually shifted to a two-wheel drive mode will be tested in the normal on-highway two-wheel drive mode of operation.

**§ 86.236–94 Engine starting and restarting.**

The provisions of § 86.136 apply to this subpart.

**§ 86.237–94 Dynamometer test run, gaseous emissions.**

(a) The complete dynamometer test consists of a cold start drive of approximately 7.5 miles (12.1 kilometers) and a hot start drive of approximately 3.6 miles (5.8 kilometers).

(b) If the preconditioned vehicle is not already on the dynamometer, it shall be pushed into position.

(c) The vehicle is allowed to stand on the dynamometer during the ten minute time period between the cold and hot start test. The cold start test is divided into two periods. The first period, representing the cold start "transient" phase, terminates at the end of the deceleration which is scheduled to occur at 505 seconds of the driving schedule. The second period, representing the "stabilized" phase, consists of the remainder of the driving schedule, including engine shutdown. The hot start test is identical to the first part or transient phase of the cold start test. Therefore, the hot start test terminates after the first period (505 seconds) is run.

(d) The provisions of § 86.137(b) apply to this subpart.

**§ 86.238–94 [Reserved]**

**§ 86.239–94 [Reserved]**

**§ 86.240–94 Exhaust sample analysis.**

The provisions of § 86.140 apply to this subpart.

**§ 86.241–94 [Reserved]**

**§ 86.242–94 Records required.**

The provisions of § 86.142–90 apply to this subpart.

**§ 86.243–94 [Reserved]**

**§ 86.244–94 Calculations; exhaust emissions.**

The provisions of § 86.144–94 apply to this subpart, except that $NO_x$ measurements are optional. Should $NO_x$ measurements be calculated, note that the humidity correction factor is not valid at colder temperatures.

**§ 86.245–94 [Reserved]**

**§ 86.246–94 Intermediate temperature testing.**

(a) This section is applicable to tests which are conducted at an intermediate temperature as defined in § 86.094–2.

(b) For testing during ambient temperatures of less than 50 °F (10 °C), the test procedure is identical to the test procedure that is used for testing at 20 °F (−7 °C) contained in 40 CFR part 86, subpart C.

(c) For testing at temperatures of 50 °F (10 °C) or higher, the FTP shall be used.

18. Section 86.608–90 is amended by revising paragraph (a) introductory text, (a)(1), and by adding a new paragraph (a)(3) to read as follows:

**§ 86.608–90 Test procedures.**

(a) The prescribed test procedures are contained in subpart B and/or subpart C of this part 86. For purposes of Selective Enforcement Audit testing, the manufacturer shall not perform any of the test procedures in subpart B of this part relating to evaporative emission testing, except as specified in paragraph (a)(2) of this section.

(1) The Administrator may, on the basis of a written application by a manufacturer, prescribe test procedures other than those in subpart B and/or subpart C of this part for any motor vehicle which he determines is not susceptible to satisfactory testing using the procedures in subpart B and/or subpart C of this part. The Administrator may, based on advance application by a manufacturer, approve optional test procedures for use in Selective Enforcement Audit testing.

* * * * *

(3) The following exceptions to the test procedures in subpart C of this part are applicable to Selective Enforcement Audit testing:

(i) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in § 86.231(a), and may drain the test fuel from other than the lowest point of the fuel tank as specified in § 86.231(b), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(ii) In performing exhaust sample analysis under § 86.240, the manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(iii) The manufacturer need not comply with § 86.242 since the records required therein are provided under other provisions of subpart G of this part.

(iv) In addition to the requirements of subpart C of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing:

(A) The manufacturer shall inspect the fuel system to ensure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water (3.6±0.1 kPa) to the fuel system allowing the pressure to stabilize and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water (0.5 kPa) in five minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph § 86.608(d) and report this action in accordance with paragraph § 86.609(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative emission control system by component addition, deletion, or substitution, except if approved in advance by the Administrator, to comply with paragraph (a)(3)(i) of this section.

* * * * *

19. Section 86.701–94 is revised to read as follows:

**§ 86.701–94 General applicability.**

The provisions of this subpart apply to: 1994 and later model year Otto-cycle and diesel light-duty vehicles; 1994 and later model year Otto-cycle and diesel light-duty trucks; and 1994 and later model year Otto-cycle and diesel heavy-duty engines. The provisions of subpart B of this part apply to this subpart for compliance with emissions subject to FTP standards. For cold CO standards, the provisions of subpart C of this part apply to this subpart.

20. Section 86.708–94 is amended by revising paragraph (b) to read as follows:

**§ 86.708–94 In-use emission standards for 1994 and later model year light-duty vehicles.**

* * * * *

(b) The provisions of § 86.090–8(b) through (h) of subpart A of this part apply to this section. The provisions of § 86.096–8(i) through (k) of subpart A of this part apply to this section.

21. Section 86.709–94 is amended by revising paragraph (b) to read as follows:

**§ 86.709–94 In use emission standards for 1994 and later model year light-duty trucks.**

* * * * *

(b) The provision of § 86.090–8(b) through (k) of subpart A of this part apply to this section.

22. Section 86.709–99 is amended by revising paragraph (b) to read as follows:

**§ 86.709–99 In-use emission standards for 1999 and later model year light-duty trucks.**

* * * * *

(b) The provisions of § 86.097–9(b), (c), and (g) through (k) of subpart A of this part apply to this section.

23. Section 86.1005–90 is amended by removing the period at the end of paragraph (a)(1)(ii) and adding a semicolon in its place and by revising paragraphs (a)(1)(iii) and (a)(2)(vi)(c) to read as follows:

**§ 86.1005–90 Maintenance of records; submittal of information.**

(a) * * *

(1) * * *

(iii) If testing gasoline-fueled or methanol-fueled Ottocycle light-duty trucks, the equipment requirements specified in § 86.106 (excluding all references to evaporative and particulate emission testing), § 86.206, and § 86.1506–84 of this subpart; and

* * * * *

(2) * * *

(vi) * * *

(C) If testing gasoline-fueled or methanol-fueled Ottocycle light-duty trucks, the record requirements specified in § 86.142 (excluding all references to diesel vehicles), § 86.242, and § 86.1542; and

* * * * *

24. Section 86.1008–90 is amended by revising paragraph (a)(2) and adding a new paragraph (a)(5) to read as follows:

**§ 86.1008–90 Test procedures.**

(a) * * *

(2) For light-duty trucks, the prescribed test procedure is the Federal Test Procedure as described in subparts B, P, and/or C of this part. The manufacturer shall not perform the evaporative emission test procedures contained in subpart B of this part. The Administrator may, based on advance application by a manufacturer, approve optional test procedures for use in Selective Enforcement Audit testing.

* * * * *

(5) When testing light-duty trucks, the following exceptions to the test procedures in subpart C of this part are applicable:

(i) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank as specified in § 86.231(a) and may drain the test fuel from other than the lowest point of the fuel tank as specified in § 86.231(b) provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(ii) In performing exhaust sample analysis under § 86.240, the manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(iii) The manufacturer need not comply with § 86.242 since the records required therein are provided under other provisions of subpart K of this part.

(iv) In addition to the requirements of subpart C of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing.

(A) The manufacturer shall inspect the fuel system to ensure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water (3.6±0.1 kPa) in the fuel system allowing the pressure to stabilize and isolating the fuel system from the pressure sources. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water (0.5 kPa) in 5 minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph § 86.1008(d) and report this action in accordance with paragraph § 86.1009(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative emission

control system by component addition, deletion, or substitution, except if approved in advance by the Administrator to comply with paragraph (a)(5)(i) of this section.

* * * * *

25. Section 86.1009–84 is amended by revising paragraphs (a) and (c)(1) to read as follows:

**§ 86.1009–84 Calculation and reporting of test results.**

(a) Initial test results are calculated following the Federal Test Procedure specified in § 86.1008–84(a). Round these results, in accordance with the American Society for Testing and Materials (ASTM) E29–67, Reapproved 1973, Standard Recommended Practice for Indicating Which Places of Figures Are to be Considered Significant in Specified Limiting Values. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from ASTM, 1916 Race Street, Philadelphia, PA, 19103. Copies may be inspected at U.S. EPA, OAR, 401 M Street, SW., Washington DC, 20460, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC. Results should be rounded to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

* * * * *

(c) *Final deteriorated test results.* (1) The final deteriorated test results for each heavy-duty engine or light-duty truck tested according to subpart B, C, D, N, or P of this part are calculated by either adding or multiplying, as specified in subpart A of this part for the applicable engine family control system combination, the appropriate deterioration factor to the final test results for each vehicle or engine.

* * * * *

[FR Doc. 92–15824 Filed 7–16–92; 8:45 am]

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Part VI

# Department of Commerce

**National Oceanic and Atmospheric Administration**

**15 CFR Part 921**

**National Estuarine Research Reserve System Program Regulations; Proposed Rule**

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 921**

**[Docket No. 910927-1227]**

**National Estuarine Research Reserve System Program Regulations**

**AGENCY:** Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The proposed rule would revise the existing interim-final rules for selecting, designating, operating, and funding national estuarine research reserves to bring them into accord with requirements of the Coastal Zone Act Reauthorization Amendments of 1990 (title VI, subtitle C, Pub. L. 101–508) and to adopt some of the revisions suggested by comments received on the interim-final rule. Comments are invited.

**DATES:** Comments will be considered if submitted on or before August 31, 1992.

**ADDRESSES:** Send comments to: Mr. William J. Harrigan, Acting Chief; Sanctuaries and Reserves Division; Office of Ocean and Coastal Resource Management, NOS/NOAA; 1825 Connecticut Avenue NW.; suite 714; Washington, DC 20235, (202) 606–4122.

**FOR FURTHER INFORMATION CONTACT:** June Cradick at (202) 606–4016.

**SUPPLEMENTARY INFORMATION:**

## I. Authority

This notice of proposed rulemaking is issued under the authority of section 315(a) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461 (the Act). The National Estuarine Reserve Research System has been operating under interim-final regulations published July 23, 1990 (55 FR 29940).

## II. Background

On July 23, 1990 (55 FR 29940) NOAA published interim final regulations for continued implementation of the National Estuarine Reserve Research System Program pursuant to section 315 of the Act, 16 U.S.C. 1461. Written comments were accepted until September 21, 1990. On November 5, 1990 Public Law 101–508 was passed reauthorizing the Program. Several changes to the regulations were required as a result of the 1990 reauthorization. In addition, for the reasons stated below, some of the revisions suggested in the comments received on the interim final rules are here proposed. A summary of the significant proposed changes to the interim-final regulations is presented below.

When implemented, these regulations will establish the Program's mission and goals and revise procedures for selecting, designating and operating national estuarine research reserves.

## III. Changing the Name of the Program

The name of the Program was changed from the National Estuarine Reserve Research System to the National Estuarine Research Reserve System by section 6214 of Public Law 101–508. The proposed revisions to the regulations would revise the Program name accordingly when it appears in the regulations.

## IV. Revision of the Procedures for Selecting, Designating, and Operating National Estuarine Research Reserves

### *(A) Revision of Match Requirements*

The Coastal Zone Act Reauthorization Amendments of 1990 (Amendments) effectively reduced from 50% to 30% state, and, where applicable, private party match requirements for the following financial assistance award types: operations, research, monitoring, facility construction and education/interpretation. The Amendments also provide for 100 percent Federal support for educational-interpretive activities that benefit the entire System. Match requirements for site selection and land acquisition remain at 50%. The proposed revisions would make the regulations conform.

### *(B) Definitions*

The proposed revisions would add a definition for the term "state agency".

### *(C) Increase in Acquisition Support*

The Amendments increase the maximum amount of Federal financial assistance that can be awarded for the acquisition of land and waters, or interests therein, for any one National Estuarine Research Reserve from $4,000,000 to $5,000,000.

### *(D) Change in Development Support*

The proposed regulations would revise the regulations to allow costs associated with the development of research, monitoring and education programs to be included as supplemental development costs and to eliminate the ceiling of $1,500,000 on financial assistance which can be provided for development assistance directly associated with facility construction.

### *(E) Simplification of Operational Support*

The proposed regulations would reduce state and Federal paperwork burdens by combining support for routine monitoring and education activities with the annual non-competitive operations and management award. Competitive awards for special monitoring, research and education projects would continue as a separate activity.

### *(F) Clarification of Site Selection*

The proposed regulations would clarify the process to be followed by a coastal state which proposes to reactivate an inactive site previously approved by NOAA for development as an estuarine sanctuary or research reserve.

### *(G) Resource Manipulation*

The regulations recognize the possibility that in reserve buffer areas long-term uses may have existed (*e.g.* hunting and fishing) prior to designation which should be allowed to continue.

### *(H) Performance Evaluation*

The Amendments emphasize the importance of public participation in the performance evaluation process. They also establish interim sanctions, including partial or full withdrawal of financial assistance, and establish a process for instituting such sanctions. The proposed revisions would make the regulations conform.

## V. Other Actions Associated With the Rulemaking

[A] Classification Under Executive Order 12291. NOAA has concluded that these regulations are not major because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

These rules amend existing procedures for identifying, designating, and managing national estuarine research reserves in accordance with the Coastal Zone Act Reauthorization Amendments of 1990. They will not result in any direct economic or environmental effects nor will they lead to any major indirect economic or environmental impacts.

[B] Regulatory Flexibility Act Analysis. A Regulatory Flexibility Analysis is not required for this rulemaking. The regulations set forth procedures for identifying and designating national estuarine research reserves, and managing sites once designated. These rules do not directly affect "small government jurisdictions" as defined by Public Law 96–354, the Regulatory Flexibility Act, and the rules will have no effect on small businesses. Accordingly, the General Counsel of the Department of Commerce has certified to the Chief Counsel of the Small Business Administration that these revisions, if adopted as proposed, will not have a significant economic impact on a substantial number of small entities.

[C] Paperwork Reduction Act of 1980. This rule contains collection of information requirements subject to Public Law 96–511, the Paperwork Reduction Act (PRA), which have already been approved by the Office of Management and Budget (approval number 0648–0121). Public reporting burden for the collections of information contained in this rule is estimated to average 2,012 hours per response for management plans and related documentation, 1.25 hours for performance reports, and 15 hours for annual reports and work plans. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to Richard Roberts, room 724, Department of Commerce, 6010 Executive Blvd., Rockville, Maryland 20852, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. ATTN: Desk Officer for NOAA.

[D] Executive Order 12612. These proposed rules do not contain policies which have sufficient Federalism implications to warrant preparation of a Federalism Assessment pursuant to Executive Order 12612. However, the provisions of the rules setting forth what a state must do or agree to do in order to qualify for the various types of Federal financial assistance available under the rules have been reviewed to ensure that the rules grant the states the maximum administrative discretion possible in the administration of the National Estuarine Research Reserve System policies embodied in the qualification requirements. In formulating those policies, the NOAA worked with affected states to develop their own policies with respect to the use of National Estuarine Research Reserves. To the maximum extent possible consistent with the NOAA's responsibility to ensure that the objectives of the National Estuarine Research Reserve System provisions of the Coastal Zone Management Act are achieved, the rules refrain from establishing uniform national standards. Extensive consultations with state officials and organizations have been held regarding the financial assistance qualifications imposed. Details regarding awards of financial assistance have been discussed above under the heading "Revision of the Procedures for Selecting, Designating and Operating National Estuarine Research Reserves" and are not repeated here.

[E] National Environmental Policy Act. NOAA has concluded that publication of these interim-final rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

**List of Subjects in 15 CFR Part 921**

Administrative practice and procedure, Coastal zone, Environmental impact statements, Grants programs—Natural resources, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.420, National Estuarine Research Reserve Research System; Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Sanctuaries)

Dated: July 2, 1992.

**W. Stanley Wilson,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

For the reasons set forth in the preamble, it is proposed that 15 CFR part 921 be revised as follows:

## PART 921—NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM REGULATIONS

**Subpart A—General**

Sec.


921.1 Mission, goals and general provisions.
921.2 Definitions.
921.3 National Estuarine Research Reserve System biogeographic classification scheme and estuarine typologies.
921.4 Relationship to other provisions of the Coastal Zone Management Act and the Marine Protection, Research and Sanctuaries Act.

**Subpart B—Site Selection, Post Site Selection and Management Plan Development**

921.10 General.
921.11 Site selection and feasibility.
921.12 Post site selection.
921.13 Management plan and environmental impact statement development.

**Subpart C—Acquisition, Development, and Preparation of the Final Management Plan**

921.20 General.
921.21 Initial acquisition and development awards.

**Subpart D—Reserve Designation and Subsequent Operation**

921.30 Designation of National Estuarine Research Reserves.
921.31 Supplemental acquisition and development awards.
921.32 Operation and management: Implementation of the management plan.
921.33 Boundary changes, amendments to the management plan, and addition of multiple-site components.

**Subpart E—Ongoing Oversight, Performance Evaluation and Withdrawal of Designation**

921.40 Ongoing oversight and evaluations of designated National Estuarine Research Reserves.
921.41 Withdrawal of designation.

**Subpart F—Special Research Projects**

921.50 General.
921.51 Estuarine research guidelines.
921.52 Promotion and coordination of estuarine research.

**Subpart G—Special Monitoring Projects**

921.60 General.

**Subpart H—Special Interpretation and Education Projects**

921.70 General.

**Subpart I—General Financial Assistance Provisions**

921.80 Application information.
921.81 Allowable costs.
921.82 Amendments to financial assistance awards.

**Appendix I to Part 921—Biogeographic Classification Scheme**

**Appendix II to Part 921—Typology of National Estuarine Research Reserves**


**Authority:** Section 315, Public Law 92–583, as amended; 86 Stat. 1280 (16 U.S.C. 1461).

### Subpart A—General

**§ 921.1 Mission, goals and general provisions.**

(a) The mission of the National Estuarine Research Reserve Program is the establishment and management, through Federal-state cooperation, of a national system (National Estuarine Research Reserve System or System) of estuarine research reserves (National Estuarine Research Reserves or Reserves) representative of the various regions and estuarine types in the United States. Estuarine research reserves are established to provide opportunities for long-term research, education, and interpretation.

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(b) The goals of the Program are to:

(1) Ensure a stable environment for research through long-term protection of National Estuarine Research Reserve resources;

(2) Address coastal management issues identified as significant through coordinated estuarine research within the System;

(3) Enhance public awareness and understanding of estuarine areas and provide suitable opportunities for public education and interpretation;

(4) Promote Federal, state, public and private use of one or more reserves within the System when such entities conduct estuarine research; and

(5) Conduct and coordinate estuarine research within the System, gathering and making available information necessary for improved understanding and management of estuarine areas.

(c) National Estuarine Research Reserves shall be open to the public to the extent permitted under state and Federal law. Multiple uses are allowed to the degree compatible with each reserve's overall purpose as provided in the management plan (see § 921.13) and consistent with paragraphs (a) and (b), of this section. Use levels are set by the state where the reserve is located and analyzed in the management plan. The research reserve management plan shall describe the uses and establish priorities among these uses. The plan shall identify uses requiring a state permit, as well as areas where uses are encouraged or prohibited. Consistent with resource protection and research objectives, public access and use may be restricted to certain areas or components within a research reserve.

(d) Habitat manipulation for research purposes is allowed consistent with the following limitations. Manipulative research activities must be specified in the management plan, be consistent with the mission and goals of the program (see paragraphs (a) and (b) of this section) and the goals and objectives set forth in the reserve's management plan, and be limited in nature and extent to the minimum manipulative activity necessary to accomplish the stated research objective. Manipulative research activities with a significant or long-term impact on reserve resources require the prior approval of the state and the National Oceanic and Atmospheric Administration (NOAA). Manipulative research activities which can reasonably be expected to have a significant adverse impact on the estuarine resources and habitat of a reserve, such that the activities themselves or their resulting short and long-term consequences compromise the representative character and integrity of a reserve, are prohibited. Habitat manipulation for resource management purposes is prohibited except as specifically approved by NOAA as:

(1) A restoration activity consistent with paragraph (e) of this section; or

(2) as an activity necessary for the protection of public health or the preservation of other sensitive resources which have been listed or are eligible for protection under relevant Federal or state authority (*e.g.*, threatened/endangered species or significant historical or cultural resources) or if the manipulative activity is a long-term (*i.e.*, has occurred prior to designation) pre-existing use (*e.g.*, use of a buffer area for hunting and/or fishing club activities). If habitat manipulation is determined to be necessary for the protection of public health, the preservation of sensitive resources, or if the manipulation is a long-term preexisting use in a buffer area, then these activities shall be specified in the Reserve Management Plan in accordance with § 921.13(a)(10) and shall be limited to the reasonable alternative which has the least adverse and shortest term impact on the representative and ecological integrity of the reserve.

(e) Under the Act an area may be designated as an estuarine reserve only if the area is a representative estuarine ecosystem that is suitable for long-term research. Many estuarine areas have undergone some ecological change as a result of human activities (*e.g.*, hydrological changes, intentional/unintentional species composition changes—introduced and exotic species). In those areas proposed or designated as national estuarine research reserves, such changes may have diminished the representative character and integrity of the site. Although restoration of degraded areas is not a primary purpose of the System, such activities may be permitted to improve the representative character and integrity of a reserve. Restoration activities must be carefully planned and approved by NOAA through the Reserve Management Plan. Historical research may be necessary to determine the "natural" representative state of an estuarine area (*i.e.*, an estuarine ecosystem minimally affected by human activity or influence). Frequently, restoration of a degraded estuarine area will provide an excellent opportunity for management oriented research.

(f) NOAA may provide financial assistance to coastal states, not to exceed, per Reserve, 50 percent of all actual costs or $5 million whichever amount is less, to assist in the acquisition of land and waters, or interests therein. NOAA may provide financial assistance to coastal states not to exceed 70 percent of all actual costs for the management and operation of, the development and construction of facilities, and the conduct of educational or interpretive activities concerning reserves (see Subpart I). NOAA may provide financial assistance to any coastal state or public or private person, not to exceed 70 percent of all actual costs, to support research and monitoring within a reserve. Predesignation, acquisition and development, operation and management, special research and monitoring, and special education and interpretation awards are available under the National Estuarine Research Reserve Program. Predesignation awards are for site selection/feasibility, draft management plan preparation and conduct of basic characterization studies. Acquisition and development awards are intended primarily for acquisition of interests in land, facility construction and to develop and/or upgrade research, monitoring and education programs. Operation and management awards provide funds to assist in implementing, operating and managing the administrative, and basic research, monitoring and education programs, outlined in the research reserve management plan. Special research and monitoring awards provide funds to conduct estuarine research and monitoring projects within the System. Special educational and interpretive awards provide funds to conduct estuarine educational and interpretive projects within the System.

(g) Lands already in protected status managed by other Federal agencies, state or local governments, or private organizations may be included within National Estuarine Research Reserves only if the managing entity commits to long-term management consistent with paragraphs (d) and (e) of this section in the reserve management plan. Federal lands already in protected status may not comprise the key land and water areas of a research reserve (see § 921.11(c)(3)).

(h) To assist the states in carrying out the Program's goals in an effective manner, NOAA will coordinate a research and education information exchange throughout the National Estuarine Research Reserve System. As part of this role, NOAA will ensure that information and ideas from one reserve are made available to others in the system. The network will enable reserves to exchange information and research data with each other, with

universities engaged in estuarine research, and with Federal, state, and local agencies. NOAA's objective is a system-wide program of research and monitoring capable of addressing the management issues that affect long-term productivity of our Nation's estuaries.

**§ 921.2 Definitions.**

(a) *Act* means the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(b) *Under Secretary* means the Under Secretary of Commerce for Oceans and Atmosphere, or designee.

(c) *Coastal state* means a state of the United States, in or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of these regulations the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas Islands, the Trust Territories of the Pacific Islands, and American Samoa (see 16 U.S.C. 1453(4)).

(d) *State agency* means an instrumentality of a coastal state to whom the coastal state has delegated the authority and responsibility for the creation and/or management/operation of a national estuarine research reserve. Factors indicative of this authority may include the power to receive and expend funds on behalf of the reserve, acquire and sell or convey real and personal property interests, adopt rules for the protection of the reserve, enforce rules applicable to the reserve, or develop and implement research and education programs for the reserve. For the purposes of these regulations, the terms "coastal state" and "State agency" shall be synonymous.

(e) *Estuary* means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term also includes estuary-type areas with measurable freshwater influence and having unimpaired connections with the open sea, and estuary-type areas of the Great Lakes and their connecting waters. (See 16 U.S.C. 1453(7)).

(f) *National Estuarine Research Reserve* means an area that is a representative estuarine ecosystem suitable for long-term research, which may include all of the key land and water portion of an estuary, and adjacent transitional areas and uplands constituting to the extent feasible a natural unit, and which is set aside as a natural field laboratory to provide long-term opportunities for research, education, and interpretation on the ecological relationships within the area (see 16 U.S.C. 1453(8)) and meets the requirements of 16 U.S.C. 1461(b). This includes those areas designated as national estuarine sanctuaries or reserves under section 315 of the Act prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990 and each area subsequently designated as a national estuarine research reserve.

**§ 921.3 National Estuarine Research Reserve System Biogeographic Classification Scheme and Estuarine Typologies.**

(a) National Estuarine Research Reserves are chosen to reflect regional differences and to include a variety of ecosystem types. A biogeographic classification scheme based on regional variations in the nation's coastal zone has been developed. The biogeographic classification scheme is used to ensure that the National Estuarine Research Reserve System includes at least one site from each region. The estuarine typology system is utilized to ensure that sites in the System reflect the wide range of estuarine types within the United States.

(b) The biogeographic classification scheme, presented in Appendix I of this part, contains 29 regions. Figure 1 graphically depicts the biogeographic regions of the United States.

(c) The typology system is presented in appendix II of this part.

**§ 921.4 Relationship to other provisions of the Coastal Zone Management Act, and to the Marine Protection, Research and Sanctuaries Act.**

(a) The National Estuarine Research Reserve System is intended to provide information to state agencies and other entities involved in addressing coastal management issues. Any coastal state, including those that do not have approved coastal management programs under section 306 of the Act, is eligible for an award under the National Estuarine Research Reserve Program (see § 921.2(c)).

(b) For purposes of consistency review by states with a federally approved coastal management program, the designation of a national estuarine research reserve is deemed to be a Federal activity, which, if directly affecting the state's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved state coastal management program as provided by section 1456(c)(1) of the Act, and implementing regulations at 15 CFR part 930, subpart C. In accordance with section 1456(c)(1) of the Act and the applicable regulations NOAA will be responsible for certifying that designation of the reserve is consistent with the state's approved coastal management program. The state must concur with, or object to, the certification. It is recommended that the lead state agency for reserve designation consult, at the earliest practicable time, with the appropriate state officials concerning the consistency of a proposed national estuarine research reserve.

(c) The National Estuarine Research Reserve Program will be administered in close coordination with the National Marine Sanctuary Program (Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431–1445), also administered by NOAA. Title III authorizes the Secretary of Commerce to designate discrete areas of the marine environment as National Marine Sanctuaries to protect or restore such areas for their conservation, recreational, ecological, historical, research, educational or esthetic values. National marine sanctuaries and estuarine research reserves may not overlap, but may be adjacent.

## Subpart B—Site Selection, Post Site Selection and Management Plan Development

**§ 921.10 General.**

(a) A coastal state may apply for Federal financial assistance for the purpose of site selection, preparation of documents specified in § 921.13 (draft management plan (DMP) and environmental impact statement (EIS)), and the conduct of limited basic characterization studies. The total Federal share of this assistance may not exceed $100,000. Federal financial assistance for preacquisition activities under §§ 921.11 and 921.12 is subject to the total $5 million for which each reserve is eligible for land acquisition. In the case of a biogeographic region (see appendix I of this part) shared by two or more coastal states, each state is eligible for Federal financial assistance to establish a separate national estuarine research reserve within their respective portion of the shared biogeographic region. Financial assistance application procedures are specified in Subpart I.

(b) In developing a research reserve program, a state may choose to develop a multiple-site research reserve reflecting a diversity of habitats in a single biogeographic region. A multiple-site research reserve allows the state to develop complementary research and educational programs within the individual components of its multi-site research reserve. Multiple-site research

reserves are treated as one reserve in terms of financial assistance and development of an overall management framework and plan. Each individual site of a proposed multiple-site research reserve shall be evaluated both separately under § 921.11(c) and collectively as part of the site selection process. A coastal state may propose to establish a multiple-site research reserve at the time of the initial site selection, or at any point in the development or operation of the estuarine research reserve. If the state decides to develop a multiple-site national estuarine research reserve after the initial acquisition and development award is made for a single site, the proposal is subject to the requirements set forth in § 921.33(b). However, a state may not propose to add one or more sites to an already designated research reserve if the operation and management of such research reserve has been found deficient and uncorrected or the research conducted is not consistent with the Estuarine Research Guidelines referenced in § 921.51. In addition, Federal funds for the acquisition of a multiple-site research reserve remain limited to $5,000,000 (see § 921.20). The funding for operation of a multiple-site research reserve is limited to the maximum allowed for any one reserve per year (see § 921.32(c)) and preacquisition funds are limited to $100,000 per reserve.

**§ 921.11 Site selection and feasibility.**

(a) A coastal state may use Federal funds to establish and implement a site selection process which is approved by NOAA.

(b) In addition to the requirements set forth in Subpart I of this part, a request for Federal funds for site selection must contain the following programmatic information:

(1) A description of the proposed site selection process and how it will be implemented in conformance with the biogeographic classification scheme and typology (§ 921.3);

(2) An identification of the site selection agency and the potential management agency; and

(3) A description of how public participation will be incorporated into the process (see § 921.11(d)).

(c) As part of the site selection process, the state and NOAA shall evaluate and select the final site(s). NOAA has final authority in approving such sites. Site selection shall be guided by the following principles:

(1) The site's contribution to the biogeographical and typological balance of the National Estuarine Research Reserve System. NOAA will give priority consideration to proposals to establish reserves in biogeographic regions or subregions or incorporating types that are not represented in the system. (See the biogeographic classification scheme and typology set forth in § 921.3 and appendices I and II of this part);

(2) The site's ecological characteristics, including its biological productivity, diversity of flora and fauna, and capacity to attract a broad range of research and educational interests. The proposed site must be a representative estuarine ecosystem and should, to the maximum extent possible, be an estuarine ecosystem minimally affected by human activity or influence (see § 921.1(e)).

(3) Assurance that the site's boundaries encompass an adequate portion of the key land and water areas of the natural system to approximate an ecological unit and to ensure effective conservation. Boundary size will vary greatly depending on the nature of the ecosystem. Research reserve boundaries must encompass the area within which adequate control has or will be established by the managing entity over human activities occurring within the reserve. Generally, reserve boundaries will encompass two areas: Key land and water areas (or "core area") and a buffer zone. Key land and water areas and a buffer zone will likely require significantly different levels of control (see § 921.13(a)(7)). The term "key land and water areas" refers to that core area within the reserve that is so vital to the functioning of the estuarine ecosystem that it must be under a level of control sufficient to ensure the long-term viability of the reserve for research on natural processes. Key land and water areas, which comprise the core area, are those ecological units of a natural estuarine system which preserve, for research purposes, a full range of significant physical, chemical and biological factors contributing to the diversity of fauna, flora and natural processes occurring within the estuary. The determination of which land and water areas are "key" to a particular reserve must be based on specific scientific knowledge of the area. A basic principle to follow when deciding upon key land and water areas is that they should encompass resources representative of the total ecosystem, and which if compromised could endanger the research objectives of the reserve. The term "buffer zone" refers to an area adjacent to or surrounding key land and water areas and essential to their integrity. Buffer zones protect the core area and provide additional protection for estuarine-dependent species, including those that are rare or endangered. When determined appropriate by the state and approved by NOAA, the buffer zone may also include an area necessary for facilities required for research and interpretation. Additionally, buffer zones should be established sufficient to accommodate a shift of the core area as a result of biological, ecological or geomorphological change which reasonably could be expected to occur. National Estuarine Research Reserves may include existing Federal or state lands already in a protected status where mutual benefit can be enhanced. However, NOAA will not approve a site for potential national estuarine research reserve status that is dependent primarily upon the inclusion of currently protected Federal lands in order to meet the requirements for research reserve status (such as key land and water areas). Such lands generally will be included within a research reserve to serve as a buffer or for other ancillary purposes; and may be included, subject to NOAA approval, as a limited portion of the core area;

(4) The site's suitability for long-term estuarine research, including ecological factors and proximity to existing research facilities and educational institutions;

(5) The site's compatibility with existing and potential land and water uses in contiguous areas as well as approved coastal and estuarine management plans; and

(6) The site's importance to education and interpretive efforts, consistent with the need for continued protection of the natural system.

(d) Early in the site selection process the state must seek the views of affected landowners, local governments, other state and Federal agencies and other parties who are interested in the area(s) being considered for selection as a potential national estuarine research reserve. After the local government(s) and affected landowner(s) have been contacted, at least one public meeting shall be held in the vicinity of the proposed site. Notice of such a meeting, including the time, place, and relevant subject matter, shall be announced by the state through the area's principal newspaper at least 15 days prior to the date of the meeting and by NOAA in the Federal Register.

(e) A state request for NOAA approval of a proposed site (or sites in the case of a multi-site reserve) must contain a description of the proposed site(s) in relationship to each of the site selection principles (§ 921.11(c)) and the following information:

(1) An analysis of the proposed site(s) based on the biogeographical scheme/typology discussed in § 921.3 and set forth in appendices I and II of this part;

(2) A description of the proposed site(s) and its (their) major resources, including location, proposed boundaries, and adjacent land uses. Maps, including aerial photographs, are required;

(3) A description of the public participation process used by the state to solicit the views of interested parties, a summary of comments, and, if interstate issues are involved, documentation that the Governor(s) of the other affected state(s) has been contacted. Copies of all correspondence, including contact letters to all affected landowners must be appended;

(4) A list of all sites considered and a brief statement of the reasons why a site was not preferred; and

(5) A nomination of the proposed site(s) for designation as a National Estuarine Research Reserve by the Governor of the coastal state in which the site is located.

(f) A state proposing to reactivate an inactive site, previously approved by NOAA for development as an estuarine sanctuary or reserve, may apply for those funds remaining, if any, provided for site selection and feasibility (§ 921.11(a)) to determine the feasibility of reactivation. This feasibility study must comply with the requirements set forth in § 921.11(c)–(e).

**§ 921.12 Post site selection.**

(a) At the time of the coastal state's request for NOAA approval of a proposed site, the state may submit a request for funds to develop the draft management plan and for preparation of the EIS. At this time, the state may also submit a request for the remainder of the predesignation funds to perform a limited basic characterization of the physical, chemical and biological characteristics of the site approved by NOAA necessary for providing EIS information to NOAA. The state's request for these post site selection funds must be accompanied by the information specified in subpart I and, for draft management plan development and EIS information collection, the following programmatic information:

(1) A draft management plan outline (see § 921.13(a) below); and

(2) An outline of a draft memorandum of understanding (MOU) between the state and NOAA detailing the Federal-state role in research reserve management during the initial period of Federal funding and expressing the state's long-term commitment to operate and manage the reserve.

(b) The state is eligible to use the funds referenced in § 921.12(a) after the proposed site is approved by NOAA under the terms of § 921.11.

**§ 921.13 Management plan and environmental impact statement development.**

(a) After NOAA approves the state's proposed site and application for funds submitted pursuant to § 921.12, the state may begin draft management plan development and the collection of information necessary for the preparation by NOAA of an EIS. The state shall develop a draft management plan, including an MOU. The plan shall set out in detail:

(1) Research reserve goals and objectives, management issues, and strategies or actions for meeting the goals and objectives;

(2) An administrative plan including staff roles in administration, research, education/interpretation, and surveillance and enforcement;

(3) A research plan, including a monitoring design;

(4) An education/interpretive plan;

(5) A plan for public access to the research reserve;

(6) A construction plan, including a proposed construction schedule, general descriptions of proposed developments and general cost estimates. Information should be provided for proposed minor construction projects in sufficient detail to allow these projects to begin in the initial phase of acquisition and development. A categorical exclusion, environmental assessment, or EIS may be required prior to construction;

(7) An acquisition plan identifying the ecologically key land and water areas of the research reserve, ranking these areas according to their relative importance, and including a strategy for establishing adequate long-term state control over these areas sufficient to provide protection for reserve resources to ensure a stable environment for research. This plan must include an identification of ownership within the proposed research reserve boundaries, including land already in the public domain; the method(s) of acquisition which the state proposes to use—acquisition (including less-than-fee simple options) to establish adequate long-term state control; an estimate of the fair market value of any property interest—which is proposed for acquisition; a schedule estimating the time required to complete the process of establishing adequate state control of the proposed research reserve; and a discussion of any anticipated problems. In selecting a preferred method(s) for establishing adequate state control over areas within the proposed boundaries of the reserve, the state shall perform the following steps for each parcel determined to be part of the key land and water areas (control over which is necessary to protect the integrity of the reserve for research purposes), and for those parcels required for research and interpretive support facilities or buffer purposes:

(i) Determine, with appropriate justification, the minimum level of control(s) required [e.g., management agreement, regulation, less-than-fee simple property interest (e.g., conservation easement), fee simple property acquisition, or a combination of these approaches] This does not preclude the future necessity of increasing the level of state control;

(ii) Identify the level of existing state control(s);

(iii) Identify the level of additional state control(s), if any, necessary to meet the minimum requirements identified in paragraph (a)(7)(i) of this section;

(iv) Examine all reasonable alternatives for attaining the level of control identified in paragraph (a)(7)(iii) of this section, and perform a cost analysis of each; and

(v) Rank, in order of cost, the methods (including acquisition) identified in paragraph (a)(7)(iv) of this section.

An assessment of the relative cost-effectiveness of control alternatives shall include a reasonable estimate of both short-term costs (*e.g.*, acquisition of property interests, regulatory program development including associated enforcement costs, negotiation, adjudication, etc.) and long-term costs (*e.g.*, monitoring, enforcement, adjudication, management and coordination). In selecting a preferred method(s) for establishing adequate state control over each parcel examined under the process described above, the state shall give priority consideration to the least costly method(s) of attaining the minimum level of long-term control required. Generally, with the possible exception of buffer areas required for support facilities, the level of control(s) required for buffer areas will be considerably less than that required for key land and water areas. This acquisition plan, after receiving the approval of NOAA, shall serve as a guide for negotiations with landowners. A final boundary for the reserve shall be delineated as a part of the final management plan;

(8) A resource protection plan detailing applicable authorities, including allowable uses, uses requiring a permit and permit requirements, any

restrictions on use of the research reserve, and a strategy for research reserve surveillance and enforcement of such use restrictions, including appropriate government enforcement agencies;

(9) If applicable, a restoration plan describing those portions of the site that may require habitat modification to restore natural conditions;

(10) If applicable, a resource manipulation plan, describing those portions of the reserve buffer in which long-term preexisting (prior to designation) manipulation (*e.g.*, use of a buffer area for hunting and/or fishing club activities), for reasons not related to research or restoration is occurring. The plan shall explain in detail the nature of such activities, shall justify why such manipulation should be permitted to continue within the reserve buffer, and shall describe possible effects of this manipulation on key land and water areas and their resources;

(11) A proposed memorandum of understanding (MOU) between the state and NOAA regarding the Federal-state relationship during the establishment and development of the national estuarine research reserve, and expressing a long-term commitment by the state to maintain and manage the research reserve in accordance with section 315 of the Act, 16 U.S.C. 1461, and applicable regulations. In conjunction with the MOU, and where possible under state law, the state will consider taking appropriate administrative or legislative action to ensure the long-term protection and operation of the national estuarine research reserve. If other MOUs are necessary (such as with a Federal agency, another state agency or private organization), drafts of such MOUs must be included in the plan. All necessary MOU's shall be signed prior to research reserve designation; and

(12) If the state has a federally approved coastal management program, a certification that the national estuarine research reserve is consistent to the maximum extent practicable with that program. See §§ 921.4(b) and 921.30(b).

(b) Regarding the preparation of an EIS under the National Environmental Policy Act on a national estuarine research reserve proposal, the state and NOAA shall collect all necessary information concerning the socioeconomic and environmental impacts associated with implementing the draft management plan and feasible alternatives to the plan. Based on this information, the state will draft and provide NOAA with a preliminary EIS.

(c) Early in the development of the draft management plan and the draft EIS, the state and NOAA shall hold a scoping meeting (pursuant to NEPA) in the area or areas most affected to solicit public and government comments on the significant issues related to the proposed action. NOAA will publish a notice of the meeting in the **Federal Register** at least 15 days prior to the meeting. The state shall be responsible for publishing a similar notice in the local media.

(d) NOAA will publish a **Federal Register** notice of intent to prepare a draft EIS. After the draft EIS is prepared and filed with the Environmental Protection Agency (EPA), a Notice of Availability of the draft EIS will appear in the **Federal Register**. Not less than 30 days after publication of the notice, NOAA will hold at least one public hearing in the area or areas most affected by the proposed national estuarine research reserve. The hearing will be held no sooner than 15 days after appropriate notice of the meeting has been given in the principal news media by the state and in the **Federal Register** by NOAA. After a 45-day comment period, a final EIS will be prepared by the state and NOAA.

## Subpart C—Acquisition, Development and Preparation of the Final Management Plan

### § 921.20 General.

The acquisition and development period is separated into two major phases. After NOAA approval of the site, draft management plan and draft MOU, and completion of the final EIS, a coastal state is eligible for an initial acquisition and development award(s). In this initial phase, the state should work to meet the criteria required for formal research reserve designation; *e.g.*, establishing adequate state control over the key land and water areas as specified in the draft management plan and preparing the final management plan. These requirements are specified in § 921.30. Minor construction in accordance with the draft management plan may also be conducted during this initial phase. The initial acquisition and development phase is expected to last no longer than three years. If necessary, a longer time period may be negotiated between the state and NOAA. After research reserve designation, a state is eligible for a supplemental acquisition and development award(s) in accordance with § 921.31. In this post-designation acquisition and development phase, funds may be used in accordance with the final management plan to construct research and educational facilities, complete any remaining land acquisition, for program development, and for restorative activities identified in the final management plan. In any case, the amount of Federal financial assistance provided to a coastal state with respect to the acquisition of lands and waters, or interests therein, for any one national estuarine research reserve may not exceed an amount equal to 50 percent of the costs of the lands, waters, and interests therein or $5,000,000, whichever amount is less.

### § 921.21 Initial acquisition and development awards.

(a) Assistance is provided to aid the recipient prior to designation in:

(1) Acquiring a fee simple or less-than-fee simple real property interest in land and water areas to be included in the research reserve boundaries (see § 921.13(a)(7); § 921.30(d));

(2) Minor construction, as provided in paragraphs (b) and (c) of this section;

(3) Preparing the final management plan; and

(4) Up to the point of research reserve designation, initial management costs, *e.g.*, for implementing the NOAA approved draft management plan, preparing the final management plan, hiring a reserve manager and other staff as necessary and for other management-related activities. Application procedures are specified in subpart I of this part.

(b) The expenditure of Federal and state funds on major construction activities is not allowed during the initial acquisition and development phase. The preparation of architectural and engineering plans, including specifications, for any proposed construction, or for proposed restorative activities, is permitted. In addition, minor construction activities, consistent with paragraph (c) of this section also are allowed. The NOAA-approved draft management plan must, however, include a construction plan and a public access plan before any award funds can be spent on construction activities.

(c) Only minor construction activities that aid in implementing portions of the management plan (such as boat ramps and nature trails) are permitted during the initial acquisition and development phase. No more than five (5) percent of the initial acquisition and development award may be expended on such activities. NOAA must make a specific determination, based on the final EIS, that the construction activity will not be detrimental to the environment.

(d) Except as specifically provided in paragraphs (a)–(c) of this section,

construction projects, to be funded in whole or in part under an acquisition and development award(s), may not be initiated until the research reserve receives formal designation (see § 921.30). This requirement has been adopted to ensure that substantial progress in establishing adequate state control over key land and water areas has been made and that a final management plan is completed before major sums are spent on construction. Once substantial progress in establishing adequate state control/acquisition has been made, as defined by the state in the management plan, other activities guided by the final management plan may begin with NOAA's approval.

(e) For any real property acquired in whole or part with Federal funds for the research reserve, the state shall execute suitable title documents to include substantially the following provisions, or otherwise append the following provisions in a manner acceptable under applicable state law to the official land record(s):

(1) Title to the property conveyed by this deed shall vest in the [recipient of the award granted pursuant to Section 315 of the Act, 16 U.S.C. 1461 or other NOAA approved state agency] subject to the condition that the designation of the [name of National Estuarine Reserve] is not withdrawn and the property remains part of the federally designated [name of National Estuarine Research Reserve]; and

(2) In the event that the property is no longer included as part of the research reserve, or if the designation of the research reserve of which it is part is withdrawn, then NOAA or its successor agency, after full and reasonable consultation with the State, may exercise the following rights regarding the disposition of the property:

(i) The recipient may retain title after paying the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the current fair market value of the property;

(ii) If the recipient does not elect to retain title, the Federal Government may either direct the recipient to sell the property and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from the sale (after deducting actual and reasonable selling and repair or renovation expenses, if any, from the sale proceeds), or direct the recipient to transfer title to the Federal Government. If directed to transfer title to the Federal Government, the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the original project to the current fair market value of the property; and

(iii) Fair market value of the property must be determined by an independent appraiser and certified by a responsible official of the state, as provided by Department of Commerce Regulations at 15 CFR part 24, and Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally assisted programs at 15 CFR part 11.

(f) Upon instruction by NOAA, provisions analogous to those of § 921.21(e) shall be included in the documentation underlying less-than-fee-simple interests acquired in whole or part with Federal funds.

(g) Federal funds or non-Federal matching share funds shall not be spent to acquire a real property interest in which the state will own the land concurrently with another entity unless the property interest has been identified as a part of an acquisition strategy pursuant to § 921.13(7) which has been approved by NOAA prior to the effective date of these regulations.

(h) Prior to submitting the final management plan to NOAA for review and approval, the state shall hold a public meeting to receive comment on the plan in the area affected by the estuarine research reserve. NOAA will publish a notice of the meeting in the **Federal Register**. The state shall be responsible for having a similar notice published in the local newspaper(s).

## Subpart D—Reserve Designation and Subsequent Operation

### § 921.30 Designation of National Estuarine Research Reserves.

(a) The Under Secretary may designate an area proposed for designation by the Governor of the state in which it is located, as a National Estuarine Research Reserve if the Under Secretary finds:

(1) The area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

(2) Key land and water areas of the proposed research reserve, as identified in the management plan, are under adequate state control sufficient to provide long-term protection for reserve resources to ensure a stable environment for research;

(3) Designation of the area as a reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation;

(4) A final management plan has been approved by NOAA;

(5) An MOU has been signed between the state and NOAA ensuring a long-term commitment by the state to the effective operation and implementation of the area as a National Estuarine Research Reserve;

(6) All MOU's necessary for reserve management (i.e., with relevant Federal, state, and local agencies and/or private organizations) have been signed; and

(7) The coastal state in which the area is located has complied with the requirements of subpart B of this part.

(b) NOAA will determine whether the designation of a national estuarine research reserve in a state with a federally approved coastal zone management program directly affects the coastal zone. If the designation is found to directly affect the coastal zone, NOAA will make a consistency determination pursuant to section 307(c)(1) of the Act, 16 U.S.C. 1456, and 15 CFR part 930, subpart C. See § 921.4(b). The results of this consistency determination will be published in the **Federal Register** when the notice of designation is published. See § 921.30(c).

(c) NOAA will publish the notice of designation of a National Estuarine Research Reserve in the **Federal Register**. The state shall be responsible for having a similar notice published in the local media.

(d) The term "state control" in § 921.30(a)(3) does not necessarily require that key land and water areas be owned by the state in fee simple. Acquisition of less-than-fee simple interests (*e.g.*, conservation easements) and utilization of existing state regulatory measures are encouraged where the state can demonstrate that these interests and measures assure adequate long-term state control consistent with the purposes of the research reserve (see also § 921.13(a)(7); § 921.21(g)). Should the state later elect to purchase an interest in such lands using NOAA funds, adequate justification as to the need for such acquisition must be provided to NOAA.

### § 921.31 Supplemental acquisition and development awards.

After national estuarine research reserve designation, and as specified in the approved management plan, a coastal state may request a supplemental acquisition and/or development award(s) for acquiring additional property interests identified in the management plan as necessary to

strengthen protection of key land and water areas and to enhance long-term protection of the area for research and education, for facility and exhibit construction, for restorative activities identified in the approved management plan, for administrative purposes related to acquisition and/or facility construction and to develop and/or upgrade research, monitoring and education/interpretive programs. Federal financial assistance provided to a national estuarine research reserve for supplemental development costs directly associated with facility construction (*i.e.*, major construction activities) may not exceed 70 percent of the total project cost. NOAA must make a specific determination that the construction activity will not be detrimental to the environment. Supplemental acquisition awards for the acquisition of lands or waters, or interests therein, for any one reserve may not exceed an amount equal to 50 per centum of the cost of the lands, waters, and interests therein or $5,000,000, whichever amount is less. In the case of a biogeographic region (see appendix I of this part) shared by two or more states, each state is eligible independently for Federal financial assistance to establish a separate national estuarine research reserve within their respective portion of the shared biogeographic region. Application procedures are specified in subpart I of this part. Land acquisition must follow the procedures specified in § 921.13(a)(7), § 921.21 (e) and (f) and § 921.81.

**§ 921.32 Operation and Management: Implementation of the Management Plan.**

(a) After the reserve is formally designated, a coastal state is eligible to receive Federal funds to assist the state in the operation and management of the reserve including the management of research, monitoring, education, and interpretive programs. The purpose of this Federally funded operation and management phase is to implement the approved final management plan and to take the necessary steps to ensure the continued effective operation of the reserve.

(b) State operation and management of the reserves shall be consistent with the mission, and shall further the goals of the National Estuarine Research Reserve Program (see § 921.1).

(c) Federal funds are available for the operation and management of the reserve. Federal funds provided pursuant to this section may not exceed 70% of the total cost of operating and managing the reserve for any one year. In the case of a biogeographic region (see appendix I of this part) shared by two or more states, each state is eligible for Federal financial assistance to establish a separate reserve within their respective portion of the shared biogeographic region (see § 921.10).

(d) Operation and management funds are subject to the following limitations:

(1) Eligible coastal state agencies may apply for up to the maximum share available per reserve for that fiscal year. Share amounts will be announced annually by letter from the Sanctuary and Reserves Division to all participating states. This letter will be provided as soon as practicable following approval of the Federal budget for that fiscal year.

(2) No more than ten percent of the total amount (state and Federal shares) of each operation and management award may be used for construction-type activities.

**§ 921.33 Boundary changes, amendments to the management plan, and addition of multiple-site components.**

(a) Changes in the boundary of reserve and major changes to the final management plan, including state laws or regulations promulgated specifically for the reserve, may be made only after written approval by NOAA. NOAA may require public notice, including notice in the **Federal Register** and an opportunity for public comment before approving a boundary or management plan change. Changes in the boundary of a reserve involving the acquisition of properties not listed in the management plan or final EIS require public notice and the opportunity for comment; in certain cases, a categorical exclusion, an environmental assessment and possibly an environmental impact statement may be required. NOAA will place a notice in the **Federal Register** of any proposed changes in research reserve boundaries or proposed major changes to the final management plan. The state shall be responsible for publishing an equivalent notice in the local media. See also requirements of § 921.4(b) and § 921.13(a)(11).

(b) As discussed in § 921.10(b), a state may choose to develop a multiple-site national estuarine research reserve after the initial acquisition and development award for a single site has been made. NOAA will publish notice of the proposed new site including an invitation for comments from the public in the **Federal Register**. The state shall be responsible for publishing an equivalent notice in the local newspaper(s). An EIS, if required, shall be prepared in accordance with section § 921.13 and shall include an administrative framework for the multiple-site research reserve and a description of the complementary research and educational programs within the research reserve. If NOAA determines, based on the scope of the project and the issues associated with the additional site(s), that an environmental assessment is sufficient to establish a multiple-site research reserve, then the state shall develop a revised management plan which, concerning the additional component, incorporates each of the elements described in § 921.13(a). The revised management plan shall address goals and objectives for all components of the multi-site research reserve and the additional component's relationship to the original site(s).

(c) The state shall revise the management plan for a reserve at least every five years, or more often if necessary. Management plan revisions are subject to paragraph (a) of this section.

(d) NOAA will approve boundary changes, amendments to management plans, or the addition of multiple-site components, by notice in the **Federal Register**. If necessary NOAA will revise the designation document (findings) for the site.

## Subpart E—Ongoing Oversight, Performance Evaluation and Withdrawal of Designation

**§ 921.40 Ongoing oversight and evaluations of designated National Estuarine Research Reserves.**

(a) The Assistant Administrator shall conduct, in accordance with sections 312 and 315 of the Act and procedures set forth in 15 CFR part 928, ongoing oversight and evaluations of reserves. Interim sanctions may be imposed in accordance with regulations promulgated under 15 CFR part 928.

(b) The Assistant Administrator may consider the following indicators of non-adherence in determining whether to invoke interim sanctions:

(1) Inadequate implementation of required staff roles in administration, research, education/interpretation, and surveillance and enforcement. Indicators of inadequate implementation could include: No reserve Manager, or no staff or insufficient staff to carry out the required functions.

(2) Inadequate implementation of the required research plan, including the monitoring design. Indicators of inadequate implementation could include: Not carrying out research or monitoring that is required by the plan, or carrying out research or monitoring that is inconsistent with the plan.

(3) Inadequate implementation of the required education/interpretation plan. Indicators of inadequate implementation could include: Not carrying out education or interpretation that is required by the plan, or carrying out education/interpretation that is inconsistent with the plan.

(4) Inadequate implementation of public access to the reserve. Indicators of inadequate implementation of public access could include: Not providing necessary access, giving full consideration to the need to keep some areas off limits to the public in order to protect fragile resources.

(5) Inadequate implementation of facility development plan. Indicators of inadequate implementation could include: Not taking action to propose and budget for necessary facilities, or not undertaking necessary construction in a timely manner when funds are available.

(6) Inadequate implementation of acquisition plan. Indicators of inadequate implementation could include: Not pursuing an aggressive acquisition program with all available funds for that purpose, not requesting promptly additional funds when necessary, and evidence that adequate long-term state control has not been established over some core or buffer areas, thus jeopardizing the ability to protect the reserve site and resources from offsite impacts.

(7) Inadequate implementation of reserve protection plan. Indicators of inadequate implementation could include: Evidence of non-compliance with reserve restrictions, insufficient surveillance and enforcement to assure that restrictions on use of the reserve are adhered to, or evidence that reserve resources are being damaged or destroyed as a result of the above.

(8) Failure to carry out the terms of the signed Memorandum of Understanding (MOU) between the state and NOAA, which establishes a long-term state commitment to maintain and manage the reserve in accordance with section 315 of the Act. Indicators of failure could include: State action to allow incompatible uses of state-controlled lands or waters in the reserve, failure of the state to bear its fair share of costs associated with long-term operation and management of the reserve, or failure to initiate timely updates of the MOU when necessary.

### § 921.41 Withdrawal of designation.

The Assistant Administrator may withdraw designation of an estuarine area as a National Estuarine Research Reserve pursuant to and in accordance with the procedures of section 312 and 315 of the Act and regulations promulgated thereunder.

## Subpart F—Special Research Projects

### § 921.50 General.

(a) To stimulate high quality research within designated national estuarine research reserves, NOAA may provide financial support for research projects which are consistent with the Estuarine Research Guidelines referenced in § 921.51. Research awards may be awarded under this subpart to only those designated research reserves with approved final management plans. Although research may be conducted within the immediate watershed of the research reserve, the majority of research activities of any single research project funded under this subpart must be conducted within reserve boundaries. Funds provided under this subpart are primarily used to support management-related research projects that will enhance scientific understanding of the research reserve ecosystem, provide information needed by reserve managers and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues. Special research projects may be oriented to specific research reserves; however, research projects that would benefit more than one research reserve in the National Estuarine Reserve Research System are encouraged.

(b) Funds provided under this subpart are available on a competitive basis to any coastal state or qualified public or private person. A notice of available funds will be published in the **Federal Register**. Special research project funds are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) ("allowable costs").

### § 921.51 Estuarine research guidelines.

(a) Research within the National Estuarine Research Reserve System shall be conducted in a manner consistent with Estuarine Research Guidelines developed by NOAA.

(b) A summary of the Estuarine Research Guidelines is published in the **Federal Register** as a part of the notice of available funds discussed in § 921.50(c).

(c) The Estuarine Research Guidelines are reviewed annually by NOAA. This review will include an opportunity for comment by the estuarine research community.

### § 921.52 Promotion and coordination of estuarine research.

(a) NOAA will promote and coordinate the use of the National Estuarine Research Reserve System for research purposes.

(b) NOAA will, in conducting or supporting estuarine research other than that authorized under section 315 of the Act, give priority consideration to research that make use of the National Estuarine Research Reserve System.

(c) NOAA will consult with other Federal and state agencies to promote use of one or more research reserves within the National Estuarine Research Reserve System when such agencies conduct estuarine research.

## Subpart G—Special Monitoring Projects

### § 921.60 General.

(a) To provide a systematic basis for developing a high quality estuarine resource and ecosystem information base for National Estuarine Research Reserves and, as a result, for the System, NOAA may provide financial support for basic monitoring programs as part of operations and management under § 921.32. Monitoring funds are used to support three major phases of a monitoring program; studies necessary for comprehensive site description/characterization, development of a site profile, and implementation of a monitoring program.

(b) Additional monitoring funds may be available on a competitive basis to the state agency responsible for reserve management or a qualified public or private person or entity designated by the reserve for special monitoring projects. However, if the applicant is other than the managing entity of a research reserve (coastal state), that applicant must submit as a part of the application a letter from the reserve manager indicating formal support of the application by the managing entity of the reserve. Funds provided under this subpart for special monitoring projects are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) ("allowable costs").

(c) Monitoring projects funded under this subpart must focus on the resources within the boundaries of the research reserve and must be consistent with the applicable sections of the Estuarine Research Guidelines referenced in § 921.51. Portions of the project may occur within the immediate watershed of the reserve beyond the site

boundaries. However, the monitoring proposal must demonstrate why this is necessary for the success of the project.

### Subpart H—Special Interpretation and Education Projects

#### § 921.70 General.

(a) To stimulate the development of innovative or creative interpretive and educational projects and materials to enhance public awareness and understanding of estuarine areas, NOAA may fund special interpretive and educational projects in addition to those activities provided for in operations and management under § 921.32. Special interpretive and educational awards may be awarded under this subpart to only those designated research reserves with approved final management plans.

(b) Funds provided under this subpart may be available on a competitive basis to any state agency. However, if the applicant is other than the managing entity of a research reserve, that applicant must submit as a part of the application a letter from the reserve manager indicating formal support of the application by the managing entity of the reserve. These funds are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) ("allowable costs").

(c) Applicants for education/interpretive projects that NOAA determines benefit the entire national estuarine research reserve system may receive Federal assistance of up to 100% of project costs.

### Subpart I—General Financial Assistance Provisions

#### § 921.80 Application information.

(a) Only a coastal state may apply for Federal financial assistance awards for preacquisition, acquisition and development, operation and management, and special education and interpretation projects under subpart H. Any coastal state or public or private person may apply for Federal financial assistance awards for special estuarine research or monitoring projects under subpart G. The announcement of opportunities to conduct research in the reserve system appears on an annual basis in the **Federal Register**. If a state is participating in the national Coastal Zone Management Program, the applicant for an award under section 315 of the Act shall notify the state coastal management agency regarding the application.

(b) An original and two copies of the formal application must be submitted at least 120 working days prior to the proposed beginning of the project to the following address: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Universal Building South, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235. The Application for Federal Assistance Standard Form 424 (Non-construction Program) constitutes the formal application for site selection, post-site selection, operation and management, research, and education and interpretive awards. The Application for Federal Financial Assistance Standard Form 424 (Construction Program) constitutes the formal application for land acquisition and development awards. The application must be accompanied by the information required in subpart B of this part (predesignation), subpart C of this part, and § 921.31 (acquisition and development), and § 921.32 (operation and management) as applicable. Applications for development awards for construction projects, or restorative activities involving construction, must include a preliminary engineering report, a detailed construction plan, a site plan, a budget and categorical exclusion check list or environmental assessment. All applications must contain back up data for budget estimates (Federal and non-Federal shares), and evidence that the application complies with the Executive Order 12372, "Intergovernmental Review of Federal Programs." In addition, applications for acquisition and development awards must contain:

(1) State Historic Preservation Office comments;

(2) Written approval from NOAA of the draft management plan for initial acquisition and development award(s); and

#### § 921.81 Allowable costs.

(a) Allowable costs will be determined in accordance with applicable OMB Circulars and guidance for Federal financial assistance, the financial assistance agreement, these regulations, and other Department of Commerce and NOAA directives. The term "costs" applies to both the Federal and non-Federal shares.

(b) Costs claimed as charges to the award must be reasonable, beneficial and necessary for the proper and efficient administration of the financial assistance award and must be incurred during the award period.

(c) Costs must not be allocable to or included as a cost of any other Federally-financed program in either the current or a prior award period.

(d) General guidelines for the non-Federal share are contained in Department of Commerce Regulations at 15 CFR part 24 and OMB Circular A–110. Copies of Circular A–110 can be obtained from the Sanctuaries and Reserves Division; 1825 Connecticut Avenue, NW., suite 714; Washington, DC 20235. The following may be used in satisfying the matching requirement:

(1) Site Selection and Post Site Selection Awards. Cash and in-kind contributions (value of goods and services directly benefiting and specifically identifiable to this part of the project) are allowable. Land may not be used as match.

(2) Acquisition and Development Awards. Cash and in-kind contributions are allowable. In general, the fair market value of lands to be included within the research reserve boundaries and acquired pursuant to the Act, with other than Federal funds, may be used as match. However, the fair market value of real property allowable as match is limited to the fair market value of a real property interest equivalent to, or required to attain, the level of control over such land(s) identified by the state and approved by the Federal Government as that necessary for the protection and management of the national estuarine research reserve. Appraisals must be performed according to Federal appraisal standards as detailed in Department of Commerce regulations at 15 CFR part 24 and the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally assisted programs in 15 CFR part 11. The fair market value of privately donated land, at the time of donation, as established by an independent appraiser and certified by a responsible official of the state, pursuant to 15 CFR part 11, may also be used as match. Land, including submerged lands already in the state's possession, may be used as match to establish a national estuarine research reserve. The value of match for these state lands will be calculated by determining the value of the benefits forgone by the state, in the use of the land, as a result of new restrictions that may be imposed by reserve designation. The appraisal of the benefits forgone must be made by an independent appraiser in accordance with Federal appraisal standards pursuant to 15 CFR part 24 and 15 CFR part 11. A state may initially use as match land valued at greater than the Federal share of the acquisition and development award. The value in excess of the amount

required as match for the initial award may be used to match subsequent supplemental acquisition and development awards for the national estuarine research reserve (see also § 921.20). Costs related to land acquisition, such as appraisals, legal fees and surveys, may also be used as match.

(3) Operation and Management Awards. Generally, cash and in-kind contributions (directly benefiting and specifically identifiable to operations and management), except land, are allowable.

(4) Research, Monitoring, Education and Interpretive Awards. Cash and in-kind contributions (directly benefiting and specifically identifiable to the scope of work), except land, are allowable.

**§ 921.82 Amendments to financial assistance awards.**

Actions requiring an amendment to the financial assistance award, such as a request for additional Federal funds, revisions of the approved project budget or original scope of work, or extension of the performance period must be submitted to NOAA on Standard Form 424 and approved in writing.

**Appendix I to Part 921—Biogeographic Classification Scheme**

**Acadian**

1. Northern Gulf of Maine (Eastport to the Sheepscot River).
2. Southern Gulf of Maine (Sheepscot River to Cape Cod).

**Virginian**

3. Southern New England (Cape Cod to Sandy Hook).
4. Middle Atlantic (Sandy Hook to Cape Hatteras).
5. Chesapeake Bay.

**Carolinian**

6. North Carolinas (Cape Hatteras to Santee River).
7. South Atlantic (Santee River to St. John's River).
8. East Florida (St. John's River to Cape Canaveral).

**West Indian**

9. Caribbean (Cape Canaveral to Ft. Jefferson and south).
10. West Florida (Ft. Jefferson to Cedar Key).

**Louisianian**

11. Panhandle Coast (Cedar Key to Mobile Bay).
12. Mississippi Delta (Mobile Bay to Galveston).
13. Western Gulf (Galveston to Mexican border).

**Californian**

14. Southern California (Mexican border to Point Conception).
15. Central California (Point Conception to Cape Mendocino).
16. San Francisco Bay.

**Columbian**

17. Middle Pacific (Cape Mendocino to the Columbia River).
18. Washington Coast (Columbia River to Vancouver Island).
19. Puget Sound.

**Great Lakes**

20. Lake Superior (including St. Mary's River).
21. Lakes Michigan and Huron (including Straits of Mackinac, St. Clair River, and Lake St. Clair).
22. Lake Erie (including Detroit River and Niagara Falls).
23. Lake Ontario (including St. Lawrence River).

**Fjord**

24. Southern Alaska (Prince of Wales Island to Cook Inlet).
25. Aleutian Islands (Cook Inlet to Bristol Bay).

**Sub-Arctic**

26. Northern Alaska (Bristol Bay to Damarcation Point).

**Insular**

27 Hawaiian Islands.
28. Western Pacific Island.
29. Eastern Pacific Island.

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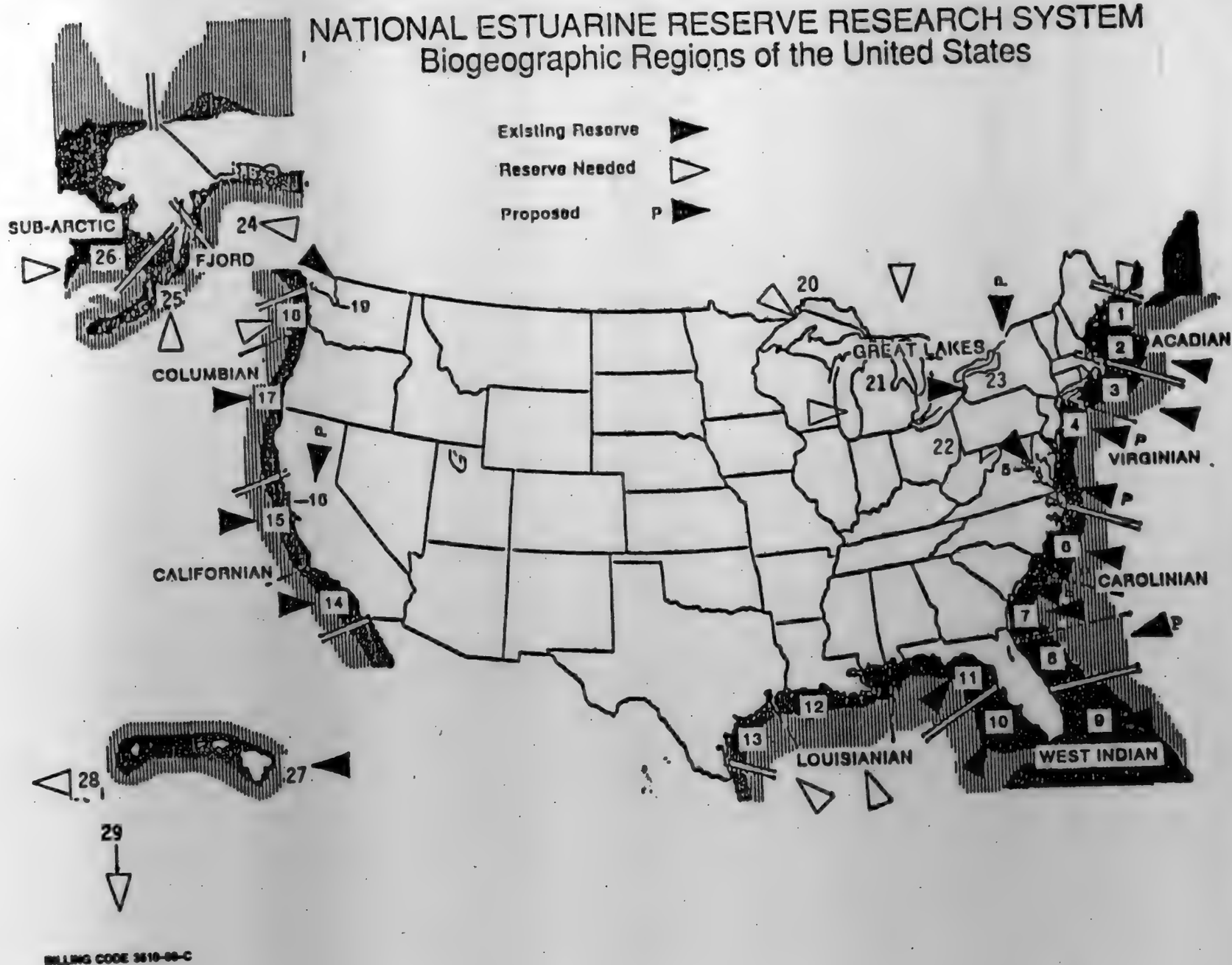


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**Appendix II to Part 921—Typology of National Estuarine Research Reserves**

This typology system reflects significant differences in estuarine characteristics that are not necessarily related to regional location. The purpose of this type of classification is to maximize ecosystem variety in the selection of national estuarine reserves. Priority will be given to important ecosystem types as yet unrepresented in the reserve system. It should be noted that any one site may represent several ecosystem types or physical characteristics.

**Class I—Ecosystem Types**

*Group I—Shorelands*

A. Maritime Forest-Woodland

This type of ecosystem consists of single-stemmed species that have developed under the influence of salt spray. It can be found on coastal uplands or recent features such as barrier islands and beaches, and may be divided into the following biomes:

1. Northern Coniferous Forest Biome: This is an area of predominantly evergreens such as the sitka spruce (*Picea*), grand fir (*Abies*), and white cedar (*Thuja*), with poor development of the shrub and herb leyera, but high annual productivity and pronounced seasonal periodicity.

2. Moist Temperate (Mesothermal) Coniferous Forest Biome: Found along the west coast of North America from California to Alaska, this area is dominated by conifers, has relatively small seasonal range, high humidity with rainfall ranging from 30 to 150 inches, and a well-developed understory of vegetation with an abundance of mosses and other moisture-tolerant plants.

3. Temperate Deciduous Forest Biome: This biome is characterized by abundant, evenly distributed rainfall, moderate temperatures which exhibit a distinct seasonal pattern, well-developed soil biota and herb and shrub layers, and numerous plants which produce pulpy fruits and nuts. A distinct subdivision of this biome is the pine edible forest of the southeastern coastal plain, in which only a small portion of the area is occupied by climax vegetation, although it has large areas covered by edaphic climax pines.

4. Broad-leaved Evergreen Subtropical Forest Biome: The main characteristic of this biome is high moisture with less pronounced differences between winter and summer. Examples are the hammocks of Florida and the live oak forests of the Gulf and South Atlantic coasts. Floral dominants include pines, magnolias, bays, hollies, wild tamarind, strangler fig, gumbo limbo, and palms.

B. Coast Shrublands

This is a transitional area between the coastal grasslands and woodlands and is characterized by woody species with multiple stems a few centimeters to several meters above the ground developing under the influence of salt spray and occasional sand burial. This includes thickets, scrub, scrub savanna, heathlands, and coastal chaparral. There is a great variety of shrubland vegetation exhibiting regional specificity:

1. Northern Areas: Characterized by *Hudsonia*, various erinaceous species, and thickets of *Myrica*, *Prunus*, and *Rosa*.

2. Southeast Areas: Floral dominants include *Myrica*, *Baccharis*, and *Ilex*.

3. Western Areas: *Adenostoma*, *Arcotyphylos*, and *Eucalyptus* are the dominant floral species.

C. Coastal Grasslands

This area, which possesses sand dunes and coastal flats, has low rainfall (10 to 30 inches per year) and large amounts of humus in the soil. Ecological succession is slow, resulting in the presence of a number of seral stages of community development. Dominant vegetation includes mid-grasses (2 to 4 feet tall), such as *Ammophila*, *Agropyron*, and *Calamovilfa*, tall grasses (5 to 8 feet tall), such as *Spartina*, and trees such as willow (*Salix* sp.), cherry (*Prunus* sp.), and cottonwood (*Pupulus deltoides*). This area is divided into four regions with the following typical strand vegetation:

1. Arctic/Boreal: *Elymus;*
2. Northeast/West: *Ammophila;*
3. Southeast/Gulf: *Uniola;* and
4. Mid-Atlantic/Gulf: *Spartina patens*.

D. Coastal Tundra

This ecosystem, which is found along the Arctic and Boreal coasts of North America, is characterized by low temperatures, a short growing season, and some permafrost, producing a low, treeless mat community made up of mosses, lichens, heath, shrubs, grasses, sedges, rushes, and herbaceous and dwarf woody plants. Common species include arctic/alpine plants such as *Empetrum nigrum* and *Betula nana*, the lichens *Cetraria* and *Cladonia*, and herbaceous plants such as *Potentilla tridentata* and *Rubus chamaemorus*. Common species on the coastal beach ridges of the high arctic desert include *Dryas intergrifolia* and *Saxifrage oppositifolia*.

This area can be divided into two main subdivisions:

1. Low Tundra: Characterized by a thick, spongy mat of living and undecayed vegetation, often with water and dotted with ponds when not frozen; and

2. High Tundra: A bare area except for a scanty growth of lichens and grasses, with underlaying ice wedges forming raised polygonal areas.

E. Coastal Cliffs

This ecosystem is an important nesting site for many sea and shore birds. It consists of communities of herbaceous, graminoid, or low woody plants (shrubs, heath, etc.) on the top or along rocky faces exposed to salt spray. There is a diversity of plant species including mosses, lichens, liverworts, and "higher" plant representatives.

*Group II—Transition Areas*

A. Coastal Marshes

These are wetland areas dominated by grasses (Poacea), sedges (Cyperaceae), rushes (Juncaceae), cattails (Typhaceae), and other graminoid species and is subject to periodic flooding by either salt or freshwater. This ecosystem may be subdivided into: (a) Tidal, which is periodically flooded by either salt or brackish water; (b) nontidal (freshwater); or (c) tidal freshwater. These are essential habitats for many important estuarine species of fish and invertebrates as well as shorebirds and waterfowl and serves important roles in shore stabilization, flood control, water purification, and nutrient transport and storage.

B. Coastal Swamps

These are wet lowland areas that support mosses and shrubs together with large trees such as cypress or gum.

C. Coastal Mangroves

This ecosystem experiences regular flooding on either a daily, monthly, or seasonal basis, has low wave action, and is dominated by variety of salt-tolerant trees, such as the red mangrove (*Rhizophora mangle*), black mangrove (*Avicennia nitida*), and the white mangrove (*Laguncularia racemosa*). It is also an important habitat for large populations of fish, invertebrates, and birds. This type of ecosystem can be found from central Florida to extreme south Texas to the islands of the Western Pacific.

D. Intertidal Beaches

This ecosystem has a distinct biota of microscopic animals, bacteria, and unicellular algae along with macroscopic crustaceans, mollusks, and worms with a detritus-based nutrient cycle. This area also includes the driftline communities found at high tide levels on the beach. The dominant organisms in this ecosystem include crustaceans such as the mole crab (*Emerita*), amphipods (*Gammeridae*), ghost crabs (*Ocypode*), and bivalve mollusks such as the coquina (*Donax*) and surf clams (*Spisula and Mactra*).

E. Intertidal Mud and Sand Flats

These areas are composed of unconsolidated, high organic content sediments that function as a short-term storage area for nutrients and organic carbons. Macrophytes are nearly absent in this ecosystem, although it may be heavily colonized by benthic diatoms, dinoflaggellates, filamentous blue-green and green algae, and chaemosynthetic purple sulfur bacteria. This system may support a considerable population of gastropods, bivalves, and polychaetes, and may serve as a feeding area for a variety of fish and wading birds. In sand, the dominant fauna include the wedge shell *Donax*, the scallop *Pecten*, tellin shells *Tellina*, the heart urchin *Echinocardium*, the lug worm *Arenicola*, sand dollar *Dendraster*, and the sea pansy *Renilla*. In mud, faunal dominants adapted to low oxygen levels include the terebellid *Amphitrite*, the boring clam *Playdon*, the deep sea scallop *Placopecten*, the quahog *Mercenaria*, the echiurid worm *Urechis*, the mud snail *Nossarius*, and the sea cucumber *Thyone*.

F. Intertidal Algal Beds

These are hard substrates along the marine edge that are dominated by macroscopic algae, usually thalloid, but also filamentous or unicellular in growth form. This also includes the rocky coast tidepools that fall within the intertidal zone. Dominant fauna of these areas are barnacles, mussels, periwinkles, anemones, and chitons. Three regions are apparent:

1. Northern Latitude Rocky Shores: It is in this region that the community structure is best developed. The dominant algal species include *Chondrus* at the low tide level, *Fucus* and *Ascophyllum* at the mid-tidal level, and *Laminaria* and other kelplike algae just beyond the intertidal, although they can be exposed at extremely low tides or found in very deep tidepools.

2. Southern Latitudes: The communities in this region are reduced in comparison to those of the northern latitudes and possesses algae consisting mostly of single-celled or filamentour green, blue-green, and red algae, and small thalloid brown algae.

3. Tropical and Subtropical Latitudes: The intertidal in this region is very reduced and contains numerous clacareous algae such as *Porolithon* and *Lithothamnion*, as well and green algae with calcareous particles such as *Halimeda*, and numerous other green, red, and brown algae.

*Group III—Submerged Bottoms*

A. Subtidal Hardbottoms

This system is characterized by a consolidated layer of solid rock or large pieces of rock (neither of biotic origin) and is found in association with geomorphological features such as submarine canyons and fjords and is usually covered with assemblages of sponges, sea fans, bivalves, hard corals, tunicates, and other attached organisms. A significant feature of estuaries in many parts of the world is the oyster reef, a type of subtidal hardbottom. Composed of assemblages of organisms (usually bivalves), it is usually found near an estuary's mouth in a zone of moderate wave action, salt content, and turbidity. If light levels are sufficient, a covering of microscopic and attached macroscopic algae, such as kelp, may also be found.

B. Subtidal Softbottoms

Major characteristics of this ecosystem are an unconsolidated layer of fine particles of silt, sand, clay, and gravel, high hydrogen sulfide levels, and anaerobic conditions often existing below the surface. Macrophytes are either sparse or absent, although a layer of benthic microalgae may be present if light levels are sufficient. The faunal community is dominated by a divers population of deposit feeders including polychaetes, bivalves, and burrowing crustaceans.

C. Subtidal Plants

This system is found in relatively shallow water (less than 8 to 10 meters) below mean low tide. It is an area of extremely high primary production that provides food and refuge for a diversity of faunal groups, especially juvenile and adult fish, and in some regions, manatees and sea turtles. Along the North Atlantic and Pacific coasts, the seagrass *Zostera marina* predominates. In the South Atlantic and Gulf coast areas, *Thalassia* and *Diplanthera* predominate. The grasses in both areas support a number of epiphytic organisms.

**CLASS II—Physical Characteristics**

*Group I—Geologic*

A. Basin Type

Coastal water basins occur in a variety of shapes, sizes, depths, and appearances. The eight basic types discussed below will cover most of the cases:

1. Exposed Coast: Solid rock formations or heavy sand deposits characterize exposed ocean shore fronts, which are subject to the full force of ocean storms. The sand beaches are very resilient, although the dunes lying just behind the beaches are fragile and easily damaged. The dunes serve as a sand storage area, making them chief stabilizers of the ocean shorefront.

2. Sheltered Coast: Sand or coral barriers, built up by natural forces, provide sheltered areas inside a bar or reef where the ecosystem takes on many characteristics of confined waters—abundant marine grasses, shellfish, and juvenile fish. Water movement is reduced, with the consequent effects of pollution being more severe in this area than in exposed coastal areas.

3. Bay: Bays are larger confined bodies of water that are open to the sea and receive strong tidal flow. When stratification is pronounced, the flushing action is augmented by river discharge. Bays vary in size and in type of shorefront.

4. Embayment: A confined coastal water body with narrow, restricted inlets and with a significant freshwater inflow can be classified as an embayment. These areas have more restricted inlets than bays, are usually smaller and shallower, have low tidal action, and are subject to sedimentation.

5. Tidal River: The lower reach of a coastal river is referred to as a tidal river. The coastal water segment extends from the sea or estuary into which the river discharges to a point as far upstream as there is significant salt content in the water, forming a salt front. A combination of tidal action and freshwater outflow makes tidal rivers well-flushed. The tidal river basin may be a simple channel or a complex of tributaries, small associated embayments, marshfronts, tidal flats, and a variety of others.

6. Lagoon: Lagoons are confined coastal bodies of water with restricted inlets to the sea and without significant freshwater inflow. Water circulation is limited, resulting in a poorly flushed, relatively stagnant body of water. Sedimentation is rapid with a great potential for basin shoaling. Shores are often gently sloping and marshy.

7. Perched Coastal Wetlands: Unique to Pacific islands, this wetland type, found above sea level in volcanic crater remnants, forms as a result of poor drainage characteristics of the crater rather than from sedimentation. Floral assemblages exhibit distinct zonation while the faunal constituents may include freshwater, brackish, and/or marine species. Example: Aunu'u Island, American Samoa.

8. Anchialine Systems: These small coastal exposures of brackish water form in lava depressions or elevated fossil reefs, have only a subsurface connection in the ocean, but show tidal fluctuations. Differing from true estuaries in having no surface continuity with streams or ocean, this system is characterized by a distinct biotic community dominated by benthis algae such as Rhizoclonium, the mineral encrusting Schiuzothrix, and the vascular plant Ruppia maritima. Characteristic fauna, which exhibit a high degree of endemicity, include the mollusks Theodoxus neglectus and T. cariosus. Although found throughout the world, the high islands of the Pacific are the only areas within the U.S. where this system can be found.

B. Basin Structure

Estuary basins may result from the drowning of a river valley (coastal plains estuary), the drowning of a glacial valley (fjord), the occurrence of an offshore barrier (bar-bounded estuary), some tectonic process (tectonic estuary), or volcanic activity (volcanic estuary).

1. Coastal plains estuary: Where a drowned valley consists mainly of a single channel, the form of the basin is fairly regular, forming a simple coastal plains estuary. When a channel is flooded with numerous tributaries, an irregular estuary results. Many estuaries of the eastern United States are of this type.

2. Fjord: Estuaries that form in elongated, steep headlands that alternate with deep U-shaped valleys resulting from glacial scouring are called fjords. They generally possess rocky floors or very thin veneers of sediment, with deposition generally being restricted to the head where the main river enters. Compared to total fjord volume, river discharge is small. But many fjords have restricted tidal ranges at their mouths, due to sills, or upreaching sections of the bottom which limit free movement of water, often making river flow large with respect to the tidal prism. The deepest portions are in the upstream reaches, where maximum depths can range from 800 m to 1200 m, while sill depths usually range from 40 m to 150 m.

3. Bar-bounded Estuary: These result from the development of an offshore barrier, such as a beach strand, a line of barrier islands, reef formations, a line of moraine debris, or the subsiding remnants of a deltaic lobe. The basin is often partially exposed at low tide and is enclosed by a chain of offshore bars or barrier islands, broken at intervals by inlets. These bars may be either deposited offshore or may be coastal dunes that have become isolated by recent sea level rises.

4. Tectonic Estuary: These are coastal indentures that have formed through tectonic processes such as slippage along a fault line (San Francisco Bay), folding or movement of the earth's bedrock, often with a large inflow of freshwater.

5. Volcanic Estuary: These coastal bodies of open water, a result of volcanic processes, are depressions or craters that have direct and/or subsurface connections with the ocean and may or may not have surface continuity with streams. These formations are unique to island areas of volcanic origin.

C. Inlet Type

Inlets in various forms are an integral part of the estuarine environment, as they regulate, to a certain extent, the velocity and magnitude of tidal exchange, the degree of mixing, and volume of discharge to the sea. There are four major types of inlets:

1. Unrestricted: An estuary with a wide, unrestricted inlet typically has slow currents, no significant turbulence, and receives the full effect of ocean waves and local disturbances which serve to modify the

shoreline. These estuaries are partially mixed, as the open mouth permits the incursion of marine waters to considerable distances upstream, depending on the tidal amplitude and stream gradient.

2. Restricted: Restrictions of estuaries can exist in many forms: Bars, barrier islands, spits, sills, and more. Restricted inlets result in decreased circulation, more pronounced longitudinal and vertical salinity gradients, and more rapid sedimentation. However, if the estuary mouth is restricted by depositional features or land closures, the incoming tide may be held back until it suddenly breaks forth into the basin as a tidal wave, or bore. Such currents exert profound effects on the nature of the substrate, turbidity, and biota of the estuary.

3. Permanent: Permanent inlets are usually opposite the mouths of major rivers and permit river water to flow into the sea.

4. Temporary (Intermittent): Temporary inlets are formed by storms and frequently shift position, depending on tidal flow, the depth of the sea, and sound waters, the frequency of storms, and the amount of littoral transport.

D. Bottom Composition

The bottom composition of estuaries attests to the vigorous, rapid, and complex sedimentation processes characteristic of most coastal regions with low relief. Sediments are derived through the hydrologic processes of erosion, transport, and deposition carried on by the sea and the stream.

1. Sand: Near estuary mouths, where the predominating forces of the sea build spits or other depositional features, the shore and substrates of the estuary are sandy. The bottom sediments in this area are usually coarse, with a graduation toward finer particles in the head of the estuary. In the head region and other zones of reduced flow, fine silty sands are deposited. Sand deposition occurs only in wider or deeper regions where velocity is reduced.

2. Mud: At the base level of a stream near its mouth, the bottom is typically composed of loose muds, silts, and organic detritus as a result of erosion and transport from the upper stream reaches and organic decomposition. Just inside the estuary entrance, the bottom contains considerable quantities of sand and mud, which support a rich fauna. Mud flats, commonly built up in estuarine basins, are composed of loose, coarse, and fine mud and sand, often dividing the original channel.

3. Rock: Rocks usually occur in areas where the stream runs rapidly over a steep gradient with its coarse materials being derived from the higher elevations where the stream slope is greater. The larger fragments are usually found in shallow areas near the stream mouth.

4. Oyster shell: Throughout a major portion of the world, the oyster reef is one of the most significant features of estuaries, usually being found near the mouth of the estuary in a zone of moderate wave action, salt content, and turbidity. It is often a major factor in modifying estuarine current systems and sedimentation, and may occur as an elongated island or peninsula oriented across the main current, or may develop parallel to the direction of the current.

*Group II—Hydrographic*

A. Circulation

Circulation patterns are the result of combined influences of freshwater inflow, tidal action, wind and oceanic forces, and serve many functions: nutrient transport, plankton dispersal, ecosystem flushing, salinity control, water mixing, and more.

1. Stratified: This is typical of estuaries with a strong freshwater influx and is commonly found in bays formed from "drowned" river valleys, fjords, and other deep basins. There is a net movement of freshwater outward at the top layer and saltwater at the bottom layer, resulting in a net outward transport of surface organisms and net inward transport of bottom organisms.

2. Non-stratified: Estuaries of this type are found where water movement is sluggish and flushing rate is low, although there may be sufficient circulation to provide the basis for a high carrying capacity. This is common to shallow embayments and bays lacking a good supply of freshwater from land drainage.

3. Lagoonal: An estuary of this type is characterized by low rates of water movement resulting from a lack of significant freshwater influx and a lack of strong tidal exchange because of the typically narrow inlet connecting the lagoon to the sea. Circulation, whose major driving force is wind, is the major limiting factor in biological productivity within lagoons.

B. Tides

This is the most important ecological factor in an estuary, as it affects water exchange and its vertical range determines the extent of tidal flats which may be exposed and submerged with each tidal cycle. Tidal action against the volume of river water discharged into an estuary results in a complex system whose properties vary according to estuary structure as well as the magnitude of river flow and tidal range. Tides are usually described in terms of their cycle and their relative heights. In the United States, tide height is reckoned on the basis of average low tide, which is referred to as datum. The tides, although complex, fall into three main categories:

1. Diurnal: This refers to a daily change in water level that can be observed along the shoreline. There is one high tide and one low tide per day.

2. Semidiurnal: This refers to a twice daily rise and fall in water that can be observed along the shoreline.

3. Wind/Storm Tides: This refers to fluctuations in water elevation to wind and storm events, where influence of lunar tides is less.

C. Freshwater

According to nearly all the definitions advanced, it is inherent that all estuaries need freshwater, which is drained from the land and measurably dilutes seawater to create a brackish condition. Freshwater enters an estuary as runoff from the land either from a surface and/or subsurface source.

1. Surface water: This is water flowing over the ground in the form of streams. Local variation in runoff is dependent upon the nature of the soil (porosity and solubility), degree of surface slope, vegetational type and development, local climatic conditions, and volume and intensity of precipitation.

2. Subsurface water: This refers to the precipitation that has been absorbed by the soil and stored below the surface. The distribution of subsurface water depends on local climate, topography, and the porosity and permeability of the underlying soils and rocks. There are two main subtypes of surface water:

a. Vadose water: This is water in the soil above the water table. Its volume with respect to the soil is subject to considerable fluctuation.

b. Groundwater: This is water contained in the rocks below the water table, is usually of more uniform volume than vadose water, and generally follows the topographic relief of the land, being high below hills and sloping into valleys.

*Group III—Chemical*

A. Salinity

This reflects a complex mixture of salts, the most abundant being sodium chloride, and is a very critical factor in the distribution and maintenance of many estuarine organisms. Based on salinity, there are two basic estuarine types and eight different salinity zones (expressed in parts per thousand—ppt).

1. Positive estuary: This is an estuary in which the freshwater influx is sufficient to maintain mixing, resulting in a pattern of increasing salinity toward the estuary mouth. It is characterized by low oxygen concentration in the deeper waters and considerable organic content in bottom sediments.

2. Negative estuary: This is found in particularly arid regions, where estuary evaporation may exceed freshwater inflow, resulting in increased salinity in the upper part of the basin, especially if the estuary mouth is restricted so that tidal flow is inhibited. These are typically very salty (hyperhaline), moderately oxygenated at depth, and possess bottom sediments that are poor in organic content.

3. Salinity zones (expressed in ppt):

a. Hyperhaline—greater than 40 ppt.

b. Euhaline—40 ppt to 30 ppt.

c. Mixhaline—30 ppt to 0.5 ppt.

(1) Mixoeuhaline—greater than 30 ppt but less than the adjacent euhaline sea.

(2) Polyhaline—30 ppt to 18 ppt.

(3) Mesohaline—18 ppt to 5 ppt.

(4) Oligohaline—5 ppt to 0.5 ppt.

d. Limnetic: Less than 0.5 ppt.

B. pH Regime:

This is indicative of the mineral richness of estuarine waters and falls into three main categories:

1. Acid: Waters with a pH of less than 5.5.

2. Circumneutral: A condition where the pH ranges from 5.5 to 7.4.

3. Alkaline: Waters with a pH greater than 7.4.

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Part VII

# The President

## Proclamation 6458—Captive Nations Week, 1992

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# Presidential Documents

Title 3—

## The President

Proclamation 6458 of July 15, 1992

## Captive Nations Week, 1992

By the President of the United States of America

A Proclamation

When Americans first observed Captive Nations Week in 1959, repressive communist regimes had overtaken nations from Central and Eastern Europe to mainland China and overshadowed many others with the very real threat of expansionism. Three years earlier, forces of the Soviet Union had brutally suppressed a popular movement for freedom in Hungary; some 16 years before that, the Soviets had invaded Poland and achieved the forcible annexation of Lithuania, Latvia, and Estonia. In 1959, the United Nations had only recently ended its efforts to thwart communist expansionism below the 38th parallel in Korea, and a communist-led insurgency had already begun to threaten South Vietnam. At a time when millions of people were enslaved by Soviet domination or subjugated by proxy, at a time when countless others were terrorized by the threat of communist aggression and subversion, Americans paused during Captive Nations Week to reaffirm our commitment to liberty and self-government and to express our solidarity with all those peoples seeking freedom, independence, and security.

Today, 33 years after our first observance of Captive Nations Week, millions of people who suffered under Soviet domination and communist rule are free. The Iron Curtain and its most despised symbol, the Berlin Wall, have fallen—toppled by courageous individuals who would no longer stand the denial of their fundamental human rights. Today we celebrate the existence of a free and unified Germany, as well as the independence of the Baltic States, Central European countries, and 12 new states that replaced the U.S.S.R. In Afghanistan and Angola, where bloody civil war against Soviet-supported, Marxist-Leninist regimes left thousands dead and millions of others homeless, chances of achieving lasting peace have reached their highest level in years.

As we celebrate the hope of peace and freedom in these and other once-captive nations, we also remember the many courageous, freedom-loving men and women who resisted tyranny and oppression—often at great personal cost. These include the thousands of dissenters who risked imprisonment, exile, and death in order to demand rights that we Americans enjoy: freedom of religion, speech, and assembly, as well as the right to a fair trial and to protection against unreasonable searches and seizures. They include prisoners of the gulag who remained devoted to liberty despite suffering hunger, torture, and long periods of solitary confinement; and they include selfless religious leaders such as Father Jerzy Popieluszko of Poland, Cardinal Josef Mindszenty of Hungary, and Cardinal Josyf Slipyj of Ukraine, who inspired countless others by their unshakeable belief in the God-given rights and dignity of the human person. From broadcasters at the Voice of America and Radio Free Europe/Radio Liberty, who pierced the Iron Curtain with words of hope and truth, to freedom-fighters in Nicaragua and other Latin American countries who led popular resistance to local despots and to political and military interference from Cuba and the Soviet Union—the men and women whom we remember this week never lost their faith in freedom and in the inevitable triumph of liberty and justice.

As we recall all those who labored and sacrificed to hasten the demise of imperial communism and to liberate the world's captive nations, we must also remember those peoples who remain subject to regimes that continue to deny basic human rights in stark violation of both the letter and the spirit of international human rights agreements, as well as fundamental standards of morality. The United States will continue to speak out against egregious human rights violations in Cuba and elsewhere, and we shall continue to warn the world's newly emerging democracies against another kind of subjugation: the tyranny of ethnic hatred and nationalist rivalries. History has shown how these evils can produce their own form of captivity: a vicious cycle of violence, political repression, and economic stagnation and loss. As this observance of Captive Nations Week reminds us, freedom and peace are precious blessings that require the faith, the will, and the wherewithal to preserve and strengthen them.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning July 12, 1992, as Captive Nations Week. I call on all Americans to observe this week with appropriate ceremonies and activities in celebration of the growth of liberty and democracy around the world and in recognition of the need for continued vigilance and resolve in the defense of human rights.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of July, in the year of our Lord nineteen hundred and ninety two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

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**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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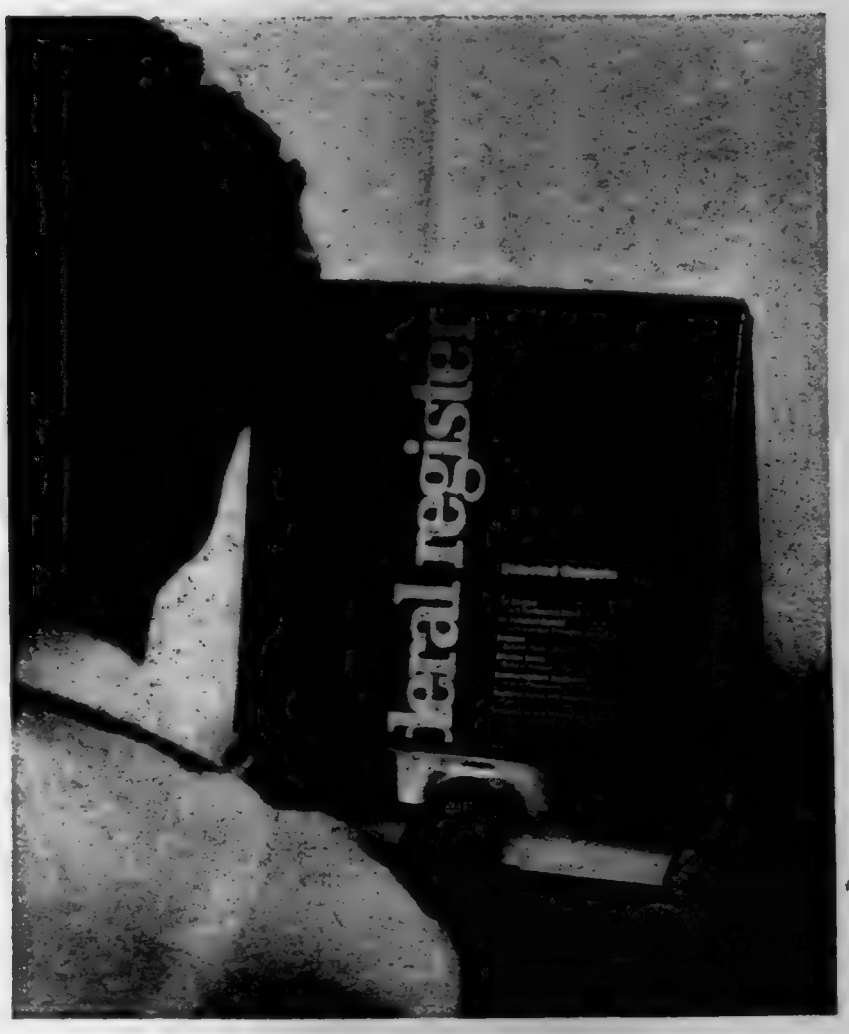


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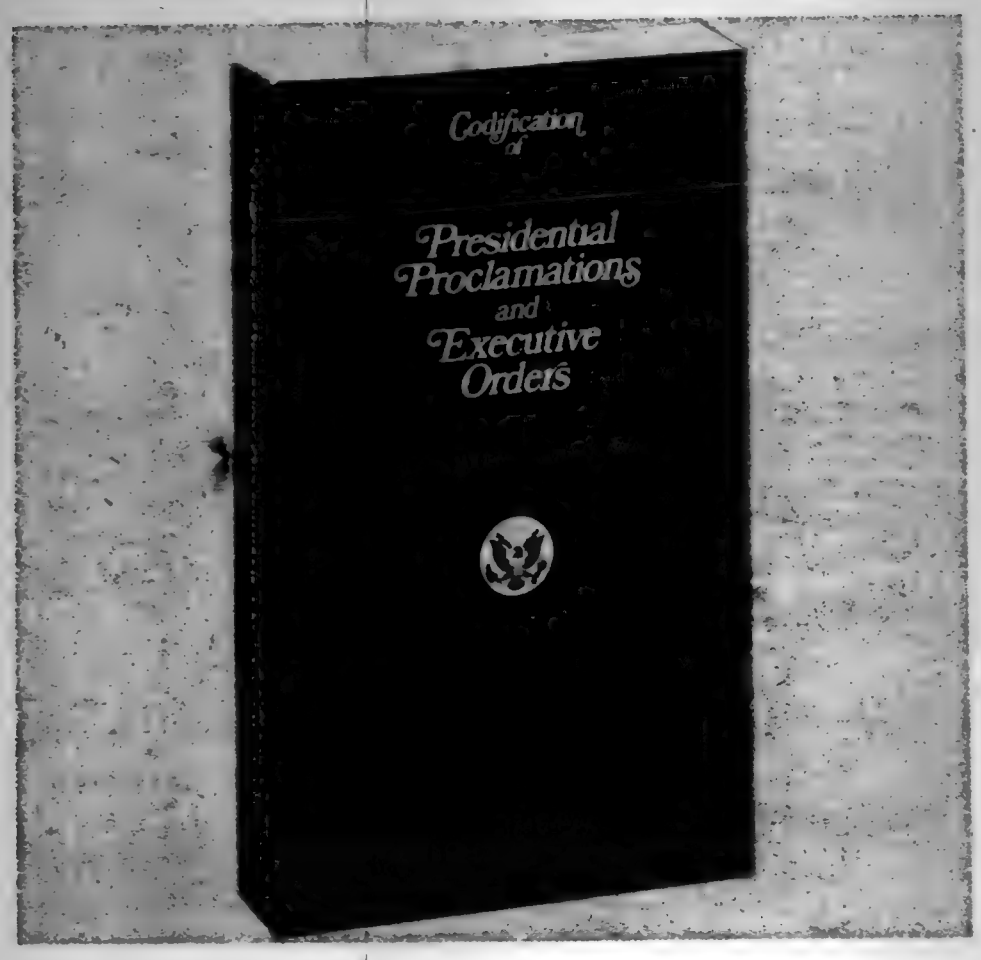


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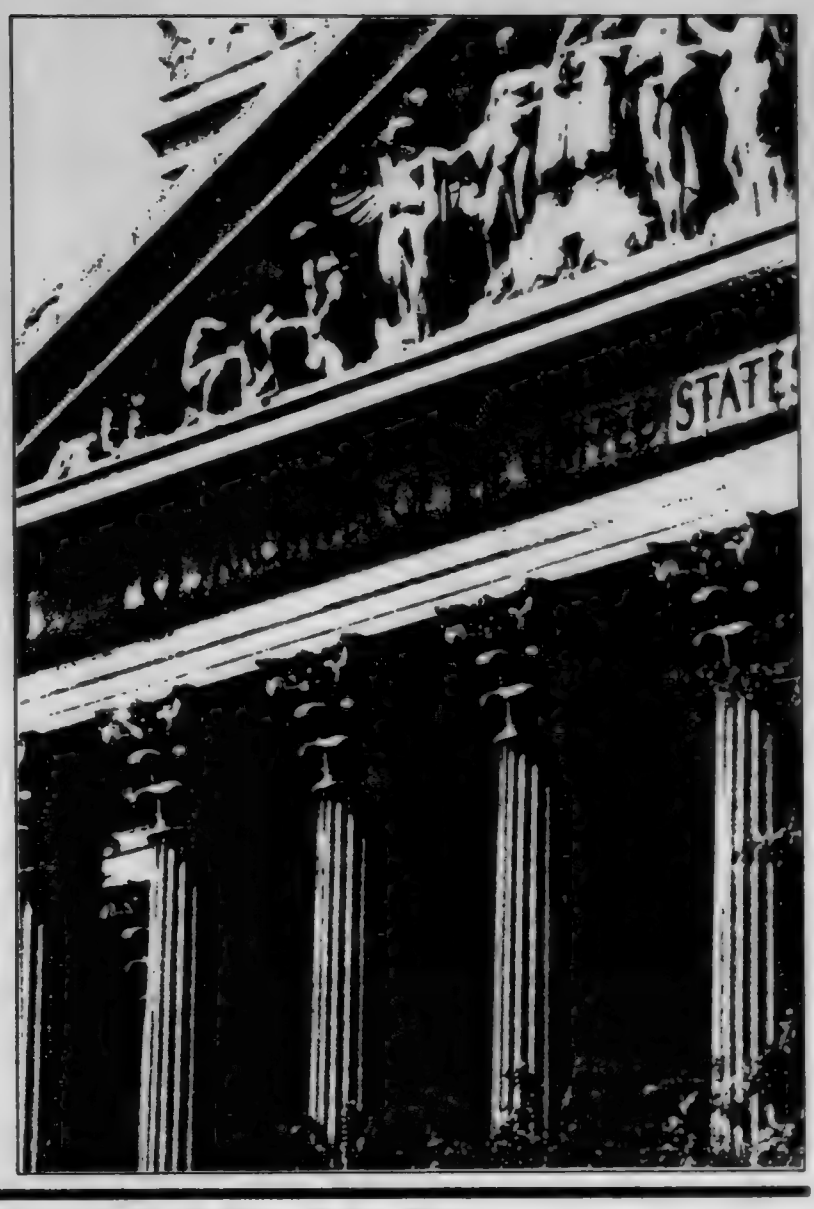


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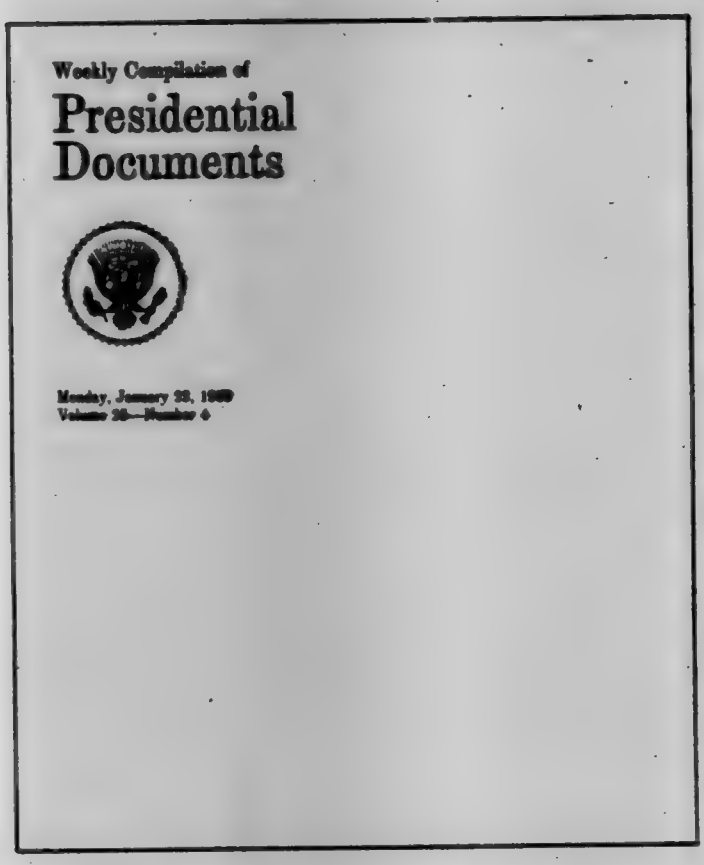


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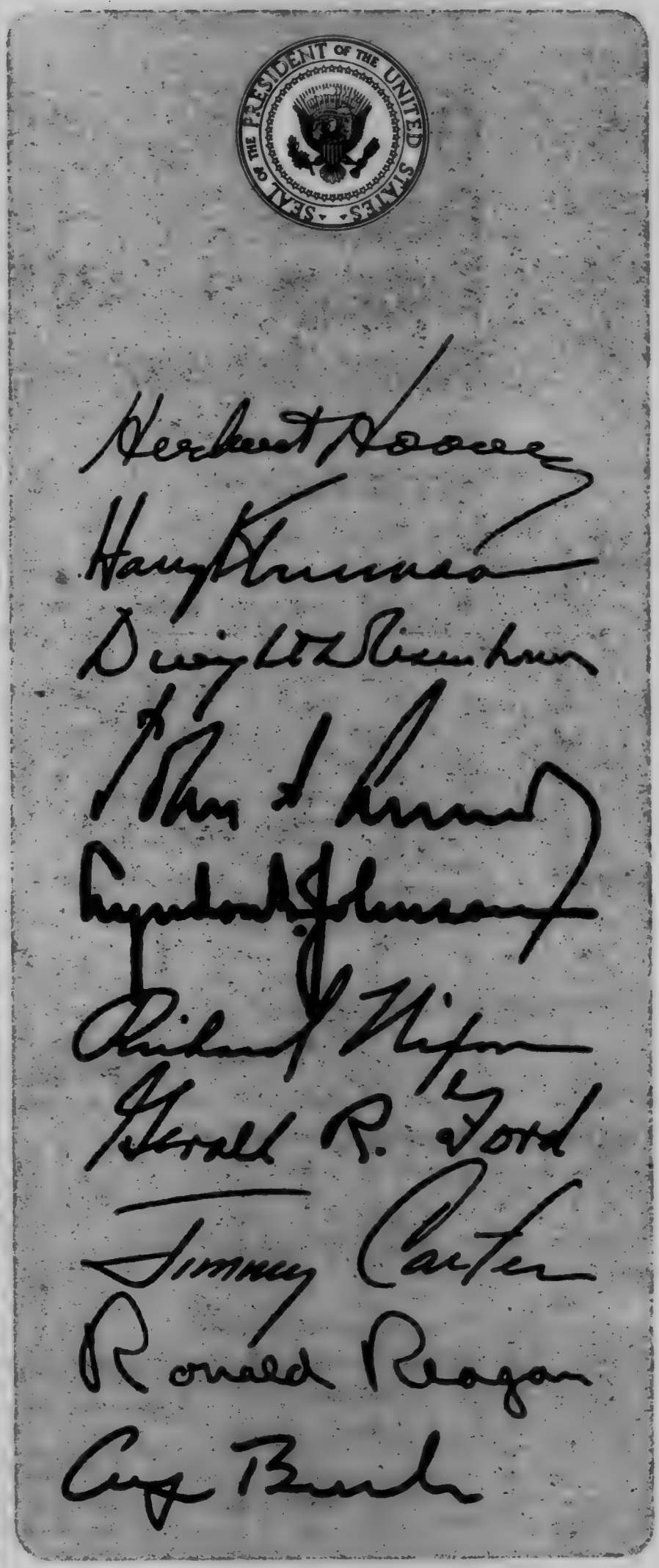


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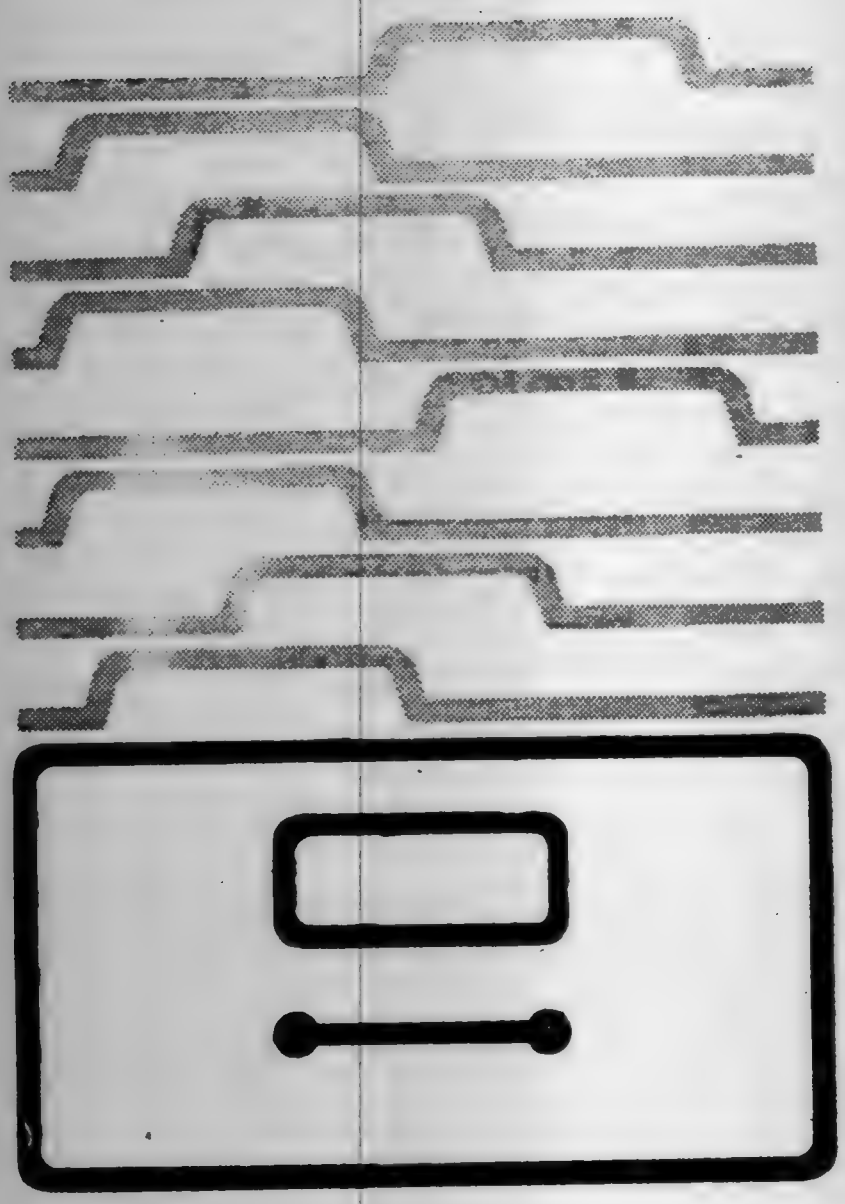

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**OFFICE O**

**1 CFR Part**

**Change of**
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**AGENCY:** C
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**ACTION:** Te

**SUMMARY:**
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# Rules and Regulations

Federal Register
Vol. 57, No. 139
Monday, July 20, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF THE FEDERAL REGISTER

### 1 CFR Part 51

### Change of the Office of the Federal Register's Address for Inspection of Materials Incorporated by Reference

**AGENCY:** Office of the Federal Register, NARA.

**ACTION:** Technical amendment.

**SUMMARY:** The procedures for incorporation by reference appear at 1 CFR part 51. This document changes the address of the Office of the Federal Register listed as an inspection location for materials incorporated by reference throughout titles 1 through 50 of the Code of Federal Regulations. The change is made necessary by the relocation of the Office of the Federal Register. This document also announces the July 20, 1992 date of the relocation.

**EFFECTIVE DATE:** July 20, 1992.

**ADDRESSES:** The new address for the Office of the Federal Register will be 800 North Capitol Street, NW., suite 700, Washington, DC 20001.

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Jablonski at (202) 523–4534.

**SUPPLEMENTARY INFORMATION:** The Office of the Federal Register is relocating to 800 North Capitol Street, NW., suite 700, Washington, DC and will be open for business at the new location on July 20, 1992. Services will be provided at 1100 L Street, NW., Washington, DC through July 17, 1992. The Office of the Federal Register's mailing address will continue to be: Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

Under the Freedom of Information Act, 5 U.S.C. 552(a), the Director of the Federal Register has the responsibility for approval of materials incorporated by reference into the Federal Register system. Currently, the address of the Office of the Federal Register appears as an inspection location for all materials that are incorporated by reference.

This document changes the address of the Office of the Federal Register wherever it appears in titles 1 through 50 of the Code of Federal Regulations as the inspection address for incorporated materials. As each title is revised, the editors will amend this Office's inspection address for materials that are incorporated by reference.

### List of Subjects in 1 CFR Part 51

Administrative practice and procedure, Incorporation by reference.

For the reasons discussed in the preamble, and under the authority 5 U.S.C. 552(a), the Director of the Office of the Federal Register amends titles 1 through 50 of the Code of Federal Regulations as set forth below:

The Office of the Federal Register's address for inspection of materials incorporated by reference, "1100 L Street, NW., room 8401, Washington, DC" is revised to read "800 North Capitol Street, NW., suite 700, Washington, DC" wherever it appears in titles 1 through 50.

Dated: July 14, 1992.

**Richard L. Claypoole,**

*Deputy Director of the Federal Register.*

[FR Doc. 92–16858 Filed 7–17–92; 8:45 am]

BILLING CODE 1505–01–M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket 91–121–2]**

### Mexican Fruit Fly; Removal From Regulated Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule.

**SUMMARY:** We are affirming without change an interim rule that amended the Mexican fruit fly regulations by removing the Texas counties of Brooks, Dimmit, Jim Hogg, Jim Wells, La Salle, Starr, Webb, and Zapata from the list of regulated areas. We have determined that the Mexican fruit fly does not exist in these areas and that restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from these areas.

**EFFECTIVE DATE:** August 19, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations contained in 7 CFR 301.64 (referred to below as the regulations) impose restrictions on the interstate movement of regulated articles from regulated areas in quarantined States in order to prevent the artificial spread of the Mexican fruit fly, *Anastrepha ludens* (Loew), to noninfested areas. Regulated articles include citrus fruit, avocados, apples, peaches, pears, plums, prunes, and pomegranates.

In an interim rule published in the Federal Register and effective September 10, 1991 (56 FR 46107–46108, Docket Number 91–121), we amended the regulations by removing the Texas counties of Brooks, Dimmit, Jim Hogg, Jim Wells, La Salle, Starr, Webb, and Zapata from the list of regulated areas. We required that comments on the interim rule be received on or before November 12, 1991. The one letter of comment that we received, which was from the Texas Department of Agriculture, supported the interim rule. The facts presented in the interim rule still provide a basis for the rule. Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

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based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This rule removes restrictions on the interstate movement of regulated articles from eight counts in Texas. Within the previously regulated areas there are approximately 59 entities that will be affected, including 23 fruit/produce markets, 16 nurseries, 7 flea markets, 8 packing sheds, and 5 commercial growers of peaches and apples. These entities comprise less than one percent of the total number of similar enterprises operating in the State of Texas.

Most of these entities handle regulated articles primarily for local movement, so their distribution of those articles was not affected by the regulatory provisions we are removing. Entities that do handle regulated articles for interstate movement could move most articles without significant added costs under specific conditions set forth in the regulations. Additionally, many of these entities also handle items other than the previously regulated articles. For these reasons we expect that any effect that this rule might have on these entities is minimal.

Under these circumstances, the Administrator of the animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Incorporation by reference, Mexican fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

**PART 301—DOMESTIC QUARANTINE NOTICES**

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 301.64–3 that was published at 56 FR 46107–46108 on September 10, 1991.

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 15th day of July 1992.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92–17022 Filed 7–17–92; 8:45 am]

BILLING CODE 3410-34-M

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**Agricultural Marketing Service**

**7 CFR Part 1209**

**[FV–91–404]**

**RIN 0581–AA49**

**Procedures for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order and Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Such Order**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Mushroom Promotion, Research, and Consumer Information Act of 1990 authorizes a program of promotion, research, and consumer information to be developed through the promulgation of an order. The U.S. Department of Agriculture recently issued a proposed order and announced a producer and importer referendum. To become effective the proposed order must be approved by mushroom producers and importers in a referendum. This rule establishes procedures for the conduct of the initial referendum to determine if producers and importers favor implementation of the proposed order. These procedures will also apply to any subsequent referenda to amend, continue, or terminate the order should it be implemented. In addition to referenda procedures, this rule contains rules of practice governing proceedings on petitions to modify or to be exempted from the order.

**EFFECTIVE DATE:** July 20, 1992.

**ADDRESSES:** Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2533–S, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Richard Schultz at the above address or telephone (202) 720–5976.

**SUPPLEMENTARY INFORMATION:** This final rule, authorized under the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112), hereinafter referred to as the Act, establishes the procedures for the conduct of the initial referendum and any subsequent referenda applicable to the Mushroom Promotion, Research and Consumer Information Order (order). In addition, this action also establishes the Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from Such Order.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. Section 1930 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State.

The Act further provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1927 of the Act, a person subject to the order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition, which will be final if in accordance with the law. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of such ruling of the Secretary.



**Regulatory Flexibility Act**

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The most recent Department estimate of mushroom growers in the United States indicates that there are 460 domestic growers. Between 100 and 150 of these growers would fall under the definition of "producer" as defined in the Act and be subject to the provisions of the order. A minority of these producers would be classified as small entities. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms, which include mushroom handlers and importers, have been defined as those having annual receipts of less than $3,500,000. There are approximately 100 handlers, including producers who are also handlers, who would be subject to the provisions of the order. A majority of these handlers would be classified as small entities. There are no more than 3 importers, out of approximately 30 importers, who would be subject to the provisions of the order. A majority of these importers would be classified as small entities.

During the period from July 1, 1990, through June 30, 1991, Department statistics indicate that 756 million pounds of mushrooms were produced in the United States. Of this total production, 518 million pounds were for fresh market. During this same period, Department statistics indicate that 3.5 million pounds of fresh mushrooms were imported into the United States. Major exporting countries, as a percentage of total fresh mushroom imports, were Canada (93.9%), Thailand (2.0%), Japan (1.9%), and Taiwan (1.0%).

The order would require each mushroom producer and importer who produces or imports, on average, more than 500,000 pounds of fresh mushrooms annually to pay an assessment which could be incrementally increased to a maximum rate of one cent per pound. Such a maximum assessment rate could not be realized until the fourth year of the order. In addition, the order would require an estimated 100 first handlers of fresh mushrooms, a majority of whom would be classified as small entities, to collect and remit such assessments.

This rule establishes procedures for the initial referendum to determine whether the order will go into effect. Such a referendum is required by the Act. These procedures also apply to any subsequent referenda to amend, continue, or terminate the order should it be implemented. In addition to referenda procedures, this rule contains rules of practice governing proceedings on petitions to modify or to be exempted from the order. The Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in this action have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581–0093, except for the Council nominee background statement form which is assigned OMB control number 0505–0001. It is estimated that up to 153 mushroom producers and importers will be eligible to vote in the initial referendum and that it will take an average of 6 minutes for each producer and importer to complete the referendum ballot.

**Background**

The Act authorizes the development of a nationally coordinated program of promotion, research, consumer information, and industry information designed to strengthen the mushroom industry's position in the marketplace; maintain and expand existing markets and uses for mushrooms; and develop new markets and uses for mushrooms. An order implementing the program must first be approved by producers and importers voting in a referendum.

Persons voting in the initial referendum and subsequent referenda will certify their eligibility to vote and will designate their status as either a mushroom producer or importer. Only current producers or importers who either produced or imported, on average, over 500,000 pounds of mushrooms annually during the representative period will be eligible to vote in such referenda. Producers and importers will be required to certify the pounds of mushrooms they either produced or imported during the representative period. These figures will be used to determine the results of the voting based on the volume of mushrooms produced and imported by those eligible and voting.

In addition to referenda procedures, this rule contains rules of practice for proceedings on petitions to modify or be exempted from an order. Section 1927 of the Act provides that any person subject to an order may file a written petition with the Secretary stating that such order or any provision of such order is not in accordance with law. The person may request a modification of such order or an exemption from certain provisions or obligations of such order. The person shall be given an opportunity for a hearing on the petition, in accordance with regulations prescribed by the Secretary.

A proposed rule on the referenda and petition filing procedures was published in the January 29, 1992, issue of the **Federal Register** (57 FR 3380). Interested persons were invited to submit comments on the proposal until February 29, 1992. Two comments were received in response to the proposed rule. One comment was received jointly from the American Mushroom Institute and the Mushroom Council (AMI) and another from the Pictsweet Mushroom Farms Division of United Foods, Inc. (United).

Comments from the AMI suggested certain changes to § 1209.303 of the proposed rule which would specifically grant the right to cast ballots by mail. Proposed § 1209.303(b) provides that the referendum agent shall determine the voting method. The provision gives the referendum agent the latitude to determine whether ballots may be cast by mail, at polling places, or by a combination of the two. In addition, the Administrator of the AMS is authorized to prescribe additional instructions concerning how a referendum is to be conducted. This latitude is needed in order to effectively conduct impartial referenda. Therefore, the comment is denied.

The AMI requested that a procedure be added to the referendum rules to permit public challenges to the qualifications of those casting votes. To this end, the AMI specifically requested that the referendum agent make available for public inspection, for 10 days following the voting period, a list of each person casting a vote in the referendum. The change requested by the AMI would be inconsistent with the confidentiality provisions of the proposed order and regulations. The AMS and the referendum agent will take the appropriate steps necessary to ascertain the validity of the ballots which are cast in the referendum.

Anyone has a right to challenge the validity of any ballot. If a challenge is brought to the attention of the referendum agent, such investigation as is necessary will be made to determine the validity of the ballot.

The AMI commented that the term "trusts" should be added to proposed § 1209.302(b) since the administrators, executors, or trustees of eligible producing or importing estates would be eligible to cast ballots on behalf of such estates. The term "trusts" is not mentioned in this section. In response to the comment, the Department has decided to clarify the language in § 1209.302(b) of this rule by changing the term "estate" to "entity."

The AMI also commented that the definition of "representative period" in proposed § 1209.301(d) should be revised to reflect the fact that such period would allow for averaging production, such as a rolling two-year period. The definition of "representative period" is consistent with other such definitions in research and promotion orders administered by the Department. In selecting the period for the purposes of the initial referendum, the Secretary will take into account the provisions and requirements of the Act, including the provision that production and importation be determined on an average annual basis.

The AMI addressed the issue of a definition for "fresh market" which is similar to its comment on the proposed order. This comment has already been considered in the analysis of comments on the proposed order and will not be addressed in this rulemaking procedure.

Finally, the AMI provided supplemental comments on the comments submitted with regard to the proposed order rulemaking by the Office of Advocacy, which is part of the Small Business Administration. These supplemental comments will be considered part of the rulemaking record but will not be addressed in this rulemaking procedure.

Several comments from United indicate that United may have misinterpreted certain provisions of the proposed rule.

United expressed concern that private parties could be allowed to act as referendum agents in the conduct of referenda. The Department does not intend that private parties should act as referendum agents in the conduct of referenda. Referendum agents will be Department employees not private parties. Such agents will conduct referenda in accordance with the procedures contained in this rule and pursuant to Department policy and practice.

United also expressed concern that the proposed rule did not set out any meaningful requirements for publicizing referenda. The Department does not agree with this comment. Proposed § 1209.303(d) states that the referendum agent will give reasonable advance public notice of the referendum "by utilizing available media or public information sources * * * Such sources of publicity may include, but are not limited to, print and radio; and by such other means as the agent may deem advisable."

United commented on the Department's ability to notify mushroom growers and importers of the initial referendum. The Department has developed an extensive voter list containing the names of known mushroom growers and importers. Due to the eligibility requirements specified in the Act and proposed order, a majority of the persons on this list will not be eligible to vote in the referendum. On January 23, 1992, the Department mailed out information to all persons on this list regarding the issuance and content of a proposed order and notice of a public meeting to discuss such order. Such mailings amply demonstrate the Department's ability to effectively and fairly notify affected and interested persons.

United further commented that if the Department has developed any type of voter list, then the Department should make such a list publicly available at least 90 days before a referendum in order to ensure informed producer and importer participation. The Department does not agree with this comment. The release of such a list involves the issue of an individual's right to privacy. Furthermore, the Department has demonstrated its capability to effectively and fairly inform voters on the proposed order. The public availability of such a list prior to a referendum would duplicate the Department's efforts and is not expected to significantly increase voter participation in a referendum.

United also commented that the proposed rule did not provide specific information regarding the voter package to be used in the initial referendum. The AMS has developed a uniform voter package to be used in the conduct of referenda relating to research and promotion programs. This package can be readily altered to accommodate the particulars of individual programs. It was not the intent of the Department to include the details of such a package as a part of the proposed rule.

United suggested that voters be given three options when voting in any referendum. It was recommended that the ballot allow voters a vote of: "yes," "no," or "no preference." The Department does not agree with the inclusion of the language "no preference" on the ballot. The purposes for holding a referendum are to determine whether an order will be implemented, continued, amended, or terminated by those voting in the referendum. Consequently, such a determination can be fairly concluded by a "yes" or "no" vote. Therefore, the comment is denied.

United also suggested that in order to ensure maximum participation among eligible voters in a referendum, voting should be done through the mail and by secret ballot. The Department agrees with this comment in regard to the initial referendum. However, voting in subsequent referenda, as provided in final § 1209.303(b), may be undertaken by mail, at polling places, or any combination of the two.

United expressed concern that the proposed rule did not set out criteria to verify the eligibility of persons voting in referenda. The Department has developed appropriate safeguards to verify voter eligibility in the initial referendum and subsequent referenda. It was not the intent of the Department to include the specifics of such safeguards as part of the rule.

United further commented that the proposed rule did not provide any procedures to challenge ballots or to appeal decisions to strike ballots. The issue on public challenges to ballots is addressed in the Department's response to the AMI's comment on this subject.

In regard to United's comment concerning appealing the Department's invalidation of an individual's ballot, any individual voter may request to see how their own ballot was handled by the referendum agent. Further, by the time ballots for the referendum are mailed, detailed referendum procedures for handling and tabulating ballots will be available to the public on request. It should be noted that all ballots are kept in a locked box until the voting period is over. At that time an auditor from the Office of Audit, which is part of the Office of the Inspector General, will observe the opening of all ballots and the subsequent validation and tabulation of the votes. This is standard practice for referenda conducted by the Fruit and Vegetable Division. Therefore, the comment to include these additional safeguards, including United's suggestion of using an independent auditor to monitor voting and assess results, is denied.

United further stated that since the order is not yet effective, the definitions

of key terms, such as "producer," "importer," or "mushrooms," are still subject to change. This final rule will be issued after the issuance of a proposed order which is subject to approval by producers and importers in the initial referendum. Only after it is approved can the order become effective. However, it will be final insofar as its terms and definitions are concerned prior to the referendum conducted in accordance with these rules. Further, the phrase "on average" has been added for clarity to the definitions of "eligible producer" and "eligible importer" in this rule and for the same reason in the definition of "eligible producer" the term "lessor-lessee" has been changed to "landlord-tenant."

United commented that the proposed rule did not provide for the establishment of a representative period. United further commented that it was unclear who may vote in the initial referendum. It was not the Department's intent to establish a representative period in the proposed rule. Such a period is specified in a proposed rule and referendum order to establish a Mushroom Promotion, Research, and Consumer Information Order. A proposed rule containing a proposed order and referendum order was published in the June 10, 1992, issue of the **Federal Register** (57 FR 24720).

In the aforementioned proposed rule, the representative period will be a specified two-year period. The Department will determine a person's eligibility to vote in the initial referendum and any subsequent referenda by averaging such person's total fresh market production or importation over the specified period. In addition, any person voting in the initial referendum must satisfy the proposed order's definition of "producer" or "importer" on the actual date that their ballot is completed. Such persons must certify their volume of production or importation on the ballot which is subject to verification.

United also commented that the definition of "eligible importer" provides no justification to allow persons, such as agents and brokers, to vote on behalf of actual importers. The Department does not agree with this comment. The definition of "importer" in the Act and in the proposed order is used in general terms to mean any person who imports. It is intended that this term should include any person who imports, as a principle or as an agent, broker, or consignee, mushrooms from outside of the United States for marketing in the United States. Due to the modest quantity of imported fresh market mushrooms, the estimated number of eligible importers voting in the initial referendum will not exceed 3 percent of the estimated number of eligible producers voting in the referendum. Such a percentage is not expected to skew the vote nor result in mushrooms being double-counted, as United contends.

Other comments submitted by United were related to the order and will be addressed in the final decision on a proposed order. Thus, these comments will not be discussed in connection with this rulemaking action.

After considerations of all relevant material presented, including the comments received and other available information, it is found that this action, and all of terms and conditions thereof, tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. A proposed rule containing a proposed order and referendum order was published in the June 10, 1992, issue of the **Federal Register** (57 FR 24720). To become effective, the proposed order must be approved by mushroom producers and importers in referendum. In order to conduct a referendum in a timely manner, this rule should be made effective as soon as possible. Further, interested persons were afforded a 30-day comment period, and no useful purpose would be served in delaying the effective date. Therefore, this final rule is effective on the date of publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 1209**

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, chapter XI of title 7, is amended by adding part 1209 to read as follows:

## PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

**Subparts A–B—[Reserved]**

**Subpart C—Procedure for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order**

Sec.

1209.300 General.
1209.301 Definitions.
1209.302 Voting.
1209.303 Instructions.
1209.304 Subagents.
1209.305 Ballots.
1209.306 Referendum report.
1209.307 Confidential information.

**Subpart D—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Mushroom Promotion, Research, and Consumer Information Order**

1209.400 Words in the singular form.
1209.401 Definitions.
1209.402 Institution of proceeding.

**Authority:** 7 U.S.C. 6101 *et seq.*

**Subparts A–B—[Reserved]**

**Subpart C—Procedure for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order**

**§ 1209.300 General.**

Referenda to determine whether eligible producers and importers favor the issuance, continuance, termination, or suspension of a Mushroom Promotion, Research, and Consumer Information Order shall be conducted in accordance with this subpart.

**§ 1209.301 Definitions.**

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Mushroom Promotion, Research, and Consumer Information Order, including an amendment to the Order, with respect to which the Secretary has directed that a referendum be conducted.

(c) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and wife who has title to, or leasehold interest in, mushroom production facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called "joint ventures" wherein one or more parties to the agreement, informal or otherwise, contributed

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capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the production or importation of mushrooms and the authority to transfer title to the mushrooms so produced or imported.

(f) *Eligible producer* means any person defined as a producer who produces, on average, over 500,000 pounds of mushrooms annually during the representative period and who:

(1) Owns or shares in the ownership of mushroom production facilities and equipment resulting in the ownership of the mushrooms produced;

(2) Rents mushroom production facilities and equipment resulting in the ownership of all or a portion of the mushrooms produced;

(3) Owns mushroom production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the mushrooms produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms who share the risk of loss and receive a share of the mushrooms produced. No other acquisition of legal title to mushrooms shall be deemed to result in persons becoming eligible producers.

(g) *Eligible importer* means any person defined as an importer in the Order who imports, on average, over 500,000 pounds annually during the representative period. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced mushrooms immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mushrooms from the U.S. Customs Service when such mushrooms are entered or withdrawn for consumption in the United States.

(h) *Act* means the Mushroom Promotion, Research, and Consumer Information Act of 1990, *Subtitle B of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, 7 U.S.C. 6101–6112,* and any amendments thereto.

(i) *Commerce* means interstate, foreign, and intrastate commerce.

(j) *Council* means the administrative body referred to as the Mushroom Council established under § 1925(b) of the Act.

(k) *Department* means the United States Department of Agriculture.

(l) *Fiscal Year* means the 12-month period from January 1 through December 31 each year, or such period as recommended by the Council and approved by the Secretary.

(m) *Importer* means any person who imports, on average, over 500,000 pounds of mushrooms annually from outside the United States.

(n) *Mushrooms* means all varieties of cultivated mushrooms grown within the United States and marketed for the fresh market, or imported into the United States and marketed for the fresh market, except such term shall not include mushrooms that are commercially marinated, canned, frozen, cooked, blanched, dried, packaged in brine, or otherwise processed in such manner as the Council, with the approval of the Secretary, may determine.

(o) *On average* means a rolling average of production or imports during the last two fiscal years, or such other period as may be determined by the Secretary.

(p) *Producer* means any person engaged in the production of mushrooms who owns or shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year.

(q) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the Department of whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(r) *State* means any of the several States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

(s) *To market* means to sell or otherwise dispose of mushrooms in any channel of commerce.

(t) *United States* means collectively the several States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

### § 1209.302 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity may cast a ballot on behalf of such producer, importer, or entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

### § 1209.303 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time when all ballots may be cast.

(b) Determine whether ballots may be cast by mail, at polling places, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(2) The total volume of mushrooms produced by the voting producer during the representative period.

(3) The total volume of mushrooms imported by the voting importer during the representative period, and

(4) In a joint venture, names of the parties and each party's share of ownership.

(d) Give reasonable advance public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, methods of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.



(e) Make available to eligible producers and importers the instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of the Order, the terms and conditions of the Order. No person who claims to be eligible to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer and importer whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places, determine the necessary number of polling places, designate them, announce the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointed subagents, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such agent or subagents during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

### § 1209.304 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform, in accordance with the requirements herein set forth, any or all of the following functions which, in the absence of such appointment, shall be performed by the agent:

(a) Give public notice of the referendum in the manner specified herein;

(b) Serve as poll officer at a polling place;

(c) Distribute ballots and provide the material specified in § 1209.303(e) to producers and importers and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with, the subagent and inquire into the eligibility of such person to vote in the referendum, indicating all challenged ballots deemed to be invalid.

### § 1209.305 Ballots.

The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

### § 1209.306 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

### § 1209.307 Confidential information.

All ballots cast and the contents thereof, whether or not relating to the identity of any person who voted or the manner in which any person voted, and all information furnished to, compiled by, or in possession of the referendum agent or subagents shall be treated as confidential.

## Subpart—D Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Mushroom Promotion, Research, and Consumer Information Order

### § 1209.400 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

### § 1209.401 Definitions.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart C—Procedure for the Conduct of Referenda in Connection with the Mushroom Promotion, Research, and Consumer Information Order.

(a) *Administrative law judge* or *judge* means any administrative law judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(b) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order.

(c) *Proceeding* means a proceeding before the Secretary arising under section 1927 of the Act;

(d) *Hearing* means that part of the proceedings which involves the submission of evidence;

(e) *Party* includes the Department of Agriculture;

(f) *Hearing clerk* means the Hearing Clerk, U.S. Department of Agriculture, Washington, DC;

(g) *Decision* means the judge's report to the Secretary and includes the judge's proposed:

(1) Findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis thereof,

(2) Order, and

(3) Rulings on findings, conclusions and orders submitted by the parties; and

(h) *Petition* includes an amended petition.

### § 1209.402 Institution of proceeding.

(a) *Filing and service of petitions.* Any person subject to the Order desiring to complain that such Order or any provision of such Order or any obligation imposed in connection with the Order is not in accordance with law shall file with the hearing clerk, in quintuplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition in writing the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the Order, or the interpretation or application of such terms or provisions, which are complained of;

(3) A full statement of the facts, avoiding a mere repetition of detailed evidence, upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly

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and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the Order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the Order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Requests for the specific relief which the petitioner desires the Secretary to grant; and

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) *A motion to dismiss a petition: filing, contents, and responses to a petition.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk a motion to dismiss the petition, or any portion of the petition, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds for objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the judge for the judge's consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from the Order shall be governed by §§ 900.52(c)(2) through 900.71 of the Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From Marketing Orders and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However, each reference to marketing order in the title shall mean Order.

Dated: July 15, 1992.

**Kenneth C. Clayton,**

*Acting Administrator.*

[FR Doc. 92-17000 Filed 7-15-92; 11:01 am]

BILLING CODE 3410-02-M

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Parts 214 and 274a

**[INS No. 1458-92]**

**RIN 1115-AD16**

### Pre-Completion Interval Training; F-1 Student Work Authorization

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rulemaking will restore the ability of foreign students to engage in practical training prior to completion of their course of study and will also provide employment authorization for F-1 students based upon severe economic hardship. Pre-completion training is necessary to permit students to accept short-term employment that furthers their academic studies before the students have graduated. It will provide a student with practical training as a part of the student's educational experience within the United States. Providing work authorization based on severe economic hardship is necessary to permit students who suffer unforeseen financial difficulties to remain in status and to continue their education at the school in which they are enrolled.

**DATES:** This interim rule is effective July 20, 1992. Written comments must be submitted on or before September 18, 1992.

**ADDRESSES:** Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference INS number 1458-92 on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** William R. Tollifson, Senior Immigration Examiner, Immigration and Naturalization Service, Examinations Division, 425 I Street, NW., room 7122, Washington, DC 20536, telephone (202) 514-3240.

**SUPPLEMENTARY INFORMATION:** The Immigration and Naturalization Service (Service) published a final rule in the Federal Register concerning F-1 student work authorization on October 29, 1991, at 56 FR 55606-55617. The final rule attempted to streamline the procedures for employment authorization. While the regulation implemented the Pilot Off-Campus Employment Program and both simplified the paperwork involved in and expanded the definition of on-campus employment, it eliminated the separate pre-completion training and economic necessity work authorization provisions.

The Service is restoring pre-completion practical training within the ambit of the standard practical training regulations. Permitting practical training prior to course completion will provide foreign students with more flexibility to engage in employment directly related to their studies. Such practical training will be deducted from the 12 months of practical training generally available.

Authorization for pre-completion practical training will be expedited by the Service for the 1992 summer vacation period. The Service will issue an Employment Authorization Document (EAD) to an eligible walk-in applicant at the Service office having jurisdiction over the applicant's place of residence. Alternatively, if an eligible student elects to mail the Form I-765, Application for Employment Authorization, to the designated Service office, the Service will make every attempt to schedule an appointment to issue the EAD within 7 days of receipt. With respect to periods after the summer of 1992, the integrity considerations pertaining to the issuance of an EAD to an eligible F-1 student are undergoing further policy review. This issue will be addressed at the time of publication of the final rule.

The Service is also providing for work authorization based upon severe economic hardship. This will enable students who have suffered unexpected financial difficulties, and for whom the Pilot Off-Campus Employment Program is unavailable or insufficient, to continue their education without interruption. It should be noted that work authorization based upon severe economic hardship will differ from the former economic hardship program.

First, the Designated School Official (DSO) will no longer endorse the Form I-20 Student ID. As is the case with other categories of work authorization for nonimmigrants, F-1 students will have to apply for an EAD on Form I-765 at the district offices having jurisdiction over their place of residence. Form I-538, the DSO certification, should accompany the Form I-765 application. This new rule also mandates that a student must make a good faith effort to pursue employment authorization on-campus and under the Pilot Off-Campus Employment Program. The DSO must certify on Form I-538 that neither the existing Pilot program nor on-campus employment is available or sufficient to meet the student's severe economic hardship. If a student were able to find adequate employment on-campus or under the Pilot program, the student would not be able to make a showing of need for work authorization based upon severe economic hardship.

It is the view of the Service that requiring the student to make a good faith effort to find employment through other programs will not impose an onerous burden on the students, the DSOs, or the employers. The Service has provided a suggested approach to complying with this requirement. The student should consult his or her DSO to determine whether there are any employment opportunities under the Pilot program available in the area. If such opportunities exist, the student should pursue those available opportunities. If employment under the Pilot program is insufficient, the DSO's certification to that effect on Form I-538 will satisfy the requirements of this section. On the other hand, if the DSO knows that no Pilot program employment exists and on-campus employment is unavailable or insufficient, the DSO's certification to that effect on Form I-538 will also satisfy the requirements of this section.

Finally, the Service is revising 8 CFR 274a to require that students who seek employment for purposes of optional practical training or who seek employment because of severe economic hardship apply for work authorization.

The Service's implementation of this rule as an interim rule, with a provision for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 553 (b)(B) and (d)(3). This rulemaking falls under the good cause exception because a notice and comment period would be impracticable and contrary to the public interest. This rulemaking confers a benefit upon eligible students, and does not impose a penalty of any kind. It is imperative that this interim rule become effective upon publication so that those persons who are eligible to apply for work authorization based upon severe economic hardship or for pre-completion practical training may apply for either benefit accordingly.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5 Display of Control Numbers.

**List of Subjects**

*8 CFR Part 214*

Administrative practice and procedure, Aliens, Employment.

*8 CFR Part 274a*

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1184, 1186a; 8 CFR part 2.

2. Section 214.2 is amended by revising paragraph (f)(9)(ii) to read as follows:

**§ 214.2 Special requirements for admission, extension, and maintenance of status.**

* * * * *

(f) * * *

(9) * * *

(ii) *Off-campus work authorization*—(A) *General.* An F-1 student may be authorized to work off-campus on a part-time basis in accordance with paragraph (f)(9)(ii) (B) or (C) of this section after having been in F-1 status for one full academic year provided that the student is in good academic standing as determined by the DSO. Part-time off-campus employment authorized under this section is limited to no more than twenty hours a week when school is in session. A student who is granted off-campus employment authorization may work full-time during holidays or school vacation. The employment authorization is automatically terminated whenever the student fails to maintain status.

(B) *Wage-and-labor attestation requirement.* Except as provided under paragraphs (f)(9)(ii)(C) and (f)(9)(iii) of this section, a student may be authorized to accept off-campus employment only if the prospective employer has filed a labor-and-wage attestation pursuant to 20 CFR part 655, subparts J and K (requiring the employer to attest to the fact that it has actively recruited domestic labor for at least 60 days for the position and will accord the student worker the same wages and working conditions as domestic workers similarly employed.)

(C) *Severe economic hardship.* If other employment opportunities are not available or are otherwise insufficient, an eligible F-1 student may request off-campus employment work authorization based upon severe economic hardship caused by unforeseen circumstances beyond the student's control. These circumstances may include loss of financial aid or on-campus employment without fault on the part of the student, substantial fluctuations in the value of currency or exchange rate, inordinate increases in tuition and/or living costs, unexpected changes in the financial condition of the student's source of support, medical bills, or other substantial and unexpected expenses.

(D) *Procedure for off-campus employment authorization.* The student must submit the application to the DSO on Form I-538, Certification by Designated School Official. The DSO may recommend the student work off-campus for one year intervals by certifying on the Form I-538 that:

(*1*) The student has been in F-1 status for one full academic year;

(*2*) The student is in good standing as a student and is carrying a full course of study as defined in paragraph (f)(6) of this section;

(*3*) The student has demonstrated that acceptance of employment will not interfere with the student's carrying a full course of study; and

(*4*) Either: (*i*) The prospective employer has submitted a labor-and-wage attestation pursuant to paragraph (f)(9)(ii)(B) of this section, or

(*ii*) The student has demonstrated that the employment is necessary to avoid severe economic hardship due to unforeseen circumstances beyond the student's control pursuant to paragraph (f)(9)(ii)(C) of this section, and has demonstrated that employment under paragraph (f)(9)(i) and (f)(9)(ii)(B) of this

section is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

(E) *Wage-and-Labor attestation application to the DSO.* An eligible F-1 student may make a request for off-campus employment authorization to the DSO on Form I-538 after the employer has filed the labor-and-wage attestation. By certifying on Form I-538 that the student is eligible for off-campus employment, and endorsing the student's I-20 ID, the DSO may authorize off-campus employment in one year intervals for the duration of a valid attestation as determined by the Secretary of Labor. The endorsement on the student's I-20 ID should read "part-time employment with (name of employer) at (location) authorized from (date) to (date)." Off-campus employment authorized by the DSO under this provision is incident to the student's status pursuant to 8 CFR 274a.12(b)(6)(ii) and employer-specific and, therefore, exempt from the EAD requirement. The DSO must notify the Service of each off-campus employment authorization by forwarding to the Service data processing center the completed Form I-538. The DSO shall return to the student the endorsed I-20 ID.

(F) *Severe economic hardship application—(1)* The applicant should submit to the Service Form I-20 ID, Form I-538, and Form I-765 along with the fee required by 8 CFR 103.7(b)(1), and any other supporting materials such as affidavits which further detail the unforeseen circumstances that require the student to seek employment authorization and the unavailability or insufficiency of employment under paragraphs (f)(9)(i) and (f)(9)(ii)(B) of this section. The requirement with respect to paragraph (f)(9)(ii)(B) of this section is satisfied if the DSO certifies on Form I-538 that the student and the DSO are not aware of available employment in the area through the Pilot Off-Campus Employment Program. In areas where there are such Pilot program opportunities, this requirement is satisfied if the DSO certifies on Form I-538 that employment under the Pilot program is insufficient to meet the student's needs. The student must apply for the employment authorization on Form I-765 with the Service office having jurisdiction over his or her place of residence.

(*2*) The Service shall adjudicate the application for work authorization based upon severe economic hardship on the basis of Form I-20 ID, Form I-538, and Form I-765, and any additional supporting materials. If employment is authorized, the adjudicating officer shall issue an EAD. The Service director shall notify the student of the decision, and, if the application is denied, of the reason or reasons for the denial. No appeal shall lie from a decision to deny a request for employment authorization under this section. The employment authorization may be granted in one year intervals up to the expected date of completion of the student's current course of study. A student has permission to engage in off-campus employment only if the student receives the EAD endorsed to that effect. Off-campus employment authorization may be renewed by the Service only if the student is maintaining status and good academic standing. The employment authorization is automatically terminated whenever the student fails to maintain status.

* * * * *

3. In § 214.2, paragraph (f)(10)(ii) is revised to read as follows:

**§ 214.2 Special requirements for admission, extension, and maintenance of status.**

* * * * *

(f) * * *

(10) * * *

(ii) *Optional practical training*—(A) *General.* An F-1 student may apply to the Service for authorization for temporary employment for practical training directly related to the student's major area of study. Temporary employment for practical training may be authorized:

(*1*) During the student's annual vacation and at other times when school is not in session if the student is currently enrolled and eligible, and intends, to register for the next term or session;

(*2*) While school is in session, provided that practical training does not exceed twenty hours a week while school is in session;

(*3*) After completion of all course requirements for the degree (excluding thesis or equivalent), if the student is in a bachelor's master's, or doctoral degree program; or

(*4*) After completion of the course of study. A student must complete all practical training within a 14 month period following the completion of study.

(B) *Termination of practical training.* Authorization to engage in practical training employment is automatically terminated when the student transfers to another school.

(C) *Request for authorization for practical training.* A request for authorization to accept practical training must be made to the designated school official (DSO) of the school the student is authorized to attend on Form I-538, accompanied by his or her current Form I-20 ID.

(D) *Action of the DSO.* In making a recommendation for practical training, a designated school official must:

(*1*) Certify on Form I-538 that the proposed employment is directly related to the student's major area of study and commensurate with the student's educational level;

(*2*) Endorse and date the student's Form I-20 ID to show that practical training in the student's major field of study is recommended "full-time (or part-time) from (date) to (date)"; and

(*3*) Return to the student the Form I-20 ID and send to the Service data processing center the school certification on Form I-538.

* * * * *

4. In § 214.2, paragraph (f)(11) introductory text is amended by adding two sentences at the beginning of the paragraph to read as follows:

**§ 214.2 Special requirements for admission, extension, and maintenance of status.**

* * * * *

(f) * * *

(11) *Employment authorization.* The total periods of authorization for optional practical training under paragraph (f)(10) of this section shall not exceed a maximum of twelve months. Part-time practical training, 20 hours per week or less, shall be deducted from the available practical training at one-half the full-time rate.* * *

* * * * *

## PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

5. The authority citation for part 274a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

6. In § 274a.12, paragraph (c)(3) is revised to read as follows:

**§ 274a.12 Classes of aliens authorized to accept employment.**

* * * * *

(c) * * *

(3) A nonimmigrant (F-1) student who:

(i) Is seeking employment for purposes of optional practical training pursuant to 8 CFR 214.2(f), provided the alien will be employed only in an occupation which is directly related to his or her area of studies and that he or she presents an I-20 ID endorsed by the designated school official;

(ii) Has been offered employment under the sponsorship of an international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) and who presents a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship. The F–1 student must also present an I–20 ID endorsed by the DSO in the last 30 days; or

(iii) Is seeking employment because of severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C) and has filed the Form I–20, Form I–538 and any other supporting materials such as affidavits which further detail the unforeseen economic circumstances that require the student to seek employment authorization and evidence the fact that the student has attempted to find employment under 8 CFR 214.2(f)(9)(ii)(B);

* * * * *

Dated: July 14, 1992.

Gene McNary,

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 92–16986 Filed 7–17–92; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 21 and 23

**[Docket No. 108CE, Special Condition 23–ACE–72]**

### Special Conditions; Beech Model C90 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are being issued to Air BP Atlanta for a Supplemental Type Certification (STC) on the Beech Model C90 Series airplane. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of lightning and high intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

**DATES:** The effective date of these special conditions is August 19, 1992. Comments must be received on or before August 19, 1992.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 108CE, room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 108CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Kenneth W. Payauys, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Service, Central Region, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426–5085.

**SUPPLEMENTARY INFORMATION**

#### Comments Invited

The FAA has determined that good cause exists for making these special conditions effective 30 days after issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 108CE." The postcard will be date stamped and returned to the commenter.

#### Background

On May 13, 1992, Air BP Atlanta, Dekalb Peachtree Airport—One Corsair Drive, Atlanta, Georgia 30341, made an application to the FAA for a supplemental type certificate (STC) for the Beech Model C90 airplane. The proposed modification incorporates a novel or unusual design feature such as digital avionics consisting of an electronic flight instrument system (EFIS) that is vulnerable to HIRF external to the airplane.

#### Type Certification Basis

The type certification basis for the Beech Model C90 Series airplane is as follows: Part 3 of the Civil Air Regulations (CAR), effective May 15, 1956, through amendment 3–2, effective August 12, 1957; amendment 3–6, effective September 13, 1961; amendment 3–7, § 3.705, effective May 3, 1962; amendment 3–8, effective December 18, 1961; part 23 of the Federal Aviation Regulations (FAR), amendment 23–7, §§ 23.959, 23.1111 and 23.1563(a), effective September 14, 1969; amendment 23–23, §§ 23.1385(c), 23.1387(a) and 23.1545, effective December 1, 1978; special conditions outlined in FAA letters to Beech dated January 21, February 15, and February 27, 1963, and May 5, 1965; part 36 of the FAR, effective December 1, 1969, through amendment 36–10; SFAR 27, effective February 1, 1974, through amendment 27–4; amendment 23–41, §§ 23.1309 and 23.1311, effective November 8, 1990; exemptions, if any; and the special conditions adopted herein.

#### Discussion

Air BP Atlanta plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of lightning and HIRF. These features include electronic systems, which are susceptible to the HIRF environment and that were not envisaged by the existing regulations, for this type of airplane.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis, as provided by § 21.17(a)(2).

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*Protection of System from High Intensity Radiated Fields (HIRF)*

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisaged when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment, defined below:

TABLE I.—FIELD STRENGTH VOLTS/METER

| Frequency | Peak | Average |
|---|---|---|
| 10–500 KHz | 60 | 60 |
| 500–2000 | 80 | 80 |
| 2–30 MHz | 200 | 200 |
| 30–100 | 33 | 33 |
| 100–200 | 150 | 33 |
| 200–400 | 56 | 33 |
| 400–1000 | 4020 | 935 |
| 1–2 GHz | 7850 | 1750 |
| 2–4 | 6000 | 1150 |
| 4–6 | 6800 | 310 |
| 6–8 | 3600 | 666 |
| 8–12 | 5100 | 1270 |
| 12–18 | 3500 | 551 |
| 18–40 | 2400 | 750 |

Note: Since 1989, a concerted effort has been under way to review, verify, and validate the HIRF environment. This table represents the current estimate of the HIRF environment. The current values overall are lower than the previous values for the HIRF environment. Additional requirements will continue to be required for the certification of installed critical systems in aircraft approved for operation below 500 feet.

Or:

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions can withstand a peak of electromagnetic field strength of 100 volts per meter (v/m) or the external HIRF environment, whichever is less, in a frequency range of 10KHz to 18GHz. When using a laboratory test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

**Conclusion**

In view of the design features discussed for the Beech Model C90 Series airplane, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances. For example, the Dornier 228–200 (53 FR 14782, April 26, 1988), the Cessna Model 525 (56 FR 49396, September 30, 1991), and the Beech Model 200, A200, and B200 Series airplanes (57 FR 1220, January 13, 1992). For this reason, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions without notice; therefore, special conditions are being issued without substantive changes for this airplane and made effective 30 days after issuance.

**List of Subjects in 14 CFR Parts 21 and 23**

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

**Authority:** Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

**Adoption of Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Beech Model C90 Series airplane:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definitions apply: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on July 13, 1992.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–16985 Filed 7–17–92; 8:45 am]

BILLING CODE 4910–13–M



**14 CFR Part 39**

**[Docket No. 91–CE–70–AD; Amendment 39–8320; AD 92–16–11]**

**Airworthiness Directives; Fairchild Aircraft (Formerly Swearingen Aviation Corporation) SA226 and SA227 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Fairchild Aircraft SA226 and SA227 airplanes. This action requires a modification to the horizontal stabilizer aft spar attach fitting installation and stabilizer skin, and repetitive inspections of the radius area of the rib splice straps for cracks, with modification if found cracked. The Federal Aviation Administration (FAA) has received reports of broken fasteners that attach the pivot fitting of the horizontal tail to the rear spar. The actions specified by this AD are intended to prevent failure of the horizontal stabilizer caused by broken pivot fitting fasteners, which could result in loss of control of the airplane.

**DATES:** Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

**ADDRESSES:** Service information that is applicable to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; Telephone (512) 824–9421. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 4400 Blue Mound Road, Fort Worth, Texas 76193–0150; Telephone (817) 624–5155; Facsimile (817) 624–5029.

**SUPPLEMENTARY INFORMATION:** Reports of broken fasteners that attach the pivot fitting of the horizontal tail to the rear spar on several Fairchild Aircraft SA226 and SA227 series airplanes that have over 10,000 hours time-in-service (TIS) prompted the FAA to propose amending the Federal Aviation Regulations and publish a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 23, 1991 (56 FR 54806). The action proposed a modification to the horizontal stabilizer aft spar attach fitting installation and the stabilizer skin in accordance with Fairchild SA226 Series Service Bulletin (SB) 226–55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991, or Fairchild SA227 Series SB 227–55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: May 22, 1991, whichever is applicable. It also would require repetitive inspections of the radius area of the rib splice straps for cracks with subsequent modification if found cracked. Interested persons were afforded an opportunity to participate in the making of this amendment. One comment was received in favor of the proposed rule and no comments were received concerning the FAA's determination of the cost to the public.

Prior to issuing the final rule for this action, Fairchild Aircraft revised Fairchild SA227 Series SB 227–55–006, Horizontal Stabilizer Fitting Fasteners, to include additional procedures for modifying the horizontal stabilizer aft spar attach fitting installation and the stabilizer skin on Fairchild Aircraft SA227 series airplanes. Fairchild Aircraft also revised Fairchild SA226 Series SB 226–55–010, Horizontal Stabilizer Fitting Fasteners, to incorporate minor editorial corrections. The Fairchild SA226 Series SB 226–55–010 revision does not add to the scope of work, cost, or effectivity that was originally proposed; however, the Fairchild SA227 Series SB 227–55–006 revision does increase the scope of work set forth in the NPRM.

Since Fairchild SB 227–55–006 does increase the scope of work over that of the earlier proposed AD, the proposal was revised accordingly and a supplemental notice of proposed rulemaking was issued and published in the **Federal Register** on March 30, 1992 (57 FR 10745).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 715 (368 SA226 series and 347 SA227 series) airplanes in the U.S. registry will be affected by the proposed AD, that it will take approximately 32 workhours per SA226 series airplane and 33 workhours per SA227 series airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $1,400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,278,485 ($1,162,880 for the SA226 series airplanes and $1,115,605 for the SA227 series airplanes).

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new AD:

**92-16-11 Fairchild Aircraft (formerly Swearingen Aviation Corporation):** Amendment 39-8320; Docket No. 91-CE-70-AD.

*Applicability:* The following Model and serial number airplanes, certificated in any category:

| Model | Serial No. |
|---|---|
| SA226-T | T201 through T275 and T277 through T291 |
| SA226-T(B) | T(B)276 and T(B)292 through T(B)417 |
| SA226-AT | AT001 through AT074 |
| SA226TC | TC201 through TC419 |
| SA227-TT | TT421 through TT541 |
| SA227-AT | AT423 through AT895 |
| SA227-AC | AC406, AC415, AC416, AC420 through AC783, and AC785 |

*Compliance:* Required as indicated, unless already accomplished.

To prevent failure of the horizontal stabilizer caused by broken pivot fitting fasteners, which could result in loss of control of the airplane, accomplish the following:

(a) Upon the accumulation of 10,000 hours time-in-service (TIS) or within the next 1,000 hours TIS after the effective date of this AD, whichever occurs later, accomplish the following:

(1) Modify the horizontal stabilizer aft spar attach fitting installation in accordance with paragraphs A. (1) through A. (7) of the 2. Accomplishment Instructions section of Fairchild SA226 Series Service Bulletin (SB) 226-55-010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, or paragraphs A. (1) through A. (3) and B. (1) through B. (6) of the 2. Accomplishment Instructions section of Fairchild SA227 Series SB 227-55-006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, whichever is applicable.

(2) Modify the stabilizer skin in accordance with paragraphs B. (1) through B. (4) of the 2. Accomplishment Instructions section of Fairchild SA226 Series SB 226-55-010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, or paragraphs C. (1) through C. (5) of the 2. Accomplishment Instructions section of Fairchild SA227 Series SB 227-55-006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, whichever is applicable.

(3) Visually inspect the radius area of the rib splice strap for cracks in accordance with Figure 2 of Fairchild SA226 Series SB 226-55-010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, or Figure 3 of Fairchild SA227 Series SB 227-55-006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, whichever is applicable.

(i) If cracks are found, prior to further flight, obtain a repair scheme from the manufacturer through the Fort Worth Airplane Certification Office at the address specified in paragraph (c) of this AD, incorporate the repair scheme, and reinspect thereafter at intervals not to exceed 5,000 hours TIS.

(ii) If no cracks are found, reinspect thereafter at intervals not to exceed 5,000 hours TIS.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193-0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Aircraft Certification Office.

(d) The inspections and modifications required by this AD shall be done in accordance with Fairchild SA226 Series Service Bulletin 226-55-010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, or Fairchild SA227 Series Service Bulletin 227-55-006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

(f) This amendment (39-8320) becomes effective on September 8, 1992.

Issued in Kansas City, Missouri, on July 13, 1992.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-17031 Filed 7-17-92; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 71

**[Airspace Docket No. 91-AGL-16]**

## Transition Area Alteration; Motley, MN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies the existing Motley, MN, transition area to accommodate a new Nondirectional Radio Beacon (NDB) runway 09 Standard Instrument Approach Procedure (SIAP) to Morey Fish House Airport, Motley, MN. This action also updates the geographic coordinates of the airport. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**EFFECTIVE DATE:** 0901 u.t.c. October 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

**SUPPLEMENTARY INFORMATION:**

### History

On Tuesday, April 21, 1992, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the existing Motley, MN, transition area near Morey Fish House Airport (57 FR 14522).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsequently in the Handbook.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the existing Motley, MN, transition area to accommodate a new NDB runway 09 SIAP to Morey Fish House Airport, Motley, MN. This action also updates the geographic coordinates of the airport.

The development of a new SIAP requires that the FAA alter the designated airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Incorporation by reference, transition areas.

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

*Section 71.181 Designation*

* * * * *

**AGL MN TA Motley, MN [Revised]**

Motley, Morey Fish House Airport, MN
(lat. 46° 19′ 25″N, long. 94° 36′ 18″ W)
Staples NDB
(lat. 46° 22′ 50″N, long. 94° 48″ 01″ W)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Morey Fish House Airport and within 1.75 miles each side of the Staples NDB 118° bearing extending from the 5-mile radius to 8.5 miles northwest of the airport excluding that airspace within the Staples, MN, Transition Area.

* * * * *

Issued in Des Plaines, Illinois on July 1, 1992.

**John P. Cuprisin,**

*Manager, Air Traffic Division.*

[FR Doc. 92–16896 Filed 7–17–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 92–AGL–4]**

## Establishment of Transition Area; Gwinner, ND

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes the Gwinner, North Dakota transition area to accommodate a new nondirectional radio beacon (NDB) runway 34 Standard Instrument Approach Procedure (SIAP) to Gwinner-Roger Melroe Field. The intended effect of this action is to ensure segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**EFFECTIVE DATE:** 0901 u.t.c., October 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

**SUPPLEMENTARY INFORMATION:**

**History**

On Tuesday, April 21, 1992 the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area near Gwinner, North Dakota (57 FR 14521).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsequently in the Handbook.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations establishes a transition area at Gwinner, North Dakota to accommodate a new NDB runway 34 Standard Instrument Approach Procedure (SIAP) to Gwinner-Roger Melroe Field. The SIAP is predicated on a non-federal NDB located on the airport. This action will lower the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of Gwinner-Roger Melroe Field. This action will also change the operating status of the airport from VFR only to include IFR operations concurrent with the SIAP publication.

The development of the new SIAP procedure requires that the FAA alter the designated airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Incorporation by reference, transition areas.

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

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**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

| *Section 71.181* | *Designation* |
|---|---|
| * | * * * * * |
| AGL ND TA Gwinner, ND [New] | |
| Gwinner-Roger Melroe Field, Gwinner, ND (lat. 46°13'26" N., long. 97°36'33" W.) | |

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Gwinner-Roger Melroe Field Airport.

* * * * *

Issued in Des Plaines, Illinois, on July 16, 1992.

**Chester W. Anderson,**

*Acting Assistant Manager, Air Traffic Division.*

[FR Doc. 92-16998 Filed 7-17-92; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

**24 CFR Parts 905 and 906**

**[Docket No. R-92-1529; FR-2810-I-02]**

**RIN No. 2577-AA50**

### Notice of Extension of Section 5(h) Homeownership Program for Public and Indian Housing

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Extension of effectiveness of interim rule.

**SUMMARY:** This document extends for six months the period that the interim rule for the Section 5(h) Homeownership Program will be in effect from July 20, 1992 to January 20, 1993.

**EFFECTIVE DATES:** Effective July 20, 1992. The interim rule at 56 FR 47852, September 20, 1991, is effective from October 21, 1991 through January 20, 1993.

**FOR FURTHER INFORMATION CONTACT:** C. Wayne Hunter, Senior Homeownership Programs Advisor, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4118, Washington, DC 20410. Telephone number (202) 708-4233, TDD (202) 708-0850. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** A regulatory codification of the requirements of the Section 5(h) Homeownership Program for public (24 CFR part 906) and Indian (24 CFR part 905) housing was published as an interim rule in the **Federal Register** on September 20, 1991 (56 FR 47852). The primary statutory mandate for this program is section 5(h) of the United States Housing Act of 1937 (Act). Secondary authority is found in section 6(c)(4)(D) of the Act.

As the primary statutory mandate, section 5(h) authorizes PHAs to sell public housing to residents "on such terms and conditions as the [PHA] may determine." That emphasis on local initiative and discretion is reinforced by section 6(c)(4)(D), which speaks of "the development by local housing authority managements of viable homeownership opportunity programs." These two complementary portions of the Act constitute what is essentially one provision that established the statutory basis for local homeownership activities under the section 5(h) Homeownership Program.

The preamble to the interim rule stated that the rule would cease to be effective after July 20, 1992, unless before that date the Department published it as a final rule. The Department has since determined that some additional time and experience in working with the interim rule would be appropriate before issuing a final rule. Accordingly, the time period during which the interim rule will be in effect is extended for an additional six months to January 20, 1993. If a final rule is published on or before January 20, 1993 this rule will continue in effect until the published final rule's effective date.

Dated: July 10, 1992.

**Joseph G. Schiff,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 92-16970 Filed 7-17-92; 8:45 am]

BILLING CODE 4210-33-M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR PART 148**

**[FRL-4155-8]**

### Underground Injection Control Program; Hazardous Waste Injection Restrictions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Stay of technical amendment.

**SUMMARY:** On March 6, 1992 (57 FR 8086), EPA issued a technical amendment to the third third land disposal restriction rule. This technical amendment included rule revisions at 40 CFR part 148 applicable to Class I injection wells of the Underground Injection Control (UIC) program. The Agency overlooked a potential impact of the amendment which could disrupt continued operation of hazardous Class I wells injecting newly identified or listed hazardous wastes, along with prohibited characteristic wastes. Accordingly, after subsequent consideration, EPA is staying the UIC technical amendment at § 148.1(d)(1), insofar as it applies to deep wells receiving prohibited characteristic wastes and newly identified or listed unprohibited wastes.

**EFFECTIVE DATE:** This rule is effective on July 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Bruce J. Kobelski, Underground Injection Control Branch, Office of Ground Water and Drinking Water (WH-550G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-7275.

**SUPPLEMENTARY INFORMATION:** On March 6, 1992 (57 FR 8086), EPA issued a technical amendment to the so-called third third land disposal restriction rule, the rule that established prohibitions and treatment standards for all remaining wastes that were hazardous at the time of the 1984 Resource, Conservation, and Recovery Act (RCRA) amendments, but were not yet prohibited. See 55 FR 22520 (June 1, 1990). Included among these wastes were all wastes which were hazardous because they exhibit the characteristics of ignitability, corrosivity, reactivity, or Extraction Procedure (EP) Toxicity.

One of the technical amendments made to the original third third rule concerns prohibited characteristic hazardous wastes that are disposed in Class I deep injection wells of the Underground Injection Control (UIC) program. Class I wells are wells in which wastewater is injected below the lower-most geological formation containing, within one-quarter mile of the well bore, an underground source of drinking water (USDW). 40 CFR 144.6(a); see 57 FR 8087. EPA indicated that it was amending the third third rule so that prohibited characteristic wastes could not permissibly meet a treatment standard as a result of dilution if the characteristic waste were to be subsequently disposed in a Class I hazardous injection well. Thus, the land disposal prohibitions for characteristic wastes disposed in these wells would apply at the point of those wastes' generation. The reasoning was that EPA assumed that Class I hazardous wells were already subject to all of the land disposal restrictions by virtue of also disposing of non-characteristic (i.e. listed) hazardous wastes. Thus, there would not be a regulatory disruption (a primary reason for not applying prohibitions at the point of generation for waste disposed in these units) if the dilution prohibition were also applied to characteristic wastes. *Id.*



However, EPA overlooked that these wells can potentially be receiving newly identified or listed hazardous wastes, that is, wastes not yet prohibited. Therefore, these wells could indeed incur significant disruption (i.e. segregation of characteristic wastes for separate management until a no migration demonstration for these wastes can be made for the well) if the dilution prohibition were to be applied at the point of generation. See 55 FR 22658-59. To avoid this result, which was the one EPA was initially seeking to prevent in generally applying the dilution prohibition at the point of disposal for characteristic wastes in all Class I wells, EPA is staying the technical amendment for 40 CFR 148.1(d)(1) insofar as it applies to Class I deep wells classified as hazardous solely because they inject hazardous wastes that are not yet prohibited. This has the effect of applying prohibitions at the point of disposal for the characteristic hazardous wastes disposed in these Class I hazardous deep wells, as well as in nonhazardous deep wells. See 55 FR 22658. In this regard, we believe that the operation of Class I hazardous waste wells with no migration petitions already approved by the Agency will not be disrupted, as their entire been evaluated during the petition review process.

EPA is, however, leaving in place the technical amendment insofar as it applies to hazardous Class I deep wells receiving prohibited hazardous wastes, as well as injecting prohibited characteristic wastes that are no longer hazardous at the point of injection. There should be no regulatory disruption incurred by these wells, since they will either have received a no migration variance or are already complying with treatment standards and the dilution prohibition for the prohibited hazardous wastes they are injecting. (57 FR 8087) Thus, EPA continues to see no reason not to also apply these prohibitions for prohibited characteristic hazardous wastes managed by such deep wells.

Finally, it should be noted that the legality of EPA's determination to apply prohibitions at the point of disposal has been challenged, and is presently awaiting decision by a panel of the District of Columbia Circuit. The court's determination of this issue could necessitate further changes in the provision.

**List of Subjects in 40 CFR Part 148**

Hazardous waste.

Dated: June 18, 1992.

**Martha Prothro,**

*Acting Assistant Administrator, Office of Water.*

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS**

1. The authority citation for part 148 continues to read as follows:

**Authority:** Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

2. Section 148.1 is amended by revising paragraph (d) to read as follows:

**§ 148.1 Purpose, scope, and applicability.**

* * * * *

(d) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under this part are not prohibited if the wastes:

(1) Are disposed into a nonhazardous injection well defined under 40 CFR 144.6(a) and do not exhibit any prohibited characteristic of hazardous waste identified in subpart C of part 261 at the point of injection; or

(2) Do not exhibit any prohibited characteristics of hazardous waste identified in subpart C of part 261 at the point of injection and are disposed into a hazardous injection well defined under 40 CFR 144.6(a) that receives only non-prohibited hazardous wastes.

* * * * *

[FR Doc. 92-17019 Filed 7-17-92; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 721**

**[OPPTS-50603; FRL-4042-3]**

**RIN 2070-AB27**

### Significant New Uses of Certain Chemical Substances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for nine chemical substances which were the subject of premanufacture notices (PMNs) and some of which were subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires certain persons who intend to manufacture, import, or process any of these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by the SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating these SNURs using direct final procedures.

**EFFECTIVE DATES:** The effective date of this rule is September 18, 1992. This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on August 3, 1992. If EPA receives notice before August 19, 1992 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the substance for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

**ADDRESSES:** Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPPTS-50603 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate (with additional sanitized copies of confidential business information is involved) to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-105, 401 M St., SW., Washington, DC 20460. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. Unit X. of this preamble contains additional information on submitting comments containing CBI.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-543-B, 401 M St., SW., Washington,

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DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** These SNURs will require persons to notify EPA at least 90 days before commencing manufacturing or processing of a substance for any activity designated by the corresponding SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

## I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.25.

## II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action. Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

## III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order or as a non-section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for each such substance contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice at least 90 days in advance. Data on potential exposures or releases of the substances, testing other than that specified in the section 5(e) order for the substance, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes. The consent oder for the substance P–85–612 contains language which in some cases does not match the language in part 721 subpart B; however, EPA believes that the SNUR provisions are generally equivalent to the corresponding provisions of the section 5(e) order for this substance.

The SNUR for the PMN substance P–91–899 regulates the chemical substance subject to a section 5(e) order where the finding under TSCA is based solely on substantial production volume and significant or substantial human exposure or release to the environment in substantial quantities. For this case there was limited or no toxicity data available for the PMN substance. In such cases EPA regulates new chemical substances under section 5(e) by requiring the submitter to complete certain toxicity tests prior to exceeding a specified cumulative production limit. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and substances with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects.

**PMN Number P–85–612**

*Chemical name:* (generic) Polymer of substituted aryl olefin.
*CAS Number:* Not available.
*Effective date of section 5(e) consent order:* September 6,1985.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that the impurity present in this substance may present an unreasonable risk of injury to health, that the substance is expected to be produced in substantial quantities, and that there may be significant or substantial human exposures.
*Toxicity concern:* Similar chemicals have been shown to cause liver, kidney, neurotoxic, reproductive, and teratogenic effects in test animals.
*Recommended testing:* The Agency has determined that a 28–day range finding test and a four dosage level 90–day subchronic oral toxicity test (40 CFR 798.2650) on the substance's impurity would help characterize possible liver, kidney, neurotoxic, reproductive, and teratogenic effects of the impurity.
*CFR citation:* 40 CFR 721.6820.

**PMN Number P–90–1730**

*Chemical name:* (generic) Halophenyl sulfonamide salt.
*CAS number:* Not available.



*Effective date of section 5(e) consent order:* November 22, 1991.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
*Toxicity concern:* Although not expected to cause acute effects to fish and aquatic organisms at water saturation, similar substances have been shown to cause chronic toxicity in fish and aquatic organisms. Specifically, based on quantitative structural activity relationships (QSAR) to similar compounds, EPA predicts that chronic toxicity to fish and aquatic organisms may occur at concentrations in excess of 10 ppb PMN substance in surface waters.
*Recommended testing:* EPA has determined that a fish early life stage toxicity test (40 CFR 797.1600), a daphnid chronic toxicity test (40 CFR 797.1330), and a green algal toxicity test (40 CFR 797.1050) would help characterize the chronic toxicity effects to fish and aquatic organisms. The PMN submitter has agreed not to exceed a specified production limit without performing these tests.
*CFR citation:* 40 CFR 721.9570.

**PMN Number P–91–74**

*Chemical name:* (generic) Propenoate-terminated alkyl substituted silyl ester
*CAS number:* Confidential.
*Effective date of section 5(e) consent order:* November 6, 1991.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
*Toxicity concern:* Similar substances have been shown to cause cancer in test animals.
*Recommended testing:* A 2–year, two-species bioassay to help characterize cancer effects (40 CFR 798.3300).
*CFR citation:* 40 CFR 721.3120.

**PMN Number P–91–899**

*Chemical name:* (generic) Alkylaryl substituted phosphite.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* November 7, 1991.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposures.
*Recommended testing:* EPA has determined that the results of an acute oral toxicity test (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28–day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the a specified cumulative production limit without performing these tests.
*CFR citation:* 40 CFR 721.6080.

**PMN Number P–91–937**

*Chemical name:* (generic) Polymer of disubstituted phthalate, dioxoheteropolycycle, and methacrylic acid.
*CAS number:* Not available.
*Effective date of section 5(e) consent order:* November 5, 1991.
*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
*Toxicity concern:* Similar chemicals have been shown to cause cancer in test animals.
*Recommended testing:* EPA has determined that a 2–year rodent bioassay (40 CFR 798.3300) would characterize the potential carcinogenic effects posed by the PMN substance.
*CFR citation:* 40 CFR 721.7240.

**PMN Number: P–91–1340**

*Chemical name:* Ethanol, 2,2'-(hexylamino)bis-.
*CAS number:* 6752–33–6.
*Basis for action:* The PMN substance will be used as a corrosion inhibitor in brake fluids. Based on the analogy of the PMN substance to aliphatic amines, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 90 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water. EPA has determined that other uses of the substance may result in releases to surface water. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(iii).
*Recommended testing:* EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), an acute fish assay (40 CFR 797.1400), and an acute fish assay modified with humic acid (40 CFR 795.115) will characterize environmental effects.
*CFR citation:* 40 CFR 721.3340.

**PMN Number: P–91–1372**

*Chemical name:* (generic) Polyoxy alkylene glycol amine.
*CAS number:* Not available.
*Basis for action:* The PMN substance will be used as a lubricant. Based on the analogy of the PMN substance to aliphatic amines, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 30 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water. EPA has determined that other uses of the substance may result in releases to surface water. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(iii).
*Recommended testing:* EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), an acute fish assay (40 CFR 797.1400), and an acute fish assay modified with humic acid (40 CFR 795.115) will characterize environmental effects.
*CFR citation:* 40 CFR 721.4000.

**PMN Number: P–91–1456**

*Chemical name:* (generic) Trimethyl spiropolyheterocyclic naphthalene compound.
*CAS number:* Confidential.
*Basis for action:* The PMN substance will be used as a paint, ink, or plastic additive. Based on the analogy of the PMN substance to neutral organics, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water. EPA has determined that other uses of the substance may result in releases to surface water. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(iii).
*Recommended testing:* EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), and an acute fish assay (40 CFR 797.1400) will characterize the environmental effects of the PMN substance.
*CFR citation:* 40 CFR 721.5250.

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**PMN Number: P-92-283**

*Chemical name:* (generic) Substituted spiro oxazine.
*CAS number:* Confidential.
*Basis for action:* The PMN substance will be used as a dye for identification labels. Based on the analogy of the PMN substance to neutral organics, the PMN substance may cause toxicity to aquatic organisms. Based on these data EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to water. EPA has determined that other uses of the substance may result in releases to surface water. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(iii).
*Recommended testing:* EPA has determined that an acute algal assay (40 CFR 797.1050), an acute daphnid assay (40 CFR 797.1300), and an acute fish assay (40 CFR 797.1400) will characterize the environmental effects of the PMN substance.
*CFR citation:* 40 CFR 721.5525.

## IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for five of the substances, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The bases for such findings are outlined in Unit III. of this preamble. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitters. The SNUR provisions for these substances designated herein are consistent with the provisions of the section 5(e) orders. In the case of four of the substances for which the proposed uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at § 721.170 were met.

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review to ensure the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

## V. Direct Final Procedure

EPA is issuing these SNURs as direct final rules, as described in §§ 721.160(c)(3) and 721.170(d)(4). In accordance with § 721.160(c)(3)(ii), this rule will be effective September 18, 1992, unless EPA receives a written notice by August 19, 1992 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30-day comment period. This action establishes SNURs for nine chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

## VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order requires or recommends certain testing, Unit III. of this preamble lists those recommended tests. However, EPA has established production limits in the section 5(e) orders for two of the substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the section 5(e) orders are included in Unit III. of this preamble. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use. The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUR notice submitters contact EPA early enough so that they will be able to conduct the appropriate tests before exceeding the production limit. SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on:

(1) Human exposure and environmental release that may result from the significant new use of the chemical substances.

(2) Potential benefits of the substances.

(3) Information on risks posed by the substances compared to risks posed by potential substitutes.

## VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in § 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request that EPA determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.575(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.575(b)(1).

## VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. Section 5(e) orders have been issued in five cases and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement (NOC) and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, eight of the nine substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that many, if any, of the significant new uses described in the following regulatory text are ongoing. As discussed at 55 FR 17376 (April 24, 1990), EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through these SNURs will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA has promulgated provisions to allow persons to comply with these SNURs before the effective date. If a person were to meet the conditions of advance compliance in § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

## IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPPTS-50603).

## X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS-50603). The record includes information considered by EPA in developing this rule. A public version of the record without any confidential business information is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located at rm. NE-G004, 401 M St., SW., Washington, DC. Any person who submits comments claimed as CBI must mark the comments as "confidential", "trade secret", or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any person submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

## XI. Regulatory Assessment Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,552 to $12,166, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

### *C. Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by OMB under the

provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, D.C. 20503.

**List of Subjects in 40 CFR Part 721**

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: July 7, 1992.

**Victor J. Kimm,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, 40 CFR part 721 is amended as follows:

**PART 721—[AMENDED]**

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.3120 to subpart E to read as follows:

**§ 721.3120 Propenoate-terminated alkyl substituted silyl ester.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as propenoate - terminated alkyl substituted silyl ester (PMN P–91–74) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

(A) Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 0.1 percent), and (c).

(B) The following citations correspond to the NIOSH-approved respirators that would be permitted following submittal by the company and written approval by EPA of the results of cartridge service life testing performed in accordance with *Interim Recommendations for Determining Organic Vapor Cartridge Service Life for Category 23C Respirators* (available through the TSCA Assistance Office), or its equivalent, in a laboratory which demonstrates the effectiveness of the organic vapor cartridge: § 721.63(a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), and (a)(5)(xv).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(iii)(D), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(D), and (h)(2)(iii)(A), (h)(2)(iii)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified at § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

3. By adding new § 721.3340 to subpart E to read as follows:

**§ 721.3340 Ethanol, 2,2'-(hexylamino)bis-.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as ethanol, 2,2'-(hexylamino)bis- (PMN P–91–1346) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified at § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

4. By adding new § 721.4000 to subpart E to read as follows:

**§ 721.4000 Polyoxy alkylene glycol amine.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyoxy alkylene glycol amine (PMN P–91–1372) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified at § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified at § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

5. By adding new § 721.5250 to subpart E to read as follows:

**§ 721.5250 Trimethyl spiropolyheterocyclic naphthalene compound.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as trimethyl spiropolyheterocyclic naphthalene compound (PMN P–91–1456) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified at § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

6. By adding new § 721.5525 to subpart E to read as follows:

**§ 721.5525 Substituted spiro oxazine.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted spiro oxazine (PMN P–92–283) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified at § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

7. By adding new § 721.6060 to subpart E to read as follows:

**§ 721.6060 Alkylaryl substituted phosphite.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylaryl substituted phosphite (PMN P–91–899) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified at § 721.125(a) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

8. By adding new § 721.6820 to subpart E to read as follows:

**§ 721.6820 Polymer of substituted aryl olefin.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polymer of substituted aryl olefin (PMN P–85–612) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) Protection in the workplace. Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(vii), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iii), (g)(1)(iv), and (g)(1)(vi), (g)(2), (g)(4), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), (c)(2), and any disposal associated with any use, or with manufacturing or processing associated with any use other than by means of recycling.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified at § 721.125(a) through (j) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

9. By adding new § 721.7240 to subpart E to read as follows:

**§ 721.7240 Polymer of disubstituted phthalate, dioxoheteropolycycle, and methacrylic acid.**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as polymer of disubstituted phthalate, dioxoheteropolycycle, and methacrylic acid (PMN P–91–937) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), (h)(2)(i)(D), and (h)(2)(iii)(A).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified at § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notificationrequirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

10. By adding new § 721.9570 to subpart E to read as follows:

§ 721.9570 Halophenyl sulfonamide salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halophenyl sulfonamide salt (PMN P–90–1730) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (q).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 10 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified at § 721.125(a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

[FR Doc. 92–17024 Filed 7–17–92; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 90–563; RM–7444]

### Radio Broadcasting Services; Thomasville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 238C3 for Channel 237A at Thomasville, Alabama, and modifies the license for Station WJDB–FM to specify operation on the higher powered channel, as requested by Griffin Broadcasting Corporation, Inc., successor-in-interest to WJDB Radio, Inc. See 55 FR 49541, November 29, 1990. Coordinates for Channel 238C3 at Thomasville are 31–46–07 and 87–45–53. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–563, adopted June 30, 1992, and released July 15, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 237A and adding Channel 238C3 at Thomasville.

Federal Communications Commission.

Michael C. Ruger,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92–17048 Filed 7–17–92; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 73

[MM Docket No. 92–16; RM–7887]

### Radio Broadcasting Services; Hazelhurst, Jeffersonville, Mt. Vernon, Sandersville, Soperton and Tennille, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228C2 for Channel 228A at Hazelhurst, Georgia, and modifies the license for Station WVOH (FM) to specify operation on the higher class channel; substitutes Channel 229C2 for Channel 229A at Jefferson, Georgia, and modifies the license for Station WWST (FM) to specify operation on the higher class channel, and allots Channel 269A to Mt. Vernon, Georgia, at the request of joint petitioners Jeff Davis Broadcasters, ALP Limited Partnership and Wesley James Holden, respectively. In order to accommodate the upgrades at Hazelhurst and Jeffersonville, we will also substitute Channel 260A for Channel 228A at Sandersville, Georgia, and modify the license for Station WSNT accordingly; substitute Channel 291A for Channel 269A at Soperton, Georgia, and modify the license for Station WKTM (FM) accordingly; and substitute Channel 270A for vacant but applied for Channel 260A at Tennille, Georgia. See 57 FR 05412, February 14, 1992, and Supplemental Information, infra.

EFFECTIVE DATES: August 28, 1992 the window period for filing applications at Mt. Vernon, Georgia, will open on August 31, 1992, and close on September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–16, adopted June 29, 1992, and released July 15, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

The coordinates for Channel 228C2 at Hazelhurst are North Latitude 31–51–15 and West Longitude 82–34–00. The coordinates for Channel 229C2 at Jeffersonville are North Latitude 32–47–00 and West Longitude 83–28–36. The coordinates for Channel 260A at Sandersville are North Latitude 32–58–23 and West Longitude 82–48–34. The coordinates for Channel 270A at Tennille are North Latitude 32–52–51 and West Longitude 82–50–01. The coordinates for Channel 291A at Soperton are North Latitude 32–23–19 and West Longitude 82–42–13. The coordinates for Channel 269A at Mt. Vernon are North Latitude 32–10–10 and West Longitude 82–33–09. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 228A and adding Channel 228C2 at Hazelhurst, by removing Channel 229A and adding Channel 229C2 at Jeffersonville, by removing Channel 228A and adding Channel 260A at Sandersville, by removing Channel 269A and adding Channel 291A at Soperton, by removing Channel 260A and adding Channel 270A at Tennille, and by adding Mt. Vernon, Channel 269A.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92-17049 Filed 7-17-92; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 92-89; RM-7964]**

## Radio Broadcasting Services; Fosston, MN

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 296C2 for Channel 296A at Fosston, Minnesota, and modifies the license for Station KKCQ-FM to specify operation on the higher class channel. See 57 FR 17870, April 28, 1992. Canadian concurrence has been obtained for this allotment at coordinates 47-37-46 and 95-38-02. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** August 28, 1992.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 92-89, adopted July 30, 1992, and released July 15, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 296A and adding Channel 296C2, at Fosston, Minnesota.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92-17050 Filed 7-17-92; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 672

**[Docket No. 911176-2018]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of closure.

**SUMMARY:** NMFS is establishing a directed fishing allowance and is prohibiting directed fishing for Pacific ocean perch in the Eastern Regulatory Area (statistical areas 64, 65, and 68) of the Gulf of Alaska (GOA). This action is necessary to prevent the total allowable catch (TAC) for Pacific ocean perch in the Eastern Regulatory Area from being exceeded. The intent of this action is to promote optimum used of groundfish while conserving Pacific ocean perch stocks.

**EFFECTIVE DATES:** 12 noon, Alaska local time (A.l.t.), July 15, 1992, through 12 midnight, A.l.t., December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

**SUPPLEMENTARY INFORMATION:** The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA are managed by the Secretary of Commerce under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR part 611.92 and parts 620 and 672.

The amount of a species or species group apportioned to a fishery is TAC, as stated in § 672.20(a)(2). Under the final notice of specifications (57 FR 2844, January 24, 1992), the amount apportioned to Pacific ocean perch for the Eastern Regulatory Area was 2,160 metric tons (mt).

Under § 672.20(c)(2), the Director, Alaska Region, NMFS (Regional Director), has determined that the amount of Pacific ocean perch apportioned to the Eastern Regulatory Area will soon be reached. Therefore, NMFS is establishing a directed fishing allowance of 1,669 mt for the Eastern Regulatory Area, and is setting aside the remaining 500 mt of the current apportionment as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishery soon will catch its directed fishing allowance. Consequently, under § 672.20(c)(2), NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Regulatory Area, effective from 12 noon, A.l.t., July 15, 1992, through 12 midnight, A.l.t., December 31, 1992.

After this closure, in accordance with § 672.20(g)(3), amounts of Pacific ocean perch retained on board a vessel in the Eastern Regulatory Area of the GOA may not equal or exceed 20 percent of the amount of all other fish species retained at the same time by the vessel during the same trip as measured in round weight equivalents.

**Classification**

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

**List of Subjects in 50 CFR Part 672**

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1001 *et seq.*

Dated: July 15, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-17030 Filed 7-15-92; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 57, No. 139
Monday, July 20, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Parts 317 and 381

[Docket No. 91-019P]

RIN 0583-AB37

## Listing of Minor Ingredients in Other Than Descending Order of Predominance

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations by allowing product ingredients present at individual levels of 2 percent or less by weight to be listed in the ingredients statement in other than descending order of predominance. The proposed rule would allow manufacturers to adjust ingredients in a formulation present at 2 percent or less without resubmitting the labeling for new approval each time such adjustment is made. This proposed rule is in response to a petition submitted by the National Food Processors Association (NFPA).

**DATES:** Comments must be received on or before September 18, 1992.

**ADDRESSES:** Written comments should be addressed to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to: Ashland L. Clemons, (202) 205-0042. (See also "**Comments**" under "**SUPPLEMENTARY INFORMATION.**")

**FOR FURTHER INFORMATION CONTACT:** Ashland L. Clemons, Director, Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 205-0042.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12291

The Agency has determined that this proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

### Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

This proposed rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, applicable administrative procedures must be exhausted. Those administrative procedures are set forth in the rules of practice governing proceedings for labeling determinations at 9 CFR parts 335 and 381, subpart W.

### Effects on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would make it optional for both large and small manufacturers of meat and poultry products containing ingredients at levels of 2 percent or less by weight to list such ingredients in the ingredients statement in other than descending order of predominance. Current regulations require all ingredients of meat and poultry products to be listed in the order of predominance (9 CFR 317.2(f) and 381.118(a)). Manufacturers opting to list their ingredients in other than descending order of predominance would have to revise their product labels to include a quantifying phrase at the end of the ingredients statement and submit the revised labels to FSIS for approval. However, once initial approval has been given by FSIS on the revised labels, manufacturers would be allowed to adjust ingredients in a formulation present at 2 percent or less without resubmitting the labeling for new approval each time such adjustment is made. As a result, such manufacturers would save time and costs associated with preparing the paperwork required under the Agency's prior label approval system. In addition, the number of labels received by the Agency would be reduced, to some extent, redirecting Agency resources to more significant label reviews.

### Comments

Interested persons are invited to submit written comments concerning this proposed rule. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket Number 91-019P. Any person desiring an opportunity for oral presentation of views, as provided under the Poultry Products Inspection Act, must make such request to Mr. Ashland L. Clemons so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this proposal will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

## Background

*National Food Processors Association Petition*

The Agency has been petitioned by the National Food Processors Association (NFPA), Washington, DC, to allow ingredients present in a product at levels of 2 percent or less by weight to be listed in other than descending order of predominance. The petitioner believes the proposed amendment to the Federal meat and poultry products inspection regulations would reduce the number of label changes currently required of industry, and would ease the backlog of labels to be reviewed by the Food Labeling Division (FLD) when minor formulation changes are made. The requested proposal is consistent with the Food and Drug Administration (FDA) regulation at 21 CFR 101.4(a)(2).

*Current Statutory and Regulatory Requirements*

Section 1(n)(7) of the Federal Meat Inspection Act (21 U.S.C. 601(n)(7)) provides that any carcass, part thereof, meat or meat food product is misbranded "if it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Secretary under section 7 of this Act unless (A) it conforms to such definitions and standards, and (B) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavorings, and coloring) present in such food." Section 1(n)(9) further provides that any carcass, part thereof, meat or meat food product is misbranded "if it is not subject to the provisions of subparagraph (7), unless its label bears (A) the common or usual name of the food, if any there be, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; * * *" Section 4(h) (7) and (9), respectively, of the Poultry Products Inspection Act (21 U.S.C. 453(h) (7) and (9)) contain similar provisions for any poultry product.

Furthermore, the Federal meat and poultry products inspection regulations specify that ingredients in the ingredients statement must be listed in their order of predominance. Section 317.2(f)(1) of the Federal meat inspection regulations (9 CFR 317.2(f)(1)) provides that the list of ingredients shall show the common or usual names of the ingredients arranged in the descending order of predominance, with a few minor exceptions. Section 381.118(a) of the poultry products inspection regulations (9 CFR 381.118(a)) provides that the label shall show a statement of the ingredients in the poultry product if the product is fabricated from two or more ingredients, and that such ingredients shall be listed by their common or usual names in the order of their descending proportions.

The FDA regulation at 21 CFR 101.4(a)(1) provides that ingredients shall be listed by their common or usual name in descending order of predominance by weight. However, 21 CFR 101.4(a)(2) allows ingredients present in amounts of 2 percent or less by weight to be listed in other than descending order of predominance at the end of the ingredients statement. The listing of such ingredients must be preceded by an appropriate quantifying statement, e.g., "Contains _____ percent or less of _____," or "Less than _____ percent of _____." The blank percentage within the quantifying statement shall be filled in with a threshold level of 2 percent, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate. No ingredient to which the quantifying phrase applies may be present in an amount greater than the stated threshold.

*The Proposal*

After reviewing the petitioner's request, FSIS has determined that allowing ingredients present in a product at individual levels of 2 percent or less by weight to be listed in other than descending order of predominance would be in accordance with the provisions of the FMIA and PPIA and would not cause the product to be misbranded because the presence of all ingredients will still be identified in the ingredients statement. Therefore, FSIS is proposing to amend the Federal meat and poultry products inspection regulations by allowing product ingredients present at individual levels of 2 percent or less by weight to be listed in other than descending order of predominance at the end of the ingredients statement. The listing of such ingredients by their common or usual names would have to be preceded by a quantifying statement such as "Contains _____ percent or less of _____," or "Less than _____ percent of _____." The percentage of the ingredient(s) would be filled in with a threshold level of 2 percent, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate. No ingredient to which the quantifying statement applies may be present in an amount greater than the stated threshold.

The provisions as stated above would apply to ingredients statements consisting of composite listing of ingredients or component listing of ingredients. A composite listing of ingredients identifies all of a product's ingredients in descending order of predominance. For example, a product labeled as breaded chicken pattie chunks could have an ingredient listing as follows: (Ingredients: Chicken breast, water, soy flour, sugar, and spices). A component listing of ingredients identifies a product's major components accompanied by a list of each component's ingredients in descending order of predominance. For example, the ingredients statement of a sausage pizza may read as follows: (Ingredients: Crust (bleached flour, water, salt), sauce (tomato paste, tomatoes, water, spices), cheese (part skim mozzarella cheese, cheddar, and provolone), and sausage (pork, water, salt, and spices)). When the component listing is used, the quantifying statement may appear at the end of each component's list of ingredients rather than at the end of the ingredients statement.

Establishments would continue to comply with §§ 318.7(c)(4) and 381.147(f)(4) of the regulations (9 CFR 318.7(c)(4) and 381.147(f)(4)) which list substances that are acceptable for use in the preparation of meat and poultry products. In addition, any adjustment in formulation of a standardized product would also be required to comply with limits and conditions of use prescribed in 9 CFR part 319 or part 381, subpart P. Establishments would be required to notify the inspector-in-charge of any formulation changes, even though the label would not be submitted for approval.

The Agency believes that this proposal would have a positive impact on the industry, consumers, and the Agency. Once initial approval has been given by FSIS on the revised labels containing the quantifying phrase, meat and poultry manufacturers would have the option of adjusting product formulation in relation to the ingredients present at 2 percent or below without reapplying to FSIS for level approval. Consumers would be provided with more informative labeling that identifies the threshold level in the quantifying statement, whereas currently, only the ingredients are listed. Last, the Agency would not be reapproving labels with minor formulation changes.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations to read as follows:

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**List of Subjects**

*9 CFR Part 317*

Food labeling, Meat inspection.

*9 CFR Part 381*

Food labeling, Poultry inspection.

**PART 317—LABELING, MARKING DEVICES, AND CONTAINERS**

1. The authority citation for part 317 would continue to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.2 would be amended by adding a new paragraph (f)(1)(vi) to read as follows:

**§ 317.2 Labels: definition; required features.**

* * * * *

(f)(1) * * *

(vi)(A) Product ingredients which are present in individual amounts of 2 percent or less by weight may be listed in the ingredients statement in other than descending order of predominance: *Provided,* That such ingredients are listed by their common or usual names at the end of the ingredients statement and preceded by a quantifying statement, such as "Contains _____ percent of _____," or "Less than _____ percent of _____." The percentage of the ingredient(s) shall be filled in with a threshold level of 2 percent, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate. No ingredient to which the quantifying statement applies may be present in an amount greater than the stated threshold. Such a quantifying statement man also be utilized when an ingredients statement contains a listing of ingredients by individual components. Each component listing may utilize the required quantifying statement at the end of each component ingredients listing.

(B) Such ingredients may be adjusted in the product formulation without a change being made in the ingredients statement on the labeling, provided that the adjusted amount complies with § 318.7(c)(4) and part 319 of this subchapter, and does not exceed the amount shown in the quantifying statement. Any such adjustments to the formulation shall be provided to the inspector-in-charge.

* * * * *

**PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS**

3. The authority citation for part 381 would continue to read as follows:

**Authority:** 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

4. Section 381.118(a) would be revised to read as follows:

**§ 381.118 Ingredients statement.**

(a)(1) The label shall show a statement of the ingredients in the poultry product if the product is fabricated from two or more ingredients. Such ingredients shall be listed by their common or usual names in the order of their descending proportions, except as prescribed in paragraph (a)(2) of this section.

(2)(i) Product ingredients which are present in individual amounts of 2 percent or less by weight may be listed in the ingredients statement in other than descending order of predominance: *Provided,* That such ingredients are listed by their common or usual names at the end of the ingredients statement and preceded by a quantifying statement, such as "Contains _____ percent or less of _____," or "Less than _____ percent of _____." The percentage of the ingredient(s) shall be filled in with a threshold level of 2 percent, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate. No ingredient to which the quantifying statement applies may be present in an amount greater than the stated threshold. Such a quantifying statement may also be utilized when an ingredients statement contains a listing of ingredients by individual components. Each component listing may utilize the required quantifying statement at the end of each component ingredients listing.

(ii) Such ingredients may be adjusted in the product formulation without a change being made in the ingredients statement on the labeling, provided that the adjusted amount complies with § 381.147(f)(4) and subpart P of this part, and does not exceed the amount shown in the quantifying statement. Any such adjustments to the formulation shall be provided to the inspector-in-charge.

* * * * *

Done at Washington, DC, on June 30, 1992.

H. Russell Cross,

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 92–17021 Filed 7–17–92; 8:45am]

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**FEDERAL RESERVE SYSTEM**

**12 CFR Part 206**

**[Regulation F; Docket No. R–0769]**

**Interbank Liabilities**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is publishing for comment a new Regulation F, Interbank Liabilities. The proposed rule would implement section 308 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which requires the Board to develop regulations designed to limit the exposure of insured depository institutions to other depository institutions. The proposed rule would apply to banks, savings associations, and branches of foreign banks with deposits insured by the Federal Deposit Insurance Corporation (FDIC)

The proposed rule would require insured banks, savings associations, and branches of foreign banks, referred to collectively as "banks," to develop and implement internal procedures to evaluate and control exposure to the depository institutions with which they do business, referred to as "correspondents." These procedures would be required to include limits on both credit and settlement exposure to each individual correspondent. The proposed rule also would establish "benchmark" guidelines for daily overnight credit exposure to individual correspondents within which a bank ordinarily would be expected to remain. The benchmarks are states as a percentage of the exposed bank's capital. The benchmarks are intended to establish the maximum credit exposure that generally would be considered to be prudential, and are tiered based on the capital position of the correspondent with which the bank is dealing. The proposed rule provides for a two-year transition period after the effective date for implementation of the rule. The Board anticipates that the final rule would become effective on December 19, 1992.

**DATES:** Comments should be received by September 18, 1992.

**ADDRESSES:** Comments, which should refer to Docket No. R–0769, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B–1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding

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the Availability of Information, 12 CFR 261.8.

**FOR FURTHER INFORMATION CONTACT:** Oliver Ireland, Associate General Counsel (202/452–3625), or Lawranne Stewart, Attorney (202/452–3513), Legal Division; or Stephen Lovette, Manager (202/452–3622), or Derek L. Young, Senior Financial Analysis (202/452–2960), Division of Banking Supervision and Regulation. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thomas (202/452–3544).

**SUPPLEMENTARY INFORMATION:** Section 308 of the Federal Deposit Insurance Corporation Improvements Act of 1991 (FDICIA) added a new section 23 to the Federal Reserve Act (FRA), which requires the Board to prescribe standards, by regulation or order, that will have the effect of limiting the risks posed by an insured depository institution's exposure to another depository institution. The Board believes that section 308 is intended to reduce the risks to insured depository institutions and to the deposit insurance funds by preventing situations where the failure of a single correspondent bank would trigger the failure of insured depository institutions with claims on the failed correspondent. Although the purpose of the section is stated in terms of the risks of the failure of large banks,[1] the provision directs the Board to prescribe standards to limit "the risks posed by an insured depository institution's exposure to any other depository institution." FRA section 23(b). Under section 23, insured depository institutions include all banks and savings associations that are insured by the Federal Deposit Insurance Corporation, as well as insured branches of foreign banks. FRA section 23(d).

The statute defines the "exposure" of an insured depository institution to include all extensions of credit to a depository institution, deposits or reverse repurchase agreements with a depository institution, guarantees, acceptances, or standby letters of credit on behalf of a depository institution, purchases or acceptance as collateral of securities issued by a depository institution, and "all similar transactions that the Board by regulation determines to be exposure for the purposes of this section." FRA section 23(c)(1). The Board is given authority to exempt transactions from the definition of exposure if the exemption is in the public interest and consistent with the purposes of the statute. FRA section 23(c)(2).

Section 23 provides that the rules developed by the Board are to be enforced by the appropriate Federal banking agency of an insured depository institution. FRA section 23(e). The amendments made by section 308 are effective on December 19, 1992, although the Board is authorized to provide transition rules to facilitate compliance with the rules under section 23. FDICIA section 308(b) and (c).

### Interbank Exposure

The sources of the exposure of a bank to its correspondents tend to arise from two types of activity. First, banks may become exposed to their correspondents when obtaining banking services, such as check collection services, from their correspondents. Second, exposure may arise when banks engage in transactions with correspondents in the financial markets. Each type of exposure presents its own risks and characteristics.

Correspondent banking services are the primary source of interbank exposure for the majority of insured banks, particularly small- and medium-sized banks. In connection with check collection services and other trade- or payment-related correspondent services, banks often maintain balances with their correspondents in order to settle transactions and to compensate the correspondents for the services provided. These balances give rise to credit exposure to the correspondents. Although correspondent services are in some cases provided on a fee basis, many correspondents may prefer compensating balance arrangements, as these balances provide the correspondents with a stable source of funding. Similarly, banks may prefer to pay for services with "soft charges" in the form of balances instead of "hard charges" in the form of fees.

Exposure to a correspondent may be significant, particularly where a bank uses one correspondent for all of the bank's check collections and other payment services, sells excess reserve account balances ("Fed funds") to the correspondent, and engages in other banking transactions with the correspondent.[2] This exposure may increase when interest rates fall, as higher levels of compensating balances may be required to provide adequate compensation to the correspondent.

Money center banks and large regional banks may have significant exposure to correspondents [3] through their activities in interbank markets, such as the securities, swap, and foreign exchange markets. Interbank transactions such as swaps, foreign exchange contracts and over-the-counter options that call for performance in the future give rise to exposure to the depository institutions that act as counterparties in such transactions. This exposure includes settlement risk, that is, the risk that a counterparty will fail to make a payment or delivery in a timely manner. Settlement risk may arise from transactions in the government securities, foreign exchange, or other markets, and may result from operational, liquidity, or credit problems.

There are currently no comprehensive statutory or regulatory limits on interbank exposure. National banks are subject to lending limits that prohibit national banks from lending amounts equal to more than 15 percent of the national bank's unimpaired capital and surplus to a single borrower on an unsecured basis, and an additional 10 percent on a secured basis. The national bank lending limits apply only to "loans and extensions of credit," and do not include most of the off-balance sheet transactions that may provide significant sources of exposure to correspondents. Additionally, the national bank lending limits do not apply to overnight Fed funds sales, a significant source of short-term exposure to correspondents.

State-chartered banks generally are subject to similar lending limits under

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[1] Section 308 states that "[t]he purpose of this section is to limit the risks that the failure of a large depository institution (whether or not that institution is an insured institution) would pose to the insured depository institutions." FRA section 23(a).

[2] Although a bank's primary correspondent often will buy Fed funds as principal directly from the bank, a correspondent may act as agent to place the funds with another institution. In such agency arrangements, a bank may provide its correspondent with a pre-approved list of institutions with which the correspondent may place the funds. Where a correspondent is acting as the bank's agent in placing Fed funds, the bank's exposure would be to the ultimate purchaser of the funds, not to the correspondent placing the funds on its behalf.

Fed funds sales generally are unsecured. A bank also may provide funds to a correspondent through transactions known as "reverse repurchase agreements," in which the bank provides funds to the correspondent by buying an asset, generally a government security. The correspondent agrees that it will repurchase the asset from the bank at the expiration of a set period, generally overnight, at a repurchase price calculated to compensate the bank for the use of its funds. Unlike Fed funds sales, these transactions are essentially secured transactions.

[3] Although the depository institutions that are parties to transactions in the interbank markets discussed above generally are referred to as "counterparties," the term "correspondent" generally will be used in this discussion to denote any depository institution to which an insured depository institution is exposed.

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state law. Almost all states impose lending limits on the banks they charter. Most of these limits are patterned on the national bank lending limits, although the specific percentages or transactions covered vary. The state limits generally do not apply to a broader range of transactions than the national bank limits, although some states include Fed funds transactions within their limits. A number of states, however, exclude interbank transactions from their lending limits entirely.

Federal savings associations generally are subject to the same limitations on loans to one borrower as national banks, with exceptions for loans under $500,000 and loans for residential real estate development. 12 U.S.C. 1464(u). In some states, state-chartered savings associations are subject to the same limitations as state-chartered banks, but a significant number of states have no lending limits that apply to savings associations or place no limits on deposits by a savings association with an insured depository institution.

**Proposed Rule**

The Board invites comment on all aspects of the proposed Regulation F, which would implement the provisions of section 38 of FDICIA. The Board's proposed rule is designed to ensure that banks adopt prudent limits on credit and liquidity risks in dealing with another depository institution. The proposed rule requires banks to establish limits on both credit and settlement exposure to each individual correspondent. Banks' assessments of the condition and operation of correspondents and their internal controls on exposure to correspondents are intended to operate as the principal safeguards against excessive exposure to individual correspondents.

The proposed rule also establishes "benchmark" guidelines on the overnight credit exposure to individual correspondents that ordinarily should not be exceeded. The benchmarks are stated as percentages of the exposed bank's capital. The levels of overnight credit exposure considered to be permissible under the benchmarks are tiered based on the capital of the correspondent with which the bank is dealing, so that higher levels of a bank's capital may be exposed to better capitalized correspondents. These benchmark guidelines normally should not be exceeded, and are intended to establish the maximum credit exposure that ordinarily would be considered to be prudent with respect to a correspondent with a particular level of capital.

The benchmarks, which are based on a measure of credit exposure that excludes certain relatively low-risk transactions, generally would permit a bank to have credit exposure to an individual correspondent in an amount up to 25 percent of the exposed bank's total capital. For a correspondent that a bank can demonstrate is "adequately capitalized," the bank could have credit exposure equal to 50 percent of the bank's total capital, but no more than 25 percent of the bank's capital could be exposed through transactions that have a term to maturity of more than thirty days. No specific benchmark is provided for credit exposure to a correspondent that the bank can demonstrate is "well capitalized."

In all cases, a bank would be expected to establish prudential credit limits internally, either within or in addition to the benchmark limits, and would be expected to place limits on settlement and other risks not addressed by the benchmarks. Although the primary emphasis of the proposed rule is on the prudential limits to be established internally by banks, the benchmarks for credit exposure are intended to prevent banks from undertaking levels of exposure that would not be considered to be prudent by the Board. Where a bank is exposed to a correspondent that is less than adequately capitalized and the correspondent fails, the bank could expect to lose a substantial portion of its credit exposure. Further, it would suffer protracted liquidity problems and uncertainty as to its ultimate loss. A correspondent that is adequately capitalized poses a lesser risk of imminent failure and therefore under the benchmarks banks would be permitted to take larger credit exposures that may be reduced quickly to the 25 percent limit if a correspondent's financial condition deteriorates. Well capitalized institutions generally pose a still lesser risk of failure, although risk is incurred in dealing with any institution. The Board believes that much of the current credit exposure of banks to their correspondents would fall within the benchmarks, although it anticipates that the benchmarks may be constraining in some cases.

**Section-By-Section Analysis**

The following is a section-by-section analysis of the proposed rule. A number of issues concerning the application of the rule are discussed in the context of the relevant section. An additional discussion of issues relating to monitoring, recordkeeping, and compliance is included in the Initial Regulatory Flexibility Analysis.

*Section 206.1 Authority, Purpose and Scope.*

This section states that Part 206 implements section 308 of FDICIA, and that part 206 is intended to limit the risks to insured depository institutions from the failure of depository institutions.

*Section 206.2 Definitions.*

*Bank.* "Bank" is defined to mean an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (FDI Act), and therefore includes any bank, savings association, or other institution the deposits of which are insured by the FDIC. This term also includes state or Federal branches of foreign banks that are insured by the FDIC, but does not include credit unions. Although the provisions of the proposed regulation are applicable to depository institutions insured by the FDIC, the term "bank" is substituted in the regulation for clarity.

*Correspondent.* A "correspondent" is an institution to which a bank must limit its exposure under the proposed rule, and includes a "U.S. depository institution" or a "foreign bank" to which the bank has exposure. The capital adequacy guidelines permit a lower risk-weighting for most claims on these institutions.

Although section 23 of the FRA requires that standards be enacted to limit exposure to "depository institutions," that term is not defined in that section and no general definition of the term that would be applicable to section 23 is included in the Federal Reserve Act. With respect to domestic depository institutions, only insured depository institutions are included within the definition of "correspondent," as discussed further under the definition of "U.S. depository institution."

In addition to domestic institutions, the proposed definition of "correspondent" includes depository institutions that are "foreign banks." Insured depository institutions currently have significant exposure to foreign banks. Exposure to foreign banks involves risks to banks that are similar to exposure to domestic correspondents; consequently, the proposed rule also would apply to exposure to correspondents that are foreign banks.

*Exposure.* The proposed rule defines "exposure" to mean the risks to a bank that its correspondent will not make a payment to complete a transaction in a timely manner, or will not pay an obligation. Exposure includes both the operational and liquidity risks related to the settlement of transactions and risk

related to the creditworthiness of a counterparty. Under § 206.3 of the proposed rule, a bank is required to establish internal policies and limits relating to all types of exposure to its correspondents. Section 206.4 of the proposed rule establishes benchmarks for "credit exposure" to correspondents. Section 206.5 of the proposed rule defines "credit exposure." The definition of "credit exposure" does not include operational or liquidity risks or certain transactions that pose only a low credit risk.

*Foreign bank.* The definition of "foreign bank" is based on the criteria used in the risk-based capital guidelines for determining whether claims on a foreign institution may be considered to be claims on a bank, which carry a risk-weighting of 20 percent under the capital guidelines for claims with a remaining term to maturity of one year or less.[4] The criteria used in the capital-adequacy guidelines include foreign banks organized under the laws of any country. The definition is based primarily on whether the foreign institution is engaged in the business of banking, including the receipt of deposits as a substantial portion of its business, whether it has the authority to accept demand deposits, and whether the bank supervisory or monetary authorities of its home country recognize it as a bank.[5] The United States office of a foreign bank would be considered to be part of the foreign bank.

*Primary Federal supervisor.* "Primary Federal supervisor" is defined to have the same meaning as "appropriate Federal banking agency" under section 3(q) of the FDI Act. The term "primary Federal supervisor" has been substituted for clarity. Under this definition, the primary Federal supervisor means (1) the Comptroller of the Currency for national or District banks and for insured Federal branches of foreign banks, (2) the FDIC for state nonmember banks and insured state-chartered branches of foreign banks,[6] and (3) the Office of Thrift Supervision for savings associations. The Board is the primary Federal supervisor for state member banks. Section 23(e) of the FRA provides that the primary Federal supervisor will be responsible for enforcing compliance with the rules implementing section 23 with respect to the institutions for which it is responsible.

*Quality asset.* The term "quality asset" includes assets that would be of sufficient quality to be used as collateral for transactions with affiliates under section 23A of the FRA. The definition is roughly the obverse of the term "low quality asset" in subsection (b)(10) of section 23A. Assets that are classified, on nonaccrual status, past due by more than thirty days, or that have been renegotiated are excluded, as are assets that have been compromised due to the deteriorating financial condition of the obligor. An asset also would not be considered to be a quality asset if other loans to the same obligor had been classified. This definition excludes from credit exposure an asset on which a correspondent is a secondary obligor, or which results in secondary exposure to the correspondent, as long as the asset would be considered to be a quality asset even in the absence of recourse to the correspondent.

*Subsidiary.* "Subsidiary" has the same meaning that term is given under section 23A of the FRA (12 U.S.C. 371c), and therefore includes any company in which a bank owns or controls 25 percent or more of any class of voting securities. A company in which the election of a majority of directors is controlled by the bank, or a company which the Board has found to be controlled by the bank for the purposes of section 23A of the FRA, also will be considered to be a subsidiary.

*Total capital.* "Total capital" is defined as the total of Tier 1 and Tier 2 capital under the risk-based capital guidelines of a bank's primary Federal supervisor. Tier 1 capital includes core capital elements such as common stockholder's equity, qualifying noncumulative perpetual preferred stock, and minority interests in the equity accounts of consolidated subsidiaries, minus goodwill and ineligible intangibles. Tier 2 capital includes perpetual preferred stock and related surplus, hybrid capital instruments, mandatory convertible debt instruments, term subordinated debt and intermediate-term preferred stock and related surplus, and a portion of the bank's allowance for loan and lease losses. "Total capital" is used in section 206.4 of the proposed regulation as the base for calculating the maximum credit exposure that a bank should have to a correspondent.

As noted above, insured branches of foreign banks are "banks" under the proposed rule and are therefore subject to the section 206.4 guidelines on credit exposure. Consistent with the approach of the OCC in applying the national bank lending limits to Federal branches of foreign banks, the § 206.4 guidelines on credit exposure in the proposed regulation would be based on the capital of the entire foreign bank. For foreign banks organized in countries that subscribe to the principles of the Basle Capital Accord, total capital under the proposed rule would include total Tier 1 and Tier 2 capital as calculated under the standards of that country. For foreign banks that are organized in countries that do not subscribe to the principles of the Basle Capital Accord, total capital under the proposed rule would be calculated based on the provisions of the Accord. In either case, a foreign bank would be permitted to apply the accounting conventions permitted by its country of organization in calculating total capital.

*U.S. depository institution.* Under the proposed rule, the term "correspondent" is defined to include both a "foreign bank" and a "U.S. depository institution." As is the case for the term "foreign bank," the definition of "U.S. depository institution" covers only institutions that are considered to be depository institutions for the purposes of the capital adequacy guidelines. "U.S. depository institution" is limited to institutions insured under the FDI Act that are chartered under Federal or state law. "U.S. depository institution" does not include Federal Reserve Banks, Federal Home Loan Banks, or other domestic depository institutions that are not federally insured. The term also does not include insured branches of a foreign bank, as the foreign bank itself is considered to be the correspondent.

Although section 23 of the FRA refers to exposure to "depository institutions," whether insured or not, application of the proposed rule to exposure to uninsured domestic institutions would provide little benefit in risk reduction while adding significantly to the complexity of the proposed rule. For example, banks may have exposure to uninsured trust companies that are registered clearing agencies. These trust companies are subject to a separate supervisory scheme under the Securities

[4] Long-term claims (claims with a term to maturity of more than one year) against foreign banks organized under the laws of countries that are members of the Organization for Economic Cooperation and Development (OECD) are also weighted at 20 percent. While the lower risk weighting is given to short term claims on any foreign bank, regardless of where the bank is organized, long-term claims against foreign banks that are organized under the laws of countries that are not part of the OECD-based group of countries are weighted at 100 percent. See, *e.g.*, 12 CFR part 208, app. A.

[5] The central bank of a foreign country is not considered to be a "foreign bank" for the purposes of the risk-based capital guidelines, and would not be included within the definition of "foreign bank" for the purposes of the proposed rule.

[6] The FDIC also may have overlapping responsibilities for insured Federal branches of foreign banks.

Exchange Act of 1934. This supervisory scheme is intended to control the risk to users of the trust company's services. In some cases these companies are subject to supervision by the Board as member banks. Little benefit would be gained by applying the limits of section 23 to the transactions of insured depository institutions with such uninsured trust companies or similar entities. Further, the purposes and consequently the levels of capital for uninsured trust companies are not comparable to those of insured institutions. For these reasons, the Board finds that it is in the public interest and consistent with the purposes of section 23 to exclude exposure to uninsured domestic institutions from the coverage of the proposed rule, as permitted under section 23(c)(2).

*Section 206 General Guidelines*

Prudential Limits

The proposed rule requires banks to have policies and procedures to limit the risks posed by transactions with correspondents, taking into account both credit risk and settlement risk. This subsection emphasizes the importance of safe and sound banking practices in transactions with correspondents. Under this subsection, a bank would be required to establish limits on its exposure for each correspondent with which the bank does business, and to review periodically the condition of each correspondent and revise as necessary the limits on exposure to each correspondent. A bank would be required to structure its relations with its correspondents to avoid undue concentrations of exposure to an individual correspondent. A bank should address issues relating to both intraday and overnight exposure in its policies and procedures.

In establishing limits on exposure to a correspondent, the proposed rule requires the bank to evaluate the overall condition and creditworthiness of its correspondent. The bank should not rely solely on the capital ratios of its correspondent, but should assess other factors that can affect a correspondent's condition and operations.

Monitoring of Exposure

Under this subsection of the proposed rule, a bank would be required to ensure that its exposure to a correspondent remains within the internal limits the bank has established for exposure ordinarily does not exceed the benchmark guidelines on interday credit exposure established under § 206.4. A bank can meet the requirements concerning monitoring of its limits and guidelines either by structuring its relations with its correspondents so that the limits and guidelines are not exceeded, or by monitoring actual exposure to correspondents.

For example, if the aggregate of the credit facilities approved for a correspondent is less than the benchmark established under § 206.4, then the bank generally would not need to monitor actual outstandings under each facility, as long as it had procedures to ensure that the facilities are not exceeded. If total actual outstandings under the facilities available to a correspondent are likely to exceed the benchmark limit, frequent monitoring would be necessary. If aggregate credit facilities approved for a particular correspondent exceed the limits of § 206.4, but actual outstandings under the facilities are almost always below the limits, monitoring on an *ex post* basis may be adequate.

*Section 206.4 Guidelines for Credit Exposure*

In addition to the general requirements for the establishment of internal limits concerning credit risks under § 206.3, § 206.4 of the proposed rule establishes benchmark guidelines on interday credit exposure within which banks ordinarily should remain. The benchmarks established in this section are tiered based on the capitalization of the correspondent. These guidelines would not be rigid limits, such as the national bank lending limits, violations of which may result in director liability for losses attributable to loans exceeding the lending limits. Unlike limits that apply to lending transactions, in which total exposure can be determined at the time the transaction is done, the proposed rule applies to a variety of transactions under which credit exposure cannot be determined or limited readily. For example, credit exposure resulting from many off-balance sheet transactions may increase without any action on the part of the bank as a result of moves in the relevant markets. Because exposure under these transactions changes frequently, actual credit exposure is difficult to monitor on a contemporaneous basis. Similarly, credit exposure related to the collection of checks and other cash items also cannot be measured with precision on a contemporaneous basis, as the bank does not have sufficient information to determine whether particular items have been finally paid.[7]

Rigid limits on credit exposure effectively would require a bank to target a much lower level of credit exposure in order to enable the bank to stay within the limits at all times. Such limits also would lend a false sense of precision to the measures of credit exposure used in the proposed rules. For these reasons, the proposed guidelines are structured as benchmarks that would be considered prudent outside limits on credit exposure.

Credit exposure ordinarily should remain within the guidelines, but occasional or inadvertent excesses would not be considered to be a violation of the regulation, provided that credit exposure generally is managed in a manner consistent with the regulation's prudential requirements. For example, occasional excesses resulting from market disturbances, market movements favorable to the bank, unexpected surges in activity in particular areas, or operational difficulties would not be considered to be violations of the regulation. Further, the benchmarks are intended to serve as the outer limits for exposure to correspondents, and are not intended to endorse levels of credit exposure that otherwise would not be considered prudent based on the condition and operations of the correspondent. For example, credit exposure to a correspondent qualifies as adequately capitalized, but that has weaknesses in its management, operations, or loan portfolio, should be at a level below that permitted under the benchmark for credit exposure to an adequately capitalized correspondent.

Many banks already have sophisticated risk management systems that they use to measure exposure. If a bank can demonstrate that its system produces a measurement of risk exposure that is essentially equivalent to the measure of credit exposure used in this rule, it may be able to rely on its systems to demonstrate compliance with § 206.4. Additionally, the guidelines apply to credit exposure on an interday basis, that is, overnight credit exposure. The Board recognizes that determining overnight credit exposure may be difficult for banks that have global branch networks and that engage in transactions at almost all times of the day. For such institutions, any reasonable method for determining "interday" credit exposure that is applied on a consistent basis would be sufficient.

[7] Under FDIC receivership proceedings, checks sent for collection through a bank that fails are not treated as claims on the failed bank unless the checks have been finally paid.

Well Capitalized Correspondents

No numerical benchmark is established for credit exposure to a correspondent that the bank can demonstrate is "well capitalized," as that term is defined under § 206.6(a)(1) of this part. Although no specific numerical limit would apply to exposure to such institutions, the bank would still be required to meet the general prudential standards under § 206.3 with respect to credit exposure to such correspondents.

Adequately Capitalized Correspondents

Under the proposed rule, a bank should limit its total interday credit exposure to a correspondent that the bank can demonstrate is "adequately capitalized," as that term is defined under § 206.6(a)(2) of this part, to 50 percent of the exposed bank's total capital. Within this overall guideline, a separate benchmark for longer term credit exposure would apply, under which a bank should not have credit exposure with a remaining term to maturity of more than thirty days in amounts equal to more than 25 percent of the bank's total capital. For a bank with 50 percent of it capital exposed, therefore, only half of its exposure should have a remaining term to maturity of more than thirty days. This structure recognizes that exposure with a remaining term of thirty days or less can be reduced fairly readily if the condition of a correspondent changes. As with exposure to well capitalized correspondents, credit exposure that meets these guidelines is subject to the general prudential standards.

Other Correspondents

The general limit for interday credit exposure to an individual correspondent is 25 percent of a bank's total capital. Except where a bank can demonstrate that its correspondent is adequately or well capitalized, the 25 percent benchmark would apply to a bank's credit exposure to any correspondent. To the extent that a bank can obtain adequate information to demonstrate that its correspondent is adequately or well capitalized, the higher benchmarks described above would apply. As with exposure to correspondents that the bank can demonstrate are adequately capitalized or well-capitalized, exposure under this guideline is subject to the general prudential standards of § 206.3.

Commonly Controlled Depository Institutions

Except for the general prudential standards in § 206.3, a bank need not adhere to the benchmark guidelines for credit exposure to correspondents that are commonly controlled with the bank, and for which the bank would be subject the cross-guarantee provisions of section 206 of the Financial Institution Reform, Recovery, and Enforcement Act (12 U.S.C. 1815(e)). Because an insured depository institution is potentially liable to the FDIC for losses resulting from the failure of a commonly controlled insured depository institution under the cross-guarantee provisions, there is no effective way for a bank that is subject to the proposed rule to limit its credit exposure to an FDIC-insured depository institution that is commonly controlled with the bank.

For the purposes of this section, "commonly controlled" is given a definition similar to but somewhat narrower than that used for the purposes of the cross-guarantee provisions of the FDI Act. Under the FDI Act, banks are commonly controlled if they are controlled by the same holding company of if one bank controls the other. Control exists where there is ownership of 25 percent or more of the voting stock of an entity.[8] Under the cross-guarantee provisions, control also may exist based on ownership interests of less than 25 percent under certain circumstances. For the purposes of the proposed rule, however, banks will be considered to be commonly controlled only if a holding company owned 25 percent or more of the voting stock of each bank, or if one institution owned 25 percent or more of the voting stock of the other.[9]

Exposure of Subsidiaries

A bank must include the credit exposure of its subsidiaries in calculating its credit exposure to a correspondent. "Subsidiary" is defined to include companies in which the bank owns or controls 25 percent or more of the company. A bank may prorate the credit exposure of the subsidiary to reflect the bank's ownership of companies in which it has less than 100 percent ownership.

Transition Provisions

Where a bank is no longer able to demonstrate that a correspondent is adequately capitalized or well capitalized, including where the bank cannot obtain adequate information concerning the capital ratios of the correspondent, the bank should bring its credit exposure into line with the appropriate benchmark guideline within 30 days of the date when updated information normally would be obtained on the capital ratios of the correspondent. In most instances, this normally would be the date when new Call Report data are available.

*Section 206.5 Computation of Credit Exposure*

Transactions Generally Included in Credit Exposures

The Board proposes to base the computation of credit exposure for the purposes of the guidelines of § 206.4 on the claims on a correspondent that qualify as assets and off-balance sheet items subject to capital requirements under the capital adequacy guidelines. These assets and off-balance sheet items are given a weighting of 100 percent for the purposes of calculating credit exposure.

The claims covered would include direct extensions of credit, such as demand deposit balances, other deposits, Fed funds sales, and other loans to a depository institution, as well as other transactions that involve the credit risk of a correspondent, such as stand-by letters of credit issued by the bank for the account of a correspondent. Off-balance sheet transactions such as interest rate and foreign exchange rate contracts are included in credit exposure, but only to the extent of the current replacement value. The "add-ons" required for the purposes of risk-based capital calculations in order to reflect potential future increases in the value of the claims would not be required in determining credit exposure to a correspondent for the purposes of the proposed regulation. Only the mark-to-market value of these transactions therefore will be included in the credit exposure calculation.

Settlement risk and other sources of exposure that are not covered by the risk-based capital guidelines are not included in the calculation of credit exposure for the purposes of § 206.4, although these sources of exposure must be addressed under the general prudential standards in § 206.3.

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[8] The standard for "control" under the FDI Act is the standard provided by the Bank Holding Company Act. 12 U.S.C. 1813(w) and 1841.

[9] Although the proposed rule would not apply the benchmark limits on exposure to depository institutions with common ownership of 25 percent or more, depository institutions with common ownership of more than 25 percent would continue to be subject to the limits on transactions with affiliates under sections 23A and 23B of the FRA (12 U.S.C. 371c and 371c-1). Under section 23A, transactions between banks with common ownership of 80 percent or more may be exempt from the section 23A limits on transactions, although these limits continue to apply to transactions such as those between savings associations that are not owned by a bank holding company or between a bank and its foreign bank parent.

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Netting

Banks may give effect to netting contracts in calculating credit exposure, provided that the netting contracts are valid and enforceable under applicable law. This generally would include transactions under a netting contract between two depository institutions organized in the United States. Netting contracts between financial institutions in the United States generally are valid under the netting provisions of Title IV of FDICIA, sections 401–407.

Other netting contracts also may be considered valid and enforceable. Transactions subject to netting contracts that meet the minimum legal standards recommended in the November 1990 Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries ("Basle Netting Report") for the recognition of cross-border netting contracts may be netted under this subsection. Under the standards established by the Basle Netting Report, a bank must have reasoned legal opinions that the contracts are valid and enforceable under the law of the countries in which the exposed institution and its correspondent are chartered, and where any branches of the institutions that engage in transactions covered by the netting contract are located, as well as the laws that govern the individual transactions subject to the netting contract or any contract or agreement necessary to effect the netting. Such opinions would have to be reviewed periodically to ensure their continued validity.

Exclusions

Under the proposed rule, "credit exposure" does not include exposure to a correspondent from transactions that the Board believes present little risk to the bank. Consequently, the Board finds that these exclusions are in the public interest and consistent with the purpose of section 308. The exclusions include certain secured transactions, cash items in the process of collection, and obligations that result in secondary exposure to the correspondent or for which a second obligor in addition to the correspondent is available, as well as the portion of exposure that is covered by Federal deposit insurance.

Secured Transactions

"Credit exposure" does not include transactions that are fully secured by United States government or agency securities or other readily marketable collateral having a current market value equal to 100 percent of the transactions. As banks do not have the power to pledge collateral generally to cover deposit obligations, the exclusion for secured transactions will result primarily in the exclusion of reverse repurchase agreements, that is, transactions in which the exposed bank has provided funds in exchange for a security which the user of the funds promises to repurchase.

For the purposes of the exclusion, "government security" is defined to include a security that is an obligation of or guaranteed by the United States government or any of its departments, agencies, bureaus, boards, commissions, establishments, or corporations owned by the government. The definition is the same as that used for the purposes of the national bank lending limits. As with the national bank lending limits, transactions secured by government securities of the types listed will be excluded from calculation of exposure.

The definition of "readily marketable collateral" is based on the definition of that term in the Comptroller's lending limits for national banks, and includes financial instruments and bullion that may be sold under ordinary circumstances with reasonable promptness of a fair market value based on actual market transactions. This definition covers instruments of the type listed in the OCC regulation, including stocks, notes, bonds, and debentures traded on a national securities exchange, "OTC margin stocks," commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds in which a security interest may be perfected. Other financial instruments that meet the criteria of the definition also would be covered. Although transactions secured by "readily marketable collateral" are subject to a 10 percent limit under the national bank lending limits, such transactions would be excluded from the definition of credit exposure for the purposes of the proposed rule.

Although the definition of "government security" used in the national bank lending limits does not including obligations issued or guaranteed by certain United States government-sponsored enterprises such as the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Student Loan Marketing Association (SLMA), such obligations generally would be included within the definition of "readily marketable collateral." In addition to obligations of United States government-sponsored enterprises, such as FNMA, FHLMC, and SLMA, "readily marketable collateral" would include obligations of foreign governments, multilateral lending institutions or regional development banks that may be sold under ordinary circumstances with reasonable promptness at a fair market value based on actual market transactions.

Cash Items in the Process of Collection

Banks commonly use correspondents as intermediaries for the collection of checks and other cash items, and typically maintained balances with their correspondents as part of their check collection relationships. The proceeds of a bank's check deposits to an account at a correspondent generally are made available for withdrawal in accordance with an availability schedule of the correspondent. Under the proposed rule, the portion of the balance that has not yet been made available for withdrawal would be excluded from the calculation of exposure.

This treatment reflects the FDIC's treatment of checks and other cash items collected through institutions for which the FDIC is acting as liquidator or receiver. Checks and other cash items on which final payment has not been made at the time of the collecting institution's closure are not treated as deposits subject to the insurance limitation. The FDIC treats the closed correspondent as the agent of the bank with respect to the collection of items that have not been finally paid and passes the proceeds back to the bank.[10]

A bank collecting checks through a correspondent does not have sufficient information to determine with precision the value of the checks deposited with a correspondent that have not yet been finally paid. This section permits a bank to exclude the portion of its cash letter that its correspondent has not yet made available for withdrawal by that bank from the calculation of credit exposure. The Board believes that the portion of a cash letter that is not yet available to the bank for withdrawal would provide a reasonable estimate of the portion of the bank's deposit that is represented by checks sent for collection that would not have been finally paid, and thus should be excluded from the calculation of credit exposure.

Secondary Obligations

Under the purposes of the proposed rule, credit exposure does not include quality assets on which the correspondent is secondarily liable or

[10] 12 CFR 330.4; FDIC Advisory Opinion Nos. 91–75 (Aug. 28, 1991) and 86–28 (October 10, 1986).

that result in secondary credit exposure to the correspondent. This exclusion covers transactions such as loans to third parties secured by stock or debt obligations of the correspondent, as well as "two-name paper," such as loans to third parties purchased from the correspondent with recourse or loans or obligations of third parties backed by stand-by letters of credit issued by the correspondent. The asset must be of sufficient quality, based on the credit of the primary obligor without the backing of the correspondent, that the asset generally would be acceptable as collateral based on the standards for transactions with affiliates under section 23A of the FRA. If the quality of an asset or the financial condition of the primary obligor on an asset deteriorates, the asset must be included as credit exposure to the correspondent.

FDIC-Insured Deposits

Under the proposed rule, credit exposure does not include the portion of the bank's exposure that is covered by Federal deposit insurance. This exclusion would permit the bank to deduct the $100,000 deposit insurance coverage from credit exposure relating to deposit account balances at a correspondent that also is insured. This exclusion may not be used to offset credit exposure due to Fed funds sales and other transactions that are not insured.

*Section 206.6 Capital Level of Correspondents*

The benchmark guidelines on credit exposure provided in § 206.4 are tiered based on the level of capitalization of the correspondent, with higher levels of credit exposure permitted for correspondents that a bank can demonstrate are "adequately capitalized" or "well capitalized." The determination of whether a correspondent is considered "well capitalized" or "adequately capitalized" generally will be based on the risk-based capital and leverage capital ratios of the correspondent. The capital ratios required to meet these classifications are based on the minimum capital ratios proposed for the purposes of the prompt corrective action standards under section 131 of FDICIA,[11] with the exception of the minimum leverage ratio required to be considered "adequately capitalized."

For the purpose of this proposed rule, a correspondent will be considered "adequately capitalized" if the correspondent has a total risk-based capital ratio of 8 percent of greater, a Tier 1 risk-based capital ratio of 4 percent or greater, and a leverage ration of 4 percent or greater. Although the proposed prompt corrective action standard also permit a bank to be considered "adequately capitalized" with a leverage ratio of only 3 percent if the bank has a composite 1 CAMEL rating and is not experiencing or anticipating significant growth, a bank is not permitted to disclose its CAMEL rating. For this reason, correspondents must meet the 4 percent leverage ratio requirement to be considered "adequately capitalized" for the purposes of this proposed rule.

For the purposes of this proposed rule, a correspondent will be considered "well capitalized" if the correspondent has a total risk-based capital ratio of 10 percent or greater, a Tier 1 risk-based capital ratio of 6 percent or greater, and a leverage ratio of 5 percent or greater. The proposed prompt corrective action standard also requires that the bank not be subject to any final order or directive concerning the bank's capital. This condition is not imposed for the purposes of this regulation, as such information concerning a correspondent may not be available to a bank.

Although the section 23 does not require that exposure to foreign banks be limited under the rule, the proposed rule has included foreign banks as correspondents for prudential reasons. A correspondent that is a foreign bank may be considered "well capitalized" or "adequately capitalized" under this section if it meets the respective capital levels established under the proposed rule, as calculated under the risk-based capital system established by the Basle Capital Accord. It is anticipated that use of these measures will reduce the burden on banks in complying with the standards established by the proposed rule. This treatment also is consistent with the Capital Equivalency Report recently submitted to Congress by the Board and the Department of the Treasury. As discussed in the Report, the risk-based capital measure of capital established under the Basle Capital Accord are generally the most meaningful measure of capital for a foreign bank.

For a correspondent that is a U.S. depository institution, the required ratios generally are calculated in accordance with the capital adequacy guidelines of the correspondent's primary Federal supervisor. For a correspondent that is a foreign bank organized in a country that has adopted the risk-based framework of the Basle Capital Accord, the required risk-based capital ratios are to be calculated in accordance with the capital adequacy guidelines of the supervisory authority of the country in which the correspondent is chartered. For a correspondent that is a foreign bank organized in a country that has not adopted the risk-based framework of the Basle Capital Accord, the required risk-based capital ratios are to be calculated in accordance with the provisions of the Basle Capital Accord.

As calculated under the capital adequacy guidelines of the appropriate Federal regulator, "Leverage ratio" means the ratio of Tier 1 capital to average total consolidated assets. As calculated under the capital adequacy guidelines of the appropriate foreign or domestic supervisory authority or the Basle Capital Accord, "total risk-based capital ratio" means the ratio of qualifying total capital to weighted risk assets. Similarly, "Tier 1 risk-based capital ratio" means the ratio of Tier 1 capital to weighted risk assets. Although the calculation of these ratios and the definitions of the components of the ratios may vary slightly among the capital adequacy guidelines established by the various supervisory authorities, the differences generally are not significant.

The Board understands that banks generally are able to obtain financial information, including risk-based and leverage capital ratios, either from the Call Report or Thrift Financial Report, directly from the depository institutions with which they do business, or from secondary sources, such as bank rating agencies.

For example, the risk-based capital ratios for domestic banks with assets of over $1 billion can be calculated from data provided in Schedule RC–R of the Call Report. Domestic banks with assets of less than $1 billion also are required to complete a portion of Schedule RC–R, which provides a test for determining whether the rest of the Schedule also must be completed. For institutions with assets of less than $1 billion that are required to complete Schedule RC–R, the institution's risk-based capital ratios can be calculated from the data provided. Additionally, risk-based capital ratios for savings associations may be calculated from the data provided in Schedule CCR of the Thrift Financial Report.

For domestic banks with assets of under $1 billion that meet the test provided in Schedule RC–R and therefore are not required to complete the Schedule, the portion of the Schedule completed could be relied on for determining that a correspondent has

[11] 12 U.S.C. 1831o; 57 FR 29228, July 1, 1992.

sufficient risk-based capital to meet the minimum risk-based capital ratio requirement to be considered "adequately capitalized." For such institutions, it is not possible currently to calculate risk-based capital more accurately from the Call Report data. The Board anticipates, however, that by the time the benchmarks provided in § 206.4 are fully implemented, a more complete information may be available from the Call Report that will facilitate the calculation of risk-based capital for all domestic depository institutions. For a correspondent that is a foreign bank, the Board anticipates that information on capital ratios will be obtained directly from the foreign bank or from secondary sources.

Banks would be permitted to rely on capital ratios calculated from Call Report or Thrift Financial Report data or obtained directly from the correspondent or from secondary sources for the purposes of the proposed rule. A bank would be expected to use the most recently available information, which should be updated as new Call Reports or equivalent information become available publicly or from the correspondent. For domestic correspondents, updated information is available on a quarterly basis.[12] Where a bank cannot routinely obtain updated information on a timely basis, the bank should not rely on the information as a basis for using the higher benchmark guidelines provided for adequately capitalized correspondents or as a basis for considering a correspondent to be well capitalized.

*Section 206.7 Waiver*

The waiver provision provides the Board with the flexibility to deal with situations in which a bank cannot reasonably comply with the benchmark guidelines established in § 206.6 of the proposed rule. Use of the waiver would require the bank's primary Federal supervisor to advise the Board that the bank cannot reasonably obtain correspondent services while remaining within the benchmark guidelines. The waiver authority is intended to be used in very limited circumstances, such as where a bank's capital has been impaired to the point that the capital-based benchmark guidelines are too small to permit the institution to transact adequate business with its correspondents.

[12] Where a correspondent that is a foreign bank closes its books on a semiannual basis, information on capital ratios would not have to be obtained more frequently than semiannually.

*Section 206.8 Record Retention*

A bank would be required to maintain records to demonstrate its compliance with both the prudential standards and the numerical benchmark guidelines. With respect to the general prudential standards of § 206.3, a bank should be able to demonstrate that it has instituted the appropriate policies and procedures and undertaken the necessary analysis for all of the correspondents with which it does business, and has maintained credit risk and settlement exposure within internally established limits. For the guidelines of § 206.4, a bank will need to maintain records to demonstrate that its credit exposure was ordinarily within the limits only for correspondents for which the bank's internal limits permit credit exposure in excess of the numerical benchmarks.

Issues relating to recordkeeping are discussed below in more detail as part of the Board's Initial Regulatory Flexibility Analysis.

*Section 206.9 Transition Provisions*

This section provides for a two-year transition period following the effective date of the final rule. The Board expects that the final rule will be effective on December 19, 1992. During the first year after the effective date, banks would be expected to be in compliance with the prudential standards required under § 206.3. During the second year, § 206.4 would apply, but with twice the stated numerical benchmarks. For this period, therefore, overall credit exposure to correspondents that a bank can demonstrate are adequately capitalized ordinarily should be limited to 100 percent of the exposed bank's total capital, and credit exposure with a term to maturity of more than 30 days should be limited to 50 percent of total capital. Credit exposure to correspondents other than those a bank can demonstrate are adequately capitalized or well capitalized should be limited to 50 percent of the exposed bank's capital. Beginning in December 1994, the final benchmark guidelines would apply.

Competitive Analysis

The Board's procedures for conducting a competitive impact analysis are described in policy statement titled "The Federal Reserve in the Payments System," which was revised in March 1990. 55 FR 11648, March 29, 1990. In its consideration of a proposed regulatory change that would have a substantial effect on payments-system participants, the Board assesses whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve Banks in providing similar services due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve Banks deriving from such legal differences.

The proposed rule does not limit credit exposure of a bank to Federal Reserve Banks because such exposure does not pose a risk to the bank. Similarly, the proposed rule does not impose quantitative limits on a bank's credit exposure to a "well capitalized" correspondent because this exposure generally poses little risk to the bank. However, the proposed rule imposes three substantive requirements on a bank's exposure to a well capitalized correspondent that are not imposed on a bank's exposure to a Federal Reserve Bank.

First, under § 206.3(a), a bank must have policies and procedures to limit exposure due to transactions with a well capitalized correspondent. Second, under § 206.3(b), a bank must either structure transactions with or monitor exposure to a well capitalized correspondent to ensure that exposure ordinarily remains within the internal limits established by the bank under § 206.3(a). Third, under § 206.4, a bank must be able to routinely obtain sufficient information to demonstrate that the correspondent is well capitalized.

Banks would be subject to more stringent requirements with respect to credit exposure to correspondents that are not well capitalized. In these cases, a bank would be required to limit its credit exposure to an individual correspondent to 25 percent or 50 percent of the bank's capital, based on whether the bank can demonstrate that the correspondent is adequately capitalized. To the extent that a bank determines that the rule's requirements are burdensome and/or costly to implement, the bank may choose to be exposed, where practical, to a Federal Reserve Bank rather than to a correspondent.

Due to these requirements, which would be applicable to a bank's exposure to a correspondent, but not to exposure to a Federal Reserve Bank, the proposed rule may have a direct and material adverse effect on the ability of correspondents to compete effectively with the Federal Reserve in providing payment services, and in particular check collection services.[13] Small banks

[13] The proposed rule may adversely affect, to a lesser extent, other service providers' ability to compete with the Federal Reserve Banks in offering other payment services, such as noncash collection and settlement services.

that collect their checks through a correspondent, rather than through a Federal Reserve Bank, often sell Fed funds to or through the correspondent and obtain other services from that correspondent. To the extent that a bank's aggregate activity with a correspondent exceeds the applicable internal limit or the appropriate benchmark guideline for the bank's credit exposure to the correspondent, the bank would be required to diversify and/or reduce its credit exposure.

Since many small banks collect their checks through one correspondent, diversifying credit exposure could entail shifting all of the bank's check collection business to another correspondent or to a Federal Reserve Bank. Alternately, a bank could reduce its credit exposure by altering its check collection and/or Fed funds relationship with its correspondent. For example, a bank could reduce or eliminate the collected balances held at the correspondent by paying for its check collection services to a greater extent with explicit fees, rather than through earnings credits on compensating balances. A bank also could sell a greater proportion of its Fed funds through the correspondent as agent, rather than directly to the correspondent as principal.

Nevertheless, to the extent that the proposed rule has a potential adverse effect on other correspondents, this adverse effect would be due to the differing legal powers of the Federal Reserve Banks, which make them effectively immune to failure. Given that the potential adverse competitive effects of the proposed rule are due to legal differences between the Federal Reserve Banks and depository institutions, the Board assessed the provisions of the proposal's objectives could be reasonably achieved with a lesser or no adverse competitive impact.

The objective of the proposed rule is to limit the risks that the failure of a correspondent would pose to exposed banks. The structure of the proposed rule minimizes any adverse competitive effects the rule may have on correspondents that provide payment services. Specifically, the proposed rule does not impose rigid limits on credit exposure, and generally permits a higher level of credit exposure to correspondents with higher capital levels. In addition, the proposed rule excludes cash items in the process of collection from the calculation of credit exposure to a correspondent. The Board believes that the objective of the proposed rule would not be met if the remaining requirements, described above, did not apply to exposures to well-capitalized correspondents. Moreover, the Board believes that no purpose would be served by imposing the proposed rule's requirements on exposures to Federal Reserve Banks, as there is, in effect, no risk that a Federal Reserve Bank would fail and cause a loss to an institution.

In sum, the Board believes that the provisions of the proposed rule are necessary to fulfill the statutory objectives even though they may adversely affect the ability of correspondents to compete with the Federal Reserve Banks in providing check collection and other payment services.

## Initial Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*) requires an agency publishing a proposed rule also to publish for comment an initial regulatory flexibility analysis containing: (1) A description of the reasons why the proposed rule is being considered; (2) a statement of the objectives of, and legal basis for, the proposed rule; (3) a description of the small entities to which the proposed rule would apply, and an estimate of their number, if feasible; (4) a description of projected reporting, recordkeeping, and compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills required to prepare the reports or records; (5) an identification of Federal rules that may duplicate, overlap, or conflict with the proposed rule; and (6) a discussion of significant alternatives considered. Items 1, 2, and 5 are discussed in the Supplementary Information above.

As required by section 308 of FDICIA, the proposed rule would apply to all depository institutions insured by the FDIC, regardless of size. Approximately 8,500 of these depository institutions could be considered to be "small entities." [14]

The primary recordkeeping and compliance requirements under the proposed rule relate to (1) the establishment and monitoring of internal limits on exposure to correspondents under § 206.3, and the recordkeeping required to demonstrate compliance with this section, and (2) compliance with and recordkeeping required to demonstrate compliance with the numerical benchmarks established for credit exposure in § 206.4.

The Board anticipates that compliance with the requirements of § 206.3 for the establishment of internal limits on exposure to individual correspondents will not be excessively burdensome, as most banks already examine the creditworthiness of the correspondents with which they do business, and establish internal limits on exposure to these institutions. Smaller banks, which do business with a limited number of correspondents and which are not likely to have significant off-balance sheet exposure should bear a minimum burden in meeting the requirements.

Recordkeeping required to demonstrate compliance with the requirements of § 206.3 will include maintaining up-to-date credit files on each correspondent with the appropriate limits on exposure to the correspondent reflected in the files. A bank also will need to demonstrate that it generally has maintained its exposure to its correspondents within the internal limits established under § 206.3. For smaller banks, exposure normally will consist of deposits with or Fed funds sold to other depository institutions, and the total exposure to a correspondent should equal the total of the bank's "due from" and "Fed funds sales" accounts for the correspondent. The recordkeeping required for larger institutions with more diverse sources of exposure will be more complex. The Board anticipates that compliance with a bank's internal limits can be demonstrated by the record systems already maintained by many banks for their own internal use. Some banks, particularly those that do not have integrated information systems, may need to develop more extensive recordkeeping systems.

More extensive recordkeeping may be required to demonstrate compliance with the benchwork guidelines for credit exposure under § 206.4. If a bank has credit exposure to an individual correspondent equal to more than 25 percent of the bank's capital, the bank will need to maintain current information to demonstrate that the correspondent to which the bank is exposed meets the criteria established for the higher numerical benchmarks. While in many cases the Board anticipates that this information will be provided to the bank by its correspondents, the bank may have to obtain this information from other sources in some instances.

[14] This figure is based on a determination made by the Small Business Administration (SBA) that financial institutions with less than $100 million in assets are considered to be "small entities" by the SBA. 13 CFR 121.1401. This determination was made for the purpose of government contracting requirements, and no determination of size requirements for financial institutions have been made by the SBA for other purposes.

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For small banks, the recordkeeping required to demonstrate compliance with the guidelines established by § 206.4 generally will be the same as that described with respect to § 206.3. For larger banks, which have more diverse sources of credit exposure to other depository institutions, more comprehensive recordkeeping may be required to demonstrate compliance, particularly if the bank currently does not maintain consolidated records of outstandings under all facilities available to a correspondent. Additionally, many banks have developed sophisticated risk management systems that may measure exposure and risk differently than the proposed rule. These banks may not be able to determine their "credit exposure," as measured by the proposed rule, using their current risk management and information systems. To the extent that a bank can demonstrate the relationship between exposure measurements produced by its existing system and the measurement of credit exposure used in this rule, a bank may be able to rely on the existing systems to demonstrate compliance with § 206.4.

The Board does not anticipate that any specialized professional skills beyond those already utilized by depository institutions will be required to prepare the required recordkeeping.

Additionally, the Board anticipates that in some instances the proposed rule would require a bank to reduce its credit exposure to a correspondent below current levels, and that this reduction may result in additional costs to the bank. As discussed above in the Competitive Analysis, banks may have to diversify their exposure across a larger number of correspondents, compensate their correspondents through fees rather than compensating balances, and/or sell Fed funds though agency arrangements rather than directly to their principal correspondents. Market developments such as these may result in an overall increase in the costs of correspondent services to insured depository institutions.

The proposed rule also is expected to have an impact on certain providers of correspondent services, known as "bankers' banks," which provide services only to other depository institutions. The depository institutions to which bankers' banks provide services are often also the owners of the bankers' bank, and often use the bankers' bank for all their correspondent services, resulting in levels of exposure to the bankers' bank that may exceed the benchmarks established in the proposed rule. Although the Board believes that many bankers' banks are likely to be considered to be well capitalized, in some cases a bankers' bank may have to raise additional capital in order to meet the standard for "well capitalized" to enable the banks that own the bankers' bank to continue using the bankers' bank as their primary or sole correspondent. The Board does not anticipate that raising such capital will be prohibitively costly for most bankers' banks, as they are owned by the same institutions to which they provide services.

The Board considered several alternative structures in developing the proposed rule. For example, the Board initially considered more rigid limits on exposure. Because of the difficulty of monitoring and complying with rigid limits, however, the primary emphasis of the proposed rule focuses on prudential standards and guidelines for permissible credit exposure. The Board also considered a more liberal structure under which banks would be permitted to determine their own limits on exposure in all cases. This alternative was rejected because it would have permitted banks to expose a significant portion of their capital to an undercapitalized correspondent and thereby to risk failure in the event of the failure of the correspondent.

## Paperwork Reduction Act Analysis

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the proposed recordkeeping requirements will be reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of the comments received during the public comment period. A detailed description of the proposed recordkeeping requirements (including the reasons for the requirements and the institutions that would be subject to them) is contained elsewhere in this notice.

## List of Subjects in 12 CFR Part 206

Banks, banking, Interbank liability, Lending limits, Reporting and recordkeeping requirements, Savings associations.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 23 of the Federal Reserve Act, 12 U.S.C. 371b–2, the Board is proposing to add 12 CFR part 206 to read as follows:

## PART 206—LIMITATIONS ON INTERBANK LIABILITIES

Sec.
206.1 Authority, purpose, and scope.
206.2 Definitions.
206.3 Prudential standards.
206.4 Guidelines for credit exposure.
206.5 Credit exposure.
206.6 Capital levels of correspondents.
206.7 Waiver.
206.8 Record retention.
206.9 Transition provisions.

**Authority:** Section 308 of Pub. L. 102–242, 105 Stat. 2236 (12 U.S.C. 371b–2).

### § 206.1 Authority, purpose, and scope.

(a) *Authority and purpose.* This part (Regulation F, 12 CFR Part 206) is issued by the Board of Governors of the Federal Reserve System (Board) to implement section 308 of the Federal Deposit Insurance Corporation Improvements Act of 1991 (Act), 12 U.S.C. 371b–2. The purpose of the regulation is to limit the risks that the failure of a depository institution would pose to insured depository institutions.

(b) *Scope.* This part applies to all depository institutions insured by the Federal Deposit Insurance Corporation.

### § 206.2 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Bank* means an insured depository institution, as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(b) *Correspondent* means a U.S. depository institution or a foreign bank, as defined in this part, to which a bank has exposure.

(c) *Exposure* means the risk that payment to complete a transaction will not be made in a timely manner, or that an obligation will not be paid in full. "Exposure" includes the operational and liquidity risks related to the settlement of transactions and risk related to the creditworthiness of a correspondent.

(d) *Foreign bank* means an institution that:

(1) Is organized under the laws of a country other than the United States;

(2) Engages in the business of banking;

(3) Is recognized as a bank by the bank supervisory or monetary authorities of the country of the bank's organization;

(4) Receives deposits to a substantial extent in the regular course of business; and

(5) Has the power to accept demand deposits.

(e) *Primary Federal supervisor* has the same meaning as the term "appropriate Federal banking agency" in section 3(q)

of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(f) (1) *Quality asset* means an asset:

(i) That is not in a nonaccrual status;

(ii) On which principal or interest is not more than thirty days past due; and

(iii) Whose terms have not been renegotiated or compromised due to the deteriorating financial condition of the primary obligor.

(2) An asset will not be considered to be a "quality asset" if any other loans to the primary obligor on the asset have been classified as "substandard," doubtful," or "loss" or treated as "other loans specially mentioned" in the most recent report of examination or inspection of the bank or an affiliate prepared by either a Federal or a state supervisory agency.

(g) *Subsidiary* has the same meaning given that term under section 23A of the Federal Reserve Act (12 U.S.C. 371c).

(h) *Total capital* means the total of a bank's Tier 1 and Tier 2 capital under the risk-based capital guidelines provided by the bank's primary Federal supervisor. For an insured branch of a foreign bank organized under the laws of a country that subscribes to the principles of the Basle Capital Accord, "total capital" means total Tier 1 and Tier 2 capital as calculated under the standards of that country. For an insured branch of a foreign bank organized under the laws of a country that does not subscribe to the principles of the Basle Capital Accord, "total capital" means total Tier 1 and Tier 2 capital as calculated under the provisions of the Accord.

(i) *U.S. depository institution* means a federally-insured depository institution chartered in the United States under Federal or state law, and includes an insured national bank, state bank, District bank, or savings association, as those terms are defined under section 3 of the Federal Depository Insurance Act (12 U.S.C. 1813), but does not include an insured branch of a foreign bank.

### § 206.3 Prudential standards.

(a) *Internal limits.* A bank shall establish and maintain policies and procedures to limit its exposure to the correspondents with which it does business. Banks shall establish and periodically review and revise, as necessary, limits on exposure to individual correspondents based on an evaluation of the overall financial condition and other factors bearing on the creditworthiness of each correspondent. the bank shall structure these limits to avoid undue concentration of settlement or credit risk with respect to any individual correspondent.

(b) *Monitoring.* A bank shall structure transactions with a correspondent or monitor exposure to a correspondent to ensure that its exposure does not exceed its internal limits established under § 206.3(a) and that its credit exposure ordinarily does not exceed any applicable guidelines specified in § 206.4.

### § 206.4 Guidelines for credit exposure.

(a) In addition to the prudential limits on exposure established by a bank under § 206.3, a bank ordinarily is expected to maintain credit exposure to an individual correspondent, as calculated under § 206.5, within the guidelines in paragraphs (a) (1) through (3) of this section, except as provided in paragraph (b) of this section.

(1) *Well-capitalized correspondents.* Except as otherwise provided in § 206.3, a bank need not limit its credit exposure to a correspondent that the bank can demonstrate is well capitalized, as defined in § 206.6.

(2) *Adequately-capitalized correspondents.* A bank ordinarily should limit its daily interday credit exposure to a correspondent that the bank can demonstrate is adequately capitalized, as defined in § 206.6, to an amount equal to not more than 50 percent of the bank's total capital. For such a correspondent, the bank also ordinarily should limit its daily interday credit exposure with a remaining term to maturity of more than 30 days to an amount equal to not more than 25 percent of the bank's total capital.

(3) *Other correspondents.* A bank should ordinarily limit its daily interday credit exposure to any other correspondent to an amount equal to not more than 25 percent of the bank's total capital.

(b) *Commonly controlled insured depository institutions.* A bank need not limit its credit exposure to a correspondent that is commonly controlled with the bank and for which the bank is subject to liability under section 5(e) of the Federal Deposit Insurance Act. A correspondent shall be considered to be commonly controlled with the bank if:

(1) 25 percent or more of any class of voting securities of the bank and the correspondent are owned, directly or indirectly, by the same depository institution or company; or

(2) Either the bank or the correspondent owns 25 percent or more of any class of voting securities of the other.

(c) *Exposure of subsidiaries.* In calculating credit exposure to a correspondent under this part, a bank shall include the credit exposure of the bank's subsidiaries to the correspondent. If the bank does not own 100 percent of the shares of the subsidiary, the bank's credit exposure shall include a *pro rata* portion of the subsidiary's exposure. The *pro rata* portion shall be based on the percentage ownership of the bank in the subsidiary.

(d) *Transition provisions.* Where a bank is no longer able to demonstrate that a correspondent is adequately capitalized or well capitalized for the purposes of § 206.4(a) (1) or (2), including where the bank cannot obtain adequate information concerning the capital ratios of the correspondent, the bank should reduce its credit exposure to the appropriate level under § 26.4(a) within 30 days after the date when current Call Report or other relevant financial data normally would be available.

### § 206.5 Credit exposure.

(a) *Scope of credit exposure.* Except as provided in § 206.5 (b) and (c), the credit exposure of a bank to a correspondent shall consist of the bank's assets and off-balance sheet items that are subject to capital requirements under the capital adequacy guidelines of the bank's primary Federal supervisor, and that involve claims on the correspondent. For this purpose, off-balance sheet items shall be valued on the basis of current exposure.

(b) *Netting.* Transactions covered by netting agreements that are valid and enforceable under all applicable laws may be netted in calculating exposure.

(c) *Exclusions.* Credit exposure to a correspondent does not include:

(1) Transactions, including reverse repurchase agreements, that are fully secured by government securities or readily marketable collateral having a current market value equal to 100 percent of the credit exposure under the transaction. For the purpose of this exclusion, "government securities" means obligations of, or obligations fully guaranteed as to principal and interest by, the United States government or any department, agency, bureau, board, commission, or establishment of the United States, or any corporation wholly owned directly or indirectly by the United States. "Readily marketable collateral" means financial instruments or bullion that may be sold in ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or a similarly available daily bid- and ask-price market;

(2) The proceeds of checks and other cash items deposited in an account at a correspondent that are not yet available for withdrawal;

(3) Quality assets on which the correspondent is secondarily liable or that result in secondary exposure to the correspondent, including:

(i) Loans to third parties secured by stock or debt obligations of the correspondent;

(ii) Loans to third parties purchased from the correspondent with recourse;

(iii) Loans or obligations of third parties backed by stand-by letters of credit issued by the correspondent; and

(4) The portion of the bank's credit exposure to the correspondent that is covered by Federal deposit insurance.

**§ 206.6 Capital levels of correspondents.**

(a) For the purpose of this part, a correspondent will be considered:

(1) "Well capitalized" [1] if the correspondent has:

(i) A total risk-based capital ratio of 10.0 percent or greater;

(ii) A Tier 1 risk-based capital ratio of 6.0 percent or greater; and

(iii) A leverage ratio of 5.0 percent or greater.

(2) "Adequately capitalized" [2] if the correspondent has:

(i) A total risk-based capital ratio of 8.0 percent or greater;

(ii) A Tier 1 risk-based capital ratio of 4.0 percent or greater; and

(iii) A leverage ratio of 4.0 percent or greater.

(b) A correspondent that is a foreign bank may be considered "well capitalized" or "adequately capitalized" under this section without regard to the minimum leverage ratios required under paragraphs (a)(1)(iii) and (a)(2)(iii) of this section.

(c) *Definitiions.* For the purpose of this section:

(1) *Leverage ratio* means the ratio of Tier 1 capital to average total consolidated assets, as calculated in accordance with the capital adequacy guidelines of the correspondent's primary Federal supervisor.

(2) *Total risk-based capital ratio* means the ratio of qualifying total capital to weighted risk assets. "Tier 1 risk-based capital ratio" means the ratio of Tier 1 capital to weighted risk assets. For a correspondent that is a U.S. depository institution, the ratios shall be calculated in accordance with the capital adequacy guidelines of the correspondent's primary Federal supervisor. For a correspondent that is a foreign bank organized in a country that has adopted the risk-based framework of the Basle Capital Accord, the ratio shall be calculated in accordance with the capital adequacy guidelines of supervisory authority of the country in which the correspondent is chartered. For a correspondent that is a foreign bank organized in a country that has not adopted the risk-based framework of the Basle Capital Accord, the ratios shall be calculated in accordance with the provisions of the Basle Capital Accord.

**§ 206.7 Waiver.**

The Board may waive the application of § 206.4(a) to a bank if the primary Federal supervisor of the bank advises the Board that the bank is not reasonably able to obtain necessary services, including payment-related services and placement of funds, without incurring exposure to a correspondent in excess of otherwise applicable limits.

**§ 206.8 Record retention.**

Banks shall establish recordkeeping reasonably designed to demonstrate compliance with the provisions of §§ 206.3 and 206.4.

**§ 206.9 Transition provisions.**

(a) For a period of one year beginning on December 19, 1992, a bank shall comply with the prudential standards required under § 206.3(a), and under § 206.3(b) shall structure transactions with a correspondent or monitor exposure to a correspondent to ensure that its exposure does not exceed its internal limits established under § 206.3(a). During this period, a bank need not meet the guidelines for credit exposure established under § 206.4 or monitor credit exposure under § 206.3(b).

(b) For a period of one year beginning on December 19, 1993, the overall guideline for credit exposure to an adequately capitalized correspondent contained in § 206.4(a)(2) is changed to 100 percent of the bank's total capital, with the guideline for credit exposure having a remaining term to maturity of more than 30 days changed to 50 percent of the bank's capital. The guideline on credit exposure to an individual correspondent contained in § 206.4(a)(3) is changed to 50 percent of the exposed institution's total capital.

By order of the Board of Governors of the Federal Reserve System, July 13, 1992.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 92-16716 Filed 7-17-92; 8:45 am]

BILLING CODE 6210-01-M

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[1] As used in this part, the term "well capitalized" is similar but not identical to the definition of that term as used for the purposes of the prompt corrective action standards, as proposed at 57 FR 29228, July 1, 1992, under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831) (prompt corrective action standards).

[2] As used in this part, the term "adequately capitalized" is similar but not identical to the definition of that term as used for the purposes of the prompt corrective action standards.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 21 and 29

**[Docket No. 92-ASW-3; Notice No. SC-92-3SW]**

### Special Conditions: Eurocopter Deutschland Model BK-117 C-1 Helicopter, Power Turbine Electronic Overspeed Protection System

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed special condition.

**SUMMARY:** This notice proposes a special condition for the Eurocopter Deutschland Model BK-117 C-1 helicopter. This helicopter will have a novel or unusual design feature associated with the Turbomeca Arriel 1E engines, which will have a power turbine electronic overspeed protection system. The applicable airworthiness regulations do not contain appropriate safety standards for the requirements to protect critical function systems from the effects of external radio frequency energy sources. This notice contains proposed additional safety standards that the Administrator considers necessary to ensure that critical functions of systems would be maintained when exposed to the high intensity radiated fields (HIRF).

**DATES:** Comments must be received on or before August 19, 1992.

**ADDRESSES:** Submit comments in duplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ASW-3, Fort Worth, Texas 76193-0007, or deliver in duplicate to the Office of the Assistant Chief Counsel, Building 3B room 158, 4400 Blue Mound Road, Fort Worth, Texas.

All comments must be marked Docket No. 92-ASW-3. Comments may be inspected in the Office of the Assistant Chief Counsel, at the address specified above, between 8 a.m. and 4 p.m., weekdays except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Carroll Wright, FAA, Rotorcraft Standards Staff, Regulations Group, Fort

Worth, Texas 76193-0111; telephone (817) 624-5120.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of this proposed special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket or notice number and be submitted in duplicate to the address specified under the caption "**ADDRESSES**." All communications received on or before the closing date for comments will be considered before taking action on this proposal. The special condition proposed in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this special condition will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-ASW-3." The postcard will be date/time stamped and returned to the commenter.

**Background**

Eurocopter Deutschland, Munich, Germany, submitted an application for an Amended Type Certificate for the Model BK-117 C-1 helicopter, dated March 8, 1991, for the FAA Brussels Certification Office through the Germany Luftfahrt Bundesamt (LBA) authorities. The two Lycoming LTS 101-750B-1 engines that were originally installed in the previously certificated BK-117 B-1 version, will be replaced by two Turbomeca "Arriel 1E" engines for the BK-117 C-1 model helicopter. The Turbomeca "Arriel 1E" engines will have a power turbine electronic overspeed protection system.

**Type Certification Basis**

The certification basis established for the Model BK-117 C-1 helicopter consists of FAR 21.29 and FAR 29 effective February 1, 1965, Amendments 29-1 through 29-16, plus the following propulsion system requirements effective on March 8, 1991, the date of application to the LBA:

| FAR | |
|---|---|
| 29.901 | Powerplant installation, Amendment 29-26. |
| 29.903 | Engines, Amendment 29-26. |
| 29.908 | Cooling fans, Amendment 29-26. |
| 29.955 | Fuel flow, Amendment 29-26. |
| 29.961 | Fuel system hot weather operation, Amendment 29-26. |
| 29.1041-1047 | Cooling, Amendment 29-26. |
| 29.1091 | Air induction, Amendment 29-17. |
| 29.1093 | Air induction system icing protection, Amendment 29-26. |
| 29.1103 | Induction systems ducts and air duct system, Amendment 29-17. |

In addition, FAR Part 36 Noise Standards amended by Amendments 36-1 through the latest amendment adopted and in effect when noise tests or analysis are completed.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an aircraft or installation. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

**Discussion**

The Eurocopter Deutschland Model BK-117 C-1 helicopter, at the time of application, was identified as incorporating one and possibly more electrical/electronic systems that will be performing functions critical to the continued safe flight and landing of the helicopter. A power turbine electronic overspeed protection system performs the critical function of engine overspeed control. The control of engine overspeed is critical to the continued safe flight and landing of the helicopter during all operating flight regimes, both visual flights rules (VFR) and instrument flight rules (IFR).

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical/electronic systems that perform functions required for continued safe flight and landing. These advanced systems are responsive to the transient effects of induced electrical current and voltage caused by the high intensity radiated fields (HIRF) incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of electrical/electronic systems by damaging the components or by upsetting the system's functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of the § 29.1309(a) requirement. Higher energy levels radiate from operational transmitters that are currently used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF must be provided by the design and installation of these systems. The primary factors that have contributed to this increased concern are: (1) the increasing use of sensitive electronics that perform critical functions; (2) the reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials; (3) the adverse service experience of military aircraft using these technologies; and (4) the increase in the number and power of radio frequency emitters and the expected increase in the number of these transmitters in the future.

The FAA has recognized the need for aircraft certification standards to keep pace with the developments in technology and environment and, in 1988, initiated a high priority program to: (1) determine and define the electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis, and (3) prescribe and promulgate regulatory standards. The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have established a level of HIRF environment that a helicopter could be exposed to during IFR operations.

While the HIRF requirements are being finalized, the FAA is adopting special conditions for the certification of

aircraft that employ electrical/electronic systems performing critical functions. The accepted maximum energy levels in which civilian helicopter system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. This special condition will require that the helicopter's electrical/electronic systems and its associated wiring harness be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating IFR.

The defined HIRF environment specified in this proposed special condition is based on many critical assumptions; among these is that, with the exception of takeoff and landing at an airport, the aircraft would be not less than 500 feet above ground level (AGL). Helicopter operating under visual flight rules (VFR) routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed given environment by twice or more.

This special condition will require electrical/electronic systems that perform critical functions, as installed in aircraft, to meet either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and the operational capability of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment. The FAA has determined that the environment defined in Table I is acceptable for critical functions in helicopters operating not less than 500 feet AGL. For critical functions in helicopters operating at altitudes less than 500 feet AGL, additional considerations must be given.

The applicant may demonstrate by a laboratory test that the electrical/electronic systems that perform critical functions withstand a peak electromagnetic field strength in a frequency range of 10 $KH_z$ to 18$GH_z$. If a laboratory test is used to shoe compliance with the HIRF requirements, no credit would be given for signal attenuation due to installation. A level of 100 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are appropriate for critical functions during IFR operations. A level of 200 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are more appropriate for critical functions during VFR operations.

For helicopters, the primary electronic flight displays are critical for IFR operations and a full authority digital engine control (FADEC) is an example of a critical functioning system for all operations (both IFR and VFR).

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis that performs critical functions are the ones that are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements would only apply to the critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to the HIRF environmental condition. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be concurrently exposed to the fields.

The modulation should be selected for the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 $H_z$ square wave modulation while the video signals for electronic display systems may be susceptible to 400 $H_z$ sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 $KH_z$ sine wave with 80 percent depth of modulation in the frequency range from 10 $KH_z$ to 400 $MH_z$ and 1 $KH_z$ square wave with greater than 90 percent depth of modulation from 400 $MH_z$ to 18 $GH_z$. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the critical aspects of the system under consideration continue to perform its intended function during and after exposure to required electromagnetic fields. Deviations from system specification may be acceptable but need to be independently assessed by the FAA for each application.

TABLE 1.—FIELD STRENGTH VOLTS/METER

| Frequency | Peak | Average |
|---|---|---|
| 10–500$KH_z$ | 50 | 50 |
| 500–2000 | 80 | 80 |
| 2–30 $MH_z$ | 200 | 200 |
| 30–100 | 33 | 33 |
| 100–200 | 150 | 33 |
| 200–400 | 56 | 33 |
| 400–1000 | 4020 | 935 |
| 1–2 $GH_z$ | 7550 | 1750 |
| 2–4 | 6000 | 1150 |
| 4–6 | 6800 | 310 |
| 6–8 | 3600 | 666 |
| 8–12 | 5100 | 1270 |
| 12–18 | 3500 | 551 |
| 18–40 | 2400 | 750 |

## Conclusion

This proposed action would affect only certain unusual or novel design features on one series of helicopter. It would not be a rule of general applicability and would affect only the applicant who applied to the FAA for approval of these features on the affected helicopter.

## List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

**Authority:** 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11541; 49 U.S.C. 106(g) (Rev. Pub. L. 97–449, January 12, 1983).

## The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special condition as a part of the type certification basis for the Eurocopter Deutschland Model BK–117 C–1 helicopter.

### Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely

affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on July 6, 1992.

James D. Erickson,

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 92-16991 Filed 7-17-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-ANE-14]

## Airworthiness Directives; Essex PB&R Corp. (formerly E.I. DuPont de Nemours and Co., Inc.) PELS Model 4566M37B Crewmember Protective Breathing Equipment

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Essex PB&R Corporation (formerly E.I. DuPont de Nemours and Co., Inc.) PELS Model 4566M37B crewmember protective breathing equipment (PBE). This proposal would require that PBE units with certain serial numbers be removed from service and replaced with serviceable PBE units. This proposal is prompted by the discovery of failed neck seal adhesive bonds during a functional audit and the subsequent determination that 2,757 PBE units were produced with adhesive that exceeded the shelf life date. The actions specified by the proposed AD are intended to prevent leakage of the PBE neck seal, which could compromise the crew's ability to combat an aircraft fire.

**DATES:** Comments must be received by September 18, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-14, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Essex PB&R Corporation, P.O. Box 791, Elkton, Maryland 21921. This information may be examined at the FAA, Office of the Assistant Chief Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. Kallis, New York Aircraft Certification Office, ANE-173, Engine & Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581-1145; telephone (516) 791-6427; fax (516) 791-9024.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Dockets number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-ANE-14." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket 92-ANE-14, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

### Discussion

The FAA has determined that an unsafe condition exists on Essex PB&R Corporation (formerly E.I. DuPont de Nemours and Company Incorporated) PELS Model 4566M37B crewmember protective breathing equipment (PBE). During a functional audit of these units, the hood shell to neck seal adhesive bond failed in 6 of the 55 units tested. Further investigation revealed that 2,757 units were produced between March 29, 1989 and May 9, 1989 with potentially defective adhesive bonds. Investigation by the manufacturer and the supplier of the bonding adhesive revealed that the shelf life of the adhesive had been exceeded. This condition, if not corrected, could result in leakage of the PBE neck seal, which could compromise the crew's ability to combat an aircraft fire.

In December 1990, the E.I. DuPont de Nemours and Company Incorporated PELS line of PBE was acquired by Essex PB&R Corporation.

The FAA has reviewed and approved the technical contents of Essex PB&R Corporation Service Bulletin (SB) No. 001, Revision 1, dated October 3, 1991, that lists affected PBE units and describes procedures for replacement.

Since an unsafe condition has been identified that is likely to exist or develop on other units of the same type design, the proposed AD would require removal of certain serial numbered PBE units in accordance with service bulletin described previously.

The FAA estimates that 2,757 PBE units installed in aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per PBE unit to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The replacement PBE unit would cost approximately $400 per unit. The FAA has been advised by the manufacturer that they will exchange at no cost certain PBE units that are returned. Based on these figures, the total impact cost of the proposed AD on U.S. operators is estimated to be $1,254,435. This total figure may be reduced by the operators electing to participate in the exchange program.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative.

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on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Essex PB&R Corporation (formerly E.I. DuPont de Nemours and Company Incorporated):** Docket No. 92–ANE–14.

*Applicability:* Essex PB&R Corporation (formerly E.I. DuPont de Nemours and Company Incorporated) PELS Model 4566M37B crewmember protective breathing equipment (PBE) units as listed in Essex PB&R Corporation Service Bulletin (SB) No. 001, Revision 1, dated October 3, 1991, installed on but not limited to transport category aircraft manufactured by Boeing, McDonnell Douglas, Airbus, and Lockheed.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent leakage of the PBE neck seal, which could compromise the crew's ability to combat an aircraft fire, accomplish the following:

(a) Within the next 90 days after the effective date of this AD, remove the affected PBE unit in accordance with the Accomplished Instructions of Essex PB&R Corporation Service Bulletin (SB) No. 001, Revision 1, dated October 3, 1991, and replace with a serviceable unit.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate. The request should be forwarded through an FAA Principal Maintenance Inspector who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on June 11, 1992.

**Jack A. Sain,**

*Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 92–16993 Filed 7–17–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 91–CE–48–AD]**

**Airworthiness Directives; de Havilland DHC–6 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to supersede Airworthiness Directive (AD) 77–03–07, which currently requires repetitive inspections of the alloy reinforcing channels of the elevator control circuit and the hand pump mounting support for cracks on certain de Havilland DHC–6 series airplanes, and replacement of any cracked part. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would require modification of the elevator circuit control and hand pump mounting support as terminating action for the repetitive inspections that are currently required by AD 77–03–07. The actions specified in the proposed AD are intended to prevent failure of the elevator support assembly, which could result in loss of control of the airplane.

**DATES:** Comments must be received on or before September 29, 1992.

**ADDRESSES:** Submit comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–48–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; Telephone (516) 791–6220.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–CE–48–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–48–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Discussion**

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries

an unnecessary safety risk when a design change exists that could eliminate those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of an adjacent structure being damaged as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires the incorporation of a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA recently conducted a review of existing ADs that apply to de Havilland DHC–6 series airplanes. Assisting the FAA in this review were (1) Transport Canada, which is the airworthiness authority for Canada; (2) de Havilland, Inc.; (3) the Regional Airlines Association (RAA); and (4) several U.S. and foreign operators of the affected airplanes.

From this review, the FAA has identified Airworthiness Directive 77–03–07, Amendment 39–3100, as one that should be superseded with a new AD that would eliminate short-interval and critical repetitive inspections. AD 77–03–07 currently requires repetitive inspections of the alloy reinforcing channels of the elevator control circuit and the hand pump mounting support for cracks on certain de Havilland DHC–6 series airplanes, and replacement of any cracked part.

De Havilland, Inc. (formerly Boeing of Canada, Ltd.) has issued Service Bulletin (SB) No. 6/348, Revision C, dated July 15, 1977, which specifies procedures for (1) replacement of the existing aluminum alloy reinforcing channels with two steel angles that will provide a stronger mounting surface for the lower pivot bearing housing; and (2) installation of a brace to the left-hand side of the hand pump to improve the rigidity of its mounting.

As a result of the previously discussed AD review, Transport Canada considers the modification referenced in this service bulletin as mandatory and has issued Transport Canada AD CF–77–05R1 in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above.

Based on its aging commuter-class aircraft policy and after reviewing all available information including that received from Transport Canada, the FAA has determined that AD action should be taken to eliminate the repetitive short-interval inspections required by AD 77–03–07, Amendment 39–3100, and to prevent failure of the elevator support assembly, which could result in loss of control of the airplane.

Since the condition described is likely to exist or develop in other de Havilland DHC–6 series airplanes of the same type design, the proposed AD would supersede AD 77–03–07 with a new AD that would (1) initially retain the inspections of the elevator support assembly for cracks and replacement of any cracked part as required by AD 77–03–07; and (2) eventually require modification of the elevator support assembly as terminating action for the repetitive inspections of this assembly. The proposed actions would be accomplished in accordance with de Havilland SB No. 6/348, Revision C, dated July 15, 1977.

The FAA estimates that 144 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 35 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $400 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $334,800.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 144 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 50 percent are operated in scheduled passenger service by 14 different operators. A significant number of the remaining 50 percent are operated in other forms of air transportation such as air cargo and air taxi.

The proposed AD allows 2,400 hours time-in-service (TIS) before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 12 to 24 calendar months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 12 to 24 years before the proposed modification would be mandatory.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing AD 77–03–07, Amendment 39–3100, and adding the following new AD:

**De Havilland: Amendment 39–; Docket No. 91–CE–48–AD.** Supersedes AD 77–03–07, Amendment 39–3100.

*Applicability:* Model DHC–6–1/100/200/300 airplanes (serial numbers 2 through 494, 497 through 503, 505, and 507), certificated in any category, that have not incorporated Modification 6/1594 in accordance with the instructions in Part C of de Havilland Service

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Bulletin (SB) 6/348, Revision C, dated July 15, 1977.

*Compliance:* Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the elevator support assembly, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS), unless already accomplished within the last 175 hours TIS, and thereafter at intervals not to exceed 200 hours TIS until Modification No. 6/1594 is incorporated as specified in paragraph (b) of this AD, accomplish the following:

(1) Visually inspect the floor structure channel members, part numbers C6FS1229–37 and C8FS1229–31, for cracks in the area around the lower pivot bearing housing in accordance with the instructions in Part A of de Havilland SB No. 6/348, Revision C, dated July 15, 1977. If cracks are found, prior to further flight, repair or replace any cracked components in accordance with Part B or C of the instructions in de Havilland SB No. 6/348, Revision C, dated July 15, 1977.

(2) Visually inspect the top and bottom flanges of the hydraulic hand pump fitting, part number C6FSM1293–27, for cracks immediately behind the front bolt boss in accordance with the instructions in Part A of de Havilland SB No. 6/348. If cracks are found, prior to further flight, repair or replace in accordance with Part B or C of the instructions in de Havilland SB No. 6/348, Revision C, dated July 15, 1977.

(3) If the replacement requirements of paragraphs (a)(1) and (a)(2) of this AD are accomplished in accordance with the instructions in Part C, Installation Modification No. 6/1594, of de Havilland SB No. 6/348, Revision C, dated July 15, 1977, then the inspection requirements of this AD are no longer required.

(b) Within the next 2,400 hours TIS, unless already accomplished as specified in paragraph (a)(3) of this AD, incorporate Modification 6/1594 in accordance with the instructions in Part C of de Havilland SB 6/348, Revision C, dated July 15, 1977.

**Note 1:** Compliance with paragraph (b) of this AD is considered terminating action for the inspection requirements of this AD.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5 Canada; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 13, 1992.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–16980 Filed 7–17–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 92–CE–35–AD]**

## Airworthiness Directives; Beech Models 34C and T–34C–1 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech Models 34C and T–34C–1 airplanes. The proposed action would assure that there are sufficient welds to secure the balance weight tube to the attachment plate in each elevator balance arm assembly, and would require replacement of the subject elevator balance arm assembly if insufficient welds are found. Insufficient elevator balance arm assembly welds have been found on the affected airplanes. The actions specified by the proposed AD are intended to prevent separation of an elevator arm assembly from the elevator caused by insufficient welds, which could result in loss of control of the airplane.

**DATES:** Comments must be received on or before September 22, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–35–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Witchita, Kansas 67201–0085; Telephone (316) 676–7111. This information may also be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Engler, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4122; Facsimile (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–35–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–35–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

Insufficient elevator balance arm assembly welds have been found on certain Beech Models 34C and T–34C–1 airplanes. An insufficient weld is one where the weld bead does not extend around the full circumference of the balance weight tube in all three areas of the subject elevator balance arm assembly, and thus does not adequately secure the balance weight to the attachment plate. If not detected and

corrected, insufficient welds could result in separation of an elevator arm assembly from the elevator and possible loss of control of the airplane.

Beech has issued Service Bulletin (SB) No. 2442, dated May 1992, which specifies procedures for inspecting the elevator balance arm assemblies for insufficient welds.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent separation of an elevator arm assembly from the elevator caused by insufficient welds, which could result in loss of control of the airplane.

Since the condition described is likely to exist or develop in other Beech Models 34C and T-34C-1 airplanes of the same type design, the proposed AD would require (1) an inspection of each elevator balance arm assembly for insufficient welds in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" section of Beech SB No. 2442, dated May 1992; and (2) replacement of the subject elevator balance arm assembly in accordance with the applicable maintenance manual if insufficient welds are found.

The FAA estimates that 142 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $15,620.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new AD:

**Beech: Docket No. 92-CE-35-AD.**

*Applicability:* Model 34C airplanes (serial numbers (S/N) GP-1 through GP-50) and Model T-34C-1 airplanes (S/N GM-1 through GM-71 and S/N GM-78 through GM-98), certificated in any category.

*Compliance:* Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent separation of an elevator arm assembly from the elevator caused by insufficient welds, which could result in loss of control of the airplane, accomplish the following:

(a) Inspect each elevator balance arm assembly for insufficient welds in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" section of Beech Service Bulletin (SB) No. 2442, dated May 1992.

**Note 1:** An insufficient weld is one where the weld bead does not extend around the full circumference of the balance weight tube in all three areas of the subject elevator balance arm assembly, and thus does not adequately secure the balance weight to the attachment plate.

(b) If an insufficient weld is found, prior to further flight, replace the subject elevator balance arm assembly in accordance with Chapter 27-30 of the maintenance manual.

(c) Special flight permits may be issued in accordance with FAR 21.197 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 13, 1992.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-16981 Filed 7-17-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 92-AGL-8]**

## Proposed Modification of Control Zone; Wilmington, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify the existing Wilmington, Ohio control zone by expanding the existing control zone's effective hours of operation. Airborne Express has requested the control zone hours be expanded due to the increasing numbers of Visual Flight Rule (VFR) flights in the vicinity of Airborne Airpark Airport during marginal VFR weather and while their air traffic operations are at peak activity. This notice also proposes to correct the existing description of the control zones hours to state the effective times more clearly. The intent of this action is to enhance safety for users of this airspace by ensuring segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before September 2, 1992.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 92-AGL-8, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System

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Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AGL–8". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the existing Wilmington, Ohio control zone to expand the existing hours of operation. Airborne Express has requested the control zone hours be expanded due to the increasing numbers of Visual Flight Rule (VFR) flights in the vicinity of Airborne Airpark Airport during marginal VFR weather and while their air traffic operations are at peak activity. Currently the control zone is effective from 2300 to 0700 hours local time daily, Monday through Saturday. If amended in accordance with this proposal, the control zone would be effective from 2300 hours to 0700 hours local time daily, Monday through Saturday and from 0800 to 1600 hours local time daily, Tuesday through Friday and Sunday.

Aeronautical maps and charts would reflect the defined area which would enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Control zones are published in § 71.171 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones, Incorporation by reference.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The Incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

*Section 71.171 Designation*

* * * * *

**AGL OH CZ Wilmington, OH [Revised]**

Airborne Airpark Airport, Wilmington, OH
(lat. 39°25'52" N., long. 83°47'52" W.)
Hollister Field Airport, Wilmington, OH
(lat. 39°26'15" N., long. 83°42'30" W.)

Within a 5-mile radius of Airborne Airpark Airport and within 4¼ miles each side of the 040° Midwest VOR radial, extending from the 5-mile radius area to 8.5 miles northeast of the Airborne Airpark Airport; and within 4¼ miles each side of the 214° Midwest VOR radial, extending from the 5-mile radius area to 8.5 miles southwest of the Airborne Airpark Airport excluding that portion of airspace within a 1-mile radius of Hollister Field Airport. This control zone is effective from 2300 hours to 0700 hours local time daily, Monday through Saturday and from 0800 to 1600 hours local time daily, Tuesday through Friday and Sunday.

* * * * *

Issued in Des Plaines, Illinois, on July 13, 1992.

**Chester W. Anderson,**

*Acting Assistant Manager, Air Traffic Division.*

[FR Doc. 92–16997 Filed 7–17–92; 8:45 am]

BILLING CODE 4910–13–M

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## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 65 and 69**

**[Common Carrier Docket No. 92–133; FCC 92–256]**

**Reform of the Interstate Rate of Return Represcription and Enforcement Processes**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Communications Commission (the Commission) has adopted a Notice of Proposed Rulemaking and Order which proposes

to reform the rate of return represcription and enforcement processes. The Notice and Proposed Rulemaking and Order also defers the next scheduled represcription proceeding pending the outcome of this Notice of Proposed Rulemaking.

**DATES:** Comments must be filed on or before September 11, 1992, and reply comments must be filed on or before October 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** William A. Kehoe III or Sonja J. Rifken, Common Carrier Bureau, Accounting and Audits Division, (202) 632–7500.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking and Order in Amendment of parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes, CC Docket No. 92–133, FCC No. 92–256, adopted June 18, 1992 and released July 14, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Dockets Branch (room 230), 1919 M St., NW., Washington, DC. The full text will be published in the FCC Record and may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street, NW., Washington, DC 20037.

**Synopsis of Notice of Proposed Rulemaking and Order**

1. In this Notice of Proposed Rulemaking and Order (Notice), we continue our efforts to reduce regulatory burdens by undertaking fundamental reform of our rate of return represcription and enforcement processes. Those processes, which are set forth in our part 65 rules, reflect a telecommunications industry and a regulatory environment that has changed dramatically since the rules' adoption in 1985.

2. When part 65 was adopted, the Commission regulated the interstate communications services of the American Telephone and Telegraph Company and local exchange carriers (LECs) on a rate of return basis. Since that time our price cap initiatives have removed all interexchange and most interstate access revenues from rate of return regulation. Carriers whose interstate services remain primarily under rate of return regulation now generate only about 6.3% of total LEC revenue.

3. To reflect this different environment, the Notice invites comment on virtually all aspects of our represcription and enforcement processes. We propose to change: (1) How we begin represcription proceedings; (2) how we conduct them; and (3) how we estimate the cost of capital during their course. We also propose to change our part 65 enforcement rules in light of *AT&T* v. *Commission*, 836 F.2d 1386 (D.C. Cir. 1988) (per curiam) (Automatic Refund Decision).

4. Our rules contemplate a new represcription proceeding every two years regardless of conditions in the capital markets. We propose to begin represcription proceedings only when market indicators show significant changes in the cost of capital that are likely to persist over time. We believe that this change would allow us to initiate represcription proceedings only when they are warranted.

5. The current rules establish a "paper hearing" process for represcription proceedings that is patterned after the system used in evidentiary hearings. We believe that this process results in a redundant record and imposes heavy burdens. We propose to replace this process with a notice and comment system that, we believe, would eliminate many of the unnecessary burdens of the represcription process. We also propose to eliminate or curtail discovery in represcription proceedings.

6. Our part 65 rules require exchange carrier holding companies meeting certain specified criteria to participate in represcription proceedings. These mandatory participants must file notices of appearance and initial submissions, and also respond to information requests. Presently, the only holding companies that meet the criteria for mandatory participation are the Regional Bell Holding Companies (RHCs). We question whether we should continue to rely on these companies as the primary source of information in represcription proceedings, given our regulation of the RHC's affiliates, the Bell Operating Companies, under price caps. We propose to require local exchange carriers or their holding companies to submit to the National Exchange Carrier Association, Inc. (NECA) any information that might be needed to support our methodologies for initiating and conducting represcription proceedings, to require NECA to process this information in accordance with the Commission's rules, and to make NECA the only mandatory participant in represcription proceedings.

7. Part 65 of our rules uses a weighted average cost of capital calculation to determine a unitary, overall rate of return for rate of return LECs. While we propose no change in our policy of prescribing a unitary, overall rate of return, we propose to change how we estimate the cost of debt, cost of equity, cost of preferred stock, and capital structure components of that return. We invite comment on alternative methodologies for estimating those components. We also invite comment on whether we should select cost of debt, cost of preferred stock, and capital structure methodologies that would be presumptive or conclusive in future represcription proceedings.

8. The Automatic Refund Decision remanded the part 65 automatic refund rule. That decision was based on the United States Court of Appeals for the District of Columbia Circuit's view that the Commission's prescribed rate of return represented both the maximum and the minimum return that this Commission could prescribe. In response to that decision, we make clear that the prescribed rate of return is a point within a broad zone of reasonableness that is neither the maximum nor the minimum return necessary to meet constitutional standards. To enforce the prescribed rate of return, we propose to rely on the tariff review and complaint processes. However, we invite comment on whether we should adopt a refund rule to supplement those processes.

9. Our proposals seek to simplify the rate of return represcription and enforcement processes so they would not impose unnecessary burdens on the telecommunications industry as it continues to develop. In making these proposals, we are attempting to ensure that carriers will continue to have the opportunity to maintain their credit and attract capital and that interstate rates will remain just and reasonable.

10. Accordingly, *It is ordered* That, pursuant to sections 1, 4(i), 4(j), 201, 202, 204, 205, 218–220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–202, 204–05, 218–220, and 403, notice is hereby given of proposed amendments to parts 65 and 69 of the Commission's Rules, 47 CFR 65.1 *et seq.* & 69.1 *et seq.*, described in this Notice of Proposed Rulemaking.

11. *It is further ordered*, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 CFR 154(i), 154(j), that § 65.102(c) of the Commission's Rules, 47 CFR CFR 65.102(c), is suspended, insofar as it requires the filing of rate of return submissions.

**List of Subjects**

*47 CFR Part 65*

Administrative practice and procedure, Communications common

carriers, Reporting and recordkeeping requirements, Telephone.

*47 CFR Part 69*

Communications common carriers; Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 92-17051 Filed 7-17-92; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 92-148, RM-8022]**

## Radio Broadcasting Services; Ludlow, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Miracle Broadcasting, seeking the allotment of Channel 261B1 to Ludlow, California, as that community's second local FM service. Coordinates for this proposal are 34-47-31 and 116-03-56. Mexican concurrence will be requested for this allotment.

**DATES:** Comments must be filed on or before September 4, 1992, and reply comments on or before September 19, 1992.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Peter Gutmann, Esq., Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-148, adopted June 30, 1992, and released July 15, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92-17052 Filed 7-17-92; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 92-149, RM-8023]**

## Radio Broadcasting Services; Liberal, KS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Alpha Broadcasting, Inc., proposing the substitution of Channel 286C1 for Channel 286C2 at Liberal, Kansas, and modification of the construction permit for Station KZQD (FM) to specify operation on Channel 286C1. The coordinates for Channel 286C1 are 37-17-39 and 100-51-38.

**DATES:** Comments must be filed on or before September 4, 1992, and reply comments on or before September 19, 1992.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gerald Stevens-Kittner, Lisa E. Kopf, Arter & Hadden, 1801 K Street, NW., suite 400K, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Katheen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-149, adopted July 1, 1992, and released July 15, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92-17053 Filed 7-17-92; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 92-150, RM-8024]**

## Radio Broadcasting Services; Trenton, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Marvin E. Luehrs proposing the substitution of Channel 222C3 for Channel 221A at Trenton, Missouri, and modification of the license for Station KTTN-FM to specify operation on Channel 222C3. The coordinates for channel 222C3 are 40-05-00 and 93-33-30.

**DATES:** Comments must be filed on or before September 4, 1992, and reply comments on or before September 19, 1992.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Marvin E. Luehrs, Station KTTN Radio, Box 307, Trenton, Missouri 64683.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.

92–150 adopted July 1, 1992, and released July 15, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio Broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92–17054 Filed 7–17–92; 8:45 am]

BILLING CODE 6712–01–M

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# Notices

Federal Register
Vol. 57, No. 139
Monday, July 20, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research Service

### Science and Education, National Research Initiative Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, the Cooperative State Research Service announces the following meeting:

NAME: Science and Education National Research Initiative Advisory Committee.
DATE: August 4, 1992.
TIME: 9 a.m. to 5 p.m.
PLACE: U.S. Department of Agriculture, room 338, Aerospace Building, 901 D Street, SW., Washington, DC 20250.
TYPE OF MEETING: Open to the public. Persons may participate in the meeting as the time and space permit.
COMMMENTS: The public may file written comments before or after the meeting with the contact person listed below.
PURPOSE: To advise the Secretary of Agriculture with respect to the research to be supported, priorities to be adopted and emphasized, and the procedures to be followed in implementing those programs of research grants to be awarded competitively.
CONTACT PERSON FOR AGENDA AND MORE INFORMATION: Dr. William D. Carlson, Associate Administrator, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 328 Aerospace Center Building, Washington, DC 20250, Telephone 202–401–1761.

Done at Washington, D.C. this 10th day of July, 1992.

**William D. Carlson,**
*Associate Administrator.*

[FR Doc. 92–16944 Filed 7–17–92; 8:45 am]
BILLING CODE 3410–22–M

### Forest Service

### Exemption From Appeal, Lost Man Salvage Sale, Boise National Forest, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Notification that decisions relating to the rehabilitation and recovery of insect damaged natural resources are exempted from appeal.

**SUMMARY:** This is notification that timber salvage harvest and reforestation activities to recover and rehabilitate natural resources from recent insect epidemics on the Lost Man project area, Boise Ranger District, Boise National Forest are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

**DATES:** Effective July 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Don Peterson, District Ranger, Boise Ranger District, Boise National Forest, 5493 Warm Springs Avenue, Boise, ID 83712, Telephone: 208–364–4243.

**SUPPLEMENTARY INFORMATION:** Several years of drought in southwest Idaho have reduced soil moisture and weakened conifer trees. Consequently, Douglas-fir tussock moth, and bark beetle populations have dramatically increased and reached epidemic levels on the Boise National Forest. It is estimated that more than 400,000 trees larger than 12 inches in diameter have died on the Forest as a result of insect damage since 1986.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Boise Ranger District personnel have developed a proposal to harvest dead and dying timber, and reforest damaged acres. They have also prepared the Lost Man Salvage Timber Sale Environmental Assessment (EA) which identified issues, developed alternatives, and analyzed the effects of implementing timber salvage and other recovery activities.

The analysis area for the Lost Man EA is located approximately 35 miles east of Boise, Idaho. The area includes about 11,000 acres with insect mortality scattered throughout. The Forest will harvest approximately 10 million board feet of dead and dying trees using the helicopter (80 percent) and tractor/jammer (20 percent) logging systems. Cutting areas would average less than five acres in size and would not exceed 20 acres. Cutover areas greater than 5 acres would be replanted, and smaller areas may be replanted depending on accessibility. Natural regeneration would be used to reforest smaller areas.

There is no road construction or reconstruction proposed for the salvage operations. Helicopter landings would be constructed or reconstructed along existing roads.

Management direction for the Lost Man area is established in the Boise National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides for the removal of salvage timber from lands within the project area. In addition, the Forest Plan prescribes standards to protect soil, water, wildlife, visual, and other onsite resources. The proposed action for the Lost Man project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

Forest Pest Management Specialists and District Foresters have analyzed the insect situation and have found no economical or practical means to control the insect epidemic. Although salvage harvesting and reforestation will not control the epidemic, these activities will: (1) Recover valuable timber that would otherwise deteriorate, and (2) reforest those areas that have been left without tree cover as a result of the insect-caused mortality. It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses. Through the salvage timber sale, breeding insects can be removed in the logs (bark beetles) and Knutson-Vandenburg (K–V) funds can be generated for use to restore forest resources that have been damaged by the insect epidemic.

The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is sufficient justification to expedite this project. The decision will be implemented after publication of this notice in the **Federal Register.**

If the project is delayed because of an appeal (delays of up to 150 days are possible), it is likely that the salvage harvest could not be implemented during the 1992 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead and dying timber is $1,100,000. Of this, approximately $277,000 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to half of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the

objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Lost Man Salvage and Recovery project, Boise Ranger District, Boise National Forest, from appeal. The environmental assessment discloses the effects for the proposed actions on the environment and addresses issues resulting from the proposal.

Dated: July 13, 1992.

**Clair C. Beasley,**

*Deputy Regional Forester, Intermountain Region, USDA Forest Service.*

[FR Doc. 92-16983 Filed 7-17-92; 8:45 am]

BILLING CODE 3410-11-M

## Exemption of the Crooked Pike Recovery Project, Boise National Forest, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of exemption from appeal.

**SUMMARY:** This is notification that decisions to implement timber salvage harvest, insect baiting and trapping, and reforestation activities to rehabilitate and recover natural resources from recent insect epidemics on the Crooked Pike project area, Idaho City Ranger District, Boise National Forest are exempt from appeal in accordance with 36 CFR 217.4(A)(11).

**DATES:** Effective July 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Terry Sexton, Timber Management Assistant, Idaho City Ranger District, Boise National Forest, P.O. Box 129, Idaho City, ID, 83631, Telephone: 208-392-6681.

**SUPPLEMENTARY INFORMATION:** Several years of drought in southwest Idaho have reduced soil moisture and weakened conifer trees. Consequently, Douglas-fir bark beetle, mountain pine beetle, and tussock moth insect populations have dramatically increased and reached epidemic levels on the Boise National Forest. It is estimated that more than 400,000 trees larger than 12 inches in diameter have died on the Forest as a result of insect damage since 1986.

As part of the effort to rehabilitate and recover natural resources damaged by the insect epidemic, Idaho City Ranger District personnel have developed a proposal to harvest dead and dying timber, bait and trap insects, and reforest damaged acres. They have prepared the Crooked Pike Environmental Assessment (EA) which has identified issues, developed alternatives, and analyzed the effects of implementing timber salvage and other recovery activities.

The analysis area for the Crooked Pike EA is located 15 miles northeast of Idaho City, Idaho. The area includes about 22,000 acres with insect mortality scattered throughout. The Forest will harvest approximately 5 million board feet (MMbf) of dead and dying trees using helicopters, tractors, and jammers. Cutting areas would average less than 5 acres in size and would not exceed 20 acres. Cutover areas greater than 10 acres would be replanted, and smaller areas may be replanted depending on accessibility. Natural regeneration would be used to reforest smaller areas.

The Forest is also proposing to bait and trap insects within the project area to help break up breeding cycles and reduce future insect populations. There is no new road construction proposed for the salvage operations.

Management direction for the Crooked Pike area is established in the Boise National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides for the removal of salvage timber from lands within the project area. The Forest Plan also describes standards to protect soil, water, wildlife, visual, and other onsite resources. The proposed action for the Crooked Pike project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

The Crooked Pike salvage area includes a 2,400-acre portion of the Ten Mile/Black Warrior inventoried roadless area. The portion of this area where timber harvest is proposed has been allocated to commercial timber production by the Forest Plan. Approximately 500 Mbf would be harvested from the area using helicopters. Landings would be constructed adjacent to existing roads.

Forest Pest Management Specialists and District Foresters have analyzed the insect situation and have found no economical or practical means to control the insect epidemic. Although salvage harvesting, baiting/trapping, and reforestation will not control the epidemic, these activities will: (1) Help to break up insect breeding cycles; (2) recover valuable timber that would otherwise deteriorate; and (3) reforest those areas that have been left without tree cover as a result of the insect-caused mortality. It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses. Through the salvage timber sale, breeding insects can be trapped and removed and Knutson-Vandenburg (K-V) funds can be generated for use to restore forest resources that have been damaged by the insect epidemic.

The Forest Supervisor has determined, through preliminary scoping and environmental analysis, that there is sufficient justification to expedite this project. The decision will be implemented after publication of this notice in the **Federal Register**.

If the project is delayed because of an appeal (delays of up to 150 days are possible), it is likely that the salvage harvest could not be implemented during the 1992 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead and dying timber is $500,000. Of this, approximately $125,000 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to $400,000 and potentially make the savage sale unattractive to timber purchasers. This would jeopardize the objectives of the rehabilitation and recovery project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Crooked Pike Salvage and Recovery Project, Idaho City Ranger District, Boise National Forest, from appeal. The environmental assessment disclose the effect of the proposed actions on the environment and addresses issues resulting from the proposal.

Dated: July 14, 1992.

**Clair C. Beasley,**

*Deputy Regional Forester, Intermountain Region, USDA Forest Service.*

[FR Doc. 92-16984 Filed 7-17-92; 8:45 am]

BILLING CODE 3410-01-M

## New Wilderness Areas and Other Congressionally Designated Areas; Tongass National Forest, AK

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; availability of maps and legal descriptions.

**SUMMARY:** The Tongass Timber Reform Act of November 28, 1990, added six areas of the Tongass National Forest to the National Wilderness Preservation System and established in perpetuity twelve areas of the Forest as Land Use Designation II ("LUD II") Management Areas. Legal descriptions and maps of these areas are now available for public inspection at the offices listed under **ADDRESSES** in this notice.

**ADDRESSES:** Legal descriptions and maps are on file for public inspection any may be reviewed by interested parties at the following locations:

Forest Service, USDA, Auditors Building, Recreation, Cultural Resources, and Wilderness Management Staff, 4th Floor Central, 201 14th Street, SW., Washington, DC 20250.
Regional Forester, R-10, Federal Office Building, Juneau, Alaska 99802
Forest Supervisor, Tongass-Chatham Area, 204 Siginaka Way, Sitka, Alaska 99835
Forest Supervisor, Tongass-Stikine Area, Petersburg, Alaska 99835
Forest Supervisor, Tongass-Stikine Area, Federal Building, Ketchikan, Alaska 99901.

**FOR FURTHER INFORMATION CONTACT:** Gerald Stokes, Forest Service, Recreation, Cultural Resources, and Wilderness Management Staff, call (202) 205-0825.

**SUPPLEMENTARY INFORMATION:** The six additions to the National Wilderness Preservation System established by the Tongass Timber Reform Act are as follows:

Pleasant/Lemesurier/Inian Islands Wilderness
Young Lake Addition—added to Admiralty National Monument, and added to the Kootznoowoo Wilderness.
South Etolin Wilderness
Chuck River Wilderness
Karta River Wilderness
Kuiu Wilderness.

The twelve congressionally designated Land Use Designation II areas are as follows:

Yakutat Forelands
Berners Bay
Anan Creek
Kadashan
Lisianski River/Upper Hoonah Sound
Mt. Calder/Mt. Holbrook
Nutkwa
Outside Islands
Trap Bay
Point Adolphus/Mud Bay
Naha
Salmon Bay.

The twelve areas were chosen for special management because of their critical importance for fish and wildlife habitat and their high value to tourism and recreation. The Tongas Land Management Plan provides the following specific management criteria for LUD II areas:

(1) *Purpose:* Areas allocated to LUD II are to be managed in a roadless State to retain wildland character, but this would permit wildlife and fish habitat improvement and primitive recreational facility development.

(2) *Management implications:* Commerical timber harvesting is not permitted. Timber can be salvaged only to prevent significant damage to other resources. Examples are removal of windfall in an important fish stream or control of an epidemic insect infestation.

Personal use of wood is allowed for cabin logs, firewood, float logs, trolling poles, and other similar uses.

Water and power developments are permitted if they can be designed to retain the overall primitive characteristics of the allocated area.

Roads will not be built except to serve authorized activities such as mining, power and water development, aquaculture developments, transportation needs determined by the State of Alaska, and vital Forest transportation system linkages. (Vital Forest transportation system linkages refer to necessary additions to the permanent road network. Such linkages may be built through LUD II areas when either no other feasible land or water routes exist to access adjacent LUD III or LUD IV areas or when it can be demonstrated that the routing through the LUD II area is clearly environmentally preferable and site-specific mitigation measures can be designed to minimize the impact of the road on the surrounding LUD II area. A clear need to build such linkages must be demonstrated through a comparative analysis of transportation alternatives through the National Environment Policy Act (NEPA) process and must be approved by the Forest Supervisor, in consultation with other Tongass Forest Supervisors.)

Mineral Development is subject to existing laws and regulations.

Use of snowmachines, motorboats and airplanes on freshwater is permitted; however, restrictions may be imposed on a case by case basis if such use becomes excessive.

Permanent improvements such as fishways, fish hatcheries, or aquaculture sites may be built. Appropriate landscape management techniques will be applied in the design and construction of such improvements to minimize impacts on recreational resources.

Major concentrated recreational facilities will generally be excluded.

Dated: July 13, 1992.

**George M. Leonard,**

*Associate Chief.*

[FR Doc. 92-17002 Filed 7-17-92; 8:45 am]

BILLING CODE 3431-11-M

## Pacific Southwest Region; Fee Schedule for Communications Uses

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** The Regional Forester has modified the fee schedule for communications uses authorized on National Forest System lands located in the Pacific Southwest Region.

**ADDRESSES:** Copies of the schedule may be obtained by writing to the Regional Forester, Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111.

**FOR FURTHER INFORMATION CONTACT:** Les Perison (415) 705-1881 or Ron Hanson (415) 705-2717, Land and Real Estate Management Staff.

**SUPPLEMENTARY INFORMATION:** On August 23, 1989, the Regional Forester for the Pacific Southwest Region published a notice of adoption of fee schedule for communications uses (54 FR 35031). Congress delayed implementation of the fee schedule and directed the Forest Service to review and report to the Appropriations Committees on the ability of fee schedules to reflect values associated with local market conditions. The report was completed and sent to the Appropriations Committees in March of 1991. The restriction on implementation of the fee schedules was removed in 1992.

The fee schedule modifications are based on the findings of the report to Congress and additional administrative review. Most of the modifications either reduce the fees adopted in 1989, or require appraisals or other sound business management principles be used to establish fees. The modified fee schedule reflects the fair market value of the authorized use as required by the Federal Land Policy and Management Act.

Dated: July 14, 1992.

**Annette Jameson,**

*Director, Lands and Real Estate Management, Pacific Southwest Region.*

[FR Doc. 92-16985 Filed 7-17-92; 8:45 am]

BILLING CODE 3410-01-M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 23-92]**

### Foreign-Trade Zone 20—Suffolk, VA; Application for Subzone; Newport News Shipbuilding & Drydock Co. Shipyard, Newport News, VA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Virginia Port Authority, grantee of FTZ 20, requesting special-purpose subzone status for the Newport News Shipbuilding and Drydock

Company (NNS) shipyard, located in Newport News, Virginia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the board (15 CFR Part 400). It was formally filed on July 8, 1992.

The shipyard (473 acres/25,000 employees) is located at 4101 Washington Avenue, Newport News, Virginia, within the Norfolk/Newport News Customs port of entry. The facility is used for the construction on repair of commercial, military and research vessels. The shipyard produces both conventional and nuclear-powered surface/submersible vessels and certain industrial products, such as offshore oil platforms. Up to 20 percent of the components of the vessels are purchased from foreign sources, including diesel engines, cargo pumps, generators, engine control systems, FO/LO filter modules/purifiers, hydraulic power racks, communication equipment, and thermal oil.

Zone procedures will help NNS reduce production costs on its current orders and compete internationally for new commercial and military contracts. Most of the foreign-origin components are subject to Customs duties (duty rate range: 2.0 to 4.9 percent), while the finished products, as oceangoing vessels, are duty free.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 18, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 5, 1992.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Port of Newport News, 25th and Warwick Blvd., Newport News, VA 23607

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: July 13, 1992.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 92–17039 Filed 7–17–92; 8:45 am]

BILLING CODE 3510-DS-M

## International Trade Administration

[A–508–604]

## Industrial Phosphoric Acid From Israel; Initiation of Changed Circumstances Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of initiation of changed circumstances antidumping duty administrative review.

**SUMMARY:** On March 23, 1992, Negev Phosphates, Ltd. (Negev) was revoked from the antidumping duty order in the final results of the administrative review covering the period August 1, 1989 through July 31, 1990 (56 FR 10008), based on three consecutive years of no dumping. Negev notified the Department in a March 30, 1992 letter that the company had merged with Rotem Fertilizers, Ltd. (Rotem). We are initiating a changed circumstances review to examine whether Rotem is the successor to Negev, and, therefore, subject to the revocation which applied to Negev.

**EFFECTIVE DATE:** July 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 19, 1987, the Department of Commerce (the Department) published in the **Federal Register** (52 FR 31057) an antidumping duty order on industrial phosphoric acid from Israel. On March 23, 1992, the antidumping duty order was revoked as it applied to Negev in the final results of the administrative review covering the period August 1, 1989 through July 31, 1990 (56 FR 10008), based on three consecutive years of no dumping. Negev notified the Department in a March 30, 1992 letter that the company had merged with another company, Rotem and that Rotem henceforth would be shipping subject merchandise to the United States (prior to the merger Rotem was not a shipper of the subject merchandise to the United States).

### Initiation

The Department is initiating this review to determine whether Rotem is the successor to Negev and consequently, whether the revocation applicable to Negev also applies to Rotem. If we determine that Rotem is Negev's successor, we will apply the revocation to Rotem and instruct U.S. Customs officials to liquidate all entries of Israeli industrial phosphoric acid from Rotem without regard to antidumping duties.

We find Rotem's merger with Negev following the revocation of the order as it applied to Negev and Rotem's commencement of shipments of the subject merchandise to the United States to be changed circumstances sufficient to warrant a changed circumstances antidumping duty administrative review on industrial phosphoric acid from Israel, pursuant to section 751(b) of the Tariff Act of 1930 as amended (the Act) (19 U.S.C. 1675(b)) and 19 CFR 353.22 (f).

We are hereby notifying the public that we are initiating a changed circumstances antidumping duty administrative review on industrial phosphoric acid from Israel. We are also inviting interested parties to comment on the above and on any other relevant issue(s) which are associated with the foregoing. This notice is published in accordance with section 751(b) of the Act and 19 CFR 353.22(f)(1)(i).

Dated: July 10, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92–17040 Filed 7–17–92; 8:45 am]

BILLING CODE 3510-DS-M

## Performance Review Board Membership

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of appointment of members to the Performance Review Board.

**SUMMARY:** This notice announces the appointment by the Department of Commerce Acting Under Secretary for International Trade, Timothy J. Hauser, of the Performance Review Board (PRB). This is a revised list of membership which includes previous members as listed in the October 1, 1991, **Federal Register** announcement (55 FR 49749) with additional members added to serve a two-year term. The purpose of the International Trade Administration's (ITA) PRB is to review and make

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recommendations to the appointing authority on performance and other issues concerning members of the Senior Executive Service (SES). The members on the PRB are:

Marjory Searing, Deputy Assistant Secretary for Japan, International Economic Policy.
David A. Jensen, Deputy Assistant Secretary for Africa, the Near East and South Asia, International Economic Policy.
Auggie D. Tantillo, Deputy Assistant Secretary for Textiles and Apparel, Trade Development.
Richard W. Moreland, Director, Office of Antidumping Investigations, Import Administration.
Roland L. MacDonald, Director, Office of Antidumping Compliance, Import Administration.
George Muller, Director, Office of Export Trading Company Affairs, Trade Development.
Eleanor Roberts Lewis, Chief Counsel for International Commerce (Non-ITA member).

**FOR FURTHER INFORMATION CONTACT:** Ms. LaVerne Hawkins, Office of Personnel, room 4808, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230 (202–377–3947).

Dated: July 10, 1992.

**James T. King, Jr.,**

*Director of Personnel, ITA.*

[FR Doc. 92–16959 Filed 7–17–92; 8:45 am]

BILLING CODE 3510-25-M

## Auburn University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 92–041. *Applicant:* Auburn University, Auburn University, AL 36849–5101. *Instrument:* Conductivity Stopped-Flow Attachment, Model SF–51. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 57 FR 14388, April 20, 1992.

*Docket Number:* 92–045. *Applicant:* University of California, Santa Cruz, CA 95406. *Instrument:* Rapid Kinetic Stopped-Flow Unit w/o Pneumatic Drive, Model RX–1000. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Indended Use:* See notice at 57 FR 15283, April 27, 1992.

*Advice Submitted By:* National Institutes of Health, June 2, 1992.

*Comments:* None received.

*Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the united States.

*Reasons:* These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. NIH advises us that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 92–17041 Filed 7–17–92; 8:45 am]

BILLING CODE 3510-DS-M

## Cornell University Medical College, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Comments:* None received.

*Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

*Docket Number:* 91–142R. *Applicant:* Cornell University Medical College, New York, NY 10021. *Instrument:* Rapid Mixing Accessory, Model SFA–12. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 57 FR 21394, May 20, 1992. *Reasons:* The foreign article rapidly mixes and delivers fluid reactants directly to the observation cell of an existing fluorometer or spectrophotometer. *Advice Submitted By:* National Institutes of Health, June 2, 1992.

*Docket Number:* 92–034. *Applicant:* Washington University, St. Louis, MO 63139. *Instrument:* Fluorescence Kinetics Instrument. *Manufacturer:* Walz, Germany. *Intended Use:* See notice at 57 FR 14388, April 20, 1992. *Reasons:* The foreign instrument provides pulse modulated time-resolved chlorophyll fluorescence with 10.0 μs resolution. *Advice Submitted By:* National Institutes of Health, June 2, 1992.

*Docket Number:* 92–038. *Applicant:* Emory University, Atlanta, GA 30322. *Instrument:* Spot-focus High Energy Xenon Flash Lamp, Model XF–10 with Accessory. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 57 FR 14388, April 20, 1992. *Reasons:* The foreign instrument provides controllable short duration, high intensity, spot-focused light bursts of specific color for study of photokinetic reactions. *Advice Submitted By:* National Institutes of Health, June 2, 1992.

*Docket Number:* 92–046. *Applicant:* Nemours Children's Clinic, Jacksonville, FL 32207. *Instrument:* Isotope Ratio Mass Spectrometer, Model OPTIMA. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 57 FR 15283, April 27, 1992. *Reasons:* The foreign instrument provides: (1) An internal precision of 0.03, (2) absolute sensitivity to one ion detected per 1500 molecules of $CO_2$ induced and (3) a micro-gas inlet. *Advice Submitted By:* National Institutes of Health, June 2, 1992.

*Docket Number:* 92–057. *Applicant:* Carnegie Institution of Washington, Washington, DC 20015. *Instrument:* Automated Electron Microprobe, Model JXA8900/SCH. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 57 FR 21395, May 20, 1992. *Reasons:* The foreign instrument provides an intense electron beam to excite characteristic x-rays of a sample phase down to 1.0 μm area. *Advice Received from:* National Institute of Standards and Technology, May 29, 1992 (comparable case).

*Docket Number:* 92–060. *Applicant:* State University of New York, Stony Brook, NY 11794. *Instrument:* (3) In-situ Large Volume Filtration Systems. *Manufacturer:* Challenger Oceanic Systems and Services, United Kingdom. *Intended Use:* See notice at 57 FR 21395, May 20, 1992. *Reasons:* The foreign instrument provides programmable in situ filtration and capture of particles in water columns with a flow rate to 1200 liters of water per hour to a depth of more than 5000m. *Advice Received From:* National Ocean Service, February 4, 1992 (comparable case).

The National Institutes of Health, National Institute of Standards and Technology and National Ocean Service advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

*Director, Statutory Import Programs Staff.*

[FR Doc. 92-17042 Filed 7-17-92; 8:45 am]

BILLING CODE 3510-DS-M

## National Institute of Standards and Technology

### Malcolm Baldrige National Quality Award's Panel of Judges

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that there will be a closed meeting of the Panel of Judges of the Malcolm Baldrige National Quality Award from Wednesday, August 5, 1992, through Thursday, August 6, 1992. The Panel of Judges is composed of nine members prominent in the field of quality management and are appointed by the Director of the National Institute of Standards and Technology. The purpose of this meeting is to review the 1992 Award applications and to select applications to be considered in the site visit stage of the evaluation. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

**DATES:** The meeting will convene August 5, 1992, at 8 a.m. and adjourn at approximately 4 p.m. on August 6, 1992. The entire meeting will be closed.

**ADDRESSES:** The meeting will be held in Lecture Room C, Administration Building, at the National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

**FOR FURTHER INFORMATION CONTACT:** Dr. Curt W. Reimann, Associate Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2036.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 27, 1992, that the meeting of the Panel of Judges will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by Section 5(c) of the Government in the Sunshine Act, P.L. 94-409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: July 14, 1992.

John Lyons,

*Director.*

[FR Doc. 92-17043 Filed 7-17-92; 8:45 am]

BILLING CODE 3510-13-M

## National Oceanic and Atmospheric Administration

### Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

**AGENCY:** Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, DOC.

**ACTION:** Notice of intent to evaluate.

**SUMMARY** The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Tijuana River National Estuarine Research Reserve (NERR) in California.

The evaluation will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of coastal states with respect to their operation and management of NERRs. Evaluation of a NERR requires findings pertaining to a state's implementation of its federally approved NERR management plan, and adherence to the terms of financial assistance awards funded under the CZMA. These reviews include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting(s) is held as part of the site visit.

Notice is hereby given of the dates of the site visit for the Tijuana River NERR evaluation, and the date, local time, and location of a public meeting during the site visit:

The site visit for the Tijuana NERR will be August 17-August 21, 1992. A public meeting will be held Tuesday, August 18, 1992, 7:30 p.m., at the Reserve's Visitor Center, 301 Caspian Way, Imperial Beach, CA.

Copies of the States's most recent performance reports, as well as OCRM's notification and supplemental request letter to the state, are available upon request from OCRM. Written comments from interested parties regarding this program are encouraged at this time and will be accepted until seven days after the site visit. Direct written comments to Vickie Allin, Chief, Policy Coordination Division, at the address listed below. When final evaluation findings are completed, OCRM will place a notice in the **Federal Register** announcing their availability.

**FOR FURTHER INFORMATION CONTACT:** Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue NW. Washington, DC 20235, (202) 606-4100.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 13, 1992.

W. Stanley Wilson,

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 92-16933 Filed 7-17-92; 8:45 am]

BILLING CODE 3510-08-M

## Minority Business Development Agency

**[Project I.D. No. 06-10-83001-01]**

### Business Development Center Applications: Oklahoma City MBDC

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice of correction of closing date.

**SUMMARY:** The above solicitation was previously advertised on Friday, June 19, 1992. The closing date of this announcement has been changed. The new closing date for this advertisement is August 4, 1992.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated July 14, 1992.

Melda Cabrera,

*Regional Director, Dallas Regional Office.*

[FR Doc. 92-16979 Filed 7-17-92; 8:45 am]

BILLING CODE 3510-21-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice of continuation of the CHAMPUS Reform Initiative Demonstration Project.

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**SUMMARY:** Notice is hereby given that the demonstration project conducted by contract under the provisions of Chapter 55, title 10, Section 1092, to test a different method for financing and delivering health care services under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), hereafter referred to as the CHAMPUS Reform Initiative (CRI), will be continued beyond the expiration date of the current contract (July 31, 1993), for all beneficiaries who reside in the states of California and Hawáii. The successor contract, currently in the solicitation phase, will include five option periods, the execution of which would result in 5 years of service delivery. The purpose for continuing the CRI is to assure a full demonstration of the CRI model as a method to contain CHAMPUS costs for the Government and the beneficiary, to improve coordination between the military and civilian components of the Military Health Services System, and to enhance services for beneficiaries.

**DATES:** August 1, 1993, for CHAMPUS beneficiaries in California and Hawaii.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel Richard C. Storey, Medical Service Corps, U.S. Air Force, Office of the Assistant Secretary of Defense for Health Affairs (Health Services Financing), (703) 695–3626.

**SUPPLEMENTARY INFORMATION:** Under the terms and conditions of the contract, CHAMPUS beneficiaries in California and Hawaii who live near military hospitals will be offered a triple-option health benefits package which allows them to choose among three options: (1) The Prime program, a health maintenance organization (HMO)-type option; (2) a preferred provider option (PPO); or (3) the option to remain in Standard CHAMPUS. Beneficiaries may use any military hospital or clinic when care is available. Non-availability statements (NAS) will be required when a beneficiary residing in a military catchment area needs non-emergency inpatient care. As in the current demonstration project, the successor contract will have a prime contractor with responsibility to deliver medical care to CHAMPUS patients residing in California and Hawaii for a fixed price and to provide claims processing services.

The CHAMPUS Reform Initiative provides alternatives for the financing and delivery of health care services under CHAMPUS. It represents structural reform, centered on the principles of managed care and integration of military and civilian health care resources.

### Prime Program

The Prime program will be a voluntary, HMO-type enrollment program offered as an alternative to Standard CHAMPUS by the contractor who is at risk for benefit dollars. This program provides enhanced CHAMPUS benefits to all enrolled beneficiaries who live in areas where it exists. Under the proposed contract, the Prime program will be offered in military hospital catchment areas and selected non-catchment areas in the demonstration states. The benefits package available to Prime program enrollees will contain the same benefits as are available to beneficiaries under Standard CHAMPUS plus benefit enhancements offered by the contractor. These enhancements include such services as routine physicals and other preventive care procedures not covered under Standard CHAMPUS. The Prime program benefits will be uniform across all areas of the region where Prime is offered. Prime requires no annual deductible for all enrollees. For most outpatient care there is a $5 copayment; some outpatient services have higher copayments. Dependents of sponsors (active or retired) in pay grades E-4 and below have no copayment for primary care and preventive services. Dependents of all active-duty sponsors have no cost-share for civilian hospital care. Retirees and their dependents are charged $75 per day for civilian hospital care, up to a maximum of $750 per admission. Beneficiaries who select Prime will have the added benefit of not having to file any claim forms. Under Prime, mental health visits require a $5 or $10 copayment, determined by the type of visit; urgent care visits cost $15 each, and emergency room visits have a $25 fee paid by the patient. The restrictions placed on patients who choose Prime include that they follow the contractor's rules for seeking nonemergency medical care and that they agree to stay in the program for a full year, unless they move out of an area where Prime is offered. Patients who are enrolled in Prime and who are not happy with a particular civilian physician will be allowed to choose another one within the network.

### PPO Program

The PPO program, where available, will offer CHAMPUS beneficiaries who do not or cannot enroll in Prime the ability to receive care from one of the contractor's network providers at a reduced level of cost-sharing. Under this option, patients will be covered for the same medical services as under the existing Standard CHAMPUS program, but they will get discounts for office visits and hospital inpatient care by using physicians who are members of the contractor's provider network. Dependents of active-duty service members, as an example, will pay 15 percent of the cost of a doctor's office visit in the contractor network instead of the 20 percent required under the current CHAMPUS program. Retirees and their families will pay 20 percent rather than 25 percent for office visits. For inpatient care, active-duty dependents will have no cost-share and retirees and their dependents will pay $125 per day (or 25 percent of billed charges), whichever is less, plus 20 percent of inpatient professional fees (instead of the Standard CHAMPUS cost-share of 25 percent of all billed charges or the daily inpatient charge, whichever is less). The PPO program offers greater freedom than the Prime program because patients do not have to enroll. CHAMPUS patients will be allowed to use the PPO program on a case-by-case basis if it is available in their area. Regular CHAMPUS deductibles continue to apply. As in the Prime program, beneficiaries who select the PPO program will have the added benefit of not having to file any claim forms for care received through this option.

### Standard CHAMPUS

The term "Standard CHAMPUS" refers to the CHAMPUS Basic Program and the CHAMPUS Program for the Handicapped. Standard CHAMPUS will continue to be an option available to nonenrolled CHAMPUS beneficiaries in California and Hawaii. The contractor is responsible for payment for authorized benefits currently available under the program. Since the demonstration is being conducted to test alternatives for financing and delivery of health care services, the process for review and authorization of care under Standard CHAMPUS, as well as under Prime and PPO, may include review features not currently in place outside the demonstration area. All providers of care in California and Hawaii will be specifically notified of any such requirements. Requests for payment of services may be denied when prior authorization is required and not obtained. Beneficiaries will be held harmless in all instances where providers fail to seek prior authorization for covered services as required. With respect to services excludable from payment because they are medically unnecessary, the provisions of 32 CFR 199.4(h) will apply as they do to the Peer

Review Organization program under that section.

**Health Care Finder**

Health care finder and contract liaison offices or service centers will be established by the contractor at or near all military hospitals in the demonstration states. Health care finders will help beneficiaries obtain referrals for services in the most appropriate setting, whether in a military facility or with civilian providers, to facilitate beneficiary access to care and help assure optimal use of military hospitals. The service centers will also serve as a source of information and assist beneficiaries with resolution of claims problems.

**Resource Sharing**

Resource sharing agreements may be entered into by the contractor with individual military treatment facility commanders to use medical personnel, equipment, or supplies from the contractor's provider network and from private sources outside the network for the purpose of enhancing the capabilities of the military facility to provide needed inpatient and outpatient care to CHAMPUS beneficiaries. There is no cost to the beneficiary beyond that normally associated with care in a military treatment facility.

**Duration**

The contract includes five option periods for the delivery of services, which, if executed, would extend service delivery under the contract for five years.

**Exclusions to the CHAMPUS Reform Initiative Demonstration Project**

The following are not covered under the demonstration:

—Beneficiaries eligible under the Civilian Health and Medical Program of the Veterans Administration (CHAMPVA) are not covered under the CHAMPUS Reform Initiative.

—Beneficiaries who receive care in the states of Hawaii and California, but who are not residents of those states, are excluded from the Prime Program.

—The CHAMPUS prohibition against payment of abortions, except where the life of the woman would be endangered if the fetus were carried to term, extends to the demonstration.

—Experimental or investigational services which are excluded under CHAMPUS are also excluded under the demonstration.

—No funds shall be used to pay claims under the demonstration for sexual dysfunctions or sexual inadequacies.

—No funds shall be used to pay institutional or professional claims for inpatient mental health services in excess of 30 days in a fiscal year (or an admission) in the case of patients 19 years of age or older, 45 days in a fiscal year (or an admission) in the case of a patient under 19 years of age, or 150 days in a fiscal year (or an admission) in the case of a residential treatment center stay, unless a waiver is granted under the provisions of chapter 4, paragraphs B.8 or B.9, DoD 6010.8–R.

Dated: July 14, 1992.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92–16952 Filed 7–20–92; 8:45 am]

BILLING CODE 3810–01–M

## DEPARTMENT OF ENERGY

### Financil Assistance Award Intent To Award Grant to Medical College of Wisconsin

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice of intent to make a noncompetitive financial assistance award.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.6(A)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(B) to the Medical College of Wisconsin under Grant Number DE–FG01–92EH89237. The purpose of the grant is to support a conference for improving the environmental and health risk awareness of physicians and public health specialists by cultivating a greater understanding within these groups of the technical bases of health risk estimates and their use in the standard setting process. This effort will have a total estimated cost of $20,000 to be provided by the DOE.

**SCOPE:** The grant will provide funding to the Medical College of Wisconsin to organize and hold its conference entitled, "Environmental Stewardship and the Medical, Biomedical Science and Public Health Communities: A Proposal for a New Initiative." The conference will be held at the Wingspread Conference Center, Racine, Wisconsin, from July 31, 1992, through August 2, 1992.

The goal of this conference is to successfully cultivate within the health professions a greater understanding of health risk estimates, what these estimates mean, and how they are considered in the risk management process.

The project is meritorious because of its relevance to the accomplishment of an important public purpose—helping the medical community to better understand the implications of environmental pollution for public health and well-being and to communicate more effectively with members of the public on these issues.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method and approach for educating and enhancing the activities of the medical community and the public. Accordingly, it is anticipated that better decision-making with respect to environmental clean-ups will result from this conference.

**FOR FURTHER INFORMATION CONTACT:** Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Jeffrey R. Dulberg, PR–322.4, 1000 Independence Avenue, SW., Washington, DC 20585.

**Thomas S. Keefe,**

*Director, Division "B", Office of Placement and Administration.*

[FR Doc. 92–17044 Filed 7–17–92; 8:45 am]

BILLING CODE 6450–01–M

### Financial Assistance to the Rocky Flats Local Impacts Initiative

**AGENCY:** DOE, Rocky Flats Office.

**ACTION:** Notice of intent to award noncompetitive financial assistance to the Rocky Flats local impacts initiative.

**SUMMARY:** Pursuant to the statutory authorities of Section 646 of the Department of Energy Organization Act (Pub. L. 95–91) and the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 97–258), the Department of Energy, Rocky Flats Office, gives notice of its plan to award approximately $100,000 to the Rocky Flats Local Impacts Initiative, doing business on behalf of the Rocky Flats Local Impacts Task Force. In addition, up to $140,000 in other goods and services may be provided. The task force, comprised of eleven cities and political bodies in the area of Rocky Flats Plant, was created as a forum for local governments working together to assess, to plan for, and to mitigate, negative economic and socioeconomic impacts on affected communities which may result from the reduction of operations due to the change in mission at the facility. This award will provide start-up costs in planning and implementing a successful

transition for the workers and the plant site. Tasks include coordination with local communities to develop programs to retrain or assist workers affected by the transition, analyze other plant closures to develop a greater perspective of similar situations, survey vendors to determine their vulnerability to cutbacks in procurement, examine the potential for alternative uses of land, buildings, and other resources, and the creation of new opportunities both on and off-site.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Gross, Contract Specialist, U.S. DOE, Rocky Flats Office, Contracts and Services Division, P.O. Box 928, Golden, CO 80402–0928, Purchase Requisition Number: DE–FG34–92RF00475.

Issued at Golden, Colorado, July 8, 1992.

Al H. Pauole,

*Deputy Manager.*

[FR Doc. 92–17045 Filed 7–17–92; 8:45 am]

BILLING CODE 6450–01–M

## Issuance of Financial Assistance Solicitation Restricted Eligibility; Nevada Field Office

**AGENCY:** U.S. Department of Energy, Nevada Field Office (DOE/NV).

**ACTION:** Notice of Issuance of a Financial Assistance Solicitation Restricted Eligibility.

**SUMMARY:** The DOE/NV announces that pursuant to the DOE financial Assistance Rules, 10 CFR 600.7 and 600.9, it intends on issuing on a restricted eligibility basis, Financial Assistance Solicitation Number DE–PS08–92NV11194 for the Science and Technology Education Program.

**PROJECT SCOPE:** Eligible organizations will be invited to submit applications indicating what efforts they will undertake to improve three major mathematics and science education programs/ initiatives designed to address the needs of pre-college students.(Grades K–12). The three categories to be identified in the solicitation include (1) Mathematics, Science and Technology Teacher Training and Professional Development to include summer basic and applied research, curriculum development opportunities, math/science teacher workshops, and other related professional development opportunities designed to lead to improved student interest in mathematics and science education; (2) Special Services and Outreach to Underrepresented (UR) Populations: minorities, females, and the disabled, designed to motivate the interest of these students in math/science and to increase their representation in these career paths; and (3) Mini-Grant Mathematics and Science Education Activities; with successful applicants effectively describing how the use of these funds will augment their existing math/science program and help improve the overall instruction and delivery of mathematics, science, and technology curriculum

This solicitation is restricted to educational institutions, 26 U.S.C. 501(c)(3), tax-exempt organizations, and not-for-profit entities (including professional and/or technical associations) with programs or activities designed to address the mathematics and science areas. DOE anticipates that a number of grants totaling $200,000 will be awarded with the maximum amount for each grant limited to $50,000 for teacher training; $30,000 for UR populations, and $10,000 for mini-grants. The solicitation is expected to be released July 13, 1992. A one-year project period for all grants is expected to begin on or about September 15, 1992.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Nevada Field Office, ATTN: Marlene M. Kolicius, Contracts Division, P.O. Box 98518, Las Vegas, Nevada 89193–8518, (702) 295–1060. Technical questions should be directed to Rudy Cruz, Office of External Affairs, on (702) 295–4628.

Issued in Las Vegas, Nevada, On July 8, 1992.

Nick C. Aquilina,

*Manager, DOE Nevada Field Office.*

[FR Doc. 92–17046 Filed 7–17–92; 8:45 am]

BILLING CODE 6450–01–M

## Bonneville Power Administration

## West of Hatwai; Floodplain and Wetland Involvement Notification

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of Floodplain and Wetland Involvement, Spokane, Whitman and Asotin, Counties, WA.

**SUMMARY:** Bonneville Power Administration (BPA) proposes to undertake a number of projects in the states of Washington and Idaho to increase the minimum transmission capacity across the West of Hatwai cutplane from the present 2140 megawatts (MWs) to 2800 MWs. These actions would involve crossing the floodplains of the Spokane River northwest of the City of Spokane, Washington, the Palouse River southeast of the City of Colfax, Washington, and the Snake River near the City of Clarkstone, Washington. They may also affect wetlands in the Four Mounds Prairie area of Spokane County, Washington. BPA will address all practicable alternatives for avoiding these areas. Where practicable alternative do not exist, mitigation measures and/or on-site or off-site enhancement will be investigated.

**FOR FURTHER INFORMATION CONTACT:** John M. Taves—EFBG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208.

**SUPPLEMENTARY INFORMATION:** Those individual actions that may have an effect on floodplains would include (i) rebuilding Washington Water Power Company's (WWP) Devil's Gap-Westside 115–kV transmission line in Lincoln and Spokane Counties; (ii) reconductoring WWP's East Colfax-Shawnee 115–kV transmission line in Whitman County; and (iii) constructing a new 230–kV transmission line across the Snake River near Clarkston, Washington, and Lewiston, Idaho. These proposed actions are described more precisely below.

Rebuilding the Devil's Gap-Westside 115–kV transmission line may impact the floodplain of the Spokane River at mile post 60 above Nine Mile Falls over what is known as the Nine Mile Reservoir in Spokane County, Washington. The floodplain is located in section 8 of Township 26 North, Range 42 East of the Willamette Meridian. The existing transmission line is 19 miles in length and connects the Devil's Gap Switching Station, located just south of the Long Lake Dam in Lincoln County, to the Westside Substation, located a few miles northwest of the City of Spokane, Washington.

Reconductoring the East Colfax-Shawnee 115–kV transmission line as it crosses and parallels the Palouse River in Whitman County may impact the Palouse River floodplain in sections 20, 21, 28, and 33, of Township 16 North, Range 44 East, and section 4 of Township 15 North, Range 44 East of the Willamette Meridian. The existing transmission line is 7.2 miles in length and extends from the East Colfac Substation, located immediately east of the City of Colfax, to the Shawnee Substation located two miles north-northwest of the City of Albion, Washington.

The proposed construction of approximately eight miles of new 230–kV transmission line connecting the North Lewiston Substation, located on the north bank of the Clearwater River, just north of the City of Lewiston, Idaho, to a point of connection on the Walla Walla-Lola 230–kV transmission line

southwest of the City of Clarkston, Washington, may impact the floodplain of the Snake River. The floodplain of the Snake River may be impacted in section 24 of Township 11 North, Range 45 East of the Willamette Meridian.

The wetlands that may be affected by the proposed action are located in sections 7 and 9 of Township 26 North, Range 41 East, and in section 12 of Township 26 North, Range 40 East of the Willamette Meridian.

Rebuilding of both the Devil's Gap-Westside 115–kV transmission line and the Airway Heights-Devils Gap 115–kV transmission line in their present locations may impact a portion of the wetlands located there.

In accordance with DOE regulations for compliance with floodplain and wetland environmental review requirements (10 CFR part 1022(, BPA will prepare a floodplain/wetland assessment on this proposed action. The floodplain/wetland assessment and floodplain statement of findings will be included in he categorical exclusion that is being prepared for this project. A floodplain statement of findings will be published in the **Federal Register.**

Issued in Portland, Oregon, on June 22, 1992.

**Randall W. Hardy,**

*Administrator.*

[FR Doc. 92–16911 Filed 7–17–92; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. ER92–687–000, et al.]**

### Pennsylvania Power & Light Co., et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 13, 1992.

Take notice that the following filings have been made with the Commission:

**1. Pennsylvania Power & Light Co.**

[Docket No. ER92–687–000]

Take notice that Pennsylvania Power & Light Company (PP&L) on July 1, 1992, tendered for filing an Electrical Output Sales Agreement (Sales Agreement), dated June 26, 1992, between PP&L and the New York Power Authority (the NYPA).

As more fully set forth therein, the Sales Agreement provides that the NYPA may reserve capability and energy from PP&L's Martins Creek Units 1 and 2 and PP&L's Martins Creek Units 3 and 4. Rates for sales under the Sales Agreement are set forth on Schedules A and B, thereto.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of July 1, 1992. Initial service under the Sales Agreement will not begin before the requested effective date.

PP&L states that a copy of its filing was served on the NYPA, the Pennsylvania Public Utility Commission and the New York Public Service Commission.

*Comment date:* July 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

**Bangor Hydro-Electric Co.**

[Docket No. ER92–607–000]

Take notice that Bangor Hydro-Electric Company (Bangor) on July 6, 1992, tendered for filing an Initial Rate Schedule, Rate Schedule for Power Sales. The Rate Schedule provides for the sale by Bangor to other utilities which enter into Service Agreements with Bangor, capacity and associated energy at negotiated rates not to exceed Bangor's cost of service.

Bangor requests that the Commission waive its notice requirement in order to allow the Rate Schedule to become effective on July 15, 1992.

*Comment date:* July 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

**Consumers Power Co.**

[Docket No. ER92–691–000]

Take notice that on July 6, 1992, Consumers Power Company (Consumers) tendered for filing a Service Agreement with the Michigan Public Power Agency (MPPA) and Wolverine Power Supply Cooperative, Inc. (Wolverine) pursuant to Consumers' Open Access Transmission Service Tariff. The filed Service Agreement makes available to MPPA and Wolverine firm transmission service arrangements in order to facilitate formation of a new operating entity called the Municipal Cooperative Coordinated Pool. A copy of the filing was served upon the MPPA, Wolverine, and the Michigan Public Service Commission.

*Comment date:* July 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

**4. Babcock-Utrapower Jonesboro**

[Docket No. QF85–335–002]

On June 30, 1992, and July 2, 1992, Babcock-Utrapower Jonesboro (Applicant) tendered for filing amendments to its filing in this docket.

Together, the amendments provide additional information pertaining to the ownership structure of its small power production facility and the effect of the partnership's federal income tax election on the stream of benefits from the facility. No determination has been made that the submittals constitute a complete filing.

*Comment date:* July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

**5. Babcock-Ultrapower West Enfield**

[Docket No. QF85–334–002]

On June 30, 1992, and July 2, 1992, Babcock-Ultrapower West Enfield (Applicant) tendered for filing amendments to its filing in this docket

Together, the amendments provide additional information pertaining to the ownership structure of its small power production facility and the effect of the partnership's federal income tax election on the stream of benefits from the facility. No determination has been made that the submittals constitute a complete filing.

*Comment date:* July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

**6. The Washington Water Power Co.**

[Docket No. ER92–688–000]

Take notice that on July 2, 1992, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR part 35, the annual contract rate for the 15-Year Agreement for Purchase and Sale of Firm Capacity and Energy between The Washington Water Power Company (WWP) and Puget Sound Power & Light Company. WWP requests that the Commission accept the Agreement for filing, effective April 1, 1992, and waive the 60 day notice requirement.

A copy of the filing was served upon Puget Sound Power & Light.

*Comment date:* July 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protest should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16960 Filed 7-17-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CP92-589-000, et al.]

## ANR Pipeline Co. et al.; Natural Gas Certificate Filings

July 13, 1992.

Take notice that the following filings have been made with the Commission:

### 1. ANR Pipeline Co.

[Docket No. CP92-589-000]

Take notice that on July 9, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92-589-000 is a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon 50 percent of its ownership of 3 metering facilities by sale to Trunkline Gas Company, under ANR's blanket certificate issued in Docket No. CP82-480-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

ANR requests authorization to abandon 50 percent of its interest in the Red Lion, Farmersville and Castine meters, all located adjacent to the Lebanon Extension (owned jointly by ANR and Trunkline) in Ohio. ANR states that the abandonment and sale are proposed pursuant to an agreement with Trunkline. It is stated that the 3 meters would then be treated as Lebanon Extension facilities. It is explained that no customers would lose service as a result of the proposed abandonment. It is asserted that the meters were installed under blanket authorization in Docket No. CP82-480-000, issued to ANR's predecessor, Michigan Wisconsin Pipe Line Company.

*Comment date:* August 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

### 2. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP92-578-000]

Take notice that on July 6, 1992, Arkla Energy Resources (AER), a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP-92-578-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, to construct and operate certain facilities in Arkansas and Oklahoma, and to abandon certain facilities in Oklahoma, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, AER intends to (1) construct and operate three new sales taps; (2) to operate one existing tap for delivery of gas for resale to a consumer other than the right-of-way grantor for whom the tap was originally installed; and (3) to abandon three sales taps in Seminole County, Oklahoma, all of the delivery of gas sold to Arkansas Louisiana Gas Company (ALG) for resale to domestic and commercial consumers in Arkansas and Oklahoma. AER also proposes to construct and operate one new delivery point for transportation to an end-user. AER further states that sales-service gas will be delivered from its general system supply, which it states is adequate to provide the service.

*Comment date:* August 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16962 Filed 7-17-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. RS92-5-000, et al., RS 92-6-000, et al.]

## Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Location of Prefiling Conference

July 8, 1992.

Take notice that the prefiling conference to be convened in these proceedings pursuant to the notice issued June 30, 1992, will be held at the Washington Hilton and Towers, 1919 Connecticut Avenue, NW., Washington, DC. The conference will convene on July 21, 1992, at 10 a.m. and continue on July 22, if necessary. The conference will address the proposals of Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company to comply with Order No. 636.

For additional information, contact Donald A. Heydt (202) 208-0740.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16963 Filed 7-17-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RS92-24-000]

## Texas Gas Transmission Corp.; Conference

July 13, 1992.

Take notice that on July 23, 1992, a conference will be convened in the above-captioned docket to discuss Texas Gas Transmission Corporation's summary of its proposed plan for implementation of Order No. 636.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Hearing Room 1, Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons may call Patrick Seferovich at (202) 208-0504 or Bob Szekely at (202) 208-0442.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-16961 Filed 7-17-92; 8:45 am]

BILLING CODE 6717-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4153-9]

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected

cost and burden and includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 19, 1992.

**FOR FURTHER INFORMATION OR A COPY OF THIS ICR, CONTACT:** Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Air and Radiation**

*Title:* Indoor Environmental Quality Questionnaire (EPA ICR #1619.01). This ICR requests approval for a new clearance.

*Abstract:* The Indoor Environmental Quality Questionnaire is a component of the EPA Building Assessment, Survey, and Evaluation (BASE) program. In this program, EPA is conducting a five-year indoor air quality (IAQ) study of 150-250 large commercial and public office buildings. The purpose of this study is to develop a national baseline assessment of the indoor air in such buildings. The activities EPA will conduct under this study include the Indoor Environmental Quality Questionnaire, building inspections, interviews with building maintenance workers, environmental measurements (e.g., ventilation rates, concentrations of indoor air pollutants), and other quantitative and qualitative assessments. By conducting this research, EPA will begin to be able to assess the key building parameters that affect IAQ and the incidence of certain IAQ-related health and comfort problems. The Indoor Environmental Questionnaire is a voluntary questionnaire asking for information pertaining to work station characteristics, working conditions, exposure to pollutants, health and well-being, and stress. Data from the Indoor Environmental Questionnaire will be used to compare the measured building parameters and health effects.

EPA intends to pilot test this survey in three buildings. After making any refinements necessary in response to the pilot test, EPA will proceed with the five-year study.

*Burden Statement:* The public reporting burden for this collection of information is estimated to average 14 minutes per response, including time for reviewing instructions and completing and reviewing the collection of information.

*Respondents:* Occupants of commercial facilities in a wide variety of fields and SIC codes.

*Estimated Number of Respondents:* 14,000 over 5 years

*Estimated Total Annual Burden on Respondents:* $14,720.

*Frequency of Collection:* Once.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460,

and

Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affair, 725 17th Street, NW., Washington, DC 20503.

Dated: July 8, 1992.

**John Girman,**

*Chief of Analysis Branch, Indoor Air Division.*

[FR Doc. 92–16899 Filed 7–17–92; 8:45 am]

BILLING CODE 4160–50–M

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**[FRL–4156–2]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before August 19, 1992. To obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Water**

*Title:* Estimate of Municipal Wastewater Treatment Facility Requirements for the Needs Survey (ICR 0318.05). This ICR requests an extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

*Abstract:* ICR 0318.05 seeks renewed OMB clearance for the information requirements associated with the 1994 Needs Survey. This survey is required under sections 205(a) and 516(b)(1) of the Clean Water Act (CWA), which direct EPA, in conjunction with the States and Territories, to conduct an inventory, or Needs Survey, of the nation's publicly-owned treatment works (POTWs) every two years. The Needs Survey is intended to address the construction needs and cost estimates of POTWs. Following completion of the survey, EPA will compile the results and submit them in a report to Congress.

The survey's requirements fall on the States and Territories, whose contributions consist of the following:

—Assembling the data on POTWs,
—Providing documentation where needed,
—Explaining certain categories of need based on construction costs,
—Explaining anomalies in the POTW data.

The POTWs themselves are not respondents in this survey, and will not be the object of any reporting or recordkeeping burden.

EPA's responsibilities include ensuring national consistency for the survey and preparing the final report for Congress. For the present collection, the report will reflect data from 1994 and will be submitted to Congress by February of 1995.

The total annual burden for this ICR is estimated at 14,638 hours, an increase of 2803 hours over the last Needs Survey. This increase is primarily due to the rise in the number of POTWs and also reflects the inclusion of requirements for Combined Sewer Overflows and Nonpoint Source and Stormwater data collections.

*Burden Statement:* The average burden associated with the Needs Survey is 1.1 hours per response. This total includes time for searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

*Respondents:* States and Territories.

*Estimated No. of Respondents:* 59.

*Estimated Total Annual Burden on Respondents:* 14,638 hours.

*Frequency of Collection:* Biennially.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460,

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: July 15, 1992.

**David Schwarz,**

*Acting Director, Regulatory Management Division.*

[FR Doc. 92–17015 Filed 7–17–92; 8:45 am]

BILLING CODE 4160–50–M

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[FRL-4156-1]

## Public Meetings on Combined Sewer Overflows

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** EPA's Office of Water and the Office of Water's Management Advisory Group (MAG) will hold a MAG work group meeting with organizations that represent State and municipal governments, environmental and/or wastewater facility organizations and industry on July 23–24. The purpose of the meeting is to discuss development of a National Pollutant Discharge Elimination System permitting policy that will expedite implementation of the National Combined Sewer Overflow Strategy, issued by the EPA in 1989. The public is invited to attend, and at specified times, to contribute comments.

**DATES:** July 23–24 and if necessary, August 6–7 and August 25–26. All meetings will begin at 8:30 a.m. and end no later than 5 p.m. A determination on whether or not to proceed with subsequent meetings will be made at the conclusion of each meeting.

**ADDRESSES:** The July 23–24 meeting will be held at the Park Hyatt Hotel, 1201 Twenty-fourth St. NW., Washington, DC, 20037, (202) 789–1234. If the additional meetings are necessary, they will be held at the offices of RESOLVE/WWF, 1250 Twenty-fourth St., NW., Washington, DC 20037, (202) 778–9653.

**FOR MORE INFORMATION CONTACT:** For more information on substantive matters, please contact Rich Kuhlman, Office of Wastewater Enforcement and Compliance, at (202) 260–7361. For information on administrative matters, or to advise of your intent to attend, please contact Abby Arnold, EPA's co-convener at (202) 778–9653.

Dated: July 14, 1992.

**Michael B. Cook,**

*Director, Office of Wastewater Enforcement and Compliance.*

[FR Doc. 92–17018 Filed 7–17–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4155–9]

## Diesel Fuel Sulfur Content; Petition for Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final decision.

**SUMMARY:** On April 30, 1991, the Governor of American Samoa submitted a petition for an exemption from the limitation on the sulfur content of diesel fuel under section 211(i) of the Clean Air Act, as amended (Act). This petition also sought an exemption for American Samoa from the requirements of certain regulations which specify diesel fuel requirements for use in on-highway motor vehicles and engines. See 40 CFR part 80. The petition sought the exemptions pursuant to section 325 of the Act.

Today's Final Decision grants an exemption to American Samoa from the sulfur content requirements for diesel fuel under section 211(i) (1) and (2) of the Clean Air Act. The exemptions are based on a finding that is unreasonable to require persons in American Samoa to comply with the sulfur content limitation of section 211(i) of the Act and those portions of EPA's motor vehicle diesel fuel regulations (40 CFR part 80) that pertain to the 0.05% sulfur limit required under section 211(i), due to unique geographical, meteorological and economic factors in American Samoa, as well as other significant local factors.

**DATES:** The exemptions are effective on August 19, 1992.

**ADDRESSES:** Copies of information relevant to this final notice of decision are available for inspection in public docket A–91–40 at the Air Docket (LE–131) of the EPA, room M–1500, 401 M Street SW., Washington, DC 20460, (202) 260–7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. Monday through Friday. A duplicate public docket, R9–AS–DF–01, is also available at U.S. EPA, Region 9, Air & Toxics Division, 17th Floor, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1227, and is available between the hours of 8 a.m. to 4:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Joseph B. Fernandes, Chemical Engineer, Fuels Section, Field Operations and Compliance Policy Branch, Field Operations and Support Division (6406J), 401 M Street SW., Washington, DC 20460, (202) 233–9016.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 211(i)(1) of the Act makes it unlawful, effective October 1, 1993, for any person to manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40. This prohibition is self-effectuating, although EPA is required to promulgate regulations to implement and enforce these requirements pursuant to section 211(i)(2). Section 211(i)(3) establishes the sulfur content for fuel used in the certification of heavy-duty diesel vehicles and engines. In addition, section 211(i)(4) requires the Administrator to take final action on any petition filed under section 324 [1] of the Act seeking an exemption from the requirements of section 211(i) within 12 months of the date of such petition.

Prior to enactment of the Clean Air Act Amendments of 1990, which added section 211(i), EPA promulgated regulations which closely mirror the sulfur content and minimum cetane index requirements of section 211(i) (55 FR 34120, August 21, 1990). EPA has published a Notice of Proposed Rulemaking amending these regulations so they conform with section 211(i) (56 FR 32533, July 17, 1991).

Section 325(a)(1) of the Act provides that upon application by the governor of Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any person or source in such territory from various requirements of the Act, including section 211(i). Such exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological or economic factors of such territory, or such other local factors as the Administrator deems significant.

### II. Petition for Exemption

On April 30, 1991, the Honorable Peter Tali Coleman, Governor of American Samoa, submitted a petition to exempt motor vehicle diesel fuel in American Samoa from the sulfur content limitation of section 211(i) and regulations promulgated under 40 CFR Part 80 (55 FR 34120, August 21, 1990). The petition did not seek an exemption from the minimum cetane index of 40

[1] Section 211(i)(4) mistakenly refers to exemptions under section 324 of the Act ("Vapor Recovery for Small Business Marketers of Petroleum Products"), while the proper reference is to section 325. Congress clearly intended to refer to section 325, as shown by the language used in section 211(i)(4), and the United States Code citation used in section 806 of the Clean Air Act Amendments of 1990, Public Law 101–549. Section 806 of the Amendments, which added paragraph i to section 211 of the Act, used 42 U.S.C. 7625–1 as the United States Code designation for section 324. This is the proper designation for section 325 of the Act. Also see 136 Cong. Rec. S17230 (daily ed. October 26, 1990) (statement of Sen. Murkowski).

requirement.[2] The petition was based on geographical, climatological, meteorological, air quality, economical and environmental factors.

According to the petition, "(t)he source to be exempted is diesel fuel for use in motor vehicles * * *". If granted, the exemption would therefore apply to all persons in American Samoa subject to the prohibitions of section 211(i) of the Act and the diesel fuel requirements in 40 CFR Part 80. The exemption would apply to all persons to the extent they manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce, in American Samoa, motor vehicle diesel fuel. This includes but is not limited to the Government of American Samoa.

The following discussion summarizes the contents of the petition.

*A. Geography and Location of American Samoa*

The Territory of American Samoa consists of seven islands of volcanic origin located approximately 2,500 miles south of Honolulu, Hawaii, almost 4,500 miles southwest of Los Angeles, California and 1,600 miles northeast of Auckland, New Zealand. The total land area is 76 square miles. The main island of Tutuila has a land area slightly over 52 square miles and is the home of approximately 45,000 of the Territory's 48,000 inhabitants and the capital, Pago Pago. Tutuila has approximately 92 miles of paved road where the maximum speed limit is 30 mph. Tutuila's volcanic terrain is highly mountainous. The other islands have no paved roads, except for Ta'u which has a small paved strip used by fewer than 50 vehicles.

*B. Climate, Meteorology and Air Quality*

The climate on Tutuila is tropical with an average rainfall of 180 inches annually. Temperatures range between 70 degrees F to 90 degrees F with an average humidity of 80 percent. Strong and ever-present trade winds, combined with the lack of any heavy industries, prevent any air pollution from gathering. American Samoa has no sulfur dioxide or sulfate particulate air pollution problem and does not foresee any. Air quality levels are below the national secondary ambient air quality standards for all pollutants. 40 CFR part 50. EPA has not identified any areas in the territory as having the potential for violation of the national ambient air quality standards within ten years. 40 CFR 52.2826(a) (1989), 51 FR 40675 (November 7, 1986).

*C. Economic Factors*

American Samoa is remote from the United States mainland and must rely on materials shipped in by sea or air. The cost of construction is 25–50 percent higher than on the mainland, yet the annual per capita income is only $3,900 and the highest minimum wage is $2.62 per hour. The unemployment rate is approximately 13 percent.

The American Samoa Government (ASG) is the owner of the only petroleum storage facility in the Territory, which is leased to PRI South Pacific, Inc. (PRI), a wholly-owned subsidiary of Pacific Resources, Inc., a petroleum refiner based in Honolulu, Hawaii, and in turn a wholly-owned subsidiary of Broken Hill Proprietary, Ltd., an Australian corporation. PRI shares the storage facility with Shell Company (Pacific Islands) Ltd. (Shell) and BP South-West Pacific, Ltd. (BP), both Australian corporations. The lease terminates on December 31, 1994. The petroleum storage facility was constructed by the United States Navy during 1942 as part of its World War II South Pacific operations. The ASG began a total upgrade of the facility in 1988, which was to be completed in 1992. However, due to lack of adequate funding, many projects had to be curtailed or delayed and completion does not appear likely until 1995 or beyond.

Without an exemption, the ASG claims it will be required to construct segregated tank storage, service lines and modifications to the load racks at an estimated minimum cost of $300,000, not including the necessary containment berms, which could add an additional $250,000 to the costs. The ASG does not have the funds to construct segregated storage at this time nor does it anticipate having funds available in the foreseeable future.

All petroleum currently consumed in American Samoa is imported in small tankers. Due to the lack of demand for 0.05 weight percent sulfur diesel fuel in the Pacific, Shell and BP have advised they will not furnish it to American Samoa. PRI estimates that diesel fuel which complies with section 211(i)(1)'s sulfur restrictions will cost $0.08 to $0.10 per gallon more than the diesel fuel currently imported to American Samoa. If the ASG is required to comply and construct segregated storage facilities, the petition states that a tax in excess of $0.25 per gallon would need to be imposed to recover the storage facility construction cost. Hence, the total increased cost of automotive diesel oil on Tutuila would be $0.35 per gallon. Fuel is supplied to the outer islands in 55 gallon drums by barge or small vessels from Tutuila, thus creating even higher costs.

*D. Environmental Factors*

Current ASG petroleum specifications for diesel fuel allow a maximum sulfur content of 0.4 weight percent and require a minimum cetane index of 40. The ASG set this sulfur content specification to provide high quality diesel fuel for the ASG's electric utility. By regulation, the ASG prohibits burning of any fuel in excess of 1.5 weight percent sulfur. The Territorial Energy Office (TEO) analysis of diesel fuel imports during fiscal year 1990 disclosed that the weighted average of the sulfur content was 0.1918 weight percent and the average cetane index was 52.4. The petroleum suppliers advised the ASG that they should be able to continue to supply diesel fuel at or below the current sulfur levels. The ASG's sulfur content restrictions apply to the diesel fuel used for all power generation, and both highway and off-highway vehicles.

American Samoa has only 60 vehicles licensed for highway use that require diesel fuel. The ASG owns 31 of these and the remaining 29 are commercial vehicles. The petition states that these vehicles are necessary for government and commercial use e.g. container hauling equipments are used in the dock and are generally diesel powered. They are used for loading and unloading of the cargo. Based on a TEO survey, these vehicles consume on average fewer than 14 gallons per week of diesel fuel. Based on the current diesel fuel sulfur weight percentage of diesel fuel in American Samoa, this totals less than 600 pounds of sulfur annually from all the vehicles. This small amount of sulfur emitted over a year, coupled with the trade winds which disperse any pollutant, does not constitute a health risk nor would it cause any air quality standard to be exceeded.

*III. Public Participation*

Following the November 18, 1991 publication of EPA's proposed decision, a thirty-day comment period was open which ended December 18, 1991. During this time, the Agency received no request for a public hearing. Comments were received from two parties, Volvo GM Heavy Truck Corporation (Volvo GM) and the Engine Manufacturers Association (EMA), both of whom

[2] Section 211(i) of the Act authorizes EPA to establish an equivalent alternative aromatic level to the minimum cetane index specification. EPA's current regulations provide for such an alternative aromatic level. 40 CFR 80.29(a) Since the American Samoa Government does not seek an exemption from the minimum cetane index requirement, presumably they also do not seek exemption from the alternative aromatic level requirement.

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supported granting the petition. The following section includes the substantive issues raised regarding the waiver and EPA's response.

Volvo GM and EMA both suggested that EPA, in connection with granting ASG's petition, grant two additional exemptions in the case of 1994 and later model year engines in American Samoa: (1) An exemption from the section 203(a)(1) prohibition against the sale of engines not certified under section 206 as being in compliance with the applicable emission standards; and (2) an exemption from the section 203(a)(3) prohibition against tampering with certified engines. EMA went on to recommend an exemption for heavy-duty diesel engines manufacturers from the section 207(a) requirement that they warrant to the ultimate purchaser of engines affected by the fuel exemption that the engines will conform to applicable emissions regulations for their useful lives. The EMA also recommended exempting heavy-duty engine manufacturers from recall liability under section 207(c) for any engine affected by the fuel exemption.

As an initial matter, the Agency questions whether it has the authority to grant the exemption suggested by Volvo GM and EMA. Section 325 authorizes EPA to grant exemptions from Clean Air Act requirements "upon petition by the Governor of Guam, American Samoa, * * *" The exemptions Volvo GM and EMA requested were not also requested by the Governor of American Samoa. Since Congress was specific in authorizing EPA to grant exemptions in response to petitions from Governors of certain territories, it is unlikely that Congress meant to grant EPA broader authority to grant exemptions in response to any requests from any party.

In any event, action on these additional requests is not within the scope of this rulemaking. Since the requests were first made in comments on ASG's petition, the Agency's notice of proposed rulemaking contained no mention of them. Without the benefit of an EPA notice regarding the requests, it is doubtful that the public has had adequate notice or opportunity to comment on them. EPA thus is not in a position to take final action on the requests at this time.

Even if the Agency could grant the exemptions at this time, it would not be inclined to do so, as explained below.

*Issue: Sale of Certified Engines*

EPA believes that the prohibition against the sale of uncertified engines in American Samoa should continue to apply. After model year 1993, heavy-duty diesel engines probably will be equipped with devices which will be adversely impacted by the level of sulfur in diesel fuel allowed by the exemption being granted today, but it is likely that some emissions benefits can still be accrued. The average sulfur content in diesel fuel currently consumed in American Samoa is less the 0.2 weight percent. Engines designed to comply with the more stringent particulate emission standards applicable to 1994 and later model year engine will emit fewer particulates that will older engines even given 0.2 weight percent sulfur in the fuel.

*Issue: Exemption From Tampering*

EPA believes that a blanket waiver from the tampering prohibition for model year 1994 and later heavy-duty engines would allow tampering in situations where such tampering may result in an increase in emissions. For example, removal of an emissions related device that is not affected by the high sulfur fuel or is rendered less effective but not inoperative by the high sulfur fuel would increase emissions over what would have occurred in the absence of tampering.

However, some model year 1994 and later heavy-duty engines may be built with after treatment devices that may be rendered inoperative by the use of diesel fuel with sulfur content exceeding 0.05 weight percent. The exercise of enforcement discretion may be appropriate in the case of tampering with a device that has been or is likely to be rendered inoperative by the use of high sulfur diesel fuel. However, EPA should not allow tampering with an emissions control device that has been or is likely to be rendered less effective, but not rendered inoperative, as a result of the use of higher sulfur fuel.

*Issue: Warranty Exemption*

EPA believes an exemption from the warranty provisions of section 207 is unnecessary to protect manufacturers from unreasonable warranty recoveries by purchasers. The emission defect warranty requirements under section 207(a) of the Act require an engine manufacturer to warrant that the engine shall conform at the time of sale to applicable emission regulations and that the engine is free from defects which cause the engine to fail to conform with applicable regulations for its useful life. In practice, this warranty is applicable to a specific list of emission and emission related engine components.

It has been consistent EPA policy that misuse and/or improper maintenance of a vehicle or engine by the purchaser, including misfueling, may create a reasonable basis for denying warranty coverage for the specific emission and emission related engine components affected by this misuse. In this case, while use of fuel exempted from the sulfur content limitation cannot be considered "misfueling", it will have the same adverse effect: it will have an adverse effect on emissions control components. Thus, EPA believes that where the use of noncomplying diesel fuel will have an adverse impact on the emissions durability of specific engine parts or systems, such as a trap oxidizer, the manufacturer will have a reasonable basis for denying warranty coverage. However, as has consistently been EPA's policy, those components not adversely affected by the misfueling should continue to receive full emissions warranty coverage. In any event, the number of engines likely to be covered in American Samoa, and the potential for excessive costs or disputes, are extremely small.

*Issue: Recall Liability*

Heavy-duty engine manufacturers are responsible for recalling and repairing engines that do not comply with emission requirements for their useful life. The EPA tests engine classes to determine whether engines comply with applicable emission standards when properly used and maintained. Under section 207(c), if a substantial number of engines in a specific engine class do not comply when tested, that entire class can be recalled. If a situation arose in which an engine fueled with noncomplying diesel fuel were included in an EPA in-use compliance test program, EPA would determine, on a case-by-case basis, if the noncompliance were the result of the use of noncomplying diesel fuel. If it were determined that the noncomplying diesel fuel was the cause of the engine's failure to meet the applicable emission standards, that fact would be considered before seeking recall of the class. Given the very small number of diesel engines used in American Samoa, it is highly unlikely that noncompliance by those engines would ever result in an engine class being recalled. In cases in which it was determined that the overall class was subject to recall, however, individual engines would not be excluded from repair on the basis of fuel used. Manufacturers are responsible for repairing any engine in the recalled class regardless of its history of tampering or malmaintenance. The situation that would occur in American Samoa is no different and thus the manufacturers should remain liable for performing recall repairs on these engines when required.

### IV. Final Decision

American Samoa must rely totally on the costly importation of petroleum supplies, including diesel fuel, as a result of its remote location, along with its lack of internal petroleum supplies or refining capability. Given the petroleum storage infrastructure in American Samoa, compliance with section 211(i) diesel fuel sulfur content requirements could be accomplished in only one of two ways.

First, ASG, as owner of the only storage facility for such fuel, could build segregated storage space for 0.05 weight percent sulfur diesel fuel. EPA believes that the cost of such construction, as discussed earlier would impose a great burden on the economy, and is financially unreasonable given the lack of commensurate environment benefits. The high cost of exacerbated by American Samoa's remote location. The second alternative for compliance would be allowed importation into American Samoa of only complying diesel fuel. In effect, instead of building another storage tank for low sulfur diesel fuel, only low sulfur diesel fuel would be imported for storage in the single tank. The single storage facility would then continue to service all the uses for diesel fuel, including power generation, on-highway fuel and off-highway fuel. The cost of this alternative is clearly exorbitant, given the on-highway diesel fuel comprised only 0.112 percent of all imports of diesel fuel.

It would cost over 4 million dollars per year to bring much less than one percent of the diesel fuel in compliance with section 211(i), and would be much more expensive than building segregated storage facilities.

This major economic burden would provide almost no environmental benefit, in a context where there are no current air pollution problems. There is no identified potential for violations of national ambient air quality standards in American Samoa. The Territory has only 92 miles of paved roads and fewer than 60 diesel-fueled vehicles licensed for highway use. The estimated 600 pounds of sulfur currently emitted by these vehicles is dispersed by the islands; trade winds and presents no public health or welfare risk at this time. Exemption from the section 211(i) requirements would not lead to future problems, in light of American Samoa's current regulatory limits and purchase specifications on diesel fuel sulfur content. In addition, the section 211(i) diesel sulfur requirements are designed primarily to protect the emission control hardware on model year 1994 and later heavy-duty vehicles, and the already very small American Samoa fleet can be expected to contain few if any of these vehicles for the foreseeable future.[1] Imposition of the section 211(i) requirements are therefore not necessary to either solve an air pollution problem or to avoid one in the future.

The economic and environmental factors discussed above flow directly from the unique geography, meteorology and economic situation of American Samoa. The severe economic burden which would be imposed by the section 211(i) requirements far outweighs the almost nonexistent environmental benefit from application of these requirements to American Samoa. The Agency therefore finds that compliance with the diesel sulfur content limitation of section 211(i) (1) and (2) of the Act, and compliance with 40 CFR 80.29(a), is unreasonable for persons on American Samoa, and therefore exempts any person or source in American Samoa from these provisions.

For the same reasons, the Agency also exempts persons in American Samoa from those provisions of section 211(g)(2) of the Act which prohibit the fueling of motor vehicles with high-sulfur diesel fuel.[4] Although American Samoa did not explicitly request exemption from this provision in its petition, it is reasonable to read the petition as including such a request. Section 211 (g) and (i) both restrict the use of high-sulfur motor vehicle diesel fuel, and exempting American Samoa from the section 211(i) sulfur content requirements but not from the section 211(g) related prohibition, would provide no relief in fact from the problems American Samoa presented in its petition.

[1] During the diesel fuel rulemaking, EPA considered the general applicability of the diesel fuel requirements to Hawaii and the Pacific territories. 55 FR 34134 (August 21, 1990) Comments submitted by ASG and Pacific Resources, Inc. in that rulemaking questioned whether the diesel fuel requirements should apply to Hawaii and the Pacific territories. EPA did not accept the commentors' suggested geographic limits on the scope of the rule, primarily because of the potential use of 1994 and later heavy-duty diesel vehicles in these areas. That decision cannot be compared to today's final decision, however, as EPA's focus in that rulemaking was Hawaii and the Pacific territories viewed as a whole. The basic focus of this final decision is one specific territory, American Samoa.

[4] This subsection makes it unlawful for any person to introduce or cause or allow the introduction into any motor vehicle of diesel fuel which they know or should know contains a concentration of sulfur in excess of 0.05 percent (by weight). The final action includes exemption from this prohibition, but does not include the prohibitions in section 211(g)(2) relating to the minimum cetane index or alternative aromatic levels.

### V. Statutory Authority

Authority for the final action in this notice is section 325(a)(1) of the Clean Air Act, as amended (42 U.S.C. 7625–1(a)(1)).

### VI. Administrative Designation and Regulatory Analysis

Under Executive Order (EO) 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. This final decision is not a regulation or rule as defined in EO 12291, therefore, no regulatory impact analysis has been prepared.

### VII. Impact on Small Entities

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact on small entities. Since today's final decision exempt entities in American Samoa from complying with regulatory requirements, a regulatory flexibility analysis is not needed.

### VIII. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

Dated: July 12, 1992.

**William K. Reilly,**

*Administrator.*

[FR Doc. 92–17013 Filed 7–17–92; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–946–DR]

### Minnesota; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Minnesota (FEMA–946–DR), dated June 26, 1992, and related determinations.

**EFFECTIVE DATE:** July 7, 1992.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

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**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Minnesota, dated June 26, 1992, is hereby amended to include the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 26, 1992:

Nobles County for Public Assistance (already designated for Individual Assistance).
McLeod County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support.*

[FR Doc. 92-17006 Filed 7-17-92; 8:45 am]

BILLING CODE 6718-02-M

## Meeting; FEMA Security Practices Board of Review

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting, portions of which may be closed:

**NAME:** FEMA Security Practices Board of Review.

**DATES:** Friday, July 24, 1992.

**PLACE:** Federal Emergency Management Agency, John W. Macy, Jr. Conference Room, room 829, 500 C Street SW., Washington, DC 20472.

**TIMES:** July 24, 1992, 9 a.m. to 12 p.m.

**PROPOSED AGENDA:** Review the transcript, tasks, and remaining procedural matters from the last meeting; hear and discuss certain briefings; make preparations for the next meeting, including assignment of tasks.

**SUPPLEMENTARY INFORMATION:** The Review Board must complete its review and report by September 11, 1992. In view of this time limit and owing to the complex, sensitive, and urgent nature of FEMA security matters, less than 15 days' notice of the meeting is given, under 41 CFR 101-6.1015(b)-(2).

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Member of the general public who plan to attend the meeting should contact the Office of the Director, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3923) on or before July 22, 1992.

The Director has determined that portions of the Board meeting may have to be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), because discussions may (1) disclose matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense, (2) relate solely to the internal personnel rules and practices of an agency, and (3) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of privacy.

Minutes of the meeting (minus those portions of the meeting which may be closed to the public) will be prepared and will be available for public viewing in the Office of the Director, Federal Emergency Management Agency, room 828, 500 C Street SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: July 13, 1992.

**Wallace E. Stickney,**

*Director.*

[FR Doc. 92-17007 Filed 7-17-92; 8:45 am]

BILLING CODE 6718-01-M

## GENERAL SERVICES ADMINISTRATION

### Information Collection Activities Under Office of Management and Budget Review

**AGENCY:** Office of Acquisition Policy (VP), GSA.

**SUMMARY:** The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection, 3090-0235, Multiple Award Schedule Policy Statements (MAS) - Discount Schedule and Marketing Data Sheets (DSMD) and Price Reductions. DSMD sheets are used to collect data about certain sales, discount and marketing. The data are used to determine the commerciality of items offered, set the Government's negotiation objective and determine price reasonableness. The Price Reductions clause ensures that the Government maintains its relationship with a MAS contractor's customer or category of customer upon which the MAS contract is predicated.

**ADDRESSES:** Send comments to Ed Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

**Annual Reporting Burden**

DSMD sheets: 5,100 respondents; 15 average hours per response; 76,500 burden hours. Price Reductions clause: 1,830 respondents; 3 average hours per response; 12,720 burden hours.

**FOR FURTHER INFORMATION CONTACT:** Les Davison, (202) 501-4788. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW., Washington, DC 20405. By telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: July 2, 1992.

**Emily C. Karam,**

*Director, Information Management Division.*

[FR Doc. 92-17008 Filed 7-17-92; 8:45 am]

BILLING CODE 6820-61-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

### Guidelines for Cooperative Agreements for Drug Abuse Treatment—Heroin Initiative

**AGENCY:** Office for Treatment Improvement, ADAMHA, DHHS.

**ACTION:** The award of cooperative agreements to support immediate expansion of the number of heroin abuse treatment slots in 6 specific urban areas as part of ADAMHA's Heroin Initiative.

**SUMMARY:** This notice is to provide information to the public concerning ADAMHA's intent to award cooperative agreements for addressing heroin treatment needs between the Office for Treatment Improvement (OTI) and entities representing the interests of the greater metropolitan areas of the following cities: New York City, Newark, in Baltimore, Detroit, Seattle and Los Angeles. This is not a formal request for applications. Assistance will be provided only for the 6 cities listed above. Awards will be made to the State or local government agency responsible for administering substance abuse services. OTI's intent is that the most eligible government agency provide the services to eligible patients residing or working within the greater metropolitan areas of the cities involved and that the expansion is implemented in a timely manner.

**AUTHORITY:** Awards will be made under the statutory authority of section 516 of the Public Health Service Act. The cooperative agreement is the appropriate mechanism to fund this activity since it is the intent of OTI that the treatment expansion developed by this initiative result from collaborative efforts among the State, local, and Federal officials responsible for substance abuse services with input from local providers. With the concurrence of the affected states, these cooperative agreements are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.



**BACKGROUND:** New data released from the National Institute on Drug Abuse's Drug Abuse Warning Network (DAWN), which monitors drug-related emergency room episodes in the nation's hospitals, show a continuing upward trend in episodes involving heroin. New York City, Newark, Baltimore, Detroit, and Seattle had the largest DAWN reported annual increase in heroin users by the third quarter of 1991, thus the selection of these metropolitan areas for an award under the Heroin initiative. In addition, due to the recent civil disturbances and the disruption in drug abuse services in Los Angeles, this city has also been selected as an eligible area for an award. The magnitude of the heroin and associated public health problems in these 6 cities is such that the Department of Health and Human Services has designated them for an immediate expansion of drug abuse treatment and prevention activities.

The primary objectives for the Heroin Initiative Cooperative Agreements include:

(1) Expansion of ambulatory detoxification services within 60 days of award;

(2) Aggressive recruitment of heroin users who have recently begun heroin use and have not been treated previously for narcoticism, and individuals who have relapsed after a period of one year or more stable abstinence;

(3) Provision of screening for HIV, STD's, and TB for each patient should be at the point of original admission;

(4) Provision of case management and treatment services so as to effect a continuum of care for the target population; initiated with detoxification, followed by intensive outpatient, day treatment, or supportive outpatient as is individually appropriate, provision of relapse prevention services and for a small proportion, readmission following relapse to pharmacologic maintenance;

(5) Expansion of outpatient and pharmacologic maintenance services as necessary to implement a continuum of care;

(6) Although funds for prevention are not available under this announcement, recipients must agree to coordinate, as relevant, with the Office for Substance Abuse Prevention's (OSAP) high risk youth activities, including Community Partnership grantees, high risk youth grantees, the Urban Youth Campaign, Teen Drinking Prevention program, as well as other relevant prevention and media efforts to help grassroort activities that are directed toward prevention of further increases in heroin or other drug use among younger age groups;

(7) Participation the OTI Electronic Bulletin Board and OASAP RADAR NETWORK in order to provide and receive sentinel information or heroin use and prevention.

Case management through a continuum of care is an important element of this program. Applicants must demonstrate the capability to recruit the target population into detoxification services or maintenance services as is clinically appropriate and successfully refer them to an appropriate level of outpatient care and ultimately to relapse prevention services.

The highest priority target population for the services to be funded under these special cooperative agreements are heroin users who have recently begun use and have not been treated previously for narcoticism, and individuals who have relapsed after a period of one year or more of stable abstinence. Given the target population described above, the services that are expected to be emphasized are: (1) Ambulatory detoxification (including pharmacological and nonpharmacological supports); (2) intensive outpatient and/or day treatment; (3) supportive outpatient treatment (including relapse prevention); and, for those cases where there is no response to these approaches, (4) capacity for methadone maintenance. However, these cooperative agreements are intended to provide flexibility to respond to local needs as documented through needs assessment, epidemiology, and analyses of existing treatment capacity and utilization for narcotic addiction treatment.

**AVAILABILITY OF FUNDS:** In FY 1992 approximately $4.5 million is available to support this initiative. It is anticipated that awards will be made in September 1992 for a single budget period of approximately 12 months.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan L. Becker, OTI/ADAMHA, Rockwall II, 10th floor, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3820.

The Catalog of Federal Domestic Assistance number for this initiative is 93.950.

**Joseph R. Leone,**

*Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 92-16987 Filed 7-17-92; 8:45 am]

BILLING CODE 4160-20-M

### Centers for Disease Control

**[Program Announcement 288]**

### Cooperative Agreements To Conduct Surveillance of Blood Contact and Other Adverse Events During Phlebotomies and Intravenous Catheter Insertions

**Introduction**

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of funds in fiscal year (FY) 1992 for cooperative agreements to conduct surveillance of blood contact and other adverse events (i.e., skin and mucous membrane contact, and needlesticks) during phlebotomies and intravenous (IV) catheter insertions in hospital settings.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

**Authority**

This program is authorized by sections 301(a), 311, and 317(k)(3) of the Public Health Service Act, (42 U.S.C. 241(a), 243, and 247b(k)(3)) as amended. Applicable program regulations are found in 42 CFR 52, Grants for Research Projects.

**Eligible Applicants**

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide agents or instrumentalities, and small, minority and/or women-owned businesses are eligible for these cooperative agreements.

**Availability of Funds**

Approximately $300,000 will be available in FY 1992 to provide funding for 2-3 cooperative agreements. Awards are expected to range from $100,000 to $200,000. Funding estimates may vary and are subject to change. Funding is available for a 12 month budget period within a 1 year project period. No specific matching funds are required.

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**Purpose**

The purpose of this cooperative agreement is to assist the recipient in conducting surveillance of blood contact and other adverse events during phlebotomies and peripheral IV catheter insertions in hospital settings. The overall benefit of this cooperative agreement is for the recipient to assess the health and safety of its workers who perform phlebotomies and peripheral IV catheter placements and to develop prevention programs. The specific objectives of the cooperative agreement are to:

1. Describe the nature, frequency, and circumstances of health-care worker exposure to patient blood related to phlebotomies and peripheral IV placements and to identify risk factors for such exposure;

2. Evaluate the efficacy of engineering controls (including the design of the medical device used), work practices, and personal protective equipment in preventing needlestick injuries during these procedures;

3. Describe the health-care workers' satisfaction with the design of the device being used; and

4. Generate data for the development of additional recommendations regarding engineering controls, work practices, and protective equipment appropriate to protect health-care workers during phlebotomy and peripheral IV placement.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC should be responsible for conducting activities under B., below:

*A. Recipient Activities*

1. Formulation of a plan that describes the development, implementation, and evaluation of a surveillance project which includes:

a. Description of the nature, frequency, circumstances, and risk factors for blood contact and other adverse events during phlebotomies and/or IV catheter insertions; and

b. Description of the design of the device(s) used, the use of gloves or other infection control precautions, and the health-care worker's knowledge of the patient's HIV status during these procedures.

2. Establishment of a specific and realistic plan of operation and a timetable for all activities including delineation of surveillance methodology, implementation, and data analysis and dissemination.

3. Development of a plan for surveillance of a sufficient number of events to draw meaningful conclusions regarding incidence and risk factors for blood contact (e.g., design of devices used, use of infection control precautions, knowledge of patient's HIV status). Possible approaches might include 1) surveillance conducted simultaneously on different wards where different devices or other infection control measures are used; and 2) surveillance conducted sequentially during time periods when different devices or infection control measures are used.

4. Utilization of this information to reduce hospital rates of blood contact and needlestick injuries and development of prevention programs for the institution.

5. Participation in the development and maintenance of a data management system for the study. Share data with CDC on a timely basis.

6. Identification and selection of appropriate staff for the program.

*B. CDC Activities*

1. Provision of technical assistance in the conduct of the study, including development of study design and data collection instrument, to the recipient, as needed.

2. Provision of assistance in the development of data management systems.

3. Coordination of data analysis, dissemination, and presentation of aggregated data from all recipients.

4. Provision of assistance in utilizing knowledge acquired from this surveillance for future prospective studies of blood contact and other adverse events during routine medical procedures.

5. Provision of aggregated data collected from this project for the development of recipient's institutional guidelines for engineering control, work practices, and personal protective equipment appropriate to protect health-care workers during routine medical proceudres.

**Evaluation Criteria**

The initial application will be reviewed and evaluated based upon the following criteria:

1. The applicant's understanding of the purpose and objectives of the cooperative agreement and willingness to cooperate with CDC in the design, implementation and analysis of the project. (15 Points)

2. The extent to which the applicant demonstrates knowledge and understanding of the background and need for such surveillance, and for utilizing surveillance data to evaluate infection control measures (e.g., engineering controls). (10 Points)

3. The quality and feasibility of the proposed program activities for achieving the objectives, including the applicant's ability to conduct surveillance of a sufficient number of events to draw meaningful conclusions in a reasonable time period. (20 Points)

4. The quality of the plans to coordinate and conduct the project, including a description of techniques for data collection, data management, and data analysis. (20 Points)

5. How the study will be administered, including the size, qualifications, duties and responsibilities, and time allocation of the proposed staff; the availability of the facilities to be used during the investigation; and a schedule for accomplishing the program activities, including time frames. (20 Points)

6. A statement of the applicant's demonstrated capabilities and experience in conducting such a project. (15 Points)

7. The extent to which the budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds. (Not scored)

**Funding Priorities**

Priority will be given to applicants who are presently conducting surveillance of the nature, frequency, and circumstances of blood contacts and other adverse events such as needlestick injuries during phlebotomies and peripheral IV catheter insertions. Also, priority will be given to applicants who have initiated or have plans to initiate the use of safer device technology for the prevention of blood contact and needlestick injuries during the performance of phlebotomies and IV catheter insertions. Applicants may elect to conduct surveillance of blood contact during one or both of these types of procedures.

**Executive Order 12372 Review**

Applicants are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving

more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, no later than 30 days after the application deadline date. (A waiver for the 60 day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance number is 93.118.

**Other Requirements**

*HIV/AIDS Requirements*

Recipients must comply with the document titled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions," (June 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel, such as the one created by the state health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a governmental health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

**Application Submission and Deadline**

The original and two copies of the application PHS Form 5161-1 must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, on or before August 21, 1992.

1. *Deadline:* Applications will be considered to meet the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.

2. *Late Applications:* Applications which do not meet the criteria in either 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where To Obtain Additional Information**

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Mailstop E-14, Atlanta, Georgia 30305, telephone (404) 842-6508.

Programmatic technical assistance may be obtained from Ruthanne Marcus, M.P.H., or Marsha A. Jones, HIV Infections Branch, Hospital Infections Program, National Center for Infectious Diseases, Centers for Disease Control, Mailstop A-07, Atlanta, Georgia 30333, telephone (404) 639-1547.

Please refer to Announcement Number 288 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1), referenced in the Introduction, through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Dated: July 14, 1992.

**Ledene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control.*

[FR Doc. 92-16978 Filed 7-17-92; 8:45 am]

BILLING CODE 4160-18-M

**[Announcement Number 253]**

**Availability of Funds for Fiscal Year 1992; Enhancement of Capacity To Assess Progress Toward Healthy People 2000 Objectives**

**Introduction**

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for cooperative agreements to enhance state and local capacity to assess progress toward Healthy People 2000 Objectives for the Nation and to use assessment information for policy making and program management.

The areas of interest covered by this announcement include the capacity to assess and maintain surveillance for morbidity, mortality, risk factors, risk behaviors, environmental exposures, illness and medical outcomes, and access and utilization of preventive and health care services in defined populations. This health assessment at a minimum should be defined in terms of the Health Status Indicators and selected Year 2000 Health Objectives. Data assessment may also include other important issues in a population that could not be addressed by the Year 2000 Objectives because of data gaps.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. The activities in this announcement are directly related to two objectives in Healthy People 2000, Priority Area 22, "Surveillance and Data Systems." Objective 22.5 emphasizes the need for measurement of progress: "Implement in all States periodic analysis and publication of data needed to measure progress toward objectives for at least 10 of the priority areas of the national health objectives." Objective 22.5a emphasizes "Periodic analysis and publication of State progress toward the national objectives for each racial or ethnic group that makes up at least 10 percent of the State population." Objective 22.6 is geared toward systems for the transfer of health information related to the national health objectives among Federal, state, and local agencies. (For ordering a copy of Healthy People 2000, see the section **Where to Obtain Additional Information.**)

**Authority**

This program is authorized under the Public Health Service Act, Sections

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301(a), 311(b) and 317 [42 U.S.C. 241(a), 243(b) and 247b], as amended.

**Eligible Applicants**

Eligible applicants are the official public health agencies of states or their bona fide agents or instrumentalities and regional consortia of such agencies. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

**Availability of Funds**

Approximately $1,000,000 is available in FY 1992 to fund approximately 6 awards. It is expected that the average award will be $165,000 ranging from $140,000 to $190,000. It is expected that the awards will begin on or about September 30, 1992, and are usually made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of an acceptable application, satisfactory performance and the availability of funds.

In addition, recipients will receive training and technical assistance in mutually agreed areas. At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance to assist in the project implementation and/or will enroll an employee of the recipient agency in the CDC Intern Training Program.

**Purpose**

The purpose of this project is to increase the assessment capacity of state and local health agencies and to develop new surveillance models to measure currently under-assessed conditions or populations. Funds will be awarded for the purpose of developing integrated assessment activities within State health agencies for use in policy development and program management, including (1) identifying, evaluating, and integrating disparate data systems into a state-wide assessment model; (2) conducting comparable analyses of available health data, especially data related to the Health Status Indicators; (3) using health information from data systems to develop community-based plans included in assessment tools such as Assessment Protocol for Excellence in Public Health (APEX/PH), Planned Approach to Community Health (PATCH), Health Communities 2000: Model Standards, and Healthy People 2000; (4) developing a partnership with local health agencies within the state or consortium area and providing these agencies with technical assistance and analytic support; (5) developing a plan to address data gaps and other information needs: (6) working with CDC to enhance national surveillance systems and develop mechanisms for electronic data exchange; (7) implementing mechanisms to ensure that assessment is an integral part of public health in the state or consortium area; and (8) developing model surveillance and health information systems which could be transferred to other states.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

*A. Recipient Activities*

(If the recipient is a consortium, the term "state health agency" or "agency" shall mean the state health agencies within the consortium area.)

During the first year of the project, the recipient shall hire needed staff and work with CDC to undertake the following activities:

1. Designate an individual to coordinate and facilitate the activities listed below.

2. Develop a detailed evaluation of the assessment capacity of the state health agency and propose activities to meet identified weaknesses. The evaluation shall include a description of each major health statistics and surveillance system (including laboratory surveillance and diagnostic data) indicating its location, items, definitions, owner, and barriers to its use in an integrated assessment model. Topics to be addressed by the evaluation should include:

a. Definitional differences across data systems;

b. Organizational and technical issues that impede integration;

c. An evaluation of the agency's surveillance systems, using the approach described in the **GUIDELINES FOR EVALUATING SURVEILLANCE SYSTEMS;**

d. Major gaps in data needed for assessing progress toward the Year 2000 Objectives in those priority areas under the state health agency's span of control; (other major health information not necessarily under the agency's control, e.g., hospital discharge data, mental health data, should be discussed in terms of collaborative possibilities);

e. Agency's capacity to analyze and disseminate health data and surveillance information;

f. Extent to which health statistics and surveillance information are utilized by the agency's programs for priority setting and policy decisions;

g. Agency's involvement with local health agencies in the develolpment of data and analytic tools to meet local assessment needs; and

h. Training needs required to assist the agency in developing its assessment capacity.

3. Identify and place a state employee in CDC's Epidemiology Program Office (EPO) Surveillance Computing Internship Program. Eligible participants in the Internship Program include full time current employees of the state health department who have a background in public health surveillance and some computer experience.

The state will receive funding to supplement a portion of the state employee's salary for a period of 3 to 6 months while they are an intern. The intern will receive training in the operation and maintenance of electronic surveillance systems. The intern will travel to CDC for training, have the opportunity to network with similar staff in other states, and develop software to support surveillance activities in the state.

4. Collect and analyze data on the Health Status Indicators by appropriate sub-state groupings, e.g., geographical, ethnic. Develop a proposal for modifications to existing data systems to address the priority data needs identified by Committee 22.1.

5. Transmit health status indicator and other data to CDC via the Wide-ranging Online Data for Epidemiologic Reserach (WONDER) system in conjunction with other surveillance and health information systems. Use WONDER to retrieve data for assessment activities.

6. Implement a pilot program in a defined population for data collection and surveillance development of underassessed but high burden health conditions or populations.

In subsequent years the recipient shall implement activities to address assessment weakenesses (see number 2, above) and shall collaborate with other funded agencies and with CDC to develop methods for generalization of information learned through this project.

*B. Centers for Disease Control Activities*

1. CDC, through its offices and programs, will provide training in the following areas:

a. Analytic and methdologic issues; data quality;

b. Surveillance;

c. APEX; the uses of assessment data for policy development;

d. Development of new data systems for chronic disease surveillance;

e. Integration of laboratory data with other systems;

f. Electronic transfer of data; and

g. Appropriate use of data in the establishment of Year 2000 Health Objectives for state and local agencies, establishment of priorities, and development of policy and community health plans.

2. If the state elects to receive a CDC assignee, CDC will provide an assignee to work with the recipient in the evaluation of its assessment capacity and in developing strategies to strengthen those capacities. The assignee will be an epidemiologist whose training and experience are commensurate with the recipient's needs. Assignees will be detailed to the recipient for the duration of the project, or for as long as CDC and the recipient agree that the assignee is needed for the recipient to meet the project goals.

3. CDC will provide training to a recipient state employee through the EPO Computer Internship Program.

**Evaluation Criteria**

The initial application for the proposal for the enhancement of capacity of assess progress toward Healthy People 2000 Objectives will be reviewed on the evaluation criteria listed below:

A. Quality of goals and objectives and practicality of methods for comprehensive surveillance and assessment in providing information for decision makers. (25 points)

B. Evidence of ability to work with surveillance and other population-based data collection methodologies. Ability to coordinate comprehensive state surveillance and statistical systems which may span state organizational units or include non-state information sources. (25 points)

C. Evidence of an ongoing commitment to the use of data generated from assessment activities in policy development activities and the integration of information and surveillance systems with program management. (15 points)

D. Evidence of local health department involvement in the decision-making processes related to the project. (15 points)

E. Support for community processes through assistance in developing information for community use with assessment systems such as APEX or Model Standards. Provision of analytic support and/or technical assistance to local health departments, as needed. (10 points)

F. Evidence of a plan to make the program self-sufficient so that it becomes an integral part of the state and local program decision process. (10 points)

G. The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds. (Not weighted)

**Executive Order 12372 Review**

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance number is 93.283.

**Other Requirements**

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**Application Submission and Deadline**

The original and two copies of the application PHS Form-5161-1 must be submitted to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, on or before August 7, 1992.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where To Obtain Additional Information**

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Eddie L. Wilder, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842-6805. Programmatic technical assistance may be obtained from Susan Hawk, Program Analyst, room 630, National Center for Health Statistics, 6525 Belcrest Road, Hyattsville, Maryland 20782, (301) 436-3548.

Please refer to Program Announcement Number 253 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the **Introduction** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Dated: July 14, 1992.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control.*

[FR Doc. 92-16976 Filed 7-17-92; 8:45 am]

BILLING CODE 4160-18-M

[Program Announcement Number 258]

## Cooperative Agreement To Develop and Implement a Program That Will Contribute to the Primary Prevention of the Recurrence of Neural Tube Defects Through the Appropriate Use of Folic Acid Supplements; Availability of Funds for Fiscal Year 1992

### Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of cooperative agreement funds in fiscal year (FY) 1992 to develop and implement a program that will contribute to the primary prevention of the recurrence of spina bifida and anencephaly (neural tube defects, NTD) through the appropriate use of folic acid supplements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health and Maternal and Infant Health. (For ordering a copy of Healthy People 2000, see the section Where To Obtain Additional Information.)

### Authority

This program is authorized under Sections 301 [42 U.S.C. 241] and 311 [42 U.S.C. 243] of the Public Health Service Act, as amended.

### Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, and state and local health departments or their bona fide agents or instrumentalities, and small, minority and/or women-owned businesses are eligible for these cooperative agreements. Applicant institutions must work with discrete geographical areas such as counties, cities, or states with a minimum of 25,000 resident births per year; preference will be given to institutions working with 50,000 or more births per year.

### Availability of Funds

Approximately $500,000 will be available in FY 1992 to fund two cooperative agreements. It is expected that each award will be $250,000. It is expected that the awards will begin on or about September 30, 1992, and are usually made for a 12-month budget period within a project period of up to 5 years. The funding estimate may vary and is subject to change.

Continuation awards will be based on satisfactory progress, need to continue the program, and the availability of funds.

### Purpose

The purpose of this cooperative agreement is to enable an institution to develop and implement a program that will contribute to the primary prevention of the "recurrence" of spina bifida and anencephaly (neural tube defects, NTD) through the appropriate use of folic acid supplements. The program will have 4 parts:

1. A surveillance program to ascertain women who have an NTD-affected pregnancy who will be candidates for the use of folic acid supplements for subsequent pregnancies. The surveillance programs should be highly sensitive, capable of ascertaining at least 90% of NTD-affected pregnancies among women residents in a geographically defined population. In most areas of the U.S., this will require a surveillance system that encompasses diagnoses made by community health-care providers at 3 different stages: prenatally, at live birth, and stillbirth.

2. A program of information dissemination to make at-risk women detected by the surveillance system aware of (a) their increased risk of having a subsequent NTD-affected pregnancy, and (b) the preventive possibilities presented by the use of folic acid supplements.

3. A system to ascertain the outcomes of subsequent pregnancies of women who have been the targets of the information dissemination program (#2 above). This system will provide quantitative estimates of overall prevention effectiveness of the program.

4. A research project designed to learn more about the causes of NTD. It is expected that folic acid supplement use will prevent some, but not all, "recurrent" NTD. This project will thus focus on trying to discover why some cases are prevented while others are not. This will involve leaning more about the mechanism of NTD prevention by folic acid. In addition, the project will involve a search of non-nutritional causes of NTD.

### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below, and CDC will be responsible for conducting activities under B. below:

*A. Recipient Activities*

1. Design, a surveillance system to detect all women who have NTD-affected pregnancies in a defined population (e.g., state, county, city). Recipient to begin surveillance within 6 months of receipt of cooperative agreement.

2. Develop a plan to make such women (#1, above), aware of (1) their high risk repeating the NTD outcome in subsequent pregnancies, and (2) the potential for prevention by use of 4 mg folic acid per day at least one month prior to conception and through the first trimester of pregnancy. This information must be transmitted to the appropriate women within 3 months of the completion of their NTD-affected pregnancy. Recipient is to begin this activity as soon as eligible women are ascertained by surveillance system. (#1, above).

3. Develop a tracking system to ascertain subsequent pregnancy outcomes in all women who are given information about recurrence risks and folic acid prevention; the system must also have the capability to assess the degree to which women actually followed the recommendation. Recipient to begin activity as soon as eligible women are ascertained by surveillance system.

4. Develop a plan to enroll women ascertained by surveillance system in a case-control study designed to learn more about the causes of NTD. Participation in the study will involve interviews and collection of biological samples; similar information and specimens will also be obtained from controls. Since most women will be enrolled in the study because they have an NTD-affected pregnancy for the first time ("occurrent" pregnancy), the study will provide a mechanism to evaluate the role of vitamins in the occurrence of NTD. The recipient is to begin enrollment as soon as eligible women are ascertained by surveillance system.

5. Participate in a central data bank provided by the CDC, for the accumulation of information related to surveillance, folic acid prevention program effectiveness, and the study of causes of NTD.

*B. CDC Activities*

1. Work with recipients to design surveillance system, information dissemination plan, and follow-up system.

2. Work with recipients to develop an interview instrument for use in the study of causes and arrange for laboratory analysis of biological specimens.

3. Provide a central data bank for cooperative agreement recipients for the accumulation of information related to surveillance, folic acid prevention program effectiveness, and the study of causes of NTD.

**Evaluation Criteria**

Applications will be reviewed and evaluated according to the following criteria:

*A. Applicant's Understanding of the Problem (10%)*

The extent to which the applicant has a clear, concise understanding of the requirements, objectives, and purpose of the cooperative agreement. The extent to which the application reflects an understanding of the complexities of the surveillance program; the information dissemination program; the system needed to ascertain the outcomes of subsequent pregnancies; and the research project needed to carry out this proposal.

*B. Organizational Experience (30%)*

The extent to which the applicant has the skills and experience to implement the principal parts of this project; (1) a surveillance program; (2) programs to disseminate information; (3) other systems used to ascertain outcomes; and (4) research projects stemming from surveillance programs.

*C. Approach and Capability (40%)*

The extent to which the applicant has included a description of their approach to a surveillance program, a program of information dissemination, a system to ascertain the outcomes of subsequent pregnancies, and a concept of a research project designed to learn more about the causes of NTD. The applicant shall describe and indicate the availability of facilities and equipment necessary to carry out this project. Preference will be given to applicants serving populations with 50,000 or more births per year and also to applicants serving populations with high NTD occurrence rates.

*D. Program Personnel (20%)*

The applicant shall identify all current and potential personnel who will be utilized to work on this cooperative agreement, including qualifications and specific experience as it relates to the requirements set forth in this request. The extent to which the applicant describes a capability to assemble a competent and trained staff to conduct the requirements set forth in this request.

*E. Budget Justification and Adequacy of Facilities (not scored)*

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

**Executive Order 12372**

Applications are not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Other Requirements**

*Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

*Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**Catalog of Federal Domestic Assistance Number (CFDA)**

The Catalog of Federal Domestic Assistance number is 93.283.

**Application Submission and Deadline**

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, on or before August 24, 1992.

*1. Deadline*

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date; or

B. Sent on or before the deadline data and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

*2. Late Applications*

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications and will be returned to the applicant.

**Where To Obtain Additional Information**

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, (404) 842–6630. Programmatic technical assistance may be obtained from J. David Erickson, D.D.S., Ph.D., Chief, Birth Defects and Genetic Diseases Branch, Division of Birth Defects and Developmental Disabilities, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mail Stop F–45, Atlanta, Georgia 30333, Telephone: (404) 488–4957.

Please refer to Announcement Number 258 when requesting information or submitting the application.

Potential applicants may be obtained of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone (202) 783–3238).

Dated: July 14, 1992.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control.*

[FR Doc. 92–16977 Filed 7–17–92; 8:45 am]

BILLING CODE 4160–18–M

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## Food and Drug Administration

**Consumer Participation; Notice of Open Meeting**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Minneapolis District Office,

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chaired by John Feldman, District Director. The topic to be discussed is regulation of new plant foods developed through biotechnology.

**DATES:** Thursday, August 6, 1992, 10 a.m. to 12 m.

**ADDRESSES:** University of Wisconsin Extension Office, 57 Fairground Dr., Madison, WI 53713.

**FOR FURTHER INFORMATION CONTACT:** Steve Davis, Public Affairs Specialist, Food and Drug Administration, U.S. Courthouse, 517 East Wisconsin Ave., rm. SB-06, Milwaukee, WI 53202, 414-297-3097.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 13, 1992.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 92-16932 Filed 7-17-92; 8:45 a.m.]

BILLING CODE 4160-01-F

## National Institutes of Health

### Division of Research Grants; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be open to the public to discuss administrative details relating to Special Emphasis Panel business for approximately one half hour at the beginning of the meeting. Attendance by the public will be limited to space available. The meeting will be closed thereafter in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications in the areas of the behavioral and neurosciences. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7534, will furnish a summary of the meeting and a roster of panel members. Substantive program information may be obtained from the Scientific Review Administrator whose telephone number is provided. Since it is necessary to announce meetings well in advance of the actual meeting, it is suggested that anyone planning to attend the meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

Meeting to Review an Individual Grant Application in the Areas of the Behavioral and Neurosciences:

Scientific Review Administrator: Dr. Joseph Kimm (301) 496-7494.

Date of Meeting: July 20, 1992.

Place of Meeting: Embassy Suites Hotel, Washington, DC.

Time of Meeting: 2 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 10, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92-17176 Filed 7-17-92; 8:45 am]

BILLING CODE 4140-01-M

## Office of Assistant Secretary for Health

### President's Council on Physical Fitness and Sports; Memorandum of Agreement Between the President's Council on Physical Fitness and Sports (PCPFS) and the American Alliance for Health, Physical Education, Recreation and Dance (AAHPERD)

**AGENCY:** Office of the Assistant Secretary for Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The President's Council on Physical Fitness and Sports (PCPFS) and the American Alliance for Health, Physical Education, Recreation and Dance (AAHPERD) have determined that it is in the best interest of the nation to have a uniform fitness assessment and education program. Public comment on the appropriateness of this proposal is invited.

**FOR FURTHER INFORMATION CONTACT:** Christine G. Spain, Director, Research, Planning & Special Projects, PCPFS, 701 Pennsylvania Avenue, NW., suite 250, Washington, DC 20004, 202-272-3424.

**SUPPLEMENTARY INFORMATION:** The PCPFS consists of twenty private citizens, appointed by the President of the United States, who advise the President and the Secretary of the Department of Health and Human Services on ways and means to carry out the 10-point program outlined in Executive Order 12345, as amended. A full-time professional staff carries out PCPFS programs and conducts day-to-day business. The AAHPERD is a nonprofit membership organization representing professional educators. Both PCPFS and AAHPERD are two principal organizations in the nation concerned with physical fitness testing and improving the physical fitness level of the Nation's youth. PCPFS presently administers the "President's Challenge Physical Fitness Program," and AAHPERD presently administers the "Physical Best" program. It is believed to be in the best interest of the nation to have one uniform physical fitness assessment test, supported by an education program. In that regard, the PCPFS is encouraging comments on the following memorandum of agreement with AAHPERD for the development and operation of a single fitness test and education program which will be known as the "President's Youth Fitness Program."

#### PCPFS Mission

Begun in 1956 by President Eisenhower, the PCPFS operates under Executive Order No. 12345, as amended. The PCPFS is mandated to recommend programs to the President of the United States and the Secretary of the Department of Health and Human Services to encourage nationwide participation in physical fitness and sports activities.

PCPFS programs help focus public awareness on the importance of staying physically active by encouraging schools, business and industry, government, recreation agencies, sports and youth-serving organizations to step up their emphasis on developing and maintaining sound physical fitness and sports programs.

As the lead agency responsible for monitoring the nation's progress toward achieving the "Physical Activity and Fitness Objectives" of Healthy People 2000, the PCPFS emphasizes diverse programs which highlight health and physical fitness for all Americans. Since good habits are best set early in life, and virtually every youngster has the opportunity to attend school, there is a need for a sound physical fitness assessment and education program in the nation's school systems.

#### AAHPERD Mission

Since its founding in 1885, AAHPERD has been a major force in the research, development and promotion of quality educational programs to help improve the total health and fitness of all Americans. Today, AAHPERD's

national, regional and state networks represent 60,000 professionals in the fields of physical education, fitness, sport, health education, recreation, leisure and dance. These professionals work on a daily basis with the nation's youth in schools and communities throughout the land.

Following its establishment of the first national youth fitness norms in 1958, AAHPERD began promoting health-related fitness assessment and education in 1980. In 1987, as a leading national organization in physical education and physical fitness for the nation's children and youth, AAHPERD introduced the "Physical Best" program which has as its main objective the motivation of all children and youth to engage in physical activity in a manner which promotes health and physical well-being. The program's thrust is aimed at assessing current fitness levels and in helping students gain the knowledge, skills, and understanding necessary to assume responsibility for their fitness, now and throughout their lives.

Over 40 states currently endorse the "Physical Best" program for physical fitness assessment and education in school systems, and of this number, nine mandate utilization of the program. Individuals included in AAHPERD's national network and those working in the nation's schools have expressed great interest in the development and availability of the President's Youth Fitness Program (PYFP).

**Memorandum of Agreement**

The following Memorandum of Agreement, cited herein in its entirety, states that both parties agree to begin discussions. It was signed on May 4, 1992. Public comment is invited on the intention of both PCPFS and AAHPERD to unify the two physical fitness testing programs into one national assessment and education program to be entitled "The President's Youth Fitness Program."

Memorandum of Agreement Between the President's Council on Physical Fitness and Sports and the American Alliance for Health, Physical Education, Recreation and Dance Regarding the Administration of the "President's Youth Fitness Program"

*Whereas:* The President's Council on Physical Fitness and Sports (PCPFS) and the American Alliance for Health, Physical Education, Recreation and Dance (AAHPERD) are two of the principal organizations in the Nation concerned with physical fitness and fitness testing; and

*Whereas:* PCPFS presently administers the "President's Challenge" fitness assessment test and AAHPERD presently administers the "Physical Best" fitness assessment test and each recognizes the value of the respective tests; and

*Whereas:* It is in the best interest of the Nation to have a uniform fitness assessment and education program and the parties are desirous of developing and maintaining a close working relationship in the field of fitness education and assessment;

*Now Therefore* it is agreed between PCPFS and AAHPERD as follows:

*I. Program Administration*

Upon signing the Agreement, the two parties agree to begin working out the financial, administrative and other details of an arrangement for the operation of a fitness assessment and education program which will be designated the President's Youth Fitness Program. This Agreement is not intended to impose any binding financial commitments on either party nor is it intended to prejudice in any way competition or coordination among organizations which may be utilized in implementing any agreed upon program. Among the matters preliminarily agreed upon are the following:

A. AAPHERD and PCPFS contemplate a jointly administered Program in which the day-to-day operations will be the responsibility of AAHPERD or a similar public or private nonprofit organization experienced in the area of fitness and health.

B. Such an operating organization will maintain separate accounting and auditing records and procedures for this Program which will be available for inspection and copying by PCPFS at all times upon reasonable notice.

C. The Program will be developed in a way to make it financially self-sustaining and not require any cash outlays by PCPFS. As the day-to-day operator of the Program, the operating organization will be entitled to set off against proceeds, any reasonable expenses (including developmental expenses) it incurs in the initiation and maintenance of this program. The nature and amounts of any such expenses must be agreed upon by the parties.

*II. Development of Program*

Upon the signing of this agreement, two groups will be created:

A. The Executive Council

There will be created an Executive Council consisting of seven members, three of whom will be selected by each party with the seventh member being the Assistant Secretary for Health or his designee. The manner of selection and terms of the six members will be determined by the respective parties. The principal purpose of the Council will be to begin the discussions necessary to develop and successfully set in motion the President's Youth Fitness Program. After the development of those activities, it is expected that an Executive Council or a similar body will continue in existence as the administrative and policy setting entity for the operation of the Program.

B. The Research Advisory Committee

There will be created an eight-member Research Advisory Committee (RAC), the selection and terms of which will be determined by the Executive Council. The purpose of the RAC will be to discuss all aspects of the PCPFS/AAHPERD fitness education and assessment program and to make recommendations to the Executive Council. The Chairperson of the RAC will be designated a Special Advisor (unpaid) to the PCPFS. The RAC will be formed as soon as possible in order to review all aspects of fitness assessment and education that may be relevant to the President's Youth Fitness Program.

C. Federal Register Notice

To maximize input for other parties with an interest in this effort, a notice of this agreement will be published in the **Federal Register** with an opportunity to comment. The comments received will be taken into consideration in establishing the Program.

*III. Program Composition*

It is the current intention of the parties that the Program will be developed in accordance with the following guidelines, criteria, and elements:

A. Assessments will be based upon all test items used in the Physical Best Program.

B. All assessments and evaluations shall be based on criterion-referenced standards which shall be reviewed by the Research Advisory Committee. [Normative data will be included without compromising criterion-referenced health related fitness testing and assessment.]

C. To measure body composition, the two principal options under consideration are: (1) The sum of skinfolds (triceps and calf), and (2) the body mass index.

D. The three awards comprising the President's Youth Fitness Program will be the Presidential Physical Fitness Award, the National Physical Fitness Award, and the Participation Award. In

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addition, the parties will consider the incorporation of a Surgeon General's Award to replace the Participation Award for all those who participate in the testing program.

E. The award system will be centered on behavioral criteria rather than on performance, in accordance with the following:

(1) Participation Award

A participation award will be based on the students completing a series of fitness activities over a designated period of time. Students achievements will be monitored by the Instructor.

Note: The Surgeon General's Award may eventually replace the Participation Award. The Surgeon General of the Public Health Service is identified with concern for each individual's health. To emphasize the importance of regular physical activity to health, a Surgeon General's Award could be given to students completing the agreed-upon test activities over a designated period of time. Student achievements will be monitored by the Instructor.

(2) National Physical Fitness Award

Upon completion of the Presidential Youth Fitness Test, students who set and accomplish improvement goals are eligible for the National Physical Fitness Award. This program will be monitored by the students' Instructor.

(3) Presidential Physical Fitness Award

To meet the requirements for this award, students must successfully meet the criterion-referenced standards on four of the five test items (all five test items must be taken).

(4) Continuous Fitness Award

Consideration should be given to establishing a long-term, "multi-year" award to reward the maintenance of continuous and positive fitness over a designated period of time.

*IV. Current Activities and Commitments*

Both parties recognize that the other is currently conducting fitness and assessment programs of its own. Nothing in this agreement is intended to obstruct or interfere with those programs or related contractual relationships currently outstanding. Nevertheless, in light of the expressed desire of the two parties to work together closely in the future each party will reduce, to the extent that it is reasonably able, its current inventories of equipment, stickers, seals and related materials to the point where a future consolidation of their respective programs will become feasible.

*V. Conclusion*

Although this Agreement does not commit either party to any financial obligations, it is intended to express the strong commitment of both parties to coordinate their activities so as to work in partnership to further the fitness and general health of the Nation.

**Call for Research Advisory Committee Members**

The proposed "President's Youth Fitness Program" is seeking volunteers with expertise in physical fitness to serve as members of an eight-member Research Advisory Committee that will study and recommend possible research and evaluation on current fitness assessment and education programs, with the goal of continued improvement of all aspects of the President's Youth Fitness Program. Expertise is needed in exercise physiology, exercise psychology, body composition, measurement, muscular strength/endurance, cardiovascular physiology, and fitness education, as well as other related areas.

Please send a letter of interest and curriculum vita by September 18, 1992 to: RAC Selection, PCPFS, 701 Pennsylvania Avenue, NW., suite 250, Washington, DC 20004

Dated: July 10, 1992.

**James O. Mason,**

*Assistant Secretary for Health.*

[FR Doc. 92-17030 Filed 7-17-92; 8:45 am]

BILLING CODE 4160-17-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY-920-02-4143-11]**

### Coal Leases; WY

**AGENCY:** Bureau of Land Management, Interior, Wyoming.

**ACTION:** Notice of Invitation for Sodium Exploration License (WYW127208).

**SUMMARY:** Pursuant to section 302(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1732(b), and to the regulations at title 43, Code of Federal Regulations, subpart 3524, members of the public are hereby invited to participate with United States Borax & Chemical Corporation (U.S. Borax) on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Sweetwater County, Wyoming.

T. 17 N., R. 108 W., 6th P.M., Wyoming
Sec. 6: Lots 8 thru 14, S2NE, SENW, E2SW, SE;
Sec. 8: All;
Sec. 16: All;
Sec. 20: All;
Sec. 28: All;
Sec. 30: Lots 5 thru 8, E2W2, E2;
Sec. 34: All;
T. 17 N., R. 109 W., 6th P.M., Wyoming
Sec. 12: 1 thru 10, SW, W2SE;
Sec. 14: All;
Sec. 20: All;
Sec. 22: All;
Sec. 24: Lots 1 thru 16;
Sec. 26: All;
Sec. 28: All;
Containing 8305.88 acres.

All of the sodium in the above-described land consists of unleased Federal sodium within the Green River Basin Known Sodium Leasing Area. The purpose of the exploration program is to conduct off-lease exploration by drilling.

**ADDRESSES:** The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management (BLM). Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW127208): Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming; and, Bureau of Land Management, Rock Springs District Office, Highway 191 North, Rock Springs, Wyoming.

**SUPPLEMENTARY INFORMATION:** Any party electing to participate in this exploration program must send written notice to both the BLM and U.S. Borax by the close of business August 19, 1992. The written notice should be sent to the following addresses: United States Borax & Chemical Corporation, Western Regional Exploration Office, Attn: Robert J. Kellie, Sparks, NV 89413, Bureau of Land Management, Wyoming State Office, Chief, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, WY 82003.

**Lynn E. Rust,**

*Chief, Branch of Mining Law & Solid Minerals.*

[FR Doc. 92-16714 Filed 7-17-92; 8:45 am]

BILLING CODE 4310-22-M

**[OR-100-09-6310-02; GP2-325]**

### Meeting

**AGENCY:** Bureau of Land Management, DOI.

**ACTION:** Notice of Advisory Council meeting.

**SUMMARY:** The District Advisory Council for the Bureau of Land Management, Roseburg District will meet between



August 13 and September 14, 1992. The specific date and time for the meeting will be announced approximately 10 days in advance in the local news media; anyone interested in attending can also contact the District Public Affairs Specialist (at the number shown below) to obtain this information. On the agenda are a general update on District activities, election of officers, and an advance briefing on the preferred alternative for the Roseburg District Resource Management Plan, which will be distributed for public review shortly after the meeting.

**ADDRESS:** Bureau of Land Management, Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, OR 97470.

**FOR FURTHER INFORMATION CONTACT:** Mel Ingeroi, Public Affairs Specialist, (503) 440-4930.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public, and a public comment period will be provided. Written statements for the Council can be mailed to the District Manager prior to the meeting or presented to the Council during the meeting. Summary minutes will be available for public review within 30 days of the meeting.

Dated: July 14, 1992.

**Gordon L. Cheniae,**

*Associate District Manager.*

[FR Doc. 92-16982 Filed 7-17-92; 8:45 am]

BILLING CODE 4310-33-M

**[CA-020-4212-13; CACA 26721]**

### Issuance of Land Exchange Conveyance Document and Order Providing for Opening of Public Lands in Modoc County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this exchange was to acquire title to non-Federal lands that provide wetland-riparian habitat and critical deer winter range. The exchange will benefit the general public, the local agricultural economy, and provide improved management of Federal and non-Federal lands. The public interest was well served through completion of this exchange.

**FOR FURTHER INFORMATION CONTACT:** Viola Andrade, BLM California State Office, 916-978-4820.

1. The United States issued an exchange conveyance document to The Trust for Public Land on June 30, 1992, under section 206 of the Act of October 21, 1976, 43 U.S.C. 1716 (1988), for the following described lands:

**Mount Diablo Meridian**

T. 40 N., R. 7 E.,
Sec. 14, N½SW¼ and SE¼SW¼;
Sec. 15, E½NE¼ and NE¼SE¼;
Sec. 23, SW¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 26, N½NW¼.
T. 39 N., R. 9 E.,
Sec. 3, lot 2 and S½NE¼;
Sec. 4, W½SE¼.
T. 42 N., R. 9 E.
Sec. 10, NE¼NE¼, NW¼SE¼, and S½SE¼;
Sec. 12, SE¼NE¼ and NE¼SE¼;
Sec. 14, S½NW¼, and NW¼SW¼;
Sec. 15, NE¼ and N½SE¼;
Sec. 24, NE¼NW¼;
Sec. 35, NW¼NE¼.
T. 41 N., R. 11 E.,
Sec. 14, NE¼NW¼;
Sec. 23, SW¼NW¼.
T. 42 N., R. 12 E.,
Sec. 31, SE¼NE¼.

The areas described aggregate 1,480.78 acres of Federal lands in Modoc County.

2. In exchange for these lands, the United States acquired the following described lands from The Trust for Public Land:

**Mount Diablo Meridian**

T. 41 N., R. 14 E.,
Sec. 8, E½SW¼ and SE¼;
Sec. 9, S½SW¼;
Sec. 16, all;
Sec. 17, NE¼, NW¼, and W½SW¼;
Sec. 18, SE¼SE¼.

The areas described aggregate 1,400 acres of non-Federal land in Modoc County.

The values of the Federal land and the non-Federal land in the exchange were appraised at $245,384 and $260,000, respectively. The value difference between the Federal land and non-Federal land is being equalized in accordance with the terms and conditions of the Cooperative Agreement for Equalization of Land Values.

3. At 10 a.m. on August 19, 1992, the lands described in Paragraph 2 above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 19, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10 a.m. on August 19, 1992, the lands described in Paragraph 2 will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. Of the lands described in paragraph 2 above, the following land will be subject to the public safety closure notice published in the **Federal Register** on December 17, 1991 (56 FR 65506) until revoked or modified by the authorized officer:

**Mount Diablo Meridian**

T. 41 N., R. 14 E.,
Sec. 17, NE¼.

The area described contains 160 acres.

Dated: July 8, 1992.

**Ed Hastey,**

*State Director.*

[FR Doc. 92-16936 Filed 7-17-92; 8:45 am]

BILLING CODE 4310-40-M

**[FWS 93520-3210]**

### Realty Action; Segregation of Public Lands in Kootenai, Benewah, Shoshone, Latah, Clearwater, and Idaho Counties, ID

**SUMMARY:** This notice is the preliminary notification of a legislated land exchange known as the "Arkansas-Idaho Land Exchange Act of 1992." Another Notice of Realty Action will be issued prior to issuance of a patent, which will describe the exchange in detail. The following described public lands are part of the "Arkansas-Idaho Land Exchange Act of 1992," and are segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, or pursuant to special legislation:

**Boise Meridian, Idaho**

T. 39 N., R. 1 E.,
Sec. 8, NW¼SE¼.
T. 40 N., R. 1 E.,
Sec. 14, S½NE¼, N½SE¼, and SW¼SE¼, excepting therefrom the interest of approved Mineral Survey 2806;
Sec. 28, NE¼SW¼;
Sec. 29, NE¼SE¼;

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Sec. 33, NW¼NW¼.
T. 42 N., R. 1 E.,
Sec. 6, lots 4 and 6.
T. 46 N., R. 1 E.,
Sec. 2, lots 1 to 4;
Sec. 4, lots 1 and 2, SE¼NE¼, and SW¼SE¼;
Sec. 5, lot 2;
Sec. 7, lots 1, 2, and 3, NE¼, E½W½, and N½SE¼;
Sec. 8, lots 1 to 5, N½NW¼, SW¼NW¼, and NW¼SW¼.
Sec. 9, W½W½;
Sec. 10, E½NE¼;
Sec. 12, NW¼NE¼;
Sec. 24, SW¼SE¼.
T. 48 N., R. 1 E.,
Sec. 6, lots 11, 13, 14 and 15, SW¼SW¼, and NW¼SE¼;
Sec. 22, NE¼NE¼.
T 29 N., R. 2 E.,
Sec. 27, lot 4.
T. 42 N., R. 2 E.,
Sec. 1, E½SE¼.
T. 43 N., R. 2 E.,
Sec. 4, NE¼SE¼;
Sec. 10, NE¼NE¼;
Sec. 12, SW¼SW¼ and S½SE¼;
Sec. 13, N½N½ and SE¼NE¼;
Sec. 14, N½NE¼;
Sec. 15, SE¼SW¼ and SW¼SE¼.
T. 44 N., R. 2 E.,
Sec. 2, lots 2, 3, and 4, S½NW¼, and NW¼SW¼;
Sec. 3, lots 3 and 4;
Sec. 10, W½NE¼, E½NW¼, and NW¼SE¼;
Sec. 12, SE¼NE¼;
Sec. 20, SE¼NE¼;
Sec. 24, SE¼NE¼ and SE¼;
Sec. 25, N½NE¼ and SW¼NE¼;
Sec. 32, W½NE¼.
T. 45 N., R. 2 E.
Sec. 34, S½N½, N½S½ and SW¼SW¼.
T. 46 N., R. 2 E.,
Sec. 1, N½SW¼ and S½SE¼;
Sec. 2, lots 3 and 4, SW¼NE¼, and NE¼SE¼;
Sec. 12, E½NE¼;
Sec. 13, SE¼NE¼;
Sec. 20, S½SW¼;
Sec. 24, SE¼NE¼;
Sec. 25, E½E½ and S½SE¼;
Sec. 30, E½NE¼ and SW¼SE¼.
T. 47 N., R. 2 E.,
Sec. 25, W½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 26, SE¼SE¼;
Sec. 27, W½NE¼, NW¼, NE¼SW¼, and W½SE¼;
Sec. 31, lot 1;
Sec. 34, N½NE¼ and SE¼NE¼
Sec. 35, N½NE¼, NW¼, and NW¼SW¼.
T. 43 N., R. 3 E.,
Sec. 11, SE¼SW¼ and S½SE¼;
Sec. 12, SE¼SW¼;
Sec. 13, W½NW¼;
Sec. 14, NE¼, NE¼NW¼, N½SE¼, SW¼SE¼, and NW¼SE¼SE¼;
Sec. 15, W½NW¼, SE¼NW¼, N½SW¼, and SE¼SW¼;
Sec. 19, E½SE¼;
Sec. 20, All;
Sec. 21, W½NE¼, W½, W½SE¼, and SE¼SE¼;
Sec. 22, W½NE¼, SE¼NE¼, NE¼NW¼, NE¼SW¼, S½SW1/4, and SE¼;
Sec. 23, W½NW¼NE¼ and W½NW¼SW¼;
Sec. 27, W½NE¼ and W½;
Sec. 28, E½, NE¼NW¼, and S½SW¼;
Sec. 29, NW¼NE¼, S½SW¼, and S½SE¼;
Sec. 30, S½SE¼;
Sec. 31, E½, SE¼SW¼;
Sec. 32, W½NE¼, W½, and S½SE¼;
Sec. 33, N½N½, SW¼NE¼, S½SW¼ and W½SEW¼;
Sec. 34, NW¼NE¼, N½NW¼, and SE¼NW¼.
T. 44 N., R. 3 E.,
Sec. 3, lot 2, SW¼NE¼, and E½SW¼;
Sec. 4, S½NE¼ and NW¼SE¼;
Sec. 5, S½NW¼, NW¼SW¼, and SE¼SE¼;
Sec. 6, S½NE¼;
Sec. 8, SW¼NE¼ and NE¼SE¼;
Sec. 9, NE¼NE¼.
T. 45 N., R. 3 E.,
Sec. 2, lots 4 and 5, S½NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 3, lots 1, 2, 3, 4, 7, and 8, S½NE¼, SE¼NW¼, NE¼SW¼, SW¼SW¼, NW¼SE¼, and SE¼SE¼;
Sec. 4, lots 1 to 4;
Sec. 9, SW¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 11, W½NE¼ and N½NW¼;
Sec. 14, S½SW¼ and SW¼SE¼;
Sec. 22, N½NE¼ and SE¼SE¼;
Sec. 24, N½N½;
Sec. 26, NE¼ and E½SE¼;
Sec. 32, S½NE¼ and N½SE¼;
Sec. 34, NE¼SE¼.
T. 45 N., R. 4 E.,
Sec. 2, lots 1 to 4, W½SW¼, and E½SE¼;
Sec. 3, lots 1 to 8, S½N½ and S½;
Sec. 4, lots 1 to 8, and S½N½;
Sec. 5, lots 1 and 8, SE¼NE¼, NE¼SW¼, S½SW¼, and SE¼;
Sec. 7, lots 1 to 5, 9, 10, and 13, and E½W½;
Sec. 9, all;
Sec. 14, NE¼NE¼;
Sec. 17, SE¼NW¼ and S½;
Sec. 18, lots 13 and 14, W½NE¼, and NE¼NW¼;
Sec. 28, NW¼NE¼.
T. 32 N., R. 5 E.,
Sec. 13, SW¼NW¼;
Sec. 14, W½NE¼NE¼, SE¼NE¼NE¼, N½NW¼, and SW¼NW¼;
Sec. 15, N½NE¼ and SE¼NE¼;
Sec. 18, NE¼NE¼;
Sec. 23, SE¼SE¼;
Sec. 24, NW¼SW¼;
Sec. 26, NE¼NE¼;
Sec. 27, SE¼NE¼;
T. 34 N., R. 5 E.,
Sec. 32, SW¼NE¼.
T. 38 N., R. 1 W.,
Sec. 17, NW¼SE¼.
T. 39 N., R. 1 W.,
Sec. 2, SW¼NE¼;
Sec. 7, lot 7;
Sec. 26, SW¼SE¼;
Sec. 29, lot 4;
Sec. 30, lot 3;
Sec. 37, lots 1, 2, and 3.
T. 40 N., R. 1 W.,
Sec. 31, SE¼NW¼.
T. 44 N., 1 W.,
Sec. 34, lot 3.
T. 46 N., R. 1 W.,
Sec. 8, NE¼NW¼ and S½NW¼;
Sec. 12, N½ and N½SW¼.
T. 48 N., R. 1 W.,
Sec. 1, lots 9, 10, and 11, N½SW¼, SE¼SW¼, and SE¼;
Sec. 3, SE¼NE¼;
Sec. 8, S½NW¼;
Sec. 33, lot 4 and NW¼NW¼.
T. 44 N., R. 2 W.,
Sec. 12, N½NW¼.
T. 45 N., R. 2 W.,
Sec. 4, lot 3.
T. 46 N., R. 2 W.,
Sec. 14, lot 1.
T. 48 N., R. 4 W.,
Sec. 14, SE¼NW¼.
T. 49 N., R. 5 W.,
Sec. 15, S½NW¼, NE¼SW¼, and NW¼SE¼.

The areas described aggregate 19, 222 acres.

**FOR FURTHER INFORMATION CONTACT:** Geoffrey Haskett, Chief, Division of Realty, Fish and Wildlife Service, Arlington Square 622, 4401 N. Fairfax Drive, Arlington, VA 22203, Phone (703) 358–1713 or Fritz U. Rennebaum, District Manager, 1808 N. Third Street, Coeur d' Alene, Idaho 83814, Phone (208) 769–5000.

**SUPPLEMENTARY INFORMATION:** The publication of this notice in the **Federal Register** segregates the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, or pursuant to special legislation. As provided by the regulations of 43 CFR 2201.1(b), and subsequently tendered application, allowance of which is discretionary shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this notice will terminate two years from the date of publication in the **Federal Register**, upon issuance of patent or publication of an opening order in the **Federal Register**, whichever occurs first.

**Kemp Conn,**

*Deputy Assistant Director, Land and Renewable Resources.*

[FR Doc. 92–16986 Filed 7–17–92; 8:45 am]

BILLING CODE 4310–55–M

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**[G–010–G2–0115–4212–11; NMNM 86622]**

## Albuquerque District; Realty Action—Recreation and Public Purposes Act Classification; New Mexico

**AGENCY:** Bureau of Land Management, Farmington Resource Area, Interior.

**ACTION:** Notice of realty action. Recreation and public purposes lease/

patent of public land in San Juan County, New Mexico.

**SUMMARY:** The following described public land has been determined suitable for classification for leasing and later patenting to the City of Farmington under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Farmington proposes to use the land for a law enforcement officers' weapons training facility.

**New Mexico Principal Meridian**

T. 29 N., R. 13 W.,
Sec. 20, E½NW¼SE¼.

Containing 20 acres, more or less.

**COMMENT DATES:** For 45 days from date of publication in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands to the Bureau of Land Management at the address given below. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action becomes the final determination of the Department of the Interior. The classification becomes effective 60 days from the date of publication of this Notice.

**FOR FURTHER INFORMATION CONTACT:** Information related to this action, including the environmental assessment, is available for review at the Bureau of Land Management, Farmington Resource Area Office, 1235 La Plata Highway, Farmington, New Mexico 87401.

**SUPPLEMENTARY INFORMATION:** Publication of this Notice in the **Federal Register** segregates the public land described above from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. The segregative effect will terminate: (1) Upon publication in the **Federal Register** of an opening order; or (2) upon issuance of a patent, whichever occurs first.

The lease or patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. Provisions of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended, 42 U.S.C. 6901–6987 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. 9601 and all applicable regulations.

3. Reservation to the United States of a right-of-way for ditches and canals in accordance with 43 U.S.C. 945.

4. All minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals.

5. All valid existing rights, e.g. rights-of-way and leases of record.

The land is not needed for Federal purposes. Leasing and later patenting is consistent with current Bureau of Land Management policies and land use planning. The estimated intended time of lease issuance is September 21, 1992, with the patent being issued upon substantial development taking place. The proposal serves the public interest because it would provide a convenient fire-arms instructional and training facility for law enforcement officers.

Dated: July 10, 1992.

**Mike Pool,**
*Area Manager.*

[FR Doc. 92-17069 Filed 7-17-92; 8:45 am]
BILLING CODE 4310-FB-M

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**[UT-942-02-5700-11; UTU-66955, UTU-66959, UTU-67350]**

## Realty Action, Noncompetitive (Direct) Sale of Public Land in Carbon County, UT

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of realty action, UTU-66955, UTU-66959, UTU-67350, Noncompetitive (Direct) Sale of public land in Carbon County, Utah

**SUMMARY:** Notice is given that the following described parcels of public land have been examined, and through the development of local land-use planning decisions, based upon public input, resource considerations, regulations, and Bureau policies, the parcels have been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using noncompetitive (direct) sale procedures (43 CFR 2711.3–3):

**UTU-66955**

Salt Lake Meridian, Utah
T. 12 S., R. 12 E.,
section 19, E½NE¼;
section 20, SE¼SW¼

The described land aggregates 120.00 acres more or less.

**UTU-66959**

Salt Lake Meridian, Utah
T. 12 S., R. 12 E.,
section 19, SW¼NE¼.

The described land aggregates 40.00 acres more or less.

**UTU-67350**

Salt Lake Meridian, Utah
T. 12 S., R. 12 E.,
section 20, SW¼NE¼, W½SE¼.

The described land aggregates 120.00 acres more or less.

The parcels are difficult and uneconomic to manage as public lands are not needed for any resource program, and are not suitable for management by the Bureau or any other Federal department or agency.

The parcels are being offered as noncompetitive (direct) sales in accordance with 43 CFR 2711.3–3 to Steve and Kerry Allred (UTU–66955) Orangeville, Utah, Earlene Black (UTU–66959) of Huntington, Utah, and Joe Iriart (UTU–67350) of Price, Utah.

The land will not be offered for sale until at least sixty (60) days after publication of this notice in the **Federal Register**. The sale will be at no less than the appraised fair market value of $6,000.00 (UTU–66955), $2,000.00 (UTU–66959), and $6,000.00 (UTU–67350).

Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent, or two hundred seventy (270) days from the date of the publication, whichever occurs first.

*The Terms and Conditions Applicable to the Sales are*

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of land will be subject to all valid existing rights, reservations, and privileges of record. Existing rights, reservations, and privileges of record include, but are not limited to, Federal oil and gas leases UTU–49940 and UTU–64502.

*Sale Procedures*

The buyers will be required to submit ten (10) percent of the fair market value of the property on the date the property is offered for sale. The remainder of the full purchase price shall be submitted prior to the expiration of one hundred eighty (180) days from the date of the sale. The lands will be offered for sale at the Price River Resource Area office. If the lands are not sold on the sale date, they will remain for sale over-the-counter until sold or withdrawn from the

market. Over-the-counter bidder qualifications are noted below.

*Bidder Qualifications*

Bidder must be U.S. citizens 18 years of age or over, a State or State instrumentality authorized to hold property; a corporation authorized to hold property; or a corporation authorized to own real estate in the State of Utah.

*Bid Standards*

The BLM reserves the right to accept or reject any and all offers or withdraw the land from sale if, in the opinion of the Authorized officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

*Comments*

For a period of forth-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the Utah State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

*Supplementary Information:* Additional information concerning the lands and the terms and the terms and conditions of the sale may be obtained from Mark Mackiewicz, Area Realty Specialist, Price River Resource Area, 900 North 700 East, Price, Utah 84501, (801) 637–4584, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood Drive, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

July 10, 1992.

**Kenneth V. Rhea,**

*Acting District Manager.*

[FR Doc. 92–17005 Filed 7–17–92; 8:45 am]

BILLING CODE 4310–DQ–M

## Minerals Management Service

### Outer Continental Shelf Western Gulf of Mexico Oil and Gas Lease Sale 141; Correction Notice

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Correction.

On Friday, July 10, 1992, the Notice of Sale for Western Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sale 141, to be held August 19, 1992, was published in the **Federal Register** at 57 FR 30854–30863.

Paragraph 12(d) of the Notice which lists Federal acreage under lease is amended by adding Garden Banks Blocks 142, 186, and 187 to the listing on page 30858. The leases on these blocks have been placed under a Suspension of Production, and the blocks are unavailable for lease in Sale 141.

Questions may be directed to Supervisor, Sales and Support Unit, Office of Leasing and Environment, Gulf of Mexico Regional Office. Telephone: (504) 736–2768.

Dated: July 14, 1992.

**Thomas Gernhofer,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 92–17003 Filed 7–17–92; 8:45 am]

BILLING CODE 4310–MR–M

## National Park Service

### Mississippi River Coordinating Commission Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets the schedule for the forthcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

**DATE:** August 12, 1992, 8:30 p.m. to 12 p.m.

**ADDRESS:** Inver Hills Community College, Liberal Arts Building, room 210, 8445 College Trail; Inver Gove Heights, Minnesota.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Mississippi National River and Recreation Area, 175 East 5th Street, suite 418, St. Paul, Minnesota 55101, (612) 290–4160.

**SUPPLEMENTARY INFORMATION:** The Mississippi River Coordinating Commission was established by Public Law 100–696, November 18, 1988.

Dated: July 8, 1992.

**William W. Schenk,**

*Acting Regional Director, Midwest Region.*

[FR Doc. 92–16973 Filed 7–19–92; 8:45 am]

BILLING CODE 4310–70–M

## INTERNATIONAL DEVELOPMENT CORPORATION

### Agency for International Development

### Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (202) 467–9367, FA/AS/ISS, room 3726 NS, Washington, DC 20523–0042.

*Date Submitted:* July 3, 1992.
*Submitted Agency:* Agency for International Development.
*OMB Number:* 0412–0003.
*Form Number:* AID–1550–3.
*Type of Submission:* New Collection.
*Title:* Title II, Public Law 480 Commodities-Annual Estimate of Requirements—Fiscal Year.
*Purpose:* The Annual Estimate of Requirements (AER) is used by the Office of Food for Peace to obtain information critical for the planning and budgeting cycle of the Public Law 480 title II Program. The AERs include planned recipient and ration levels, number of distributions, operating reserves that are needed and inventories on hand.

**Annual Reporting Burden**

*Respondents:* 56; *annual responses:* 1; *average hours per response:* 24; *burden hours:* 1,344.

*Reviewer:* Lin Liu (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Date: July 2, 1992.

**Elizabeth Baltimore,**

*Information Support Services Division.*

[FR Doc. 92–16934 Filed 7–17–92; 8:45 am]

BILLING CODE 6116–01–M

## INTERSTATE COMMERCE COMMISSION

[No. MC-C-30198]

### Advantage Tank Lines, Inc.—Petition for Declaratory Order—Ex-Pipeline Movements

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of institution of proceeding.

**SUMMARY:** In response to a petition by motor carrier Advantage Tank Lines, Inc., the Commission has instituted this declaratory order proceeding under 5 U.S.C. 554(e) to determine whether certain transportation of petroleum and petroleum products it provides between points in Michigan is in interstate commerce subject to the Commission's regulatory jurisdiction. At issue are the facts and circumstances surrounding the transportation of certain petroleum and petroleum products that move into Michigan by pipeline prior to their being handled by petitioner. The Commission is providing interested persons an opportunity to participate in this proceeding and is inviting their comments.

**DATES:** Any person interested in participating in this proceeding as a party of record by filing and receiving written comments must file a notice of intent to do so by July 30, 1992. (A copy of the notice should be sent to petititioner's representative.) Following receipt of the notices, the Commission will issue a service list of the parties. Petitioner will have 10 days after service of this list to provide each party with a copy of the petition and any additional material which it may file with the Commission in support of its position. Initial written comments (an original and 10 copies) must be filed within 30 days after service of the list. All parties will have 50 days after service of the list to reply. All parties must send a copy of all comments and replies to each other party of record.

**ADDRESSES:** Send written notices of intent to participate to:

Office of the Secretary, Case Control Branch, room 1324, Attn: Docket No. MC-C-30198, Interstate Commerce Commission, Washington, DC 20423, and

James W. Muldoon, Muldoon & Ferris, 2733 W. Dublin-Granville Rd., Columbus, OH 43235-4268.

**FOR FURTHER INFORMATION CONTACT:** Kenneth H. Schwartz, (202) 927-5316, or Richard B. Felder, (202) 927-5610. (TDD for hearing impaired: (202) 927-5721).

**SUPPLEMENTARY INFORMATION:** Advantage Tank Lines, Inc., and Clark Oil & Refining Corp. have entered into an agreement under which Advantage is to provide the contract carrier transportation of gasoline from a distribution facility in Detroit, MI, to various retail locations in Michigan. Clark's gasoline moves by pipeline from refineries situated in Blue Island and Wood River/Hartford, IL, to the Detroit facility prior to its being tendered to Advantage.

While Advantage was providing transportation for Clark under the agreement between parties, a Michigan State Police officer gave the carrier a State of Michigan Commercial Vehicle Citation for operating without intrastate authority issued by the Michigan Public Service Commission. Advantage believes that, when it handles Clark's shipments, it is properly operating under authority issued by the ICC in No. MC-24780.

Advantage has petitioned the ICC for a declaratory order finding that the involved transportation is in interstate, not intrastate, commerce and thus is subject to the ICC's regulatory jurisdiction. By decision, this Commission has determined that the petition presents a controversy sufficient to warrant the institution of a proceeding under 5 U.S.C. 554(e).

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927-7428. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: July 14, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 92-17038 Filed 7-17-92; 8:45 am]

BILLING CODE 7035-01-M

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[Docket No. AB-55 (Sub-No. 429X)]

### CSX Transportation, Inc.—Abandonment Exemption—in Harrison County, WV

Applicant CSX Transportation, Inc., has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonment* to abandon its 6.5-mile rail line between milepost BSA-17.0, at Shinnston, and milepost BSA-19.0, at Haywood, including the Robinson Run Branch between milepost BSD-0.0 and milepost BSD-4.5, in Harrison County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period, and (4) that the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on August 19, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/ rail banking requests under 49 CFR 1152.29 [3] must be filed by July 30, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 10, 1992, with Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment

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[1] A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

(EA) by July 24, 1992. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

*Decided:* July 9, 1992.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92–17037 Filed 7–17–92; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### California State Standard; Approval

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Approval of standard: Hand fed food patty machines.

**SUMMARY:** This Notice approves the California standard for Hand Fed Food Patty Machines, submitted for approval on May 10, 1991. This standard is an independent State standard for which there is no Federal equivalent. Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard or is a State-initiated standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (the Act) requires that the State standard must be "at least as effective" in providing safe and healthful employment and places of employment. In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce.

On April 20, 1992, OSHA published a **Federal Register** notice (57 FR 14435) requesting public comment on both the "at least as effective" criterion as well as the product clause test of section 18(c)(2) of the Act. This notice invited interested persons to submit by May 20, 1992, written comments and views regarding the California standard and whether it should be approved by the Acting Assistant Secretary. In response to this notice, OSHA did not receive any comments from the public.

**EFFECTIVE DATE:** July 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 523–8148.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The requirements for adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act, are set forth in section 18(c)(2) of the Act and in 29 CFR part 1902, 29 CFR 1952.7, and 29 CFR 1953.21, 1953.22 and 1953.23. OSHA regulations require that States respond to the adoption of new or revised permanent federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register** (29 CFR 1953.23(a)); a 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (20 CFR 1953.22(a)). Independent State standards also must be submitted for OSHA's review and approval. Newly adopted State standards or revisions to existing standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On May 1, 1973, notice was published in the **Federal Register** (38 FR 10717) of the approval of the California State plan and the adoption of subpart K to part 1952 containing the decision. The California State plan provides for the adoption of State standards in the following manner.

The Cal/OSHA Standards Board, comprised of seven members representing management, labor, occupational safety, occupational health, and the general public, reviews new Federal standards, as well as proposed State-initiated standards presented by the California Division of Occupational Safety and Health, and those suggested by interested parties. The Standards Board appoints advisory committees with special expertise to develop a draft standard. Hearings are held to obtain input from the public. After a standard is adopted by the Standards Board, it is reviewed by the Office of Administrative Law and signed by the Secretary of State. The standard generally becomes effective 30 days after signing.

After the normal open period for public review and comment, the California Standards Board adopted a standard for Hand Fed Food Patty Machines on January 24, 1991. The standard became effective on March 23, 1991. By letter dated May 10, 1991, with attachments, from R.W. Stranberg, formerly Acting Chief Deputy Director, to Frank L. Strasheim, Regional Administrator, the State submitted the standard (8 CCR section 4554) and incorporated the standard as part of its occupational safety and health plan.

The State's standard addressed the inherent hazards in operating this type of machinery and initiates safety regulations for the guarding of hand fed food patty forming machines. OSHA does not have specific standards for hand fed food patty machines. Therefore, OSHA's Directorate of Safety Standards Programs compared this standard to OSHA's Instruction STD 1–12.9, General Requirements for All Machines, and concluded that the State's standard addresses those specific areas of point of operation guarding necessary to provide safe handing of hand fed food patty machines by employees.

### B. Public Participation

A **Federal Register** notice requesting public comment on both the "at least as effective" criterion as well as the product clause test of section 18(c)(2) of the Act was published on April 20, 1992 (57 FR 14435). This notice invited interested persons to submit by May 20, 1992, written comments and views regarding the California standard on hand fed food patty machines and whether it should be approved by the Acting Assistant Secretary. In addition, comments were specifically sought on whether the standard is applicable to products which are distributed or used in interstate commerce; required by compelling local conditions; and, unduly burdens interstate commerce. In response to the April 20, 1992, **Federal Register** notice, OSHA did not receive any public comment on the standard.

### C. Decision

Having reviewed the State submission and having received no objections to the approval of the standard, OSHA has determined that:

(1) The California standard is at least as effective as Federal OSHA's General Requirements for All Machines, and addresses those specific areas of point of operation guarding necessary to provide safe handling of hand fed food patty machines by employees. Thus, OSHA determines that the State standard meets the "at least as effective" criterion of section 18(c)(2) of the Act; and,

(2) The record on this standard includes no evidence, developed by or submitted to OSHA, that the standard is not in compliance with the product clause test of section 18(c)(2) of the Act; therefore, the standard is presumed to be in compliance with section 18(c)(2) of the Act.

OSHA, therefore, approves the California standard for hand fed food patty machines.

**D. Location of Supplement for Inspection and Copying**

A copy of the California standard applicable to hand fed food patty machines, along with approved State provisions for adoption of the standard, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor, 71 Stevenson Street, San Francisco, California 94105; California Department of Industrial Relations, California Division of Occupational Safety and Health (Cal/OSHA), 455 Golden Gate Avenue, 4th Floor, San Francisco, California 94102; Office of the Director, Federal-State Operations, OSHA, U.S. Department of Labor, room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210.

This decision is effective July 20, 1992.

**Authority:** Sec. 18, 84 Stat. 1608 [29 U.S.C. 667]; 29 CFR Part 1902, Secretary of Labor's Order No.1 1–90 (55 FR 9033).

Signed the 15th day of July 1992, in Washington, DC.

**Dorothy L. Strunk,**

*Acting Assistant Secretary.*

[FR Doc. 92–16999 Filed 7–17–92; 8:45 am]

BILLING CODE 4510–26–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Humanities; Meetings

**AGENCY:** National Endowment for the Humanities, NFAH.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

**FOR FURTHER INFORMATION CONTACT:** David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/786–0282.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code.

1. *Date:* August 3, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315.
*Program:* This meeting will review Fellowships for University Teachers applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

2. *Date:* August 3, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review Fellowships for College Teachers and Independent Scholars applications in European History, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

3. *Date:* August 4, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315.
*Program:* This meeting will review Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars applications in Music, Dance, History and Criticism, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

4. *Date:* August 4, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review Fellowships for College Teachers and Independent Scholars applications in Anthropology, Archaeology, and Psychology, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

5. *Date:* August 5, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315.
*Program:* This meeting will review Fellowships for University Teachers applications in Romance Languages and Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

6. *Date:* August 6, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315.
*Program:* This meeting will review Fellowships for University Teachers applications in Art History, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

7. *Date:* August 6, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 430.
*Program:* This meeting will review Fellowships for College Teachers and Independent Scholars applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

8. *Date:* August 7, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315
*Program:* This meeting will review Fellowships for University Teachers applications in Anthropology; Sociology; Archaeology; and Psychology, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993

9. *Date:* August 7, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 415
*Program:* The meeting will review Fellowships for College Teachers and Independent Scholars applications in American History I, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993

10. *Date:* August 10, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315.

*Program:* This meeting will review Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars applications in African, Asian, and Latin American History submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993

11. *Date:* August 10, 1992.
*Time:* 9:30 a.m. to 4:00 p.m.
*Room:* 430.
*Program:* This meeting will review all applications to International Research, submitted to the Division of Research Program, for projects beginning after January, 1993.

12. *Date:* August 10, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 415
*Program:* This meeting will review Fellowships for University Teachers applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January , 1993.

13. *Date:* August 11, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 415
*Program:* This meeting will review Fellowships for College Teachers and Independent Scholars applications in American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

14. *Date:* August 11, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315
*Program:* This meeting will review Fellowships for University Teachers applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993

15. *Date:* August 17, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315
*Program:* This meeting will review Fellowships for University Teachers applications in Rhetoric and Criticism; Communication; Theater and Film History, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993

16. *Date:* August 17, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 415
*Program:* This meeting will review Fellowships for College Teachers and Independent Scholars applications in Art History, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993

17. *Date:* August 18, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315
*Program:* This meeting will review Fellowships for University Teachers applications in European History, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993

18. *Date:* August 18, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 415
*Program:* This meeting will review Fellowships for College Teachers and Independent Scholars applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993

19. *Date:* August 19, 1992
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315
*Program:* This meeting will review Fellowships for University Teachers applications in American History and Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993

20. *Date:* August 19, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review Fellowships for College Teachers and Independent Scholars applications in American History II, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

21. *Date:* August 20, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315.
*Program:* This meeting will review Fellowships for University Teachers applications in Political Science; Law and Jurisprudence, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

22. *Date:* August 20, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 430.
*Program:* This meeting will review Fellowships for College Teachers and Independent Scholars applications in Rhetoric; Communication; Theater; Film, and American Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

23. *Date:* August 21, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315.
*Program:* This meeting will review Fellowships for University Teachers applications in Comparative Literature; Germanic; Slavic; Asian Languages and Literatures; and Linguistics, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

24. *Date:* August 21, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review Fellowships for College Teachers and Independent Scholars applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning January, 1993.

25. *Date:* August 24, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review Fellowships for College Teachers and Independent Scholars applications in Politics and Society, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

26. *Date:* August 25, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review Fellowships for College Teachers and Independent Scholars applications in Languages and Literatures I, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

27. *Date:* August 25, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315.
*Program:* This meeting will review Fellowships for College Teachers and Independent Scholars applications in Languages and Literatures II, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

28. *Date:* August 26, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review Fellowships for College Teachers and Independent Scholars applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

29. *Date:* August 26, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315.
*Program:* This meeting will review Fellowships for University Teachers applications in American Literature and Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1993.

30. *Date:* August 27, 1992.
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 315.
*Program:* This meeting will review Fellowships for University Teachers applications in Religious Studies submitted to the Division of

Fellowships and Seminars, for projects beginning after January, 1993.

**David C. Fisher,**
*Advisory Committee Management Officer.*

[FR Doc. 92-16947 Filed 7-17-92; 8:45 am]
BILLING CODE 7536-01-M

## National Council on the Humanities; Meeting

July 13, 1992.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on August 13-14, 1992.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on August 13-14, 1992, will not be open to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated September 9, 1991.

The agenda for the sessions on August 13, 1992, will be as follows:

8:30-9 a.m. Coffee for Council Members—room 526.
(Open to the Public)

**Committee Meetings**

(Open to the Public) Policy Discussion
9-10 a.m. Education Programs—room M-14.
Fellowship Programs—room 315.
Public Programs—room 415.
Research Programs/Preservation and Access—room 507.
State Programs and Office of Outreach—room M-07.

10 a.m. until Adjourned (Closed to the Public) Discussion of specific grant applications before the Council.

The morning session on August 14, 1992, will convene at 9 a.m., in the 1st Floor Council Room, M-09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:
(Coffee for Staff and Council members will be served from 8:30-9 a.m.)

Administration of Oath of Office for New Council Members. Minutes of the Previous Meeting. Reports
A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Budget Report
E. Legislative Report
F. Committee Reports on Policy and General Matters Overview
1. Education Programs
2. Fellowships Programs
3. Public Programs
4. Research Programs
5. Preservation and Access
6. State Programs and Office of Outreach

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. David C. Fisher, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786-0322, TDD (202) 786-0282. Advance notice of any special needs or accommodations is appreciated.

**David C. Fisher,**
*Advisory Committee Management Officer.*

[FR Doc. 92-16946 Filed 7-17-92; 8:45 am]
BILLING CODE 7536-01-M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 45th meeting on Wednesday and Thursday, July 29-30, 1992, 8:30 a.m. until 6 p.m., in room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)).

The agenda for the subject meeting shall be as follows:

A. Meet with representatives of the U.K. Radioactive Waste Management Advisory Committee to discuss items of mutual interest.

B. Review and comment on an NRC staff technical position on repository design for thermal loads.

C. Discuss a supplemental request for additional information on a systems analysis approach to reviewing the overall high-level waste program.

D. Discuss with a representative of the Institute of Scrap Recycling Industries radioactive contamination found in metal scrap, recent actions, and recommendations.

E. Continue preparation of a report on the pace of progress in site characterization activities associated with the proposed high-level waste repository.

F. Hear a briefing by the NRC staff on the recent Supreme Court decision regarding the Low-Level Waste Policy Amendments Act (tentative).

G. Hear a report on the activities of the NRC's Federal Liaison (tentative).

H. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: July 14, 1992.

John C. Hoyle,

*Advisory Committee Management Officer.*

[FR Doc. 92-17023 Filed 7-17-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

**Niagara Mohawk Power Corp.; Withdrawal of Application for Amendment to Facility Operating License**

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Niagara Mohawk Power Corporation (the licensee) to withdraw its March 31, 1992, as supplemented May 13, 1992, application for proposed amendment to Facility Operating License No. DPR-63 for the Nine Mile Point Nuclear Station Unit No. 1, located in Oswego County, New York.

The proposed amendment would have revised Technical Specifications 3.1.1b(1) and 4.1.1b(1) to allow operation with control rod 22-31 potentially uncoupled for the remainder of cycle 10, which is currently scheduled to end in January 1993.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Determination, and Opportunity for Hearing published in the Federal Register on April 15, 1992, (57 FR 13149). However, by letter dated July 7, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 31, 1992, as supplemented May 13, 1992, and the licensee's letter dated July 7, 1992, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the State University of New York, Penfield, Library, Reference and Documents Department, Oswego, New York.

Dated at Rockville, Maryland, this 13th day of July 1992.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

*Senior Project Manager, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92-17029 Filed 7-17-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-387 and 50-388]

**Pennsylvania Power and Light Co., Allegheny Electric Cooperative, Inc.; Withdrawal of Application for Amendment to Facility Operating License**

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Pennsylvania Power and Light Company (the licensees) to withdraw its January 26, 1990 application for proposed amendment to Facility Operating License Nos. NPF-14 and NPF-22 for Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendment would have revised the plant technical specifications to delete the isolation functions of the differential temperature leak detection systems for reactor coolant piping outside the containment.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on February 21, 1990 (55 FR 6114). However, by letter dated June 30, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 26, 1990, and the licensee's letter dated June 30, 1992, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland this 14th day of July 1992.

For the Nuclear Regulatory Commission.

George F. Maxwell,

*Acting Project Manager, Project Directorate I-2 Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92-17028 Filed 7-17-92; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

**Excepted Service**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Sherry Turpenoff, (202) 606-0950.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on June 16, 1992 (58 FR 26879). Individual authorities established or revoked under Schedules A and B and established under Schedule C between May 1 and May 31, 1992, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, 1992.

**Schedule A**

The following exception was established:

*Department of the Air Force*

One position of Commander, Air National Guard Readiness Center, GM-301-15, located at Andrews Air Force Base, Maryland. Effective May 12, 1992.

**Schedule B**

No Schedule B authorities were established or revoked during May.

**Schedule C**

*Department of Agriculture*

One Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective May 4, 1992.

One Executive Assistant to the Administrator, Farmers Home Administration. Effective May 22, 1992.

*Commission on Civil Rights*

One Special Assistant to a Commissioner. Effective May 19, 1992.

*Department of Commerce*

One Special Assistant to the Assistant Secretary for Import Administration, International Trade Commission. Effective May 4, 1992.

*Consumer Product Safety Commission*

One Staff Assistant to a Commissioner. Effective May 15, 1992.

One Secretary (Office Automation) to the Chairman. Effective May 15, 1992.

*Department of Defense*

One Staff Assistant to the Under Secretary of the Army. Effective May 8, 1992.

One Special Assistant to the Assistant Secretary of Defense (Special Operations/Low Intensity Conflict). Effective May 11, 1992.

*Department of Education*

Two Confidential Assistants to the Director, Scheduling and Briefing Staff. Effective May 4, 1992.

One Special Assistant to the Assistant Secretary, Office of Human Resources and Administration. Effective May 8, 1992.

One Special Assistant to the Assistant Secretary, Office of Policy and Planning. Effective May 8, 1992.

One Confidential Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective May 11, 1992.

*Department of Energy*

One Special Assistant to the Assistant Secretary, Office of Domestic and International Energy Policy. Effective May 4, 1992.

One Staff Assistant to the Principal Deputy Assistant Secretary, Office of Domestic and International Energy Policy. Effective May 4, 1992.

One Public Affairs Coordinator to the Director, Office of Policy and Program Information, Office of Environmental Restoration and Waste Management. Effective May 6, 1992.

One Staff Assistant to the Director of Scheduling and Logistics. Effective May 11, 1992.

*Equal Employment Opportunity Commission*

One Confidential Assistant to the Director, Office of Communications and Legislative Affairs. Effective May 29, 1992.

*Environmental Protection Agency*

One Director, Executive Secretariat, to the Chief of Staff. Effective May 12, 1992.

One Staff Assistant to the Associate Assistant Administrator for Administration and Resources Management. Effective May 19, 1992.

One Staff Assistant to the Director, Public Liaison Division, Office of Communications, Education and Public Affairs. Effective May 29, 1992.

*Federal Emergency Management Agency*

One Executive Assistant to the Director. Effective May 12, 1992.

*Federal Labor Relations Authority*

One Staff Assistant to the General Counsel. Effective May 29, 1992.

*Department of Health and Human Services*

One Speechwriter to the Director of Speechwriting, Public Affairs. Effective May 8, 1992.

One Deputy to the Director, Office of Community Services, Administration for Children and Families. Effective May 11, 1992.

One Special Assistant to the Chief of Staff, Office of the Secretary. Effective May 22, 1992.

*Department of Housing and Urban Development*

One Special Assistant to the Deputy Assistant Secretary for Single Family Housing. Effective May 27, 1992.

*Department of the Interior*

One Special Assistant (Communications and Outreach) to the Director, Minerals Management Service. Effective May 1, 1992.

One Special Assistant to the Assistant Director—External Affairs, U.S. Fish and Wildlife Service. Effective May 18, 1992.

*International Trade Commission*

One Staff Assistant (Legal) to the Commissioner. Effective May 22, 1992.

*Department of Labor*

One Deputy Legislative Officer to the Deputy Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 1, 1992.

One Staff Assistant to the Assistant Secretary, Mine Safety and Health Administration. Effective May 4, 1992.

One Secretary's Representative (Chicago, IL) to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective May 11, 1992.

One Secretary's Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 22, 1992.

One Staff Assistant to the Assistant Secretary for Policy. Effective May 29, 1992.

One Staff Assistant to the Secretary of Labor. Effective May 29, 1992.

*National Aeronautics and Space Administration*

One Writer-Editor to the Administrator. Effective May 8, 1992.

One Administrative Assistant to the Administrator. Effective May 22, 1992.

*Office of National Drug Control Policy*

One Confidential Assistant to the Deputy Director, Supply Reduction. Effective May 4, 1992.

One Research Assistant to the Executive Director, National Commission on Measured Responses to Achieve a Drug Free America by 1995. Effective May 18, 1992.

One Executive Assistant to the Executive Director, National Commission on Measured Responses to Achieve a Drug Free America by 1995. Effective May 18, 1992.

*Office of Personnel Management*

One Deputy to the Director, Office of Congressional Relations. Effective May 22, 1992.

*Office of Science and Technology Policy*

One Assistant to the Director for External Affairs. Effective May 22, 1992.

*Department of State*

One Chief, Public Information Division, Supervisory Public Affairs Specialist to the Director, Office of Public Liaison, Bureau of Public Affairs. Effective May 11, 1992.

One Protocol Officer (Visits) to the Foreign Affairs Officer, Office of the Chief of Protocol. Effective May 11, 1992.

One Special Programs Assistant to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs. Effective May 18, 1992.

One Legislative Office to the Director of Congressional Relations, Bureau of Management. Effective May 11, 1992.

*Department of the Treasury*

One Special Assistant to the Deputy Assistant Secretary (Public Affairs). Effective May 1, 1992.

One Special Assistant (Project Coordination) to the Assistant Secretary (Management). Effective May 4, 1992.

One Staff Assistant to the Deputy Assistant Secretary (Public Affairs). Effective May 4, 1992.

One Director, Office of Corporate Finance, to the Deputy Assistant Secretary (Corporate Finance). Effective May 4, 1992.

*United States Information Agency*

One Public Affairs Specialist to the Associate Director for Broadcasting, Director of the Bureau of Broadcasting. Effective May 29, 1992.

*United States Trade Representative*

One Executive Secretary to the United States Trade Representative. Effective May 22, 1992.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Office of Personnel Management.

**Douglas A. Brook,**

*Acting Director.*

[FR Doc. 92–16930 Filed 7–17–92; 8:45 am]

BILLING CODE 6325–01–M

VOL 57 ISS 139 JL 20 1992 UMI



**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-30919; International Series Release No. 418; File No. SR-OCC-92-16]**

**Self-Regulatory Organization; The Options Clearing Corp.; Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to End-of-Month Foreign Currency Options and End-of-Month Cross-Rate Foreign Currency Options**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on June 26, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-OCC-92-16) as described in items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice and order to solicit comments from interested persons and to grant approval of the proposed rule change on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

OCC hereby proposes to amend article XV, section 1(h) and article XX, section 1(i) of its by-laws to provide that the expiration date for certain "end-of-month" foreign currency options and "end-of-month" cross-rate foreign currency options is the Saturday following the last Friday of the expiration month.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at three places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed change to article XV, section 1(h) and article XX, section 1(i) of OCC's By-laws is to accommodate the proposed plan of the Philadelphia Stock Exchange ("PHLX") to provide for the listing of short term foreign currency options that will expire on the Saturday following the last Friday of each month ("end-of-month options").[2] The PHLX's proposed rule change will affect both foreign currency options and cross-rate foreign currency options. Therefore, it is necessary for OCC to amend the definition of "expiration date" with respect to foreign currency options (article XV, section 1(h) of OCC's By-laws) and cross-rate foreign currency options (article XX, section 1(i) of OCC's By-laws) to include a separate expiration date for end-of-month foreign currency options and for end-of-month cross-rate foreign currency options.

End-of-month foreign currency options and end-of-month foreign cross-rate options would be cleared through OCC's International Clearing System as are all other currency options. For purposes of calculating margin, both types of end-of-month options will be added to the existing margin class and product groups. When exercise settlement dates coincide, a Clearing Member's exercises and assignments relating to end-of-month foreign currency options will be netted for purposes of settlement with the Clearing Member's exercises and assignments relating to other dollar-denominated foreign currency options in exactly the same way that exercise and assignment activity in foreign currency options is presently netted. However, because cross-rate foreign currency options are all European style options, exercise settlement dates of end-of-month cross-rate foreign currency options will never coincide with exercise settlement dates of other cross-rate foreign currency options, and therefore, no such netting will occur.

The proposed rule change is consistent with section 17A of the Act because it applies the same systems, procedures, and safeguards to the clearance and settlement of end-of-month foreign currency options and end-of-month cross-rate foreign currency options that are presently used successfully by OCC with all currency options. The rule change will therefore facilitate the prompt and accurate clearance and settlement of such options.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Commission believes OCC's proposal to amend the definition of "expiration date" with respect to foreign currency options and cross-rate foreign currency options is consistent with the Act and particularly with section 17A of the Act.[3] Section 17A(b)(3)(F) of the Act [4] requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes OCC's proposal to amend the definition of expiration date is consistent with that requirement because it will enable OCC to clear short term foreign currency options traded on the PHLX.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. Because the Commission has published notice and is prepared to approve the PHLX's proposed rule change relating to end-of-month foreign currency options and end-of-month cross-rate foreign currency options, accelerated approval will permit the trading and clearing of these products to begin sooner and, thereby, will more quickly remove impediments to and help to perfect the mechanism of the national system for the clearance and settlement of securities transactions as required by section 17A of the Act. The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 30669, International Series Release No. 380 (May 6, 1992), 57 FR 20313.

[3] 15 U.S.C. 78q-1 (1988).

[4] 15 U.S.C. 78q-1(b)(3)(F) (1988).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–OCC–92–16 and should be submitted by August 10, 1992.

**V. Conclusion**

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and, in particular, with Section 17A of the Act.

*It is therefore ordered,* under section 19(b)(2) of the Act, that the proposal (File No. SR–OCC–92–16) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–16954 Filed 7–17–92; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–30918; International Series Release No. 419; File No. SR–OCC–92–17]**

## Self-Regulatory Organization; The Options Clearing Corporation; Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Cross-Rate Foreign Currency Option's Unit of Trading, Commencement Time, Exercise Settlement, and OCC's Right To Reject Cross-Rate Foreign Currency Transactions for Non-Payment of Premium

July 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on June 26, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR–OCC–92–17) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice and order to solicit comments from interested persons and to grant approval of the proposed rule change on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

OCC hereby proposes to make the following changes to its By-laws and Rules: (i) Amend article XX, section 4(b) of its By-laws to correspond with the proposed rule change of the Philadelphia Stock Exchange ("PHLX") to reduce the contract size of cross-rate foreign currency options listed on the PHLX;[2] (ii) amend article I, section 1 C(11) and article VI, sections (5) and (8)(b) of its By-laws in order to fully effectuate OCC's right to reject unaccepted Exchange transactions in cross-rate foreign currency options when the purchasing Clearing Member fails to pay the premium therefor; and (iii) amend chapter XXI, rule 2106(b) of its Rules to provide OCC with sufficient time to confirm that a Clearing Member has fulfilled its exercise settlement obligation to OCC in respect of cross-rate foreign currency options before OCC fulfills its reciprocal settlement obligations to the Clearing Member.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Reduction of Contract Size of Cross-Rate Foreign Currency Options

The purpose of the proposed rule change to article XX, section 4(b) of OCC's By-laws is to allow OCC to adjust the unit of trading of cross-rate foreign currency options to correspond with the proposed plan of the PHLX to reduce the contract size of cross-rate foreign currency options listed on the PHLX. Because the PHLX's proposed reduction in the contract size (unit of trading) will apply to outstanding cross-rate foreign currency option contracts, it is necessary to amend article XX, section 4(b) of OCC's By-laws to authorize OCC to make the necessary adjustments in all cross-rate foreign currency option contracts outstanding at the time of the change. The language of the proposed article XX, section 4(b) is patterned in part after existing language regarding adjustments to index option contracts in article XVII, section 3(c) of OCC's By-laws.

2. Delayed Commencement Time

The purpose of the proposed amendments to article I, section 1 C(11) and article VI, sections 5 and 8(b) of OCC's By-laws is to fully effectuate OCC's right, set forth in article XX, section 5 of OCC's By-laws, to reject unaccepted Exchange transactions in cross-rate foreign currency options in the event that OCC fails to receive payment of certain premiums at or before the settlement time. At the time OCC filed its Rules and By-laws governing cross-rate foreign currency options, it reserved the right to reject certain Exchange transactions in cross-rate foreign currency options for nonpayment of premiums.[3] In order to insure that OCC is able to receive the full benefit of that provision, it is necessary to provide for a delayed commencement time so that OCC will always be able to determine whether it has received payment at or before the settlement time of all premiums denominated in the same trading currency due to OCC from the Purchasing Clearing Member in the account in which the Exchange transaction was effected. The proposed definition would state that the commencement time for cross-rate foreign currency options is three hours after the settlement time for the Exchange transaction in which the option was purchased. This is the same definition of commencement time applicable to index Participations and Market Baskets as set forth in article I, section 1 C(11) of OCC's By-laws.

The proposed amendment to article VI, section 8(b) of OCC's By-laws is necessary to conform that provision to

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] File No. SR–PHLX–92–14.

[3] Securities Exchange Act Release No. 29920, International Series Release No. 340 (Nov. 7, 1991), 56 FR 58105 (File No. SR–OCC–91–04).

reflect OCC's right to reject Exchange transactions in cross-rate foreign currency options. Article VI, section 5 of OCC's By-laws is proposed to be amended to make an additional conforming reference to article XX, section 5 of OCC's By-laws in order to provide that, as with Index Participations and Market Baskets transactions, a cross-rate currency option transaction may be rejected before the applicable commencement time when OCC would otherwise be deemed to have accepted the transaction.

3. Amended Exercise Settlement Provisions

The purpose of the proposed change in chapter XXI, rule 2106(b) is to provide OCC with sufficient time on the exercise settlement date of cross-rate foreign currency options to verify that a Clearing Member has fulfilled its obligation to OCC either to deliver the underlying foreign currency, in the case of a Delivering Clearing Member, or to pay the aggregate exercise price, in the case of a Receiving Clearing Member, before OCC fulfills its reciprocal performance obligations. OCC has determined that the current provisions in chapter XXI, rule 2106(b) of its Rules are too narrow because even when the settlement time for the currency due to OCC is prior to the settlement time for the currency that OCC is required to pay, it may not be sufficiently prior to that time to allow OCC to confirm its receipt from the Clearing Member of the countercurrency and, if necessary, to give instructions to the applicable bank to stop performance on OCC's payment obligation. OCC anticipates that it will invoke the amended provision to require, in the case of options on British pounds that are denominated in German marks, that Clearing Members required to pay marks or deliver pounds to OCC must do so on the foreign business day preceding the exercise settlement date.

The proposed rule change is consistent with Section 17A of the Act because it will facilitate the prompt and accurate clearance and settlement of cross-rate foreign currency options. Also, the additional confirmation time provided by the amended commencement time definition, the clarification of OCC's right to reject transactions for nonpayment of premiums, and the amended exercise settlement provisions applicable to cross-rate foreign currency options will allow OCC to better protect itself in the event of a Clearing Member default and will, thereby, promote the safeguarding of investors' securities and funds.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Commission believes OCC's proposal to amend its By-laws and Rules to: (i) Correspond with the proposed rule change by the PHLX to reduce the contract size of cross-rate foreign currency options listed on the PHLX; (ii) fully effectuate OCC's right to reject unaccepted Exchange transactions in cross-rate foreign currency options when the purchasing Clearing Member fails to pay the premium therefor; and (iii) provide OCC with sufficient time to confirm that a Clearing Member has fulfilled its exercise settlement obligations to OCC in respect of cross-rate foreign currency options before OCC fulfills its reciprocal settlement obligations to the Clearing Member is consistent with the Act and particularly with section 17A of the Act.[4] Section 17A(b)(3)(F) of the Act [5] requires that the rules of a clearing agency be designed to assure the safeguarding of the securities and funds in its custody or control or for which it is responsible. The Commission believes OCC's proposal enhances OCC's ability to protect itself in the event of a Clearing Member default and, thereby, promotes the safeguarding of investors' securities and funds which are in OCC's custody or control or for which OCC is responsible.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. Because the Commission is prepared to approve the PHLX's proposed rule change relating to reduction of the contract size of cross-rate foreign currency options, accelerated approval will permit the PHLX to carry out its proposal to make the contract size for cross-rate foreign currency options the same as that for other foreign currency options. Furthermore, accelerated approval will allow OCC to immediately put in place the above described amendments to its By-laws and Rules and, thereby, to more quickly promote the safeguarding of investors' securities and funds which are in OCC's custody or control or for which OCC is responsible. Therefore, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–OCC–92–17 and should be submitted by August 10, 1992.

**V. Conclusion**

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and, in particular, with section 17A of the Act.

*It is therefore ordered,* under section 19(b)(2) of the Act, that the proposal (File No. SR–OCC–92–17) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–16955 Filed 7–17–92; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78l–1 (1988).

[5] 15 U.S.C. 78l–1(b)(3)(F) (1988).

[Rel. No. IC-18842; 811-6503]

## The Argentina Growth Fund, Inc.; Application

July 10, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** The Argentina Growth Fund, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on June 18, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 4, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus, Paralegal Specialist, at (202) 272-3023, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company incorporated under the laws of the State of Maryland. On December 13, 1991, Applicant filed a Notification of Registration pursuant to section 8(a) of the Act on Form N-8A. Applicant did not file a registration statement pursuant to section 8(b) of the Act.

2. Applicant has never made a public offering of its securities.

3. Applicant has no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-17009 Filed 7-17-92; 8:45 am]

BILLING CODE 8010-01-M

## Issuer Delisting; Application To Withdraw From Listing and Registration; (Lancit Media Productions, Ltd., Common Stock, $0.001 Par Value; Warrants) File No. 1-10781

July 14, 1992.

Lancit Media Productions Ltd. ("Company") has filed an application with the Securities and Exchange Commission, ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, it is requesting the delisting from the BSE due to the lack of activity of the issuer's securities on the BSE since such securities were listed, and the limited market exposure the issuer's securities have on the BSE.

Any interested person may, on or before August 4, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-16956 Filed 7-17-92; 8:45 am]

BILLING CODE 8010-01-M

## Issuer Delisting; Application To Withdraw From Listing and Registration; (Craftmade International, Inc., Common Stock, $0.01 Par Value) File No. 1-10471

July 14, 1992.

Craftmade International, Inc. ("Company") has filed an application with the Securities and Exchange Commission, ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, it is requesting the delisting of its Common Stock from the BSE because it is contemplating inclusion of its Common Stock in the National Market System of the National Association of Securities Dealers Automated Quotation System at or around the end of the Company's fiscal year which concludes June 30, 1992.

Any interested person may, on or before August 4, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-16957 Filed 7-17-92; 8:45 am]

BILLING CODE 8010-01-M

VOL 57 ISS 139 JL 20 1992 UMI

[Release No. 35-25579; International Series Release No. 417]

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

July 10, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 3, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**New England Electric System, et al. (70-8007)**

New England Electric System ("NEES"), registered holding company, and its wholly owned utility subsidiaries, Granite State Electric Company ("Granite State"), Massachusetts Electric Company ("Mass Electric") and the Narragansett Electric Company ("Narragansett"), all located at 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration under section 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42, and 50(a)(5) thereunder.

Applicants request authorization, through August 1, 2002, for Granite State, Mass Electric and Narragansett (collectively, "Subsidiaries") to purchase, on the open market, from time to time through August 1, 2002, shares of NEES common stock and to pay the shares to their respective outside directors ("Directors"). The shares will be in addition to retainers and fees already paid to the Directors for their board service and will constitute further compensation for such service. Shares will be purchased by each Subsidiary with the Subsidiary's treasury funds at such time and in such amounts as to enable the Subsidiary to pay its Director for each current year. Subsidiaries will not purchase excess shares and hold them for future payment to their Directors. Initially, compensation for service on each board will include 50 NEES common shares to be paid to each Director service on the board on August 1 of each year. The number of shares paid to each Director may change from time to time and need not be the same for each Subsidiary. The total number of shares purchased by the Subsidiaries as a group, through August 1, 2002, will not exceed, in the aggregate, 20,000 shares, which represents, as of June 30, 1992, approximately 0.03% of the total of all outstanding NEES common shares. Based on a New York Stock Exchange closing price of $32.75 per shares as of June 30, 1992, the estimated maximum cost of purchasing 20,000 shares is $655,000.

**Entergy Corp., et al. (70-8010)**

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered public-utility holding company, Electec, Inc. ("Electec"), 639 Loyola Avenue, New Orleans, Louisiana 70113, Entergy's wholly owned nonutility subsidiary company, and Entergy Power, Inc. ("EPI"), 425 West Capitol Avenue, Little Rock, Arkansas 72201, Entergy's public-utility subsidiary company ("Applicants"), have filed an application-declaration under sections 2(a)(8), 3(a)(5), 3(b), (6)(a), 7, 9(a), 10, 12(b), 13(b) and 13(f) of the Act and Rules 10, 43, 45, 51, 83, 86, 87, 90, 91 and 95 thereunder.

Applicants seek authority, among other things, to invest up to $50 million in one of two newly formed Argentine electric-utility companies that own and operate transmission and distribution systems in the City of Buenos Aires and the surrounding area ("Distribution Company"). Entergy has acquired an option (the "Option") to participate in a consortium ("Consortium") with five other nonaffiliated entities [1] to acquire from the government of Argentina, pursuant to public competitive bidding, a 51% interest in Distribution Company. The remaining 49% of the shares of Distribution Company will be held by the Argentine government, with 10% to be transferred to employees of Distribution Company, and the remainder to be sold in Argentina and internationally pursuant to public offerings. A Chilean member of the Consortium, Distribuidora Chilectra Metropolitana, S.A., will operate Distribution Company.

If the bid made by the Consortium is successful, the members of the Consortium intend to form Investor Company to acquire a 51% ownership interest in Distribution Company. Entergy Argentina S.A. ("Entergy Argentina"), a new, to-be-acquired, wholly owned Argentine subsidiary company of Electec, proposes to acquire up to 15% of Investor Company and will have the right to elect one of its directors and perhaps one member out of eight members of the board of directors of Distribution Company.[2] The Consortium members' principal rights, with respect to Distribution Company, are to have no more than two voting members out of three on the Comptrolling Committee of Distribution Company,[3] and to have five voting members out of eight voting members on the board of directors of Distribution Company.[4] Entergy seeks authority to exercise its Option prior to January 27, 1993, and thus to acquire indirectly up to a 7.7% voting interest in Distribution Company.

Although the actual amount of Entergy's indirect investment will not be determined until a formal bid is made, the application states that Entergy's share of the costs and contingent liabilities in connection with the acquisition and ownership of its indirect interest in Distribution Company over approximately the next three years is not expected to exceed $50 million. To finance its investment, Entergy proposes to acquire up to 50,000 shares of the common stock of Electec for $1,000 per share. Electec, in turn, proposes to

[1] The other Consortium members are three Chilean companies, three Argentine companies and a United States utility company. The Chilean companies are Empresa Nacional de Electricidad, S.A. (10%), Enersis, S.A. and Distribuidora Chilectra Metropolitana, S.A. (collectively 37.5%); the Argentine companies are Banco Frances (10%), Perez Companc, S.A.C.F.I.M.A. and Sade, S.A.C.C.I.F.I.M. (collectively 37.5%); and, the United States company is PSI Resources, Inc. (5% with an option to acquire an additional 5%).

[2] A change in ownerships structure may be required under the Act.

[3] The Comptrolling Committee ("Comision Fiscalizadora") in Argentine corporations represents the shareholders before the board of directors.

[4] The shares of Distribution Company not acquired by the Consortium (49%), also will be represented on the board. Distribution Company employees will be entitled to one voting member and two voting members are designated for the future public shareholders. Each member of the Distribution Company board will have one vote.

acquire the common stock of Entergy Argentina.[5]

Entergy's principal obligations will be the following: (1) to pay its percentage share of the Consortium's common expenses in connection with the submission of the bid to acquire Distribution Company (not to exceed $150,000); (2) to pay its share of the purchase price to the appropriate members of the Consortium,[6] to make the required working capital contributions and to assume certain contingent liabilities of Distribution Company;[7] and (3) not to assign or dispose of its equity share in Distribution Company for a period extending five years after the date of the transfer of the shares of Distribution Company by the Argentine government unless otherwise agreed by, among others, the government of Argentina.

In addition, Electec proposes to provide technical advisory services to Distribution Company with respect to operation, maintenance, strategic planning, customer service, marketing, information systems and others matters. Any such services will be provided on a competitive basis that neither favors nor discriminates against affiliates of Distribution Company. Electec expects that on an annual basis the provision of such services may range up to a maximum of $1 million, with the average likely to be $750,000 annually. It is anticipated that the consulting services will involve no more than ten staff employees, working on a task basis, requiring no Entergy system employees to reside in Argentina. It is estimated that such advisory work would not exceed five employee-years annually from Entergy system personnel.

Applicants request that any consulting arrangement between Electec and Distribution Company be exempt from section 13 and the rules promulgated thereunder.[8]

Electec may obtain services from its associate companies, Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power and Light Company ("MP&L"), New Orleans Public Service Inc. ("NOPSI"), EPI and Entergy Services, Inc. ("ESI") to carry out its advisory arrangements with Distribution Company. Electec will reimburse its associate companes at cost. Electec has been previously authorized to obtain services from AP&L, LP&L, MP&L, NOPSI and ESI (HCAR No. 23200, January 12, 1984). Applicants also request authorization for Electec to obtain services from EPI directly and for Electec to reimburse EPI at cost.

Applicants request an order under section 3(b) exempting Entergy Argentina, Investor Company and Distribution Company, as subsidiary companies, from the provisions of the Act, and under section 3(a)(5), exempting Electec, Entergy Argentina and Investor Company as holding companies, from the provisions of the Act.

Applicants state that none of Entergy Argentina, Investor Company or Distribution Company will derive a material part of their income, directly or indirectly, from sources within the United States, and will not operate, or have any subsidiary company that operates, as a public-utility company in the United States. In addition, Applicants state that none of Electec, Entergy Argentina and Investor Company are, nor will they derive a material part of their income from, subsidiary companies which are companies the principal business of which within the United States is that of a public-utility company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-17010 Filed 7-17-92; 8:45 am]

BILLING CODE 8010-01-M

[5] Under Argentine law, a corporation must have a minimum of two shareholders. As a result, although Electec will own virtually all of the common stock of Entergy Argentina, one share is expected to be held by a nominee of Electec.

[6] The bidding documents issued by the government of Argentina require that a portion of the purchase price be paid by bidders purchasing for cash in the open market and presenting as part of the tender price Argentine public debt securities. Entergy requests authorization, if appropriate, indirectly through the Investor Company to acquire such Argentine public debt securities.

[7] The principal contingent liabilities include the assumption by the Investor Company in the event of a default by either Edenor and Edesur of certain short-term debt of Edenor or Edesur. At the time of transfer to the winning bidders, Edenor and Edesur will have short-term debt of approximately $95 million and $136 million, respectively, payable not later than December 1, 1992. Any obligations flowing from such contingent liabilities are included within Entergy's request for authorization to invest indirectly up to $50 million in the Investor Co.

[8] Applicants make no representation that the consulting services to be provided to Distribution Company will be provided at greater than or less then cost.

## DEPARTMENT OF STATE

**[Public Notice 1649]**

### United States Organization for the International Telegraph & Telephone Consultative Committee (CCITT); Study Group B Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Wednesday, August 26, 1992 and Wednesday, December 9, 1992 in room 1912 from 9:30 a.m. to 5 p.m., Department of State: 2201 C Street NW, Washington, DC 20520.

The purpose of the meetings will be to prepare for the Interegnum Working Group meetings of CCITT working parties of Study Group XI, in September/October '92 and of Study Group XVIII Working Parties in January, 1993. The Agenda of the August meeting will review the results of the June, 1992 final meeting of Study Group XVIII. Both meetings will consider contributions to either working party meeting, consider nominees for U.S. Delegations to working party meetings, review proposed structure and questions proposed for Study Group XI and XVIII during the 1993–1996 Plenary Period, and consider any other business raised within the terms of reference of U.S. Study Group B.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the Office of Gary Fereno, Department of State, (202) 647–0201, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Dated: July 2, 1992.

**Earl S. Barbely,**

*Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.*

[FR Doc. 92-16936 Filed 7-17-92; 8:45 am]

BILLING CODE 4710-45-M

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[Public Notice 1660]

### United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group D Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and the Message Handling Service—Management Domain (MHS–MD) Ad Hoc Group will meet on August 3–5, 1992, at the American National Standards Institute, 11 West 42nd Street, N.Y.C. from 9 a.m. to 5 p.m. Those expecting to attend this meeting should notify Beth Sommerville at (202) 642–4796. The Group will also meet on September 30, October 1–2, 1992 at the U.S. Department of State: Room 6320 from 8:30 a.m. to 5 p.m.

The agenda of these meetings will be to review documentation on Registration Requirements and Procedures, continued work on drafting and behavioral document for registered U.S. management domains, and to consider any other business within the scope of U.S. Study Group D.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the Office of Gary Fereno, Department of State, (202) 647–0201, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Dated: July 7, 1992.

**Earl S. Barbely,**

*Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.*

[FR Doc. 92–16939 Filed 7–17–92; 8:45 am]

BILLING CODE 4710–45–M

## Office of the Secretary

[Public Notice 1661]

### Delegations of Authority 193–3; Amendment of Delegations of Authority to the Under Secretary for Management

By virtue of the authority vested in me as Secretary of State, including the authority of section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), I hereby order that:

Delegation of Authority 193, dated January 7, 1992, as amended, is hereby amended by adding a new section 4e. under "Functions Delegated to the Under Secretary for Management" to read as follows:

"e. The functions of the President under sections 102(a)(3) and 162 (b) and (d) of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102–138), delegated to the Secretary of State by Memorandum of February 10, 1992. In keeping with that memorandum, the functions delegated by this subparagraph shall be exercised in coordination with the Director of the Office of Management and Budget and the Assistant to the President for National Security Affairs."

Dated: June 25, 1992.

**James A. Baker, III,**

*Secretary of State.*

[FR Doc. 92–16940 Filed 7–17–92; 8:45 am]

BILLING CODE 4710–10–M

## THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

### National Advisory Board Meeting

**AGENCY:** Thrift Depositor Protection Oversight Board.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for a meeting of the National Advisory Board. The meeting is open to the public. Please note that elsewhere in ths issue of the **Federal Register** is a meeting notice for the National Housing Advisory Board, which will meet in the afternoon following the National Advisory Board meeting.

**DATES:** The meeting is scheduled for Monday, August 3, from 9 a.m. to 12 noon.

**ADDRESSES:** The meeting will be held at the Federal Deposit Insurance Corporation, Board Room 6010, 550 17th Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street NW., Washington, DC 20232, 202/786–9675.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 21A(d) of the Federal Home Loan Bank Act, the Thrift Depositor Protection Oversight Board had established a National Advisory Board and six Regional Advisory Boards to advise the Oversight Board and the RTC on the desposition of real property assets of the Corporation.

*Agenda:* A detailed agenda will be available at the meeting. The meeting will include briefings from the chairpersons of the six Regional Advisory Boards on their respective meetings held throughout the country between July 15 and 31, 1992. Discussions will focus on the meeting series agenda topics which includes a review of RTC's disposition strategies for hard-to-sell assets and the extent and geographic distribution of RTC real estate owned in relation to the real estate markets in which it participates.

*Statements:* Interested persons may submit, in writing, data, information or views on the issues pending before the National Advisory Board prior to or at the meeting. Seating is available on a first come first served basis for this open meeting.

Dated: July 15, 1992.

**Jill Nevius,**

*Committee Management Officer.*

[FR Doc. 92–17055 Filed 7–17–92; 8:45 am]

BILLING CODE 2222–01–M

### National Housing Advisory Board Meeting

**AGENCY:** Thrift Depositor Protection Oversight Board.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act 5 U.S.C. app., announcement is hereby published for the meeting National Housing Advisory Board. The meeting is open to the public. Please note that elsewhere in this issue of the **Federal Register** is a meeting notice for the National Advisory Board, which will meet in the morning prior to the National Housing Advisory Board meeting.

**DATES:** The meeting is scheduled for Monday, August 3, from 1 to 3 p.m.

**ADDRESSES:** The meeting will be held at the Federal Deposit Insurance Corporation, Board Room 6010, 550 17th Street NW., Washington, DC.



**FOR FURTHER INFORMATION CONTACT:** Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street NW., Washington, DC 20232, 202/786–9675.

**SUPPLEMENTARY INFORMATION:** In accordance with section 21A(d)(2) of the Federal Home Loan Bank Act, as amended by the Resolution Trust Corporation Thrift Depositor Protection Reform Act of 1991, the Thrift Depositor Protection Oversight Board has established a National Housing Advisory Board to advise the Oversight Board on policies and programs related to the provision of affordable housing. The National Housing Advisory Board consists of the Secretary of the Department of Housing and Urban Development and the chairpersons of the six Regional Advisory Boards established under section 21A (d)(3) of the Federal Home Loan Bank Act. The charter for the National Housing Advisory Board was filed on February 20, 1992.

**Agenda**

A detailed agenda will be available at the meeting. The meeting will include briefings from the Board's chair and from the chairpersons of the six Regional Advisory Boards on their respective meetings held throughout the country between July 15 and 31, 1992. Discussions will focus on the RTC's single-family and multi-family affordable housing disposition programs.

**Statements**

Interested persons may submit, in writing, data, information, or views on the issues pending before the National Advisory Board prior to or at the meeting. Seating for the open meeting is available on a first come first served basis.

Dated: July 15, 1992.

**Jill Nevius,**

*Committee Management Officer.*

[FR Doc. 92–17056 Filed 7–17–92; 8:45 am]

BILLING CODE 2222–01–M

### Meeting

**AGENCY:** Thrift Depositor Protection Oversight Board.

**ACTION:** Notice of meeting.

**DATES:** Wednesday, August 5, 1992, 3 to 4 p.m.

**ADDRESSES:** Federal Deposit Insurance Corporation, Board Room 6010, 550 17th Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Limbach, Director, Corporate Communications, 1777 F Street NW., Washington, DC 20232, (202) 786–9672.

**SUPPLEMENTARY INFORMATION:**

*Discussion Agenda*

- RTC Update.
- Report of National Advisory Board.
- Report of National Housing Advisory Board. Closed session to follow

Dated: July 15, 1992.

**Jill Nevius,**

*Committee Management Officer.*

[FR Doc. 92–17057 Filed 7–17–92; 8:45 am]

BILLING CODE 2222–01–M

## DEPARTMENT OF TRANSPORTATION

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 2, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 48223.
*Date filed:* June 29, 1992.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 27, 1992.
*Description:* Application of Aero Costa Rica Acori, S.A. d/b/a Aero Costa Rica, pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property and mail as follows: Between San Jose, Costa Rica and Miami, Florida.

*Docket Number:* 48224.
*Date filed:* June 30, 1992.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 28, 1992.
*Description:* Application of Aerovias Especiales de Carga, Ltda., pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit to engage in scheduled and charter foreign air transportation of property and mail as follows: (a) Scheduled authority between Bogota-Miami-Bogota, (b) Such charter authority as may be permitted under part 212 of the Department's Economic Regulations.

*Docket Number:* 48226.
*Date filed:* June 30, 1992.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 28, 1992.
*Description:* Application of Roadair Feeder Service Ltd. d/b/a Roadair Lines, pursuant to section 402 of the Act and subpart Q of Regulations, requests a foreign air carrier permit to provide scheduled and charter foreign air transportation of persons, baggage and goods between points in the United States and Canada

*Docket Number:* 48228.
*Date filed:* June 30, 1992.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 28, 1992.
*Description:* Application of Transportes Aereos Guatemaltecos, Pursuant to section 402 of the Act and Subpart Q of the Regulations seeks authority to provide general cargo, such as fresh produce, computers, cars and clothing transport between Miami, Florida, USA and points in Guatemala with intermediate stops in El Salvador, San Jose, Costa Rica, San Pedro, Sula Honduras, Belize and Nicaragua.

*Docket Number:* 45723.
*Date filed:* June 29, 1992.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 27, 1992.
*Description:* Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations applies for amendment of its foreign air carrier permit issued to it in Order 89–8–29, to permit TAESA to engage in the scheduled air transportation of persons, property and mail between Puerto Vallarta, on the one hand, and Laredo, Texas, on the other hand.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 92–16969 Filed 7–17–92; 8:45 am]

BILLING CODE 4910–62–M

## Federal Aviation Administration

### Proposed Terminal Control Area at Nashville, TN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of informal airspace meetings.

**SUMMARY:** This notice announces fact-finding informal airspace meetings to

solicit information from airspace users and others concerning a proposal to establish a Terminal Control Area (TCA) for the Nashville, TN, area. The establishment of a TCA is being considered due to the increased volume of traffic arriving and departing Nashville.

**DATES:** Comments must be received on or before October 26, 1992. These informal airspace meetings will be held on August 24 and August 25, 1992.

**ADDRESSES:** The location of the informal airspace meetings is as follows:

*Date:* Monday, August 24 and Tuesday, August 25, 1992.
*Time:* 7 p.m. to 10 p.m.
*Location:* Tennessee Air National Guard, 118th Tactical Airlift Wing, Building 708, Knapp, Boulevard, Nashville, TN 37217.

Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

**FOR FURTHER INFORMATION CONTACT:** James W. Stephenson, Air Traffic Manager, Airport Traffic Control Tower, Nashville Metropolitan Airport, 515 Olen Taylor Drive, Nashville, TN 37217: telephone: (615) 781–5460.

**SUPPLEMENTARY INFORMATION:**

**Meeting Procedures**

(a) These meetings will be informal in nature and will be conducted by a representative of the Administrator, FAA Southern Region. Each participant will be given an opportunity to make a presentation, although a time limit may be imposed.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation so that timeframes can be established. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel. These meetings may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded. However, a summary of the comments made at these meetings will be filed in the docket.

*Agenda*

Opening Remarks and Discussion of Meeting Procedures
Public Presentations
Closing Comments.

Issued in Washington, DC, on July 14, 1992.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 92–16994 Filed 7–17–92; 8:45 am]

BILLING CODE 4910–13–M

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## Passenger Facility Charge (PRC) Approvals and Disapprovals

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In May 1992, there were six applications approved.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

**PFC Applications Approved**

*Public Agency:* Lake Tahoe Airport, South Lake Tahoe, California.
*Application Type:* Impose and Use PFC Revenue.
*PFC Level:* $3.00.
*Total Approved Net PFC Revenue:* $928,747.
*Earliest Permissible Charge Effective Date:* August 1, 1992.
*Duration of Authority to Impose:* March 1, 1997.
*Class of Air Carriers Not Required to Collect PFC's:* None.
*Brief Description of Projects Approved:* Acquire two snow plows, Install south hazard beacon, Security fence, Snow blower, Access control system, Erosion control/safety areas, Enhance FAA tower visibility, Feasibility study/clear areas, Aircraft, rescue, and firefighting (ARFF) access roads.
*Brief Description of Projects Disapproved:* Replace snow cat rescue vehicle, Replace two snow blowers, Saw/seal runway, Expand ARFF/snow equipment building, Front end loader.
*Determination:* Section 158.33(a)(1) requires the public agency to begin implementation of a project no later than 2 years after receiving approval to use PFC revenue on that project. Therefore, all projects approved in this application must begin implementation no later than May 1994. The schedule submitted with the application shows implementation dates of November 1994 through November 1996 for the five disapproved projects listed above.

Home purchase program.
*Determination:* The FAA has determined that the purpose of this program is to establish a fund to purchase, retrofit, and resell, with deeded easements, homes of those residents impacted by airport noise. This program is not included in any adopted planning document nor have any noise contours been published showing eligible areas. In addition, the program as proposed does not contain specific requests nor has there been made a determination of specific costs which will be incurred. Based on these findings, the FAA is unable to conclude that the project will result in mitigation of noise impacts resulting from the airport and that the program will be implemented within 2 years as required by regulation.
*Decision Date:* May 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Rodriquez, San Francisco Airport District Office, (415) 876–2775.

*Public Agency:* Golden Triangle Regional Airport, Columbus, Mississippi.
*Application Type:* Impose and Use PFC Revenue.
*PFC Level:* $3.00.
*Total Approved Net PFC Revenue:* $1,693,211.
*Earliest Permissible Charge Effective Date:* August 1, 1992.
*Duration of Authority to Impose:* September 1, 2006.
*Class of Air Carriers not Required to Collect PFC's:* None.
*Brief Description of Projects Approved:* Renovate terminal building.
*Brief Description of Projects Disapproved:* Acquire communication equipment, Overlay taxiways and apron, Overlay and groove runway.
*Determination:* Section 158.33(a)(1) requires the public agency to begin implementation of a project no later than 2 years after receiving approval to use PFC revenue on that project. Therefore, all projects approved in this application must begin implementation by no later than May 1994. The schedule submitted with the application shows implementation dates of fiscal years

1995 and 1996 for the three disapproved projects listed above.

*Decision Date:* May 8, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Elton E. Jay, FAA Jackson Airports District Office, (601) 965–4628.

*Public Agency:* Lawton Metropolitan Area Airport Authority, Lawton, Oklahoma.

*Application Type:* Impose and Use PFC Revenue.

*PFC Level:* $2.00.

*Total Approved Net PFC Revenue:* $334,078.

*Earliest Permissible Charge Effective Date:* August 1, 1992.

*Duration of Authority to Impose:* January 1, 1996.

*Class of Air Carriers Not Required to Collect PFC's:* None.

*Brief Description of Project Approved:* Construct phase I of terminal expansion, Aircraft rescue and firefighting (ARFF) vehicle and mechanical lift device. Emergency power generator and electric security gates, Engine runup apron and distance-to-go markets, T-hangar taxiways and general aviation drainage improvements.

*Brief Description of Projects Partially Approved:* Reconstruction of ARFF access road.

*Determination:* The public agency is requesting PFC funds for the matching share of a planned AIP grant. The total estimated cost of the reconstruction of the ARFF road is $60,033. The majority of this project is AIP eligible; however, the wash rack for ARFF vehicles is not eligible; therefore, the approved amount has been reduced by the PFC portion of the wash rack costs.

*Brief Description of Projects Disapproved:* Airport access roads, Rehabilitate airfield pavements, Update airport master plan.

*Determination:* Part 158.33(a)(1) requires the public agency to begin implementation of a project no later than 2 years after receiving approval to use PFC revenue on that project. The schedule submitted with the application shows implementation dates of May 1995 for the three disapproved projects listed above.

*Decision Date:* May 8, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Perkins, Airports Division, FAA Southwest Region Office, (817) 624–5979.

*Public Agency:* Tulsa Airports Improvement Trust, Tulsa, Oklahoma.

*Application Type:* Impose PFC Revenue.

*PFC Level:* $3.00.

*Total Approved Net PFC Revenue:* $8,450,000.

*Earliest Permissible Charge Effective Date:* August 1, 1992.

*Duration of Authority to Impose:* August 1, 1994.

*Class of Air Carriers not Required to Collect PFC's:* None.

*Brief Description of Projects Approved:* Tusla/Riverside emergency communications equipment, Aircraft rescue and firefighting (ARFF) vehicle replacement, Taxiway Alpha Holding Apron and Taxiway Delta reconstruction, Taxiway X-ray extension, Construct ARFF facility, Taxiway Juliet extension, Taxiway Whiskey reconstruction.

*Brief Description of Project Withdrawn:* Construct air carrier runway.

*Determination:* The Tulsa Airports Improvement Trust withdrew this project from its application by letter to the FAA.

*Brief Description of Projects Disapproved:* Taxiway Tango extension, Runway 8/26 extension.

*Determination:* These projects do not meet the requirements of section 158.33(c), which states that the authority to impose a PFC shall expire: (1) 3 years after the charge effective date unless the public agency has applied for authority to use, PFC revenue authority to use has been approved, or a request for extension (not to exceed 2 years) to submit an application for project approval has been granted; or, (2) 5 years after the charge effective date unless the public agency has obtained project approval. The schedule submitted with the application shows implementation dates of 1999 through 2001 for the two disapproved projects listed above.

*Decision Date:* May 11, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Perkins, Airports Division, FAA Southwest Region Office, (817) 624–5979.

*Public Agency:* Memphis-Shelby County Airport Authority, Memphis, Tennessee.

*Application Type:* Impose PFC Revenue.

*PFC Level:* $3.00.

*Total Approved Net PFC Revenue:* $26,000,000.

*Earliest Permissible Charge Effective Date:* August 1, 1992.

*Duration of Authority to Impose:* December 1, 1994.

*Class of Air Carriers Not Required to Collect PFC's:* On-demand air taxi/commercial operators that (1) do not enplane or deplane passengers at the Memphis International Airport's (MEM) main passenger terminal buildings and (2) enplane less then 500 passengers per year at MEM.

*Determination:* The FAA has determined that the requested class accounts for less than 1 percent of the enplanements at MEM and that the requested class is reasonable, not arbitrary, nondiscriminatory, and otherwise in compliance with the law; therefore, this request is approved.

*Brief Description of Projects Approved:* Reconstruct Runway 18L–36R, Taxiways and other airfield and planning projects.

*Brief Description of Projects Deferred:* Land Acquisition, roadways and utilities, Third parallel runway, Extend Runway 18L–36R.

*Determination:* The decision on these projects is being deferred at this time at the request of the Memphis-Shelby County Airport Authority.

*Decision Date:* May 28, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jerry Bowers, FAA Memphis Airports District Office, (901) 544–3495.

*Public Agency:* Niagara Frontier Transportation Authority, Buffalo, New York.

*Application Type:* Impose PFC Revenue.

*PFC Level:* $3.00.

*Total Approved Net PFC Revenue:* $189,873,000.

*Earliest Permissible Charge Effective Date:* August 1, 1992.

*Duration of authority to Impose:* March 1, 2026.

*Class of Air Carriers Not Required to Collect PFC's:* The Niagara Frontier Transportation Authority (NFTA) requests to exclude the class of "air taxi/commercial operator" from the requirement to collect PFC's. This class of carriers is further defined by the NFTA as follows:

"Air taxi/commercial operator" shall include, without regard to number of passengers or payload capacity, revenue passengers transported for student instruction, nonstop sightseeing flights that begin and end at the same airport and are conducted within a 25 statute mile radius of the airport, ferry or training flights, aerial photography or survey charters, and firefighting charters.

*Determination:* The NFTA's request that commercial operators having a maximum seating capacity of 10 passengers or a maximum payload capacity of less than 6,000 pounds not be required to collect the PFC is approved. The NFTA should confirm, on annual basis using prior year enplanement data, that this class does not exceed one percent of the total enplanements at Greater Buffalo International airport.

*Brief Description of Projects Approved:* Construct new passenger terminal facility, Demolition of

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American airlines hangar and air cargo building, aircraft apron, runway 14–32 safety improvements, Acquisition/demolition of Buffalo Airport Center (BAC), Circulatory roadway system improvements, Acquistion/demolition of airways Hotel, Flyover (Kensington expressway Interchange).

*Decision Date:* May 29, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Philip Brito, FAA New York Airport District Office, (718) 553–1682.

**Cumulative List of Applications Previously Approved**

Huntsville International Airport, Huntsville, Alabama

Date approved: March 6, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $20,831,051.
Earliest charge effective date: June 1, 1992.
Estimated charge expiration date: November 1, 2008.

Muscle Shoals Regional Airport, Muscle Shoals, Alabama

Date Approved: February 18, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $104,100.
Earliest charge effective date: June 1, 1992.
Estimated charge expiration date: February 1, 1995.

Stapleton International Airport/Denver International Airport, Denver, Colorado

Date Approved: April 28, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $2,330,734,321.
Earliest charge effective date: July 1, 1992.
Estimated charge expiration date: January 1, 2026.

Savannah International Airport, Savannah, Georgia

Date Approved: January 23, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $39,501,502.
Earliest charge effective date: July 1, 1992.
Estimated charge expiration date: March 1, 2004.

Capital Airport, Springfield, Illinois

Date Approved: March 27, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $882,308.
Earliest charge effective date: June 1, 1992.
Estimated charge expiration date: May 1, 1994.

Gulfport-Biloxi Regional Airport, Gulfport, Mississippi

Date Approved: April 3, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $384,028.
Earliest charge effective date: July 1, 1992.
Estimated charge expiration date: December 1, 1993.

Hattiesburg-Laurel Regional Airport, Moselle, Mississippi

Date Approved: April 15, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $119,153.
Earliest charge effective date: July 1, 1992.
Estimated charge expiration date: January 1, 1996.

Minneapolis-St. Paul International Airport, Minneapolis, Minnesota.

Date Approved: March 31, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $23,408,819.
Earliest charge effective date: June 1, 1992.
Estimated charge expiration date: April 1, 1993.

McCarran International Airport, Las Vegas, Nevada

Date Approved: February 24, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $428,054,360.
Earliest charge effective date: June 1, 1992.
Estimated charge expiration date: February 1, 2004.

Portland International Airport, Portland, Oregon.

Date Approved: April 8, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $17,961,850.
Earliest charge effective date: July 1, 1992.
Estimated charge expiration date: July 1, 1994.

Issued in Washington, DC, on July 13, 1992.

**Leonard L. Griggs, Jr.**

*Assistant Administrator for Airports.*

[FR Doc. 92–16992 Filed 7–17–92; 8:45 am]

BILLING CODE 4910–13–M

## Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Marquette County Airport, Marquette, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Marquette County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before August 19, 1992.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Harold R. Pawley, Airport Manager, of the County of Marquette, Michigan, at the following address: Marquette County Airport, 198–B Airport Road, Negaunee, Michigan 49866.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Marquette, Michigan, under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter A. Serini, Manager, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7300. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Marquette County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 29, 1992, the FAA determined that the application to impose a PFC submitted by the County of Marquette, Michigan, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 1, 1992.

The following is a brief overview of the application.

*Level of the proposed PFC: $3.00.*

*Proposed charge effective date: October 1, 1992.*

*Proposed charge expiration date: December 31, 1997.*

*Total estimated PFC revenue: $766,106.*

*Brief description of proposed project(s): Land Acquisition; Fencing; Rehabilitate, Extend, and Widen Runway 1/19 with Associated Taxiways; Lighting; Signs; Visual Approach Aids, and Security System.*

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxis and Charters.*

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT."**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Marquette, Michigan.

Issued in Des Plaines, Illinois, on July 8, 1992.

**James H. Washington,**

*Acting Manager, Airports Division, Great Lakes Region.*

[FR Doc. 92–16990 Filed 7–17–92; 8:45 am]

BILLING CODE 4910–13–M



## Federal Highway Administration

## Participation in the Intelligent Vehicle-Highway System (IVHS) Field Operational Test Program

**AGENCY:** Federal Highway Administration (FHWA), US DOT.

**ACTION:** Notice of interest areas; request for participation.

**SUMMARY:** The U.S. Department of Transportation (US DOT) is seeking offers from the public and private sector to form partnerships to conduct operational tests in support of the national Intelligent Vehicle-Highway Systems (IVHS) program. The IVHS operational test program is designed to evaluate system concepts, technologies, institutional and/or financial arrangements that hold the promise of improving mobility and transportation productivity, enhancing safety and reducing congestion on the Nation's highways. This announcement is one of a series that will be issued annually to identify key IVHS technologies or program areas where the US DOT is seeking offers for operational tests. The selection criteria contained in this announcement will be used to assess an operational test's potential for contributing to the advancement of the national IVHS program, to evaluate the proposed technical and management approaches for the test, and to determine the appropriateness of the proposed Federal role in the project. A complete description of the IVHS operational test program, and the role of the various US DOT administrations in this program, is contained in the **Federal Register** announcement, "Intelligent Vehicle-Highway Systems (IVHS) Field Operational Test Program," published on May 8, 1992.

**DATES:** Operational test offers must be received on or before October 19, 1992.

**ADDRESSES:** Offers to participate in the IVHS operational test program should be submitted to the Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) through the participating State or local transportation or other public agency for transmittal to FHWA or FTA Regional Office, or directly to the National Highway Traffic Safety Administration (NHTSA) or other US DOT agency as appropriate. NHTSA offers may be submitted to the Office of Crash Avoidance Research (NRD–50), 400 Seventh Street, SW., Washington, DC 20590. If a public agency is not a participant in an FHWA or FTA project, offers may be submitted directly to the US DOT, FHWA, Operational Test Division (HTV–12), 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Schoene, FHWA Office of Traffic Management and IVHS, HTV–12, (202) 366–6479; Mr. August Burgett, NHTSA Office of Crash Avoidance Research, NRD–50, (202) 366–5672; Mr. Ronald Boenau, FTA Office of Technical Assistance and Safety, UTS–30, (202) 366–4995; or Ms. Julie Dingle, Office of the Chief Counsel, HCC–32, (202) 366–0780, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** The Intelligent Vehicle-Highway System (IVHS) program consists of a range of advanced technologies and system concepts which, in combination, can improve mobility and transportation productivity, enhance capacity and safety, maximize the use of existing transportation facilities, conserve energy resources, and reduce adverse environmental effects. The aim of the national IVHS program is to deploy advanced technologies to help solve transportation problems and improve safety. An operational test integrates existing technology, research and development (R&D) products, institutional and perhaps regulatory arrangements to test one, and usually more, new technological, institutional or financial elements in a real world test bed. Operational tests are conducted in an operational highway environment under "live" transportation conditions. This distinguishes operational tests from research projects or other kinds of testing, for example, simulation testing, inservice fleet evaluations, or tests on test tracks or other facilities that are temporarily closed to the public.

Operational tests also serve as the transition between R&D and full scale deployment of IVHS technologies. An IVHS research study may become an integral part of an operational test to permit an independent evaluation of how well newly developed IVHS technologies work under real operating conditions and assess the benefits and public support for the product or system.

IVHS operational tests are conducted as cooperative ventures between the US DOT and a variety of public and private partners, including State and local governments, private companies, universities and possibly others. Potential private sector participants in IVHS operational tests are encouraged, when appropriate, to work with appropriate State and local transportation agencies or other public sector organizations in the preparation of proposed cooperative ventures. An IVHS operational test will typically involve a carefully crafted partnership which is negotiated among Federal, State, local, private and other institutions. Funding for the technical and administrative responsibilities are shared among the partners in the operational test.

### IVHS Corridors Program

The Intelligent Vehicle-Highway Systems Act, an element of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102–240, 105 Stat. 1914, 2189, established the IVHS Corridors Program. These IVHS corridors will provide long-term sites for multiple operational tests and will serve as showcases for implementation of IVHS technologies.

The ISTEA provides specific criteria that the US DOT is using to designate three to ten priority corridors that would especially benefit from IVHS. Among the criteria specified in the ISTEA for designating the priority corridors are traffic density above the national average, severe or extreme ozone non-attainment, a variety of transportation facilities and an inability to significantly expand capacity. These criteria, especially regarding ozone non-attainment, limit potential priority corridors sites to four areas of the country: a northeast corridor along I–95; a midwestern area that includes Chicago and parts of Indiana and Wisconsin; an area around Houston Texas; and an area in southern California, including Los Angeles and San Diego.

In addition to the priority corridors, other sites will be designated as corridors by the US DOT as part of the Corridors Program. These other corridors may be either urban, rural or commercial vehicle in nature and must possess the characteristics necessary to advance the national IVHS program.

### Funding Levels

The ISTEA provides two categories of funds for operational tests. The first is the IVHS Corridors Program described above. The Corridors Program is authorized at $71 million in fiscal year 1992 and $86 million per fiscal years 1993 through 1997, for a total of $501 million over six years. The ISTEA states that at least 50 percent of the funds for the Corridors Program must be spent in the designated priority corridors. The remaining funds will be spent in the other corridors.

Each year, a portion of the authorized Corridors Program funding will be used to support previously approved, ongoing projects within the corridor sites. The

amount of these funding commitments will vary from year to year. It is expected that approximately $40 to $60 million per fiscal year will be available to fund new operational test projects at the designated priority and other corridor sites.

In addition to the Corridors Program, the "Other IVHS Activities" category in the ISTEA is authorized at $23 million for FY 92 and $27 million per fiscal year for 1993 through 1997. Approximately $10 million per fiscal year will be available from this category of funds to support additional operational tests at sites not designated for the Corridors Program. Opportunities for additional discretionary funding also may be available from the FTA and NHTSA. The exact amount to be made available for operational tests each year from any category of funds will depend on the number and quality of offers submitted and other funding priorities.

Since operational tests vary in size, scale and funding level, the following list illustrates the funding levels in several ongoing, multi-year projects:

| Project | Total cost | Total Federal IVHS Funds |
|---|---|---|
| TravTek, Orlando, FL | $12 million | $3 million. |
| ADVANCE, Chicago, IL | 40 million | 20 million. |
| DIRECT, Detroit, MI | 5 million | 2.5 million. |

A Cooperative Agreement will generally be used as the contract document to transfer Federal IVHS funds to a State DOT or other project partner for implementing the operational test.

**Areas of Interest**

The list below identifies key IVHS technologies or program areas in which operational tests are needed to advance the national IVHS program as discussed in the *Strategic Plan for Intelligent Vehicle-Highway Systems in the United States* [1] adopted by IVHS AMERICA.

In addition to the application of specific technologies, the IVHS program encompasses innovative institutional concepts or arrangements for procuring, installing, operating or managing advanced traffic management and traveler information systems. Examples might include a design-build approach to system procurement and implementation; franchising arrangements or licensing agreements for system operation; contracting to the private sector for system operation; privatization of complete system design, installation and operation; and other procurement innovations. Operational tests which combine innovative institutional concepts with the technologies or program areas identified below would be of particular interest.

**Technologies or Program Areas**

1. Systems that provide direct benefit to travelers in rural areas in terms of improved safety, mobility and productivity. Technologies for use in rural systems could include components from Advanced Traveler Information Systems (ATIS), Advanced Public Transportation Systems (APTS), Commercial Vehicle Operations (CVO), or Advanced Vehicle Control System (AVCS). Some examples of functions or features of interest in a rural IVHS system include:

(a) Systems to detect and provide advisory and warning messages on roadway conditions or other hazards,

(b) Systems that automatically request emergency assistance,

(c) Navigation systems that provide route guidance based on current traffic conditions and information systems for motorist services and tourist attractions,

(d) Dynamic warning systems to warn at-risk vehicles of potentially hazardous conditions such as curves, steep grades, etc., and

(e) Real-time para-transit systems for rural and/or suburban areas.

2. Advanced traveler information systems which encompass various technologies and approaches for providing a wide range of service to the traveler and/or driver. Functions and features of interest include:

(a) Systems to provide real-time information, at home, at work, and in-route, so that travelers can make informed decisions about departure time, travel mode choice, and route selection,

(b) Personal, portable advanced traveler information systems that provide appropriate real-time traffic and traveler information to reduce travel time and improve safety,

(c) Information systems with special commercial functions for public service vehicles and/or commercial fleets such as taxis, transit, and delivery trucks, to provide improved fleet management, productivity gains and mission time reductions,

(d) Systems to disseminate real-time traffic and travel information using low cost communications techniques, for example FM sideband radio transmission. Both urban and rural applications of these systems are of interest,

(e) User-friendly kiosks which provide real-time information on transit routes, opportunities and schedules linking specific locations to waiting passengers. Systems which also include changeable message signs to provide real-time information onboard transit vehicles and at transit stops are of particular interest,

(f) Systems to provide real-time transit information at home, in work places, and at high user volume trip locations. Systems to provide dynamic ride sharing and trip matching information, at home and in work places are also of interest,

3. Advanced traffic management systems that integrate existing traffic signal and freeway surveillance and control systems for area wide, cooperative control in a large multi-jurisdictional metropolitan area, without incurring large additional costs.

4. Alternative surveillance and detection capabilities for real-time traffic control, incident detection and management, and other advanced traffic management features.

5. Environmental and roadway conditions sensor systems to assist the driver in navigating or to detect fog, ice, wind, etc. for improved safety and traffic management.

6. Systems for commercial vehicles to improve industry productivity and fleet management, facilitate remote driver and vehicle safety inspections,and automatically record regulatory information to reduce the paperwork and reporting requirements for both States and industry.

7. Advanced vehicle control systems which encompass various technologies and approaches for providing enhanced collision avoidance capability, including:

(a) Systems for detecting lane departure, and

(b) Systems for detecting obstacles.

**Operational Test Offer Preparation**

An offer to participate in the operational test program should contain sufficient information to enable an evaluation of the merits of the technologies in the proposed test, how closely the test supports the overall IVHS program goals, the appropriateness of the proposed test site, and how strong a commitment the potential project partners have to the successful completion of the project. The offer should not exceed 50 pages in length and, to the extent possible, contain details regarding potential schedules, financial arrangements within the project partnership, proposed

[1] Published by IVHS AMERICA on May 20, 1992. Available to IVHS AMERICA members for $25 and to non-members for $50 from IVHS AMERICA, 1776 Massachusetts Ave., NW., Washington, DC 20036-1903; telephone (202) 857-1242.

scope of the project and the anticipated results. To facilitate review, please submit ten copies, plus an unbound reproducible copy, of the offer. All submittals should be printed on 8½ by 11 inch paper.

The offer should spell out proposed cost share arrangements with enough detail to determine whether the resources being committed to the potential project are sufficient to assure successful completion. Special attention should also be paid to clearly stating the goals and expected results of the project, along with plans which have been made to ensure that the results can be fairly and completely evaluated.

**Review Process**

A review process has been established to evaluate responses to this notice soliciting participation in the IVHS operational test program. A US DOT multi-agency committee will review offers for joint venture and/or multimodal operational tests to determine how well they meet existing IVHS information needs, what unique contributions each makes to the overall IVHS program, and to assess the capabilities and commitments of the project partners. The selection criteria below will be used to judge the degree to which an offer addresses the technical, financial, and project management aspects of the proposed operational test. The selection process will focus on measures such as the overall contribution to IVHS program knowledge base, suitability of the proposed site to support overall IVHS program test objectives, and the ability of the existing infrastructure to support the test program. A critical aspect of the selection process will be judging the various factors that could influence the successful outcome of the proposed test. This will include an assessment of the financial resources that are to be committed to the project.

**Selection Criteria**

*I. Relationship to National Program*

The proposed IVHS Operational Test shall:

1. Directly contribute to the higher priority issues or needs of the US DOT IVHS program involving advanced technologies that offer several of the following:

a. Increased mobility and operational efficiency,

b. Improved safety,

c. Contributions towards clean air and energy efficiency goals,

d. Increased transit ridership and efficiency,

e. Increased vehicle occupancy levels through the improved operation of high occupancy vehicle facilities,

f. Enhanced commercial productivity and regulatory efficiency,

g. Improved commercial vehicle safety,

h. Improved U.S. international competitiveness.

2. Advance the development and eventual implementation of the proposed technology or system. Demonstrate that there is an acceptable basis for believing that the technologies being tested will ultimately be successfully deployed or implemented.

3. Have meaningful, distinguishable features involving technical, institutional, market, or other important characteristics which have not been addressed in operational tests to date. Projects should not replicate past or current tests unless such replication provides a significant contribution to advancing the IVHS program.

4. Fit within a logical evolution of the IVHS program and/or supporting technology.

*II. Project Management and Proposed Partnership*

The proposed IVHS Operational Test plan shall:

1. Provide an overall level of confidence that the test will be successfully completed.

2. Demonstrate an acceptable level of commitment, management capability and business reliability of the partners and, where possible, strong State and local support for the project when they are partners.

3. Demonstrate that there is a commitment by all partners to a national technology sharing effort and a willingness to dedicate the time and effort required to share the technical and institutional results of the test with others.

4. Clearly define the roles and responsibilities of the principal partners and demonstrate that they have the ability to perform their assigned responsibilities. For large or complex tests, an experienced systems manager to support the project is desirable.

5. Provide sufficient background to validate the accuracy of the cost and schedule estimates for the operational test.

6. Minimize any potential negative effects of the test and demonstrate an awareness and approach for dealing with complicating technical or institutional factors which might adversely affect the test. Innovative or challenging ways for dealing with these factors will be of particular interest.

7. Identify the proposed agreements for sharing of technology developed under this operational test.

8. Identify long range plans for full scale deployment of the technologies when the operational test has been completed.

*III. Suitability of the Test Site, Vehicle Fleet and Infrastructure*

The proposed Operational Test shall:

1. Demonstrate that the operational test is part of a continuing, ongoing transportation management program or that there is a good opportunity for components of the operational test to evolve into operational systems after the testing is completed.

2. Demonstrate that the size and characteristics of the test and site are adequate for meaningful evaluation of the proposed system and/or technology and that the test and site have the operational or environmental characteristics to challenge the operation, reliability and durability of the product/prototype being evaluated.

3. Assure that local public transportation services are in place, as necessary, to assure a valid market test of the operational test technology and that the local public transportation providers are interested in the adoption of new technologies.

4. Provide the opportunity to evaluate the safety benefits of systems and/or operations where such issues are important considerations.

5. Maintain adequate records to support the project evaluation with regard to operation and maintenance, etc. of the device/system being tested.

*IV. Federal Role*

The proposed Operational Test shall:

1. Assure that the Federal government role in the operational test is consistent with the Department's statutory role and responsibilities.

2. Assure Federal participation in the design and conduct of the project evaluation is sufficient to ensure that the project is independently evaluated on a national program scale.

3. Assure that the proposed contribution to the operational test is consistent with agency policy and appropriate to the type and scope of the test. By statute, the maximum share of an operational test funded from Federal funds, including IVHS funds, cannot exceed 80%. The remaining 20% must be from non-federally derived funding sources and must consist of either cash, substantial equipment contributions which are wholly utilized as an integral part of the project, or personnel services dedicated full-time to project purposes

for a substantial period, as long as these staff are not otherwise supported with Federal funds. In order to maximize available Federal IVHS dollars and consistent with agency policy, prospective partners are encouraged to increase their share to 50%. Additional funds provided over the required 20% minimum may come from a variety of funding sources any may include the value of federally-supported projects directly associated with the IVHS project. These contributions may come from State, local government, or private sector participants.

4. Demonstrate that Federal IVHS funds are not being used when regular Federal-aid, State, or private funds can and should be used or where the primary benefit of the operational test is in areas of private sector responsibility.

5. Assure that Federal participation in the proposed test is an appropriate use of the Federal government's resources.

**Negotiation and Approval Process**

Based on the above selection criteria, a US DOT review committee will identify those offers which have the greatest potential for successful participation in the US DOT IVHS program.

For those offers that satisfy the selection criteria, the lead US DOT agency will begin negotiations with the project partners to reach mutually agreeable terms for an IVHS operational test. It should be noted that the development of the final project may require extensive, and sometimes lengthy, negotiations between the parties. Only upon successful completion of these negotiations would a partnership be formed.

(Secs. 6051 through 6059, Pub. L. 102-240, 105 Stat. 1914, 2189; 23 U.S.C. 315)

Issued on: July 10, 1992.

**T.D. Larson,**

*Administrator.*

[FR Doc. 92-16985 Filed 7-17-92; 8:45 am]

BILLING CODE 4910-22-M

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## Federal Railroad Administration

### Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements

Pursuant to 49 CFR part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

**Block Signal Application (BS-AP)-No. 3179**

*Applicant: Consolidated Rail Corporation*

Mr. J.F. Noffsinger, Chief Engineer—C&S, 15 North 32nd Street, Philadelphia, Pennsylvania 19104-2849.

The Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of four controlled signals, numbers 38R, 40L, and 42R, on the Hagerstown Secondary Track and No. 1 Running Track, between "Town" Interlocking, milepost 73.7 and "Hager" Interlocking, milepost 74.8, Harrisburg Division, near Hagerstown, Maryland.

The reason given for the proposed changes is to retire facilities no longer required for present operation.

**BS-AP-No. 3180**

*Applicant: Atchison, Topeka and Santa Fe Railway Company*

Mr. Russell E. Hagberg, Vice President—Transportation, 1700 East Golf Road, Schaumburg, Illinois 60173-5860.

The Atchison, Topeka and Santa Fe Railway Company seeks approval of the proposed modification of the signal system, on the main and secondary tracks, between C.A. Junction, Missouri, milepost 418.2 and East Sibley, Missouri, milepost 424.9, on the Illinois Division, Marceline Subdivision, consisting of the discontinuance and removal of the automatic train stop equipment from the trackage.

The reason given for the proposed changes is that the trackage is presently authorized for 79 mph passenger train movements and the automatic train stop equipment is unnecessary.

**BS-AP-No. 3181**

*Applicant: Atchison, Topeka and Santa Fe Railway Company*

Mr. Russell E. Hagberg, Vice President-Transportation, 1700 East Golf Road, Schaumburg, Illinois 60173-5860.

The Atchison, Topeka and Santa Fe Railway Company seeks approval of the proposed modification of the signal system, on the main and secondary tracks, between Holiday, Kansas, milepost 0.0 and Emporia, Kansas, milepost 111.8, on the Illinois Division, Topeka Subdivision, consisting of the discontinuance and removal of the automatic train stop equipment from the trackage.

The reason given for the proposed changes is that the present maximum authorized speed over the trackage is 79 mph and the automatic train stop equipment serves no purpose.

**BS-AP-No. 3182**

*Applicant: CSX Transportation*

Mr. W.J. Scheerer, Chief Engineer—Train Control, 500 Water Street, Jacksonville, Florida 32202.

CSX Transportation seeks approval of the proposed discontinuance and removal of the traffic control system on the single main track between milepost SG 575.0 and milepost SG576, near Howells, Georgia, on the Atlanta Division, consisting of the conversion all power-operated switches to hand-operation, the removal of all signals, and the designation of the trackage to yard limit operation.

The reason given for the proposed changes is to eliminate facilities no longer needed for present day operation.

**BS-AP No. 3183**

*Applicant: CSX Transportation*

Mr. W.J. Scheerer, Chief Engineer—Train Control, 500 Water Street, Jacksonville, Florida 32202.

CSX Transportation seeks approval of the proposed reduction of the limits of the traffic control system on the single main track between milepost Z138.0 and milepost Z139.3, near Erwin, Tennessee, on the Corbin Division, Blue Ridge Subdivision, consisting of the removal of one signal, the relocation of one signal, and the conversion of an automatic block signal to an operative approach. The carrier proposes to operate the trackage under yard limits rules.

The reason given for the proposed changes is to eliminate facilities no longer needed for present day operation.

**BS-AP-No. 3184**

*Applicant: CSX Transportation*

Mr. W.J. Scheerer, Chief Engineer—Train Control, 500 Water Street, Jacksonville, Florida 32202.

CSX Transportation seeks approval of the proposed reduction of the limits of the traffic control system on the single main track between milepost 90.7 and milepost 93.0, near Bruceton, Tennessee, on the Mobile Division, Bruceton Subdivision, consisting of the removal of one signal and the operation of the trackage under yard limit rules.

The reason given for the proposed changes is to eliminate facilities no longer needed for present day operation.

**BS-AP-No. 3185**

*Applicant: National Railroad Passenger Corporation*

Mr. P.A. Cannito, Vice President-Engineering, 30th and Market Streets, Philadelphia, Pennsylvania 19104.

The National Railroad Passenger Corporation seek approval of the proposed modification of the automatic block signal system and supplemental cab signal system arranged for movements with the current of traffic, on the two main tracks, between Shore Line Junction Interlocking, milepost 75.2, near New Haven, Connecticut, and Cranston Interlocking, milepost 181.2, near Cranston, Rhode Island, Boston Division. The carrier proposes the discontinuance and removal of the intermediate wayside signals retaining only approach and home signals in connection with the installation of a traffic control system, with the cab signals expanded to include five additional speed/aspects, and speed control for high speed operation. All hand-operated switches in the main tracks will be electrically locked.

The reason given for the proposed changes is to retire facilities no longer required for future operation with electrification and higher speeds.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 13, 1992.

**Phil Olekszyk,**

*Deputy Associate Administrator for Safety.*

[FR Doc. 92-16964 Filed 7-17-92; 8:45 am]

BILLING CODE 4910-16-M

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## National Highway Traffic Safety Administration

**Docket No. 92-17; Notice 2**

## Determination That Nonconforming 1985 Daimler Limousines are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of determination by NHTSA that nonconforming 1985 Daimler Limousines are eligible for importation.

**SUMMARY:** This notice announces the determination by NHTSA that 1985 Daimler Limousines not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified model 1985 Daimler Limousine), and they are capable of being readily modified to conform to the standards.

**DATES:** The determination is effective July 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

**SUPPLEMENTARY INFORMATION:** Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that.

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 (of the Act), and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (Registered Importer No. R-90-005) petitioned NHTSA to determine whether 1985 Daimler Limousines are eligible for importation into the United States. NHTSA published notice of the petition on April 17, 1992 (57 FR 13792) to afford an opportunity for public comment. The notice referenced a letter that the petitioner had furnished from the vehicle's manufacturer, Jaguar Cars, Inc., in which that manufacturer stated that it "certified the 4.2 liter Daimler limousine for [the] 1985 model year" and that "two were brought in as complying, certified cars." The reader is referred to the **Federal Register** notice for additional details on the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

### Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #12 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

### Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a non-U.S. certified 1985 Daimler Limousine is substantially similar to a 1985 Daimler Limousine originally manufactured for importation into and sale in the United States and certified by its manufacturer under section 114 of the National Traffic and Motor Vehicle Safety Act, and that the non-U.S. certified 1985 Daimler Limousine is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

**Authority:** 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at CFR 1.50 and 501.8.

Issued on: July 14, 1992.

**William A. Boehly,**

*Associate Administrator for Enforcement.*

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## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## The Federal Republic of Yugoslavia (Serbia and Montenegro), Notification of Status of Controlled Yugoslav Entities

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** General Notice No. 1.

**SUMMARY:** The Treasury Department has been asked to clarify the status of various entities in which the

Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) may have an interest or which may be located in the Federal Republic of Yugoslavia (Serbia and Montenegro) may have an interest on which may be located in the Federal Republic of Yugoslavia (Serbia and Montenegro) for purposes of Executive Orders 12808 and 12810. Based on information currently available to the Office of Foreign Assets Control, the following partial list of entities owned or presumed to be controlled by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) has been compiled.

**FOR FURTHER INFORMATION CONTACT:** Loren L. Dohm, chief, Blocked Assets Division, Tel.: (202) 622–2440, or William B. Hoffman, Chief Counsel, Tel.: (202) 622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC.

**SUPPLEMENTARY INFORMATION:** On May 30, 1992, the President issued Executive Order 1208, declaring a national emergency with respect to Serbia and Montenegro, and invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). The Executive order blocks all property and interests in property of the Governments of Serbia and Montenegro, as well as all property and interests in property in the name of the former Government of the Socialist Federal Republic of Yugoslavia or the Government of the Federal Republic of Yugoslavia. On June 4, 1992, the President issued Executive Order 12810, imposing additional sanctions on the Federal Republic of Yugoslavia (Serbia and Montenegro), consistent with United Nations Security Council Resolution 757, dated May 30, 1992.

The Executive order block, *inter alia*, all property and interests in property of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro). The term "Government of the Federal Republic of Yugoslavia (Serbia and Montenegro)" includes:

(1) The state and the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), as well as any political subdivision, agency, or instrumentality thereof, including the National Bank of Yugoslavia, the Yugoslav National Army, the Yugoslav Chamber of Economy, the National Bank of Serbia, the Serbian Chamber of Economy, the National Bank of Montenegro, and the Montenegrin Chamber of Economy;

(2) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act, directly or indirectly, on behalf of any of the foregoing; and

(4) Any other person or organization determined by the Director of the Office of Foreign Assets Control to be included within this section.

The entities appearing on the "Blocked Yugoslav Entities Currently Identified" list are owned or deemed to be controlled by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and are therefore blocked by sections 1 and 2 of Executive Order 12808 and section 1 of Executive Order 12810. In addition, many of these entities are located in the Federal Republic (Serbia and Montenegro) and thus subject to the transfer restrictions contained in section 2(g) of Executive Order 12801. Section 2(g) prohibits transfers to or for the benefit of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) or persons or entities located in the Federal Republic of Yugoslavia (Serbia and Montenegro).

This list is not all-inclusive. All entities located or organized in the Federal Republic of Yugoslavia (Serbia and Montenegro), and their foreign subsidiaries, are presumed to be controlled by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro). U.S. person are prohibited from engaging in transactions with such entities, unless the transactions are licensed by the Office of Foreign Assets Control. In addition, all assets within U.S. jurisdiction owned or controlled by these entities are to be treated as blocked. U.S. persons are not prohibited, however, from paying funds owed to these entities into blocked accounts held in domestic U.S. financial institutions. Entities on the list known to be located in the United States are marked by an asterisk (*)

Entities wishing to provide information concerning ownership or control of any listed entity by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), or to apply for licenses to authorize specific transactions or classes of transactions, should write to the Office of Foreign Assets Control.

**Warning:** This list is subject to revision as additional information becomes available. Do not assume that a particular entity is free of ownership or control by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) or that it is located outside Serbia or Montenegro based solely on its absence from the "Blocked Yugoslav Entities Currently Identified" list.

**Authority:** 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; 49 U.S.C. App. 1514; E.O. 12808, 57 FR 23299 (June 2, 1992); E.O. 12810, 57 FR 24347 (June 9, 1992).

## Blocked Yugoslav Entities Currently Identified

*Banks and Financial Institutions*

Agencia d.d., New York
Agrobanka Belgrade
AY Bank Limited (formerly known as "Anglo-Yugoslav" Bank)
Banque Franco Yougoslave
Beogradska Banka d.d. (formerly known as "Beobanka d.d." and "Udruzena Beogradska Banka")
Dafiment Bank
First Corporate Bank
Inex Banka, d.d.
International GENEX Bank
Jugobanka d.d. (also known as "Yugobanka")
Jugoskandik d.d.
Jugoslovenska Banka za Medjunarodnu Ekonomsku Saradnju (also known as "YUBMES" or "Yugoslav Bank for International Economic Cooperation")
Jugoslovenska izvozna i kreditna banka d.d. (also known as "Yugoslav Export and Credit Bank Group" and "JIK Banka d.d.")
Karic Banka d.d.
Kreditna Banka Beograd
Mesovita Banka d.d. (also known as "PKB Banka")
Montenegrobanka d.d. (formerly known as "Investiciona Banka Titograd")
Montex Banka d.d.
National Bank of Montenegro (also known as "Narodna Banka Crne Gore")
National Bank of Serbia (also known as "Narodna Banka Srbije")
National Bank of Yugoslavia (also known as "Banque Nationale de Yougoslavie" and Narodna Banka Jugoslavije")
Niksa Banka
Novosadska Banka d.d.
Osnovna Banka Kreditna Banka Beograd
Osnovna Privredno-Investiciona Banka (also known as "Investbanka")
Panonska Banka d.d.
Privredna banka Beograd d.d.
Privredna banka Novi Sad d.d.
Slavija Banka
Sluzba Drustvena Knigovodstva (also known as "SDK" or "Social Accounting Service")
Smederevska Banka d.d.
Societe Generale Yugoslav Bank d.d.
Udruzena Kosovska Banka (also known as "Associated Bank of Kosovo")
Union Banka d.d.
Vojvodjanska Banka d.d.

*Nonbanking Institutions*

Aerodrom Beograd (also known as "Airport Belgrade")
Aeroinzinjering
Agro-Univerzal
Agroexport
Agrooprema
Agropanonija
Agropromet
Agrovojvodina

AIK Sumadija
AIK Vranje
Air Jugoslavia
AS Impex/Aeroservis
Astro-Orion
Autotehna
Aviogenex
AVNOJA 57
Balkanija
Beomedicina
Brodoimpex
CENTROCOOP (also known as "CENTROCOOP Export-Import Enterprise")
CENTROCOOP—Belkamen
CENTROCOOP—Hladnjaca Bar
CENTROCOOP—Invest
CENTROCOOP—Proizvodnja
Centroexport
Centroprojekt
Centrotekstil
Centrotextil Inc.*
Chamber of Economy of Montenegro (also known as "Privredna Komora Crne Gore")
Chamber of Economy of Serbia (also known as "Privredna Komora Srbije")
Chamber of Economy of Yugoslavia (also known as "Privredna Komora Jugoslavije")
Coopex
Dinara
Drvno Industrijsko Preduzece (also known as "DIP")
Dunav (also known as "Danube")
Dunav-Tisa-Dunav
Duvanska Industrija
EI Bull HN
EI-Fabrika Radio Cevi
EI-Nis
Elektrometal
Elektroprivreda Crne Gore (also known as "Montenegro Electric Power Company")
Elektroprivreda Srbije (also known as "Serbia Electric Power Industry")
Elektrotimok
Elind
Energoprojekt Promet
Energoprojekt, Inc.*
Fabeg
Fabrika Kablova
Fabrika Opreme i Delova
Fabrika Stakla—Zajecar
Fabrika Ventila za Pneumatiku
Fam
FAP-FAMOS
Federal Directorate of Supply and Procurement
FERONIKL—Glogovac
General Motors YU
Generalexport (also known as "GENEX")
Genex Kristal
GIK Komgrap
Global
GOSA
Grupo ICD-PAMS-SG
Gumaplast
Hemofarm
Hempro
HISAR—Fabrika za Preradu Voca i Povrca (also known as "Canned Fruit and Vegetable Production of Prokuplje")
I.P.T. Company, Inc.*
ICN-Galenika
Ikarus
IMK 14 Oktobar (also known as "Metalworking Machines and Components Industry 14 October")
Imlek
Impex Overseas Corporation *
IMR—Industrija Motora Rakovica (also known as "Motor Industry of Rakovica")
IMT—Industrija Motora I Traktora (also known as "Machines and Tractors Industry")
Industrija Kablova
Industrija Kotrljajucih Lezaja
Industrijaimport
Inex Turist
Inexamer Commercial Corporation *
Informatika
Inkotehna
Inos
Institut za Sisteme
Institut za Spoljnu Trgovinu (also known as "Foreign Trade Institute")
Interexport
Interkomerc
International Trade Marketing
Interprogress Trading Corporation *
Interservis
Intertehna
Invest Import
Investinzenjering
Itrana
Ivo Lola Riber—Beograd
JAT (also known as "Yugoslav Airlines" or "Jugoslovenski Aerotransport" or "Javno Preduzece za Vazdusni Saobracaj")
Javno Preduzece PTT Srbije (also known as "Public Enterprise of Post, Telegraph, and Telephone of Serbia")
Jugoagent
Jugoalat
Jugoauto
Jugoazbest
Jugobrod
Jugodrvo
Jugoduvan
Jugoelektro
Jugoexport
Jugohemija
Jugoinspekt
Jugolaboratorija
Jugolek
Jugometal
Jugomontana (also known as "Yugomontana")
Jugopapir
Jugopetrol
Jugoprevoz
Jugoslovenska Oceanska Plovidba (also known as "Yugoslav Ocean Lines")
Jugoslovenska Pomorska Agencija (also known as "Yugoslav Shipping Agency")
Jugotehna
Karic Brothers (also known as "Brace Karic")
KAT
Kluz
Koimpex
Kombinat Aluminijuma Podgorica (also known as "Aluminum Cooperative Podgorica")
Konstruktor
Kooperativa
Krusevac Promet
Krusik
Kuglex
LETEKS—Leskovac (also known as "Wool and Textile Industry of Leskovac")
Lirija
LZTK
MAG Intertrade
Magnohorm
Markonizoni
Masinokomerc
MATROZ Sremska Mitrovica (also known as "MATROZ—Cellulose and Paper Industry")
Merima
Metalchemical Commercial Corporation*
Metalservis
Metalursko Metalski Kombinat Niksic
MG Nord Trading Company
MIN—Masinska Industrija (also known as "Machine Industry of Nis")
Minel
Minnex Trading Corporation*
MKS—Metalurski Kombinat Smederevo (also known as "Metalurgical Cooperative of Smederevo")
Montenegroexpres—Budva (also known as "Tourist Enterprise Montenegroexpres")
Montex
Morava
Nacional
Nacional Shop
Naftagas
NIS-NAFTA Industrija Srbije (also known as "Serbian Petroleum Industry")
Nolivel
Novinska Agencija Tanjug (also known as "TANJUG")
Novkabel
Novosadska Fabrika Kabela
OBOD Cetinje—Elektroindustrija
Omniauto
Omnikomerc
Optika—Beograd
Pamucni Kombinat Yumko
PIK Becej
PIK Pozarevac
PIK Sirmium
PIK Sombor
PIK Takovo
PIK Tamis
Poljoprivredni Kombinat Beograd (also known as "PKB")
Preduzece za Gazdovanje Sumama—Srbijasume (also known as "Public Forestry Enterprise—Srbijasume")
Progres
Progres—Interagrar
PROGRES—Prizren (also known as "Metal and Plastic Components Production")
Prva Petroletka
PTT Crne Gore (also known as "Montenegro Post, Telegraph and Telephone")
PTT Jugoslavije (also known as "Yugoslav Post, Telegraph and Telephone") (including all Serbian and Montenegrin affiliates)
Putnik
RAD Gradjevinsko Preduzece
Radoje Dakic (also known as "Enterprise for Construction Machinery—Radoje Dakic")
Rank Xerox YU
Rapid
Ratko Mitrovic—Beograd
Rekord
Robne Kuce Beograd
RTB (also known as "Radio Televizija Beograd")
RTB Bor
RTV Crne Gore (also known as "Radio Televizija Crne Gore") (including all affiliates)
RTV Novi Sad (also known as "Radio Televizija Novi Sad")

RTV Pristina (also known as "Radio Televizija Pristine")
RTV Srbije (also known as "Radio Televizija Srbije") (including all affiliates)
Rudnik—Gornji Milanovac
RUL—Leskovac
Sava
SBS
Seme
Servo Mihalj
Sever
Sevojno Overseas Corporation *
Simpo (also known as "Sima Pogacarevic-Simpo")
Sintelon
Srbija—Kragujevac
Srbijaturist
Srbocoop
Srpska Fabrika Stakla
Suko
Tacon Group
Tehnogas
Tehnohemija
Tehnopromet
Tehnoservis
Teking-Invest
Teknox
Tekstilni Kombinat RASKA
Teleoptik
TIG—Tekstilna Industrija Grdelica (also known as "Textile Industry of Grdelica")
Tigar
Tigar America *
TREPCA—Kosovska Mitrovica (also known as "Mining Metalurgy-Chemical Combination of Lead and Zinc")
Trgoprodukt
Trgovina Kosovo
Turisticki Savez Jugoslavije (also known as "Tourist Association of Yugoslavia")
Udruzenje YU Visa
Unionpromet
Univerzal
UTVA
Valjaonica Aluminijuma
Vetprom
VISKOZA—Loznica (also known as "Viscose and Cellulose Industry of Loznica")
Vocarcoop—Union
Vojvodina—Sremska Mitrovica
Vojvodina Tours
Yatzo Group
Yugoexport *
Yugoslav National Army (also known as "Jugoslovenska Narodna Armija" or "JNA")
Yugoslavia Commerce
Yugotours
Yusaco
Zajednica Jugoslovenskih Zeleznica (also known as "Association of Yugoslav Railways")
Zastava Impex
Zavod za E. Eksp.
Zavodi Crvena Zastava—Kragujevac (also known as "Automobile Industry—Crvena Zastava" or "Zastava")
ZCZ/Yugomedica
Zdravlje
Zelengora
Zeleznicko Transportno Preduzece Beograd (also known as "Belgrade Railroad Transportation Organization")
Zeleznicko Transportno Preduzece Crne Gore (also known as "Montenegrin Railroad Transportation Organization")
Zeleznicko Transportno Preduzece Novi Sad (also known as "Novi Sad Railroad Transportation Organization")
Zeleznicko Transportno Preduzece Srbije (also known as "Serbian Railroad Transportation Organization")
Zorka
Zupa—Krusevac

Issued: July 13, 1992.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: July 14, 1992.

**Peter K. Nunez,**

*Assistant Secretary (Enforcement).*

[FR Doc. 92-17011 Filed 7-17-92; 8:45 am]

BILLING CODE 4810-25-M

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**CONSUMER PR
COMMISSION**

**TIME AND DAT**
21, 1992.

**LOCATION:** Ro
Towers, 5401
Bethesda, Ma

**STATUS:** Oper

**MATTERS TO**
Lighters.

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For a Recorde
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504-0709.

**CONTACT PER
INFORMATION:**
of the Secreta
Bethesda, Md

Dated: July 1

**Sheldon D. Butt**

*Deputy Secreta*

[FR Doc. 92-171

BILLING CODE 63

**CONSUMER PR
COMMISSION**

**TIME AND DAT**
July 22, 1992.

**LOCATION:** Ro
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Bethesda, Ma

**STATUS:** Oper

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**CONTACT PER
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Bethesda, Md

Dated: July 1

**Sheldon D. Butt**

*Deputy Secreta*

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VOL 57 ISS 139 JL 20 1992 UMI

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 139
Monday, July 20, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m., Tuesday, July 21, 1992.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:** Cigarette Lighters.

The staff will brief the Commission on a proposed consumer product safety standard that would require disposable and novelty lighters to meet specified requirements for child-resistance.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: July 15, 1992.

**Sheldon D. Butts,**

*Deputy Secretary.*

[FR Doc. 92–17168 Filed 7–16–92; 2:18 pm]

BILLING CODE 6355–01–M

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**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m., Wednesday, July 22, 1992.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:** FY 94 Budget.

The Commission will consider issues related to the Budget for fiscal year 1994.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: July 15, 1992.

**Sheldon D. Butts,**

*Deputy Secretary.*

[FR Doc. 92–17169 Filed 7–16–92; 2:18 pm]

BILLING CODE 6355–01–M

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**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m., Thursday, July 23, 1992.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:** Section 15 & 37, CPSA.

The Commission will consider amendments to the Commission's rules interpreting Section 15 of the CPSA and a rule interpreting Section 37 of the CPSA.

For a Recorded Message Containing the Latest Agenda Information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: July 15, 1992.

**Sheldon D. Butts,**

*Deputy Secretary.*

[FR Doc. 92–17170 Filed 7–16–92; 2:18 pm]

BILLING CODE 6355–01–M

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**DEPARTMENT OF DEFENSE**

**UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES**

Meeting Notice

**TIME AND DATE:** Executive Committee of the Board of Regents time 11:00 a.m., July 27, 1992.

**PLACE:** Uniformed Services University of the Health Sciences, Room A1005, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

**STATUS:** Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

**MATTERS TO BE CONSIDERED:**

11:00 a.m. Meeting—Board of Regents Executive Committee

(1) Planning for the August 10th Board of Regents meeting.

**CONTACT PERSON FOR MORE INFORMATION:** David S. Trump, M.D., Executive Secretary of the Board of Regents, 301/295–3886.

Dated: July 16, 1992.

**Linda Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92–17180 Filed 7–16–92; 3:18 pm]

BILLING CODE 3810–01–M

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**UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS**

Amendment to Notice of Closed Meeting

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 57 FR 30770, July 10, 1992.

**PREVIOUSLY ANNOUNCED DATE OF MEETING:** August 3, 1992.

**CHANGE:** Delete the following item from the closed meeting agenda:

Consideration of a Proposed Filing with the Postal Rate Commission for a Mail Classification Change Regarding Delivery Point Barcoding.

**CONTACT PERSON FOR MORE INFORMATION:** David F. Harris, (202) 268–4800.

**David F. Harris,**

*Secretary.*

[FR Doc. 92–17172 Filed 7–16–92; 2:19 pm]

BILLING CODE 7710–12–M

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**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week July 20, 1992.

A closed meeting will be held on Wednesday, July 22, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, July 22, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Litigation Matter.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Atkins at (202) 272–2000.

Dated: July 15, 1992.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 92–17136 Filed 7–16–92; 2:17 pm]

BILLING CODE 8010-01-M

VOL 57 ISS 139 JL 20 1992 UMI

federal register

Monday
July 20, 1992

Part II

# Department of Health and Human Services

**Food and Drug Administration**

**21 CFR Part 101**

**Food Labeling: Format for Nutrition Label; Proposed Rule**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 101**

**[Docket No. 91N-0162]**

**RIN 0905-AD08**

**Food Labeling: Format for Nutrition Label**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to adopt a new format for use in presenting nutrition information on the food label and in the labeling of food. In conjunction with this proposal, FDA is providing a review of the results of four consumer research studies that it conducted to evaluate the effectiveness of a number of alternative nutrition label formats. Based on the findings of the research, the comments on this document, the results of other label research that the agency expects to receive during the comment period for this document, and all other relevant information, FDA intends to revise the current nutrition label in conjunction with several final regulations implementing the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). FDA is requesting comment on the proposed format, the strengths and weaknesses of the other format alternatives tested, as well as of any alternate format, in meeting the requirements of the 1990 amendments that deal with how nutrition information is to be conveyed to the public. The agency will publish a final regulation by November 8, 1992, that defines a standard format for presenting nutrition information on the food label.

**DATES:** Written comments by August 19, 1992. The agency is proposing that any final rule that may issue based upon this proposal become effective 6 months following its publication in accordance with requirements for nutrition labeling under the Nutrition Labeling and Education Act of 1990.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Raymond E. Schucker, Center for Food Safety and Applied Nutrition (HFF-240), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5657.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. General*

In response to a request by the Secretary of Health and Human Services (the Secretary) to seek improvements in the way nutrition information is conveyed on the food label, FDA published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** of August 8, 1989 (54 FR 32610), soliciting public comment on a wide range of food labeling issues, including among other things: (1) Whether to revise requirements for nutrition labeling, and (2) whether to change the nutrition label format. FDA subsequently held four public hearings on food labeling, the last of which was held in Atlanta, GA on December 13, 1989, and focused on the nutrition label format.

The National Food Processors Association (NFPA) submitted as a comment on the ANPRM the results of a consumer research study that it sponsored in 1990 (Ref. 1). In the NFPA study, food shoppers expressed a preference for a label design that presented tabular nutrient values in the same manner as current labeling but that also added as a separate section a nutrition profile that put important food components in the context of standards of daily consumption.

In the **Federal Register** of July 19, 1990 (55 FR 29487), FDA published a proposed rule entitled "Food Labeling; **Mandatory Status** of Nutrition **Labeling and Nutrient Content Revision**" (hereinafter referred to as "the **mandatory nutrition** labeling proposal"). FDA proposed to require that **nutrition** labeling be included in the labeling of **most foods that are** a meaningful source of nutrition and that the levels of a minimum of 13 nutrients be included in the nutrition labeling.

The mandatory nutrition labeling proposal also provided for the declaration of proposed Daily Reference Values (DRV's) for up to eight food components as part of a separate voluntary section of the nutrition label under the heading "Nutrition Profile." (See discussion in section IV.) The agency proposed the nutrition profile in recognition of numerous public comments on the ANPRM that expressed interest in information about how individual foods fit within general recommendations for the total daily diet. FDA discussed the way in which it derived proposed DRV's in a companion technical document entitled "Food Labeling; Reference Daily Intakes and Daily Reference Values" (55 FR 29476, July 19, 1990) (hereinafter referred to as the "RDI/DRV proposal").

The President signed the 1990 amendments (Pub. L. 101-535) into law on November 8, 1990. FDA discussed the effects of the 1990 amendments on its July 19, 1990, proposals in a supplementary proposal on nutrition labeling that published in the **Federal Register** of November 27, 1991 (56 FR 60366), entitled "Food Labeling; Reference Daily Intakes and Daily Reference Values; Mandatory Status of Nutrition Labeling and Nutrient Content Revision."

To conform with the requirements of the 1990 amendments, FDA proposed to require the addition of complex carbohydrates and sugars to nutrients that must be declared in nutrition labeling. In addition, the agency proposed to make the DRV's a mandatory part of nutrition labeling. The agency explained that it was doing so in response to comments that it received on the mandatory nutrition labeling proposal and to the findings of new consumer research studies, and to fulfill the requirements of section 2(b)(1)(A) of the 1990 amendments to promote comprehension and understanding of the significance of nutrition information in the context of a total daily diet (56 FR 60366 at 60372, November 27, 1991).

As stated above, the agency has tentatively determined that the best way to place the food within the context of a total daily diet is to provide DRV's for calories and the seven nutrients that will be required on the label. The U.S. Department of Agriculture (USDA), which is considering separate nutrition labeling regulations for meat and poultry, has suggested that the need for "contextual" information can best be met by providing information based on the Federal Government's dietary guidelines. Appendix F illustrates such an approach.

FDA is requesting public comment on the question of whether this format, and all others discussed in this document, meets the statutory requirement that the information included in nutrition labeling be conveyed in a manner that enables consumers to understand its relative significance in the context of a total daily diet. (Various other format alternatives are illustrated and discussed later in this document.)

Further, FDA requests comment on the relative merits of the USDA-suggested format and those other alternatives, e.g., which format(s) are likely to be most comprehensible to consumers; which format(s) best helps consumers apply the nutrition information to their individual needs; which format(s) can best be accommodated in the space available on a food label?



### *B. An Improved Nutrition Label Format—Legal Authority*

The 1990 amendments direct the Secretary to issue proposed regulations to implement new section 403(q) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(q)), which makes nutrition labeling mandatory for most foods regulated by FDA (section 2(b)(1) of the 1990 amendments). Authority to ensure that the label format helps consumers to choose a healthy diet is provided by at least two provisions of the 1990 amendments. Section 403(q)(1) of the act (21 U.S.C. 343(q)(1)), which was added by the 1990 amendments (section 2(a)), states:

> The Secretary may by regulation require any information required to be placed on the label or labeling by this subparagraph or subparagraph (2)(A)) (section 403(q)(1) or (2)(A)) to be highlighted on the label or labeling by larger type, bold type, or contrasting color if the Secretary determines that such highlighting will assist consumers in maintaining healthy dietary practices.

In addition, section 2(b)(1)(A) of the 1990 amendments states that the implementing regulations shall—

> * * * require the required information to be conveyed to the public in a manner which enables the public to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet.

A standardized graphic presentation that arranges nutrient names, declarations of nutrient amounts, and other required nutrition information, and that allows a consumer to judge the significance of the level of a particular nutrient in a particular food in the context of the total daily diet, fulfills the new statutory requirements. It is also consistent with the Secretary's mandate for an improved food label.

The 1990 amendments also require, in section 2(c), that the Secretary carry out activities that educate consumers about the availability of nutrition information on the food label and "the importance of that information in maintaining healthy dietary practices." FDA interprets this provision, together with section 2(b)(1)(A) of the 1990 amendments, and section 403(q)(1) of the act, as a mandate for the agency to investigate new labeling approaches, such as highlighting, grouping, and techniques for graphic presentation. The agency also interprets it as a mandate to conduct consumer research to determine the format for nutrition labeling that will most effectively call consumers' attention to the nutrition information and facilitate consumer understanding of the significance of that information pertaining to a particular food in relation to total dietary information.

Traditionally, the function of the nutrition label has been to provide information about the nutrient components in food. Education about the role of nutrients in maintaining diet and health status has been considered to be the province of educators and governments, to be carried out in various formal and informal off-label settings and assisted by explanatory pamphlets, magazines and news media articles, and public service advertising.

However, the 1990 amendments (sections 2(b)(1)(A) and 2(c) of the 1990 amendments and section 403(q)(1) of the act) direct that nutrition labeling be revised so that it can play a more educational role, specifically to assist consumers in maintaining healthy dietary practices. FDA requests comment about how the nutrition label can best assume the educational role mandated by the 1990 amendments.

Finally, the legislative history accompanying the 1990 amendments suggests that the Secretary consider a variety of format options including: "information about the recommended daily intake, the use of descriptive terms such as 'high,' 'medium,' and 'low' or use of universal symbols to indicate desirable or undesirable levels of particular nutrients." (H. Rept. 101-538, 101st Cong., 2d sess. 18 (1990).)

### *C. Need for Consumer Research*

In the mandatory nutrition labeling proposal, FDA announced the agency's intention to examine various alternatives (such as bar graphs and pie charts) to the current tabular format for presenting nutrition information on food labels. The agency had received public comment in response to the ANPRM, cautioning against making changes in the format without first conducting consumer research to determine the effectiveness of alternatives. Relatively few data were available concerning the usefulness of the various format alternatives, and there was concern that unfounded changes to the current format familiar to consumers could be counterproductive.

The need for consumer testing was underscored by a report entitled "Nutrition Labeling—Issues and Directions for the 1990's" (Ref. 2), which was prepared by the Committee on the Nutrition Components of Food Labeling, Food and Nutrition Board, Institute of Medicine (IOM) of the National Academy of Sciences (NAS) (the Committee) and jointly sponsored by the Department of Health and Human Services (DHHS) and USDA. The report stated that consumer ability to use information to facilitate choosing foods consistent with USDA's and DHHS' "Nutrition and Your Health, Dietary Guidelines for Americans" report (Ref. 3) should be an important consideration in selection of a format, and that the popularity of a format alone is not sufficient to recommend its use. This report, which was issued after the publication of the July 1990 proposals, recommended that alternative label formats be subjected to both qualitative and quantitative consumer testing before the issuance of any final nutrition labeling requirement. The Committee found that it is "essential that actual formats be tested in an environment closely approximating marketplace conditions."

Formal position statements advocating consumer testing also were issued by the American Dietetic Association and jointly by the American Institute of Nutrition and the American Society of Clinical Nutrition (Refs. 4 and 5). Consequently, FDA developed a research proposal for a consumer study, the results of which could help support a regulatory proposal establishing a revised nutrition format.

### *D. Format Alternatives and Their Selection*

FDA has reviewed its experience with the existing nutrition label, format suggestions received in response to the ANPRM, and format ideas generated as part of a label design project in 1983 (Ref. 6). On the basis of this review, FDA listed the possibilities for the nutrition label format, including: (1) Bar graphs; (2) pie charts; (3) adjectival descriptors; (4) tabular numeric formats with either minor or major modifications; (5) tabular formats enhanced by highlighting devices such as color, boldface type, type size, or other graphic devices; (6) other types of graphic presentations; and (7) grouping of nutrients according to amounts present in the food or according to dietary recommendations to moderate or increase nutrients in the diet. The agency did not include graphic devices such as stars and smiling faces on this list because based on research, which was conducted in 1972 at FDA's request by the Consumer Research Institute (CRI) (Ref. 7), the agency has concluded that such graphic devices in conjunction with or in lieu of numerical declarations, are inappropriate for conveying nutrition information. In the CRI study, low education/income participants rejected such devices as vague,

condescending, and childish and not in keeping with nutrition as a serious subject.

FDA has undertaken study of the effectiveness of the various label format possibilities in fulfilling the requirements of the 1990 amendments.

## II. Format Research Studies

### *A. FDA Focus Group Study 1*

In a research activity designed to provide qualitative information on the utility of certain alternative nutrition label formats, FDA contracted with Market Facts, Inc., to conduct a series of five consumer focus group discussions in which participants were presented with 12 prototypical nutrition labels. The various labels incorporated such terms as "Daily Value" (DV) and "Percent Daily Value" and utilized such mechanisms as bar graphs, pie charts, and adjectival descriptors. The groups met in August 1990 (Ref. 8).

A focus group discussion is a technique for gathering qualitative information on interrelated topics of interest from 8 to 10 persons under the guidance of a trained moderator. In designing the focus group sessions, FDA included specific comparison tasks and discussion issues that targeted the participants' ability to use and interpret the format. In this way, the discussions were structured to explore issues beyond stated preferences and initial visual appeal.

In the FDA focus group discussions, there was a general consensus that, compared to numeric label presentations, some graphic presentations such as bar graphs and pie charts made the information more difficult to extract and tended to clutter the label. Although participants often described the bar graphs as "eye catching," most criticized them as confusing.

The comments were even more negative about pie charts. Pie charts were perceived as being much too difficult to use. Some participants suggested that they would not even read a label with a pie chart on it.

An executional problem with the pie chart format is that cholesterol and sodium declarations cannot be accommodated (when the pie is divided according to caloric contribution) because they make no contributions to calories, nor (when the pie is divided by weight) because they make little or no contributions to total dry weight relative to other constituents. As a result, cholesterol and sodium do not appear as wedges in the pie and must be listed separately. Listing cholesterol and sodium separate from other nutrients defeats the purpose of a uniform display to facilitate ready comprehension of the information. Furthermore, neither a dry weight nor a calorie basis for allocating nutrient values per serving of individual foods relates to current dietary recommendations or guidelines. The potentially large differences between nutrients in their relative contribution to total weight or total calories permit no fixed sequence for arranging nutrients. Based on the results of the focus groups and the executional problems, FDA excluded the pie chart format from further consideration.

Focus group participants described the "ideal label" as one that would be simple, providing only the grams (g) per serving and either the DV or Percent Daily Value.

### *B. FDA Experimental Study 1*

In 1990, FDA designed and conducted an experimental study of five nutrition label formats with guidance from a project advisory group consisting of representatives of academia, the consumer community, and the food industry. Field work was completed between October and December of 1990 and involved interviews with a geographically dispersed sample of 1,000 respondents representative of the U.S. population of adult primary food shoppers and a separate sample of 500 shoppers with less than a 12th grade education. Respondents viewed nutrition formats in accordance with an experimental protocol in eight shopping malls in various locations across the United States.

#### 1. Formats Tested

The nutrition label formats selected for use in FDA Experimental Study 1 were composites derived from the seven possible formats listed above, the FDA focus group discussion sessions (Ref. 8), an agency-sponsored label development contract with a professional package design firm (Ref. 6), and label research by other organizations (Refs. 1 and 9). A sample of each format included in the FDA Experimental Study may be found in Appendix A to this proposed rule. Table 1 describes each format used in the study.

TABLE 1.—FORMATS EVALUATED IN FDA EXPERIMENTAL STUDY 1

| Format | Description |
|---|---|
| CONTROL | Tabular declarations of the proposed nine mandatory nutrients and food components in g and mg and four vitamins and minerals as a percent of daily value. |
| CONTROL/DRV | In addition to the tabular content of the CONTROL label, the proposed DRV for fat, saturated fat, cholesterol, sodium, carbohydrate, and fiber were included. |
| ADJECTIVE | In addition to the CONTROL/DRV format information, a descriptive adjective (high, medium, or low) in boldface print was added for each nutrient. |
| NUMERIC | In addition to the CONTROL format information, a separate table headed "Nutrition Profile" was added which included proposed DRV's for six nutrients, and for all nutrients, a declaration of the percent of proposed DRV or RDI under a common heading "Percent of Daily Value." |
| BAR GRAPH | Presented the same numeric information as for the NUMERIC format and additionally provided a bar graph. |

#### 2. Evaluation Criteria

FDA Experimental Study 1 evaluated formats in situations that required food shoppers to examine pairs of competitive foods and to identify differences in nutrient content between the two foods. Shoppers were also asked to make judgments about the relative nutritional quality of the foods in each pair. Shoppers were then shown all five formats simultaneously and asked to identify the format that they considered most helpful and least helpful for use in selecting foods and in meal planning. They were also asked to give reasons for their choices.

FDA used a total of six evaluative measures in analyzing the data to differentiate between formats. Four of the measures were based on objective scoring of format performance in the paired product task, and two of the measures were based on shopper preference in the forced choice selection. Table 2 provides a description of the six criteria.

TABLE 2.—EVALUATION CRITERIA FOR FDA EXPERIMENTAL STUDY 1

| | |
|---|---|
| Performance Measures: | |
| a. Discrimination accuracy. | Number of correct identifications of nutrient differences between pairs of foods. |
| b. False positives | Number of perceptions of nutrient differences where in fact none exist. |

TABLE 2.—EVALUATION CRITERIA FOR FDA EXPERIMENTAL STUDY 1—Continued

| | |
|---|---|
| c. Task time | Amount of time as a measure of effort required to complete the product comparison task. |
| d. Nutritional quality judgment. | Correct identification of the more nutritious product in a pair. |
| Preference Measures: | |
| a. Most helpful | The format considered most helpful of the five for food selection and meal planning. |
| b. Least helpful | The format considered least helpful of the five for food selection and meal planning. |

3. Study Results

Study results on both the performance measures and the preference measures were dependent on the complexity of the information displays in the five formats. The CONTROL and CONTROL/DRV formats were the simplest displays in the sense of containing the least amount of information. The NUMERIC and BAR GRAPH formats represented the most complex displays. For these latter two formats, macronutrient names were repeated in two different sections of the label. In one section macronutrient values were declared on an absolute basis, while in the nutrition profile section the same macronutrient values were declared both on a per serving percentage basis and as an absolute daily amount.

The ADJECTIVE format, containing less redundant information, was of intermediate complexity. The ADJECTIVE format had the largest favorable balance between most helpful and least helpful preference choices and came closest to striking a balance between understandability and providing sufficient information. Performance of the ADJECTIVE format, although better than that of the NUMERIC and the BAR GRAPH, was worse than that of the CONTROL and the CONTROL/DRV. A principal weakness of the ADJECTIVE format was that shoppers were less accurate in discriminating nutrient differences between foods, apparently because they tended to compare foods on the basis of the adjectival descriptors rather than of the numerical declarations.

The CONTROL and CONTROL/DRV formats performed better overall than the NUMERIC and BAR GRAPH formats on the performance measures. Differences between the two simpler formats and the three more complex formats were particularly large on the measure of task time. Shoppers on average required 20 percent more time to find nutrient differences using the ADJECTIVE, NUMERIC, and BAR GRAPH formats than for the CONTROL and CONTROL/DRV. The largest differences in time between formats (CONTROL versus BAR GRAPH) was more than 30 percent.

Although CONTROL and CONTROL/DRV formats performed significantly better on the performance measures during the search task, fewer shoppers rated them as most helpful for food selection and meal planning, criticizing the formats for providing less needed information than the more complex formats. The CONTROL format had a large unfavorable balance between most helpful and least helpful preference choices, while in contrast the CONTROL/DRV format received very few selections as least helpful.

4. Proposed Additional Formats

In the **Federal Register** of May 20, 1991 (56 FR 23072), FDA published an announcement of the availability of a report of the findings of FDA Experimental Study 1, entitled "A Study of Nutrition Label Formats: Performance and Preference" (Ref. 10). The announcement discussed the implications of the study findings with respect to developing additional format alternatives that might overcome format performance weaknesses observed in the study, while improving consumer perceptions of the adequacy of the amount of information presented. The agency discussed three new formats in this notice. They appear in Appendix B to this document.

The first of the three new formats was a PERCENT DV format. It is a simplified alternative to the NUMERIC and BAR GRAPH formats of FDA Experimental Study 1. It eliminates the redundant double listing of nutrient names and the legend "Nutrition Profile." Declarations of nutrient values as a percent of the proposed DV appear in columnar order. Declarations of absolute nutrient values are retained in parentheses following nutrient names but are not placed in columnar order. In developing this format, the agency balanced the need for absolute nutrient values by consumers who are receiving dietary counseling on the basis of absolute values against the need to conserve label space.

The second format was in part a response to the grant of authority in the 1990 amendments to require the use of highlighting through the use of larger type, bold type, or a contrasting color, in the presentation of label information. A HIGHLIGHTING format based on use of boldface lettering for specific nutrients and their values appeared to offer two significant advantages over the use of adjectives. First, consumer understanding of the significance of a particular nutrient and its amount per serving of food could be enhanced without introducing the imprecision that had been associated with the use of adjectives. Second, removal of the adjectives reduced information redundancy and, as a result, the time required to compare foods. Associated with the highlighting format is a footnote indicating that each highlighted nutrient meets two criteria: The nutrient meets an FDA definition for being high or low; additionally, the level of the nutrient per serving of food is directionally consistent with dietary recommendations to seek foods with higher or lower levels of the nutrient.

The third new format alternative, GROUPING, was developed by FDA in response to comments that the formats tested in FDA Experimental Study 1 provided only a relatively limited amount of diet-related guidance to assist consumers in maintaining healthy dietary practices. The comments pointed out that while the formats introduced proposed DRV's for nutrients of public health concern, the nutrition label information was not placed in the context of the broad dietary guidance offered to the public in such government publications as "Nutrition and Your Health; Dietary Guidelines for Americans," 1990 (Ref. 3). The GROUPING format subdivides nutrients into two groups, those for which dietary intake should be moderated and those that should be consumed in adequate amounts.

The agency requested comments on FDA Experimental Study 1 and on the additional format research suggested by the findings (56 FR 23072, May 20, 1991). FDA solicited suggestions for formats and alternative objective performance measures, along with suggestions for new tasks that would test whether consumers could use the nutrition information in realistic situations. FDA also sought comment on the relative weight that it should give to consumer preferences versus performance characteristics. The agency requested the submission of any available consumer research in support of format suggestions.

5. Public Comments

In response to the May 20, 1991, announcement, 34 comments were received, 22 from individual firms or trade associations, 5 from consumer

groups, 6 from individual consumers, and one from a consumer agency of a foreign government. Some of the comments addressed the content of the nutrition label rather than its format. These comments will not be addressed in this document.

1. The majority of comments on specific formats recommended retaining the CONTROL format. The second most frequently recommended format was CONTROL/DRV. The majority of companies commenting on proposed DRV's were against their inclusion; a minority of firms endorsed proposed DRV's or said that they did not object to their inclusion on the label. Some accepted a mandatory basis for DRV's, others preferred that they be optional. A trade association suggested that DRV's need not be included on all labels because the values are constant. A trade association noted that the ADJECTIVE, HIGHLIGHTING, and GROUPING formats are not likely to remain static because nutritional recommendations will change over time. Therefore, it argued that only numerical declarations should be required, and that the evolving nutritional recommendations should be handled by education as needed.

FDA's November 27, 1991, proposal pointed out that the 1990 amendments require that more than numerical declarations be presented in the nutrition label. As stated above, section 2(b)(1)(A) of the 1990 amendments requires that nutrition information be conveyed to the public in a manner that will assist consumers to understand the information in the context of the total daily diet. Thus, FDA proposed at that time that the use of the DRV was the best alternative considered to meet this statutory requirement.

2. Several comments criticized the term "DV." One suggested replacing it with "Daily Typical Recommendation." Another comment felt that "Value" inappropriately implied quality or worth, and suggested instead the term "Daily Recommendation."

FDA is addressing these comments and others on the use of the term "DV" as a part of the agency's mandatory nutrition labeling rulemaking (56 FR 60371, November 27, 1991).

3. A trade association suggested that instead of requiring a single set of DRV's on all food labels, FDA should work with manufacturers to explore formats showing DRV's for a number of different caloric levels. A number of comments were received objecting to the 2,350 calorie reference as a basis for establishing DRV's.

The calorie reference is not a format issue, and these comments will be addressed in FDA's final regulation establishing label reference values (e.g., the proposed reference daily intakes (RDI's) and DRV's).

4. Comments recommending that various formats should be deleted were numerous. The format most frequently rejected was the ADJECTIVE, with the majority of comments coming from industry, as was the case for less frequent recommendations to delete the BAR GRAPH, HIGHLIGHTING, PERCENT DV, and GROUPING formats. Objections were raised to certain features of the proposed formats. Criticisms were directed to formats that imply "good food" versus "bad food" distinctions, all graphic formats, and all formats that include dietary guidance.

A consumer group stated that the science is inadequate to define cutoff values for adjectival descriptors. A few comments stated that consumers were likely to misinterpret the percentages in the PERCENT DV format. GROUPING was considered by some comments to place an inappropriate emphasis on the relative value of nutrients in a specific food. Others argued that grouping may encourage consumers to select a nutritionally unbalanced diet. One comment said that the HIGHLIGHTING format was confusing because it highlights only selected nutrients present in desirable amounts and does not make clear that the highlighting is selective.

FDA considered these comments and used them in designing the second FDA format study.

5. The majority of those who commented said that FDA should give considerable weight to performance measures, but that it should do so on the basis of a new set of performance tasks, not the simple discrimination task of FDA Experimental Study 1. For example, a number of comments suggested obtaining judgments of a food's contribution to a daily diet by having shoppers calculate the remaining daily allowance of each food element after eating one serving of a food. Another suggestion was to test shopper ability to adjust the daily allowance of a nutrient based on a daily calorie intake different from the 2,350 calorie reference proposed by FDA. One comment said that weight should be given to preferences because consumers will be more likely to use a format that they like. A few comments said, without further elaboration, that FDA should give no consideration to consumer preference.

FDA agreed that additional label use tasks were necessary to more fully study format performance. It developed several new tasks in the second FDA format study. Moreover, as suggested by the comments, FDA encouraged industry, in the studies that it is conducting, to examine consumer ability to deal with variations in the 2,350 calorie reference.

As for the weight to be given to the performance and preference measures, FDA interprets the report of the IOM (Ref. 2) as giving first consideration to performance and second to preference. FDA does not agree, however, with the comment that no consideration should be given to consumer preference. The agency believes that formats that are perceived as hard to understand and use are likely to be avoided by consumers. On the other hand, FDA is not persuaded that a format will necessarily be used simply because it is liked. In test situations involving information processing, consumers often expressed positive preferences for information displays that they perceived as containing more information, independent of the content of the information, its comprehensibility, or whether they intended to use the information.

6. Comments from both industry and consumer groups criticized FDA Experimental Study 1 for not controlling for consumer familiarity with the CONTROL format. They argued that consumer familiarity with CONTROL was the reason that it performed best on the product discrimination task. The comments suggested that in future testing, shoppers should be given instruction or practice in the use of the newer formats.

The agency has concluded that the data from FDA Experimental Study 1 do not support the interpretation that format familiarity was a principal factor in CONTROL performance. As reported, FDA analyzed format performance separately for frequent nutrition label readers versus infrequent/nonlabel readers. If the success with use of CONTROL was the result of familiarity, CONTROL should have scored significantly higher among frequent label readers than infrequent readers. However, there were no differences between these groups in ability to use CONTROL or any of the other formats. Furthermore, if familiarity was a factor, success with CONTROL should have been higher among women than men on the performance measures, since women are more frequent users of food label information as a result of greater involvement in food selection, meal planning, and the care of children and other household members with diet-related health problems (Refs. 1 and 11).

However, there were no gender differences in format performance.

FDA believes that a more appropriate interpretation of the data is that CONTROL and CONTROL/DRV formats are easier to use in discriminating product nutritional differences because the formats are perceptually simple. Simplicity is a function of low information redundancy. Nutrient names are listed only once, and the displays contain only one numerical declaration per nutrient. FDA was guided by the principle of simplicity in developing the PERCENT DV, GROUPING, and HIGHLIGHTING formats.

Also, FDA does not fully agree that giving instruction or practice with newer labels is an acceptable procedure for evaluating formats. There is no way to translate a one-on-one instruction of shopper by an interviewer in a test situation to the educational equivalent of familiarizing potential label users in the population with the features of a format. The test situation bypasses the normal real world requirements of delivering a message to the intended audience and of ensuring that it is received, is underreal world are not estimatable but are undoubtedly very large.

The elapsed time to achieve public understanding comparable to the interviewer-shopper interaction in a test situation may be decades. Extensive effort to make formats comparable in a test setting could possibly result in the selection of a format with significant weaknesses that might require a generation of educational effort to remedy. Nonetheless, FDA attempted to take this concern into account in designing FDA Experimental Study 2.

7. One consumer group commented that formats such as the BAR GRAPH were not the best designed of that type, but no evidence was provided that alternative arrangements were superior.

FDA used essentially the same BAR GRAPH design as the one professionally designed for the earlier NFPA study (Ref. 1). The NUMERIC design was similar to a format suggested by Robert P. Gersin Associates, a professional package design firm (Ref. 6). FDA recognizes that alternative arrangements of format elements are possible. However, the agency does not have the resources or time to test numerous arrangements.

8. One consumer group commented that, of the performance measures, task time is least important because this measure would probably change as consumers become more familiar with the label.

FDA does not agree that task time is least important. Current research in consumer information processing is based on the premise that consumers take a cost-benefit approach in deciding whether to use product information, and that they use the information only when they perceive that the benefits exceed the costs. Conversely, consumers do not seek or attempt to use information if the effort outweighs the expected benefits (Ref. 12). In this framework, task time is a measure of consumer effort. Consumer skills in nutrition label use will not improve over time if consumers avoid trying to use a label that perceptually requires excessive effort. Thus, FDA believes that task time is an important measure of label effectiveness.

9. A consumer group recommended that the research be expanded to cover issues of readability and low literacy among older Americans and minority groups. Recommendations were to test type sizes, styles, and color contrasts for legibility and to prescribe standards for these elements. Since almost 10 percent of respondents in the first study did not pass a literacy screen, it was recommended that FDA test pictorial symbols.

Because of funding constraints and a compressed time schedule for completion of the label format research, FDA had to decide which of the various elements of labeling for study were most important. The agency decided that a test of different type sizes and styles would require a separate study. The existing labeling regulations establish minimum type sizes (21 CFR 101.2(c)) and provide that required information be printed on a background with sufficient color contrast to ensure legibility (21 CFR 101.15). Thus, FDA already has the means to enforce these regulatory requirements through current regulations. Moreover, as discussed above, consumer research (Ref. 7) has shown that pictorial symbols for nutrition information are not particularly helpful to the undereducated. For these reasons FDA elected to give priority to testing other aspects of the format involving principally the arrangement of information.

### *C. Industry Cooperative Test Program*

In the **Federal Register** of July 1, 1991 (56 FR 29963), FDA announced its intent to initiate a cooperative pilot program with industry to test alternative nutrition label formats. A number of firms had expressed interest in testing the format alternatives that the agency planned to test in its second study. Industry efforts were coordinated in a joint working committee of the Grocery Manufacturers of America (GMA) and NFPA. After considering the advantages and disadvantages of testing the formats on actual products in the market place, the committee concluded that a more controllable and cost efficient approach was to show shoppers labels and conduct interviews using the mall intercept technique employed by FDA in Experimental Study 1 and Study 2.

The GMA/NFPA committee developed and reviewed an experimental design and questionnaire with FDA. The experimental design provided for executing 7 alternative formats on actual packages for 23 different food products, although brand names were to be removed from the packages.

A national sample of 5,000 food shoppers was interviewed in 36 shopping malls dispersed across the United States. The study was conducted during the first calendar quarter of 1992. FDA expects to receive the results of the industry study during the comment period on this proposal.

In addition to GMA and NFPA, several individual companies responded to FDA's July 1, 1991 announcement. The Kellogg Co. submitted a petition under 21 CFR 101.108 to conduct a nationwide, in-market test of a format similar to the CONTROL/DRV with highlighting on one of the firm's well known cereal brands. The firm placed the alternative label in production during the first quarter of the calendar year 1992. Interviews about the format were conducted with approximately 1,000 product purchasers who called a toll-free telephone number printed on the package. The data from the interviews will determine awareness of the format changes, consumer understanding of the proposed DRV, ability to use the DRV to calculate the number of servings of cereal required to obtain the daily allowance of a nutrient, and the perceived ease or difficulty of adjusting the DRV to take into account a daily calorie consumption different from the 2,350 calorie reference on the label. FDA expects to receive the results of the Kellogg Co.'s efforts during the comment period for the present proposal.

Frito-Lay, Inc., informed FDA of its interest in testing nutrition label formats for a snack product. A consumer interview study using a central location approach was designed to test CONTROL, CONTROL/DRV, NUMERIC, BAR GRAPH, and ADJECTIVE formats from FDA Experimental Study 1 on actual packages of one of the firm's corn chip

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brands, with the brand name in place. The agency reviewed and commented on the test design and questionnaire. A total of 750 snack eaters participated at central locations in the Dallas metropolitan area during November and December 1991.

Among other questions, respondents were asked by Frito-Lay, Inc., to determine the number of servings that could be eaten to meet the proposed DV for saturated fat and fiber. They also rated formats for ease of use and preference. The major findings were that CONTROL/DRV had consistently strong performance and highest consumer acceptance. The BAR GRAPH did not have strong comprehension scores and was thought not to be easy to use. The ADJECTIVE format scored lowest of all formats on the preference measures. This result was attributed to consumer skepticism about the credibility of the adjectives as applied to a snack product. A report of the study was submitted to FDA and has been filed with the Dockets Management Branch (address above) (Ref. 13).

*D. FDA Focus Group Study 2*

After analyzing the results of its first round of studies and the comments on the May 1991 announcement, the agency conducted a second series of six focus group discussions to determine consumer perceptions of a variety of nutrition labeling issues. Participants were asked what they thought terms like "recommended" or "reference" would mean on a label. Participants associated these terms with a government standard or average.

FDA included a GROUPING format in this study to explore how consumers might use the format and to determine reaction to the label directives to consume more of certain nutrients and to control intake of others. Some participants thought the grouping referred to the nutrients that were present at high levels and low levels, respectively, for the particular product. A number of group members criticized the format for telling people what they should and should not eat. A summary report of discussion findings has been filed as part of the record in this proceeding (Ref. 14).

*E. FDA Experimental Study 2*

1. Procedures

Concurrent with the second focus group study, the agency designed FDA Experimental Study 2 to test the three new formats developed to answer questions raised by the results of FDA Experimental Study 1 and to link label nutrient information more closely with dietary guidance being given to the public. A second purpose was to extend the label use tasks beyond simple discrimination to include more of the kinds of label use activities suggested in the public comments. A third objective was to more closely examine the ability of the proposed DRV to help consumers use nutrient information in dietary planning and management.

FDA developed the design for this experiment to accommodate a total of seven formats. The mall intercept technique was used to interview a sample of 1,200 geographically dispersed primary food shoppers in eight shopping centers. The sample was augmented to include, for analysis purposes, a sufficient number of shoppers with less than a high school education.

In a manner similar to FDA Experimental Study 1, each shopper viewed a total of four labels, each on different foods. Because too much interview time was required for any one respondent to be given all label use tasks, different tasks were assigned to three random subgroups of shoppers. A random one-third of shoppers saw labels on product pairs and were asked to identify nutrient differences and to choose the most and least helpful formats for food selection and meal planning as in FDA Experimental Study 1.

A second randomly selected subgroup of shoppers saw four formats, one at a time, on four different products and completed tasks that involved: (1) Checking nutrient content and health claims against a nutrition information panel, and (2) using the proposed DRV's to calculate the number of servings of a product that a person could consume and yet stay within daily limits for certain nutrients. Shoppers were also asked to identify nutrients to be sought and nutrients to be avoided in the diet for the remainder of the day after several servings of the reference product had been consumed. Shoppers also selected the most helpful and least helpful format for selecting foods and planning meals.

The third random subgroup of shoppers was assigned the same tasks involving the same food products as the second subgroup but for different formats. In order to achieve design symmetry for number of products and formats, and as a check on subgroup comparability, FDA repeated the GROUPING format in both respondent groups two and three.

In order to address the concern expressed in some comments on FDA Experimental Study 1 that label formats containing new elements would perform at a disadvantage relative to more familiar formats, some respondents were informed by the interviewer that DV's were present on some of the food labels, and they were given a brief explanation of the purpose of the DV. They were told that DV's are based on a diet of 2,350 calories a day, which may be more or less than the respondent's usual diet. However, to assess the effect of giving participants information about the presence and purpose of the DV and the calorie reference, this additional information was only given to a randomly selected one-half of the respondents. The DRV's and caloric reference were not mentioned to remaining respondents in order to compare the groups and to determine whether education differentially affected performance on the various formats.

2. Format Alternatives

As stated above, a total of seven formats were included in FDA Experimental Study 2. In addition to the three new formats, PERCENT DV, HIGHLIGHTING, and GROUPING (which are shown in Appendix B), FDA included the CONTROL/DRV format in the study to permit the results of FDA Experimental Studies 1 and 2 to be linked on the product discrimination task. FDA also used the ADJECTIVE format and CONTROL and PERCENT DV format without proposed DRV values. All formats were used for the new label use tasks added to FDA Experimental Study 2. FDA's purpose in testing the CONTROL and PERCENT DV formats both with and without proposed DRV's was to permit close examination of shoppers' abilities to use the DRV's in conjunction with per serving nutrient declarations. (FDA selected the terminology "PERCENT DV" rather than "PERCENT DRV" for the particular format that centers on percentages since the percentage values cover both proposed RDI's and DRV's.)

3. Evaluation Criteria

In FDA Experimental Study 2, FDA asked consumers to perform three label use tasks. First, as in FDA Experimental Study 1, shoppers were asked to identify nutrient differences between product pairs ("product nutrient differences" task). In addition, shoppers were asked to use the nutrition label to verify front panel nutrient content and health claims ("claims verification" task). Third, they were asked to use the DRV's to: (1) Calculate servings allowances, and (2) to balance nutrients in the daily diet by determining which nutrients should be increased and which decreased ("dietary calculations" tasks). Table 3

provides further descriptions of the criteria for each of the three label use tasks.

TABLE 3.—EVALUATION CRITERIA FOR THREE FORMAT USE TASKS: FDA EXPERIMENTAL STUDY 2

| Task | Type measure | Definition |
|---|---|---|
| Product Nutrient Differences: | | |
| 1. Accuracy | Performance | As defined in Table 1 for FDA Experimental Study 1. |
| 2. False positives | ...do | Do. |
| 3. Task time | ...do | Do. |
| 4. Most helpful | Preferential | Do. |
| 5. Least helpful | ...do | |
| Claims Verification: | | |
| 1. High-low nutrient claims | Performance | Number right minus number wrong verifications based on nutrition information panel. |
| 2. Health claims | ...do | Percent shoppers unable to verify correctness based on nutrition information panel. |
| 3. Percent fat free claims | ...do | Percent shoppers correct based on nutrition information panel. |
| 4. Task time | ...do | Time as a measure of effort required to complete the claims verification task. |
| 5. Healthfulness rating | ...do | 10-point rating of product healthfulness before and after viewing nutrition information panel. |
| Dietary Calculations: | | |
| 1. Compute servings | Objective performance | Percent shoppers giving correct number of servings to meet daily allowance for carbohydrates. |
| 2. Balance nutrients | Performance | Number right minus number wrong identifications of nutrients for which to increase or decrease intake for remainder of day. |
| 3. Most helpful | Preferential | The format considered most helpful of the four for food selection and meal planning.[1] |
| 4. Least helpful | ...do | The format considered least helpful of the four for food selection and meal planning.[1] |

[1] Forced choice made after completion of claims verification and dietary calculations tasks.

As part of the dietary calculations task, shoppers were asked to determine the number of servings of a given food that would be required to meet the daily reference amount for carbohydrates. FDA recognizes that a single food source is not a sound basis for obtaining 100 percent of the daily requirement of a nutrient. However, shoppers were asked to make such a determination for convenience in testing. In addition, to determine whether shoppers understood that nutrient amounts per serving need to be considered in relation to the DRV and in the context of the total diet, they were asked to state which nutrients they would seek more of and which less of in the foods that they ate during the day after consuming three servings of the food in question, a more than likely intake from a single food source.

4. Findings and Implications

a. *General.* The results of FDA Experimental Study 2 are available in a report entitled "Evaluation of Nutrition Label Formats: FDA Study 2" (Ref. 15). In summary, the objectives of improving accuracy and ease of use in identifying nutrient differences between foods were substantially met by the three new formats, PERCENT DV, HIGHLIGHTING, and GROUPING. They equaled or exceeded CONTROL/DRV on accuracy, false positives, and task time. The new formats also exceeded the performance of the ADJECTIVE format on the three performance measures.

As many as 25 percent of shoppers, depending on format, were able accurately to determine the number of servings of product required to meet the daily allowance for carbohydrates. Shoppers were most accurate when presented with formats that contained the proposed DRV and the absolute nutrient amounts per serving. They were less accurate with proposed DRV and percent of DRV per serving (17 percent) and least accurate (8 percent) when using the absolute amount per serving and no DRV.

Providing shoppers with information about the presence and purpose of proposed DRV's resulted in better performance in calculating servings needed to meet daily requirements and more time spent on the claims verification task compared with shoppers who did not receive the prior information. However, the additional information did not assist participants in using formats with DRV's and percent DRV declarations more effectively than formats without these new information elements.

When asked to choose the most helpful and least helpful format following completion of the claims verification and dietary calculations tasks, shoppers were consistently critical of formats that did not include proposed DRV's. Over 60 percent of respondents selected CONTROL and the PERCENT DV formats without DRV, neither of which include proposed DRV listings, as least helpful for food selection and meal planning.

b. *Format performance on label use tasks.* The full study report (Ref. 15) discusses the findings in terms of the original units of measurement by which each evaluation criterion was defined (see Table 3) and also a summary index measure which permitted the comparison of format performances across evaluation measures after each measure was converted to a common scale. The following discussion is based on the summary index measures, which ranged in value from 0 to 3 and are shown in Table 4 for the performance measures grouped under the three major use tasks, product nutrient differences, claims verification, and dietary calculations. Format differences of .9 or more for a particular evaluation measure are considered statistically significant, as they would be likely to occur by chance no more than 5 out of 100 occasions on which similar data were collected.

TABLE 4.—SUMMARY INDEX OF OBJECTIVE PERFORMANCE MEASURES BY FORMAT

| | Control | Control/DRV | Percent DV | Percent DV w/o DRV | Adjective | Highlighting | Grouping |
|---|---|---|---|---|---|---|---|
| Product Nutrient Differences: | | | | | | | |
| Accuracy | 2 | 2 | 2 | 2 | 1 | 2 | 2 |
| Task Time | 2 | 1 | 1.5 | 1.5 | 0.1 | 2 | 1.5 |
| Claims Verification: | | | | | | | |
| High-Low Nutrient Claims | 0.5 | 0.5 | 1 | 2 | 1 | 0.1 | 0.5 |
| Health Claims | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Percent Fat Free Claims | 1 | 1.5 | 1.5 | 1.5 | 2 | 1.5 | 1.5 |
| Dietary Calculations: | | | | | | | |
| Compute Servings | 0.1 | 2 | 1 | 1.5 | 1.5 | 1.5 | 1.5 |
| Balance Nutrients | 0.1 | 0.5 | 2 | 2 | 1.5 | 0.1 | 0.5 |
| Healthfulness Rating | 1.5 | 1.5 | 1 | 1.5 | 1 | 2 | 1.5 |
| Average of all measures | 1.2 | 1.3 | 1.4 | 1.6 | 1.1 | 1.3 | 1.3 |

The index can take the value of 0 to 3 for any performance measure, with 3 representing the highest performance.

(i) *Product nutrient differences.* The performance of shoppers when using the ADJECTIVE format in identifying product nutrient differences was significantly poorer on both accuracy and task time than when shoppers used all other formats. Shopper performance on PERCENT DV, HIGHLIGHTING, and GROUPING formats was as good as on CONTROL and CONTROL DRV formats for accuracy. Shoppers took significantly more time when using the ADJECTIVE format than when using all other formats.

(ii) *Claims verification.* In using the nutrition information panel to verify the accuracy of nutrient content claims about high or low nutrient levels on the principal display (or front) panel, participants were more accurate when they used the PERCENT DV without DRV's format than when they used any other format including PERCENT DV with DRV's. Shoppers less effectively used the ADJECTIVE and PERCENT DV with DRV formats, and least effectively used CONTROL, CONTROL/DRV, GROUPING, and HIGHLIGHTING formats.

FDA interprets these results to indicate that nutrient declarations on a percentage base are used more accurately than metric declarations when consumers must assess whether the nutrient levels are high or low. The addition of proposed DRV's reduced accuracy for this particular label task.

There were no differences among formats in shoppers' ability to use the nutrition information panel to evaluate the accuracy of health claims. Nearly 50 percent of shoppers correctly said they were unable to determine whether claims were correct or not.

The ADJECTIVE format was significantly better than CONTROL and equal to the other formats in facilitating verification of the correctness of percent fat free claims.

Perceptions of the healthfulness of products were affected when shoppers were shown nutrition information following exposure to a set of positively worded nutrient content and health claims, some of which were false. Independent of format, ratings on a 10-point scale of healthfulness declined after nutrition information was presented. FDA interprets the decline as a tempering effect from the nutrient information. Under the assumption that nutrition information should temper or balance positive and promotional front panel nutrient content claims, more effective formats would be expected to bring about the greatest change in consumers initial perceptions. Within this framework of interpretation, the HIGHLIGHTING format was superior and the PERCENT DV with DRV's and ADJECTIVE formats were least effective (Table 4).

(iii) *Dietary calculations.* In using the formats to make dietary calculations, shoppers were most accurate with the CONTROL/DRV format and nearly as accurate with the ADJECTIVE, PERCENT DV with DRV's, HIGHLIGHTING, and GROUPING formats when determining number of servings of different foods required to meet the proposed DRV for carbohydrates. CONTROL was significantly inferior to all other formats in this application. Shoppers were somewhat less accurate in using the PERCENT DV with DRV's than without DRV's. FDA interprets these data to mean that proposed DRV's together with percent declarations confuse some people who do not realize that the percent declaration is all that is needed to do the calculation.

The remaining dietary management task required shoppers to balance nutrients, i.e., to identify which nutrients they would seek more or less of in the foods they ate during the remainder of the day after consuming three servings of a reference food. Shoppers were most accurate in using the PERCENT DV formats, with and without DRV's, and only slightly less accurate in using the ADJECTIVE format. They were significantly less accurate in using CONTROL, CONTROL/DRV, HIGHLIGHTING, and GROUPING.

(iv) *Overall performance.* Considering the performance measures on the whole and giving each equal weight, the most effective format was PERCENT DV without DRV, followed by PERCENT DV with DRV. CONTROL/DRV, HIGHLIGHTING, and GROUPING were somewhat less effective. The least effective formats were CONTROL and ADJECTIVE.

c. *Format preferences.* FDA analyzed shopper preferences for most helpful and least helpful formats for food selection and meal planning. To obtain a net percentage of the two types of choice, the agency subtracted least helpful from most helpful choices. The percentage of most helpful selections ranged across formats from 6 percent to 49 percent of shoppers. The range of least helpful selections was 6 percent to 62 percent. The net percentage of selections was highly positive for ADJECTIVE and HIGHLIGHTING. Next, with slightly positive to zero net percentages of selection, were GROUPING and CONTROL/DRV. PERCENT DV with DRV's had slightly negative net percentages of selection, while CONTROL and PERCENT DV without DRV's had highly negative net percentages of selection. As stated above the latter two formats were highly criticized because they did not provide proposed DRV's. Criticisms directed at the GROUPING format were that it was confusing and overly prescriptive of what people should eat.

The preference results are shown in Table 5 in the form of the previously discussed summary index. As was the case in FDA Experimental Study 1, the formats consumers found most helpful did not necessarily score highest in the performance measures that were tested.

The most effective format, PERCENT DV without DRV, was one of the ones found least helpful, the major criticism being that daily reference information was missing. The two most preferred formats, ADJECTIVE and HIGHLIGHTING, had low and average performance results, respectively. However, CONTROL was least effective in performance and among the least preferred of the formats. The common element linking performance and preference for CONTROL was the lack of availability of proposed DRV's.

TABLE 5.—SUMMARY INDEX OF PREFERENCE MEASURES BY FORMAT

| | Control | Control/ DRV | Percent DV | Percent DV w/o DRV | Adjective | Highlighting | Grouping |
|---|---|---|---|---|---|---|---|
| Net of most minus least helpful selections | .1 | 1.0 | .5 | .1 | 2.0 | 2.0 | 1.0 |

The index can take the value of 0 to 3, with 3 representing the highest preference.

### III. Format Strengths and Weaknesses

#### *A. CONTROL and CONTROL/DRV Formats*

The major strength of the CONTROL label without the proposed DRV listings is its accuracy and ease of use in distinguishing nutritional differences between foods. The addition of proposed DRV's has no effect on accuracy and only slightly increases shopper effort in using it. A weakness of the CONTROL format in the absence of proposed DRV's is that it does not facilitate the determination of the number of servings appropriate to meet daily recommendations.

With the addition of proposed DRV's, the CONTROL label is as accurate as any format when used for calculating servings requirements, but there is relatively little improvement in shoppers' abilities to determine which nutrients they should seek more of and which less of in meeting daily requirements.

Shoppers overall are pretty evenly split concerning the CONTROL/DRV format, with about equal numbers considering it most helpful and least helpful for food selection and meal planning. However, they are highly critical of CONTROL when proposed DRV's are not present.

#### *B. PERCENT DV Format (With and Without DRV Listing)*

##### 1. Review of Results

A major strength of the PERCENT DV format is that it facilitates making high-low type judgments about nutrient content levels. The format tested was slightly more effective in these usage situations when the proposed DRV's were not present. A relative weakness of the format is that shoppers are somewhat less accurate in computing number of servings needed to meet the DV when they use percents as compared with using absolute nutrient amounts in conjunction with DRV's. However with actual DRV's removed, the PERCENT DV format performs as well as any of the other formats that use absolute amounts and DRV's.

Some shoppers preferred the PERCENT DV format when proposed DRV's were present. Many more were highly critical of the format when DRV's were not present.

##### 2. Elements Affecting Presentation

In the format tested, absolute declarations were arranged in noncolumnar order next to nutrient names. Based on the pattern of the data obtained on the performance tasks, the separation of the absolute nutrient declarations from the percent listings appears to have improved consumer ability to use the percent data. There was further improvement when the proposed DRV's were removed entirely. These results raise a question as to the need for DRV's to be listed in the nutrition label. This issue is discussed later in section IV of this document.

A second factor not tested in FDA Experimental Studies 1 and 2, but particularly important issue for the PERCENT DV format, is how it would be applied to foods that declare two sets of nutrient values, for example, on both as-purchased and as consumed bases. FDA requests comment and suggested alternatives to the format arrangement shown in Table 6.

Table 6

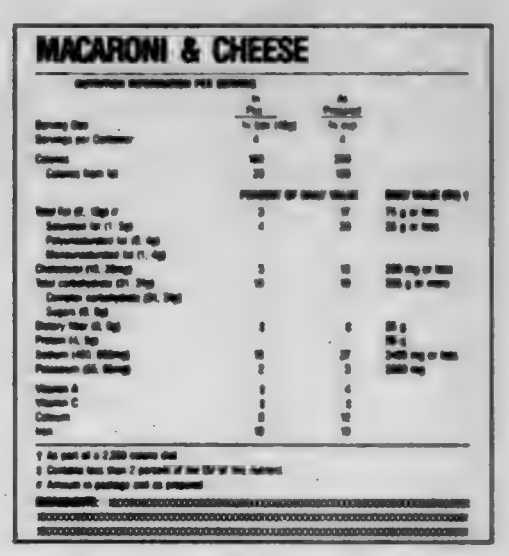
MACARONI & CHEESE

The principle followed in the example is to segregate absolute nutrient values from the percent listings by grouping the nutrient values to the left in noncolumnar order and adding a footnote to the label to distinguish as-purchased from as-consumed values. As discussed previously, the absolute declarations are retained for those consumers who may be receiving dietary counseling based on absolute nutrients amounts. The study results show that when both types of nutrient declaration are available, consumers use the percent listings in lieu of absolute values and proposed DRV's to calculate number of servings to meet nutrient daily requirements. Therefore, an objective of the visual display should be to facilitate easy and uncluttered access to the percent listings by separating them from the absolute nutrient declarations.

A final issue for the PERCENT DV format is encountered in declaring the "percent DV" of protein. Proposed

§ 101.9 (c)(8)(i) and (c)(8)(ii) (56 FR 60366 at 60389, November 27, 1991) specify that the term "Percent of Daily Value" for protein shall express protein quality, and that for foods represented or purported to be for use by adults and children 1 or more years of age, this value shall be determined by a protein digestibility-corrected amino acid score (PDCAAS) method. A different method is proposed for foods represented or purported to be for use by infants. While proposed § 101.9(c)(8)(i) permits declaration of:

> * * * "Percent of Daily Value" on all foods, it requires this declaration only if a protein claim is made for the product, or if the product is represented or purported to be for use by infants or children under 4 years of age, and the protein is not of low quality. If the protein is of low quality, the protein content statement must be modified by an adjacent statement "not a significant source of protein."

The continuation of this policy in conjunction with the PERCENT DV format would allow declaration of percent of the proposed DV on a voluntary basis for most foods. Because of the added cost associated with calculation of the PDCAAS, it is likely that manufacturers would generally choose to not declare "Percent of Daily Value" for protein, and, accordingly, the label would show no entry for protein under the "Percent of Daily Value" column (as seen in Table 8). Additionally, no entry would be allowed (as proposed in § 101.9(c)(8)(i)) when the protein in the food is low quality (i.e., when the protein quality value is a PDCAAS of less than 20 expressed as a percent in foods intended for use by adults and children 4 or more years of age, or when the protein quality value is less than 40 percent of the reference standard in foods represented or purported to be for use by infants or children under 4 years of age).

### *C. ADJECTIVE Format*

#### 1. Review of Results

Relative to the other formats, the ADJECTIVE format has no particularly outstanding performance characteristics and has two major weaknesses. Consumers are least accurate in identifying product nutrient differences with this format and take more time to complete the task. However, this format has high consumer acceptance because it is perceived as providing adequate information, as being well arranged, and as being an aid to food selection and meal planning.

#### 2. Elements Affecting Presentation

To assess nutrition quality, to calculate the number of servings required to meet nutrient daily requirements, or to apply nutrition information to other kinds of dietary management, the user must be able to comprehend the information presented, that is, to identify the information that is relevant and to accurately assess that information. Moreover, the user must be able to do so with an expenditure of effort (time) that does not exceed the expected benefits from use of the information.

Despite the positive consumer evaluation of the ADJECTIVE format, FDA questions how well consumers were able to comprehend the information that it presented. With this format, shoppers apparently, as stated above, made comparisons using the adjectival descriptor rather than the actual nutrient amounts. This fact raises questions about whether consumers were able to determine what the key information is in this format with an acceptable amount of effort, and whether they were able to understand the significance of that information.

A comment to FDA Experimental Study 1 suggested that task time is the least important performance measure, premised on the notion that all formats would become easier to use with practice. FDA disagrees with this comment based on its belief that many consumers would avoid formats altogether that required a great deal of effort to use in simple search tasks. FDA concludes that adequate information search and retrieval characteristics are minimum requirements for a nutrition label, and that format weaknesses in meeting such fundamental requirements are not compensated for by strengths in other areas of label use. The basis for this conclusion is that consumers who are unable readily to find key information or to perceive it accurately will, as a result, not attempt to use the information or will not be able to use it accurately in selecting foods or for other aspects of dietary management. FDA believes that these weaknesses may outweigh the positive consumer acceptance of the ADJECTIVE format.

FDA consequently requests further comments and evidence on the utility of adjectival descriptors for nutrition labeling. FDA is especially interested in what weight to give to the finding that consumers were less likely to notice nutrient differences using this format. This problem was particularly pronounced when consumers were asked to make determinations regarding nutrients in the "medium" and "high" range, where the difference masked by the adjective could be of some magnitude. For example, as tested, "medium" covered the range 141 to 456 milligrams (mg) sodium, 21 to 57 mg of cholesterol, and 10 to 62 g of carbohydrate.

Moreover, for the ADJECTIVE format to be tested, it was necessary to set the number of definitions for the adjectives that were used. An important consideration is that under the 1990 amendments, adjectives that appear on the nutrition label have to be defined consistently with adjectives that appear as nutrient content claims elsewhere on the food label. Because FDA is in the process of proposing definitions for nutrient content claims, the agency followed the proposed definitions as closely as possible in using the adjectives in the ADJECTIVE format.

FDA considered the possibility of creating an adjectival scheme with more than three levels of distinction (e.g., low, medium low, medium high, high). Because there is no evidence that such a scheme would be an improvement over a three-level scheme, and because such a scheme would not be consistent with the proposed nutrient content claims, FDA did not test it. Additionally, FDA felt that the larger number of adjectives could confuse consumers and cause them to require more time to identify nutrient differences.

Another possibility would be to use a fourth adjective that connotes a more absolute amount, such as "none." While such a term would not be as likely to increase consumer confusion, FDA did not use it to keep the number of adjectives to a minimum. The agency requests that comments that urge the adoption of the ADJECTIVE format to address specifically what and how many adjectives should be used if FDA were to adopt this format. Data to support any recommendations are also requested.

As discussed above, for purposes of its consumer studies, FDA used the proposed definitions for nutrient content claims (except for "medium," which became everything that was not "low" or "high"). In the case of the term "low," definitions were available for total fat, saturated fat, cholesterol, and sodium. For other nutrients, "low" was defined as two percent or less of the RDI or DRV. This procedure was sufficient for the format studies because proposed RDI's or DRV's had been proposed for all of the nutrients and food components declared on the test formats. In actual use, however, nutrients for which no proposed RDI's or DRV's exist (e.g., sugars, complex carbohydrate, polyunsaturated fat) might need to be declared in nutrition labeling. FDA requests comments on how to provide for an adjective for use in conjunction with these nutrients.

In addition, FDA notes that "high" is defined as 20 percent or more of the proposed RDI or DRV for a nutrient. While this definition makes sense for those nutrients whose consumption is encouraged, it may not be as suitable for nutrients whose consumption should be minimized, like total fat and saturated fat. It is also inconsistent with the proposed "disqualifying nutrient levels" of 15 percent of the DRV for such nutrients in the agency's health claims proposal (56 FR 60537 at 60543, November 27, 1991) and carried forward as disclosure levels for nutrient content claims (56 FR 60421 at 60425, November 27, 1991). FDA requests comments on how to define "high" for such nutrients.

*D. HIGHLIGHTING Format*

1. Review of Results

The HIGHLIGHTING format performs as well as the best scoring CONTROL format on the basic search task requiring identification of nutrient differences between foods. It has two weaknesses relative to one or more of the other formats. It is less helpful to consumers in assessing the accuracy of high-low nutrient claims and determining which nutrients should be increased and which decreased in meeting dietary requirements. HIGHLIGHTING has high consumer acceptance, however, and receives few criticisms as an aid to food selection and meal planning.

2. Elements Affecting Presentation

The HIGHLIGHTING format tested used bold face type to highlight both the nutrient name and declared amount. As tested, the format flagged only selected nutrients present at levels directionally consistent with: (1) Current dietary recommendations to the public to consume foods that are higher or lower in specific nutrients (Refs. 2, 3, 16, and 17); and (2) meeting existing or proposed FDA definitions for "high," "low," or "reduced." The nutrients flagged included total fat, saturated fat, cholesterol, sodium, fiber, and calcium. Thus, highlighting profiled only desirable nutrient characteristics and did not call attention to less desirable nutrient characteristics of foods, e.g., high levels and low levels of nutrients that should be moderated or increased, respectively, in the daily diet. The format has received some criticism for providing incomplete information by not fully characterizing both the undesirable as well as desirable characteristics of foods.

FDA believes that one benefit from highlighting desirable characteristics is that it provides incentives to the food industry to modify existing products and to develop new foods with desirable characteristics. However, under FDA's nutrient content claims proposals, desirable characteristics can be highlighted by the manufacturer on the front of the package, where more consumers will see the information. It is not clear how much more useful it would be to consumers or as an incentive to manufacturers to require the highlighting of desirable characteristics on the nutrition label as well. Given the nutrient content claims proposal, it may be more useful to consumers and an incentive to manufacturers to improve the nutritional characteristics of foods to require highlighting of undesirable characteristics. However, this too could be a repetition of that part of the nutrient content claims proposal (proposed § 101.13(h)) that requires the referral statement given with nutrient content claims to identify nutrients that are present at a level which increases the risk of a disease or health-related condition. FDA requests further comment on whether highlighting should be extended to all nutrients. Comments that urge the use of highlighting of undesirable nutrient characteristics are requested to address the types of definitional issues discussed above under the ADJECTIVE format, such as how to deal with nutrients for which no proposed RDI's or DRV's are proposed, and how to define "low" levels of desirable nutrients, e.g., calcium and dietary fiber.

An additional issue that is encountered with foods that are not consumed directly but that must be processed or combined with other ingredients before consumption is whether to base the highlighting on the product as-packaged or as-consumed. For food products declaring nutrition information both as purchased and as consumed, it must be clear to the consumer which form is being highlighted. Allowing highlighting on both bases could cause confusion. The issue of whether label nutrient information should be based on an as-packaged versus an as-consumed basis was discussed in the agency's proposed regulation dealing with serving sizes (56 FR 60394 at 60413, November 27, 1991).

*E. GROUPING Format*

1. Review of Results

On performance tasks the GROUPING format has no outstanding strengths, although it performs as well as the best formats on product nutrient differences and on computing servings needed to meet daily nutrient requirements. Two weaknesses relative to other formats is that consumers have greater difficulty in making high-low nutrient judgments and cannot as accurately use the format to determine which nutrients to increase, and which to decrease, in the daily diet. The format has moderately favorable consumer acceptance but is considered by some consumers hard to use, confusing, and too prescriptive.

2. Elements Affecting Presentation

A two-category grouping for nutrients leads to the separation of several subcomponents and uncertainty as to where other subcomponents belong. For example, if total carbohydrate in the final nutrition labeling regulation is required to be separated into complex carbohydrate and sugars, complex carbohydrate would be listed along with the nutrients that should be increased in the diet, while sugars would be grouped with nutrients that should be reduced. It is unclear in which group to place total carbohydrate. Comments are requested on whether it should always be placed under one group (and if so, which group), or whether its location should vary depending on which subcomponent was present in the highest amount. Wherever it is grouped, the declaration of the amount and the proposed DRV for total carbohydrates may be confusing to consumers. For example, if total carbohydrate is listed under "Choose a diet high in:" as tested, and yet a third of the total carbohydrates are sugars and are listed under "Choose a diet low in:", will consumers understand that the specified number of g of sugars is included in the g of total carbohydrate in the other grouping? The same problem arises with the subcomponents of total fat.

In addition, there is a problem with the placement of nutrients for which scientific consensus about consumption levels is uncertain. There is no consensus as to whether unsaturated fats (or its subcomponents, polyunsaturated and monounsaturated fats) should be changed or remain the same in the diet. Dietary guidance with respect to the fatty acids only suggests maintaining an approximately equal balance among the subcomponents of total fat (including saturated, polyunsaturated, and monounsaturated fats). Another example is potassium, a nutrient whose recommended intake level is often variable, depending upon the health status of the individual. FDA requests comment on whether the format is feasible in light of the grouping problems that arise with the various nutrient components. The agency also requests comment on whether the nutrition label should go as far as

GROUPING does to prescribe a diet for all consumers.

## IV. Issues on Use of Reference Values

FDA proposed DRV's in response to section 2(b)(1)(A) of the 1990 amendments that, among other things, requires that information about nutrients be presented in a manner that enables the public to understand such information in the context of a total daily diet. Accordingly, most of the label formats in this proposal include a daily value element. However, FDA is still considering whether daily values are the most appropriate mechanism for accomplishing the requirement of the 1990 amendments that information be conveyed within the context of the total daily diet. Thus, the agency requests ideas on other ways of providing that contextual information.

One concern regarding a single daily value for use by all consumers is the potential to mislead individuals whose dietary intakes should vary substantially from the daily value. The agency requests ideas and comments on ways to address this concern, while recognizing that a label cannot contain complete dietary guidance tailored to all individuals. A number of possible alternatives that address this concern are discussed below and in section V.F. of this document. Of course, if DRV's are ultimately determined not to be the best way to accomplish this, an alternative label format would be adopted.

Further, the agency requests suggestions about how the label format can be improved to better convey the contextual information. For example, one option could be to include on the panel general dietary guidelines (e.g., "No more than 30 percent of calories of total daily diet should come from fat"). Another option could be to include on the panel information on desirable nutrient intakes based on a range of calorie values (e.g., "* * * based on 1,800 to 3,000 calories per day" or "* * * based on 1,600 to 2,800 calories per day").

### *A. Lack of Reference Values*

Implementation of any of the above formats will raise issues dealing with the use of reference values. FDA has previously proposed to define DRV's for eight food components: total fat, saturated fat, unsaturated fat, cholesterol, total carbohydrate, dietary fiber, sodium, and potassium (55 FR 29476, July 19, 1990; 56 FR 60366, November 27, 1991). For reasons enumerated in the RDI/DRV proposal, the agency has not proposed DRV's for complex carbohydrates, sugars, sugar alcohol, polyunsaturated and monounsaturated fats, and soluble fiber and insoluble fiber (55 FR 29476, July 19, 1990)

Given the fact that FDA has not been able to determine reference values for certain nutrients, formats that include these reference values will show missing values under the proposed DV column for nutrient subcomponents for which no reference values have been adopted (see Table 6). FDA requests comments as to whether the missing values will cause consumer confusion, to such an extent that it outweighs the utility of the information presented for those nutrients for which reference values have been defined. Would potential confusion be minimized by placing an entry in the proposed DV column stating that a reference value is not available for the particular component?

This problem would be particularly significant for the PERCENT DV format because there would be blanks in the principal numeric column. For the nutrients for which there are no reference values, consumers would have only the absolute declaration of the amount per serving.

FDA requests comment about the significance of this problem and about how the agency should handle it.

### *B. Retention of Proposed DRV with PERCENT DV Format*

The results of the study of the PERCENT DV format suggested that consumers were best able to use the percent DV information when the proposed DRV's were not specified, provided that consumers understood that the percent DV contained all the information needed to determine number of daily servings required. Therefore, FDA requests comment on whether proposed DRV's should be retained if the PERCENT DV format is adopted.

### *C. Placement of Proposed DRV's*

In regard to the placement of proposed DRV's in the nutrition label, FDA's studies generally listed the proposed DRV's in the right-hand column. Other placements for this information, such as in a string at the bottom of the nutrition label, however, are possible. Removal of the proposed DRV's from the immediate proximity of the column of percents in the PERCENT DV format may facilitate use of the percent listings by removing nonessential information that distracts the consumer from the primary task of determining the nutrient contribution of the food, yet retaining them in the format would still make the proposed DRV's available to consumers. On the other hand, relocating the proposed DRV's in this way makes them less accessible and may lower consumer preference for this format.

The agency requests comment on whether the listing of proposed DRV's in a string will conserve label space, and whether this result is a desirable tradeoff relative to more difficult access to the DRV's.

### *D. Terms "Or More" and "Or Less"*

For all test formats that included proposed DRV's in FDA Experimental Studies 1 and 2, there were also appended to the DRV declarations the qualifying terms "or more" and "or less," where appropriate, depending on the nutrient. Such qualifying terms would not be appropriate for some nutrients, such as dietary fiber and potassium, for which dietary guidance is not specific. FDA has little evidence as to whether these terms moderate consumers' interpretation of the proposed DRV's. However, the consumer comment that FDA did receive stated that the proposed DRV qualifying terms were important and helped provide additional guidance about how much of the nutrients to consume.

FDA tentatively concludes that at least some consumers will pay attention to the qualifiers and are less likely to give too literal an interpretation to whatever legend is used to describe the proposed DRV's. FDA therefore intends to require the use of the qualifying terms in conjunction with the proposed DRV's if it requires the use of DRV's as part of the nutrition label format. The agency requests comment on the desirability of requiring the qualifying terms that were tested or alternate terms.

## V. Certain Format Elements and Other Issues Not Addressed by Research

### *A. Format Elements*

To facilitate comparison of label results between FDA Experimental Studies 1 and 2, total carbohydrate was not subdivided into complex carbohydrate and sugars in FDA Experimental Study 2, even though such a division is required by the 1990 amendments, which were enacted after FDA Experimental Study 1 was completed. For the same reason, changes in terminology that were proposed in the supplementary proposal on nutrition labeling, such as "total fat" in place of "fat" and "dietary fiber" in place of "fiber" (56 FR 60366, November 27, 1992), were not made in FDA Experimental Study 2. The absence of complex carbohydrate and sugars and

use of previous terminology should not be interpreted as a change from the mandatory nutrition labeling proposal (56 FR 60366, November 27, 1991).

The FDA studies did not test possible alternative orderings of nutrients. In its research studies, the agency ordered the nutrients based on their importance to consumers, as shown in consumer research (Ref. 1), and on public health concerns and the amount of dietary information being disseminated about the nutrient by authoritative sources (Refs. 3 and 16). In the ordering that results, those nutrients whose over-consumption is related to increased risk of a disease or health condition are placed at the top of the list of required nutrients. The normal left-to-right, top-to-bottom reading pattern for the printed word brings the more important nutrients to the reader's attention before less important information. This fact is reflected in the findings of FDA Experimental Study 1, in which the accuracy scores for vitamins and minerals decreased as they were placed lower on the label and beneath more and more information.

The ordering that FDA used in its studies differs from that proposed in the supplementary mandatory nutrition labeling proposal (56 FR 60366 at 60380, November 27, 1991) in that sodium is moved up to a position following cholesterol. Comments are requested on this alternative ordering of nutrients.

The research did not test alternative arrangements for subcomponent listings, such as saturated fat as a subcomponent of total fat. FDA Experimental Study 1 showed consumers to be less accurate in identifying saturated fat as a subcomponent of total fat. Some respondents in the FDA focus group discussions misinterpreted such listings and added component and subcomponent declarations together. FDA hopes that the changes in terminology that was proposed in the supplementary mandatory nutrition labeling proposal, such as characterizing fat for labeling purposes as "total fat" and carbohydrates as "total carbohydrate" (56 FR 60366 at 60370, November 27, 1992), will reduce consumer confusion. The agency requests comments on the usefulness of extending this characterization to calories to clarify the difference between "calories" and "calories from fat."

The agency has also seen a label format that further distinguishes subcomponents by using the term "of which." An example that distinguishes total calories from calories from fat would be:

| | |
|---|---|
| Total Calories | 60 |
| of which calories from fat | 20 |

FDA is considering requiring that the words "of which" or similar terms, such as "including," preface "calories from fat" as a subcomponent of calories; "saturated fat" and "unsaturated fat" (or its subcomponents "polyunsaturated" and "monounsaturated" fats) as subcomponents of total fat; "complex carbohydrate," "sugars," and "sugar alcohol" as subcomponents of total carbohydrate; and "soluble fiber" and "insoluble fiber" as subcomponents of dietary fiber in whatever final format that the agency adopts. The agency requests comment on what terminology will most effectively distinguish these subcomponents from totals and improve their observability in the label display.

*B. Overall Graphic Presentation*

An aspect of format design that has the potential to improve effective communication, but which so far has not been part of FDA's research, is changes in the overall graphic presentation of the label. While interested in maintaining maximum flexibility consistent with the statute, FDA has explored changes in graphic presentations that can be made. These changes could include, for example, using graphic elements such as typeface, type size, and spacing and the arrangement of various label elements to produce a more effective food label format that is easier to use and understand than any tested or used so far. These graphic techniques go directly to the requirements in the 1990 amendments (section 2(b)(1)(A)) that the information be presented in a way that enables consumers to readily observe the information. They could be applied to any of the formats now under consideration.

FDA believes overall graphic presentation is an essential part of designing a better label format. To more clearly illustrate what the agency is considering, graphic adaptations of the CONTROL/DRV and PERCENT DV with DRV formats are shown in appendix C.

In both examples given in appendix C, the title of the nutrition label has been changed from "Nutrition Information" to a shorter name to limit space constraints. Titles used are "Nutrition Guide" and "Nutrition Values." Comments are requested on these and other possible titles. The agency notes that this change and several of those discussed below, will require regulatory changes to allow for their use.

Graphic adaptations that are present in the CONTROL/DRV example include bold typeface to call attention to the nutrient names and serving size data, bars with reverse printing as column headers, double columns at the top and bottom of the label, and use of the word "including" preceding subcomponents. Other graphic adaptations in the PERCENT DV with DRV example include reduced type size for subcomponents and g/mg amounts for macronutrients, variations of the type face used for serving size household measures and g weights, reverse printing of the quantitative proposed DV's, and a horizontal listing of vitamins and minerals under the heading "Vitamins & Minerals."

The PERCENT DV with DRV graphic format also contains an expanded footnote in an effort to clarify that proposed DV's are based on a single caloric intake level and that values will vary according to a person's caloric intake. The footnote states: "For a 2,350 calorie diet. Your Daily Value may be higher or lower, depending on your calorie intake." FDA requests comments on the effectiveness of this statement in conveying to consumers the need to modify these values to meet their nutritional needs and suggestions for alternative footnote statements. For example, some alternative footnote statements might be:

(1) "Based on a 2,300 calorie diet. Fewer calories are recommended for women and young children."

(2) "As part of a 2,400 calorie diet. Many young children and women over 50 need 2,000 calories or less. For a 2,000 calorie diet the Daily Value would be less than 65 g Fat, less than 20 g Saturated Fat, less than 275 g Carbohydrate, and 25 g Fiber (Sodium and Cholesterol do not change)."

(3) "A 2,000 calorie diet is for women over 50 and young children. Most teenagers, sedentary men, active and very active persons, and lactating and breastfeeding women need more calories."

In both examples, graphic modifications were used to differentiate subcomponents from the principal components in the belief that this change would eliminate the need to put the word "total" before "fat" and carbohydrate. In the CONTROL/DRV example, FDA placed the word "includes" before subcomponent names. In the PERCENT DV with DRV example, FDA has used smaller type size, indentation, and lines to separate components and their subcomponents from other components.

FDA recognizes that it will likely have to look outside the agency to find the expertise needed to properly explore the

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use of graphic adaptations. The agency requests suggestions on how best to solicit and evaluate suggested changes in overall label graphic presentation. FDA also seeks comment on the graphic techniques used in the examples in Appendix C and other techniques that can be used to enhance the basic nutrition labeling format and that are within FDA's ability to regulate. Comments should address which graphic elements, if any, should be required in final regulations and which should be allowed to be used voluntarily.

*C. Simplified Format*

Section 403(q)(5)(C) of the act requires the use of a simplified format if a food contains insignificant amounts of more than one-half the nutrients required in the full nutrition labeling format. FDA issued proposed regulations to implement this section of the 1990 amendments as a part of its supplemental nutrition labeling proposal (56 FR 60366 at 60373, November 27, 1991).

Inasmuch as a uniform label presentation will facilitate consumer use of nutrition labeling and is supported by the IOM report (Ref. 2, p. 299), FDA believes that it is essential that the simplified format resemble, to the maximum degree possible, the full nutrition label. Therefore, the agency anticipates modifying proposed § 101.9(f) as needed to ensure that such resemblance exists.

Examples of the CONTROL/DRV and PERCENT DV formats modified to present the simplified label are shown in Appendix D. Comments are requested on these methods for adapting the nutrition label format to the simplified label as well as alternative suggestions for accomplishing this goal.

*D. Format for Nutrition Labeling of Dietary Supplements of Vitamins and Minerals*

In accordance with section 403(q)(5)(E) of the act (21 U.S.C. 343(q)(5)(E)), FDA proposed *Section 101.36 Nutrition Labeling of Dietary Supplements of Vitamins and Minerals* (56 FR 60366 at 60393, November 27, 1991). To reduce consumer confusion, FDA proposed that nutrition labeling of vitamin and mineral supplements appear as similar as possible to the nutrition labeling of other food. Accordingly, as with the simplified label, FDA anticipates modifying proposed § 101.36 as needed to maintain this similarity. FDA requests comments on this approach.

*E. Voluntary Format Elements*

FDA also seeks comment on the possibility of allowing the use of voluntary format elements. The principal format would be mandatory and would include those elements, such as the proposed DV, that FDA has determined to be necessary to satisfy the requirements of the 1990 amendments. Voluntary format elements that are in keeping with the mandatory format may enhance the educational capability of the label. For example, such elements might involve the use of a particular graphic presentation that FDA has found to be promising but that, given the very tight implementation schedule required by the 1990 amendments, has not been tested.

One possibility that would increase flexibility is that highlighting, rather than being viewed as a separate format, would be allowed as a voluntary graphic enhancement of the principal format. This approach is similar to what is currently happening in the marketplace in an unregulated fashion. Another possibility is the voluntary use of adjectives in the nutrition label consistent with FDA's definitions for nutrient content claims, e.g., "low" fat or "high" fiber.

FDA seeks comment on the feasibility of an approach that would allow voluntary enhancements of a basic format. Would the use of voluntary elements create sufficient confusion to outweigh any benefit that would result from the added enhancement, or would it assist consumers to observe and comprehend label information?

*F. Alternate Formats*

FDA is proposing to select a standard format in section VI.B. At the same time, FDA recognizes that the formats tested by the agency obviously do not exhaust all possibilities. FDA's rationale for selecting the formats that it has tested is explained earlier in this document and in a notice of the availability of a report on format research (56 FR 23072, May 20, 1991). Many types of formats or methods of graphic enhancement that have been suggested, such as larger type size or multicolor graphics, go beyond what the agency can mandate. Among the alternative formats discussed in this section and the formats discussed earlier in this document, the agency requests comments on which format is most comprehensible for a majority of the population, while providing nutrition information in the context of a total daily diet.

1. Formats With Dietary Guidance Based on Ranges

An alternative to the use of specific reference values based on a single caloric level is the use of a range of values for each reference value for those nutrients whose recommended intake levels are tied to caloric intake levels. FDA seeks comment on the use of a range for reference values. Is a range a more effective or comprehensible means of presenting information about these nutrients than a single value? Will a range better help people understand how the information applies to them, as opposed to one average value that does not apply precisely to all people? Can the use of a range be accommodated in the space available for nutrition labeling on food labels? If a range is used, comments are requested on the specific range for each nutrient that should be used.

In the example given in appendix E based on the CONTROL format, a range is given in a column entitled "Recommended Daily Intake" adjacent to the quantitative declarations of calories, calories from fat, total fat, saturated fat, total carbohydrate, dietary fiber, and protein. Cholesterol and sodium, which do not have reference values based on caloric intake levels, are specified by a single value. The calorie intake range depicted in appendix E is based on the most recent USDA dietary guidance. That guidance combines NAS' recommended daily allowances (RDA's) and national food consumption survey data to arrive at a range of 1,600 to 2,800 calories per day. If the range was to be based solely on the RDA's, it would be 1,800 to 3,000 calories per day. FDA seeks comments on the use of such ranges, and on what values should be used if a range format is adopted. Such a format might depict calorie intakes as ranges with upper levels of 2,800 to 3,000 calories per day. These upper levels are based on the median heights and weights for men ages 15 to 50. The upper level based on the median heights and weights for women ages 15 to 50 is 2,200 calories per day. What, if any, additional information needs to be contained in such labels so that they are not misleading?

A variation of this type of format would be the listing of DV's for two or three different caloric intake levels on each label, perhaps based on an intake of 1,600, 2,200, and 2,800 calories per day.

Another variation might be the use of a footnote to explain that advisable daily intake levels for calories, fat,

carbohydrate, fiber, and protein will vary based on height, weight, metabolism, and activity levels. For example, a footnote statement might read, "The Daily Value is an example of range for a normal diet. Nutritional needs vary, 1,600 calories for sedentary women and older adults, 2,800 calories for teenage boys, active men, and very active women."

Comments are requested on the use of these types of dietary guidance, their utility to consumers to understand the food's relative significance in the context of total daily diet, and whether a footnote is useful and how to best convey such information in a footnote.

2. Formats With Daily Values for Men and Women

Recommended calorie and nutrient intakes vary widely across the general population, and a single daily value, therefore, may not be appropriate. One possible way to address this concern would be to include on the label an average daily value for men and an average daily value for women. Appendix E includes an illustration of such a format. Would this format help individuals better identify their daily nutritional needs? Would such a format be helpful to individuals even though it presents "average" daily values that are not applicable to all men and all women? Can such a "dual" declaration be accommodated in the space available for nutrition labeling on food labels? If such a format is suggested, the agency requests comments on what the specific calorie and nutrient intakes should be.

3. Modified Grouping Format

Another format option that has been suggested but not tested would modify the GROUPING format so that nutrients are grouped by whether the food is "high," "medium," or "low" in a particular nutrient, instead of whether consumers should choose a diet high or low in that nutrient as was the case in the GROUPING format that FDA tested. The suggested format responds to some criticisms of the GROUPING format that have already been discussed. For example, it responds to the complaints that the GROUPING format used in FDA Experimental Study 2 was too prescriptive. It also eliminates inaccuracies caused by adjectives because individual nutrient adjectives are removed.

However, because this suggested format is based on adjectives, it raises some of the same definitional issues that the ADJECTIVE format does. In addition, it raises new issues, such as the potential negative impact on consumers of a constantly changing order of nutrients on the label depending on the quantitative amount of the nutrient present. Studies have shown that elderly people, in particular, have a hard time extracting information when the location of the nutrient is not constant (Ref. 18). Additionally, the effort required to use the format would likely be considerably greater than for other formats in which nutrients have fixed positions.

Nonetheless, FDA believes all modifications warrant consideration and seeks additional comment on this and other format and graphic alternatives.

## VI. FDA's Proposal

### *A. Findings of Research*

The research findings from the FDA studies reveal a complex pattern of communication effectiveness across the various formats tested. The research does not, however, identify a clearly superior format for all usage situations. Rather, some formats perform well for certain applications but are weak in others. Selection of a format is further complicated by the issues that arise as additional nutrients and nutrient components are added to the label beyond the minimum required under the mandatory nutrition labeling proposal.

### *B. FDA's Tentative View*

FDA recognizes that the format ultimately selected must meet the requirements of the 1990 amendments as well as the rising consumer expectations that nutrition information on food labels will enable them to select healthier diets. Based on the available research evidence and comments, FDA tentatively concludes that several elements will be included in the final nutrition format.

First, the information will be displayed in a manner that is simple and minimizes clutter. FDA's major finding from the research studies is that simple formats are easier to comprehend and require less consumer effort than complex information displays. Therefore, a simple display best meets the requirements of the 1990 amendments that nutrition information should be more observable and understandable as it relates to the total diet.

Second, the information will be presented in a tabular fashion, although perhaps enhanced by other graphic devices to provide rapid access to, and greater observability of, key nutrition information.

Third, the nutrition information display will include either a listing of the quantitative amount of each nutrient, in absolute terms (e.g., g), or a listing of the amount as a percent of the proposed RDI or DRV, or a combination of both. (As discussed earlier, the agency is still considering whether DRV's are the best mechanism to satisfy the requirement of section 2(b)(1)(A) of the 1990 amendments.) FDA research shows that consumers are more accurate in observing nutrient differences between foods when formats provide ready access to the quantitative amounts of the nutrients present. Consumer ability to readily observe characterizing differences between foods is a prerequisite to understanding how food selection can contribute to healthier dietary practices.

Fourth, nutrient information must be linked to the dietary guidance that is considered important to public health. This linkage of individual foods with the total diet fulfills the mandate of the 1990 amendments to ensure that the label format helps consumers to choose healthier diets. Therefore, the format that FDA adopts will include information that achieves the purpose of linking individual foods to a daily diet. FDA's research studies show that a sizable minority (25 percent) of shoppers already understand and are able to use proposed DRV's for that purpose.

FDA requests comments on these tentative conclusions and the other conclusions that FDA should reach to arrive at a format that satisfies the requirements of the 1990 amendments.

Because the research to date has not been definitive, and because FDA anticipates receiving results of other studies during the comment period on this proposal, the agency believes that all the formats of FDA Experimental Study 2 deserve further consideration.

In the November 27, 1991, proposal, FDA tentatively decided that the CONTROL format, lacking DRV information, or other information serving the same purpose, did not meet the requirements of the 1990 amendments that the nutrition information be conveyed in a manner that enables the public to understand the relative significance of the nutrient information in the context of the total daily diet. In addition, FDA Experimental Study 2 provided evidence that a sizable minority (25 percent) of consumers understand and are able to use proposed DRV's in the context of the daily diet. FDA Experimental Studies 1 and 2 and public comments indicate that the public wants daily reference information.

FDA proposes to establish the PERCENT DV with DRV format as the standard format for presenting nutrition

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information on the food label. The agency tentatively concludes that, among formats researched to date, the use of nutrient information for dietary management will more readily be achieved with this format, which allows consumers flexibility to use nutrient absolute amounts together with proposed DRV listings or, alternatively, to use the percent DV listing or the absolute amounts individually in deciding how particular foods fit into a daily diet and in other aspects of dietary planning and management. Inclusion of the DRV as a required element of the label will be contingent on a final determination based on review of comments on the original and supplementary proposals for nutrition labeling, as well as the research results. FDA requests comment on the proposed format, as well as rationale and evidence in support of the other formats tested or alternative formats.

FDA expects that comments to this proposal will provide some particularly important information. The GMA/NFPA study includes 23 different foods commonly consumed on various meal and snack occasions and incorporates two of the same three label use tasks used in FDA Experimental Study 2. Thus, the industry study is a broader scale replication of the FDA research. The study may confirm FDA's findings and possibly provide more definitive guidance toward selection of a final format. Moreover, on the basis of queries, FDA is aware that other format research in addition to the GMA/NFPA, the Kellogg Co. and Frito-Lay, Inc., studies may be underway. FDA, therefore, considers it inappropriate to foreclose other format alternatives until it has an opportunity to study these other research findings.

FDA recognizes the limitations in the various studies that it has conducted to date and in the studies that it expects to receive in the near future. While these studies are extremely valuable in helping the agency evaluate various format elements, they are only one of many factors that FDA must consider in making its final decision. The decision on the format that best meets the requirements of the 1990 amendments is a complex policy determination that FDA will make after evaluating the results of studies, public comment, and all other relevant information.

FDA therefore requests comments and all relevant evidence on what format it should adopt for the presentation of nutrition information. The comments should discuss the proposed format, the six other formats that FDA tested, as well as any other format that well-designed studies have shown to be superior to these alternatives. In addition, FDA solicits comments on the evaluation measures that it should use in considering such evidence.

*C. Relative Importance of Label Uses*

FDA believes that the most important criterion in judging a format is that it facilitate the accurate search for significant nutrient information with the minimum effort. Thus, this format performance characteristic is critical. A format that does so clearly meets the requirements of the 1990 amendments, particularly section 2(b)(1)(A). That it permits the search for accurate information with a minimum of effort means that the information is readily observable. That it results in an accurate search means that the shopper comprehends the information. That it allows the shopper to determine significant nutrient information means that it allows the consumer to understand the importance of the information presented.

In addition, in making a final selection of a format, FDA intends to give greater consideration to format performance in facilitating dietary calculations, such as computing servings in relation to a DRV or other dietary guidance, or in determining which nutrients to increase or to decrease in the remainder of the day's diet, than to use of the format in assessing nutrient content and health claims. The agency intends to do so for two reasons: First, the ability of a format to facilitate dietary calculations is a direct reflection of its ability to enable consumers to understand the significance of the information in the context of the total daily diet, which again is one of the requirements for the format in the 1990 amendments.

Second, since designing FDA Experimental Study 2, FDA has published, in response to the mandate of the 1990 amendments, proposals that will establish regulations governing the use of implied and expressed nutrient content claims, including, among others, descriptors applicable to cholesterol, total fat, saturated fat, sodium, and calories, and will require that labels bearing nutrient content claims refer the consumer to the nutrition information panel (56 FR 60421 and 60478, November 27, 1991). The provisions of the act on nutrient content claims (section 403(r)(2)(B)(ii)) of the act (21 U.S.C. 343(r)(2)(B)(ii)) require labels that bear such a claim to identify any nutrient that is present in the food at a level that increases the risk of a diet-related disease or health condition (56 FR 60421). To implement this requirement, FDA proposed specific levels of fat, saturated fat, cholesterol, and sodium that present such a risk. Additionally, FDA has proposed general requirements pertaining to health claims that characterize the relationship of a food component to a disease or health-related condition (56 FR 60537, November 27, 1991). These regulatory proposals thus will control nutrient content and health claims on food labels and will lessen the need for consumers to rely on the nutrition panel to assess the validity of such claims.

The agency requests comment on the criteria that the agency intends to use in judging nutrition labeling formats.

**VII. Economic Impact**

The food labeling reform initiative, taken as a whole, will have associated costs in excess of the $100 million threshold that defines a major rule. Therefore, in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354), FDA has developed one comprehensive regulatory impact analysis (RIA) that presents the costs and benefits of all of the food labeling provisions taken together. The RIA was published in the **Federal Register** of November 27, 1991 (56 FR 60856).

**VIII. Environmental Impact**

The agency has determined under 21 CFR 25.24 that this proposed rule is of a type that does not individually or cumulatively have a significant effect on the human environment. The proposed actions pertaining to food labeling meet the criteria in 21 CFR 25.24(a)(11) for exclusion from preparation of any environmental assessment and an environmental impact statement. The proposed regulations pertaining to the nutrition label format meet the criteria for exclusion, described in 21 CFR 25.24(a)(8). Therefore, neither an environmental assessment nor an environmental impact statement is required.

**IX. Effective Date**

FDA is proposing to make these regulations effective 6 months after the publication of a final rule based on this proposal. FDA notes, however, that in section 10(a)(3)(B) of the 1990 amendments, Congress provides that if the Secretary, and by delegation FDA, finds that requiring compliance with section 403(q) of the act, on mandatory nutrition labeling, or with section 403(r)(2) of the act, on nutrient content claims, 6 months after publication of the final rules in the **Federal Register** would cause undue economic hardship, the Secretary may delay the application of these sections for no more than 1 year.

In light of the agency's tentative findings in its RIA (56 FR 60856, November 27, 1991), FDA requested comment in the supplementary mandatory nutrition labeling proposal (56 FR 60366 at 60384) of whether it can and should delay the application of sections 403(q) and 403(r)(2) of the act. The agency is currently considering the comments that it has received on this issue and intends to publish a **Federal Register** document announcing its conclusion concerning the effective date in advance of any final rule announcing how it will implement sections 403(q) and 403(r)(2), to assist firms in planning how they will comply with the act. FDA hopes that the early publication of such a notice will assist firms in avoiding any unnecessary expenses that could be incurred by trying to comply with a compliance date that may cause "undue economic hardship."



**X. Comments**

Interested persons may, on or before August 19, 1992, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

**XI. References**

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.


1. NFPA, "Food Labeling and Nutrition: What Americans Want," Washington, DC, 1990.
2. Committee on the Nutrition Components of Food Labeling, Food and Nutrition Board, IOM, NAS, "Nutrition Labeling: Issues and Directions for the 1990's," Washington, DC, National Academy Press, 1990.
3. USDA and DHHS, "Nutrition and Your Health, Dietary Guidelines for Americans," Washington, DC, Home and Garden Bulletin No. 232, 3d ed., U.S. Government Printing Office, 1990.
4. The American Dietetic Association, "Nutrition and Health Information on Food Labels," Journal of the American Dietetic Association, 90:583, 1990.
5. American Institute of Nutrition and the American Society of Clinical Nutrition, "Position Statement on Food Labeling," Washington, DC, April 1990.
6. Robert P. Gersin Associates, Inc., "Food and Drug Administration Design of Food Package Information Formats: Final Report," January 1983.
7. Stokes, R.C. and R. Haddock, "Interim Report of the First Two Phases of the CRI/FDA Nutrition Labeling Research Program," CRI, Inc., Washington, DC, August 1972.
8. Lewis, C.J. and E.A. Yetley, "Focus Group Sessions on Formats of Nutrition Labels," Journal of the American Dietetic Association, 92:62, 1992.
9. American Heart Association, unpublished presentation to FDA of developmental research on graphic labels, May 1, 1990.
10. Levy, A.S., S.B. Fein, and R.E. Schucker, "A Study of Nutrition Label Formats: Performance and Preference," Center for Food Safety and Applied Nutrition, FDA, Washington, DC, March 1991.
11. Division of Consumer Studies, FDA "Gender Differences in Use of Nutrition Information," February 1992.
12. Russo, J.E., R. Staelin, C.A. Nolan, G.J. Russell, and B.L. Metcalf, "Nutrition Information in the Supermarket," Journal of Consumer Research, 13:48–70, 1986.
13. Frito-Lay, Inc., "A Consumer Survey of Various Formats for Nutritional Labeling," 1992.
14. Market Facts, Inc., "Summary Report, FDA Nutrition Labeling Focus Groups," Prepared under FDA Contract No. 223–89–2170, Washington, DC, FDA, January 1992.
15. Levy, A.S., S.B. Fein, and R.E. Schucker, "Evaluation of Nutrition Label Formats: FDA Study 2," Center for Food Safety and Applied Nutrition, FDA, Washington, DC, March 1992.
16. "The Surgeon General's Report on Nutrition and Health," DHHS (PHS) Publication No. 88–50210 (GPO Stock No. 017–001–465–1), U.S. Government Printing Office, Washington, DC.
17. Committee on Diet and Health, Food and Nutrition Board, Commission on Life Sciences, National Research Council, "Diet and Health: Implications for Reducing Chronic Disease Risk," Washington, DC, National Academy Press, 1989.
18. Cole, C.A. and G.J. Gaeth, "Cognitive and Age-related Differences in the Ability to Use Nutritional Information in a Complex Environment," Journal of Marketing Research, May 1990, 27:175–184.


**David A. Kessler,**

*Commissioner of Food and Drugs.*

Dated: July 14, 1992.

**Louis W. Sullivan,**

*Secretary of Health and Human Services.*

BILLING CODE 4160-01-M

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## Appendix A—Formats Tested in FDA Experimental Study 1

### *Control*

# FROZEN VEGETABLES
## IN SAUCE

**NUTRITION INFORMATION PER SERVING**

| | |
|---|---|
| Serving Size: | 4½ oz (126 g) ½ cup |
| Servings per Container: about 2 | |
| Calories | 140 |
| Calories from fat | 80 |
| Fat | 9 g |
| Saturated fat | 2 g |
| Cholesterol | 0 mg |
| Sodium | 380 mg |
| Carbohydrate | 14 g |
| Fiber | 3 g |
| Protein | 4 g |

**PERCENT OF DAILY VALUE**

| | |
|---|---|
| Vitamin A | 10 |
| Vitamin C | 10 |
| Calcium | 2 |
| Iron | 4 |

**INGREDIENTS:** XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXX

## Adjective

# FROZEN VEGETABLES
## IN SAUCE

**NUTRITION INFORMATION PER SERVING**

Serving Size: 4½ oz (126 g) ½ cup
Servings per container: about 2

| | |
|---|---|
| Calories | 140 |
| Calories from fat | 80 |

| | AMOUNT | DAILY VALUE |
|---|---|---|
| Fat | HIGH (9 g) | 75 g or less* |
| Saturated fat | MEDIUM (2 g) | 25 g or less* |
| Cholesterol | LOW (0 mg) | 300 mg or less |
| Sodium | HIGH (380 mg) | 2,400 mg or less |
| Carbohydrate | LOW (14 g) | 325 g or more* |
| Fiber | MEDIUM (3 g) | 25 g |
| Protein | LOW (4 g) | |

**PERCENT OF DAILY VALUE**

| | | |
|---|---|---|
| Vitamin A | MEDIUM | 10 |
| Vitamin C | MEDIUM | 10 |
| Calcium | LOW | 2 |
| Iron | LOW | 4 |

*As part of a 2,350 calorie diet

**INGREDIENTS:** XXXX

## Numeric

# FROZEN VEGETABLES
## IN SAUCE

**NUTRITION INFORMATION PER SERVING**

Serving Size: 4½ oz (126 g) ½ cup
Servings per Container: about 2

| | |
|---|---|
| Calories | 140 |
| Calories from fat | 80 |
| | **AMOUNT** |
| Fat | 9 g |
| Saturated fat | 2 g |
| Cholesterol | 0 mg |
| Sodium | 380 mg |
| Carbohydrate | 14 g |
| Fiber | 3 g |
| Protein | 4 g |

**NUTRITION PROFILE**

| PERCENT OF DAILY VALUE | | DAILY VALUE |
|---|---|---|
| Fat | 12 | 75 g or less* |
| Saturated fat | 8 | 25 g or less* |
| Cholesterol | 0 | 300 mg or less |
| Sodium | 16 | 2,400 mg or less |
| Carbohydrate | 4 | 325 g or more* |
| Fiber | 12 | 25 g |
| Vitamin A | 10 | |
| Vitamin C | 10 | |
| Calcium | 2 | |
| Iron | 4 | |

*As part of a 2,350 calorie diet

**INGREDIENTS:** XXXX

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# Bar Graph

## FROZEN VEGETABLES
### IN SAUCE

**NUTRITION INFORMATION PER SERVING**

Serving Size: 4½ oz (126 g) ½ cup
Servings per container: about 2

| | |
|---|---|
| Calories | 140 |
| Calories from Fat | 50 |
| | **AMOUNT** |
| Fat | 9 g |
| Saturated fat | 2 g |
| Cholesterol | 0 mg |
| Sodium | 380 mg |
| Carbohydrate | 14 g |
| Fiber | 3 g |
| Protein | 4 g |

**NUTRITION PROFILE**

| | DAILY VALUE | PERCENT OF DAILY VALUE (0 10 20 30) |
|---|---|---|
| Fat | 75 g or less* | 12% |
| Saturated Fat | 25 g or less* | 8% |
| Cholesterol | 300 mg or less | 0% |
| Sodium | 2,400 mg or less | 16% |
| Carbohydrate | 325 g or more* | 4% |
| Fiber | 25 g | 12% |
| Vitamin A | | 10% |
| Vitamin C | | 10% |
| Calcium | | 2% |
| Iron | | 4% |

*As part of a 2,350 calorie diet

**INGREDIENTS:** XXXX

**Appendix B—New Formats Tested in FDA Experimental Study 2**

## *Percent DV With DRV*

# FROZEN VEGETABLES
## IN SAUCE

NUTRITION INFORMATION PER SERVING

Serving Size: 4½ oz (126g) ½ cup
Servings per container: 2

| | |
|---|---|
| Calories | 80 |
| Calories from fat | 20 |

| | PERCENT OF DV | DAILY VALUE (DV) † |
|---|---|---|
| Fat (2g) | 3 | 75 g or less |
| Saturated fat (0g) | 0 | 25 g or less |
| Cholesterol (0mg) | 0 | 300 mg or less |
| Sodium (440mg) | 18 | 2,400 mg or less |
| Carbohydrates (14g) | 4 | 325 g or more |
| Fiber (3g) | 12 | 25 g |
| Protein (4g) | 5 | |
| Vitamin A | 10 | |
| Vitamin C | 10 | |
| Calcium | 2 | |
| Iron | 4 | |

† As part of a 2,350 calorie diet

**INGREDIENTS:** XXXX

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## Highlighting

# FROZEN VEGETABLES
## IN SAUCE

NUTRITION INFORMATION PER SERVING

Serving Size: 4½ oz (126g) ½ cup
Servings per container: 2

| | |
|---|---|
| Calories | 80 |
| Calories from fat | 20 |

| | AMOUNT | DAILY VALUE † |
|---|---|---|
| **Fat** | **2 g*** | 75 g or less |
| **Saturated fat** | **0 g*** | 25 g or less |
| **Cholesterol** | **0 mg*** | 300 mg or less |
| Sodium | 440 mg | 2,400 mg or less |
| Carbohydrates | 14 g | 325 g or more |
| Fiber | 3 g | 25 g |
| Protein | 4 g | |

PERCENT OF DAILY VALUE

| | |
|---|---|
| Vitamin A | 10 |
| Vitamin C | 10 |
| Calcium | 2 |
| Iron | 4 |

† As part of a 2,350 calorie diet
Meets FDA definitions and is consistent with dietary recommendations as:
* Low or reduced in amount per serving

**INGREDIENTS:** XXXX

## Grouping

# FROZEN VEGETABLES

**NUTRITION INFORMATION PER SERVING**

Serving Size: 4½ oz (126g) ½ cup
Servings per container: 2

| | |
|---|---|
| Calories | 80 |
| Calories from fat | 20 |

| CHOOSE A DIET LOW IN: | AMOUNT | DAILY VALUE † |
|---|---|---|
| Fat | 2 g | 75 g or less |
| Saturated fat | 0 g | 25 g or less |
| Cholesterol | 0 mg | 300 mg or less |
| Sodium | 440 mg | 2,400 mg or less |
| **CHOOSE A DIET HIGH IN:** | | |
| Carbohydrates | 14 g | 325 g or more |
| Fiber | 3 g | 25 g |
| **PERCENT OF DAILY VALUE** | | |
| Protein | 8 | |
| Vitamin A | 10 | |
| Vitamin C | 10 | |
| Calcium | 8 | |
| Iron | 4 | |

† As part of a 2,350 calorie diet

**INGREDIENTS:** XXXX

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**Appendix C—Graphic Adaptations**

**Graphic adaptation of CONTROL with DRV format**

# Nutrition Values

| Size | | Calories/Serving | |
|---|---|---|---|
| Serving Size | ½ cup (114g) | Calories | 260 |
| Servings per container | 4 | Includes Calories from fat | 120 |

| | per Serving | Daily Value* |
|---|---|---|
| **Fat** | **13g** | **Less than 75g** |
| includes Saturated Fat | 5g | Less than 25g |
| **Cholesterol** | **30mg** | **Less than 300mg** |
| **Sodium** | **660mg** | **Less than 2,400mg** |
| **Carbohydrate** | **31g** | **325g** |
| includes Complex Carbohydrate | 26g | |
| and Sugars | 5g | |
| **Dietary Fiber** | **0g** | **25g** |
| **Protein** | **5g** | **50g** |

| % Daily Value | | % Daily Value | |
|---|---|---|---|
| **Vitamin A** | 4% | **Calcium** | 12% |
| **Vitamin C** | 2% | **Iron** | 4% |

*Daily Value is based on 2,350 calorie diet



**Graphic adaptation of PERCENT DV with DRV format**

# Nutrition Guide

**Serving Size** ½ cup (114g)
Servings per Container **4**
**Calories 260**
(Calories from fat **120**)

| Per serving | % Daily Value | Daily Value |
|---|---|---|
| **Fat** (13g) | **17%** | Less than **75g*** |
| Saturated Fat (5g) | **20%** | Less than **25g*** |
| **Cholesterol** (30mg) | **10%** | Less than **300mg** |
| **Sodium** (660mg) | **28%** | Less than **2,400mg** |

| Per serving | % Daily Value | Daily Value |
|---|---|---|
| **Carbohydrate** (31g) | **10%** | **325g*** |
| Complex Carbohydrate (26g) | | |
| Sugars (5g) | | |
| **Dietary Fiber** (0g) | **0%** | **25g** |
| **Protein** (5g) | | **50g*** |

**Vitamins & Minerals** % Daily Value

**Vitamin A** 4%, **Vitamin C** 2%, **Calcium** 12%, **Iron** 4%

***For a 2,350 calorie diet. Your Daily Value may be higher or lower, depending on your calorie intake .**

## Appendix D—Examples of Simplified Formats

# Simplified Labels

### Control/DRV Format (Soft Drink)

NUTRITION INFORMATION PER SERVING

Serving Size: 1 can (360 ml)
Servings per container: 1

| | Amount | Daily Value(DV) † |
|---|---|---|
| Calories | 145 | |
| Total Fat | 0g | 75 g or less |
| Total carbohydrate | 36g | 325 g or more |
| Sugars | 36g | |
| Protein | 0g | 50 g |
| Sodium | 20mg | 2400 mg or less |

† As part of a 2,350 calorie diet

### Control/DRV Format (Soft Drink) In-Line Presentation

NUTRITION INFORMATION

Serving Size: 1 can (360 ml)
Servings per container: 1
PER SERVING: 145 calories, 0 g total fat (Daily Value (DV) = 75 g† or less); 36 g total carbohydrate (DV = 325 g† or more) [includes 36 g sugars], 0 g protein (DV = 50 g); 20 mg sodium (DV = 2400 mg or less).

† As part of a 2,350 calorie diet

### Percent DV Format with DRV (Soft Drink)

NUTRITION INFORMATION PER SERVING

Serving Size: 1 can (360 ml)
Servings per container: 1
Calories: 145

| | Percent of DV | Daily Value(DV) † |
|---|---|---|
| Total Fat (0g) | 0 | 75 g or less |
| Total carbohydrate (36g) | 11 | 325 g or more |
| Sugars (36g) | | |
| Protein (0g) | 0 | 50 g |
| Sodium (20mg) | 1 | 2400 mg or less |

† As part of a 2,350 calorie diet

### Percent DV Format with DRV (Soft Drink) In-Line Presentation with DRV in String Beneath Nutrition Information

NUTRITION INFORMATION

Serving Size: 1 can (360 ml)
Servings per container: 1
PER SERVING: 145 calories, 0 g Total fat = 0% DV; 36 g Total carbohydrate = 11% DV (includes 36 g sugars); 0 g Protein = 0% DV; 20 mg Sodium = 1% DV.

DAILY VALUES (DV)†: 75 g or less total fat, 325 g or more total carbohydrate, 50 g protein, and 2400 mg or less sodium.

† As part of a 2,350 calorie diet

APPENDIX E

## *Control with Dietary Guidance*

# FROZEN VEGETABLES
## IN SAUCE

**NUTRITION INFORMATION PER SERVING**

Serving Size: 1/2 cup (126 g)
Servings per Container: 2

| | | RECOMMENDED DAILY INTAKE* |
|---|---|---|
| Calories | 140 | 1600-2800 |
| Calories from fat | 80 | 480-840 |
| **NUTRIENT** | **AMOUNT** | **RECOMMENDED DAILY INTAKE*** |
| Total Fat | 9 g | 53-93 g |
| Saturated fat | 2 g | 18-31 g |
| Cholesterol | 0 mg | 300 mg |
| Sodium | 380 mg | 2400 mg |
| Total Carbohydrate | 14 g | 240-420 g |
| Complex Carbohydrate | 10 g | |
| Sugars | 4 g | |
| Dietary Fiber | 3 g | 18-32 g |
| Protein | 4 g | 40-70 g |
| **PERCENT OF DAILY VALUE** | | |
| Vitamin A | 10 | |
| Vitamin C | 10 | |
| Calcium | 2 | |
| Iron | 4 | |

* Ranges are based on recommended intakes and food consumption surveys. Advisable calorie, fat, carbohydrate, fiber, and protein intake should vary based on age, sex, height, weight, metabolism, and activity level.

**INGREDIENTS:** XXXX

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*Control with Dietary Guidance*

# FROZEN VEGETABLES
## IN SAUCE

**NUTRITION INFORMATION PER SERVING**

Serving Size: 1/2 cup (126 g)
Servings per Container: 2

| | | | |
|---|---|---|---|
| Calories | | 140 | |
| Calories from fat | | 80 | |
| | | DAILY GUIDE | |
| NUTRIENT | AMOUNT | WOMEN | MEN |
| Total Fat | 9 g | Less than 65 g* | 80 g* |
| Saturated fat | 2 g | Less than 20 g* | 25 g* |
| Cholesterol | 0 mg | Less than 300 mg | 300 mg |
| Sodium | 380 mg | Less than 2400 mg | 2400 mg |
| Total Carbohydrate | 14 g | More than 300 g* | 375 g* |
| Complex Carbohydrate | 10 g | | |
| Sugars | 4 g | | |
| Dietary Fiber | 3 g | 25 g* | 30 g* |
| Protein | 4 g | 50 g* | 65 g* |
| PERCENT OF DAILY VALUE | | | |
| Vitamin A | | 10 | |
| Vitamin C | | 10 | |
| Calcium | | 2 | |
| Iron | | 4 | |

* Based on an assumed calorie intake of 2,000 calories for women and 2,500 calories for men. Advisable calorie, fat, carbohydrate, fiber, and protein intake will vary based on age, height, weight, metabolism, and activity level.

**INGREDIENTS:** XXXX

APPENDIX F

## *Control with Dietary Guidance*

# FROZEN VEGETABLES
## IN SAUCE

**NUTRITION INFORMATION PER SERVING**

Serving Size: 1/2 cup (126 g)
Servings per Container: 2
Calories 140
Calories from fat 80

| NUTRIENT | AMOUNT | PERCENT OF REFERENCE DAILY INTAKE | |
|---|---|---|---|
| Total Fat (1g=9 calories) | 9 g | Vitamin A | 10 |
| Saturated fat | 2 g | Vitamin C | 10 |
| Cholesterol | 0 mg | Calcium | 2 |
| Sodium | 380 mg | Iron | 4 |
| Total Carbohydrate (1g=4 calories) | 14 g | | |
| Complex Carbohydrate | 10 g | | |
| Sugars | 4 g | | |
| Dietary Fiber | 3 g | | |
| Protein (1g=4 calories) | 4 g | | |

Use this nutrition information to help you plan your total daily diet. The Dietary Guidelines recommend that Americans:
- Eat a wide variety of foods
- Choose a diet with plenty of vegetables, fruits, and grain products
- Choose a diet low in fat (30% of calories or less), saturated fat (less than 10% of calories), and cholesterol
- Use sugar, salt and sodium in moderation

**INGREDIENTS:** XXXX

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federal register

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Part III

# Department of the Interior

**Bureau of Indian Affairs**

## Receipt of Petition for Federal Acknowledgement of Existence as an Indian Tribe; Notice

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

July 8, 1992.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the

Gun Lake Village Band and Ottawa Colony, Band of Grand River Ottawa Indians, c/o William L. Church, 5721 Grand River Drive, Grand Ledge, Michigan 48837

has filed a petition for acknowledgment by the Secretary of the Interior that the group exits as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on June 24, 1992, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Eddie F. Brown,

*Assistant Secretary-Indian Affairs.*

[FR Doc. 92–16953 Filed 7–17–92; 8:45 am]

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PART IV

# Office of Management and Budget

**Cumulative Report on Rescissions and Deferrals; Notice**

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## OFFICE OF MANAGEMENT AND BUDGET

### Cumulative Report on Rescissions and Deferrals

July 1, 1992.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of July 1, 1992, of 128 rescission proposals and 11 deferrals contained in the special message for FY 1992. These messages were transmitted to Congress on September 30, and December 19, 1991, and on February 19, March 10, March 20, April 8, April 9, and June 25, 1992.

### Rescissions (Table A and Attachment A)

The President proposed 128 rescissions totaling $7,879.5 million. Public Law 102–298 (approved June 4, 1992) rescinded $2,066.9 million of the $7,879.5 million proposed by the President. Attachment A shows the history and status of each rescission proposed during FY 1992.

### Deferrals (Table B and Attachment B)

As of July 1, 1992, $3,869.7 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1992.

### Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

56 FR 50620, Monday, October 7, 1991
56 FR 67402, Monday, December 30, 1991
57 FR 6644, Wednesday, February 26, 1992
57 FR 11140, Wednesday, April 1, 1992
57 FR 11528, Friday, April 3, 1992
57 FR 13151, Wednesday, April 15, 1992
57 FR 13779, Friday, April 17, 1992
57 FR 29610, Thursday, July 2, 1992

Richard Darman,

*Director.*

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1992 RESCISSIONS

| | Amounts (In millions of dollars) |
|---|---|
| Rescissions proposed by the President | 7,879.5 |
| Accepted by Congress as of July 1, 1992 | 2,066.9 |
| Rescission proposals for which funding was previously withheld and has been released | 7,330.1 |
| Rescission proposals for which funding was not withheld | 25.0 |
| Rescission proposals for which funding is currently being withheld | --- |

TABLE B

STATUS OF FY 1992 DEFERRALS

| | Amounts (In millions of dollars) |
|---|---|
| Deferrals proposed by the President | 5,774.2 |
| Routine Executive releases through July 1, 1992 (OMB/Agency releases of $3,767.5 million, partially offset by cumulative positive adjustments of $1,863.0 million) | -1,904.5 |
| Overturned by the Congress | --- |
| Currently before the Congress | 3,869.7 |

Attachments

**ATTACHMENT A**
**Status of FY 1992 Rescission Proposals**
**(Amounts in thousands of dollars)**

| As of July 1, 1992 Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress: Less than 45 days | Amounts Pending Before Congress: More than 45 days | Date of Message | Amount Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| **DEPARTMENT OF AGRICULTURE** | | | | | | | | |
| Cooperative State Research Service | | | | | | | | |
| Building and facilities | R92-36 | | 250 | 3-20-92 | 250 | 5-29-92 | | |
| | R92-37 | | 500 | 3-20-92 | 500 | 5-29-92 | | |
| | R92-38 | | | 3-20-92 | 500 | 5-29-92 | 500 | P.L. 102-298 |
| | R92-39 | | 2,710 | 3-20-92 | 2,710 | 5-29-92 | | |
| | R92-40 | | 375 | 3-20-92 | 375 | 5-29-92 | | |
| | R92-41 | | 3,050 | 3-20-92 | 3,050 | 5-29-92 | | |
| | R92-42 | | 225 | 3-20-92 | 225 | 5-29-92 | | |
| Cooperative State Research Service | R92-43 | | 225 | 3-20-92 | 225 | 5-29-92 | | |
| | R92-44 | | | 3-20-92 | 750 | 5-29-92 | 750 | P.L. 102-298 |
| | R92-45 | | 94 | 3-20-92 | 94 | 5-29-92 | | |
| | R92-46 | | 39 | 3-20-92 | 39 | 5-29-92 | | |
| | R92-47 | | 387 | 3-20-92 | 387 | 5-29-92 | | |
| | R92-48 | | 85 | 3-20-92 | 85 | 5-29-92 | | |
| | R92-49 | | | 3-20-92 | 49 | 5-29-92 | 49 | P.L. 102-298 |
| | R92-50 | | 125 | 3-20-92 | 125 | 5-29-92 | | |
| | R92-51 | | 185 | 3-20-92 | 185 | 5-29-92 | | |
| | R92-52 | | 120 | 3-20-92 | 120 | 5-29-92 | | |
| | R92-53 | | 134 | 3-20-92 | 134 | 5-29-92 | | |
| | R92-54 | | 100 | 3-20-92 | 100 | 5-29-92 | | |
| | R92-55 | | 46 | 3-20-92 | 46 | 5-29-92 | | |
| | R92-56 | | 200 | 3-20-92 | 200 | 5-29-92 | | |
| | R92-57 | | 250 | 3-20-92 | 250 | 5-29-92 | | |
| | R92-58 | | | 3-20-92 | 50 | 5-29-92 | 50 | P.L. 102-298 |
| | R92-59 | | 187 | 3-20-92 | 187 | 5-29-92 | | |
| | R92-60 | | 140 | 3-20-92 | 140 | 5-29-92 | | |
| | R92-61 | | 76 | 3-20-92 | 76 | 5-29-92 | | |
| Extension Service | | | | | | | | |
| Extension Service | R92-62 | | 647 | 3-20-92 | 647 | 5-29-92 | | |
| | R92-63 | | 150 | 3-20-92 | 150 | 5-29-92 | | |

**ATTACHMENT A**
**Status of FY 1992 Rescission Proposals**
**(Amounts in thousands of dollars)**

| As of July 1, 1992<br>Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress<br>Less than 45 days | <br>More than 45 days | Date of Message | Amount Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| National Agricultural Library | | | | | | | | |
| National Agricultural Library | R92-64 | | 500 | 3-20-92 | 462 1/ | 5-29-92 | | |
| Animal and Plant Inspection Service | | | | | | | | |
| Salaries and expenses | R92-35 | | 100 | 3-20-92 | 100 | 5-29-92 | | |
| **DEPARTMENT OF COMMERCE** | | | | | | | | |
| National Telecommunications and Information Administration | | | | | | | | |
| Public telecommunications facilities, planning and construction | R92-2 | | 18,425 | 3-10-92 | 21,425 | 5-11-92 | 3,000 | P.L. 102-298 |
| **DEPARTMENT OF DEFENSE** | | | | | | | | |
| Operation and Maintenance | | | | | | | | |
| Operation and maintenance, Army | R92-3 | | 80,798 | 3-10-92 | 92,850 | 5-11-92 | 12,052 | P.L. 102-298 |
| Operation and maintenance, Navy | R92-4 | | 104,520 | 3-10-92 | 104,650 | 5-11-92 | 130 | P.L. 102-298 |
| Operation and maintenance, Marine Corps | R92-5 | | 14,834 | 3-10-92 | 22,000 | 5-11-92 | 7,166 | P.L. 102-298 |
| Operation and maintenance, Air Force | R92-6 | | 3,848 | 3-10-92 | 4,500 | 5-11-92 | 552 | P.L. 102-298 |
| Operation and maintenance, Defense Agencies | R92-7 | | 20,200 | 3-10-92 | 20,200 | 5-11-92 | | |
| Procurement | | | | | | | | |
| Aircraft procurement, Army | R92-103 | | 133,000 | 4-9-92 | 133,000 | 6-19-92 | | |
| Procurement of weapons and tracked combat vehicles, Army | R92-9 | | 60,000 | 3-10-92 | 110,000 | 5-11-92 | 50,000 | P.L. 102-298 |
| | R92-104 | | 225,000 | 4-9-92 | 225,000 | 6-19-92 | | |
| | R92-105 | | | 4-9-92 | | | 196,300 | P.L. 102-298 |
| | R92-106 | | 17,600 | 4-9-92 | 17,600 | 6-19-92 | | |
| Procurement of ammunition, Army | R92-10 | | 1,000 | 3-10-92 | 1,000 | 5-11-92 | | |
| Aircraft procurement, Navy | R92-11 | | 223,000 | 3-10-92 | 262,000 | 5-11-92 | 39,000 | P.L. 102-298 |

1/ Only $462,000 was withheld from obligation.

ATTACHMENT A
Status of FY 1992 Rescission Proposals
(Amounts in thousands of dollars)

| As of July 1, 1992 Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress: Less than 45 days | Amounts Pending Before Congress: More than 45 days | Date of Message | Amount Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| | R92-107 | | | 4-9-92 | | | 15,000 | P.L. 102-298 |
| | R92-108 | | 8,000 | 4-9-92 | 8,000 | 6-19-92 | | |
| Weapons procurement, Navy | R92-12 | | 13,200 | 3-10-92 | 13,200 | 5-11-92 | | |
| | R92-109 | | 130,000 | 4-9-92 | 130,000 | 6-19-92 | | |
| | R92-110 | | | 4-9-92 | | | 4,000 | P.L. 102-298 |
| | R92-111 | | | 4-9-92 | | | 60,000 | P.L. 102-298 |
| Shipbuilding and conversion, Navy | R92-13 | | 238,100 | 3-10-92 | 238,100 | 5-11-92 | | |
| | R92-101 | | 1,615,900 | 3-20-92 | 2,765,900 | 5-21-92 | 1,150,000 | P.L. 102-298 |
| Other procurement, Navy | R92-14 | | 41,300 | 3-10-92 | 41,300 | 5-11-92 | | |
| | R92-102 | | | 3-20-92 | 189,400 | 5-21-92 | 189,400 | P.L. 102-298 |
| | R92-112 | | 10,000 | 4-9-92 | 10,000 | 6-19-92 | | |
| | R92-113 | | 4,000 | 4-9-92 | 4,000 | 6-19-92 | | |
| | R92-114 | | 2,000 | 4-9-92 | 2,000 | 6-19-92 | | |
| Procurement, Marine Corps | R92-15 | | 40,200 | 3-10-92 | 40,200 | 5-11-92 | | |
| | R92-115 | | 6,500 | 4-9-92 | 6,500 | 6-19-92 | | |
| Procurement, Defense Agencies | R92-16 | | 154,800 | 3-10-92 | 154,800 | 5-11-92 | | |
| National guard and reserve equipment | R92-116 | | 21,000 | 4-9-92 | 21,000 | 6-19-92 | | |
| | R92-117 | | 799,300 | 4-9-92 | 799,300 | 6-19-92 | | |
| | R92-118 | | 67,000 | 4-9-92 | 67,000 | 6-19-92 | | |
| | R92-119 | | 9,300 | 4-9-92 | 9,300 | 6-19-92 | | |
| | R92-120 | | 45,000 | 4-9-92 | 45,000 | 6-19-92 | | |
| | R92-121 | | 15,000 | 4-9-92 | 15,000 | 6-19-92 | | |
| | R92-122 | | 20,000 | 4-9-92 | 20,000 | 6-19-92 | | |
| | R92-123 | | 60,000 | 4-9-92 | 60,000 | 6-19-92 | | |
| | R92-124 | | 15,000 | 4-9-92 | 15,000 | 6-19-92 | | |
| Research, Development, Test and Evaluation | | | | | | | | |
| Research, development, test, and evaluation, Army | R92-18 | | 102,200 | 3-10-92 | 102,200 | 5-11-92 | | |
| | R92-125 | | 4,000 | 4-9-92 | 4,000 | 6-19-92 | | |
| Research, development, test, and evaluation, Navy | R92-19 | | 140,600 | 3-10-92 | 140,600 | 5-11-92 | | |

**ATTACHMENT A**
**Status of FY 1992 Rescission Proposals**
**(Amounts in thousands of dollars)**

| As of July 1, 1992<br>Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress<br>Less than 45 days | <br>More than 45 days | Date of Message | Amount Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| Research, development, test, and evaluation, Air Force | R92-20 | | 127,100 | 3-10-92 | 127,100 | 5-11-92 | | |
| | R92-21 | | 320,900 | 3-10-92 | 375,900 | 5-11-92 | 55,000 | P.L. 102-298 |
| | R92-126 | | 3,000 | 4-9-92 | 3,000 | 6-19-92 | | |
| | R92-127 | | | 4-9-92 | | | 248,800 | P.L. 102-298 |
| Research, development, test, and evaluation, Defense Agencies | R92-128 | | 5,000 | 4-9-92 | 5,000 | 6-19-92 | | |
| | R92-129 | | 6,000 | 4-9-92 | 6,000 | 6-19-92 | | |
| | R92-130 | | 70,000 | 4-9-92 | 70,000 | 6-19-92 | | |
| Military Construction | | | | | | | | |
| Military construction, Army | R92-22 | | 200 | 3-10-92 | 9,050 | 5-11-92 | 8,850 | P.L. 102-298 |
| Military construction, Navy | R92-23 | | 17,400 | 3-10-92 | 17,400 | 5-11-92 | | |
| Military construction, Air Force | R92-24 | | 6,000 | 3-10-92 | 6,000 | 5-11-92 | | |
| Military construction, Defense Agencies | R92-25 | | 39,000 | 3-10-92 | 48,000 | 5-11-92 | 9,000 | P.L. 102-298 |
| Military construction, Army National Guard | R92-26 | | 16,565 | 3-10-92 | 16,565 | 5-11-92 | | |
| Military construction, Air National Guard | R92-27 | | | 3-10-92 | 306 | 5-11-92 | 306 | P.L. 102-298 |
| Military construction, Army Reserve | R92-28 | | 2,749 | 3-10-92 | 2,749 | 5-11-92 | | |
| Military construction, Naval Reserve | R92-29 | | 25,100 | 3-10-92 | 36,000 | 5-11-92 | 10,900 | P.L. 102-298 |
| **DEPARTMENT OF DEFENSE-CIVIL** | | | | | | | | |
| Corps of Engineers | | | | | | | | |
| Construction, general | R92-91 | | 3,000 | 3-20-92 | 3,000 | 5-21-92 | | |
| Operation and maintenance, general | R92-92 | | 1,350 | 3-20-92 | 1,350 | 5-21-92 | | |
| **DEPARTMENT OF ENERGY** | | | | | | | | |
| Energy Programs | | | | | | | | |
| Fossil energy research and development | R92-34 | | 1 | 4-8-92 | 1 | 6-18-92 | 144 | P.L. 102-298 |

ATTACHMENT A
Status of FY 1992 Rescission Proposals
(Amounts in thousands of dollars)

| As of July 1, 1992 Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress: Less than 45 days | Amounts Pending Before Congress: More than 45 days | Date of Message | Amount Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| **DEPARTMENT OF HEALTH AND HUMAN SERVICES** | | | | | | | | |
| Health Resources and Services Administration | | | | | | | | |
| Health resources and services | R92-30 | | 25,000 2/ | 3-10-92 | | | | |
| **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT** | | | | | | | | |
| Housing Programs | | | | | | | | |
| Annual contributions for assisted housing | R92-65 | | 547,659 | 3-20-92 | 547,659 | 5-21-92 | | |
| | R92-66 | | 1,500 | 3-20-92 | 1,500 | 5-21-92 | | |
| | R92-67 | | 1,000 | 3-20-92 | 1,000 | 5-21-92 | | |
| | R92-68 | | 2,000 | 3-20-92 | 2,000 | 5-21-92 | | |
| | R92-69 | | 150 | 3-20-92 | 150 | 5-21-92 | | |
| | R92-70 | | 100 | 3-20-92 | 100 | 5-21-92 | | |
| | R92-71 | | 1,200 | 3-20-92 | 1,200 | 5-21-92 | | |
| | R92-72 | | 1,000 | 3-20-92 | 1,000 | 5-21-92 | | |
| | R92-73 | | 1,300 | 3-20-92 | 1,300 | 5-21-92 | | |
| | R92-74 | | 3,900 | 3-20-92 | 3,900 | 5-21-92 | | |
| | R92-75 | | 2,500 | 3-20-92 | 2,500 | 5-21-92 | | |
| | R92-76 | | 1,500 | 3-20-92 | 1,500 | 5-21-92 | | |
| | R92-77 | | 500 | 3-20-92 | 500 | 5-21-92 | | |
| | R92-78 | | 1,000 | 3-20-92 | 1,000 | 5-21-92 | | |
| | R92-79 | | 1,000 | 3-20-92 | 1,000 | 5-21-92 | | |
| | R92-80 | | 505 | 3-20-92 | 505 | 5-21-92 | | |
| | R92-81 | | 65 | 3-20-92 | 65 | 5-21-92 | | |
| | R92-82 | | 101 | 3-20-92 | 101 | 5-21-92 | | |

2/ Funding was never withheld.

ATTACHMENT A
Status of FY 1992 Rescission Proposals
(Amounts in thousands of dollars)

| As of July 1, 1992 Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress: Less than 45 days | Amounts Pending Before Congress: More than 45 days | Date of Message | Amount Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| | R92-83 | | 1,500 | 3-20-92 | 1,500 | 5-21-92 | | |
| | R92-84 | | 700 | 3-20-92 | 700 | 5-21-92 | | |
| | R92-85 | | 1,000 | 3-20-92 | 1,000 | 5-21-92 | | |
| Annual contributions for assisted housing | R92-86 | | 800 | 3-20-92 | 800 | 5-21-92 | | |
| Congregate services program | R92-1 | | 16,700 | 2-19-92 | 16,700 | 4-6-92 | | |
| Flexible subsidy fund | R92-31 | | 25,000 | 3-10-92 | 25,000 | 5-11-92 | | |
| Policy Development and Research | | | | | | | | |
| Research and technology | R92-87 | | 400 | 3-20-92 | 400 | 5-21-92 | | |
| **DEPARTMENT OF THE INTERIOR** | | | | | | | | |
| National Park Service | | | | | | | | |
| Construction | R92-89 | | 7,700 | 3-20-92 | 7,700 | 5-21-92 | | |
| Operation of the national park system | R92-90 | | 1,975 | 3-20-92 | 1,975 | 5-21-92 | | |
| Bureau of Indian Affairs | | | | | | | | |
| Operation of Indian programs | R92-32 | | 5,880 | 3-10-92 | 5,880 | 5-11-92 | | |
| Construction | R92-88 | | 2,696 | 3-20-92 | 8,593 | 5-21-92 | 5,897 | P.L. 102-298 |
| **DEPARTMENT OF TRANSPORTATION** | | | | | | | | |
| Federal Railroad Administration | | | | | | | | |
| Local rail freight assistance | R92-33 | | 9,880 | 3-10-92 | 9,880 | 5-11-92 | | |

**ATTACHMENT A**
**Status of FY 1992 Rescission Proposals**
**(Amounts in thousands of dollars)**

| As of July 1, 1992 Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress: Less than 45 days | Amounts Pending Before Congress: More than 45 days | Date of Message | Amount Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| **ENVIRONMENTAL PROTECTION AGENCY** | | | | | | | | |
| Research and development | R92-98 | | 116 | 3-20-92 | 116 | 5-21-92 | | |
| Abatement, control and compliance | R92-93 | | 1,250 | 3-20-92 | 1,250 | 5-21-92 | | |
| | R92-94 | | 390 | 3-20-92 | 390 | 5-21-92 | | |
| | R92-95 | | 70 | 3-20-92 | 70 | 5-21-92 | | |
| | R92-96 | | 1,450 | 3-20-92 | 1,450 | 5-21-92 | | |
| Buildings and facilities | R92-97 | | 20,000 | 3-20-92 | 20,000 | 5-21-92 | | |
| **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION** | | | | | | | | |
| Construction of facilities | R92-99 | | 3,400 | 3-20-92 | 3,400 | 5-21-92 | | |
| Research and development | R92-100 | | 750 | 3-20-92 | 750 | 5-21-92 | | |
| **TOTAL RESCISSIONS** | | 0 | 5,812,527 | | 7,330,191 | | 2,066,946 | |

**ATTACHMENT B**
**Status of FY 1992 Deferrals – As of July 1, 1992**
**(Amounts in thousands of dollars)**

| Agency/Bureau/Account | Deferral Number | Amounts Transmitted: Original Request | Amounts Transmitted: Subsequent Change (+) | Date of Message | Releases(–): Cumulative OMB/ Agency | Releases(–): Congressionally Required | Congressional Action | Cumulative Adjustments (+) | Amount Deferred as of 7–1–92 |
|---|---|---|---|---|---|---|---|---|---|
| **FUNDS APPROPRIATED TO THE PRESIDENT** | | | | | | | | | |
| International Security Assistance | | | | | | | | | |
| Economic support fund | D92–1 | 244,777 | | 09–30–91 | | | | | |
| | D92–1A | | 1,623,312 | 12–19–91 | 1,527,599 | | | 1,108,866 | 1,449,356 |
| Foreign military financing | D92–8 | 1,908,000 | | 12–19–91 | | | | | |
| | D92–8A | | 93,098 | 06–25–92 | 996,300 | | | 695,578 | 1,700,376 |
| Agency for International Development | | | | | | | | | |
| International disaster assistance, Executive | D92–2 | 40,704 | | 09–30–91 | | | | | |
| | D92–2A | | 12,483 | 02–19–92 | 42,731 | | | 34,068 | 44,524 |
| Demobilization and transition fund | D92–9 | 13,000 | | 12–19–91 | | | | | 13,000 |
| **DEPARTMENT OF AGRICULTURE** | | | | | | | | | |
| Forest Service | | | | | | | | | |
| Cooperative work | D92–3 | 482,378 | | 09–30–91 | 135,434 | | | | 346,944 |
| Expenses, brush disposal | D92–10 | 101,006 | | 12–19–91 | | | | | 101,006 |
| Timber salvage sales | D92–11 | 131,549 | | 02–19–92 | | | | | |
| | D92–11A | | 50,000 | 06–25–92 | 30,000 | | | | 151,549 |
| **DEPARTMENT OF DEFENSE – CIVIL** | | | | | | | | | |
| Wildlife Conservation, Military Reservations | | | | | | | | | |
| Wildlife conservation, Defense | D92–4 | 1,416 | | 09–30–91 | 93 | | | | 1,324 |

ATTACHMENT B
Status of FY 1992 Deferrals – As of July 1, 1992
(Amounts in thousands of dollars)

| Agency/Bureau/Account | Deferral Number | Amounts Transmitted: Original Request | Amounts Transmitted: Subsequent Change (+) | Date of Message | Releases(–): Cumulative OMB/ Agency | Releases(–): Congressionally Required | Congressional Action | Cumulative Adjustments (+) | Amount Deferred as of 7–1–92 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF HEALTH AND HUMAN SERVICES | | | | | | | | | |
| Social Security Administration | | | | | | | | | |
| Limitation on administrative expenses | D92–5 | 7,317 | | 09–30–91 | | | | | 7,317 |
| DEPARTMENT OF STATE | | | | | | | | | |
| Bureau for Refugee Programs | | | | | | | | | |
| United States emergency refugee and migration assistance fund, executive | D92–6 | 30,053 | | 09–30–91 | | | | 24,520 | 54,323 |
| | D92–6A | | 24,750 | 12–19–91 | 25,000 | | | | |
| DEPARTMENT OF TRANSPORTATION | | | | | | | | | |
| Federal Aviation Administration | | | | | | | | | |
| Facilities and equipment (Airport and airway trust fund) | D92–7 | 1,010,375 | | 09–30–91 | 1,010,375 | | | | 0 |
| TOTAL, DEFERRALS | | 3,970,575 | 1,803,643 | | 3,767,532 | 0 | | 1,863,033 | 3,869,719 |



07–Jul–92

[FR Doc. 92–16953 Filed 7–17–92; 8:45 am]
BILLING CODE 3110–01–C

federal register

Monday
July 20, 1992

Part V

# Department of Housing and Urban Development

**Office of the Secretary**

**24 CFR Parts 50 and 574**

**Housing Opportunities for Persons With AIDS; Interim Rule**

VOL 57 ISS 139 JL 20 1992 UMI



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50 and 574

[Docket No. R-92-1806; FR-3178-I-01]

## Housing Opportunities for Persons With AIDS

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Interim rule.

**SUMMARY:** The interim rule will govern the operation of the Housing Opportunities for Persons with AIDS (HOPWA) program. The program was authorized by the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) to provide States and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome (AIDS) and related diseases. The program authorizes two types of grants for housing assistance and services: entitlement grants and competitively awarded grants.

**DATES:** *Effective date:* August 19, 1992.

Comment due date: September 18, 1992.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

**FOR FURTHER INFORMATION CONTACT:** James N. Forsberg, Director, Office of Special Needs Assistance Programs, (202) 708-4300; TDD: (202) 708-2565); Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-7000. (Telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

### I. Information Collections

The information collection requirements contained in §§ 574.160, 574.240, 574.510 and 574.520 of this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in part III of this preamble. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent by August 19, 1992, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Washington, DC 20410-0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3001, Washington, DC 20503, Attention: Jennifer Main, Desk Officer for HUD. At the end of the public comment period, the Department may amend the information collection requirements to reflect the public comments or OMB comments received concerning the information collections.

### II. Background

In writing these regulations to implement the AIDS Housing Opportunity Act, the Department found the statute to be complex and, in some places, ambiguous. Because several key parts of the statute are subject to differing interpretations, and because the Department's rulemaking procedures generally require the publication of a proposed rule before regulations are made final and effective, the Department originally planned to publish a proposed rule. However, given the pressing need for housing and services for persons with AIDS and related diseases before the 1992-1993 winter, the decision was made to publish this interim rule. The interim rule allows the program to be implemented now, while soliciting public comments to be considered in developing a final rule. The formal justification for this interim rulemaking is located in part III of this preamble.

Without the benefit of public comments, and within the limits described in the statute, the Department has attempted to develop regulations which are simple in concept, easy to follow in practice, and internally consistent in their requirements. However, public comments may show that the rule can be improved.

To assist potential commenters, this preamble describes the reasoning underlying key provisions. It also identifies specific limitations required by the statute, which cannot be changed by the Department.

The preamble is organized to reflect the major subparts of the rule.

### Subpart A—General

*Project Sponsor*

In § 574.3, the term "project sponsor" is defined. While the statute does not define this term, it does state that the grantee must carry out authorized activities through project sponsors. Considering that a narrow definition of this term could significantly restrict the flexibility of grantees in implementing activities, the Department has defined "project sponsor" broadly to mean any private nonprofit organization or government agency that receives funds from the grantee to carry out eligible activities.

*Unit of General Local Government*

Also defined in § 574.3 is the term "unit of general local government." The statute states that this term has the same meaning as in section 104 of the National Affordable Housing Act. The regulation incorporates the definition from section 104, except that it omits the phrase "a consortium of such political subdivisions recognized by the Secretary in conformance with section 216(2) of the National Afforable Housing Act." (Section 216(2) is one of the provisions of title II of the Act that established the HOME program.) This phrase has been omitted because it serves a special purpose under the HOME program that the Department believes is inapplicable to the Housing Opportunities for Persons with AIDS (HOPWA) program.

### Subpart B—Formula Entitlements

*Applicant Designation*

Under the statute, 90 percent of the appropriated funds are to be awarded by formula to certain metropolitan areas, referred to in this rule as Eligible Metropolitan Areas or EMAs, and to States qualifying for an entitlement grant based on the number of cases of AIDS. The other 10 percent of appropriated funds are to be awarded competitively.

While the statute states that grantees are States and units of general local

government, it does not make clear which units of general local government located within each EMA should be considered as the eligible grantee or grantees. Under one interpretation, every unit of general local government within the EMA would be eligible to receive its proportionate share of the amount allocated by formula to the EMA. But, considering the total amount appropriated for all EMAs, and the minimum grant allocation of $200,000 per grantee described in paragraph 854(c)(2) of the statute, this approach is infeasible.

Another suggested approach was to allocate funds according to the method used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (Pub. L. 100–381, approved August 18, 1990); that is, to distribute each EMA's allocation to the city or urban county within that EMA providing health services to the largest number of persons with AIDS and establish administrative mechanisms to allocate funds and services through intergovernmental agreements to other jurisdictions. The provision of the Ryan White Act that authorized this approach were not included in the AIDS Housing Opportunity Act. The Department, therefore, does not believe it can unilaterally select one locality within each EMA to be the grantee.

Instead, the Department is interpreting section 854(e) of the statute to mean that those units of general local government within each EMA that are entitled jurisdictions under the Community Development Block Grant (CDBG) program (42 U.S.C. 5301–5317; 24 CFR 570) must determine among themselves which single unit of general local government will serve as the applicant and grantee for the EMA's entitlement amount under the HOPWA program. The rule at § 574.110 describes the mechanism for designating the applicant/grantee for each EMA. The rule requires that agreement be reached on which unit of general local government will apply for HOPWA funds and serve as grantee by at least one-half of an EMA's CDBG program entitlement communities and that those communities represent a majority of the total population of all CDBG entitlement communities within the EMA.

The Department believes that by not requiring unanimity, this "majority rule" approach represents a workable solution to a complex problem. To ensure that the entire metropolitan area is served, the rule also requires that the designated applicant agree to serve eligible persons living anywhere within the EMA.

All of the 18 EMAs that will receive funds in FY 1992 under the Ryan White Act have been determined to be eligible to receive allocations under HOPWA's 1992 appropriation. The remaining nine eligible EMA applicants under HOPWA are in States that receive Ryan White funding and are likely to be participating cooperatively in HIV Care Consortia that provide health services in those areas. In cases where EMAs are receiving funding under the Ryan White Act, HUD recommends that the units of general local government in these EMAs carefully consider designating the same governmental entity to serve as the HOPWA applicant in order to ensure close coordination between housing recources and supportive services for persons with AIDS.

An announcement of allocations of HOPWA funds will be published annually in the **Federal Register**, listing the Department's determination of which States and metropolitan areas qualify for grant allocations, estimated allocations, and population numbers for the CDBG program entitlement units of general local government within the metropolitan areas, as described in §§ 574.100, 574.110 and 574.130 of the Interim Rule.

The designated applicant for an EMA must include in its application a certification pursuant to § 574.100(d)(7) that it was so designated in compliance with § 574.110.

*Eligible Beneficiaries*

Section 574.140 describes who are eligible beneficiaries under the program. While the statute is clear that only persons with AIDS or related diseases are eligible to be served, it is somewhat ambiguous on whether eligible persons must also be low-income individuals. Section 855 of the statute clearly states that grant funds may be used only for activities designed to prevent homelessness among persons with AIDS. It can be argued that persons who are not low-income individuals (i.e., persons who have incomes above 80% of the applicable median income for the area) are not currently in danger of becoming homeless.

Section 857 of the statute, in describing grants for AIDS housing information and resource identification, makes no reference to any income standard. Section 858, which authorizes grants for short-term supported housing and services, specifically limits this assistance to persons with AIDS who are homeless or in need of housing assistance to prevent homelessness. Section 859 authorizes rental assistance only for low-income individuals with AIDS. Section 860, in authorizing grants for single room occupancy dwellings, states that, to the extent practicable, such grants shall be carried out in the manner provided under section 8(n) of the United States Housing Act of 1937. The section 8 program is limited to low-income persons. Section 861 of the statute, which authorizes grants for community residences, describes rent requirements for low-income residents and for residents who do not have low incomes. Section 861(b)(1)(C) states also that fees may be charged for services provided based on the resident's income and resources.

Taking all of these provisions into consideration, and also considering the limited funds available for HOPWA, the Department has decided that except for outreach, educational, and housing information services, eligible beneficiaries under the program should be limited generally to persons with AIDS or related diseases who are low-income individuals. This approach will help ensure that limited resources are targeted to persons with the greatest need.

*Location of State Activities*

States may carry out their authorized activities anywhere in the State, including within metropolitan areas that also qualify for an entitlement grant. The statute did not provide for limiting a State to areas outside of an EMA. This flexibility in the location of State programs may also provide for improved program effectiveness through better coordination with other services for persons with AIDS.

**Subpart C—Competitive Grants**

The statute established two competitive categories of assistance: (1) Grants to States and localities for projects of national significance; and (2) grants for other projects submitted by States and localities which did not qualify for a formula allocation. A competition will be announced for both categories of assistance and applications will be rated based on selection criteria that are stated in § 574.250, Grant Selection Process. Applicants for projects of national significance will be rated on the additional criteria of the innovative nature of the project and its potential for replication in similar localities or nationally, in accordance with § 574.250(b)(3).

**Subpart D—Uses of Grant Funds**

The Department interprets section 855 of the statute as authorizing any activity that carries out strategies designed to prevent homelessness among persons

with AIDS. The first sentence of that section describes this broad authority, and is followed by a description of five specific categories of eligible activities plus a sixth category authorizing "other activities that the Secretary develops in cooperation with eligible States and localities." Sections 857 through 861 of the statute describe eligible activities under each of the five specific categories along with applicable limitations. Rather than follow this format in developing the rule, the Department has adopted a more typical regulatory format by consolidating into one section all eligible activities. Separate sections then discuss standards that apply to all forms of housing assistance, as well as those that apply only to a specific type of housing assistance.

The Department believes the list of eligible activities covers every type of activity that an applicant may wish to carry out. However, in case other activities are identified by applicants, the rule includes a provision allowing the Secretary to approve any other activity proposed by the applicant.

Section 574.300 of the rule lists all of the eligible activities and indicates that they are subject to applicable requirements described in §§ 574.310, 574.320, 574.330 and 574.340. As stated in this section, HOPWA funds may be used to assist all forms of housing to carry out strategies designed to prevent homelessness among persons with AIDS. HOPWA funds may also be used to provide appropriate supportive services.

Section 574.310 describes six general standards applicable to all eligible housing activities. These general standards are established under the authority of section 855 of the statute which states that, "The Secretary shall establish standards and guidelines for approved activities." These standards cover mandatory supportive services, housing quality, minimum use period for structures assisted with HOPWA funds, resident rent payments, and termination of assistance to residents following due process procedures. The statute describes the minimum use period for structures only with respect to short-term supported housing. For consistency, the Department has applied this standard to all structures assisted with HOPWA funds.

Section 574.320 describes additional standards that apply to all rental assistance provided with HOPWA funds. Standards are established for rental subsidies. These standards are consistent with similar standards found in other HUD programs providing rental assistance, such as the section 8 rental payments assistance program and the HOME program.

Section 574.330 describes additional standards that apply to short-term supported housing and § 574.340 describes additional standards that apply to community residences. These additional standards are all required by the statute.

**Subpart E—Special Responsibilities of Grantees and Project Sponsors**

All of the responsibilities of grantees and project sponsors described in this subpart are required by the statute.

**Subpart F—Grant Administration**

The grant administration requirements described in this subpart are standard requirements applied by HUD to similar grant-in-aid programs.

**Subpart G—Other Federal Requirements**

The Federal requirements described in this subpart are other Federal requirements that the Department has responsibility for enforcing in this program as well as in its other programs.

*Public Comment*

Public comments on any provision in this interim rule will be welcomed. However, public comments supporting or opposing the key provisions described under subparts A–D above will be particularly helpful in preparing the final rule.

*Part 50 Amendment*

The Department has determined that the decision point for compliance with the environmental review required by the National Environmental Policy Act of 1969 (NEPA) and the other applicable Federal environmental laws and authorities listed in 24 CFR 50.4 is *not* the approval by HUD of the award of grants to successful applicants, but rather the approval of specific properties for use in a grantee's program. The reason for this decision point is that applications for funding are *not* likely to identify specific properties to be used in the HOPWA programs, whereas certain Federal environmental laws and authorities require review of specific properties. Since 24 CFR 50.17 discusses decision points for environmental review and it does not provide for this type of situation, it is being amended in this rule to add a requirement that does recognize it.

The section dealing with environmental policy, generally (§ 50.3) is being amended to add a paragraph to provide that an applicant for assistance involving the later selection of specific properties must assure HUD that it will assist HUD in fulfilling HUD's responsibility for environmental review by taking three actions. It must: (1) Cooperate in providing information needed for the environmental review, (2) take any mitigating measures required or select alternate property, and (3) refrain from carrying out program activities until HUD's review is completed and the property is approved. The provisions of part 574 that describe the application requirements for formula entitlements (§ 574.160(c)(8)) and competitive grants (§ 574.240(d)(9)) also require these three actions. The environmental policy and procedures required of the successful applicant and the HUD field office to comply with NEPA and applicable environmental laws and authorities described in § 50.4 are specified in § 574.510, Environmental Procedures and Standards. Additional guidance will be provided to grantees and HUD field offices.

The Department has determined that NEPA and the other Federal environmental laws and authorities listed at § 50.4 apply to physical development activities listed in § 574.300(b) (3) and (4); they do not apply to the other activities cited in § 574.300, which by their nature do not propose a physical change to a property. To preclude the need for doing repetitive findings of no significant impact for non-physical development activities and to provide for an efficient and effective use of resources and staff responsible for compliance with part 50, HUD is revising § 50.19 to eliminate the need for these findings.

The heading of § 50.19 is revised to reflect its true nature: "Activities not subject to § 50.4." To this section is added a new and expanded list of activities funded under HUD programs such as HOPWA that would not alter any property conditions that would require review or compliance under the other Federal laws and authorities cited in § 50.4. The Department has determined that the laws and authorities listed in § 50.4 are not applicable to the activities listed in this section.

The section (§ 50.20) that provides for a categorical exclusion from the environmental review required by NEPA is revised in a similar manner. There is an existing exclusion for supportive services, maintenance, and administrative activities under homeless programs. That exclusion is broadened in this revision (paragraph (o)) to cover HUD approval of financial assistance for any proposed activity to be carried out that would not alter any property conditions, similar to the exemption from other environmental authorities discussed above. With respect to

acquisition, rehabilitation or construction, certain of the existing exclusions in § 50.20 would apply, excluding some actions that do not exceed certain thresholds.

### III. Findings and Certifications

*Justification for Interim Rulemaking*

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from this general practice where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impractical, unnecessary, or contrary to the public interest." (24 CFR 10.1).

The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, because the urgent need to provide HOPWA funds for housing and supportive services for persons with AIDS and related diseases makes the prior solicitation of public comments contrary to the public interest. To delay program implementation until the publication of a final rule, developed after consideration of comments received on this rule, would mean that funds would not reach grantees until early in 1993, too late to provide housing assistance for the 1992–93 winter. Program implementation through this interim rule, on the other hand, would allow funds to be available in the summer of 1992.

The Department invites public comment on this interim rule. The comments received within the 60-day comment period will be considered during the development of the final rule that will supersede this interim rule.

*Waiver*

Section 574.4 of this rule constitutes a general waiver, which is subject to section 7(q) of the Department of Housing and Urban Development Act. As such, it is subject to the Department's statement of policy concerning waivers that was published on April 22, 1991 (56 16337), which requires that any general waiver authority be exercised by the Assistant Secretary responsible for issuing the regulation; must be in writing; must state the grounds for granting the waiver; and must be reported to the public by publication of a notice of the waiver in the Federal Register.

*Environmental Impact*

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

*Impact on the Economy*

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are limited to States and metropolitan areas with a relatively large cumulative number of cases of persons with AIDS.

*Semiannual Agenda of Rules*

This rule was not listed in the Department's Semiannual Agenda of Regulations, published on April 27, 1992 (57 FR 16804) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

*Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Rule is not subject to review under the Order. The rule authorizes entitlement grants to a limited number of States and metropolitan areas and authorizes competitively awarded grants under a limited statutory allocation for housing assistance and services for the Housing Opportunities for Persons with AIDS program, but the grants are administered locally.

*Impact on the Family*

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that this Rule, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance and general well-being. Although the statutory authority for the program is directed at providing housing assistance and services for individuals with acquired immunodeficiency syndrome and related diseases, programs supported by HOPWA will benefit the families of these individuals. In cases where the individual is dependent on his or her family and in cases where individuals are responsible for dependents, HOPWA funds will be incidentally serving families. Such assistance will help enable those families with a participating member who has AIDS to live in decent, safe, and sanitary housing and receive the supportive services necessary to assist a person with AIDS to live independently. Since the impact on the family is beneficial, no further review is considered necessary.

*"Takings" Assessment*

The General Counsel, as the Designated Official under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights, has determined that this rule does not have "takings implications" as defined in HUD's "Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." The Department does not regard the effects of this rule on private property rights as "effectively denying economically viable use of any distinct legally protected property interest of a property owner, or resulting in a permanent or temporary physical occupation, invasion, or deprivation." The rule would authorize acquisition of property by grantees or their project sponsors under the normal State and local governmental procedures for the limited purpose of providing housing assistance for eligible beneficiaries.

*Public Reporting Burden*

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements.

TABLE 1.—TABULATION OF ANNUAL REPORTING BURDEN

| Description of information collection | Provision of interim rule | Number of respondents | Number of responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|---|
| Applications to HUD: | | | | | | |
| State entitlements | § 574.160 | 11 | 1 | 11 | 8.0 | 88 |
| Local unit for EMA | § 574.160 | 27 | 1 | 27 | 12.0 | 324 |
| Competitive awards | § 574.240 | 100 | 1 | 100 | 20.0 | 2,000 |
| Annual report to HUD | § 574.520 | 48 | 1 | 48 | 12.0 | 576 |
| Waiver requests to HUD | § 574.4 | 5 | 1 | 5 | 4.0 | 20 |
| | § 574.310(c) | | | | | |
| | § 574.330(b) | | | | | |
| Amendments submitted | § 574.160 | 5 | 1 | 5 | 4.0 | 20 |
| | § 574.260 | | | | | |
| Uniform Relocation Act Appeals Process | § 574.630 | 5 | 1 | 5 | 2.0 | 10 |
| Environmental review recordkeeping | § 574.510 | 48 | 1 | 48 | 4.0 | 192 |
| Total burden | | | | | | 3,230 |

Note: Based on experience, the number of competitive applications to be selected is estimated to be 10 and no more than 10 percent of grants will involve waivers, amendments or relocations.

**Catalog**

The Catalog of Federal Domestic Assistance program number for the Housing Opportunities for Persons with AIDS program is 14.241.

**List of Subjects**

*24 CFR Part 50*

Environmental assessments, Environmental impact statements, Environmental policies and review procedures.

*24 CFR Part 574*

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, title 24 of the Code of Federal Regulations is amended, as follows:

**PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY**

1. The authority citation for 24 CFR part 50 is revised to read as follows:

**Authority: 42 U.S.C. 3535(d).**

2. In § 50.3, a new paragraph (i) is added to read as follows:

**§ 50.3 Environmental policy.**

* * * * *

(i) For HUD grant programs in which the funding approval for an applicant's program must occur before the applicant's selection of properties, the application shall contain an assurance that the applicant agrees to assist HUD to comply with this part and that the applicant shall:

(1) Supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by this part;

(2) Carry out mitigating measures required by HUD or select alternate eligible property; and

(3) Not acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to such program activities with respect to any eligible property, until HUD approval is received.

3. In § 50.17, paragraph (i) is redesignated as paragraph (j), and a new paragraph (i) is added, to read as follows:

**§ 50.17 Projects.**

* * * * *

(i) *Grant programs in which HUD approval of funding for an applicant's program must occur before the applicant's selection of properties for use in its program.* HUD approval of specific properties (see § 50.3(i)).

* * * * *

4. Section 50.19 is added, to read as follows:

**§ 50.19 Activities not subject to § 50.4.**

Because certain activities funded under HUD programs would not alter any conditions that would require review or compliance under the other Federal laws and authorities cited in § 50.4, the laws and authorities listed in § 50.4 do not apply to them. These activities are the following:

(a) The approval of planning grants under the Homeownership and Opportunity for People Everywhere [HOPE] programs;

(b) Information services;

(c) Resource identification and planning to establish and coordinate strategies, including feasibility studies, environmental studies and testing;

(d) Tenant-based rental assistance;

(e) Supportive services including, but not limited to, health care, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

(f) Operating costs including maintenance, security, operation, insurance, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs;

(g) Technical assistance; and

(h) Administrative expenses.

5. In § 50.20, paragraph (o) is revised to read as follows:

**§ 50.20 Categorical exclusions.**

* * * * *

(o) The following activities that do not affect a physical structure or property:

(1) Information services;

(2) Resource identification and planning to establish and coordinate strategies, including feasibility studies, environmental studies and testing;

(3) Tenant-based rental assistance;

(4) Supportive services including, but not limited to, health care, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

(5) Operating costs including maintenance, security, operation, insurance, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs; and

(6) Administrative expenses.

* * * * *

6. Part 574 is added, to read as follows:

## PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

### Subpart A—General


Sec.
574.1 Purpose.
574.2 Overview.
574.3 Definitions.
574.4 Waivers.


### Subpart B—Formula Entitlements


574.100 Eligible applicants.
574.110 Designation of applicant within EMA.
574.120 Responsibility of applicant to serve EMA.
574.130 Formula allocations.
574.140 Eligible beneficiaries.
574.150 Eligible activities.
574.160 Application requirements.
574.170 Application review and approval.
574.180 Amendments.
574.190 Reallocation of grant amounts.


### Subpart C—Competitive Grants


574.200 Amounts available for competitive grants.
574.210 Eligible applicants.
574.220 Eligible beneficiaries.
574.230 Eligible activities.
574.240 Application requirements.
574.250 Grant selection process.
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### Subpart D—Uses of Grant Funds


574.300 Eligible activities.
574.310 General standards for eligible housing activities.
574.320 Additional standards for rental assistance.
574.330 Additional standards for short-term supported housing.
574.340 Additional standards for community residences.


### Subpart E—Special Responsibilities of Grantees and Project Sponsors


574.400 Prohibition of substitution of funds.
574.410 Capacity.
574.420 Cooperation.
574.430 Fee prohibitions.
574.440 Confidentiality.
574.450 Financial records.


### Subpart F—Grant Administration


Sec.
574.500 Responsibility for grant administration.
574.510 Environmental procedures and standards.
574.520 Performance reports.
574.530 Recordkeeping.
574.540 Obligation and deobligation of funds.


### Subpart G—Other Federal Requirements


574.600 Nondiscrimination and equal opportunity.
574.605 Applicability of OMB circulars.
574.610 Drug-free workplace.
574.615 Anti-lobbying certification.
574.620 Debarred or suspended contractors.
574.625 Conflict of interest.
574.630 Displacement, relocation and real property acquisition.
574.635 Lead-based paint.
574.640 Flood insurance protection.
574.645 Coastal barriers.
574.650 Audit.


**Authority:** 42 U.S.C. 12901–12912.

### Subpart A—General

#### § 574.1 Purpose.

The Housing Opportunities for Persons with AIDS (HOPWA) program is authorized by title VIII, subtitle D, of the Cranston-Gonzalez National Affordable Housing Act (NAHA). The program is designed to provide States and localities with resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome and related diseases. The program authorizes entitlement grants and competitively awarded grants for housing assistance and services.

#### § 574.2 Overview.

(a) *Available funds.* The Department awards funds appropriated for any fiscal year for the program through a formula allocation and a competitive grant process. The amount of funds available will be specified in an Announcement of Allocations for entitlement grants and a Notice of Funds Availability (NOFA) for competitive grants, both published in the **Federal Register**. Certain States and metropolitan areas, that are eligible for formula allocations due to their population and number of cases of persons with AIDS, will receive funds under this part for eligible activities that address the housing needs of persons with AIDS. All States and units of general local government are eligible to apply for competitive grants.

(b) *Formula entitlements.* Under the Act, 90 percent of appropriated amounts are to be distributed by formula entitlement. Seventy-five percent of this 90 percent are distributed to eligible States and Eligible Metropolitan Areas (EMAs), which have an approved Comprehensive Housing Affordability Strategy (CHAS), more than 1,500 cumulative cases of persons with AIDS, and in the case of EMAs, a population of more than 500,000. The additional 25 percent share of the 90 percent is distributed to those eligible metropolitan areas which have a greater than average incidence of cases of persons with AIDS.

(c) *Competitive grants.* The 10 percent remainder of appropriated funds are awarded through a competitive process. Eligible applicants are States and units of general local government.

#### § 574.3 Definitions.

*Acquired immunodeficiency syndrome and related diseases* means the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome.

*Applicant* means a State or unit of general local government applying for a formula allocation as described under § 574.100 or a competitive grant as described under § 574.210.

*Community Development Block Grant (CDBG) program* means a program authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5317; 24 CFR 570).

*Eligible Metropolitan Area (EMA)* means a metropolitan area that qualifies for a formula entitlement allocation under § 574.100 of this part.

*Grantee* means a State or unit of general local government receiving a grant directly from HUD under this part.

*Low-income individual* means any individual or family whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median income for the area if HUD finds that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

*Metropolitan area* means a metropolitan area as established by the Office of Management and Budget.

*Moderate rehabilitation* means rehabilitation that involves costs that are less than or equal to 75 percent of the value of the building after rehabilitation.

*Population* means total resident population based on data compiled by the U.S. Census and referable to the same point in time.

*Private nonprofit organization* means a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1986 that: (1) Is exempt from taxation under subtitle A of the Code; (2) Has an accounting system and a voluntary board; and (3) Practices nondiscrimination in the provision of assistance.

*Project sponsor* means any private nonprofit organization or governmental agency that receives funds from the grantee to carry out eligible activities under this part.

*Rehabilitation* means the improvement or repair of an existing structure, or an addition to an existing structure that does not increase the floor area by more than 100 percent.

*Secretary* means the Secretary of the Department of Housing and Urban Development.

*State* means a State of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this part.

*Substantial rehabilitation* means rehabilitation that involves costs in excess of 75 percent of the value of the building after rehabilitation.

*Unit of general local government* means any city, town, township, parish, county, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of the National Affordable Housing Act.

### § 574.4 Waivers.

Upon a determination and finding of good cause, the Secretary may waive any requirement of this part in any particular case subject only to statutory limitations. Each waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

## Subpart B—Formula Entitlements

### § 574.100 Eligible applicants.

(a) *Qualifying States.* To qualify for a formula allocation under HOPWA, an eligible State must have: (1) more than 1,500 cumulative cases of AIDS in those areas of the State outside of eligible metropolitan areas qualifying under paragraph (b); and (2) an approved Comprehensive Housing Affordability Strategy (CHAS) as provided by § 574.160. A State may carry out activities anywhere in the State, including within metropolitan areas qualifying under paragraph (b) of this section.

(b) *Qualifying metropolitan areas.* To qualify for a formula allocation under HOPWA, an Eligible Metropolitan Area (EMA) must have: (1) A population of more than 500,000; (2) more than 1,500 cumulative cases of AIDS; and (3) an approved Comprehensive Housing Affordability Strategy (CHAS) as provided by § 574.160. The process for designating a single unit of general local government to apply for the allocation to the EMA and serve as the grantee is described in § 574.110.

(c) *List.* A listing of Eligible Metropolitan Areas (EMA) and States eligible for formula allocations will be contained in the Announcement of Allocations published annually in the **Federal Register**. (For Fiscal Year 1992, the Announcement was published July 20, 1992.)

### § 574.110 Designation of applicant within EMA.

(a) Community Development Block Grant (CDBG) program entitlement communities within an EMA shall collaborate for the purpose of designating a single unit of general local government to administer the program on behalf of the EMA. The designated unit of general local government will be recognized by HUD as the eligible applicant for the EMA for the purpose of submitting an application to HUD, receiving a grant from HUD and selecting project sponsors, if any, to carry out authorized activities. The designation will be in the form of a certification as provided for in § 574.160 and will only be in effect for the fiscal year's allocation for which it is made. The designation may be extended or changed by the CDBG participants within the EMA for future years' allocations.

(b) In identifying the unit of general local government to administer the overall program, at least one-half of the CDBG entitlement communities must agree on the designated agency, and these communities must represent a majority of the total population of all CDBG entitlement communities within the EMA. Unanimous consent of the CDBG entities is not required. Failure to agree by the application deadline established in the Announcement of Allocations published in the **Federal Register** will mean forfeiture of the fiscal year's allocation and the reallocation of the amount to other grantees.

### § 574.120 Responsibility of applicant to serve EMA.

The EMA's applicant shall serve eligible persons who live anywhere within the EMA, except that housing assistance shall be provided only in localities within the EMA that have a HUD-approved CHAS and have provided a certification of consistency in accordance with § 574.160(a).

### § 574.130 Formula allocations.

(a) *Data sources.* HUD will allocate funds based on data collected by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Center for Infectious Diseases, Division of HIV/AIDS, and use population data provided by the U.S. Census. To ensure uniformity and consistency, the data utilized will be for the same reference period.

(b) *Distribution of appropriated funds for entitlement awards.* Seventy-five percent of the funds allocated under the formula is distributed to eligible metropolitan areas and eligible States based on each metropolitan area's or State's proportionate share of the cumulative number of AIDS cases in all eligible metropolitan areas and eligible States. The remaining twenty-five percent is allocated among eligible metropolitan areas, but not States, where the per capita incidence of AIDS for the year preceding the fiscal year of the appropriation is higher than the average for all metropolitan areas with more than 500,000 population. The EMA's allocation is based on its proportionate share of the incidence of AIDS cases. The high incidence factor is computed by multiplying: (1) The population of the metropolitan area; and (2) the difference between its twelve-month-per-capita-incidence rate and the rate for all metropolitan areas with more than 500,000 population.

(c) *Minimum grant.* No grant awarded under paragraph (b) of this section shall be less than $200,000. Therefore, if the calculations under paragraph (b) of this section would result in any eligible metropolitan area or eligible State receiving less than $200,000, the amount allocated to that entity is increased to $200,000 and allocations to entities in excess of $200,000 are proportionately reduced by the amount of the increase.

### § 574.140 Eligible beneficiaries.

Persons eligible to receive assistance or services under this part are persons

with acquired immunodeficiency syndrome or related diseases who are low-income individuals. A person with AIDS or related diseases regardless of income is eligible to receive housing information services, as described in § 574.300(b)(1). Any person living in proximity to a community residence is eligible to participate in that residence's community outreach and educational activities regarding AIDS and related diseases, as provided in § 574.300(b)(10).

**§ 574.150 Eligible activities.**

Grantees under this subpart are authorized to provide, or contract with project sponsors to provide, housing assistance or service activities as described in Subpart D—Uses of Grant Funds. The selection of project sponsors is not subject to the procurement requirements of 24 CFR 85.36.

**§ 574.160 Application requirements.**

(a) *CHAS.* Assistance may not be made available under this part unless the applicant has submitted a certification that proposed housing assistance is consistent with a Comprehensive Housing Affordability Strategy (CHAS) submitted to and approved by HUD in accordance with 24 CFR part 91. The applicant's certification of consistency must be submitted by the public official responsible for submitting the CHAS. Where the applicant is a designated unit of general local government for an EMA, it must also obtain and keep on file certifications of consistency from such public officials for each other locality in the EMA in which housing assistance is provided.

(b) *Application requirements.* To receive a grant, a State or designated applicant for an EMA applying for a formula grant award on the basis of an allocation under § 574.130 must submit an application that meets the requirements of paragraph (c) of this section, and the application must be submitted within the time period established by HUD in the Announcement of Allocations for Housing Opportunities for Persons with AIDS, published annually in the Federal Register. This Announcement:

(1) Gives the location for obtaining application packages, which provides specific application requirements and guidance;

(2) Specifies the time and the place for submitting completed applications;

(3) Identifies States and metropolitan areas eligible to receive funding available under the announcement; and

(4) Identifies the Community Development Block Grant (CDBG) participants within each EMA and their populations in order to assist the process of identifying one unit of general local government to apply on behalf of the EMA.

(c) *Application contents.* A formula entitlement grant application, at a minimum, must contain:

(1) A description of the proposed activities, including general locations, and costs;

(2) A description of the number and characteristics of the eligible persons who would be served by the proposed activities;

(3) A description of the public and private resources that are expected to be made available in connection with the proposed activities;

(4) A description of the method of selecting project sponsors;

(5) A description of efforts that have been or will be taken to coordinate proposed activities with State and local government agencies responsible for providing services to persons with AIDS and related diseases, including, where applicable, coordination with agencies administering assistance provided pursuant to the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (42 U.S.C. 300);

(6) A certification that any building or structure assisted under this part will be maintained as a facility to provide assistance for eligible beneficiaries:

(i) For a period of not less than 10 years in the case of assistance involving new construction, substantial rehabilitation or acquisition of a facility; and

(ii) For a period of not less than 3 years in cases involving non-substantial rehabilitation or repair of a building or structure;

(7) Evidence that the proposed activities will meet urgent needs that are not being met by available public and private sources;

(8) A certification that proposed housing activities are consistent with the CHAS submitted to HUD, as described in paragraph (a) of this section;

(9) For a designated applicant for an EMA, a certification of its designation in compliance with the requirements of § 574.110;

(10) An assurance that the applicant will:

(i) Supply HUD with information necessary for HUD to perform any applicable environmental review for each property in accordance with the environmental laws and authorities cited in 24 CFR part 50;

(ii) Carry out mitigating measures required by HUD or select alternate eligible property; and

(iii) Not acquire, rehabilitate, convert, lease, repair or construct property to provide housing, or commit HUD or local funds to such program activities with respect to any eligible property until HUD approval is received. See § 574.510 of this part for the environmental procedures and standards for applicants for assistance; and

(11) Such other information or certifications as HUD determines to be necessary.

**§ 574.170 Application review and approval.**

The application review and approval process for assistance under this section consists of the following stages:

(a) *Review.* Applications will be reviewed to determine:

(1) Whether the application is adequate in time of submission, form, and completeness;

(2) Whether the applicant, the population to be served and project sponsor, if any, are eligible; and

(3) Whether the proposed activities are eligible for assistance under the program.

(b) *Approval.* The Department will award a grant in the amount determined under § 574.130 of this part to eligible applicants with approved applications.

**§ 574.180 Amendments.**

(a) A grantee must notify HUD in writing of any substantial change in the approved program of activities. A substantial change is any addition or deletion of an eligible activity, or any change that will significantly alter the scope, location, service area, objectives, or timing of an activity or the number or type of eligible beneficiaries served, that has been approved in an application.

(b) Each amendment request must contain a description of the revised proposed use of funds and a certification that the proposed use of funds is consistent with the applicable Comprehensive Housing Affordability Strategy. Funds may not be expended for the revised proposed use of funds until:

(1) HUD accepts the revised proposed use; and

(2) Environmental review of the revised proposed use of funds has been completed in accordance with § 574.510.

**§ 574.190 Reallocation of grant amounts.**

Funds allocated to EMAs that do not designate a unit of general local government to receive the formula grant, as described in § 574.110, by the application deadline specified in the Announcement of Allocations, and

funds allocated to other EMAs and eligible States that do not submit an application by the deadline, will be added to the funds available for formula allocations in the current fiscal year. Any funds that become available as a result of deobligations or the imposition of sanctions as provided for in § 574.540 will be added to the funds available for formula allocations in the next fiscal year.

## Subpart C—Competitive Grants

### § 574.200 Amounts available for competitive grants.

(a) The Department will set aside 10 percent of the amounts appropriated under this program on a competitive basis to fund:

(1) Special projects of national significance; and

(2) Projects submitted by States and localities that do not qualify for formula grants.

(b) Any funds that become available as a result of deobligations or the imposition of sanctions, as provided in § 574.540, will be added to the funds available for competitive grants in the next fiscal year.

### § 574.210 Eligible applicants.

(a) All States and units of general local government, regardless of the number of AIDS cases and total population, may apply for grants for projects of national significance.

(b) The only applicants eligible for the other category of competitive grants as described in § 574.200(a)(2) are the following:

(1) States that do not qualify for formula grants, as described in § 574.100;

(2) Localities outside of EMAs, and

(3) Localities inside of EMAs that do not have a HUD-approved CHAS.

(c) Nonprofit organizations are not eligible to apply directly to HUD for a grant but may receive funding as a project sponsor under contract with a grantee.

### § 574.220 Eligible beneficiaries.

Persons eligible to receive assistance or services under this part are persons with acquired immunodeficiency syndrome or related diseases who are low-income individuals. A person with AIDS or related diseases regardless of income is eligible to receive housing information services, as described in § 574.300(b)(1). Any person living in proximity to a community residence is eligible to participate in that residence's community outreach and educational activities regarding AIDS and related diseases, as provided in § 574.300(b)(10).

### § 574.230 Eligible activities.

Grantees under this subpart are authorized to provide, or contract with project sponsors to provide, housing assistance or service activities as described in Subpart D—Uses of Grant Funds. The selection of project sponsors is not subject to the procurement requirements of 24 CFR 85.36.

### § 574.240 Application requirements.

(a) *Notice of Fund Availability for competitive grants.* Applications must comply with the provisions of the Department's Notice of Fund Availability (NOFA) to be published in the **Federal Register** in accordance with 24 CFR part 12. The notice:

(1) Gives the location for obtaining application packages, which will provide specific application requirements and guidance;

(2) Specifies the time and the place for submitting completed applications;

(3) States the amount and status of funding available under the notice, including the amounts allocated to each of the two categories of assistance;

(4) Specifies the timing and conditions for curing technical deficiencies in reviewed application;

(5) Provides other appropriate program information and guidance, including purpose, authority, and eligibility; and

(6) Describes the factors relative to each ranking criterion contained in § 574.250 of this part, and indicates the weight or relative importance of the criteria as they will be applied to the funding round announced in the Notice.

(b) *Application requirements.* To receive grant amounts, a State or unit of general local government that elects to apply for a competitive grant award must submit an application that meets the requirements of paragraph (c) of this section and must be submitted within the time period established by HUD in the Notice of Funds Availability.

(c) *Application contents.* A competitive grant application, at a minimum, must contain:

(1) Applicant and project sponsor data, including a description of the applicant and sponsor's past experience in administering programs providing assistance to persons with AIDS, including minority persons;

(2) A description of the proposed activities, including general locations and costs;

(3) A description of the number and characteristics of the persons who would be served by the proposed activities;

(4) A description of the public and private resources that are expected to be made available in connection with the proposed activities;

(5) A description of the method of selecting project sponsors;

(6) A description of efforts that have been or will be taken to coordinate proposed activities with State and local government agencies responsible for providing services to persons with AIDS and related diseases, including, where applicable, coordination with agencies administering assistance provided pursuant to the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (42 U.S.C. 300);

(7) A certification that any building or structure assisted with amounts under this part will be maintained as a facility to provide assistance for eligible beneficiaries:

(i) For not less than 10 years in the case of assistance involving new construction, substantial rehabilitation or acquisition of the building; and

(ii) For not less than 3 years in cases involving non-substantial rehabilitation or repair of a building or structure;

(8) Evidence that the proposed activities will meet urgent needs that are not being met by available public and private sources;

(9) For grants for projects of national significance, a description of the innovative nature of the project and its potential for replication in similar localities or nationally;

(10) A certification that proposed housing activities are consistent with the CHAS submitted to HUD, as described in § 574.160(a), except for applicants eligible under § 574.210(b)(3);

(11) An assurance that the applicant will:

(i) Supply HUD with information necessary for HUD to perform any applicable environmental review for each property in accordance with the environmental laws and authorities cited in 24 CFR part 50;

(ii) Carry out mitigating measures required by HUD or select alternate eligible property; and

(iii) Not acquire, rehabilitate, convert, lease, repair or construct property to provide housing, or commit HUD or local funds to such program activities with respect to any eligible property until HUD approval is received. See § 574.510 of this part for the environmental procedures and standards for applicants for assistance; and

(12) Such other information or certifications as the Secretary determines to be necessary.

**§ 574.250 Grant selection process.**

(a) *Selection process.* The grant selection process for assistance under this subpart consists of the following stages:

(1) *Threshold review.* Applications will be reviewed to determine:

(i) Whether the application is adequate in time of submission, form, and completeness;

(ii) Whether the applicant, the population to be served and project sponsor(s), if any, are eligible;

(iii) Whether the proposed activities are eligible for assistance under the program; and

(iv) Whether the applicant is currently in compliance with the Federal requirements contained in Subpart G—Other Federal Requirements, §§ 574.600–574.650.

(2) *Rating.* Applications that fulfill each of the threshold review requirements described in paragraph (a)(1) of this section will be rated based on the selection criteria provided in paragraph (b) of this section;

(3) *Selection for funding.* In the final stage of the selection process, the highest rated applications within each of the two categories of assistance will be selected for funding in accordance with their ranked order to the extent funds are available.

(b) *Rating criteria for applications for funds for competitive grants.*

(1) *General.* Applications for funds for competitive grants will be assigned a rating score and placed in ranked order, based upon the criteria listed in paragraphs (b)(2) and (b)(3) of this section. The criteria, including the point value for each, will be described in more detail in the Notice of Funds Availability which will be published in the **Federal Register**.

(2) *Criteria.* HUD will award points for the following criteria:

(i) Applicant capacity;

(ii) Need for the project in the area to be served, including the relative numbers of AIDS cases and per capita AIDS incidence, and the housing needs of persons with AIDS in the community;

(iii) Extent of leveraged public and private resources for the project, including the extent of local planning and coordination of housing programs for persons with AIDS, and the likelihood of the continuation of State and local efforts; and

(vi) Other criteria as determined by the Secretary and announced in the NOFA.

(3) *Additional criteria for projects of national significance.* For projects of national significance, HUD also will award points for the following criteria:

(i) Innovative nature of the proposal, including the effectiveness of the proposed model(s) for providing supportive housing for persons with AIDS; and

(ii) Potential for replication of the proposed activity in other similar localities or nationally.

**§ 574.260 Amendments.**

After an application has been selected for funding, any change that will significantly alter the scope, location, service area, objectives, or timing of an activity or the number or type of eligible beneficiaries served must be justified to HUD and approved by HUD. Whenever any other amendment to the application is made, the grantee must provide a copy to HUD.

## Subpart D—Uses of Grant Funds

**§ 574.300 Eligible activities.**

(a) *General.* Subject to applicable requirements described in §§ 574.310, 574.320, 574.330, and 574.340, HOPWA funds may be used to assist all forms of housing designed to prevent homelessness including emergency housing, shared housing arrangements, apartments, single room occupancy (SRO) dwellings, and community residences. Appropriate supportive services, as required by § 574.310 (a), must be provided as part of any HOPWA assisted housing, but HOPWA funds may also be used to provide services independently of any housing activity.

(b) *Activities.* The following activities may be carried out with HOPWA funds:

(1) Housing information services including, but not limited to, counseling, information, and referral services to assist eligible individuals to locate, acquire, finance and maintain housing. This may also include fair housing counseling for eligible beneficiaries who may encounter discrimination on the basis of race, color, religion, sex, age, national origin, familial status, or handicap;

(2) Resource identification to establish, coordinate and develop housing assistance resources (including conducting preliminary research and making expenditures necessary to determine the feasibility of specific housing-related initiatives);

(3) Acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing and services;

(4) New construction (for single room occupancy (SRO) dwellings and community residences only).

(5) Project- or tenant-based rental assistance;

(6) Short-term rent, mortgage, and utility payments to prevent the homelessness of the tenant or mortgagor of a dwelling;

(7) Supportive services including, but not limited to, health, mental health, assessment, permanent housing placement, drug and alcohol abuse treatment and counseling, day care, nutritional services, intensive care when required, and assistance in gaining access to local, State, and Federal government benefits and services;

(8) Operating costs for housing including maintenance, security, operation, insurance, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs;

(9) Technical assistance in establishing and operating a community residence, including planning and other pre-development or pre-construction expenses;

(10) For community residences only: administrative expenses including, but not limited to, costs relating to community outreach and educational activities regarding AIDS and related diseases. Not more than 10 percent of the funds used for community residences may be used for administrative costs; and

(11) Any other activity proposed by the applicant and approved by HUD.

(c) *Limitations of assistance to primarily religious organizations.*—(1) *Provision of assistance.* (i) Assistance may be provided under this part by a grantee to a project sponsor that is a primarily religious organization if the primarily religious organization agrees to provide all eligible activities under this program in a manner that is free from religious influences and in accordance with the following principles:

(A) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion.

(B) It will not discriminate against any person applying for any of the eligible activities under this part on the basis of religion and will not limit such housing or other eligible activities or give preference to persons on the basis of religion.

(C) It will provide no religious instruction or counseling, conduct no religious services or worship (which term does not include voluntary nondenominational prayer before meetings), engage in no religious proselytizing, and exert no other

religious influence in the provision of eligible activities under this part.

(ii) Assistance will not be provided to a project sponsor that is a primarily religious organization to construct or acquire a structure. Assistance may be provided to a project sponsor that is a primarily religious organization to rehabilitate or convert a structure owned by the organization, only as described in paragraph (c)(2) of this section.

(2) *Rehabilitation or conversion of structures owned by primarily religious organizations.* Grant amounts may be used to rehabilitate or convert a structure that is owned by a primarily religious organization, only if:

(i) The structure (or portion thereof) that is to be rehabilitated or converted with HUD assistance has been leased to an existing or newly established wholly secular organization (which may be established by the religious organization under the provisions of paragraph (c)(3) of this section).

(ii) The HUD assistance is provided to the secular organization (and not the religious organization) to make the improvements.

(iii) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion.

(iv) The lease payments paid to the primarily religious organization do not exceed the fair market rent for the structure before the rehabilitation or conversion was done.

(v) The portion of the cost of any improvements that benefit any unleased portion of the structure will be allocated to, and paid for by, the religious organization.

(vi) The primarily religious organization agrees that if the secular organization does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of the improvements to the original grantee from which the amounts used to rehabilitate or convert the building were derived. While the original grantee is expected to use this amount for eligible HOPWA activities, there is no requirement that funds received after the close of the grant period be used in accordance with the requirements of this part.

(3) *Assistance to a wholly secular private nonprofit organization established by a primarily religious organization.*

(i) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a project sponsor. The secular organization may be eligible to receive all forms of assistance available under this part.

(ii) The secular organization must agree to provide eligible activities under this part in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (c)(1)(i) of this section.

(iii) The secular organization may enter into a contract with the religious organization to operate the housing assistance, supportive services and other eligible activities for the project. In such a case, the religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (c)(1)(i) of this section.

(vi) The rehabilitation or conversion of structures are subject to the requirements of paragraph (c)(2) of this section.

**§ 574.310 General standards for eligible housing activities.**

All grantees using grant funds to provide housing must adhere to the following standards:

(a) *Supportive services.* The grantee shall ensure that qualified service providers in the area provide appropriate supportive services to the individuals assisted with housing under this subpart. Supportive services are described in § 574.300(b)(7). For any individual who requires more intensive care than can be provided in housing assisted under this subpart, the grantee shall provide for locating a care provider who can appropriately care for the individual and for referring the individual to the care provider.

(b) *Housing quality standards.* All housing assisted under § 574.300 (b) (3), (4), (5), (6), and (8) must meet the applicable housing quality standards outlined below.

(1) *State and local requirements.* Each recipient of assistance under this part must provide safe and sanitary housing that is in compliance with all applicable State and local housing codes, licensing requirements, and any other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the housing.

(2) *Habitability standards.* Except for such variations as are proposed by the locality and approved by HUD, recipients must meet the following requirements:

(i) *Structure and materials.* The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from hazards.

(ii) *Access.* The housing must be accessible and capable of being utilized without unauthorized use of other private properties. Structures must provide alternate means of egress in case of fire.

(iii) *Space and security.* Each resident must be afforded adequate space and security for themselves and their belongings. An acceptable place to sleep must be provided for each resident.

(iv) *Interior air quality.* Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.

(v) *Water supply.* The water supply must be free from contamination at levels that threaten the health of individuals.

(vi) *Thermal environment.* The housing must have adequate heating and/or cooling facilities in proper operating condition.

(vii) *Illumination and electricity.* The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliance while assuring safety from fire.

(viii) *Food preparation and refuse disposal.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(ix) *Sanitary condition.* The housing and any equipment must be maintained in sanitary condition.

(c) *Minimum use period for structures.* (1) Any building or structure assisted with amounts under this part must be maintained as a facility to provide housing or assistance for individuals with acquired immunodeficiency syndrome or related diseases:

(i) For a period of not less than 10 years, in the case of assistance provided under an activity eligible under § 574.300(b)(3) and (4) involving new construction, substantial rehabilitation or acquisition of a building or structure; or

(ii) For a period of not less than 3 years in the cases involving non-substantial rehabilitation or repair of a building or structure.

(2) *Waiver of minimum use period.* HUD may waive the minimum use period of a building or structure as stipulated in paragraph (c)(1) of this section if the grantee can demonstrate, to the satisfaction of HUD, that:

(i) The assisted structure is no longer needed to provide supported housing or assistance, or the continued operation of the structure for such purposes is no longer feasible; and

(ii) The structure will be used to benefit individuals or families whose incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, if the Secretary finds that such variations are necessary because of construction costs or unusually high or low family incomes.

(d) *Resident rent payment.* Each person receiving rental assistance under this program or residing in any rental housing assisted under this program must pay as rent an amount determined in accordance with section 3(a) of the United States Housing Act of 1937 and 24 CFR 813.106. Under these authorities, each resident must pay as rent the higher of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the age of the individual, medical expenses, size of family and child care expenses and are described in detail in 24 CFR 813.102);

(2) 10 percent of the family's monthly gross income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

(e) *Termination of assistance.* Assistance to participants who reside in housing programs under this grant may be terminated if the participant violates program requirements or conditions of occupancy. Grantees must ensure that supportive services are provided, so that a participant's assistance is terminated only in the most severe cases.

(f) *Due process.* In terminating assistance to any program participant, grantees must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. This process at a minimum, must consist of:

(1) Serving the participant with a written notice containing a clear statement of the reasons for termination;

(2) Permitting the participant to have a review of the decision, in which the participant is given the opportunity to present written objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(3) Providing prompt written notification of the final decision to the participant.

**§ 574.328 Additional standards for rental assistance.**

If grant funds are used to provide rental assistance, the following additional standards apply:

(a) *Maximum subsidy.* The amount of grant funds used to pay monthly assistance for an eligible person may not exceed the difference between: (1) The lower of the rent standard or reasonable rent for the unit; and (2) the resident's rent payment calculated under § 574.310(d).

(b) *Rent standard.* The rent standard shall be established by the grantee and shall be no more than the published Section 8 fair market rent (FMR) or the HUD-approved community-wide exception rent for the unit size. However, on a unit by unit basis, the grantee may increase that amount by up to 10 percent for up to 20 percent of the units assisted.

(c) *Rent reasonableness.* The rent charged for a unit must be reasonable in relation to rents currently being charged for comparable units in the private unassisted market and must not be in excess of rents currently being charged by the owner for comparable unassisted units.

**§ 574.330 Additional standards for short-term supported housing.**

Short-term supported housing includes facilities to provide temporary shelter to eligible individuals as well as rent, mortgage, or utilities payments to enable eligible individuals to remain in their own dwellings. If grant funds are used to provide such short-term supported housing assistance, the following additional standards apply:

(a) *Time limits.* A short-term supported housing facility may not provide residence to any individual for more than 60 days during any six month period. Rent, mortgage, or utilities payments to prevent the homelessness of the tenant or mortgagor of a dwelling may not be provided to such an individual for these costs accruing over a period of more than 21 weeks in any 52 week period.

(b) *Residency and location limitations.*—(1) Residency. A short-term supported facility may not provide shelter or housing at any single time for more than 50 families or individuals;

(2) *Location.* A facility for short-term supported housing may only be located in or contiguous to another emergency or short-term housing facility if that other facility is used exclusively by individuals with acquired immunodeficiency syndrome or related diseases.

(3) *Waiver of residency and location limitations.* HUD may waive, as it determines appropriate, the limitations of paragraphs (b)(1) and (b)(2) of this section.

(c) *Placement.* A short-term supported housing facility assisted under this part must, to the maximum extent practicable, provide each individual living in such housing the opportunity for placement in permanent housing or in a living environment appropriate to his or her health and social needs.

(d) *Assistance to continue independent living.* In addition to the supportive services provided when an individual is relocated to a short-term supported housing facility, supportive services may be provided to individuals when they remain in their residence because the residence is appropriate to the needs of the individual. In the latter case, a rent, mortgage or utilities payments program assisted under this part shall provide, when reasonable, supportive services specifically designed to maintain the individual in such residence.

(e) *Case management services.* A program assisted under this section shall provide each assisted individual with an opportunity, if eligible, to receive case management services from the appropriate social service agencies.

**§ 574.340 Additional standards for community residences.**

(a) A community residence is a multiunit residence designed for individuals with acquired immunodeficiency syndrome or related diseases to provide a lower cost residential alternative to institutional care; to prevent or delay the need for such care; to provide a permanent or transitional residential setting with appropriate services to enhance the quality of life for those who are unable to live independently; and to enable such persons to participate as fully as possible in community life.

(b) If grant funds are used to provide a community residence, except for planning and other expenses preliminary to construction or other physical improvement for the development of a community residence, the grantee must, prior to the expenditure of such funds, obtain and keep on file certifications that:

(1) The jurisdiction in which the community residence is located has entered into a written agreement to provide services as required by § 574.310(a) to individuals assisted by the community residence;

(2) The jurisdiction in which the community residence is located has acquired sufficient funding for these services, and the service providers are qualified to assist individuals with acquired immunodeficiency syndrome and related diseases; and

(3) Any construction or physical improvements carried out with amounts received from the grant will comply with any applicable State and local housing codes and licensing requirements in the jurisdiction in which the community residence is located.

## Subpart E—Special Responsibilities of Grantees and Project Sponsors.

### § 574.400 Prohibition of substitution of funds.

Amounts received from grants under this part may not be used to replace other amounts made available or designated by State or local governments for use for the purposes of this part.

### § 574.410 Capacity.

The grantee shall ensure that any project sponsor with which the grantee contracts to carry out an activity under this part has the capacity and capability to effectively administer the activity.

### § 574.420 Cooperation.

(a) The grantee shall agree, and shall ensure that each project sponsor agrees, to cooperate and coordinate in providing assistance under this part with the agencies of the relevant State and local governments responsible for services in the area served by the grantee for individuals with acquired immunodeficiency syndrome or related diseases and other public and private organizations and agencies providing services for such individuals.

(b) A grantee that is a State shall obtain the approval of the unit of general local government in which a project is to be located before entering into a contract with a project sponsor to carry out an activity authorized under this part.

### § 574.430 Fee prohibitions.

The grantee shall agree, and shall ensure that each project sponsor agrees, that no fee, except rent, will be charged of any individual for any service provided with amounts from a grant under this part.

### § 574.440 Confidentiality.

The grantee shall agree, and shall ensure that each project sponsor agrees, to ensure the confidentiality of the name of any individual assisted under this part and any other information regarding individuals receiving assistance.

### § 574.450 Financial records.

The grantee shall agree, and shall ensure that each project sponsor agrees, to maintain and make available to HUD for inspection financial records sufficient, in HUD's determination, to ensure proper accounting and disbursing of amounts received from a grant under this part.

## Subpart F—Grant Administration

### § 574.500 Responsibility for grant administration.

(a) *General.* Grantees are responsible for ensuring that grants are administered in accordance with the requirements of this part and other applicable laws. Grantees are responsible for ensuring that their respective project sponsors carry out activities in compliance with all applicable requirements.

(b) *Grant agreement.* The grant agreement will provide that the grantee agrees, and will ensure that each project sponsor agrees, to:

(1) Operate the program in accordance with the provisions of these regulations and other applicable HUD regulations;

(2) Conduct an ongoing assessment of the housing assistance and supportive services required by the participants in the program;

(3) Assure the adequate provision of supportive services to the participants in the program; and

(4) Comply with such other terms and conditions, including recordkeeping and reports (which must include racial and ethnic data on participants) for program monitoring and evaluation purposes, as HUD may establish for purposes of carrying out the program in an effective and efficient manner.

(c) *Enforcement.* HUD will enforce the obligations in the grant agreement in accordance with the provisions of 24 CFR 85.43. A grantee will be provided an opportunity for informal consultation before HUD will exercise any remedies authorized in paragraph (a) of that section.

### § 574.510 Environmental procedures and standards.

(a) Before any amounts under this program are used to acquire, rehabilitate, convert, lease, repair or construct properties to provide housing, HUD shall perform a review in accord with 24 CFR part 50, which implements the National Environmental Policy Act and the related Federal environmental laws and authorities listed under 24 CFR 50.4. In performing its environmental review, HUD may use previously issued environmental reviews prepared by other local, State, or federal agencies for the proposed property. The grantee will cooperate in providing these documents. HUD must, however, conduct the environmental analysis and prepare the environmental review and be responsible for the required environmental findings.

(b) HUD shall determine whether the proposed property triggers thresholds for the applicable federal environmental laws and authorities listed under 24 CFR 50.4. These may apply when the property is:

(1) Located within designated coastal barriers;

(2) Listed on, or eligible for listing on, the National Register of Historic Places; located within, or adjacent to, an historic district, or is a property whose area of potential effects includes a historic district or property;

(3) Located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature;

(4) Contaminated by toxic chemicals or radioactive materials;

(5) Located within a runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield;

(6) Located within certain flood hazard areas or a designated wetland;

(7) Located within an area requiring flood insurance protection; or

(8) Located within a high noise area.

(c) A grantee or project sponsor shall refer the property to HUD for threshold review and shall submit all available, relevant information to HUD to permit HUD to make the review.

(d) If HUD determines that one or more of the thresholds are exceeded, HUD shall conduct an environmental review of the issue and, if appropriate establish mitigating measures that the grantee and/or project sponsor shall carry out for the property unless it decides it select an alternate property.

(e) HUD will issue a notice specifying applicable threshold and documentation requirements.

### § 574.520 Performance reports.

A grantee shall submit to HUD annually a report describing the use of the amounts received, including the number of individuals assisted, the types of assistance provided, and any other information that HUD may require. Annual reports are required until all grant funds are expended.

### § 574.530 Recordkeeping.

Each grantee must ensure that records are maintained for a three-year period to document compliance with the

provisions of this part. Grantees must maintain current and accurate data on the race and ethnicity of program participants.

**§ 574.540 Obligation and deobligation of funds.**

Selection of an application for funding and notification of the applicant constitutes the obligation of funds by HUD to cover the amount of the approved assistance. HUD may deobligate all or a portion of the amounts approved for eligible activities if such amounts are not expended in a timely manner, or the proposed activity for which funding was approved is not provided in accordance with the approved application and the requirements of this regulation. The grant agreement may set forth other circumstances under which funds may be deobligated or sanctions imposed.

## Subpart G—Other Federal Requirements

**§ 574.600 Nondiscrimination and equal opportunity.**

Grantees and project sponsors must, within the eligible population, comply with the following requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familial status and handicap:

(a) *Fair housing requirements.* The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100; Executive Order 11063 and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) *Discrimination on the basis of age or handicap.* The prohibitions against discrimination based on age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(c) *Employment opportunities.* The requirements of section 3 of the Housing and Urban Development Act of 1968, (12 U.S.C. 1701(u)) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects).

(d) *Minority and women's business enterprises.* The requirements of Executive Orders 11625, 12432, and 12138 apply to grants under this part. Consistent with HUD's responsibilities under these Orders, the grantee and project sponsor must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(e) *Affirmative outreach.* A grantee or project sponsor must adopt procedures to ensure that all persons who qualify for the assistance, regardless of their race, color, religion, sex, age, national origin, familial status, or handicap, know of the availability of the HOPWA program, including facilities and services accessible to persons with a handicap, and maintain evidence of implementation of the procedures.

(f) *Disability requirements.* The grantee and project sponsor must not discriminate against persons with AIDS or related diseases based on an additional handicap of such persons in violation of the Fair Housing Act or Section 504 of the Rehabilitation Act of 1973. In addition, the grantee and project sponsor must comply with the reasonable modification requirement of the Fair Housing Act, the reasonable accommodation requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, and the accessibility requirements of the Fair Housing Act and section 504, and implementing regulations. See 42 U.S.C. 3604(f) and 24 CFR 100.203—100.205; 29 U.S.C. 794 and 24 CFR part 8.

**§ 574.605 Applicability of OMB circulars.**

The policies, guidelines, and requirements of 24 CFR part 85 (codified pursuant to OMB Circular No. A–102) and OMB Circular No. A–87 apply with respect to the acceptance and use of funds under the program by States and units of general local government, including public agencies, and Circulars Nos. A–110 and A–122 apply with respect to the acceptance and use of funds under the program by private non-profit entities. (Copies of OMB Circulars may be obtained from E.O.P. Publications, Room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332. (This is not a toll-free number.) There is a limit of two free copies.)

**§ 574.610 Drug-free workplace**

Grantees are subject to the requirements of sections 5151–5160 of the Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

**§ 574.615 Anti-lobbying certification.**

Recipients of Federal contracts, grants, and loans are prohibited from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. The rule is found at 24 CFR part 87. It requires applicants, grantees, and project sponsors of assistance exceeding $100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants, grantees, and project sponsors if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. Substantial monetary penalties may be imposed for failure to file the required certification or disclosure.

**§ 574.620 Debarred or suspended contractors.**

The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status are applicable to grantees and project sponsors under this part.

**§ 574.625 Conflict of interest.**

In addition to the conflict of interest requirements in OMB Circular A–102 and 24 CFR 85.36(b)(3), no person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee or project sponsor and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

**§ 574.630 Displacement, relocation and real property acquisition.**

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, grantees and project sponsors must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of,

the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(c) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Appeals.* A person who disagrees with the grantee's or project sponsor's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the grantee. A low-income person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(e) *Responsibility of grantee.* (1) Each grantee shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with funds available from other sources.

(3) The grantee shall maintain records in sufficient detail to demonstrate compliance with these provisions.

(f) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move for an assisted project, including any permanent move from the real property that is made:

(i) After notice by the grantee, project sponsor, or property owner to move permanently from the property, if the move occurs on or after the date that the grantee submits to HUD an application for assistance that is later approved and funded;

(ii) Before the submission of the application to HUD, if the grantee, project sponsor, or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after the "initiation of negotiations" and the move occurs before the tenant has been provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(*1*) The tenant's monthly rent before the initiation of negotiations and estimated average utility costs, or

(*2*) 30 percent of gross household income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex and either:

(*1*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or

(*2*) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation or applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purposes of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section), if the project is approved;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The grantee or project sponsor may request, at any time, HUD's determination of whether a displacement is or would be covered under this section.

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the grantee and the project sponsor.

### § 574.635 Lead-based paint.

The grantee and project sponsor must comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing at 24 CFR part 35, as applicable. In addition, the grantee and project sponsor must also meet the following requirements relating to inspection and abatement of defective lead-based paint surfaces;

(a) Treatment of defective paint surfaces must be performed before final inspection and approval of the renovation, rehabilitation or conversion activity under this part; and

(b) Appropriate action must be taken to protect facility occupants from the hazards associated with lead-based paint abatement procedures.

### § 574.640 Flood insurance protection.

No property to be assisted under this part may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(a)(1) The community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59 through 79); or

(2) Less than a year has passed since FEMA notification regarding such hazards; and

(b) The grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

### § 574.645 Coastal barriers.

In accordance with the Coastal Barrier Resources Act, 16 U.S.C. 3501, no financial assistance under this part may

be made available within the Coastal Barrier Resources System.

**§ 574.650 Audit.**

The financial management system used by a State or unit of general local government that is a grantee must provide for audits in accordance with 24 CFR part 44. A project sponsor is subject to the audit requirements of OMB Circular A–110.

Dated: June 8, 1992.

**Jack Kemp,**

*Secretary.*

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Part VI

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Community Planning and Development**

**Announcement of Allocations for Housing Opportunities for Persons with AIDS; Notice**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3440; FR-3294-N-01]

### Announcement of Allocations for Housing Opportunities for Persons with AIDS

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice contains a listing of formula allocations under the Housing Opportunities for Persons with AIDS (HOPWA) program and information on how eligible applicants may apply for the formula grants to which they are entitled. An Interim Rule containing the requirements and other programmatic information for HOPWA appears elsewhere in this issue of the **Federal Register.**

**DATES:** Application packages will be available beginning July 20, 1992, from the HUD field offices listed at the end of this announcement. Applications may be submitted any time before the deadline date and will be processed as soon as they are received. Applicants are encouraged to submit their applications as soon as possible.

The original copy of the application must be received at the HUD Field Office serving the jurisdiction of the applicant no later than 4 p.m. local time on September 30, 1992. An additional copy of the application must also be sent to the following address: Department of Housing and Urban Development, Office of Special Needs Assistance Programs, room 7262, 451 Seventh Street, SW., Washington, DC 20410, Attention: James N. Forsberg, Director. However, a determination that an application was received on time will be made solely on receipt of the original application at the Field Office. Additional information regarding the submission of applications is included in the package.

**FOR FURTHER INFORMATION CONTACT:** The HUD Field Office serving the jurisdiction of the applicant. See the listing at the end of this announcement.

### Program Authority

The $42,935,000 in assistance made available in this announcement is authorized by section 854 of the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990), which established the Housing Opportunities for Persons with AIDS (HOPWA) program, and was appropriated by the Department's appropriation act for fiscal year 1992 (Pub. L. 102-139, approved October 29, 1991). An additional $4,771,000 in appropriated funds, to be awarded by competitive grants, will be announced in a Notice of Funding Availability (NOFA) to be published shortly.

### Eligibility

Under the Act, entitlement grants are to be awarded to eligible States and for Eligible Metropolitan Areas (EMAs) which have more than 1,500 cumulative cases of persons with AIDS, and in the case of an EMA, a population of more than 500,000. For the fiscal year 1992 awards, the Department has used 1990 U.S. Census data to determine the populations of the jurisdictions listed below. The number of cumulative cases of AIDS used to determine if the 1,500 threshold has been met, is as of September 30, 1991 (the end of the Fiscal Year 1991) and is from data collected by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Center for Infectious Diseases, Division of HIV/AIDS. The Interim Rule at § 574.110 stipulates the method of designating the unit of general local government that will apply on behalf of the EMA.

### Recipient Disclosures: HUD Reform Act

States and units of general local government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for three years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each State and unit of general local government may use HUD Form 2880 to collect the applicant disclosure and update reports, or it may develop its own form. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.

Efforts to influence HUD's decisions with respect to financial assistance under these allocations are subject to disclosure requirements imposed by section 13 of the Department of Housing and Urban Development Act. That Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance or management of the award, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

### Listing of Eligible Metropolitan Areas and States with Projected Awards

Charts 1 and 2, below, provide the Department's determination of the States and metropolitan areas entitled to formula grants from the 1992 appropriation and their formula allocations. Chart 2 also lists each EMA's Community Development Block Grant (CDBG) jurisdictions and their respective populations. As provided in § 574.110 of the Interim Rule, these jurisdictions within each EMA must collaborate for the purpose of designating one unit of general local government to administer the program on behalf of the EMA.

CHART 1. STATES THAT QUALIFY FOR THE HOPWA PROGRAM AND FISCAL YEAR 1992 AWARDS

| State | 1992 award |
|---|---|
| California | $1,106,000 |
| Connecticut | 433,000 |
| Florida | 1,048,000 |
| Missouri | 442,000 |
| New Jersey | 664,000 |
| New York | 656,000 |
| North Carolina | 395,000 |
| Ohio | 526,000 |
| Puerto Rico | 445,000 |
| Texas | 894,000 |
| Virginia | 299,000 |

CHART 2. ELIGIBLE METROPOLITAN AREAS (EMA'S) THAT QUALIFY FOR THE HOPWA PROGRAM, FISCAL YEAR 1992 AWARDS, AND CDBG URBAN COUNTIES AND METROPOLITAN CITIES WITHIN EACH EMA

| Name of EMA | 1990 population | 1992 award |
|---|---|---|
| Anaheim-Santa Ana, CA | | $296,000 |
| Anaheim | 266,406 | |
| Buena Park | 68,784 | |
| Costa Mesa | 96,357 | |
| Fountain Valley | 53,691 | |
| Fullerton | 114,144 | |
| Garden Grove | 143,050 | |
| Huntington Beach | 181,519 | |
| Irvine | 110,330 | |
| Newport Beach | 66,643 | |
| Orange | 110,658 | |
| Orange County | 827,114 | |
| Santa Ana | 293,742 | |
| Westminster | 78,118 | |
| Atlanta, GA | | 1,097,000 |
| Atlanta | 394,017 | |
| Cobb County | 403,767 | |
| De Kalb County | 512,298 | |
| Fulton County | 291,793 | |
| Gwinnett County | 355,701 | |
| Marietta | 44,129 | |
| Baltimore, MD | | 447,000 |
| Annapolis | 33,187 | |
| Anne Arundel County | 393,950 | |
| Baltimore | 736,014 | |
| Baltimore County | 692,134 | |
| Bergen-Passaic, NJ | | 290,000 |
| Bergen County | 811,550 | |
| Clifton | 71,742 | |
| Passaic | 58,041 | |
| Paterson | 140,891 | |
| Wayne Township | 47,025 | |
| Boston, MA | | 589,000 |
| Arlington | 44,630 | |
| Boston | 574,283 | |
| Brookline | 54,718 | |
| Cambridge | 95,802 | |
| Framingham | 64,989 | |
| Lynn | 81,245 | |
| Malden | 53,884 | |
| Medford | 57,407 | |
| Newton | 82,585 | |
| Quincy | 84,985 | |
| Somerville | 76,210 | |
| Waltham | 57,878 | |
| Weymouth | 54,063 | |
| Chicago, IL | | 919,000 |
| Arlington Hts | 75,460 | |
| Berwyn | 45,426 | |
| Chicago | 2,783,726 | |
| Chicago Heights | 33,072 | |
| Cicero | 67,436 | |
| Cook County | 1,669,329 | |
| Des Plaines | 53,223 | |
| Du Page County | 719,086 | |
| Evanston | 73,233 | |
| Mount Prospect | 53,170 | |
| Naperville | 85,351 | |
| Oak Lawn | 56,182 | |
| Oak Park | 53,648 | |
| Schaumburg Village | 68,586 | |
| Skokie | 59,432 | |
| Dallas, TX | | 674,000 |
| Carrollton | 82,169 | |
| Dallas | 1,006,877 | |
| Dallas County | 193,778 | |
| Denton | 66,270 | |
| Garland | 180,650 | |
| Grand Prairie | 99,616 | |
| Irving | 155,037 | |
| Mesquite | 101,484 | |
| Plano | 128,713 | |
| Richardson | 74,840 | |
| Denver, CO | | 300,000 |
| Adams County | 194,755 | |
| Arapahoe County | 182,749 | |

CHART 2. ELIGIBLE METROPOLITAN AREAS (EMA'S) THAT QUALIFY FOR THE HOPWA PROGRAM, FISCAL YEAR 1992 AWARDS, AND CDBG URBAN COUNTIES AND METROPOLITAN CITIES WITHIN EACH EMA—Continued

| Name of EMA | 1990 population | 1992 award |
|---|---|---|
| Arvada | 89,235 | |
| Aurora | 222,103 | |
| Denver | 467,610 | |
| Lakewood | 126,481 | |
| Westminster | 74,625 | |
| Detroit, MI | | 321,000 |
| Canton TWP | 57,040 | |
| Clinton TWP | 85,068 | |
| Dearborn | 89,286 | |
| Dearborn Heights | 80,838 | |
| Detroit | 1,027,974 | |
| Farmington Hills | 74,652 | |
| Lincoln Park | 41,832 | |
| Livonia | 100,850 | |
| Macomb County | 247,230 | |
| Oakland County | 544,410 | |
| Pontiac | 71,166 | |
| Port Huron | 33,694 | |
| Redford TWP | 54,387 | |
| Rochester Hills | 61,766 | |
| Roseville | 51,412 | |
| Royal Oak | 65,410 | |
| Southfield | 75,728 | |
| St Clair Shores | 68,107 | |
| Sterling Heights | 117,810 | |
| Taylor | 70,811 | |
| Troy City | 72,884 | |
| Warren | 144,864 | |
| Waterford, TWP | 66,692 | |
| Wayne County | 454,785 | |
| Westland | 84,724 | |
| Fort Lauderdale-Hollywood, FL | | 1,111,000 |
| Broward County | 701,012 | |
| Coral Springs | 79,443 | |
| Ft Lauderdale | 149,377 | |
| Hollywood | 121,697 | |
| Plantation | 66,692 | |
| Pompano Beach | 72,411 | |
| Sunrise | 64,407 | |
| Houston, TX | | 1,512,000 |
| Baytown City | 63,850 | |
| Fort Bend County | 131,464 | |
| Harris County | 1,040,082 | |
| Houston | 1,630,553 | |
| Pasadena | 119,363 | |
| Jersey City, NJ | | 638,000 |
| Bayonne | 61,444 | |
| Hudson County | 205,106 | |
| Jersey City | 228,537 | |
| Union City | 58,012 | |
| Los Angeles-Long Beach, CA | | 2,917,000 |
| Alhambra | 82,106 | |
| Baldwin Park | 69,330 | |
| Bellflower | 61,815 | |
| Burbank | 93,643 | |
| Carson | 83,995 | |
| Cerritos | 53,240 | |
| Compton | 90,454 | |
| Downey | 91,444 | |
| El Monte | 106,209 | |
| Gardena | 49,847 | |
| Glendale | 180,038 | |
| Huntington Park | 71,349 | |
| Inglewood | 56,065 | |
| Lakewood | 109,602 | |
| Lancaster | 73,557 | |
| Long Beach | 97,291 | |
| Los Angeles | 429,433 | |
| Los Angeles County | 3,485,398 | |
| Lynwood | 2,290,545 | |
| Montebello | 61,945 | |
| Monterey Park | 59,564 | |
| Norwalk | 60,738 | |
| Pasadna | 94,279 | |
| Pico Rivera | 131,591 | |
| Pomona | 59,177 | |
| | 131,723 | |

CHART 2. ELIGIBLE METROPOLITAN AREAS (EMA'S) THAT QUALIFY FOR THE HOPWA PROGRAM, FISCAL YEAR 1992 AWARDS, AND CDBG URBAN COUNTIES AND METROPOLITAN CITIES WITHIN EACH EMA—Continued

| Name of EMA | 1990 population | 1992 award |
|---|---|---|
| Redondo each | 60,167 | |
| Santa Clarita | 110,642 | |
| Santa Monica | 86,905 | |
| South Gate | 86,284 | |
| Torrance | 133,107 | |
| West Covina | 96,086 | |
| Whittier | 77,671 | |
| Miami-Hialeah, FL | | 2,308,000 |
| Dade County | 1,270,731 | |
| Hialeah | 188,004 | |
| Miami | 358,548 | |
| Miami Beach | 92,639 | |
| Nassau-Suffolk, NY | | 962,000 |
| Babylon Town | 202,089 | |
| Huntington Town | 191,474 | |
| Islip Town | 299,587 | |
| Nassau County | 1,158,099 | |
| Suffolk County | 615,441 | |
| New Orleans, LA | | 420,000 |
| Jefferson Parish | 376,273 | |
| Kenner | 72,033 | |
| New Orleans | 496,938 | |
| Slidell | 24,124 | |
| New York, NY | | 11,153,000 |
| Mount Vernon | 67,153 | |
| New Rochelle | 67,265 | |
| New York | 7,322,564 | |
| Rockland County | 227,872 | |
| Westchester County | 433,853 | |
| White Plains | 48,718 | |
| Yonkers | 188,082 | |
| Newark, NJ | | 1,366,000 |
| Bloomfield TWP | 45,061 | |
| East Orange | 73,552 | |
| Elizabeth | 110,002 | |
| Essex County | 923,354 | |
| Irvington TWP | 61,016 | |
| Morris County | 341,571 | |
| Newark | 275,221 | |
| Parsippany-Troy Hills TWP | 48,478 | |
| Union TWP | 50,024 | |
| Union County | 333,793 | |
| Oakland, CA | | 646,000 |
| Alameda | 70,459 | |
| Alameda County | 284,194 | |
| Antioch | 62,195 | |
| Berkeley | 102,724 | |
| Concord | 111,348 | |
| Contra Costa County | 482,185 | |
| Fremont | 173,339 | |
| Hayward | 111,498 | |
| Livermore | 56,741 | |
| Oakland | 372,242 | |
| Richmond | 87,425 | |
| San Leandro | 68,223 | |
| Union City | 53,762 | |
| Walnut Creek | 60,569 | |
| Philadelphia, PA-NJ | | 766,000 |
| Abington TWP | 56,322 | |
| Bensalem Township | 56,788 | |
| Bristol TWP | 57,129 | |
| Bucks County | 427,257 | |
| Burlington County, NJ | 353,689 | |
| Camden, NJ | 87,492 | |
| Camden County, NJ | 277,679 | |
| Cherry Hill TWP, NJ | 69,348 | |
| Chester | 41,856 | |
| Chester County | 376,396 | |
| Delaware County | 374,770 | |
| Gloucester County, NJ | 230,082 | |
| Gloucester TWP, NJ | 53,797 | |
| Haverford TWP | 48,848 | |
| Lower Merion WP | 58,003 | |
| Montgomery County | 516,262 | |
| Norristown | 30,749 | |
| Philadelphia | 1,585,577 | |
| Upper Darby | 81,177 | |

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CHART 2. ELIGIBLE METROPOLITAN AREAS (EMA'S) THAT QUALIFY FOR THE HOPWA PROGRAM, FISCAL YEAR 1992 AWARDS, AND CDBG URBAN COUNTIES AND METROPOLITAN CITIES WITHIN EACH EMA—Continued

| Name of EMA | 1990 population | 1992 award |
|---|---|---|
| San Diego, CA | | 535,000 |
| Carlsbad | 63,126 | |
| Chula Vista | 135,163 | |
| El Cajon | 88,693 | |
| Encinitas | 55,386 | |
| Escondido City | 108,635 | |
| La Mesa City | 52,931 | |
| National City | 54,249 | |
| Oceanside | 128,398 | |
| San Diego | 1,110,549 | |
| San Diego County | 573,859 | |
| Santee | 52,902 | |
| Vista | 71,872 | |
| San Francisco, CA | | 3,635,000 |
| Daly | 92,311 | |
| Mann County | 230,096 | |
| Redwood City | 66,072 | |
| San Francisco | 723,959 | |
| San Mateo | 85,486 | |
| San Mateo County | 344,279 | |
| South San Francisco | 54,312 | |
| San Juan, PR | | 1,392,000 |
| Byamaon Municipio | 220,262 | |
| Carolina Municipio | 177,806 | |
| Fajardo Municipio | 36,882 | |
| Guaynabo Municipio | 92,886 | |
| Humacao Municipio | 55,200 | |
| San Juan Municipio | 437,745 | |
| Toa Baja Municipio | 89,454 | |
| Trujillo Alto Municipio | 61,120 | |
| Seattle, WA | | 372,000 |
| Auburn | 33,102 | |
| Bellevue | 86,874 | |
| Everett | 69,961 | |
| Federal Way | 60,781 | |
| King County | 809,542 | |
| Seattle | 516,259 | |
| Snohomish County | 394,368 | |
| Tampa-St. Petersburg-Clearwater, FL | | 366,000 |
| Clearwater | 98,784 | |
| Hillsborough County | 554,039 | |
| Largo | 65,674 | |
| Pasco County | 276,823 | |
| Pinellas County | 444,076 | |
| St Petersburg | 238,629 | |
| Tampa | 280,015 | |
| Washington, DC-MD-VA | | 1,314,000 |
| Alexandria, VA | 111,183 | |
| Arlington County, VA | 180,514 | |
| Fairfax County, VA | 823,354 | |
| Frederick, MD | 40,148 | |
| Montgomery County, MD | 746,445 | |
| Prince Georges County, MD | 707,341 | |
| Prince William County, VA | 250,377 | |
| Washington, DC | 606,900 | |
| West Palm Beach-Boca Raton-Delray, FL | | 468,000 |
| Boca Raton | 61,492 | |
| Delray Beach | 47,181 | |
| Palm Beach County | 670,930 | |
| West Palm Beach | 67,643 | |

Note: Total grants allocated for 1992 in charts 1 and 2: $42,935,000.

**HUD Field Offices**

Telephone numbers for Telecommunications Devices for the Deaf (TDD machines) are listed for field offices; all HUD numbers, including those noted*, may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY or (1–800–877–8339) or (202) 708–9300.

*California*

(Southern): Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235; TDD (213) 251–7038.

(Northern): Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576; TDD (415) 556–8357.

*Colorado*

Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811; TDD (303) 844–6158.

*Connecticut*

Daniel Kolesar, 330 Main St., Hartford, CT 06106–1860; (203) 240–4508; TDD (203) 240–4522.

*District of Columbia*

James H. McDaniel, 820 First St., NE, Washington, DC 20002; (202) 275–0994; TDD (202) 275–0967.

*Florida*

James N. Nichol, 325 W. Adams St., Jacksonville, FL 32202–4303; (904) 232–3587; TDD (904) 232–1291.

*Georgia*

Charles N. Straub, Russell Fed. Bldg., Room 688, 75 Spring St., SW, Atlanta, GA 30303–3388; (404) 331–5139; TDD (404) 730–2654.

*Illinois*

Richard Wilson, 77 W. Jackson Blvd., Chicago, IL 60606–5760; (312) 353–1696; TDD (312) 353–7143.

*Louisiana*

Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70112–2887; (504) 589–7212; TDD (504) 589–7237.

*Maryland*

Harold Young, Equitable Bldg., 3rd Floor, 10 N. Calvert St., Baltimore, MD 21202–1865; (301) 962–2417; TDD (301) 962–0106.

*Massachusetts*

Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343; TDD (617) 565–5453.

*Michigan*

Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–4343; TDD * via 1–800–877–8339.

*Missouri*

Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 236–2184; TDD (913) 236–3972.

*New Jersey*

Frank Sagarese, Military Park Bldg., 60 Park Pl., Newark, NJ 07102–5504; (201) 877–1776; TDD * via 1–800–877–8339.

*New York*

Joan Dabelko, 26 Federal Plaza, New York, NY 10278–0068; (212) 264–2885; TDD (212) 264–0927.

*North Carolina*

Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707; (919) 547–4005; TDD (919) 547–4055.

*Ohio*

Jack E. Riordan, 200 North High St., Columbus, OH 43215–2499; (614) 469–6743; TDD (614) 469–6694.

*Pennsylvania*

John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665; TDD (215) 597–5564.

*Puerto Rico*

Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR 00918–1804; (809) 766–5576; TDD (809) 766–5909.

*Texas*

R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447.

*Virginia*

Joseph Aversano, Fed. Bldg., 400 N. 8th St., P.O. Box 10170, Richmond, VA 23240–9998; (804) 771–2824; TDD (804) 771–2820.

*Washington*

John Peters, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101–2054; (206) 553–0374; TDD (206) 553–4351.

Dated: June 8, 1992.

**Randall H. Erben,**

*Acting Assistant Secretary for Community Planning and Development.*

[FR Doc. 92–16790 Filed 7–17–92; 8:45 am]

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Part VII

# Department of Housing and Urban Development

**Office of the Secretary**

**Regulatory Waiver Requests Granted by the Department of Housing and Urban Development; Notice**

VOL 57 ISS 139 JL 20 1992 UMI



**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Secretary**

**[Docket No. N-92-3038; FR-2736-N-07]**

## Regulatory Waiver Requests Granted by the Department of Housing and Urban Development

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Public notice of the granting of regulatory waiver requests: March 1, 1992 through May 31, 1992.

**SUMMARY:** Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This Notice is the fifth in a series, being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this Notice is to comply with the requirements of section 106 of the Reform Act.

**FOR FURTHER INFORMATION CONTACT:** For general information about this Notice, contact Grady J. Norris, Assistant General Counsel for Regulations, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (Telephone 202-755-7055. This is not a toll-free number.) For information concerning a particular waiver action about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant actions.

**SUPPLEMENTARY INFORMATION:** As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (Section 7(q)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3)), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that the Department has approved, by publishing a notice in the **Federal Register**. These Notices (each covering the period since the most recent previous notification) shall;

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purposes of today's document.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the fifth Notice of its kind to be published under section 106. The first Notice, published on August 26, 1991, updated waiver-grant activity by the Department from the period immediately following passage of the Reform Act through the end of May 1991. Thereafter, notices updating waiver-grant activity for the ensuring three-month periods were published on October 28, 1991, January 13, 1992, and April 8, 1992.

Today's document updates HUD's waiver-grant activity through the end of May, 1992. In approximately three months, the Department will publish a similar Notice, providing information about waiver-grant activity for the period from June 1, 1992 through August, 1992.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 24.200 (involving the waiver of a provision in part 24) would come early in the sequence, while waivers in the Section 8 and Section 202 programs (24 CFR chapter VIII) would be among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 811.105(b) and § 811.107(a) would appear sequentially in the listing under § 811.105(b).)

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between June and August 1992. (Today's document contains a few notices involving waivers granted before the beginning of the calendar quarter covered by this notice.)

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the Appendix that follows this Notice.

Dated: July 9, 1992.

**Jack Kemp,**

*Secretary.*

## Appendix—Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development, March 1, 1991 Through May 31, 1992

**Note to Reader:** The person to be contacted for additional information about the waiver-grant items numbered 1 through 9 in this listing is: Mr. Jan C. Opper, Field Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 541 Seventh Street, SW., room 7270, Washington, DC 20410-7000, Phone: (202) 708-2565.

Grant of Waiver of Regulation

1. Regulation: 24 CFR 91.40(b).

Project/Activity: Rockland County, NY consortium; Oxnard, CA; Hawthorne, CA. Waiver of the 60-day comment period for the Comprehensive Housing Affordability Strategy (CHAS).

Nature of Requirement: 24 CFR 91.40(b) requires that a jurisdiction make its proposed housing strategy (CHAS) available to the public for a reasonable length of time (at least sixty days) for an examination and comment period.

Granted by: Jack Kemp, Secretary.

Date Granted: April 30, 1992; May 4, 1992; May 8, 1992.

Reasons Waived: Section 216(5) of the National Affordable Housing Act (24 U.S.C. 12746) requires that a jurisdiction eligible for the HOME Investment Partnerships program submit a CHAS not later than 90 days after providing HUD with a notification of intent to apply for the Home Program. Because the Rockland County consortium and the Cities of Oxnard and Hawthorne could not meet this statutory requirement, they requested that requirement at 24 CFR 981.40(b) be waived and the required length of time for comments be shortened to thirty days. Each jurisdiction agreed to consider comments submitted beyond the thirty-day period and committed to incorporating those subsequent

comments in an amendment to the CHAS or in its annual update. Because of the potential detrimental impact to each of the jurisdiction's low-income population, the Secretary determined that good cause existed for which to waive 24 CFR 91.40(b).

2. Regulation: 24 CFR 92.150(a).

Project/Activity: Atlanta, GA; Hartford, CT; Dade County, FL; Miami Beach, FL; Dakota County, MN consortium; Cuyahoga County, OH consortium, Tucson/Pima County, AZ consortium; Santa Monica, CA; Washington, DC; State of West Virginia; Lake County, IL consortium; Mount Vernon, NY; New Britain, CT. Waiver of HOME Investment Partnerships program description submission requirements.

Nature of Requirement: 24 CFR 92.150(a) requires that a jurisdiction that has not yet been designated a participating jurisdiction for the HOME program must submit a program description within 45 days of designation.

Granted by: Anna Kondratas, Assistant Secretary for Community Planning and Development or Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.

Date Granted: March 9, 1992 through April 24, 1992

Reasons Waived: Waivers of 24 CFR 92.150(a) were granted to the above participating jurisdictions for good cause. In going through the HOME application process for the first time, in this new program, each of the above jurisdictions encountered difficulties in synchronizing local legislative hearing and meeting requirements with the 45-day deadline.

3. Regulation: 24 CFR 570.200(a)(5) and 24 CFR 570.200(h)

Project/Activity: Cumberland, MD—purchase of an aerial telescopic platform fire fighting truck; Montgomery County, MD—acquisition and rehabilitation of a facility to provide services to the homeless; Davenport, IA—purchase of property for use as a domestic violence shelter; Wayne County, MI (City of Belleville)—reconstruction of the West Columbia sewer system; Kenosha, WI—removal of a pedestrian mall and conversion to a traffic-bearing street. Waiver of reimbursement of pre-agreement costs under the Community Development Block Grant program.

Nature of Requirement: 24 CFR 570.200(h) permits reimbursement of certain eligible costs incurred prior to the date of the grant agreement. 24 CFR 570.200(a)(5) limits pre-agreement costs to those described in subparagraph 570.200(h).

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development and Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.

Date Granted: March 2, 1992 through May 21, 1992.

Reasons Waived: In each of the jurisdictions above, except Kenosha WI, the Assistant Secretary determined that not granting a waiver would cause undue hardship on low and moderate income persons that would otherwise benefit from the service or facility. In the case of Kenosha, WI, not granting the waiver would adversely affect the purposes of the Act by inhibiting the elimination of a slum and blighted area.

4. Regulation: 24 CFR 570.490(b).

Project/Activity: States of Oklahoma and Wyoming. Final Statement submission deadline extension.

Nature of Requirement: 24 CFR 257.490(b) requires each state administering the State Community Development Block Grant (CDBG) Program to submit a Final Statement and certifications by March 31 of each Federal fiscal year. The States requested extension to May 29, 1992 and April 30, 1992, respectively, for submission of its Fiscal Year 1992 Statement.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Dates Granted: March 23, 1992 and April 1, 1992, respectively.

Reasons Waived: The State of Oklahoma requested a time extension to allow it to use 1990 Census information for its geographic allocation. Otherwise, the State would have to use 12 year old data in distributing its FY 1992 funds. The State of Wyoming requested a time extension to complete its 45-day public comment period which was delayed due to unforeseen circumstances. If waivers were not granted, small communities within those States would not be able to assist low and moderate income persons, causing undue hardship and adversely affecting the purposes of the Act.

5. Regulation: 24 CFR 576.51(a).

Project/Activity: Oxnard, CA; Middlesex County, NJ; Yonkers, NY. Under the Emergency Shelter Grants program, waiver of the application submission deadline requirements to permit submission at a later date.

Nature of Requirement: 24 CFR 576.51(a) requires that any State, or formula city or county, or Territory, that elects to receive an Emergency Shelter Grant, submit an application no later than 45 days after the date of notification of the grant allocation amount.

Granted by: Anna Kondratas, Assistant Secretary for Community Planning and Development and Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.

Date Granted: April 30, 1992 and May 13, 1992.

Reasons Waived: Waivers were granted for the above applicants because they would have been unable to submit Comprehensive Housing Affordability Strategies (CHAS) prior to or on the date of the deadline for submission of the FY 1992 Emergency Shelter Grant application, as required. The CHAS is being submitted by applicants for the first time, as required by the National Affordable Housing Act. Not to grant a waiver of the application deadline and to extend the deadline would have caused undue hardship and would adversely affect the purposes of Title IV of the Stewart B. McKinney Homeless Assistance Act, as amended.

6. Regulation: 24 CFR 576.55(b)(2).

Project/Activity: Cincinnati, OH. Deadline for expenditure of Emergency Shelter Grant (ESG) funds. An extension until December 31, 1992 was requested.

Nature of Requirement: 24 CFR 576.55(b)(2) requires that each ESG formula grantee spend all of the grant amounts it was allocated within 24 months of the date of the grant award by HUD.

Granted by: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: March 5, 1992.

Reasons Waived: The city requested an extension of the deadline because it needs additional time to obtain financing to rehabilitate a shelter facility. Irregularities discovered in the original bidding documents necessitated rebidding. Under these circumstances, it was determined that undue hardship would result if a waiver were not granted and that the shelter facility would contribute significantly to the purposes of the McKinney Act.

7. Regulation: 24 CFR 577.115(a).

Project/Activity: Chicago, IL. Waiver of operating and supportive service cost participation requirements under the Transitional Housing program.

Nature of Requirement: 24 CFR 577.115(a) states that assistance for operating and supportive service costs will be available for up to 75 percent of the total costs for two years and up to 50 percent of the total costs for three years.

Granted by: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: April 17, 1992.

Reasons Waived: Failure to waive the requirements at 24 CFR 577.115(a) would prevent the City of Chicago from becoming the substitute grantee for two Transitional Housing projects, and adversely affect the purposes of the program.

8. Regulation: 24 CFR 577.135(b).

Project/Activity: El Paso, TX. Providing Transitional Housing assistance to a project in which residents receive Section 8 assistance.

Nature of Requirement: 24 CFR 577.135(b) prohibits the provision of Transitional Housing program assistance if the project involves a structure, or residents of the structure, that will receive assistance under the U.S. Housing Act of 1937 (includes section 8), et al.

Granted by: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: April 7, 1992.

Reasons Waived: Since the project was underway prior to HUD realizing that Section 8 project-based certificates were to be used, failure to grant a waiver would adversely affect those homeless persons the project was intended to serve and cause them undue hardship.

9. Regulation: 24 CFR 577.335(e).

Project/Activity: Sacramento Housing and Redevelopment Agency, CA. Waiver of conflict of interest provisions under the Transitional Housing Program.

Nature of Requirement: 24 CFR 577.335(b) prohibits any person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, from obtaining a personal or financial interest or benefit from the activity or have an interest in any contract, subcontract, or agreement with respect thereto, or proceeds thereunder, either for himself or herself or for those with whom he of she has family or business ties, during his or her tenure or for one year thereafter.

Granted by: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: March 2, 1992.

Reasons Waived: A person who has been on the board of a nonprofit organization that operated a transitional living center for quadriplegics under a HUD Transitional Housing grant to the Sacramento Housing and Redevelopment Agency. (The person was not on the board when the grant was awarded and had no role in obtaining the grant funds.) That person became the transitional living center coordinator when the previous coordinator resigned unexpectedly. The nonprofit organization acted in good faith in appointing the coordinator. To deny the waiver and force the new coordinator to resign would result in a hardship for the residents who have special needs because of their physical condition. It would be disruptive to their progress to lose a second coordinator within six months.

**Note to Reader:** The person to be contacted for additional information about the waiver-grant items numbered 10 through 12 in this listing is: Gerald Benoit, Director, Rental Assistance Division, Department of Housing and Urban Development, 451 Seventh Street, SW., room 6128, Washington, DC 20410, Phone: (202) 708–0477.

10. Regulation: 24 CFR 882.101(b)(2).

Project/Activity: Housing Authority of the City of Jefferson, Missouri.

Nature of Requirement: Regulation prohibits a PHA from administering housing assistance under the Section 8 rental certificate program for units owned by the PHA.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: April 3, 1992.

Reason Waived: To prevent undue hardship for a family participating in the Section 8 rental certificate program who resided in the unit before the acquisition of the building by the housing authority. (This waiver only extends to the unit occupied by the one family and no other assisted families may move into this building.)

11. Regulation: 24 CFR 882.110(d).

Project/Activity: New York City Housing Authority.

Nature of Requirement: Regulation requires that the total number of assisted units may not exceed 40 percent of the total number of units in a section 221(d)(3) below-market interest rate project or in a section 236 project.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: April 10, 1992.

Reason Waived: In order to settle litigation, HUD agreed to grant a waiver to the New York City Housing Authority to allow the total number of its assisted units to exceed 40 percent of the total number of units in its section 221(d)(3) below market interest rate projects or its 236 projects.

12. Regulation: 24 CFR 882.209(K); 24 CFR 877.207(e).

Project/Activity: New York City Housing Authority.

Nature of Requirement: Regulation requires that under the Section 8 rental certificate and rental voucher programs, the housing assistance contract be executed before commencement of the assisted tenancy.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: April 10, 1992.

Reason Waived: In order to settle litigation, HUD agreed to grant a waiver to permit the New York City Housing Authority to execute retroactive housing assistance payments.

**Note to Reader:** The person to be contacted for additional information about the waiver-grant items numbered 13–16 in this listing is: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–2730.

13. Regulation: 24 CFR 885.425(d).

Project/Activity:

| Project name | Project No. | Field office |
|---|---|---|
| Two, Inc | 051–EH172 | Richmond Office. |
| Three, Inc | 051–HH004 | Richmond Office. |
| Four, Inc | 051–HH013 | Richmond Office. |

Nature of Requirement: Regulation requires that the owner's simplified certificate of actual cost be verified by an independent certified public accountant or an independent public accountant licensed by a State or local regulatory agency prior to December 31, 1970.

Granted by: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 24, 1991.

Reason Waived: To avoid placing a financial hardship on the Borrower, and because HUD staff believed, as indicated in outstanding Section 202 and full insurance instructions, that an accountant's opinion is not always necessary to protect the Secretary's and the Borrower's interests when a project qualifies to use the simplified form of cost certification, Form HUD–92205, the requirement of verification by a licensed accountant was waived.

14. Regulation: 24 CFR 885.810(c)(3)(i).

Project/Activity:

| Project name | Project No. | Field office |
|---|---|---|
| Edison Arms | 012–EH002 | New York. |

Nature of Requirement: The regulation requires the Department of Housing and

Urban Development to limit direct loan financing to the development cost limits set forth in paragraphs (c)(1) and (c)(2) of § 885.810. Paragraph (c)(3)(i) authorizes the Assistant Secretary to increase the cost limits by up to 110 percent in any geographic area where the cost levels require, and to increase the cost limits by up to 140 percent on a project-by-project basis. Waivers of this section may pefmit an increase in the cost limits by up to 160 percent on a project-by-project basis for specific HUD Offices where development costs are consistently higher than anywhere else in the nation.

Granted by: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 19, 1991.

Reason Waived: Not to approve the above HCP waiver would cause hardship to the Borrower, which has expended substantial funds to reach this stage of processing. Further, if the project is cancelled, much needed housing would not be built. Granting the waiver was, therefore, in the public interest and consistent with both programmatic objectives and the Secretary's goal of increasing affordable housing opportunities for low income families.

15. Regulation: 24 CFR 855—Loans for Housing for the Elderly or Handicapped § 885.825(c), Reduction of Loan Amount and Contract Rents.

Project/Activity:

| Project Name | Project No. | Regional Office |
|---|---|---|
| Village on Park. | 045-EH070 | Philadelphia. |

Nature of Requirement: The Regulation cited above requires that if the certified costs approved by HUD are less than the loan amount established under § 885.805, the loan amount and the contract rents will be reduced accordingly.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-Housing Commissioner.

Date Granted: May 21, 1992.

Reason Waived: There was an overpayment of funds to the general contractor which resulted from the criminal activity that occurred between a HUD representative and the general contractor. HUD agreed with the U.S. Attorney that to require the Borrower to repay these funds would penalize the Borrower for the wrongdoings of a HUD representative and the general contractor, about which the Borrower had no knowledge or control.

16. Regulation: 24 CFR 855—Loans for Housing for the Elderly or Handicapped § 885.230. Duration of section 202 Fund Reservation.

Project/Activity:

| Project Name | Project No. | Regional Office |
|---|---|---|
| Bay Cove GH IV | 023-EH343 | Boston. |
| Independence Housing. | 024-EH197 | Boston. |
| Monsignor Fiorentino. | 012-EH622 | New York. |
| WNY Veterans Hsg. | 014-EH250 | New York. |
| Casa Victoria Hsg. | 012-EH583 | New York. |
| John Walter Edwards. | 012-EH655 | New York. |
| Gethsemane Manor. | 014-EH257 | New York. |
| The Bridges | 014-EH247 | New York. |
| Riese St. Gerard Sr. | 031-EH221 | New York. |
| Monsignor Henry J. Reel. | 012-EH672 | New York. |
| Bellerose Apartments. | 012-EH661 | New York. |
| Belmont Blvd Apts. | 012-EH665 | New York. |
| Diakonia Housing | 034-EH312 | Philadelphia. |
| United Cerebral Palsy. | 034-EH383 | Philadelphia. |
| Sansom House | 034-EH393 | Philadelphia. |
| Concord House I & II. | 045-EH097 | Philadelphia. |
| Howard Sheltered Homes. | 052-EH162 | Philadelphia. |
| Accessible Apartments. | 051-EH185 | Philadelphia. |
| Capitol Commons | 000-EH157 | Philadelphia. |
| DEAF-Reach | 000-HD003 | Philadelphia. |
| Buena Vista Apts. | 051-EH182 | Philadelphia. |
| Toombs-Lyon Housing. | 061-EH208 | Atlanta. |
| Distinctive Care Homes. | 061-EH210 | Atlanta. |
| Broadway Towers | 061-EH215 | Atlanta. |
| Travis House | 061-EH216 | Atlanta. |
| Independent Lifestyles. | 061-EH220 | Atlanta. |
| Coral Bay Terrace. | 066-EH211 | Atlanta. |
| Teamster Retiree Hsg. | 067-EH157 | Atlanta. |
| Burnell Brown Housing. | 071-EH502 | Chicago. |
| Westhaven of Englewood. | 071-EH536 | Chicago. |
| The Center Apartments. | 071-EH545 | Chicago. |
| Muncie Place Apts. | 073-EH306 | Chicago. |
| Wheder-Silver Manor. | 042-EH419 | Chicago. |
| Apple Grove | 042-EH426 | Chicago. |
| Family Initiative | 042-EH416 | Chicago. |
| Handicapped Hsg Harmony. | 092-EH246 | Chicago. |
| Asi-Brainerd Barrier. | 092-EH250 | Chicago. |
| HM & Community Options. | 092-EH256 | Chicago. |
| Willmar Housing | 092-EH260 | Chicago. |
| AL-CAR/VOA Elderly. | 113-EH038 | Ft. Worth. |
| Long Beach Gardens. | 122-EH495 | San Francisco. |
| Masselin Senior Hsg. | 122-EH503 | San Francisco. |
| The Gardens | 122-EH502 | San Francisco. |
| Harding Project | 122-EH499 | San Francisco. |
| Riverside VOA Elderly. | 122-EH434 | San Francisco. |
| Simi Valley Sr Citizen. | 122-EH485 | San Francisco. |
| Vista Serena Apts. | 122-EH479 | San Francisco. |
| Lazzell Residence | 122-EH487 | San Francisco. |

Nature of Requirement: The Regulations cited above require the Department of Housing and Urban Development to cancel any section 202 fund reservation for which construction, rehabilitation or acquisition has not begun within 24 months after the Notice of section 202 Fund Reservation is issued, unless a 12-month extension is granted by the Regional Administrator, for a total maximum 36-month period.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: Waivers approved between March 1, 1992 and May 31, 1992.

Reason Waived: Circumstances beyond the control of the Section 202 Owners delayed project development within the maximum period of 36 months. Further, sponsors had expended substantial funds to bring the projects to construction starts and development of these units furthered the Secretary's goal of expanding affordable housing opportunities. Waivers of this section granted authority to extend these fund reservations beyond 24 months to allow additional time to reach construction starts.

**Note to Reader:** The person to be contacted for additional information about waiver-grant item number 17 in this listing is: Kerry J. Mulholland, Chief, Mortgage Credit Branch, Technical Support Division, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708-0283.

17. Regulation: 24 CFR 885.425(d).

Project/Activity:

| *Project name* | *Project No.* | *Field office* |
|---|---|---|
| Two, Inc. | 051-EH172 | Richmond Office. |
| Three, Inc. | 051-HH004 | Richmond Office. |
| Four, Inc. | 051-HH013 | Richmond Office. |

Nature of Requirement: Regulation requires that the owner's simplified certificate of actual cost be verified by an independent certified public accountant or an independent public accountant licensed by a State or local regulatory agency prior to December 31, 1970.

Granted by: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 24, 1991.

Reason waived: To avoid placing a financial hardship on the Borrower and inasmuch as we believe, as is indicated in outstanding section 202 and full insurance instructions, that an accountant's opinion is not always necessary to protect the Secretary's and the Borrower's interests when a project qualifies to use the simplified form of cost certification, Form HUD–92205.

**Note to Reader:** The person to be contacted for additional information about waiver-grant item number 18 in this listing is: Felix Coward, Chief, Architectural and Engineering Branch, Technical Support Division, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–0743.

18. Regulation: 24 CFR 885.810(c)(3)(i).
Project/Activity:

| Project name | Project No. | Field office |
|---|---|---|
| Edison Arms | 012-EH092 | New York. |

Nature of Requirement: The Regulation cited above requires the Department of Housing and Urban Development to limit direct loan financing to the development cost limits set forth in paragraphs (c)(1) and (c)(2) of this section. Paragraph (c)(3)(i) authorizes the Assistant Secretary to increase the cost limits by up to 110 percent in any geographic area where the cost levels require, and to increase the cost limits by up to 140 percent on a project-by-project basis. Waivers of this section grant authority to increase the cost limits by up to 160 percent on a project-by-project basis for specific HUD Offices where development costs are consistently higher than anywhere else in the nation.

Granted by: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 19, 1991.

Reason Waived: To not approve the above HCP waiver would cause hardship to the Borrower which has expended substantial funds to reach this stage of processing. Further, if the project is cancelled, much-needed housing would not be built. Granting the waiver is, therefore, in the public interest and consistent with both programmatic objectives and the Secretary's goal of increasing affordable housing opportunities for low income families.

**Note to Reader:** The person to be contacted for additional information about waiver-grant item number 19 in this listing is: Kerry J. Mulholland, Chief, Mortgage Credit Branch, Technical Support Division, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–0283.

19. Regulation: Section 24 CFR 855—Loans for Housing for the Elderly or Handicapped Section 885.825(c), Reduction of Loan Amount and Contract Rents.

Project/Activity:

| Project name | Project No. | Regional office |
|---|---|---|
| Village on Park. | 045–EH070 | Philadelphia. |

Nature of Requirement: The Regulation cited above requires that if the certified costs approved by HUD are less than the loan amount established under § 885.805, the loan amount and the contract rents will be reduced accordingly.

Granted by: Arthur J. Hill, Assistant Secretary for Housing—Housing Commissioner.

Date Granted: May 21, 1992.

Reason Waived: There was an overpayment of funds to the general contractor which resulted from the criminal activity that occurred between a HUD representative and the general contractor. HUD agreed with the U.S. Attorney that to require the Borrower to repay these funds, penalizes the Borrower for the wrongdoings of a HUD representative and the general contractor of which it had no knowledge or control.

**Note to Reader:** The person to be contacted for additional information about waiver-grant item number 20 in this listing is: Dom Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–1015.

20. Regulation: 24 CFR 905.705.

Project/Activity: Providing Performance Funding System subsidy for one unit from the Blackfeet Indian Housing Authority's rental inventory which is used as a Family Child Care Program.

Nature of Requirement: The regulation cited above discusses how to determine the amount of operating subsidy for which an IHA is eligible.

Granted by: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: March 25, 1992.

Reason Waived: This waiver was requested, and granted, to provide Performance Funding System operating subsidy for one unit removed from the Blackfeet Indian Housing Authority's rental inventory. The rental unit is being used to support a Family Child Care Program to promote economic self sufficiency services to the community.

**Note to Reader:** The person to be contacted for additional information about the waiver-grant items numbered 21 through 26 in this listing is: Edward C. Whipple, Occupancy Division, Office of Management Operations, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–0744.

21. Regulation: 24 CFR 913.107(a).

Project/Activity: DeKalb County Housing Authority.

Nature of Requirement: 24 CFR 913.107(a) requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, and amount equal to the portion of the grant designated for shelter and utilities.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: January 9, 1992.

Reason Waived: To allow DeKalb County Housing Authority to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937, which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

22. Regulation: 24 CFR 913.107(a).

Project/Activity: Cambridge Housing Authority; Turnkey III Homeownership Opportunity Programs Project MA 3–15.

Nature of Requirement: 24 CFR 913.107(a) requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, and amount equal to the portion of the grant designated for shelter and utilities.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: January 28, 1992.

Reason Waived: To allow Cambridge Housing Authority Turnkey III Homeownership Opportunity Program (Project MA 3–15) to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

23. Regulation: 24 CFR 913.107(a).

Project/Activity: Lyon, KS Housing Authority.

Nature of Requirement: 24 CFR 913.107(a) requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, and amount equal to the portion of the grant designated for shelter and utilities.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: March 9, 1992.

Reason Waived: To allow Lyon Housing Authority to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

24. Regulation: 24 CFR 913.107(a).

Project/Activity: Osage, OK Housing Authority.

Nature of Requirement: 24 CFR 913.107(a) requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, and amount equal to the portion of the grant designated for shelter and utilities.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: March 9, 1992.

Reason Waived: To allow Osage Housing Authority to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

25. Regulation: 24 CFR 913.107(a).

Project/Activity: Sleepy Eye, MN Housing and Redevelopment Authority.

Nature of Requirement: 24 CFR 913.107(a) requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, and amount equal to the portion of the grant designated for shelter and utilities.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: April 22, 1992.

Reason Waived: To allow Sleepy Eye Housing and Redevelopment Authority to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

26. Regulation: 24 CFR 913.107(a).

Project/Activity: Cincinnati, OH Metropolitan Housing Authority.

Nature of Requirement: 24 CFR 913.107(a) requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, and amount equal to the portion of the grant designated for shelter and utilities.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: March 9, 1992.

Reason Waived: To allow Cincinnati Metropolitan Housing Authority to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

**Note to Reader:** The person to be contacted for additional information about the waiver-grant items numbered 27 through 31 in this listing is: David Caprara, Deputy Assistant Secretary, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–4214.

27. Regulation: 24 CFR 990.104.

Project/Activity: Waiver for approval of units for non-dwelling use to support economic self-sufficiency and anti-drug programs at Housing Authorities.

Nature of Requirement: Housing Authority of Wilkes-Barre, PA is authorized to increase the operating subsidy for two units removed from the dwelling rental inventory to support their economic self-sufficiency program.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: May 15, 1992.

Reason Waived: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory unless a waiver of PFS is granted.

28. Regulation: 24 CFR 990.104.

Project/Activity: Waiver for approval of units for non-dwelling use to support economic self-sufficiency and anti-drug programs at Housing Authorities.

Nature of Requirement: Housing Authority of Tallahassee, Florida is authorized to increase the operating subsidy for two units removed from the dwelling rental inventory to support their economic self-sufficiency program.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: May 22, 1992.

Reason Waived: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory unless a waiver of PFS is granted.

29. Regulation: 24 CFR 990.104.

Project/Activity: Waiver for approval of units for non-dwelling use to support economic self-sufficiency and anti-drug programs at Housing Authorities.

Nature of Requirement: Housing Authority of Las Cruces, New Mexico is authorized to increase the operating subsidy for two units removed from the dwelling rental inventory to support their economic self-sufficiency program.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: May 29, 1992.

Reason Waived: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory unless a waiver of PFS is granted.

30. Regulation: 24 CFR 990.104.

Project/Activity: Waiver for approval of units for non-dwelling use to support economic self-sufficiency and anti-drug programs at Housing Authorities.

Nature of Requirement: Housing Authority of Bernalillo, New Mexico is authorized to increase the operating subsidy for two units removed from the dwelling rental inventory to support their economic self-sufficiency program.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: June 5, 1992.

Reason Waived: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory unless a waiver of PFS is granted.

31. Regulation: 24 CFR 990.104.

Project/Activity: Waiver for approval of units for non-dwelling use to support economic self-sufficiency and anti-drug programs at Housing Authorities.

Nature of Requirement: Housing Authority of Río Arriba, New Mexico, is authorized to increase the operating subsidy for two units removed from the dwelling rental inventory to support their economic self-sufficiency program.

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Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: June 5, 1992.

Reason Waived: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory unless a waiver of PFS is granted.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 32 through 33 in this listing is: John Comerford, Director, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708-1872.

32. Regulation: 24 CFR 990.109(b)(3)(iv).

Project/Activity: Detroit Housing Department, Detroit, MI.

Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: April 10, 1992.

Reason Waived: The initial request for a waiver came shortly after HUD had published a proposed rule in the Federal Register that would have established new conditions under which a PHA could include vacant units in the determination of operating subsidy eligibility. Congressional action on the Department's 1992 Appropriations Bill, however, included language in the Conference report that barred appropriated funds from being used to implement the proposed rule.

The proposed rule would have corrected inefficiencies and removed inequities contained in the current Vacancy Rule. The Congressional abrogation of the rule-making process meant a continuation of these problems. It was thus felt necessary to develop a general policy describing the circumstances under which Vacancy Rule waivers would be considered and approved, so that these problems could be minimized without the Department's being in conflict with the congressional action. Waiver requests received during and after this period were reviewed but generally were not acted upon.

In response to this situation, HUD approved an obligation of $28.9 million of operating subsidy funds by issuing a letter-of-intent (LOI) in September 1991. In determining this amount, 62% was used as the assumed occupancy percentage. It was hoped, however, that a policy on Vacancy Rule waiver requests would be in place before payments of the LOI began, so that appropriate conditions could be placed on the released funds, if warranted.

In November 1991, the Detroit Field Office was authorized to pay $14.4 million to the DHD and payment of an additional $4 million was authorized in March 1992. No conditions were placed on these payments. HUD is now asking Congress to reverse its earlier action on the proposed vacancy rule and allow HUD to proceed with publication of a final rule. Since only three months remained in the DHD's fiscal year, and because there was an approvable budget in the Field Office, good cause was found to exist to permit the DHD to use 62% as its projected occupancy percentage.

33. Regulation: 24 CFR 990.109(e)(2).

Project Activity: Denver Housing Authority, Denver, CO.

Nature of Requirement: The regulation requires a PHA to include locally-generated income in its calculation of operating subsidy eligibility.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: April 24, 1992.

Reason Waived: The waiver allows the exclusion from the subsidy calculation of surcharge income from a cable TV service being offered to residents at the Denver Housing Authority. The provision of this cable service is seen as a desirable resident initiative project. The Central Resident Council (CRC) is expected to become responsible for the cable service contract with a year. Residents chosing cable service will pay a mandatory $2 surcharge as part of their monthly bill and this income, less reasonable administrative expenses, would be used by the CRC for resident initiatives such as the scholarship fund. This project will be operated with the full consultation and involvement of the CRC. This waiver is for a period not to exceed 12 months from the time the cable service is implemented. During this period, the housing authority shall train and prepare CRC to assume complete responsibility for the cable service contract.

[FR Doc. 92-16971 Filed 7-17-92; 8:45 am]

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federal register

Monday
July 20, 1992

Part VIII

# Environmental Protection Agency

## Incentives for Development and Registration of Reduced Risk Pesticides; Notice

VOL 57 ISS 139 JL 20 1992 UMI

**ENVIRONMENTAL PROTECTION AGENCY**

**[OPP-36184; FRL 4006-7]**

## Incentives for Development and Registration of Reduced Risk Pesticides

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice, request for comment.

**SUMMARY:** This notice solicits comment on potential policies employing economic incentives to encourage the development, registration and use of pesticides or pest control practices that present lower risks to public health and the environment. An additional, more specific goal of such policies would be to encourage the registration of lower risk substitutes for existing high-risk pesticides. Such policies would require the Agency to establish workable criteria for selecting promising registration candidates for this program and offering possible reductions in required data, accelerated processing by EPA, or other measures. Criteria might also be necessary for identifying existing pesticides that pose higher risks and that therefore are priority candidates for substitution. When less hazardous substitutes become available, the registration of such existing pesticides may be reassessed by the Agency. Finally, EPA may consider other approaches to improve the incentives for pesticide users to adopt pest control practices that are less likely to threaten public health or the environment. These may include changes to existing Agency policies that prohibit safety claims for pesticides. EPA requests public comments on both the specific questions raised in this notice and on any other ways the Agency might attain these goals. In view of the significance and complexity of this topic, EPA plans to hold a public workshop to further explore the issues and suggestions raised in the comments received. The time and place of the public workshop will be announced in a later **Federal Register** notice.

**DATES:** Written comments, identified by the document control number [OPP–36184], must be received on or before September 18, 1992.

**ADDRESSES:** By mail, submit written comments to: Public Response Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the project and any written comments will be available for public inspection in Room 1128 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Stephanie R. Irene, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 305–5447.

**SUPPLEMENTARY INFORMATION:**

### I. Background

#### *A. Introduction*

EPA registers (licenses the marketing of) pesticide products approved for specific uses under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). A pesticide is registered for control of particular pests (e.g., specific insects or weeds) on particular sites (e.g., specific crops, ornamentals or structures) at specified doses (e.g., pounds per acre). Registrations may also specify the use of particular pesticide application techniques, precautions or restrictions.

To obtain a registration for a pesticide under FIFRA, an applicant must demonstrate that the pesticide will perform its intended function without causing unreasonable adverse effects on the environment [FIFRA, section 3(c)(5)]. Such effects are defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide" [FIFRA, section 2(bb)]. This standard requires a finding that the benefits of use of the pesticide outweigh the risks of use, when the pesticide is used in compliance with the terms and conditions of registration, or in accordance with commonly recognized practices.

Pesticides are intended to prevent, destroy, repel or mitigate any pest, or to act as plant growth regulators, defoliants, or desiccants. Since they are designed to be biologically active, virtually all pesticides present some intrinsic risk incidental to their use. However, the procedures used for the registration of pesticide products are designed to identify potential risks to humans and the environment, and to ensure that when such pesticide products are used in accordance with label instructions, any risks are outweighed by the benefits obtained.

#### *B. Current Problems*

EPA recognizes that the current registration system has several weaknesses that may contribute to delays in developing and registering preferable lower risk pesticides and that may hamper the dissemination of adequate information to assist users or the public in making more knowledgeable pest control choices. A discussion of these problems follows.

1. *Barriers to market entry favor existing products.* Many people believe that the existence of one or more pesticides registered for a use often raises barriers to the introduction of an alternative product. This may occur because existing pesticides become familiar to users, making the penetration of the market by new products more difficult. In addition, because data requirements and registration costs have increased over the last decade, market entry costs for a new product may have become a substantial hurdle, whereas an older product which dominates the market may have borne lower testing and other registration costs. Moreover, all or some of such costs may have been recovered through sales of the older pesticide, allowing the older product to be sold more cheaply than a new one. EPA's accelerated reregistration program will reduce some of these differences in data requirements by effecting the updating of data bases for existing pesticides. However, existing products will remain on the market as additional data are generated, while new and unregistered alternatives cannot enter the market until all or most of the more recently imposed data requirements are satisfied. In addition, under existing law, the Agency must go through a costly and time-consuming process to cancel the registration of a pesticide. To address this problem, the President has proposed legislative reforms which include procedural changes enabling the Agency to act more quickly when necessary to remove an existing pesticide from the marketplace. In any case, we can expect that many older pesticides will continue to enjoy advantages over newer (including potentially safer) products that could replace them.

2. *Existing products may pose known and unknown risks.* While EPA's registration approach permits certain distinctions among registered products based on risk, such as restricted-use classification and label precautionary statements, the extent to which a pesticide is employed for registered uses is generally not limited. For example, a pesticide registered for use on wheat may ordinarily be lawfully used on any fraction of that crop, from 0 to 100 percent. This approach may lead to a perception that EPA is not concerned about potential risks stemming from the amount of use of a registered pesticide, provided it is used in a manner consistent with the instructions on its labeling. While FIFRA requires a finding by EPA that a pesticide's use will not cause unreasonable adverse effects on people or the environment, EPA recognizes that even the careful use of most existing pesticides may pose potential risk to public health and/or the environment. As mentioned above, pesticides, by their very nature, tend to be biologically active and thus tend to pose some risk to some species. For example, nearly all pesticides can affect some nontarget organisms. Moreover, some pesticides pose potential risks of some concern but were registered or allowed to remain on the market because their benefits were found to outweigh their risks, and lower risk, effective alternatives were not available.

It is also likely that some pesticides will be found in the future to have adverse effects or problematic exposures not now recognized, due to changes in our scientific understanding. In addition, data are not routinely available on the interactive (e.g., additive, synergistic, or antagonistic) effects of sequential or concurrent exposure to pesticides. For these reasons, EPA encourages users to employ pesticides only in amounts necessary to control pests and only when the need for them is such that nonchemical alternative practices would not be cost-effective. When pesticides are required, EPA believes that users should be encouraged to select the least risky among alternative effective pesticides, in combination with biological controls or pest control practices that will provide adequate protection.

3. *Structure of the registration process does not offer incentives.* The traditional registration and labeling process provides only limited information and few incentives to guide users in making environmentally desirable choices. Pesticide product labeling does provide a variety of indications of Agency concern, including indications of acute toxicity, selected warnings, and use precautions. It also indicates which products are restricted for sale to and use by certified applicators. Beyond this, however, pesticide labels usually provide no clear basis for comparison of risks among alternative pesticides. Indeed, EPA has forbidden direct or comparative safety claims in an attempt to avoid misleading labeling that could confuse users (40 CFR 156.10(a)(5)). Discussions with pesticide manufacturers, however, indicate that permitting truthful, non-misleading claims could have a strong effect on the marketing of pesticides as registrants seek competitive advantage.

In short, as a result of registration and reregistration practices as they affect old and new pesticides, pesticide producers may not have adequate incentives to get higher risk pesticides off the market and to develop less hazardous pesticides. In addition, pesticide users have not been provided adequate information through pesticide labeling or advertising to choose use practices likely to prevent needless pollution or risk to public health and the environment.

### *C. Goal*

Through this notice, the Agency seeks to develop policies to create improved economic incentives for the development, registration, and use of newer biological and other types of safer pesticides. It also seeks to encourage adoption of pest control practices such as integrated pest management (IPM) that may retard the development of pest resistance to pesticides and achieve lower overall risk. Such measures may offer the potential for important reductions in risk to public health and the environment. EPA is soliciting comments on how best to pursue this approach to its overall goal, possibly employing some or all of the potential positive and negative incentives described in this notice.

It is generally recognized that the microbial and biochemical pesticides present lower overall risk than most conventional chemical pesticides. They are typically microorganisms, pheromones, or other substances found in nature and are effective in amounts which are minimal when compared to more conventional chemicals. The resulting exposure to humans and the environment is usually very low, thus presenting little if any risk. Therefore, due to the nature of these microbial or biochemical pesticides, the Agency currently provides some incentives for their registration, such as reduced and tiered data requirements, expedited review times, and tolerance fee waivers in most cases. EPA would like to consider applying these types of incentives more broadly to encourage development of conventional pesticides which present markedly lower risk to human health and the environment.

The goal of encouraging the registration of lower risk pesticides is part of a broader Agency initiative to decrease human health and environmental risk through the prevention of pollution. Under the Pollution Prevention Act of 1990, EPA has issued a broad pollution prevention strategy and is developing more specific, detailed pollution prevention strategies for several economic sectors. One of these sector strategies will address pollution prevention in agriculture, with the goal of protecting human health and aquatic and terrestrial ecosystems while assuring the economic viability of a food and fiber production system providing supplies that are adequate, safe, diverse, and affordable. Clearly, pesticide use will be addressed in the strategy as one of the vital agricultural practices that must be managed carefully to protect the environment.

The Agency is also examining ways to assist pesticide users in making informed choices about products, potentially including pesticides which are environmentally preferable, by allowing appropriate information to be transmitted on product labels and in advertising. This may require EPA to change its prohibition of safety claims on pesticide labeling. An Agency work group—the Environmental Labeling Committee, has been established to define labeling terms, to develop guidelines for the use of such terms in environmental marketing, and to coordinate EPA activities to ensure consistency across Agency programs on labeling issues.

## II. Development of Solutions to the Problems

EPA intends to consider modifications in its licensing processes to encourage the development of safer pesticides in general. EPA is considering a two-fold strategy — the accelerated registration of lower risk pesticides in general, and the possible restriction or removal, based on risk-benefit analysis, of the higher risk pesticides for which safer substitutes become available. This approach is outlined below to give an idea of the types of changes EPA would consider. The Agency requests comments on this approach and invites suggestions of new and different approaches to meeting this goal.

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Additional details on possible approaches are presented in Unit III of this notice, Summary of Issues.

*A. Encouraging Development of Lower risk Pesticides*

EPA will consider encouraging the development of lower risk pesticides by streamlining registration and otherwise lowering barriers to market entry when applications for registration meet criteria indicating that the proposed product is likely to pose lower risk to public health and the environment than comparable products currently on the market.

1. *How to identify candidate lower risk pesticides.* For the Agency to give special treatment to applications for the registration of potential lower risk pesticides, it must be able to identify likely candidates efficiently. While this suggests a need for clear criteria, the task of defining lower risk for the wide variety of potential adverse effects of pesticides would be a formidable challenge. For example, to fully define lower risk, one might have to consider such factors as: dietary, occupational, and other human exposure sources; acute and chronic human health effects; lifetime individual risk; general population risk; risk to special subpopulations such as children or non-nursing infants; and risk to a broad range of ecological communities, endangered species and other nontarget species through exposure to ground water and surface water, spray drift, etc. The Agency also recognizes that it would be pointless to establish a set of criteria that virtually no conceivable products could satisfy. This suggests that any useful system of criteria may require a method for explicitly considering tradeoffs among these factors. This further complicates an already difficult task. EPA invites comments on possible specific approaches to such trade-offs or balancing among criteria, as well as suggestions for other approaches.

2. *Suggested EPA actions.* When an application (or potential application) for registration meets the criteria for a potentially lower risk pesticide, the Agency could use a number of measures to create economic incentives to accelerate development and reduce delays and costs of registration. Some examples of such measures are:

a. Counseling applicants to clarify registration requirements; providing advice to the applicants on testing strategies very early in the data development phase of the process.

b. Giving higher priority to reviews for such pesticides, and minimizing the time these applications would spend waiting for reviews to start. This could include the possible initiation of review prior to completion of the chronic studies to decrease time to market entry, if the interim reports indicate that significant long-term effects are unlikely.

c. Waiving fees, such as those for tolerance petitions that must accompany applications for food uses, provided the Agency does approve the registration application and continues to be convinced that the pesticide does present only lower risks.

d. Reducing or deferring data requirements, allowing use of alternative test methods, or permitting use of surrogate data when such measures are consistent with the Agency's obligation and ability to make the determination that the pesticide will not cause unreasonable adverse effects on the environment. That is, the Agency would consider reducing data requirements if information on the uses and properties of any pesticide under review indicated that certain data, which were routinely required of other pesticides, were not required in the current situation in order for the Agency to make the determination that the proposed use would not cause unreasonable adverse effects. Similarly, if available information on any pesticide permitted EPA to conclude that use of the product were unlikely to cause unreasonable adverse effects during any additional time EPA might consider for the generation of data, such a delay may be granted. If, however, additional information becomes available to the Agency indicating that these judgments either may be or were incorrect, any reductions, modifications, or deferrals of data requirements could then be reversed.

*B. Replacing Higher Risk Pesticides*

The objective of this element of the possible two-fold approach would be to consider regulatory action on those uses of higher risk registered pesticides which raise concerns about the risks posed. These might be uses for which no effective, safer alternatives currently exist. Since FIFRA requires risk-benefit balancing, there are circumstances in which some pesticides are allowed continued registration for certain uses even though they may present risks of concern to humans or the environment. These specific pesticide uses may result in exposures through application, reentry into treated areas by workers, residues in food, contamination of ground water or surface water, or other undesirable environmental impacts.

In such cases, the benefits of such pesticide uses may have been determined to outweigh the risks because there are no cost-effective and safer alternative pesticides or pest control practices available to replace these higher risk pesticides. In short, the risk-benefit standard for registration established in FIFRA is satisfied. Consequently, the Agency retains the registration of these pesticide uses. However, if alternatives become available, the risk-benefit balance may change and the Agency may have cause to reevaluate the risk-benefit equation for these higher risk pesticide uses, possibly resulting in regulatory action to cancel or restrict them. Therefore, the registration of safer and effective alternatives for these higher risk uses would create important opportunities for reducing overall risks from the use of pesticides while retaining pest control benefits. How might EPA include such considerations in its pesticide licensing program?

1. *How to identify higher risk uses as candidates for replacement.* One way in which EPA could identify such higher risk uses is to publish a list of these pesticide-use combinations. Publication of this information might focus public attention on higher risk pesticides and encourage the development of alternatives to their uses. Alternatively, the Agency could publish criteria for judging higher risk.

In addition to, or as an alternative to, a list of uses to be replaced, EPA might establish general criteria for applications that may qualify for preferential treatment. In addition to meeting these criteria, the applicants could be required to submit statements to the Agency describing in detail any high risk uses or pesticides which they believe their submission could replace and the risk reductions associated with their product which qualify it to be reviewed as a safer replacement.

Finally, the Agency could also periodically or continuously invite the public to nominate uses for a list based on submitted evidence of the risks of concern. In addition, the public, such as crop consultants, may be invited to submit data on the availability of significantly safer pesticides or pest control practices for listed uses that may justify reevaluation of risks and benefits under FIFRA, possibly leading to regulatory action.

The Agency recognizes that there are both advantages and disadvantages to publishing a list of specific higher risk uses. The principal advantage is that a list would most effectively inform industry of the pesticide uses that the Agency is seeking to replace, providing them with clear direction for their research and development efforts. A

specific list of higher risk uses could also reduce costs to EPA in screening applications claiming to replace such uses, since the applications would have to request registration for specific listed uses. In addition, a list could provide useful information to pesticide users and exposed persons to alert them to continuing EPA concerns, to possibly reduce use when the need is marginal, and to stimulate extra care in use.

On the other hand, the stigma of being included on such a list might be difficult to erase if, upon thorough review and evaluation of additional data that may have become available since the pesticide was last evaluated, the Agency finds that such a categorization is no longer warranted.

The Agency seeks public comment on both the advantages and disadvantages in general of creating a list of higher risk pesticide uses and the criteria which could be used to identify the components of such a list.

2. *Potential approaches to implementation.* If an application for registration of a pesticide is accompanied by documentation indicating that it may be safer and may effectively replace a higher risk use, EPA could subject the application to a preliminary screen for adequacy and credibility of the claim. If it passed that test, the application could receive review priority, waiver of fees, or other advantages designed to accelerate registration. Once the Agency finds that an application does in fact represent a potentially significant reduction in risk if used to replace a higher risk use, a critical phase of this approach would begin. At that point, EPA could initiate a formal review of the risk-benefit balance of the corresponding higher risk use(s), potentially resulting in the limitation or cancellation of such uses.

Any limitation on use, cancellation, or denial of future registration resulting from a review of the higher risk use would be based upon a finding under FIFRA of unreasonable adverse effects on human health or the environment given the availability of a safer substitute. Thus, the risk-benefit analysis for the higher risk pesticide would have changed such that the benefits may no longer outweigh the risks. In general, the availability of safer and effective alternative pest control products or cultural practices would be expected to lower the net benefits of the higher risk product significantly as weighed under FIFRA's risk-benefit balancing test for registration. That is, the consequences of canceling or restricting the higher risk pesticide would be diminished by the availability of the safer and effective alternative pesticide or pest control practice.

## III. Summary of Issues for Comment

The Agency invites comment on the approaches outlined in this notice. Specifically, EPA is interested in the public's views about such issues as: (1) Criteria for distinguishing lower risk and high-risk pesticides, (2) incentives and disincentives that would influence registrants and users to make decisions that favor lower risk pesticides, (3) whether the Agency should publish a list of higher risk pesticides, and (4) what the Agency should require from registrants seeking to register safer alternatives to high-risk pesticides.

In addition, commenters are encouraged to submit suggestions for other approaches designed to further the goals described in this notice.

### *A. Lower Risk Pesticides*

1. *Criteria.* A vital part of this overall policy will be the method for deciding what pesticides present sufficiently lower risk to merit the Agency's special efforts to encourage their registration and use. In this regard, EPA solicits comments on two questions:

a. What specific criteria should the Agency use to identify lower risk pesticide candidates for accelerated review and other special treatment from among applications for registration?

The following are among the criteria the Agency is considering for identifying pesticides that would be eligible for special treatment as lower risk products:

i. Very low acute and chronic toxicity in test animals.

ii. Little or no persistence in the environment.

iii. Little or no potential to contaminate ground and surface water.

iv. Very low potential toxicity to nontarget organisms (e.g., birds, fish, shrimp, bees, etc.).

v. Low exposure to humans and the environment; for example, because the product is formulated to reduce drift, is contained in a trap, or is otherwise formulated to reduce exposure.

vi. Likely to be more compatible with IPM strategies, resulting in reduced pesticide risk, and/or be less likely to result in the development of resistance by the target pest.

These are very general criteria and EPA solicits specific suggestions about how they might be defined and implemented. For example, the first criterion — very low acute and/or chronic toxicity in test animals — could be implemented using the following screening criteria:

- Acute toxicity category III or IV by all routes of exposure (40 CFR 156.10(h)(1)).
- Not a neurotoxicant in hen studies for organophosphates or in mammalian neurotoxicity studies for any chemical class.
- Not a skin sensitizer.
- Not a carcinogen.
- Not a reproductive/developmental toxicant.
- Not a mutagen in two or more tests.

Similarly, the Agency could develop specific criteria for ecological effects and environmental fate parameters. These might specify short half-lives, low mobility in soils, etc.

b. How can EPA determine that an application for registration merits accelerated treatment as a lower risk candidate without detailed review of submitted data? If the Agency accepts representations from an applicant as part of the screening process and these turn out to be incorrect following detailed review, what disincentives should the Agency employ to discourage such applicant behavior?

2. *Incentives.* Registrants may need some positive incentives to encourage them to develop and market lower risk pesticides. The Agency particularly solicits comments on the following questions concerning such incentives:

a. How might EPA create positive market incentives for lower risk pesticides? Should the current regulations as stated in 40 CFR 156.10 prohibiting direct and comparative safety/efficacy claims on labels or in advertising be relaxed and revised to encourage competition in the marketplace by allowing products to make safety/efficacy claims. If this approach were adopted, the Agency may choose to encourage and permit, without prior approval, labeling and advertising of comparative safety/efficacy claims. Permitting claims that a product is "lower risk" or "safer" than competing alternatives could have a strong effect on the marketing of the pesticide as registrants seek competitive advantage. Should the Agency's role be limited to enforcement efforts only, i.e., ensuring that claims are not false and misleading? What should be the role of the Federal Trade Commission under this approach? How can these positive incentives be created without undermining the precautionary emphasis of pesticide labeling, inviting abuse of unsubstantiated safety claims or causing confusion and dissemination of misinformation among consumers? More generally, what type of claims

should be permitted on pesticide labels and in advertising?

b. On what basis should EPA decide to reduce data requirements for apparently good candidates for lower risk pesticides? In other words, under what circumstances can EPA prudently determine the hazards associated with a pesticide without some of the specific data normally used to do so? Which data could be waived or deferred and under what circumstances? How can the Agency ensure that any data requirements that are waived or deferred for selected products can continue to be required for other pesticides, as well as readily reinstated by EPA as circumstances warrant?

*B. Higher Risk Pesticides*

1. *List of higher risk uses.* The possibility of publishing a list of pesticide uses that pose a higher level of risk raises a number of questions on which the Agency would welcome public comment:

a. Should the Agency publish a list of higher risk pesticides to guide public and private-sector research on safer substitutes, as well as user behavior?

b. How should the Agency formulate its criteria for placing a pesticide-use combination on such a list of higher risk pesticides?

The Agency is considering a number of ways in which this could be implemented. For example, the list of higher risk uses could identify categories of pesticides which are generally known to be more hazardous (e.g., fumigants, fungicides, nematicides, and most wood preservatives), or it could list individually such uses (e.g., tributyltin used in antifouling paint on certain types of boats). One specific approach for consideration involves listing any pesticide uses which, after evaluation in the special review process, were found to pose risks of concern, but whose registrations were maintained because of the lack of viable alternatives. (Special review is EPA's process for performing intensive risk-benefit analysis of registered pesticides that are suspected of causing unreasonable adverse effects on human health and/or the environment).

Candidates for the list could also be identified through the reregistration process pursuant to the 1988 amendments to FIFRA. In this process, EPA is required to review the reregistration eligibility of all pesticides registered prior to 1984. As a part of this process, registrants are required to identify which existing scientific studies will be used by them to support continued registrations and which data requirements will be filled by new studies. As all of these data are reviewed, additional candidates for the list of higher risk uses may be identified and added directly to the list. Alternatively, any such candidates could be referred to the special review process for application of the previously discussed criteria at the end of the review.

Another source of candidates for a list could be those pesticide uses for which EPA has published a Federal Register notice initiating the special review process. Although at this stage the special review process would not have been completed and the final risk-benefit determination would not have been made, the fact that the pesticide use(s) in question triggered the process could be sufficient to justify their identification as higher risk uses for which EPA might wish to encourage substitute pesticide or pest control practices, such as IPM programs. Nonetheless, it must be recognized that the special review process often entails the generation and consideration of additional information, and that the review may not conclude that the pesticide should continue to be regarded as posing higher risk.

c. If the Agency adopts a policy permitting applicants to identify the higher risk uses their proposed product would replace, what criteria should the applicants address in their justification for special treatment, and which should the Agency apply in evaluating such justifications?

2. *Incentives/Disincentives.* EPA recognizes that any policy for promoting pesticides must create a climate that makes these pesticides an attractive option for both registrants and users. The Agency invites comments on the following questions concerning incentives and disincentives:

a. What is the effectiveness of proposed incentives—lowering barriers to registration and the potential for regulatory action on selected existing higher risk uses — when safer substitutes are registered and alter the risk-benefit balance for the older pesticide uses? Other suggestions for incentives within the confines of the FIFRA authority, including informational activities, are also welcome.

b. Should EPA require especially hazardous pesticides (e.g., those bearing labeling for higher risk uses) to be labeled to highlight that fact to potential users? How should such negative messages be expressed? Should positive labeling be extended to those products that, while not innocuous, are significantly safer than higher risk pesticides? As mentioned above, the generic issue of labeling of products for their compatibility with the environment (e.g., "Environmentally Friendly") is being explored by an EPA-wide task force. This notice also invites comments on this subject so they may be conveyed to the task force. The topic may also be discussed at the public workshop planned to explore the issues raised in this notice and written comments on it.

c. If registration of a safer substitute leads to consideration of cancellation or restriction of a higher risk pesticide use, how should EPA address the potential impacts of such action on IPM and the development of pest resistance to available pesticides? That is, how should EPA consider the effect of a possible narrowing of the range of pest control options that may discourage some IPM practices under certain circumstances?

d. It is EPA's current position that the regulations under section 18 of FIFRA do not allow for the authorization of emergency exemptions based solely on the determination that the chemical being requested under section 18 is safer or environmentally preferable to the registered alternatives. Are there changes to the section 18 regulations that would allow authorization of emergency exemptions based on a determination that the chemical being requested is safer than the registered alternatives?

3. *Risk reduction.* Should the Agency define the level of risk reduction that a alternative should achieve when it is being compared to a higher risk counterpart? For example, is a one-order-of-magnitude cancer risk reduction enough to allow the safer alternative the advantage of expedited registration when a risk assessment itself bears at least that amount of uncertainty? How could EPA define equivalent levels of significant risk reduction for ecological effects and environmental fate? In short, how should EPA define "potentially significant reduction in risk"?

*C. General*

The Agency also invites public input on the following general questions:

1. EPA's goal is to provide incentives to the pesticide industry to develop, register, and encourage the use of pesticides which present lower risk to human health and the environment. What incentives could be offered to users to encourage them to make environmentally responsible decisions regarding pesticide usage and pest control practices, even when such responsible choices may be somewhat less cost-effective for them?

2. Should EPA require that applicants seeking the registration incentives offered by this new policy — especially those claiming that their products are safer alternatives to higher risk pesticides — submit product performance data? Currently, the Agency requires the registrant to generate these data, but they are not submitted to EPA for review unless the pesticide product is used to control microorganisms infectious to humans or is used to control vertebrates that may directly or indirectly transmit diseases to humans. EPA currently waives the submission of such performance data for most products. Should this policy be revised under the proposed policy? It can be argued that such a policy change, if limited to proposed products claiming to be safer, would erect unique barriers to registration of proposed safer replacements. As an alternative, would a delay, after introduction of the safer alternative and before any risk-benefit reevaluation of the existing use, permit users and the market to determine efficacy for most products, without EPA review of efficacy data? EPA could also consider requiring efficacy and comparative performance data for riskier competing products.

3. Should EPA consider the option of charging increased fees for special screening and accelerated review? While this policy could diminish economic incentives for seeking registration of safer pesticides, it would also reflect EPA's higher costs of processing and review and could discourage abuse of the special provisions for lower risk pesticides.

4. Are there other points of intervention where the Agency should adopt special measures to encourage the development and use of safer pesticides, e.g. experimental use permit process, tolerance process, etc.?

5. The Agency recognizes that, by adopting certain policies, it would be deliberately altering the existing pattern of competition within the pesticides industry. What steps would be appropriate to ensure that these changes are constructive? For example, how should EPA deal with pesticides that received special treatment as candidate products, but which do not retain that status after complete review? Such products could be said to have received competitive advantages that they did not deserve. What has that done to similar products that did not receive such advantages? What could the Agency do to prevent or correct such distortions of incentives?

This **Federal Register** notice is meant to solicit public participation in a project designed to encourage the development of pesticides. The project's goal is to develop policies under which EPA would provide economic incentives to registrants, including reducing compliance costs and red tape, to encourage innovation, leading to a net effect of economic growth with decreased risk to public health and the environment. The Agency invites the broadest possible comments on the subject of this notice. Commenters should not feel limited to comment on the issues or possible approaches discussed above.

Dated: July 13, 1992.

**Linda J. Fisher,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

[FR Doc. 92-17104 Filed 7-17-92; 8:45 am]

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Part IX

## Department of State

**Bureau of Politico-Military Affairs**

**22 CFR Part 121**

**Amendment to the International Traffic in Arms Regulations (ITAR), the United States Munition List; Interim Final Rule**

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

22 CFR Part 121

[Public Notice PN 1662]

## Amendment to the International Traffic in Arms Regulations (ITAR), the United States Munitions List

**AGENCY:** Department of State.

**ACTION:** Interim final rule.

**SUMMARY:** This rule amends the regulations implementing section 38 of the Arms Export Control Act (AECA). It establishes a process for the expedited movement to the control of the Department of Commerce of mass market software with encryption capabilities which meet certain standards.

**EFFECTIVE DATE:** This interim final rule is effective immediately.

**FOR FURTHER INFORMATION:** Details regarding this notice may be obtained from James Andrew Lewis, telephone 202–697–6977 or Daniel L. Cook, telephone 703–875–6647, and details regarding the specified technical characteristics and the expedited commodity jurisdiction process may be obtained from Gary Oncale, Department of State, telephone 703–875–6644.

**SUPPLEMENTARY INFORMATION:** This rule amends the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and services. On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

> By June 1, 1991, the United States will remove from the U.S. Munitions List all items contained on the COCOM dual-use list unless significant U.S. national security interests would be jeopardized (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

The Department of State published in July, August, and September 1991 notices of proposed rule changes related to the coverage of articles in categories XII, VIII, XX, and XIII. This rule takes into consideration public comments received in response to these notices. It addresses the request of representatives of the mass-market software industry to relax AECA controls applicable to mass-market software with encryption and to expedite and improve the predictability of procedures to transfer export jurisdiction for such products from the Department of State to the Department of Commerce commodity Control List.

The Department of State has already transferred control of certain mass-marketed software with encryption, when limited to certain functions, to the Department of Commerce (see **Federal Register**, Vol. 57, No. 81/Monday, April 27, 1992/Rules and Regulations, Page 15233 for details). Significant national security interests warrant the continued control of mass-market software products with encryption which can be used to ensure the privacy of data on the U.S. Munitions List. Mass-market software products with encryption that have previously been granted transfers of commodity jurisdiction remain under Department of Commerce jurisdiction. All other such products are under the jurisdiction of the Department of State.

In response to mass-market software industry requests to recognize the particular requirement of that industry for expeditious and predictable export control procedures applicable to mass-market software with encryption, the Department of State has established a process for the expedited review and transfer as appropriate, to the jurisdiction of the Department of Commerce of mass-market software products with encryption that contain certain specified technical characteristics.

Requests to transfer commodity jurisdiction of mass-market software with encryption for privacy of data and the associated key management that meets the specified criteria will be granted on an expedited basis. The Department of State will expeditiously process such a request to verify that the product meets the specified criteria and shall transfer jurisdiction of products so verified to the Department of Commerce.

This amendment involves a foreign affairs function of the United States and is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554.

### List of Subjects in 22 CFR Part 121

Arms and munitions, Classified information, Exports.

For the reasons set out in the preamble, 22 CFR part 121, § 121.1 is amended to read as follows.

## PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

**Authority:** Section 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311, 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658.

2. In § 121.1, a note will be added to Category XIII (b)(1) to read as follows:

### § 121.1 General. The United States Munitions List.

* * * * *

Category XIII—Auxiliary Military Equipment

* * * * *

(b) * * *

(1) * * *

**Note:** A procedure has been established to facilitate the expeditious transfer to the Commodity Control List of mass market software products with encryption that meet specified criteria regarding encryption for the privacy of data and the associated key management. Requests to transfer commodity jurisdiction of mass market software products designed to meet the specified criteria may be submitted in accordance with the commodity jurisdiction provisions of § 120.5. Questions regarding the specified criteria or the commodity jurisdiction process should be addressed to the Office of Defense Trade Controls. All mass market software products with cryptography that were previously granted transfers of commodity jurisdiction will remain under DOC control. Mass market software governed by this note is software that is generally available to the public by being sold from stock at retail selling points, without restriction, by means of over the counter transactions, mail order transactions, or telephone call transactions; and designed for installation by the user without further substantial support by the supplier.

Dated: July 6, 1992.

**Richard A. Clarke,**

*Assistant Secretary of State for Politico-Military Affairs.*

[FR Doc. 92–17191 Filed 7–17–92; 9:34 am]

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## CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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| 1, 2 (2 Reserved) | (869-017-00001-9) | $13.00 | Jan. 1, 1992 |
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| *§§ 1.61-1.169 | (869-017-00085-0) | 33.00 | Apr. 1, 1992 |
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**5 CFR Par**

**RIN 3206-A**

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# Rules and Regulations

Federal Register
Vol. 57, No. 140
Tuesday, July 21, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 294**

**RIN 3206-AD63**

## Implementation of the Freedom of Information Act

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** On June 13, 1989, the Office of Personnel Management published proposed rules that (1) outline which material the Office of Personnel Management (OPM) generally makes available for public inspection and copying pursuant to the Freedom of Information Act (FOIA) and, (2) implement Executive Order 12600, concerning the release of confidential commercial information requested under the FOIA. After considering comments received after publication, OPM has revised its regulations accordingly. In addition, this revision reflects the replacement of the Index to Information with the Handbook of Publications, Periodicals, and FPM Issuances and an addendum, revises the list of key officials in § 294.107, and updates the citation in § 294.111(b).

**EFFECTIVE DATE:** This rule becomes effective August 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** C. Ronald Trueworthy, 703–908–8550.

**SUPPLEMENTARY INFORMATION:** OPM published proposed rules with request for comment in the June 13, 1989, **Federal Register** (54 FR 25120). The proposed rules included changes to § 294.106 of OPM's Freedom of Information Act (FOIA) regulations, "Handbook of Publications, Periodicals, and FPM Issuances and Addendum," to reflect more clearly OPM's practices and the requirements of the FOIA as to what is made available for public inspection and copying when the material is not published or offered for sale. In addition, the proposed rules added § 294.112, "Confidential commercial information," to comply with E.O. 12600. Section 7 of E.O. 12600 directed each executive department and agency subject to FOIA, to establish by regulation, after notice and public comment, procedures for notifying submitters of records containing confidential commercial information, when those records were requested under the FOIA and it was determined that the records may have to be disclosed. Three organizations (a union, a public citizens group, and a reporters committee) commented on the proposed regulations.

In the interest of clarity, OPM published subparts A and D of part 294 of its regulations in their entirety, but asked for comments only on §§ 294.106 and 294.112. Two organizations (the union and the public citizens group) provided comments on other sections of the regulations. However, those comments, on sections other than §§ 294.106 and 294.112, are outside the scope of this rulemaking.

The following paragraphs discuss comments received on OPM's regulations according to the section involved.

Section 294.106—Handbook of Publications, Periodicals, and FPM Issuances and Addendum. One commentor suggested that the language used in § 294.106(a)(1) be more explicit by deleting the word "generally" and the phrase "which are relied on and cited by the OPM as precedent." OPM agrees with this suggestion, in that it is consistent with the terms of the FOIA, and has made the changes accordingly.

The same commentor recommended that the language in § 294.106(a)(2) incorporate the precise statutory categories of material exempt on the basis of preventing a clearly unwarranted invasion of personal privacy. In response to this comment, we have revised § 294.106(a)(2) to conform more precisely with the terms of the FOIA, at 5 U.S.C. 552(a)(2), regarding the removal of identifying details from opinions, statements of policy, interpretations, or staff manuals or instructions. This commentor also recommended that "or where release is not in accordance with OPM regulations, administrative staff manuals or instructions referenced in subpart D of 5 CFR part 294" be removed as not supported by statute. OPM has reworded the language in this section so that only the FOIA's exemptions will be the basis for withholding information.

Section 294.112—Confidential commercial information. One commentor objected to the 10-day response time specified in § 294.112(h) as requiring de facto violation of both the Freedom of Information Act and E.O. 12600. They state that giving a submitter 10 days to object, after being notified that a request has been received, prevents OPM from meeting the mandated time limits of the FOIA when business information is requested. OPM has addressed this concern by revising § 294.112(h) to afford the submitter "a reasonable period of time" to object.

The same commentor objected to the requirements of § 294.112(k), which states that OPM will not "officially" receive a request or appeal until the expiration of the time allowed submitters to object to release of confidential commercial information. After further consideration, we have decided to delete § 294.112(k) from the final regulation.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

### List of Subjects in 5 CFR Part 294

Freedom of information.

U.S. Office of Personnel Management.

**Constance Berry Newman,**

*Director.*

Accordingly, OPM is amending 5 CFR part 294 as follows:

## PART 294—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority for part 294 is revised to read as follows:

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**Authority:** 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502, as amended by the Freedom of Information Reform Act of 1986, Pub. L. 99–570, and E.O. 12600, 52 FR 23781 (June 25, 1987).

2. Section 294.106 is revised to read as follows:

**§ 294.106 Handbook of Publications, Periodicals, and FPM Issuances and addendum.**

(a)(1) Annually, OPM publishes OPM–AG–PSD–01, "Handbook of Publications, Periodicals, and FPM Issuances," and accompanying addendum. This handbook and addendum lists material published and offered for sale are available for public inspection or copying. Unless the material is published and offered for sale, OPM makes available for public inspection and copying:

(i) Final opinions made by OPM in the adjudication of cases;

(ii) OPM policy statements and interpretations adopted by OPM but not published in the **Federal Register**; and

(iii) OPM administrative staff manuals and instructions that affect a member of the public.

(2) To the extent required to prevent a clearly unwarranted invasion of personal privacy, OPM may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction.

(b) A copy of this handbook and addendum is available at no cost from the—Publishing Management Branch, Office of Personnel Management, room B464, 1900 E Street, NW., Washington, DC 20415–0001.

(c) OPM indexes material in this handbook and addendum format for the convenience of the public. Indexing does not constitute a determination that all of the material listed is within the category that is required to be indexed by 5 U.S.C. 552(a)(2). Most of OPM's publications may be found in OPM's Library in Room 5H27 at the address listed in paragraph (b) of this section.

(d) As provided by 5 U.S.C. 552(a)(2), OPM has determined that it is unnecessary and impractical to publish the "Handbook of Publications, Periodicals, and FPM Issuances" and addendum more frequently than annually because of the small number of revisions that occur.

3. Section 294.107 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 294.107 Places to obtain records.**

* * * * *

(b) The following is a list of key Washington, DC, officials of OPM and their principal areas of responsibility. Address requests for records to the appropriate official using the official's title and the following address: Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

| Send to— | For subject-matter about— |
|---|---|
| Associate director for administration. | Administrative services; information management; and personnel. |
| Associate director for retirement and insurance. | Retirement; life and health insurance. |
| Associate director for personnel systems and oversight. | Personnel management in agencies; pay; position classification; wage grade jobs; performance management; and employee and labor relations. |
| Assistant director for workforce information. | Governmentwide personnel statistics; official personnel and employee medical folders. |
| Associate director for investigations. | Background investigations and related records on individuals. |
| Associate director for career entry. | Nationwide examining and testing for employment; promotions; administrative law judges; affirmative employment programs for minorities, women, veterans, and the handicapped. |
| Chief financial officer | Financial management. |
| Director for human resources development. | Training, education, and development; senior executive service. |
| Director, Washington area service center. | Examining, testing, and training operations in Washington, DC. |

(c) Direct requests for records on subjects not specifically referred to in this section or in the handbook or addendum, to Plans and Policies Division (CHP–500), Office of Information Resources Management, Administration Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

* * * * *

4. In § 294.111 paragraph (b) is revised to read as follows:

**§ 294.111 Custody of records; subpoenas.**

* * * * *

(b) See 5 CFR part 297, Subpart D—Disclosure of Records, of this title, for the steps other officials should take on receipt of a subpoena or other judicial order for an Office record.

5. Section 294.112 is added to read as follows:

**§ 294.112 Confidential commercial information.**

(a) In general, OPM will not disclose confidential commercial information in response to a Freedom of Information Act request except in accordance with this section.

(b) The following definitions from Executive Order 12600, apply to this section:

(1) *Confidential commercial information* means records provided to the Government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information, directly or indirectly, to OPM. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(c) Submitters of information shall designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of their submissions that they consider to be confidential commercial information. Such designations shall expire 10 years after the date of submission unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(d) OPM shall, to the extent permitted by law, provide prompt written notice to an information submitter of Freedom of Information requests or administrative appeals if:

(1) The submitter has made a good faith designation that the requested material is confidential commercial information, or

(2) OPM has reason to believe that the requested material may be confidential commercial information.

(e) The written notice required in paragraph (d) of this section shall either describe the confidential commercial material requested or include as an attachment, copies or pertinent portions of the records.

(f) Whenever OPM provides the notification and opportunity to object required by paragraphs (d) and (h) of this section, it will advise the requester that notice and an opportunity to object are being provided to the submitter.

(g) The notice requirements of paragraph (d) of this section shall not apply if:

(1) OPM determines that the information should not be disclosed;

(2) The information has been lawfully published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(4) The information was submitted on or after August 20, 1992, and has not been designated by the submitter as

exempt from disclosure in accordance with paragraph (c) of this section, unless OPM has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such a case, OPM shall, within a reasonable number of days prior to a specified disclosure date, notify the submitter in writing of any final administrative decision to disclose the information.

(h) The notice described in paragraph (d) of this section shall give a submitter a reasonable period from the date of the notice to provide OPM with a detailed written statement of any objection to disclosure. The statement shall specify all grounds for withholding any of the material under any exemption of the Freedom of Information Act. When Exemption 4 of the FOIA is cited as the grounds for withholding, the specification shall demonstrate the basis for any contention that the material is a trade secret or commercial or financial information that is privileged or confidential. It must also include a specification of any claim of competitive harm, including the degree of such harm, that would result from disclosure. Information provided in response to this paragraph may itself be subject to disclosure under the FOIA. Information provided in response to this paragraph shall also be subject to the designation requirements of paragraph (c) of this section. Failure to object in a timely manner shall be considered a statement of no objection by OPM, unless OPM extends the time for objection upon timely request from the submitter and for good cause shown. The provisions of this paragraph concerning opportunity to object shall not apply to notices of administrative appeals, when the submitter has been previously provided an opportunity to object at the time the request was initially considered.

(i) OPM shall consider carefully a submitter's objections and specific grounds for nondisclosure, when received within the period of time described in paragraph (h) of this section, prior to determining whether to disclose the information. Whenever OPM decides to disclose the information over the objection of a submitter, OPM shall forward to the submitter a written notice, which shall include:

(1) A statement of the reasons why the submitter's disclosure objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

(j) OPM will notify both the submitter and the requester of its intent to disclose material a reasonable number of days prior to the specified disclosure date.

(k) Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, OPM shall promptly notify the submitter.

[FR Doc. 92-17034 Filed 7-20-92; 12:01 pm]
BILLING CODE 6325-01-M

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**5 CFR Part 531**

**RIN 3206-AE24**

## Pay Under the General Schedule; Interim Geographic Adjustments

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing final regulations on the interim geographic adjustments (IGA's) authorized by section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) and Executive Order 12786 of December 26, 1991. The final regulations establish rules for applying these adjustments to General Schedule (GS) employees in the following Consolidated Metropolitan Statistical Areas (CMSA's): New York-Northern New Jersey-Long Island, NY-NJ-CT; San Francisco-Oakland-San Jose, CA; and Los Angeles-Anaheim-Riverside, CA.

**EFFECTIVE DATE:** These regulations are effective on the first day of the first pay period beginning on or after August 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Belva MacDonald, (202) 606-2858.

**SUPPLEMENTARY INFORMATION:** Section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) authorized the President, at his discretion, to establish interim geographic adjustments (IGA's) of up to 8 percent of basic pay in one or more Consolidated Metropolitan Statistical Areas (CMSA's), Primary Metropolitan Statistical Areas (PMSA's), or Metropolitan Statistical Areas (MSA's) that meet certain criteria. On December 12, 1990, the President issued Executive Order 12736, establishing IGA's of 8 percent in three CMSA's and authorizing OPM to prescribe regulations governing the application of IGA's to General Schedule (GS) employees, including the extent to which IGA's shall be payable to employees receiving special salary rates. Executive Order 12786 of December 26, 1991, reiterated these provisions and also delegated to OPM the authority to extend IGA's to employees in other categories of positions.

The three CMSA's in which IGA's have been authorized by the President are New York-Northern New Jersey-Long Island, NY-NJ-CT; San Francisco-Oakland-San Jose, CA; and Los Angeles-Anaheim-Riverside, CA.

Interim regulations implementing IGA's were published on January 9, 1991 (56 FR 771). The 60-day public comment period ended on March 11, 1991. Comments were received from seven Federal agencies and one labor organization. These comments, as well as certain changes and clarifications of the interim regulations, are summarized below.

### Boundaries of Interim Geographic Adjustment Areas

Two agencies recommended that the regulations identify covered areas by their standard geographic location codes. OPM agrees and will issue and distribute to agencies a list of standard geographic location codes for the IGA areas as reported to the Central Personnel Data File (CPDF).

An Agency and the labor organization suggested that Mercer County, NJ, be included in the New York CMSA. Since the Office of Management and Budget (OMB) defines CMSA's, PMSA's, and MSA's, OPM does not have authority to modify these definitions.

Two agencies commented that Federal agencies should be permitted to request deviations in the boundaries of IGA areas in cases where adverse impact can be clearly demonstrated. FEPCA specifically limits IGA areas to CMSA's, PMSA's, and/or MSA's. OPM does not have authority to modify the boundaries of these areas and cannot authorize such deviations.

An agency asked that the boundaries of IGA areas be made consistent with those established for special salary rate authorizations. The three IGA areas designated by the President are CMSA's defined by OMB, and IGA's apply to all GS positions in each area. Special salary rates are established on a local, nationwide, or worldwide basis to address the staffing problems of one or more agencies with respect to specific occupations and grades. OPM has already informed Federal agencies that, in the future, we will no longer accept special rate requests in which the geographic area to be covered includes both inside and outside an IGA area. Separate requests must be submitted for such areas, and each such request will be considered on its own merits. OPM also plans to review the geographic

coverage of all existing special rates authorizations before the implementation of the new locality pay system under FEPCA in January 1994.

**Extension of Interim Geographic Adjustments to Other Areas**

An agency commented that San Diego, Santa Barbara, Philadelphia, Baltimore, the Boston/Nashua area, Chicago, Dallas/Ft. Worth, the State of Connecticut, and Washington, DC, need immediate relief.

Section 302(b) of FEPCA provided that in determining areas where an IGA is needed, the President shall consider available evidence of significant pay disparities, including Bureau of Labor Statistics (BLS) information on pay relatives, relevant commercial surveys, and recruitment or retention problems. In response to a congressional request, OPM reviewed 18 additional cities using these criteria. In January 1992, OPM issued a report to the President and Congress recommending no extension of IGA's to other areas at this time.

**Interim Geographic Adjustments and Special Salary Rates**

An agency suggested that OPM designate IGA's as basic pay for the computation of the highest previous rate of pay for employees who are reassigned out of an IGA area not at their request. The agency argued that this measure would be consistent with the treatment of a special salary rate as the highest previous rate in exceptional cases when employees are reassigned to nonspecial rate positions and the action serves the interest of the agency.

The IGA's granted to GS employees in the Los Angeles, San Francisco, and New York CMSA's are intended to alleviate the widespread disparities in pay and related problems of recruitment and retention in these particular areas before locality-based comparability payments become effective in January 1994. As a result, OPM considers it inappropriate to treat IGA's as basic pay for the computation of the highest previous rate of pay and thereby potentially continue the benefit of the IGA for employees who move to other geographic areas.

An agency commented that local special salary rates based on the inability to recruit and retain because of remoteness or working conditions, as opposed to a pay disparity, should not be offset by IGA's. Local special salary rates are set at a level relative to the local labor market. If problems of recruitment and retention of well-qualified personnel continue for reasons other than disparities in pay, an agency may request higher special salary rates and/or make use of other FEPCA authorities such as recruitment bonuses and retention allowances.

An agency stated that employees on a local special salary rate authorization and entitled to retained pay under 5 CFR part 536 can receive a greater salary increase than others on the same authorization. The agency contended that employees continuing on retained pay receive one-half of the special salary rate increase plus the full 8 percent IGA, but those employees not entitled to retained pay receive the greater of the adjusted special salary rate or the pay for the corresponding grade and step of the General Schedule plus the 8 percent IGA.

Employees on retained pay under a local special salary rate authorization do not receive a greater salary increase than other employees on the same authorization. While employees on retained pay receive one-half of the special salary rate increase, those not on retained pay receive the full amount of the increase. In all cases, the total pay of an employee receiving a local special salary rate is an amount equal to the greater of (a) the adjusted annual rate of pay; or (b) his or her rate of basic pay under the local special salary rate authorization, without an IGA.

**Miscellaneous**

An agency commented that § 531.103(d), which states that the adjusted rate is payable only when the employee is in a pay status, was unnecessary. OPM believes that this provision is a useful reminder that an employee may not be paid an IGA during periods of absence without leave or leave without pay.

An agency asked whether a GS employee who was reduced in grade from an SES position and is entitled to pay retention under 5 CFR part 536 is eligible for an IGA. The answer is yes. Section 531.101 of the final regulations clarifies that the "scheduled annual rate of pay" includes a retained rate of pay under 5 CFR 359.705.

An agency asked how to compute overtime pay when an employee in an IGA area is paid above GS–10, step 1, but is ineligible for an IGA because he/she receives a local special salary rate under 5 U.S.C. 5305 that is higher than the adjusted annual rate of pay under the IGA regulations, and the local special salary rate authorization does not include GS–10. As stated in § 531.103(b)(3), the adjusted rate of pay is considered basic pay for purposes of computing the limitation on overtime pay under 5 U.S.C. 5542(a). This is true even if the employee does not actually receive the adjusted rate of pay due to receipt of a greater local special salary rate.

Finally, OPM is revising § 531.102(b), concerning the computation of hourly, daily, weekly, and biweekly adjusted rates of pay, to be consistent with the final regulations for "Special Pay Adjustments for Law Enforcement Officers in Selected Cities" published on January 22, 1992 (57 FR 2431).

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

**List of Subjects in 5 CFR Part 531**

Government employees, Wages, Adminstrative practice and procedure.

**Constance Berry Newman,**

*Director, U.S. Office of Personnel Management.*

Accordingly, OPM's interim regulations under 5 CFR part 531 published January 9, 1991, at 56 FR 771, are adopted as final with the following changes:

1. The authority citation for part 531 is revised to read as follows:

**Authority:** 5 U.S.C. 5115, 5307, 5338, and chapter 54; E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart A issued under sec. 302, Pub. L. 101–509, 104 Stat. 1462, and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), 5402, and 7701(b)(2);

Subpart C also issued under sec. 404, Pub. L. 101–509, 104 Stat. 1466;

Subpart D also issued under 5 U.S.C 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336.

2. In § 531.101, paragraph (c) under the definition of *Scheduled annual rate of pay* is revised to read as follows:

**§ 531.101 Definitions.**

* * * * *

Scheduled annual rate of pay, means—

* * * * *

(c) The retained rate of pay under part 536 of this chapter or 5 CFR 359.705, where applicable, exclusive of additional pay of any kind.

* * * * *

3. In § 531.102, paragraph (b) is revised to read as follows:

**§ 531.102 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.**

* * * * *

(b) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the employee's basis daily tour of duty;

* * * * *

[FR Doc. 92-17035 Filed 7-20-92; 12:01 pm]

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**5 CFR Parts 831 and 841**

**RIN 3206-AD65**

**Civil Service Retirement System and Federal Employees Retirement System; General Administration**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is adopting its interim rules relating to military service deposits under the Civil Service Retirement System (CSRS) and general administration of the Federal Employees Retirement System (FERS). The CSRS rules provide relief in cases where unusual circumstances prevent an individual from making the deposit for post-1956 military service before his or her separation for retirement; the FERS rules have general application to all types of FERS basic benefits. The topics covered include the regulatory structure for FERS, disclosure of information from retirement records, general application requirements, claims processing procedures, computation of interest, waiver of benefits, and State income tax withholding. These regulations are necessary to allow late military service deposits under CSRS where circumstances warrant, and to complete our FERS general administration regulations.

**EFFECTIVE DATE:** August 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Harold L. Siegelman, (FTS) 266-0299, or (202) 606-0299.

**SUPPLEMENTARY INFORMATION:**

**1. Background on the FERS Interim Regulations**

The Federal Employees Retirement System (FERS) Act of 1986, Public Law 99-335, created a new retirement system for Federal employees. Part 841 of title 5, Code of Federal Regulations, contains the rules that have general application to all types of FERS basic benefits.

On January 16, 1987, we published (at 52 FR 2058) interim regulations governing waiver of annuity benefits under the FERS Act of 1986. These interim regulations were subpart H of part 841.

On February 23, 1987, we published (at 52 FR 5432) interim regulations to provide for withholding of State income taxes from benefits payable under the FERS Act. These interim regulations provided the procedures that OPM will follow in entering into agreements with States to withhold State income taxes and in withholding those taxes from FERS benefits. These interim regulations, contained in subpart J of part 841, were identical to the corresponding provisions (subpart S of part 831) under the Civil Service Retirement System (CSRS).

On April 15, 1987, we published (at 52 FR 12132) interim regulations to implement provisions of the FERS Act of 1986 that provide that interest be included in amounts paid as FERS basic benefits or in amounts collected by FERS. These interim regulations, contained in subpart F of part 841, described the methodology for computing interest when interest must be paid or collected in connection with FERS basic benefits.

On May 21, 1987, we published (at 52 FR 19242) interim regulations covering the general "housekeeping" requirements of FERS, general application requirements, and claims processing procedures. The interim regulations were divided into three subparts. Subpart A contained the "housekeeping" rules including the regulatory structure for FERS, definitions that apply throughout the FERS regulations (parts 841 through 846), evidentiary requirements for documenting service histories, rules for disclosure of information from FERS records, rules for computing when time limits specified in parts 841 through 846 expire, and the order of priority for various obligations that can be satisfied from an annuity. On April 17, 1990, we published (at 55 FR 14229) final rules that among other things amended the description of the regulatory structure for FERS contained in subpart A. Subpart B contained the general application requirements applicable to all FERS basic benefits. On January 11, 1990, we published (at 55 FR 994) interim rules adding § 841.204 to subpart B. That section protects the rights of certain survivors of former employees who die after separation from Federal service with title to an immediate reduced annuity but who did not file an application for that annuity. On October 11, 1990, we adopted (at 55 FR 41179) § 841.204 with amendments. Subpart C contained claims processing procedures including information on where to file applications, and reconsideration and appeal rights.

Part 841 also contains four other subparts that are not now being adopted as final rules. Subpart D contains regulations to implement the Government cost provisions of the FERS Act of 1986. These rules provide the methodology for computing Government agencies' shares of the cost of funding basic FERS benefits, the notice that will be provided for changes in rates, the appeal rights available to agencies, and the initial rates applicable to all agencies. Subpart E contains regulations to implement the employee deduction and Government contribution provisions of the FERS Act of 1986. On July 6, 1987, we adopted (at 52 FR 25196) subparts D and E as final rules.

Subpart G of part 841 contains regulations concerning cost of living adjustments to FERS basic benefits. On April 17, 1990, we adopted (at 55 FR 14229) subpart G as final rules.

On December 31, 1986, we published (at 51 FR 47190) subpart I as interim regulations. This subpart establishes procedures for handling court-ordered payments for benefits under FERS. Subpart I was intended to implement provisions of the FERS Act of 1986 that require OPM to honor court orders entitling former spouses or legally separated spouses to benefits. On December 30, 1986, we had published (51 FR 47021) proposed regulations that would change our procedures for handling State court orders affecting retirement benefits under the CSRS. The interim FERS regulations on court orders affecting retirement benefits conformed with the proposed CSRS regulations. However, on September 9, 1991, we withdrew (at 56 FR 45883) the proposed CSRS regulation, and on January 2, 1992, we published (at 57 FR 120) proposed regulations for handling court-ordered benefits under both CSRS and FERS. The proposed rules would create a new part 838 of title 5 of the Code of Federal Regulations, and would eliminate subpart I of part 841. Accordingly, we are not adopting subpart I as final rules at this time.

**2. Comments on the FERS Interim Regulations**

We received a total of six comments on the four sets of interim regulations covered by this final rule.

One commenter objected to the stringent requirements under § 841.106(b) that must be met before OPM can accept secondary evidence in place of primary evidence in the form of official records, and suggested that the language in § 831.103(b), the

corresponding CSRS regulations, be substituted. Section 841.106(b) was written to clarify the requirements for the use of secondary evidence. Section 831.103(b) was intended to allow the use of secondary evidence only if the records repository has certified that the official records have been lost, destroyed, or are incomplete. We intend to amend the CSRS regulations to make a similar clarification.

In addition, we are amending § 841.106(b) to eliminate the description of a procedure that no longer applies. As amended, § 841.106(b) provides that the certification by the official records repository for the records in question that the records have been lost, destroyed or are incomplete is a prerequisite to the acceptance of any evidence other than the official records.

The commenter also questioned the portion of § 841.108 that provides for disclosure of information from retirement records only to the individual who is the subject of the record. The commenter was concerned that executors, administrators, or survivors of a deceased employee would be denied access to these records. The commenter has misinterpreted the regulation. Section 841.108(a)(2) states that we will, except for certain medical records, disclose the contents of the retirement records to the individual to whom the records apply. It does not prohibit disclosure to others. Section 841.108(a)(3) states that we will disclose information from the records in accordance with the Privacy Act of 1974 (5 U.S.C. 552a). Subsection (a)(2) of the OMB Privacy Act Guidelines (Circular No. A-108, published at 40 FR 28948) provides that the privacy protections apply only while the subject of the record is living. Section 841.108 does not restrict access to records after the death of the subject of the records.

One commenter objected to two aspects of § 841.306. The commenter questioned the portion of that section and § 841.305 that permits OPM to decide whether a decision should be subject to reconsideration or an immediate appeal to the Merit Systems Protection Board (MSPB). We believe that we should retain flexibility to permit an immediate appeal to MSPB in cases in which the additional step of an OPM reconsideration would be inappropriate. Sections 841.305(a) and 841.306(a) provide such flexibility to speed up the appeal process by issuing a final OPM decision at the initial stage in cases where this is warranted. MSPB offers a de novo review of the decision with the right to a hearing, thus ensuring that the claimant's position may be fully reviewed at the appeal level.

The commenter also objected to the commencing date of the 30-day period in which a reconsideration request must be filed under § 831.306(d). The commenter suggested that the period commence when the claimant receives the decision rather than when we issue it. The commenter's suggestion would create unnecessary difficulties in documenting the commencing date of the 30-day period. We can readily identify the date of issuance, but establishing the date of receipt would require certified mail, which is both expensive and an administrative burden. The regulation provides for waiver of the time limit when circumstances beyond the claimant's control, such as delays in receiving decisions, prevent a timely request for reconsideration.

The remaining comments suggested editorial changes.

### 3. Other FERS Changes

We have removed § 841.110 that established the order of priority for withholding from an annuity when the annuity is not large enough to cover all withholdings. We are reconsidering the order of priority and will issue a new order of priority in connection with a corresponding CSRS provision later.

The amendment to subpart F corrects two incorrect references on interest on service credit deposits.

### 4. Military Deposits

OPM published (at 49 FR 20631) interim regulations on May 16, 1984, providing relief to retirees who, because of administrative error or delay, were unable to make a deposit for post-1956 military service prior to their separation. Such employees may make a deposit to their former employing agency after separation, so long as it is completed within the time limit set by OPM when OPM determines that an administrative error has been made. We did not receive any comments.

### Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities because it only affects retirement payments to retired Government employees, spouses, and former spouses.

### List of Subjects

*5 CFR Part 831*

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Handicapped, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement, Survivors.

*5 CFR Part 841*

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

**Constance Berry Newman,**

*Director.*

Accordingly, OPM is adopting its interim rules under 5 CFR part 831 published on May 16, 1984, at 49 FR 20631 and under part 841 published on January 16, 1987, at 52 FR 2058; on February 23, 1987, at 52 FR 5432; on April 15, 1987, at 52 FR 12132; and on May 21, 1987, at 52 FR 19242; as amended on January 11, 1990, at 55 FR 994; April 17, 1990, at 55 FR 14229; and October 10, 1990, at 55 FR 41179; as final rules with the following changes:

## PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

1. An authority citation for part 841 continues to read as follows:

**Authority:** 5 U.S.C. 8461; § 841.108 also issued under 5 U.S.C. 552a; subpart D also issued under 5 U.S.C. 8423; § 841.504 also issued under 5 U.S.C. 8422; § 841.507 also issued under section 505 of Public Law 99-335; subpart J also issued under 5 U.S.C. 8469.

### Subpart A—General Provisions

2. In section 841.106, paragraph (b)(2) is revised to read as follows:

**§ 841.106 Basic records.**

* * * * *

(b) * * *

(2) When the official records repository for the records in question certifies that the records in question are lost, destroyed, or incomplete, OPM will accept such inferior or secondary evidence that it considers appropriate under the circumstances, and such inferior or secondary evidence is then admissible.

* * * * *

3. Section 841.110 is removed.

### Subpart F—Computation of Interest

**§ 841.604 [Amended]**

4. Section 841.604 is amended by removing "§ 842.304" and "§ 842.306" and inserting, in their place, "§ 842.305" and "§ 842.307" respectively.

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1435

**RIN 0560-AC58**

### Sugar and Crystalline Fructose Information Reporting and Recordkeeping Requirements

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final, with changes, an interim rule published at 56 FR 47351-47375 on September 19, 1991. This final rule sets forth requirements for the monthly reporting by sugarcane and sugar beet processors and by cane sugar refiners of information on sugar imports and other receipts, processing inputs, production, distribution, stocks, and plant capacities. In addition, manufacturers of crystalline fructose are required to submit monthly reports of their distribution of crystalline fructose.

**EFFECTIVE DATE:** July 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert Barry, Director, Sweeteners Analysis Division, Agricultural Stabilization and Conservation Service, room 3741, South Agriculture Building, U.S. Department of Agriculture, Washington, DC; telephone: (202) 720-3391.

**SUPPLEMENTARY INFORMATION:**

### Summary of the Provisions of This Final Rule

With the amendments made necessary by the comments referred to below and minor, nonsubstantive language and format changes for purposes of clarity, the interim rule published in the **Federal Register** at 56 FR 47351 on September 19, 1991, as modified by the final rule published at 56 FR 59196 on November 22, 1991, is adopted as a final rule. This final rule sets forth requirements for the monthly reporting, by sugarcane and sugar beet processors and by cane sugar refiners, to the Commodity Credit Corporation, of information on sugar imports and other receipts, processing inputs, production, distribution, stocks, and plant capacities. In addition, manufacturers of crystalline fructose will be required to submit monthly reports of their distributions of crystalline fructose. Initial reports will be due on 15 days after publication of this rule in the **Federal Register**. Failure to furnish the information may result in a civil penalty being imposed upon the processor, refiner, or manufacturer.

The information collected pursuant to this subpart will be used primarily in administering the domestic price support program for sugarcane and sugar beets, making the necessary estimates and determinations required by the standby marketing allotment program for sugar and crystalline fructose, monitoring to detect whether imported articles are causing material interference with these programs, and establishing the total quota amount for entries of imported sugar under the lower-tier duties of the tariff-rate quota for imported sugars, syrups, and molasses. Abstracts of the data collected will be published by USDA on a monthly and cumulative basis.

This final rule provides that information needs will be achieved by applicable persons completing new CCC forms (CCC-831 through CCC-833, and CCC-835). Copies of these forms are published immediately following this final rule.

### Rulemaking Analyses

This final rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that the provisions of this interim rule will not result in: (1) An annual effect to the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, an Environmental Assessment and an Environmental Impact Statement are not necessary for this final rule.

[The Office of Management and Budget (OMB) has assigned approval number 0560-0138 for the information collections submitted for review during the interim stage of this rule.] The revised paperwork and recordkeeping requirements imposed by this final rule have been resubmitted to OMB for expedited review under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

The public reporting burden for these collections of information is estimated to vary widely among respondents depending on the number of factories reported under each responding company. Most companies have only one factory but some have as many as eight. The mean and median reporting burdens estimated for each reporting form, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, are as follows:

| | Estimated burden | |
|---|---|---|
| | Mean | Median |
| CCC-831 Sugar Beet Processors | 90 | 75 |
| CCC-832 Sugarcane Processors | 35 | 30 |
| CCC-833 Sugar Distributions | 145 | 60 |
| CCC-835 Cane Sugar Refiners | 80 | 60 |

Form CCC-834, Crystalline Fructose Distributions, has been eliminated. Only total distribution is required to be reported by each of two manufacturers of crystalline fructose, at an insignificant burden.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB) #0560-0138), Washington, DC 20503.

The program covered by this final rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

### Statutory Background

Various federal statutes impose responsibilities on the Secretary of Agriculture with respect to supporting and protecting the domestic sugar industry. These responsibilities of the Secretary, discussed in detail in the preamble to the interim rule, make necessary the collection of comprehensive information with respect

to the supply and demand for sugar. In summary, the Secretary of Agriculture is required by law to achieve, without significant expenditure of federal funds, a range of objectives with respect to maintaining market prices for raw and refined sugar, controlling domestic and imported supplies, and meeting the international obligations of the United States. Under these circumstances, it is necessary for the Secretary to collect comprehensive information on the activities of the principal domestic participants in the U.S. sugar market.

**Comments on the Interim Rule**

Interested persons were provided 30 days to submit written comments concerning the interim rule. Written comments on the interim rule were received from six organizations:

1. American Sugar Cane League, a trade association representing all Louisiana processors of sugarcane and farmers representing 95 percent of State sugarcane output.
2. Sugar Cane Growers Cooperative of Florida, representing some 57 growers.
3. Hawaiian Sugar Planters' Association, representing 13 sugar plantation operations in Hawaii and the C&H Sugar Company which provides terminal storage, ocean transportation, refining, and marketing services.
4. U.S. Beet Sugar Association, representing 11 companies operating 36 factories accounting for 100 percent of U.S. beet sugar production.
5. U.S. Cane Refiners' Association.
6. A.E. Staley Manufacturing Company, a manufacturer of crystalline fructose and corn sweeteners.

In addition, meetings were held with company representatives of A.E. Staley on October 24, 1991; U.S. Cane Refiners' Association on October 28, 1991; and the U.S. Beet Sugar Association on October 29, 1991. Numerous telephone calls were made to industry representatives and sugar industry experts to clarify or verify information relating to the definitions and categories of data in the reporting forms. The major comments received and responses to them are as follows:

*Comment (a)*

A trade association repeated the industry suggestions, which had been made at the April 19, 1991, prior consultations, that USDA provide a single collection point for data on sugar.

*Response*

While some consolidation of data collection into ASCS has been accomplished, other data activities are impractical to transfer to ASCS. Other agencies in USDA are better advantaged to collect and disseminate information which relates to their program area. Among those data are crop production reports, which rely on surveys by the National Agricultural Statistics Service (NASS); trade data, relating to the Foreign Agricultural Service's (FAS) administration of sugar import programs; and cost of production data, based on periodic surveys by Economic Research Service (ERS). Data to be consolidated include NASS's *Sugar Market Statistics*, ERS's collection of beet sugar industry data for establishing regional loan rates and support levels (ASCS had already been receiving the data for cane sugar), and ERS's calculation of regional loan rates and support levels.

*Comment (b)*

Three respondents strongly objected to providing data on sugar supply, distribution, and processing capacity for individual plants within a company. Reasons cited were one or more of the following: providing plant data would be difficult, time-consuming, and unduly burdensome and the data would be proprietary.

*Response*

Data by plant would be helpful in analyzing the industry but are not absolutely required to carry out program management. Should there be compliance issues requiring such data, USDA could check into company records. One exception, however, is the need to collect production data by plant once a year in order to calculate regional loan rates.

Furthermore, in the case of physical processing capacity, there is no good reason why the data should not be provided. Such information by individual facility has been available from various sources, and it is merely a matter of requiring that such information be reported regularly so as to update and systematize the data. In order to reduce the reporting burden, the data will be requested only once a year.

*Comment (c)*

Two respondents asked that the reporting by cane refiners of receipts of raw sugar be on a State-by-State basis rather than by specific company. They claimed that reporting receipts by company would be burdensome and needlessly disclose proprietary information.

*Response*

Individual company data provide a cross-check on reports provided by individual cane processing companies and can help USDA ensure consistency of data. Cane refiners currently report receipts of raw sugar, by specific milling company, for the States of Louisiana and Texas (Texas has just one mill). However, receipts from Hawaii, Florida, and Puerto Rico are reported by State rather than by company, because the raw sugar from mills in those States is first transferred to a terminal before shipment to cane refiners. At the terminal, the raws are commingled and lose individual company identity by the time they are shipped to cane refiners. Accordingly, cane refiners will be asked to continue the established practice of reporting receipts by company for sugar from Louisiana and Texas, and by State terminals for sugar from Hawaii, Florida, and Puerto Rico.

*Comment (d)*

Three respondents objected to the interim rule's definition of raw sugar as that which tested less than 99.4 degrees by the polariscope (a measure of sucrose purity) and refined sugar as that which tested a minimum 99.4 degrees. It was indicated that refined sugar typically tests above 99.4 degrees, but that in any case refiners disagree as to the minimum polarity of refined sugar. All respondents said that the distinction between raw and refined should continue according to current practice; raw sugar is that which is to be further processed, and refined sugar is that which is not to be further refined or improved in quality. In short, refined sugar should be differentiated from raw on the basis of use rather than polarity.

*Response*

Typically, sugarcane is processed by a mill to produce raw sugar which is then further processed by a refinery into refined sugar. However, the purity of mill-processed sugar varies and some sugar, such as "plantation whites," has a high degree of purity. Some of the sugar produced by a mill may be used as direct-consumption sugar and not sugar for further processing. On the other hand, sugar of the same purity may be designated as raw because it is to be further processed. Accordingly, the established industry usage will be accepted and will be used for reporting purposes.

*Comment (e)*

The interim rule had included molasses (in terms of its sugar content) in the general definition of sugar because a new "desugaring" technology can extract sugar from molasses. Two respondents, however, state that only some of the molasses will be desugared and only when that sugar is available

should it be counted as part of the sugar supply.

*Response*

While the comment makes a good point, not all of the molasses should be excluded from the definition of sugar; specifically, edible molasses should continue to be defined as sugar. For sugar loan program purposes, USDA regulations have included edible molasses and cane syrup since the 1981 Farm Act, and such definition is continued in the 1990 Farm Act sugar loan program regulations, as well as the marketing assessment regulations. An insignificant amount of edible molasses (less than 1 percent of U.S. sugar production) and even less sugarcane syrup, is produced each year in the United States. Most of the edible molasses is produced by one company in Louisiana. Accordingly, the definition of sugar has been changed to include only edible molasses, and the definition of inedible molasses has been deleted.

*Comment (f)*

The interim rule requested the quantity of processed sugarcane and mill processing capacity be expressed in terms of net tons. One respondent objected to using net tons because, ever since the use of the core sampler method for testing sugarcane for sugar content in Louisiana, the processors no longer have the facilities to calculate trash content and convert gross tons processed into net tons. Another respondent, representing some of the Florida growers, also expressed preference for gross tons but, in subsequent discussion, indicated either measure was feasible.

*Response*

Gross tons would not be as meaningful a measure as net tons of sugarcane, and in the case of Hawaii where trash can account for some 40 percent of gross tonnage, the use of gross tons would render the data almost meaningless. The problem is unique to Louisiana whose producers strongly object to using net tons.

NASS currently estimates sugarcane production in all States in terms of net tons. In Louisiana, NASS receives a gross tons estimate from the American Sugarcane League, and the NASS County Agent estimates a trash percentage to get net tons of sugarcane. Accordingly, all States should report in net tons, except Louisiana. Because of the unique situation there, a procedure will be developed following the current process used by NASS to derive net tons for Louisiana.

*Comment (g)*

Two respondents considered the request for data on imported sugarcane and sugar beets to be unnecessary. In the case of cane, they contended that shipment over long distances would be too expensive and impractical because of rapid deterioration of the sugar (ignoring the possibility of shipment from Mexico). Furthermore, they said cane could not be shipped into the United States, because phytosanitary regulations would forbid it.

*Response*

Marketing controls, if activated, would apply only to domestically produced sugarcane and sugar beets. If those crops are able to enter the United States, the sugar produced from them should be identified. However, it turns out that phytosanitary regulations already prevent sugarcane from being imported. In the case of sugar beets, no such phytosanitary restraints exist and, in fact, small quantities have been shipped from Canada. As a result, data on imports of sugar beets will continue to be requested.

*Comment (h)*

The industry sought confirmation that the definition of the crop year would remain the same as that which has been used for the price-support loan program since 1982, namely production on a July 1 to June 30 basis.

*Response*

The definition of crop-year used for purposes of the sugar price support program, i.e., on the basis of a July-June crop year with the customary allowances in dating (such as for a continuous harvest that goes beyond June), will be used for purposes of the reporting and recordkeeping requirements.

*Comment (i)*

A trade association contended that data on liquid sugar and molasses are not really needed because liquid sugar would be included in the overall sugar figures, as would any sugar that might come from molasses.

*Response*

Liquid sugar data have been provided to USDA's *Sugar Market Statistics* for years and continue to be a useful category of sugar production and distribution. An emerging technology to de-sugar cane molasses and produce liquid invert syrup reinforces the need for data on liquid sugar.

*Comment (j)*

One crystalline fructose (CF) manufacturer contends that, when CF is used primarily for non-sweetener purposes, such quantity of CF should not have to be reported.

*Response*

Section 359a of the Agricultural Adjustment Act of 1938, as amended, requires the reporting of all distributions of CF and does not distinguish between sweetener and non-sweetener uses of CF. For that matter, neither does the statute make such a distinction for sugar which, like CF, has non-sweetener properties which are desirable in various uses. Even if one can identify the particular sales which are not primarily for sweetening purposes, the attribute of sweetness would still be part-and-parcel of CF and a factor in the purchase of it. Accordingly, all distributions of domestically manufactured CF from corn must be reported regardless of the intended use of the CF.

*Comment (k)*

One of the two manufacturers of crystalline fructose (CF) objected to providing detailed data on end-uses for CF, claiming that the statute does not require such specificity; it is needlessly burdensome, requiring a new information system to properly track and report such data; and it will have a significant anti-competitive effect because there are only two domestic manufacturers of CF and a relatively small volume and number of uses of the product now exist.

*Response*

The arguments against disclosure of detailed data on distribution of CF have merit, and accordingly only a total distribution figure will be required.

*Comment (l)*

A trade association commented that some companies keep records based on accounting periods that may vary somewhat from calendar months, and suggested that reporting be based on accounting periods which end closest to the completion of a calendar month instead of strictly at the end of the calendar month.

*Response*

Previous submission of data for USDA's *Sugar Market Statistics*, which reported on a quarterly basis, gave a slight leeway for the accounting period that was supposed to end every calendar quarter. A similar allowance would accommodate some companies

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which carry accounts on a weekly basis, and permit them to close their accounts just before or just after a calendar month. CCC accepts this suggestion.

*Comment (m)*

Two respondents objected to providing data on average recovery rates, claiming that such information was proprietary and possibly misleading.

*Response*

CCC accepts this comment and has deleted this information requirement.

*Comment (n)*

Some respondents asked that they be provided at least 30 days after distribution of the revised forms before they are required to begin submitting such forms.

*Response*

Following the receipt of numerous oral and written comments on both the interim rule and the reporting forms, CCC determined that it would be necessary to postpone the dates for receipt of the October, November, and December reports from November 21, 1991, to January 31, 1992. Such action was taken by CCC in a final rule published in the **Federal Register** on November 22, 1991 (see 56 FR 59196). In addition, that final rule changed the due date for subsequent submissions from the 15th day after the end of the calendar month for which the data are to be reported, to the third Friday of the month following the month for which the data are to be reported.

This final rule provides a further extension of the due date for submission of the initial reports. Delays in revising the interim reporting forms to permit a more efficient and effective tracking of needed data have required that the submission of monthly reports for October 1991 through January 1992 data be postponed to 15 days after publication of this rule in the **Federal Register**, from the previous due date of January 31, 1992. The data for February 1992 and subsequent months prior to the month of publication of this rule in the **Federal Register** will be due the third Friday of the month following the month of publication of this rule. Data for the month of publication of this rule and for subsequent months will be due by the third Friday of the month following the month for which data are reported.

**List of Subjects in 7 CFR Part 135**

Crystalline fructose, Loan programs/agriculture, Marketing assessments, Price support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, the interim rule amending 7 CFR part 1435 which was published at 56 FR 47351 on September 19, 1991, is adopted as a final rule with the following changes:

**PART 1435—SUGAR**

1. The authority citation for part 1435 continues to read as follows:

Authority: 7 U.S.C. 1359aa, 1359hh(a)(1), 1446(a); additional U.S. note 3(a) to chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS).

2. Section 1435.401 is revised to read as follows:

**§ 1435.401 Definitions.**

The definitions set forth in this section shall be applicable to terms used in this subpart.

*ASCS* means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

*Cane sugar refiner* means a person who processes raw cane sugar into refined crystalline sugar or liquid sugar. The same person may be both a "cane sugar refiner" and either a "sugarcane processor" or "sugar beet processor" or both.

*Cane syrup* means concentrated cane juice from which no sucrose has been extracted.

*CCC* means the Commodity Credit Corporation.

*Crop year* means the period beginning July 1 and ending June 30 of the following calendar year, with the customary allowance for a continuous harvest that goes beyond June. The "1991 crop" means sugar processed from domestically produced sugar beets or sugarcane harvested during the 1991 crop year. The "1991 crop" includes sugar processed from molasses or thick juice produced from domestically produced sugar beets or sugarcane harvested during the 1991 crop year.

*Crystalline fructose* means a monosaccharide and reducing sugar, manufactured from field corn, appearing as free-flowing white crystals with the chemical formula $C_6H_{12}O_6$, a molecular weight of 180.16, and meeting the specifications of the *Food Chemicals Codex* (Third Edition, as amended in Third Supplement, 1991) of the National Research Council.

*Deliveries* means a subcategory of *distribution*, consisting of sugar delivered to end-users for consumption as sugar or for use in products containing sugar, including sugar delivered to a manufacturer under the Sugar-Containing Products Re-Export Program.

*Direct-consumption sugar* means any sugar which is not to be further refined or improved in quality, whether such sugar is principally of crystalline structure or is liquid sugar, edible molasses, or cane syrup.

*Distribution* means the sale or other disposition of sugar or crystalline fructose, including (but not limited to) the forfeiture of sugar to the CCC and the disposition of sugar or crystalline fructose for retail sale, for further processing or refining, for production of alcohol or feed, or for exportation.

*Edible molasses* means molasses which is not to be further refined or improved in quality and which is to be distributed for human consumption, either directly or in molasses-containing products.

*Fiscal year* means the year beginning October 1 and ending September 30.

*Imports* means sugar or crystalline fructose entered into the customs territory of the United States.

*Invert sugar* means a mixture of glucose (dextrose) and fructose (levulose) formed by the hydrolysis of sucrose.

*Liquid sugar* means a direct-consumption sugar which is not principally of crystalline structure and which contains, or which is to be used for the production of any sugars principally not of crystalline structure which contain soluble nonsugar solids (excluding any foreign substances that may have been added or developed in the product) equal to 6 per cent or less of the total soluble solids. Liquid sugar is exclusive of cane syrup and edible molasses.

*Molasses* means a thick syrup which is a byproduct of processing sugar beets or sugarcane, or of refining raw cane sugar, and in which sucrose or the sucrose equivalent of invert sugars, or both, account for less than 94 percent of the total soluble solids.

*Person* means an individual, corporation, association, marketing or processing cooperative, joint stock company, estate or trust, or other legal entity.

*Plant capacity* means the maximum capability, on a short tons per day basis, of a processing or refining facility to process sugar beets (cleaned and tared), sugarcane, and/or raw sugar.

*Processing facility* means a distinct physical facility, at a single location, which processes sugarcane or sugar beets into sugar.

*Processing inputs* means the quantity of raw materials (e.g., sugarcane, sugar beets, raw sugar, molasses, etc.) used in processing or refining operations.

*Production* means the output of beet sugar from the processing by sugar beet processors of domestically produced sugar beets or sugar beet molasses; the output of cane sugar (including edible molasses and cane syrup) by sugarcane processors of domestically produced sugar cane or sugarcane molasses; or the output of sugar (including edible molasses) from the processing by cane sugar refiners of raw cane sugar or imported molasses.

*Raw sugar* means any sugar, whether or not principally of crystalline structure, which is to be further refined or improved in quality.

*Raw value of any quantity of sugar* means its equivalent in terms of raw sugar testing ninety-six sugar degrees, as determined by a polarimetric test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA). Direct-consumption sugar derived from sugar beets and testing ninety-two or more sugar degrees by the polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. Sugar derived from sugarcane and testing ninety-two sugar degrees or more by the polariscope shall be translated into terms of raw value in the following manner: raw value = $\{[(\text{actual degree of polarization} - 92) \times 0.0175] + 0.93\} \times$ actual weight. For example, with respect to cane sugar testing ninety-two sugar degrees by the polariscope, derive raw value by multiplying the actual number of pounds of such sugar by 0.93; for cane sugar testing more than ninety-two sugar degrees by the polariscope, derive raw value by multiplying the actual number of pounds of such sugar by the figure obtained by adding 0.93 to the result of multiplying 0.0175 by the number of degrees and fractions of a degree of polarization above ninety-two degrees. For sugar testing less than ninety-two sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the "total sugar content" (i.e., the sum of the sucrose and invert sugars) thereof by 0.972.

*Receipts* refers to the quantity of raw materials (e.g., sugarcane, sugar beets, raw sugar, refined sugar, liquid sugar, syrups, molasses, etc.) received by the processing or refining facility.

*Refined crystalline sugar* means white, crystalline sugar (including "high-polarity" sugar from raw cane mills) which is not to be further refined or improved in quality. Most direct-consumption sugar is in the form of refined crystalline sugar.

*Refining facility* means a distinct physical facility, at a single location, which processes raw sugar or imported molasses into refined sugar.

*Stocks* means inventory of sugar or crystalline fructose on hand at the beginning and at the end of the calendar month for which data are being reported, as appropriate.

*Sucrose* means a disaccharide having the chemical formula $C_{12}H_{22}O_{11}$.

*Sugar* means any grade or type of saccharine product derived, directly or indirectly, from sugarcane or sugar beets and consisting of, or containing, sucrose or invert sugar, including all raw sugar, refined crystalline sugar, liquid sugar, edible molasses, and cane syrup.

*Sugar beet processor* means a person who commercially produces refined sugar, liquid crystalline sugar, or liquid sugar directly or indirectly from sugar beets (including sugar produced from sugar beet molasses). The same person may be both a "sugar beet processor", and either a "cane sugar refiner" or "sugarcane processor" or both.

*Sugarcane processor* means a person who commercially produces raw sugar or refined sugar directly or indirectly from sugarcane (including sugar produced from sugarcane molasses). The same person may be both a "sugarcane processor", and a "cane sugar refiner" or "sugar beet processor" or both.

3. Section 1435.402 is revised to read as follows:

**§ 1435.402 Duty to report.**

(a) (1) *Monthly Reports.* (i) Every sugar beet processor shall file, on a monthly basis, completed Forms CCC-831 and CCC-833, which accurately report each processor's imports and other receipts, processing inputs, production, distribution, and stocks.

(ii) Every sugarcane processor shall file, on a monthly basis, completed Forms CCC-832 and CCC-833 which accurately report each processor's imports and other receipts, processing inputs, production, distribution, and stocks.

(iii) Every cane sugar refiner shall file, on a monthly basis, completed Forms CCC-833 and CCC-835 which accurately report each refiner's imports and other receipts, processing inputs, production, distribution, and stocks.

(iv) Every manufacturer of crystalline fructose shall report, on a monthly basis, such manufacturer's total distributions of crystalline fructose.

(2) *Annual reports.* Every sugar beet processor, sugarcane processor, and cane sugar refiner shall file an annual report of the prior crop year production and current plant capacity of each processing and refining facility owned or operated by the processor or refiner.

(b) *Submission of reports.* (1) The initial month for which data are to be reported is October 1991, and the initial monthly reports for October 1991 through January 1992 must be received no later than August 5, 1992. The data for February 1992 and subsequent months prior to July 1992 will be due the third Friday of August 1992. Data for the month of July 1992 and for subsequent months must be received no later than the third Friday of the month following the month for which the data are reported.

(2) The initial annual report of production data, for the 1990 crop year, and current plant capacity data must be received no later than the due date for the February 1992 data. Subsequent annual reports must be received no later than the third Friday of March following the end of the crop year for which the production data are reported.

(3) Data reports shall be filed or delivered to the U.S. Department of Agriculture, ASCS, DAPA, room 3090-S, P.O. Box 2415, Washington, DC 20013 or transmitted to the FAX number provided on the report form.

Signed this 6th day of July 1992 in Washington, DC.

**Keith D. Bjerke,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 92-17115 Filed 7-20-92; 12:01 pm]

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## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Parts 240 and 249**

**[(Release No. 34-30929; File No. S7-25-91) (International Series Release No. 421)]**

**RIN: 3235-AF44**

**Final Temporary Risk Assessment Rules**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Adoption of rules.

**SUMMARY:** The Securities and Exchange Commission is adopting Rules 17h-1T and 17h-2T (17 CFR 240.17h-1T and 17 CFR 240.17h-2T) under the Securities Exchange Act of 1934 (the "Exchange Act"). The rules are being adopted primarily pursuant to the authority conferred on the Commission by the Market Reform Act of 1990. Rule 17h-1T would require broker-dealers to maintain and preserve records and other information concerning certain of the broker-dealer's associated persons. The requirement to maintain and preserve information under Rule 17h-1T would extend to the financial and securities

activities of the holding companies, affiliates, or subsidiaries of a broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T would require broker-dealers to file with the Commission quarterly reports concerning the information required to be maintained and preserved under Rule 17h–1T.

**DATES:** The rules become effective September 30, 1992. See section IV. of the Supplementary Information section of this release for the temporary implementation schedule.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Macchiaroli, (202) 272–2904 or Roger G. Coffin, (202) 272–7375, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

### *A. Background*

On August 30, 1991, the Commission proposed for comment temporary Rules 17h–1T and 17h–2T, which, together with proposed Form 17–H, would establish a risk assessment recordkeeping and reporting system for broker-dealers.[1] The Rules were proposed pursuant to the authority conferred on the Commission by the Market Reform Act of 1990 (the "Reform Act"), which added section 17(h) to the Exchange Act.[2] Section 17(h) provides the Commission with specific authority to obtain information regarding certain activities of broker-dealer affiliates and augments the Commission's authority with respect to matters relating to the financial responsibility of broker-dealers.

Section 17(h) requires broker-dealers to maintain and preserve such risk assessment information as the Commission by rule prescribes with respect to those associated persons of the broker-dealer whose "business activities are reasonably likely to have a material impact on the financial and operational condition" of the broker-dealer, including the broker-dealer's "net capital, its liquidity, or its ability to finance its operations".[3] The statute provides that the records should concern the broker-dealer's "policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities", of its material associated persons and should "describe, in the aggregate, each of the financial and securities activities conducted by, and the customary sources of capital and funding" of associated persons whose business activities are reasonably likely to have a material impact on the broker-dealer".[4] In addition, the Reform Act authorizes the Commission to require broker-dealers to file summary reports of the information and records maintained pursuant to the recordkeeping provisions.[5]

The Commission's proposal contained two rules. Proposed Rule 17h–1T set forth the specific recordkeeping requirements applicable to broker-dealers and provided guidelines to be used in establishing which associated persons of the broker-dealer are subject to the recordkeeping and reporting requirements.

Included in the recordkeeping requirements were risk management policy information, financial data, including consolidating and consolidated financial statements, securities and commodities position data, and other categories of financial and securities related information. Proposed Rule 17h–2T would require broker-dealers to file quarterly reports on proposed Form 17–H.

Proposed Form 17–H contained general instructions for use in reporting information and included a separate section of line items to be used in reporting numerical data to the Commission. Recognizing that the proposal would establish new recordkeeping and reporting burdens on members of the securities industry, who in the past have been required to report on the financial and operational condition of the registered entity only, the Commission requested public comment on the scope of the proposal, the burdens of complying with the rules, as well as the specific recordkeeping and reporting requirements contained therein.

### *B. Brief Summary of Comment and Commission Action*

In response to the request for comment, the Commission received 63 letters addressing the proposed risk assessment rules. Generally, the commentators criticized the breadth of the proposal and the level of detail in the information required to be maintained and reported. Many commentators urged the Commission to reduce the potential universe of broker-dealer affiliates as to which the broker-dealer would be required to maintain records. Other commentators addressed the application of the proposed rules to foreign entities. Many of these writers suggested that foreign affiliates operating under a regulatory scheme should be exempt from the proposed rules. Finally, the commentators suggested numerous technical changes to the recordkeeping and reporting requirements, many of which the Commission believes are helpful and have been incorporated into the rules being adopted today. Specific aspects of the comments are discussed in greater detail in the applicable sections of this release.

In summary, today the Commission is adopting, with certain modifications, Rules 17h–1T and 17h–2T, together with Form 17–H. The general approach taken in the rules being adopted today remains as proposed. Broker-dealers will be required to designate, using the guidelines set forth in Rule 17h–1T and subject to Commission oversight, Material Associated Persons for the purposes of Rules 17h–1T and 17h–2T. Broker-dealers will then be required to maintain certain information concerning the financial and securities activities of each Material Associated Person and will be required to file quarterly reports with the Commission on Form 17–H.

The rules being adopted today differ from the proposal in several respects. The Commission has undertaken to address the primary objection to the proposal, which was the burden imposed by the detailed information required by the risk assessment rules. To address this issue, the amount of information required to be maintained has been reduced in those areas where the information would not significantly assist the Commission and especially where it could be costly for a broker-dealer to obtain. The Commission believes that the cumulative effect of the modifications to the proposal and to the amount and format of the data required will significantly reduce the burdens associated with complying with the new rules.

The revisions to the proposed rules also incorporate certain of the commentators' suggestions with respect to the reporting and recordkeeping requirements. Additionally, special provisions for certain domestic and foreign entities have been added. Finally, the rules incorporate certain of the commentators' suggestions concerning the exemptive provisions; as proposed, the rules would exempt broker-dealers that maintain less than $5 million in capital and which do not

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[1] Exchange Act Release No. 29835 (August 30, 1991); 56 FR 44014, (September 6, 1991).

[2] Pub. L. No. 101–432, 104 Stat. 963 (1990); 15 U.S.C. 78q(h).

[3] *See* section 17(h)(1) of the Act.

[4] *Id.*

[5] *Id.*

carry customer accounts. The final rules raise this exemption to $20 million.

The Commission is adopting temporary rules to commence the formal information gathering process envisioned by the Market Reform Act. The Commission believes it would be appropriate, after some experience is gained with the information obtained pursuant to the temporary rules, to evaluate the operation of the risk assessment rules. The Commission would require the Division of Market Regulation to prepare a study evaluating the effectiveness of the rules. The report will be issued within 90 days after the rules have been fully operative for two years, and will be issued for public comment. Once the industry has commented, and the Commission has made its own evaluation, the Commission will decide what, if any, further refinements or modifications are appropriate.

Because the Commission believes it is important to commence the risk assessment program as soon as possible, the rules will become effective pursuant to a temporary implementation schedule. Pursuant to this schedule, broker-dealers will be required to maintain the information required by paragraphs (a)(1)(i) (the organization chart), (a)(2)(ii) (risk management policy information) and (a)(1)(iii) (disclosure of litigation) of Rule 17h–1T commencing September 30, 1992. Rule 17h–2T will require broker-dealers to file this limited information with the Commission on or before October 31, 1992. The rules will become fully effective on December 31, 1992.

## II. Analysis of Public Comments

The general areas of the Commission's proposal that drew the attention of the commentators may be described as follows: (1) Which broker-dealer affiliates should be covered by the rules and the amount of information required to be kept by a broker-dealer concerning each covered affiliate; (2) the application of the rules to foreign entities; (3) the treatment of affiliates which are regulated entities (including domestic and foreign banks, insurance companies and futures commission merchants); (4) the rules' general exemptive provisions; and (5) technical recordkeeping, reporting and filing issues.

### *A. Scope of Risk Assessment Rules*

As noted above, section 17(h) requires broker-dealers to keep records with respect to the financial and securities activities of those associated persons of the broker-dealer whose "business activities are reasonably likely to have a material impact" on the broker-dealer's financial and operational condition.[6] Section 17(h) does not indicate which associated persons of a broker-dealer should fall under this statutory standard; however, the legislative history accompanying the Reform Act suggests a flexible facts and circumstances approach.[7]

To incorporate this approach, proposed Rule 17h–1T contained several factors to be used by broker-dealers in determining which affiliates are subject to the rules. For the purposes of the risk assessment rules, affiliates subject to the rules are known as "Material Associated Persons."

The first factor set forth in Rule 17h–1T is the nature and proximity of the relationship between the registered firm and an associated person. Second is the overall funding needs of the broker-dealer and the degree, if any, to which the broker-dealer is financially dependent upon the associated person. Where a broker-dealer relies on the commercial paper or other unsecured credit of the holding company for financing, the broker-dealer would be materially affected by an acceleration or call by holders of such obligations because of events at the holding company level. Third is the degree to which the broker-dealer or its customers rely on the associated person for operational services or support. Merely offering products or services to the customers of broker-dealers, such as insurance products to brokerage customers will not, in and of itself, rise to the level of materiality called for by the risk assessment rules. However, if a broker-dealer relies on the associated person for significant operational facilities or services, the activities or financial difficulties of the associated person may well have a material impact on the broker-dealer. Fourth is the level of risk present in the types of activities of the broker-dealer or its associated person. Associated persons engaged in activities such as transactions in derivative products, merchant banking or venture capital activities are more likely to have a material impact on the broker-dealer than associated persons that engage in less risky activities. The final factor is the extent to which the associated person has the ability or the authority to cause a withdrawal of capital from the broker-dealer. These factors were intended to amplify the statutory standard and to suggest some, but not all, of the criteria that may be relevant to a determination of materiality.

Because of the complexity and diversity of the various holding companies which own broker-dealers, the Commission's proposal would leave the initial determination of which associated persons are Material Associated Persons up to the reporting broker-dealer, subject to Commission oversight. The Commission believes this method remains the most practical way to implement the recordkeeping and reporting provisions of the risk assessment rules and is incorporating this approach into the final rules. The commentators raised a number of issues with regard to the designation of Material Associated Persons under the proposed rules.

#### 1. Financial Strength of the Affiliate

Several commentators urged the Commission to incorporate other factors, such as the associated person's rating by a rating agency, the financial strength of the broker-dealer, or the financial strength of the associated person into Rule 17h–1T. According to this argument, a parent or affiliate in sound fiscal health is less likely to have a material impact on the financial and operational condition of the associated broker-dealer than a parent experiencing financial difficulties.

While a well-capitalized parent or affiliate can be a source of strength to the registered entity, the Commission does not believe that the financial strength of the broker-dealer or an associated person should be relevant in designating Material Associated Persons under the risk assessment rules. The Commission's risk assessment program is designed to provide information regarding significant broker-dealer affiliates on a regular and continuing basis. It would be insufficient for the Commission to receive an incomplete picture of any single holding company structure, especially in light of the fact that the financial strength of the parent may rest behind the broker-dealer's credit rating or access to the commercial paper market. The Commission's risk assessment program is designed to enable the Commission to monitor the financial and securities activities of all associated persons whose business activities are, by themselves, reasonably likely to have a material impact on the broker-dealer. A broker-dealer could be impacted by a significant and sudden change in the fiscal position of a key affiliate or parent, despite the prior

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[6] The term "associated person of a broker or dealer" is defined in Section 3(a)(18) of the Exchange Act. For the purposes of the risk assessment rules, the term does not include natural persons.

[7] *See* H. Rep. at 27.

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apparent financial stability of that entity.

2. Factors in Designating Material Associated Persons

The commentators also urged the Commission to refine or restrict the factors set forth in proposed Rule 17h–1T concerning the designation of Material Associated Persons. Essentially, these commentators suggested that the rules explicitly state that holding companies not primarily engaged in financial or securities activities should not be considered Material Associated Persons. While there may be instances where the activities of an ultimate parent or affiliate are not material to the financial condition of the broker-dealer, particularly if the parent or affiliate's primary business does not involve financial or securities activities, the Commission does not believe it would be appropriate to draw a bright line test in this regard. Instead, a facts and circumstances analysis is required. The first factor set forth in Rule 17h–1T, the nature and proximity of the relationship between the broker-dealer and the associated person, is intended to encompass these types of issues.

To illustrate, certain broker-dealer holding companies consist of at least two layers. The first level usually includes the direct parent of the broker-dealer and a number of related financial services entities. As stated in the proposing release, the Commission believes, absent very unusual circumstances, that these entities should be designated Material Associated Persons. This is particularly true in light of the fact that many broker-dealers carry potentially risky or highly leveraged positions, including interest rate agreements and over-the-counter derivative products in these first-tier affiliates.

The next layer may consist of a corporate holding company which has a controlling interest in the broker-dealer holding company and often one or more other intermediate holding companies that engage in businesses independent of the broker-dealer. The scope of the final risk assessment rules may, in some instances, extend to certain of these entities, especially if the broker-dealer depends on any of these companies as a source of funding. Alternatively, intermediate holding companies or an ultimate parent company may meet the material impact test. The financial distress or a potential bankruptcy filing by such an entity could directly threaten the broker-dealer's ability to obtain credit or might interfere with the broker-dealer's access to the clearance and settlement system. If the day-to-day operations of the broker-dealer are or could be affected by the activities of the affiliate or parent, then that affiliate is most likely a Material Associated Person. On the other hand, there may be situations where, after an evaluation of all the relevant facts and circumstances, it appears that associated persons in the upper levels of the holding company hierarchy are likely to have only a remote impact on the financial and operational condition of the broker-dealer, and should not be designated Material Associated Persons. If the ultimate parent in a multi-tiered holding company is primarily involved in non-financial and non-securities activities, such as retailing or manufacturing, the Commission believes the parent should not, absent unusual circumstances, be designated a Material Associated Person.

3. Use of Exchange Act Reports

Finally, several commentators suggested that the Commission create a separate category for Material Associated Persons that are subject to periodic Exchange Act reporting obligations. These public Material Associated Persons, argued the commentators, should be permitted to submit copies of reports on Forms 10–K and 10–Q for risk assessment purposes. While the Commission's goal is to incorporate as much readily available information as possible into the risk assessment program, it does not believe that Exchange Act reports, without additional disclosure, can be used by broker-dealers in reporting on a Material Associated Person. Exchange Act reports are public disclosure documents that do not contain the specialized data required to enable the Commission staff to adequately assess the overall financial condition of a holding company and the potential impact its key members can have on a registered broker-dealer. Moreover, the Commission needs to have uniformity in the reports filed under the rules. Even though some of the information required by Form 17–H is contained in Forms 10–K and 10–Q, the Commission does not believe it would be unduly burdensome to reformat it on Form 17–H.

*B. Treatment of Regulated Entities*

Proposed Rules 17h–1T and 17h–2T contained special provisions for associated persons or brokers or dealers subject to the regulatory supervision of certain federal and state regulatory authorities. These provisions were designed to diminish the need for broker-dealers to create an additional set of records where records substantially similar to those required by the risk assessment rules are created for the use of other federal or state regulators. The Commission is adopting the special provisions, with some refinements, as they apply to banks and insurance companies, and is adding a section for Material Associated Persons subject to the regulation of the Commodity Futures Trading Commission.

1. Banks

Proposed Rule 17h–1T provided that a broker-dealer would be deemed to be in compliance with the rule's recordkeeping requirements with respect to a Material Associated Person subject to the supervision of a federal banking agency if the broker-dealer maintained copies of the reports filed by the associated bank with its federal banking regulator. Proposed Rule 17h–2T permitted the broker-dealer to furnish copies of such reports to the Commission. The Commission is adopting these provisions substantially as proposed. Several commentators requested clarification on the application of these provisions to domestic and foreign banks.

One commentator suggested that the rules should be clarified to specify which forms filed with bank regulators need to be maintained and filed by the broker-dealer. In addition, several commentators requested clarification with respect to the application of these provisions to foreign banks subject to federal banking regulation.[8]

Proposed Rules 17h–1T and 17h–2T would require the broker-dealer to maintain and file copies of all the reports filed with a federal banking regulator. After analyzing the comments and the various federal banking reports, the Commission has determined that not all banking reports need be filed with the Commission as part of the risk assessment program. Rather, the rules being adopted today specify that the broker-dealer must maintain copies of all reports filed by the bank Material Associated Person to comply with Rule 17h–1T. However, Rule 17h–2T specifies that domestic banks will only be

[8] One commentator, noting the comprehensive scheme of federal banking regulation, suggested that Material Associated Persons that are banks should be exempt from the rules altogether. Despite this regulatory scheme, Congress provided the Commission with the authority to request information from banks for risk assessment purposes. The Commission believes that the risk assessment program would not be complete if such information is not obtained. As envisioned in the Reform Act, the Commission will obtain such information in the form presented to federal banking authorities.

required to file copies of Forms FY–9C and Form FR Y–6 with the Commission.[9] The Commission believes these forms are the only bank reporting forms essential to risk assessment.

The proposed rules did not directly address the application of the rules to foreign banking organizations which are subject to regulation by U.S. banking regulators. The commentators, using an argument based on the language of the Reform Act and the legislative history, asserted that the intent of Congress was to include foreign banks that are subject to U.S. banking regulation under the special provisions for banks contained in the Reform Act and incorporated into the Commission's rules.[10] After an examination of the content of these reports, and a comparison of their content to the reports filed by U.S. banks, the Commission has determined to permit foreign banking organizations that file reports under the banking statutes specified in the rules to file copies of their reports in the same fashion as domestic banks.

2. Insurance Companies

The Commission's proposal contained special provisions for insurance companies that are Material Associated Persons under the rules. A broker-dealer with an insurance company Material Associated Person would satisfy the recordkeeping requirements by maintaining copies of the annual and quarterly reports filed by the parent insurance company with the state insurance regulator of the parent's domiciliary state. A broker-dealer designating a stock insurance company as a Material Associated Person would be required to, in addition to maintaining state insurance reports, provide copies of the filings the insurance company makes under sections 13 or 15 of the Exchange Act, together with filings made under the Investment Company Act of 1940. For all other insurance companies, the broker-dealer will be required to file copies of the reports prepared for state regulatory use. Two commentators discussed the provisions proposed for insurance companies.

One commentator suggested that brokers or dealers associated with a mutual insurance company Material Associated Person should be exempt from the rules except to the extent that they should be required to file the annual and quarterly reports filed by the insurance company with state regulators. The Commission believes that it is appropriate to have access through the broker or dealer to all those reports filed by insurance company Material Associated Persons. By requiring the broker-dealer to maintain all reports filed, the Commission is assured of prompt access to the information contained therein when necessary.

Another commentator noted that while all state insurance regulators require the insurance companies subject to their authority to file annual reports, only a limited number require quarterly statements while the risk assessment rules require quarterly disclosure. Although this commentator pointed out that states with quarterly filing requirements include the major markets for insurance companies, and that the major insurance companies therefore file quarterly reports, the Commission has a strong interest in receiving quarterly reports. Therefore, the rules provide that, in the event an insurance company does not prepare quarterly reports for a state, the associated broker-dealer must maintain the records required by Rule 17h–1T and file a Form 17–H on a quarterly basis. The commentator also indicated that reports are filed on forms adopted by the National Association of Insurance Commissioners, not on forms prescribed by the insurance company's domiciliary state. The text of the rules has been changed to reflect that distinction and to indicate that the reports are to be filed regardless of whom they are filed with at the state level. In conclusion, the Commission is adopting the provisions with respect to insurance companies as proposed with the clarification discussed above.

3. Futures Commission Merchants

The Commission has added a new provision to the rules adopted today with respect to Material Associated Persons subject to the supervision of the Commodity Futures Trading Commission (the "CFTC"). Pursuant to this section, a broker-dealer will be deemed in compliance with the recordkeeping and reporting requirements if it maintains and files copies of Forms 1 FR–FCM or 1 FR–IB filed by the Material Associated Person. The Commission believes that it is appropriate to add these provisions because entities regulated by the CFTC are subject to recordkeeping, reporting, and supervisory requirements similar to those imposed by the Commission on broker-dealers.

*C. Application of Rules to Non-Domestic Entities*

Proposed Rules 17h–1T and 17h–2T would require registered broker-dealers to make and keep records with respect to all of their Material Associated Persons, regardless of the nationality or regulatory status of such Material Associated Person. In order to assess the impact of these requirements on multi-national conglomerates, the Commission's proposal specifically requested comment on the application of the risk assessment rules to foreign entities. In response, several U.S. subsidiaries of foreign firms, together with a number of foreign regulatory authorities, commented on the proposed rules.

The foreign commentators made the following suggestions. First, noting that many non-domestic Material Associated Persons are subject to the regulatory supervision of a foreign regulator, the commentators urged the Commission to exempt altogether any Material Associated Person subject to foreign regulation. As an alternative, the commentators requested that the Commission rely on the home country regulator of the Material Associated Person for assurances of the entities' financial soundness. In connection with this approach, the commentators urged the Commission to develop additional and more extensive information sharing agreements with international regulatory organizations in order to create a global risk management environment that primarily relies on the home country regulator of an international enterprise.

The Commission believes in the principle of cooperation and information sharing among financial and securities regulators. However, the Reform Act requires the Commission to promulgate rules requiring broker-dealers to report on the financial condition of all affiliates that could have a material impact on the U.S. registered entity. In today's global marketplace, that impact could just as easily be caused by a non-domestic entity as a domestic one. In light of the Congressional mandate in this area, the Commission does not believe it is appropriate to exempt foreign entities from the application of the risk assessment rules, even if a foreign firm

[9] The Commission notes that the test of the Reform Act stated that broker-dealers would be permitted to file copies of reports filed by a bank pursuant to section 8 of the Bank Holding Company Act of 1956. Section 8 of that Act refers to penalties; the correct citation should refer to section 5 of the Bank Holding Company Act, which refers to reporting obligations. The rules have been modified to correct this error.

[10] The proposed rules contained special provisions for banks "subject to examination by, and the reporting requirements of a Federal banking agency." The text of the Reform Act refers to the "examination by, or the reporting requirements of a Federal banking agency." The final rules have been revised to track the statutory language.

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is regulated in its home country. Instead, the Commission has determined to adopt the approach suggested by certain commentators, which the Commission believes will enable the Commission to properly discharge its regulatory obligations while at the same time affording deference to the existence of foreign banking and securities regulators.

In a new section added to Rules 17h–1T and 17h–2T, a broker-dealer will be allowed to maintain and file reports prepared by a Material Associated Person for a Foreign Financial Regulatory Authority as that term is defined in section 3(a)(51) of the Act in lieu of having to prepare a Form 17–H.[11] The Commission believes this approach will not be unduly burdensome for foreign entities because the broker-dealer will be permitted to file copies of foreign regulatory reports directly with the Commission. The Commission notes that the treatment accorded to entities regulated by foreign authorities is similar to that accorded to regulated domestic entities. In effect, the Commission is not imposing any additional burdens on any regulated entity other than requiring an English translation of reports already produced.

Under the rules adopted today, where a Material Associated Person is subject to the regulatory supervision of a Foreign Financial Regulatory Authority, the broker-dealer may maintain and file copies of the reports produced for that regulator.

*D. Exemptions*

In order to create a risk assessment program that both deploys the Commission's resources in a cost-effective manner and focuses in on the segment of the securities industry most likely to have a significant impact on the operation of the markets or on investors, proposed Rules 17h–1T and 17h–2T contained three exemptive provisions. The first would permit individual broker-dealers to apply for an exemption. Section 17(h) of the Act directs the Commission to consider in the exemptive process a number of factors that were contained in the proposed rules. Although the Commission believes it is appropriate for the Commission to consider exemptive applications from individual broker-dealers, because the factors for this general exemption are set forth in the text of the statute, it is unnecessary to repeat them in the text of the rules. Therefore, the language contained in the proposed rules duplicating the statutory language will not be repeated in the rules.

The second category of exemption contained in Rules 17h–1T and 17h–2T would exempt limited purpose mutual fund brokers who are exempt from the provisions of the customer protection rule, Rule 15c3–3 pursuant to paragraph (k)(1) thereof.[12] This category would include the firms associated with insurance companies that are registered with the Commission as broker-dealers in order to offer variable annuity and other related products. Because the Commission believes these limited purpose firms pose limited systemic or customer risk and are beyond the intended scope of the Reform Act, this aspect of the proposal is being adopted. This exemption will exempt these firms, regardless of the amount of capital they maintain.

The third category of exemption contained in the proposed rules would also have exempted broker-dealers that maintain capital of less than $5 million and which do not carry customer accounts. The commentators who discussed this exemption generally agreed that the $5 million capital threshold was too low. Alternatives ranged from $25 to $100 million in capital or a sliding scale approach correlating the amount of capital with the nature and scope of the risk associated with different activities. Several commentators suggested that the rules exempt all but the largest 50 to 75 broker-dealers. Virtually all the commentators opposed the condition that would cause all broker-dealers that hold customer funds or securities or carry customer accounts to be subject to the rules.

The Commission believes that, especially in the initial phases of the risk assessment program, caution is warranted in the setting of the exemptive provisions in the risk assessment rules. The Commission does conclude, however, that a refinement can be made to this exemptive provision that will reduce the overall number of subject broker-dealers without a corresponding trade-off in risk. Therefore, the rules being adopted today raise the $5 million to $20 million except as to firms that hold customer assets (unless they maintain less that $250,000 in net capital). Excluded also would be broker-dealers that clear customer trades but do not hold funds or securities for customers except to facilitate transactions and only for the time necessary to complete the transaction.

As noted, as proposed, all firms that carry customer accounts would be covered by the rules. The commentators objected to this aspect of the rules because it would subject certain firms with minimal capital to the recordkeeping and reporting requirements solely because they carry customer accounts. The Commission considers this to be a valid point which can be addressed by putting a "floor" on these firms. Accordingly, the rules have been revised to limit their application to those carrying firms that maintain in excess of $250,000 in capital. Thus, all broker-dealers that carry customer accounts who maintain capital in excess of $250,000 would be subject to the rules.

A review of the capitalization of the securities industry reveals that, of the approximately 5,600 broker-dealers that conduct a public business, approximately 600 firms clear and carry the accounts of customers. Of this number, approximately 435 firms have capital in excess of $250,000. Together with firms that maintain in excess of $20 million, today's action would subject approximately 630 firms to the risk assessment rules. However, Schedule I to the FOCUS Report requires broker-dealers to indicate whether or not the firm is a subsidiary of a parent which is not a registered broker-dealer. From this item an estimate of how many broker-dealers are part of a holding company structure (and could have Material Associated Persons) can be achieved. The most recent data from Schedule I shows that 280 broker-dealers indicated they were a subsidiary of a non-broker dealer. This data indicates that the actual number of broker-dealers that will be required to report on their Material Associated Persons will be considerably smaller than the approximately 630 firms potentially subject to the rules. Finally, while the staff plans to focus its efforts on the largest 50 to 75 broker-dealers, in the event of a problem with a firm that carries or holds customer accounts, the Commission and its staff will have access to this retained data and will be able to focus more promptly on customer exposure.

[11] Section 3(a)(51) of the Act defines a "foreign financial regulatory authority" to mean "any (A) Foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above."

[12] These broker-dealers are exempt from the provisions of Rule 15c3–3 pursuant to paragraph (k)(1) thereof. They must limit their activities to the purchase, sale, and redemption of redeemable securities of registered investment companies or of interests or participation in an insurance company separate account, whether or not registered as an investment company; the solicitation of share accounts for savings and loan associations insured by an instrumentality of the United States; and the sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies.



## III. Final Risk Assessment Rules

*A. Recordkeeping and Reporting Requirements*

Proposed Rule 17h–1T would require broker-dealers to maintain and preserve two general categories of information concerning each Material Associated Person of the broker-dealer. The first category concerned the holding company's organization and risk management policies. The second involved the financial condition of the organization, including financial statements together with specialized categories of financial and securities activity related data, such as information concerning interest rate swaps, financial instruments and real estate ventures. Proposed Rule 17h-2T would require broker-dealers to file quarterly reports of the information required to be maintained by Rule 17h–1T.

The commentators to the Commission's proposal objected to the amount of information required to be maintained under proposed Rule 17h–1T. Moreover, the commentators argued that the level of detail required by proposed Form 17–H was excessive and beyond what the Commission requires for its regulatory purposes. The Commission is sensitive to the concerns articulated by the industry, and in adopting the risk assessment rules, is reducing, where possible, the recordkeeping and reporting burdens imposed by the rules. In addition, many of the commentators' suggestions with respect to the specifics of the proposal are being incorporated into the rules as adopted today.

1. Organization and Risk Management Policies

(a) *Organizational chart.* Paragraph (a)(1)(i) of Rule 17h–1T will require a broker-dealer to maintain an organizational chart of the holding company structure. The broker-dealer is required to indicate which associated persons of the broker-dealer are deemed to be Material Associated Persons. Associated persons that exist solely for tax reasons or that are shell companies that produce little or no revenue may either be omitted from the chart or combined into a single entry to reduce the number of entries. As proposed, paragraph (a)(1)(i) would have required the maintenance of a flowchart compiled during the audit process. Several commentators pointed out that certain organizations either do not prepare flowcharts, or prepare them on a business segment rather than a legal entity basis, as the proposal would require. Based in part on the comments, the Commission has decided to eliminate the flowchart requirement.

Proposed Form 17–H specified that the organizational chart was to be filed in the broker-dealer's first risk assessment filing and at each year-end. Quarterly updates would be required only where a significant change has occurred in the information on file with the Commission. The Commission is adopting these filing requirements as proposed.[13]

Form 17–H has been revised to conform to paragraph (a)(1)(i) and no longer calls for a narrative discussion concerning the criteria used in selecting Material Associated Persons, the business lines conducted, and the names of the chief executive, operating financial officers of each Material Associated Person. These requirements were burdensome, and the Commission can obtain this information on an ad hoc basis as needed. Form 17–H will require the name and telephone number of a contact person at the broker-dealer who will be available to answer questions concerning the information reported therein, including the holding company structure and the criteria used in designating Material Associated Persons.

(b) *Risk management policies.* As proposed, paragraphs (a)(1) (ii) through (iv) would require a broker-dealer to maintain certain risk management policies for itself and each Material Associated Person. The Commission has reorganized these provisions into a single revised paragraph. As revised, the new paragraph no longer requires policies concerning credit controls and collateral procedures.[14] As adopted, Form 17–H will require a broker-dealer to file its policy information only in the first filing with the Commission; quarterly updates will be required only where a material change has occurred in the information on file with the Commission.

In addition, a number of commentators argued that the policies required by the rules should be the policies of the broker-dealer only, and not each Material Associated Person. The Commission agrees that this clarification is warranted. Therefore, the proposal has been amended to state that the policies required to be maintained under Rule 17h–1T and filed under Rule 17h-2T should be the broker-dealer's policies only. Additionally, the final rules require the broker-dealer to maintain policies for monitoring and controlling financial and operational risks to itself based on the activities of its Material Associated Persons.

Finally, some commentators were unsure whether the Commission's proposal instituted an affirmative burden to create policies and procedures in the risk management area if none previously existed. The Reform Act provided the Commission with authority to monitor existing procedures for controlling systemic risk in the securities industry. If a firm operates without the policies referred to in the rules, it will be sufficient for risk assessment purposes for the broker-dealer to document, in writing, the absence of such policies.

(c) *Material legal proceedings.* Proposed Rule 17h–1T would require broker-dealers to keep records that describe all material pending legal proceedings to which the broker-dealer or any Material Associated Person is a party, or to which any of its property is subject and that would be required to be disclosed under GAAP. The commentators requested clarification on the application of this paragraph. As revised, new paragraph (a)(1)(ii) will require broker-dealers to maintain a record of material legal proceedings that would be required to be disclosed under GAAP on a consolidated basis looking at the organization as a whole. The references to the form and content of Item 103 of Regulation S–K have been deleted. Rule 17h-2T and Form 17–H will require this information to be filed in the first Form 17–H delivered to the

[13] Under the temporary implementation schedule set forth in this release, broker-dealers will be required to furnish an organizational chart 30 days after the initial effective date of the rules. Because the rules require broker-dealers to file the organizational chart in each year-end Form 17–H, broker-dealers operating on a calender year end would technically be required to file another chart in the December filing. For the purposes of the phase-in of the rules, any broker-dealer filing an organizational chart under the temporary implementation schedule need not file the chart a second time in the first year-end filing unless a material change has occurred.

[14] The Commission notes that the information regarding capital adequacy formerly contained in paragraph (a)(1)(vi) of proposed Rule 17h–1T has been incorporated into the revised paragraph (a)(1)(ii). Proposed Item 4 of Form 17–H, dealing with capital adequacy information, has been deleted as unnecessary.

Commission, with quarterly updates only if necessary.

2. *Financial information.* As noted above, the second general category of risk assessment information required to be maintained by Rule 17h–1T and filed on Form 17–H pursuant to Rule 17h-2T will include the financial data necessary to assess the risks to a registered firm caused by the activities of its Material Associated Persons. The Commission is adopting these provisions in modified form to respond to many of the commentators' suggestions.

(a) *Financial statements.* As the Commission stated in its proposal, the information contained in the financial statements required by the rules will be one of the most important elements of the risk assessment program. This data will enable the Commission staff to evaluate the broker-dealer's position in the holding company hierarchy as a whole, and will give an overview of the financial condition of the organization.

As proposed, Rule 17h–1T would require broker-dealers to make and keep consolidating and consolidated balance sheets, income statements and cash flow statements for the broker-dealer and each Material Associated Person prepared in accordance with GAAP. Form 17–H contained various instructions for guidance in reporting the financial data to the Commission. Specifically, Form 17–H required the financial statements to be prepared in the form and content specified by Regulation S–X. Proposed Form 17–H also required a reconciliation to U.S. GAAP in the event that the financial statements were prepared in accordance with a comprehensive set of accounting principles other than U.S. GAAP.

Primarily, the commentators objected to the burdens imposed by the rule's requirement to present financial data in the form required by Regulation S–X. Broker-dealers that are non-public companies, or that have non-public Material Associated Persons, argued that the imposition of the S–X standards would, in essence, require the firms to develop new accounting and legal infrastructures for the sole purpose of complying with the Commission's risk assessment rules. In proposing this requirement, the Commission did not intend to impose unnecessary and costly burdens on those entities not otherwise subject to the requirements of Regulation S–X. Rather, the Commission intended to provide guidance regarding the form and content of the necessary financial disclosure. Therefore, in view of the opposition to this requirement, and the burdens cited by the industry in complying, the Commission has decided to revise the requirements for financial disclosure under the rules. The revised rules and form will require consolidated and consolidating financial balance sheets; income statements and statements of cash flows prepared in accordance with GAAP and without reference to Regulation S–X. Additionally, the requirement for a reconciliation to U.S. GAAP has been deleted. Entities using a set of accounting principles other than U.S. GAAP will be required to disclose what the accounting principles are, but will not be required to reconcile the numbers to U.S. GAAP.

Additionally, several commentators requested clarification as to whether, in the preparation of the consolidating financial statements, the rules would require separate stand-alone financial data for each Material Associated Person. The Commission has revised paragraphs (a)(1)(iv) and (a)(1)(v) of Rule 17h–1T and the corresponding sections of Form 17–H to specify that the consolidating and consolidated balance sheets, income statements, and statement of cash flows are required for the broker-dealer and the broker-dealer's ultimate holding company parent. Separate consolidating and consolidated information is not required for each Material Associated Person included in the consolidating and consolidated information.

(b) *Aggregate securities and commodities positions.* Proposed Rule 17h–1T would require broker-dealers to maintain records of the amount at the end of the quarter, and the highest and lowest amounts during the quarter, of securities and commodities positions held by each Material Associated Person, including a separate listing of each position that exceeds a defined Materiality Threshold at any time during the quarter. Proposed Rule 17h–1T defined the term Materiality Threshold to mean the greater of: (A) $100 million; or (B) 10 percent of the broker-dealer's tentative net capital or 10 percent of the Material Associated Person's tangible net worth, whichever is greater. Proposed Form 17–H set forth a schedule to be used in reporting this data to the Commission.

Generally, the commentators recognized the need for the Commission to compile and analyze position data. The writers did, however, offer a number of suggestions that the Commission believes are helpful and that can be incorporated into the final version of the rules being adopted today. Specifically, the Securities Industry Association (the "SIA") recommended that the highs and lows for single position tracking requirements in the rule should be determined on the basis of month-end figures, rather than daily figures, which would impose a costly and continuous monitoring requirement. The Commission agrees that month-end reporting would be sufficient for risk assessment purposes, and has modified the rule accordingly. As revised, Rule 17h–1T will require broker-dealers to maintain aggregate position data at quarter end, and at month end if greater than quarter end. Single position tracking for the purposes of monitoring positions that are larger than the Materiality Threshold will be required at month end. Finally, Item 5 of Form 17–H has been modified to conform to the language of Rule 17h–1T, and the line items in the Form have been revised to reflect the commentators' concerns regarding excessive detail in the disclosure of options positions.

(c) *Financial instruments.* Proposed Rule 17h–1T required broker-dealers to maintain information concerning the activities of a Material Associated Person involving financial instruments with off-balance sheet risk, as that term is used in Statement of Financial Accounting Standards No. 105 ("SFAS 105"). SFAS 105, which applies to all companies preparing financial statements in accordance with GAAP, requires disclosure of information about financial instruments with off-balance sheet risk and financial instruments with concentration of credit risk. Off-balance sheet risk is referred to in SFAS 105 as the risk of accounting loss (defined as the loss that may have to be recognized due to credit and market risk as the result of the obligations from a financial instrument).

Initially, several commentators noted that SFAS 105 requires the disclosure on an annual and not quarterly basis. The firms argued that quarterly reporting under the risk assessment rules would create additional and unneeded cost. The Commission recognizes that certain additional burdens will be created by the imposition of quarterly SFAS 105 disclosure; however, the market for these types of instruments is growing, and much of this activity is being booked outside of the registered broker-dealer. This area may be a source of concern in the future, as complex and risky financial products are developed and become more prevalent in the securities industry. For this reason, the Commission is requiring quarterly reporting of financial instrument data under Rule 17h–2T and Form 17–H.

Additionally, the Commission had made certain revisions to the applicable provisions of the rule and form concerning the disclosure of financial instruments. Generally, these revisions

clarify that the required records and disclosure under the rules would be substantially similar to that required by SFAS 105. Thus, paragraph (a)(1)(vii) of Rule 17h–1T will require broker-dealers to maintain the notional or contractual amounts, and in the case of options, the value of the underlying instruments, of financial instruments as the term is used in SFAS 105. The rules require a separate listing of each instrument where the credit risk with respect to any individual counterparty exceeds the Materiality Threshold at quarter end.[15] As previously proposed, the rules would require the monitoring of large exposures on a daily basis. However, based in part on the recommendation of the SIA, rules have been revised to require tracking at quarter end rather than on a daily basis to reduce unnecessary burdens. The Commission wishes to point out that, because SFAS 105 leaves considerable discretion to a firm in the manner it discloses financial instrument data, Form 17–H contains detailed line item breakdowns of these instruments that will make the information reported to the Commission more meaningful than that would be disclosed under SFAS 105 in a Form 10–K.

(d) *Bridge loans and other extensions of credit.* Paragraph (a)(1)(viii) of Rule 17h–1T will require the aggregate amount at the end of each quarter, and the amount at month end if greater than quarter end, of bridge loans or other similar extensions of credit by each Material Associated Person. In response to the suggestions of the commentators, and as in the case of position reporting, the highest and lowest amounts of bridge loans at any time during the quarter will not be required; similarly, exposures that exceed the Materiality Threshold need only be noted month end. Quarterly disclosure of this information will be required under the provisions of Rule 17h–2T and Form 17–H.

(e) *Commercial paper and other financing information.* Paragraph (a)(1)(ix) of Rule 17h–1T will require broker-dealers to keep the aggregate amount at the end of each quarter, and the amount at month end if greater than quarter end, of commercial paper, secured and other unsecured borrowing, bank loans, lines of credit, and the principal installments of long-term or medium-term debt scheduled to mature within one year. The rule has been revised to clarify that this information should be kept for the broker-dealer and each Material Associated Person. Because large broker-dealers rely on the commercial paper market for a significant amount of their daily funding needs, the Commission believes funding data will be critical to the effective implementation of the risk assessment program. As in other areas, the Commission has revised this provision in response to the suggestions of the commentators to require broker-dealers to maintain, and report, the amounts of commercial paper and other financing sources outstanding at the end of each quarter and not the highest and lowest amounts during the quarter as the Commission's proposal would have required.

(f) *Real estate information.* Proposed Rule 17h–1T required broker-dealers to maintain various detailed information concerning the real estate and mortgage loan activities of their Material Associated Persons. The Commission is particularly concerned about the impact mortgage loans and real estate investments made by a Material Associated Person could have on a registered broker-dealer. The Commission is adopting the rules' real estate provisions with a number of changes that respond to the issues raised by the commentators.

Paragraph (a)(1)(x) of Rule 17h–1T will require a breakdown of real estate loans and investments by type of property; geographic distribution; the value of loans that are not current, are in the process of foreclosure, or have been restructured; the allowance for losses on loans and investments; and information concerning risk concentration. The rule specifically excludes information regarding trading positions in whole loans, which, as the commentators pointed out, are usually held for short periods of time. As proposed, Rule 17h–1T would have required the maintenance of information concerning the Material Associated Person's lending and risk management policies and policies for placing loans on a non-accrual status. These requirements have not been adopted into the final rules as the Commission believes this is an area where a burden can be reduced without significant loss to the risk assessment program. The Material Associated Person would only be required to provide the criteria it uses for determining which loans are not current. In this regard, new Item 9 of Form 17–H has been streamlined by eliminating the requirement to produce a narrative analysis reflecting problem loans or investments. Section E of Part II of Form 17–H has similarly been revised by reducing the level of detail in reporting. The Commission believes that these revisions address the concerns of the commentators concerning the burdens of complying with the real estate provisions of the risk assessment rules.

B. *Location of records.* In order to address the commentators' concern with maintaining and storing information about many different enterprises within the holding company, the Commission is adopting a new paragraph in Rule 17h–1T that would permit the required records to be maintained at a Material Associated Person, or at some other records storage facility. Any such location must be in the United States and the records must be kept in an easily accessible place as that term is used in Rule 17a–4. Moreover, in order to operate under this new provision, the broker-dealer must furnish to the Commission an undertaking permitting the examination of the records by the Commission or its designees similar to that currently required by the Commission's broker-dealer recordkeeping rules.

C. *Reporting requirements.* Proposed Rule 17h–2T specified that Form 17–H would be required within 45 days after the end of each fiscal quarter. The rule permitted the filing of the year-end consolidating and consolidated financial statements within 90 days after the end of the fiscal year. Citing personnel and time problems, several broker-dealers, together with the SIA, requested that the filing deadlines be extended by 15 days for both the quarter-end filings and the year-end filings. The Commission regards this concern as valid, and has extended the reporting timeframes set forth in paragraph (a)(1) of Rule 17h–2T to 60 and 105 days respectively.

Rule 17h–2T has also been revised to conform to the various revisions made to rule 17h–1T. For example, paragraph (c)(1) of the rule's special provisions for banks has been refined to specify the particular banking reports that are required to be filed with the Commission. Paragraphs (c)(3) and (d) have been added for Material Associated Persons that are subject to the supervision of the CFTC and foreign regulatory authorities.

## IV. Temporary Implementation Schedule

Many of the commentators to the Commission's proposal pointed to the personnel and systems adjustments that would be required to comply with the recordkeeping and reporting requirements set forth in the rules being

[15] SFAS 105 defines "credit risk" as the possibility that a loss may occur from the failure of another party to perform under the terms of the contract.

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adopted today. To ease the burdens associated with starting the risk assessment program, the Commission is adopting a temporary implementation schedule to phase-in the rules. During the comment process it was stated that certain of the items called for under the rules (such as the organization chart and risk management policy information) generally already exist. Therefore, it would not be difficult for broker-dealers to supply this information relatively shortly after the rules become effective. The remainder of the financial data will, it was argued, take sometime for the industry to compile.

The Commission believes it is important to commence the information gathering process as soon as possible and therefore the rules will require that broker-dealers maintain the information required by paragraphs (a)(1)(i) (the organization chart), (a)(2)(ii) (risk management policy information) and (a)(1)(iii) (disclosure of litigation) of Rule 17h–1T commencing September 30, 1992. Rules 17h–2T will require broker-dealers to file this limited information with the Commission on or before October 31, 1992. The rules will become fully effective on December 31, 1992.

**V. Summary of Final Regulatory Flexibility Analysis**

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 630 concerning the final rules. The FRFA notes that the Commission did not receive any comments regarding the Initial Regulatory Flexibility Analysis. A copy of the FRFA may be obtained by contacting Roger G. Coffin, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC, 20549, (202) 272–7375.

**VI. Statutory Analysis**

Pursuant to the Securities Exchange Act of 1934 and particularly sections 17 and 23 thereof, 15 U.S.C. 78q and 78w, the Commission is adding a new 240.17h–1T and 240.17h–2T to title 17 of the Code of Federal Regulations in the manner set forth below.

**VII. List of Subjects in 17 CFR Parts 240 and 249**

Reporting and recordkeeping requirements; Securities.

**VIII. Text of the Final Rules**

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

**PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

1. The authority citation for part 240 is amended by adding the following citation:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

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Section 240. 17h–1T also issued under 15 U.S.C. 78q.

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2. By adding § 240.17h–1T to read as follows:

**§ 240.17h–1T Risk assessment recordkeeping requirements for associated persons of brokers and dealers.**

*(a) Requirement to maintain and preserve information.* (1) Every broker or dealer registered with the Commission pursuant to section 15 of the Act, and every municipal securities dealer registered pursuant to Section 15B of the Act for which the Commission is the appropriate regulatory agency, unless exempt pursuant to paragraph (c) of this section, shall maintain and preserve the following information:

(i) An organizational chart which includes the broker or dealer and all its associated persons. Included in the organizational chart shall be a designation of which associated persons are Material Associated Persons as that term is used in paragraph (a)(2) of this section;

(ii) Written policies, procedures, or systems concerning the broker or dealer's:

(A) Method(s) for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person;

(B) Financing and capital adequacy, including information regarding sources of funding, together with a narrative discussion by management of the liquidity of the material assets, the structure of debt capital, and sources of alternative funding; and

(C) Trading positions and risks, such as records regarding reporting responsibilities for trading activities, policies relating to restrictions or limitations on trading securities and financial instruments or products, and a description of the types of reviews conducted to monitor existing positions, and limitations or restrictions on trading activities.

(iii) A description of all material pending legal or arbitration proceedings involving a Material Associated Person or the broker or dealer that are required to be disclosed by the ultimate holding company under generally accepted accounting principles on a consolidated basis;

(iv) Consolidated and consolidating balance sheets, prepared in accordance with generally accepted accounting principles, which may be unaudited and which shall include the notes to the financial statements, as of quarter end for the broker or dealer and its ultimate holding company;

(v) Quarterly consolidated and consolidating income statements and consolidated cash flow statements, prepared in accordance with generally accepted accounting principles, which may be unaudited and which shall include the notes to the financial statements, for the broker or dealer and its ultimate holding company;

(vi) The amount as of quarter end, and at month end if greater than quarter end, of the aggregate long and short securities and commodities positions held by each Material Associated Person, including a separate listing of each single unhedged securities or commodities position, other than U.S. government or agency securities, that exceeds the Materiality Threshold at any month end;

(vii) The notional or contractual amounts, and in the case of options, the value of the underlying instruments, as of quarter end, of financial instruments with off-balance sheet risk and financial instruments with concentrations of credit risk (as those terms are used in Statement of Financial Accounting Standards No. 105) where the Material Associated Person operates a trading book, with a separate entry of each commitment where the credit risk (as that term is used in Statement of Financial Accounting Standards No. 105) with respect to a counterparty exceeds the Materiality Threshold at quarter end;

(viii) The aggregate amount as of quarter end, and the amount at month end if greater than quarter end, of all bridge loans and those other material unsecured extensions of credit (not including intra-group receivables) with an initial or remaining maturity of less than one year by each Material Associated Person, together with the allowance for losses for such transactions, including a specific description of any extensions of credit to a single borrower exceeding the Materiality Threshold at any month end;

(ix) The aggregate amount as of quarter end, and the amount at month end if greater than quarter end, of



commercial paper, secured and other unsecured borrowing, bank loans, lines of credit, or any other borrowings, and the principal installments of long-term or medium-term debt, scheduled to mature within twelve months from the most recent fiscal quarter for the broker or dealer and each Material Associated Person; and

(x) Data relating to real estate activities, including mortgage loans and investments in real estate, but not including trading positions in whole loans, conducted by each Material Associated Person, including:

(A) Real estate loans and investments by type of property, such as construction and development, residential, commercial and industrial or farmland;

(B) The geographic distribution, as of quarter end, by type of loan or investment where the amount exceeds the Materiality Threshold at quarter end;

(C) The aggregate carrying value of loans which each Material Associated Person deems to be not current as to interest or principal, together with the Material Associated Person's criteria for the determination of which loans are not current, or which are in the process of foreclosure or that have been restructured;

(D) The allowance for losses on loans and on investment real estate by type of loan or investment, and the activity in the allowance for losses account; and

(E) Information about risk concentration in the real estate investment and loan portfolio, including information about risk concentration to a single borrower or location of property if the risk concentration exceeds the Materiality Threshold at quarter end.

(2) The determination of whether an associated person of a broker or dealer is a Material Associated Person shall involve consideration of all aspects of the activities of, and the relationship between, both entities, including without limitation, the following factors:

(i) The legal relationship between the broker or dealer and the associated person;

(ii) The overall financing requirements of the broker or dealer and the associated person, and the degree, if any, to which the broker or dealer and the associated person are financially dependent on each other;

(iii) The degree, if any, to which the broker or dealer or its customers rely on the associated person for operational support or services in connection with the broker's or dealer's business;

(iv) The level of risk present in the activities of the broker's or dealer's associated persons; and

(v) The extent to which the associated person has the authority or the ability to cause a withdrawal of capital from the broker or dealer.

(3) The information, reports and records required by the provisions of this section shall be maintained and preserved in accordance with the provisions of section 240.17a–4 and shall be kept for a period of not less than three years in an easily accessible place.

(4) For the purposes of this section and section 240.17h–2T, the term "Materiality Threshold" shall mean the greater of:

(i) $100 million; or

(ii) 10 percent of the broker or dealer's tentative net capital based on the most recently filed Form X–17A–5 or 10 percent of the Material Associated Person's tangible net worth, whichever is greater.

*(b) Special provisions with respect to material associated persons subject to the supervision of certain domestic regulators.* A broker or dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraph (a) of this section with respect to a Material Associated Person if:

(1) Such Material Associated Person is subject to examination by, or the reporting requirements of, a Federal banking agency and the broker or dealer maintains in accordance with the provisions of this section copies of all reports submitted by such Material Associated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956 other than the Form FR 2068; or

(2) If such Material Associated Person is subject to the supervision of an insurance commissioner or other similar official or agency of a state, and the broker or dealer maintains in accordance with the provisions of this section copies of the Annual and Quarterly Statements with Schedules and Exhibits prepared by the insurance company on forms prescribed by the National Association of Insurance Commissioners; or

(3) In the event an insurance company is not required to prepare Quarterly Statements on forms prescribed by the National Association of Insurance Commissioners, the broker or dealer must maintain and preserve the records required by paragraph (a) of this section on a quarterly basis; or

(4) In the case of a Material Associated Person that is subject to the supervision of the Commodity Futures Trading Commission, the broker or dealer maintains in accordance with the provisions of this section copies of the reports filed on Forms 1 FR–FCM or 1 FR–IB by such Material Associated Person with the Commodity Futures Trading Commission.

*(c) Special provisions with respect to material associated persons subject to the supervision of a foreign financial regulatory authority.* A broker or dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraph (a) of this section with respect to a Material Associated Person if such broker or dealer maintains in accordance with the provisions of this section copies of the reports filed by such Material Associated Persons with a Foreign Financial Regulatory Authority. The broker or dealer shall maintain a copy of the original report and a copy translated into the English language. For the purposes of this section, the term Foreign Financial Regulatory Authority shall have the meaning set forth in section 3(a)(51) of the Act.

(d) *Exemptions.* (1) The provisions of this section shall not apply to any broker or dealer which is exempt from the provisions of section 240.15c3–3:

(i) Pursuant to paragraph (k)(1) of § 240.15c3–3; or

(ii) Pursuant to paragraph (k)(2) of § 240.15c3–3; or

(iii) If the broker or dealer does not qualify for an exemption from the provisions of § 240.15c3–3 and such broker or dealer does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of or for customers; unless

(iv) In the case of paragraphs (d)(1)(ii) or (d)(1)(iii) of this section, the broker or dealer maintains capital including debt subordinated in accordance with appendix D of § 240.15c3–1 equal to or greater than $20,000,000.

(2) The provisions of this section shall not apply to any broker or dealer which maintains capital including debt subordinated in accordance with appendix D of section 240.15c3–1 of less than $250,000, even if the broker or dealer hold funds or securities for, or owes money or securities to, customers or carries the accounts of or for customers.

(3) In calculating capital for the purposes of this paragraph, a broker or dealer shall include the equity capital and subordinated debt of any other registered brokers or dealers that are associated with the broker or dealer and are not otherwise exempt from the

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provisions pursuant to paragraph (d)(1)(i) of this section.

(4) The Commission may, upon written application by a Reporting Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any brokers or dealers associated with such Reporting Broker or Dealer. The term "Reporting Broker or Dealer" shall mean, in the case of a broker or dealer that is associated with other registered brokers or dealers, the broker or dealer which maintains the greatest amount of net capital as reported on its most recently fixed Form X-17A-5. In granting exemptions under this section, the Commission shall consider, among other factors, whether the records and other information required to be maintained pursuant to this section concerning the Material Associated Persons of the broker or dealer associated with the Reporting Broker or Dealer will be available to the Commission pursuant to § 240.17h-2T.

*(e) Location of records.* A broker or dealer required to maintain records concerning a Material Associated Person pursuant to this section may maintain those records either at the Material Associated Person or at a records storage facility provided that the records are located within the boundaries of the United States and the records are kept in an easily accessible place, as that term is used in § 240.17a-4. In order to operate pursuant to the provisions of this paragraph, the Material Associated Person or other entity maintaining the records shall file with the Commission a written undertaking in form acceptable to the Commission, signed by a duly authorized person, to the effect that the records will be treated as if the broker or dealer was maintaining the records pursuant to this section and that the entity maintaining the records undertakes to permit examination of such records at any time or from time to time during business hours by representatives or designees of the Commission and to promptly furnish the Commission or its designee true, correct, complete and current hard copy of any or all or any part of such records. The election to operate pursuant to the provisions of this paragraph shall not relieve the broker or dealer required to maintain and preserve such records from any of its responsibilities under this section or section 240.17h-2T.

*(f) Confidentiality.* All information obtained by the Commission pursuant to the provisions of this section from a broker or dealer concerning a Material Associated Person shall be deemed confidential information for the purposes of section 24(b) of the Act.

*(g) Temporary implementation schedule.* Every broker or dealer subject to the requirements of this section shall maintain and preserve the information required by paragraphs (a)(1)(i), (ii), and (iii) of this section commencing September 30, 1992. Commencing December 31, 1992, the provisions of this section shall apply in their entirety.

3. By adding § 240.17h-2T to read as follows:

**§ 240.17h-2T Risk assessment reporting requirements for brokers and dealers.**

*(a) Reporting requirements of risk assessment information required to be maintained by section 240.17h-1T.* (1) Every broker or dealer registered with the Commission pursuant to section 15 of the Act, and every municipal securities dealer registered pursuant to section 15B of the Act for which the Commission is the appropriate regulatory agency, unless exempt pursuant to paragraph (b) of this section, shall file a Form 17-H within 60 calendar days after the end of each fiscal quarter. The Form 17-H for the fourth fiscal quarter shall be filed within 60 calendar days of the end of the fiscal year. The cumulative year-end financial statements required by section 240.17h-1T may be filed separately within 105 calendar days of the end of the fiscal year.

(2) The reports required to be filed pursuant to paragraph (a)(1) of this section shall be considered filed when received at the Commission's principal office in Washington, DC.

(3) For the purposes of this section, the term Material Associated Person shall have the meaning used in § 240.17h-1T.

(b) *Exemptions.* (1) The provisions of this section shall not apply to any broker or dealer which is exempt from the provisions of section 240.15c3-3:

(i) Pursuant to paragraph (k)(1) of § 240.15c3-3; or

(ii) Pursuant to paragraph (k)(2) of § 240.15c3-3; or

(iii) If the broker or dealer does not qualify for an exemption from the provisions of § 240.15c3-3 and such broker or dealer does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of or for customers; unless

(iv) In the case of paragraphs (b)(1)(ii) or (b)(1)(iii) of this section, the broker or dealer maintains capital including debt subordinated in accordance with appendix D of § 240.15c3-1 equal to or greater than $20,000,000.

(2) The provisions of this section shall not apply to any broker or dealer which maintains capital including debt subordinated in accordance with appendix D of § 240.15c3-1 of less than $250,000, even if the broker or dealer hold funds or securities for, or owes money or securities to, customers or carries the accounts of or for customers.

(3) In calculating capital and subordinated debt for the purposes of this section, a broker or dealer shall include the equity capital and subordinated debt of any other registered brokers or dealers that are associated with the broker or dealer and are not otherwise exempt from the provisions pursuant to paragraph (b)(1)(i) of this section.

(4) The Commission may, upon written application by a Reporting Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any brokers or dealers associated with the Reporting Broker or Dealer. The term "Reporting Broker or Dealer" shall mean, in the case of a broker or dealer that is associated with other registered brokers or dealers, the broker or dealer which maintains the greatest amount of net capital as reported on its most recently filed Form X-17A-5. In granting exemptions under this section, the Commission shall consider, among other factors, whether the records and other information required to be maintained pursuant to § 240.17h-1T concerning the Material Associated Persons of the broker or dealer associated with the Reporting Broker or Dealer will be available to the Commission pursuant to the provisions of this section.

*(C] Special provisions with respect to material associated persons subject to the supervision of certain domestic regulators.* A broker or dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a) of this section with respect to a Material Associated Person if:

(1) Such Material Associated Person is subject to examination by or the reporting requirements of a Federal banking agency and the broker or dealer or such Material Associated Person furnishes in accordance with paragraph (a) of this section copies of reports filed on Form FR Y-9C, Form FR Y-6, Form FR Y-7, and Form FR 2068 by the Material Associated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956; or

(2) If the Material Associated Person is subject to the supervision of an insurance commissioner or other similar official agency of a state; and

(i) In the case of a Material Associated Person organized as a public stock company, the broker or dealer furnishes in accordance with the provisions of this section copies of the filings made by the insurance company pursuant to sections 13 or 15 of the Act and the Investment Company Act of 1940; or

(ii) In the case of Material Associated Person organized as a mutual insurance company or a non-public stock company, the broker or dealer furnishes in accordance with the provisions of this section copies of the Annual and Quarterly Statements prepared by the insurance company on forms prescribed by the National Association of Insurance Commissioners. The Annual Statement furnished to the Commission pursuant to this section shall include: The classification (distribution by state) section from the schedule of real estate; distribution by state, the interest overdue (more than three months), in process of foreclosure, and foreclosed properties transferred to real estate during the year sections from the schedule of mortgages; and the quality and maturity distribution of all bonds at statement values and by major types of issues section from the schedule of bonds and stocks. All other Schedules and Exhibits to such Annual and Quarterly Statements shall be maintained at the broker-dealer pursuant to the provisions of § 240.17h-1T but not furnished to the Commission.

(iii) In the event an insurance company organized as a stock or mutual company is not required to prepare Quarterly Statements, the broker or dealer must file with the Commission a Form 17-H in accordance with the provisions of this section on a quarterly basis.

(3) In the case of a Material Associated Person that is subject to the supervision of the Commodity Futures Trading Commission, the broker or dealer furnishes in accordance with the provisions of this section copies of the reports filed by the Material Associated Person with the Commodity Futures Trading Commission on Forms 1 FR-FCM or 1 FR-IB.

(4) No broker or dealer shall be required to furnish to the Commission any examination report of any Federal banking agency or any supervisory recommendations or analyses contained therein with respect to a Material Associated Person that is subject to the regulation of a Federal banking agency. All information received by the Commission pursuant to this section concerning a Material Associated Person that is subject to examination by or the reporting requirements of a Federal banking agency shall be deemed confidential for the purposes of section 24(b) of the Act.

(5) The furnishing of any information or documents by a broker or dealer pursuant to this section shall not constitute an admission for any purpose that a Material Associated Person is otherwise subject to the Act. Any documents or information furnished to the Commission by a broker or dealer pursuant to this rule shall not be deemed to be "filed" for the purposes of the liabilities set forth in section 18 of the Act.

*(d) Special provisions with respect to material associated persons subject to the supervision of a foreign financial regulatory authority.* A broker or dealer shall be deemed to be in compliance with the reporting requirements of this section with respect to a Material Associated Person if such broker or dealer furnishes in accordance with the provisions of this section copies of the reports filed by such Material Associated Person with a Foreign Financial Regulatory Authority. The broker or dealer shall file a copy of the original report and a copy translated into the English language. For the purposes of this section, the term Foreign Financial Regulatory Authority shall have the meaning set forth in section 3(a)(51) of the Act.

*(e) Confidentiality.* All information obtained by the Commission pursuant to the provisions of this section from a broker or dealer concerning a Material Associated Person shall be deemed confidential information for the purposes of section 24(b) of the Act.

*(f) Temporary implementation schedule.* Every broker or dealer subject to the requirements of this section shall file the information required by Items 1, 2 and 3 of Form 17-H by October 31, 1992. Commencing December 31, 1992, the provisions of this section shall apply in their entirety.

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for part 249 continues to read as follows:

**Authority:** 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

5. By adding § 249.328T to read as follows:



**§ 249.328T Form 17-H, Risk assessment report for brokers and dealers pursuant to section 17(h) of the Securities Exchange Act of 1934 and rules thereunder.**

This form shall be used by brokers and dealers in reporting information to the Commission concerning certain of their associated persons pursuant to section 17(h) of the Securities Exchange Act of 1934 [15 U.S.C. 78q(h)] and Rules 17h-1T and 17h-2T thereunder [§§ 240.17h-1T and 240.17h-2T of this chapter].

**Note:** This form will not appear in the Code of Federal Regulations.

**Securities and Exchange Commission, Washington, DC 20549**

**Form 17-H**

**Risk Assessment Report for Brokers and Dealers**

**Part I—Risk Assessment Reporting Requirements for Brokers and Dealers**

SEC File No. _____
Crd No. _____
Name of Reporting Broker-Dealer _____
Address of Principal Place of Business _____
Firm I.D. No. _____
For Period Beginning (MM/DD/YY) _____
And Ending (MM/DD/YY) _____
Name and Telephone Number of Person To Contact in Regard to This Report _____
Name(s) of Material Associated Persons Contained in This Report: _____
Name of Associated Broker-Dealer(s) Not Filing (If applicable) _____

*Attention*

Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Intentional misstatements or omissions of facts may also result in civil fines and other sanctions pursuant to Section 20 of the Securities Exchange Act of 1934.

The person signing this report represents hereby that all information contained in this Form is true, correct and complete. It is understood that all information in this Form is considered an integral part of this Form and that the submission of any amendment represents that all unamended information remains true, correct and complete as previously filed.

Pursuant to the Securities Exchange Act of 1934, the undersigned has caused this report to be signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 19_____.

_____
(Name of Broker-Dealer)

_____
(Signature and Title of Person Duly Authorized to Submit This Report)

*General Instructions*

1. This Form consists of two parts. Part I consists of the organizational, policy and legal information required by paragraphs (a)(1)(i) through (iii) of section 240.17h–1T, together with the financial statements required by paragraphs (a)(1)(iv) and (v) of § 240.17h–1T. Part II contains line items for reporting the numerical and other data required by paragraphs (a)(1)(vi) through (x) of § 240.17h–1T

2. Report as of the last day of the fiscal quarter. This Form is to be filed within 60 calendar days of the end of each fiscal quarter by brokers and dealers concerning each Material Associated Person (as defined in Temporary Rules 17h–1T and 17h–2T). The Form for the fourth fiscal quarter shall be filed within 60 calendar days of the end of the fiscal year. The cumulative year end financial statements required by paragraphs (a)(1)(iv) and (v) of § 140.17h–1T may be filed separately within 105 calendar days of the end of the fiscal year.

3. In the event a broker or dealer is associated with one or more other registered brokers or dealers, each broker or dealer is required to file a separate Form 17–H. The Commission may exempt from the filing requirements all brokers or dealers associated with a broker or dealer that has been designated a "Reporting Broker or Dealer." The term "Reporting Broker or Dealer" shall have the meaning set forth in Rules 17h–1T and 17h–2T. A broker or dealer seeking designation as a Reporting Broker or Dealer must apply to the Commission for an exemption pursuant to Rule 17h–2T. Pending such designation, each broker or dealer associated with the broker or dealer requesting such designation as a Reporting Broker or Dealer is required to file a separate Form 17–H.

4. The information requested in Part II of this Form shall be completed separately for each Material Associated Person, even if the financial data contained in the broker or dealer's Form X–17A–5 contains information concerning a Material Associated Person. The broker-dealer should not include information concerning its activities in the information required by Part II of this Form if such information is filed with the Commission as part of the broker-dealer's Form X–17A–5 or Form G–405.

Item 1.—Organizational Chart Reflecting the Associated Persons and the Broker-Dealer

1. Provide a copy of the organizational chart maintained by the broker or dealer pursuant to paragraph (a)(1)(i) of § 240.17h–1T.

2. The information provided pursuant to this Item should be included in the first Form 17–H filed by the broker or dealer and in the year end filing. Quarterly updates should be provided only where a material change in the information provided to the Commission has occurred.

Item 2.—Risk Management and Other Policies

1. Provide copies of the financing, capital adequacy, and risk management and other policies, procedures or systems maintained by the broker-dealer pursuant to paragraph (a)(1)(ii) of section 240.17h–1T.

2. The information provided pursuant to this Item should be included in the first Form 17–H filed by the broker or dealer. Quarterly updates should be provided only where a material change in the information provided to the Commission has occurred.

Item 3.—Legal Proceedings

1. Provide the description of any material pending legal or arbitration proceedings maintained by the broker or dealer pursuant to paragraph (a)(1)(iii) of § 240.17h–1T.

2. The information provided pursuant to this Item should be included in the first Form 17–H filed with the Commission. Quarterly updates should be provided only where a material change in the information provided to the Commission has occurred.

Item 4.—Financial Statements

1. Provide the information required to be maintained by the broker or dealer pursuant to paragraphs (a)(1)(iv) and (a)(1)(v) of § 240.17h–1T. The financial statements may be presented on an unaudited basis. The statement of cash flows and the notes to financial statements may be omitted for the consolidating financial statements. Entities using accounting principles other than U.S. GAAP should indicate in a note the accounting principles used.

2. The consolidating financial statements must be presented on a subsidiary basis and shall indicate which subsidiaries are Material Associated Persons.

**Part II—General Instructions for Part II of This Form**

1. Provide the following information for each Material Associated Person as of the end of the quarter. Indicate the name of each Material Associated Person in a separate column. In the event a separate listing of a position, financial instrument or otherwise is required pursuant to any of the provisions of § 240.17h–1T the broker or dealer should indicate as such in the appropriate section of this Part II. Indicate a separate listing for long and short positions.

*I. Aggregate Securities and Commodities Positions Indicate long and short positions separately)*

1. U.S. Treasury securities
2. U.S. Government agency
3. Securities issued by states and political subdivisions in the U.S.
4. Foreign securities:
   (a) Debt securities
   (b) Equity securities
5. Banker's acceptance
6. Certificates of deposit
7. Commercial paper
8. Corporate obligations
9. Stocks and warrants (other than arbitrage positions).
10. Arbitrage:
    (a) Index arbitrage and program trading.
    (b) Risk arbitrage
    (c) Other arbitrage
11. Options:
    (a) Market value of put options:
        (i) Listed
        (ii) Unlisted
    (b) Market value of call options:
        (i) Listed
        (ii) Unlisted
12. Spot commodities
13. Investments with no ready market:
    (a) Equity
    (b) Debt
    (c) Other (include limited partnership interests).
14. Other securities of commodities
15. Summary of delta or similar analysis (if available).

*II. Financial Instruments With Off-Balance Sheet Risk and With Concentration of Credit Risk* (Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument. In the event a separate listing of a position or instrument is required pursuant to the provisions of section 17h-1T separately state such position separately.

A. Securities
1. When-issued securities:
   (a) Gross commitments to purchase.
   (b) Gross commitments to sell
2. Written stock option contracts:
   (a) Market value, and the value of the underlying securities, of call contracts:
       (i) Listed
       (ii) Unlisted
   (b) Market value, and the value of the underlying securities, of put contracts:
       (i) Listed
       (ii) Unlisted

(c) Market value, and the value of the underlying securities, of naked call contracts:
(i) Listed.....
(ii) Unlisted.....
(d) Market value, and the value of the underlying securities, of naked put contracts:
(i) Listed.....
(ii) Unlisted.....
3. Futures:
(a) U.S. Treasury and mortgage-backed securities futures.
(b) Other futures (specify).....
4. Forwards:
(a) U.S. Treasury and mortgage-backed securities.
(i) Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
(ii) Per counterparty breakdown where credit risk exceeds the Materiality Threshold.
(b) Other forwards (specify).....
(i) Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
(ii) Per counterparty breakdown where credit risk exceeds the Materiality Threshold.

B. Interest Rate Swaps
1. U.S. dollar denominated swaps:
(a) Total notional or contractual amount.
(b) Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
(c) Per counterparty breakdown where credit risk exceeds the Materiality Threshold.
2. Cross currency swaps:
(a) Total notional or contractual amount.
(b) Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
(c) Per counterparty breakdown where credit risk exceeds the Materiality Threshold.

C. Foreign exchange
1. Swaps:
(a) Total notional or contractual amount.
(b) Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
(c) Per counterparty breakdown where credit risk exceeds the Materiality Threshold.
2. Notional or contractual amounts of commitments to purchase foreign currencies and U.S. dollar exchange:
(a) Future.....
(b) Forwards.....
(i) Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
(ii) Per counterparty breakdown where credit risk exceeds the Materiality Threshold.
3. Contractual value together with value of the underlying instruments of naked written option contracts.

D. All other swap agreements (specify type)
1. Total notional or contractual amount.
2. Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
3. Per counterparty breakdown where credit risk exceeds the Materiality Threshold.

E. Commodities
1. Futures.....
2. Forwards.....
(a) Aggregate current cost of replacing contracts by counterparty in which the Material Associated Person has a gain.
(b) Per counterparty breakdown where credit risk exceeds the Materiality Threshold.
3. Sold option contracts (e.g., options on individual commodities and commodities indexes)
(a) Market value, and the value of the underlying securities, of call contracts:
(i) Listed.....
(ii) Unlisted.....
(b) Market value, and the value of the underlying securities, of put contracts:
(i) Listed.....
(ii) Unlisted.....
(c) Market value, and the value of the underlying securities, of naked call contracts:
(i) Listed.....
(ii) Unlisted.....
(d) Market value, and the value of the underlying securities, of naked put contracts:
(i) Listed.....
(ii) Unlisted.....

F. Loan commitments
1. Total amount.....
2. Unused portion.....

G. Total standby, commercial and similar letters of credit or guarantees.

H. Assets sold with recourse.....

I. Other off-balance sheet items (specify).

J. Summary of delta or similar analysis (if available).

K. Provide a separate listing, by amount, of significant concentrations of credit risk as defined in Statement of Financial Accounting Standards 105.

*III. Bridge Loans and Other Extensions of Credit*
1. Bridge loans.....
2. Other material credit extensions (specify).
3. Allowance for losses for credit extensions.

*IV. Funding Sources*
1. Short-term borrowings:
(a) Commercial paper.....
(b) Bank loans-secured.....
(c) Bank loans-unsecured.....
(d) Other.....
(e) Total.....
2. Long and medium-term debt.....
3. Committed lines of credit.....
4. Amounts borrowed under credit lines.
5. Credit ratings for commercial paper
(a) Standard & Poor's Corporation.
(b) Moody's Investor Service.....
(c) Other Nationally Recognized Statistical Rating Organization.

*V. Real Estate*
1. Real estate loans:
(a) Construction and land development.
(b) Secured by farmland.....
(c) Secured by residential properties.
(d) Commercial and industrial.....
(e) Other.....
2. Real estate investments:
(a) Construction and land development.
(b) Farmland.....
(c) Residential properties.....
(d) Commercial and industrial.....
(e) Other.....
3. Provide a separate listing of the above information by geographic region where the amount exceeds the Materiality Threshold.
4. Provide information about risk concentration to a single borrower, location or property in the investment or loan portfolio where the amount exceeds the Materiality Threshold

Dated: July 16, 1992.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-17151 Filed 7-20-92; 12:01 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 73

**[Docket No. 89C-0506]**

## Listing of Color Additives Exempt From Certification; Diluents for Color Additive Mixtures: Calcium Disodium EDTA (Calcium Disodium Ethylenediaminetetraacetate) and Disodium EDTA (Disodiumethylenediaminetetraacetate)

**AGENCY:** Food and Drug Administration, HHS.

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**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of calcium disodium EDTA (calcium disodium ethylenediaminetetraacetate) and disodium EDTA (disodium ethylenediaminetetraacetate) as diluents in color additive mixtures for use in food and ingested drugs. This action is in response to a petition filed by Warner-Jenkinson Co.

**DATES:** Effective August 21, 1992, except as to any provisions that may be stayed by the filing of proper objections; written objections by August 20, 1992.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Emily Florio, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9515.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

In a notice published in the **Federal Register** of January 10, 1990 (55 FR 908), FDA announced that a color additive petition (CAP 9C0218) had been filed by Warner-Jenkinson Co., P.O. Box 14538, St. Louis, MO 63178–4538, proposing that 21 CFR part 73 of the color additive regulations be amended to provide for the safe use of calcium disodium EDTA (calcium disodium ethylenediaminetetraacetate) and disodium EDTA (disodium ethylenediaminetetraacetate) as diluents in color additive mixtures for use in food and ingested drugs. This amendment will provide for the use of these diluents in color additive mixtures for ingested drug use by the cross-reference already given in 21 CFR 73.1001(a)(1). The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376).

## II. Conclusion

Based on data contained in the petition and other relevant information, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of calcium disodium EDTA and disodium EDTA as diluents in color additive mixtures for use in food and ingested drugs. The agency also concludes on the basis of those data and existing regulations for uses of calcium disodium EDTA (21 CFR 172.120) and disodium EDTA (21 CFR 172.135), that the diluents will perform their intended effects as preservatives and sequestrants, and thus, are suitable for these uses. The agency, therefore, is amending the color additive regulations in 21 CFR 73.1(a)(3) to provide for use of the diluents disodium EDTA and calcium disodium EDTA.

FDA further concludes that color additive mixtures containing calcium disodium EDTA and disodium EDTA are exempted from batch certification subject to the condition that each straight color in the mixture has been exempted from batch certification or, if not so exempted, is from a batch that has previously been certified and that has not changed in composition since certification. Mixtures of certifiable color additives are further subject to the restrictions of 21 CFR 80.35(b), wherein the certified batch of straight color is simply mixed with the approved diluent(s) and the label of such color additive mixtures shall not bear the lot number assigned by FDA to the certified straight color components, but shall bear the manufacturer's control number through which the history of the straight color can be determined.

## III. Inspection of Documents

In accordance with 21 CFR 71.15, the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

## IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

## V. Objections

Any person who will be adversely affected by this regulation may at any time on or before August 20, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

## List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

## PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

**Authority:** Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376).

2. Section 73.1 is amended in the table in paragraph (a)(3) by alphabetically

adding two new entries under the headings "Substances", "Definitions and specifications", and "Restrictions" to read as follows:

**§ 73.1 Diluents in color additive mixtures for food use exempt from certification.**

* * * * *

(a) * * *

(3) * * *

| Substances | Definitions and specifications | Restrictions |
|---|---|---|
| Calcium disodium EDTA (calcium disodium ethylenediaminetetraacetate). | Contains calcium disodium ethylenediaminetetraacetate dihydrate (CAS Reg. No. 6766-87-6) as set forth in the Food Chemicals Codex, 3d ed., p. 50, 1981. | May be used in aqueous solutions and aqueous dispersions as a preservative and sequestrant in color additive mixtures intended only for ingested use; the color additive mixture (solution or dispersion) may contain not more than 1 percent by weight of the diluent (calculated as anhydrous calcium disodium ethylenediaminetetraacetate). |
| * * * * | | |
| Disodium EDTA (disodium ethylenediaminetetraacetate). | Contains disodium ethylenediaminetetraacetate dihydrate (CAS Reg. No. 6381-92-6) as set forth in the Food Chemicals Codex, 3d ed., p. 104, 1981. | May be used in aqueous solutions and aqueous dispersions as a preservative and sequestrant in color additive mixtures intended only for ingested use; the color additive mixture (solution or dispersion) may contain not more than 1 percent by weight of the diluent (calculated as anhydrous disodium ethylenediaminetetraacetate). |

* * * * *

Dated July 15, 1992.

Michael R. Taylor,

*Deputy Commissioner for Policy.*

[FR Doc. 92-17143 Filed 7-20-92; 8:45 am]

BILLING CODE 4160-01-M

## 21 CFR Parts 510 and 520

**[Docket No. 92N-0271]**

## Animal Drugs, Feeds, and Related Products; Sulfadimethoxine Soluble Powder

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Agri Laboratories, Ltd. The ANADA provides for the use of a generic sulfadimethoxine soluble powder as an antibacterial in drinking water for broiler and replacement chickens and meat-producing turkeys, and in drinking water and as a drench for dairy calves, dairy heifers, and beef cattle.

**EFFECTIVE DATE:** July 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Steven D. Vaughn, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8848.

**SUPPLEMENTARY INFORMATION:** Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503, is the sponsor of ANADA 200-031 which provides for the use of a generic sulfadimethoxine soluble powder as an antibacterial in drinking water for the treatment of broiler and replacement chickens for coccidiosis, fowl cholera, and infectious coryza; meat-producing turkeys for coccidiosis and fowl cholera; and in drinking water and as a drench for the treatment of dairy calves, dairy heifers, and beef cattle for shipping fever complex, bacterial pneumonia, calf diphtheria, and foot rot.

Approval of ANADA 200-031 for Agri Laboratories, Ltd.'s, Sulfadimethoxine Antibacterial Soluble Powder is as a generic copy of Hoffmann-LaRoche's NADA 046-285 for Albon® Soluble Powder (sulfadimethoxine). The ANADA is approved as of June 17, 1992, and the regulations are amended in 21 CFR 520.2220a to reflect this approval. The basis for approval is discussed in the freedom of information summary.

In addition, Agri Laboratories, Ltd., has not previously been listed in 21 CFR 510.600(c) as a sponsor of an approved application. That section is amended to add new entries for the firm.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, room 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

### List of Subjects

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 520*

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Agri Laboratories, Ltd.," and in the table in paragraph (c)(2) by numerically adding a new entry for "057561" to read as follows:

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(1) * * *

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| Firm name and address | Drug labeler code |
|---|---|
| • • • • | • |
| Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503 | 057561 |
| • • • • | • |

(2) • • •

| Drug labeler code | Firm name and address |
|---|---|
| • • • • • | |
| 057561 | Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503 |
| • • • • • | |

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

**§ 520.2220a [Amended]**

4. Section 520.2220a. Sulfadimethoxine drinking water and drench is amended in paragraph (b) by removing "(1)" after the word "follows:" and by adding the phrase "and 057561" after the number "000004".

Dated: July 9, 1992.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 92-17059 Filed 7-20-92; 12:01 pm]

BILLING CODE 4160-01-M

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**21 CFR Part 558**

**New Animal Drugs for Use in Animal Feeds; Narasin and Bacitracin Methylene Disalicylate**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by A. L. Laboratories, Inc. The NADA provides for the use of two separately approved Type A medicated articles, one containing narasin and the other containing bacitracin methylene disalicylate, to make combination Type C medicated feeds for the prevention of coccidiosis, for increased rate of weight gain, and for improved feed efficiency in broiler chickens.

**EFFECTIVE DATE:** July 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** James F. McCormack, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8602.

**SUPPLEMENTARY INFORMATION:** A.L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, has filed NADA 140-853 which provides for the combination of separately approved narasin and bacitracin methylene disalicylate Type A medicated articles to make Type C medicated feeds containing 54 to 72 grams (g) of narasin per ton and 10 to 50 g of bacitracin methylene disalicylate per ton. The feed is used in broiler chickens for the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati, E. necatrix,* and *E. tenella,* for increased rate of weight gain, and for improved feed efficiency.

The NADA is approved as of May 22, 1992, and the regulations are amended in 21 CFR 558.76(d)(3) and 558.363(c)(1) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years exclusivity beginning May 22, 1992, because it contains reports of new clinical or field investigations essential to the approval of the application.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), room 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.76 is amended by revising paragraph (d)(3)(xiii) to read as follows:

**§ 558.76 Bacitracin, methylene disalicylate.**

• • • • • •

(d) • • •

(3) • • •

(xiii) Narasin alone or in combination with roxarsone as in § 558.363.

3. Section 558.363 is amended by adding paragraph (c)(1)(vi) to read as follows:

**§ 558.363 Narasin.**

• • • • •

(c) • • •

(1) • • •

(vi) *Amount per ton.* Narasin 54 to 72 grams, and bacitracin methylene disalicylate 10 to 50 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati, E. necatrix,* and *E. tenella,* for increased rate of weight gain, and for improved feed efficiency.

(B) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal. Narasin as provided by 000986, bacitracin methylene disalicylate by 046573 in § 510.600(c) of this chapter.

• • • • •

Dated: June 22, 1992.

**Richard H. Teske,**

*Deputy Director, Center for Veterinary Medicine.*

[FR Doc. 92-17508 Filed 7-20-92; 12:01 pm]

BILLING CODE 4160-01-M

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**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**27 CFR Part 19**

**[T.D. ATF-327]**

**Distilled Spirits for Fuel Use**

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.



**ACTION:** Final rule, Treasury decision.

**SUMMARY:** ATF is amending the regulations in 27 CFR part 19 regarding the submission of operational reports by large and medium size alcohol fuel plants (AFP). Under current regulations, large alcohol fuel plants are required to submit quarterly reports of operations (ATF Form 5110.75) to the Bureau, medium size plants are required to submit these reports on a semiannual basis, and small alcohol fuel plants are required to submit these reports annually. This Treasury decision eliminates the requirement to submit quarterly and semiannual reports. Alcohol fuel plants will only be required to submit a single, annual report of operations.

**EFFECTIVE DATE:** July 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Daniel J. Hiland, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202-927-8210).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Crude Oil Windfall Profit Tax Act of 1980 (Pub. L. No. 96-223, 94 Stat. 229) amended the Internal Revenue Code of 1954 by adding a new section 5181, Distilled Spirits for Fuel Use. 26 U.S.C. 5181 provides for the establishment of distilled spirits plants solely for the purpose of producing, processing, storing, and using or distributing, distilled spirits to be used exclusively for fuel use.

Regulations implementing this section of law are incorporated into 27 CFR part 19, subpart Y—Distilled Spirits for Fuel Use. These regulations allow for the establishment of a new type of distilled spirits plant, exclusively for the production, processing and storing, and use or distribution of alcohol for fuel purposes, Alcohol Fuel Plants (AFP). The regulations also waive many of the normal requirements for qualification and operation of this new type of distilled spirits plant.

27 CFR 19.907 defines three types of alcohol fuel producers. They are:

(a) *Small plant.* An AFP which produces (including receipts) not more than 10,000 proof gallons of spirits per calendar year.

(b) *Medium plant.* An AFP which produces (including receipts) more than 10,000 and not more than 500,000 proof gallons of spirits per calendar year.

(c) *Large plant.* An AFP which produces (including receipts) more than 500,000 proof gallons of spirits per calendar year.

27 CFR 19.988 requires that alcohol fuel plants periodically file reports of their operations depending on the type of plant, as follows:

Small plant—Annually (December 31)
Medium plant—Semiannually (June 30 and December 31)
Large plant—Quarterly (Close of each calendar quarter)

These reports are submitted on ATF Form 5110.75 and contain information regarding the quantities of spirits which are produced, received, and used in the production of alcohol fuel, and the quantities and disposition of the alcohol fuel produced by each AFP. The Bureau of Alcohol, Tobacco and Firearms (ATF) has required the submission of these reports of operations by AFP's so as to monitor industry operations for compliance with law and regulations, and to analyze trends in the industry.

**Regulatory Initiative**

On January 28, 1992, President Bush announced a regulatory initiative. This initiative included a 90-day moratorium on issuance of proposed or final rules, with some limited exceptions. The President also called for a review of all existing regulations and programs to identify any which impose substantial costs on the economy. The regulations governing alcohol fuel plants were reviewed under this program.

**Review of AFP Report Requirements**

After reviewing the report requirements governing alcohol fuel plants, ATF believes that it can sufficiently monitor industry operations through submission of a single, annual report from all three types of alcohol fuel plants. Accordingly, ATF is amending 27 CFR 19.988 to require an annual report in lieu of quarterly and semiannual reports of operations by large AFP's and medium AFP's respectively.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. A copy of this final rule has been submitted to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business, pursuant to 26 U.S.C. 7805(f).

**Executive Order 12291**

It has been determined that this final rule is not a major regulation as defined in E.O. 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Administrative Procedure Act**

Because this Treasury decision merely reduces the reporting requirements for medium and large alcohol fuel proprietors from semiannual and quarterly, respectively, to annually, it is found to be unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation in 5 U.S.C. 553(d).

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1980, Public Law No. 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because it does not impose any new reporting requirements. This final rule eliminates some of the reporting requirements applicable to large and medium size alcohol fuel producers.

**Drafting Information**

The principal author of this document is Daniel J. Hiland, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 19**

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, (Government agencies), Chemicals, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

**Authority and Issuance**

Accordingly, under the authority of 26 U.S.C. 5181, and 26 U.S.C. 7805, 27 CFR part 19 is amended as follows:

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## PART 19–DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for 27 CFR part 19 continues to read as follows:

**Authority:** 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C 9301, 9303, 9304, 9306.

**Par. 2.** Section 19.988 is revised to read as follows:

**§ 19.988 Reports.**

Each proprietor shall submit an annual report of their operations, Form 5110.75, for the calendar year ending December 31. The proprietor shall submit this report to the regional director (compliance) by January 30 following the end of the calendar year.

(Sec. 807, Pub. L. No. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

Signed:

**Daniel R. Black,**

*Director.*

Approved: June 19, 1992.

**Peter K. Nunez,**

*Assistant Secretary, (Enforcement).*

[FR Doc. 92-17123 Filed 7-20-92; 12:01 pm]

BILLING CODE 4810-31-M

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 385

[DoD Directive 5111.1]

### Under Secretary of Defense for Policy (USD(P))

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This document updates the responsibilities, functions, relationships and authorities of the USD(P). Significant revisions include the following: Deletes USD(P) responsibility for the counterintelligence and security countermeasures functions, which the Secretary of Defense recently transferred to the ASD(C3I) and Deletes USD(P) oversight responsibility for the following organizations, which the Secretary of Defense recently placed under the authority, direction, and control of the ASD(C3I): the Defense Investigative Service, the Defense Polygraph Institute, the DoD Security Institute, and the Defense Personnel Security Research and Education Center.

**EFFECTIVE DATE:** July 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. D. Clark, telephone 703–697–4281.

**SUPPLEMENTARY INFORMATION:**

### List of Subjects in 32 CFR Part 385

Organization and functions (Government agencies).

Accordingly, 32 CFR part 385 is revised to read as follows:

## PART 385—UNDER SECRETARY OF DEFENSE FOR POLICY

Sec.

385.1 Purpose.
385.2 Applicability and scope.
385.3 Responsibilities and functions.
385.4 Relationships.
385.5 Authorities.

**Authority:** 10 U.S.C. 134.

**§ 385.1 Purpose.**

Under title 10 of the United States Code this part updates the responsibilities, functions, relationships, and authorities of the USD(P) as prescribed herein, and supersedes DoD Directive 2030.1 [1].

**§ 385.2 Applicability.**

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

**§ 385.3 Responsibilities and functions.**

The Under Secretary of Defense for Policy is the principal staff assistant and advisor to the Secretary and Deputy Secretary of Defense for all matters concerning the integration of DoD plans and policies with overall national security objectives. In the exercise of this responsibility, the USD(P) shall:

(a) Represent the Department of Defense, as directed, in matters involving the National Security Council (NSC), Department of State, and other Departments, Agencies, and interagency groups with responsibilities in the national security area.

(b) Develop policy and coordinate implementation of arms control negotiations, including DoD positions on arms reductions and other defense-related international negotiations.

(c) Develop policy and oversee their implementation on international security countermeasures activities of the Department of Defense; and carry out the responsibilities of the Secretary for the administration of National Disclosure Policy, the Security Policy Automation Network (SPAN), including the Foreign Disclosure and Technical Information System (FORDTIS), the Foreign Visits System (FVS), and future systems available through the SPAN. As the U.S. Security Authority for the North Atlantic Treaty Organization (NATO), serve as the primary focal point for staff coordination on these matters within the Department of Defense, with other Government departments and agencies, and with foreign governments and international organizations, and provide DoD representation to foreign governments and intergovernmental and international organizations dealing with these matters.

(d) Develop policies and coordinate implementation of DoD political-military affairs, including: nuclear weapons policy and strategy; theater nuclear matters; special operations; low-intensity conflict; law of the sea; foreign military rights; strategic offensive and defensive forces; general purpose forces; special operations forces; and the relationship between strategic and theater force planning, programs, and budgets.

(e) Review evaluations and develop recommendations to the Secretary of Defense on plans and requirements for, and capabilities of, existing or proposed U.S. or foreign forces and their deployment, with particular attention to performance of missions which are or may be critical in the consideration of U.S. national security policy.

(f) Assist the Secretary of Defense in preparing written policy guidance for the preparation and review of operational and contingency plans, including those for nuclear and conventional forces (including Special Operations Forces), and in reviewing such plans.

(g) Provide oversight of all DoD activities related to technology transfer; develop, coordinate, and provide policy direction and overall management for the DoD Technology Security Program and policy relating to international technology transfer, to include export controls, dual-use and munitions licensing, arms cooperation programs, and support for enforcement and intelligence agencies.

(h) Develop policy, plans, procedures, and exercise OSD management oversight for the discharge of DoD functions for the following: Emergency

[1] Canceled document. Copies may be obtained from Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

planning and preparedness; crisis management; defense mobilization and expansion in emergency situations; military support to civil authorities; civil defense; and continuity of operations and, as assigned by the Secretary of Defense, continuity of government. Lead and coordinate DoD Component activities to provide support, as required, to other U.S. Government departments and agencies, and the State governments on the planning and exercising of national security emergency preparedness matters.

(i) Develop policy, coordinate DoD participation, exercise OSD management oversight, and provide appropriate OSD approval processes for DoD involvement in national security special activities, special access programs, sensitive support to non-DoD agencies, and other uniquely sensitive national security programs. Provide special support to the Secretary of Defense in connection with his participation in related NSC activities.

(j) Plan and conduct net assessments for the Secretary of Defense.

(k) Negotiate and monitor agreements with foreign governments and defense alliances to which the United States is a party. Develop DoD policy and coordinate plans and programs undertaken in cooperation with foreign governments and military establishments, and represent the Department of Defense, as directed, in the conduct of alliances and defense relationships.

(l) Provide policy direction for defense security assistance matters; monitor Security Assistance Offices and other missions on security assistance; and negotiate and monitor foreign military sales and other security assistance agreements with foreign governments.

(m) Develop DoD policy and coordinate actions relating to humanitarian assistance support.

(n) Develop DoD space policy and review and evaluate programs, plans, and systems requirements relating to the use of outer space, including participation in outer space activities of the NSC and other interagency fora, consistent with DoD Directive 3500.1.[2]

(o) Serve as the Secretary's and Deputy Secretary's principal advisor for the planning phase of the DoD Planning, Programming, and Budgeting System, to include the lead role in developing overall policy, defense strategy, and force and resource planning; and serve as a key participant in programming and budgeting decisions as well. Coordinate the development and approval of the Defense Planning Guidance.

(n) Develop DoD policy and programs on psychological operations.

(p) Develop DoD policy guidance for DoD participation in international activities supporting U.S. information programs.

(q) Develop DoD policy, coordinate policy implementation, and provide oversight for DoD support for international counternarcotics effort.

(r) Develop policy, plans, and procedures and provide oversight of all DoD activities related to international economic policy, including international trade and international energy/strategic materials security policy. Provide for DoD representation on interagency committees dealing with international economic policy, including the Trade Policy Committee and its subordinate groups, and relevant committees established by the Economic Policy Council (and successors to these committees and groups).

(s) Conduct policy planning for U.S. national security policy and strategies.

(t) Develop policy, review requirements, coordinate, make recommendations, as appropriate, and exercise policy oversight for the programs for execution of the joint worldwide reconnaissance schedule and other sensitive related activities.

(u) Develop, coordinate, and implement policy on all matters relating to prisoners of war and missing in action.

(v) Perform such other functions as the Secretary of Defense may prescribe.

### § 385.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the USD(P) shall:

(1) Report directly to the Secretary and Deputy Secretary of Defense.

(2) Exercise authority, direction, and control over:

(i) The Deputy Under Secretary of Defense for Policy.

(ii) The Assistant Secretary of Defense (International Security Affairs).

(iii) The Assistant Secretary of Defense (International Security Policy).

(iv) The Assistant Secretary of Defense (Special Operations and Low-Intensity Conflict).

(v) The Director, Defense Security Assistance Agency.

(vi) The Director, Defense Technology Security Administration.

(vii) Such Deputy Under Secretaries and Directors as may be established.

(3) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and Federal organizations having collateral or related functions.

(4) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum readiness, sustainability, efficiency, and economy.

(b) Other OSD officials and heads of the DoD Components shall coordinate with the USD(P) on all matters related to the responsibilities and functions cited in section 385.3.

### § 385.5 Authorities.

The USD(P) is hereby delegated authority to:

(a) Issue DoD Instructions, Dod publications, and one-time directive-type memoranda, consistent with DoD 5025.1M [3], that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5 [4], in carrying out assigned functions, as necessary.

(c) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government Agencies, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

(e) Perform the statutory functions of making findings, determinations, certifications, and waivers under Public Law No. 87–195 (1961) and Public Law 90–629 (1968), and arms export-related provisions of authorization and appropriation acts which grant powers vested directly in the Secretary of Defense or delegated to him by Executive order. The USD(P) may redelegate these authorities, currently contained in enclosures (1) and (2) of DoD Directive 5105.38 [5], in whole or in part, as appropriate, and in writing, to civilian Presidential appointee in the Department of Defense or the Director of the Defense Security Assistance Agency, who may not redelegate them.

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[2] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[3] See footnote 2 to § 385.3(n).

[4] See footnote 2 to § 385.3(n).

[5] See footnote 2 to § 385.3(n).

Dated: July 16, 1992.
**L.M. Bynum,**
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*
[FR Doc. 92-17109 Filed 7-20-92; 12:01 pm]
BILLING CODE 3810-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Public Land Order 6936

[AK-932-4214-10; AA-3104]

### Revocation of Bureau Order Dated May 9, 1955, for Selection of Land by the State of Alaska; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes in its entirety, the Bureau Order dated May 9, 1955, as it affects 181.30 acres of public lands withdrawn and reserved near Gustavus, Alaska, for use by the Civil Aeronautics Administration (now the Federal Aviation Administration), for the maintenance of air navigation facilities. The lands are no longer needed for the purpose for which they were withdrawn. This action also opens the lands for selection by the State of Alaska, if such lands are otherwise available. Any lands described herein that are not conveyed to the State will be subject to the terms and conditions of withdrawals of record.

**EFFECTIVE DATE:** July 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. The Bureau Order dated May 9, 1955, which withdrew public lands for air navigation facilities near Gustavus, Alaska, is hereby revoked as it affects the following described lands:

Copper River Meridian

T.40 S., R. 59 E.,
Sec. 9, lot 1 and N½SE¼;
Sec. 16, lot 2 and NW¼NW¼.
The areas described aggregate 181.30 acres.

2. Subject to valid existing rights, the lands described above are hereby opened for selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 48 U.S.C. prec. 21 (1988), or section 906(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(b) (1988).

3. The State of Alaska application for selection made pursuant to section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Lands not conveyed to the State will be subject to the terms and conditions of withdrawals of record.

Dated: July 8, 1992.
**Frank A. Bracken,**
*Deputy Secretary of the Interior.*
[FR Doc. 92-17072 Filed 7-20-92; 12:01 pm]
BILLING CODE 4310-JA-M

### 43 CFR Public Land Order 6937

[AK-932-4214-10; F-14223]

### Public Land Order No. 6932, Correction; Modification of Public Land Order No. 5150, as Amended, for Selection of Lands by the State of Alaska; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order corrects an error in the land description in Public Land Order No. 6932.

**EFFECTIVE DATE:** July 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by sections 17(c), 17(d)(1), and 22(h)(4) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(c), 1616(d)(1), and 1621(h)(4) (1988), and by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

The land description in Public Land Order No. 6932, 57 FR 24985-24986, June 12, 1992, is hereby corrected as follows:

On page 24985, third column, under the heading Parcel 1, line 19, which reads "feet to corner No. 9; Thence, S.4 36°21' W.," is hereby corrected to read "feet to corner No. 9; Thence, S. 36°21' W.,".

Dated: July 8, 1992.
**Frank A. Bracken,**
*Deputy Secretary of the Interior.*
[FR Doc. 92-17073 Filed 7-20-92; 12:01 pm]
BILLING CODE 4310-JA-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[GC Docket 91-119; FCC 92-316]

### Use of Alternative Dispute Resolution Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has adopted a final rule which clarifies the types of proceedings to which the provisions of the Administrative Dispute Resolution Act (ADRA), particularly the confidentiality protections, should apply. The intended effect of this rule is to resolve the uncertainty surrounding this technical issue concerning the scope of the ADRA before the June 30, 1992 commencement of our ADR pilot project in the formal common carrier complaint area. Therefore, we are bifurcating this proceeding and dealing with the rulemaking on an expedited basis. Those comments relating to the issues raised in the Second Notice of Inquiry concerning an FCC roster of neutrals will be addressed in a separate Commission Order.

**EFFECTIVE DATE:** July 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Sharon Kelley, (202) 632-6990.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction and Background**

1. On September 26, 1991, the Commission adopted an Initial Policy Statement and Order, 56 FR 51178 (October 10, 1991), 6 FCC Rcd 5669 (1991), encouraging the use of alternative dispute resolution (ADR) procedures in its administrative proceedings, as authorized under the Administrative Dispute Resolution Act (ADRA), and Negotiated Rulemaking Act (NRA) and adopted a provision in part 1 of the Commission's rules recognizing this policy. At that same time, we announced the initiation of an ADR pilot project to test the effectiveness of ADR procedures in the resolution of formal complaints brought pursuant to section 208 of the Communications Act, 47 CFR 208.

2. The ADRA provides that an agency may use ADR to resolve an "issue in

controversy" which it defines as an issue "with which there is disagreement between the agency and persons who would be substantially affected by the decision." The ADRA could thus be read as inapplicable to those proceedings before the Commission in which the Commission is the deciding body but is not itself a party. Congress has not yet enacted a corrective amendment, see Administrative Procedure Technical Amendments Act, H.R. 2549, 102d Cong. 1st Sess. (1991). The Interstate Commerce Commission dealt with this uncertainty by proposing to amend its rules to clarify the types of proceedings on which ADRA procedures will apply. They concluded that the ADRA does not in any way limit an agency's power to use ADR techniques in matters not expressly governed by the ADRA. We proposed to adopt a similar rule.

**II. Discussion**

3. The comments submitted in response to the NPRM/SNOI unanimously support amending the Commission's rules pursuant to our own independent authority, to clarify that the ADRA applies to those proceedings before the Commission in which the Commission is the deciding body but not itself a party. The commenters agree that the ADRA provisions, particularly the confidentiality protections, are "essential to the effective functioning of alternative dispute resolution methods," and would encourage the use of ADR procedures in proceedings before the Commission. U.S. West reasoned that it also makes good sense to amend section 1.18 of the Commission's rules to clarify that ADRA procedures apply "whether or not the Commission is involved in the actual ADR process, "[t]o engage parties to be forthcoming and candid, without fear that frank statements and interexchanges may later be used against them * * *"

4. We agree with these comments that § 1.18(b) should be adopted as proposed. We also wish to make clear that, under this new rule, ADRA provisions apply even in situations where the FCC may not be aware that parties have hired a private neutral. At the same time, it is important to reemphasize that, even if ADRA procedures apply, there may be cases where the Commission is not able to accept the parties' settlement agreement.

**III. Conclusion**

5. After considering the record developed herein, the Commission is amending § 1.18 of the Commission's rules.

6. Accordingly, *It Is Ordered*, that § 1.18 of the Commission's rules *Is Amended*, as set forth below, to be effective upon publication in the **Federal Register**.

7. We find good cause to dispense with the effective date provisions of the Administrative Procedure Act to ensure that parties who take part in the Commission's ADR pilot project will be entitled to the procedural protections of the ADRA, particularly its confidentiality provisions. 5 U.S.C. 553(d)(3).

8. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 4 U.S.C. 154(i), 303(r).

**List of Subjects in 47 CFR Part 1**

Administrative practice and procedure.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

**Rule Change**

Part 1 of title 47 of the CFR is amended as follows:

1. The authority citation for part 1 continues to read as follows:

**Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.**

2. Section 1.18 is amended by designating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

**§ 1.18 Administrative Dispute Resolution.**

* * * * *

(b) In accordance with the Commission's policy to encourage the fullest possible use of alternative dispute resolution procedures in its administrative proceedings, procedures contained in the Administrative Dispute Resolution Act, including the provisions dealing with confidentiality, shall also be applied in Commission alternative dispute resolution proceedings in which the Commission itself is not a party to the dispute.

[FR Doc. 92-16929 Filed 7-20-92; 12:01 pm]

BILLING CODE 6712-01-M

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 663**

**[Docket No. 920400-2100]**

**Pacific Coast Groundfish Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency interim rule; extension of effective date.

**SUMMARY:** An emergency interim rule is in effect through July 16, 1992, which allocates Pacific whiting (whiting) between vessels that deliver to shoreside and to at-sea processors. The emergency rule is intended to preserve harvesting opportunities for operators of catcher vessels that do not process, by preventing preemption of shoreside processing operations by at-sea processors, and by promoting the development of shoreside processing opportunities in coastal communities while continuing to allow participation by the at-sea processing fleet. Because conditions warranting the emergency still exist, the Secretary of Commerce (Secretary) extends the emergency interim rule.

**DATES:** Effective from 0001 hours July 17, 1992, through October 19, 1992. Comments are invited until August 5, 1992. On the basis of comments received, NMFS may rescind, modify, or revoke this action.

**ADDRESSES:** Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, Washington 98115-0070; or Charles E. Fullerton, Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, California 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206-526-6140, or Rodney R. McInnis at 310-980-4040.

**SUPPLEMENTARY INFORMATION:** Under Section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), an emergency rule was implemented on April 15, 1992 (57 FR 13661), effective through July 16, 1992, to allocate whiting between shorebased and at-sea processors. The emergency rule apportioned the 208,800-metric ton (mt) harvest guideline of Pacific whiting (whiting): 98,800 mt for processing at sea, 80,000 mt for shoreside processing, and the remaining 30,000 mt reserved for later release to either sector, giving priority to shoreside processing needs. Two provisions were made to assure full utilization of the harvest guideline: (1) If 60 percent (48,000 mt) of the shoreside allocation is not processed by September 1, the 30,000-mt reserve will be made available for processing at sea; and (2) the needs of shoreside processors will be reassessed and any amount of the remaining harvest guideline that is not needed by them for

the remainder of 1992 may be released for processing at sea on October 1, or soon thereafter. This emergency rule was implemented to preserve harvesting opportunities for operators of catcher vessels that do not process, to prevent preemption of shoreside processing operations by at-sea processors, and to promote the development of shoreside processing opportunities in coastal communities while continuing to allow participation by the at-sea processing fleet. This emergency rule was recommend by the Pacific Fishery Management Council (Council) at its March, 1992, meeting, and was intended to be extended for a second 90-day period in order to encompass the time period of the majority of the 1992 Pacific whiting fishery.

At-sea processors took their initial allocation in only 3 weeks, processing over 38,000 mt the last week. Shoreside processors have processed a record 14,000 mt to date and are continuing to process whiting at the highest rates on record. If this emergency rule had not been implemented, the at-sea processing fleet would have taken almost all of the harvest guideline within 6 weeks, preempting the majority of shoreside operations.

The emergency rule must be extended for an additional 90 days to continue providing harvesting and processing opportunities for all sectors of the whiting fishery for the remainder of the whiting season. Otherwise, at-sea processors would be able to take the entire remaining whiting harvest guideline so quickly that the shoreside processors would not be able to compete with them.

*Comments.* NMFS has received several comments from at-sea processing representatives asking that the release of the reserve to at-sea processing, if any, be delayed from September to October, and occur in conjunction with the reapportionment of any surplus allocation not needed by shoreside processors. They indicated that if the 30,000-mt reserve were released for at-sea processing in September, it could be taken in less than a week, and at-sea processing vessels would be idled until the second reassessment is completed in October. They considered this potential to be costly to the at-sea processing fleet. They argued that a single reapportionment would provide for an uninterrupted fishery in October rather than two shorter openings, one in September and the other in October.

*Response to Comments.* Although NMFS believes the comments have merit, other representatives from at-sea processing companies have indicated that they have made annual fishing plans based on the two releases authorized by the emergency rule as written, and that subsequent changes to the rule would be disruptive to their planned activities. Due to a lack of consensus within the at-sea processing industry favoring a change to the rule, NMFS has decided to extend the rule without any changes.

The emergency interim rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order and was reported to the Director of the Office of Management and Budget with an explanation of why following procedures of that order is not possible.

The Council voted to extend the emergency at its meeting on July 8, 1992. Because the emergency still exists, the Secretary extends the effectiveness of the emergency rule for an additional 90 days, through October 14, 1992.

**List of Subjects in 50 CFR Part 663**

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 15, 1992.

**Samuel W. McKeen,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 92-17113 Filed 7-16-92; 3:28 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 57, No. 140
Tuesday, July 21, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Part 591**

**RIN 3206-AF02**

### Cost-of-Living Allowance and Post Differentials (Nonforeign Areas)

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to include the Commonwealth of the Northern Mariana Islands in the Territory of Guam nonforeign cost-of-living allowance (COLA) area. This change will entitle certain Federal white-collar employees in the Commonwealth of the Northern Mariana Islands to a COLA and will reduce the post differential currently payable in that area. OPM also proposes to amend appendices A and B to subpart B of part 591, title 5, Code of Federal Regulations, to incorporate the above changes, remove obsolete material, and include current COLA rates and post differentials. Except for the changes described in the "Supplementary Information" below, OPM is proposing no changes in the amounts of COLA's or post differentials at this time.

**DATES:** Comments must be received on or before August 20, 1992.

**ADDRESSES:** Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Phyllis G. Foley (202) 606–3710 or (FTS) 266–3710.

**SUPPLEMENTARY INFORMATION:** Under section 5941 of title 5, United States Code, and Executive Order 10,000, OPM has the authority to establish COLA's in nonforeign overseas areas and in Alaska if living costs are substantially higher than those in Washington, DC. In addition, OPM is authorized to establish post differentials as a recruitment incentive based on conditions of environment that differ substantially from conditions in the continental United States. For nearly 17 years, OPM has authorized both a COLA and a post differential for the Territory of Guam allowance area. The current COLA rate is 12.5 percent, and the current post differential is 20 percent.

In response to requests for the U.S. Department of Agriculture and the Department of Health and Human Services, OPM proposes to expand the Guam allowance area to include the Commonwealth of the Northern Mariana Islands. Though smaller in industry and population than Guam, the Commonwealth of the Northern Mariana Islands is similar in terms of its economic base and activity. Furthermore, many Federal employees in the Northern Mariana Islands have close working relationships with Federal employees in Guam. The expansion of the allowance area will improve pay equity among Federal employees in these areas.

This change will result in the payment of both a COLA and a post differential in the Northern Mariana Islands. Although the Guam post differential is lower than the current Northern Mariana Islands post differential (25 percent), no employee's pay will be affected. Post differentials are payable to nonlocal hires to the extent that both COLA and post differentials combined do not exceed the statutory maximum, which is 25 percent. Because the current COLA in Guam is 12.5 percent, the combination of COLA and post differential payable will be 25 percent until such time as either the COLA or post differential is adjusted.

OPM proposes to amend appendices A and B to 5 CFR part 591, subpart B. These amendments are necessary to incorporate the above changes, remove obsolete material, and include the current nonforeign area COLA rates as published in Federal Personnel Manual Letter 591–51, dated March 2, 1990. One change in appendix B deletes Canton Island as a place at which differentials are paid because Canton Island is no longer a nonforeign area. As a foreign area, any allowances or differentials payable in that area are prescribed by State Department regulations.

Except for the changes affecting the Commonwealth of the Northern Mariana Islands, OPM proposes no changes in the amounts of COLA's or post differentials at this time. Any future changes in allowance rates will be published as separate notices of proposed and final rules in the Federal Register.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) or E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

### List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

**Constance Berry Newman,**

*Director.*

Accordingly, OPM proposes to amend 5 CFR part 591 as follows:

## PART 591—ALLOWANCES AND DIFFERENTIALS

1. The authority citation for part 591 continues to read as set forth below:

**Authority:** 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. In § 591.204, paragraph (b)(5) is revised to read as follows:

**§ 591.204 Establishment of allowance areas.**

* * * * *

(b) * * *

(5) Territory of Guam and Commonwealth of the Northern Mariana Islands. (i) The Territory of Guam.

(ii) The Commonwealth of the Northern Mariana Islands.

* * * * *

3. Appendix A of subpart B is revised to read as follows:

### Appendix A of Subpart B—Places and Rates at Which Allowances Shall be Paid

This appendix lists the places where a cost-of-living allowance has been approved and shows the allowance rate

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to be paid to employees along with any special eligibility requirements for the allowance payment. The allowance percentage rate shown is paid as a percentage of an employee's rate of basic pay.

| Geographic Coverage/Allowances Category | Percent[1] |
|---|---|
| **State of Alaska** | |
| City of Anchorage and 50 mile radius by road: | |
| Local Retail | 25.0 |
| Commissary/Exchange | 17.5 |
| City of Fairbanks and 50 mile radius by road: | |
| Local Retail | 25.0 |
| Commissary/Exchange | 20.0 |
| City of Juneau and 50 mile radius by road: | |
| Local Retail | 25.0 |
| Commissary/Exchange | 25.0 |
| Rest of the State: All Employees | 25.0 |
| **State of Hawaii** | |
| City and County of Honolulu: | |
| Local Retail | 22.5 |
| Commissary/Exchange | 12.5 |
| County of Hawaii: All Employees | 15.0 |
| County of Kauai: | |
| Local Retail | 17.5 |
| Commissary/Exchange | 17.5 |
| County of Maui and County of Kalawao: All Employees | 20.0 |
| **Territory of Guam and Commonwealth of the Northern Mariana Islands** | |
| All Locations: | |
| Local Retail | 12.5 |
| Commissary/Exchange | 0 |
| **Commonwealth of Puerto Rico** | |
| All Locations: | |
| Local Retail | 10.0 |
| Commissary/Exchange | 0 |
| **The Virgin Islands** | |
| St. Croix: All Employees | 12.5 |
| St. Thomas and St. John: All Employees | 12.5 |

[1] Authorized allowance rate (percent).

**Definitions of Allowance Categories**

The following definitions of the allowance categories identified in the tables in this appendix shall be used to determine employee eligibility for the appropriate allowance rate:

*Allowance Category and Definition*

Local Retail—This category includes those employees who purchase goods and services from private retail establishments

Commissary/Exchange—This category includes those employees who shop at private retail establishments, but who, as a result of their Federal civilian employment, also have unlimited access to commissary and exchange facilities. This category is established only in those allowance areas that have these facilities

Note: Eligibility for access to military commissary and exchange facilities is determined by the appropriate military department. If an employee is furnished with these privileges for reasons associated with his or her Federal civilian employment, he or she will have an identification card that authorizes access to such facilities. Possession of such an identification card—i.e., one issued by reason of his or her Federal civilian employment—is sufficient evidence that the employee uses the facilities.

**Subpart B, Appendix B, [Amended]**

4. In appendix B of subpart B, the listing for Canton Island is removed and the listing for the Commonwealth of the Northern Mariana Islands is revised to read as follows:

| Geographic coverage | Percentage differential rate | Effective date |
|---|---|---|
| Commonwealth of the Northern Mariana Islands. | 20.0 | Aug. 20, 1992. |

[FR Doc. 92-17032 Filed 7-20-92; 12:01 pm]
BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 55, 56, 59 and 70

[Docket PY-92-002]

RIN 0581-AA72

### Increase in Fees and Charges for Egg Products Inspection and Egg, Poultry, and Rabbit Grading

**AGENCY:** Agricultural Marketing Sevice, USDA.

**ACTION:** Notice of correction to proposed rule.

**SUMMARY:** This document contains a correction in the supplementary information published with proposed regulations on Monday, July 6, 1992 (57 FR 29661). The supplementary information misstated the approximate date that increased fees would be effective.

**EFFECTIVE DATE:** July 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Larry W. Robinson, Chief, Grading Branch, 202-720-3271.

**SUPPLEMENTARY INFORMATION:** The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing voluntary egg products inspection; voluntary egg, poultry, and rabbit grading; and laboratory services. Likewise, the Egg Products Inspection Act requires the collection of fees to cover costs of overtime, holiday, and appeal inspection services. Each fiscal year, these fees undergo a cost analysis to determine if they are adequate to recover the cost of providing the services. Accordingly, the proposed rule, as published, contains proposed regulatory amendments which would increase the fees for these services.

Included in the Supplementary Information under the heading "Timing of Any Fee Increase" was an approximate date of June 1, 1992, for implementation of the fee increases. This error, while obviously misstated, may prove to be misleading to the industries using the voluntary grading and inspection services.

**Correction of Publication**

Accordingly, the publication on July 6, 1992, of the proposed rule on increase in fees and charges (Doc. No. PY-92-002) is corrected as follows:

Supplementary Information, page 29661, Column 1, Paragraph 1, Timing of Any Fee Increase. In the last sentence, the approximate effective date of June 1, 1992, is corrected to read "September 1, 1992."

Done at Washington, DC, on: July 15, 1992.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 92-17119 Filed 7-20-92; 12:01 am]
BILLING CODE 3410-02-M

### Rural Electrification Administration

### 7 CFR Part 1703

RIN 0572-AA60

### Deferments of REA Loan Payments for Rural Development Projects

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Rural Electrification Administration (REA) published a proposed rule entitled Deferments of REA Loan Payments for Rural Development Projects in the **Federal Register** on June 10, 1992, (57 FR 26782). The proposed rule provided an opportunity for interested parties to send comments to REA until July 16, 1992. REA is reopening the comment period.

**DATES:** Written comments must be received by REA or carry a postmark or equivalent no later than August 5, 1992.

**ADDRESSES:** Submit an original and three copies of written comments to Blaine D. Stockton, Jr., Assistant Administrator, Economic Development and Technical Services, Rural Electrification Administration, room 4025, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500. Comments may be inspected at room 2238 of the South Building between 8:30 a.m. and 5 p.m. (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Blaine D. Stockton, Jr., Assistant Administrator, Economic Development and Technical Services, telephone number (202) 720-9552.

**SUPPLEMENTARY INFORMATION:** REA has determined that it would be beneficial to reopen the comment period for another 15 days to allow an opportunity for additional comments from interested parties.

**Authority:** 7 U.S.C. 901 *et seq.*

Dated: July 15, 1992.

**James B. Huff, Sr.,**

*Administrator.*

[FR Doc 92-17116 Filed 7-20-92; 12:01 pm]
BILLING CODE 3410-15-F



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Chapter I

[Docket No. 92N-0251]

### Electronic Identification/Signatures; Electronic Records; Request For Information and Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that it is considering whether the agency should propose regulations that would, under certain circumstances, accept electronic identification or electronic signatures in place of handwritten signatures where signatures are called for in Title 21 of the Code of Federal Regulations (CFR), and where the electronic form of the signature bearing record is allowable by the regulations. The decision on whether to propose such regulations will be based on information and comments submitted in response to this advance notice of proposed rulemaking, the recommendations and findings of the agency's Task Force on Electronic Identification/Signatures, and the agency's experience with alternatives to conventional handwritten signatures.

**DATES:** Written information and comments by October 19, 1992.

**ADDRESSES:** Submit written information and comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

This document, together with the February 24, 1992, report of the agency's Electronic Identification/Signature Working Group, discussed elsewhere in this notice, is available (without references) via Internet and Bitnet by sending an electronic mail message to DOC00001@FDACD.BITNET. The sole purpose of this address is to automatically distribute the notice and report, by return electronic mail. Therefore, no other correspondence should be sent to the address, and there is no need to include text in the body or subject of the request message.

The full report (in hard copy) may be ordered from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB 92-183193 and include payment of $50.00 (for paper copy; order number PB 92-183193 (A19)) or $19.00 (for microfiche; order number PB 92-183193 (A04)) for each copy of the document. Payment may be made by check, money order, charge card (American Express, VISA, or Mastercard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703-487-4650. The report is available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Motise, Center for Drug Evaluation and Research (HFD-323), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301-295-8089. Electronic mail address via MCI® Telecommunications Corp. (MCI®) Mail: Name: Paul J. Motise, EMS: FDA, MBX: MOTISE, MBX: A1, MBX: FDACD. (For help in addressing format contact the MCI® mail customer support line (1-800-444-6245)).

**SUPPLEMENTARY INFORMATION:** The agency is aware that automated systems are being used more extensively in the various industries it regulates. Use of such systems is also expanding within the agency itself. An emerging objective of the use of automation is the implementation of paperless electronic records. Signatures are a key aspect of many records and the transition from paper records containing traditional handwritten signatures to paperless electronic records raises a set of issues relating to FDA acceptance of alternatives to handwritten signatures. Electronic records can contain human endorsements using various technologies. An alternative to the handwritten signature in such electronic records is termed an electronic identification/signature, for purposes of this document.

The agency has met with members of the pharmaceutical industry who sought advice on how they could implement paperless records systems within regulations for 21 CFR Part 210—Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs; General and 21 CFR Part 211—Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals, i.e., CGMP's. Upon examining how the agency might accommodate such records and attendant endorsements by electronic identification/signature, FDA found the issues to be complex, affecting regulations beyond the CGMP area. For example, a review of Title 21 of the CFR found references to signatures in 132 different sections; a listing of these sections is contained in the report identified below. These regulations typically address signatures in manufacturing production records, clinical investigation records, and formal submissions to the agency. Absent, however, is a codified definition of signature itself. The same preliminary examination took note of the agency's own paperless electronic records which may contain electronic identifications/signatures.

To identify the issues and develop preliminary approaches on how FDA might accept signature alternatives in an agency-wide manner, the agency formed an FDA Task Force on Electronic Identification/Signatures. The task force created a subgroup, the Electronic Identification/Signature Working Group to address the issues in greater detail. A copy of the group's initial report dated February 24, 1992, has been placed on file and is on display at the Dockets Management Branch (address above), for public examination; copies may be obtained from NTIS (address above). The report recommended publication of an advance notice of proposed rulemaking to obtain wide public comment on the issues to determine whether the agency should promulgate regulations that would, under certain circumstances, accept electronic identification signatures in place of handwritten signatures where signatures

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are required by various FDA regulations.

The agency is considering the use of electronic identification/signatures within the general context of three categories of current and future paperless (electronic) records: (1) Records maintained by industry which are subject to FDA inspection (e.g., batch production records for drug products, low acid canned foods, or infant formulas); (2) records submitted to FDA for review and approval, usually as part of research or marketing applications (e.g., new drug applications and food additive petitions); and (3) FDA's own records (e.g., sample collection reports) and notifications to industry (e.g., electronic mail). The agency requests that comments address the issues within these three categories of records, and how these records may or may not lend themselves to the use of electronic identification signatures. The agency wishes to clarify, however, that at this time it does not seek to mandate the conversion of paper records to electronic form.

Although this notice pertains to records which are currently allowed by the regulations to be in electronic form, the issues related to electronic identification/signatures are germane to electronic records, in general. Therefore, the agency welcomes comments that identify any record now required by FDA that may be amenable to being in electronic form.

The agency is aware of a variety of signature alternative technologies and will consider their acceptance according to their performance characteristics and the level of security they provide. The level of performance and security would be commensurate with the regulatory significance of the electronic record. The agency is seeking comments on how this stratified acceptance might be accomplished. For example, FDA might establish definitions which incorporate technological and security distinctions for the terms signature, signatures recorded electronically, electronic signature, and electronic identification. In the agency's experience, a signature is generally the name of an individual, handwritten in script by that individual; the act of signing usually involves use of a writing or marking instrument and provides a unique and secure link to the individual. Where such a signature is captured on electronic media instead of on paper, the result might be termed "signatures recorded electronically."

The agency is aware of various technologies that dispense with the act of signing, but still apparently furnish an intrinsic biometric or behavioral link to an individual such that someone else cannot make use of that person's signature alternative (e.g., retinal scan systems, voice prints, hand prints). The agency is considering the term "electronic signatures" for such systems.

Another type of signature alternative appears to lack intrinsic biometric or behavioral links to the person being identified, but instead relies upon administrative controls to maintain the uniqueness and security of the identification method. Examples of such signature alternatives are systems which use (individually, or in combination) bar codes, passwords/identification codes, and personal identification devices (badges/cards). The agency is considering the term "electronic identification" for such systems.

The agency requests comments on how the above, or other classes of signature alternatives would fulfill three general purposes of the traditional handwritten signature: (1) To identify the actor and show his/her authority to act; (2) to document the action in a way that is legally binding and cannot be altered or repudiated; and (3) to create a record that would be admissible evidence in court.

To be acceptable to the agency, electronic identification signatures need to be as legally acceptable as conventional, handwritten signatures. The agency would have to conform to any acceptance criteria established by the courts. FDA expects electronic identification/signatures to carry the same commitment, legal weight, and significance as conventional handwritten signatures. Falsification of signature alternatives must be considered fraudulent to the same extent as is falsification of handwritten signatures.

The agency is seeking specific comments on each of the following issues which are addressed in greater detail in the above-referenced working group report:

1. *Regulatory Acceptance.* Various FDA regulations are worded in ways that do not accept signature alternatives. For example, the CGMP regulations for human and veterinary drugs do not anticipate or allow electronic identification/signature substitutes for handwritten signatures; 21 CFR 211.186 explicitly requires full handwritten signatures. Various submissions to the agency regarding medical devices must contain signatures; 21 CFR 1005.25 requires signatures to be written "in ink." On the other hand, the agency has accepted encoded computerized endorsements where the low acid canned food regulations call for identification of individuals who perform certain actions. The agency believes it would be beneficial to take a uniform approach to accepting signature alternatives and is seeking comments on how such an approach may be codified and how various records required by the regulations might lend themselves to the use of electronic identification/signatures.

2. *Enforcement Integrity.* Acceptance of signature alternatives must not hamper the agency's enforcement efforts. For example, FDA investigators must be able to obtain copies of electronic records which would be admissible evidence in regulatory actions to demonstrate individual responsibility. The agency conducted a review of relevant statutes and cases and found no court cases which clearly recognize the validity of signature alternatives. At the same time, no cases were found that would impede acceptance of signature alternatives. FDA's examination also disclosed several sections of Title 18 of the United States Code that FDA could use to pursue cases of electronic records falsification. (Details of the review are contained in the working group report.) The agency is particularly interested in comments on this aspect of adopting electronic identification/signatures.

3. *Security.* The agency is concerned that electronic identification/signatures be secure from abuse and falsification. Although FDA recognizes that virtually any system can be corrupted and defeated by individuals who are intent on falsification, substitutes for handwritten signatures should nonetheless be at least as secure as conventional handwritten signatures. The agency requests comments on how electronic identification/signatures can be secured. This issue is critical because of the ease with which some electronic identification methods can be falsified without leaving an audit trail. The agency seeks comments on whether some types of signature alternatives may be too insecure to accept at all, and if the agency should establish a stratified system whereby the regulatory significance of a given record would determine the level of security that would be necessary for a signature alternative.

4. *Validation.* The agency recognizes the importance of validation as a means of attaining confidence in the reliability of signature alternative technologies. Based upon the agency's inspectional findings of inadequacies regarding computer systems validation in general, FDA is concerned that new technologies may be adopted before they are

adequately validated. Therefore, the agency requests comments on key elements of validation of electronic identification/signature systems and on what type of guidance FDA should develop in this area.

5. *Standards.* The agency's acceptance of signature alternatives would be facilitated if FDA could apply appropriate signature standards developed by other organizations. The agency is aware that a Digital Signature Standard has been proposed by the National Institute of Standards and Technologies (NIST). A copy of the proposed NIST standard is included as an attachment to the working group report, on file at the Dockets Management Branch (address above). The agency seeks comments on the application of the proposed NIST standard to FDA matters, as well as comments on any other relevant standards.

6. *Freedom of Information.* The agency has very limited experience in handling freedom of information (FOI) requests that: (1) Are submitted in electronic form, (2) request that paper documents be supplied in electronic form, and (3) request that electronic documents be furnished in electronic form. However, FDA anticipates receiving such requests in the future as paperless systems are adopted. Comments are requested on the need to establish modified fees and procedures.

The agency also welcomes comments on any related issues. In addition, the agency would like to hear from developers of electronic identification/signature systems. Presentations before the task force are welcome and may be arranged through the contact person listed above. However, this request is for information only and does not undertake any commitment to purchase any system. In the event that any future acquisition results from this activity, such acquisitions will be conducted in accordance with the requirements for competition as set forth in the Federal Acquisition Regulation (Title 48 of the CFR). The agency emphasizes that the purpose of such presentations is for FDA to obtain information on emerging technologies and not to endorse or disapprove particular systems.

Interested persons may, on or before October 19, 1992, submit to the Dockets Management Branch (address above) written information and comments regarding this advance notice of proposed rulemaking. Two copies of the information and comments should be submitted, except that individuals may submit one copy. The information and comments are to be identified with the docket number found in brackets in the heading of this document. The information and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 15, 1992.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 92-17144 Filed 7-20-92; 12:01 pm]

BILLING CODE 4160-01-F

## PANAMA CANAL COMMISSION

### 35 CFR Part 133

RIN 3207-AA32

### Tolls for Use of Canal

**AGENCY:** Panama Canal Commission.

**ACTION:** Proposed rule; recommendation to the President.

**SUMMARY:** The Panama Canal Commission proposes an increase of approximately 9.9% in the rates of tolls to become effective October 1, 1992. The basis for the toll increase is that the Commission anticipates that in fiscal years 1992 and 1993, it will experience, in the aggregate, a significant deficit created by a trend of nominal traffic and revenue growth inadequate to absorb cost increases due to inflation. The proposed increase is necessary to comply with the statutory requirement that tolls be set to produce revenues sufficient to cover all costs of maintenance and operation of the Panama Canal, including capital for plant replacement, expansion and improvements, and working capital.

**DATES:** Proposed effective date: October 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street NW, Suite 550, Washington, DC 20036-4996, (Telephone: (202) 634-6441).

**SUPPLEMENTARY INFORMATION:** Section 1602 (b) of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3792(b), requires that Canal tolls be prescribed at rates calculated to produce revenues to cover, as nearly as practicable, all costs of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto, as well as to provide capital for plant replacement, expansion and improvements, and working capital.

The rates of tolls for use of the Panama Canal were last increased on October 1, 1989 by 9.8%. The rates placed in effect at that time have proven adequate to provide, in the aggregate, sufficient revenues to cover all operating and capital costs of the Canal through 1991, but the Commission anticipates significant deficits, in the aggregate, during the next two fiscal years.

These deficits are the result of the continuing trend of traffic growth revenues inadequate to absorb cost increases due to inflation. Commission projections indicate that total operating expenses in fiscal year 1992 will exceed revenues by $4.2 million. In fiscal year 1993, at present toll rates, a cumulative deficiency of $37.6 million is projected. This growing imbalance between inflation and traffic growth underlies the clear need for implementing a toll rate increase of 9.9%. The new rates will replace existing rates on October 1, 1992.

Section 1604 of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3794, establishes the procedures that the Panama Canal Commission must follow in proposing a toll rate increase. Those procedures have been supplemented by regulations in 35 CFR Part 70, which in addition, provide interested parties with instructions for participating in the process governing changes in the rates of tolls.

Pursuant to the statute and regulations, on April 15, 1992, an advance notice of proposed rulemaking was published in the **Federal Register** (57 FR 13067) recommending a 9.9% increase in the rates of Canal tolls, to become effective on October 1, 1992. At that time, a written analysis showing the basis and justification for the proposed toll increase was made available to interested parties.

Written comments were solicited and received from interested parties, and a public hearing was held in Washington, DC on June 4, 1992. The views presented by the interested parties, as well as other relevant information, were considered by the Board of Directors of the Commission at its quarterly meeting of July 1992. On July 16, 1992, the Board voted to recommend to the President that the proposed 9.9% increase be implemented on October 1, 1992. A complete record of the proceedings since the initiation of the proposal, including the data, views and arguments submitted by the interested parties will be forwarded to the President with the Commission's recommendation. In considering the proposal, the President may approve, disapprove or modify the recommendation of the Commission. The final rule, approved and published by the President, will be effective no earlier than thirty days from the date of publication in the **Federal Register**.

This proposed rulemaking does not constitute a "major rule" as defined in

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section 1(b) of Executive Order 12291, dated February 17, 1981. Analysis of the proposed toll increase indicates that it will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

A review of the environmental effect of the proposed increase in the rates of tolls concludes that the proposal is not a major federal action which will have a significant effect on the quality of the environment of a foreign nation; therefore, pursuant to Executive Order 12114, dated January 4, 1979, an environmental analysis is not required.

The Assistant to the Chairman and Secretary of the Panama Canal Commission has certified to the Office of Management and Budget that these proposed changes in regulations meet the applicable standards provided in sections 2(a) and (b)(2) of Executive Order No. 12778.

Finally, the Regulatory Flexibility Act is inapplicable, since this regulation is one relating to "rates" or "practices relating" thereto (5 U.S.C. 601 (2)).

**List of Subjects in 35 CFR Part 133**

Panama Canal, Vessels.

Accordingly, it is proposed that 35 CFR part 133 be amended as follows.

## PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for part 133 continues to read as follows:

**Authority:** Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR [illegible].

2. Section 133.1 is revised to read as follows:

**§ 133.1 Rates of toll.**

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, $2.21 per net vessel ton of 100 cubic feet each of actual earning capacity—that is, the net tonnage determined in accordance with part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, $1.76 per net vessel ton.

(c) On other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, $1.23 per ton of displacement.

Dated: July 16, 1992.

**Michael Rhode, Jr.,**

*Assistant to the Chairman and Secretary.*

[FR Doc. 92-17067 Filed 7-20-92; 8:45 am]

BILLING CODE 3640-04-M

## POSTAL SERVICE

**39 CFR Part 111**

**Vendor Presort Software Validation Program**

**AGENCY:** Postal Service.

**ACTION:** Notification of public meeting.

**SUMMARY:** The U.S. Postal Service (USPS) is holding a public meeting to give interested parties an additional opportunity to present their views on the proposed rule on the Vendor Presort Software Validation Program.

**DATES:** 8 a.m., August 5, 1992.

**ADDRESSES:** The meeting will take place at the National Address Information Center, 6060 Primacy Parkway, Memphis, TN.

**FOR FURTHER INFORMATION CONTACT:** Charles G. Delaney at (202) 1268–5321 or George T. Hurst at (202) 268–5232.

**SUPPLEMENTARY INFORMATION:** After receiving written comments in response to a **Federal Register**, notice of proposed rulemaking (57 FR 12893–12901), the Postal Service has decided to provide an additional opportunity for comment. To facilitate the receipt of comments, a public meeting will be held on August 5, 1992, at 8 a.m. at the National Address Information Center, 6060 Primacy Parkway, Memphis, TN. At that time the public will have an opportunity to provide oral and written comments concerning the proposed rule. Any one interested in attending should contact either Charles G. Delaney or George T. Hurst.

After considering all comments received in response to the original **Federal Register** notice, and comments received at this meeting, the Postal Service will publish a notice regarding the final adoption of this rule.

**Stanley F. Mires,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 92-17077 Filed 7-20-92; 12:01 pm]

BILLING CODE 7710-12-M

**39 CFR Part 111**

**Coding Accuracy Support System (CASS) Certification of Address Matching Software for Automation-Based Rates**

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal will amend *Domestic Mail Manual* (DMM) subchapter 530 to change the requirements for Coding Accuracy Support System (CASS) certification of address matching software.

**DATE:** Comments on this proposed rule must be received on or before August 17, 1992.

**ADDRESS:** All written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza, SW, room 8430, Washington, DC 20260–5903. Copies of all written comments will be available for inspection and photocopying between 9 A.M. and 4 P.M., Monday through Friday, in room 8430, at the above address.

**FOR FURTHER INFORMATION CONTACT:** George T. Hurst (202) 268–5232.

**SUPPLEMENTARY INFORMATION:**

**The CASS Certification Process**

This proposed rule would change the requirements for Coding Accuracy Support System (CASS) certification to ensure that the necessary software is in place for mailers to make a smooth transition from ZIP+4 barcoding to delivery point barcoding. As noted in DMM Issue 42, March 15, 1992, the Postal Service plans, subject to future regulatory action, to require a delivery point barcode (DPBC) on all letter-size mail claimed at a barcoded rate, effective March 21, 1993.

The Postal Service Coding Accuracy Support System (CASS) certification process is a testing procedure that provides a common platform to measure the quality of address matching software and provide useful diagnostics to correct software deficiencies. CASS currently tests the ability of address matching software to accurately match address records to the Postal Service ZIP+4 data base and assign correct 5-digit, ZIP+4, delivery point, and carrier route codes, depending on the level of certification desired. (Currently, 5-digit, ZIP+4, delivery point, and carrier route certification are all available.)

The CASS certification procedure is available free of charge to all vendors and users of address matching software. However, the Postal Service incurs ever

increasing costs to support the wide variety of CASS testing processes. To contain these costs, the Postal Service proposes to eliminate the certification of address matching software products that perform only verification and or assignment of ZIP+4 code information. The Postal Service would continue to support the certification of delivery point code address matching software products that provide and/or correct ZIP+4 code information. This would allow the Postal Service to maintain as few individual software testing procedures as practicable in support of the mailing industry's need for address matching products to qualify address information for automation-based postage rates (ZIP+4 and ZIP+4 barcoded rates).

Address matching software capable of providing only ZIP+4 information will decrease in importance with the planned March 21, 1993 implementation of the delivery point barcoding requirement. At that time, the Postal Service plans to require mailers wishing to obtain a barcoding discount for letter-size mail to have processed their addresses through software that is CASS certified for its ability to generate delivery point information. Since the DPBC is formed simply by adding two additional digits from the existing address to the ZIP+4 code, list owners or processors wishing to obtain only ZIP+4 code information will be able to do so through the use of delivery point code address matching software. In addition, CASS certified ZIP+4 code information will continue to be available through vendors licensed by the Postal Service to provide National Change of Address service or Delivery Sequence File service, as well as through the purchase of the Computerized Delivery Sequence (CDS) product.

Consistent with recent changes in the CASS cycle (providing for two semi-annual cycles of 7-months duration overlapping by 30 days, effective November 1, 1992) and to allow additional time to convert to DPBC, the Postal Service has extended the current grace period on processing of address lists using CASS certified software to November 30, 1992.

**Creating a CASS Certification Procedure for 2-Digit Utilities**

Appending delivery point code (DPC) information to existing address lists or files may require more computer storage capacity than is readily or cost effectively available to some list owners, processors, or mailers. For those mailers who choose to append the DPC information to the individual address records at the time addresses are printed for mailing rather than permanently store this additional data with each record, the Postal Service plans to offer a new CASS testing procedure to evaluate and certify the accuracy of "2-digit DPC Utilities" that may be used to derive the last 2 digits of the DPBC from a standardized address format.

Although it is strongly recommended, mailers are not required to use the standardized address elements output by a CASS certified address matching process on a mailpiece to qualify for automation-based postage rates (ZIP+4 or ZIP+4 Barcoded rates). However, the accuracy of a 2-digit DPC utility will depend upon the accuracy of the primary house or building number of a given address. If this primary house or building number has not been previously verified for accuracy, the 2-digit DPC utility may append incorrect delivery point information. Therefore, the Postal Service proposes to require 2-digit DPC utility software be used only with standardized addresses to ensure the accuracy of the information the software must identify to develop a correct DPC. Mailers who choose not to store the DPC information with the address record in their files must obtain and use standardized address information when processing with 2-digit DPC utilities.

The CASS evaluation, scoring, and certification of 2-digit DPC utilities will be similar to the current certification process for delivery point coding software. The USPS would provide a test deck comprising sample addresses from across the country with missing or incorrect 2-digit DPC information which the software vendor or user would process and return for evaluation. To be CASS certified, a 2-digit DPC utility would have to accurately append the correct 2-digit DPC information with 100% accuracy to the standardized ZIP+4 coded addresses on the test deck. Retesting and certification will occur on the same cycle as all other CASS certifications. The CASS certification process for 2-digit DPC utilities will be available with the fall, 1992 CASS certification cycle.

Although exempt by 39 U.S.C. 410(a) from the provisions of the Administrative Procedure Act regarding proposed rule making, 5 U.S.C. 553(b), (c), the Postal Service invites public comments on the following proposed amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

**List of Subjects in 39 CFR Part 111**

Postal Service.

**PART 111—[AMENDED]**

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406 3621, 5001.

2. Chapter 5 of the Domestic Mail Manual is amended as follows:

**CHAPTER 5—AUTOMATION-COMPATIBLE MAIL**

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**530 Address and ZIP+4 Code Accuracy**

531 CODING ACCURACY SUPPORT SYSTEM (CASS) CERTIFICATION

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531.111 *Definition.* [Change the first sentence as follows:] "The Coding Accuracy Support System (CASS) is a process designed in cooperation with the mailing industry to improve the accuracy of delivery codes, ZIP+4 codes, 5-digit ZIP Codes, and carrier route codes appearing on mailpieces."

* * * * *

531.112 *Requirement.* [Change the last sentence as follows:] "Mailers using multiline optical character readers (MLOCRs) to place delivery point or ZIP+4 barcodes on mailpieces must also obtain CASS certification for the address matching software used on their MLOCR equipment."

531.113 *Delivery Point Barcoding Option.* [Replace the first 4 sentences with the following:] "The use of a delivery point barcode instead of a ZIP+4 barcode on mailpieces to obtain barcoded rates is optional."

**531.12 Methods To Obtain ZIP+4 Coding**

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b. CASS certified DPC address matching software

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e. CASS certified ZIP+4 address matching software.

**Note:** CASS certification of ZIP+4 address matching software is no longer provided effective September 1, 1992. ZIP+4 codes may be obtained from CASS certified DPC address matching software. In addition, address lists coded with ZIP+4 address matching software CASS certified before September 1, 1992 may continue to be used in accordance with 531.15.

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531.114 *Use of Current Information.* [Change the first sentence as follows:] "When used for ZIP+4 coding or ZIP+4 barcoding, the address matching software and methods described in 531.11 through 531.13 must have a valid CASS certification and must use the current Postal Service ZIP+4 file that

has been updated to include all applicable change transaction files."

* * * * *

[Eliminate current 531.15, and renumber 531.16, 531.161, and 531.162 as 531.15, 531.151, and 531.152 respectively. In 531.152 change the first sentence as follows:] "To allow for the planned transition to delivery point coding requirements (see 531.112), a one-time grace period is provided for those mailers whose normal 12-month address processing anniversary falls from March 1 through November 30, 1992." [Change the date in the next sentence and the last sentence to:] "November 30, 1992."

* * * * *

**531.2 Address Lists**

[After 531.22 add the following:] "Note: CASS certification of ZIP+4 address matching software is no longer provided effective September 1, 1992. ZIP+4 codes may be obtained from CASS certified DPC address matching software. In addition, address lists coded with ZIP+4 code address matching software CASS certified before September 1, 1992 may continue to be used in accordance with 531.15.

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532 REQUIRED DOCUMENTATION

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**532.22 Summary Output Information**

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[Eliminate 532.222 and renumber 532.223 and 532.224 as 532.222 and 532.223. In what becomes 532.222 eliminate *b*(7) and *c*. In what becomes 532.223 change *a*. and *b*. as follows:]

*a*. The number of addresses successfully coded with correct 5-digit ZIP Codes.

*b*. The number of addresses successfully coded with correct carrier route codes.

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**532.32 Mailings Produced From a Single Address List**

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[Eliminate 532.322 and renumber 532.323 and 532.324 accordingly.]

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**532.33 Mailing Produced From Multiple Address Lists**

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[Eliminate 532.332 and renumber 532.333 and 532.334 accordingly.]

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533 HOW TO OBTAIN CASS CERTIFICATION

**533.1 General.** [Text of existing 533].

**533.2 CASS Stage I.** The CASS certification process is a two stage procedure. Stage I is a test file with answers which is supplied upon request to customers wishing to certify an address matching software product. The Stage I file contains fabricated sample addresses from address ranges across the country with missing or incorrect address element information. The correct answers supplied on this Stage I test file provide a means for self-assessment of address matching software accuracy so that software vendors or users can pre-determine their product's readiness for the actual test.

**533.3 CASS Stage II.** The Stage II file is the actual test without answers and is used as the measurement device for certification of the accuracy of address matching software. Similar to the Stage I file, the Stage II file contains fabricated sample addresses from address ranges across the country with missing or incorrect address element information that the address matching software must correct. Software vendors or users processes the Stage II file against its address matching products, appending the correct or missing information being tested for in each address record. Upon completion, the Stage II file is then returned to the Postal Service for analysis, scoring, and, if qualified, certification. For multiline optical character readers (MLOCRs) and encoding stations, CASS certification is obtained by barcoding sample mailpieces in a test deck. Upon completion, the test deck is returned to the Postal Service for analysis, scoring and, if qualified, certification.

**533.4 Certification Requirements.** To be CASS certified, delivery point code address matching software must first correctly ZIP+4 code the addresses contained in the Stage II file or test deck with 96% accuracy. Once this 9-digit code has been determined, delivery point code address matching software must correctly append the additional 2-digits of the delivery point code to the Stage II file or test deck with 100% accuracy.

A 2-digit utility (separate or "stand alone" address matching software that appends only the correct 2-digit DPC information) must use the standardized address information returned by DPC address matching software when determining the correct delivery point code. A 2-digit utility must assign the 2-digit delivery point code to the addresses contained in the Stage II file with 100% accuracy.

To be CASS certified, address matching software used to assign 5-digit ZIP Codes and carrier route codes must assign the appropriate codes to the Stage II file with 98% accuracy.

**533.5 Customer Notifications.** The Postal Service sends written notice to the customer requesting the CASS test, informing the customer of the results of analysis and the product certification status. The USPS publishes a list of certified software vendors and users biannually, identifying those products that, based upon Postal Service evaluation, have performed to the established accuracy standards. Follow-up notification is mailed to alert previously certified address matching software vendors and users of the next certification cycle.

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534 ACCURATE ADDRESSING

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**534.4 Format of Numeric Equivalent of the Delivery Point Barcode.** A numeric equivalent to the delivery point barcode must consist of five numbers, a hyphen, and seven numbers as required by 515.3 and must only be printed on a mailpiece within a barcoded rate mailing.

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**550 Requirements for Barcoded Pieces**

551 ZIP+4 Barcode Requirements

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**551.12 Delivery Point Barcode Format**

551.121 Unique 5-Digit ZIP Code. [Change the end of the first sentence as follows:] ". . . returned by the CASS certified DPC address matching process."

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551.122 Firm ZIP+4 Code. [Change the end of the first sentence as follows:] ". . . returned by the CASS certified DPC address matching process."

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An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

**Stanley F. Mires,**

*Assistant General Counsel Legislative Division.*

[FR Doc. 92-17068 Filed 7-20-92, 12:01 pm]

BILLING CODE 7710-12-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[MO9-1-5335; FRL-4156-9]**

## Approval and Promulgation of Implementation Plans; State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions to the Missouri State Implementation Plan (SIP) which would replace outdated incinerator regulations with comprehensive statewide incinerator regulations which are based on the current technical data. These revisions should effectively reduce air emissions from incinerators through the requirement of emission limits and good operating practices.

**EFFECTIVE DATE:** All comments should be submitted to EPA at the address shown and must be received on or before August 20, 1992.

**ADDRESSES:** Comments may be mailed to Joshua A. Tapp, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submittal and the EPA-prepared technical support document are available for public inspection at the above address and at the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101.

**FOR FURTHER INFORMATION CONTACT:** Josh Tapp at (913) 551-7020.

**SUPPLEMENTARY INFORMATION:** On July 1, 1991, Missouri submitted new regulations 10 CSR 10-6.160 entitled "Medical Waste and Solid Waste Incinerators," and 10 CSR 10-6.190 entitled "Sewage Sludge and Industrial Waste Incinerators." Both rules were published in the Missouri Code of State Regulations on May 31, 1991, and became effective June 10, 1991. These regulations contain requirements for incinerator operation, emissions limits, performance testing, operator training, and reporting and recordkeeping.

The new Missouri incinerator rules are more stringent than existing Missouri incinerator rules 10 CSR 10-2.090, 10 CSR 10-3.040, 10 CSR 10-4.080, and 10 CSR 10-5.080 for the following reasons: (1) The new rules have emission limits for particulate matter which are more stringent than the existing rules; (2) Contrary to the old incinerator rules, the new rules limit carbon monoxide emissions either through a combustion efficiency requirement or through an emission limit set at the time of the performance test; (3) The new rules have miscellaneous requirements for incinerator operation, operator training, and reporting and recordkeeping which are not addressed in the existing incinerator rules.

On February 18, 1991, the rescissions of Missouri's area-specific incinerator rules 10 CSR 10-2.090, 10 CSR 10-3.040, 10 CSR 10-4.080, and CSR 10-5.080 were submitted to EPA. On October 15, 1991, the rescissions of all five rules were published in the Missouri Code of State Regulations. The rescissions became effective October 25, 1991. These rules had limited operating parameter requirements and only one emission limit, which was for particulate matter.

The EPA is proposing to approve the rescission of existing rules 10 CSR 10-2.090, 10 CSR 10-3.040, 10 CSR 10-4.080, and 10 CSR 10-5.080, and the EPA is proposing to approve the new, more stringent requirements of incinerator rules 10 CSR 10-6.160 and 10 CSR 10-6.190. However, the Clean Air Act does not provide the authority for EPA to approve the following sections of the Missouri incinerator rules as a SIP revision:

(1) The emission limit and corresponding sampling method listed in regulation 10 CSR 10-6.190 for hydrogen chloride (subsections 4(F) and 5(D)) will not be approved as a part of this SIP revision.

(2) The emission limits and corresponding sampling methods listed in regulation 10 CSR 10-6.160 for hydrogen chloride (subsections (4)(L) and 6(G)); dioxins and furans (subsections (4)(M) and 6(H); and mercury (subsection (4)(N) and (6)(I)) will not be approved as a part of this SIP revision.

Certain categories of sources which emit such noncriteria pollutants are regulated under section 111 of the Clean Air Act, and the regulation of the aforementioned pollutants is consistent with the intent of the Clean Air Act—specificially including section 111 New Source Performance Standard for Municipal Waste Combustors located in 40 CFR part 60, subpart Ea, subsections 60.54(d), 60.53(a), and 60.52(a).

On March 19, 1992, amendments to rule 10 CSR 10-6.030 were submitted to EPA. On September 20, 1991, these amendments were published in the Missouri Code of State Regulations and they became effective September 30, 1991. These amendments establish new sampling methods for particulate emissions (subsection (5)(C) and subsection (5)(D)), hydrogen chloride emissions (section (15)), dioxin and furan emissions (section (16)), and mercury emissions (section (17)).

In addition, on September 20, 1991, Missouri submitted administrative amendments to rule 10 CSR 10-6.030. The substantive provisions of this rule have been approved by EPA in previous **Federal Register** notices. The administrative changes consist of the renumbering of various sections of the rule. The following amendments were submitted:

Section (14) (Lead Sampling Methods) will become section (12); section (12) (Fluoride Sampling Methods) will become section (13); section (13) (Volatile Organic Compound Sampling Methods) will become section (14); section (20) (General Reference Methods) will become section (18); and section (21) (Alternative Sampling Methods) will become section (19). These administrative changes represent significant changes in the rule organization but not the rule content.

The EPA is proposing to approve the additional sampling methods and the administrative reorganization of regulation 10 CSR 10-6.030.

State rules with citations referring to the renumbered sampling methods in rule CSR 10-6.030 were administratively amended and included in the submission. The renumbering of 10 CSR 10-6.030 section (13) (VOC sampling methods) to 10 CSR 10-6.030 section (14) affects the following rules which site VOC sampling methods: 10 CSR 10-2.210, 10 CSR 10-2.230, 10 CSR 10-2.260, 10 CSR 10-2.290, 10 CSR 10-2.300, 10 CSR 10-2.310, 10 CSR 10-2.320, 10 CSR 10-5.220, 10 CSR 10-5.300, 10 CSR 10-5.320, 10 CSR 10-5.330, 10 CSR 10-5.360, 10 CSR 10-5.370, 10 CSR 10-5.390, 10 CSR 10-5.410, and 10 CSR 10-5.430. These rules have been submitted with the appropriate amended citations. Only the amended citations will be approved as a SIP revision since each of the affected rules have been previously addressed in their entirely in past **Federal Register** actions.

The renumbering of 10 CSR 10-6.030 section (12) (Fluoride emissions sampling methods) to 10 CSR 10-6.030 section (13) affects the following rules which cite fluoride sampling methods: 10 CSR 10-3.160 and 10 CSR 10-6.090. Only the amended citations will be approved as a SIP revision in this rulemaking, since each of the affected rules have been previously addressed in their entirely in past **Federal Register** actions.

The renumbering of 10 CSR 10-6.030 section (14) (Lead emissions sampling methods) to 10 CSR 10-6.030 section (12) affects rule 10 CSR 10-6.120 which cites lead emission sampling methods. Only

the amended citations will be approved as a SIP revision in this rulemaking, since each of the affected rules have been previously addressed in their entirely in past **Federal Register** actions.

For the following rules, citations to 10 CSR 10–6.030 section (20) have been replaced by a citation to a specific sampling method in 10 CSR 10–6.030 section (14): 10 CSR 10–2.280 and 10 CSR 10–5.350. Only the amended citations will be approved as a SIP revision in this rulemaking, since each of the affected rules have been previously addressed in their entirely in past **Federal Register** actions.

All rule actions listed in this notice were submitted in compliance with section 172(b)(2) and section 110 of the Clean Air Act.

**EPA Action**

The EPA is proposing to approve rule revisions to the Missouri SIP which would effectively reduce air emissions from incinerators through the requirement of emission limits and good operating practices.

The EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address above.

Nothing in this action should be construed as permitting of llowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

With regard to the renumbering of rule 10 CSR 10–6.030 and the rules with citations to those renumbered sections, EPA has not reviewed the substance of these regulations at this time. These rules were approved into the state implementation plan in previous rulemakings. The EPA is now merely approving the renumbering system submitted by the state. The EPA's approval of the renumbering system, at this time, does not imply any position with respect to the approvability of the substantive requirements of the rules.

Under 5 U.S.C. 605(b), EPA certifies that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291. OMB has agreed to continue the temporary waiver until such time as it rules on EPAs request.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Carbon monoxide, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401–7642.

Dated: July 6, 1992.

**Morris Kay,**

*Regional Administrator.*

[FR Doc. 92–17140 Filed 7–20–92; 12:01 pm]

BILLING CODE 6560–50–M

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

**44 CFR Part 81**

**RIN 3067–AB87**

### List of Jurisdictions Eligible for Sale of Crime Insurance

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule amends the list of jurisdictions in which there exists a critical crime insurance availability problem that has not been resolved at the local level and deletes from eligibility under the Federal Crime Insurance Program the jurisdictions of Alabama, Connecticut, Georgia, and Puerto Rico, making their citizens ineligible to purchase Federal crime insurance policies against burglary and robbery losses on and after October 1, 1992. The Federal Insurance Administrator has determined there is no longer a critical crime insurance availability problem in these jurisdictions.

Additionally, the Federal Insurance Administrator has consulted with various officials of the Territory of the Virgin Islands. They have provided evidence that a crime insurance market availability problem exists and the proposed rule further amends the list of eligible jurisdictions to include the Virgin Islands.

**DATES:** Comments must be received on or before September 21, 1992.

**ADDRESSES:** Persons wishing to comment should submit comments in duplicate to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Kimber A. Wald, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3440.

**SUPPLEMENTARY INFORMATION:** This action is being taken under the authority of 12 U.S.C. 1749bbb–17, on the basis of the Administrator's continuing review of the extent of any critical problem of crime insurance availability in the various jurisdictions. This action follows contact with Alabama, Connecticut, Georgia, Puerto Rico, and the Virgin Islands.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

*Regulatory Impact Analysis.* This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

*EO 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

*EO 12778, Civil Justice Reform.* This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 81**

Crime insurance.

Accordingly, 44 CFR Part 81 is amended as follows:

**PART 81—[AMENDED]**

1. The authority citation for part 83 continues to read as follows:

**Authority:** 12 U.S.C. 1749bbb *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 81.1 is amended by revising paragraph (b)(1) to read as follows:

**§ 81.1 States eligible for the sale of crime insurance.**

* * * * *

(b)(1) On the basis of the information available, the Federal Insurance Administrator has determined that the District of Columbia, the Virgin Islands,

and the states set forth in this paragraph have an unresolved critical crime insurance market unavailability problem requiring the operation of the Federal Crime Insurance Program therein as of October 1, 1992:

| | |
|---|---|
| California | New Jersey |
| Florida | New York |
| Illinois | Pennsylvania |
| Kansas | District of Columbia |
| Maryland | Virgin Islands |

* * * * *

Dated: July 10, 1992.

**C.M. "Bud" Schauerte,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 92-17130 Filed 7-20-92; 12:01 pm]

BILLING CODE 6718-18-M

VOL 57 ISS 140 JL 21 1992 UMI



# Notices

Federal Register
Vol. 57, No. 140
Tuesday, July 21, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Radio and Television Broadcast Use Fee Advisory Committee; Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Radio and Television Broadcast Use Fee Advisory Committee will meet in Denver, Colorado, on August 3 and 4, 1992, from 8:30 a.m. to 4:30 p.m. The Committee is comprised of eleven members. The purpose of the meeting is for the Committee to review information pertaining to fees for radio and television broadcast use on public and National Forest System lands. The designated Federal official on the Committee is Gordon H. Small, Director of Lands, USDA Forest Service. Richard Spight, Diablo Communications, Inc., Point Richmond, California, will chair the meeting, which is open to public attendance; however, participation is limited to Committee members and Forest Service and Bureau of Land Management personnel. Persons who wish to bring communications use fee matters to the attention of the Committee may file written statements with the Executive Secretary of the Committee before or after the meeting.

**DATES:** The meeting will be held August 3 and 4, 1992.

**ADDRESSES:** The meeting will be held at the Radisson Hotel, Century Room, 1550 Court Place, Denver, Colorado 80202.

Send written comments to J. Kenneth Myers, Executive Secretary, Radio and Television Broadcast Use Fee Advisory Committee, c/o Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1248.

**FOR FURTHER INFORMATION CONTACT:** Brent Handley, Lands Staff, (202) 205–1264.

Dated: July 15, 1992.

**George M. Leonard,**

*Associate Chief.*

[FR Doc. 92–17127 Filed 7–20–92; 12:01 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of Export Administration.

*Title:* Application for Export License.

*Form Number(s):* BXA–622 and EAR – Section 772.4.

*Agency Approval Number:* 0694–0005.

*Type of Request:* Extension of the expiration date of a currently approved collection.

*Burden:* 11,751 reporting/recordkeeping hours.

*Number of Respondents:* 28,206.

*Avg Hours Per Response:* 25 minutes for reporting/2 minutes for recordkeeping.

*Needs and Uses:* This collection is required in compliance with U.S. export regulations. The information given by U.S. exporters provides the basis for decisions to grant export licenses for exports of goods and technology that are controlled for reasons of national security and foreign policy.

*Affected Public:* Businesses or other for–profit institutions; small businesses or organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Gary Waxman, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

*Agency:* Bureau of Export Administration.

*Title:* Commodity Classification and Information Requests.

*Form Number(s):* No form but requirements are found at EAR 770.11(d) and 770.1(g)(2).

*Agency Approval Number:* 0694–0048.

*Type of Request:* Extension of the expiration date of a currently approved collection.

*Burden:* 3,661 hours.

*Number of Respondents:* 7,321.

*Avg Hours Per Response:* 30 minutes.

*Needs and Uses:* This reporting requirement is either information regarding a specific export transaction or a complete description of the commodity for which the exporter is seeking classification. This information is used by BXA to make a determination on whether or not an export license is required.

*Affected Public:* Individuals; businesses or other for–profit institutions; non–profit institutions; small businesses or organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Gary Waxman, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

*Agency:* National Institute of Standards and Technology.

*Title:* Manufacturing Technology Centers.

*Form Number(s):* None.

*Agency Approval Number:* 0694–0005.

*Type of Request:* Extension of the expiration date of a currently approved collection.

*Burden:* 800 hours.

*Number of Respondents:* 20.

*Avg Hours Per Response:* 40 hours.

*Needs and Uses:* In accordance with the provisions of the Omnibus Trade and Competitiveness Act of 1988, 15 U.S.C. 278k, the National Institute of Standards and Technology seeks to announce the availability of funds, announce a public briefing for potential applicants, and request proposals for up to three new Manufacturing Technology Centers. The purpose of the information collection is to secure sufficient information from proposers to make it possible for the National Institute of Standards and Technology to detemrine applicant eligibility and select awardees.

*Affected Public:* Non–profit institutions.

*Frequency:* One time.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Maya A. Bernstein, (202) 395–3785, Room 3235, New Executive Office Building, Washington, D.C. 20503.



*Agency:* National Oceanic and Atmospheric Administration.

*Title:* Fishermen's Contingency Fund.

*Form Number(s):* NOAA Forms 88–164 and 88–166.

*Agency Approval Number:* 0648–0082.

*Type of Request:* Extension of the expiration date of a currently approved collection.

*Burden:* 13,650 hours.

*Number of Respondents:* 1,065.

*Avg Hours Per Response:* 10 hours.

*Needs and Uses:* The application and 15–day report forms are used by commerciala fishermen to file claims under Title IV of the Outer Continental Shelf Lands Act Amendments of 1987. The purpose of the fund is to compensate commercial fishermen for damages attributable to oil and gas activities on the OUter Continental Shelf.

*Affected Public:* Individuals; small businesses or organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Ron Minsk, (202) 395–3084, Room 3019, New Executive Office Building, Washington, D.C. 20503.

*Agency:* National Oceanic and Atmospheric Administration.

*Title:* Weather Modification Activities Report.

*Form Number(s):* 17–4, 17–4A, 17–4B.

*Agency Approval Number:* 0648–0025.

*Type of Request:* Extension of the expiration date of a currently approved collection.

*Burden:* 240 reporting/recordkeeping hours.

*Number of Respondents:* 40.

*Avg Hours Per Response:* 1 hour for reporting; 5 hours for recordkeeping.

*Needs and Uses:* All non–federally sponsored attempts to modify the weather must be reported. The data are used to show trends in cloud seeding and weather modification activities in the U.S.

*Affected Public:* State or local governments; businesses or other for–profit institutions; small businesses or organizations.

*Frequency:* On occasion, recordkeeping.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Ron Minsk, (202) 395–3084, Room 3019, New Executive Office Building, Washington, D.C. 20503.

*Agency:* Patent and Trademark Office.

*Title:* Changes in Patent and Trademark Assignment Practice.

*Form Number(s):* PTO–1594 and PTO–1595.

*Agency Approval Number:* 0651–0011.

*Type of Request:* Revision.

*Burden:* 148,810 hours.

*Number of Respondents:* 293,620.

*Avg Hours Per Response:* 30 minutes.

*Needs and Uses:* The Patent and Trademark Office records assignments or documents related to ownership of patent and trademark cases. The Offfice will require a cover sheet to expedite the processing of these documents and to ensure that they are properly recorded.

*Affected Public:* Individuals; businesses or other for–profit institutions; federal agencies or employees; non–profit institutions; small businesses or organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Maya A. Bernstein, (202) 395–3785, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective Desk Officer listed above.

Dated: July 10, 1992.

**Edward Michals,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 92–17131 Filed 7–20–92; 12:01 pm]

BILLING CODE 3510–CW–F

## Foreign-Trade Zones Board

### Order No. 588; Resolution and Order Approving the Application of the Board of Harbor Commissioners of the City of Long Beach for Special-Purpose Subzone Status Datatape, Incorporated, Plant (High Density Digital Tape Recording Equipment) Pasadena, CA

Proceedings of the Foreign-Trade Zones Board, Washington, DC

### Resolution and Order

Pufsuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Board of Harbor Commissioners of the City of Long Beach, California, grantee of FTZ 50, filed with the Foreign-Trade Zones Board (the Board) on May 24, 1991, requesting special-purpose subzone status at the high density digital tape recording equipment manufacturing plant of Datatape, Incorporated, in Pasadena, California, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including section 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

### Grant of Authority for Subzone Status

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the Board of Harbor Commissioners of the City of Long Beach, California, grantee of FTZ 50, has made application (filed 5–24–91, FTZ Docket 30–91, 56 FR 25661, 6–5–91) to the Board for authority to establish a special-purpose subzone at the high density digital tape recording equipment manufacturing plant of Datatape, Incorporated, in Pasadena, California;

Whereas, notice of said application has been given in the Federal Register and public comment has been invited; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone at the Datatape, Incorporated, plant in Pasadena, California, designated on the records of the Board as Foreign-Trade Subzone 50D, at the location described in the application, subject to the Act and the Board's Regulations (as revised, 56 FR 50790–50808, 10/8/91), including section 400.28.

Signed at Washington, DC, this 13th day of July 1992, pursuant to Order of the Board.

**Alan M. Dunn,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates; Foreign-Trade Zones Board.*

[FR Doc. 92-17154 Filed 7-20-92; 12:01 pm]

BILLING CODE 3510-DS-M

## International Trade Administration

**[A-475-802]**

## Industrial Belts and Components and Parts Thereof From Italy; Amendment of Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration; Department of Commerce.

**ACTION:** Notice of amendment of final results of antidumping duty administrative review.

**SUMMARY:** On March 9, 1992, the Department of Commerce published the final results of its administrative review of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, from Italy. The review covered one manufacturer/exporter of this merchandise, Pirelli Trasmissional Industriali, S.p.A. (Pirelli), and the period February 1, 1989 through May 31, 1990. Based on the correction of clerical errors, we have changed the margin for Pirelli from 68.2 percent to 60.38 percent.

**EFFECTIVE DATE:** July 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Megan Pilaroscia or Jean Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 9, 1992, the Department of Commerce (the Department published in the **Federal Register** (57 FR 8295) the final results of its administrative review of the antidumping duty order on industrial belts from Italy (54 FR 25313, June 14, 1989).

After publication of our final results, the petitioner alleged that clerical errors had been made regarding the U.S. price for several exporter's sales price (ESP) transactions and the duplication of transactions included in a particular data set of the ESP computer program instructions. We agree and have corrected these errors.

### Amended Final Results of Review

As a result of our correction of the clerical errors, we have determined that a weighed-average margin of 60.38 percent exists for Pirelli. In our original finals results, as the best information available (BIA), we applied the weighted-average ESP margin of 78.69 percent to ESP sales for which Pirelli failed to provide information regarding sales of such or similar merchandise in the home market. This rate was used because it was the highest weighted-average margin in the history of the proceeding. The ESP margin which results after making the clerical corrections is not the highest in the proceeding.

The rate from the investigation of sales-at-less-than-fair-value is now the highest rate in the proceeding and, therefore, has been used as BIA for the amended final results. This rate is 74.90 percent (54 FR 15483, April 18, 1989).

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the weighted-average margin of 60.38 percent. The Department will issue appraisement instructions directly to the Custom Service.

Because the final results for a period of review more recent than the review period covered by this notice have been issued, the dumping margin determined in this amended final results of review will have no impact on the current cash deposit rate. As provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Tariff Act), the Customs Service shall continue to require a cash deposit for all merchandise produced or exported by Pirelli Trasmissioni Industriali, S.p.A. of estimated antidumping duties based on the final rate published for the company's most recent administrative review period. For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, and who is unrelated to any previously reviewed firm, a cash deposit of estimated antidumping duties, equal to the highest non-BIA rate for any firm with shipments during the most recent period for which a review has been completed, shall be required.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

In addition, this notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 16, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-17155 Filed 7-20-92; 8:45 am]

BILLING CODE 3510-DS-M

## Open Meeting

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of first meeting of the Latin America/Caribbean Business Promotion Council.

**SUMMARY:** The Caribbean Basin Business Promotion Council was re-established on May 3, 1991, and renamed the Latin America/Caribbean Business Promotion Council. The Council was re-established to advise the Secretary of Commerce and the Agency for International Development Administrator on matters pertinent to the implementation of the Caribbean Business Initiative (CBI), the Andean Trade Initiative (ATI), and the Enterprise for the Americas.

**TIME AND PLACE:** August 7, 1992 from 10 a.m. to 4:30 p.m. The meeting will take place at the Main Commerce Building, room 6808, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**AGENDA:**

1. Introductory presentations and administrative matters.
2. Briefings on BCI, ATI, Enterprise for the Americas and the North America Free Trade Agreement.
3. Discussion and formulation of Council work plan.
4. Other matters as appropriate.

**PUBLIC PARTICIPATION:** The meeting will be open to public participation and the last thirty minutes will be set aside for oral comments and questions. Approximately fifteen seats will be available for the public. Seats will be available on a first come first-served basis. Please notify Margaret Almazan at 202/377-0841 of your intent to attend.

**FOR FURTHER INFORMATION CONTACT:** Margaret Almazan, Latin America/

S-310999 0003(00)(20-JUL-92-11:38:24)

Caribbean Business Development Center, Main Commerce Building, room 1235, Washington, DC 20230.

Dated: July 15, 1992.

**Walter M. Bastian,**

*Director, Latin America/Caribbean Business Development Center.*

[FR Doc. 92-17107 Filed 7-20-92; 12:01 pm]

BILLING CODE 3510-DA-M

## Minority Business Development Agency

### Pilot MEGA Center Applications: States of Wisconsin, Illinois, Iowa, Indiana, Kansas, Minnesota, Missouri, Nebraska, Ohio, and Michigan; Correction

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Correction.

**SUMMARY:** In notice document Volume 57, No. 118, beginning on page 27215 in the issue of Thursday, June 18, 1992, make the following correction:

On page 27215 in the second full paragraph of the third column, the second sentence incorrectly stated that client fees were restricted to the Basic Service Component of the Pilot MEGA Center. This same sentence should read as follows: To assist in this effort, the Pilot MEGA Center may charge client fees for all management and technical assistance (M&TA) rendered under the award.

Dated: July 16, 1992.

**Bharat Bhargava,**

*Associate Director.*

[FR Doc. 92-17156 Filed 7-20-92; 12:01 pm]

BILLING CODE 3510-21-M

## National Oceanic and Atmospheric Administration

### Mid-Atlantic Fishery Management Council, Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council (Council) and its Large Pelagics Committee will meet on August 4-6, 1992, at the Showboat Hotel & Casino, 801 Boardwalk, Atlantic City, NJ. (telephone: 609 343-4000—.

The Large Pelagics Committee will begin its meeting at 1:30 p.m. on August 4, and adjourn at 4 p.m. The Council will begin its regular meeting on August 5, and adjourn on August 6 at approximately 1 p.m. In addition to reviewing committee reports, the Council is scheduled to adopt squid-mackerel-butterfish specifications for 1993, hear a presentation on New Jersey artificial reefs, and consider other fishery matters as deemed necessary. The Council may go into closed session (not open to the public), to discuss personnel and/or national security matters.

For more information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: July 15, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-17129 Filed 7-20-92; 8:45 am]

BILLING CODE 3510-22-M

### South Atlantic Fishery Management Council; Statement of Organization, Practices and Procedures

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of revision to statement of organization, practices and procedures.

**SUMMARY:** Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

On January 6, 1992, NOAA published in the **Federal Register** (57 FR 375) a final rule that revised the regulations (50 CFR parts 601 and 605) and guidelines concerning the operations of the Councils under the Magnuson Act. The final rule, effective February 5, 1992, implemented parts of sections 108 and 109 of Public Law 101-627, the Fishery Conservation Amendments of 1990, which amended and reauthorized the Magnuson Act through September 30, 1993.

In accordance with the above-mentioned final rule, the South Atlantic Fishery Management Council (South Atlantic Council) has revised its SOPP, which was originally published in the **Federal Register** on August 23, 1977 (42 FR 183). Interested parties may obtain a copy of the South Atlantic Council's revised SOPP by contacting Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Dated: July 15, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-17128 Filed 7-20-92; 12:01 pm]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

July 16, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** July 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1146, published on January 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 16, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 7, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1992 and extends through January 31, 1993.

Effective on July 23, 1992, you are directed to amend the directive dated January 7, 1992 to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated September 19, 1991, as amended, between the Governments of the United States and the People's Republic of Bangladesh:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 331 | 791,353 dozen pairs. |
| 334 | 89,103 dozen. |
| 335 | 130,558 dozen. |
| 336/636 | 315,541 dozen. |
| 338/339 | 925,204 dozen. |
| 340/640 | 2,091,480 dozen. |
| 341 | 1,797,372 dozen. |
| 342/642 | 310,973 dozen. |
| 347/348 | 1,559,340 dozen. |
| 363 | 18,409,350 numbers. |
| 369–S [2] | 1,233,991 kilograms. |
| 634 | 253,325 dozen. |
| 638/639 | 1,174,112 dozen. |
| 645/646 | 285,844 dozen. |
| 647/648 | 980,718 dozen. |
| 847 | 495,929 dozen. |

[1] The limits have not been adjusted to account for any imports exported after January 31, 1992.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92–17106 Filed 7–20–92; 12:01 pm]

BILLING CODE 3510–DR–F

## Settlement of an Import Restraint Limit for Certain Wool Textile Products Produced or Manufactured in Guatemala

July 15, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing a limit.

**EFFECTIVE DATE:** July 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated June 26, 1992, between the Governments of the United States and Guatemala establishes, among other things, an import limit for wool textile products in Category 448 for the periods July 1, 1992 through December 31, 1992, January 1, 1993 through December 31, 1993 and January 1, 1994 through December 31, 1994.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a limit for the period beginning on July 1, 1992 and extending through December 31, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 9111, published on March 16, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOUs dated November 9, 1989 and June 26, 1992, but are designed to assist only in the implementation of certain of their provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 15, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Memorandum of Understanding (MOU) dated June 26, 1992, between the Governments of the United States and Guatemala; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 23, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 448, produced or manufactured in Guatemala and exported during the six-month period beginning on July 1, 1992 and extending through December 31, 1992, in excess of 41,729 dozen.

Textile products in Category 448 which have been exported to the United States prior to July 1, 1992 shall not be subject to this directive.

Textile products in Category 448 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The limit set forth above is subject to adjustment in the future pursuant to the provisions of the MOU's dated November 9, 1989 and June 26, 1992, between the Governments of the United States and Guatemala.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92–17105 Filed 7–20–92; 12:01 pm]

BILLING CODE 3510–DR–F

S–310999 0005(00)(20–JUL–92–11:38:30)

4703.FMT...[16.30].. 4-30-92

## Establishment and Amendment of Import Limits and Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

July 16, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing and amending import limits and amending visa requirements.

**EFFECTIVE DATE:** July 24, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6581. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During recent consultations the Governments of the United States and Thailand agreed to establish specific limits for Category 669–P for the periods March 25, 1992 through December 31, 1992; and January 1, 1993 through December 31, 1993. Also, the two governments agreed to increase the 1991-1993 calendar year base limits for Categories 359–H/659–H.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish and amend limits for Categories 669–P and 359–H/659–H for the 1992 periods. The existing visa requirements are being amended to require a visa for part-Categories 669–P and 669–O.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58559, published on November 20, 1991; 57 FR 2713, published on January 23, 1992; and 57 FR 13718, published on April 17, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 16, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 24, 1992, you are directed to increase the current limit for Categories 359–H/659–H [1] to 930,060 kilograms [2].

Also, you are directed to establish a limit at 3,081,967 kilograms [3] for Category 669–P [4] for the period which began on March 25, 1992 and extends through December 31, 1992.

For visa purposes, you are directed to amend the directive dated January 16, 1992, to require a visa for textile products in part-Categories 669–P and 669–O [5], produced or manufactured in Thailand and exported from Thailand on and after September 1, 1992.

Goods in Category 669 which are produced or manufactured in Thailand and exported from Thailand during the period September 1, 1992 through September 30, 1992 may be visaed as 669, 669–P or 669–O. Goods in Category 669 produced or manufactured in Thailand and exported from Thailand on and after October 1, 1992 must be visaed as 669–P or 669–O.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92–17153 Filed 7–20–92; 12:01 pm]

BILLING CODE 3510–DR–F

[1] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and [illegible].

[2] The limit has not been adjusted to account for any imports exported after December 31, 1991.

[3] The limit has not been adjusted to account for any imports exported after March 24, 1992.

[4] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[5] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

## Request for Public Comments on Bilateral Textile Consultations with the Government of Qatar on Certain Cotton and Man-Made Fiber Textile Products

July 15, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories for which consultations have been requested, call (202) 377–3740.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended, section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 30, 1992, under the terms of Section 204 of the agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Qatar with respect to cotton and man-made fiber men's and boys' woven shirts, produced or manufactured in Qatar.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Qatar, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Qatar and exported during the twelve-month period which began on June 30, 1992 and extends through June 29, 1993, at a level of not less than 282,683 dozen.

A summary market statement concerning Categories 340/640 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 340/640, or to comment on domestic production or availability of products included in Categories 340/640, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Qatar.

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Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration. Comments received will be considered in the context of the consultations with the Government of Qatar.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 340/640. Should such a solution be reached in consultations with the Government of Qatar, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 56 FR 60101, published on November 27, 1991).

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Market Statement—Oman**

**Category 340/640—Men's and Boys' Cotton and Man-Made Fiber Woven Shirts**

**June 1992**

*Import Situation and Conclusion*

U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, from Qatar reached 282,683 dozen during the year ending March 1992, almost three times the 102,229 dozen imported during the year ending in March 1991. During the first three months of 1992, imports of Category 340/640 from Qatar reached 140,002 dozen, almost 6 times the 23,942 dozen imported during the same period a year earlier and 84 percent of Qatar's total calendar year 1991 Category 340/640 import level.

The sharp and substantial increase in Category 340/640 imports from Qatar is causing disruption in the U.S. market for men's and boys' cotton and man-made fiber woven shirts.

*U.S. Production, Import Penetration, and Market Share*

U.S. production of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined 28 percent falling from 16,401,000 dozen in 1988 to 11,797,000 dozen in 1991. U.S. imports of men's and boys' cotton and man-made fiber woven shirts, Category 340/640, declined in 1990 and 1991. However, Category 340/640 imports surged in 1992, reaching 7,155,498 dozen during the first three months of 1992, 26 percent above the level imported during the January-March 1991 period. If Category 340/640 imports continue to grow at this rate, they will reach a record 28,620,000 dozen in calendar year 1992.

The ratio of imports to domestic production increased from 157 percent in 1988 to 203 percent in 1991, while the domestic manufacturers' share of the market for men's and boys' cotton and man-made fiber woven shirts fell from 39 percent in 1988 to 33 percent in 1991. If imports continue to increase at their current rate of growth and domestic production remains at the 1991 level, the ratio of imports to domestic production would increase to 243 percent and the domestic manufacturers' share of the market for men's and boys' cotton and man-made fiber woven shirts would fall to 29 percent in 1992.

*Duty-Paid Value and U.S. Producers' Price*

Approximately 78 percent of Category 340/640 imports from Qatar during the year ending March 1992 entered the U.S. under HTSUSA numbers 6205.20.2050—men's yarn dyed cotton shirts that are not napped, and not corduroy, 6205.20.2065—other men's cotton shirts, other than yarn dyed, and 6205.30.2070—other men's man-made fiber shirts, other than yarn dyed. These shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable shirts.

[FR Doc. 92-17103 Filed 7-20-92; 12:01 pm]

BILLING CODE 3510-DR-F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### DoD, Commercial Activities Inventory Report and Five Year Review Schedule Fiscal Year 1991

**AGENCY:** DoD.

**ACTION:** Notice.

**SUMMARY:** This notice announces the publication of the DoD Commercial Activities Inventory Report and Five Year Review Schedule for Fiscal Year 1991. This document may be obtained by calling (202) 512-2413 or by writing to the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402. Refer to stock number 008-000-00600-8, and enclose a check in the amount of $26.00.

**SUPPLEMENTARY INFORMATION:** This document is published under the provisions of OMB Circular A-76, which requires the Department of Defense to publish an annual inventory report of all commercial activities. The Office of Management and Budget also requires that the Department of Defense publish a five year schedule for reviewing all in-house commercial activities. The purpose of the review is to determine whether the in-house method of operation should continue or whether a cost comparison should be performed to determine the most cost effective method of operation.

Dated: July 15, 1992.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-17110 Filed 7-20-92; 12:01 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER92-669-000, et al.]**

### Florida Power & Light Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 14, 1992.

Take notice that the following filings have been made with the Commission:

**1. Florida Power & Light Company**

[Docket No. ER92-669-000]

Take notice that on June 26, 1992, Florida Power & Light Company (FPL) tendered for filing Amendment Number Four to the Short Term Agreement to Provide Power and Energy by Florida Power & Light Company to Utilities Commission, City of New Smyrna Beach, Florida (Amendment). FPL requests that the Amendment be made effective June 29, 1992.

*Comment date:* July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

**2. Central Vermont Public Service Corporation**

[Docket No. ER92-594-000]

Take notice that Central Vermont Public Service Corporation (CVPS) on July 6, 1992, tendered for filing an additional Service Agreement which provides for service pursuant to Central Vermont's FERC Electric Tariff No. 5.

CVPS requests the Commission to waive its notice of filing requirements to permit the Service Agreements to become effective in accordance with their individual terms.

*Comment date:* July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

**3. United Illuminating Company**

[Docket No. ER92-661-000]

Take notice that on June 19, 1992, United Illuminating Company tendered for filing a Notice of Cancellation of Docket No. ER92-434-000 and Docket No. ER92-453-000.

*Comment date:* July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

**4. West Texas Utilities Company**

[Docket No. EL91-57-001]

Take notice that on June 15, 1992, West Texas Utilities Company tendered for filing a corrected Exhibit A, Sheet 1, of Rate Schedule COC-6 Partial Requirements for Wholesale Service to the City of Coleman.

*Comment date:* July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

**5. Western Resources, Inc.**

[Docket No. ER92-692-000]

Take notice that on July 6, 1992, Western Resources, Inc. (Western Resources) tendered for filing proposed changes to the following Rate Schedules:

| FERC No. | Other party |
|---|---|
| 225 | Altamont, KS. |
| 227 | Axtell, KS. |
| 248 | Centralia, KS. |
| 231 | Chapman, KS. |
| 253 | Elwood, KS. |
| 230 | Enterprise, KS. |
| 236 | Eudora, KS. |
| 226 | Marion, KS. |
| 222 | Muscotah, KS. |
| 233 | Robinson, KS. |
| 212 | Scranton, KS. |
| 224 | Severance, KS. |
| 244 | St. Marys, KS. |
| 245 | Vermillion, KS. |
| 210 | Waterville, KS. |

Western Resources states that the purpose of the changes is to extend the term of the existing contracts for an additional ten years. The changes are proposed to become effective September 10, 1992.

Copies of the filing were served upon the cities and the Kansas Corporation Commission.



*Comment date:* July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

**6. Polk Power Partners, L.P., a Delaware Limited Partnership**

[Docket No. QF92-54-001]

On July 9, 1992, Polk Power Partners, L.P., a Delaware Limited Partnership (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment provides additional information related to the ownership and liquid C02 plant. No determination has been made that the submittal constitutes a complete filing.

*Comment date:* August 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

**7. Florida Power Corporation**

[Docket No. ER92-92-670-000]

Take notice that on June 26, 1992, Florida Power Corporation (Florida Power) filed a Construction Agreement between itself and Tampa Electric Company (TECO) providing for the construction of a new interconnection point at TECO's Cabbage Hill Substation and a revised Exhibit A to their Contract for Interchange Service adding Cabbage Hill to the list of interconnection points. Florida Power requests that the filing be allowed to become effective on August 26, 1992.

*Comment date:* July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

**8. Iowa Power Inc.**

[Docket No. ER92-694-000]

Take notice that on July 6, 1992, Iowa Power Inc. (Iowa Power) tendered for filing a Letter Agreement between Iowa Power and Indianola Waterworks and Electric Light and Power Board of Trustees (Indianola) dated June 11, 1992.

Iowa Power states that the Letter Agreement is a negotiated agreement providing for transmission service to Indianola's water well in Iowa Power's service territory.

*Comment date:* July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

**9. Public Service Company of New Hampshire**

[Docket No. ER92-690-000]

Take notice that on July 6, 1992, Public Service Company of New Hampshire (PSNH) tendered for filing proposed changes in its rate schedules pursuant to which PSNH provides wholesale electric service to three New Hampshire municipal electric systems customers: Town of Ashland, Town of Wolfeboro, and New Hampton Village Precinct (collectively the "Municipal Customers").

PSNH proposes to increase the base rates included in each of the Resale Service Agreements between PSNH and the three Municipal Customers to recover a portion of the increased decommissioning charges required to be paid by PSNH as of April 1, 1992 pursuant to an order issued by the new Hampshire Decommissioning Financing Committee. PSNH also proposes to amend the Resale Service Agreements to provide a method to collect the increased charges on a basis of forecasted kilowatt-hour sales to be adjusted annually to reflect actual kilowatt-hour sales. PSNH states that the method proposed to be made applicable to the Municipal Customers is the same method PSNH uses to collect similar decommissioning costs from its retail customers.

PSNH request waiver of the Commission's customary notice requirements in order to make the proposed rate changes effective on July 1, 1992. PSNH states that the implementation of the proposed rate changes as of July 1, 1992 will result in consistent rate treatment for its retail and wholesale customers, and that waiver of the Commission's notice will not affect any other parties.

*Comment date:* July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

**10. Western Resources, Inc.**

[Docket No. ER92-696-000]

Take notice that on July 6, 1992, Western Resources, Inc. (Western Resources) tendered for filing proposed changes to the following Rate Schedules:

| FERC No. | Other party |
|---|---|
| 250 | Burlingame, KS. |
| 241 | Clay Center, KS. |
| 242 | Elmwood, KS. |
| 209 | Herington, KS. |
| 226 | Holton, KS. |
| 240 | Lamed, KS. |
| 211 | Minneapolis, KS. |
| 249 | Osage City, KS |
| 235 | Sabetha, KS. |
| 243 | Stafford, KS. |
| 237 | Sterling, KS. |
| 252 | St. John, KS. |

Western Resources states that the purpose of the changes is to extend the term of the existing contracts for an additional ten years. The changes are proposed to become effective September 10, 1992.

Copies of the filing were served upon the cities and the Kansas Corporation Commission.

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*Comment date:* July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protest should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17082 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

**[Docket Nos. ST92-3679-000 Through ST92-4199-000]**

## K N Energy; Self-Implementing Transactions

July 15, 1992.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, section 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "part 284 subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a) (1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311 (a) (2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

**Lois D. Cashell,**

*Secretary.*

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Estimated maximum daily quantity [2] | Aff. Y/ A/N [3] | Rate schedule | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST92-3679 | KN Energy, Inc | LL & E Gas Marketing, Inc | 05-01-92 | G-S | 5,128 | N | F | 04-01-92 | 04-01-93 |
| ST92-3680 | El Paso Natural Gas Co | Saguaro Power Co | 05-01-92 | G-S | 20,600 | Y | F | 04-01-92 | Indef. |
| ST92-3681 | El Paso Natural Gas Co | Meridian Oil Trading Inc | 05-01-92 | G-S | 154,500 | Y | I | 04-01-92 | Indef. |
| ST92-3682 | El Paso Natural Gas Co | Sunrise Energy Co | 05-01-92 | G-S | 30,900 | Y | F | 04-01-92 | Indef. |
| ST92-3683 | El Paso Natural Gas Co | Texaco Inc | 05-01-92 | G-S | 180,250 | Y | F | 04-01-92 | Indef. |
| ST92-3684 | El Paso Natural Gas Co | United States Borax & Chemical Corp. | 05-01-92 | G-S | 19,570 | Y | F | 04-02-92 | Indef. |
| ST92-3685 | El Paso Natural Gas Co | Enron Gas Marketing, Inc | 05-01-92 | G-S | 206,000 | Y | I | 04-18-92 | Indef. |
| ST92-3686 | El Paso Natural Gas Co | NGC Transportation, Inc | 05-01-92 | G-S | 150,000 | Y | I | 04-18-92 | Indef. |
| ST92-3687 | El Paso Natural Gas Co | Meridian Oil Trading Inc | 05-01-92 | G-S | 170,100 | Y | I | 04-08-92 | 05-01-93 |
| ST92-3688 | El Paso Natural Gas Co | Amoco Energy Trading Corp | 05-01-92 | G-S | 61,800 | Y | I | 04-01-92 | Indef. |
| ST92-3689 | El Paso Natural Gas Co | Meridian Oil Trading Inc | 05-01-92 | G-S | 206,000 | Y | I | 04-02-92 | Indef. |
| ST92-3690 | El Paso Natural Gas Co | Los Angeles Dept. of Water & Power. | 05-01-92 | G-S | 37,080 | Y | F | 04-01-92 | Indef. |
| ST92-3691 | El Paso Natural Gas Co | Mobil Natural Gas Inc | 05-01-92 | G-S | 20,600 | Y | F | 04-01-92 | Indef. |
| ST92-3692 | El Paso Natural Gas Co | NGC Transportation, Inc | 05-01-92 | G-S | 100,000 | Y | I | 04-01-92 | Indef. |
| ST92-3693 | El Paso Natural Gas Co | Meridian Oil Marketing Inc | 05-01-92 | G-S | 103,000 | A | F | 04-01-92 | Indef. |
| ST92-3694 | El Paso Natural Gas Co | Meridian Oil Trading Inc | 05-01-92 | G-S | 206,000 | Y | I | 04-01-92 | Indef. |
| ST93-3695 | South Georgia Natural Gas Co | Engelhard Corp | 05-01-92 | G-S | 1,000 | N | I | 05-01-92 | 09-30-95 |
| ST92-3696 | Sea Robin Pipeline Co | Ledco, Inc | 05-01-92 | G-S | 100,000 | N | I | 04-01-92 | Indef. |
| ST92-3697 | United Gas Pipe Line Co | Div. of Nukem, Inc | 05-01-92 | G-S | 104,800 | N | I | 04-21-92 | 06-19-92 |
| ST92-3698 | Delhi Gas Pipeline Corp | Transcontinental Gas P/L Corp | 05-01-92 | C | 5,000 | N | I | 04-01-92 | Indef. |
| ST92-3699 | Delhi Gas Pipeline Corp | Transcontinental Gas P/L Corp | 05-01-92 | C | 5,000 | N | I | 04-01-92 | 01-01-99 |



| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Estimated maximum daily quantity [2] | Aff. Y/ A/N [3] | Rate schedule | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST92-3700 | Williams Natural Gas Co | KPL Gas Service | 05-01-92 | G-S | 75,000 | N | F | 04-01-92 | Indef. |
| ST92-3701 | Western Gas Interstate Co | Southern Union Gas Co | 05-01-92 | B | 15,300 | N | F | 04-01-92 | 02-28-11 |
| ST92-3702 | Williston Basin Inter. P/L Co | KN Gas Marketing, Inc | 05-01-92 | G-S | 30,000 | N | I | 04-02-92 | 12-31-92 |
| ST92-3703 | Williston Basin Inter. P/L Co | Western Gas Resources, Inc | 05-01-92 | G-S | 147,900 | A | I | 04-03-92 | 05-23-93 |
| ST92-3704 | Williston Basin Inter. P/L Co | Hiland Partners | 05-01-92 | G-S | 76,500 | A | I | 04-02-92 | 05-31-93 |
| ST92-3705 | Panhandle Eastern Pipe Line Co. | Kansas Power and Light Co | 05-01-92 | G-S | 10,000 | N | I | 04-01-92 | Indef. |
| ST92-3706 | Panhandle Eastern Pipe Line Co. | PPG Industries, Inc | 05-01-92 | G-S | 4,273 | N | F | 04-01-92 | Indef. |
| ST92-3707 | Panhandle Eastern Pipe Line Co. | Indiana Gas Co | 05-01-92 | G-S | 50,000 | N | F | 04-01-92 | Indef. |
| ST92-3708 | Panhandle Eastern Pipe Line Co. | Archer Daniels Midland Co | 05-01-92 | G-S | 5,000 | N | I | 04-01-92 | Indef. |
| ST92-3709 | Panhandle Eastern Pipe Line Co. | Indiana Gas Co | 05-01-92 | G-S | 50,000 | N | I | 04-01-92 | Indef. |
| ST92-3710 | Panhandle Eastern Pipe Line Co. | Archer Daniels Midland Co | 05-01-92 | G-S | 5,000 | N | I | 04-01-92 | Indef. |
| ST92-3711 | Panhandle Eastern Pipe Line Co. | Archer Daniels Midland Co | 05-01-92 | G-S | 5,000 | N | I | 04-01-92 | Indef. |
| ST92-3712 | Panhandle Eastern Pipe Line Co. | Gastrak Corp | 05-01-92 | G-S | 1,000 | N | I | 04-02-92 | Indef. |
| ST92-3713 | Transwestern Pipeline Co | Enron Oil & Gas Co | 05-01-92 | G-S | 65,000 | Y | I | 04-01-92 | Indef. |
| ST92-3714 | Transwestern Pipeline Co | Pacific Gas & Electric Co | 05-01-92 | B | 150,000 | N | I | 04-02-92 | Indef. |
| ST92-3715 | Transwestern Pipeline Co | Pacific GAs & Electric Co | 05-01-92 | B | 150,000 | N | I | 04-02-92 | Indef. |
| ST92-3716 | Transwestern Pipeline Co | Seagull Marketing Services, Inc | 05-01-92 | G-S | 25,000 | N | I | 04-02-92 | Indef. |
| ST92-3717 | Transwestern Pipeline Co | Gasmark, Ltd | 05-01-92 | G-S | 100,000 | N | I | 04-01-92 | Indef. |
| ST92-3718 | Transwestern Pipeline Co | Enron Gas Marketing, Inc | 05-01-92 | G-S | 200,000 | Y | I | 04-03-92 | Indef. |
| ST92-3719 | Transwestern Pipeline Co | Pacific Gas & Electric Co | 05-01-92 | B | 200,000 | N | I | 04-03-92 | Indef. |
| ST92-3720 | Transwestern Pipeline Co | NGC Transportation, Inc | 05-01-92 | G-S | 100,000 | N | I | 04-01-92 | Indef. |
| ST92-3721 | Transwestern Pipeline Co | Production Gathering Co | 05-01-92 | G-S | 2,000 | N | I | 04-01-92 | Indef. |
| ST92-3722 | Southern Natural Gas Co | Seagull Marketing Services | 05-01-92 | G-S | 50,000 | N | I | 04-03-92 | Indef. |
| ST92-3723 | Southern Natural Gas Co | Atlanta Gas Light Co | 05-01-92 | G-S | 200,000 | N | I | 04-01-92 | Indef. |
| ST92-3724 | Southern Natural Gas Co | Stone Savannah River | 05-01-92 | G-S | 30,000 | N | I | 04-01-92 | Indef. |
| ST92-3725 | Southern Natural Gas Co | City of La Grange | 05-01-92 | G-S | 4,000 | N | I | 04-17-92 | 05-01-93 |
| ST92-3726 | Southern Natural Gas Co | Atlanta Gas Light Co | 05-01-92 | G-S | 1,000 | N | I | 04-01-92 | Indef. |
| ST92-3727 | Southern Natural Gas Co | Energy Dynamics, Inc | 05-01-92 | G-S | 50,000 | N | I | 03-27-92 | Indef. |
| ST92-3728 | Arkla Energy Resources | Swift Energy Co | 05-01-92 | G-S | 15,000 | N | I | 03-01-92 | Indef. |
| ST92-3729 | Arkla Energy Resources | Webb Energy Resources, Inc | 05-01-92 | G-S | 10,000 | N | I | 03-01-92 | Indef. |
| ST92-3730 | Arkla Energy Resources | Helmerich & Payne Energy | 05-01-92 | G-S | 50,000 | N | I | 03-01-92 | Indef. |
| ST92-3731 | Arkla Energy Resources | Crown Pipeline Co | 05-01-92 | G-S | 20,000 | N | I | 03-01-92 | Indef. |
| ST92-3732 | Arkla Energy Resources | Semco Energy Services | 05-01-92 | G-S | 15,000 | N | I | 03-01-92 | Indef. |
| ST92-3733 | Arkla Energy Resources | Nicor Exploration Co | 05-01-92 | G-S | 10,000 | N | I | 03-01-92 | Indef. |
| ST92-3734 | Arkla Energy Resources | Hanna Oil and Gas Co | 05-01-92 | G-S | 7,000 | N | I | 03-01-92 | Indef. |
| ST92-3735 | Arkla Energy Resources | Vintage Gas, Inc | 05-01-92 | G-S | 25,000 | N | I | 03-01-92 | Indef. |
| ST92-3736 | Arkla Energy Resources | Sonat Exploration | 05-01-92 | G-S | 50,000 | N | I | 03-01-92 | Indef. |
| ST92-3737 | Arkla Energy Resources | North Canadian Gas Marketing | 05-01-92 | G-S | 50,000 | N | I | 03-01-92 | Indef. |
| ST92-3738 | Arkla Energy Resources | GPC Marketing Co | 05-01-92 | G-S | 10,000 | N | I | 03-01-92 | Indef. |
| ST92-3739 | Arkla Energy Resources | Concorde Resource Corp | 05-01-92 | G-S | 10,000 | N | I | 03-01-92 | Indef. |
| ST92-3740 | Arkla Energy Resources | Park Avenue Exploration | 05-01-92 | G-S | 125 | N | I | 03-01-92 | Indef. |
| ST92-3741 | Arkla Energy Resources | Sunbelt Oilfield Services | 05-01-92 | G-S | 20,000 | N | I | 03-01-92 | Indef. |
| ST92-3742 | Arkla Energy Resources | Buttonwood Petroleum | 05-01-92 | G-S | 2,000 | N | I | 03-01-92 | Indef. |
| ST92-3743 | Arkla Energy Resources | American Exploration | 05-01-92 | G-S | 5,000 | N | I | 03-01-92 | Indef. |
| ST92-3744 | Arkla Energy Resources | Conoco | 05-01-92 | G-S | 50,000 | N | I | 03-01-92 | Indef. |
| ST92-3745 | Arkla Energy Resources | Arkla Energy Marketing Co | 05-01-92 | G-S | 500,000 | A | I | 03-01-92 | Indef. |
| ST92-3746 | Arkla Energy Resources | Gas Energy Development | 05-01-92 | G-S | 15,000 | N | I | 03-01-92 | Indef. |
| ST92-3747 | Arkla Energy Resources | Arkla Exploration Co | 05-01-92 | G-S | 150,000 | Y | I | 03-01-92 | Indef. |
| ST92-3748 | Arkla Energy Resources | Mobil Natural Gas | 05-01-92 | G-S | 100,000 | N | I | 03-01-92 | Indef. |
| ST92-3749 | Arkla Energy Resources | Production Gathering Co | 05-01-92 | G-S | 1,000 | N | I | 03-01-92 | Indef. |
| ST92-3750 | Arkla Energy Resources | Unocal | 05-01-92 | G-S | 50,000 | N | I | 03-01-92 | Indef. |
| ST92-3751 | Arkla Energy Resources | Highland Energy Co | 05-01-92 | G-S | 20,000 | N | I | 03-01-92 | Indef. |
| ST92-3752 | Arkla Energy Resources | Revere Corp | 05-01-92 | G-S | 10,000 | N | I | 03-01-92 | Indef. |
| ST92-3753 | Arkla Energy Resources | Mitchell Energy Corp | 05-01-92 | G-S | 10,000 | N | I | 03-01-92 | Indef. |
| ST92-3754 | Arkla Energy Resources | Phillips Petroleum Co | 05-01-92 | G-S | 30,000 | N | I | 03-01-92 | Indef. |
| ST92-3755 | Arkla Energy Resources | Zinke & Trumbo | 05-01-92 | G-S | 10,000 | N | I | 03-01-92 | Indef. |
| ST92-3756 | Arkla Energy Resources | Twister Transmission Co | 05-01-92 | G-S | 50,000 | N | I | 03-01-92 | Indef. |
| ST92-3757 | Arkla Energy Resources | TK Drilling Corp | 05-01-92 | G-S | 500,000 | N | I | 03-01-92 | Indef. |
| ST92-3758 | Arkla Energy Resources | Triumph Gas Marketing | 05-01-92 | G-S | 10,000 | N | I | 03-01-92 | Indef. |
| ST92-3759 | Arkla Energy Resources | Weiser Brown Oil Co | 05-01-92 | G-S | 2,700 | N | I | 03-01-92 | Indef. |
| ST92-3760 | Arkla Energy Resources | Ward Gas Marketing | 05-01-92 | G-S | 50,000 | N | I | 03-01-92 | Indef. |
| ST92-3761 | Arkla Energy Resources | UMC Petroleum Corp | 05-01-92 | G-S | 20,000 | N | I | 03-01-92 | Indef. |
| ST92-3762 | Arkla Energy Resources | PSEC Inc | 05-01-92 | G-S | 2,000 | N | I | 03-01-92 | Indef. |
| ST92-3763 | Arkla Energy Resources | Ralley Pipeline Corp | 05-01-92 | G-S | 15,000 | N | I | 03-01-92 | Indef. |
| ST92-3764 | Arkla Energy Resources | Matrix Gas Marketing | 05-01-92 | G-S | 10,000 | N | I | 03-01-92 | Indef. |
| ST92-3765 | Arkla Energy Resources | HCG Energy Corp | 05-01-92 | G-S | 25,000 | N | I | 03-01-92 | Indef. |
| ST92-3766 | Arkla Energy Resources | South Miami Gas Co., Inc | 05-01-92 | G-S | 25,000 | N | I | 03-01-92 | Indef. |
| ST92-3767 | Arkla Energy Resources | OXY USA, Inc | 05-01-92 | G-S | 25,000 | N | I | 03-01-92 | Indef. |
| ST92-3768 | Arkla Energy Resources | Kaiser Francis Oil Co | 05-01-92 | G-S | 20,000 | N | I | 03-01-92 | Indef. |
| ST92-3769 | Arkla Energy Resources | I P Petroleum Co | 05-01-92 | G-S | 5,000 | N | I | 03-01-92 | Indef. |
| ST92-3770 | Arkla Energy Resources | Eberly and Meade, Inc | 05-01-92 | G-S | 10,000 | N | I | 03-01-92 | Indef. |

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Estimated maximum daily quantity [2] | Aff. Y/A/N [3] | Rate schedule | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST92-3771 | Arkla Energy Resources | Anadarko Trading | 05-01-92 | G-S | 50,000 | N | I | 03-01-92 | Indef. |
| ST92-3772 | Arkla Energy Resources | Murphy Oil USA, Inc. | 05-01-92 | G-S | 10,000 | N | I | 03-01-92 | Indef. |
| ST92-3773 | Arkla Energy Resources | Marathon Oil Co | 05-01-92 | G-S | 150,000 | N | I | 03-01-92 | Indef. |
| ST92-3774 | CNG Transmission Corp | O & R Energy, Inc | 05-04-92 | G-S | 100,000 | N | I | 04-11-92 | Indef. |
| ST92-3775 | Trunkline Gas Co | Mid-America Pipeline Co | 05-04-92 | G-S | 830 | N | F | 04-06-92 | Indef. |
| ST92-3776 | Lone Star Gas Co | El Paso Natural Gas Co | 05-04-92 | C | 50,000 | N | I | 04-01-92 | Indef. |
| ST92-3777 | Lone Star Gas Co | Transco Gas Pipeline | 05-04-92 | C | 50,000 | N | I | 04-11-92 | Indef. |
| ST92-3778 | ONG Transmission Co | Northern Natural Gas Co. | 05-04-92 | C | 30,000 | N | I | 04-21-92 | Indef. |
| ST92-3779 | ONG Transmission Co | Arkla Energy Resources | 05-04-92 | C | 50,000 | N | I | 04-21-92 | Indef. |
| ST92-3780 | ONG Transmission Co | Northern Natural Gas Co. | 05-04-92 | C | 25,000 | N | I | 02-01-92 | Indef. |
| ST92-3781 | Transok, Inc. | Northern Natural Gas Co. | 05-04-92 | C | 50,000 | N | I | 12-01-91 | Indef. |
| ST92-3782 | Transok, Inc | ANR Pipeline Co. | 05-04-92 | C | 50,000 | N | I | 10-01-91 | Indef. |
| ST92-3783 | Transok, Inc | Panhandle Eastern Pipe Line Co. | 05-04-92 | C | 20,000 | N | I | 04-04-92 | Indef. |
| ST92-3784 | Enogex Inc | Northern Natural Gas Co. | 05-04-92 | C | 50,000 | N | I | 04-01-92 | Indef. |
| ST92-3785 | Enogex Inc | Arkla Energy Resources | 05-04-92 | C | 50,000 | N | I | 04-01-92 | Indef. |
| ST92-3786 | Enogex Inc | ANR Pipeline Co. | 05-04-92 | C | 50,000 | N | I | 04-17-92 | Indef. |
| ST92-3787 | Enogex Inc | Northern Natural Gas Co. | 05-04-92 | C | 50,000 | N | I | 04-01-92 | Indef. |
| ST92-3788 | Enogex Inc | Arkla energy Resources | 05-04-92 | C | 50,000 | N | I | 04-02-92 | Indef. |
| ST92-3789 | Tennessee Gas Pipeline Co | National Fuel Gas Dist. Co | 05-04-92 | B | 26,000 | N | I | 04-03-92 | Indef. |
| ST92-3790 | Tennessee Gas Pipeline Co | Access Energy Corp | 05-04-92 | G-S | 500,000 | N | I | 04-02-92 | Indef. |
| ST92-3791 | Tennessee Gas Pipeline Co | Energy Marketing Exchange, Inc. | 05-04-92 | G-S | 200,000 | N | I | 04-01-92 | Indef. |
| ST92-3792 | Tennessee Gas Pipeline Co | Lockport Energy Associates, L.P. | 05-04-92 | G-S | 20,000 | N | I | 04-02-92 | Indef. |
| ST92-3793 | Tennessee Gas Pipeline Co | Energy Marketing Exchange, Inc. | 05-04-92 | G-S | 102,500 | N | I | 04-05-92 | Indef. |
| ST92-3794 | Tennessee Gas Pipeline Co | Entrade Corp. | 05-04-92 | G-S | 1,310,000 | N | I | 04-16-92 | Indef. |
| ST92-3795 | Columbia Gas Transmission Corp. | GTE Products Corp | 05-05-92 | G-S | 3,000 | Y | F | 05-01-92 | Indef. |
| ST92-3796 | Tennessee Gas Pipeline Co | Texas-Ohio Gas, Inc | 05-05-92 | G-S | 75,000 | N | I | 04-16-92 | Indef. |
| ST92-3797 | Mississippi River Trans. Corp | Transok, Inc | 05-05-92 | B | 15,000 | A | I | 01-01-92 | Indef. |
| ST92-3798 | National Fuel Gas Supply corp. | National Fuel Gas Supply Corp. | 05-05-92 | B | 15,000 | N | I | 04-06-92 | 03-30-93 |
| ST92-3799 | Northwest Pipeling Corp | Chevron U.S.A. Inc. | 05-05-92 | G-S | 100,000 | N | I | 01-01-92 | Indef. |
| ST92-3800 | Northwest Pipeline Corp | Kimball Energy Co. | 05-05-92 | G-S | 150,000 | N | I | 01-01-92 | Indef. |
| ST92-3801 | Equitrans, Inc | O & R Energy | 05-05-92 | G-S | 77,480 | N | I | 12-03-91 | Indef. |
| ST92-3802 | Equitrans, Inc | Industrial Energy Services Co. | 05-05-92 | G-S | 25,818 | N | I | 12-01-91 | Indef. |
| ST92-3803 | Equitrans, Inc | O & R Energy | 05-05-92 | G-S | 5,000 | N | I | 09-01-92 | Indef. |
| ST92-3804 | Equitrans, Inc | Consolidated Fuel Corp | 05-05-92 | G-S | 1,214 | N | I | 12-02-91 | Indef. |
| ST92-3805 | Equitrans, Inc | Industrial Energy Services Co. | 05-05-92 | G-S | 3,532 | N | I | 01-01-92 | Indef. |
| ST92-3806 | Colorado Interstate Gas Co | Coastal Chem, Inc. | 05-06-92 | G-S | 21,700 | Y | F | 05-01-92 | 08-31-95 |
| ST92-3807 | Colorado Interstate Gas Co | Western Natural Gas and Trans. Corp. | 05-06-92 | G-S | 3,000 | N | F | 05-01-92 | 04-30-95 |
| ST92-3808 | Channel Industries Gas Co | Natural Gas P/L Co. of America. | 05-06-92 | C | 300,000 | A | I | 04-30-92 | Indef. |
| ST92-3809 | Channel Industries Gas Co | Trunkline Gas Co. | 05-06-92 | C | 300,000 | A | I | 04-17-92 | Indef. |
| ST92-3810 | Questar Pipeline Co | Tecovas Partners L.P. | 05-07-92 | G-S | 15,000 | N | I | 04-01-92 | 01-1-93 |
| ST92-3811 | Natural Gas P/L Co. of America. | Catex Energy, Inc | 05-07-92 | G-S | 93,000 | N | I | 04-08-92 | Indef. |
| ST92-3812 | Northern Border Pipeline Co | Wes Cana Energy Marketing (U.S.). | 05-06-92 | G-S | 50,000 | N | I | 04-10-92 | 01-31-94 |
| ST92-3813 | Transwestern Pipeline Co | Enron Gas Marketing, Inc. | 05-07-92 | G-S | 500,000 | A | I | 04-09-92 | Indef. |
| ST92-3814 | Transwestern Pipeline Co | Pacific Gas & Electric Co | 05-07-92 | B | 50,000 | N | I | 04-09-92 | Indef. |
| ST92-3815 | Transwestern Pipeline Co | Pacific Gas & Electric Co | 05-07-92 | B | 50,000 | N | I | 04-09-92 | Indef. |
| ST92-3816 | Transwestern Pipeline Co | NGC Transportation, Inc. | 05-07-92 | G-S | 50,000 | N | I | 04-11-92 | Indef. |
| ST92-3817 | Transwestern Pipeline Co | Pacific Gas & Electric Co | 05-07-92 | B | 50,000 | N | I | 04-14-92 | Indef. |
| ST92-3818 | Transwestern Pipeline Co | AMOCO Energy Trading Corp | 05-07-92 | G-S | 100,000 | N | I | 04-11-92 | Indef. |
| ST92-3819 | Tennessee Gas Pipeline Co | Superior Natural Gas Corp. | 05-07-92 | G-S | 50,000 | N | I | 04-07-92 | Indef. |
| ST92-3820 | United Gas Pipe Line Co. | Shell Gas Trading Co. | 05-07-92 | G-S | 62,880 | N | I | 04-27-92 | 08-25-92 |
| ST92-3821 | United Gas Pipe Line Co. | Vesta Energy Co. | 05-07-92 | G-S | 104,800 | N | I | 04-28-92 | 08-26-92 |
| ST92-3822 | United Gas Pipe Line Co. | Gulf Gas Utilities Co. | 05-07-92 | G-S | 85 | N | F | 04-27-92 | 08-04-92 |
| ST92-3823 | Mississippi River Trans. Corp | Texaco Gas Marketing | 05-07-92 | G-S | 30,000 | Y | I | 05-01-92 | Indef. |
| ST92-3824 | Mississippi River Trans. Corp | American Central Gas Companies Inc. | 05-07-92 | G-S | 10,000 | Y | I | 05-01-92 | Indef. |
| ST92-3825 | Colorado Interstate Gas Co | Vegas Co. | 05-07-92 | G-S | 10,000 | N | I | 05-01-92 | Indef. |
| ST92-3826 | Colorado Interstate Gas Co | Amoco Energy Trading Corp. | 05-07-92 | G-S | 100,000 | N | I | 03-01-92 | Indef. |
| ST92-3827 | Colorado Interstate Gas Co. | Coastal Gas Marketing Co | 05-07-92 | G-S | 100,000 | N | I | 03-24-92 | Indef. |
| ST92-3828 | Colorado Interstate Gas Co. | Mountain Gas Resources | 05-07-92 | G-S | 20,000 | N | I | 03-03-92 | 02-28-95 |
| ST92-3829 | Williams Natural Gas Co | Grand Valley Gas Co | 05-07-92 | G-S | 35,000 | N | I | 04-07-92 | Indef. |
| ST92-3830 | East Tennessee Natural Gas Co. | Industrial Energy Services Co. | 05-07-92 | G-S | 50,000 | H | I | 04-28-92 | Indef. |
| ST92-3831 | Northwest Pipeline Corp | Gasmark, Ltd. | 05-07-92 | G-S | 15,000 | N | I | 04-02-92 | Indef. |
| ST92-3832 | Tarpon Transmission Co | Diamond Shamrock Offshore Partners. | 05-07-92 | G-S | 15,000 | N | I | 02-01-92 | Indef. |
| ST92-3833 | Tarpon Transmission Co | Arco Natural Gas Marketing, Inc.. | 05-07-92 | G-S | 5,000 | N | I | 10-01-91 | Indef. |
| ST92-3834 | Arkla Energy Resources | Vesta Energy Co. | 05-08-92 | G-S | 2,800 | N | F | 01-01-92 | Indef. |
| ST92-3835 | Arkla Energy Resources | Union Natural Gas Co. | 05-08-92 | G-S | 4,000 | N | F | 01-01-92 | Indef. |
| ST92-3836 | Williston Basin Inter. P/L Co. | Koch Hydrocarbon Co | 05-08-92 | G-S | 188,565 | Y | I | 04-08-92 | 09-30-92 |

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Estimated maximum daily quantity [2] | Aff. Y/A/N [3] | Rate schedule | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST92-3837 | Northern Natural Gas Co | Interstate Power Co | 05-06-92 | B | 5,902 | N | F | 04-16-92 | 10-31-92 |
| ST92-3838 | Northern Natural Gas Co | Wisconsin Gas Co | 05-06-92 | B | 1,100 | N | F | 04-14-92 | 10-31-92 |
| ST92-3839 | Northern Natural Gas Co | Peoples Natural Gas Co | 05-06-92 | B | 50,000 | N | F/I | 02-25-92 | Indef. |
| ST92-3840 | Northern Natural Gas Co | Equitable Resources Marketing Co. | 05-06-92 | G-S | 100,000 | N | F/I | 04-15-92 | Indef. |
| ST92-3841 | Williston Basin Inter. P/L Co | Koch Hydrocarbon Co | 05-06-92 | G-S | 170,000 | A | I | 04-06-92 | 05-01-92 |
| ST92-3842 | Northern Natural Gas Co | Virginia Dept. of Public Utilities | 05-06-92 | B | 500 | N | F | 05-01-92 | 06-31-92 |
| ST92-3843 | Texas Eastern Transmission Corp. | Midcon Marketing Corp | 05-11-92 | G-S | 400,000 | N | I | 04-15-92 | Indef. |
| ST92-3844 | Texas Eastern Transmission Corp. | CNG Transmission Corp | 05-11-92 | G-S | 400,000 | N | I | 03-01-92 | Indef. |
| ST92-3845 | Texas Eastern Transmission Corp. | Unigas Energy, Inc | 05-11-92 | G-S | 200,000 | N | I | 04-01-92 | Indef. |
| ST92-3846 | Texas Eastern Transmission Corp. | New Jersey Natural Gas Co | 05-11-92 | G-S | 41,364 | N | I | 01-25-92 | Indef. |
| ST92-3847 | Texas Eastern Transmission Corp. | Anadarko Trading Co | 05-11-92 | G-S | 400,000 | N | I | 04-16-92 | Indef. |
| ST92-3848 | Panhandle Eastern Pipe Line Co. | Associated Natural Gas, Inc | 05-06-92 | G-S | 25,000 | N | I | 04-10-92 | Indef. |
| ST92-3849 | Panhandle Eastern Pipe Line Co. | Angas, Inc | 05-06-92 | G-S | 40 | N | I | 04-12-92 | Indef. |
| ST92-3850 | Colorado Interstate Gas Co | Montana Power Co | 05-06-92 | B | 15,000 | N | I | 03-12-92 | Indef. |
| ST92-3851 | Colorado Interstate Gas Co | Aquila Energy Marketing Corp | 05-06-92 | G-S | 100,000 | N | I | 03-01-92 | Indef. |
| ST92-3852 | Colorado Interstate Gas Co | LL & E Gas Marketing, Inc | 05-06-92 | G-S | 20,000 | N | I | 03-01-92 | Indef. |
| ST92-3853 | Colorado Interstate Gas Co | Montana Power Co | 05-06-92 | B | 15,000 | N | I | 03-01-92 | 02-28-93 |
| ST92-3854 | Colorado Interstate Gas Co | Montana Power Co | 05-06-92 | B | 15,000 | N | I | 03-04-92 | Indef. |
| ST92-3855 | Colorado Interstate Gas Co | Texaco Gas Marketing Inc | 05-06-92 | G-S | 10,000 | N | I | 03-01-92 | Indef. |
| ST92-3856 | Colorado Interstate Gas Co | Questar Energy Co | 05-06-92 | G-S | 10,000 | N | I | 03-01-92 | Indef. |
| ST92-3857 | Arkla Energy Resources | Ethyl Corp | 05-06-92 | G-S | 2,700 | N | F | 01-01-92 | Indef. |
| ST92-3858 | Natural Gas P/L Co. of America. | Marathon Oil Co | 05-06-92 | G-S | 30,000 | N | I | 04-01-92 | Indef. |
| ST92-3859 | Natural Gas P/L Co. of America. | Trunkline Gas Co | 05-06-92 | G | 50,000 | N | I | 04-01-92 | Indef. |
| ST92-3860 | Natural Gas P/L Co. of America. | Energy Marketing Exchange, Inc | 05-06-92 | G-S | 50,000 | N | I | 03-26-92 | Indef. |
| ST92-3861 | Natural Gas P/L Co. of America. | Chevron USA, Inc | 05-06-92 | G-S | 20,000 | N | I | 10-19-92 | Indef. |
| ST92-3862 | Natural Gas P/L Co. of America. | Citrus Marketing, Inc | 05-06-92 | G-S | 40,000 | N | I | 04-10-92 | Indef. |
| ST92-3863 | United Texas Transmission Co | Winnie Pipeline Co | 05-06-92 | C | 5,000 | N | I | 03-01-92 | Indef. |
| ST92-3864 | ANR Pipeline Co | Madison Gas and Electric Co | 05-06-92 | G-S | 16,364 | N | F | 04-06-92 | Indef. |
| ST92-3865 | ANR Pipeline Co | Associated Natural Gas Co | 05-06-92 | G-S | 968 | N | F | 04-06-92 | Indef. |
| ST92-3866 | ANR Pipeline Co | Anchor Hocking Corp | 05-06-92 | G-S | 764 | N | F | 04-11-92 | Indef. |
| ST92-3867 | ANR Pipeline Co | Consolidated Papers, Inc | 05-06-92 | G-S | 1,018 | N | F | 04-09-92 | Indef. |
| ST92-3868 | ANR Pipeline Co | Semco Pipeline Co | 05-06-92 | B | 150,000 | N | I | 04-23-92 | Indef. |
| ST92-3869 | ANR Pipeline Co | Battle Creek Gas Co | 05-06-92 | B | 1,000 | N | I | 04-14-92 | Indef. |
| ST92-3870 | ANR Pipeline Co | NGC Transportation, Inc | 05-06-92 | G-S | 200,000 | N | I | 04-16-92 | Indef. |
| ST92-3871 | Kern River Gas Transmission Co. | Gasmark, Ltd | 05-11-92 | G-S | 17,500 | N | I | 04-16-92 | Indef. |
| ST92-3872 | Kern River Gas Transmission co. | Grand Valley Gas Co | 05-06-92 | G-S | 300,000 | N | I | 04-17-92 | Indef. |
| ST92-3873 | Northern Natural Gas Co | Enogex Services Corp | 05-11-92 | G-S | 50,000 | N | F/I | 04-15-92 | Indef. |
| ST92-3874 | Northern Border Pipeline Co | Mobil Natural Gas Inc | 05-11-92 | G-S | 100,000 | Y | I | 04-09-92 | 01-14-93 |
| ST92-3875 | Northern Natural Gas Co | Enron Gas Marketing, Inc | 05-11-92 | G-S | 2,250 | A | F | 05-01-92 | Indef. |
| ST92-3876 | East Texas Gas Systems | United Gas Pipe Line Co | 05-11-92 | C | 100,000 | N | I | 04-10-92 | Indef. |
| ST92-3884 | Lone Star Gas Co | Natural Gas P/L Co. of America. | 05-11-92 | C | 18,000 | N | I | 04-16-92 | Indef. |
| ST92-3885 | Westar Transmission Co | KN Energy Co | 05-07-92 | G-S | 9,200 | Y | I | 02-01-91 | Indef. |
| ST92-3886 | ValeroTransmission, L.P. | Northern Natural Gas Co | 05-12-92 | C | 75,000 | N | I | 01-01-91 | Indef. |
| ST92-3887 | Valero Transmission, L.P | El Paso Natural Gas Co | 05-12-92 | C | 150,000 | Y | I | 03-01-91 | 11-01-95 |
| ST92-3888 | Tennessee Gas Pipeline Co | Eagle Natural Gas Co | 05-12-92 | G-S | 40,000 | N | I | 04-15-91 | Indef. |
| ST92-3889 | Tennessee Gas Pipeline Co | Coronado Transmission Co | 05-12-92 | G-S | 1,000 | N | I | 04-15-92 | Indef. |
| ST92-3890 | Columbia Gas Transmission Corp. | North Central Oil Corp | 05-12-92 | G-S | 5,000 | N | I | 05-10-92 | Indef. |
| ST92-3891 | Columbia Gas Transmission Corp. | The Oxford Oil Co | 05-12-92 | G-S | 1,276 | N | I | 05-10-92 | Indef. |
| ST92-3892 | United Gas Pipe Line Co | Energy Maketing Exchange, Inc | 05-12-92 | G-S | 76,800 | N | I | 04-22-92 | 08-20-92 |
| ST92-3893 | Transcontinental Gas P/L Corp | Washington Gas Light Co., Et Al | 05-12-92 | B | 300,000 | N | F/I | 04-13-92 | Indef. |
| ST92-3894 | Natural Gas P/L Co. of America. | CNG Producing Co | 05-12-92 | G-S | 2,000 | N | I | 04-01-92 | Indef. |
| ST92-3895 | Stingray Pipeline Co | Polaris Pipeline Corp | 05-13-92 | G-S | 100,000 | N | I | 04-04-92 | Indef. |
| ST92-3896 | Questar Pipeline Co | Mountain Gas Resources, Inc | 05-13-92 | G-S | 25,000 | N | I | 04-13-92 | 06-30-92 |
| ST92-3897 | Gas Gathering Corp | Apache Corp | 05-13-92 | G-S | 1,000 | N | I | 04-01-92 | Indef. |
| ST92-3898 | Mid Louisiana Gas Co | Vernon E. Faulconer, Inc | 05-13-92 | G-S | 500 | N | I | 04-11-92 | 03-31-93 |
| ST92-3899 | Valero Transmission, L.P | Natural Gas P/L Co of America | 05-13-92 | C | 20,000 | N | I | 05-01-92 | Indef. |
| ST92-3900 | Valero Transmission, L.P | United Gas Pipe Line Co | 05-13-92 | C | 15,900 | N | I | 04-23-92 | Indef. |
| ST92-3901 | Valero Transmission, L.P | Natural Gas P/L Co. of America. | 05-13-92 | C | 10,000 | N | I | 04-22-92 | Indef. |

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|---|---|---|---|---|---|---|---|---|---|
| ST92-3902 | Tennessee Gas Pipeline Co | Louisiana State Gas Corp | 05-13-92 | G-S | 50,000 | N | I | 05-01-92 | Indef. |
| ST92-3903 | Tennessee Gas Pipeline Co | Cornerstone Production Corp | 05-13-92 | G-S | 150,000 | N | I | 05-01-92 | Indef. |
| ST92-3904 | Tennesse Gas Pipeline Co | Three Rivers Pipeline Co | 05-13-92 | B | 80,000 | N | I | 04-13-92 | Indef. |
| ST92-3905 | Tennessee Gas Pipeline Co | Gasmark, Inc | 05-13-92 | G-S | 30,000 | N | I | 05-01-92 | Indef. |
| ST92-3906 | Ong Transmission Co | ANR Pipeline Co | 05-13-92 | C | 75,000 | N | I | 05-01-92 | Indef. |
| ST92-3907 | Ong Transmission Co | ANR Pipeline Co | 05-13-92 | C | 75,000 | N | I | 05-01-92 | Indef. |
| ST92-3908 | Ong Transmission Co | Phillips Gas Pipeline Co | 05-13-92 | C | 50,000 | N | I | 05-01-92 | Indef. |
| ST92-3909 | Ong Transmission Co | Phillips Gas Pipeline Co | 05-13-92 | C | 30,000 | N | I | 05-01-92 | Indef. |
| ST92-3910 | Ong Transmission Co | Natural Gas P/L Co of America | 05-13-92 | C | 50,000 | N | I | 05-01-92 | Indef. |
| ST92-3911 | Pacific Gas Transmission Co | Pacific Gas and Electric Co | 05-13-92 | B | 107,377 | N | I | 04-30-92 | Indef. |
| ST92-3912 | Pacific Gas Transmission Co | Bridge Gas U.S.A., Inc | 05-13-92 | G-S | 100,000 | N | I | 04-23-92 | Indef. |
| ST92-3913 | Pacific Gas Transmission Co | Direct Energy Marketing Inc | 05-13-92 | G-S | 60,000 | N | I | 04-05-92 | Indef. |
| ST92-3914 | Pacific Gas Transmission Co | Enron Gas Marketing, Inc | 05-13-92 | G-S | 97,613 | N | I | 04-01-92 | Indef. |
| ST92-3915 | Pacific Gas Transmission Co | Enron Gas Marketing, Inc | 05-13-92 | II | 97,613 | N | I | 04-01-92 | Indef. |
| ST92-3916 | United Gas Pipe Line Co | Unocal Exploration Corp | 05-13-92 | G-S | 25,200 | N | I | 05-01-92 | 08-29-92 |
| ST92-3917 | United Gas Pipe Line Co | MG Natural Gas Corp | 05-13-92 | G-S | 10,000 | N | I | 05-01-92 | 08-29-92 |
| ST92-3918 | United Gas Pipe Line Co | Scana Hydrocarbons, Inc | 05-13-92 | G-S | 10,000 | N | I | 05-01-92 | 08-29-92 |
| ST92-3919 | United Gas Pipe Line Co | Meridian Oil Trading Inc | 05-13-92 | G-S | 104,800 | N | I | 04-01-92 | 07-30-92 |
| ST92-3920 | United Gas Pipe Line Co | Shell Gas Trading Co | 05-13-92 | G-S | 57,640 | N | I | 05-01-92 | 08-29-92 |
| ST92-3921 | Ong Transmission Co | Norhern Natural Gas Co | 05-14-92 | C | 100,000 | N | I | 04-15-92 | Indef. |
| ST92-3922 | Tennessee Gas Pipeline Co | Industrial Energy Services Co | 05-14-92 | G-S | 15,000 | N | I | 04-28-92 | Indef. |
| ST92-3923 | Tennessee Gas Pipeline Co | Meridian Meketing and Trans. Corp. | 05-14-92 | G-S | 2,000 | N | I | 04-16-92 | Indef. |
| ST92-3924 | United Gas Pipe Line Co | Energy Marketing Exchange, Inc. | 05-14-92 | G-S | 78,600 | N | I | 04-29-92 | 08-27-92 |
| ST92-3925 | United Gas Pipe Line Co | Entex, Div. of Arkla | 05-14-92 | G-S | 75,000 | N | I | 05-05-92 | 09-02-92 |
| ST92-3926 | Texas Gas Transmission Corp | Stellar Gas Co | 05-14-92 | G-S | 20,000 | N | I | 05-01-92 | Indef. |
| ST92-3927 | Texas Gas Transmission Corp | Indiana Gas Co., Inc | 05-14-92 | G-S | 10,000 | N | I | 05-01-92 | Indef. |
| ST92-3928 | Texas Gas Transmission Corp | Seaboard Farms of Ky, Inc | 05-14-92 | B | 450 | N | I | 04-30-92 | Indef. |
| ST92-3929 | Texas Gas Transmission Corp | CMS Gas Marketing | 05-14-92 | G-S | 100,000 | Y | I | 05-01-92 | Indef. |
| ST92-3930 | Texas Gas Transmission Corp | Woodward Marketing, Inc | 05-14-92 | G-S | 50,000 | N | I | 04-28-92 | Indef. |
| ST92-3931 | Black Marlin Pipeline Cp | Houston Pipeline Co | 05-15-92 | B | 50,000 | A | I | 04-30-92 | Indef. |
| ST92-3932 | Williston Basin Inter. P/L Co | Chevron USA, Inc | 05-15-92 | G-S | 26,250 | A | I | 04-15-92 | 08-31-92 |
| ST92-3933 | Tennessee Gas Pipeline Co | Centran Corp | 05-15-92 | G-S | 250,000 | N | I | 05-02-92 | Indef. |
| ST92-3934 | Tennessee Gas Pipeline Co | City of Hohenwald | 05-15-92 | B | 2,000,000 | A | I | 03-01-92 | Indef. |
| ST92-3935 | Tennessee Gas Pipeline Co | Texas Southeastern Gas Co | 05-15-92 | B | 2,000,000 | A | I | 12-07-92 | Indef. |
| ST92-3936 | Tennessee Gas Pipeline Co | Ozark Pipeline Co | 05-15-92 | B | 2,000,000 | A | I | 10-24-91 | Indef. |
| ST92-3938 | Tennessee Gas Pipeline Co | DSourthern Natural Gas Co | 05-15-92 | B | 2,000,000 | A | I | 07-21-89 | Indef. |
| ST92-3938 | Tennessee Gas Pipeline Co | Direct Gas Supply Corp | 05-15-92 | G-S | 51,550 | N | I | 05-01-92 | Indef. |
| ST92-3939 | Midwestern Gas Transmission Co. | Fina Natural Gas Co | 05-15-92 | G-S | 100,000 | N | I | 05-01-92 | Indef. |
| ST92-3940 | Columbia Gulf Transmission Co | Access Energy Corp | 05-15-92 | G-S | 100,000 | N | I | 05-05-92 | Indef. |
| ST92-3941 | Columbia Gulf Transmission Co | Williams Gas Marketing Co | 05-15-92 | G-S | 100,000 | N | I | 05-01-92 | Indef. |
| ST92-3942 | Columbia Gulf Transmission Co | CMS Gas Marketing Co | 05-15-92 | G-S | 100,000 | N | I | 05-01-92 | Indef. |
| ST92-3943 | Columbia Gulf Transmission Co | Krumpp & Associates | 05-15-92 | G-S | 40,000 | N | I | 05-01-92 | Indef. |
| ST92-3944 | Columbia Gulf Transmission Co | Entrade Corp | 05-15-92 | G-S | 50,000 | N | I | 05-02-92 | Indef. |
| ST92-3945 | Oasis Pipe Line Co | Northern Natural Gas Co | 05-15-92 | C | 100,000 | N | I | 01-24-92 | Indef. |
| ST92-3946 | Oasis Pipe Line Co | El Paso Natural Gas Co | 05-15-92 | C | 100,000 | N | I | 01-18-92 | Indef. |
| ST92-3947 | Oasis Pipe Line Co | Northern Natural Gas Co | 05-15-92 | C | 100,000 | N | I | 03-01-92 | Indef. |
| ST92-3948 | Questar Pipeline Co | Mountain Fuel Supply Co | 05-15-92 | B | 34,656 | N | I | 05-01-92 | Indef. |
| ST92-3949 | Questar Pipeline Co | Fuel Resources Development Co. | 05-15-92 | G-S | 1,350 | N | I | 05-01-92 | Indef. |
| ST92-3950 | Oasis Pipe Line Co | El Paso Natural Gas Co | 05-15-92 | C | 100,000 | N | I | 01-01-92 | Indef. |
| ST92-3951 | Panhandle Eastern Pipe Line Co. | Amoco Production Co | 05-18-92 | G-S | 100,000 | N | I | 04-01-92 | Indef. |
| ST92-3952 | Panhandle Eastern Pipe Line Co. | Associated Natural Gas, Inc | 05-18-92 | G-S | 75,000 | N | I | 04-16-92 | Indef. |
| ST92-3953 | Panhandle Eastern Pipe Line Co. | Ohio Gas Co | 05-18-92 | B | 3,000 | N | I | 04-22-92 | Indef. |
| ST92-3954 | Tennessee Gas Pipeline Co | Aquila Energy Marketing Corp | 05-18-92 | G-S | 100,000 | N | I | 05-01-92 | Indef. |
| ST92-3955 | Tennessee Gas Pipeline Co | Midcon Services Corp | 05-18-92 | G-S | 400,000 | N | I | 05-01-92 | Indef. |
| ST92-3956 | Tennessee Gas Pipeline Co | Mississippi Fuel Co | 05-18-92 | B | 2,000,000 | A | I | 02-01-92 | Indef. |
| ST92-3957 | Tennessee Gas Pipeline Co | City of Centerville | 05-18-92 | B | 2,000,000 | A | I | 03-01-92 | Indef. |
| ST92-3958 | Tennessee Gas Pipeline Co | City of Portland | 05-18-92 | B | 2,000,000 | A | I | 01-15-92 | Indef. |
| ST92-3959 | Kern River Gas Transmission Co. | City of Los Angeles, Water & Power. | 05-18-92 | G-S | 300,000 | Y | I | 04-24-92 | 10-31-93 |
| ST92-3960 | Columbia Gas Transmission Corp. | Industrial Energy Services, Inc | 05-18-92 | G-S | 340 | Y | F | 05-01-92 | Indef. |
| ST92-3961 | Columbia Gas Transmission Corp. | PPG Industries, Inc | 05-18-92 | G-S | 20,000 | Y | I | 05-01-92 | Indef. |
| ST92-3962 | Sabine Pipe Line Co | Texas-Ohio Gas, Inc | 05-18-92 | C | 30,000 | N | I | 03-01-92 | Indef. |
| ST92-3963 | Neches Pipeline System | Natural Gas P/L Co. of America | 05-18-92 | C | 50,000 | N | I | 05-01-92 | 11-01-99 |
| ST92-3964 | Valero Transmission, L.P | Trunkline Pipeline Co | 05-18-92 | C | 25,000 | N | I | 05-01-92 | Indef. |
| ST92-3965 | Valero Transmission, L.P | Florida Gas Transmission Co | 05-18-92 | C | 30,000 | N | I | 02-01-92 | Indef. |
| ST92-3966 | Houston Pipeline Co | Florida Gas Transmission Co | 05-18-92 | C | 20,000 | N | I | 05-01-92 | Indef. |
| ST92-3967 | Houston Pipeline Co | Sabine Pipeline Co | 05-18-92 | C | 20,000 | N | I | 02-12-92 | Indef. |
| ST92-3968 | Houston Pipeline Co | Transcontinental Gas P/L Corp | 05-18-92 | C | 50,000 | N | I | 02-22-92 | Indef. |
| ST92-3969 | Houston Pipeline Co | United Gas Pipe Line Co | 05-18-92 | C | 100,000 | N | I | 03-26-92 | Indef. |



| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Estimated maximum daily quantity [2] | Alt. Y/A/N [3] | Rate schedule | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST92-3970 | Houston Pipeline Co | United Gas Pipe Line Co | 05-18-92 | C | 100,000 | N | I | 04-07-92 | Indef. |
| ST92-3971 | Houston Pipeline Co | Texas Eastern Transmission Corp. | 05-18-92 | C | 100,000 | N | I | 01-12-92 | Indef. |
| ST92-3972 | Houston Pipeline Co | Trunkline Gas Co | 05-18-92 | C | 100,000 | N | I | 01-12-92 | Indef. |
| ST92-3973 | Houston Pipeline Co | Sabine Pipeline Co | 05-18-92 | C | 100,000 | N | I | 03-05-92 | Indef. |
| ST92-3974 | Houston Pipeline Co | Northern Natural Gas Co | 05-18-92 | C | 50,000 | N | I | 04-01-92 | Indef. |
| ST92-3975 | Houston Pipeline Co | United Gas Pipe Line Co | 05-18-92 | C | 100,000 | N | I | 02-01-92 | Indef. |
| ST92-3976 | Houston Pipeline Co | Tennessee Gas Pipeline Co | 05-18-92 | G-ST | 8,500/17,000 | N | I | 01-01-92 | 03-31-20 |
| ST92-3977 | Houston Pipeline Co | Natural Gas P/L Co. of America. | 05-18-92 | C | 100,000 | N | I | 03-26-92 | Indef. |
| ST92-3978 | Houston Pipeline Co | Transcontinental Gas P/L Corp | 05-18-92 | C | 20,000 | N | I | 03-01-92 | Indef. |
| ST92-3979 | Houston Pipeline Co | Natural Gas P/L Co. of America. | 05-18-92 | C | 100,000 | N | I | 03-01-92 | Indef. |
| ST92-3980 | Houston Pipeline Co | Florida Gas Transmission Co | 05-18-92 | C | 20,000 | N | I | 03-01-92 | Indef. |
| ST92-3981 | Houston Pipeline Co | Florida Gas Transmission Co | 05-18-92 | C | 20,000 | N | I | 03-01-92 | Indef. |
| ST92-3982 | Houston Pipeline Co | Northern Natural Gas Co | 05-18-92 | C | 50,000 | N | I | 03-02-92 | Indef. |
| ST92-3983 | Houston Pipeline Co | Natural Gas P/L Co. of America. | 05-18-92 | C | 10,000 | N | I | 02-09-92 | Indef. |
| ST92-3984 | Houston Pipeline Co | Transcontiental Gas P/L Corp | 05-18-92 | G-ST | 10,000/20,000 | N | F | 02-02-92 | 07-31-92 |
| ST92-3985 | Houston Pipeline Co | Phillips Gas Pipeline Co | 05-18-92 | C | 15,000 | N | I | 04-01-92 | Indef. |
| ST92-3986 | Houston Pipeline Co | Northern Natural Gas Co | 05-18-92 | C | 15,000 | N | I | 04-01-92 | Indef. |
| ST92-3987 | Tennessee Gas Pipeline Co | MG Natural Gas Corp | 05-18-92 | G-S | 160,000 | N | I | 05-02-92 | Indef. |
| ST92-3988 | Tennessee Gas Pipeline Co | Stellar Gas Co | 05-18-92 | G-S | 65,000 | N | I | 05-01-92 | Indef. |
| ST92-3989 | Tennessee Gas Pipeline Co | Appalachian Gas Sales | 05-18-92 | G-S | 15,000 | N | I | 05-01-92 | Indef. |
| ST92-3990 | Panhandle Eastern Pipe Line Co. | Enron Gas Marketing Inc | 05-18-92 | G-S | 100,000 | N | I | 04-24-92 | Indef. |
| ST92-3991 | Transcontinental Gas P/L Corp | Philadelphia Gas Works | 05-18-92 | B | 4,516,425 | N | I | 05-03-90 | Indef. |
| ST92-3992 | Columbia Gas Transmission Corp. | Baltimore Gas and Electric Co | 05-18-92 | B | 50,000 | N | I | 05-01-92 | Indef. |
| ST92-3993 | Columbia Gas Transmission Corp. | Consolidated Gas Marketing, Inc. | 05-18-92 | G-S | 1,300 | Y | I | 05-01-92 | Indef. |
| ST92-3994 | Natural Gas P/L Co. of America. | Quantum Chemical Corp | 05-18-92 | G-S | 2,010 | N | F | 09-30-94 | Indef. |
| ST92-3995 | Natural Gas P/L Co. of America. | Tennessee Gas Pipeline Co | 05-18-92 | G | 48,000 | N | F | 05-16-91 | 05-29-08 |
| ST92-3996 | Canyon Creek Compression Co | Amoco Energy Trading Corp | 05-18-92 | G-S | 80,000 | N | I | 05-01-92 | Indef. |
| ST92-3997 | Canyon Creek Compression Co | Union Pacific Fuels, Inc | 05-18-92 | G-S | 50,000 | N | I | 03-01-92 | Indef. |
| ST92-3998 | Questar Pipeline Co | Enron Gas Marketing, Inc | 05-18-92 | G-S | 100,000 | N | I | 05-09-92 | 02-01-93 |
| ST92-3999 | El Paso Natural Gas Co | Texaco Exploration and Prod. Inc. | 05-18-92 | G-S | 2,060 | N | I | 04-25-92 | Indef. |
| ST92-4000 | Panhandle Eastern Pipe Line Co. | Semco Energy Services, Inc | 05-19-92 | G-S | 20,000 | N | I | 05-01-92 | Indef. |
| ST92-4001 | Panhandle Eastern Pipe Line Co. | Amgas, Inc | 05-19-92 | G-S | 50 | N | I | 05-01-92 | Indef. |
| ST92-4002 | Northwest Pipeline Corp | IGI Resources, Inc | 05-19-92 | G-S | 70,000 | N | I | 01-01-92 | Indef. |
| ST92-4003 | Northwest Pipeline Corp | Grand Valley Gas Co | 05-19-92 | G-S | 200,000 | N | I | 01-01-92 | Indef. |
| ST92-4004 | Panhandle Eastern Pipe Line Co. | Mountain Iron & Supply Co | 05-19-92 | G-S | 5,000 | N | I | 05-01-92 | Indef. |
| ST92-4005 | Panhandle Eastern Pipe Line Co. | Mountain Iron & Supply Co | 05-19-92 | G-S | 5,000 | N | I | 05-01-92 | Indef. |
| ST92-4006 | Panhandle Eastern Pipe Line Co. | Martin Exploration Management | 05-19-92 | G-S | 50,000 | N | I | 05-01-92 | Indef. |
| ST92-4007 | Panhandle Eastern Pipe Line Co. | City of Lapel | 05-19-92 | G-S | 1,000 | N | I | 05-01-92 | Indef. |
| ST92-4008 | Panhandle Eastern Pipe Line Co. | Amoco Energy Trading Co | 05-19-92 | G-S | 130,000 | N | I | 05-01-92 | Indef. |
| ST92-4009 | Panhandle Eastern Pipe Line Co. | Amgas, Inc | 05-19-92 | G-S | 60 | N | I | 05-01-92 | Indef. |
| ST92-4010 | Southern Natural Gas Co | O&R Energy, Inc | 05-19-92 | G-S | 50,000 | N | I | 05-01-92 | Indef. |
| ST92-4011 | Southern Natural gas Co | Mississippi Chemical Corp | 05-19-92 | G-S | 100,000 | N | I | 05-01-92 | Indef. |
| ST92-4012 | Southern Georgia Natural Gas Co. | City of Nashville | 05-19-92 | G-S | 500 | N | I | 05-06-92 | 10-04-97 |
| ST92-4013 | Southern Georgia Natural Gas Co. | City of Fort Gains | 05-19-92 | G-S | 250 | N | I | 05-06-92 | 02-26-97 |
| ST92-4014 | Southern Natural Gas Co | Energy Dynamics, Inc | 05-19-92 | G-S | 50,000 | N | I | 05-06-92 | Indef. |
| ST92-4015 | Southern Natural Gas Co | Energy Dynamics, Inc | 05-19-92 | G-S | 50,000 | N | I | 05-06-92 | Indef. |
| ST92-4016 | Southern Natural Gas Co. | Engelhard corp | 05-19-92 | G-S | 1,008 | N | I | 05-01-92 | 09-30-95 |
| ST92-4017 | South Georgia Natural Gas Co | County Board of Decatur | 05-19-92 | G-S | 150 | N | I | 05-09-92 | 03-01-93 |
| ST92-4018 | South Georgia Natural Gas Co | City of Andersonville | 05-19-92 | G-S | 61 | N | I | 05-06-92 | 03-01-93 |
| ST92-4019 | South Georgia Natural Gas Co | City of Richland | 05-19-92 | G-S | 250 | N | I | 05-06-92 | 02-26-97 |
| ST92-4020 | South Georgia Natural Gas Co | City of Ocilla | 05-19-92 | G-S | 429 | N | I | 05-06-92 | 02-26-97 |
| ST92-4021 | South Georgia Natural Gas Co | Albany Water, Gas & Light Comm. | 05-19-92 | G-S | 13,081 | N | I | 05-06-92 | 09-01-93 |
| ST92-4022 | South Georgia Natural Gas Co | City of Unadilla | 05-19-92 | G-S | 500 | N | I | 05-06-92 | 01-03-93 |
| ST92-4023 | South Georgia Natural Gas Co | City of Shellman | 05-19-92 | G-S | 185 | N | I | 05-06-92 | 02-26-97 |
| ST92-4024 | South Georgia Natural Gas Co | City of Cordele | 05-19-92 | G-S | 1,400 | N | I | 05-06-92 | 03-01-93 |
| ST92-4025 | South Georgia Natural Gas Co | City of Tifton | 05-19-92 | G-S | 2,661 | N | I | 04-01-92 | 03-01-97 |

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| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Estimated maximum daily quantity [2] | Aff. Y/A/N [3] | Rate schedule | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST92-4025 | Llano, Inc. | Phillips Petroleum Co | 05-19-92 | G-S | 7,800 | N | I | 04-18-92 | 03-31-97 |
| ST92-4027 | Sea Robin Pipeline Co. | Cater Energy, Inc. | 05-19-92 | C | 50,000 | N | I | 04-18-92 | Indef. |
| ST92-4028 | South Georgia Natural Gas Co. | City of Douglas | 05-19-92 | G-S | 2,008 | N | I | 05-09-92 | 03-01-97 |
| ST92-4029 | Northern Natural Gas Co. | Iowa Electric Light and Power Co. | 05-1-992 | B | 25,000 | N | F/I | 04-30-92 | Indef. |
| ST92-4030 | Northern Natural Gas Co. | NGC Transportation, Inc. | 05-19-92 | G-S | 500,000 | N | F/I | 04-30-92 | Indef. |
| ST92-4031 | Tennessee Gas Pipeline Co | Stellar Gas Co | 05-19-92 | G-S | 1,000,000 | N | I | 05-09-92 | Indef. |
| ST92-4032 | Tennessee Gas Pipeline Co | Vigas Corp. | 05-20-92 | G-S | 110,000 | N | I | 03-01-92 | Indef. |
| ST92-4033 | Tennessee Gas Pipeline Co | Woodward Marketing, Inc. | 05-20-92 | G-S | 200,000 | N | I | 04-23-92 | Indef. |
| ST92-4034 | Tennessee Gas Pipeline Co | Energy Marketing Exchange, Inc. | 05-20-92 | G-S | 102,500 | N | I | 04-23-92 | Indef. |
| ST92-4035 | Transwestern Pipeline Co | Windward Energy & Marketing Co. | 05-20-92 | G-S | 75,000 | N | I | 04-11-92 | Indef. |
| ST92-4036 | Transwestern Pipeline Co | American Hunter Exploration Ltd. | 05-20-92 | G-S | 270,000 | N | I | 04-11-92 | Indef. |
| ST92-4037 | Transwestern Pipeline Co | Enron Gas Marketing, Inc. | 05-20-92 | G-S | 500,000 | Y | I | 04-20-92 | Indef. |
| ST92-4038 | Northern Natural Gas Co. | Union Exploration Corp. | 05-20-92 | G-S | 15,000 | N | F/I | 05-01-92 | Indef. |
| ST92-4039 | Northern Natural Gas Co. | Hunt Oil Co. | 05-20-92 | G-S | 5,000 | N | F/I | 05-01-92 | Indef. |
| ST92-4040 | Northern Natural Gas Co. | Equitable Resources Marketing Co. | 05-20-92 | G-S | 100,000 | N | F/I | 05-01-92 | Indef. |
| ST92-4041 | Northern Natural Gas Co. | Wisconsin Power & Light Co | 05-20-92 | B | 20,000 | N | F/I | 05-01-92 | Indef. |
| ST92-4042 | Northern Natural Gas Co. | Mercado Gas Services, Inc. | 05-20-92 | G-S | 7,500 | N | F/I | 05-02-92 | Indef. |
| ST92-4043 | Superior Offshore P/L Co. | Baltimore Gas & Electric | 05-21-92 | B | 30,000 | N | I | 05-01-92 | Indef. |
| ST92-4044 | Superior Offshore P/L Co. | Cincinnati Gas & Electric | 05-21-92 | B | 30,000 | N | I | 05-01-92 | Indef. |
| ST92-4045 | Questar Pipeline Co | Grand Valley Gas Co | 05-21-92 | G-S | 145,820 | N | I | 04-21-92 | Indef. |
| ST92-4046 | Michigan Gas Storage Co | Michigan Gas Co | 05-21-92 | B | 60,000 | Y | I | 03-24-92 | Indef. |
| ST92-4047 | Consumers Power Co | Michigan Gas Co | 05-21-92 | G-HT | 60,000 | N | I | 03-24-92 | Indef. |
| ST92-4048 | Transwestern Pipeline Co | Access Energy Corp | 05-21-92 | G-S | 50,000 | N | I | 05-05-92 | Indef. |
| ST92-4049 | Transwestern Pipeline Co | Plains Farmers Gas Co-op | 05-21-92 | G-S | 5,000 | N | I | 05-01-92 | Indef. |
| ST92-4050 | Transwestern Pipeline Co | Mercado Gas Services, Inc. | 05-21-92 | G-S | 25,000 | N | I | 05-01-92 | Indef. |
| ST92-4051 | Transwestern Pipeline Co | Citizens Utilities Co | 05-21-92 | B | 25,000 | N | F | 04-27-92 | Indef. |
| ST92-4052 | Transwestern Pipeline Co | Citizens Utilities Co | 05-21-92 | B | 25,000 | N | F | 04-27-92 | Indef. |
| ST92-4053 | Transwestern Pipeline Co | Integrated Services, Inc. | 05-21-92 | B | 1,500 | N | I | 04-28-92 | Indef. |
| ST92-4054 | Transwestern Pipeline Co | BP Gas Marketing Co | 05-21-92 | G-S | 30,000 | N | I | 05-02-92 | Indef. |
| ST92-4055 | Trunkline Gas Co. | Texon Corp. | 05-21-92 | G-S | 7,000 | N | I | 04-01-92 | Indef. |
| ST92-4056 | Acadian Gas Pipeline System | Texas Eastern Trans. Corp | 05-22-92 | C | 15,000 | N | I | 05-01-92 | Indef. |
| ST92-4057 | Acadian Gas Pipeline System | Sabine Pipeline Co. | 05-22-92 | C | 40,000 | N | I | 05-01-92 | Indef. |
| ST92-4058 | Paiute Pipeline Co | Winnemucca Farms, Inc | 05-22-92 | G-S | 800 | N | I | 04-01-92 | Indef. |
| ST92-4059 | Tennessee Gas Pipeline Co | Wes Cana Energy Marketing, Inc. | 05-22-92 | G-S | 1,500 | N | F | 05-01-92 | 07-30-92 |
| ST92-4060 | Natural Gas P/L Co. of America. | Access Energy Corp | 05-22-92 | G-S | 50,000 | N | I | 05-01-92 | Indef. |
| ST92-4061 | Natural Gas P/L Co. of America. | Inland Steel Co | 05-22-92 | G-S | 10,000 | N | I | 08-01-92 | 05-31-93 |
| ST92-4062 | Natural Gas P/L Co. of America. | Entex | 05-22-92 | B | 10,000 | N | F | 05-01-92 | 11-30-94 |
| ST92-4063 | Natural Gas P/L Co. of America. | Entex | 05-22-92 | B | 10,000 | N | F | 05-01-92 | 11-30-94 |
| ST92-4064 | Great Lakes Gas Trans. L.P | Kimball/Trippe Energy Associates | 05-22-92 | G-S | 150,000 | N | I | 04-23-92 | Indef. |
| ST92-4065 | Williams Natural Gas Co | Western Gas Resources, Inc. | 05-22-92 | G-S | 100,000 | N | I | 04-24-92 | Indef. |
| ST92-4066 | Texas Eastern Transmission Corp. | Gemco Gas Marketing, Inc | 05-26-92 | G-S | 120,000 | N | I | 05-01-92 | Indef. |
| ST92-4067 | Texas Eastern Transmission Corp. | Maxus Exploration Co. | 05-26-92 | G-S | 50,000 | N | I | 05-02-92 | Indef. |
| ST92-4068 | Texas Eastern Transmission Corp. | Arco Natural Gas Marketing Co | 05-26-92 | G-S | 100,000 | N | I | 05-06-92 | Indef. |
| ST92-4069 | Texas Eastern Transmission Corp. | Vesta Energy Co. | 05-26-92 | G-S | 130,000 | N | I | 05-01-92 | Indef. |
| ST92-4070 | Texas Eastern Transmission Corp. | BHP Gas Marketing Co | 05-26-92 | G-S | 5,000 | N | I | 05-01-92 | Indef. |
| ST92-4071 | Kern River Gas Transmission Co. | Inland Container Corp. | 05-26-92 | G-S | 25,000 | N | I | 04-26-92 | Indef. |
| ST92-4072 | Kern River Gas Transmission Co. | Arco Natural Gas Marketing, Inc. | 05-26-92 | G-S | 50,000 | N | I | 04-30-92 | Indef. |
| ST92-4073 | Kern River Gas Transmission Co. | Pan-Alberta Gas (U.S.) Inc. | 05-26-92 | G-S | 300,000 | N | I | 04-28-92 | Indef. |
| ST92-4074 | Tennessee Gas Pipeline Co | Florida Gas Transmission Co. | 05-26-92 | G | 2,000,000 | N | I | 05-01-92 | Indef. |
| ST92-4075 | Tennessee Gas Pipeline Co | City of Akron | 05-26-92 | G-S | 4,000 | N | I | 05-08-92 | Indef. |
| ST92-4076 | Tennessee Gas Pipeline Co | NGC Transportation, Inc. | 05-26-92 | G-S | 25,000 | N | I | 04-25-92 | Indef. |
| ST92-4077 | Tennessee Gas Pipeline Co | Access Energy Corp | 05-26-92 | G-S | 500,000 | N | I | 05-03-92 | Indef. |
| ST92-4078 | Natural Gas P/L Co. of America. | Anthem Energy Co. | 05-26-92 | G-S | 150,000 | N | I | 04-25-92 | Indef. |
| ST92-4079 | Colorado Interstate Gas Co | Helmerich & Payne Energy Ser., Inc. | 05-26-92 | G-S | 20,000 | N | F | 04-01-92 | Indef. |
| ST92-4080 | Colorado Interstate Gas Co | Montana Power Co | 05-26-92 | B | 15,000 | N | I | 04-01-92 | Indef. |
| ST92-4081 | Colorado Interstate Gas Co | Montana Power Co | 05-26-92 | B | 15,000 | N | I | 04-01-92 | Indef. |
| ST92-4082 | Colorado Interstate Gas Co | Barrett Fuels Corp. | 05-26-92 | G-S | 15,000 | N | I | 04-01-92 | Indef. |
| ST92-4083 | Colorado Interstate Gas Co | Western Gas Resources, Inc. | 05-26-92 | G-S | 1,500 | N | I | 04-01-92 | Indef. |

| Docket No.[1] |
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| ST92-4150 |

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Estimated maximum daily quantity [2] | Aff. Y/A/N [3] | Rate schedule | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST92-4084 | Colorado Interstate Gas Co | North Canadian Marketing Corp | 05-26-92 | G-S | 50,000 | N | I | 04-01-92 | Indef. |
| ST92-4085 | Colorado Interstate Gas Co | Grand Valley Gas Co | 05-26-92 | G-S | 50,000 | N | I | 04-22-92 | Indef. |
| ST92-4086 | Colorado Interstate Gas Co | Polaris Pipeline Co | 05-26-92 | G-S | 75,000 | N | I | 04-01-92 | Indef. |
| ST92-4087 | Colorado Interstate Gas Co | Bridgegas U.S.A., Inc | 05-26-92 | G-S | 50,000 | N | I | 04-25-92 | Indef. |
| ST92-4088 | Colorado Interstate Gas Co | Aquila Energy Marketing Corp | 05-26-92 | G-S | 6,700 | N | I | 04-01-92 | Indef. |
| ST92-4089 | Colorado Interstate Gas Co | Mountain Gas Resources, Inc | 05-26-92 | G-S | 50,000 | N | I | 04-02-92 | Indef. |
| ST92-4090 | Colorado Interstate Gas Co | Aquila Energy Marketing Corp | 05-26-92 | G-S | 50,000 | N | I | 04-01-92 | Indef. |
| ST92-4091 | Kentucky West Virginia Gas Co | M.O.V. Oil, Inc | 05-26-92 | G-S | 360 | N | I | 04-02-92 | Indef. |
| ST92-4092 | Kentucky West Virginia Gas Co | Newport Oil Corp | 05-26-92 | G-S | 250 | N | I | 04-01-92 | Indef. |
| ST92-4093 | Columbia Gulf Transmission Co | Brooklyn Interstate Nat. Gas Corp. | 05-26-92 | G-S | 30,000 | N | I | 04-13-92 | Indef. |
| ST92-4094 | Columbia Gulf Transmission Co | Yuma Gas Corp | 05-26-92 | G-S | 70,000 | N | I | 04-06-92 | Indef. |
| ST92-4095 | Columbia Gulf Transmission Co | Transco Energy Marketing Co | 05-26-92 | G-S | 200,000 | N | I | 04-01-92 | Indef. |
| ST92-4096 | Columbia Gulf Transmission Co | Virginia Electric & Power Co | 05-26-92 | G-S | 75,000 | N | I | 04-06-92 | Indef. |
| ST92-4097 | Columbia Gas Transmission Corp. | Woodward Marketing, Inc | 05-26-92 | G-S | 30,000 | Y | I | 04-15-92 | Indef. |
| ST92-4098 | Columbia Gas Transmission Corp. | Stand Energy Corp | 05-25-92 | G-S | 30 | Y | F | 04-07-92 | Indef. |
| ST92-4099 | Columbia Gas Transmission Corp. | J.D. Drilling Co | 05-26-92 | G-S | 3,001 | N | I | 04-10-92 | Indef. |
| ST92-4100 | Texas Gas Transmission Corp | Fina Natural Gas Co | 05-26-92 | G-S | 50,000 | Y | I | 04-01-92 | Indef. |
| ST92-4101 | Texas Gas Transmission Corp | River Gas Co | 05-26-92 | G-S | 3,073 | N | F | 04-01-92 | Indef. |
| ST92-4102 | Texas Gas Transmission Corp | Arkla Energy Resources | 05-26-92 | G | 200,000 | Y | I | 04-01-92 | Indef. |
| ST92-4103 | Kern River Gas Transmission Co. | M.H. Whittier Corp | 05-27-92 | G-S | 4,500 | N | F | 04-01-92 | Indef. |
| ST92-4104 | Texas Gas Transmission Corp | Entrade Corp | 05-27-92 | G-S | 100,000 | N | I | 04-01-92 | Indef. |
| ST92-4105 | Texas Gas Transmission Corp | Gasmark, Ltd | 05-27-92 | G-S | 50,000 | N | I | 05-01-92 | Indef. |
| ST92-4106 | Texas Gas Transmission Corp | Texaco Gas Marketing, Inc | 05-27-92 | G-S | 100,000 | N | I | 05-01-92 | Indef. |
| ST92-4107 | Texas Gas Transmission Corp | CNG Transmission Corp | 05-27-92 | G | 40,000 | N | I | 05-06-92 | Indef. |
| ST92-4108 | Lone Star Gas Co | Natural Gas P/L Co. of America | 05-27-92 | C | 23,000 | N | I | 05-18-92 | Indef. |
| ST92-4109 | Louisiana Resources Pipeline Co. | Union Carbide Chemicals & Plastics | 05-27-92 | C | 50,000 | N | I | 01-01-92 | Indef. |
| ST92-4110 | Louisiana Resources Pipeline Co. | Columbia Gulf Transmission Co | 05-27-92 | C | 30,000 | N | I | 05-01-92 | Indef. |
| ST92-4111 | Louisiana Resources Pipeline Co. | Louisiana Gas Pipeline Co., L.P | 05-27-92 | C | 200,000 | N | I | 05-21-92 | Indef. |
| ST92-4112 | Louisiana Resources Pipeline Co. | Sea Robin Pipeline Co | 05-27-92 | C | 50,000 | N | I | 05-07-92 | Indef. |
| ST92-4113 | Trunkline Gas Co | Western Gas Marketing, Inc | 05-2-92 | G-S | 100,000 | N | I | 04-06-92 | Indef. |
| ST92-4114 | Northern Border Pipeline Co | Progas U.S.A., Inc | 05-27-92 | G-S | 75,000 | Y | I | 05-01-92 | 04-30-94 |
| ST92-4115 | Northern Border Pipeline Co | Entrade Corp | 05-27-92 | G-S | 86,000 | Y | I | 05-01-92 | 11-30-92 |
| ST92-4116 | Northern Border Pipeline Co | Hadson Gas Systems, Inc | 05-27-92 | G-S | 100,000 | Y | I | 05-01-92 | 11-30-92 |
| ST92-4117 | Northern Border Pipeline Co | POCO Petroleums Ltd | 05-27-92 | G-S | 75,600 | Y | I | 05-01-92 | 12-06-93 |
| ST92-4118 | Northern Border Pipeline Co | Unigas Energy In | 05-27-92 | G-S | 100,000 | Y | I | 05-01-92 | 12-31-92 |
| ST92-4119 | Northern Border Pipeline Co | NGC Transportation, Inc | 05-27-92 | G-S | 150,000 | Y | I | 05-01-92 | 11-30-93 |
| ST92-4120 | Northern Border Pipeline Co | Portage Energy Inc | 05-27-92 | G-S | 245,000 | Y | I | 05-01-92 | 04-30-94 |
| ST92-4121 | Northern Border Pipeline Co | Salmon Resources, Ltd | 05-27-92 | G-S | 30,000 | Y | I | 05-01-92 | Indef. |
| ST92-4122 | Northern Border Pipeline Co | POCO Petroleums Ltd | 05-27-92 | G-S | 252,000 | Y | I | 05-01-92 | 04-30-94 |
| ST92-4123 | Northern Border Pipeline Co | Coastal Gas Marketing Co | 05-27-92 | G-S | 100,000 | Y | I | 05-01-92 | 04-30-94 |
| ST92-4124 | Northern Border Pipeline Co | Enron Gas Marketing, Inc | 05-27-92 | G-S | 300,000 | Y | I | 05-01-92 | 12-31-92 |
| ST92-4125 | Northern Border Pipeline Co | Cibola Corp | 05-27-92 | G-S | 148,000 | Y | I | 05-01-92 | 12-31-93 |
| ST92-4126 | Northern Border Pipeline Co | Aquila Energy Marketing Corp | 05-27-92 | G-S | 300,000 | Y | I | 05-01-92 | 11-30-93 |
| ST92-4127 | Northern Border Pipeline Co | Salmon Resources, Ltd | 05-27-92 | G-S | 500,000 | Y | I | 05-01-92 | 11-30-93 |
| ST92-4128 | Northern Border Pipeline Co | Unigas Engery Inc | 05-27-92 | G-S | 150,000 | Y | I | 05-01-92 | 04-30-94 |
| ST92-4129 | Northern Border Pipeline Co | Coastal Gas Marketing Co | 05-27-92 | G-S | 200,000 | Y | I | 05-01-92 | 04-30-94 |
| ST92-4130 | Northern Border Pipeline Co | Unigas Corp | 05-27-92 | G-S | 100,000 | Y | I | 05-01-92 | 11-24-92 |
| ST92-4131 | Northern Border Pipeline Co | Mobil Natural Gas Inc | 05-27-92 | G-S | 200,000 | Y | I | 05-01-92 | 10-31-93 |
| ST92-4132 | Northern Border Pipeline Co | Enron Gas Marketing, Inc | 05-27-92 | G-S | 100,000 | Y | I | 05-01-92 | 12-31-92 |
| ST92-4133 | Northern Border Pipeline Co | Gasmark, Inc | 05-27-92 | G-S | 100,000 | Y | I | 05-01-92 | 04-30-94 |
| ST92-4134 | Colorado Interstate Gas Co | Williams Gas Marketing Co | 05-27-92 | G-S | 30,000 | N | I | 04-01-92 | 03-31-93 |
| ST92-4135 | Colorado Interstate Gas Co | Montana Power Co | 05-27-92 | B | 20,000 | N | I | 05-07-92 | Indef. |
| ST92-4136 | Colorado Interstate Gas Co | Western Gas Resources, Inc | 05-27-92 | G-S | 1,000 | N | I | 04-01-92 | Indef. |
| ST92-4137 | Trunkline Gas Co | Valero Gas Marketing, L.P. | 05-27-92 | G-S | 50,000 | N | I | 05-04-92 | Indef. |
| ST92-4138 | Trunkline Gas Co | Hadson Gas Systems, Inc | 05-27-92 | G-S | 50,000 | N | I | 04-29-92 | Indef. |
| ST92-4139 | Trunkline Gas Co | Phibro Distributors Corp | 05-27-92 | G-S | 100,000 | N | I | 04-01-92 | Indef. |
| ST92-4140 | Trunkline Gas Co | Midland Cogeneration Venture, L.P. | 05-27-92 | G-S | 30,000 | N | I | 05-01-92 | Indef. |
| ST92-4141 | Northern Border Pipeline Co | Unigas Corp | 05-27-92 | G-S | 100,000 | Y | I | 05-01-92 | 4-30-94 |
| ST92-4141 | Northern Border Pipeline Co | Enron Gas Marketing, Inc | 05-27-92 | G-S | 250,000 | Y | I | 05-01-92 | 12-31-92 |
| ST92-4143 | Northern Border Pipeline Co | Poco Petroleums Ltd | 05-27-92 | G-S | 75,600 | Y | I | 05-01-92 | 12-06-93 |
| ST92-4144 | Trunkline Gas Co | Enermax | 05-27-92 | G-S | 100,000 | N | I | 05-01-92 | Indef. |
| ST92-4145 | Trunkline Gas Co | Centran Corp | 05-27-92 | G-S | 50,000 | N | I | 04-30-92 | Indef. |
| ST92-4146 | Trunkline Gas Co | Eagle Natural Gas Co | 05-27-92 | G-S | 20,000 | N | I | 05-01-92 | Indef. |
| ST92-4147 | Trunkline Gas Co | Citrus Marketing, Inc | 05-27-92 | G-S | 100,000 | N | I | 05-01-92 | Indef. |
| ST92-4148 | Trunkline Gas Co | Florida Gas Utility | 05-27-92 | G-S | 100,000 | N | I | 04-28-92 | Indef. |
| ST92-4149 | Trunkline Gas Co | Meridian Oil Trading, Inc | 05-27-92 | G-S | 100,000 | N | I | 05-01-92 | Indef. |
| ST92-4150 | Trunkline Gas Co | Equitable Resources Marketing Co. | 05-27-92 | G-S | 50,000 | N | I | 05-01-92 | Indef. |

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Estimated maximum daily quantity [2] | Aff. Y/A/N [3] | Rate schedule | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST92-4151 | Trunkline Gas Co | Phillips Petroleum Co | 05-27-92 | G-S | 80,000 | N | I | 05-01-92 | Indef. |
| ST92-4152 | Northern Natural Gas Co | Western Gas Marketing, Inc | 05-27-92 | G-S | 70,000 | N | F | 05-09-92 | Indef. |
| ST92-4153 | United Texas Transmission Co | Natural Gas P/L Co. of America. | 05-28-92 | C | 10,000 | Y | I | 05-08-92 | Indef. |
| ST92-4154 | United Texas Transmission Co | Natural Gas P/L Co. of America. | 05-28-92 | C | 3,200 | Y | I | 04-01-92 | Indef. |
| ST92-4155 | Panhandle Eastern Pipeline Co | Michigan Gas Utilities Co | 05-28-92 | B | 8,500 | N | I | 04-30-92 | Indef. |
| ST92-4156 | Trunkline Gas Co | Western Gas Marketing, Inc | 05-28-92 | G-S | 100,000 | N | I | 05-05-92 | Indef. |
| ST92-4157 | Northwest Pipeline Co | ARCO Natural Gas Marketing, Inc. | 05-28-92 | G-S | 70,000 | N | F | 05-07-92 | Indef. |
| ST92-4158 | Northwest Pipeline Co | Winnemucca Farms, Inc | 05-28-92 | G-S | 800 | N | I | 04-29-92 | Indef. |
| ST92-4159 | Webb/Duval Gatherers | Texas Eastern Transmission Corp. | 05-28-92 | C | 1,000 | N | I | 03-01-92 | Indef. |
| ST92-4160 | Natural Gas P/L Co. of America. | Aquila Energy Marketing Corp | 05-29-92 | G-S | 50,000 | N | I | 02-01-92 | 01-31-93 |
| ST92-4161 | Tennessee Gas Pipeline Co | Scana Hydrocarbons, Inc | 05-29-92 | G-S | 15,000 | N | I | 05-13-92 | Indef. |
| ST92-4162 | Tennessee Gas Pipeline Co | CNG Transmission Corp | 05-29-92 | G | 12,000 | N | F | 05-08-92 | Indef. |
| ST92-4163 | El Paso Natural Gas Co | Enron Gas Marketing, Inc | 05-29-92 | G-S | 196,842 | Y | I | 03-25-92 | Indef. |
| ST92-4164 | Delhi Gas Pipeline Corp | Ozark Gas Transmission System. | 05-29-92 | C | 2,000 | N | I | 05-01-92 | 12-31-99 |
| ST92-4165 | Delhi Gas Pipeline Corp | United Gas Pipe Line Co | 05-29-92 | C | 4,000 | N | I | 05-01-92 | Indef. |
| ST92-4166 | Delhi Gas Pipeline Corp | Panhandle Eastern Pipeline Co | 05-29-92 | C | 10,000 | N | I | 05-01-92 | Indef. |
| ST92-4167 | Delhi Gas Pipeline Corp | Natural Gas P/L Co. of America. | 05-29-92 | C | 8,000 | N | I | 05-01-92 | 12-31-99 |
| ST92-4168 | Delhi Gas Pipeline Corp | Ozark Gas Transmission System. | 05-29-92 | C | 8,000 | N | I | 05-01-92 | 12-31-99 |
| ST92-4169 | Delhi Gas Pipeline Corp | Ozark Gas Transmission System. | 05-29-92 | C | 6,000 | N | I | 05-01-92 | 12-31-99 |
| ST92-4170 | Delhi Gas Pipeline Corp | Natural Gas P/L Co. of America. | 05-29-92 | C | 5,000 | N | I | 05-01-92 | 12-31-99 |
| ST92-4171 | Delhi Gas Pipeline Corp | Natural Gas P/L Co. of America. | 05-29-92 | C | 5,000 | N | I | 05-08-92 | 01-01-00 |
| ST92-4172 | Williston Basin Inter P/L Co | Prairielands Engery Marketing, Inc. | 05-29-92 | G-S | 120,000 | A | I | 04-30-92 | 10-14-92 |
| ST92-4173 | Arkla Energy Resources | Tenaska Transmission Co | 05-29-92 | G-S | 20,000 | N | I | 04-01-92 | Indef. |
| ST92-4174 | Arkla Energy Resources | Highland Energy Co | 05-29-92 | G-S | 20,000 | N | I | 04-09-92 | Indef. |
| ST92-4175 | Arkla Energy Resources | Ohio Gas Co | 05-29-92 | B | 10,000 | N | I | 04-08-92 | Indef. |
| ST92-4176 | Pacific Gas Transmission Co | Oregon Natural Gas Development Corp. | 05-29-92 | G-S | 50,000 | N | I | 05-08-92 | Indef. |
| ST92-4177 | Pacific Gas Transmission Co | Direct Energy Marketing Limited | 05-29-92 | G-S | 60,00 | N | I | 05-07-92 | Indef. |
| ST92-4178 | Williams Natural Gas Co | Tenaska Marketing Ventures | 05-29-92 | G-S | 106,000 | N | I | 05-01-92 | Indef. |
| ST92-4179 | El Paso Natural Gas Co | Williams Natural Gas Co | 05-29-92 | G | 50,000 | Y | I | 05-01-92 | Indef. |
| ST92-4180 | ANR Pipeline Co | North Canadian Marketing Corp | 05-29-92 | G-S | 30,000 | N | I | 05-02-92 | Indef. |
| ST92-4181 | ANR Pipeline Co | Union Light Heat & Power Co | 05-29-92 | B | 2,036 | N | F | 05-01-92 | Indef. |
| ST92-4182 | ANR Pipeline Co | Arco Natural Gas Marketing, Inc. | 05-29-92 | G-S | 2,036 | N | F | 05-01-92 | Indef. |
| ST92-4183 | ANR Pipeline Co | Cincinnati Gas and Electric Co | 05-29-92 | B | 100,000 | N | I | 05-01-92 | Indef. |
| ST92-4184 | ANR Pipeline Co | Peoples Gas Light & Coke, N. Il Gas. | 05-29-92 | B | 50,000 | N | I | 05-04-92 | Indef. |
| ST92-4185 | ANR Pipeline Co | Enron Gas Marketing, Inc | 05-29-92 | G-S | 150,000 | N | I | 05-01-92 | Indef. |
| ST92-4186 | ANR Pipeline Co | Cincinnati Gas & Electric Co | 05-29-92 | B | 8,146 | N | F | 05-01-92 | Indef. |
| ST92-4187 | ANR Pipeline Co | Ward Gas Marketing, Inc | 05-29-92 | G-S | 50,000 | N | I | 05-01-92 | Indef. |
| ST92-4188 | ANR Pipeline Co | Nerco Oil & Gas, Inc | 05-29-92 | G-S | 200,000 | N | I | 05-01-92 | Indef. |
| ST92-4189 | ANR Pipeline Co | Northern Illinois Gas Co | 05-29-92 | B | 25,00 | N | I | 05-01-92 | Indef. |
| ST92-4190 | ANR Pipeline Co | Entrade Corp | 05-29-92 | G-S | 100,000 | N | I | 05-01-92 | Indef. |
| ST92-4191 | ANR Pipeline Co | Coastal Gas Marketing Co | 05-29-92 | G-S | 100,000 | N | I | 05-02-92 | Indef. |
| ST92-4192 | ANR Pipeline Co | Central Illinois Light Co | 05-29-92 | B | 9,165 | N | F | 05-01-92 | Indef. |
| ST92-4193 | Iroquois Gas Trans. System. L.P. | Continental Energy Marketing Ltd. | 05-29-92 | G-S | 100,000 | N | I | 05-01-92 | 10-31-92 |
| ST92-4194 | Transcontinental Gas P/L Corp | Industrial Energy Services Co | 05-29-92 | G-S | 20,000 | N | I | 05-01-92 | Indef. |
| ST92-4195 | Transcontinental Gas P/L Corp | Atlanta Gas Light Co | 05-29-92 | B | 700,000 | N | I | 05-12-92 | Indef. |
| ST92-4196 | Transcontinental Gas P/L Corp | Nomeco Oil & Gas Co | 05-29-92 | G-S | 40,000 | N | I | 05-01-92 | Indef. |
| ST92-4197 | Transcontinental Gas P/L Corp | Delmarva Power & Light Co | 05-29-92 | B | 100,000 | N | I | 05-02-92 | Indef. |
| ST92-4198 | Transcontinental Gas P/L Corp | Woodward Marketing, Inc | 05-29-92 | G-S | 50,000 | N | I | 05-01-92 | Indef. |
| ST92-4199 | Transcontinental Gas P/L Corp | Consolidated Edison Co. of NY, Inc. | 05-29-92 | B | 100,000 | N | I | 05-04-92 | Indef. |

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with Order No. 436 (Final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).

[2] Estimated maximum daily volumes includes volumes reported by the filing Company in MMBTU, MCF and DT.

[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 92-17157 Filed 7-20-92 12:01 pm]

BILLING CODE 6717-01-M

[Docket Nos. JD92-07658T, Texas—61; JD92-07659T, Texas—62; JD92-07660T, Texas—63; JD92-07661T, Texas—64]

## Railroad Commission of Texas; NGPA Notices of Determination by Jurisdictional Agency Designating Tight Formations

July 15, 1992.

Take notice that on July 2, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notices of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the W Sand (Docket No. JD92-07658T), X Sand (Docket No. JD92-07659T), Y Sand (Docket No. JD92-07660T), and Z Sand (Docket No. JD92-07661T) of the Lower Vicksburg Formation, in portions of Hidalgo County, Texas, qualify as tight formations under § 107(b) of the Natural Gas Policy Act of 1978. The four determinations represent the reduction of the recommended areas applicable to the W, X, Y, and Z Sands under the previously withdrawn notice of determination for the Lower Vicksburg Formation in Texas—15 Addition 4 (Docket No. JD92-02504T).

The notices of determination also contain Texas' findings that the currently recommended portions of the W, X, Y, and Z Sands meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17158 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

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[Docket No. JD92-07745T West Virginia-11]

## West Virginia; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 15, 1992.

Take notice that on July 13,1992, the West Virginia Department of Commerce, Labor and Environmental Resources (West Virginia) subnmitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Fifty-Foot/Thirty-Foot, Gordon, Fourth and Fifth Sands in certain areas of Harrison and Doddridge Counties, West Virginia qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The notice covers approximately 26 square miles in the Folsom, Salem, Wallace and Wolf Summit Quads in Harrison and Doddridge Counties, West Virginia.

The notice of determination also contains West Virginia's findings that the referenced portion of the Fifty-Foot/Thirty-Foot, Gordon, Fourth and Fifth Sands meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 274.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17159 Filed 7-20-92; 12:01 am]

BILLING CODE 6717-01-M

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[Docket No. PR92-18-000]

## Delhi Gas Pipeline Corp. (Kansas System); Petition for Rate Approval

July 15, 1992.

Take notice that on June 30, 1992, Delhi Gas Pipeline Corporation (Delhi) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 27.74 cents per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Delhi states that it owns and operates extensive non-interconnected pipeline systems primarily in the states of Texas and Oklahoma with smaller operations in several other states, including facilities in Kansas, which are the subject of this proceeding. Delhi further states that its Kansas facilities are located in various counties in Kansas. By Commission letter order issued June 21, 1990 (51 FERC ¶ 61,391 (1990)), Delhi was authorized to charge a maximum rate of $0.26 per MMBtu for the period July 1, 1989, through June 30, 1992, for the Kansas System.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before August 3, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17160 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

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[RS92-35-000]

## Gas Transport, Inc; Conference

July 14, 1992.

Take notice that on July 31, 1992, a conference will be convened in the captioned restructuring docket. This conference is being convened to discuss the summary of its Order No. 636 compliance filing and rates filed by Gas Transport, Inc. on July 7, 1992. The conference will be held in room 3400-C of the offices of the Federal Energy Regulatory Commission at 825 N. Capitol Street, Washington, DC 20426. The conference will begin at 9:30 a.m. on July 31, 1992. All interested parties are invited to attend. However, attendance at the conference will not confer party status.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17080 Filed 7-20-92; 12:01pm]

BILLING CODE 6717-01-M

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[Docket No. CP92-576-000]

## Panhandle Eastern Pipe Line Co.; Application

July 15, 1992.

Take notice that on July 2, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-576-000 an application, as supplemented July 9, 1992, pursuant to section 7(b) of the Natural Gas Act for authorization to partially abandon

authorized sales service to two of its existing jurisdictional sales customers, Kokomo Gas and Fuel Company (Kokomo) and Northern Indiana Public Service Company (NIPSCO), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that in accordance with Article III, section 4.a(iv) of Panhandle's stipulation and agreement dated April 21, 1991, in Docket Nos. RP88-262-000, *et al*, Kokomo and NIPSCO have entered into new service agreements with Panhandle reducing their annual and daily contract demand quantities as detailed in the application and extending the term of service to October 31, 1993. It is indicated that the new service agreements would supersede the customers' existing Rate Schedule G-1 service agreements. No abandonment of facilities is proposed.

Any person desiring to be heard or to make protest with reference to said application should on or before July 27, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17061 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

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**[Docket Nos. ER92-279-000 and ER92-280-000]**

## Public Service Electric and Gas Co.; Filing

July 15, 1992.

Take notice that on June 2, 1992 Public Service Electric and Gas Company (PSE&G) tendered for filing an amendment in the above referenced dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 27, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17063 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

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**[Docket No. RP92-134-000]**

## Southern Natural Gas Co.; Informal Settlement Conference

July 15, 1992.

Taken notice that an information settlement conference will be convened in this proceeding on Wednesday, July 29, 1992, at 11 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Betsy R. Carr at (202) 208-1240 or James A. Pederson at (202) 208-2158.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17161 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

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**[Docket No. RP86-119-021]**

## Tennessee Gas Pipeline Co.; Tariff Filing to Implement Stipulation and Agreement

July 15, 1992.

Take notice that on July 13, 1992, Tennessee Gas Pipeline Company (Tennessee) filed the following revised sheets to its Fourth Revised Vol. I of its FERC Gas Tariff, with a proposed effective date of July 1, 1992.

Substitute Original Sheet No. 21
Substitute Original Sheet No. 21A
Substitute Original Sheet No. 22
Substitute Original Sheet No. 23
Substitute Original Sheet No. 344

Tennessee states that the purpose of this filing is to state the effective TGIC gas rate for the month of July and to correct certain errors in its compliance filing of June 30 in Docket Nos. RP 86-119 *et al.*

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17162 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

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**[Docket No. RP91-203-014]**

## Tennessee Gas Pipeline Co.; Compliance Filing

July 15, 1992.

Take notice that on July 10, 1992, Tennessee Gas Pipeline Company (Tennessee) filed the following tariff

sheets to its FERC Gas Tariff to be effective February 1, 1992, and April 1, 1992, respectively:

*Original Volume No. 2*

5th Substitute 25th Revised Sheet No. 5
5th Substitute Original Sheet No. 5
2nd Substitute 26th Revised Sheet No. 5
2nd Substitute 1st Revised Sheet No. 5A

Tennessee states that the purpose of this filing is to comply with the Commission's June 25, 1992 Order, which required Tennessee to file revised rate schedule T-47 reflecting the zone methodology used in its original filing on August 1, 1991 in the above referenced docket.

Tennessee states that copies of the filing have been mailed to all parties on the official service list in this proceeding, affected customers, and affected state regulatory commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17163 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

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**[Docket Nos. RP88-228-035]**

## Tennessee Gas Pipeline Co.; Tariff Filing

July 15, 1992.

Take notice that on June 30, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheet to be effective July 1, 1992:

Fourth Revised Volume No. 1

*Original Volume No. 2*

28th Revised Sheet No. 5
3rd Revised Sheet No. 5A
26th Revised Sheet No. 6
2nd Revised Sheet No. 6A
10th Revised Sheet No. 7
2nd Revised Sheet No. 7A
11th Revised Sheet No. 8
2nd Revised Sheet No. 8A
10th Revised Sheet No. 9
2nd Revised Sheet No. 9A
14th Revised Sheet No. 10
1st Revised Sheet No. 10A

Tennessee states that the purpose of this filing is to implement the Stipulation and Agreement (Cosmic Settlement) filed on June 25, 1991 and amended on May 7, 1991 by Tennessee in the referenced docket as approved and modified by the Commission order on June 25, 1992. The tariff revisions also reflect the modifications adopted or required by the Commission orders of January 20 and April 10 in the referenced consolidated proceedings.

Tennessee states that it will make a separate filing to establish separate take-or-pay recovery provisions for Equitable Gas Company and Central Hudson Gas and Electric Company.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17164 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

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**[Docket No. RP91-210-011]**

## Tennessee Gas Pipeline Co.; Filing

July 15, 1992.

Take notice on July 13, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Fourth Revised Volume No. 1 of its FERC Gas Tariff to be effective on July 1, 1992:

First Revised Sheet No. 267
First Revised Sheet No. 274
First Revised Sheet No. 275
Original Sheet No. 275A
First Revised Sheet No. 499
First Revised Sheet No. 507

Tennessee states that this filing is being made to comply with the Commission's order dated June 26, 1992. Tennessee states that the tariff sheets have been amended to incorporate the ten commitments made by Tennessee in its June 12th filing in this proceeding to provide additional information to parties pursuant to its cash-out mechanism.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17165 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

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**[Docket No. CP92-588-000]**

## Transcontinental Gas Pipe Line Corp.; Application

July 14, 1992.

Take notice that on July 9, 1992, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92-588-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas transportation service provided to United Gas Pipe Line Company (United), all as more fully set forth in the application on file with the Commission and open to public inspection.

TGPL proposes to abandon a firm transportation service for United under TGPL's Rate Schedule X-241 on the basis that the service is no longer need.[1] TGPL states that the service is being rendered pursuant to a transportation agreement dated June 23, 1980, as amended on November 17, 1980, and March 7, 1981. TGPL indicates that the natural gas is transported from Ship Shoal Blocks 70 and 72, offshore Louisiana, to points of delivery located onshore Louisiana. TGPL states that although the original agreement specified a contract demand of 13,300

[1] TGPL states that authorization for the transportation services was issued in Docket No. CP81-83-000 on February 8, 1982, as amended by orders issued on October 25, 1982, and May 20, 1983. See 18 FERC ¶ 61,097 (1982), 21 FERC ¶ 62,091 (1982), and 23 FERC ¶ 61,266 (1983).

Mcf per day, such contract demand subsequently has been reduced in accordance with the settlement agreement dated December 20, 1984. TGPL states that the primary term of the agreement will expire on November 23, 1992. TGPL requests an effective date for the proposed abandonment of November 23, 1992, since the parties have entered an agreement dated October 25, 1991, terminating the service in its entirety, effective on November 23, 1992.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 4, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20626, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TGPL to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17079 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

**[Docket No. SA92-6-000]**

## TransTexas Pipeline; Petition for Rate Adjustment

July 15, 1992.

Take notice that on June 29, 1992, TransTexas Pipeline (TransTexas) tendered for filing a petition for an adjustment under 18 CFR 385.1104 wherein TransTexas seeks an adjustment to 18 CFR 284.123(b)(1) to allow the continued use of current intrastate transportation rates as the applicable rates for transportation under section 311 of the NGPA. Such rates were determined on June 1, 1992 by the Texas Railroad Commission to be just and reasonable and not in excess of a cost-based rate.

The procedures applicable to the conduct of this adjustment proceeding are found in subpart K of the Commission's Rules of Practice and Procedure (18 CFR 395.1101, *et seq.*).

Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provions of such subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17166 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

**[Docket No. CP92-596-000]**

## Trunkline Gas Co.; Request for Abandonment Authorization

July 15, 1992.

Take notice that on July 15, 1992, Trunkline Gas Company (Trunkline) and Panhandle Eastern Pipeline Company (Panhandle) filed settlements in Docket No. RP87-15-033 *et al.*, and Docket No. RP91-229-009, *et al.*, in which they, among other things, request the Commission, pursuant to section 7(b) of the Natural Gas Act, to authorize Trunkline to abandon the sales service it currently provides to Panhandle under Trunkline's Rate schedule P-1, pursuant to a sales agreement dated September 1, 1989, as of May 1, 1992, without further condition or qualification. The Commission is attaching the above captioned certificate docket to this request.

Any person desiring to be heard or to protest said request for abandonment authorization should on or before July 22, 1992, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, a motion to intervene or protest in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection in the public reference room.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no protest is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a protest is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear of be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17167 Filed 7-20-92; 12:01 pm]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-4156-6]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information collection request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before August 20, 1992. To obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Water**

*Title:* 1990 National Census of Pulp, Paper, and Paperboard Manufacturing Facilities (ICR no. 1459.02). this ICR requests an extension of a currently approved collection.

*Abstract:* With ICR 1459.02, EPA is requesting a seven-month extension of OMB clearance of the Census of Pulp, Paper, and Paperboard Manufacturers under the Paperwork Reduction Act. As the current OMB clearance will expire on August 31, 1992, EPA is requesting OMB approval to continue information until March 31, 1993. Clearance for this additional period will enable EPA to complete the Census and to conduct certain follow-up activities.

To implement the Clean Water Act, EPA must issue effluent limitations guidelines, pretreatment standards, and new source performance standards for point sources of pollution from a number of industries, including manufactures of pulp, paper, and paperboard. The effluent guidelines and standards currently in place are considered outdated, so EPA intends to revise them in association with a consent decree entered into with the Environmental Defense Fund in 1988.

The 1990 National Census of Pulp, Paper and Paperboard Manufacturing Facilities was designed to provide EPA with the information it needs to classify and categorize the industry, to choose the best treatment and discharge technology, to determine alternative manufacturing processes which could reduce pollution, and to study the engineering changes necessary for compliance with the best technology.

EPA has also collected financial and economic information as part of the Census in order to assess the economic impact of compliance on the facilities.

Additionally, EPA has collected information on air emissions from industry wastewater in order to help support the development of Clean Air Act guidelines and standards. Finally, the Agency has collected sludge production and disposal information to determine the appropriate regulatory action under the Resource conservation and Recovery Act.

The follow-up activities which EPA plans to conduct during the requested seven-month clearance extension will consist primarily of two types of actions. First, EPA will contact respondents to verify incomplete or unclear information which the respondents have already submitted. Second, EPA will ask a subset of respondents for additional information on pollution prevention practices which were initiated in 1990 or 1991. EPA may also conduct site visits of some of these facilities.

*Burden Statement:* The average burden associated with the 1990 National Census of Pulp, Paper, and Paperboard Manufacturing Facilities for the requested clearance period is 8 hours per response. This total includes time for searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

*Respondents:* Pulp, paper, and paperboard manufacturing facilities.

*Estimated No. of Respondents:* 25.

*Estimated Total Annual Burden on Respondents:* 200 hours.

*Frequency of Collection:* Variable, as needed.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: July 15, 1992.

**David Schwarz,**

*Acting Director, Regulatory Management Division.*

[FR Doc. 92–17134 Filed 7–20–92; 12:01 pm]

BILLING CODE 6560–50–M

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**[FRL–4156–7]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before August 20, 1992. To obtain a copy of this ICF, contact Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Water**

*Title:* Amendment to NPDES Compliance Assessment Information Requirements (ICR 1427.03). This ICR is an amendment to a currently approved collection.

*Abstract:* With ICR 1427.03, EPA is amending the baseline National Pollutant Discharge Elimination System (NPDES) Compliance Assessment ICR to incorporate the compliance assessment requirements of the State Sludge Management Program.

The baseline NPDES Compliance Assessment ICR (ICR no. 1427.02, OMB no. 2040–0110, approved on 06/12/90) concerns all facilities discharging pollutants into waters of the United States. Under section 402 of the Clean Water Act (CWA), these facilities must have a permit issued by EPA or an approved State under the NPDES program. The baseline NPDES Compliance Assessment ICR in particular addresses the requirements designed to provide the permitting authority with sufficient data to determine that the facility is in compliance with permit conditions. The compliance assessment ICR covers reporting and recordkeeping of monitoring data, compliance schedule reports, noncompliance reports, alternate level reports, which address changes in a facility's production level, and 308 letters, which deal with the control of oil and hazardous waste spills. These requirements are distinct from those of the Discharge Monitoring Report (ICR no. 0229.06, OMB no. 2040–0004), which elicits sampling and analysis data for individual permits in a standardized form.

Under section 405 of the Water Quality Act of 1987, EPA has established a similar permitting program for the disposal of sewage sludge. Permit conditions concerning sludge use have been included in some NPDES permits, while some sludge-only permits have been developed separately. The information requirements associated with the sewage sludge program have until now been included in the State Sludge Management Program ICR (ICR no. 1237.03, OMB no. 2040–0128, approved 04/19/89) which will expire shortly. Now EPA is using ICR 1427.03 to incorporate these requirements into the NPDES baseline.

The requirements described in this ICR amendment fall upon publicly-owned treatment works (POTWs) or other treatment works treating domestic sewage. These respondents must submit reports of compliance or noncompliance with permit compliance schedules and sludge regulations. In these reports, the respondents must indicate whether the milestones set out in their permits have been achieved and must describe any

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instance of noncompliance with sludge regulations that has not been reported elsewhere.

EPA Regional offices and approved States will use the information submitted in order to monitor compliance with national standards, to assess the adequacy of these standards, to establish appropriate permit conditions, and to determine enforcement needs. EPA headquarters uses the information for large-scale program management.

*Burden Statement:* The average annual reporting burden associated with the amendment to the ICR for NPDES Compliance Assessment Requirements is 3.5 hours per response. This total includes time for searching existing data sources, gathering the data needed, maintaining required records, and completing and reviewing the collection of information. The average annual recordkeeping burden is 1.7 hours per record keeper.

*Respondents:* Facilities discharging wastewater.

*Estimated No. of Respondents:* 16,759.

*Estimated Total Annual Burden on Respondents:* 195,368 hours.

*Frequency of Collection:* Variable, as needed.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: July 15, 1992.

**David Schwarz,**

*Acting Director, Regulatory Management Division.*

[FR Doc. 92–17135 Filed 7–20–92; 12:01 pm]

BILLING CODE 6560–50–M

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**[FRL–4156–5]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before August 20, 1992. To obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

### Office of Water

*Title:* National Pollutant Discharge Elimination System Modification and Variance Requests (ICR no. 0029.05). This ICR requests an extension of the expiration date of a currently approved collection without any change in the substance or the method of collection.

*Abstract:* ICR 0029.05 seeks renewal of OMB clearance for the requirements of the National Pollutant Discharge Elimination System (NPDES) concerning requests for permit modifications and variances. Authorized by the Clean Water Act (CWA), the NPDES establishes a program of permits for facilities wishing to discharge wastes into lakes and streams. These permits are administered by EPA and States, who set conditions for the permits in order to attain the goals of the CWA. Within the NPDES permitting framework, the Sewage Sludge program deals with treatment works that handle domestic sewage.

Under section 301 of the CWA, EPA and States have the authority to modify NPDES permit conditions. Under Section 405 of the Act, authorized States may issue or modify permits addressing the use and disposal of sewage sludge.

Normally, the permit conditions set by the permit authority remain unchanged throughout the five-year life of each permit. However, in some cases, a permittee may apply for a variance or modification in the conditions to account for some change which has taken place. Examples of such changes are revisions in State water quality standards and alterations in the permittee's operations.

By granting permit modifications and variances, EPA and the States are able to quickly take into account innovations in pollution control technology, legislative initiatives, changes in permittees' operations, and corrections to previously-submitted permit information.

ICR 0029.05 addresses the information requirements associated with these permit modifications and variances. It encompasses information requirements described in two previously-approved ICRs: Modification/Variance Requests to Permits for Wastewater Discharge and Associated Regulations (OMB no. 2040–0068, ICR no. 0029.04) and the State Sludge Management Program (OMB no. 2040–0128, ICR no. 1237.03).

To apply for a permit modification or variance, permittees must supply information to update or supplement the data they submitted with their original permit application. This information serves to allow the permitting authority to ascertain whether a permit modification is needed and whether a request for a variance from permit conditions should be granted. Typical information submissions might include a Permittee Report of Planned Facility Changes, where a permittee describes any planned facility alterations or additions which may affect the level or nature of discharged pollutants. Another frequently-submitted document might be the Permittee Report of Inaccurate Previous Information, where permittees notify the permit authority by letter of any inaccurate or incomplete information in a previously-submitted permit application or report.

*Burden Statement:* The average burden associated with NPDES Modification and Variance Requests is 4.25 hours per response. This total includes time for searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

*Respondents:* Facilities with NPDES permits.

*Estimated No. of Respondents:* 12,442.

*Estimated Total Annual Burden on Respondents:* 52,918 hours.

*Frequency of Collection:* Variable, based on respondent's request.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: July 15, 1992.

**David Schwarz,**

*Acting Director, Regulatory Management Division.*

[FR Doc. 92–17141 Filed 7–20–92; 12:01 pm]

BILLING CODE 6560–50–M

[FRL-41563-3]

## California State Motor Vehicle Pollution Control Standards; Opportunity for Written Comments on Additional Information Submitted to the Public Docket of the Low-Emission Vehicle Standards Waiver Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of an opportunity to submit written comments.

**SUMMARY:** On January 9, 1992, EPA published a notice that the California Air Resources Board (CARB) had requested a waiver of Federal preemption for its Low-Emission Vehicle (LEV) standards. In this Notice, EPA offered an opportunity for a public hearing and asked for public comment on this waiver request. This hearing was held on February 19, 1992, and the public comment period was closed on March 24, 1992. By this notice, EPA announces an opportunity for written comment on additional information submitted to the public docket of this waiver request (Docket A-91-71) subsequent to the close of the public comment period.

**DATES:** Written comments on this additional information will be accepted until August 20, 1992.

**ADDRESSES:** Written comments should be submitted (in duplicate if possible) to: Charles N. Freed, Director, Manufacturers Operations Division (6405-J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of the additional information submitted to Docket A-91-71 will be available for public inspection during the working hours of 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m., Monday through Friday, at: U.S. Environmental Protection Agency, Air Docket (LE-131), room M1500, First Floor Waterside Mall, 401 M Street, SW., Washington, DC 20460 (Telephone (202) 260-7548). A reasonable fee will be charged by EPA for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Doyle, Attorney/Advisor, Manufacturers Operations Division (6405-J), U.S. Environmental Protection Agency, Washington, DC 20460, Telephone (202) 233-9256.

**SUPPLEMENTARY INFORMATION:** By letter dated October 4, 1991, CARB requested a waiver of Federal preemption for its LEV standards and accompanying test procedures. On January 9, 1992, EPA published a Notice of Opportunity for Public Hearing and request for comments regarding this waiver request.[1] EPA received request from two parties to hold this hearing, which was held on February 19, 1992. The public comment period closed on March 24, 1992.

EPA has recently received additional comments from the Motor Vehicle Manufacturers Association (MVMA), which had filed comments previously in this proceeding. These comments include information discussing specific descriptions of automobile technology needed to produce vehicles which would comply with the LEV standards, projections of the cost of compliance, and other product planning information. To allow interested parties an opportunity to review and comment upon this new submission from MVMA, EPA is accepting public comment on this new submission until August 20, 1992. EPA asks that interested parties limit their comments to discussion of this new information as it relates to the issues EPA must examine when evaluating a CARB waiver request. These issues are:

(1) Whether California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs separate standards to meet compelling and extraordinary conditions;

(3) Whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Clean Air Act.[2]

Persons with comments containing CBI must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information." If a person making comments wants EPA to base its waiver decision in part on a submission labeled as CBI, then a non-confidential version of the document which summarizes the key data or information should be submitted for the public docket. Information covered by a claim or confidentiality will be disclosed by EPA only to the extent allowed by the procedures in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person who submitted the comments.

[1] 57 FR 909.

[2] See section 209(b) of the Clean Air Act, 42 U.S.C. 7543(b).

Dated: July 14, 1992.

**Jerry Kurtzweg,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 92-17014 Filed 7-20-92; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-949-DR]

## Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Texas (FEMA-949-DR), dated July 2, 1992, and related determinations.

**EFFECTIVE DATE:** July 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Gregory S. Jones, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3668.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Texas, dated July 2, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1992:

Moore County for Individual Assistance

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support.*

[FR Doc. 92-17112 Filed 7-20-92; 12:01 pm]

BILLING CODE 6718-03-M

## FEDERAL MARITIME COMMISSION

## Georgia Ports Authority et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice

appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224–200416–005.

*Title:* Georgia Ports Authority/ Jugolinija Terminal Agreement.

*Parties:* The Georgia Ports Authority, Jugolinija.

*Synopsis:* The Agreement changes the name of Jugolinija to Croatia Line and extends the term of the Agreement for three years beginning October 1, 1992.

*Agreement No.:* 224–200688.

*Title:* Maryland Port Administration/ Sea-Land Terminal Agreement.

*Parties:* Maryland Port Administration ("MPA"), Sea-Land Service, Inc. ("Sea-Land").

*Synopsis:* The Agreement provides that MPA will lease approximately eleven acres at the Port of Baltimore's Seagirt Terminal on a month-to-month basis for a maximum period of six months.

*Agreement No.:* 224–200689.

*Title:* Total Terminals Inc. ("TTI") Agreement.

*Parties:* Hanjin Transportation Co., Ltd. ("HJT"), Marine Terminals Corporation ("MTC").

*Synopsis:* The proposed Agreement would permit HJT and MTC, as shareholders, to establish TTI, which will provide marine terminal and stevedoring services at HJT's facilities at the Port of Long Beach.

Dated: July 15, 1992.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92–17088 Filed 7–20–92; 12:01 pm]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Brenton Banks, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 14, 1992.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Brenton Banks, Inc.*, Des Moines, Iowa; to acquire Ames Savings Bank, F.S.B., Ames, Iowa, and thereby engage in owning, controlling, and operating a savings association, if the savings association engages only in deposit taking, lending and other activities that are permissible for bank holding companies pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Iowa.

Board of Governors of the Federal Reserve System, July 15, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92–17092 Filed 7–20–92; 12:01 pm]

BILLING CODE 6210–01–F

### Continental Mortgage Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 14, 1992.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Continental Mortgage Corporation*, Maywood, Illinois; to engage *de novo* through its subsidiary, Continental Mortgage Banking Corporation, Maywood, Illinois, in originating, processing and funding 1-4 family residential mortgages pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 15, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92–17093 Filed 7–20–92; 12:01 pm]

BILLING CODE 6210–01–F

**Merchants and Planters Bank Employee Stock Ownership Plan; Change in Bank Control Notice**

**Acquisition of Shares of Banks or Bank Holding Companies**

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 11, 1992.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Merchants and Planters Bank Employee Stock Ownership Plan*, Newport, Arkansas; to acquire 15.89 percent of the voting shares of M&P Community Bancshares, Inc., Newport, Arkansas, and thereby indirectly acquire Merchants and Planters Bank, Newport, Arkansas.

Board of Governors of the Federal Reserve System, July 15, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-17094 Filed 7-20-92; 12:01 pm]

BILLING CODE 6210-01-F

**Merrill Merchants Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 14, 1992.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

*1. Merrill Merchants Bancshares, Inc.*, Bangor, Maine; to become a bank holding company by acquiring 100 percent of the voting shares of Merrill Merchants Bank, Bangor, Maine, a *de novo* bank.

**B. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. Banc One Corporation*, Columbus, Ohio, and Banc One Texas Corporation, Columbus, Ohio; to merge with Team Bancshares, Inc., Dallas, Texas, and Team Bancshares II, Inc., Wilmington, Delaware, and thereby indirectly acquire Team Bank, Fort Worth, Texas.

**C. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Decatur Investment, Inc.*, Oberlin, Kansas; to acquire 99.5 percent of the voting shares of State Bank of Atwood, Atwood, Kansas.

*2. F.S.B., Inc.*, Superior, Nebraska; to acquire 94.5 percent of the voting shares of First Formoso, Inc., Superior, Kansas, and thereby indirectly acquire Jewell County Bank, Mankato, Kansas.

*3. LoLyn Financial Corporation*, Lee's Summit, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Community Bank of Raymore, Raymore, Missouri.

*4. United Missouri Bancshares, Inc.*, Kansas City, Missouri, and United Subsidiary, Inc., Kansas City, Missouri, a wholly-owned subsidiary of United Missouri; to acquire 100 percent of the voting shares of M-L Bancshares, Inc., Wichita, Kansas, and thereby indirectly acquire Security State Bank of Great Bend, Great Bend, Kansas, and Russell State Bank, Russell, Kansas; Highland Bancshares, Inc., Topeka, Kansas, and thereby indirectly acquire Highland Park Bank and Trust, Topeka, Kansas; North Plaza Bancshares, Inc., Topeka, Kansas, and thereby indirectly acquire North Plaza Bank State Bank, Topeka, Kansas; Bellcorp, Inc., Manhattan, Kansas, and thereby indirectly acquire Citizens Bank and Trust Co., Manhattan, Kansas; NBA Bankshares, Inc., Salina, Kansas, and thereby indirectly acquire The National Bank of America at Salina, Salina, Kansas. In connection with this acquisition, United Subsidiary, Inc. has also applied to become a bank holding company.

**D. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. Western Washington Bancorp*, Federal Way, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Washington State Bank, Federal Way, Washington, a *de novo* bank.

Board of Governors of the Federal Reserve System, July 15, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-17095 Filed 7-20-92; 12:01 pm]

BILLING CODE 6210-01-F

## FEDERAL TRADE COMMISSION

**Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules**

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 062292 AND 070292

| Name of acquiring person, Name of acquired person, Name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| Chemical Banking Corporation, NSI Health Care Services Corp., Home X-Ray Holding Corp. | 92-1072 | 06/22/92 |
| Rand McNally & Company, Golder, Thoma, Cressy Fund III Limited Partnership, Nicholstone Holdings, Inc. | 92-1113 | 06/22/92 |
| UAL Corporation, Carl C. Icahn, Trans World Airlines, Inc. | 92-1114 | 06/22/92 |
| Danka Business System PLC, Fujitsu Limited, Fujitsu Imaging System of America, Inc. | 92-1111 | 06/23/92 |
| Chevron Corporation, Exxon Corporation, Exxon Corporation | 92-1092 | 06/24/92 |
| The F. Dohmen Co., Northwestern Drug Company, Northwestern Drug Company | 92-1117 | 06/24/92 |
| Jostens, Inc., Wicat Systems, Inc., Wicat Systems, Inc. | 92-0851 | 06/25/92 |
| Aon Corporation, Wexford Underwriting Managers, Inc., Wexford Underwriting Managers, Inc. | 92-1042 | 06/25/92 |
| The Molson Companies Limited, The Dexter Corporation, The Mogul Corporation | 92-1056 | 06/25/92 |
| Medeva PLC, International Medication Systems, Limited, International Medication Systems, Limited | 92-1061 | 06/25/92 |
| Rochester Telephone Corporation, The Statesboro Telephone Company, The Statesboro Telephone Company | 92-1104 | 06/25/92 |
| JWP Inc., Resource Recyling Technologies, Inc., Resource Recyling Technologies, Inc. | 92-1107 | 06/25/92 |
| NFC plc, Trammell Crow Distribution Corporation, Trammell Crow Distribution Corporation | 92-1108 | 06/25/92 |
| JWP Inc., Graver Tank & Mfg. Co., Inc., Graver Tank & Mfg. Co., Inc. | 92-1116 | 06/25/92 |
| Boston Ventures Limited Partnership III, Continental Cablevision, Inc., Continental Cablevision, Inc. | 92-1122 | 06/25/92 |
| John B. Sanfilippo & Son, Inc., John C. Taylor, Sunshine Nut Company, Inc. | 92-1012 | 06/26/92 |
| Karl Eller, Gannett Co., Inc., Gannett Outdoor Co. of Arizona | 92-1045 | 06/26/92 |
| Grand Metropolitan Public Limited Company, AADC Holding Company, Inc., AADC Holding Company, Inc. | 92-1069 | 06/26/92 |
| Centre Capital Investors, L.P., Glomesh Pte. Ltd., Victory Markets, Inc. | 92-1121 | 06/26/92 |
| Airgas, Inc., Virginia Welding Supply Co., Virginia Welding Supply Co. | 92-1130 | 06/26/92 |
| Bell Atlantic Corporation, Lynda B. Lovett, Cellcom of Hickory, Inc. | 92-1137 | 06/26/92 |
| Biomet, Inc., Walter Lorenz, Walter Lorenz Surgical Instruments, Inc. | 92-1132 | 06/29/92 |
| Kobe Steel Ltd., Mitsubishi Corporation, Machinery Distribution Inc. | 92-1136 | 06/29/92 |
| Royal Dutch Petroleum Company, The Goodyear Tire & Rubber Company, The Goodyear Tire & Rubber Company | 92-1139 | 06/29/92 |
| Sensormatic Electronics Corporation, Dr. Erich Burlefinger, Burle Industries, Inc. | 92-1058 | 06/30/92 |
| Dr. Erich Burlefinger, Sensormatic Electronics Corporation, Sensormatic Electronics Corporation | 92-1059 | 06/30/92 |
| Beverly Enterprises, Inc., Thomas Konig, Culwell Health, Inc. | 92-1063 | 06/30/92 |
| Metropolitan Life Insurance Company, Sequa Corporation, Sequa Capital Corporation | 92-1096 | 06/30/92 |
| Tyco Toys, Inc., David C.W. Yeh, Universal Matchbox Group Ltd. | 92-1074 | 07/01/92 |
| David C. W. Yeh, Tyco Toys, Inc., Tyco Toys, Inc. | 92-1075 | 07/01/92 |
| Minnesota Mining & Manufacturing Company, Stephen G. Dent, Fibre Glass-Evercoat Company, Inc. | 92-1085 | 07/01/92 |
| Fuji Photo Film Co., Ltd., Robert Rachesky, Union Photo Company, Inc. | 92-1100 | 07/01/92 |
| H. J. Heinz Company, Cooperfund, Inc., Cooperfund, Inc. | 92-1120 | 07/01/92 |
| Kellwood Company, Mr. Leo Yu Ming Chu and Mrs. Ivy Oi Wa Mui Chu, California Ivy, Inc. | 92-1129 | 07/01/92 |
| Lincoln National Corporation, The Seibels Bruce Group, Inc., The Seibels Bruce Group, Inc. | 92-1138 | 07/01/92 |
| JWP Inc., Henry C. Meagher, Mechanical Construction Corp. | 92-1148 | 07/01/92 |
| JWP Inc., Raymond E. Meagher Jr., Mechanical Construction Corp. | 92-1155 | 07/01/92 |
| James H. Posseht, Minorco, Inspiration Leasing Inc. | 92-1151 | 07/02/92 |
| Randolph W. Lenz, Clark Equipment Company, Clark Equipment GmbH | 92-1153 | 07/02/92 |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay or Renee A. Horton, contact representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

**C. Landis Plummer,**

*Acting Secretary.*

[FR Doc. 92–17126 Filed 7–20–92; 12:01 pm]

BILLING CODE 6750–01–M

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**[Docket 9240]**

## American Family Publishers; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New Jersey-based seller of magazine subscriptions from misrepresenting that an attorney is actively and substantially involved in the collection of any debt, and that legal action with respect to any alleged debt is about to be, or will be, initiated. Respondent also would be prohibited from failing to instruct any debt collector it retains, engages or employs to comply fully with all the provisions of the Fair Debt Collection Practices Act.

**DATES:** Comments must be received on or before September 18, 1992.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** David Medine or Roger Fitzpatrick, FTC/S–4429, Washington, DC 20580. (202) 326–3224 or 326–3172.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

The agreement herein, by and between American Family Publishers, a joint venture partnerships of the Time Incorporated Magazine Company and AFP Associates, by its duly authorized officer, hereafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent American Family Publishers is a joint venture partnership organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at

Four Gateway Center, Newark, New Jersey 07102.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of section 5 of the Federal Trade Commission Act, and has filed answers to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as the Commission may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission, or that the facts alleged in the compliant other than jurisdictional facts are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might have to any other manner of service. The compliant may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

**I**

*It Is Ordered* that respondent American Family Publishers, a joint venture partnership of The Time Incorporated Magazine Company and AFP Associates, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, agent, independent contractor, or other device, in connection with the collection or attempted collection of any debt in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication, that;

(1) An attorney is actively and substantially involved in the collection of any debt;

(2) Legal action with respect to any alleged debt is about to, or will, be initiated.

B. Failing to instruct any debt collector it retains engages, or employs to comply fully with all provisions of the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.*, as amended or as it may hereafter be amended.

**II**

*It Is Further Ordered* That respondent shall distribute a copy of this Order to each of its present and future officers, agents, representatives, and employees having responsibility with respect to the collection of debts and to each of the present and future debt collectors that respondent retains, engages or employs and shall secure from each such person or entity a signed statement acknowledging receipt of said Order.

**II**

*It Is Further Ordered* That:

A. For purposes of this Order, the following definitions shall apply:

(1) "Consumer Accounts" shall mean a debt owed to respondent by a direct mail purchaser of magazines or other goods or products;

(2) "Debt Collector" shall mean an independent third party engaged in the collection of debts on behalf of itself or others.

B. Respondent is enjoined from:

(1) Encouraging, including, advising or coercing any debt collector to which it sells, transfers, or assigns title to consumer accounts to engage in acts or practices that are prohibited by Section I(A) of this Order with respect to such consumer accounts, provided that mere negotiation of the price of sale without referring to or suggesting practices prohibited by section I(A) of this Order shall not be deemed to be encouraging, inducing, advising or coercing;

(2) Failing to take reasonable steps sufficient to determine whether any debt collector to which it sells, transfers, or assigns title to consumer accounts engages in collection activities prohibited by section I(A) of this Order with respect to such consumer accounts. Respondent shall have satisfied its duty to determine which practices are employed by a debt collector if it instructs and contractually requires such debt collector to provide regularly to respondent collection letters used by such debt collector, and investigates all consumer complaints received by respondent (including those received from third parties such as government agencies and better business bureaus) that state or imply a violation of Section I(A) of this Order by debt collectors.

(3) Selling, transferring or assigning title, or continuing to sell, transfer or assign title to consumer accounts to any debt collector when it has actual knowledge or knowledge fairly implied that such debt collector is engaged in acts or practices prohibited by section I(A) of this Order, unless respondent has a *bona fide* belief that such debt collector is immediately ceasing to engage in such prohibited acts or practices.

(4) Failing to notify the Associate Director of Enforcement that it has terminated the sale, transfer or assignment of title to consumer accounts to a debt collector pursuant to the requirements of subsection (3) above.

(5) Failing to maintain, for a period of five (5) years from the date of entry of this Order, records sufficient to demonstrate compliance with the Order.

IV

*It Is Further Ordered* That, notwithstanding anything herein to the country:

A. Respondent shall have a complete defense to any charge that it has violated section I(A) of this Order if title to the subject consumer accounts had been, at the time the alleged violations occurred, assigned or transferred to a debt collector in a *bona fide*, arm's-length irrevocable sale; and

B. A debt collector shall not be deemed retained, engaged or employed for purposes of determining compliance with Section I(B) of this Order if title to the subject consumer accounts had been, at the time the alleged violations occurred, assigned or transferred to such debt collector in a *bona fide*, arm's length irrevocable sale.

V

*It Is Further Ordered* That for a period of five (5) years from the entry of this Order, respondent shall promptly notify the Federal Trade Commission at least thirty (30) days prior to any proposed change, such as relocation, dissolution, assignment, or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries or any other change which may affect compliance obligations arising out of this Order.

*It Is Further Ordered* That respondent shall, within sixty (60) days of the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement containing consent order to cease and desist from respondent American Family Publishers.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint (issued April 23, 1990) alleges that respondent engaged various debt collection agencies to collect its unpaid accounts and used these debt collection agencies to send deceptive attorney collection letters to consumers. Through these letters, AFP's collectors misrepresented that an attorney is actively and substantially involved in the collection of the debt and that legal action is about to or will be initiated if payment is not made.

The complaint alleges that respondent engaged in unfair and deceptive acts or practices in violation of section 5(a) of the Federal Trade Commission Act because it knowingly approved the misrepresentations made by its debt collectors or acted in concert with or knowingly assisted its collection agencies in making such misrepresentations.

The proposed order prohibits respondent from misrepresenting directly or by implication, that (1) an attorney is actively and substantially involved in the collection of any debt, and (2) legal action with respect to any alleged debt is about to, or will, be initiated. Respondent is also prohibited from failing to instruct any debt collector it retains, engages, or employs to comply fully with all the provisions of the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* Respondent is required to distribute a copy of the order to present and future officers, employees, and its outside debt collectors.

Additionally, part III of the proposed order requires that if respondent sells or transfers its accounts to debt collectors in any fashion, respondent (1) may not encourage the debt collector to engage in practices prohibited by the order, (2) must take steps to determine whether the debt collector engages in collection activities prohibited by the order, (3) may not sell account to a debt collector when it has knowledge that such collector is engaged in acts prohibited by the order and, (4) must notify the Commission when it terminates a sales to a debt collector because it had knowledge that the debt collector engaged in practices prohibited by this order. The requirements of part III of the proposed order are considered by the Commission to be appropriate relief in this case to prevent recurrence of the alleged statutory violations.

The order further provides that respondent shall have a complete defense to any charge that it violated provision I(A) of the order if, at the time the violations occurred, title to the accounts had been transferred to a collector in a *bona fide*, arm's-length, irrevocable sale.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**C. Landis Plummer,**

*Acting Secretary.*

[FR Doc. 92-17125 Filed 7-20-92; 12:01 pm]

BILLING CODE 6750-01-M

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**[File No. 912 3165]**

## Nikki Fashions, Ltd., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Massachusetts-based retailer of designer clothing and its owner from selling misbranded textile fiber and wool products, and from selling wearing apparel from which they have removed the required care label.

**DATES:** Comments must be received on or before September 21, 1992.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Kristie Woods, Boston Regional Office, Federal Trade Commission, 10 Causeway St., room 1184, Boston, MA. 02222-1073. (617) 565-7240.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Nikki Fashions Ltd., a corporation, and Nicolina P. Varrichione, individually and as an officer of Nikki Fashions Ltd.

[FILE NO. 912 3165]

**Agreement Containing Consent Order To Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nikki Fashions Ltd., a corporation, and Nicolina P. Varrichione, individually and as an officer of said corporation, ("proposed respondents") and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

*It Is Hereby Agreed* by and between Nikki Fashions Ltd., by its duly authorized officer and Nicolina P. Varrichione, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Nikki Fashions Ltd., is a corporation organized, existing, and doing business under the laws of Commonwealth of Massachusetts. Its office and principal place of business is located at 328 Worcester Road, Framingham, Massachusetts 01701.

2. Proposed respondent Nicolina P. Varrichione, is sole shareholder and president of the corporate proposed respondent named herein. She formulates, directs and controls the acts or practices of proposed respondent Nikki Fashions Ltd. Her office and principal place of business are the same as that of said corporate proposed respondent.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

4. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act, 5 U.S.C. 504.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such from as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondents that they have violated the law as alleged in the draft complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) Issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

**I**

*It Is Ordered* that respondents Nikki Fashions Ltd., a corporation, its successors and assigns, and its officers, and Nicolina P. Varrichione, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with any textile fiber product as "textile fiber product" is defined in the Textile Fiber Products Identification Act, as amended (hereinafter "TFPI Act"), do forthwith cease and desist from offering for sale, selling, advertising, delivering, transporting or causing to be transported, after shipment in commerce, as "commerce" is defined in the TFPI Act, textile fiber products that are misbranded in that they do not have securely affixed to, or placed on, each such product in the location, manner, and form required by the TFPI Act, a stamp, tag, label or other means of identification correctly showing, in a clear and conspicuous manner, each element of information required to be disclosed by section 4(b) of the TFPI Act.

**II**

*It Is Further Ordered* that respondents Nikki Fashions Ltd., a corporation, its successors and assigns, and its officers, and Nicolina P. Varrichione, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with any wool product as "wool product" is defined in the Wool Products Labeling Act of 1939, as amended (herein "Wool Act"), do forthwith cease and desist from offering for sale, selling, advertising, delivering, transporting or causing to be transported, after shipment in commerce, as "commerce" is defined in the Wool Act, wool products that are misbranded in that they do not have affixed to, or placed on, each such product in the location, manner, and form required by the Wool Act, a stamp, tag, label or other means of identification correctly showing, in a clear and conspicuous manner, each element of information required to be disclosed by section 4(a)(2) of the Wool Act.

**III**

*It Is Ordered* that respondents Nikki Fashions Ltd., a corporation, its successors and assigns, and its officers, and Nicolina P. Varrichione, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the offering for sale

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and sale of any textile fiber product, as "textile fiber product" is defined in the TFPI Act, do forthwith cease and desist from removing or mutilating, or causing or participating in the removal or mutilation of, any stamp, tag, label or other identification required by the TFPI Act to be affixed to textile fiber products, prior to the time any such product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to section 4(b) of the TFPI Act.

**IV**

*It Is Further Ordered* that respondents Nikki Fashions Ltd., a corporation, its successors and assigns and its officers, and Nicolina P. Varrichione, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the offering for sale and sale of any wool product, as "wool product" is defined in the Wool Act, do forthwith cease and desist from removing or mutilating, or causing or participating in the removal or mutilation of, any stamp, tag, label or other identification required by the Wool Act to be affixed to wool products, prior to the time any such product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to section 4(a)(2) of the Wool Act.

**V**

*It Is Further Ordered* that respondents Nikki Fashions Ltd., a corporation, its successors and assigns and its officers, and Nicolina P. Varrichione, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the offering for sale and sale of any textile wearing apparel, as "textile wearing apparel" is defined in the Commission's Trade Regulation Rule relating to the Care Labeling of Textile Wearing Apparel (hereinafter "Care Labeling Rule"), 16 CFR part 423, do forthwith cease and desist from removing, or causing or participating in the removal of any label or tag required by the Care Labeling Rule to be affixed to textile wearing apparel, unless respondents reattach such label or tag to the article of wearing apparel, prior to the time any such product is sold and delivered to the ultimate consumer.

**VI**

*It Is Further Ordered* that respondents shall distribute a copy of this Order to all present and future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this Order and that respondents secure from each such person a signed statement acknowledging receipt of said Order.

**VII**

*It Is Further Ordered* that, whenever a stamp, tag, label or other form of identification which shows information required by the TFPI Act or Wool Act is substituted or otherwise removed, respondents shall keep records for a period of five (5) years sufficient to show the information set forth on the removed stamp, tag, label, or other form of identification, as well as the name or names of the person or persons from whom such product was received.

**VIII**

*It Is Further Ordered* that respondent shall, for a period of five (5) years after this Order becomes final, maintain and upon request, make available to the Federal Trade Commission for inspection and copying, all documents that relate to the manner and form in which respondents have complied with this Order.

**IX**

*It Is Further Ordered* that the corporate respondent shall, for a period of ten (10) years from the date of this Order, notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Nikki Fashions Ltd., such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

**X**

*It Is Further Ordered* that the individual respondent shall, for a period of ten (10) years from the date of this Order, promptly notify the Commission of the discontinuance of her present business or employment and of each affiliation with a new business or employment whose activities include the sale or offer for sale of any type of "textile fiber product," "wool product" or "textile wearing apparel," as those terms are defined in the TFPI Act, the Wool Act and the Care Labeling Rule, respectively, or of her affiliation with a new business or employment in which her own duties and responsibilities involve the sale or offer for sale of any such product. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment.

**XI**

*It Is Further Ordered* that respondents shall, within sixty (60) days after the date of service of this Order, submit a report, in writing, to the Federal Trade Commission setting for in detail the manner and form in which they have complied with this Order.

*Analysis of Proposed Consent Order to Aid Public Comment*

The Federal Trade Commission has accepted an agreement to a proposed consent order from Nikki Fashions Ltd., a Massachusetts corporation, and Nicolina P. Varrichione, individually (collectively, the "proposed respondents").

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns the alleged sale by proposed respondents of misbranded textile fiber products and misbranded wool products. Proposed respondents are also alleged to have removed care labels from certain articles of textile wearing apparel sold by them. The Commission's proposed complaint alleges that proposed respondents have mutilated or removed, from textile fiber products and wool products, tags, labels or other means of identifying the constituent fibers and percentages of such products and/or the country where such products were processed or manufactured. The proposed complaint also alleges that this conduct by proposed respondents violates the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*, and the regulations promulgated thereunder, *see* 16 CFR Part 303, as well as the Wool Act, 15 U.S.C. 68 *et seq.*, and the regulations promulgated thereunder, *see* 16 CFR part 300.

The Textile Fiber Products Identification Act and the Wool Act make it an unfair and deceptive act or practice to offer for sale a misbranded textile fiber product or wool product. *See* 15 U.S.C. 70a and 68a. Textile fiber products and wool products are misbranded if they are not labeled as to the constituent fiber content, the percentages of fiber content or the name of the country where these products were processed or manufactured. *See* 15 U.S.C. 70b and 68b.



The Commission's proposed complaint further alleges that proposed respondents have sold wearing apparel to consumers after removing the care labels from these articles of clothing. The Commission's Trade Regulation Rule relating to the Care Labeling of Textile Wearing Apparel, *see* CFR part 423, requires manufacturers and importers to affix labels to articles of textile wearing apparel in order to provide regular care instructions to purchasers. The proposed complaint alleges that proposed respondents' removal of these care labels is an unfair and deceptive act or practice, in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because consumers are misled into using improper care procedures that are harmful to the articles of wearing apparel.

The proposed consent order is drafted to ensure proposed respondents' compliance with the relevant statutes and regulations by enjoining future violations. The proposed order prohibits proposed respondents from selling misbranded textile fiber products and wool products and from selling wearing apparel from which proposed respondents have removed the required care label. The proposed order also contains standard order provisions requiring proposed respondents to: Retain records demonstrating their compliance with the order; distribute the order to certain present and future employees; notify the Commission of any changes in the structure of the corporate respondent or in the business or employment of the individual respondent; and to report to the Commission their compliance with the terms of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order to modify in anyway its terms.

**C. Landis Plummer,**

*Acting Secretary.*

[FR Doc. 92-17124 Filed 7-20-92; 12:01 pm]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Cooperative Research and Development Agreement; CRADA 92-03

**AGENCY:** Centers for Disease Control (CDC), Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Disease Control (CDC), National Center for Environmental Health and Injury Control, Division of Environmental Health Laboratory Sciences, desires to enter into a Cooperative Research and Development Agreement (CRADA) with manufacturers of in vitro diagnostic products and/or instrumentation to develop and/or improve methodology for a reference method for the measurement of low density lipoprotein (LDL) cholesterol. The collaborator and CDC will jointly perform research aimed at the development or improvement of a method to achieve the specificity, precision, accuracy, and transferability required of a national reference method. The CDC will provide technical expertise, consultation and guidance, reference sera, analytical support, and method evaluation and testing.

It is anticipated that all inventions that may arise from this CRADA will be jointly owned and with an option for an exclusive royalty-bearing license to the collaborator with which the CRADA is made. The CRADA will be executed for a 2-year period with the possibility of renewal for another 2-year period.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of latitude is given to Federal agencies in implementing collaborative research. As a Federal agency, the CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. The single restriction in this exchange is that CDC may not provide funds to the other participants in a CRADA.

**SUPPLEMENTARY INFORMATION:** This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary. For additional information contact:

**Technical Contact**

Parvin P. Waymack, Ph.D., Special Activities Branch (404) 488-4126, or L. Omar Henderson, Ph.D., Clinical Biochemistry Branch (404) 488-4132 Division of Environmental Health Laboratory Sciences, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F-25, Atlanta, GA 30333.

**Business Contact**

Jim Holler, Ph.D., Special Activities Branch, Division of Environmental Health Laboratory Sciences, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F-25, Atlanta, GA 30333, telephone (404) 488-4176.

Applicants will be judged according to the following criteria:

1. Soundness of the methodological approach and research plan;
2. Adequacy and technical capabilities of the staff to develop the desired method;
3. Ability to develop, produce, market, and support the necessary reagent and instrumentation;
4. Evidence of scientific credibility; and
5. Ability to complete the CRADA in a timely fashion.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99-502.

The responses must be made to: Jim Holler, Technology Transfer Coordinator, Division of Environmental Health Laboratory Sciences, NCEHIC, Centers for Disease Control; 1600 Clifton Road, NW., Mailstop F-25; Atlanta, GA 30333.

Dated: July 15, 1992.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations: Centers for Disease Control.*

[FR Doc. 92-17089 Filed 7-20-92; 12:01 pm]

BILLING CODE 4160-18-M

### Cooperative Research and Development Agreement, CRADA 92-04

**AGENCY:** Centers for Disease Control (CDC), Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Disease Control (CDC), National Center for Environmental Health and Injury Control, Division of Environmental Health Laboratory Sciences, desires to enter into a Cooperative Research and Development Agreement (CRADA) with manufacturers of control and reference materials to develop a stable

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preparation (preferably lyophilized) suitable for standardizing the measurement of Apo B and low density lipoprotein (LDL) cholesterol. The collaborator and CDC will jointly perform research aimed at the development of a stable lyophilized reference material which is essentially matrix free and closely approximates fresh human serum in the measurement of Apo B and LDL-cholesterol. The CDC will provide technical expertise, consultation and guidance, analytical support, and evaluation and testing of the reference sera.

It is anticipated that all inventions that may arise from this CRADA will be jointly owned and with an option for an exclusive royalty-bearing license to the collaborator with which the CRADA is made. The CRADA will be executed for a 2-year period with the possibility of renewal for another 2-year period.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of latitude is given to Federal agencies in implementing collaborative research. As a Federal agency, the CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. The single restriction in this exchange is that CDC may not provide funds to the other participants in a CRADA.

**SUPPLEMENTARY INFORMATION:** This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary. For additional information contact:

**Technical Contact**

L. Omar Henderson, Ph.D., Clinical Biochemistry Branch (404) 488–4132 or Parvin P. Waymack, Ph.D., Special Activities Branch (404) 488–4126, Division of Environmental Health Laboratory Sciences, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–25, Atlanta, GA 30333.

**Business Contact**

Jim Holler, Ph.D., Special Activities Branch, Division of Environmental Health Laboratory Sciences, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–25, Atlanta, GA 30333, telephone (404) 488–4176.

Applicants will be judged according to the following criteria:

1. Soundness of the research plan and approach;
2. Adequacy and technical capabilities of the staff to develop the desired reference material;
3. Ability to maintain, store, distribute, and support the production of reproducible lots of reference material;
4. Evidence of scientific credibility; and
5. Ability to complete the CRADA in a timely fashion.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99–502.

The responses must be made to: Jim Holler, Technology Transfer Coordinator, Division of Environmental Health Laboratory Sciences, NCEHIC, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–25, Atlanta GA 30333.

Dated: July 15, 1992.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control.*

[FR Doc. 92–17060 Filed 7–20–92; 12:01 pm]

BILLING CODE 4160–18–M

## Food and Drug Administration

**[Docket No. 92F–0261]**

### Cardolite Corp.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Cardolite Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 3-pentadecenyl phenol mixture (obtained from cashew nutshell liquid) reacted with formaldehyde and ethylenediamine in a ratio of 1:2:2 as an epoxy curing agent in resins and coatings intended for contact with food.

**FOR FURTHER INFORMATION CONTACT:** Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4326) has been filed by Cardolite Corp., c/o 1414 Fenwick Lane, Silver Spring, MD 20910. The petition proposes to amend the food additive regulations to provide for the safe use of 3-pentadecenyl phenol mixture (obtained from cashew nutshell liquid) reacted with formaldehyde and ethylenediamine in a ratio of 1:2:2 as an epoxy curing agent in resins and coatings intended for contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 8, 1992.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92–17060 Filed 7–20–92; 12:01 pm]

BILLING CODE 4160–01–F

**[Docket No. 91P–0335]**

### Canned Tuna Deviating From Identity Standard; Amendment of Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that it is amending a temporary permit, issued to Bumble Bee Seafoods, Inc., to market test products designated as "chunk light tuna with jalapeno in water" and "chunk light tuna with jalapeno in oil" that deviate from the U.S. standards of identity for canned tuna (21 CFR 161.190), to increase the area of distribution, and to increase the amount of chunk light tuna with jalapeno in oil to be distributed.

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5106.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17, FDA issued a temporary permit (56 FR 48212, September 24, 1991) to Bumble Bee Seafoods, Inc., 5775 Roscoe Ct., San Diego, CA 92123, to market test in interstate commerce canned tuna products formulated by adding chopped or diced jalapeno peppers that have been previously prepared and packed in brine. The agency issued the permit to facilitate market testing in the southwestern United States.

The test products deviate from the U.S. standard of identity for canned tuna (21 CFR 161.190) in that they contain diced or chopped green jalapeno peppers. The amount of jalapeno peppers added does not exceed 10 percent of the water capacity of the can. jalapeno peppers replace part of the liquid (water or oil) and do not affect the tuna fish fill portion. The test products meet all requirements of the standard with the exception of this deviation.

Bumble Bee Seafoods, Inc., has requested that FDA amend its temporary permit by increasing the area of distribution to include the entire United States and its territories and possessions. The firm also requested that FDA amend its temporary permit to increase the amount of chunk light tuna with jalapeno in oil from 300,000 cases containing 24 cans of tuna with jalapeno peppers in soybean oil, each can weighing 175 grams (6 1/8 ounces), to 400,000 cases. The amount of tuna with jalapeno peppers in spring water to be market tested remains the same. The purpose of the amendment is to provide the permit holder with a broader base for measuring consumer acceptance of the test products.

Therefore, under the provision of 21 CFR 130.17(f), FDA is amending the temporary permit to increase the area of distribution to include the entire United States and its territories and possessions and to increase the quantity of chunk light tuna with jalapeno in oil from 300,000 to 400,000 cases. All other terms and conditions of this permit remain the same.

Dated: July 8, 1992.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92–17062 Filed 7–20–92; 12:01 pm]

BILLING CODE 4160–01–F

**[Docket No. 92F–0250]**

### Quantum Chemical Corp.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Quantum Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of propylene modified ethylene-*n*-butyl acrylate for use as a component in the manufacture of food packaging materials.

**FOR FURTHER INFORMATION CONTACT:** Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4327) has been filed by Quantum Chemical Corp., 11500 Northlake Dr., Cincinnati, OH 45249. The petition proposes to amend the food additive regulations to provide for the safe use of propylene modified ethylene-*n*-butyl acrylate for use as a component in the manufacture of food packaging materials.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 8, 1992.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92–17061 Filed 7–20–92; 12:01 pm]

BILLING CODE 4160–01–F

**[Docket No. 92E–0154]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; ADSOL® Red Cell Preservation Solution System

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for ADSOL® Red Cell Preservation Solution System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Joel P. Sparks, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ADSOL® Red Cell Preservation Solution System. ADSOL® Red Cell Preservation Solution System (sodium citrate, citric acid, dextrose, monobasic phosphate, mannitol, and adenine in BTHC plastic blood bags) is indicated for the collection and storage of blood and components under conditions equivalent to those employed with currently approved plastic containers. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ADSOL® Red Cell Preservation Solution System (U.S. Patent No. 4,710,532) from Morflex, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated May 6, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ADSOL® Red Cell Preservation

Solution System represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ADSOL® Red Cell Preservation Solution System is 1,192 days. Of this time, 496 days occurred during the testing phase of the regulatory review period, while 696 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: September 21, 1988. FDA has verified the applicant's claim that September 21, 1988, was the date the investigational new drug application became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: January 30, 1990. FDA has verified the applicant's claim that January 30, 1990, was the date the new drug application (NDA) for ADSOL® (NDA 90-0223) was initially submitted.

3. *The date the application was approved*: December 27, 1991. FDA has verified the applicant's claim that NDA 90-0223 was approved on December 27, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 301 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 21, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 19, 1993, determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 1992.

**Allen B. Duncan,**

*Acting Associate Commissioner for Health Affairs.*

[FR Doc. 92-17083 Filed 7-20-92; 12:01 pm]

BILLING CODE 4160-01-F

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**[Docket No. 92E-0151]**

## Determination of Regulatory Review Period for Purposes of Patent Extension; CPD Blood-Pack®

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for CPD Blood-Pack® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Joel P. Sparks, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CPD Blood-Pack®. CPD Blood-Pack® (anticoagulent citrate phosphate dextrose solution in PL 2209 plastic containers) is indicated for the collection and storage of blood and components under conditions equivalent to those employed with currently approved plastic containers. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CPD Blood-Pack® (U.S. Patent No. 4,824,893) from Morflex, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated May 6, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CPD Blood-Pack® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CPD Blood-Pack® is 1,192 days. Of this time, 496 days occurred during the testing phase of the regulatory review period, while 696 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: September 21, 1988. FDA has verified the applicant's claim that the date the investigational new drug application (IND) became effective was September 21, 1988.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: January 30, 1990. The

applicant claims January 22, 1990, as the date the new drug application (NDA) for CPD Blood-Pack® (NDA 90-0224) was filed. However, FDA records indicate that NDA 90-0224 was submitted on January 30, 1990.

3. *The date the application was approved*: December 27, 1991. FDA has verified the applicant's claim that NDA 90-0224 was approved on December 27, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 391 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 21, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 19, 1993, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 13, 1992.

**Alan B. Duncan,**

*Acting Associate Commissioner for Health Affairs.*

[FR Doc. 92-17084 Filed 7-20-92; 12:01 pm]

BILLING CODE 4160-01-F

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-060-02-5440-10 ZBB9]

### Availability of Final Environmental Impact Statement and Report for the Proposed Eagle Mountain Landfill, Riverside County, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with section 102 of the National Environmental Policy Act of 1969, a joint Final Environmental Impact Statement and Report (EIS/EIR) has been prepared by the Bureau of Land Management and County of Riverside, California for the proposed Eagle Mountain Landfill. The Final EIS/EIR includes minor modifications to the proposed action based on public comment, new regulations, and further analysis. Responses to all public comments and statements given at the various public hearings are also included. The EIS/EIR describes and analyzes four alternatives including the proposed project. Mine Reclamation Corporation has proposed to utilize the Kaiser Steel Resources, Inc., Eagle Mountain Mine site in Riverside County, California, and an associated railroad spur for a Class III waste disposal facility. The site would also be used for the storage of recyclable materials, rail and equipment maintenance. The proposal includes a land exchange and application for a right-of-way with the BLM and a Specific Plan Amendment with the County. The EIS/EIR analyzes the effects of the proposed action and alternatives on such environmental issues as desert tortoise, air and water quality, visual and cultural resources, and public safety. A Record of Decision will be prepared by the BLM, however, a decision will not be made until after the BLM has received the Biological Opinion from the U.S. Fish and Wildlife Service. It is expected that the Biological Opinion will be received before the end of November, 1992.

Public reading copies are available for review at the following libraries:

BLM Library, Service Center, Denver, CO
California State Library, Government Publications, Sacramento, CA
Coachella Branch Library, Coachella, CA
Desert Hot Springs Branch Library, Desert Hot Springs, CA
Indio Branch Library, Indio, CA
Lake Tamarisk Branch Library, Desert Center, CA
Los Angeles Public Library, Fifth St., Los Angeles, CA
Los Angeles Public Library, Spring St., Los Angeles, CA
Palm Desert Branch Library, Palm Desert, CA
Palm Springs Library Center, Palm Springs, CA
Palo Verde Valley District Library, Blythe, CA
Central Library, Seventh St., Riverside, CA
San Bernardino County Library, Joshua Tree, CA
San Bernardino County Library, Adobe Rd., Yucca Valley, CA
San Bernardino County Library, 29 Palms Hwy., Yucca Valley, CA
San Bernardino Public Library, West 6th St., San Bernardino, CA
UC Riverside Library, Government Publications, Riverside, CA

Copies are also available for review at the following BLM and County offices:

Bureau of Land Management, Palm Springs-South Coast RA, 63-500 Garnet Ave., P.O. Box 2000, N. Palm Springs, CA 92258-2000.
Bureau of Land Management, CA Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507-0714.
Riverside County, Planning Dept., County Admin. Office, 4080 Lemon St., 9th Flr., Riverside, CA 92501-3651.
Bureau of Land Management, California State Office, Federal Office Bldg., 2800 Cottage Way, Rm. E-2841, Sacramento, CA 95825.
Riverside County Planning Dept., Bermuda Dunes Office, 79733 Country Club Dr., Bermuda Dunes, CA 92201.

Comments on the environmental documents or the project will be accepted by the BLM for a 30 day period ending August 21, 1992. Your comments will be considered in arriving at BLM's decision on the land exchange and right of way actions. Please send your comments to: Bureau of Land Management, Palm Springs-South Coast Resource Area, Attn: Steve Nagle, 63-500 Garnet Ave., P.O. Box 2000, N. Palm Springs, CA 92258-2000.

Dated: June 26, 1992.

**Steve Nagle,**

*Acting Area Manager.*

[FR Doc. 92-16025 Filed 7-20-92; 8:45 am]

BILLING CODE 4310-40-M

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[AK-910-02-4830-02-ADVB]

### Northern Alaska Advisory Council Public Meeting

The Northern Alaska Advisory Council will hold a public meeting, Tuesday, August 25, 1992, in the dining room of the new kitchen at Coldfoot Services, south of the Arctic Acres Inn, at Coldfoot, Alaska (mile 175 Dalton Highway). The public meeting will start at 8 p.m. and end at 9:30 p.m. Public comment will be taken from 8:30 p.m. to 9 p.m.; written comments may be submitted.

The meeting will be held during a field trip that will familiarize the council members with Bureau of Land Management facilities along the Dalton Highway. During the August 24 to 26 trip, and during the public meeting, the council will discuss the present status of public facilities along the Dalton, and the need to develop facilities to accommodate visitor safety, dispense information and protect and conserve

the public land and its natural resources.

For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474–2231.

Dated: July 14, 1992.

**Roger Bolstad,**

*Designated District Manager.*

[FR Doc. 92–17091 Filed 7–20–92; 12:01 pm]

BILLING CODE 4310–JA–M

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[NV–930–92–4212–14; N–45233]

### Corrected Realty Action Non-Competitive Sale of Public Lands in Clark County, NV

The Notice of Realty Action published in the **Federal Register** on June 12, 1992 (57 FR 25075; FR Doc 92–13805), is hereby corrected with respect to the authorization under which a portion of the sale will occur. The correction is as follows:

The land described below will be sold under the Act of October 21, 1976; 90 Stat. 2750 (P.L. 94–579):

**Mount Diablo Meridian, Nevada**

T. 13 S., R. 71 E.,
Sec. 3: Lots 6 through 12, SW¼NW¼, W½SW¼;
Sec. 4: Lots 5 through 12, SE¼NE¼, E½SE¼.

Dated: July 9, 1992.

**Ben Collins,**

*District Manager.*

[FR Doc. 92–17070 Filed 7–20–92; 12:01 pm]

BILLING CODE 4310–HC–M

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[ID–942–02–4730–12]

### Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., July 13, 1992.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, and the subdivision of sections 19 and 30, T. 8 S., R. 18 E., Boise Meridian, Idaho, Group No. 797, was accepted, July 7, 1992.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: July 13, 1992.

**Duane E. Olsen,**

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 92–17090 Filed 7–20–92; 8:45 am]

BILLING CODE 4310–GG–M

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## National Park Service

### Rocky Mountain National Park, CO; Boundary Adjustment Order

**AGENCY:** National Park Service, Interior.

**ACTION:** Boundary adjustment order.

Order adjusting the boundary of Rocky Mountain National Park to include certain lands.

**SUMMARY:** Pursuant to the authority contained in the Act of November 29, 1989, 103 Stat. 1700, 16 U.S.C. Sec. 192b–10, and as certain lands authorized for acquisition by the Secretary of the Interior have now been acquired, the boundaries of Rocky Mountain National Park are being adjusted accordingly.

**DATES:** The effective date of this Order shall be July 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Chief, Land Resources Division, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2610.

**SUPPLEMENTARY INFORMATION:** The above-cited Act authorizes the Secretary of the Interior to acquire certain lands adjacent to Rocky Mountain National Park and, upon acquisition, to adjust the park boundary to include such lands with in the park. The total acreage of Rocky Mountain National Park will be increased by 59.45 acres by this boundary adjustment.

Subject to valid existing rights, the following described lands are hereby added to Rocky Mountain National Park to be administered in accordance with the laws and regulations applicable thereto:

Township 4 North, Range 73 West, 6th Principal Meridian, Larimer County, Colorado.
Lots 1, 2, 3 and 5 through 15, inclusive, Baldpate Estates, according to the plat thereof recorded April 3, 1986, at Reception No. 86016631,

Containing 59.45 acres, more or less.

Dated: July 14, 1992.

**Michael D. Snyder,**

*Acting Regional Director, Rocky Mountain Region.*

[FR Doc. 92–17121 Filed 7–20–92; 12:01 pm]

BILLING CODE 4310–70–M

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### Native American Graves Protection and Repatriation Review Committee: Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting of the Native American Graves Protection and Repatriation Review Committee.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. appendix (1988), of the second meeting of the Native American Graves Protection and Repatriation Act Review Committee will be held on August 26, 27, and 28, 1992 in Denver, CO.

All meetings will be held in the Mount Vernon Room of the Sheraton Denver West Hotel and Conference Center, 360 Union Blvd, Lakewood, CO. Meetings will begin at 8:30 a.m. and conclude not later than 5 p.m.

The matters to be discussed at this meeting include: development of interim guidance concerning written summaries, inventories, and notification; development of draft proposed regulations implementing the statute; and the dispute resolution procedures to be followed by the committee.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon or Dr. C. Timothy McKeown, Archeological Assistance Division, National Park Service, P.O. Box 37127, Washington, DC 20013, Telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, Archeological Assistance Division, 800 North Capital Street, NW., Washington, DC 20001.

Dated: July 16, 1992.

**Francis P. McManamon,**

*Departmental Consulting Archeologist Chief, Archeological Assistance Division.*

[FR Doc. 92–17122 Filed 7–20–92; 12:01 pm]

BILLING CODE 4310–70–M

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 11, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 15, 1992.

Carol D. Shull,

*Chief of Registration, National Register.*

ARIZONA

Maricopa County

*Craig Mansion*, 131 E. Country Club Dr., Phoenix, 92001013

ARKANSAS

Logan County

*New Blaine School*, jct. of AR 22 and Spring Rd., New Blaine vicinity, 92001007

Phillips County

*Battery A Site, Battle of Helena*, NW of jct. of Adams and Columbia Sts., Helena, 92001012

*Battery B Site, Battle of Helena*, NE of jct. of Liberty St. and Summit Rd., Helena, 92001011

CALIFORNIA

Napa County

*Earl, Thomas, House*, 1721 Seminary St., Napa, 92000996

*Wulff, Capt. N.H., House*, 549 Brown St., Napa, 92000994

San Diego County

*Kinsey, Martha, House*, 1624 Ludington Ln., La Jolla, 92000998

San Mateo County

*Simmons, William Adam, House*, 751 Kelly Ave., Half Moon Bay, 92000995

CONNECTICUT

Fairfield County

*Deacon's Point Historic District*, Roughly bounded by Seaview Ave. and Williston, Bunnell and Deacon Sts., Bridgeport, 92001019

Hartford County

*Burwell, Ernest R., House*, 101 Grove St., Bristol, 92001009

Litchfield County

*Wilton Center Historic District*, Roughly, area around jct. of Lovers Ln. and Belden Hill and Ridgefield Rds., Wilton, 92001003

GEORGIA

Liberty County

*Liberty County Jail*, 302 S. Main St., Hinesville, 92001035

ILLINOIS

Cook County

*Wheeler—Magnus Round Barn (Round Barns of Illinois TR)*, 611 E. Central Rd., Arlington Heights, 92001017

Kane County

*St. Mary's Church of Gilberts*, 10 Matteson St., Gilberts, 92001018

Lee County

*Amboy Illinois Central Depot*, 50 S. East Ave., Amboy, 92001015

Ogle County

*City and Town Hall*, jct. of Fourth Ave. and Sixth St., Rochelle, 92001006

Sangamon County

*Lincoln, Abraham, Memorial Garden*, 2301 E. Lake Dr., Springfield, 92001016

Tazewell County

*Herget, Carl, Mansion*, 420 Washington St., Pekin, 92001005

Warren County

*Weir, William S., Jr., House*, 462 E. Broadway, Monmouth, 92001004

MASSACHUSETTS

Berkshire County

*Society of the Congregational Church of Great Barrington*, 241 and 251 Main St., Great Barrington, 92000999

Middlesex County

*Saxonville Historic District*, Roughly, a long Elm, Danforth, Central, Water and Concord Sts., Framingham, 92000992

Norfolk County

*Clapp, Lucius, Memorial*, 6 Park St., Stoughton, 92000993

MISSOURI

Franklin County

*AME Church of New Haven*, 225 Selma St., New Haven, 92001002

Jefferson County

*Leight, Valentine, General Store*, 4586 Main St., House Springs, 92001014

Pike County

*Griffith-McCune Farmstead Historic District*, MO WW E of jct. with MO D, Eolia vicinity, 92001001

OHIO

Cuyahoga County

*Brecksville Trailside Museum*, Chippewa Cr. Dr. SE of jct. with OH 82, Brecksville, 92000988

Jefferson County

*Steubenville Pottery Company Buildings*, Co. Rd. 44 SW of jct. with OH 7, Steubenville vicinity, 92001034

Monroe County

*Salem Church*, 40452 OH 255, Sardis vicinity, 92000989

Washington County

*Spencer's Landing*, 4 E. Fifth St., Belpre, 92001035

PENNSYLVANIA

Montgomery County

*West Laurel Hill Cemetery*, 227 Belmont Ave., Lower Merion Township, Bala Cynwyd, 92000991

Wayne County

*Damascus Historic District (Upper Delaware Valley, New York and Pennsylvania, MPS)*, Roughly, PA 371 from Galilee Rd. to the Delaware R. and adjacent part of Rt. 63027 S of PA 371, Damascus, 92001009

York County

*Melchinger, Englehart, House*, 5 N. Main St., Dover, 92000990

TEXAS

Hays County

*Dobie, John R., House*, 202 Old Kyle Rd., Wimberley, 92001024

VERMONT

Franklin County

*Montgomery House*, VT 118, Montgomery, 92000997

Orleans County

*Sweeney, J.S., Store, Barn, Livery and Hall*, jct. of VT 105 and Town Hwy. 3 (Main St.), Charleston, 92000993

Windsor County

*Woodstock Warren Through Truss Bridge (Metal Truss, Masonry & Concrete Bridges in Vermont MPS)*, Town Hwy. 24 across the Ottauquechee R., Woodstock vicinity, 92000987

VIRGINIA

Amherst County

*Athlone*, jct. of VA 151 and VA 674, Amherst vicinity, 92001029

Chesterfield County

*Chesterfield County Courthouse and Courthouse Square*, N side VA 10, 350 ft. E of jct. with VA 655, Chesterfield, 92001008

Frederick County

*Newtown-Stephensburg Historic District*, Roughly, Main St. from city limit to Farm View Dr. and adjacent areas of Mulberry and German Sts., Stephens City, 92001033

Richmond Independent City

*Bacon, Nathaniel, School (Public Schools of Richmond MPS)*, 815 N. 35th St., Richmond, 92001031

*Cary, John B., School (Public Schools of Richmond MPS)*, 2100 Idlewood Ave., Richmond (Independent City), 92001030

*Springfield School (Public Schools of Richmond MPS)*, 900 N. 29th St., Richmond, 92001032

Suffolk Independent City

*Godwin-Knight House*, 140 King's Hwy., Chuckatuck, 92001028

**WISCONSIN**

**Iowa County**

*Archeological Site No. 47Io168 (Wisconsin Indian Rock Art Sites MPS)*, Address Restricted, Brigham, 92001025

*Archeological Site No. 47Io167 (Wisconsin Indian Rock Art Sites MPS)*, Address Restricted, Brigham, 92001026

**Ozaukee County**

*Hilgen, Friedrich and Louisa, House*, N47 W6033 Spring St., Cedarburg, 92001027.

[FR Doc. 92-16974 Filed 7-20-92; 12:01 pm]

BILLING CODE 4310-10-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 32049 (Sub-No. 1)]**

### Central of Tennessee Railway and Navigation Company, Inc.; Modified Rail Certificate

On March 26, 1992, Central of Tennessee Railway and Navigation Company, Incorporated (Centennrail) filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150, subpart C, to operate a rail line beginning at milepost 205 at Nashville, TN and extending to milepost 180 at Ashland City, TN, a distance of 25 miles with 3 miles of switching leads.[1]

The line is owned by Cheatham County Rail Authority (CCRA), a State of Tennessee public entity, which purchased it from the Illinois Central Gulf Railroad Company (ICG) in 1988 after ICG had been authorized to abandon it. CCRA has given the initial operator, McCormick, Ashland City & Nashville Railroad Co., Inc., (MACO), notice under a default provision in its operations contract and has selected Centennrail to be the new contract operator.

The Commission will serve a copy of this notice on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Decided: July 15, 1992.

[1] This notice was incorporated in a broad request for relief by Centennrail and Cheatham County Rail Authority (CCRA), docketed as Finance Docket No. 32049, in which CCRA seeks an adverse discontinuance of authority for McCormick, Ashland City & Nashville Railroad Co., Inc., (MACO) to operate the line and replacement of MACO as operator by Centennrail. The discontinuance aspect is being handled separately under the lead docket number and this modified certificate aspect has been renumbered as Finance Docket No. 32049 (Sub-No. 1).

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92-17120 Filed 7-20-92; 12:01 pm]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Consent Judgment in Action To Enjoin Violation of the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 F.R. 19029, notice is hereby given that a Consent Decree in *United States* v. *Mennen de Puerto Rico, Ltd. and the Mennen Company ("MENNEN")*, Civil Action No. CV 92-1927 (RLA), was lodged with the United States District Court for the District of Puerto Rico on July 9, 1992. The Consent Decree provides for payment of $563,700 as civil penalties for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the National Pollutant Discharge Elimination System ("NPDES") Permit No. PR0025135 for Mennen's manufacturing plant located in Juncos, Puerto Rico. The Consent Decree also requires Mennen to conduct certain remedial actions in order to achieve compliance with the effluent limitations contained in NPDES Permit No. PR0025135. Mennen must transport its process and sanitary wastewater to Puerto Rico Aqueduct and Sewerage Authority's Puerto Nuevo Sewage Treatment Plant and modify its stormwater management practices as provided in the Consent Decree.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Mennen de Puerto de Puerto Rico, Ltd. and the Mennen Company*, D.O.J. Ref. No. 90-5-1-1-3771.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Puerto Rico, Federal Office Building, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918; at the Region II office of the Environmental Protection Agency, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York, 10278; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $6.50 (25 cents per page reproduction charge) payable to the Consent Decree Library.

**Roger Clegg,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 92-17071 Filed 7-20-92; 12:01 pm]

BILLING CODE 4410-01-M

## Immigration and Naturalization Service

**[INS No. 1400SOM-92; AG Order No. 1607-92]**

### Extension of Designation of Somalia Under Temporary Protected Status Program

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** Under section 244A of the Immigration and Nationality Act as amended (8 U.S.C. 1254a) (the "Act"), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible nationals of designated foreign states (or parts thereof) upon a finding that such foreign states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. Under section 304(b)(1) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law 102-232, 105 Stat. 1733, December 12, 1991 ("the Technical Amendments"), an alien having no nationality is also eligible for benefits under the Temporary Protected Status Program if he or she last habitually resided in a designated state. On September 16, 1991, the Attorney General designated Somalia for Temporary Protected Status for a period of 12 months. Order No. 1525-91, 56 FR 46904.

This notice extends the designation of Somalia under the Temporary Protected Status program for an additional 12 months, in accordance with section 244A(b)(3) (A) and (C) of the Act. This notice also makes clear that eligibility for Temporary Protected Status benefits is granted not only to nationals of Somalia but also to persons having no nationality who last habitually resided in Somalia.

**EFFECTIVE DATE:** This designation is effective on September 17, 1992, and will remain in effect until September 17, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pearl B. Chang or Marcela C. Moglia, Examiners, Immigration and Naturalization Service, room 5250, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

**Notice of Extension of Designation of Somalia Under Temporary Protected Status Program**

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act as amended (8 U.S.C. 1254a) (the "Act") and pursuant to section 244A(b)(3) (A) and (C) of the Act, I find that there still exist extraordinary and temporary conditions in Somalia that prevent aliens who are nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, from returning to Somalia in safety, as a result of the continued armed conflict in that nation.

I further find that permitting nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, to remain temporarily in the United States is not contrary to the national interest of the United States. Accordingly, it is ordered as follows:

(1) The designation of Somalia under section 244A(b) of the Act is extended for an additional 12-month period from September 17, 1992, to September 17, 1993.

(2) I estimate that there are no more than 2,000 Somalian nationals, and aliens having no nationality who last habitually resided in Somalia, who are currently in nonimmigrant or unlawful status, eligible for Temporary Protected Status.

(3) Except as specifically provided in this notice, an application for Temporary Protected Status during the extended period of designation provided by this notice must be filed pursuant to the provisions of 8 CFR part 240.

(4) A national of Somalia, or an alien having no nationality who last habitually resided in Somalia, who was granted Temporary Protected Status during the 12-month period of designation that began on September 16, 1991, must file a new Application for Temporary Protected Status, Form I–821 together with an Application for Employment Authorization, Form I–765, within the thirty (30) day period prior to the one-year anniversary of the original grant of Temporary Protected Status to such alien in order to be eligible for Temporary Protected Status during the period between such anniversary and September 17, 1993.

(5) An Application for Temporary Protected Status, Form I–821, filed during the period of extended designation by a national of Somalia, or an alien having no nationality who last habitually resided in Somalia, who has been granted Temporary Protected Status during the 12-month period of designation that began on September 16, 1991, will be without fee.

(6) The fee prescribed in 8 CFR 103.7(b)(1) will be charged for each Application for Employment Authorization, Form I–765, filed by an alien requesting employment authorization pursuant to the provision of paragraph (4) of this notice. An alien who does not request employment authorization must file Form I–765 together with Form I–821 for information purposes, but in such cases Form I–765 will be without fee.

(7) Pursuant to section 244A(b)(3) of the Act, the designation of Somalia under the Temporary Protected Status Program shall be reviewed again at least 60 days before the end of this extended period of designation, and of any subsequent extended period of designation, to determine whether the conditions for such designation continue to exist. Notice of each such determination, including the basis for the determination, shall be published in the **Federal Register**.

(8) Information concerning Temporary Protected Status for nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: July 14, 1992.

**George J. Terwilliger, III,**

*Acting Attorney General.*

[FR Doc. 92–17084 Filed 7–20–92; 12:01 pm]

BILLING CODE 4410–01–M

## Attorney General

**Certification of the Attorney General McIntosh County, Georgia**

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in McIntosh County, Georgia. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on August 7, 1965 (30 FR 9897).

Dated: July 17, 1992.

**George J. Terwilliger,**

*Acting Attorney General of the United States.*

[FR Doc. 92–17305 Filed 7–17–92; 7:45 pm]

BILLING CODE 4410–01–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–27,229]**

**Cheyenne Petroleum Co., Oklahoma City, OK; Affirmative Determination Regarding Application for Reconsideration**

On June 26, 1992, a former worker requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment assistance for workers at the subject firm. The Department's Negative Determination was issued on June 8, 1992 and published in the **Federal Register** on June 26, 992, (57 FR 28705).

The former worker claims that the Department's investigation was flawed and that Cheyenne Petroleum owns and manages wells and produces crude oil and natural gas.

*Conclusion*

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of July 1992.

**Stephan A. Wandner,**

*Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.*

[FR Doc. 92–17101 Filed 7–20–92; 12:01 pm]

BILLING CODE 4510–30–M

**[TA–W–27,047]**

**Global Drilling Fluids, Inc., a/k/a Global Chemicals, Inc., Lafayette, LA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for Worker Adjustment

Assistance on May 21, 1992 applicable to all workers of Global Drilling Fluids, Inc., Lafayette, Louisiana. The notice was published in the Federal Register on June 12, 1992 (57 FR 25080).

New information received from the company shows that the company's name was changed from Global Chemicals, Inc., to Global Drilling Fluids, Inc., on March 19, 1991. The claimants' wages are being reported under Global Chemicals, Inc. Accordingly, the Department is correcting the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of Global Drilling Fluids, Inc., and Global Chemicals, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA-W-27,047 is hereby issued as follows:

"All workers of Global Drilling Fluids, Inc., also known as a/k/a Global Chemicals, Inc., Lafayette, Louisiana who became totally or partially separated from employment on or after March 13, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 13th day of July 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-17102 Filed 7-20-92; 12:01 pm]

BILLING CODE 4510-30-M

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[TA-W-27,068]

### Mustang Fuel Corp., Oklahoma City, OK; Notice of Affirmative Determination Regarding Application for Reconsideration

On July 1, 1992, a former worker requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's decision was issued on June 3, 1992 and published in the Federal Register on June 26, 1992, (57 FR 28705).

A former worker states that the Department mistakenly denied their petition on the grounds that the workers do not produce an article. A review of the investigation findings shows that the company is an integrated production company and needs further investigation.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of July 1992.

**Stephen A. Wander,**

*Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.*

[FR Doc. 92-17100 Filed 7-20-92; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-27,197]

### O&K Trojan, Inc., Batavia, NY; Negative Determination Regarding Application for Reconsideration

By an application dated July 8, 1992, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 25, 1992 and was published in the Federal Register on July 8, 1992 (57 FR 30234).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company states that it imports for its network of distributors and as a result a customer survey would not show whether the customers imported.

The Department's denial was based on the fact that the increased import criterion as well as the "contributed importantly" test of the Group Eligibility Requirements of the Trade were not met for front end loaders. U.S. imports of construction machinery declined absolutely and relative to domestic shipments in 1991 compared to 1990.

Investigation findings show that company imports declined in 1991 compared to 1990 and in the first quarter of 1992 compared to the first quarter of 1991. Production ceased in March 1992. Workers were covered by a previous certification that expired on June 12, 1992.

Customer comments reveal that the demand for front end loaders has been weak because of the recession.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 10th day of July 1992.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.*

[FR Doc. 92-17099 Filed 7-20-92; 12:01 pm]

BILLING CODE 4510-30-M

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## Mine Safety and Health Administration

### Summary of Decisions Granting in Whole or in Part Petitions for Modification

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Notice of affirmative decisions issued by the administrators for coal mine safety and health and metal and nonmetal mine safety and health on petitions for modification of the application of mandatory safety standards.

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**SUMMARY:** Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the Federal Register. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon compliance with stipulations stated in the decision.

**FOR FURTHER INFORMATION:** Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: July 15, 1992.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

**Affirmative Decisions on Petitions for Modification**

Docket No.: M–88–210–C
FR Notice: 53 FR 49256
Petitioner: Cyprus Emerald Resources Corporation
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage cables to use 2400-volt a.c. cables and equipment to power permissible longwall mining equipment within 150 feet of pillar workings, such as the longwall gob, or in by the last open crosscut with specific conditions as outlined in the petition considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–33–C
FR Notice: 55 FR 10525
Petitioner: Island Creek Coal Company
Reg Affected: 30 CFR 75.309(a)
Summary of Findings: Petitioner's proposal to install methane sensors in all developing sections of the mine to measure ventilation and to assign a certified person to continuously monitor methane in the event of a sensor failure considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–34–C
FR Notice: 55 FR 10525
Petitioner: Island Creek Coal Company
Reg Affected: 30 CFR 75.309(a)
Summary of Findings: Petitioner's proposal to install methane sensors in all developing sections of the mine to measure ventilation and to assign a certified person to continuously monitor methane in the event of a sensor failure considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–39–C
FR Notice: 55 FR 11273
Petitioner: Mettiki Coal Corporation
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install a early warning fire detection system utilizing a low-level carbon monoxide system in the belt haulage entries with specific procedures and equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–40–C
FR Notice: 55 FR 11274
Petitioner: Mettiki Coal Corporation
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to install a early warning fire detection system utilizing a low-level carbon monoxide system in the belt haulage entries with specific procedures and equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–41–C
FR Notice: 55 FR 11453
Petitioner: Cyprus Empire Corporation
Reg Affected: 30 CFR 75.507
Summary of Findings: Petitioner's proposal to use air for the belt haulage entry to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–181–C
FR Notice: 55 FR 52331
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1103–4
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide system in all belt entries used as intake aircourses with specific procedures and equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–182–C
FR Notice: 55 FR 52333
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1103–4
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide system in all belt entries used as intake aircourses with specific procedures and equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–184–C
FR Notice: 55 FR 52332
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1103–4
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide system in all belt entries used as intake aircourses with specific procedures and equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–04–C
FR Notice: 56 FR 8800
Petitioner: Cyprus Empire Corporation
Reg Affected: 30 CFR 75.902
Summary of Findings: Petitioner's proposal to operate a submersible pump in a borehole with a modified ground monitor system considered acceptable alternate method. Granted with conditions for the North Angle pump.

Docket No.: M–91–36–C
FR Notice: 56 FR 22889
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to enclose electrical equipment in a monitored fireproof structure instead of ventilating the equipment to the return considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–40–C
FR Notice: 56 FR 23941
Petitioner: Soldier Creek Coal Company
Reg Affected: 75.326
Summary of Findings: Petitioner's proposal to use belt air to ventilate the face area and install a low-level carbon monoxide detection system in the belt entry considered acceptable alternate method. Granted with conditions to all belt entries except belt entries used in the two-entry system.

Docket No.: M–91–41–C
FR Notice: 56 FR 23941
Petitioner: Soldier Creek Coal Company
Reg Affected: 30 CFR 75.1103–4
Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide detection system in the belt entry considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–42–C
FR Notice: 56 FR 23941
Petitioner: Soldier Creek Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to enclose electrical equipment in a monitored fireproof structure instead of ventilating the equipment to the return considered acceptable ventilating the equipment to the return considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–49–C
FR Notice: 56 FR 27976
Petitioner: Twentymile Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use 2400-volt cables and equipment to power permissible longwall mining equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–52–C
FR Notice: 56 FR 27976
Petitioner: Sahara Coal Company, Inc.
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to enclose the electrical equipment in a monitored fireproof structure instead of ventilating the equipment to the return considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–60–C
FR Notice: 56 FR 33310
Petitioner: Cyprus Shoshone Coal Corporation
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use 2400-volt cables and equipment to power permissible longwall equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–61–C
FR Notice: 56 FR 33310
Petitioner: Dana Coal Company (formerly Fantasia Mining Company)
Reg Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors on permissible three-wheel battery-powered tractors considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–65–C
FR Notice: 56 FR 40915
Petitioner: Rocky Top Coal Company
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to use increased rope strength and a secondary rope on a slope conveyance (gunboat) to transport persons considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–66–C
FR Notice: 56 FR 40915
Petitioner: Peabody Coal Company
Reg Affected: 30 CFR 75.1700
Summary of Findings: Petitioner's proposal to seal and mine through oil and gas wells considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–70–C
FR Notice: 56 FR 50597
Petitioner: Island Creek Coal Company
Reg Affected: 30 CFR 75.1100–2(b)
Summary of Findings: Petitioner's proposal to install a waterline in the supply entry, adjacent to the conveyor belt entry.

hydrants (water outlets) located at a crosscut connecting the supply entry and the belt entry considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–85–C
FR Notice: 56 FR 54890
Petitioner: Golden Oak Mining Company
Reg Affected: 30 CFR 75.305
Summary of Findings: Due to hazardous roof conditions petitioner's proposal to establish evaluation points a specific crosscuts in the return aircourse instead of traveling between the crosscuts considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–86–C
FR Notice: 56 FR 54890
Petitioner: New Warwick Mining Company
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide detection system in all present and future belt entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–87–C
FR Notice: 56 FR 54890
Petitioner: New Warwick Mining Company
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install a low-level carbon monoxide detection system in all present and future belt entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–89–C
FR Notice: 56 FR 58094
Petitioner: Sunnywide Coal Company
Reg Affected: 30 CFR 75.305
Summary of Findings: Petitioner's states that examining seals will result in a diminution of safety due to arches being installed for roof support considered acceptable alternate method. Granted with conditions for the three areas containing seals where arches have been installed and back filled.

Docket No.: M–91–90–C
FR Notice: 56 FR 58094
Petitioner: Wyoming Fuel Company
Reg Affected: 30 CFR 75.1101–8
Summary of Findings: Petitioner's proposal to use a single line of automatic water sprinkles for its fire protection system at the main and secondary belt conveyor drives considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–92–C
FR Notice: 56 FR 58094
Petitioner: Energy West Mining Company
Reg Affected: 30 CFR 75.1100–2(e)
Summary of Findings: Petitioner's proposal to use two portable fire extinguishers or one extinguisher with at least twice the minimum capacity of a portable fire extinguisher at temporary electrical installations instead of one extinguisher and 240 pounds of rock dust considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–93–C
FR Notice: 56 FR 58094
Petitioner: McElroy Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to enclose the electrical equipment in a fireproof structure instead of coursing air currents to the return considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–95–C
FR Notice: 56 FR 58094
Petitioner: C&B Mining Company
Reg Affected: 30 CFR 75.301
Summary of Findings: Petitioner's proposal that the minimum quantity of air reaching the working face be 1,500 cubic feet a minute (cfm), reaching the last open crosscut in any prior set of developing entries by 5,000 cfm and reaching the intake end of a pillar line be 5,000 cfm considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–96–C
FR Notice: 56 FR 64278
Petitioner: Sextet Mining Corporation
Reg Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal that MSHA's Decision and Order, granted on September 17, 1990, for docket number M–89–137–C be amended as follows: Amend paragraph 1(a) to require installation of a low-level carbon monoxide detection system in all belt entries; amend paragraph 1(b) to require locating the carbon monoxide monitoring devices so that the air is monitored at each belt drive and tailpiece and at intervals not to exceed 2,000 feet along each conveyor belt entry, except as provided in paragraph 1(c) and paragraph 10; and omit paragraph 11 because belt haulage entries to ventilate the working faces are not used in the mine.

Docket No.: M–91–98–C
FR Notice: 56 FR 58094
Petitioner: The Ohio Valley Coal Company
Reg Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to enclose electrical equipment in a fireproof structure instead of coursing the air currents to the return considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–100–C
FR Notice: 56 FR 58094
Petitioner: Consol Pennsylvania Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use a high-voltage cable inby the last open crosscut to power a longwall shearing machine considered acceptable alternate method for the Bailey Mine. Granted with conditions.

Docket No.: M–91–108–C
FR Notice: 56 FR 65513
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage cables inby the last open crosscut to power the longwall considered acceptable alternate method for the Dilworth Mine. Granted with conditions.

Docket No.: M–91–109–C
FR Notice: 56 FR 65513
Petitioner: Eagle Nest, Inc.
Reg Affected: 30 CFR 75.1700
Summary of Findings: Petitioner's proposal to plug and mine through oil and gas wells considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–116–C
FR Notice: 56 FR 65514
Petitioner: Shell Mining Company
Reg Affected: 30 CFR 77.900
Summary of Findings: Petitioner's proposal to use an automatic reset circuit breaker to supply power to electrical equipment instead of using a manual reset breaker considered acceptable for the pit dewatering pumps in the North Rochelle Mine. Granted with conditions.

Docket No.: M–91–130–C
FR Notice: 57 FR 3220
Petitioner: Eagle Run Coal Company, Inc.
Reg Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to operate gunboats to transport persons with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connection device considered acceptable alternate method. Granted with conditions.

Docket No.: M–92–01–C
FR Notice: 57 FR 3221
Petitioner: Eastern Associated Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage cable supply power in the 8 Right 2 Left and 3 Left North Mains Longwall sections of the mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–92–12–C
FR Notice: 57 FR 7799
Petitioner: Kerr-McGee Coal Company
Reg Affected: 30 CFR 75.326
Summary of Findings: Petitioner's proposal that MSHA's Decision and Order, granted October 21, 1991, docket number M–91–54–C be amended to allow the use of the MSHA approved fire resistant styrene butadiene rubber (SBR) conveyor belt within the two 450 feet rock tunnels and monitored by both a low-level carbon monoxide system and a methane monitoring system considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–12–M
FR Notice: 56 FR 40915
Petitioner: Sunshine Precious Metals, Inc.
Reg Affected: 30 CFR 57.11041
Summary of Findings: Petitioner's proposal to post a warning sign instead of a landing gate at the bottom of every slope in which the timber slide ladderway inclinations exceed 70 degrees considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–15–C
FR Notice: 56 FR 46206
Petitioner: Hecla Mining Company
Reg Affected: 30 CFR 57.14162
Summary of Findings: Petitioner's proposal to operate one-car trains with out trip lights considered acceptable alternate method. Granted with conditions.

[FR Doc. 92–17098 Filed 7–20–92; 12:01 pm]
BILLING CODE 4510–43–M

## Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under

section 101(c) of the Federal Mine Safety and Health Act of 1977.

This notice also amends a petition for modification (57 FR 28882) of application of mandatory safety standard to correct the standard number and cite as follows:

**1. Consolidation Coal Company Amendment**

*(Docket No. M–92–68–C)*

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) for its Osage No. 3 Mine (I.D. No. 46–01455) located in Monongalia County, West Virginia. Petitioner proposes to make a weekly examination of certain areas of the mine and states that this method will provide the same measure of protection to the miners as would be provided by the mandatory standard.

**2. Westmoreland Coal Company**

*(Docket No. M–92–70–C)*

Westmoreland Coal Company has filed a petition to modify the application of 30 CFR 75.1105 to its Holton Mine (I.D. No. 44–04197) located in Lee County, Virginia. The petitioner requests that several provisions in MSHA's Decision and Order issued on October 30, 1990, for docket number M–89–115–C be amended.

**3. Eastern Associated Coal Corporation**

*(Docket No. M–92–71–C)*

Eastern Associated Coal Corporation has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Harris No. 2 Mine (I.D. No. 46–01270) located in Boone County, West Virginia. The petitioner proposes to use high-voltage cables inby the last open crosscut at the working longwall sections with appropriate safety precautions. The lower voltage cables currently being used draw large current requiring a high breaker setting, which can cause excessive heat and voltage regulation problems. Petitioner states that the proposed method will provide no less than the same measure of protection as the standard.

**4. Buck Creek Coal, Inc.**

*(Docket No. M–92–72–C)*

Buck Creek Coal, Inc. has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Buck Creek Mine (I.D. No. 12–02033) located in Sullivan County, Indiana. The petitioner proposes to operate a diesel powered generator without an earth-referenced ground to supply electrical power to mobile mining equipment when such mining equipment is being moved from one area of the mine to another. Petitioner states that the proposed method will provide no less than the same measure of protection as the standard.

**5. Leeco, Inc.**

*(Docket No. M–92–73–C)*

Leeco, Inc., has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its Mine No. 62 (I.D. No. 15–16412) located in Perry County, Kentucky. The petitioner proposes to implement an alternate test drilling plan by drilling horizontal testholes into the coal seam in advance of the working face within the drill zone which will provide a higher degree of safety to the miners than that afforded by the standard.

**6. Island Creek Coal Company**

*(Docket No. M–92–74–C)*

Island Creek Coal Company, 250 West Main Street, P.O. Box 11430, Lexington, Kentucky 40575–1430 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) for its Dobbin Mine (I.D. No. 46–05480), its Laurel Run Mine (I.D. No. 46–02845), and its North Branch Mine (I.D. No. 46–01309) all located in Grant County, West Virginia. Petitioner proposes to use high voltage cables with ground check wires smaller than No. 10 A.W.G. when used for transmitting power on high-voltage longwall systems and states that this method will provide the same measure of protection to the miners as would be provided by the mandatory standard.

**7. Sahara Coal Company, Inc.**

*(Docket No. M–92–75–C)*

Sahara Coal Company, Inc., P.O. Box 330, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 21 (I.D. No. 11–00784) located in Saline County, Illinois. Petitioner proposes to establish air measurement stations where the quantity and quality of air entering, flowing through, and returning from each affected return air course can be determined and states that this method will provide the same measure of protection to the miners as would be provided by the mandatory standard.

**8. McElroy Coal Company**

*(Docket No. M–92–76–C)*

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its McElroy Mine (I.D. No. 46–01437) located in Marshall County, West Virginia. Petitioner proposes to establish a checkpoint where air measurement and methane checks would be made and states that this method will provide the same measure of protection to the miners as would be provided by the mandatory standard.

**9. Consolidation Coal Company**

*(Docket No. M–92–77–C)*

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Osage No. 3 Mine (I.D. No. 46–01455) located in Monongalia County, West Virginia. Petitioner proposes to enclose specific electrical installations in a fireproof structure with fireproof doors. A fire suppression system would be installed over these installations, and no combustible material would be stored within the electrical installation enclosure. The air ventilating these installations would be monitored by CO sensors. Petitioner states that this method will provide the same measure of protection to the miners as would be provided by the mandatory standard.

**Request for Comments**

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 20, 1992. Copies of these petitions are available for inspection at that address.

Dated: July 15, 1992.

Patricia W. Silvey,

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 92–17097 Filed 7–20–92; 12:01 pm]

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## NUCLEAR REGULATORY COMMISSION

### Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the Office of Management and Budget (OMB) review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission (new, revision, or extension): Revision.

2. The title of the information collection: NRC Form 4, "Cumulative Occupational Exposure History." NRC Form 5, "Occupational Exposure Record for a Monitoring Period."

3. The form number if applicable: NRC Forms 4 and 5.

4. How often the collection is required: NRC Form 4 is generally prepared by exposed individuals, then reviewed and maintained by the licensee. It is not submitted to the NRC. NRC Form 5 is prepared by the licensee and transmitted to the NRC annually.

5. Who will be required or asked to report: NRC licensees.

6. An estimate of the total number of responses: NRC Form 4—40,000/year. NRC Form 5—400,000/year.

7. An estimate of the total number of hours needed annually to complete the requirement or request:

NRC Form 4—7,667 hours; (16,667 existing forms × 0.25 hr/form=4167 hours) + (23,333 revised forms × 0.15 hr/form=3500 hours) or an average of .93 hours per licensee.

NRC Form 5—129,828 hours; 125,000 hours for preparation of the form (166,667 existing forms × 0.4 hr/form=66,667 hours) + (233,333 revised forms × 0.25 hr/form=58,333 hours) and 4,828 hours for submittal of the revised forms or an average of 15.7 hours per licensee.

8. An indication of whether section 3504(l), Public Law 95–511 applies: Not applicable.

9. Abstract: NRC Form 4 is used to record a summary of the previous occupational exposures of individuals to ensure that exposure does not exceed regulatory limits. NRC Form 5 is used to record and report the results of individual monitoring for occupational exposure to radiation during a 1-year period to ensure compliance with annual occupational exposure limits.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150–0005 and 3150–0006), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 13th day of July 1992.

For the Nuclear Regulatory Commission.

**Gerald F. Cranford,**

*Designated Senior Official for Information Resources Management.*

[FR Doc. 92–17145 Filed 7–20–92; 12:01 pm]

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**[Docket No. 50–220]**

### Niagara Mohawk Power Corp., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a revision to an exemption from certain requirements of 10 CFR part 50, appendix J, to Niagara Mohawk Power Corporation (the licensee) for Nine Mile Point Nuclear Station Unit No. 1, located at the licensee's site in Oswego County, New York.

### Environmental Assessment

*Identification of Proposed Action*

By letter dated July 9, 1992, the licensee requested a revision to a schedular exemption granted on March 20, 1992, pursuant to 10 CFR 50.12(a) from the requirements of 10 CFR part 50, appendix J, regarding: (1) Leak testing of the emergency condenser condensate return line valves 39–03, –04, –05, and –06; (2) leak testing of the shutdown cooling system isolation valves 38–01, –02, –12, and –13; and (3) that the leakage of these valves be included in the 0.60 $L_a$ acceptance criteria for Type B and C tests. The March 20, 1992, schedular exemption had been issued as an extension to two previously-issued schedular exemptions (October 17, 1988 and August 29, 1989). The requested revision would delete emergency condenser condensate return line valves 39–05 and 39–06 from the March 20, 1992, exemption and provide justification for continuing a schedular exemption for emergency condenser condensate return line check valves 39–03 and 39–04. The previously approved (March 20, 1992) portion of the schedular exemption for the shutdown cooling system isolation valves (38–01, –02, –12 and –13) would also be continued.

The March 20, 1992, schedular exemption was issued to be valid until startup from the fall of 1994 refueling outage since the NRC staff determined that the exemption would not cause undue risk to the public health and safety and since special circumstances existed. The special circumstances included a chemical decontamination of the reactor coolant system and a single draining of the reactor vessel both planned for the 1994 refueling outage which will emphasize mechanical work. Performance of the chemical decontamination and performance of only a single draining of the reactor vessel are expected to reduce overall occupational exposures by approximately 100 person-rem and will also reduce the volume of radwaste generated.

As a result of an extended forced outage that began on May 1, 1992, the licensee was required to gain access to and remove emergency condenser condensate return line check valves 39–03 and 39–04 rather than delay this access until the fall of 1994 refueling outage. Therefore, the NRC staff requested the licensee to reevaluate the basis for the March 20, 1992, schedular exemption.

The duration of the forced outage that began on May 1, 1992, has resulted in the September 1992 refueling outage (reload 12) being rescheduled to early 1993 and reload 13 being rescheduled from fall of 1994 to early 1995. This forced outage has also enabled the licensee to delete emergency condenser condensate return line valves 39–05 and 39–06 from the March 20, 1992, exemption since these valves will be tested prior to restart to ensure compliance with the requirements of 10 CFR part 50, appendix J.

*The Need for the Proposed Action*

The revised schedular exemption is required to permit the licensee to startup and operate the plant until startup from the refueling outage currently scheduled for early 1995. The existing shutdown cooling system isolation valves and the emergency condenser condensate return line check valves (39–03 and 39–04) are not designed to 10 CFR part 50, appendix J, leak requirements. Testing



of check valves being procured as replacements for the existing check values determined that the replacements would not meet the licensee's system design specifications. Replacement check valves which meet the licensee's system design requirements are not currently available and will not be available for the refueling outage scheduled to begin in January 1993. Without this revision to the previously-granted schedular exemption, restart and operation of this plant after its current forced outage would be delayed until the necessary modifications and testing were completed.

*Environmental Impacts of the Proposed Action*

The proposed revision of the previously-granted exemption would allow the licensee to continue to operate the plant until the emergency condenser condensate return line check valves and the shutdown cooling isolation valves are modified during the early 1995 refueling outage so that these valves can be leak tested in accordance with the requirements of 10 CFR part 50, appendix J.

The environmental effects of a design basis loss-of-coolant accident involving emergency condenser tubing with the condensate return line check valves leaking in excess of the appendix J limits were evaluated in the Environmental Assessment an Finding of No Significant Impact (53 FR 37376) issued in conjunction with the October 17, 1988, exemption. That assessment concluded that there would be no significant radiological or non-radiological environmental impacts associated with the October 17, 1988, exemption. Likewise, the environmental effects of leakage past the shutdown cooling system isolation valves in excess of the appendix J limits (during normal operation, shutdown, and accident conditions) were evaluated in the Environmental Assessment in Finding of No Significant Impact (54 FR 26279) issued in conjunction with the August 29, 1989, exemption. That assessment also concluded that there would be no significant radiological or nonradiological environmental impacts associated with the August 29, 1989, exemption. Similar conclusions were made in the Notice of Environmental Assessment and Fining of No Significant Impact (57 FR 2791) for the extension of these exemptions issued on March 20, 1992. The proposed revision of the March 20, 1992, exemption will not change the environmental effects (determined to be not significant) of excessive leakage past these valves. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed extensions to these exemptions.

*Alternative to the Proposed Action*

The NRC staff has concluded that there is no measurable impact associated with the proposed revision of this exemption. Therefore, alternatives to the proposed extension of these exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested revision of this exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station Unit No. 1 operations and would result in unwarranted delays in plant startup and operation.

*Alternative Use of Resources*

The actions associated with the granting of the proposed revision to this exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Nine Mile Point Nuclear Station, Unit No. 1," dated January 1974.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's submittal that supports the proposed revision to the exemption discussed above. The NRC staff did not consult other agencies or persons.

### Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed revision to this exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the revision to this exemption as listed herein, which is available fro public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 15th day of July 1992.

For the Nuclear Regulatory Commission.

**Robert A. Capra,**

*Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–17146 Filed 7–20–92; 12:01 pm]

BILLING CODE 7590–01–M

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### Advisory Committee on Reactor Safeguards, Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on July 27, 1992, in Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Monday, July 27, 1992—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report related to the Electric Power Research Institute's (EPRI's) requirements document for the evolutionary light water reactors.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of EPRI, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid

telephone call to the cognizant ACRS staff engineer, Mr. Elpidio G. Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 14, 1992.

Sam Duraiswamy,

*Chief, Nuclear Reactors Branch.*

[FR Doc. 92–17118 Filed 7–20–92; 12:01 pm]

BILLING CODE 7590–01–M

## Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on August 5, 1992, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that will be closed to discuss the qualifications of candidates nominated for appointment to the ACRS. This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

The agenda for the subject meeting shall be as follows: Wednesday, August 5, 1992—3 p.m. until 5:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. Qualification of candidates nominated for appointment to the ACRS will also be discussed.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommitttee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Raymond F. Fraley (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 14, 1992.

Sam Duraiswamy,

*Chief Nuclear Reactors Branch.*

[FR Doc. 92–17117 Filed 7–20–92; 12:01 pm]

BILLING CODE 7590–01–M

[Docket Nos. 50–413 and 50–414]

## Duke Power Co., Catawba Nuclear Station, Units 1 and 2; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52 issued to Duke Power Company (the licensee) for operation of the Catawba Nuclear Station, Units 1 and 2 located in York County, South Carolina.

The proposed amendment would revise the Technical Specifications for Unit 1, Cycle 7 reload. Cycle 7 for Catawba Unit 1, scheduled to begin in September 1992, is the second Catawba Cycle for which the reload fuel is supplied by B&W Fuel Company (BWFC). The incoming Batch 9 fuel assemblies are designated as Mark-BW. To support implementation of Mark-BW fuel in the McGuire and Catawba nuclear stations, Duke Power Company (DPC) has developed new methods and models to analyze the plants during normal and off-normal operation. The thermal-hydraulic analytical models are documented in topical report DPC-NE–3000P for non-LOCA transients and BAW–10174 for LOCA. Portions of the analytical methodology are documented in topical report DPC–NE–3001P and DPC–NE–2004PA. The remaining Final Safety Analysis Report (FSAR) Chapter 15 non-LOCA system transient analysis methodology is documented in DPC–NE–3002. The FSAR Chapter 15 LOCA system transient analysis methodology is documented in BAW–10174. The NRC staff has issued safety evaluations on these topical reports.

The licensee states that all of the accidents analyzed in the FSAR have been reviewed for Cycle 7 operation, and that many of the FSAR Chapter 15 system thermal-hydraulic accident analyses sensitive to reload core physics parameters have been reanalyzed using Duke Power methodology. Several bounding transients were analyzed in detail to demonstrate the capability of DPC calculational techniques. The results of these analyses were reported in DPC–NE–3001P. For the other reanalyzed transients, the approved methodology is documented in DPC–NE–3002. The Technical Specifications (TS) that the licensee proposes to be changed are as follows:

| Specification | Description of change |
|---|---|
| 2.1.1, 2.2.1 | Decreased $F_{delta H}$ for Mark-BW fuel.<br>Removed power range neutron flux negative rate reactor trip.<br>Removed Total Allowance, Z value, and Sensor Error terms. |
| 3.1.3.1 | Included all accident analyses that would require reevaluation in the event that one full length RCCA is inoperable. |
| 3/4.2.2, 3/4.2.3 | Changed $F_q$ and $F_{delta H}$ methodology to reflect Duke nomenclature.<br>Quantified surveillance requirements. |
| 3/4.2.5 | Corrected action item requirement. |
| 3/4.3.3.1 | Removed power range neutron flux negative rate reactor trip.<br>Removed items associated with RID Bypass System. |
| 3/4.3.3.2 | Increased low steam line pressure setpoint.<br>Increased feedwater isolation response time.<br>Increased steam line isolation response time.<br>Removed Total Allowance, Z value, and Sensor Error terms.<br>Removed steam line pressure dynamic compensation. |
| 3/4.4.1.2 | Changed reactor coolant loop operation requirement. |
| 3/4.4.2.1, 3/4.4.2.2 | Increased pressurizer safety valve lift setpoint tolerance. |
| 3/4.5.1.c | Changed required cold leg accumulator boron concentration. |
| 3/4.5.2 | Changed ECCS pump surveillance requirements. |
| 3/4.6.2 | Reduced allowable primary to secondary leakage rate. |
| 3/4.6.3 | Changed feedwater isolation valve, main steam isolation valve, and main steam isolation bypass valve stroke time from 5 seconds to Not Applicable. |
| 3/4.7.1.4 | Increased main steam line isolation valve stroke time. |
| 6.9.1.9 | Reflected change to DPC core operating limit methodology. |

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The following was included in the licensee's analysis.

* * * * *

**Power Distribution and Safety Limits**

* * * * *

The Catawba Unit 1, Cycle 7 Reload Safety Evaluation Report * * * presents an evaluation which demonstrates that the core reload using Mark-BW fuel will not adversely impact the safety of the plant. During Cycle 7, the core will contain 72 fresh fuel assemblies, 72 burned fuel assemblies supplied by B&W and 49 Westinghouse supplied Optimized Fuel Assemblies (OFA).

A LOCA evaluation for operation of Catawba Nuclear Station with Mark-BW fuel has been completed (BAW 10174, Mark-BW Reload LOCA Analysis for the Catawba and McGuire Units). Operation of the station while in transition from Westinghouse supplied OFA fuel to B&W supplied Mark-BW fuel is also justified in this topical.

BAW–10174 demonstrates that Catawba Nuclear Station continues to meet the criteria of 10 CFR 50.46 when operated with Mark-BW fuel. Large Break LOCA calculations completed consistent with an approved evaluation model (BAW–10168P and revisions) demonstrate compliance with 10 CFR 50.46 for breaks up to and including the double ended severance of the largest primary coolant pipe. The small break LOCA calculations used to license the plant during previous fuel cycles are shown to be bounding with respect to the new fuel design. This demonstrates that the plant meets 10 CFR 50.46 criteria when the core is loaded with Mark-BW fuel.

* * * * *

Duke Power Company's Topical Reports DPC–NE–3000, DPC–NE–3001, and DPC–NE–2004 provide evaluations and analyses for non-LOCA transients which are applicable to Catawba. The scope of these analyses includes all events specified by sections 15.1–15.6 of Regulatory Guide 1.70 (Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants) and presented in the Final Safety Analysis Report for Catawba. The analysis and evaluations performed for these topicals confirm that operation of Catawba Nuclear Station for reload cycles with Mark-BW fuel will continue to be within the previously reviewed and licensed safety limits.

One of the primary objectives of the Mark-BW replacement fuel is compatibility with the resident Westinghouse fuel assemblies. The description of the Mark-BW fuel design and the thermal-hydraulics and the core physics performance evaluation demonstrate the similarity between the reload fuel and the resident fuel. The extensive testing and analysis summarized in BAW–10173P shows that the Mark-BW fuel design performs, from the standpoint of neutronics and thermal-hydraulics, within the bounds and limiting design criteria applied to the resident Westinghouse fuel for the Catawba plant safety analysis.

Each FSAR accident has been reviewed to determine the effects of Cycle 7 operation and to ensure that the radiological consequences of postulated accidents are within applicable regulatory guidelines, and do not adversely affect the health and safety of the public. The design basis LOCA evaluations assessed the radiological impact of differences between the Mark-BW fuel and Westinghouse OFA fuel fission product core inventories. Also, the dose calculation effects from non-LOCA transients reanalyzed by Duke Power were evaluated using Cycle 7 characteristics. The calculated radiological consequences are all within specified regulatory guidelines and contain significant levels of margin.

The analyses contained in the referenced Topical Reports indicate that the existing design criteria will continue to be met. Therefore, the enclosed TS changes will not increase the probability or consequences of an accident previously evaluated.

As stated in the above discussion, normal operational conditions and all fuel-related transients have been evaluated for the use of Mark-BW fuel at Catawba Nuclear Station. Testing and analysis was also completed to ensure that, from the standpoint of neutronics and thermal-hydraulics, the Mark-BW fuel would perform within the limiting design criteria. Because the Mark-BW fuel performs within the previously licensed safety limits, the possibility of a new or different accident from any previously evaluated is not created.

The reload-related changes to the TSs do not involve a significant reduction in the margin of safety. The calculations and evaluations documented in BAW–10174 show that Catawba will continue to meet the criteria of 10 CFR 50.46 when operated with Mark-BW fuel. The evaluation of non-LOCA transients documented in DPC–NE–3001 also confirms that Catawba will continue to operate within previously reviewed and licensed safety limits. Because of this, the TS changes to support the use of Mark-BW fuel will not involve a significant reduction in the margin of safety.

An administrative change is being made to TS Tables 2.2–1 (Reactor Trip System Instrumentation Trip Setpoints), and Table 3.3–4 (Engineered Safety Features Actuation System Instrumentation Trip Setpoints). Since these tables contain values that are not identical for each unit, a separate table will be provided for each unit. The pages will be labeled "Unit 1" or "Unit 2", and there will be an "A" in the page number for Unit 1 and a "B" in the page number for Unit 2. The TS Tables will be copied on white paper for Unit 1 and on yellow paper for Unit 2 to further distinguish applicability. Table 3.3–4 will also have references to the RTD bypass system deleted, since the RTD bypass system has been removed, and they no longer apply. These changes are administrative in nature, and are being made only to clarify the TS. Since they involve no change in requirements, they involve no significant hazards.

**Removal of Total Allowance Z and Sensor Error** * * *

The removal of the Total Allowance, Sensor error, and Z columns from Tables 2.2–1 and 3.3–4, along with the deletion of TS 2.2.1.b.1, 3.3.2.b.1, and equation 2.2–1, which provide for the use of these values, do not involve any significant hazards consideration. These specifications provide the option of declaring instrumentation operable when the setpoint is less conservative than the allowable value. This is done through the use of equation 2.2–1. With the deletion of Specifications 2.2.1.b.1, 3.3.2.b.1, equation 2.2–1, and the Total Allowance, Sensor Error, and Z columns from Tables 2.2–1 and 3.3–4 the channel must be declared inoperable with the setpoint less conservative than the Allowable Value. This change is more conservative than the current requirements, and therefore involves no significant hazards.

**Deletion of Neutron Flux High Negative Rate Trip**

The removal of the Power Range Neutron Flux High Negative Rate trip will not result in any previously-reviewed accident becoming more probable or more severe. The trip is a response to a pre-existing transient condition and would not initiate any accident. The trip is designed to provide protection from a dropped control rod. However, in the event of a dropped rod, the reactor is assumed to trip on low pressurizer pressure. Therefore, the protection function is retained. The consequences of a dropped rod have been analyzed and found to be within acceptable limits.

Likewise, the removal of this trip will not create a new accident not previously reviewed. The removal of a response to a transient will not initiate a new transient. There are no credible unanalyzed transients which will occur as a result of a dropped rod. The removal of this trip will reduce the potential for spurious or unnecessary trips which may occur as a result of maintenance or the drop of a low-worth rod. There are no other hardware modifications or procedure changes that will be made as a result of this deletion which could create the possibility of a new accident.

No margin of safety will be reduced by this change. As noted above, if a dropped rod necessitates a trip, the trip function will be accomplished as a result of low pressurizer pressure. For those dropped rods for which no trip is necessary, the removal of this trip will provide protection against an unnecessary transient.

**Reduce Allowable Primary to Secondary Leakage**

The allowable primary to secondary leakage has been reduced to limit the offsite radiological dose consequences due to the reanalysis of the locked rotor, rod ejection, and single uncontrolled rod withdrawal FSAR Chapter 15 events. The new limits are more conservative than the current TS requirements. Lowering the allowable primary to secondary leakage will not increase the probability of a previously evaluated accident, it will ensure that the dose consequences of an accident are within allowable limits. The possibility of a new or different accident from any previously evaluated is not created because there will be no physical changes to the plant operating procedures, other than to more conservatively limit leakage. There will not be a significant reduction in the margin of safety due to the fact that the allowable leakage is more conservative.

Based on the above, it is concluded that no significant hazards are associated with this change.

**Increase in Operable RCS Loops in Mode 3 and Increase Cold Leg Accumulator Required Boron Concentration**

These amendments will not involve any significant hazards consideration. The proposed changes will result in the parameter or operating condition involved becoming more conservative than the current TS requirement. The NRC's own guidance, published in the Federal Register (48 CFR 14870), states that an amendment which results in conditions becoming more restrictive is not likely to result in significant hazards consideration as defined by 10 CFR 50.92. Therefore, it may be concluded, with no further analysis, that these amendments will not involve a significant hazards consideration.

**ECCS Pump Performance Requirements**

The proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated because the Loss-of-Coolant-Accident (LOCA) analysis, to which the ECCS flowrates are input assumptions, is unchanged and, therefore, continues to meet applicable acceptance criteria.

The proposed amendments will not result in a significant increase in the possibility of a new accident because the new values represent a change in required pump performance. The new values represent no change in the assumptions made in the LOCA analysis, or any physical change in the plant. Enough margin exists between the flow used in the LOCA analysis and the new required pump flows that a reanalysis was not necessary.

[T]he proposed changes will not result in a significant decrease in a margin of safety, because pump performance at the new values is sufficient to meet all acceptance criteria in both the current FSAR analysis and any analysis associated with Catawba 1 Cycle 7.

Based on the above, it is concluded that no significant hazards exist.

**Increase in Pressurizer Code Safety Valve Setpoint Tolerances**

The proposed amendment will not result in a significant increase in the probability or consequences of any previously analyzed accident. The valve lift setting is challenged only after a transient has been initiated and is not a contributor to the probability of any transient or accident. The transients which involve pressure increases which would potentially challenge the safety valves have been analyzed to determine the consequences of delayed or premature valve actuation at the extremes of the new setpoint tolerances. These analyses show that all applicable acceptance criteria are met using the wider tolerances.

The proposed amendment will not result in the creation of any new accident not previously evaluated. As noted above, the setpoint tolerance only affects the time at which the safety valve opens following or during a transient, and is not a contributor to the probability of an accident.

The proposed amendment will not result in a significant decrease in a margin of safety. The limiting transient in each accident category has been analyzed to determine the effect of the change in lift setpoint tolerance on the transient. In each case, the results of the analyses met all acceptance criteria.

Based on the above, it is concluded that no significant hazards exist.

**Low Steam Line Setpoint Pressure Change**

Changing the Low Steam Line Pressure setpoint and removal of dynamic compensation will not increase the probability or consequences of any previously-reviewed accident. The higher steam line pressure setpoint is consistent with all licensing basis safety analyses. This change, in conjunction with the removal of the dynamic compensation of the steam pressure signal, is intended to reduce or eliminate spurious Engineered Safeguards Features (ESF) actuations which are caused by minor (but rapid) pressure decreases in the secondary system.

The proposed amendment will not result in a new accident not previously reviewed. A change in steam line pressure is a response to an existing transient condition, rather than a precursor or initiating event. A change in the steam line pressure setpoint is also not a precursor or initiating event.

The proposed amendment will not result in a significant decrease in a margin of safety. The reanalysis of the steam line break accident which was performed shows that all imposed Condition II acceptance criteria are met.

Based on the above, it is concluded that no significant hazards exist.

**Feedwater and Main Steam Line Isolation Valve Stroke Time**

The proposed changes to the valve stroke times in Tables 3.3–5 and Table 3.6–2a will not significantly increase the probability or consequences of any

previously evaluated accident. The effects of the delays in isolation times on the various transients affected have been analyzed and found to be acceptable. Since these valves do not receive a containment isolation signal, and no credit is taken for operation of these valves in the dose analysis for a containment isolation function, a maximum stroke time does not apply for containment isolation.

The proposed changes will not significantly increase the possibility of a new accident not previously evaluated. Feedwater and main steam isolation are responses to ongoing transients, rather than initiators or precursors of transients. No equipment or component reconfiguration will occur as a result of this change.

The proposed changes will not significantly decrease any margin of safety. As noted above, the effects of the longer isolation times have been evaluated and found to be acceptable.

Based on the above, it is concluded that no significant hazards exist.

**Revise List of Accidents Requiring Reevaluation in the Event of an Inoperable RCCA**

The proposed change to Table 3.3–1 will not change the probability or consequences of any accident or reduce any safety margin, because the table simply lists accident analyses which must be reevaluated in the event of an inoperable rod cluster control assembly (RCCA). The activities involved are analytical only, and do not introduce any operational considerations. Revision of the table to more accurately define the affected analyses is an administrative effort related to activities (analyses) which are conducted offsite after the fact of a postulated inoperable RCCA.

Based on the above, it is concluded that no significant hazards exist

* * * * *

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The licensee has also proposed changes to TS 6.9.1.9 to update the listing of previously approved topical reports which describe the analytical methods used to determine the core operating limits. This updating is an administrative change that provides consistency between the list and the changes made as discussed above in the prior sections of the TS. Accordingly, the updating of this list to reflect the titles of the reports describing the underlying methodology for the changes discussed above does not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any previously evaluated, and does not involve a significant reduction in a margin of safety. On this basis the staff proposes to find that this change does not involve a significant hazards consideration. The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 20, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a

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supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 13, 1992, as supplemented July 8, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 14th day of July 1992.

For the Nuclear Regulatory Commission.

**Leonard A. Wiens,**

*Acting Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92-17147 Filed 7-20-92; 12:01 pm]

BILLING CODE 7590-01-M

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**[Docket No. 40-8027]**

**Amendment Receipt and Opportunity for a Hearing; License No. SUB-1010; Sequoyah Fuels Corporation, Gore, OK**

The U.S. Nuclear Regulatory Commission is considering the amendment of Materials License No. SUB-1010 to revise the groundwater monitoring program for Sequoyah Fuels Corporation (SFC) located in Gore, Oklahoma.

*Proposed Action:* By amendment request dated April 1, 1992, SFC requested a license amendment to implement the SFC Groundwater Monitoring Plan (GMP) dated March 31, 1992. The GMP describes the groundwater monitoring program for SFC. The above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC, and the Local Public Document Room at the Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

*Opportunity for a Hearing*

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Sequoyah Fuels Corporation, P.O. Box 610, Gore, Oklahoma 74435); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are: 1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 14th day of July 1992.



For the Nuclear Regulatory Commission.

**John W.N. Hickey,**

*Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.*

[FR Doc. 92-17148 Filed 7-20-92; 12:01 pm]

BILLING CODE 7590-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35-25582; International Series Release No. 423]**

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

July 16, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 4, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

*Dominion Resources, Inc., et al. (70-8032)*

Dominion Resources, Inc. ("Dominion"), a Virginia public utility holding company exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, Dominion Energy, Inc. ("Dominion Energy"), its wholly owned nonutility subsidiary company and Dominion Generating S.A. ("DGSA"), a wholly owned Argentine subsidiary company of Dominion Energy, all of P.O. Box 26532, 901 East Byrd Street, Richmond, Virginia 23261-6532, have filed an application in connection with the proposed acquisition of an interest in an Argentine electric public-utility company, Central Termica Guemes S.A. ("Guemes"). The applicants request an order under section 3(b) of the Act granting unqualified exemptions from all provisions of the Act for Dominion Management Argentina S.A. ("DMASA"), a to-be-formed, wholly owned Argentine subsidiary of Dominion Energy, and Guemes. Alternatively, the applicants request an order approving the proposed acquisition of interests in Guemes and DMASA under sections 9(a)(2) and 10, and, upon consummation of the transactions, granting exemptions under section 3(a)(5) from all provisions of the Act, except section 9(a)(2), to Dominion Energy and DGSA.

Dominion, through its wholly owned public-utility subsidiary company Virginia Electric and Power Company, is engaged in the generation, transmission, distribution and sale of electric power in Virginia and northeastern North Carolina. Dominion's electric revenues during 1991 were approximately $3.69 billion.

Guemes, a government-owned Argentina corporation, owns a 245 MW thermal electric generating station. As part of its privatization program, the Argentine government is seeking bidders for up to a 60% voting equity interest in Guemes.[1]

Dominion will seek to acquire up to a 60% voting equity interest in Guemes through DGSA. Dominion also intends to form DMASA to manage and operate the Guemes generating station. DMASA, as operator, will depend primarily on locally hired employees. The applicants do not anticipate that more than ten senior Dominion Energy United States personnel will be assigned to Guemes in Argentina. Other than such personnel transfer and the financial commitment described below, there will be no business transactions or financial commitments between Guemes and Dominion or any of Dominion's other subsidiaries.

Though the price for the 60% equity interest in Guemes has not yet been determined, the application states that Dominion and its subsidiary companies will not invest more than $500 million inclusive of any guarantees or other financial commitments that may be provided, as well as certain construction obligations.[2] Dominion will finance its indirect investment in Guemes from existing working capital, short-term borrowing or cash flow from operations.[3] Revenues, including operating fees, and net income which Dominion expects from its Guemes interest are expected to be less than 5% of the utility revenues and net income of Dominion as a whole. Five percent of Dominion's 1991 utility revenues is approximately $189 million and 5% of Dominion's 1991 net income is approximately $23 million.

Guemes will be an "electric utility company" as defined in section 2(a)(3). As a result, Dominion, Dominion Energy and DGSA will each be a "holding company" within the meaning of section 2(a)(7) with respect to Guemes, and Guemes will be a direct or indirect "subsidiary company" of each within the meaning of section 2(a)(8). DMASA will also be an "electric utility company" within the meaning of section 2(a)(3) because it will operate Guemes.

The applicants request orders of exemption under section 3(b) for Guemes and DMASA. The application states that neither DMASA nor Guemes will derive any material part of its income, directly or indirectly, from sources within the United States, and neither will operate, or have any subsidiary company that operates, as a public-utility company in the United States. The application also states that, if unqualified exemptions are granted, Dominion Energy and DGSA will rely upon rule 10(a)(1) to provide an exemption insofar as each is a holding company; and Dominion, Dominion Energy and DGSA will rely on rule 11(b)(1) to provide an exemption from the approval requirements of sections 9(a)(2) and 10 to which they would otherwise be subject. Dominion states that it will continue to qualify as an exempt holding company under section 3(a)(1) following the acquisition.

If unqualified orders of exemption are not granted, the applicants request authorization under sections 9(a)(2) and 10 to organize and acquire DMASA and to acquire an interest in Guemes. The applicants also request orders under section 3(a)(5) exempting Dominion

[1] The Argentine government will retain 30% of the voting securities of Guemes, and the remaining 10% of the securities will be sold to the employees of Guemes pursuant to an employee stock ownership plan.

[2] Included in the commitment is the winning bidder's responsibility to construct an 85 mile, 132 KV transmission line that will be owned and operated by the Argentine government.

[3] Dominion also seeks to invest in Central Termica Alto Valle S.A., another Argentine generating station. See *Dominion Resources, Inc.*, Holding Co. Act Release No. 25558 (June 22, 1992). Dominion states that its investments and commitments in connection with foreign projects will not exceed an aggregate amount of $500 million.

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Energy and DGSA from all provisions of the Act, except section 9(a)(2). The application states that neither Dominion Energy nor DGSA is engaged in the business of a public-utility company in the United States, or will derive a material part of its income, directly or indirectly, from any one or more subsidiary companies which are a company or companies the principal business of which within the United States is that of a public-utility company.

The applicants will inform the appropriate state regulators of the proposed transactions and will request a letter from them stating that the proposed transactions do not require their approval.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-17217 Filed 7-17-92; 12:01 pm]

BILLING CODE 8010-01-M

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of priority areas for Commission study; Request for public comment.

**SUMMARY:** The Commission is continuing its ongoing analysis of the implementation of the sentencing guidelines and has identified the following priority topical issues upon which it intends to focus its attention during the coming year: (1) "White collar"/economic offenses; (2) money laundering offenses; (3) violent crimes against the person and firearms offenses, including gang-related activity; (4) drug trafficking offenses, including the interaction among the drug trafficking guideline, role in the offense guidelines, and mandatory minimum statutes; and (5) environmental offenses, including fine guidelines for organizations convicted of such offenses. Comment is requested in respect to these specific issues identified by the Commission in preparation for the 1993 amendment cycle that culminates in the submission to Congress of proposed guideline amendments no later than May 1, 1993. While the Commission welcomes comment on any aspect of guideline application or any other matter within the Commission's authority, it suggests that interested persons focus their comments and recommendations on these identified priority areas.

**DATES:** Public comment for this information-gathering phase of the 1993 amendment cycle should be received by the Commission as soon as practicable but no later than September 15, 1992, in order for it to be most usefully considered by the Commission in shaping its work during the 1993 amendment cycle.

**ADDRESSES:** Comment should be sent to: United States Sentencing Commission, 1331 Pennsylvania Ave., NW., suite 1400, Washington, DC 20004. Attn: Public Information Specialist.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Information Specialist, telephone: (202) 626-8500.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent commission in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise promulgated guidelines and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p).

As in previous years, the Commission is beginning the process that may result in amendments submitted to Congress in 1993 by soliciting formal and informal comment in respect to certain priority areas upon which the Commission expects to concentrate its attention during the coming year. This notice is designed to provide interested persons with an early opportunity to inform the Commission of legal, operational, or policy concerns relating to guidelines within the identified priority areas, as well as to suggest specific solutions and alternative approaches. In late 1992 or early 1993, the Commission will publish in the Federal Register a formal notice of proposed amendments and amendment issues and invite comment on those proposals.

The Commission has listed the following as priorities for study and/or possible amendment action in the 1993 amendment cycle:

(1) "White collar" offenses generally (including, but not limited to, tax offenses, fraud, embezzlement and theft), with an emphasis on the "loss" tables in the guidelines for these various economic offenses and the enhancement for "more than minimal planning";

(2) Money laundering offenses;

(3) Violent offenses covered under Chapter Two, Part A of the *Guidelines Manual* and firearms offenses, including gang-related activity;

(4) Drug trafficking offenses, focusing on the relationship between mandatory penalties in the drug statutes and the guidelines, including the adjustment for role in the offense; and

(5) Environmental offenses, especially with respect to fine guidelines for organizational defendants.

In addition to the aforementioned areas slated for priority attention during the coming year, the Commission has identified a second list of priority areas on which work will begin late this year, but on which final reports are expected in the 1994 amendment cycle. Among the topics slated for examination on this "two-year" schedule are:

(1) Departures below the guideline range based upon defendants' substantial assistance in the investigation of other crimes;

(2) A comprehensive examination of other bases for departure from the guidelines, including the departure jurisprudence of the appellate courts;

(3) Computer fraud offenses, to the extent not addressed within the aforementioned study of white collar offenses;

(4) Public corruption offenses;

(5) Food and drug offenses, including the development of fine guidelines for organizations committing these offenses;

(6) Juvenile offenses;

(7) Review of the probation and supervised release revocation policy statements;

(8) Criminal history; and

(9) Comprehensive review of Sentencing Reform Act statutory provisions.

The Commission also has established a project group to address a number of issues relating to prison administration and prison sentence implementation mentioned in various provisions of the Sentencing Reform Act.

As in past amendment cycles, the Commission generally intends to utilize interdisciplinary staff working groups, consisting of representatives from its legal, research, and training/technical assistance units to address designated priority issues. The Commission staff working groups, in turn, will be drawing upon the expertise of other individuals and groups in the criminal justice system to aid their work. The working groups' objectives will be to comprehensively examine topical areas and report to the Commission needs for training emphasis, additional research, legislative action, guideline amendments, or other action as appropriate.



The Commission welcomes comment in respect to the aforementioned identified priorities, as well as any other aspect of guideline application or the implementation of the Sentencing Reform Act.

**William W. Wilkins, Jr.,**

*Chairman.*

[FR Doc. 92-17078 Filed 7-20-92; 8:45 am]

BILLING CODE 2210-40-M

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 140
Tuesday, July 21, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY FUTURES TRADING COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 57 F.R. 29761.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:30 p.m., Thursday, July 30, 1992.

**CHANGES IN THE AGENDA:** the Commodity Futures Trading Commission has added to the agenda an Application of the MidAmerica Commodity Exchange for contract designation in Three-Month Eurodollar Time Deposit futures.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn K. Gilbert, 254–6314.

**Lynn K. Gilbert,**

*Deputy Secretary of the Commission.*

[FR Doc. 92–17321 Filed 7–17–92; 2:49 pm]

BILLING CODE 6351–01–M

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**BOARD OF GOVERNORS OF THE FEDERAL SYSTEM:**

**TIME AND DATE:** 11:00 a.m., Monday, July 27, 1992.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTER TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 17, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92–17261 Filed 7–17–92; 2:14 pm]

BILLING CODE 6210–01–M

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**NATIONAL CREDIT UNION ADMINISTRATION**

Notice of Meetings

**TIME AND DATE:** 9:30 a.m., Tuesday, July 28, 1991.

**PLACE:** Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

**STATUS:** Open.

**BOARD BRIEFING:**

1. Insurance Fund Report.

**MATTERS TO BE CONSIDERED:**

1. Approval of Minutes of Previous Open Meeting.
2. Central Liquidity Facility Report and Review of CLF Lending Rate.
3. Pilot Program—Community Development Credit Unions.
4. Proposed Rule: Amendment to Part 741. NCUA's Rules and Regulations., Requirements for Insurance.
5. Proposed Revision to the Operating Fee Scale for Federal Credit Unions.
6. Public Comment on Reduction of Regulatory Burden.

**RECESS:** 10:30 a.m.

**TIME AND DATE:** 11:00 a.m., Tuesday, July 28, 1992.

**PLACE:** Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Approval of Minutes of Previous Closed Meetings.
2. Requests for Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. NCUA's Budget FY 93 and FY 94. Closed pursuant to exemptions (2) and (9)(B).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

**FOR MORE INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 92–7287 Filed 7–17–92; 2:15 pm]

BILLING CODE 7535–01–M

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**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of July 20, 27, August 3, and 10, 1992.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of July 20**

*Monday, July 20*

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of July 27—Tentative**

*Wednesday, July 29*

9:30 a.m.
Periodic Briefing on EEO Program (Public Meeting) (Contact: William Kerr, 301–492–4665)
11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
1:00 p.m.
Briefing on National Research Council Report: Nuclear Power—Technical and Institutional Options for the Future (Public Meeting)
3:00 p.m.
Discussion of Litigative and Related Matters (Closed—Ex. 9B and 10)

*Friday, July 31*

10:00 a.m.
Periodic Meeting with Advisory Committee on Medical Uses of Isotopes (Public Meeting) (Contact: Larry Camper, 301–504–3417)

**Week of August 3—Tentative**

*Tuesday, August 4*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of August 10—Tentative**

*Wednesday, August 12*

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this Date.

To verify the status of meeting call (recording)—(301) 504–1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 504–1661.

Dated: July 17, 1992.

**William M. Hill, Jr.,**

*Office of the Secretary.*

[FR Doc. 92–17306 Filed 7–17–92; 2:16 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
July 21, 1992

Part II

# Environmental Protection Agency

**40 CFR Part 70**
**Operating Permit Program; Final Rule**

VOL 57 ISS 140 JUL 21 1992 UMI

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 70**

**[FRL-4152-9]**

**RIN 2060-AD16**

## Operating Permit Program

**AGENCY**: Environmental Protection Agency (EPA).

**ACTION**: Final rule.

**SUMMARY**: The EPA is promulgating a new part 70 of chapter I of title 40 of the Code of Federal Regulations (CFR).

Title V of the Clean Air Act (Act) Amendments of 1990, Public Law 101-549, enacted on November 15, 1990, requires EPA to promulgate regulations within 12 months of enactment that require and specify the minimum elements of State operating permit programs. This new part 70 contains these provisions. It requires States to develop, and to submit to EPA, programs for issuing operating permits to major stationary sources (including major sources of hazardous air pollutants listed in section 112 of the Act), sources covered by New Source Performance Standards (NSPS), sources covered by emissions standards for hazardous air pollutants pursuant to section 112 of the Act, and affected sources under the acid rain program.

Title V establishes timeframes for developing and implementing the State permit programs. Within 3 years of enactment (i.e., no later than November 15, 1993), States must submit proposed permit programs to EPA for approval. The EPA must act to approve or disapprove a State program within 1 year of submittal by the State to EPA. In some cases, EPA can grant programs an interim approval for a period of up to 2 years. If a State fails to submit a fully-approvable program within the 3-year period (or by the end of the interim approval period), EPA will apply specific sanctions pursuant to the provisions of title V and, in any event, must establish a Federal program 2 years after the end of the 3-year program submittal period. Sources subject to the part 70 program must submit complete permit applications within 1 year after a State program is approved by EPA (including an interim approval) or, where the State program is not approved, within 1 year after a program is promulgated by EPA. In the case of new sources, complete permit applications would generally be due 12 months after the source commences operation, unless the permitting authority sets an earlier deadline.

Part 70 sources must obtain an operating permit addressing all applicable pollution control obligations under the State implementation plan (SIP) or Federal implementation plan (FIP), the acid rain program, the air toxics program, or other applicable provisions of the Act (e.g., NSPS). Sources must also submit periodic reports to the State and EPA, as appropriate, concerning the extent of their compliance with permit obligations. The permit, permit application, and compliance reports will be available to the public, subject to any applicable confidentiality protection procedures similar to those contained in section 114(c).

In the proposal, EPA discussed issues connected with the regulations that will govern EPA's issuance of title V permits. The EPA will address these issues further when the Agency proposes Federal regulations.

**DATES**: The regulatory amendments announced herein take effect on July 21, 1992. This promulgation, however, does not affect the date by which States are to submit full permit programs to EPA for approval. The submittal deadline is set by section 502(d)(1) as 3 years after enactment of the Act Amendments of 1990. The deadline for full program submittal, therefore, is set by the Act as November 15, 1993. A slight variation to this rule can occur if EPA grants a program interim approval. An interim approval will be accompanied by a list of revisions or modifications necessary for the program to be fully approved. The State will then have until 6 months prior to the end of the interim approval to submit the program corrections, even though the November 15, 1993 date may have passed.

**ADDRESSES**:

*Docket*

Supporting information used in developing the proposed and final rules is contained in Docket No. A-90-33. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address listed below. A reasonable fee may be charged for copying. The address of the EPA Air Docket is: Room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT**: Michael Trutna (telephone 919/541-5345) or Kirt Cox (telephone 919/541-5399), Mail Drop 15, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Management Division, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION**: The contents of today's preamble are in the following format:

I. Background and Purpose
II. Implementation Principles
III. Summary of Final Rules
IV. Discussion of Regulatory Changes
  A. Section 70.1—Program Overview
  B. Section 70.2—Definitions
  C. Section 70.3—Applicability
  D. Section 70.4—State Program Submittals and Transition
  E. Section 70.5—Permit Applications
  F. Section 70.6—Permit Content
  G. Section 70.7—Permit Issuance, Renewal, Reopenings, and Revisions
  H. Section 70.8—Permit Review by EPA and Affected States
  I. Section 70.9—Fee Determination and Certification
  J. Section 70.10—Federal Oversight and Sanctions
  K. Section 70.11—Requirements for Enforcement Authority
V. Administrative Requirements
  A. Docket
  B. Office of Management and Budget (OMB) Review
  C. Regulatory Flexibility Act Compliance
  D. Paperwork Reduction Act

This preamble is organized to meet the needs of readers who want just an overview of the operating permit program and for readers who want a detailed discussion of the changes made to the proposed regulations to result in today's final rulemaking.

The first section provides background on the amendments to the Act establishing an operating permit program, the purposes of that action, and the expected benefits. The information is useful to anyone seeking any level of information on the operating permit program.

The second section mentions the principles EPA has followed while developing the regulations. These implementation principles and the positions on associated issues were discussed in detail in the May 10, 1991, preamble.

Section III of the preamble provides a summary of the requirements of the regulations being promulgated today.

A discussion of the regulatory changes from the proposed requirements is in section IV. In the preamble of the May 10, 1991, proposal, EPA explained the basis for its various proposed positions. Where the proposed regulations have not been changed in the final rules, EPA continues for the most part to rely on the rationale provided in the proposal notice. Where the regulations have changed in more than a minor way, this preamble states

the basis and purpose for the final regulations, including the reasons for the change. A separate document providing more detailed responses to comments on the proposal will be placed in the docket. The design of section IV follows the flow of the final part 70 regulations.

The final section (section V) contains the administrative requirements accompanying Federal regulatory actions. These include the topics listed in the preamble outline above.

The preamble includes many citations (e.g., § 70.6) to refer the reader to more detail or to the origin of certain requirements. These citation sections will not be followed by their origin such as "of this preamble" or "of title V." Rather, the reader can recognize the origins of the sections by their nature:

A. Sections of the preamble begin with a Roman numeral.

B. Sections of title V of the Act are in the 500's.

C. Sections of the proposed regulations range from 70.1 to 70.11.

D. Sections of the Act are referenced by a three-digit number, such as 112 and 400.

E. Sections of existing EPA regulations generally are preceded by "40 CFR."

This preamble makes frequent use of the term "State," usually meaning the State air pollution control agency which would be the permitting authority. The reader should assume that use of "State" also applies, as defined in section 302(d), to the District of Columbia and territories of the United States, and may also include reference to a local air pollution agency. These agencies can either be the permitting authority for the area of their jurisdiction or assist the State or EPA in implementing the title V permitting program. In some cases, the term "permitting authority" is used and can refer to both State and local agencies when the local agency directly issues permits or assists the State in issuing permits. The term "permitting authority" may also apply to EPA where the Agency is the permitting authority of record.

## I. Background and Purpose

Title V was added to the Act on November 15, 1990, and introduces an operating permit program. It requires that EPA, within 12 months of enactment, promulgate regulations setting forth provisions under which States will develop operating permit programs and submit them to EPA for approval. The EPA proposed these regulations to be codified in a new part 70 of chapter I of title 40 of the CFR on May 10, 1991 [56 FR 21712]. The comment period for that action ended on July 9, 1991. Approximately 500 public comments were received on the proposal during the comment period. Copies of these comments appear in the docket for this action listed above under *Docket*. The following four public hearings were held on the proposal: June 4 and 5, 1991, in Washington, DC; June 6, 1991, in Chicago, Illinois; June 24, 1991, in San Francisco, California; and July 1, 1991, in Dallas, Texas.

The significant changes to the regulations resulting from public comments are contained in this preamble. A summary of all public comments, transcripts of the public hearings, and the response of EPA to all the significant comments are contained in a technical support document.

Sources subject to the permitting requirements of part 70 (part 70 sources) must obtain an operating permit; States must develop and implement the program; and EPA, after promulgating today's permit program regulations, must review each State's proposed program and oversee the State's efforts to implement any approved program, including reviewing proposed permits and vetoing improper permits. When a State fails to adopt and implement its own approvable program, EPA must apply sanctions against the State or the relevant jurisdiction and ultimately also develop and implement a Federal permit program.

The addition of such a permitting program makes the Act more consistent with other environmental statutes, including the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA), both of which have permit requirements. The part 70 regulations have been designed to minimize the disruption to current State efforts by offering as much flexibility as is provided by the law. The program can also help implement market-based control strategies using improved monitoring and emissions tracking.

While title V generally does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be followed, especially with respect to determining compliance with underlying applicable requirements. The program will generally clarify, in a single document, which requirements apply to a source and, thus, should enhance compliance with the requirements of the Act. Currently, a source's obligations under the Act (ranging from emissions limits to monitoring, recordkeeping, and reporting requirements) are, in many cases, scattered among numerous provisions of the SIP or Federal regulations. In addition, regulations are often written to cover broad source categories, therefore, it may be unclear which, and how, general regulations apply to a source. As a result, EPA often has no easy way to establish whether a source is in compliance with regulations under the Act.

The title V permit program will enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements. Increased source accountability and better enforcement should result. The program will also greatly strengthen EPA's ability to implement the Act and enhance air quality planning and control, in part, by providing the basis for better emission inventories.

Another benefit of the title V permit program is that it provides a ready vehicle for the States to administer significant parts of the substantially-revised Federal air toxics program and the new acid rain program. This enhances EPA's ability to oversee all programs under the Act. Specifically, the Act requires that States use the permit system to administer the air toxics program. In addition, States will be responsible for reviewing and issuing permits to implement the second phase of the acid rain program (with permitting activities beginning in 1996) and will play a significant role in ensuring compliance with the acid rain regulations promulgated under title IV of the Act.

Finally, an important benefit is that the permit program contained in these regulations will ensure that States have resources necessary to develop and administer the program effectively. In particular, the permit fees provisions of title V will require sources to pay the cost of developing and implementing the permit program. To the extent the fees are based on actual emission levels, the fees will create an incentive for sources to reduce emissions.

The EPA expects that this rule will promote several objectives which the Agency believes are essential to the long term success of environmental programs: market-based programs, coordination of control programs across media, and pollution prevention.

Market-Based Programs: The EPA is committed to using market-based principles to achieve the greatest level of environmental protection at the least cost. The title V operating permit program will lay the critical foundation for pursuing market-based programs under the Clean Air Act beyond the acid rain program under title IV, which

already provides for marketable emission allowances within an operating permit system. Before the permit program, there was no ready vehicle for quantifying and accounting for Federal air pollution control requirements at a particular facility. With a title V permit, those control requirements can be quantified by a facility, the first step in establishing the currency necessary for a market-based system. Moreover, title V permits will establish monitoring and compliance requirements which are essential to make a market system accountable.

Cross-Media Coordination: Of the major regulatory statutes EPA implements, the Act alone did not have a permit program as the basic vehicle for applying source-specific control requirements at regulated facilities. As a result, EPA could not readily include air pollution requirements in its efforts to coordinate control requirements across media. Now that EPA has available to it permits which reflect the requirements under the CWA, RCRA, and the Act, it will be easier to coordinate those programs in the future.

Part of the cross-media coordination EPA hopes to achieve using title V permits is a comparison of the relative impact of control requirements across media and risk-based analysis of the impact of pollution control requirements. Clearly, EPA must faithfully implement the requirements in each of its regulatory programs, but EPA hopes increasingly to balance control requirements across media according to risk-based analyses to the extent the relevant statutes provide EPA with flexibility. In the future, such comparisons across media will provide the information critical to an ongoing evaluation of EPA's regulatory programs, and may provide the basis for transforming the more media-specific structure of the Agency's programs into a more unified program that addresses the greatest risk first.

Pollution Prevention: Title V permits will also lead air pollution sources and regulatory agencies to evaluate their air pollution control strategies, both on a source-specific basis and across the regulatory program. Implementing title V presents an opportunity to pursue strategies that avoid pollution, rather than control it, and that eliminate pollution, rather than shift it from one medium to the other. Indeed, a cross-media analysis should highlight opportunities to avoid pollution shifting.

## II. Implementation Principles

The passage of the Act amendments of 1990 was a major accomplishment in the protection of public health and the environment in the United States. The Act sets forth ambitious goals which can only be achieved through effective and expeditious implementation by EPA and State and local governments. Today's rulemaking is one of the first of several important actions that EPA will be taking to accomplish its rule development responsibilities under the Act. The EPA in designing its May 10, 1991 proposal identified several principles to guide the design and implementation of title V regulations and related programs. These principles, which were discussed extensively in the proposal, were thought to be necessary to preserve the legislative intent underlying the content of title V. The EPA intends that these principles be appropriately incorporated into all aspects of program development and implementation by both States and EPA. In particular, EPA will employ them when it is responsible for developing rules, overseeing State or local agency programs and permits, or issuing permits.

## II. Summary of Final Rules

### *A. Applicability*

The title V operating permits program requires all part 70 sources to submit permit applications to the appropriate permitting authority within 1 year of the effective date (i.e., date of EPA approval) of the State program. The operating permit program applies to the following sources:

1. Major sources, defined as follows:

(a) Air toxics sources, as defined in section 112 of the Act, with the potential to emit 10 tons per year (tpy), or more, of any hazardous air pollutant listed pursuant to 112(b); 25 tpy, or more, of any combination of hazardous air pollutants listed pursuant to 112(b); or a lesser quantity of a given pollutant, if the Administrator so specifies [501(2)(A)].

(b) Sources of air pollutants, as defined in section 302, with the potential to emit 100 tpy, or more, of any pollutant [501(2)(B)].

(c) Sources subject to the nonattainment area provisions of title I, part D, with the potential to emit pollutants in the following, or greater, amounts [501(2)(B)]:

| | TPY |
|---|---|
| (i) Ozone (VOC and NOx):[1] | |
| Serious | 50 |
| Transport regions not severe or extreme | 50 |
| Severe | 25 |
| Extreme | 10 |
| (ii) Carbon monoxide—serious (where stationary sources contribute significantly) | 50 |
| (iii) Particulate matter (PM–10)—serious | 70 |

[1] For this purpose, title I treats volatile organic compounds (VOC) and oxides of nitrogen (NOx) sources somewhat differently. In areas qualifying for an exemption under section 182(f), NOx sources with the potential to emit less than 100 tpy would not be considered major sources under part D of title I. In areas not qualifying for this exemption, NOx sources are subject to the lower thresholds created by section 182(f). In ozone transport regions, a lower threshold of 50 tpy for VOC sources is created by section section 184(b). Because section 182(f) does not refer to 184(b), the lower threshold in ozone transport regions applies to VOC sources, but not to NOx sources. Whatever its location, any 100 tpy source would be considered a major source under section 302.

[2] VOC only.

2. Any other source, including an area source, subject to a hazardous air pollutant standard under section 112.

3. Any source subject to NSPS under section 111.

4. Affected sources under the acid rain provisions of title IV [501(1)].

5. Any source required to have a preconstruction review permit pursuant to the requirements of the prevention of significant deterioration (PSD) program under title I, part C or the nonattainment area, new source review (NSR) program under title I, part D.

6. Any other stationary source in a category EPA designates, in whole or in part, by regulation, after notice and comment.

A major source is defined in terms of all emissions units under common control at the same plant site (i.e., within a contiguous area in the same major group, two-digit, industrial classification). Once subject to the part 70 operating permit program for one pollutant, a major source must submit a permit application including all emissions of all regulated air pollutants from all emissions units located at the plant, except that only a generalized list needs to be included for insignificant events or emissions levels. The program (including combinations of partial programs) applies to all geographic areas within each State, regardless of their attainment status. The acid rain permit program requirements, however, apply only within the contiguous 48 States and the District of Columbia.

The EPA is authorized, consistent with the applicable provisions of the Act, to exempt one or more source categories (in whole or in part) from the requirement to have a permit if the Agency determines that compliance with the part 70 regulations would be "impracticable, infeasible, or unnecessarily burdensome" [section 502(a)]. The EPA may not, however, exempt any major source or affected (i.e., acid rain) source. The EPA believes

that compliance by nonmajor sources with the permitting requirements during the early stages of the program would prove to be unnecessarily burdensome for nonmajor sources and impracticable and infeasible for permitting authorities as well. Therefore, to promote an orderly phase-in of the program, States can defer coverage temporarily for all sources which are not major. The EPA will complete a rulemaking to consider further deferral or permanent exemption for non-major sources within 5 years of the date EPA first approves a State program that defers such sources.

Any source whose obligation to obtain a permit is deferred may request a permit prior to the end of the 5-year deferral period. All deferred sources will be required to submit permit applications within 12 months after the completion of the future rulemaking, unless they are sources or source categories that receive a continued exemption (i.e., EPA determines that compliance with the permitting requirements for such categories would be impracticable, infeasible, or unnecessarily burdensome on the source categories) in the future rulemaking.

In addition, States may permanently exempt from review those nonmajor sources and source categories subject to title V solely because they are subject to the NSPS for new residential wood heaters or the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos from demolition and renovation activities. The Administrator reserves the right to grant deferral or exemption to additional nonmajor source categories when they become subject to section 112, and thereby subject to title V.

*B. State Permit Program Submittals and Transition*

Title V requires EPA to promulgate regulations establishing the minimum elements of a State permit program. State and local pollution control agencies or interstate compacts may implement provisions of title V, as long as all geographic areas within each State are covered by a permit program. As previously discussed, reference to the "State" will include reference to local agencies, where appropriate, which would allow granting of a partial program for a specific geographic area within a State. The EPA oversees development of State programs and enforces the obligation to implement a program in each State. Should a State fail to develop a permit program, the EPA must implement a program for that State [501(4), 502(d)(1), and 302(b)].

1. Minimum Program Requirements

As required by title V, today's regulations establish the minimum elements of a State operating permit program, including the following:

(a) Requirements for permit applications, including standard application forms and criteria for determining the completeness of applications [502(b)(1)].

(b) Monitoring and reporting requirements [502(b)(2)].

(c) A permit fee system [502(b)(3)].

(d) Provisions for adequate personnel and funding to administer the program [502(b)(4)].

(e) Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act [502(b)(5)(A)].

(f) Authority to terminate, modify, or revoke and reissue permits "for cause" [502(b)(5)(D)].

(g) Authority to enforce permits, permit fee requirements, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than $10,000 per day for each violation, and "appropriate criminal penalties" [502(b)(5)(E)].

(h) Authority to assure that no permit will be issued if EPA timely objects to its issuance [502(b)(5)(F)].

(i) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete and for processing applications; for public notice, including offering an opportunity for public participation, where applicable; for expeditious review of permit actions; and for State court review of the final permit action [502(b)(6)].

(j) Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the Act (section 503 and the deadlines for permitting under acid rain provisions in title IV) shall be treated as a final permit action solely to allow judicial review by the applicant, anyone else who participated in the public review process, and any other person who could obtain judicial review of such action under applicable law, to compel action on the application [502(b)(7)].

(k) Authority and procedures to make available to the public any permit application, compliance plan, permit, emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions similar to those of section 114(c) of the Act [502(b)(8)]; the contents of the permit itself are not entitled to confidentiality protection [503(e)].

(l) Provisions to allow operational flexibility at the permitted facility [502(b)(10)].

(m) Provisions required if a State allows sources to make certain changes that are not prohibited or addressed by the permit [502(a)].

(n) Provisions to require that part 70 permits include terms and conditions addressing alternative scenarios at the permitted facility and emissions trading provided for in the underlying applicable requirement [502(b)(6)].

2. State Program Development

Within 3 years of enactment, the Governor of each State shall submit to EPA a permit program meeting the requirements of title V. A State may submit its current or proposed program to EPA for approval. The Governor must also submit a legal opinion from the attorney general, attorney for those State air pollution control agencies with independent legal counsel, or the chief legal officer of an interstate agency, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out the program [502(d)(1)]. The EPA encourages prompt action by each State to evaluate the potential of its existing enabling legislation to implement title V and to take additional actions, as needed, to ensure a timely and approvable program submittal.

Several States may need new legislative authority in a number of areas in order to fulfill the requirements of the Act, including (but not limited to): Authority to charge, collect, retain, and spend adequate permit fees, and to collect civil penalties of a maximum amount of at least $10,000 per day per violation. The EPA intends to assist States in identifying and obtaining any required new authorities.

3. The EPA Review of Program Submittals

Within 1 year after receiving the State's program, EPA shall approve or disapprove it, in whole or in part. The EPA may approve the program to the extent it meets the requirements of the Act and today's regulations.

If EPA disapproves the program, or any part of it, EPA must notify the Governor of any revisions necessary for EPA approval. The State then has 180 days from this notice to revise and resubmit the program [502(d)(1)]. When EPA approves a program, EPA must suspend issuance of Federal permits, but may retain jurisdiction over permits still under administrative or judicial review [502(e)].

4. Interim Program Approvals

If a program is not fully-approvable, EPA may grant interim approval to a permit program, so long as the program "substantially meets" the requirements of title V. Criteria for satisfying the "substantially meets" test include:

(a) The commitment and capability to collect fees adequate to cover the costs of the interim permitting program and the development as appropriate of the whole program;

(b) The legal authority to assure that sources subject to the interim program comply with all applicable requirements of titles I, IV, and V under the Act;

(c) Fixed permit terms not to exceed 5 years;

(d) The opportunity for public participation in appropriate permit proceedings;

(e) The opportunity for EPA to review and object to the issuance, modification, or renewal of any permit and for affected States to review such permits consistent with section 505 of the Act;

(f) The requirement that a proposed permit will not be issued if EPA objects to its issuance;

(g) Adequate procedures for enforcing permits, including penalties;

(h) Provisions for allowing operational flexibility and alternative scenarios for sources, consistent with §§ 70.4(b)(12) and 70.6(a)(9);

(i) Streamlined procedures for issuing and revising permits and determining when applications are complete; and

(j) Application and reporting forms to be used in implementing the interim program.

In the notice of final rulemaking granting interim approval, EPA must specify the changes the State must make to receive full approval. The EPA may grant interim approval, which may not be renewed, for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permit program in the State [502 (d) (2)–(3) and (g)]. Permits issued under a program with interim approval have full standing with respect to title V, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications discussed in the following section.

5. State Permit Review

As noted above [III.B.(4)], subject sources are required to submit permit applications to the permitting authority within 1 year of program approval, whether full, partial, or interim. For title IV (acid rain) sources, however, specific superseding deadlines are provided for the submission of Phase II permit applications, which will not be due to States until January 1, 1996 [408(D)(2)]. For the initial round of permit applications, the permitting authority must establish a phased schedule for processing permit applications submitted within the first full year after program approval. This schedule must assure that the permitting authority will act on at least one-third of the permits each year over a period not to exceed 3 years after approval (interim or full) of the program [503(c)]. The EPA urges States to encourage early submittals of complete applications.

States are required to issue permits under the acid rain program by December 31, 1997 [408(D)(3)]. For most States, this deadline will coincide roughly with the second year of permit program implementation. Additionally, expedited review and issuance procedures may be required for permit applications for sources pursuing compliance extensions for early reductions of hazardous air pollutants under section 112(i)(5).

After acting on the initial round of applications, the permitting authority must from then on act on a completed application (i.e., issue or deny a permit) within 18 months after receiving the complete application. The permitting authority must establish reasonable procedures to prioritize review of permit applications, especially in the case of applications for new construction or modifications as defined in title I [503(c)].

*C. Complete Permit Application*

Each State program must establish specific criteria to be used in defining a complete permit application. A complete application is one that the permitting authority has determined to contain all the necessary information needed to begin processing the permit application. The permitting authority can determine, however, that the application becomes incomplete if the source fails to provide timely updates to the application that the permitting authority needs to issue the permit within the specified deadlines.

The permitting authority must provide notice to the source of completeness determinations. In the event that no notice is provided to the source within 60 days after receipt of the application by the permitting authority, the application shall be deemed complete.

A source which files a timely and complete application for a permit or a renewal will not be liable for failure to have a permit if the permitting authority delays in issuing or reissuing the permit, provided this delay was not due to the applicant's failure to respond in a reasonable and timely manner to written requests from the permitting authority for additional information needed to evaluate the application. This protection also applies with respect to title V to sources requiring both new title V and certain NSR permits. These sources must have a preconstruction permit consistent with the requirements of parts C and D of title I, and must have filed a complete application for a title V operating permit within 12 months of commencing operation, unless some earlier date is required by the permitting authority. In general, a complete application must be submitted according to the transition schedule approved within the part 70 program and in a timely way for subsequent renewals. "Timely" for renewals means 6 months prior to expiration of the permit, unless some greater time is needed (not to exceed 18 months) to ensure that the terms of the permit do not lapse before they are revised or renewed.

All complete applications must contain information which identifies a source, its applicable air pollution control requirements, the current compliance status of the source, the source's intended operating regime and emissions levels, and must be certified as to their truth, accuracy, and completeness by a responsible official after making reasonable inquiry. Each permit application must, at a minimum, include a completed standard application form (or forms) and a compliance plan. The permitting authority can, however, allow the application to cross-reference relevant materials where they are current and clear with respect to information required in the permit application. Such might be the case where a source is seeking to update its title V permit based on the same information used to obtain an NSR permit or where a source is seeking renewal of its title V permit and no change in source operation or in the applicable requirements has occurred. Any cross-referenced documents must be included in the title V application that is sent to EPA and that is made available as part of the public docket on the permit action.

The compliance plan describes how the source plans to comply or achieve compliance with all applicable air quality requirements under the Act. The exact contents and detail required in the compliance plan depend on the compliance status of the source with respect to each applicable requirement. This plan must include a schedule of

compliance and a schedule for the source to submit progress reports to the permitting authority no less frequently than every 6 months where applicable. Each source must submit a compliance certification report at least once a year in which it certifies its status with respect to each requirement, and the method used to determine the status. Specific requirements for acid rain affected sources regarding compliance schedules, progress reports, and compliance certifications will be contained in regulations promulgated under title IV of the Act.

The minimum data elements required in all standard application forms, as well as the basic requirements for compliance plans and compliance certifications, are presented in § 70.5 of the regulations. With exception of certain Federal programs (e.g., acid rain), EPA will not specify that any particular form be used by States as long as the minimum data elements are provided to EPA. However, the Agency will encourage the use of certain model forms as a preferred way to meet the requirements of § 70.5.

Additional information may be required from some subject sources. For example, those located in nonattainment areas under part D of title I may be required to fulfill the emissions statement requirements for certain sources of VOC and $NO_x$. Similarly, sources of hazardous air pollutants subject to section 112 which are attempting to comply with alternative emissions limits will also need to submit additional information.

*D. Permit Content*

The State program is required in § 70.6 to assure that permits meet all applicable requirements of the Act and include the following:

1. A fixed term, not to exceed 5 years [502(b)(5)(B)], except that affected sources under title IV must have 5-year fixed terms [408(a)] and solid waste incinerators under section 129(e) may have up to a 12-year fixed term.

2. Limits and conditions to assure compliance with all applicable requirements under the Act, including requirements of the applicable implementation plan [504(a)] and title IV.

3. A schedule of compliance (where applicable), which is defined as a schedule of remedial measures [504(a) and 501(3)].

4. Inspection, entry, monitoring, compliance certification, recordkeeping, and reporting requirements to assure compliance with the permit terms and conditions, consistent with any monitoring regulations that EPA promulgates under sections 504(b), 114, and 504(c). Nothing in this regulation should be read to require continuous emissions monitoring in situations where it is not otherwise prescribed.

5. A provision describing conditions under which any permit for a major source with a term of 3 or more years must be reopened to incorporate any new standard or regulation promulgated under the Act [502(b)(9)].

6. Provisions under which the permit can be revised, terminated, modified, or reissued for cause.

7. Provisions ensuring operational flexibility within a permit so that certain changes can be made within a permitted facility without a permit revision, provided that the change is not a "modification" (as defined in title I of the Act), that it does not exceed the emissions allowed under the permit or under any applicable requirement, and that a notice is provided to the permitting authority at least 7 days in advance where the permit would not allow such changes [502(b)(10)]. The operational flexibility provision contained in title V must be implemented carefully and fairly so that a source can respond quickly to changing business opportunities while, at the same time, the permitting authority is assured that the source will meet all the applicable requirements of the Act.

8. A provision that nothing in the permit or compliance plan issued pursuant to title V of the Act shall be construed as affecting allowances under the acid rain program [408(b)].

9. A provision ensuring that all alternative operating scenarios identified by the source are included in the permit [502(b)(6)].

All terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act. Consistent with EPA's discretion under the Act, the final rules require the permitting authority to identify those provisions in the permit which are not required under the Act or under any of its applicable requirements (i.e., State origin only) as not being federally enforceable. Like all other permit terms, a term which the permitting authority fails to designate as not federally enforceable will not be subject to challenge after 90 days.

Section 504(f) of the Act defines the permit shield provision of title V, which enables States to provide sources with greater certainty as to their legal obligations under the Act. This section authorizes the permitting authority to provide that compliance with the permit shall be deemed compliance with all other applicable provisions of the Act, if the applicable requirements of such provisions are included in the permit, or if the permitting authority, in acting on the permit, determines that such other provisions (which shall be referred to in such determinations) are not applicable. This determination or a concise summary thereof must be included in the permit. The EPA encourages States to employ the "permit shield" routinely to help stabilize the permit process and give greater certainty to the regulated community.

The EPA may alter the scope of the permit shield by rule. The Agency intends to prohibit use of the shield in cases where the source initiates changes that result in requirements becoming applicable to the source beyond those contained in the permit (until such changes are later incorporated into the permit). Sources seeking to obtain or renew a part 70 permit cannot be shielded from enforcement actions alleging violations of any applicable requirements (including orders and consent decrees) that occurred before, or at the time of, permit issuance. In addition, sources may not be shielded from requests for information pursuant to section 114 of the Act. The EPA has also provided that the shield will not extend to minor permit modifications (and to some changes made under the operational flexibility provisions pursuant to § 70.4(b)(12) and to most administrative permit amendments).

*E. Permit Issuance and Review*

Regulations concerning the processes for permit issuance, review, renewal, revision, and reopening are found in §§ 70.7 and 70.8. Briefly, these include:

1. Permit Notification to EPA and Affected States

The permitting authority must provide notice to certain States and EPA of permit applications received and proposed permits. It must submit to EPA the following:

(a) The application for any permit, renewal, or revision, including any compliance plan, or any portion EPA determines it needs to review the application and permit effectively; and

(b) Each proposed permit and each permit issued as a final permit by the State [505(a)(1)].

The permitting authority is required to notify all affected States of each permit application that must be forwarded to EPA. Affected States are those whose air quality may be affected and that are contiguous to the State in which the source is located, or those within 50 miles of the source. The permitting

authority must give all such States an opportunity to submit written recommendations for the permit. If the authority refuses to accept those recommendations, it must provide its reasons for refusal in writing [505(a)(2)].

The EPA may waive its own and affected States' review of permits for any category of sources, except major sources, either when approving an individual program, or in a regulation applicable to all programs. The EPA may also waive its own right to review, but maintain the requirement for a State to notify affected States [505(d)]. During Phase II of the acid rain program, the Agency does not intend to waive its own right to review affected sources under the acid rain program.

2. The Agency Review and State Response

The Act authorizes EPA to object to any permit that would not be in compliance with the applicable requirements of the Act. If EPA objects within 45 days after receiving either the proposed State permit or the notice that the permitting authority has refused to adopt an affected State's recommendations for the permit, the permitting authority must respond to EPA in writing. The EPA must provide the permitting authority and permit applicant a statement of reasons for the objection [505(b)(1)].

The permitting authority may not issue a valid title V permit if EPA has objected unless the permitting authority revises the permit to meet EPA's objections. The permitting authority has 90 days after EPA's objection to revise the permit. If the permitting authority fails to do so, EPA must issue or deny the permit [505(c)].

3. Judicial Review and Public Petition

An approvable program must provide for judicial review in State court of the permit action. Such review must be available to the applicant, anyone who participated in the public participation process, and any other person who could obtain judicial review of the action under State law [505(b)(6)].

Within 60 days after the expiration of the 45-day EPA review period, any person may petition the Administrator to veto a permit if EPA fails to object. The objections in the petition must have been raised during the public participation period on the permit provided by the State issuance process, unless the petitioner shows that it was impracticable to raise the objections at that time. The petition does not postpone the effectiveness of a permit that has been issued.

The Administrator must grant or deny a petition within 60 days after it is filed. If the permit has not been issued, EPA must issue an objection if the petitioner demonstrates to the satisfaction of the Administrator that the permit is not in compliance with the Act. If the permitting authority has already issued the permit and the petition is granted, EPA will modify, terminate, or revoke the permit, and the permitting authority may issue a revised permit only if it meets EPA's objection [505(b)(3)]. If the Administrator denies the petition, the denial is subject to review in the Federal Court of Appeals under section 307 [505(b)(2)].

Where EPA objects to a permit and the State fails to meet EPA's objection, EPA must then issue or deny the permit. The Federal Court of Appeals may review EPA's final action in issuing or denying the permit under section 307. Title V provides that EPA's objection to a permit is not subject to judicial review until EPA takes final action on the permit [505(c)].

4. Reopenings

Any approvable program, at a minimum, must require that the permitting authority will revise all major source permits with a remaining life of 3 or more years to incorporate applicable requirements under the Act that are promulgated after issuance of the permit. Such revisions must be made using the revision procedures that meet the requirements for permit revision and must be made within 18 months after the promulgation of the new requirement. No revision is required if the effective date of the requirement is after the expiration of the permit term [502(b)(9)]. Approvable programs also must require that the permitting authority may terminate, modify, or revoke permits for cause [502(b)(5)(D)]. "Cause," as defined in the rule, may exist when the permit contains a material mistake made in applying the emission standards or limitations, or in other permit requirements.

Phase II acid rain permits will need to be reopened to incorporate $NO_x$ provisions. Excess emission offset plans and all allowance allocations and transfers, however, must be deemed incorporated into each unit's permit, upon recordation or approval by the Administrator, without further permit revision and review.

If EPA finds that cause exists to reopen a permit, EPA must notify the permitting authority and the source. The permitting authority has 90 days after receipt of the notification to forward to EPA a proposed determination of termination, modification, or revocation and reissuance of the permit. The EPA may extend the 90-day period for an additional 90 days if a new application or additional information is necessary. The EPA then may review the proposed determination under the review procedures of permit issuance. If the permitting authority fails to submit a determination or if EPA objects to the determination, EPA may terminate, modify or revoke and reissue the permit. The EPA must provide notice and "fair and reasonable procedures" when it terminates, modifies, or revokes and reissues a permit [505(e)].

5. Permit Revisions

Taking the above into account, the EPA today outlines the mechanisms for permit modification and administrative amendments that are needed to revise the part 70 permit to accommodate changes which would otherwise violate terms and conditions of the permit. While States are required to provide for expeditious permit revisions, they have considerable flexibility in doing so. The State shall provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications. States may meet their obligation by adopting the approach outlined by EPA in today's final rules or one which is substantially equivalent.

Administrative amendments are those defined in § 70.7(a) which can be accomplished by the permitting authority without public or EPA review. These permit revisions include correction of typographical errors or changes in address or source ownership. Another type of administrative amendment inolves the incorporation of requirements established under State preconstruction review that meets procedural requirements that are applicable and substantially equivalent to those contained in §§ 70.7 (discussed below) and 70.8 and the compliance requirements contained in § 70.6 (e.g., monitoring, recordkeeping, reporting, and compliance certification).

The EPA's description of the most streamlined process it would approve for all other types of permit revisions is set forth in § 70.7(e). It employs two types of permit modification procedures:

(a) Minor permit modifications, and

(b) Significant permit modifications.

These are for changes that go beyond the activities allowed in the original permit or that increase the total emissions allowed under the permit.

The model provision contained in § 70.7(e) defines the types of permit modifications that a State could decide to process through minor permit modification procedures. They include

modifications that reflect increases in permitted emissions that do not amount to modifications under any requirement of title I an that do not meet certain other requirements. Minor permit modification procedures required that a source provide advance notice of the proposed change, but allow a change to take effect prior to the conclusion of the revision procedures.

Under EPA's model procedures for minor permit modifications, changes may be made by the source after it files a complete application with the permitting authority. The proposed modification will be available for review by EPA, affected States, and the permitting authority. The State may approve the proposed modification at any time. The EPA has 45 days from the date the Agency receives notice from the State to review the proposed modification, and the permitting authority cannot finally issue the permit until after EPA's review period has ended, or until EPA has notified the permitting authority that EPA will not object to the issuance of the permit modification, although the permitting authority may disapprove the modification prior to that time. The modification procedures must generally be completed and final action taken by the permitting authority no later than 90 days following the filing of a complete application.

The regulation also provides an opportunity for the permitting authority to modify the minor permit modification procedures to process in groups applications for changes at the lowest levels of emissions increases (as defined in the regulation). The regulation provides that a source may request in its application that changes, below a set threshold, be aggregated during a 90-day period, or until they reach the applicable threshold level, whichever comes first. These changes would then undergo the minor permit modification process, including review by the permitting authority, affected States, and EPA.

Under the minor permit modification option outlined by EPA, a source that makes a change before a permit revision has issued, does so at its own risk. It is not protected from underlying applicable requirements by any shield. It is afforded only a temporary exemption from the formal requirement that it operate in accordance with the permit terms that it seeks to change in its modification application. Should the permitting authority or EPA ultimately reject the sources proposed permit modification, the source would be subject to enforcement proceedings for any violation of these requirements. The permit shield under § 70.6(f) does not apply to minor permit modifications issued by the permitting authority.

The other type of permit modification procedures described are for significant modifications. After receipt of an application for a significant permit modification, a permitting authority would review only the specific changes proposed in the application and their impact on the continued compliance of the part 70 source with all applicable requirements of the Act.

Sources subject to requirements of the acid rain program must hold allowances to cover their emissions of $SO_2$. These sources will have conditions in their permits prohibiting emissions exceeding the number of allowances held. Sources holding emissions allowances under the acid rain program may buy, sell, or trade those allowances. Allowance transactions registered by the Administrator will be incorporated into the source's permit as a matter of law, without following either the permit modification or amendment procedures described above.

6. Permit Renewal

Each permit is to have a fixed term not to exceed 5 years (except that permits for municipal waste combustors may have terms up to 12 years). Renewal permits are subject to the same requirements as those applying to initial permits, including the requirement for a timely and complete application and for a compliance plan and processing by the permitting authority within 18 months of a complete application.

The source will be able to operate after expiration of the permit only if it has submitted a timely and complete application for a new permit, as mentioned in the previous discussion on complete applications. To maintain the protection afforded by having a complete application, the source applicant still must respond in a timely fashion upon written request by the permitting authority to provide additional information needed to develop and issue the permit. Should a permit expire before a source submits a timely and complete application, the source's right to operate is terminated unless and until a part 70 permit is issued by the permitting authority [503(d)]. The application must be deemed to be complete 60 days from the date of its submission to the permitting authority, unless the permitting authority has already determined that the application is not complete. In addition, consistent with the established precedent in the National Pollutant Discharge Elimination System (NPDES) program under the CWA, where the fixed term of a permit has expired, the permitting authority must provide either that the permit remains effective or that the conditions of the permit remain enforceable until the permit is reissued, except as provided in regulations promulgated pursuant to title IV for the acid rain portions of a permit.

*F. Fee Determination and Certification*

A key requirement of State operating permit programs is that States establish an adequate permit fee program. Regulations concerning fee programs and appropriate criteria for determining the adequacy of such programs are set forth in § 70.9.

An approvable permit must require part 70 sources to pay an annual fee (or the equivalent over some other period) sufficient to cover all "reasonable (direct and indirect) costs" required to develop and administer the permit program [502(b)(3)(A)]. All fees required to be collected under title V must be used solely to support the permit program [502(b)(C)(iii)]. The EPA has ruled that these fees must cover a range of costs, including:

1. Preparing generally applicable regulations or guidance regarding implementation of the program or its enforcement.

2. Reviewing and acting upon any title V application.

3. General administrative costs of running the permit program, including information management activities to support and track permit applications, compliance certifications, and related data entry.

4. Implementing and enforcing the terms of the permit, excluding any court costs or other costs associated with an enforcement action and including adequate resources to determine which sources are subject to the program.

5. Emissions and ambient monitoring.

6. Modeling analyses and demonstrations.

7. Preparing inventories and tracking emissions.

8. Development and administration of the State small business stationary source technical and environmental compliance assistance program as it applies to the title V permitting obligations of part 70 sources [502[b)(3)7(A) (i)–(vi)].

The program will be presumed adequate if it would collect in fees an amount equal to or greater than the presumptive minimum program cost, which is $25 per ton per year (tpy) (1989 baseline) for the actual emissions of each regulated pollutant (for presumptive fee calculation). Regulated pollutants (for presumptive fee

calculation) mean all regulated air pollutants, with the exception of carbon monoxide, pollutants subject only to section 112(r), and pollutants which are solely regulated as chlorofluorocarbons (CFC) under section 602 [502(b)(3)(B) (i) and (ii)]. In addition, the State is not required to count emissions of any pollutant from any one source in excess of 4,000 tpy [502(b)(3)(B)(iii)] or emissions that are already accounted for within the emissions of another regulated pollutant (although the State is not precluded from doing so). The State need not collect the presumptive minimum program cost if it demonstrates that a lesser amount will adequately support the direct and indirect costs of the program [502(b)(3)(B)(iv)]. Conversely, States must make a sufficient showing of fee adequacy if commenters present evidence to the Administrator during the program approval process which rebuts the presumption that $25/tpy is adequate to support the program. The permitting authority must provide for a periodic accounting of how the required fees were used solely to support the program and how they meet the presumptive minimum described above.

The EPA interprets title V to offer permitting authorities flexibility in setting variable fee amounts for different pollutants or different source categories, as long as the sum of all fees collected is sufficient to meet the reasonable direct and indirect costs required to develop and administer the provisions of title V of the Act, including section 507 as it applies to part 70 sources. The $25/tpy used to calculate the presumptive minimum program cost is to be increased each year according to the Consumer Price Index (CPI) at the time the index is published as defined by section 502(b)(3)(B)(v). Nothing in this section is intended to provide States any additional authority (beyond what is otherwise authorized under State law) to levy fees beyond the amount necessary to offset the program costs of title V.

Section 408(c)(4) of the Act provides that during the years 1995 through 1999, no fee shall be required to be paid under section 502(b)(3) or under section 110(a)(2)(L) with respect to emissions from any unit which is an affected unit under section 404. The Agency interprets this provision to mean that EPA may not approve part 70 programs that offset required permit program costs using emissions-based fees collected from affected units, under section 404, from 1995 to the year 2000.

If EPA determines that a State's fee program is not approvable, or that a State is not adequately administering or enforcing an approved fee program, EPA may collect reasonable fees from permittees. Such fees shall be designed solely to cover EPA's costs of administering the Federal permit program [502(b)(3)(C)(i)]. Sources failing to pay a fee assessed by EPA must pay a penalty of 50 percent of the fee amount, plus interest [502(b)(3)(C)(ii)]. The EPA must deposit federally-collected fees, penalties, and interest in a special Treasury fund, subject to appropriation, to carry out EPA's permitting activities.

*G. Federal Oversight and Sanctions*

Federal activities for oversight of State operating permit programs include situations where a State fails to submit an approvable permit program, or EPA determines that a permitting authority is inadequately administering and enforcing a permit program or an approved permit fee program.

1. State Failure To Submit a Program

The EPA must apply sanctions to a State where the Governor has not submitted a program within 18 months after the deadline for submittal, or where 18 months have passed since EPA disapproved the program in whole or in part [502(d)(2)(B)]. The sanctions are the same as those in title I: A highway funding cutoff, and a two-to-one offset ratio for new or modified sources [179(b)] applicable to certain nonattainment areas. A sanction may be applied any time during the 18-month period following the date required for program submittal or program revision [502(d)(2)(A)]. The EPA must apply one of these sanctions after the above-referenced periods elapse. If the State has no approved program 2 years after the date required for submission of the program, EPA must promulgate, administer, and enforce a Federal permit program for the State [502(d)(3)].

If the EPA determines that a State's program is not approvable or that a permitting authority is not adequately administering an approved program, the EPA will promulgate a Federal permit program which the Agency will administer and enforce where the State fails to submit, correct, or implement its program. The Agency has the authority to collect reasonable fees from the permittees to cover the costs of administering the program. Any source that fails to pay fees shall be subject to additional penalties. Fees, penalties, and interest collected by the EPA will be deposited in a special U.S. Treasury fund for permitting activities and held for future appropriation.

2. State Failure to Implement a Program

Whenever EPA determines that a permitting authority is not adequately administering and enforcing a program, EPA must notify the State [502(i)(1)]. If EPA determines that the failure to administer and enforce the program persists 18 months after EPA's notice to the State, EPA must apply the same sanctions in the same manner as required for a failure to submit an approvable program [502(i)(2)]. The EPA has the option of imposing any one of the sanctions before the 18-month period has passed [502(i)(1)]. If the State has not cured the failure to administer and enforce the program within 18 months after EPA's notice, EPA must promulgate, administer, and enforce a Federal permit program within 2 years after the notice to the State [502(i)(4)].

*H. Required Enforcement Authority*

Section 70.11 sets forth the enforcement authority required for an approvable part 70 program. It requires permitting authorities to have authority to seek and impose civil penalties and criminal fines as well as injunctive relief.

*I. Permit/SIP Relationship*

The SIP remains the basis for demonstrating and ensuring attainment and maintenance of the national ambient air quality standards (NAAQS). The permit program collects and implements the requirements contained in the SIP as applicable to the particular permittee. Since permits must incorporate emission limitations and other requirements of the SIP, all SIP provisions applicable to a particular source will be defined and collected into a single document. The applicable requirements in the permit would include any recent SIP changes, whether as a result of a State or local SIP revision or of a FIP action by EPA. The EPA intends to assist in the implementation of the permit program through the use of model permits for numerous source categories, including model general permits as discussed below in section I.V.F. addressing general permits.

As previously discussed, title V affords significant operational flexibility. The relationship between title V permits and SIP's is a key factor in determining the extent to which operational flexibility is available to sources, since each permit, in part, must assure compliance with the applicable implementation plan. The EPA recognizes that it will take time to complete the transition from a regulatory system where SIP's are the

primary tool for implementing and enforcing the Act, to one where operating permits ultimately assume primary responsibility for implementation and enforcement.

The EPA is considering what means will aid in ensuring a smooth transition to increasingly general, and thus more flexible, SIP's, which may allow permits rather than the SIP's to specify the details of how SIP limits and objectives apply to subject sources. In particular, EPA will be seeking to develop information in the following areas:

1. The most efficient ways of implementing requirements of SIP's through permits, such as moving detail from SIP's to permits;

2. Flexible ways for sources to demonstrate compliance with reasonably available control technology (RACT) limits, such as through the use of protocols for defining equivalency or through the development of equivalency determinations in the permitting process (as discussed below); and

3. Expanded use of emissions trading and marketable permits to achieve SIP objectives as well as providing a stable accounting mechanism for tracking and enforcing emissions reductions at a source.

The EPA encourages the development of more flexible SIP's. For example, in the final rule, § 70.6(a)(8) provides that no permit revision is required for emission trades in economic incentive or marketable permit programs, providing that the permit contains a program or process for implementing the trade. Thus, a SIP containing a generic trading rule and a replicable procedure for implementing the rule through a permit may allow trading to occur without a permit revision, provided the permit contains the replicable procedure. This is similar to the way in which permits allow sources to shift among alternate scenarios that were initially provided for in the permit. If States choose to implement trading in this manner, the provisions of the permit allowing the trades must incorporate all of the procedural protections contained in the underlying SIP.

As discussed in the section on operational flexibility, States may also elect to develop SIP's that set forth trading and compliance provisions that sources could use to comply with SIP limits after 7-days notice. The SIP would have to include compliance requirements and procedures for the trade which are sufficiently specific to demonstrate compliance. Such provisions can prove useful to sources in cases where permits do not already provide for emission trades.

*J. New Source Review/Title V Relationship*

Decisions made under the NSR and/or PSD programs [e.g., best available control technology (BACT)] define certain applicable SIP requirements for the title V source. The permitting authority is required to have reasonable procedures and resources to assign priority to action on permits for new construction or modification [503(c)].

Under today's final rule State and local permitting authorities have the option, but not a mandate, to integrate requirements determined during preconstruction review with those required under title V. Such integration would be consistent with the previously stated implementation goals of combining programs and building on existing State programs which typically have already accomplished such integration at the State level. As discussed above, if NSR is integrated with the procedural and compliance-related requirements contained in §§ 70.6, 70.7, and 70.8 (including opportunity for EPA and affected State review), an existing title V permit can be administratively revised to reflect the results of the integrated NSR process.

*K. Small Businesses*

The EPA has given serious consideration in this rulemaking to minimizing any undue impacts on small businesses. Accordingly, except for acid rain sources and municipal waste incinerators, EPA has allowed States to temporarily defer the title V permitting obligation of all nonmajor sources which would have been otherwise subject to title V provisions. This deferral will continue for such categories of nonmajor sources until the Agency has completed a rulemaking to consider whether a permanent exemption, continued deferral, or applicability of the permit program would be appropriate. In addition, States can exempt from review on a permanent basis those nonmajor sources and source categories which are subject to title V solely because they are subject to NSPS for new residential wood heaters and the NESHAP for asbestos demolition and renovation activities.

For those small businesses still required (or opting) to obtain a permit, and for other appropriate source categories, EPA is promoting the use of general permits where possible. A general permit is a single permitting document which can cover a category or class of many similar sources. Public participation and EPA and affected State review must be provided by the permitting authority before issuing a general permit [504(d)], but not when the individual sources subsequently submit requests for coverage and are evaluated for a permit reflecting the terms of the general permit. The permit issuance process for eligible sources can thus be greatly simplified, which substantially reduces the administrative burden on both sources and the permitting authority.

Section 507 requires States to establish a small business stationary source technical and environmental compliance assistance program. The program must be adopted as part of the SIP consistent with sections 110 and 112. The States must submit the proposed program within 2 years after enactment of title V [507(a)]. The State must also establish a Compliance Advisory Panel to monitor implementation of the program [507(e)].

The State or EPA may reduce any fee required under the Act for small business stationary sources [507(f)]. When developing regulations or control technique guidelines (CTG) which require CEMS, EPA must consider the appropriateness of requiring CEMS at such sources. This provision does not apply to CEMS under the acid rain provisions of title IV [507(g)]. The EPA must also consider the size, type, and technical capabilities of such sources and economic feasibility of the regulations when developing a CTG [507(h)].

*L. Relationship With Section 112 (Air Toxics)*

The operating permit program will implement standards issued under section 112 as it existed prior to the Act amendments of 1990, as well as future standards to be promulgated under section 112 as it was revised by the Act amendments of 1990 which describe requirements for the use of maximum achievable control technology (MACT), generally available control technology (GACT), and any technology used to reduce unreasonable residual risk. As noted earlier, a major source under section 112 is defined as any stationary source (or group of stationary sources), located in a contiguous area and under common control, which has the potential to emit 10 tpy or more of any hazardous air pollutant, 25 tpy or more of any combination of these pollutants, or a lesser quantity of a given pollutant if the Administrator so specifies.

The State permit program submittal is required to contain a legal opinion affirming the adequacy of existing legal authority to implement and enforce section 112 provisions. Each title V permit must in part assure compliance

with these provisions as it must with all other applicable requirements of the Act. State law must allow a State to accept delegation of authority to implement and enforce MACT standards; to impose case-by-case determinations of MACT for new, reconstructed, or modified

* * * sources where no applicable emissions limitations have been yet established [112(g)]; and to develop and enforce case-by-case determinations of MACT where EPA fails to issue a standard for a major source category or subcategory within 18 months of the scheduled promulgation date [112(j)]. Section 112(g) of the Act requires the Administrator to "establish reasonable procedures for assuring that the requirements applying to modifications are reflected in the permit." The EPA will establish these requirements in the upcoming section 112(g) rulemaking.

EPA notes that some States may have certain procedural requirements they must satisfy before the State has the ability to impose Federal Clean Air Act requirements in a State-issued permit. Although some States may be able to take delegation of Federal requirements for MACT standards very freely, others may have to go through State rulemaking or other administrative approval processes before having authority to impose Federal requirements in a permit. The EPA encourages States to examine their procedures for implementing current and newly promulgated Federal requirements. In most cases new Federal standards, such as new MACT standards, will be promulgated with sufficient notice and sufficiently long compliance schedules that a State will have time to follow reasonable procedures implementing the standard. As long as the State is able to issue in a timely manner permits that assure compliance with the applicable requirements of the Act, the program is approvable under title V and these regulations. If a State's procedures are such that the State is not able to implement Federal requirements in time to issue complete permits, the EPA must determine whether the State is properly implementing the title V program.

The operating permit program will also be the principal long-term mechanism for implementing alternative emissions limitations for sources under section 112(i)(5) of the Act. This section provides an extension for existing sources to comply with otherwise applicable standards for hazardous air pollutants, provided certain criteria concerning early reductions are met. The Administrator or a State acting pursuant to a title V permit program is required to issue a permit allowing an existing source (for which the owner or operator demonstrates that the source has achieved a reduction of 90 percent or more in emissions of hazardous air pollutants, 95 percent in the case of particulate hazardous pollutants, from the source) to meet an alternative emissions limitation reflecting such reduction in lieu of complying with a standard under section 112(d) within the time period provided in the standard. This extension would apply for a period of 6 years from the compliance date for the otherwise applicable standard, provided that the reduction occurs before the standard is proposed. The one exception is specified in section 112(i)(5)(B) wherein existing sources that prior to proposal make a federally-enforceable commitment to achieve the reductions, can have until January 1, 1994, to achieve the reduction. For permit applications to ensure effective implementation of section 112 without placing sources in undue jeopardy of violating a hazardous air pollutant standard involving early reduction demonstrations according to section 112(i)(5) of the Act, the permitting authority is required to issue the permit within 9 months of receipt of a complete application.

*M. Relationship With NPDES Program*

The proposal solicited comment on whether there should be a presumption for resolving title V implementation issues consistent with relevant experience in the NPDES program. Commenters stated that, although NPDES experience is in many cases useful, the creation of a presumption is not a sufficiently flexible approach given the dissimilarities between the two programs. The EPA recognizes the significant dissimilarities between title V and the NPDES program. While EPA will continue to look to the NPDES program for guidance, EPA agrees with commenters that NPDES precedent should not be presumed binding for purposes of decisions made in the implementation process for the title V program.

*N. Relationship With Title IV (Acid Rain)*

Eventually title IV mandates implementation of an acid rain control program to be carried out through operating permits issued under title V as modified by title IV. Final rule promulgation for regulations to implement the entire acid rain program is required within 18 months after enactment. The acid rain permits regulations are expected to cover a wide range of topics, including:

1. Acid rain specific requirements for permits and compliance plans (emissions limits, deadlines, monitoring);

2. Additions to State part 70 program approval criteria specific to the acid rain program;

3. Requirements for alternative compliance methods (e.g., phase I extensions, reduced utilization, substitution units, energy conservation, phase II repowering, etc.);

4. Compliance certification reporting requirements;

5. Requirements for designated representatives.

In addition, acid rain emissions monitoring requirements, and excess emissions offset planning and penalty requirements, must be specified in the permit.

The general relationship between titles IV and V is governed by three important provisions of the Act. Sections 506(b) and 408(a) state that the requirements of a title V program will apply to the permitting of affected sources under the acid rain program, except as modified by title IV. In addition, as provided in section 403(f), compliance with the acid rain program requirements will not exempt or excuse the owner or operator of any source subject to those requirements from compliance with any other applicable requirements of the Act (e.g., SIP, PSD/NSR, NSPS).

Permits will be issued to affected sources under the acid rain program in two phases. EPA will issue phase I permits in 1993, which will become effective on January 1, 1995. These permits, and all permits issued to acid rain affected sources, will have an effective permit term of 5 years. Regulations describing phase I Federal permit issuance procedures are required to be promulgated within 18 months of enactment. Phase II permits will be issued by States with approved title V programs beginning in 1997. State-issued permits will be issued in accordance with the procedures defined in this part, as supplemented by the future acid rain regulations. Should a State fail to adequately administer the phase II program, EPA will take back the entire permit program. The EPA will then implement the Federal title V regulations for permit issuance, as supplemented by Federal acid rain permit issuance procedures, and will issue permits to acid rain sources within that State.

During phase I, approximately 110 affected sources, having more than 261 individual units, will have to be permitted. The units at these sources will receive marketable allowances for $SO_2$ emissions, as specified in section

404, Table A of the Act. In addition, other units may become subject to phase I under one of several phase I compliance options. Phase I permit applications are to be submitted to the EPA Regional Office by February 15, 1993. Phase I permits will become effective on January 1, 1995. It is likely that many part 70 State programs will be approved after EPA has issued phase I permits.

Under part 70, within 3 years after EPA approval of a state permit program, the State will be required to issue permits covering all applicable requirements of the Act, to all sources in its jurisdiction, including sources subject to the acid rain program. If a State does not have an approved part 70 program by July 1, 1998, EPA is required to issue the first round of phase II $SO_2$ permits by January 1, 1998. If a State receives program approval after July 1, 1998, and EPA determines that the State can satisfactorily review and issue phase II $SO_2$ permits by the end of 1997, EPA may delegate this responsibility to the State. The effective date for phase II $SO_2$ permit requirements will be January 1, 2000. Phase II $NO_x$ applications are due on January 1, 1998. The permitting authority (the State or EPA) will have to reopen the previously-issued phase II $SO_2$ permit before January 1, 2000, to add those limits to the permit.

## IV. Discussion of Regulatory Changes

This portion of the preamble is organized according to the sections of part 70, and discusses the principal regulatory changes made in the final rules in response to public comments. This portion of the preamble focuses on the rationale for these changes.

### *A. Section 70.1—Program Overview*

This section of the regulation introduces certain concepts underlying the regulatory requirements of part 70. These concepts include implementation principles utilized in regulatory development.

Few comments were received on this proposed section; however, several commenters supported EPA's recognition of the implementation principles contained in the proposal and urged that the final regulation be as consistent as possible with them. One commenter suggested that environmental protection occur in conjunction with enhancing the productive capacity of the nation.

The Administrator agrees that enhancement of the nation's productive capacity is an important concept that should be incorporated into the first implementation principle. This is consistent with section 101(b)(1) of the Act which states that among its goals is one to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population. The Administrator expects these principles to guide subsequent implementation of these final regulations as they have governed regulation development.

### *B. Section 70.2—Definitions*

Many definitions of terms in other parts of the Act or EPA regulations are utilized in part 70. In addition, a number of new terms created in conjunction with developing the part 70 regulations are defined in this section. These new definitions include terms necessary to communicate effectively the new regulatory requirements.

Several significant comments were received on how the definitions would be applied in various sections of the regulation. In responding to these commenters, some important changes to key definitions have occurred. Important changes were made to definitions of "applicable requirement" and "regulated pollutant." Several new terms, "section 502(b)(10) changes," "emissions allowable under the permit," "permit program costs," "part 70 program," and "regulated pollutant (for presumptive fee calculation)," were added to the definitions. Separate discussions of those changes are contained in the sections describing the program areas where these definitions are primarily used. In addition, some terms have either been moved from the proposed definitions or added in response to comment for exclusive use in a particular section. These include administrative amendment (§ 70.7), actual emissions. (§ 70.9), and complete application (§ 70.5).

### *C. Section 70.3—Applicability*

#### 1. Five-Year Exemption for Nonmajor Sources

Section 502(a) of the Act provides the Administrator the discretion to exempt one or more source categories (in whole or in part) from the requirement to obtain a permit "if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories." The Act specifies that major sources may not be exempted from these requirements.

The EPA initially proposed, consistent with the authority given in section 502(a), to allow States to exempt all nonmajor sources (other than acid rain affected sources) from the requirement to obtain a permit for 5 years from the date of State program approval. The proposal made the exemption for nonmajor sources in nonattainment areas contingent upon a showing by the permitting authority that title V operating permits were not necessary for the State to assure compliance with the implementation plan obligations applicable to defined sources. The EPA also reserved the ability to determine in future rulemakings whether permitting obligations should be deferred for nonmajor sources which become subject to new section 112 standards.

Section 70.3(b)(1) of the final part 70 regulations retains most of the provisions of the proposal and provides States the option of exempting all nonmajor sources (except for affected sources and solid waste incineration sources) from the requirement to obtain a permit until EPA completes the rulemaking described below on applying the permitting program to non-major sources. As discussed below, EPA will complete this rulemaking within five years of the date it first approves a State program that defers such sources. A State may choose to provide the 5-year temporary deferral to all "nonmajors" or to nonmajors only in selected source categories. The deferral may not be extended to any major source, as this is explicitly prohibited by section 502(a) of the Act. As proposed, the final rule also specifies that no affected source under the acid rain program can be exempted from the requirement to obtain a title V permit, since section 408(a) provides that permits shall be the vehicle for implementation of the acid rain requirements of the Act.

One change in the proposal is that solid waste incineration units that are nonmajor sources can be deferred only until the time they are required to obtain permits under section 129(e) of the Act. States should not be allowed to override the Act's specific schedule for permitting this specific source category.

The EPA finds that without this deferral, compliance with the permitting requirements would be "impracticable, infeasible" and "unnecessarily burdensome on these source categories" within the meaning of section 502(a). Two independent and sufficient reasons support EPA's determination. The first was presented in the preamble to the proposal, i.e., the burden on the permitting authorities and EPA will make permitting all nonmajor sources in the early stages of the program impracticable and infeasible. The second reason, which by itself justifies deferral, is that the requirement for nonmajor sources to obtain a title V permit during the early stages of the

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program would be "unnecessarily burdensome" for these sources. This is because the anticipated burden on permitting authorities and EPA, as described in the preamble to the proposal, would translate into a significant, additional, and unnecessary burden on nonmajor sources if they were required to be permitted.

Nonmajor sources will be disproportionately affected by the administrative difficulties faced by the permitting authorities. The great majority of nonmajor sources are small businesses, and many are not currently subject to State air permit programs. Nonmajor sources will require more assistance from permitting authorities and EPA because of the relative lack of technical and legal expertise, resources, as well as inexperience in dealing with environmental regulation that characterizes most small businesses. If permitting authorities become overburdened due to a backlog of thousands of permits to be processed, nonmajor sources will be unable to obtain additional technical and procedural assistance from permitting authorities. Although the small business technical assistance program should help these sources, the small business program staff will also be assisting small businesses that are major sources and will face the same problems as permitting staff.

Difficulty in obtaining assistance will unnecessarily burden nonmajor sources in various ways. For example, difficulty in obtaining assistance from permitting authorities could make it problematic, if not impossible, for some nonmajor sources to submit a timely and complete application. If they fail to submit a timely and complete application, they would lose the "application shield," thereby forcing them to close or run the risk of operating without a permit in violation of the Act. Nonmajor sources' inexperience with permitting and their relative lack of technical and legal resources also make it more likely that such sources will require more permit revisions soon after permit issuance. If permitting authorities are overburdened, it will be difficult for nonmajors to obtain permit revisions early in the process. This will prevent them from promptly making what they believe are necessary changes.

The EPA notes that some nonmajor sources would already be permitted at the State level, and therefore would have some experience with the permitting process and completing permit applications. A State need not extend the deferral to these sources. However, even these sources will have to deal with the increased burdens flowing from the requirements of other titles of the Act. The EPA also notes that an alternative to deferral under section 502(a) exists in the form of general permits. However, even for source categories well-suited to general permits there will likely be some burden in complying with these requirements.

As stated above, EPA expects that the great majority of nonmajor sources will be small businesses. Some nonmajor sources will in fact be either adjuncts to large corporations possessing significant technical and legal expertise, or will have independently acquired such resources and expertise. It is therefore likely that there will be certain nonmajor sources for which the requirements of the part 70 program may not be unnecessarily burdensome.

While the permitting requirements will be significantly less burdensome for these sources, EPA has determined that it is not feasible to subject these sources to different treatment for purposes of this deferral. This is primarily because the class of sophisticated nonmajor sources described above bears little or no relation to the delineation of source "categories" as that term is used in section 502(a). Rather, EPA believes that these sources typically represent a small percentage of each of the various categories of nonmajor sources. Given the anticipated lack of resources discussed above, it is not reasonable to expect permitting authorities to sift through the large number of nonmajor sources and select those for which the permit program requirements will not be unnecessarily burdensome. Indeed, the requirement to conduct such a survey would to a great extent undercut the benefits intended by this deferral, and would not be justified by the minor gains in emission controls resulting from the permitting of these few nonmajor sources.

As already mentioned, States are free to apply the deferral only to certain categories of nonmajor sources. The part 70 regulations therefore do not prevent a State from drawing distinctions based upon which nonmajor sources have the resources and expertise necessary to comply with the permit program.

Compelling States to permit nonmajor sources during the early stages of the title V permitting program is not only extremely burdensome for these sources, it is unnecessarily so. Requiring nonmajor sources to be permitted at the beginning of the program would not provide major benefits to air quality and might actually hinder implementation of the Act. The temporary exemption for nonmajor sources poses few risks to progress in improving air quality. By definition, these sources emit less than major sources and are less significant contributors to air quality problems. Furthermore, deferring permitting requirements does not defer a source's obligation to comply with the underlying substantive air pollution control requirements. Nonmajor sources may be subject to NSPA or existing NESHAP regulations that in general already contain many of the same monitoring, recordkeeping, and reporting requirements that would apply to major sources.

Requiring nonmajors to obtain permits at the start of a permitting program could hinder implementation of the Act. It would stress the system by greatly increasing the number of permits required to be processed. This additional stress would make it more likely that errors would occur in permitting major sources, which could adversely affect air quality. Concentrating State permitting resources on major sources during the first phase of the program will make more efficient use of those resources.

Furthermore, deferring permitting requirements for nonmajor sources temporarily does not just delay the permitting burden on these sources, it will significantly decrease the burden. Once the programs have been operating for several years and the initial wave of permitting is completed, permitting staff will have the time and experience necessary to assist nonmajor sources which become subject to the permitting process.

Thus, the temporary exemption of minor sources furthers important policy goals. The failure to defer nonmajors would greatly increase the burden on those sources, would probably not provide significant environmental benefits, would stress the permitting system at its most vulnerable time, and might actually hinder achievement of air quality gains. Deferring the applicability of title V requirements to nonmajor sources temporarily might even have a net air quality benefit to the extent it facilitates bringing more major sources into compliance earlier.

The EPA believes that the preceding analysis of the burden on nonmajor sources is ample justification for the exemption under section 502(a) being implemented here. This is particularly so in light of the principle expressed in the *Alabama Power* decision that a deferral of the applicability of Act provisions requires far less justification than an outright exemption [636 F.2d at 360, n. 86].

The burdens of the permitting program identified above, including the lack of adequate resources and technical and legal expertise on the part of sources, as well as the potential difficulty in obtaining technical and legal assistance from permitting authorities, are likely to continue for some significant number of nonmajor sources beyond the early stages of the program. Accordingly, EPA believes it would be unduly burdensome, and in some cases onerous, to subject all such sources to the full panoply of procedural and substantive requirements embodied in the permit rules being promulgated today. Although the Agency anticipates that many nonmajor sources will qualify for general permits and thereby avoid the greater burdens associated with obtaining specific permits, EPA also believes it likely that a certain number of categories of nonmajor sources should be permanently exempted from the permit program. For others, a continuation of the deferral of program applicability may well be appropriate. This is so despite the support that will be offered through the Small Business Technical Assistance Program established under section 507. While that program will be beneficial to nonmajor sources, the extraordinary number of nonmajor sources that could conceivably enter the permit system at the expiration of the 5-year period, as many as 350,000 sources, could overwhelm the capacities of the State technical assistance programs.

To address these serious concerns, EPA will, within 3 years of the first approval of a full or partial State permit program that defers nonmajor sources, initiate rulemaking to determine whether to grant a further deferral from the permit program to all or some specific categories of nonmajor sources. In addition, the rulemaking will consider whether to grant permanent exemptions to any source categories for which there is a sufficient record to support such an exemption. As part of this rulemaking, EPA, in conjunction with affected sources, will gather information which will enable the Agency to make exemption or deferral determinations as appropriate. Moreover, the rulemaking will consider whether the permitting program should be structured more effectively for nonmajor sources that may be brought into the program at that time. The Agency believes that after several years of experience with the title V program, both EPA and the States will be in a better position to determine whether the program may be structured more effectively for the large number of small sources that may be covered by the program. The EPA will propose such a rule no later than 4 years following approval of the first full or partial State permit program with a deferral, and promulgate the rule prior to EPA's first approval of a State program that defers such sources.

2. Nonattainment Area Demonstration Requirement for 5-Year Exemption

As mentioned above, the proposal made the 5-year deferral for nonmajor sources in nonattainment areas contingent upon a showing by the permitting authority that the State could effectively enforce its SIP obligations on such sources without using federally-enforceable operating permits. State representatives opposed having to make a demonstration for deferring nonmajor sources in nonattainment areas.

The final rules do not include this requirement because such a showing is not required by the Act. Section 502(a) of the Act makes no distinction regarding treatment of exemptions in attainment areas versus nonattainment areas. The EPA also determined that the proposed provision was impractical and unnecessary. It would have demanded a significant amount of resources from State agencies at a critical period in program development. States said that it would have taken almost as much effort to make the demonstration as it would to permit the nonmajor sources. The purpose of allowing States to defer permitting obligations for nonmajor sources would have been dramatically undercut if a special showing were required for nonattainment areas.

3. Permanently Exempted Source Categories

The proposed rules solicited comment on individual source categories recommended for permanent exemptions. While several industry commenters supported the exemption of source categories from title V permitting, there was no consensus among these commenters concerning which particular sources should be exempted. The most frequently suggested source categories for exemption included wood stoves and asbestos demolition/renovation sites.

The EPA today is exempting two source categories: All sources subject to regulation under the demolition and renovation provisions of the NESHAP for asbestos (40 CFR part 61, subpart M, § 61.145); and all residential wood heaters subject to regulation under the NSPS (40 CFR part 60, subpart AAA). As with the 5-year deferral for nonmajor sources, there are two reasons for exempting asbestos demolition and renovation operations and residential wood heaters. Each reason provides an independent justification for the exemptions. First, as described in more detail below, permitting such sources would be impracticable and infeasible for permitting authorities. Second, permitting such sources poses an unnecessary burden for these sources. Additionally, exempting these source categories furthers an important goal of the Agency's implementation of the Act: It minimizes disruption of many existing State programs. Several State permitting programs already exempt both categories from their own permitting programs. The EPA has typically deferred the responsibility for addressing situations involving the regulation of residential sources to State and local agencies. In addition, requiring permits from both of these source categories would involve the practical problem of determining who would be permitted. Would EPA require permits from each individual demolition operation or wood heater owner, or from demolition/renovation contractors and wood heater manufacturers? Either way presents numerous practical problems. Additional support for exempting these specific source categories is provided below.

(a) Asbestos demolition and renovation operations. Many owners and operators of asbestos demolition and renovation operations may have "ownership" of such a source only briefly. It would be difficult and burdensome for individual owners and operators to obtain permits for one-time demolition and renovation operations with which they are associated. Conversely, other owners or contractors may be associated with many temporary operations during the term of any permit, and this scenario would involve the difficulties related to permitting temporary sources. Permitting asbestos demolition and renovation operations would also be difficult because these activities often commence at a particular site after relatively short notice. Waiting for a title V permit to undergo the entire permit issuance process could cause serious disruptions for owners and operators.

The burden imposed by requiring permits for asbestos demolition and renovation sources is unnecessary because it would provide few additional environmental or enforcement benefits. The EPA and delegated States under the NESHAP receive advance notice of all regulated demolition or renovation operations. Enforcement personnel are able to target and prioritize inspection resources and monitor compliance with NESHAP work practice standards. The EPA and the States also receive waste

disposal documentation verifying proper disposal at EPA-approved disposal sites. Because of the temporary nature of these sources, permits issued to them would likely only require compliance with the NESHAP work practice standards because additional reporting or recordkeeping requirements would be unnecessary. No monitoring in the traditional sense would be required because the asbestos NESHAP is a work practice standard, not an emissions limitation.

(b) New residential wood heaters. The EPA finds that a permanent exemption for new residential wood heaters subject to the NSPS is appropriate because of the burden that federal permitting would place on homeowners, distributors, manufacturers and permitting authorities alike. First, requiring permits from all subject residential wood heaters (likely numbering in the hundreds of thousands) in attainment and nonattainment areas across the country would require a significant allocation of resources from both homeowners and permitting authorities to achieve relatively minimal air quality benefits in some areas. Because the problems associated with particulate matter and hazardous air pollutant emissions from wood heaters tend to be very localized in nature, the EPA believes that a requirement to obtain a permit for owners of residential wood heaters subject to the NSPS is unnecessary in some areas and should remain in the discretion of State and local agencies. Some local agencies in nonattainment areas have already successfully employed permitting programs for these sources as part of their attainment strategies.

Second, if homeowners were required to obtain a title V permit, they would likely be required to provide verification that they were in compliance with certain installation and/or fuel quality requirements. This might involve expensive inspections or laborious recordkeeping. It would be unnecessarily burdensome for private citizens to comply with such requirements. The frequent transfers of residential ownership could also complicate compliance efforts. If wood heater manufacturers or distributors were the permittees, there would be no practical way for wood heater performance in residential locations to be monitored. Third, the permitting of new residential wood heaters by permitting authorities could prove to be extremely resource intensive. The large number of permittees affected would likely experience problems in obtaining technical assistance from the permitting authority, which would make obtaining a permit more burdensome for homeowners. Effectively determining the number and location of all wood heaters in a given jurisdiction would be a complicated task. There are hundreds of thousands of such sources throughout the country. Many State and local agencies in areas where wood stoves are a significant concern have already developed non-regulatory public information, outreach, and voluntary control programs. Adding the additional burden of permitting these numerous sources would likely not be an efficient use of agency resources.

4. Definition of "Regulated Air Pollutant"

The proposal defined "regulated pollutant" to mean substances for which a standard has been promulgated under the Act. The term regulated pollutant was used in the proposed regulation in describing what information is required in permit applications and permits. This caused confusion because the Act defines the term "regulated pollutant" differently and uses it specifically for calculating fees. To avoid this confusion, the final part 70 regulations use the term "regulated air pollutant" to describe the information required for permit applications and permits, and the term "regulated pollutant (for presumptive fee calculation)" for use in calculating fees.

The term "regulated air pollution," as now defined, accurately reflects all pollutants subject to a standard, regulation, or requirement. This term is used specifically in the regulations to describe what information is required in a permit application and in a permit. As now applied in the regulations, the revised definition will ensure that the permitting authority receives complete information on all pollutants which are "regulated" under the Act and emitted by a source. By having this information, the permitting authority can properly determine which requirements under the Act apply to the source, and include these requirements in the permit. Only by including all requirements applicable to a source in the permit can a permitting authority ensure that the permit assures compliance with the Act.

Several changes were made to the definition of "regulated air pollutant" (which was "regulated pollutant" in the proposal). First, substances regulated under title VI of the Act (protection of stratospheric ozone) were added to the list of regulated pollutants. As a general rule, regulatory requirements under the stratospheric ozone program should be included in a source's permit. However, because of the nature of some title VI regulations, the Administrator may determine by future regulation that some CFC regulations need not be in an operating permit. For example, the Administrator may decide that a title V permit need not contain production limits that apply on a company-wide, rather than facility-specific, basis.

Second, the final part 70 regulations clarify when a substance regulated under section 112 becomes a "regulated air pollutant." The term "regulated air pollutant" includes any pollutant subject to a standard or other requirements under section 112 of the Act, including section 112(r) of the Act. As applied to an individual source only, the definition includes any pollutant for which a case-by-case MACT determination is made under section 112(g)(2) of the Act, which requires such a determination to be made specifically in response to a modification or new construction by the source. This type of MACT determination, which is to be made by the permitting authority if EPA has not established any applicable emissions limitation previously, will apply only to the individual source for which it was developed. Because the requirement to make such a MACT determination is triggered by action by a single source, EPA believes that such a determination should not require the substance to be treated as a regulated pollutant for the entire regulated community at the time the determination is developed for a single source.

5. Definition of Major Stationary Source

Evaluation of the requirements of the Act with respect to the outer continental shelf (OCS) program has prompted the Agency to delete the reference to vessels in the definition of major stationary source. Specifically, section 328(a)(4)(C)(iii) requires that emissions from vessels servicing or associated with the OCS source be considered direct emissions from the source. The promulgated definition will allow permitting of these sources consistent with the requirements of the OCS program.

Commenters also raised concerns about flexibility of research and development (R&D) operations. Although EPA is not exempting R&D operations from title V requirements at this time, in many cases States will have the flexibility to treat an R&D facility as separate from the manufacturing facility with which it is co-located. Under such an approach, the facility would be treated as though it were a separate source, and would then be required to have a title V permit only if the R&D facility itself would be a major source.

*D. Section 70.4—State Program Submittals and Transition*

1. Approval of Program Elements

Many State and industry commenters strongly supported various existing State programs and suggested that these programs should be approved with minimal change; one of these commenters suggested that EPA should be responsible for identifying what would have to be changed in the submitted program for the State program to be approved. Several commenters further suggested that EPA allow "equivalent" programs where they achieve the same results as the title V program.

The EPA has no leeway to accept current programs other than to judge them against he criteria for program content specified in section 502(b). However, in promulgating these regulations, the Administrator has provided for as much flexibility as possible in approving State programs in an effort not to disrupt them unduly. The provisions in section 502(g), however, provide for interim approval of programs for a period of up to 2 years if the program "substantially meets" the program content criteria in 502(b). The criteria for determining if a program substantially meets title V and is eligible for interim approval was proposed in § 70.4(d) and public comment was considered in establishing the final criteria.

Furthermore, EPA wishes to note that, consistent with its implementation goals for title V, it will attempt to be flexible in determining whether a State program meets the required minimum elements. This will be particularly true where the State has an established track record in implementing an air operating permit program.

In some cases, certain provisions within the final rules directly provide flexibility to States in meeting the minimal program requirements. For example, § 70.4(b)(13) requires in part for State program approval "provisions for adequate, streamlined, and reasonable procedures for expeditious review of permit revisions, including permit modifications." This section states further that the State may meet this obligation by "using procedures that meet the requirements of § 70.7(e) of this part or that are *substantially equivalent*." (Emphasis added.) Here, EPA has provided a model for the State to follow and will approve different but effective State approaches which accomplish the same statutory and regulatory objectives. At the same time, however, the Administrator will ensure that State programs meet the requirements of section 502(b).

2. Underlying Regulations

The proposed § 70.4(b)(2) required that the State include in the program submittal the regulations that comprise the program and evidence of their correct adoption, including the notice of public comment and significant comments received by the State. States commented that this type of evidence may no longer be accessible. One State commented that it is unreasonable to require evidence that existing regulations, some of which were adopted 20 years ago, were correctly adopted and that, for new regulations, States should only need to make a demonstration that the general adoption process was procedurally correct, with a statement from the Attorney General that the regulations followed proper procedures.

The Administrator agrees with the concern that proper regulatory adoption evidence may be unavailable. Section 70.4(b)(2) in the final regulations leaves it up to the State to provide the evidence of proper adoption that is available. Added to the final regulations is the requirement also to submit any regulations or statutes that could restrict the effective implementation of the permit program. The EPA needs to see any such regulations, and needs the Attorney General's opinion as to their validity, to be able to judge if any regulatory changes need to be made before full approval of a program submittal is warranted.

3. Opportunity for Judicial Review

Section 502(b)(6) of the Act requires that a part 70 program provide "an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law." This requirement for State program approval was reflected in § 70.4(b)(3)(x) of the proposal.

The final rule clarifies that the State must allow the denial, as well as the issuance, of a permit to be challenged in State court. The final regulation provides that the source and the public have the right to bring an action if the permitting authority fails to issue or deny the permit in the time required by the State program, as required by section 502(b)(7). If a State fails to act on initial permit applications, EPA may impose sanctions or withdraw program approval.

The final regulation also was modified to accommodate changes in permit modification procedures under § 70.7(e) of this part. A provision was added requiring States to allow judicial review if the permitting authority fails to act on a permit modification application and the source has already made the requested change. In that case, an action could be brought against the permitting authority for failure to act (seeking a court order requiring the permitting authority to act finally on the application).

No time limits on challenging a permit in State court were included in the proposal, but comments were solicited on the need for such limitation. No adverse comments were received and some commenters indicated permitted sources need assurance of stable permit conditions after a reasonable time for challenge has passed. Two industry commenters suggested that any permit challenge limitations that EPA establishes should include provisions allowing challenges to the permit after the time for the challenge has lapsed. Such provisions are especially important, they argued, as new grounds may arise after the period for challenge has lapsed, and as the government's interpretation of a permit may not be known until an enforcement action is commenced.

An additional provision addressing the opportunity for judicial review has been added to the final regulations. Section 70.4(b)(3) requires that this opportunity for State court review of the final permit action must be the exclusive means for obtaining judicial review of the permit, and that all such petitions for judicial review must be filed no later than 90 days after final permit action, or such shorter time as the State requires. If new grounds for challenge arise after the 90-day review period has ended, the party may challenge the permit on such new grounds within 90 days after the new grounds arise. Such new grounds must be based on new information which was not available during the review period. New grounds specifically do not include a government interpretation of a permit of which the source claims in an enforcement action to have been unaware. After this period for review no permit may be challenged in court, including any State or Federal enforcement action. Section 307 clearly establishes this rule for circumstances in which EPA is the permitting authority. Any dispute over interpretations of a permit may be resolved in an enforcement action, if any.

One of the primary goals behind title V is to have greater certainty for sources and State and Federal enforcement personnel as to what requirements

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under the Act apply to a particular source. In order to achieve that certainly, the terms of the permit cannot be subject to challenge in enforcement actions. Limiting judicial review of permits has advantages for the permittee, the permitting authority and EPA. The advantage for permittees is the added certainty and stability gained by their permit no longer being subject to challenge. Enforcement at the State and Federal level should also benefit significantly. Currently, many enforcement actions are hindered by disputes over which Act requirements apply. Under the permit system, these disputes will no longer arise because any differences among the State, EPA, the permittee, and interested members of the public as to which of the Act's requirements apply to the particular source will be resolved during the permit issuance and subsequent review process.

In the preamble of the May 10, 1991, proposal, EPA suggested that, to ensure national consistency in the acid rain program, it might be appropriate to require that challenges to acid rain requirements in part 70 permits be reviewed only in Federal courts. The EPA wishes to clarify that it did not mean that action on the State-issued permit itself is subject to judicial review in Federal court. As is more fully explained in the preamble to the recently-proposed acid rain regulations, only certain specific decisions of the Administrator that are incorporated into part 70 permits will be reviewed in Federal court. Final action on the permit itself will be subject to review in State court, as is provided for in section 502(b)(6).

4. "Act On" Permits

Section 503(c) establishes the requirement that sources submit permit applications within 1 year of the date they become subject to the permit program, and that the permitting authority issue or deny permits within 18 months of the application submittal. Initially, the date that sources become subject to the program is upon program approval. The language in section 503(c) goes on to establish an exception to this schedule by allowing the permitting authority to develop a 3-year phased schedule for "acting on" the first set of permit applications submitted within 1 year of program approval. Section 503(c) requires such phased schedule to provide that at least one third of the permits be "action on" annually in each of the 3 years.

One State proposed that the requirement for a permitting authority to "act on" a permit [as discussed in the transition plan requirement in § 70.4(b)(11)] should mean "begin review" of, rather than issue or deny the permit. The EPA believes that the requirement of section 503(c) that at least one third of the applications submitted within the first year of a program be "acted on" annually after the effective program date must be read to mean that final action will be taken on those applications within the specified timeframe.

5. Operational Flexibility

(a) Proposal and Comments. The proposed regulations implementing section 502(b)(10) appeared in § 70.6(d) in the proposal, but now are found at § 70.4(b)(12). Industry comments generally approved EPA's regulatory proposal implementing section 502(b)(10), and supported the measures as necessary to allow American industry to remain competitive and adjust to changing market conditions. Some, however, wanted the final rules to provide more flexibility.

Environmental groups and a number of States strongly criticized the proposal's operational flexibility provisions. These critics maintained that the statute allows sources to shift among different operating scenarios (with different emissions) only if the various scenarios are set forth in the permit. Otherwise, they claimed, the source must obtain a permit revision before making the change at the facility. These critics stated that the extension of the permit shield to changes made pursuant to § 70.6(d) made matters even worse, because any changes made under the 7-day notice would receive no review from the permitting authority, EPA, or the public.

A number of State and local air pollution control agencies also strongly criticized EPA's view stated in the proposal that emissions or other practices not prohibited by a permit are allowed. They argued that this concept runs counter to the way State and local air permitting programs are run, and is far too open-ended. One permitting authority commented that allowing such "off-permit" activities would make it impossible to use a title V operating permit program as the basis for a market-based compliance system, because the permits would no longer necessarily reflect the total emissions from any facility. Several States have commented that mandating this interpretation as a program element would require such a fundamental restructuring of their existing operating permit programs that the State would not be able to adapt the State program to title V. Some also stated that this view is at odds with section 502(b)(10) of the Act.

(b) Structure of the general provisions. As a result of public comments and the Agency's further consideration of this controversial provision, EPA has changed the regulatory provisions implementing section 502(b)(10) in several ways. The regulations have been moved from § 70.6(d) (on permit content) to § 70.4(b)(12) (in the section on permit programs) because the requirement is one for the program itself.

Despite the views of some commenters to the contrary, EPA believes that the Act requires a State to meet the requirements of section 502(b)(10) in order for the Agency to approve the title V permit program. Section 502(b) states that "the minimum elements of a permit program * * * shall include each of the following." For reasons that will be fully set out in the detailed response to comments document, neither sections 506(a) nor 116 allow States to avoid this program element. As a result, the final regulation includes program elements for operational flexibility which the State is mandated to provide in its title V program.

The EPA has, however, reconsidered the question of exactly what this statutory provision contemplates. There was serious disagreement among the commenters concerning whether section 502(b)(10) allows sources to operate in ways that are not specifically addressed in the permit without obtaining a permit revision (as long as the changes meet the specifications stated in the provision), or whether it merely states that, if the various operating scenarios or provisions for increasing and decreasing emissions at various emitting units are stated in the permit, the source may shift among these operations or units without obtaining a permit revision. After careful analysis of the statute and legislative history, EPA concludes that the statutory language gives EPA broad authority to provide source operational flexibility. The EPA has structured its final regulation to give the States flexibility in meeting their requirements under section 502(b)(10), while ensuring that programs must provide operational flexibility consistent with title V and the underlying applicable requirements it implements.

In brief, the final regulation identifies three ways to provide operational flexibility:

(i) Programs must allow certain narrowly defined changes within a permitted facility that contravene specific permit terms without requiring a permit revision, as long as the source does not exceed the emissions allowable under the permit.

(ii) The permit program may allow emissions trading at the facility to meet SIP limits where the SIP provides for such trading on 7-days' notice in cases where trading is not already provided for in the permit; and

(iii) The permit program must provide for emissions trading for the purposes of complying with a federally-enforceable emissions cap established in the permit independent of or more strict than otherwise applicable requirements.

The first and third ways of implementing operational flexibility are mandatory on the States; the second is available to States that wish to take advantage of it.

As noted above, a number of State and environmentalist commenters argued that section 502(b)(10) only allows operational changes without a permit revision if the flexibility is built into the permit itself (i.e., various operating scenarios or rules for allowing trading of emissions among different units are expressly set forth in the permit).

The EPA does not believe, however, that section 502(b)(10) is only a mandate to include alternate permitted scenarios in the permit. If a permit includes compliance terms for alternate operating scenarios, a source is simply complying with the terms of its permit when it operates under one or another scenario. If limited to this narrow reading, section 502(b)(10) would be rendered mere surplusage or an unnecessary gloss on a source's obligation under section 502(a) to comply with its permit.

On the other hand, EPA also disagrees with commenters who asserted that section 502(b)(10) authorizes sources to give a 7-day advance notice and then meet their permit limits using an average of all emissions across the "permitted facility," regardless of whether such averaging would be consistent with the underlying requirements of the Act. Nothing in title V or the Act allows permitted sources to violate applicable requirements. If a SIP emission limit applies to each emissions unit at a facility, a title V permit cannot authorize any one unit to violate that emission limit, even if the average emissions across the facility are equal to the emissions that are allowed at the facility under the SIP. As a policy matter, emissions averaging provisions are often complicated to implement and require careful review to ensure that the trading plan allows the same emissions as the otherwise applicable requirements. The EPA believes that a 7-day notice is not a reasonable amount of time to conduct such a review.

The EPA agrees, however, that one policy goal of the Act is to encourage responsible emissions trading plans and to reduce the costs of meeting the Act's requirements. The EPA's regulations implementing section 502(b)(10) are designed to encourage emissions trading as extensively as possible consistent with the requirement that title V permits comply with the applicable requirements of the Act and the need to ensure a reasonable review of the emissions trading provisions established in a permitting process.

Before discussing each of these three elements of EPA's final regulation on operational flexibility, there are provisions in the regulation that are applicable to any method for implementing operational flexibility. The regulations provide that the source must give at least a 7-day advance notice of any change made pursuant to the section 502(b)(10) process. The source, the permitting authority, and EPA must attach a copy of a 7-day advance notice describing the change to their copy of the relevant permit. These notices will be critical for determining how a source is complying with applicable requirements at any time, and therefore must accompany a permit.

Further, no change under this provision can exceed "emissions allowable under the permit." The EPA has defined this term to mean a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emission limit (including work practice standards) or a federally-enforceable emissions cap that the source has assumed to avoid applicable requirements. This definition clarifies that changes under this provision cannot increase emissions beyond what is provided for by the terms and conditions of the permit.

Nothing in this section is meant to imply any limit on the inherent flexibility sources have under their permits. A permittee can always make changes, including physical and production changes, that are not constrained under the permit. For example, a facility could physically move equipment without providing notice or obtaining a permit modification if the move does not change or affect applicable requirements or federally-enforceable permit terms or conditions. Or a painting facility with a permit that limits the VOC content of its paints can switch paint colors freely as long as each color complies with the VOC limit in the permit.

(c) Changes contravening certain permit terms or conditions, § 70.4(b)(12)(i). As noted above, a federal operating permit is not meant to prevent a source from making changes at the facility that are not constrained by the permit. Accordingly, the Act does not require 7-day notice for such changes under 502(b)(10). The agency believes that the term "changes" in 502(b)(10) is meant to apply to changes at the facility that may contravene the permit. Therefore, the first method for implementing operational flexibility requires each program to allow certain changes at a permitted facility that may contravene specific permit terms or conditions or make them inapplicable. The types of changes that are allowed are limited as discussed below. The program must provide that an owner or operator of a source could give a 7-day notice that it is making a change at the facility. The notice would, among other things, describe the change and identify any permit terms or conditions that would no longer be applicable as a result of the change. If that notice and the change qualify under this provision, the facility owner or operator would not have to comply with the permit terms and conditions it has identified that restrict the change. If it is later proven that the change does not qualify under this provision, the original terms of the permit remain fully enforceable.

Under the regulations, programs must allow "section 502(b)(10) changes" without requiring a permit modification. The regulations define "section 502(b)(10) changes" as those that contravene a permit term, but exclude from this definition any changes that violate applicable requirements or contravene permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements. This definition is designed to prevent changes to permit terms that are critical to determining the "emissions allowable under the permit."

An example of how this provision would operate would be a permit in which the federally-enforceable portion specifies a particular brand of coating, along with the emission limit applicable to that coating. This provision would allow the source to change that brand of coating using a 7-day notice. Of course, the new brand must comply with the emission limit.

(d) Emissions trading based on the SIP, § 70.4(b)(12)(ii). The second method for implementing operational flexibility would allow a source to trade emissions within the permitted facility to meet its SIP limits, where the permit does not already provide for such emissions trading but the SIP does. The SIP will identify which provisions allow this type

of operational flexibility. This method would allow a source which had not anticipated needing to trade emissions within the facility to take advantage of emissions trading provisions in the SIP after a 7-day notice without having to modify its permit to include new compliance provisions to enforce the emissions trade. Each permit for a source eligible for such emissions trading would include the applicable SIP emission limits. Upon giving the notice under 502(b)(10), the source could then meet the SIP limits using the applicable trading and compliance provisions approved into the applicable implementation plan. The notice accompanying the permit will then indicate that the source is complying with the implementation plan's trading provisions, rather than the compliance terms set forth in the permit. This mechanism should prove useful to those facilities where emissions trading might provide useful operational flexibility, but the source has not anticipated the need to trade emissions or is not sure enough about its need to warrant writing compliance provisions necessary to implement an emissions trading plan in its permit.

The EPA is not aware of any SIP's that are currently structured to allow sources to opt into an emissions trade based on a 7-day notice, EPA will encourage the States to develop such provisions as part of its efforts to promote market-based regulation under the Act. EPA has already begun to examine the relationship between SIP's and operating permits to identify opportunities for more flexible implementation of the requirements of title I of the Act. To aid the States in implementing this method of operational flexibility EPA will propose, within one year following this rulemaking, guidance for comment on how States may revise their implementation plans to meet these goals. EPA will issue the final guidance within two years.

Any such SIP would have to include compliance requirements and procedures for such trades. As outlined below, these procedures must assure that any such trade is quantifiable, accountable, enforceable, and based on replicable procedures for ensuring the emission reductions that the trading program was intended to provide, including necessary test methods, monitoring, recordkeeping, and reporting. These trading provisions must be specific enough so that any source authorized to use them has a clear method for demonstrating compliance without undergoing a permit revision, but must also be flexible.

*Quantifiable:* EPA and the State must be able to determine the emissions impact of the SIP requirement or emission limit. SIP's must specify measuring techniques, including test methods, monitoring, recordkeeping and reporting requirements with which to measure the emissions allowed under the trading program and for a compliance determination.

*Enforceable:* A SIP measure must include clear and unambiguous requirements which apply to the source pursuant to legal authority that States, EPA, and citizens may enforce under the Act. An emission limit must also be enforceable in practice; a regulatory limit is not enforceable if, for example, it is impractical to determine compliance with the published limit.

*Accountable:* The demonstration of reasonable further progress, attainment, or maintenance for the SIP must account for the aggregate effect of the emissions trades allowed under any such program.

*Replicable:* SIP procedures for applying the emission trading rules to specific sources should be structured so that two independent entities applying the procedures would obtain the same result when determining compliance with the emission trading provisions. For a SIP trading provision to produce replicable results, the SIP must clearly specify all the variables necessary for determining the baseline emissions for each source, and increases and decreases from that baseline.

The permit shield would not apply to any emissions trades made under the SIP pursuant to a 7-day notice, because the relevant compliance terms and trading provisions would be contained in the SIP, not in the permit. The regulations allow a source to implement non-operational changes, such as changes in monitoring, under this provision. If the emissions trading provisions in the SIP contain compliance provisions for the trading different from the compliance provisions already in the source's permit, the source must comply with the compliance provisions in the SIP rather than those in the permit. To the extent the source chooses to operate under its original permit terms rather than the SIP provision, the source must comply with the compliance provisions in its permit.

(e) Emissions trading under emissions caps, § 70.4(b)(12)(iii). The third method for implementing operational flexibility requires the permitting authority to provide for emissions trading in the permit for the purposes of complying with certain emissions caps. Where the permit establishes a federally enforceable emissions cap that is independent of the applicable requirements, the source may request such emissions trading. For example, to limit the source's potential to emit, a permittee may agree to an emissions cap in its permit that is lower than anything required under the SIP or other applicable requirements. If the permittee requests it, and proposes replicable procedures adequate to ensure that the emissions trades are enforceable, accountable, and quantifiable under the permit cap, the permitting authority shall include the emissions trading procedures in the permit. The source could then engage in emissions trading following a 7-day notice based on those procedures. Of course, the permit must also include the limitations with which each emissions unit must comply under any applicable requirements and must continue to ensure compliance with all applicable requirements, including the SIP.

If a unit is subject to requirements where the emissions impacts are not readily quantifiable, there is no requirement for the permitting authority to include such units in an emissions trading plan. For example, units subject solely to work practice standards with no quantifiable emissions limit are not likely candidates for such emissions trading plans. Of course, a source may agree to certain federally-enforceable terms or conditions to avoid any otherwise applicable requirement, even though trading under such permit terms or conditions may not be appropriate.

(f) Emission caps and emission allowances. EPA has received comments from several parties expressing concern about how to make changes in permit limits that are more strict than or below the level required in the Act's underlying applicable requirements. The commenters raise two scenarios. One is where the permitting authority sets an emissions limit or cap on an emission unit as a matter of State law. The other is where the source has agreed to make the lower limit or cap federally enforceable to reduce the source's potential to emit as a matter of Federal law.

In the first scenario, EPA wishes to clarify that these regulations do not require a State to use title V procedures to modify emission limits that are based solely on State law and do not implement an applicable Federal requirement. A State is free to establish its own procedures for modifying any such State limits which may be referred to in a title V permit. As explained below, pursuant to § 70.6(b), all permit terms which are not federally

enforceable must be identified as such in the permit.

In the second scenario, it is possible to use the combination of several provisions in these regulations to allow for operational flexibility around federally-enforceable emission limits or caps which are more strict than otherwise required by the Act's applicable requirements. A source may request that the permit provide for emissions trading under § 70.4(b)(12)(iii), as discussed above. For example, a source could structure its permit so that the emissions caps at the permitted facility created a pool of unused emissions under the voluntary limit on the source's potential to emit. The facility could then establish an emissions trading plan in its permit which would allow it to apply those unused emissions at any particular emission unit after a 7-day notice. The permit would contain the compliance provisions necessary to account for the application of emission allowances from this pool.

Obviously, the source may use this pool of emissions allowances to increase its emissions on any unit only as high as allowed by the applicable requirements for that emissions unit, if any. In addition, the source's total emissions must remain below any voluntary limit on its potential to emit. But within those limits, the source could cap its potential to emit, while maintaining the flexibility to shift emissions on short notice.

(g) Batch processors and operational flexibility. Batch processors, such as pharmaceutical or specialty chemical producers, raised particular concerns about operational flexibility under title V. Commenters also raised concerns about flexibility of research and development (R&D) operations. Although EPA is not exempting R&D operations from title V requirements at this time, in many cases States will have the flexibility to treat an R&D facility as separate from the manufacturing facility with which it is co-located. Under such an approach, the facility would be treated as though it were a separate source, and would then be required to have a title V permit only if the R&D facility itself would be a major source. In response, EPA has provided many opportunities for operational flexibility in these regulations, even beyond the requirements of 502(b)(1). More important, sources can always make changes that are not constrained under the permit. For example, as mentioned above, a facility could physically move equipment without providing notice or obtaining a permit modification if the move does not change or affect applicable requirements or federally-enforceable permit terms or conditions. In addition, the permittee and the permitting authority may craft permits to establish worst-case operational scenarios so that the ability of the source to increase its emissions from actual levels up to the permitted allowable emission limits will be inherent in the emission limits in such operating permits. The permittee can make such increases without submitting a 7-day notice. Also many emission limits are expressed in terms of emission rates, not total emissions. In this case the permit would not limit the production capacity of the facility, as long as it complied with the applicable emission rate.

Moreover, programs must allow certain changes that may contravene permit terms under § 70.4(b)(12)(i). In addition, pursuant to § 70.4(b)(12)(iii) the permitting authority will be required to include in the permit emissions trading provisions requested by the batch processor that are appropriate to comply with an emissions cap established in the permit. Under § 70.4(b)(12)(ii) the source may engage in emissions trading based on the implementation plan. Under § 70.6(a)(9) and (10) the permit must include alternative operating scenarios identified by the source or emissions trading provisions to the extent provided for in the underlying applicable requirements. Finally, these regulations allow a State to authorize "off-permit" operations, as explained in the decision below on § 70.4(b)(14) and (15).

6. "Off-permit" Operations

The permit program may allow changes at a facility that are not addressed or prohibited by the permit terms (so-called "off-permit" changes), provided they meet the requirements of § 70.4(b)(14), described below. Although many commenters challenged the legality of this concept under title V, EPA believes that title V was not intended to prohibit such changes. The Agency continues to believe that section 502(a) allows certain changes at a permitted facility that need not be incorporated into the permit until renewal. Section 502(a) prohibits a source from operating any of certain listed types of sources "except in compliance with a permit * * * *" EPA's view is that it does not violate this prohibition for a source to operate in ways that are neither addressed nor prohibited by the permit. Thus, new §§ 70.4(b)(14) and (15) of the regulations provide that a State may allow a permitted source to make changes that are not addressed or prohibited by the permit, without requiring a permit revision, as long as they are not modifications under any provision of title I, are not subject to any requirements under title IV of the Act, and meet all applicable requirements of the Act.

The EPA is limiting off-permit changes to those that do not constitute title I modifications for legal and policy reasons. Legally, the structure of the statute suggests that title I modifications should not take place entirely outside the permit process. Section 502(b)(10) explicitly excludes title I modifications from the class of changes that can be made without a permit revision. It would be anomalous for the Act to suggest that permits must be modified to reflect title I modifications in one place and then, by inference under section 502(a), allow off-permit changes above title I modification levels to take place without any permit modification. As a policy matter, the Act specifically identifies title I modifications under section 502(b)(10) because they represent significant changes to a facility. Other changes may implicate Federal standards, but title I modifications always do. Therefore, it is not reasonable to allow such modifications to be made outside the title V permit system.

The final regulations make a change in this section, however. EPA has deleted the language in the proposal, at § 70.6(d)(3)(iv), stating that notification to the permitting authority and EPA is not required for changes at the source that are not regulated or prohibited by the permit. After considering the public comments, EPA believes that it is critical that the permitting authority and EPA should receive contemporaneous written notification for these types of changes. This notice will provide a record of activity at the facility without inhibiting the sources ability to make the change. If notification were not required, sources could make substantial changes without notifying the permitting authority or EPA of changes that might implicate Federal requirements. This would defeat one of the purposes of an operating permit system. The final rule also requires the source to keep certain records of these changes. These records may consist of copies of the notices sent to EPA and the permitting authority when the change is made.

One inherent limitation on the changes a source can make under the off-permit concept is that off-permit changes are limited to those activities not "addressed" by the permit. Therefore, off-permit changes cannot

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alter the permitted facility's obligation to comply with the compliance provisions of its title V permit, which under § 70.6 will be "addressed" in each permit. Such requirements include monitoring (including test methods), recordkeeping, reporting, and compliance certification requirements.

The regulations clarify that the permit shield under section 504(f) may not extend to changes made in this way. This limitation was clearly stated in the preamble to the proposal [56 FR 21746], but, as several commenters pointed out, was not stated in the proposed regulations.

Finally, the regulations made it clear that a State may choose to prohibit off-permit operations as a matter of State law. EPA believes, however, that off-permit operations are an important source of flexibility under title V. Therefore, the regulations provide that any State prohibition of off-permit operations will not be enforceable as a matter of Federal law under the Act. This means that if a State elects to prohibit off-permit operations, neither EPA nor citizens could enforce against the source for failure to have a Federal title V permit covering the off-permit change. Of course, the underlying requirements of the Act would remain federally enforceable if the off-permit change violates any applicable requirement.

If a State prohibits off-permit activity under State law, the State will likely require the source to use some State procedures to record the off-permit change so that the source's operating permit reflects the off-permit change. Where the State chooses to include off-permit changes in the portion of the permit that is not federally enforceable, the permitting authority must establish procedures which at least provide EPA with notice of the change. Obviously, such changes do not qualify for the permit shield under §§ 504(f) and 70.6(f).

It is possible, however, that States or EPA may conclude that a prohibition on off-permit operations must also be made federally enforceable to ensure that applicable requirements are met. For example, as mentioned above, a marketable permits program may be impossible to administer and enforce if an operating permit is not a complete representation of the permitted facility's emissions. To allow for such innovative uses of the title V permit program to implement the Act, a prohibition on off-permit operations can be made federally enforceable where the SIP or applicable requirement, such as a MACT standard, includes a prohibition of off-permit operations.

Section 70.4(b)(15) makes clear that certain changes to the federally-enforceable terms and conditions of a part 70 permit must go through permit revision procedures. As noted above, changes that are title I modifications cannot be made off-permit.

Also ineligible are changes subject to any requirements of title IV. The EPA believes that the allowance trading system provided for in title IV will not be feasible unless there is an accurate accounting of each source's obligations thereunder in the title V permit.

7. Partial Program Approval

Section 70.4(c) of the proposal contained provisions for approving a program that applies to a limited universe of sources. The proposal mirrored the language in section 502(f) that listed the minimum criteria a program must meet to get approval as a partial program. Several industry commenters said that partial approval for programs that issue permits that do not include all applicable elements should be avoided, since it would cause involvement by multiple permitting authorities and result in confusion. An environmental group commented that partial program approvals may not be legal if they do not cover the entire range of source categories to which title V applies; they would not fulfill all requirements of the Act. Several commenters supported the need for partial program approvals, however.

Approval of partial programs is provided for in section 502(d) and minimum criteria for approval are listed in section 502(f). The minimum criteria in section 502(f) cover title V, title I, title IV as applicable to affected sources, and section 112 as applicable to new sources, major sources, and area sources. Since a partial program can be part of a whole State program, EPA will grant full approval to a partial program only if it meets all the part 70 requirements. The EPA will, however, consider interim approval for partial programs that substantially meet the requirements of part 70.

Clarification is added to § 70.4(c) concerning source-category limited partial programs. A program that only addresses certain source categories based on the jurisdictional limits of a local agency will be approved as a partial program. This partial program approval can be interim if the program does not fully meet, but substantially meets, the criteria for a permitting program. A program that is limited because it does not address certain source categories (for reasons other than geographical jurisdiction of a local agency) will be given only an interim approval and must be modified within the interim approval period to cover all sources and meet all part 70 requirements before full approval can be granted. However, for EPA to grant interim approval to a source-category limited program (other than for geographical reasons), there must be compelling reasons why the State cannot address all sources in the interim. These reasons will be judged on a case-by-case basis.

One State commenter argued that EPA should approve permit programs on a district-by-district basis. The EPA will act on partial programs as they are submitted. The State retains the option to submit several partial programs to meet its obligation to submit a whole part 70 program.

8. Interim Approval of Programs

Section 502(g) of the Act allows interim approval of a State program for up to 2 years if it substantially meets the requirements of title V. Section 70.4(d) proposed six program elements that would be needed for a program to receive interim approval.

Several industry commenters stated that operational flexibility and permit revision procedures should be required aspects of the State's interim program, and that provisions for renewing permits granted under interim approval should also be made. Some State agency commenters, on the other hand, believed that the key elements included for interim approval should be kept to a minimum.

The criteria for allowing interim approvals is designed to provide for viable permits that will not have to be renewed upon full program approval other than when the term of the permit expires. The EPA believes the proposed criteria, with the addition of enforcement, certain operational flexibility provisions, streamlined permitting procedures, alternative operating scenarios, and permit application forms, discussed below, are sufficient to substantially meet the requirements of title V. Other suggested additions to the criteria were considered and only these provisions were judged to be of such importance as to be added.

The program elements that compose the criteria a program must meet to be granted interim approval have been modified to add enforcement authority. Section 70.4(d)(3)(vii) now requires interim programs to have "authority to enforce permits, including the authority to assess penalties against sources that do not comply with their permits or with the requirement to obtain a permit." Enforcement is an essential element of



any viable permitting program and therefore no program "substantially meets" the elements necessary for an approvable part 70 program without authority to enforce permits and the requirement to obtain a permit. Therefore, civil authority to enforce permit terms and conditions and the requirement to obtain a permit is necessary to qualify for interim approval. The EPA realizes, however, that many States do not currently have the criminal authority or the civil statutory maximum of $10,000 per day per violation required for full approval, and legislative changes will be necessary. Therefore, the civil statutory maximum would not have to be at the $10,000 per day per violation level and criminal authority would not be required until full approval.

The Administrator agrees with industry commenters that the ability to incorporate alternate scenarios into the permit, as well as certain provisions of operational flexibility, are important aspects of the permitting program that should be included in an interim program. In that permits issued under an interim program could be for a full 5-year term, sources would need these important provisions for that period to allow timely response to changes in market conditions. These elements are important minimum elements without which needless permit revisions could be required before changes critically important to the source could be made.

Balanced against this need for flexibility is the concern that States may not be ready to implement certain aspects of § 70.4(b)(12) at the time of an interim submittal. Accordingly, EPA is requiring as a minimum interim program element only the ability to generally implement this section.

The Administrator also agrees that any permit issuance or revision activity under an interim program should be carried out expeditiously. Streamlined provisions for revising permits issued under an interim program could be vital to industry if market conditions dictate that a permit revision is necessary. No specific timeframes are being provided as guidance for meeting this criterion because timeliness of action on permits and permit revisions will depend on the experience of the individual permitting authority and also because processing the first phase of permits could be more difficult due to the initial workload on an agency. The streamlined procedures will be judged on a case-by-case basis when a program submittal is reviewed and interim approval is considered. EPA also believes that an interim program should have application forms to ensure that any permit processing procedures are smoothly implemented.

9. Review of Program

Several groups suggested shortening the period of time allowed for States to resubmit their programs following EPA review and disapproval of the initial program submittal. The proposed regulations in § 70.4(f) allowed 180 days following notice of disapproval by the Administrator or such other time not to exceed 2 years for States to resubmit their programs with corrected deficiencies. The allowance for up to 2 years was proposed only for a situation where legislative changes would be needed and additional time would be required for the changes to be adopted. Several environmental groups endorsed a 180-day period to resubmit a program, stating that the Act at 502(d)(1) allows a period of that length. Two industry commenters indicated that the States should only have 1 year to submit their program revisions following EPA review.

Section 502(d)(1) stipulates that the State has 180 days after EPA notice of disapproval to resubmit a program and does not provide for any longer period. Section 70.4(f) has been revised to reflect only the 180 days and the provision for up to 2 years has been removed to be consistent with 502(d)(1).

10. Program Deficiency Correction

Section 70.4(i)(1) allows 180 days for a program revision when the Administrator finds, sometime after program approval, that a program has inadequate means of implementation or is inadequate in some other way. If the State demonstrates that additional legal authority is necessary to correct the deficiency, the period may be extended up to 2 years. The proposal did not, however, cover program revisions needed due to a change in part 70. This has been added to the final rules so that any program revision which must include additional legal authority necessary to implement a change to the part 70 rules can be accomplished over a period up to 2 years.

11. Confidential Information Submittal

A Federal agency requested that laws for classified or sensitive unclassified information be applied when such information is transmitted to the permitting authority and to EPA for permit review. A State commenter requested that EPA correspond directly with the permittee to get confidential information, and that EPA should not require States to share confidential information. One commenter indicated that State legal authority should not be required to transmit confidential data.

A stipulation is added to § 70.4(j) that a source may be required by the permitting authority to submit confidential information directly to EPA since some States cannot submit such information to EPA. Regardless of whether the submittal is made by the State or the source, the material will be submitted under 40 CFR part 2, which contains EPA's business confidentiality regulations. The regulations contain the requirements material must meet to be considered as business confidential. Qualifying information is entitled to protection under part 2 such that it will not be released to outside parties.

12. Computer-Readable Information

Section 70.4(j)(1) of the regulations addresses availability to EPA of information that is used in the administration of a State program. The final regulation specifies that such information is to be provided, to the extent practicable, in computer-readable files. Such language was not found in the proposal; therefore, no comments were received specifically on this issue. The EPA, however, supports further progress in the computerized exchange of information between itself and State and local agencies, as long as it is cost-effective and streamlines processing for the parties involved. Recent EPA workgroup meetings on data management issues have identified a strong interest on the part of State and local agencies in making their information systems more compatible with those at EPA. Representatives of EPA and permitting authorities alike recognize the potential for future administrative cost savings through well-designed permitting-related computer systems.

*E. Section 70.5—Permit Applications*

1. Submittal for Preconstruction Review

The proposal stated that any source required to have a preconstruction review permit pursuant to the requirements of the PSD program under title I, part C or the NSR program under title I, part D is subject to the part 70 permit program. The proposal did not address the timing of application submittal for these sources.

The final rule in § 70.5(a)(ii) now states that sources that must meet the requirements under 112(g) or for which part C or D permits are required must submit a part 70 permit application no later than 12 months after operations commence, unless the State requires an earlier submittal date. The final

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requirements for section 112(g) will be established in the rulemaking under section 112(g). Where an existing part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

Section 503(c) of the Act states that an application with a compliance plan shall be submitted not later than 12 months after the date on which the source becomes subject to the permitting program and provides for State discretion in setting the exact deadline. These deadlines should be included in the part 70 program submittal for review and approval by EPA. Section 503(a) states that any source is subject to the permitting program on the later of two dates, the effective date of State's part 70 program approval or when the source is subject to section 502(a). Additionally, section 502(a) states that it shall be a violation for a source to operate without a permit. This implies that a source becomes subject to the operating permit program when operations commence. Therefore, a subject source may wait until 12 months after it begins operation or after State program approval, whichever date is later, to submit its operating permit application, provided that the State has not established an earlier date. Furthermore, section 503(d) allows a source subject to the permit program to operate and not be in violation prior to the time it must submit an application under section 503(c). Since section 503(d) is more specific on this point, it is clear that a source required to have a title I part C or D permit need not submit a part 70 application until after it commences operation or such earlier date as the permitting authority may establish. This prevents the source from being subject to an enforcement action during the 12-month period that it operates before it applies for an operating permit.

2. "Timely" Application Submittal for Permit Renewals

The proposal would have required permit renewal applications to be submitted 18 months prior to permit expiration. Furthermore, the proposal offered two examples where times less than 18 months would be approved by the Administrator (where the State issues permits with terms shorter than 5 years and where the State was required to act on permits in less than 18 months) and stated that in no case would a deadline be approved that was less than 6 months before the permit terms expired.

Several commenters interpreted the proposal to require all applications for permit renewals to be submitted 18 months before permit expiration. There was consensus among industry commenters that an 18-month lead time for submittal of permit renewal applications was too long and would lead to unnecessary application revisions before the permit was issued. Some of these commenters supported a 3–6 month deadline before renewal.

In response to these comments, the EPA states that the proposed regulation never required all sources to submit applications for permit renewals 18 months in advance. In order to ensure that the permit terms do not lapse, the renewal application must be submitted far enough in advance of permit expiration to allow for reissuance. This is consistent with section 502(a) of the Act, which states that a source shall not operate without a permit once it is subject to the permitting program. There is a competing concern in that these applications must be expeditiously processed by the State, consistent with 502(b)(6) of the Act. This concern has been addressed by changing the final regulation to provide permitting authorities the discretion to require renewal applications to be submitted not less than 6 months or more than 18 months before permit expiration. The States are now given flexibility to set these deadlines, but this flexibility is tempered by EPA's ability to audit State programs after approval to determine if permits are being renewed before the permit terms lapse. The States can require sources to submit applications within the time confines provided in the regulation, and it is then up to the States to ensure that the applications are processed and the renewal permits are issued as provided for in their program submittals.

3. Application Completeness Determination

(a) Deadline for States to determine completeness. In § 70.4(b)(6) of the proposed rule, a permitting authority had 30 days to determine whether the application was complete and to send the applicant, in writing, a notice of completeness or incompleteness, or the application would be deemed complete by default. This requirement was proposed by EPA in response to section 502(b)(6) that States have, as a program element, "[a]dequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, * * *".

While many industry commenters supported the 30-day deadline for application completeness determination, several State groups suggested changing provisions for completeness by default to 60 days. States commented that 30 days per application was not long enough to ensure that all permit applications could be reviewed for completeness within the workload of the Agency, especially in light of the initial submittal of applications from all sources within 1 year after program approval. An environmental group interpreted the 30-day completeness determination to weaken the Act significantly by allowing sources to operate with incomplete applications.

Due to these comments and after further study, the Administrator has decided to change provisions for the determination of application completeness by default to 60 days [§ 70.5(a)(1)(iii)]. This result applies to all permitting actions, except for processing minor permit modifications where no completeness determination is required. The EPA believes that a "reasonable" time for this review as required by section 502(b)(6) of the Act is 60 days. This follows the precedents set in the NPDES program and in numerous States for processing permits for existing sources and should afford permitting authorities sufficient time for completeness determinations. Applications for major sources often involve hundreds of individual units and the States may not be able practically to perform this task in 30 days. Allowing a 60-day completeness review time should ensure that the States, especially at program commencement, do not issue blanket notices of incompleteness to permittees, due to an inability to perform this duty. This is important because a State's completeness determination starts the clock as of receipt of the application on any required deadlines for application processing. On the other hand, increasing this review time will prevent the sheer weight of the applications at the beginning of the program from, by default, allowing sources to operate and be shielded from enforcement action with incomplete applciations that the agency has not reviewed.

(b) Submittal of additional information after the completeness determination. The proposal stated that permitting authorities should have reasonable criteria for determining when additional information requested of a source after a determination of completeness must be submitted in order to retain the protection afforded by the timely submittal of a complete application.

Several industry commenters requested the ability to update their applications after the completeness determination but before the permit was issued, especially with reference to the possibility that there would be an extended delay in issuing the permit during the initial 3 year phase-in of the State programs.



In response to these comments and for additional reasons, the Administrator believes that additional information should be provided to the permitting authority to address requirements that become applicable during the period of time after the completeness determination but prior to release of the draft permit. Section 70.5(b) has been changed to require the submittal of this information. Not all information that might change during this period would be required to be submitted by the source; only that concerning new applicable requirements. This new information would not effect the determination of completeness. This information submittal requirement is consistent with the important principle of title V that these permits certainly the source as to its obligations. These applicable requirements would apply to the source regardless of the status of the permit application and regardless of whether a permit has been issued or not. However, for practical reasons, this requirement only extends until the time that the draft permit is issued. After the draft permit is issued but before the final permit is issued, new applicable requirements would have to be inserted by the permitting authority and the protection of the completeness determination would be preserved.

4. Exemptions for Insignificant Activities or Emission Units

The preamble to the proposal solicited comment on the comprehensiveness of the information to be required on application forms. The preamble section on applications was silent as to whether certain activities with emissions at or below certain levels could be exempted from having to be fully described and included in a complete part 70 permit application, although it was mentioned in regard to fee demonstrations in the proposed regulations.

Industry and many State commenters strongly supported the inclusion of provisions for exemptions for insignificant activities, so that the applications would not have to contain unnecessary information. Environmental groups, however, indicated that different exemption levels should be required for different compounds, and the EPA should establish uniform national exemptions for insignificant activities or emission levels.

In the final regulation at § 70.5(c), the Administrator has provided that exemptions for insignificant activities or emission levels can be developed by States individually as part of their part 70 programs, rather than being established on a national basis by EPA. The regulation limits the State's discretion by precluding such exemptions if they would interfere with the determination or imposition of any applicable requirement, or the calculation of fees. Applicable requirement in this context would include any standard or requirement as defined in § 70.2.

Furthermore, the Administrator receives the application to have a list containing information the insignificant activities that are exempted because of size, emissions levels, or production rate. An example might be a boiler which is exempt because it is below a specified size.This list need only contain enough information to identify the activities qualifying for an exemption. This list is important for both the source and the State as it provides information as to what activities are exempted. This list will also be helpful in the event that a future rulemaking results in a new requirement being applicable to the exempted activity, or in the event the State changes its fee structure to charge fees for the previously exempted activity. However, for these exemptions which apply to an entire category of activities, such as space heaters, the application need not contain any information on the activity.

These types of exemptions minimize unnecessary paperwork and reduce the need for sources to conduct analysis of all emissions regardless of the amount involved. Such a position is also supported by the *Alabama Power* decision, where the court found that emissions from certain small modifications and emissions of certain pollutants at new sources could be exempted from some or all PSD review requirements on the grounds that such emissions would be *de minimis*. In other words, the Administrator may determine levels below which there is no practical value in conducting an extensive review.

Rather than mandating national criteria for exempting insignificant activities or emission levels for all pollutants, the Administrator is allowing them on a case-by-case basis to be approved during rulemaking for each part 70 permit program. To require one test nationally would ignore several State programs which have already defined workable criteria for insignificant emissions activities. State discretion to apply these exemptions also allows title V to build upon rather than disrupt existing State programs.

In regard to hazardous air pollutants, the EPA is planning a rulemaking to establish exemptions based on insignificant emission levels for modifications under section 112(g), and the exemptions established by a State for such pollutants should not be less stringent than these levels.

5. Ambient Assessment Information

The proposed rule contained discussion on whether ambient impact assessment information should be required on all applications and stated that it should be required by a State in limited circumstances. Ambient impact assessment information here means source-specific data necessary for input to air quality impact dispersion models. Air quality modeling is not typically required for individual sources by the Clean Air Act (i.e., it is normally assumed that no individual source can affect attainment or maintenance of an ambient standard on an area-wide basis).

In the final rule, the definition of applicable requirement in § 70.2 now states that NAAQS standards and visibility and PSD increment requirements under part C of title I are applicable requirements as they apply to temporary sources. Furthermore, this definition affects the requirement in § 70.5(c)(3)(vii) that ambient impact assessment information would be required of temporary sources or any other source where such information is needed to meet an applicable requirement (e.g., regulation to ensure good engineering stack height consistent with section 123 of the Act).

6. Compliance Plans

(a) Compliance plans required of all sources. The proposal required that a compliance plan be submitted at the time of permit application only for sources not in compliance with all applicable requirements. In addition, the proposal stated that a compliance plan should include descriptions of how each applicable requirement will be met, descriptions of the compliance status of each requirement, a schedule of compliance, and a schedule for submission of certified progress reports.

Numerous State, environmental and public interest groups, as well as an association of State and local air pollution control officials, strongly opposed the requirement that compliance plans only be required from sources that are not in compliance and stated that these plans should be required of all sources. On the other hand, numerous industry commenters supported EPA's proposal to require compliance plans only from sources that are out of compliance at the time of permit issuance.

In response to commenters, the EPA has further reviewed the language of the statute and the legislative history, and

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agrees that compliance plans containing schedules of compliance are required of all sources as part of the permit application.

Section 503(b)(1) of the Act establishes the requirement that application contain compliance plans and does not distinguish between sources in compliance or out of compliance with applicable requirements. Further evidence for requiring a compliance plan for complying sources is the reference in section 503(b)(1) to a compliance plan as a description of how the source will comply with applicable requirements. Additionally, section 503(c) of the Act clearly states that any person required to have a permit shall submit a compliance plan and an application for a permit.

The legislative history supports this conclusion. While the bill passed by the House required compliance plans from both complying and noncomplying sources, the bill passed by the Senate would have required compliance plans of only those complying sources subject to new requirements. S. 1630, section 352(b). In this regard, the statute reflects the provisions of the House Bill and does not contain the exception in the Senate Bill. It therefore appears that Congress considered and rejected even a limited exemption from the requirement to submit compliance plans for sources in compliance.

The proposal similarly required schedules of compliance only for sources not in compliance with all applicable requirements. As with compliance plans, the final rule requires schedules of compliance of all sources. This result is compelled by the language of section 503(b), which requires that each compliance plan include a schedule of compliance, as well as section 504(a), which states that each permit must contain a schedule of compliance.

However, EPA believes that the language of the statute suggests that schedules of compliance should receive different treatment where they are being applied to requirements for which the source is in compliance. Section 501(3) defines a schedule of compliance as "a schedule of *remedial measures*, including an enforceable sequence of actions or operations, *leading to compliance*" with applicable requirements (emphasis added). The phrases "remedial measures" and "leading to compliance" logically suggest the correction of a situation where a source is not in compliance. Further, it is unlikely that sources in compliance were intended to be subject to enforceable interim measures. In addition, complying sources have already demonstrated an ability to comply with applicable requirements. The EPA believes that it would be burdensome and serve no useful purpose for these sources to submit detailed schedules of compliance.

In the final rule, EPA requires schedules of compliance for sources in compliance with all applicable requirements at the time of permit issuance to contain only a statement that the source will continue to comply with such requirements. With respect to any applicable requirement effective in the future, the schedule of compliance must contain a statement that the source will meet such requirements on a timely basis, unless the underlying applicable requirement requires a more detailed compliance schedule. Similarly, for complying sources, certified progress reports are not required unless detailed compliance plans are required by an applicable requirement. In the final rule, a compliance plan is required to be included in the permit application, but not in the permit, for all sources.

(b) Applicable requirements effective in the future. The proposal required citation and description of applicable requirements, including requirements that become effective during the term of the permit, if such requirement has been promulgated at the time of permit application, but did not discuss such requirements in reference to compliance plans.

Several commenters maintained that failing to address future compliance dates in compliance plans is inconsistent with the Act requirement that SIP's contain such schedules.

The final rule requires that each schedule of compliance must contain information concerning future-effective applicable requirements. Furthermore, the definition of applicable requirement contained in § 70.2 has been modified to clarify that future-effective requirements that have been promulgated or approved by EPA at the time of permit issuance are applicable requirements for purposes of part 70 permits.

The Administrator agrees with commenters that subpart N of part 51 requires that SIP's contain legally enforceable compliance schedules for any requirements (including requirements with future-effective dates) applicable to stationary sources and that, therefore, these requirements are also applicable requirements for purposes of part 70 permits.

7. Compliance Certifications

(a) Content of certifications. The proposed rule stated that, to be considered complete, a permit application must include, among other elements, a compliance certification for all applicable requirements. The proposed discussion in some detail wha' is required of a source to meet these requirements. Commenting on the proposal, industry commenters requested several modifications of, or clarifications to, the compliance certification provisions regarding contents of certifications. The final rule regarding compliance certifications requirements for permit applications has been clarified in response to these comments.

Today's rule imposed two types of compliance certification requirements on part 70 sources. First, in § 70.5(c)(9), every application for a permit must contain a certification of the source's compliance status with all applicable requirements, including any applicable enhanced monitoring and compliance certification requirements promulgated pursuant to section 114 and 504(b) of the Act. This certification must indicate the methods used by the source to determine compliance. This requirement is critical because the content of the compliance plan and the schedule of compliance required under § 70.5(a)(8) is dependent on the source's compliance status at the time of permit issuance.

The second type of compliance certification is imposed by § 70.6(c)(5). This section states that every part 70 permit must contain a requirement for the source to submit a compliance certification at least annually throughout the term of the permit. The contents of this compliance certification are drawn from sections 114(a)(3) and 503(b)(2) of the Act. This certification must: Identify each term and condition of the permit that is the basis for certification; the source's compliance status with that requirement; whether compliance was continuous or intermittent; the method(s) used to determine compliance consistent with the monitoring requirements of § 70.6(a); and such other facts as the permitting authority may require to determine the compliance status of the source. The final rule differs from the proposal in that annual certification is now required with respect to the terms and conditions of the permit; the proposal required certification only with the applicable requirements. This change is necessary to conform to the express requirement of section 503(b)(2).

Each of the above compliance certifications must be certified by a responsible official for truth, accuracy and completeness, consistent with § 70.5(d).

(b) Responsible official for title IV sources. The proposed rule in § 70.5 required all part 70 sources subject to permitting requirements to submit a

complete and timely permit application, certified by a responsible official as to truth, accuracy, and completeness. Some commenters questioned who may certify compliance and requested further information on the term "responsible official."

Title IV contains independent requirements for compliance certification and section 403(26) already defines the term "designated official" as a responsible official designated to represent the owner or operator in matters pertaining to allowances and 'he submission of and compliance with permits, permit applications, and compliance plans for the unit. The final regulations have been clarified in § 70.2 to allow, but not require, the designated official for affected sources to be the responsible official for all part 70 purposes.

Industry commenters stated that the definition of "responsible official" should allow more latitude for designating a plant manager as a responsible official. In the final rule, the definition of "responsible official" has been expanded to allow for delegation of authority to a plant manager where the delegation has been approved in advance by the permitting authority.

8. The Application Shield

Section 503(d) of the Act provides that once a timely and complete application has been filed, the applicant is shielded from enforcement action for operating without a permit until such time as the permit is issued. Two provisions in the proposed regulations, §§ 70.7(b) (2) and (3), were related to this "application shield" in that they directly concerned the determination of whether a permit application submitted was timely or complete. One provision in the proposal provided a grace period of up to three months to submit applications or additional information requested by the State after the required submittal date. Another provision allowed the shield for timely applications that the permitting authority determined to be incomplete despite a "good faith" effort on the part of the source, provided that the source expeditiously cured the defect.

Several commenters criticized offering the protection of the application shield for late application submittals. The Administrator, upon consideration of these comments and after further study, has decided to delete from the final rule these two provisions, proposed §§ 70.7(b) (2) and (3). The 3 month grace period for submitting a timely application effectively extended the "application shield" to sources that did not submit a timely application, which would have been inconsistent with section 503(c) of the Act. This section does not allow any additional time beyond the deadlines specifically provided. Furthermore, the Administrator now believes that this provision would have violated section 502(a) of the Act by allowing a source to operate without a permit (given that the application shield would not have applied). Similarly, the "good faith" exception to the requirement that only timely and complete applications provide an application shield has been deleted from the final rule. This provision was deleted because it was not required by the statute and because it would have effectively shielded all sources from enforcement action for not submitting a complete application. In this context, a "good faith" determination would be too subjective to provide a clear standard for either industry or the permitting authorities.

*F. Section 70.6—Permit Content*

1. Applicable Requirements of the Act

Title V requires that operating permits assure compliance with each applicable standard, regulation, or requirement under the Act, including the applicable implementation plan [502(b)(5)(A), 504(a), and 505(b)(1)]. Thus, the permitting authority and EPA should clearly understand and agree on what requirements under the Act apply to a particular source. Section 70.6(a)(1)(i) requires that the permit reference the authority for each term and condition of the permit. Including in the permit legal citations to the provisions of the Act is critical in defining the scope of any permit shield, since the permit shield, if granted, extends to the provisions of the Act included in the permit. Including the legal citations in the permit will also ensure that the permittee, the permitting authority, EPA, and the public all have a common understanding of the applicable requirements included in the permit. This requirement is satisfied by citation to the State regulations or statutes which make up the SIP or implement a delegated program. Under section 505(b)(1), EPA must object to permits that fail to assure compliance with the applicable requirements and will look to the available record for clarification as what these requirements should be. The following clarifies the EPA position with respect to several issues regarding applicable requirements.

(a) Requirements with future compliance dates. The proposal defined "applicable requirements" as the substantive requirements arising under other sections and titles of the Act. The definition in the final part 70 regulations clarifies that "applicable requirements" include not only those requirements that are in effect at the time of permit issuance, but also include those that have been promulgated prior to permit issuance and that have future effective compliance dates during the permit term. This furthers the Act's and EPA's goal that the permit embody all relevant requirements applicable to the source.

The EPA recognizes the potential for sources to have to repeat permit issuance procedures where an applicable requirement is promulgated close to permit issuance. This problem is to some extent inherent in any permit program which, like title V, attempts to make the permit the comprehensive document for requirements applicable to the source. Because this problem was not addressed in either the proposal or comments received on the proposal, it will need to be addressed in a revision to the part 70 regulations to be proposed in a future **Federal Register** notice.

The EPA plans to revise part 70 to allow for a system of grandfathering in which requirements promulgated after the close of the public comment period and within a certain time period (EPA intends to solicit comment on a range of from 90 to 150 days after close of the comment period) would not have to be incorporated into the permit prior to issuance. For requirements promulgated within the specified time period, but which the State is not required to include in the permit initially, the permit will need to be reopened pursuant to the requirements of section 502(b)(9). However, if the permitting authority fails to issue the permit within that time period, the permit could be issued after that period only if the applicant certified that no new requirement applicable to the source had been promulgated since the closing of the public comment period.

(b) Section 112(r) accidental release program. The definition of "applicable requirements" was also revised to clarify that requirements of section 112(r) of the Act, regarding the accidental release program, are applicable requirements. This would include any requirement under section 112(r)(7) to prepare and register a risk management plan (RMP). The EPA recognizes, however, that an RMP is not in any sense a "permit" to release substances addressed therein, and that section 112(r) was not intended to be primarily implemented or enforced through title V [112(r)(7)(F)]. The EPA therefore believes it sufficient for purposes of title V to require only that the source indicate in its permit that it has complied with any requirement to register an RMP, or alternatively to

indicate in its compliance plan and schedule of compliance its intent to comply with such requirement The RMP itself need not be included in the title V permit.

(c) NAAQS. The EPA proposed that the NAAQS is a SIP requirement, not an "applicable requirement" for title V permits. In the case of large, isolated sources such as power plants or smelters where attainment of the NAAQS depends entirely on the source, EPA proposed that the NAAQS may be an applicable requirement and solicited comment on this position.

An environmental group commented that excluding protection of ambient standards, PSD increments or visibility requirements as applicable requirements are unlawful and bad policy. It argued that section 504(e) expressly defines "requirements of the Act" as "including, but not limited to, ambient standards and compliance with applicable increment or visibility requirements under part C of title I." Although this provision applies only to temporary sources, the group asserts that it would be anomalous for Congress to impose more comprehensive permit requirements for temporary sources than for permanent sources.

The EPA disagrees with the comment that would apply section 504(e) to permanent sources. Temporary sources must comply with these requirements because the SIP is unlikely to have performed an attainment demonstration on a temporary source. To require such demonstration as on every permitted source would be unduly burdensome, and in the case of area-side pollutants like ozone where a single source's contribution to any NAAQS violation is extremely small, performing the demonstration would be meaningless. Under the Act, NAAQS implementation is a requirement imposed on States in the SIP; it is not imposed directly on a source. In its final rule, EPA clarifies that the NAAQS and the increment and visibility requirements under part C of title I of the Act are applicable requirements for temporary sources only.

(d) Preconstruction permits under regulations approved or promulgated under title I. This definition was changed in part to clarify that applicable requirements include terms and conditions of preconstruction permits issued pursuant to SIP's and other regulations approved by EPA in formal rulemaking after notice and an opportunity for public comment.

(e) Alternative scenarios and emissions trading. EPA believes that providing for permits with alternative operating scenarios, including emissions trading provisions to the extent provided for in the applicable requirements, will be a critical element of any part 70 program and useful in ensuring the implementation of all applicable requirements. If the permit contains approved alternative scenarios or emissions trading provisions, it will be a more complete representation of the operation at the permitted facility. Moreover, there will be less need for permit modifications to accommodate different operations at the facility. Therefore, EPA is requiring that alternative operating scenarios, including emissions trading provisions provided for in the applicable requirements, identified by the source be included in the permit as part of the mandate in section 502(b)(6) to include "[a]equate, streamlined, and reasonable procedures" for permit actions in these regulations.

Obviously, all such scenarios and emissions trading provisions must comply with the permit requirements of title V and the underlying applicable requirements. Under § 70.6(a)(9) for alternative scenarios, the source must keep a contemporaneous record of any change from one scenario to another. Under § 70.6(a)(10), the permit must assure that emissions trading provisions contain the appropriate compliance provisions required under these regulations. The permitting authority may extend the permit shield to any such scenario or emissions trading provisions, because they are provided for in the permit and the permit will include the compliance terms for those scenarios or trades.

There is an important distinction between the mandate for emissions trading in this provision and the authorization in § 70.6(a)(1)(iii) for permits to establish alternative emissions limits equivalent to SIP limits where the SIP allows for such equivalency determinations. Under § 70.6(a)(10), the State will have developed and EPA will have approved the emissions trading program into the SIP or applicable requirement with the intention that it would allow trading without case-by-case review. The State and EPA would also assure that the SIP or applicable requirement provides replicable procedures to ensure that trades are accountable, enforceable, and quantifiable. Under § 70.6(a)(1)(iii), however, the SIP provision authorizing the alternative emission limits will not necessarily have established in advance the replicable procedures to ensure that the alternative limits are accountable, enforceable, and quantifiable. Section 70.6(a)(1)(iii) requires the permitting authority to establish such procedures in the permit itself as part of a full permit issuance, renewal, or significant modification process. Such alternative limits are not a mandatory part of a permit because it may be impossible to establish for some types of SIP limits equivalent limits that are accountable, enforceable, and quantifiable under replicable procedures. Therefore, the permitting authority must retain the discretion not to include alternate limits in the permit under § 70.6(a)(1)(iii).

(f) Equivalency Determinations. In order to take advantage of the flexibility provided by the title V permit program, EPA has added a provision [§ 70.6(a)(1)(iii)] which allows States to develop alternative emissions limits through the permit program. Under this section, a State may choose to adopt a SIP provision that would authorize sources to meet either the SIP limit or an equivalent limit to be formulated in the permit process. Such a provision would allow a State to build additional flexibility into its SIP program. A permit issued pursuant to such a provision would have to contain the equivalency determination, as well as provisions that assure that the resulting emission limit is quantifiable, accountable, enforceable, and based upon replicable procedures (see discussion above of these terms in the emissions trading context). The permit application must demonstrate that the permit provisions are equivalent to the SIP limit as well as quantifiable, accountable, enforceable, and based on replicable procedures. Consistent with these requirements, States may adopt such SIP provisions for all appropriate SIP requirements or only for specific requirements for which the State determines equivalency determinations are appropriate. The determination of what constitutes an equivalent limit could take place either during the permit issuance or renewal process or as a result of the significant modification procedures. The State retains discretion, subject to EPA veto, to decide if an alternative emission limit is justified in any particular case.

2. Permit Shield

(a) Scope of the permit shield. Section 504(f) of the Act states that, if certain conditions are met, the permit may provide that compliance with the permit shall be deemed compliance with other applicable provisions of the Act that relate to the permittee. This is referred to as the "permit shield." The proposed regulation allows the permitting authority to provide under certain circumstances that a source in compliance with the part 70 permit be considered to be in compliance with

other applicable provisions of the Act. For such a permit shield to be in effect, either the permit must include the applicable requirements of such provisions or the permitting authority must determine that the specified provisions are not applicable to the source. The permit must expressly state that a permit shield exists. A permit lacking such express statement is presumed to have no shield.

Provisions of sections 303 (emergency orders) and section 408(a) of the Act (the acid rain program), are applicable regardless of the existence of a permit shield. The owner or operator of a source is liable for violations prior to or at the time of permit issuance. The source cannot be shielded from the requirement to provide EPA information pursuant to section 114 of the Act.

In support of its proposal, the Agency cited that one of the objectives of the title V permitting program is to create a single document that serves as a comprehensive statement of a source's obligations for air pollution control. Through the use of a permit shield the document may, for a period of time, provide a degree of certainty to the source regarding its obligations. EPA's proposal suggested allowing a broad interpretation of the permit shield. Under this interpretation, a source would be protected from enforcement for noncompliance with any applicable requirement of the Act as long as the source was in compliance with all requirements of the source's title V permit. If the permit had misinterpreted applicable requirements, the source would not be obligated to comply with the correctly interpreted requirements. The source would also be shielded from any newly promulgated Federal requirements until the title V permit was reopened and the requirement(s) were incorporated into the permit.

Other goals of the title V program are to implement the Act and to generate improvements in air quality through the enforcement of existing regulations and the timely implementation of newly promulgated regulations. Thus, a balance must be struck between providing certainty to sources as to which requirements are applicable to them and how these requirements are interpreted, and achieving improvements in air quality. This balance can be achieved by appropriately defining the scope of the permit shield, when a shield expires, and when a permit must be terminated, modified, or revoked and reissued for cause.

The EPA received many comments on the permit shield provision. While industry commenters strongly endorsed the broad interpretation of the permit shield provision, State agency and environmental commenters argued for limits to the permit shield, or the elimination of the permit shield concept altogether. There was a strong opposition to requiring the permit shield as part of the permit content.

In response to comments received, and upon further analysis of the statutory provision at issue, the Administrator has modified the position set forth in the proposal. The EPA has decided to adopt a "narrow" interpretation, under which a source cannot be shielded from applicable regulations, standards, implementation plans, or other requirements promulgated after issuance of a title V permit.

In analyzing the strengths and weaknesses of the competing shield theories, EPA examined both the text and the structure of the statute. Section 504(f) of the Act provides two situations where a shield can be applied to applicable provisions of the Act other than those found in section 502. Section 504(f)(1) of the Act states that the shield can apply if "the permit includes the applicable requirements of such provisions." Section 504(f)(2) of the Act sets forth the other situation where a permit shield may apply: "the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof." It is clear from the language of the Act that only requirements that have been reviewed by the permitting authority and identified as such in the permit can be shielded against. Review by the permitting authority would include a determination of applicability and a determination of the source's obligation(s) under the provision(s). This review includes the opportunity for public participation, EPA veto, and judicial review.

Section 504(f)(1) cannot be the basis for mounting a shield against later-enacted requirements, since such requirements, having not been in existence at the time the permit was issued could not, perforce, have been included in it. A permit cannot contain "applicable requirements" that have not been adopted. The fact that Congress required, in order to shield against a provision, a permit to include all, as opposed to some, requirements of that provision, indicates that Congress intended an identity between what was contained in the permit and the provision shielded against.

If a permit does not qualify for the shield on the grounds that it includes applicable requirements of a provision, as provided under section 504(f)(1), then the only basis for shielding against a provision is pursuant to section 504(f)(2). To qualify under that section, the permitting authority "in acting on the permit application" must make a determination, specifically referring to the provisions at issue, that such provision is not applicable. The permitting authority must specify and refer to the provision. Such a determination cannot refer to a provision not yet in existence. And if it refers to a provision that exists, but is later changed, the determination would not be referring to the later provision, but to its predecessor. Further, this approach would be inconsistent with the intent of providing for public review of determinations of inapplicability. The public could not review a determination of inapplicability of a provision not yet enacted. Section 504(f)(2) of the Act is designed to set down in an authoritative and public fashion the way in which existing legal requirements apply to a source. Section 504(f)(2) is, therefore, not intended to prevent later-enacted requirements from being fully applicable to the source.

In addition to textual obstacles, there exists a powerful structural argument against the broad shield. Put simply, a broad shield would effectively abrogate specific Congressional mandates such as section 112 requirements for implementing MACT standards and would significantly handicap States in their planning for effectiveness of new requirements designed to meet other Congressional goals. In particular, the deadlines for air toxics were the focus of much debate during the amendment process, and Congress gave no indication that it intended EPA to revise these dates by expanding the permit shield. Compliance with new requirements designed to meet NAAQS progress and attainment deadlines would also be haphazard and completely dependent on the happenstance of individual permit issuance. It is inconceivable that Congress, with its overwhelming concern for the timing of requirements in title I, would, with no discussion and no explicitness, have placed such a roadblock in the path of State planning. A permit system that undermines the enforceability of other provisions of the Act would not vindicate Congressional purposes.

The EPA maintains its position that the shield cannot apply to provisions related to title IV of the Act, the acid

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rain provisions. As the proposal noted, EPA believes that section 408 bars the permit shield for acid rain requirements [56 FR 21744] (sections 408(a) and 414). The EPA believes that shielding sources from acid rain requirements would disrupt effective implementation of that important new program.

(b) Terms of the permit shield. Industry suggested that the shield extend during the time a permit expires when action on permit renewal is delayed and that the shield should remain in force while a permit is reopened for cause.

State representatives and environmentalists suggested that the permit should be reopened if the permit is found to be in error as the shield cannot exempt a source from an effective provision of the Act. They also suggested that the permitting authority should be allowed to revoke the permit shield if information submitted is found to be false, incomplete or misleading.

The EPA's position is that the application shield applies if the permit lapses and the source has submitted a timely and complete application and there is a delay in issuing the permit renewal. The EPA's position with respect to the permit shield (as it applies to the terms and conditions of the permit) is that this type of shield continues to apply if the permit lapses. Under EPA's interpretation of the shield to exclude later promulgated requirements, these would of course continue to be applicable to the source.

3. Monitoring

Section 504(c) provides that every permit issued under title V shall contain monitoring requirements "to assure compliance with the permit terms and conditions." This statutory provision is implemented through § 70.6(a)(3)(i) of the regulations. If the underlying applicable requirement imposes a requirement to do periodic monitoring or testing (which may consist of recordkeeping designed to serve as monitoring), the permit must simple incorporate this provision under § 70.6(a)(3)(i)(A). If the underlying applicable requirement imposes no such obligation, under § 70.6(a)(3)(i)(B) the permit must require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring) which yields reliable data from the relevant time period that are taken under conditions representative of the source's operations and, therefore, representative of the source's compliance with its permit. Appropriate monitoring or testing may include noninstrumental monitoring or testing techniques such as opacity readings using an EPA approved method. Any monitoring or testing method or procedure approved by EPA for determining compliance may be used to satisfy the requirement of § 70.6(a)(3)(i)(B).

Examples of situations where § 70.6(a)(3)(i)(B) would apply include a SIP provision which contains a reference test method but no testing obligation, or a NSPS which requires only a one time stack test on startup. Any Federal standards promulgated pursuant to the Act amendments of 1990 are presumed to contain sufficient monitoring and, therefore, only § 70.6(a)(3)(i)(A) applies. EPA will issue guidance for public review within eighteen months addressing which applicable requirements contain insufficient monitoring and the criteria EPA will apply in determining the types of monitoring which would satisfy the requirement of § 70.6(a)(3)(i)(B). To the extent that EPA identifies any federally promulgated requirement with insufficient monitoring, EPA will issue a rulemaking to revise such requirement.

In some instances, a recordkeeping obligation will be sufficient to meet the requirement of § 70.6(a)(3)(i). An example would be a VOC coating source which uses complying coatings and relies on no control equipment to meet the applicable SIP limit. For this type of source, an obligation to keep records of and periodically certify and report the contents of all coatings used would be sufficient.

4. General Permits

The proposal reflected the language of section 504(d) of the Act, which allows States to issue a general permit covering numerous similar sources. Sources covered by general permits must comply with all part 70 requirements, including the requirement for submitting a permit application. General permits, however, do not apply to affected sources (acid rain), unless provided for under title IV regulations. The proposal solicited comment as to how the general permit should be applied to specific sources.

Commenters requested that EPA allow more flexibility for general permits and allow States to formulate their own general permit applications and general permits.

The final rule clarifies that once the general permit has been issued after an opportunity for public participation and EPA and affected State review, the permitting authority may grant or deny a source's request to be covered by a general permit without further public participation or EPA or affected State review. The rule further clarifies that this action of granting or denying the source's request will not be subject to judicial review.

The primary purpose of section 504(d) is to provide an alternative means for permitting sources for which the procedures of the normal permitting process would be overly burdensome, such as area sources under section 112. See H.R. 101-490, 101st Cong., 2nd Sess., 350 (1990). This purpose would be substantially frustrated if sources subject to a general permit were required to repeat public participation procedures at the individual application stage, or if each applicability determination were subject to judicial review.

To ensure that the general permit process is not abused, for example, by a source that misrepresents facts in its request for the general permit, this section provides that a source receiving a general permit shall be subject to an enforcement action for operating without a part 70 permit, notwithstanding the permit shield provisions, if the source is later determined not to qualify for coverage under the general permit. The EPA believes that this approach strikes the appropriate balance between the procedural advantages intended by section 504(d) and the need to protect the integrity of the permitting process.

In setting criteria for sources to be covered by general permits, States should consider all of the following factors. EPA may object to general permits that do not meet these factors. First, categories of sources covered by a general permit should be generally homogenous in terms of operations, processes, and emissions. All sources in the category should have essentially similar operations or processes and emit pollutants with similar characteristics. Second, sources should not be subject to case-by-case standards or requirements. For example, it would be inappropriate under a general permit to cover sources requiring case-by-case MACT determinations. Third, sources should be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.

Sources, including those emitting air toxics, may also be issued general permits strictly for the purposes of avoiding classification as a major source. For example, if sources above a certain emissions level are subject to stringent requirements, it may be feasible to cover sources below that level under a general permit that has, as its principal requirement, a condition that the emissions level is not exceeded.



Based on preliminary information, EPA intends to develop model general permits for certain source categories. In particular, the Agency is considering development of model general permits for degreasers, dry cleaners, small heating systems, sheet fed printers, and VOC storage tanks.

Individual sources covered under a general permit may be issued an individual permit, or alternatively, a letter, or certification may be used. Provided the individual permit, letter or certification is located at the source, the States need not require that sources also have a copy of the general permit; this can be retained on file at the permitting authority's office or at the source's corporate headquarters in the case of franchise operations. The permitting authority may also determine in the first instance whether it will issue a response for each individual general permit application and may specify in the general permit a reasonable time period after which a source that has submitted an application will be deemed to be authorized to operate under the general permit.

General permits may be issued to cover any category of numerous similar sources, including major sources, provided that such sources meet the criteria set out above. For example, permits can be issued to cover small businesses such as gas stations or dry cleaners. General permits may also, in some circumstances, be issued to cover discrete emissions units, such as individual degreasers, at industrial complexes. Such a unit at an industrial complex can be covered by a general permit if the requirements for a general permit are met and the change is one for which a new permit is appropriate. Where a general permit is issued to a discrete emissions unit at an industrial complex, the requirements of the general permit could be incorporated into the relevant title V operating permit at the next renewal.

5. Emergencies

The proposal did not specifically provide for the handling of emergencies that result in deviations from the terms of the permit. Comments were received requesting that the part 70 regulations make some provision for emergencies or "upsets" caused by the failure of emission control equipment. The EPA believes it is appropriate, consistent with the emphasis in the part 70 regulations on providing sources with adequate operational flexibility, to include such a provision in the final rule.

Section 70.6(g) now provides for an affirmative defense in the case where permit allowables have been exceeded due to an emergency. "Emergency" is in turn defined as a reasonably unforeseeable event beyond the control of the source that requires immediate corrective action to restore normal operation and that is not due to certain factors specified in the rule. To establish the defense, the permittee must prove each of the four factors enumerated in § 70.6(g)(3). Section 70.6(g) is modeled after the NPDES permit upset provision in 40 CFR 122.41.

Courts have held, in the Clean Water Act context, that a NPDES permit must contain upset provisions to account for the inherent fallibility of technology in technology-based standards. See, e.g., *Marathon Oil Co.* v. *EPA* 565 F.2d 1253, 1273 (9th Cir. 1977). Other cases have upheld EPA's decision not to promulgate upset provisions, reasoning that the exercise of enforcement discretion is adequate protection of the permittee's interests. *Corn Refiners Ass'n, Inc.* v. *Costle*, 594 F.2d 1223, 1228 (8th Cir. 1979); *Weyerhaeuser Co.* v. *Costle*, 590 F.2d 1011, 1056-58 (D.C. Cir. 1978). The idea that technology-based standards should account for the fallibility of technology has been affirmed in the context of New Source Performance Standards under the Act. See, e.g., *Essex Chemical Corp.* v. *Rickelshaus*, 486 F.2d 427 (D.C. Cir. 1973).

EPA believes that the emergency provision of § 70.6(g) is appropriate in order to provide permitted sources with an affirmative defense where an enforcement action is brought for exceedances of technology-based standards due solely to the unforeseeable failure of technology. Implicit in § 70.6(g) is that the affirmative defense will not be available for violations of health-based standards. This is appropriate because such standards, such as NAAQS or NESHAP, are formulated largely without regard to the limits of technology. The EPA believes that to excuse violations of these standards would be contrary to Congressional intent. In *Natural Resources Defense Council* v. *EPA*, the D.C. Circuit held that Congress did not intend to tie water quality-based limitations to the capabilities of any given technology. 859 F.2d 156 (D.C. Cir. 1988). This reasoning is at least as compelling in the context of health-based air quality standards.

This provision for emergencies does not limit the opportunity any permitted source might otherwise have to contact the permitting authority in the event of an emergency. Nothing in these regulations requires the permitting authority to respond to emergencies in any particular manner.

6. Voluntary Limits

Title V permits are an appropriate means by which a source can assume a voluntary limit on emissions for purposes of avoiding being subject to more stringent requirements. Section 70.6(b)(1) has been revised to clarify that such terms and conditions assumed at the request of the permittee for purposes of limiting a source's potential to emit will be federally enforceable.

The EPA recognizes that sources may wish to limit their potential to emit in this way prior to there being an approved State permit program. For sources of criteria pollutants, a method already exists by which a State preconstruction review program operating permit program approved into a SIP may be used to limit a source's potential to emit. See Final Rule: Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans, 54 FR 27274, June 28, 1989. However, sources emitting hazardous air pollutants listed in section 112(b), some of which may be subject to regulation prior to approval of State permit programs, may desire an alternate means of limiting their potential to emit hazardous air pollutants. Accordingly, EPA is considering allowing States to use programs approved under section 112(l) as a means of developing federally-enforceable limits on the potential to emit section 112(b) pollutants. Implementing this concept will require the resolution of many issues more appropriately addressed in the forthcoming guidance issued pursuant to section 112(l)(2).

Several commenters urged the Agency to adopt a simple procedure to allow sources voluntarily to restrict their potential to emit so as not to become subject to title V permitting obligations. As noted in the proposed rule, such a restriction must be federally enforceable in order to serve this purpose. In response to the concerns raised by these commenters, EPA has structured the final rule to provide several simple mechanisms that will allow sources to adopt federally-enforceably restrictions on their potential to emit. First, as discussed above, a restriction adopted under an existing State preconstruction review or operating permit program that has been approved into a SIP will be sufficient for this purpose. State programs approved under section 112(l) may also be available as methods to limit a source's potential to emit. In addition, as discussed above, States may issue general permits to sources

strictly for the purpose of allowing those sources to avoid classification as a major source. The EPA recognizes that it seems somewhat counterintuitive to rely on a general permit to relieve a source of other permitting obligations. However, EPA believes that general permits will provide a simple, straightforward mechanism for sources to adopt federally-enforceable restrictions on their potential to emit and therefore avoid more burdensome permitting obligations.

*C. Section 70.7—Permit Issuance, Renewal, Reopenings, and Revisions*

1. Permitting Authority's Action on Permit Application

Under § 70.7(a)(5), the permitting authority, in acting on a permit application, must transmit to EPA (and others upon request) a statement setting forth the legal and factual basis for the permit conditions included in the draft permit. Conversely, should the permitting authority deny the permit application, it should prepare a statement of the grounds for denial.

2. Permit Revisions

(a) General. The EPA proposed that the statutory language in section 502(b)(6) leaves substantial discretion to the States to devise appropriate procedural schemes for making expeditious revisions to permits, including "fast-track" procedures to facilitate operational flexibility. As a matter of policy, EPA encouraged (but did not require) States to implement minor permit review procedures for changes that result in emission increases above permit allowables, but that are not title I modifications and do not violate any applicable Federal requirements, as long as such procedures include at least 7 days advance notice to the permitting authority and the Administrator. After waiting the required 7 days, the source could make the change unless the permitting authority objected to the noticed change within the 7 day period. If the permitting authority did not object to the change as a minor permit amendment, it would have 60 days from receipt of the notice to revise the permit.

The EPA proposed to review proposed State procedures for revising permits in conjunction with EPA's review of the State program. The basic test would be whether a State's procedural system, taken as a whole, could assure that the national ambient air quality standards and other substantive requirements of the Act would be maintained and enforceable. The EPA then solicited general comment on what criteria would be appropriate for EPA to use in approving State procedures for revising permits.

Industry commenters supported proposed § 70.7(f), the "minor permit amendment" provision. They stated that this provision is necessary to accommodate inevitable, but unforeseeable, changes in production and to compete successfully in international markets.

State commenters, on the other hand, noted that § 70.7(f) appeared to violate section 502(b)(6), which requires public notice and an opportunity for judicial review. These commenters also stated that it would be impossible to resolve any issues within the 7-day period, or to give an adequate review within the allotted time frame. A national group of State and local agencies suggested that if the minor permit amendment remains, EPA should set a specific *de minimis* threshold of 5 tons or 20 percent of the major source cut-off, which is more stringent.

Environmental groups argued that the law clearly requires public comment and agency review, and opportunity for judicial review for permit revisions. They argued further that a permit whose terms can be changed at will by the source is not enforceable, which violates the basic requirement of title V that permits be enforceable.

Section 70.7(f) as proposed appeared to authorize a source, in a very expedited process, to make changes resulting in an increase in emissions above the emissions allowable under its permit, provided that the changes did not constitute modifications under title I, merely upon providing a 7 day notice to the permitting authority and EPA. It is not entirely clear from the proposal as written whether EPA intended the 7 day notice to the permitting authority and EPA to be merely a necessary, as opposed to a necessary and sufficient, requirement. There is some dissonance between the text of the proposed regulation and the preamble, which expresses uncertainty about what additional procedures may be required for an approvable "procedural system" for fast-track revisions, and solicits comment on the appropriate criteria for EPA to use in approving State revision procedures [56 FR 21747].

For the reasons set out in detail below, the Administrator is today promulgating a rule that calls for review by the permitting authority, affected States, and EPA before part 70 permits can be revised, but does not require public notice and comment for those permit modifications qualifying for minor permit modification procedures. It bears repeating that title V permitting cannot relax any applicable requirements, including those contained in the SIP. The final part 70 regulations therefore directly address not only those substantial comments that called for a process allowing reasonable time for State review, an adequate opportunity for public comment and a hearing, and an opportunity for EPA and affected State review, but also those who voiced concerns over the ability of a source to rewrite its permit to avoid enforcement.

The EPA's final regulations governing permit revisions balance several, sometimes conflicting, goals of the permit program. First, as explained above, the procedures for revising a permit should provide appropriate opportunities for the permitted source, permitting authority, EPA, affected States, and, where appropriate, the public to determine that the permit faithfully applies the Act's requirements. Second, any revision process must be tailored so that the procedural burdens on the permitted facility and permitting authority are reasonable in relation to the significance and complexity of the change being proposed in the permit. Third, the process must provide permittees with a reasonable level of certainty and ability to plan for change at the facility. Finally, the regulations must be flexible so that States may adapt their existing programs to meet part 70 requirements without unnecessarily displacing procedures that have operated before the advent of the Federal operating permit program.

To accommodate these goals, EPA will allow States to develop different types of review procedures that match the procedural elements to the significance of the change. These options are in addition to the considerable flexibility provided elsewhere in the regulation, which accommodates many types of operational changes without the need for a permit revision. Today's rule suggests two possible approaches that employ the minimum procedures required by the Act for different types of changes. The track for significant changes essentially mirrors the permit issuance process. In this track, the public, the permitting authority, affected States, and EPA will review the revision in the same sequence they will use at permit issuance. The other track, which the Agency has named "minor permit modification procedures," is designed for smaller changes at a facility. Such changes will not involve complicated regulatory determinations. In this track, in certain cases, a source may make a change after notice, but prior to the time

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the permitting authority, affected States, and EPA review the revision. The permittee may make a requested change immediately after filing the application.

The minor permit modification procedures set forth the most streamlined process that would be approved by EPA. The EPA would not approve a more streamlined process that did not provide an opportunity for review by the permitting authority, EPA, or affected States.

In each track, EPA has provided the permitting authority, affected States, and EPA an opportunity to review the proposed revision. What distinguishes the two tracks is: (1) Whether public review is required; and (2) the point in the process at which the permittee may make the change after proposing it to the permitting authority. In reviewing comments from industry, it is clear to EPA that industry's primary concern is that quickly changing business conditions require changes in operation on little or no notice. This could not be accommodated by a process of indeterminate length that could delay any decision on even the most routine or noncontroversial changes, despite the permittee's good faith efforts to pursue the revision process. Industry comments do not dispute the fundamental obligation that any permit revision must comply with the applicable requirements, but maintain that the process should not unreasonably delay a decision to allow a facility to comply with the Act under revised permit terms. The minor permit modification procedures are designed to address these concerns within the framework of title V.

(b) Legal basis for minor permit modifications. The issues surrounding whether public notice and procedure are necessary for minor permit modifications proved to be among the most controversial issues raised by the proposal. These issues engendered many comments from affected sources, the States, environmental groups, and others. For these reasons, EPA also sought and received a legal opinion (dated May 27, 1992) from the Department of Justice concerning the extent of EPA's discretion to allow States to adopt procedures allowing minor modifications to permits without public notice and comments.

EPA has carefully considered the issues in light of the public comments received and the opinion from the Department of Justice, and has decided to adopt the reasoning provided by the Department. Briefly, EPA is adopting final rules that allow States to adopt procedures for making minor permit modifications without public notice or comment. There are two alternative bases for this action. First, EPA believes that the statute and legislative history can be properly construed to allow such an approach, and second, this approach can also be based upon the general judicial doctrine that permits *de minimis* departures from statutory requirements.

(i) Statutory Construction. The Supreme Court established a two-step approach to analyzing such legal questions in *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984). The first inquiry is whether Congress has "directly spoken to the precise question at issue." *Id.* at 842. This standard is exacting: It requires a "clear indication of Congress' intent with respect to the precise issue at hand." *Natural Resources Defense Council* v. *EPA*, 859 F.2d 156, 201 (D.C. Cir. 1988). If there is such a clear indication, that ends the analysis because a court "must give effect to the unambiguously expressed intent of Congress," as revealed through application of the traditional tools of statutory construction. *Chevron*, 467 U.S. at 842–43 & n.9.

If, however, the statute is silent or ambiguous on the precise question at issue, the reviewing court will determine whether the proposed regulation "is based on a permissible construction of the statute." *Id.* at 843. Under this second step of *Chevron*, the courts must uphold the EPA interpretation provided it is "reasonable and consistent with the statute's purpose." *Chemical Mfrs. Ass'n* v. *EPA*, 919 F.2d 158, 162–3 (D.C. Cir. 1990). Under the second step of *Chevron*, a court will substantially defer to the EPA's exercise of its discretion and will generally confine its analysis to whether the EPA's proposed rule is reasonable and consistent with the statutory scheme of title V. *See Chemical Mfrs. Ass'n*, 919 F.2d at 162–63; *Natural Resources Defense* v. *EPA*, 822 F.2d 104, 117 (D.C. Cir. 1987). Moreover, where the question under step two of *Chevron* involves the formulation of procedures by the Agency, the deference accorded the Agency's decisions is especially broad. *See Chemical Mfrs. Ass'n*, v. *Natural Resources Defense Council*, 470 U.S. 116, 131 (1985). Where the interpretive issue is procedural, the Supreme Court's ruling in *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council*, 435 U.S. 519 (1978), requires courts to be especially deferential to the agency's interpretation.

In *Vermont Yankee*, the Court articulated the presumption that "[a]bsent constitutional constraints or extremely compelling circumstances the "administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties." 435 U.S. at 543 (quoting *FCC* v. *Schreiber*, 381 U.S. 279, 290 (1965), and *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940). Subsequently, the Court has made clear that *Vermont Yankee*'s presumption is a reason to grant even more deference to any agency's interpretation of a statute under *Chevron* where the issue ultimately concerns whether administrative action may be taken through particular procedural means. *Chemical Mfrs. Ass'n*, 470 U.S. at 131 (where a dispute involves an argument over the procedural means to be used by the agency, "these are particularly persuasive cases for deference to the Agency's interpretation. Cf. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 543 (1978)."). See American Trucking Assn's v. *United States*, 627 F.2d 1313, 1321 (D.C. Cir. 1980) (Wright, J. (the D.C. Circuit "has repeatedly stated that an agency 'should be accorded broad discretion in establishing and applying rules for * * * public participation"; (ellipsis in original) (citing several cases).

Following the framework established by *Chevron*, the first question is whether Congress has "*directly spoken* to the precise question at issue." *Chevron*, 467 U.S. at 842 (emphasis added).

In the present case it is significant that, while Congress referred to public notice in section 502(b)(6), it did not expressly tie that notice to permit revisions. Section 502(b)(6) requires the EPA to establish "adequate, streamlined, and reasonable procedures" for four elements of any permitting program:

(1) "For expeditiously determining when *applications* are complete,"

(2) "For processing such *applications*,"

(3) "For public notice, including offering an opportunity for public comment and a hearing, and"

(4) "For expeditious review, of *permit actions, including applications, renewals, or revisions*, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law."

42 U.S.C. 7661(a)(b)(6) (emphasis added).

Unlike the other three elements, the "public notice" element—element (3)—

does not indicate to what actions it applies. The text of section 502(b)(6) does not directly tie the "public notice" element to any of the Agency actions referred to in elements (1), (2) or (4). That a procedure for public notice is referred to in element (3) thus does not alone determine the types of actions to which such notice applies: Rather, it could be read simply as a requirement that to the extent public notice and comment are required or provided, the EPA must establish adequate, streamlined, and reasonable procedures for the States to use to obtain public comment. Alternatively, even if one were to consider it unambiguously clear that public comment is necessary for initial permit "applications," the statute remains ambiguous as to whether public notice is necessary for the various permit actions listed in element (4), including not only "applications" but also "renewals" and "revisions". Congress thus did not clearly require public notice and comment for all "permit actions."

Where Congress has required public notice and an opportunity for comment in title V, it has applied the requirement directly to the specified agency action. Subsection (d) of section 504, for example, provides that "[t]he permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources." 42 U.S.C. 7661c(d). See also, e.g., 42 U.S.C. section 7661f(c)(2) ("Upon petition by a source, the State may, *after notice and opportunity for public comment*, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria [for a small business] but which does not emit more than 100 tons per year of all regulated pollutants.") (emphasis added).

Numerous provisions in the Act itself and in other environmental statutes setting forth notice and comment requirements demonstrate that Congress can and does formulate and apply explicit provisions for public comment to particular types of activities. For example, section 169A of the Act requires "notice and opportunity for public hearing" before the EPA may exempt a major stationary source from a retrofit requirement if that source is contributing to visibility impairment. 42 U.S.C. 7491 (b), (c)(1). Similarly, section 165 of the Act requires that construction permits issued for new major emitting facilities be subject to "a public hearing * * * with opportunity for interested persons * * * to appear and submit written or oral presentations on the air quality impact of such source." *Id.* section 7475(a)(2). The Clean Water Act requires the EPA to provide an "opportunity for public hearing" before issuing a pollutant discharge permit, 33 U.S.C. 1342(a)(1), and the Resource Conservation and Recovery Act requires public notice and, if requested, an "informal public hearing (including an opportunity for presentation of written and oral views)" prior to the issuance of any hazardous facility permit, 42 U.S.C. 6974(b)(2).

These examples all reinforce the basic conclusion that if Congress meant to require a comment period for all permit revisions, Congress would have directly so stated. The absence in title V of any explicit provision for public comment on permit amendments suggests that Congress did not intend to require such notice.

We note that the opportunity for judicial review in element (4) is extended to, among others, "any person who participated in the public comment process." It could be argued that this language implies the need for public notice and opportunity for comment in all permitting actions.

However, EPA notes that element (4) established an opportunity for judicial review, not public comment. It would be both awkward and unusual for Congress to specify in such an indirect manner that the public notice and comment element must apply to precise categories of permit actions. Thus we do not think it is plain that element (4) is to be read in conjunction with element (3) as a refinement on the public comment provision. Rather, it can be argued that under element (3), the extent of the public comment process is to be determined by the State permitting agency under guidance from the EPA, see *Natural Resources Defense Council* v. *EPA*, 859 F.2d at 175–76, and the only *clear* statutory imperative governing the EPA's implementation of element (3) is that any procedures for public notice and comment be "[a]dequate, streamlined, and reasonable."

It is not anomalous that judicial review may be available, but notice and comment were not provided. There will be available a record for judicial review that will include the application for minor permit modification filed by the permittee, the proposed permit, the statement of basis for the proposed permit, and the State's final action. Courts will conduct review based on that administrative record, without having to create a new administrative record through trial *de novo*, a result rejected by courts in the past. See generally *Camp* v. *Pitts*, 411 U.S. 138, 141–42 (1973).

EPA has also examined the language and structure of section 505 of the Act. Section 505 of the Act sets forth, *inter alia*, a procedure under which EPA will receive copies of permit applications as well as applications for permit modifications or renewals. See 42 U.S.C. 7661d(a). This section also establishes procedures whereby the EPA may object to the issuance of any permit, *id.* section 7661d(b)(1), and for notice to affected and contiguous States of permit applications and proposed permits received by the EPA. Section 505(b)(2) provides that any person may petition the EPA to veto a proposed permit on the basis of objections raised in "the public comment period provided by the permitting agency." *Id.* section 7661d(b)(2).

The EPA's initial proposal defined "permit modifications" and "minor permit amendment" as separate subclasses of "permit revision." The logical implication of such a distinction would be that minor permit amendments would not be subject to any section 505 review procedures (*e.g.*, 45-day EPA review), which apply to permit applications, "modifications," and renewals. However, if the terms "modification" and "revision" are used interchangeably, then minor permit modifications are modifications within the meaning of section 505(a). The statute, however, is unclear on the question of whether Congress used the terms "modifications" and "revision" interchangeably in title V.

Neither "modification" nor "revision" is defined in title V. Courts presume that "the use of different terminology within a statute indicates that Congress intended to establish a different meaning," *National Insulation Transp. Comm.* v. *ICC*, 683 F. 2d 533, 537 (D. C. Cir. 1982). Interpreting "modifications" as a subset of "revisions," as the EPA proposed rule did, is also consistent with the dictionary definitions of "revise" and "modify." To "revise" is defined generally as to change, amend, alter, or to correct, improve, update. See *Webster's New World Dictionary* 1130 (rev. ed. 1982). Although one dictionary we have examined does define "revise" to mean a "[t]o change or modify," *The American Heritage Dictionary* 1112 (New College ed. 1976) (as in to "revise an earlier opinion"), "modify" is usually defined more narrowly as to limit, regulate, moderate, qualify, change or alter partially, reduce in degree, or make less extreme, severe, or strong. See *Webster's* at 914; *Random House* at 858; *American Heritage* at 844. Accordingly,

EPA believes that the requirements of section 505 do not necessarily apply to permit revisions as distinct from permit modifications.

Even if EPA were to conclude that a minor permit modification constitutes a "permit modification" within the meaning of section 505(a), that would not resolve the question whether section 505 would permit EPA the discretion under the mandate of section 502(b)(6) to create a procedural distinction between permit modifications that involve a title I modification and those that do not. In this regard, section 502(b)(10) expresses Congress's conclusion that changes in a source's operations or practices that (i) do not constitute a title I modification and (ii) do not increase emissions above existing allowables will require no permit revision at all and only minimal administrative review. From this, EPA concluded that the two types of changes identified in section 502(b)(10) are in Congress's view the most important in determining the procedural treatment to be afforded any change affecting permit terms or conditions. And because, under existing regulations, a modification within the meaning of title I will by definition involve emissions increases that trigger the application of new substantive requirements under title I, there would appear to be strong basis for the EPA to require more elaborate procedures for proposed revisions involving title I modifications. Even for minor permit modifications, EPA concludes that it is appropriate to retain the key elements of section 505—the 45 day EPA review and veto opportunity and notice to affected States.

Section 505(b)(2) allows objections to be raised for the first time before the Administrator if "it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period." If the State has provided *no* opportunity for public comment, it would obviously be impracticable to raise objections to the proposed permit modification during the most recent public comment period. Similarly, the petitioner could plainly substantiate a claim that the grounds for objection arose "after such period." Thus, under the section 505(b)(2) parenthetical the public can petition the Administrator regarding minor permit modifications in cases where the permitting authority has not provided for a prior public comment period on the proposed modification. Based on the language of the statute, therefore, it appears that in section 505 Congress, has not "directly spoken to the precise question at issue" so as to foreclose EPA's exercise of discretion. *Chevron*, 467 U.S. at 842.

(ii) Reasonableness of minor permit modification procedures under *Chevron*. The EPA believes the procedures adopted in this rule for minor permit modifications strike a careful balance between the competing statutory goals, set forth in section 502(b)(6), that permit procedures be "streamlined," "expeditious," "adequate," and "reasonable." Further, the approach taken in the final rule is a reasonable and fair accommodation of the comments received both criticizing and supporting the revision procedures in the proposed rule.

EPA received many comments from industry documenting the need to make operational changes expeditiously in response to market demands. For example, comment IV–D–160 stated that the automobile industry must be able to respond quickly to market and technological changes in order to maintain its market share relative to foreign competitors, and that provisions for expeditious permit revisions for minor emissions increases were crucial to this effort.

Certain industries, including the pharmaceutical industry, pointed out that, owing to the multi-purpose nature of both the equipment and processes used, and the wide variety of products produced, the need for adequate operational flexibility and the ability to revise permits expeditiously is of central concern in the design of the operating permits rule. See, e.g., IV–D–132. In fact, some industry commenters asserted that the proposal's minor permit amendment provisions did not go far enough in providing for operational flexibility. See, e.g., IV–D–241 (seven-day waiting period for minor permit amendments could economically weaken many companies).

EPA believes that the procedures for minor permit modifications in the final rule accommodate these industry concerns to the extent possible while maintaining a careful balancing of the above-mentioned statutory goals and preserving the integrity of the permit process. The minor permit modification procedures achieve the goals of being "streamlined" and "expeditious" because they allow States to adopt procedures under which sources may make permit revisions related to operational needs without delay and without the need to submit those revisions to public notice and comment. For changes resulting in increases in emissions below *de minimis* threshold levels set by the permitting authority and approved by EPA, the permitting authority may group these revisions on a quarterly basis for purposes of EPA and affected State review. For changes resulting in emissions increases above these threshold levels (but below title I modification levels) the source may implement the change immediately after filing a complete application, unless the permitting authority establishes a waiting period. In either case, permitting authority, EPA and affected State review may occur after the change has been made.

In contrast to the industry approval of the proposal's minor permit amendment procedures, State and environmental commenters were generally critical of these provisions. A group of Northeastern States (IV–D–192) asserted that seven days was an insufficient period to review a proposed permit revision. An environmental group (IV–D–158) stated that the minor permit amendment provisions would allow sources to increase emissions without legal limit. The general theme of these and similar comments was that, by allowing certain permit revisions to take place without the same public notice and comment procedures required in permit issuance and renewal, the regulations would undermine the effectiveness of the permit program in implementing and enforcing the requirements of the Act.

EPA disagrees with these commenters. Although the final rule allows approval of State programs that omit public notice and comment for certain permit revisions, the various protections associated with minor permit modification procedures assure that these procedures will be "adequate" and "reasonable" and will not undermine the permitting authority's ability to implement and enforce the Act. To begin with, the rule places several significant restrictions on the types of revisions eligible for treatment as minor permit modifications. Among these is the restriction that these procedures not be used for significant changes to existing monitoring, reporting, or recordkeeping requirements. Section 70.7(e)(2)(i)(A)(3). Thus, while operational changes, such as physical plant changes or changes in utilization, that may be necessary to respond to changing market conditions, may be the subject of permit revisions without prior governmental authorization or public notice and comment, significant changes related to a source's compliance regime must undergo full review before being implemented.

Several other protections ensure the adequacy and reasonableness of the minor modification procedures. A minor

permit modification will not be deemed to have issued for purposes of Federal law until EPA has had the opportunity to review the proposed modification for compliance with the Act. Likewise, affected States will have an opportunity to review and comment on proposed revisions and to make their views known to EPA prior to issuance. These governmental review requirements will help ensure that any modification of a permit accomplished through minor permit modification procedures will comply with the Act and the requirements of this part.

The rule provides the source with an additional incentive to comply. The rule provides that the permitting authority may enforce the original permit terms if the source should fail to comply with its proposed terms during the pendency of the minor permit modification.

Even after a minor permit modification has been properly "issued" following review by the permitting authority and EPA, the source remains responsible for compliance with the Act. Revisions effected through minor permit modification procedures do not receive the protection of the permit shield, so the permitting authority, EPA, and private citizens may enforce the applicable requirements and the requirements of part 70 regardless of how the permit has been revised.

Finally, the concern regarding the potential to increase emissions without legal limit under the minor permit modification procedures is misplaced, and is based on a misunderstanding of title V and the substantive requirements of the Act.

As discussed above, title V is primarily procedural, and is not generally intended to create any new substantive requirements. Nor are title V programs required to establish any sort of "cap" on emissions unless derived from a substantive requirement in another title of the Act. The title V permit is intended to record in a single document the substantive requirements derived from elsewhere in the Act. Therefore, in most cases the only emissions limits contained in the permit will be emissions limits that are imposed to comply with the substantive requirements of the Act (including SIP requirements). The permit itself will not impose any sort of independent "cap" on emissions except where requested by the source. This might occur, for example, in order to limit the source's potential to emit through a federally-enforceable mechanism for the purpose of lawfully avoiding substantive requirements of the other titles that would apply in the absence of a cap.

Like the minor permit amendment provisions of the proposed rule, the minor permit modification provisions in the final rule explicitly prohibit changes that would (1) constitute title I modifications, or (2) violate any applicable requirement of the Act. Applicable requirements include MACT standards, NESHAP, RACT limits contained in a SIP, NSPS, BACT, lowest achievable emission rate standards, and work practice standards established pursuant to a SIP, and other Federal requirements (including SIP limits). The minor permit modification procedure cannot be used to exceed any of these limits. It should be pointed out in this regard that the Act implicitly prohibits "stacking" of emissions increases under the minor permit modification procedures. The EPA has long held that stacking is unlawful where it is done for the purpose of improperly evading full permit modification procedures under title I. See, e.g., 54 FR 27274, 27281 (June 29, 1989) (prohibition against use of "sham" minor source permits for purpose of evading major NSR requirements under title I).

It is also worth noting that title I establishes additional substantive limits that would prevent unlimited vertical stacking in specific instances. For example, section 182(c)(6) establishes *de minimis* levels for ozone precursors in serious, severe, and extreme nonattainment areas that limit increases for purposes of title I modifications to 25 tons when aggregated with all other net increases in emissions at the source over the five years preceding the change. Thus, for these areas, there is a cumulative limit of 25 tons that, if exceeded, would trigger a title I modification and would prevent the source from using the minor permit modification procedures for changes above these limits. In other nonattainment areas and in attainment areas, certain increases above prescribed "significance levels" would also be aggregated with all other net increases in emissions at the source within a five-year contemporaneous period. See, *e.g.*, 40 CFR § 52.21(b)(2) and (3).

It bears emphasis that the minor permit modification procedures set forth in the final rule set the minimum standard for an approvable State permit program. States are free to establish permit revision procedures more stringent than those set forth in this rule. The EPA recognizes that most States have already adopted some form of operating permits program and, based on their own experience, have developed different approaches for processing permit revisions. The EPA also recognizes that different States have different environmental concerns. For example, States that have serious nonattainment problems may wish to adopt more stringent review procedures than those that do not. The final rule allows State the flexibility to design permit programs or to adapt their existing programs to meet their individual circumstances, provided the minimum requirements of part 70 are met.

(iii) *De minimis* justification for minor permit modification procedures. The EPA starts from the assumption that, in the context of regulatory statutes there is "virtually a presumption in * * * favor [of *de minimis* exemptions]," *Public Citizen* v. *Young*, 831 F.2d 1108, 1113 (D.C. Cir. 1987), and they will be inferred "save in the face of the most unambiguous demonstration of congressional intent to foreclose them." *Alabama Power*, 636 F.2d at 357. If such an exemption were statutorily permissible and otherwise valid, it would allow omission of public notice and comment in genuinely *de minimis* cases, even assuming that under step one of *Chevron* the Act unambiguously required public notice and comment for all permit actions.

In *Public Citizen*, the U.S. Court of Appeals for the D.C. Circuit reviewed the law in this area in the context of the "Delaney Clause" of the Color Additive Amendments of 1960, a provision of the Federal Food, Drug and Cosmetic Act (FFDCA) that bars the Food and Drug Administration (FDA) from listing any color additive "found * * * to induce cancer in man or animal," 21 U.S.C. section 376 (b)(5)(B); such FDA listing is a prerequisite for an additive's legal use. The court found that the language, structure, and legislative history of the Color Additive Amendments clearly foreclosed any *de minimis* exemption authority, because, although the cancer risks of the products did indeed appear "trivial," 831 F.2d at 1111, the statute was sufficiently rigid to preclude application of the *de minimis* doctrine. In reaching this conclusion, the court found that "the [statutory] language itself is rigid; the context—an alternative design admitting administrative discretion for all risks other than carcinogens—tends to confirm that rigidity. * * * [T]he legislative history * * * only strengthens the inference." 831 F.2d at 1113.

The language, structure, and legislative history of title V do not indicate that "Congress has been extraordinarily rigid," *Alabama Power*,

636 F.2d at 360–61, precluding the virtual[ ] * * * presumption," *Public Citizen*, 831 F.2d at 1113, that EPA may lawfully seek to frame *de minimis* exemptions from permit review requirements. Accordingly, such exemption authority is available to support a minor amendment procedure.

With regard to the language and structure of title V, a number of provisions are relevant. A modification procedure insulates a source that complies with its requirements from liability under section 502(a), which provides that "it shall be unlawful for any person to violate any requirement of a permit issued under this subchapter," 42 U.S.C. section 7661a(a). This prohibition is similar to that set out in section 165(a) of the Act, the provision at issue in *Alabama Power* ("No major emitting facility * * * may be constructed unless a permit has been issued"). Under title V, Congress nowhere prescribed an inflexible adherence to permit allowables. To the contrary, where the statutory design both contains a prohibition on exceedance of permit limits and authorizes modifications of such limits through procedures that must be both "streamlined" and "expeditious," *id.* section 7661a(b)(6), title V allows an exemption for minor exceedances on the basis of a *de minimis* rationale. Likewise, the legislative history of the relevant statutory provisions and title V as a whole is consistent with this approach.

Given that the statute does not explicitly preclude the crafting of a *de minimis* exemption for minor exceedances of permit allowables, the question remains whether the *de minimis* exemption here satisfies the principle articulated in *Alabama Power* for justification of a *de minimis* exemption that the "burdens of regulation yield a gain of trivial or no value." 636 F.2d at 361. The minor permit modification provisions of this rule comport with this criterion for establishment of a *de minimis* exemption because public review of changes effected through the minor modification track would yield a trivial gain in furthering the ultimate goal of the title V permit, namely, to assure compliance with the requirements of the Act. For the reasons stated below, EPA believes this application of the *de minimis* concept follows directly from the EPA's prior actions to follow the directives of the *Alabama Power* decision.

Central to this conclusion is the rule's limitation that no revision may be processed as a minor modification if it would constitute a title I modification. By regulation, EPA has limited modifications under parts C (prevention of significant deteriorations) and D (nonattainment) of title I to changes that would not increase emissions beyond certain "significance levels." These significance levels, established in response to the *Alabama Power* decision following careful analysis by EPA of the legal and air quality considerations, have never been challenged and remain in effect. *See* 40 CFR § 51.165(a)(1)(x). See also 45 FR 52676 (August 7, 1980). In fact, Congress endorsed this *de minimis* approach in the 1990 Act Amendments. It did so in part by setting specific statutory *de minimis* levels for major modifications in certain areas, and by leaving in EPA's other *de minimis* exceptions undisturbed. See, *e.g.*, sections 182(d)(6) and 182(e)(2). The minor permit modification track is therefore limited to increases in emissions levels long recognized under the Act as insignificant.

Compared to this established exemption from NSR, the minor permit modification procedure in fact presents a stronger case for a *de minimis* exemption from Act requirements for the following reasons. First, as noted above, the *de minimis* exemption for minor permit modifications is taken from a statutory context far more flexible than was the case for the NSR *de minimis* exemption. The statutory provisions in question in *Alabama Power* required that a permit be obtained for any "modification" to a major stationary source. The directive of title V that permit procedures be "streamlined" and "expeditious" indicates the intent to allow far more flexibility in the establishment of revision procedures.

Secondly, the *de minimis* exemption established in response to *Alabama Power* allowed a source to avoid altogether the considerable review requirements associated with NSR under parts C and D of title I. In this case, the exemption is merely from the public notice and comment component of a regulatory review scheme that remains largely intact. Thus, while increases in emissions up to title I significance levels would normally escape governmental and public review entirely under the NSR procedures of parts C and D, the same changes to a title V permit will be reviewed by the State and EPA for compliance with all applicable requirements of the Act.

Moreover, the NSR exemption allows a source to avoid significant substantive requirements, such as the requirement to install technological controls or to obtain emissions offsets from other sources in the area prior to construction. By contrast, the minor permit modification procedure is an exemption from certain procedural requirements only. Any change effected through minor permit modifications must comply with all substantive Act requirements.

EPA received a comment addressing the analysis in the Department of Justice opinion. Although this comment was received very late in the process, it has been carefully considered. In general, the analysis in the Department's opinion speaks for itself. A few specific points merit response, however.

First, the commenter contends that providing an opportunity for judicial review of minor permit amendments without providing also for public notice and comment would require courts to conduct trials *de novo* because there would be no administrative record. However, as noted earlier in this preamble, there will be a record for review, consisting at least of the permit modification application, the proposed permit and statement of basis, and the State's final action.

The commenter also asserted that, while the *de minimis* concept may be appropriate to limit the scope of an agency's authority, it may not find application where an agency seeks to limit the extent of public review of matters already within its jurisdiction. The EPA believes that, to the contrary, the latter case finds more support in judicial precedent establishing authority for *de minimis* exemptions. The primary test of the legal sufficiency of an administratively-created *de minimis* exemption is that the burden of regulation must yield a gain of "trivial or no value." *Alabama Power*, 636 F.2d at 360–361. If a gain of trivial or no value would result from the inclusion of certain activities within the regulatory jurisdiction of an agency, there must similarly be at best a trivial gain when those same activities, once brought within the agency's authority, are merely exempted from requirement to undergo public review. This is precisely the case here, because the same *de minimis* emissions levels established for purposes of exemption from the NSR requirements will serve to limit the changes eligible for processing through minor permit modifications. The present rule therefore presents an even stronger case than the new source review thresholds for application of the *de minimis* principles established in the *Alabama Power* decision, as it has been implemented by EPA for over a decade.

This commenter also asserted that allowing permit terms to be modified

without notice to the general public would frustrate the requirement that permits be enforceable. But contrary to the commenter's claim, nothing in minor modification procedures insulates a source from EPA or citizen enforcement of the modified permit terms or the requirements of the Act. First, any permit that is modified using minor modification procedures will be a matter of public record on file with the permitting authority pursuant to section 503(e) of the Act. Citizens may obtain a copy of any permit, as amended, from the permitting authority or the relevant EPA Region for the purpose of enforcing its terms. Second, today's rule specifically denies the permit shield to changes incorporated into a permit using minor modification procedures. If a citizen believes that a minor permit modification violates the underlying requirements of the Act, the citizen may always seek to enforce the Act's requirements if the source is relying on its modified permit to demonstrate compliance with those requirements of the Act.

The commenter also alleges that EPA provided the public with inadequate notice of its intention to rely on a *de minimis* rationale as a ground for denying public participation on minor permit modifications. On the contrary, the Agency's notice of proposed rulemaking so clearly pointed toward a *de minimis* rationale that the adoption of such a rationale in these final rules can readily be seen as a logical outgrowth of the Agency's proposal. See, *Small Refiner Lead Phase Down Task Force* v. *EPA*, 705 F.2d 506, 547, 549 (D.C. Cir., 1983); *City of Stoughton* v. *EPA*, 858 F.2d 747, 753 (D.C., Cir., 1988). The provision in question called "minor permit amendments" (§ 70.7(f)) in the proposal concerned what emissions increases could be considered sufficiently small that they could be instituted without public participation, an inquiry which covers whether increases are so small as to be *de minimis*. Proposal § 70.7(f) applied if the proposed revision "does not constitute a modification under any provision of title I of the Act". In turn, under the landmark decision of *Alabama Power* v. *Costle*, 636 F.2d 323 (D.C. Cir., 1979), *de minimis* emissions increase may be exempted from consideration as "modifications". Hence, the use of the term modification put the public on notice that *de minimis* was an issue in the rule making. Indeed, the Agency received numerous comments (e.g., IV–D–208, IV–D–312, IV–D–323) that minor permit amendments were justified as *de minimis* under *Alabama Power*. During the comment period, several State groups (IV–D–121, IV–D–232, IV–D–270) and one environmental group (N–D–81) addressed the issue of appropriate *de minimis* thresholds. Finally, the commenter's own comment addressed the *de minimis* issue. In sum, the EPA proposal provided sufficient notice that *de minimis* was an approach that might be adopted as a final outcome in the rulemaking.

(c) Legal basis for section 502(a) exemption. EPA's model regulations outlining an option for minor permit modifications preserve the elements of permitting authority, affected States, and EPA review. They allow a source to make the proposed change after notice, but before the review procedures have been completed. Thus the procedures in effect temporarily exempt the source from the technical requirement of section 502(a) that a source operate in compliance with its permit. The basis for such limited exemption resides in the doctrine of *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 357–361 (D.C. Cir. 1979), where the D.C. Circuit set forth "the principles pertinent to an agency's authority to adopt general exemptions to statutory requirements."

In *Alabama Power*, the Court observed that "Unless Congress has been extraordinarily rigid, there is likely a basis or an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value." *Id.* at 360–361. Far from being "extraordinarily rigid" with respect to procedures governing permit actions, Congress' intent in title V, as evidenced in section 502(b)(6) and elsewhere, was to establish a flexible standard: procedures for "expeditious review of permit actions" that are "adequate, streamlined, and reasonable". In title V Congress repeatedly demonstrated interest in balancing the need for "expeditious action" by the permitting authority with the need for adequate governmental and public oversight of the permitting process (see, e.g. 502(b)(7), (8)).

The minor permit modification procedures outlined in EPA's regulations allow States to create a highly limited *de minimis* exemption that satisfies the requirements of *Alabama Power*. The Administrator has determined that States could find that requiring review by the permitting authority, EPA, and affected States to take place before a source can make a change qualifying for treatment as a minor permit modification may impose great burdens on industry and State regulatory systems, while any benefit that would accrue would be trivial. The regulations require ample safeguards to ensure that such a temporary exemption (to the formal requirement of compliance with all permit terms while a modification application is pending) is truly *de minimis* in scope and impact.

First, a State could not allow a change to qualify for minor permit modification procedures unless it were less than a title I modification and met certain additional eligibility criteria. These stringent criteria, described in paragraph (c) below, will assure that this procedure is not used for significant changes. Second, the State could not allow a change to be made until after the source filed a complete application for a permit modification.

Third, the State could allow the source to make the change it proposed, but the source must bear the full risk of the consequences if its proposed modification is subsequently disapproved. Moreover, no "permit shield" attaches to any minor permit modification. The only exemption that the source could receive, and it would be a temporary one lasting only until its permit application is processed, is from the technical requirement that the source comply with the existing permit terms that are the subject of the proposed modification. The source would continue to be subject to all applicable requirements, and to those permit terms not addressed by its proposed modification.

If a source chooses to make a change before final action on its proposed modification, and that change is subsequently disapproved, enforcement proceedings may be brought for any violation of applicable requirements resulting from the change. Furthermore, if the source chooses to implement a change prior to issuance of a revision and the permitting authority does not take final action on the application in a timely fashion, the public may have the opportunity under State law to seek a State court order requiring the permitting authority to act finally on the application, and can seek enforcement of the applicable requirements of the Act if it believes the revision violates the Act.

Given these consequences, no source would lightly undertake to make a change while awaiting a permit modification. Emissions resulting from changes that are subsequently disapproved would, moreover, be small and limited in time. Since the permit must issue or be denied in 90 days, the potential for significant illegal emissions increases to occur is negligible. Thus the environmental consequences of this *de minimis* exemption are trivial.

Furthermore, a State might determine that the exemption is desirable because it would free the regulatory system to devote resources to processing significant modifications, without holding up smaller changes with low environmental risk. It would also preserve for the permit modification process the protections of governmental oversight, thereby ensuring the integrity of the permit system without unnecessarily burdening regulatory authorities or regulated industry.

The Administrator concludes that such a *de minimis* exemption is well within his discretion, and comports with the regulatory objectives of title V. A permitting authority may reasonably determine that regulations based on this *de minimis* exemption provide "adequate, streamlined, and reasonable procedures" for permit modifications.

With these tracks, EPA believes it has provided States with an example of adequate, streamlined, and reasonable procedures for handling permit revisions. States may meet their obligation to adopt such procedures using EPA's model or provisions that are substantially equivalent. A State's substantially equivalent procedures need not be identical to EPA's model, nor are the procedures set forth in § 70.7(e) meant to preempt the States from requiring additional process before allowing a change to take effect or before granting a permit revision.

(d) Description of final rule. Following is a description of how the model set forth in § 70.7(e) would work. The model attempts to match the significance and complexity of the proposed revision with the nature and degree of the process required. Changes that qualify for minor permit modification procedures could be made immediately after notifying the permitting authority. Significant changes could not be made until the permitting authority issued the permit modification after review by affected States, the public, and the Administrator.

Criteria for minor permit modification procedures: State programs must include criteria for determining which types of modifications undergo which review process. Today's rule sets forth criteria describing the types of modifications that can be processed on an expedited basis, although States can adopt more restrictive criteria. Under these criteria, State programs cannot use minor permit modification procedures except for modifications that:

(1) Do not violate any applicable requirement;

(2) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit (as discussed below);

(3) Do not require or change a case-by-case determination of an emission limitation or other standard (such as a case-by-case MACT determination under section 112(g) of the Act, or equivalency determinations for RACT limits under title I), or a source-specific determination of ambient impacts, or a visibility or increment analysis;

(4) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which it would otherwise be subject (as, for instance, a change to a previously established voluntary cap to escape new source review);

(5) Are not modifications under any provision of title I of the Act; and

(6) Are not required by the State program to be processed as a significant modification.

Only insignificant changes in existing monitoring, reporting, and recordkeeping requirements may go through the minor permit modification procedures of § 70.7(e) (2) and (3). An example of an insignificant change in monitoring would be a switch from one validated reference test method for that pollutant and source category to another, where the permit does not already provide for an alternative test method.

The final rule also allows States to process "economic incentives, emissions trading, marketable permits, or other similar approaches" under the minor permit modification process, if the underlying SIP or EPA rule provides explicitly for use of minor permit modification procedures when implementing these types of changes. EPA is providing this form of permit modification for the same reason that it is expanding the use of the operational flexibility provisions for emissions trading: to encourage the use of market-based strategies, and to allow flexibility for processing changes under these programs, consistent with the requirements of title V. The term "other similar approaches" includes other programs that may achieve a similar result as an economic incentive program, a marketable permits program, or an emission trading program, but that may use a different mechanism or approach. This term is meant to allow States to use the minor permit modification process for other programs that may be developed in the future, provided that the underlying requirement explicitly allows for this type of processing. As with similar provisions elsewhere in this rule, future SIP's and EPA rules would have to contain compliance requirements and procedures that would assure that any or all market-based programs are quantifiable, accountable, and enforceable, and based on replicable procedures for determining the emission reductions expected from the program.

Minor permit modification procedures for individual permit modifications. If the source requested the minor permit modification process, the source could make the proposed change while its application was pending. The types of changes that can be made using minor permit modification procedures vary. Thus, it does not make sense to insist that States follow identical procedures in all circumstances, provided that the States comply with the minimum time period specified in these rules. Review by the permitting authority, affected States, and the Administrator could occur concurrently. The permitting authority could then issue (or deny) the permit modification.

A source may request minor permit modification processing of a permit modification by filing a complete application demonstrating that it qualifies for such treatment. The application must also include the source's suggested draft permit. The source may make the proposed change after filing a complete application.

During the pendency of an application for a minor permit modification, a source would receive a qualified exemption from the requirement that it comply with its existing permit terms, but the exemption would be in effect only while the source operates in compliance with its proposed permit terms and conditions. If a source uses minor permit modification procedures to make the change, during the pendency of its application the source need not comply with the existing permit terms and conditions it seeks to modify, but must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. Thus, if a source uses minor permit modification procedures to make such a change, an enforcement action always may be brought to enforce the underlying applicable requirements with respect to the change. Furthermore, if a source violates the proposed permit terms and conditions, it will lose its exemption from complying with its existing permit terms and conditions, and an action enforcing the existing permit terms and conditions may be brought.

The permit shield otherwise allowed under § 70.6(f) cannot be granted to permit terms resulting from minor permit

modifications. Requiring the source to be bound by the underlying applicable requirements irrespective of a minor permit modification helps ensure that providing additional process for minor permit modifications would provide only trivial benefits and provides a limit on the emissions increases available which could occur "stacking."

Within 5 working days of receipt of a complete permit application, the permitting authority must fulfill its obligations under § 70.8(a)(1) and (b)(1) to notify affected States of the requested permit modification and transmit the proposed permit and other necessary documents to the Administrator. For purposes of EPA review and petitions to EPA, the draft permit would be the same as the proposed permit. The permitting authority would have to respond promptly to affected States' recommendations. If EPA objected to a permit modification, then the procedures in § 70.8 of this part would apply.

The final rule requires 45 days for EPA review of and opportunity to veto permit modifications, including those that change the emissions allowable under the permit. The rule also requires that sources comply with substantive conditions and limitations contained in permits that have been issued in accordance with the Act, including those issued as modified permits. Thus permit modifications are subject to the procedures required by § 70.8 for permit issuance. These include § 70.8's requirement that an affected State receive notice and an opportunity to comment on permit modifications.

The permitting authority may not issue a final permit modification until EPA's review period has elapsed without objection or EPA has sent written notice to the permitting authority that it will not object to the modification. However, the permitting authority may approve the modification prior to the time it finally issues the modification. The permitting authority must act within 90 days of receipt of an application for modification, or 15 days after the end of the Administrator's 45-day review period, whichever time is later. This action may include a determination that minor permit modification procedures are inappropriate and that significant modification procedures must be followed (which would terminate the source's ability to operate out of compliance with its approved permit terms and conditions).

In developing State programs, States may also want to provide the permitting authority with the option of issuing a revised proposed permit that would restart EPA's 45-day review period. This would allow the State to make minor changes to the proposed permit without requiring the State to deny an application due to minor errors in the proposed permit, thereby forcing the source to reapply for a permit modification. EPA believes that a source should be allowed to make a change before a modified permit is issued by the permitting authority only if the source bears the risk of making a change that the permitting authority later finds should not have been made.

Group processing procedures. Within the class of changes that can be processed as minor permit modifications, EPA believes that some of these changes are so insignificant that the administrative burdens of individually processing large numbers of such proposed modifications may not be justified. Therefore, the permitting authority may process groups of such modifications together. The group processing procedures basically track the minor permit modification procedures described above, except that the permitting authority could process all eligible modifications on a quarterly basis, or as soon as the aggregate of the source's applications reached the threshold level, discussed below, set in the State program.

Modifications eligible for treatment as minor permit modifications could be processed in a group if they fell below a threshold level approved as part of the State permit program. A State may establish its own threshold levels. However, EPA's regulations suggest the following threshold levels, based on comments from State and local air pollution control agencies with experience implementing permitting programs: 5 tons per year, 20 percent of the major source definition for the area, or 10 percent of the permitted allowable level, whichever is lowest. Many States do not require permits for sources at or below these levels. Moreover, changes below these suggested levels are not likely to trigger new Federal applicable requirements.

The State may establish alternative thresholds if it can justify them based on criteria drawn from the *Alabama Power* decision. The regulations provide the States with guidance for setting appropriate levels, without locking them into a rigid formula. A State's experience under an established program is a good basis for demonstrating that alternate *de minimis* levels will meet the program's goals and legal obligations.

States may also propose alternate *de minimis* levels in response to new regulations which might create unanticipated results under the formula for *de minimis* emission levels described above. For example, section 112(a)(1) allows EPA to establish "lesser quantity" thresholds for certain toxic air pollutants. A fixed percentage of the major source size which yields an appropriate *de minimis* level for a 100-ton per year major sources may not be reasonable when applied to major sources of well less than 10 tons per year. EPA will review such alternate limits according to the same criteria drawn from the *Alabama Power* decision.

The group processing procedures differ in only a few respects from the general procedures for minor permit modifications. Most importantly, the timing of review by the permitting authority, EPA, and affected States is different from that under general procedures for minor permit modifications. Instead of processing applications as soon as the applications are submitted by the source, the permitting authority can collect applications and process them as a group once a quarter. Modifications eligible for group processing would need to be processed more frequently only when the pending applications, in the aggregate, reach the threshold level set by the State. Second, the source would have to notify EPA that it is seeking a modification. Such notice is required because the EPA may not receive notice of the change from the permitting authority for three months.

The source would also be required to submit all forms necessary for the permitting authority to notify EPA and affected States. For purposes of EPA review and petitions to EPA, the draft permit would be the same as the proposed permit. The permitting authority would be required to fulfill its obligation under § 70.8(a)(1) and (b)(1) to notify affected States and transmit information to the Administrator promptly after receipt of the complete application for minor permit modification.

Criteria for significant modifications. Significant modifications are those modifications which do not qualify for treatment as minor permit modifications or administrative amendments. Significant changes to existing monitoring permit terms or conditions, or changes that would relax reporting or recordkeeping requirements would be significant modifications, since these types of changes are likely to affect how the permitting authority determines whether the source is in compliance with emission limitations and other permit terms and conditions. An example of such a change would be a

switch from direct measurement of emissions to fuel sampling and analysis, such as switching from emissions monitoring of $SO_2$ to sampling and analyzing coal sulfur content. The EPA believes it would be inappropriate for sources to be able to change the method of measuring compliance with its requirements using the minor permit modification procedures. Although EPA recognizes that there are legitimate economic reasons for making some changes quickly, there should be no such urgency for changing existing significant monitoring, reporting, or recordkeeping requirements. Nothing in § 70.7(e)(4)(i) regarding compliance provisions shall be interpreted to prevent sources from making off-permit changes pursuant to § 70.4(b)(14) and (15), or using the operational flexibility provision in § 70.4(b)(12)(ii). When a source takes advantage of these provisions, it may alter its activities to such a degree that its original compliance terms are no longer relevant with respect to the change. A source which makes off-permit changes must comply with any compliance provisions imposed by the applicable requirements that apply to the off-permit change. Similarly, a source that uses the operational flexibility provision of § 70.4(b)(12)(ii) must comply with all compliance provisions imposed by the SIP provision authorizing the operational flexibility. If the source later decides to operate as originally permitted, it must comply with the compliance provisions in its original permit.

Significant Procedures. The EPA has not set forth a specific model for processing significant permit modifications. It is anticipated that the procedures will be very similar to those for processing initial permits or permit renewals. However, most significant modifications should be less complex than initial permits or permit renewals, and the process need only focus on the changes to the permit rather than repeat any more comprehensive permit analysis of the source. Therefore, EPA has required that each State program provide that the majority of significant modification applications are finally issued or denied within 9 months after they are received.

3. Deadline for Action on Applications

Under the Act, the permitting authority is required to act on permit applications, including permit modifications and renewals, within 18 months from receipt of a complete permit application, except for permits for affected sources (acid rain). The proposal did not suggest that shorter deadlines might be appropriate for permit renewals or modifications.

Industry commenters were concerned that 18 months for renewals and modifications is too long and recommended reducing the review period to 4 to 6 months.

The EPA responds that, although section 503(c) of the Act clearly requires an 18-month deadline for action on applications (except during the phase-in transition period), EPA agrees that many permit renewals and modifications could be reviewed in far less time, provided that the conditions and terms of the permit do not lapse.

Thus, the Administrator, consistent with section 502(b)(6), has included several provisions in the final regulations to substantially expedite review of permit modifications [*see* § 70.7(e)]. Furthermore, the Administrator agrees that permit renewals are often so straightforward that they should be reviewed in much less time than 18 months. In discussions with State and local agencies, it is apparent that renewal times of less than 6 months are common except in a few cases. Thus, while EPA cannot require that all renewals occur in a shorter time frame, it strongly encourages States to review 90 percent of renewal applications in under 6 months.

4. Administrative Permit Amendments

An administrative permit amendment would include administrative changes such as correction of typographical errors, changes in address, change of ownership, etc. EPA also proposed to treat as administrative permit amendments any changes that have been processed under an approved State preconstruction review program. The proposal stated that since these changes have already received sufficient EPA review and appear to offer adequate opportunity for public comment and a hearing, EPA believed it would be unnecessary for them to undergo the full permit revision procedure described in section 502(b)(6) simply to incorporate the results of the NSR program.

A number of State agencies recommended that permit requirements issued under State NSR programs should be incorporated into title V permits via the administrative permit amendment process. One group of State agencies suggested that EPA should expand the list of items to be processed as administrative permit amendments to include anything that is obviously approvable.

The EPA has learned, however, that most State preconstruction review programs do not meet title V requirements for review by EPA and affected States. EPA believes that such procedures are required for permit revisions. Thus, EPA will allow States to use the administrative permit amendment procedures to incorporate the results of an EPA-approved State NSR program, if the NSR program is enhanced as necessary to meet requirements substantially equivalent to the applicable part 70 requirements. Changes that meet the requirements for minor permit modifications may be made under procedures substantially equivalent to those in § 70.7(e) (2) or (3). Changes that do not meet the requirements for minor permit modifications must be made under procedures substantially equivalent to those for permit issuance or significant permit modifications. Accordingly, the permit shield may only attach to the latter category of administrative amendments and can not attach until final action has been taken granting the request for the administrative amendment. If a State does not make the necessary improvements to its NSR program, the permit modification process must be used to revise the part 70 permit, as needed.

The primary intent of these "enhancements" of the NSR process is to allow the permitting authority to consolidate NSR and title V permit revision procedures. As stated in the May 10, 1991 proposal, it is not to second-guess the results of any State NSR determination. For example, if a State does provide for EPA's 45-day review in its NSR program, EPA would only be reviewing whether the State had conducted a BACT analysis, if applicable, and whether that analysis is faithfully incorporated in the title V permit. The EPA will not use its review period to object to or attempt to revise the State's BACT determination. Correspondingly, EPA's failure to object to the substance of the BACT determination will not limit any remedies EPA might otherwise have under the Act to address a faulty BACT determination.

The proposed rule allows changes that the permitting authority determines to be similar to those in items (i)–(iv) in § 70.7(d) to be permit revisions for purposes of administrative permit amendments. The EPA has decided to strengthen the proposal by requiring that this list of similar changes be proposed by the permitting authority in its permit program and approved by the EPA. The EPA believes this change is necessary to allow adequate EPA review of these changes to ensure that they are similar to the types of changes defined in items (i)–(iv).

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Section 70.7(d)(3)(i) requires the permitting authority to take final action on a request for an administrative amendment to a permit within 60 days of receipt of such request. This 60-day period was intended as a convenience to the permitting authority, not as a waiting period imposed on a source seeking to implement changes qualifying for the administrative amendment track. To clarify this meaning, new § 70.7(d)(3)(iii) provides that a source may implement changes addressed in a request for an administrative amendment immediately upon submittal of the request. Except as discussed above, § 70.7(d)(4) has been revised to clarify that the permit shield may not attach for these changes.

5. Public Participation

Under section 502(b)(6) of the Act, State programs are to have "adequate, streamlined and reasonable" procedures for providing public notice, "including offering an opportunity for public comment and a hearing," of "permit actions, including applications, renewals, or revisions." The EPA proposed that the opportunity for a public hearing can be implemented in an informal manner (e.g. not a full trial-type hearing), such as through open meetings for interested parties to express their concerns. The proposal stated that States were to develop procedures for notice and an opportunity for public comment and a hearing "after considering the requirements of part 124 of 40 CFR."

State agencies commented that the EPA should be careful not to make the public review process unduly burdensome. Environmentalists commented that the EPA should require more specific public comment and hearing procedures, since section 502(b)(6) requires EPA to promulgate minimum elements of a permit program, including "adequate, streamlined and reasonable procedures * * * for public notice, including offering an opportunity for public comment and a hearing."

Although EPA believes that part 124 may provide some useful guidance to States in establishing procedures for public participation, EPA decided that the reference to part 124 was too vague and could have been read to incorporate elements in part 124 that EPA believes are not necessary for title V permits. Therefore, EPA has deleted the reference in the rule to part 124 and has specifically listed the minimum elements of public participation that must be included in a State program.

Section 70.7(h) makes clear that all permit proceedings, except those for minor permit modifications, must provide adequate procedures for public participation. For this purpose, public participation includes: notice, an opportunity for public comment, and a hearing where appropriate. Section 70.7(h) goes on to specify the key elements required in such procedures.

Section 70.7(h)(1) addresses the manner of giving notice, and those to whom it must be given. It provides that notice must be given: By publication in a general circulation newspaper; to all those who request to be included on a mailing list developed by the permitting authority by other means if necessary to assure adequate notice to the affected public.

Section 70.7(h)(2) describes the information that the notice must include, and § 70.7(h)(3) requires notice to be provided to affected states pursuant to § 70.8.

Sections 70.7(h) (4) and (5) contain requirements for the timing of public comment and notice of any public hearing. For initial permit issuance, permit renewals, and significant modifications, the permitting authority must provide at least 30 days for public comment and at least 30 days advance notice of any public hearing.

Finally, § 70.7(h)(6) requires the permitting authority to keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his obligation under section 505(b)(2) of the Act to determine whether a citizen petition may be granted, and to make them available to the public.

Public objections to a draft permit, permit revision, or permit renewal must be germane to the applicable requirements implicated by the permit action in question. For example, objections addressed to portions of an existing permit that would not in any way be affected by a proposed permit revision would not be germane. Public comments will only be germane if they address whether the draft permit is consistent with applicable requirements or requirements of part 70.

*H. Section 70.8—Permit Review by EPA and Affected States*

1. 90-day Response Period

Proposed § 70.8(c)(4) allowed 90 days for the permitting authority to make a submittal in response to an EPA objection to issuance of a proposed permit. If the permitting authority submitted a revised permit that only partially met EPA's objection, up to another 90-day period could be granted for the permitting authority to submit a second permit revision meeting EPA's objection. This provision for a second 90-day period is removed from the final rules because the Administrator has determined that section 505(c) of the Act only allows one 90-day period. Although section 505(e) of the Act allows an additional 90-day period, this section applies to reopening permits for cause, not for objections to proposed permits.

Section 70.8(d) provides that where EPA, in response to a public petition, has objected to a permit that has already been issued, EPA will modify, terminate, or revoke such permit. The final rule clarifies that EPA shall do so consistent with the procedures for reopening a permit for cause set forth in § 70.7(g)(4) or (5)(i) and (ii), "except in unusual circumstances." Unusual circumstances would include those where there is a substantial and imminent threat to the public health and safety resulting from the deficiencies in the permit.

2. Permit Continuance

The proposal required permitting authorities to suspend a permit if the Administrator objected to the permit as a result of a public petition under § 70.8(d). Upon further review, EPA now believes that this provision would not meet the requirements section 505(b)(3) of the Act. The final rule states that upon EPA objection as a result of a petition and after the permit is issued, EPA shall modify, terminate, or revoke the permit. The permitting authority can thereafter issue a revised permit meeting EPA's objections. These provisions are as section 505(b)(3) of the Act stipulates and EPA has no discretion to do otherwise.

3. Grounds for an EPA Objection

The proposal allowed EPA to object to a permit if the permitting authority failed to submit necessary information, forms or notices to EPA. The final regulation expands this provision by allowing EPA to object to a permit if the public notice and comment and affected State review requirements (under sections 502(b)(6) and 505(a)(2) of the Act), where applicable, were not met. This is necessary to ensure that permitting authorities meet their obligation under the Act to provide adequate opportunity for public participation and affected State review. The regulations also specify that the Administrator may only object if a proposed permit is not in compliance with the applicable requirements or the requirements of part 70.

*I. Section 70.9—Fee Determination and Certification*

The requirement that State operating permit programs establish an adequate permit fee schedule is a key prevision of title V. The statute provides that an approvable permit program require sources subject to part 70 to pay an annual fee (or the equivalent over some other period) sufficient to cover all "reasonable (direct and indirect) costs" required to develop and administer the permit program [502(b)(3)(A)]. The statute also mandates that all fees required to be collected by a permitting authority under title V must be used solely to support the permit program [502(b)(3)(C)(iii)]. Following is a description of the basis and purpose of the changes in § 70.9.

1. Permit Program Costs

The proposal required States to collect permit fees sufficient to cover most, if not all, of a State's costs of its air pollution control program for stationary sources. After review of public comment and further evaluation of section 502(b)(3) and its legislative history, the Administrator concludes that all air pollution control program costs related to stationary sources need not be recouped through operating permit fees. The rejection of the interpretation in the proposal is based primarily on the fact that the Senate bill would have required recovery of all stationary source air pollution control program costs [S. Rep. No. 228, 101st Cong., 1st Sess. 351 (1989)], but the Senate bill was rejected by the Conference Agreement in favor of the House bill. Although the Act requires recovery of fewer costs than the Senate bill, it leaves the Agency some discretion in deciding which costs must be recouped.

The proposal was accurate in its conclusion that the fee provisions of title V mandate that the permit fees be collected in sufficient amount to support several air pollution control program activities that are relevant to title V sources and implemented through the operating permit program. This is clear from the list of such activities in section 502(b)(3)(A) of the Act, which includes some activities that are not strictly part of the permitting program, but for which costs related to stationary sources must be recovered. The final rule focuses more upon permit program activities, rather than air program activities more generally, in determining the minimum mandated amount for fee collections. Because the nature of permitting related activities can vary greatly from State to State, the EPA intends toe valuate each demonstration individually using the definition of "permit program costs" in the final regulation.

Finally, it should be noted that title V does not prevent a State from developing a fee schedule that will result in the collection of revenues in excess of those required to support the permit program. The Administrator will consider the use of such funds in reviewing the fee schedules proposed by States.

2. Role of the $25/tpy Presumptive Fee Amount

The proposal highlighted two "tests" ford determining fee schedule adequacy: The "program support test" (the fee schedule would result in the collection of adequate revenues to support all of the specified air program functions) and the "cost-per-ton test" (the $25/tpy presumptive fee minimum). An environmental group objected to this approach, claiming that it might give the incorrect impression that a State program meeting the "cost-per-ton test" would be approvable regardless of whether this amount adequately funded its program.

Although EPA has consistently viewed program support as the true measure of a fee schedule's approvability, the Agency acknowledges that the format of the proposal could have created some uncertainty. For this reason, § 70.9(b) is restructured to indicate that the program support test is the basic measure of fee schedule approvability. Section 502(b)(3)(A) clearly requires that all State programs collect enough in fees to cover their permit program costs.

Section 70.9(b) clarifies that there is a rebuttable presumption that a State fee schedule is adequate if it collects in the aggregate an amount equal to or greater than the presumptive minimum program cost, which is $25/tpy of actual emissions of regulated pollutants (for presumptive fee calculation). The EPA believes that the use of a presumptive minimum amount as a rebuttable presumption that the State is covering its permit program costs is the best way to give meaning to section 502(b)(3)(B) of the Act. A requirement that all State programs prove that their fee schedules recoup their permit program costs without regard for the presumptive minimum amounts an impermissible reading of the Act because it makes section 502(b)(3)(B) meaningless. The Administrator anticipates that this presumption will be most useful during the initial round of program approvals, until permitting programs develop and States and EPA gain greater expertise in estimating program financial needs and fee revenues.

3. "Regulated Pollutants"

The proposal set the presumptive minimum amount that a State must collect to cover its permit program costs as $25/tpy of regulated pollutants actually emitted by part 70 sources the preceding year. The proposal was somewhat confusing as to what pollutants would be considered "regulated pollutants" for this purpose, in part because the proposal used the statutory term "regulated pollutant" for purposes other than calculating the presumptive minimum. To clarify the matter, "regulated air pollutant" was added as a defined term for other than fee purposes, and "regulated pollutant 9for presumptive fee calculation)" was redefined consistent with the Act's definition.

The proposal requested comment on when a pollutant listed in section 112(b) becomes a regulated pollutant for fee purposes. The following three alternatives were set forth: (1) At the time of enactment of the 1990 Act Amendments, (2) when EPA first promulgates a MACT standard for that pollutant, or (3) when a MACT standard for that pollutant first becomes applicable to the permitted source. The proposal adopted the second alternative.

The final rule adopts a slightly modified version of the second alternative, i.e., a pollutant becomes a regulated pollutant (for fee purposes) when EPA first promulgates a MACT standard for that pollutant. In addition, if a pollutant is regulated at a particular source, its emissions will be considered for fee purposes even if a general standard has not been issued. The EPA continues to rely on the rationale in the preamble supporting the second alternative. This alternative is the most reasonable interpretation of the Act and makes the most sense from a policy perspective.

The EPA has also decided to exercise its discretion by excluding from regulated pollutant (for presumptive fee calculation) those substances that would be regulated pollutants only because they are regulated under section 112(r) (the accidental release program). Requiring these substances to be included in calculating the presumptive minimum necessary to cover a State's permit program costs would be administratively difficult and would not significantly increase the presumptive minimum. Because releases of these substances are not permitted and occur accidentally, the amount of

actual emissions from an accidental release may not be knwon—certainly it is unlikely that it would be measured with monitoring equipment. The EPA believes that there will be relatively few substances that are regulated under section 112(r) and not regulated elsewhere under the Act. Additionally, the amount of emissions of such substances are likely to be small enough that they would be insignificant for purposes of calculating the presumptive minimum amount to cover permit program costs.

The proposal was also modified so as to allow States relying on the $25/tpy presumptive minimum to exclude from the calculation insignificant quantities of actual emissions not required to be in a permit application pursuant to § 70.5(c). The EPA could not justify requiring States to include such emissions in the presumptive minimum calculation given the administrative burden of collecting the necessary information for fees purposes, and the insignificant additional fees that a State would be required to collect if these insignificant levels of emissions were included. To the extent that actual emissions must be included in the calculation of the $25/tpy presumptive minimum, they need not be measured using the same methods as might be required to determine whether a source is complying with an underlying applicable requirement.

Section 502(b)(3) provides that States relying on the $25/tpy presumptive minimum must base this computation upon each "regulated pollutant (for presumptive fee calculation)" and defines this for fee purposes only in terms of criteria pollutants (except CO), pollutants regulated under section 111 or 112, and VOC. No exemption is created for such pollutants which a particular source emits but for which the source is not in fact subject to a specific regulatory requirement. On the other hand, no fees are required from other "regulated air pollutants" as defined more expansively in § 70.2 in making the $25/tpy test.

4. Fees From Phase I Acid Rain Sources

The proposal interpreted section 408(c)(40 of the Act as prohibiting EPA, but not the States, from collecting emissions-related fees during 1995 through 1999 from affected sources under section 404. Some industry commenters maintained that this prohibition extends to both States and EPA. After reanalysis of the statutory provision, EPA concludes that the stronger reading is that during 1995 through 1999 section 408(c)(4) precludes EPA and the States from using fees to support a title V program when these fees are related to emissions from affected units under section 404.

It is important to note, however, that States have discretion in how to address utilities. Section 408(c)(4) does not prevent a State from assessing such fees against utilities if the State chooses. The EPA will not, however, consider such emissions-based fees in determining whether the State fee schedule meets the State's obligation to recover permit program costs.

Because of the limitation on fee assessment on affected units under section 404, States relying on the $25/tpy presumptive minimum amount to recover permit program costs shall not be required to include emissions on which they cannot charge a title V emissions fee in their calculation of the presumptive minimum program cost.

5. State Fee Schedules

The final part 70 regulations clarify that States have a great deal of discretion in using the fee schedule to allocate permit program costs among part 70 sources. Even if the State relies on the $25/tpy presumptive minimum, the State fee schedule does not need to assess fees at $25/tpy. The State is not required to assess fees on any particular basis and can use application fees, service-based fees, emissions fees based on either actual or allowable emissions, other types of fees, or any combination thereof.

It should be clarified that State fee programs can provide for the assessment of fees on the basis of emissions of any regulated air pollutant. The exclusion of three categories of regulated air pollutants (carbon monoxide and certain pollutants regulated under sections 112(r) and 602 of the Act) applies solely to how the $25/tpy presumption with respect to aggregate program revenue adequacy is to be calculated. States electing to assess fees for emissions of any of the regulated air pollutants, including those in the three categories referenced above, are fully authorized to do so. All fee revenues from those programs will be recognized for the purposes of determining program adequacy.

*J. Section 70.10—Federal Oversight and Sanctions*

1. Geographic Application of Sanctions

The proposal indicated, in accordance with section 502 (d) and (i), that sanctions are applicable if a permitting authority fails to submit an approvable operating permit program or fails to implement an approved program. The proposal did not specify the geographical application of sanctions. State and local agency commenters felt that in the event a partial program for a local agency is granted full approval in a State, the local agency should not be penalized if the State fails to meet its permit program obligations for the remainder of the State. If sanctions are to be applied, they should not be applied in the local agency jurisdiction where a program is adequately being implemented. Conversely, the local agency may be found to not be administering or enforcing its program and be subject to sanctions. The State may have an approved program for the remainder of the area within the State and should not be penalized for failure of the local agency to meet its obligations.

The Administrator agrees with this concern and the stipulation is added to § 70.10 that sanctions are applicable only to the geographic area covered under the program which has not been submitted or is not being adequately administered or enforced. Any other area of the State covered by an approved program that is being adequately implemented will not be affected by sanctions.

2. Discretionary Application of Sanctions

Proposed § 70.10(a)(2) stated that EPA will apply sanctions within 18 months after the date required for program submittal. Section 502(d)(2)(A) states that, where a State has failed to submit a permit program by the required date, EPA has discretion within the first 18 months of that date to apply sanctions. Section 70.10(a)(2) has been corrected to more accurately reflect the intent of the Act. Similarly, § 70.10(b)(3) has been amended to more accurately reflect the intent of section 502(i)(1) that EPA has discretion whether to apply sanctions within the first 18 months after making a finding that a State is not adequately administering or enforcing a program.

3. Withdrawal of Approval of Part 70 Program

Section 70.10(c) sets out criteria for withdrawal of part 70 program approval, such as failure of the permitting authority to enforce the requirements of the part 70 program and the terms and conditions of part 70 permits. The final regulations now add in § 70.10(c)(1)(ii)(E) that failure to act in a timely way on applications for permits, permit renewals, and permit revisions is grounds for withdrawal of approval of the part 70 program. This addition is simply a recognition of the importance and benefits of the permitting program.

If large numbers of permits are allowed to lapse and sources continue to operate without a permit because they have submitted a timely and complete application, or permits are not updated in a timely way to reflect the current status of the source, all the benefits of the permitting program such as increased certainty for sources and enhanced enforcement are lost. Therefore, EPA has added this as a basis for withdrawal of part 70 program approval. The final rule also clarifies that EPA may withdraw a program in whole or in part.

4. EPA Issuance of Initial Permits

The proposal in § 70.10(b)(5) stated that the EPA may issue or deny the permit where the State has failed to act in a timely manner. Upon further review of the language and structure of the Act, EPA has decided to eliminate this provision in the final rule. Where initial permit issuance is concerned, section 502(e) is clear in stating that EPA shall suspend the issuance of permits upon approval of a State program. Where the permitting authority has failed to act in a timely manner on applications for permit renewal, EPA may revoke and reissue the permit as provided for in § 70.7.

*K. Section 70.11–Requirements for Enforcement Authority*

This section ensures that the basic framework for effective enforcement of title V permits will be in place in each State with an approved part 70 program. Section 70.11 contains specific requirements for enforcement authority consistent with those contained in 40 CFR 123.27 for the NPDES program with appropriate adjustments to conform to the Clean Air Act. No significant changes to the proposed § 70.11 for defining minimum requirements for State programs are contained in the final rules. However, EPA specifically encourages additional enforcement authority with respect to the two areas discussed below.

The EPA encourages State and local permitting authorities to have administrative enforcement authority similar to section 113(d) of the Act, although it is not required by § 70.11. Having administrative enforcement authority in addition to judicial enforcement authority has many advantages. First, administrative cases generally have lower forum costs and are effective for minor or straightforward violations. Reliance on the judiciary for all enforcement actions may cause significant delays in pursuing violations considering how overburdened State and Federal judiciaries are. For both these reasons, more violations may be pursued if the permitting authority has administrative enforcement authority.

The EPA also recommends that State and local enforcement authorities consider as criminal penalties not only fines, but also incarceration. Such a penalty will be an inducement for State law enforcement officials to undertake environmental criminal cases that may be lacking if this type of crime can only result in a fine, which can also be obtained through civil suit. This will enable State enforcement authorities to pursue criminal cases which may otherwise have to be prosecuted by Federal enforcement authorities.

## V. Administrative Requirements

*A. Docket*

The docket for this regulatory action is A–90–33. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

(2) To serve as the record in case of judicial review (except for interagency review materials). The docket is available for public inspection at EPA's Air Docket, which is listed under the **ADDRESSES** section of this document.

*B. Office of Management and Budget (OMB) Review*

Under Executive Order 12291 (E.O. 12291), EPA must judge whether a regulation is "major," and therefore subject to the requirement "to the extent permitted by law" to prepare a Regulatory Impact Analysis (RIA) in connection with each major rule. Major rules are defined as those likely to result in the following:

1. An annual effect on the economy of $100 million or more.

2. A major increase in costs or prices for consumers or individuals industries.

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

Although some States already have operating permit programs including fee provisions, the incremental cost of this regulation is not small. The national estimate of incremental annualized cost for the operating permit programs required by section 502(b)(3) of title V exceeds $100 million. Consequently, a Regulatory Impact Analysis has been prepared.

Given the mandate within title V to develop this regulation, the Agency has taken steps to provide for the timely accomplishment of title V requirements. In following the implementation principles mentioned in section II, EPA has allowed flexibility in permit design, in use of general permits to expedite the review process for certain smaller sources, and in the phase-in implementation of certain requirements. The Agency has thus attempted to reduce overall societal cost and any adverse economic impact associated with meeting the environmental objectives of title V. In addition, with permit fee revenue collections from subject sources State and local agencies will have the resources to develop and implement an accountable and enforceable operating permit program.

The draft RIA was made available for public comment as part of the May 10, 1991, proposal. In response to comments received, the RIA was revised to incorporate greater clarity and detail with respect to the numbers of sources affected and costs incurred. Certain costs related to paperwork burdens were increased as a result in both the RIA and the ICR (described below). The new estimate for the annualized direct cost to 34,000 major sources and permitting agencies is $526 million.

This estimate includes some costs that are due to existing State and local regulations, and are not attributable to this rule. It excludes, however, costs associated with permitting 350,000 nonmajor air toxic sources that were included in the Proposed Initial List of Categories of Sources under section 112(c)(1) of the Clean Air Act Amendments. Under today's final rules, States may temporarily defer permit requirements for these sources. The EPA encourages States to issue temporary exemptions. If no such exemptions were granted, and if all of these sources were required to obtain general permits, then the direct cost to sources and permitting agencies would increase by about $79 million annually. Use by the States of specific permits, rather than the general permits that the EPA believes are normally appropriate for these nonmajor air toxic sources, will also raise costs unnecessarily. The EPA estimates that use of specific rather than general permits would at least triple the permitting costs to each source. The EPA projects that if, for example, 25 percent of the nonmajor air toxic sources are not granted deferrals, then actions by the States to require specific rather than general permits would raise cost to sources and permitting agencies by about $68 million annually. Finally, to

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the extent that the EPA has underestimated the cost of obtaining specific permits, and to the extent that States require permitting for nonmajor air toxic sources using specific permits (rather than general permits), the direct costs could be increased as much as a billion dollars annually. The EPA encourages States to consider cost differences between specific and general type permits. The EPA recommends that States allow sources to use the type of permit that achieves the requirements of title V at lowest cost. The EPA believes the general permit would normally be appropriate for the nonmajor air toxic sources that are not granted exemptions.

The EPA will soon promulgate a Final Initial List of Categories of Sources under section 112(c)(1) of the Act Amendments. This Final Initial List is expected to reduce the number of nonmajor air toxic sources that must comply with permitting requirements to below 350,000.

The benefits of this rule include more efficient enforcement and greater compliance with emission standards. Greater compliance may result in an improvement in air quality. This rule is not otherwise expected to yield gains in air quality since the rule does not affect ambient air standards or emission standards.

*C. Regulatory Flexibility Act Compliance*

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). That analysis is not necessary, however, if an Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Applicable EPA guidelines for determining whether an RFA is required to accompany a rulemaking package state the criteria for determining when the number of affected small entities is "substantial" and whether there is a significant impact. The determination of significant impact for small businesses essentially depends upon compliance costs, production costs, and predicted closures. For small governments, the determination of significant impact depends upon compliance costs, operating costs, and record keeping costs.

A regulatory flexibility screening analysis was prepared to examine the potential for significant adverse impacts on small entities associated with specific permitting provisions. This analysis has revealed that without specific mitigation provisions, substantial numbers of small entities may be adversely impacted. Since potential adverse impacts could exist, EPA will use and expects States to use, general permits and deferred applicability of non-major sources to mitigate any such potential impacts. To the extent any remaining significant adverse impacts are probable, the small business assistance program provisions of title V could provide further relief. Consequently, EPA does not believe large numbers of small entities will be adversely affected or will experience disproportionate significant impacts. I hereby certify that this rule as promulgated will not have a significant economic impact on a substantial number of small business entities and thereby does not require an RFA.

*D. Paperwork Reduction Act*

Under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), Federal agencies must obtain OMB clearance for collection of information from ten (10) or more non-federal respondents. Each source subject to the requirements for obtaining a title V operating permit will have to submit a permit application and will make periodic compliance reports. These requirements parallel what many sources are already reporting to State and local permitting authorities and what States report to EPA. The effect of these regulations will be to subject more sources to such requirements, primarily those required to obtain a permit due to classification as a major source under the title III air toxics requirements or title I nonattainment requirements. The Act specifies that major sources cannot be exempted from the requirement to obtain a part 70 permit. Their inclusion in the Act is due to the necessity for more effective air quality management throughout the country.

Comments on the proposed Information Collection Request (ICR) were received from two Federal agencies, an industry group, and a research organization. All commenters felt that the cost and burden hour estimates in the proposed ICR were understated. Two commenters specifically identified major activities required of sources and permitting authorities in the permitting process which should be accounted for in the estimates. The need for guidance on general permits was also mentioned by two commenters. The final ICR has been updated to include estimates for two time periods: (1) The first three years (years 1–3) after EPA promulgates the part 70 regulations, as required by the Paperwork Reduction Act; and (2) the following five years (years 4–8), during which initial title V permits will be issued. Estimates for years 4–8 have been provided for informational purposes. EPA will be able to make better estimates of permit issuance costs for years 4–8 after State and local title V programs are reviewed and approved. It should be noted that the proposed ICR only addressed years 4–8, not the first three years after promulgation. Since the Act allows State and local agencies two years after promulgation of EPA regulations to submit programs to EPA, and it allows EPA a year to review and approve such programs, it was assumed in the final ICR that only permitting authorities will experience administration burden during years 1–3.

The analysis of years 4–8 in the final ICR has been updated to respond to comments received. The revised ICR incorporates several additional activities, including activities related to requirements for public notices, public hearings, permit revisions, and permit reopenings. The addition of these new activities, along with additional analysis of burden hour estimates by a group of permitting experts from the private and government sectors, have resulted in increased burden hour and cost estimates for permitting authorities and sources. For years 4–8, total annual cost estimates for permitting authorities have increased from $15 to $160 million, and for sources these estimates have increased from $115 million to $352 million annually. In regard to guidance for general permits, EPA has projects underway to develop model general permits for specific source categories.

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**. The burden to all 112 State and local permitting authorities for this collection of information during the first three years after EPA promulgates the part 70 regulations, is estimated to total 1,944,880 hours equalling an annual average of 5,788 hours per permitting agency. This includes time for rule interpretation, analysis and/or revision to legislative authority, analysis and/or development of regulations, and development of a fee demonstration, standard application form, and a transition plan.



Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch (PM-223Y), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

The information collection requirements contained in 40 CFR part 70 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them.

Dated: June 25, 1992.

William K. Reilly,

*Administrator.*

**List of Subjects in 40 CFR Part 70**

Administrative practice and procedure, Air pollution control, Intergovernmental relations.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding a part 70 as set forth below.

## PART 70—STATE OPERATING PERMIT PROGRAMS

Sec.
70.1 Program overview.
70.2 Definitions.
70.3 Applicability.
70.4 State program submittals and transition.
70.5 Permit applications.
70.6 Permit content.
70.7 Permit issuance, renewal, reopenings, and revisions.
70.8 Permit review by the EPA and affected States.
70.9 Fee determination and certification.
70.10 Federal oversight and sanctions.
70.11 Requirements for enforcement authority.

**Authority:** 42 U.S.C. 7401, *et seq.*

### § 70.1 Program overview.

(a) The regulations in this part provide for the establishment of comprehensive State air quality permitting systems consistent with the requirements of title V of the Clean Air Act (Act) (42 U.S.C. 7401, *et seq.*). These regulations define the minimum elements required by the Act for State operating permit programs and the corresponding standards and procedures by which the Administrator will approve, oversee, and withdraw approval of State operating permit programs.

(b) All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements. While title V does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be adopted especially with respect to compliance.

(c) Nothing in this part shall prevent a State, or interstate permitting authority, from establishing additional or more stringent requirements not inconsistent with this Act. The EPA will approve State program submittals to the extent that they are not inconsistent with the Act and these regulations. No permit, however, can be less stringent than necessary to meet all applicable requirements. In the case of Federal intervention in the permit process, the Administrator reserves the right to implement the State operating permit program, in whole or in part, or the Federal program contained in regulations promulgated under title V of the Act.

(d) The requirements of part 70, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or modified in regulations promulgated under title IV of the Act (acid rain program).

(e) Issuance of State permits under this part may be coordinated with issuance of permits under the Resource Conservation and Recovery Act and under the Clean Water Act, whether issued by the State, the U.S. Environmental Protection Agency (EPA), or the U.S. Army Corps of Engineers.

### § 70.2 Definitions.

The following definitions apply to part 70. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Act.

*Act* means the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

*Affected source* shall have the meaning given to it in the regulations promulgated under title IV of the Act.

*Affected States* are all States:

(1) Whose air quality may be affected and that are contiguous to the State in which a part 70 permit, permit modification or permit renewal is being proposed; or

(2) That are within 50 miles of the permitted source.

*Affected unit* shall have the meaning given to it in the regulations promulgated under title IV of the Act.

*Applicable requirement* means all of the following as they apply to emissions units in a part 70 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates):

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter;

(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;

(3) Any standard or other requirement under section 111 of the Act, including section 111(d);

(4) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(5) Any standard or other requirement of the acid rain program under title IV of the Act or the regulations promulgated thereunder;

(6) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

(7) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(8) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(9) Any standard or other requirement for tank vessels under section 183(f) of the Act;

(10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(11) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a title V permit; and

(12) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

*Designated representative* shall have the meaning given to it in section 402(26) of the Act and the regulations promulgated thereunder.

*Draft permit* means the version of a permit for which the permitting authority offers public participation under § 70.7(h) or affected State review under § 70.8 of this part.

*Emissions allowable under the permit* means a federally enforceable permit

term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

*Emissions unit* means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term "unit" for purposes of title IV of the Act.

*The EPA or the Administrator* means the Administrator of the EPA or his designee.

*Final permit* means the version of a part 70 permit issued by the permitting authority that has completed all review procedures required by §§ 70.7 and 70.8 of this part.

*Fugitive emissions* are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

*General permit* means a part 70 permit that meets the requirements of § 70.6(d).

*Major source* means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(1) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) Hydrofluoric, sulfuric, or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;
(xv) Carbon black plants (furnace process);
(xvi) Primary lead smelters;
(xvii) Fuel conversion plants;
(xviii) Sintering plants;
(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;
(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
(xxvii) All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;

(3) A major stationary source as defined in part D of title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25 and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f) (1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas:

(A) That are classified as "serious," and

(B) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM–10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM–10.

*Part 70 permit* or *permit* (unless the context suggests otherwise) means any permit or group of permits covering a part 70 source that is issued, renewed, amended, or revised pursuant to this part.

*Part 70 program* or *State program* means a program approved by the Administrator under this part.

*Part 70 source* means any source subject to the permitting requirements of this part, as provided in § § 70.3(a) and 70.3(b) of this part.

*Permit modification* means a revision to a part 70 permit that meets the requirements of § 70.7(e) of this part.

*Permit program costs* means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in § 70.9(b) of this part (whether such costs are incurred by the permitting authority or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

*Permit revision* means any permit modification or administrative permit amendment.

*Permitting authority* means either of the following:

(1) The Administrator, in the case of EPA-implemented programs; or

(2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under this part.

*Potential to emit* means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in title IV of the Act or the regulations promulgated thereunder.

*Proposed permit* means the version of a permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with § 70.8.

*Regulated air pollutant* means the following:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Any pollutant for which a national ambient air quality standard has been promulgated;

(3) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(4) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(5) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act, including sections 112(g), (j), and (r) of the Act, including the following:

(i) Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and

(ii) Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirement.

*Regulated pollutant (for presumptive fee calculation)*, which is used only for purposes of § 70.9(b)(2), means any "regulated air pollutant" except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance to a standard promulgated under or established by title VI of the Act; or

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Act.

*Renewal* means the process by which a permit is reissued at the end of its term.

*Responsible official* means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under part 70.

*Section 502(b)(10) changes* are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

*State* means any non-Federal permitting authority, including any local agency, interstate association, or statewide program. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Where such meaning is clear from the context, "State" shall have its conventional meaning. For purposes of the acid rain program, the term "State" shall be limited to authorities within the 48 contiguous States and the District of Columbia as provided in section 402(14) of the Act.

*Stationary source* means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.

*Whole program* means a part 70 permit program, or any combination of partial programs, that meet all the requirements of these regulations and cover all the part 70 sources in the entire State. For the purposes of this definition, the term "State" does not include local permitting authorities, but refers only to the entire State, Commonwealth, or Territory.

### § 70.3 Applicability.

(a) *Part 70 sources.* A State program with whole or partial approval under this part must provide for permitting of at least the following sources:

(1) Any major source;

(2) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act;

(3) Any source, including an area source, subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of this Act;

(4) Any affected source; and

(5) Any source in a source category designated by the Administrator pursuant to this section.

(b) *Source category exemptions.* (1) All sources listed in paragraph (a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act, may be exempted by the State from the obligation to obtain a part 70 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the

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appropriateness of any permanent exemptions in addition to those provided for in paragraph (b)(4) of this section.

(2) In the case of nonmajor sources subject to a standard or other requirement under either section 111 or section 112 of the Act after July 21, 1992 publication, the Administrator will determine whether to exempt any or all such applicable sources from the requirement to obtain a part 70 permit at the time that the new standard is promulgated.

(3) Any source listed in paragraph (a) of this section exempt from the requirement to obtain a permit under this section may opt to apply for a permit under a part 70 program.

(4) Unless otherwise required by the State to obtain a part 70 permit, the following source categories are exempted from the obligation to obtain a part 70 permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to part 60, subpart AAA—Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to part 61, subpart M—National Emission Standard for Hazardous Air Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation.

(c) *Emissions units and part 70 sources.* (1) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(2) For any nonmajor source subject to the part 70 program under paragraph (a) or (b) of this section, the permitting authority shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the part 70 program.

(d) *Fugitive emissions.* Fugitive emissions from a part 70 source shall be included in the permit application and the part 70 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

**§ 70.4 State program submittals and transition.**

(a) *Date for submittal.* Not later than November 15, 1993, the Governor of each State shall submit to the Administrator for approval a proposed part 70 program, under State law or under an interstate compact, meeting the requirements of this part. If part 70 is subsequently revised such that the Administrator determines that it is necessary to require a change to an approved State program, the required revisions to the program shall be submitted within 12 months of the final changes to part 70 or within such other period as authorized by the Administrator.

(b) *Elements of the initial program submission.* Any State that seeks to administer a program under this part shall submit to the Administrator a letter of submittal from the Governor or his designee requesting EPA approval of the program and at least three copies of a program submission. The submission shall contain the following:

(1) A complete program description describing how the State intends to carry out its responsibilities under this part.

(2) The regulations that comprise the permitting program, reasonably available evidence of their procedurally correct adoption, (including any notice of public comment and any significant comments received on the proposed part 70 program as requested by the Administrator), and copies of all applicable State or local statutes and regulations including those governing State administrative procedures that either authorize the part 70 program or restrict its implementation. The State shall include with the regulations any criteria used to determine insignificant activities or emission levels for purposes of determining complete applications consistent with § 70.5(c) of this part.

(3) A legal opinion from the Attorney General for the State, or the attorney for those State, local, or interstate air pollution control agencies that have independent legal counsel, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program. This statement shall include citations to the specific states, administrative regulations, and, where appropriate, judicial decisions that demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State states and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel," the attorney signing the statement required by this section shall have full authority to independently represent the State agency in court on all matters pertaining to the State program. The legal opinion shall also include a demonstration of adequate legal authority to carry out the requirements of this part, including authority to carry out each of the following:

(i) Issue permits and assure compliance with each applicable requirement and requirement of this part by all part 70 sources.

(ii) Incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into part 70 permits consistent with § 70.6.

(iii) Issue permits for a fixed term of 5 years in the case of permits with acid rain provisions and issue all other permits for a period not to exceed 5 years, except for permits issued for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act.

(iv) Issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and review such permits at least every 5 years. No permit for a solid waste incineration unit may be issued by an agency, instrumentality or person that is also responsible, in whole or in part, for the design and construction or operation of the unit.

(v) Incorporate into permits all applicable requirements and requirements of this part.

(vi) Terminate, modify, or revoke and reissue permits for cause.

(vii) Enforce permits, permit fee requirements, and the requirement to obtain a permit, as specified in § 70.11.

(viii) Make available to the public any permit application, compliance plan, permit, and monitoring and compliance, certification report pursuant to section 503(e) of the Act, except for information entitled to confidential treatment pursuant to section 114(c) of the Act. The contents of a part 70 permit shall not be entitled to protection under section 115(c) of the Act.

(ix) Not issue a permit if the Administrator timely objects to its issuance pursuant to § 70.8(c) of this part or, if the permit has not already been issued, to § 70.8(d) of this part.

(x) Provide an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public participation process provided pursuant to § 70.7(h) of this part, and any other person who could obtain judicial review of such actions under State laws.

(xi) Provide that, solely for the purposes of obtaining judicial review in State court for failure to take final action, final permit action shall include the failure of the permitting authority to take final action on an application for a permit, permit renewal, or permit

revision within the time specified in the State program. If the State program allows sources to make changes subject to post hoc review [as set forth in §§ 70.7(e)(2) and (3) of this part], the permitting authority's failure to take final action within 90 days of receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing requirements) must be subject to judicial review in State court.

(xii) Provide that the opportunity for judicial review described in paragraph (b)(3)(x) of this section shall be the exclusive means for obtaining judicial review of the terms and conditions of permits, and require that such petitions for judicial review must be filed no later than 90 days after the final permit action, or such shorter time as the State shall designate. Notwithstanding the preceding requirement, petitions for judicial review of final permit actions can be filed after the deadline designated by the State, only if they are based solely on grounds arising after the deadline for judicial review. Such petitions shall be filed no later than 90 days after the new grounds for review arise or such shorter time as the State shall designate. If the final permit action being challenged is the permitting authority's failure to take final action, a petition for judicial review may be filed any time before the permitting authority denies the permit or issues the final permit.

(xiii) Ensure that the authority of the State/local permitting Agency is not used to modify the acid rain program requirements.

(4) Relevant permitting program documentation not contained in the State regulations, including the following:

(i) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program; and

(ii) Relevant guidance issued by the State to assist in the implementation of its permitting program, including criteria for monitoring source compliance (e.g., inspection strategies).

(5) A complete description of the State's compliance tracking and enforcement program or reference to any agreement the State has with EPA that provides this information.

(6) A showing of adequate authority and procedures to determine within 60 days of receipt whether applications (including renewal applications) are complete, to request such other information as needed to process the application, and to take final action on complete applications within 18 months of the date of their submittal, except for initial permit applications, for which the permitting authority may take up to 3 years from the effective date of the program to take final action on the application, as provided for in the transition plan.

(7) A demonstration, consistent with § 70.9, that the permit fees required by the State program are sufficient to cover permit program costs.

(8) A statement that adequate personnel and funding have been made available to develop, administer, and enforce the program. This statement shall include the following:

(i) A description in narrative form of the scope, structure, coverage, and processes of the State program.

(ii) A description of the organization and structure of the agency or agencies that will have responsibility for administering the program, including the information specified in this paragraph. If more than one agency is responsible for administration of a program, the responsibilities of each agency must be delineated, their procedures for coordination must be set forth, and an agency shall be designated as a "lead agency" to facilitate communications between EPA and the other agencies having program responsibility.

(iii) A description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(iv) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(v) An estimate of the permit program costs for the first 4 years after approval, and a description of how the State plans to cover those costs.

(9) A commitment from the State to submit, at least annually to the Administrator, information regarding the State's enforcement activities including, but not limited to, the number of criminal and civil, judicial and administrative enforcement actions either commenced or concluded; the penalties, fines, and sentences obtained in those actions; and the number of administrative orders issued.

(10) A requirement under State law that, if a timely and complete application for a permit renewal is submitted, consistent with § 70.5(a)(2), but the State has failed to issue or deny the renewal permit before the end of the term of the previous permit, then:

(i) The permit shall not expire until the renewal permit has been issued or denied and any permit shield that may be granted pursuant to § 70.6(f) may extend beyond the original permit term until renewal; or

(ii) All the terms and conditions of the permit including any permit shield that may be granted pursuant to § 70.6(f) shall remain in effect until the renewal permit has been issued or denied.

(11) A transition plan providing a schedule for submittal and final action on initial permit applications for all part 70 sources. This plan shall provide that:

(i) Submittal of permit applications by all part 70 sources (including any sources subject to a partial or interim program) shall occur within 1 year after the effective date of the permit program;

(ii) Final action shall be taken on at least one-third of such applications annually over a period not to exceed 3 years after such effective date;

(iii) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted on within 9 months of receipt of the complete application; and

(iv) Submittal of permit applications and the permitting of affected sources shall occur in accordance with the deadlines in title IV of the Act and the regulations promulgated thereunder.

(12) Provisions consistent with paragraphs (b)(12)(i) through (iii) of this section to allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in the terms of total emissions): *Provided*, That the facility provides the Administrator and the permitting authority with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different time frame for emergencies. The source, permitting authority, and EPA shall attach each such notice to their copy of the relevant permit. The following provisions implement this requirement of an approvable part 70 permit program:

(i) The program shall allow permitted sources to make section 502(b)(10) changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions).

(A) For each such change, the written notification required above shall include a brief description of the change within

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the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(B) The permit shield described in § 70.6(f) of this part shall not apply to any change made pursuant to this paragraph (b)(12)(i) of this section.

(ii) The program may provide for permitted sources to trade increases and decreases in emissions in the permitted facility, where the applicable implementation plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in this paragraph (b)(12)(ii) of this section. This provision is available in those cases where the permit does not already provide for such emissions trading.

(A) Under this paragraph (b)(12)(ii) of this section, the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(B) The permit shield described in § 70.6(f) of this part shall not extend to any change made under this paragraph (b)(12)(ii) of this section. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(iii) The program shall require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions, including all terms required under § 70.6 (a) and (c) of this part to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The permitting authority shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

(A) Under this paragraph (b)(12)(iii) of this section, the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(B) The permit shield described in § 70.6(f) of this part may extend to terms and conditions that allow such increases and decreases in emissions.

(13) Provisions for adequate, streamlined, and reasonable procedures for expeditious review of permit revisions or modifications. The program may meet this requirement by using procedures that meet the requirements of § 70.7(e) or that are substantially equivalent to those provided in § 70.7(e) of this part.

(14) If a State allows changes that are not addressed or prohibited by the permit, other than those described in paragraph (b)(15) of this section, to be made without a permit revision, provisions meeting the requirements of paragraphs (b)(14) (i) through (iii) of this section. Although a State may, as a matter of State law, prohibit sources from making such changes without a permit revision, any such prohibition shall not be enforceable by the Administrator or by citizens under the Act unless the prohibition is required by an applicable requirement. Any State procedures implementing such a State law prohibition must include the requirements of paragraphs (b)(14) (i) through (iii) of this section.

(i) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(ii) Sources must provide contemporaneous written notice to the permitting authority and EPA of each such change, except for changes that qualify as insignificant under the provisions adopted pursuant to § 70.5(c) of this part. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

(iii) The change shall not qualify for the shield under § 70.6(f) of this part.

(iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(15) Provisions prohibiting sources from making, without a permit revision, changes that are not addressed or prohibited by the part 70 permit, if such changes are subject to any requirements under title IV of the Act or are modifications under any provision of title I of the Act.

(16) Provisions requiring the permitting authority to implement the requirements of §§ 70.6 and 70.7 of this part.

(c) *Partial programs.* (1) The EPA may approve a partial program that applies to all part 70 sources within a limited geographic area (e.g., a local agency program covering all sources within the agency's jurisdiction). To be approvable, any partial program must, at a minimum, ensure compliance with all of the following applicable requirements, as they apply to the sources covered by the partial program:

(i) All requirements of title V of the Act and of part 70;

(ii) All applicable requirements of title IV of the Act and regulations promulgated thereunder which apply to affected sources; and

(iii) All applicable requirements of title I of the Act, including those established under sections 111 and 112 of the Act.

(2) Any partial permitting program, such as that of a local air pollution control agency, providing for the issuance of permits by a permitting authority other than the State, shall be consistent with all the elements required in paragraphs (b) (1) through (16) of this section.

(3) Approval of any partial program does not relieve the State from its obligation to submit a whole program or from application of any sanctions for failure to submit a fully-approvable whole program.

(4) Any partial program may obtain interim approval under paragraph (d) of this section if it substantially meets the requirements of this paragraph (c) of this section.

(d) *Interim approval.* (1) If a program (including a partial permit program) submitted under this part substantially meets the requirements of this part, but is not fully approvable, the Administrator may be rule grant the program interim approval.

(2) Interim approval shall expire on a date set by the Administrator (but not later than 2 years after such approval), and may not be renewed. Sources shall

become subject to the program according to the schedule approved in the State program. Permits granted under an interim approval shall expire at the end of their fixed term, unless renewed under a part 70 program.

(3) The EPA will grant interim approval to any program if it meets each of the following minimum requirements:

(i) *Adequate fees.* The program must provide for collecting permit fees adequate for it to meet the requirements of § 70.9 of this part.

(ii) *Applicable requirements.* The program must provide for adequate authority to issue permits that assure compliance with the requirements of paragraph (c)(1) of this section for those major sources covered by the program.

(iii) *Fixed term.* The program must provide for fixed permit terms, consistent with paragraphs (b)(3) (iii) and (iv) of this section.

(iv) *Public participation.* The program must provide for adequate public notice of and an opportunity for public comment and a hearing on draft permits and revisions, except for modifications qualifying for minor permit modification procedures under § 70.7(e) of this part.

(v) *EPA and affected State review.* The program must allow EPA an opportunity to review each proposed permit, including permit revisions, and to object to its issuance consistent with § 70.8(c) of this part. The program must provide for affected State review consistent with § 70.8(b) of this part.

(vii) *Permit issuance.* The program must provide that the proposed permit will not be issued if EPA objects to its issuance.

(vii) *Enforcement.* The program must contain authority to enforce permits, including the authority to assess penalties against sources that do not comply with their permits or with the requirement to obtain a permit.

(viii) *Operational flexibility.* The program must allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the act and the changes do not exceed the emissions allowable under the permit, consistent with paragraph (b)(12) of this section.

(ix) *Streamlined procedures.* The program must provide for streamlined procedures for issuing and revising permits and determining expeditiously after receipt of a permit application or application for a permit revision whether such application is complete.

(x) *Permit application.* The program submittal must include copies of the permit application and reporting form(s) that the State will use in implementing the interim program.

(xi) *Alternative scenarios.* The program submittal must include provisions to insure that alternate scenarios requested by the source are included in the part 70 permit pursuant to § 70.6(a)(9) of this part.

(e) *EPA review of permit program submittals.* Within 1 year after receiving a program submittal, the Administrator shall approve or disapprove the program, in whole or in part, by publishing a notice in the **Federal Register**. Prior to such notice, the Administrator shall provide an opportunity for public comment on such approval or disapproval. Any EPA action disapproving a program, in whole or in part, shall include a statement of the revisions or modifications necessary to obtain full approval. The Administrator shall approve State programs that conform to the requirements of this part.

(1) Within 60 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete enough to warrant review by EPA for either full, partial, or interim approval. If EPA finds that a State's submission is complete, the 1-year review period (i.e., the period of time allotted for formal EPA review of a proposed State program) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the 1-year review period shall not begin until all the necessary information is received by EPA.

(2) If the State's submission is materially changed during the 1-year review period, the Administrator may extend the review period for no more than 1 year following receipt of the revised submission.

(3) In any notice granting interim or partial approval, the Administrator shall specify the changes or additions that must be made before the program can receive full approval and the conditions for implementation of the program until that time.

(f) *State response to EPA review of program.*—(1) *Disapproval.* The State shall submit to EPA program revisions or modifications required by the Administrator's action disapproving the program, or any part thereof, within 180 days of receiving notification of the disapproval.

(2) *Interim approval.* The State shall submit to EPA changes to the program addressing the deficiencies specified in the interim approval no later than 6 months prior to the expiration of the interim approval.

(g) *Effective date.* The effective date of a part 70 program, including any partial or interim program approved under this part, shall be the effective date of approval by the Administrator.

(h) *Individual permit transition.* Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program, except that the Administrator will continue to issue phase I acid rain permits. After program approval, EPA shall retain jurisdiction over any permit (including any general permit) that it has issued unless arrangements have been made with the State to assume responsibility for these permits. Where EPA retains jurisdiction, it will continue to process permit appeals and modification requests, to conduct inspections, and to receive and review monitoring reports. If any permit appeal or modification request is not finally resolved when the federally-issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved. Upon request by a State, the Administrator may delegate authority to implement all or part of a permit issued by EPA, if a part 70 program has been approved for the State. The delegation may include authorization for the State to collect appropriate fees, consistent with § 70.9 of this part.

(i) *Program revisions.* Either EPA or a State with an approved program may initiate a program revision. Program revision may be necessary when the relevant Federal or State statutes or regulations are modified or supplemented. The State shall keep EPA apprised of any proposed modifications to its basic statutory or regulatory authority or procedures.

(1) If the Administrator determines pursuant to § 70.10 of this part that a State is not adequately administering the requirements of this part, or that the State's permit program is inadequate in any other way, the State shall revise the program or its means of implementation to correct the inadequacy. The program shall be revised within 180 days, or such other period as the Administrator may specify, following notification by the Administrator, or within 2 years if the State demonstrates that additional legal authority is necessary to make the program revision.

(2) Revision of a State program shall be accomplished as follows:

(i) The State shall submit a modified program description, Attorney General's statement, or such other documents as EPA determines to be necessary.

(ii) After EPA receives a proposed program revision, it will publish in the **Federal Register** a public notice summarizing the proposed change and

provide a public comment period of at least 30 days.

(iii) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act.

(iv) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the **Federal Register**. Notice of approval of nonsubstantial program revisions may be given by a letter from the Administrator to the Governor or a designee.

(v) The Governor of any State with an approved part 70 program shall notify EPA whenever the Governor proposes to transfer all or part of the program to any other agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until the revision has been approved by the Administrator under this paragraph.

(3) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as he determines are necessary.

(j) *Sharing of information.* (1) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction and in a form specified by the Administrator, including computer-readable files to the extent practicable. If the information has been submitted to the State under a claim of confidentiality, the State may require the source to submit this information to the Administrator directly. Where the State submits information to the Administrator under a claim of confidentiality, the State shall submit that claim to EPA when providing information to EPA under this section. Any information obtained from a State or part 70 source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter.

(2) The EPA will furnish to States with approved programs the information in its files that the State needs to implement its approved program. Any such information submitted to EPA under a claim of confidentiality will be subject to the regulations in part 2 of this chapter.

(k) *Administration and enforcement.* Any State that fails to adopt a complete, approvable part 70 program, or that EPA determines is not adequately administering or enforcing such program shall be subject to certain Federal sanctions as set forth in § 70.10 of this part.

### § 70.5 Permit applications.

(a) *Duty to apply.* For each part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this section.

(1) *Timely application.* (i) A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.

(ii) Part 70 sources required to meet the requirements under section 112(g) of the Act, or to have a permit under the preconstruction review program approved into the applicable implementation plan under part C or D of title I of the Act, shall file a complete application to obtain the part 70 permit or permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish. Where an existing part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(iii) For purposes of permit renewal, a timely application is one that is submitted at least 6 months prior to the date of permit expiration, or such other longer time as may be approved by the Administrator that ensures that the term of the permit will not expire before the permit is renewed. In no event shall this time be greater than 18 months.

(iv) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(2) *Complete application.* The program shall provide criteria and procedures for determining in a timely fashion when applications are complete. To be deemed complete, an application must provide all information required pursuant to paragraph (c) of this section, except that applications for permit revision need supply such information only if it is related to the proposed change. Information required under paragraph (c) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. The program shall require that a responsible official certify the submitted information consistent with paragraph (d) of this section. Unless the permitting authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 70.7(a)(4) of this part. If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in § 70.7(b) of this part, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

(3) *Confidential information.* In the case where a source has submitted information to the State under a claim of confidentiality, the permitting authority may also require the source to submit a copy of such information directly to the Administrator.

(b) *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) *Standard application form and required information.* The State program under this part shall provide for a standard application form or forms. Information as described below for each emissions unit at a part 70 source shall be included in the application. The Administrator may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule approved pursuant to § 70.9 of this part. The permitting authority may use discretion in developing application forms that best

meet program needs and administrative efficiency. The forms and attachments chosen, however, shall include the elements specified below:

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with alternate scenario identified by the source.

(3) The following emission-related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under this paragraph (c) of this section. The permitting authority shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to § 70.9(b) of this part.

(ii) Identification and description of all points of emissions described in paragraph (c)(3)(i) of this section in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rate in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(iv) The following information to the extent it is needed to determine or regulate emissions: Fuels, fuel use, raw materials, production rates, and operating schedules.

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the part 70 source.

(vii) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(viii) Calculations on which the information in paragraphs (c)(3 (i) through (vii) of this section is based.

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements, and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this part or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to § 70.6(a)(9) of this part or to define permit terms and conditions implementing § 70.4 (b) (12) or § 70.6 (a) (10) of this part.

(8) A compliance plan for all part 70 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements.

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(C) For requirements for which the source is not in compliance at the time or permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expresly required by the applicable requirement.

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(iv) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with paragraph (d) of this section and section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the permitting authority; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Act.

(d) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

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**§ 70.6 Permit content.**

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(i) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(ii) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

(iii) If an applicable implementation plan allows a determination of an alternative emission limit at a part 70 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the State elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) *Permit duration.* The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years.

(3) *Monitoring and related recordkeeping and reporting requirements. (i)* Each permit shall contain the following requirements with respect to monitoring:

(A) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;

(B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (a)(3)(iii) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(i)(B) of this section; and

(C) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(ii) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(A) Records of required monitoring information that include the following:

(*1*) The date, place as defined in the permit, and time of sampling or measurements;

(*2*) The date(s) analyses were performed;

(*3*) The company or entity that performed the analyses;

(*4*) The analytical techniques or methods used;

(*5*) The results of such analyses; and

(*6*) The operating conditions as existing at the time of sampling or measurement;

(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(iii) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

(A) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 70.5(d) of this part.

(B) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements.

(4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Act or the regulations promulgated thereunder.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(ii) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(iii) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(i) The permittee must comply with all conditions of the part 70 permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(ii) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege.

(v) The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.

(7) A provision to ensure that a part 70 source pays fees to the permitting authority consistent with the fee schedule approved pursuant to § 70.9 of this part.

(8) *Emissions trading.* A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such operating scenario; and

(iii) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(i) Shall include all terms required under paragraphs (a) and (c) of this section to determine compliance;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions that allow such increases and decreases in emissions; and

(iii) Must meet all applicable requirements and requirements of this part.

(b) *Federally-enforceable requirements.* (1) All terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

(2) Notwithstanding paragraph (b)(1) of this section, the permitting authority shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of §§ 70.7, 70.8, or of this part, other than those contained in this paragraph (b) of this section.

(c) *Compliance requirements.* All part 70 permits shall contain the following elements with respect to compliance:

(1) Consistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a part 70 permit shall contain a certification by a responsible official that meets the requirements of § 70.5(d) for this part.

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:

(i) Enter upon the permittee's premises where a part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(3) A schedule of compliance consistent with § 70.5(c)(8) of this part.

(4) Progress reports consistent with an applicable schedule of compliance and § 70.5(c)(8) of this part to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

(i) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(i) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the permitting authority) of submissions of compliance certifications;

(ii) In accordance with § 70.6(a)(3) of this part, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(iii) A requirement that the compliance certification include the following:

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The compliance status;

(C) Whether compliance was continuous or intermittent;

(D) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with paragraph (a)(3) of this section; and

(E) Such other facts as the permitting authority may require to determine the compliance status of the source;

(iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority; and

(v) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.

(6) Such other provisions as the permitting authority may require.

(d) *General permits.* (1) The permitting authority may, after notice and opportunity for public participation provided under § 70.7(h) of this part, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other part 70 permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the permitting authority shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of paragraph (f) of this section, the source shall be subject to enforcement action for operation without a part 70 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the permitting authority for coverage under

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the terms of the general permit or must apply for a part 70 permit consistent with § 70.5 of this part. The permitting authority may, in the general permit, provide for applications which deviate from the requirements of § 70.5 of this part, provided that such applications meet the requirements of title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under § 70.7(h) of this part, the permitting authority may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

(e) *Temporary sources.* The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the permitting authority at least 10 days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this section.

(f) *Permit shield.* (1) Except as provided in this part, the permitting authority may expressly include in a part 70 permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) Such applicable requirements are included and are specifically identified in the permit; or

(ii) The permitting authority, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any part 70 permit shall alter or affect the following:

(i) The provisions of section 303 of the Act (emergency orders), including the authority of the Administrator under that section;

(ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(iv) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(g) *Emergency provision*—(1) *Definition.* An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) *Effect of an emergency.* An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (g)(3) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(iv) The permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph (a)(3)(iii)(B) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

### § 70.7 Permit issuance, renewal, reopenings, and revisions.

(a) *Action on application.* (1) A permit, permit modification, or renewal may be issued only if all of the following condition have been met:

(i) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under § 70.6(d) of this part;

(ii) Except for modifications qualifying for minor permit modification procedures under paragraphs (e) (2) and (3) of this section, the permitting authority has complied with the requirements for public participation under paragraph (h) of this section;

(iii) The permitting authority has complied with the requirements for notifying and responding to affected States under § 70.8(b) of this part;

(iv) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(v) The Administrator has received a copy of the proposed permit and any notices required under §§ 70.8(a) and 70.8(b) of this part, and has not objected to issuance of the permit under § 70.8(c) of this part within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under § 70.4(b)(11) of this part or under regulations promulgated under title IV of title V of the Act for the permitting of affected sources under the acid rain program, the program shall provide that the permitting authority take final action on each permit application (including a request for permit modification or renewal) within 18 months, or such lesser time approved by the Administrator, after receiving a complete application.

(3) The program shall also contain reasonable procedures to ensure priority is given to taking action on applications for construction or modification under title I, parts C and D of the Act.

(4) The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. For modifications processed through minor permit modification procedures, such as those in paragraphs (e) (2) and (3) of this section, the State program need not require a completeness determination.



(5) The permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it.

(6) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under title I of the Act.

(b) *Requirement for a permit.* Except as provided in the following sentence, § 70.4(b)(12)(i), and paragraphs (e) (2)(v) and (3)(v) of this section, no part 70 source may operate after the time that it is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under a part 70 program. The program shall provide that, if a part 70 source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a part 70 permit is not a violation of this part until the permitting authority takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph (a)(4) of this section, and as required by § 70.5(a)(2) of this part, the applicant fails to submit by the deadline specified in writing by the permitting authority any additional information identified as being needed to process the application.

(c) *Permit renewal and expiration.* (1) The program shall provide that:

(i) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance; and

(ii) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with paragraph (b) of this section and § 70.5(a)(1)(iii) of this part.

(2) If the permitting authority fails to act in a timely way on a permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

(d) *Administrative permit amendments.* (1) An "administrative permit amendment" is a permit revision that:

(i) Corrects typographical errors;

(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(iii) Requires more frequent monitoring or reporting by the permittee;

(iv) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority;

(v) Incorporates into the part 70 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of §§ 70.7 and 70.8 of this part that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in § 70.6 of this part; or

(vi) Incorporates any other type of change which the Administrator has determined as part of the approved part 70 program to be similar to those in paragraphs (d)(1) (i) through (iv) of this section.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act.

(3) *Administrative permit amendment procedures.* An administrative permit amendment may be made by the permitting authority consistent with the following:

(i) The permitting authority shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(ii) The permitting authority shall submit a copy of the revised permit to the Administrator.

(iii) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The permitting authority may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in § 70.6(f) for administrative permit amendments made pursuant to paragraph (d)(1)(v) of this section which meet the relevant requirements of §§ 70.6, 70.7, and 70.8 for significant permit modifications.

(e) *Permit modification.* A permit modification is any revision to a part 70 permit that cannot be accomplished under the program's provisions for administrative permit amendments under paragraph (d) of this section. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act.

(1) *Program description.* The State shall provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications. The State may meet this obligation by adopting the procedures set forth below or ones substantially equivalent. The State may also develop different procedures for different types of modifications depending on the significance and complexity of the requested modification, but EPA will not approve a part 70 program that has modification procedures that provide for less permitting authority, EPA, or affected State review or public participation than is provided for in this part.

(2) *Minor permit modification procedures*—(i) *Criteria.*—(A) Minor permit modification procedures may be used only for those permit modifications that:

*(1)* Do not violate any applicable requirement;

*(2)* Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

*(3)* Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

*(4)* Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

*(A)* A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I; and

*(B)* An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act;

*(5)* Are not modifications under any provision of title I of the Act; and

*(6)* Are not required by the State program to be processed as a significant modification.

(B) Notwithstanding paragraphs (e)(2)(i)(A) and (e)(3)(i) of this section,

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minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA.

(ii) *Application.* An application requesting the use of minor permit modification procedures shall meet the requirements of § 70.5(c) of this part and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) The source's suggested draft permit;

(C) Certification by a responsible official, consistent with § 70.5(d), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(D) Completed forms for the permitting authority to use to notify the Administrator and affected States as required under § 70.8.

(iii) *EPA and affected State notification.* Within 5 working days of receipt of a complete permit modification application, the permitting authority shall meet its obligation under § 70.8 (a)(1) and (b)(1) to notify the Administrator and affected States of the requested permit modification. The permitting authority promptly shall send any notice required under § 70.8(b)(2) to the Administrator.

(iv) *Timetable for issuance.* The permitting authority may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification, whichever is first, although the permitting authority can approve the permit modification prior to that time. Within 90 days of the permitting authority's receipt of an application under minor permit modification procedures or 15 days after the end of the Administrator's 45-day review period under § 70.8(c), whichever is later, the permitting authority shall:

(A) Issue the permit modification as proposed;

(B) Deny the permit modification application;

(C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(D) Revise the draft permit modification and transmit to the Administrator the new proposed permit modification as required by § 70.8(a) of this part.

(v) *Source's ability to make change.* The State program may allow the source to make the change proposed in its minor permit modification application immediately after it files such application. After the source makes the change allowed by the preceding sentence, and until the permitting authority takes any of the actions specified in paragraphs (e)(2)(v) (A) through (C) of this section, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(vi) *Permit shield.* The permit shield under § 70.6(f) of this part may not extend to minor permit modifications.

(3) *Group processing of minor permit modifications.* Consistent with this paragraph, the permitting authority may modify the procedure outlined in paragraph (e)(2) of this section to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(i) *Criteria.* Group processing of modifications may be used only for those permit modifications:

(A) That meet the criteria for minor permit modification procedures under paragraph (e)(2)(i)(A) of this section; and

(B) That collectively are below the threshold level approved by the Administrator as part of the approved program. Unless the State sets an alternative threshold consistent with the criteria set forth in paragraphs (e)(3)(i)(B) *(1)* and *(2)* of this section, this threshold shall be 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in § 70.2 of this part, or 5 tons per year, whichever is least. In establishing any alternative threshold, the State shall consider:

*(1)* Whether group processing of amounts below the threshold levels reasonably alleviates severe administrative burdens that would be imposed by immediate permit modification review, and

*(2)* Whether individual processing of changes below the threshold levels would result in trivial environmental benefits.

(ii) *Application.* An application requesting the use of group processing procedures shall meet the requirements of § 70.5(c) of this part and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft permit.

(C) Certification by a responsible official, consistent with § 70.5(d) of this part, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(D) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under paragraph (e)(3)(i)(B) of this section.

(E) Certification, consistent with § 70.5(d) of this part, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(F) Completed forms for the permitting authority to use to notify the Administrator and affected States as required under § 70.8 of this part.

(iii) *EPA and affected State notification.* On a quarterly basis or within 5 business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under paragraph (e)(3)(i)(B) of this section, whichever is earlier, the permitting authority promptly shall meet its obligations under §§ 70.8 (a)(1) and (b)(1) to notify the Administrator and affected States of the requested permit modifications. The permitting authority shall send any notice required under § 70.8(b)(2) of this part to the Administrator.

(iv) *Timetable for issuance.* The provisions of paragraph (e)(2)(iv) of this section shall apply to modifications eligible for group processing, except that the permitting authority shall take one of the actions specified in paragraphs (e)(2)(iv) (A) through (D) of this section within 180 days of receipt of the application or 15 days after the end of the Administrator's 45-day review period under § 70.8(c) of this part, whichever is later.

(v) *Source's ability to make change.* The provisions of paragraph (e)(2)(v) of this section shall apply to modifications eligible for group processing.

(vi) *Permit shield.* The provisions of paragraph (e)(2)(vi) of this section shall also apply to modifications eligible for group processing.

(4) *Significant modification procedures*—(i) *Criteria.* Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. The State program shall contain criteria for determining whether a change is significant. At a minimum, every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this part that would render existing permit compliance terms and conditions irrelevant.

(ii) The State program shall provide that significant permit modifications shall meet all requirements of this part, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The permitting authority shall design and implement this review process to complete review on the majority of significant permit modifications within 9 months after receipt of a complete application.

(f) *Reopening for cause.* (1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(i) Additional applicable requirements under the Act become applicable to a major part 70 source with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to § 70.4(b)(10) (i) or (ii) of this part.

(ii) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(iii) The permitting authority or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(iv) The Administrator or the permitting authority determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under paragraph (f)(1) of this section shall not be initiated before a notice of such intent is provided to the part 70 source by the permitting authority at least 30 days in advance of the date that the permit is to be reopened, except that the permitting authority may provide a shorter time period in the case of an emergency.

(g) *Reopenings for cause by EPA.* (1) If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to paragraph (f) of this section, the Administrator will notify the permitting authority and the permittee of such finding in writing.

(2) The permitting authority shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the permitting authority must require the permittee to submit additional information.

(3) The Administrator will review the proposed determination from the permitting authority within 90 days of receipt.

(4) The permitting authority shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the Administrator's objection.

(5) If the permitting authority fails to submit a proposed determination pursuant to paragraph (g)(2) of this section or fails to resolve any objection pursuant to paragraph (g)(4) of this section, the Administrator will terminate, modify, or revoke and reissue the permit after taking the following actions:

(i) Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in paragraphs (g) (1) through (4) of this section.

(ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

(h) *Public participation.* Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice; to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public;

(2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the permitting authority processing the permit; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including those set forth in § 70.4(b)(3)(viii) of this part, and all other materials available to the permitting authority that are relevant to the permit decision; a brief description of the comment procedures required by this part; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled);

(3) The permitting authority shall provide such notice and opportunity for participation by affected States as is provided for by § 70.8 of this part;

(4) *Timing.* The permitting authority shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The permitting authority shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his obligation under section 505(b)(2) of the Act to determine whether a citizen petition

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may be granted, and such records shall be available to the public.

**§ 70.8 Permit review by EPA and affected States.**

(a) *Transmission of information to the Administrator.* (1) The permit program shall require that the permitting authority provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final part 70 permit. The applicant may be required by the permitting authority to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the permitting authority may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(2) The Administrator may waive the requirements of paragraphs (a)(1) and (b)(1) of this section for any category of sources (including any class, type, or size within such category) other than major sources according to the following:

(i) By regulation for a category of sources nationwide, or

(ii) At the time of approval of a State program for a category of sources covered by an individual permitting program.

(3) Each State permitting authority shall keep for 5 years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this part.

(b) *Review by affected States.* (1) The permit program shall provide that the permitting authority give notice of each draft permit to any affected State on or before the time that the permitting authority provides this notice to the public under § 70.7(h) of this part, except to the extent § 70.7(e) (2) or (3) of this part requires the timing of the notice to be different.

(2) The permit program shall provide that the permitting authority, as part of the submittal of the proposed permit to the Administrator [or as soon as possible after the submittal for minor permit modification procedures allowed under § 70.7(e) (2) or (3) of this part], shall notify the Administrator and any affected State in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the permitting authority's reasons for not accepting any such recommendation. The permitting authority is not required to accept recommendations that are not based on applicable requirements or the requirements of this part.

(c) *EPA objection.* (1) The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part. No permit for which an application must be transmitted to the Administrator under paragraph (a) of this section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

(2) Any EPA objection under paragraph (c)(1) of this section shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The Administrator will provide the permit applicant a copy of the objection.

(3) Failure of the permitting authority to do any of the following also shall constitute grounds for an objection:

(i) Comply with paragraphs (a) or (b) of this section;

(ii) Submit any information necessary to review adequately the proposed permit; or

(iii) Process the permit under the procedures approved to meet § 70.7(h) of this part except for minor permit modifications.

(4) If the permitting authority fails, within 90 days after the date of an objection under paragraph (c)(1) of this section, to revise and submit a proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of the Federal program promulgated under title V of this Act.

(d) *Public petitions to the Administrator.* The program shall provide that, if the Administrator does not object in writing under paragraph (c) of this section, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the permitting authority shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the permitting authority has issued a permit prior to receipt of an EPA objection under this paragraph, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in § 70.7(g) (4) or (5) (i) and (ii) of this part except in unusual circumstances, and the permitting authority may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(e) *Prohibition on default issuance.* Consistent with § 70.4(b)(3)(ix) of this part, for the purposes of Federal law and title V of the Act, no State program may provide that a part 70 permit (including a permit renewal or modification) will issue until affected States and EPA have had an opportunity to review the proposed permit as required under this section. When the program is submitted for EPA review, the State Attorney General or independent legal counsel shall certify that no applicable provision of State law requires that a part 70 permit or renewal be issued after a certain time if the permitting authority has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit), unless EPA has waived such review for EPA and affected States.

**§ 70.9 Fee determination and certification.**

(a) *Fee Requirement.* The State program shall require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs.

(b) *Fee schedule adequacy.* (1) The State program shall establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. These costs include, but are not limited to, the costs of the following activities as they relate to the operating permit program for stationary sources:

(i) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(ii) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(iii) General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;

(iv) Implementing and enforcing the terms of any part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(v) Emissions and ambient monitoring;

(vi) Modeling, analyses, or demonstrations;

(vii) Preparing inventories and tracking emissions; and

(viii) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained in section 507 of the Act in determining and meeting their obligations under this part.

(2)(i) The Administrator will presume that the fee schedule meets the requirements of paragraph (b)(1) of this section if it would result in the collection and retention of an amount not less than $25 per year [as adjusted pursuant to the criteria set forth in paragraph (b)(2)(iv) of this section] times the total tons of the actual emissions of each regulated pollutant (for presumptive fee calculation) emitted from part 70 sources.

(ii) The State may exclude from such calculation:

(A) The actual emissions of sources for which no fee is required under paragraph (b)(4) of this section;

(B) The amount of a part 70 source's actual emissions of each regulated pollutant (for presumptive fee calculation) that the source emits in excess of four thousand (4,000) tpy;

(C) A part 70 source's actual emissions of any regulated pollutant (for presumptive fee calculation), the emissions of which are already included in the minimum fees calculation; or

(D) The insignificant quantities of actual emissions not required in a permit application pursuant to § 70.5(c).

(iii) "Actual emissions" means the actual rate of emissions in tons per year of any regulated pollutant (for presumptive fee calculation) emitted from a part 70 source over the preceding calendar year or any other period determined by the permitting authority to be representative of normal source operation and consistent with the fee schedule approved pursuant to this section. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year or such other time period established by the permitting authority pursuant to the preceding sentence.

(iv) The program shall provide that the $25 per ton per year used to calculate the presumptive minimum amount to be collected by the fee schedule, as described in paragraph (b)(2)(i) of this section, shall be increased each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989.

(A) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

(B) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

(3) The State program's fee schedule may include emissions fees, application fees, service-based fees or other types of fees, or any combination thereof, to meet the requirements of paragraph (b)(1) or (b)(2) of this section. Nothing in the provisions of this section shall require a permitting authority to calculate fees on any particular basis or in the same manner for all part 70 sources, all classes or categories of part 70 sources, or all regulated air pollutants, provided that the permitting authority collects a total amount of fees sufficient to meet the program support requirements of paragraph (b)(1) of this section.

(4) Notwithstanding any other provision of this section, during the years 1995 through 1999 inclusive, no fee for purposes of title V shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act.

(5) The State shall provide a detailed accounting that its fee schedule meets the requirements of paragraph (b)(1) of this section if:

(i) The State sets a fee schedule that would result in the collection and retention of an amount less than that presumed to be adequate under paragraph (b)(2) of this section; or

(ii) The Administrator determines, based on comments rebutting the presumption in paragraph (b)(2) of this section or on his own initiative, that there are serious questions regarding whether the fee schedule is sufficient to cover the permit program costs.

(c) *Fee demonstration.* The permitting authority shall provide a demonstration that the fee schedule selected will result in the collection and retention of fees in an amount sufficient to meet the requirements of this section.

(d) *Use of Required Fee Revenue.* The Administrator will not approve a demonstration as meeting the requirements of this section, unless it contains an initial accounting (and periodic updates as required by the Administrator) of how required fee revenues are used solely to cover the costs of meeting the various functions of the permitting program.

**§ 70.10 Federal oversight and sanctions.**

(a) *Failure to submit an approvable program.* (1) If a State fails to submit a fully-approvable whole part 70 program, or a required revision thereto, in conformance with the provisions of § 70.4, or if an interim approval expires and the Administrator has not approved a whole part 70 program:

(i) At any time the Administrator may apply any one of the sanctions specified in section 179(b) of the Act; and

(ii) Eighteen months after the date required for submittal or the date of disapproval by the Administrator, the Administrator will apply such sanctions in the same manner and with the same conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a) of the Act.

(2) If full approval of a whole part 70 program has not taken place within 2 years after the date required for such submission, the Administrator will promulgate, administer, and enforce a whole program or a partial program as appropriate for such State.

(b) *State failure to administer or enforce.* Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part and of any agreement between the State and the Administrator concerning operation of the program.

(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering or enforcing a part 70 program, or any portion thereof, the Administrator will notify the permitting authority of the determination and the

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reasons therefore. The Administrator will publish such notice in the **Federal Register**.

(2) If, 90 days after issuing the notice under paragraph (c)(1) of this section, the permitting authority fails to take significant action to assure adequate administration and enforcement of the program, the Administrator may take one or more of the following actions:

(i) Withdraw approval of the program or portion thereof using procedures consistent with § 70.4(e) of this part;

(ii) Apply any of the sanctions specified in section 179(b) of the Act;

(iii) Promulgate, administer, or enforce a Federal program under title V of the Act.

(3) Whenever the Administrator has made the finding and issued the notice under paragraph (c)(1) of this section, the Administrator will apply the sanctions under section 179(b) of the Act 18 months after that notice. These sanctions will be applied in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a) of the Act.

(4) Whenever the Administrator has made the finding and issued the notice under paragraph (c)(1) of this section, the Administrator will, unless the State has corrected such deficiency within 18 months after the date of such finding, promulgate, administer, and enforce, a whole or partial program 2 years after the date of such finding.

(5) Nothing in this section shall limit the Administrator's authority to take any enforcement action against a source for violations of the Act or of a permit issued under rules adopted pursuant to this section in a State that has been delegated responsibility by EPA to implement a Federal program promulgated under title V of the Act.

(6) Where a whole State program consists of an aggregate of partial programs, and one or more partial programs fails to be fully approved or implemented, the Administrator may apply sanctions only in those areas for which the State failed to submit or implement an approvable program.

(c) *Criteria for withdrawal of State programs.* (1) The Administrator may, in accordance with the procedures of paragraph (c) of this section, withdraw program approval in whole or in part whenever the approved program no longer complies with the requirements of this part, and the permitting authority fails to take corrective action. Such circumstances, in whole or in part, include any of the following:

(i) Where the permitting authority's legal authority no longer meets the requirements of this part, including the following:

(A) The permitting authority fails to promulgate or enact new authorities when necessary; or

(B) The State legislature or a court strikes down or limits State authorities to administer or enforce the State program.

(ii) Where the operation of the State program fails to comply with the requirements of this part, including the following:

(A) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits;

(B) Repeated issuance of permits that do not conform to the requirements of this part;

(C) Failure to comply with the public participation requirements of § 70.7(h) of this part;

(D) Failure to collect, retain, or allocate fee revenue consistent with § 70.9 of this part; or

(E) Failure in a timely way to act on any applications for permits including renewals and revisions.

(iii) Where the State fails to enforce the part 70 program consistent with the requirements of this part, including the following:

(A) Failure to act on violations of permits or other program requirements;

(B) Failure to seek adequate enforcement penalties and fines and collect all assessed penalties and fines; or

(C) Failure to inspect and monitor activities subject to regulation.

(d) *Federal collection of fees.* If the Administrator determines that the fee provisions of a part 70 program do not meet the requirements of § 70.9 of this part, or if the Administrator makes a determination under paragraph (c)(1) of this section that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under title V of the Act, collect reasonable fees to cover the Administrator's costs of administering the provisions of the permitting program promulgated by the Administrator, without regard to the requirements of § 70.9 of this part.

**§ 70.11 Requirements for enforcement authority.**

All programs to be approved under this part must contain the following provisions:

(a) *Enforcement authority.* Any agency administering a program shall have the following enforcement authority to address violations of program requirements by part 70 sources:

(1) To restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment.

(2) To seek injunctive relief in court to enjoin any violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit.

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, according to the following:

(i) Civil penalties shall be recoverable for the violation of any applicable requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, entry or monitoring activities or, any regulation or orders issued by the permitting authority. These penalties shall be recoverable in a maximum amount of not less than $10,000 per day per violation. State law shall not include mental state as an element of proof for civil violations.

(ii) Criminal fines shall be recoverable against any person who knowingly violates any applicable requirement; any permit condition; or any fee or filing requirement. These fines shall be recoverable in a maximum amount of not less than $10,000 per day per violation.

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method. These fines shall be recoverable in a maximum amount of not less than $10,000 per day per violation.

(b) *Burden of proof.* The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section shall be no greater than the burden of proof or degree of knowledge or intent required under the Act.

(c) *Appropriateness of penalties and fines.* A civil penalty or criminal fine assessed, sought, or agreed upon by the permitting authority under paragraph (a)(3) of this section shall be appropriate to the violation.

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Part III

# Environmental Protection Agency

**40 CFR Parts 51, 52, and 60**

**Requirements for Preparation, Adoption and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; and Standards for Performance for New Stationary Sources; Rule**

VOL 57 ISS 140 JL 21 1992 UMI

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51, 52, and 60**

**[FRL 4137-7]**

**RIN 2060-AD62**

**Requirements for Preparation, Adoption and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Standards of Performance for New Stationary Sources**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA today adopts a broad NSR exclusion for utility pollution control projects, adhering to its policy that new source regulations already generally exclude coverage of pollution control projects undertaken at electric utility units. Similarly, EPA is today adopting an "actual to future actual" methodology for determining whether all other nonroutine physical or operational changes at utilities (other than the replacement of a unit or addition of a new unit) are subject to NSR under either prevention of significant deterioration (PSD) or nonattainment provisions.

In addition, EPA is also modifying its regulations implementing the modification provisions of the title I new source performance standards (NSPS) program to provide that a utility may use for its pre-change baseline the highest hourly emissions rate achievable at any time during the 5 years prior to the physical or operational change. In addition, EPA is modifying its regulations to reflect changes made by Congress in the 1990 Amendments to the applicability of new source requirements to clean coal technology (CCT) and repowering projects, and to "very clean" units.

**DATES:** This rule takes effect on July 21, 1992. Under section 307(b)(1) of the CAA, petitions for judicial review must be filed on or before September 21, 1992, in the U.S. Court of Appeals for the DC Circuit.

**ADDRESSES:** Material relevant to this rulemaking may be found in Public Docket A-90-06. This docket is located in U.S. EPA's Central Docket Section (LE-131), Waterside Mall, M-1500, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3 p.m. on weekdays and a reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. David A. Solomon at (919) 541-5375 or Mr. Larry Elmore at (919) 541-5433, New Source Review Section (MD-15), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** The following outline reflects the organization of today's notice:

I. Introduction
II. Background
  A. The New Source Performance Standards, Prevention of Significant Deterioration and Nonattainment Programs of Title I
  B. The Two-Step Test for Modifications
  C. Step One: Physical or Operational Change
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  E. Step Two: Emissions Increases Under NSR Requirements
  1. Existing Regulations
  2. The WEPCO and Puerto Rican Cement Decisions
  F. The Clean Air Act Amendments of 1990
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III. Discussion of Final Action on Proposal
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  E. Clean Coal Technology Demonstration Projects and Very Clean Units
  F. Calculation of NSPS Baseline
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  I. Limitation of the Rule to Electric Utilities
IV. Administrative Requirements
  A. Executive Order (E.O.) 12291
  B. Paperwork Reduction Act
  C. Economic Impact Assessment
  D. Regulatory Flexibility Act Certification
  E. Effective Date
  F. Federalism Implications

## I. Introduction.

The applicability of the new source requirements of title I of the Clean Air Act (CAA) to physical or operational changes at electric utility generating units is an issue of considerable interest at this time because of the recent passage of the 1990 CAA Amendments (1990 Amendments). Many utilities will be undertaking major pollution control projects at their units in the next few years. In enacting title IV, Congress did not suspend any title I requirements for this work. However, the massive industry-wide undertakings of pollution control projects warrants a clarification of the new source review (NSR) requirements of title I. In particular, NSR provisions should not inadvertently bias a utility towards or against any means of complying with the acid rain provisions. The EPA believes the amendments adopted today and the clarification of its current policy under its present NSR regulations provide adequate assurances that utilities can undertake title IV pollution control projects without uncertainty as to the applicability of the various title I new source requirements. At the same time, the applicability of existing new source regulations to modifications has been the source of two recent Federal appellate decisions, *Wisconsin Electric Power Co.* v. *Reilly*, (*WEPCO*), 893 F.2d 901 (7th Cir. 1990), and *Puerto Rican Cement Co.* v. *EPA*, 889 F.2d 292 (1st Cir. 1989). As a result, EPA is today adopting clarifying amendments to these regulations that confirmed policies regarding some of these provisions as they apply to utility projects.

The EPA today amends its regulations implementing the various title I new source requirements governing physical or operational changes at electric utility steam generating units. Specifically, these changes are being issued to clarify the coverage of the NSPS, PSD and nonattainment preconstruction review requirements of title I of the CAA to projects undertaken at electric utility steam generating units.[1]

The EPA today amends the definition of "major modification" in 40 CFR parts 51 and 52 to set forth the conditions under which the addition, replacement or use at existing electric utility generating units of any system or device whose primary function is the reduction of air pollutants (including the switching to a less polluting fuel where the primary purpose of the switch is the reduction of air pollutants) will or will not subject the source to preconstruction review. Specifically, EPA is adopting in PSD and nonattainment areas a regulatory exclusion explicating its authority under the statutory definition of "modification" and confirming EPA's current practice that pollution control projects which "do not render the unit less environmentally beneficial" are not "physical or operational changes," and hence, are not "modifications" for the purposes of parts C and D of title I and are not "major modifications" for the purposes of EPA's regulations implementing those provisions. The EPA is today also amending its PSD and nonattainment NSR regulations (40 CFR

[1] The regulations define electric utility steam generating units as any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts (MW) of electrical output to any utility power distribution system for sale [see e.g., proposed 40 CFR 51.165(xx)].

parts 51 and 52) [2] as they apply to utilities to (1) clarify the NSR baseline for determining whether a proposed physical or operational change will subject a utility to the preconstruction review requirements of these provisions; (2) set forth an actual-to-future-actual methodology for determining whether a physical or operational change is subject to NSR; (3) provide further clarification of the existing regulatory requirement that only those increases in emissions that actually result from the physical change or change in the method of operation can be considered in determining whether the proposed change subjects the utility to NSR requirements; and (4) implement sections 409 and 415 of title IV of the 1990 Amendments which create special NSPS treatment for certain repowering projects and limited NSR exemptions for temporary and permanent CCT projects, and for certain "very clean" units. Finally, EPA is also amending its NSPS regulations (40 CFR part 60) to allow a utility to use as its pre-change baseline its highest hourly emissions rate achievable during the 5 years prior to the proposed physical or operational change.

Today's rule addressing pollution control projects and other non-routine physical and operational changes at electric utility units is timely for several reasons. First, the 1990 Amendments establish, in title IV, a new control scheme for addressing the acid rain problem which focuses exclusively and immediately on utility power plants. Title IV will force most electric utility steam generating units to undertake pollution control projects and provides full flexibility to achieve compliance without a bias towards or against any particular pollution control method. Second, the Agency believes its extensive experience with other non-routine physical and operational changes at such units and the unique characteristics of the electric utility industry (e.g., the general similarity of equipment within the category and the extent of publicly available information) support a revision to the NSR applicability criteria for this source category. Further, while Congress did not make significant changes in the NSR and NSPS statutory language in 1990, the conference committee provided the following guidance to EPA in its Joint Explanatory Statement:

> [T]he deletion of most provisions relating to the WEPCO decision is not intended to affect or prejudice in any way the issues or resolution of the WEPCO matter. At the same time, the conferees urge a quick resolution of the WEPCO matter by EPA as appropriate.

Conference Comm., Joint Explanatory Statement of the Committee of the Conference to Accompany S. 1630, Rep. 101–952, 101st. Cong., 2nd Sess. (1990) pp. 344–45. In passing title IV, Congress did not suspend any requirements of title I. However title I and title IV are clearly intended to work in concert, not conflict, and today's ruling is intended to ensure that harmony.

In taking the actions announced today, EPA has relied on the written comments provided to the docket in this matter as well as testimony provided at a public hearing on the proposed rule conducted by EPA on July 14, 1991.

The public comment period, originally scheduled to close on August 19, 1991, was extended until September 18, 1991 (56 FR 40843, August 16, 1991) to receive additional comments. The comment period was later reopened on November 25, 1991 (see 56 FR 59238) for 2 weeks to receive comments on the information contained in the transcript of a congressional hearing conducted by the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce on July 22, 1991, and other related information. In response to several requests to extend the comment period, the comment period was extended for an additional 7 days, making the final deadline for comments December 17, 1991 (see 56 FR 65203).

## II. Background

### *A. The New Source Performance Standards, Prevention of Significant Deterioration and Nonattainment Programs of Title I*

Title I of the CAA has three programs specifically designed to ensure that no new air pollution—whether from new sources or from modifications to existing sources—can be emitted unless the source complies with new source requirements.

The 1970 CAA required EPA to promulgate technology-based NSPS applicable to the construction or modification of stationary sources that cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare [see CAA section 111(b)(1)(A), 42 U.S.C. 7411(b)(1)(A)]. The NSPS provisions were "designed to prevent new air pollution problems" by regulating newly-constructed sources and changes occurring at existing sources that result in emissions increases (see *National Asphalt Pavement Assoc.* v. *Train*, 539 F.2d 775, 783 (D.C. Cir. 1976); see also H.R. Rep. No. 1146, 91st Cong., 2d Sess. 3, reprinted in 1970 U.S. Code Cong. & Admin. News 5356, 5358). Congress defined the term "modification" as "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted" [see CAA section 111(a)(4), 42 U.S.C. 7411(a)(4)].

In 1977, Congress adopted additional amendments to the CAA. These changes included preconstruction permitting requirements for major new and modified sources under two programs, prevention of significant deterioration (PSD) and nonattainment NSR (respectively, parts C and D of the CAA). Congress intended these programs to apply generally where industrial changes might increase pollution in an area. *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 400 (D.C. Cir. 1979). Congress incorporated in parts C and D the same definition of the term "modification" set forth in the NSPS provisions [see CAA section 111(a)(4), 169(2)(C), and 171(4)].

The NSR program for PSD (CAA sections 160–169) applies in attainment areas, i.e., those areas which have attained the national ambient air quality standards (NAAQS). To receive a PSD permit, a prospective major new source or major modification must (among other things) show that (1) it will not cause or contribute to a violation of the available air quality "increment" (designed to prevent ambient air quality from deteriorating by more than certain specified levels), (2) it will not cause or contribute to a violation of a NAAQS, and (3) it will use the "BACT," which must be at least as stringent as any applicable NSPS or hazardous pollutant standard under section 112 of the CAA.

Part D of the 1977 Amendments applies to nonattainment areas, i.e., those areas which have not met the NAAQS under section 109. To receive a permit in such areas, major new and modified sources must (among other things) (1) obtain emissions offsets, thereby assuring that reasonable progress toward attainment of the NAAQS will occur, and (2) comply with the "lowest achievable emission rate (LAER)" (see CAA sections 171–173).[3]

[2] For the purposes of this notice, references to "new source review" (or "NSR") refer to the preconstruction review requirements of both part C (PSD) and part D (nonattainment) of the CAA, unless otherwise indicated.

[3] The 1970 CAA also included a provision applicable to construction or modification of any

Continued

*B. The Two-Step Test for Modifications*

The modification provisions of the NSPS and NSR programs are based on the broad NSPS definition of "modification" in section 111(a)(4) of the CAA. That section contemplates a two-step test for determining whether activities at an existing facility constitute a modification subject to new source requirements. In the first step, which is largely the same for NSPS and NSR, the reviewing authority determines whether a physical or operational change will occur.[4] If so, the reviewing authority proceeds in the second step to determine whether the physical or operational change will result in an emissions increase over baseline levels. In this second step, the applicable rules branch apart, reflecting the fundamental distinctions between the technology-based provisions of NSPS and the air quality-based provisions of NSR.

Briefly, the NSPS program examines maximum hourly emission rates, expressed in kilograms per hour.[5]

Emissions increases for NSPS purposes are determined by changes in the hourly emissions rates at maximum physical capacity. On the other hand, the NSR regulations examine total emissions to the atmosphere. For applicability determination purposes, emissions increases under NSR are determined by changes in annual emissions as expressed in tons per year (tpy).[6]

*C. Step One: Physical or Operational Change*

The EPA has always recognized that the definition of physical or operational change in section 111(a)(4) could, standing alone, encompass the most mundane activities at an industrial facility (even the repair or replacement of a single leaky pipe, or a change in the way that pipe is utilized). However, EPA has always recognized that Congress obviously did not intend to make every activity at a source subject to new source requirements.

As a result, EPA has defined "modification" in the NSPS and NSR regulations to include common-sense exclusions from the "physical or operational change" component of the definition. For example, both sets of regulations contain similar exclusions for routine maintenance, repair, and replacement; for increases in the hours of operation or in the production rate; and for certain types of fuel switches [see e.g., 40 CFR 52.21(b)(2)(iii) and 60.14(e)]. In addition, with respect to pollution control equipment, the NSPS regulations contain an exclusion for:

> The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emissions control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

40 CFR 60.14(e) (5). As will be discussed, in recent individual applicability determinations EPA has excluded pollution control projects from NSR following a similar "environmentally beneficial" test.

*D. Step Two: Emissions Increases for NSPS Applicability*

The EPA's NSPS regulations define the term "modification" as any "physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies" (see 40 CFR 60.2 and 60.14). Under current NSPS regulations, emissions increases, for applicability purposes, are calculated by comparing the hourly emission rate, at maximum physical capacity, before and after the physical or operational change. That is, to determine whether a change to an existing facility will increase the emissions rate, the existing NSPS regulations authorize the use of an "emissions factor analysis," or a materials balance, continuous monitoring, or manual emissions test to evaluate emissions before and after the change [see 40 CFR 60.14(b)(2)].

Absent the exclusions from modifications specified at 40 CFR 60.14(e), any increase in emissions to the atmosphere over the previous emissions rate will subject the unit to NSPS [see 40 CFR 60.14 (a) and (b)]. In addition, under the "reconstruction rules," physical or operational changes which would cost 50 percent or more of the total cost of a comparable new facility may be classified as reconstructions (see 40 CFR 60.15) and are subject to NSPS as a new source, even if there is no emissions increase.

*E. Step Two: Emissions Increases Under NSR Requirements*

1. Existing Regulations

The EPA's regulations implementing the PSD and nonattainment programs require preconstruction review for sources undertaking a "major modification," *i.e.*, a physical change or change in the method of operations "that would result in a significant net emissions increase of any pollutant subject to regulation under the CAA" [see 40 CFR 52.21(b)(2)(i), 52.24(f)(5)].[7] A "net emissions increase" is defined as the increase in "actual emissions" from the particular physical or operational change together with any other "contemporaneous" increases or decreases in actual emissions [see 40 CFR 52.21(b)(3)(i)].[8]

Applicability of the CAA's NSR provisions must be determined in advance of construction and is pollutant specific. In cases involving existing sources, this requires a pollutant-by-pollutant projection of the emissions increases, if any, that will result from the physical or operational change. Specifically, to determine whether a proposed physical or operational change will result in an emissions increase, the source must first determine a baseline level of actual emissions. The regulations define actual emissions on a particular date as "the average rate, in tpy, at which the unit actually emitted the pollutant during a 2-year period which precedes the particular date and

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stationary source. This provision is presently set forth in section 110(a)(2)(C). Today's notice does not propose to change the scope of the regulations implementing this provision (see 40 CFR 51.160–164).

[4] This is further described in section III.H below.

[5] An hourly emissions rate may be determined by a stack test or calculated from the product of the instantaneous emissions rate, i.e., the amount of pollution emitted by a source, after control, per unit of fuel combusted or material processed (such as pounds of sulfur dioxide emitted per ton of coal burned) times the production rate (such as tons of coal burned per hour) (see 40 CFR 60.14).

[6] Annual emissions may be calculated as the product of the hourly emissions rate times the utilization rate, expressed as hours of operation per year, or as the product of an emissions factor (*e.g.*, from *Compilation of Air Pollutant Emission Factors*, AP–42, 4th Ed. and subsequent supplements) in units of mass emitted per unit of process throughput times the annual throughput [see 40 CFR 52.21(b)(21)].

[7] The current PSD program is set forth in two sets of regulations. One of the regulations cited (40 CFR 52.21) is part of the Federal PSD permit program which applies as part of a Federal implementation plan for States that have not submitted a PSD program meeting the regulatory requirements of 40 CFR 51.166 (standards for PSD provisions in State implementation plans (SIP)]. In most States where the Federal requirements apply, EPA has delegated the authority to implement the PSD program back to the State. Roughly two-thirds of the States are implementing their own PSD program pursuant to an EPA-approved SIP. Sections 52.21 and 51.166 have identical modification provisions.

The EPA's regulations for nonattainment areas are set forth at 40 CFR § 51.165, 52.24 and in part 51, Appendix S. These sections contain applicability provisions regarding modification that are largely identical to those in the PSD provisions.

[8] Roughly speaking, "contemporaneous" emissions increases or decreases are those which have occurred between the date 5 years preceding the proposed physical or operational change and the date that the increase from the change occurs [see 40 CFR 52.21(b)(3)(ii)]. Once a modification is determined to be major, the PSD requirements apply only to those specific pollutants for which there would be a significant net emissions increase [see e.g., 40 CFR 52.21(j)(3) (best available control technology); 40 CFR 52.21(m)(1)(b) (air quality analysis)].

which is representative of normal source operation" [see 40 CFR 52.21(b)(21)(ii)]. The Administrator "shall" allow use of a different time period "upon a determination that it is more representative of normal source operation." *Id.* The EPA has typically used the 2 years immediately preceding the physical or operational change to establish the baseline [see 45 FR 52676, 52705, 52718 (1980)]. However, it can allow the use of an earlier 2-year period that is more representative of normal source operations. For example, in *WEPCO*, EPA found the fourth and fifth years prior to the modification more representative of WEPCO's normal operations.

Because the applicability determination must be made in advance of construction, EPA's NSR regulations provide that when an emissions unit "has not begun normal operations," actual emissions equal the "potential-to-emit of the unit" [see 40 CFR 52.21(b)(21)(iv)]. This approach is referred to as the actual-to-potential methodology. This regulatory provision may be overcome—and NSR will not apply—if the source owner agrees, in a federally-enforceable instrument—not to increase its actual emissions above baseline level [see e.g., 40 CFR 52.21(b)(4)].

2. The WEPCO and Puerto Rican Cement Decisions

As noted above, to calculate whether a physical or operational change "increases" emissions, EPA regulations require it to find an increase in actual emissions [see 40 CFR 52.21(b)(3)(i)(a)]. Where the emissions unit has not "begun normal operations," EPA regulations recognize that future actual emissions are difficult to predict and employ future "potential" emissions as a proxy [see 40 CFR 52.21(b)(21)(iv)]. The linchpin under the current regulations for predicting future emissions after a modification is thus whether the unit has "begun normal operations."

Two recent Federal appellate court decisions have addressed EPA's interpretation of the phrase "begun normal operations." These decisions, *Puerto Rican Cement Co., Inc.* v. *US EPA*, 889 F.2d 292 (1st Cir. 1989) and *Wisconsin Elec. Power Co.* v. *Reilly*, 893 F.2d 901 (7th Cir. 1990) ("*WEPCO*"), occasion a reexamination of EPA's interpretation of the phrase, and of the usefulness of the regulatory language itself. The meaning of the phrase is highly fact-dependent, and these decisions have created uncertainty regarding its application; thus, as described later in this notice, EPA today changes its regulations for electric utility steam generating units to employ a more useful criterion.

Both cases involved physical changes to existing emissions units, but changes of differing extent, nature and result. In *Puerto Rican Cement*, the owner of a cement plant [9] with several kilns sought to convert one "wet" kiln into a "dry" kiln, and to combine that kiln with another kiln (see 889 F.2d at 293). The court observed that the total production capacity of the renovated single kiln would exceed the combined production capacity of the previous two separate kilns by "about 35%." *Id.* It noted that the renovated single kiln would employ a different "cement-making process" than the original kiln from which it was "converted," *id.* And it said that the new kiln would be "more efficient [and] may lead the firm to decide to *increase the level of production*," *id.* at 297 (emphasis in original). In reviewing EPA's interpretation of "begun normal operations," the court applied a highly deferential standard of review, since an agency's interpretation of its own regulatory language is typically given " 'controlling weight unless it is plainly erroneous or inconsistent with the regulation' " [see 889 F.2d at 297, quoting *Udall* v. *Tallman*, 380 U.S. 1, 16–17 (1965) (citation omitted)]. The court concluded that on the facts of the case, EPA's interpretation that "normal operations" had not begun was not "arbitrary or irrational," *id.* at 298, and hence EPA's application of the actual-to-potential test to predict future emissions was permissible.

In *WEPCO*, 893 F.2d 901, the Seventh Circuit was faced with a different kind of modification. There renovations were proposed for several older (35 to 50 year old) coal-fired electric utility boilers. The physical changes involved repair and replacement of turbine-generators, steam drums and other major components. The EPA contended, as it had in *Puerto Rican Cement*, that these changes went beyond "normal operations" and thus warranted use of future potential emissions as the test for an emissions increase over past actual emissions. Here the court disagreed with EPA's interpretation that "normal operations" had not begun. The court coined the phrase "like-kind replacement" to describe the type of renovation occurring at the WEPCO plant. *Id.* at 917. The court described a "like-kind replacement" as one that "does not 'change or alter' the design or nature of the facility. Rather, it merely allows the facility to operate again as it had before the specific equipment deteriorated." *Id.* at 908. In determining whether such a "like-kind replacement" had "begun normal operations," *Id.* at 917, the court considered whether a "realistic assessment of [the] impact [of the change] on ambient air quality levels is possible.' " *Id.* at 917 [quoting *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 379 (D.C. Cir. 1979)]. The court said that where the renovations were "like-kind replacements," EPA could not reasonably interpret its regulations to say that such a unit was so different that it has not "begun normal operations." Thus, it concluded that the "actual-to-potential" test could not be applied, under EPA's regulations, to units simply undergoing "like-kind replacements." [10]

Neither of these decisions specified the threshold for when a unit has "begun normal operations." Based on these decisions, under its current regulations, EPA must consider the facts of each case and apply the actual-to-potential test only where the change is sufficiently significant to support a finding that "normal operations" have not "begun." At least for changes that are "like kind replacements," "normal operations" have begun, and the actual-to-potential test is impermissible.

Because the "begun normal operations" criterion is highly fact-dependent and its application is inherently case-by-case, it may be an uncertain indicator of what emissions test will be applied in a given instance. However, EPA's extensive experience with electric utilities, and the generally similar nature of operations within this source category, provide EPA an adequate basis on which to predict future actual emissions from such units in most cases. Consequently, as explained below, EPA is today revising its regulations to apply the actual-to-actual test on all physical or operational changes at electric utility steam generating units save those that are an addition of a new unit or constitute a replacement of an existing unit.

*F. The Clean Air Act Amendments of 1990*

1. New Source Review and the Acid Rain Provisions

The 1990 Amendments, Pub L. No. 101–549, 104 Stat. 2399 (Nov. 15, 1990), made numerous changes in the nonattainment provisions of the CAA

[9] *Puerto Rican Cement* involved a cement plant, not an electric utility, but the court's legal analysis of the phrase "begun normal operations" in the current regulations is relevant to all facilities.

[10] On remand, EPA employed an actual-to-future actual test, comparing WEPCO's representative actual emissions for the baseline period to estimated future actual emissions based on ala the available facts in the record.

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and added a new title to address the problem of acid rain. The amendments attack nonattainment problems with a broad array of new requirements all designed to bring all areas of the country into attainment with the national ambient air quality standards for all pollutants. These requirements include traffic reduction strategies, use of alternative clean fuels, increased offset requirements for stationary sources, and changes in the threshold size of stationary sources subject to NSR. A principal theme of the legislation is the establishment of categories of nonattainment areas based on the severity of the pollution problem. The more severe the area, the more controls Congress required be imposed.

The Amendments also establish, in title IV, a new control scheme for addressing the acid rain problem. The exclusive focus of this program is on utility power plant emissions of sulfur dioxide and nitrogen oxides. The 1990 Amendments require sulfur dioxide emissions from utilities to be reduced by approximately 10 million tons annually in two phases—the first to take effect in 1995, the second in 2000. A total of 111 specific plants are targeted in Phase I, and will be required to reduce their $SO_2$ emissions to specified emissions limits. In Phase II, these plants, and almost all others, are subject to even lower $SO_2$ emissions limits. This reduction program is to be implemented through a new market-based system under which emissions allowances reflecting the required reduction in current emissions are allocated to existing utility plants. Plant owners, who are required to hold allowances equal to their actual emissions, are then free to trade these allowances. Thus, the emissions of individual units may vary from the initial allocation of allowances, but aggregate emissions are always held to the program's overall target level. This program will provide powerful incentives to sources to undertake pollution control projects.

Because of these requirements, many of the plants subject to Phase I controls must make compliance decisions within the next year in order to assure that the complicated control equipment that may be necessary to meet Phase I standards is in place by the 1995 deadline. In enacting title IV, Congress did not suspend any title I requirements for this work. However, the massive industry-wide undertakings of pollution control projects warrants a clarification of the NSR requirements of title I. In particular, NSR provisions should not inadvertently bias a utility towards or against any means of complying with the acid rain provisions. The EPA believes the amendments promulgated today and the clarification of its current policy under its present NSR regulations provide adequate assurances that utilities can undertake title IV pollution control projects without uncertainty as to the applicability of the various title I new source requirements.

2. Repowering and Clean Coal Technology Projects

In title IV of the 1990 Amendments, which creates the acid rain program, Congress made changes in the applicability of new source requirements to changes involving repowering and Clean Coal Technology (CCT) projects.

Section 409 grants an extension of the acid rain controls deadline to sources that seek to comply with the acid rain reductions by repowering a unit with qualifying clean coal technology. Section 402(12) defines repowering as:

> [The] replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of the date of enactment of the Clean Air Act Amendments of 1990. Notwithstanding the provisions of section 409(a), for the purpose of this title, the term 'repowering' shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

[See CAA sections 402(12) and 409(a)].

Congress provided that repowering projects that qualify for a Phase II compliance extension would also be exempt from NSPS requirements, so long as the repowering "does not increase actual hourly emissions for any pollutant regulated under the Act" [see CAA section 409(d)]. An operator can qualify for the 3-year extension of the Phase II emissions limitation by demonstrating (by December 31, 1997) to the permitting authority that one or more units will be repowered with a qualifying clean coal technology to meet the title IV restrictions. The operator must provide, no later than January 1, 2000, additional documentation of the repowering project including a preliminary design and engineering effort for the project and a binding contract for the majority of the equipment needed, as well as any additional information the reviewing authority requires.

Today's amendments also implement an exemption from new source requirements for CCT demonstration projects created by Congress in section 415 of title IV of the 1990 Amendments. In these provisions, CCT is defined as any technology not in widespread use on the date of enactment that achieves significant reductions in $SO_2$ or nitrogen oxides ($NO_x$) emissions associated with burning coal in the generation of electricity, process steam, or industrial products [see CAA section 415(a)]. A CCT "demonstration project" is a project funded under DOE's CCT program or a similar project funded by EPA.[11]

Repowering projects that are awarded funding from the Department of Energy (DOE) as permanent CCT demonstration projects (or similar projects funded by EPA) are exempt from NSPS and PSD requirements so long as *potential* emissions (see 40 CFR 52.21(b)(4)) from the unit do not increase as a result of the project [see CAA section 415(b)(3)]. These funded projects may still be required to comply with the nonattainment NSR provisions of title I of the CAA, unless they are eluded as pollution control projects.

The installation, operation, cessation, or removal of a temporary CCT demonstration project that is operated for 5 years or less is exempt from NSPS and both PSD and nonattainment new source requirements [see CAA 415(b)(2)]. However, the facility still must comply with the applicable SIP and other requirements necessary to attain and maintain the NAAQS.

Finally, in section 415(c), Congress provided an exemption from NSPS and PSD for the reactivation of "very clean units" otherwise in compliance with the CAA that had been shut down for at least the 2 years prior to enactment of the 1990 Amendments and that, prior to the shutdown, had been equipped with pollution controls with a removal efficiency of at least 85 percent for sulfur dioxide and 98 percent for particulates, and had been equipped with low-$NO_x$ burners.

[11] Section 415(b)(1) defines a CCT project as a project "using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency."

## III. Discussion of Final Action on Proposal

### *A. Pollution Control Projects*

#### 1. Regulatory Changes for Pollution Control Projects

a. *Background.* The EPA proposed to amend its PSD and nonattainment regulations as they pertain to utility pollution control projects by exercising its authority under the statutory definition of "modification" and confirming the Agency's current policy that such projects are not subject to NSR unless they render the unit less environmentally beneficial. Generally, pollution control projects at existing stationary sources are not major modifications subject to NSR requirements for the simple reason that they do not result in an increase in actual emissions. In addition, EPA has always recognized that Congress did not intend that every activity at an existing facility be considered a physical or operational change for purposes of the NSR.[18]

The EPA proposed to adopt revisions to its PSD and nonattainment regulations for the addition, replacement or use at an existing electric utility steam generating unit of any system or device whose primary function is the reduction of air pollutants (including the switching to a less-polluting fuel where the primary purpose of the switch is the reduction of air pollutants). Under the proposal, a utility pollution control project would not be treated as a physical or operational change unless the project renders the unit less environmentally beneficial.

The key to this addition to the list of exclusions from the term physical or operational change is EPA's judgment that Congress did not intend that pollution control projects be considered the type of activity that should trigger NSR. The EPA proposed regulatory language to explicate and formalize its statutory authority to exclude pollution control projects under the NSR provisions. In 1977, when Congress enacted the NSR provisions of the CAA, it provided that the term "modification" in NSR shall have the same meaning as the term "modification" under NSPS [see section 169(2)(c), 171(4)]. At the time, regulations promulgated under the NSPS provisions defining "modification," provided that the term "modification" does not include:

> The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emissions control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

[See 40 CFR 60.14(e)(5)].

In 1978, EPA noted that "in adding section 169(2)(c) to the CAA, Congress indicated that it intended to conform the meaning of 'modification' to 'usage in other parts of the Act' [see 123 Congr. Rec. H11955, 11957 (Nov. 1, 1977)" also see 43 FR 26396 (June 19, 1978)]. Thus, just as EPA had the statutory authority to exclude pollution control projects by regulation from NSPS, the statutory authority exists for EPA to explicate by regulation an exclusion for pollution control projects from parts C and D of title I.

This exclusion under NSR reflects the existing regulatory exclusion for pollution control activities under NSPS regulations, and several recent case-specific nonapplicability determinations under the NSR programs. The NSPS regulatory exclusion contains the proviso that the replacement of a pollution control system or device cannot be less "environmentally beneficial" to qualify for the exclusion [see 40 CFR 60.15(e)(5)]. With respect to NSR, the proposal adopted a similar regulatory exclusion for pollution control projects in the PSD and nonattainment context. The major difference in the proposed NSR exclusion is that it would apply the "not less environmentally-beneficial" test to the addition and use, as well as the replacement, of a pollution control system or device. This change reflects the distinct air quality component of the PSD and nonattainment programs. By focusing on whether a pollution control project is a physical or operational change within the meaning of the NSR regulations, the proposal avoids the need to undertake a quantitative emissions increase calculation in every case, as would be necessary if such projects were deemed to be physical or operational changes. The EPA expects that most, if not all, pollution control projects will reduce net actual emissions. Nevertheless, the Administrator's authority to consider individual pollution control projects provides an adequate opportunity to determine that a pollution control project would somehow result in an adverse environmental impact and thus conclude that the project renders the unit less environmentally beneficial, and is therefore a physical or operational change that may be subject to NSR.

As proposed, a pollution control project refers to a project undertaken at a utility unit for purposes of reducing emissions from such unit. These changes are limited to the installation of conventional or innovative emissions control equipment, including, but not limited to, installation of conventional and advanced flue gas desulfurization, sorbent injection for sulfur dioxide ($SO_2$) and-$NO_x$ controls, electrostatic precipitators, and projects undertaken to accommodate switching to a less polluting fuel, including natural gas or coal re-burning, co-firing of natural gas and other fuels for the purpose of controlling $SO_2$ and $NO_x$ emissions.

Likewise, any activity that is necessary to accommodate switching to a less polluting fuel is considered to be part of the pollution control project. In some instances, this may involve changes to the pollution generating equipment (e.g., boiler), but only if the changes are necessary to maintain the normal operating capability of the unit at the time of the project, where the capability would otherwise be impaired as a result of the fuel switch. For example, an electric utility steam generating unit that switches from a higher sulfur bituminous coal to a low-sulfur subbituminous coal may need to make certain changes to the boiler in order to avoid derating the unit.

Changes that are intended primarily to restore original capacity or to improve the operational efficiency of the facility are not considered to be part of a pollution control project for purposes of today's rule. Also, the source still must comply with all applicable SIP limits and requirements, permit conditions and applicable NAAQS or PSD increment limits.

As proposed, this pollution control project exclusion did not extend to source categories other than electric utility steam generating units. The EPA so limited this provision because, in contrast with a general lack of experience with other industries, EPA has extensive experience in addressing new source applicability issues regarding pollution control projects in the utility industry. That experience led EPA to conclude that pollution control projects in the utility industry are generally environmentally beneficial.

As noted above, generally pollution control projects at existing stationary sources are not major modifications subject to NSR because they do not usually result in an increase in actual emissions, and EPA believes that, in general, pollution control projects were

[18] For instance, EPA has specifically recognized that routine maintenance, repair and replacement, and changes in hours of operation or in the production rate are not considered a physical change or change in the method of operation [see 40 CFR 52.21(b)(2)(iii), 52.24(f)(5)(iii), 51.165(a)(1)(v)(C)(1), 51.166(b)(2)(iii), and 60.14(e)(1)].

not intended by Congress to be considered physical or operational changes for purposes of NSR.

The EPA applies its PSD regulations in harmony with its NSPS regulations, which exclude most pollution control projects [see 40 CFR 60.14(e)(5)]. In 1977, Congress incorporated the NSPS definition of modification into the PSD and nonattainment statutes [see CAA sections 111(a)(4), 169(a)(c), 171(4)]. In addition, the legislative history reflects that, as a general matter, Congress intended to conform the meaning of "modification" for PSD purposes to the usage under the NSPS program [see 123 Cong. Rec. H11957 (November 1, 1977)]. The EPA reiterated this view in 1978 (see 43 FR 26396, June 19, 1978). Subsequently, EPA interpreted its NSR regulations to incorporate the NSPS pollution control project exclusion.[13] The EPA later voiced concern about incorporating the precise NSPS pollution control language in the NSR context absent explication through notice-and-comment rulemaking largely because of the ambient air quality component of NSR that is absent from the NSPS program.[14] In recent years however, EPA has consistently excluded pollution control projects from NSR provided that the proposed project would be environmentally beneficial, taking into account ambient air quality.[15] In light of the title IV requirements and other provisions of the 1990 Amendments, EPA confirms that it will continue to consider the overall environmental consequences of pollution control projects for NSR applicability. By its nature, a determination of whether or not a project renders a unit less environmentally beneficial involves case-by-case assessment of its net emissions and overall impact on the environment. In making such assessments, EPA must consider the overall emissions before and after the project, as well as any other relevant environmental factors. As a result, no single factor can be identified in advance for purposes of making this determination.

b. *Comments Generally Favoring the EPA Proposal.* In general, comments from industry supported the proposal to exclude pollution control projects. Commenters supporting the provision noted that the exclusion is consistent with the CAA and EPA's earlier determinations regarding such projects. Indeed, several commenters expressed the view that no change in EPA's rules was necessary. One commenter noted that Congress indicated its intent not to apply NSPS or NSR requirements to pollution control projects by adopting the NSR definition of "modification."

Another commenter pointed out that because of the number of projects that will shortly be spawned by the acid rain provisions of the CAA, if permitting were required for every utility operator that plans a fuel switch or the installation of pollution control equipment, EPA would be overwhelmed with applications. This could affect the reliability of the electric utility industry and delay compliance with title IV. One commenter noted that a utility should not be prevented from qualifying for the pollution control exclusion if that utility takes steps to restore diminished capacity of a power plant at the same time that the utility undertakes a pollution control project such as repowering.

Several commenters supported flexibility for utilities on strategies for $SO_2$ control. Two commenters noted that if the national $SO_2$ emissions cap is maintained, plant modifications that may increase $SO_2$ emissions at one unit should not trigger NSR or NSPS requirements. Another commenter suggested that in light of the $SO_2$ emissions caps, utilities should be permitted to undertake pollution control projects or make nonroutine changes, even though such changes increase $SO_2$ emissions, without being forced to install technology (such as scrubbers) to control $SO_2$.

c. *Comments Generally Opposing the EPA Proposal.* Commenters opposed to the exclusion of pollution control projects from NSR provisions disputed EPA's authority to create such "exemptions" and disagreed that Congress intended to exclude pollution control projects from NSR. One commenter stated that the pollution control project exclusion is illegal and conflicts with section 182(e)(2) of the CAA, noting that while section 182(e)(2) provides limited NSR relief for some pollution control projects, it is not a blanket "exemption" from NSR, because the requirement to achieve the lowest achievable emission rate (LAER) remains effective, which demonstrates congressional intent to prevent EPA from granting broader exclusions.

Opponents to the exclusion for pollution control projects also pointed out that efforts by utilities to reduce one pollutant can often increase emissions of another. Such efforts, as well as projects that reduce pollution in one area but increase it in another, should not be "exempted" from NSR or PSD provisions. Several commenters provided examples of how installation of pollution control equipment or fuel switching aimed at reduction of $SO_2$ also had the effect of increasing emissions of $NO_x$ and particulate matter, and how installation of low-$NO_x$ burners increased VOC emissions.

Some opponents to the exclusion for pollution control projects said that the definition of pollution control project is overly broad, and that EPA lacks authority to apply such a broad definition.

d. *Comments Suggesting Revisions to the Proposal.* Several commenters, both for and against the exclusion, suggested specific regulatory changes to the pollution control exclusion. For instance, numerous commenters requested a clarification of the environmentally beneficial test. In addition, the following suggestions were made with regard to the definition of "pollution control project":

(1) Include any upgrade of the pollution control efficiencies of existing devices;

(2) Include "pollution prevention" changes such as leak detection and repair programs and the attendant site changes;

(3) Clarify that the pollution control project need not be a permanent change;

(4) Include boiler alterations involving natural gas cofiring, reburn, or reburn with sorbent injection even though there are benefits other than pollution control; and

(5) Include impacts on other Class I area air quality related values as well as visibility in determining whether a project that would increase emissions is nevertheless environmentally beneficial.

e. *The EPA Analysis.* Based on a review of the comments, EPA has determined to adopt a formal pollution control project exclusion for electric utility steam generating units. Thus EPA is today adopting revisions to its PSD and nonattainment regulations for the addition, replacement or use at an existing electric utility steam generating unit of any system or device whose primary function is the reduction of air pollutants (including the switching to a

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[13] Memorandum from Edward Reich, Director, Stationary Source Compliance Division and William F. Pedersen, Acting Associate General Counsel, Air, Noise, and Radiation Division to Allyn M. Davis, Region IV (April 21, 1983).

[14] See Memorandum from Gerald A. Emison, Director, OAQPS, to Regional Division Directors (July 7, 1988).

[15] See Letter, William G. Rosenberg Assistant Administrator, EPA, to Andrew Aitken, Vice President, New England Power Service Co., March 26, 1991; Letter, Rosenberg to Patrick M. McCarter, Senior Vice President, Public Service Co. of Colorado, July 23, 1990; Letters, David Kee, Director, Air and Radiation Division, EPA Region V, to Timothy J. Method, Assistant Commissioner, Indiana Dept. of Environmental Management, January 30, 1990 and March 8, 1990.

less-polluting fuel where the primary purpose of the switch is the reduction of air pollutants). Under the regulations as adopted today, a utility undertaking a project qualifying for the pollution control project exclusion will not be subject to NSR under either PSD or nonattainment.

In the proposed rule, EPA did not provide any specific definition of the environmentally beneficial standard. Numerous commenters noted the lack of a specific standard for the environmentally beneficial test and requested that EPA provide a definition for this new term and guidance as to how it will be applied. Of course, as noted above, pollution control projects at existing stationary sources are generally not subject to NSR requirements for the simple reason that they do not usually result in an increase in actual emissions. In addition, as also noted above, EPA has determined that Congress did not intend that pollution control projects be considered the type of activity that should trigger NSR.

On the other hand, several commenters pointed out that a project that reduces one pollutant should not be allowed to increase emissions of another pollutant if that increase will cause or exacerbate a different pollution problem. More specifically, an environmental commenter suggested that EPA had endorsed at the Congressional hearing a view that increases would not be allowed in nonattainment areas absent a "compelling showing."

First, as discussed, nothing in today's action authorizes any emissions increase that would cause or contribute to a violation of the NAAQS, PSD increment or visibility limitation.[16] Second, the proposed and final rule provide an appropriate way of enabling utilities to undertake pollution control projects in an expeditious manner while protecting air quality. Although a pollution control project could theoretically cause a small collateral increase in some emissions, it will substantially reduce emissions of other pollutants. In recognition of this, the rule provides for a case-by-case assessment of the pollution control project's net emissions and overall impact on the environment. Third, as discussed in the following section, the permitting authority can require additional modeling under certain circumstances to evaluate the air quality impact of a pollution control project, thereby helping to assure protection of air quality. The EPA considers these safeguards to be adequate to address air quality concerns in both attainment and nonattainment areas.

Several commenters challenged the need for a regulatory exclusion, noting that EPA had already excluded numerous individual pollution control projects pursuant to its existing regulatory authority. However, while EPA has in fact made case-by-case determinations excluding pollution control projects from NSR, it has never provided a comprehensive statement of its policy in this regard nor formally included this exclusion in its NSR regulations governing SIP's or its own NSR regulations. Because of the enormous surge in projects that utilities can be expected to undertake in response to the acid rain provisions, EPA believes that a formal rulemaking spelling out the exact parameters of the exclusion is necessary.

At least one commenter cautioned EPA against requiring sources to submit "applications" to secure the pollution control project exclusion, lest sources face excessive paperwork burdens and lengthy delays every time they change their pollution control equipment. Under today's rule, and consistent with the other NSR applicability decisions, sources remain responsible in the first instance for determining what permitting requirements apply to their activities. Beyond issuing any construction or operating permits that may be needed, the permitting authority is not necessarily involved unless a source seeks a determination of NSR applicability on its own or a modeling analysis is required.

Several commenters requested that this exclusion be extended to nonroutine repairs that are undertaken by the utility in conjunction with the pollution control project. However, title IV's overall national $SO_2$ ceiling and emission trading program do not allow EPA to simply ignore the local air quality impact of $SO_2$ increases at individual title IV-covered facilities. The national emissions caps established by title IV are not designed to protect plant-specific considerations of local air quality, the focus of title I's NSR requirements. This argument is also refuted by the plain language of title IV which by its terms does not supersede title I [see §§ 403 (f) and (g), 413].

Several opponents of the exclusion point out that certain pollution control technologies can actually increase emissions of other pollutants and that the installation of a pollution control project may result in increased utilization of the unit, and thereby result in an increase in actual emissions. As noted above, EPA expects that pollution control projects will decrease actual emissions. Moreover, even though emissions increases are possible in some cases, EPA is not precluded from creating this exclusion. The mere fact of an emissions increase, standing alone, does not render the exclusion inconsistent with the CAA. For instance, EPA regulations have long excluded emissions increases associated with routine maintenance repairs and replacement, as well as increases in the operations of a unit in response to fluctuations in the market [see, e.g., 40 CFR 52.21(b)(2)(iii)(a), (f)]. Given the modeling safeguard and the overall benefit to the environment of pollution control projects as well as the relevant statutory provisions, EPA is confident that the regulatory clarification of this exclusion is a lawful and appropriate exercise of its powers.

It was also suggested that the pollution control project exclusion is inconsistent with § 182(e)(2) of the CAA. Section 182(e)(2) provides that in extreme ozone nonattainment areas (the Los Angeles area is the only one), any physical or operational change "which results in any increase in emissions" will be considered a modification. The source can avoid the offset requirements (but not the rest of NSR) by internally offsetting (i.e., netting) any increase in emissions at a ratio of at least 1.3 to 1. The provision also provides that the extreme area offset provisions (but again not the rest of NSR) do not apply to the installation of equipment required to comply with "the applicable implementation plan, permit, or this Act."

The EPA does not agree that this nonattainment provision, which applies to only one area, somehow precludes EPA from adopting an exclusion to its general NSR rules regarding pollution control projects. While there may be some overlap (i.e., utility compliance projects undertaken in the Los Angeles area that qualify under this rule as pollution control projects), in general the two provisions are quite different. Today's rule is limited to utilities but applies to all areas of the country, while section 182(e)(2) applies to all source

[16] The NSR regulations define a "major modification" subject to review as any physical or operational change at a major stationary source that would result in a "significant net emissions increase" in any regulated pollutant [see e.g., 51.166(a)(1)(v)(A)]. In nonattainment areas "significant," in reference to a net emissions increase, is defined as a rate of emissions that would equal or exceed a specified amount. For example, under the current regulations a rate of 40 tpy or more is "significant" for $SO_2$. This does not address the question of whether a significant increase in emissions will cause or contribute to a violation of the NAAQS, PSD increment or visibility limitation.

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categories but only to the Los Angeles area. Section 182(e)(2) also appears to apply to a broader category of changes. There is no evidence that Congress intended this limited provision to preempt EPA from adopting a broad pollution control project exclusion. On the other hand, the CAA conferees did specifically direct EPA to find an administrative resolution of the WEPCO issues (see Conference Comm., Joint Explanatory Statement of the Committee of the Conference to Accompany S. 1630. Rep. 101–051, 101st Cong. 2nd Sess. (1990) pp. 344–45). For these reasons, EPA does not believe that section 182(e) directly or indirectly limits EPA's authority here.

2. Additional Modeling Requirements

a. *Background.* A proposed pollution control project or physical or operational change cannot result in an emissions increase that will cause or contribute to a violation of a NAAQS, PSD increment, or visibility limitation [see CAA section 110(a)(2)(c), 165, 169A(b), 173]. The pollution control projects exclusion does not authorize any significant net increase in emissions that would have this proscribed impact. It is possible that a pollution control project, while not causing any increase in maximum hourly emissions, will cause a significant net increase in actual emissions, which in turn could cause or contribute to the violation of a NAAQS, increment or visibility limitation. For this reason, as proposed, the reviewing authority may require a source to perform an air quality impact analysis (modeling) whenever (1) it has reason to believe that a proposed change will result in a significant net increase in actual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis and (2) it has reason to believe that such an increase would cause or contribute to a violation of a NAAQS, increment or visibility limitation. If this modeling indicates that this increase in emissions will cause or contribute to a violation of any ambient standard, PSD increment or visibility limitation, the pollution control exclusion does not apply.

b. *Comments on the EPA Proposal.* Many commenters viewed the modeling requirement as ensuring that the pollution control project exclusion will not have an adverse impact on local air quality because sources must still comply with all applicable emission limits necessary to protect NAAQS, PSD increments, and visibility.

However, several commenters expressed concern over the adequacy of EPA's air quality impact analysis requirement as a safeguard due to the methodology proposed to calculate actual emissions. Specifically, an environmental group pointed out that using increases in "representative actual annual emissions" as the test for determining whether a pollution control project results in unacceptable impacts on air quality can exclude real emissions increases (e.g., due to demand growth), and thus fails to account for the full impact of the project. This commenter asserted that increases in "actual emissions" should be the key to use of the pollution control project exclusion.

Some commenters also objected due to the fact that the proposal relies on State and local agencies to be aware of the project and request the analysis. One commenter added that it is unclear how a violation of the NAAQS can be avoided before the fact and how the permitting agency could require an air quality analysis if the pollution control project is not subject to NSR.

Finally, a government agency questioned why the safeguard provision protected "visibility limitations" when the PSD program is designed to protect all "air quality related values" in Class I areas. An environmental group commented that the proposed rule does not provide for notification to Federal Land Managers so that they can fulfill their responsibilities to protect Class I areas.

c. *The EPA Analysis.* After careful review of the proposal and the comments, EPA has determined to promulgate the modeling provision as proposed. The EPA does not believe the objections to this provision to be well-founded. Although the proposal does not explicitly require sources to inform the permitting authority of pollution control projects, EPA anticipates that in most, if not all, circumstances involving pollution control projects, permitting authorities will be aware of the source's intentions. For instance, State permitting requirements may require the source to bring the project to the permitting authority or the source may wish to do so to secure emission reduction credits for pollutants that will be decreased. In addition, most projects at utilities are typically subject to public scrutiny in a variety of forums as a result of filings made with Public Utility Commissions and other local, State or Federal agencies. Consequently, it is unlikely that a utility could proceed with a pollution control project without some type of review regarding CAA or other requirements. This will be especially true of pollution control projects undertaken for the purpose of compliance with title IV.

The EPA disagrees with the environmental group comment that it is inappropriate to hinge use of the pollution control project exclusion on increases in "representative actual annual emissions" rather than increases in "actual emissions." Nothing in today's rules would authorize pollution control projects that result in a violation of a NAAQS, PSD increment or visibility limitation. The commenter is correct that the rule as proposed would in certain circumstances not subject to review significant increases in actual emissions from a source that follow completion of the pollution control project. However, the rule is clear that this could occur only where the increase in question in fact does not result from the pollution control project, but rather from an independent factor such as demand growth. As discussed above, it is not the purpose of the NSR program to subject all emissions increases to permitting requirements, only increases that result from a nonroutine change at an existing plant. The State may always revise its SIP to correct NAAQS violations that it concludes are caused by increased utilization but do not result from a pollution control project at that plant.

The government agency commenter is correct that PSD permitting requirements are intended to prevent a major new source or major modification from causing an adverse impact on air quality related values in Class I areas. However, the agency ignores the fact that, in general, existing facilities that have not been modified are not subject to ambient requirements related to air quality related values. The EPA believes that today's rule will allow reviewing authorities sufficient flexibility to protect, to the extent required under existing law, Class I areas from possible adverse impacts from pollution control projects. Moreover, as noted above, pollution control projects *reduce* emissions of targeted pollutants. While emissions of other pollutants could in theory increase in a few cases, EPA does not expect this to result in significant impacts on Class I areas. Where prospective projects may be cause for concern, permitting agencies have the authority to require modeling to prevent increment or visibility violations, and likewise may solicit the views of others in taking any other appropriate remedial steps deemed necessary to protect Class I areas. In deciding to adopt the rule as proposed, EPA emphasizes that all environmental impacts, including those on Class I areas, can be considered in evaluating

whether a utility unit is "less environmentally beneficial" after controls than it was before controls. Accordingly, the final rule allows consideration of all environmental impacts—beneficial and adverse—in making a determination.

*B. Representative Actual Annual Emissions*

1. Background

The EPA proposed to clarify its methodology for calculating emissions increases at electric utility steam generating sources that had begun normal operations. The EPA proposed to compare actual emissions before and after changes for all physical or operational changes at an existing electric utility steam generating unit other than the addition of a new unit or the replacement of an existing unit. The EPA proposed to consider a unit to be replaced if it would constitute a reconstructed unit within the meaning of 40 CFR 60.15. Since there is no relevant operating history for wholly new units and replaced units, it is not possible to reasonably project post-change utilization for these units, and hence, their future level of "representative annual actual emissions." For other changes, past operating history, and other relevant information, provides a basis for reasonable projections.

As proposed, the "representative actual annual emissions" methodology requires the utility to compare its baseline emissions with its future actual emissions to determine if the proposed change will increase actual emissions. The EPA's existing regulations define baseline emissions as "the average rate, in tpy, at which the unit actually emitted the pollutant during a 2-year period which precedes the particular date and which is representative of normal source operation" (see, e.g., 40 CFR 52.21). The Administrator "shall" allow use of a different time period "upon a determination that it is more representative of normal source operation." *Id.* Although not required by the regulations, EPA has historically used the 2 years immediately preceding the proposed change to establish the baseline [see 45 FR 52676, 52705, 52718 (1980)]. However, in some cases it has allowed the use of earlier periods. For example, in *WEPCO*, EPA found the fourth and fifth years prior to the modification more representative of WEPCO's normal operations since the source's capacity was reduced due to physical problems. The EPA proposed to retain this regulatory language, but to adopt a new presumption regarding its implementation.

Under the proposed action, the Administrator would presume that any 2 consecutive years within the 5 years prior to the proposed change is representative of normal source operations for a utility. This presumption is consistent with the 5-year period for "contemporaneous" emissions increases and decreases in 40 CFR 52.21(b)(3)(i)(b).[17] Source owners or operators desiring to use other than a 2-year period or a baseline period prior to the last 5 years may seek the Administrator's specific determination that such period is more representative of normal operations.[18]

The future actual projection is the product of: (1) The hourly emissions rate, which is based on the unit's physical and operational capabilities following the change and federally-enforceable operational restrictions that would affect the hourly emissions rate following this change; and (2) projected capacity utilization, which is based on (a) the unit's historical annual utilization, and (b) all available information regarding the unit's likely post-change capacity utilization.[19] The projection of post-change capacity utilization for applicability purposes should be based on a projection of utilization for a period after the physical or operational change. Specifically, EPA proposed to allow sources to base the projection of utilization on the 2 years after the change, or a different consecutive 2-year period within the 10 years after the change, where the Administrator determines that such period is more representative of normal source operations.

2. Comments Generally Favoring the EPA Proposal

a. Several commenters favored the expansion of the time period for establishing the pre-change emissions baseline. Suggestions included:

(1) Allow the use of any 2 consecutive years within the last 5 years of operation to allow for a more representative baseline for units that have been shut down;

(2) Allow utilities to request to use periods of representative high utilization outside the 5 year time period;

(3) Add the "any 2 out of the prior 5 year baseline period" discussed in the preamble to 40 CFR parts 51, 52, and 60;

(4) Allow utilities to use the maximum utilization in any 1 year within at least the last 10 years, since 10 years is a more relevant capacity investment planning horizon than 5 years;

(5) Clarify that the source will be able to select the relevant 2-year period with approval of the reviewing authority required only when the pre-change baseline is outside of the 5-year period proceeding the change;

(6) Expand the baseline calculation period from 5 years to 10 years to be consistent with the after-change calculation period and to address a more representative time period;

(7) Allow the use of any 2 years (rather than consecutive years) due to long reserve shutdowns and because maintenance planning requires that utility boilers be operated in "abnormal" conditions for long durations; and

(8) Require sources to back up the choice of which 2 years to use with a short-term standard using an hourly rate, use the same 2-year period for determining the short-term and annual rates, and codify the 2 years used for the limit.

Several comments that recommended expanding the proposal to include industrial sources in the NSR exemption also noted that a "5-year window" is not satisfactory for industrial sources which do not always have representative periods of emissions immediately before a physical change. One industrial commenter suggested the use of any 2-year period be allowed.

Commenters in favor of the future actual emissions calculation method noted that it will alleviate uncertainty, for nonroutine repair, replacement, and maintenance projects while still protecting local air quality; the future-actual method reduces speculation and allows more reliance on factual data; and the actual-to-future-actual emissions comparison is more appropriate to look at the operating history and projected capacity of an existing unit to determine whether a change will increase emissions. One commenter stated that the actual-to-potential method discouraged environmentally beneficial modifications, but suggested that the

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[17] This presumption does not apply to past modifications at an emissions unit for the purpose of determining contemporaneous emission changes at a source and cannot be used to extend the 5 year period specified in that provision [see 40 CFR 52.21(b)(3)(1)(b)].

[18] The level of baseline emissions selected must be consistent with current assumptions regarding the source's emissions that are used under the SIP for planning or permitting purposes. Thus, the source may not select a level of baseline emissions higher than that used by the permitting authority in issuing a PSD or other construction permit to a source in the area, if such higher level would result in a NAAQS or increment violation, or violate a visibility limitation.

[19] In projecting future utilization and emissions factors, the permitting authority may consider the company's historical operational data, its own representations, filings with Federal, State or local regulatory authorities, and compliance plans developed under title IV of the 1990 Amendments.

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most appropriate policy would be to adopt a potential-to-potential test.

One commenter noted that the actual-to-future-actual test would end what was felt to be the "unlawful and unfair practice" of using the NSR program to "arbitrarily reduce allowable hours of operation or rates of production for existing sources." Countering the argument that the actual-to-future-actual test could create public health problems, two commenters noted that utilities must comply with all Federal, State and local air quality restrictions regardless of the tests used. Also supporting the actual-to-future-actual test, one commenter pointed out that source owners will be motivated by incentives in the CAA, proposed regulations, and market forces to finance and engineer economic and efficient physical and operational changes at plants so as to achieve excellent environmental control. One commenter favored calculating future emissions over a representative 2-year period within a 5-year period after the change.

3. Comments Generally Opposing the EPA Proposal

One opponent of the proposed methods stated that emission increases at power plants would now be fostered since the proposal will allow utilities to choose their own definitions for when emissions have increased.

In general, opponents of the proposal regarding the pre-change baseline noted that the change is arbitrary and capricious and that there is no analysis in the docket suggesting that any 2-year period is more representative of pre-change maximum emissions. Commenters noted that under the proposal, sources could select the years in which they had the highest emissions in an attempt to minimize the appearance of an increase and escape NSR. One commenter noted that the change in baseline calculation methodology would give utilities such flexibility in refurbishing, repowering, and life extension projects as to bias competitive power markets towards the continued use of existing old units rather than the construction of new ones.

Opponents to the use of future actual emissions stated that there is no reasoned basis for an unenforceable representative actual emissions approach, and application of this test to electric utilities is not consistent with EPA's established policy toward other sources. Other comments contended that the future actual test ignores all past precedents and that, in determining whether a change triggers NSR, EPA should compare actual emissions for the current unit to potential emissions from the altered source; the future actual test does not guard against artificially low estimates made by sources to escape NSR, nor does it protect against substantial increases made immediately after the 2-year period; and the future actual emissions calculation procedure amounts to self-regulation and is easily subject to abuse.

State and local air agencies generally opposed the future actual method of calculating post-change emissions. One noted that the appropriate emission increase test should be determined on a case-by-case basis. One agency noted that the actual-to-future actual approach results in a significant relaxation of title I NSR requirements and would allow utilities to upgrade equipment which may have lost significant generating capacity without the equipment being subject to NSR, hampering local air quality attainment and maintenance efforts. There were several comments that future emissions cannot be reasonably determined solely on past operating history. One State noted that direction is needed on how actual versus potential emissions are estimated.

A few commenters addressed the 2-year period after the proposed change which is the basis for calculating the future actual emissions. Opponents of the future actual concept stated that use of such a provision would result in unrealistically low future emissions projections and shield a company against efforts to enforce NSR requirements at a source that increased emissions 3 years after making physical changes.

An environmental group and several State agencies noted that the projected post-change emissions should become an enforceable permit condition in order to commit a source to limit its future emissions to a specific amount and to provide assurance that these projections are reasonable estimates of expected emissions. If a source will not accept such a permit condition, then the source should have to use potential post-change emissions.

4. Comments Suggesting Revisions to the Proposal

Three commenters suggested a more flexible test for ascertaining $SO_2$ increases for determining applicability of NSR and NSPS requirements, namely a measure of pollution per unit of electrical output.

a. Commenters made the following specific suggestions for changes surrounding the future actual calculation method:

(1) Develop guidelines to assist States in making like-kind determinations;

(2) Require like-kind replacements to use the representative actual annual emissions for calculation of actual emissions;

(3) Define "like-kind replacement" to include complete replacement of an existing emissions unit;

(4) Define "routine repair and replacement;"

(5) Apply the actual-to-actual test to like-kind replacement of an entire emitting unit;

(6) Allow new units or greenfield plants to rely on future actual emissions if they can reliably project future emissions; and

(7) Consider an alternative way to make the NSR accounting system consistent, such as basing it on past allowable to future allowable emissions.

(b) Other suggestions included the following:

(1) Provide guidance on routine repair and replacement and maintenance activities to include placing units on cold reserve and bringing them back on line, and

(2) Use a 2-year period other than immediately after the change only when the EPA cannot clearly demonstrate that the 2-year period immediately following the change is not representative.

5. The EPA Analysis

The EPA has decided to promulgate the proposed "representative actual annual emissions" methodology for calculating emissions changes at electric utility steam generating units where the changes do not involve the construction of a new, "greenfield" unit or the replacement of an existing one. After a thorough review of the comments, EPA concludes that the comparison of "actual emissions before" to a projection of "actual emissions after" a physical or operational change at an existing utility steam generating unit is workable and, with the added safeguard discussed below, is the most suitable method for evaluating emissions changes at such sources.

Many commenters questioned EPA's proposed presumption that sources may use, as the baseline, emissions from any 2 consecutive years within the 5 years prior to the proposed change without regard to normal source operations. As discussed in the proposal, this presumption is consistent with EPA's decision in WEPCO and the 5-year period for "contemporaneous" emissions

increases and decreases in 40 CFR 52.21(b)(3)(i)(b).[20]

Moreover, EPA is not reading "normal source operations" out of the regulation as charged. Rather, the presumption recognizes the nature of utility operations without compromising the existing regulatory language which requires that the pre-change 2-year period used in defining baseline emissions be representative of "normal" operations. For example, as a system a utility's "normal" operations means directly responding to a demand for electricity. A cold winter or hot summer will result in high levels of "normal" operations while a relatively mild year will produce lower "normal" operations. By presumably allowing a utility to use any 2 consecutive years within the past 5, the rule better takes into consideration that electricity demand and resultant utility operations fluctuate in response to various factors such as annual variability in climatic or economic conditions that affect demand, or changes at other plants in the utility system that affect the dispatch of a particular plant. By expanding a baseline for a utility to any consecutive 2 in the last 5 years, these types of fluctuations in operations can be more realistically considered, with the result being a presumptive baseline more closely representative of normal source operation.

The EPA disagrees with comments seeking to allow the use of any 2 consecutive years within the last 5 years of a unit's "operation" rather within than the 5 years directly preceding the proposed change. A shifting of the 5-year period would be difficult to harmonize with definitions of contemporaneous contained in the regulations [see, e.g., 40 CFR 52.21(b)(3)(iii)]. This type of open-ended provision would even credit a unit which has been inoperative for 20 or 30 years or longer with a high level of emissions. The EPA notes, however, that as has always been the case under the prior regulations, any source owner or operator may request a determination that another baseline period is more representative of the unit's "normal" operations.

Several commenters opposing today's regulatory changes charged that without appropriate assurances utilities could deliberately underestimate future operations (and thus emissions) for the purpose of avoiding review or that even where a forthright estimate is made, the forecast may prove inaccurate. The EPA is concerned that without appropriate safeguards increases in future actual emissions that in fact resulted from the physical or operational change could go unnoticed and unreviewed. For this reason, EPA has added the safeguard explained below.

The EPA does not, however, agree with comments that post-change emissions estimates must always be made into permanent federally-enforceable permit conditions. To do so would permanently restrict a utility's legally allowable emission limits to its pre-change actual emissions level unless it subsequently underwent NSR, and would fail to account for the very real possibility that emissions might increase over baseline levels in the future for reasons unrelated to the physical or operational change in question. As discussed more fully in the following section, NSR applies only where the emissions increase is caused by the change. Thus the issue should be viewed more as one of tracking and monitoring post-change utilization and/or emissions levels at the unit to confirm that baseline emission levels are not exceeded as a result of the change.

To guard against the possibility that significant increases in actual emissions attributable to the change may occur under this methodology, EPA is clarifying in the final regulations that any utility which utilizes the "representative actual annual emissions" methodology to determine that it is not subject to NSR must submit for 5 years after the change sufficient records to determine if the change results in an increase in representative actual annual emissions.[21] Utilities may use continuous emissions monitoring data, operational levels, fuel usage data, source test results or any other readily available data of sufficient accuracy for the purpose of documenting a unit's post-change actual annual emissions.

Where the change does not increase the unit's emissions factor, i.e., the amount of pollution emitted by a source after control per unit of fuel combusted (such as pounds of $SO_2$ emitted per ton of coal burned), the utility may submit annual utilization data, rather than emissions data, as a method of tracking post-change emissions. If annual utilization data show that the unit increased utilization above baseline levels, the permitting authority should determine whether the increase resulted from the change. Where a causal link exists between the change and the increase in utilization, the permitting authority should then determine whether emissions have also increased as a result of the change.

Changes that could increase a unit's emissions factor typically involve changes to the boiler itself. (Such changes do not include activities that qualify as pollution control projects under today's rule.) Where these types of changes exist, the utility should submit annual emissions data to the permitting authority. If these data suggests that the utility has increased annual emissions over baseline levels, the permitting authority should inquire whether the increase resulted from the physical or operational change. The utility may demonstrate that any increase was caused by an independent factor, such as demand growth.

Appropriate records are to be submitted to the permitting agency on an annual basis for a period of 5 years from the date the unit begins operations (i.e., post-change operations after an initial shakedown period). A longer period, not to exceed 10 years, may be required by the permitting agency where it has determined that no period within the first 5 years following the change is representative of source operations.

Since it is expected that utilities will submit the same data normally used to report emissions or operational levels under existing Federal, State or local air pollution control agency requirements, EPA does not expect that documentation of post-change actual annual emissions will impose any additional data collection burden on the part of a utility.

The purpose of this provision is to provide a reasonable means of determining whether a significant increase in representative actual annual emissions resulting from a proposed change at an existing utility occurs within the 5 years following the change. Thus the intent is to confirm the utility's initial projections rather than annually revisiting the issue of NSR applicability. If, however, the reviewing authority determines that the source's emissions have in fact increased significantly over baseline levels as a result of the change, the source would become subject to NSR requirements at that time. The EPA has adopted this approach and the time period because it believes that, in most cases, any emissions increase resulting from a physical or operational change at a utility unit would occur within the first 5 years of normal operation of the unit

[20] As discussed, this presumption does not apply to past modifications at an emissions unit for the purpose of determining contemporaneous emission changes at a source and cannot be used to extend the 5-year period specified in that provision [see 40 CFR 52.21(b)(3)(1)(b)].

[21] This is the only substantive change from the regulations as proposed. However, EPA has also made minor changes to the wording of some of the regulations to address problems with clarity and syntax. Since these changes are not intended to alter the meaning of the regulations, they are not individually discussed in this preamble.

after the change. Thus, EPA will presume that any increase in emissions levels more than 5 years after the change has occurred is not related to the physical or operational change.

In response to comments regarding "like-kind" replacements, EPA notes that today's regulations recognize no distinction between "like-kind" replacements and other nonroutine physical or operational changes at a utility steam generating unit. The "actual-to-future-actual" methodology promulgated today for calculating emissions changes applies to all types of changes at utility units, including the replacement of "like-kind" components at an existing unit. However, the "like-kind" replacement of a whole unit is for all practical purposes a replacement unit and, therefore, is treated as a new unit.

Although several commenters suggested that EPA should expand the representative actual emissions test to new and reconstructed units, EPA has decided not to do so. Since there is no relevant operating history for new or reconstructed units, it would not be possible to accurately project operations or emissions for these units. Consequently, the EPA has left unchanged the regulations which require that for any unit which has not begun normal operations, actual emissions are considered equal to the unit's potential-to-emit.

A few commenters requested that EPA define or provide guidance on "routine repair, replacement and maintenance" activities. The June 14 proposal did not deal with this aspect of the regulations, nor do the regulatory changes promulgated today. However, the issue has an important bearing on today's rule because a project that is determined to be routine is excluded by EPA regulations from the definition of major modification. For this reason, EPA plans to issue guidance on this subject as part of a NSR regulatory update package which EPA presently intends to propose by early summer. In the meantime, EPA is today clarifying that the determination of whether the repair or replacement of a particular item of equipment is "routine" under the NSR regulations, while made on a case-by-case basis, must be based on the evaluation of whether that type of equipment has been repaired or replaced by sources within the relevant industrial category.

*C. The Causation Requirement*

1. Background

The NSR regulatory provisions require that the physical or operational change "result in" an increase in actual emissions in order to consider that change to be a modification [see e.g., 40 CFR 52.21(2)(i)]. In other words, NSR will not apply unless EPA finds that there is a causal link between the proposed change and any post-change increase in emissions. The EPA proposed to amend its rules to clarify this provision in the context of modifications at electric utility steam generating units.

Under the proposed regulations, any emissions increase attributable to a physical or operational change, such as a physical or operational change that significantly alters the efficiency of the plant, (see, *Puerto Rican Cement*, 889 F.2d at 297–8), must continue to be included in the post-change emissions calculation. The proposal clarified that where increased operations are in response to independent factors, such as system-wide demand growth, which would have occurred and affected the unit's operations even in the absence of the physical or operational change, such increases do not result from the change and shall be excluded from the projection of future actual emissions. Thus, in assessing whether the proposed change will result in an increase in actual emissions, utilities need not include in their projection of post-change utilization that portion of the increased rate of utilization, if any, due to factors unrelated to the physical or operational change, such as an increase in projected capacity utilization due to the rate of electricity demand growth for the utility system (of which that source is a member) as a whole.

Under today's rule, during a representative baseline period (see *supra*), the plant must have been able to accommodate the projected demand growth physically and legally even absent the particular change. Increased operations (and resultant increases in actual emissions) that could not physically and legally be accommodated during the representative baseline period but for the proposed physical or operational change should be considered to result from the change.

2. Comments Generally Favoring the EPA Proposal

Several utility representatives supported the proposed demand growth exclusion and the causation requirement. Many commenters requested clarification of certain points or expansion of certain provisions. One commenter noted that there should be a specific exclusion for emissions increases at a generating station resulting from generation shifts and decreased plant efficiencies caused by operation of pollution control systems. Another noted that the discussion of the criteria for recognizing "factors unrelated to the physical or operational change" should be improved upon because the proposed requirements that a facility must have been physically able to accommodate the projected growth during a "representative baseline period" could have a negative impact in utility capacity planning and investment decisions, depending upon how such a period is determined.

One commenter noted that EPA should specifically recognize an exception for units which have been inactive, because a unit should not have to include all of its emissions due to demand growth merely because it was in need of repair or maintenance while inactive. Commenters asked that EPA better define "independent factors" in the context of the demand growth exclusion. Lastly, one commenter stated that the final rule should reconcile the "demand growth exclusion" with the existing "hours of operation/rate of production" exclusion by confirming that increases attributable to system-wide demand growth are already excluded under the already-existing exclusion and, therefore the "demand growth exclusion" only applies where there is a federally-enforceable permit term limiting hours of operation or production rate.

3. Comments Generally Opposing the EPA Proposal

Opponents of the exclusion of emissions attributable to demand growth contended that there is no rational basis for ignoring such emissions. When increased capacity or utilization is the immediate goal of a project and an increase in emissions occurs, the project must be subject to NSR regardless of the underlying reasons for the increased capacity or utilization and corresponding emission increase. Contrary to the letter and purpose of the statute, the demand growth exclusion could result in major increases in actual emissions going unreviewed and unregulated, would create serious local pollution problems, and would discriminate against companies that were successful in implementing energy efficiency programs. One local agency pointed out that it is virtually impossible to determine with any degree of certainty what portion of a unit's emissions are attributable to an increase in projected capacity utilization.

In addition, commenters noted that the exclusion will have an adverse effect on local agencies' ability to control emissions and that the time of

construction of a project is the most efficient and effective time to address such emissions. One commenter stated that the exclusion for demand growth may further bias competitive power markets toward existing units, and that EPA failed to consider the impact of the causation requirement on utility operations, emissions or competition in power markets.

4. The EPA Analysis

After careful consideration of the comments received and further analysis of the issues involved, EPA has decided to promulgate the causation provision as proposed.

Commenters argued that any post-change emissions increase, regardless of its origin, should subject a source to NSR. However, these arguments ignore the relevant statutory and regulatory modification provisions. No commenters challenging the provision have suggested the statute and implementing regulations do not contain a causation provision. Rather, they argue that in the proposed rule EPA has misconstrued this requirement.

In conjunction with developing the representative actual annual emissions methodology, EPA recognized that the analysis of the causation requirement may disclose that an emissions increase that follows a nonroutine physical or operational change is merely coincidental, and in fact results from independent factors such as demand growth. It is important to emphasize, however, that this does not amount to a per se exclusion of demand growth from the emissions increase calculation. Rather, demand growth can only be excluded to the extent it—and not the physical or operational change—is the cause of the emissions increase. The EPA believes that this is a reasonable interpretation of the statutory provision in question, of EPA's own regulations, and of judicial precedents.

Consequently, where projected increased operations are in response to an independent factor, such as demand growth, which could have occurred and affected the unit's operations during the representative baseline period even in the absence of the physical or operational change, the increased operations cannot be said to result from the change and therefore may be excluded from the projection of the unit's future actual emissions. Conversely, where the increase could not have occurred during the representative baseline period but for the physical or operational change, that change will be deemed to have resulted in the increase.

The EPA did receive numerous comments regarding the difficulty of applying this new interpretation. However, EPA believes it is possible to distinguish between emissions increases that are related to a physical or operational change from those that are not. This issue is a fact-dependent determination that must be resolved on a case-by-case basis. As discussed, EPA considers emissions increases due to increased operations that could not be physically or legally accommodated during the representative baseline period but for the proposed physical or operational change, to result from the change. The preamble to the proposal also made clear that any emissions increase attributable to a physical or operational change that significantly alters the efficiency of the plant, (see *Puerto Rican Cement*, 889 F.2d at 297–8), must continue to be included in the post-change emissions calculations. However, EPA in no way intends to discourage physical or operational changes that increase efficiency or reliability or lower operating costs, or improve other operational characteristics of the unit and does so by focusing on the effect of any nonroutine changes on the operating characteristics of the unit during the representative baseline period. The EPA recognizes that improvements such as these are desirable for economic reasons and to assure a reliable supply of electricity. Thus, physical or operational changes that improve operational characteristics will be treated in the same manner as any other changes. This means that where an improvement involves a routine change, it is excluded from the NSR definition of "major modification." Alternatively, where an improvement is not routine and an emissions increase results from the improvement, that portion of the emissions increase resulting from the improvement will be considered in determining whether the proposed change subjects the unit to NSR requirements.

Several commenters requested a clarification concerning a unit's ability to accommodate demand growth in its pre-change configuration. In EPA's view, such a clarification is not warranted. As discussed above, operational levels that a unit could not have achieved during the representative baseline period but for the physical or operational change are considered to result from the change. Post-change emissions increases associated with such operational levels must, therefore, be considered to result from the change and be taken into account for NSR applicability purposes.

Numerous commenters pointed out that it may be very difficult to determine when an increase is caused by independent factors and when it is caused by the physical change. Also, an environmental commenter argued that this causation question must always be resolved in favor of including all post-change emission increases that follow a change which improves a unit's efficiency, since in its view an efficiency gain will always be the primary determinant of the utility's use of a generating unit, notwithstanding the presence of other necessary—but not of themselves sufficient—factors such as demand growth. However, as so formulated, the comment answers itself. If efficiency improvements are the predominant cause of the change in emissions and demand growth is not, the exclusion does not apply. But this is a question of fact which must be resolved on a case-by-case basis and is dependent on the individual facts and circumstances of the change at issue. EPA declines to create a presumption that every emissions increase that follows a change in efficiency is inextricably linked to the efficiency change.

In calculating demand growth, utilities may consider the company's historical operational data, its own representations, filings with Federal, State or local regulatory authorities, and compliance plans developed under title IV of the 1990 Amendments.

The EPA disagrees with comments that this provision could result in major increases in actual emissions going unreviewed with the potential to create serious local air pollution problems. First, the NSR major modification provisions do not apply to all increases in emissions, just emission increases which result from a nonroutine physical or operational change at an existing major source. Second, as has already been observed, this provision does not amount to a per se exclusion of demand growth. Finally, this new provision does not diminish the scope of the coverage of EPA's NSR regulations. Rather, it merely incorporates into the actual-to-future-actual methodology a requirement of the pre-existing statutory and regulatory scheme.

Moreover, in response to those concerns that a demand growth exclusion could lead to serious local air pollution problems, EPA notes the restrictions it placed on the overall future projection in the proposal: the level of emissions the source claims that it will operate at should be consistent with current assumptions regarding the

source's emissions that are used in the relevant SIP.

Finally the EPA does not agree with the commenter requesting that the final rule confirm that increases attributable to system-wide demand growth are already excluded under the existing exclusion for increases in hours of operation and, therefore, the "demand growth exclusion" only applies where there is a federally-enforceable permit term limiting hours of operation or production rate. The commenter's statement is not correct. Although a source may vary its hours of operation or production as part of its everyday operations, an increase in emissions attributable to an increase in hours of operation or production rate which is the result of a construction-related activity is not excluded from review (see *WEPCO*, 893 F.2d at 916 n.11; *Puerto Rican Cement*, 889 F.2d at 298).

*D. Repowering*

1. Background

As previously mentioned, title IV of the 1990 Amendments grants special treatment to utilities that seek to comply with the mandated acid rain reductions by repowering a unit with qualifying clean coal technology [see 1990 Amendments section 402(12), 409(a)]. Specifically, repowering projects that qualify for a Phase II compliance extension will also be exempt from NSPS requirements, so long as the repowering "does not increase actual hourly emissions for any pollutant regulated under the Act" [see section 409(d)]. The EPA interprets the requirement that the repowering not lead to an increase in "actual hourly emissions" as an expression of Congressional intent that with respect to repowering projects, EPA should use the same general approach to determining applicability as it has for other physical or operational changes, discussed above. Accordingly, EPA proposed rules provided that a repowering project which results in an increase over baseline in a unit's post-modification hourly emissions will not be eligible for this limited NSPS exemption.

The proposed NSPS exemption applied to repowering of existing units at existing sources, so long as the project qualifies for the Phase II extension and satisfies the "actual hourly emissions" increase test. Because of this provision, the reconstruction limitations specified in 40 CFR 60.15 are not applicable to qualifying repowering projects. However, no special treatment can be afforded to a new unit which is located at a different site than the existing unit it replaces [see CAA section 409(d)].

Pursuant to section 409(e), EPA will provide expedited NSR processing for repowering projects and will encourage State permitting authorities to do the same.

2. Public Comment

The EPA did not receive any comments opposing the repowering proposal while several industry and Congressional commenters supported it. The Congressional commenters requested clarification of EPA's interpretation of term "repowering." The Congressional commenters stated that the proposed definition of "repowering" can be interpreted as limiting qualifying repowering technologies to those that only involve the replacement of the boiler, disqualifying highly-promising, multi-pollutant technologies that do not involve boiler replacement.

3. The EPA Analysis

In light of the lack of negative comments, EPA is today promulgating the CCT provisions as proposed. This includes no change in the definition of "repowering." However, EPA will follow an expansive interpretation of the term repowering, which should address many of the concerns expressed by some of the commenters while remaining consistent with statutory terms and Congressional intent. The EPA notes that this interpretation is currently subject to comment as part of the rulemaking implementing the acid rain provisions of the 1990 Amendments and EPA may address this issue further in the context of that proceeding.

Section 402(12), in relevant part, defines "repowering" as follows:

> Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of the date of enactment of the Clean Air Act Amendments of 1990 * * *[22]

[22] The last sentence in the definition of "repowering" in section 402(12) of the CAA refers to a specific CCT project in Tallahassee, Florida (Arvah B. Hopkins Station Unit 2 Circulating Fluidized-Bed Repowering Project) awarded November 30, 1990.

a. The definition thus provides for three major categories of repowering technologies:

(1) Technologies specifically listed in the statute;

(2) Derivatives of one or more of these listed technologies; and

(3) Technologies which:

(a) Are capable of controlling multiple combustion emissions simultaneously;

(b) With improved boiler or generation efficiency; and

(c) With significantly greater waste reduction than technologies in widespread commercial use as of the date of enactment of the CAA (November 15, 1990).

In accordance with the language of the statutory definition of repowering, the final rule provides that a qualifying repowering technology must involve "replacement" of an existing boiler. The language of section 402(12), though ambiguous in many significant respects, will not support an interpretation which fails to recognize that repowering requires use of an appropriate new technology instead of the existing boiler.

The EPA considered whether the reference to boiler replacement in section 402(12) could be read as referring to only the first category of technologies. However, such an approach would require reading the provision as if the recital of the three alternative technologies began immediately after the phrase "repowering means," rather than after the phrase "repowering means replacement of an existing coal-fired boiler with one of the following clean coal technologies:."

Such a reading is inconsistent with the structure of the provision, in which the colon, which is "used chiefly to direct attention to matter that follows (as a list, explanation, or quotation)" [see Webster's Ninth New Collegiate Dictionary 266 (1985)], follows rather than precedes the reference to boiler replacement. Moreover, all three categories of technologies would be properly described as "the following clean coal technologies:."

While it is true that the list following the colon, like the phrase "the following clean coal technologies:" could be read to refer exclusively to the seven named technologies (or to those technologies and their approved derivatives), such an interpretation would still fail to provide a satisfactory explanation of the grammatical structure of the provision. Either of these two readings would fail to explain how the technologies that, according to those readings do not consider boiler replacement, relate to the term "repowering." In other words, if

the concept of boiler replacement were removed from either the third category of technologies or from both the second and third categories, the provision would read, with respect to those categories:

> The term "repowering" means * * * a derivative of one or more of (the seven) technologies, and any other technology capable of (meeting the three performance criteria).

The difficulty with this reading is that "repowering," whatever the precise scope of its definition, clearly means doing something with a derivative technology or a multipollutant control technology, rather than simply those technologies themselves. Requiring boiler replacement for all three categories avoids this particular infirmity.

The EPA also considered another textual argument that could be advanced to support an interpretation of section 402(12) that boiler replacement is not required for the third category of technology, but it also is unpersuasive. It simply does not follow from the fact that the category of multipollutant control technologies alone has expressly enumerated performance criteria that those criteria are meant to be the exclusive test for qualifying technologies of these types. Because the third category of technology was intended to encompass types of technologies which were unknown on the date of enactment (and thus, unlike the prior categories, not susceptible to being enumerated in the statute) that category would necessarily have to include explicit defining criteria, whether or not the boiler replacement criterion applied to it. By the same token, the fact that the latter two categories are subject to EPA approval in consultation with DOE does not imply that this is the only criterion applicable to them. Each is subject to additional criteria (i.e., the requirement of derivation in the case of the second category, and the three performance criteria in the case of the third category).

The pivotal phrase "replacement of an existing coal-fired boiler" is undefined in the statute, and its scope is not clearly delineated by its context. Some of the seven listed technologies may not require total boiler replacement, although all require such extensive changes to the boiler that they are tantamount to boiler replacement. Under the principle of *ejusdem generis*, therefore, the Agency clearly has, at a minimum, ample discretion to treat as functional boiler replacement any changes broadly similar in scope to those involved in installing the seven named technologies. Such a definition would clearly represent the lower, not the upper, limit on the Agency's discretion to give meaning to the term "replacement". Accordingly, the statute confers on EPA the additional discretion to define boiler replacement in a functional manner that takes into account achievement of the specified performance criteria as well as the degree of changes to the boiler. By way of example, elsewhere in today's final rule the Agency considers a unit to be "replaced" if it would "constitute a reconstructed unit within the meaning of 40 CFR 60.15." In accordance with the above language EPA will use the 40 CFR 60.15 test for "reconstruction" as general guidance in determining whether each individual application under § 409 involves sufficient replacement to qualify for a repowering extension and hence, an NSPS exemption.

In short, because "Congress has not directly spoken to the precise question at issue," *Chevron, U.S.A.* v *NRDC*, 467 U.S. 837, 842–43 (1984), EPA enjoys a significant measure of discretion to determine to what extent replacement of less than 100 percent of the parts of an existing boiler could be deemed replacement for purposes of § 402(12) and this rule. For the reasons discussed above, EPA believes the proposed regulatory language regarding repowering is reasonable. That proposal is today promulgated without change.

### *E. Clean Coal Technology Demonstration Projects and Very Clean Units*

#### 1. Background

The EPA also proposed rules implementing the new CCT exemption created by the 1990 Amendments. In this proposal, temporary CCT demonstration projects are defined as those CCT demonstration projects lasting 5 years or less. Title IV gives these projects an exemption from NSPS, PSD and nonattainment requirements. *Id.*, section 415(b)(2). However, the facility would still be subject to any applicable SIP and must comply with any other requirements necessary to attain and maintain NAAQS. The EPA proposed to implement this provision and clarify that EPA considers the 5 year period as starting on the date of startup (as defined in 40 CFR 60.2). A temporary demonstration project may be converted to a permanent status at any time, provided it meets all the requirements that apply to a permanent CCT project criteria at the time of conversion.

Further, EPA proposed that at the end of a temporary project, the facility must be returned to pre-demonstration conditions and hourly emission rates (or lower). The return of the facility to its pre-demonstration physical and operational condition would not result in the loss of the actual emissions margin between pre-demonstration actual emissions rate and SIP-allowable emissions rates for that facility. Rather, the facility would be treated as if the temporary demonstration project had never occurred.[23]

This proposal did not extend to emissions increases that are unrelated to the conduct of temporary demonstration projects. The EPA considers emissions increases (above the pre-demonstration levels) that are attributable to physical or operational changes, other than those necessary to restore that unit to its pre-demonstration condition, to be beyond the scope of the Congressional exemption.

The EPA also proposed to implement an exemption from NSPS and PSD requirements for repowering projects which are awarded funding from the DOE as permanent CCT demonstration projects (or similar projects funded by EPA) so long as *potential* emissions [see 52.21(b)(4)] from the unit do not increase as a result of the project [see section 415(b)(3)]. However, repowering projects that qualify as pollution control projects will be treated as other pollution control projects for the purposes of the nonattainment provisions of title I of the CAA.

Finally, the proposal implemented the statutory exemptions in section 415(c). In that section, Congress provided an exemption from NSPS and PSD for the reactivation of "very clean units" otherwise in compliance with the CAA that had been shut down for at least the 2 years prior to enactment of the 1990 Amendments and that, prior to the shutdown, had been equipped with pollution controls with a removal efficiency of at least 85 percent for sulfur dioxide and 98 percent for particulates, and had been equipped with low-$NO_x$ burners. This exemption appears to have been narrowly tailored and is not expected to have widespread applicability.

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[23] This would be the case even if there were small differences in the post-demonstration physical and operational conditions due to a technical inability to restore the unit to its precise pre-demonstration condition, or due to normal variability in the coal used. Thus, EPA would not seek to apply NSPS or NSR because of a post-demonstration emissions increase attributable solely to an increase in the hours of operation or production rate of the unit (subject to the NSPS limitation that the production rate increase must be accomplished without a capital expenditure).

2. Comments Generally Favoring the EPA Proposal

Some commenters specifically mentioned that CCT demonstration projects should not be subject to NSR provisions.

3. Comments Generally Opposing the EPA Proposal

Some commenters did not support the proposed blanket inclusion of all CCT projects as pollution control projects. One commenter suggested that each CCT project be reviewed on a case-by-case basis and, if the project results in higher emission levels, it should not be considered a pollution control project. Another commenter gave an example of a CCT project that converts an oil-fired unit to a higher emitting coal-fired unit, noting that this project should not be considered a pollution control project.

One commenter opposed to the pollution control project exemption questioned the very narrow exemption from NSPS and PSD for the reactivation of well-controlled, very clean units that had been shut down for at least 2 years prior to the enactment of the 1990 Amendments. If such exemptions are granted, the commenter urged EPA to include a condition that any reactivated sources perform an air quality impact assessment and demonstrate that they would not cause or contribute to a violation of NAAQS, PSD increments, or visibility standards.

4. Comments Suggesting Revisions to the Proposal

a. The following suggestions were made with regard to the definition of "pollution control project":

(1) Include all elements of CCT demonstration projects as an excluded project;

(2) Add the words "clean coal technology" in the examples of pollution control projects in 40 CFR 51.165, 51.166, 52.21, and 53.24; and

(3) Use the statutory definition of CCT demonstration project in 60.14(j)(1). The statutory definition omits the requirement that at least 20 percent of the funding for a CCT demonstration project come from the Federal government.

5. The EPA Analysis

After review of the public comments and further analysis of the subject provision, EPA has decided to promulgate the proposed rules implementing the CCT and very clean unit exemption created by the 1990 Amendments. The EPA views this action as merely incorporating into its existing regulatory framework statutory exemptions that were immediately effective upon passage of the 1990 Amendments. Please note that language inadvertently included in the proposed rules which purported to extend the exemption in section 415(c) to nonattainment areas has been deleted.

*F. Calculation of NSPS Baseline*

1. Background

As discussed in the proposal, "any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies" is a modification for NSPS applicability purposes [see 40 CFR 60.14(a)]. The NSPS regulations implementing this general definition focus on increases in hourly emissions, expressed in kilograms of pollutant discharged per hour. To determine if an increase in hourly emissions has occurred at a unit, a pre-change baseline must be established. Under current regulations, the emissions rate before and after a physical or operational change is evaluated at each unit by comparing the current hourly potential emissions at maximum operating capacity to hourly emissions at maximum capacity after the change. In this calculation, the reviewing authority disregards the unit's maximum design capacity.[24] The original design capacity of a unit, to the extent it differs from actual maximum capacity at the time that the baseline is established due to physical deterioration of the facility, is immaterial to this calculation.

The EPA proposed that, for an existing electric utility steam generating unit, the pre-change baseline for NSPS applicability purposes shall be calculated using the highest hourly emissions rate achievable at any time during the 5 years prior to the change. The proposal retained the key concept in existing regulations that the baseline be determined during a period that is roughly contemporaneous with the proposed change at the affected facility. The EPA believes that the proposed revision, while modest, is still necessary to avoid the current regulation's undue emphasis on the physical condition of the affected facility immediately prior to the change. The proposal's more flexible provision enables units to establish a baseline that is representative of its physical and operational capacity in recent years, while still precluding the use of a baseline tied to original design capacity, which as noted above may bear no relationship to the facility's capacity in recent years.

Without this revision, the NSPS regulations may unduly burden utilities undertaking physical or operational changes in conjunction with the acid rain program. For instance, if a unit has broken down and is in need of repairs, the utility's baseline will be artificially low. The proposed change would allow utilities to demonstrate that an earlier, higher capacity was more representative of the unit's maximum hourly emissions rate.

2. Comments Generally Favoring the EPA Proposal

Several commenters noted that EPA's proposal will provide needed flexibility and alleviate uncertainty for nonroutine repair, replacement, and maintenance projects while still protecting local air quality. One commenter supported retention of the key concept of equating contemporaneous emissions with representative emissions.

3. Comments Generally Opposing the EPA Proposal

One commenter opposing the proposal noted that the provision for the maximum hourly emissions achievable during the last 5 years would result in a significant relaxation of NSPS requirements and would allow utilities to upgrade equipment which may have lost significant generating capacity without the equipment being subject to NSPS. Sources that have been operating below their maximum achievable emission rates for the 5 years prior to the change can cause increases in actual hourly emission rates, inconsistent with the intent of the NSPS program. In addition, the change in the baseline will allow utilities such an extensive ability to make unregulated changes such as refurbishment, repowering or life-extension as to interfere with competition between existing units and new units.

4. Comments Suggesting Revisions to the Proposal

The most frequent comment on this part of the proposal was that the rule should be clarified to say that the baseline should reflect the last 5 years of operation, to address units that have not been operating. In this regard, commenters were concerned about whether the approach will ensure the establishment of past emission levels that are truly representative of normal

[24] [See 39 FR 36,948 col. 1 (proposed rule)]. In *WEPCO*, the utility contended that baseline capacity for the purpose of determining whether an increase in emission rate occurs for purposes of an NSPS modification is the original design capacity of the facility. However, the court rejected WEPCO's argument that original design capacity or past "representative" capacity, no longer achievable at the plant, had to be used for the baseline emissions rate.

source operations for utility units in cold storage for more than 5 years.

One commenter asked that the NSPS baseline [40 CFR 60.14(h)] be made consistent with the NSR pre-change baseline [40 CFR 52.21(b)(21)(ii)] by adding the phrase, "or other period deemed by the Administrator to be more representative of normal operation." One commenter remarked that if the rule cannot be changed to allow consideration of the past 5 years of operation, then EPA should select an alternative that would reflect a more representative baseline. In addition, some commenters asked for clarification that a unit may "net out" of NSPS requirements by switching to low sulfur coal.

5. The EPA Analysis

After careful consideration of the comments received and further analysis of the subject provision, EPA has decided to promulgate the proposed revised methodology for calculating the pre-change baseline for NSPS applicability purposes for an existing electric utility steam generating unit. The amended methodology will use the highest hourly emissions rate achievable at any time during the 5 years prior to the change.

The revised methodology retains the key concept in existing regulations that the baseline be determined during a period that is roughly contemporaneous with the proposed change at the affected facility. The EPA believes that this decision to revise the current regulation will allow utilities flexibility regarding the scheduling of nonroutine repair, replacement, and maintenance projects. Also, the EPA believes that without this revision, the NSPS regulations may unduly burden utilities undertaking physical or operational changes in conjunction with the acid rain program. This change will allow utilities to demonstrate that an earlier, higher capacity was more representative of the unit's maximum hourly emissions rate.

The EPA did not agree with comments that the use of the maximum hourly emissions achievable during the last 5 years would result in a significant relaxation of NSPS requirements and allow utilities to upgrade equipment which may have lost significant generating capacity without the equipment being subject to NSPS. The promulgated change provides a more flexible provision enabling units to establish a baseline that is representative of their physical and operational capacity in recent years, while still precluding the use of a baseline tied to original design capacity, which may bear no relationship to the facility's capacity in recent years.

The EPA did not agree with the comment that degree of flexibility granted utilities to make unregulated changes such as refurbishment, repowering or life-extension projects as a result of rule changes would interfere with competition between existing units and new units. The prior regulations allowed refurbishment, repowering or life-extension projects, provided emissions do not increase above the unit's current maximum hourly emissions rate. Both the prior and newly promulgated regulations require a unit that undergoes a refurbishment, repowering or life-extension project which increases emissions above the unit's actual current maximum hourly rate to be subject to NSPS. The promulgated regulation simply allows more flexibility in defining a unit's current capacity.

The EPA cannot agree with comments that the methodology for computing the NSPS baseline reflect the last 5 years of operation rather than the 5 years prior to the change. As discussed in conjunction the NSR baseline, the use of such a baseline would credit a unit which has been inoperable for 20 or 30 years, or longer, and in need of extensive nonroutine changes, with an emissions baseline that does not reflect current achievable levels of operations. The EPA notes, however, that the NSPS regulations have always allowed a dormant unit to demonstrate its current capacity in order to determine its emissions baseline. Thus an operable unit, or one in need of only routine maintenance or repair, which has been dormant for an extended period of time can still demonstrate its achievable capacity and associated emissions level by operating for a relatively short period of time.

A commenter requested that the NSPS baseline be revised to be consistent with the NSR pre-change baseline by adding the phrase, "or other period deemed by the Administrator to be more representative of normal operation." The EPA did not grant this request because it would change the emphasis of the NSPS program. As a technology-based program, the NSPS program examines maximum hourly emissions rates, expressed in kilograms per hour. Thus, emission increases for NSPS purposes are determined by changes in the hourly emissions rates at maximum physical capacity, regardless of how the unit has actually operated. In contrast, in light of the air quality planning component of the NSR program, the NSR regulations examine total actual annual emissions to the atmosphere. Consequently, normal operations over a period of time is considered for purposes of determining a source's impact on ambient air. For NSR applicability determination purposes emissions increases are determined by changes in actual annual emissions as expressed in tpy.

Some commenters requested clarification on "netting out" of NSPS requirements by switching to low sulfur coal. The proposed regulatory changes were specifically limited to addressing the maximum achievable emissions at a specific point in time (i.e., immediately prior to the change versus achievable over the last 5 years) and not the parameters used in quantifying maximum hourly emissions. Today's rule does not alter current NSPS regulations on this point. Under those present NSPS regulations, only physical limitations on maximum capacity are considered in determining potential emissions at powerplants. Thus, any prospective changes in fuel or raw materials accompanying the physical or operational change are not considered in determining maximum capacity.

*G. Utility BACT Presumption for $NO_x$*

1. Background

The EPA proposed to adopt a presumption that, in the case of PSD permits issued by EPA under 40 CFR 52.21, BACT for emissions of $NO_x$ from existing coal-fired electric utility steam generating units undergoing a modification is the technology required under Section 407 of the CAA.

2. Comments Generally Favoring the EPA Proposal

Supporters of the low-$NO_x$ burner BACT presumption pointed to strong Congressional policy judgement favoring the use of "low-$NO_x$ burner technology." The BACT presumption should provide greater certainty and consistency to utilities, yet one supporter thought it would not limit the permitting authority's ability or obligation to consider other factors. One commenter noted that the BACT presumption establishes that low-$NO_x$ burners constitute reasonable available control technology (RACT) as well as BACT.

3. Comments Generally Opposing the EPA Proposal

Concluding that the presumption is unwarranted, misguided, and possibly illegal, several opponents of the BACT presumption noted that it forecloses consideration of other $NO_x$ control technologies and ignores the demonstrated track record and cost-

effectiveness of other technologies such as selective catalytic reduction (SCR) or selective noncatalytic reduction. Commenters noted that SCR technology is in use in more than 200 power plants in six nations and can achieve twice the $NO_x$ reduction achievable by low-$NO_x$ burners. The SCR or other technologies more effective than low-$NO_x$ burners may be needed as retrofit requirements to attain the ozone standard.

Another comment voiced by opponents of the low-$NO_x$ burner BACT presumption, was that it cannot be reconciled with the statutory command for case-by-case decisions. The EPA does not have the right to make such a presumption and several instances were cited where EPA has upheld the case-by-case BACT determination process. The BACT presumption fails to recognize that there are site-specific considerations that will affect the selection of BACT.

Opponents of the BACT presumption also noted that such a presumption improperly shifts the burden of technology analysis to States at a time when they are overburdened. In addition, it will have an adverse effect on the ability of State and local agencies to control emissions to the degree necessary because it limits an agency's attainment strategies. Some of the northeastern States expressed concerns that such a presumption might interfere with efforts to attain the ozone standard.

4. The EPA Analysis

Based upon a consideration of the comments received, and a reexamination of the relevant facts and statutory provisions, EPA has determined not to promulgate the presumption regarding BACT for $NO_x$. The EPA is concerned that this presumption would suggest preemption of the exercise of State discretion and case-by-case decisionmaking which Congress envisioned as fundamental to the BACT process.

In light of its decision not to adopt a BACT low-$NO_x$ presumption, EPA will not respond to other objections and suggestions raised by commenters.[25]

*H. Applicability Determinations*

As noted in the proposal, source owners or operators in most instances are able to readily ascertain whether NSR requirements apply to them. Consequently, in administering these requirements, EPA does not require sources to obtain a formal applicability determination before proceeding with construction. In keeping with that practice, EPA will not require utilities to seek applicability determinations under either the revised regulations promulgated today or the interpretations of existing regulations contained in this preamble. Utilities in most cases can readily ascertain how this notice will affect them. The EPA anticipates, however, that questions will arise regarding certain aspects of this proposal. Because some instances involve discrete judgments, utilities may wish to obtain determinations of applicability. The EPA will provide such determinations upon request. Such requests should be submitted together with appropriate documentation to the appropriate permitting authority.

Comments regarding applicability determinations have previously been addressed in other sections of this rulemaking.

*I. Limitation of the Rule to Electric Utilities*

1. Background

Consistent with the proposed rule, the regulatory provisions promulgated today are limited to electric utility steam generating units. Such units are defined as any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts of electrical output to any utility power distribution system for sale. In the proposal, EPA indicated that it was limiting this rulemaking to electric utility steam generating units for two reasons. First, title IV of the CAA addresses acid precipitation and focuses exclusively on utility power plants. Today's ruling ensures that the title I and title IV programs will not impose conflicting requirements for those plants. The second reason that the provisions were limited to utilities is that EPA's extensive experience with electric utilities, the general similarity of equipment within the category, and the particular extent of publicly available information, indicate that a revision to the NSR applicability criteria for this source category is warranted.

2. Public Comments

Several commenters noted that limitation of the proposal to electric utilities lacks rational justification as well as legal and technical support. Several noted that the limitation is unfair, arbitrary, and capricious. Typical of several letters, one commenter noted that EPA offered no qualitative evidence of underlying assumptions, and another noted that EPA violates the Administrative Procedures Act by limiting the proposal to electric utilities. To this commenter, the limitation discriminates against industrial sources and is not in line with the intentions of the legislation. One commenter noted that the *WEPCO* court did not base its analysis on any particular characteristics of the utility industry.

Numerous commenters countered EPA's claim and justification for the limitation that the Agency has more experience with electric utilities than other industries. Illustrating that EPA has extensive experience with other industries, commenters mentioned chemical manufacturing, cement plants, refineries, paper mills, auto assembly plants, the 65 NSPS sources, and sources covered in numerous guideline documents and RACT guidance. In addition, several noted that the lack of understanding is a poor excuse for not applying the proposal to all industries.

Commenters also noted that other industries face the same problems that utilities do when attempting to install pollution control equipment. Like electric utilities, pollution control projects in other industries are generally environmentally beneficial, but the limitation of the exclusion to electric utilities as proposed would discourage the other source categories, from installing pollution control projects.

Several commenters noted that other industries will be equally impacted by extensive regulations under titles I, III, and V, just as electric utilities will be affected by title IV. For example, pharmaceutical plants will undergo physical and operational changes to meet reasonably available control technology (RACT) and/or maximum achievable control technology, and these projects should not be subject to NSR or NSPS. They note that the burden and supportive reasons for making the proposed changes are just as great for other categories of sources as they are for electric utilities.

Some commenters pointed out that EPA presently applies the pollution control project exemption from NSPS to all industries and that existing NSR rules are not industry-specific.

3. The EPA Analysis

The EPA does not believe that this rule should be expanded at this time but will address this issue in a separate rulemaking. Specifically, EPA currently has underway a separate rulemaking which will consider the desirability of adopting for other source categories the

[25] This includes comments on the environmental impacts of the low-$NO_x$ burner presumption, elaboration on what constitutes low-$NO_x$ burner technology, and the merits and current use of other $NO_x$ control technologies as BACT.

NSR pollution control project exclusion and the changes to the methodology for determining whether a source change constitutes a modification that have been adopted today for utilities. This rulemaking will also discharge EPA's obligation to propose and take final action on a potential-to-potential methodology as required by Exhibit B of the settlement agreement in *Chemical Manufacturers Association* v. *EPA* (D.C. Cir., No. 79–1112). The EPA presently intends to propose these NSR revisions by early summer.

Prior to proposal of this rule, EPA considered going forward with a rule that applied to all source categories. However, the complexity of that task meant that a rule could not be developed in a short time frame, a fact that posed unique and serious difficulties for one source category, utilities. While the commenters favoring expansion of this rule to all source categories are accurate in their claims that sources outside utilities face CAA-mandated pollution control projects, utilities alone are singled out to participate in the 1990 Amendments' new acid rain program. This program requires that units subject to phase I of the program meet $SO_2$ reduction limits by 1995. Given the size, complexity, and expense of scrubbers and other $SO_2$ pollution control technologies, the affected utilities need guidance today as to the title I implications of their control strategies. While other sources may soon have new control requirements imposed on them, utility sources face the most immediate need for clarification of their NSR responsibilities.

In addition, EPA also had high confidence that a workable "future-actual" methodology could be developed for the utility industry for all changes that did not involve construction of a new unit or replacement of an existing unit. The source population is relatively small and the technology in use is relatively uniform. Moreover, utility sources are largely regulated by PUC's which evaluate anticipated utility growth as part of the regulatory oversight process. The fact of Public Utility Commission (PUC) review helps ensure the reliability of utility projections of future operating conditions. The EPA anticipates that NSR permitting authorities will be able to draw upon PUC proceedings in evaluating utility claims of future utilization.

In addition, the emissions monitoring provisions of title IV requires that continuous emissions monitoring data or other highly accurate methods for reporting actual emissions will be used for all affected sources. This will assure that actual emissions data will be readily available for utility sources subject to today's rule. In the rulemaking which EPA intends to undertake by early summer, EPA will address the precise applicability of the pollution control project exclusion and of the actual to future actual methodology to non-utility source categories.

## IV. Administrative Requirements

### *A. Executive Order (E.O.) 12291*

Under E.O. 12291, EPA must judge whether a regulation is a "major rule" and therefore subject to the requirement for preparation of a Regulatory Impact Analysis. This ruling is not a major rule because it will reduce the economic costs of meeting the requirements of the CAA. However, this ruling was submitted to the Office of Management and Budget (OMB) for review. Written comments from OMB to EPA and any EPA response are included in Docket A–[illegible].

### *B. Paperwork Reduction Act*

The proposal package stated that no additional public reporting burden will result from this ruling. That is still the case despite final rule requirements for reporting certain data to agencies for 5 years following a change and for documenting excluded demand growth, because this information is already required by other provisions of the law and the final rule in doing so is providing exclusions for the affected sources and the net result is a decrease in these source's public reporting burden. All information collection requirements of the Federal NSR and NSPS regulations have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., and have been assigned OMB control numbers 2060–0003 for NSR, and 2060–0023, 2060–0026 and 2060–0072 for NSPS. The effect of this rule would be a reduction in paperwork related to complying with NSR and NSPS requirements, since this ruling provides additional clarification as to physical and operational changes that may be excluded from these requirements.

### *C. Economic Impact Assessment*

The requirement for performing an Economic Impact Assessment under section 317 of the CAA (42 U.S.C. 7617), does not apply to the amendments EPA is promulgating today. Section 317 applies only to "revisions which the Administrator determines to be substantial revisions." The promulgated amendments are not substantial revisions because they relieve current regulatory burdens.

### *D. Regulatory Flexibility Act Certification*

As noted in the proposal notice, this action is not subject to the certification provisions of section 605(b) of the Regulatory Flexibility Act because this rule will result in a reduction of administrative costs and no increase in control costs, therefore having no significant impact on industry.

### *E. Effective Date*

As stated earlier in this notice, this rule is effective immediately upon publication in the **Federal Register**. The EPA has concluded that, under section 307(d)(1) of the CAA, the requirement of sec. 4(d) of the Administrative Procedures Act, 5 U.S.C. 553(d), for a 30-day waiting period before making a rule effective is not applicable.

### *F. Federalism Implications*

Under E.O. 12612, EPA must determine if a rule has federalism implications (i.e., substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). For those rules which have federalism implications, a Federalism Assessment is to be made. The EPA's determination is that there are no federalism implications; these are relatively minor changes to existing Federal law and regulations.

The executive order also requires that agencies, to the extent possible, refrain from limiting the State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The executive order provides for preemption of State law, however, if there is a clear congressional intent for the agency to do so. Any such preemption, however, is to be limited to the extent possible. Since the rule is a direct effort to ensure implementation of the 1990 Amendments, EPA considers all of the above requirements to be met.

### Lists of Subjects

*40 CFR Part 51*

Administrative practice and procedure, Air pollution control, Carbon monoxide, Clean Coal Technology projects, Hydrocarbons, Intergovernmental relations, Lead,

Nitrogen dioxide, NSR, Ozone, Particulate matter.

*40 CFR Part 52*

Air pollution control, Carbon Monoxide, Clean Coal Technology projects, Hydrocarbons, Lead, Nitrogen dioxide, NSR, Particulate matter, Repowering, Sulfur oxides.

*40 CFR Part 60*

Air pollution control, Carbon monoxide, Clean Coal Technology projects, Hydrocarbons1 Lead, Nitrogen dioxide, NSPS, Particulate matter, Repowering, Sulfur oxides.

Dated: May 20, 1992.

**William K. Reilly,**

*Administrator.*

For the reasons set forth in the preamble, parts 51, 52, and 60 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

## PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 is revised to read as follows:

**Authority:** 42 U.S.C. 7401(b)(1), 7410, 7411, 7470–7479, 7491, 7501–7508, 7601 and 7602, as amended by the 1990 Amendments, Pub. L. No. 101–549, 104 Stat. 2399 (Nov. 15, 1990); 402, 409, 415 of the CAA as amended, 104 Stat. 2399, unless otherwise noted.

2. Section 51.165 is amended by revising paragraph (a)(1)(xii)(D) and by adding paragraphs (a)(1)(v)(C)(*8*), (a)(1)(v)(C)(*9*), (a)(1)(xii)(E), (a)(1)(xx), (a)(1)(xxi), (a)(1)(xxii), (a)(1)(xxiii), (a)(1)(xxiv), (a)(1)(xxv) to read as follows:

**§ 51.165 Permit requirements.**

(a) * * *

(1) * * *

(v) * * *

(C) * * *

(*8*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the reviewing authority determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(*i*) When the reviewing authority has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I, if any, and

(*ii*) The reviewing authority determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(*9*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*i*) The State Implementation Plan for the State in which the project is located, and

(*ii*) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

* * * * *

(xii) * * *

(D) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (a)(1)(xii)(E) of this section) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(E) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the reviewing authority, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the reviewing authority if it determines such a period to be more representative of normal source post-change operations.

* * * * *

(xx) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(xxi) *Representative actual annual emissions* means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within 10 years after that change, where the reviewing authority determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the reviewing authority shall:

(A) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(B) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(xxii) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State Implementation Plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(xxiii) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(xxiv) *Clean coal technology demonstration project* means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(xxv) *Pollution control project* means any activity or project at an existing electric utility steam generating unit for

purposes of reducing emissions from such unit. Such activities or projects are limited to:

(A) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(B) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(C) A permanent clean coal technology demonstration project conducted under title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(D) A permanent clean coal technology demonstration project that constitutes a repowering project.

3. Section 51.166 is amended by revising paragraph (b)(21)(iv) and by adding paragraphs (b)(2)(iii) (*h*) through (*k*), (b)(21)(v), and (b) (30) through (37) to read as follows:

**§ 51.166 Prevention of significant deterioration of air quality.**

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(*h*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the Administrator determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(*1*) When the reviewing authority has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I, if any, and

(*2*) The reviewing authority determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(*i*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*1*) The State implementation plan for the State in which the project is located: and

(*2*) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(*j*) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(*k*) The reactivation of a very clean coal-fired electric utility steam generating unit.

* * * * *

(21) * * *

(iv) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (b)(21)(v) of this section) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(v) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit following the physical or operational change, provided the source owner or operator maintains and submits to the reviewing authority, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the reviewing authority if it determines such a period to be more representative of normal source post-change operations.

* * * * *

(30) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(31) *Pollution control project* means any activity or project undertaken at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(i) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(ii) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including but not limited to natural gas or coal re-burning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions;

(iii) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency, or

(iv) A permanent clean coal technology demonstration project that constitutes a repowering project.

(32) *Representative actual annual emissions* means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within 10 years after that change, where the reviewing authority determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the reviewing authority shall:

(i) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(ii) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the

representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(33) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(34) *Clean coal technology demonstration project* means a project using funds appropriated under the heading "Department of Energy—Clean Coal Technology", up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(35) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.

(36) (i) *Repowering* means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(ii) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(iii) The reviewing authority shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Clean Air Act.

(37) *Reactivation of a very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(ii) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-$NO_x$ burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 is revised to read as follows:

**Authority:** 42 U.S.C. 7401–7642 as amended by the Clean Air Act Amendments of 1990, Pub. L. No. 101–549, 104 Stat. 2399 (Nov. 15, 1990), unless otherwise noted.

2. Section 52.21 is amended by revising paragraph (b)(21)(iv) and by adding paragraphs (b)(2)(iii)(*h*) through (*k*), (b)(21)(v), and paragraphs (b)(31) through (b)(38) to read as follows:

### § 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(*h*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the Administrator determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(*1*) When the Administrator has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I, if any, and

(*2*) The Administrator determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(*i*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*1*) The State implementation plan for the State in which the project is located, and

(*2*) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(*j*) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(*k*) The reactivation of a very clean coal-fired electric utility steam generating unit.

* * * * *

(21) * * *

(iv) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (b)(21)(v) of this section) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(v) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Administrator on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the Administrator if he determines such a period to be more representative of normal source post-change operations.

* * * * *

(31) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW

electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(32) *Pollution control project* means any activity or project undertaken at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(i) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(ii) An activity or project to accommodate switching to a fuel which is less polluting than the fuel in use prior to the activity or project, including, but not limited to natural gas or coal reburning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions;

(iii) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(iv) A permanent clean coal technology demonstration project that constitutes a repowering project.

(33) *Representative actual annual emissions* means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within 10 years after that change, where the Administrator determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the Administrator shall:

(i) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(ii) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(34) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(35) *Clean coal technology demonstration project* means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology", up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(36) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(37) (i) *Repowering* means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(ii) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(iii) The Administrator shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Clean Air Act.

(38) *Reactivation of a very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(ii) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-$NO_x$ burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

* * * * *

3. Section 52.24 is amended by revising paragraph (f)(13)(iv) and by adding paragraphs (f)(5)(iii)(*h*) and (*i*), (f)(13)(v) and paragraphs (f)(19) through (24) to read as follows:

**§ 52.24 Statutory restriction on new sources.**

* * * * *

(f) * * *

(5) * * *

(iii) * * *

(*h*) The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the Administrator determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(*1*) When the Administrator has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality

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impact analysis in the area conducted for the purpose of title I, if any, and

(2) The Administrator determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(*i*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*1*) The State implementation plan for the State in which the project is located, and

(*2*) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

* * * * * * *

(13) * * *

(iv) For any emissions unit (other than an electric utility steam generating unit specified in paragraph (f)(13)(v) of this section) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(v) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Administrator, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the Administrator if he determines such a period to be more representative of normal source post-change operations.

* * * * *

(19) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(20) *Representative actual annual emissions* means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within 10 years after that change, where the Administrator determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the Administrator shall:

(i) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(ii) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(21) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(22) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(23) *Clean coal technology demonstration project* means a project using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(24) *Pollution control project* means any activity or project undertaken at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(i) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(ii) An activity or project to accommodate switching to a fuel which is less polluting than the fuel in use prior to the activity or project including, but not limited to natural gas or coal re-burning, co-firing of natural gas and other fuels for the purpose of controlling emissions;

(iii) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(iv) A permanent clean coal technology demonstration project that constitutes a repowering project.

* * * * *

## PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 is revised to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7414, 7416, and 7601 as amended by the Clean Air Act Amendments of 1990, Pub. L. 101–549, 104 Stat. 2399 (Nov. 15, 1990; 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted.

2. Section 60.2 is amended by adding the following definitions in alphabetical order:

**§ 60.2 Definitions.**

* * * * * * *

*Clean coal technology demonstration project* means a project using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstrations of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency.

* * * * * * *

*Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

* * * * * * *

*Reactivation of a very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(2) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-$NO_x$ burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

* * * * * * *

*Repowering* means replacement of an existing coal-fired boiler with one of the following clean coal technologies:



through appropriations for the Environmental Protection Agency.

* * * * * * *

*Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

* * * * * * *

*Reactivation of a very clean coal-fired electric utility steam generating unit* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(2) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-$NO_x$ burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

* * * * * * *

*Repowering* means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

* * * * * * *

3. Section 60.14 is amended by adding paragraphs (h) through (l) to read as follows:

**§ 60.14 Modification.**

* * * * * * *

(h) No physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for the purposes of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the 5 years prior to the change.

(i) Repowering projects that are awarded funding from the Department of Energy as permanent clean coal technology demonstration projects (or similar projects funded by EPA) are exempt from the requirements of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the five years prior to the change.

(j) (1) Repowering projects that qualify for an extension under section 409(b) of the Clean Air Act are exempt from the requirements of this section, provided that such change does not increase the actual hourly emissions of any pollutant regulated under this section above the actual hourly emissions achievable at that unit during the 5 years prior to the change.

(2) This exemption shall not apply to any new unit that:

(i) Is designated as a replacement for an existing unit;

(ii) Qualifies under section 409(b) of the Clean Air Act for an extension of an emission limitation compliance date under section 405 of the Clean Air Act; and

(iii) Is located at a different site than the existing unit.

(k) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project is exempt from the requirements of this section. A *temporary clean coal control technology demonstration project*, for the purposes of this section is a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(l) The reactivation of a very clean coal-fired electric utility steam generating unit is exempt from the requirements of this section.

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Part IV

# Department of Education

34 CFR Parts 674, 675, and 676
Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program; Final Rule

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**DEPARTMENT OF EDUCATION**

**34 CFR Parts 674, 675, and 676**

**RIN 1840-AB31**

**Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program**

**AGENCY:** Department of Education.

**ACTION:** Final rule.

**SUMMARY:** The Secretary amends the regulations for the Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs. These programs are known collectively as the campus-based programs and are authorized by the Higher Education Act of 1965, as amended (HEA). These regulations modify provisions governing the campus-based programs, clarify existing policy, and make other necessary changes.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. A document announcing the effective date will be published in the **Federal Register**. If you want to know the date these regulations become effective, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Coppage or Michael J. Oliver, Campus-Based Programs Branch, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue SW., ROB-3, room 4018, Washington, DC 20202-5447. Telephone: (202) 708-4690. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339. (In the Washington, DC, 202 area code, telephone 708-9300 between 8 a.m. and 7 p.m., Eastern time.)

**SUPPLEMENTARY INFORMATION:** On March 13, 1991, the Secretary published a notice of proposed rulemaking (NPRM) for the campus-based programs in the **Federal Register** (56 FR 10742-10754). The regulations have been revised in accordance with public comments on the proposed rule.

The NPRM included a discussion of the major issues surrounding the proposed changes. The following list summarizes those proposed changes and identifies the pages of the preamble to the NPRM on which discussion of those changes may be found:

The addition of the definitions of "full-time undergraduate student" and "full-time graduate or professional student" under § 674.2(b) of the Perkins Loan Program, and § 675.2(b) of the College Work-Study Program (page 10742).

Clarification under § 674.31(e)(2) that an institution may still capitalize the penalty charge assessed on National Defense and Direct Student Loan borrowers during the repayment period (page 10742).

A proposal to delete the word "regular" in the phrases "half-time regular student," "regular half-time student," and "less than half-time regular student" in §§ 674.31, 674.32, 674.34, 674.35 and 674.36 (page 10742).

Clarification under §§ 674.43(a) and 674.47(a)(2) that certain costs of documented telephone calls to demand repayment of overdue loan amounts may be charged to the Perkins Loan Fund (page 10742).

A proposal to revise the promissory notes found in Appendices A, B, C, and D of part 674, to correct typographical errors made during the printing of the previous regulations, and to clarify certain other requirements (page 10742).

A proposal to clarify the CWS Federal share limitations (page 10743).

**Major Changes to the NPRM**

A few significant changes have been made since the publication of the NPRM:

- The proposal to delete the word "regular" in the phrases "half-time regular student," "regular half-time student," and "less than half-time regular student" in §§ 674.31, 674.32, 674.34, 674.35 and 674.36 of the Perkins Loan regulations has been rescinded.
- A new National Direct Student Loan and Perkins Loan cancellation provision for law enforcement or corrections officer service provided by the Crime Control Act of 1990 (Pub. L. 101-647) has been included in the sample promissory notes.
- The proposed language to limit to 10 percent an institution's expenditures of CWS funds received by the institution for the Community Service Learning (CSL) Program has been rescinded. However, the language has been clarified regarding the Federal share applicable to students working under the CSL Program.

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRM, 47 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

*Perkins Loan Program*

*Section 674.2(b) Full-Time Graduate or Professional Student*

*Comment:* The Secretary received several comments on the proposed provision in § 674.2(b) that would define the term "full-time graduate or professional student." All commenters supported the change. They felt that the proposal was similar to the method used by the Guaranteed Student Loan programs, and that this is an advisable approach that allows an institution to determine who may be classified as a full-time graduate or professional student.

*Discussion:* The Secretary has determined that it is in the best interest of the Perkins Loan program to allow institutions to determine when a student is a full-time graduate or professional student as what constitutes a full-time academic workload differs by institution and program, as well as by curriculum and practice.

*Changes:* None.

*Section 674.31 Promissory Note*

*Comments:* Several commenters were in favor of the clarification on the capitalization of penalty charges assessed on National Defense and National Direct Student Loan borrowers during the repayment period.

*Discussion:* The Secretary agrees with the commenters that this section should clarify that institutions still may capitalize the penalty charge assessed on National Defense and National Direct Student Loan borrowers during the repayment period.

*Changes:* None.

*Section 674.31 Promissory Note*

*Section 674.32 Special Terms: Loans to Less Than Half-Time Student Borrowers*

*Section 674.33 Repayment*

*Section 674.34 Deferment of Repayment—Perkins Loans*

*Section 674.35 Deferment of Repayment—Direct Loans Made on or After October 1, 1980*

*Section 674.36 Deferment of Repayment—Direct Loans Made Before October 1, 1980 and Defense Loans*

*Comments:* Several commenters questioned the proposed deletion of the word "regular" from the phrases "half-time regular student," "regular half-time student," and "less than half-time regular student" in these sections. The deletions would allow students who were not pursuing a degree or certificate to receive a deferment for attending an institution at least half-time.



*Discussion:* The Secretary agrees with the commenters that the determination of when a repayment period begins and when a student qualifies for a deferment for attending an institution should be tied into the student's status as a regular student. Under 34 CFR 668.7(a)(1) a student is required to be a regular student in order to be eligible to receive a loan. The word "regular" originally was considered not needed in §§ 674.31, 674.32, 674.33, 674.34, 674.35 and 674.36 because all eligible students are regular students. However, the proposed deletion of the word "regular" would have allowed students no longer enrolled for the purpose of obtaining a degree, certificate, or other recognized credential to receive an advantage in determining when a repayment period begins or to qualify for a student deferment. This was not the intention of the proposed deletion.

*Changes:* The final regulations reflect any necessary additions of the word "regular" in the above listed sections for consistency. The final regulations do not delete the word "regular" as proposed in the NPRM.

*Section 674.38(a)(1) Postponement of Loan Repayments in Anticipation of Cancellation*

*Comments:* Many commenters supported the addition of §§ 674.53 and 674.54, teacher cancellation, to the list of reasons for postponement of loan repayments in anticipation of cancellation. One commenter suggested that the section be expanded to include loan cancellation for health professionals who agree to work in a medically underserved area. Another commenter requested uniform guidelines for handling postponement in anticipation of cancellation requests.

*Discussion:* The Secretary is revising § 674.38(a)(1) to crossreference § 674.53 and § 674.54. These sections inadvertently were not listed in the December 1, 1987 regulations. The Department has no statutory authority to provide loan cancellation for health professionals who agree to work in a medically underserved area. The Department has provided guidelines for handling postponement in anticipation of cancellation requests in the Federal Student Financial Aid Handbook.

*Changes:* None.

*Section 674.42(a)(2)(x) Contact With the Borrower*

*Comments:* The Secretary received many comments on the inclusion of this provision in the regulations. All commenters felt that even though the provision is in the Higher Education Act of 1965, as amended, that the additional information to be provided during the exit interview about average loan indebtedness seems irrelevant and presents an administrative burden that has no effect on reducing defaults or in promoting a borrower's increased understanding of loan indebtedness.

*Discussion:* Section 485(b)(1) of the Higher Education Act of 1965, as amended, requires that an institution provide, during its exit counseling, general information about the average indebtedness of students who have loans at that institution under the Perkins Loan Program. The Secretary feels that by providing this information to students, the institution will help students to be aware of having loans and of their responsibilities to repay the loans. The Secretary believes it is appropriate to state this requirement expressly in the regulations so that institutions will be aware of the statutory requirement.

*Changes:* None.

*Section 674.45(c)(1)(iii) Collection Procedures*

*Comments:* One commenter suggested further clarification should be made to this section by cross-referencing the litigation procedures section.

*Discussion:* The Secretary agrees with the commenter and has decided to make further clarifying changes in this section.

*Changes:* The Secretary has added a cross-reference to 34 CFR 674.46.

*Section 674.43(a) Billing Procedures*

*Section 674.47(a)(2) Costs Chargeable to the Fund*

*Comments:* The Secretary received several comments in support of the revisions to clarify that the costs of all documented telephone calls made during the billing cycle to demand payment of overdue amounts on the loan, that are not recovered from the borrower, may be charged to the Perkins Loan Fund.

Additionally, one commenter stated that the proposed revision was impractical to implement because a number of office staff members do loan collection and each has a separate telephone line. The commenter recommended that an institution be allowed to charge the Perkins Loan Fund average costs to be determined by annual calculations as backup for an auditor.

*Discussion:* The Secretary believes that making telephone calls and working with the debtor over the telephone, as soon as the borrower is overdue in making a payment, is in keeping with the Department's goal of using all effective methods of collection. The Secretary has determined that only actual costs may be charged to the Fund for telephone calls made during the billing cycle. The Secretary disagrees that it is difficult for an institution to track the actual costs of telephone calls made during the billing cycle and, therefore, an institution may not charge average costs to the Fund.

*Changes:* None.

*Section 674.49 Bankruptcy of Borrower*

*Comments:* Many commenters were in favor of the Crime Control Act of 1990 (Pub. L. 101-647), which provides that the period of time in which a borrower cannot discharge a loan for chapter 7, 11, 12 and 13 bankruptcies has been extended from 5 years to 7 years. The commenters all suggested that the regulations should be revised to be consistent with the current law.

*Discussion:* The Secretary agrees that the final regulations should reflect the changes to the bankruptcy provisions found in the Crime Control Act of 1990. In addition, the Secretary notes that additional changes were made to the Bankruptcy Code (11 U.S.C. 1328(a)) by section 3007 of the 1990 Omnibus Budget Reconciliation Act (OBRA). The Secretary therefore feels that the final regulations also should be amended to reflect these additional changes.

*Changes:* The final regulations extend from 5 years to 7 years the period of time in which a borrower cannot have a loan discharged for chapter 7, 11, 12 and 13 bankruptcies as provided in the Crime Control Act of 1990. Further, the final regulations reflect the changes made to the Bankruptcy Code by section 3007 of OBRA. The regulations provide that a discharge under 1328(a) of the Bankruptcy Code does not discharge an education loan unless the loan entered the repayment period more than seven years, excluding periods of deferment, before the filing of the petition.

*Appendices—Promissory Notes*

*Comments:* The Secretary received several comments concerning the promissory notes. Two commenters were disappointed that the provision regarding loan cancellation for full-time law enforcement and correction officers was not included in the NPRM. Some commenters brought to the attention of the Secretary some typographical errors, and one commenter agreed with all the proposed changes.

*Discussion:* The Secretary thanks the commenters for their careful review and agrees that the new cancellation provision provided by the Crime Control Act of 1990 should be incorporated in the promissory notes. To provide the

public with an opportunity to comment in a separate NPRM, the Secretary intends to propose regulations concerning the requirements for a borrower to qualify for the new loan cancellation provision.

*Changes:* The loan cancellation provision for service as a law enforcement or corrections officer has been included in the promissory note. All typographical errors have been corrected.

**College Work-Study (CWS) Program**

*Section 675.2(b) Full-Time Graduate or Professional Student*

See comment and discussion in the preamble under § 674.2(b).

*Section 675.26 CWS Federal Share Limitation*

*Comments:* Many commenters disagreed with the proposed change and were concerned that the proposed wording could be interpreted now to exclude students from being employed under CWS during a period of nonenrollment. Some commenters wanted an institution to be able to apply a Federal share toward student wages under the CSL program after 10 percent of the institution's CWS funds were expended for CSL.

*Discussion:* The Secretary, based on the comments received, agrees that students may be employed under CWS during periods of nonenrollment. Also, revisions clarify that an institution may pay student wages under the CSL program by applying a 90 percent Federal share with up to 10 percent of the institution's CWS funds. Any student wages under the CSL program paid in excess of 10 percent of the institution's CWS funds must be paid by applying the regular CWS Federal share.

*Changes:* The Secretary, in amending § 675.26(a)(1) by deleting the word "enrolled" before the word "student", has clarified that students may work under CWS during periods of nonenrollment. The regulations have been changed to reflect more accurately the language in the statute regarding the CWS Federal share limitations.

*Section 675.28—Community Service Learning Program*

*Comments:* Several commenters are concerned about the proposed language regarding the amount of its CWS allocation that an institution may use to employ students under the CSL program. One commenter believed that if the purpose of the CSL program is to give students the opportunity to work in a setting that offers work-learning opportunities that relate to their educational or vocational goals, that it would be inappropriate for the Department to limit to 10% of the CWS allocation the amount that institutions can expend for the CSL program. Another commenter expressed the opinion that the proposed change was contrary to current statutory language.

*Discussion:* The Secretary, after further review, agrees that an institution is not restricted in the amount of CWS funds it may use for student wages under the CSL program.

*Changes:* The proposed change to § 675.28(a) has been rescinded.

**Supplemental Educational Opportunity Grant Program**

*Section 676.16(f) Payment of an SEOG*

*Comments:* Several commenters supported the deletion of the reference to NDSL, as the change would make the SEOG regulations consistent with the Perkins Loan regulations.

*Discussion:* The Secretary has amended the SEOG regulations to be consistent with the Perkins Loan regulations.

*Changes:* None.

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Assessment of Educational Impact**

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Parts 674, 675, and 676**

Education, Loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; and 84.063 Pell Grant Program)

Dated: July 13, 1992.

**Lamar Alexander,**

*Secretary of Education.*

The Secretary amends parts 674, 675, and 676 of title 34 of the Code of Federal Regulations as follows:

## PART 674—PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

**Authority:** 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.1 is amended by revising paragraph (b)(1) to read as follows:

**§ 674.1 Purpose and identification of common provisions.**

* * * * *

(b) (1) The Perkins Loan Program, authorized by Title IV–E of the Higher Education Act of 1965, as amended, and previously named the National Direct Student Loan Program, is a continuation of the National Defense Loan Program authorized by Title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under Title II before the enactment of Title IV–E continue to exist.

* * * * *

3. In § 674.2, paragraph (b) is amended by adding the definition of *Full-time graduate or professional student* after the definition of *Financial need;* by revising the title of *Full-time student* to read *Full-time undergraduate student* and adding in the first sentence the word "undergraduate" after the word "enrolled" and before the word "student"; and by removing "38" in paragraph (2) of newly designated *Full-time undergraduate student* and adding, in its place, "36" to read as follows:

**§ 674.2 Definitions.**

* * * * *

(b) * * *

*Full-time graduate or professional student.* An enrolled graduate or professional student who is carrying a full-time academic workload at an institution of higher education as determined by that institution according to its own standards and practices.

* * * * *

4. Section 674.8 is amended by revising paragraphs (a) introductory text and (a)(3) to read as follows:

**§ 674.8 Program participation agreement.**

* * * * *

(a) The institution shall establish and maintain a Fund and shall deposit into the Fund—

* * * * *

(3) Payments of principal, interest, late charges, penalty charges, and collection costs on loans from the Fund;

* * * * *

**§ 674.18 [Amended]**

5. In § 674.18, paragraph (b)(4) is amended by adding "Pell Grant," before "CWS".

6. Section 674.19 is amended by revising paragraph (e)(2)(i) to read as follows:

**§ 674.19 Fiscal procedures and records.**

* * * * *

(e) * * *

(2) * * *

(i) An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal, interest, collection costs, and either penalty or late charges.

* * * * *

7. Section 674.31 is amended by revising paragraphs (b)(2)(i)(B), (b)(3) and (b)(5)(iii)(A) to read as follows:

**§ 674.31 Promissory note.**

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) For Direct Loans made before October 1, 1980 and Perkins Loans, begins 9 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

* * * * *

(3) *Cancellation.* The promissory note must state that the unpaid principal, interest, collection costs, and either penalty or late charges on the loan are canceled upon the death or permanent and total disability of the borrower.

* * * * *

(5) * * *

(iii) * * *

(A) Add either the penalty or late charge to the principal the day after the scheduled repayment was due; or

* * * * *

8. Section 674.32 is amended by revising paragraph (a)(2)(ii) and the authority citation to read as follows:

**§ 674.32 Special terms: loans to less than half-time student borrowers.**

(a) * * *

(2) * * *

(ii) The end of a nine-month period that includes the date the loan was made and began on the date the borrower ceased to be enrolled as at least a half-time regular student at an institution of higher education or comparable institution outside the U.S. approved for this purpose by the Secretary.

* * * * *

(Authority: 20 U.S.C. 1087dd)

9. Section 674.33 is amended by revising paragraphs (a)(1) and (a)(3)(iii) to read as follows:

**§ 674.33 Repayment.**

(a) * * *

(1) The institution shall establish a repayment plan before the student ceases to be at least a half-time regular student.

* * * * *

(3) * * *

(iii) Accrued interest.

* * * * *

10. Section 674.34 is amended by revising paragraphs (b)(1), (c)(3), (c)(4), (c)(5), (d)(3) introductory text, (d)(4) introductory text, (d)(4)(iii), and (e)(2) to read as follows:

**§ 674.34 Deferment of repayment—Perkins loans.**

* * * * *

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at—

* * * * *

(c) * * *

(3) A Peace Corps volunteer (see § 674.57);

(4) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see § 674.57);

(5) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

* * * * *

(d) * * *

(3) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(A) of this section, the borrower must provide the institution with the following certifications:

* * * * *

(4) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(B) of this section, the borrower must provide the institution with a statement from an authorized official of the internship program certifying that—

* * * * *

(iii) The internship or residency program in which the borrower has been accepted leads to a degree or certificate awarded by an institution of higher education, a hospital or a health-care facility that offers postgraduate training.

* * * * *

(e) * * *

(2) That begins not later than six months after a period in which the borrower was at least a half-time regular student at an eligible institution.

* * * * *

11. Section 674.35 is amended by revising paragraphs (b)(1), (c) introductory text, (c)(3), (c)(4), and (g) to read as follows:

**§ 674.35 Deferment of repayment—Direct loans made on or after October 1, 1980.**

* * * * *

(b) (1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at—

* * * * *

(c) The borrower need not repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is—

* * * * *

(3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

* * * * *

(g) No repayment of principal or interest begins until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), and (d) of this section.

* * * * *

12. Section 674.36 is amended by revising paragraphs (b)(1), (c)(3), and (d) to read as follows:

**§ 674.36 Deferment of repayment—Direct loans made before October 1, 1980 and Defense loans.**

* * * * *

(b) (1) A borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period

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on a loan, when the borrower is at least a half-time regular student at—

* * * * *

(c) * * *

(3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

* * * * *

(d) The institution shall exclude the deferment periods described in paragraphs (b) and (c) of this section when determining the 10-year repayment period.

* * * * *

13. Section 674.38 is amended by revising paragraph (a)(1) to read as follows:

**§ 674.38 Postponement of loan repayments in anticipation of cancellation.**

(a) * * *

(1) Notifies the institution in writing that he or she is teaching or engaged in other services that qualify for loan cancellation under §§ 674.53, 674.54, 674.55, 674.56, 674.57 or § 674.58.

* * * * *

14. Section 674.42 is amended by adding a new paragraph (a)(2)(x) and revising paragraph (b)(1)(i) to read as follows:

**§ 674.42 Contact with the borrower.**

(a) * * *

(2) * * *

(x) General information with respect to the average indebtedness of students who have loans at that institution under Part E of the Higher Education Act of 1965, as amended.

* * * * *

(b) *Contact with the borrower during the initial and post-deferment grace periods.* (1)(i) For loans with a nine-month initial grace period (Direct loans made before October 1, 1980 and Perkins loans), the institution shall contact the borrower three times within the initial grace period.

* * * * *

15. Section 674.43 is amended by revising paragraphs (a) introductory text, and (b)(3) introductory text to read as follows:

**§ 674.43 Billing procedures.**

(a) The term "billing procedures," as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers when payments are overdue, and to demand payment of overdue amounts. An institution shall use billing procedures that include at least the following steps:

* * * * *

(b) * * *

(3) The institution shall determine the amount of the late charge imposed for loans described in paragraph (b)(2) of this section based on either—

* * * * *

16. Section 674.45 is amended by revising paragraphs (c)(1) introductory text, (c)(1)(i) and (ii)(B), and adding a new paragraph (c)(1)(iii) to read as follows:

**§ 674.45 Collection procedures.**

* * * * *

(c)(1) If the institution, or the firm it engages, pursues collection activity for up to 12 months and does not succeed in converting the account to regular repayment status, or the borrower does not qualify for deferment, postponement, or cancellation on the loan, the institution shall—

(i) Litigate in accordance with the procedures in § 674.46;

(ii) * * *

(A) * * *

(B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firm; or

(iii) Submit the account for assignment to the Secretary in accordance with the procedures set forth in § 674.50.

* * * * *

17. Section 674.47 is amended by revising paragraph (a)(2) to read as follows:

**§ 674.47 Costs chargeable to the Fund.**

(a) * * *

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the penalty or late charges, the institution may charge the Fund for only that unpaid portion of the cost of telephone calls to the borrower made pursuant to § 674.43 to demand payment of overdue amounts on the loan.

* * * * *

18. Section 674.49 is amended by revising paragraphs (c) (1), (2) and (3), (e)(4)(i), (f) introductory text, (f)(2), (f)(2)(ii)(A) and (f)(3), (h)(1) (i) and (ii) to read as follows:

**§ 674.49 Bankruptcy of borrower.**

* * * * *

(c) * * *

(1) The institution shall follow the procedures in this paragraph if it is properly served with a complaint in a proceeding under chapter 7, 11, 12, or 13 of the Bankruptcy Code, or under 11 U.S.C. 1328(b), for a determination of dischargeability under 11 U.S.C. 523(a)(8)(B) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents.

(2) If more than seven years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief in bankruptcy, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) If less than seven years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief, the institution shall determine, on the basis of reasonably available information, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents.

* * * * *

(e) * * *

(4)(i) The institution shall monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a "hardship discharge" under 11 U.S.C. 1328(b), and the institution holds a loan that entered repayment status more than seven years, excluding periods of deferment, before the borrower filed the petition for relief in bankruptcy, the institution shall determine from its own records and information derived from documents filed with the court—

* * * * *

(f) *Resumption of collection from the borrower.* The institution shall resume billing and collection action prescribed in this subpart after—

* * * * *

(2) The borrower has received a discharge under 11 U.S.C. 727, 11 U.S.C. 1141, or 11 U.S.C. 1228, unless—

* * * * *

(ii)(A) The loan entered the repayment period more than seven years, excluding periods of deferment, before the filing of the petition, and

* * * * *

(3) The borrower has received a discharge under 11 U.S.C. 1328(a) or 1328(b), unless—

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii)(A) The loan entered the repayment period more than seven years, excluding



periods of deferment, before the filing of the petition, and

(B) The borrower's plan approved in the bankruptcy proceeding made some provision with regard to either the loan obligation or unsecured debts in general.

* * * * *

(h) * * *

(1) * * *

(i) A general order of discharge on a borrower owing a student loan obligation which entered the repayment period more than seven years, exclusive of periods of deferment, from the date on which a petition for relief under Chapter 7, 11 or 12 of the Bankruptcy Code was filed; or

(ii) A judgment that repayment of the debt would constitute an undue hardship, and that the debt is therefore dischargeable.

* * * * *

**§ 674.50 [Amended]**

19. In § 674.50, paragraph (c)(6) is amended by changing the word "deferred" to read "deferment".

20. In § 674.52, paragraph (d) is revised to read as follows:

**§ 674.52 Cancellation procedures.**

* * * * *

(d) The Secretary considers a borrower's loan deferment under §§ 674.34, 674.35 and 674.36 to run concurrently with any period for which a cancellation for military, Peace Corps, or ACTION program service is granted.

* * * * *

**§ 674.57 [Amended]**

21. In § 674.57, paragraph (a)(2) is amended by adding after "1973" the words "(ACTION programs)".

22. Appendix A to part 674 is revised to read as follows:

**Appendix A to Part 674—Promissory Note—Perkins Loan**

*Perkins Loan Program: Perkins Loan*

[Any bracketed clause or paragraph may be included at option of institution.]

I, _____, promise to pay to _____ (hereinafter called the Institution), located at _____, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

*I. General*

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures For Receiving Deferment or Cancellation.* I understand that to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XII, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

*II. Interest*

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

*III. Repayment*

(1) I promise to repay the principal and the interest that accrues on it to the Institution over a period beginning nine (9) months after the date I cease to be at least a half-time regular student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending ten (10) years later, unless that period is [shortened under paragraph III(5), or] extended under paragraphs III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3) (A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly, or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional ten (10) years and may adjust any repayment schedule to reflect my income.

[(5) (A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5) (A) includes the amounts I owe on all my outstanding Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one (1) year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled payments. However, interest shall continue to accrue.

*IV. Prepayment*

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

*V. Default*

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges, and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, XI, or XII of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

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(4) I understand that if I default on my loan, I then will lose my right to defer repayments.

(5) I understand that if the Institution accelerates the loan under paragraph V(1), I then will lose my right to receive a cancellation of a portion of my loan for any teaching, Head Start, military, volunteer, law enforcement, or corrections service described in Articles VII, VIII, IX, X, and XI performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements that are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

*VI. Deferment*

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service.

(ii) In service as a volunteer under the Peace Corps Act.

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs), or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled.

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship that is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health-care facility that offers postgraduate training.

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate that does not exceed $1 more than the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(E) For a period not in excess of six (6) months—

(i) That follows by six (6) months or less a period during which I was enrolled as at least a half-time regular student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed.

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

*VII. Cancellation for Teaching*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school in the school district of a local educational agency that is eligible in such year of service for funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard-of-hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services); in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

*VIII. Head Start Cancellation*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period that is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

*IX. Military Cancellation*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

*X. Volunteer Service Cancellation*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) This loan will be canceled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second twelve (12) month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the third and fourth twelve (12) month periods of volunteer service completed.

*XI. Law Enforcement or Corrections Officer Cancellation*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform qualifying service after the period for which I received the loan—



(A) As a full-time law enforcement officer for an eligible local, State, or Federal law enforcement agency; or

(B) As a full-time corrections officer for an eligible local, State, or Federal corrections agency.

(2) A portion of this loan will be canceled for each completed year of law enforcement or corrections service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year for each of the first and second complete years of that service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete years of that service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during the year for the fifth complete year of that service.

*XII. Death and Disability Cancellation*

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become permanently and totally disabled after I receive this loan, the Institution will cancel the total amount of this loan.

*XIII. Change in Name, Address, Telephone Number, or Social Security Number*

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

*XIV. Late Charge*

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, XI, and XII of this agreement.

(2) No charge may exceed 20 percent of my monthly, bimonthly, or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

*XV. Assignment*

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

*XVI. Prior Loans*

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

PERKINS LOANS AT OTHER INSTITUTIONS

| | Amount | Date | Institution |
|---|---|---|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |

*XVII. Schedule of Advances*

The following amounts were advanced to me under this loan agreement on the dates indicated:

| | Amount | Date | Signature of borrower |
|---|---|---|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. I UNDERSTAND AND AGREE TO ALL OF THE FOREGOING TERMS AND CONDITIONS.

[This note is signed as a sealed instrument.]

Signature _____ [(seal)]

Date _____ 19__

Permanent Address (Street or Box Number, City, State, and Zip Code)

_____

Social Security Number (borrower must provide)

_____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore be legally binding, the Institution shall require a cosigner to this note.

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner

_____

[(seal)]

Date _____ 19__

Permanent Address (Street or Box Number, City, State, and Zip Code)

_____

Social Security Number (cosigner must provide)

_____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C.1087dd)

23. Appendix B to part 674 is revised to read as follows:

**Appendix B to Part 674—Promissory Note—Direct Loan**

*Perkins Loan Program: Direct Loan*

[Any bracketed clause or paragraph may be included at option of institution.]

I, _____, promise to pay to _____ (hereinafter called the Institution), located at _____, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

*I. General*

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

*II. Interest*

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

*III. Repayment*

(1) I promise to repay the principal and the interest that accrues on it to the Institution over a period beginning six (6) months after the date I cease to be at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending ten (10) years later, unless that period is [shortened under paragraph III(5), or] extended under paragraph III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly, or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional ten (10) years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense, and Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one (1) year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

*IV. Prepayment*

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

*V. Default*

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges, and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I then will lose my right to defer repayments.

(5) I understand that if the Institution accelerates the loan under paragraph V(1), I then will lose my right to receive a cancellation of a portion of my loan for any teaching, Head Start, military, law enforcement, or corrections service described in Articles VII, VIII, IX and X, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements that are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

*VI. Deferment*

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or as an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs), or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled.

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship that is required in order that I may receive professional recognition required to begin my professional practice or service.

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

*VII. Cancellation for Teaching*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school in the school district of a local educational agency that is eligible in such year of service for funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard-of-hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent for the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

*VIII. Head Start Cancellation*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period that is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

*IX. Military Cancellation*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

*X. Law Enforcement or Corrections Officer Cancellation*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform qualifying service after the period for which I received the loan—

(A) As a full-time law enforcement officer for an eligible local, State; or Federal law enforcement agency; or

(B) As a full-time corrections officer for an eligible local, State, or Federal corrections agency.

(2) A portion of this loan will be canceled for each completed year of law enforcement or corrections service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year for each of the first and second complete years of that service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete years of that service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during the year for the fifth complete year of that service.

*XI. Death and Disability Cancellation*

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become permanently and totally disabled after I receive this loan, the Institution will cancel the total amount of this loan.

*XII. Change in Name, Address, Telephone Number, or Social Security Number*

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

*XIII. Late Charge*

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed 20 percent of my monthly, bimonthly, or quarterly payment.

(3) (A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

*XIV. Assignment*

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another Institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

*XV. Prior Loans*

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None".)

PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

| | Amount | Date | Institution |
|---|---|---|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |

*XVI. Schedule of Advances*

The following amounts were advanced to me under this loan agreement on the dates indicated:

| | Amount | Date | Signature of Borrower |
|---|---|---|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |

Notice to Borrower: Do not sign this note before you read it. I understand and agree to all the foregoing terms and conditions.

[This note is signed as a sealed instrument.]

Signature _____[(seal)]

Date _____, 19__

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (borrower must provide) _____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note.

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner _____[(seal)]

Date _____, 19__

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (cosigner must provide) _____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C.1087dd.)

24. Appendix C to part 674 is revised to read as follows:

## Appendix C to Part 674—Promissory Note—Perkins Loan—Less Than Half-Time Student Borrower

*Perkins Loan Program: Perkins Loan*

[Any bracketed clause or paragraphs may be included at option of institution.]

I, _____, promise to pay to _____ (hereinafter called the Institution), located at _____ the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

*I. General*

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund

created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XII, I am responsible for submitting appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

*II. Interest*

Interest shall accrue from the beginning of the repayment period and shall be at the Annual percentage rate of five percent (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

*III. Repayment*

(1)(A) I promise to repay the principal and the interest that accrues on it to the Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding Perkins Loan I have received; or

(ii) If I have no other outstanding Perkins Loans, either nine (9) months from the date this loan is made, or if the loan was made less than nine (9) months after I ceased enrollment as at least a half-time regular student, at the end of that nine (9) month period.

(B) I understand that this repayment period shall end ten (10) years later, unless it is extended under paragraphs III(4), 111(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly, or quarterly installments as determined by the Institution. I understand that if my monthly payment for all loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the United States Secretary of Education (hereinafter called the Secretary).

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional ten (10) years and may adjust any repayment schedule to reflect my income.

(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Perkins Loans, including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one (1) year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

*IV. Prepayment*

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.

*V. Default*

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges, and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, XI, or XII of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I then will lose my right to defer repayments.

(5) I understand that if the Institution accelerates the loan under paragraph V(1), I then will lose my right to receive a cancellation of a portion of my loan for any teaching, Head Start, military, volunteer, law enforcement, or corrections service described in Articles VII, VIII, IX, X, and XI, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements that are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

*VI. Deferment*

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs), or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled.

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship that is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health-care facility that offers postgraduate training.

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate that does not exceed $1 more than the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(E) For a period not in excess of six (6) months—

(i) That follows by six (6) months or less a period during which I was enrolled as at least a half-time regular student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed.

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayment if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

*VII. Cancellation for Teaching*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school in the school district of a local educational agency that is eligible in such year of service for funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard-of-hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

*VIII. Head Start Cancellation*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period that is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or the equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

*IX. Military Cancellation*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

*X. Volunteer Service Cancellation*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a volunteer under the Peace Corps Act, or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) This loan will be canceled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second twelve (12) month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the third and fourth twelve (12) month periods of volunteer service completed.

*XI. Law Enforcement or Corrections Officer Cancellation*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform qualifying service after the period for which I received the loan—

(A) As a full-time law enforcement officer for an eligible local, State, or Federal law enforcement agency; or

(B) As a full-time corrections officer for an eligible local, State, or Federal corrections agency.

(2) A portion of this loan will be canceled for each completed year of law enforcement or corrections service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year for each of the first and second complete years of that service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete years of that service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during the year for the fifth complete year of that service.

*XII. Death and Disability Cancellation*

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become permanently and totally disabled after I receive this loan, the Institution will cancel the total amount of this loan.

*XIII. Change in Name, Address, Telephone Number, or Social Security Number*

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

*XIV. Late Charge*

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, XI, and XII of this agreement.

(2) No charge may exceed 20 percent of my monthly, bimonthly, or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

*XV. Assignment*

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

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(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

*XVI. Prior Loans*

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

PERKINS LOANS AT OTHER INSTITUTIONS

| | Amount | Date | Institution |
|---|---|---|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |

*XVII. Schedule of Advances*

The following amounts were advanced to me under this loan agreement on the dates indicated:

| | Amount | Date | Signature of borrower |
|---|---|---|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |

Notice to Borrower: Do not sign this note before you read it. I understand and agree to all of the foregoing terms and conditions.

[This note is signed as a sealed instrument.]

Signature _____ [(seal)]

Date _____, 19____

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (borrower must provide) _____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore be legally binding, the Institution shall require a cosigner to this note.

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner _____ [(seal)]

Date _____, 19____

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (cosigner must provide) _____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C. 1087dd)

25. Appendix D to part 674 is revised to read as follows:

**Appendix D to Part 674—Promissory Note—Direct Loan—Less Than Half-Time Student Borrower**

*Perkins Loan Program: Direct Loan*

[Any bracketed clause or paragraph may be included at option of institution.]

I, _____, promise to pay to _____ (hereinafter called the Institution), located at _____, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

*I. General*

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

*II. Interest*

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

*III. Repayment*

(1)(A) I promise to repay the principal and the interest that accrues on it to the Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding loan made under the Perkins Loan Program I have received; or,

(ii) If I have no other outstanding loans made under the Perkins Loan Program, either nine (9) months from the date this loan is made, or, if the loan was made less than nine (9) months after I ceased enrollment as at least a half-time regular student, at the end of that nine (9) month period.

(B) I understand that this repayment period shall end ten (10) years later, unless it is extended under paragraphs III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly, or quarterly installments, as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon written request, repayment may be made in graduated installments in accordance with a schedule approved by the United States Secretary of Education (hereinafter called the Secretary).

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional ten (10) years and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one (1) year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment, prevent me from making the scheduled repayments. However, interest shall continue to accrue.

*IV. Prepayment*

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made and the initial grace period has not ended will be used to reduce the amount of the loan and will not be considered a prepayment.

(3) If I repay amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be considered a prepayment.

(4) If, in an academic year other than the award year in which the loan was made, I repay more than the amount due for an installment, the excess will be used to repay principal unless I designate it as an advance payment of the next regular installment.



*V. Default*

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges, and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I then will lose my right to defer repayments.

(5) I understand that if the Institution accelerates the loan under paragraph V(1), I then will lose my right to receive a cancellation of a portion of my loan for any teaching, Head Start, military, law enforcement, or corrections service described in Articles VII, VIII, IX, and X, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements that are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

*VI. Deferment*

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time regular student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or as an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs), or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled.

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship that is required in order that I may receive professional recognition required to begin my professional practice or service.

(D) During a six (6) month period following the expiration of my deferment in paragraphs VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

*VII. Cancellation for Teaching*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school in the school district of a local educational agency that is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard-of-hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have special learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

*VIII. Head Start Cancellation*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period that is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

*IX. Military Cancellation*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance for each complete year of such service.

*X. Law Enforcement or Corrections Officer Cancellation*

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform qualifying service after the period for which I received the loan—

(A) As a full-time law enforcement officer for an eligible local, State, or Federal law enforcement agency; or

(B) As a full-time corrections officer for an eligible local, State, or Federal corrections agency.

(2) A portion of this loan will be canceled for each completed year of law enforcement or corrections service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year for each of the first and second complete years of that service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete years of that service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during the fifth complete year of that service.

*XI. Death and Disability Cancellation*

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become permanently and totally disabled after I receive this loan, the Institution will cancel the total amount of this loan.

*XII. Change In Name, Address, Telephone Number, or Social Security Number*

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

*XIII. Late Charge*

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed 20 percent of my monthly, bimonthly, or quarterly payment.

(3) (A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

*XIV. Assignment*

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

*XV. Prior Loans*

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

| | Amount | Date | Institution |
|---|---|---|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |

*XVI. Schedule of Advances*

The following amounts were advanced to me under this loan agreement on the dates indicated:

| | Amount | Date | Signature of borrower |
|---|---|---|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU HAVE READ IT.

I UNDERSTAND AND AGREE TO ALL OF THE FOREGOING TERMS AND CONDITIONS.

[This note is signed as a sealed instrument.]

Signature _____ [(seal)]

Date _____, 19____

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (borrower must provide) _____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note.

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner

_____ [(seal)]

Date _____, 19____

Permanent Address (Street or Box Number, City, State, and ZIP Code)

Social Security Number (cosigner must provide) _____

The Institution shall provide a copy of this note to you and any cosigner and you should retain the copy for your records.

(Authority: 20 U.S.C. 1087dd)

## PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

1. The authority citation for part 675 is revised to read as follows:

**Authority:** 42 U.S.C. 2751–2756a, unless otherwise noted.

2. In § 675.2, paragraph (b) is amended by adding the definition of *Full-time graduate or professional student* after the definition of *Financial need;* by revising the title of *Full-time student* to read *Full-time undergraduate student;* and by adding in the first sentence of the definition of *Full-time undergraduate student* the word "undergraduate" after the word "enrolled" and before the word "student" to read as follows:

**§ 675.2 Definitions.**

* * * * *

(b) * * *

*Full-time graduate or professional student.* An enrolled graduate or professional student who is carrying a full-time academic workload at an institution of higher education as determined by the institution according to its own standards and practices.

* * * * *

**§ 675.16 [Amended]**

3. In § 675.16, paragraph (b)(1) is amended by removing the word "or" and adding, in its place, the word "of" before the word "his", and paragraph (b)(3) is amended by removing the word "or" and adding, in its place, the word "of" before the word "prepaid".

**§ 675.18 [Amended]**

4. In § 675.18, paragraph (a)(4) is amended by removing the word "allocation" and adding, in its place, the word "program" after "SEOG".

**§ 675.22 [Amended]**

5. In § 675.22, paragraph (b)(6) is amended by removing the word "dlobbying" and adding, in its place, the word "lobbying".

**§ 675.23 [Amended]**

6. In § 675.23, paragraph (b)(2)(ii) is amended by removing the word "by" and adding, in its place, the word "be" after the word "otherwise".

7. Section 675.26 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(ii) and (a)(2) to read as follows:

**§ 675.26 CWS Federal share limitations.**

(a)(1) Unless the Secretary approves a higher share under paragraph (d) of this section, the Federal share of CWS compensation paid to a student who is employed other than by a for-profit organization as described in § 675.23 may not exceed—

* * * * *

(ii) 90 percent under a community service learning program described in § 675.28, with respect to the amount paid to students under the community service learning program from up to 10 percent of the institution's cumulative CWS allocation and reallocation for an award year. The Federal share of CWS compensation paid to students under a community service learning program from the excess over 10 percent of the institution's CWS allocation and reallocation for an award year may not exceed the limitations specified in § 675.26(a)(1)(i).

(2) The Federal share of the compensation paid to a student employed by a for-profit organization may not exceed 60 percent for award

years 1987–88 and 1988–89, 55 percent for award year 1989–90, and 50 percent for award year 1990–91 and subsequent award years.

* * * * *

8. Section 675.28 is amended by revising paragraphs (a), (b)(2) and (c)(2)(ii) to read as follows:

**§ 675.28 Community service learning program.**

(a) From its allocation under the CWS program, an institution may employ its students in a community service learning program designed to develop, improve, or expand services for low-income individuals and families, or to solve particular problems related to the needs of low-income individuals.

(b) * * *

(2) Provides students with work-learning opportunities, to the maximum extent practicable, that relate to their educational or vocational programs or goals.

(c) * * *

(2) * * *

(ii) May include activities related to such fields as health care, education (including tutorial services), child care, literacy training, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, and community improvement.

* * * * *

9. Section 675.34 is amended by revising paragraph (a)(2) to read as follows:

**§ 675.34 Multi-institutional job location and development programs, or arrangements with nonprofit organizations.**

(a) * * *

(2) A nonprofit organization for a community services job location and development program only. The nonprofit organization must have professional direction and staff.

* * * * *

## PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

1. The authority citation for part 676 continues to read as follows:

**Authority:** 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

**§ 676.2 [Amended]**

2. In § 676.2, paragraph (b) is amended by revising the title of *Full-time student* to read *Full-time undergraduate student;* and by adding in the first sentence the word "undergraduate" after the word "enrolled" and before the word "student".

**§ 676.3 [Amended]**

3. In § 676.3, paragraph (b) is amended by removing the word "of" and adding, in its place, the word "or" after the word "allocation".

**§ 676.16 [Amended]**

4. In § 676.16, paragraph (f) is amended by removing the words "and NDSL" after "SEOG".

**§ 676.18 [Amended]**

5. In § 676.18, paragraph (a)(3) is amended by removing the word "allocation" and adding, in its place, the word "program" after "CWS".

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Part V

# Department of Transportation

## Research and Special Programs Administration

**Public Notice and Invitation to Comment**

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PDA-5(R)]

## Application by Chemical Waste Transportation Institute for Preemption Determination As To Uniform Hazardous Waste Manifest Promulgated by the Illinois Environmental Protection Agency

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Public notice and invitation to comment.

**SUMMARY:** The Chemical Waste Transportation Institute (CWTI) has applied for an administrative determination whether the Uniform Hazardous Waste Manifest promulgated by the Illinois Environmental Protection Agency (IEPA) is preempted by the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations issued under the HMTA.

**DATES:** Comments received on or before September 4, 1992, and rebuttal comments received on or before October 19, 1992, will be considered before an administrative determination is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

**ADDRESSES:** The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. 202–366–4453). Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA–5(R)). Three copies of each should be submitted. In addition, a copy of each comment and each rebuttal comment must also be sent to (a) Mr. Kevin Connors, Chairman, Chemical Waste Transportation Institute, 1730 Rhode Island Avenue, NW., suite 1000, Washington, DC 20036, and (b) Mr. William C. Child, Director, Division of Land Pollution Control, Illinois Environmental Protection Agency, P.O. Box 19276, Springfield, Illinois 62796–9276. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Connors and Child at the addresses specified in the **Federal Register**.")

**FOR FURTHER INFORMATION CONTACT:** Kathleen S. Molinar, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

### I. Background

The Hazardous Materials Transportation Act (HMTA) was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It replaced a patchwork of state and local laws. "[U]niformity was the linchpin in the design of" the HMTA. *Colorado Public Utilities Comm.* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). Unless otherwise authorized by Federal law or unless a waiver of preemption is granted by DOT, the HMTA (49 App. U.S.C. 1811(a)) explicitly preempts "any requirement of a State or political subdivision thereof or Indian tribe" if:

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of any regulation issued under [the HMTA] is not possible.

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA], or

(3) It is preempted under section 105(a)(4) [49 App. U.S.C. § 1804(a)(4), describing five "covered subject" areas] or section 105(b) [49 App. U.S.C. § 1804(b), dealing with highway routing requirements].

With two exceptions, section 1804(a)(4) preempts "any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe" which concerns a "covered subject" and "is not substantively the same" as a provision in the HMTA or regulations under the HMTA. The two exceptions are State and Indian tribe hazardous materials highway routing requirements governed by 49 App. U.S.C. 1804(b) and requirements "otherwise authorized by Federal law." The "covered subjects" defined in section 1804(a)(4) are:

(i) The designation, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect * * *" 49 CFR 107.202(d).

The HMTA provides that any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted by the HMTA. Notice of the application must be published in the **Federal Register**, and the applicant is precluded from seeking judicial relief on the "same or substantially the same issue" of preemption for 180 days after the application is filed, or until the Secretary takes final action on the application, whichever occurs first. 49 App. U.S.C. 1811(c)(1). A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final. 49 App. U.S.C. 1811(e).

The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which were delegated to the Federal Highway Administration. 49 CFR 1.53(b). RSPA's regulations concerning preemption determinations are set forth at 49 CFR 107.201–107.211 (including amendments of February 28, 1991 (56 FR 8616), April 17, 1991 (56 FR 15510), and May 13, 1992 (57 FR 20424)). Under these regulations, RSPA's Associate Administrator for Hazardous Materials Safety issues preemption determinations. "Any person aggrieved" by RSPA's decision on an application for a preemption determination may file a petition for reconsideration within 20 days of service of that decision. 49 CFR 107.211(a).

The decision by RSPA's Associate Administrator for Hazardous Materials Safety becomes RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time; the filing of a petition for reconsideration is not a prerequisite to seeking judicial review under 49 U.S.C. 1811(e). If a petition for reconsideration is filed, the action by RSPA's Associate

Administrator for Hazardous Materials Safety on the petition for reconsideration is RSPA's final agency action. 49 CFR 107.211(d).

In making decisions on applications for waiver of preemption, RSPA is guided by the principles and policies set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA contains express preemption provisions, which RSPA has implemented through its regulations.

## II. CWTI'S Application for a Preemption Determination

With its June 12, 1992 letter, CWTI applied for a determination that IEPA's Uniform Hazardous Waste Manifest is preempted by the HMTA. The text of CWTI's application is reproduced as appendix A to this notice. (The appendices to CWTI's application are available for examination at, and copies may be obtained at no cost from, RSPA's Dockets Unit, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone 202–366–4453.)

## III. Comments

All comments should be limited to the issue of whether the IEPA Uniform Hazardous Waste Manifest is preempted by the HMTA. Comments should specifically address the "substantively the same," "dual compliance," and "obstacle" tests described in I, above. Comments should also address the issue of whether the IEPA Uniform Hazardous Waste Manifest is "otherwise authorized by Federal law."

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201 through 107.211.

Issued in Washington, DC on July 15, 1992.

**Robert A. McGuire,**

*Acting Associate Administrator for Hazardous Materials Safety.*

## Appendix A—Before the United States Department of Transportation Office of Hazardous Materials Safety

**Application of the Chemical Waste Transportation Institute To Initiate a Proceeding To Determine That the Uniform Hazardous Waste Manifest Promulgated by the Illinois Environmental Protection Agency is Preempted by the Hazardous Materials Transportation Act**

June 12, 1992.

*Application of the Chemical Waste Transportation Institute To Initiate a Proceeding To Determine That the Uniform Hazardous Waste Manifest Promulgated by the Illinois Environmental Protection Agency is Preempted by the Hazardous Materials Transportation Act*

### Interest of the Petitioner

The Chemical Waste Transportation Institute (CWTI) is part of the National Solid Wastes Management Association (NSWMA), a not-for-profit association that represents approximately 2,000 waste services companies throughout the United States and Canada. Members of the Institute are commercial firms specializing in the transportation of hazardous waste, by truck and rail, from its point of generation to its management destination. Our members are both private and for hire carriers that operate in interstate and intrastate commerce, including points to and from Illinois. To the extent that member companies operate in Illinois and are subject to the terms of the IEPA manifest form attached as opposed to the Uniform Manifest (EPA Form 8700–22) and the Continuation Sheet (EPA Form 8700–22A), these members are forced to choose between conformance with the requirements of the IEPA or the Department of Transportation (DOT) and the Environmental Protection Agency (EPA).

### Background

The NSWMA on behalf of the CWTI originally petitioned for a ruling of inconsistency on April 12, 1990 and, in light of substantial enhancement to RSPA's preemption authority occasioned by the enactment of Public Law 101–615, resubmitted our petition on May 16, 1991.[1] At that time, we were advised that the matters at issue in the petition were subject to the preemption provisions of Public Law 101–615, section 4 which compel RSPA to issue binding determinations of preemption unless the challenged state requirement is "substantively the same as" and federal requirement. With the May 13, 1992 publication of the final rule defining "substantively the same as" standard, RSPA is in a position to fully evaluate the merits of this petition.

### Basis for the Application

Since the CWTI refiled its application on May 16, 1991, IEPA has voluntarily addressed one of the concerns raised in the April 12th petition.[2] Nevertheless, the IEPA revision still falls short of the federal standards established pursuant to a joint DOT/EPA rulemaking [3] that are set forth at 40 CFR part 262, Appendix and referenced at 49 CFR 172.205. The remaining inconsistencies pertain to (1) a limitation on the allowable abbreviations to record volumetric and weight units of measure and (2) the IEPA abandonment of Continuation Sheets. Each of these deviations is in conflict with the preemptive standard set forth at 49 CFR 171.3(c) and, to the extent that the Uniform Manifest is used as a shipping paper [4] the "substantively the same as" preemptive standard. As such, these inconsistent aspects of the form are a violation of the Hazardous Materials Transportation Act, as amended (HMTA) and the hazardous materials regulations (HMRs).

### Authority for a Determination of Preemption

Heretofore, the CWTI petition before RSPA for a ruling of inconsistency in the matter styled IRA–51 was based on the fact that the IEPA manifest cannot satisfy the "dual compliance" and "obstacle" tests which are set forth in section 112(a) of the HMTA. With the finalization of docket HM–207A, defining the "substantively the same as" preemptive standard, CWTI has yet another definitive and compelling test on which to base its claim that the IEPA manifest is expressly preempted by section 105(a)(4)(A).

- The IEPA Manifest Cannot Satisfy the "Dual Compliance" and "Obstacle" Tests Set Forth in Section 112(a) of the HMTA

Congress revised section 112(a) of the HMTA by including the "dual

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[1] See docket IRA–51.

[2] See attached letter to Alan I. Roberts, Associate Administrator for Hazardous Materials Safety, RSPA, US DOT, from William C. Child, Manager, Division of Land Pollution Control, IEPA, dated December 17, 1991.

[3] See 49 FR 10490 (March 20, 1984).

[4] See 49 CFR 172.205(h). The Uniform Manifest may be used as a shipping paper. Inasmuch as the Uniform Manifest contains all of the information required to be present on a shipping paper and the Manifest must be carried with each hazardous waste shipment in the "same manner as required for shipping papers," virtually all hazardous waste shippers (generators) satisfy DOT shipping paper requirements through the Manifest. The only notable exception is hazardous waste transport by rail. Rail carriers are allowed to substitute waybills for the Uniform Manifest when transporting hazardous waste to a designated facility or to other non-rail and intermediate rail carriers provided certain conditions are met. These provisions were made so not to disrupt the normal intermodal/interlining operating practices of railroads. See 49 CFR 172.205(f) and 40 CFR 263.20(f).

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compliance" and "obstacle" standards, previously used as regulatory standards for determining preemption, as explicit statutory grounds for a finding of preemption. As the RSPA noted in its preamble implementing the revised section 112(a) authorities, the original HMTA "did not define 'inconsistent' or provide any standards for determining what requirements were 'inconsistent.'" [6] Accordingly, the Department set forth by regulation two criteria for determining "whether a non-federal requirement was inconsistent with the HMTA or the regulations * * *" [7] The "dual compliance and obstacle" criteria were, of course, "originally established by Supreme Court decisions determining whether a conflict exists between a State and Federal statute in areas where Congress has not completely foreclosed State regulation." [7] In the 1990 amendments, Congress merely "adopted these standards proposed by the Department. The 'two standards [adopted] are the same requirements that are currently codified in regulations relating to inconsistency rulings.' H.R. Rep. No. 441, Pt. 1, 101st Cong., 2d sess. 49 (1990). Congress stated its intention to clarify the current preemption process 'by more clearly identifying the standards against which a determination of preemption is made. Those standards are now reflected in Court decisions and they are documented in the precedents established in administrative rulings issued by the Department.' H.R. Rep. No. 444, Pt. 2 101st Cong., 2d Sess. 25 (1990)." [8]

As RSPA has emphasized, while the scope of the "conflict" and "obstacle" tests has not changed, Congress clearly provided for "an affirmative statement of preemption" [9] in cases in which the tests are not met by state or local requirements. Accordingly, while all previous inconsistency rulings issued by the RSPA were merely advisory, the same tests must now be utilized, both by the RSPA and the courts, in making legally binding preemption determinations.

That the IEPA manifest flunks both the "dual compliance" and "obstacle" tests is clear. By creating its own version of the Uniform Manifest, IEPA has refused to abide by the terms of 49 CFR 171.3(c)(3) which specifically provides that "any requirement of the state * * * is inconsistent with this subchapter if it applies * * * differently from or in addition to the requirements of this subchapter concerning * * * [the] format or contents of—hazardous waste manifests." The DOT requirements also mandate that all hazardous waste manifests be prepared pursuant to the terms of 40 CFR 262.20. That provision sets forth appropriate abbreviations for allowable units of measure; prescribes that the total quantity of waste be entered on the Uniform Manifest or Continuation Sheet, in necessary, in sections 14 or 31 respectively; specifies the use of Continuation Sheets if additional space is required for the DOT hazardous materials description and related information or if more than two transporters are required; and provides that states may not alter or request information differing from the federal standard in the numbered sections of the Uniform Manifest.

In contravention of these requirements, the IEPA form limits the allowable abbreviations for the indication of units of measure to either "G" for gallons or "Y" for cubic yards and forbids the use of decimals or fractions in describing the total quantities of waste by gallons or cubic yards that is entered in item 13 of the manifest. These requirements for designating units of measure and the total quantity of waste lead, when viewed together, to disingenuous results. For example, a transporter who hauls one drum of a solid hazardous waste (approximately 0.3 cubic yards) would be forced to indicate on the IEPA manifest a total quantity of "0", given that quantities must be rounded to the nearest whole number.[10]

The IEPA manifest also rejects the Uniform Manifest's mandate to use Continuation Sheets in certain situations. The IEPA instead instructs generators who would otherwise prepare a Continuation Sheet to complete a separate Uniform Manifest form. The Uniform Manifest requirement does not permit states to utilize a "second manifest" option in lieu of the Continuation Sheet which is intended to be attached to the Uniform Manifest form.

The IEPA manifest form cannot be reconciled with the Uniform Manifest adopted in a joint rulemaking by DOT and the EPA. The purpose of the Uniform Manifest was to eliminate the considerable confusion and unnecessary paperwork engendered by numerous, often conflicting manifest forms prepared by the states. While at present it is possible for states to require use of their own manifests in lieu of the Federal form, state-issued manifests may not require additional or different information other than what is permitted in the lettered sections of the Uniform Manifest. Not only is the IEPA manifest precisely the type on inconsistent state actions which is preempted by the HMTA and the HMRs, to the extent that it contradicts the Uniform Manifest, it stands as an obstacle to the accomplishment and execution of the purposes and objectives of the HMTA. If the IEPA manifest is permitted to stand, members of the CWTI who operate in interstate commerce will be faced with the need to comply with manifest requirements in Illinois that differ from those in other states. It was this reason—the possibility that states might enforce conflicting requirements—that prompted Congress to enact the HMTA and led to the promulgation by DOT and EPA of the Uniform Manifest. Moreover, unless the IEPA manifest is invalidated, other states may be encouraged to adopt manifest forms that differ in numerous ways from the Uniform Manifest. The mere possibility that disparate requirements could be imposed by other states mandates a finding of inconsistency.[11]

- Section 105(a)(4)(A) Expressly Preempts the IEPA Manifest Form

Public Law 101–615 section 105(a)(4) substantially strengthened federal preemption in the area of hazardous materials transportation. Among other things, the statute provides that unless a state or local requirement related to the "preparation, execution, and use of

[5] See 56 FR 8617 (February 28, 1991).
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*

[10] IEPA in prior correspondence to IRA–51 has suggests that the difficulties caused by the restriction of allowable quantity abbreviations and decimal or fraction notations could be overcome by classifying a solid as a liquid, so that in the case of the drum containing 0.3 cubic yards of material that amount of waste would be reported in gallons, and the reclassification could then be clarified by a notation in item "J" of the IEPA manifest. Another commentator to IRA–51 suggested that an amount of waste under 1.0 for any unit of measure could be "rounded up" to 1.0 to avoid a "zero" quantity result. These suggestions must be rejected because they presume to alter the information requirements set forth in the number sections of the Uniform Manifest. Clearly, acceptance of the suggestions would set a dangerous precedent for the imposition of unique and onerous manifesting requirements. For example, the designation of solids as liquids would create considerable confusion in the event of an emergency response. Likewise, "rounding up" the quantity of waste would unnecessarily impose additional costs upon hazardous waste generators and transporters. Many states levy taxes on the quantity of waste moved. Finally, inaccurate quantity information on the Uniform Manifest would hinder enforcement efforts, and discourage accuracy in federal data collection activities dependent on the Manifest such as EPA's biennial reporting and capacity assurance plans.

[11] See IR 15, 49 FR 46,860 (Nov. 27, 1984); IR 14, 49 FR 46,656 [Nov. 27, 1984); and IR 5, 47 FR 51,901 (Nov. 18, 1982).



shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents" is "substantively the same" as the federal requirements, the non-federal requirement is flatly preempted. The IEPA form and requirements at issue here are clearly not "substantively the same" as the federal Uniform Manifest.

The fact that a transporter/carrier may choose to comply with RSPA's shipping paper requirements with some form other than the Uniform Manifest does not diminish the fact that the Uniform Manifest is a shipping paper. RSPA clearly considers the Uniform Manifest a shipping paper. Not only does the Uniform Manifest contain all information required by RSPA to be included on any shipping paper document and therefore would ipso facto be a "shipping paper," [12] but RSPA's requirements for the Uniform Manifest appear in the subpart to the HMRs dealing with shipping papers and, where state or local requirements are preempted because they differ from the federal standard and are applied only to hazardous waste as opposed to other hazardous materials, DOT modifies "shipping papers" to include "hazardous waste manifests." [13]

In the past, RSPA has on several occasions found similar state information and shipping paper requirements to be per se inconsistent with the HMTA.[14] Not only would it be highly unlikely that RSPA would reverse itself on the substance of these earlier rulings, but in light of RSPA's strengthened preemptive authority in certain critical areas of the HMRs, including shipping papers, RSPA is for all intents and purposes precluded from issuing other than a determination of preemption in this matter. As RSPA noted in its May 13, 1992 final rule defining and promulgating the "substantively the same as" preemption standard, "Congress intended to preempt the entire field of hazardous materials transportation in the [shipping paper] covered subject areas. RSPA believes that in the * * * subject areas, national uniformity is critical * * *. Any additional requirements, in excess of the Federal requirements, would not be 'substantively the same,' and would be preempted." [15] Only "editorial and other similar de minimis changes are permitted." [16] We submit that the IEPA requirements are not editorial nor are they de minimis.

Rebuttable Presumptions

In the interest of expediting this proceeding, following is a summary of defenses raised by the IEPA in support of its manifest in prior correspondence with the RSPA on IRA–51 and the Institute's response. We believe each defense is flawed and should be dismissed.

First, the fact that IEPA is not the only entity that uses a manifest which varies from the federal norm does not justify the Agency's actions. In fact, other states are watching the outcome of this proceeding either to continue existing inconsistent requirements or to impose new ones. Whether the IEPA form is the most egregious of these state manifest inconsistencies is immaterial. The fact is that the IEPA has impermissibly altered the Uniform Manifest and the IEPA form in its challenged aspects should be preempted. Absent such a determination, the signal to states would be that deviation is acceptable in contravention of the goals of the HMTA and the HMRs.

Second, the IEPA actions are not excused by Public Law 94–580 section 3009 (RCRA).[17] Section 3009, as amended in 1980, is limited to state authorization for the adoption of certain more stringent technical, design or performance standards for TSDFs than those promulgated by EPA pursuant to subtitle C of RCRA. The legislative history reveals that the 1980 amendment "would permit States to establish standards more stringent than Federal standards with regard to the selection of sites for the disposal of hazardous waste materials." [18] The sponsor of the amendment went on to explain that:

The Act provides States with a framework for implementing hazardous waste treatment and disposal programs. However, it is inadequate in that it does not give States the opportunity to set standards more stringent than those provided by Federal authorities in establishing sites for disposal facilities * * * My amendment to [RCRA] corrects this deficiency by allowing states to adopt standards more stringent than the Federal standards when selecting sites for the disposal of hazardous waste materials.[19]

Accordingly, Congress did not provide that states could modify or abandon the Uniform Manifest or other transportation-related requirements and still be equivalent and consistent with the national program as required by RCRA Section 3006 which provides for federal authorization to states to administer their own hazardous waste management programs.[20] Illinois is an approved state. Indeed, EPA's own regulations implementing section 3006 make clear that "no other manifest form, shipping document or information, other than that required by federal law, may be required by the State to travel with the shipment." [21] Moreover, section 3003(b) of the RCRA mandates that the federal standard adopted by EPA by which states can judge the "consistency" and "equivalency" of their hazardous waste transportation programs for purposes of section 3006 is the HMTA and the HMRs as well as those items specifically mentioned in section 3003(a). Acceptance of IEPA's position would grant states carte blanche authority to abandon the Uniform Manifest.

Third, the CWTI has "standing" to bring this petition. Trade associations have frequently advanced the interests of their members by participating in HMTA inconsistency proceedings. Moreover, neither the HMTA nor HMRs seeks to apply the article III judicial concept of "injury in fact" as the basis for association standing. CWTI notes, however, that several decisions of the United States Supreme Court have made clear that an association has standing. Specifically, it is clear that an association has standing if one or more of its members have standing in their own right.[22] The CWTI members which operate in Illinois are, without question, affected by the manifest form at issue here.[23] No one has a truer or more

[12] See 49 CFR 172.200, 201, 202, 203, and 204.
[13] See 49 CFR 172 subpart C and 171.3(c), respectively.
[14] See for example IR 4, 47 FR 1231 (Jan. 11, 1982); and IR 19, 52 FR 24,404 (June 30, 1987).
[15] See 57 FR 20425 (May 13, 1992).
[16] *Id.*
[17] IEPA has in prior correspondence in the matter of IRA-51 justified its proscribing certain allowable units of measure because it is exercising its "more stringent than" authority. In fact, IEPA acknowledged in its original reply to the NSWMA petition (June 21, 1990) that "this explicit substitution was a continuation of Illinois' computerized manifest system that was begun in 1979." IEPA's limitation of allowable units of measure has noting to do with a desire to be more stringent than the federal, uniform requirements. It is a reflection of the fact that IEPA simply never conformed to the Uniform Manifest requirements when they were promulgated in 1984.
[18] See 125 Cong. Rec. S6824 (Daily Ed., June 4, 1979).
[19] Id. at S6825.
[20] See *Ensco Inc.* v. *Dumas*, 807 F.2d 743 (8th Cir. 1986) (Section 3009 "acknowledges only the authority of state and local government entities to make good-faith adaptations of federal policy to local conditions"; provision applies only to certain limited state requirements pertaining to land disposal or treatment facilities); *Ogden Environmental Services.* v. *City of San Diego*, 687 F. Supp. 1436 (S.D. Cal. 1988) (Citing *Ensco*).
[21] See 40 CFR 271.10.
[22] See *Hunt* v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977). Also see *Warth* v. *Seldin*, 422 U.S. 490, 511 (1975).
[23] See 49 CFR 171.2(b) which provides that "no person may transport a hazardous materials in

Continued

defined stake in the outcome of the IEPA manifest petition than CWTI members who are compelled to use the form. Under established precedent, this traceable injury provides a judicially cognizable basis for standing.[24] Neither the claim asserted nor the relief requested here would require—even in a federal court—the participation of individual members of CWTI in order to address the legality of the IEPA manifest.[25]

Fourth, IEPA's claim that competent authority at EPA approved its form is without merit. EPA is not the administering agency regarding the Uniform Manifest. Public Law 94–580 section 3003(b) provides that the transportation—and the Uniform Manifest is above all else a transportation shipping document—of hazardous waste is subject to the HMTA. EPA must issue regulations pertaining to transportation of hazardous waste that are "consistent with the requirements of" the HMTA and the HMRs, not the other way around. In fact, EPA regulations provide that states, such as Illinois, authorized to administer their own hazardous waste program "must follow the Federal manifest format and may supplement the format to a limited extent subject to the consistency requirements of the [HMTA]." [26] IEPA previously acknowledged this point. In a letter filed by the IEPA with the RSPA in the matter of IRA–51, IEPA states that "it is [IEPA's] understanding that DOT no longer requires that use of a continuation sheet." [27] (Emphasis added).

IEPA bases its claim that EPA approved its form on a 1987 letter from staff of the Waste Characterization Branch [28] that cannot be squared with the subsequent correspondence from the then Acting Assistant Administrator of the EPA in 1989 which states that "(no) other manifest form, shipping document, or information, other than that required by federal law, may be required by the State to travel with the shipment." [Citing 40 CFR 271.10] This principle is also explicitly set out in EPA's rules on state program consistency at 40 CFR 271.4. Thus, any state requirement that a hazardous waste transporter carry documentation with shipments of hazardous waste is preempted by federal law." [29] Moreover, the 1987 letter deals only with the use of Continuation Sheets, not the IEPA limitation on authorized abbreviations for weights and volumes of hazardous waste. Nor is the EPA staff assessment about the rarity of instances in which more than two transporters are used supported by fact. Based on a survey conducted by CWTI in 1990, fully 9 percent of all hazardous waste shipped off-site is moved at some point by rail. The figure rises to 17 percent when rail shipments are compared only with hazardous waste that moves in interstate commerce. In almost every instance rail shipments include a motor carrier transfer at one or both ends of the journey. We submit that 17 percent or even 9 percent of volumes shipped is not "rare."

Fifth, the unique IEPA requirements cannot be justified by the notion that they "improve the manifest system." Government at all levels is interested in the improvement of regulatory requirements. For this reason, specific provision is made to petition government for rulemakings. In the case of the Uniform Manifest, an appropriate petition would be filed with the DOT pursuant to 49 CFR 106.31 and with the EPA pursuant to 40 CFR 260.20. In the instant case, the IEPA has not chosen to pursue these legal remedies, but instead has acted unilaterally to modify the federally authorized Uniform Manifest in circumvention of specific prohibitions to the contrary.

Sixth, the IEPA has requested that RSPA withhold its determination pending the outcome of a petition filed with the EPA by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). RSPA has no such authority nor should it have the desire to allow the continued enforcement of inconsistent, conflicting non-federal requirements. While IEPA's request asks RSPA to violate its mandate, the IEPA has not taken steps to address this situation in a timely and appropriate fashion. If the IEPA believes that the EPA and RSPA are not acting with appropriate speed on the ASTSWMO petition, the Agency could have filed a petition for a waiver of preemption with the RSPA, or simply mandated that its unique information requirements be entered in a "lettered" rather than a "numbered" section of the Uniform Manifest.[30]

## Conclusion and Request for Relief

The Uniform Manifest plays a vital role in promoting the pervasive scheme of uniform regulation of hazardous materials transportation established by the HMTA and the HMRs. The Department should not hesitate to determine that these aspects of the IEPA manifest form constitute the type of inconsistent state action that is preempted by the HMTA and the HMRs. At the same time, the IEPA has chosen to ignore or bypass other approaches to achieve its ends.

The CWTI requests that a binding determination of preemption be issued invalidating the IEPA manifest to the extent that it:

(1) Prohibits the use of authorized abbreviations to indicate quantities of material shipped in a numbered section of the form; and

(2) Rejects the federal requirement that Continuation Sheets be utilized if more than two transporters are used to transport the waste or if more space is required for information set forth in section 11 of the Uniform Manifest form.

## Certification

Pursuant to 49 CFR 107.205, I hereby certify that I have forwarded a copy of this application to: William C. Child, Director, Division of Land Pollution Control, Illinois Environmental Protection Agency, P.O. Box 19276, Springfield, IL 62794–9276.

Kevin Connors,

*Chairman.*

[FR Doc. 92–17065 Filed 7–20–92; 12:01 pm]

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commerce unless that material is handled and transported in accordance with this subchapter * * *." The subchapter includes specific mandates concerning the use of the Uniform Manifest. See 49 CFR 171.3(c)(3) and 172.205. 49 CFR 172.3 provides that "this part [which among other things prescribes the requirements for shipping papers] applies to (1) each person who offers a hazardous materials for transportation and (2) each carrier by air, highway, rail or water who transports a hazardous material."

[24] See *Duke Power Co.* v. *Carolina Envtl. Study Group*, 438 U.S. 59 (1978); *American Insurance Association* v. *Selby*, 624 F. Supp. 267 (D.D.C. 1985) (Fact that only four members of trade association out of 174 suffered threat of injury did not deprive group of standing).

[25] See loc.cit. *Hunt* v. *Washington State Apple Advertising Comm'*. and *New York State Club Assn.* v. *New York*, 108 S. Ct. 2225 (1988).

[26] See 40 CFR 271.10(h).

[27] See attached letter to Carolyn Barley, a former EPA employee in the Waste Characterization Branch of the Office of Solid Waste, EPA, from Gregory T. Zak, Manager, Compliance Assurance Unit, IEPA, dates February 10, 1987

[28] See attached letter from Carolyn Barley, Waste Characterization Branch, Office of Solid Waste, EPA to Gregory Zak, IEPA, dated April 30, 1987.

[29] See attached letter from Jonathan Z. Cannon, Acting Assistant Administrator, EPA to Bruce Swonger, Chairman, CWTI, dated November 9, 1989.

[30] This latter option would only have been a remedy for the IEPA's insistence on limiting authorized unit of measurement abbreviations. Its desire to preclude use of the Continuation Sheet would have to wait for either a successful (1) Petition for a waiver of preempion or (2) conclusion to a petition for rulemaking.

federal register

Tuesday
July 21, 1992

Part VI

# Department of the Interior

**Bureau of Indian Affairs**

**Indian Gaming; Notice**

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Tribal-State Compact.

**SUMMARY:** Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Yavapai-Prescott Indian Tribe and the State of Arizona Gaming Compact of 1992, executed on July 3, 1992.

**DATES:** This action is effective July 21, 1992.

**ADDRESSES:** Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Division Chief, Tribal Government Services, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7446.

Dated: July 15, 1992.

**Eddie F. Brown,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 92–17106 Filed 7–20–92; 12:01 pm]

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federal register

Tuesday
July 21, 1992

Part VII

# Department of Health and Human Services

## Administration for Children and Families

## Abandoned Infants Assistance Program; Notice

VOL 57 ISS 140 21 JUL 1992 UMI

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

[Program Announcement No. 93551-921]

### Abandoned Infants Assistance Program

**AGENCY:** Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

**ACTION:** Announcement of the availability of financial assistance and request for applications to carry out demonstration projects to provide comprehensive services to abandoned infants and their families.

**SUMMARY:** The Administration on Children, Youth and Families announces the availability of funds to carry out demonstration projects to prevent the abandonment in hospitals of infants and young children, specifically those infants and young children perinatally exposed to a dangerous drug and those infants and young children infested with the human immunodeficiency virus (HIV) or who have been perinatally exposed to the virus; and to develop, implement and operate a comprehensive services program to address the needs of these children and their families.

**DATES:** The closing date for receipt of applications is September 4, 1992.

**ADDRESSES:** Applications should be sent to: FY 1992 Abandoned Infants Assistance Program, Administration for Children and Families, Division of Discretionary Grants, Hubert H. Humphrey Building, room 341–F.2, 200 Independence Avenue SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Patricia Campiglia (202) 205–8657.

**SUPPLEMENTARY INFORMATION:**

**Part I: General Information**

*A. Background*

Public Law (Pub. L.) 102–236, the Abandoned Infants Assistance Act Amendments of 1991 (the Act), amends Public Law 100–505, the Abandoned Infants Act of 1988 and was signed into law December 12, 1991. The purposes of the Act are to establish a program of demonstration projects to prevent the abandonment in hospitals of infants and young children, particularly those who have been perinatally exposed to a dangerous drug and those with the human immunodeficiency virus (HIV) or who have been perinatally exposed to the virus; to identify and address the needs of those infants and children who are, or might be, abandoned; to develop a program of comprehensive services for these children and members of the biological family (see Definitions) for any condition that increases the probability of abandonment of an infant or young child, including foster family care services, case management services, family support services, parenting skills, in-home support services, respite and crisis intervention services, counseling services and group residential home services; and to recruit and train health and social services personnel, foster care families, and residential care providers to meet the needs of abandoned children and infants and children who are at risk of abandonment. In addition, the Secretary of the Department of Health and Human Services is required to carry out evaluation studies and submit reports to Congress on the estimated number of infants and young children abandoned in hospitals and an estimated cost of their care by all levels of government in providing housing and care for infants and young children abandoned in hospitals. The legislation also allows for the provision of technical assistance and training programs to support the planning, development and operation of the demonstration projects.

Definitions: The reauthorized legislation provides definitions for three terms, i.e., "abandoned infants and young children," "dangerous drug," and "natural family." The term "abandoned infants and young children" retains the definition stated in the original legislation (Pub. L. 100–505) and means infants and young children who are medically cleared for discharged from acute-care hospital settings, but who remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives. The terms "dangerous drug" and "natural family" are new. The term "dangerous drug" means a controlled substance as defined in section 102 of the Controlled Substances Act. Although Public Law 102–236 uses the term "natural family," the Administration on Children, Youth and Families prefers the term biological family. Therefore, the term biological parents/family/mother/father will be used for the remainder of the grant announcement. The term biological family shall be broadly interpreted to include biological parents, grandparents, family members, guardians, children residing in the household and individuals residing in the household on a continuing basis who are in a care-giving situation with respect to infants and young children covered under this Act. (42 U.S.C., 670 note, title I, section 103.)

*B. Eligibility Applicants*

Eligibility requirements are referenced under each priority area.

*C. Availability and Allocation of Funds*

Total combined funding under this announcement for fiscal year (FY) 1992 competitive grants under section 101 of the Act (42 U.S.C. 670 note), is approximately $8 million.

The Administration for Children and Families proposes to award approximately 20 grants in varying amounts up to $450,000 per budget year. Maximum award amounts are indicated in the discussion of each priority area. Applications under this announcement will be considered for:

- Competing Continuation Service Demonstration Projects—to continue the comprehensive service programs initially funded in FY 1990 by requiring documentation of continuing need for the project; to propose ways of improving service provision to meet the needs of abandoned infants and young children or those who are at risk of abandonment and their families; and to propose methods to continue the program evaluation and include summary evaluative data to date.
- New Start Service Demonstration Projects—to establish a comprehensive services program in jurisdictions not already served by the Abandoned Infants Assistance Program to meet the needs of abandoned infants and young children, or those who are at risk of abandonment and their families; and to evaluate the program.
- Family Support Services for Grandparents and Other Relatives—to provide counseling, networking and supportive services to grandparents and other relatives who serve either as full or part-time caretakers to infants/toddlers who have been exposed to dangerous drugs pre-natally.

All applicants funded under this announcement will be required to provide information for special studies or evaluations funded by the Administration on Children, Youth and Families (ACYF).

All applicants funded under this announcement will be required to have a key person from the project staff and the evaluator attend a grantees' meeting held annually in Washington, DC.

The training and technical assistance services of the Abandoned Infants Assistance Resource Center on Drug, HIV and Medically Involved Children are available to all applicants funded under this announcement.

All applicants are also required to provide assurances that they will comply with fiscal and program reporting requirements. These required assurances are listed later in this program announcement.

*D. Statement of the Problem*

Concern continues to grow about the numbers of infants and young children infected with HIV and/or exposed to drugs during prenatal development. Also, there is concern about an increase in the number of women who are using illegal drugs during pregnancy with possible adverse consequences for their children.

In recent years, the link between female intravenous drug users, the HIV perinatal transmission rate and the subsequent development of the acquired immune deficiency syndrome (AIDS) in young children has presented an enormous challenge to pediatric health care workers. According to the most recent Centers for Disease Control (CDC) data, there are 3,140 AIDS-infected children under 13 years of age. This problem is expected to grow. The CDC estimated that 1.5 per 1,000 women giving birth in 1989 were HIV infected. Assuming a perinatal transmission rate of 30 percent, approximately 1,800 newborns acquired HIV during that year. AIDS is becoming increasingly prevalent and it is expected to become one of the main causes of death for children under four years of age. Children who are HIV positive or who have AIDS are frequently ill and require intensive and specialized care. The delivery of services to these children is often complicated because the children and their families live in communities that lack the necessary resources or because caregivers have difficulty accessing needed services. Further complicating the situation is the fact that all of these children have mothers who are HIV positive, and most of the mothers are drug-abusers who themselves need medical, social and other supportive services.

This results in an estimated 16–22 percent of all HIV positive children in the country being placed in foster care (Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 1989). Returning care to the mother may not be an option, since the mother may be too ill herself to care for the child.

Some reports suggest that the number of drug-exposed children may be increasing (Walker, et al., 1991). Further, some national experts on child welfare data systems believe that reports received from child protective services agencies may represent an "undercount" on the number of drug-exposed infants. (Tatara, 1988–90; Rosenbaum, 1989). The 1990 National Institute on Drug Abuse (NIDA) National Household Survey documents a continuing problem of substance abuse among women of childbearing age. The survey found that 4.8 million (8 percent) of the 60.1 million women in the childbearing years (15–44) had used an illicit drug in the past month. Slightly over .5 million or .9 percent used cocaine and 3.9 million (6.5 percent) used marijuana in the past month. Among women of all ages, 12.6 percent consumed alcohol once a week or more.

Some pre-natally drug-exposed infants and/or HIV positive infants remain in hospitals beyond the need for in-hospital medical care. Other infants are placed in foster care or leave the hospital with their parent(s) or other relatives but quickly come to the attention of the child protective services agency due to reports of maltreatment. In some other cases, young infants who have gone home with their families return to the hospital at a later date for medical treatment and are abandoned by the family at that time. Frequently, there are young siblings who may be at jeopardy or who are already in out-of-home care.

Some children exposed to drugs, and those who acquire AIDS, pose challenging medical and behavioral problems. Their neurological deficits and developmental delays can prove very trying for caregivers. Biological and foster parents, relatives, adoptive parents and other caretakers often need special training and supportive services to help them meet the children's needs and to provide respite for the caretakers themselves.

Achieving permanency for such children is typically slow and complex. Some parents may be motivated to keep the child, but not to change their behaviors; other parents may be motivated to change their behaviors, but are incapable of accessing the appropriate services on their own or of maintaining improved behaviors in their current environment. The assistance required to address the service needs of the parent may be fragmented among many different agencies. Some services may not be readily available. Some, such as drug treatment, may not be readily available for pregnant women. Some services may not be culturally sensitive, and others may not be entirely appropriate to the client's needs.

If permanency is to be achieved early in the life of the developing child, intensive efforts must be made with the family to determine its suitability to care for the child. If that is not possible, steps must be taken toward constructive long-term solutions to provide permanency for the child. Toward these ends, systematic action must be taken to obtain and deliver a comprehensive set of services to the biological and/or foster or adoptive family and the child.

A number of discretionary programs within ACYF and throughout the Department of Health and Human Services fund projects which are related to the issues addressed by this announcement. A brief description of these programs with the name of a contact person is attached in Appendix IV. Prospective applicants for Priority Areas I and II must, if applicable, include these existing programs in the service network proposed and provide a description of the proposed networking activities.

*Emphasis on Coordination*

All New Start Service Demonstration Project applicants should utilize an existing consortium or develop a consortium or other coordinating entity for the purpose of carrying out the project funded under this announcement. The consortium may include public health, child welfare, substance abuse treatment and other relevant human services agencies. To the extent possible, applicants are encouraged to formalize working relationships with the police and courts; mental health, developmental disabilities, Head Start, and special education providers; and community parent education and parent support programs, including in-home visiting, respite care and housing assistance in the community. Plans for coordinating joint medical-social service case management, outstationing child welfare staff at hospitals where large numbers of at-risk infants are being delivered, or other methods to be used to bring about comprehensive service delivery should be described in the applicant's proposal and supported by documentation.

All currently funded grantees seeking continuation funding should continue to use their existing consortia. These grantees shall:

(1) Describe ways in which the consortium can be expanded, if possible, or changed, if necessary; and

(2) Demonstrate how the consortium has improved communication and working relationships between and among community agencies in coordinating services for this target population.

The agency receiving the grant must assume fiscal and administrative responsibilities for the use of grant funds. The role of cooperating agencies

must be explicit and supported by letters of specified commitment to the project. Pro forma support letters will not be considered responsive. Also, each application must include as a specific goal the development of strategies to coordinate and make optimal use of all relevant private, Federal, State and local resources to establish and maintain services beyond the life of the grant.

**Part II: Responsibilities of the Grantee**

*A. Priority Area I—Competing Continuation Service Demonstration Projects*

Seventeen service demonstration projects initially funded in FY 1990 under section 101, Public Law 100–505 are eligible for competing continuation grants under this priority area. (See list in appendix III.) Applicants must show progress and accomplishments to date on the original goals and objectives of their current grant.

Proposals submitted under this priority area are to include approaches/strategies to organize, make accessible and implement a comprehensive set of services to:

- Prevent the abandonment of infants and young children, including the provision of services to members of the biological family to address any condition that increases the probability of abandonment of an infant or young child;
- Prevent the subsequent abandonment of infants and young children when they return to their homes;
- Assist abandoned infants and children to reside with their biological families, relatives or foster and adoptive families, as appropriate, and to include the provision of respite care as needed. Short-term, transitional residential care services for small groups of infants or young children may be provided. For these services, however, it must be shown that the placements are necessary because a sufficient number of families cannot be recruited and trained to provide foster family care for abandoned infants and young children in the community or that such placements are in the best interests of the child. Proposals including residential care services will be considered only if that component is integral to a larger system of services directed toward achieving permanency for the children. The proposal may not include the costs of construction or other major structural changes for facilities.

Any available summary evaluation data on the program must be included, as well as a descriptive narrative of the data.

Applicants are encouraged to revise or to expand their goals and objectives based on a review of the development and implementation of the program. The review should include an assessment of the effectiveness of the approaches and intervention strategies initially proposed. If revised approaches were used, they should also be assessed for their effectiveness. Competing continuation grantees must include a new service component for support and educational services to grandparents or other family members who are serving as primary caregivers to the children of HIV positive and substance abusing parents. These services can include group support/counseling, information on accessing community resources, financial support, custody issues and issues related to parental visits.

The proposal must include an assurance of a third party evaluation of the project. In order to evaluate the competence of the third-party evaluator and to assure that the evaluation methodology and design are appropriate, the third party evaluator must write the evaluation section of the proposal. This means that the evaluator must be selected as soon as possible after an applicant has decided to compete for a demonstration project. In selecting an evaluator, applicants are reminded that the Administration for Children and Families (ACF) encourages maximum free and open competition, using the applicant's own procurement policies and procedures. The applicant's proposal must indicate whether the third party evaluator was competitively selected, or whether the applicant is proposing a sole source contract for the evaluator. Sole source requests must be fully justified in the applicant's proposal. For those applicants who plan to continue the services of their current third party evaluator, the applicant must include in the proposal a sole source justification for review and approval by the program office and the Division of Discretionary Grants, ACF.

The applicant must include an assurance that, at a minimum, a key staff person from the project and the evaluator will attend the annual 2–3 day grantees' meeting in Washington, DC. The applicant further must assure participation in any evaluation effort supported by ACYF.

Project Duration

The length of the continuation project period for the competing service demonstration grantees may not exceed 36 months. The grant will be continued for one additional year based on satisfactory program performance and progress.

Eligible Applicants

The 17 currently funded comprehensive service demonstration grantees initially funded in fiscal year 1990.

Federal Share of Project Costs

Grant amounts will vary and range up to $450,000 for each of three years. The dollar amount requested must be fully justified and documented. The justification can include various community-specific factors related to substance abuse and perinatal exposure to drugs or HIV. For example, the applicant might include information on the rate of illegal drug use by women of child-bearing age; the rate of HIV positive women giving birth; the number of known drug users; the rate or number of infants who have a positive toxicology screen. The size of a prior grant award is not, in and of itself, adequate justification to request the same amount under this announcement.

Matching Requirement

The minimum non-Federal matching requirement is 10 percent of the total cost of the project. Therefore, a project requesting a total of $1,350,000 in Federal funds for all three project years (based on an award of $450,000 per budget year), must include a match of at least $150,000 (10 percent of total project costs, i.e., $50,000 per budget period). The non-Federal matching requirement may be in cash or in-kind contribution.

*B. Priority Area II—New Start Comprehensive Service Demonstration Projects*

Applicants in jurisdictions in which there currently does not exist a program funded under the Abandoned Infants Assistance Program will be considered under this priority area. Applicants from localities in which projects are currently operating (see appendix III) will not be considered as the purpose of this priority area is to establish comprehensive service projects in new localities.

All proposals submitted under this Priority Area will be considered for funding through September 30, 1993.

Under this priority area proposals will be considered which are designed to organize, make accessible, and implement a comprehensive set of services to:

- Prevent the abandonment in hospitals of infants and young children, including the provision of services to members of the biological family for any

condition that increases the probability of abandonment of an infant or young child;

• Prevent the subsequent abandonment of infants and young children after they have returned home with their parent(s);

• Assist abandoned infants and children to reside with their biological families, relatives or foster and adoptive families, as appropriate, including the use of respite care programs. Short-term, transitional residential care services for small groups of infants or young children may be provided. For these services, however, it must be shown that a sufficient number of families cannot be recruited and trained to provide foster care for abandoned infants or young children in the community, or that such placements are in the best interests of the child. Proposals which include residential care services will be considered only if they are integral to a larger system of services working to achieve permanency for these children. These proposals may not include the costs of construction or other major structural changes for facilities.

In order to assure that consideration is given to the widest range of possible interests for program development, applicants must consider the broad range of possible circumstances confronting at-risk parents in the target community, including the following:

• Before pregnancy: educational services on family planning, pre-conception counseling and prenatal care, emphasizing the dangers of substance abuse, and other issues related to the prevention of abandonment;

• During pregnancy: Sensitizing all programs in the community to the importance of recognizing drug abuse during pregnancy and providing voluntary services as often as possible;

• Pregnant women in trouble where drug use is a factor; women who are arrested, victims of domestic violence, or reported to protective services for child maltreatment need special attention;

• Women from high drug use areas seeking prenatal care, or entering a hospital for delivery;

• Parents of infants who must remain in the hospital for any medical reasons related to HIV or possible drug involvement; or

• Families with drug exposed infants and young children in need of support programs.

Some promising strategies which may be considered in formulating proposals include:

• Comprehensive programs with as many services as possible available at one site and located in areas accessible to the client population.

• Assured confidentiality to build client trust and encourage utilization of programs and services.

• Multidisciplinary collaboration to meet variable client needs including treatment, interagency agreements, use of a single case manager and integration of multi-agency case plans.

• Intensive interventions to meet the client's many needs over the long-term including home visits, child care, drop-in centers and 24 hour crisis telephone lines.

• Involvement of fathers in the intervention strategy and treatment approaches, including family counseling.

• Supportive drug treatment services adapted for women, with peer support focusing on common problems and avoiding confrontational group processes commonly used with men.

• Residential treatment and/or drug free housing before and after the birth for women and children to enable them to leave living environments where drugs and alcohol are readily available.

• Parent education and quality child care to support rehabilitation of the parent and the child.

• Respite care for biological, foster and adoptive parents.

Applicants for a comprehensive service project under this priority may include training activities as a part of the project. Applicants should include a service component for support and education services to grandparents or other family members who are serving as primary caregivers to the children of HIV positive parents and drug and alcohol abusing parents. Also, applicants must address resource development and coordination as a goal of the program.

Each service demonstration project must propose to carry out a third-party evaluation as an integral part of the demonstration effort. In order to evaluate the competence of the third-party evaluator and to assure that the evaluation methodology and design are appropriate, the third party evaluator must write the evaluation section of the proposal. This means that the evaluator must be selected as soon as possible after an applicant has decided to compete for a demonstration project. In selecting an evaluator, applicants are reminded that ACF encourages maximum free and open competition, using the applicant's own procurement policies and procedures. The applicant's proposal must indicate whether the third party evaluator was competitively selected, or whether the applicant is proposing a sole source contract for the evaluator. Sole source requests must be fully justified in the applicant's proposal. This evaluation should be designed to collect systematic data to answer questions such as the following: What are the characteristics of families who abandon children? What are the services needs of children/mothers/fathers/families of drug exposed infants? Of HIV positive infants? What are the barriers to comprehensive case management and to the coordination of service delivery? What changes have been most helpful in improving the delivery of services? What changes/improvements have there been in the child's well-being and/or child's development? What changes have been in the family's stability and ability to function?

The proposal must include an assurance that a key staff member from the project and the third party evaluator will attend the annual 2–3 day grantees' meeting in Washington, DC. The applicant must agree to participate in any evaluation effort supported by ACYF.

**Project Duration**

The project period may not exceed 36 months. The grant will be continued for one additional year based on satisfactory program performance and progress.

Eligible Applicants

Public and nonprofit private entities.

Federal Share and Project Costs

The maximum Federal share is $450,000 per budget year. However, applicants are strongly encouraged to construct the budget request judiciously. Factors to be considered include the population of the area to be served; the extent of maternal substance abuse in the target area; the number of drug-exposed infants; the number of women with AIDS or women who are HIV positive in the target area; the number of reports/ referrals to social service agencies of babies born with illegal substances in their system. For example, a city which currently receives a $450,000 grant per budget year under this legislation has the following profile: a population of 2–3 million; 20 percent of newborns have been pre-natally exposed to drugs; 2,000 reported allegations of child maltreatment involving infants in substance-abusing families are received annually; approximately 350–375 women with AIDS living in the jurisdiction; an estimated 2,500–3,000 HIV positive women and between 700–800 HIV positive children; and an annual projected number of 500 children born

who are HIV-positive. Each applicant should compare statistics from its area to the example city and develop its budget request accordingly. This profile does not necessarily exclude an application from a jurisdiction of smaller size receiving the maximum Federal amount. However, an applicant from a smaller-sized jurisdiction must provide adequate/justification that the community's experience with drug exposed and/or HIV-positive infants is severe enough to warrant the maximum Federal amount.

Matching Requirement

The minimum non-Federal matching requirement is 10 percent of the total of the project. Therefore, a project requesting a total of $1,350,000 in Federal funds for all three project years (based on an award of $450,000 per budget year), must include a match of at least $150,000 (10 percent of total project costs, i.e., $50,000 per budget year). The non-Federal matching requirement may be in cash or in-kind contribution.

*C. Priority Area III—Family Support Services for Grandparents and Other Relatives Providing Caregiving for Children of Substance Abusing and HIV-Positive Women*

As an increasing number of HIV-positive and/or drug abusing parents become unable to provide adequate care for their infants and young children, family relatives, usually grandparents, assume responsibility as the primary caregiver for the children. In some jurisdictions, parent support groups report that an estimated 5 percent of families consist of a grandparent raising a grandchild, a circumstance which the support groups report is due primarily to parental drug addiction.

Many of the children born to drug-abusing, HIV positive or AIDS infected women suffer medical or behavioral problems as a result of their mother's addiction or health status. They may be hyperactive and have more severe and chronic health problems and more developmental and neurological delays. These children may be more difficult to parent in many ways that family members, particularly grandparents who are dealing with problems of their own aging, may not be adequately prepared to handle.

In addition to parenting issues, families must also deal with financial support and custody issues. Family members frequently are outside the public child welfare system and receive little, if any, financial assistance. If assistance is available, it is generally at a rate lower than the foster care rates. Many caretakers receive no financial assistance at all.

The caretakers may need education in how to deal with children who have been exposed pre-natally to a dangerous drug or who may be HIV positive; assistance in gaining access to community resources; and, for themselves, support services to cope with the responsibilities of rearing children at an older age. The caregivers need training in what to expect of these children, how to nurture and care for them and how to access other supportive services, including respite care. Family caregivers may also need some education to deal with the addictive behaviors of the parent(s). In addition, if the parent is HIV positive, the caregivers will need support in dealing with the illness and eventual death of the child's parent.

The purpose of this priority area is to provide funds: (1) To existing family caregiver support groups to provide counseling and other support services to family caregivers for drug-exposed and/or HIV positive children; and (2) to establish family caregiver support groups for caregivers of drug-exposed and/or HIV positive children where needed.

Proposals should reflect:

- An understanding of the problems involved in caring for children of drug-using and/or HIV positive parent(s);
- An understanding and a description of the multiple needs of the caregivers;
- Evidence of a commitment to work with a social service, public health or mental health agency in providing needed consultation, support services and advice to family caregivers; and
- A national, broad-based understanding of program and service issues involved in serving families affected by drug abuse and HIV.

Applicants must assure that small sub-grants, which must not exceed $5,000 each, will be awarded to incorporated non-profit, local family caregiver (grandparent) groups or family support groups to conduct family support focused activities.

Applicants must describe the criteria that would be employed in awarding sub-grants to these groups, the methods that would be used to request proposals from the groups and how the subgrantees' activities would be monitored.

The applicants should also include an evaluation plan to be conducted by a third party. In order to evaluate the competence of the third-party evaluator and to assure that the evaluation methodology and design are appropriate, the third party evaluator must write the evaluation section of the proposal. This means that the evaluator must be selected as soon as possible after an applicant has decided to compete for a demonstration project. In selecting an evaluator, applicants are reminded that ACF encourages maximum free and open competition, using the applicant's own procurement policies and procedures. The applicant's proposal must indicate whether the third party evaluator was competitively selected, or whether the applicant is proposing a sole source contract for the evaluator. Sole source requests must be fully justified in the applicant's proposal.

The proposal must include an assurance that a key staff person from the project and the evaluator will attend the annual 2–3 day grantees' meeting in Washington, DC. The applicant must agree to participate in any evaluation effort supported by ACYF.

Project Duration

The project period may not exceed 36 months. The grant will be continued for one additional year based on satisfactory program performance and progress.

Eligible Applicants

National private, nonprofit agencies or organizations are eligible to apply. Applicants must demonstrate a national orientation on family caregiver/support activities and be able to demonstrate a history of involvement with grandparent groups or other family member caregiver groups which specifically address the needs of drug-exposed and/or HIV positive children.

Federal Share of Project Costs

The maximum Federal share is $100,000 for each 12 month budget period. It is anticipated that one grant will be awarded under this Priority Area. The applicant must assure, at a minimum, that 75 percent of the awarded Federal funds will be distributed to family support groups.

Matching Requirement

The minimum non-Federal matching requirement is 10 percent of the total cost of the project. For example, a project requesting a total of $300,000 in Federal funds for all three project years (based on an award of $100,000 per budget year), must include a match of at least $33,336 (10 percent of total project costs, i.e., $11,112 per budget year). The non-Federal matching requirement may be in cash or in-kind contribution.

**Part III: General Information and Requirements for the Application Process and Review**

This part contains general information for applicants and basic requirements for submitting applications in response to this announcement. Application forms are provided at the end of this section along with detailed instructions for developing and assembling the application package for submittal.

*A. General Information*

1. Review Process and Funding Decisions

Applications will be grouped by priority area and reviewed and scored competitively against the published evaluation criteria (part III, section D) by experts in the field, generally persons from outside the Federal government. The results of this review will be a primary factor in making funding decisions. The Administration for Children and Families (ACF) reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. The ACF may also solicit comments from other Federal agencies, Central and Regional Office staff, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by the Commissioner, Administration on Children, Youth and Families in making funding decisions.

2. Required Notification of the State Single Point of Contact

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Program," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." The CDFA number of the Abandoned Infants Assistance Program is 93.551. All States and territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Oregon, Pennsylvania, Virginia, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these eleven areas indicated above need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

Other applicants should contact their SPOC as soon as possible to advise them of the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials to the SPOC and indicate the date of the submittal (or the date the SPOC was contacted, if no submittal is required) on the SF 424, item 16a. The SPOCs will be notified of any applicant not indicating SPOC contact on the application, when the SPOC contact is required. The SPOCs have sixty (60) days starting from the application deadline to comment on applications for financial assistance under this program. Comments are, therefore, due from the SPOC no later than August 20, 1992. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in a delay in the grant award.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule. It is helpful in tracking SPOC comments if the SPOC clearly indicates the applicant organization as it appears on the application SF 424. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, room 341.F.2, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Attn: William J. McCarron, ACF–92–Abandoned Infants.

A list of Single Points of Contact for each State and Territory is included in appendix I of this announcement.

3. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements and regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved by OMB.

*B. Deadline for Submittal of Applications*

The closing date for receipt of applications is September 21, 1992.

(a) Deadlines. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date at the address specified above; or (2) sent on or before the deadline date and received by the granting agency in time to be considered during the competitive review and evaluation process under chapter 1–62 of the Department of Health and Human Services' Grants Administration Manual. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier on the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

(b) Applications Submitted by Other Means. Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date. Hand-delivered applications will be accepted at the Division of Discretionary Grants during the working hours of 9 a.m. to 5:30 p.m., Monday through Friday.

(c) Late Applications. Applications which do not meet the criteria in the above paragraphs are considered late applications. The granting agency will notify each late applicant that its application will not be considered in the current competition.

(d) Extension of Deadlines. The Administration on Children, Youth and Families (ACYF) may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mails. However, if ACYF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

*c. Application Requirements*

1. Priority Area Responsiveness

The application must be responsive to the priority area under which it is being submitted, as identified at the top of the page one of the SF 424. In order to be considered responsive, the application must address each of the minimum requirements for an application specified in the priority area description.

2. Application Form

The application must be submitted on single-sided reproduced copies of the SF 424 (revised 1988).

3. Copies Required

Applicants must submit an original and two copies of the complete application prepared in accordance with the instructions provided. A complete application includes: the completed SF 424, a summary description of the proposed project, required certifications/assurances, and the program narrative. The full application package is described in part III H.

4. Signature

The signature of the Certifying Representative must be handwritten (preferably in black ink) and the signer's name and title must be typed in Item 18a of the original SF 424.

5. Length

All narrative sections of the application must meet the formal specifications. Although no page limit has been established, applicants should seriously consider the information provided in the introduction to part II, and provide narratives that are succinct, responsive to the priority area requirements, and within the general recommended length requirements as specified in the instructions later in this part.

6. Evaluation and Reporting Requirements

Section 102(a) of the Act requires the Secretary to provide for evaluations of all projects carried out under section 101. All projects will be required to cooperate in this evaluation, and to provide program data as requested. In addition, all programs must submit quarterly program progress reports and semi-annual fiscal reports as specified in the instructions attached to the Financial Assistance Award.

7. Dissemination

The application must set forth a plan for the dissemination of the results of the project for which assistance is being requested and must agree to cooperate and to provide information for an ACYF-funded special study for the development of a Report on Effective Care Methods as required by section 102(c) of the Act.

8. Statutory Assurances

Each application must include a statement assuring the Department that the grantee will meet the following statutory requirements. Any assistance needed to comply with these requirements should be discussed with the local public child welfare agency.

(1) The following assurances are required under section 101(b) of Public Law 102–236 if the applicant expends the grant to carry out any program of providing care to infants and young children in foster homes or in other non-medical residential settings away from the parents:

- That a case plan of the type described in paragraph (1) of section 475 of the Social Security Act will be developed for each infant or young child (to the extent that such infant or young child is not otherwise covered by such a plan) for whom funds would be expended for foster care; and
- That the program includes a case review system of the type described in paragraph five (5) of section 475 of the Social Security Act (covering each such infant and young child who is not otherwise subject to such a system).

*Section 475(1).* Paragraph (1) of section 475 of the Social Security Act reads substantially as follows "The term—case plan" means a written document which includes at least the following:

a. A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 472(a)(1); and

b. A plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and addressing the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

c. Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

*Section 475(5).* Paragraph five (5) of section 475 of the Social Security Act reads substantially as follows—The term "case review system" means a procedure for assuring that:

a. Each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child;

b. The status of each child is reviewed periodically but no less frequently than once every six months either by a court or by administrative review in order to determine the continuing necessity for an appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship; and

c. With respect to such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held, in a family or juvenile court or another court (including a Tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis) and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents.

(2) That funds provided under this section shall be used only as specified in the application approved by the Secretary (section 101(d)(1)(A)).

(3) That fiscal control and fund accounting procedures will be established as may be necessary to ensure proper disbursement and accounting of Federal funds paid to the applicant under this announcement (section 101(d)(1)(B)).

(4) That reports to the Secretary will be made annually on the utilization, cost, and outcome of activities conducted, and services furnished under this grant (section 101(d)(1)(C)).

(5) That, if during the majority of the 180-day period preceding the date of the enactment of this Act, the applicant has carried out any program with respect to the care of abandoned infants and young children, the applicant must certify that funds provided under the grant will be expended only for the purpose of expanding such services (section 101(d)(1)(D)).

(6) That the applicant agrees to cooperate with and provide data to a Federally funded evaluation contractor (section 102(a)).

9. Other Requirements

(1) All cooperating agencies having a role in the activities proposed must submit a letter signed by an official with authority to commit the agency or organization. This letter must specify the activities and level of involvement for the cooperating entity. General letters of support are not acceptable.

(2) Maps indicating areas to be served, locations of services, or other geographic information may be attached.

(3) A table or chart showing the interrelationships and coordination patterns of agencies for the proposed program is required.

(4) All public agencies must certify that the program will not be delayed because of general hiring freezes or restrictions on travel when this relates to hiring, travel or other activities of the funded program. The responsible official signing the application must be able to authorize exemptions from such restriction(s).

*D. Evaluation Criteria*

The Program Narrative Statement of the application should correspond to the evaluation criteria. The description of the four criteria below should be used as headings in developing the program narrative.

Applications will be reviewed by a panel of at least three individuals. These reviewers will comment on and score the applications, basing their comments and scoring decisions on the following criteria.

(1) Objectives and Need for Assistance (25 Points)

The application pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. It identifies the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

(2) Results or Benefits Expected (15 Points)

The application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal and indicates the anticipated contributions to policy, practice, theory and/or research. The proposed project costs are reasonable in view of the expected results.

(3) Approach (40 Points)

The application outlines a sound and workable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule for accomplishments and target dates.

To the extent applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

(4) Staff Background and Organization's Experience (20 Points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background, and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer the project. The application describes the relationship between this project and other related work planned, anticipated or underway by the applicant with Federal assistance.

*E. The Components of the Application*

A complete application consists of the following in this order:

1. Application Face Sheet, SF 424, page 1.
2. Budget Non-Construction, SF 424 A, Budget Information: Section A (Budget Summary), Section B (Budget Catagories), and Section E (Budget Estimates of Federal Funds Needed for Balance of Project);
3. Budget justification (approximately three pages);
4. Project summary description with listing of key words (approximately two pages);
5. Program Narrative (approximately 50 double-spaced pages is suggested as a reasonable length), organized with sections addressing the following four areas: (1) Objectives and Need for Assistance; (2) Results or Benefits Expected; (3) Approach; and (4) Staff Background and Experience;
6. Organizational capability statement;
7. Letters of commitment;
8. SF 424B Assurances-Non Construction, Debarment, and Drug-Free Workplace; Certification Regarding Lobbying; and
9. Appendices/attachments, may include a bibliography (approximately two pages single-spaced); resume or curriculum vitae (approximately two pages each); and evaluation instruments/measurements.

*F. Preparing the Application*

1. Availability of Forms

Agencies and organizations interested in applying for grant funds should submit an application on the Standard Form 424 (revised April 1988) which is included in the announcement (appendix II).

Each application must be executed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package.

2. Application Submission and Notification

Completed applications must be sent to: FY 1992 Abandoned Infants Assistance Program, Administration for Children and Families, Division of Discretionary Grants, Hubert H. Humphrey Building, room 341–F.2, 200 Independence Avenue SW., Washington, DC 20201, Attn: William J. McCarron, ACF–92–Abandoned Infants.

The program announcement number (93551–921) must be clearly identified on the application.

Successful applicants will be notified through a Notice of Financial Assistance Awarded. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the grant, the total project period, the budget period and the amount of the non-Federal matching share. Unsuccessful applicants will be notified by letter.

3. Program Narrative

The Program Narrative is a very important part of the application. It

should be clear, concise and specific to the priority area being addressed as described in Part II. The narrative should provide information on how the application meets the evaluation criteria. This narrative should be typed on a single-side of 8½" by 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page one. Applicants should not submit reproductions of larger size paper reduced to meet the size requirement.

Applicants are required to follow the format described below in preparing their applications, using the four headings for the sections of the narrative. However, the number of specific pages for each section is given as a suggestion only. The specific information to be included under each heading was discussed previously under the "Evaluation Criteria."

The four sections are: Objectives and Need for Assistance; Results or Benefits; Approach; and Staff Background.

4. Organizational Capability

Applicants should provide a brief background description of how the applicant is organized and the types and quantities of services it provides. This statement may also include descriptions of relevant past experience as well as the competence of the project team and its demonstrated ability to implement a proposed effort that is comprehensive.

5. Assurance and Certifications

Applicants must file a Standard Form 424B, Assurances—Non-Construction Programs and Certifications Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must provide certification regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug-Free Workplace Requirements and the Debarment and Other Responsibilities certifications.

*G. The Application Package*

To expedite the processing of applications, each applicant is requested to adhere to the following instructions. Each application package must include:

1. A copy of the Checklist for a Complete Application with all the items checked as being included in the application.

2. An original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page one. To facilitate handling, please do not use covers, binders, or tabs or include extraneous materials such as agency promotion brochures, slides, tapes, film clips, minutes of meetings or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be automatically notified of the receipt of, and the four digit identification number assigned to their application. This number and priority area must be referred to in all subsequent communication with ACF concerning the application. After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number to aid in quick retrieval. It will not be possible for ACF staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given. Applicants should be advised that ACF staff cannot release predecisional information relative to an application other than that it has been received and that it is going through the review process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

*H. Checklist for a Complete Application*

The Checklist below should be typed on 8½" by 11" plain white paper, completed and included in the application package.

Checklist

I have checked my application package to ensure that it includes the following:

—— Checklist for a complete application;
—— One original application signed in black ink and dated plus two copies;
—— A complete SPOC certification with the date of SPOC contact entered in item 16 page 1 of the SF 424; and
—— Each package contains the application (original and two copies) for one priority area.

The original and both copies of the application include the following:

—— SF 424, page 1, Application Face Sheet;
—— SF 424A;
—— Budget Justification;
—— Summary description and key words;
—— Program narrative;
—— Organizational Capability Statement;
—— Interagency agreements; letters of commitment;
—— Certification Regarding Lobbying; Debarment Certification;
—— SF 424B Assurances;
—— Section 475 of the Social Security Act (Case Plan) Assurances;
—— Appendices/attachments.

(Federal Catalog of Domestic Assistance Program Number 93.551: Abandoned Infants Assistance Program)

Dated: June 17, 1992.

**Wade F. Horn,**

*Commissioner, Administration on Children, Youth and Families, ACF.*

**Appendix I—State Single Points of Contact**

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8005

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727–9111

Florida

Karen McFa
Clearinghou
Governor, C
The Capitol,
Telephone: (

Georgia

Charles H. E
State Clea
Street, SW
Telephone

Hawaii

Mr. Harold S
Office of S
Planning a
Office of t
Room 406
Telephone
8172

Illinois

Tom Berksh
Office of t
Springfiel
782–8639

Indiana

Frank Sulliv
Agency, 2
Indiana 4

Iowa

Steven R. M
Progress,
Developm
Moines, Io
3725

Kentucky

Debbie Ang
Kentucky
Capital Pl
40601, Tel

Maine

State Single
Benson, S
Station #
Telephon

Maryland

Mary Abra
Clearingh
Planning,
Baltimore
Telephon

Massachuse

State Single
Boyle, Ex
Developm
1803, Bost
Telephon

Michigan

Milton O. W
Michigan
Michigan
Telephon

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Illinois

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Indiana

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Iowa

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Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223

Mississippi

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Vermont

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Washington

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West Virginina

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Wisconsin

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Department of Administration, (808) 286–0207.

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Virgin Islands

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BILLING CODE 4130-01-M

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Append
APPLIC
FEDERA
1. TYPE OF SU
Application
Constr
Non-Co
3. APPLICANT
Legal Name:
Address (give
5. EMPLOYER
8. TYPE OF AP
If Revision, ent
A. Increase
D. Decrease
10. CATALOG O
ASSISTANC
TITLE:
12. AREAS AFF
13. PROPOSED
Start Date
15. ESTIMATED
a. Federal
b. Applicant
c. State
d. Local
e. Other
f. Program Inc
g. TOTAL
16. TO THE BES
AUTHORIZED B
a. Typed Name
d. Signature o
Previous Editio

Appendix II

**APPLICATION FOR FEDERAL ASSISTANCE**

OMB Approval No. 0348-0043

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code) |

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

| 13. PROPOSED PROJECT | | 14. CONGRESSIONAL DISTRICTS OF: | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |
| | | | |

| 15. ESTIMATED FUNDING: | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| | | |
| d. Signature of Authorized Representative | | e. Date Signed |
| | | |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

**Instructions for the SF 424**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4130-01-M

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OMB Approval No. 0348-0044

## BUDGET INFORMATION — Non-Construction Programs

**SECTION A – BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B – BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| | | | | | |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4130-01-C

**SECTION C - NON-FEDERAL RESOURCES**

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

**SECTION D - FORECASTED CASH NEEDS**

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

**SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT**

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

**SECTION F - OTHER BUDGET INFORMATION**
(Attach additional Sheets if Necessary)

| | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks | |

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

**Instructions for the SF–424A**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Section A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1–4, Columns (a) and (b)**

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)—For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amounts(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

**Section B. Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

One 6j—Show the amount of indirect costs.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal-Resources**

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

**Assurances—Non-Construction Programs**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

*As the duly authorized representative of the applicant I certify that the applicant:*

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR part 900, subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with Pub. L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

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Signature of Authorized Certifying Official

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Title

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Applicant Organization

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Date Submitted

BILLING CODE 4130-01-M

## U.S. Department of Health and Human Services
## Certification Regarding Drug-Free Workplace Requirements
## Grantees Other Than Individuals

**By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.**

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

**"Controlled substance"** means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

**"Conviction"** means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

**"Criminal drug statute"** means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

**"Employee"** means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**The grantee certifies that it will or will continue to provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

**The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):**

**Place of Performance (Street address, City, County, State, ZIP Code)**_____

_____

*Check ___ if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

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*Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions*

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

*Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions* (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**Certification Regarding Lobbying**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certificate be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more that $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

**Appendix III**

*Locations of Currently Funded Abandoned Infants Assistance Service Programs*

| | Fiscal years funded |
|---|---|
| *California* | |
| San Joaquin County, Department of Health Care Services, French Camp, CA | 1990 & 1991 |
| Orange County Social Services, Santa Ana, CA | 1991 |
| Department of Social Services, San Francisco, CA | 1990 & 1991 |
| *Connecticut* | |
| Yale University, School of Medicine, New Haven, CT | 1990 & 1991 |
| *Delaware* | |
| Delaware State Department of Services for Children, Youth and Their Families, Wilmington, DE (Project Site is Wilmington) | 1991 |
| *District of Columbia* | |
| D.C. Department of Human Services, Washington, D.C. | 1990 & 1991 |
| *Florida* | |
| Florida Department of Health and Rehabilitation Services, Miami, FL (Project Site is Miami) | 1990 & 1991 |
| Operation PAR, Inc., St. Petersburg, FL | 1990 & 1991 |
| *Georgia* | |
| Georgia Department of Human Resources, Atlanta, GA (Project Site is Atlanta) | 1990 & 1991 |
| *Maryland* | |
| Maryland State Department of Human Resources, Baltimore, MD (Project Site is Baltimore) | 1991 |

| | Fiscal years funded |
|---|---|
| *Illinois* | |
| Illinois State Department of Children and Family Services, Springfield, IL (Project Site is Chicago) | 1991 |
| *Massachusetts* | |
| South Shore Mental Health Center, Boston, MA | 1990 & 1991 |
| Massachusetts State Department of Public Health, Boston, MA (Project Sites are New Bedford and Springfield) | 1991 |
| *Missouri* | |
| Children's Mercy Hospital, Kansas City, MO | 1990 & 1991 |
| *New Jersey* | |
| Protestant Community Centers, Newark, NJ | 1990 & 1992 |
| New Jersey State Department of Human Services, Trenton, NJ (Project Site is Hudson County—Jersey City) | 1991 |
| *New Mexico* | |
| University of New Mexico, Albuquerque, NM | 1990 & 1991 |
| *New York* | |
| New York Department of Social Services, Division of Family and Children Services, Albany, NY (Project Site is Brooklyn) | 1990 & 1991 |
| Children's Hospital, Buffalo, NY | 1991 |
| Leake & Watts Children's Home, Specialized Foster Home Program, Yonkers, NY | 1990 & 1991 |
| *Pennsylvania* | |
| Hahnemann University, Philadelphia, PA | 1990 & 1991 |
| Ken-Crest Centers for Exceptional Children, Philadelphia Children's Services, Philadelphia, PA | 1990 & 1991 |
| *South Carolina* | |
| Volunteers of America of the Carolinas, Columbia, SC (Project Site is Richland County—Columbia) | 1990 & 1991 |
| *Tennessee* | |
| Child & Family Services of Knox County, Knoxville, TN | 1991 |
| Texas Department of Human Services, Protective Services, Communication Services, and Policy and Customer Relations, Austin, TX (Project Site is Dallas-Fort Worth) | 1990 & 1991 |

**Appendix IV**

ACYF Discretionary Programs Related to the Abandoned Infants Assistance Act.

• The Child Welfare Research and Demonstration Program provides financial support to State and local governments or other nonprofit institutions, agencies, and organizations engaged in research or demonstrations in the field of child welfare. Research and demonstration grants supported under this program address services to families to prevent the need for out-of-home placement, the development of alternative placements for children including foster care and adoption, and reunification services so that children can return home, if at all possible. Several projects serving HIV positive children have been funded under this program. For further information, call Cecelia Sudia, (202) 245–0764.

• The Child Welfare Services Training Grant Program provides discretionary grants to accredited public or nonprofit institutions of higher learning to develop and improve educational and training programs related to child welfare and to assist child welfare agencies to improve the skills and qualifications of staff. For further information, call Penny Maza, (202) 245–0172.

• The Adoption Opportunities Program provides financial support to State and local agencies and other profit and nonprofit organizations for research and demonstration projects to improve adoption practices, to eliminate barriers to adoption and to find permanent homes for children, particularly children with special needs (including children who are HIV positive or who have been drug-exposed). For further information, call Delmar Weathers, (202) 245–0871.

• Child Abuse and Neglect discretionary activities are designed to assist and enhance national, State and community efforts to prevent, identify and treat child abuse and neglect. These activities include conducting research and demonstration grants; gathering, analyzing and disseminating information through a national clearinghouse; and providing grants to eligible State to strengthen child protective services programs. Several projects related to drug exposed babies and substance abusing mothers have been funded under this program and findings are available. For further information, call Joan Gaffney (202) 245–0709.

• The Emergency Child Abuse Prevention Service Projects provide financial support to State and local agencies with experience in providing child maltreatment services to enable such organizations to improve the delivery of services to children whose parents are substance abusers. Projects include the implementation of comprehensive, coordinated, community-based programs which are multi-disciplinary in nature. Other projects include the hiring and training of personnel; the creation or expansion of services to deal with individual and family crises related to substance abuse; and the implementation of public information programs regarding the link between substance abuse and child maltreatment. For further information, call Judy Coulter, (202) 245–0629.

• The Temporary Child Care for Children with Disabilities and Crisis Nurseries Program provides demonstration grants to States to assist private and public agencies in developing temporary child care (respite care) for children with disabilities and crisis nurseries for children at risk of child abuse and neglect. Many of these projects provide services which will be needed for abandoned infants and these programs, where available, should be included in planning for abandoned infants. For further information, call Ory Cuellar, (202) 245–0899.

• The Administration on Developmental Disabilities (ADD) provides funding for State Planning Councils, Protection and Advocacy Agencies, University Affiliated Programs, and projects of national significance authorized under the Developmental Disabilities Act, 42 U.S.C. 6000, et seq. Networks of research and service delivery systems are supported to promote improvements in the quality, scope and range of services available for those who are developmentally disabled. The ADD has funded pediatric AIDS projects designed to meet the needs of abandoned infants and young children who test HIV positive or who may be placed in foster care because the mother is HIV positive and unable or unwilling to care for the child. The projects focus on identifying children who are at risk; developing early intervention strategies; coordinating services; and providing training. For further information, call Kay Smith (202) 245–2984.

Other DHHS Discretionary Programs Related to Abandoned Infants Assistance Program.

• The Maternal and Child Health Bureau, Health Resource and Services Administration, Public Health Service, provides formula grants, special project grants, and research and training authorized under title V of the Social Security Act, as amended. State grants-in-aid emphasize interagency coordination, early identification of children in need of health services, follow-up care and treatment to reduce the effects of chronic conditions, and prevent handicapping conditions originating at birth. Support is provided for maternal and child health services and crippled children's service, particularly for mothers and children in low-income areas.

The Maternal and Child Health Bureau has funded a variety of Pediatric AIDS Health Care demonstration and special projects as well as training and national leadership activities to promote effective ways to prevent HIV infection, especially through perinatal transmission; to develop community-based, family-centered, coordinated services for infants and children with HIV infection; and to develop programs to reduce the spread of infection to vulnerable populations of children and adolescents. For information concerning projects in your area, call Beth Roy, (301) 443–2350.

• The Office of Substance Abuse Prevention within the Alcohol, Drug Abuse, and Mental Health Administration provides for a variety of activities authorized under the Anti-Drug Abuse Act, Public Law 100–690. Since 1988, model demonstration projects have been funded to promote interagency coordination in the delivery of comprehensive services for substance abusing pregnant and post-partum women and their infants; to increase the availability and accessibility of prevention, early intervention, and treatment services for these populations; to decrease the incidence and prevalence of drug and alcohol use among

pregnant and post-partum women; to improve the birth outcomes of women who used alcohol and other drugs during pregnancy and to decrease the incidence of infants affected by maternal substance use; and to reduce the severity of impairment among children born to women involved in substance abuse.

Primary prevention and early intervention projects have also been funded to demonstrate effective comprehensive service systems for the prevention, treatment and rehabilitation of drug and alcohol abuse among high risk youth, many of whom become teenage parents. For information concerning projects in your area, call Ellen Hutchins, (301) 443–5720.

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Part VIII

# Resolution Trust Corporation

12 CFR Part 1620

**Restrictions on the Sale of Assets by the Resolution Trust Corporation; Final Rule**

VOL 57 ISS 140 JL 21 1992 UMI

**RESOLUTION TRUST CORPORATION**

**12 CFR Part 1620**

**RIN 3205-AA15**

## Restrictions on the Sale of Assets by the Resolution Trust Corporation

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Resolution Trust Corporation (RTC) is promulgating a regulation pursuant to the requirement of the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 (Thrift and Bank Fraud Act or Act). The statute requires that assets held by the RTC in the course of liquidating federally-insured savings associations not be sold to persons who, in ways specified in the Act, contributed to the demise of such savings associations. The rule is intended to accomplish the Congressional directive by implementing a self-certification process that is a prerequisite to the sale of assets by the RTC. The regulation provides definitions that effectuate and/or clarify the intent of Congress regarding the scope of the statutory prohibitions.

**EFFECTIVE DATE:** August 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Hu Benton, Legal Division, 202–736–0301; Yeeleng Rothman, Legal Division, 202–736–0340; David Wiley, Asset Management and Sales Division, 202–416–7136. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The RTC was created by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) to liquidate federally-insured savings associations and the assets of those associations. The RTC's organic statute is the Federal Home Loan Bank Act, as amended, particularly 12 U.S.C. 1441a (FHLB Act). In addition, when acting as conservator or receiver for a savings association, the RTC has the same powers and duties as does the Federal Deposit Insurance Corporation (FDIC) pursuant to sections 11 through 13 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821–1823.

The Thrift and Bank Fraud Act affects asset sales by the RTC in two regards. First, it amended the FDI Act provisions that are applicable to the RTC to proscribe sales by the RTC of assets of particular savings associations to persons who, by committing certain specified felonies, caused a loss to the particular savings associations. On May 10, 1991, the RTC published a directive (Circular 10100.14) that implemented the Thrift and Bank Fraud Act's amendments to the FDI Act regarding RTC asset sales. The directive prescribed a certification that must be made before the RTC will sell an asset. The RTC will modify or supplement that certification through a new directive by the effective date of this regulation.

The second relevant portion of the Thrift and Bank Fraud Act is section 2526(c), which amended the RTC's organic statute, specifically 12 U.S.C. 1441a(f). Section 2526(c) required the RTC to promulgate regulations to prohibit the sale of an asset of a failed savings association to, and/or the use of RTC financing to purchase an asset that is in the hands of the RTC by, persons who, in a non-criminal way, contributed to the demise of that savings association.

On October 9, 1991 (56 FR 50829), the RTC published a proposed regulation to implement the mandates of section 2526(c) of the Thrift and Bank Fraud Act, and provided the opportunity for public comment. Four comments were received.

### B. Discussion of Comments

*1. Comments Supporting Broadening of Restrictions*

One commenter suggested that the proposed regulation was too narrow and that the regulation should be broadened to bar sales of assets of any institution under the RTC's control to a person or entity who caused a loss to, or otherwise harmed, any institution under the RTC's control, not just the specific institution that the prospective asset purchaser harmed. A second commenter supported this recommendation. While acknowledging that the Thrift and Bank Fraud Act did not authorize such a broad ban on prospective purchasers, the commenter encouraged the RTC to seek a legislative amendment to broaden the Act's restrictions. The commenter asserted that the proposed restrictions on sale of assets in connection with loans or extensions of credit, despite tracking the Act, were too lax. For example, the commenter asserted, under the proposed regulation, an individual could receive seller financing from the RTC or an association under its control despite having defrauded that association or having defaulted on an obligation of more than $1 million if the default was non-fraudulent. Furthermore, the proposed rule would assertedly permit an individual who has committed fraud and defaulted on an obligation of more than $1 million to buy an asset for cash. Notwithstanding the limitations of the Thrift and Bank Fraud Act, the commenter asserted that the RTC has broad authority under FIRREA, "inherent in the corporate charter of the RTC," to specify terms and conditions on the sale of assets. The commenter recommended that the RTC "prioritize cash sales," and urged that bids from such individuals "should be scrupulously reviewed and perhaps flagged for GAO audit purposes." Additionally, transactions with anyone who has caused a loss to any RTC institution should be flagged for GAO audit, and the RTC should seek a substantial "premium" to mitigate the damages caused by the purchaser.

As was noted in the preamble to the proposed regulation, the final regulation will closely follow the Thrift and Bank Fraud Act. While there is no question that the RTC has independent authority under FIRREA to establish procedures for the selection of asset purchasers, FIRREA's overriding goals include the attainment of the best possible return on the assets of the associations that the RTC takes over. The commenters have not identified any countervailing legislative or statutory purpose that would be served by placing broadscale handicaps on the offers submitted by prospective purchasers that Congress has not directed the RTC to bar. Accordingly, through this regulation, the RTC does not, except in very limited instances, intend to broaden the Congressionally-imposed limitations on those who can purchase assets from the RTC. Nor will it adopt a preference scheme as proposed by the commenter.

As was stated in the preamble to the proposed regulation, however, this regulation in no way implies that the RTC will provide seller financing to a prospective purchaser who is not creditworthy, and the fact that a prospective purchaser has defaulted on loans of any amount, whether or not any defaults were fraudulent, may lead to a determination that the prospective purchaser is not creditworthy. A section has been added to the regulation to make this clear. Moreover, the RTC is authorized by statute to make loans, and required by statute to obtain the best return on assets under its purview and to make the most efficient use of funds provided to it. The RTC finds that it would be inconsistent with these duties to provide seller financing to any prospective borrower who has exhibited fraud in connection with a default of any amount. Accordingly, while the proposed regulation would arguably have permitted the provision of seller

financing to persons who had committed fraud but caused a loss of less than $1 million, the final regulation has eliminated that possible loophole.

*2. Proposed Restrictions; Comments Suggesting Narrowing or Clarification of Specific Restrictions*

As prescribed by the Act, the proposed regulation delineated four basic factual situations in which a person will be barred from purchasing an asset of an RTC-controlled savings association, and/or barred from using RTC financing to purchase one or more assets. The following is a brief summary of how the regulation will apply the restrictions in the Act. The final regulation must be consulted for specific restrictions and definitions.

First, if the prospective purchaser, or related entity, as defined in the regulation, has defaulted to any savings association on one or more obligations, and the purchaser or related entity has been found to have engaged in fraud in connection with these obligations, RTC financing would not be provided in any asset sale. Unlike the other regulatory restrictions, this restriction is not limited to the purchase of assets from the specific institution that was harmed by the prospective purchaser. Consistent with the Act, this portion of the regulation would not prohibit a cash sale in this circumstance.

Second, if a person participated in a material way, as defined in the regulation, in one transaction or multiple transactions that resulted in a substantial loss to a savings association, the person would not, using any source of payment or financing, be permitted to purchase an asset of that association from the RTC.

Third, if a person has, by federal regulatory action, been removed from or barred from participating in the affairs of an association that is under RTC control, the person would not, using any source of payment or financing, be permitted to purchase an asset of that association from the RTC.

Finally, if a prospective purchaser or related entity has demonstrated a pattern or practice of defalcation, as defined by the regulation, regarding obligations to an RTC controlled association, the prospective purchaser would be barred from purchasing an asset or assets of that association from the RTC, regardless of the intended source of financing or payment.

The Act provides one exception to the above-described restrictions, which is reflected in the regulation. That is, the restrictions would be lifted if in the course of the sale or transfer of an asset, the purchaser's or transferee's obligations to the savings association or to the RTC were resolved or settled. A provision has been added to the regulation to clarify that the inability to make all certifications will not be a bar if the offeror acknowledges the inability to make the necessary certifications but submits a bona fide offer to cure the outstanding obligations.

In addition, as a matter of regulatory authority, the RTC intends to limit the possible retroactive effect of the regulation. That is, no sale or seller financing arrangement would be rescinded or revoked based upon the provisions of the regulation if there was a legally enforceable contract of sale between the purchaser and the RTC at the time the regulation becomes effective.

Pattern or Practice of Defalcation

Two commenters questioned the proposed definition of "pattern or practice of defalcation." One commenter asserted that "defalcation" is commonly defined as encompassing the existence of a fiduciary duty. As such, the commenter suggested that the RTC's proposed standard, which would apply the "pattern or practice of defalcation" restriction to borrowers, would be overbroad. The commenter asserted that the statutory scheme supports restricting only officers or directors based upon a pattern or practice of defalcation. According to the commenter, the Act permits cash sales to defaulting borrowers even if they have engaged in fraud. Therefore, the commenter asserted, the statutory provision that precludes all asset sales to persons who have engaged in defalcation would be meaningless if defalcation applied to borrowers, because defalcation also subsumes fraud. The commenter believes that in the Act and its legislative history, Congress was expressing its displeasure with officers and directors who violated fiduciary duties. Thus, the commenter concluded, blanket restrictions on all sales were intended to apply only to officers and directors.

The commenter also argued that "defalcation" requires a more objective standard emphasizing bad faith and willful misconduct, not merely the fact that the borrower committed more than one default. The commenter also argued that a defalcation exists only where the borrower had the intent to cause a loss at the time the obligation was incurred. According to the commenter, "pattern or practice" should require actions arising out of two or more separate and unrelated transactions or obligations.

The second commenter recommended that the RTC clarify that a pattern or practice of defalcation requires an intent to cause a loss, and that for purposes of the regulation, such intent should be evidenced by a finding of wrongdoing or misconduct.

The RTC disagrees that "pattern or practice of defalcation" should be limited to officers or directors. Congress is not bound to follow common law or colloquial definitions of terms. Moreover, the clearest indication that Congress did not intend to restrict such a bar to officers or directors is in the conflicts of interest provisions of FIRREA, 12 U.S.C. 1441a(p). In that statute, Congress prohibited the RTC from hiring any person as either a contractor or employee if the person had demonstrated a pattern or practice of defalcation. For more than two years, through two regulations published after notice and comment (12 CFR parts 1605 and 1606), the RTC has applied the pattern or practice standard to any person, regardless of whether he or she had been an officer or director of a financial institution. The Thrift and Bank Fraud Act similarly applies to "any person"; moreover, other sections of the Act specifically apply to officers and directors of financial institutions. Therefore, this challenge to the applicability of "pattern or practice of defalcation" is unfounded.

The RTC has determined that the proposed definition of "pattern or practice of defalcation" may well prove to be unworkable and could cause uncertainty that could unduly delay the disposition of assets. Accordingly, the final regulation contains the same definitions that have been used in the RTC's contractor ethics regulation (12 CFR part 1606). As noted above, the RTC has more than two years of applying and interpreting that definition. The RTC has found it to be a workable definition that strikes a fair balance between restricting the activities of persons who intentionally harmed savings associations, while permitting dealings with persons who in good faith are willing to pay debts as financial circumstances permit.

Participating in a Material Way in Causing a Substantial Loss

A commenter asserted that the definition of "material way" is too broad, and should clearly reflect that the acts covered by the rule are relevant only if they occurred in connection with the transactions that caused the loss. In addition, the commenter asserts that the Act requires a finding of the prohibited acts. Mere allegations by a governmental agency should not be enough. Furthermore, the commenter

asserts that the Act requires that there be multiple transactions in order to constitute a restriction on asset purchases. Therefore, the commenter argued that it would be impermissible for the regulations to bar a purchaser for only one covered transaction. Finally, according to the commenter, the definition of "substantial loss" (more than $50,000) fails to consider relevant factors, including whether the loan had an economic basis when it was made, the size of the original transaction, or the reasons for the loss. Assertedly, this standard would be arbitrary and capricious as proposed.

The RTC does not agree with these comments. The clear intent and purpose of the Act is to restrict sales to persons who participated in causing a material loss. The focus is on the degree of harm to savings associations, not on the economic circumstances surrounding particular loans. Furthermore, the Act in this regard does not require a finding of the culpable conduct. Moreover, the RTC does not agree that this bar should be limited to persons who caused a substantial loss through multiple transactions. It would contravene the purposes of the Act, and could possibly be arbitrary and capricious, to bar a purchaser who through multiple transactions had caused a loss of only slightly more than $50,000, but to deal with a person who had through a single transaction caused a loss of substantially greater magnitude (e.g., several million dollars). Accordingly, this section of the proposed regulation will not be changed.

Key Officials

A commenter asserted that the definition of "key official" is too broad in that it would include all officers of a prospective purchaser. The commenter argued that key officials should be limited to those who have "substantial responsibility for the direction and control of the potential purchaser's policies and operations." This would assertedly be consistent with the definition of "management official" in the Contractor Ethics regulations. The commenter asserts that this proposal is supported by strong policy reasons, and that it would be unfair to penalize a purchaser who employs someone who has no significant responsibilities. Assertedly, the proposed definition could make former officers of a failed institution potentially unemployable. Finally, according to the commenter, the proposed definition could unduly restrict the universe of potential purchasers, harming the RTC.

This comment appears to be well-based. The RTC's intent in promulgating the proposed regulation was not to reach down to a person who might nominally be an officer of a company but actually has no significant input in running the company. The legislative purpose of the Act, and the RTC's mandates under FIRREA, are sufficiently served if the scope of officials covered by this regulation is consistent with the RTC's contractor ethics regulation, 12 CFR part 1606. Accordingly, the definition of "key official" has been modified to be consistent with that of "management official" in 12 CFR part 1606.

Application of Restrictions to Affiliates

A commenter asserted that the RTC needs to clarify the extent to which the regulations apply to affiliates. It is proposed that this can be accomplished by incorporating the definition of "control" from the Bank Holding Company Act of 1956, since the Thrift and Bank Fraud Act incorporates that statute's definition of "affiliate," i.e., a company that controls, is controlled by, or is under common control with another company. The RTC finds that this is consistent with the intent of the Thrift and Bank Fraud Act, and the proposed regulation has been modified accordingly.

Applying the above recommended definition of "control," the commenter requested that the RTC clarify that a potential purchaser should not be barred as an affiliate in either of two specific situations. In brief, the situations are: (a) Potential purchaser was managing general partner of a real estate development joint venture with a thrift, where the joint venture innocently defaulted on a loan from the thrift; (b) potential purchaser borrowed money from a thrift in a participating mortgage where the thrift participated in the cash flow and profit, and the purchaser defaulted for economic reasons. The commenter believes that barring such purchasers would preclude hundreds of bidders without a policy reason, as the Act was intended to prevent "insiders" from benefiting from their own wrongdoing. The commenter argued that legally, these situations would not place the purchaser and the institution under common control, and as a policy matter, the purchasers would not be insiders. The commenter concluded that, if guilty of fraud, a felony, or a pattern or practice of defalcation, such purchasers would be barred anyway, so there is no reason to bar them for innocent defaults.

Having incorporated the aforementioned definition of control, the RTC does not wish to provide case-specific guidance through this rulemaking document. However, the RTC will entertain this as a request for a legal opinion should the commenter wish that it be considered as such.

Other Issues

A commenter questioned the statutory authority to prohibit seller financing under the regulations to a person who has been alleged to have committed fraud, absent a finding or final determination by a court or administrative tribunal. The RTC has ample authority under FIRREA, as well as this Act, to place terms and conditions on the provision of loans. See, *e.g.*, 12 U.S.C. 1441a(b)(10)(K), (N). Where, as in this limited situation, it could clearly endanger the taxpayers' recovery on assets under the RTC's control to provide seller financing to a purchaser who has been charged by a governmental body with fraud, the RTC finds it necessary to go beyond the confines of the Thrift and Bank Fraud Act in adopting this regulation.

A commenter recommended clarifying that a prospective purchaser who would be barred from purchasing a single asset is not barred from purchasing a pool containing that asset. No rationale or legal basis was provided. The RTC finds no support for such a limitation.

Finally, a commenter asserted that the RTC should not be permitted to rescind a purchase contract once it is awarded, absent a knowing false certification or material changes in circumstances after filing a certification. The RTC finds that this is not an issue on which Congress gave the RTC regulatory discretion. Rather, the Act clearly prohibits sale of assets to those who have outstanding obligations as defined in the regulations, and the burden is on the person making such certifications to update them as necessary between the time a contract is signed and the transfer of ownership takes place. Intent in filing the certification is not an issue as to whether the sale may be rescinded. The RTC reserves the right to explore all legal remedies at the time an actual situation appears.

**C. Conclusion**

As noted above, the RTC in promulgating this regulation is following a statute that dictates most of the terms of the regulation. The regulation has been drafted in a way that is intended to be susceptible to self-certification by prospective purchasers. In addition, the RTC has found it necessary to define several terms that are not defined by the Act. In developing these definitions, the RTC has, to the extent that it can do so and remain consistent with the intent of Congress, drawn upon its experience in

the implementation of its Contractor Ethics regulations, 12 CFR part 1606. Where the definitions are strictly prescribed by the Thrift and Bank Fraud Act, the RTC has maintained those definitions. It is the intent of Congress that assets not be sold to persons or entities that they control, or are controlled by, if such persons or entities significantly contributed to the demise of a savings association.

Where neither the Act nor the contractor ethics regulations provided a workable definition, the RTC has attempted to develop a definition or to implement the Act in a way that is consistent with this Congressional intent.

**Final Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, the following regulatory flexibility analysis is hereby provided:

1. Reasons, objectives, and legal bases underlying the regulation: These elements have been discussed elsewhere in the Supplementary Information.

2. Small entities to which the regulation would apply: Individuals, and businesses which could qualify as small businesses under various statutory and regulatory standards, may be affected by these provisions. This regulation applies equally to all entities of any size. The RTC has been given no discretion in this matter by Congress.

3. Impact of the regulation on small businesses: Persons or entities that seek to purchase assets from the RTC do so on a strictly voluntary basis. The only burden imposed by this regulation is the completion of a certification form. This will not require the use of professional skills or the preparation of special reports or records. The RTC sought comment on alternative methods of compliance, or reporting requirements; no comments were submitted on this issue.

4. Overlapping or conflicting federal rules: There are no known federal rules which overlap, duplicate, or conflict with the regulation.

5. Alternatives to the regulation. The RTC has not identified alternatives that would be less burdensome to small businesses and yet effectively accomplish the objectives of the regulation. There is no obviously less burdensome method of implementing the statutory mandate than a self-certification process.

Nevertheless, comment was specifically solicited on this issue. No comments were received on this issue.

**List of Subjects in 12 CFR Part 1620**

Asset disposition, Savings associations.

For the reasons set out in the preamble, the RTC hereby adds part 1620 to title 12, chapter XVI of the Code of Federal Regulations, to read as follows:

## PART 1620—RESTRICTIONS ON SALE OF ASSETS BY THE RESOLUTION TRUST CORPORATION

Sec.

1620.1 Purpose and scope.
1620.2 Definitions.
1620.3 Restrictions on the sale of assets by the RTC in conjunction with a loan or extension of credit.
1620.4 Restrictions on the sale of assets by the RTC regardless of the method of financing.
1620.5 Independent determination of eligibility for seller financing.
1620.6 Certain asset sales unaffected by this part.
1620.7 Certification required.

**Authority:** 12 U.S.C. 1441a(b)(12) and (f).

### § 1620.1 Purpose and scope.

(a) The Resolution Trust Corporation is prohibited from selling assets that were or are held by savings associations that have been placed under the conservatorship or receivership of the Resolution Trust Corporation to certain persons who profited or engaged in wrongdoing at the expense of those savings associations, or seriously mismanaged those savings associations.

(b) The restrictions of this part generally apply only when there is a connection between a savings association that now holds or formerly held one or more assets, and the prospective purchaser whose conduct injured that specific savings association. The restrictions apply even though the assets are no longer owned by the savings association that the prospective purchaser injured. *Provided,* That, unless the RTC determines otherwise, the restrictions shall not apply to sales of securities backed by pools of assets which may include assets of such savings association. Except as specified, this part does not establish a general prohibition against the sale of assets of savings associations under the control of the Resolution Trust Corporation to a prospective purchaser who may have injured one or more savings associations other than the savings association(s) whose assets the purchaser seeks to purchase.

### § 1620.2 Definitions.

(a) *Corporation* means the Resolution Trust Corporation in its corporate capacity.

(b) *Key official* means a management official, managing or general partner, or director of an entity, or an individual who, acting individually or in concert with one or more entities or individuals, owns or controls 25 percent or more of the ownership of an entity, or otherwise controls the entity's management or policies.

(c) *Management official* means an individual within an organization who has substantial responsibility for the direction and control of the organization's policies and operations.

(d) *Person* includes an individual, or an entity with a legally independent existence, including, without limitation, a trustee; the beneficiary of at least a 25 percent share of the proceeds of a trust; a partnership; a corporation; an association; a society; or other organization or institution.

(e) *RTC* means the Resolution Trust Corporation as corporation, as conservator, or as receiver, as the context indicates.

### § 1620.3 Restrictions on the sale of assets by the RTC in conjunction with a loan or extension of credit.

(a) Neither the Corporation, nor a savings association that is under the conservatorship or receivership of the RTC, may, in selling one or more assets of any savings association that was or is under the conservatorship or receivership of the RTC, provide a loan, advance, or other extension of credit, to a person if—

(1) That person, or a key official of that person, has defaulted, or has been a key official of a partnership or a corporation which defaulted, on one or more obligations to any savings association; and

(2) The person or its key official has been determined by a court or administrative tribunal to have engaged in, or is subject to a pending judicial or administrative action brought by the RTC or a component of the government of the United States or of any state alleging fraudulent activity in connection with any such obligation.

(b) It shall be a violation of paragraph (a) of this section for a person under such circumstances to purchase, using a loan, advance, or other extension of credit provided by the Corporation or such savings association, one or more assets of a subject savings association.

(c) For purposes of paragraph (a) of this section, a person or its key official is considered to have defaulted on an obligation only if the person or its key official has failed to comply with the terms of the loan or other obligation to such an extent that the property

securing the obligation is foreclosed upon. Paragraph (a) of this section does not apply to the failure to satisfy an unsecured obligation.

(d) The restrictions in paragraph (a) of this section do not apply if the sale or transfer of an asset resolves or settles, or is part of the resolution or settlement of, obligations owed by the person or its key official(s) to the savings association whose assets are being sold, or to the Corporation.

**§ 1620.4 Restrictions on the sale of assets by the RTC regardless of the method of financing.**

(a) Neither the Corporation, nor a savings association that is under its conservatorship or receivership, may sell one or more assets of a savings association that was or is under the conservatorship or receivership of the RTC, to any person if the person or any key official of that person—

(1) Has participated, as an officer or director of the same savings association, or of an affiliate of that savings association, in a material way in one or more transaction(s) that resulted in an aggregate loss of more than $50,000 to that savings association, taking into account any net proceeds from the sale of collateral; or

(2) Has been removed from, or prohibited from participating in the affairs of, the savings association whose asset(s) is (are) being sold, pursuant to any final enforcement action by a Federal banking agency (defined at 12 U.S.C. 1813(q)); or

(3) Has demonstrated a pattern or practice of defalcation regarding obligations to the savings association whose asset(s) is (are) being sold.

(b) The restrictions of paragraphs (a)(1) and (a)(3) of this section shall not apply if the sale or transfer of an asset resolves or settles, or is part of the resolution or settlement of, obligations owed by the person or its key official(s) to the savings association whose assets are being sold, or to the Corporation.

(c) For purposes of paragraph (a) of this section, "affiliate" is defined as any company that controls, is controlled by, or is under common control with, another company. Control shall be defined as it is defined in 12 U.S.C. 1841(a)(2) on August 20, 1992.

(d) For purposes of paragraph (a) of this section, a "loss" is a net loss where a savings association has written off a receivable, either because it was required to do so by an examiner, auditor or regulator, or elected to write off the receivable using applicable accounting principles.

(e) For purposes of paragraph (a) of this section, an individual or entity has participated in a material way in a transaction that caused a loss to a savings association if the individual or entity:

(1) Has been found in a final determination by a court or administrative tribunal, or is alleged in a judicial or administrative action brought by the RTC or by any component of the government of the United States or of any State—

(i) To have violated any law, regulation, or order issued by a Federal banking agency, or breached or defaulted on a written agreement with a Federal banking agency, or breached a written agreement with a savings association; or

(ii) To have engaged in an unsafe or unsound practice in conducting the affairs of the savings association; or

(iii) To have breached a fiduciary duty owed to that savings association; or

(2) Is in default on a written agreement (including, but not limited to, a contract for goods or services, note, deed of trust, mortgage, loan agreement) with a savings association.

(f) For purposes of paragraph (a) of this section, a person or its key official shall have demonstrated a pattern or practice of defalcation regarding obligations to a savings association if the person or key official has engaged in any or all of the following:

(1) The person or key official has defaulted on more than one obligation to pay principal or interest to the savings association, and the savings association or its successor has continuing legal claims based upon these defaults in an aggregate amount in excess of $50,000; or

(2) The person or key official has engaged in more than one act that was intended to cause a loss to the savings association; or

(3) The person or key official, as a borrower, entered into more than one loan agreement with the savings association, the making of which was an unsafe or unsound action of the association on the basis of facts that the borrower knew or should have known, and the borrower defaulted on the loans in the aggregate amount of $50,000 or more.

(g) For purposes of paragraphs (e) and (f) of this section, the term "default" means a delinquency of 90 or more days as to payment of principal or interest; or the failure to comply with the terms and conditions of a contract or other written agreement, other than a loan or advance.

(h) It shall be a violation of this part for any person to purchase an asset that the RTC or a savings association under its conservatorship or receivership is prohibited from selling to that person if circumstances exist that would cause any of the restrictions enumerated in paragraph (a) of this section to apply.

**§ 1620.5 Independent determination of eligibility for seller financing.**

The ability of an offeror to certify that none of the restrictions set forth in this part is applicable, does not create any right to obtain a loan or advance by or through the RTC or a savings association under its conservatorship or receivership, or remove the right of the RTC to make an independent determination, based upon all relevant facts of the offeror's financial condition and history, of the offeror's eligibility to receive such loan or advance.

**§ 1620.6 Certain asset sales unaffected by this part.**

The effectiveness of this part shall not be grounds for rescission or revocation of the sale of one or more assets, or the withholding of seller financing by the RTC, if a legally enforceable contract of sale and/or agreement for seller financing was in effect prior to August 20, 1992.

**§ 1620.7 Certification required.**

The Corporation, or a savings association under its conservatorship or receivership, may not sell any asset, and no person shall buy any asset from the RTC or a savings association under its conservatorship or receivership, unless the person shall have certified, under penalty of perjury, with notice that a false certification may lead to punishment under 18 U.S.C. 1001 and 18 U.S.C. 1621, that none of the above restrictions applies to the sale of that asset. *Provided* That, the RTC may in its discretion permit a person to make an offer to purchase one or more assets, and may accept such offer, despite the inability to so certify, if the person acknowledges the inability to certify and submits a bona fide offer to cure any existing amounts owed to the RTC or the relevant association in conjunction with the sale of the asset(s).

By order of the Chief Executive Officer.

Dated at Washington, DC, this 10th day of July 1992.

Resolution Trust Corporation.

**William Tricadco,**

*Assistant Secretary.*

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Part IX

# Department of Housing and Urban Development

## Office of the Assistant Secretary

**24 CFR Part 219**

**Flexible Subsidy Program—Capital Improvement Loans; Final Rule**

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Part 219**

**[Docket No. R-92-1437; FR-2541-F-02]**

**RIN 2502-AE55**

**Flexible Subsidy Program—Capital Improvement Loans**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule makes final an interim rule published on March 7, 1989 (54 FR 9708), that amended the regulations at 24 CFR part 219, which govern the HUD Flexible Subsidy Program. Under the Flexible Subsidy Program, HUD provides assistance to projects experiencing extreme financial difficulty. The interim rule revised part 219 to reflect recent legislative amendments to the Flexible Subsidy Program, and to organize the Flexible Subsidy regulations into three subparts to cover: The current program of Flexible Subsidy operating assistance; the new program of capital improvement loans; and the general provisions applicable to both types of assistance. This rule makes final those amendments, with certain additions and revisions.

With respect to additions, the final rule implements those provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, and of the Department of Housing and Urban Development Reform Act of 1989, that are applicable to the Flexible Subsidy Program. With respect to revisions, the final rule revises certain sections of the interim rule to reflect policies and practices that are part of the Flexible Subsidy Program, and that should have been incorporated in the interim rule.

**EFFECTIVE DATE:** August 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-3944 or (202) 708-4594 (TDD). (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:**

## I. Paperwork Reduction Act Statement

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980, and have been approved and assigned OMB control number 2502-0395.

## II. Background

*The 1978 Amendments*

Section 201 of the Housing and Community Development Amendments of 1978 (section 201) created the Flexible Subsidy Program to provide operating assistance for projects experiencing extreme financial difficulty. The Flexible Subsidy Program was created in response to the findings and recommendations of a HUD 1977/1978 Task Force on Multifamily Property Utilization (44 FR 29632). The Task Force concluded that then-existing subsidies and loan servicing tools did not adequately address the full range of problems confronting multifamily projects. Under HUD programs then in existence, the amount of subsidy was determined by factors other than total project needs (e.g., by tenant rent/income ratios in the Section 8 Program).

The Flexible Subsidy Program, as created by section 201, provided that the amount of assistance is to be based upon an analysis of the project's total needs. Operating assistance is provided in the form of a deferred loan and, in conjunction with other resources, is designed to restore or maintain the physical and financial soundness of eligible projects so as to maintain their low- and moderate-income character. Assistance can be used to fund operating deficits, such as delinquent tax escrows or inadequate reserve accounts, and to correct past deficiencies in maintenance, repairs, and capital replacements.

*The 1983 Amendments*

The 1983 amendments to section 201 (made by section 217 of the Housing and Urban-Rural Recovery Act of 1983) expanded the Flexible Subsidy Program to include projects assisted under section 8 of the United States Housing Act of 1937 (section 8) that had been converted from assistance under section 236 of the National Housing Act or section 101 of the Housing and Urban Development Act of 1965 (Rent Supplement). The 1983 amendments also clarified that a project need not have an FHA-insured mortgage to be eligible for assistance under the Flexible Subsidy Program.

*The 1987 Amendments*

The 1987 amendments to section 201 (amendments made by sections 185 and 186 of the Housing and Community Development Act of 1987) again expanded the category of eligible projects. Projects assisted under section 23 of the United States Housing Act of 1937 (section 23) as it existed before January 1, 1975, and projects that received a loan under section 202 of the Housing Act of 1959 (section 202) more than 15 years before the date on which assistance is to be made available under this program, were made eligible.

The 1987 amendments also created a new category of assistance to be provided under the Flexible Subsidy Program—assistance for projects that need capital improvements to achieve physical soundness, and cannot be funded from project reserve funds without jeopardizing other major repairs or replacements that are reasonably expected to be required in the near future. This program of capital improvement loans is to be funded at an annual minimum of $30 million or 40 percent of the total amount available to the Flexible Subsidy Program (whichever is less), to the extent of approvable applications.

The 1987 amendments contemplate a contribution from the project owner toward the capital improvements of at least 20 percent of the total estimated cost. HUD may require the contribution to be as much as 30 percent of the cost, if that action is necessary to keep the rent burden required to service the loan at a reasonable level. The cost for capital improvements to be made under this loan program is limited to the amount HUD determines to be necessary to repair or replace capital items that have failed, or are likely to fail, in the near future; to improve those items and associated items to meet HUD's cost-effective energy efficiency standards; and to satisfy requirements under section 504 of the Rehabilitation Act of 1973 for access by mobility-impaired persons.

The 1987 amendments specify priorities to be given in awarding capital improvement loans. Top priority is given to projects where the owner is seeking to prepay the mortgage, and the project is eligible for incentives to continue operating for the benefit of low- and moderate-income tenants under section 224(b) of the Emergency Low Income Housing Preservation Act of 1987, or under title VI, subtitle A of the Cranston-Gonzalez National Affordable Housing Act. Other projects are to be given priority to the extent (1) the



capital improvements are immediately required; (2) the project serves lower income families and other suitable housing is unavailable in the area; (3) the capital improvements involve life, safety, or health of the project residents; and (4) the project demonstrates the greatest financial distress but can be rendered physically sound. In any case, the owner must agree to maintain the low- and moderate-income character of the project at least until the maturity of the original mortgage.

The 1987 amendments also specify that the interest rate on the loan is to be established by the Secretary of HUD. It is to be a rate that is not less than 3 percent nor more than 6 percent (unless a rate of as low as 1 percent is needed to sustain acceptable rents), and it is to be based on a point spread below the Treasury rate, plus an allowance established by the Secretary to cover administrative costs and probable losses. The term of the loan may not exceed the remaining term of the original mortgage. The Secretary is also authorized to impose additional conditions determined to be appropriate.

Recognizing that a project may need considerable assistance, the 1987 amendments provide that a project may receive more than one loan or other assistance under the Flexible Subsidy Program. Those amendments also provide that if the debt service on a capital improvement loan would otherwise force the rents too high, the owner's contribution can be required to be higher or the rate of interest on the loan can be lower, as discussed above. Other ways stated in the statute to resolve the high rent burden problem are to provide Section 8 existing housing assistance or to increase the length of the loan term.

## III. The Interim Rule

Section 1011 of the McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) (McKinney Act) required HUD to implement the capital improvement loan component of the program, at a stated minimum annual funding level, by issuing "regulations" that become effective not later than February 5, 1989. On March 7, 1989 (54 FR 9708), HUD published an interim rule to implement the capital improvement loan component of the Flexible Subsidy Program, as required by section 1011 of the McKinney Act, and to implement other changes to the program made by the 1983 and 1987 amendments.

The interim rule reorganized 24 CFR part 219 into three subparts. Subpart A contains the regulatory provisions that are applicable to the entire Flexible Subsidy Program. Subpart B contains the regulations that are applicable only to the existing Operating Assistance Program, and subpart C contains the requirements that are applicable only to the Capital Improvement Loan Program. The preamble to the March 7, 1989 rule described more fully additional changes made to the then-existing part 219 regulations, and the reasons for the revisions. (See 54 9709-9812.)

HUD invited public comment on the March 7, 1989 rule, and advised that the comments would be considered in the development of a final rule (54 FR 9712). The comments and HUD's responses to the comments are discussed below. Since publication of the interim rule, additional statutory requirements have been made applicable to the Flexible Subsidy Program. These requirements have been incorporated in the final rule. A discussion of these statutory requirements and the reasons for incorporation in the final rule is set forth below. In addition to new statutory requirements, the final rule makes revisions to certain sections of the interim rule to reflect policies and practices that are part of the Flexible Subsidy Program, and which should have been incorporated in the interim rule.

## IV. Additions to Interim Rule

*The 1989 HUD Reform Act*

The Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (Reform Act) contains an array of new authorities designed to assist HUD in reshaping the administration of its programs. On March 14, 1991, HUD published in the **Federal Register** a final rule to implement section 102 of the Reform Act of 1989. (See 24 CFR part 12, 56 FR 11032.) The March 14, 1991 rule made final a proposed rule published on June 19, 1990 (55 FR 25036). Section 102 of the Reform Act contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD.

Under subpart C of the March 14, 1991 rule, applicants that seek assistance under certain HUD programs are required to make the disclosures set forth in 24 CFR 12.32. These disclosures include information on other government assistance to be used with respect to the project or activities to be carried out with the assistance, the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the uses to which the funds are to be put. Subpart D of the March 14, 1991, rule requires that before making any assistance which is subject to the provisions of subpart D available with respect to any housing project for which other government assistance is or is expected to be made available, HUD will determine and execute a certification that the amount of the assistance is not more than is necessary to make the assisted activity feasible after taking account of the other government assistance.

The Flexible Subsidy Program was listed as a HUD program covered by the requirements of subpart C and subpart D in the June 19, 1990 proposed rule and March 14, 1991 final rule pertaining to the Reform Act. (See 55 FR 25046, 25048, 25050; 56 FR 11044, 11045, 11048.) Accordingly, the Department is incorporating in §§ 219.210 and 219.310 of this final rule (the sections which list the application submission requirements for a Flexible Subsidy loan) the disclosures required by subpart C of the Department's Reform Act regulations. Sections 291.205 and 219.315 incorporate the requirements of subpart D.

*Uniform Relocation Act*

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601-4655) (Uniform Relocation Act), as amended by the Uniform Relocation Act Amendments of 1987 (URA Amendments), authorizes Federal financial assistance to persons displaced from real property as a direct result of acquisition by a Federal agency, a State or a State agency for a Federal or federally assisted project or program, or by rehabilitation, demolition, or privately undertaken acquisition for Federal or federally assisted programs. Sections 412 of the URA Amendments designated the Department of Transportation (DOT) to be the lead Federal agency and authorized DOT to issue, with the active participation of other Federal agencies, regulations to implement the URA Amendments. On March 2, 1989, DOT issued a government-wide final rule (49 CFR part 24; 54 FR 8912) that followed an interim rule issued by that agency on December 17, 1987 (52 FR 47994). On February 19, 1988 (53 FR 4964), HUD published an interim rule advising that it would make effective, as of April 2, 1989, "all rule changes necessary to implement amendments to the Uniform Relocation Act."

The Flexible Subsidy Program is subject to the requirements of the Uniform Relocation Act. Activities that involve displacement of individuals are not eligible for funding under the Flexible Subsidy Program. However, in

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the event permanent displacement occurs under the program, the provisions of the Uniform Relocation Act apply. Further, temporary relocation is subject to certain specified program requirements. Accordingly, this final rule adds a new section 135 to part 219 to incorporate the requirements of the amended URA as applicable to the Flexible Subsidy Program, and to incorporate the administrative requirements governing temporary relocation. The inclusion of this new section 135 in this final rule is necessary to conform the Flexible Subsidy Program regulations to the requirements of the Uniform Relocation Act. The requirements of the amended Uniform Relocation Act are explicit and allow little, if any, administrative discretion or interpretation.

*Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing—April 8, 1992 Interim Rule*

On April 8, 1992 (57 FR 11992), HUD published an interim rule, entitled "Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing." The interim rule implements and makes effective HUD's procedures and standards for administering subtitle A of title VI of the National Affordable Housing Act, entitled "Low Income Housing Preservation and Resident Homeownership Act of 1990," which repeals and replaces the Emergency Low Income Housing Preservation Act of 1987. The April 8, 1992 interim rule, which is based on a May 2, 1991 proposed rule (56 FR 20262), incorporate the public comments received on the proposed rule, and solicits additional public comments. One of the sections amended by the April 8, 1992 interim rule was § 219.325, entitled "Effect on Rental Rates." The April 8, 1992 interim rule made changes to the introductory text of paragraph (b) and to paragraph (b)(3) of this section, and added a new paragraph (b)(5). This final rule incorporates the amendments made to § 219.325 by the April 8, 1992 interim rule. However, the Department notes that further changes may be made to this section when a final rule is issued on the matter of Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing."

**V. Revisions to Interim Rule**

*Three Year Limit on Assistance Applicable to Entire Program (§ 219.105(e))*

As noted earlier in this preamble, section 201 of the Housing and Community Development Amendments of 1978 established the operating assistance component of the Flexible Subsidy Program. Section 201(c)(1)(C) of this statute states in par that "* * * with respect to projects sold after October 1, 1978, *assistance* shall be available for a period not to exceed three years * * *". (Emphasis added.) Although there have been subsequent amendments to section 201, as discussed above (e.g., the creation of the capital improvements portion of the Flexible Subsidy Program in 1987), section 201(c)(1)(C) has not changed. Further, in amending section 201 to create the capital improvement component of the program, the Congress did not create a separate eligibility section for capital improvement loans, but rather, left section 201(c) to govern eligibility for both operating assistance and capital improvement loans. Thus, the Department concludes that the word "assistance" as used in section 201(c)(1)(C) is intended to cover both operating assistance and capital improvements. The interim rule, however, failed to accurately reflect the language of section 201(c)(1)(C) of the 1978 Amendments.

Subpart A of the rule sets forth the requirements applicable to the entire Flexible Subsidy Program—both operating assistance and capital improvement loans. Section 219.105(e) of subpart A, provides, among other things, that for projects sold after October 1, 1978, operating assistance under subpart B shall be available for a period not to exceed three years. (Emphasis added.) No mention was made of capital improvement loans in this section. Accordingly, this final rule amends § 219.105(e) to clarify that the three-year limitation is applicable to operating assistance and capital improvement loans, in accordance with the language of section 201(c)(1)(C).

*When Owner Contribution to Project as Condition for Approval of TPA May Constitute Required Owner Cash Contribution (§§ 219.205(b)(1), 219.305(c))*

As set forth in the March 7, 1989 interim rule, § 219.205(b)(1) (governing operating assistance loans) and § 219.205(c) (governing capital assistance loans) provide that funds which have already been agreed to be contributed to a project as a condition for purchase of the project (the transfer of physical assets (TPA)) will not be considered as the owner's cash contribution that is required for approval of a loan under the Flexible Subsidy Program. In response to public comment on this issue, discussed in Section VI of this preamble, these two sections have been revised by this final rule to include an exception to this restriction.

As revised, §§ 219.205(b)(1) and 219.305(c) now provide, in paragraphs (b)(1)(ii) and (c)(3), respectively, that cash that has been contributed to the project as a condition for receiving approval of the purchase of the project (TPA) will not normally be considered for purposes of meeting the cash contribution requirement unless a finding is made that the additional work and cost required was not anticipated or deemed necessary at the time of HUD's preliminary approval of the TPA. However, the TPA must have received preliminary approval not later than 36 months prior to the flexible subsidy loan application for this contribution to be considered the owner's matching cash contribution.

*Inclusion of Insured Projects in Estimated Project Revenue (§ 219.215)*

Section 219.215 sets forth the procedures for computing estimated project revenue. Section 219.215(a)(1)(ii) provides that a vacancy allowance may be used in developing the estimated revenue. Prior to publication of the March 7, 1989 interim rule, § 219.125 contained the provisions governing estimation of project revenue. Section 219.125 provided that a vacancy allowance may be used in developing the estimated revenue for insured projects. One of the revisions made to this section (now § 219.215) by the March 7, 1989 interim rule was to add non-insured projects to the category of projects covered by this section. However, in adding "non-insured" projects, reference to "insured projects" was inadvertently omitted. Accordingly, this final rule re-incorporates reference to "insured" projects in this section.

*Repayment of Operating Assistance Triggered by TPA (§ 219.220(b))*

Section 219.220(b) of the interim rule provided that assistance paid to an owner under the operating assistance component of the Flexible Subsidy Program must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, or prepayment of the mortgage. Section 219.220(b) of the final rule has been revised to include an additional event which may trigger repayment—"a sale of the project (Transfer of Physical Assets (TPA)) if the Secretary so requires at the time of approval of the TPA." The inclusion of this event in § 219.220(b) does not introduce a new repayment requirement. HUD Notice H–84–37, first issued November 11, 1984, and periodically extended subsequent to that date, provides for repayment of the Flexible Subsidy assistance generally at the time of a transfer of physical assets. Accordingly the inclusion of this provision in § 219.220(b) reflects an existing Flexible Subsidy Program practice.



*Removal of Limitation on Capital Improvement Loan (§ 219.315)*

Section 219.315 of the interim rule contained a paragraph that limited the amount of assistance available for a capital improvement loan. This section provided that if the requested capital improvement loan is greater than the remaining balance of the mortgage, the loan will not exceed 80 percent of the appraised value of the property as repaired, less the balance of the first mortgage. The Department has eliminated this limitation in the final rule. This limitation is not required by statute, and in practice, the amounts of assistance requested were below the 80 percent cap established by this section.

**VI. Discussion of Public Comments on Interim Rule**

Five entities submitted comments on the interim rule. The commenters included a public housing agency; three professional associations, representing the building, housing and redevelopment, and real estate management industries; and a law firm. The commenters generally were supportive of the interim rule, but offered several suggestions for changes, principally with respect to owner contributions, priorities for funding, and the level of funding. Several comments addressed portions of part 219 that were not changed or were not materially changed by the interim rule from the former provisions of part 219. The purpose of inviting public comments on the March 7, 1989 interim rule was to obtain comments on those sections of part 219 that were amended by the interim rule. In the event the Department decides to make substantive revisions to those provisions of part 219 that were not amended by the interim rule, the Department will publish a proposed rule which describes the amendments and invites public comment.

Following careful consideration of the comments on the interim rule, the Department has decided to adopt the March 7, 1989 interim rule with only those changes discussed in sections IV and V of the preamble.

The following presents a discussion of the substantive issues raised by the commenters, and the Department's response to each issue.

*Expansion of Eligible Projects (§ 219.105)*

Section 219.105, which specifies types of eligible projects under the Flexible Subsidy Program, was revised in the interim rule to reflect the addition of several categories of new projects, including certain section 8 projects, certain section 23 (precursor to section 8) projects, and certain section 202 projects.

*Comment.* One commenter stated that it was concerned about the inclusion of the section 8, section 23 and section 202 projects as eligible projects under the Flexible Subsidy Program, because the inclusion of these projects would increase competition for State agency non-insured projects.

*Response.* As discussed earlier in this preamble, the Congress expanded the category of projects eligible for assistance under the Flexible Subsidy Program to include section 8, section 23 and section 202 projects. The allocation process under the Flexible Subsidy Program establishes two categories of projects: (1) State agency financed non-insured projects; and (2) all other projects, including projects with FHA-insured and HUD-held mortgages. Accordingly, a State agency non-insured project will not compete against a section 8, section 23 or section 202 project for funding.

*Comment.* The same commenter stated that it was important that the final Flexible Subsidy rule not impair or foreclose funding for non-insured section 236 projects (section 236 refers to section 236 of the National Housing Act). The commenter stated that it is inequitable to take funds generated from excess income on section 236 projects (many of which are non-insured) and allocate these funds to a new larger group of federally-assisted projects at the expense of the non-insured section 236 projects.

*Response.* When section 236 interest reduction assistance was originally made available, the specifications were clearly spelled out, including the return of any excess income to HUD with no controls on its reuse. It is true that some projects have generated large amounts of excess income over the years, and have used little or no excess income, while the reverse is true for others—resulting in Project A subsidizing Project B. However, on an overall basis, this is considered an effective use of funds to help maintain the low- and moderate-income housing stock. HUD's experience to date indicates that the largest percent of dollars paid into the Flexible Subsidy Fund comes from section 236 projects with mortgages insured or held by HUD.

*Comment.* Finally, the commenter stated that the final rule should assure that State-agency non-insured projects will receive equal treatment with HUD-insured projects when funds are allocated.

*Response.* As noted above, the allocation process under the Flexible Subsidy Program establishes two categories of projects: (1) State agency financed non-insured projects; and (2) all others, including projects with FHA-insured and HUD-held mortgages. The allocations are the same in each category: the number of units in potentially eligible projects of the category as a percentage of the total number of units in all potentially eligible projects.

*Use of Uncommitted Capital Improvement Loan Amounts (§ 219.115(e))*

Section 219.115(e) provides in relevant part that if any of the amounts reserved for capital improvement loans remain unused 60 days before the end of a fiscal year, these amounts will become available for operating assistance loans under subpart B.

*Comment.* One commenter stated that it was unclear whether the unused funds must be reserved for specific projects before the end of the fiscal year or will be carried over to the next fiscal year. The commenter stated that in the former case, 60 days would not be sufficient time for owners to apply for operating assistance loans, and for HUD to review the applications. The commenter requested that in the final regulation HUD explain more clearly how these unused funds will be treated.

*Response.* At the time of issuance of the interim rule, HUD anticipated that a Notice of Fund Availability (NOFA) would be issued for both subpart B, operating assistance loans, and subpart C, capital improvement loans, during the second quarter of Fiscal Year 1991. Issuance of the NOFA by this quarter would permit Field Offices and Headquarters to review all applications and make any required funding transfers before the end of the fiscal year. (The FY 1991 NOFA for both operating assistance loans and capital improvement loans was published on May 7, 1991 (56 FR 21200.)) HUD expects to publish future NOFAs (which announce funding for both operating assistance and capital improvement loans) early in the fiscal year. (The FY 1992 NOFA was published on February 18, 1992 (57 FR 5948).) HUD believes that 60 days is sufficient time to review applications under a process in which NOFAs that announce funding for both

components of the Flexible Subsidy Program are published early in the fiscal year. If any of the amounts set aside for capital improvement loans remain unreserved 60 days before the end of a fiscal year, they will become available for operating assistance under subpart B. Additionally, under this process, owners who applied for operating assistance in response to the published NOFA, are not required to reapply if additional operating assistance becomes available.

*Local Government Consultation (§ 219.120)*

This section provides that the Secretary of HUD, before making assistance available to a project under the Flexible Subsidy Program, will consult with the appropriate officials of the unit of local government in which the project is located to seek certain assurances about the project; i.e., that the community in which the project is located is providing, or will provide, essential services to the project; the real estate taxes on the project are, or will be, no greater than would be the case if the property were assessed in a manner consistent with normal property assessment procedures; and any Flexible Subsidy assistance provided to the project would not be inconsistent with local plans and priorities.

*Comment.* One commenter questioned which local officials would make the determinations necessary to give the assurance required by § 219.120. The commenter stated that the regulations need to clarify how this process will work.

*Response.* This portion of the rule has not changed since May 23, 1980. Accordingly, HUD has had ample experience in determining which officials in local government to contact.

*Amount of Operating Assistance (§ 219.205(a))*

Section 219. 335(b) provides in part that the principal balance of the capital improvement loan may be increased at the sole discretion of HUD and subject to the availability of funds.

*Comment.* One commenter suggested that a provision similar to § 219.335(b) be included in the regulations governing operating assistance.

*Response.* A provision similar to § 219.335(b) was included in the published interim rule. Section 219.205(a) provides, "The Secretary will provide initial *and subsequent* operating assistance to permit the project * * *." (Emphasis added.)

*Program Eligibility of Repair or Replacement Item (§ 219.205(a)(1))*

Section 219.205(a)(1) provides that a repair or replacement item is eligible for assistance under the Flexible Subsidy Program only if no previous payment of HUD-related assistance (such as assistance under the Flexible Subsidy Program or CDBG Program) has been made.

*Comment.* One commenter requested that a repair or replacement item be eligible for assistance under the Flexible Subsidy Program even if previous assistance was made available to this item. The commenter stated that there may be a particular item which requires periodic attention, and, consequently, periodic assistance.

*Response.* A repair or replacement item is only eligible under subpart B of the Flexible Subsidy (Operating Assistance), if no previous payment of HUD-related assistance has been made. This is a statutory constraint. A repair or replacement item for which assistance previously has been provided by HUD might be eligible for Flexible Subsidy loan under subpart C (Capital Improvement Loans) where this constraint does not exist. However, it is not the intent of this program to provide a series of capital improvement loans for periodic or recurring maintenance problems. Items which are known to have recurring problems should be included in a project's budget. Additionally, it is not the intent of the Capital Improvement Loan Program (CILP) to provide a second capital improvement loan to remedy a repair which was made with one CILP loan, and where that repair was not adequately effected.

*Owner Contribution Credit for Cash Already to Contribute to Project (§§ 219.205(b)(1), 219.305(c))*

As discussed above in section V of this preamble, §§ 219.205(b)(1) and 219.305(c), as set forth in the March 7, 1989 interim rule, provide that funds which have already been agreed to be contributed to a project as a condition for approval of the TPA will not be considered as the owner's cash contribution that is required for approval of a loan under the Flexible Subsidy Program. As set forth in the March 7, 1989 interim rule, each of these sections also provide that HUD will consider as credit toward the owner's contribution any cash contribution, made from sources other than project income, that was made within 24 months before applying for the loan.

*Comment.* Two commenters questioned why TPA contributions could not be credited toward the owner contribution or Flexible Subsidy Program loans. One commenter stated that the TPA funds may be the only source of funds available to the owner. The other commenter stated that TPA funds should receive credit as the required owner contribution if these funds have been contributed by the owner for the purpose of making, or are related to making, physical repairs to a project within two years before the TPA application or operating assistance application, or if funds are being, or will be, contributed as a condition of HUD's approval of a TPA, or an operating assistance loan.

*Response.* For the reasons discussed in the response to the following comment, the Department does not agree that TPA contributions should be credited toward the owner's required contribution for Flexible Subsidy Program loans in every case. However, as discussed in section V of this preamble, the Department has determined that TPA funds should receive credit as the required owner contribution in the following situation. Cash that already has been contributed to the project as a condition for approval of the TPA will be considered the required owner cash contribution if HUD has made a finding that the additional work and cost required for the project was not anticipated or deemed necessary at the time of HUD's preliminary approval of the TPA. However, to be considered the cash contribution under this circumstance, the TPA must have received preliminary approval not later that 36 months prior to the loan application. Accordingly, §§ 219.205(b)(1) and 219.305(c) have been revised to include this provision.

*Comment.* One commenter objected to the time limit placed on the owner contributions which would receive credit under §§ 219.205(b) and 219.305(c). The commenter suggested that these contributions always be considered, with no time limitations.

*Response.* A 24-month time frame is considered reasonable for purposes of measuring previous owner contributions. To consider all owner contributions, regardless of the time made, would be to consider, in many cases, owner contributions made 20 years ago. The problem an extended time period presents is one of adequate documentation of the owner contribution. Generally, the financial records concerning an owner contribution made many years ago no longer exists. Additionally, the purposes of past contributions become obscure (i.e., were they made as a trade-off to

obtain other benefits from HUD, such as additional Section 8 funds?). Accordingly, HUD considers the 24-month time limitation to be an appropriate standard.

*Payment of Operating Assistance Loan (§ 219.220(a))*

Section 219.220(a) provides that operating assistance payments will be paid to the project owner after monies payable from the Reserve Fund for Replacements and owner contribution have been paid.

*Comment.* One commenter stated that these conditions for disbursement of the operating assistance loan proceeds do not permit the owner to make the owner's contribution over a period of time. The commenter also stated that the Replacement Reserve Fund should be maintained to keep the project in good condition for the future.

*Response.* Current administrative guidelines and the Financial Assistance Contract (Form HUD–9819) specify that owner contributions be deposited on the first working day of each quarter for Flexible Subsidy Assistance under subpart B (Operating Assistance). Drawdowns, if any, from the Reserve Fund for Replacements are negotiated between project owners and HUD. It is not HUD's intent to deplete the Reserve Fund as a whole; one of the eligible purposes of Operating Assistance is to increase the amount on hand in the Reserve Fund, where necessary.

*Priorities for Funding (§ 219.230)*

Section 219.230 states that HUD will give funding priority for operating assistance to projects currently experiencing financial and management problems where conditions can be stabilized by the provision of assistance under subpart B (the operating assistance regulations). This section further provides that to the extent that funds remain available, assistance may be provided to projects that on the basis of a financial and management analysis, appear to have a high probability of having financial and management problems within approximately the next five years and satisfy the eligibility requirements of the Flexible Subsidy Program.

*Comment.* One commenter recommended that the final rule specify several criteria for determining the two types of financial and management problems identified in § 219.230.

*Response.* The criteria for determining financial and management problems are well known, and have been implemented by HUD for many years. HUD's concern with codification of the criteria is that it would tend to overemphasize some of the criteria, to the possible exclusion of others which may be equally important in a specific case. Additionally, codification of the criteria may constrain the flexibility that should prevail in an overall analysis of a particular project's financial and management problems.

*Comment.* The same commenter recommended use of performance standards developed by the commenter for its own management evaluation and improvement system, or the performance standards developed by the Public Housing Decontrol Initiative.

*Response.* Both systems recommended by the commenter are excellent; however, the Department has long-established systems in place to deal with the projects eligible for the Flexible Subsidy Program. These systems are being further enhanced through the new Comprehensive Servicing Policy which is currently being implemented.

*Owner Contribution in the Capital Improvement Loan Program (§ 219.305(c))*

Section 219.305(c) of subpart C, which contains the regulations governing capital improvement loans, provides that an owner must contribute 25 percent of the total estimated cost of the capital improvements involved, unless the owner is a nonprofit corporation (other than a cooperative association), in which case it is exempt from the cash contribution requirement. Paragraph (1) of this section provides that the contribution must be made in cash.

1. Reduce Amount of Required Owner Contribution

*Comment.* Three commenters expressed concern about the required cash contribution in the Capital Improvement Loan Program. Two commenters stated that recent changes in the Federal tax laws made it increasingly difficult to raise owner capital as a 'down payment' or matching contribution for the capital improvement loan. One commenter recommended that the owner contribution level should not exceed 20 percent of the total estimated cost of capital improvements. Another commenter suggested that HUD take a more flexible approach to the required owner contribution. This commenter suggested that HUD establish an owner contribution range, as for example 20 to 30 percent of total project costs, and that the precise percentage for an owner would be determined based on the economics of each individual project.

*Response.* Historically, the Flexible Subsidy Program has required up to a one-third contribution from a limited dividend owner. In the case of the Capital Improvement Loan Program, Section 201, as amended by section 185(f) of the Housing and Community Development Act of 1987, requires a minimum contribution of 20 percent, and authorizes the Secretary to increase the required owner contribution to an amount not to exceed 30 percent. Given the history of requiring up to one-third contributions in the operating assistance component of the program, the Department determined that the usual amount of owner contribution in the capital improvement loan component of the program should be higher than the minimum level of 20 percent; therefore, the intermediate rate of 25 percent was selected. However, Section 201 permits the owner's contribution to be waived or reduced, should sufficient justification exist to do so. Also, HUD will attempt to tailor each loan to the condition of the property and the ability of the rent structure to support the debt service necessary to amortize the loan. This will provide a sufficient basis for reducing the owner's contribution, if circumstances warrant.

2. Permit Non-Cash Owner Contributions

*Comment.* One commenter noted that for non-HUD-insured projects, the regulations permit non-cash owner contributions for operating assistance loans, but not for capital improvement loans. The commenter requested that non-cash contributions be permitted for both types of loans, and that there be no difference in owner contributions for insured or non-insured projects.

*Response.* On April 10, 1991, HUD issued "Housing Notice H91–30, Operating Assistance Funding Under the Flexible Subsidy Program." This notice contained a requirement that owners of limited dividend projects contribute a minimum of 25 percent of the requested operating assistance loan. This requirement was applicable without regard to whether the project was HUD-insured or non-HUD-insured. The interim regulations for the capital improvement loan program also require a minimum 25 percent owner contribution, and also do not differentiate between HUD-insured and non-insured projects. Thus, the discrepancy between insured and uninsured projects, which previously existed in the Flexible Subsidy Program, has been eliminated. On the issue of the amount of the owner contribution, as discussed in the response to the preceding comment, this amount can be lowered when there is sufficient justification for doing so.

With respect to the issue of non-cash contributions, the regulations in subpart B, governing operating assistance loans, permit a non-profit owner to contribute to the project in the form of services, if HUD determines that neither the mortgagor nor the sponsor has the financial capability to make a cash contribution. (See § 219.205(b)(2).) In the regulations governing capital improvement loans, HUD exempts non-profit owners from the 25 percent owner contribution requirement, and therefore, the issue of non-cash contributions does not arise in that context. With respect to for-profit entities, HUD has determined the non-cash contributions are inappropriate for capital improvement loans, as the following example illustrates: a capital improvement loan program of $1,000,000 is approved. In an ordinary case involving a limited dividend owner, $750,000 would come from HUD, and $250,000 from the owner's funds. A greater amount would come from HUD (with a corresponding lesser amount from the owner), only to the extent that the owner is given credit for cash contributions used to repair capital items within the past 24 months. (See § 219.305(c)(3).) In the case of a non-profit owner, the entire $1,000,000 would come from HUD in the form of the capital improvement loan. If $250,000, or any portion thereof, were allowed as a contribution of services, the result would be that a portion of the capital improvements would not be completed.

*Comment.* One commenter offered several alternative forms of owner contribution other than the required "cash" contribution. The commenter requested that HUD consider owner contributions in the following forms:

(1) A non-interest bearing owner loan or interest-bearing owner loan, repayable from the development as a project expense or from residual receipts;

(2) Deferred, unpaid management fees;

(3) Dividends (not distributions) deferred prospectively or retroactively; and

(4) Mortgagee contributions, such as debt service deferrals and low interest energy loans based on "shared savings" repayments.

*Response.* As discussed in the response to the preceding comment, in the case of capital improvements, the owner contribution to the project must be one of immediately available cash in order to ensure that the capital improvements can be undertaken. With one exception, HUD does not impose limitations on the source of the cash contribution. Section 219.305(c)(2) provides that the cash must not be taken from project income, but may be taken from surplus cash from the project.

3. Reduce Interest Rate on Loan if Owner Exceeds Required Contribution

*Comment.* One commenter suggested that since HUD has the authority to reduce interest rates to as low as one percent to decrease the impact on tenant rents (see § 219.320(b)(4)), HUD should consider offering owners the option of making a 30 percent contribution in return for a capital improvement loan with an interest rate in the one to three percent range, rather than the six percent which the regulations indicated will be the standard rate.

*Response.* The owner's contribution is only one factor in determining the interest rate of the loan, and would not by itself be a reason to lower the interest rate. A six percent rate is not "standard" in the sense that it will be the rate charged on all loans. The six percent rate is simply the maximum rate HUD can charge as long as the "applicable Federal rate" determined by the Secretary of the Treasury exceeds 8.5 percent. (See § 219.320(b)(3).) Should the Federal rate fall below 8.5 percent, the maximum rate also would drop. There also are other reasons—principally an extreme rent burden caused by debt service on the new loan—which could result in an interest rate lower than the maximum allowable rate.

4. Reduce Owner Contribution if Owner Waived Dividends

*Comment.* One commenter stated that HUD should be sensitive to those owners who took few distributions from property, and instead left the distribution with the property. The commenter offered the following example: "An owner took two distributions in 18 years. If the owner ever waived his distribution, it is unfair to ask the owner for more money." The commenter stated that, in such circumstances, the Secretary should exercise discretion and waive the additional money required from the owner.

*Response.* Few, it any, owners went into the section 221(d)(3) Below Market Interest Rate (BMIR) Program or the section 236 Program for the limited dividend they offered. If an owner waived the dividend, it was part of a trade-off in which HUD offered additional section 8 assistance, or, for example, a new Flexible Subsidy loan, in order to effect certain project improvements. If a dividend was waived solely at an owner's discretion, this was a business decision, and would not affect the contribution required for a capital improvement loan.

*Amount of Capital Improvement Assistance (§ 219.315)*

Section 219.315 specifies how the amount of capital improvement assistance will be determined.

*Comment.* One commenter requested that "soft costs" should be incorporated in the capital improvement loan. The commenter stated that reasonable legal and accounting costs are justifiable costs in the capital improvement program.

*Response.* "Soft costs" (e.g., accounting fees, financing fees) are expected to be minimal to non-existent. The loan documents are uncomplicated, and, consequently, legal expenses should be nominal. Formal "cost certification" is not required for the Capital Improvement Loan Program. Accounting and auditing expenses would be absorbed by the project in the normal course of project operations. Accordingly, HUD does not wish to alter the regulation to provide for "soft costs" as part of the loan. However, necessary architectural and engineering fees could be included in the Capital Improvement Loan Program.

*Interest Rates on Loans (§ 219.320(b))*

Section 219.320(b) establishes the minimum and maximum interest rates that HUD may charge on capital improvement loans—three and six percent, respectively.

*Comment.* One commenter stated that some cases may warrant an interest rate lower than the six percent ceiling, and recommended that HUD approve a lower rate if cash flow projections indicate that a higher debt service rate cannot be serviced. The commenter stated that some cases may warrant Section 8 assistance and a loan rate of one percent in order to avoid an extreme rent burden on tenants.

*Response.* The regulations impose strict limitations on any rent increases resulting from a Capital Improvement Loan, and authorize actions, such as a lower interest rate and Section 8 assistance, to remedy this situation.

*Security for the Capital Improvement Loan (§ 219.320(c))*

Section 219.320(c) provides, in relevant part, that the project owner will be required to execute a note evidencing the capital improvement loan, which generally must be secured.

*Comment.* One commenter stated that the final rule should expressly state how the capital improvement loans are to be secured. The commenter stated that it is

important that owners of non-insured projects know what security HUD will require in order for them to determine whether a capital improvement loan is feasible.

*Response.* For projects with insured mortgages, the owner will be required to execute a Note and Mortgage, along with a Deferred Recordation Agreement. This agreement will entitle HUD to record the documents at a later date should the mortgage be assigned, or at such time as the mortgagee no longer has an interest in the project. Projects with HUD-held mortgages do not require the use of the Deferred Recordation Agreement because HUD is already the mortgagee. For projects with uninsured mortgages, the security arrangements will be left to the discretion of the State Housing Finance Agency.

*General Comments*

1. Keep the Flexible Subsidy Program Flexible

*Comment.* One commenter stated that the Flexible Subsidy Program will best achieve its objectives by allowing project owners the widest range of program options within which to structure a loan, without having to seek a waiver from the Secreary for the slightest variance.

*Response.* The operating assistance loan and the capital improvement loan components of the Flexible Subsidy program are being implemented through a competitive NOFA process. Therefore, any required waivers can be handled uniformly for all projects. Additionally, the program currently offers sufficient variations in matters such as interest rates and owner contribution so as to negate the need for a large number of waivers.

2. Acquisition of Privately-Owned Housing by Public and Nonprofit Entities

*Comment.* One commenter encouraged HUD to consider the provision in the Housing and Community Development Act of 1987 concerning acquisition of at-risk assisted, privately-owned housing by public or non-profit entities.

*Response.* Although this comment is not germane to the rule, HUD does not discourage acquisition of privately-owned housing by public or non-profit entities, as permitted by law.

3. Increase Funding for Flexible Subsidy Program

*Comment.* One commenter advised that it was concerned that funding was inadequate for the two Flexible Subsidy programs, and requested that HUD increase substantially the funding for this program.

*Response.* This is a legislative policy issue, and not a matter of regulation.

## IV. Other Matters

*Environment*

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 101(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) in connection with the March 7, 1989 interim rule. That Finding remains applicable to this final rule, and is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, room 10276, 451 7th Street, SW., Washington, DC 20410.

*Executive Order 12291*

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of this rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601), has reviewed this rule before publication and, by approving it, certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule establishes final regulations that will govern a HUD program which provides financial assistance to owners of troubled projects to remedy the disrepair of necessary capital items and to provide operating subsidy to these projects. This assistance is provided to qualifying projects without regard to the size of the project.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under the Order. The rule will provide for additional financial assistance to HUD-assisted multifamily housing projects, but will not interfere with State or local governmental functions.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

*Regulatory Agenda*

This rule is listed as sequence number 1169 under the Office of Housing in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804, 16829), under Executive Order 12291 and the Regulatory Flexibility Act.

*Catalog*

The Catalog of Domestic Assistance number for the program affected by this rule is 14.164.

**List of Subjects in Part 219**

Loan programs—housing and community development, low- and moderate-income housing.

Accordingly, 24 CFR part 219 is revised to read as follows:

## PART 219—FLEXIBLE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

**Subpart A—General Provisions**

Sec.
219.101 Purpose.
219.105 Types of projects.
219.110 General eligibility.
219.115 Flexible Subsidy Fund.
219.120 Local government consultation.
219.125 Environmental requirements.
219.130 Waivers.
219.135 Displacement and temporary relocation.

**Subpart B—Operating Assistance**

219.205 Amount of operating assistance.
219.210 Application.
219.215 Estimating project revenue and operating expenses.
219.220 Payment and repayment of operating assistance.
219.225 Effect of assistance on rent increase approvals.
219.230 Priorities for funding.

**Subpart C—Capital Improvement Loans**

219.305 Eligibility.
219.310 Application.

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219.315 Amount of assistance.
219.320 Loan terms and conditions.
219.325 Effect on rental rates.
219.330 Priorities for funding.
219.335 Operations.

**Authority:** 12 U.S.C. 1715z-1a; 42 U.S.C. 3535(d).

## Subpart A—General Provisions

### § 219.101 Purpose.

The purposes of the Flexible Subsidy program are to provide assistance to restore or maintain the financial soundness of certain projects; to assist in the improvement of the management of certain projects; to permit capital improvements to be made to maintain certain projects as decent, safe, and sanitary housing; and to maintain the low- to moderate-income character of certain projects assisted or approved for assistance under the National Housing Act, the United States Housing Act of 1937, the Housing Act of 1959, or the Housing and Urban Development of 1965, without regard to whether the projects are subject to insured financing under the National Housing Act.

### § 219.105 Types of projects.

The types of rental or cooperative housing projects that may be eligible for assistance under this part include only the following:

(a) A project assisted under the section 236 Interest Reduction Program, the section 221(d)(5) Program (commonly known as the 221(d)(3) Below Market Interest Rate Program), or the Rent Supplement Program;

(b) A project that was constructed more than 15 years before assistance is to be provided under this part with a loan under the section 202 Program for Housing for the Elderly or Handicapped;

(c) A project assisted under section 23 of the United States Housing Act of 1937 (1937 Act), as in effect immediately before January 1, 1975, that is ineligible for assistance under the modernization program operated under the 1937 Act;

(d) A project assisted under the section 8 Housing Assistance Payments Program after conversion from assistance under the section 236 Rental Assistance Payments Program or the Rent Supplement Program; or

(e) A project that met the criteria in paragraph (a) or (b) of this section before acquisition by the Secretary and that has been sold by the Secretary subject to a mortgage insured or held by the Secretary and subject to an agreement (in effect during the period of assistance under this part) that provides that the low- and moderate-income character of the project will be maintained; except that with respect to any project sold after October 1, 1978; operating assistance under subpart B of this part and capital improvement loans under subpart C of this part shall be available for a period not to exceed three years.

### § 219.110 General eligibility.

Assistance under this subpart may not be made available unless the Secretary has determined that:

(a) This assistance, when considered with other resources available to the project, is necessary, will restore or maintain the financial or physical soundness of the project and will maintain the low- and moderate-income character of the project. "Other resources" include but are not limited to mortgage modification agreements, owner contributions, and assistance from State or local programs;

(b) The owner has agreed to maintain the low- and moderate-income character of the project for a period at least equal to the remaining term of the project mortgage;

(c) This assistance will be less costly to the Federal Government over the useful life of the project than other reasonable measures by which the Secretary could maintain the low- and moderate-income character of the project;

(d) The project owner, together with the mortgagee in the case of projects not insured under the National Housing Act, has provided or agreed to provide assistance to the project in a manner determined by the Secretary in accordance with § § 219.205(b) and 219.305(c);

(e) The project is, or can reasonably be made, structurally sound, as determined from information resulting from an on-site inspection of the project;

(f) Project management is being conducted by persons who meet satisfactory levels of competency and experience as determined by the Secretary in the management review process; and

(g) The project is being operated and managed in accordance with a management improvement and operating (MIO) plan that is designed to reduce the operating costs of the project and that has been approved by the Secretary—except for a project for which the only assistance provided under this part is for capital improvements under subpart C. (See § 219.310(b).)

### § 219.115 Flexible Subsidy Fund.

(a) The Flexible Subsidy Fund is a revolving fund established in the Treasury of the United States that is available to the Secretary, to the extent approved in appropriation Acts, to provide assistance under this part.

(b) The Fund consists of the following:

(1) Any amount appropriated to carry out the purpose of this part;

(2) Any amount repaid on any assistance provided under this part;

(3) Any amounts credited to the Section 236 program excess rental receipts fund; and

(4) Any amount received by the Secretary under this program, including any interest on investment of funds as described in paragraph (c) of this section.

(c) Any amounts in the Fund determined by the Secretary to be in excess of the amounts currently required to carry out the provisions of this part will be invested by the Secretary in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States.

(d) At the beginning of each fiscal year, funds are allocated for two categories of projects: State agency financed non-insured projects; and all others, including projects with FHA-insured and HUD-held mortgages. Each category is allocated an amount based on the number of units in potentially eligible projects of that category as a percentage of the total number of units in all potentially eligible projects. Once these two funding categories are established, each category will be administered to comply with the statutory requirement concerning spending for the capital improvement loan program enumerated in paragraph (e) of this section, by spending 40 percent of its allocation, or its share of the stated dollar amount (whichever is less), to the extent of approvable applications.

(e) The Secretary will use not less than $30 million, or 40 percent of the amounts available in the Fund (subject to paragraph (a) of this section) in any fiscal year (whichever is less), for purposes of providing capital improvement loans under subpart C of this part, to the extent of approvable applications. If any of the amounts set aside for capital improvement loans remain unreserved 60 days before the end of a fiscal year, they will become available for operating assistance under subpart B of this part. In the event additional operating assistance becomes available under a published Notice of Funding Availability (NOFA), applicants who have applied for operating assistance in response to that NOFA are not required to reapply for this assistance.



(f) Funding decisions are made on a periodic basis, using the applicable priorities enumerated in subparts B and C of this part. As the end of each fiscal year approaches, HUD will determine to what extent there are funds required to be used for capital improvement loans (under paragraph (e) of this section) that are allocated for one of the two major categories (described in paragraph (d) of this section) but are unlikely to be used by projects of that category. In the last quarter, to the extent there is to be an excess in either of the categories for capital improvement loans that could be used for loans to eligible applicants of the other category, the funds will be reallocated.

### § 219.120 Local government consultation.

The Secretary, before making assistance available to a project, will consult with the appropriate officials of the unit of local government in which the project is located and will seek the assurances that:

(a) The community in which the project is located is providing, or will provide, essential services to the project in keeping with the community's general level of these services;

(b) The real estate taxes on the project are or will be no greater than would be the case if the property were assessed in a manner consistent with normal property assessment procedures for the community; and

(c) Assistance to the project under this part would not be inconsistent with local plans and priorities.

### § 219.125 Environmental requirements.

To be approved for funding under this part, an application for assistance to cover a capital improvement, as defined in § 219.305, will be reviewed for compliance with applicable environmental requirements, as follows:

(a) If the proposed capital improvements involve major mechanical systems, HUD will determine whether the project is located in a 100-year floodplain, and if so, will take all feasible actions to minimize the impact of flooding on the mechanical systems.

(b) If a project is listed on the National Register of Historic Places, the proposed use of funds will be reviewed for compliance with the National Historic Preservation Act of 1966. As a general rule, in-kind replacements will not trigger review under that Act. If the project is not listed on the National Register but is located in an historic district, review under the Act will only be required where there are proposed alterations to the exterior that are not in-kind.

### § 219.130 Waivers.

Upon a determination of good cause, the Secretary of Housing and Urban Development (Secretary) may, subject to statutory limitations, waive any provision of this part. Each such waiver will be in writing and will be supported by documentation of the pertinent facts and grounds. Waivers granted under this section are subject to the requirements of Section 106 of the Department of Housing and Urban Development Reform Act of 1989.

### § 219.135 Displacement and temporary relocation.

(a) *General.* No person shall be displaced as a direct result of rehabilitation assisted under this part, unless approved in advance by HUD. If displacement occurs, the "displaced person" (defined in paragraph (e) of this section) shall be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(b) *Temporary relocation.* Rehabilitation assisted under this part may require temporary relocation of residents. The following policies cover residential tenants who will not be required to move permanently, but who must be temporarily relocated in order to carry out the rehabilitation. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Appeals.* A person who disagrees with the owner's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the owner. A person who is dissatisfied with the owner's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(d) *Responsibility of owner.* The owner shall ensure compliance with the URA, the regulations at 49 CFR part 24, and the requirements of this section, notwithstanding any third party's contractual obligation to the owner to comply with these provisions. The owner shall maintain records in sufficient detail to demonstrate such compliance.

(e) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of rehabilitation that is assisted under this part. This includes any permanent, involuntary move from the property, including any permanent, involuntary move that is made:

(i) After notice of the person from the owner to move permanently from the property, if the move occurs on or after the date that the owner submits to HUD an application for assistance that is later approved and funded; or

(ii) Before the submission of the application to HUD, if the owner or HUD determines that the person was displaced as a direct result of the rehabilitation assisted under this part; or

(iii) By a tenant-occupant of a dwelling if any one of the following three situations occurs:

(A) The tenant moves after execution of the agreement between HUD and the property owner, and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex and either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another unit in the same building/complex but is not offered

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reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (e)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; or

(ii) The person moved into the property after the submission of the application to HUD and, before signing a lease and commencing occupancy, received written notice of the application for assistance, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase), and the fact that he or she would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the rehabilitation; or

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of the rehabilitation.

(3) The owner may request, at any time, a HUD determination of whether a displacement is or would be covered under this section.

(f) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a displaced residential tenant, the term "initiation of negotiations" means the execution of the agreement between HUD and the property owner under which the assistance is provided.

## Subpart B—Operating Assistance

### § 219.205 Amount of operating assistance.

(a) The Secretary will provide the initial and subsequent operating assistance to permit the project to attain and maintain financial soundness, in an amount that is consistent with the project's MIO plan, subject to the availability of funds as described in § 219.115, and subject to the limitation on housing assistance as set forth in 24 part 12, subpart D. Subject to these limitations, the amount of assistance provided under this subpart will not exceed the sum of the following:

(1) An amount determined by the Secretary to be necessary to correct project deficiencies existing at the beginning of the first year of assistance that were caused by the deferral of regularly scheduled maintenance and repairs, or by the failure to make necessary and timely replacements of equipment and other components of the project. A repair or replacement item is only eligible under this program if no previous payment of HUD-related assistance (such as assistance under this part, a Housing Development Grant, or a Community Development Block Grant) has been made. A capital improvement (as described in § 219.305(a)) is eligible for funding as part of operating assistance only if it is necessary to meet local building codes or to maintain the project in a decent, safe, and sanitary condition and the Secretary determines that this method of funding the improvement is the most efficient;

(2) An amount determined by the Secretary to be necessary to maintain the low- and moderate-income character of the project by reducing deficiencies (which exist at the beginning of the first year of assistance and for which payment has not previously been made) in the reserve fund established by the project owner for the purpose of replacing capital items;

(3) An amount not greater than the amount by which the estimated operating expenses for the year for which assistance is made available exceed the estimated revenues to be received by the project during that year, as determined in accordance with § 219.210; and

(4) An amount determined by the Secretary to be necessary to carry out a plan to upgrade the project to meet cost-effective energy efficiency standards approved by the Secretary.

(b) The owner must provide assistance to the project, as follows:

(1) Generally, the contribution must be made in cash. The contribution must not be taken from project income, but may be taken from surplus (as defined in the Regulatory Agreement) from the project. Cash contributions by the owner made within the 24 months before application for operating assistance under this subpart from sources other than project income may be considered for purposes of meeting this contribution requirement.

(i) Cash that has already been agreed to be contributed to the project as a condition for receiving a capital improvement loan will not be considered for purposes of meeting this contribution requirement;

(ii) Cash that has been contributed to the project as a condition for receiving approval of the purchase of the project (TPA) will not generally be considered for purposes of meeting this contribution requirement unless HUD finds that the additional work and cost required was not anticipated or deemed necessary at the time of HUD's preliminary approval to the TPA; however, the TPA must have received preliminary approval not later than 36 months prior to the HUD's receipt of the flexible subsidy loan application for this contribution to be considered as the matching contribution.

(2) A non-profit owner may be permitted to contribute to the project in the form of services, if HUD determines that neither the mortgagor nor the sponsor has the financial capability to make a cash contribution.

### § 219.210 Application.

(a) The project owner must submit an application on a form approved by the Secretary.

(b) the application will include an MIO plan that includes the following:

(1) A detailed maintenance schedule;

(2) A schedule for correcting past deficiencies in maintenance, repairs and replacements;

(3) A plan to upgrade the project to meet cost-effective energy efficiency standards approved by HUD;

(4) A plan to improve financial and management control systems;

(5) An updated annual operating budget, if the last budget was submitted more than 90 days before the application is submitted; and

(6) A plan setting forth the specific controls and procedures that will result in a reduction in operating costs, if possible, together with an estimate of the cost saving.

(c) The application will include documentation of eligibility, as described in § 219.110, and shall also include:

(1) Certification of compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 U.S.C. 4601–4655), and its implementing regulations at 49 CFR part 24, and § 219.135 of this part; and

(2) Disclosures of other government assistance and expected sources and uses of that assistance, and the identity of interested parties, as required by 24 CFR 12.32.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0395)

### § 219.215 Estimating project revenue and operating expenses.

(a) *Computing estimated project revenue.* The estimated revenue for a project with respect to any year is equal to the sum of the following:

(1) The estimated amount of rent that is to be paid by the tenants of the project during the year (without regard, in the section 236 Interest Reduction program, to whether the owner has established and is collecting a "basic rent", as defined in 24 CFR 236.2), in accordance with the following:

(i) The rent being paid or projected to be paid at the time project revenue is estimated; but, in no event less than 30 percent of the adjusted income of each tenant, or, in the case of a tenant paying his or her own utilities, a percentage of income that is less than 30 percent and that takes into account the reasonable costs of utilities. Percentages of adjusted income, as defined in 24 CFR part 813, can be based on the most recent tenant income certification. In no case will the amount used for this estimate exceed the HUD-approved rent for the project.

(ii) A vacancy allowance may be used in developing the estimated revenue for insured, non-insured projects and HUD-held projects. This allowance may not exceed six percent of the rental payments otherwise to be anticipated, unless the Secretary permits a higher allowance for the first three years in which assistance is to be provided to a project under this subpart because the higher allowance is necessary to carry out the purposes of this subpart.

(2) The estimated amount of assistance payments to be made on behalf of the tenants during the year, other than assistance provided under this subpart; and

(3) Other income attributable to the project as determined by the Secretary, e.g., commercial rental income, tax rebates or refunds, condemnation or insurance award proceeds.

(b) *Computing estimated project operating expenses.* The estimated operating expenses of any project with respect to any year shall include all estimated operating costs that the Secretary determines to be necessary and consistent with the MIO plan for the project for the year. These costs include, but are not limited to, taxes, utilities, maintenance and repairs (except for maintenance and repairs that should have been performed in previous years), management, insurance, debt service, and payments made by the owner for the purpose of establishing or maintaining a reserve fund for replacement costs. The estimated operating expenses may not include any return on the equity investment of the owner.



### § 219.220 Payment and repayment of operating assistance.

(a) *Basis for payment.* Assistance payments will be computed on an annual basis in accordance with § 219.205, payable at least quarterly, after the amount payable from the reserve for replacements (if any) and the owner contribution payable as part of the approved plan have been paid. At the time of each payment, the operations of the project will be reviewed by the Secretary to determine that they are consistent with the MIO plan. Continued payments will be contingent upon satisfactory performance.

(b) *Basis for repayment of assistance.* Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project (Transfer of Physical Assets (TPA)) if the Secretary so requires at the time of approval of the TPA.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0395)

### § 219.225 Effect of assistance on rent increase approvals.

To assure that projects eligible for assistance under this part restrain costs in every way possible, including by using assistance under this part to upgrade capital items to meet cost-effective energy efficiency standards, the Secretary will consider, as part of the rent increase approval process under 24 CFR part 245, whether the project owner could control increases in utility costs by securing more favorable utility rates, by undertaking energy conservation measures that are financially feasible and cost effective, or by taking other financially feasible and cost-effective actions to increase energy efficiency or to reduce energy consumption. Where the Secretary determines that the owner could exercise such control, the amount of a proposed rent increase may be adjusted to reflect the estimated savings that could be attained.

### § 219.230 Priorities for funding.

HUD will give funding priority to projects currently experiencing financial and management problems where conditions can be stabilized by the provision of assistance under this subpart. To the extent that funds remain available, assistance may be provided to projects that, on the basis of a financial and management analysis, appear to have a high probability of having financial and management problems within approximately the next five years, and that satisfy the eligibility requirements of § 219.110.

## Subpart C—Capital Improvement Loans

### § 219.305 Eligibility.

(a) Assistance is available under this subpart for capital improvements. For purposes of this subpart, "capital improvements" include any major repair or replacement of building components: *i.e.*, roof structures, ceiling, wall or floor structures, foundations, plumbing, heating, cooling, electrical systems and major equipment, including any major repair or replacement of any short-lived building component or equipment before the expiration of its useful life. Capital improvements also may include limited supplements or enhancements to mechanical equipment needed for health and safety of the residents, such as air conditioning, heating equipment, or water softeners, where they do not exist. Capital improvements do not include maintenance of any such item.

(b) Assistance under this subpart will be in the form of a loan. The Secretary will provide this assistance only if the Secretary determines that the owner's reserve for replacements (including any surplus cash, residual receipts or other funds from the project account or escrow outside the project account that could be used to fund the reserve) is insufficient to finance both the capital improvements for which assistance is being requested and other capital improvements that are reasonably expected to be required within the next 24 months, as described in the owner's work write-up (submitted as part of the application), and that the owner has funded the reserve fund in accordance with HUD requirements. An owner's Reserve Fund for Replacements may only be used to cover needed capital improvements if the Reserve Fund for Replacements exceeds $1,000 per unit, and then only to the extent of depleting it by up to 50 percent of the amount over $1,000 per unit on the date the capital improvement loan is made.

(c) An owner must contribute 25 percent of the total estimated cost of the capital improvements involved, unless the owner is a nonprofit corporation (other than a cooperative association), in which case it is exempt from this contribution requirement. The total estimated cost of the capital improvements includes the cost of the estimate of work, the cost of materials, and the cost of labor. This estimate must be approved by HUD as cost effective.

(1) Generally, the contribution must be made in cash. The contribution must not

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be taken from project income, but may be taken from surplus cash (as defined in the Regulatory Agreement) from the project. Cash contributions by the owner made within the 24 months before application for a capital improvement loan under this subpart from sources other than project income may be considered for purposes of meeting this contribution requirement.

(2) Cash that already has been agreed to be contributed to the project as a condition for receiving operating assistance will not be considered for purposes of meeting this requirement.

(3) Cash that has been contributed to the project as a condition for receiving approval of the purchase of the project (TPA) will not generally be considered for purposes of meeting this contribution requirement unless HUD finds that the additional work and cost required was not anticipated or deemed necessary at the time of HUD's preliminary approval of the TPA; however, the TPA must have received preliminary approval not later than 36 months prior to HUD's receipt of the CILP loan application for this contribution to be considered as the matching contribution; and

(4) When the owner has spent its own money (as from surplus cash) to attempt to repair capital items within the 24 months before HUD's receipt of the capital improvement loan application, and the repair was unsuccessful and has resulted in a need for a replacement (to be funded by a capital improvement loan), the expenditure will be considered for purposes of meeting the contribution requirement.

**§ 219.310 Application.**

(a) A project owner must submit an application on a form approved by the Secretary, which will include a work write-up to describe the capital improvements to be covered by the requested loan (see § 219.315), and other documentation of eligibility, as described in §§ 219.110 and 219.305. The project owner also must submit:

(1) Certification of compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 U.S.C. 4601–4655), and its implementing regulations at 49 CFR part 24, and § 219.135 of this part.

(2) Disclosures of other government assistance and identity of interested parties, as required by 24 CFR 12.32.

(b) The application must be accompanied by a MIO plan only in the following cases:

(1) A default under the mortgage;

(2) A violation of the fiscal requirements or property maintenance requirements of the regulatory agreement (for other than willful or fraudulent reasons);

(3) An unsatisfactory or marginally satisfactory management review in the past 24 months (unless the owner has corrected the problems through a substitution of management agent, management personnel, or otherwise, in a manner satisfactory to HUD); and

(4) A situation that HUD Headquarters has determined requires submission of a MIO plan.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0395)

**219.315 Amount of assistance.**

(a) The amount of assistance available under this subpart will not be greater than is necessary to make the assisted activity feasible after taking into account other government assistance, if any, in accordance with the provisions of 24 CFR part 12, subpart D.

(b) Subject to the provisions of paragraph (a) of this section, the amount of assistance will not exceed the sum of the following, minus the owner contribution made in accordance with § 219.305:

(1) The amount the Secretary determines is necessary to cover capital improvements at the project with respect to capital items that have failed, or are likely to fail or deteriorate seriously within 24 months;

(2) The amount the Secretary determines is necessary to upgrade the capital items and related capital items to meet cost-effective energy efficiency standards approved by HUD; and

(3) The amount the Secretary determines is necessary to comply with the Department's standards in 24 CFR part 8 for accessibility to individuals with handicaps.

**§ 219.320 Loan terms and conditions.**

(a) The length of the loan term will be determined based on various factors, including the useful life of the improvement, the amount financed, and the impact on tenant rents. The term generally will be for the remaining period of the original mortgage, and the term may not exceed that period. With respect to a non-insured project, the loan term will generally be for the remaining period during which the owner is under an obligation to provide housing for lower income families, and the term may not exceed that period.

(b) In determining the interest rate on the loan, the Secretary will consider factors such as the length of the loan term and the effect of the required debt service on tenant rents.

(1) The minimum rate is the applicable Federal rate determined by the Secretary of the Treasury at the end of the Federal fiscal year before the loan is to be made, minus three percentage points, plus an allowance established by the Secretary of HUD to cover administrative costs and probable losses under the program.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the rate to be charged may not be less than three percent nor more than six percent.

(3) The rate that represents both the minimum and the maximum rate is six percent, unless the applicable Federal rate determined by the Secretary of the Treasury for a fiscal year is less than 8.5 percent or HUD changes the allowance from its initial amount of .5 percent, thereby producing a minimum rate other than six percent. In that event, HUD will publish in the **Federal Register** the following: The rate determined by the Secretary of the Treasury, the allowance established by HUD, and the minimum rate.

(4) Notwithstanding the minimum rate limitations specified in paragraphs (b)(1) and (b)(2) of this section, the Secretary may charge a lesser rate if the Secretary determines that the lower rate is necessary to maintain reasonable rental rates. (See § 219.325.)

(c) Each loan for capital improvements is a liability of the project and cannot be discharged in any bankruptcy proceeding under section 727, 1141, or 1328(b) of title 11, United States Code. The project owner will be required to execute a note evidencing the capital improvement loan, which generally must be secured.

(d)(1) A capital improvement loan may be made under this subpart to a project owner who already has received assistance under this part, so long as the capital items that are the subject of the loan application have reached the end of their useful life and the project meets all of the applicable eligibility criteria for the capital improvement loan. (See §§ 219.110 and 219.305.)

(2) A capital improvement may not be financed partly by operating assistance under subpart B of this part and partly by a capital improvement loan under subpart C of this part. However, a project owner may apply for assistance to cover deferred liabilities under subpart B of this part and, simultaneously, apply for a loan to cover capital improvements under subpart C of this part.

**§ 219.325 Effect on rental rates.**

(a) Rent increases resulting from the debt service and other expenses of a loan for capital improvements under this part for an owner whose project rents are not approved by HUD and that is subject to a plan of action approved under 24 CFR part 248 are governed by the rent agreements entered into as part of that plan of action.

(b) If rent increases that would result from the debt service and other expenses of a capital improvement loan under subpart C of this part for a project other than one described in § 219.330(a) would cause the rents of lower income residents of the project to be higher than the amount that would be allowed for eligible families under 24 CFR 813.107, or where appropriate to implement a plan of action under part 248 of this chapter, the Secretary may consider taking any or all of the following actions:

(1) Increase the amount of the owner's contribution under § 219.305 to an amount not to exceed 30 percent of the total estimated cost of the capital improvements involved.

(2) Increase the term of the loan determined under § 219.305(a) to a term that does not exceed the remaining term of the mortgage on the project.

(3) Notwithstanding § 219.320(b), reduce the rate of interest on the capital improvement loan to a rate not lower than one percent.

(4) Provide assistance under the Section 8 Existing Housing Program (including project-based Certificates or Loan Management Set-aside), to the extent amounts are available for such assistance, and without regard to the limitation contained in 24 CFR 813.105 on the number of non-very low income families that may be admitted to the program.

(5) Permit repayment of the debt service to be deferred as long as the low and moderate income character of the project is maintained in accordance with § 219.110(b).

**§ 219.330 Priorities for funding.**

(a) The Secretary will establish an annual set-aside for projects that are eligible for incentives to continue to operate as low- to moderate-income housing under a plan of action in accordance with 24 CFR part 248, to assure that top priority for funding capital improvement loans is given to this category of projects. This set-aside may be increased or decreased during the year if it is determined to be appropriate.

(b) To the extent that funds are available for projects other than those described in paragraph (a) of this section, priority will be given to projects based on the extent to which—

(1) The capital improvements for which the loan is requested are immediately required;

(2) The project serves as the residence of lower income families, and the extent to which other suitable housing is unavailable for such families in the areas in which the project is located;

(3) The capital improvements for which the loan is requested involve the life, safety, or health of the residents of the project, or involve major capital improvements in the project; and

(4) The project demonstrates the greatest financial distress, while continuing to meet the requirements of § 219.110.

**§ 219.335 Operations.**

(a) Interest on the capital improvement loan starts to accrue and the loan amortization period begins when the loan proceeds have been spent.

(b) If, after the work is completed, the estimated cost proves to be less than originally estimated, the excess will be returned to the Flexible Subsidy Fund, described in § 219.115, unless HUD has approved the excess for additional items or improvements. Any anticipated cost overruns must be reported to HUD immediately. The principal balance of the capital improvement loan may be increased at the sole discretion of HUD and subject to the availability of funds. Until the project owner receives a written commitment for an increase in the principal balance of the loan, the project owner will be solely responsible for any excess costs of performing the capital improvements. In the case of an identity of interest firm, no increases in the principal balance of the capital improvement loan to cover cost overruns will be considered.

Dated: July 15, 1992.

**Arthur J. Hill,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 92–17150 Filed 7–20–92; 12:01 pm]

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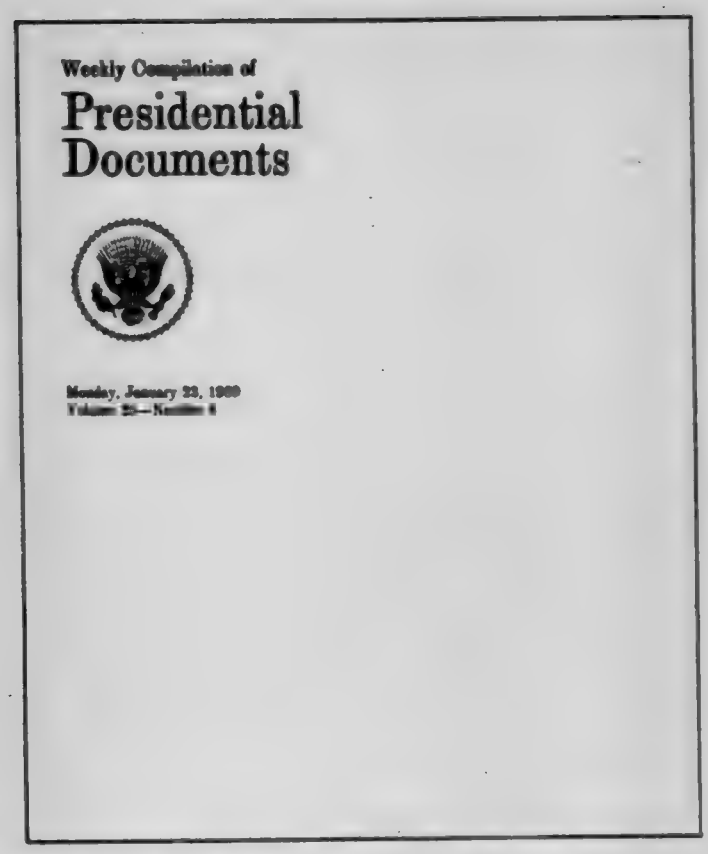


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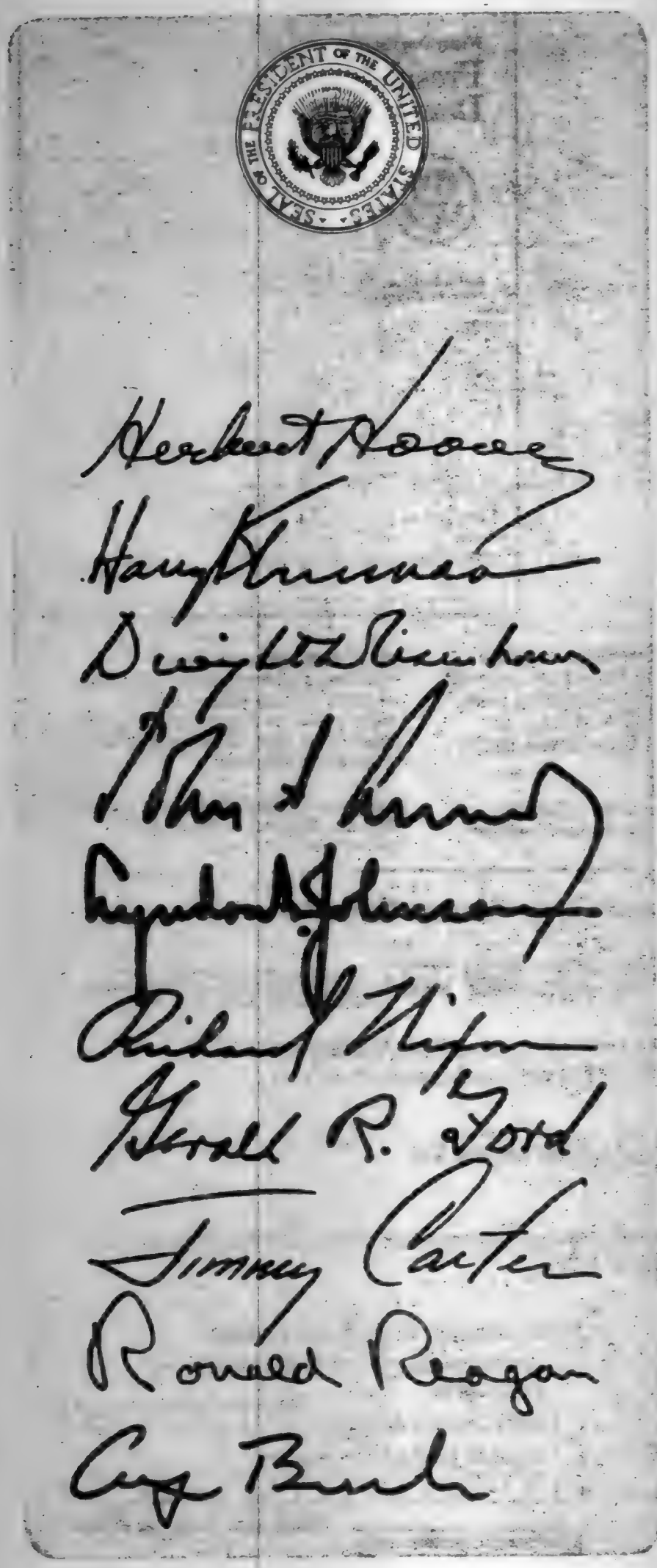


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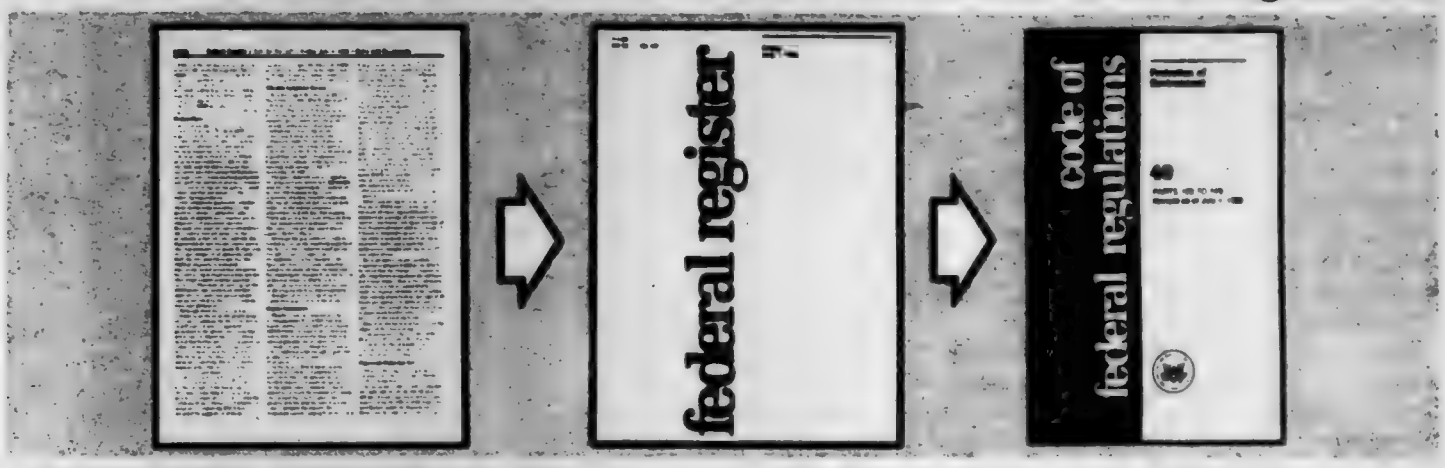


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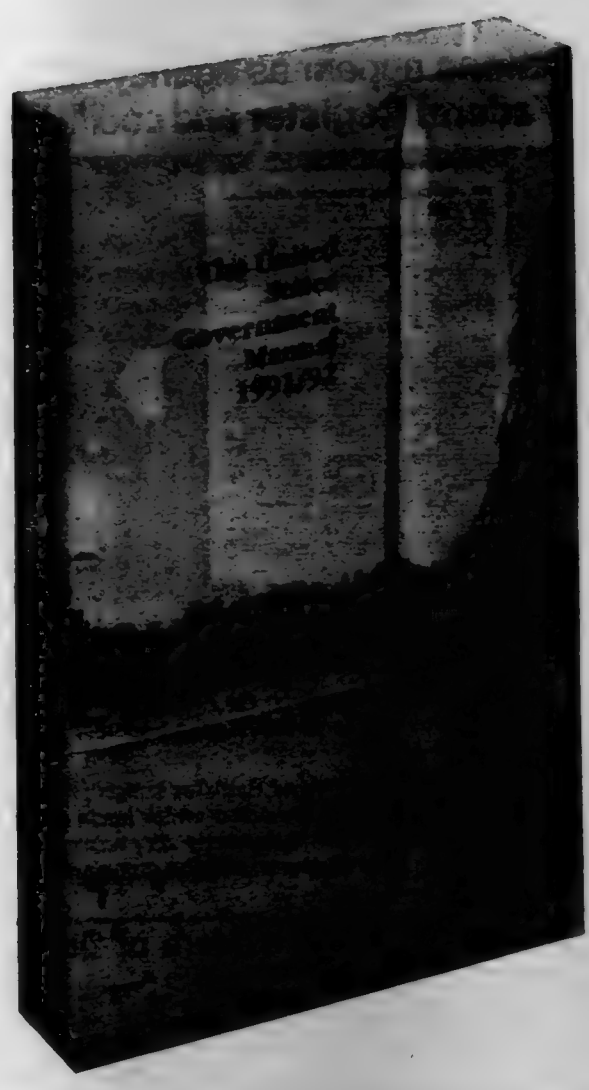

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By the President of the United States of America

A Proclamation

At a time when millions of Americans are taking advantage of warm summer weather to enjoy hiking, gardening in the backyard, and other outdoor activities, it is fitting that we remind ourselves of the health threat posed by Lyme disease. Discovered in 1975 by a rheumatologist who noted a high incidence of arthritis among patients living in wooded areas in and near Lyme, Connecticut, Lyme disease is a potentially debilitating bacterial infection that is transmitted to humans by the bite of a very small tick. These ticks feed primarily on deer and mice—although they may also be found on cats, dogs, and birds—and individuals who work or play in wooded, brushy areas are prime targets for tick bites.

While it is most prevalent in the coastal Northeast and in Wisconsin, Minnesota, northern California, and Oregon, Lyme disease has been reported in almost every State. Hence, all Americans should be aware of the importance of prevention and early detection.

Persons who spend time in wooded areas are advised to take precautions against being bitten by the tick that carries Lyme disease. These measures include using tick repellents, avoiding long grass or brush, covering up well with light-colored slacks and long-sleeved shirts, and carefully examining oneself for ticks after returning from the out-of-doors.

Early symptoms of Lyme disease may include a red, bull's-eye-shaped rash at the site of a tick bite, headache, low-grade fever, joint pain, and fatigue. Fortunately, when the disease is detected early, most persons respond well to treatment with antibiotics. If left undetected, however, Lyme disease can lead to chronic arthritis and to serious problems of the nervous system and heart. Therefore, persons who are at risk of contracting Lyme disease and who exhibit symptoms are urged to consult their physician.

Federal agencies such as the National Institutes of Health and the Centers for Disease Control, along with numerous physicians and scientists in the private sector, are continuing the fight against Lyme disease. Researchers are developing more reliable diagnostic laboratory tests, as well as new therapies for the disease. They are also making progress toward a vaccine while studying new ways to eradicate the tick-borne bacterium that causes Lyme disease.

In support of these efforts, the Congress, by Public Law 102–319, has designated the week beginning July 26, 1992, as "Lyme Disease Awareness Week" and has requested the President to issue a proclamation in observance of this week.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning July 26, 1992, as Lyme Disease Awareness Week. I encourage all Americans to observe this week with appropriate programs and activities in order to enhance their understanding of Lyme disease.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of July, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-17398
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# Rules and Regulations

Federal Register
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Wednesday, July 22, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Part 4

[Docket No. 92-15]

### Description of Office, Procedures, Public Information

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** As required by the Freedom of Information Reform Act of 1986 (FOIRA), the Office of the Comptroller of the Currency (OCC) is publishing amendments to its regulations governing the disclosure of information under the Freedom of Information Act (FOIA).

The effect of this final rule is to implement amendments to FOIA contained in FOIRA. These amendments concern Exemption 7 of the FOIA (law enforcement records) and the FOIA fee and fee waiver provisions. In addition, this final rule implements Executive Order 12600, which deals with predisclosure notification procedures for confidential commercial information. This final rule also makes technical, clarifying and conforming changes to the OCC's existing FOIA regulation.

**EFFECTIVE DATE:** August 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Frank Vance, Jr., Disclosure Officer, (202) 874-4700, or Ferne Fishman Rubin, Senior Attorney, Legal Advisory Services Division, (202) 874-5330, Office of the Comptroller of the Currency, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

### Background and General Information

*Freedom of Information Reform Act*

The FOIRA amended the FOIA (5 U.S.C. 552) by modifying Exemption 7 and by supplying new provisions relating to charging and waiving fees. The FOIRA requires Federal agencies to issue regulations establishing a schedule of fees and procedures for determining when fees should be waived or reduced. The fee schedule must conform to guidelines issued by the Office of Management and Budget (OMB).

The FOIRA modified Exemption 7 of the FOIA, which exempts from public disclosure certain records or information compiled for law enforcement purposes, in three ways: (1) It added language to allow for an exemption based on a reasonable expectation of any number of specified harms from disclosure; (2) it added explanatory language describing a confidential source; and (3) it provided an exemption from disclosure if release of the information "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." This final rule incorporates these FOIRA amendments into the OCC's FOIA regulations at 12 CFR 4.16(b)(7).

The FOIRA also significantly amended the fee provision of the FOIA by establishing five classes of FOIA requesters: (1) Commercial; (2) educational institutions; (3) noncommercial scientific institutions; (4) representatives of the news media; and (5) all others. Commercial requesters are charged for the direct costs of review, search and duplication of records. Educational institutions, noncommercial scientific institutions and representatives of the news media are charged fees for direct costs of duplication, with the first 100 pages provided free of charge. All other requesters are charged fees for search and duplication, with two hours of search time and 100 pages of duplication provided free of charge. Prior to the FOIRA, requesters were not classified and charges were made in all cases for search and duplication; *i.e.*, unless fees were specifically waived or reduced, all requesters were charged the same fees.

In addition, the FOIRA amended the FOIA with respect to waiver or reduction of fees. Under FOIRA, documents are to be furnished without a fee or with a reduced fee if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Prior to the FOIRA, the waiver or reduction of fees occurred when an agency determined that such waiver or reduction was in the "public interest because furnishing the information can be considered as primarily benefiting the general public." Section 4.17(h) incorporates the OCC's new schedule for charging and waiving fees.

*Executive Order 12600*

Executive Order 12600 (52 FR 23781, June 25, 1987), concerning confidential commercial information, requires each Executive department and agency subject to FOIA to establish procedures to give submitters of records containing confidential commercial information notice when those records are requested, and may be subject to disclosure, under FOIA. Under § 4.18(d) of this final rule, a submitter of confidential commercial information has an opportunity to make written objections to disclosure and to state all grounds upon which disclosure is opposed. Furthermore, the submitter is notified whenever a FOIA requester institutes a suit seeking to compel disclosure of the confidential commercial information provided to the OCC by the submitter.

*OMB Guidelines*

Revised § 4.17(h) contains the basic requirements of the FOIRA and also reflects OMB's guidelines. OMB'S proposed and final guidelines were published in the **Federal Register** on January 16, 1987 (52 FR 1982) and on March 27, 1987 (52 FR 10012), respectively. While the numbering system and titles of some portions of this final rule differ from the OMB guidelines, the substance is similar in all material respects.

*Department of Justice (DOJ) Guidelines*

Revised § 4.17(h)(2)(vii) is based upon guidelines issued by DOJ. The DOJ guidelines were not published in the **Federal Register**, but are available upon request from the OCC through the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, Washington, DC 20219.

*Department of the Treasury Regulation*

The amended regulation, as it appears below (including its fee structure), is consistent with the Department of the Treasury's FOIA regulation. See 31 CFR part 1, subpart A (1991). Should any actual or apparent inconsistency between the OCC's FOIA regulation and that of the Department of the Treasury arise in the future, the latter regulation should govern. See 31 CFR 1.1(d).

*Changes from NPRM*

A Notice of Proposed Rulemaking (NPRM), setting forth these amendments, was published in the **Federal Register** on August 10, 1989 (54 FR 32820). No comments were received in response to the NPRM.

This final rule includes numerous technical, clarifying and conforming changes. For example, portions have been rewritten for clarity, organizational updates have been made to include changes in the titles of OCC officials and new addresses, and certain minor revisions have been made to ensure greater conformity with the FOIA regulations of the Department of the Treasury. In addition, the list of information which may be obtained from the Federal Deposit Insurance Corporation has been updated and procedures for addressing requests for records which are the property of another Federal agency or department have been added in §§ 4.17 (c) and (d).

This final rule also contains the following changes from the NPRM:

(a) The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183 (FIRREA), requires public disclosure of certain documents. In general, section 913 of FIRREA (12 U.S.C. 1818(u)) requires public disclosure of final orders issued with respect to administrative enforcement proceedings. These final orders include cease and desist orders, civil money penalty and removal orders, capital directives, any orders issued after an administrative hearing, and modifications and terminations of such orders. Section 1212 of FIRREA (12 U.S.C. 2906) requires written evaluation of an institution's performance under the Community Reinvestment Act. Sections 4.15(a)(1) and 4.17(b)(2)(ii) of this final rule set forth procedures for obtaining the documents required to be disclosed under FIRREA.

(b) Title XXV of the Crime Control Act of 1990, Public Law No. 101–647, section 2547, 104 Stat. 4864, The Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 (12 U.S.C. 1818(u)), requires public disclosure of formal agreements and other enforceable documents issued with respect to administrative enforcement proceedings. This final rule reflects this statutory amendment in § 4.15(a)(1).

*Further Notice and Comment*

As noted above, the final rule adopts certain changes not proposed in the NPRM. The OCC has determined that no additional notice and comment period is necessary under 5 U.S.C. 553(b)(3)(A) because this final rule pertains to rules of agency procedure. Further, publication of this final rule is in the public interest. Most of the changes in the final rule improve the availability of documents, and reflect statutory and procedural amendments. Other changes merely reflect minor administrative changes which have already occurred. No area in which the final rule differs from the NPRM adversely affects the availability of public documents.

**Regulatory Flexibility Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that these changes will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required. This final rule is procedural and technical in nature and implements statutory changes. The effects of this final rule should have minimal impact on national banks regardless of size.

**Executive Order 12291**

The OCC has determined that this final rule does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required on the grounds that this revision (1) will not have an annual effect on the economy of $100 million or more; (2) will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This final rule is procedural and technical in nature and implements statutory changes. The effects of this final rule should have minimal impact on national banks regardless of size.

**List of Subjects in 12 CFR Part 4**

Freedom of information, Organization and functions (Government agencies), and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 12, chapter I, part 4 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 4 is revised to read as follows:

**PART 4—[AMENDED]**

**Authority:** 5 U.S.C. 552; 12 U.S.C. 93a.

2. Section 4.13 is revised to read as follows:

**§ 4.13 Forms and instructions.**

(a) Information about forms utilized by the Office of the Comptroller of the Currency (OCC), other than those applicable to corporate activities, is available from:

(1) *Mailing address.* Communications Division, Mail Stop 9–13, Office of the Comptroller of the Currency, Washington, DC 20219.

(2) *Location.* 250 E Street, SW., 9th Floor, Washington, DC 20219.

(b) A list of forms utilized by the OCC and forms and instructions are available by writing to: Communications Division, Mail Stop 9–13, Office of the Comptroller of the Currency, Washington, DC 20219.

(c) A charge may be assessed for certain forms or instructions or for any form or instruction requested in large quantities.

3. Section 4.15 is amended by revising paragraphs (a) introductory text, (a)(1), and (b) to read as follows:

**§ 4.15 Orders, opinions, etc. available to the public.**

(a) Subject to the exceptions listed in § 4.16, the OCC makes the following documents available to the public, either in publications or upon written request, for inspection and/or copying:

(1) Final orders, agreements and other enforceable documents made in the adjudication of cases, including final orders published pursuant to 12 U.S.C. 1818(u).

* * * * *

(b) The OCC maintains and makes available to the public, upon written request, for inspection and copying, a current index identifying the various documents referred to in paragraphs (a)(1) through (4) and paragraph (a)(10) of this section issued, adopted or promulgated after July 4, 1967. The index is located in the Communications Division, Office of the Comptroller of the Currency, Washington DC 20219.

* * * * *

4. Section 4.16 is amended by revising paragraphs (a) and (b)(7) to read as follows:

**§ 4.16 Other records available to public; exceptions.**

(a) All OCC records, including those referred to in § 4.15, are available to any person, upon written request, for inspection and copying in accordance with §§ 4.17 and 4.17a, except as provided in paragraph (b) of this section.

(b) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of those records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis;

(v) Could reasonably be expected to disclose information furnished by a confidential source, in the case of a record or information complied by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation;

(vi) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vii) Could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

5. Section 4.17 is revised to read as follows:

**§ 4.17 Access to public records, requests for identifiable records, and service of process.**

(a) *General.* This section identifies the titles of officers designated to make initial and appellate determinations with respect to requests, the officer designated to receive service of process, and addresses for delivery of requests, appeals and service of process, and the required content of requests.

(b) *Location of certain records*—(1) *In general.* Except as provided for in paragraph (b)(2) of this section, all OCC public records are available at the location listed in § 4.13(a)(2).

(2) *Exceptions.* (i) The following documents are available from the respective districts at the addresses listed in § 4.1a(b):

(A) During the period such applications are in the investigatory process in the respective districts, the public portions of applications by national banking associations to establish a branch or seasonal agency, and the public portions of applications to organize a national banking association.

(B) Records concerning matters delegated to the district offices (such as those listed in § 5.3(c) of this chapter).

(ii) The public section of Community Reinvestment Act evaluations prepared on or after July 1, 1990, pursuant to 12 U.S.C. 2906, are available from the CRA Contact, Department of Compliance Management, Office of the Comptroller of the Currency, Washington, DC 20219.

(c) *Records of another agency.* If a requested record is the property of another Federal agency or department, upon receipt of a request for the record the OCC will promptly inform the requester of this ownership and immediately will forward the request to the proprietary agency or department, for processing in accordance with the latter's regulations.

(d) *Information concerning records.* (1) The following information, other than blank forms, may be requested from the Federal Deposit Insurance Corporation, 550–17th Street, NW., Washington, DC 20429:

(i) Consolidated Reports of Condition (domestic);

(ii) Consolidated Reports of Condition (foreign and domestic);

(iii) Special Reports; and

(iv) Annual Reports of Trust Assets.

(2) Initial determinations as to whether to grant requests for all records available under §§ 4.15 and 4.16, other than those described in paragraphs (b)(2), (c) and (d) of this section, will be made by the Deputy Comptroller for Communications or that person's designee. Requests for such records shall be submitted to:

(i) *Mailing address.* Disclosure Officer, Communications Division, Mail Stop 9–13, Office of the Comptroller of the Currency, Washington, DC 20219.

(ii) *Location.* 250 E Street, SW., 9th Floor, Washington, DC 20219.

(3) Initial determinations as to whether to grant requests for records described in paragraph (b)(2)(i) of this section as being located in the district offices will be made by the Deputy Comptroller for each respective district, or that person's designee. All requests for those records shall be submitted to the respective Deputy Comptroller at the address set forth in § 4.1a(b).

(e) *Administrative appeal of initial determination to deny records.* Requesters shall submit appeals in writing within 35 days of the date of the initial denial and shall state the circumstances, reasons or arguments advanced in support of disclosure of the requested records. Appellate determinations with respect to requests for OCC records will be made by the Comptroller of the Currency or that person's designee. Requesters shall submit appeals to:

(1) *Mailing address.* Disclosure Officer, Communications Division, Mail Stop 9–13, Office of the Comptroller of the Currency, Washington, DC 20219.

(2) *Location.* 250 E Street, SW., 9th Floor, Washington, DC 20219.

(f) *Service of process.* Service of process by litigants seeking access to OCC records will be received by the Chief Counsel, and shall be served at the following location:

(1) *Mailing address.* Chief Counsel, Office of the Comptroller of the Currency, Washington, DC 20219.

(2) *Location.* 250 E Street, SW., 9th Floor, Washington, DC 20219.

(g) *Content of request for identifiable records.* A request for OCC records available under §§ 4.15 and 4.16 must be in writing and state the full name, address and telephone number of the person requesting access to the records and a reasonable description of the records sought. A reasonable description includes sufficient detail to enable OCC personnel who are familiar with the subject area of the request to locate the records with a reasonable amount of effort. A request for records must also state how the documents released will be used (See § 4.17(h)). The OCC may determine from the use specified in the request that the requester is a "commercial use requester". If the OCC has reasonable cause to doubt the use to which a requester will put the records sought, or if that use is not clear from the request itself, the OCC will seek additional clarification before assigning the request to a specific category.

(h) *Fees for document search, review, and duplication; waiver and reduction of fees*—(1) *Definitions*—(i) *Direct costs* means those expenditures which the OCC actually incurs in searching for and duplicating (and in the case of commercial use requesters, reviewing) documents to respond to a request for information under the Freedom of Information Act (FOIA).

(ii) *Search* means all time spent by OCC personnel in locating documents

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that are responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually and/or by computer.

(iii) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audiovisual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(iv) *Review* means the process of examining documents located in response to a request to determine whether any portion of any document may be withheld. It also includes the processing of any documents for disclosure.

(v) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(vi) *Educational institution*, whether public or private, means a preschool, an elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education which operates a program or programs of scholarly research.

(vii) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (h)(1)(v) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(viii) *Representative of the news media* means any person actively gathering news for, or a free-lance journalist who reasonably expects to have his or her work product published or broadcast by an entity that is organized and operated to publish or broadcast news to the public. The term "news" mean information that is about current events or that would be of current interest to the public.

(2) *Fees.* The dollar amount of fees which the OCC may charge to FOIA requesters will be set forth in the "Notice of Comptroller of the Currency Fees" issued in December of each year, or in an amended or "Interim Notice of Comptroller of the Currency Fees" which may be issued from time to time throughout the year as necessary. Such Notices may be obtained from the OCC's Communications Division, Washington, DC 20219. The fees implemented in the December and Interim or amended Notices will be effective 30 days after issuance. The OCC may charge fees that recoup the full allowable direct costs it incurs. The OCC may contract with no-government enterprises to locate, reproduce, and/or disseminate records; provided however, that the OCC has determined that the ultimate cost to the requester will be no greater than it would be if the OCC performed these tasks itself. In no case will the OCC contract out responsibilities which the FOIA provides that the Comptroller of the Currency alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce fees. Fees are subject to change as costs change.

(i) *Searches other than for computerized records.* The OCC will charge for records at the salary rate(s) of the employee(s) making the search. Such rate(s) will be reflected in the December or Interim "Notice of Comptroller of the Currency Fees" described in this paragraph (h)(2). Where a single class of personnel (*e.g.*, all administrative/clerical, or all professional/executive) is used exclusively, an average rate for the range of grades typically involved may be established at the OCC's discretion. This charge includes transportation, at actual cost, of personnel and records necessary to the search.

(ii) *Searches for Computerized records.* The fee for searches of computerized records is the actual direct cost of the search, including computer time, computer runs and the operator's salary. The fee for a computer printout is the actual cost.

(iii) *Duplication of records.* (A) The per-page fee for paper copy reproduction of documents will be reflected in the December or Interim "Notice of Comptroller of the Currency Fees" described in this paragraph (h)(2);

(B) If any other method of duplication is used, the OCC will charge the actual direct cost of duplicating the documents.

(iv) *Review of records.* The OCC will charge commercial use requesters for review of records at the initial administration level at the salary rate(s) of the employee(s) conducting the review. Such rate(s) will be reflected in the December or Interim "Notice of Comptroller of the Currency Fees" described in this paragraph (h)(2). Where a single class of personnel (*e.g.*, all administrative/clerical, or all professional/executive) is used exclusively, an average rate for the range of grades typically involved may be established at the OCC's discretion.

(v) *Fees to exceed $25.* If the OCC estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. If so notified by the OCC, the requester will have an opportunity to confer with OCC personnel in order to revise the request in hopes of meeting his or her needs at a lower cost. The administrative time limits in 5 U.S.C. 552(a)(6) (*i.e.*, ten (10) business days from the receipt of initial requests and 20 business days from the receipt of appeals from an initial denial, plus permissible extensions of these time limits) will begin only after the OCC receives a revised request from the requester.

(vi) *Other services.* Complying with requests for special services is at the OCC's discretion. The OCC may recover the full costs of providing such services to the extent it elects to provide them.

(vii) *Restriction on assessing fees.* The OCC will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(viii) *Waiving or reducing fees.* The OCC will waive or reduce fees under this section whenever, in its opinion, disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(A) The following factors are used in determining whether a waiver or reduction of fees is in the public interest:

(*1*) *The subject of the request.* Whether the subject of the requested records concerns the operations or activities of the government;

(*2*) *The informative value of the information to be disclosed.* Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(*3*) *The contribution to an understanding of the subject by the general public.* Whether disclosure of the requested information will contribute to public understanding of the subject; and

(*4*) *The significance of the contribution to public understanding.* Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(B) If the public interest requirement in paragraph (h)(2)(vii)(A) of this section is met, the OCC will then make a determination on the "commercial

interest" requirement, based upon the following factors:

(1) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(2) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is reasonably considered by the OCC to be primarily in the commercial interest of the requester.

(C) The OCC, if the required public interest exists and the requester's commercial interest is not primary in comparison to that public interest, will waive or reduce the fees that would normally be charged to that requester.

(3) *Fees for categories of requesters.* (i) *Commercial use requesters.* The OCC will assess fees for requesters in this category which recover the allowable costs of search, review and duplication. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of duplication of documents.

(ii) *Requesters who are representatives of the news media, or educational and noncommercial scientific institution requesters.* The OCC provides documents to requesters in these categories for the cost of duplication. No fee is assessed for duplication of the first 100 pages.

(iii) *All other requesters.* The OCC assesses fees for requesters who do not fit into any of the above categories to recover the full reasonable direct cost of search and duplication. No fees are assessed for the first 100 pages of duplication or the first two hours of search time.

(4) *Interest on unpaid fees.* The OCC may assess interest charges on an unpaid bill for FOIA-related fees beginning on the 31st day following the day on which the bill was sent. Interest is charged at the rate prescribed in 31 U.S.C. 3717.

(5) *Fees for unsuccessful search; search and review of exempt records.* The OCC may assess fees for time spent searching for records, even if the records requested are not located. The OCC may also charge for search and review time if the records located are exempt from disclosure.

(6) *Aggregating requests.* When the OCC reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the OCC may aggregate the requests and charge accordingly.

(7) *Advance payment of fees.* Each FOIA requester shall include a statement agreeing to pay all fees that are properly charged. However, the OCC does not require advance payment, unless:

(i) The OCC estimates or determines that the fees are likely to exceed $250. If it appears that the fees will exceed $250, the OCC will notify the requester of the likely cost and obtain satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. In the case of requesters with no history of payment, the OCC will require an advance payment of the full estimated charges that will be incurred; or

(ii) The requester has previously failed to pay a fee in a timely fashion, *i.e.*, within 30 days of the date of the billing. The OCC may require such requesters to pay the full amount owed plus any applicable interest, as provided in paragraph (h)(4) of this section, or demonstrate that the fee owed has been paid, prior to processing any further record request. Under these circumstances, the OCC may also require the FOIA requester to make an advance payment of the full amount of the estimated fees before processing a new request or finishing the processing of a pending request.

(8) *Tolling of administrative time limits.* When the OCC takes action under paragraphs (h)(7) (i) or (ii) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) begin only after the OCC has received the required fee payments.

6. In § 4.18, a new paragraph (d) is added to read as follows:

**§ 4.18 Other rules of disclosure.**

* * * * *

(d) *Procedures for protecting the confidentiality of commercial information as required by Executive Order 12600 (3 CFR, 1987 Comp., p. 235).*

(1) *Definitions.* For purposes of this section, the following definitions apply:

(i) *Confidential commercial information* means records provided to the OCC by a submitter which arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act (FOIA) because disclosure could reasonably be expected to cause substantial competitive harm to the submitter thereof.

(ii) *Submitter* means any person or entity who provides confidential commercial information to the OCC. This term includes, but is not limited to, national banks and their officers, directors and principal shareholders, as well as corporations, State governments and foreign governments.

(2) *Notice to submitters of confidential commercial information.* The OCC will provide a submitter of confidential commercial information with prompt written notice of the receipt of a request seeking access to that information, whenever required to do so in accordance with paragraph (d)(3) of this section, and except as provided in paragraph (d)(7) of this section. The notice will either describe the exact nature of the confidential commercial information requested or provide copies of the records or portions of records containing that information.

(3) *When notice is required.* (i) For confidential commercial information submitted to the OCC prior to January 1, 1988, the OCC will provide the submitter thereof with notice of the receipt of a request for that information whenever:

(A) The records are less than ten (10) years old and the information has been designated by the submitter as confidential commercial information;

(B) The OCC has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm to the submitter; or

(C) The information is subject to a prior express commitment of confidentiality given by the OCC to the submitter.

(ii) For confidential commercial information submitted on or after January 1, 1988, the OCC will provide the submitter thereof with notice of the receipt of a request encompassing such information whenever:

(A) The submitter has in good faith designated the information as being of a commercially or financially sensitive nature; or

(B) The OCC has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm to the submitter.

(iii) Notice of a FOIA request seeking confidential commercial information falling within either paragraphs (d)(3) (i) or (ii) of this section is required for a period of not more than ten (10) years after the date of submission, unless the submitter of the confidential commercial information requests, and provides acceptable justification for, a specific notice period of greater duration.

(iv) Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the entity that the information in question is in fact confidential commercial information and has not been disclosed to the public.

(4) *Opportunity to object to disclosure.* Through the notice described in paragraph (d)(2) of this section, the OCC will afford the submitter of confidential commercial information ten (10) business days within which to provide the OCC with a detailed statement of any objection to disclosure of the information. That statement will specify all grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, will demonstrate why the submitter contends that the information is confidential commercial information. Information provided by a submitter pursuant to this paragraph (d)(4) may itself be subject to disclosure under the FOIA. When notice is given to a submitter under paragraph (d)(2) of this section, the OCC will advise the requester that notice has been given to the submitter of the information requested. The OCC will also advise the requester that there will be a delay in its decision of whether to grant or deny access to the information sought. The requester will be further advised that this delay by the OCC may be considered a denial of access to the records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester may agree to a voluntary extension of time so that the OCC may review the submitter's objections to disclosure.

(5) *Notice of intent to disclose.* The OCC will consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the confidential commercial information. Whenever the OCC decides to disclose confidential commercial information over the objection of the submitter thereof, the OCC will forward to the submitter a written notice which will include:

(i) A statement of the reasons for which the submitter's objections to disclosure were not sustained;

(ii) A description of the confidential commercial information to be disclosed;

(iii) A specified disclosure date, which is ten (10) business days after the notice of the final decision to release the requested information has been mailed to the submitter. A copy of the disclosure notice will be forwarded to the requester at the same time; and

(iv) A statement that if the submitter is going to seek injunctive relief, to advise the OCC immediately.

(6) *Notice of FOIA requester's lawsuit.* Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information covered by paragraph (d)(3) of this section, the OCC will promptly notify the submitter of the confidential commercial information that a lawsuit has been brought.

(7) *Exceptions to the notice requirement.* The notice requirement of this section shall not apply if:

(i) The OCC determines that it will not disclose the information;

(ii) The information has been made public by the submitter or has otherwise been officially made available;

(iii) Disclosure is required by law (other than 5 U.S.C. 552);

(iv) The information was acquired in the course of a lawful investigation of a possible violation of criminal law;

(v) The information requested was not designated by the submitter as confidential commercial information pursuant to paragraphs (d)(3)(ii) (A) and (B) of this section, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the OCC has substantial reason to believe that disclosure of the information would result in competitive harm; or

(vi) The designation made by the submitter in accordance with paragraph (d)(3) of this section appears obviously frivolous; except that, in such case, the OCC must provide the submitter with written notice of any final administrative determination to disclose the information, at least ten (10) business days prior to the specified date when the information is to be disclosed.

Dated: July 13, 1992.

**Stephen R. Steinbrink,**

*Acting Comptroller of the Currency.*

[FR Doc. 92-16761 Filed 7-21-92; 8:45 am]

BILLING CODE 4810-33-M

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## FARM CREDIT ADMINISTRATION

### 12 CFR Part 603

**RIN 3052-AB31**

### Privacy Act Regulations; New Exempt System of Records

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA) by the Farm Credit Administration Board (Board) adopts a final regulation amending part 603 of FCA regulations, that was published as a proposed regulation on March 13, 1992, 57 FR 8851. This regulation exempts the system of records, "Office of Inspector General (OIG) Investigative Files—FCA," from certain Privacy Act provisions, due to the law enforcement nature of the records.

**EFFECTIVE DATE:** The amendment shall become effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Elizabeth M. Dean, Counsel to the Inspector General, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4030,

or

Rebecca S. Orlich, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** On February 21, 1992, the FCA published an advance notice to establish a new system of records, "Office of Inspector General Investigative Files—FCA," under the Privacy Act, 5 U.S.C. 552a, as amended. See 57 FR 6221.

In conjunction with the establishment of the new system of records, the FCA Board proposed to amend FCA regulation 12 CFR 603.355 to exempt the new system of records from certain provisions of the Privacy Act. See 57 FR 8851 (March 13, 1992). The Privacy Act provisions require, among other things, that the agency provide notice when collecting information, account for certain disclosures, permit individuals access to their records, and allow them to request that the records be amended. These provisions would interfere with the conduct of OIG investigations if applied to the OIG's maintenance of the proposed system of records.

The regulation amendment would exempt the system of records under subsections (j)(2) and (k)(2) of the Privacy Act. Subsection (j)(2) of 5 U.S.C. 552a allows an exemption for a system of records maintained by "the agency component thereof which performs as its principal function any activity pertaining to enforcement of criminal laws * * *." Subsection (k)(2) of 5 U.S.C. 552a allows an exemption for a system of records consisting of "investigatory materials compiled for law enforcement purposes," where such materials are not within the scope of the (j)(2) exemption pertaining to criminal law enforcement. These exemptions are fully discussed in the supplementary information to the proposed regulation, at 57 FR 8851 (March 13, 1992).

The FCA received comments from the Farm Credit Council (FCC), a trade

association representing Farm Credit System institutions, and the Office of Management and Budget (OMB). The FCC requested that the FCA clarify that the exemptions for this system of records will be effective on the effective date of the final rule, not on the date of the establishment of the system of records. The FCA Board agrees that this is correct. With regard to the proposed regulation, OMB suggested that the FCA state in the regulation the reasons for exempting various records within law enforcement system of records from subsections of the Privacy Act. The FCA has done so.

The FCA, therefore, exempts the system of records containing the OIG investigative files under exemptions (j)(2) and (k)(2) of the Privacy Act by amending 12 CFR 603.355, in which the FCA specifies its systems of records that are exempt under the Privacy Act.

**List of Subjects in 12 CFR Part 603**

Privacy.

For the reasons stated in the preamble, part 603 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

## PART 603—PRIVACY ACT REGULATIONS

1. The authority citation for part 603 is revised to read as follows:

**Authority:** Secs. 5.9, 5.17 of the Farm Credit Act; 12 U.S.C. 2243, 2252, 5 U.S.C. app. 3, 5 U.S.C. 552a (j)(2) and (k)(2).

2. Section 603.355 is amended by revising the section heading; adding the paragraph designation "(a)" to the existing introductory paragraph; adding the following text to the end of newly redesignated paragraph (a); and adding a new paragraph (b) to read as follows:

**§ 603.355 Exemptions.**

(a) *Specific.* * * *

* * * * *

Office of Inspector General Investigative Files—FCA.

(b) *General.* (1) In addition, pursuant to 5 U.S.C. 552a (j)(2), investigatory materials compiled for criminal law enforcement in the system of records described in (b)(2) are exempt from all subsections of 5 U.S.C. 552a, except (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the OIG. This would enable record subjects to impede the investigation by, for example, destroying evidence, intimidating potential witnesses, or fleeing the area to avoid inquiries or apprehension by law enforcement personnel.

(ii) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsection (j)(2) of the Privacy Act.

(iii) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to those records might compromise ongoing investigations, reveal confidential informants or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(iv) From subsections (e)(1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(v) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(vi) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(vii) From subsections (e)(4) (G), and (H), and (I), (e)(8), (f), (g) and (h) because this system is exempt from the access provisions of subsection (d) pursuant to subsection (j) of the Privacy Act.

(2) Office of Inspector General Investigative Files—FCA.

Dated: July 16, 1992.

**Curtis M. Anderson,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 92–17259 Filed 7–21–92; 8:45 am]

BILLING CODE 6705–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 177 and 178

**[Docket Nos. 86F–0340 and 86F–0341]**

## Indirect Food Additives: Polymers, Adjuvants, Production Aids and Sanitizers

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additives regulations to provide for the safe use of ethylene-carbon monoxide copolymers as components of food packaging and to provide that these copolymers may be sterilized with hydrogen peroxide for use in contact with food. This action is in response to two petitions filed by The Dow Chemical Co.

**DATES:** Effective July 22, 1992; written objections and requests for a hearing by August 21, 1992. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 177.1312(c)(2), effective July 22, 1992.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION:** Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of September 2, 1986 (51 FR 31175), FDA announced that a food additive petition (FAP 6B3948) had been filed by The Dow Chemical Co., Midland, MI 48674, proposing that the food additive regulations be amended to provide for the safe use of ethylene-carbon monoxide copolymers as a component of food packaging materials. In another notice published in the **Federal Register** of September 24, 1986 (51 FR 33925), FDA announced that a petition (FAP

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6B3949) had been filed by The Dow Chemical Co., proposing that the food additive regulations be amended to provide for the safe use of ethylene-carbon monoxide copolymers as a heat-seal layer for food-contact packaging when they are sterilized with hydrogen peroxide solutions.

FDA has evaluated the data in the petitions and other relevant material. The agency concludes that the food additive regulations should be amended by adding new § 177.1312 *Ethylene-carbon monoxide copolymers* (21 CFR 177.1312) to provide for their safe use as food-contact materials, and in 21 CFR 178.1005 by adding a new entry in the table in paragraph (e)(1) to provide that these coploymers may be sterilized with hydrogen peroxide, as set forth below.

In accordance with § 171.1(h) (21 CFR 171.(h)), the petitions and the documents that FDA considered and relied upon in reaching its decision to approve these petitions are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has considered the potential environmental effects of this action. In the environmental assessments for these petitions, the petitioner states that inclusion of carbon monoxide in the polymer chain allows the polymer to readily degrade when exposed to ultraviolet (UV) radiation. Thus, the potential exists for the introduction into the environment of degradation products and additives from the degrading copolymers, if the subject copolymers are exposed to UV radiation. The petition also states that the subject copolymers are expected to be used as inner layers that are protected from UV radiation. Because of these expected uses, the environmental assessments for these petitions do not assess the potential environmental impact of the enhanced degradation of the subject copolymers. Because this potential environmental impact has not been addressed and to assure that the subject copolymers will not be used in a manner such that they would be likely to be exposed to UV radiation, the regulation for the subject copolymers restricts the uses to inner layers of articles.

Based on careful consideration of the potential environmental effects of this action, FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 21, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects**

*21 CFR Part 177*

Food additives, Food packaging, Incorporation by reference.

*21 CFR Part 178*

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR parts 177 and 178 are amended as follows:

## PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

**Authority:** Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 177.1312 is added to subpart B to read as follows:

**§ 177.1312 Ethylene-carbon monoxide copolymers.**

The ethylene-carbon monoxide copolymers identified in paragraph (a) of this section may be safely used as components of articles intended for use in contact with food subject to the provisions of this section.

(a) *Identity.* For the purposes of this section, ethylene-carbon monoxide copolymers (CAS Reg. No. 25052–62–4) consist of the basic polymers produced by the copolymerization of ethylene and carbon monoxide such that the copolymers contain not more than 30 weight-percent of polymer units derived from carbon monoxide.

(b) *Conditions of use.* (1) The polymers may be safely used as components of the food-contact or interior core layer of multilaminate food-contact articles.

(2) The polymers may be safely used as food-contact materials at temperatures not to exceed 121 °C (250 °F).

(c) *Specifications.* (1) Food-contact layers formed from the basic copolymer identified in paragraph (a) of this section shall be limited to a thickness of not more than 0.01 centimeter (0.004 inch).

(2) The copolymers identified in paragraph (a) of this section shall have a melt index not greater than 500 as determined by ASTM method D1238–82, condition E "Standard Test Method for Flow Rates of Thermoplastics by Extrusion Plastometer," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(3) The basic copolymer identified in paragraph (a) of this section, when extracted with the solvent or solvents characterizing the type of food and under the conditions of time and temperature characterizing the conditions of its intended use, as determined from Tables 1 and 2 of § 176.170(c) of this chapter, yields net chloroform-soluble extractives in each extracting solvent not to exceed 0.5 milligram per square inch of food-contact surface when tested by methods described in § 176.170(d) of this chapter.

(4) The provisions of this section are not applicable to ethylene-carbon monoxide copolymers complying with § 175.105 of this chapter.

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

3. The authority citation for 21 CFR part 178 continues to read as follows:

**Authority:** Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

4. Section 178.1005 is amended in the table in paragraph (e)(1) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

**§ 178.1005 Hydrogen peroxide solution.**

* * * * *

(e) * * *

(1) * * *

| Substances | Limitations |
|---|---|
| * * * * * | |
| Ethylene-carbon monoxide copolymers. | Complying with § 177.1312 of this chapter. |
| * * * * * | |

* * * * *

Dated: July 6, 1992.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92-17181 Filed 7-21-92; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Part 1308

### Schedules of Controlled Substances: Exempt Anabolic Steroid Products

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The Drug Enforcement Administration (DEA) is designating certain pharmaceuticals as exempt anabolic steroid products. This action is part of the ongoing implementation of the Anabolic Steroid Control Act of 1990.

**DATES:** Effective Date: July 22, 1992 Comments must be submitted on or before September 21, 1992.

**ADDRESSES:** Comments and objections should be submitted to: Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

**SUPPLEMENTARY INFORMATION:** Section 1903 of the Anabolic Steroids Control Act of 1990 (ASCA) (title XIX of Pub. L. 101-647) provides that the Attorney General may exempt products which contain anabolic steroids from all or any part of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) if the products have no significant potential for abuse. The authority to exempt these products was ultimately delegated to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration. The procedure for implementing this section of the ASCA was published in the **Federal Register** by the DEA on August 30, 1991 (56 FR 42935). Applications which were in conformance with the announcement were received and were forwarded to the Secretary of Health and Human Services for his evaluation.

The Deputy Assistant Administrator, having reviewed the applications, the recommendations of the Secretary, and other relevant information, finds that each of the products described below has no significant potential for abuse because of its concentration, preparation, mixture or delivery system.

Interested persons are invited to submit their comments in writing with regard to this interim rule.

The listing of these products in 21 CFR 1308.34 relieves persons who handle them in the course of legitimate business from the registration, records, reports, prescription, physical security, import, and export requirements associated with Schedule III substances. Accordingly, the Deputy Assistant Administrator certifies that this action will have no negative economic impact upon small entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to require the preparation of a Federalism Assessment.

It has been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of Executive Order 12291. Accordingly, this action is not subject to those provisions of Executive Order 12778 which are contingent upon review by OMB. Nevertheless, the Deputy Assistant Administrator has determined that this is not a "major rule," as that term is used in Executive Order 12291, and that it would otherwise meet the applicable standards of sections 2(a) and 2(b)(2) of Executive Order 12778.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by title XIX of Public Law 101-647, as delegated to the Administrator of the DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100, and delegated to the Deputy Assistant Administrator, Office of Diversion Control in 28 CFR 0.104, appendix to subpart R, section 7(g), the Deputy Assistant Administrator of the Office of Diversion Control hereby amends 21 CFR part 1308 as set forth below:

## PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. In § 1308.34, the table is revised to read as follows:

**§ 1308.34 Exempt anabolic steroid products.**

* * * * *

TABLE OF EXEMPT ANABOLIC STEROID PRODUCTS

| Trade name | Company | NDC code | Form | Ingredients | Quantity |
|---|---|---|---|---|---|
| Estratest | Solvay Pharmaceuticals, Marietta, GA | #0032-1026 | TB | Esterified estrogens | 1.25 mg |
| | | | | Methyltestosterone | 2.5 mg |
| Estratest HS | Solvay Pharmaceuticals, Marietta, GA | #0032-1023 | TB | Esterified estrogens | 0.625 mg |
| | | | | Methyltestosterone | 1.25 mg |

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TABLE OF EXEMPT ANABOLIC STEROID PRODUCTS—Continued

| Trade name | Company | NDC code | Form | Ingredients | Quantity |
|---|---|---|---|---|---|
| Premar in with Methyltestosterone | Ayerst Labs. Inc., New York, NY | #0046-0675 | TB | Conjugated estrogens<br>Methyltestosterone | 1.25 mg<br>10.0 mg |
| Premar in with Methyltestosterone | Ayerst Labs. Inc., New York, NY | #0046-0676 | TB | Conjugated estrogens<br>Methyltestosterone | 0.625 mg<br>5.0 mg |
| Testosterone Cypionate—Estradiol Cypionate Injection. | Steris Labs. inc., Phoenix, AZ | #0402-0257 | Vial | Testosterone cypionate<br>Estradiol cypionate | 50 mg/ml<br>2 mg/ml |
| Testosterone Enanthate—Estradiol Valerate Injection. | Steris Labs. Inc., Phoenix, AZ | #0402-0360 | Vial | Testosterone enanthate<br>Estradiol valerate | 90 mg/ml<br>4 mg/ml |

* * * * *

Dated: July 15, 1992.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92-17202 Filed 7-21-92; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 48 and 602

[T.D. 8421]

RIN 1545-AP48

### Gasoline Excise Tax

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final Regulations.

**SUMMARY:** This document contains final regulations relating to the federal excise tax on gasoline. These regulations reflect and implement certain changes made by the Tax Reform Act of 1986 and the Revenue Reconciliation Act of 1990. These regulations affect refiners, importers, and distributors of gasoline and provide guidance relating to taxable transactions, persons liable for tax, gasoline blendstocks, and gasohol.

**EFFECTIVE DATES:** These regulations are effective January 1, 1993, except that § 48.4081-9 is effective July 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Frank Boland, (202) 566-4475 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1270. The estimated annual burden per respondent varies from .1 hour to .25 hours, depending on individual circumstances, with an estimated average of .2 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time depending on their particular circumstances.

Comments regarding the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

### Background

Sections 4081 and 4082 of the Internal Revenue Code impose, and provide certain rules relating to, the federal gasoline excise tax. Sections 4081 and 4082 were amended in relevant part by the Tax Reform Act of 1986 (the "1986 Act") and the Revenue Reconciliation Act of 1990 (the "1990 Act").

On August 27, 1991, the IRS published in the **Federal Register** (56 FR 42287) proposed amendments to the regulations (26 CFR part 38) under sections 4081 and 4082. The IRS received a number of comments with respect to the proposed regulations, and a public hearing was held on November 25, 1991. After consideration of all comments received and statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

### Significant Issues Raised in Comments and Changes Made by the Final Regulations

*Overview*

Three major issues were raised in the public comments on the proposed regulations: (1) The identity of the person liable for tax on removal of gasoline at the terminal rack, (2) the treatment of gasoline blendstocks, and (3) the refund procedures under section 4081(e). Generally, the final regulations adopt the proposed rule that the position holder is liable for tax on removal of gasoline at the terminal rack, modify the proposed rules for gasoline blendstocks to allow tax-free nonbulk transfers of gasoline blendstocks to approved terminals and refineries, and modify the proposed refund procedures by revising the form and content of the claim for a refund. The final regulations generally are effective on and after January 1, 1993. Transitional rules are provided for the period from July 1, 1991, to December 31, 1992.

*Definitions (§ 48.4081-1)*

Under the proposed regulations, the term "bulk transfer" means any transfer of gasoline by pipeline or marine vessel. Several commentators suggested that the term be expanded to include a gasoline registrant's transfer of its gasoline by truck or rail car from one approved terminal to another approved terminal.

The final regulations do not adopt this suggestion. The principal purpose of the 1990 Act amendments to section 4081 was to make all nonbulk removals of gasoline from a terminal taxable. Enforcement of the federal gasoline excise tax is greatly complicated if some removals of gasoline at the terminal rack are exempt from tax.

In response to a comment, the final regulations clarify that entry into the United States does not occur when gasoline is brought into Puerto Rico (which is part of the United States customs territory). However, entry into the United States does occur when gasoline is brought into the United States from Puerto Rico.

The final regulations shorten the term "gasoline blend stocks and additives" to "gasoline blendstocks" and adopt the list of gasoline blendstocks contained in the proposed regulations, with certain modifications.



In the final regulations, the term "debutanized natural gasoline" is replaced by the term "natural gasoline."

The proposed regulations included in the list of gasoline blendstocks a mixture of two or more gasoline blendstocks if the mixture is not gasoline. One commenter suggested that this product be deleted from the list because such a mixture generally has lost its effectiveness as a blendstock. The final regulations adopt this suggestion.

Notice 88-16, 1988-1 C.B. 482, provides that the term "gasoline blendstocks" does not include any product that cannot be blended into gasoline without further processing or fractionation. One commentator suggested that the final regulations incorporate this principle, and the final regulations do so.

One commentator suggested that the definition of the term "transmix containing gasoline" be revised to avoid unnecessary accounting for transmix that contains only insignificant amounts of gasoline. This revision is now unnecessary because only transmix containing gasoline that can be blended into gasoline without further processing or fractionation is considered a gasoline blendstock under the final regulations.

*Tax on Removal at a Terminal Rack (§ 48.4081-2)*

The Proposed Regulations

Under proposed § 48.4081-2(b), tax is imposed on gasoline removed from a terminal at the rack. Under existing rules, the person liable for tax is the owner of the gasoline at the time of removal. However, under proposed § 48.4081-2(c), the person liable for tax is the position holder (the "position holder rule"). Proposed § 48.4081-1(m) defines the position holder to be the person that holds the inventory position to the gasoline as reflected on the records of the terminal operator. This is generally a person that has a contract with the terminal operator for the use of storage facilities and terminaling services at a terminal for the gasoline, but the term also includes a terminal operator that owns gasoline in its own terminal.

A position holder may not necessarily own the gasoline when it is removed at the rack. This may occur, for example, because the position holder transfers title to the gasoline to a buyer without any physical movement of the gasoline and without changing the holder of the inventory position on the terminal operator's books. A similar result occurs under various financing arrangements or when a position holder merely subleases its space in the terminal without informing the terminal operator of the sublease. Another common transaction in which one person owns the gasoline and another person holds the inventory position is a location exchange. As an example of a location exchange, M operates a terminal in Maryland and N operates a terminal in New Jersey. X, a customer of M, wants to buy gasoline in New Jersey. To accommodate its customer, M exchanges the gasoline with N, without transferring inventory positions on the books of the terminal operators.

Under existing rules, these transactions can be conducted on a tax-free basis so long as the gasoline is transferred between registered persons. Under the position holder rule, no tax is imposed when title to gasoline is transferred in the terminal without changing the person holding the inventory position on the books of the terminal operator because the transfer is not treated as a sale. See proposed § 48.4081-1(r). However, a position holder remains liable for the tax imposed when the gasoline is subsequently removed at the terminal rack. Thus, in the above example, N, the position holder, would be liable for the tax when M's customer, X, removes the gasoline at N's terminal rack.

Public Comments

Several commentators argued that, because the position holder remains liable for the tax imposed when the gasoline is subsequently removed at the terminal rack, the position holder will include the amount of that tax in the price it charges its buyer. This will result in an increased outlay for the buyer that will not be recovered until the buyer sells the gasoline and includes the amount of the tax in the price it charges its customer.

According to the commentators, the change in pricing under the position holder rule would increase costs for market participants, reduce competition, and impair the ability of the market to respond to changes in supply and demand. For example, commentators argued that smaller companies may find it difficult or expensive to finance the increased cost of buying gasoline at a tax-included price. Moreover, because of their limited financial resources and access to credit, these companies may not be able to become position holders themselves in order to buy gasoline tax free. As a result, these companies may withdraw from a segment of the gasoline market, making it less competitive.

As another example, commentators suggested that the position holder rule would decrease the frequency of exchanges and increase their cost. Companies might have to create a burdensome and expensive "tax invoice" system in order to by properly reimbursed for the amount of the tax from their exchange partners. This could be especially problematic for complex arrangements involving multiple parties and facilities.

The commentators suggest that additional costs and dislocations also may result where the position holder charges its buyer for the amount of the tax it expects to be due, but no tax is imposed because the buyer (or a subsequent buyer) removes the gasoline from the terminal in bulk or a reduced rate of tax is imposed because the buyer (or a subsequent buyer) sells the gasoline at the terminal rack to a gasohol blender. According to the commentators, new and perhaps costly mechanisms will need to be developed to reimburse such a buyer (or subsequent buyer) for the excess of the amount it paid its seller in respect of tax over the amount of tax, if any, actually due from the position holder. One effect may be to limit opportunities for gasohol blenders to purchase gasoline at the reduced rate.

Accordingly, several commentators argued that the final regulations should retain the existing rules concerning the identity of the person liable for tax when gasoline is removed at the rack. Alternatively, one commentator suggested modifying the proposed regulations so that the receiving party in an exchange would be primarily liable for the tax while the position holder would be secondarily liable for tax. Another commentator proposed that a terminal operator should be allowed to recognize any gasoline registrant as a position holder even though the registrant does not have a terminaling and storage agreement with the operator.

The Final Regulations

The final regulations adopt the position holder rule as proposed, with the effective date delayed until January 1, 1993, in order to allow additional time for companies to adjust to that rule. The position holder rule provides the most effective method of assuring that the proper amount of gasoline tax is paid. The Service recognizes that the position holder rule may cause some companies to incur costs in restructuring some business relationships and accounting procedures and that the effect on certain companies may be greater than on others. However, the Service believes that each alternative to the position holder rule imposes significant compliance burdens that would not be

distributed equally among participants in the industry. Moreover, any disadvantages of the rule should be more than offset by the benefits legitimate businesses will achieve through the elimination of rules that allow significant opportunities for unfair competition through tax evasion. These legitimate businesses will be better able to compete if everyone in their market pays the same amount of tax on a gallon of gasoline.

Congress, the Executive Branch, state governments, and various segments of the petroleum industry have long been concerned with the problem of gasoline tax evasion. See Compliance with Federal Gasoline Excise Tax Provisions: Hearing before the Subcommittee on Oversight of the House Committee on Ways and Means, 99th Cong., 2nd Sess. (1986); and Shortfalls in Highway Trust Fund Collections: Hearing before the Subcommittee of Investigations and Oversight of the House Committee of Public Works and Transportation, 101st Cong., 1st Sess. (1989). Congress addressed these concerns by twice changing the law in recent years. The 1986 Act moved the point of taxation from the producer's sale of gasoline to the earlier of the sale or removal of gasoline from the terminal, effective January 1, 1988. The 1990 Act provided that the removal of gasoline at the terminal rack was subject to tax regardless of whether the gasoline had previously been subject to tax, effective July 1, 1991.

Neither the 1986 Act nor the 1990 Act identifies the person that is required to pay the tax to the government. Instead, the conference report to the 1990 Act, H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 1052 (1990), confirms that the IRS is to provide rules and administrative procedures for determining liability for payment of the tax. Congress clearly intended that IRS develop rules to assure that tax is, in fact, paid to the government.

The existing rule that the owner of the gasoline at the time of the taxable event is liable for the tax has allowed certain persons to obscure the identity of the taxpayer through a complex chain of sales among related parties. This creates the potential for, and according to several commentators and authorities has resulted in, considerable gasoline tax evasion.

Under the position holder rule, the taxpayer with respect to a removal at the terminal rack will be either the terminal operator or a person that has a contractual relationship with the terminal operator. Thus, the IRS can easily identify the person liable for tax by examining the records of the terminal operator.

In addition, terminal operators should ensure that each position holder is registered with the IRS because the terminal operator may be jointly and severally liable for the tax if the position holder is not a gasoline registrant. As an additional check on the position holder, the terminal operator is likely for its own business purposes to review the credit and financial resources of persons requesting terminaling and storage services in the terminal.

Another important enforcement benefit of the position holder rule is that it should reduce the number of taxpayers and registrants. This will allow the IRS to maximize the effectiveness of its enforcement resources.

The recordkeeping burden associated with the position holder rule should, in most cases, be no greater than the burden for taxpayers under the existing rule. The position holder rule, in fact, reduces the burden with respect to transfers in a terminal because the transfers are not treated as sales potentially subject to tax and thus the seller need not determine whether its transferee is registered. In the case of exchanges, the Service recognizes that the position holder rule may create the need for additional recordkeeping, but believes that these transactions already require considerable recordkeeping for business and tax purposes. The position holder rule also should reduce the need for refunds under section 4081(e) because the rule will reduce the possibilities of taxable sales within a terminal.

The final regulations do not adopt the suggestion that primary liability be shifted to the receiving party in an exchange leaving the position holder only secondarily liable for tax. Unlike the position holder rule, this alternative would prevent the IRS from identifying the taxpayer through an audit of the terminal operator's books. It would require detailed recordkeeping by the parties to the exchange because each party potentially would be liable for tax with respect to the gasoline it receives and the gasoline it exchanges. It also would expand the number of taxpayers, as compared to the position holder rule, and could allow companies to obscure the identity of the taxpayer, especially in complicated, multi-party exchanges.

The final regulations also do not adopt the suggestion that a terminal operator be allowed to recognize gasoline registrants as position holders even if the registrants do not have terminaling and storage agreements with the terminal operator. Although this approach might provide throughputters with some additional flexibility, it would place a large recordkeeping burden on terminal operators. An operator would have to maintain both its regular inventory records and a new set of "tax" records so it could determine the identity of the "tax" position holder. The proposal also would expand the number of taxpayers as compared to the position holder rule.

*Taxable Events Other Than Removal at the Terminal Rack (§ 48.4081–3)*

Proposed § 48.4081–3 provides rules for taxing events other than the removal of gasoline at the terminal rack. These taxes are imposed on certain removals from a refinery, entries into the United States, bulk transfers not received at an approved terminal or refinery, bulk transfers by an unregistered position holder, sales to unregistered persons, and removal or sale of blended gasoline by a blender.

The final regulations generally adopt these provisions as proposed. However, proposed § 48.4081–3(b) is revised to provide that no tax is imposed on removals from a refinery rack if (1) the gasoline is removed by rail car from an approved refinery and received at an approved terminal, (2) the refinery and the terminal are operated by the same gasoline registrant, and (3) the gasoline cannot be removed by bulk transfer because the refinery is not served by pipeline or waterborne gasoline transporting vessel.

Under proposed § 48.4081–3(d), tax is imposed on the bulk transfer from a terminal if the position holder is not registered. One commentator noted that the proposed regulations did not describe the tax consequences of bulk transfers from a terminal by a person other than the position holder. The final regulations clarify that tax is not imposed on the bulk transfer from a terminal by such a person (whether or not registered) so long as the position holder with respect to the gasoline is registered. Under § 48.4081–2, tax is imposed only when gasoline is removed at the terminal rack, and bulk transfers are not removals at the terminal rack. However, tax is imposed under § 48.4081–3(e) if gasoline is removed from a terminal in a bulk transfer and is received at an unapproved terminal or refinery.

*Special Rules for Gasoline Blendstocks (§ 48.4081–4)*

Under the final regulations (as under the proposed regulations), gasoline blendstocks generally are treated the

same as gasoline so long as they are in the bulk transfer/terminal system. Accordingly, tax is not imposed on a bulk transfer of gasoline blendstocks if the relevant party (determined under the rules applicable to gasoline in the bulk transfer/terminal system) is a gasoline registrant.

Under Notice 88–16, a registered person may, by nonbulk transfer, remove gasoline blendstocks from a terminal or refinery tax free even if the person will use the gasoline blendstocks to produce gasoline. A registered person also may sell gasoline blendstocks tax free to another registered person even if the sale is in connection with a nonbulk removal and the gasoline will be used by the buyer to produce gasoline.

In contrast, under the proposed regulations, nonbulk removals of gasoline blendstocks are generally taxable if the blendstocks will be used to produce gasoline regardless of whether the removals are by a registered person. Under a special rule, however, ETBE, MTBE, TAME, and TBA may, by nonbulk transfer, be removed from a terminal or refinery, or brought into the United States, tax free if these products are received at an approved terminal or refinery.

Some commentators objected to the proposed treatment of nonbulk removals of gasoline blendstocks and recommended that the rules of Notice 88–16 be retained. The commentators argued that gasoline blendstocks are frequently transported between facilities in the bulk transfer/terminal system by nonbulk transfer. The effect of applying the rule in the proposed regulations would be that taxed and untaxed gasoline blendstocks often would be commingled in refineries and terminals. When gasoline produced from these blendstocks is removed at the terminal rack, a refund would be available for the portion representing previously-taxed blendstocks (but not with respect to the remainder). The recordkeeping required to determine the amount of that portion would make the proposed rule difficult to administer for taxpayers and the IRS.

Accordingly, the final regulations apply to all gasoline blendstocks the special rule that applied under the proposed regulations only to ETBE, MTBE, TAME, and TBA. Thus, tax is not imposed on nonbulk removals from a terminal or refinery, or on nonbulk entries into the United States, of any gasoline blendstocks if the person otherwise liable for tax (1) is a gasoline registrant, (2) has an unexpired notification certificate (as described in § 48.4081–5) from the operator of the terminal or refinery where the gasoline blendstocks are received, (3) does not know that any information in the certificate is false, and (4) has verified the accuracy of the notification certificate in accordance with IRS procedures.

*Gasohol (§ 48.4081–6)*

Regulations concerning the tolerance rule for determining the percentage of alcohol required for gasohol and the rule relating to the later blending of gasohol were published in the **Federal Register** on March 4, 1992, (57 FR 7653). These final regulations incorporate the tolerance and later blending rules without substantive change.

*Conditions for, and Reporting Relating to, Refunds of Gasoline Tax Under Section 4081(e) (§ 48.4081–7)*

The Proposed Regulations

Beginning July 1, 1991, section 4081 may impose tax more than once on a particular volume of gasoline. For example, gasoline sold to an unregistered person within the bulk transfer/terminal system is taxed on that sale (the "first tax") and taxed again (the "second tax") when it is removed at the terminal rack. Under the proposed regulations, each seller liable for tax on the sale of gasoline within the bulk transfer/terminal system to an unregistered buyer must include with its return of tax a statement identifying the buyer and amount and type of gasoline sold (the "first taxpayer's report"). The proposed regulations also prescribe conditions under which the person who pays the second tax to the government may obtain a refund. A claimant must (1) identify the person who paid the first tax to the government (the "first taxpayer"), (2) identify every owner in the chain of sales between the first taxpayer and the claimant, (3) obtain invoices of all the transactions in this chain of sales, (4) obtain a statement from the person who paid the first tax that such person has not claimed or received a credit for, or refund of, the first tax, and (5) obtain evidence that the claimant has met the conditions to allowance for refund of manufacturers taxes of section 6416(a) (relating to whether the claimant bore the burden of the tax) with respect to the second tax. The conditions also include, where applicable, satisfaction of the reporting requirement by the person paying the first tax and a requirement that the claimant submit a copy of the first taxpayer's report with the refund claim. These provisions were proposed to be effective on July 1, 1991.

Public Comments

Commentators argued that the information-collection requirements under the proposed regulations are too burdensome.

The Final Regulations

The final regulations retain the requirement that the claimant identify the first taxpayer and the subsequent owners of the gasoline. This requirement is necessary so that the IRS may verify that a first tax actually has been paid to the government and that the claimant has paid the second tax on the same gasoline. However, the final regulations modify the reporting and information-collection requirements so that claimants will not have to obtain invoices relating to previous sales of the gasoline. Instead, a claimant will fulfill its responsibility by including with its return a copy of the first taxpayer's report, which should be passed down the chain of sales.

Section 48.4081–7 of the final regulations set forth the format for the first taxpayer's report and expands the reporting requirement to cover all taxable events except removals at a terminal or refinery rack, nonbulk entries into the United States, and removals or sales by blenders. Reporting is optional for these events, but taxpayers are encouraged to report if they expect that a second tax will be imposed with respect to the gasoline.

Under the final regulations, in order for a person who pays a second tax to claim a refund in respect of a first tax imposed after December 31, 1992, (regardless of the point at which the first tax is imposed), a copy of the first taxpayer's report must be submitted by the person who pays the second tax. Accordingly, any first taxpayer required to report must give a copy of the report to certain persons. For example, if the first tax is imposed on the sale of gasoline within the bulk transfer/terminal system to an unregistered buyer, the first taxpayer must give a copy to the buyer. First taxpayers filing optional reports should (but are not required to) follow similar procedures for transactions outside of the bulk transfer/terminal system.

If a person receives a first taxpayer's report and subsequently sells the gasoline within the bulk transfer/terminal system (other than a sale in a terminal that does not involve a change in the position holder), that person must give a copy of the first taxpayer's report and a statement describing the subsequent sale to its buyer. A person receiving a first taxpayer's report in a

sale outside of the bulk transfer/terminal system should (but is not required to) follow a similar procedure if that person subsequently sells the gasoline and the parties expect that another tax will be imposed under section 4081 with respect to the gasoline.

If the first taxpayer's volume of gasoline is divided among more than one buyer, multiple copies of the report should be made at the stage the gasoline is divided, with appropriate notations concerning the volume sold to each buyer, so that each buyer has a copy of the first taxpayer's report.

The claimant's submission of a copy of the first taxpayer's report does not mean that the claim will be allowed. For example, a claim will not be allowed if the first taxpayer did not actually pay the first tax to the government. A claim also will not be allowed if the IRS cannot determine that the first taxpayer's report applies to the gasoline to which the claim relates.

The final regulations require the first taxpayer to state on the first taxpayer's report that it has not claimed or received a credit for, or refund of, the first tax (instead of requiring the claimant to obtain such a statement from the first taxpayer). In addition, under the final regulations, the requirements of section 6416(a) are satisfied by a statement by the claimant that it has not included the amount of the second tax in the sale price of the gasoline and has not collected that amount from its buyer.

One commentator suggested that a credit rather than a refund be allowed when the same person pays both the first and second taxes. This would occur, for example, when a taxpayer removes gasoline at a terminal rack, trucks the gasoline to a second terminal, and then removes the gasoline at the rack of the second terminal. This suggestion is not adopted because such a credit is not authorized by sections 4081(e) or 6416(d). However, the final regulations provided a simplified refund procedure in these cases.

*Transitional Rules Applicable After June 30, 1991, and Before January 1, 1993 (§ 48.4081–9)*

The 1990 Act amendments relating to section 4081 are effective July 1, 1991, even though §§ 48.4081–1 through 48.4081–8 are not effective until January 1, 1993.

Section 48.4081–9 of the final regulations provides transitional rules applying the 1990 Act's gasoline tax amendments during the period from July 1, 1991, to December 31, 1992. The transitional rules provide that taxable events during this period are determined under sections 4081 and 4082 and that the owner of the gasoline immediately before the taxable event is liable for tax. Where two taxes are imposed with respect to the same gasoline and the first tax is imposed before January 1, 1993, the first taxpayer need not file a first taxpayer's report and the second taxpayer need not include a copy of that report in a refund claim to satisfy the conditions for allowance under section 4081(e). For other matters, taxpayers may rely on previously published guidance to the extent this guidance is not inconsistent with section 4081, as amended by the 1990 Act. The relevant guidance in this area includes Notice 87–83, 1987–2 C.B. 393, Notice 88–16, 1988–1 C.B. 482, Notice 88–109, 1988–2 C.B. 446, Notice 89–101, 1989–2 C.B. 435, and Rev. Rul. 88–70, 1988–2 C.B. 338.

## Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Drafting Information

The principal author of these regulations is Frank Boland, Office of the Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. However, other persons from the Service and the Treasury Department participated in their development.

## List of Subjects

*26 CFR Part 48*

Agriculture, Aircraft, Boats, Coal, Excise taxes, Furs, Jewelry, Motor fuels, Motor vehicles, Sporting goods, Tires.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 48 and 602 are amended as follows:

**Paragraph 1.** The authority citation for part 48 is amended by adding the following citations:

**Authority** 26 U.S.C. 7805 * * * Section 48.4081–4 also issued under 26 U.S.C. 4082(a); Section 48.4081–6 also issued under 26 U.S.C. 4081(c); Sections 48.4081–7 and 48.4081–9(c) also issued under 26 U.S.C. 4081(e) * * *

**Par. 2.** Subpart H of part 48 is amended as follows:

1. New § 48.4081–0 is added.
2. Sections 48.4081–1 and 48.4081–2 are revised.
3. The authority citation following § 48.4081–2 is removed.
4. New §§ 48.4081–3 through 48.4081–9 are added.
5. Sections 48.4082–1, 48.4083–1, 48.4083–2, 48.4084, the authority citation following 48.4084, 48.4084–1, and 48.9000–0 are removed.
6. The added and revised provisions read as follows:

**§ 48.4081–0 Gasoline tax; table of contents.**

This section lists captions contained in §§ 48.4081–1 through 48.4081–9.

*Section 48.4081–1 Gasoline tax; definitions.*

(a) Overview.
(b) Approved terminal or refinery.
(c) Blended gasoline.
(d) Blender.
(e) Bulk transfer.
(f) Bulk transfer/terminal system.
(g) Enterer.
(h) Entry into the United States.
(i) Gasoline.
(j) Gasoline blendstocks.
(1) In general.
(2) Products requiring further processing.
(k) Gasoline registrant.
(l) Industrial user.
(m) Position holder.
(n) Rack.
(o) Refiner.
(p) Refinery.
(q) Removal.
(r) Sale.
(1) In general.
(2) Example.
(s) Terminal.
(t) Terminal operator.
(u) Throughputter.
(v) Vessel.
(w) Effective date.

*Section 48.4081–2 Gasoline tax; tax on removal at a terminal rack.*

(a) Overview.
(b) Imposition of tax.
(c) Liability for tax.
(1) In general.
(2) Joint and several liability of terminal operator.
(3) Conditions for avoidance of liability.
(d) Rate of tax.
(e) Effective date.

*Section 48.4081–3 Gasoline tax; taxable events other than removal at the terminal rack.*

(a) Overview.
(b) Tax on the removal from a refinery.
(1) In general.

(2) Exemption for certain refineries.
(3) Liability for tax.
(4) Rate of tax.
(c) Tax on entry into the United States.
(1) In general.
(2) Liability for tax.
(3) Rate of tax.
(d) Tax on bulk transfers from a terminal by an unregistered position holder.
(1) In general.
(2) Liability for tax.
(3) Rate of tax.
(e) Tax on bulk transfers not received at an approved terminal or refinery.
(1) In general.
(2) Liability for tax.
(3) Rate of tax.
(f) Tax on sales of gasoline within the bulk transfer/terminal system.
(1) In general.
(2) Liability for tax.
(3) Rate of tax.
(g) Tax on removal or sale by the blender.
(1) In general.
(2) Liability for tax.
(3) Rate of tax.
(4) Example.
(h) Effective date.

*Section 48.4081–4 Gasoline tax; special rules for gasoline blendstocks.*

(a) Overview.
(b) Nonbulk removals and entries of gasoline blendstocks not used to produce gasoline.
(1) Removals and entries not in connection with sales.
(2) Removals and entries in connection with sales.
(3) Tax on sales after certain nonbulk removals or entries.
(c) Nonbulk removals and entries of gasoline blendstocks received at an approved terminal or refinery.
(d) Bulk transfers to a registered industrial user.
(e) Certificate.
(1) In general.
(2) Withdrawal of right to provide certificate.
(3) Form of certificate.
(f) Effective date.

*Section 48.4081–5 Gasoline tax; notification certificate of gasoline registrant.*

(a) Overview.
(b) Certificate.
(1) In general.
(2) Form of certificate.
(3) Use of Form 637 as a notification certificate prohibited.
(c) Effective date.

*Section 48.4081–6 Gasoline tax; gasohol.*

(a) Overview.
(b) Definitions.
(1) Alcohol.
(2) Gasohol.
(3) Gasohol blender.
(4) Registered gasohol blender.
(c) Rate of tax on gasoline removed or entered for gasohol production.
(1) In general.
(2) Certificate.
(d) Rate of tax on gasohol removed or entered.
(e) Tax rates.
(1) Gasohol production tax rate.
(2) Gasohol tax rate.
(f) Later blending.
(1) In general.
(2) Amount of tax.
(3) Liability for tax.
(4) Examples.
(g) Later separation and failure to blend.
(1) Later separation.
(2) Failure to blend.
(h) Effective date.

*Section 48.4081–7 Gasoline tax; conditions for, and reporting relating to, refunds of gasoline tax under section 4081(e).*

(a) Overview.
(b) Conditions to allowance of refund.
(c) Reporting requirements.
(1) Reporting by persons paying first tax.
(2) Model first taxpayer's report.
(3) Optional reporting for certain taxable events.
(4) Information provided to subsequent owners, etc.
(5) Exception if the same person incurs two taxes in the same calendar quarter.
(d) Form and content of refund claim.
(1) In general.
(2) Information to be included on claim form by claimant that did not pay the first tax to the government.
(3) Information to be included on claim form by claimant that paid the first tax to the government.
(e) Time for filing claim.
(f) Examples.
(g) Effective date.
(1) In general.
(2) Cross reference.

*Section 48.4081–8 Gasoline tax; measurement.*

(a) In general.
(b) Effective date.

*Section 48.4081–9 Gasoline tax; rules applicable after June 30, 1991, and before January 1, 1993.*

(a) Overview.
(b) Imposition of tax.
(c) Liability for tax.
(1) Primary liability.
(2) Secondary liability.
(d) Reliance on previously issued guidance.
(e) Conditions for refunds of gasoline tax under section 4081(e).
(1) Conditions to allowance of refund.
(2) Form and contant of claim.
(3) Time for filing claim.
(f) Effective date.

**§ 48.4081–1 Gasoline tax; definitions.**

(a) *Overview.* This section provides definitions for purposes of the regulations relating to the gasoline tax imposed by section 4081 of the Internal Revenue Code.

(b) *Approved terminal or refinery.* The term "approved terminal or refinery" means a terminal or refinery that is operated, respectively, by a gasoline registrant that is a terminal operator, or by a gasoline registrant that is a refiner.

(c) *Blended gasoline*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, the term "blended gasoline" means gasoline that is a mixture of—

(i) Gasoline with respect to which tax has been imposed under section 4081(a); and

(ii) Any substance with respect to which tax has not been imposed under section 4081(a), other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor.

(2) *Exception.* In the case of a mixture that is gasohol (as defined in § 48.4081–6(b)(2)) the term "blended gasoline" does not include a mixture of—

(i) Gasoline with respect to which tax was imposed under section 4081(a) at a rate described in § 48.4081–6(e) (relating to gasohol) or with respect to which a valid claim is made under section 6427(f); and

(ii) Alcohol.

(d) *Blender.* The term "blender" means any person that produces blended gasoline outside the bulk transfer/terminal system.

(e) *Bulk transfer.* The term "bulk transfer" means any transfer of gasoline by pipeline or vessel.

(f) *Bulk transfer/terminal system.* The term "bulk transfer/terminal system" means the gasoline distribution system consisting of refineries, pipelines, vessels, and terminals. Thus, gasoline in a refinery, pipeline, vessel, or terminal is in the bulk transfer/terminal system. Gasoline in the fuel supply tank of any engine, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

(g) *Enterer.* The term "enterer" generally means the importer of record (under customs law) with respect to the gasoline. However, if the importer of record is acting as an agent (for example, the importer of record is a customs broker engaged by the owner of the gasoline), the person for whom the agent is acting is the enterer. If there is no importer of record for gasoline entered into the United States, the owner of the gasoline at the time it is brought into the United States is the enterer.

(h) *Entry into the United States.* Gasoline is entered into the United States if, and entry occurs when—

(1) The gasoline is brought into the United States and applicable customs law requires that the gasoline be entered into the United States for consumption, use, or warehousing; or

(2) The gasoline is brought into the United States from Puerto Rico and applicable customs law would require that the gasoline be entered into the United States for consumption, use, or

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warehousing if the gasoline were brought into the United States from somewhere other than Puerto Rico.

(i) *Gasoline.* The term "gasoline" means—

(1) All products (including gasohol (as defined in § 48.4081–6(b)(2))) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel (other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method); and

(2) Gasoline blendstocks.

(j) *Gasoline blendstocks*—(1) *In general.* Except as provided in paragraph (j)(2) of this section, the term "gasoline blendstocks" means—

(i) Alkylate;
(ii) Butane;
(iii) Butene;
(iv) Catalytically cracked gasoline;
(v) Coker gasoline;
(vi) Ethyl tertiary butyl ether (ETBE);
(vii) Hexane;
(viii) Hydrocrackate;
(ix) Isomerate;
(x) Methyl tertiary butyl ether (MTBE);
(xi) Mixed xylene (not including any separated isomer of xylene);
(xii) Natural gasoline;
(xiii) Pentane;
(xiv) Pentane mixture;
(xv) Polymer gasoline;
(xvi) Raffinate;
(xvii) Reformate;
(xviii) Straight-run gasoline;
(xix) Straight-run naphtha;
(xx) Tertiary amyl methyl ether (TAME);
(xxi) Tertiary butyl alcohol (gasoline grade) (TBA);
(xxii) Thermally cracked gasoline;
(xxiii) Toluene;
(xxiv) Transmix containing gasoline; and
(xxv) Any other product designated as a gasoline blendstock by the Commissioner by revenue ruling or other administrative pronouncement.

(2) *Products requiring further processing.* The term "gasoline blendstocks" does not include any product that cannot, without further processing, be used in the production of gasoline described in paragraph (i)(1) of this section. For example, a mixed hydrocarbon stream that is produced in a natural gas processing plant is not a gasoline blendstock if the stream cannot be used to produce gasoline described in paragraph (i)(1) of this section without further processing.

(k) *Gasoline registrant.* The term "gasoline registrant" means an enterer, industrial user, refiner, terminal operator, or throughputter that is registered under section 4101.

(l) *Industrial user.* The term "industrial user" means any person that receives gasoline blendstocks by bulk transfer for its own use in the manufacture of products other than gasoline described in paragraph (i)(1) of this section.

(m) *Position holder.* The term "position holder" means, with respect to gasoline in a terminal, the person that holds the inventory position in the gasoline, as reflected on the records of the terminal operator. A person holds the inventory position in gasoline when that person has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal with respect to the gasoline. The term also includes a terminal operator that owns gasoline in its terminal.

(n) *Rack.* The term "rack" means a mechanism for delivering gasoline from a refinery or terminal into a truck, trailer, railroad car, or other means of nonbulk transfer.

(o) *Refiner.* The term "refiner" means any person that owns, operates, or otherwise controls a refinery.

(p) *Refinery.* The term "refinery" means a facility used to produce gasoline from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which gasoline may be removed by pipeline, by vessel, or at a rack. However, the term does not include a facility where only blended gasoline or gasohol (as defined in § 48.4081–6(b)(2)), and no other type of gasoline, is produced.

(q) *Removal.* The term "removal" means any physical transfer of gasoline, and any use of gasoline other than as a material in the production of gasoline or special fuels (as defined in § 48.4041–8(f)). However, gasoline is not removed when it evaporates or is otherwise lost or destroyed.

(r) *Sale*—(1) *In general.* The term "sale" means—

(i) The transfer of title to, or substantial incidents of ownership in, gasoline (other than gasoline in a terminal) to the buyer for a consideration, which may consist of money, services, or other property; or

(ii) The transfer of the inventory position with respect to gasoline in a terminal if the transferee becomes the position holder with respect to the gasoline.

(2) *Example.* The following example illustrates the rule of this paragraph (r):

*Example.* B owns one million gallons of gasoline that is stored in A's terminal. B also is the position holder with respect to the gasoline. While the gasoline remains stored in the terminal, B transfers title to 200,000 gallons of the gasoline to C. C then transfers title to the 200,000 gallons to D. B continues to hold the inventory position on A's records with respect to the one million gallons. Because B continues as the position holder with respect to the gasoline, the transfers of title to the gasoline from B to C and from C to D are not sales of gasoline.

(s) *Terminal.* The term "terminal" means a gasoline storage and distribution facility that is supplied by pipeline or vessel, and from which gasoline may be removed at a rack. However, the term does not include any facility at which gasoline blendstocks are used in the manufacture of products other than gasoline (as defined in paragraph (i)(1) of this section) and from which no gasoline is removed.

(t) *Terminal operator.* The term "terminal operator" means any person that owns, operates, or otherwise controls a terminal.

(u) *Throughputter.* The term "throughputter" means any person that—

(1) Owns gasoline within the bulk transfer/terminal system (other than in a terminal); or

(2) Is a position holder.

(v) *Vessel.* The term "vessel" means a waterborne gasoline transporting vessel.

(w) *Effective date.* This section is effective January 1, 1993.

### § 48.4081–2 Gasoline tax; tax on removal at a terminal rack.

(a) *Overview.* This section provides the general rule that all removals of gasoline at a terminal rack are taxable and the position holder with respect to the gasoline is liable for the tax.

(b) *Imposition of tax.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks), tax is imposed on the removal of gasoline from a terminal if the gasoline is removed at the rack.

(c) *Liability for tax*—(1) *In general.* The position holder with respect to the gasoline is liable for the tax imposed under paragraph (b) of this section.

(2) *Joint and several liability of terminal operator.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (b) of this section if—

(i) The position holder with respect to the gasoline is a person other than the terminal operator and is not a gasoline registrant; and

(ii) The terminal operator has not met the conditions of paragraph (c)(3) of this section.

(3) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under paragraph (c)(2) of this section if, at the time of the removal, the terminal operator—



(i) Is a gasoline registrant;

(ii) Has an unexpired notification certificate (described in § 48.4081–5) from the position holder;

(iii) Does not know that any information in the notification certificate is false; and

(iv) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(d) *Rate of tax.* For the rate of tax generally, see section 4081(a). For the rate of tax on gasohol and on gasoline sold for gasohol production, see § 48.4081–6.

(e) *Effective date.* This section is effective January 1, 1993.

### § 48.4081–3 Gasoline tax; taxable events other than removal at the terminal rack.

(a) *Overview.* Although tax is imposed when gasoline is removed at the terminal rack, tax is also imposed in certain other situations described in this section. This section provides rules for the imposition of tax when gasoline is removed from a refinery, entered into the United States, removed by bulk transfer from a terminal by an unregistered position holder, removed by bulk transfer and not received at an approved terminal or refinery, or sold to an unregistered person within the bulk transfer/terminal system. This section also provides rules for the imposition of tax when blended gasoline is removed or sold by the blender.

(b) *Tax on removal from a refinery*—(1) *In general.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks), and paragraph (b)(2) of this section (relating to an exemption for certain refineries), a tax is imposed on the removal of gasoline from a refinery if—

(i) The removal is by bulk transfer and the refiner or the owner of the gasoline immediately before the removal is not a gasoline registrant; or

(ii) The removal is at the rack.

(2) *Exemption for certain refineries.* The tax imposed under paragraph (b)(1)(ii) of this section does not apply to a removal of gasoline if—

(i) The gasoline is removed by rail car from an approved refinery and is received at an approved terminal;

(ii) The refinery and the terminal are operated by the same gasoline registrant; and

(iii) The refinery is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel.

(3) *Liability for tax.* The refiner is liable for the tax imposed under paragraph (b) of this section.

(4) *Rate of tax.* For the rate of tax generally, see section 4081(a). For the rate of tax on gasohol and on gasoline sold for gasohol production, see § 48.4081–6.

(c) *Tax on entry into the United States*—(1) *In general.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks), a tax is imposed on the entry of gasoline into the United States if—

(i) The entry is by bulk transfer and the enterer is not a gasoline registrant; or

(ii) The entry is not by bulk transfer.

(2) *Liability for tax.* The enterer is liable for the tax imposed under paragraph (c) of this section.

(3) *Rate of tax.* For the rate of tax generally, see section 4081(a). For the rate of tax on gasohol and on gasoline sold for gasohol production, see § 48.4081–6.

(d) *Tax on bulk transfers from a terminal by an unregistered position holder*—(1) *In general.* A tax is imposed on the removal by bulk transfer of gasoline from a terminal if the position holder with respect to the gasoline is not a gasoline registrant.

(2) *Liability for tax*—(i) *In general.* The position holder with respect to the gasoline is liable for the tax imposed under paragraph (d)(1) of this section.

(ii) *Joint and several liability of terminal operator.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (d)(1) of this section if—

(A) The position holder with respect to the gasoline is a person other than the terminal operator; and

(B) The terminal operator has not met the conditions of paragraph (d)(2)(iii) of this section.

(iii) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under this paragraph (d)(2) if, at the time of the bulk transfer, the terminal operator—

(A) Is a gasoline registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the position holder;

(C) Does not know that any information in the notification certificate is false; and

(D) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(e) *Tax on bulk transfers not received at an approved terminal or refinery*—(1) *In general.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks) a tax on gasoline is imposed if—

(i) Gasoline is removed by bulk transfer from a refinery or terminal, or entered by bulk transfer into the United States;

(ii) No tax was imposed on such removal or entry under paragraph (b), (c), or (d) of this section; and

(iii) Upon removal from the pipeline or vessel, the gasoline is not received at an approved terminal or refinery (or at another pipeline or vessel).

(2) *Liability for tax*—(i) *In general.* The owner of the gasoline when it is removed from the pipeline or vessel is liable for the tax imposed under paragraph (e)(1) of this section if the owner has not met the conditions of paragraph (e)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* An owner of gasoline is not liable for tax under paragraph (e)(2)(i) of this section if, at the time the gasoline is removed from the pipeline or vessel, the owner of the gasoline—

(A) Is a gasoline registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the operator of the terminal or refinery where the gasoline is received;

(C) Does not know that any information in the notification certificate is false; and

(D) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(iii) *Liability of the operator of the facility where the gasoline is received.* The operator of the facility where the gasoline is received is liable for the tax imposed under paragraph (e)(1) of this section if the owner of the gasoline has met the conditions of paragraph (e)(2)(ii) of this section and is jointly and severally liable for the tax if the owner has not met such conditions.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(f) *Tax on sales within the bulk transfer/terminal system*—(1) *In general.* A tax is imposed on the sale of gasoline located within the bulk transfer/terminal system if the sale is to a person that is not a gasoline registrant and tax has not been imposed on such gasoline under § 48.4081–2, or paragraph (b), (c), (d), or (e) of this section.

(2) *Liability for tax*—(i) *In general.* The seller of the gasoline is liable for the tax imposed under paragraph (f)(1) of this section if the seller has not met the conditions of paragraph (f)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* A seller is not liable for tax under paragraph (f)(2)(i) of this section if, at the time of the sale, the seller—

(A) Is a gasoline registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the buyer;

(C) Does not know that any information in the certificate is false; and

(D) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(iii) *Liability of the buyer.* The buyer of the gasoline is liable for the tax imposed under paragraph (f)(1) of this section if the seller of the gasoline has met the conditions of paragraph (f)(2)(ii) of this section and is jointly and severally liable for the tax if the seller has not met such conditions.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(g) *Tax on removal or sale by the blender*—(1) *In general.* A tax is imposed on the removal or sale of blended gasoline by the blender thereof. The number of gallons of blended gasoline subject to tax is the difference between the total number of gallons of blended gasoline removed or sold and the number of gallons of previously taxed gasoline used to produce the blended gasoline.

(2) *Liability for tax.* The blender is liable for the tax imposed under paragraph (g)(1) of this section.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(4) *Example.* The following example illustrates the provisions of this paragraph (g) and § 48.4081–1(c):

*Example.* (i) X, a gasoline wholesale distributor, buys 10,000 gallons of gasoline at a terminal rack. The gasoline is delivered into a tank trailer. Tax is imposed on the position holder in the terminal under § 48.4081–2(b) when the gasoline is removed at the rack. X then goes to another location where 500 gallons of alcohol (a substance not subject to tax under section 4081) are delivered into the tank trailer already containing the 10,000 gallons of gasoline. The gasoline and alcohol are splash blended as X drives to X's retail service station where X pumps the blended gasoline into a storage tank for sale to consumers.

(ii) X is a blender within the meaning of § 48.4081–1(d) because X has produced blended gasoline, as defined in § 48.4081–1(c), by mixing the 10,000 gallons of gasoline on which tax has been imposed under § 48.4081–2(b) with 500 gallons of alcohol, a substance not subject to tax under section 4081. The 10,500 gallon mixture is not gasohol because it does not satisfy the alcohol-content requirement described in § 48.4081–6(b)(2)(i). X, the blender, is liable for the tax imposed under § 48.4081–3(g) on the blended gasoline. The tax is imposed when the blended gasoline is removed from the tank trailer at the retail station. Tax is computed on 500 gallons, the number of gallons not previously subject to tax under section 4081.

(h) *Effective date.* This section is effective January 1, 1993.

**§ 48.4081–4 Gasoline tax; special rules for gasoline blendstocks.**

(a) *Overview.* This section provides rules exempting from tax certain removals, entries, and sales of gasoline blendstocks. Generally, under prescribed conditions, tax is not imposed on gasoline blendstocks that are not used to produce gasoline or that are received at an approved terminal or refinery.

(b) *Nonbulk removals and entries of gasoline blendstocks not used to produce gasoline*—(1) *Removals and entries not in connection with sales.* Tax is not imposed under § 48.4081–2(b), § 48.4081–3(b)(1)(ii), or § 48.4081–3(c)(1)(ii) on the removal or entry of gasoline blendstocks not in connection with a sale if—

(i) The person otherwise liable for tax under § 48.4081–2(c)(1) (the position holder), § 48.4081–3(b)(3) (the refiner), or § 48.4081–3(c)(2) (the enterer) is a gasoline registrant; and

(ii) Such person does not use the gasoline blendstocks to produce gasoline (as defined in § 48.4081–1(i)(1)).

(2) *Removals and entries in connection with sales.* Tax is not imposed under § 48.4081–2(b), § 48.4081–3(b)(1)(ii), or § 48.4081–3(c)(1)(ii) on the removal or entry of gasoline blendstocks in connection with a sale if—

(i) The person otherwise liable for tax under § 48.4081–2(c)(1) (the position holder), § 48.4081–3(b)(3) (the refiner), or § 48.4081–3(c)(2) (the enterer) is a gasoline registrant; and

(ii) At the time of the sale, such person has an unexpired certificate (described in paragraph (e) of this section) from the buyer and has no reason to believe any information in the certificate is false.

(3) *Tax on sales after certain nonbulk removals or entries*—(i) *In general.* If paragraph (b) (1) or (2) of this section applies to the removal or entry of gasoline blendstocks, tax is imposed on any sale of such blendstocks unless, at the time of the sale, the seller—

(A) Has an unexpired certificate (described in paragraph (e) of this section) from its buyer; and

(B) Has no reason to believe any information in the certificate is false.

(ii) *Liability for tax.* The seller is liable for the tax imposed under this paragraph (b)(3).

(iii) *Rate of tax.* For the rate of tax, see section 4081.

(c) *Nonbulk removals and entries of gasoline blendstocks received at an approved terminal or refinery.* Tax is not imposed under § 48.4081–2(b), § 48.4081–3(b)(1)(ii), or § 48.4081–3(c)(1)(ii) on the removal or entry of gasoline blendstocks that are received at a terminal or refinery if the person otherwise liable for tax under § 48.4081–2(c)(1) (the position holder), § 48.4081–3(b)(3) (the refiner), or § 48.4081–3(c)(2) (the enterer)—

(1) Is a gasoline registrant;

(2) Has an unexpired notification certificate (described in § 48.4081–5) from the operator of the terminal or refinery where the gasoline blendstocks are received;

(3) Does not know that any information in the certificate is false; and

(4) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(d) *Bulk transfer to a registered industrial user.* Tax is not imposed under § 48.4081–3(e)(1) if, upon the removal of gasoline blendstocks from a pipeline or vessel, the gasoline blendstocks are received by a gasoline registrant that is an industrial user.

(e) *Certificate*—(1) *In general.* The certificate to be provided by a buyer of gasoline blendstocks consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (e)(3) of this section, and contains all information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(i) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(ii) The date a new certificate is provided to the seller.

(iii) The date the seller is notified by the Internal Revenue Service or the buyer that the buyer's right to provide a certificate has been withdrawn.

(2) *Withdrawal of right to provide certificate.* The Internal Revenue Service may withdraw the right of a buyer of gasoline blendstocks to provide a certificate under this paragraph (e) if

such buyer uses gasoline blendstocks to which a certificate applies in the production of gasoline or resells the gasoline blendstocks without obtaining a certificate from its buyer. The Internal Revenue Service may notify any seller to whom the buyer has provided a certificate that the buyer's right to provide a certificate has been withdrawn.

(3) *Model certificate.*

**Certificate of Person Buying Gasoline Blendstock for use Other Than in the Production of Gasoline**

(To support tax-free sales under section 4081 of the Internal Revenue Code)

_____

_____

Name, address, and employer identification number of seller

The undersigned buyer ("Buyer") hereby certifies the following under penalties of perjury:

The gasoline blendstocks to which this certificate relates will not be used to produce gasoline.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here _____ and enter:

1. Invoice or delivery ticket number _____
2. _____ (number of gallons) of _____ (type of gasoline blendstocks)

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____
2. Expiration date _____

(period not to exceed 1 year after the effective date)

3. Type (or types) of gasoline blendstocks _____

4. Buyer account or order number _____

Buyer will not claim a credit or refund under section 6427(h) of the Internal Revenue Code for any gasoline blendstocks covered by this certificate.

Buyer will provide a new certificate to the seller if any information in this certificate changes.

If Buyer resells the gasoline blendstocks to which this certificate relates, Buyer will be liable for tax unless Buyer obtains a certificate from the purchaser stating that the gasoline blendstocks will not be used to produce gasoline and otherwise complies with the conditions of § 48.4081–4(b)(3) of the Manufacturers and Retailers Excise Tax Regulations.

Buyer understands that if Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn. In addition, the Internal Revenue Service has not notified Buyer that the right to provide a certificate has been withdrawn from a purchaser to which Buyer sells gasoline blendstocks tax free.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Signature and date signed

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Buyer

_____

Employer identification number

_____

Address of Buyer

(f) *Effective date.* This section is effective January 1, 1993.

**§ 48.4081–5 Gasoline tax; notification certificate of gasoline registrant.**

(a) *Overview.* This section set forth requirements for the notification certificate used under §§ 48.4081–2(c)(3), 48.4081–3(d)(2)(iii), 48.4081–3(e)(2)(iii), 48.4081–3(f)(2)(ii), and 48.4081–4(c) to notify another person of the gasoline registrant's registration status.

(b) *Certificate.*—(1) *In general.* The certificate to be provided by a gasoline registrant consists of a statement that is signed under penalties of perjury by a person with authority to bind the registrant, is in substantially the same form as the model provided in paragraph (b)(2) of this section, and contains all information necessary to complete such model. A new certificate must be given if any information in the most recently provided certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earlier of the following dates:

(i) The date the registrant provides a new certificate.

(ii) The date the recipient of the certificate is notified by either the Internal Revenue Service or the registrant that the registrant's registration has been revoked or suspended.

(2) *Model certificate.*

**Notification Certificate of Gasoline Registrant**

_____

_____

Name, address, and employer identification number of person receiving certificate

The undersigned gasoline registrant ("Registrant") hereby certifies under penalties of perjury that Registrant is registered by the Internal Revenue Service with registration number _____ and that Registrant's registration has not been revoked or suspended by the Internal Revenue Service.

Registrant understands that the fraudulent use of this certificate may subject Registrant and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the cost of prosecution.

_____

Signature and date signed

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of registrant

_____

Employer identification number

_____

Address of registrant

(3) *Use of Form 637 as a notification certificate prohibited.* A copy of the certificate of registry (Form 637) issued to a registrant by the Internal Revenue Service is not a notification certificate described in paragraph (b)(2) of this section.

(c) *Effective date.* This section is effective January 1, 1993.

**§ 48.4081–6 Gasoline tax; gasohol.**

(a) *Overview.* This section provides definitions relating to gasohol and rules for determining the applicability of reduced rates of tax on a removal or entry of gasohol or of gasoline used to produce gasohol. Rules are also provided for the imposition of tax on the separation of gasoline from gasohol and the failure to use gasoline (which has been taxed at a reduced rate) to produce gasohol.

(b) *Definitions.*—(1) *Alcohol.*—(i) *In general; source of the alcohol.* Except as provided in paragraph (b)(1)(ii) of this section, the term "alcohol" means any alcohol that is not a derivative product of petroleum, natural gas, coal, or peat. Thus, the term includes methanol and ethanol that are not derived from petroleum natural gas, coal, or peat. The term also includes alcohol produced either within or outside the United States.

(ii) *Proof and denaturants.* The term "alcohol" does not include alcohol with a proof of less than 190 degrees (determined without regard to added denaturants). If the alcohol added to a fuel/alcohol mixture (the "added alcohol") includes impurities or denaturants, the volume of alcohol in the mixture is determined under the following rules:

(A) The volume of alcohol in the mixture includes the volume of any

impurities (other than added denaturants and any fuel with which the alcohol is mixed) that reduce the purity of the added alcohol to not less than 190 proof (determined without regard to added denaturants).

(B) The volume of alcohol in the mixture includes the volume of any approved denaturants that reduce the purity of the added alcohol, but only to the extent that the volume of the approved denaturants does not exceed 5% of the volume of the added alcohol (including the approved denaturants). If the volume of the approved denaturants exceeds 5% of the volume of the added alcohol, the excess over 5% is considered part of the nonalcohol content of the mixture.

(C) For purposes of this paragraph (b)(1)(ii), "approved denaturants" are any denaturants (including gasoline and nonalcohol fuel denaturants) that reduce the purity of the added alcohol and are added to such alcohol under a formula approved by the Secretary.

(2) *Gasohol*—(i) *In general.* Gasohol is a blend of gasoline and alcohol in a mixture that satisfies the alcohol-content requirement immediately after the mixture is blended. The determination of whether a particular mixture satisfies the alcohol-content requirement is made on a batch-by-batch basis. Except to the extent provided in paragraph (b)(2)(ii) of this section, a batch satisfies the alcohol-content requirement if and only if it contains at least 9.8 percent alcohol by volume, without rounding. A batch of gasohol is a discrete mixture of gasoline and alcohol. If a batch is splash blended, a batch typically corresponds to a gasoline meter delivery ticket and an alcohol meter delivery ticket, each of which shows the number of gallons of liquid delivered into the mixture. In such case, the volume of each component in a batch (without adjustment for temperature) ordinarily is determined by the number of metered gallons shown on the delivery tickets for the gasoline and alcohol delivered. However, if a blended adds metered gallons of gasoline and alcohol to a tank already containing more than a de minimis amount of liquid (other than gasohol), the determination of whether a batch satisfies the alcohol-content requirement will be made by taking into account the amount of alcohol and non-alcohol fuel contained in the liquid already in the tank. Ordinarily, any amount in excess of 0.5 percent of the capacity of the tank will not be considered de minimis.

(ii) *Batches containing less than 10 percent but at least 9.8 percent alcohol.* If a batch of mixture contains less than 10 percent alcohol but at least 9.8 percent alcohol, only a portion of the batch is considered to be gasohol. That portion equals the number of gallons of alcohol in the batch multiplied by 10. Any remaining liquid in the mixture is "excess liquid." If tax was imposed on the excess liquid at the gasohol production rate (as defined in paragraph (e)(1) of this section), the excess liquid in the batch is considered to be gasoline with respect to which there is a failure to blend into gasohol for purposes of paragraph (g) of this section. Excess liquid is considered to be removed before the removal of the gasohol portion.

(iii) *Examples.* The following examples illustrate the provisions of this paragraph (b)(2):

*Example 1.* A gasohol blender splash blends a batch of gasohol in a tank holding approximately 8000 gallons of mixture. The applicable delivery tickets show that the mixture of blended by first pumping 7200 metered gallons of gasoline into the empty tank, and then pumping 800 metered gallons of alcohol into the tank. Accordingly, the mixture contains 10 percent alcohol (as determined based on the delivery tickets provided to the blender) and qualifies as gasohol.

*Example 2.* The facts are the same as in *Example 1* except that the applicable delivery tickets show that a mixture is blended by first pumping 7220 metered gallons of gasoline into the empty tank, and then pumping 780 metered gallons of alcohol into the tank. Because the mixture contains only 9.75 percent alcohol (as determined based on the delivery tickets provided to the blender), the mixture does not qualify as gasohol.

*Example 3.* The facts are the same as in *Example 1* except that the applicable delivery tickets show that a mixture is blended by first pumping 7205 metered gallons of gasoline into the empty tank, and then pumping 795 metered gallons of alcohol into the tank. Because the mixture contains less than 10 percent alcohol, but more than 9.8 percent alcohol, (as determined based on the delivery tickets provided to the blender), only 7950 gallons of the mixture qualify as gasohol. The remaining 50 gallons of the mixture are treated as gasoline with respect to which there was a failure to blend into gasohol for purposes of paragraph (g) of this section.

(3) *Gasohol blender.* The term "gasohol blender" means any person that regularly buys gasoline and alcohol and produces gasohol for use in its trade or business or for resale.

(4) *Registered gasohol blender.* The term "registered gasohol blender" means a person that is registered under section 4101 as a gasohol blender.

(c) *Rate of tax on gasoline removed or entered for gasohol production*—(1) *In general.* The rate of tax imposed on gasoline under §§ 48.4081–2(b) (relating to tax imposed at the terminal rack), 48.4081–3(b)(1)(ii) (relating to tax imposed at the refinery rack), or § 48.4081–3(c)(1 )(ii) (relating to tax imposed on nonbulk entries) is the gasohol production tax rate if—

(i) The person liable for tax under § 48.4081–2(c)(1) (the position holder), § 48.4081–3(b)(2) (the refiner), or § 48.4081–3(c)(2) (the enterer) is a gasoline registrant and a registered gasohol blender, and such person produces gasohol with such gasoline within 24 hours after removing or entering the gasoline; or

(ii) The gasoline is sold in connection with the removal or entry, the person liable for tax under § 48.4081–2(c)(1) (the position holder), § 48.4081–3(b)(2) (the refiner), or § 48.4081–3(c)(2) (the enterer) is a gasoline registrant and such person, at the time of the sale—

(A) Has an unexpired certificate (as described in paragraph (c)(2) of this section) from the buyer;

(B) Does not know that any information in the certificate is false; and

(C) Has verified, in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement, that the buyer is a registered gasohol blender.

(2) *Certificate*—(i) *In general.* The certificate to be provided by a registered gasohol blender consists of a statement that is signed under penalties of perjury by a person with authority to bind the registered gasohol blender, is in substantially the same form as the model certificate provided in paragraph (c)(2)(ii) of this section, and contains all information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(A) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(B) The date the registered gasohol blender provides a new certificate to the seller.

(C) The date the seller is notified by the Internal Revenue Service or the gasohol blender that the gasohol blender's registration has been revoked or suspended.

(ii) *Model certificate.*

**Certificate of Registered Gasohol Blender**

(To support sales of gasoline at the gasohol production tax rate under section 4081(c) of the Internal Revenue Code)

---

Name, address, and employer identification number of seller

The undersigned buyer ("Buyer") hereby certifies the following under penalties of perjury:

Buyer is registered as a gasohol blender with registration number _____. Buyer's registration has not been suspended or revoked by the Internal Revenue Service.

The gasoline bought under this certificate will be used by Buyer to produce gasohol (as defined in § 48.4081–(6)(b) of the Manufacturers and Retailers Excise Tax Regulations) within 24 hours after buying the gasoline.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here _____ and enter:

1. Account number _____
2. Number of gallons _____

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____
2. Expiration date _____

(period not to exceed 1 year after the effective date)

3. Buyer account or order number _____

Buyer will not claim a credit or refund under section 6427(f) of the Internal Revenue Code for any gasoline covered by this certificate.

Buyer agrees to provide seller with a new certificate if any information on this certificate changes.

Buyer understands that any use other than in Buyer's production of gasohol, or resale, of the gasoline covered by this certificate may result in the revocation of Buyer's registration.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____
Signature and date signed

_____
Printed or typed name of person signing

_____
Title of person signing

_____
Name of Buyer

_____
Employer identification number

_____
Address of Buyer

(iii) *Use of Form 637 as a gasohol blender's certificate prohibited.* A copy of the certificate of registry (Form 637) issued to a gasohol blender by the Internal Revenue Service is not a gasohol blender's certificate described in paragraph (c)(2)(ii) of this section.

(d) *Rate of tax on gasohol removed or entered.* The rate of tax imposed on removals or entries of any gasohol under §§ 48.4081–2(b), 48.4081–3(b)(1)(ii), and 48.4081–3(c)(1)(ii) is the gasohol tax rate. The rate of tax imposed on removals and entries of excess liquid (as described in paragraph (b)(2)(ii) of this section) is the rate of tax applicable to gasoline under section 4081(a).

(e) *Tax rates*—(1) *Gasohol production tax rate.* The gasohol production tax rate is the rate applicable under section 4081(c) to the type of gasohol produced.

(2) *Gasohol tax rate.* The gasohol tax rate is nine-tenths of the gasohol production tax rate applicable to the type of gasohol produced.

(f) *Later blending*—(1) *In general.* A tax is imposed on the sale or removal of a mixture by the blender thereof if—

(i) The blender produced the mixture by blending gasohol and gasoline (other than gasohol) for the purpose of producing fuel that contains a specific percentage of alcohol that is less than 10 percent;

(ii) Tax was imposed with respect to the gasohol at the reduced rate prescribed in paragraph (e) of this section (or tax was imposed with respect to the gasohol at the rate prescribed in section 4081(a) for gasoline and a refund or credit is claimed pursuant to section 6427(f)); and

(iii) Immediately after blending, the mixture contains less than 10 percent alcohol.

(2) *Amount of tax.* The amount of tax imposed under this paragraph (f) is the difference between—

(i) The number of gallons in the mixture times the rate prescribed under section 4081(a) for gasoline; and

(ii) The total amount of tax previously imposed under section 4081(a) (and not returned or credited) with respect to the components of the mixture.

(3) *Liability for tax.* The blender of the mixture is liable for the tax imposed under this paragraph (f).

(4) *Examples.* The provisions of this paragraph (f) are illustrated by the following examples.

*Example 1.* A retailer advertises fuel containing 5 percent alcohol. To produce the mixture, the retailer buys 5,000 gallons of gasohol on which tax has been imposed at the rate prescribed in paragraph (e) of this section. The blender then blends the gasohol with 5,000 gallons of gasoline. Because the retailer blends the gasoline and gasohol for the purpose of producing a mixture that contains only 5 percent alcohol, this paragraph (f) applies and tax is imposed on the sale or removal of the mixture. Under paragraph (f)(2) of this section, the amount of tax imposed is the difference between (i) 10,000 gallons times the rate prescribed under section 4081(a) for gasoline, and (ii) the total amount of tax previously imposed under section 4081(a) with respect to components of the mixture. The retailer may be entitled to claim a credit under section 40(b) for the amount of alcohol contained in the mixture.

*Example 2.* A retailer who has been selling gasoline decides to begin selling gasohol. The retailer buys 5,000 gallons of gasohol on which tax has been imposed at the rate prescribed in paragraph (e) of this section. The retailer pumps the gasohol into the gasoline storage tank that had not been emptied prior to the conversion to gasohol sales. Because the retailer did not blend the gasohol bought and the gasoline already in the storage tank for the purpose of producing a mixture containing a specific percentage of alcohol that is less than 10 percent, tax is not imposed under this section even if the resulting mixture contains less than 10 percent alcohol. Similarly, tax would not be imposed under this paragraph (f) if, several months later, the retailer decides to switch back to gasoline sales because of a shortage in the supply of gasohol and pumps gasoline into the storage tank while it still contains some gasohol.

(g) *Later separation and failure to blend*—(1) *Later separation*—(i) *Imposition of tax.* A tax is imposed on the removal or sale of gasoline separated from gasohol with respect to which tax was imposed at a rate described in paragraph (e) of this section or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1).

(ii) *Liability for tax.* The person that owns the gasohol at the time the gasoline is separated from the gasohol is liable for the tax imposed under paragraph (g)(1)(i) of this section.

(iii) *Rate of tax.* The rate of tax imposed under paragraph (g)(1)(i) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the applicable gasohol production tax rate.

(2) *Failure to blend*—(i) *Imposition of tax.* A tax is imposed on the entry, removal, or sale of gasoline (including excess liquid described in paragraph (b)(2)(ii) of this section) with respect to which tax was imposed at the gasohol production tax rate but which was not blended into gasohol.

(ii) *Liability for tax*—(A) In the case of gasoline with respect to which tax was imposed at the gasohol production rate under paragraph (c)(1)(i) of this section (relating to entries and removals not in connection with sales), the person liable for the tax imposed by paragraph (g)(2)(i) of this section is the person that was liable for tax on the entry or removal.

(B) In the case of gasoline with respect to which tax was imposed at the gasohol production rate under paragraph (c)(1)(ii) of this section (relating to entries and removals in connection with sales), the person that bought the gasoline in connection with

the entry or removal is liable for the tax imposed under paragraph (g)(2)(i) of this section.

(iii) *Rate of tax.* the rate of tax imposed under paragraph (g)(2)(i) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the applicable gasohol production tax rate.

(h) *Effective date.* This section is effective January 1, 1993.

**§ 48.4081–7 Gasoline tax; conditions for, and reporting relating to, refunds of gasoline tax under section 4081(e).**

(a) *Overview.* This section provides reporting requirements and other conditions that a person paying tax to the government under section 4081 must satisfy to receive a refund (but not a credit) under section 4081(e) with respect to gasoline on which a prior tax was paid to the government under section 4081. No credit against any tax imposed under the Internal Revenue Code is allowed under this section.

(b) *Conditions to allowance of refund.* A claim for refund of tax imposed by section 4081 with respect to gasoline is allowed under section 4081(e) and this section only if—

(1) A tax imposed by section 4081 with respect to the gasoline was paid to the government and not credited or refunded (the "first tax");

(2) After imposition of the first tax, another tax was imposed by section 4081 with respect to the same gasoline and was also paid to the government (the "second tax");

(3) The person that paid the second tax to the government has filed a timely claim for refund that contains the information required under paragraph (d) of this section; and

(4)(i) The person that paid the first tax to the government has included with its return the applicable statements under paragraph (c) of this section; or

(ii) Paragraph (c)(5) of this section applies.

(c) *Reporting requirements*—(1) *Reporting by persons paying first tax.* Except as provided in paragraph (c) (3) or (5) of this section, the person that paid the first tax under § 48.4081–3 (the "first taxpayer") must include with its return of that tax a statement that is in substantially the same form as the model report provided in paragraph (c)(2) of this section and contains all information necessary to complete such model report (the "first taxpayer's report").

(2) *Model first taxpayer's report.*

**First Taxpayer's Report**

1. _____

First Taxpayer's name, address, and employer identification number

2. _____

Name, address, and employer identification number of the buyer of the gasoline subject to tax

3. _____

Date and location of removal, entry, or sale

4. _____

Volume and type of gasoline removed, entered, or sold

5. Check type of taxable event:

_____ Removal from refinery

_____ Entry into United States

_____ Bulk transfer from terminal by unregistered position holder

_____ Bulk transfer not received at an approved terminal

_____ Sale within the bulk transfer/terminal system

6. _____

Amount of Federal excise tax paid on account of the removal, entry, or sale

7. _____

Location of IRS service center where this report is filed

The undersigned taxpayer (the "Taxpayer") has not received, and will not claim, a credit with respect to, or a refund of, the tax on the gasoline to which this form relates.

Under penalties of perjury, the Taxpayer declares that Taxpayer has examined this statement, including any accompanying schedules and statements, and, to the best of Taxpayer's knowledge and belief, they are true, correct and complete.

_____

Signature and date signed

_____

Printed or typed name of person signing this report

_____

Title

(3) *Optional reporting for certain taxable events.* Paragraph (c)(1) of this section does not apply with respect to a tax imposed under § 48.4081–2 (removal at a terminal rack), § 48.4081–3(b)(1)(ii) (nonbulk entries into the United States), or § 48.4081–3(g) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be imposed under section 4081 with respect to the gasoline, that person should (but is not required to) include with its return of the tax a statement that is in substantially the same form as the model report provided in paragraph (c)(2) of this section and contains all information necessary to complete such model report.

(4) *Information provided to subsequent owners, etc.*—(i) *By person required to file first taxpayer's report.* A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to—

(A) The person to whom the first taxpayer sells (within the meaning of § 48.4081–1(r)) the gasoline within the bulk transfer/terminal system; or

(B) The owner of the gasoline immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(ii) *By person filing optional first taxpayer's report.* A first taxpayer filing a first taxpayer's report under paragraph (c)(3) of this section should (but is not required to) give a copy of the report to—

(A) The person to whom the first taxpayer sells the gasoline; or

(B) The owner of the gasoline immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(iii) *By person receiving first taxpayer's report.* A person that receives a copy of the first taxpayer's report and subsequently sells (within the meaning of § 48.4081–1(r)) the gasoline within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(4)(iv) of this section to the buyer. A person that receives a copy of the first taxpayer's report and subsequently sells the gasoline outside the bulk transfer/terminal system should (but is not required to) give the copy and a statement that satisfies the requirements of paragraph (c)(4)(iv) of this section to the buyer, if that person expects that another tax will be imposed under section 4081 with respect to the gasoline.

(iv) *Form of statement*—(A) *In general.* A statement satisfies the requirements of this paragraph (c)(4)(iv) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This statement must contain all information necessary to complete the model statement provided in paragraph (c)(4)(iv)(B) of this section but need not be in the same format.

(B) *Model statement describing subsequent sale.*

**Statement of Subsequent Seller**

1. _____

_____

Name, address, and employer identification number of seller in subsequent sale

2. _____

_____

Name, address, and employer identification number of buyer in subsequent sale

3. _____

Date and location of subsequent sale

4. _____

Volume and type of gasoline sold

The undersigned seller (the "Seller") has received the copy of the first taxpayer's report provided with this statement in

connection with Seller's purchase of the gasoline described in this statement.

Under penalties of perjury, Seller declares that Seller has examined this statement, including any accompanying schedules and statements, and, to the best of Seller's knowledge and belief, they are true, correct and complete.

Signature and date signed

Printed or typed name of person signing this statement

Title

(v) *Sale to multiple buyers.* If the first taxpayer's report relates to gasoline divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the gasoline is divided and each buyer must be given a copy of the report.

(5) *Exception if the same person incurs two taxes in the same calendar quarter.* A first taxpayer's report under paragraph (c)(1) of this section is not required if the first tax and second tax are incurred by the same person in the same calendar quarter.

(d) *Form and content of refund claim*—(1) *In general.* The following rules apply to claims for refund under section 4081(e):

(i) The claim must be made by the person that paid the second tax to the government.

(ii) The claim must be made on Form 843, Claim for Refund and Request for Abatement (or such other form as the Commissioner may designate), in accordance with the instructions on the form. The form shall be marked "Section 4081(e) Claim" at the top. Section 4081(e) claims shall not be included with a claim for a refund under any other provision of the Internal Revenue Code.

(iii) If the person that paid the second tax did not pay the first tax to the government, the claim must contain all the information described in paragraph (d)(2) of this section.

(iv) If the person that paid the second tax also paid the first tax to the government, the claim must contain all the information described in paragraph (d)(3) of this section.

(2) *Information to be included on claim form by claimant that did not pay the first tax to the government.* If the person that paid the second tax did not pay the first tax to the government, the claim for a refund under section 4081(e) must contain the following information with respect to the gasoline covered by the claim:

(i) Volume and type of gasoline.

(ii) Date on which claimant incurred the tax liability to which this claim relates.

(iii) Amount of tax on this gasoline that claimant paid to the government and a statement that claimant has not included the amount of this tax in the sales price of the gasoline and has not collected that amount from the person that bought the gasoline from claimant.

(iv) Name, address, and employer identification number of the person that paid the first tax to the government.

(v) A copy of the first taxpayer's report (described in paragraph (c) of this section).

(3) *Information to be included on claim form by claimant that paid the first tax to the government.* If the person that paid the second tax also paid the first tax to the government, the claim for a refund under section 4081(e) must contain the following information with respect to the gasoline covered by the claim:

(i) Volume and type of gasoline.

(ii) Date on which claimant incurred liability for the first tax on the gasoline.

(iii) Location of the refinery, terminal, or point of entry where claimant incurred liability for the first tax.

(iv) Amount of the first tax claimant paid to the government.

(v) Date on which claimant incurred tax liability for the second tax on the gasoline.

(vi) Location of the refinery or terminal where claimant incurred liability for the second tax.

(vii) Amount of the second tax claimant paid to the government and a statement that claimant has not included the amount of this tax in the sales price of the gasoline and has not collected that amount from the person that bought the gasoline from claimant.

(e) *Time for filing claim.* A claim for refund under section 4081(e) may be filed any time after the claimant has filed the return of the second tax and before the end of the period prescribed by section 6511 for the filing of a claim for a refund.

(f) *Examples.* The following examples illustrate the provisions of this section.

*Example 1.* (i) A is a gasoline registrant that owns 10,000 gallons of gasoline, and on April 5, 1993, is transporting the gasoline by barge on a waterway in the United States. That day, A sells the gasoline to B, a person that is not a gasoline registrant. A is liable for tax on the sale under § 48.4081–3(f). A pays this tax to the government and attaches to its return of the gasoline tax for the 2nd quarter of 1993 the first taxpayer's report described in paragraph (c)(2) of this section. A also gives a copy of this report to B.

(ii) On April 9, 1993, B sells the gasoline to C, a gasoline registrant. B also gives C a copy of the first taxpayer's report and the statement of subsequent seller (required under paragraph (c)(4) of this section). On April 14, 1993, the gasoline is removed from a terminal at the rack. C is the position holder of the gasoline at the time of the removal and thus is liable for tax on the removal under § 48.4081–2(c)(1). C pays this tax to the government.

(iii) After C has filed a return of the second tax and before the end of the period prescribed by section 6511 for filing a claim for a refund, C files a claim for a refund of the second tax. The claim is in the form prescribed in paragraph (d)(2) of this section. C includes with its claim a copy of the first taxpayer's report and statement of subsequent seller. Because the conditions to allowance of a refund under paragraph (b) of this section have been met, C is allowed a refund of the second tax.

*Example 2.* The facts are the same as in *Example 1* except that A does not pay the tax to the government. Because the first tax was not paid to the government as required by paragraph (b)(1) of this section, the conditions to allowance of a refund under paragraph (b) of this section have not been met. Therefore, C is not allowed a refund of the second tax.

(g) *Effective date*—(1) *In general.* This section is effective in the case of gasoline with respect to which the first tax is imposed after December 31, 1992.

(2) *Cross reference.* For rules applicable if the first tax is imposed before January 1, 1993, see § 48.4081–9(e).

**§ 48.4081–8 Gasoline tax; measurement.**

(a) *In general.* For purposes of the tax imposed by section 4081, gallons of gasoline may be measured on the basis of—

(1) Actual volumetric gallons

(2) Gallons adjusted to 60 degrees Fahrenheit; or

(3) Any other temperature adjustment method approved by the Commissioner.

(b) *Effective Date.* This section is effective January 1, 1993.

**§ 48.4081–9 Gasoline tax; rules applicable after June 30, 1991, and before January 1, 1993.**

(a) *Overview.* This section provides transitional rules for applying the amendments made to section 4081 by the Revenue Reconciliation Act of 1990 during the period beginning July 1, 1991 (the effective date of those amendments) and ending December 31, 1992 (the last day before the effective date of §§ 48.4081–1 through 48.4081–8.

(b) *Imposition of tax.* For the imposition of tax, see sections 4081 and 4082.

(c) *Liability for tax*—(1) *Primary liability.* The owner of the gasoline immediately before the taxable event is liable for the tax imposed under sections 4081 and 4082.

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(2) *Secondary liability.* The terminal operator is secondarily liable for tax imposed under section 4081(a)(1)(ii) if it permits an unregistered owner of gasoline to remove the gasoline at its terminal rack. However, the terminal operator may rely on the rules of Notice 87–83, 1987–2 C.B. 393, to avoid such liability.

(d) *Reliance on previously issued guidance.* Taxpayers may rely on guidance previously published by the Internal Revenue Service under sections 4081 and 4082 to the extent the guidance is not inconsistent with sections 4081 and 4082 (as amended by the Revenue Reconciliation Act of 1990). The relevant guidance includes Notice 87–83, 1987–2 C.B. 393, Notice 88–16, 1988–1 C.B. 482, Notice 88–109, 1988–2 C.B. 446, Notice 89–101, 1989–2 C.B. 435, and Rev. Rul. 88–70, 1988–2 C.B. 338

(e) *Conditions for refunds of gasoline tax under section 4081(e)*—(1) *Conditions to allowance of refund.* A claim for refund of tax imposed by section 4081 with respect to gasoline is allowed under section 4081(e) and this section only if—

(i) A tax imposed by section 4081 with respect to the gasoline was paid to the government and not credited or refunded (the "first tax");

(ii) After imposition of the first tax, another tax was imposed by section 4081 with respect to the same gasoline and was also paid to the government (the "second tax"); and

(iii) The person that paid the second tax to the government has filed a timely claim for refund that contains the information required under paragraph (d)(2) of this section.

(2) *Form and content of refund claim.* The claim for refund under section 4081(e) shall be made by the person that paid the second tax. The claim must be made on Form 843, Claim for Refund and Request for Abatement (or such other form as the Commissioner may designate), in accordance with the instructions on the form. Each claim for a refund under this section must contain the following information with respect to the gasoline covered by the claim:

(i) The volume and type of gasoline.

(ii) The name, address, employer identification number, and registration number of the first taxpayer.

(iii) The date on which the claimant bought the gasoline.

(iv) The location at which the claimant bought the gasoline.

(v) The date on which the claimant incurred the tax liability to which the claim relates.

(3) *Time for filing claim.* A claim for refund under section 4081(e) may be filed any time after the claimant has filed the return of the second tax and before the end of the period prescribed by section 6511 for the filing of a claim for a refund.

(f) *Effective date.* This section is effective after June 30, 1991, and before January 1, 1993, except that paragraph (e) of this section applies to any refund relating to a first tax imposed before January 1, 1993.

**Par. 3.** The authority citation for part 602 continues to read as follows:

Authority: 26 CFR 7805.

**Par. 4.** Section 602.101(c) is amended by removing the entries in the table for §§ 48.4081–1, 48.4081–2, 48.4082–1, 48.4083–1, 48.4083–2, and 48.4084–1 and adding the following entries in the table to read as follows:

**§ 602.101 OMB control numbers.**

* * * * *

(c) * * *

| CFR part or section where identified and described | Current OMB control number |
|---|---|
| * * * * * | |
| 48.4081–2(c)(3) | 1545–1270 |
| 48.4081–3(d)(2)(iii) | 1545–1270 |
| 48.4081–3(e)(2)(ii) | 1545–1270 |
| 48.4081–3(f)(2)(ii) | 1545–1270 |
| 48.4081–4(b)(2)(ii) | 1545–1270 |
| 48.4081–4(b)(3)(i) | 1545–1270 |
| 48.4081–4(c) | 1545–1270 |
| 48.4081–6(c)(1)(ii) | 1545–1270 |
| 48.4081–7 | 1545–1270 |
| 48.4081–9 | 1545–1270 |
| * * * * * | |

Shirley D. Peterson,
*Commissioner of Internal Revenue.*
Approved:
Fred T. Goldberg, Jr.,
*Assistant Secretary of the Treasury.*
[FR Doc. 92–16561 Filed 7–21–92; 8:45 am]
BILLING CODE 4830–01–M

## DEPARTMENT OF JUSTICE

### Office of the Attorney General

### 28 CFR Part 0

[AG Order No. 1606–92]

### Establishment of the Office of International Programs

**AGENCY:** Department of Justice.
**ACTION:** Final rule.

**SUMMARY:** This order will amend the Department of Justice organization regulations to replace the Office of International Affairs with the Office of International Programs. Establishment of this new Office will increase efficiency within the Department. This order will provide the public with an accessible list of the duties of the Director of the Office of International Programs. This order will amend the Code of Federal Regulations in order to reflect accurately the Department's internal management structure.

**EFFECTIVE DATE:** July 22, 1992.

**FOR FURTHER INFORMATION CONTACT:** Drew C. Arena, Director, Office of International Programs, U.S. Department of Justice, Washington, DC 20530, telephone (202) 514–8672.

**SUPPLEMENTARY INFORMATION:** This order pertains to a matter of internal Department management. 5 U.S.C. 553(b)(A). It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a major rule within the meaning of or subject to Executive Order 12291.

**List of Subjects in 28 CFR Part 0**

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509, 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C 301; 28 U.S.C. 509, 510, 515–519.

**§ 0.1 [Amended]**

2. Part 0, subpart A, § 0.1 is amended by removing from the list under "Offices" the title "Office of International Affairs" and by adding in its place the title "Office of International Programs".

3. Subpart E–1 of part 0 is revised to read as follows:

### Subpart E–1—Office of International Programs

**§ 0.26 Organization.**

There shall be within the Office of the Deputy Attorney General an Office of International Programs.

(a) *Director.* The Office of International Programs shall be headed by a Director appointed by the Attorney General.

(b) *Functions.* The Director of the Office of International Programs shall discharge the following duties:

(1) Coordinate all proposals for the Department of Justice, or Department of Justice personnel, to provide foreign countries with training or technical assistance in the fields of law enforcement, administration of justice, legislation, and economic reform and democratic institution-building initiatives.

(2) Assist the Deputy Attorney General in coordinating the activities of the International Criminal Investigative Training Assistance Program and in coordinating responses to requests for international training and technical assistance submitted to the INTERPOL–U.S. National Central Bureau and other Department of Justice units.

(3) Serve as the focal point, on behalf of the Deputy Attorney General, for administrative matters involving international activities, including overseas staffing, of all Department of Justice units.

(4) Coordinate arrangements and preparations for contacts by the Attorney General and Deputy Attorney General with officials of foreign governments, foreign non-governmental organizations, and international organizations.

(5) As required, advise the Deputy Attorney General on matters relating to non-operational foreign travel by Department of Justice personnel.

(6) Serve as a primary liaison with the Department of State, with other appropriate federal, state and local agencies, and with appropriate non-governmental institutions, regarding training and technical assistance to foreign countries in the fields of law enforcement, administration of justice, legislation, and economic reform and democratic institution-building initiatives.

(7) Review and coordinate all planned and ongoing training and technical assistance activities in the fields of law enforcement, administration of justice, legislation, and economic reform and democratic institution-building initiatives by Department of Justice personnel in foreign countries.

(8) As needed, facilitate logistical arrangements for Department of Justice personnel to engage in approved training and technical assistance activities in the fields of law enforcement, administration of justice, legislation, and economic reform and democratic institution-building initiatives in foreign countries.

(9) Coordinate Department of Justice views on proposals for entities outside the Department, including international organizations, to conduct training and technical assistance activities in the fields of law enforcement, administration of justice, legislation, and economic reform and democratic institution-building initiatives in or for foreign countries.

(10) Serve as a focal point, on behalf of the Deputy Attorney General, for resolution, within the Department of Justice, of issues regarding international policy.

(11) Coordinate, on behalf of the Deputy Attorney General, legislation relevant to Department of Justice training and technical assistance activities in or for foreign countries.

(12) Perform such other duties and functions as may be specially assigned by the Deputy Attorney General.

(c) *Relationship with other Departmental units.* The Office of International Programs shall:

(1) Maintain continual liaison with interested components of the Department on international matters.

(2) Develop and administer effective mechanisms to ensure thorough consideration, by interested components of the Department, of all proposals for international training and technical assistance by Department personnel.

(d) *Redelegation of authority.* The Director is authorized to redelegate to any subordinate member of the Office of International Programs any of the authority, functions or duties vested in the Director by this subpart.

Dated: July 10, 1992.
George J. Terwilliger III,
*Acting Attorney General.*
[FR Doc. 92–17085 Filed 7–21–92; 8:45 am]
BILLING CODE 4410–01–M



## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### 37 CFR Part 1

[Docket No. 910246–2140]

RIN 0651–AA43

### Changes in Patent and Trademark Assignment Practice

**AGENCY:** Patent and Trademark Office, Commerce.
**ACTION:** Final Rule; correction.

**SUMMARY:** The Patent and Trademark Office (Office) amended the rules of practice regarding assignments in patent and trademark cases to improve and clarify the rules, to codify changes in practice and to consolidate the rules into a new Part 3 directed to assignments. In the final assignment rules a fee change promulgated in January 1992 was inadvertently omitted from the § 1.17(i)(1) listing.

**EFFECTIVE DATE:** September 4, 1992.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey V. Nase by telephone at (703) 305–9282 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box DAC, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The amended assignment rules first appeared in a notice of proposed rulemaking published in the **Federal Register** on May 10, 1991, at 56 FR 21641, and the Patent and Trademark Office "Official Gazette" of June 4, 1991, at 1127 O.G. 8–16. The final rules appeared in the **Federal Register** on July 6, 1992, at 57 FR 29634. Between the time the proposed and final rules were published, 37 CFR § 1.97(d) was amended, effective March 16, 1992, by a final rule which appeared in the **Federal Register** of January 17, 1992, 57 FR 2021, relating to the duty of disclosure. The amendment provided for a new petition fee which was referenced in 37 CFR § 1.17, patent application processing fees. The reproduction of § 1.17 in the final assignment rule package neglected to add the reference to the new petition fee under § 1.97(d).

Section 1.17(i)(1) is reproduced in its entirety to include the reference to § 1.97(d) which was inadvertently omitted. The amount of the fee for considering an information disclosure statement is not affected by this rule change.

**List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents.

For the reasons set out in the preamble and pursuant to the authority contained in 35 U.S.C. 6, part 1 of title 37 of the Code of Federal Regulations has been amended as set forth below.

### PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.17 is amended by revising paragraph (i)(1) to read as follows:

**§ 1.17 Patent application processing fees.**

* * * * *

(i)(1) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—$130.00.

§ 1.12—for access to an assignment record
§ 1.14—for access to an application
§ 1.53—to accord a filing date
§ 1.55—for entry of late priority papers
§ 1.60—to accord a filing date

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§ 1.62—to accord a filing date
§ 1.97(d)—to consider an information disclosure statement
§ 1.103—to suspend action in application
§ 1.177—for divisional reissues to issue separately
§ 1.312—for amendment after payment of issue fee
§ 1.313—to withdraw an application from issue
§ 1.314—to defer issuance of a patent
§ 1.666(b)—for access to interference settlement agreement
§ 3.81—for patent to issue to assignee, assignment submitted after payment of the issue fee

* * * * *

Dated: July 17, 1992.

**Douglas B. Comer,**

*Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.*

[FR Doc. 92-17298 Filed 7-21-92; 8:45 am]

BILLING CODE 3510-16-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 180 and 185

**[PP 0E3902 and FAP 0H5599/R1156; FRL-4073-8]**

**RIN 2070-AB78**

### Pesticide Tolerances for Lambda-Cyhalothrin

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document establishes tolerances for the insecticide lambda-cyhalothrin in or on the food commodity dried hops and increases tolerances in or on the raw agricultural commodities fat of cattle, goats, horses, and sheep and milk. These regulations to establish and increase maximum permissible levels for residues of the insecticide were requested pursuant to petitions submitted by ICI Agricultural Products.

**EFFECTIVE DATE:** This regulation becomes effective July 22, 1992.

**ADDRESSES:** Written objections, identified by the document control number, [PP 0E3902 and FAP 0H5599/R1156], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: George T. LaRocca, Product Manager (PM) 15, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6100.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 3, 1992 (57 FR 23388), EPA issued a proposed rule that gave notice that ICI Agricultural Products, Wilmington, DE 19897, had submitted pesticide petition (PP) 0E3902 proposing to increase a tolerance under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)) in or on the raw agricultural commodities fat of cattle, goats, horses, and sheep at 0.02 part per million (ppm) and milk fat at 0.25, and submitted food additive petition (FAP) 0H5599 to establish a food additive regulation under section 409(b) of the FFDCA (21 U.S.C. 348(b)) for the insecticide lambda-cyhalothrin, [1 α (S*), 3α(Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the food commodity dried hops imported from Germany at 10.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

### List of Subjects in 40 CFR Parts 180 and 185

Administrative practice and procedure, agricultural commodities, food additives, pesticides and pests, reporting and recordkeeping requirements.

Dated: July 7, 1992.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

### PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.438, by revising the section heading and the commodities fat of cattle, goats, horses and sheep and milk in the table in paragraph (a) to read as follows:

**§ 180.438 [1 α (S*),3α(Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| Cattle, fat | 0.02 |
| Goats, fat | 0.02 |
| Horses, fat | 0.02 |
| Milkfat (reflecting 0.01 ppm in whole milk) | 0.25 |



| Commodity | Parts per million |
|---|---|
| Sheep, fat | 0.02 |

### PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346.

b. In § 185.1310 by adding new paragraph (b), to read as follows:

**§ 185.1310 [1 α (S*),3α(Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate.**

* * * * *

(b) A food additive tolerance is established for residues of the insecticide [1 α (S*),3α(Z)]-(±)-cyano-(3-phenoxylphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate as follows:

| Commodity | Parts per million |
|---|---|
| Hops, dried | 10.0 |

[FR Doc. 92-17137 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-F

## 40 CFR Part 721

**[OPPTS-50591C; FRL-4009-6]**

**RIN 2070-AB27**

### Ethane, 2-chloro-1,1,1,2-tetrafluoro-; Significant New Use Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance ethane, 2-chloro-1,1,1,2-tetrafluoro-, which is the subject of premanufacture notice (PMN) P-88-1763, and which is subject to a TSCA section 5(e) consent order issued by EPA. This rule requires certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

**DATES:** This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on August 5, 1992. The effective date of this rule is September 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. EB-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** This SNUR requires persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of P-88-1763 for the significant new uses designated herein. The required notice will provide EPA with information with which to evaluate an intended use and associated activities.

### I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a significant new use notice (SNUN), EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities described in that notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707.

### II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354) and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions in subpart A which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR Part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

### III. Background

*A. Proposed Rule*

The chemical substance, ethane, 2-chloro-1,1,1,2-tetrafluoro-, was the subject of PMN P-88-1763 and a TSCA section 5(e) consent order issued by EPA. The order contained provisions requiring labeling, material safety data sheets (MSDSs), and worker training, prohibiting use of the substance in structural insulation foam board, limiting distribution of the substance to persons who agree to follow requirements specified in the section 5(e) consent order, submitting certain toxicity testing by the production limits or dates specified in the section 5(e) consent order, and maintaining certain records. EPA published a direct final SNUR for the substance in the **Federal Register** of April 25, 1991, at 56 FR 19229. The section number given for the substance in the proposed rule, § 721.1006, has been redesignated in the final rule as § 721.3180. EPA received a notice of intent to submit adverse comments during the 30 days following publication. Therefore, as required by § 721.160, the direct final SNUR for P-88-1763 was withdrawn in the **Federal Register** of September 20, 1991, at 56 FR 47677 and a proposed SNUR published in the **Federal Register** of September 20, 1991, at 56 FR 47714. EPA received comments from one person, the original PMN submitter.

The proposed SNUR for P-88-1763 designated as significant new uses, based on the provisions of the section 5(e) order for P-88-1763:

(1) Any use without establishing a hazard communication program in the workplace including specific worker training, specific label and MSDS language, and warning statements.

(2) Any use where the aggregate manufacture and importation production limit as defined in the consent order for P–88–1763 is exceeded.

(3) Use as a blowing agent in the manufacture of structural insulation foams for commercial or consumer purposes.

In addition, the proposed SNUR contained recordkeeping requirements for documenting manufacture or import volumes, purchases, customer sales, notification of customers of the existence of the SNUR, establishment/implementation of the hazard communication program including copies of the MSDS and label, and compliance with use restriction of P–88–1763 as a blowing agent for structural insulation foams. Additionally, under § 721.5(a)(2)(i) every manufacturer, importer, and processor subject to a SNUR for a particular substance is required to notify each customer in writing of the specific SNUR requirements. Under § 721.5(d), manufacturers, processors, and importers of a substance subject to a SNUR are also required to take specified actions if they have knowledge that recipients of that substance are engaging in a significant new use. These actions could include stopping sales, notices to the recipient and EPA, and, if necessary, a SNUN on behalf of the recipient.

*B. Final Rule*

The commenter provided comments on a number of the proposed rule provisions. The commenter interprets TSCA section 9(c) to provide that EPA's authority to promulgate the comprehensive workplace and labeling program in § 721.72(a) through (g), referenced in § 721.1006(a)(2)(i) (now § 721.3180(a)(2)(i)) is preempted by the Occupational Safety Health Administration (OSHA) Hazard Communication Standard, 29 CFR 1910.1200. EPA disagrees. Section 9(c) of TSCA addresses section 4(b)(1) of the Occupational Safety and Health Act (OSHA). Section 4(b)(1) prohibits OSHA standards governing working conditions with respect to which other Federal agencies "exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health." TSCA section 9(c) provides only that TSCA requirements do not preempt OSHA standards. This means that neither statute preempts the other.

For purposes of the OSHA Hazard Communication Standard, a substance generally is considered a health hazard requiring warnings and notice of protective measures only if certain toxicity data requirements are met. In contrast, regulation under section 5(e) of TSCA is designed to prevent unreasonable risks when there is insufficient data to evaluate those risks. It is entirely within EPA's jurisdiction to regulate a new chemical substance or the new uses of a substance under section 5(e) of TSCA to prevent such risks even in cases where the substance would not qualify as a hazardous chemical and would not be subject to the OSHA Hazard Communication Standard. In the case of P–88–1763 there are still insufficient data to evaluate its potential cancer and developmental toxicity risks. EPA has made the finding under section 5(e) of TSCA that, due to potential cancer and developmental toxicity concerns, P–88–1763 may present an unreasonable risk of injury to human health.

The commenter also stated that under § 721.72(a) through (g), referenced in § 721.1006(a)(2)(i) (now § 721.3180(a)(2)(i)), EPA had not complied with section 9(d) of TSCA. Section 9(d) of TSCA states that EPA must consult with other agencies to achieve maximum enforcement of TSCA while imposing the least burdensome requirements. The SNUR for P–88–1763 contains provisions for hazard communication found in EPA's general provisions for SNURs under § 721.72 promulgated on July 27, 1989 (54 FR 31298). After consultation with OSHA, EPA modeled these provisions after OSHA's Hazard Communication Standard so that complying with similar regulations under TSCA and OSHA would not be burdensome or duplicative. Instances such as P–88–1763 should require only one hazard communication program with labels and MSDS's to comply with provisions of both acts.

The commenter also stated that EPA had made the finding that P–88–1763 presents a physical or health hazard as those terms are defined in the OSHA Hazard Communication Standard. As stated above EPA has made a finding under section 5(e) of TSCA that the substance may present a risk. Whether the substance is a hazardous chemical for OSHA purposes is determined by the standards of the OSHA and the accompanying regulations. Under the OSHA Hazard Communication Standard, manufacturers are responsible for determining whether they have a hazardous chemical and complying with applicable requirements.

The commenter noted that the proposed concentration of 0.1 percent as the trigger for the provision regarding low concentrations in mixtures in § 721.72(e) referenced in § 721.1006(a)(2)(i) (now § 721.3180(a)(2)(i)), was different from the 1.0 percent found in the section 5(e) order (in the section 5(e) order, the concentration is set at 1.0 percent and drops to 0.1 percent if toxicity testing implicates P–88–1783 as a carcinogen). EPA agrees that both the section 5(e) order and the SNUR should agree and has revised the final SNUR to provide that the level is set at 1.0 percent but drops to 0.1 percent if the employer becomes aware of new information that requires a cancer hazard warning on the MSDS. However, a change in concentration will not necessitate further notification in the **Federal Register**.

The commenter requested that EPA clarify the meaning of aggregate production volume in § 721.80(q) referenced in § 721.1006(a)(2)(ii) (now § 721.3180(a)(2)(ii)) and explain how EPA intends to apply the two production limits found in the order to persons subject to the SNUR. For purposes of this SNUR, aggregate production volume means total production volume of that substance for each individual manufacturer or importer. Each manufacturer or importer subject to the SNUR may produce up to the lower production limit. Before exceeding that limit, the manufacturer/importer must submit a significant new use notice to EPA. EPA anticipates addressing both production volume limits upon receiving significant new use notification. Accordingly, notice will not be required prior to exceeding the second production limit.

The commenter noted that § 721.80(q) as referenced in § 721.1006(a)(2)(ii) (now § 721.3180(a)(2)(ii)) did not designate manufacture or import without conducting toxicity testing beyond a certain production limit as a significant new use. The commenter stated that this was a major difference between the section 5(e) order and the SNUR because the section 5(e) order required the submitter to complete certain studies before exceeding the production volume limit. The commenter stated that this situation imposed costs on the first manufacturer/importer that are not imposed on a second manufacturer/importer and could unduly create barriers to innovation contrary to TSCA section 2(b)(3) policy. The commenter also suggested alternative significant new uses so that other manufacturers/processors would share test costs as a condition of manufacturing/importing any quantity of P–88–1763.

The Agency believes that no change to the proposed provision of the SNUR for production limits is necessary. The

proposed SNUR designated as a significant new use to exceed the production limit in the section 5(e) order for P–88–1763. Before a second manufacturer/importer may exceed the production limit it must give 90 days notice to EPA of the significant new use. EPA will evaluate the significant new use notice and generally will not allow a second manufacturer/importer to exceed the production limit unless the testing required in the section 5(e) order has been completed or is in progress. EPA will coordinate with multiple manufacturers/importers of P–88–1763 to the extent possible to ensure that only one set of required tests is conducted and that the parties will have an opportunity to share costs. The significant new use designation at § 721.80(q) and EPA's response to a significant new use notice for that designation as described above are similar to the requirements of the section 5(e) consent order and impose similar cost of testing on any manufacturer, processor, or importer who files a significant new use notice. In addition, designating completion of toxicity testing as a significant new use does not address any of the factors found in section 5(a)(2). Therefore, EPA has decided to continue to designate the production limit in the SNUR as the best approximation of the terms of the section 5(e) order.

The proposed SNUR at § 721.80 as referenced in § 721.1006(a)(2)(ii) (now § 721.3180(a)(2)(ii)) designates as a significant new use the use of P–88–1763 as a blowing agent in the manufacture of structural insulation foams for commercial or consumer purposes. The commenter recommended that the Agency also designate the sale of P–88–1763 for use as a blowing agent in the manufacture of structural insulation foams for commercial or consumer purposes and the importation of consumer/commercial structural insulation foams that were produced abroad using P–88–1763 as a significant new use.

The commenter's concern regarding the sale of P–88–1763 is addressed under the general SNUR provisions in § 721.5(d)(1). In the final SNUR it is a significant new use to use P–88–1763 as a blowing agent in the manufacture of structural insulation foams for commercial or consumer purposes. According to § 721.5(d)(1), any manufacturer, importer, or processor who has knowledge that a recipient of P–88–1763 is using it as a blowing agent in the manufacture of structural insulation foams for commercial or consumer purposes, must cease distribution of P–88–1763 to that person and submit a significant new use notice unless certain other conditions are met. In effect, manufacturers, importers, and processors may not knowingly sell P–88–1763 for a designated significant new use.

EPA agrees with the commenter's position that persons who import for consumer or commercial purposes structural insulation foams that were produced abroad using P–88–1763 should be subject to the requirements of this SNUR. In the section 5(e) order for P–88–1763, EPA found that consumers exposed to P–88–1763 from such insulation foams may be subject to inhalation exposures of up to 1,300 mg per year. Based on this finding, EPA determined that the substance may present an unreasonable health risk. However, consumers who are subject to inhalation exposures from structural insulation foams would be subject to the same health risks whether the foams are manufactured domestically or imported. Therefore, as indicated by the commenter, the applicability of this SNUR should be consistent with respect to commercial or consumer uses of domestically manufactured and imported structural insulation foams. To assure that EPA will receive notice from importers as well as manufacturers and processors, the final rule designates as a significant new use "use for commercial or consumer purposes structural insulation foams made using this substance." Persons who import the substance for such a use would be required to submit a notice under the final rule. Accordingly, the exemption set out in § 721.45(f) for importing articles made from a substance subject to a SNUR will not apply to import of structural insulation foams used for commercial or consumer purposes made from P–88–1763. This should not change the reporting burden for domestic producers of foams using P–88–1763 because they would be required to report if they use the substance to produce foams and EPA would review their use before any further use of the actual foams.

The commenter cited two instances under § 721.72(g) as referenced in § 721.1006(a)(2)(i) (now § 721.3180(a)(2)(i)) where a designated new use under the hazard communication provision in the SNUR differed from the requirement in the section 5(e) consent order. The commenter states that the section 5(e) consent order required MSDS language that stated "Intentional misuse or deliberate inhalation may cause death without warning" while the SNUR designated MSDS language that stated "Intentional misuse can be fatal." The section 5(e) consent order also required a statement on the label "Before using read the HCFC 124 MSDS" while the SNUR designated the statement "See MSDS for details." The commenter stated that EPA should have the same requirements for both the order and the SNUR.

In the case of the cited MSDS language EPA has the same requirements for both the order and the SNUR. EPA's approval of the alternative MSDS language "intentional misuse or deliberate inhalation may cause death without warning" is contained in a letter to the commenter/PMN submitter separate from the section 5(e) consent order. The section 5(e) consent order still requires the MSDS phrase "intentional misuse can be fatal." In the letter, EPA merely approved additions to the MSDS language. The label statement noted by the commenter as required in the section 5(e) consent order was specifically requested by the commenter rather than EPA's standard label language, "See MSDS for details." However, the final rule designates only the standard language which allows some flexibility for persons who may use a different trade name for the PMN substance. The commenter's customers may use the language required in the order knowing that it satisfies their requirements under the SNUR.

The commenter requested clarification or withdrawal of several significant new use designations relating to recordkeeping, notification of customers, and definition of processing. The commenter specifically asked EPA to verify if the exemption at § 721.45(i), which states that anyone subject to a section 5(e) consent order for a substance is exempt from conflicting requirements from the SNUR for that substance, also applies to recordkeeping. EPA agrees that persons who are exempt from SNUR requirements for a substance because they are subject to a section 5(e) consent order for that substance, are also exempt from recordkeeping requirements for those SNUR requirements for that substance.

The commenter also specifically requested EPA to clarify if the recordkeeping requirements at § 721.125(c) apply to intracompany transfers from the site of manufacture, import, or processing to a storage facility/warehouse. The requirement at § 721.125(c) is for manufacturers, importers, and processors, of a substance to document the name and address of the persons to whom the

manufacturer, importer, or processor directly sells or transfers the substance, date of sale or transfer, and quantity sold or transferred. Section 721.125(c) does not require manufacturers, importers, or processors to document intracompany transfers for storage purposes. However, intracompany transfers for further processing or use are to be documented.

The commenter claimed that the recordkeeping requirements under § 721.125 were confusing and potentially very burdensome. The commenter asked EPA to clarify if its listing of recordkeeping requirements in its comments was accurate. The confusion arises from the uncertainty of what types of processing activities trigger the requirement to submit a notice under this SNUR and what records are to be kept by each manufacturer, importer, and processor. The burden is a result of the potentially large number of processors who might have to keep such records. The commenter stated that such a burden may adversely impact the commercial utilization of P–88–1763 as a chlorofluorocarbon alternative. The submitter's listing of records required under § 721.125 is accurate. Based on that listing EPA expects manufacturers, importers, and processors will understand specific recordkeeping requirements. However, EPA agrees that, absent a clear statement of applicability, the potentially complex distribution pattern, and large number of processors for P–88–1763 could result in unnecessary confusion and regulatory burden. EPA addresses these issues in its response to the comment described in the next paragraph.

The commenter stated that EPA should define processing or processors of P–88–1763, to clarify who would be subject to the requirements for notification of customers of hazard communication requirements, notification of customers of the existence of the SNUR for P–88–1763, and records documenting such notification. The commenter asked EPA to clarify if the listing of potential processors in its comments would be considered processors under the rule. The commenter also restated that the uncertainty and burden of a SNUR applying to so many potential processors could adversely impact the commercial utilization of P–88–1763 as a chlorofluorocarbon alternative. EPA agrees that a better description of who is subject to the SNUR for P–88–1763 would reduce uncertainty and the regulatory burden. Therefore, the final rule specifically describes processing activities that would not constitute new uses under this SNUR. First it should be noted that under § 721.45(f) any person who imports or processes a substance subject to a SNUR is exempt from that SNUR if the substance is incorporated into an article before that person receives it unless EPA identifies such articles as subject to a specific SNUR. Therefore, once P–88–1763 is incorporated into appliances, air conditioners, industrial equipment, or any other articles (except the foam insulation described earlier) the SNUR no longer applies to persons who import or process such articles.

In addition, EPA has added language to the final rule to indicate that this SNUR is not applicable to the following categories of processors:

> Processors of this substance are not subject to this section if they only service, repair, maintain, or sell products that contain the substance.

This statement defines the applicability of this SNUR and is not intended to affect the statutory or regulatory definition of "processor" for other purposes.

The commenter claimed that EPA had not articulated its finding that manufacture, import, or processing of P–88–1763 may constitute a significant new use under section 5(a)(2) of TSCA and in particular had not provided any explanation of TSCA section 5(a)(2) factors to support the new use finding.

Section 5(a)(2) of TSCA provides that EPA's determination that a use of a chemical substance is a significant new use must be made after a consideration of all relevant factors including:

(A) The projected volume of manufacturing and processing of a chemical substance.

(B) the extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.

(C) The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

(D) The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

EPA construes the statute to allow consideration of any other relevant factors, in addition to those enumerated in section 5(a)(2)(A) through (D).

In the case of P–88–1763, EPA's determination under section 5(a)(2) fully complied with all of the statutory requirements. In addition to the four statutory factors, EPA also took into account the consideration that the original PMN submitter had been subject to a section 5(e) consent order to control a potential unreasonable risk. Based on the findings in this consent order and on a consideration of other relevant factors under section 5(a)(2), EPA believes it is reasonable to require other manufacturers, importers, and processors to submit a notice prior to engaging in any of the significant new uses because they involve potential unreasonable risks. Section 5(a)(2) of TSCA allows EPA to consider all relevant factors. All of the significant new uses in the SNUR for P–88–1763 are new because they are not allowed in the section 5(e) consent order and no other parties have demonstrated that they are ongoing.

When designating a significant new use of P–88–1763 to be any manufacturing, importing, or processing without the hazard communication program specified in § 721.72 of the SNUR, EPA considered that an effective hazard communication program, which includes such provisions as warning statements on the label and MSDS and worker training, addresses such factors in section 5(a)(2) as type, form, duration, and magnitude of exposure as well as methods of manufacturing, processing, and use.

When designating use as a blowing agent in the manufacture of structural insulation foams for commercial or consumer purposes or use of structural insulation foams for commercial or consumer purposes made using this substance as a significant new use of P–88–1763, EPA considered such factors in section 5(a)(2) as type, form, duration, and magnitude of exposure as well as methods of manufacturing, processing, and use.

When designating the aggregate manufacture and importation volume above the amount designated in the section 5(e) consent order for P–88–1763 as a significant new use, EPA considered such factors in section 5(a)(2) as duration and magnitude of exposure, as well as projected volume of manufacturing and processing.

## IV. Substance Subject to This Rule

EPA is promulgating significant new use and recordkeeping requirements for the following chemical substance under part 721 subpart E.

**PMN Number P–88–1763**

*Chemical name:* Ethane, 2-chloro-1,1,1,2-tetrafluoro-.
*CAS Number:* 2837–89–0.
*Effective date of section 5(e) consent order:* October 16, 1990.
*Basis for section 5(e) order:* The order was issued under sections 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on the

finding that this substance may present an unreasonable risk of injury to health, the substance will be produced in substantial quantities, and there may be significant or substantial human exposure to the substance.

*Toxicity concern:* Similar substances have been shown to cause cancer and developmental toxicity in laboratory animals. However, data from a recently submitted 90–day inhalation study in rats on P–88–1763 have mitigated the Agency's concerns for liver toxicity. Further, the only signs of neurotoxicity in this study were sedation effects commonly associated with this class of chemicals.

*Recommended testing:* EPA has determined that a two-species developmental inhalation toxicity study (40 CFR 798.4000) would help characterize possible developmental toxicity of the substance, and a 2–year, two-species inhalation bioassay (40 CFR 798.3300) would help characterize the possible carcinogenicity of the substance. The order contains two production limits. The PMN submitter has agreed not to exceed the first production limit without performing the developmental toxicity study. The submitter has also agreed not exceed the second production limit without performing the 2–year bioassay.

*CFR Citation:* 40 CFR 721.3180.

## V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of the **Federal Register** notice that first identifies the new use rather than as of the effective date of the rule. Because this SNUR was first published on April 25, 1991, as a direct final rule, that date will serve as the date after which uses will be considered to be new uses. If uses which had commenced between that date and the effective date of this final rule were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses regulated through this SNUR after April 25, 1991, will have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substances between the publication of the direct final rule and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

## VI. Economic Analysis

EPA evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The Agency's complete economic analysis is available in the public record for this rule (OPPTS–50591C).

## VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50591C). The record includes basic information considered by the Agency in developing this rule. The record includes the following information:

1. The premanufacture notice.
2. The **Federal Register** notice announcing receipt of the PMN.
3. The section 5(e) order.
4. The direct final, withdrawal of direct final, and proposed SNUR.
5. The economic analysis of this rule.
6. The toxicology support document.
7. The engineering support document.
8. The exposure support document.
9. The risk assessment support document.
10. Public comments.

A public version of the record, without any Confidential Business Information, is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in rm. NE–G004, 401 M St., SW., Washington, DC.

## VIII. Regulatory Assessment Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice.

EPA believes that, because of the nature of the rule and the substance involved, there will be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule are likely to be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters are small firms.

### *C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

**List of Subjects in 40 CFR Part 721**

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 7, 1992.

**Victor J. Kimm,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, 40 CFR part 721 is amended as follows:

**PART 721—[AMENDED]**

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding a new § 721.3180 to subpart E to read as follows:

**§ 721.3180 Ethane, 2-chloro-1,1,1,2-tetrafluoro-.**

(a) Chemical substances and significant new uses subject to reporting. (1) The chemical substance identified as ethane, 2-chloro-1,1,1,2-tetrafluoro- (CAS number 2837–89–0) (PMN P–88–1763) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent; concentration is set at 0.1 percent if new information requires a hazard statement on the MSDS for cancer pursuant to § 721.72(c)(5)), (f), and (g)(5). The following additional human hazard precautionary statement shall appear on the MSDS as specified in § 721.72(c):

Inhalation of high concentrations of vapor is harmful and may cause heart irregularities, unconsciousness, or death. Intentional misuse can be fatal. Vapor reduces oxygen available for breathing and is heavier than air. Liquid contact causes frostbite. The effects in animals from single exposure by inhalation include central nervous system effects, anesthesia, and decreased blood pressure. Cardiac sensitization occurred in dogs exposed to a concentration of 2.5 percent in air and given an intravenous epinephrine challenge. Repeated exposures produced increased liver weights, anesthetic effects, irregular respiration, poor coordination, and nonspecific effects such as decreased body weight gain. However, no irreversible effects were seen as evidenced by histopathologic evaluation. As part of an extensive toxicology program, halogenated chlorofluorocarbon–124 will be tested in subchronic, developmental, and chronic/cancer studies. Avoid breathing high concentration of vapor. Use with sufficient ventilation to keep employee exposure below recommended limits. Avoid contact of liquid with skin and eyes. Wear chemical splash goggles and lined butyl gloves. Do NOT allow product to contact open flame or electrical heating elements because dangerous decomposition products may form.

The following additional human health hazard precautionary statements shall appear on each label as specified in § 721.72(b):

Inhalation of high concentrations of this substance in vapor form may cause:

(a) Heart irregularities.

(b) Unconsciousness.

(c) Death.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q). In addition it is a significant new use to use this substance as a blowing agent in the manufacture of structural insulation foams for commercial or consumer purposes or to use for commercial or consumer purposes structural insulation foams made using this substance.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) Processors of this substance are not subject to this section if they only service, repair, maintain, or sell products that contain the substance.

(2) Notwithstanding § 721.45(f), importers of structural insulation foams made using this substance are subject to notification requirements.

(3) *Recordkeeping requirements.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), (c), and (f) through (i).

(4) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(5) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 92–17026 Filed 7–21–92; 8:45 am]

BILLING CODE 6560–50–F

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101–45

**[FPMR Amendment H–186]**

### Utilization and Disposal of Personal Property

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** This regulation provides for use of the revised edition of Standard Form (SF) 97, The United States Government Certificate to Obtain Title to a Vehicle. The Standard Form 97 was revised because of amendments to 49 CFR part 580, Odometer Disclosure Requirements, and because of difficulties experienced by State motor vehicle administrations (MVAs) when titling vehicles transferred by the Federal Government to the vehicle purchaser. The odometer mileage disclosure statement portion of the SF 97 was amended to comply with the revised requirements of 49 CFR part 580.

**EFFECTIVE DATE:** July 22, 1992.

**FOR FURTHER INFORMATION CONTACT:** Lester D. Gray, Director, Property Management Division (703–305–7240).

**SUPPLEMENTARY INFORMATION:** The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

**List of Subjects in 41 CFR Part 101–45**

Government property management, Reporting requirements, Surplus Government property.

**PART 101–45.3—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY**

1. The authority citation for part 101–45 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

**Subpart 101–45.3—Sale of Personal Property**

2. Section 101–45.303–3 is amended by revising paragraph (c) and adding paragraph (d) as follows:

**§ 101–45.303–3 Delivery.**

* * * * *

(c) The Standard Form (SF) 97, the United States Government Certificate to Obtain Title to a Vehicle, is a four-part form issued on continuous feed paper.

The original certificate is produced on secure paper to readily identify any attempt to alter the form. The SF 97 shall be signed in accordance with requirements established by the head of the agency selling the vehicle. The SF 97 is an accountable form and is serially numbered during the printing process. Each agency shall have an accountable officer who will be responsible for the requisition, storage, and issuance of the SF 97. Certificates showing erasures or strikeovers will be considered invalid. Proper precautions shall be exercised by all agency accountable officers to prevent blank copies of the SF 97 from being obtained by unauthorized persons.

(d) Delivery of motor vehicles to purchasers shall be evidenced by submission to the purchaser of a completed original of the SF 97. Two copies of the SF 97 shall be furnished to the owning agency (one copy for the reporting office and one copy for the custodian) and the other copy shall be furnished the contracting officer of the agency effecting the sale or transfer of the motor vehicle. The SF 97 is illustrated at § 101–45.4901–97. Other certificates of release or bills of sale shall not be used in lieu of the SF 97. Instructions for the use of the SF 97 are in § 101–45.4901–97–1.

**Subpart 101–45.49—Illustrations of Forms**

3. Section 101–45.4901–97 is revised to read as follows:

**§ 101–45.4901–97 Standard Form 97, The United States Government Certificate to Obtain Title to a Vehicle.**

**§ 101–45.4901–97A [Removed]**

4. Section 101–45.4901–97A is removed.

Dated: June 25, 1992.

Richard G. Austin,

*Administrator of General Services.*

[FR Doc. 92–17209 Filed 7–21–92; 8:45 am]

BILLING CODE 6820–24–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 42 CFR Chapter I, Subchapter J

### Vaccine Injury Compensation; Calculation of Cost of Health Insurance; Editorial Corrections

**AGENCY:** Public Health Service, HHS.

**ACTION:** Corrections.

**SUMMARY:** This document provides editorial corrections in the words of issuance and amendatory instruction, the subchapter heading, and the authority citation of the final rule published Wednesday, June 24, 1992 (57 FR 28098–99) concerning the Secretary's determination of the average cost of a health insurance policy, for purposes of computing compensation amounts under the National Vaccine Injury Compensation Program.

**EFFECTIVE DATE:** July 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Balbier, Jr., Director, Division of Vaccine Injury Compensation, 6001 Montrose Rd., room 702, Rockville, MD 208523; telephone (301) 443–6593.

**SUPPLEMENTARY INFORMATION:**

**Background**

The final rule whose words of issuance and amendatory instruction, subchapter heading, and authority citation are herein corrected provides the Secretary's determination of the average cost of a health insurance policy, for purposes of compensation computations under the National Vaccine Injury Compensation Program.

**Need for Correction**

As published, the final rule will create potentially misleading editorial complications when the 1992 edition of Volume 42 of the Code of Federal Regulations is published.

**Corrections of Publication**

Accordingly, the following corrections are made to final rule published Wednesday, June 24, 1992. On page 28099, in the third column:

1. The words of issuance and amendatory instruction following the signature block are corrected to read as follows:

Accordingly, 42 CFR Chapter I, subchapter J, is amended by revising the subchapter heading and by adding a new part 100, as follows:

2. The heading of subchapter J is revised to read as follows:

**SUBCHAPTER J—VACCINES**

3. The authority citation for part 100 is corrected to read as follows:

**Authority:** Sec. 215 of the Public Health Service Act (42 U.S.C. 216); Sec. 2115 of the Public Health Service Act, Pub. L. 99–660, 100 Stat. 3767, as amended (42 U.S.C. 300aa–15).

Dated: July 15, 1992.

John Gallivan,

*PHS Regulations Officer.*

[FR Doc. 92–17236 Filed 7–21–92; 8:45 am]

BILLING CODE 4160–17–M

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## OFFICE OF PERSONNEL MANAGEMENT

### 45 CFR Part 801

### Voting Rights Program

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is establishing a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Acting Attorney General has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

**DATES:** This rule is effective June 21, 1992. In view of the need for its publication without an opportunity for prior comment, comment will still be considered. To be timely, comments must be received on or before August 21, 1992.

**ADDRESS:** Send or deliver comments to Stephanie J. Peters, Attorney, Office of Personnel Management, room 7350, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Stephanie J. Peters, (202) 606–1920.

**SUPPLEMENTARY INFORMATION:** The Acting Attorney General has designated McIntosh County as an additional examination point under the provisions of the Voting Rights Act of 1965, as amended. He determined on July 17, 1992, that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint Federal Examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

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Under section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately in view of the pending election to be held in the subject county, where Federal observers will observe the election under the authority of the Voting Rights Act of 1965, as amended.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under § 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it adds one new location to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

**List of Subjects in 45 CFR Part 801**

Administrative practice and procedure, Voting rights.

U.S. Office of Personnel Management.

**Douglas A. Brook,**

*Acting Director.*

Accordingly, OPM is amending 45 CFR part 801 as follows:

## PART 801—VOTING RIGHTS PROGRAM

1. The authority citation for part 801 continues to read as follows:

**Authority:** 5 U.S.C. 1103; secs. 7, 9, 79 Stat. 440, 441 (42 U.S.C. 1973e, 1973g).

2. Appendix A to part 801 is amended by adding alphabetically McIntosh County of Georgia to read as follows:

**Appendix A to Part 801**

* * * * *

**Georgia**

* * * * *

McIntosh: Best Western, Swiss Inn, room 115, Highway 251 and Interstate 95, Darien, Georgia 31304; (912) 437–4418 or 4421; July 21, 1992.

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[FR Doc. 92–17351 Filed 7–20–92; 12:01 pm]

BILLING CODE 6325–01–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 90**

**[PR Docket No. 89–552; FCC 92–261]**

### Use of the 220–222 MHz Band by the Private Land Mobile Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** The Commission has adopted a Memorandum Opinion and Order which addresses several issues raised on reconsideration of its previously adopted Report and Order, as well as the issues presented in the Further Notice of Proposed Rule Making issued in the proceeding. Specifically, with respect to the points raised on reconsideration, the Memorandum Opinion and Order affirms the following aspects of the Report and Order: The expedited effectiveness of the rule delineating the procedures for processing 200 MHz applications; the exclusion of wireline telephone common carriers from eligibility for commercial licensing in the band; various financial requirements and other entry criteria, with the exception of the "second audit" requirement applicable to nationwide applicants, which is eliminated; and the decision to restrict access to those channels set aside for public safety/mutual aid use to Public Safety Radio Service licensees. With respect to the issues raised in the Further Notice, the Memorandum Opinion and Order concludes that lotteries should be used to select all nationwide licensees, and that the construction and operational requirements applicable to non-commercial nationwide licensees should be strengthened to ensure that these channels are used as envisioned for internal communications purposes.

**EFFECTIVE DATE:** October 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Karen Kincaid, (202) 634–2443, Private Radio Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order, PR Docket No. 89–552, FCC 92–261, adopted June 18, 1992, and released July 16, 1992. The full text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452–1422.

**Summary of Memorandum Opinion and Order**

1. In March 1991, the Commission adopted the Report and Order (56 FR 19598, April 29, 1991) that forms the basis of this proceeding, establishing service rules to govern narrowband land mobile operations at 220–222 MHz. The first issue raised on reconsideration of the Report and Order concerns the expedited effectiveness of the rule delineating the procedures for processing 220–222 MHz applications, which the Commission permitted to become effective two days after publication in the **Federal Register**. In the Memorandum Opinion and Order, the Commission affirmed the early effectiveness of the rule at issue, 47 CFR 90.711, noting that in its recent Order on Reconsideration in the wireless cable proceeding, Order on Reconsideration, Gen. Docket Nos. 90–54, 80–113, 6 FCC Rcd 6784, *pet. for review pending sub nom.* United States Independent Microwave Television Ass'n v. FCC, No. 91–1637 (D.C. Cir. filed Dec. 20, 1991), the Commission considered the legality of its decision to make a rule essentially identical to § 90.711 effective immediately upon publication in the **Federal Register**, and concluded that rules of this nature are not subject to the advance publication requirement of the Administrative Procedure Act.

2. Next, the Commission addressed various arguments challenging 47 CFR 90.703(c), which provides that any person except a wireline telephone common carrier is eligible for commercial licensing at 220–222 MHz. The issues raised on reconsideration with respect to this rule were (1) that § 90.703(c) is invalid because the rationale undergirding it was not discussed in either the Notice or Report and Order as was required, the petitioner alleged, by sections 553(b) and 553(c) of the Administrative Procedure Act, and (2) that the restriction is undesirable on its merits. In rejecting the first of these contentions, the Commission stated that the full text of § 90.703(c) was set forth in the appendix to both the Notice and the Report and Order, which fully satisfied the requirements of the Administrative Procedure Act. The Commission affirmed the wireline limitation on its merits, stating that the retention of the wireline restriction should encourage competition until the Commission is better able to evaluate the extent to which private land mobile services might prove to be true competitors to cellular and similar technologies.



3. Next, the Commission decided to adhere to its original decision to use lotteries to select among mutually exclusive applications, thus foregoing the suggestion advanced in the Further Notice of Proposed Rule Making (57 FR 4180, February 4, 1992) that comparative hearings might prove useful in the nationwide context. The Commission did, however, proceed with its proposal to strengthen the construction and operational standards applicable to non-commercial nationwide licensees. Specifically, the Commission amended its rules to (1) require nationwide non-commercial licensees to construct at least one base station in a minimum of 70 markets within five rather than ten years of licensing; (2) prohibit the transfer or assignment of nationwide non-commercial licenses during the entire ten-year license term rather than after 40 percent of the licensee's system has been constructed; (3) require non-commercial nationwide applicants to demonstrate an actual presence or long-term business plan that necessitates internal communications capacity in the 70 or more markets identified in the license application; and (4) bar the leasing of excess capacity on the nationwide non-commercial channels during the first five years of the license term. The additional showings responsive to these rule changes must be filed within thirty days after the effective date of the Memorandum Opinion and Order. The Commission also stated that if, in light of any of these rule changes, a nationwide non-commercial applicant wishes to withdraw its application, it will be permitted to do so any time before the lottery is held, and its application fees will be refunded.

4. The Commission then considered various claims concerning the financial and reporting requirements adopted in the Report and Order. The Commission affirmed the Report and Order in all such respects except the "second audit" requirement contained in 47 CFR 90.713(b), which the Commission modified to provide that applicants are not required to submit a second audited balance sheet but may instead submit an unaudited, certified balance sheet for the purpose of satisfying § 90.713(b).

5. Finally, the Commission affirmed its decision to permit only Public Safety Radio Service licensees to be permitted access to the channels set aside for public safety/mutual aid use.

**Final Regulatory Flexibility Analysis**

*Need and Purpose of This Action*

This Memorandum Opinion and Order addresses several specific issues presented by the Report and Order and Further Notice of Proposed Rule Making previously adopted in the same proceeding. The rule changes adopted herein are responsive to concerns raised by applicants and other members of the public concerning the financial and reporting requirements applicable to 220 NHz nationwide licensees and the construction and operational requirements applicable to 220 MHz non-commercial nationwide licensees. These rule changes are designed to serve the public interest by ensuring that only the most qualified entities are selected as licensees, thereby guaranteeing prompt and effective delivery of service.

*Summary of the Issues Raised*

None of the petitions for reconsideration or comments filed in response thereto addressed the Final Regulatory Flexibility Analysis presented in the Report and Order. Similarly, none of the comments filed in response to the Initial Regulatory Flexibility Analysis contained in the Further Notice of Proposed Rule Making addressed the same.

*Significant Alternatives Considered*

Several alternatives were discussed in the earlier phases of this proceeding. All significant alternatives have been addressed.

**List of Subjects in 47 CFR Part 90**

Private land mobile radio services, radio.

**Amendatory Text**

1. The authority citation for part 90 continues to read as follows:

**Authority:** Sec. 4, 303, 332 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, and 332 unless otherwise noted.

2. 47 CFR 90.709 is amended by adding paragraph (a)(4) to read as follows:

**§ 90.709 Special limitations on amendment of applications and on assignment or transfer of authorizations licensed under this subpart.**

(a) * * *

4. Any application to transfer or assign a nationwide non-commercial system before the expiration of the first ten-year license term.

* * * * *

3. 47 CFR 90.713 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 90.713 Entry criteria.**

(a) As set forth in § 90.717, two blocks of ten and six blocks of five contiguous channels have been set aside for exclusive assignments for non-government use on a nationwide basis. Depending upon whether the application is for nationwide commercial or non-commercial channel blocks, it must comply with the following:

(1) Applicants for commercial nationwide channels must include certification that, within ten years of receiving a license, the applicant will construct a minimum of one base station in at least 70 different geographic areas; that base stations will be located in a minimum of 28 of the 100 urban areas listed in § 90.741; that each base station in the ten large urban areas designated in § 90.725(h) will have all assigned nationwide channels constructed and in operation (regularly interacting with mobile and/or portable units); and that all other base stations will have a minimum of five of the assigned nationwide channels constructed and in operation. Applicants for non-commercial nationwide channels must include certification that, within five years of receiving a license, the applicant will construct a minimum of at least one base station in at least 70 different geographic areas designated in the application; that base stations will be located in a minimum of 28 of the 100 urban areas listed in § 90.741; that each base station in the ten large urban areas designated in § 90.725(h) will have all assigned nationwide channels constructed and in operation (regularly interacting with mobile and/or portable units); and that all other base stations will have a minimum of five of the assigned nationwide channels constructed and in operation.

(2) Applicants for commercial and non-commercial nationwide channels must include certification that they will meet the construction requirements set forth in § 90.725.

(3) Applicants for commercial nationwide channels must include a ten-year schedule detailing plans for construction of the proposed system. Applicants for non-commercial nationwide channels must include a five-year schedule detailing plans for construction of the proposed system.

(4) Applicants for commercial nationwide channels must include an itemized estimate of the cost of constructing 40 percent of the system and operating the system during the first four years of the license term. Applicants for non-commercial nationwide channels must include an itemized estimate of the cost of

constructing the entire system within five years.

(5) Applicants for commercial nationwide channels must include proof that the applicant has sufficient financial resources to construct 40 percent of the system and operate the proposed system for the first four years of the license term; *i.e.*, that the applicant has net current assets sufficient to cover estimated costs or a firm financial commitment sufficient to cover estimated costs. Applicants for non-commercial nationwide channels must include proof that the applicant has sufficient financial resources to construct the entire system within five years of the license grant; *i.e.*, that the applicant has net current assets to cover estimated costs or a firm financial commitment sufficient to cover estimated costs.

(6) Applicants for non-commercial nationwide licensing must also submit a certification demonstrating an actual presence or business plan necessitating internal communications capacity in the 70 or more markets identified in the license application.

(b) Applicants relying on personal or internal resources for the showing in paragraph (a) of this section must submit independently audited financial statements certified within one year of the date of the application showing net current assets sufficient to meet estimated construction and operating costs. Applicants must also submit a balance sheet current within 60 days of its submission that clearly shows the continued availability of sufficient net current assets to construct and operate the proposed system for one year and a certification by the applicant or an officer of the applicant organization attesting to the validity of the unaudited balance sheet.

* * * * *

4. 47 CFR 90.719 is amended by revising the note to read as follows:

**§ 90.719 Individual channels available for assignment in the 220–222 MHz band.**

* * * * *

**Note:** Channels 181–185 are indefinitely reserved until further Commission action, and are not currently available for assignment or use.

5. 47 CFR 90.725 is amended by revising the introductory portion of paragraphs (a), (d) and (h) to read as follows:

**§ 90.725 Construction requirements.**

(a) Licensees granted commercial nationwide authorizations will be required to construct base stations having a minimum of five assigned nationwide channels and place those base stations in operation as follows:

* * * * *

(d) Each commercial nationwide licensee must file a system progress report on or before the anniversary date of the grant of its license after 2, 4, 6 and 10 years, demonstrating compliance with the relevant construction benchmark criteria.

* * * * *

(h) Licensees granted non-commercial nationwide authorizations will be required to construct base stations in a minimum of 70 markets designated in the application within five years of the initial license grant.

* * * * *

6. 47 CFR 90.733 is amended by revising paragraph (d) to read as follows:

**§ 90.733 Permissible operations.**

* * * * *

(d) Licensees of non-commercial nationwide systems may lease excess capacity of their systems as private carriers five years after the date of original license grant provided that their system is fully constructed and operational.

7. The authority citation for part 97 continues to read as follows:

**Authority:** 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

8. 47 CFR 97.301 is amended by revising the third line entry in the Table in paragraph (a) to read as follows:

**§ 97.301 Authorized frequency bands.**

* * * * *

(a) * * *

| Wavelength band | ITU region 1 | ITU region 2 | ITU region 3 | Sharing requirements see § 97.303 (paragraph) |
|---|---|---|---|---|
| 1.25 m | | 222–225 | | (a) |

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92–17210 Filed 7–21–92; 8:45 am]

BILLING CODE 6712–01–M

## 47 CFR Part 90

**[PR Docket No. 86–3; FCC 92–270]**

## Eligibility in the Specialized Mobile Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has adopted an Order terminating PR Docket No. 86–3, in which the Commission previously issued a Notice of Proposed Rule Making soliciting comment on a proposal to amend the rule that precludes wireline telephone common carriers from becoming base station licensees in the Specialized Mobile Radio (SMR) service. The Commission terminated the proceeding because the SMR industry has undergone numerous changes since the adoption of the Notice, rendering both the rationale upon which the original proposal was predicated and the comments filed in response thereto no longer relevant to a meaningful determination of whether the wireline limitation should be removed.

**EFFECTIVE DATE:** August 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Karen Kincaid, (202) 634–2443, Private Radio Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order, PR Docket No. 86–3, FCC 92–270, adopted June 19, 1992, and released July 15, 1992. The full text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's, copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452–1422.

**Summary of Order**

1. In 1986, the Commission adopted the Notice of Proposed Rule Making 51 FR 2910, January 22, 1986 that forms the basis of this proceeding, broadly proposing to eliminate the rule prohibiting wireline telephone common carriers from being eligible to become base station licensees in the SMR service. Since 1986, however, the SMR industry has undergone numerous changes. For example, the industry has experienced tremendous growth in terms of both the number of SMR licensees and the amount of capital generated by SMR service providers. In addition, although the SMR marketplace has ordinarily been characterized by the existence of a number of distinct licensees, the industry has experienced a recent trend toward consolidation.

2. Because these changes have occurred in the period of time subsequent to the issuance of the notice, neither the rationale upon which the original proposal was predicated nor the comments filed in response to the proposal necessarily remain relevant to a meaningful determination of whether the wireline limitation should be removed.

3. Moreover, at present, the Commission is persuaded that the wireline limitation serves a useful purpose. Recent trends in the SMR service reflect that private carrier land mobile providers have begun to emerge as innovative and viable competitors to common carrier land mobile offerings. By retaining the wireline restriction at least until the Commission has had an opportunity to evaluate fully the competitive potential of private land mobile services vis-a-vis common carrier land mobile providers, the Commission will be able to preserve a climate favorable to the continued development of private land mobile competitors.

4. Finally, the Commission addressed the status of several waivers of the wireline prohibition that were granted conditioned on the outcome of PR Docket No. 86–3. Specifically, the Commission concluded that its decision to terminate PR Docket No. 86–3 and to retain the wireline prohibition also necessitate the termination of these outstanding waiver grants. Accordingly, all outstanding conditional waivers of 47 CFR 90.603(c) will be terminated within ninety days of the effective date of this Order unless, within sixty days after the effective date, the recipients of these waivers submit a showing demonstrating how, in view of the policy considerations undergirding the wireline restriction, the public interest will be served by the continuation of waiver status.

**Final Regulatory Flexibility Analysis**

*Need and Purpose of This Action*

The *Order* terminates the inquiry initiated in PR Docket No. 86–3. This action serves the public interest by maintaining an environment favorable to the development of private land mobile competitors until the Commission has had an opportunity to create a record based on the current status of the industry.

*Summary of the Issues Raised*

None of the comments filed in response to the *Notice* addressed the Initial Regulatory Flexibility Analysis presented in therein.

*Significant Alternatives Considered*

All significant alternatives have been addressed.

**List of Subjects in 47 CFR Part 90**

Private land mobile radio service, Radio, Specialized mobile radio services.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92–17206 Filed 7–21–92; 8:45 am]

BILLING CODE 6712–01–M

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## INTERSTATE COMMERCE COMMISSION

**49 CFR Part 1109**

**[Ex Parte No. 55 (Sub. No. 83)]**

## Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Those in Which the Commission is a Party

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is amending its rules of practice to implement the Administrative Dispute Resolution Act (ADRA), Public Law 101–552, and the Negotiated Rulemaking Act (Reg-neg.), Public Law 101–648. These statutes amend the Adminstrative Procedure Act by authorizing and encouraging adminstrative agencies to use arbitration, mediation, negotiated rulemaking, and other consensual methods of dispute resolution where appropriate. The Commission is adopting general procedures as set forth below to facilitate broad use of ADR and Reg-neg in all Commission proceedings where appropriate. The new procedures: allow formal ICC proceedings to be held in abeyance, even where statutory deadlines apply, to allow ADR procedures to proceed; provide procedures for limited appeal of arbitration decisions; and provide for protection of confidential information obtained through the ADR process.

**EFFECTIVE DATE:** The Commission's final rule be effective August 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Louis Mackall (202) 927–6056. [TDD for hearing impaired: (202) 927–5721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC, 20423. Telephone (202 289–4357 or 4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or conservation of energy resources. This proposal should benefit small entities in instances where it is used by simplifying and reducing the cost of regulatory procedures. Because these ADR procedures are purely voluntary, small entities need not consent to them if they do not believe they will benefit. The proposed rule was published on December 12, 1991 at 56 FR 64737.

**List of Subjects in 49 CFR Part 1109**

Administrative practice and procedure, Motor carriers, Railroads, Reporting and Recordkeeping requirements, Water carriers.

Decided: July 3, 1992.

By the Commission: Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. .

**Sidney L. Strickland, Jr.,**

*Secretary.*

For the reasons set forth in the preamble, title 49, chapter X, is to be amended as follows:

1. A new part 1109 is added to read as follows:

## PART 1109—USE OF ALTERNATIVE DISPUTE RESOLUTION IN COMMISSION PROCEEDINGS AND THOSE IN WHICH THE COMMISSION IS A PARTY

Sec.

1109.1 Invoking ADR in Commission proceedings.

1109.2 Appeals from arbitration decisions.
1109.3 Confidentiality in ADR matters.

**Authority:** 5 U.S.C. 553, 559, and 582.

**§ 1109.1 Invoking ADR in Commission proceedings.**

Any proceeding may be held in abeyance for 90 days while administrative dispute resolution (ADR) procedures (such as arbitration and mediation) are pursued. (Additional 90 day periods can be requested.) The period while any proceeding is held in abeyance to facilitate ADR will not be counted towards the statutory deadlines. All parties are required to indicate their written consent for ADR treatment. Requests that a proceeding be held in abeyance while ADR procedures are pursued should be submitted to the Office of the Secretary. The Secretary shall promptly issue an order in response to such requests. Unless arbitration or some other binding process involving a neutral has been undertaken, any party believing that ADR procedures are not yielding the intended results shall inform the Secretary and all parties in writing, and normal agency procedures will be reactivated by the Secretary by notice served on all the parties.

**§ 1109.2 Appeals from arbitration decisions.**

Appeals are limited to clear errors of general transportation importance, and not issues of causation or fact. Arbitration awards can be challenged on the basis that they do not take their essence from the Interstate Commerce Act, or are not limited to the matters the parties have refered for arbitration. Appeals are limited to 10 typewritten pages. Parties will have 20 days from the service date of the decision to file, and opposing parties 20 days to answer. Arbitration decisions will become effective in 30 days unless a party seeks a stay of the decision within 10 days of its issuance, and we grant the stay. Appeals and stay petitions should be limited to extraordinary circumstances.

**§ 1109.3 Confidentiality in ADR matters.**

In all ADR matters involving the Commission, whether under the Administrative Dispute Resolution Act or not, the confidentiality provisions of ADRA (5 U.S.C. 584) shall bind the Commission and all parties and neutrals in those ADR matters.

[FR Doc. 92-17290 Filed 7-21-92; 8:45 am]
BILLING CODE 7035-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 630

[Docket No. 910640-1140]

### Atlantic Swordfish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Reopening of the drift gillnet fishery.

**SUMMARY:** Subject to the conditions below, the Secretary of Commerce (Secretary) reopens the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. The Secretary has determined that a substantial amount of annual quota for swordfish that may be harvested by drift gillnet was not harvested by July 8, 1992. This reopening is to allow the catch of swordfish by drift gillnet vessels to reach, but not exceed, the quota.

**EFFECTIVE DATE:** Reopening is effective 0001 hours local time July 22, 1992, through 1200 hours local time the day following the day that NMFS determines, based on actual catch, that fishing must cease. Public notification of closure will be made through call-in procedures contained in this rule and through subsequent notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Stone, 301-713-2347.

**SUPPLEMENTARY INFORMATION:** The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act.

By final rule, effective December 10, 1991 (56 FR 65007, December 13, 1991), the Secretary implemented quotas and closure provisions for Atlantic swordfish. An annual quota was established for swordfish that could be harvested by drift gillnet during each of two periods, January 1 through June 30, and July 1 through December 31. Under 50 CFR 630.25(a), the Secretary is required to close the drift gillnet fishery for swordfish when its quota is reached, or is projected to be reached.

Approximately 32,000 pounds (14,515 kilograms) of swordfish were landed by drift gillnet vessels during January 1 through June 30, 1992. NMFS estimated that 15 drift gillnet vessels would begin fishing on or about July 1, 1992. Based on the number of vessels that would fish and recent average catch per set of approximately 1,570 pounds (712 kilograms) for the month of July, NMFS determined that the combined drift gillnet quota from the January 1 through June 30 period, and the July 1 through December 31 period, would be reached on or before July 8, 1992. Hence, the drift gillnet fishery for Atlantic swordfish was closed effective 0001 hours local time July 8, 1992.

After receiving the actual catch data, NMFS has determined that approximately 19,000 pounds (8,626 kilograms) remain unharvested. Because this is an unusual circumstance in that about 20 percent of the total quota remains unharvested, NMFS has determined that it is appropriate to reopen, with the following conditions to assure that the quota is not overrun.

Pursuant to the authority in 50 CFR 630.26, the reopening and continuation of the fishery are conditioned as follows:

(1) All drift gillnet fishermen must notify NMFS of intent to fish (this is already a requirement under the Marine Mammal Protection Act exemption program).

(2) All drift gillnet fishermen participating must report to Pat Gerrior at 508-548-5123 ext. 291 or Dick Stone at 301-713-2347 between 1000 and 1100 hours local time on each day the fishery remains open, beginning on July 22, 1992.

(3) The report must consist of the daily logbook entry, as required by § 630.5(a), for the number of fish and estimated total dressed carcass weight.

(4) After 1100 hours local time each day, NMFS will calculate the total amount harvested and will determine whether the fishery will remain open for another 24-hour period. It is the responsibility of each vessel owner or operator to ascertain whether the fishery will be open for an additional 24 hours. This information will be available from NMFS (Dick Stone, 301-713-2347) after 1200 hours (noon) each day. In addition, notification of closure will be made through publication in the **Federal Register**.

(5) When NMFS determines that the fishery must be closed, all drift gillnet fishing for swordfish must cease and all vessels with drift gillnets on board and swordfish in excess of the bycatch limits specified at § 630.25(c)(1) must be in port by 1300 hours local time of the following day.

(6) Vessels must notify the nearest NMFS port agent immediately on arrival in port.

After the closure of the drift gillnet fishery, a person aboard a vessel using

or having aboard a drift gillnet (1) may not fish for swordfish from the North Atlantic swordfish stock; (2) may not possess more than two swordfish per trip in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude; and (3) may not land more than two swordfish in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

### Classification

This action is authorized by 50 CFR 630.26 and complies with Executive Order 12291.

**Authority:** 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

### List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, treaties.

Dated: July 17, 1992.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-17297 Filed 7-21-92; 8:45 am]

BILLING CODE 3510-22-M

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## 50 CFR Part 672

**[Docket No. 911175-2018]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is establishing a directed fishing allowance and is closing the directed fishery for "other rockfish" in the Western Regulatory Area (statistical area 61) of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the total allowable catch (TAC) for "other rockfish" in this area.

**DATES:** Effective 12 noon, Alaska local time (A.l.t.), July 18, 1992, through 12 midnight, A.l.t., December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** David R. Cormany, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The "other rockfish" TAC in statistical area 61 of the GOA, was established by the final notice of specifications (57 FR 2844, January 24, 1992) as 1,390 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the "other rockfish" TAC in statistical area 61 of the GOA will soon be reached. Therefore, the Regional Director is establishing a directed fishing allowance of 1,182 mt, and setting aside the remaining 208 mt as by, catch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently NMFS is prohibiting directed fishing for "other rockfish" in statistical area 61 of the GOA, effective from 12 noon, A.l.t., July 18, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

### Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 17, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-17237 Filed 7-21-92; 8:45 am]

BILLING CODE 3510-22-M

VOL
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# Proposed Rules

Federal Register
Vol. 57, No. 141
Wednesday, July 22, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Parts 1421 and 1427

### Upland Cotton Adjusted World Price; Announcement Time of the Rice World Market Price and Valuation of Broken Kernel Rice in the World Rice Price Calculation

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the regulations to change the announcement time by the Commodity Credit Corporation (CCC) of the adjusted world price for rice and to restrict loan repayments, repayment-rate lock-ins, and applications for loan deficiency payments from beginning at 2 p.m. eastern time each Tuesday until an announcement of the adjusted world price of rice for the succeeding weekly period has been made. The announcement time change is being proposed in response to public comments that such change will improve the effectiveness of the rice marketing loan and loan deficiency payment programs.

This proposed rule would also amend the regulations to allow the adjusted world market value of broken kernels to more accurately reflect its relationship to the world price of whole kernel rice in world markets. This change is being proposed so that the world price formula language will more precisely express the actual method used for calculating the broken kernel world price. Both proposed actions are initiated in accordance with section 101(B)(a)(5)(B) of the Agricultural Act of 1949, as amended.

This proposed rule also amends the regulations to (1) Change the time of announcement by the CCC of the adjusted world price (AWP) and coarse count adjustment (CCA) for upland cotton from 4 p.m. to 5 p.m. eastern time each Thursday and to provide that the AWP and CCA will be effective at the time of announcement; (2) provide that CCC will not accept repayments of price support loans at a rate based on the AWP beginning at 4 p.m. eastern time each Thursday until an announcement of the AWP and CCA for the succeeding weekly period has been made if the AWP for the current week is less than the current crop-year loan level for Strict Low Middling one and one-sixteenth inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) (base quality) cotton plus an amount estimated by CCC to represent average charges plus interest (carrying charges); (3) provide that CCC will not accept applications for loan deficiency payments beginning at 4 p.m. eastern time each Thursday until an announcement of the AWP and CCA for the succeeding weekly period has been made; and (4) clarify the procedures with respect to the additional discretionary adjustment to the AWP and the calculation of the payment rate under the upland cotton user marketing certificate program during the period when both current shipment prices and forward shipment prices are available for growths quoted for Middling 1 3/32 inch cotton, cost, insurance and freight (C.I.F.) northern Europe. These actions are initiated in accordance with section 103B(a) and (b) of the Agricultural Act of 1949, as amended.

Implementation of the changes made by this proposed rule will improve the effectiveness of the price support programs for rice and upland cotton.

**DATES:** Comments must be received by August 6, 1992, in order to be assured of consideration.

**ADDRESSES:** Submit comments to: Deputy Administrator, Policy Analysis, USDA, ASCS, room 3090–S, P.O. Box 2415, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** Janise Zygmont (regarding cotton) or Gene S. Rosera (regarding rice), Fibers and Rice Analysis Division, USDA, ASCS, room 3756–S, P.O. Box 2415, Washington, DC 20013 or call 202–720–6734.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "nonmajor". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, State or local governments or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are: Commodity Loans and Purchases—10.051.

It has been determined that the Regulatory Flexibility Act is not applicable since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule do not preempt State law, are not retroactive, and do not involve issues which are the subject of administrative appeals.

This provision is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This amendment will not result in any change in the public reporting burden. Therefore, the information collection requirements of the Paperwork Reduction Act are not applicable to this amendment.

### Background

Section 101B(a)(5) (B) of the Agricultural Act of 1949 provides that the Secretary of Agriculture shall prescribe by regulation a formula to define the prevailing world market price for rice and a mechanism by which the Secretary shall announce periodically the prevailing world market price for rice.

Under the present rule, the adjusted world price for rice shall be announced, to the extent practicable, on or after 7 a.m. The announced price is effective at 12:00:01 a.m. of the announcement day. Under this proposed rule, the adjusted world price for rice would be announced on or after 3 p.m eastern time each Tuesday, but may be announced more frequently, as determined by the Secretary. For the purpose of repaying price support loans or calculating loan deficiency payment rates, the adjusted world price announced at this proposed time would be effective upon announcement.

If the proposed announcement time is adopted, CCC would not permit loan repayments or accept applications for loan deficiency payments or lock-ins of rates beginning at 2 p.m. eastern time each Tuesday until the announcement of the adjusted world price for the succeeding weekly period has been made. This one-hour period would provide producers and ASCS staff a time interval between potentially different world price levels. Such interval is considered necessary to reduce confusion over which adjusted world price level applies to any individual loan repayment or loan deficiency payment calculation.

The present rule is inconsistent in expressing how the market value of broken kernel rice is to be determined. Section 1421.25(a)(5)(ii) provides that the market value of broken kernels shall be based upon the estimated domestic market values of all sizes of broken kernels. Section 1421.25 (a)(5)(v)(A)(2) provides that the market value of broken kernels is computed by multiplying the estimated domestic values of all sixes of broken kernels by the estimated national average quantity of broken kernels produced in milling 100 pounds of rice. Further § 1421.25 (a)(5)(vi) also refers to the estimated domestic market value of broken kernel rice. Since the inception of the rice marketing loan program, the world price of broken kernel rice used under sections has been one-half the whole kernel world market price as determined under this section. This value relationship has been consistent with the relative values of whole and broken kernels under the CCC price support program, domestic and export market values, and the provisions at § 1421.25 (a)(5)(ii).

Under this proposed rule, the price relationship between whole and broken kernels would not necessarily be fixed but would be based on the relationship of whole and broken kernel world prices as determined by world market price observations.

The AWP and CCA for upland cotton are currently announced by CCC as soon as possible after 4 p.m. eastern time each Thursday and are in effect from 12:01 a.m. eastern time Friday through midnight the following Thursday. During periods when the AWP is below the loan level but above 70 percent of the loan level, a producer or agent or subsequent agent authorized on CCC Form 605 may (1) Repay the loan amount for one or more bales of cotton pledged as collateral for a loan at the AWP in effect on the day the repayment is received by the county office or authorized Loan Serving Agent that disbursed the loan, or (2) a producer may agree to forgo loan eligibility on one or more bales of cotton and file an application for a loan deficiency payment on such bales at a payment rate equal to the amount that the AWP is below the loan level.

Under this procedure a loan may be repaid or an application for a loan deficiency payment may be filed on Thursday afternoon after the loan repayment rate or loan deficiency payment rate for the following week is known but before such rates become effective. If the AWP is increasing for the following week, having this knowledge in advance of the effective time of new rates permits transactions to be conducted that afternoon that might not otherwise have been conducted thereby providing an advantage to those persons having this knowledge. On the other hand, if the AWP is decreasing for the following week, transactions may be delayed until the following day to obtain additional program benefits. Furthermore, under the current procedures, producers in time zones west of the eastern time zone have an additional one, two or three hours in which to repay their loans or file an application for a loan deficiency payment. This creates inequities between producers in different time zones, particularly during periods when the additional discretionary AWP adjustment under § 1427.25(c)(4) is applicable.

A situation whereby the industry knows the AWP for the subsequent week while the current week's AWP is still in effect is unacceptable to CCC. In an effort to correct the situation, CCC published a proposed rule in the **Federal Register** on December 31, 1991, (56 FR 67547) proposing to amend the regulations found at 7 CFR part 1427 to change the time of the announcement of the AWP and CCA to 8 p.m. eastern time each Thursday and to make the AWP and CCA effective upon announcement. Fourteen of the fifteen respondents opposed the proposed changes. As a result, CCC announced by press release on April 15, 1992, and in the **Federal Register** on May 12, 1992, that it was withdrawing the proposed rule but indicated that it intended to publish another proposed rule with respect to these provisions in the near future.

This proposed rule is in response to the announcement to withdraw the proposal. In developing this proposed rule, CCC considered four options, any of which would accomplish the objectives of CCC. Options considered were:

*Option 1*

Maintain the current time of announcement and effective time of the AWP and CCA but stipulate that, if the AWP for the current week is less than the current crop-year loan level for the base quality of upland cotton plus estimated carrying charges, then (1) Loan repayments at a rate based on the AWP will not be accepted from 4 p.m. eastern time each Thursday until the AWP and CCA for the succeeding weekly period become effective, and (2) applications for loan deficiency payments will not be accepted during the same period.

Most of the respondents to the December 31, 1991, proposed rule recommended continuation of the current time of announcement and effective time of the AWP. This option would continue those procedures but, in order to accomplish the CCC objectives, loan repayments would not be accepted for about 8 hours each Thursday if the AWP for the current week is less than the current crop year loan level plus estimated carrying charges and loan deficiency payment applications would not be accepted during the same period.

*Option 2*

Announce the AWP and CCA at 5 p.m. eastern time each Thursday and make the AWP and CCA effective upon announcement; stipulate that, if the AWP for the current week is less than the current crop-year loan level for the base quality of upland cotton plus estimated carrying charges, then (1) loan repayments at a rate based on the AWP will not be accepted beginning at 4 p.m. eastern time each Thursday until an announcement of the AWP and CCA for the succeeding weekly period has been made, and (2) applications for loan deficiency payments will not be accepted during the same period.

This option would delay the announcement of the AWP and CCA only about 30 minutes beyond the

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current announcement time since it is usually about 4:30 p.m. eastern time when the announcement is actually made. It also would result in a suspension of loan repayment and loan deficiency payment applications for only about 1 hour.

*Option 3*

Announce the AWP and CCA at 8 p.m. eastern time each Thursday and make the AWP and CCA effective upon announcement.

This option is the procedure that CCC proposed in the December 31, 1991, proposed rule. Delaying the announcement of the AWP and CCA until 8 p.m. eastern time each Thursday, after all ASCS county offices are closed throughout the United States, and making the AWP and CCA effective upon announcement would accomplish CCC's objectives without necessitating suspension of loan repayments and loan deficiency payment applications. However, respondents to the previous proposed rule indicated that the later announcement time would cause several problems, including a delay in pricing export sales of U.S. cotton to the Far East.

*Option 4*

Announce the AWP and CCA at 8 a.m. eastern time each Friday and make the AWP and CCA effective upon announcement.

This option was recommended by one respondent to the December 31, 1991, proposed rule. Although the option would accomplish CCC's objectives, a problem could result whenever Friday is a nonworkday because the announcement would not be made until the next workday following the weekend.

**Discussion of Changes**

After considering the advantages and disadvantages of the four options considered, CCC has determined that it will propose implementations of Option This proposed rule would amend § 1427.19 to provide that, whenever the AWP for the current week is below the current crop-year loan level for the base quality of upland cotton plus estimated carrying charges, repayment of loans at a rate based on the AWP will not be allowed beginning at 4 p.m. eastern time each Thursday until an announcement of the AWP and CCA for the succeeding weekly period has been made. Section 1427.23 would be amended to provide that CCC will not accept applications for loan deficiency payments beginning at 4 p.m. eastern time each Thursday until an announcement of the AWP and CCA for the succeeding weekly period had been made. In addition, § 1427.25(e) would be amended to change the time of announcement of the AWP and CCA to 5 p.m. eastern time each Thursday and to provide that the AWP and CCA will be effective upon announcement.

With respect to the determination of any additional discretionary adjustment under section 1427.25(c)(4), the final rule published in the **Federal Register** on August 23, 1991, (56 FR 41749) did not specify how the U.S. Northern Europe price would be determined during the period when both current shipment prices and forward shipment prices are available. This proposed rule would amend section 1427.25(c)(4) to specify these provisions.

The final rule published in the **Federal Register** on April 20, 1992, (57 FR 14328) with respect to the implementation of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 was not clear about how the payment rate under the upland cotton user marketing certificate program would be determined during the period when both current shipment prices and forward shipment prices are available. This proposed rule would amend section 1427.107 to clarify these provisions.

Interested persons are invited to submit written comments on the proposed rule changes. Comments must be received by August 6, 1992, in order to be assured of consideration. The comment period is being limited to 15 days so that the provisions of this proposed rule can become effective not later than August 1, 1992, the beginning of the 1992-crop marketing year.

**List of Subjects**

*7 CFR Part 1421*

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

*7 CFR Part 1427*

Cotton, Loan programs (agriculture), Price support programs, Warehouses, Marketing certificate programs.

Accordingly, 7 CFR parts 1421 and 1427 are proposed to be amended as follows:

## PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

**Authority:** 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. In § 1421.25, paragraphs (a)(5)(ii), (a)(5)(v)(A)(2), (a)(5)(vi), (a)(6), and (a)(7) are revised to read as follows:

**§ 1421.25 Market price repayments.**

(a) * * *

(5) * * *

(ii) The price determined in accordance with paragraph (a)(5)(i) of this section shall be adjusted to reflect the market value of the total quantity of whole kernels contained in such milled rice by deducting the world value of broken kernels contained therein, with such value of the broken kernels to be determined by multiplying the quantity of such broken kernels (4% per hundredweight) by the world market value of such broken kernels. The world market value of broken kernels shall be based upon the relationship of whole and broken kernel world prices as estimated from observations of prices at which rice is being sold in world markets.

* * * * *

(v) * * *

(A) * * *

(2) The market value of broken kernels contained in the rough rice, computed by multiplying the estimated world market value of broken kernels by the estimated national average quantity of broken kernels produced in milling 100 pounds of rice;

* * * * *

(vi) The price determined in accordance with paragraph (a)(5)(v) of this section may be adjusted to a whole kernel loan rate basis by deducting the estimated world market value of the total quantity of broken kernels contained in such rice and dividing the resulting value by the estimated national average quantity of milled whole kernels produced in milling 100 pounds of rice.

(6) The adjusted world price for each class for rice, loan rate basis, shall be determined by CCC and shall be announced, to the extent practicable, on or after 3 p.m. eastern time each Tuesday continuing through the last Tuesday of July 1996, but may be announced more frequently, as determined by CCC. In the event that Tuesday is a non-workday, the determination will be made on the next workday, on or after 3 p.m. eastern time. The announced prices will be effective upon announcement and will remain in effect for a period as announced by CCC.

(7) Notwithstanding any other provision of this section, if the adjusted world price for rice is less than the current crop-year loan level plus an amount estimated by CCC to represent average charges plus interest, the repayment of loans and applications for lock-in of loan repayment rates at a rate based on the adjusted world price of



rice will not be accepted from 2 p.m. eastern time each Tuesday until an announcement of the adjusted world price for the succeeding weekly period has been made. In the event that Tuesday is a non-workday, such loan repayments and applications for lock-in of loan repayment rates will not be accepted from 2 p.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made.

* * * * *

3. In § 1421.29, paragraph (c) is revised and paragraph (g) is added to read as follows:

**§ 1421.29 Loan deficiency payments.**

* * * * *

(c) The loan deficiency payment rate for a crop shall be the amount by which the price support loan level for the crop exceeds the level at which CCC has announced that producers may repay their price support loans in accordance with § 1421.25. Such rate shall be the amount determined on the day the producer provides a complete request for a loan deficiency payment to the county office. When such request provides that the loan deficiency payment rate shall be based on the date of delivery, and the documentation of delivery indicates the rice was delivered after 3 p.m. eastern time, the loan deficiency payment rate in effect after 3 p.m. eastern time of the delivery date shall be used. In all other cases where the loan deficiency payment rate is based on the delivery date, the payment rate in effect at 12:00:01 a.m. eastern time of the delivery date shall be used.

* * * * *

(g) Notwithstanding any other provision of this section, applications for loan deficiency payments will not be accepted beginning at 2 p.m. eastern time each Tuesday until the announcement of the adjusted world price for the succeeding weekly period has been made. In the event that Tuesday is a non-workday, such applications for loan deficiency payments will not be accepted from 2 p.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made.

## PART 1427—COTTON

4. The authority citation for 7 CFR part 1427 continues to read as follows:

**Authority:** 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

5. Section 1427.19 is amended by adding a new paragraph (h) to read as follows:

**§ 1427.19 Repayment of price support loans.**

* * * * *

(h) Notwithstanding any other provision of this section, if the adjusted world price for upland cotton, determined in accordance with § 1427.25, is less than the current crop-year loan level for the base quality of upland cotton plus an amount estimated by CCC to represent average charges plus interest, repayment of upland cotton loans at a rate based on the adjusted world price will not be accepted beginning at 4 p.m. eastern time each Thursday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e). In the event that Thursday is a nonworkday, such loan repayments will not be accepted beginning at 7 a.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e).

6. Section 1427.23 is amended by adding a new paragraph (f) to read as follows:

**§ 1427.23 Cotton loan deficiency payments.**

* * * * *

(f) Notwithstanding nay other provision of this section, applications for loan deficiency payments will not be accepted beginning at 4 p.m. eastern time each Thursday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e). In the event that Thursday is a nonworkday, such applications for loan deficiency payments will not be accepted beginning at 7 a.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e).

7. Section 1427.25 is amended by revising paragraphs (c)(4) and (e) to read as follows:

**§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.**

* * * * *

(c) * * *

(4)(i) The prevailing world market price, as adjusted in accordance with paragraphs (c)(1) through (c)(3) of this section may be further adjusted if it is determined that:

(A) Such price is less than 115 percent of the current crop-year loan level for U.S. base quality cotton, and

(B) The Friday through Thursday average price quotation for the lowest-paid United States growth as quoted for M 1 $^{3}/_{32}$ inch cotton C.I.F. northern Europe (U.S. Northern Europe price) is greater than the average of the quotations for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 $^{3}/_{32}$ inch cotton C.I.F. northern Europe.

(ii) During the period when both current shipment prices and forward shipment prices are available for growths quoted for M 1 $^{3}/_{32}$ inch cotton C.I.F. northern Europe, the U.S. Northern Europe price provided in paragraph (c)(4)(i)(B) of this section shall be determined as follows: Beginning with the week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday of the lowest-priced United States growth as quoted for M 1 $^{3}/_{32}$ inch cotton C.I.F. northern Europe (U.S. Northern Europe current price) and the average of the forward shipment prices for the preceding Friday through Thursday of the lowest-price United States growth quoted M 1 $^{3}/_{32}$ inch cotton C.I.F. northern Europe (U.S. Northern Europe forward price) are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the average of the U.S. Northern Europe current price and the average of the U.S. Northern Europe forward price are available, the result calculated by the following procedure:

(A) Weeks 1 and 2: (2 × U.S. Northern Europe current price) + (U.S. Northern Europe forward price) /3.

(B) Weeks 3 and 4: (2 × U.S. Northern Europe current price) + (U.S. Northern Europe forward price) /2.

(C) Weeks 5 and 6: (2 × U.S. Northern Europe current price) + (U.S. Northern Europe forward price) /3.

(D) Week 7 through July 31: U.S. Northern Europe forward price.

(iii) In determining the U.S. Northern Europe price as provided in paragraphs (c)(4)(i)(B) and (c)(4)(ii) of this section:

(A) If quotes for either the U.S. Memphis territory or the California/Arizona territory are not available for any week, the available quotations will be used.

(B) If quotes are not available for one or more days in the 5-day period, the available quotes during the period will be used.

(C) If no quotes are available for either the U.S. Memphis territory or the California/Arizona territory during the Friday through Thursday period, no adjustment will be made.

(iv)(A) The adjustment shall be based on some or all of the following data, as available:

(*1*) The U.S. share of world exports;

(*2*) The current level of cotton export sales and shipments; and

(*3*) Other data determined by CCC to be relevant in establishing an accurate prevailing world market price, adjusted to United States quality and location.

(B) The adjustment may not exceed the difference between the U.S. Northern Europe price, as determined in paragraphs (c)(4)(i) through (c)(4)(iii) of this section, and the Northern Europe price, as determined in paragraph (a) of this section.

* * * * *

(e) The adjusted world price for upland cotton as determined in accordance with paragraph (c) of this section, and the amount of the additional adjustment as determined in accordance with paragraph (f) of this section, shall be announced, to the extent practicable, at 5 p.m. eastern time each Thursday continuing through the last Thursday of July 1996. In the event that Thursday is a nonworkday, the determination will be announced, to the extent practicable, at 8 a.m. eastern time the next workday. The adjusted world price and the amount of the additional adjustment will be effective upon announcement and will remain in effect for a period as announced by CCC.

* * * * *

8. Section 1427.107 is amended by revising paragraph (b) to read as follows:

**§ 1427.107 Payment rate.**

* * * * *

(b) Notwithstanding the provisions of paragraph (a) of this section, no payment rate shall be established in a week following:

(1) A week in which the adjusted world price, determined in accordance with § 1427.25, exceeds 130 percent of:

(i) The current crop-year loan level for the base quality of upland cotton for payment rates determined in accordance with paragraphs (a)(1)(i) and (ii) and (a)(2)(i) and (iii) of this section;

(ii) succeeding crop-year loan level for the base quality of upland cotton for the payment rate determined in accordance with paragraph (a)(2)(iv) of this section.

(2) A consecutive 10-week period in which the U.S. Northern Europe price (U.S. Northern Europe current price, when applicable), adjusted for the value of any certificate or cash payment issued in accordance with paragraph (a) of this section, exceeds the Northern Europe price (Northern Europe current price, when applicable) by more than 1.25 cents per pound.

* * * * *

Signed at Washington, DC on July 16, 1992.

John A. Stevenson,

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 92-17192 Filed 7-21-92; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Part 230**

**[Release No. 33-6942, File No. S7-19-92]**

**RIN 3235-AF51**

## International Series No. 422; Private Resales of Securities to Institutions

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule amendments.

**SUMMARY:** The Securities and Exchange Commission ("Commission") today is publishing for comment proposed amendments to rule 144A under the Securities Act of 1933 ("Securities Act" or "Act"). Rule 144A provides a safe-harbor exemption from the registration requirements of the Securities Act for resales of restricted securities to qualified institutional buyers ("QIBs"). The proposed amendments would expand the categories of QIBs to include collective and master trust legal forms commonly used for the collective investment of pension and other employee benefit plan funds. The proposed amendments also would recognize purchases by an insurance company for separate accounts not required to be registered under the Investment Company Act of 1940 ("Investment Company Act") as purchases for the account of the insurance company. Finally, the amendments would allow the inclusion of U.S. government and similar securities in calculating the amount of securities owned or invested by a particular institutional investor.

**DATES:** Comments should be received not later than September 1, 1992.

**ADDRESSES:** Comments should be submitted in triplicate to Johnathon G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6-9, Washington, DC 20549. Comment letters should refer to File No. S7-19-92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room at the same address.

**FOR FURTHER INFORMATION CONTACT:** Brent H. Taylor or Michael Hyatte at 202-272-3246, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary

On April 23, 1990, the Commission adopted Rule 144A [1] to provide a safe harbor from the registration requirements of the Securities Act for specified resales [2] of restricted or unregistered securities to "qualified institutional buyers," a term defined by the rule.[3] Except for registered broker-dealers, institutions eligible to be QIBs must own or invest on a discretionary basis at least $100 million in eligible securities. For registered broker-dealers, the requisite ownership or investment amount is $10 million. Banks, savings and loan associations, and equivalent foreign institutions must also have a net worth of at least $25 million to be QIBs.

Since the Rule's adoption, over $19 billion of securities relating to 181 issuers have been sold in 184 Rule 144A placements.[4] Of this amount, more than $7.6 billion of securities relating to 118 foreign issuers have been sold in 107 Rule 144A placements, and approximately $11.8 billion of securities relating to 66 U.S. issuers have been sold in 74 Rule 144A placements.

Over $13 billion of debt securities (including convertible debt) and over $6 billion of common and preferred equity securities have been sold in these rule 144A placements.

Although pension and other employee benefit plans are among the categories of institutions enumerated in rule 144A

[1] 17 CFR 230.144A.

[2] Such resales are those made to QIBs acting for their own accounts or for the accounts of other QIBs. Where a QIB ("QIB 1") buys for the account of another QIB ("QIB 2"), the seller and any person acting on behalf of the seller may rely on the representation of QIB 1 in ascertaining whether QIB 2 is indeed a QIB, if such reliance is reasonable.

[3] In an effort to facilitate the identification of QIBs, the Division of Corporation Finance has permitted sellers and persons acting on their behalf to rely on the Qualified Institutional Buyers Directory, published by Standard & Poor's, "As a method for establishing a reasonable belief that a prospective purchaser is a qualified institutional buyer * * *" Standard & Poor's (July 8, 1991).

[4] "Rule 144A placement" refers generally to financing transactions exempt from registration under the Securities Act where the issuer and its intermediaries anticipate resales in reliance on the Rule. Usage of the term is discussed more extensively in the Commission's report to Congress on the Rule. Securities and Exchange Commission, Staff Report on Rule 144A (September 30, 1991) 1-2.

as possible QIBs,[5] two of the legal forms commonly used to invest the funds of these plans, collective trust funds and master trusts, are not currently enumerated as qualifying institutions in the rule. Assets of many employee benefit plans are held and managed through collective trusts, which combine funds of plans of several employers, or master trust, which combine funds of plans that are under the common sponsorship of a single employer (including its affiliates) into a single administrative arrangement. In recognition of these common practices and the fact that the participants in the collective trust and master trusts would be limited to institutions falling into qualifying institutional categories already enumerated in the rule (namely, pension and other employee benefit plans), the Commission proposes to expand the QIB categories to include these two types of investment vehicles. Specifically, the amendments proposed today would add collective trust funds used for the investment of the funds of corporate-sponsored employee benefit plans and state-sponsored benefit plans and master trust for the commingled investment of funds of a single employer's employee benefit plans as types of entities that can qualify as a QIB.

A second change to the definition of QIB, proposed in response to questions regarding the status of purchases by an insurance company for its unregistered separate accounts,[6] would specify that sales to a QIB insurance company for its unregistered separate accounts can qualify under rule 144A.

Finally, the Commission proposes to amend the rule to permit institutions to include U.S. government securities in the amount of securities held or invested. Based on its experience with the rule, such exclusion appears to have created inordinate complexity and inefficiency in applying the rule, and does not appear necessary to assure that QIBs include only sizable institutions experienced in securities investing.

## II. Specific Proposals

### *A. Collective Trust Funds and Master Trust Funds*

In order to reduce administrative burdens and costs, trustees (generally banks) oftentimes pool assets in their trusts into a collective arrangement which provides for common management of funds. These collective trust arrangements differ based upon the nature of the assets being pooled and the participants, and may receive differing treatment under the U.S. federal tax and securities laws. Although terminology within the banking industry varies, the term "collective trust fund" (also called a "collective investment fund") is generally used to refer to a trust fund whose assets consist of funds from multiple pension plans or other employee benefit plans of more than one employer. A "master trust" is essentially the same as a collective trust fund except that all of the participant plans are under the common sponsorship of a single employer, including its affiliates. These collective trust funds and master trust funds are to be distinguished, for purposes of the rule, from "common trust funds" (or "common trusts"), trusts for individual accounts in which a bank is serving as trustee, executor, guardian, administrator or custodian under a Uniform Gift to Minors Act. Trust maintained for the benefit of individuals may participate in common trust funds.[7]

Currently under the rule the only trust form specifically listed as a qualifying institution is the "Massachusetts or similar business trust," [8] a term that does not include the ordinary common law trust. Employee benefit plans within the meaning of ERISA [9] are qualifying institutions under the rule.[10] However, collective and master trusts set up to facilitate the investments of such plans are not specifically listed and so might arguably not qualify as eligible institutions. If this is so, for such a trust to be a QIB, each participating pension or benefit plan would have to own or invest at least $100 million in securities. While many participating plans do individually qualify, it is quite common for smaller plans to be included in collective trust funds with larger plans.

#### 1. Collective Trust Funds

Collective trust funds are a significant means of investing both private and government pension and other employee benefit funds. In the exercise of fiduciary powers authorized by the Comptroller of the Currency ("OCC"), a national bank may make collective investments for a funds consisting solely of the assets of retirement, pension, profit-sharing, stock bonus, or other tax-exempt funds.[11] Equivalent powers may be held by state-chartered banks,[12] which are substantial participants in the administration of such funds.[13] As a result of the interplay between the regulations of the OCC, federal tax laws and regulations, and the federal securities laws and regulations, participants in collective trust funds essentially must be limited to corporated sponsored tax-qualified employee benefit plans and state and local plans. In 1990, 331 such funds each owned or invested more than $100 million in securities; total securities investments of these exceeded $234 billion.[14]

#### 2. Master Trusts

The use of master trusts by large employers is commonplace. A survey published in December 1991 showed that there were at least 29 banks and trust companies providing their master trust services to 1,279 clients with total master trust assets exceeding $870 billion.[15] The master trust device allows for the collective administration of numerous and diverse individual plans sponsored by a single employer. The single administrative device simplifies the conduct of the multiple plans, prevents duplication of effort and expense, and creates economies of scale. The larger size of the master trust taken as a whole also allows greater diversification of investment, a clear benefit to the multiple employee plans included within the trust and their participants.

Multiple ERISA plans, rather than a single plan for all employees, are maintained for commercial reasons unrelated to any regulatory concern

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[5] 17 CFR 230.144A(a)(1)(i) (D) and (E).

[6] Separate accounts registered under the Investment Company Act (15 U.S.C. 80a–1) are investment companies and so are already eligible entities through rule 144A(a)(1)(i)(B). Registered separate accounts may also be eligible through 144A(a)(1)(iv), for families of investment companies.

[7] Common trusts are not limited to the participation of pension and employee benefit plans or other institutional forms. Common trust funds are described in the Securities Act, section 3(a)(2), 15 U.S.C. 77c(a)(2), and in the Comptroller of the Currency's regulations, 12 CFR 9.18(a)(1). This type of commingled trust is used for the collective administration and investment of assets contributed by the bank acting as trustee or in another fiduciary capacity for an existing trust arrangement. As was previously mentioned, beneficiaries of the subordinate trusts or other fiduciary arrangements participating in a common trust could include individuals.

[8] 17 C.F.R. 230.144A(a)(1)(i)(C).

[9] Employee Retirement Income Security Act of 1974, Pub. L. No. 93–406, 88 Stat 829 (codified principally in 29 U.S.C. 1001–1461).

[10] 17 C.F.R. 230.144A(a)(1)(i)(E).

[11] 12 CFR 9.18(a)(2).

[12] *See, e.g.*, N.Y. Banking Law Sections 94, 96–c, 100 (McKinney 1990); Cal. Fin. Code section 1500.1 (West 1989); Ill. Ann. Stat. ch. 17, sections 311–7(d), 1552–9 (Smith-Hurd 1991).

[13] As of December 31, 1990, eight of the fifteen largest collective investment fund operations were managed by state-chartered banks. Federal Financial Institutions Examination Council, Trust Assets of Financial Institutions—1990 (1991) 63.

[14] Source: FDIC.

[15] 1991 Master and Directed Trust Services Directory, Pension World, December 1991 at 38.

under the Securities Act. The several plans within a master trust ordinarily will provide different benefits for employees of different subsidiaries, for employees of different classes, or for employees in different locations. In addition, an employee may wish to continue a separate plan in its independent form in light of the possibility that the related business is itself sold, a technique that simplifies the transfer of the obligations of that business.

Although it may be possible for an employer to combine all of the plans constituting a master trust into a single plan, an employer's business reasons for conducting its employee benefit program in multiple ERISA plans are irrelevant to the concerns of the Securities Act. If constituted in a single plan, plans now administered through a master trust would be in a legal form clearly eligible to be a QIB.[18] Accordingly, if a master trust composed of such plans under common sponsorship owns or invests at least $100 million in securities, the master trust should be recognized as a QIB.

Both collective and master trusts would be encompassed in new paragraph (F) of the rule. To distinguish collective and master trusts that invest on behalf of institutional investors (specifically, pension plans and other employee benefit plans) from other trust forms that may invest on behalf of individuals (such as common trusts), the proposed definition recognizing collective and master trusts as prospective QIBs refers only to those trusts whose participants are employee benefit plans otherwise described as QIB-eligible entities within the rule. Specifically excluded, however, are plans whose assets include funds for individual retirement accounts and H.R. 10 (Keogh) plans.

*B. Unregistered Insurance Company Separate Accounts*

The lack of express recognition in rule 144A of a QIB insurance company's ability to purchase securities under the rule that it allocates to its unregistered separate accounts may have inhibited to some extent insurance company participation in the rule 144A market and deprived the account participants of investment opportunities. The proposals will amend the rule with the addition of a note to rule 144A(a)(1)(i)(A) reciting that an insurance company purchasing under the rule for a separate account (or accounts) not required to be registered under the Investment Company Act is deemed to be purchasing for the insurance company's own account.

Assets in separate accounts, which are used as funding mechanisms for employee benefit plans,[17] are segregated from the other assets of the insurance company and are not chargeable with liabilities arising from any other business the insurer may conduct.[18] Nevertheless, under the Investment Company Act [19] (with respect to registered separate accounts) and under state law, the sponsoring insurance company is usually deemed to be the owner of the assets of the separate account.[20] Accordingly, viewing the assets in unregistered separate accounts as assets of the insurance company in the context of rule 144A would not be inconsistent with the treatment of separate accounts under the Investment Company Act and state law.

*C. Inclusion of U.S. Government Securities*

In reproposing and adopting rule 144A, the Commission rejected the use of asset size as an appropriate criterion for qualification in favor of a size-of-securities portfolio as a better indicator of investment sophistication and expertise. Describing the test, the adopting release stated that, "[g]enerally, any instrument that, but for specific exemption, would have to be registered with the Commission under the Securities Act would be treated as a security for this purpose."[21] At the same time, the adopted rule excluded "securities issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States.[22]

The ineligibility of U.S. government and similar securities has caused inordinate complexity and inefficiency in applying the rules. Not only does the exclusion require specific knowledge of the composition of a purchaser's portfolio, but also the distinctions made among various securities appear somewhat idiosyncratic. For example, excluded government securities include those issued or guaranteed by the Department of Housing and Urban Development, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association.[23] At the same time, a collateralized mortgage obligation backed by such securities may be included toward the qualifying amount because the obligation is a security distinct from the ineligible securities.

## III. Request for Comments

Any interested person wishing to submit written comments on the proposed amendments to rule 144A, as well as other matters that might have an impact on the proposal, is requested to do so.

## IV. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the proposed amendments. The analysis notes that the proposed amendments are intended to recognize several legal forms commonly used for institutional participation in the securities markets, in particular those forms used for the investment of pension and other employee benefit funds.

The proposed amendments will not result in any significant increase in reporting, recordkeeping or compliance requirements. No alternatives to the proposed amendments consistent with their objectives were found.

A copy of the analysis may be obtained by contacting Michael Hyatte, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

## V. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed amendments, the Commission requests views and data estimating the effect of the proposed amendments on transactions under the Rule.

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[17] These separate accounts do not register as investment companies because section 3(c)(11) of the Investment Company Act excludes from the definition of "investment company" any insurance company separate account that funds only specified kinds of governmental or tax-qualified employee benefit plans. In contrast, separate accounts not funding such employee benefit plans are generally required to register as investment companies. *Prudential Insurance Company of America* v. *SEC*, 326 F.2d 383 (3d Cir. 1963), *cert. denied* 377 U.S. 953 (1964).

[18] See generally K. Black and H. Skipper, Life Insurance (11th ed., 1987); Roth, Krawczyk and Goldstein, Reorganizing Insurance Company Separate Accounts, 46 Bus. Law. 537 (1991).

[19] 15 U.S.C. 80a.

[20] Black and Skipper, supra n. 18, at 553.

[21] Securities Act Release No. 6862 (April 23, 1990) [55 FR 17933, 17938].

[22] 17 CFR 230.144A(a)(2).

[23] UNUM Life Insurance (November 21, 1990).

[18] 17 CFR 230.144A(a)(1)(i)(E).

**VI. Statutory Basis for Proposals**

Rule 144A is proposed to be amended by the Commission pursuant to sections 2(11), 4(1), 4(3), and 19(a) of the Securities Act of 1933.

**List of Subjects in 17 CFR Part 230**

Reporting and recordkeeping requirements, Securities.

**VII. Text of Proposals**

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

**PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

1. The authority citation for part 230 is revised by adding the following citation:

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted. Section 230.144A is also issued under 15 U.S.C. 77b and 77j.

2. Section 230.144A is amended by adding a Note following paragraph (a)(1)(i)(A); removing the words "of 1940 (the Investment Company Act)" in paragraph (a)(1)(i)(B); redesignating paragraphs (a)(1)(i)(F) through (a)(1)(i)(H) as paragraphs (a)(1)(i)(G) through (a)(1)(i)(I); adding paragraph (a)(1)(i)(F); and removing the phrase "securities issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States;" following the colon in paragraph (a)(2) to read as follows:

**§ 230.144A Private resales of securities to institutions.**

* * * * *

(a)(1) * * * (i) * * * (A) * * *

**Note:** A purchase by an insurance company for one or more of its separate accounts, as defined by section 2(a)(37) of the Investment Company Act of 1940 (the "Investment Company Act"), which are neither registered under section 8 of the Investment Company Act nor required to be so registered, shall be deemed to be a purchase for the account of such insurance company.

* * * * *

(F) Any trust fund maintained by a bank whose participants are exclusively plans of the types identified in subparagraph (D) or (E), except trust funds that include as participants individual retirement accounts or H.R. 10 plans.

Dated: July 16, 1992.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–17193 Filed 7–21–92; 8:45 am]

BILLING CODE 8010–01–M

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**17 CFR Parts 230, 239, 240 and 249**

**[Release No. 33–6943, 34–30930; File No. S7–20–92]**

**RIN 3235–AD67**

## Simplification of Registration Procedures for Primary Securities Offerings

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Securities and Exchange Commission ("Commission") today is publishing for comment proposed revisions to rules and forms under the Securities Act of 1933 ("Securities Act") and Securities Exchange Act of 1934 ("Exchange Act") designed to provide issuers greater flexibility and efficiency in accessing the public securities markets. The proposals would expand the availability of Form S–3, the short-form registration statement under the Securities Act, to additional issuers and classes of transactions. The proposed revisions to Form S–3 would result in the extension of Rule 415, the shelf registration rule, to a greater variety of offerings, including investment grade assetbacked securities. Today's initiatives also include proposals that would permit shelf registration of debt, equity and other securities without a specific allocation of offering amounts among the classes of securities being registered; provide for immediate effectiveness of Form S–3 registration statements for dividend and interest reinvestment plans; and revise Rule 430A to permit specified price and volume changes to be made after effectiveness without the filing of a post-effective amendment. The initiatives also would revise the prospectus filing rule, Rule 424, to accommodate the timing constraints in filing prospectus supplements used in connection with offerings of mortgage-related and investment grade asset-backed securities; and streamline the registration of securities on Form 8–A under the Exchange Act.

**DATES:** Comments should be received on or before September 1, 1992.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments letters should refer to File No. S7–20–92. All comments letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Meredith B. Cross at (202) 272–2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission today is proposing amendments to Form S–3 [1] under the securities Act.[2]. The proposed amendments would increase the classes of issuers and transactions eligible to use that registration statement form and consequently the shelf registration offering procedures of Rule 415,[3] and permit eligible issuers to register debt, equity and other classes of securities on a single shelf registration statement without a specific allocation of offering amounts among the listed classes of securities being registered. A revision to Rule 457,[4] the fee calculation rule, to implement this proposed registration procedure also is being proposed. Revisions to Form S–3 and Rule 462 [5] are being proposed to permit registration statements on Form S–3 for dividend and interest reinvestment plans to be automatically effective upon filing with the Commission. The Commission also is proposing to amend Rule 430A [6]o permit specified price and volume changes to be made after effectiveness without the need to file a post-effective amendment. Further, an instruction to the prospectus filing rule, Rule 424, [7] is proposed that would allow prospectus supplements containing pricing and other transaction specific information with respect to mortgage-related and investment grade asset-backed offerings to be filed no later than two business days following first use, rather than two business days following the earlier of pricing or first use, as is now required for most offerings. Finally, the Commission is proposing amendments to Form 8–A,[8] the short-form used to register securities under section 12 of the Exchange Act,[9] and Rule 12b–23 [10]

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[1] 17 CFR 239.13.
[2] 15 U.S.C. 77a *et seq.*
[3] 17 CFR 230.415.
[4] 17 CFR 230.457.
[5] 17 CFR 230.462.
[6] 17 CFR 230.430A.
[7] 17 CFR 230.424.
[8] 17 CFR 249.208a.
[9] 15 U.S.C. 78*l*(g).
[10] 17 CFR 240.12b–23.

to permit limited information about the terms of the securities to be incorporated by reference from prospectus supplements filed after the effective date.

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## I. Executive Summary

The Commission today is proposing several initiatives designed to further streamline the process of registering securities for sale to the public. These initiatives, intended to provide issuers greater flexibility and increase efficiency in raising capital from the public securities markets, recognize and build on the success of the integrated disclosure system and shelf registration process adopted 10 years ago.

The proposals expand the classes of companies that would be eligible to register primary offerings based on the size of the public float or the investment grade rating of the securities on Form S–3, the short-form registration statement. Specific provision would be made for asset-backed securities, including pools of small business loans. To implement these initiatives, three principal changes to the Form S–3 eligibility requirements are proposed. First, the reporting history necessary to register on Form S–3 would be reduced from 36 to 12 months for most issuers. Second, the aggregate market value of the issuer's voting stock held by non-affiliates (referred to as the "public float") qualifying an issuer for use of Form S–3 for any of its securities would be reduced from $150 million to $75 million, and the 3 million share trading volume test would be eliminated. Under these two proposals, an estimated 450 additional issuers with an aggregate public float of approximately $88 billion would become eligible to use Form S–3. Third, Form S–3 would be revised to specifically provide for registration of investment grade asset-backed securities offerings without regard to whether the issuer has a reporting history. If this proposal had been in effect in calendar year 1991, an estimated $48 billion of investment grade asset-backed securities offerings could have been registered on Form S–3.

These proposed changes to Form S–3 would result in increased availability of shelf registration for the newly eligible offerings. Issuers eligible to use Form S–3 for primary offerings are permitted to register securities prior to any planned offering and offer these securities after effectiveness in one or more tranches without any additional pre-offering clearance from the Commission.[11] During calendar year 1991, approximately 370 companies registered approximately $200 billion of debt, preferred stock and other securities on Form S–3 for delayed primary shelf offerings. In addition, the Form S–3 revisions would extend shelf registration to all investment grade asset-backed offerings, a financing benefit already available to issuers of mortgage-related securities.[12] This proposal would thus reduce costs of securitization of small business loans as well as other financial assets.

To provide additional flexibility and facilitate the use of shelf registration for delayed offerings of common stock, the proposals would permit a Form S–3 eligible company to register debt, equity and other securities on a single shelf registration statement, without having to specify in the registration statement the amount of each class of securities to be offered. Under this proposal, a Form S–3 eligible company would specify an aggregate dollar amount of securities to be offered under the registration statement and the categories of securities that may be offered. Any combination of the disclosed securities up to the aggregate dollar amount registered could be taken off the shelf.

The proposals also include a revision to Form S–3 and Rule 462 to permit Form S–3 registration statements covering dividend and interest reinvestment plans to become effective automatically upon filing with the Commission. This treatment would be consistent with the current treatment of post-effective amendments for such offerings.

[11] See Rule 415(a)(1)(x).

[12] See Rule 415(a)(1)(vii).

The initiatives include a proposal designed to enhance the utility of Rule 430A, a rule adopted by the Commission in 1987 to eliminate the need to file most pre-effective pricing amendments.[13] Rule 430A would be revised to permit changes in the offering price and decreases in the amount of the securities offered to be reflected after effectiveness in the final prospectus without the need to file a post-effective amendment so long as such changes would not materially change the disclosure contained in the effective registration statement.

Further, a proposed revision to Rule 424(b), the prospectus filing rule, would codify a staff interpretive position that permits issuers of collateralized mortgage obligations to file prospectus supplements containing price and other offering information two business days following first use, rather than two business days following the earlier of pricing or first use as is now generally required.[14] This proposal also would extend to issuers of other types of mortgage-related and investment grade asset-backed offerings.

Finally, a proposed revision to Form 8–A, the Exchange Act short-form registration statement, would eliminate the need to file with the Commission an amendment to that form to provide pricing information relating to the terms of the securities prior to effectiveness. This information would be incorporated by reference from a subsequently filed prospectus.

## II. Initiatives to Simplify the Registration Process

### *A. Proposals Relating to Form S–3 Registration Statement*

#### 1. Background

Under the integrated disclosure system, the disclosure requirements under the Securities Act and the Exchange Act are integrated so that one set of disclosure rules applies under both Acts.[15] This disclosure system is based on the premise that investors purchasing securities in offerings registered under the Securities Act and secondary market purchasers should have access to the same basic

[13] See Release No. 33–6714, June 5, 1987 (52 FR 21252).

[14] See Division of Corporation Finance Interpretive Letter to Skadden, Arps, Slate, Meager & Flom regarding "Certain Mortgage Related Securities Under Rule 415(a)(1)(vii) and Prospectus Filing Requirements of Rule 424(b) (2) and (5)" (avail. August 19, 1987).

[15] See Securities Act Release No. 6383 (March 3, 1982) (47 FR 11380) ("Adoption of Integrated Disclosure System").

information package about the issuer of the securities.[16] As a result, the same information about the issuer is required to be included in prospectuses used to sell securities and in periodic reports filed by issuers.

The Securities Act registration forms in the integrated disclosure system, principally Forms S–1, S–2 and S–3, establish three categories of registrants.[17] While the same information is required to be included as a part of the registration statement pursuant to each of these forms, the method of providing the information—whether physically presented in the prospectus, delivered with the prospectus, or incorporated by reference from Exchange Act reports into the prospectus—varies with each category of registrants.

Form S–3 permits maximum reliance upon Exchange Act reports, allowing issuers that qualify to use the form to incorporate information about the issuer into the prospectus by reference from Exchange Act filings, rather than having to reiterate this information in the prospectus or otherwise deliver it to investors.[18] In addition, in a delayed or continuous offering, Form S–3 allows issuers to update the issuer-related prospectus information through incorporation by reference of future Exchange Act filings, rather than through post-effective amendments to the registration statement.[19]

Under the current rules, an issuer may register any primary offering of its securities on Form S–3 if, among other requirements,[20] (1) the issuer has been subject to Exchange Act reporting for at least 36 months and (2) has a public float of at least $150 million, or, alternatively, at least $100 million if the annual trading volume of such stock is at least 3 million shares.[21] An issuer may register specific securities transactions on Form S–3, including a primary offering of investment grade non-convertible debt or preferred stock, without regard to the minimum public float requirement provided the issuer satisfies the 36-month minimum reporting requirement and other registrant criteria.[22] Other offerings, such as secondary offerings of a class of securities currently listed on a national securities exchange or quoted on NASDAQ,[23] rights offerings to shareholders,[24] offerings of securities issuable upon exercise of warrants or upon conversion of other outstanding securities [25] and offerings pursuant to dividend and interest reinvestment plans,[26] also may be registered on Form S–3 whether or not the issuer meets the minimum public float test, provided, among other things, that the issuer meets the 36-month minimum reporting requirement.[27]

Form S–2, which is available to issuers of any size that have been reporting for at least 36 months,[28] allows some reliance upon Exchange Act reports. Issuers that qualify to use the form can choose to either (i) deliver a copy of the annual report to security holders with the prospectus, or (ii) present registrant-oriented information comparable to that required to be included in such annual report in the prospectus; in either case, the more complete registrant information otherwise required to be included is incorporated by reference into the prospectus from the issuer's most recent annual report on Form 10–K.[29] Because Form S–2 does not permit incorporation by reference of future Exchange Act reports, updating amendments requiring Commission action must be filed in ongoing offerings. Form S–1, which is available to all issuers, requires complete disclosure to be set forth in the prospectus—no incorporation by reference is permitted.

In addition to full incorporation by reference, one of the most important benefits associated with Form S–3 eligibility is the ability to conduct delayed offerings under the Commission's Rule 415, which provides for shelf registration.[30] Rule 415 specifies those offerings that may be conducted on a delayed or a continuous basis. Only limited categories of offerings are permitted to be conducted on a delayed (episodic) basis; Rule 415 permits delayed offerings of specified "traditional" shelf offerings,[31] offerings of "mortgage-related securities" [32] and offerings of securities qualified to be registered for a primary offering on Form F–3 [33] or Form S–3.[34] An issuer that is eligible to use Form S–3 and Rule 415 for a delayed offering gains significant flexibility and financing efficiency since it is able to complete the registration of securities prior to the planned offering, and then offer and sell the securities from time to time in response to market and other factors without having to wait for further Commission action.

After ten years of experience through various stages of the business cycle, the integrated disclosure system and shelf registration have achieved their intended effects of providing issuers efficient access to the public securities markets without compromising investor protection, with about $200 billion of securities registered on Form S–3 for delayed primary offerings during 1991 alone and about $50 billion during the first calendar quarter of 1992. One issuer has used a single shelf registration statement for approximately 500 separate takedowns, and another had approximately 160 separate takedowns off its registration statement. At the same time, improvement in the quality of ongoing Exchange Act reporting, which the Commission cited as a basis for the integrated disclosure system,[35] continues.

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[16] *Id.*

[17] 17 CFR 239.11; 17 CFR 239.12. See also registration statement on Form S–4 which is used to register securities offered in connection with business acquisitions. Comparable registration statements under the "F" series are available to foreign private issuers. No changes to the "F" series forms are being proposed at this time.

[18] See Item 12 of Form S–3.

[19] See *Id.*; and the Item 512(a) undertakings (17 CFR 229.512(a)) applicable to shelf registration statements.

[20] Other form S–3 eligibility requirements include timely filing of Exchange Act filings during the 12 months prior to filing the Form S–3 and the absence of enumerated defaults since the last required audited financial statements. See General Instruction I.A. to Form S–3.

[21] General Instruction I.B.1. of Form S–3.

[22] General Instruction I.B.2 of Form S–3.

[23] General Instruction I.B.3 of Form S–3.

[24] See General Instruction I.B.4 of Form S–3 which permits issuers to engage in rights offerings with its existing shareholders. Consistent with the form's eligibility requirements, where the securities underlying the rights may be acquired by new investors because, for example, the rights are transferable, the issuer may use Form S–3 only if it satisfies the minimum trading float test applicable to primary offerings of equity securities.

[25] *Id.*

[26] *Id.*

[27] Form S–3 also is available to a majority-owned subsidiary if (1) the subsidiary independently satisfies the form's registrant eligibility and transactional criteria, (2) its parent meets such criteria and fully guarantees the principal and interest on the securities, *or* (3) its parent meets registrant eligibility requirement and the securities will be non-convertible investment grade debt or preferred stock. See General Instruction I.C. of Form S–3.

[28] General Instruction I.C. of Form S–2.

[29] See Item 12 of Form S–2.

[30] See Rule 415(a)(1)(x).

[31] The "traditional" shelf offerings that may be conducted on either a delayed or continuous basis include securities that will be offered on behalf of selling security holders (Rule 415(a)(1)(i)), employee benefit or dividend or interest reinvestment plan offerings (Rule 415(a)(1)(ii)), offerings pursuant to outstanding options, warrants or rights (Rule 415(a)(1)(iii)), securities to be issued upon conversion of outstanding securities (Rule 415(a)(1)(iv), securities pledged as collateral (Rule 415(a)(1)(v)), securities registered in connection with ADR facilities (Rule 415(a)(1)(vi)) and securities to be issued in business combination transactions (Rule 415(a)(1)(viii)).

[32] Rule 415(a)(1)(vii).

[33] 17 CFR 239.33.

[34] 17 CFR 230.415(a)(1)(x).

[35] *See* Securities Act Release No. 33–6235 (September 16, 1980) (45 FR 63693).

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2. Proposed Revisions to Form S–3

a. *Registrant Requirements—Reporting History.* The proposals would shorten from 36 to 12 months Form S–3's minimum issuer reporting requirement for all offerings of non-asset-backed securities.[36] Under this change, an issuer that had been subject to reporting for at least 12 months prior to filing its registration statement, and had timely filed all required reports during the 12 months prior to filing, would be eligible to use Form S–3 if applicable transaction requirements were met.[37] This change would apply to all offerings of non-asset-backed securities permitted to be registered on Form S–3, including, for example, primary offerings of debt, equity or other securities (whether or not investment grade), secondary offerings, rights offerings to shareholders and offerings of securities issuable upon exercise of warrants.

The proposed change to the reporting history reflects the nature of offerings registerable on Form S–3. Issuers offering investment grade securities or meeting the public float test [38] should have sufficient market following so that a three-year reporting requirement would not appear to materially enhance the market following of these issuers. Secondary offerings, offerings pursuant to dividend or interest reinvestment plans and offerings of securities underlying rights, warrants and convertible securities have been permitted to be registered on Form S–3 without a public float test since the form was adopted, reflecting the historic availability of Form S–16.[39] The proposals would continue the Commission's traditional treatment of these offerings.

Comment is requested as to whether the proposed 12 month requirement is sufficient, or whether a shorter or longer period, such as two years or the current three years, would be preferable. The specific reasons for the suggested period should be stated.[40]

b. *Transactional Requirements.*

i. Public float requirement. The proposals would reduce the minimum public float eligibility criteria of Form S–3. Under the proposals, an issuer with at least $75 million in voting stock held by non-affiliates would be eligible to use Form S–3 to register any class of its securities, as long as the issuer satisfied the issuer eligibility requirements.[41] The proposal would eliminate the trading volume test for companies with a public float of under $150 million. The Commission requests comment as to whether it should continue the 3 million share trading volume test for some or all of the issuers whose public float is between $75 million and $150 million. If a trading volume test is favored, comment is requested as to whether as different minimum volume, such as 1 million or 2 million shares, is preferred. Should there be a requirement that the voting stock be traded on a national exchange or NASDAQ?

Under the proposals, there would be an estimated 450 additional companies eligible to register primary offerings of all their securities as follows.

S–3 ELIGIBLE ISSUERS ON BASIS OF PUBLIC FLOAT AND TRADING VOLUME

| | Total | NYSE | AMEX | NMS | NASDAQ | Other |
|---|---|---|---|---|---|---|
| Current | 1,510 | 825 | 77 | 415 | 37 | 56 |
| Additional: | | | | | | |
| If $75 million public float and 1 year reporting | 449 | 140 | 44 | 190 | 29 | 46 |
| If $75 million float, 1 year reporting and retain 3 million share minimum trading volume for $75 to $150 million float | 177 | 55 | 13 | 102 | 5 | 2 |

The public float eligibility criteria are proposed based upon an analysis of the trading markets and market following of registrants included in various market capitalization ranges. The proposed criteria are designed to extend the benefits of Form S–3 and shelf registration to a larger class of issuers, while insuring that the investing public has access to sufficient and timely information about the issuers included in the new caregories.

As the above chart illustrates, a large majority of the companies that would become eligible to use Form S–3 for a primary offering under the proposals have securities traded on either a national securities exchange or authorized for inclusion on the NASDAQ National Market System ("NMS"). One indicia of market interest and following of a company is the number of research analysts covering the company. Approximately two-thirds of the estimated newly eligible companies are followed by at least three research analysts.[42] Of the estimated 177 new companies that would become eligible if the 3 million share trading test is retained, approximately 80% are followed by at least three research analysts.

Comment is requested on whether the proposed change in the public float eligibility criteria is appropriate. Would the issuers eligible under the proposed criteria be sufficiently followed by the market to permit incorporation by reference of information from Exchange Act filings to satisfy the prospectus disclosure and updating requirements? Specific comment is requested as to whether the float test should be higher or lower, and, if so, at what level should it be set.

As noted above, if these proposals to expand the availability of Form S–3 are adopted, greater numbers of issuers would become eligible to conduct delayed offerings of equity, debt (including debt that is not investment grade), preferred stock or other securities. Comment also is requested as

[36] General Instruction I.A.3(a) would be amended to change the current thirty-six calendar month requirement to twelve calendar months.

[37] The proposals would not alter any other registrant requirements set forth in General Instruction I.A. of Form S–3.

[38] See General Instruction I.B.1 of Form S–3 ("Primary Offerings by Certain Registrants") and "b. i. public float requirements" *infra*.

[39] Form S–16 was rescinded in connection with the adoption of the integrated disclosure system. See Securities Act Release No. 6383 (March 3, 1982) [47 FR 11380].

[40] No change is proposed to the 36 month reporting requirement of Form S–2. Issuers eligible to register primary offerings of common stock and non-investment grade debt or preferred stock on this Form do not necessarily include those with substantial market following.

[41] General Instruction I.B.1 ("Primary Offerings by Certain Registrants") of Form S–3 would be amended to change the $150 million minimum requirement to $75 million.

[42] Data concerning analyst following is derived from information obtained from Nelson Publications, the publisher of Nelson's Directory of Investment Research (1992).



to whether the categories of companies proposed to be permitted to conduct delayed offerings is appropriate, or whether the use of shelf registration for delayed offerings should be limited to a specified more limited class of Form S–3 offerings. Commenters that favor different criteria are requested to described such criteria and specifically address whether the same or different standards are appropriate for Form S–3 eligibility and for Rule 415-delayed offering eligibility.

ii. Investment grade non-convertible securities. The Form S–3 eligibility criteria for investment grade securities also is proposed to be amended to substitute the term "non-convertible securities" for the current specific references to nonconvertible debt or preferred stock. This proposal would clarify that other investment grade financing instruments (such as foreign currency or other cash settled derivative securities) could be registered under the investment grade eligibility standard. Consistent with current staff interpretations, Form S–3 also would be amended to clarify that investment grade securities must have the required rating at the time of offer and sale to the public.

iii. Investment grade asset-backed securities. Under the current rules, the benefits of Form S–3 registration and shelf registration for delayed offerings generally are not available to issuers of investment grade asset-backed securities that are not "mortgage-related securites." As a result, for example, investment grade small business loan or credit card receivables trust certificates generally cannot be registered for sale on a delayed basis, since the issuers ordinarily are not eligible to use Form S–3 [43] and non-mortgage, asset-backed securities are not a permitted category in Rule 415. By contrast, mortgage-related asset bascked securities, which may be of comparable character and quality to other investment grade asset-backed securities, are specifically permitted to be offered on a delayed basis under Rule 415, whehter or not registered on Form S–3.[44]

Form S–3 is proposed to be amended to add offerings of investment grade asset-backed securities as an additional category of transactions that may be registered on the form. As proposed, asset-backed securities could be registered on Form S–3 whether or not the issuer has a previous Exchange Act reporting history. The proposed rules do not require a reporting history in light of the limited utility of the information about the issuer that would be provided by an Exchange Act reporting history. Until an asset-backed issuer is formed, raises capital and purchases assets, any information about the issuer that might be included in Exchange Act reports would not appear to be useful to investors. Comment is requested, however, as to whether a reporting history for the depositor, servicer and/or trust should be required, and, if so, for what period.

The proposed eligibility criteria for the registration of asset-backed securities on Form S–3 is intended to reflect current practices in the asset-backed securities markets and to provide sufficient flexibility to accommodate future developments. To qualify, the securities would be required to represent obligations primarily serviced by the Cashflows of a discrete pool of similar assets. The proposed definition would not distinguish between pass-through (i.e. equity) and pay-through (i.e. debt) asset-backed securities. Consequently, both pay-through and pass-through securities, as well as residual or subordinate interests, could be registered on the form if all other conditions were met. Further, the proposed definition would include both whole securities and interest-only or principal-only components of such securities. Moreover, unlike current Form S–3, the legal nature of the issuing entity—whether a trust, limited purpose subsidiary, or other legal person—would be irrelevant to the proposed eligibility analysis. Comment is requested on the proposed definition should the definition be limited to subcategories of asset-backed financing and if so what categories?

Under the proposal, Form S–3 and shelf registration would be available for asset-backed securities with the following two characteristics. First, the payment obligations on the securities must be serviced primarily by the cashflows of a pool of discrete liquidating assets such as small business loans, accounts receivable, notes, installment sales contracts, leases or other assets that by their terms convert into cash within a specified period of time.[45] Structured financings would not be considered asset-backed securities for purposes of the proposed revision to Form S–3 where a substantial portion of the underlying assets are originated by one obligor (including affiliated entities). For example, securities issued by a trust that leases property to one company would not be contemplated by the asset-backed securities definition. Commenters are requested to address whether a specific asset concentration limitation should be set forth in the definition and, if so, what level of asset concentration would be appropriate, e.g. 5%–40%.

Second, the securities must be rated "investment grade" by a nationally recognized statistical rating organization ("NRSRO") at the time of offer and sale to the public. The definition of "investment grade" would be the same as that currently set forth in Form S–3 for other investment grade securities.[46] Under this standard, asset-backed securities would be "investment grade" if, the securities, at the time of offer and sale are rated by at least one NRSRO in one of its generic rating categories which signifies investment grade, typically one of the four highest categories.[47] This standard is proposed

[43] Although the trusts that are formed to issue such asset-backed securities may be created by S–3 eligible issuers, the trusts generally do not qualify as "majority owned subsidiaries" of such issuers for purposes of Form S–3.

[44] The Secondary Mortgage Market Enhancement Act of 1984, Pub. L. No. 98–440, 98 Stat. 1689 (1984) ("SMMEA") was enacted by Congress to increase the flow of funds to the housing market by removing unnecessary regulatory impediments to the creation and sale of private mortgage-backed securities. An early version of the legislation contained a provision that specifically would have required the Commission to create a permanent procedure for shelf registration of mortgage-related securities. The provision was removed from the final version of the legislation, however, as a result of the Commission's decision to adopt Rule 415, implementing a shelf registration procedure for mortgage-related securities. See H.R. Rep. No. 984, 98th Cong., 2d Sess. 14, reprinted in 1984 U.S. Code Cong. & Admin. News 2827; see also Release No. 33–6499 (November 17, 1983) [48 FR 52889], n. 30 (noting that mortgage-related securities were the subject of pending legislation).

SMMEA added a definition of "mortgage-related security" in section 3(a)(41) of the Exchange Act. The definition requires, *inter alia*, that the securities be rated in one of the two highest statisical rating categories and represent an ownership interest in, or be secured by, notes secured by a first lien interest on real estate. As a result of the relationship between paragraph (a)(1)(vii) of Rule 415 and the SMMEA legislation, the Division generally has required issuers seeking to rely on this provision of Rule 415 to meet the requirements of section 3(a)(41). See Piper Mortgage Incorporated (April 22, 1987); Sears Mortgage Securities Corp. (April 21, 1986).

[45] The assets also may include guarantees, letters of credit, financial insurance or other instruments provided as a credit enhancement for the obligations of the issuer. The type or category of asset to be securitized must be described in the registration statement at the time of effectiveness. A registration statement that merely identifies several alternative types of assets that may be securitized would not meet this proposed criteria.

[46] See General Instruction I.B.2 of Form S–3.

[47] If the securities are not investment grade at the time of offer and sale, a post-effective amendment on Form S–1 could be used with respect to that particular take-down; alternatively the issuer would file a new registration statement with respect to the non-qualifying securities.

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since this has been Form S–3's standard for investment grade since its adoption 10 years ago. Comment is requested, however, as to whether the rating standard for asset-backed securities should be more limited, such as requiring that the securities be rated in one of the two highest rating categories, as is currently the case for mortgage-related securities under section 3(a)(41) of the Exchange Act.

Under the proposals, mortgage-related securities could be registered on Form S–3 and, therefore, sold pursuant to Rule 415 if the securities otherwise came within the asset-backed securities definition in Form S–3. As a result, mortgage-related securities that are rated in the top four rating categories, but not the top two rating categories, which are not currently eligible to be sold on a delayed basis, would become eligible. This would provide comparable treatment to all types of asset-backed securities and is otherwise consistent with Form S–3's current approach to other investment grade securities. Comment is requested as to whether it is appropriate to expand the categories of mortgage-related securities that may be registered for shelf offerings in this manner.

In connection with the asset-backed securities proposal, Rule 424(b), the prospectus filing rule, is proposed to be amended to codify a staff interpretive position that permits issuers of collateralized mortgage obligations to file prospectus supplements containing price and other offering information within two business days following first use (or to transmit such supplements by a means reasonably calculated to result in filing by such date), rather than Rule 424(b)'s general rule that the prospectus be filed not later than the earlier of two business days following pricing or first use (or transmitted by a means reasonably calculated to result in filing by such date). This proposed revision also would extend to issuers of other mortgage-related and asset-backed securities.

c. *Majority-Owned Subsidiaries.* Current Form S–3 is available to majority-owned subsidiaries in three circumstances.[48] Under the proposals, General Instruction I.C.3. would be revised to make clear that the Form would be available where an S–3 eligible parent fully and unconditionally guarantees the "payment obligations" on the subsidiary's non-convertible securities being registered. Currently the form refers only to principal and interest obligations. This proposed change would clarify that the form is available to register securities other than traditional debt securities. Comment is requested as to whether it would be appropriate to revise this eligibility criteria as proposed.

d. *Dividend or Interest Reinvestment Plans.* Form S–3 is proposed to be amended to provide for the automatic effectiveness upon filing of a Form S–3 registration statement relating solely to a dividend or interest reinvestment plan. To implement this proposal, Rule 462 also would be amended to provide for such immediate effectiveness. Elimination of the current 20-day waiting period should not adversely affect the quality of disclosure in such filings. In addition, automatic effectiveness upon filing is consistent with the treatment of post-effective amendments for such registration statements under the current rules. Comment is requested on the appropriateness of this change.

e. *Proposal to Permit Form S–3/Shelf Registration of Aggregate Amounts of Securities Without Allocation Among Classes.* While shelf registration of delayed offerings on Form S–3 is permitted for common stock as well as debt and other securities, it has been used almost entirely with respect to senior securities. In calendar year 1991 for example, of the approximately $200 billion of securities registered on Form S–3 for delayed primary offerings, approximately $199.7 billion was for delayed offerings of non-convertible debt or preferred stock, while only $300 million was for delayed offerings of common stock. Similarly, in the first quarter of calendar year 1992, only $118 million of the $50 billion registered for delayed primary offerings was for delayed common stock primary offerings. The limited use of shelf registration for common stock reportedly reflects concerns by registrants about the market effects from the overhang created by such registration, as well concerns that the market would view even a registration statement for possible future sales of common stock as signalling management's view that the price of the stock has reached a peak.

Currently, registration statements are required to specify the amount of securities to be offered. In the case of debt securities offered on a delayed offering shelf registration on Form S–3, the issuer has disclosed a dollar amount of generic debt and indicated various categories of debt securities that may be included. No allocation among the categories of possible debt securities is specified. In the case of common stock or preferred stock, the amount of securities to be offered is specified in terms of the number of shares. The proposed rule would incorporate the practice currently used for investment grade debt registered on Form S–3 to all securities. An issuer registering securities on Form S–3 based on the public float of its voting stock or investment grade rating of the securities being offered would be permitted to disclose the various types of securities covered by the registration statement (both debt and equity), but would not have to identify the specific amount of each category to be offered.[49] The prospectus supplement would specify the amount of the particular security to be offered. In this way, the registrant would be able to offer any category of securities specified in the registration statement up to the total dollar amount registered.[50] Investors would receive the same information as is currently required for any shelf offering. No change is intended with respect to the disclosures necessary in a shelf registration statement with respect to the types of each category of securities being registered. A conforming change to Form S–4 is proposed for shelf acquisition registrations by Form S–3 eligible issuers.

The Commission requests comment on the appropriateness of the proposed change. Comment also is requested as to whether this proposal would in fact encourage the use of shelf registration for those delayed offerings of common stock and convertible securities currently permitted under Rule 415. Further, comment is requested as to whether there are other changes to Rule 415, Form S–3 or other Commission rules that would facilitate the use of shelf registration for delayed offerings of common stock and convertible securities.

*B. Proposed Revisions to Rule 430A*

To further the efficiencies of Rule 430A the proposals include an amendment to the rule to permit price and volume changes that do not materially change the disclosures in the registration statement to be reflected in the final prospectus without the need to file a post-effective amendment.

Rule 430A permits the omission of specified price-related information from the registration statement at the time of effectiveness, provided specific conditions are met. Although not part of the rule, the Commission stated in the Rule 430A adopting release that information about a change in the volume of securities being offered would not be considered information that could omitted in reliance on the rule and disclosed in the prospectus filed pursuant to paragraph (b)(1) or (b)(4) of Rule 424.[51] Under this interpretation, "a decrease in (the) amount (of securities to be offered) generally would require a post-effective amendment."[52] This proposed revision does not change the requirement that an increase in the size of the offering after effectiveness requires a new registration statement.[53]

The Rule 430A adopting release also advised that where the initial public offering price for securities fixed after effectiveness falls outside the bona fide range of the offering price of the securities disclosed in the prospectus at effectiveness, the registrant must file a post-effective amendment to include the price-related information or to update the estimate range.

These interpretive positions have unnecessarily limited the flexibility intended to result from eliminating the requirement to file most pre-effective pricing amendments. Accordingly, the Commission proposes to amend Rule 430A to replace these interpretations with a materiality standard to be used in determining whether a post-effective amendment would be required to reflect a decrease in volume or to update price range information. Under this materiality standard, a post-effective amendment would not be required unless a reduction in volume or a change in the price range would materially change the disclosure included in the registration statement at effectiveness. Examples of situations in which a post-effective amendment would be required include changes to the volume or price that would materially affect the public float after the offering, the use of proceeds, the issuer's financial condition or the control of the issuer.

Specific comment is requested with regard to this proposed revision to Rule 430A. If a standard other than the proposed materiality standard is considered preferable, commenters should specifically described such standard and the reasons for recommending it.

*C. Proposals to Simplify Concurrent Securities Act and Exchange Act Registration*

Today's initiatives include proposals to further streamline the registration of securities under the Exchange Act in order to facilitate concurrent Securities Act and Exchange Act registration.[54] Under the proposal, the Exchange Act registration form used in concurrent registration would be amended to permit price-related terms of the securities to be omitted at the time of effectiveness in a manner similar to Securities Act Rule 430A.

Concurrent Exchange Act registration generally may be accomplished through the filing of a Form 8–A short-form registration statement.[55] This form is very brief, consisting of a cover page, a description of the class of securities to be registered, a signature page and certain required exhibits. When common stock is being registered, concurrent registration can be accomplished easily, even when pricing information will be omitted from the Securities Act registration statement at the time of effectiveness, because pricing information is not necessary to complete the Form 8–A[56] Accordingly, in a common stock offering, if Rule 430A or Rule 415 is used, no "pricing amendment" generally would be required under either the Securities Act or the Exchange Act.

By contrast, when the security being registered is one in which the "terms" of the security are established when the securities are priced, such as debt securities or preferred stock, an amendment to the Form 8–A setting forth the pricing information is necessary under the current rules before the Form 8–A can be declared effective.[57] The need for this pricing amendment to the Form 8–A presents logistical and administrative difficulties, and undercuts the efficiencies of Rule 430A and Rule 415.

In order to address this concern, Form 8–A is proposed to be amended to permit the Form 8–A to become effective without the final, price-related terms of the securities. This price-related information would then be incorporated by reference into the Form 8–A from a prospectus or prospectus supplement filed in accordance with current Rule 424(b) under the Securities Act.[58] The proposed amendment would permit the same price-related information that is permitted to be omitted from the Securities Act registration statement at the time of effectiveness in reliance upon Rule 430A to be omitted from the Form 8–A.[59]

Incorporation by reference to the Rule 424(b) prospectus would be permitted under the proposal only in those instances in which price-related terms that are required to be included in the Form 8–A registration statement [60] are not known or are unavailable to the registrant prior to the filing of the Form 8–A. The form would be required to be complete in all other respects; a generic or largely incomplete Form 8–A would not be permitted. The proposed change is not intended to affect the listing, informational or filing requirements imposed by a national securities exchange or registered securities association.

## III. Cost-Benefit Analysis

To evaluate the benefits and costs associated with the proposed amendments to Form S–3, Form S–4, Rule 424, Rule 430A, Rule 457, Rule 462, Form 8–A and Rule 12b–23, the Commission requests commenters to provide views and data as to the costs

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[48] See n. 25 *supra*.

[49] Proposed new paragraph (*o*) to Rule 457 would specify that the registration fee would be computed on the basis of the maximum offering price of the securities being registered.

[50] In computing the amount available on the registration statement, the dollar amount of each offering would be subtracted from the remaining amount.

[51] Securities Act Release No. 33–6714 (May 27, 1987).

[52] *Id.* n. 34.

[53] See Rule 413 of Regulation C (17 CFR 230.413).

[54] When securities registered under the Securities Act will be traded on a national securities exchange, section 12 of the Exchange Act requires the class of securities to be registered under the Exchange Act before the securities may begin trading. See section 12(a) of the Exchange Act, 15 U.S.C. 78*l*(a). Similarly, the NASDAQ system requires as a condition to inclusion in the system that the securities be section 12 registered.

[55] Form 8–A is available to those issuers that are subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act. However, to facilitate timely registration under the Exchange Act, the Division of Corporation Finance permits non-reporting registrants to file a Form 8–A prior to the effective date of an initial public offering in order to permit concurrent effectiveness of the Securities Act and Exchange Act registrations. This is permitted because the additional information that would be provided in a Form 10 (the long-form Exchange Act registration form for non-reporting issuers) is included in the concurrent Securities Act registration statement.

[56] The price of common stock is not a "term" of the security required to be described in the Form 8–A.

[57] For example, in an offering of convertible debt securities, the interest rate, the conversion rate, and the call price are terms of the securities that must be included in the Form 8–A, but which are not known until the time of pricing.

[58] A related technical amendment to Rule 12b–23 under the Exchange (17 CFR 240.12b–23) also is proposed. The proposed amendment would except Rule 424(b) supplements filed after effectiveness of a Form 8–A from Rule 12b–23's requirement that information incorporated by reference into an Exchange Act registration statement be included as an exhibit to the registration statement.

[59] Under the proposed amendment to Form 8–A, registrants would be permitted to provide the title of the securities on the cover of the Form 8–A in preliminary form before the securities are priced (e.g., —% debentures due 20—), so that the requirement to provide the title of the securities would not be an impediment to the effectiveness of the Form 8–A prior to pricing.

[60] See Item 1 of Form 8–A, which requires the information specified in Item 202 of Regulation S–K.

and benefits associated with amending the rules and forms to expand the availability of Form S–3 and the resultant extension of Rule 415 to a greater variety of offerings, including investment grade asset-backed securities. Similar comments are requested on the proposals to permit shelf registration of equity, debt and other securities without a specific allocation of offering amounts among the classes of securities being registered; amend Rule 430A to allow non-material price changes and decreases in volume to be made after effectiveness without the filing a post-effective amendment; and to permit limited information regarding the securities to be incorporated by reference into Exchange Act registration statements on Form 8–A from prospectuses filed after effectiveness. Finally, comment is request on the proposal to have registration statements on Form S–3 for dividend or interest reinvestment plans to become effective automatically upon filing with the Commission.

## IV. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[61] regarding the proposed rules. The IRFA notes that the proposed amendments are intended to provide issuers greater flexibility and efficiency in accessing the public securities markets. The proposed amendments would not impose any new reporting, recordkeeping or compliance requirements on any entities. No alternatives to the proposed amendments consistent with their objectives and the Commission's statutory mandate were found. It is expected that the overall effect of the proposed rules will provide issuers greater flexibility and increased efficiency in raising capital from the public securities markets. The proposals to reduce the reporting history requirement for use of Form S–3 and the proposed revisions to Rule 430A and Form 8–A, if adopted, could apply to any issuer, including small entities registering securities for public sale. For example, a small entity that has been reporting for at least 12 months but less than 36 months could become eligible to use Form S–3 for the registration of a secondary offering or an offering of securities underlying warrants. To the extent that these proposals have an effect on small entitites, it is believed that the proposals would reduce the compliance burdens associated with Securities Act or Exchange Act registration for such entities, as they would for any other issuer. A copy of the IRFA may be obtained from Meredith B. Cross, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 3–3, Washington, DC 20549, (202) 272–2573.

[61] 5 U.S.C. 603 (1988).

## V. General Request for Comments

Any interested persons wishing to submit written comments on the proposed rule amendments that are the subject of this release, to suggest additional changes, or to submit comments on other matters that might have an impact of the proposals contained herein, are requested to do so. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and should refer to file number S7–20–92. Comment is requested on the impact of the proposals from the point of view of the public, as well as the entities or persons making filings with the Commission. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 19(a) of the Securities Act.[62] The Commission further requests comment on any competitive burdens that may result from adoption of the proposals. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[63]

## VI. Statutory Bases

The amendments to the Commission's rules and forms are being proposed pursuant to the sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933, as amended, sections 12, 13, 15(d) and 23(a) of the Securities Exchange Act of 1934, as amended.

## List of Subjects in 17 CFR Parts 230, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

## VII. Text of Proposed Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

[62] 15 U.S.C. 77s(a).

[63] 15 U.S.C. 78w(a).

## PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read as follows:

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

2. By amending § 230.424 by adding a new Instruction at the end of paragraph (b) to read as follows:

**§ 230.424 Filing of prospectuses, number of copies.**

* * * * *

(b) * * *

*Instruction.* Notwithstanding § 230.424(b)(2) and (b)(4) above, a form of prospectus or prospectus supplement relating to an offering of mortgage-related securities on a delayed basis under § 230.415(a)(1)(vii) or asset-backed securities on a delayed basis under § 230.415(a)(l)(x) that is required to be filed pursuant to paragraph (b) of this section shall be filed pursuant to paragraph (b) of this section shall be filed with the Commission no later than the second business day following the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

3. By amending § 230.430A by adding an instruction to paragraph 9a) to read as follows:

**§ 230.430A Prospectus in a registration statement at the time of effectiveness.**

(a) * * *

*Instruction to paragraph (a):* A decrease in the volume of securities or change in the bona fide estimate of the maximum offering price range from that contained in the registration statement that is declared effective may be disclosed in the form of prospectus filed with the Commission pursuant to § 230.424(b) or § 230.497(h) under the Securities Act so long as the decrease in volume or change in the price range would not materially change the disclosure contained in the registration statement at effectiveness.

* * * * *

4. By amending § 230.457 by adding new paragraph (o) to read as follows:

**§ 230.457 Computation of fee.**

* * * * *

(o) Where an issuer eligible to use Form S–3 is registering securities pursuant to General Instruction I.B.1 or I.B.2 to Form S–3 to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(x) or in connection with a business combination transaction purusant to § 230.415(a)(1)(viii), the registration fee may be calculated on the basis of the maximum offering price of

all the securities listed in the "Calculation of Registration Fee" Table.

5. By revising § 230.462 to read as follows:

**§ 230.462 Effective date of a registration statement filed on Form S–8 and dividend or interest reinvestment plan filed on Form S–3.**

A registration statement on Form S–8 (§ 239.16b of this chapter) and a registration statement on Form S–3 (§ 239.13) for a dividend or interest reinvestment plan shall become effective upon filing with the Commission.

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

6. The authority citation for part 239 continues to read as follows:

**Authority:** 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

7. By amending General Instructions I and II to Form S–3 (§ 239.13) by revising the introductory text to paragraphs A. and C.2. of Instruction I; by revising paragraphs A.3.(a), B.1. and B. of Instruction I; by revising the first sentence of paragraphs B.2. and C.3. of Instruction I; by redesignating paragraphs A.4. through A.6. of Instruction I as paragraphs A.5. through A.7. of Instruction I; adding new paragraphs A.4. and B.5 to Instruction I; adding new paragraph C. to Instruction II; and by revising General Instruction III to read as follows:

**Note:** Form S–3 does not appear in the Code of Federal Regulations.

**Form S–3**

* * * * *

*General Instructions*

I. * * *

A *Registrant Requirements.* Registrants must meet the following conditions in order to use this Form for registration under the Securities Act of securities offered in the transactions specified in I.B. below:

* * * * *

3. The registrant:

(a) Has been subject to the requirements of Section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this Form; and

* * * * *

4. The provisions of paragraph A.3.(a) above do not apply to any issuer registering investment grade asset-backed securities as defined in I.B.5. below.

* * * * *

B. *Transaction requirements.* Security offerings meeting any of the following conditions and made by a registrant meeting the Registrant Requirements specified in I.A. above may be registered on this Form:

1. *Primary offerings by certain registrants.* Securities to be offered for cash by or on behalf of a registrant, or outstanding securities to be offered for cash for the account of any person other than the registrant, including securities acquired by standby underwriters in connection with the call or redemption by the registrant of warrants or a class of convertible securities; *provided* that the aggregate market value of the voting stock held by non-affiliates of the registrant is $75 million or more.

*Instruction.* The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405 (§ 230.405 of this chapter).

2. *Primary Offerings of non-convertible investment grade securities.* Non-convertible securities to be offered for cash by or on behalf of a registrant, provided such securities at the time of the offer and sale are "investment grade securities," as defined below. * * *

* * * * *

5. *Offerings of investment grade asset-backed securities.* Asset-backed securities to be offered for cash, provided the securities are "investment grade securities," as defined in I.B.2. above (Primary Offerings of Certain Non-convertible Securities). For purposes of this form, the term "asset-backed security" means a security the obligations of which are primarily serviced by the cashflows of a discrete pool of receivables or other financial assets that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

C. * * *

2. The parent of the registrant-subsidiary meets the Registrant Requirements and the conditions of Transaction Requirements B.2. (Primary Offerings of Certain Non-Convertible Securities) are met; or

3. The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities. * * *

II. * * *

* * * * *

C. Where two or more classes of securities being registered on the form pursuant to General Instruction I.B.1 or I.B.2 are to be offered on a delayed on continuous basis pursuant to § 230.415(a)(1)(x), § 230.457(o) under the Securities Act permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" Table ("Fee Table"). In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Table need not specify by each class information as to the amount to be registered, proposed maximum offering price per unit, and proposed maximum aggregate offering price. * * *

III. Dividend or Interest Reinvestment Plans: Filing and Effectiveness of Registration Statement; Request for Confidential Treatment.

A registration statement on this Form S–3 relating solely to securities offered pursuant to a dividend or interest reinvestment plan will become effective automatically (§ 230.462) upon filing (§ 230.456). Post-effective amendments to such a registration statement on this Form shall become effective upon filing (§ 230.464).

* * * * *

8. By amending the General Instructions to Form S–4 (17 CFR 239.25) by adding new paragraph J. to read as follows:

**Note:** Form S–4 does not appear in the Code of Federal Regulations.

**Form S–4**

* * * * *

*General Instructions*

* * * * *

J. Where two or more classes of securities being registered on the form are to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(viii), § 230.457(o) under the Securities Act permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" Table ("Fee Table"). In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Table need not specify by each class information as to the amount to be registered, proposed maximum offering price per unit, and proposed maximum aggregate offering price.

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for part 240 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11 unless otherwise noted.

10. By amending § 240.12b-23 by revising paragraph (a)(3) to read as follows:

**§ 240.12b-23 Incorporation by reference.**

(a) * * *

(3) Copies of any information or financial statement incorporated into a registration statement or report by reference, or copies of the pertinent pages of the document containing such information or statements, shall be filed as an exhibit to the statement or report, except that:

(i) A proxy or information statement incorporated by reference in response to Part III of Form 10-K (§ 249.310); and

(ii) A form of prospectus filed pursuant to § 230.424(b) incorporated by reference in response to Item 1 of Form 8–A (§ 249.208a) need not be filed as an exhibit.

* * * * *

**PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934**

11. The authority citation for part 249 continues to read as follows:

**Authority:** 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

12. By amending Form 8–A (17 CFR 249.208a) by revising the instruction to Item 1 to read as follows:

**Note:** Form 8–A does not appear in the Code of Federal Regulations.

Regulations.

**Form 8–A**

* * * * *

*Item 1.* * * *

*Instruction.* If a description of the securities comparable to that required here is contained in any prior filing with the Commission, such description may be incorporated by reference to such other filing in answer to this item. If such description will be included in a form of prospectus subsequently filed by the registrant pursuant to Rule 424(b) under the Securities Act (§ 230.424(b) of this chapter) this registration statement shall state that such prospectus shall be deemed to be incorporated by reference into the registration statement.

Dated: July 16, 1992.

By the Commission.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 92–17221 Filed 7–21–92; 8:45 am]

BILLING CODE 8010-01-M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 131**

**[Docket No. 91P–0090/CP]**

**Evaporated Milk; Proposed Amendment of the Standard of Identity**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend the standard of identity for evaporated milk by revising the minimum milkfat and total milk solids content requirements and establishing a minimum milk solids-not-fat content requirement. The proposed amendments are in response to a petition filed by the American Dairy Products Institute (ADPI) and will promote honesty and fair dealing in the interest of consumers.

**DATES:** Written comments by September 21, 1992. The agency proposes that any final rule that may issue based upon this proposal become effective 60 days after date of publication of the final rule in the **Federal Register.**

**ADDRESSES:** Submit written comments, data, or information to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–205–5007.

**SUPPLEMENTARY INFORMATION:** The American Dairy Products Institute, 130 North Franklin St., Chicago, IL 60606, filed a petition on March 12, 1991, requesting that FDA amend the standard of identity for evaporated milk (§ 131.130 (21 CFR 131.130)) to:

(1) Reduce the minimum milkfat content requirement from 7.5 percent to 6.5 percent by weight;

(2) Reduce the minimum total milk solids content requirement from 25 percent to 23 percent by weight; and

(3) Add a minimum milk solids-not-fat content requirement of 16.5 percent by weight.

## I. Statement of Grounds

In support of its petition, ADPI stated that nutritionists and health-care professionals are proposing, and consumers are demanding, food products that contain less fat, cholesterol, calories, and sodium. In response to that demand, evaporated milk manufacturers, through this suggested amendment of the standard of identity for evaporated milk, are proposing reductions of 13 percent in fat, 9 percent in calories, and 5 percent in sodium in the food. In addition, ADPI stated that further reductions in the sodium content of evaporated milk will occur as the industry systematically converts from the use of disodium phosphate to dipotassium phosphate for product stabilization.

ADPI also stated that evaporated milk is most closely associated with fluid milk, and that it regularly replaces fluid milk for beverage purposes, food preparation, and other uses. Evaporated milk traditionally has been sold as a safe, convenient milk product that duplicates the composition of fluid milk when diluted with an equal volume of water. It has long been considered to be a 2:1 concentrate of fluid milk. ADPI noted that the current U.S. standard of identity for milk in § 131.110(a) (21 CFR 131.110(a)) specifies a minimum milkfat content of 3.25 percent and a minimum milk solids-not-fat content of 8.25 percent, and that the suggested amendments will provide that the modified evaporated milk will contain twice the milkfat and milk solids-not-fat contents as defined for fluid milk. Thus, the suggested minimum milkfat content for evaporated milk would be 6.5 percent by weight (2×3.25=6.5), and the suggested minimum milk solids-not-fat content would be 16.5 percent by weight (2×8.25=16.5), resulting in a minimum total milk solids content of 23 percent by weight (6.5+16.5=23).

ADPI submitted information on three industry research tests as to consumer perception comparing the standardized evaporated milk to evaporated milk manufactured to conform to the suggested amendments. The following is a brief discussion of the tests and the results.

### *A. Evaporated Milk In-Home Use Test*

A nationally representative sample of 400 regular users of evaporated milk were selected from a consumer panel. For the purposes of the survey, a regular user was defined as a female head of a household who claims to have purchased at least two cans of evaporated milk in the past year. Two hundred such consumers were asked to evaluate the attributes of the modified product, and 200 other consumers were asked to evaluate the attributes of standardized evaporated milk. The products were evaluated overall on a 10-point hedonic scale for such attributes as consistency and appearance. In addition, those consumers who used evaporated milk in coffee were asked to evaluate the products for the attributes relating to that purpose. Consumers who used evaporated milk in foods or beverages other than coffee were asked to evaluate the product's performance relating to those purposes.

ADPI reported that, overall, the modified product was rated higher than the standardized evaporated milk by a small but significant margin at the 90 percent confidence level.

### *B. Evaporated Milk Triangle Test Panel Survey*

This taste test was designed to compare products made by identical recipes except that the evaporated milk product used was different. The test

involved 54 panelists the first day and 44 the second day. On the first day red light was used to mask differences in color, and on the second day regular lights were used. Panelists were given samples of each of three recipes: (1) A beverage made with orange soda, (2) pumpkin pie, and (3) fudge. In each case, one sample was the recipe made with standardized evaporated milk, one sample was the recipe made with the modified evaporated milk, and one was made with evaporated milk or with the modified evaporated milk or as to present two identical and one odd sample per recipe. Panelists were asked to taste the samples and select the sample that was different.

ADPT stated that there were no statistically significant distinctions between consumer perception of the products made with the two types of evaporated milk.

*C. Evaporated Milk Home Use Test*

A sample of 153 consumers were asked to evaluate the performance of the modified evaporated milk versus the performance of standardized evaporated milk in certain recipes and to state an overall preference for one product or the other, as well as to rate the products on overall performance, i.e., performance as to "richness of the dish," "creaminess of the dish," and "influence on flavor of the dish."

According to ADPI, overall, the preferences for one product or the other were identical. Thirty-seven percent of the participants preferred the modified evaporated milk product, and 37 percent of the participants preferred the standardized evaporated milk product. The remaining 26 percent expressed no preference.

ADPI stated that industry experience and the consumer research demonstrate that there is no significant difference in consumers' perception of, or preference for, the standardized evaporated milk versus the modified evaporated milk. Thus, ADPI claimed that the suggested amendments would promote honesty and fair dealing and would not result in required changes in recipes using standardized evaporated milk.

**II. The Proposal**

In the **Federal Register** of July 2, 1940 (5 FR 2442 at 2443), FDA stated in the findings of fact that led to the adoption of the standard of identity for evaporated milk that the concentration of evaporated milk is limited by the percent of nonfat milk solids in the finished product. FDA also stated that concentration to a point where the nonfat milk solids is not less than 18 percent is a reasonable degree of concentration which can be and is accomplished by the application of accepted commercial methods of manufacture.

In addition, the findings of fact noted that evaporated milk contained not less than 7.8 percent of milkfat and not less than 25.5 percent of total milk solids according to the advisory standard of identity for evaporated milk that was effective at that time under the Food and Drugs Act of June 30, 1906.

However, the fundings of fact concluded that the proper ratio of nonfat milk solids to milkfat in evaporated milk was about 2.275, based on the ratio of nonfat milk solids to milkfat in the average fluid market milk of the nation. Consequently, FDA established 7.9 percent as a reasonable minimum milkfat content and 25.9 percent as a reasonable total milk solids content in evaporated milk.

In the **Federal Register** of October 10, 1973 (38 FR 27924), FDA, established a standard of identity for milk that required that milk contain not less than 3.25 percent of milkfat and not less than 8.25 percent of milk solids not fat based on the milkfat content of milk produced by cows in the United States in 1972. In the same issue of the **Federal Register** (38 FR 27924 at 27925), in view of the compositional changes in cow's milk, FDA decided to reduce the minimum milkfat level of evaporated milk from 7.9 percent to 7.5 percent and the minimum total milk solids requirement from 25.9 percent to 25.5 percent.

Subsequently, in consideration of the acceptance of the recommended international Codex Alimentarius standard for evaporated milk by the United States (43 FR 21668, May 19, 1978), FDA reduced the total milk solids requirement for evaporated milk from 25.5 percent to 25 percent by weight. No change was deemed necessary in the milkfat content of evaporated milk at that time.

The agency believes, in view of the widespread support for Americans to reduce the amount of fat and the number of calories in their diets, that reasonable grounds have been submitted to warrant issuance of a proposal to amend the standard in the manner requested in the petition. It further believes that the suggested amendment is consistent with the intent of the standard of identify for evaporated milk as established in 1940, as well as the subsequent amendments, that require that the milkfat and milk solids-not-fat contents be reasonably related to those of the milk used in the manufacture of evaporated milk. Accordingly, FDA is proposing to amend the standard of identify for evaporated milk in § 131.130(a) by reducing the milkfat content from 7.5 percent to 6.5 percent by weight, reducing the minimum total milk solids content from 25 percent to 23 percent by weight, and establishing a minimum requirement for milk solids not fat of 16.5 percent by weight.

FDA requests comments on these amendments as well as on whether there are other changes in the standard that will assist manufacturers by providing more flexibility but that will also be in the interest of consumers. Suggestions for additional changes in the standard should be supported, where possible, with data on the need for the changes and on the anticipated effects on the food and on consumer acceptance of the product so modified.

**III. Economic Impact**

FDA has examined the economic implications of the proposed rule to amend the standard of identity for evaporated milk in 21 CFR part 131 as required by Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12291 compels Federal agencies to use cost-benefit analysis as a component of decisionmaking. Public Law 96–354 requires regulatory relief for small businesses, where feasible. Because no marginal costs are expected to be incurred to comply with this proposed regulation, the agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In accordance with Public Law 96–354, FDA has also determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses.

FDA is proposing to amend the standard of identity for evaporated milk by lowering the minimum milkfat and total milk solids content requirements and establishing a minimum milk solids-not-fat content requirement consistent with the lower values. This provision will result in a product that continues to reflect the 2:1 level of concentration of evaporated milk compared to fluid whole milk. The lower values for the minimum milkfat content and minimum total solids content will not significantly affect the use of this product in recipes. Because these are minimum levels, manufacturers may continue to process evaporated milks using current formulations. Thus, no changes are required in formulations unless manufacturers wish to reformulate their products.

If evaporated milk products are not reformulated, manufacturers would continue to produce products that are not precisely formulated to yield a 2:1

concentrate and thus would incur slightly higher production costs. Another option is to remove the evaporated milk standard and to allow manufacturers to use any combination of milkfat and nonfat milk solids levels in their evaporated milk products. There is no evidence that this option would be in the best interest of consumers or of manufacturers. In the absence of a Federal standard for evaporated milk, the States could establish standards with different requirements which could hinder interstate commerce. Uniform standards protect consumers from unfair trade practices and also enable manufacturers to compete in an equitable manner.

The benefits of the selected option, to propose to amend the standard as requested by ADPI, will be to continue to provide consumers with an evaporated milk product that is a 2:1 concentrate of fluid milk. It will ensure that evaporated milk products also contain a minimum level of milk solids not fat. It will also allow for the production of an evaporated milk that contains less milkfat and total milk solids than in permitted under the current standard of identify.

If FDA adopts this proposal, firms will not required to change existing labels. Thus, FDA finds that there are no marginal costs for this proposed amendment of the standard of identify for evaporated milk. Therefore, in accordance with section 605(b) of Public Law 96–354, FDA has also determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses.

### IV. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### V. Request for Comments

Interested persons may, on or before September 21, 1992, submit to the Docket Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

### List of Subjects in 21 CFR Part 131

Cream, Food grades and standards, Milk, and Yogurt.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and relegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 131 be amended as follows:

## PART 131—MILK AND CREAM

1. The authority citation for 21 CFR part 131 continues to read as follows:

**Authority:** Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

2. Section 131.130 is amended by revising paragraph (a) to read as follows:

**§ 131.130 Evaporated milk.**

(a) *Description.* Evaporated milk is the liquid food obtained by partial removal of water only from milk. It contains not less than 6.5 percent by weight of milkfat, not less than 16.5 percent by weight of milk solids not fat, and not less than 23 percent by weight of total milk solids. Evaporated milk contains added vitamin D as prescribed by paragraph (b) of this section. It is homogenized, it is sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

* * * * *

Dated: July 10, 1992.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92–17162 Filed 7–21–92; 8:45 am]

BILLING CODE 4160–01–M

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

**[PS–7–92]**

**RIN 1545–AQ46**

### Continuity of Life–Limited Partnerships

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that amend the regulations under section 7701 of the Internal Revenue Code relating to the classification of organizations for tax purposes. The proposed regulations clarify the rule in the regulations regarding the characteristic of continuity of life of a limited partnership. These proposed regulations are proposed to be effective for taxable years beginning 30 days after the date of publication of these regulations in final form.

**DATES:** Written comments and requests to speak (with an outline of oral comments) at the public hearing must be received by September 29, 1992. The public hearing is scheduled to be held on October 20, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register**.

**ADDRESSES:** Send comments and requests to speak (with an outline of oral comments) at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:Corp:T:R (PS–7–92), room 5228, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning the hearing, Bob Boyer, Regulations Unit (202) 377–9231 (not a toll-free number); concerning the regulation, James A. Quinn, (202) 566–3158 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains proposed regulations that amend part 301 of title 26 of the Code of Federal Regulations. The proposed regulations clarify the rule in 26 CFR 301.7701–2(b)(1) regarding the characteristic of continuity of life of a limited partnership.

### Explanation of Provisions

For federal tax purposes, organizations may be classified as associations (which are taxable as corporations), partnerships, or trusts. Section 7701(a) (2) and (3) of the Code and §§ 301.7701–1 through 301.7701–4 of the regulations set forth the tests, or standards, that are to be applied in determining the tax classification of unincorporated organizations. Section 301.7701–2 provides that the classification of an unincorporated organization as a partnership or an association depends upon whether an organization possesses the relevant corporate characteristics of continuity of life, centralization of management, limited liability, and free transferability of interests.

Section 301.7701–2(b) of the regulations provides rules for determining whether an organization has continuity of life. For limited partnerships, the third sentence of § 301.7701–2(b)(1) states that if the retirement, death, or insanity of a general partner of a limited partnership causes a dissolution of the partnership, unless the remaining general partners

agree to continue the partnership or unless all remaining members agree to continue the partnership, continuity of life does not exist.

In order to clarify this rule, the third sentence of § 301.7701–2(b)(1) is revised to specifically state that a limited partnership lacks continuity of life notwithstanding the fact that a dissolution may be avoided by the remaining general partners agreeing to continue the partnership or by at least a majority in interest of the remaining general and limited partners combined agreeing to continue the partnership upon an event of withdrawal of a general partner, and to clarify that the regulations apply, not only to the retirement, death, or insanity of a general partner, but also to all other events of withdrawal of a general partner.

In addition, the citation to *Glensder Textile Co.* v. *Commissioner*, 46 B.T.A. 176 (1942), *acq.*, 1942–1 C.B. 8, at the end of paragraph (b)(1) of § 301.7701–2 of the regulations is amended to conform the current citation rules.

**Special Analyses**

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Comments and Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held on October 20, 1992. See Notice of hearing published elsewhere in this issue of the **Federal Register**.

**Drafting Information**

The principal author of these regulations is James A. Quinn of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

**List of Subjects in 26 CFR Part 301**

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

**Par. 2.** Section 301.7701–2 is amended as follows:

1. The third sentence of paragraph (b)(1) is revised.

2. The citation at the end of paragraph (b)(1) is revised.

3. The revised provisions read as follows:

**§ 301.7701–2 Associations.**

* * * * *

(b) * * *

(1) * * * If the death, insanity, bankruptcy, retirement, resignation, expulsion, or other event of withdrawal of a general partner of a limited partnership causes a dissolution of the partnership, continuity of life does not exist; furthermore, continuity of life does not exist notwithstanding the fact that a dissolution of the limited partnership may be avoided, upon such an event of withdrawal of a general partner, by the remaining general partners agreeing to continue the partnership or by at least a majority in interest of the remaining partners agreeing to continue the partnership. *See Glensder Textile Co.* v. *Commissioner*, 46 B.T.A. 176 (1942), *acq.*, 1942–1 C.B. 8.

* * * * *

Joe Kump,

*Acting Commissioner of Internal Revenue.*

[FR Doc. 92–17086 Filed 7–21–92; 8:45 am]

BILLING CODE 4830–01–M

**26 CFR Part 301**

**[PS–7–92]**

**RIN 1545–AQ46**

## Continuity of Life–Limited Partnerships; Hearing

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on proposed regulations under section 7701 of the Internal Revenue Code relating to the classification of organizations for tax purposes. The proposed regulations clarify the rule in the regulations regarding the characteristic of continuity of life of a limited partnership.

**DATES:** The public hearing will be held on Tuesday, October 20, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, September 29, 1992.

**ADDRESSES:** The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS–7–92], room 5228, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9231, (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations that amend 26 CFR part 301. The proposed regulations clarify the rule in 26 CFR 301.7701–2(b)(1) regarding the characteristic of continuity of life of a limited partnership. These regulations appear in the proposed rules sections of this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, September 29, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

**Dale D. Goode,**

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 92-17186 Filed 7-21-92; 8:45 am]

BILLING CODE 4830-01-M

## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

### 33 CFR Part 334

### Restricted Areas for Gulf Coast Homeports at Ingleside, Texas, Mobile, Alabama, and Pascagoula, Mississippi

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Corps of Engineers proposes to establish naval restricted areas in the waters of the Gulf of Mexico at the Naval Homeports located at Ingleside, Texas; Mobile, Alabama, and Pascagoula, Mississippi. The purpose of the restricted areas is to reduce safety hazards and security risks and protect persons and property from the dangers encountered in these areas.

**DATES:** Written comments must be received on or before August 21, 1992.

**ADDRESSES:** Send written comments in response to this proposal to: HQUSACE, Attn: CECW-OR, Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** For information please contact Mr. Ralph Eppard at (202) 272-1783.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers proposes to establish restricted areas at each of the Navy Gulf Coast Homeports located at Ingleside, Texas, Mobile, Alabama, and Pascagoula, Mississippi. The proposed restricted areas would encompass the waters surrounding the Naval Stations and piers where extensive Naval operations take place. The proposed restricted areas would be used extensively by U.S. Naval ships and commercial vessels under contract to the Navy, in daily operations around the pier. The piers will be used to provide fuel, maintenance and other services for these vessels which could be hazardous to other vessels. Naval operations in the area include the following:

(a) Docking, undocking, loading, unloading, maintenance and transiting the area;

(b) Support/maintenance from the pier and by floating crane, tugs and other yard craft;

(c) Helicopter traffic; and

(d) Visiting ships, both U.S. and foreign.

The restricted areas are essential to protect persons and property from the dangers associated with these operations and safeguard the area from accidents, sabotage and other subversive acts.

### Economic Assessment and Certification

This proposed rule is being issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12291 do not apply.

I hereby certify that this proposed rule will have no significant economic impact on a substantial number of small entities.

### List of Subjects in 33 CFR Part 334

Navigation (water), Transportation.

In consideration of the above, the Corps of Engineers proposes to amend part 334 of title 33 as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

**Authority:** 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Part 334 is amended by adding § 334.782, to read as follows:

### § 334.782 Naval Station Mobile, Mobile, Alabama; naval restricted area.

(a) *The area.* The waters of Mobile Bay beginning at a point at latitude 30°31'25.9"N, longitude 88°05'25.8"W, thence easterly to latitude 30°31'26"N, longitude 88°04'59.2"W, thence northerly to latitude 30°31'40.5"N, longitude 88°04'59.3"W, thence south-southwesterly along the shoreline to the point of beginning.

(b) *The regulations.* Mooring, anchoring, fishing or recreational boating shall not be allowed within the restricted area. Commercial vessels at anchor will be permitted to swing into the restricted area while at anchor and during tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Naval Station Mobile and such agencies as he/she shall designate.

3. Part 334 is amended by adding § 334.786, to read as follows:

### § 334.786 Naval Station Pascagoula, Pascagoula, Mississippi; naval restricted area.

(a) *The area.* The waters of Pascagoula Harbor beginning at a point at latitude 30°20'16"N, longitude 88°34'50.3"W, thence northerly to latitude 30°20'34.3"N, longitude 88°34'51.8"W, thence easterly to latitude 30°20'34.3"N, longitude 88°34'9.6"W, thence southerly to latitude 30°20'19.5"N, longitude 88°34'9.6"W, thence westerly along the shoreline to the point of beginning.

(b) *The regulations.* Mooring, anchoring, fishing or recreational boating shall not be allowed within the restricted area when required by the Commanding Officer of Naval Station Pascagoula to safeguard the installation and its personnel and property in times of an imminent security threat; during special operations; during natural disasters; or as directed by higher authority. Commercial vessels at anchor will be permitted to swing into the restricted area while at anchor and during tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Naval Station Pascagoula and such agencies as he/she shall designate.

4. Part 334 is amended by adding § 334.802, to read as follows:

### § 334.802 Ingleside Naval Station, Ingleside, Texas; naval restricted area.

(a) *The area.* The waters of Corpus Christi Bay beginning at a point at latitude 27°49'13.6"N, longitude 97°12'5.7"W, thence southerly to latitude 27°49'7.3"N, longitude 97°12'5.4"W, thence south-southwesterly to latitude 27°49'01"N, longitude 97°12'39.4"W, thence north-northeasterly to latitude 27°49'02.4"N, longitude 97°12'40.3"W, thence north-northeasterly to latitude 27°49'14.9"N, longitude 97°12'42.7"W, thence easterly along the shoreline to the point of beginning.

(b) *The regulations.* Mooring, anchoring, fishing or recreational

boating shall not be allowed within the restricted area. Commercial vessels at anchor will be permitted to swing into the restricted area while at anchor and during tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Naval Station Ingleside and such agencies as he/she shall designate.

Dated: July 9, 1992.

Approved:

**Herbert H. Kennon,**

*Deputy Director of Civil Works.*

[FR Doc. 92-17225 Filed 7-21-92; 8:45 am]

BILLING CODE 3710-08-M

## POSTAL SERVICE

### 39 CFR Part 111

### Pallet Discount for Second-Class Mailpieces

**AGENCY:** Postal Service.

**ACTION:** Notification of public meeting.

**SUMMARY:** The Postal Service is holding a public meeting to discuss changes to the Domestic Mail Manual (DMM) regulations concerning preparation of second-class mail on pallets that may be warranted if discounts for such preparation are approved.

**DATES:** The meeting will be held on Tuesday, July 28, from 10 a.m. to 2 p.m.

**ADDRESSES:** The address of the meeting is U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC, in the Ben Franklin Room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Whittaker J. Jones, Office of Product Management, 475 L'Enfant Plaza, SW., Washington, DC 20260-5913, telephone (202) 268-2254.

**SUPPLEMENTARY INFORMATION:** On September 25, 1991, pursuant to 39 U.S.C. 3622 and 3623, the Postal Service filed a request for a recommended decision by the Postal Rate Commission (PRC) on the establishment of discounts for second-class mailpieces prepared on pallets. The PRC subsequently designated this filing as Docket No. MC 91-3, (hereafter referred to simply as MC 91-3). The Postal Service is issuing this notice to advise the public that a meeting has been scheduled to discuss issues relating to the implementation of these discounts assuming the PRC's recommended decision in MC 91-3 is consistent with the Postal Service's request and the Governors of the Postal Service, acting pursuant to 39 U.S.C. 3625, approve that recommended decision.

Attendance at this meeting is open to the interested public but limited to the space available. Persons planning to attend should contact Whittaker Jones, at the number provided above, to register. The discussion will be limited to issues and concerns pertaining to second-class pallet preparation only. Items to be discussed may include, but are not limited to:

1. Levels of presort.
2. Minimum pallet weights.
3. Maximum pallet heights for double stacked pallets.
4. Physical pallet preparation.
5. Projected mail volumes on pallets based on different preparation options.

Following the meeting, if the Postal Service determines that significant changes to existing second-class pallet regulations are warranted, the Postal Service will develop a proposed rule for publication in the **Federal Register** and public comment.

**Stanley F. Mires,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 92-17303 Filed 7-21-92; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 122

**[FRL-4155-6]**

### National Pollutant Discharge System General Permit and Reporting Requirements for Discharges From Concentrated Animal Feeding Operations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of draft general NPDES permits for discharges from confined animal feeding operations.

**SUMMARY:** Pursuant to sections 301, 304 (b) and (c), and 306 (b) and (c) of the Clean Water Act. EPA regulations define concentrated animal feeding operations as point sources subject to the NPDES permit program, list the criteria for determining a Concentrated Animal Feeding Operation (CAFO's), and establish the effluent limitation guidelines for Feedlots pursuant to section 306 (b) and (c) of the Clean Water Act.

The **Federal Register** published November 16, 1990 contains application requirements for all storm water discharges associated with industrial activities, which includes facilities with National Effluent Guidelines for storm water. The effluent limitations apply to all wastewaters from feedlot operation areas, including those generated by precipitation. This places feedlots in the category of National Effluent Guidelines for storm water. All dischargers covered by the November 1990 publication must apply for a permit or gain coverage under a promulgated permit for storm water.

This notice requests comments on the separate general permits for concentrated animal feeding operations in four States (Louisiana, New Mexico, Oklahoma, and Texas) without authorized NPDES State programs and on Indian lands in New Mexico and Oklahoma. Separate general permits are being noticed for each State.

**DATES:** Comments on the proposed permits must be received on or before the date 10 days following the date of last public hearing in that State. The comment period for the permit in State of Texas ends September 11, 1992. The comment period for the permit in the State of Louisiana ends September 4, 1992. The comment period for the permit in the State of Oklahoma ends September 8, 1992. The comment period for the permit in the State of New Mexico ends September 8, 1992. See **SUPPLEMENTARY INFORMATION** for information on hearing dates.

**ADDRESSES:** The public should send an original and two copies of their comments addressing any aspect of this notice to Ellen Caldwell, Permits Branch of Water Division (6W-PS), U.S. Environmental Protection Agency Region 6, 1445 Ross Ave. Suite 1200, Dallas, Texas 75202 (214) 655-7190.

Comments addressing factors or issues which are specific to one or several general permits (e.g., specific requirements for the general permit authorizing concentrated animal feeding operations in Texas), should clearly indicate the applicability of the comment to a particular State. The public record is located at EPA Region 6, and is available upon written request. Requests for copies of the public record should be addressed to Ellen Caldwell at the address above. A reasonable fee may be charged for copying.

See **SUPPLEMENTARY INFORMATION** for information on hearing addresses.

**FOR FURTHER INFORMATION CONTACT:** For further information on the proposed draft general permits contact Ellen Caldwell, Permits Branch of Water Division (6W-PS), U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., suite 1200, Dallas, Texas 75202 (214) 655-7190.

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**SUPPLEMENTARY INFORMATION:**

**Hearings**

Meetings and Public Hearings will be held in each of the states to provide information on the permit conditions and allow for public comment on the permit. Informal meetings with question and answer sessions are scheduled prior to each of the Public Hearings where the public can make formal statements and comments for the public record. The meetings and public hearings to allow for comments on general permits for the State in which the hearing is held are scheduled as follows:

(1) September 1, 1992, Tuesday, question and answer session from 3 p.m., to 5 p.m., and hearing from 7 p.m. to 10 p.m., in the Civic Center, 401 S. Buchanan (3rd and Buchanan), Amarillo, Texas 79186.

(2)August 21, 1992, Friday, question and answer session from 3 p.m. to 5 p.m. and hearing from 7 p.m. to 10 p.m., Regency Ballroom, Hyatt Regency San Antonio on the Riverwalk, 123 Losoya Street, San Antonio, Texas 78205.

(3) August 24, 1992, Monday, question and answer session from 3 p.m. to 5 p.m. and hearing from 7 p.m. to 10 p.m., Tucker Building, 8919 World Ministry Avenue, Baton Rouge, Louisiana 70810.

(4) August 27, 1992, Thursday, question and answer session from 3 p.m. to 5 p.m. and hearing from 7 p.m. to 10 p.m., Central Plaza Hotel & Convention Center, 112 S.Martin Luther King, Junction of I–35 & I–40 (Eastern Exit 127), Oklahoma City, Oklahoma 73117.

(5) August 28, 1992, Thursday, question and answer session from 3 p.m. to 5 p.m. and hearing from 7 p.m. to 10 p.m., Hyatt Regency, 330 Tijeras NW, Albuquerque, NM 87102.

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## I. Background

The 1972 amendments to the Federal Water pollution Control Act (FWPCA, also referred to as the Clean Water Act or CWA),[1] prohibited the discharge of any pollutant to navigable waters from a point source unless the discharge is authorized by a NPDES permit. Efforts to improve water quality under the NPDES program have traditionally focused on reducing pollutants in discharges of industrial process waste water and from municipal sewage treatment plants. Sewage outfalls and industrial discharges were easily identified as being responsible for poor, often drastically degraded water quality conditions. Section 306(b)(1)(A) of the SWA required EPA to establish standards of performance for the 27 industrial categories listed in this section of the CWA. Feedlots are included in the 27 categories of industries listed.

The Code of Federal Regulations was amended February 14, 1974 to include effluent guidelines for Feedlots (39 FR 5706); and to include application requirements for concentrated animal feeding operations (40 CFR 122.23) In addition, the regulations requiring applications from dischargers of Storm Water Associated With Industrial Activity includes all industrial activities which have National Effluent Guidelines for storm water. The effluent guidelines published in 1974 include requirements for any waste water or precipitation (storm water) which comes in contact with products from the concentrated feeding areas in feedlots. The technology standard established in the effluent guidelines for feedlots is No Discharge unless a result of the 25-year, 24-hour storm event.

## II. Framework of NPDES System

Congress established the NPDES program with the 1972 Amendments to the FWPCA. Section 402 of the Act requires EPA to administer a national permit program to regulate point source discharges of pollutants to waters of the United States and sets out the basic elements of the program.

*A. State Programs*

The Act allows States to request EPA authorization to administer the NPDES program instead of EPA. Under section 402(b), EPA must approve a State's request to operate the permit program once it determines that the State has adequate legal authorities, procedures, and the ability to administer the program. At this point in time, one State in Region 6 is authorized to, at a minimum, issue NPDES permits for municipal and industrial sources and is currently authorized by EPA to issue NPDES general permits. EPA Region 6 issues all NPDES permits in the four States (LA, TX, OK, and NM) without NPDES authorized programs.

*B. Requirements in NPDES Permits*

The CWA establishes two types of standards for conditions in NPDES permits, technology-based standards and water quality-based standards. These standards are used to develop effluent limitations, special conditions, and monitoring requirements in NPDES permits. Section 402(a)(1) authorizes the inclusion of other types of conditions that are determined to be necessary, known as special conditions, in NPDES permits. Special conditions include requirements for best management practices (BMPs).

1. Technology-Based Standards

Technology-based requirements under section 301(b) of the Act represent the minimum level of control that must be imposed in a permit issued under section 402 of the Act. Two technology-based requirements are appropriate for existing feedlots: (1) Best practicable control technology economically achievable (BCT); and (2) best available technology economically achievable (BAT). The BCT standard applies to the control of conventional pollutants, while the BAT standard applies to the control of all toxic pollutants and for all pollutants which are neither toxic nor conventional pollutants. Section 306 of the CWA provides for EPA to establish new source performance standards for new sources.

Technology-based requirements may be established through one of two methods: (1) Application of national BAT/BCT effluent limitations guidelines promulgated by EPA under section 304 of the CWA and new source performance standards promulgated under section 306 of the CWA applicable to dischargers by category or subcategory; and (2) on a case-by-case basis under section 402(a)(1) of the Act, using the best professional judgement (BPJ), for pollutants or classes of discharges for which EPA has not promulgated national effluent limitations guidelines.

Note: EPA only establishes new source performance standards under section 306 of the CWA when developing national effluent limitations guidelines, and not when establishing permit conditions on a case-by-case basis.

2. Water Quality-Based Standards for Controls

In addition to technology-based controls, section 301(b) of CWA also requires that NPDES permits must include any conditions more stringent than technology-based controls necessary to meet State water quality standards. Water quality-based requirements are established under this provision on a case-by-case basis.

[1] Federal Water Pollution Control Act, as amended: 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), and 1317 (c); 86 Stat. 816 et seq., Public Law 92–500; 91 Stat. 15567, Public Law 95–217.



## III. Permitting

*A. Prior Permitting*

Between 1974 and 1982, EPA promulgated effluent limitations guidelines for wastewater and storm water discharges from ten categories of industrial discharges:

- Cement Manufacturing.
- Feedlots.
- Fertilizer Manufacturing.
- Petroleum Refining.
- Phosphate Manufacturing.
- Steam Electric.
- Coal Mining.
- Ore Mining and Dressing.
- Mineral Mining and Processing.
- Asphalt Emulsion.

Site specific permitting efforts were focused on facilities with the greatest potential to impair or impact water quality.

*B. Permit Application Regulations*

1. Regulations Requiring NPDES Coverage

In accordance with the 1972 FWPCA and 40 CFR Part 122 all dischargers to waters of the United States are required to apply for a NPDES permit. 40 CFR part 122.23 establishes concentrated animal feeding operations (CAFOs) as point source dischargers subject to NPDES permitting.

On November 16, 1990, (55 FR 47990), EPA published NPDES permit application requirements for facilities with storm water discharges associated with industrial activity. Among these designated facilities are those which have national effluent guidelines for storm water. Under these regulations all feedlots must apply for an NPDES permit. Feedlot facilities must at a minimum obtain coverage under a promulgated general permit for storm water.

2. Scope of NPDES Concentrated Animal Feeding Operation (CAFO) Permitting Program

All animal feeding operations listed in 40 CFR part 122 appendix B are considered to be concentrated animal feeding operations (CAFOs) and which must be permitted under the NPDES permitting program:

New and existing operations which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:

a. 1,000 slaughter or feeder cattle;
b. 700 mature dairy cattle (whether milkers or dry cows);
c. 2,500 swine weighing over 55 pounds;
d. 500 horses;
e. 10,000 sheep or lambs;
f. 55,000 turkeys;
g. 100,000 laying hens or broilers when the facility has unlimited continuous flow watering;
h. 30,000 laying hens or broilers when facility has liquid manure handling system;
i. 5,000 ducks; or
j. 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep;

New and existing operations which either discharge pollutants into navigable waters through a man-made ditch, flushing system, or other similar man-made device, or directly into waters of the United States, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:

a. 300 slaughter or feeder cattle;
b. 200 mature dairy cattle (whether milkers or dry cows);
c. 750 swine weighing over 55 pounds;
d. 150 horses;
e. 3000 sheep or lambs;
f. 16,000 turkeys;
g. 30,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
h. 9000 laying hens or broilers when facility has liquid manure handling system;
i. 1,500 ducks; or
j. 300 animal units (from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep).

However, no animal feeding operation is considered by EPA to be a concentrated feeding operation or a point source if such animal feeding operation discharges only in the event of a 25 year, 24-hour storm event.

This regulatory definition is meant to encompass all animal operations which have industrial characteristics. The definition "concentrated animal feeding operation" includes the number of animals confined; the length of time the animals are confined at the facility; and the type of the confinement. If the facility confines 1000 animal units or more, or 300 animal units and the facility has any manner of conveyance for waste or storm water runoff which allows the water to be discharged to a water of the U.S., then the facility is subject to NPDES permitting requirements. Operations smaller than the regulatory number are usually agricultural in nature and are not subject the NPDES permit program unless the Director has designated them as a "concentrated" animal feeding operation affecting water quality.

Also, it is not the intent of EPA to regulate facilities through NPDES permitting if animals are on the facility for less than 45 days out of a 12 month period. Some persons have expressed the opinion that this relieves animal transfer facilities of permitting requirements because the animals are transferred after only a few days. Region 6 believes strongly that it is clearly the intent of the regulation to include transfer facilities, as they house animals almost continuously. It is irrelevant whether they are the same animals for the 45 day duration.

Although the definition was not meant to include obviously non-point source operations where the animals are confined in pasture situations, the discharge from areas of concentrated animal feeding or housing must be permitted if the facility meets the regulatory definition. Region 6 wants to clarify that even though some of the facility areas may have livestock and pasture crops co-existing during the normal growing season (e.g. at a dairy facility), this does not exempt the areas of concentrated animal activity (pens, barns and houses, etc.) from consideration as a point source with NPDES permit responsibilities.

In addition to the concentrated animal feeding operations (CAFOs) which have permitting requirements as "point sources", this permit encourages any animal feeding operation which determines it discharges pollutants to a water of the U.S. to establish voluntary compliance with the terms of this permit.

The NPDES permit programs only addresses point source discharges. Section 503(14) of the CWA defines the term "point source" broadly to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, * * * from which pollutants are or may be discharged. In most court cases, the term

"point source" has been interpreted broadly. For example, the holding in *Sierra Club* v. *Abston Construction Co., Inc.*, 620 F.2d 41 (5th Cir., 1980) indicates that changing the surface of land or establishing grading patterns on land will result in a point source where the runoff from the site ultimately is discharged to waters of the United States. The Agency will embrace the broadest possible definition of point source consistent with the legislative intent of the CWA and court interpretations to include any identifiable conveyance from which pollutants might enter the waters of the United States.

3 CAFOs With Expired Permits or Pending Applications

All facilities which have expired permits and have reapplied in accordance with 40 CFR 122.21(d); and all facilities which have submitted applications in accordance with 40 CFR 122.21(a) are automatically covered by the terms of this permit. A permittee can request to be excluded from coverage by this permit by applying for an individual permit in accordance with 40 CFR 122.28(b)(3)(iii). If the reasons cited are adequate to support the issuance of an individual permit, the Director shall grant the request by the issuance of an individual permit. Submission of an application does not authorize the permittee to discharge.

Some regulated concentrated animal feeding operations which are smaller than the levels specified in 40 CFR 412.10 may wish to consider requesting an individual permit (as discussed in part V of this fact sheet). However, Region 6 believes that biological or other treatment for these facilities will be excessively expensive. We expect, therefore, few of these smaller facilities to utilize this option. In any case, this reason for requesting an individual permit will to apply for any feedlot with effluent guidelines establishing a no discharge to waters to the U.S. requirement.

4. Feedlot Discharge Through Other Sewer Systems

The November 16, 1990 notice clarifies that industrial discharges to waters of the United States, including those through storm sewers to waters of the United States, must obtain NPDES permit coverage. However, discharges associated with industrial activity to sanitary sewer systems (i.e. those systems which are part of a Wastewater Treatment Plant collection system), including combined sewer systems, generally do not need to obtain NPDES permit coverage, although they may be subject to pretreatment requirements.

5. Permit Application Requirements

Feedlots are subject to the application deadlines required of storm water dischargers with storm water associated with industrial activity as defined in the November 16, 1990 **Federal Register**. 40 CFR 122.21 excludes persons covered by general permits from requirements to submit individual permit applications. Coverage under this general will eliminate the operators need to apply for an individual permit.

*a. Application of general permit.* General permits are an important tool for assuring adequate environmental safeguards for large numbers of similar facilities without the administrative and resource burdens involved in individual permit issuance. EPA wants to emphasize that, except for the procedural differences set out at § 122.28 in the NPDES regulations, general permits are analogous to individual permits in every respect. General permits are still subject to the same reporting and monitoring requirements, limitations, enforcement provisions, penalties, and other substantive requirements as individual permits. General permits should be viewed as an administrative tool enabling the issuance of one permit to authorize a group of dischargers. The general permit program has been available to authorize NPDES States since its inception in 1979. Most general permits utilize a Notice of Intent (NOI) as a mechanism to register covered facilities. The administrative burdens on the permit issuing agency and the costs to dischargers can be reduced by replacing more complicated permit application requirements with simplified requirements. The public notice for a general specifies whether a Notice of Intent (NOI) is required prior to coverage.

There are two situations where an NOI would not have to be submitted to authorize discharges under a general permit are authorized by 40 CFR 122.28(b)(2)(v). The first situation is where the Director notifies the discharger that the discharge is covered by the permit. The second situation is where the Director decides that an NOI is inappropriate for a general permit. To make the latter decision, the Director considers the type of discharges, the expected nature of the discharges, the potential for toxic and conventional pollutants in the discharges, the expected volume of the discharges, other means of identifying discharges covered by the permit, and the estimated number of discharges to be covered by the permit. Where this approach is pursued, the Director is required to describe the reasons for not requiring an NOI in the fact sheet of the general permit.

This public notice specifies that a Notice of Intent (NOI) is not required for coverage under this general permit. A Notice of Intent (NOI) in general permits is a mechanism which can be used to establish an accounting of the number of permittees covered by the general permit, the nature of operations at the facility generating the discharge, and their identity and location. This type of information is appropriate when there is a discharge being monitored and tracked, however, in situations where there is to be no discharge, via requirements to contain all wastewater and storm water, it is unnecessary for the Agency to track these non-dischargers. Region 6 estimates that there are over 1000 concentrated animal feeding operations (CAFOs) in the regulated four state area. Tracking activities and inspections would be a severe drain on the Region's resources, and would increase the work load on the existing program. Region 6 believes that violations of the permit will be self reported by the permittee or the concerned public. In addition, the States in Region 6 have an compliance tracking and inspection system which is already established, and will provide the Director with information concerning any water quality violations.

Where a violation is not reported by the operator of the facility, the concerned public will bring such violations to the attention of the Director. Upon the resulting inspection of the site and a review of the pollution prevention plan and other required documentation, EPA will be able to determine if the permittee has violated the permit conditions by reviewing the required documentation to be kept on site. This will allow the Agency to focus its inspection and enforcement efforts toward the water quality problems and violators, and will afford Region 6 the same enforcement potential to insure compliance with the permit as it would enjoy with a Notice Of Intent. Due to the opportunity for public scrutiny, all permittees will develop adequate documentation of compliance with this permit. For these reasons it will not be necessary to register the permittees under the general permit via a notice of intent. Therefore, in accordance with 40 CFR 122.28(b)(2)(v) a notice of intent shall not be filed by the operator to gain coverage under this permit. This permit will apply to all CAFOs covered by permitting requirements under 40 CFR 122.23.

*b. Individual permit application requirements.* Facilities which the Director determines are causing or contributing to a violation of water quality standards may be required to file an individual permit application. The requirements for an individual permit application are reflected in Form 1 and Form 2B. These forms require the development and submission of detailed site-specific information. The information is intended to be used to develop the site-specific conditions generally associated with individuals permits. Individual permit applications may be needed under several circumstances. Examples include: General permits where the owner or operator of a discharge authorized by a general permit is requesting to be excluded from the coverage of the general permit by applying for a permit (see 40 CFR 122.28(b)(2)(iii) for EPA-issued general permits); or the Director requiring an owner or operator of a discharge authorized by a general permit to apply for an individual permit (see 40 CFR 122.28(b)(2)(ii) for EPA-issued general permits).

Advantages of a General Permit:

- General requirements and recommended management practices will be established for discharges covered by the permit;
- Facilities whose discharges are covered by the permit will have an opportunity to comply with the CWA, and will therefore, be afforded some protection from third-party litigation;
- The public will have the opportunity through the Agency to review reports and to comment on permitting activities for concentrated animal feeding operations;
- Many Facilities without an existing permit will automatically have requirements to comply with Technology and Management requirements.

*C. Burdens on Permitting Agencies*

The focal issue in developing a general permit for CAFOs under the NPDES permitting program is to provide an expedient and economic permitting option for both the regulated community and the permitting Agency. Implementing the NPDES permitting program is a complex process. The steps in developing individual permits are very resource intensive. The issuance of a general permit to reduce the administrative burden benefits the Agency, the tax payer, and the environment. Major steps to issue a permit include:

- *Training of Permit Writers.* Permit writers must acquire the appropriate expertise necessary for writing permits.
- *Permit Application Review.* Permit applications (or notices of intent to be covered under a general permit) that are received initially must be screened and reviewed for completeness. When this review indicates that necessary information has not been provided, the applicant must be notified and an explanation of the deficiency provided. Applications that are complete must be assigned to a permit writer and filed.
- *Preparing a Draft Permit.* Preparing a draft permit and fact sheet involves a technical evaluation of the discharge based on a review of the permit application or other appropriate information. The appropriate factors associated with technology-based or water quality-based standards must be evaluated. Appropriate effluent limitations, monitoring requirements, and any special conditions need to be developed.
- *Public Notice of the Draft Permit.* Draft permits must undergo appropriate public notice. In some cases public hearings must be held.
- *Permit Issuance.* Public comments must be received, evaluated, and responded to in developing a final permit. Any request for an evidentiary hearing must be addressed.
- *Compliance Monitoring/ Enforcement.* A number of compliance monitoring activities can be conducted including reviewing discharge monitoring reports, conducting site inspections, and evaluating other information. Enforcement actions include assessing penalties and issuing administrative orders. In some cases, enforcement actions lead to litigation.

In addition to these steps, a number of administrative functions, such as responding to public inquiries, can create burdens for permit issuing agencies. The number of such inquiries can be particularly high when a general permit covering a large regulated community is involved.

As discussed earlier in this notice, efforts to permit point source discharges under the CWA have focussed primarily on industrial process discharges and discharges from POTWs. EPA and authorized NPDES States have issued more than 48,600 NPDES permits for industrial process discharges, 15,600 NPDES permits for POTWs, and approximately 59 general permits have been issued covering at least 7,200 facilities. The Agency estimates that there are over 1000 concentrated animal feeding operation facilities in Region 6. Most feedlot facilities have not been addressed under the NPDES program in the past. Today's notice incorporates several elements of EPA's initial attempts to establish a workable NPDES program that reflects the realities of these administrative burdens.

*D. Storm Water Permitting Strategy*

Feedlot facilities are subject to the established storm water permitting program. The Agency plans to address permitting for those facilities listed in the November 1990 FR with the following priority based strategy:

- *Tier I—Baseline Permitting:* One or more general permits will be developed to initially cover the majority of storm water discharges associated with industrial activity;
- *Tier II—Watershed Permitting:* Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual or watershed-specific general permits.
- *Tier III—Industry-Specific Permitting:* Specific industry categories will be targeted for individual or industry-specific general permits; and
- *Tier IV—Facility-Specific Permitting:* A variety of factors will be used to target specific facilities for individual permits.

1. Tier I

Although facilities with National Effluent Guidelines for storm water are included as one of the categories which must apply under the November 1990 FR, those facilities were excluded from coverage under the proposed Tier I Baseline General Permit for Storm Water Discharges Associated With Industrial Activity, and therefore, no permitting opportunity is provided for CAFOs.

2. Tier II

Where watersheds are shown to be impacted EPA will be issuing Tier II Watershed General Permits. These permits will apply to all discharges of storm water in the watershed; this will include the discharges from CAFOs.

3. Tier III

Specific industry categories will be targeted for individual or industry-specific general permits. These permits will allow permitting authorities to focus attention and resources on industry categories of particular concern, industries with effluent guidelines, and/or industry categories where tailored requirements are appropriate. The Agency will work with the States to develop model permits for selected classes of industrial storm water discharges. EPA is also working to identify priority industrial categories in the two Reports to Congress required under section 402(p)(5) of the CWA. This

permit is one of the first Tier III industry specific general permits developed by Region 6 under this strategy.

4. Tier IV

Individual permits will be issued where warranted by: the pollution potential of the discharge, the need for individual control mechanisms, water quality concerns, and where reduced administrative burdens exist. Where water quality concerns warrant the development of site specific individual permits for any CAFO facility, Region 6 will develop these permits on a priority basis.

*E. Wastewater Treatment Strategies*

1. End-of-Pipe Treatment

End-of-pipe treatment requirements are typically imposed through numeric effluent limitations, which provide the discharger with flexibility to design the most cost effective type of treatment for the given facility. For many types of industrial facilities, it may be a requirement to collect and treat the runoff from targeted areas of the facility. This approach was taken with 10 industrial categories with national effluent guideline limitations. There are several basic similarities among the national effluent guideline limitations:

- To meet the numeric effluent limitation, most, if not all, facilities must collect and temporarily store onsite runoff from targeted areas of the facility;
- The effluent guideline limitations do not apply to discharges whenever rainfall events, either chronic or catastrophic, cause an overflow of storage devices designed, constructed, and operated to contain a design storm. The 10-year, 24-hour storm, or the 25-year, 24-hour storm commonly are used as the design storm in the effluent guideline limitations; and

2. Best Management Practices

The term best management practices (BMPs) can describe a wide range of management procedures, schedules of activities, prohibitions on practices, and other management practices to prevent or reduce the pollution of surface waters of the United States. BMPs also include operating procedures, treatment requirements and practices to control feedlot runoff, drainage from raw materials, spills or leaks. BMPs can be established in two ways: BMP plans and site or pollutant-specific BMPs. EPA often establishes NPDES permit conditions that require generic BMPs to be identified and implemented through BMP plans. General permits often require BMP plans to insure compliance with the effluent limitations of the permit. Many of the BMPs in a typical BMP plan involve planning, reporting, training, preventive maintenance, and good housekeeping. Many facilities currently employ BMPs as part of normal operation. Experience has shown that many spills of hazardous chemicals can be attributed, in one way or another, to human error. Improper procedures, lack of training, and poor engineering are among the major causes of non compliance. Experience has shown that BMPs can be used appropriately and BMP plans can effectively reduce pollutant discharges in a cost-effective manner. BMP plans should reflect requirements for spill prevention. BMP plans should also ensure that solid and hazardous waste is managed in accordance with requirements established under the Resource Conservation and Recovery Act (RCRA) where appropriate. In these cases management practices required under RCRA should be expressly incorporated into the BMP plan.

Where specific pollutants have been identified as associated with a particular industrial activity, more advanced site or pollutant-specific BMP requirements can be developed. The following four categories describe these site or pollutant-specific BMPs:

- Prevention.
- Containment.
- Mitigation.
- Ultimate Disposition.

This general permit requires that each permittee covered by this permit develop a BMP plan to insure that the facility will remain in compliance with the effluent guidelines; and will provide the Agency with an opportunity to review documentation of the facility's "No Discharge" status. Pollutant specific BMPs will be developed for CAFOs if water quality violations identify specific pollutants which must be addressed for the protection of surface waters. These activities are most appropriately employed in individual site specific permits.

3. Traditional Management Practices

Many management practices have been employed by industry for many years and have gained acceptance as appropriate operation and maintenance. Because these practices enjoy widespread use they are considered to be "economically achievable". For example, lined retention or detention basins, water reuse, and land application practices can be used to contain waste and precipitation waters. However, care must be taken to evaluate the potential of many of these traditional devices for ground water contamination.

4. Elimination of Pollution Sources

In the case of CAFOs, the elimination of a pollution source may be the most effective way to control pollutants in discharges and to eliminate discharges. Options for reducing pollution sources include changing chemicals used at the facility, and modification of material management practices such as moving storage areas into buildings. Some options for reducing pollutants in discharges from feedlots include: *Building better containment structures; Implementing Best Management Practices to prevent pollution; Using traditional management practices; and Eliminating pollution sources.* Development of comprehensive control strategies should include controls from each of these categories.

## IV. Draft General Permit for Concentrated Animal Feeding Operations

*A. Today's Notice*

Today's notice proposes a general permits for Concentrated Animal Feeding Operations (CAFOs) in four States (LA, TX, OK, NM). The following portion of this notice provides notice for draft NPDES general permits and accompanying fact sheets for CAFOs in LA, NM, OK, and TX. These draft general permits are intended to cover concentrated animal feeding operations with NPDES permitting requirements. The proposed permit contains: The Federal guidelines; the best management practices to insure that the permittee complies with the effluent requirement of "no discharge" to waters of the U.S.; and the technology standard set for storm water (i.e. the Pollution Prevention Plan). The final general permits will include all more stringent State Standards for CAFOs in that State.

Effective Date of Requirements

This permit shall be effective upon issuance.

EPA Contacts

LA, NM, OK, TX

United States EPA, Region VI, Water Management Division, (6W–PM), First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, suite 1200, Dallas, TX 75202.

Proposed Schedule for General Permits Issuance

Draft Permits Transmitted to State requesting Section 401 certification: July 22, 1992.

Notice of Draft Permits in Federal Register: July 22, 1992.

Comment Period Closes

On the date 10 days after the last public hearing in that State. The comment period for the permit in the State of Texas ends August 28, 1992. The comment period for the permit in the State of Louisiana ends September 4, 1992. The comment period for the permit in the State of Oklahoma ends September 8, 1992. The comment period for the permit in the State of New Mexico ends September 8, 1992.

*B. Fact Sheet for Draft General Permit*

Publication of this draft general permit and fact sheet is designed to comply with the requirements of 40 CFR 124.10 (Public Notice of Permit Action and Public Hearing) simultaneously for all 4 draft general permits being noticed today. The language of the draft general permits is provided at the end of the preamble of this notice. In general, most conditions of the draft general permits are intended to apply to all of the general permits indicated above. Where conditions in different permits vary, these differences are indicated in the draft general permit.

1. Authority

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act (CWA)) was amended to provide that the discharge of any pollutants to waters of the United States from any point source is unlawful, except if the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. 40 CFR 122.23 and 122 Appendix B establish concentrated animal feeding operations as a point source subject to NPDES permitting requirements.

2. Coverage Under the Proposed General Permit

*Types of Discharges Covered.* In 1976 (FR 11458), EPA promulgated the regulatory definition of Concentrated Animal Feeding Operations which addresses discharges of waste and precipitation waters from feedlots. (This definition is reprinted in the definition section of the draft general permit (part VII. 5.) found in today's notice). The permits that are being proposed are intended to cover all CAFOs with NPDES permitting requirements in the four States (TX, LA, OK, and NM), except duck facilities established prior to 1974. The effluent guidelines for these duck facilities are for biological treatment which is inconsistent with the "no discharge" requirements of the proposed permits. These discharges are best addressed with site specific, water quality permitting. The effluent limitations established for existing duck CAFOs limit total biological oxygen demand discharged per 1000 ducks to 1.66 kg as a daily maximum and 0.91 kg as a 30 day average. Pathogen requirements in the permit limit fecal coliform discharged to 400 colonies/100 ml of discharge. Facilities with new source performance standards (those facilities established after 1974) are required to meet the effluent limitation of "no discharge" to waters of the U.S. Duck facilities established after 1974 are covered by the proposed permits.

*Designated Concentrated Animal Feeding Operations.* Where the Director becomes aware of facilities which do not fit the definition of "concentrated" in 40 CFR part 122 Appendix B, but are considered by the Director to be contributing to a water quality problem, the Director may designate the animal feeding operation as a point source subject to the terms of this permit.

*CAFOs With Expired Permits or Pending Application.* Many existing CAFOs have submitted applications in accordance with NPDES requirements and have remained unpermitted due to the administrative work load and priorities. All of these applicants will gain coverage under the NPDES program through the issuance of this permit. Region 6 believes this benefits those applicants without an NPDES permit. Any permittee which desires an individual permit may petition the Director in accordance with Part I. D. 2. of the permit.

*Additional Coverage Requirements for CAFOs Established After Permit Issuance.* All CAFO established after the issuance of this permit will be subject to a full environmental review by this Agency to insure compliance with the National Environmental Policy Act. New CAFO facilities shall, prior to constructing, complete the form provided in Appendix D of this permit. The permittee will be required to have documentation of "No Significant Impact" or a completed Environmental Impact Statement, in accordance with an environmental review conducted by this Agency, for coverage under this permit. Completed documentation of the Agency's review and findings must be on site prior to any operations as a CAFO, and must remain on site as a condition of coverage under this permit.

3. Limitations on Coverage

The Director may deny coverage under this permit to any Animal Feeding Operations, that the Director determines is contributing to a water quality standard violation. The permittee will be notified that the Director has made such a determination, and will be required to submit an individual permit application on or before a date specified in the notification. The permittee may petition for more time if the permittee can show just cause for the delay.

Where discharges contain significant amounts of pollutants that can be removed by a sewage treatment plant, the discharge can be discharged to the sanitary sewage system. Such diversions must be coordinated with the operators of the sewage treatment plant and the collection system to avoid compounding problems with either combined sewer overflows (CSOs), basement flooding or wet weather operation of the treatment plant. It is unlikely that Wastewater Treatment Plants will be considerate of discharges from the CAFO facilities due to the volume of storm runoff which would accompany such a discharge. Where CSO discharges, flooding or plant operation problems can result, onsite storage followed by a controlled release during dry weather conditions may be considered. If the discharge is made to a Wastewater Treatment Plant which discharges in accordance with an NPDES permit, no permit is required, however, the discharge must be compliant with the pretreatment standards listed in 40 CFR part 412.

4. Permit Conditions

*a. Description of draft permit conditions.* The conditions of these draft permits have been developed to be consistent with the technology-based standards of the CWA (BAT/BCT) and the technology standard for storm water pollutant source controls. Based on a consideration of the appropriate factors for BAT and BCT requirements discussed in this fact sheet for controlling pollutants from feedlots, the draft general permit proposes effluent limitations, prohibitions, a set of tailored requirements for developing and implementing best management practices and pollution prevention plans.

The draft permit conditions reflect EPA's decision to select a number of best management practices and traditional management practices which prevent discharges. The draft permit conditions applicable to these facilities are not numeric effluent limitations, but rather are requirements for developing and implementing site specific controls to eliminate discharges except in the case of the 25 year, 24-hr. storm event.

EPA is authorized under 40 CFR 122.44(k)(2) to impose BMPs in lieu of numeric effluent limitations in NPDES permits when the Agency finds numeric effluent limitations to be inappropriate.

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EPA may also impose BMPs which are "reasonably necessary * * * to carry out the purposes of the Act" under 40 CFR 122.44(k)(3). Both of these standards for imposing BMPs are recognized in *NRDC* versus *Costle*, 568 F.2d 1369, 1380 (D.C. Cir. 1977). The conditions in the draft general permits are proposed under the authority of both of these regulatory provisions. The BMP and pollution prevention requirements in these permits operate as limitations on effluent discharges that reflect the application of BAT/BCT. This is because the BMPs identified require the use of control technologies which, in the context of these general permits, are the best available of the technologies economically achievable (or the equivalent BCT finding). See, e.g. *NRDC* versus *EPA*, 822 f.2d 104, 122–23.(D.C. Cir. 1987) (EPA has substantial discretion to impose non-quantitative permit requirements pursuant to section 402(a)(1)).

*b. Effluent limitations.* Discharge limitations for all CAFOs except Duck Facilities Established prior to 1974.

The effluent limitations in this permit are established to be consistent with the BAT requirements for feedlots established in 40 CFR 412. The permittees will be required to contain all wastewaters and all precipitation runoff from the CAFO areas in the amount of the 25 year, 24-hour storm event. This source control of wastewater and contaminated storm water is considered to be both an industry standard and the most effective water quality control available to CAFO facilities. Region 6 requests comments on the effectiveness of this control measure, as well as, alternative industry standards used today to control the discharge of pollutants into waters of the United States. In addition the permit includes requirement for the permittee to document how the facility controls runoff in compliance with the permit.

*c. Non-numeric limitations, best management practices, and other conditions*——(1) *Prohibitions.* The permittee will be prohibited from discharging any wastes into the waste contaminant system which are not a product of proper operation and maintenance of the CAFO. This will effectively prohibit the facility from accepting outside wastes or from dumping other potentially hazardous materials into the retention system. This is necessary because any materials introduced into the containment structures have the potential to be discharged to a Water of the U.S. whenever a rainfall event exceeds the 25 year, 24-hour storm.

(2) *Proper Operation and Maintenance Requirements.* (A) Proper Operation and Maintenance Record. The permittee will be required to record the operation and maintenance of the facility. This information will provide the opportunity for the Agency or authorized agent to determine if the facility is in compliance with the permit conditions and the pollution prevention plan. This will also provide the permittee with information on the effectiveness of the BMP's established and the terms of the pollution plan.

Included in this record are: (a) Calculations required for application rates and retention facility capacity; (b) documentation of existing retention facility capacity; (c) date log indicating date that pens, lot, fence lines, feed lanes, and feed storage areas are cleaned; (d) date log indicating monthly inspection of retention facility for structural integrity and maintenance, including mowing and vegetation maintenance; (e) date log indicating weekly inspection of wastewater level in retention facility, including specific measurement of wastewater level; (f) if the waste (manure) is sold or given to other persons for beneficial use, maintain a log of: date of removal from the feedlot; name of hauler; and amount, in dry tons, of waste removed from the feedlot.

Region 6 believes that these records are required to determine if the facility has been compliant with the "no discharge" effluent limitation. The Agency must be able to determine when wastes have been removed and where they were disposed of, to determine that the wastes were not discharged into a water of the U.S. Region 6 requests comments on the appropriateness of the information required in the Operation and Maintenance Record, and suggestions of any additional records which the public believes are necessary to insure compliance with the requirements of the permit.

(B) Required Best Management Practices. the BMP's required in the permit include requirements for: (a) Retention structure design, capacity, operation and maintenance. These required BMPs insure that the design and maintenance of the retention facilities will be sufficient to prevent any discharge to a water of the U.S. that is not in compliance with the terms of this permit.

(b) Location requirements. Retention facilities and waste storage areas must not be located in areas of flooding, or where the storage of such wastes endangers public health.

(c) Waste removal. Wastes must be stored and removed in such a manner as to prevent discharge of the wastes to waters of the U.S.. Where waste disposal includes land application, the BMPs included require that the land application be at agronomic rates. Where wastes are applied in excess of plant uptake rates, the excess has the potential to enter surface waters through leaching and/or runoff.

(d) Pesticide use. The Region believes that there is reasonable potential for pesticides from CAFO facilities to be discharged to surface waters through runoff, and through discharges from the retention facility during storm events beyond the design retention. Proper use and storage of pesticides, and reuse of "dip vat" residues to spray pens will reduce the amounts of pesticide residues which runoff to the retention facility. Also the operator should evaluate the use of pesticides which are toxic to wildlife and aquatic life, and which do not break down readily into less toxic components.

(e) Dead animal removal. Dead animals must be disposed of in a way that prevents contaminated discharges to surface waters, and does not endanger public health.

The Agency requests comments from both the regulated community and the public on the BMP's required in the permit. Information is solicited regarding the potential effectiveness of the required BMP's as components of proper operation and maintenance of a concentrated animal feeding operation. It is important to the Agency in its efforts to protect the environment, and to determine the economic achievability of the required BMP's.

It is common for State Soil Conservation Service (SCS) to develop plans for operators of CAFOs, outlining requirements for retention structures and facility management practices, particularly with regards to the land application of the facility wastes. Where provisions in the SCS plans are equivalent to the BMPs outlined in this permit, the permittee may use the plan developed by the SCS for compliance with the permit. The Region believes that the SCS site specific evaluation will provide the facility with a plan that will be protective of the federal standards required. In developing the documentation required by this permit, the permittee may refer to the section of the SCS plan which satisfies that particular permit requirement. This simple reference will allow the permittee to avoid redundant documentation. The Agency requests comments from both the regulated



community and the public on the appropriateness of using SCS plans to comply, in part, with the BMP's required in the permit.

(C) Pollution Prevention Plan. The pollution prevention plan is considered to be the BAT standard requirement for the regulation of storm water. CAFOs with national effluent guidelines for storm water are subject to the requirements of the National program to regulate the pollutants discharged in storm water runoff. Facilities in compliance with the requirements of this permit will, in case of catastrophic, or chronic rain events, discharge to surface waters. The Pollution Prevention Plan will reduce these occasions, and reduce the pollutants these discharges will carry with them. All facilities covered by these general permits must prepare, retain and implement a pollution prevention plan. These tailored requirements have been developed to allow the implementation of site-specific measures that address features and activities, for the control of pollutants associated with feedlots. In 1979, EPA completed a technical survey of industry best management practices (BMPs) which was based on a review of practices used by industry to control the non-routine discharge of pollutants from non-continuous sources including runoff, drainage from raw material storage areas, spills, leaks, and sludge or waste disposal. This review includes analysis and assessment of published articles and reports, technical bulletins, and discussions with industry representatives through telephone contacts, written questionnaires and site visits.

The review identifies two classes of pollution control measures. The first class of controls includes those management practices which are generally considered to be essential to a good BMP program, low in cost, and applicable to broad categories of industry and types of substances. These practices are independent of the type of industry, ancillary sources, specific chemicals, group of chemicals, or plant-site locations. The survey concludes that these controls are broadly applicable to all industry types and activities, and should be viewed as minimum requirements in any effective BMP program. The second class of controls includes management practice controls which provide a second line of defense against the release of pollutants and includes prevention measures, containment measures, mitigation and cleanup measures, and treatment methods.[1] Since that time, EPA has, on a case-by-case basis, imposed BMP requirements in NPDES permits.

Major classes of water management controls for feedlots include: Land application of runoff onsite; water retention structures and artificial wetlands; and water detention structures. For many sites, a combination of these controls may be appropriate. The Agency is using the term "pollution prevention plan" in the context of these control plans because the term emphasizes that requirements in the plans provide a flexible basis for developing site-specific measures to minimize and control the amounts of pollutants that would otherwise enter the retention basin.

The plan requirements are based primarily on traditional management, pollution prevention and BMP concepts which have been tailored to feedlots. These permits establish the framework and the basic elements required for feedlot "Best Management Practices", in addition, the pollution prevention plan and suggested management practices provide flexibility to allow the development of site-specific measures. At a given site, specific measures incorporated into the pollution prevention plan will reflect the sources of pollutants that have been identified at the site. For example, a facility that has identified particular pesticides as potential sources of pollution will incorporate appropriate good housekeeping and management practices to address these sources. However, a facility not using pesticides would not have to incorporate measures to address these pesticides in their plan. The permittee has the flexibility to develop the plan themselves, to hire a professional, or to use components of a site specific SCS plan. At a minimum the following nine specific requirements should be addressed in the BMP plan to reduce pollutants in runoff from the facility:

- Pollutant Sources.
- Management Controls.
- Employee training.
- Visual Inspections.
- Preventive maintenance.
- Reporting and notification procedures.
- Housekeeping.
- Sedimentation and erosion.
- Spill response.

The Agency requests comments from both the regulated community and the public on the appropriateness of the components of the pollution prevention plan. Information regarding the potential effectiveness of the pollution prevention plan in preventing the discharge of pollutants from CAFOs is of great interest to the Agency.

*Plan Requirements for Feedlot Facilities*—(i) *Source Identification.* Pollution prevention plans must be based on an accurate understanding of the pollution potential of the site. The first part of the plan requires an evaluation of the sources of pollution at the side. The permit proposes that the source identification components of the plan identify all activities and significant materials which may potentially be significant pollutant sources. Plans must include: (a) A site map, or topographic map indicating, an outline of the drainage area of the concentrated animal feeding area; each existing structural control measure to reduce pollutants in wastewater and precipitation runoff; and surface water bodies. (b) A written description of materials that are used, stored or disposed of at the CAFO (such as pesticides, cleaning agents, fuels etc.). (c) A list of spills and leaks of toxic or hazardous pollutants that occurred at the facility after the effective date of this permit and have the potential to contribute pollutants to runoff waters. (d) A summary of any existing sampling data describing pollutants in overflow or bypass discharges.

Other information to consider, if applicable, include the manner and frequency in which pesticides, herbicides, fertilizers or soil enhancers are applied at the site and an evaluation of significant spills or leaks of conventional, toxic and hazardous pollutants based on a description of the materials released, an estimate of the volume of the release, the location of the release, and any remediation or cleanup measures taken. The Agency requests comments on what other types of information may be appropriate for source identification purposes.

*(ii) Practices and Program Elements to Control Pollutants.* The second major section of the pollution prevention plan addresses practices and program elements to reduce pollutants in areas identified as having high potential for runoff contamination. Potential ground water impacts should also be considered by operators when designing storage devices. Operators designing storage devices, such as ponds, should be aware of federal requirements for the protection of groundwater and comply with those requirements.

*Wastewater Management Controls.* Each facility covered by this permit

[1] For a complete description of the BMP survey, see "NPDES Best Management Practices Guidance Document", U.S. EPA, December 1979, EPA–600/9–79–045.

must develop a description of management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The following management controls must be addressed:

• Wastewater retention facilities. The permittee will have documentation at the facility site supporting the management controls used to contain wastewaters and storm waters from the concentrated feeding areas. The pollution prevention plan must include all calculations used to support design, construction, and size of the retention structures, as well as all factors and calculations used in determining land application rates, acreage, and crops. This documentation may be developed by the State Soil Conservation Service. This documentation will allow the Agency to determine if the containment structure is adequately designed to contain the required 25 year, 24-hour event.

• Liner Requirement. Over most of EPA Region 6 surface water flow is sustained throughout much of the year by ground water inflow. As a result, contaminants which leak from containment structures to the ground water will typically move underground toward local streams and rivers where they will be discharged and affect wager quality. The permittee must have on site documentation that no hydrologic connection exists between the contained wastewater and surface waters of the United States. The permittee is given two options to demonstrate the lack of hydrologic connection: (1) Document that there can be no significant leakage from the retention structure; or (2) Document that leakage from the retention structure would not migrate to surface waters. These two options allow the permittee to take into account the natural situation beneath the retention structure (such as natural materials or isolated ground waters). The permittee should be aware that man made connections from ground waters to surface waters via wells and irrigation must be taken into account when determining hydraulic connections. Where the permittee cannot document that no hydrologic connection exists, the containment structure must have a liner which will prevent the potential contamination of surface waters. Liners for retention structures should be constructed in accordance with good engineering practices and must be certified by a Professional Engineer. Liner maintenance shall include inspection at least once/2 years. Liner design may be in accordance with a SCS plan. Although the requirement for liner installation is to protect surface waters, the permittee is strongly encouraged to provide a liner for any containment structures to comply with existing regulations for ground water protection.

• Manure and Pond Solids Handling and Land Application. Requirements in the permit and Pollution Prevention Plan do not allow the storage of wastes where there is the potential for inadvertent release to any surface water. Storage areas cannot be placed so as to be threatened by flood waters. Wastes cannot be applied to land during or immediately preceding rain events, so as to avoid runoff of the wastes. Land application rates and procedures that are developed for the facility in accordance with State guidelines may be used as part of the Pollution Prevention Plan for land application of wastes. The pollution prevention plan must ensure and document that procedures for the handling and disposal of manure and pond solids complies with the permit requirements. Documentation of waste storage protocol, land application procedures, and manure handling activities are required by the permit to ensure that none of the wastes or resulting pollutants are discharged to a water of the U.S. Permittees are encouraged to apply the manure as fertilizer. However, where local water quality is threatened by phosphorus, the permittee is cautioned to limit the application rate to the crop uptake rate of phosphorus.

*Preventive Maintenance.* A preventive maintenance program involves inspection and maintenance of all management devices (cleaning oil/water separators, catch basins) as well as inspecting and testing equipment and systems to uncover condition that could cause breakdowns or failures resulting in discharges of pollutants to surface wasters. A good preventive maintenance program includes identifying equipment or retention systems used; periodically inspecting or testing equipment and retention system; adjusting, repairing, or replacing items; and maintaining complete records on the equipment and retention systems.

*Good Housekeeping.* Good housekeeping requires the maintenance of a clean, orderly facility. Good housekeeping includes establishing housekeeping protocols to reduce the possibility of mishandling chemicals or equipment and training of employees in housekeeping techniques. Pollutants that may enter retention structures at CAFO sites due to poor housekeeping include oils, grease, paints, gasoline, truck washdown, solvents litter, debris and sanitary wastes. Management plans can address the following to prevent the discharge of these pollutants:

• Designate areas for equipment maintenance and repair;

• Provide waste receptacles at convenient locations and provide regular collection of wastes;

• Locate equipment washdown areas on site, provide appropriate control of washwaters;

• Provide protected storage areas for chemicals, paints, solvents, fertilizers and other potentially toxic materials; and

• Provide adequately maintained sanitary facilities.

*Spill Prevention and Response Procedures.* Areas where potential spills can occur, and their accompanying drainage points should be identified clearly in the pollution prevention plan. Where appropriate, specifying material handling procedures and storage requirements in the plan should be considered. Procedures for cleaning up spills should be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel. Spill response procedures should avoid discharging to retention structures unless necessary because of immediate safety considerations.

*Sediment and Erosion Prevention.* The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify measures to limit erosion.

*Employee Training.* Employee training programs are necessary to inform personnel at all levels of responsibility of the requirements of the permit and of the procedures outlined in the pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan should identify periodic dates for such training.

*Inspections and Recordkeeping.* The facility operator or a responsible person will be named in the Pollution Prevention Plan to develop the plan and do the required inspections and reporting. This person will assist the facility manager in its implementation, maintenance, and revision. The activities and responsibilities of the designated person should address all aspects of the facility's pollution prevention plan. However, EPA prefers that the facility manager, not the employee have overall responsibility

and accountability for the quality of the pollution prevention plan, to ensure adequate implementation of the plan.

• Recordkeeping and Internal Reporting Procedures. A record keeping system ensures adequate implementation of the pollution prevention plan. Incidents such as spills, leaks and improper dumping, along with other information describing the quality and quantity of discharges should be included in the records. Inspections and maintenance activities such as cleaning oil and grit separators or catch basins should be documented and recorded. Records of releases of a hazardous substance, describing each release that has occurred at any time after the date of three years prior to the issuance of this permit, measures taken in response to the release, and measures taken to prevent recurrence must be included in plans.

• Visual Inspections. Qualified plant personnel should be identified to inspect designated equipment and storage areas. Typical inspections should include examination of pipes, pumps, tanks, supports, foundations, dikes, and drainage ditches. Material handling areas should be inspected for evidence of, or the potential for, pollutants entering the drainage system. A tracking or follow up procedure must be used to ensure that appropriate and adequate response and corrective actions have been taken. Records of inspections are required to be maintained.

• Site Inspection. It is important that the permittee conduct annual inspection of the facility site to verify that the description of potential pollutant sources is accurate, the drainage map has been updated or otherwise modified to reflect current conditions; and the controls outlined in the pollution prevention plan to reduce pollutants are being implemented and are adequate. Records documenting significant observation made during the site inspection must be retained as part of the pollution prevention plan for a minimum of three years. This allows the Agency access to records of permit compliance much the same as all self reported information required in NPDES permits.

*Special requirements for discharges through municipal separate storm sewer systems serving a population of 100,000 or more.* Facilities discharging through a municipal separate storm system serving a population of 100,000 or more shall comply with applicable requirements in the municipality's storm water management program developed under NPDES permits issued for the discharge of the municipal separate storm sewer system that receives the CAFO facility's discharge, provided the operator of the CAFO has been notified of such conditions.

*Consistency with other plans.* Facilities which have requirements for retention capacity and land application of wastes provided in site specific plans developed by SCS, or Best Management Practices (BPM) Programs developed by a professional consultant may incorporate any part of such plans into the pollution prevention plan by reference.

Additional Information

Additional technical information on BMP's and the elements of a BMP plan is contained in the publication entitled "NPDES Best Management Practices Guidance Document," U.S. EPA, June 1981. Site or Pollutant-Specific Best Management Practices. Information more specific to CAFO is available through Farm*A*Syst (national contact ph.# 608–262–0024) developed for EPA by the University of Wisconsin.

Additional BMPs are included in appendix A of the permit. These BMP's are recommended for use by the operator of CAFO facilities, but are not required. Their inclusion in the permit is meant to provide the facility operator with guidance and recommendations. A decision to use the BMPs in appendix A is voluntary and should take into account site specific factors.

The permittee is also provided with reference application rates and manure nitrogen values in Appendices B&C to help the operator with the documentation of land application procedures. The information provided in the appendices of the permit are for reference only. Site specific information should be taken into account prior to the land application of any CAFO wastes. Additional information on manure content and application rates can be obtained through the Soil Conservation Service and the Texas Agricultural Extension Service. The operator may also wish to review the information available through the American Society of Agricultural Engineers, 2959 Niles Road, St. Joseph, Michigan 49085–9559.

(D) State Standards. In accordance with section 301(b)(1)(C) of the CWA these permits must include all State standards and rules which may be more stringent than the federal requirements. The following requirements are promulgated State Standards for CAFOs in Texas and as such will be included in the final NPDES general permit for CAFOs in the State of Texas: Subchapter B Livestock and Poultry Production Operations Rules Effective 4/1/87 part 321.36. Ground Water Protection, and part 321.40 Edwards Aquifer. These sections of the Texas rules establish liner requirements for all new CAFOs; and prohibit the establishment of any new CAFO on the recharge zone of the Edwards Aquifer.

*d. Recording and reporting.* Monitoring data serves a number of functions under the NPDES program. Discharge monitoring data can be used to assist in the evaluation of the risk of the discharge by indicating the types and the concentrations of pollutant parameters in the discharge. Discharge monitoring data can be used in evaluating the potential of the discharge to cause or contribute to water quality impacts and water quality standards violations.

Discharge monitoring data can also be used to evaluate the effectiveness of controls on reducing pollutants in discharges. This function of monitoring can be important in evaluating the effectiveness of source control or pollution prevention measures as well as evaluating the operation of end-of-pipe treatment units. Where numeric or toxicity effluent limits are incorporated into permits, discharge monitoring data plays a critical role by providing EPA and authorized NPDES States with data to evaluate compliance with effluent limits. The use of discharge monitoring data to determine permit compliance greatly enhances the ability of EPA and authorized NPDES States to enforce permit conditions.

Permits for industrial process discharges and discharges from POTWs traditionally have incorporated numeric and/or toxicity effluent limitations as conditions. Monitoring reports for these discharges provide a direct indication whether the discharge complies with permit conditions. However, permits for feedlots will require no discharge of pollutants into waters of the U.S. Monitoring data will be required only in case of discharge from the retention system.

If, for any reason, there is a discharge, the permittee is required to notify the Director and the State in writing within 14 days of the discharge from the retention facility, and to document the following information to the on-site pollution prevention plan: (a) A description and cause of the discharge, including an estimate of the discharge volume; (b) The period of discharge, including exact dates and times, and, if not corrected the anticipated time the discharge is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the discharge (c) Analysis of the conventional pollutants in the discharge; (d) If caused by a precipitation event, information

from the nearest National Weather Service station concerning the size of the precipitation event; (e) Measurements taken for the purpose of the monitoring shall be representative of the monitored discharge.

The discharge must be analyzed for all conventional pollutants associated with feedlot operation. Numbers of Fecal Coliform bacteria are an indicator of the amount of pathogenic bacteria that is being discharged to the receiving water. Total Suspended Solids (TSS) is a common pollutant found in discharges that can have significant impacts on receiving waters. Oxygen demand (COD and BOD5) will help the permitting authority evaluate the oxygen depletion potential of the discharge. Five day biological Oxygen Demand (BOD5) is the most commonly used indicator of oxygen demand. The pH will provide important information on the potential availability of metals to the receiving flora, fauna, and sediment. In some cases it will provide information regarding material management. Total phosphorus, Total Kjeldahl Nitrogen (TKN), nitrate plus nitrite nitrogen are measures of nutrients that can impact water quality. In addition, the monitoring requirements contain a requirement to monitor pollutants the facility uses or stores on site which have a potential to be in the discharge. (Example: frequently used cleaning agents and pesticides.)

All discharge information and data will be available to the Director upon request. As a part of the pollution prevention plan, this information will also be available to the public upon reasonable request. Signed copies of monitoring reports shall be submitted to the State if requested. The permittee must notify the Director in writing within 14 days of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. The permittee must also report all instances of noncompliance in writing within 14 days to the Director in accordance with this permit.

The draft general permits have an "adverse climate conditions" provision allowing a discharger to submit a description of why samples could not be collected in lieu of sampling data when the discharger is unable to collect samples due to climatic conditions which prohibit the collection of samples including weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.).

The requirements for the type of samples taken vary depending on the nature of the retention structure. A minimum of one grab sample may be taken from the over-flow structure for discharges from holding ponds or other impoundments. Feedlots are not required to submit monitoring reports unless specifically requested by the Director. These dischargers must maintain sampling data collected during the term of the permit. The Agency requests comments as to whether this data should be submitted to the appropriate State Agency (e.g. State Health Departments). The Agency also requests comment as to whether facilities covered by these permits should be required to submit to the appropriate State agency an annual certification that a pollution prevention plan has been developed for the site and is being implemented.

The permittee is required to retain records of all monitoring information, copies of all reports required by this permit, and records of all data for a period of at least three years from the date of the measurement, report, or application. This period may be extended by request of the Director.

*e. Standard permit conditions.* This permit includes all of the standard conditions used in NPDES permitting to insure proper implementation of the permit requirements.

5. Reopener clause

Where a potential exists for the State to develop numeric limitations which are more stringent, or control a pollutant not controlled by permit, the region reserves the right to revise, revoke or modify the permit to meet any applicable water quality standards.

6. Definitions

Region 6 requests comments on any terms referred to in this permit which are not defined in Part VIII of the permit.

## V. Economic Impact

EPA believes that this proposed general permit will be economically beneficial to the regulated community. It provides an economic alternative to the individual application process the facilities covered by this permit would otherwise have to face. The requirements are consistent with those already imposed by effective federal regulations and State requirements. The suggested management practices and pollution prevention plans give the regulated facilities guidelines which may save them time and money.

An economic analysis was done when the BAT requirements for the national effluent guidelines (40 CFR 412) were published. Region 6 believes that the same economic and technology rationale would apply to the smaller facilities covered by this print. Also, Region 6 believes that this permit is the most economical permitting option available to the smaller facilities with NPDES application requirements.

If, however, any smaller facilities believe that this economic analysis for the guidelines containment technology would not apply to their facility and that they would be able to achieve necessary water quality requirements of the receiving stream, through the use of biological or equivalent treatment systems, those smaller facilities may apply for individual permit coverage.

It may be in many situations unlikely, however, that an operator of a CAFO would be able to meet water quality standards economically with a biological treatment system. Pollutant content of the wastewaters from the containment structures can have as much as 50 to 600 mg/l of nitrogen. Region 6 believes the biological treatment needed to reduce the pollutant and pathogen loadings to meet water quality standards set for a particular receiving water could prove excessively expensive.

## VI. Compliance with Other Federal Regulations

### *A. National Environmental Policy Act*

Finding of No Significant Impact

To all interested government agencies and public groups: Pursuant to the requirements of section 511(c) of the Clean Water Act and the environmental review procedures of the U.S. Environmental Protection Agency (EPA) at 40 CFR part 6, "Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act" for the National Pollutant Discharge Elimination System (NPDES) New Source Program, the EPA has conducted a general environmental review of the following proposed action:

(A) *Proposed action.* Issuance of General NPDES Permit for New Source Concentrated Animal Feeding Operations (CAFO), defined in 40 CFR part 122 appendix B and 40 CFR part 412, and located in all parts of the State. The discharge of process wastewater from these facilities is subject to the requirements of 40 CFR 122.23 and 40 CFR part 412, and to the application of the new source performance standards promulgated on February 14, 1974, under the NPDES permit program.

*(B) Environmental effects generally associated with CAFOs.* Potential Impacts to Surface Waters. Impacts to surface water recourses can result from

runoff from the feedlot area. The runoff may be contaminated with pesticides used in veterinary treatments, nutrients and bacteria from the fecal matter, rations and mineral blocks. Other contaminants in the runoff may result from improper disposal of dredge material from the waste water holding ponds, and from erosion resulting from uncontrolled runoff.

Potential Impacts to Groundwater Resources. Contaminants in unlined holding ponds may seep into groundwater resources. Possible contaminants contained in the ponds include the nutrient nitrogen and bacteria from fecal materials, and pesticides used in veterinary treatments.

Potential Impacts to the Ambient Air Quality. The primary impacts to the ambient air quality derive from the methane emissions and the noxious odors to adjoining areas.

*(C) Mitigation and general pollution prevention.* The new source performance standards effluent guidelines for CAFOs require that there be no discharge of process waste water pollutants to navigable waters. the process waste water treatment pond is to be designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25-year, 24-hour rainfall event for the location of the point source. The holding pond will be lined with either a synthetic or a clay liner to prevent groundwater contamination. Buffer zones will be used to separate feed lot areas from residential areas to mitigate for odor and visual impacts. CAFOs will be required to use Best Management Practices for control of pollution.

*(D) Finding.* On the basis of a general review of the impacts commonly associated with CAFO operations and other available information, the EPA has made a preliminary finding that the issuance of the General NPDES Permit will not result in any significant adverse environmental impacts and that an Environmental Impact Statement (EIS) is not required. This Finding of No Significant Impact (FNSI) covers CAFO facilities in place and operating at the time of issuance of the General Permit. Applicants for CAFO facilities proposed after the issuance of the General Permit shall submit an appropriate EID and undergo environmental review prior to the start of construction.

Comments regarding this decision not to prepare an EIS will be accepted during the thirty (30) day period following the public notice of this preliminary FNSI. The finding will become final with the issuance of the final permit decision. Address all comments to: Ellen Caldwell (6W–PS), U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone: (214) 655–7190.

New CAFO subject to National Effluent Guidelines (40 CFR part 412) will be required to complete an Environmental Review with the Agency prior to coverage under the permit. New facilities are any CAFO not in operation as of the issuance date of the permits. These facilities, prior to construction must complete an environmental review with this Agency. The initial form to start the process of an environmental review has been provided in Appendix D of the permit. The permittee must have documentation of "No Significant Impact" or a completed Environmental Impact Statement, in accordance with an environmental review conducted by the Agency, as a condition of coverage under the permit. This documentation must be retained on site.

*B. Endangered Species Act*

The permits proposed today will authorize no discharge other than upsets and bypasses, which are relatively infrequent occurrences. Accordingly, EPA Region 6 determines that issuance of these permits is unlikely to adversely affect any listed threatened or endangered species or designated critical habitat. EPA Region 6 has submitted copies of these permits to the U.S. Fish & Wildlife Service. During the comment period for these proposed permits, Region 6 will be undergoing consultation with Fish & Wildlife Service regarding this determination.

*C. Executive Order 12291*

The Office of Management and Budget has exempted this action from the review requirements of Executive order 12291 pursuant to section 8(b) of that order.

*D. Paperwork Reduction Act*

EPA has reviewed the requirements imposed on regulated facilities in this general permit under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under provisions of the Clean Water Act.

*E. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's proposed general permit would generally make the NPDES regulations more flexible and less burdensome for permittees. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments, if promulgated, and that these general permits, when issued, will not have a significant impact on a substantial number of small entities.

**List of Subjects in 40 CFR Part 122**

Administrative practice and procedure, Reporting and record keeping requirements, Water pollution control.

Authority: Clean Water Act, 33 USC 1251 *et seq.*

Dated: July 1, 1992.

**W.B. Hathaway,**

*Acting Regional Administrator.*

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Part VII. Definitions

**Part I. Coverage Under this Permit**

*A. Permit Area.*

The permit covers all areas administered by Region 6 in the State of _____[2].

*B. Coverage and Eligibility*

Unless excluded from coverage in accordance with paragraph C or D below, owners or operators of animal feeding operations that are defined in 40 CFR 122 appendix B as concentrated animal feeding operations, and are subject to the requirements of 40 CFR 122.23 are authorized under the terms and conditions of this permit. Owners or operators of Concentrated Animal Feeding Operations (CAFOs) are not required to submit a notice of gain coverage under this permit unless specified by the Director.

1. Permittees must retain on site a copy of the permit and the pollution prevention plan as required by this permit.

2. Other Animal Feeding Operations. All other animal feeding operations are encouraged to comply with this permit.

3. CAFO's With Expired Permits or Pending Applications. All facilities which have expired permits and have reapplied in accordance with 40 CFR 122.21(d); and all facilities which have submitted applications in accordance with 40 CFR 122.21(a) are automatically covered by the terms of this permit. A permittee may request to be excluded from coverage by this permit by applying for an individual permit in accordance with 40 CFR 122.28(b)(3)(iii).

4. Additional Coverage Requirements for Concentrated Animal Feeding Operations Established After Permit Issuance. New CAFO facilities subject to National Effluent Guidelines (40 CFR 412) shall, prior to discharging, complete the form provided in Appendix D of this permit. The form must be sent to: Mr. Hector Pena (6E–FF), U.S. EPA Region 6, 1445 Ross Ave., Suite 1200, Dallas, Texas 75202.

The permittee shall have documentation of "No Significant Impact" or a completed Environmental Impact Statement, in accordance with an environmental review conducted by this Agency, as condition of coverage under this permit. This documentation shall be obtained and retained on site prior to any discharge from the CAFO.

*C. Limitations on Coverage.*

The following discharges from Concentrated Animal Feeding Operations (CAFOs) are not covered by this permit;

1. CAFO's that the Director has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard, and which have been notified by the Director to file for an individual or alternative general permit in accordance with Part I, D. (below) of this permit.

2. CAFO's that discharge all their runoff and wastewater to a sanitary sewer system which discharges in accordance with an NPDES permit.

3. Concentrated Duck feeding operations established prior to 1974 which are not subject to new source performance standards.

*D. Requiring an Individual Permit or an Alternative General Permit*

1. The Director may require any person authorized by this permit to apply for and obtain either an individual NPDES permit or an alternative NPDES general permit as provided in 40 CFR 122.28(b)(2)(i). The Director will notify the owner or operator in writing that a permit application is required. If an owner or operator fails to submit in a timely manner an individual NPDES permit application required by the Director under this paragraph, then the applicability of this general permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

2. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit as provided in 40 CFR 122.28(b)(2)(iii). The owner or operator shall submit an individual application (Form 1 and Form 2B) to the Director with reasons supporting the request.

3. When an individual NPDES permit is issued to an owner or operator otherwise subject to this permit, or the owner or operator is approved for coverage under an alternative NPDES general permit, the applicability of this permit to the facility is automatically terminated on the effective date of the individual permit or on the date of approval for coverage under the alternative general permit. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the permittee is automatically reinstated under this permit on the date of such denial, unless otherwise specified by the Director.

*E. Notification Requirements*

Owners or operators of facilities authorized by this permit shall notify the appropriate State Agency that they are covered by this permit. State notification must be made within 30 days of issuance of this permit or upon completion of a new facility.

*F. Permit Expiration*

Coverage under this permit will expire five (5) years from the date of issuance. The conditions of an expired permit continue in force until the effective date of a new permit (40 CFR 122.6).

**Part II. Effluent limitations**

*A. Discharge Limitations For All Categories Other Than Duck Facilities Prior to 1974*

The following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a CAFO in compliance with this permit after application of the best available technology economically achievable or new source performance standards: There shall be no discharge of process waste water pollutants to waters of the U.S.

Limitations established for concentrated duck feeding operations which began operations after the establishment of New Source Performance Standards in 1974 are subject to the new source performance standard: There shall be no discharge of process waste water pollutants to waters of the U.S.

*B. Releases in Excess of the 25 year, 24-hr Storm Event*

Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25-year, 24-hour rainfall event for the location of the point source. There shall be no effluent limitations on discharges from detention structures constructed and maintained to contain the 25 year, 24 hour storm event if the discharge is the result of a rainfall event which exceeds the design capacity and proper maintenance.

[2] Note That the Agency is Noticing distinct draft general permits in Louisiana, New Mexico, Oklahoma, Texas.

Retention structures shall contain all process wastewaters plus the 25 year, 24 hour storm event. Structures shall be sufficient to contain all wastewaters even in case of high winds.

**Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations**

*A. Prohibition on Unauthorized Substances*

All discharges to containment structures shall be composed entirely of wastewaters from the proper operation and maintenance of a CAFO and the precipitation from the animal feeding operation areas. The disposal of any materials (other than discharges associated with proper operation and maintenance of the CAFO) into the containment structures are prohibited by this permit.

*B. Proper Operation and Maintenance Requirements*

The facilities covered by this permit are required to document the attainment of Best Available Technology (BAT) and Best Conventional Technology (BCT), and all Best Management Practices (BMPs) used to comply with the effluent limitations in this permit. Such documentation shall be included in the Pollution Prevention Plan (PPP) outlined in Part II. C. of this permit and shall be made available to the Director upon request. Where applicable, equivalent measures contained in a site specific Animal Waste Management Plan prepared by the State Soil Conservation Service (SCS), may be substituted for the BMP and PPP requirements in this Part of the permit. Where provisions in the SCS plan are substituted for applicable BMPs or portions of the PPP, the PPP must refer to the appropriate section of the SCS plan. If the pollution prevention plan contains reference to the SCS plan, a copy of the SCS plan must be kept on site.

1. Operating and Maintenance Record. The owner/operator shall construct, operate and maintain the feedlot in compliance with this permit. Where the information contained in a SCS plan is equivalent to the required documentation below, the records for this permit may include reference to the SCS plan as documentation of permit compliance. The following records shall be maintained at the feedlot and shall be made available to the Director upon request.

a. Calculations required for application rates and retention facility capacity;

b. Documentation of existing retention facility capacity;

c. Date log indicating monthly inspection of the retention facility for structural integrity and maintenance;

d. Date log indicating weekly inspection of wastewater level in retention facility, including specific measurement of wastewater level;

e. If the waste (manure) is sold or given to other persons for beneficial use, maintain a log of: date of removal from the feedlot; name of hauler; and amount, in dry tons, of waste removed from the feedlot. Incidental amounts, given away by the passenger pick-up truck load, need not be recorded.

2. Best Management Practices. The following Best Management Practices (BMPs) shall be utilized by concentrated animal feeding owners/operators, as appropriate, based upon existing physical and economic conditions, opportunities and constraints. Where the provisions in a SCS plan equivalent or more protective the permittee may refer to the SCS plan as documentation of compliance with the BMP's required by this permit.

a. Control facilities must be designed, constructed, and operated to contain all process generated wastewaters and the contaminated runoff from a 25-year, 24-hour rainfall event for the location of the point source. Calculations may also include allowances for surface retention, infiltration, and other site specific factors. Waste control facilities must be constructed, maintained and managed so as to retain all contaminated rainfall runoff from open lots and associated areas, process generated wastewater, and waste.

Open lots and associated wastes shall be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures designed to carry peak flows expected at times when the 25 year, 24-hr. rainfall event occurs.

Retention facilities shall not be built in a wetland, fresh water playa, or other water of the U.S. except in compliance with a 404 Permit form the U.S. Corp of Engineers.

(1) Retention Capacity Calculations. Retention facilities shall be sized based upon the following procedure. Calculate the retention capacity based upon the 25-year 24-hour rainfall event by summing:

(A) The runoff volume from open lot surfaces plus

(B) The runoff volume from areas between open lot surfaces and the retention facilities plus

(C) The rainfall multiplied by the area of the retention facility and wastes basin plus

(D) The volume of rainfall from any roofed area that is directed into the retention facilities plus

(E) All waste and process generated wastewater produced during a period of time not less 21 days including:

(i) Volume of wet manure plus;

(ii) Volume of water used for manure/waste removal plus;

(iii) Volume of cleanup/washwater plus;

(iv) Other water such as drinking water that enters the retention facilities.

Where appropriate, site specific information should be used to determine retention capacity and land application rates. All site specific information used must be documented in the Operation and Maintenance Record.

(2) Retention Facility Embankments. The following minimum design standards are required for construction and/or modification of a retention facility: Soils used in the embankment shall be free of foreign material such as trash, brush, and fallen trees. The embankment shall be constructed in lifts or layers no more than six inches thick and compacted at optimum moisture content. Any variation in embankment construction must be accompanied by compaction testing. Compaction tests must be certified by a Professional Engineer. All embankment walls shall be protected by planting grass or the use of riprapping (or its equivalent).

(3) Retention facilities shall be equipped with either irrigation or evaporation or liquid removal systems capable of dewatering the retention facilities. Operators using pits, ponds, or lagoons for storage and treatment of storm water, manure and process generated wastewater, including flush waste handling systems, shall maintain in their wastewater retention facility sufficient freeboard to contain rainfall and rainfall runoff from a 25-year rainfall event. The operator shall restore freeboard for a 25-year rainfall event with 21 days of any rainfall event or accumulation of wastes or process generated wastewater which reduces such freeboard, weather permitting. Equipment capable of dewatering the wastewater retention structures of waste and/or wastewater with 21 days following any rainfall event which encroaches on the volume of the pond(s) required to accommodate the rainfall and runoff resulting from the 25-year rainfall event shall be at the site available for use at all times.

(5) Permanent markers (measuring device) shall be maintained in the wastewater retention facilities to show the volume required for a 25-year rainfall event within the containment

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ponds. The marker shall be visible from the top of the levee.

(6) Where site specific variations are warranted, the permittee must document these variations and their appropriateness. Concentrated animal feeding operations constructing a new or modifying an existing wastewater retention facility should insure that all construction and design is in accordance with good engineering practices.

b. No flowing surface waters (e.g. rivers, streams, canals) shall come into direct contact with the animals confined on the CAFO. Fences may be used to restrict such access.

c. Wastewater retention facilities or holding pens may not be located in the 100-year flood plain unless the facility is protected from inundation and damage that may occur during that flood event.

d. Wastewater retention facilities, holding pens or waste/wastewater disposal sites may not be located closer than 500 from a public water well nor 250 feet from a private water well.

e. Waste handling, treatment, and management shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or contribute to the taking of endangered or threatened species of plant, fish or wildlife.

f. Waste handling, treatment, and management shall not create a public health hazard; shall not result in groundwater contamination; shall conform with State guidelines and/or regulations.

g. Solids, sludges, manure, or other pollutants removed in the course of treatment or control of wastewater shall be disposed of in manner such as to prevent any pollutant from such materials from entering waters of the United States.

h. All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent any pollutant from such materials from entering the waters of the United States.

i. Pesticide Use. The operator shall prevent the discharge of pesticide contaminated waters into waters of the U.S. The permittee shall notify the Director in writing within 14 if any discharge of pesticides into waters of the U.S. occurs.

j. Dead animals shall be properly disposed of within 24 hours. Animals may be buried (a minimum of 150 feet from any drainage way with a minimum of 3 feet of cover), composted in accordance with health department standards, or removed from the premises.

k. Management of wastes. Collection, storage, and disposal of liquid and solid waste should be managed in accordance with recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site shall be secondary to the proper disposal of waste and wastewater.

3. *Pollution prevention plans.* A pollution prevention plan shall be developed for each facility covered by this permit. All containment structures have the potential to discharge to waters of the U.S. Pollution preventions plans shall be prepared in accordance with good engineering practices and should include measures necessary to limit pollutants in runoff to the containment structures. The plan shall identify potential sources of pollution which may reasonably be expected to affect water quality in the case of discharge from the CAFO. In addition, the plan shall describe and ensure the implementation of practices which are to be used to assure compliance with the limitations and conditions of this permit. Where a SCS plan has been prepared for the facility, the pollution prevention plan may refer to the SCS plan when the SCS plan documentation contain equivalent requirements for the facility. When the permittee uses a SCS plan as partial completion of the pollution plan, the SCS plan must be kept on site. The land shall identify a specific individual(s) at the facility who is responsible for developing the implementation, maintenance, and revision of the pollution prevention plan. The activities and responsibilities of the pollution prevention personnel should address all aspects of the facility's pollution prevention plan.

a. The plan shall be signed by the owner or other signatory authority in accordance with Part VI.L. (Signatory Requirements), and be retained on site in accordance with Part VI.E. (Retention of Records) of this permit. It shall be completed within 180 days of the effective date of this permit (and updated as appropriate), or, in the case of new facilities, prior to operation. Plans shall provide for compliance with the terms of the plan within 365 days of the effective date of this permit, or, in the case of new facilities, upon commencement of operations. Facilities designated by the Director as concentrated animal feeding operations in accordance with Part I. B. 2. (Designated "Concentrated" Animal Feeding Operations) shall complete the plan within 180 days, and provide for compliance with 365 days after notification from the Director that the facility is to be considered a concentrated animal feeding operation. The owner or operator of a facility covered by this permit shall make plans available upon request to the Director, or authorized representative.

b. If the plan is reviewed by the Director, or authorized representatives, the Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. After such notification from the Director, or authorized representative, the permittee shall make changes to the plan within 30 days after such notification unless otherwise provided by the Director.

c. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States of if the pollution prevention plan proves to be ineffective in achieving the general objectives of controlling pollutants in discharges from CAFO's. Amendments to the plan may be reviewed by the Director or authorized representative.

d. The plan shall include, at a minimum, the following items:

(1) *Description of Potential Pollutant Sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add pollutants to runoff drained from the facility. Each plan shall identify all activities and materials which may potentially be pollutant sources. Each plan shall include:

(a) A site map, or topographic map indicating, an outline of the drainage area of the concentrated animal feeding area; each existing structural control measure to reduce pollutants in wastewater and precipitation runoff; and surface water bodies.

(b) A written description of materials that are used, stored or disposed of at the CAFO (such as pesticides, cleaning agents, fuels etc.).

(c) A list of spills and leaks of toxic or hazardous pollutants that occurred at the facility after the effective date of this permit and have the potential to contribute pollutants to runoff waters.

(d) A summary of existing sampling data describing pollutants in overflow or bypass discharges.

(2) *Wastewater Management Controls.* Each facility covered by this permit shall develop a description of management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The plan shall include a the location and a description of existing structural and non-structural control measures to contain wastewaters; and a description of any treatment the wastewater receives. The description of management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) *Wastewater retention facilities.* The permittee must have on site documentation supporting the management controls used to contain wastewaters and storm waters from the concentrated feeding areas. Retention facilities shall be equipped with either irrigation or evaporation systems capable of dewatering the retention facilities, or a regular schedule of wastewater removal by contract hauler. The pollution prevention plan must include all calculations used to support design, construction, and size of the retention structures, as well as, all factors and calculations used in determining land application rates, acreage, and crops. Where economically achievable, best management practices provided in Part III.B. should be used. If land application is utilized for disposal of wastewater, the following requirements shall apply: (i) Discharge of irrigated wastewater off the application site is prohibited; (ii) When irrigation disposal of wastewater is used, facilities shall not exceed the nutrient uptake of the crop coverage with any land application of wastewater and/or manure; (iii) Wastewater shall not be irrigated when the ground is frozen or saturated or during rainfall events; (iv) Irrigation practices shall be managed so as to prevent ponding or puddling of wastewater on the site, contamination of ground or surface water, and the occurrence of nuisance conditions such as odors and flies; (v) Facilities including ponds, pipes, ditches, pumps, diversion and irrigation equipment shall be maintained to insure ability to fully comply with the terms of this permit and the pollution prevention plan; (vi) Adequate equipment or land application area shall be available for removal of such waste and wastewater as required to maintain the retention capacity of the facility for compliance with this permit.

(b) *Liner Requirement.* The permittee shall have, at the CAFO facility, site specific documentation that no hydrologic connection exists between the contained wastewater and surface waters of the United States. Where the permittee cannot document that no hydrologic connection through ground water exists, the ponds, lagoons and basins of the retention facilities must have a liner which will prevent the potential contamination of surface waters.

(i) Documentation of No Hydrologic Connection. A lack of hydrologic connection can be demonstrated by: (1) Documenting that there will be no significant leakage from the retention structure; or (2) documenting that any leakage from the retention structure would not migrate to surface waters. At a minimum this documentation should be certified by a Professional Engineer or equivalent ground water professional and must include:

—Hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure up to the wetted perimeter;
—Depth to ground water;
—Hydraulic conductivity, thickness and lithology of the uppermost aquifer;
—A piezometric (ground water contour) map of the uppermost aquifer covering the area in and around the structure and including the nearest flowing stream.

For documentation of no significant leakage, in-situ materials must, at a minimum, meet the hydraulic conductivity and thickness described in Part II.B.3.d(2)(b)(iii) (below). Documentation that leakage will not migrate to a surface water must include maps showing ground water flow paths, or that the leakage enters a confined environment.

(ii) Liner construction. Liners for retention structures should be constructed in accordance with good engineering practices and shall have hydraulic conductivities no greater than $1 \times 10^{7}$ cm/sec. Liner thickness should be 1.5 feet or greater.

(iii) Liner maintenance. Where a liner is installed to prevent hydrologic connection the permittee must maintain the liner to prevent hydrologic connection to surface waters, and must be installed to inhibit infiltration of wastewaters. Liner maintenance shall include inspection at least once/2 years or a leak detection system. Liner inspection will include the removal of all liquids and accumulated solids from the structure followed by a visual inspection for cracks and other signs of physical deterioration. Where regular liner inspection is not established and no leak detection system is installed, monitoring wells must be installed on the down gradient slope where the potential exists for down gradient migration to impact surface waters. Samples from monitoring wells must be analyzed for total nitrates, nitrite, ammonia, and total phosphorus at least once/quarter. Data from the monitoring wells must be kept on site for three years with the pollutions prevention plan. The first year's sampling shall be considered the baseline data and must be retained on site for the life of the facility.

(c) *Manure and Pond Solids Handling and Land Application.* Storage and land application of manure shall not cause a discharge of pollutants to waters of the United States or cause a water quality violation in waters of the United States. Discharge (run-off) of waste from the application site is prohibited. At all times, sufficient volume shall be maintained within the control facility to accommodate manure, other solids, wastewaters and rain waters (runoff) from the concentrated animal feeding areas. A minimum of two feet of freeboard above a normal pond level should be included in the facility design. The pollution prevention plan must ensure and document that procedures for the handling and disposal of manure and pond solids complies with the following requirements: (i) Storage and/or surface disposal of manure in the 100-year flood plain is prohibited. (ii) Run off from manure storage piles must be retained on site. (iii) Waste shall not be applied to land when the ground is frozen or saturated or during rainfall events. (iv) Waste manure shall be applied to suitable land at appropriate times and rates. Timing and rate of applications to shall be in response to crop needs, assuming usual nutrient losses, expected precipitation and soil conditions; (Permittees are encouraged to apply manures and pond solids as fertilizer. However where local water quality is threatened by phosphorus, the permittee should limit the application rate to the crop uptake rate of phosphorus.) (v) Disposal of manure shall not cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife; nor shall such disposal interfere with or cause harm to migratory water fowl. (vi) All necessary practices to minimize waste manure transport to watercourses shall be utilized and documented to the plan. (vii) Adequate manure storage capacity based upon manure and waste production and land availability shall be provided. Do not stockpile manure near watercourses. (viii) Use edge-of-field, grassed strips to separate eroded soil and manure particles from the field runoff, and avoid land subject to excessive erosion.

(3) *Preventive Maintenance.* A preventive maintenance program shall involve inspection and maintenance of

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all runoff management devices (cleaning separators, catch basins) as well as inspecting and testing facility equipment and containment structures to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters. Operators will provide routine maintenance to their control facilities in accordance with a schedule and plan of operation to ensure compliance with permit limitations and state water quality criteria. This schedule and plan will be written and include a description of the pollution control equipment and structures used, operating schedules for dewatering the pollution control facilities and disposing of the accumulated solids, and a description of where the removed liquid and solid wastes are to be disposed to prevent entry to any waters of the United States.

(4) *Good Housekeeping.* Good housekeeping requires the maintenance of a clean, orderly facility. Housekeeping procedures that would result in the basic overall cleanliness of the facility shall be outlines in the pollution prevention plan.

(5) *Spill Prevention and Response Procedures.* Areas where potential spill can occur, and their accompanying drainage ponds shall be identified clearly in the pollution prevention plan. Where appropriate, the pollution prevention plan should specify material handling procedures and storage requirements. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(6) *Sediment and Erosion Prevention.* The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify measures to limit erosion.

(7) *Employee Training.* Employee training programs shall inform personnel at all levels of responsibility of the components and goals of the pollution prevention plan. Training should address topics such as spill response and clean up, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(8) *Inspections and Recordkeeping.* The operator or the person named in the pollution prevention plan as the individual responsible for drafting and implementing the plan shall be responsible for inspections and recordkeeping.

*Recordkeeping and Internal Reporting Procedures.* Incidents such as spills, or other discharges, along with other information describing the pollution potential and quantity of the discharge shall be included in the records. Inspections and maintenance activities shall be documented and recorded. These records must be kept on site for a minimum of three years.

*Visual Inspections.* The authorized person shall inspect designated equipment and plant areas. Material handling areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. A tracking or follow-up procedure shall be used to ensure that appropriate action has been taken in response to the inspection.

*Site Inspection.* A complete inspection of the facility shall be done and a report made documenting the findings of the inspection made at least once/year. The inspection shall be conducted by the authorized person named in the pollution prevention plan, to verify that the description of potential pollutant sources is accurate; the drainage map has been updated or otherwise modified to reflect current conditions; and the controls outlined in the pollution prevention plan to reduce pollutants are being implemented and are adequate. Records documenting significant observation made during the site inspection shall be retained as part of the pollution prevention plan. Records of inspections shall be maintained for a period of three years.

d. Special requirements for discharges through municipal separate storm sewer systems serving a population of 100,000 or more. Facilities discharging through a municipal separate storm system serving a population of 100,000 population or more shall comply with applicable requirements in the municipality's storm water management program. CAFO facilities must comply with the requirements in the municipal storm water management program developed under an NPDES permit issued for the discharge of the municipal separate storm sewer system that receives the CAFO facility's discharge, provided the operator of the CAFO has been notified of such conditions.

e. Permittees must evaluate the applicability of the Recommended Management Practices listed in appendix A of this permit. Where applicable and economically feasible the operator should include these practices in the pollution prevention plan.

4. Other Legal Requirements. No condition of this permit shall release the permittee from any responsibility or requirements under other statutes or regulations, Federal, State or Local.

**Part IV. Monitoring and Reporting Requirements**

*A. Discharge Notification*

If, for any reason, there is a discharge, the permittee is required to notify the Director and the State in writing within 14 working days of the discharge from the retention facility and to document the following information to the on site pollution prevention plan:

1. The permittee shall monitor the discharge and include in the pollution prevention plan the following information in writing within 14 days of becoming aware of such discharge.

a. A description and cause of the discharge, including an estimate of the discharge volume;

b. The period of discharge, including exact dates and times, and, if not corrected the anticipated time the discharge is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the discharge;

c. Sample Type. A minimum of one grab sample shall be taken from the over-flow structure for discharges from holding ponds or other impoundments. Sampling and analysis of the discharge samples must be in accordance with EPA approved methods for water analysis listed in 40 CFR 136.

d. Analysis of discharge samples must include the following: Fecal Coliform bacteria; 5-day Biological Oxygen Demand (BOD5); Total Suspended Solids (TSS); pH; temperature; total phosphorus; Kjeldahl nitrogen; nitrate nitrogen; and any pesticide or waste which the operator has reason to believe could be in the discharge.

e. Measurements taken for the purpose of monitoring shall be representative of the monitored discharge.

f. If caused by a precipitation event(s), information from the nearest available weather station concerning the size of the precipitation event.

g. Sampling Waiver. The permittee must document description of why samples could not be collected in lieu of samples data when the discharger is unable to collect samples due to climatic conditions which prohibit the collection of sampling including weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.).

2. All discharge information and data will be made available to the Director upon request.

3. *Written Notification.* Signed copies of monitoring reports shall be submitted to the Director if requested at the following addresses: (*Address Here*).



*B. Anticipated Noncompliance*

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

*C. Other Noncompliance Reporting*

The permittee shall report all instances of noncompliance within 14 working days to the Director in accordance with Part IV.A. (Discharge Notification) of this permit.

*d. Penalties for Falsification of Reports*

The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

*E. Retention of Records*

The permittee shall retain copies of all records required by this permit for a period of at least three years from the date reported. This period may be extended by request of the Director at any time.

*F. Availability of Reports*

In addition to data determined to be confidential under 40 CFR Part 2, information submitted to EPA may be claimed as confidential by the submitter. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. As required by the Act, however, Notices of Intent, permits, and effluent data shall not be considered confidential and any claims of confidentiality for this information will be denied.

*G. Bypass of Treatment Facilities*

1. Notice:

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall submit to EPA and the State written notice, if possible at least ten days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass to the Director as required under Part IV.A.

2. Prohibition of bypass.

a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass, unless:

i. The bypass was unavaoidable to prevent loss of life, personal injury, or severe property damage;

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

iii. The permittee submitted notices as required under Part IV.A.,B.,C. (above), & H. (below) of this section.

b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in Part IV G.2.a. (above) of this section.

*H. Upset Conditions*

For facilities with biological treatment systems who wish to establish the affirmative defense of an upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

a. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee has notified the Director of the upset as required under Part IV.A.,B., and C.; and

d. The permittee commenced remedial measures required in a timely manner.

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

*I. Planned Changes*

The permittee shall give notice to the Director, as soon as possible, of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged.

*J. Duty to Provide Information*

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

*K. Other Information*

When the permittee becomes aware that he failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he shall promptly submit such facts or information.

*L. Signatory Requirements*

All reports or information submitted to the Director shall be signed and certified.

1. All reports or information shall be signed by the facility owner or operator/manager where the authority to sign documents has been assigned or delegated to the operator/manager.

a. For facilities owned by a corporation: By a responsible corporate officer. For the purpose of this permit, a responsible corporate office means (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation.

b. For a facilities owned by a partnership or sole proprietorship: by a general partner or the proprietor respectively.

c. For facilities owned by a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if the authorization is made in writing by a person described above, and the authorization specifies either an individual or a position having responsibility for the overall operation.

3. Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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**V. Standard Requirements**

*A. Duty to Comply*

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for loss of authorization to discharge under this general permit; or for denial of a permit renewal application.

*B. Inspection and Entry*

The permittee shall allow the Director, or an authorized representative of EPA including the State, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit:

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

*C. Toxic Pollutants*

The permittee shall comply with effluent standards of prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

*D. Penalties for Violations of Permit Conditions*

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 319, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation is subject to a fine of not less than $2,500, nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or both.

*E. Continuation of the Expired General Permit*

An expired general permit continues in force and effect until a new general permit is issued.

*F. Need to Halt or Reduce Activity not a Defense*

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

*G. Duty to Mitigate*

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

*H. Proper Operation and Maintenance*

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

*I. Penalties for Falsification of Monitoring Systems*

The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in Part V.D. (Penalties for Violation of Permit Conditions) of this permit.

*J. Oil and Hazardous Substance Liability*

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

*K. Property Rights*

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

*L. Severability*

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

*M. State Laws*

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

*N. Permit Actions*

This permit may be modified, revoked or reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated non-compliance does not stay any permit condition.

**VI. Reopener Clause**

If effluent limitations or requirements are established or modified in an approved State Water Quality Management Plan or Waste Load Allocation and if they are more stringent than those listed in this permit or control a pollutant not listed in this permit, this permit may be reopened to include those more stringent limits or requirements.

**VII. Definitions**

1. "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the disposal of wastes.

2. "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied

by 0.1, plus the number of horses multiplied by 2.0.

3. "Best Management Practices" (BMP) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States". BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

4. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

5. "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in 40 CFR part 122, appendix B, or which the Director designates as a significant contributor of pollution pursuant to 40 CFR 122.23.

Animal feeding operations defined as "concentrated" in 40 CFR part 122, appendix B are as follows:

New and existing operations which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:

a. 1,000 slaughter or feeder cattle;
b. 700 mature dairy cattle (whether milkers or dry cows);
c. 2,500 swine weighing over 55 pounds;
d. 500 horses;
e. 10,000 sheep or lambs;
f. 55,000 turkeys;
g. 100,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
h. 30,000 laying hens or broilers when facility has liquid manure handling system;
i. 5,000 ducks; or
j. 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep;

New and existing operations which discharge pollutants into navigable waters either through a man-made ditch, flushing system, or other similar man-made device, or directly into waters of the United States, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:

a. 300 slaughter or feeder cattle;
b. 200 mature dairy cattle (whether milkers or dry cows);
c. 750 swine weighing over 55 pounds;
d. 150 horses;
e. 3000 sheep or lambs;
f. 16,000 turkeys;
g. 30,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
h. 9000 laying hens or broilers when facility has liquid manure handling system;
i. 1,500 ducks; or
j. 300 animal units (from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep).

6. "Control facility" means any system used for the retention of all wastes on the premises until their ultimate disposal. This includes the retention of manure, liquid waste, and runoff from the feedlot area.

7. "Feedlot" means a concentrated, confined animal or poultry growing operation for meat, milk, or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth or production is not sustained in the area of confinement, and is subject to 40 CFR part 412.

8. "Ground water" means any subsurface waters.

9. "Land application" means the removal of waste solids from a control facility and incorporation into the soil mantle primarily for disposal purposes.

10. "Liner" means any barrier in the form of a layer, membrane or blanket, installed to prevent a hydrologic connection between liquids contained in retention structures and waters of the U.S.

11. "Process wastewater" means any process generated wastewater directly or indirectly used in the operation of a feedlot (such as spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact swimming, washing, or spray cooling of animals; and dust control) and any precipitation (rain or snow) which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, eggs).

12. "Retention Facility" or "Retention Structures" means all collection ditches, conduits and swales for the collection of runoff and wastewater, and all basins, ponds and lagoons used to store wastes, wastewaters and manures.

13. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

14. "The Act" means Federal Water Pollution Control Act as amended, also known as the Clean Water Act, found at 33 U.S.C. 1251 *et seq.*.

15. "Toxic pollutants" mean any pollutant listed as toxic under section 307(a)(1) of the Act.

16. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

17. "25-year 24-hour rainfall event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

18. "10-year 24-hour rainfall event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 10 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

**Appendix A—Recommended "Best" Management Practices**

The best management practices (BMPs) outlined in this Appendix are recommended for the control and abatement of pollutant discharges. Pollution Prevention Plan should include these measures where it is appropriate.

*I. Location Standards*

This section establishes the minimum standards which should be considered when selecting the site for a new concentrated animal feeding operation.

A. The purpose of this section is to minimize possible contamination of ground and surface waters by defining the characteristics that make an area unsuitable or inappropriate for concentrated animal feeding operations. Permittees should take every precaution to minimize the possibility of exposing the public to nuisance conditions, and to prevent locating of a concentrated animal feeding operation in an area determined to be unsuitable or inappropriate, unless the design, construction, and

operational features of the facility will mitigate the unsuitable site characteristics.

B. When constructing a new facility or a substantial change of an existing facility or developing a waste management plan for a proposed site, the permittee should evaluate whether the design, construction or operational features minimizes possible contamination of surface water and groundwater. In making this evaluation, the permittee should consider the following factors:

1. Active geologic processes such as flooding, erosion, subsidence, submergence and faulting;

2. Groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge and aquifer recharge or discharge conditions;

3. Soil conditions such as stratigraphic profile and complexity, hydraulic conductivity of strata, and separation distance from the facility to the aquifer and/or surface water; and

4. Climatological conditions.

C. Wastewater retention facilities or holding pens should not be located in wetlands. (This prohibition is not applicable to constructed wetlands.)

D. Wastewater retention facilities should not be located in areas overlying regional aquifers unless the regional aquifer is separated from the base of the containment structure by a minimum of 3 feet of material with a vertical hydraulic conductivity not greater than $10^{-7}$ cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation of pollutant migration. A synthetic membrane liner may be substituted with a minimum of 30 mils thickness and an underground leak detection system with appropriate sampling points.

E. A minimum 500 foot buffer zone should be maintained from the retention facilities and storage areas to the nearest property line. Holding pens should not be located closer than 150 feet to the nearest property line.

*II. Retention Structure Design*

The permit requires that the facility be constructed and maintained to contain the 25 year, 24-hour storm event. It is important that the retention structures be constructed in accordance with good engineering practices. The following are some design characteristics that the owner/operator should consider in the design of the retention structures:

A. The embankment wall should have a top width of at least 10 feet;

B. Interior and exterior slope of the embankment walls should be no steeper than one foot vertical to three feet horizontal;

C. There should be an emergency freeboard not less than two feet base;

D. The retention facility should be constructed with an emergency spillway or overflow channel to remove water in a controlled manner when the retention facility capacity is exceeded.

E. The permit requires that wastewater containment structures shall be isolated from uncontaminated storm water run-on by berms or diversion terraces. The diverted rainfall runoff should not be diverted onto the property of adjacent landowners without the written permission of such landowners.

*III. Surface Water Protection*

A. The permit requires that waste control facilities be constructed, maintained and managed so as to retain all contaminated rainfall runoff from open lots and associated areas, process generated wastewater, and waste. Practices to decrease the lot runoff and water volume are as follows:

1. Divert runoff from clean areas above lot by constructing ditches, terraces and waterways above an open lot;

2. Install gutters, downspouts and buried conduits to divert roof drainage; and

3. Provide more roofed area.

4. Decrease open lot surface area;

5. Repair or adjust waterers and water systems to minimize water wastage.

6. Use practical amounts of water for cooling.

7. Use practical amounts of water for cleaning equipment.

8. Recycle water to flush manure from paved surfaces if practical and applicable.

B. Discharging wastewaters or runoff from the concentrated animal areas is prohibited by the permit. Practices to decrease the potential of lot runoff and wastewaters to be discharged to waters of the U.S.:

1. Collect manure more frequently;

2. Eliminate areas that slope in directions such that wastewater/rainfall cannot be collected;

3. Collect and allow wastewater to evaporate; and

4. Collect and evenly apply wastewater to land only during dry weather, and at appropriate agronomic rates.

C. It is a violation of this permit to discharge any solid waste or manure to a water of the U.S. The following practices can help to minimize waste manure transport to watercourses:

1. Do not stockpile manure near watercourses;

2. Provide adequate manure storage capacity based upon manure and waste production and land availability;

3. Apply waste manure to suitable land at appropriate times and rates;

4. Adjust timing and rate of applications to crop needs, assuming usual nutrient losses, expected precipitation and soil conditions;

5. Avoid land subject to excessive erosion;

6. Use edge-of-field, grassed strips to separate eroded soil and manure particles from the field runoff;

7. Utilize off-site areas for manure application in a manner consistent with best managements practices and the requirements of this permit; and

8. Where local water quality is threatened by phosphorus, the permitted should limit the application rate to the crop uptake rate of phosphorus.

D. Feedlot Waste Management for Fly and Odor Control. The following practices for fly and odor control should be utilized by owners/operators concentrated animal feeding operations to minimize associated ordors and insects:

1. Manure-covered surfaces should be kept dry;

2. Dirty, manure covered animals should be prevented;

3. An orderly system for runoff collection and manure handling should be maintained;

4. Waste should be kept dry or flushed regularly from confinement areas to a lagoon or solids separator;

5. Dry manure should be stored in steep piles;

6. Dairies should clean, scrape and wash the drip shed after each milking; and

7. Manure should be removed from the holding pens within five days after animals are removed from a particular lot.

E. All facilities should install a mechanical solids separator and/or a solids settling basin at a point following any wash and/or flush area and immediately prior to the wastewater entering the retention facilities. Solids should be removed from the separator/solids settling basins at least three times per week and stored in a covered area.

F. Owner/operators should collect waste that accumulates along holding pen/open lot fence lines, in feeding lanes and feed storage area on a weekly basis.

*IV. Ground Water Protection.*

Where the potential exists for the contained wastewaters to contaminate groundwater, the permittee should take every precaution to prevent migration of pollutants to those waters. The permittee should take all action appropriate to avoid the discharge of wastewaters and contaminated runoff waters to surface and ground waters.

A. Where a hydrologic connection to surface exists, the permit requires that the retention basins be lined with materials that will provide resistance to pollution migration. All new or modified wastewater retention facilities should be constructed of compacted or in-situ earthen materials which meet the following minimum requirements:

(1) 30% or more passes through a number 200 mesh sieve;

(2) A liquid limit of 30% or greater;

(3) A plasticity index of 15 or greater;

(4) hydraulic conductivity equal to or less than $1\times10^{-7}$ cm/sec;

(5) Soil compaction will be 95% standard proctor at optimum moisture content; and

(6) A minimum thickness of 1.5 feet.

B. If the wastewater retention facilities are not constructed of suitable materials, then an alternate lining material should be used. Liner materials include flexible membrane linings, asphalt-sealed fabric liners, and bentonite sealants. Completed pond linings should be designed and installed in accordance with good engineering practices.

C. Livestock should be prohibited entry into the retention lagoons, on lagoon dikes and immediate surrounding areas. If livestock are allowed in the retention lagoons, those lagoon linings should be inspected for damage and permittee should certify in the pollution prevention plan that the lining meets the specified criteria.

D. Concentrated animal feeding operations located over drinking water aquifers should install ground water monitoring wells and/or lysimeters to monitor liquid movement through the saturated and unsaturated zones. All wells and/or lysimeters must be installed by licensed water well drillers or qualified professionals according to state requirements.

*V. Feedlot Wa*
*Land Applicat*

The permit p
irrigated waste
Neither is irrig
ground is froze
rainfall events

A. If land ap
disposal of wa
management p

1. When irrig
is used, tailwa
as necessary t
wastewater;

2. Land to be
less than 6%;

3. Irrigation
as to prevent p
wastewater or
ground or surf
of nuisance co
flies;

4. Irrigation
foot buffer in t
as needed to p
leaving the pro

5. Irrigation
limited to the
determined by
for the area an
of the irrigated

6. The cover
should be harv

B. Represent
taken at least
or wastewater

| | |
|---|---|
| Corn | |
| Cotton | |
| Grain Sorghum | |
| Wheat | |
| Coastal Bermud | |
| Alfalfa | |
| Wheat | |
| Sorghum/Sudan | |

[1] Fertilizer
percent for each

*V. Feedlot Waste Utilization or Disposal By Land Application*

The permit prohibits the discharge of irrigated wastewater off the application site. Neither is irrigation permitted when the ground is frozen or saturated or during rainfall events.

A. If land application is utilized for disposal of wastewater, the following good management practices should be followed:

1. When irrigation disposal of wastewater is used, tailwater facilities shall be provided as necessary to prevent the release of applied wastewater;

2. Land to be irrigated should have a slope less than 6%;

3. Irrigation practices shall be managed so as to prevent ponding or puddling of wastewater on the site, contamination of ground or surface water, and the occurrence of nuisance conditions such as odors and flies;

4. Irrigation patterns should allow a 100-foot buffer in the downwind direction or more as needed to prevent wastewater spray from leaving the property;

5. Irrigation application rates should be limited to the most conservative calculation determined by comparing the water budget for the area and crop, and the nutrient uptake of the irrigated crop; and

6. The cover crop of each irrigated area should be harvested at least once a year.

B. Representative soil samples should be taken at least annually from the waste and/or wastewater application site.

1. When soil samples are taken the sampling procedures shall employ accepted techniques of soil science for obtaining representative analytical results.

2. The following depth zones below the ground surface should be sampled: a. 0 to 6 inches; b. 6 to 10 inches; and c. 10 to 30 inches.

3. The samples should be analyzed for nitrate-nitrogen, ammonia nitrogen, total Kjeldahl nitrogen, cation exchange capacity, extractable phosphorus, sodium, magnesium, calcium, sulfur, and electrical conductivity.

C. All solid wastes stockpiles or retained on site should:

1. Be stored under a permanent (structural) or temporary (plastic sheeting) cover so as to be protected from rainfall, and

2. Be isolated from all run-on storm waters by dikes, terraces, berms, ditches, or other similar structures.

D. If land application is utilized for disposal of solid waste in either dried of liquid form, the following requirements shall apply:

1. Land to receive waste should have a slope less than 6%;

2. Waste shall not be spread when the ground is frozen or saturated or during rainfall events;

3. Waste should be incorporated into the soil within 48 hours of application or the owner/operator should maintain a 200 foot buffer zone of grass or other thick vegetation between the disposal areas and the down gradient property line and/or watercourses.

4. Disposal of waste and wastewater should be done in such a manner as to prevent nuisance conditions such as odors and flies. The following procedures should be used to control odors and flies:

a. Apply manure uniformly and in a layer thin enough to insure drying in 5 days or less.

b. Avoid spreading when the wind would blow odors toward populated areas or nearby residences or businesses.

c. Avoid spreading or applying manure immediately before weekends and holidays when people are likely to be engaged in nearby outdoor and recreational activities.

d. Avoid spreading near heavily traveled highways.

e. Spread or apply manure in morning when air is warming and rising rather than in the late afternoon.

f. Where manure is applied to nonvegetated land, incorporate manure into the soil during or within 24 hours of application.

5. Feedlots may sell or give wastes (manure) to other persons for beneficial use. The owner/operator should analyze the wastes (manure) annually for ammonia-nitrogen, nitrate-nitrogen, total Kjeldahl nitrogen, extractable phosphorus and total potassium. The owner/operator should provide each recipient of wastes (manure) written copies of the annual analysis.

## Appendix B—Reference Land Application Rates of Wastewater

TABLE 1. NUTRIENT REQUIREMENTS OF CROPS, LBS/ACRE.

| Crop | Expected Yield | Nitrogen (lbs/ac) | Phosphorus (lbs/ac) |
|---|---|---|---|
| Corn | 75–99 bu/a | 75–100 | 50 |
| | 100–149 bu/a | 110–165 | 50 |
| | 150–200 bu/a | 160–240 | 50 |
| Cotton | 1.0 bales/a | 40 | 40 |
| | 1.5 bales/a | 60 | 60 |
| | 2.0 bales/a | 80 | 80 |
| | 2.5 bales/a | 100 | 60 |
| Grain Sorghum | 1500–2000 lbs/a | 30–40 | 20 |
| | 2000–4000 lbs/a | 40–80 | 40 |
| | 4000–6000 lbs/a | 80–120 | 60 |
| | 6000–8000 lbs/a | 120–160 | 80 |
| Wheat | 20–30 bu/a | 40–60 | 20 |
| | 30–40 bu/a | 60–80 | 40 |
| | 40–60 bu/a | 80–120 | 40 |
| | 60–80 bu/a | 120–160 | 60 |
| | 80–100 bu/a | 160–200 | 60 |
| Coastal Bermuda | Grazing only | 100–160 | 50 |
| | 1 cutting + grazing only | 160–220 | 50 |
| | 3 cuttings | 300–350 | 100 |
| | 4–6 cuttings | 400–600 | 130 |
| Alfalfa | Non-irrigated, annually | 20 | 60 |
| | Irrigated; 6 T/a | 20 | 100 |
| | Irrigated; 8–12 T/a | 20 | 140 |
| Wheat | Light grazing [1] | 160 | 60 |
| | Moderate grazing | 200 | 75 |
| | Heavy grazing | 240 | 80 |
| Sorghum/Sudan | 1 cutting or light grazing | 80 | 40 |
| | 2 cuttings or medium grazing | 160 | 60 |
| | 3 cuttings or heavy grazing | 200 | 80 |

[1] Fertilizer application rates suggested for grazing wheat pastures are for eastern Texas and Louisiana. Rates for all grazing intensities should be reduced by 10 percent for each 50-mile increment west of Dallas Texas.

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Note: Actual fertilizer application rate recommendations are based on the above crop requirements, minus soil nutrient levels identified by a soil test, resulting in recommendations which may be significantly lower than nutrient levels listed in the table.

TABLE 2.—MAXIMUM WASTEWATER APPLICATION RATES IN INCHES

| | Expected crop uptake, plant available nitrogen (lbs./ac./yr.) (from table 1) | | | |
|---|---|---|---|---|
| | 100 | 200 | 300 | 400 |
| | Wastewater application rates (in./acre/yr.) | | | |
| Wastewater nitrogen mg/l *: | | | | |
| 50 | 10.67 | 21.33 | 32.00 | 42.67 |
| 100 | 5.33 | 10.67 | 16.00 | 21.33 |
| 150 | 3.55 | 7.11 | 10.67 | 14.22 |
| 200 | 2.67 | 5.33 | 8.00 | 10.67 |
| 250 | 2.13 | 4.27 | 6.40 | 8.53 |
| 300 | 1.78 | 3.56 | 5.33 | 7.11 |
| 350 | 1.52 | 3.05 | 4.57 | 6.09 |
| 400 | 1.33 | 2.67 | 4.00 | 5.33 |
| 450 | 1.19 | 2.37 | 3.56 | 4.74 |
| 500 | 1.07 | 2.13 | 3.20 | 4.27 |
| 550 | 0.97 | 1.94 | 2.91 | 3.88 |
| 600 | 0.89 | 1.78 | 2.67 | 3.56 |

* Nitrogen content of the waste water must be determined by a laboratory test of the wastewater to be land applied. Wastewater used for irrigation should be tested on a regular schedule established in the facilities Pollution Prevention Plan.

**Appendix C—Reference Land Application Rates for Manure and Pond Solids**

Fertilizer Values of Different Animal Manures [1]

TABLE 1.—POUNDS OF AVAILABLE NITROGEN (N) PER TON OF MANURE

| Animal Type | Unleached manure |
|---|---|
| Dairy Cattle | 66 |
| Feeder/Slaughter Cattle | 71 |
| Swine | 106 |
| Sheep/Lambs/Goats | 83 |
| Horses | 34 |
| Chickens/Turkeys/Ducks | 88 |
| Rabbits | 57 |
| Ostrich/Emu | 55 |
| Exotic Mammals and Birds | 90 |

**Sludge and Animal Waste Recommended Fertilizer Application Rates* and Scheduling for Selected Crops**

**General Notes**

Application rate of sludge or animal wastes should be based on the most limiting rate between nitrogen and phosphorus, unless otherwise noted. the rate of manure land application should reflect the nitrogen or phosphorus already applied to the crop by wastewater irrigation. If the application does not supply sufficient rates of other nutrients, commercial fertilizer may be utilized to provide total needs in accordance with these guidelines.

**Notes on Nitrogen Rates**

Nitrogen rates indicated are for plant available nitrogen (PAN). Maximum nitrogen application rates shall be reduced by the amount of residual nitrate-nitrogen as indicated by required soil tests. Maximum single nitrogen application shall be 150 lbs/ac PAN. Where allowable PAN application exceeds 150 lbs/ac, split applications must be utilized.

**Notes on Soil Testing**

Soil samples should be taken and analyzed in the spring prior to planting. If a double crop of wheat is in the rotation, a fall soil sample should be taken and analyzed prior to the fall wheat planting. Samples should represent a maximum of sixty (60) acres and should be composite of a minimum of six (6) core samples. Each core should be a composite of soil over a depth of 0 to 6 inches.

**Soybeans**

Rate: Nitrogen—250 lbs/ac maximum for animal wastes tested prior to application. 150 lbs/ac maximum for animal wastes without testing.
Phosphorus—20 lbs/ac maximum actual available elemental P. Equivalent to 45 lbs/ac phosphate ($P_2O_5$).
Potassium—75 lbs/ac maximum actual elemental K. Equivalent to 90 lbs/ac potash ($K_2O$).
Scheduling: Application is recommended prior to spring planting of soybeans or in split applications during the growing season.

Notes: If soybeans follow winter wheat, soil tests should be performed prior to application.

**Winter Wheat**

Rate: Nitrogen—100 lbs/ac maximum.
Phosphorus—22 lbs/ac maximum actual available elemental P. Equivalent to 50 lbs/ac phosphate ($P_2O_5$).
Potassium—50 lbs/ac maximum actual elemental K. Equivalent to 60 lbs/ac potash ($K_2O$).
Scheduling: Application of phosphorus and potassium is recommended prior to planting. Application of nitrogen is recommended in a split early spring application in February or March. Application of the maximum nitrogen rate in the fall prior to planting is allowed.

Notes: On soils with 70% or greater sand content, nitrogen fertilizer should only be applied as split early spring applications. On any soils, if the full recommended rate is applied in the fall, no supplemental spring booster N is allowed unless the field participates in the Cooperative Extension Service Wheat Monitoring Program and follows N application in accordance with recommendations.

**Milo (Grain Sorghum)**

Rate: Nitrogen—120 lbs/ac maximum for irrigated fields. 100 lbs/ac maximum for non-irrigated fields.
Phosphorus—26 lbs/ac maximum actual available elemental P. Equivalent to 60 lbs/ac phosphate ($P_2O_5$).
Potassium—50 lbs/ac maximum actual elemental K. Equivalent to 60 lbs/ac potash ($K_2O$).
Scheduling: Application should be made in spring prior to planting.

Notes: For double cropping with winter wheat, see notes for soybeans and wheat.

**Corn**

Rate: *Non-Irrigated.* Nitrogen—125 lbs/ac maximum.
Phosphorus—22 lbs/ac maximum actual available elemental P. Equivalent to 50 lbs/ac phosphate ($P_2O_5$).
Potassium—84 lbs/ac maximum actual elemental K. Equivalent to 100 lbs/ac potash ($K_2O$).
*Irrigated.* Nitrogen—300 lbs/ac maximum for animal wastes tested prior to application. 150 lbs/ac maximum for animal wastes without testing.
Phosphorus—44 lbs/ac maximum actual available elemental P. Equivalent to 100 lbs/ac phosphate ($P_2O_5$).
Potassium—167 lbs/ac maximum actual elemental K. Equivalent to 200 lbs/ac potash ($K_2O$).
Scheduling: The recommendation is to apply approximately ⅓ of the N at planting and the remainder as a sidedress. All P and K should be applied at planting.

Notes: For double cropping with wheat, see notes for soybeans and wheat. Note that fertilizer rates shown are maximums and actual rates should be based on realistic yield potentials. The Cooperative Extension Service should be contacted to advise on yields and appropriate rates.

**Bermuda Grass**

Rate: Nitrogen—300 lbs/ac maximum for animal wastes tested prior to application. 150 lbs/ac maximum for animal wastes without testing.
Phosphorus—35 lbs/ac maximum actual available elemental P. Equivalent to 80 lbs/ac phosphate ($P_2O_5$).
Potassium—167 lbs/ac maximum actual elemental K. Equivalent to 200 lbs/ac potash ($K_2O$).
Scheduling: Application should begin just prior (within one month) to breaking dormancy in the spring and continue through the growing season.

Notes: For pastures with both bermuda grass and fescue where the bermuda grass is dominant during the summer months and fescue is dominant during cool months, the total fertilization rate shall not exceed the maximum available for bermuda grass.

**Fescue**

Rate: Nitrogen—150 lbs/ac maximum for animal wastes tested prior to application. 135 lbs/ac maximum for animal wastes without testing.
Phosphorus—26 lbs/ac maximum actual available elemental P. Equivalent to 60 lbs/ac phosphate ($P_2O_5$).
Potassium—44 lbs/ac maximum actual elemental K. Equivalent to 100 lbs/ac potash ($K_2O$).
Scheduling: Application should begin in late summer to early fall through late fall or early winter and also begin in late winter or early spring through late spring.

Notes: For pastures with both bermuda grass and fescue where the bermuda grass is dominant during the summer months and fescue is dominant during cool months, the total fertilization rate shall not exceed the maximum available for bermuda grass.

**Appendix D—Basic Format for Environmental Assessment**

This is the basic format for the Environmental Assessment prepared by EPA Region 6 from the review of the applicant's Environmental Information Document (EID) required for new source NPDES permits. Comprehensive information should be provided for those items or issues that are affected; the greater the impact, the more detailed information needed. The EID should contain a brief statement addressing each item listed below, even if the item is not applicable. The statement should at least explain why the item is not applicable.

*A. General Information*

1. Name of applicant
2. Type of facility
3. Location of facility
4. Product manufactured

*B. Description Summaries*

1. Describe the proposed facility and construction activity
2. Describe all ancillary construction not directly involved with the production processes
3. Describe briefly the manufacturing processes and procedures
4. Describe the plant size, its history, and the general area

*C. Environmental Concerns*

1. Historical and Archeological (include a statement from the State Historical Preservation Officer)
2. Wetlands Protection and 100-year Floodplain Management (the Army Corps of Engineers must be contacted if any wetland area of floodplain is affected)
3. Agricultural Lands (a prime farmland statement from the Soil Conservation Service must be included)
4. Coastal Zone Management and Wild and Scenic Rivers
5. Endangered Species Protection and Fish and Wildlife Protection (a statement from the U.S. Fish and Wildlife Service must be included)
6. Air, Water and Land Issues: quality, effects, usage levels, municipal services used, discharges and emissions, runoff and wastewater control, geology and soils involved, land-use compatibility, solid and hazardous waste disposal, natural and man-made hazards involved
7. Biota concerns: Floral, faunal, aquatic resources, inventories and effects
8. Community Infrastructures available and resulting effects: social, economic, health, safety, educational, recreational, housing, transportation and road resources

**Basic Environmental Information Document Guidelines for New Source Category Industries—EPA Region 6**

*I. General Information*

A. Name of Applicant and Proposed Facility: _____

B. Description of Site and Location: _____

C. Description of Project, Product and Process: _____

[FR Doc. 92-17132 Filed 7-21-92; 8:45 am]
BILLING CODE 6560-50-M

[1] These values are for reference only. The permittee should have manure tested for nitrogen and phosphorus on a regular basis if it is to be land applied to crops to avoid over application.



## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 92-146, RM-8019]**

**Radio Broadcasting Services; Mammoth Lakes, CA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Mammoth Mountain FM Associates, Inc., licensee of Station KMMT(FM), Mammoth Lakes, California, seeking the substitution of Channel 293B1 for Channel 292A and modification of its license accordingly to specify operation on the higher power channel. Coordinates for this proposal are 37–37–40 and 119–01–56.

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's rules. Therefore, we will not accept competing expressions of interest in the use of Channel 293B1 at Mammoth Lakes, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

**DATES:** Comments must be filed on or before September 8, 1992, and reply comments on or before September 23, 1992.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: David A. Digerness, President, Mammoth Mountain FM Associates, Inc., P.O. Box 1284, Mammoth Lakes, CA 93546.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–146 adopted June 29, 1992, and released July 16, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 92–17205 Filed 7–21–92; 8:45 am]
BILLING CODE 6712–01–M

## DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

**50 CFR Part 663**

**[Docket No. 9207782178]**

**Pacific Coast Groundfish Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NOAA issues this proposed rule to implement conservation and

management measures as prescribed in proposed Amendment 6 to the Fishery Management Plan for the Pacific Coast Groundfish Fishery (FMP). This rule would establish a license limitation limited entry program for the commercial groundfish fishery based on the issuance of gear-specific Federal permits. The intended effect of this proposed rule is to promote conservation and improve stability and economic viability of the fishery industry, by limiting or reducing harvesting capacity in the Pacific Coast Groundfish Fishery.

**DATES:** Comments on the proposed rule must be received on or before August 31, 1992.

**ADDRESSES:** Comments on the proposed rule, Amendment 6, or supporting documents should be sent to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or Mr. E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213.

Copies of Amendment 6, the Supplemental Environmental Impact Statement and the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, OR 97201.

Comments on the information collection requirements that would be imposed by this rule should be sent to Mr. Rolland A. Schmitten or Mr. E. Charles Fullerton, at the addresses above, and to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206–526–6140, Rodney McInnis at 310–980–4040, or the Pacific Fishery Management Council at 503–326–6352.

**SUPPLEMENTARY INFORMATION:**

## Background

Amendment 6 to the FMP was prepared by the Pacific Fishery Management Council (Council) under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended, 16 U.S.C. 1801 *et seq.* A notice of availability for the proposed Amendment was filed with the Office of the **Federal Register** on June 9, 1992. Copies of Amendment 6 are available from the Council upon request at the address given above.

Domestic landings from the Pacific Coast Groundfish Fishery were relatively stable, averaging about 30,000 metric tons (mt) annually, until the early 1970s when they began a fairly steady increase. By 1976, when the Magnuson Act was passed, annual groundfish landings had reached 60,000 mt, and by 1982, when the FMP was implemented, total landings (excluding foreign and joint venture catch) had peaked at 116,000 mt.

A major reason for this rapid growth in groundfish landings was a substantial buildup in harvesting capacity that greatly exceeded the sustainable production capacity of the groundfish resource taken in traditional fisheries. Harvesting capacity increased as newly constructed vessels and vessels displaced from other fisheries entered the fishery. The number of trawl vessels alone rose from 286 in 1977 to 472 in 1979. Furthermore, improved electronic, navigational, and fish-finding equipment significantly increased the harvesting efficiency of the fleet. The result was that in just a few years the Pacific Coast Groundfish Fishery had progressed from harvesting surplus production, from generally healthy or underharvested fish stocks, to the point of excessive capacity with major stocks having been fished down to maximum sustainable yield (MSY) levels.

The fishing down of groundfish stocks to MSY levels combined with harvesting capacity in excess of that required to take the available resource have led to an increase in the number and complexity of regulations that constrain the economic performance of the existing fleets. As fleet capacity has increased, species yielding high rates of return have increasingly become subject to targeting. In order to protect the resource, quotas have been imposed at the Council's recommendation. As harvesting capacity continued to increase due to the fishery's profitability, increased harvest rates have reduced the time required to reach quotas. In order to maintain a flow of product throughout the entire year, a system of trip landing and frequency limits, as well as quotas and closures, has been imposed at the Council's recommendation. Trip limits and quotas have resulted in the inability of many individual vessels to utilize fully their harvesting capacity. However, these measures do not prevent fleet capacity from expanding (and thus harvest rates from increasing) through the entry of additional vessels into the fishery. If fleet capacity continues to expand or if stocks begin to decline, progressively lower trip limits and longer closures will be necessary, thereby further restricting the utilization of fleet capacity. Trip limits may produce some desirable results such as extending the season, but trip limits do not effectively check expansion of fleet harvesting capacity and the dissipation of potential fishery profits that occur with the entry of new vessels.

Additionally, trip limits create other resource management problems such as unreported mortality through discarding fish caught in excess of trip limits, and highgrading as fishermen try to maximize the value of their catch under restrictive trip limits. Similarly, season closures when quotas are reached created unreported discard mortality.

The Council proposed Amendment 6 in order to begin to address directly the issue of increasing amounts of excess and unutilizable fleet harvesting capacity. The amendment would institute a license limitation program based on the issuance of Federal permits to control the overall fleet harvest capacity of the three major gear types (trawl, longline, and fish pot) that account for the vast majority (over 90 percent) of the Pacific Coast Groundfish harvest. It should be noted that "fish pot" as used throughout Amendment 6 refers to traps and pots and is defined in 50 CFR part 663, the regulations governing the Pacific Coast Groundfish Fishery, as "trap (or pot)" gear.

The following are the goals and objectives for the limited access program. The primary objective addresses the overcapacity problem directly while the secondary objectives address the ways in which the Council intends that effort limitation regimes will promote the achievement of the FMP's goals and objectives.

### *Goals*

The goals for the Pacific coast groundfish fishery limited entry program are to improve stability and economic viability of the industry while recognizing historic participation, meeting groundfish management objectives, and providing for enforceable laws.

### *Primary Objective*

The primary objective of the limited entry program is to limit or reduce harvesting capacity in the Pacific coast groundfish fishery.

### *Secondary Objectives*

In pursuit of the primary objective, the following secondary objectives will be addressed:

*Economic*: Promote long-term economic stability. Increase net returns from the fishery. Allow flexibility for combination (multiple-gear) vessels.

*Management*: Stabilize management regimes by reducing need for frequent in-season changes. Reduce the cost of management. Reduce by catch and waste. Encourage effort in underutilized species.

*Enforcement*: Promote cost-effective enforcement by reducing need for frequent changes and tight trip limits. Promote logistically viable enforcement by minimizing need to use regulatory management measures such as trip limits or subarea closures.

*Social*: Recognize and accommodate historical participation of those investing their lives and resources in the fishery. Maintain a mechanism for fishery entrance/exit and flexibility for change in the fleet. Reduce conflicts between user groups by limiting or reducing effort competition for the same resource. Provide a stable supply of groundfish to the public at a reasonable price.

*Description of Amendment 6*

Amendment 6 is intended to control the capacity of the groundfish fishing fleet in three main ways: (1) Limiting the overall number of vessels; (2) limiting the number of vessels using each of the three major gear types; and (3) limiting increases in vessel harvest capacity by limiting vessel length. Although Amendment 6 signifies a major step forward in controlling fleet capacity, currently used regulatory management measures such as trip landing and frequency limits will continue to be necessary, at least in the short term, to restrict usable vessel capacity.

Amendment 6 divides the Pacific coast commercial groundfish fishery into two segments. The first segment is the limited entry fishery consisting of vessels using trawl, longline, and/or trap (or pot) gear that are issued limited entry permits. The second segment is the open access fishery consisting of vessels using all other gear (called "exempted" gear in Amendment 6), as well as vessels that do not have limited entry permits endorsed for use of longline or trap (or pot) gear but that make small landings with longline or trap (or pot) gear. Vessels landing groundfish in the open access segment must comply with any trip landing and frequency limits established for the open access fishery. Allocations of groundfish may be made to the limited entry and open access fisheries based on their historic harvest levels during a specific "window period." Such allocations likely would result in 90 to 95 percent of the allowable groundfish harvest being allocated to the limited entry fishery. The implementation date for the limited entry program is January 1, 1994. If approved and implemented, the limited entry program could be modified, or even abolished, by subsequent amendment to the FMP.

Beginning January 1,1994, a Federal permit would be required to participate in the limited entry segment of the fishery. Permits would be endorsed for one or more of three gear types (trawl, longline, and trap (or pot)), with four possible types of endorsement for each gear type. For purposes of the limited entry program, Portuguese longline (commercial vertical hook-and-line) is considered a type of exempted gear. Accordingly, the term "longline", as used throughout this notice of proposed rulemaking, does not include Portuguese longline. Vessels meeting specific minimum landing requirements (MLRs) with a particular gear during the qualifying "window period" (July 11, 1984, through August 1, 1988) would receive "A" endorsements for that gear. Generally, "A" endorsements are the only transferable endorsements. Endorsements may not be transferred separately from the permit to which they were made. An adjustment period is provided for vessels that landed some groundfish prior to August 1, 1988, but do not meet the MLRs for an "A" endorsement, through the issuance of a non-transferable "B" endorsement. A "B" endorsement allows the vessel to participate in the limited entry fishery through 1996, when all "B" endorsements will expire. Those vessels under construction, conversion, or that were purchased during the window period, and as a result were unable to meet the MLRs, are provided an opportunity to demonstrate their commitment to participate in the groundfish fishery through the issuance of "provisional A" endorsements. "Provisional A" endorsements can be upgraded to "A" endorsements if specific "upgrade" requirements are met for 3 consecutive years. "Designated Species B" endorsements, valid for a single year, allow vessels to harvest underutilized species if the vessels with permanent limited entry permits do not intend to harvest the entire allowable catch.

More than one type of gear endorsement may be affixed to a limited entry permit. When the limited entry fishery is open, a vessel fishing under a limited entry permit may also fish with open access gear (exempted gear and longline or trap (or pot) gear for which an endorsement is not held). However, all fishing with open access gear will be subject to regulations (trip limits, etc.) applicable to the open access fishery and all catch will count against the limited entry quota. A vessel with a limited entry permit may also participate in the open access fishery when the limited entry fishery is closed, but not with gear for which its limited entry permit is endorsed.

No more than one limited entry permit will be issued for each qualifying vessel. Permits will be issued only to the current owner of the vessel, unless the previous owner has reserved, by the express terms of a written contract by which vessel ownership is transferred, the right to the limited entry permit, or if a vessel that would have qualified for an endorsement was totally lost prior to initial issuance of a limited entry permit.

All limited entry permits must be renewed annually and will expire if not renewed each year.

A size endorsement (length overall) on each permit will prevent an owner from increasing the length of a vessel for which the permit is issued by more than 5 feet. Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined to qualify for a permit with a larger size endorsement. The size endorsement on the new "combined" vessel's permit will be determined by a process to be developed by the NMFS Northwest Regional Director (Regional Director) in consultation with the Council and with the professional advice of marine architects and other qualified individuals. In the case of a vessel endorsed for trawl gear, when the length of the vessel is smaller by more than 5 feet than the originally endorsed length, the permit will be reissued with a size endorsement for the smaller length.

Limited entry permits may be transferred to other vessels and owners; however, the permits will continue to be restricted by size and gear endorsements. Non-transferable endorsements will expire with the transfer of the permit.

*"A" Endorsements*

"A" endorsements are primarily intended for those vessels with significant involvement in the Pacific Coast groundfish fishery during the July 11, 1984, to August 1, 1988, window period. The purpose of the window period is to provide a 4-year period encompassing both good and bad years in the groundfish and other West Coast fisheries, during which individual vessel owners could demonstrate present participation, historic participation, and a significant dependence on the Pacific Coast groundfish fishery. August 1, 1988,

was the date announced by the Council and NOAA as the date after which entry into a limited entry program, under development by the Council, might be prohibited. The purpose of the cutoff date was to prevent further over-capitalization of the fishery by discouraging persons from entering the fishery only on the speculation that they might qualify for a valuable permit that could later be sold at a profit.

"A" endorsements are transferable with the permit and are valid for all groundfish species managed under the FMP. An "A" endorsement expires upon failure to renew the limited entry permit to which it is affixed. A vessel's dependence and significant involvement in the groundfish fishery is determined by meeting the MLR for one or more gear types during the window period. The MLR for each gear type is:

*Trawl:* At least 9 separate days in which over 500 pounds a day of any groundfish species (except Pacific whiting) caught with groundfish trawl gear are landed or delivered; or a total of 450 mt of landings or deliveries of any groundfish species (except Pacific whiting) caught with groundfish trawl gear; or 17 separate days in which over 500 pounds a day of Pacific whiting caught with groundfish trawl gear are landed or delivered; or a total of 3,750 mt of landings or deliveries of Pacific whiting caught with groundfish trawl gear.

*Longline:* At least 6 separate days in which over 500 pounds a day of any groundfish species caught with longline gear are landed or delivered; or a total of 37.5 mt of landings or deliveries of any groundfish species caught with longline gear.

*Trap (or pot):* At least 5 separate days in which over 500 pounds a day of any groundfish species caught with trap (or pot) gear are landed or delivered; or a total of 150 mt of landings or deliveries of any groundfish species caught with trap (or pot) gear.

In order to limit the issuance of permits to bona fide groundfish fishermen, and ensure that salmon and shrimp fishermen who may land some groundfish incidental to salmon and shrimp fishing operations do not qualify for groundfish limited entry permits, any landing that includes salmon or shrimp will not count toward meeting the MLRs for a limited entry permit. Shrimp fishermen will still be allowed a bycatch of groundfish; and salmon trollers are allowed to harvest groundfish in the open access fishery because troll great is an exempt gear.

Amendment 6 has a special provision for issuing limited entry permits with "A" endorsements to vessels participating in small limited entry fisheries controlled by local governments, in existence as of July 11, 1991, and having negligible impacts on the groundfish resource. Use of these permits will be restricted to vessels that are operating in conformance with the local program. These "limited" permits may be transferred between vessels operating in the program, but may not be used to increase the number of vessels in the program.

For a small limited entry fleet to be eligible for certification, a representative must apply to the NMFS Northwest Regional Director. The Regional Director, after receiving a recommendation from the Council, must determine that the fleet: (1) Has negligible impact on the overall groundfish resource; and (2) operates in a manner consistent with the goals and objectives of Amendment 6. After making this determination, the Regional Director may incorporate the fleet into the limited entry fishery and set an upper limit on the amount of groundfish the fleet may land.

The small limited entry fleet provision was added by the Council in order to provide for the continued participation of small local groundfish vessels with unique social and cultural histories, such as the Newport Beach, California, dory fleet, which currently operates under a local program that limits the size and number of vessels that may participate.

*"Provisional A" Endorsements*

"Provisional A" endorsements are designed primarily for individuals who purchased a vessel near the end of the window period, or had a vessel under construction or conversion during the window period and, as a result, are unable to meet the MLR for an "A" endorsement. This non-transferable endorsement recognizes the financial investment and intent to participate in the groundfish fishery demonstrated during the window period and subsequently shown by meeting specific "upgrade" criteria.

A vessel owner who contracted to have a vessel constructed or converted would qualify for a "provisional A" endorsement if: (a) A contract for part of the construction (including laying of the keel) or conversion (including a structural modification necessary to make the vessel capable of fishing with limited entry gear) was signed, and earnest money of 10 percent or more of the value of the contract was paid to August 1, 1988; (b) the contract is not transferred from the contract holder between August 1, 1988, and the issuance of the "provisional A" endorsement; (c) for vessels qualifying under the construction provision, no landing of any species of fish was made anywhere by the vessel prior to July 11, 1984, and for vessels qualifying under the conversion provision, no landing was made anywhere between the time conversion began and July 11, 1984; and (d) at least one landing of any species of fish was made anywhere prior to September 30, 1990, for vessels qualifying under the construction provision, and at least one landing of any species of fish was made anywhere after conversion began and prior to September 30, 1990, for vessels qualifying under the conversion provision.

A vessel owner who constructed or converted a vessel would qualify for a "provisional A" endorsement by meeting the same requirements described above except that, rather than the requirement that a contract be signed and earnest money of 10 per cent of a contract be paid, the vessel owner must have commenced the construction or conversion activity before August 1, 1988. The "upgrade" period for vessels being constructed or converted begins with the conclusion of the construction or conversion. For vessels being constructed, this is the first landing of fish anywhere; for vessels being converted, this is the first landing of fish anywhere after the beginning of conversion.

A vessel owner who purchased a vessel during the window period, and used a limited entry gear to catch and land groundfish during the window period, but whose vessel does not meet the MLRs for an "A" gear endorsement, would qualify for a "provisional A" endorsement, provided ownership of the vessel was not transferred between August 1, 1988, and the time upgrade criteria are met. The 3-year "upgrade" period begins immediately upon the purchase of the vessel; the vessel owner must meet the upgrade landing requirements during each of 3 consecutive years or the permit will expire.

A "provisional A" endorsement may be upgraded to an endorsement if specific landing requirements are met during the first 3 years of an upgrade period. The amount of landings required each year is the approximate equivalent of the annualized MLR, which vessels receiving "A" endorsements are required to meet.

The landing requirements to upgrade a "provisional A" endorsement to an "A" endorsement are:

1. For trawl gear, at least 2 days with landings over 500 pounds a day of any groundfish species except Pacific

whiting; or a total of 113 mt of landings or deliveries (at sea) of any groundfish species except Pacific whiting; or 5 days or 938 mt of landings or deliveries (at sea) of Pacific whiting.

2. For longline gear, at least 2 days with landings over 500 pounds a day of any groundfish species; or a total of 10 mt of landings or deliveries of any groundfish species.

3. For trap (or pot) gear, at least 2 days with landings over 500 pounds a day of any groundfish species; or a total of 36 mt of landings or deliveries of any groundfish species.

As with all endorsements, any landing that includes salmon or shrimp will not count toward meeting the "upgrade" landing requirements.

A "provisional A" endorsement will expire at the end of any consecutive 365-day period (during the 3-year upgrade period) in which a vessel's landings or deliveries (at sea) do not meet the landing requirements for upgrade.

In addition to situations involving the purchase, construction, or conversion of a vessel, a "provisional A" endorsement could be upgraded to an "A" endorsement under two special circumstances: (1) Where endorsements are to be issued to vessel owners who used fishing gear that has been prohibited after the window period; and (2) where endorsements are to be issued for replacement vessels that are larger than the vessel replaced, when the vessel is "in place" prior to September 30, 1990.

For most vessels that would qualify for a "provisional A" endorsement, the upgrade period will have been completed by the time this proposed limited access program is implemented, if approved, and the vessel would be issued an "A" endorsement. Thus, any effort increase resulting from this provision is anticipated to be small and short-term.

*"B" Endorsements*

"B" endorsements are designed to allow those vessels with a history of participation in the fishery either prior to the window period or during the window period, but insufficient to meet the MLRs for an "A" endorsement, or for the upgrade of a "provisional A" endorsement to an "A" endorsement, to continue to participate for an adjustment period before they are required to obtain an "A" endorsement or to cease participating in the limited entry fishery. A vessel owner could receive a non-transferable "B" permit if his vessel landed at least 500 pounds of groundfish on at least 3 separate days at any time prior to August 1, 1988, the end of the window period, as long as the vessel owner has continuously owned the vessel since the date of the first of the three qualifying landings. The non-transferable "B" endorsement provides short-term access to the fishery to provide the opportunity for those individuals who may have participated at a higher level prior to the window period, or at a low level during the window period, to adjust to the limited entry program. "B" endorsements expire at the end of the 1996 fishing year, by which time vessel owners must have obtained a permit with an "A" endorsement or have left the limited entry fishery.

*"Designated Species B" Endorsements*

"Designated species B" endorsements may be issued for Pacific whiting, shortbelly rockfish, and jack mackerel (north of 39 degrees N. latitude), only if the committed harvesting capacity of vessels with limited entry permits is insufficient to harvest the allowable catch. "Designated species B" endorsements are valid through the end of the calendar year only and are not transferable with the permit. The purpose of these endorsements is to allow domestic fishermen the maximum opportunity to harvest these groundfish species prior to consideration of authorization of joint venture (JVP) or directed foreign fishing operations. The allowable harvest of each species by vessels with "designated species B" endorsements, the "designated species catch limit," is determined annually by NMFS on or about October 1 of the preceding fishing year and will be published in the **Federal Register**. "Designated species B" endorsements will be issued to allow achievement of the "designated species catch limit." Those vessels receiving "designated species B" endorsements will be determined by NMFS at the beginning of each fishing year based upon "seniority" (number of years the vessel has fished for the designated species). Vessels with equal seniority will be ranked equally. Endorsements will be issued first to all vessels with the highest seniority, then next highest, etc., until it is estimated that the commitments of applicants receiving endorsements is sufficient to take the "designated species catch limit." If there are insufficient commitments by senior applicants to take the catch limit, other applications will be ranked by lottery, and a number of endorsements sufficient to take the catch limit will be issued.

If NMFS initially overestimates the commitment of the limited entry fleet at the beginning of the year, it may reapportion quantities of fish to the "designated species catch limit" at any time during the year by publishing a notice in the **Federal Register**.

*Other Provisions*

Amendment 6 allows hardship exceptions for vessels that fail to meet the initial issuance and "prove-up" criteria, provided that the failure to qualify resulted from either (1) inadequate or incorrect official documentation (landing records) of landings or deliveries; (2) construction or conversion criteria are not met due to delay(s) beyond the control of the vessel owner; and (3) death, illness, or injury of a vessel owner, or litigation involving the vessel.

If a vessel that would have qualified for a permit is totally lost, it may be replaced within 2 years of the date of the loss, and the limited entry permit will be transferred to the new vessel. The size endorsement on the permit issued for the replacement vessel will be the overall length of the lost vessel, unless the vessel qualifies for a "provisional A" endorsement for the size of the replacement vessel.

Any person applying for a limited entry permit or gear endorsement may appeal in writing an initial decision regarding issuance to the Northwest Regional Director, NMFS, within 30 days of the initial decision. An appellant may, if desired, request that the Regional Director seek a recommendation from the Council as to whether the appeal should be granted.

The NMFS Regional Director will charge fees to cover administrative expenses related to issuance of limited entry permits including initial issuance, renewal, transfer, vessel registration, replacement, and appeals of limited entry permits. Although the amount of the initial issuance fee is as yet undetermined, it may run between $100 and $600 per vessel. A lesser fee may be charged for annual renewals and for transfers of permits.

Limited entry permits will be issued by the Fishery Management Division, Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115, telephone (206) 526-6140. Applications for initial issuance of limited entry permits and gear endorsements would have to be submitted between January 1, 1993, and June 30, 1993. Initial limited entry permits will be issued between July 1, 1993, and December 31, 1993.

*Scope of the Program*

Under Amendment 6, a limited entry permit confers a privilege to operate the vessel in the commercial groundfish fishery, in conformance with the Pacific

Coast Groundfish FMP, using the gear(s) for which the permit is endorsed. The FMP could be revised in the future and could change or abolish the privileges associated with limited entry permits. One specific option currently under consideration by the Council is adoption of an Individual Transferable Quota (ITQ) system that would require ITQs to harvest specific groundfish species.

**Classification**

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99-659, requires that the Secretary of Commerce (Secretary) publish proposed implementing regulations 15 days after the receipt of the amendment. At this time the Secretary has not determined that Amendment 6, which these proposed rules would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views and comments received during the comment period.

The Council prepared a supplemental Environmental Impact Statement (SEIS) for the amendment that discusses the impact on the environment as a result of this rule. A copy of the SEIS may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA, initially has determined that this proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR/IRFA that demonstrates prositive net short-term and long-term economic benefits to the fishery under the proposed management measures. The proposed rule is not expected to have an annual effect on the economy of $100 million or more; nor lead to significant increases in costs to consumers, industries, government agencies, or geographical regions; nor to have significant adverse impacts on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises. A copy of this review may be obtained from the Council (see **ADDRESSES**).

The proposed rule is exempt from the advance review procedures of E.O. 12291 under section 8(a)(2) of that order. The Magnuson Act, as amended, requires the Secretary to publish proposed implementing regulations 15 days after receipt of the amendment. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of the order.

The major burden imposed on small business by license limitation is the cost of acquiring permits incurred by those who do not initially receive them. NMFS believes this proposed regulatory action, if adopted, could have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, depending upon the future market prices for limited entry permits. That market does not presently exist and, therefore, we do not know what the demand will be. There could be a significant effect on vessels that do not qualify for limited entry permits depending on the price for permits. We do not know how many recent participants there are in this fishery and who will not qualify for initial limited entry permits. For small entities who cannot afford to purchase a limited entry permit, this proposed regulatory action will significantly impact them. For other small entities, the potentially significant economic impact due to the cost of the permit is somewhat offset by the realization of anticipated above-normal earnings to participants in the limited entry fishery. Most vessel owners who fished during the window period but do not initially qualify for a permit relied on groundfish caught with limited entry gear for only a small portion of their revenue during the window period. All small entities participating in the limited entry fishery will be impacted by the requirement for permit holders to pay an annual permit fee to NMFS to cover costs of processing and issuing permits, administering the permit program and its data files, and financing a Permit Review Board. This fee is expected to be considerably less than $500 regardless of the size of the entity. The RIR/IRFA examines impacts on small entities and may be obtained from the Council (see **ADDRESSES**).

This proposed rule contains several new collection-of-information requirements subject to the Paperwork Reduction Act. Requests to collect this information are being submitted to the Office of Management and Budget (OMB) for approval. The requirements are for application forms: (1) To apply for the issuance of initial permits; (2) to apply to transfer ownership of a permit; (3) to apply to transfer the permit to a different vessel; and (4) to apply for annual renewal of the permit. The public reporting burden for this collection is estimated to average 1 hour per response for initial application for a permit, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Renewal of permits is estimated to average 0.3 hours and permit transfers 0.2 hours. Send comments on these reporting burden estimates or any other aspect of the collection of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

NMFS issued a Biological Opinion under the Endangered Species Act on August 10, 1990, pertaining to Amendment 4 of the FMP. It concluded that implementation of the FMP (including Amendment 4) would not jeopardize the continued existence of any of the species considered. NMFS listed Snake River sockeye salmon as endangered on November 20, 1991, and Snake River spring/summer and fall chinook as threatened on April 22, 1992. As a result, NMFS has reinitiated consultation under section 7 of the Endangered Species Act and a Biological Opinion addressing the effects of the groundfish fishery (as managed under Amendment 6) on these species will be completed before this proposed rule becomes final.

The Council has determined that this rule is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California. Letters have been sent to the three states requesting their review and comment.

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

**List of Subjects in 50 CFR Part 663**

Administrative practice and procedures, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 16, 1992.

**Samual W. McKeen,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 663 is proposed to be amended as follows:

1. The authority citation for part 663 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 663.7, new paragraphs (q) through (u) are added to read as follows:

**§ 663.7 Prohibitions.**

* * * * *

(q) Effective January 1, 1994, fish with trawl gear, or carry trawl gear on board a vessel that also has groundfish aboard

(unless the vessel is in continuous transit from outside the fishery management area to a port in Washington, Oregon, or California), without having a limited entry permit valid for that vessel affixed with a gear endorsement for trawl gear.

(r) Effective January 1, 1994, fail to carry aboard a vessel that vessel's limited entry permit.

(s) Makes a false statement on an application for issuance, renewal, transfer, vessel registration, or replacement of a limited entry permit.

(t) Effective January 1, 1994, take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish.

(u) Effective January 1, 1994, carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed.

3. A new subpart C is added to 50 CFR part 663 to read as follows:

**Subpart C—Limited Entry and Open Access Fisheries**

Sec.
663.30 General.
663.31 Definitions.
663.32 Allocations.
663.33 Limited entry fishery—General.
663.34 "A" gear endorsement.
663.35 "Provisional A" gear endorsement.
663.36 "B" gear endorsement.
663.37 "Designated Speices B" gear endorsement.
663.38 Hardship exceptions.
663.39 Replacement of lost vessels.
663.40 Fees.
663.41 Limited entry permits.
663.42 Permit appeals.
663.43 Permit sanctions.

## Subpart C—Limited Entry and Open Access Fisheries

### § 663.30 General.

(a) This subpart applies to non-treaty Indian commercial fishing for groundfish in the Pacific Coast Groundfish Fishery, and provides procedures and criteria for the administration of the limited entry and open access fisheries established by Amendment 6.

(b) Effective January 1, 1994, all commercial fishing for groundfish must be conducted in accordance with this subpart, except such fishing by treaty Indian tribes as may be separately provided for.

### § 663.31 Definitions.

In addition to the definitions in the Magnuson Act and in §§ 620.2 and 663.2 of this chapter, the terms used in this subpart have the following meanings:

*Amendment 6* means Amendment 6 to the Pacific Coast Groundfish Plan.

*Exempted gear* means all types of fishing gear except trawl, longline, and trap (or pot) gear.

*Fisheries Management Division (FMD)* means the Chief, Fisheries Management Division, Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115, telephone (206) 526–6140, or a designee.

*Length overall,* with respect to a vessel, means the length overall set forth in the Certificate of Documentation (CG–1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate issued by a state or the U.S. Coast Guard for an undocumented vessel; for vessels which do not have the length overall stated in an official document, the length overall is the length overall as determined by the U.S. Coast Guard or by a marine surveyor in accordance with the U.S. Coast Guard method for measuring length overall.

*Limited entry fishery* means the fishery composed of vessels using trawl gear, longline, and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the limited entry fishery.

*Limited entry gear* means longline or trap (or pot) gear used under the authority of a valid limited entry permit affixed with an endorsement for that gear, and all trawl gear.

*Limited entry permit* means the permit required to participate in the limited entry fishery, and includes the gear endorsements affixed to the permit unless specified otherwise.

*Longline*, for purposes of this subpart only, means a stationary, buoyed, and anchored groundline with hooks attached, but does not include commercial vertical hook-and-line gear.

*Mt* means metric ton.

*Open access fishery* means the fishery composed of vessels using trawl gear, longline, and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery.

*Open access gear* means all types of fishing gear except:

(1) Longline or trap (or pot) gear fished by a vessel that has a limited entry permit affixed with a gear endorsement for that gear; and

(2) Trawl gear.

*Owner*, as used in this subpart, means a person who is identified as the current owner in the Certificate of Documentation (CG–1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate issued by a state or the U.S. Coast Guard for an undocumented vessel.

*Person*, as used in this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

*Regional Director* means the Northwest Regional Director, National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115, telephone (206) 526–6150.

*Totally lost* means that the vessel being replaced no longer exists *in specie*, or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel.

*Window period* means the period from July 11, 1984, through August 1, 1988.

### § 663.32 Allocations.

(a) *General.* Effective January 1, 1994, the commercial portion of the Pacific Coast Groundfish Fishery, excluding the treaty-Indian fishery, is divided into limited entry and open access fisheries.

(b) *Allocation procedures.* Effective January 1, 1994, separate allocations for the limited entry and open access fisheries will be established annually for certain species and/or areas using the procedures described in § 663.21 and sections II.E. and H. of the appendix to this part.

(c) *Catch accounting between the limited entry and open access fisheries.* Any groundfish caught by a vessel with a limited entry permit will be counted against the limited entry allocation while the limited entry fishery for that vessel's limited entry gear is open. When the fishery for a vessel's limited entry gear has closed, groundfish caught by that vessel with open access gear will be counted against the open access allocation. All groundfish caught by vessels without limited entry permits will be counted against the open access allocation.

(d) *Additional guidelines.* Additional guidelines governing determination of the limited entry and open access allocations are in section II.E.(d) of the appendix to this part.

(e) *Treaty Indian fisheries.* Certain amounts of groundfish may be set aside annually for tribal fisheries prior to dividing the balance of the allowable catch between the limited entry and open access fisheries. Tribal fisheries

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conducted under a set-aside are not subject to this subpart.

(f) *Recreational fisheries.* Recreational fishing for groundfish is outside the scope of, and not affected by, this subpart. Certain amounts of groundfish may be specifically allocated to the recreational fishery, and will be set aside prior to dividing the commercial allocation between the commercial limited entry and open access fisheries.

**§ 663.33 Limited entry fishery—General.**

(a) Participation in the limited entry fishery requires that the owner of a vessel have a limited entry permit affixed with a gear endorsement registered for use with that vessel for the gear being fished. There are four types of gear endorsements: "A," "provisional A," "B," and "designated species B." More than one type of gear endorsement may be affixed to a limited entry permit. While the limited entry fishery is open, vessels fishing under limited entry permits may also fish with open access gear. All fishing with open access gear is subject to regulations applicable to the open access fishery. Vessels with limited entry permits may also participate in the open access fishery when the limited entry fishery is closed, but only with open access gear.

(b) At initial issuance, no more than one limited entry permit will be issued for each qualifying vessel. The limited entry permit will be issued only to the current owner of the vessel, unless:

(1) The previous owner of a vessel qualifying for an "A" or a "designated species B" gear endorsement has, by the express terms of a written contract, reserved the right (or, for "designated species B" endorsements, seniority status) to the limited entry permit, in which case the limited entry permit will be issued to the previous owner based on the catch history of the qualifying vessel [note: If the limited entry rights have been reserved by contract, the current vessel owner no longer has rights to the issuance of a limited entry permit for the qualifying vessel]; or

(2) A vessel that would have qualified for an "A" gear endorsement was totally lost prior to initial issuance of a limited entry permit. In this case, the owner of the vessel at the time it was lost retains the right to a limited entry permit with an "A" gear endorsement, unless the owner conveyed the right to another person by the express terms of a written contract, in which case the person holding the contractual rights is entitled to the permit (see § 663.39).

(c) A vessel qualified for initial issuance of a limited entry permit by meeting the initial issuance criteria for one or more gear endorsements (reference §§ 663.34, 663.35, 663.36, and 663.37).

(d) Limited entry permits are transferable as follows:

(1) The permit holder may transfer (by sale, assignment, lease, bequest, intestate succession, barter, trade, gift, or other form of conveyance) the limited entry permit to a different person, or to a different vessel under the same ownership, subject to the conditions set forth in this subpart.

(2) Gear endorsements may not be transferred separately from the limited entry permit.

(3) Except as provided in §§ 663.35(b)(2), 663.36(b)(2), and 663.37(b)(2), only "A" gear endorsements remain valid with the transfer of a limited entry permit.

(e) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a limited entry permit.

(f) *Vessel size endorsements.* (1) The limited entry permit will be endorsed with the length overall for the vessel for which the permit is initially issued, except as provided in § 663.35(a)(4) regarding issuance of a "provisional A" endorsement for the size of the replacement vessel.

(2) A permit may be used with a vessel up to 5 feet (1.52 m) more in length overall than the length endorsed on the permit without a change in the size endorsement.

(3) The length for which the permit is endorsed will be changed only when permits are combined for use with a vessel requiring a larger size endorsement (reference paragraph (g) of this section), or, for permits endorsed for trawl gear, when the length of the vessel used under the permit is more than 5 feet (1.52 m) less than the originally endorsed length, in which case the permit will be reissued with a length overall endorsement for the length of the smaller vessel.

(g) *Combining limited entry permits.* Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined to "step-up" to a permit with a larger size endorsement. The Regional Director, with professional advice of marine architects and other qualified individuals, and after consultation with the Council, will develop and implement a standardized measure of harvest capacity for the purpose of determining the appropriate endorsed lengths for limited entry permits created by combining two or more permits with smaller size endorsements. The harvest capacity represented by the larger size endorsement should not exceed the sum of the harvest capacities of the limited entry permits being combined.

(h) *Limited entry permits indivisible.* Limited entry permits may not be divided for use by more than one vessel.

**§ 663.34 "A" gear endorsement.**

(a) *Initial issuance criteria.* (1) The current owner of a vessel that met the minimum landing requirements (MLRs) during the window period may receive an "A" endorsement for each type of limited entry gear for which the vessel qualifies.

(2) The MLRs are:

(i) Use of trawl gear to make: At least 9 separate days with landings over 500 pounds (227 kg) of any groundfish species except Pacific whiting; or 450 mt of landings of any groundfish species except Pacific whiting; or 17 separate days with landings over 500 pounds (227 kg) of Pacific whiting; or 3,750 mt of landings of Pacific whiting.

(ii) Use of longline gear to make: At least 6 separate days with landings over 500 pounds (227 kg) of any groundfish species; or 37.5 mt of landings of any groundfish species.

(iii) Use of trap (or pot) gear to make: At least 5 separate days with landings over 500 pounds (227 kg) of any groundfish species; or 150 mt of landings of any groundfish species.

(iv) *Exceptions:* Any landing that included salmon or shrimp will not count toward meeting the MLRs.

(3) *Small limited entry fleets.* (i) Small limited entry fisheries that are controlled by a local government, are in existence as of July 11, 1991, and that have negligible impacts on the groundfish resource, may be certified as consistent with the goals and objectives of Amendment 6 and incorporated into the limited entry fishery.

(ii) If a fleet is certified and incorporated into the limited entry fishery, vessels in the fleet at the time of incorporation will be issued limited entry permits with "A" endorsements for appropriate gear.

(iii) A permit issued to a vessel in a certified fleet is only valid when the vessel is operating under and in conformance with the certified program. Such a permit and endorsement may be transferred to another vessel that will operate in the same certified fleet, provided the total number of vessels in the fleet does not increase. If more vessels are added to a fleet in a certified limited entry program, these additional vessels will not receive "A" endorsements unless the program is recertified for the greater number of



vessels, and the larger fleet incorporated into the limited entry fishery.

(iv) The Regional Director may place an upper limit on the amount of groundfish that an incorporated fleet, or vessels operating in an incorporated fleet, may land.

(v) *Procedure for incorporation.* Upon application of a representative of a small limited entry fleet, the Regional Director, after receiving a recommendation from the Council, may incorporate the fleet into the limited entry fishery, if the Regional Director:

(A) Determines that the fleet has a negligible impact on the groundfish resource; and

(B) Certifies the activities of the fleet as consistent with the goals and objectives of Amendment 6.

(4) *Other qualifying criteria for "A" gear endorsements.* See §§ 663.35(a)(4) and 663.35(c).

(b) *Attributes.* (1) A limited entry permit with an "A" endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(2) An "A" endorsement is transferable with the limited entry permit to another person, or to another person or a different vessel under the same ownership under § 663.41(d).

(3) An "A" endorsement expires on failure to renew the limited entry permit to which it is affixed (see § 663.41(c)).

**§ 663.35 "Provisional A" gear endorsement.**

(a) *Initial issuance criteria.* The following persons qualify for "provisional A" gear endorsements:

(1) A person who contracted to have a vessel constructed or converted may qualify for a "provisional A" endorsement for the vessel if:

(i) A contract for part of the construction (including laying of the keel) or conversion was signed, and earnest money of 10 percent or more of the value of the contract was paid, prior to August 1, 1988;

(ii) The contract for the vessel under construction (or ownership of vessel under conversion) is not transferred from the contract holder (or owner) between August 1, 1988, and the issuance of the "provisional A" endorsement (unless the transfer was caused by the death of the vessel owner, in which case the transferee may apply for the "provisional A" endorsement);

(iii) For vessels qualifying under the construction provision, no landing of any species of fish was made anywhere by the vessel prior to July 11, 1984; for vessels qualifying under the conversion provision, no landing of any species of fish was made anywhere between the time conversion began and July 11, 1984; and

(iv) For vessels qualifying under the construction provision, at least one landing of any species of fish was made anywhere prior to September 30, 1990; for vessels qualifying under the conversion provision, at least one landing of any species of fish was made after conversion began and prior to September 30, 1990.

(2) A vessel owner who constructed or converted a vessel may qualify for a "provisional A" endorsement for the vessel if:

(i) Prior to August 1, 1988, the keel was laid or conversion began;

(ii) Vessel ownership is not transferred from the owner between August 1, 1988, and issuance of the "provisional A" endorsement (unless the transfer was caused by the death of the vessel owner, in which case the transferee may apply for the "provisional A" endorsement);

(iii) For vessels qualifying under the construction provision, no landing of any species of fish was made anywhere by the vessel prior to July 11, 1984; for vessels qualifying under the conversion provision, no landing of any species of fish was made anywhere between the time conversion began and July 11, 1984; and

(iv) For vessels qualifying under the construction provision, at least one landing of any species of fish was made anywhere prior to September 30, 1990; for vessels qualifying under the conversion provision, at least one landing of any species of fish was made after conversion began and prior to September 30, 1990.

(3) A vessel owner who purchased the vessel during the window period, and used a limited entry gear to catch and land groundfish during the window period, but whose vessel does not meet the MLRs for an "A" gear endorsement, may qualify for a "provisional A" endorsement for the limited entry gear(s) used during the window period, provided ownership of the vessel is not transferred between August 1, 1988, and the issuance of the "provisional A" endorsement (unless the transfer was caused by the death of the vessel owner, in which case the transferee may apply for the "provisional A" endorsement).

(4) Persons owning replacement vessels qualify by the following:

(i) An owner of a replacement vessel more than 5 feet (1.52 m) longer than the replaced vessel may be issued a "provisional A" endorsement for the length of the replacement vessel if, prior to September 30, 1990, the owner has:

(A) Acquired a replacement vessel;

(B) Disposed of the replaced vessel; and

(C) Reserved, by the express terms of a written contract, the right to a future limited entry permit on the basis of the catch history of the replaced vessel.

(ii) If the limited entry rights have been reserved by contract, the replaced vessel entitles no subsequent owner to issuance of a limited entry permit for that vessel. The owner of a replacement vessel must choose between:

(A) An "A" endorsement on a limited entry permit with the size endorsement applicable to the replaced vessel; or

(B) A "provisional A" endorsement on a limited entry permit with a size endorsement for the replacement vessel.

(iii) The "provisional A" endorsement will be issued only for the gear(s) for which the replaced vessel would have qualified for an "A" endorsement. For purposes of this paragraph (a)(4), "replacement vessel" means a vessel that replaces, through construction, conversion, purchase or trade, a vessel that would qualify for an "A" gear endorsement.

(5) If, after the window period, an exempt gear is prohibited by Washington, Oregon, or California or the Secretary of Commerce, the owners of vessels using such gear, who would not otherwise qualify for an "A" or "provisional A" endorsement, may qualify for a "provisional A" endorsement for only one of the three limited entry gears, if the vessel used the prohibited gear to make sufficient landings of groundfish during the window period to meet the MLR for the limited entry gear. If a vessel would qualify for an endorsement for more than one limited entry gear, the owner must choose the type of gear for which the endorsement will be issued. If an "A" or "provisional A" endorsement was previously issued for the vessel, and the endorsement was subsequently transferred or expired, no "provisional A" endorsement will be issued.

(b) *Attributes.* (1) A limited entry with a "provisional A" endorsement entitles the holder to fish for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(2) A "provisional A" endorsement is not transferable with the limited entry permit to another person, and may not be used with a different vessel under the same ownership, unless:

(i) The vessel for which the endorsement was issued is totally lost, and the permit is transferred to a replacement vessel by the permit holder (see § 663.39); or

(ii) The transfer is caused by the death of the vessel owner, in which case the

transferee may hold the "provisional A" endorsement.

(3) A "provisional A" endorsement will be issued for only one type of limited entry gear, to be selected by the vessel owner, for vessels qualifying under the construction or conversion, and "prohibited gear" provisions. "Provisional A" endorsements for more than one type of limited entry gear may be issued for vessels qualifying under the purchase and replacement provisions.

(4) The maximum (but not minimum) duration of a "provisional A" endorsement is 3 years (see paragraph (e) of this section).

(5) A "provisional A" endorsement will not be issued to a vessel that has already failed to meet the upgrade criteria for an "A" endorsement (see paragraph (c) of this section) at the time application for the "provisional A" endorsement is made. A vessel that has met the upgrade criteria for an "A" endorsement at the time application for a limited entry permit is made will be issued an "A" endorsement. A vessel will be considered qualified for an "A" endorsement as of the date the "provisional A" endorsement upgrade criteria are met.

(c) *Upgrading.* (1) A "provisional A" endorsement may be upgraded to an "A" endorsement.

(2) For a "provisional A" endorsement to be upgraded, the vessel must meet one of the landing requirements in paragraph (c)(3) of this section in each of the three consecutive 365-day periods beginning with the earliest date of: Endorsement issuance; for vessels qualifying under the construction provision, first landing of any species of fish by the vessel anywhere; for vessels qualifying under the conversion provision, first landing of any species of fish by the vessel anywhere after the date conversion began; vessel purchase for vessels qualifying under purchase provisions; or vessel replacement for vessels qualifying under replacement provisions.

(3) The landing requirements to upgrade a "provisional A" endorsement to an "A" endorsement are as follows:

(i) Use of trawl gear to make: At least 2 separate days with landings over 500 pounds (227 kg) of any groundfish species; or 113 mt of landings of any groundfish species except Pacific whiting; or 5 days or 938 mt of landings of Pacific whiting.

(ii) Use of longline gear to make: At least 2 separate days with landings over 500 pounds (227 kg) of any groundfish species; or 10 mt of landings of any groundfish species.

(iii) Use of trap (or pot) gear to make: At least 2 separate days with landings over 500 pounds (227 kg) of any groundfish species; or 36 mt of landings of any groundfish species.

(iv) *Exceptions*: Any landing that included salmon or shrimp will not count toward meeting the landing requirements.

(d) *Conversion*: "Conversion", for purposes of determining a vessel's "provisional A" gear endorsement eligibility, means that:

(1) Prior to the conversion, the vessel was structurally incapable of fishing for groundfish with the limited entry gear selected for the "provisional A" endorsement;

(2) The conversion included a structural change to the vessel which enabled it to fish for groundfish with the selected gear (for longline and trap (or pot) vessels, the structural change may include installation of a gear hauler); and

(3) The amount invested in conversion (including all equipment and gear) was more than 25 percent of the current appraised value of the converted vessel, or $10,000, whichever is less, of which not more than one-fifth of the investment was for fishing gear. For purposes of this paragraph, "gear" means fishing gear not permanently affixed to the vessel (not welded or bolted), and, with respect to electronic equipment, includes only equipment specifically required for use of the gear in the groundfish fishery.

(e) *Expiration.* (1) A "provisional A" endorsement expires at the end of any 365-day period (during the 3-year qualifying period) in which a vessel's landings do not meet the applicable landing requirement.

(2) A "provisional A" endorsement expires on failure to renew the limited entry permit (see § 663.41).

(3) A "provisional A" endorsement that expires will not be reissued.

### § 663.36 "B" gear endorsement.

(a) *Intial issuance criteria.* (1) The current owner of a vessel that did not meet the MLRs for an "A" endorsement may receive a "B" endorsement for each type of limited entry gear used by the vessel to land at least 500 pounds (227 kg) of groundfish on at least 3 separate days at any time prior to August 1, 1988, if the owner has continuously owned the vessel since the date of the first of the three qualifying landings.

(2) For purposes of the "continuous ownership" requirement for initial issuance of "B" endorsements only, vessel ownership will not be considered to change, even if there is a change in the ownership shown on the vessel documentation, so long as there is no change in the controlling interest in the vessel. *Controlling interest* means, in the case of a corporation, ownership of stock possessing at least 51 percent of total combined voting power of all classes of stock entitled to vote of such corporation, or at least 51 percent of the total value of shares of all classes of stock of such corporations; in the case of a trust or estate, ownership of an actuarial interest of at least 51 percent of such trust or estate; in the case of a partnership, ownership of at least 51 percent of the profits interest or capital interest of such partnership; and, in the case of a sole proprietorship, ownership of such sole proprietorship.

(3) Any landing that included salmon or shrimp will not count toward meeting the landing requirements.

(4) A vessel owner who has failed to meet the landing requirements for upgrading a "provisional A" endorsement to an "A" endorsement, but who meets the landing and ownership requirements in paragraph (a)(1) of this section, may be issued a "B" endorsement, provided that the "provisional A" endorsement was not issued under § 663.35(a)(4) (replacement of smaller vessels).

(b) *Attributes.* (1) A limited entry permit with a "B" endorsement entitles the holder to fish for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(2) A "B" endorsement is not transferable to another person, and may not be used with another vessel under the same ownership, unless the vessel for which the endorsement was issued is totally lost, and the permit is transferred to a replacement vessel owned by the same owner (see § 663.39).

(c) *Expiration.* (1) All "B" endorsements expire on December 31, 1996.

(2) A "B" endorsement expires on failure to renew the limited entry permit (see § 663.41(c)).

### § 663.37 "Designated Species B" gear endorsement.

(a) *Issuance criteria*—(1) *General. Designated species* means Pacific whiting, jack mackerel north of 39° North latitude, and shortbelly rockfish. By-catch allowances in fisheries for these species will be established using the procedures specified for incidental allowances in joint venture and foreign fisheries at 50 CFR part 663, Appendix II.J.

(2) *Catch limit.* On or about October 1 of each year, the FMD will determine the commitment of persons with limited entry permits with "A," "provisional A."

and "B" gear endorsements (the "limited entry fleet") to harvest each designated species for delivery to domestic processors during the coming year. "Commitment" means a permit holder's contract or agreement with a specific domestic processor to deliver an estimated amount of the designated species. The "designated species B" endorsement catch limit is the harvest guideline or quota for the designated species minus the commitment of the limited entry fleet. If the commitment is less than DAP and the harvest guideline or quota for the species, "designated species B" endorsements valid for delivery to domestic processors will be issued in numbers necessary to reach but not exceed the harvest guideline or quota. "Designated species B" endorsements also may be issued for delivery to foreign processors of designated species for which a JVP is established. If at any time during the fishing year the FMD determines that any part of the limited entry fleet commitment will not be taken, the Regional Director will make a reapportionment to the "designated species B" endorsement catch limit. The amount of the annual limited entry fleet commitment, "designated species B" endorsement catch limit, and the amounts and timing of any reapportionments to the "designated species B" endorsement catch limit will be announced in the **Federal Register**.

(3) *Procedure for issuance.* Owners of vessels applying for "designated species B" endorsements must apply on or before November 1 of each year for a "designated species B" endorsement for the following year. Applicants are required to specify their commitments for delivery of the designated species for the coming year. On or about November 1 of each year, the FMD will establish a prioritized list of applicants based on seniority (number of years the vessel has fished for the designated species). Vessels with equal seniority will be ranked equally. "Designated species B" endorsements will be issued first to all vessels with the highest seniority, then to those with the next highest seniority, and so on down the list. No further endorsements will be issued when it is estimated that the commitments of applicants receiving endorsements is sufficient to take the "designated species B" catch limit. If there are insufficient commitments by senior applicants to take the "designated species B" catch limit, additional applications will be ranked by lottery and a number of endorsements sufficient to take the catch limit will be issued.

(b) *Attributes.* (1) A limited entry permit with a "designated species B" endorsement entitles the holder to fish only for the species, and only with the gear, specified in the endorsement.

(2) A "designated species B" endorsement is not transferable to another person, and may not be used with a different vessel under the same ownership, unless the vessel has been totally lost and replaced consistent with the provisions of § 663.39, in which case the replacement vessel has the same seniority as the lost vessel for purposes of a "designated species B" endorsement.

(3) A "designated species B" endorsement is valid only for the fishing year for which it is issued.

**§ 663.38 Hardship exceptions.**

Hardship exceptions to initial issuance and upgrade criteria exist for limited entry permits with "A," "provisional A," and "B" gear endorsements. Under the permit issuance process of § 663.41, a hardship exception may be granted to a permit applicant for a vessel that does not meet the initial issuance or upgrade criteria for a gear endorsement. No hardship exceptions will be granted for vessels that did not meet the MLRs or landing requirements during the window period for economic reasons, or because of loss or inactivity of the vessel as a result of a violation of Federal or state law (including non-fisheries violations). If a hardship exception is granted, a limited entry permit will be issued with gear endorsement(s) for which the applicant's vessel would have qualified if the hardship had not intervened. In order to obtain a hardship exception, the applicant must prove that the vessel's failure to qualify was caused by one of the following hardship situations:

(a) Insufficient documented landings with legal groundfish gear during the applicable period due to inadequate or incorrect official documentation of landings. In this situation, evidence other than official landing records may be considered.

(b) Construction or conversion criteria are not met due to delay(s) beyond the control of the vessel owner.

(c) Death, illness, or injury of a vessel owner, or litigation involving the vessel, prevented the vessel from meeting the MLRs, landing requirements, construction, conversion, replacement, or upgrade criteria during the applicable qualifying period.

**§ 663.39 Replacement of lost vessels.**

(a) If a vessel that has a "provisional A," "B," or "designated species B" gear endorsement, or, prior to limited entry permit issuance, would qualify for an "A," "provisional A," "B," or "designated species B" gear endorsement, is totally lost it may be replaced within 2 years of the date of the loss, and its rights (in the case of "designated species B" gear endorsements, seniority status) to a limited entry permit transferred to a replacement vessel, unless the loss was the result of the willful act of the vessel owner or someone acting on the owner's behalf. The 2-year period allowed for replacement may be extended if circumstances beyond the control of the person holding the replacement rights prevented acquisition of a replacement vessel within 2 years of the loss.

(b) Rights may only be transferred to a replacement vessel owned by the same owner as the lost vessel, except for vessels with "A" endorsements and vessels qualifying for "A" endorsements that were lost before a limited entry permit was issued. (See § 663.33(b)(2)).

(c) The size endorsement on the limited entry permit issued for the replacement vessel shall be the length overall of the lost vessel, except that a "provisional A" endorsement may be issued for the size of the replacement vessel under § 663.35(a)(4).

**§ 663.40 Fees.**

The Regional Director will charge fees to cover administrative expenses related to issuance of limited entry permits, including initial issuance, renewal, transfer, vessel registration, replacement, and appeals. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

**§ 663.41 Limited entry permits.**

(a) *Initial issuance—issuing authority; schedule.* (1) Limited entry permits will be issued by the FMD.

(2) Applications for initial issuance of limited entry permits and gear endorsements must be submitted between January 1, 1993, and June 30, 1993. Initial limited entry permits will be issued between July 1, 1993, and December 31, 1993. Exceptions to this schedule are as follows:

(i) An owner of a vessel qualifying for a "provisional A" gear endorsement because the vessel's gear has been prohibited must take application within 180 days of the date the prohibition is effective, or between January 1, 1993, and June 30, 1993, whichever is later.

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(ii) An owner of a vessel applying for a "B" gear endorsement because the vessel has failed to meet the "provisional A" upgrade criteria after January 1, 1993, must make application within 180 days of failure to meet the upgrade criteria.

(iii) Owners of vessels applying for "designated species B" endorsements must apply on or before November 1 of each year for a "designated species B" endorsement for the following fishing year.

(iv) Owners of vessels that are part of a limited entry fleet incorporated under § 663.34(a)(3) must apply within 180 days of incorporation.

(3) Untimely applications will be rejected unless the applicant demonstrates that circumstances beyond the applicant's control prevented submission of the application during the specified period. Illness, injury, or death of the potential applicant are the primary grounds on which untimely applications may be accepted.

(b) *Applications for limited entry permits and gear endorsements.* (1) Application forms for limited entry permits and gear endorsements are available from the FMD. Contents of the application, and required supporting documentation, are specified in the application form.

(2) A separate, fully complete, and accurate application form, together with required supporting documentation, must be submitted for each vessel for which a limited entry permit is sought.

(3) Upon receipt of an incomplete or improperly executed application, the FMD will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(4) If the application is complete on its face, the FMD may request further documentation as necessary to act on the request.

(c) *Renewal of limited entry permits and gear endorsements.* (1) Limited entry permits expire at the end of each calendar year, and must be renewed between September 1 and October 31 of each year in order to remain in force the following year.

(2) Notices to renew limited entry permits will be issued by FMD prior to September 1 each year to the most recent address of the permit holder. The permit holder shall provide FMD with notice of any address change within 15 days of the change.

(3) A limited entry permit that is allowed to expire will not be renewed unless the FMD determines that failure to renew was proximately caused by the illness, injury, or death of the permit holder.

(d) *Transfer and registration of limited entry permits and gear endorsements.* (1) Upon transfer of a limited entry permit, the FMD will reissue the permit in the name of the new permit holder with such gear endorsements as are eligible for transfer with the permit. No transfer is effective until the limited entry permit has been reissued and is in the possession of the new permit holder.

(2) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. A permit not registered for use with a particular vessel may not be used. If the permit will be used with a vessel other than the one registered on the permit, a registration for use with the new vessel must be obtained from the FMD and placed aboard the vessel before it is used under the permit.

(3) Application forms for the transfer and registration of limited entry permits are available from the FMD. Contents of the application, and required supporting documentation, are specified in the application form.

(4) the FMD will maintain records of all limited entry permits that have been issued, renewed, transferred, registered, or replaced.

(e) *Evidence and burden of proof.* A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(1) A certified copy of the current vessel document (U.S. Coast Guard or state) is the best evidence of vessel ownership and length overall;

(2) A certified copy of a state fish receiving ticket is the best evidence of a landing, and of the type of gear used;

(3) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights; and

(4) Such other relevant, credible evidence as the applicant may submit, or the FMD or the Regional Director request or acquire, may also be considered.

(f) *Initial decisions.* Initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the FMD. Adverse decisions shall be in writing and shall state the reasons therefor. The FMD may decline to transfer if sanctions on the permit are pending (see § 663.43).

**§ 663.42 Permit appeals.**

(a) Decisions on appeal of initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the Regional Director.

(b) Appeal decisions shall be in writing and shall state the reasons therefor.

(c) Within 30 days of an initial decision by the FMD denying issuance, renewal, transfer, or registration of a limited entry permit, or endorsement upgrade, on the terms requested by the applicant, an appeal may be filed with the Regional Director.

(d) The appeal must be in writing, and must allege facts or circumstances to show why the criteria in this subpart have been met, or why a hardship exception should be granted.

(e) In the appellant's discretion, the appeal may be accompanied by a request that the Regional Director seek a recommendation from the Council as to whether the appeal should be granted. Such a request must contain the appellant's acknowledgement that the confidentiality provision so the Magnuson Act at 16 U.S.C. 1853(d) and 50 CFR part 603 are waived with respect to any information supplied by the Regional Director to the Council and its advisory bodies for purposes of receiving the Council's recommendation on the appeal. In responding to a request for a recommendation on appeal, the Council will apply the provisions of this subpart in making its recommendation as to whether the appeal should be granted.

(f) Absent good cause for further delay, the regional Director will issue a written decision on the appeal within 45 days of receipt of the appeal, or, if a recommendation from the Council is requested, within 45 days of receiving the Council's recommendation. The Regional Director's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

**§ 663.43 Permit sanctions.**

Limited entry permits are subject to sanctions pursuant to the Magnuson Act at 16 U.S.C. 1858(g) and 15 CFR part 904, subpart D. The FMD shall review every application to transfer limited entry permits. If the FMD determines that the applicant has been issued a Notice of Permit Sanction for a violation of the Magnuson Act that has not been resolved, the FMD may decline to approve such transfer pending resolution of the matter.



4. The Appendix to part 663 is amended as follows:

a. Under the index, the entry for II.E. is revised;

b. In paragraph II.E., the heading is revised, the existing text is redesignated paragraph II.E.(a), a new heading for newly redesignated paragraph II.E.(a) is added, and new paragraphs II.E.(b), II.E.(c), and II.E.(d) are added; and

c. Under paragraph III.B., the first paragraph of the introductory text is revised, to read as follows:

**Appendix to Part 663—Groundfish Management Procedures**

*Index*

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II. * * *

E. Guidelines for Determining the Numerical Specification of a Harvest Guideline or Quota; Allocation Between Limited Entry and Open Access Fisheries

(a) Numerical Specification of a Harvest Guideline or Quota.
(b) Treaty Indian Fisheries.
(c) Recreational Fisheries.
(d) Allocation Between Limited Entry and Open Access Fisheries.
(1) Allocation procedures.
(2) Limited entry allocation.
(3) Open access allocation.
(4) Open access allocation percentage.

* * * * *

II. * * *

E. Guidelines for Determining the Numerical Specification of a Harvest Guideline or Quota; Allocation Between Limited Entry and Open Access Fisheries

(a) *Numerical Specification of a Harvest Guidelines or Quota.* * * *

(b) *Treaty Indian Fisheries.* Certain amounts of groundfish may be set aside annually for tribal fisheries prior to dividing the balance of the allowable catch between the commercial limited entry and open access fisheries.

(c) *Recreational Fisheries.* Any specific allocation to the recreational fishery will be set aside annually prior to dividing the commercial allocation between the limited entry and the open access fisheries.

(d) *Allocation Between Limited Entry and Open Access Fisheries*—(1) *Allocation procedures.* Effective January 1, 1994, separate allocations for the limited entry and open access fisheries will be established annually for certain species and/or areas using the procedures described in § 663.21 and sections II.E. and H. of this appendix. The Council will also develop recommendations for allocations for the commercial limited entry and open access fisheries for certain separate species and/or areas for which the Council determines allocations are necessary.

(2) *Limited entry allocation.* The allocation for the limited entry fishery is the allowable catch (harvest guideline or quota excluding set asides under sections II.E.(b) and (c) of this appendix) minus the allocation to the open access fishery.

(3) *Open access allocation.* The allocation for the open access fishery is derived by applying the open access allocation percentage to the annual harvest guideline or quota after subtracting any set asides under sections II.E.(b) and (c) of this appendix. For management subareas where quotas or harvest guidelines for a stock are not fully utilized, no separate allocation will be established for the open access fishery until it is projected that the allowable catch for a species will be reached.

(4) *Open access allocation percentage.* (i) For each species with a harvest guideline or quota, the initial open access allocation percentage is calculated by:

(A) Computing the total catch for that species during the window period by

(*1*) Longlines and traps (or pots) not initially receiving a limited entry endorsement for that gear, and

(*2*) Exempted gear; and

(B) Dividing that amount by the total catch during the window period by all gear.

(ii) The following guidelines apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following year's open access allocation:

(A) *Adjustment to decrease.* If a gear type is prohibited by a state or the Secretary and a vessel thereby qualifies for a limited entry permit under § 663.35(a)(5); or if a small limited entry fleet is incorporated into the limited entry fishery under § 663.34(a)(3), the window-period catch of these vessels will be deducted from the open access fishery's historical catch levels and the open access allocation percentage recalculated accordingly.

(B) *Adjustment to increase.* The window-period catch of a vessel with a "B" gear endorsement for longline or trap (or pot) gear will count toward the open access allocation percentage after its "B" endorsement expires. The historic catch level of a vessel with a "B" gear endorsement for trawl gear will continue to count toward the limited entry fishery allocation after the "B" endorsement expires.

III. * * *

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B. * * *

Management measures are normally imposed, adjusted, or removed at the beginning of the fishing year, but may, if the Council determines it necessary, be imposed, adjusted or removed at any time during the year. Management measures may be imposed for resource conservation, social or economic reasons consistent with the criteria, procedures, goals, and objectives set forth in Amendment 4. Management measures for the open access fishery will be set consistent with the objectives set out in Amendment 6 at 14.2.2.6.

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# Notices

Federal Register
Vol. 57, No. 141
Wednesday, July 22, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ACTION

### Information Collection; Final Notice

**AGENCY:** ACTION.

**ACTION:** Notice on information collection.

**SUMMARY:** This notice sets forth the Agency's information collection requirements regarding handicap accessibility self-evaluations by recipients of Federal financial assistance from ACTION. Certain modifications have been made to the proposed optional checklist in response to comments and recommendations from program sponsors. The Office of Management and Budget (OMB) approved and assigned a clearance number to the certification form.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Voss, Director, Equal Opportunity Staff, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525—(202) 606–4812 (voice) or (202) 606–5256 (TDD).

**SUPPLEMENTARY INFORMATION:** Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability by recipients of Federal financial assistance. Section 417 of the Domestic Volunteer Service Act (DVSA), Public Law 93–113, defines recipient of Federal financial assistance as any program, project or activity to which volunteers are assigned under ACTION's programs. Regulations implementing section 504 (45 CFR 1232.7(c)) require that recipients of Federal financial assistance determine if physical barriers in facilities or programmatic barriers cause discrimination against individuals with disabilities by preventing or interfering with their participation in programs conducted by the particular recipient.

The "Handicap Accessibility Self-Evaluation Certification" is the only form required by ACTION to be completed by the sponsors and stations. Each station or site must submit this form to its sponsor or project. The sponsor or project then submits a form to its ACTION State Program Office for the entire project. A copy of the documentation on work station and site self-evaluations and transition plans—which may be based on any Federal, State, local or other procedure or law that meets the requirements of Section 504 of the Rehabilitation Act of 1973 or on the attached self-evaluation form—may be submitted to the Older American Volunteer Program (OAVP) sponsor or VISTA project so the sponsor or project can more easily determine the accessibility of the program when viewed in its entirety.

Once a certification is submitted, a sponsor/project or station/site need not conduct another self-evaluation unless the physical or programmatic features of their programs or activities substantially change. The requirement that programs or activities be accessible is a continuing requirement, but the conduct of a self-evaluation is a one-time only requirement.

### Discussion of Comments and Response

A total of 281 written comments were received in response to the two notices of proposed information collection. Many comments related to the prior ACTION Handicap Accessibility Guidebook, guidance, and procedures used by ACTION in implementing the self-evaluation requirement. Other comments related to the narrative portion of that Guidebook.

Each comment received, whether relating to the documents published for comment in the **Federal Register** or relating to other matters, has been reviewed and duly considered. The following text represents the Agency response to the substantive comments on the proposed certification form and/or checklist, as well as any subsequent modifications and individual word changes.

*1. Legal Responsibility of ACTION and Its Recipients of Federal Financial Assistance*

Many commenters cited what they felt the law and legal requirements are or what they should be. The actual requirements are set forth below.

As previously stated in the Supplementary Information section, Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability by recipients of Federal financial assistance. Section 417 of the Domestic Volunteer Service Act (DVSA), Public Law 93–113, defines recipient of Federal financial assistance as any program, project, or activity to which volunteers are assigned under ACTION's programs. Regulations implementing section 504 (45 CFR 1232.7(c)) require that recipients of Federal financial assistance determine if physical barriers in facilities or programmatic barriers cause discrimination against individuals with disabilities by preventing or interfering with their participation in programs conducted by the particular recipient.

Although the DVSA defines recipient of Federal financial assistance as any place a volunteer is assigned under one of ACTION's programs, thereby including both sponsors or projects and stations or sites, ACTION sponsors and projects are, in essence, primary recipients of Federal financial assistance who extend Federal financial assistance (i.e., volunteers) to subrecipients (i.e., stations or sites). Both recipients and subrecipients are obligated, by virtue of receiving Federal financial assistance, to comply with the statutory and regulatory requirements.

The recipient of Federal financial assistance must assure that its programs as well as its activities, when viewed in its entirety, are accessible to individuals with disabilities. "Viewed in its entirety" means that participation in a program and access to facilities are guaranteed to individuals with disabilities even though not all work stations or sites may be accessible. A sponsor is not required to make each of its existing work stations or sites or every part of each work station or site accessible to and usable by individuals with disabilities. As long as a representative sample of stations or sites are accessible, the program is accessible when "viewed in its entirety."

The self-evaluation requirement applies to the program or activity receiving the Federal financial assistance; it also applies to evaluating accessibility for all individuals (i.e., employees, volunteers, and clients) who participate in the program or activity. While certain types of facilities may be anticipated to be more accessible than others, all types of facilities must

conduct a self-evaluation. Churches are not exempt from this requirement. The requirement does not apply, however, to individual homes in which clients are served.

*2. Relationship to Americans With Disabilities Act Requirements*

Many commenters thought ACTION's self-evaluation requirements implemented the Americans with Disabilities Act (ADA). Others questioned why, if public facilities have until July 1994 to comply with the accessibility requirements of the ADA, was ACTION performing this survey now rather than waiting until mid-1994.

The Government-wide regulations implementing section 504 of the Rehabilitation Act of 1973, which affect ACTION's sponsors and projects, went into effect in 1979 and were amended in 1990. The requirement for sponsors and projects to conduct self-evaluations, therefore, pre-dates passage of the ADA. The self-evaluation process described in this notice addresses bringing ACTION and its recipients of Federal financial assistance into compliance with this long-standing legal requirement.

While the accessibility requirements under section 504 are similar to the requirements under the ADA, they are not identical. ACTION has no authority to enforce the provisions of the ADA as it applies to its grantees. As the ADA relates to ACTION's recipients of Federal financial assistance, the Department of Justice is responsible for compliance by public accommodations, commercial facilities, and State and local governments, and the Equal Employment Opportunity Commission is responsible for compliance with the employment practices provisions.

*3. Duplication of Effort*

Many commenters felt ACTION's requirements resulted in a duplication of effort since ACTION's regulatory requirement is similar to the requirement found in the section 504 regulations of all other Federal agencies which provide Federal financial assistance. However, each Federal granting agency is responsible for ensuring compliance with its own regulations by its own recipients.

To eliminate duplication of effort, ACTION has explicitly stated that any recipient which has already completed a self-evaluation, either for ACTION or for another agency, is not required to conduct a new self-evaluation in order to fulfill ACTION's self-evaluation requirements. Similarly, conducting the self-evaluation under ACTION'S guidelines should fulfill the section 504 requirements of other Federal agencies.

*4. Legal Liability*

Many commenters mentioned legal liability. It is important to remember that ACTION and its sponsors or projects and its stations or sites which have not completed their self-evaluations are currently in violation of section 504 of the Rehabilitation Act of 1973. This self-evaluation process was implemented to bring ACTION and its recipients of Federal financial assistance into compliance with section 504 and provide some degree of assurance against legal liability.

A law suit would only have standing if there was an allegation that discrimination took place because of noncompliance with the requirements of the Rehabilitation Act of 1973. The only remedy for failure to conduct a self-evaluation or misrepresenting a self-evaluation would be for ACTION to institute funding sanctions against a sponsor or project under other ACTION regulations. If a law suit were filed against a station or site for discrimination, only the volunteer station would be liable unless it could also be shown that the sponsor, project or ACTION was aware of the discrimination and took no corrective steps. In particular, it should be noted that volunteers and staff may record data, e.g., measurements taken, but only the designated management official who signs the certification form has the authority to make a determination regarding accessibility.

As part of ACTION's oversight, the Agency staff review the self-evaluations process during their normal site monitoring visits to assure compliance with section 504 requirements.

*5. Procedural Requirements*

Some commenters referred to the availability of the Guidebook, checklist, and/or certification forms from ACTION. In response to our previous Guidebook issuance, we distributed the following to our more than 750 RSVP projects and 56,000 work stations: 10,000 guidebooks, 45,000 checklists and 45,000 certification forms. We do not know yet how many sponsors and stations completed their self-evaluations prior to the publication of the Agency's notice in the **Federal Register**. We intend to provide the new guidebook and forms to sponsors and stations which did not complete the previous process and which request them.

A few commenters asked who was the appropriate official to sign the form. The form should be signed by an appropriate management official who has authority to ensure proper completion of the self-evaluation and to commit the agency to remedial actions, if necessary. Since the organizational structures of sponsors and projects vary widely, it is up to the sponsor or project to identify the level of this appropriate official.

Other commenters said maintaining documentation will create a storage problem. A copy of the documentation on station and site self-evaluations and transition plans may be submitted to the sponsor or project. This allows the sponsor or project to more easily determine the accessibility of the program when viewed in its entirety. It also can be used as documentation to meet the section 504 requirements of other Federal agencies.

*6. Training and Technical Assistance*

Many of the commenters suggested that ACTION needed to provide more training and technical assistance.

In the area of training, last year ACTION presented to all Agency staff and the majority of its project directors a one-hour video on the reasons for and the consequences of non-accessibility from an historic perspective. The presenter, a member of the staff of the Center on Aging at the University of Maryland who herself is disabled, also addressed why accessibility benefits the able-bodied community as well as the disabled. In addition, last year ACTION conducted training on the Rehabilitation Act and the self-evaluation requirement at a plenary session at each of ACTION's nine regional training conferences which were provided for ACTION project directors.

Concerning technical assistance, the Handicap Accessibility Guidebook was produced by ACTION as a technical assistance tool for use by ACTION staff and grantees. Furthermore, an audio tape of a one-hour question and answer session with ACTION staff and the RSVP Association board members was reproduced and made available upon request to project directors. In addition, each ACTION State Program Director met with the leading state organization that deals with disability issues. The purpose of the meeting was to obtain technical assistance and advice about how to facilitate projects and work stations in their completion of the self-evaluations and certifications. Subsequent sessions with project directors were also scheduled. Lastly, the project directors were provided with additional materials including a list of organizations in their states, e.g., Centers for Independent Living, that could provide assistance.

ACTION will issue the revised handbook, optional checklist and

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certification form with OMB approval. These materials will be distributed, along with supplemental guidance, to ACTION staff and all appropriate sponsors and volunteer stations that have yet to conduct their self-evaluations. (As of December 31, 1991, more than 375 ACTION sponsors had successfully completed their self-evaluations.) ACTION staff will also be fully briefed on any revisions in policy and procedures so that they can continue to provide technical assistance to project directors.

*7. Estimated Time Requirements*

Many commenters concluded that it takes more time than the 2 hours estimated by ACTION to conduct a self-evaluation. Some commenters included staff training time, assembling support data, and follow-up conversations in their estimates. Those who indicated they had completed or nearly completed the self-evaluations generally said it took from 1¾ to 4 hours to complete, depending on travel time. ACTION had previously determined that the average completion time was 2 hours after observing projects conduct self-evaluations.

The method by which a sponsor or project and station or site elect to conduct their self-evaluations will greatly impact on the amount of time required. ACTION has not prescribed any particular method by which the self-evaluation may be conducted. (The only proscription by ACTION is that a recipient may not *require* its volunteers to conduct the self-evaluations.) Some methods by which the actual self-evaluations may be conducted include:

—Recruiting a volunteer to conduct the self-evaluation
—Obtaining the assistance of local organizations for individuals with disabilities
—Using college architectural students
—Training a cadre of volunteers to conduct the self-evaluations
—Obtaining the assistance of local corporations or unions
—Contracting out
—Having project staff conduct the self-evaluations
—Asking each station or site to conduct its own self-evaluation

We recognize that all of these options are not available to all sponsors or projects, but most will have several options open to them. The choice of an option(s) may significantly impact the amount of time required to complete the self-evaluations.

After reviewing the comments, the agency has changed the average completion time from 2 hours to 4 hours.

*8. Implementation Costs*

Many commenters said the self-evaluation process was costly in terms of postage, paper, telephone calls, printing and reproduction of necessary forms, staff time travel expenses, meals, etc. Some said they felt that ACTION should reimburse the sponsors or projects and stations or sites for the evaluation expenses they incurred.

Compliance with the Rehabilitation Act is a prerequisite to being eligible to receive Federal funding. While the Agency has assumed, and will continue to assume, the cost for all ACTION-conducted training and publications, consistent with Federal law and regulations, the cost of conducting the self-evaluations is the responsibility of the applicant for Federal assistance. Therefore, no reimbursement will be provided to ACTION sponsors or projects and stations or sites.

It should be noted that the appropriate management officials of the recipient of Federal financial assistance are responsible for assuring accessibility of its program or activity when considered in its entirety. Unless mandatory accessibility standards apply based on new construction or alteration after receiving Federal financial assistance, sometimes physical alterations are unnecessary and program changes may result in accessibility. Facility owners are responsible for ensuring that their facility complies with all Federal, State, and local accessibility standards and requirements.

*9. Checklist Form*

The optional "Handicap Accessibility Checklist" is one way by which a recipient may conduct its handicap accessibility self-evaluation. Although prior guidance required the use of the ACTION checklist or a similar Federal survey, recipients may not use alternative procedures in order to comply with these regulations. Further, any recipient which has already completed the self-evaluation need not conduct a new self-evaluation.

Some commenters said the checklist was too long and detailed, while others said it was not detailed enough. ACTION recognized most persons conducting the self-evaluation will not have expertise in the area of accessibility. Therefore, the optional checklist "walks" the evaluator through the self-evaluation. Not accessibility, but it also includes a narrative discussion at the beginning of each physical element.

Many commenters noted that there are checklists developed by other entities which are not as lengthy or detailed as ACTION's. Their implied question is whether the shorter forms meet the self-evaluation requirements for section 504. The checklist in ACTION's Guidebook is optional, and there is no specific format required under section 504. ACTION's regulations require each recipient of Federal financial assistance to:

Evaluate its current policies, practices an effects thereof; modify any that do not meet the requirements of this part; and take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices (45 CFR 1232.7(c)).

Any self-evaluation which fulfills this regulatory requirement meets the self-evaluation requirement for section 504. If requested to do so, grantees bear the burden of independently substantiating how they fulfilled this regulatory requirement and demonstrate how they are in compliance with any applicable design standard. As part of its oversight responsibilities, ACTION staff will review during their normal site monitoring visits the self-evaluation process used by a sponsor or project and station or site to assure that a good faith effort was made to comply with section 504 requirements.

Several commenters said the programmatic portion of the checklist contains technical language which is difficult to understand. No specific examples of such language, however, were provided in the comments. The Guidebook contains an extensive discussion on how to evaluate programs and activities; this discussion should clarify the language in the checklist.

Related to the programmatic portion, one commenter asked if the phrase in the FGP Handbook regarding "physically able to perform the tasks assigned" is now illegal? The requirement is that volunteers be able to perform the essential functions of the position, with or without reasonable accommodation.

One commenter said the checklist interchanged words such as "maximum," "minimum," and "at least," and gave two specific examples. These examples were in error in the original checklist, and were corrected in the checklist published for comment in the **Federal Register**. Therefore, no further changes have been made.

Some commenters said the directions and self-evaluation are not written in an easily understood format, as is required for learning disabled individuals. The requirement is not that everything be written in such a format, but that it be available within a relatively short time period if requested.

Other commenters said completion of the checklist requires architectural and mathematical computations. No such computations are required, and the guidebook contains a chart to be referenced when measuring slopes and includes a practical way to approximate measuring door pressures (i.e., by comparing it to the pressure required to open a refrigerator door).

Commenters recommended using a "box system" for checking off responses on the optional checklist. Columns for "Yes," "No," and "N/A" have been incorporated into the final optional checklist. Others requested that the programmatic section be arranged in a multiple choice or checklist format. The information considered in this part of the optional checklist is not conducive to that format and therefore no change was made.

*10. Certification Form*

Some commenters recommended having certification forms for stations or sites which are different from those for sponsors or projects. We believe one form is less confusing and is in keeping with the intent of the Paperwork Reduction Act. Therefore, no change has been made.

Dated July 10, 1992.

**Jane A. Kenny,**

*Director, ACTION.*

**Handbook 240: Appendix 1**

*Handicap Accessibility Checklist*

A. Program Accessibility

B. Building and Site Accessibility

This checklist is presented as a guide to identify physical barriers that might restrict program access to individuals with disabilities. Use of this checklist is not mandatory. The building/site criteria are based on the Uniform Federal Accessibility Standards (UFAS) and specific citations are provided. If you answer "No" to any of the questions, it does not necessarily mean noncompliance because other methods of providing program access may be used.

This checklist is available on audio cassette or in large print from ACTION, Equal Opportunity Director, 1100 Vermont Avenue NW., Washington, DC 20525—(202 606–4812 (voice), (202 606–5256 (TDD).

**Program Accessibility: Suggestions for a Self-Evaluation**

**Background**

A grantee may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. A grantee's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "programs accessibility," applies to all existing facilities of a grantee. Grantees, however, are not necessarily required to make each of their existing facilities accessible.

Grantees may achieve program accessibility by a number of methods. In many situations, providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional facilities, may be the most efficient method of providing program accessibility. A grantee may, however, pursue alternatives to structural changes in order to achieve program accessibility. Nonstructural methods include acquisition or redesign of equipment, assignment of aides to beneficiaries, and provision of services at alternate accessible sites.

A self-evaluation is a grantee's assessment of its current policies and practices to determine whether there are obstacles to the grantee's program or activities. The self-evaluation identifies and corrects those policies and practices that are inconsistent with section 504 requirements. As part of the self-evaluation, a grantee should:

1. Identify all of the grantee's programs, activities, and services; and

2. Review all the policies and practices that govern the administration of the grantee's programs, activities, and services.

Normally, a grantee's policies and practices are reflected in its regulation, administrative manuals or guides, policy directives, and memoranda. Other practices, however, may not be recorded and may be based on custom.

Once a grantee has identified its policies and practices, it should analyze whether these policies and practices adversely affect the full participation of individuals with disabilities in its programs, activities and services. In this regard, a grantee should be mindful that although its policies and practices may appear harmless, they may result in denying individuals with disabilities the full participation of its programs, activities, or services. Listed below are several areas a grantee should consider when conducting its self-evaluation.

*Element 1: Participation of Individuals With Disabilities in the Self-Evaluation Process (see TAG–88–9)*[1]

a. Are individuals with disabilities and other interested persons involved in the self-evaluation process?

b. Is the general public involved in the self-evaluation process?

*Element 2: Policies and Practices That Limit the Participation of Individuals With Disabilities in the Organization's Programs and Activities*

Consider your organization's formal and informal program eligibility and admission criteria or licensing standards. Particular attention should be paid to policies incorporating or establishing:

—Physical or mental fitness or performance requirements;
—Safety standards;
—Testing requirements;
—Educational requirements;
—Work experience requirements;
—Requirements based on disability;
—Requirements that prohibit participation because of disability; and
—Insurability requirements.

Do any of these standards or requirements have the direct or indirect effect of excluding or limiting the participation of individuals with disabilities in your organization's programs or activities?

Which of these standards or requirements will be altered or eliminated to allow participation by individuals with disabilities? How will your organization communicate these changes to your organization's staff and the public?

Which of these standards or requirements will be retained by your organization? What is your organization's justification for their retention?

*Element 3: Information and Training for Staff*

What staff members need to be aware of your organization's obligations and policies which enable individuals with disabilities to participate in your organization's programs or activities?

How has your organization informed/trained these staff members?

[1] Copies of Technical Assistance Guides (TAG's), which provide detailed technical implementation information, are available from the Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530, (202) 307–2222 (voice) or (202) 307–7678 (TDD). While TAG's may be helpful in gaining detailed knowledge of an area of accessibility, they are not necessary for completing this survey.

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*Element 4: Use of Contractors*

Does your organization use contractors to conduct programs or activities on behalf of your organization that are designed to provide services to your organization's beneficiaries? [If not, go to next element.]

How does your organization ensure both contractors and your organization's procurement officials are aware of their obligations to facilitate participation of individuals with disabilities in programs or activities contractors operate on behalf of your organization?

How does your organization monitor fulfilling this obligation?

*Element 5: Transportation*

Does your organization provide transportation to volunteers, beneficiaries, visitors, etc.? [If not, go to next element.]

What procedures does your organization follow to make transportation accessible to persons with mobility, visual, and hearing impairments?

*Element 6: Telephone Communications*

How does your organization communicate telephonically with hearing impaired individuals?

*Element 7: Documents and Publications*

How does your organization make documents and publications readily accessible to and usable by visually impaired persons? Does your organization use audiotape, large print, Braille, computer disk or something else?

Does your organization portray individuals with disabilities in your organization's documents and in publications?

*Element 8: Meetings*

Does your organization require that meetings, hearings, and conferences be held, upon request, in accessible locations?

Are interpreters, readers, and/or adaptive equipment provided in an expeditious manner, when requested, for meetings, interviews, conferences, public appearances by organization officials, and hearings?

Does your organization ensure that individuals with hearing impairments who do not read sign language can participate effectively in meetings, conferences, and hearings via assistive listening devices or other means?

*Element 9: Audio-Visual Presentations*

How does your organization make audio-visual presentations accessible to individuals with visual and hearing impairments?

Does your organization portray individuals with disabilities in audio-visual presentations?

*Element 10: Emergency Evacuation*

What equipment and/or procedures does your organization use to notify individuals with visual, hearing, and mobility impairments of emergency evacuation procedures?

*Element 11: Accessible Equipment*

In providing services to your beneficiaries, is it necessary for your beneficiaries to use electronic or other types of equipment (such as computer terminals, copying machines, etc).

If so, how do you ensure that individuals with disabilities are provided access to and use of such equipment?

*Element 12: Reasonable Accommodation (45 CFR 1232.10)*

*Standard:* A grantee shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified beneficiary or volunteer with a disability unless the grantee can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

Reasonable accommodation may include (1) making facilities used by beneficiaries, or volunteers readily accessible to and usable by individuals with disabilities, and (2) acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions. In determining whether an accommodation would impose an undue hardship on the operation of your program, factors to be considered include:

a. The overall size of your organization's program with respect to number of volunteers, number and type of facilities, and size of budget;

b. The type of your organization's operation, including the composition and structure of your organization's volunteer force;

c. The nature and cost of the accommodation needed.

Does your organization have policies that ensure reasonable accommodation is made to the known physical or mental limitations of an otherwise qualified beneficiary or volunteer with a disability?

*Element 13: Notification*

How does your organization notify all persons (participants, beneficiaries, volunteers, visitors, and other interested parties, including those with impaired vision and/or hearing) of your organization's policy not to discriminate against qualified individuals with disabilities?

How does your organization notify all persons that your meetings, hearings, and conferences will be held in accessible locations and that auxiliary aids will be provided, upon request, to participants with disabilities?

How does your organization notify all persons about how and with whom to file a discrimination complaint on the basis of disability and what procedure are they told to follow?

Building and Site Accessibility—General Information

Organization Name: _____

Facility Name and Address (with city, state, and zip code):

_____

_____

_____

Date reviewed: _____

Reviewer's Name and Title: _____

Address (if different from above): _____

_____

Phone (including area code): _____

Programs and Activities Conducted in Facility: _____

Purpose of this checklist: This checklist will help you identify physical barriers to program access in existing facilities. It provides guidance about the way building elements should be constructed to achieve maximum accessibility. Completion of the checklist will give you an idea of how far the facility is from the ideal, but failure to meet the standards in the checklist does not, by itself, mean that a building element constitutes a significant problem in terms of program accessibility. Consideration should be given to how great the variation is and what its effect is on the participation of individuals with disabilities in the program. If the effect on access is significant, consideration should be given to making physical changes in the facility or otherwise modifying the program in order to make the program accessible.

This checklist is available on audio cassette or in large print from ACTION, Equal Opportunity Director, 1100 Vermont Avenue, NW., Washington, DC 20525—202/606-4812 (voice), 202/606-5256 (TDD).

Tools needed to conduct evaluation of building and site accessibility: Generally, the only tool necessary to complete this checklist will be a tape measure. This checklist is generally based on the Uniform Federal Accessibility Standards (UFAS), which should be referred to for further information.

*Element 1: Accessible Route (UFAS 4.1–4.7)*

*Need:* People who walk with difficulty or use wheelchairs, crutches, canes or walkers need a wide, smooth, level, and firm surface. Sight-impaired people need a path free of hazards such as low-hanging or protruding objects undetectable by a cane.

| | Yes | No | N/A |
|---|---|---|---|
| 1. At least one accessible route connects all parts of facility? | | | |



| | Yes | No | N/A |
|---|---|---|---|
| 2. Minimum of 36" clear width except at doors? | | | |
| 3. Is there at least a 60" x 60" passing space at reasonable intervals? | | | |
| 4. Minimum of 60" clear headroom? | | | |
| 5. Surface: non-slip, firm and stable? | | | |
| 6. Slope does not exceed 1:20? [If greater than 1:20, apply criteria for ramps and curb ramps.] | | | |
| 7. Are routes not interrupted by ½" or more changes in level or steps? | | | |
| 8. Are grates set in the direction of the route no more than ½" wide? | | | |
| 9. At least one accessible route from transportation stops, parking, street and/or sidewalks? | | | |

Comments:

*Element 2: Parking (UFAS 4.6)*

*Need:* People with mobility impairments need parking spaces wide enough to open car doors fully and get out with a wheelchair or mobility aid, that are close to the building or facility and that are on an accessible route from parking lot to building.

1. If any visitor parking is provided, are spaces reserved for individuals with disabilities? Suggested guideline:

| Total parking in lot | Accessible spaces |
|---|---|
| 1–25 | 1 |
| 26–50 | 2 |
| 51–75 | 3 |
| 76–100 | 4 |
| 101–150 | 5 |
| 151–200 | 6 |
| 201–300 | 7 |
| 301–400 | 8 |

| | Yes | No | N/A |
|---|---|---|---|
| 2. Reserved space(s) located closest to accessible entrance; on accessible route? | | | |
| 3. Is the space(s) at least 96" wide? | | | |
| 4. Access aisle next to space at least 60" | | | |
| 5. Slope of space/access aisle no more than 1:50? | | | |
| 6. Accessibility symbol on space; mounted at a height unobscurable by a vehicle? | | | |

Comments:

*Element 3: Ramps (UFAS 4.8)*

*Need:* People who use wheelchairs need gently sloped ramps with handrails, no drop-offs, and a smooth, stable surface with level top and bottom platforms for resting and turning.

| | Yes | No | N/A |
|---|---|---|---|
| 1. Slope is least possible and no more than 1:12? | | | |
| 2. Cross slope (perpendicular to direction of travel) no more than 1:50? | | | |
| 3. Surface: non-slip, firm and stable? | | | |
| 4. Walls, railings or curbs at least 2" high to prevent slipping off ramp? | | | |
| 5. Level landing is as wide as ramp and at least 60" long at top and bottom of ramp and at each turn of ramp? | | | |
| 6. Ramp is at least 36" wide and rises no more than 30"? | | | |
| a. If ramp rise is more than 6" and length is more than 72", are there handrails between 30–34" high which extend 1' beyond top and bottom of ramp? | | | |
| b. Ends and edges rounded smoothly? | | | |
| c. Solidly anchored and with fittings that do not rotate? | | | |
| d. Parallel with slope of ground surface? | | | |

Comments:

*Element 4: Entrances and Interior Doors (UFAS 4.13 and 4.14)*

*Need:* People with mobility impairments need a building entrance which is wide, smooth, level or ramped. Entrance doors must be wide, have adequate space for maneuvering on both the pull and push sides, and require light pressure and no twisting to operate.

| | Yes | No | N/A |
|---|---|---|---|
| 1. At least one principle entrance, located on accessible route? | | | |
| 2. Accessible doors are standard single or double-leaf hinged doors, not revolving doors/turnstiles? | | | |
| 3. Is the door width at least 32" (if double doors are used, one must comply)? | | | |
| 4. Is door hardware no higher than 48" and push/pull type or lever operated? | | | |
| 5. Is the maximum opening force 8.5 lbs. on exterior hinged doors (about as much as needed to open a refrigerator door); 5 lbs. on interior hinged, sliding, or folding doors? | | | |
| 6. Are all thresholds no higher than ½" with beveled edge, and a slope no greater than 1:2? | | | |
| 7. Is there adequate maneuvering clearance at doors? | | | |

Comments:

*Element 5: Elevators (UFAS 4.10)*

*Need:* All persons with disabilities benefit from elevators. For maximum usability, elevators must provide adequate maneuvering space, time to get to and enter the cab, be conveniently located, and have marked controls. Blind persons benefit from audible indications on direction of travel and floors, and tactile markings at all controls. Hearing-impaired persons need this information to be visual. Lifts benefit people with mobility impairments; they cannot substitute for elevators in new construction, but they can be a successful solution to existing stairs than cannot be ramped.

| | Yes | No | N/A |
|---|---|---|---|
| 1. At least one serves each level on accessible route in a multi-story facility, unless levels are connected by ramps? | | | |
| 2. Is it an automatic self-leveling elevator with re-opening devices? | | | |
| 3. Cars dimensions: if door opens in the center, floor at least 51" × 80"; if door opens on one side, floor at least 51" × 68"? | | | |
| 4. Hall call buttons: centered 42" or less from floor and lighted? | | | |
| 5. Car controls: highest control 48", buttons at least ¾" and marked with raised characters? | | | |
| 6. Door remains open 3 seconds? | | | |
| 7. Visual and audible floor indicators provided? | | | |
| 8. If emergency information systems provided, audible alarms (bells or audible instructions) and visual signals (flashing alarms or written instructions) are used? | | | |
| 9. Automatically corrects over/under-travel within ½" when stopping at floor? | | | |

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| | Yes | No | N/A |
|---|---|---|---|
| 10. Door width at least 36"? | | | |
| 11. Floor is firm, stable and non-slip? | | | |
| 12. No more than 1¼" gap between car and landing platform? | | | |

Comments:

*Element 6: Stairs (UFAS 4.9)*

*Need:* People with sight impairments need stairs of uniform tread and width, with handrails which guide them and which indicate landings.

| | Yes | No | N/A |
|---|---|---|---|
| 1. Stair step heights are uniform; step depths are at least 11" and uniform? | | | |
| 2. No overhangs on steps greater than 1½"; overhangs are curved? | | | |
| 3. Handrails meet requirements (discussed under ramps)? | | | |

Comments:

*Element 7: Restrooms (UFAS 4.16–4.26)*

*Need:* People with mobility impairments need restrooms that they can get to and use easily and safety. For maximum flexibility, fixtures need adequate clear floor space for close approach and turning. Some individuals require sturdily mounted grab bars for support or transfer. Controls and hardware must be within reach and easily operable. Hot, sharp, abrasive, or protruding objects are hazards.

| | Yes | No | N/A |
|---|---|---|---|
| 1. If there are restrooms, at least one is provided on an accessible route? | | | |
| 2. Entrance door has at least 32" clear opening; level handle or push/pull type hardware; identified by accessibility symbol? | | | |
| 3. Unobstructed space to allow for wheelchair? | | | |
| 4. Toilet stall door at least 32" wide? | | | |
| 5. Adequate space for maneuvering in stalls? [Refer to standards for requirements for different configurations.] | | | |
| 6. In stalls, front partition and at least one side partition provide toe clearance at least 9" above the floor (if depth of the stall is greater than 60", toe clearance not needed)? | | | |
| 7. Grab bars are 33–36" high; located on back and side of stall; 1–1/4–1–1/2" diameter; 1–1/2" from wall; support 250 lb. force in any direction at any point; sharp edges/protrusions eliminated? | | | |
| 8. Toilet is 17"–19" high and located maximum 18" from center of toilet to closest wall? | | | |
| 9. For wall-mounted urinal, the basin opening is no more than 17" from floor; elongated rim; clear floor space 30" by 48" in front of urinals? | | | |
| 10. Toilet paper dispenser at least 19" above floor? | | | |
| 11. Sinks: height maximum 34"; drain and hot water pipes insulated; minimum 29" clearance below apron of sink? | | | |
| 12. Faucets: controls mounted no more than 44" above ground; hand-operated or automatic but do not require tight gripping, pinching or twisting of wrist? | | | |
| 13. Where there are mirrors, bottom edge maximum of 40" above floor? | | | |
| 14. Towel dispenser and disposal unit: operable part not more than 40" above floor? | | | |

Comments:

*Element 8: Drinking Fountains (UFAS 4.12(9))*

*Need:* Persons in wheelchairs need drinking fountains mounted low so they can reach the spout. They need to be able to pull up under the fountain or along its side. Provision of a paper cup dispenser may be an appropriate alternative. Persons who have difficulty using their hands need controls that can be easily operated.

| | Yes | No | N/A |
|---|---|---|---|
| 1. If fountains are available, 50% accessible on each floor; if only one is available, is it on an accessible route? | | | |
| 2. Spout mounted 36" above floor in front of unit with water flow at least 4" high and parallel to front of unit? | | | |
| 3. Controls operable with one hand without grasping or twisting? | | | |
| 4. Wall mounted: bottom of apron to floor at least 27"; built in: at least 30" x 48" in front of fountain? | | | |

Comments:

*Element 9: Hazardous Areas and Warning Signals (UFAS 4.1.2. and 4.28)*

*Need:* People with visual impairments need audible emergency warning systems and to be alerted by touch to hazardous areas. Persons with hearing impairments need visual alarms.

| | Yes | No | N/A |
|---|---|---|---|
| 1. If warning systems are provided, both visual (flashing) and audible provided? | | | |
| 2. Door knobs to hazardous areas roughened; doors labeled in raised or routed letters? | | | |

Comments:

*Element 10: Assembly, Meeting and Conference Areas (UFAS 4.1 and 4.33)*

*Need:* People who use wheelchairs need a level area from which they can view the performance area. Both the seating area and the performance area must be on an accessible route. Persons with hearing impairments need an auxiliary listening system.

| | Yes | No | N/A |
|---|---|---|---|
| 1. Wheelchair spaces available? Suggested guideline: | | | |

| Total capacity | Wheelchair locations |
|---|---|
| 50–75 | 3 |
| 76–100 | 4 |
| 101–150 | 5 |
| 151–200 | 6 |
| 201–300 | 7 |
| 301–400 | 8 |

| | | | |
|---|---|---|---|
| 2. Wheelchair locations adjacent to accessible route and, whenever possible, ramped to different seating levels? | | | |
| 3. Performing areas on an accessible route? | | | |
| 4. For large areas, amplification system available (volume controls, wireless headphones, infrared—audio loops and radio frequency are acceptable)? | | | |

Comments:

*Element 11: Public Telephones (UFAS 4.1.2. and 4.31)*

*Need:* Persons who use wheelchairs need adequate clear floor space to pull up to the telephone and a low mounting height so they can reach all operable parts. Persons with hearing impairments need volume controls.

| | Yes | No | N/A |
|---|---|---|---|
| 1. If public telephones, at least one accessible per floor? | | | |
| 2. Located on an accessible route with clear floor space 30" × 48" in front of phone? | | | |
| 3. Highest operable control 48" high for front approach, 54" for parallel approach? | | | |
| 4. Push button controls? | | | |
| 5. Any provision for the hearing impaired? | | | |

Comments:

*Element 12: Picnic Areas*

*Need:* Persons in wheelchairs need tables with one end extended or with a portion of a bench removed so that the table legs or benches do not prohibit access. Picnic tables need to be on an accessible route and located on a firm, level surface. Grills and trash receptacles need to be at an accessible height. Grills need to be located on a paved level textured surface, and trash receptacles need to have rounded corners so as not to be a safety hazard to visually-impaired persons.

Comments:

*Element 13: Exhibits, Signs and Information Displays*

*Need:* Persons with disabilities need exhibits, signs and information displays adequately lighted, in high-contrast colors, in large, easy-to-read print, and at levels where the material may be read by short people or by persons in wheelchairs. Tactile objects allow visually-impaired persons to enjoy exhibits and displays. Audio information should be available to hearing-impaired persons in some other format.

Comments:

*Element 14: Seating, Tables, and Work Areas (UFAS 4.32)*

*Need:* Persons in wheelchairs need seating with flat, clear floor space in front of tables, counters, and work areas, as well as sufficient knew clearance.

Comments:

*Element 15: Other Building Elements and Specialized Facilities*

Other building elements and special use facilities are not covered by these forms. Where access to these elements and facilities is essential for individuals with disabilities are to participate fully in your program or activity.

- Bathing facilities and showers—UFAS 4.23
- Storage facilities—UFAS 4.25
- Windows—UFAS 4.12
- Dwelling units—UFAS 4.34
- Food service facilities—UFAS 5.0
- Health care facilities—UFAS 6.0
- Libraries—UFAS 8.0
- Mercantile—UFAS 7.0

Copies of the UFAS may be obtained from ACTION State Offices.

**Handicapped Accessibility Self-Evaluation Certification**

Organization Name: _____
Address: _____

_____

Telephone Number (with Area Code): _____

I certify that a handicap accessibility self-evaluation has been:

_____ Completed on _____ (date)

_____ Partially completed and will be done on _____ (date)

The results of the self-evaluation(s) is (are) as follows:

_____ The recipients' program, when viewed in its entirety, is accessible and no corrective actions are required.

_____ The recipient's program, when viewed in its entirety, is accessible, but some corrective actions will be made.

_____ The recipient's program, when viewed in its entirety, is not accessible. FOR SPONSOR ONLY: Corrective action will be made by:

_____
(date)

I understand that, if the organization has 15 or more employees, information on how the self-evaluation was conducted is to be made available for public inspection for 3 years after its completion. I also understand that this information will be available to ACTION officials upon request.

_____
(date)

_____
(signature)

_____
(name/title of responsible official)

Each OAVP station and VISTA site must submit this certification form to its OAVP sponsor to VISTA project. Each OAVP sponsor and VISTA project must submit this one form to its ACTION State office.

[FR Doc. 92–16968 Filed 7–21–92 8:45 am]

BILLING CODE 6050–28–M



## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 92–032–2]**

### Public Meeting; Veterinary Biologics

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** This is the second notice to producers of veterinary biologics and other interested persons that we are holding the fourth annual public meeting to discuss current regulatory and policy issues related to the manufacture and distribution and use of veterinary biological products. The agenda includes but is not limited to program updates; compliance and regulatory issues; licensing issues; consumer views on veterinary biologics; in vitro testing; international harmonization of regulation of veterinary biologics; poultry issues; National Veterinary Services Laboratories (NVSL) issues; biotechnology issues; Veterinary Biologics Field Operations (VBFO) issues; informal meetings with personnel from Veterinary Biologics (VB), VBFO, and NVSL; and open discussion for presentation of comments by attendees.

**PLACE, DATES, AND TIMES OF MEETING:** The fourth annual public meeting will be held in the Scheman Building at the Iowa State Center, Ames, Iowa, 50011, on Tuesday, August 18, 1992, from 8 a.m. to 5 p.m. and Wednesday, August 19, 1992, from 8 a.m. to 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lorie Lykins; Veterinary Biologics Field Operations; Biotechnology, Biologics, and Environmental Protection; Animal and Plant Health Inspection Service; U.S. Department of Agriculture; 223 South Walnut Avenue, Ames, Iowa 50010, (515) 232–5785.

**SUPPLEMENTARY INFORMATION:** APHIS previously announced that it was holding the fourth annual meeting on veterinary biologics in Ames, Iowa, in August, 1992 (See 57 FR 8432, March 10, 1992). In its notice for the meeting, APHIS requested interested persons to submit topics to be included in the meeting's agenda. Based on the submissions received and other considerations, the agenda for the fourth annual meeting includes but is not limited to the following topics:

1. Program updates;
2. Compliance and regulatory issues;
3. Licensing issues;
4. Consumer views on veterinary biologics;
5. In vitro testing;
6. Breakout sessions;

a. International harmonization;
b. Poultry issues;
c. NVSL issues;
d. Biotechnology issues;
e. VBFO issues;
f. Informal meetings with personnel from VB, VBFO, or NVSL;
7. Open discussion.

During the "open discussion" portion of the meeting, attendees will have the opportunity to present their views on any matter concerning the APHIS veterinary biologics program. Comments may be either impromptu or prepared. Persons wishing to make a prepared statement should indicate their intention to do so at the time of registration, by indicating the subject of their remarks and the approximate time they would like to speak. APHIS welcomes and encourages the presentation of comments at the meeting.

Registration forms, lodging information, and copies of the complete agenda may be obtained from the person listed under "**FOR FURTHER INFORMATION CONTACT**". Advance registration is required. The deadline for registration is August 10, 1992. Please note that the meeting is scheduled to end by 4 p.m. on Wednesday, August 19, 1992.

Done in Washington, DC, this 17th day of July 1992.

**Robert Melland,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92-17281 Filed 7-21-92; 8:45 am]

BILLING CODE 3410-34-M

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## Forest Service

### Revised Land and Resource Management Plan for the George Washington National Forest, Alleghany, Amherst, Augusta, Bath, Botetourt, Frederick, Highland, Nelson, Page, Rockbridge, Rockingham, Shenandoah, and Warren Counties, VA, and Hampshire, Hardy, Monroe, and Pendleton Counties, WV

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised notice; revised availability dates for final environmental impact statement and addition of a cooperating agency.

**SUMMARY:** In January 1992 the Forest Service released the Draft Environmental Impact Statement for the Revised Land and Resource Management Plan for the George Washington National Forest. As a result the agency has received more than 4,300 letters of comment. To allow sufficient time to adequately analyze these letters and make appropriate changes in the preparation of the Final Environmental Impact Statement and Revised Land and Resource Management Plan for the George Washington National Forest, the agency is revising the dates for the availability of the final environmental impact statement. In addition the U.S. Department of the Interior's Fish and Wildlife Service has agreed to be a cooperating agency in the preparation of the final environmental impact statement.

**FOR FURTHER INFORMATION CONTACT:** Ronald W. Lindenboom, Interdisciplinary Team Leader, George Washington National Forest, Harrison Plaza, P.O. Box 233, Harrisonburg, Virginia 22801, phone [703] 433-2491.

**SUPPLEMENTARY INFORMATION:** The Notice of Intent (NOI) to prepare an environmental impact statement to revise the Land and Resource Management Plan for the George Washington National Forest was published in the **Federal Register** for November 2, 1989 (54 FR 46280-46281). A revision to the NOI was published in the **Federal Register** October 23, 1990 (55 FR 42744-42745) changing the availability dates of the draft and final environmental impact statements.

The final environmental impact statement was scheduled to be filed with the Environmental Protection Agency (EPA) and available for public review by May 1992. It is now expected to be available by December 1992. At that time EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**.

The U.S. Department of the Interior's Fish & Wildlife Service has agreed to be a cooperating agency in the preparation of the final environmental impact statement. They will be providing information on the recovery of the Cowknob Salamander (*Plethodon punctatus*), a species proposed for listing as Federally endangered. Cowknob Salamander is found in Virginia and West Virginia along the crest of the Shenandoah Mountains in an area approximately 24 miles long by 1 mile wide. The total range of this species lies within the boundaries of the George Washington National Forest.

Dated: July 16,.1992.

**Marvin C. Meier,**

*Deputy Regional Forester.*

[FR Doc. 92-17218 Filed 7-21-92; 8:45 am]

BILLING CODE 3410-11-M

### Eagle Creek Timber Sale(s), Mt. Hood National Forest, Clackamas County, OR

**AGENCY:** Forest Service, USDA.

**ACTION:** Revision of a notice of intent to prepare an environmental impact statement.

**SUMMARY:** This notice of intent revises the notice of intent to prepare an environmental impact statement (EIS) for the Eagle Creek Timber Sales(s), Mt Hood National Forest, Clackamas County, Oregon, published on April 15, 1991, in the **Federal Register** (56 FR 15071). Following preliminary scoping and environmental analysis, the Mt. Hood National Forest has changed the proposed action and the timeline for the release of the draft and final EIS.

The proposed action in the original notice of intent was described as follows: The proposed Eagle Creek Timber Sales will harvest approximately 450 acres of timber and build about five miles of access road beginning in fiscal year 1993. The proposed action is revised as follows: The proposed action may harvest timber on as many as 1500 acres and build about five miles of access road beginning in fiscal year 1994. This change is a result of using partial cut silvicultural prescriptions. The original calculation of 450 acres was based on a clearcut silvicultural prescription.

The draft EIS (originally planned to be available for public review in January 1992) is expected to be available for review in December 1992. The final EIS will be published in May 1993.

**FOR FURTHER INFORMATION CONTACT:** Questions and comments about this EIS should be directed to Jack Gerstkemper, Estacada Ranger District, Estacada, Oregon 97023, phone (503) 630-6861.

Dated: July 1, 1992.

**Michael S. Edrington,**

*Forest Supervisor.*

[FR Doc. 92-17229 Filed 7-21-92; 8:45 am]

BILLING CODE 3410-11-M

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## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Action Affecting Export Privileges; Frederick Components International, Ltd.; Correction

In the **Federal Register** of Friday, May 29, 1992, the Bureau of Export Administration published an Order at 22709. This notice is being published to correct the subject matter of that order.

The subject heading should have appeared as set forth above.

Dated: July 9, 1992.

**Iain S. Baird,**

*Director, Office of Export Licensing.*

[FR Doc. 92-17179 Filed 7-21-92; 8:45 am]

BILLING CODE 3510-DT-M

## Foreign-Trade Zones Board

**[Order No. 589]**

### Relocation and Expansion of Foreign-Trade Zone 56, Oakland, CA; and Approval of Manufacturing Activity for Export Within Foreign-Trade Zone 56; Advanced Blending Corp. (Infant Formula)

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

*Whereas,* the City of Oakland, California, Grantee of Foreign-Trade Zone No. 56, has made application (filed 5-9-91, FTZ Docket 27-91, 56 FR 22842, 5-17-91) to the Board for authority to relocate and expand its general-purpose zone in Oakland, California, adjacent to the San Francisco/Oakland customs port of entry;

*Whereas,* the application was amended on July 8, 1991, to include a request for authority on behalf of Advanced Blending Corporation to manufacture milk-based infant formula for export under zone procedures within FTZ 56 (56 FR 38112, 8-12-91);

*Whereas,* notices of said application and amendment have been given in the **Federal Register** and public comment has been invited;

*Whereas,* the Board has found that the requirements of the Act and the Board's regulations would be satisfied, and that the proposal, as amended, would be in the public interest provided that the manufacturing authority for Advanced Blending Corporation is limited to export activity, as indicated in the amended application, and that all foreign-origin dairy products and sugar admitted to the zone shall be reexported;

*Now, Therefore,* the Board hereby orders:

That the Grantee is authorized to relocate and expand its zone in accordance with the application filed on May 9, 1991, and Advanced Blending Corporation is authorized to manufacture infant formula under zone procedures for export within FTZ 56, as requested in the amendment of July 8, 1991, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790-50808, 10-8-91), including § 400.28.

Signed at Washington, DC, this 15th day of July 1992.

**Alan M. Dunn,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 92-17299 Filed 7-21-92; 8:45 am]

BILLING CODE 3510-DS-M

## International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with June anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** July 22, 1992.

**FOR FURTHER INFORMATION CONTACT:** Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2104.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements, with June anniversary dates.

### Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than June 30, 1993.

| Antidumping duty proceedings and firms | Periods to be reviewed |
|---|---|
| Canada: | |
| Red Raspberries, A-122-401 | |
| British Columbia Blueberry Cooperative Association, Clearbrook Packers, Inc., Mukhtiar & Sons Packers Ltd., Universal Packers Inc., Valley Berries Inc. | 6/1/91-5/31/92 |
| France: | |
| Large Power Transformers, A-427-030 | |
| Jeumont-Schneider | 6/1/91-5/31/92 |
| Japan: | |
| Industrial Belts, A-588-807 | |
| Mitsuboshi Belting Limited | 6/1/91-5/31/92 |
| Large Power Transformers, A-588-032 | |
| Fuji | |
| Polyethylene Terephthalate Film Sheet and Strip, A-588-814, A-588-814 | |
| Toray Industries, Inc. | 11/30/90-5/31/92 |
| Singapore | |
| Industrial Belts, A-559-802 | |
| Mitsuboshi Belting (Singapore) Pte. Ltd. | 6/1/91-5/31/92 |
| The Hungarian People's Republic: | |
| Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, A-437-601 | |
| Magyar Gordulocsapagy Muvek | 6/1/91-5/31/92 |

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| Antidumping duty proceedings and firms | Periods to be reviewed |
|---|---|
| The People's Republic of China: | |
| Sparklers, A–570–804 | 12/17/90–5/31/92 |
| Guangxi Native Produce Import & Export Corporation, Beihai Fireworks and Firecracker Branch | |
| Tapered Roller Bearings and Parts Thereof, A–570–601 | |
| Harbin Bearing Factory, Luoyang Bearing Factory, Wafangdian Bearing Factory, Shanghai General Bearing Co., Ltd., Shanghai Rolling Bearing Factory, Xiangyang Bearing Factory, Chengdu General Bearing Factory, Hailin Bearing Factory, Guiyang Bearing Factory, Haihong Bearing Factory, Lanzhou Bearing Factory, Xibei Bearing Factory, Changzhi Bearing Factory, Jining Bearing Factory, Shenyang Bearing Factory, Gongzhuling Bearing Factory, Jiamusi Bearing Factory, Hangzhou Bearing Factory, Jiangxi Bearing Factory, Liangshan Bearing Factory, Yantai Bearing Factory, Northwest Bearing Plant, Huangshi Bearing Factory, Guangxi Bearing Factory, Chongqing Bearing Factory, Yunnan Bearing Factory, Baoji Bearing Factory, Xiangtan Bearing Factory, Shaoguan Bearing Factory, Xinjiang Bearing Factory, The Second Bearing Factory of Xuzhou, Yuxi Bearing Factory, Changde Bearing Factory, Chengdu Bearing Company, Handan Bearing Factory, Xingcheng Bearing Factory, Premier Bearing & Equipment, Ltd., Chin Jun Industrial, Ltd., China National Machinery and Equipment Import and Export Corporation, China National Machinery Import and Export Corporation of Jilin Province | 6/1/91–5/31/92 |
| The Republic of Korea: | |
| Polyethylene Terephthalate Film, Sheet and Strip, A–580–807 | 11/30/90–5/31/92 |
| SKF Limited, Cheil Synthetics Inc., Kolon Industries, Inc., STC Corporation | |

*Countervailing Duty Proceedings*

None.

In addition, in accordance with § 353.25 of the Commerce Regulations, the following firms have requested revocation from the antidumping duty order.

Canada

*Red Raspberries*
A–122–401
British Columbia Co-Operative Association, Clearbrook Packers Inc., Mukhtiar & Sons Packers Ltd.

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and § 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 355.22(c) (1989).

Dated: July 15, 1992.

**Roland L. MacDonald,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 92–17300 Filed 7–21–92; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0078; FAR Case 88–53]**

### OMB Clearance Request for the Make-or-Buy Program

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000–0078).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the Make-or-Buy Program.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Olson, Office of Federal Acquisition Policy, GSA, (202) 501–3221.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Price, performance, and/or implementation of socioeconomic policies may be affected by make-or-buy decisions under certain Government prime contracts. Accordingly, Subpart, 15.7, Make-or-Buy Programs, of the FAR—

(i) Sets forth circumstances under which a Government contractor must submit for approval by the contracting officer a make-or-buy program, *i.e.*, a written plan identifying major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted;

(ii) Provides guidance to contracting officers concerning the review and approval of the make-or-buy programs; and

(iii) Prescribes the contract clause at FAR 52.215–21, Changes or Additions to Make-or-Buy Programs, which specifies the circumstances under which the contractor is required to submit for the contracting officer's advance approval a notification and justification of any proposed change in the approved make-or-buy program.

The information is used to assure the lowest overall cost to the Government for required supplies and services.

**B. Annual Reporting Burden**

The annual reporting burden is estimated as follows: Respondents, *200;* responses per respondent, *3;* total annual responses, *600;* preparation hours per response, *8;* and total response burden hours, *4,800.*

*Obtaining Copies of Proposals:* Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0078, Make-or-Buy Program, FAR case 88–53, in all correspondence.

Dated: July 14, 1992.

**Beverly Fayson,**

*FAR Secretariat.*

[FR Doc. 92–17189 Filed 7–21–92; 8:45 am]

BILLING CODE 6820–34–M

**[OMB Control No. 9000–0023]**

### OMB Clearance Request for Balance of Payments Program Certificate

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000–0023), Balance of Payments Program Certificate.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning OMB Control Number 9000–0023, Balance of Payments Program Certificate.

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

**Purpose**

The offeror, in submitting the Balance of Payments Program Certificate, certifies that each end product or service, except the end products or services listed in the certificate, is a domestic end product or service and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

Offers are evaluated by giving a certain preference to domestic end products or services over foreign end products or services in accordance with § 25.303(b) of the Federal Acquisition Regulation.

**Annual Reporting Burden**

The annual reporting burden is estimated as follows: *Respondents,* 1,243; *responses per respondent,* 5; *total annual responses,* 6,215; *preparation hours per response,* 1.67; and total response burden hours, 1,038.

**Obtaining Copies of Proposals**

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0023, Balance of Payments Program Certificate, in all correspondence.

Dated: July 14, 1992.

**Beverly Fayson,**

*FAR Secretariat.*

[FR Doc. 92–17190 Filed 7–21–92; 8:45 am]

BILLING CODE 6820–34–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### DoD Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATES:** The meeting will be held at 9 a.m., Wednesday and Thursday, 5–6 August 1992.

**ADDRESSES:** The meeting will be held at MIT/Lincoln Laboratory, 135 South Road Facility, Bedford, MA 01730.

**FOR FURTHER INFORMATION CONTACT:** Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended (5 U.S.C. App. II § 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: July 16, 1992.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92–17187 Filed 7–21–92; 8:45 am]

BILLING CODE 3810–01–M

### DoD Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATES:** The meeting will be held at 9 a.m., Tuesday, 4 August 1992.

**ADDRESSES:** The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: July 16, 1992.

**L.M. Bynum,**

*Alternate, OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92–17186 Filed 7–21–92; 8:45 am]

BILLING CODE 3810–01–M



## Corps of Engineers, Department of the Army

### Regulatory Guidance Letters Issued by the Corps of Engineers

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to provide a copy of the latest Regulatory Guidance Letter (RGL) to all known interested parties. RGL's are used by the Corps of Engineers as a means to transmit guidance on the permit program (33 CFR parts 320–330) to its division and district engineers.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 272–1782.

**SUPPLEMENTARY INFORMATION:** In accordance with a notice published by the Corps of Engineers on January 22, 1991, (56 FR 2408), we will publish all RGL's upon issuance. Accordingly, RGL No. 92–2, subject: Water Dependency and Cranberry Production, is hereby published. This guidance was developed jointly by the Corps of Engineers and the U.S. Environmental Protection Agency.

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Dated: July 13, 1992.

**John P. Elmore, P.E.,**

*Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.*

Subject: Water Dependency and Cranberry Production

1. Enclosed for implementation is a joint Army Corps of Engineers/Environmental Protection Agency Memorandum to the Field on water dependency and cranberry production. This guidance was developed jointly by the Army Corps of Engineers and the U.S. Environmental Protection Agency.

2. This guidance will expire 31 December 1995 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore, P.E.,

*Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.*

**Memorandum to the Field**

Subject: Water Dependency and Cranberry Production

1. The purpose of this memorandum is to clarify the applicability of the Section 404(b)(1) Guidelines water dependency provisions (40 CFR 230.10(a)) to the cultivation of cranberries, in light of Army Corps of Engineers (Corps) regulations at 33 CFR 323.4(a)(1)(iii)(C)(1) (ii) and (iii), and Environmental Protection Agency (EPA) regulations at 40 CFR 232.3(d)(3)(i) (B) and (C). These sections of the Corps and EPA regulations state, among other things, that cranberries are a wetland crop, and that some discharges associated with cranberry production are considered exempt from regulation under the provisions of section 404(f) of the Clean Water Act. The characterization of cranberries as a wetland crop has led to inconsistency in determining if cranberry production is a water dependent activity as defined in the section 404(b)(1) Guidelines (Guidelines).

2. The intent of Corps regulations at 33 CFR 320.4(b) and of the Guidelines is to avoid the unnecessary destruction or alteration of waters of the U.S., including wetlands, and to compensate for the unavoidable loss of such waters. The Guidelines specifically require that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences" (see 40 CFR 230.10(a)). Based on this provision, an evaluation is required in every case for use of non-aquatic areas and other aquatic sites that would result in less adverse impact to the aquatic ecosystem, irrespective of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent. A permit cannot be issued, therefore, in circumstances where an environmentally preferable practicable alternative for the proposed discharge exists (except as provided for under section 404(b)(2)).

3. For proposed discharges into wetlands and other "special aquatic sites," the Guidelines alternatives analysis requirement further considers whether the activity associated with the proposed discharge is "water dependent". The Guidelines define water dependency in terms of an activity requiring access or proximity to or siting within a special aquatic site to fulfill its basic project purpose. Special aquatic sites (as defined in 40 CFR 230.40–230.45) are: (1) Sanctuaries and refuges; (2) wetlands; (3) mud flats; (4) vegetated shallows; (5) coral reefs; and (6) riffle and pool complexes. If an activity is determined not to be water dependent, the Guidelines establish the following two presumptions (40 CFR 230.10(a)(3)) that the applicant is required to rebut before satisfying the alternatives analysis requirements:

a. That practicable alternatives that do not involve special aquatic sites are presumed to be available; and,

b. That all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem.

It is the responsibility of the applicant to clearly rebut these presumptions in order to demonstrate compliance with the Guidelines alternatives test.

4. If an activity is determined to be water dependent, the rebuttable presumptions stated in paragraph 3 of this memorandum do not apply. However, the proposed discharge, whether or not it is associated with a water dependent activity, must represent the least environmentally damaging practicable alternative in order to comply with the alternatives analysis requirement of the Guidelines as described in paragraph 2 of this memorandum.

5. As previously indicated, Corps and EPA regulations consider cranberries as a wetland crop species. This characterization of cranberries as a wetland crop species is based primarily on the listing of cranberries as an obligate hydrophyte in the National List of Plant Species That Occur in Wetlands (U.S. Fish and Wildlife Service Biological Report 88(26.1–26.13)) and the fact that cranberries must be grown in wetlands or areas altered to create a wetland environment. Therefore, the Corps and EPA consider the construction of cranberry beds, including associated dikes and water control structures associated with dikes (i.e., headgates, weirs, drop inlet structures), to be a water dependent activity. Consequently, discharges directly associated with cranberry bed construction are not subject to the presumptions applicable to non-water dependent activities discussed in paragraph 3 of this memorandum. However, consistent with the requirements of § 230.10(a), the proposed discharge must represent the least environmentally damaging practicable alternative, after considering aquatic and non-aquatic alternatives as appropriate. To be considered practicable, an alternative must be available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. For commercial cranberry cultivation, practicable alternatives may include upland sites with proper characteristics for creating the necessary conditions to grow cranberries. Factors that must be considered in making a determination of whether or not upland alternatives are practicable include soil pH, topography, soil permeability, depth to bedrock, depth to seasonal high water table, adjacent land uses, water supply, and, for expansion of existing cranberry operations, proximity to existing cranberry farms. EPA Regions and Corps Districts are encouraged to work together with local cranberry growers to refine these factors to reflect their regional conditions.

6. In contrast, the following activities often associated with the cultivation and harvesting of cranberries are not considered water dependent: construction of roads, ditches, reservoirs, and pump houses that are used during the cultivation of cranberries, and construction of secondary support facilities for shipping, storage, packaging, parking, etc. Therefore, the rebuttable practicable alternatives presumptions discussed in paragraph 3 of this memorandum apply to the discharges associated with these non-water dependent activities. However, since determinations of practicability under the Guidelines includes consideration of cost, technical, and logistics factors, determining the availability of practicable alternatives to discharges associated with these non-water dependent activities must involve consideration of the need of an alternative to be proximate to the cranberry bed in order to achieve the basic project purpose of cranberry cultivation. Once it has been determined that the location of the cranberry bed, including associated dikes, and water control structures, represents the least environmentally damaging practicable alternative, practicable alternatives for maintenance roads, ditches, reservoirs and pump houses will generally be limited to the bed itself and the area in the vicinity of the actual bed. For example, the bed dikes may be the only practicable alternative for location of maintenance roads. When practicable alternatives cannot be identified within such geographic constraints, the applicant must minimize the impacts of the roads, reservoirs, etc., to the maximum extent practicable.

7. During review of applications for discharges associated with cranberry cultivation, it is important to reiterate that proposed discharges must also comply with the other requirements of the Guidelines (i.e., 40 CFR 230.10 (b), (c) and (d)). In addition, evaluations of all discharges, whether or not the proposed discharge is associated with a water dependent activity, must comply with the provisions of the National Environmental Policy Act, including an investigation of alternatives to the proposed discharge. Further, applications for discharges associated with cranberry cultivation will continue to be evaluated in accordance with current Corps and EPA policy and practice concerning mitigation, cumulative impact analysis, and public interest review factors.

8. This guidance expires 31 December 1995 unless sooner revised or rescinded.

For the Director of Civil Works:

Robert H. Wayland, III,

*Director, Office of Wetlands, Oceans, and Watersheds, U.S. Environmental Protection Agency.*

John P. Elmore,

*Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.*

[FR Doc. 92–17228 Filed 7–21–92; 8:45 am]

BILLING CODE 3710–06–M



## DEPARTMENT OF ENERGY

### Office of Fossil Energy

**[FE Docket No. 92–44–NG]**

### Coastal Gas Marketing Co.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Coastal Gas Marketing Company blanket authorization to import up to 600 Bcf and to export up to 150 Bcf of natural gas, including liquefied natural gas from and to Canada, Mexico, and other countries over a two-year period beginning on the date of first delivery after July 11, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 15, 1992

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92–17275 Filed 7–21–92; 8:45 am]

BILLING CODE 6450–01–M

**[FE Docket No. 92–78–NG]**

### Louis Dreyfus Energy Corp.; Application for Blanket Authorization To Import and Export Natural Gas and Vacate Existing Authorization

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of June 22, 1992, of an application filed by Louis Dreyfus Energy Corp. (L.D. Energy) to (i) import up to 182.5 Bcf of natural gas from Canada for sales to markets in the United States during a two-year period commencing on the date of first delivery, and (ii) export up to 182.5 Bcf of natural gas from the United States for sales to markets in Mexico and Canada during a two-year period commencing on the date of first delivery. The proposed imports and exports would take place at any point on the international border where existing pipeline facilities are located. L.D. Energy further requests that its existing blanket export authorization granted in DOE/FE Opinion and Order No. 409 on July 13, 1990, be vacated upon approval of the requested import/export authorization.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 21, 1992.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** L.D. Energy is a close corporation, organized and existing under the laws of Delaware, with its principal place of business in Wilton, Connecticut. L.D. Energy is a wholly-owned subsidiary of Louis Dreyfus Corporation, which, in turn, is a subsidiary of Louis Dreyfus Holding Company Inc., a Delaware corporation, whose parent is S.A. Louis Dreyfus & Cie of Paris, France, a family-owned concern. L.D. Energy is involved in marketing crude oil and refined products as well as the construction, chartering, and operation of liquefied natural gas tankers.

L.D. Energy requests authorization to import and export natural gas for its own account and as agent for the accounts of U.S. suppliers and purchasers and Mexican and Canadian suppliers and purchasers. The gas will be sold on a short-term basis, to commercial and industrial end-users, local distribution companies, and pipelines in the U.S. and Mexico. The applicant anticipates sales of gas exported to Mexico will be made principally to Petroleos Mexicanos. L.D. Energy requests that import and export authority be granted on a blanket basis to provide it with the flexibility necessary to respond to rapidly changing conditions in the natural gas markets in the United States, Mexico, and Canada. The exported gas would come from production areas in the United States with surplus supplies of natural gas or would consist of supplies which are incremental to the needs of current purchasers. The imported gas would be purchased from various Canadian suppliers including producers, marketers, and pipelines. No contracts for the sale of the proposed imports or exports have been executed, however, the specific details of each export transaction would be filed by L.D. Energy as per DOE's quarterly reporting requirements. L.D. Energy anticipates all sales would result from arms-length negotiations and the prices would be determined by market conditions.

L.D. Energy currently holds a blanket authorization to import up to 50 Bcf of natural gas from Canada that was granted on July 13, 1990, in DOE/FE Opinion and Order No. 409. Since L.D. Energy has not imported any natural gas under this authorization, the two-year import authorization period has not expired. L.D. Energy intends for the authorization requested in its current application to supersede the authorization contained in Order 409 and therefore requests that Order 409 be vacated upon issuance of its requested, two-year, natural gas import/export authorization of 182.5 Bcf.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the

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natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose the application should comment in their responses on these issues.

**NEPA Compliance**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trail-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of L.D. Energy's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 16, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92-17276 Filed 7-21-92; 8:45 am]

BILLING CODE 6450-01-M

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**[FE Docket No. 92-77-NG]**

## Louis Dreyfus Natural Gas Corp.; Application for Blanket Authorization To Import and Export Natural Gas

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 22, 1992, of an application filed by Louis Dreyfus Natural Gas Corp. (L.D. Natural Gas) to (i) import up to 182.5 Bcf of natural gas from Canada for sales to markets in the United States and for reexportation to Canada during a two-year period commencing on the date of first delivery, and (ii) export up to 182.5 Bcf of natural gas from the United States for sales to markets in Mexico and Canada during a two-year period commencing on the date of first delivery. The proposed imports would take place at any point on the international border where existing pipeline facilities are located. L.D. Natural Gas would file quarterly reports detailing any transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 21, 1992.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50 1000 Independence Avenue, SW. Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6116.

Diane Stubbs Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** L.D. Natural Gas is a wholly subsidiary of Louis Dreyfus Holding Company Inc., a Delaware corporation with its principal place of business in Oklahoma City, Oklahoma. L.D. Natural Gas, whose parent is S.A. Louis Dreyfus & Cie of Paris, France, a family-owned concern, is currently involved in various aspects of production, sales and marketing of natural gas to various commercial and industrial end-users, local distribution companies and pipelines in the United States and Canada.

L.D. Natural Gas requests authorization to import and export natural gas for its own account and as agent for the accounts of U.S. suppliers and purchasers and Mexican and Canadian suppliers and purchasers. L.D. Natural Gas further requests that such import and export authority be granted on a blanket basis to provide it with the flexibility necessary to respond to rapidly changing conditions in the natural gas markets in the United States, Mexico, and Canada. The exported gas would come from production areas in the United States with surplus supplies of natural gas or would consist of supplies which are incremental to the needs of current purchasers. The imported gas would be purchased from various Canadian suppliers including producers, marketers, and pipelines. No contracts for the sale of the proposed imports or exports have been executed, however, the specific details of each import and export transaction would be filed by L.D. Natural Gas as per DOE's quarterly reporting requirements. L.D. Natural Gas anticipates all sales would result from arms-length negotiations and the prices would be determined by market conditions.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose the application should comment in their responses on these issues.

*NEPA Compliance.* The Natural Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

*Public Comment Procedures.* In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intevention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of L.D. Natural Gas's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 16, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92–17277 Filed 7–21–92; 8:45 am]

BILLING CODE 6450–01–M

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**[FE Docket No. 91–103–LNG]**

## Phillips Alaska Natural Gas Corp. and Marathon Oil Company; Order Amending Existing Authorization To Export Liquefied Natural Gas to Japan

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order amending the authorization of Phillips Alaska Natural Gas Corporation and Marathon Oil Company to increase by twelve percent the volume of liquefied natural gas the applicants are authorized to export from Alaska to Japan beginning April 1, 1993, through March 31, 2004.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 15, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92–17278 Filed 7–21–92; 8:45 am]

BILLING CODE 6450–01–M

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## Western Area Power Administration

## Floodplain/Wetlands Involvement for the Sterling Substation Transformer and Fuse Replacement Project, Logan County, CO

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Floodplain/wetland involvement and opportunity to comment.

**SUMMARY:** The Department of Energy, Western Area Power Administration (Western), is proposing to remove and replace a transformer and transformer fuses, and provide oil spill containment for all oil-filled equipment at the Sterling Substation near Sterling, Colorado, in Logan County. Because the substation is within the floodplain of the South Platte River, Western will prepare a Floodplain/Westlands Assessment.

**DATES:** Public comments or suggestions concerning the floodplain involvement of Western's proposed actions are invited. Comments are due within 15 days after the date of publication of this notice in the **Federal Register**.

**ADDRESSES:** Comments or suggestions should be sent to: Mr. Robert H. Jones, Acting Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490–7200.

**FOR FURTHER INFORMATION CONTACT:** Rodney D. Jones, Environmental Specialist, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490–7371.

**SUPPLEMENTARY INFORMATION:** Pursuant to DOE's "Compliance with Floodplain/Wetlands Environmental Review Requirements," 10 CFR part 1022, Western has determined this proposed project may involve activities within a floodplain area. Western will prepare a floodplain/wetlands assessment in accordance with Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands. The assessment will address the

proposed activity in the South Platte River floodplain.

Removing and replacing the Sterling Substation transformer has become necessary due to the age of the existing transformer and the unavailability of replacement parts. These factors have made maintaining this transformer increasingly difficult. The new transformer would require less maintenance time and increase reliability by reducing the risk of potential failure. The existing transformer and foundation would be removed and a new transformer with a new concrete foundation installed. The 69 kilovolt (kV) fuses would be replaced with a three-phase interrupter to prevent single-phase conditions. Single-phase operation has caused severe low voltages to customers in the area. In addition, three instrument transformers would be replaced and one circuit breaker would be removed.

Based on U.S. Geological Survey topographic maps and Federal Emergency Management Agency (FEMA) maps, the existing substation lies within the known boundaries of the 100-year floodplain of the South Platte River. All construction activity associated with the project would take place within the 10-acre fenced boundary of the substation facility. Oil spill containment for all oil-filled equipment would be installed at the substation. Oil spill containment design will consider potential oil spill impacts to the South Platte River and floodplain.

Issued at Golden, Colorado, July 10, 1992.

William H. Clagett,

*Administrator.*

[FR Doc. 92-17279 Filed 7-21-92; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP-300224A; FRL-4070-2]**

## Abandoned and Incomplete Pesticide Petitions That are Being Withdrawn

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; Withdrawn Petitions.

**SUMMARY:** This notice announces the withdrawal without prejudice to future filings of certain pesticide petitions for tolerances or food or feed additive petitions that have been pending with the Agency.

**ADDRESSES:** By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** By mail, James A. Tompkins, Registration Support Branch, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7700.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of September 4, 1991 (56 FR 43759), EPA issued a notice which announced certain policies concerning abandoned and incomplete pesticide petitions for tolerances and food or feed additive petitions (FAP's) currently pending with the Agency. In response to the notice, certain registrants have requested the Agency to withdraw their pesticide petitions or food or feed additive petitions without prejudice to future filings. Accordingly, the petitions listed in the tables below have been withdrawn by the Agency on the dates indicated.

List of Petitions Withdrawn per Correspondence Received

| Petition | Chemical | Petitioner | Crop | Date |
|---|---|---|---|---|
| 1F1074 | Dichlobenil | Thompson-Hayward | Fish | 12-02-91 |
| 2G1241 | Methomyl | E. I. du Pont | Pineapple et al. | 09-17-91 |
| 3F1417 | Dacthal | Diamond Shamrock | RACs | 11-18-91 |
| 5F1554 | Oxadiazon | Rhodia, Inc. | Soybeans et al. | 09-09-91 |
| 5F1647 | Glyoxime | Ciba-Geigy | Oranges | 11-08-91 |
| 6F1702 | Fensulfothion | Mobay Chemical | Beans et al. | 11-15-91 |
| 6F1716 | Asulam | Rhodia, Inc. | Alfalfa forage et al. | 09-13-91 |
| 6F1717 | Asulam | Rhodia, Inc. | Grasses et al. | 09-13-91 |
| 6F1766 | Asulam | Rhodia, Inc. | Flaxseed et al. | 09-13-91 |
| 6F1810 | Benomyl | E.I. du Pont | Lettuce | 11-15-91 |
| 6F1814 | Propargite | Uniroyal Chemical | Almonds | 12-02-91 |
| 8F2043 | Aldoxycarb | Union Carbide | Cottonseed | 11-11-91 |
| 8F2077 | Oxadiazon | Rhodia, Inc. | Almonds et al. | 09-09-91 |
| 8F2096 | Aldicarb | Union Carbide | Tomatoes | 11-15-91 |
| 8F2117 | Oxamyl | E.I. du Pont | Field corn | 10-18-91 |
| 9F2186 | Aldoxycarb | Union Carbide | Peanuts et al. | 11-11-91 |
| 9G2227 | 1-12-(2,4-D) | Ciba-Geigy | Apples et al. | 09-24-91 |
| 0E2276 | Methomyl | IR-4 | Forage grasses et al. | 10-04-91 |
| 0F2316 | Oxamyl | E.I. du Pont | Beans | 10-18-91 |
| 0G2318 | Aldicarb | Union Carbide | Grapes | 11-11-91 |
| 0G2342 | Ethephon | GAF Corp. | Cottonseeds | 11-01-91 |
| 0E2393 | Triadimefon | Mobay Chemical | Cucumbers et al. | 01-28-92 |
| 0F2405 | Chlorothalonil | Diamond Shamrock | Oranges | 11-18-91 |
| 0F2416 | Metolachlor | Ciba-Geigy | Sunflowers | 10-16-91 |
| 0E2419 | DCNA | IR-4 | Tomatoes | 10-04-91 |
| 1F2436 | Bromopropylate | Ciba-Geigy | Citrus fruit et al. | 10-01-91 |
| 1E2445 | Propachlor | IR-4 | Onions | 10-04-91 |
| 1E2486 | Linuron | IR-4 | Lettuce | 10-14-91 |
| 1G2489 | Fenvalerate | Shell Chemical | Sorghum grain | 11-15-91 |
| 1F2553 | Bendiocarb | BFC Chemicals | Corn | 09-23-91 |
| 1G2558 | Bendiocarb | BFC Chemicals | Range grass | 09-23-91 |
| 2F2597 | Aldicarb | Union Carbide | Grapes | 11-11-91 |
| 2E2649 | Fenvalerate | IR-4 | Trefoil | 10-04-91 |
| 2F2657 | Fenvalerate | Shell Chemical | Raisins et al. | 11-15-91 |
| 2G2660 | Chlorothalonil | Diamond Shamrock | Apples | 11-18-91 |
| 2F2679 | Aldicarb | Union Carbide | Field grain | 11-11 91 |
| 2F2700 | Etridiazole | Olin Chemical | Peanuts | 11-27-91 |

List of Petitions Withdrawn per Correspondence Received—Continued

| Petition | Chemical | Petitioner | Crop | Date |
|---|---|---|---|---|
| 2F2705 | Amitraz | Upjohn Chemical | Pears | 09-23-91 |
| 2E2714 | Methomyl | IR-4 | Sugarcane | 10-04-91 |
| 2E2735 | Simazine | IR-4 | Rhubarb | 10-04-91 |
| 2F2737 | Dimethipin | Uniroyal Chemical | Potatoes | 12-02-91 |
| 2G2740 | Amitraz | BFC Chemicals | Apples | 09-23-91 |
| 2G2750 | Amitraz | Upjohn Chemical | Apples | 09-23-91 |
| 2G2755 | Metolachlor | Ciba-Geigy | Peanuts | 10-16-91 |
| 3F2768 | Phosalone | Rhone Poulenc | Almonds | 11-15-91 |
| 3F2806 | Flucythrinate | American Cyanamid | Apples | 11-15-91 |
| 3F2815 | Chlorothalonil | Diamond Shamrock | Peaches | 11-18-91 |
| 3F2825 | Cypermethrin | FMC | Tomatoes | 11-18-91 |
| 3E2836 | Nuarimol | Elanco | Bananas | 12-03-91 |
| 3E2867 | Acephate | Chevron Chemical | Grapes | 11-15-91 |
| 3F2870 | Atrazine | Ciba-Geigy | Range grass hay | 11-05-91 |
| 3E2881 | MCPB | IR-4 | Mint hay | 10-04-91 |
| 3F2894 | Aldoxycarb | Union Carbide | Cantaloupe et al. | 11-11-91 |
| 3G2902 | Amitraz | BFC Chemicals | Grapes | 09-23-91 |
| 3E2928 | Oxamyl | IR-4 | Grapes | 10-04-91 |
| 4F2970 | Oxamyl | E.I. du Pont | Lettuce et al. | 10-16-91 |
| 4E2982 | 2,4-DB | IR-4 | Oats et al. | 10-04-91 |
| 4F2984 | Sorprophor | Rhone Poulenc | Cotton | 11-15-91 |
| 4F2992 | Oxamyl | E. I. du Pont | Cabbage | 10-16-91 |
| 4F3000 | Metolachlor | Ciba-Geigy | Apples | 10-16-91 |
| 4G3015 | Lactofen | PPG | Peanuts et al. | 11-15-91 |
| 4F3022 | Fenvalerate | Shell Chemical | Citrus fruits et al. | 11-15-91 |
| 4F3025 | Chlorothalonil | SDS Biotech | Apples | 11-18-91 |
| 4F3030 | Fenvalerate | Shell Chemical | Brussels sprouts | 11-15-91 |
| 4E3056 | Etridiazole | IR-4 | Peppers | 10-04-91 |
| 4E3058 | Thiophanate methyl | IR-4 | Cabbage et al. | 10-04-91 |
| 4E3059 | Etridiazole | IR-4 | Cabbage et al. | 10-04-91 |
| 4F3071 | Aldoxycarb | Union Carbide | Sweet potatoes et al. | 11-11-91 |
| 4E3078 | Fenvalerate | IR-4 | Asparagus | 10-04-91 |
| 4E3084 | Ethoprop | IR-4 | Lettuce | 11-15-91 |
| 4F3095 | Ethalfluralin | Elanco | Beans et al. | 12-03-91 |
| 4G3107 | Fenpropathrin | Chevron Chemical | Cottonseed | 11-15-91 |
| 4E3140 | Simazine | IR-4 | Pistachios | 10-04-91 |
| 5F3187 | Aldoxycarb | Union Carbide | Beans et al. | 11-11-91 |
| 5H5105 | Acephate | Chevron | Tomato pomace | 11-15-91 |
| 8H5178 | Aldoxycarb | Union Carbide | Cottonseed | 11-11-91 |
| 9H5228 | Triazole | Ciba-Geigy | Prunes | 09-24-91 |
| 0H5243 | Oxycarboxin | Uniroyal Chemical | Coffee | 12-02-91 |
| 0H5250 | Ethephon | Union Carbide | Cottonseed | 11-01-91 |
| 0H5272 | Chlorothalonil | Diamond Shamrock | Citrus oil | 11-18-91 |
| 1H5279 | Bromopropylate | Ciba-Geigy | Citrus pulp et al. | 10-01-91 |
| 1H5294 | Metolachlor | Ciba-Geigy | Sunflower meal et al. | 10-16-91 |
| 2H5327 | Aldicarb | Union Carbide | Grapes | 11-11-91 |
| 2H5340 | Fenvalerate | Shell Chemical | Grape pomace | 11-15-91 |
| 2H5347 | Aldicarb | Union Carbide | Tomato pomace | 11-11-91 |
| 2H5353 | Amitraz | BFC Chemicals | Citrus pulp | 09-23-91 |
| 2H5366 | Amitraz | BFC Chemicals | Dry apple pomace | 09-23-91 |
| 2H5368 | Bendiocarb | BFC Chemicals | Corn oil | 09-23-91 |
| 2H5376 | Amitraz | Ciba-Geigy | Citrus molasses | 09-23-91 |
| 3H5380 | Acephate | Chevron Chemical | Potato waste | 11-15-91 |
| 3H5381 | Flucythrinate | American Cyanamid | Apple pomace | 11-15-91 |
| 3H5390 | Malathion | American Cyanamid | Tea leaves | 11-18-91 |
| 4H5424 | Fenvalerate | E. I. du Pont | Citrus fruit | 11-15-91 |
| 4H5438 | Oxamyl | IR-4 | Raisins et al. | 10-04-91 |
| 5H5458 | Baytan | Mobay | Wheat and grapes | 11-18-91 |

The petitions listed in the table above are hereby withdrawn without prejudice to future filings.

Authority: 7 U.S.C. 136a.

Dated: July 1, 1992.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Program.*

[FR Doc. 92-17139 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50746; FRL-4076-7]

## Receipt of a Notification to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received from E.I. duPont deNemours and Company, Inc., of Wilmington, Delaware, a notification of intent to conduct small-scale field tests involving the nonindigenous *Bacillus thuringiensis* (Bt) strain II - 808. Dupont intends to test the pesticide on a variety of unspecified vegetable and field crops in California, Delaware, Florida, Illinois, Mississippi, and Texas against unspecified coleopterous and lepidopterous pests.

**DATES:** Written comments must be received on or before August 5, 1992.

**ADDRESSES:** Comments, in triplicate, should bear the docket control number OPP-50744 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs,

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Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA, (703) 305–7690.

**SUPPLEMENTARY INFORMATION:** A notification of intent to conduct small-scale field testing pursuant to EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313), has been received from E.I. duPont deNemours and Company, Inc. of Wilmington, Delaware. The purpose of the proposed testing is to evaluate the efficacy of the nonindigenous *Bacillus thuringiensis* strain towards lepidopterous and coleopterous insect pests of vegetable and field crops. The field tests are to take place in California, Delaware, Florida, Illinois, Mississippi, and Texas for a maximum combined treated acreage of 6 acres over a 3–year period. All treated crops will be destroyed.

Following the review of E.I. duPont deNemours and Company, Inc.'s application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: July 14, 1992.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 92–17283 Filed 7–21–92; 8:45 am]

BILLING CODE 6560–50–F

**[OPP–50747; FRL–4076–8]**

## Receipt of a Notification to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received from Novo Nordisk A/S, of Denmark, a notification of intent to conduct small-scale field tests involving the nonindigenous *Bacillus thuringiensis* (Bt) strain NB357. Novo intends to test the pesticide on alfalfa, cole, cotton, sugar beets, sweet corn, and tomatoes in Alabama, California, Florida, Louisiana, and North Carolina. The target pests for these field trials are beet armyworms, corn earworms, and fall armyworms.

**DATES:** Written comments must be received on or before August 5, 1992.

**ADDRESSES:** Comments, in triplicate, should bear the docket control number OPP–50747 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA, (703) 305–7690.

**SUPPLEMENTARY INFORMATION:** A notification of intent to conduct small-scale field testing pursuant to EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313), has been received from Novo Nordisk A/S of Denmark. The purpose of the proposed testing is to evaluate the efficacy of the nonindigenous *Bacillus thuringiensis* strain under field conditions on alfalfa, cole, cotton, sugar beets, sweet corn, and tomatoes in Alabama, California, Florida, Louisiana, and North Carolina. The target pests for these field trials are beet armyworms, corn earworms, and fall armyworms. Testing will take place over a 3 1/2 year period on a combined maximum treated acreage of 8.4 acres per year. All treated crops will be destroyed.

Following the review of Novo Nordisk's application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: July 14, 1992.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 92–17284 Filed 7–21–92; 8:45 am]

BILLING CODE 6560–50–F

**[OPP–60038; FRL–4079–3]**

## Intent to Suspend Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of issuance of notices of intent to suspend.

**SUMMARY:** This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend.



Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Brozena, Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8267.

**SUPPLEMENTARY INFORMATION:**

### I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

**United States Environmental Protection Agency**

**Office of Prevention, Pesticides and Toxic Substances**

Washington, DC 20460

Certified Mail

*Return Receipt Requested*

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Reregistration Requirements Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) and 4(d)(6) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to Section 4 of FIFRA. Section 4(d)(6) provides that the Administrator "shall issue a Notice of Intent to Suspend the registration of a pesticide in accordance with the procedures prescribed by section 3(c)(2)(B)(iv) if the Administrator determines that (A) progress is insufficient to ensure submission of the data required for such pesticide under a commitment made under paragraph (3)(B) within the time period prescribed by paragraph (4)(B) or (B) the registrant has not submitted such data to the Administrator within such time period."

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Data Requirements for Reregistration. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

## II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a product list for which a letter of notification has been sent:

TABLE A.—PRODUCT LIST

| Registrant Affected | EPA Registration Number | Active Ingredient | Name of Product | Date Issued |
|---|---|---|---|---|
| Atochem North America, Inc. | 00456100280 | Thiophanate-methyl | Topsin M Technical | 7/2/92 |
| | 00458100288 | Thiophanate-methyl | Topsin M Turf and Ornamentals Fungicide | 7/2/92 |
| | 00458100322 | Thiophanate-methyl | Topsin - M 70% WP | 7/2/92 |
| | 00458100344 | Thiophanate-methyl | Topsin M 5D Fungicide | 7/2/92 |
| | 00458100352 | Thiophanate-methyl | Topsin M 4.5 F | 7/2/92 |
| | 00458100369 | Thiophanate-methyl | Topsin M 5G Fungicide | 7/2/92 |
| | 00458100372 | Thiophanate-methyl | Topsin M 85 WDG | 7/2/92 |
| Security Products Company of Delaware, Inc. | 05664400075 | (b-Napthyloxy) acetic acid | No Seed Blossom Set Push Button Spray | 7/2/92 |
| UCB Chemicals Corporation | 04572800004 | Zinc dimethyldithiocarbamate | Ziram 76-Water Dispersible Granules | 7/2/92 |
| | 04572800011 | Zinc dimethyldithiocarbamate | Ziram Technical | 7/2/92 |
| | 04572800012 | Zinc dimethyldithiocarbamate | Ziram Spray | 7/2/92 |
| | 04572800013 | Zinc dimethyldithiocarbamate | Ziram 10 Dust | 7/2/92 |
| | 04572800014 | Zinc dimethyldithiocarbamate | Niagara Ziram (95%) Code 51 | 7/2/92 |
| Vanderbilt R T Company Inc. | 00196500019 | Zinc dimethyldithiocarbamate | Vancide 51Z | 7/2/92 |
| | 00196500026 | Zinc dimethyldithiocarbamate | Vancide 51Z Dispersion | 7/2/92 |
| | 00196500079 | Zinc dimethyldithiocarbamate | Vancide MZ-96 | 7/2/92 |
| Vineland Chemical Company, Inc. | 00285300011 | Calcium methanearsonate | Super Dal E Rad (Contains Calar) | 7/2/92 |

## III. Basis for Issuance of Notice of Intent; Requirement List

The following company failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

| Active Ingredient | Registrant Affected | Requirement Name | Guideline Reference Number | Original Due-Date |
|---|---|---|---|---|
| Thiophanate-methyl | Atochem North America, Inc. | Nature of Residue - Livestock | 171-4(b) | 8/24/91 |
| Calcium methanearsonate | Vineland Chemical Company, Inc. | Chemical Identity | 61-1 | 8/24/90 |
| | | Beginning Material and Manuf Process | 61-2(a) | 8/24/90 |
| | | Discussion of Impurities | 61-2(b) | 8/24/90 |
| | | Preliminary Analysis of Product Samples | 62-1 | 8/24/90 |
| | | Certification of Ingredient Limits | 62-2 | 8/24/90 |
| | | Analytical Method to Verify Certified Limits | 62-3 | 8/24/90 |
| | | Color | 63-2 | 8/24/90 |
| | | Physical State | 63-3 | 8/24/90 |
| | | Odor | 63-4 | 8/24/90 |
| | | Boiling Point | 63-6 | 8/24/90 |
| | | Density, Bulk Density, or Specific Gravity | 63-7 | 8/24/90 |
| | | Solubility | 63-8 | 8/24/90 |
| | | Vapor Pressure | 63-9 | 8/24/90 |
| | | Dissociation Constant | 63-10 | 8/24/90 |
| | | pH | 63-12 | 8/24/90 |
| | | Stability | 63-13 | 8/24/90 |
| | | Chemical Identity | 100-5 | 8/24/90 |
| | | Chemical Identity | 171-2 | 8/24/90 |
| (b-Napthyloxy) acetic acid | Security Products Company of Delaware, Inc. | Chemical Identity | 61-1 | 8/24/90 |
| | | Beginning Material and Manuf Process | 61-2(a) | 8/24/90 |
| | | Discussion of Impurities | 61-2(b) | 8/24/90 |
| | | Certification of Ingredient Limits | 62-2 | 8/24/90 |
| | | Analytical Method to Verify Certified Limits | 62-3 | 8/24/90 |
| | | Color | 63-2 | 8/24/90 |
| | | Physical State | 63-3 | 8/24/90 |
| | | Odor | 63-4 | 8/24/90 |
| | | Melting Point | 63-5 | 8/24/90 |
| | | Boiling Point | 63-6 | 8/24/90 |
| | | Density, Bulk Density, or Specific Gravity | 63-7 | 8/24/90 |
| | | Solubility | 63-8 | 8/24/90 |
| | | Vapor Pressure | 63-9 | 8/24/90 |
| | | Dissociation Constant | 63-10 | 8/24/90 |
| | | pH | 63-12 | 8/24/90 |
| | | Stability | 63-13 | 8/24/90 |
| Zinc dimethyldithiocarbamate | Vanderbilt R T Company Inc., | Acute Avian Dietary $LC_{50}$ - Quail | 71-2(a) | 1/31/89 |
| | | Acute Avian Dietary $LC_{50}$ - Duck | 71-2(b) | 1/31/89 |
| | | Fish Toxicity - Bluegill | 72-1(a) | 1/31/89 |
| | | Fish Toxicity - Rainbow Trout | 72-1(c) | 1/31/89 |
| | | Invertebrate Toxicity | 72-2(a) | 1/31/89 |
| | UCB Chemicals Corporation | Acute Avian Dietary $LC_{50}$ - Quail | 71-2(a) | 1/31/89 |
| | | Acute Avian Dietary $LC_{50}$ - Duck | 71-2(b) | 1/31/89 |
| | | Fish Toxicity - Bluegill | 72-1(a) | 1/31/89 |
| | | Fish Toxicity - Rainbow Trout | 72-1(c) | 1/31/89 |
| | | Invertebrate Toxicity | 72-2(a) | 1/31/89 |

**IV. Attachment III Suspension Report—Explanatory Appendix**

A discussion of the basis for the Notice of Intent to Suspend follows:

*A. Calcium Methanearsonate*

On May 24, 1989, EPA issued the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing calcium methanearsonate to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(d). Failure to comply with the requirements of a Phase 2 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4(d)(6) of FIFRA.

The Calcium Methanearsonate Reregistration Data Requirements Notice dated May 24, 1989, required each affected registrant to submit materials relating to the selection of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a signed response from you dated May 24, 1990, in which you as a calcium methanearsonate registrant committed to undertake the required testing. The Notice further required that data be submitted by the deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

*B. Zinc Dimethyldithiocarbamate*

On March 14, 1988, EPA issued a Data Call-In Notice (DCI) pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing zinc dimethyldithiocarbamate (ziram) used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply is a basis for suspension under section 3(c)(2)(B) of FIFRA. Additionally, EPA subsequently issued Phase 2 and 3 Data Requirements for Reregistration Notices. Failure to comply with the requirements of a Phase 2 or 3 Data Requirements Notice is a

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basis for suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The Zinc Dimethyldithiocarbamate (Ziram) Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements within 90 days of the registrant's receipt of the DCI. UCB Chemicals Corporation and Vanderbilt Company, Inc. received the DCI on April 11, 1988. UCB Chemicals Corporation and Vanderbilt Company, Inc., both registrants of certain affected zinc dimethyldithiocarbamate (ziram) products, committed to satisfy certain data for zinc dimethyldithiocarbamate (ziram) by the deadlines required by the Data Call-In Notice. Subsequently, the companies recommitted in response to Phase 2 and/or Phase 3 Data Requirements for Reregistration Notices. Those subsequent Notices maintained the original deadlines imposed by the DCI with respect to the subject data requirements. These deadlines have passed for the data requirements listed in Attachment II and to date the Agency has not received adequate data to satisfy these requirements. Because the companies have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

*C. (b-Napthyloxy) Acetic Acid*

On May 24, 1989, EPA issued the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing (b-Napthyloxy) acetic acid to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(d). Failure to comply with the requirements of a Phase 2 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4(d)(6) of FIFRA.

The (b-Napthyloxy) Acetic Acid Reregistration Data Requirements Notice dated May 24, 1989, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received on August 30, 1989, a signed response from you dated August 25, 1989, in which you as a (b-Napthyloxy) Acetic Acid registrant committed to undertake the required testing. The Notice further required that data be submitted by the deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

*D. Thiophanate-methyl*

On May 24, 1989, EPA issued the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing thiophanate-methyl to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(d). Failure to comply with the requirements of a Phase 2 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4(d)(6) of FIFRA.

The Thiophanate-methyl Reregistration Data Requirements Notice dated May 24, 1989, required each affected registrant to submit materials relating to the selection of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a signed response from you dated August 24, 1989, in which you as a thiophanate-methyl registrant committed to undertake the required testing. The Notice further required that data be submitted by the deadline noted for the subject data requirement on Attachment II. Just before the deadline, the registrant filed a time extension request on August 14, 1991, requesting that EPA extend the study submission date to March 31, 1992. The Agency's deadline has passed as has the extension requested by the registrant and to date the Agency has not received adequate data to satisfy this data requirement. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirement listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

**V. Conclusions**

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: July 15, 1992.

**Michael M. Stahl,**

*Director, Office of Compliance Monitoring.*

[FR Doc. 92-17285 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-F

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**[OPP-60039; FRL-4079-4]**

## Intent to Suspend Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of issuance of notices of intent to suspend.

**SUMMARY:** This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

**SUPPLEMENTARY INFORMATION:**

**I. Text of a Notice of Intent to Suspend**

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

**United States Environmental Protection Agency**

**Office of Prevention, Pesticides and Toxic Substances**

Washington, DC 20460

Certified Mail

*Return Receipt Requested*

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Reregistration Requirements Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) and 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 3 Data Requirements for Reregistration Notice imposed pursuant to Section 4 of FIFRA. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. The affected product(s) and the requirement(s) which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Data Requirements for Reregistration. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements

which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

## II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a product list for which a letter of notification has been sent:

TABLE A.—PRODUCT LIST

| Registrant Affected | EPA Registration Number | Active Ingredient | Name of Product | Date Issued |
|---|---|---|---|---|
| Atochem North America, Inc. | 00458100140 | Zinc dimethyldithiocarbamate | Ziram 76 | 7/2/92 |
| | 00458100230 | Zinc dimethyldithiocarbamate | Ziram F-4 | 7/2/92 |
| | 00458100261 | Zinc dimethyldithiocarbamate | Ziram Technical | 7/2/92 |
| | WA82004400 | Zinc dimethyldithiocarbamate | Ziram F-4 | 7/2/92 |
| CFPI | 03368800001 | Butralin | No Crab | 7/2/92 |
| | 03368800002 | Butralin | Technical Amex 820 | 7/2/92 |
| NOR-AM Chemical Company | 04563900004 | Ethofumesate | Norton Technical | 7/2/92 |
| | 04563900005 | Ethofumesate | Norton E.C. | 7/2/92 |
| | 04563900007 | Ethofumesate | Norton Granule | 7/2/92 |
| | 04563900008 | Ethofumesate | Norton Flowable Herbicide | 7/2/92 |
| | 04563900060 | Ethofumesate | Norton GS | 7/2/92 |
| | 04563900062 | Ethofumesate | Prograss Flowable Herbicide | 7/2/92 |
| | 04563900068 | Ethofumesate | Prograss Emulsifiable Concentrate | 7/2/92 |
| Security Products Company of Delaware, Inc. | 05684400075 | (b-Napthyloxy) acetic acid | No Seed Blossom Set Push Button Spray | 7/2/92 |
| UCB Chemicals Corporation | 04572800007 | Ferric dimethyldithiocarbamate | Carbamate | 7/2/92 |
| | 04572800008 | Ferric dimethyldithiocarbamate | Niagara Ferbam Dust Base 87 1/2% | 7/2/92 |
| | 04572800004 | Zinc dimethyldithiocarbamate | Ziram 76-Water Dispersible Granules | 7/2/92 |
| | 04572800011 | Zinc dimethyldithiocarbamate | Ziram Technical | 7/2/92 |
| | 04572800012 | Zinc dimethyldithiocarbamate | Ziram Spray | 7/2/92 |
| | 04572800013 | Zinc dimethyldithiocarbamate | Ziram 10 Dust | 7/2/92 |
| | 04572800014 | Zinc dimethyldithiocarbamate | Niagara Ziram (95%) Code 51 | 7/2/92 |
| Vanderbilt R T Company Inc. | 00196500019 | Zinc dimethyldithiocarbamate | Vancide 51Z | 7/2/92 |
| | 00196500026 | Zinc dimethyldithiocarbamate | Vancide 51Z Dispersion | 7/2/92 |
| | 00196500079 | Zinc dimethyldithiocarbamate | Vancide MZ-96 | 7/2/92 |

## III. Basis for Issuance of Notice of Intent; Requirement List

The following company failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

| Active Ingredient | Registrant Affected | Requirement Name | Guideline Reference Number | Original Due-Date |
|---|---|---|---|---|
| Butralin | CFPI | Hydrolysis | 161-1 | 10/12/91 |
| | | Photodegradation - Water | 161-2 | 10/12/91 |
| | | Photodegradation - Soil | 161-3 | 10/12/91 |
| Ferric dimethyldithiocarbamate | UCB Chemicals Corporation | Fish Toxicity - Bluegill | 72-1(a) | 5/24/91 |
| | | Fish Toxicity - Rainbow Trout | 72-1(c) | 5/24/91 |
| | | Invertebrate Toxicity | 72-2(a) | 5/24/91 |
| (b-Napthyloxy) acetic acid | Security Products Company of Delaware, Inc. | Preliminary Analysis of Product Samples | 62-1 | 5/25/91 |
| | | Octanol/Water Partition Coefficient | 63-11 | 5/25/91 |
| Ethofumesate | NOR-AM Chemical Company | Nature of Residue - Plants | 171-4(a) | 5/24/91 |
| Zinc dimethyldithiocarbamate | Vanderbilt R T Company Inc. | Acute Avian Dietary $LC_{50}$ - Quail | 71-2(a) | 1/31/89 |
| | | Acute Avian Dietary $LC_{50}$ - Duck | 71-2(b) | 1/31/89 |
| | | Fish Toxicity - Bluegill | 72-1(a) | 1/31/89 |
| | | Fish Toxicity - Rainbow Trout | 72-1(c) | 1/31/89 |
| | | Invertebrate Toxicity | 72-2(a) | 1/31/89 |
| | Atochem North America, Inc. | Acute Avian Dietary $LC_{50}$ - Quail | 71-2(a) | 1/31/89 |
| | | Acute Avian Dietary $LC_{50}$ - Duck | 71-2(b) | 1/31/89 |
| | | Fish Toxicity - Bluegill | 72-1(a) | 1/31/89 |
| | | Fish Toxicity - Rainbow Trout | 72-1(c) | 1/31/89 |
| | | Invertebrate Toxicity | 72-2(a) | 1/31/89 |
| | UCB Chemicals Corporation | Acute Avian Dietary $LC_{50}$ - Quail | 71-2(a) | 1/31/89 |
| | | Acute Avian Dietary $LC_{50}$ - Duck | 71-2(b) | 1/31/89 |
| | | Fish Toxicity - Bluegill | 72-1(a) | 1/31/89 |
| | | Fish Toxicity - Rainbow Trout | 72-1(c) | 1/31/89 |
| | | Invertebrate Toxicity | 72-2(a) | 1/31/89 |

## IV. Attachment III Suspension Report—Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

*A. Ferric dimethyldithiocarbamate*

In March 1990, EPA issued the Phase 3 Data Requirements for Reregistration Notice imposed pursuant to section 4(e) of FIFRA which required registrants of products containing ferric dimethyldithiocarbamate (ferbam) to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(e). Failure to comply with the requirements of a Phase 3 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The Ferric Dimethyldithiocarbamate (Ferbam) Reregistration Data Requirements Notice dated March 1990, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a signed response from you dated May 24, 1990, in which you as a ferric dimethyldithiocarbamate (ferbam) registrant committed to undertake required testing. The Notice further required that data be submitted by the deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

*B. Zinc dimethyldithiocarbamate*

On March 14, 1988, EPA issued a Data Call-In Notice pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing zinc dimethyldithiocarbamate (ziram) used as an active ingredient to develop and submit certain data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply is a basis for suspension under section 3(c)(2)(B) of FIFRA. Additionally, EPA subsequently issued Phase 2 and 3 Data Requirements for Reregistration Notices. Failure to comply with the requirements of a Phase 2 or 3 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The Zinc Dimethyldithiocarbamate (Ziram) Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements within 90 days of the registrant's receipt of the DCI. Atochem North America, Inc. (Agchem Division-Pennwalt Corporation), UCB Chemicals Corporation, and Vanderbilt R T Company, Inc. received the DCI on April 11, 1988. All three companies are registrants of certain affected zinc dimethyldithiocarbamate (ziram) products, committed to satisfy certain data for zinc dimethyldithiocarbamate (ziram) by the deadlines required by the Data Call-In Notice. Subsequently, the companies recommitted in response to Phase 2 and/or Phase 3 Data Requirements for Reregistration Notices. Those subsequent Notices maintained the original deadlines imposed by the DCI with respect to the subject data requirements. These deadlines have passed for the data requirements listed in Attachment II and to date the Agency has not received adequate data to satisfy these requirements. Because the companies have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

*C. (b-Napthyloxy) Acetic Acid*

In March 1990, EPA issued the Phase 3 Data Requirements for Reregistration Notice imposed pursuant to section 4(e) of FIFRA which required registrants of products containing (b-Napthyloxy) acetic acid to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(e). Failure to comply with the requirements of a Phase 3 Data Requirements Notice is a basis for

suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The (b-Napthyloxy) Acetic Acid Reregistration Data Requirements Notice dated March 1990, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a signed response from you dated May 23, 1990, in which you as a (b-Napthyloxy) acetic acid registrant committed to undertake required testing. The Notice further required that data be submitted by the deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

*D. Butralin*

In March 1990, EPA issued the Phase 3 Data Requirements for Reregistration Notice imposed pursuant to section 4(e) of FIFRA which required registrants of products containing butralin to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(e). Failure to comply with the requirements of a Phase 3 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The Butralin Reregistration Data Requirements Notice dated March 1990, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a signed response from you dated May 23, 1990, and subsequently amended on October 12, 1990, in which you as a butralin registrant committed to undertake required testing. The Notice further required that data be submitted by the deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

*E. Ethofumesate*

In March 1990, EPA issued the Phase 3 Data Requirements for Reregistration Notice imposed pursuant to section 4(e) of FIFRA which required registrants of products containing ethofumesate to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(e). Failure to comply with the requirements of a Phase 3 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The Ethofumesate Reregistration Data Requirements Notice dated March 1990, required each affected registrant to submit materials relating to the selection of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a signed response from you dated May 25, 1990, in which you as a ethofumesate registrant committed to undertake required testing. The Notice further required that data be submitted by the deadline noted for the subject data requirement on Attachment II. This deadline has passed and to date the Agency has not received adequate data to satisfy this data requirement. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirement listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

**V. Conclusions**

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: July 15, 1992.

**Michael M. Stahl,**

*Director, Office of Compliance Monitoring.*

[FR Doc. 92-17286 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-F

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**[OPP-66037 FRL-4079-2]**

## Intent to Suspend Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of issuance of notices of intent to suspend.

**SUMMARY:** This notice, pursuant to section 6 (f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notice(s) of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA. The notice(s) were issued following issuance of Data Call-In Notice(s) by the Agency and the failure of registrant(s) subject to the Data Call-In Notice(s) to take appropriate steps to secure the data required to be submitted to the Agency. This notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this notice further identifies the registrant(s) to whom the Notice(s) of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration number(s) and name(s) of the registered product(s) which are affected by the Notice(s) of Intent to Suspend. Moreover, Table B of this notice identifies the basis upon which the Notice(s) of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notice(s) of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notice(s) of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

**SUPPLEMENTARY INFORMATION:**

**I. Text of a Notice of Intent to Suspend**

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

**United States Environmental Protection Agency**

**Office of Prevention, Pesticides and Toxic Substances**

Washington, DC 20460

Certified Mail

*Return Receipt Requested*

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the 3(c)(2)(B) Data Call-In Notice for _____ Dated _____

Dear Sir/Madam:

This letter gives you notice that the pesticide product registration(s) listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for

suspending the registration(s) of your product(s) is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the 3(c)(2)(B) Data Call-In Notice. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected product(s) and the requirement(s) which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product(s).

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registration(s) for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A-110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 3(c)(2)(B) Data Call-In Notice. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30-day period that you have satisfied the requirement(s) that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so

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received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registration(s) of your product(s) listed in Attachment I are currently suspended as a result of failure to comply with another section 3(c)(2)(B) Data Call-In Notice or Section 4 Data Requirement Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered product(s) and that you may be held liable for violations committed by your distributors.

If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject 3(c)(2)(B) Data Call-In Notice, please contact Stephen L. Brozena at (703) 308-8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List

Attachment II - Requirement List

Attachment III - Explanatory Appendix

**II. Registrant(s) Receiving and Affected by Notice(s) of Intent to Suspend; Date of Issuance; Active Ingredient and Product(s) Affected**

A letter of notification has been sent for the following product(s):

TABLE A.—PRODUCT LIST

| Registrant Affected | EPA Registration Number | Active Ingredient | Name of Product | Date Issued |
|---|---|---|---|---|
| NOR-AM Chemical Company | 04563900004 | Ethofumesate | Norton Technical | 7/2/92 |
| | 04563900005 | Ethofumesate | Norton E.C. | 7/2/92 |
| | 04563900007 | Ethofumesate | Norton Granule | 7/2/92 |
| | 04563900008 | Ethofumesate | Norton Flowable Herbicide | 7/2/92 |
| | 04563900060 | Ethofumesate | Norton GS | 7/2/92 |
| | 04563900062 | Ethofumesate | Prograss Flowable Herbicide | 7/2/92 |
| | 04563900068 | Ethofumesate | Prograss Emulsifiable Concentrate | 7/2/92 |
| PBI/Gordon Corporation | 00221700759 | Diethanolamine mefluidide | Embark 2-S Plant Growth Regulator | 7/2/92 |
| | 00221700763 | Diethanolamine mefluidide | Embark 3M 1-S Plant Growth Regulator | 7/2/92 |
| | 00221700767 | Diethanolamine mefluidide | Mefluidide 2-S Concentrate | 7/2/92 |
| | 00221700768 | Diethanolamine mefluidide | Embark E-2-Tu-Use Plant Growth Regulator | 7/2/92 |
| | 00221700765 | Potassium mefluidide | Embark 1-L Plant Growth Regulator | 7/2/92 |
| | 00221700766 | Potassium mefluidide | Embark 2-L Plant Growth Regulator | 7/2/92 |
| UCB Chemicals Corporation | 04572800004 | Zinc dimethyldithiocarbamate | Ziram 76-Water Dispersible Granules | 7/2/92 |
| | 04572800011 | Zinc dimethyldithiocarbamate | Ziram Technical | 7/2/92 |
| | 04572800012 | Zinc dimethyldithiocarbamate | Ziram Spray | 7/2/92 |
| | 04572800013 | Zinc dimethyldithiocarbamate | Ziram 10 Dust | 7/2/92 |
| | 04572800014 | Zinc dimethyldithiocarbamate | Niagara Ziram (95%) Code 51 | 7/2/92 |
| Vanderbilt R T Company Inc. | 00196500019 | Zinc dimethyldithiocarbamate | Vancide 51Z | 7/2/92 |
| | 00196500026 | Zinc dimethyldithiocarbamate | Vancide 51Z Dispersion | 7/2/92 |
| | 00196500079 | Zinc dimethyldithiocarbamate | Vancide MZ-96 | 7/2/92 |
| Atochem North America, Inc. | 00458100140 | Zinc dimethyldithiocarbamate | Ziram 76 | 7/2/92 |
| | 00458100230 | Zinc dimethyldithiocarbamate | Ziram F-4 | 7/2/92 |
| | 00458100261 | Zinc dimethyldithiocarbamate | Ziram Technical | 7/2/92 |
| | WA82004400 | Zinc dimethyldithiocarbamate | Ziram F-4 | 7/2/92 |

**III. Basis for Issuance of Notice of Intent; Requirement List**

The following registrant(s) failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

| Active Ingredient | Registrant Affected | Requirement Name | Guideline Reference Number | Original Due-Date |
|---|---|---|---|---|
| Diethanolamine mefluidide | PBI/Gordon Corporation | Estuarine & Marine Organisms - Fish | 72-3(a) | 2/25/92 |
| | | Estuarine & Marine Organisms - Mollusk | 72-3(b) | 2/25/92 |
| | | Estuarine & Marine Organisms - Shrimp | 72-3(c) | 2/25/92 |
| Potassium mefluidide | PBI/Gordon Corporation | Estuarine & Marine Organisms - Fish | 72-3(a) | 2/25/92 |
| | | Estuarine & Marine Organisms - Mollusk | 72-3(b) | 2/25/92 |
| | | Estuarine & Marine Organisms - Shrimp | 72-3(c) | 2/28/92 |
| | | Structural Chromosomal Aberration | 84-2(b) | 2/25/92 |
| Zinc dimethyldithiocarbamate | Vanderbilt R T Company Inc. | Acute Avian Dietary $LC_{50}$ - Quail | 71-2(a) | 1/31/89 |
| | | Acute Avian Dietary $LC_{50}$ - Duck | 71-2(b) | 1/31/89 |
| | | Fish Toxicity - Bluegill | 72-1(a) | 1/31/89 |
| | | Fish Toxicity - Rainbow Trout | 72-1(c) | 1/31/89 |
| | | Invertebrate Toxicity | 72-2(a) | 1/31/89 |



TABLE B.—REQUIREMENT LIST—Continued

| Active Ingredient | Registrant Affected | Requirement Name | Guideline Reference Number | Original Due-Date |
|---|---|---|---|---|
| | UCB Chemicals Corporation | Acute Avian Dietary $LC_{50}$ - Quail | 71-2(a) | 1/31/89 |
| | | Acute Avian Dietary $LC_{50}$ - Duck | 71-2(b) | 1/31/89 |
| | | Fish Toxicity - Bluegill | 72-1(a) | 1/31/89 |
| | | Fish Toxicity - Rainbow Trout | 72-1(c) | 1/31/89 |
| | | Invertebrate Toxicity | 72-2(a) | 1/31/89 |
| | Atochem North America, Inc. | Acute Avian Dietary $LC_{50}$ - Quail | 71-2(a) | 1/31/89 |
| | | Acute Avian Dietary $LC_{50}$ - Duck | 71-2(b) | 1/31/89 |
| | | Fish Toxicity - Bluegill | 72-1(a) | 1/31/89 |
| | | Fish Toxicity - Rainbow Trout | 72-1(c) | 1/31/89 |
| | | Invertebrate Toxicity | 72-2(a) | 1/31/89 |
| Ethofumesate | NOR-AM Chemical Company | Leaching and Adsorption/Desorption | 163-1 | 6/25/92 |

**IV. Attachment III Suspension Report--Explanatory Appendix**

A discussion of the basis for the Notice of Intent to Suspend follows:

*A. Zinc Dimethyldithiocarbamate*

On March 14, 1988, EPA issued a Data Call-In Notice (DCI) pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing zinc dimethyldithiocarbamate (ziram) used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply is a basis for suspension under section 3(c)(2)(B) of FIFRA. Additionally, EPA subsequently issued Phase 2 and 3 Data Requirements for Reregistration Notices. Failure to comply with the requirements of a Phase 2 or 3 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The Zinc Dimethyldithiocarbamate (Ziram) Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements within 90 days of the registrant's receipt of the DCI. Atochem North America, Inc. (Agchem Division-Pennwalt Corporation), UCB Chemicals Corporation, and Vanderbilt Company, Inc. received the DCI on April 11, 1988. All three registrants of certain affected zinc dimethyldithiocarbamate (ziram) products, committed to satisfy certain data for zinc dimethyldithiocarbamate (ziram) by the deadlines required by the Data Call-In Notice. Subsequently, the companies recommitted in response to Phase 2 and/or Phase 3 Data Requirements for Reregistration Notices. Those subsequent Notices maintained the original deadlines imposed by the DCI with respect to the subject data requirements. These deadlines have passed for the data requirements listed in Attachment II and to date the Agency has not received adequate data to satisfy these requirements. Because the companies have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

*B. Ethofumesate*

On June 19, 1991, EPA issued a Data Call-In Notice pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing ethofumesate used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Ethofumesate Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements within 90 days of the registrant's receipt of the DCI. On September 20, 1991, Nor-Am Chemical Company, registrant of certain affected ethofumesate products, committed to generate and submit certain data for ethofumesate by the deadline required by the Data Call-In Notice. This deadline has passed for the data requirement listed in Attachment II and to date the Agency has not received adequate data to satisfy this requirement. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirement listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

*C. Diethanolamine Mefluidide*

On February 4, 1991, EPA issued a Data Call-In Notice pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing diethanolamine mefluidide used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the data requirements of a Registration Standard is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Diethanolamine Mefluidide Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements within 90 days of the registrant's receipt of the DCI. On May 9, 1991, PBI/Gordon Corporation, registrant of certain affected diethanolamine mefluidide products, committed to generate and submit certain data for diethanolamine mefluidide by the deadlines required by the Data Call-In Notice. These deadlines have passed for the data requirements listed in Attachment II and to date the Agency has not received adequate data to satisfy these requirements. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

*D. Potassium Mefluidide*

On February 4, 1991, EPA issued a Data Call-In Notice pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing potassium mefluidide used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the data requirements of a Registration Standard is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Potassium Mefluidide Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements within 90 days of the registrant's receipt of the DCI. On May 9, 1991, PBI/Gordon Corporation, registrant of certain

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affected potassium mefluidide products, committed to generate and submit certain data for potassium mefluidide by the deadlines required by the Data Call-In Notice. These deadlines have passed for the data requirements listed in Attachment II and to date the Agency has not received adequate data to satisfy these requirements. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Susepnd.

V. Conclusions

EPA has issued Notice(s) of Intent to Suspend on the dates indicated. Any further information regarding the Notice(s) may be obtained from the contact person noted above.

Dated: July 15, 1992.

**Michael M. Stahl,**

*Director, Office of Compliance Monitoring.*

[FR Doc. 92-17287 Filed 7-21-92; 8:45 am]

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**[OPP-50745; FRL-4076-6]**

## Receipt of a Notification to Conduct Small-Scale Field Testing; Genetically Altered Microbial Pesticides

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received from Sandoz Agro, Inc. of Des Plaines, Illinois a notification of intent to conduct small-scale field tests involving certain genetically engineered *Bacillus thuringiensis* (Bt) strains of Sandoz's pSB909.5 Series in Mississippi in 1992 and in California, Florida, Maryland, and Mississippi in 1993 on potatoes and cole crops. The targeted pests are colorado potato beetle, cabbage looper, diamondback moth, imported cabbageworm, and celery leaftier.

**DATES:** Written comments must be received on or before August 21, 1992.

**ADDRESSES:** Comments, in triplicate, should bear the docket control number OPP-50744 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA, (703) 305-7690.

**SUPPLEMENTARY INFORMATION:** A notification of intent to conduct small-scale field testing pursuant to EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313), has been received from Sandoz Agro, Inc. of Des Plaines, Illinois. The proposed testing involves a series of small-scale field tests with genetically engineered strains of *Bacillus thuringiensis* (Bt) of Sandoz's pSB909.5 Series in Mississippi in 1992 and in California, Florida, Maryland, and Mississippi in 1993 on potatoes and cole crops. The targeted pests are colorado potato beetle, cabbage looper, diamondback moth, imported cabbageworm, and celery leaftier. All treated crops will be tilled back into the soil following field tests. All field tests will be conducted by Sandoz personnel. A maximum of 1.2 acres will be utilized in the 2 year testing program.

The strains designated as members of the pSB909.5 Series all have the following characteristics.

1. The same cloning vector (pSB909.5). This cloning vector consists of the origin of replication of a Bt plasmid, as well as an antibiotic resistance marker isolated from *Bacillus subtilis*.

2. A crystal protein toxin gene (*cry*) from Bt subspecies *aizawai, kurstaki, or tenebrionis*. The *cry* genes are not modified.

3. The recipient microorganisms will be either a Sandoz Bt subspecies *tenebrionis* strain (currently used in TRIDENT® Biological Insecticide), a Bt subspecies *kurstaki* strain (currently used in JAVELIN® Biological Insecticide), or a Bt subpecies *kurstaki* strain (currently used in THURICIDE® Biological Insecticide).

Following the review of Sandoz Agro's application and any comments received in response to this notice, EPA will decide whether or not experimental use permits are required.

Dated: July 10, 1992.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 92-17025 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-F

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**[FRL-4157-1]**

## Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; Alascom, Inc., et al.

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Notice of proposed administrative settlement and opportunity for public comment.

**SUMMARY:** The U.S. Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve past and estimated future liabilities of 27 *de minimis* parties for costs incurred, or to be incurred, by EPA at the Alaskan Battery Enterprises Site in Fairbanks, Alaska.

**DATES:** Comments must be provided on or before August 21, 1992.

**ADDRESSES:** Comments should be addressed to Docket Clerk, U.S. Environmental Protection Agency, Region 10, SO-155, 1200 Sixth Avenue, Seattle Washington, 98101, and should refer to In Re Alaskan Battery Enterprises Site, Fairbanks, Alaska, U.S. EPA Docket No. 1090-06-13-122.

**FOR FURTHER INFORMATION CONTACT:** Lori L. Houck, U.S. Environmental Protection Agency, Office of Regional Counsel, SO-155, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553-1115.

**SUPPLEMENTARY INFORMATION:**

In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Alaskan Battery Enterprises hazardous waste site at 157 Old Richardson Highway, Fairbanks, Alaska. The Site was listed on the National Priorities List (NPL) on March 31, 1989. 54 FR 35502 (March 31, 1989). Subject to review by the public pursuant to this Notice, the agreement has been approved by the United States Department of Justice. Below are listed the 27 parties who have executed the proposed Administrative Order on Consent:

Alascom, Inc.; Brice, Inc.; Conoco, Inc.; Caterpillar, Inc.; Emerson G.M. Diesel of America; Fairbanks TBA, Inc.; Fred Meyer, Inc.; Gene's Inc.; Golden Valley Elec. Assn.; Goldpanner Service, Inc.; Halliburton Services; Jim's College Texaco; MAPCO Alaska Petroleum; Mike's University Chevron, Inc.; Newman Trucking; Northern Commercial Company d/b/a NC Machinery Company; Northern Power Sports; Petrolane; Rent-A-Wreck; Ron's Service and Towing; Russell's Texaco; Safeway Stores; Seekins Ford-Lincoln Mercury, Inc.; Totem Services, Inc.; Tundra Tours; U.S. Postal Service; University of Alaska.

The Environmental Protection Agency (EPA) is entering into this agreement under the authority of sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with parties in the Alaskan Battery Enterprises case who are responsible for 1% or less of the volume of hazardous substances at the site.

EPA conducted a removal response during the summers of 1988 and 1989. EPA removed approximately 4,000 cubic yards of the most highly contaminated soil from the Site to eliminate a source of contamination which could be ingested and could have further contaminated the groundwater. During the removal action, EPA also removed deeper contamination which had been caused by the use of vans as a method of disposing of liquid household and shop wastes. EPA is currently performing the Remedial Investigation ("RI") and Feasibility Study ("FS"). The Proposed Plan is expected to be published for public comment in November of 1992.

The proposed settlement requires each settling party to pay a fixed sum of money representing their volumetric, generator share of EPA's past costs and the estimated costs of future response actions. The total amount that may be recovered from the proposed settlement is $179,447. The volumetric, generator share for each settling party equals $89.27 times the number of batteries that the settling party disposed of at the Site. Upon full payment, each settling party will receive a release from further civil or administrative liabilities for the Site and statutory contribution protection under section 122(g)(5), 42 U.S.C. 9622(g)(5). The proposed settlement includes a reopener provision which, if remedial response costs exceed current estimates by a factor of 3 ($1,576,440), will enable EPA to void the release from liability and seek each settling party's proportionate share of the excess.

EPA will receive written comments relating to this proposed settlement for a period of thirty (30) days from the date of this publication.

The proposed agreement may be obtained in person or by mail from EPA's Region 10 Office of Regional Counsel, SO-155, 1200 Sixth Avenue, Seattle, Washington, 98101. The Administrative Record for the Alaskan Battery Enterprises Superfund Site may be examined at the Region 10 office, of EPA, Lynn M. Williams, Administrative Records Coordinator, Superfund Branch, 1200 Sixth Avenue, Seattle, Washington, 98101 and at the Fairbanks Information Repository at the offices of the Alaska Department of Environmental Conservation, 1001 Noble Street, suite 350, Fairbanks, Alaska.

**Authority:** The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9601-9675.

**Dana A. Rasmussen,**

*Regional Administrator.*

[FR Doc. 92-17173 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-M

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**[OPPTS-51801; FRL 4080-5]**

## Certain Chemicals; Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 60 such PMNs and provides a summary of each.

**DATES:** Close of review periods:

P 92-1107, 92-1108, September 20, 1992.

P 92-1130, September 23, 1992.

P 92-1131, 92-1132, 92-1133, 92-1134, 92-1135, 92-1136, 92-1137, September 26, 1992.

P 92-1138, 92-1139, 92-1140, 92-1141, September 27, 1992.

P 92-1143, 92-1144, 92-1145, 92-1146, 92-1147, 92-1148, 92-1149, 92-1150, 92-1151, 92-1152, 92-1154, September 28, 1992.

P 92-1155, 92-1156, October 3, 1992.

P 92-1157, 92-1158, 92-1159, 92-1160, 92-1161, 92-1164, 92-1165, 92-1166, 92-1167, 92-1168, 92-1169, 92-1170, 92-1171, 92-1172, 92-1173, 92-1174, 92-1175, 92-1176, 92-1177, 92-1178, 92-1179, 92-1180, 92-1181, 92-1182, 92-1183, 92-1184, 92-1185, 92-1186, 92-1187, 92-1188, 92-1189, 92-1190, 92-1191, October 4, 1992.

Written comments by:

P 92-1107, 92-1108, August 21, 1992.

P 92-1130, August 24, 1992.

P 92-1131, 92-1132, 92-1133, 92-1134, 92-1135, 92-1136, 92-1137, August 27, 1992.

P 92-1138, 92-1139, 92-1140, 92-1141, August 28, 1992.

P 92-1143, 92-1144, 92-1145, 92-1146, 92-1147, 92-1148, 92-1149, 92-1150, 92-1151, 92-1152, 92-1154, August 29, 1992.

P 92-1155, 92-1156, September 3, 1992.

P 92-1157, 92-1158, 92-1159, 92-1160, 92-1161, 92-1164, 92-1165, 92-1166, 92-1167, 92-1168, 92-1169, 92-1170, 92-1171, 92-1172, 92-1173, 92-1174, 92-1175, 92-1176, 92-1177, 92-1178, 92-1179, 92-1180, 92-1181, 92-1182, 92-1183, 92-1184, 92-1185, 92-1186, 92-1187, 92-1188, 92-1189, 92-1190, 92-1191, September 4, 1992.

**ADDRESSES:** Written comments, identified by the document control number "(OPPTS-51801)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC, 20460, (202) 260-3532.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the

above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

**P 92-1107**

*Manufacturer.* Westvaco Corporation.

*Chemical.* (G) Modified rosin, hydrocarbon resin.

*Use/Production.* (S) Printing ink resin. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5 g/kg species (rat). Static acute toxicity: time LC50 > 10,000 ppm 96H species (pimephales promelas). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit).

**P 92-1108**

*Manufacturer.* Westvaco Corporation.

*Chemical.* (G) Modified rosin, hydrocarbon resin.

*Use/Production.* (S) Printing ink resin. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5 g/kg species (rat). Static acute toxicity: time LC50 > 10,000 ppm 96H species (pimephales promelas). Eye irritation: slight species (rabbit]. Skin irritation: negligible species (rabbit).

**P 92-1130**

*Importer.* Confidential.

*Chemical.* (G) Acrylic resin.

*Use/Import.* (S) Printing ink/paint. Import range: Confidential.

**P 92-1131**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyoxy alkylene substituted aromatic azo colorant.

*Use/Production.* (G) Polymeric colorant. Prod. range: Confidential.

**P 92-1132**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyoxyalkylene substituted aromatic azo colorant.

*Use/Production.* (G) Polymeric colorant. Prod. range: Confidential.

**P 92-1133**

*Manufacturer.* Huls America Inc.

*Chemical.* (G) Oligomeric triaminoalkyl siloxane.

*Use/Production.* (S) Surface modification of minerals. Prod. range: Confidential.

**P 92-1134**

*Importer.* Confidential.

*Chemical.* (G) Cyclic phosphate, methacrylic derivative.

*Use/Import.* (G) Coatings. Import range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

**P 92-1135**

*Manufacturer.* Huls America Inc.

*Chemical.* (G) Oligomeric diaminoalkyl siloxane.

*Use/Production.* (S) Surface modification of minerals. Prod. range: Confidential.

**P 92-1136**

*Manufacturer.* Huls America Inc.

*Chemical.* (G) Aqueous epoxy functional silane.

*Use/Production.* (S) Surface modification of minerals. Prod. range: Confidential.

**P 92-1137**

*Manufacturer.* Huls America Inc.

*Chemical.* (S) Cyclopentyltrichlorosilane.

*Use/Production.* (S) Intermediate used for manufacture dialkyldialkoxy silane. Prod. range: Confidential.

**P 92-1138**

*Manufacturer.* Ashland Chemical, Inc.

*Chemical.* (G) Polyamide/polyether graft copolymer.

*Use/Production.* (G) Dispersive use. Prod. range: Confidential.

**P 92-1139**

*Manufacturer.* Bostik, Inc.

*Chemical.* (G) Water based polyurethane.

*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**P 92-1140**

*Manufacturer.* Bostik, Inc.

*Chemical.* (G) Water based polyurethane.

*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**P 92-1141**

*Importer.* Basf Corporation-Fiber Div.

*Chemical.* (G) Mixed polyacrylate, sodium salt.

*Use/Import.* (S) Sizing agent. Import range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Static acute toxicity: time LC50 962,100 ppm species (golden orf). Eye irritation: slight species (rabbit). Skin irritation: slight species (rabbit). Skin sensitization: negative species (guinea pig).

**P 92-1143**

*Importer.* MTC America, Inc.

*Chemical.* (S) Styrene with methyl methacrylate, iso-butyl methacrylate and glycidyl methacrylate.

*Use/Import.* (S) Powder coating. Import range: Confidential.

**P 92-1144**

*Importer.* Kaneka America Corporation.

*Chemical.* (G) Organic silicon polymer.

*Use/Import.* (S) Industrial adhesives. Import range: Confidential.

*Toxicity Data.* Mutagenicity: negative.

**P 92-1145**

*Manufacturer.* Rohm and Haas Company.

*Chemical.* (G) Acrylic copolymers.

*Use/Production.* (G) Dispersive use. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

**P 92-1146**

*Manufacturer.* Rohm and Haas Company.

*Chemical.* (G) Acrylic copolymer.

*Use/Production.* (G) Dispersive use. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

**P 92-1147**

*Manufacturer.* Rohm and Haas Company.

*Chemical.* (G) Acrylic copolymers.

*Use/Production.* (G) Dispersive use. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

**P 92-1148**

*Manufacturer.* Rohm and Haas Company.

*Chemical.* (G) Acrylic copolymers.

*Use/Production.* (G) Dispersive use. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1149

*Manufacturer.* Rohm and Haas Company.

*Chemical.* (G) Acrylic copolymers.

*Use/Production.* (G) Dispersive use. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1150

*Manufacturer.* Rohm and Hass Company.

*Chemical.* (G) Acrylic copolymers.

*Use/Production.* (G) Dispersive use. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1151

*Manufacturer.* Rohm And Haas Company.

*Chemical.* (G) Acrylic copolymers.

*Use/Production.* (G) Dispersive use. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1152

*Manufacturer.* Rohm and Haas Company.

*Chemical.* (G) Acrylic copolymers.

*Use/Production.* (G) Dispersive use. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1154

*Manufacturer.* Rohm and Haas Company.

*Chemical.* (G) Acrylic copolymers.

*Use/Production.* (G) Dispersive use. Prod. range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1155

*Manufacturer.* E.I. Du Pont De Nemours & Company.

*Chemical.* (G) Substituted ethylene polymer.

*Use/Production.* (G) Binder. Prod. range: Confidential.

P 92-1156

*Manufacturer.* Amoco Chemical Company.

*Chemical.* (G) Ternary polyamide.

*Use/Production.* (G) Preparation injection molded parts. Prod. range: Confidential.

P 92-1157

*Manufacturer.* Hoechst Celanese Corportion.

*Chemical.* (G) Trisubstituted naphthalene sulfonic acid.

*Use/Production.* (S) Powder and liquid formulation of dyestuff for cellulose. Prod. range: 30,000 kg/yr.

P 92-1158

*Importer.* Confidential.

*Chemical.* (G) Fluoromethylene-vinylether copolymer.

*Use/Import.* (S) Paint or coating component. Import range: Confidential.

P 92-1159

*Manufacturer.* Confidential.

*Chemical.* (G) Polyester resin.

*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

P 92-1160

*Manufacturer.* Confidential.

*Chemical.* (G) Hydroxyl-terminated saturated polyester resin.

*Use/Production.* (G) Resin for coating sytstem. Prod. range: Confidential.

P 92-1161

*Manufacturer.* Confidential.

*Chemical.* (G) Polyester polyurethane acrylate oligomer.

*Use/Production.* (S) Resin UV or EB coatings & inks. Prod. range: Confidential.

P 92-1164

*Manufacturer.* Xerox Corporation.

*Chemical.* (G) Siloxane grafted fluoroelastomer.

*Use/Production.* (G) Machine part coating. Prod. range: Confidential.

P 92-1165

*Manufacturer.* Hoechst Celanese Corporation.

*Chemical.* (G) Trisubstituted naphthalene disulfonic acid.

*Use/Production.* (S) Powder of reactive dye for cellulose. Prod. range: 16,000 kg/yr.

P 92-1166

*Manufacturer.* Hoechst Celanese Corporation.

*Chemical.* (G) Trisubstituted naphthalene disulfonic acid.

*Use/Production.* (S) Liquid formulation of reactive dye for cellulose. Prod. range: 60,000 kg/yr.

P 92-1167

*Manufacturer.* Hoechst Celanese Corporation.

*Chemical.* (G) Trisubstituted naphthalene disulfonic acid.

*Use/Production.* (S) Powder and liquid formulation of reactive for cellulose. Prod. range: Confidential.

P 92-1168

*Manufacturer.* Confidential.

*Chemical.* (G) Quaternary ammonium salt.

*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1169

*Manufacturer.* Confidential.

*Chemical.* (G) Quaternary ammonium salt.

*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1170

*Manufacturer.* Confidential.

*Chemical.* (G) Quaternary ammonium salt.

*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1171

*Manufacturer.* Confidential.

*Chemical.* (G) Quaternary ammonium salt.

*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1172

*Manufacturer.* Hoechst Celanese Corporation.

*Chemical.* (G) Quaternary ammonium salt.

*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1173

*Manufacturer.* Hoechst Celanese Corporation.

*Chemical.* (G) Quaternary ammonium salt.

*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1174

*Manufacturer.* Confidential.

*Chemical.* (G) Quaternary ammonium salt.

*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1175
*Manufacturer.* Confidential.
*Chemical.* (G) Quaternary ammonium salt.
*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1176
*Manufacturer.* Confidential.
*Chemical.* (G) Quaternary ammonium salt.
*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1177
*Manufacturer.* Confidential.
*Chemical.* (G) Quaternary ammonium salt.
*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1178
*Manufacturer.* Confidential.
*Chemical.* (G) Quaternary ammmonium salt.
*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1179
*Manufacturer.* Confidential.
*Chemical.* (G) Quaternary ammonium salt.
*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1180
*Manufacturer.* Confidential.
*Chemical.* (G) Quaternary ammonium salt.
*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1181
*Manufacturer.* Confidential.
*Chemical.* (G) Quaternary ammonium salt.
*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1182
*Manufacturer.* Confidential.
*Chemical.* (G) Quaternary ammmonium salt.
*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1183
*Manufacturer.* Confidential.
*Chemical.* (G) Quaternary ammonium salt.
*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1184
*Manufacturer.* Confidential.
*Chemical.* (G) Quaternary ammonium salt.
*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1185
*Manufacturer.* Confidential.
*Chemical.* (G) Quaternary ammonium salt.
*Use/Production.* (G) Laundry additive. Prod. range: Confidential.

P 92-1186
*Manufacturer.* Reichhold Chemicals, Inc.
*Chemical.* (G) Polyester resin.
*Use/Production.* (S) Powder coatings. Prod. range: Confidential.

P 92-1187
*Manufacturer.* Reichhold Chemicals, Inc.
*Chemical.* (G) Polyester resin.
*Use/Production.* (S) Powder coatings. Prod. range: Confidential.

P 92-1188
*Manufacturer.* Halocarbon Products Corporation.
*Chemical.* (S) 2-Fluoroheptachloropropane.
*Use/Production.* (S) Chemical intermediate. Prod. range: Confidential.

P 92-1189
*Manufacturer.* Halocarbon Products Corporation.
*Chemical.* (S) 2-Fluoropropane.
*Use/Production.* (S) Chemical intermediate. Prod. range: Confidential.

P 92-1190
*Importer.* Confidential.
*Chemical.* (G) Polyoxyethylene derivative.
*Use/Import.* (G) Photographic chemical. Import range: Confidential.

P 92-1191
*Importer.* Confidential.
*Chemical.* (G) Biphenol A polyether terephthalate.
*Use/Import.* (G) Resin for photo copy toner/developer. Import range: Confidential.

Dated: July 17, 1992.

**Douglas W. Sellers,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxic.*

[FR Doc. 92-17288 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-F

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**[OPPTS-59945; FRL 4080-6]**

## Certain Chemicals; Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 8 such PMN(s) and provides a summary of each.

**DATES:** Close of review periods:
*Y 92-154, 92-155,* July 20, 1992.
*Y 92-156, 92-157, 92-158, 92-159* July 26, 1992.
*Y 92-160, 92-161,* July 27, 1992.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-154
*Importer.* Confidential.
*Chemical.* (G) Ethylene glycol terephthalic acid 2-sulfoisophthalic acid monosodium salt copolymer.
*Use/Import.* (S) Adhesive coating used for polymer film. Import range: Confidential.

Y 92-155
*Manufacturer.* P.D. George Company.
*Chemical.* (S) Tall oil fatty acids, trimethylolpropane; isophthalic acid; heat reactive phenolic resin.
*Use/Production.* (S) Insulating varnish for coating of electrical equipment. Prod. range: 385,555 kg/yr.

Y 92-156
*Manufacturer.* Confidential.
*Chemical.* (S) Short oil alkyd resin.
*Use/Production.* (S) Baked coatings with melamine resins. Prod. range: Confidential.

**Y 92-157**

*Manufacturer.* Confidential.

*Chemical.* (G) Unsaturated polyester resin.

*Use/Production.* (S) Flexibilizing synthetic marble. Prod. range: Confidential.

**Y 92-158**

*Manufacturer.* Confidential.

*Chemical.* (S) Short oil alkyd resin.

*Use/Production.* (S) Baked coatings with melamine resins. Prod. range: Confidential.

**Y 92-159**

*Manufacturer.* Confidential.

*Chemical.* (S) Short oil alkyd resin.

*Use/Production.* (S) Baked coatings with melamine resins. Prod. range: Confidential.

**Y 92-160**

*Manufacturer.* Mace Adhesives & Coatings Co., Inc.

*Chemical.* (G) Diisocyanatoalkane polymer with polyesterdiol, disubstituted alkanoic acid, and alkanediamine, compound with disubstituted alkanamine.

*Use/Production.* (S) Industrial coatings and commercial finishes. Prod. range: 15,000 kg/yr.

**Y 92-161**

*Manufacturer.* Confidential.

*Chemical.* (G) Poly-carboxylate, amine salt.

*Use/Production.* (G) Inhibit mineral deposition with crude oil. Prod. range: Confidential.

Dated: July 17, 1992.

**Douglas W. Sellers,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 92-17289 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-F

## FARM CREDIT ADMINISTRATION

### Privacy Act of 1974; Establishment of a New System of Records

**AGENCY:** Farm Credit Administration (FCA).

**ACTION:** Notice of establishment of a system of records for the investigative files of the Office of Inspector General; request for comments.

**SUMMARY:** The FCA is establishing a new system of records under the Privacy Act to consist of the investigatory files of the FCA's Office of the Inspector General (OIG). The publication of this system notice is one of the steps required to establish the new system. The new system of records facilitates the OIG's ability to collect, maintain, use, and disclose information pertaining to individuals, thus helping to ensure that the OIG may efficiently and effectively perform its investigations and other authorized duties and activities.

**EFFECTIVE DATE:** Comments must be received on or before August 21, 1992. Unless changes are made in response to comments received, this action is effective August 21, 1992.

**ADDRESSES:** Comments may be mailed or delivered (in triplicate) to Jean Noonan, General Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth M. Dean, Counsel to the Inspector General, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4030,

or

Rebecca S. Orlich, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** As required by 5 U.S.C. 552a(3)(4) and (11), the FCA is notifying the public of the establishment of a new system of records in the FCA's OIG. This system is being established as part of the formal creation of an OIG by action dated January 22, 1989, and the appointing of the FCA's Inspector General on the same date, under the authority of the 1988 amendments to the Inspector General Act of 1978. See Pub. L. No. 100-504, amending Pub. L. No. 95-452; 5 U.S.C. app. 3. Among the OIG's statutory duties are the prevention and detection of fraud, waste, and abuse relating to the agency's programs and operations, through the conduct of audits and investigations and the preparation of reports to the agency's Chairman and to Congress.

An advance notice of the establishment of a system of records, together with a request for comments, was published in the Federal Register on February 21, 1992, 57 FR 6221. A related proposed amendment to the FCA regulations to exempt this system of records from certain requirements of the Privacy Act was published on March 13, 1992, 57 FR 8851.

The system of records being established consists of investigatory files compiled and maintained by the OIG. Due to the law enforcement nature of these records, the proposed system is exempt from certain provisions of the Privacy Act, including disclosure to individuals who are the subject of a record in the system. See 5 U.S.C. 552a(j)(2) and (k)(2). The exempt status of the system of records is the subject of a final rule, amending FCA regulation 12 CFR 603.355, which specifies the FCA systems of records that are exempt from certain provisions of the Privacy Act. The FCA adopted this final rule at its meeting on July 16, 1992. Pursuant to 12 U.S.C. 2252(c)(1), the final rule will be effective 30 days after the date of its publication in the Federal Register during which either or both Houses of Congress are in session.

The FCA received two comments on the advance notice. the Farm Credit council, a trade association representing Farm Credit System institutions, requested that the FCA clarify that the exemptions will not take effect until and unless the final rule is issued. The FCA Board affirms that the exemptions will not apply to this system of records until the final rule becomes effective.

The Office of Management and Budget (OMB) suggested that revisions be made to routine uses (1), (2), (3), (4), (6), (8), (9), (11) and (12). Most of the suggestions involved narrowing the scope of the use; re-wording so that each numbered routine use specifies only a single type of disclosure, its recipient, and purpose; clarifying certain language; and deleting routine uses that duplicate existing Privacy Act exceptions. The OMB also suggested that a paragraph be added regarding disclosures to consumer reporting agencies. The FCA Board believes that such revisions are appropriate and has therefore made changes to the previously published advance notice. These revised routine uses are described below.

Routine use (1)(b) has been narrowed to allow disclosure only where the record collected by the OIG is necessary and relevant to a particular licensing decision. The FCA will also have to ensure that the records are timely, relevant, accurate and complete enough to assure fairness to the individual affected by the licensing decision.

The phrase "but only" has been inserted before "to the extent necessary" in routine use (2) to emphasize the narrowness of this exception.

Routine use (3) has eliminated all references to disclosing records containing information relevant to an

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agency's interest for employment purposes or for security clearance reasons. The reasoning behind this elimination is that an agency should obtain written consent in cases where it is the decision-making agency, and in cases where another agency knows the FCA has information, such other agency can make a request for the information pursuant to 5 U.S.C. 552a(b)(7) or by obtaining a waiver. Routine uses described in (3)(d) have been incorporated into the more generalized routine uses (6) and (7) concerning disclosures to an adjudicative body or an administrative tribunal during litigation or administrative proceedings.

Proposed routine use (4) has been withdrawn because the uses are already covered by other routine uses or are exceptions under the Privacy Act.

Proposed routine use (6) has been revised to eliminate the disclosure of information to any authorized agency component of the FCA, since this is already an exception allowed by the Privacy Act. See 5 U.S.C. 552a(b)(1). Also the phrase "regarding further disclosure by parties" has been eliminated since subsequent disclosures by the Department of Justice will be governed by its own disclosure rules

The FCA, in response to OMB's comment, has limited each routine use to one subject and has eliminated routine uses already covered by other routine uses or by exceptions under the Privacy Act. Renumbered routine use (5) has been limited to instances where the Department of Justice represents the FCA. Renumbered routine uses (6) and (7) cover FCA's involvement in litigation where the Department of Justice would not necessarily represent it. Proposed routine use (6)(b) has been totally eliminated since it is not normally necessary to disclose documents to obtain advice concerning accessibility of a record or information.

Renumbered routine use (8) now requires a constituent requests to be in writing. Renumbered routine use (10) clarifies that the FCA may disclose information resulting from an OIG investigation of the way in which an FCA contractor-operated program is being run to the contractor so that the contractor may take corrective action.

Proposed routine use (11) has been eliminated since section (b)(11) of the Privacy Act allows a disclosure exception for an order of the court. Case law has held that agencies may not circumvent the requirement for a judge to sign the subpoena or order for disclosure of records by having a routine use which allows disclosure without such deliberation by a judge. Proposed routine use (12) has also been withdrawn since it is not necessary to transfer documents to OMB in order to obtain advice.

**SYSTEM NAME:**

**FCA-16**

Inspector General Investigative Files—FCA.

**SECURITY CLASSIFICATION:**

Not applicable.

**SYSTEM LOCATION:**

Office of the Inspector General (OIG), Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Subjects of OIG investigations relating to the programs and operations of the Farm Credit Administration. Subject individuals include, but are not limited to, current and former employees; current and former agents or employees of contractors or subcontractors, as well as current and former contractors and subcontractors in their personal capacity, where applicable; and other individuals whose actions affect the FCA, its programs or operations. Businesses, proprietorships, and corporations are not covered by this system.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Correspondence relating to the investigation; internal staff memoranda; copies of subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken in the investigation, and accompanying exhibits; documents, records, or copies obtained during the investigation; interview notes, investigative notes, staff working papers, draft materials, and other documents and records relating to the investigation; opening reports, progress reports, and closing reports; and other investigatory information or data relating to alleged or suspected criminal, civil, or administrative violations or similar wrongdoing by subject individuals.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Inspector General Act Amendments of 1988, Pub. L. No. 100–504, amending the Inspector General Act of 1978, Pub. L. No. 95–452, 5 U.S.C. app. 3.

**PURPOSE(S):**

To document the conduct and outcome of investigations; to report results of investigations to other components of the FCA or other agencies and authorities for their use in evaluating their programs and imposition of criminal, civil, or administrative sanctions; to report the results of investigations to other agencies or other regulatory bodies for an action deemed appropriate, and for retaining sufficient information to fulfill reporting requirements; and to maintain records related to the activities of the Office of the Inspector General.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), these records or information in these records, either by itself or in combination with other information within the agency's possession, may specifically be disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified herein shall be construed to limit or waive any other routine use specified herein:

(1) When a record in a system of records, either by itself or in conjunction with other information:

(a) Indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature, disclosure may be permitted of that record to the governmental agency, whether Federal, state, local or foreign, that is charged with investigating violations of or enforcing compliance with the law.

(b) Contains information relevant to the qualifications or fitness of an individual who is licensed or seeking to be licensed, disclosure may be permitted of that record to the responsible licensing authority, provided the records are relevant and necessary in the particular licensing decision and reasonable steps are taken to ensure that the records are timely, relevant, accurate and complete enough to assure fairness to the individual affected by the licensing decision.

(2) When the FCA OIG is conducting an investigation or audit, records may be disclosed to any source, but only to the extent necessary to secure from that source information relevant to and sought in furtherance of the investigation or audit.

(3) To agencies, offices, or establishments of the executive, legislative or judicial branches of the Federal or state government when a request is in hand and where the records or information in those records is relevant and necessary to a decision with regard to disciplinary or other administrative action (excluding a decision on hiring) concerning an employee and reasonable steps are taken to ensure that the records are timely, relevant, accurate and complete enough to assure fairness to the individual affected by the disciplinary or administrative action.

(4) To independent auditors or other private firms with which the Office of Inspector General has contracted to carry out an independent audit or investigation or to analyze, collate, aggregate or otherwise refine data collected in the system of records, subject to the requirement that such contractors shall maintain Privacy Act safeguards with respect to such records.

(5) To the Department of Justice for use in litigation when either (i) the FCA, or any component thereof, (ii) any employee of the FCA in his or her official capacity, (iii) any employee of the FCA in his or her individual capacity where the Department of Justice has agreed to present the employee or, (iv) the United States, where the FCA determines that litigation is likely to affect the FCA or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the FCA to be relevant and necessary to litigation, provided that in each case the FCA determines that disclosure of the records to the Department of Justice is compatible with the purpose for which the records were collected.

(6) To a court, magistrate, or other administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, administrative proceedings, or settlement negotiations, or in connection with criminal law proceedings, when the FCA is a party to the litigation or proceeding and it determines it is relevant and necessary to the litigation or proceeding.

(7) To a court or other adjudicative body before which the FCA is authorized to appear, when either (i) the FCA, or any component thereof, (ii) any employee of the FCA in his or her official capacity, (iii) any employee of the FCA in his or her individual capacity, where the FCA determines that litigation is likely to affect the FCA or any of its components, is a party to litigation, and the FCA determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

(8) To the National Archives and Records Administration for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.



(9) To a Congressional office from the record of a subject individual in response to an inquiry from the Congressional office made at the written request of that individual, but only to the extent that the record would be legally accessible to that individual.

(10) To an FCA contractor when a contractor-operated program has been subject to OIG investigation which was uncovered personnel problems so that personnel problems can be corrected by the contractor.

(11) To debt collection contractors for the purpose of collecting debts owned to the Government, as authorized under the Debt Collection Act Of 1982, 31 U.S.C. 3718, and subject to applicable Privacy Act safeguards.

**DISCLOSURES TO CONSUMER REPORTING AGENCIES:**

Disclosures may be made from this system, pursuant to 5 U.S.C. 552a(b)(12), to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a (f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701 (a)(3), in accordance with section 3711(f) of title 31.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

The OIG Investigative Files consist of paper records maintained in file folders, cassette tapes of interviews and data maintained on computer diskettes. The folders, diskettes and cassette tapes are stored in file cabinets in the OIG.

**RETRIEVABILITY:**

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

**SAFEGUARDS:**

Records are maintained in lockable file cabinets in lockable rooms. Access is restricted to individuals whose duties require access to the records. File cabinets and rooms are locked during non-duty hours.

**RETENTION AND DISPOSAL:**

As prescribed in General Records Schedule 22, item 1b, OIG Investigative Files are destroyed 10 years after a case is closed. Cases that are unusually significant for documenting major violations of criminal law or ethical standards are offered to the National Archives for permanent retention.

**SYSTEM MANAGER AND ADDRESS:**

Inspector General, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

**NOTIFICATION PROCEDURE:**

By mailing or delivering a written request bearing the individual's name, return address, and signature, addressed as follows: Privacy Act Request, Privacy Act Officer, Office of Congressional and Public Affairs, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

**RECORD ACCESS PROCEDURE:**

Same as above.

**CONTESTING RECORD PROCEDURE:**

Same as above.

**RECORD SOURCE CATEGORIES:**

Employees or other individuals on whom the record is maintained, non-target witnesses, FCA and non-FCA records, to the extent necessary to carry out OIG investigations authorized by 5 U.S.C. app. 3.

**SYSTEM(S) EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:**

Pursuant to 5 U.S.C. 552a(j)(2), records in this system are exempt from the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), and corresponding provisions of 12 CFR 603.355, to the extent a record in the system of records was compiled for criminal law enforcement purposes.

Pursuant to 5 U.S.C. 552a(k)(2), the system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f), and the corresponding provisions of 12 CFR 603.355, to the extent the system of records consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2). *See* FCA regulation 12 CFR 603.355, as amended.

Dated: July 16, 1992.

**Curtis M. Anderson,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 92–17280 Filed 7–21–92; 8:45 am]

BILLING CODE 6705–01

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 14, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

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Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

*OMB Number:* 3060–0057.

*Title:* Application for Equipment Authorization.

*Form Number:* FCC Form 731.

*Action:* Revised collection.

*Respondents:* Businesses or other for-profit.

*Frequency of Response:* On occasion reporting.

*Estimated Annual Burden:* 8,600 responses; 24 hours average burden per response; 206,400 hours total annual burden.

*Needs and Uses:* Present Commission rules require approval of equipment regulated under certain part 15 and part 18 rule sections (see item 27 of SF–83) prior to marketing, based on a showing of compliance to technical standards established in the Rules for each device operated under the applicable Rule part. Rules governing certain equipment operating in the licensed services also require equipment authorization as established in the procedural Rules in part 2. Such a showing of compliance aids in controlling potential interference to radio communications, and the data gathered, as is necessary, may be used for investigating complaints of harmful interference. Revision of the form is required in order to incorporate fee processing information, and to clarify and simplify other items in order to reduce the public burden. The information gathered will be used by the Commission to determine compliance of the proposed equipment with the Commission's Rules. Following authorization of the equipment for marketing, the information may be used to determine that the operation of the equipment is consistent with the information supplied at the time of grant, and that the equipment marketed complies with the terms of the equipment authorization. The information collected is essential to controlling potential interference to radio communications.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92–17207 Filed 7–21–92; 8:45 am]

BILLING CODE 6712–01–M

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**[General Docket No. 91–2]**

### Information on Application Filing Procedures for the Interactive Video and Data Service

On January 16, 1992, the Commission adopted a Report and Order (R&O) in GEN Docket No. 91–2 establishing an Interactive Video and Data Service (IVDS) under part 95 of its Rules (47 CFR part 95). In the R&O the Commission stated that it would announce by Public Notice the date on which it would begin accepting applications for IVDS system licenses as well as other pertinent information concerning licensing IVDS systems. The purpose of this Public Notice is to establish an IVDS application filing window and explain the filing procedures necessary for filing applications for an IVDS system license.

Because there appears to be a substantial number of entities interested in applying for IVDS licenses, we will open up the 734 IVDS service areas or markets in stages. To get some idea of the interest in IVDS, the first stage will be limited to a single service area, service area #1 (New York, NY/NJ). For a description of the service areas see the Commission's January 24, 1992, Public Notice, Report No 92–40.

Applications for an IVDS license for the New York service area must be received at the official filing location listed herein during the three-day filing period beginning August 18, 1992, and ending August 20, 1992. Applications received before August 18, or after August 20, 1992, will be dismissed as untimely filed. The back-up filing procedure and the extra day policy do not apply to IVDS applications.[1]

**Note:** Applicants may have an interest in only one application in each service area.

All applications must be filed on FCC Form 155 and must be accompanied by a separate check made out to the Federal Communications Commission or FCC in the amount of $1,400.00. Failed payment or postdated checks will result in the application being dismissed with prejudice. In Section I of Form 155, the "Applicant Name" block must include the applicant's name (either typed or printed) followed by the signature (original) of an individual authorized to sign the application. The mailing address should be the address to which the applicant wishes official correspondence sent. The number of the service area being applied for (in this case "001") must be specified in the box labeled "Call Sign". The fee type code entered in Column (A) must be "PAI", the fee multiple in Column (B) must be "40", and the fee due in column (C) must be $1,400.00. Each individual application (Form 155) and accompanying check ($1,400.00) must be in an individual sealed envelope and properly addressed (see mail in address). Multiple applications, properly packaged, may be delivered in one larger, properly addressed container.

The Commission's official filing location for these applications is Mellon Bank in Pittsburgh, PA. Applications may be delivered to Mellon Bank in one of two ways, either mailed in or walked in.

*Mail-ins*

Filings mailed in must be mailed to: Federal Communications Commission, Interactive Video and Data Service, P.O. Box 358365, Pittsburgh, PA 15251–5365.

(This address must be used on the individually sealed envelopes.)

*Walk-ins*

Pursuant to the provisions of 47 CFR 0.401(b)(2), applications may be hand-delivered. Applications hand-delivered must be in a sealed envelope with the mail-in address specified above on its face. A separate envelope is needed for each application and accompanying check. Hand-delivered applications must be delivered to One Mellon Bank Center, 500 Grant Street, Pittsburgh, PA. 15258 anytime between 12:01 a.m. August 18, 1992, and 11:59 p.m. August 20, 1992.

The street entrance to the Window Filing location is on the Grant Street side of the building (across from the US Air ticket office). Signs will be posted in both One Mellon Bank Center and Three Mellon Bank Center indicating the Filing Window location. The "deliverer" should proceed directly to the street entrance described above and identify himself (herself) as having applications for the IVDS filing window. If a copy is proffered for stamping, one receipt only will be date stamped per application and returned.

**Caution:** The filing instructions incorporated in this Public Notice are only in effect for the purposes stated herein. These procedures override any other procedures that may be set forth in the Commission's Rules. Failure to follow the filing procedures specified herein will render an application unacceptable for filing. Such an application will be dismissed with prejudice.

After the filing window has closed the Commission will issue a Public Notice as soon as feasible listing the applications filed for the New York service area. In the event the Commission receives more than two acceptable applications for an IVDS system license for this particular service area, all the applications for this service area will be considered mutually exclusive. The Commission will use a lottery conducted in accordance with 47 CFR 1.972 to choose among mutually exclusive application. If a lottery is necessary, the Commission will announce by Public Notices (1) when a lottery will be held and (2) the lottery winners (tentative selectees). Tentative selectees will then have two business days from the date of the Public Notice announcing the winners to file a FCC Form 574 (plus required showings) amending their original application. The burden will be on the tentative selectees to provide all necessary information. If for some reason one or both of the tentative selectees' applications are dismissed, the Commission will open another filing window for that service area.

While the Commission intends to open all 734 services areas as quickly as possible, it will not issue system licenses until the first IVDS transmitter has been type accepted for operation in this service. Moreover, it is important to remember that an applicant that has been awarded an IVDS system license must meet certain construction benchmarks or automatically lose the license. Further an IVDS system licensee is prohibited from transferring the license until the 5-year construction benchmark has been met.

For further information contact Consumer Assistance Branch, 717–337–1212.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92–17315 Filed 7–20–92; 12:01 pm]

BILLING CODE 6712–01–M

[1] The back-up filing procedure enables certain applicants to file late if they follow certain procedures and if their applications are lost or delayed in transit to Pittsburgh, Pennsylvania. The extra day policy allows certain applicants to file one day after the filing deadline. These policies, however, only apply to time critical, feeable applications previously filed in Washington, DC and IVDS applications, which are new, have never been filed in Washington. Thus, if an IVDS application is received in Pittsburgh on August 21, 1992, the day after the filing window closes, or thereafter (regardless of the reason for delay), the application will be dismissed as untimely filed.



## FEDERAL MARITIME COMMISSION

### City of Oakland et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224–200690.

*Title:* Port of Oakland/Stevedoring Services of America Terminal Management Agreement.

*Parties:* City of Oakland ("Port"), Stevedoring Services of America ("SSA").

*Synopsis:* The Agreement provides for SSA to manage and operate the Port's Charles P. Howard Terminal, including its three container cranes, for a period of five years.

Dated: July 16, 1992.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92–17234 Filed 7–21–92; 8:45 am].

BILLING CODE 6730–01–M

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### Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Seabourn Cruise Line Limited and Seabourn Maritime Management A/S, 55 Francisco Street, San Francisco, CA 94133.

Vessels: SEABOURN PRIDE and SEABOURN SPIRIT.

Dated: July 16, 1992.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92–17232 Filed 7–21–92; 8:45 am]

BILLING CODE 6730–01–M

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### Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

*Seabourn Cruise Line Limited and Seabourn Maritime Management A/S, 55 Francisco Street, San Francisco, CA 94133.*

Vessels: SEABOURN PRIDE AND SEABOURN SPIRIT.

Dated: July 16, 1992.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92–17233 Filed 7–21–92; 8:45 am]

BILLING CODE 6730–01–M

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## FEDERAL RESERVE SYSTEM

### Larry Neil Bostright, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 11, 1992.

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**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Larry Neil Boatright*, Keyesport, Illinois, and Paul Wayne Jones, Murphysboro, Illinois; to acquire an additional 42.41 percent of the voting shares of Keyesport Bancshares, Inc., Keyesport, Illinois, for a total of 68.70 percent, and thereby indirectly acquire State Bank of Keyesport, Keyesport, Illinois.

**B. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Patrick T. Rooney*, Oklahoma City, Oklahoma; to acquire an additional 34.81 percent of the voting shares of Charter Bancshares, Inc., Oklahoma City, Oklahoma, for a total of 51.68 percent.

Board of Governors of the Federal Reserve System, July 16, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-17223 Filed 7-21-92; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL RESERVE SYSTEM

### Dunlap Iowa Holding Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 14, 1992.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Dunlap Iowa Holding Co.*, Dunlap, Iowa; to acquire 100 percent of the voting shares of Soldier Valley Financial Services, Inc., Soldier, Iowa, and thereby indirectly acquire Soldier Valley Savings Bank, Soldier, Iowa.

Board of Governors of the Federal Reserve System, July 16, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-17222 Filed 7-21-92; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 92N-0298]**

### Pharmafair, Inc.; Withdrawal of Approval of Three Abbreviated New Drug Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of three abbreviated new drug applications (ANDA's) held by Pharmafair, Inc., 110 Kennedy Dr., Hauppauge, NY 11788. Pharmafair has agreed in writing to permit FDA to withdraw approval of the applications, and has waived its opportunity for a hearing. This action stems from the discovery of untrue statements, discrepancies, and omissions concerning data used to obtain approval of the applications.

**EFFECTIVE DATE:** July 22, 1992.

**FOR FURTHER INFORMATION CONTACT:** Megan L. Foster, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8041.

**SUPPLEMENTARY INFORMATION:** Recently, FDA became aware of untrue statements, discrepancies, and omissions concerning the data used to support approval of the following ANDA's held by Pharmafair:



ANDA 70-485; Betamethasone Valerate Cream 0.1%;

ANDA 70-486; Betamethasone Valerate Ointment 0.1%; and

ANDA 88-837; Prednisolone Acetate 0.2% U.S.P. with Sulfacetamide Sodium Ophthalmic Suspension (Sterile).

After careful review of inspectional findings, the agency determined that there was sufficient justification to initiate proceedings to withdraw approval of the products listed above. Pharmafair was notified in writing of these determinations, and, in accordance with 21 CFR 314.150(d), was offered an opportunity to permit FDA to withdraw the applications. Subsequently, in letters dated June 10, 1992, Pharmafair requested withdrawal of the ANDA's, thereby waiving its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is withdrawn effective July 22, 1992. Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action.

Dated: July 14, 1992.

**Carl C. Peck,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 92-17310 Filed 7-21-92; 8:45 am]

BILLING CODE 4160-01-F

## National Institutes of Health

### National Eye Institute; Meeting of the National Advisory Eye Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on September 8, in Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland.

The NAEC meeting will be open to the public on September 8 from 8 a.m. until approximately 10 a.m. for discussion of program policies and issues. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the Council meeting will be closed to the public from approximately 10 a.m. on September 8 until adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, NEI, Building 31, room 6A04, NIH, Bethesda, Maryland 20892, (301) 496-9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 93.867, Retinal and Choroidal Diseases Research; 93.868, Anterior Segment Diseases Research; and 93.871, Strabismus, Amblyopia and Visual Processing; National Institutes of Health)

Dated: July 10, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92-17185 Filed 7-21-92; 8:45 am]

BILLING CODE 4140-01-M

### National Heart, Lung, and Blood Institute; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

This meeting will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one half hour at the beginning of the first session of each meeting. Attendance by the public will be limited to space available. This meeting will be closed thereafter in accordance with the provisions set forth in section 552(b)(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung, and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7548, will furnish a summary of the meeting and rosters of panel members. Substantive program information may be obtained from each Scientific Review Administrator whose telephone number is provided. Since it is necessary to schedule meetings well in advance, it is suggested that anyone planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

*Name of Panel:* NHLBI SEP on Demonstration & Education Grant Applications.

*Scientific Review Administrator:* Dr. C. James Scheirer, Telephone 301-496-7363.

*Dates of Meeting:* July 29, 1992.

*Place of Meeting:* Conference Call: Westwood Building, Room 548, Bethesda, Maryland.

*Time of Meeting:* 1 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 10, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92-17177 Filed 7-21-92; 8:45 am]

BILLING CODE 4140-01-M

### National Heart, Lung, and Blood Institute; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one half hour at the beginning of the meting. Attendance by the public will be limited to space available. The meeting will be closed thereafter in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung, and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7548, will furnish a summary of the meeting and roster of panel members. Substantive program information may be obtained from each Scientific Review Administrator whose telephone number is provided. Since it is necessary to schedule meetings well in advance, it is suggested that anyone

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planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

*Name of Panel:* NHLBI SEP on Mechanisms Underlying Coronary Heart Disease in Blacks.

*Scientific Review Administrator:* Dr. Eric H. Brown, telephone 301–496–8391.

*Dates of Meeting:* July 30–31, 1992.

*Place of Meeting:* Holiday Inn (Crowne Plaza), Rockville, MD.

*Time of Meeting:* 8 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 10, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92–17184 Filed 7–21–92; 8:45 am]

BILLING CODE 4140–01–M

## National, Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

This meeting will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one half hour at the beginning of the first session of the meeting. Attendance by the public will be limited to space available. This meeting will be closed thereafter in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual contract proposals. These contracts and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7548, will furnish meeting information upon request. Since it is necessary to schedule meetings well in advance, it is suggested that anyone planning to attend the meeting contact the Scientific Review Administrator to confirm the exact date, time, and location.

*Name of Panel:* NHLBI SEP on Peripheral Arterial Disease—Pilot Study Coordinating Center.

*Scientific Review Administrator:* Dr. C. James Scheirer, telephone 301–496–7363.

*Dates of Meeting:* August 17–18, 1992.

*Place of Meeting:* Crystal City Marriott, Arlington, Virginia.

*Time of Meeting:* 8 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 10, 1992.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 92–17183 Filed 7–21–92; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. N–92–3473]**

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 8, 1992.

**John T. Murphy,**

*Director, Information Resources, Management Policy and Management Division.*

### Submission of Proposed Information Collection to OMB

*Proposal:* Comprehensive Housing Affordability Strategy (CHAS).

*Office:* Community Planning and Development.

*Description of the Need for the Information and its Proposed Use:* States and units of local government are required to submit to HUD and to implement a Comprehensive Housing Affordability Strategy (CHAS) as a condition for receiving funds made available under Title II of the National Affordability Housing Act, the United States Housing Act of 1937, the Housing and Community Development Act of 1974, and the Stewart B. McKinney Homeless Assistance Act.

*Form Number:* HUD–40090 AND HUD–40091.

*Respondents:* State or Local Governments.

*Frequency of Submission:* Annually and Recordkeeping.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD-40090/40091 | 950 | | 1 | | 483.9 | | 459,700 |
| Recordkeeping | 950 | | 1 | | 21.9 | | 20,850 |

*Total Estimated Burden Hours:* 480,550.

*Status:* Reinstatement.

*Contact:* Cliff Taffet, HUD, (202) 708–2470, Jennifer Main, OMB, (202) 395–6880.

Dated: July 8, 1992.

[FR Doc. 92–17200 Filed 7–21–92; 8:45 am]
BILLING CODE 4210-01-M

## Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-92-3474; FR 3309-N-01]

## Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

**ACTION:** Notice of change in debenture interest rates.

**SUMMARY:** This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning July 1, 1992, is 7½ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1992, is 8 percent.

**FOR FURTHER INFORMATION CONTACT:** Fred E. McLaughlin, Financial Policy Division, room 9132, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–4325 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register.**

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning July 1, 1992, is 8 percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 8 percent for the six-month period beginning July 1, 1992. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1992.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

| Effective interest rate | On or after | Prior to |
|---|---|---|
| 9½ | Jan. 1, 1980 | July 1, 1980. |
| 9⅞ | July 1, 1980 | Jan. 1, 1981. |
| 11¾ | Jan. 1, 1981 | July 1, 1981. |
| 12⅞ | July 1, 1981 | Jan. 1, 1982. |
| 12⅜ | Jan. 1, 1982 | Jan. 1, 1983. |
| 10⅛ | Jan. 1, 1983 | July 1, 1983. |
| 10⅝ | July 1, 1983 | Jan. 1, 1984. |
| 11½ | Jan. 1, 1984 | July 1, 1984. |
| 10⅜ | July 1, 1984 | Jan. 1, 1985. |
| 11⅝ | Jan. 1, 1985 | July 1, 1985. |
| 11⅛ | July 1, 1985 | Jan. 1, 1986. |
| 10¼ | Jan. 1, 1986 | July 1, 1986. |
| 8¼ | July 1, 1986 | Jan. 1, 1987. |
| 8 | Jan. 1, 1987 | July 1, 1987. |
| 9 | July 1, 1987 | Jan. 1, 1988. |
| 9⅛ | Jan. 1, 1988 | July 1, 1988. |
| 9⅜ | July 1, 1988 | Jan. 1, 1989. |
| 9¼ | Jan. 1, 1989 | July 1, 1989. |
| 9 | July 1, 1989 | Jan. 1, 1990. |
| 8⅛ | Jan. 1, 1990 | July 1, 1990. |
| 9 | July 1, 1990 | Jan. 1, 1991. |
| 8¾ | Jan. 1, 1991 | July 1, 1991. |
| 8⅛ | July 1, 1991 | Jan. 1, 1992. |
| 8 | Jan. 1, 1992 | July 1, 1992. |
| 8 | July 1, 1992 | |

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning July 1, 1992, is 7½ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 1992.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 17151, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: July 15, 1992.

**Arthur J. Hill,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 92–17214 Filed 7–21–92; 8:45 am]
BILLING CODE 4210-27-M

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[Docket No. D-92-998; FR-3313-D-01]

## Office of the Assistant Secretary for Community Planning and Development; Revocation of Redelegation of Authority

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of revocation of redelegation of authority.

**SUMMARY:** This notice revokes the redelegation of authority published by the Department of Housing and Urban Development in the **Federal Register** on August 19, 1982, at 47 FR 36293, which redelegated the authority to monitor and take corrective and remedial actions with respect to Urban Development Action Grants (UDAGs), except the authority to adjust, reduce or withdraw grants, from the Assistant Secretary for Community Planning and Development to Regional Administrators.

**EFFECTIVE DATE:** July 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Shirley Manko, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW, room 7232, Washington, DC 20410. Telephone (202) 708-2087. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On August 19, 1982, the Department of Housing and Urban Development published a redelegation of authority in the **Federal Register** at 47 FR 36293, which redelegated the authority to monitor and take corrective and remedial actions with respect to Urban Development Action Grants (UDAGs), except the authority to adjust, reduce or withdraw grants, from the Assistant Secretary for Community Planning and Development to Regional Administrators. This redelegation is being revoked because of a recent policy decision to centralize monitoring of UDAGs in the HUD office in Washington, DC.

Accordingly, the Assistant Secretary for Community Planning and Development hereby revokes the following Redelegation of Authority:

### Revocation of Redelegation of Authority

The Redelegation of Authority published by the Department of Housing and Urban Development in the **Federal Register** on August 19, 1982, at 47 FR 36293, which redelegated the authority to monitor and take corrective and remedial actions with respect to Urban Development Action Grants (UDAGs), except the authority to adjust, reduce or withdraw grants, from the Assistant Secretary for Community Planning and Development to Regional Administrators is revoked.

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. § 3535(d).

Dated: July 10, 1992.

**Randall H. Erben,**

*Acting Assistant Secretary for Community Planning and Development.*

[FR Doc. 92-17215 Filed 7-21-92; 8:45 am]

BILLING CODE 4210-29-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AK-967-4230-15]

### Notice for Publication; AA-6703-B, AA-6703-D, AA-6703-A2; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Tatitlek Corporation for 8,448.28 acres. The lands involved are in the vicinity of the Village of Tatitlek, Alaska.

**Copper River Meridian, Alaska**

T. 11 S., R. 6 W.,
T. 12 S., R. 6 W.,
T. 11 S., R. 7 W.,
T. 12 S., R. 7 W.,
T. 13 S., R. 8 W.,
T. 9 S., R. 9 W.,
T. 10 S., R. 9 W.,
T. 13 S., R. 9 W.,
T. 10 W., R. 10 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Cordova Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal Government or regional corporation, shall have until August 21, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**Terry R. Hassett,**

*Chief, Branch of KCS Adjudication.*

[FR Doc. 92-17219 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-JA-M

[UT-942-4212-13; UTU-65023]

### Issuance of Land Exchange Conveyance Document; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Exchange of public and private lands.

**SUMMARY:** This action informs the public of the conveyance of 160.00 acres of public land out of Federal ownership. This action also opens 160.00 acres of reconveyed lands to operation of the public land laws generally.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Crocker, Bureau of Land Management, Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145-0155, 801-539-4118.

**SUPPLEMENTARY INFORMATION:** 1. The United States has issued an exchange conveyance document to Sage Point Coal Company, for the surface estate of the following described lands pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756; 43 U.S.C. 1716:

**Salt Lake Meridian**

T. 13 S., R. 11 E.,
Sec. 25, S½SW¼NE¼, E½NE¼SW¼, SE¼SW¼, W½SE¼.
The area described aggregates 160.00 acres.

2. In exchange for these lands, the United States acquired the surface estate of the following described lands:

**Salt Lake Meridian**

T. 14 S., R. 11 E.,
Sec. 13, S½SW¼, NE¼SW¼;
Sec. 24, NE¼NW¼.
The areas described aggregate 160.00 acres.

3. At 7:45 a.m., on August 21, 1992, the lands described in paragraph 2 will be open to the operation of the public land laws generally. These lands are subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m., on the date stated above, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.



4. The purpose of this exchange was to acquire critical riparian habitat.

**James M. Parker,**

*State Director.*

[FR Doc. 92-17224 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-040-02-4212-14]

### Utah; Realty Action

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following described public land in Washington County, Utah has been examined and identified as suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at not less than the appraised fair market value:

**Salt Lake Meridian**

T. 39 S., R. 16 W.,
Section 19, that portion of the SW¼SW¼SE¼NE¼ lying west of the county road, comprising approximately .9 acres.

**DATES:** On or before September 8, 1992, interested parties may submit comments to the District Manager, Cedar City District Office.

**ADDRESSES:** Comments should be addressed to the District Manager, Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84720.

**FOR FURTHER INFORMATION CONTACT:** Detailed information concerning this action is available for review at the Dixie Resource Area Office by contacting Dale Ross at (801) 673-4654.

**SUPPLEMENTARY INFORMATION:** This land is difficult and uneconomic to manage and is not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The land described above is hereby segregated from appropriation under the public land laws, including the mining laws, pending the disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Dr. Charles Bingham. All minerals will be reserved to the United States.

Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: July 13, 1992.

**Gordon Staker,**

*Cedar City District Manager.*

[FR Doc. 92-17228 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-942-02-4730-12]

### Arizona; Filing of Plats of Survey

1. A plat, in 2 sheets, constituting the map of the Muggins Mountains Wilderness Boundary, as required by Public Law 101-628—November 28, 1990, Section 1.—Titles I through III of this Act may be cited as the "Arizona Desert Wilderness Act of 1990" TITLE 1, SEC. 101. (c), and the survey in Townships 7 and 8 South, Ranges 19 and 20 West, Gila and Salt River Meridian, Arizona, was accepted April 10, 1992, and was officially filed on April 15, 1992.

A plat representing a dependent resurvey of a portion of the south boundary and a metes-and-bounds survey of the Muggins Mountains Wilderness Area in Township 7 South, Range 19 West, Gila and Salt River Meridian, Arizona, was accepted April 10, 1992, and was officially filed April 15, 1992.

A plat, in 3 sheets, representing a dependent resurvey of a portion of the west and north boundaries and a portion of the subdivisional lines; and the subdivision of section 19 and a metes-and-bounds survey of the Muggins Mountains Wilderness Area in Township 8 South, Range 19 West, Gila and Salt River Meridian, Arizona, was accepted April 10, 1992, and was officially filed April 15, 1992.

A plat, in 3 sheets, representing the dependent resurvey of a portion of the east and north boundaries and a portion of the subdivisional lines; and the subdivision of sections 11 and 13 and a metes-and-bounds survey of the Muggins Mountains Wilderness Area in Township 8 South, Range 20 West, Gila and Salt River Meridian, Arizona, was accepted April 10, 1992, and was officially filed April 15, 1992.

These plats were prepared at the request of the Bureau of Land Management, Deputy State Director, Lands and Renewable Resources.

A supplemental plat showing amended lottings in section 31, Township 23 North, Range 5 East, Gila and Salt River Meridian, Arizona, was accepted April 28, 1992, and was officially filed April 30, 1992.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office, Branch of Lands Operations.

A supplemental plat showing amended lottings in sections 24 and 25, Township 5 South, Range 22 East, Gila and Salt River Meridian, Arizona, was accepted June 2, 1992, and was officially filed on June 9, 1992.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office, Branch of Records.

A plat representing a dependent resurvey of a portion of the subdivisional lines and a metes-and-bounds survey in section 12, Township 15 South, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted May 6, 1992, and was officially filed May 13, 1992.

A plat representing the dependent resurvey of a portion of the west boundary, the subdivision of section 7, and a metes-and-bounds survey in Township 15 South, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted May 6, 1992, and was officially filed May 13, 1992.

A plat representing the dependent resurvey of portions of the subdivisional lines, the subdivision of section 11 and the dependent resurvey of portions of certain mineral surveys; and a metes-and-bounds survey in Township 17 South, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted June 18, 1992, and was officially filed June 24, 1992.

These plats were prepared at the request of the Bureau of Land Management, Phoenix District Office.

A plat, in 2 sheets, representing a dependent resurvey of portions of the north boundary, the east boundary, the subdivisional lines; and the subdivision of section 1, and metes-and-bounds surveys in Township 9 South, Range 22 West, Gila and Salt River Meridian, Arizona, was accepted June 3, 1992, and was officially filed on June 9, 1992.

This plat was prepared at the request of the Bureau of Land Management, Yuma District Office.

A supplemental plat showing Tract 38 in Unsurveyed Township 4½ North, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted April 27, 1992, and was officially filed April 30, 1992.

This plat was prepared at the request of the Forest Service, Apache-Sitgreaves National Forest.

A plat, in 2 sheets, representing a dependent resurvey of the south boundary and a portion of the east boundary; and a survey of the west boundary, identical with the Sixth Guide Meridian East, a portion of the east boundary and the subdivisional lines in Township 27 North, Range 25 East, Gila and Salt River Meridian, Arizona, was accepted April 28, 1992, and was officially filed May 6, 1992.

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A plat representing a survey of the west boundary, identical with the Sixth Guide Meridian East, the south and east boundaries, and the subdivisional lines, in Township 28 North, Range 25 East, Gila and Salt River Meridian, Arizona, was accepted April 28, 1992, and was officially filed May 6, 1992.

A plat representing a survey of the west boundary, identical with the Sixth Guide Meridian East, the east and north boundaries, and the subdivisional lines of Township 30 North, Range 25 East, Gila and Salt River Meridian, Arizona, was accepted June 11, 1992, and was officially filed June 17, 1992.

These plats were prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat representing a dependent resurvey of a portion of the Fifth Standard Parallel North, (south boundary), and the exterior boundaries in Township 21 North, Range 26 East, Gila and Salt River Meridian, Arizona, was accepted June 17, 1992, and was officially filed June 24, 1992.

This plat was prepared at the request of the Navajo and Hopi Indian Relocation Commission.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

**James P. Kelley,**

*Chief, Branch of Cadastral Survey.*

[FR Doc. 92-17311 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-32-M

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**[AZ#-930-4214-10; AZA-26964, AZA-26965]**

## Proposed Withdrawal and Opportunity for Public Meeting; Arizona

July 10, 1992.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, has filed two applications to withdraw approximately 410.00 acres (AZA-26964 for 320.00 acres and AZA-26965 for 90 acres) of National Forest System land for the Houston Mesa Campground (AZA-26964), and the Payson Visitor Information Center (AZA-26965). This notice closes the land for up to 2 years from location and entry under the United States mining laws only. The land will remain open to all other applicable uses.

**DATES:** Comments and requests for a meeting should be received on or before October 20, 1992.

**ADDRESSES:** Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 N. Seventh Street, Phoenix, Arizona 85014 or P.O. Box 16563, Phoenix, Arizona, 85011-6563.

**FOR FURTHER INFORMATION CONTACT:** John Mezes, BLM Arizona State Office, 602-640-5509.

**SUPPLEMENTARY INFORMATION:** On June 26 and July 1, 1992, the U.S. Department of Agriculture, Forest Service, filed applications to withdraw the following described National Forest System lands from location and entry under the United States mining laws only, subject to valid existing rights:

**Gila and Salt River Meridian, Arizona**

*Tonto National Forest*

T. 11 N., R. 10 E. (Houston Mesa Campground, AZA 26964),
Sec. 27, N½.
T. 10 N., R. 10 E. (Payson Visitor Information Center, AZA 26965),
Sec. 10, SE¼SE¼, E½SW¼SE¼, S½NE¼SE¼, SE¼NW¼SE¼.

The acres described aggregate 410.00 acres in Gila County.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawals. All interested persons who desire a public meeting for the purpose of being heard on the subject must submit a written request to the undersigned officer within 90 days from the date of publication of this notice.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawals may present their views in writing to the undersigned officer of the BLM.

Upon a determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless an application is denied or cancelled or the withdrawals are approved prior to that date. The temporary uses which will be permitted during this segregative period are all those applicable to U.S. Forest Service administered lands except those under the mining laws. The temporary segregation of the lands in connection with these applications shall not affect the administrative jurisdiction over the lands.

**Beaumont C. McClure,**

*Deputy State Director, Lands and Renewable Resources.*

[FR Doc. 92-17230 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-32-M

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**[NM-930-4214-10; NMNM 88049]**

## Amendment of Proposed Withdrawal and Opportunity for Public Meeting, and Partial Termination of Segregation; New Mexico

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice.

**SUMMARY:** By letter dated June 30, 1992, the United States Department of Agriculture, Forest Service, amended pending withdrawal application number NMNM 88049 by deleting 160 acres and adding 380 acres. Application NMNM 88049 was filed on December 16, 1991, for 3,478 acres, and an amendment was filed on February 19, 1992, for 3,760.08 acres of lands for the Guadalupe Canyon Zoological Botanical Area within the Coronado National Forest in Township 33 South, Ranges 21 and 22 West, New Mexico Principal Meridian. A notice of proposed withdrawal and opportunity for public meeting on application NMNM 88049 for the 3,760.08 acres was published in the **Federal Register**, Volume 57, No. 55, on Friday, March 20, 1992. This notice closes the 380 acres being added to the application from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands. This notice also terminates the segregation on the 160 acres being deleted from the application.

**DATES:** Comments and requests for a public meeting should be received on or before October 20, 1992.

**ADDRESSES:** Comments and meeting requests should be sent to the New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, New Mexico 87502-7115.

**FOR FURTHER INFORMATION CONTACT:** Georgiana E. Armijo, BLM, New Mexico State Office, 505-438-7594.

**SUPPLEMENTARY INFORMATION:** 1. The Department of Agriculture's amended application filed June 30, 1992, proposes to withdraw the following additional described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

**New Mexico Principal Meridian**

*Coronado National Forest*

T. 33 S., R. 21 W.,
Sec. 17, SW¼NW¼, NW¼SW¼, and W½SE¼SW¼;
Sec. 20, W½NE¼NW¼;
Sec. 32, NE¼NW¼ and W½NW¼.
T. 33 S., R. 22 W.,
Sec. 24, NE¼NW¼ and SW¼SE¼;
Sec. 25, E½E½NW¼ and E½NE¼SW¼.

The areas described aggregate 380 acres in Hidalgo County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the additional lands in the proposed withdrawal may present their views in writing to the New Mexico State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the additional lands in the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the additional lands in the proposed withdrawal must submit a written request to the New Mexico State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of March 20, 1992, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are any land uses, except location under the mining laws, permitted by the Forest Service under existing laws and regulations including, but not limited to, necessary protection for the flora and fauna and threatened and endangered plants and animals.

2. The amended application described in paragraph 1 deletes the following described National Forest System lands from application NMNM 88049:

**New Mexico Principal Meridian**

*Coronado National Forest*

T. 33 S., R. 21 W.,
Sec. 29, NE¼NW¼;
Sec. 31, SE¼SE¼.
T. 33 S., R. 22 W.,
Sec. 36, SW¼NE¼ and NW¼SE¼.

The areas described aggregate 160 acres in Hidalgo County.

3. At 8 a.m. on August 21, 1992, the lands described in paragraph 2 shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 10, 1992.

**Monte G. Jordan,**

*Associate State Director.*

[FR Doc. 92-17227 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-FB-M

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## National Park Service

## Amistad National Recreation Area, TX; Contract Negotiations

**AGENCY:** National Park Service, Interior.

**ACTION:** Public notice.

**SUMMARY:** Public notice is hereby given that the National Park Service proposes to negotiate a concession contract authorizing a tour boat to operate a scheduled and nonscheduled sightseeing service for the general public; boat fueling for the general public, tour boats, and National Park Service ranger boats on an as needed basis; snack type food and beverage service at reservation office; merchandising resale operation; tow boat service; and other services incidental to the operations authorized at the request of the Secretary at Amistad National Recreation Area, Texas, for a period of ten (10) years from January 1, 1993 through December 31, 2002.

**EFFECTIVE DATE:** September 21, 1992.

**ADDRESSES:** Interested parties should contact the Superintendent, Amistad National Recreation Area, Post Office Box 420367, Del Rio, Texas 78842-0367, for information as to the requirements of the proposed contract.

**SUPPLEMENTARY INFORMATION:** This contract requires a construction and improvement program. Offerors should conduct their own cost analyses before responding to this prospectus.

The Secretary will consider and evaluate all proposals received as a result of this notice. All proposals must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: July 7, 1992.

**Richard Marks,**

*Acting Regional Director, Southwest Region.*

[FR Doc. 92-17235 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-70-M

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## Concession Contract Negotiations

**AGENCY:** National Park Service, Interior.

**ACTION:** Public Notice.

**SUMMARY:** Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with the best qualified operator authorizing it to provide medical, ambulance transport, clinic, and hospital facilities and services for the public at Yellowstone National Park in Wyoming for a period of five (5) years from November 1, 1992, through October 31, 1997.

**EFFECTIVE DATE:** October 20, 1992.

**ADDRESSES:** Interested parties should contact the Regional Director, Rocky Mountain Region, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225, for information as to the requirements of the proposed contract.

**SUPPLEMENTARY INFORMATION:** The contract may warrant a ten (10) year term should a successful proponent offer to provide a construction and improvement program described in the government's Statement of Requirements. The construction and improvement program proposed has been addressed in the Development Concept Plan/Environmental Assessment for the Lake/Bridge Bay Area, dated January 1992 and the Development Concept Plan for Old Faithful, dated January 1985 for Yellowstone National Park.

The existing Concessioner, West Park Hospital dba. Yellowstone Park Medical Services (YPMS) has performed its obligations to the satisfaction of the Secretary under an existing five (5) year contract which expires by limitation of time on December 31, 1992, and therefore pursuant to the provisions of

Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. § 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Regional Director, Rocky Mountain Region, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225 not later than the ninetieth (90th) day following publication of this notice to be considered and evaluated.

Dated: July 17, 1992.

**Ben L. Moffett,**

*Acting Regional Director, Rocky Mountain Region.*

[FR Doc. 92-17209 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-70-M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 701-TA-311 (Final)]**

### Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes From Brazil

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of a final countervailing duty investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-311 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain circular, welded, non-alloy steel pipes and tubes,[1] provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** June 8, 1992.

**FOR FURTHER INFORMATION CONTACT:** Douglas E. Corkran (202-205-3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

**SUPPLEMENTARY INFORMATION:**

#### Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Brazil of certain circular, welded, non-alloy steel pipes and tubes. The investigation was required in a petition filed on September 24, 1991, by Allied Tube and Conduit Corp., Harvey, IL; American Tube Co., Phoenix, AZ; Bull Moose Tube Co., Gerald, MO; Century Tube Corp., Pine Bluff, AR; Sawhill Tubular Division, Cyclops Corp., Sharon, PA; Laclede Steel Co., St. Louis, MO; Sharon Tube Co., Sharon, PA; Western Tube and Conduit Corp., Long Beach, CA; and Wheatland Tube Corp;, Collingswood, NJ.

#### Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of allpersons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

#### Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

#### Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on August 27, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

#### Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on September 15, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 4, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 11, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.12(f), and 207.23(b) of the Commission's rules.

#### Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the commission's rules; the deadline for filing is September 9, 1992. Parties may also file written testimony in connection

[1] The products covered in this investigation are welded, non-alloy steel pipes and tubes, of circular cross section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing or mechanical applications, such as for fence tubing, and for the protection of electrical wiring, such as conduit shells.

The scope of this investigation is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included in this investigation, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.

with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is September 23, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before September 23, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of § 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: July 14, 1992.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92-17239 Filed 7-21-92; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 337-TA-335]**

## Certain Dynamic Sequential Gradient Compression Devices and Component Parts Thereof; Decision Not To Review Initial Determination Amending Complaint and Investigation To Add Additional Respondent

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 7) issued on June 12, 1992, by the presiding administrative law judge (ALJ) in the above-captioned investigation amending the complaint and notice of investigation to add Huntleigh Medical Limited as a respondent.

**FOR FURTHER INFORMATION CONTACT:** Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3087.

**SUPPLEMENTARY INFORMATION:** On June 12, 1992, the ALJ issued an ID granting in part a motion by complainant The Kendall Company to add additional respondents. The ID granted the motion to the extent of adding Huntleigh Medical Limited as a respondent. It denied Kendall's request that Huntleigh Healthcare (U.K.) and Huntleigh Healthcare (U.S.) be added as respondents. No petitions for review of the ID were filed. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the ID and all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SE., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Dated: July 14, 1992.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92-17243 Filed 7-21-92; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 337-TA-339]**

## Certain Commercial Food Portioners, Components Thereof, Including Software, and Process Thereof; Investigation; Design Systems, Inc.

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 15, 1992, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Design Systems, Inc., 14949 N.E. 40th Street, Redmond, Washington, 98052. Complainant supplemented the Complaint by filing letters dated June 25, June 26, and July 1, 1992.

The complaint, as supplemented, alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain commercial food portioners and components thereof, including software, by reason of alleged infringement of claims 1-6 of U.S. Letters Patent 4,557,019, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202-205-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

**FOR FURTHER INFORMATION CONTACT:** Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2577.

**AUTHORITY:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

**SCOPE OF INVESTIGATION:** Having considered the complaint, the U.S. International Trade Commission, on July 14, 1992, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain commercial food portioners or components thereof, including software, by reason of alleged direct or induced infringement of claims 1-6 of U.S. Letters Patent 4,557,019, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Design Systems, Inc., 14949 N.E. 40th Street, Redmond, Washington 98052.

(b) The respondents are the following companies alleged to be in violation of

section 337, and are the parties upon which the complaint is to be served:

Lumetech, Ltd., Strandvejen 50, DK-2900 Hellerup, Copenhagen, Denmark.

Koch Supplies, Inc., 1411 West 29th Street, Kansas City, Missouri 64108.

Koch/Lumetech, 1411 West 29th Street, Kansas City, Missouri 64108.

(c) Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401K, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: July 14, 1992.

[FR Doc. 92-17244 Filed 7-21-92; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 337-TA-335]**

## Certain Dynamic Sequential Gradient Devices; Change of Commission Investigative Attorneys

Notice is hereby given that, as of this date, Linda C. Odom, Esq. and Alesia M. Woodworth, Esq. of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Linda C. Odom, Esq. and Sarah C. Middleton, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: July 13, 1992.

**Lynn I. Levine,**

*Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.*

[FR Doc. 92-17245 Filed 7-21-92; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 731-TA-571 (Preliminary)]**

## Professional Electric Cutting and Sanding/Grinding Tools From Japan

### Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of professional electric cutting and sanding/grinding tools, provided for in subheadings 8461.50.00, 8465.91.00, 8508.20.00, and 8508.80.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV)

### Background

On May 29, 1992, a petition was filed with the Commission and the Department of Commerce by The Black & Decker Corp., Towson, MD, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of the subject products from Japan. Accordingly, effective May 29, 1992, the Commission instituted antidumping investigation No. 731-TA-571 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 5, 1992 (57 FR 24059). The conference was held in Washington, DC, on June 19, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 13, 1992. The views of the Commission are contained in USITC Publication 2536 (July 1992), entitled "Professional Electric Cutting and Sanding/Grinding Tools from Japan: Determination of the Commission in Investigation No. 731-TA-571 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: July 14, 1992.

By Order of the Commission.

**Paul R. Bardos,**

*Acting Secretary*

[FR Doc. 92-17242 Filed 7-21-92; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

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**[Investigation No. 332-328]**

## Live Cattle and Beef: U.S. and Canadian Industry Profiles, Trade, and Factors of Competition

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of institution of investigation and scheduling of public hearing.

**EFFECTIVE DATE:** July 13, 1992.

**SUMMARY:** Following receipt on June 12, 1992, of a request from the Committee on Ways and Means, United States House of Representatives, and the Senate Committee on Finance, United States Senate (Committees), the Commission instituted investigation No. 332-328, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of reporting on economic and competitive conditions in the U.S. and Canadian cattle and beef industries.

As requested by the Committees, the Commission will provide an updated version of the Commission's report on investigation No. 332-241, "The Competitive Position of Canadian Live Cattle and Beef in U.S. Markets" (USITC Pub. 1996, July 1987).

More specifically, as requested by the Committees the Commission will seek to provide:

(1) An updated profile of the U.S. and Canadian live cattle and beef sectors in terms of factors such as production levels and trends, markets, and production cycles.

(2) A discussion of trade in live cattle and beef between the United States and Canada and the regional distribution of U.S.-Canadian trade.

(3) A discussion of trade in live cattle and beef between the United States and other countries.

(4) A discussion of Federal, State, and Provincial Government assistance programs that are available to the cattle and beef sectors, including the Canadian National Tripartite Stabilization Program (NTSP) and payments thereunder.

(5) A discussion of other factors having a significant bearing on competitive conditions and trade.

The Committees requested that the Commission submit its report not later than 7 months after the receipt of the letter of request.

**FOR FURTHER INFORMATION CONTACT:** David E. Ludwick (202) 205–3329 or Rose Steller (202) 205–3323, Agriculture Division, Office of Industries, or William Gearhart (202) 205–3091, Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on this study by contacting the Commission's TDD terminal on (202) 205–1810.

**PUBLIC HEARING:** A public hearing in connection with this investigation is currently scheduled to begin at 9:30 a.m. on September 9, 1992, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. The hearing will continue on September 10, 1992, if required due to the number of persons wishing to testify. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter asking to testify with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.), on August 26, 1992. In addition, persons testifying should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on August 28, 1992. The deadline for filing post hearing briefs is the close of business on September 21, 1992.

**WRITTEN SUBMISSIONS:** Interested persons may submit written statements concerning the investigation. To be assured of consideration, written statements (original plus 14 copies) must be received by the close of business (5:15 p.m.) September 21, 1992. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Issued: July 14, 1992.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92–17241 Filed 7–21–92; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–331]**

## Certain Microcomputer Memory Controllers, Components Thereof and Products Containing Same

Notice is hereby given that the prehearing conference in this proceeding scheduled for July 27, 1992, and the hearing scheduled to commence immediately thereafter (57 FR 29332, July 1, 1992) are cancelled.

The Secretary shall publish this notice in the **Federal Register.**

Issued: July 15, 1992.

**Janet D. Saxon,**

*Administrative Law Judge.*

[FR Doc. 92–17240 Filed 7–21–92; 8:45 am]

BILLING CODE 7020–02–M

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## INTERSTATE COMMERCE COMMISSION

**[Ex Parte No. 509]**

## Railroad Revenue Adequacy—1991 Determination

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of decision.

**SUMMARY:** On July 22, 1992, the Commission served a decision announcing the 1991 revenue adequacy determinations for the Nation's Class I railroads. One carrier (Illinois Central) is found to be revenue adequate. The remaining carriers are found to be revenue inadequate.

**EFFECTIVE DATE:** July 22, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ward L. Ginn, Jr. (202) 927–6167. (TDD for hearing impaired: (202) 927–5721).

**SUPPLEMENTARY INFORMATION:** This annual determination of railroad revenue adequacy is made in accordance with the standards developed in Standards for Railroad Revenue Adequacy, 364 I.C.C. 803 (1981), as modified in Standards for Railroad Revenue Adequacy, 3 I.C.C.2d 261 (1986), and Supplemental Reporting of Consolidated Information for Revenue Adequacy Purposes, 5 I.C.C.2d 65 (1988). It also incorporates modifications made in Railroad Revenue Adequacy—1988 Determination, 6 I.C.C.2d 933 (1990). This decision applies the rate of return standard to data for the year 1991.

A railroad will be considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment at least equal to the current cost of capital for the railroad industry for 1991, determined to be 11.6 percent in Railroad Cost of Capital—1991, 8 I.C.C.2d 402 (1992). Additional information is contained in a concurrent decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.] This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: July 9, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

**Sidney L. Strickland, Jr.,**

*Secretary.*

| Railroad | ROI | Finding |
|---|---|---|
| Atchison, Topeka & Santa Fe Railway Co. | 8.5% | Inadequate. |
| Burlington Northern Railroad Co. | NM | Inadequate. |
| Chicago & Northwestern Transportation Co. | 7.1% | Inadequate. |
| Consolidated Rail Corp. | NM | Inadequate. |
| CSX Transportation Inc. | NM | Inadequate. |
| Florida East Coast Railway Co. | 2.2% | Inadequate. |
| Grand Trunk Western Railroad Co. | NM | Inadequate. |

| Railroad | ROI | Finding |
|---|---|---|
| Illinois Central Railroad Co. | 15.2% | Adequate. |
| Kansas City Southern Railroad Co. | 9.3% | Inadequate. |
| Norfolk Southern Corporation (Combined Railroad Subsidiaries) | 6.0% | Inadequate. |
| Soo Line Railroad Company | 4.0% | Inadequate. |
| Southern Pacific Transportation Co. (Including St. Louis Southwestern Railway Co. and Denver & Rio Grande Western Railroad Co.) | NM | Inadequate. |
| Union Pacific Railroad Co. | 1.7% | Inadequate. |

NM=ROI is negative, therefore it is not meaningful.

[FR Doc. 92-17291 Filed 7-21-92; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 32100]

**Exemption: The Broe Companies, Inc. and Railco, Inc.—Control Exemption—Chicago West Pullman Transportation Corporation, et al.**

The Broe Companies, Inc., a holding company, and its wholly owned subsidiary, Railco, Inc., a non-carrier, jointly referred to as applicants, have filed a notice of exemption to acquire control through stock ownership of non-carrier Chicago West Pullman Transportation Corporation (CWPT) which, in turn, controls the following six class III railroads: The Chicago West Pullman & Southern Railroad; the Georgia Woodlands Railroad; the Newburgh & South Shore Railroad; the Chicago Rail Link; the Manufacturers' Junction Railway; and the Wisconsin and Calumet Railroad. Applicants presently control through the Great Western Railway Company (GWR) the following class III railroads: the Great Western Railway Company of Iowa, Inc. and the Great Western Railway Company of Colorado, Inc. The proposed transaction was to have been consummated on June 30, 1992.

Applicants indicate that: (1) The lines operated by CWPT's rail carrier subsidiaries do not connect with the lines operated by GWR's rail carrier subsidiaries; (2) the involved transaction is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

This notice is filed under 49 CFR 1180.2(d)(2). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.[1] Pleadings must be filed with the Commission and served on: Louis E. Gitomer, Taylor, Morell & Gitomer, suite 210, 919 18th Street NW., Washington, DC 20006.

Decided: July 16, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92-17292 Filed 7-21-92; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 32090]

**Exemption; H. Peter Claussen and Linda C. Claussen—Continuance in Control Exemption—H & S Railroad Company, Inc.**

H. Peter Claussen and Linda C. Claussen, noncarrier individuals in control of two rail carriers, Gulf & Ohio Railways, Inc. (G&OR), and Wiregrass Central Railroad Company, Inc. (WCR), have filed a notice of exemption to continue to control H & S Railroad Company, Inc. (H&SRC), upon the latter's becoming a carrier.

H&SRC, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32089, H & S Railroad Company, Inc.—Acquisition, Operation, and Trackage Rights Exemption—Lines of Hartford and Slocomb Railroad Company, to acquire and operate a 4-mile line of railroad and to acquire trackage rights over another line segment in Alabama. The transaction involved there was expected to be consummated on or after June 30, 1992.

H. Peter Claussen and Linda C. Claussen indicate that: (1) The properties operated by the affiliated railroads will not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any other railroad in tier corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Kevin M. Sheys, Weiner, Broadsky, Sidman & Kider, P.C., 1350 New York Avenue, NW., suite 800, Washington, DC 20005-4797.

Decided: July 14, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.**

*Secretary.*

[FR Doc. 92-17293 Filed 7-21-92; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 32108]

**Exemption; Dallas, Garland & Northeastern Railroad, Inc.; Trackage Rights Exemption; Dallas Area Rapid Transit Lines at Dallas, TX**

Dallas Area Rapid Transit (Dart) has agreed to grant trackage rights to Dallas, Garland & Northeastern Railroad, Inc. (DGNO), over 1.8 miles of rail line (consisting of a 1.7-mile segment and a 500-foot connecting segment) within the city limits of Dallas, TX. The trackage rights are to become effective on or after July 31, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Kelvin J.

[1] By decision served July 1, 1992, the Commission's Office of the Secretary granted a motion filed by applicants for a protective order regarding their stock purchase agreement. Patrick W. Simmons, Illinois Legislative Director for United Transportation Union, has appealed under 49 CFR 1011.7. That appeal will be resolved in a separate decision. Mr. Simmons also indicates that he will be filing a petition to revoke this exemption.

Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980), and as clarified in Wilmington Term. R.R.—Pur. & Lease—CSX Transp. Inc., 6 I.C.C.2d 799 (1990), aff'd sub nom. Railway Labor Executives' Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991).

Dated: July 14, 1992.

By the Commission, David M. Kinschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 92-17294 Filed 7-21-92; 8:45 am]

BILLING CODE 7035-01-M

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[Finance Docket No. 32089]

**Exemption; H & S Railroad Company, Inc.; Acquisition, Operation, and Trackage Rights Exemption; Lines of Hartford and Slocomb Railroad Co.**

H & S Railroad Company, Inc. (H&SRC), a noncarrier, has filed a notice of exemption to: (1) Acquire and operate a 4-mile line of railroad owned by Hartford and Slocomb Railroad Company (Hartford), between milepost 382, at Dothan, AL, and milepost 386, at Taylor, AL; and (2) acquire trackage rights on Hartford's line of railroad between mileposts 378.88 and 382, at Dothan. The proposed transaction was to have been consummated on or about June 30, 1992.

This proceeding is related to Finance Docket No. 32090, H. Peter Claussen and Linda C. Claussen—Continuance in Control Exemption—H & S Railroad Company, Inc., wherein H. Peter Claussen and Linda C. Claussen, noncarrier individuals, have concurrently filed a notice to exempt their continuance in control of H&SRC upon the latter's becoming a carrier.

Any comments must be filed with the Commission and served: Kevin M. Sheys, Suite 800 1350 New York Avenue, NW., Washington, DC 20005.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 14, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 92-17295 Filed 7-21-92; 8:45 am]

BILLING CODE 7035-01-M

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[Finance Docket No. 32085]

**Exemption; Mile-Hi Transportation Consultants Enterprises, Inc., and Lincoln Branch, Inc.; Acquisition and Operation Exemption; Line of Western States Properties, Inc.**

Mile-Hi Transportation Consultants Enterprises, Inc. (Mile-Hi), and Lincoln Branch, Inc., noncarriers, have filed a notice of exemption to acquire and operate a line of railroad owned by Western States Properties, Inc. Mile-Hi will conduct the rail operations on the line, which runs between milepost E.P.S. 4700-45, M.P. 530.81, at Limon, Lincoln County, CO, and milepost E.P.S. 689-80 ± M.P. 591.54, at Falcon, El Paso County, CO, and has been operated by Cadillac & Lake City Railway. The proposed transaction was to have been consummated on or about July 7, 1992.

Any comments must be filed with the Commission and served on: Peter J. Crouse, 80 Garden Center, Broomfield, CO 80020.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 16, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 92-17296 Filed 7-21-92; 8:45 am]

BILLING CODE 7035-01-M

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## DEPARTMENT OF JUSTICE

### Antitrust Division

**Pursuant to the National Cooperative Research Act of 1984—Precision Risc Organization**

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Precision Risc Organization ("PRO") on June 16, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activities are given below.

As of June 11, 1992, the voting members of PRO are: Convex Computer Corporation, Richardson, TX; Hewlett-Packard Company, Palo Alto, CA; Hitachi Ltd., Shinagawa-ku, Tokyo 140, JAPAN; Oki Electric Industry Company, Ltd., Minato-ku, Tokyo 108, JAPAN; and Yokogawa Electric Corporation, Tokyo 180, JAPAN.

As of June 11, 1992, the non-voting members of PRO are: Mitsubishi Electric Corporation, Kanagawa 247, JAPAN; Sequoia Systems Inc., Marlborough, MA; Hughes Aircraft Company, Anaheim, CA; and Prime Computer, Framingham, MA.

PRO is an unincorporated association organized under the laws of the State of California. It was organized on March 23, 1992.

The purpose of PRO is to establish PA-RISC, a computer architecture originally developed by Hewlett-Packard Company, which is based on reduced instruction set computing concepts, as an evolving open architecture and to promote the worldwide use of PA-RISC-based products for the ultimate benefit of the end-user community. PRO will achieve this purpose, in part, by: (i) Adopting a set of interface specifications relating to PA-RISC which will be consistent with PRO's purpose as described above (the "PRO Standards"); (ii) providing a forum for interested parties to recommend changes to the PRO Standards; (iii) making available certain compliance testing and technical services to hardware and software vendors who want to market products which are compliant with the PRO Standards; (iv) developing, licensing, and promoting certification trademarks which will be used to demonstrate that products are compliant with the PRO Standards; (v) publishing and broadly distributing the PRO Standards and related literature; and (vi) recruiting new members to join from a broad spectrum of system vendors, independent software vendors, independent hardware vendors, semiconductor vendors, academic institutions, the information technology consumer community, and the general public.

The above described activities of PRO are intended to help foster an open

standards environment which will encourage greater availability of PA-RISC-based products from a variety of hardware vendors and greater availability of software solutions for use on PA-RISC-based products so that the end-user community will have the benefit of a wider range of choices when purchasing computer products and solutions.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 92-17204 Filed 7-21-92; 8:45 am]

BILLING CODE 4410-01-M

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on November 25, 1991, Janssen, Inc., HC 02 Box 19250, Gurabo, Puerto Rico 00658-9629, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug: | Schedule |
|---|---|
| Alfentanil (9737) | II |
| Sufentanil (9740) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 21, 1992.

Dated: July 9, 1992.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92-17254 Filed 7-21-92; 8:45 am]

BILLING CODE 4410-09-M

### Manufacturer of Controlled Substances; Registration

By Notice dated March 3, 1992, and published in the **Federal Register** on March 11, 1992, (57 FR 8681), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive West, Deptford, New Jersey 08066, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug: | Schedule |
|---|---|
| Alfentanil (9737) | II |
| Sufentanil (9740) | II |
| Fentanyl (9801) | II |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 9, 1992.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92-17255 Filed 7-21-92; 8:45 am]

BILLING CODE 4410-09-M

### Importer of Controlled Substances; Registration

By Notice dated April 27, 1992, and published in the **Federal Register** on May 1, 1992, (57FR18908), Mallinckrodt Specialty Chemicals Company, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic class of controlled substances listed below:

| Drug: | Schedule |
|---|---|
| Coca leaves (9040) | II |
| Opium, raw (9600) | II |
| Opium poppy (9650) | II |
| Poppy straw concentrate (9670) | II |

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substances listed above.

Dated: July 9, 1992.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92-17246 Filed 7-21-92; 8:45 am]

BILLING CODE 4410-09-M

### Importer of Controlled Substances; Registration

By Notice dated April 21, 1992, and published in the **Federal Register** on April 29, 1992, (57 FR 16167), Noramco of Delaware, Inc., Division McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic class of controlled substances listed below:

| Drug: | Schedule |
|---|---|
| Opium, raw (9600) | II |
| Poppy straw concentrate (9670) | II |

No comments or objection have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substances listed above.

Dated: July 9, 1992.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92-17249 Filed 7-21-92; 8:45 am]

BILLING CODE 4410-09-M

### Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this notice that on March 3, 1992, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) for registration as

a bulk manufacturer of the basis classes of controlled substances listed below:

| Drug: | Schedule |
|---|---|
| Ibogaine (7260) | I |
| Tetrahydrocannabinols (7370) | I |
| Dihydromorphine (9145) | I |
| Pholcodine (9314) | I |
| Alphacetylmethadol (9603) | I |
| Methylphenidate (1724) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Diphenoxylate (9170) | II |
| Benzoylecgonine (9180) | II |
| Ethylmorphine (9190) | II |
| Hydrocodone (9193) | II |
| Meperidine (9230) | II |
| Methadone intermediate (9254) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273) | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Opium extracts (9610) | II |
| Opium fluid extract (9620) | II |
| Opium, tincture (9630) | II |
| Opium, powdered (9639) | II |
| Opium, granulated (9640) | II |
| Oxymorphone (9652) | II |
| Phenazocine (9715) | II |
| Alfentanil (9737) | II |
| Sufentanil (9740) | II |
| Fentanyl (9801) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 21, 1992.

Dated: July 9, 1992.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92-17253 Filed 7-21-92; 8:45 am]

BILLING CODE 4410-09-M

## Importation of Controlled Substances Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (121 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 14, 1992, Radian Corporation, 8501 Mo-Pac Boulevard, P.O. Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration to be registered as an importer of dextropropoxyphene, bulk (non-dosage forms) (9273) a basic class of controlled substance in Schedule II. The firm plans to import deuterated material not currently available in the United States for manufacturing an exempt product.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 21, 1992.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 9, 1992.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92-17250 Filed 7-21-92; 8:45 am]

BILLING CODE 4410-09-M

## Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 18, 1992, Roberts Laboratories, Inc., Meridian Center III, 6 Industrial Way West, Eatontown, New Jersey 07724, made application to the Drug Enforcement Administration to be registered as an importer of propiram (9649) a basic class of controlled substance in Schedule I.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR),

and must be filed no later than August 21, 1992.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I and II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 9, 1992.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92–17252 Filed 7–21–92; 8:45 am]

BILLING CODE 4410–09–M

## Importer of Controlled Substances; Registration

By Notice dated April 27, 1992, and published in the **Federal Register** on May 1, 1992, (57 FR 18910), Stepan Chemical Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: July 9, 1992.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92–17247 Filed 7–21–92; 8:45 am]

BILLING CODE 4410–09–M

## Manufacturer of Controlled Substances; Registration

By Notice dated April 27, 1992, and published in the **Federal Register** on May 1, 1992, (57 FR 18910), Stepan Chemical Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug: | Schedule |
|---|---|
| Cocaine (9041) | II |
| Ecgonine (9180) | II |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 9, 1992.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92–17256 Filed 7–21–92; 8:45 am]

BILLING CODE 4410–09–M

## Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 16, 1992, Wildlife Laboratories, Inc., 1401 Duff Drive, suite 600, Fort Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of carfentanil (9743) a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 21, 1992.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 9, 1992.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 92–17251 Filed 7–21–92; 8:45 am]

BILLING CODE 4410–09–M

## NATIONAL COMMISSION ON MIGRANT EDUCATION

### Meeting

**ACTION:** Notice of meeting.

**SUMMARY:** The National Commission on Migrant Education will hold its twentieth meeting on Tuesday, July 28, 1992, during a conference call between Commission members and staff. The Commission was established by Public Law 100–297, April 28, 1988.

**DATE, TIME, AND PLACE:** Tuesday, July 28, 1992, beginning at 7 p.m., at 8120 Woodmont Avenue, Fifth Floor, Bethesda, MD 20814.

**STATUS:** Open to the public. Audio equipment provided for public attendance. Limited seating available.

**AGENDA:** Continued discussion of draft findings and recommendations for final report.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth J. Skiles (301) 492–5336, National Commission on Migrant Education, 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

**Note:** In order to meet the deadlines required for finalizing the Commission's final report, scheduling of this meeting to allow for

the 15-day publication of the notice was not possible.

**Linda Chavez,**

*Chairman.*

[FR Doc. 92–17238 Filed 7–17–92; 12:32 pm]

BILLING CODE 6820-DE-M

## NATIONAL EDUCATION GOALS PANEL

### Meeting

**AGENCY:** The National Education Goals Panel.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Education Goals Panel was established by a Joint Statement between the President and the Nation's governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and report to the nation on progress toward the goals.

**TENTATIVE AGENDA ITEMS:** The agenda for the meeting includes a discussion and review of Goal 1 (readiness for school) indicators, a report on potential citizenship indicators; a progress report from the Goal 5 (literacy) task force on Collegiate Assessment and a progress report from the technical planning group on International Workforce Comparisons.

**DATE:** The fourteenth meeting is scheduled for Friday, July 31, 1992, 1–4:15 p.m.

**ADDRESSES:** The Ramada Renaissance Techworld Hotel, 999 9th Street, NW., Washington, DC

**FOR FURTHER INFORMATION CONTACT:** The National Education Goals Panel Office at (202) 632–0952. Please give your name to indicate attendance.

Dated: July 16, 1992.

**Roger B. Porter,**

*Assistant to the President for Economic and Domestic Policy.*

[FR Doc. 92–17246 Filed 7–21–92; 8:45 am]

BILLING CODE 3127-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Notice of Meeting; Challenge/ Advancement Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/ Advancement Advisory Panel (Dance Challenge Section) to the National Council on the Arts will be held on August 7, 1992 from 9 a.m.–5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.–10 a.m. and 5 p.m.–5:30 p.m. The topics will be introductory remarks and policy discussion.

The remaining portion of this meeting from 10 a.m.–5 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: July 17, 1992.

**Yvonne M. Sabine,**

*Director, Panel Operations, National Endowment for the Arts.*

[FR Doc. 92–17301 Filed 7–21–92; 8:45 am]

BILLING CODE 7537-01-M

### Advisory Panel; Challenge/ Advancement

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/ Advancement Advisory Panel (Music Challenge Section) to the National Council on the Arts will be held on August 12–13, 1992 from 9 a.m.–5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on August 12 from 9 a.m – 10 a.m. and on August 13 from 5 p.m.–5:30 p.m. The topics will be introductory remarks, overview of Challenge III, and policy discussion.

The remaining portions of this meeting on August 12 from 10 a.m.–5:30 p.m. and August 13 from 9 a.m.–5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: July 17, 1992.

**Yvonne M. Sabine,**

*Director, Panel Operations, National Endowment for the Arts.*

[FR Doc. 92–17302 Filed 7–21–92; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Undergraduate Science, Engineering, and Mathematics Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

**NAME:** Special Emphasis Panel in Undergraduate Science, Engineering, and Mathematics Education.

**DATES AND TIMES:**
August 12, 1992; 7:30 p.m. to 9 p.m.
August 13, 1992; 8 a.m. to 5 p.m.
August 14, 1992; 8 a.m. to 5 p.m.
August 15, 1992; 8 a.m. to 2 p.m.

**PLACE:** Holiday Inn Crowne Plaza, 300 Army/Navy Drive, Arlington, VA 22202.

**TYPE OF MEETING:** Closed.

**CONTACT PERSON:** Dr. Herbert Levitan, Program Director, NSF, 1800 G St., NW., rm. 1210, Washington, DC 20550. Telephone: 202/357–7061.

**PURPOSE OF MEETING:** To provide advice and recommendations concerning proposals submitted to NSF for financial support.

**AGENDA:** To review and evaluate unsolicited proposals submitted to the Undergraduate Course and Curriculum Development Program.

**REASON FOR CLOSING:** The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 17, 1992.

M. Rebecca Winkler,
*Committee Management Officer.*

[FR Doc. 92–17220 Filed 7–21–92; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–237]**

### Commonwealth Edison Co., Dresden Nuclear Power Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption from the requirements of 10 CFR part 50 to Commonwealth Edison Company (CECo, the licensee) for the Dresden Nuclear Power Station, Unit 2, located in Grundy County, Illinois.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would grant a schedular exemption from the requirements of section III.D.2.(a) and III.D.3 (Type B and type C tests, respectively) of appendix J to 10 CFR part 50 relating to the primary reactor containment leakage testing for water cooled reactors. The purpose of the tests is to assure that leakage through primary reactor containment shall not exceed allowable leakage rate values as specified in the Technical Specifications and that periodic surveillance is performed.

*The Need for the Proposed Action*

By letter dated May 27, 1992, the licensee requested, pursuant to 10 CFR 50.12(a), a one time schedular exemption for Dresden Unit 2 from the 24-month local leak rate test interval for certain Type B and C leak rate test required by 10 CFR part 50, appendix J, sections III.D.2(a) and III.D.3. The exemption is requested to support the current outage schedule and to avoid the potential for an earlier reactor shutdown.

As a result of an unusually long refuel outage prior to the start of this operating cycle and several unanticipated and lengthy maintenance outages, the total number of days in which the Dresden Unit 2 reactor will be critical this cycle has been reduced considerably. This reduction in the total number of days of operation will not allow complete fuel utilization to be achieved by the originally scheduled refuel outage in September 1992. This incomplete utilization of fuel will cause an increase in excess reactivity during the next fuel cycle. Additionally, if a separate forced outage is imposed to perform testing and operation was not resumed until the fuel was utilized, CECo and its customers would bear the substantial replacement power costs incurred to provide alternate supplies of power during the outage period. In order to rectify these concerns, CECo proposes to reschedule the Dresden Unit 2 refuel outage from September 1992 to January 1993. Increasing the interval between refueling outages will cause Dresden Unit 2 to exceed the 24-month Type B and C leak rate testing surveillance interval required for Type B and C leak rate tests which cannot be performed during reactor operation.

*Environmental Impacts of the Proposed Action*

The proposed action includes exemptions from performing certain Type B and C tests for a maximum period of 122 days beyond the 24-month test interval. As stated in 10 CFR part 50, appendix J, the purpose of the primary containment leak rate testing requirements is to ensure that leakage rates are maintained within the Technical Specification requirements and to assure that proper maintenance and repair is performed throughout the service life of the containment boundary components. The requested exemption is consistent with the intent of 10 CFR part 50, appendix J, in that it represents a one time only schedular extension of short duration. The required leak tests will still be performed to assess compliance with Technical Specification requirements, albeit later, and to assure that any required maintenance or repair is performed. As noted in sections III.D.2 and III.D.3 of appendix J, it was intended that the testing be performed during refueling outages or other convenient intervals. Extending the 24-month interval by a small amount to reach the next refueling outage will not significantly impact the integrity of the containment boundary and, therefore, will not significantly impact the consequences of an accident or transient in the unlikely event of such an occurrence during the 122 day extended period.

The exemption request is further supported by the information provided in the application. CECo has identified those Type B and C volumes which will be leak tested during reactor operation. In addition, CECo has identified those volumes that will be leak tested should a forced outage of suitable duration occur prior to January 4, 1993 (122 day maximum exemption request). These commitments reduce the number of volumes which need an exemption and the length of time for which an exemption would be required should a forced outage of sufficient duration occur. CECo has also provided the testing methodology which will be used if forced outages occur. In order to provide an added margin of safety and to account for possible increases in the leakage rates of untested volumes during the relatively short period of the exemption, Dresden will impose an administrative limit for maximum pathway leakage of 85 percent of $0.6L_a$ for the remaining Unit 2 fuel cycle.

Past Unit 2 local leak rate test data have, in general, demonstrated good leak rate test results. The current maximum pathway leakage rate for Dresden Unit 2, as determined through Type B and C leak rate testing is 333.53 standard cubic feet per hour (scfh). This value is approximately 68 percent of the Technical Specification limit of 488.45 scfh ($0.6L_a$). As a result of additional maintenance being performed on various pathways during Cycle 13, the current leakage rate has been reduced from the previous outage "As Left" leakage rate of 362.29 scfh. In addition, the previous outage "As Left" total minimum pathway leakage rate for Type B and C testable penetration was 126.69 scfh. This value is approximately 21 percent of the Technical Specification limit of 610.56 scfh ($0.75L_a$). By using the minimum pathway methodology, a

conservative measurement of the actual leakage expected through a pathway under post-accident conditions can be determined. The minimum pathway data from the last two Unit 2 refuel outages also indicates that on a minimum pathway basis, the quality of primary containment does not degrade excessively through the course of the fuel cycle. In addition, the previous outage "As Left" Integrated Leak Rate Test, completed on December 18, 1990, indicated that the primary containment overall integrated leakage rate, which obtains the summation of all potential leakage paths including containment welds, valves, fittings, and penetrations, was 0.8128 weight percent per day plus the calculated leak rate of 0.7428 weight percent per day plus the leakage rate of all nonvented pathways and the leakage compensation for the change in the drywell sump levels. This value is approximately 67 percent of the limit specified in the Technical Specifications (1.2 weight percent per day or 0.75 $L_a$).

The above data, along with the station imposed limit for maximum pathway leakage, provide a basis for showing that the probability of exceeding the off site dose rates established in 10 CFR part 100 will not be increased by extending the current 24-month Type B and C testing interval for a maximum of 122 days. The proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable environmental impacts associated with the proposed exemption.

*Alternative to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the requirements of section III.D.2(a) and III.D.3 of appendix J to 10 CFR part 50. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

*Alternative Use of Resources*

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Dresden, Units 2 and 3 dated November 1973.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Findings of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's request for exemption dated May 27, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Rockville, Maryland, this 14th day of July 1992.

For the Nuclear Regulatory Commission.

**Byron L. Siegel,**

*Acting Director, Project Directorate III–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–17288 Filed 7–21–92; 8:45 am]

BILLING CODE 7590–01–M

## Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

**I. Background**

Pursuant to Public Law (Pub.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 26, 1992 through July 10, 1992. The last biweekly notice was published on July 8, 1992 (57 FR 30240).

**Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 21, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene

is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-8700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of amendment request:* May 26, 1992, as supplemented by letter dated June 3, 1992.

*Description of amendment request:* The proposed amendment revises spent fuel pool related Technical Specifications in Sections 3/4.9 and 5.6. The revised specifications introduce a required boron concentration in the spent fuel pool during refueling operations and define categories of fuel assemblies based upon enrichment, burnup and presence of burnable poisons. The allowable arrangement of assemblies within the spent fuel pool is determined as a function of the defined categories.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

HL&P [Houston Lighting & Power Company] has evaluated the revised rack analyses. Based upon SER [Safety Evaluation Report] Supplement 6 which presents the NRC acceptance criteria, the proposed changes to the UFSAR [Updated Final Safety Analysis Report] and to Section 5.6 of the Technical Specifications meet the accepted NRC acceptance criteria for rack subcriticality.

Since the proposed Technical Specifications allow for the storage of fuel assemblies in checkerboard patterns, the probability of occurrence of a misloaded assembly is increased, with respect to the current rack utilization scheme which does not use checkerboard storage. In order to ensure that the rack $K_{eff}$ remains less than or equal to 0.95 in the event of a misloaded assembly, a Technical Specification requirement has been added to require that the boron concentration of the spent fuel pool be maintained above 700 ppm. This value is adequate to ensure that for all misloadings in Region 1 and the misloading of a single fuel assembly in Region 2 the NRC acceptance criteria for rack subcriticality is met.

Therefore, the changes in the utilization of the spent fuel racks do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No changes are being proposed to the racks themselves, any other systems, or to the physical structures of the Fuel Handling Building itself. The change is analytical in nature. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The licensing basis of maintaining a $K_{eff}$ of less than or equal to 0.95 is met by the physical design of the racks and by the use of administrative controls. The Technical Specifications are being revised to require that the boron concentration of the spent fuel pool be maintained at greater than or equal to 700 ppm boron. The presence of this amount of boron is adequate to ensure that even under accident conditions the $K_{eff}$ is maintained at less than or equal to 0.95. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

*Local Public Document Room location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

*Attorney for licensee:* Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

*NRC Project Director:* Suzanne C. Black

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of amendment request:* June 19, 1992

*Description of amendment request:* The proposed amendment changes Technical Specification 4.7.9 to incorporate an alternate snubber visual inspection schedule as provided by Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve an increase in the probability or consequences of any previously evaluated accident. This amendment provides an alternate schedule for the visual inspection of snubbers which maintains the same confidence level in the snubbers ability to operate within the specified acceptance level. The accident analyses are therefore unaffected by this proposal.

(2) Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident previously evaluated since the confidence level in the number of snubbers available has not been changed.

(3) Would not involve a significant reduction in a margin of safety.

The proposed amendment provides an alternate schedule for the visual inspection of snubbers which maintains the same confidence level in the snubbers ability to operate within a specified acceptance level. The margin of safety is therefore unaffected by this proposal.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

*Local Public Document Room location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

*Attorney for licensee:* Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

*NRC Project Director:* Suzanne C. Black

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of amendment request:* December 19, 1991

*Description of amendment request:* The proposed amendment would revise the Technical specifications by incorporating extended allowable out-of-service times and surveillance test intervals for reactor protection system, isolation actuation system, emergency core cooling system and control rod block function instrumentation. Additional changes for clarity and consistency were also proposed.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not result in any physical or functional changes to the associated instrumentation. Consequently, the probability of occurrence of an accident previously evaluated in the [Final Safety Analysis Report] FSAR is not increased.

The proposed changes to instrument [allowable out-of-service times] AOTs and [surveillance test intervals] STIs have been evaluated and found to have an insignificant impact on the probability of instrument failure. Further, when the resulting reduction in test-related plant scrams and test-induced wearout of safety-related equipment is considered, the net effect of these changes is to reduce the consequences of any previously evaluated accident.

The proposed elimination of the [average power range monitors] APRM downscale trip signal for the [reactor protection system] RPS logic does not affect the consequences of any accidents evaluated in the FSAR. The downscale trip provides a scram signal only in cases of operator error during startup or power descent. In these cases, such errors would be covered by the remaining neutron monitoring trip functions.

The proposed elimination of instruments which provide an annunciator function only has no effect on the consequences of any accident evaluated in the FSAR, since there are no automatic trip functions involved.

The proposed change in format to the [limiting conditions for operation] LCOs,

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surveillance requirements and instrument tables does not affect the consequences of any accident evaluated in the FSAR. The proposed format provides significant improvements in the overall clarity and consistency of the associated TS. The incorporation of Applicable Operating Modes is consistent with [standard technical specifications] STS and provides a more precise correlation with the conditions for which the trip functions are required.

The use of the "minimum operable channels per trip function" requirements for [emergency core cooling system] ECCS and Control Rod Block instrumentation only serves to improve clarity and does not affect the level of protection required.

The use of STS action statements in several instrument tables causes some actions to be more restrictive and allow other actions to be less restrictive than presently required by TS. This ensures that an appropriate amount of urgency is maintained without creating the need for unnecessary plant transients or creating an environment conducive to operator error. The proposed action statements have no effect on the consequences of any accident evaluated in the FSAR.

The proposed addition of several trip functions to the instrument tables increases the level of assurance that appropriate compensatory actions are taken should these functions become inoperable. Since the availability of protective instrumentation is maintained, there is no adverse effect on the consequences of any accident evaluated in the FSAR.

The proposed corrections to the number of channels and/or trip systems for specific instruments provide clarification only and do not represent a reduction in the level of instrumentation required. There is therefore no effect on the consequences of any accidents evaluated in the FSAR.

The proposed changes to the Bases of Sections 3.1 and 3.2 reflect the above changes and include various editorial corrections. These changes have no affect [sic] on the consequences of previously evaluated accident.

2. The proposed changes do not result in any physical or functional changes to the affected instrumentation and therefore do not create the possibility of a new or different kind of accident.

3. The proposed changes to AOTs for the instruments addressed in the LTRs [licensing topical reports] provide additional time for making repairs and performing tests. The lack of AOTs in the current TS creates a hurried atmosphere during repairs and test which could cause an increased risk of error. Also, placing an individual channel in a tripped condition when no AOT exists, as in the current TS, increases the potential of an inadvertent scram. The proposed AOTs provide realistic times to complete the required actions without increasing the overall instrument failure frequency. Therefore, there is no reduction in the margin of safety.

The incorporation of extended STIs results in insignificant changes in the probability of instrument failure as demonstrated by the LTRs. These changes, when coupled with the reduced probability of test-induced plant transients and equipment failure, result in an overall increase in the margin of safety.

The proposed elimination of the APRM downscale trip does not affect the margin of safety as defined in the technical specifications or the FSAR. No credit is taken for the APRM downscale scram for any of the accidents analyzed in the FSAR.

The proposed elimination of several instruments which provide an annunciator function only does not effect [sic] any margin of safety since there are no automatic trip functions involved.

The proposed change in format to the LCOs, surveillance requirements and instrument tables does not affect the margin of safety. The incorporation of Applicable Operating Modes provides a more precise correlation with the conditions for which the trip functions are required. The use of "minimum operable channels per trip function" requirement for ECCS and Control Rod Block instrumentation improves clarity without affecting the level of protection required. Consequently, there is no reduction in the margin of safety.

The proposed incorporation of the STS action statements into several instrument tables will in some cases cause actions to be more restrictive and in other cases cause actions to be less restrictive than presently required by TS. This will ensure that the appropriate amount of urgency is maintained without creating the need for unnecessary plant transients or creating an environment conducive to operator error. In all cases the actions provide guidance that is more specific with regard to the circumstances addressed. Consequently, there is no reduction in the margin of safety.

The proposed addition of several trip functions to the instrument tables increases the level of assurance that appropriate compensatory actions aretaken should these functions become inoperable. Since the availability of protective instrumentation is maintained, there is no reduction in the margin of safety.

The proposed corrections to the number of channels and/or trip systems for specific instruments provide clarification only and do not represent a reduction in the level of instrumentation required. These corrections therefore have no affect [sic] on the margin of safety.

The proposed changes to the TS Bases of Section 3.1 and 3.2 reflect the above changes and include various editorial corrections. These changes have no effect on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

*Attorney for licensee:* Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* John N. Hannon

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of amendment request:* May 28, 1992

*Description of amendment request:* The proposed amendment would change the Technical Specifications by reducing the testing of the operable diesel generator when the other diesel generator is inoperable.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not increase the probability or consequences of an accident. Reducing the amount of required testing does not result in any change to the input assumptions or parameters used in any DAEC accident analysis and therefore does not negatively affect any accident scenario. In fact, it will serve to enhance the diesel generator's ability to respond during accident conditions.

2. The proposed change does not result in any physical change to the plant configuration and therefore cannot create the possibility of any new or different type of accident.

3. The margin of safety as defined by TS will not be reduced, since the proposed change makes no modifications to plant equipment and should actually increase the overall availability of the diesel generators. The diesel generators will be in a "test" condition for less time and will experience less wear-related degradation. The chances for human error will also be decreased. This will allow the diesel generators to better fulfill their design function.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

*Attorney for licensee:* Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* John N. Hannon



**Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California**

*Date of amendment requests:* July 9, 1992 (Reference LAR 92-04)

*Description of amendment requests:* The proposed amendments would revise Facility Operating License Nos. DPR-80 and DPR-82 for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to change the expiration date of the Unit 1 license from April 23, 2008, to September 22, 2021, and the expiration date for the Unit 2 license from December 9, 2010, to April 26, 2025. These proposed expiration dates would allow for 40 years of operation as permitted by 10 CFR 50.51.

The present operating license terms for Diablo Canyon are based on NRC policy in effect prior to the 1982 determination by the Commission that the 40-year term of operation may begin upon issuance of the first operating license, rather than upon issuance of the construction permit. Therefore, the present operating license terms for Diablo Canyon commence with the dates of issuance of the construction permits for Units 1 and 2, April 23, 1968, and December 9, 1970, respectively. Accordingly, the expiration date for the Unit 1 operating license is April 23, 2008, and the expiration date for the Unit 2 operating license is December 9, 2010.

Since 1982, the Commission has accepted and approved requests to amend existing operating licenses to change the expiration dates and recover the time between the effective dates of the construction permit and the first operating license. More than 50 such license amendments have been granted by the Commission. Consistent with current NRC policy, the proposed 40-year term start dates for Diablo Canyon are September 22, 1981, for Unit 1 and April 26, 1985, for Unit 2, which correspond to the effective dates of the fuel-load/low-power operating licenses for each unit.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed 40-year operating license terms do not affect the probability or consequences of an accident previously evaluated since the requested extensions entail no physical change in the plant equipment or operating procedures and the FSAR Update safety analyses are based on 40-year plant operation.

Surveillance and maintenance practices, as well as other programs such as environmental qualification of equipment, ensure timely identification and correction of any degradation of safety-related plant equipment. The long term integrity of the reactor vessels has been recently reevaluated using currently acceptable NRC calculational methods and best available DCPP-specific data. The evaluation results demonstrate, as before, that both reactor vessels are safe for normal operations in excess of 40 years. Also, the offsite radiation exposures resulting from postulated accidents have been reanalyzed using population projections for the proposed 40-year operating license terms. The calculated exposures are not significantly different from those documented in the FSAR Update and are well within 10 CFR 100 guideline values.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The possibility of a new or different kind of accident is not created by the proposed 40-year operating license terms since at least 40-years operation was assumed in the design and construction of DCPP Units 1 and 2. The plant Maintenance Program is designed to both maintain and determine the need to replace safety-related components. Thus, any degradation that might possibly create a new or different kind of postulated accident would be detected and corrected before the occurrence of such an event.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed 40-year operating license terms do not involve a significant reduction in a margin of safety since degradation of safety-related equipment will be identified and corrected by ongoing surveillance and maintenance practices. Existing programs, routine maintenance, and compliance with Technical Specifications assure that an adequate margin of safety is maintained. These activities will remain in effect for the duration of the operating licenses.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Local Public Document Room location:* California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

*Attorney for licensee:* Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

*NRC Project Director:* Theodore R. Quay

**Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon**

*Date of amendment request:* June 26, 1992

*Description of amendment request:* The licensee has proposed to revise Technical Specification Section 6.0, Administrative Controls, to clarify the responsibilities of the Vice President and Chief Nuclear Officer and responsibilities of the Vice President, Nuclear. Additionally, the licensee has proposed to correct several editorial errors. These errors consist of misspelled words, improper capitalization of terms, omitted words, an omitted definition, improper punctuation, and errors introduced by overlapping amendments.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. These changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change in management reporting relationships will provide for increased senior management attention to each of the functional areas in the Trojan Nuclear Plant (TNP) organization. In particular, the Vice President, Nuclear will be able to devote direct day-to-day attention to Plant operations. The Vice President, Nuclear is located at the Trojan site and is responsible for the functional areas directly related to day-to-day operation of the facility. The Vice President and Chief Nuclear Officer retains responsibility for overall nuclear safety.

This change does not affect Plant operating procedures nor does it affect any systems, structures or components and, therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The editorial changes are purely administrative in nature and do not affect the way systems or components are operated or maintained. The editorial corrections do not change the intent of the Technical Specifications and, therefore, do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. These changes do not create the possibility of a new or a different kind of accident from any accident previously evaluated.

The change in management reporting relationships will provide for increased

senior management attention to each of the functional areas in the Trojan Nuclear Plant organization. In particular, the Vice President, Nuclear will be able to devote direct day-to-day attention to Plant operations. The Vice President, Nuclear is located at the Trojan site and is responsible for the functional areas directly related to day-to-day operation of the facility. The Vice President and Chief Nuclear Officer retains responsibility for overall nuclear safety.

This change does not affect Plant operating procedures nor does it affect any systems, structures or components and, therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The editorial changes are purely administrative in nature and do not affect the way systems or components are operated or maintained. The editorial corrections do not change the intent of the Technical Specifications and, therefore, do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. These changes do not involve a significant reduction in a margin of safety.

The change in management reporting relationships will provide for increased senior management attention to each of the functional areas in the Trojan Nuclear Plant organization. In particular, the Vice President, Nuclear will be able to devote direct day-to-day attention to Plant operations. The Vice President, Nuclear is located at the Trojan site and is responsible for the functional areas directly related to day-to-day operation of the facility. The Vice President and Chief Nuclear Officer retains responsibility for overall nuclear safety.

This change does not affect Plant operating procedures nor does it affect any systems, structures or components and, therefore, does not involve a significant reduction in a margin of safety.

The editorial changes are purely administrative in nature and do not affect the way systems or components are operated or maintained. The editorial corrections do not change the intent of the Technical Specifications and, therefore, do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

*Attorney for licensees:* Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

*NRR Project Director:* Theodore R. Quay

**Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey**

*Date of amendment request:* June 4, 1992

*Description of amendment request:* This amendment request would change the Technical Specifications (TS) to delete the Operations Manager as a position requiring an SRO license and delineate the requirements for the Operations Manager position. These proposed changes would require the Operations Manager to either hold an SRO license or to have held an SRO license on a similar facility.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

An individual selected to fill the [Operations Manager] OM position will have met current industry guidance on the selection, qualification and training of personnel for nuclear power plants in accordance with ANSI/ANS-3.1-1987 and as specified in [the] Technical Specifications.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The deletion of the requirement for the OM to hold a SRO license, unlike a procedure or design change, does not constitute a potential new accident precursor.

3. Will not involve a significant reduction in a margin of safety.

Operations Department personnel will continue to be directly managed by a SRO licensed individual.

Candidates who are not currently holding SRO licenses and who are selected for the OM position must meet the education, experience and training requirements of ANSI N18.1-1971 and the special requirements delineated in Technical Specifications.

[This change will significantly reduce the time the OM spends displaced from the position's managerial activities, therefore reducing the amount of time the Operating Engineer (OE) is required to fulfill the responsibilities of both positions.] Additionally, this change is expected to have an overall positive impact on safety by enhancing both the OM's and OE's ability to effectively carry out their primary responsibilities and by improving the consistency and continuity of managerial oversite for the Operations Department.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

*Attorney for licensee:* M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

*NRC Project Director:* Charles L. Miller

**Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey**

*Date of amendment request:* June 15, 1992

*Description of amendment request:* This amendment request would change the Technical Specifications (TS) to provide a six-hour allowable-out-of-service time (AOT) for the discharge line "keep filled" alarm instrumentation associated with the Low Pressure Coolant Injection (LPCI) system and Core Spray System (CSS).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a physical or procedural change to any structure, component or system that significantly affects the probability or consequences of any accident or malfunction or equipment important to safety previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The proposed change will provide a reasonable period of time to accomplish required surveillance testing while assuring continued operability of redundant instrumentation.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision will not involve any physical changes to the plant. Additionally, the AOT will apply only if redundant instrumentation remains operable thereby ensuring that failure of the affected "keep fill" system will still be annunciated.

3. Will not involve a significant reduction in a margin of safety.

The proposed AOT will reduce radiological exposure of plant personnel. Insofar as the AOT will apply only for surveillance testing and only if redundant annunciation remains operable, this change can be made with no significant change in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

*Attorney for licensee:* M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

*NRC Project Director:* Charles L. Miller

**Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama**

*Date of amendments request:* May 13, 1991

*Description of amendments request:* The amendments would modify the Technical Specifications (TS) for the overpressure protection systems. Theallowable outage time (AOT) for one inoperable residual heat removal (RHR) relief valve with one or more of the reactor coolant system (RCS) cold leg temperatures less than or equal to 310 degrees Fahrenheit is being decreased from 7 days to 24 hours for water-solid conditions. The required AOT for low temperature conditions other than water-solid will remain at 7 days.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed modification to the AOT for one inoperable RHR relief valve with the RCS in a water-solid condition does not significantly increase the probability or consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report]. The proposed reduction in AOT is an enhancement to the existing technical specification, and affords increased protection for an LTOP [low temperature overpressure] event postulated during water-solid operation. As previously discussed, this reduction in AOT is being proposed to assure proper overpressure protection is afforded for the most vulnerable situation (water-solid operation). This modification does not directly initiate an accident. Since no changes in relief valve design, setpoint or operation are involved, the probability of brittle reactor vessel failure has not significantly increased by the proposed change. The consequences of accidents previously evaluated in the FSAR are unaffected by this proposed change.

2. The proposed change does not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. Cold overpressure events have been analyzed and their bases are presented in the Bases to Technical Specification 3/4.4.10. The reduction in the allowed outage time for one inoperable RHR relief valve will not alter the conclusion of the cold overpressure analysis. This technical specification change enhances the plant ability to prevent an overpressure event by applying greater restriction upon operations during times of highest risk (i.e., water-solid conditions). No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed change. The proposed technical specification modification does not challenge the performance or integrity of any safety-related systems. Therefore, the possibility of a new or different kind of accident is not created.

3. The proposed technical specification change does not involve a significant reduction in the margin of safety. The proposed reduction in AOT for water solid conditions assures proper protection is afforded for all modes of low temperature operation. The margin of safety from an accident is improved by significantly limiting the time allowed with one train of a protection feature inoperable during the time that the plant is in a vulnerable configuration. The LTOP basis for one RHR relief valve capacity has not changed. Therefore there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

*Attorney for licensee:* James H. Miller, III, Esq., Balch and Bingham, P.O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

*NRC Project Director:* Elinor G. Adensam

**TU Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas**

*Date of amendment request:* April 26, 1991

*Description of amendment request:* The proposed amendment would revise Unit 1 Technical Specifications Sections 3.3.1/4.3.1 and 3.3.2/4.3.2 and associated Bases to relax the allowed outage times (AOT) and surveillance test intervals (STI) for analog channels shared by the reactor protection system (RPS) and the engineered safety features actuation system (ESFAS).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

The determination that the results of the proposed changes are acceptable was established in the Safety Evaluation Report (SER) and Supplemental SER (SSER) prepared for WCAP-10271 Supplement 2 and WCAP-10271 Supplement 2, Revision 1 (issued by letters dated February 22, 1989 and April 30, 1990). Implementation of the proposed changes is expected to result in an acceptable increase in total reactor protection system and engineered safety features actuation system unavailability. This increase results in a small increase in core damage frequency (CDF) and public health risk. The values determined by the Westinghouse Owners Group (WOG) and presented in the above WCAP for the increase in CDF were verified by Brookhaven National Laboratory as part of an audit and sensitivity analyses for the NRC staff. Based on the small value for the increase in the CDF compared to the range of uncertainty in the CDF, the increase is considered acceptable. The extension of the WOG relaxations in AOTs and STIs to the refueling water storage tank (RWST) level has been separately shown to be bounded by the increased CDF resulting from relaxation of the Steam Generator Level channel AOTs and STIs (included in the WCAP). Therefore, the proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve hardware changes and do not result in a change in the manner in which the protection system provides plant protection. No change is being made which alters the functioning of the protection system. Rather the likelihood or probability of the protection system functioning properly is affected as described above. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined.

The impact of reduced testing other than addressed above is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. Experience has shown that the initial uncertainty assumptions are valid for reduced testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety due to:

a. Less frequent testing which will result in fewer inadvertent reactor trips and actuations of the engineered safety features actuation system components.

b. Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation. This is due to less frequent distraction of the operator and shift supervisor to attend to instrumentation testing.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

*Attorney for licensee:* George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

*NRC Project Director:* Suzanne C. Black

**Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio**

*Date of amendment request:* April 30, 1992

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) 5.3.2, "Reactor Core - Control Rods," to allow the use of extended life control rods, and allow the use of different Inconel absorber material for the axial power shaping rods.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated because the physical design parameters for the extended life control rod assemblies (ELCRAs) assure that there is no increase in the probability of a stuck control rod assembly, the mechanical and thermal-hydraulic analyses for the ELCRAs show that acceptable performance of the control rods will be maintained, and the rod worths for each fuel cycle are evaluated as part of the reload analyses.

2. The proposed change will not create the possibility of a new or different kind of accident from any previously evaluated accident because fuel performance parameters are not being changed, and because Technical Specifications concerning the nuclear heat flux hot channel factor, the nuclear enthalpy rise hot channel factor, the quadrant power tilt, and the departure from nucleate boiling parameters are not being changed.

3. The proposed change will not involve a significant reduction in a margin of safety because the mechanical and thermal-hydraulic analyses for the ELCRAs show that acceptable performance of the control rods will be maintained, and the rod worths for each fuel cycle are evaluated as part of the reload analyses.

Based on this review, it appears that the three standards of 50.92(c) are statisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606

*Attorney for licensee:* Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037

*NRC Project Director:* John N. Hannon

**Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia**

*Date of amendment request:* June 1, 1992

*Description of amendment request:* The proposed changes (1) modify the definition of containment integrity and establish Limiting Conditions for Operation and Action Statements for containment isolation systems consistent with the Standard Technical Specifications (NUREG-0452), (2) eliminate the requirement for containment integrity during positive reactivity additions by rod drive motion or boron dilution, (3) eliminate the requirement for containment integrity with the head unbolted and less than 5% shutdown margin, (4) remove the containment isolation valve tables from the Technical Specifications in accordance with Generic Letter 91-06, "Removal of Component Lists From Technical Specifications," and (5) include administrative changes to achieve consistency.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the Surry Power Station in accordance with the proposed changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of any accident previously evaluated.

• Providing Action Statements for breaches of containment integrity does not change the plant design or modify any component, system, or plant operation. The proposed Action Statements and Surveillance Requirements are consistent with the Standard Technical Specifications. The proposed actions, allowed outage times, and surveillance requirements have no effect on the probability of occurrence or the consequences of previously analyzed accidents.

• Revising the Action Statements when the internal containment air partial pressure is outside its operating limits does not change the plant design or modify any component, system, or plant operation. Providing an allowed outage time of one hour in lieu of continued operation with air partial pressure within +0.25 psig of the operating limit is considered to be conservative, in that it prohibits operation for an extended period of time in such a condition. The proposed one hour allowed outage time is consistent with the Standard Technical Specifications. The revised allowed outage time will have no effect on the probability of occurrence or the consequences of previously analyzed accidents. Rather, modifying the basis for the action from a pressure tolerance to allowed outage time is likely to reduce the time the plant can operate in the Action Statement.

• Modifying the definition of containment integrity and clarifying the containment isolation requirements for refueling operations [does] not impact plant design or change system or plant operation. Therefore, operation with containment integrity established in accordance with the modified definition will not increase the probability of occurrence or consequences of any accident previously evaluated.

• Eliminating the requirements for containment integrity 1) when the reactor head is unbolted with less than a 5% shutdown margin and 2) for positive reactivity additions due to boron dilution or rod movement in cold shutdown does not impact plant design or change plant or system operation.

Boron dilution and an uncontrolled rod withdrawal from a subcritical condition are the positive reactivity accidents analyzed in

cold shutdown and refueling shutdown conditions. The provision of containment integrity has no impact on the probability of either event occurring. An inadvertent boron dilution during cold shutdown or refueling shutdown is precluded by isolating unborated water sources in accordance with Technical Specification 3.2.F. Furthermore, fuel damage does not occur due to an uncontrolled rod withdrawal from cold shutdown. Therefore, removing the requirement for containment integrity with less than a 5% shutdown margin and the reactor head unbolted and for planned positive reactivity additions due to rod motion or boron dilution also will not increase the consequences of any previously analyzed accident.

• Implementing various administrative changes, which include removing the containment isolation valve tables, eliminating the redundant requirements on Figure 3.8.1, capitalizing the defined words and changing the acronyms from FSAR to UFSAR does not impact plant design or operation. The administrative changes will not increase the probability of occurrence or consequences of any accident previously evaluated.

2. Create the possibility of a new or different type of accident from any accident previously evaluated. The plant's design and operation are not being changed. Providing Action Statements for breaches of containment integrity, modifying the definition of containment integrity, eliminating the requirement for containment integrity in cold shutdown and refueling shutdown, clarifying the containment isolation requirements for refueling operations, clarifying the containment air partial pressure requirements, and implementing various administrative changes do not generate any new accident precursors. Thus, no new or different kind of accident is being created.

3. Involve a significant reduction in a margin of safety. Physical plant modifications, or changes in plant operation are not being made. The Technical Specification requirements for containment integrity/isolation are being clarified and appropriate Action Statements and allowed outage times are being established for operation with the breach of containment integrity. Although the requirements for containment integrity 1) when the reactor head is unbolted and the shutdown margin less than 5% Delta k/k and 2) during positive reactivity additions are being removed, both analyzed accident scenarios (i.e., uncontrolled rod withdrawal from subcritical conditions and inadvertent boron dilution) can be precluded or terminated by automatic or manual operator actions prior to any challenge to fuel cladding integrity. The accident analyses do not assume containment integrity to be established for the accidents analyzed in the cold shutdown and refueling shutdown conditions. These administrative changes have no impact on plant operation or the accident analysis assumptions and results. The existing assumptions used in the accident analysis are not being altered. Therefore, the margin of safety will not be reduced by any of the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

*NRC Project Director:* Herbert N. Berkow

**Previously Published Notices of Consideration of Issuance of Amendennts to Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing**

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration. For details, see the individual notice in the **Federal Registeron** the day and page cited. This notice does not extend the notice period of the original notice.

**Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut**

*Date of amendment request:* June 25, 1992

*Description of amendment request:* The proposed amendment would modify Technical Specifications to permit a temporary relaxation of the containment integrity specification to allow the service water side of the No. 4 containment air recirculation fan heat exchanger and motor heat exchanger to be cleaned while the plant remains at power.

*Date of publication of individual notice in* **Federal Register:** July 7, 1992 (57 FR 29905)

*Expiration date of individual notice:* August 6, 1992

*Local Public Document Room location:* Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

**Notice of Issuance of Amendment to Facility Operating License**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

**Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland**

*Date of application for amendment:* May 1, 1992

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*Brief description of amendment:* The amendment revises Technical Specifications (TS) 4.6.2.1.b.1, 4.6.2.1.b.2, 4.6.2.2.b, and 4.6.3.1.d.2. The previous TS identified the specific test signals to be used when testing the containment spray valves and pumps, the containment fan coolers, and the containment iodine filter trains. This revision changes the specific test signal to indicate that the appropriate Engineered Safety Feature Actuation System test signal be used during the required surveillance testing.

*Date of issuance:* June 30, 1992

*Effective date:* June 30, 1992

*Amendment No.:* 172

*Facility Operating License No. DPR-53:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 27, 1992 (57 FR 22260) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1992. No significant hazards consideration comments received: No

*Local Public Document Room location:* Calvert County Library, Prince Frederick, Maryland 20678.

**Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois**

*Date of application for amendments:* October 14, 1991, as supplemented February 6, 1992.

*Brief description of amendments:* Revision of Technical Specifications to reflect a modification to the fast acting solenoid valves which initiate rapid closure of the turbine control valves. The new design uses a pressure switch, rather than a limit switch, to initiate a reactor scram.

*Date of issuance:* June 29, 1992

*Effective date:* June 29, 1992

*Amendment Nos.:* 115 and 112

*Facility Operating License Nos. DPR-19 and DPR-25.* The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 27, 1991 (56 FR 60114) The February 6, 1992, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 1992. No significant hazards consideration comments received: No

*Local Public Document Room location:* Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

**Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois**

*Date of application for amendments:* July 10, 1991, as supplemented November 27 and December 30, 1991, and February 14, April 10, April 16, April 20, April 23 and May 26, 1992.

*Brief description of amendments:* The amendments revise the Technical Specifications (TS) to support the use of VANTAGE 5 fuel, in combination with the present Optimized Fuel Assembly core, and ultimately as the entire core; and changes license condition 2.C.(4) to delete reference to N-1 loop operation for Zion Nuclear Power Station, Units 1 and 2. The amendments also remove cycle specific parameter limits from the TSs and relocate them to a Core Operating Limits Report.

*Date of issuance:* June 26, 1992

*Effective date:* June 26, 1992

*Amendment Nos.:* 139 and 128

*Facility Operating License Nos. DPR-39 and DPR-48.* The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 1, 1991 (56 FR 20029) and September 4, 1991 (56 FR 43805). The November 27 and December 30, 1991, and February 14, April 10, April 16, April 20, April 23 and May 26, 1992, submittals provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The July 10, 1991, submittal superseded the March 27, 1991 submittal. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 26, 1992. No significant hazards consideration comments received: No

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

**Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan**

*Date of amendment request:* May 24, 1988 as supplemented February 27, 1991

*Description of amendment request:* This amendment changes the Fermi-2 Technical Specifications (TS) based on the guidance provided by the NRC staff in Generic Letter (GL) 87-09 dated June 4, 1987. Fermi-2 Operating License Amendment No. 31 of March 9, 1989, approved the proposed changes to TS 4.0.3 and 4.0.4. This amendment addresses the remaining change to specification 3.0.4. The proposed revision to specification 3.0.4 defines when its provisions apply; i.e., when the effected action statements permit continued operation for an unlimited period of time, instead of defining when the provisions of the specification do not apply.

*Date of issuance:* June 25, 1992

*Effective date:* June 25, 1992 with full implementation within 60 days.

*Amendment No.:* 83

*Facility Operating License No. NPF-43.* The amendment revises the Technical Specifications

*Date of initial notice in* **Federal Register:** June 29, 1988 (53 FR 24509) and May 13, 1991 (57 FR 20510). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of application for amendments:* April 13, 1992, as supplemented June 8, 1992

*Brief description of amendments:* The amendments revise Technical Specification 3.6.5.5 to allow a pressurizer enclosure hatch between the upper and lower containment volumes to be open for up to 6 hours, instead of 1 hour, to facilitate inspections of components such as PORV block valves.

*Date of issuance:* June 26, 1992

*Effective date:* June 26, 1992

*Amendment Nos.:* 96, 92

*Facility Operating License Nos. NPF-35 and NPF-52:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 13, 1992 (57 FR 20510) The June 8, 1992, letter provided clarifying information that confirmed the staff's understanding of the scope of work activities to be performed during the revised 6 hours interval and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 26, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730



**Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One,Unit No. 1, Pope County, Arkansas**

*Date of amendment request:* June 27, 1991, as supplemented December 20, 1991

*Brief description of amendment:* The amendment revised the Arkansas Nuclear One, Unit 1 (ANO-1) Technical Specifications (TSs) based onthe recommendations provided by the staff in Generic Letter 87-09 related to the applicability of limiting conditions for operation and the surveillance requirements of TS 3.0 and 4.0.

*Date of issuance:* July 7, 1992

*Effective date:* July 7, 1992

*Amendment No.:* 161

*Facility Operating License No. DPR-51.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 21, 1991 (56 FR 41581) The additional information contained in the supplemental letter dated December 20, 1991, was clarifying in nature and, thus, within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

**Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida**

*Date of application for amendment:* February 13, 1992, as supplemented May 6 and June 4, 1992.

*Brief description of amendment:* The amendment revises the fuel assembly description in Technical Specification 5.3.1 to permit the use of stainless steel rods to replace defective fuel rods.

*Date of issuance:* June 25, 1992

*Effective date:* June 25, 1992

*Amendment No.:* 143

*Facility Operating License No. DPR-72.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 1, 1992 (57 FR 11109) The May 6 and June 4, 1992 letters provided additional information which did not alter the staff's initial no significant hazard consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

**Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida**

*Date of application for amendment:* February 27, 1992

*Brief description of amendment:* This amendment revises TSs 3.1.3.3 and 4.1.3.3 in support of installation of the dual channel control rod position indicator.

*Date of issuance:* June 25, 1992

*Effective date:* June 25, 1992

*Amendment No.:* 144

*Facility Operating License No. DPR-72.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 15, 1992 (57 FR 13129) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 1992. No significant hazards consideration comments received: No.

*Local/ Public Document Room location:* Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia**

*Date of application for amendments:* November 11, 1991, as supplemented January 23, 1992

*Brief description of amendments:* The amendments change surveillance requirements in Technical Specifications (TSs) 3/4.7.6, 3/4.7.7, 3/4.9.12, and associated TS Bases, to revise the minimum heater capacity, and the relative humidity testing requirements for the control room emergency filtration system (CREFS), the piping penetration area filtration and exhaust systems (PPAFES), and the fuel handling building post accident filter system (FHBPAFS).

*Date of issuance:* July 9, 1992

*Effective date:* July 9, 1992

*Amendment Nos.:* 52 and 31

*Facility Operating License Nos. NPF-68 and NPF-81:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 22, 1992 (57 FR 5028) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 9, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

**Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York**

*Date of application for amendment:* April 24, 1992

*Brief description of amendment:* The amendment revises Technical Specification 3.4.3/4.4.3 (Access Control) to: (a) define the operating conditions under which the specification applies, (b) include an allowable outage time for continued plant operation while restoration of secondary containment integrity is underway, (c) provide action statements associated with the loss of secondary containment due to access control, and (d) provide periodic surveillance requirements for access doors other than the core spray and containment spray pump compartments.

*Date of issuance:* June 29, 1992

*Effective date:* June 29, 1992

*Amendment No.:* 129

*Facility Operating License No. DPR-63:* Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 27, 1992 (57 FR 22264) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1992 No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County,California**

*Date of application for amendments:* June 5, 1991 (License Amendment Request LAR 91-05)

*Brief description of amendments:* These amendments revised the combined Technical Specifications for the Diablo Canyon Power Plant, Unit Nos. 1 and 2, to relocate certain plant-specific parameter limits to the Core Operating Limits Report in accordance with the recommendations of NRC Generic Letter 88-16.

*Date of issuance:* July 1, 1992

*Effective date:* July 1, 1992

*Amendment Nos.:* 71 and 70

*Facility Operating License Nos.* DPR-80 and DPR-82: The amendments revised the Technical Specifications.

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*Date of initial notice in* **Federal Register:** August 7, 1991 (56 FR 37587) The additional information contained in the supplemental letter dated May 19, 1992, served to clarify the amendments, was within the scope of the initial notice, and did not affect the Commission's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 1, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

**Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of application of amendments:* January 31, 1992, as supplemented by letters dated April 28, 1992 and June 22, 1992.

*Brief description of amendments:* These amendments change the Technical Specification (TS) Section 4.5.F.1 Surveillance Requirements for the Emergency Diesel Generators. The revised Surveillance Requirement specifies that in the event that a diesel generator becomes inoperable for any reason other than preplanned preventative maintenance or testing, the operable diesel generators shall be demonstrated to be operable immediately and daily thereafter.

The letter dated April 28, 1992 clarified several of the cross references that the licensee had used in the January 31, 1992 submittal to compare the current TS to the proposed TS. In addition, the April 28, 1992 supplement provided revised TS pages that corrected several typographical errors that had been included in the January 31, 1992 submittal. The letter dated April 28, 1992 did not change the substance of the original change request.

The supplement dated June 22, 1992, modified the implementation schedule of the January 31, 1992, submittal. In the January 31, 1992 letter, the licensee indicated that it would not be ready to implement the revised procedures to support the amendment prior to July 31, 1992. Subsequent discussions with the staff determined that the licensee would not be ready to implement the revised procedures until January 1993. The staff expressed concern that the delayed implementation could subject the EDGs to unnecessary wear and tear and could result in unnecessarily aligning EDGs to the general power distribution grid during the course of a series of scheduled maintenance overhauls planned for the EDGs through the summer and fall of 1992.

The licensee then modified the January 31, 1992 request by requesting that the modifications to the Surveillance Requirements for an inoperable diesel generator be approved and implemented in advance of the remainder of the changes included in the January 31, 1992 submittal. The technical basis for the change included in this amendment is included in the January 31, 1992 and June 22, 1992 letters and was evaluated by the staff in the Safety Evaluation dated July 6, 1992.

*Date of issuance:* July 6, 1992
*Effective date:* July 6, 1992
*Amendments Nos.:* 168 and 172
*Facility Operating License Nos. DPR-44 and DPR-56:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 29, 1992 (57 FR 20515) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 6, 1992. No significant hazards consideration comments received: No

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

**Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York**

*Date of application for amendment:* January 8, 1992, as supplemented February 4, 1992

*Brief description of amendment:* The amendment revised Technical Specifications Section 3.11 (Moveable In-Core Instrumentation) to specify 38 as the minimum number of detector guide thimbles required operable. The amendment also corrected administrative and typographical errors in Section 3.11.

*Date of issuance:* June 25, 1992
*Effective date:* June 25, 1992
*Amendment No.:* 122
*Facility Operating License No. DPR-64:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 4, 1992 (57 FR 7813) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 1992. No significant hazards consideration comments received: No

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

**Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California**

*Date of application for amendment:* May 1, 1992

*Brief description of amendment:* The amendment increases the allowed number of emergency diesel engine start-stop cycles between crankshaft inspections from 50 to 70. The amendment also includes clarifications and editorial changes.

*Date of issuance:* June 29, 1992
*Effective date:* June 29, 1992
*Amendment No.:* 147
*Facility Operating License No. DPR-13:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 27, 1992 (57 FR 22286) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Main Library, University of California, P. O. Box 19557, Irvine, California 92713

**Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California**

*Date of application for amendment:* May 1, 1992 (PCN 255) and supplemented June 30, 1992

*Brief description of amendment:* The amendment revises the Technical Specifications Section 3.9, "MODERATOR TEMPERATURE COEFFICIENT (MTC)," Section 3.3.3. "MINIMUM BORON CONCENTRATION IN THE REFUELING WATER STORAGE TANK (RWST) AND SAFETY INJECTION (SI) LINES AND MINIMUM RWST WATER VOLUME," and Section 3.5.2, "CONTROL ROD INSERTION LIMITS." Technical Specification 3.9 involves a reduction to the current end-of-cycle MTC limit. To accommodate this revision to the MTC value, changes are also necessary to Technical Specification limits for safety injection line minimum boron concentration and shutdown margin.

*Date of issuance:* July 1, 1992
*Effective date:* July 1, 1992
*Amendment No.:* 148



*Facility Operating License No. DPR-13:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 27, 1992 (57 FR 22286) The supplemental information contained in letter dated June 30, 1992, was clarifying in nature and thus within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 1, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Main Library, University of California, P. O. Box 19557, Irvine, California 92713

**Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama**

*Date of application for amendment:* May 13, 1992

*Brief description of amendment:* The amendment revises Technical Specifications Table 3.2.C and 3.5.K/4.5.K to allow continued power operation when the Rod Block Monitor (RBM) is inoperable and the Minimum Critical Power Ratio (MCPR) is within specified limits. Technical Specification Bases section 3.2 is also revised to describe the basis for the proposed change. The amendment is a temporary change which will expire at the end of the current Browns Ferry Unit 2 fuel cycle (Cycle 6).

*Date of issuance:* July 2, 1992
*Effective date:* July 2, 1992
*Amendment No.:* 202
*Facility Operating License No. DPR-52:* Amendment revises the technical specifications.

*Date of initial notice in* **Federal Register:** May 22, 1992 (57 FR 21833) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 2, 1992. No significant hazards consideration comments received: None

*Local Public Document Room location:* Athens Public Library, South Street, Athens, Alabama 35611.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendment:* April 12, 1991 (TS 89-30)

*Brief description of amendment:* The amendments incorporate changes to the Technical Specifications to incorporate the balance of the Regulatory Guide 1.97 instrumentation involving the post-accident monitoring and containment isolation valves instrumentation.

*Date of issuance:* July 9, 1992
*Effective date:* July 9, 1992
*Amendment No.:* 159 - Unit 1; 149 - Unit 2
*Facility Operating License Nos. DPR-77 and DPR-79:* Amendments revise the technical specifications.

*Date of initial notice in* **Federal Register:** May 15, 1991 (56 FR 22478) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 9, 1992 No significant hazards consideration comments received: None

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

**Texas Utilities Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit No. 1, Somervell County, Texas**

*Date of amendment request:* November 27, 1991, as supplemented by letters dated May 4 and May 27, 1992.

*Brief description of amendment:* The amendment revises the Comanche Peak Steam Electric Station, Unit 1 Technical Specifications by including additional provisions for power-operated relief valves (PORVs) and block valve reliability and low temperature overpressure protection. The amendment is in response to Generic Letter 90-06.

*Date of issuance:* June 29, 1992
*Effective date:* June 29, 1992, to be implemented within 30 days of issuance.
*Amendment No.:* Amendment No. 11
*Facility Operating License No. NPF-87.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 13, 1992 (57 FR 20518) The May 4, and May 27, 1992, letters were clarifying in nature and thus, within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards considerations determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1992. No significant hazards consideration comments received: No

*Local Public Document Room location:* University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

**Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington**

*Date of application for amendment:* November 18, 1991

*Brief description of amendment:* The proposed amendment deletes the reference to footnote (e) associated with Technical Specification (TS) Table 3.3.6-1, "Control Rod Block Instrumentation," item 4.a. This removes an error that resulted from an oversight in the original preparation of the WNP-2 TS and allows the TS to conform to actual plant design with respect to the control rod block signals associated with the intermediate range monitoring (IRM) system.

*Date of issuance:* June 26, 1992
*Effective date:* June 26, 1992
*Amendment No.:* 108
*Facility Operating License No. NPF-21:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 27, 1992 (57 FR 22272) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 1992. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Richland Public Library, 955 Northgate Street, Richland, Washington 99352

**Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington**

*Date of application for amendment:* February 25, 1992

*Brief description of amendment:* The amendment revises Technical Specifications (TS) 2.1.2, "Safety Limits; Thermal Power, High Pressure and High Flow," B.2.0, "Safety Limits and Limiting Safety System Settings," and 6.9.3.2, "Core Operating Limits Report (COLR)," in order to reflect characteristics of the Cycle 8 reload core. This TS amendment specifically addresses the change in the Minimum Critical Power Ratio (MCPR) safety limit due to the analysis that was conducted on the core loading that is to be used for Cycle 8 operations.

*Date of issuance:* June 29, 1992
*Effective date:* June 29, 1992
*Amendment No.:* 109
*Facility Operating License No. NPF-21:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 1, 1992 (57 FR 11118) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1992. No

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significant hazards consideration comments received: No.

*Local Public Document Room location:* Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Dated at Rockville, Maryland, this 13th day of July 1992.

For the Nuclear Regulatory Commission

**Steven A. Varga, Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation**

[FR Doc. 92-17149 Filed 7-21-92; 8:45 am]

BILLING CODE 7590-01-F

## Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.25, Revision 1, "Air Sampling in the Workplace," provides guidance on air sampling in restricted areas (as defined in 10 CFR part 20) of the workplace. In this guide, the term "air sampling" includes the collection of samples for later analysis as well as real-time monitoring in which samples are analyzed as they are collected. The guide does not cover environmental or effluent sampling or the analysis of samples.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 512-2249 or (202) 512-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 6th day of July 1992.

For the Nuclear Regulatory Commission.

**Eric S. Beckjord,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 92-17263 Filed 7-21-92; 8:45 am]

BILLING CODE 7590-01-M

## Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.35, "Planned Special Exposures," provides guidance on the conditions and prerequisites for permitting planned special exposures allowed by the revision to 10 CFR part 20, "Standards for Protection Against Radiation," and on the associated specific monitoring and reporting requirements and provides examples of acceptable means of satisfying these requirements.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 512-2249 or (202) 512-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

**Authority:** 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 6th day of July 1992.

For the Nuclear Regulatory Commission.

**Eric S. Beckjord,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 92-17264 Filed 7-21-92; 8:45 am]

BILLING CODE 7590-01-M

## Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued a new appendix to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Appendix X, "Guidance on Complying with New Part 20 Requirements," to Regulatory Guide 10.8, Revision 2, "Guide for the Preparation of Applications for Medical Use Programs," discusses the major differences introduced by the revised 10 CFR part 20, "Standards for Protection Against Radiation," that modify the guidance previously provided by the NRC for conducting medical use programs.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 512-2249 or (202) 512-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

**Authority:** 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 6th day of July 1992.

For the Nuclear Regulatory Commission.

**Eric S. Beckjord,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 92-17265 Filed 7-21-92; 8:45 am]

BILLING CODE 7590-01-M



**[Docket Nos. 50-387 and 50-388]**

## Pennsylvania Power and Light Co; Allegheny Electric Cooperative, Inc; Correction Notice

On July 2, 1992, the **Federal Register** published a "Partial Withdrawal of Application for Amendments to Facility Operating Licenses" on page 29542 for the Susquehanna Steam Electric Station, Units 1 and 2, for application dated August 16, 1991. The License Nos. read "DPR-14" and "DPR-22". They should read "NPF-14" and "NPF-22".

Dated at Rockville, Maryland this 14th day of July 1992.

For the Nuclear Regulatory Commission.

**Charles L. Miller,**

*Director, Project Directorate I-2, Division of Reactor Projects I-2, Office of Nuclear Reactor Regulation.*

[FR Doc. 92-17266 Filed 7-21-92; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

## Meeting of the President's Council of Advisors on Science and Technology

**ACTION:** Amended notice of meeting.

**CHANGES:** The President's Council of Advisors on Science and Technology (the "Council") is currently holding a series of public meetings around the country as announced in 57 FR 23604-605 (June 4, 1992). This amendment is to provide notice of the precise location for the public meetings in Durham, North Carolina and Washington, DC.

**DATES AND LOCATIONS:** On July 21, 1992, the Council will meet at Duke University from 8:30 a.m. to 3:30 p.m. following the agenda set out in the **Federal Register** notice referenced above. This meeting will be held at The Fuqua School of Business, Geneen Auditorium. The Fuqua School's entrance is accessible by walking through the R. David Thomas Center, One Science Drive, Durham, NC. Public Parking will be available in lot 751, directly in front of the R. David Center.

On July 24, 1992, the Council will meet at the National Academy of Sciences from 8:30 a.m. to 3:30 p.m. following the agenda set out in the **Federal Register** notice referenced above. This meeting will be held in the Lecture Room at the National Academy of Sciences, 2101 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Alicia Tenuta, Office of Science and Technology Policy, 744 Jackson Place NW., Washington, DC 20506 at (202) 395-3170, fax number (202) 395-5076.

Dated: July 13, 1992.

**Vickie V. Sutton,**

*Assistant Director, Office of Science and Technology Policy.*

[FR Doc. 92-17280 Filed 7-21-92; 8:45 am]

BILLING CODE 3170-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-30932; File No. SR-MSTC-92-03]**

## Self-Regulatory Organizations; Midwest Securities Trust Company; Proposed Rule Change Relating to Committee Composition

July 16, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 2, 1992, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. RS-MSTC-92-03) as described in Items, I, II, and III below, which items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MSTC proposes to amend article IV, sections 2 and 3 of its By-Laws regarding Committee composition and structure. The proposed rule change (1) eliminates the Compensation Committee, (2) formally establishes an Audit Committee, and (3) changes the required composition of the Finance Committee.

[1] U.S.C. 78s(b)(1) (1988).

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to modify MSTC By-Laws to establish a more effective and current Committee structure. The proposed rule change would eliminate the Compensation Committee, which is inactive; its designated responsibilities are managed on an Exchange Complex basis.[2] The proposed rule change also formalizes in the By-Laws the requirement for an Audit Committee. Third, the proposal provides more flexibility in the structure of the Finance Committee by not mandating a fixed number of member comprise the Finance Committee.

The proposed rule change is consistent with section 17A(b)(3)(C) of the Act [3] in that it helps to assure a fair representation of members in the administration of MSTC affairs.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

MSTC believes that no burdens will be placed on competition as a result of the proposed rule change.

*C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments have not generally been solicited or received regarding the proposed rule change.

[2] The functions of MSTC's Compensation Committee are performed by the Compensation Committee of the Midwest Stock Exchange, the parent corporation of MSTC. Telephone conversation between J. Craig Long, Vice President, General Counsel, and Secretary, MSTC, and Jeffrey T. Brown, Staff Attorney, Division of Market Regulation, Commission (July 7, 1992).

[3] 15 U.S.C. 78q-1(b)(3)(C) (1988).

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**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-MSTC-92-3 and should be submitted by August 12, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-17258 Filed 7-21-92; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated**

July 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Davstar Industries, Ltd.
Class A Common Stock, No Par Value (File No. 7-8769)
Transportacion Maritima Mexicana S.A. de C.V.
American Depository Shares, No Par Value (File No. 7-8770)
Superior Industries International, Inc.
Common Stock, $.50 Par Value (File No. 7-8771)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-17194 Filed 7-21-92; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated**

July 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

North American Mortgage Company
Common Stock, $.01 Par Value (File No. 7-8756)
Sport Supply Group, Inc.
Common Stock Purchase Warrants expiring February 28, 1997 (File No. 7-8757)
Mitchell Energy & Development Corp.
Class B Common Stock, $.10 Par Value (File No. 7-8758)
Mitchell Energy & Development Corp.
Class A Common Stock, $.10 Par Value (File No. 7-8759)
Praxair, Inc.
Common Stock, $.01 Par Value (File No. 7-8760)
Saatchi & Saatchi Company Plc
New American Depositary Shares (each representing three Ordinary Shares of 25 p each) (File No. 7-8761)
Sea Container Ltd.
Class A Common Shares, $.01 Par Value (File No. 7-8762)
China Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-8763)
Nymagic, Inc.
Common Stock, $1.00 Par Value (File No. 7-8764)
Teleconcepts Corporation
Common Stock, $.01 Par Value (File No. 7-8765)
CCP Insurance, Inc.
Common Stock, No Par Value (File No. 7-8766)
General Motors Corporation
Depositary Shares (each representing 1/4 of a share of Series D 7.92% Preference Stock), $.10 Par Value (File No. 7-8767)
Banco Commercial Portugues, S.A.
American Depositary Shares (each representing one share, Par Value 1,000 Portuguese Escudos) (File No. 7-8768)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-17195 Filed 7-21-92; 8:45 am]

BILLING CODE 8010-01-M



**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated**

July 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Banco Commercial Portugues S.A.
AmericanDepositary Shares (representing 1 share, Portuguese Escudos 1,000 per share) (File No. 7-8772)
Champion International Corporation
Common Stock, $.50 Par Value (File No. 7-8773)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-17196 Filed 7-21-92; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated**

July 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Travelers Corporation
Series B Preference Stock (File No. 7-8749)
Nymagic, Inc.
Common Stock, $1.00 Par Value (File No. 7-8750)
Georgia Power Company
$1.9875 Class A Pfd. Stock (File No. 7-8751)
Chase Manhattan Corporation
Preferred Stock, No Par Value (File No. 7-8752)
North American Mortgage Company
Common Stock, $.01 Par Value (File No. 7-8753)
China Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-8754)
CCP Insurance, Inc.
Common Stock, No Par Value (File No. 7-8755)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-17197 Filed 7-21-92; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-30920; File No. S7-18-92, International Series Release No. 420]**

**U.S. Equity Market Structure Study**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Advance notice of possible commission action and request for information and public comment.

**SUMMARY:** The Securities and Exchange Commission ("Commission") today announces that the Division of Market Regulation ("Division") is undertaking a study of the structure of the U.S. equity markets and of the regulatory environment in which those markets operate. Information and comment are being sought with regard to the functioning and characteristics of the U.S. equity markets, as well as with respect to regulatory issues that arise from the structure of this marketplace. The Division is soliciting from interested commentators any viewpoints and information on the structural issues that face the U.S. equity markets today, as well as data supporting the viewpoints expressed. As part of its study, the Division will review the information, data, and comments received concerning the issues raised in this release and any other, related issues that commentators choose to raise. The Division expects to use the information and comments extensively as a part of its process in making recommendations to the Commission on rulemaking or any other necessary or appropriate action.

**DATES:** Comments must be received on or before October 20, 1992.

**ADDRESSES:** Persons wishing to submit comments should file ten copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, Mail Stop 6-9, 450 Fifth Street, NW., Washington, DC 20549. All comments should refer to File No. S7-18-92 and will be available at the Commission's Public Reference Room.

**FOR FURTHER INFORMATION CONTACT:** Howard Kramer, Senior Special Counsel and Market Study Coordinator, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 5-1, 450 Fifth Street, NW., Washington, DC 20549. Telephone (202) 272-2403.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The United States has the largest, most diverse, and most innovative securities markets in the world. The continued strength and vitality of the securities markets, especially the equity markets, are critical to the economic welfare of all Americans. In the past two decades, however, these markets have undergone extensive change, and, considering the continuing developments in technology and trading trends, it is likely that the upcoming decade will see changes of at least equal magnitude.

Accordingly, on December 5, 1991, Chairman Richard C. Breeden announced that the Division would undertake a study, entitled Market 2000, of the U.S. equity marketplace.[1] This

[1] See Address by Richard C. Breeden, Chairman, Securities and Exchange Commission, before Securities Industry Association, December 5, 1991.

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concept release (i) outlines the general purpose, scope and objectives of the Division's study; (ii) poses questions on critical equity market structure issues; and (iii) requests information from market participants and observers regarding certain issues the Division believes relevant to its study. In particular, the Release solicits information (including statistical information), comments and views regarding current equity market trading practices and structures and the impact thereon of the current regulatory framework. Finally, the Release solicits comments and views on any issues that commentators believe the Division should address in addition to those discussed in this Release.

## II. Background

Twenty years ago, the Commission and market participants undertook a careful and thorough examination of the equity markets and their regulatory structure.[2] At that time, serious questions had surfaced concerning the equity markets' fundamental structure, including issues of market fragmentation, best execution of customer orders, transaction costs, transparency and liquidity. As a result of that review and the Congressional hearings which followed, Congress enacted amendments to the federal securities laws to establish a national market system for securities.[3]

Since that time, the U.S. equity markets have developed dramatically in size, participants, and trading methods. For example, in 1975 the average daily volume on the New York Stock Exchange ("NYSE") was 18.6 million shares, but by 1991 it had increased almost tenfold, to approximately 179 million shares. Further, while American households dominated share holdings in 1975 (holding 70% of the total equities outstanding, with institutions holding only 21%), as of 1990, the institutional percentage had risen to 53.3%, while that held by households had fallen to 46.7%.[4]

Moreover, the National Association of Securities Dealers ("NASD") NASDAQ system, which began operations in 1971, is now one of the largest stock markets in the world, with trading valued at $884 billion in 1991.

The nature of equity trading has similarly evolved. The past decade has witnessed a concentration of equity holdings within several groups of institutional investors, including pension funds, mutual funds, and institutional money managers.

The growth of large public pension fund equity holdings alone has resulted in equity market participants that dwarf those of two decades ago, when the Institutional Investor Study was conducted. Moreover, there has been a similar growth in the volume of trading activities of broker-dealers, hedge funds, and other market professionals, and a large increase in foreign investment in U.S. equities. Today, institutional investors (both customer and broker-dealer) dominate daily trading, accounting for an estimated 75% to 80% of the average daily volume on the NYSE.[5]

Along with the growth of large institutional investor influence has come the increasingly significant role of equity derivative products. When the 1975 amendments to the Securities Exchange Act of 1934 ("Act") were adopted, the only standardized equity derivative products in existence were call options on several stocks. Only 10 years later, the derivative markets were trading options on hundreds of stocks, as well as index options, index futures and futures options on a dozen stock indices. The trading volume in stock index options and stock index futures by the mid-1980s had outstripped the value of stock trading on the NYSE.[6] Trading strategies involving these products have significantly altered the nature of the stock market. Program trading, index arbitrage, cash substitution, synthetic equities, and other derivative product strategies are now used constantly by broker-dealers and their institutional customers. Moreover, derivative products have facilitated the use of passive management or "indexation" strategies by large investors.

The growth of derivatives has been matched by dramatic advances in securities trading technology. Both securities markets and broker-dealers have increased the power and speed of technologies for order routing and execution, information dissemination, and trade and portfolio analysis and decisionmaking. This enhanced technology has facilitated growth in trading volume and efficiency, as well as derivative-related strategies.

Finally, the unfixing of commission rates in 1975 has had a profound effect on market participants and on competition among them. The resultant shrinkage, to pennies a share, of commission rates charged to institutional investors and the growth of retail discount brokers have significantly changed the nature of equity brokerage practices. Not least among these changes has been the growth of third party soft dollar practices and payment for order flow. A soft dollar arrangement involves a relationship between a money manager and a broker-dealer whereby a money manager uses the commissions generated from trades of its client accounts to obtain research, brokerage, or other services from or through a broker-dealer.[7] Payment for order flow is the practice of market makers or exchange specialists compensating broker-dealers for directing customer orders to them. Both practices raise issues relating to whether and, if so, how compensation for directed order flow affects the execution of customer orders.

In response to all of these changes, the organized equity markets and entrepreneurs operating independently of the markets have exhibited innovation, flexibility, and keen competitive drive in devising accommodations or alternatives to the markets, structure and practices. These accommodations and alternatives, however, raise questions about the regulatory environment in which the markets operate. Issues related to the proper allocation of regulatory (including self-regulatory) responsibilities, the need for enhanced transparency, transaction costs and market fragmentation once again pose significant challenges to regulators and market participants alike.

Moreover, as technology has made it possible for new trading strategies and market services to develop, it also has made it feasible for alternative market systems to develop at the periphery of the current market structure.[8] When Congress enacted legislation in 1975 mandating the development of a National Market System, it understood that the markets may no longer need to be physical places. Similarly, the advances in trading technology and telecommunications in the last five to ten years have once again raised issues relating to off-exchange trading systems. Market forces of supply and demand today can be, and to a large extent are, channeled through automated systems, but the automation frequently is off exchange floors.

To date, technological and competitive developments appear to have benefited investors by sharply reducing transaction costs. Moreover, most indications are that fragmentation adversely affecting the general quality of equity markets has not yet occurred. Nevertheless, some trading that previously would have been effected on the primary exchanges, the regional exchanges, or alternative market facilities that make real-time reports of trades is not subject to real-time reporting mechanisms. Likewise, some of the alternative systems, especially those that permit trading outside of traditional trading hours, provide public reports only in the aggregate and not on a real-time basis. In addition, the possibility of fourth market trading, that is, trading directly between institutional investors without the intervention of an intermediary, may divert further trading away from organized markets or market systems.[9] Finally, trades estimated at several million shares U.S. equities a day are executed in foreign markets, principally in London. The amount of this foreign trading that actually occurs in an organized foreign market, however, as opposed to internalized executions by the foreign desks of large U.S. broker-dealers, may be much smaller.

As if often the case, the regulatory structure for both existing markets and alternative systems has evolved in part as a series of case-by-case responses to particular issues or proposals. Moreover, the approach to the assignment of self-regulatory responsibilities to existing markets and to the regulation of alternative systems was developed in a very different market context than is present today. Issues related to market fragmentation, equal regulation of markets operated by competing self-regulatory systems, and rules relating to quotation and transaction reporting (*i.e.*, market transparency) begin to take on a very different aspect when factors such as off-exchange trading systems, program trading, equity swaps, fourth market trading, soft dollar practices, and international trading are introduced.

It does not appear that any of these issues poses an immediate threat to the quality of U.S. equity markets. Nonetheless, to ensure that U.S. equity markets remain vibrant and economically efficient, the time is ripe for a thorough examination of the role that Commission-administered statutes and Commission and self-regulatory organization ("SRO") rules play in the economic well-being of the equity marketplace and the competitive environment in which the markets and their participants operate.

In recent years, the Commission has discussed some of the issues posed in this Release in various rule proposals of the SROs, in congressional correspondence [10] and in a release proposing Rule 15c2–10, which would establish a formal regulatory structure for proprietary trading systems.[11] As the Commission reviewed these issues, it became apparent that all of these and other related issues need to be addressed in a conceptually consistent manner. Rather than continuing a piecemeal approach to the predominant issues facing the market and its regulatory structure, the Division now seeks to examine the overall structure of equity market regulation, including its impact on the relationship of the primary and regional exchanges, exempt exchanges, the over-the-counter ("OTC") market and proprietary trading systems, and the proper and equitable assignment of regulatory and self-regulatory costs among these markets.

A focus of the study will be to ensure that regulators and others continue to craft an approach preserving the contributions of alternative systems, such as competition, innovation and reduced costs, while taking into account their overall effect on the fairness and efficiency of the market as a whole. To accomplish this, the Division will study the impact of regulation on the various components of the equity market and the manner in which access to those market components may be limited or hindered by ineffective, outdated, or misallocated regulatory burdens. In addition, the study will examine the assignment of the costs of self-regulation and whether such costs should be reallocated to facilitate fair competition, while maintaining the efficiency of the market and investor protection.

An important objective will be to determine the proper role of the Commission in overseeing the continuing development of the equity markets. There have been widespread differences of opinion over the role the Commission has played over the past 17 years in oversight of the equity market structure. One viewpoint would have the Commission exercising more initiative in the process, while a different viewpoint would lead to less governmental action to alter, shape, or direct market forces. Whatever the merits of either view, all those interested in the development of healthy equity markets—investors, issuers, the SROs, market professionals, and Congress—have frequently looked to the Commission to resolve or mediate the seemingly intractable market issues that continually arise. Accordingly, the Division is interested in exploring the proper degree of Commission oversight of the functioning of U.S. equity markets.

The Division invites commentators to address these broad issues as well as the more specific issues identified below. Commentators also may address the standards, scope, and objectives of the study outlined below, and propose other issues that they believe should be included in the study.

## III. Scope and Objectives of the Study

### *A. Standards For Study*

In the course of the study, the Division plans to review the structures and the regulations that shape the equity marketplace. The examination will initially use the statutory objectives put in place by the 1975 amendments to the Act to analyze current equity market rules and structures, such as whether they are necessary and appropriate for the protection of investors; whether they promote fair, orderly, and efficient markets; and whether they continue to promote fair competition among brokers

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[2] *See* Institutional Investor Study Report of the Securities and Exchange Commission, H.R. Doc. No. 64, 92nd Cong., 1st Sess. pt.1 (1971); Statement of the Securities and Exchange Commission on the Future Structure of the Securities Markets (1972), 37 FR 5286; and SEC, Policy Statement on the Structure of a Central Market System (March 29, 1973), as reprinted in, [1973] Sec. Reg. & L. Rep. (BNA) No. 196 at D–1 (April 4, 1973).

[3] Pub. L. No. 94–29 (June 4, 1975). *See, e.g.*, 15 U.S.C. § 78k–1, which directed the Commission to facilitate the establishment of a national market system for securities; and Committee of Conference, Conference Report to Accompany S.249: Securities Acts Amendments of 1975, H. Conf. Rep. No. 94–229, 94th Cong., 1st Sess. 91–98 (1975).

[4] Institutional Investors and Capital Markets: 1991 Update, Columbia Institutional Investor Project, Center for Law and Economic Studies, Columbia Univ. School of Law (Sept. 1991).

[5] See Power, *Small Investor Continues To Give Up Control of Stocks*, The Wall Street Journal, May 11, 1992, at C1.

[6] See The October 1987 Market Break, A Report by the Division of Market Regulation (Feb. 1988), Chapter 3 at 3–1.

[7] Ordinarily, a fiduciary that uses the assets of its managed accounts for its own benefit would be subject to claims of a breach of fiduciary duty under state and federal law. In 1975, Congress adopted section 28(e) of the Act, which, under certain conditions, protects a money manager from claims of a breach of fiduciary duty should the money manager pay a commission rate higher than the rate charged by another broker-dealer to a broker-dealer providing it research and brokerage services, as defined in section 28(e)(3). 15 U.S.C. 78bb(e). See also Securities Exchange Act Release No. 23170 (April 23, 1986), 51 FR 16004.

[8] See, e.g., Wunsch Auction Systems, Inc., Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377.

[9] As used in this release, the term "fourth market" means a market where institutions deal directly with each other without the intermediation of any broker-dealer. This market has the potential to develop, especially as technology fosters the ability of market participants to trade directly without intermediation.

[10] See letter from Richard C. Breeden, Chairman, SEC, to Edward Markey, Chairman, Subcommittee on Telecommunications and Finance, U.S. House of Representatives, dated July 11, 1991. A copy of this letter is appended to this release as appendix A.

[11] See Securities Exchange Act Release No. 28708 (April 11, 1989), 54 FR 15429.

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and dealers, among exchange markets, and between exchanges and markets other than exchanges.[13] During the course of the study, the Division will also explore whether those objectives should be modified.

*B. Scope of Study*

The Division believes that the scope of this study should be limited to an examination of the issues affecting the U.S. equity markets. In particular, the study will review the primary and regional exchanges, the over-the-counter market (with particular attention to the third market, *i.e.*, trading of exchange-listed securities in the over-the-counter market), proprietary trading systems for publicly-held U.S. equities, non-intermediated trading in such securities, and trading in U.S. equity securities effected by U.S. broker-dealers on overseas markets. This focus, of course necessarily entails examining certain trading practices and techniques involving derivative products that affect the U.S. equity markets.

Clearly, the emergence of derivative trading strategies has influenced substantially the operation of the equity markets, and the study will take this impact into account.[14] However, the main thrust of the study will focus on regulation of the equity market because of its preeminent importance to the nation for capital raising and investment.

In addition, the study will not examine issues involving penny stock trading, except to the extent that the SROs attempt to use listing standards to obtain a competitive advantage. Finally, the study will not examine corporate governance issues and international markets (except as noted above).

*C. Objectives of the Study*

Upon conclusion of the fact and comment gathering portions of the study, the Division will examine and analyze the regulatory structure of the equity market in light of the information obtained. In this analysis, the Division will seek to identify those areas where there are deficiencies or where a new approach should be explored. Based on its findings, the Division may recommend to the Commission that it propose legislative or regulatory revisions. Moreover, the Division hopes to produce a framework for addressing equity market issues in the future, much as section 11A was intended to do when it was added to the Act in 1975. It must be noted that the Division does enter into this process with any preconceived notions concerning potential findings or recommendations. Indeed, the goal set by Chairman Breeden for the Division is to examine the issues affecting the entire equity market in the greatest depth feasible.

In conducting the study, the Division is not trying to dictate what the structure of the equity markets should be in the year 2,000. That determination should be made by the markets and their participants as a result of competition. However, that competition should not be skewed by inequitable regulation or allocation of self-regulatory cost, beyond that which is necessary for the protection of investors.

## IV. Issues

*A. Market Structure and Operations*

Several distinct and competing market structures have evolved in U.S. equity markets. These are: the continuous auction market or, as it is more commonly described, the exchange market; [15] the dispersed dealer market, *i.e.*, the U.S. OTC market (with NASDAQ a hybrid variation of this); the centralized dealer market, represented by the Cincinnati Stock Exchange's ("CSE") National Securities Trading System; proprietary trading systems, such as Instinet (owned by Reuters) and POSIT (owned by Jefferies & Company, Inc.); and the fourth market, in which investors trade directly among themselves.

In the last two decades the U.S. markets have experienced what some perceive to be a significant shift in trading volume away from the traditional auction market structure towards alternative structures and derivative markets.[16] To some extent, this evolution can be directly attributed to some of the previously described trends of the last 20 years: the growing impact of large institutional investors, the unfixing of commission rates, the proliferation of derivative products, and advances in trading technology and telecommunications. As a result, the largest institutional investors and money managers tend to be sophisticated market participants with the leverage and economies of scale to reduce their trading costs, and they have turned increasingly to alternative market structures and new equity and derivative products in an attempt to do so.[18]

| Market | 1981 volume | 1991 volume | 1981 trades | 1991 trades |
|---|---|---|---|---|
| NYSE | 86.66% | 82.26% | 82.42% | 67.33% |
| Regional Exchanges | 10.88 | 11.78 | 16.60 | 23.11 |
| Third Market | 2.33 | 5.82 | 0.96 | 9.59 |
| Instinet | 0.13 | 0.14 | 0.02 | 0.03 |

New York Stock Exchange Fact Book, at 24–25 (1992).

Section 11A of the Act has to a large extent fostered the development of this highly competitive situation. As noted above, Section 11A has as one of its stated goals "fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets".[17] However, this is not the only goal that the Commission was directed to address in facilitating a National Market System. That section also sets forth the following goals and objectives of the National Market System:

a. The economically efficient execution of securities transactions;

b. The availability to market participants of quotation and transaction data;

c. Enhancement of a broker's ability to execute customer orders in the best market; and

d. The opportunity, consistent with the other identified goals, for customer orders to be executed without the intervention of a dealer.

The concept of a National Market System was premised on the need for integrated market facilities when multiple markets trade the same securities. In 1975 Congress was concerned with several specific problems: Market fragmentation resulting from a market structure driven by fixed commission rates and comprised of geographically separated markets trading the same security; the institutionalization of the markets; and barriers to competition among markets

[13] 15 U.S.C. 78k–1(a)(1)(C)(ii) (1991). Section 11A (a)(1)(C)(ii) of the Act.

[14] For example, the extent to which derivative products and related hedging strategies drive equity transaction volume and shape equity investment and trading strategies and market liquidity will be examined. In contrast, the study will not address market structure or regulatory issues involving derivative products, such as the multiple trading of options, or intermarket issues such as the jurisdiction of hybrid products or margins on stock index futures.

[15] Stock exchanges currently exist at the New York Stock Exchange and the American Stock Exchange (the primary exchanges) and the Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges (the regional exchanges). The Chicago Board Options Exchange has the authority to trade stocks, but has not yet done so.

[16] Consolidated Tape Volume and Trades in NYSE-Listed Stocks;

[18] We use "trading costs" in the broadest sense. Not only do institutions frequently try to lower their commission costs, but they also endeavor to reduce their "pricing costs," *e.g.*, by avoiding impact trades (large trades that are priced outside of the current bid or offer) or by trading between the spread.

[17] See, *supra*, note 12.



that existed at that time. In response to these concerns, Congress provided the Commission, working with the industry, with broad authority to institute changes in the existing market structure to address the perceived problems, while seeking to achieve the various goals contained in section 11A.

Following enactment of the statutory mandate to create a "national" market, several important facilities were developed. These include the Consolidated Tape Association ("CTA"), the Consolidated Quotation System ("CQS"), and the Intermarket Trading System, ("ITS"). The CTA provides for the dissemination of the consolidated last sale prices for NYSE and American Stock Exchange ("Amex") stocks (and regional exchange issuers that substantially meet Amex listing standards). The prices and volume of trades in these stocks, regardless of the market in which the trade takes place, are disseminated to vendors (such as Quotron and Bridge Data) over high speed data transmission lines. The CQS gathers quotations from all market makers in exchange-listed stocks and disseminates them to vendors. The CTA last sale and CQS quotation information are publicly available through vendors' desktop terminals. The implementation of a consolidated tape and a consolidated quote enabled regional exchange specialists and third market makers to compete effectively with specialists on the primary markets, facilitated broker-dealers' efforts to obtain the best execution of their customers' orders, and helped customers to monitor the executions they received.

ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) The display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available from any participant for multiply traded securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price.[19]

ITS was an important addition to the National Market System because it increased the opportunities for brokers to secure the best execution of their customers' orders without developing order-by-order routing systems. In addition, it permitted regional specialists to attract orders from other markets by providing superior quotations and facilitated their marketmaking by enabling them to lay off their risk positions more efficiently, and at a lower cost, through offsetting transactions on primary markets.[20] In conjunction with the ITS, the exchanges and NASD adopted certain rules that require their members to avoid effecting trades at prices inferior to those displayed by another market.

At the time these facilities were implemented, some believed that they substantially addressed the structural problems that had led to the enactment of section 11A.[21] However, the markets have evolved significantly since then. Thus, the Division has been asked to reexamine whether the current facilities adequately address problems of market structure.

Many of the concerns with the current market structure that some commentators have identified are similar to those that led to the enactment of section 11A. For example, some commentators have noted what they perceive to be structural impediments to competition among various markets.[21] Other commentators have argued that the current competitive environment has resulted in excessive market fragmentation and a concomitant decreased efficiency and, at times, liquidity.[22] In addition, a serious question has arisen whether the increase in non-traditional trading facilities, including in particular after-hours trading facilities, has eroded both the transparency of U.S. markets and the ability to obtain the best execution of customer orders. All these issues are discussed more fully below.

*B. Market Competition*

The U.S. equity markets are highly competitive, with intense competition for order flow in listed stocks between primary and regional exchanges and between exchanges and the OTC market. In addition, competition in OTC stocks between the regional exchanges and the OTC market is in its infancy.[23]

In fact, it is this competition among a number of different "markets," using that term broadly to include proprietary trading systems, third market makers and the fourth market, that some commentators believe has led to harmful fragmentation of the equity markets. On the other hand, some commentators view this competition as invigorating and decry what they see as structural impediments to competition between markets. For example, the NYSE has long maintained that its Rule 390, which limits to a certain degree exchange members' ability to effect transactions in listed securities in the OTC market, is necessary to prevent dispersion of order flow into unconnected markets.[24] The NYSE believes that such fragmentation would impair price discovery and liquidity in the primary market. Critics of Rule 390 argue that it prevents large NYSE members from competing as market makers with NYSE specialists,

[19] The NASD's Computer Assisted Execution System ("CAES") currently links NASD market makers for order routing and execution purposes to ITS for securities for which Rule 19c–3 of the Act prohibits off-board trading restrictions.

[20] The ease of regional specialists in laying off their risk in the primary market has raised important questions regarding their role as market makers and the degree of their access to the primary market. *See* note 25 *infra*.

[20] For a contrary view, see, *e.g.*, Seligman, "The Future of the National Market System, 10 J. Corp. Law 79 (Fall, 1984) (discussion of areas of concern in development of the National Market Systems.)

[21] See, *e.g.*, U.S. General Accounting Office, "Securities Trading: SEC Action Needed to Address National Market System Issues," GAO/GGD–90–52 (March, 1990).

[22] See, *e.g.*, letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, January 7, 1991 (comments on WASI application for exemption from exchange regulation) ("NYSE letter").

[23] On April 29, 1987, the Commission approved a transaction reporting plan submitted by the NASD and the Midwest Stock Exchange ("MSE") governing the collection, processing and dissemination of quotation and transaction information in certain OTC securities traded on an exchange on a listed or unlisted basis ("Interim Plan"). On the same day, the Commission approved the MSE's application for unlisted trading privileges ("UTP") in 25 OTC securities. Since that time, the MSE has been trading certain OTC securities on a UTP basis pursuant to those two orders. *See* Securities Exchange Act Release Nos. 24407 (April 29, 1987), 52 FR 17348; and 22405 (April 29, 1987), 52 FR 17495.

[24] Rule 390 prevents NYSE members from effecting transactions in any NYSE listed stock in the over-the-counter market, either as a principal or agent. The rule contains certain exceptions, such as trading an NYSE stock on an organized exchange in a foreign country. In addition, the rule permits NYSE members to trade NYSE listed stocks in a foreign over-the-counter market outside of NYSE trading hours. Pursuant to Rule 19c–3 of the Act, Rule 390 does not apply to a security first listed on a national securities exchange after April 26, 1979. In addition, pursuant to Rule 19c–1 under the Act, Rule 390 does not apply to a member effecting an agency transaction in a NYSE-listed stock in the over-the-counter market.

and that if such competition were allowed, quotation spreads would narrow and market making capital would increase.

The competition between markets has generated other controversial market practices, such as payment for order flow, that have been the subject of debate as to their effect on the equity markets. For example, the primary exchanges often complain that certain regional exchange practices, such as the affiliation of regional specialist firms with upstairs firms as a means of directing order flow, distort competition. In turn, the regional exchanges have expressed great concern about certain primary market proposals, such as the NYSE's after-hours trading session and the Amex's competing dealer proposal.[25]

In addition, the exchanges believe that they are at a significant competitive disadvantage to both proprietary trading systems and third market makers. The exchanges, as SROs, have certain statutory obligations not currently imposed on proprietary trading systems.[26] They believe these obligations, or, conversely, the absence of similar obligations on proprietary trading systems and third market makers, impose a burden on their ability to compete with these systems. Moreover, there is even a lack of agreement among the SROs over the allocation of regulatory obligations and costs among SROs.[27]

Finally, the growth of offshore trading has affected competition. For a number of reasons, market participants (usually broker-dealers, and not the institutional customers) often choose to direct order flow in U.S. stocks to foreign markets. The overseas market could take the form of an exchange market, such as the Tokyo Stock Exchange, or could simply be an over-the-counter market abroad. In the latter case, the U.S. broker-dealer usually is acting as principal with its customer and is merely "booking" the trade in one of its foreign offices. Indeed, this market has been called the "fax" market because the U.S. customer and U.S. broker-dealer agree to terms of the trade involving U.S. stocks in the U.S., and the broker-dealer merely faxes the order slip to a foreign desk for execution.[28] Thus, this trading may be "overseas" in name only, with a foreign facade used to evade trade reporting requirements, exchange fees, or regulatory requirements in the U.S.

Though some foreign trading may be a bookkeeping fiction, there has been a growth of genuine foreign trading in U.S. stocks as foreign holders of U.S. securities seek to be able to trade during their normal operating hours. U.S. holders of U.S. equities also may seek to adjust their portfolios after normal U.S. trading hours in light of news events with market implications or for other economic reasons. As noted above, a portion of foreign trading in U.S. equities by U.S. broker-dealers of institutions is done to avoid off-board trading restrictions, transparency standards in the U.S. markets, transaction fees [29] and other rules, such as the Commission's short sale rule,[30] as well as cost considerations. The SROs believe that the lack of comparable regulatory obligations on broker-dealers executing orders overseas imposes a competitive burden on U.S. markets.

Commentators are asked to address the competitive issues discussed in this subsection, and to identify any other impediments to competition and market efficiency, stability and fairness. In addition, commentators are asked to discuss any rules, requirements, or practices they believe are unwise, including those identified above. Commentators should discuss any areas where coverage of rules should be expanded and any areas where rules should be eliminated.

The Division also is interested in receiving comments on the relative costs—both regulatory and non-regulatory—of executing transactions in U.S. equities in foreign markets or foreign equities in U.S. markets. Specific comparisons of the cost of executions in various markets would be very helpful, as well as a description, in order of priority, of the business reasons for selecting a particular market to execute or book different types of transactions. Analysis of the effect of specific regulatory requirements also would be helpful.

Finally, the Division is interested in whether commentators believe there are any regulatory anachronisms, lingering inefficiencies, rules or requirements whose costs exceed their benefits, or anti-competitive Commission or SRO rules in the existing market structures. Commentators are asked to address the extent to which Commission or SRO rules, such as NYSE Rules 390 and 500, harm or help fair competition.[31] At the same time, the Division requests that commentators address how altering the current competitive balance would affect investor protection.

### *C. Market Fragmentation*

#### 1. General Issues

As trading of exchange-listed securities in off-exchange systems increases, some commentators suggest that the market for these securities could become increasingly fragmented.[32] Paradoxically, the very technologies that permit and, indeed, drive such fragmentation can also be employed to link markets together.

In 1975, Congress mandated that the Commission "facilitate the establishment of a national market system" and provided the Commission the authority to address the market fragmentation confronting the markets

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[25] The Commission temporarily approved the NYSE after-hours trading session in Securities Exchange Act Release No. 29237, International Series Release No. 275 (May 24, 1991), 56 FR 24853 (May 31, 1991) (File Nos. SR–NYSE–90–52 and SR–NYSE–90–53).

The competing dealer proposal, as amended, would designate all orders in Amex stocks sent by regional stock exchange specialists or third market makers in those stocks as orders for "competing dealers." These orders would have to yield priority to all orders except those of the Amex specialist (and the on-floor proprietary orders of Amex members pursuant to Section 11(a) of the Act). The Amex specialist would continue to yield to competing dealer orders.

The Commission noticed the competing dealer proposal in Securities Exchange Act Release No. 28741 (January 3, 1991), 56 FR 1038. Notice of Amendment No. 1 appeared in Securities Exchange Act Release No. 30161 (January 7, 1992), 57 FR 1502. The Commission has received substantial comment on the proposal.

[26] for example, the exchanges have to file their proposed rule changes with the Commission for approval, develop and administer qualification examinations for their members, and conduct on-site compliance inspections of their members. These and other regulatory responsibilities are not imposed on proprietary trading systems or third market makers.

[27] See, *e.g.*, Securities Exchange Act Release No. 26341 (December 5, 1988), 53 FR 49920 (December 9, 1988) (File No. SR–NYSE–88–35). See *also*, National Market Advisory Board, The Possible Need for Modifications of the Scheme of Self-Regulation in the Securities Industry So As To Adapt it to A National Market System, December 31, 1978, which proposed the creation of an SRO coordinating entity.

[28] Despite their nominal execution abroad, these trades may be subject to the U.S. securities laws in the same manner as third market trades that are completely handled by a trading desk in the U.S.

[29] Under section 31 of the Act, fees of 1/300th of one percent of the value of a trade are imposed on all transactions in listed securities, except to the extent that market participants effect those trades in foreign markets. 15 U.S.C. 78ee (1988). These fees are also imposed upon broker-dealers effecting transactions in listed stocks in the third market. Section 31 fees are not imposed upon securities that trade only in the OTC market and are not listed on an exchange. Like all transaction fees, these fees can have a tendency to divert transactions to other markets unless similar fees are imposed abroad or overall transaction costs are lower in the U.S. due to other factors.

[30] 17 CFR 240.10a-1.

[31] Rule 500 places requirements on issuers that want to delist from the NYSE.

[32] See NYSE letter *supra* at note 22.

in the early 1970s.[33] An important issue facing the market again today is the extent to which harmful equity market fragmentation has occurred, that is, fragmentation that impairs liquidity and price discovery, and whether it is possible (or even desirable) to prevent such fragmentation. The Division solicits comment on the extent of fragmentation that exists in the market today and the development of future trends toward or away from market fragmentation. The Division seeks to obtain statistical information regarding the degree to which commentators believe such fragmentation exists. Commentators also are invited to address the causes and effects of fragmentation and suggest approaches that could be taken to eliminate any harmful fragmentation. In addition, commentators should address how to reconcile the goals of reducing harmful fragmentation and promoting fair competition.

In analyzing fragmentation, the Division also seeks to understand not only the degree to which observers believe that a central marketplace has been fragmented, but also the degree to which the marketplace has split into separate tiers of investors. For example, the question has been raised whether the marketplace is separating into institutional and retail marketplaces.[34] In particular, the Commission has been asked whether electronic trading system proliferation poses the potential for "balkanizing" our nation's securities markets into a two-tiered system—one for large institutional traders and another for individual investors.[35] In response to this inquiry, the Division stated its belief that concerns about harmful market fragmentation caused by electronic trading systems for equities appear to have been minimized by the transparency of the U.S. system. Nevertheless, the Division seeks views and analysis on whether any such tiering has occurred, is increasing or decreasing and whether participants are aware of further degrees of segregation.

Another way of examining fragmentation is to analyze the phenomenon of passive market pricing. Specific U.S. equity markets can be viewed as either being price discovery or passive markets. Trading that discovers prices, such as the trading done on the floor of the NYSE or Amex or over NASDAQ, involves the interaction of buyers and sellers in negotiating the price of a security based upon supply and demand (or in NASDAQ's case, competition between market between market makers). Passive markets, such as the crossing networks established by Instinet and POSIT and the automated execution systems of regional exchanges and some third market makers, base their executions largely on the prices discovered in other markets. Frequently, large after-hours program trades, often involving an exchange for physical ("EFP"),[36] passively base the prices of the component stocks on the primary markets' closing price.

Some commentators have argued that passive trading siphons the "easy" trades away from the primary markets, which reduces the primary markets' liquidity and raises their costs.[37] In times of market stress, however, market participants using passive markets often return to the primary market, placing sudden and potentially destablizing liquidity demands on it. The passive markets, however, do offer substantial benefits, such as execution economies, efficiencies, and operating times, that may not be available in the primary market at all times. The passive markets also have provided technological advances and reduced execution fees, spurring the primary markets to respond in kind. The question arises, however, whether these benefits are subsidized by the primary markets.

The Division is interested in the implications of a growing passive market for U.S. stocks. For example, what liquidity impact does such segregation have? The Division also is interested in the fair allocation of regulatory burdens among these markets. Are passive markets "free riding" on price discovery markets, leaving the bulk of regulatory (and other) costs to the primary markets? Is there a fairer and more rational way to allocate responsibilities and costs among markets?

Finally, the potential (or actual) tiering of markets into discrete investor groups, or into active and passive markets, raises issues relating to the potential effects of any effort to recombine discrete elements into a centralized trading mechanism. The Division seeks to understand the costs and benefits of integrating individual and institutional traders in a system without harming either group, including the costs of the infrastructure of multiple markets and of any pricing disparities that exist. In addition, the Division invites comments on the extent to which derivative products have facilitated the segmentation of the equity markets.

2. Multiple Markets—Linkages

The initial, and primary, market mechanism put in place by the Commission and the SROs after 1975 to address the fragmentation that resulted from a multiple market structure was ITS. As described above, ITS has provided important benefits to the markets, broker-dealers, and investors. Nevertheless, ITS has been the subject of frequent criticism. Participants often complain that the system's operational procedures need to be improved.[38] Other commentators have criticized the system as antiquated and insufficient.[39]

The Commission has on several occasions considered whether improvements to ITS should be made. For example, in July, 1990, the Division wrote to ITS participants requesting their comments on the need for structural enhancements to ITS. In its letter the Division requested comment on three possible alternatives, including an automatic execution feature, intended to increase the probability that orders (referred to as commitments) would receive an execution in the destination market. Most of the participants strongly opposed the Division's proposals. Similarly, in an effort to provide protection to undisplayed limit orders, the Commission in 1976 proposed the addition of a consolidated limit order book, but the SROs opposed the creation of such a system as well as a Commission price protection proposal.[40] The commentators asserted that a time and price preference for public limit orders would provide a major trading advantage to those orders, thereby creating a disincentive for the commitment of market making capital by dealers, and might eventually force all trading into a fully automated trading system.

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[33] At the same time, limiting market fragmentation was not the only goal. Equally important was the assurance of fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchanges. Congress believed that these latter goals and a national market system were consistent objectives.

[34] Letter from Edward J. Markey, Chairman, Subcommittee on Telecommunication and Finance, U.S. House of Representatives, to Richard C. Breeden, Chairman, SEC, dated May 16, 1991.

[35] *Id.* at 3.

[36] An EFP involving stocks is the exchange of a long (short) futures position for an equivalently long (short) stock position. The EFP normally takes place after the NYSE close and is privately negotiated between the parties.

[37] See NYSE letter *supra* at note 22.

[38] See, *e.g.*, The October 1987 Market Break, A Report by the Division of Market Regulation (Feb. 1988), Chapter 7 at 7–48.

[39] See, *e.g.*, 5 L. Loss and J. Seligman, Securities Regulation, 2564, 2565, (3d ed. 1990).

[40] Securities Exchange Act Release No. 12159 (March 2, 1976); and Securities Exchange Act Release No. 15770 (April 26, 1979) (Price Protection for Public Limit Orders), 44 FR 26692.

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The Division believes that in the course of this study, it is appropriate to re-examine the operation of ITS. The Division is interested in determining whether any changes to ITS are needed to improve its operation, particularly because the system has not been materially upgraded since its inception in 1979. In addition, commentators are asked to address whether ITS adequately serves its original purposes (particularly the protection of customer orders), whether those purposes have changed, and whether an enhanced linkage should be considered.

Commentators are also asked to address whether the development of alternative trading mechanisms, including Wunsch Auction Systems, Inc. ("WASI"), proprietary trading systems like Instinet and POSIT, and such SRO systems as the NYSE's afterhours trading system require a reconsideration of the scope of ITS. In addition, commentators should address whether the SROs' concerns in the late 1970s about a consolidated limit order book and a price protection rule are still valid in light of technological advances and market developments in the last 15 years.

3. Proprietary Trading Systems

In recent years, and most prominently in the 1980s, buyside institutions and large wire houses began to seek access to trading networks that could accord participants some commission or exchange fee savings by facilitating trading in listed securities, on an anonymous basis, outside of the traditional exchange context.[41] These proprietary trading systems—electronic trading networks operated as private businesses rather than SROs—collect indications of interest and rebroadcast those indications to participants through a single broker-dealer or designated broker-dealers. Proprietary systems also provide procedures for executing or settling transactions at volume and price levels agreed to by those participants.[42] The systems operate according to various configurations, such as (1) the passive pricing of relatively large blocks of securities, including portfolios of securities, matched during or after normal trading hours; (2) the entry of priced indications of interest and the ability to "hit" those prices; and (3) a "single price" call market in which price is discovered through the direct interaction of buy and sell orders. Currently, there are operational six proprietary trading systems that trade equity securities: (1) Instinet; (2) Instinet's after-hours "Crossing Network;" (3) POSIT; (4) Exchange Services, Inc.; (5) Portfolio Trading Services, Inc.; and (6) WASI.[43]

The Commission has faced the question of how to regulate these systems. On the one hand, the systems have been described as enabling buyers and sellers of securities to interact in a common place, albeit the "place" being a computer system instead of a trading floor. On the other hand, the systems do not provide a guarantee or expectation of liquidity or embrace the traditional exchange notion of membership.

To date the Commission has responded by dividing proprietary systems into two broad regulatory categories: (1) Non-exchange systems; and (2) exchange systems. The Division staff has treated non-exchange systems as broker-dealers, issuing no-action letters with respect to the non-registration of those systems as exchanges where it is appropriate to do so under the analysis set forth in the Commission's order in Delta Government Options Corporation.[44] These no-action letters are conditioned upon the sponsor providing the staff: (1) Quarterly reports of trading activity in the system; (2) the number and identity of system participants and of prospective participants who have been denied access to the system; and (3) at least 30 days' advance notice of contemplated material changes to the system. The system sponsor is also required to make representations that the sponsor has adopted appropriate procedures to ensure system security and that the system has sufficient capacity to accommodate the volume of trading that reasonably may be anticipated.

With respect to exchange systems, the Commission has viewed these as facilities of an exchange.[45] As such, they are regulated as any other aspect of the exchange. This includes, among other things, submission of proposed rule changes to the Commission for approval to alter the operation of the system. The Commission has granted one exchange system, WASI, an exemption from registration with the Commission as a national securities exchange.[46] That exemption is conditioned on, among other requirements, the adoption of surveillance procedures, reporting of transaction information to vendors and SROs, and trading only in registered or government securities. Most importantly, the Commission stated that it will revisit the appropriateness of the exemption if WASI's trading volume does not remain within certain parameters.[47]

The Commission's decisions on proprietary trading systems to date have reflected a case-by-case, evolutionary approach. To formulate a broader conceptual approach to the issue, the Commission solicited public comment on a proposed rule, rule 15c2–10 under the Act, that would impose on non-exchange systems a degree of regulation that represents a compromise between the full regime of regulatory requirements and limitations imposed upon SROs under the Act, and the less expansive regime of regulation applicable to registered broker-dealers.[48] Under proposed rule 15c2–10, a trading system would have been required to file with the Commission a plan describing its operation, make records available to the Commission on a regular basis and on request, permit the Commission to examine the system, and supervise the system to ensure compliance with the terms of the plan and the federal securities laws. The Commission received substantial comment on the Rule, but no action on the proposal was taken.

In addition to the issues raised in the release proposing rule 15c2–10, including whether the Commission has authority to regulate non-exchange proprietary trading systems under section 15(c)(2) of the Act, proprietary trading systems present the following issues germane to the Market 2000 study:

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[41] The NYSE charges fees for transactions executed for a customer account according to transaction size. For example, a 5,000 share trade would incur a transaction fee of $13.25, in addition to any floor brokerage commission that might be charged.

[42] Automated "bulletin boards" only collect and disseminate indications of interest without providing execution or settlement procedures. They are designed to serve specialized markets that lack the degree of liquidity present in the markets for listed equity securities.

[43] POSIT and Portfolio Trading Services, Inc. ("PTSI") are portfolio matching services sponsored by registered broker-dealers that permit institutional customers to trade portfolio of stocks at prices based on primary market quotations. In addition, POSIT offers execution of single-stock orders, as well as execution at prices that represent the volume-weighted average of trading in a particular security in the primary market on a particular day.

Exchange Services, Inc. ("ESI") is an after-hours electronic bulletin board, sponsored by a registered broker-dealer, that collects and rebroadcasts participant interest in exchange-listed and OTC equities, and offers executions on an agency basis, at prices and sizes displayed through the system.

[44] Securities Exchange Act Release No. 27611 (January 12, 1990), 55 FR 1890.

[45] See section 3(a)(2) of the Act, 15 U.S.C. 78c(a)(2).

[46] Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 6377.

[47] *Id.* at 6380.

[48] Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429.

1. What are the costs and benefits of proprietary trading systems to the equity market? In seeking to promote the public interest, how should proprietary trading systems be treated?

2. The existence of systems for equity trading outside of the organized markets raises transparency concerns, particularly when trades in these systems are effected outside of the regular hours of reporting. Commentators should address the degree that transaction and quotation information generated by these systems should be subject to transparency requirements.

3. Does the attraction of trading volume away from the traditional exchanges by proprietary trading systems further fragment the market for listed securities? If so, how should such fragmentation be addressed? Is "fragmentation" simply another word for "competition"? Are there offsetting benefits, such as lower costs for users, to proprietary trading systems?

4. How should the Commission work to ensure the adequate capacity and security of these systems?

5. Should the Commission revisit how it defines an exchange? Is the exchange or non-exchange distinction still viable for determining the regulatory treatment for a market system? [49] Commentators addressing this issue may wish to offer their views on how Congress or the Commission might amend the regulatory definition of what constitutes an exchange in light of these considerations and the advances in telecommunications and automation.

4. The Fourth Market

In addition to the examples of market fragmentation mentioned above, the Division is interested in receiving commentator's views on how the Commission should respond to the expansion of the fourth market. As a threshold matter, the Division is interested in gauging the current size of this market. Commentators are requested to provide information and data on the amount and type of trading that occurs in the fourth market, and the cost of completing any such transactions relative to execution costs in other markets. In addition, the Division is interested in the trends that participants have observed or expect in this area, particularly the degree to which any such trading has grown, or is likely to grow, as evolving technology continues to lower transaction costs.

In addition, assuming that such trading may grow, the Division solicits comment on steps that can or should be taken to enhance the transparency, and to ensure adequate surveillance, of fourth market trading. Today, both regulators and market participants have only a limited ability to monitor sizes and prices of trades that occur in this market.

Commentators are asked to describe the particular costs and efficiencies that fourth market participants perceive in trading in this market versus traditional markets. In addition, the Commission solicits view on permitting, with appropriate regulation, non-intermediated institutional access to the National Market System; in particular, commentators should express views, and reasons therefor, on the benefits and costs of such access.

5. Market Liquidity

There are different viewpoints on how the interaction between market competition and market fragmentation affects market liquidity. On the one hand, those fearful of market fragmentation are concerned that multiple markets disperse order flow and impair liquidity. The contrary view holds that diverse markets enhance liquidity by providing price and service competition. In addressing the issues on market fragmentation raised in this Release, the Division invites commentators to address how market liquidity has been affected by the types of fragmentation discussed above. In this regard, commentators should not only analyze the impact on liquidity caused by diverse equity markets, but also the impact caused by alternative trading products such as derivatives.[50]

*D. Best Execution*

1. General

Best execution of customer orders has long been an important requirement of the federal securities laws.[51] In its purest form, best execution can be thought of as executing a customer's order so that the customer's total cost or proceeds are the most favorable under the circumstances.[52] Since the 1975 amendments to the Act, the market has made great strides in devising means to improve execution capabilities, such as ITS, the CQS, and the CTA Plan.[53] Developments since then have also raised concerns about best execution, as to both whether it is being consistently achieved and whether it needs to be redefined. For example, the development of automated execution systems based on passive pricing of primary market quotes, the practice of payment for order flow, and the growth of alternative marketplaces, among other things, have raised questions about the issue. Those developments have enabled exchanges and market makers to enhance the speed and certainty of executing brokers' orders, but perhaps at the cost of foregoing potential price improvement for the brokers' customers.

The Division solicits comment on the degree to which best execution opportunities have been affected by the changes that have occurred in the markets and the implications both for

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[49] The Division is also interested in whether the choice of designating a system as exchange or non-exchange for regulatory classification is too limiting generally. Should the classification instead be based on functional attributes (*e.g.*, passive trading or price discovery market)?

[50] The Division is aware of projects recently initiated by the Group of Thirty and the General Accounting Office to examine the growing use of OTC derivative products. The Commission and SROs likewise have been examining OTC derivatives and the hedging strategies employed by the professional institutions issuing them. OTC derivatives involve credit and hedging risks that have the potential to impact the liquidity of the securities market as well as the financial soundness of the market's participants. See, Speech of Mary L. Schapiro, Commissioner, Securities and Exchange Commission, entitled "The Growth of the Synthetic Derivative Market: Risks and Benefits," presented before The National Options & Futures Society on November 13, 1991; and Trading Analysis of October 13 and 16, 1989, A Report by the Division of Market Regulation (May 1990). While the use of OTC derivatives is germane to many of the issues discussed in this concept release, especially those relating to market fragmentation, these products also raise many issues outside of the scope of the Market 2000 Study. In light of the several studies of OTC derivatives currently underway, the market impact of these products will not be a primary focus of the Market 2000 Study, although the Division will consider the results of those studies in connections with the Market 2000 Study. In addition, commentators are invited to address any specific issues concerning OTC derivatives that are germane to the Market 2000 Study.

[51] See Securities Exchange Act Release No. 23170 (April 23, 1986), 51 FR 16004; In re Kidder, Peabody & Co., 43 S.E.C. 911 (1968).

[52] See Securities Exchange Act Release No. 23170 (April 23, 1986), 51 FR 16004; and SEC, Second Report on Bank Securities Activities: Comparative Regulatory Framework Regarding Brokerage-Type Services 97–98, 98 n.233 (February 3, 1977), *as reprinted in* Senate Comm. on Banking, Housing & Urb. Affs., 95th Cong., 1st Sess., Report on Banks Securities Activities of the SEC 145, 251–52, 252 n.233 (Comm. Print 1977).

[53] But see Securities Exchange Act Release No. 14885 (June 23, 1978), 15 S.E.C. Doc. 138, requesting comments on a neutral order routing switch; Securities Exchange Act Release No. 18738 (May 13, 1982), 47 FR 22376, proposing a rule to require intermarket exposure of customer orders; and Securities Exchange Act Release No. 19372 (December 23, 1982) 47 FR 58287 (Reproposal of an Order Exposure Rule) and the accompanying Technical Appendix. The order routing and order exposure proposals received extensive comment, much of which raised competitive and operational concerns about them. In light of technological advances and market developments since the issuance of the proposals, the Division is interested in whether commentators believe these proposals should be revisited.

investor protection and competition between markets.

2. Payment for Order Flow

Payment for order flow is the practice of market makers or exchange specialists compensating brokerage firms for directing customer orders to them.[54] While payment for order flow has been a common practice among market makers in OTC securities for some time, an increasing volume of retail orders (especially in exchange-listed stocks) is now subject to such arrangements. In addition, although this practice originated with wholesale firms with no direct retail order flow, some integrated firms are also paying for order flow. Moreover, surveys undertaken by the SROs indicate that third market makers and some regional exchange specialists are paying for order flow. Indeed, the acquisition of many regional exchange specialists by integrated firms, with the resulting direction of order flow to the affiliated specialist, has been characterized as a widespread payment system.[55]

The increase in payment for order flow can be traced, in part, to the development by many OTC and third market makers, as well as the regional stock exchanges, of automated execution systems. The systems not only provide customers with quick, efficient and comparatively inexpensive executions at the best displayed quotation, but also have enhanced these firms' and exchange specialists' ability to execute small orders. As a result, OTC and third market makers, as well as regional exchange specialists, can afford to pay for order flow, while broker-dealers receiving such payments cut their transaction costs. As competition among firms providing automatic execution systems has increased, it appears that firms increasingly use payment for order flow as a means of attracting order flow to their automated execution systems.

Commentators are deeply divided on the issue of payment for order flow.[56] Some commentators have argued that firms routing their order flow regularly to a specific market or market maker are providing value that is very different from the value provided in routing a single order and that they should be compensated for that service.[57] Others have argued that the practice interferes with the firm's obligation to provide best execution, and that the benefits to the executing broker never flow back to the customer.[58] Moreover, the practice raises the concern that a broker's decision on how to execute a customer's order is influenced by the payment of compensation by particular markets or market makers. The aggregation of customer orders to fulfill an agreement to route orders based on payment effectively prevents the broker from making a trade-by-trade assessment of execution quality, potentially raising the issue of whether customers are, in fact, receiving best execution. Some believe that the practice should not be viewed as a discrete issue, but should be considered as closely related to other, broader questions relating to pricing of customer orders, competition among markets, and quality of markets.

The Commission held a roundtable on the topic in July 1989, at which participants discussed the extent of the practice, and its effect on best execution, disclosure, pricing efficiency, and quotation spreads. More recently, the Commission responded to a letter from Congress discussing the topic.[59]

Commentators are invited to address the practice of payment for order flow and its impact on the equity market. The Division is interested in commentators' views on the extent to which payment for order flow occurs. In addition, commentators are asked to address the following issues regarding payment for order flow: (1) Whether the customer receives best execution of his or her order; (2) whether the practice is consistent with a broker's fiduciary responsibility to customers; (3) whether the practice provides benefits that outweigh any costs it may impose, and (4) whether a broker receiving payment should be held to a disclosure requirement, assuming that the practice is not prohibited outright. In addition, payment for order flow raises market structure issues regarding whether it: (1) Encourages the routing of customer orders away from auction markets, and, if so, what are the costs and benefits of this result; (2) is consistent with the goal of fair competition set forth in Section 11A of the Act; or (3) reduces market maker quote competition for orders. To the extent commentators raise concerns over the practice of payment for order flow, they are asked to suggest responses they believe would adequately address those concerns.

3. Other

Competition between markets has resulted in the markets themselves putting in place structures that raise best execution concerns. For example, the NYSE has proposed a rule change to allow a "clean" agency cross of 25,000 shares or more to be effected at or within the prevailing NYSE quote.[60] The proposal was made in reaction to the frequency of block trades being executed on the regional markets to avoid having to take out the NYSE limit order book. As another example, the Amex has proposed dropping from 25,000 to 10,000 shares the size of an order that can obtain precedence over orders at the same price.[61] These proposals raise questions about the balance between fair markets and fair competition. The Division is interested in comments on the extent to which SRO rules promote or hinder the fair handling of customer orders and on the proper balance between SRO competitive initiatives and order execution rules.[62]

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[54] It should be noted that there is a debate among the commentators about precisely what types of practices should be deemed to involve payment for order flow. On the one hand, some commentators focus on cash payments for the receipt of order flow. Other commentators argue that other forms of economic incentives to direct order flow to a particular market are, at least, the economic equivalent of payment for order flow. See Inducements for Order Flow, A Report to the Board of Governors, National Association of Securities Dealers, Inc., July 1991 ("Ruder Committee Report").

[55] Ruder Committee Report.

[56] See letter from Richard C. Breeden, Chairman, SEC, to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, dated July 2, 1992; Coffee, Corporate Securities, New York Law Journal, Jan. 23, 1992, at 5, 7, 29; and Ruder Committee Report.

[57] Ruder Committee Report at 25.

[58] C. Lee, Purchase of Order Flows and Favorable Executions: An Intermarket Comparison (September 15, 1991); M. Blume & M. Goldstein, Differences in Execution Prices Among the NYSE, the Regionals and the NASD (September 1991). See, also, letter from Anson M. Beard, Jr., Managing Director, Morgan Stanley & Co., to Thomas E. Haley, Chairman, Consolidated Tape Association, dated January 11, 1989, recommending that a decimal-based pricing system would remove the wide spreads that make payment for order flow possible.

[59] See letter from Richard C. Breeden, Chairman, SEC, to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, dated July 2, 1992.

[60] See Securities Exchange Act Release No. 28453 (September 25, 1990), 55 FR 39223 (notice of filing of File No. SR-NYSE-90-39).

[61] See Securities Exchange Act Release No. 30257 (January 16, 1992), 57 FR 2937, (notice of filing of File No. SR-Amex-91-34). Under current Amex rules, an order for 25,000 shares or more would be executed ahead of smaller orders once a clearing trade (a transaction at the same price) has occurred. The Amex proposes to extend this size precedence to orders of 10,000 shares or more.

[62] For example, NYSE rules permit any order to be "sized out" by a larger order regardless of time priority, once a clearing trade has occurred (subject to the constraints of section 11(a) of the Act). If, say, the bids on the specialist book at the best price total 500 shares, and a 100 share trade occurs reducing the bid to 400 shares, then a new bid on the floor of 1,000 shares would have precedence based on size over the 400 share "book" bid. Are such rules consistent with fair and orderly markets?

*E. Transparency*

1. General

The U.S. equity markets generally have achieved a high level of transparency, *i.e.*, the real time dissemination of trade and quote information. While the Commission has been working with the SROs to increase transparency,[63] such developments as after-hours trading, the growth of proprietary trading systems, and fourth market trading have raised questions of the availability of real-time trade and quote information to all market participants.

The Commission is interested in whether current market transparency is adequate and how to ensure that market participants have access to necessary information. In particular, commentators should explore the areas where transparency could be improved, for example, by: (i) The dissemination of more timely trade information on after-hours trading by both exchanges and off-exchange systems; [64] (ii) examining the integration, at an appropriate cost level, into the consolidated quotation system of quotations or priced orders in the off-exchange systems; [65] and (iii) requiring exchanges to display all market interest, or at a minimum display all limit orders received by a specialist.[66]

2. Overseas Trading.

While transparency may be a strength of the U.S. equity markets, those markets no longer face competition solely from domestic sources. Markets around the world are competing for order flow in world-class U.S. equities, and broker-dealers seek to execute trades in the cheapest market, both in terms of fees and regulations.[67] The Division seeks information on the extent to which order flow may be going offshore for transparency reasons. Moreover, the Division is interested in how foreign trades in U.S. stocks should be reported. The NYSE has proposed to require that these trades be reported to the NYSE.[68] Apart from the NYSE's proposal, how should these transactions be categorized for transparency purposes?

*F. Regulatory Oversight.*

Some proponents of proprietary trading systems and off-exchange trading have suggested that the SROs are charging fees for regulatory activities that exceed their costs. SROs, in turn, sometimes claim that they, in effect, subsidize proprietary trading systems and off-exchange markets by performing regulatory oversight of the equity market these systems utilize for pricing as well as of their own member organizations.

The Division solicits comment on the manner in which Commission or SRO rules might be revised to avoid any unjustified disparities between the regulatory burdens and costs of registered exchanges, proprietary trading systems, and off-exchange markets. The comments should also address whether there should be a different allocation of regulatory responsibilities among the SROs themselves. In this regard, the commentators should identify any regulatory burdens or costs that they believe are unfairly allocated, and if there is an unfair allocation, the manner in which a reallocation should be made. If any unfair burden should be eliminated, the commentators should identify the manner in which the regulatory interest protected by such regulation should be addressed. Moreover, commentators should identify those rules of the Commission and the SROs that have limited investor protection purposes and contribute to inefficient markets.

The Division also solicits comment on the extent that regulatory responsibilities unfairly prevent markets with self-regulatory duties from competing with other markets. Further, if any such burdens are identified, commentators should address the manner in which it may be necessary to reallocate, reassign, or eliminate those burdens to permit fairer competition between markets.

## V. Conclusion

In this concept release the Division has identified those issues which it believes are germane to an evaluation of equity market structure regulation. At a minimum, the following issues will form the core of the Division's analysis and should be addressed by commentators.

1. The central purpose of the equity markets is to raise capital for use by businesses. To what degree do developments affecting traders and competing trading systems enhance or detract from the attractiveness of the U.S. equity market to savers and investors providing capital? How can the national interests of promoting savings and capital investment best be enhanced through organization and operation of the secondary trading markets? What secondary market features or practices encourage or discourage low-cost capital availability?

2. Will the existing equity markets continue to provide a centralized price discovery function? If not, why not, and what effect will this have on the U.S. capital markets? In this regard, are the equity markets becoming stratified, with the easy, profitable trades being diverted from the price discovery markets?

3. What are the costs and benefits of increased market segmentation, and how does it affect the price discovery function, market transparency, market liquidity, or best execution of orders?

4. How can increased market competition be facilitated while maintaining an efficient and liquid system for price discovery? Are there barriers to market competition and access, and if so, are they necessary?

5. How has payment for order flow affected the equity markets? What are its costs and benefits? How should the Commission address the seven specific issues noted in the payment for order flow section of this release?

6. What is the proper and most equitable means to allocate regulatory and self-regulatory costs in the equity markets? How should organized markets, proprietary systems, market professionals and customers be assigned these costs and responsibilities, both among these four groups and within each group?

7. How should the regulatory system treat after-hours trading (*i.e.*, trading when the primary market is closed)? Should the existing regulatory structure be imposed "whole cloth," or should deviations be made? For example, how should trade reporting be handled? What trading practice rules are appropriate?

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[63] See Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396 (Commission order approving NASD rule change that requires NASD members to report to the NASD transactions in NASDAQ securities, with certain exceptions).

[64] For example, should there be a so-called "run-off" tape for all after-hours transactions in reported securities? A "run-off" tape is a trader's colloquialism for capturing trades on the tape that occur after the close of normal trading. Such a tape could be expanded to capture all after-hours trades in reported securities and disseminate varying degrees of information. The information could simply include the total volume and high, low, and average prices for the after-hours trading of each security. Alternatively, the "run-off" tape could show transaction-specific information for after-hours trades.

[65] The Division would be interested in obtaining cost estimates concerning the integration of such trading into a consolidated system.

[66] See Steiner and Salwen, Stock Specialists Often Keep Best Quotes to Themselves, Wall St. J., May 8, 1992 at C1.

[67] See discussion at notes 28 to 30 *supra*.

[68] See Securities Exchange Act Release No. 30155 (January 8, 1992), 57 FR 1294 (notice of filing of File No. SR-NYSE-91-46).

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8. How should the regulatory system treat proprietary trading systems, and, in particular, how should the Commission address the five questions noted in the proprietary trading system section of this release?

9. What is the proper role of the Commission in addressing the above issues, and in ensuring that the U.S. equity markets remain the fairest, most efficient, and most competitive in the world?

In addition to these issues, the Division welcomes comments on the other issues identified in this release as well as suggestions on other issues the study should address, bearing in mind the scope of the study.

The Division also welcomes any empirical work or academic studies on these issues, or any data that might be helpful to an assessment of these issues. The Division is particularly interested in data on the following.

1. The amount of trading of publicly issued equities in the fourth market.

2. The amount of trading in U.S. equities abroad, including trading nominally effected in foreign "over-the-counter" markets. How much of this is in individual stocks and how much in programs?

3. The amount of equity trading that is passive trading (*e.g.*, and S&P 500 indexed account) as opposed to active trading.

4. The amount of equity trading attributable to derivative trading and hedging strategies.

5. The amount of equity trading effected as principal in the third market. How much of this is in individual stocks and how much in programs?

6. What are the regulatory costs for the organized markets, off-exchange trading systems, and market participants competing with organized markets. The Division is particularly interested in the regulatory costs for operating the market, system, or competitive enterprise.

7. What are the transaction costs, including fees, impact costs, and execution prices, of trading in the various organized markets, off-exchange systems, fourth market, and through third market makers (including foreign OTC markets)?

8. How widespread is payment for order flow? What are the amounts being paid, and in what forms?

The Division invites the submission of any other data that commentators feel may be useful. All comments and submissions will be available in the Commission's Public Reference Room under File No. S7–18–92.

Dated: July 14, 1992.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

United States

**SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

July 11, 1991.

The Honorable Edward J. Markey,
*Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC 20515*

Dear Chairman Markey: Thank you for your letter dated May 16, 1991, concerning the impact of computerized trading systems on the National Market System. In response to your letter, I have enclosed a copy of a memorandum that I asked the Division of Market Regulation to prepare, which addresses in detail the questions you have asked. I believe that the Division's memorandum correctly identifies the issues on which the Commission should focus in this increasingly important area affecting our securities markets.

As Congress understood when it enacted section 11A, markets no longer are, or need be, only physical places. Market forces of supply and demand can be, and to a large extent are, linked electronically, even in the electronic circuits happen to meet on an exchange floor. Whether one welcomes it or not, computerized trading already is an integral part of our markets and of all major foreign markets as well.

In general, the emergence of a larger number and variety of computerized trading systems has to date furthered the National Market System goal of decreasing transaction costs, increasing transparency, and enhancing competition in our markets. Of course, the potential exists for the use of these trading systems to increase and for the nature of these systems to change in a manner that may be currently difficult to foresee. It is for these reasons that I believe that the Commission must review with great care the manner in which we regulate these systems and the incentives created by our regulations.

I appreciate this opportunity to set forth our views on this important topic, and I look forward to working with you and the Subcommittee on developments in this area.

Sincerely,

**Richard C. Breeden,**

*Chairman.*

Enclosure

**Memorandum**

To: Chairman Breeden
From: William H. Heyman, Director, Division of Market Regulation
Re: Response to Letter from Chairman Markey concerning Computerized Trading Systems
Date: July 3, 1991.

**I. Background**

You have asked the Division of Market Regulation ("Division") to prepare responses to the letter to you from Chairman Markey dated May 16, 1991, concerning computerized trading systems. Before answering the seven specific questions, we would like to set forth some basic assumptions and concepts. In this way we hope to shorten the answers by referring back to these common assumptions and concepts, rather than redefining them in each answer.

*A. The National Market System*

The "national market system" is a term that is not specifically defined in Section 11A of the Securities Exchange Act of 1934 ("Act") because Congress believed that it was best to give the Commission "maximum flexibility in working out specific details." [1] The Congress decided that it was "essential that the Commission be granted broad, discretionary powers to oversee the development of a national market system and to implement its specific components in accordance with the findings and to carry out the objectives set forth in the bill." [2]

As these statements make clear, the findings and objectives set forth in section 11A are the critical guides to be followed by the Commission in determining how to exercise its authority to "facilitate the establishment of a national market system." [3] The findings and objectives, which are contained in section 11A(a)(1), include the following:

(1) New data processing and communications techniques create the opportunity for more efficient and effective market operations;

(2) It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—

(i) Economically efficient execution of securities transactions;

(ii) Fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;

(iii) The availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities;

(iv) The practicability of brokers executing investors' orders in the best market; and

(v) An opportunity, consistent with the provisions of clauses (i) and (iv) of this subparagraph, for investors' orders to be executed without the participation of a dealer; and

(3) The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

Congress stated that there were two paramount objectives: "the maintenance of stable and orderly markets with maximum

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[1] Senate Comm. on Banking, Housing and Urban Affairs, Report to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Sess. 7, *reprinted in* 1975 U.S. Code Cong. & Ad. News 179, 185 ("Senate Report").

[2] *Ibid.*

[3] Section 11A(a)(2).

capacity for absorbing trading imbalances without undue price movements," and the "centralization of all buying and selling interest so that each investor will have the opportunity for the best execution of his order, regardless of where in the system it originates." [4]

Congress also stated that the goal of the legislation was not to "eliminate distinctions between exchange markets and over-the-counter markets * * *," or "to force all markets for all securities into a single mold." [5] At the same time, however, Congress also indicated that, with respect to securities suitable for auction trading, "every effort should be made to design the national market system in such a way that public investors in those securities receive the benefits and protections associated with auction type trading." [6] In this connection, the Congress stated that a goal of the national market system is "the elimination of fragmented markets for securities suitable for auction trading." Congress thus indicated that, in addition to trade and quotation reporting, a "set of trading rules and procedures" may be needed to "tie the individual market centers together." [7]

Finally, Congress expressed its intent that the Commission's role in fulfilling its mandate under section 11A was not to be an "economic czar" [8]; rather, Congress intended that the "initiative for the development of the facilities of a national market system must come from private interests, and will depend upon the vigor of competition within the securities industry as broadly defined." [9] In this context, Congress stated that the SEC's "basic role" would be to "remove burdens on competition which would unjustifiably hinder the market's natural economic evolution and to assure that there is a fair field of competition consistent with investor protection." [10]

*B. What is a Securities "Market"*

Although also not defined, the concept of a securities market is critical to the concept of a national market system, for, as described above, the core goals relate to competition among and the linking of "markets." While not specifically defined, it seems clear that Congress used the term "markets" to include exchanges and the over-the-counter market as a whole, but not individual brokers and dealers. For example, in section 11A(a)(C)(ii), Congress speaks separately of "brokers" and "dealers" on the one hand and of "exchange markets" and "markets other than exchange markets" on the other hand.

The distinction between "exchanges" and "brokers" and "dealers" also is central to the Commission's decisions regarding the proper registration category of proprietary trading systems. Thus, as you know, the Commission staff has determined that several proprietary trading systems do not meet the definition of the term "exchange" in section 3(a)(1) of the Securities Exchange Act of 1934, but rather meet the definition of the terms "broker" or "dealer" in sections 3(a)(4) and (5). [11] Because the statutory definition of the term "exchange" is not unambiguous, the Commission interpreted this term in its order approving the registration of Delta Government Options Corporation ("Delta") as a clearing agency under section 17A of the Act to mean:

> Trading markets that, like the exchange markets of the mid-1930's and of today, are designed, whether through trading rules, operational procedures or business incentives, to centralize trading and provide buy and sell quotations on a regular or continuous basis so that purchasers and sellers have a reasonable expectation that they can regularly execute their orders at those quotations. [12]

As you also know, the Seventh Circuit Court of Appeals recently has upheld the Commission's approach to the interpretation of the term "exchange." [13]

*C. Transparency Principles*

One of the central goals of Section 11A is to assure the transparency of the markets for securities trading in the national market system. [14] The industry and the Commission have devoted substantial attention to this area, and a result is real-time trade and quotation reporting for the major exchange and over-the-counter securities. It is important to keep in mind that these transparency requirements for listed securities apply equally to over-the-counter trades. Thus, whenever a broker or dealer effects a trade in a listed security during the hours of operation of the trade reporting system (currently 9:30 to 4:30), the broker is required to report the price and size of the trade within 90 seconds so that the trade report can be disseminated over the Consolidated Tape Association Trade Reporting System.

Among other things, this means that trades effected by or through a proprietary trading system registered as a broker-dealer [and the sponsors of all systems trading listed or National Association of Securities Dealers Automated Quotation System ("NASDAQ")/ National Market System ("NMS") stocks are so registered] during the hours of operation of the trade reporting system are as transparent as trades effected on exchanges. It also means that all trades effected after the hours of operation of the consolidated reporting system, whether effected on or off an exchange, are not subject to the complete transparency rules. Again, there is no discrepancy here between transparency requirements for exchanges and for brokers and dealers, including proprietary trading systems, trading listed securities.

The New York Stock Exchange ("NYSE") after-hours sessions differ from the normal transparency principles for exchange trades in that trades in Crossing Session I

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[4] Senate Report, *supra* note 1, at 185.
[5] *Ibid.*
[6] Senate Report, *supra* note 1, at 195.
[7] *Ibid.*
[8] Senate Report, *supra* note 1, at 190.
[9] *Ibid.*
[10] *Ibid.*

[11] There are 20 systems that have received staff no-action positions with regard to non-registration as a national securities exchange under Section 6 of the Act:

1. Capitalink Bond Auctions, Inc. See letter from Brandon Becker, Associate Director, Division to Peter F. Olberg, Battle Fowler, dated December 11, 1989. Active.

2. RMJ Securities—Delta Government Options. See letter from Richard G. Ketchum, Director, Division to Robert A. McTamaney, Carter, Ledyard & Milburn, dated January 12, 1989. Active.

3. ECON Investment Software. See letter from Kathryn V. Natale, Assistant Director, Division, To Christopher R. Petruzzi, ECON Investment Software, dated October 11, 1988. Out of business.

4. POSIT. See letter from Brandon Becker to Lloyd Feller, Morgan Lewis & Bockius, dated July 20, 1987. Active.

5. Instinet. See letter from Richard G. Ketchum to Daniel T. Brooks, Cadwalader, Wickersham and Taft, dated August 8, 1988. Active.

6. Adler & Co. See letter from Richard T. Chase, Associate Director, Division, to James M. Anderson, Taft Stettinius & Hollister, dated August 7, 1985. Out of business.

7. NAPEX. See letters from Michael J. Simon, Assistant Director, to D. Roger Glenn, Schifino & Fleischer, dated August 2, 1985 and July 14, 1988. Active.

8. Security Pacific. See letters from Richard T. Chase and Richard Ketchum to Eric D. Roiter, Debevoise & Plimpton, dated July 19, 1985 and August 8, 1988. Out of business.

9. Troster Singer. See letter from Michael J. Simon to Carl J. Hewitt, Assistant General Counsel, Troster Singer Corporation, dated May 23, 1985 and September 3, 1985. Out of business.

10. Exchange Services. See letters from Michael J. Simon to Patteson Branch, President, Exchange Services, Inc., dated May 22, 1985 and September 5, 1985. Out of business.

11. Transaction Services. See letters from Michael J. Simon to Michael J. Tario, Co-Chief Executive Officer, Transaction Services, Inc., dated May 15, 1985 and September 5, 1985. Out of business.

12. B&K Securities Inc. See letters from Michael J. Simon to Bruce C. Klein, Secretary-Treasurer, B&K Securities, Inc., dated March 18, 1985 and September 5, 1985. Out of business.

13. Petroleum Information Corporation. See letter from John M. Ramsay, Attorney, to Alan P. Baden, Vinson & Elkins, dated November 12, 1989. Active.

14. NYSAC. See letter from Brandon Becker to Michael J. Simon, Milbank, Tweed, Hadley & McCloy, dated June 15, 1990. Active.

15. Investex Investment Exchange Inc. See letter from John M. Ramsay to Howard Wynn, Gusrae, Kaplan & Bruno, dated April 9, 1990. Active.

16. Real Estate Financing Partnership. See letter from Kathryn V. Natale to Joseph H. Huston, Jr., Stevens & Lee, dated May 1, 1990. Active.

17. Troy Capital Services, Inc. See letter from Kathryn V. Natale to Edward M. Olson, McDonnell Douglas Capital Corporation, dated May 1, 1990. Active.

18. Farmland Industries Inc. See letter from C. Dirk Peterson, to Paul A. Belvin, Stinson Mag & Fizzell, dated January 23, 1991. Active.

19. Wunsch Auction Systems, Inc. See letter from Richard G. Ketchum to ]Daniel T. Brooks, Cadwalader, Wickersham and Taft, dated February 28, 1991. (Although deemed an exchange, Wunsch Auction Systems received a no-action letter regarding non-registration as an exchange under Section 6 of the Act.) Active.

Portfolio Trading Services, Inc. See letter from William H. Heyman, Deputy Director, to Richard S. Soroko, Lippenberger, Thompson & Welch, dated May 16, 1991. Active.

[12] Securities Exchange Act Release No. 27611 (January 12, 1990), 55 FR 1890 ("Delta Order").

[13] *Bd. of Trade of the City of Chicago* v. *Securities and Exch. Comm'n*, 923 F.2d 1270 (7th Cir. 1991), rehearing en banc denied, No. 90-1246 (7th Cir. April 2, 1991).

[14] See Section 11A(a)(C)(iii).

(individual stock trades) are not individually reported on the tape, but rather total volume for each stock in that session is reported. In addition, for Crossing Session II (the aggregate securities trading session), only total dollar and share volume for all aggregates traded during the session are reported. A condition of approval of the NYSE proposal is that the NYSE report to the Commission within six months on the operation of these new (for U.S. exchanges) transparency principles.

Transparency principles for overseas markets in U.S. equities are not as rigorous as those applied in the United States markets. For example, about 3 million shares of U.S. equities are traded in the London over-the-counter market each day as a part of program trades, without any trade reporting at all.[16] Even in some organized overseas markets for U.S. equities,[16] transparency is much less than it is for the same securities in the U.S.[17]

*D. What is the "Fourth Market"?*

From the SEC's perspective, the fourth market is a market where institutions trade directly with one another without the participation of a broker-dealer. While some market participants and some recent surveys categorize Instinet and Jefferies trades as fourth market trades, from the SEC's perspective these trades are not fourth market trades because Instinet and Jefferies are registered broker-dealers.

The distinction is important because, among other reasons, trades effected through Instinet and Jefferies, unlike true fourth market trades, are subject to transparency rules and to oversight by the National Association of Securities Dealers ("NASD"). It is our understanding, based upon preliminary conversations with several large institutions, that true fourth market trading is still quite limited and that most of what is sometimes reported as fourth market volume is in fact Instinet and Jefferies volume.

*E. Price Discovery versus Passive Trading*

Another concept that is important to understand in any discussion of proprietary trading systems is the distinction between trades that discover prices and trades that are passively, or derivatively, priced. Price discovery involves the determination of the price of a security through the interaction of supply and demand. This interaction can occur either directly, as in the case of the Wunsch Auction System; through agents, as in auction markets; or indirectly through the trading of dealers, as in the NASDAQ market.

In contrast, passive, or derivative, trading takes prices discovered in other markets. For example, the crossing systems operated by Instinet and Jefferies and the after-hours overseas markets for trading programs of U.S. equities often use prices discovered in the primary markets for the securities, principally the NYSE. Other examples of passively or derivatively priced systems as defined here include the small order execution systems of the regional exchanges; the automated execution system for listed stocks operated by Bernard Madoff & Co ("Madoff"); and the after-hours single stock trading system recently introduced by the NYSE.

Passive pricing systems have developed for a variety of reasons. Certain institutional investors pursuing indexing strategies are primarily interested in matching the price performance of specific indices. Seeking the opportunity to obtain better prices by participating in the price discovery mechanisms not only is less important to such institutions but may even be counterproductive due to the large costs (including market impact costs) of effecting large trades in the price discovery systems.

On the other hand, investors seeking to effect smaller trades seem increasingly to believe that the opportunities for obtaining price improvement [18] provided by price discovery markets to smaller trades are relatively slight and outweighed by the opportunity for assured and speedy executions at displayed quotations, or in some cases now at current last sale prices, provided by the derivatively priced small order execution systems operated by the regional exchanges. It should be noted that the primary stock markets such as the NYSE and the American Stock Exchange ("Amex") do not operate such systems in large part because of the opportunities they provide for orders to obtain price improvement by being executed in between displayed spreads. About 35% of all Amex and NYSE orders in stocks with spreads of more than ⅛ in fact obtain such price improvement. In an attempt to provide similar price improvement opportunities, some regionals recently have modified their small order systems to give on a limited basis prices based upon primary market prices rather than quotations. Even with these modifications, these systems are passively priced in that the NYSE and the Amex continue to rely upon prices discovered elsewhere.

Finally, a significant portion of block trades are in effect passively priced. Many such trades are negotiated off the floor based upon the current prices disseminated from the floor, with a block premium added or subtracted, and then executed on the floor under the exchanges' block trading rules designed to protect resting pubic limit orders. About 50% of all NYSE trades now are block trades,[19] and a substantial proportion of those block trades are negotiated off-floor. As a result of the increasing reliance of both small and large traders upon passive pricing mechanisms, the price discovery mechanisms today reflect largely the interaction of medium sized supply and demand.

*F. Volume in Off-Exchange Systems*

While it is true that interest in off-exchange trading systems has increased in recent years, it is also true that the volume traded in these systems, and especially volume not subject to transparency requirements, has remained relatively slight. For example, Instinet's overall average daily volume in the first quarter of 1991 was almost 8 million shares, of which 7.1 million shares were effected in trades subject to real-time trade reporting. Similarly, average daily volume in Jefferies POSIT system in the first quarter of 1991 was over 3 million shares, over 99% of which was effected in trades subject to real-time trade reporting requirements. Maddoff's average daily volume in listed securities in the first quarter of 1991 about 9 million shares,[20] all of which was effected in trades subject to real-time reporting requirements.

The NYSE averaged about 194 million shares per pay in the first quarter of 1991, and the five regional exchanges [21] together averaged about 28 million shares daily. Thus, the combined average daily share volume of Instinet, Jefferies (POSIT) and Madoff was about 20 million shares, or 10% of NYSE volume and 9% of combined NYSE and regional volume in listed shares. In transparency terms, combined Instinet, Jefferies (POSIT) and Madoff non-real-time reported share volume was about one million shares, or less than one half of one per cent of combined daily NYSE and regional volume.[22]

By way of comparison, it is estimated that about 20 million shares a day are effected in overseas markets for U.S. securities.[23] Thus, an equal amount of trading of listed U.S. equities has escaped to foreign markets as has migrated from U.S. exchanges to U.S. off-exchange markets.

**II. Answers to Specific Questions**

1. *What is the Commission's analysis of the implications of the emergence of*

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[16] In its order approving the application of Wunsch Auction Systems, Inc. ("WASI") for exemption from exchange registration, the Commission indicated that trades negotiated by U.S. firms in the U.S. at closing U.S. prices will be deemed U.S. trades for trade reporting and other regulatory purposes even if deemed by the NYSE to be effected overseas for purposes of NYSE Rule 390. See Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 6377, 6381. This may bring some increased, U.S.-style transparency to these trades.

[17] Unlike the U.S.'s NASDAQ market, the over-the-counter market in the U.K. is neither organized nor transparent.

[17] For example, the U.K.'s market for foreign securities, Stock Exchange Automated Quotation System ("SEAQ") International, does not have public trade reporting.

[18] Price improvement in this context means a price better, from the investor's point of view, then the bid (offer in the case of a buy order) being disseminated at the time the order is entered.

[19] In this context, a block trade is a trade of 10,000 shares or greater.

[20] This assumes that a substantial portion of the 12,975,510 share listed volume attributed in the Consolidated Trade Association's volume to the National Association of Securities Dealers, Inc. ("NASD") is attributable to Madoff; we have in effect subtracted three million shares for Jefferies (Instinet is reported separately), one million shares for other potential sources of third market volume, and deemed the rest Madoff volume.

[21] The Boston ("BSE"), Cincinnati ("CSE"), Midwest ("MSE"), Pacific ("PSE"), and Philadelphia ("Phlx") Stock Exchanges.

[22] WASI's average share volume per auction, for the first two months of operation, was 27,936 shares.

[23] While there are no precise tabulations of overseas trade value in U.S. equities, we believe that current industry estimates of about 20 million shares are generally accurate.

*computerized trading systems for the National Market System, and the extent to which such systems are consistent or inconsistent with the objective of linking all securities markets through communication and data processing facilities?*

As recognized by section 11A itself,[24] computerized trading generally has positive implications for the National Market System and is consistent with the objective of linking all securities markets through communication and data processing facilities. At the same time, the potential growth of new systems and the continuing development of communications technologies suggests the desirability of a reexamination of the need for and potential to expand upon current National Market System structures.

Computerized trading systems, whether operated by securities markets or by broker-dealers, generally further the development of the National Market System. These systems tend to reduce transaction costs, thereby furthering the goal of economically efficient executions [(section 11A(a)(1)(C)(i)]; promote competition [(section 11A(a)(1)(C)(ii)]; improve the transparency of markets [(section 11A(a)(1)(C)(iii)]; increase the opportunities for best execution by improving overall transparency [(section 11A(a)(1)(C)(iv)]; and, especially in the case of systems like Instinet, Wunsch, Jefferies, and the NYSE after-hours system, enlarge the opportunities for orders to be executed without the participation of a dealer [(section 11A(A)(1)(C)(v)].

Moreover, the aggregate use of systems not operated by securities markets continues to be relatively small. For example, the overwhelming majority of U.S. trading volume [25] in listed stocks is still effected on exchanges, and fragmentation of volume due to off-exchange trading is still very small. With the relatively low volumes effected through these systems, claims that competition between exchanges and systems not registered as exchanges is not "fair" seem relatively attenuated. The goal of fair competition does not suggest that brokers and dealers like Instinet and Jefferies should be registered as exchanges. In addition, transparency concerns are slight; the U.S. volume escaping real-time trade reporting remains very low as a percentage of all trading. In this connection, it is worth noting that we are unaware of documented complaints or evidence of any actual or measurable harm to investors that has resulted from the emergence of these systems.

For similar reasons, we believe that computerized trading systems, whether operated by securities markets or by broker-dealers, are generally consistent with the objective of linking all securities markets through communication and data processing facilities. Computerization of trading generally lends itself to greater transparency, which is a principal means of market linkage and of assuring the opportunity of best execution. Computerization also facilitates the direct linkage of trading systems.

As described above, the Commission has determined that several computerized trading systems are brokers and dealers rather than "exchanges." To some extent, concerns with the emergence of these computerized trading systems reflect disagreement with these Commission decisions because the classification effectively excludes these systems from the National Market Systems goals of linking "markets." We believe that Commission doctrine in this area, as reflected in the Delta Options order upheld by the 7th Circuit, is correct. We also believe that section 11A(a)(1)(D) correctly refers to the linkage of "markets," not "brokers" or "dealers."

We do not, however, dismiss the possibility that use of off-exchange systems will increase. To a large extent, the Commission's regulatory approach to computerized off-exchange systems reflects the experimental nature, specialized purpose [*e.g.*, institutional crosses at fixed prices (Instinet and POSIT); once-a-day call auctions (WASI); or small order automated executions (Madoff)], and limited use of these systems. Even though volume in these systems is still small relative to exchange volumes, there is clearly increased investor interest in trading mechanisms that offer an alternative to traditional exchanges. For obvious reasons, institutions are seeking to reduce their transaction costs, and they believe off-exchange systems are less expensive from this perspective for some of their trades, especially passively priced trades. Similarly, small investors may perceive the costs of off-exchange trading to be less for certain of their small orders.

Moreover, with the increasing acceptance of computerized trading by all industry participants, including exchanges,[26] and with the continuing development of communications technology, technology-based solutions to various National Market System goals (such as market linkages, trading without the intervention of a dealer, and increased competition) may be even more affordable and more feasible than they were at the time section 11A was enacted.

Because of the potential increase in use of off-exchange systems and the expanded technological possibilities for National Market System initiatives, we believe that the time is ripe for a thorough examination of the National Market System implications of computerized trading systems. We believe such an examination should be a balanced and thorough one that considers potential changes not only to the Commission's current approach to off-exchange systems but also to the Commission's current approach to primary and regional exchanges, exempt exchanges, and market structure as a whole. This examination would have as its ultimate goal the proactive crafting of an overall regulatory approach that preserves the positive contributions alternative systems have to offer, such as competition, innovation, and reduced costs, and also provides investors and market participants with the most efficient and fairest overall market structure achievable with currently available technologies.

We believe that the Commission could conduct this examination in conjunction with and as a part of its consideration of proposed rule 15c2–10 (see answer 3, below). Consistent with the intent of section 11A, the Commission's central role would be to focus discussion of the issues, facilitate private sector initiatives to implement changes identified as desirable, and where necessary to eliminate competitive barriers to the implementation of such changes.

Issues and options that could be examined include:

(1) transparency improvements, by means such as the dissemination of more timely trade information regarding after-hours trading by both exchange-operated systems and proprietary trading systems [27] and the integration into the consolidated quotation system of quotations (priced orders) in proprietary trading systems;

(2) increasing best execution opportunities by more directly linking trading systems for listed stocks by, *inter alia*, improvements to the Intermarket Trading System ("ITS"), expansion of ITS to include non-19c-3 stocks,[28] or establishment of a centralized limit order book for listed stocks;[29]

(3) the costs and benefits of different mechanisms of addressing market fragmentation and specifically of integrating different trading mechanisms for the same stocks (e.g., call auctions or passively priced crossing networks with continuous price discovery mechanisms);[30]

(4) improved mechanisms for regulation and surveillance of proprietary trading systems, such as proposed rule 15c2–10;[31]

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[24] Section 11A(a)(1)(B) states that "new data processing and communications techniques create the opportunity for more efficient and effective market operations."

[25] As noted above, an increasing volume of trading in U.S. equities is being effected abroad. To some extent this may be due to the progress made in the U.S. in implementing the transparency goals of section 11A; foreign markets for U.S. equities tend to be much less transparent than U.S. markets. See above under Transparency Principles. To some extent, however, foreign trading in U.S. equities may be occurring due to the inability of U.S. firms that are members of the NYSE to effect trades in the U.S. over-the-counter market after-hours due to NYSE Rule 390.

[26] Every exchange relies greatly upon automation, and, with the implementation of the NYSE's after-hours session, every exchange now uses some sort of computerized execution.

[27] As described above in the discussion of transparency principles, there are at least two sets of domestic after-hours transparency issues: (1) The lack of transparency for after-hours trades effected in proprietary trading systems; and (2) the reduced transparency of the NYSE after-hours trading session. The Commission intends to raise its concerns with the lack of transparency of overseas markets for U.S. equities in the appropriate international fora.

[28] Rule 19c-3 under the Securities Exchange Act of 1934 eliminates off-board trading restrictions with respect to equity securities listed after April 26, 1979.

[29] A centralized limit order book is an electronic facility for collecting, storing, and executing all limit orders in particular stocks.

[30] This issue is discussed separately below in the response to Question 2.

[31] Proposed Rule 15c2-10 is discussed further in response to Question 3.

(5) the need to rationalize disparities in regulatory burdens and costs between systems regulated under Sections 6 or 15A under the Act and systems not regulated under these sections;

(6) changes to Commission regulations, and specifically means to maintain transparency and ensure adequate surveillance, if non-intermediated, fourth market, trading increases.[32]

(7) increased exemptive authority for specialized exchanges or for foreign exchanges; [33] and

(8) the effects of any expansion of National Market System initiatives on the global competitiveness of U.S. securities markets.

2. *Concerns have been expressed that the proliferation of off-market trading systems, including Instinet's Crossing Network, Jefferies POSIT system, and the Wunsch Auction System may result in a "Balkanization" of our nation's securities markets that would be inconsistent with the National Market System concept of an integrated nation-wide system of competitively traded securities. Concerns have also been raised that as a result, the goal of maintaining an efficient price-setting mechanism for securities will be undermined. Please provide the Subcommittee with an analysis and evaluation of these concerns. In your response, please indicate whether the Commission believes that electronic trading systems designed to facilitate large institutional trading markets may pose the potential for balkanizing our nations' securities markets into a two-tiered system—one for large institutional traders and another for individual investors.*

As discussed above, market fragmentation issues would be included in the Commission's examination of market structure issues. While we cannot predict the outcome of this part of the reexamination, we can offer the following preliminary observations.

With regard to "balkanization" generally, the fact that trading of listed securities in all systems, whether operated as exchanges or operated as broker-dealers, is equally subject to real-time trade reporting, coupled with the ability of arbitrage to keep prices competitive, greatly limits the extent to which markets for these securities are or ever can be "balkanized" or unlinked in an economic sense. Indeed, the competitive trading of securities in transparent systems seems to further National Market System goals.

Moreover, experience in both the stock and options markets suggests that a certain minimum, critical mass of trading tends naturally, over time, to gravitate to a primary market. The fact that competitive trading among the regional and primary exchanges and among the exchanges and off-exchange systems has in fact occurred in the U.S. with *de minimis* balkanization is concrete evidence of this tendency.[34] The overwhelming preponderance of price discovery trades in listed equities still occurs on the NYSE, the Amex, and the regional exchanges linked to the NYSE and the Amex by the ITS.[35] The limited experience with multiple trading of standardized options also supports this conclusion.[36]

In addition, it is very important to keep in mind that much of the trading being effected off-exchange is passively priced or derivative trading. The effect of the withdrawal of these trades from the price discovery mechanism is not clear. It can be argued that reintroducing the smaller trades effected in derivatively priced automated execution systems would not in any meaningful way assist in price discovery, and that reintroducing the larger institutional trades would only confound efficient price discovery by creating additional volatility. In effect, this argument runs, the larger institutional trades being effected in passively priced systems do not reflect true shifts in supply and demand based on the underlying fundamentals of the issuers.

The contrary argument is that the withdrawal of the "easier" so-called "informationless" (because not related to company fundamentals) trades from the price discovery markets will cause the liquidity providers in those markets (generally specialists, but also people entering limit orders on these markets) to widen their spreads to compensate for the loss of the ability to cover some of their risk of providing liquidity by making small profits on less risky trades.[37] This in turn could increase the transaction costs of the passive traders because they are passively trading on the prices discovered on the price discovery markets. In effect, this argument suggests that the market overall is better off if liquidity providers in the price setting markets can charge the less risky (from the liquidity providers' point of view) trades more than is theoretically justified (from an order-by-order perspective) in order to subsidize the risk they assume on the riskier trades.

Restated, the first argument suggests that orders seeking price discovery should bear the costs of price discovery, even if the consequence is that, on average and over time, those costs may be more than if all orders, including ones not interested in participating in price discovery, were required to be executed in a central mechanism. The second argument in effect suggests that, on average and over time, prices generally are more accurate, or investors generally are better off, when all orders are required to meet in some sense, even if on an order-by-order basis pricing may be somewhat less efficient. In our view, this is the principal issue of the entire debate over market fragmentation.

A different but related pricing efficiency argument arises in the context of the WASI. WASI believes that certain investors employ trading strategies that do not require the immediate execution services provided by the continuous markets. In this view, when these "patient" traders use the continuous markets they are paying a price for immediacy they don't need and, thus, are subsidizing the transaction costs of "impatient" traders. By trading only with other patient traders, their transaction costs should more accurately reflect the costs of patient trading strategies. While the withdrawal of these patient trades may raise the transaction costs of impatient traders using the continuous markets, this is only fair because those still trading in the continuous markets trade there because they desire immediacy and should pay its costs without subsidization by patient traders.[38]

The counter argument is that all trades seeking price discovery should have a chance to interact because this results in the most efficient overall pricing. In this view, any subsidization of impatient traders by patient traders is an unavoidable cost of achieving superior overall pricing efficiency. As with the arguments relating to the price discovery effects of separating passive from price discovery trades, the statute evidences no clear preference for either argument as a matter of pure theory.

While systems like Instinet's Crossing Network or POSIT may pose the potential for completely segregating passive traders from traders seeking price discovery, or, in the case of WASI, patient traders from impatient traders, we do not believe that these systems necessarily bode the separation of institutional traders from individual traders. It must be kept in mind that currently there is no system available for direct trading by individuals. When individuals use exchange markets, they gain access to them through the broker-dealer members of those markets. None of the off-market systems prohibits a broker-dealer from using the system to effect trades for customers. Moreover, none of these systems, including POSIT, has a business interest in preventing individuals *per se* from directly accessing their systems; direct access to these systems is limited only by credit considerations. In sum, while particular systems may offer trading mechanisms more

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[32] As described above, trades between institutions that do not involve a broker-dealer are not transparent. They also are not reported to a self-regulatory organization ("SRO") for surveillance purposes.

[33] See letter from Richard C. Breeden, Chairman, Securities and Exchange Commission, to John M. Dingell, Chairman, House Committee on Energy and Commerce, dated April 5, 1990. This option is discussed further in response to Question 3.

[34] As has been pointed out, these markets impose on themselves a certain amount of fragmentation. For example, in continuous markets, trading is fragmented temporally in the sense that the market does not wait to collect all supply and demand information before executing each trade. In addition, exchange markets developed spatial fragmentation for block trades through their upstairs block trade negotiation procedures. *See* "Auction Countdown," Wunsch Auction Systems, Inc., April 8, 1991; and Submission of the Staff of the Ontario Securities Commission in the matter of Instinet's Application for Admission to Membership in the Toronto Stock Exchange, Appendix A.

[35] See above p. 10.

[36] See Securities Exchange Act Release No. 28870 (May 28, 1990), 54 FR 23963 (approving Rule 19c-5).

[37] This effect, and variations thereof, are sometimes referred to as the "cherry-picking" or "cream skimming" effects. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, January 7, 1991 (commenting on WASI application for exemption), File No. 10-100.

[38] This assumes that there are no barriers to participation in either the continuous or the WASI market, an issue discussed separately below in response to the question concerning two-tiered, institutional and individual investor markets. *See* response to Question 5.

desirable to institutions than to individuals, e.g. passive pricing may generally be more favored by institutions than by individuals, and while institutions may generally be better able than individuals to pass the credit checks these systems justifiably require for direct access, these systems do not seek to exclude individual participation *per se*, either directly or (with the exception of Jefferies) via a broker-dealer.

3. *Please explain why the Commission has chosen to deal with proprietary trading systems such as the Wunsch system through the issuance of "no action" letters and low volume exemptions instead of developing comprehensive general regulations or proposing new legislation which would be applicable to the operation of all such systems.*

The Commission staff (and, in the case of Delta, the Commission) grants systems no-action letters where it is appropriate to do under the Delta Order analysis. At the same time, recognizing the problems inherent in the no-action process, including lack of publicity and opportunity for comment on the system initially and as the system changes, lack of an affirmative obligation to register, and lack of obligations to monitor trading in the system, the Commission proposed rule 15c2–10 in 1989. Rule 15c2–10 would, if adopted, put in place a comprehensive general regulation for proprietary trading systems.

The Commission has not actively pursued this approach since 1989 because it has been involved in litigation with the Chicago Board of Trade ("CBT") and the Chicago Mercantile Exchange over the definition of the term "exchange."[39] A decision in that case reversing the Commission's approach in the Delta Order would have required reconsideration of Proposed Rule 15c2–10, as it is premised upon an analysis of the definition of the term "exchange" similar to that set forth in the Delta Order. Now that this litigation has been resolved largely in the Commission's favor, we intend to reactivate consideration of this approach.

The Commission granted the low volume exemption to WASI for the reasons set forth in the attached order approving WASI's application for exemption. In summary, the Commission concluded that WASI satisfied the section 5 standard for the grant of an exemption from exchange registration, *i.e.*, that the exchange have such low volume that registration as a national securities exchange under section 6 of the Act would be impracticable and not necessary or appropriate in the interests of investors. The conditions attached to the grant of the exemption establish a comprehensive regulatory scheme appropriate to a low volume exchange, and these conditions can be changed as the Commission deems necessary and appropriate. The Division does not believe comprehensive general regulations for low volume exchanges are necessary at this time in view of the fact that no other exchanges are seeking low volume exemptions.

The Division also does not believe that an approach like that proposed in Rule 15c2–10 is possible for low volume exchanges. If a system satisfies the definition of the term "exchange," it either must register under Section 6 or obtain a low volume exemption. You have suggested that the exemptive authority in Section 5 is too restrictive and have offered to work with the Congress in crafting a more flexible exemptive provision similar to the exemptive authority the Commission possesses with respect to clearing agencies under Section 17A of the Act.[40] Among other things, this would permit the Commission to develop a comprehensive approach for low volume or other specialized exchanges similar to the approach being developed for broker-dealer systems under proposed Rule 15c2–10.

4. *What is the Commission's analysis of the proposed NYSE off-hours trading system for the NMS? Is the Commission at all concerned that elements of the proposed system will result in a migration of order flow from the regional exchanges to the primary market, with resulting negative implications for the viability of exchanges other than the primary markets (e.g., through increased costs and risks)?*

The Commission believes that the NYSE Off-Hours Trading ("OHT") facility, which was approved for a two year temporary period on May 20, 1991, is consistent with Section 11A of the Act and the principles underlying the National Market System ("NMS"). While it is true that Section 11A contemplates an integrated system for trading securities, this Section also envisions competition among markets, and the Commission does not believe it requires that a new trading system developed by one market immediately must contain provisions to facilitate trading by its competitors. In connection with the NYSE's OHT system, no other United States securities exchange or the NASD's NASDAQ system currently offers a system that is the same as, or substantially similar to, the NYSE OHT facility.

On June 13, 1991, the Commission granted accelerated approval for a temporary two-year period to virtually identical proposals from four regional stock exchanges—the BSE, MSE, Phlx, and PSE—responding to the NYSE's OHT facility. These regional stock exchange proposals did not create separate after-hours trading sessions, but instead were designed to permit the exchanges to require their specialists to provide customers with primary market protection for limit orders in NYSE-listed stocks entered on their books and designated as executable after the close of the regular 9:30 to 4 p.m. trading session ("GTX" orders) based on volume that prints in the NYSE's Crossing Session I. Under the regional exchange proposals, if an issue has traded at the limit price during NYSE's Crossing Session I, the regional specialist must fill designated orders based on volume that prints on the NYSE at 5 p.m., unless a specialist can demonstrate that a particular order would not have been executed if it had been transmitted to the NYSE (*i.e.*, if, upon receipt of a customer's GTX order, the specialist sent a duplicate order to the NYSE and that duplicate order was not executed in NYSE's Crossing Session I). The PSE also will allow GTX orders to be executed in its 4 to 4:30 p.m. (ET) auction market. The proposals by the four regional exchanges were all approved by the Commission on an accelerated basis on June 13, the first day of the NYSE's Crossing Sessions in order to allow the exchanges to compete with NYSE's Crossing Session I. In our view, these proposals achieved the goal of stemming loss of order flow by the regional stock exchanges to the NYSE during trading hours, which in our view was the greatest threat posed by the NYSE's OHT facility.

During the first few days that the NYSE OHT sessions and the new rules by the regional exchanges providing primary market protection have been in effect, the NYSE OHT sessions have experienced relatively small volume. For example, during the first five days that the sessions were operational, the daily volume averaged 432,660 shares in Crossing Session I and 1,416,200 shares in Crossing Session II, as compared with 1991 NYSE average daily volume of 186 million shares during the 9:30 a.m. to 4 p.m. trading session. Concomitantly, the regional exchanges also have experienced low volume in their price protection sessions. In particular, during the same five days, daily volume on the BSE, MSE, PH1x, and PSE averaged 280, 800, 0, and 460 shares, respectively.

The PSE and the Phlx also have submitted additional proposals that have not yet been approved and are currently being reviewed by Division staff. The PSE has proposed to extend its auction market trading session by 20 minutes and to allow the entry of one-sided closing price orders after 4 p.m. (ET). The Phlx has submitted a proposal which virtually copies the NYSE proposal in that it would establish two off-hours sessions to compete with the NYSE OHT facility. In addition, the Division expects the Amex to file a proposal for its own full-scale OHT facility within a few days.

In addition, the Division notes that, although the PSE currently is open for one half hour beyond the traditional 9:30 a.m. to 4 p.m. trading session on the NYSE, the PSE's 4 to 4:30 p.m. session differs from the NYSE's OHT facility in that it does not operate contemporaneously with the OHT system and is designed for different types of transactions. Furthermore, the Division notes that, when the PSE proposed to extend its trading hours until 4:30 p.m., the PSE was not required to provide a linkage to the other marketplaces. Accordingly, the Commission does not believe that the lack of a linkage of the OHT facility is necessarily inconsistent with Section 11A, at the present time. Of course, depending upon how trading develops, the Commission may wish to revisit this issue.

In the Commission release approving the NYSE OHT facility, the Commission noted that approval of the NYSE's OHT facility raised a number of other concerns which may be termed as "intermarket" issues. The questions raised include: (1) Whether the Intermarket Trading System ("ITS") should

[39] The CBT and CME brought this litigation out of concern with competition with Delta. *See CBT v. SEC*, *supra* note 13, at 1272.

[40] Letter from Richard C. Breeden, Chairman, Securities and Exchange Commission, to John M. Dingell, Chairman, House Committee on Energy and Commerce, dated April 5, 1990.

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be operational during any time period when both the NYSE Crossing Sessions and another ITS market are accepting orders; (2) whether the NYSE should be required to permit orders entered "GTX" on the books of regional specialists to "migrate" automatically at the close(s) of such regional exchanges to the NYSE Crossing Session I order book; (3) if so, with what priority, if any; and (4) who should bear the cost of developing a working mechanism for such transmittal.

In its consideration of these intermarket, or NMS, issues, the Commission noted that the effect of the NYSE OHT system on similar systems that the regional exchanges or the NASD may propose, as well as its effect on orders on the limit order books of both NYSE and regional specialists, is unclear and speculative at the current time. Thus, the two year approval period of the NYSE OHT faciltiy and the regional stock exchanges' proposals will provide the Commission and the NYSE, as well as competing markets, the opportunity to observe and evaluate after-hours trading. The Commission intends to consider many of these issues actively during the two-year period and to impose such requirements, if any, as it determines are appropriate to provide intermarket protections and to further the goal of a National Market System. The Commission will, in this regard, monitor, and be influenced by, the actual operation of the NYSE Crossing Sessions and the regional exchange after-hours systems.

Because at least one other exchange has proposed a trading session similar or identical to the NYSE's OHT facility, significant NMS issues may need to be resolved jointly by the NYSE, the competing markets, and the Commission. Again, we emphasize that the two year temporary approval period will provide an opportunity for the Commission and market participants to observe the actual operation of the OHT facility. Based on these observations the Commission, the NYSE, and other market participants will be in a better position to evaluate whether further steps to link the OHT facility with other markets are necessary or appropriate to protect investors or promote fair competition.

It is possible that the operation of the NYSE's OHT facility may indeed result in a reduction of order flow to the regional exchanges (although we believe that the regional exchanges are responding competitively, see *infra*, Response to Question 6). The Division believes, however, that any reduction of regional exchange market share resulting from the NYSE's OHT system would be due to the enhanced competition such a system provides, and not a result of any anti-competitive aspects of the OHT facility. Innovation that provides marketplace benefits to attract order flow to the NYSE does not result in unfair competition if the other markets are free to compete in the same manner. In fact, the Commission believes that the OHT sessions should enhance competition by providing a service to customers that other exchanges are not currently providing.

It is noteworthy that in the weeks prior to and immediately following Commission approval of the NYSE's OHT facility, the four regional exchanges who opposed the OHT facility, the BSE, MSE, Phlx, and PSE, submitted their own proposals to establish various systems to compete with the NYSE sessions. Although the proposals of the regional exchanges differed (*e.g.*, while the four regional exchanges espoused narrower proposals designed principally to provide primary market protection for limit orders on the books of their specialists, the Phlx also proposed an after-hours system that is virtually identical to the NYSE's OHT facility), the filings all had in common the desire to keep their own individual marketplaces on a competitive level with the primary U.S. marketplace—the NYSE. The Division believes that the responses by the regional exchanges to the NYSE's new systems demonstrate the competitiveness of the U.S. markets. As a result of these new initiatives, U.S. investors soon will have new opportunities for trading, including the ability to have their orders executed after the close of the regular 9:30 a.m. to 4 p.m. trading session at the closing price established on the primary market.

5. *To what extent is the Commission concerned that the emergence of proprietary trading systems may result in public customer orders migrating from an auction market which ensures price discovery and an opportunity for price improvement, to a non-auction market where the price is fixed?*

Auction markets provide investors with important benefits, including the opportunity for price improvement, and the Commission traditionally has been committed to fostering the maintenance of auctions for the stocks whose characteristics justify this type of trading.

At the same time, the Commission also must play the role assigned to it by Congress under section 11A, *i.e.*, letting private sector initiatives lead the way and acting as a promoter of competition rather than as an "economic czar." One of the principal fields of competition under our current market structure is between primary and regional markets and between the over-the-counter market for listed stocks and exchange markets.

As described above, the regional exchanges and some third market market makers (such as Madoff) offer small order execution systems that are passively priced off the primary markets as one means of competition with the primary markets. Apparently, the regional exchanges, the market makers, the brokers entering customer orders into these systems, and the customers themselves have determined that assured and speedy execution of some small orders is a greater benefit than the opportunity to obtain price improvement. These systems have been the principal source of the migration of public customer orders from the auction process.

Whether proprietary trading systems or the NYSE's after-hours system also will attract public customer orders from the regular auction process is not clear. Proprietary trading systems such as Instinet's Crossing Network and Jefferies' POSIT system are designed to attract institutional, not individual customer, order flow. We would also note that Instinet's regular trading system (i.e. the non-crossing system) is frequently used to obtain price improvement via the entry of orders priced in between the bid and ask displayed on the exchange and NASDAQ markets. In addition, WASI is an auction system that provides an alternative to investors not wishing to use the fixed price systems for after-hours trading.

6. *Some of the regional stock exchanges have expressed a concern that aspects of the New York's off-hours trading proposal will give the NYSE an anti-competitive advantage over the regional exchanges. Specifically, concerns have been expressed that New York's proposed Crossing Session I will cause "good 'till cancelled" orders to migrate from the regional exchanges onto the "good 'till cancelled" orders being offered during Crossing Session I—with the result that public customers will not have the benefit of the price discovery mechanism afforded by an auction market. Is the SEC examining these concerns, and how does the Commission plan to deal with the possibility of a migration taking place that would undercut the NMS concept and disadvantage the ability of public customers to get the best execution of their orders?*

In public comment letters opposing the NYSE's OHT facility, several of the regional stock exchanges stated that the NYSE's OHT facility is anti-competitive because the availability of the OHT facility will result in the movement of "GTC" ("good till cancelled") orders from the regional exchanges to the NYSE. The exchanges conclude that this will occur because broker-dealers will want to ensure that customer orders receive an opportunity to participate in Crossing Session I and to provide customer orders with primary market price protection. The Division believes that it is indeed a possibility that the establishment of the NYSE's Crossing Session I, where GTC orders entered during the regular 9:30 a.m. to 4:00 p.m. trading session and designated as GTX orders ("good 'till cancelled, executable through crossing session") may migrate for possible execution to Crossing Session I, could result in public customers choosing to designate many, or potentially all, of their GTC orders as GTX. The Division does not believe, however, that this contravenes the principles underlying the NMS nor do we believe it disadvantages the ability of public customers to get the best execution of their orders.

At the outset, the Division emphasizes that GTX orders in the NYSE's OHT facility are not denied the benefits of the price discovery mechanism offered by an auction. GTX orders, which are entered originally into the regular 9:30 a.m. to 4 p.m. trading session as GTC orders, are exposed to the primary market's auction system during the trading day. If designated GTX, those orders which are at, or better than, the NYSE closing price may migrate to the NYSE's Crossing Session I for a possible execution. In NYSE's Crossing Session I, the price at which orders will be executed (*i.e.*, the NYSE closing price) is a price that has been reached during the auction market operating between 9:30 a.m. and 4 p.m. This price is not an artificial price, but rather one that was reached through the

pricing mechanism of an auction market where buyers and sellers interact.

In addition, because the NYSE's closing prices would be known in advance to any investor who may choose to participate in Crossing Session I, investors will have the option of canceling their Crossing Session I orders if, after evaluating the 4:30 p.m. PSE closing price or other market information, they decide they do not want the primary market closing price. If the NYSE closing price does not remain a valid price at 5:00 p.m., then the NYSE would expect to find a dearth of one-sided orders on one side of the market, in which case no executions would occur.

Finally, as discussed in the answer to Question 4, the regional exchanges have proposed their own responses to the NYSE's after-hours session. Thus, to the extent GTC orders migrate to the NYSE, it would reflect market participants' preference for the NYSE's system over the alternative provided by its competitors.

*7. Please provide the Subcommittee with a description of the issues and options the Commission is currently considering in its examination of electronic trading systems, including issues relating to the transparency of these markets, possible integration of off-hours trade reporting with real-time reporting for equity transactions effected during the normal trading day, and the need for effective surveillance of these markets.*

As described above in the answer to Question 3, we propose that the Commission reactivate consideration of proposed rule 15c2–10 as a means to create a comprehensive and effective regulatory structure for proprietary trading systems. The rule as proposed imposes surveillance obligations on the operators of these systems.

As indicated in the answer to Question 1 above, increased transparency for after-hours trades effected in proprietary trading systems (and exchange operated after-hours trading systems as well) is a possible option. Particularly after we have received the six month report the NYSE is required to submit on the transparency of its after-hours trading system, the Commission will be in a better position to evaluate alternative approaches. Finally, as discussed in the answer to Question 3 above, you have suggested the development of legislation providing the Commission more flexibility in granting exemptions from the registration requirements of Section 6 of the Act.

See also response to question 1 in its entirety.

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**[Release No. IC–18847; 812–7534]**

## ML Venture Partners II, L.P., et al.; Application

July 14, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

**APPLICANTS:** ML Venture Partners II, L.P. ("MLVP II"), Merrill Lynch Venture Capital Inc., Merrill Lynch KECALP L.P. 1987 ("KECALP"), KECALP Inc., and ML Technology Ventures, L.P. ("MLTV").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) permitting transactions that otherwise may be prohibited by sections 17(d) and 57(a)(4) of the 1940 Act and rule 17d–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting certain transactions that otherwise may be prohibited by sections 17(d) and 57(a)(4) of the 1940 Act and rule 17d-1 thereunder in connection with the termination of BBN Integrated Switch Partners, L.P. ("BBN Switch"), a partnership in which MLVP II, MLTV, and KECALP are the sole limited partners.

**FILING DATES:** The application was filed on June 11, 1990, and amendments to the application were filed on December 14, 1990, May 3, 1991, and July 9, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 10, 1992, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, World Financial Center, North Tower, New York, New York 10281.

**FOR FURTHER INFORMATION CONTACT:** H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicants' Representations

1. MLVP II, a Delaware limited partnership, is a business development company under the 1940 Act. Its investment objective is to seek long-term capital appreciation through venture capital investments. MLVP II has five General Partners, consisting of four individuals (the "MLVP II Individual General Partners") and one managing general partner, MLVP II Co., L.P. (the "MLVP II Managing General Partner"). Three of the MLVP II Individual General Partners are individuals who are not "interested persons" of MLVP II within the meaning of section 2(a)(19) of the 1940 Act (the "MLVP II Independent General Partners"). The remaining MLVP II Individual General Partner is an affiliated person of the MLVP II Managing General Partner.

2. The MLVP II Individual General Partners supervise the operations of MLVP II and perform all duties imposed by the 1940 Act on directors of business development companies. The MLVP II Independent General Partners assume the responsibilities the 1940 Act imposes on the non-interested directors of a business development company. The MLVP II Managing General Partner provides, or arranges for the provision of, management services in connection with the venture capital investments of MLVP II. The general partner of the MLVP II Managing General Partner is Merrill Lynch Venture Capital Inc. (the "MLVP II Management Company"). The MLVP II Management Company, an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML & Co."), performs administrative services for MLVP II under an agreement with MLVP II. Since May 23, 1991, DLJ Capital Management Corporation has provided management services in connection with the venture capital investments of MLVP II pursuant to a sub-management agreement.

3. KECALP, a Delaware limited partnership, is a registered closed-end investment company and an "employees' securities company" within the meaning of section 2(a)(13) of the 1940 Act. Its investment objective is to seek long-term capital appreciation. KECALP Inc. (the "KECALP General Partner"), the general partner for KECALP and an indirect wholly-owned subsidiary of ML & Co., is responsible for managing and making investment decisions for KECALP.

4. MLTV, a Delaware limited partnership, invests in research and development ventures. ML R&D Co., L.P. (the "MLTV General Partner"), the general partner of MLTV, is a limited partnership whose general partner is an indirect wholly-owned subsidiary of ML & Co.

5. BBN Switch, a Delaware limited partnership, was organized in 1987 to develop, manufacture, and market a new line of communications switching

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equipment. The limited partners of BBN Switch are MLVP II, MLTV, and KECALP (collectively, the "Limited Partners"). The general partner of BBN Switch is BBN Integrated Switch Development Corporation ("BBNDC"), a wholly-owned subsidiary of a diversified high technology corporation, Bolt Beranek & Newman Inc. ("BBN").

6. On June 11, 1987, MLTV acquired 44.9% of the limited partnership interests (the "Interests") in BBN Switch together with warrants issued by BBN (the "BBN Warrants") entitling MLTV to purchase shares of BBN Common Stock. Concurrently, on behalf of MLVP II and KECALP, the MLVP II Management Company and the KECALP General Partner acquired 50.111% and 4.989% Interests, respectively, in BBN Switch together with BBN Warrants relating to the purchase of shares of BBN Common Stock. The MLVP II Management Company and the KECALP General Partner acted as nominees for MLVP II and KECALP because MLVP II, KECALP, and MLTV could not make the investments concurrently without obtaining prior exemptive relief from the SEC authorizing transactions otherwise prohibited under sections 17(d) and 57(a)(4) of the 1940 Act and rule 17d-1 thereunder. The Limited Partners, the MLVP II Management Company, and the KECALP General Partner applied for and were granted an order permitting the joint investments and, with respect to MLVP II and KECALP, permitting the acquisition of investments from affiliated persons. Investment Company Act Release No. 16895 (Mar. 24, 1989) (the "Prior Order").

7. On March 29, 1989, after receipt of the Prior Order, the Individual General Partners of MLVP II met to consider the matter. Prior to such meeting, the Independent General Partners had been furnished various memoranda and reports relating to the status of the BBN Switch project and the fair market value of the investment in BBN Switch. At the meeting, the Independent General Partners determined that: (i) The investment in BBN Switch and accompanying BBN Warrants was an appropriate investment for MLVP II and (ii) the fair market value of such investment was not less than $5,522,478 (representing the amount the MLVP II Management Company paid for the investment plus carrying costs). MLVP II therefore made a cash payment in this amount to the Management Company on March 29, 1989.

8. The board of directors of the KECALP General Partner conducted a similar review and reached the same conclusions at a meeting on March 31, 1989. Accordingly, on that date, KECALP made a cash payment of $549,958 to the KECALP General Partner (representing both the cost to the KECALP General Partner of purchasing the investment and its carrying costs).

9. In September 1989, the MLVP II Managing General Partner recognized the emergence of a number of problems with the BBN Switch project, including a decline in the market for private switching networks and increased competition, and determined that it was advisable to obtain special expertise to evaluate the feasibility of the project. At a meeting held in November 1989, the Independent General Partners of MLVP II approved the retention of a consultant (the "Consultant") to conduct the evaluation.

10. The Consultant evaluated the status of the BBN Switch project's development and plans for future development. It concluded that BBN Switch's technology was not cost competitive without major redesign work and that, without additional funding, the projected revenue from sales of the product would not support the ongoing development needed to stay in the market. The Consultant estimated that additional investments of approximately $7 million would be needed to develop the technology of BBN Switch sufficiently to attract a corporate investor. The Consultant indicated that BBN Switch should seek at least $20 million from such an investor.

11. By early 1990, the total funds allocated to the BBN Switch research program had been spent, and BBNDC, which had already made additional capital contributions to BBN Switch, had expressed its intention to not provide further funding. The MLVP II Managing General Partner, The KECALP General Partner, and the MLTV General Partner therefore determined that it would not be prudent for the Limited Partners to continue funding the project. Each of those three General Partners also determined that it would not be in the best interests of the Limited Partners to attempt to sell the technology to a third party because, based on their review of the Consultant's report and subsequent discussions with the Consultant, they concluded that the technology was of little or no value to a third party and, further, that the costs that would be incurred in attempting to find a purchaser of the technology probably would exceed the amount to be realized in any sale.

12. The MLVP II Management Company, on behalf of MLVP II, KECALP, and MLTV, subsequently negotiated matters relating to the termination of the BBN Switch project with BBN in March and April 1990. In the course of these negotiations, the MLVP II Management Company, the KECALP General Partner, and the MLTV General Partner considered, and discussed with counsel, any potential claims relating to the investment in BBN Switch, the issuance of the BBN Warrants, and the performance of BBN, BBN Communications Corporation ("BBNCC") (a wholly-owned subsidiary of BBN that had entered into a development agreement with BBN Switch), and BBNDC of their obligations under the agreements entered into in connection with the BBN Switch project. Counsel advised the MLVP II Management Company, the KECALP General Partner, and the MLTV General Partner that, based on its knowledge, there was no factual basis for asserting any such claims. The negotiations with BBN culminated in a proposal whereby MLVP II, KECALP, and MLTV would relinquish all rights to the technology and transfer all other assets of BBN Switch to BBN, agree to cancel all obligations under the terms of the BBN Switch partnership agreement, and enter into mutual releases, all in exchange for an aggregate of 100,000 restricted shares of BBN Common Stock.

13. At meetings held on April 16 and 27, 1990, the Independent General Partners of MLVP II and the board of directors of the KECALP General Partner, respectively, were informed of the findings of the Consultant and the proposed termination of the BBN Switch project. At such meetings, the MLVP II Independent General Partners and the board of directors of the KECALP General Partner reviewed the investment in BBN Switch and considered the several alternatives discussed above in paragraphs 11 and 12. They determined that it would be in the best interests of the respective partnerships to accept BBN's offer. In accepting such offer, the directors of the KECALP General Partner and the MLVP II Individual General Partners were informed of, and considered, among other things, the agreement to release BBN, BBNCC, BBNDC, BBN Switch and their affiliates from all present and future claims and the discussions with counsel in this regard. They determined that the value of the BBN Common Stock to be provided to the respective partnerships was a fair value to receive in exchange for the consideration to be provided by such partnerships.

14. Under the terms of an agreement executed on April 27, 1990 among BBN, BBNCC, BBNDC, and the Limited

Partners (the "Agreement"), the Limited Partners consented to the termination and dissolution of BBN Switch. The Agreement is to become effective upon receipt of the requested exemptive order or, alternatively, upon receipt of legal opinions satisfactory to the Limited Partners that such an order is not required. Under the Agreement, BBN Switch agreed to transfer all rights to the technology and all other assets of BBN Switch to BBNCC or another subsidiary of BBN. In addition, the Limited Partners agreed to release BBN, BBNCC, BBNDC, BBN Switch and their respective affiliates from all claims relating to the Limited Partners' investment in BBN Switch, the issuance of the BBN Warrants, or the performance by BBN, BBNCC, or BBNDC of their obligations under agreements entered into in connection with the BBN Switch project. Similarly, BBN, BBNCC, and BBNDC released the Limited Partners from all claims relating to BBN Switch that such parties had against the Limited Partners.

15. In consideration of such agreements and releases, BBN issued to the Limited Partners an aggregate of 100,000 shares of BBN Common Stock. Such shares are to be distributed among the Limited Partners on a pro rata basis in relation to each Limited Partner's capital contribution to BBN Switch. On April 27, 1990, the date of the Agreement, the shares of BBN Common Stock closed at $4.625 on the New York Stock Exchange, and the value of the stock to be distributed to MLVP II, KECALP and MLTV at that time was $231,763, $23,074, and $207,663, respectively.[1] BBN has delivered the 100,000 shares of its Common Stock to an escrow agent under an escrow agreement among the various parties pending receipt of the requested exemptive order.

16. In February and March, 1992, respectively, the Independent General Partners of MLVP II and the directors of the KECALP General Partner again considered the investments by MLVP II and KECALP in BBN Switch and the terms on which it is proposed that such partnership be liquidated. Following a review of the circumstances under which the investment had been acquired and the Consultant's report with respect to such investment, the Independent General Partners of MLVP II re-approved the terms of the proposed dissolution of BBN Switch and the determinations previously made by the Independent General Partners and determined that such actions are in the best interests of MLVP II. The board of directors of the KECALP General Partner made the same determinations with respect to the investment of KECALP in BBN Switch.

[1] On July 10, 1992, the shares of BBN Common Stock closed at $4.25 on the New York Stock Exchange. Wall St. J., July 13, 1992. Thus, the total value of the stock to be distributed to MLVP II, KECALP and MLTV on such date was $425,000.

## Applicants' Legal Analysis

1. Applicants request an order under Section 6(c) of the 1940 Act permitting the transactions described above relating to the termination of BBN Switch that otherwise would be prohibited under the provisions of sections 17(d) and 57(a)(4) of the 1940 Act and rule 17d–1 thereunder. Applicants are not requesting the SEC to evaluate the implementation of the Prior Order.[2]

2. Section 17(d) of the 1940 Act and Rule 17d–1 thereunder make it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which such registered company is a joint participant with such person unless an application regarding such joint arrangement has been filed with and approved by the SEC. In addition, section 57(a)(4) of the 1940 Act makes it unlawful for any person who is related to a business development company in a manner described in section 57(b)(2), acting as principal, knowingly to effect any transaction in which such business development company is a joint participant with such person in contravention of such rules and regulations as the SEC may prescribe to limit or prevent such participation by the business development company on a basis less advantageous than that of such person.

3. The affiliated persons referred to in section 17(d) and Rule 17d–1 include the KECALP General Partner and persons under common control with the KECALP General Partner (including MLVP II and MLTV). Similarly, the persons specified in section 57(b)(2) include the MLVP II Management Company and persons under common control with the MLVP II Management Company (including KECALP and MLTV).

4. The SEC has not adopted any rules or regulations under Section 57(A)(4). Section 57(i) of the 1940 Act provides that, until the adoption of rules and regulations under section 57(a), the rules and regulations of the SEC under Section 17(d) applicable to registered investment companies shall apply to transactions subject to section 57(a). Paragraph (b) of rule 17d–1 provides, in part, that, in passing on applications subject to that Rule, the SEC must consider whether the participation of a registered company in the joint arrangement on the basis proposed is consistent with the provisions, policies and purposes of the 1940 Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. As here relevant, section 6(c) authorizes the SEC to exempt any transaction or class of transactions from any provision of the 1940 Act to the extent an exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants request that the order be issued under section 6(c), rather than rule 17d–1, to limit the focus of the application to the proposed termination of BBN Switch and not extend to an analysis of the investment in BBN Switch that might be required under rule 17d–1(b) in a proceeding for an order pursuant to rule 17d–1.

6. Applicants submit that the proposed transactions in connection with the termination of BBN Switch are consistent with the standards set forth in both section 6(c) and rule 17d–1. The MLVP II Managing General Partner, the MLVP II Independent General Partners, the MLTV General Partner and the KECALP General Partner have independently reviewed and considered the terms of the Agreement and the advice of the Consultant retained to evaluate the BBN Switch research and development project. Following review of these matters, the MLVP II Managing General Partner, the MLVP II Independent General Partners, the MLTV General Partner and the KECALP General Partner each determined that the participation of the Limited Partners in the transactions contemplated by the Agreement will be on the same basis in proportion to their investments in BBN Switch, that the terms of the Agreement and consummation of the transactions

[2] Any order issued on the application would relate solely to the termination of the Limited Partners' investment in BBN Switch. In this regard, the Division of Investment Management notes that the likely effect of failing to permit the proposed joint settlement with BBN Switch would be the loss of the opportunity for each Limited Partner to recoup a small portion of its investment. Furthermore, the Division expresses no views with respect to the circumstances under which MLVP II and KECALP acquired the interests in BBN Switch and the BBN Warrants from the Management Company and the KECALP General Partner, respectively, in March of 1989. Similarly, the Division takes no position with respect to the review and re-approval of the BBN investment by the MLVP II Independent General Partners and the directors of the KECALP General Partner in February and March, 1992, respectively.

contemplated thereby will not result in the overreaching of any of the Limited Partners by an affiliated person thereof, and that, in light of the relevant circumstances, such transactions are in the respective best interests of MLVP II, MLTV, KECALP, and their respective limited partners. In addition, as noted above, the MLVP II Independent General Partners and the directors of the KECALP General Partner reviewed and re-approved the terms on which BBN Switch is proposed to be liquidated. Finally, Applicants believe that the proposed transactions in connection with the termination of BBN Switch would be consistent with the provisions, policies, and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-17198 Filed 7-21-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-18845; 812-7834]**

## Mutual Fund Group; Application

July 13, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 (the "Act").

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**APPLICANT:** Mutual Fund Group (the "Trust").

**RELEVANT ACT SECTIONS:** Order requested under section 17(d) of the Act and rule 17d-1 thereunder.

**SUMMARY OF APPLICATION:** The Trust seeks an order permitting the Trust's series and certain related investment companies, and the investment advisers to such investment companies, jointly to enter into master repurchase agreements with non-affiliated financial institutions such as broker-dealers and banks.

**FILING DATES:** The application was filed on December 6, 1991, and will be amended during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 7, 1992 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 156 West 56th Street, New York, New York 10019.

**FOR FURTHER INFORMATION CONTACT:** C. Christopher Sprague, Senior Staff Attorney, at (202) 272-3035, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. The Trust is registered under the Act as an open-end management investment company, and currently offers the following series of shares (each such series, a "Fund"): Vista California Tax Free Money Market Fund, Vista Global Money Market Fund, Vista New York Tax Free Money Market Fund, Vista Tax Free Money Market Fund, Vista U.S. Government Money Market Fund (collectively, the "Vista Money Market Funds"), Vista U.S. Government Income Fund, Vista New York Tax Free Income Fund, Vista Tax Free Income Fund, Vista Growth and Income Fund, and Vista Capital Growth Fund (collectively, the "Non-Money Market Funds"). Under a dual distribution system, the Vista Money Market Funds may offer two distinct classes of shares called the "Vista Shares" and the "Vista Premier Shares."[1]

2. Initially, only the Vista Money Market Funds would enter into the master repurchase agreements described below. However, the Trust requests that the order of exemption apply to each of the Funds (including their respective classes), to future series of the Trust, and to other registered open-end investment companies (a) advised by The Chase Manhattan Bank, N.A. ("Chase") or Chase Lincoln First Bank, N.A. ("Chase Lincoln") (each, and "Adviser") or an investment adviser that is under common control with an Adviser (as "control" is defined by section 2(a)(9) of the Act), (b) the principal underwriter of which is Vista-Broker Dealer Services, Inc. (the "Distributor") or a principal underwriter that is under common control with the Distributor (as "control" is defined by section 2(a)(9) of the Act), and (c) which hold themselves out to investors as being related for purposes of investment and investor services. Any such series or investment company will adhere to the representations set out in the application with respect to its repurchase transactions.

3. The net asset value per share of each of the Vista Money Market Funds is determined daily as of 2:30 p.m. Eastern Time. Currently, to be executed on a given day, an order to purchase shares of a Vista Money Market Fund must be received and accepted by Chase or Chase Lincoln prior to 2:30 p.m. Eastern Time that day, which is the latest time orders may be placed for overnight investment of funds received that day. Purchase orders received by Chase or Chase Lincoln after 2:30 p.m. on a given day are executed the next business day. Orders for the purchase of shares of the Vista Money Market Funds are executed only when Federal or other funds are immediately available to Chase or Chase Lincoln for investment by the Trust.

4. Purchasers of the Trust's shares include customers of Chase and Chase Lincoln or their affiliates who maintain customer-directed, non-discretionary accounts at Chase, Chase Lincoln, or their affiliates. In accordance with their customer's standing instructions, the Advisers automatically will invest excess cash balances in their customer's custody, agency, or other non-discretionary accounts in shares of one or more of the Vista Money Market Funds. These "sweep" transactions will be effected automatically by computer as of 2:30 p.m. Eastern Time each business day. The tabulation of the transaction activity in each such customer account will be completed later during the day (the "Completion Time"). Normally, the Completion Time will not be later than 3:30 a.m. Eastern Time the following morning.

5. The net income of each Vista Money Market Fund is determined daily as of 2:30 p.m. Eastern Time on days when the New York Stock Exchange is open for trading, and also is declared daily as a dividend to the shareholders of the Vista Money Market Funds at that time. However, if Chase or Chase Lincoln accepts an order as of 2:30 p.m. Eastern Time from one or more of its customers instructing Chase or Chase Lincoln to invest the customer's excess daily cash balances in one or more of the Vista Money Market Funds, and such daily cash balances are not a quantifiable dollar amount until after

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[1] See Investment Company Act Release Nos. 17359 (June 19, 1990) (notice) and 17590 (July 17, 1990) (order).

midnight of that same day, then, without the prior establishment of a "sweep" program providing for special arrangements for investment of the proceeds of these orders, dividends would be payable by the appropriate Vista Money Market Fund on shares purchased pursuant to such orders but the proceeds of such orders would remain uninvested overnight and dividends to other Vista Money Market Fund shareholders would be diluted. To address that concern, the Advisers propose to enter into repurchase transactions on behalf of the Trust with non-affiliated financial institutions by 2:30 p.m. Eastern Time each business day, with respect to amounts estimated to be received by each of the Vista Money Market Funds after 2:30 p.m. Eastern Time through the operation of the "sweep" program. Confirmation of the exact principal amount of the repurchase transaction would occur on the following business day. These repurchase agreements would be substantially similar to the form of Master Repurchase Agreement developed by the Public Securities Association, and would be a permitted investment under the investment policies of each Vista Money Market Fund.

6. Each Adviser will enter into a repurchase transaction on behalf of a Vista Money Market Fund in an amount which it estimates, based upon its experience in administering its computer sweep program, to be sufficient to invest the funds that the Vista Money Market Fund will receive through sweep transactions that day. Once the repurchase agreement is made, Chase or Chase Lincoln would wire the sale price of the transferred securities to the Fund's account with the Trust's custodian in immediately available funds. At the same time, the seller in the transaction would take such action as was necessary to transfer such securities to the Fund's account and to perfect a security interest in favor of the Fund in the securities at the time of transfer. Until the Completion Time that evening, the Fund would have a perfected security interest in all of the securities transferred.

7. To the extent that a repurchase transaction entered into on behalf of a Vista Money Market Fund was sufficient to make such Fund fully invested with respect to its sweep funds, the Fund's account would reflect the specific amount it had, in fact, invested in the transaction (including its ownership of the eligible securities purchased by such investment). If the repurchase transaction was not sufficient to make the Fund fully invested with respect to its sweep funds, the Fund's records would reflect its investment in the entire amount of the repurchase transaction and an uninvested cash position. The latter scenario is not likely to occur, according to the Trust, because each Adviser normally can predict accurately the likely amount of sweep funds, and normally will enter into a repurchase agreement in an amount greater than the estimated sweep funds. To the extent that the total amounts credited to the account of the seller when it transferred eligible securities the previous day exceeded a Fund's assets that were available for investment, each Adviser would have purchased such securities with its own funds, and would have entered into repurchase transactions with the seller for its own accounts.

8. On the next business day, based upon the amount invested by a Fund through operation of the sweep program, the seller and the Fund's custodian would confirm by telephone the amount of the repurchase transaction that the Fund had in fact entered into with its own assets, and the seller would issue the required telex or wire confirmations of the specific terms of the Fund's repurchase transaction. In addition, the seller would issue separate confirmations to each Adviser for its own account confirming that those eligible securities transferred by the seller the previous day which the Fund had not purchased with its own assets had, in fact, been purchased by the Adviser with its funds. Apart from the different amounts of the repurchase transactions, the terms of the transactions and the confirmations to a Fund and to each Adviser would be identical.

9. Ordinarily, each repurchase transaction effected with sweep funds will be secured by one issue of Treasury notes or other securities. To the extent that any such repurchase transaction is secured by two or more issues of securities differing as to quality, maturity, or rate, each security will be apportioned between the Fund and the Advisers *pro rata* to the extent possible. If such *pro rata* apportionment is not possible, securities will be apportioned in a manner that the Advisers believe will leave each party in a comparably secured position.

**Applicant's Legal Analysis**

1. Section 17(d) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which such registered investment company is a joint or a joint and several participant with such affiliated person in contravention of such rules and regulations as the Commission may prescribe. Rule 17d–1 thereunder states that in passing upon applications for an exemption from section 17(d), the Commission will consider whether the participation of the registered investment company in the joint enterprise, joint arrangement, or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of the other participants. To the extent that an Adviser, as an affiliated person of a Fund, engages on a principal basis in a repurchase transaction with a Fund, the Adviser and the Fund may be deemed to be participating in such a joint arrangement or joint enterprise. The Trust contends, however, that a Fund's participation in the proposed joint repurchase transactions will not be on a basis different from, or less advantageous than, that of the Adviser.

2. The Trust states that the proposed repurchase transactions will provide only benefits to shareholders of the Funds by investing sweep funds on the day orders are executed, thereby reducing and dilution in daily dividends. The Trust also notes that because the repurchase agreement to be used by the Funds will be substantially similar to that developed by the Public Securities Association, each Fund's rights vis-a-vis sellers will be comparable to those generally present in the industry. A Vista Money Market Fund will not enter into any repurchase transaction with the Advisers, their affiliates, or any other affiliated person of the Trust. In addition, the Funds will conduct their repurchase transactions in accordance with the Commission's releases on repurchase agreements (*i.e.*, Investment Company Act Release Nos. 10666 (Apr. 18, 1979) and 13005 (Feb. 2, 1983)).

3. The Trust submits that the proposed repurchase transactions are reasonable and fair to it and each of the Funds, do not involve overreaching on the part of any person, and are consistent with the provisions, policies, and purposes of the Act. The Trust states further that the order requested is appropriate in the public interest and consistent with the protection of investors.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–17199 Filed 7–21–92; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ended July 10, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 48233.
*Date filed:* July 6, 1992.
*Parties:* Members of the International Air Transport Association.
*Subject:* Telex—Mail Vote 577. Fares Between Hiroshima and Hong Kong R–1 to R–7.
*Proposed Effective Date:* July 22, 1992.

*Docket Number:* 48235.
*Date filed:* July 8, 1992.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC31 Reso/P 0932 dated June 19, 1992. North America-French Polynesia/New Caledonia R–1 to R–9, intended effect: January 1, 1993. TC31 Reso/P 0933 dated June 19, 1992. South America-Southwest Pacific Resos R–10 to R–18, intended effect: October 1, 1992.

*Docket Number:* 48241.
*Date filed:* July 10, 1992.
*Parties:* Members of the International Air Transport Association.
*Subject:* Telex—TC23 Mail Vote 578, Fares Between Kabul and Tehran R–1 To R–3.
*Proposed Effective Date:* August 1, 1992.

Phyllis T. Kaylor,
*Chief, Documentary Services Division.*
[FR Doc. 92–17270 Filed 7–21–92; 8:45 am]
BILLING CODE 4910–62–M

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended July 10, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 48237.
*Date filed:* July 9, 1992.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 6, 1992.
*Description:* Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity to engage in foreign air transportation of persons, property, and mail between Los Angeles, California, and Nagoya, Japan.

*Docket Number:* 48238.
*Date filed:* July 9, 1992.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 6, 1992.
*Description:* Application of Air Micronesia, Inc., Continental Airlines, Inc. and Continental Micronesia, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations, requests approval of the transfers to Continental Micronesia of Continental's certificate authority for Routes 171 (South Pacific) and 577 (Honolulu-Tokyo), a portion of Segment 10 of its certificate authority for Route 29–F (Guam/Saipan-Indonesia/Malaysia/Thailand/Sri Lanka/India), Segment 2 of its certificate authority for Route 176 (Guam/Saipan-Sydney/Brisbane), and its Guam-Nagoya exemption authority.

*Docket Number:* 48240.
*Date filed:* July 9, 1992.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 6, 1992.
*Description:* Application of Continental Micronesia, Inc. pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing scheduled interstate/overseas air transportation.

*Docket Number:* 48242.
*Date filed:* July 10, 1992.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 7, 1992.
*Description:* Application of Tower Air, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations applies for amendment of its certificate of public convenience and necessity for Route 401 to conduct additional foreign air transportation between points in the United States of America and points in the Dominican Republic.

*Docket Number:* 48244.
*Date filed:* July 10, 1992.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 7, 1977.
*Description:* Application of Malev Hungarian Airlines, pursuant to section 402 of the Act and subpart Q of the Regulations, requests renewal of its foreign air carrier permit for authority to engage in foreign air transportation of persons, property and mail between Budapest and the co-terminal points New York, Chicago and Los Angeles (code-sharing only) via intermediate points in Europe and Canada.

Phyllis T. Kaylor,
*Chief, Documentary Services Division.*
[FR Doc. 92–17271 Filed 7–21–92; 8:45 am]
BILLING CODE 4910–62–M

## Federal Aviation Administration

### Air Traffic Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Air Traffic Subcommittee of the Aviation Rulemaking Advisory Committee.

**DATES:** The meeting will be held on August 10, 1992, at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Aerospace Industries Association of America, 1250 Eye Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Aaron Boxer, Designated Federal Official, Air Traffic Rules and Procedures Service, Federal Aviation Administration, telephone: 202–267–8783.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Air Traffic Subcommittee to be held on August 10, 1992, at the Aerospace Industries Association of America, 1250 Eye Street, NW., Washington, DC. The agenda for this meeting will include:

- A progress report from the General Aviation Mode S Working Group;
- A progress report from the Pilot Procedures at Non-Towered Airports Working Group;
- A progress report from the Unmanned Aerospace Vehicles Working Group;

• The status of the subcommittee's requests to the FAA for assignment of the Mode C veil exception petition and clarification of straight-in approach; and

• A presentation of proposed articles on stuck microphones.

Attendance is open to the interested public but will be limited to the space available. The public may present written statements to the subcommittee at any time by providing 30 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on July 16, 1992.

**Aaron Boxer,**

*Executive Director, Air Traffic Subcommittee, Aviation Rulemaking Advisory Committee.*

[FR Doc. 92-17273 Filed 7-21-92; 8:45 am]

BILLING CODE 4910-13-M

## Aviation Security Advisory Subcommittee Meeting

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of Aviation Security Advisory Subcommittee meeting.

**SUMMARY:** Notice is hereby given of a meeting of the Threat Analysis and Communications Subcommittee of the Aviation Security Advisory Committee.

**DATES:** The meeting will be held Tuesday, August 4, 1992, from 9 a.m. to 1 p.m.

**ADDRESSES:** The meeting will be held in Room 1236 at the Federal Bureau of Investigation (FBI), 10th and Pennsylvania Avenue NW., Washington, DC

**FOR FURTHER INFORMATION CONTACT:** The Counterterrorism Section, FBI Headquarters, 10th and Pennsylvania Avenue NW., Washington, DC 20535, telephone 202-324-4656.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Threat Analysis and Communication Subcommittee of the Aviation Security Advisory Committee to be held August 4, 1992, in room 1236, at the Federal Bureau of Investigation, 10th and Pennsylvania Avenue NW., Washington, DC.

The agenda for the meeting will be a discussion of enforcement actions regarding persons detected with firearms at airport security checkpoints. Attendance at the August 4, 1992 meeting is open to the public but limited to space available. Members of the public may address the subcommittee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the subcommittee at anytime.

Persons wishing to present statements or obtain additional information should contact the Counterterrorism Section, FBI Headquarters, 10th and Pennsylvania Avenue NW., Washington, DC 20535, telephone (202) 324-4656.

Issued in Washington, DC on July 16, 1992.

**O. K. Steele,**

*Assistant Administrator for Civil Aviation Security.*

[FR Doc. 92-17274 Filed 7-21-92; 8:45 am]

BILLING CODE 4910-13-M

## Federal Highway Administration

## Environmental Impact Statement: New Castle County, Delaware

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in New Castle County, Delaware.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Kleinburd, Realty Officer, Delaware Division, 300 S. New St., room 2101, P.O. Box 517, Dover, DE 19901. Telephone (202) 734-2966. Mr. Paul A. Welsh, Location Study Manager, Delaware Department of Transportation, P.O. Box 778, Dover, DE 19903. Telephone (302) 739-4642.

**SUPPLEMENTARY INFORMATION:** The Federal Highway Administration (FHWA) in cooperation with the Delaware Department of Transportation (DelDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to construct approximately 20 miles of four lane divided, limited access highway in New Castle County, Delaware. The proposed facility will serve an area which is experiencing continuous growth and where extensive development is expected in the immediate and near future. The present transportation system will not be able to handle the already increasing traffic volumes at an acceptable level of service. The study area is generally bounded by the Delaware/Maryland state line on the west, Delaware Route 2 on the north, Route 13 on the east and Middletown, DE to the south. The proposed facility would connect and extend existing Rt. 301 at the Delaware/Maryland line to Delaware's portion of I-95.

Various studies for improved capacity and continuity have been conducted in the past 30 years. These studies considered numerous alternatives, but for various reasons, were never implemented as part of this study. These previous studies will be reviewed and an updated look at possible alignments will be pursued. Alternatives to be considered will include (1) taking no action (No Build), (2) improvements on existing alignment, (3) improvements on new alignment, and (4) a combination of (2) and (3).

A program of public involvement and coordination with Federal, State and Local agencies has been initiated. Both agency and public involvement will continue throughout project development.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be addressed to the FHWA or DelDOT at the addresses provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The State intergovernmental review contacts established under Executive Order 12372 (former A-95 process) regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.

Issued on: July 13, 1992.

**John J. Gilbert,**

*Division Administrator, Dover, Delaware.*

[FR Doc. 92-17231 Filed 7-21-92; 8:45 am]

BILLING CODE 4910-22-M

## Federal Transit Administration

## FTA Sections 3 and 9 Grant Obligations

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102-143, signed into law by President George Bush on October 28, 1991, contained a provision requiring the Federal Transit Administration (FTA) to publish an announcement in the Federal Register every 30 days of grants

obligated pursuant to Sections 3 and 9 of the Federal Transit Act, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

**FOR FURTHER INFORMATION CONTACT:** Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, Department of Transportation, Federal Transit Administration, Office of Grants Management, 400 Seventh Street, SW., room 9305, Washington, DC 20590, (202) 366–2053.

**SUPPLEMENTARY INFORMATION:** The Section 3 program provides capital assistance to eligible recipients in three categories: Fixed guideway modernization, construction of new fixed guideway systems and extensions, and bus purchases and construction of bus related facilities. The Section 9 program apportions funds on a formula basis to provide capital and operating assistance in urbanized areas. Section 9 grants reported may include flexible funds transferred from the Federal Highway Administration to the FTA for use in transit projects in urbanized areas. These flexible funds are authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to be used for highway or transit purposes. Pursuant to the statute FTA reports the following grant information.

SECTION 3 GRANTS

| Transit property | Grant number | Grant amount | Obligation date |
|---|---|---|---|
| City of Davis, Davis, California | CA-03-0396-00 | $3,200,000 | 06/30/92 |
| Washington Metropolitan Area Transit Authority, Washington, DC-MD-VA | DC-03-0025-00 | 5,679,000 | 06/30/92 |
| City of Lincoln, Lincoln, NE | NE-03-0026-00 | 1,334,613 | 06/15/92 |
| New York City Department of Transportation, New York, NY—Northeastern NJ | NY-03-0254-00 | 8,000,000 | 06/01/92 |
| New York Metropolitan Transportation Authority, New York, NY—Northeastern NJ | NY-03-0274-00 | 209,635,980 | 06/01/92 |
| Canton Regional Transit Authority, Canton, OH | OH-03-0116-00 | 1,575,000 | 06/05/92 |
| Greater Cleveland Regional Transit Authority, Cleveland, OH | OH-03-0118-00 | 9,901,633 | 06/05/92 |
| Pennsylvania Department of Transportation, Pennsylvania | PA-03-0197-01 | 360,000 | 06/15/92 |
| Cambria County Transit Authority, Johnstown, PA | PA-03-0221-01 | 531,88 | 06/15/92 |
| Berks Area Reading Transportation Authority, Reading, PA | PA-03-0223-01 | 1,385,192 | 06/15/92 |
| Area Transportation Authority of North Central Pennsylvania, Johnsonburg, PA | PA-03-0224-00 | 2,233,440 | 06/15/92 |
| Pennsylvania State University, State College, PA | PA-03-0225-00 | 1,500,000 | 06/08/92 |
| City of El Paso—Sun Metro, El Paso, TX-NM | TX-03-0146-00 | 1,470,300 | 06/15/92 |
| Clallam Transit System, Port Angeles, WA | WA-03-0071-00 | 4,000,000 | 06/05/92 |
| Washington State Dept. of Trans. Marine Division, Seattle, WA | WA-03-0074-00 | 2,279,996 | 06/05/92 |

SECTION 9 GRANTS

| Transit property | Grant number | Grant amount | Obligation date |
|---|---|---|---|
| Birmingham-Jefferson County Transit Authority, Birmingham, AL | AL-90-X065-00 | $2,802,320 | 06/19/92 |
| Metroplan, Little Rock-North Little Rock, AR | AR-90-X028-00 | 90,000 | 06/30/92 |
| City of Napa, Napa, CA | CA-90-X324-01 | 136,880 | 06/23/92 |
| Golden Gate Bridge, Highway and Transportation District, San Francisco-Oakland, CA | CA-90-X469-00 | 1,457,500 | 06/25/92 |
| Golden Empire Transit District, Bakersfield, CA | CA-90-X476-00 | 1,411,727 | 06/22/92 |
| Sacramento Regional Transit District, Sacramento, CA | CA-90-X479-00 | 5,530,000 | 06/22/92 |
| North San Diego County Transit Development Board, San Diego, CA | CA-90-X483-01 | 1,360,026 | 06/23/92 |
| Omnitrans, Riverside-San Bernardino, CA | CA-90-X484-00 | 4,463,100 | 06/22/92 |
| Metropolitan Transit Development Board, San Diego, CA | CA-90-X496-00 | 21,393,095 | 06/09/92 |
| Monterey County, Seaside-Monterey, CA | CA-90-X488-00 | 96,000 | 06/22/92 |
| Stockton Metropolitan Transit District, Stockton, CA | CA-90-X-490-00 | 2,058,863 | 06/22/92 |
| City of Fairfield, Fairfield, CA | CA-90-X493-01 | 12,965 | 06/11/92 |
| City & County of San Francisco, Public Utilities Commission, San Francisco-Oakland, CA | CA-90-X498-00 | 33,506,443 | 06/23/92 |
| Santa Cruz Metropolitan Transit District, Santa Cruz, CA | CA-90-X501-00 | 1,004,302 | 06/30/92 |
| City of Greeley, Greeley, CO | CO-90-X068-00 | 705,386 | 06/22/92 |
| City of Fort Collins, Fort Collins, CO | CO-90-X069-00 | 656,766 | 06/23/92 |
| Milford Transit District, Bridgeport-Milford, CT | CT-90-X204-00 | 790,899 | 06/30/92 |
| Middletown Transit District, Hartford-Middletown, CT | CT-90-X206-00 | 200,713 | 06/30/92 |
| Greater New Haven Transit District, New Haven-Meriden, CT | CT-90-X209-00 | 1,463,026 | 06/30/92 |
| Washington Metropolitan Area Transit Authority, Washington, DC-MD-VA | DC-90-X017-01 | 33,051,000 | 06/30/92 |
| Tri-County Commuter Rail Authority, Ft. Lauderdale-Hollywood-Pompano Bch, FL | FL-90-X167-00 | 3,946,574 | 06/10/92 |
| Escambia Co Bd of Commissioners, Pensacola, FL | FL-90-X170-01 | 245,444 | 06/19/92 |
| East Volusia County—East Volusia Transp. Authority, Daytona Beach, FL | FL-90-X180-01 | 97,856 | 06/29/92 |
| Broward Co Bd of Co-Commissioners—Broward Co Mass Transit Division, Ft. Lauderdale-Hollywood-Pompano Bch, FL | FL-90-X183-01 | 1,760,000 | 06/29/92 |
| Hillsborough Area Regional Transit Authority, Tampa-St. Petersburg-Clearwater, FL | FL-90-X188-01 | 1,661,000 | 06/29/92 |
| Escambia Co Bd of Commissioners, Pensacola, FL | FL-90-X192-00 | 1,153,940 | 06/29/92 |
| Brevard County Commissioners—Space Coast Area Transit, Melbourne-Palm Bay, FL | FL-90-X193-00 | 2,441,004 | 06/29/92 |
| Palm Beach Co Bd of Commissioners—Palm Beach Co Transit Authority, West Palm Bch-Boca Raton-Delray Bch, FL | FL-90-X194-00 | 3,277,982 | 06/29/92 |
| Tri-County Commuter Rail Authority, West Palm Bch-Boca Raton-Delray Bch, FL | FL-90-X195-00 | 4,499,429 | 06/29/92 |
| Naples Metropolitan Planning Organization, Naples, FL | FL-90-X196-00 | 75,000 | 06/19/92 |
| Manatee County Board of County Commissioners, Sarasota-Bradenton, FL | FL-90-X197-00 | 1,536,220 | 06/19/92 |
| City of Augusta, Augusta, GA–SC | GA-90-X051-01 | 99,190 | 06/29/92 |
| City of Augusta, Augusta, GA–SC | GA-90-X064-01 | 42,257 | 06/29/92 |
| Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA | GA-90-X067-01 | 2,570,715 | 06/29/92 |
| Douglas County, Atlanta, GA | GA-90-X068-00 | 261,812 | 06/19/92 |

SECTION 9 GRANTS—Continued

| Transit property | Grant number | Grant amount | Obligation date |
|---|---|---|---|
| Consolidated Government of Columbus, Columbus, GA–AL | GA-90-X070-00 | 1,536,985 | 06/19/92 |
| Des Moines Metropolitan Transit Authority, Des Moines, IA | IA-90-X138-00 | 135,672 | 06/30/92 |
| Lowes Park Transit System (LPTS), Rockford, IL | IL-90-X199-00 | 189,037 | 06/24/92 |
| City of Kankakee, Kankakee, IL | IL-90-X200-00 | 22,750 | 06/19/92 |
| Greater Peoria Mass Transit District, Peoria, IL | IL-90-X202-00 | 1,208,635 | 06/24/92 |
| Michiana Area Council of Governments, Indiana | IN-90-X157-01 | 121,259 | 06/24/92 |
| Northwestern Indiana Regional Planning Commission, Northwestern IN–Chicago, IL | IN-90-X169-00 | 1,682,848 | 06/25/92 |
| Topeka Metropolitan Transit Authority, Topeka, KS | KS-90-X054-00 | 1,177,000 | 06/30/92 |
| City of Owensboro, Owensboro, KY | KY-90-X061-00 | 361,000 | 06/29/92 |
| City of Henderson Transit, Evansville, IN–KY | KY-90-X062-00 | 274,275 | 06/19/92 |
| Transit Authority of Lexington-Fayette Urban County Govt., Lexington-Fayette, KY | KY-90-X063-00 | 1,430,334 | 06/29/92 |
| City of Ashland, Huntington-Ashland, KY–OH–WV | KY-90-X064-00 | 500,503 | 06/29/92 |
| Regional Planning Commission, New Orleans, LA | LA-90-X129-00 | 350,000 | 06/30/92 |
| Regional Planning Commission, Louisiana | LA-90-X130-00 | 126,000 | 06/30/92 |
| City of Monroe, Monroe, LA | LA-90-X131-00 | 1,749,463 | 06/30/92 |
| St. Bernard Parish, New Orleans, LA | LA-90-X132-00 | 204,800 | 06/30/92 |
| Crescent City Connection Division, Louisiana | LA-90-X133-00 | 893,401 | 06/30/92 |
| Southeastern Regional Transit Authority, New Bedford, MA | MA-90-X133-01 | 40,000 | 06/30/92 |
| Cape Cod Regional Transit Authority, Hyannis, MA | MA-90-X139-00 | 300,000 | 06/30/92 |
| Lowell Regional Transit Authority, Lowell, MA–NH | MA-90-X140-00 | 155,600 | 06/30/92 |
| Mass Transit Administration, Baltimore, MD | MD-90-X047-01 | 4,369,750 | 06/23/92 |
| State Railroad Administration, Baltimore, MD | MD-90-X048-00 | 1,316,201 | 06/17/92 |
| State Railroad Administration, Baltimore MD | MD-90-X049-00 | 6,222,067 | 06/30/92 |
| Mass Transit Administration, Baltimore, MD | MD-90-X050-00 | 1,238,605 | 06/26/92 |
| Battle Creek Transit System, Battle Creek, MI | MI-90-X154-01 | 61,573 | 06/25/92 |
| Bay County Metropolitan Transportation Authority, Bay City, MI | MI-90-X159-00 | 542,920 | 06/24/92 |
| County of Muskegon, Michigan | MI-90-X160-00 | 1,665,639 | 06/19/92 |
| Flint Mass Transportation Authority, Flint, MI | MI-90-X161-00 | 2,041,022 | 06/26/92 |
| City of Saginaw, Saginaw, MI | MI-90-X162-00 | 897,512 | 06/24/92 |
| City of Rochester, Rochester, MN | MN-90-X060-00 | 627,469 | 06/19/92 |
| City of Columbia Department of Public Works, Columbia, MT | MO-90-X083-00 | 357,242 | 06/30/92 |
| Great Falls Transit District, Great Falls, MI | MT-90-X032-00 | 506,218 | 06/22/92 |
| City of Winston-Salem, Winston-Salem, NC | NC-90-X101-03 | 336,740 | 06/29/92 |
| City of High Point, High Point, NC | NC-90-X136-00 | 443,012 | 06/19/92 |
| City of Hickory, Hickory, NC | NC-90-X138-00 | 244,033 | 06/19/92 |
| City of Durham, Durham, NC | NC-90-X139-00 | 606,951 | 06/19/92 |
| City of Fayetteville, Fayetteville, NC | NC-90-X142-00 | 1,346,720 | 06/19/92 |
| City of Fargo, Fargo-Moorhead, ND–MN | ND-90-X026-00 | 577,650 | 06/22/92 |
| Omaha Metro Area Transit, Omaha, NE–IA | NE-90-X031-00 | 1,245,600 | 06/30/92 |
| Cooperative Alliance for Seacoast Transportation, Portsmouth-Dover-Rochester, NH–ME | NH-90-X030-00 | 24,638 | 06/30/92 |
| Manchester Transit Authority, Manchester, NH | NH-90-X031-00 | 588,412 | 06/30/92 |
| City of Santa Fe, Santa Fe, NM | NM-90-X033-00 | 639,992 | 06/30/92 |
| Onondaga County Civic Center, Syracuse, NY | NY-90-X166-01 | 166,227 | 06/19/92 |
| Chemung County Transit System, Elmira, NY | NY-90-X223-00 | 584,432 | 06/26/92 |
| New York City Department of Transportation, New York, NY—Northeastern NJ | NY-90-X224-00 | 17,553,168 | 06/19/92 |
| City of Poughkeepsie, Poughkeepsie, NY | NY-90-X225-00 | 294,000 | 06/26/92 |
| Greater Glens Falls Transit System, Glens Falls, NY | NY-90-X226-00 | 48,000 | 06/26/92 |
| Westchester County Department of Transportation, New York, NY—Northeastern NJ | NY-90-X228-00 | 4,992,172 | 06/26/92 |
| Dutchess County, Poughkeepsie, NY | NY-90-X229-00 | 509,000 | 06/19/92 |
| Central New York Regional Transportation Authority, Syracuse, NY | NY-90-X230-00 | 1,869,600 | 06/19/92 |
| Nassau County, New York, NY—Northeastern NJ | NY-90-X231-00 | 4,854,219 | 06/19/92 |
| Greater Cleveland Regional Transit Authority, Cleveland, OH | OH-90-X166-00 | 16,101,106 | 06/19/92 |
| Central Oklahoma Transportation and Parking Authority, Oklahoma City, OK | OK-90-X040-00 | 3,890,864 | 06/30/92 |
| Tri-County Metropolitan Transportation District of Oregon, Portland-Vancouver, OR–WA | OR-90-X041-00 | 4,955,462 | 06/25/92 |
| Mid Mon Valley Transit Authority, Monessen, PA | PA-90-X232-00 | 399,560 | 06/29/92 |
| Berks Area Reading Transportation Authority, Reading, PA | PA-90-X233-00 | 1,583,860 | 06/30/92 |
| Southeastern Pennsylvania Transportation Authority, Philadelphia, PA–NJ | PA-90-X234-00 | 23,546,420 | 06/30/92 |
| Lehigh and Northampton Transportation Authority, Allentown-Bethlehem-Easton, PA–NJ | PA-90-X235-00 | 2,717,260 | 06/29/92 |
| City of Williamsport, Bureau of Transportation, Williamsport, PA | PA-90-X236-00 | 461,836 | 06/30/92 |
| York County Transportation Authority, York, PA | PA-90-X237-00 | 1,077,757 | 06/26/92 |
| Red Rose Transit Authority, Lancaster, PA | PA-90-X238-00 | 1,305,025 | 06/29/92 |
| Erie Metropolitan Transit Authority, Erie, PA | PA-90-X239-00 | 1,060,000 | 06/30/92 |
| Transportation and Motor Buses for Public Use Authority, Altoona, PA | PA-90-X240-00 | 597,516 | 06/30/92 |
| Municipality of Vega Baja, Vega Baja-Manati, PR | PR-90-X024-03 | 295,520 | 06/29/92 |
| Municipality of Ponce, Ponce, PR | PR-90-X060-01 | 954,200 | 06/29/92 |
| Municipality of Arecibo, Arecibo, PR | PR-90-X069-00 | 200,00 | 06/29/92 |
| City of San Juan, San Juan, PR | PR-90-X070-00 | 1,060,000 | 06/29/92 |
| Pee Dee Regional Transit Authority, Florence, SC | SC-90-X050-00 | 278,163 | 06/19/92 |
| City of Anderson, Anderson, SC | SC-90-X051-00 | 357,200 | 06/19/92 |
| Aiken County, Augusta, GA–SC | SC-90-X052-00 | 113,904 | 06/19/92 |
| City of Charleston, Charleston, SC | SC-90-X053-00 | 1,680,002 | 06/19/92 |
| Santee Wateree Regional Transportation Authority, Sumter, SC | SC-90-X055-00 | 320,643 | 06/19/92 |
| Coastal Rapid Public Transit Authority, Myrtle Beach, SC | SC-90-X056-00 | 298,368 | 06/19/92 |
| Central Midlands Regional Planning Council, Columbia, SC | SC-90-X057-00 | 1,090,583 | 06/19/92 |
| City of Rapid City, Rapid City, SD | SD-90-X020-01 | 38,760 | 06/22/92 |
| City of Johnson City, Johnson City, TN | TN-90-X102-00 | 365,000 | 06/19/92 |
| City of Clarksville, Clarksville, TN–KY | TN-90-X103-00 | 383,978 | 06/19/92 |
| City of Dallas, Dallas-Ft Worth, TX | TX-90-X214-00 | 200,000 | 06/02/92 |
| City of Lubbock, Lubbock, TX | TX-90-X243-00 | 1,692,400 | 06/30/92 |

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SECTION 9 GRANTS—Continued

| Transit property | Grant number | Grant amount | Obligation date |
|---|---|---|---|
| City of Lewisville, Texas | TX-90-X244-00 | 147,000 | 06/30/92 |
| City of Denton, Texas | TX-90-X246-00 | 393,915 | 06/30/92 |
| Utah Transit Authority, Salt Lake City, UT | UT-90-X016-00 | 12,889,971 | 06/02/92 |
| Greater Roanoke Transit Company, Roanoke, VA | VA-90-X092-00 | 1,053,663 | 06/17/92 |
| Greater Lynchburg Transit Company, Lynchburg, VA | VA-90-X093-00 | 1,342,864 | 06/26/92 |
| Jaunt, Inc, Charlottesville, VA | VA-90-X094-00 | 127,497 | 06/17/92 |
| Peninsula Transportation District Commission, Newport News-Hampton, VA | VA-90-X095-00 | 164,000 | 06/23/92 |
| Clark County Public Transportation Benefit Area, Portland-Vancouver, OR-WA | WA-90-X129-00 | 304,000 | 06/25/92 |
| City of Sheboygan, Sheboygan, WI | WI-90-X156-01 | 72,800 | 06/19/92 |
| City of La Crosse Planning Department (LAPC), La Crosse, WI-MN | WI-90-X163-00 | 491,260 | 06/30/92 |
| City of Superior, Duluth, WI-MN | WI-90-X164-00 | 158,392 | 06/19/92 |
| City of Racine, Racine, WI | WI-90-X165-00 | 907,228 | 06/19/92 |
| City of Green Bay Transit System, Green Bay, WI | WI-90-X166-00 | 817,673 | 06/24/92 |
| City of Waukesha, Milwaukee, WI | WI-90-X167-00 | 383,353 | 06/19/92 |
| Milwaukee County Transit System, Milwaukee, WI | WI-90-X168-00 | 12,018,430 | 06/24/92 |
| City of Chippewa Falls, Wisconsin | WI-90-X169-00 | 75,175 | 06/24/92 |
| Tri-State Transit Authority, Huntington-Ashland, WV-KY-OH | WV-90-X048-00 | 585,354 | 06/17/92 |
| Mid-Ohio Valley Transit Authority, Parkersburg, WV-OH | WV-90-X049-00 | 385,009 | 06/17/92 |
| City of Cheyenne, Cheyenne, WY | WY-90-X011-00 | 337,740, | 06/23/92 |

Issued on: July 16, 1992.

**Brian W. Clymer,**

*Administrator.*

[FR Doc. 92-17213 Filed 7-21-92; 8:45 am]

BILLING CODE 4910-57-M

## DEPARTMENT OF THE TREASURY

**[Number: 27-01]**

### Organization and Functions—Office of the Assistant Secretary (Management)/Chief Financial Officer

July 9, 1992.

1. *Purpose.* This directive describes the organization of the Office of the Assistant Secretary (Management)/ Chief Financial Officer (CFO).

2. *The Assistant Secretary (Management)/CFO.* The following are the functions of the Assistant Secretary (Management)/CFO.

a. Serves as the CFO of the Department of the Treasury, with authorities and functions pursuant to the Chief Financial Officers Act of 1990, Public Law 101-576 ("the Act"), and, as CFO, is responsible for carrying out the following functions for the Department and all bureaus (described as Departmentwide in this directive):

(1) Overseeing Departmentwide financial management, accounting policy, internal controls, cash management, credit management debt management, coordination of responses to General Accounting Office (GAO) activities relating to financial management, and corrective actions related to audit recommendations;

(2) Specifying the format, content and frequency of financial reports and statements, including overseeing the development of performance measurement indicators prepared by bureau program and financial components;

(3) Reviewing and approving the development, implementation, and maintenance of an integrated agency, as well as bureau financial management system(s), as defined by Office of Management and Budget (OMB) Circular No. A-127, paragraph 4.d., dated December 19, 1984, in compliance with generally accepted accounting principles, standards, and requirements for all Departmentwide administrative and program areas;

(4) Reviewing and approving financial statements and reports prepared at the bureau or Departmental level prior to submission to external parties after approval by the Secretary;

(5) Preparing and transmitting to the Secretary and OMB an annual report which includes items specified in 31 U.S.C. 902(a)(6) and cited below:

(a) A description and analysis of the status of financial management, Departmentwide;

(b) The annual financial statements prepared and audited reports pursuant to the Act;

(c) A summary of the Federal Managers' Financial Integrity Act (FMFIA) Report; and

(d) Any other information that warrants communication to the President and Congress concerning Departmentwide financial management;

(6) Developing and managing the Department of the Treasury budget for the Secretary and Deputy Secretary, monitoring financial execution of the budget, and ensuring the issuance of timely performance reports to management officials;

(7) Directing the biennial review of fees, royalties, rents and other charges imposed by the Department or a bureau, and making recommendations for changes;

(8) Reviewing, in accordance with the procedures established in Treasury Directive (TD) 28-02, "Legislative Procedures," all legislative items related to or concerning financial management matters subject to review and coordination pursuant to TD 28-02, to provide advice and comments on financial management issues, including costs and benefits;

(9) Providing direction and policy guidance to program managers on financial management matters;

(10) Developing Departmentwide policies and providing oversight related to qualifications, recruitment, training, selection and retention of financial management personnel; and

(11) Assuming any other function conferred upon the CFO by statute, Governmentwide regulation, or Treasury Orders or Directives.

b. Serves as the principal policy adviser to the Secretary and Deputy Secretary on matters involving the internal management of the Department and its bureaus. The Assistant Secretary oversees the Department's management programs, which include: personnel and training; affirmative action and equal employment opportunity; security; property management, procurement and contracting; planning and management analysis; and program reviews of legislative proposals in accordance with TD 28-02, to provide advice to the Secretary on cost and benefit estimates.

c. Oversees bureau proposals related to the development of budgetary resources for information systems.

d. Provides comprehensive administrative services to Departmental

Offices and other components of the Department, as appropriate.

3. *Organization Structure.* The Assistant Secretary (Management)/CFO is assisted in carrying out Departmentwide functions by three Deputy Assistant Secretaries: (a) Departmental Finance and Management; (b) Information Systems; and (c) Administration. In addition, assistance is provided in performing these functions by the Director, Office of Security, and the Deputy CFO. An organization chart is attached.

4. *The Deputy Assistant Secretary (Departmental Finance and Management)* has Departmentwide responsibility for personnel policies; the Treasury Executive Institute; equal opportunity programs; Treasury integrated management information systems, including automated payroll/personnel systems; procurement program management; management support systems; budget formulation; planning policy and management analysis; program evaluation; and productivity and management improvement. The Deputy Assistant Secretary supports the Assistant Secretary (Management)/CFO on legislative matters, and supervises the Financial Services Directorate, the Human Resources Directorate, and the Management Programs Directorate, with the exception of CFO-related responsibilities.

a. *Financial Services Directorate.* The Director serves as the Deputy CFO and reports directly to the Assistant Secretary (Management)/CFO on financial management matters. The Directorate is composed of the Office of Budget, the Office of Accounting and Internal Control, the Office of Financial Systems and Reports, and the Office of Planning and Management Analysis.

(1) *The Office of Budget* analyzes bureau resource requests and completes financial analyses related to resource allocations; monitors financial execution of the budget and administers Departmentwide budget controls; and represents the Department on budget matters in contacts with OMB, congressional committees and other Government agencies.

(2) *The Office of Accounting and Internal Control* develops, implements and evaluates Departmentwide accounting policy; oversees Departmentwide compliance with the FMFIA and Prompt Payment Act and the application of internal controls by bureau staffs; reviews and evaluates Departmentwide administrative and program accounting systems; coordinates cash and credit management/debt collection programs for treasury bureaus; monitors the resolution and implementation of audit findings and recommendations; and provides centralized coordination and monitoring of all Treasury related GAO audit activities.

(3) *The Office of Financial Systems and Reports* Recommends Departmentwide financial management and revenue systems policies and standards; reviews Departmentwide financial reports and financial statements; provides technical advice to bureaus on financial and revenue systems design and implementation; reviews and provides advice related to financial system proposals made by bureaus under TD 32–02, "Approval of Financial Management/Accounting Systems;" ensures that the Inventory, Tracking and Closure System is operational and supports needs of Departmental offices and policy officials; and codifies the process for financial systems review and documentation at the Department level.

(4) *The Office of Planning and Management Analysis* supports Departmental management through the application of planning and management analysis techniques and maintains the Departmental planning process; develops management and productivity improvement plans and oversees the development of performance indicators used in financial statements; conducts studies of issues with long-term or strategic impact on Treasury operations and conducts analyses to improve Departmentwide operations and the allocation of resources by the Departmentwide budget process; and supports the Assistant Secretary (Management)/CFO on matters relating to legislation, as provided in paragraphs 2.a.(8). and 2.b., and the President's Council on Management Improvement.

b. *Human Resources Directorate.* The directorate is composed of the Office of Personnel Policy, the Treasury Executive Institute, the Office of the Treasury Integrated Management Information Systems, and the Office of Equal Opportunity Program.

(1) *The Office of Personnel Policy* provides leadership in developing Departmentwide personnel policies and procedures; develops, recommends and implements functional personnel programs such as: Employment and staffing, including the Senior Executive Service (SES) and the disabled; classification and compensation; employee development, appraisal, recognition and benefits; employee and labor relations; drug-free workplace, including drug testing; occupational safety and health; and controls and evaluates personnel management activities, Departmentwide.

(2) *The Treasury Executive Institute* provides developmental services to SES executives and candidates to support achievement of their organizational and individual goals; presents programs, seminars and workshops with broad applicability to executive level personnel; sponsors and carries out, at the request of the Treasury Career Advisory Panel, several special activities each year, such as an Awards Ceremony to recognize the Department's Presidential Rank Award recipients.

(3) *The Office of Treasury Integrated Management Information Systems (TIMIS)* converts all Treasury bureaus from existing payroll/personnel systems to the U.S. Department of Agriculture system while simultaneously managing, operating and maintaining the system for converted bureaus; develops, conducts and maintains a full curriculum of technical training for Treasury bureau payroll/personnel staff; provides continuing user support, including user assistance in problem resolution and Departmentwide reporting; and ensures that the system meets the technical requirements of the Treasury community through the identification and development of system requirements and the negotiation of system modifications.

(4) *The Office of Equal Opportunity Program* provides for the consideration and disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, national origin, age and handicap; oversees, evaluates, and sets standards for the operation of the Regional Complaints Centers through which all Treasury bureaus process their complaints of discrimination; directs and administers Departmentwide affirmative employment and special emphasis programs, such as the Hispanic Employment Program, the Federal Women's Program, and the Historically Black Colleges and Universities Program.

c. *Management Programs Directorate.* The Directorate is composed of the Office of Procurement, the Office of Management Support Systems, and the Office of Automated Payroll/Personnel Systems.

(1) *The Office of Procurement* provides policy and technical guidance for the Departmentwide procurement and contracting programs and reviews and evaluates bureau procurement operations; oversees the activities of the Assistant Director (Small and Disadvantaged Business Utilization), in support of the Assistant Secretary

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(Management)/CFO, (who is the statutory director of the Office of Small and Disadvantaged Business Utilization under Public Law 95–507); oversees the activities of the Departmental Advocate for Competition appointed under Public Law 98–369; and administers a Departmentwide career management program for all procurement personnel in accordance with requirements of Public Law 98–191.

(2) *The Office of Management Support Systems* provides policy and technical guidance for Departmentwide space management, real and personal property, fleet management, transportation management, energy conservation, environmental quality and pollution abatement, historic preservation, metrication, and recycling programs; publishes Treasury Orders and Directives; provides policy direction and oversight of the Treasury travel management, advisory committee management, and audiovisual management programs; and reviews and evaluates bureau operations within these program areas.

(3) *The Office of Automated Payroll/Personnel Systems* has responsibility for complete administrative management and oversight of records, contracts, facility, personnel, and equipment closeout of the former Treasury Payroll Information System (TPIS) and Personnel Management Information Telecommunications System (PERMITS) payroll and personnel systems and staff.

5. *The Deputy Assistant Secretary (Information Systems)* serves as the Department's Senior Official for Information Resources Management and has Departmentwide responsibility for policy, oversight and improvement of information systems, including computer hardware and software, telecommunications (voice, data and radio), office automation, and storage and imaging technologies. The Deputy Assistant Secretary supervises the Office of Information Resources Management and the Office of Telecommunications Management.

a. *The Office of Information Resources Management* manages a broad range of information resources management functions specified in the Brooks Act and the Paperwork Reduction Act, except for management issues related to telecommunications; coordinates and makes recommendations for information systems planning and budgeting; develops and coordinates policy and standards; approves and coordinates acquisitions and systems management; conducts information management reviews; administers provisions of the Computer Security Act; conducts inventories of bureau sensitive systems and reviews security plans; develops and reviews computer security awareness training guidelines; and reviews and approves public reporting requirements; and coordinates Treasury external directories, forms, reports, records, and mail management program activities.

b. *The Office of Telecommunications Management* develops and manages the Departmentwide telecommunications program for local and wide area communications systems and services; develops policies for cost-effective utilization of telecommunications resources by Treasury bureaus; reviews and coordinates the acquisition of communications systems and services throughout the Department; establishes and oversees program offices for voice, data, video, and radio communications to meet Departmentwide requirements.

6. *The Deputy Assistant Secretary (Administration)* has responsibility for the Departmental Offices' administrative and management operating programs which include: administrative services; automated systems; facilities; budget formulation and execution; accounting and internal controls; personnel, payroll, and equal employment opportunity; printing and graphics; and procurement. The Deputy Assistant Secretary (Administration) is responsible for managing the Department's disclosure services program, Working Capital Fund, printing program and reimburseable agreement operations which cross bureau lines. The Deputy Assistant Secretary (Administration) also serves as the Departmental Offices' liaison for activities required to comply with the CFO Act. Unless another Treasury Order, Directive, or delegation specifically states otherwise with respect to a function, the Deputy Assistant Secretary (Administration) is the head of the Departmental Offices for all administrative and management functions. The Deputy Assistant Secretary supervises the Administrative Operations, Automated Systems, Facilities Management, Financial Management, Personnel Resources, Printing and Graphics, and Procurement Services Divisions.

a. *The Administrative Operations Division* provides a range of administrative support services to the Departmental Offices to include library, mail, messenger and motor pool, telephone and switchboard, travel and special events support, personal property and representation funds accounting and building security, safety and parking. The Division manages the Department's disclosure services program.

b. *The Automated Systems Division* provides office automation, data processing, user support, applications development and telecommunications services to the Departmental Offices and users outside the Departmental Offices, as appropriate.

c. *The Facilities Management Division* directs and coordinates the management of the Main Treasury Building, Treasury Annex, and related grounds, including space management, construction, maintenance, and custodial care.

d. *The Financial Management Division* formulates, presents, executes and manages the Departmental Offices' budget; maintains a comprehensive integrated financial management and accounting system in support of the financial resources under the jurisdiction of the Departmental Offices; develops and directs the internal controls activities of the Departmental Offices; and supports the Deputy Assistant Secretary (Administration) in providing information to comply with the CFO Act. In addition, the Division provides financial management for the Department's Working Capital Fund and reimbursable programs which cross bureau lines.

e. *The Personnel Resources Division* formulates and administers the operating personnel management and training programs for the Departmental Offices, including the Equal Employment Opportunity Discrimination Complaint Program and the Multi-Year Affirmative Action Plan Program, and provides payroll liaison services for Departmental Office employees.

f. *The Printing and Graphics Division* provides Departmentwide printing, graphics and printing procurement services; develops the Department's publications policy; and represents the Department before and on inter- and intragovernmental printing committees and boards.

g. *The Procurement Services Division* provides operational procurement support for the Departmental Offices and manages certain Departmentwide procurements.

7. *The Office of Security* develops and administers Departmentwide policies and programs for personnel security and physical security, including industrial security and information security, emergency preparedness, Departmental Offices personnel security, and systems security programs. The latter program encompasses computer security programs, telecommunications security, operations security (threat/vulnerability

assessments), emissions security (TEMPEST), and electronic authentication; and contacts and performs liaison with other Government agencies to fulfill program responsibilities.

8. *Cancellation.* TD 27-01, "Organization and Functions—Office of the Assistant Secretary of the Treasury (Management)," dated March 23, 1989, is superseded.

9. *Office of Primary Interest.* Office of the Assistant Secretary (Management)/CFO.

**David M. Nummy,**

*Assistant Secretary (Management)/Chief Financial Officer.*

**Attachment**

BILLING CODE 4810-25-A

# Office of Management

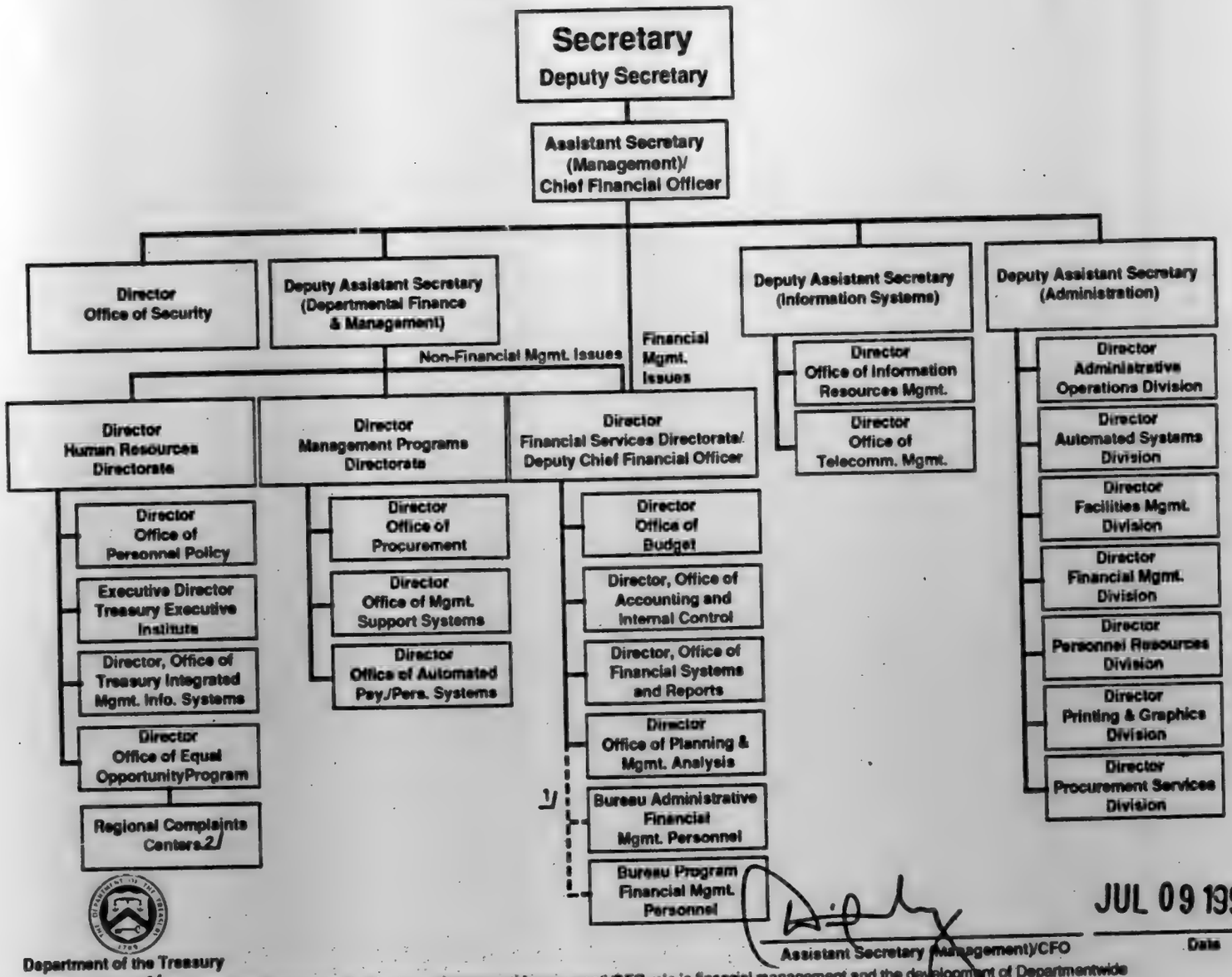


Attachment

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Assistant Secretary (Management)/CFO — Date

1/ The dotted line delineates the Assistant Secretary (Management)/CFO role in financial management and the development of Departmentwide policies related to qualifications, recruitment, training, selection, and retention of bureau financial management personnel.

2/ Regional Complaints Centers are located in Washington, DC, Dallas, Chicago, and San Francisco.

[FR Doc. 92-17208 Filed 7-21-92; 8:45 am]
BILLING CODE 4810-25-C

[Number: 19–05]

**Designation of Financial Institutions as Depositaries of Public Money for United States Mint Coin Consignment Programs**

July 8, 1992.

1. *Delegation.* By virtue of the authority delegated by the Secretary of the Treasury in Treasury Order (TO) 101–16, "Delegation of Authority to the Treasurer of the United States to Designate Financial Institutions as Depositaries of Public Money for United States Mint Consignment Programs," I hereby redelegate to the Director, United States Mint, authority to establish depositary accounts with financial institutions and to designate financial agents, only as are necessary to support United States Mint coin consignment programs.

2. *Redelegation.* The Director, United States Mint, is authorized to designate representatives to sign consignment agreements with depositary financial institutions on behalf of that official.

3. *Authority.* TO 101–16, "Delegation of Authority to the Treasurer of the United States to Designate Financial Institutions as Depositaries of Public Money for United States Mint Consignment Programs," dated August 5, 1987.

4. *Cancellation.* Treasury Directive 19–05, "Designation of Financial Institutions as Depositaries of Public Money for United States Coin Consignment Programs," dated August 6, 1987, is superseded.

5. *Office of Primary Interest.* Office of the Treasurer of the United States.

**Catalina V. Villalpando,**

*Treasurer of the United States.*

[FR Doc. 92–17209 Filed 7–21–92; 8:45 am]

BILLING CODE 4810–25–M

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[Number: 101–05]

**Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury**

July 2, 1992.

By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b) and Executive Order No. 11822, dated December 10, 1974, it is ordered that:

1. The Deputy Secretary shall report directly to the Secretary.

2. The Assistant Secretary (Policy Management) and Counselor to the Secretary shall report directly to the Secretary, except that with respect to supervision of the Executive Secretariat the Assistant Secretary (Policy Management) and Counselor to the Secretary shall report through the Deputy Secretary to the Secretary.

3. The following officials shall report through the Deputy Secretary to the Secretary and shall exercise supervision over those officers and organizational entities set forth on the attached organizational chart:

Under Secretary (International Affairs)
Under Secretary (Finance)
General Counsel
Assistant Secretary (Enforcement)
Assistant Secretary (Legislative Affairs)
Assistant Secretary (Management)
Assistant Secretary (Public Affairs and Public Liaison)
Assistant Secretary (Tax Policy)
Inspector General
Treasurer of the United States
Comptroller of the Currency
Commissioner of Internal Revenue
Director, Office of Thrift Supervision

4. The Assistant Secretary (Management) serves as the Department's Chief Financial Officer pursuant to the Chief Financial Officers Act of 1990, Public Law 101–576.

5. The Tax Legislative Counsel, the International Tax Counsel and the Benefits Tax Counsel provide counsel directly to the Assistant Secretary (Tax Policy), but are supervised by the General Counsel as part of the Department's Legal Division.

6. The Deputy Secretary is authorized, in that official's own capacity and that official's own title, to perform any functions the Secretary is authorized to perform and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary.

7. The Under Secretaries, the General Counsel, and the Assistant Secretaries are authorized to perform any functions the Secretary is authorized to perform. Each of these officials will ordinarily perform under this authority only functions which arise out of, relate to, or concern the activities or functions of, or the law administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Each of these officials shall perform under this authority in the official's own capacity and the official's own title and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by the Deputy Secretary or any of these officials in the incumbent's own title is hereby affirmed and ratified as the action of the Secretary.

8. The following officials shall, in the order of succession indicated, act as Secretary of the Treasury in case of the death, resignation, absence or sickness of the Secretary and other officers succeeding the incumbent, until a successor is appointed, or until the absence or sickness shall cease:

a. Deputy Secretary;

b. The following individuals, in the order of the date on which they were first appointed to a position within the Department requiring appointment by the President by and with the advice and consent of the Senate:

- Under Secretary (International Affairs);
- Under Secretary (Finance); and
- Assistant Secretary (Policy Management) and Counselor to the Secretary;

c. General Counsel; and

d. Assistant Secretaries, appointed by the President with Senate confirmation, in the order designated by the Secretary.

9. Treasury Order 101–05, "Reporting Relationships and Supervision of Official, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury," dated October 4, 1991, is superseded as of this date. To the extent that any provision of any other Order of the Department is inconsistent with any provision of this Order, the provisions of this Order shall govern.

**Nicholas F. Brady,**

*Secretary of the Treasury.*

BILLING CODE 4810–25–M

TO 101-05
07-02-92

Attachment

# THE DEPARTMENT OF THE TREASURY

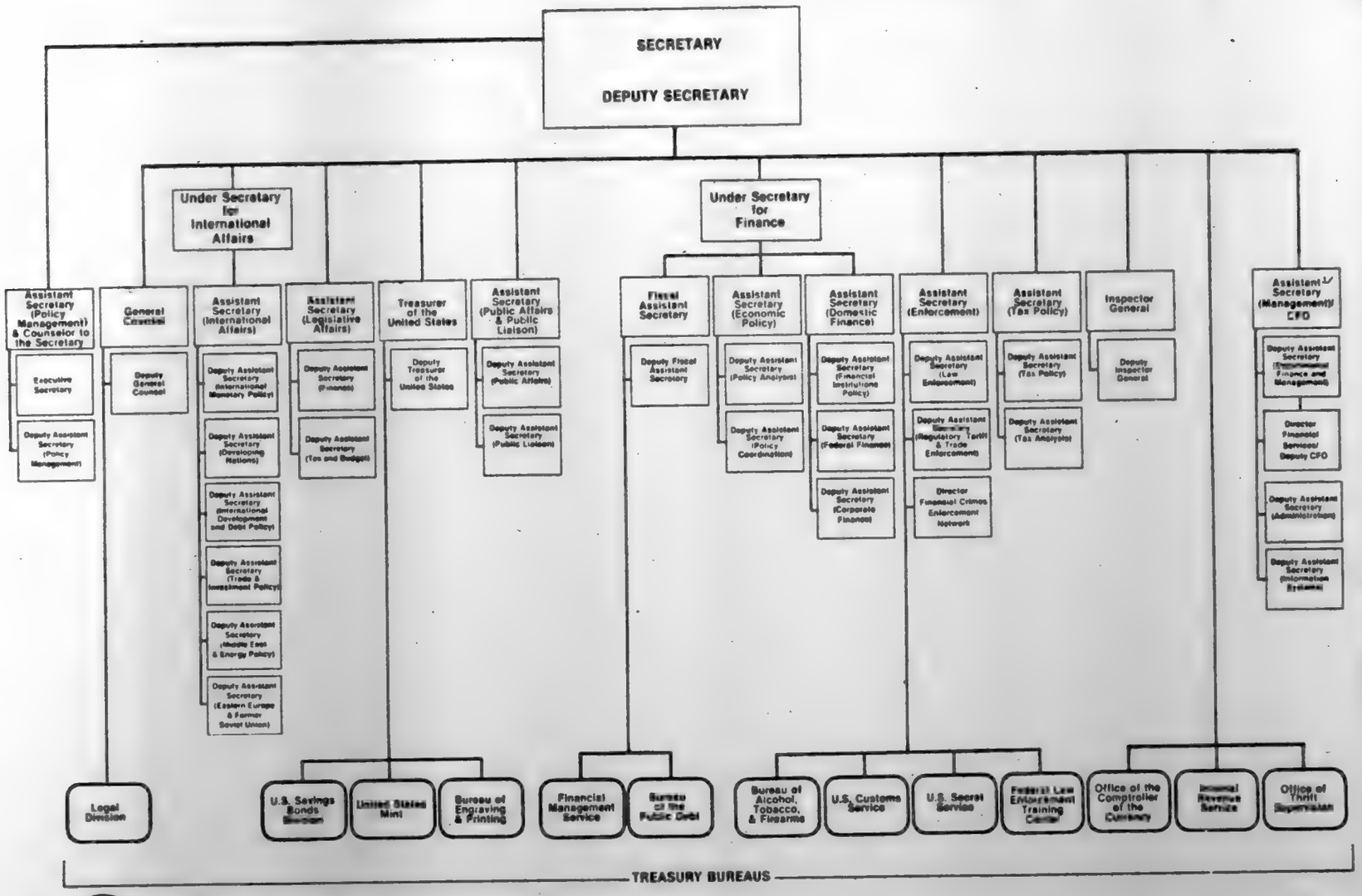


✓Assistant Secretary (Management) is the Chief Financial Officer (CFO).

JUL 2 1992

[FR Doc. 92-17211 Filed 7-21-92; 8:45 am]

BILLING CODE 4810-25-C

[Number: 12-51]

**Affixing the Department of the Treasury Seal**

June 30, 1992.

1. *Delegation.* This directive authorizes:

a. Heads of bureaus and their deputies, including the Inspector General and deputy, to affix the Seal of the Department of the Treasury to authenticate originals and copies of books, records, papers, writings, and documents of the Department for all purposes, including the purposes authorized by 28 U.S.C. 1733(b);

b. The following officials in the Departmental Offices to affix the Seal of the Department of the Treasury:

(1) Deputy Assistant Secretary (Administration);

(2) Director, Printing and Graphics Division;

(3) Director, Administrative Operations Division; and

(4) Chief, Clerk's Office; and

c. The Deputy Assistant Secretary (Administration), heads of bureaus, and the Inspector General to procure and maintain custody of the dies of the Treasury Department Seal.

2. *Redelegation.* Heads of bureaus and their deputies, including the Inspector General and deputy, may redelegate the authority in paragraph 1.a. to appropriate subordinate officials.

3. *Cancellation.* Treasury Directive 12-51, "Affixing the Department of the Treasury Seal," dated January 29, 1987, is superseded.

4. *Office of Primary Interest.* Administrative Operations Division, Office of the Deputy Assistant Secretary (Administration), Office of the Assistant Secretary (Management).

**David M. Nummy,**

*Assistant Secretary (Management).*

[FR Doc. 92-17212 Filed 7-21-92; 8:45 am]

BILLING CODE 4810-25-M

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**Customs Service**

[T.D. 92-70]

**Country of Origin Marking for Imported Pipes, Tubes, and Fittings**

**AGENCY:** U.S. Customs Service, Department of The Treasury.

**ACTION:** Notice revising T.D. 86-15 on the country of origin marking requirements of pipes, tubes, and fittings of iron or steel covered by 19 U.S.C. 1304(c).

**SUMMARY:** As provided in 19 U.S.C. 1304(c), certain pipe and pipe fittings must be marked by specified methods (die stamping, cast-in-mold lettering, etchings, or engraving). In 1988 Congress amended 19 U.S.C. 1304(c) to permit alternative methods if, because of the nature of an article, it is technically or commercially infeasible to mark by one of the four methods. In such case, paint stencilling or an equally permanent method is permitted. Small diameter pipe, tube, and fittings may be marked by tagging the container or bundles. See 19 U.S.C. 1304(c)(2). This document revises T.D. 86-15, regarding the marking of pipe, tubes, and fittings to conform to 19 U.S.C. 1304(c)(2).

**EFFECTIVE DATE:** July 22, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert Dinerstein, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2938).

**BACKGROUND:** Section 207 of the Trade and Tariff Act of 1984, (Pub. L. 98-573), amended 19 U.S.C. 1304 to require, without exception, that all pipe, tube, and pipe fittings of iron or steel must be marked to indicate the proper country of origin by means of die stamping, cast-in-mold lettering, etching or engraving. 19 U.S.C. 1304(c). However, after the enactment of section 207, it was brought to the attention of Customs that certain pipe and pipe fittings of iron or steel cannot be marked by any of the methods prescribed by the section without rendering such articles unfit for the purpose for which they were intended. Customs solicited comments on this subject, and issued T.D. 86-15 published in the **Federal Register** on February 5, 1986, 51 FR 4559, setting forth certain categories of articles which may be marked by alternative methods. For certain categories of articles, paint stencilling was the requisite method. For other categories, paint stencilling or tagging of the bundles or the containers was permitted. These categories include thin-walled pipes and fittings, small-diameter pipes and fittings, other fittings, line pipe, coated pipes, and spun iron pipe. These categories of articles are described in detail in T.D. 86-15. In addition, for ornamental pipes, tube, and fittings of all types, having a highly polished surface, T.D. 86-15 permits marking by means of a durable tag or sticker securely affixed or marking the protective wrapper.

In 1988 Congress amended 19 U.S.C. 1304(c) to allow for alternative methods of marking only if, because of the nature of an article it is technically or commercially infeasible to mark by one of the four prescribed methods. In such case, the article may be marked *by an equally permanent method of marking such as paint stencilling or in the case of small diameter pipe tube and fittings, by tagging the containers or bundles. (19 U.S.C. 1304(C)(2), emphasis added).*

In enacting 19 U.S.C. 1304(c)(2), Congress overrode Customs determination to allow the country of origin marking of certain types of pipes, tubes, and fittings by tagging of bundles or containers for pipe other than small diameter pipe. As the emphasized language makes clear marking by tagging of bundles is permissible only in the case of small diameter. Pipe, tubes and fittings which cannot be marked by a prescribed method must be marked by "paint stencilling or an equally permanent method." We do not consider tagging the containers or bundles an equally permanent method marking as paint stencilling. Therefore, marking pipe, tube, and fittings by tagging the bundles or containers is only acceptable for small diameter product. In T.D. 86-15, Customs determined that small diameter product included fittings that have a nominal diameter of one-fourth inch or less and pipe with an inner diameter of 1.9 inches or less.

Accordingly, to conform with 19 U.S.C. 1304(c)(2), T.D. 86-15 is amended as follows: Only small diameter pipe, tube, or fittings (fittings with a nominal diameter one-fourth inch or less and pipes with an inner diameter of 1.9 inches or less) may also be marked by tagging the containers or bundles. Other articles listed in T.D. 86-15 must be marked by paint stencilling or an equally permanent method.

For articles not specified in T.D. 86-15, the burden is on the importer to satisfy Customs that it is technically or commercially infeasible to mark the article by one of the four methods designated in 19 U.S.C. 1304. Such articles must be marked by paint stencilling or an equally permanent method.

Customs recognizes that there might be some cases where paint stencilling or an equally permanent method of marking could damage the product and render it unfit for the purpose it was intended. If such a case arises, Customs will consider alternative methods of marking on a case-by-case basis.

Dated: July 15, 1992.

**Samuel H. Banks,**

*Assistant Commissioner, Office of Commercial Operations.*

[FR Doc. 92-17201 Filed 7-21-92; 8:45 am]

BILLING CODE 4820-02-M

VOL
57
ISS
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# Sunshine Act Meetings

Federal Register
Vol. 57, No. 141
Wednesday, July 22, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY CREDIT CORPORATION**

**TIME AND DATE:** 2:00 p.m., July 29, 1992.

**PLACE:** Room 104–A Administration Building, U.S. Department of Agriculture, Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Minutes of Open Meeting of April 16, 1992.
2. Resolution re: Amendment of Commodity Credit Corporation Bylaws.
3. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
4. Docket re: CZ–152a, Revision 2, Computation of Interest, Application of Collections, and Authority to Disregard Small Amounts.
5. Docket re: CZ–217, Revision 2, Policy on Agreements for Fiscal and Financial Services for the Commodity Credit Corporation.
6. Docket re: CZ–261, Revision 1, Policy on Commodity Credit Corporation Borrowings from the Secretary of the Treasury.
7. Memorandum re: Change in Availability of CCC Stocks for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949 in Fiscal Year 1992.
8. Resolution re: CZ–266, Resolution No. 29, Amendment 2, Ratification of Commodities Available for Public Law 480 During Fiscal Year 1992.
9. Docket re: CX–330, Export Enhancement Program and Similar CCC Export Programs for 1992 and Subsequent Years.

**CONTACT PERSON FOR MORE INFORMATION:** James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 690–0490.

Dated: July 17, 1992.

**James V. Hansen,**

*Secretary, Commodity Credit Corporation.*

[FR Doc. 92–17338 Filed 7–20–92; 12:15 pm]

BILLING CODE 3410–05–M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, August 7, 1992.

**PLACE:** 2033 K St., N.W., Washington, D.C., 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 92–17406 Filed 7–20–92; 3:48 pm]

BILLING CODE 6351–01–M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, August 14, 1992.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 92–17407 Filed 7–20–92; 3:48 pm]

BILLING CODE 6351–01–M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, August 21, 1992.

**PLACE:** 2033 K St., N.W., Washington, D.C., 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 92–17408 Filed 7–20–92; 3:48 pm]

BILLING CODE 6351–01–M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, August 28, 1992.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 92–17409 Filed 7–20–92; 3:48 pm]

BILLING CODE 6351–01–M

**UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS**

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, August 4, 1992, in San Francisco, California. The meeting is open to the public and will be held at the General Mail Facility, 1300 Evans Avenue, in Room 332. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, August 3, 1992, but it will consist entirely of briefings and is not open to the public.

**Agenda**

*Tuesday Session*

*August 4–8:30 a.m. (Open)*

1. Minutes of Previous Meeting, July 6–7, 1992.
2. Remarks of the Postmaster General. (Marvin Runyon.)
3. Quarterly Report on Financial Performance. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group.)
4. Strategic Plan Update. (Frank R. Power, Assistant Postmaster General, Planning Department.)
5. Report on the San Francisco Division. (James W. Larsen, Field Division General Manager/Postmaster.)
6. Tentative Agenda for the August 31–September 1, 1992, meeting in Washington, D.C.

**David F. Harris,**

*Secretary.*

[FR Doc. 92–17398 Filed 7–20–92; 3:15 pm]

BILLING CODE 7710–12–M

federal register

Wednesday
July 22, 1992

Part II

# Department of Transportation

**Coast Guard**

**46 CFR Part 174**

**Subdivision and Damage Stability of Dry Cargo Vessels; Proposed Rule**

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**46 CFR Part 174**

**[CGD 87-094]**

**RIN 2115-AC87**

## Subdivision and Damage Stability of Dry Cargo Vessels

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes regulations requiring new dry cargo ships of 500 gross tons or more, calculated in accordance with the International Convention on Tonnage Measurement of Ships, 1969, to meet a minimum standard of subdivision and damage stability. These proposed regulations will implement an international standard that was developed to ensure that ships can sustain limited damage without loss of that ship.

**DATES:** Comments must be received on or before September 8, 1992.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 87-094), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

**FOR FURTHER INFORMATION CONTACT:** LCDR Guy R. Nolan, Office of Marine Safety, Security, and Environmental Protection (G-MTH-3/13), room 1308, U.S. Coast Guard Headquarters, Washington, DC 20593-0001, (202) 267-2988.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking as (CGD 87-094) and the specific sections of this proposal to which their comments apply, and give reasons for the comments. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

### Drafting Information

The principal persons involved in the drafting of this document are LCDR Guy R. Nolan, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Helen Boutrous, Project Counsel, Office of Chief Counsel.

### Background and Purpose

*A. Regulatory History*

On April 6, 1988, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) entitled "Dry Cargo Ship Subdivision and Damage Stability Regulations" in the **Federal Register** (53 FR 11440). The ANPRM provided draft regulations, that were based on an IMO resolution, for public comment. On November 6, 1989, the Coast Guard published a revision to the draft regulations in the **Federal Register** (54 FR 46631). This revision incorporated a revision in the international standard, and reopened the comment period to January 5, 1990. The Coast Guard received a total of fourteen comments to the ANPRM's. A public hearing was not requested and one was not held.

*B. Introduction*

Subdivision is the partitioning of a ship's internal volume into watertight compartments. Its purpose is to limit the quantity of water which may enter the ship following accidental hull damage or internal piping failure. Damage stability is the ability of a ship to avoid capsizing following accidental flooding. If uncontrolled flooding occurs without adequate subdivision and damage stability, the loss of the ship is virtually certain. Many disasters could possibly have been avoided if the ships had been subdivided and many others did not become disasters because the ships were subdivided. Casualties which result in capsizing or sinking typically involve loss of life, loss of the ship and its cargo, and release of quantities of oil and toxic chemicals into the environment. Casualty statistics presented in the April 6, 1988, ANPRM demonstrate that dry cargo ships with little subdivision have a higher rate of total losses following a collision than similar ships having the degree of subdivision in their cargo holds which the proposed regulation would require. Loss of life and property can be reduced if adequate subdivision and damage stability is provided in the design of all dry cargo ships.

Roughly 100 million dollars may be spent to build a ship which will take to sea a crew of up to thirty, and will carry 50 to 100 million dollars in goods as cargo, but could sink if even a single small opening is made in the hull below the waterline. Although the ship and the cargo may be insured, there can be no justification for the lives lost, the huge sums spent on inquiries and litigation, the pollution of the environment, the interruption of vital transportation services, the disruption of regular port activities, and all their associated costs to society. In most cases, well-placed, watertight bulkheads can substantially reduce these effects because the ship would not be lost.

Flooding may be caused by a wide variety of circumstances. This proposal would not prevent those circumstances, which have already been addressed to a great degree in other domestic and international regulations. Instead, these proposed regulations would improve maritime safety by requiring ship design practices that reduce the consequences of any flooding that may occur.

The direct impact of these proposed regulations on the U.S. shipping industry and the U.S. economy in general would be slight. These proposed regulations would require that all new dry cargo ships meet minimum standards of subdivision and damage stability. The mandatory international standard which this NPRM proposes to implement is one which virtually all U.S. flag ships currently meet.

Because of the different problems they face in meeting a subdivision standard, dry cargo ships can be divided into two categories: General cargo/container ships and roll-on, roll-off (RO-RO) ships.

General cargo and container ships are characterized by cargo operations that are vertical in nature: Cargo is lowered into holds and lifted out again, usually by cranes. Cargo is stowed from the bottom up, so that it is worked on a last-in, first-out basis. This vertical orientation makes it very easy to subdivide a general cargo or container ship. In fact, even such ships that were not built to any standard are usually subdivided with transverse bulkheads

and are able to withstand some damage without loss of the ship.

On the other hand, cargo operations of RO-RO ships are horizontal in nature. Trucks, trailers, farm machinery, military equipment and automobiles are rolled on and off, under their own power. This type of loading operation is very efficient and has led to an increasing number of RO-RO designs. In its most efficient form, a RO-RO has no transverse bulkheads and is completely open from bow to stern. Such a ship is vulnerable to even the smallest damage to its hull. A single small hole can sink the ship. In order to qualify for the U.S. subsidy and mortgage insurance programs, most U.S. flag RO-RO ships have been designed and built with movable bulkheads and doors to subdivide the ship to meet a "one compartment" standard. These subdivided U.S. RO-RO ships are less efficient during loading and unloading than foreign ships of the same size. They cost slightly more to build and carry slightly less cargo. However, unlike existing foreign ships, the subdivided U.S. flag RO-RO ships will meet the international standard that would be implemented by these proposed regulations.

For both general cargo/container ships and RO-RO ships, the standard proposed by this NPRM is currently met by virtually all existing U.S. ships and, therefore, will not be a departure from the normal design practice for new ships. By considering the effects of horizontal and longitudinal subdivision in addition to the traditional transverse boundaries, this proposed standard will allow naval architects flexibility not possible with the traditional "one compartment" standard of subdivision.

*C. Historical Perspective*

Until recently, there were no domestic regulations or international requirements for dry cargo ships, which may carry sizeable quantities of hazardous materials in packages, to be designed to remain afloat without capsizing after sustaining even minor damage. Most existing U.S. dry cargo ships, including RO-RO ships, were built under a subsidy or mortgage insurance program administered by the U.S. Maritime Administration (MARAD) which required these ships to meet a one compartment standard of subdivision.

The United States has been pressing for an international agreement on dry cargo ship subdivision since the International Convention for the Safety of Life at Sea, 1960. In 1977, after a series of casualties around the world, the Coast Guard restated its desire to have subdivision and damage stability standards for dry cargo ships developed as a matter of urgency, and worked on a one compartment subdivision standard together with the Society of Naval Architects and Marine Engineers. The standard could not be agreed upon internationally, partly because the standard could not be made flexible enough for RO-RO designs which depend upon horizontal and longitudinal subdivision instead of transverse subdivision, and partly because the index of safety was not functionally proportionate to the true degree of safety.

In 1985, the Maritime Safety Committee (MSC) of the International Maritime Organization (IMO) instructed the technical Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety (SLF) to develop a subdivision and damage stability standard based on the probabilistic analysis method. Standards developed were based on the research work done and the equations which were developed for the probabilistic rules for passenger ships (IMO Resolution A.265(VIII)).

The IMO draft regulations were studied by member countries for two years. At SLF 32 in September 1987, the IMO draft regulations were agreed upon and sent to the MSC for their determination on the level of subdivision which should be required. This issue was not resolved until April 1989, following the April 16, 1988, ANPRM which published the Coast Guard's intention to consider draft unilateral regulations. The draft regulations would have required all new foreign and domestic ships operating from U.S. ports to meet the IMO draft regulations and the Coast Guard announced that it would consider requiring all existing ships, foreign and domestic, operating in U.S. ports to meet the IMO draft standard after a phase-in period. Shortly thereafter, the MSC approved and finalized the IMO regulations. They were adopted in May 1990, and became effective as of February 1, 1992, as an amendment to the International Convention for the Safety of Life at Sea, 1974 (SOLAS).

The IMO regulations apply to cargo ships constructed on or after February 1, 1992. A definition of a "new" ship, for the purpose of establishing applicability of the proposed regulations, has been included in the proposed regulations. In order to be consistent with the international standard, the definition of a "new" ship uses a contract date of February 1, 1992 as a base line, with the keel laying and delivery dates following by six months and five years respectively. The Coast Guard's position is that these proposed rules set a minimum standard that has been historically exceeded by U.S. ships and, therefore, that this definition of a "new" ship will not create an undue hardship on the maritime industry.

The IMO regulations have recently been evaluated for application to ships less than 328 feet (100 meters) in length. While the principles used in the IMO regulations are appropriate regardless of ship size, the subdivision of smaller dry cargo ships is further complicated by the need to design cargo spaces that are large enough to allow efficient cargo operations. At the 36th session of SLF there was widespread support for the application of these rules to ships less than 328 feet (100 meters) in length, provided a compromise could be found between the need to subdivide and a reasonable minimum bulkhead spacing. Based on data contained in the multinational collation of results in applying Resolution MSC.19(58) to cargo ships less than 328 feet (100 meters) in length, consensus was reached and a draft SOLAS amendment will be forwarded to the MSC for approval. Although the final language of that recommendation has not yet been adopted, the substance and technical details have been incorporated into § 174.360(b) of these proposed rules. The Coast Guard requests that interested parties comment on the application of the proposed rule to ships less than 328 feet (100 meters) in length. In any event, U.S. flag dry cargo ships which have been designed to meet MARAD Design Letter No. 3 standard will meet the minimum standards of subdivision and damage stability proposed by this NPRM, regardless of length.

These proposed rules are part of a continuing effort by the Coast Guard to promote the development and adoption of satisfactory international standards that can then be adopted into U.S. regulations. Improvement of international standards benefits the public by raising the level of safety of foreign flag vessels visiting U.S. ports. U.S. adoption of the improved international standards allows U.S. flag vessels to better compete with foreign flag vessels.

To fully understand the impact of the proposed rules, they must be considered in conjunction with the draft IMO Code on Intact Stability. This Code is the result of years of international effort to consolidate and refine the intact stability standards for all vessel types. The draft code is currently in near final form and is expected to be adopted at the next IMO Assembly in October 1993.

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The Coast Guard intends to propose adoption of many portions of the draft IMO Code of Intact Stability, the most significant of which affects large containerships. The current U.S. regulations for intact stability were developed for 1940's era ships and have proved inappropriate and overly restrictive for large modern containerships. On April 2, 1992, the Coast Guard published a notice in the **Federal Register** (57 FR 11267) that allows the draft IMO intact stability standard for large containerships to be submitted as an equivalent to the current U.S. requirements for intact stability for containerships greater than 328 feet (100 meters) in length. The combined effect of the changes in both the intact and damage stability standards will be an increase in cargo capacity of U.S. flag vessels of 3 to 8 percent, without added danger to the vessel or crew. The Coast Guard projects that the potential annual benefit for the entire U.S. containership industry could be as high as $250 million.

*D. Effectiveness of the Regulations*

The detrimental effects of damage can be reduced by the use of watertight bulkheads. If damage occurs in a space between these bulkheads, the water cannot flood the undamaged part of the ship. Flooding will cause the ship to settle lower into the water and heel or trim somewhat. If the bulkheads have been well placed, the ship will not heel or trim enough to capsize.

Subdivision is passive once all watertight doors have been secured. Since it is built into the ship, it is always in place and ready if needed. A one compartment standard of subdivision and damage stability requires ships to be divided by transverse watertight bulkheads and to be operated with sufficient stability so as to remain afloat without excessive heel after damage within any one of the spaces between the bulkheads. This does not mean that a ship built to a one compartment standard will always survive damage. These ships are still vulnerable to even minor damage in way of a bulkhead that allows the flooding of two compartments.

The probabilistic approach of the regulations takes account of the probability of various extents of damage occurring anywhere along the ship's length and the resulting flooding. At the same time it takes account of the probability that the ship will survive the damage given its stability and draft. This provides a rational means of assessing the safety of ships, where flooding is concerned, no matter what their arrangements might be. For instance, a ship may be designed with less subdivision in part of its length, provided it has additional subdivision in areas shown to have a higher probability of damage. In this respect, it frees designers and operators from unnecessarily arbitrary restrictions on arrangement.

**Discussion of Comments**

On April 6, 1988, the Coast Guard published an ANPRM based on the IMO draft regulations outlined in Annex 2 of SLF 32/21. Considerable effort was expended in developing the draft regulations and the supporting casualty information, statistical data and sample calculations. In addition, the Coast Guard recognized the need to ask some specific questions to members of the concerned public and other organizations which might be affected by implementation of the draft regulations. The Coast Guard asked the following groups to become involved: Ship owners and operators; ship designers; ship masters, officers, and crew; port authorities and the public; national and international shipping interests; marine underwriters, chambers, unions, brokers, and classification societies; other administrations and flag states; and search and rescue organizations.

*A. General Comments*

Thirteen comments were received concerning the April 6, 1988, ANPRM. On November 6, 1989, the Coast Guard published a second Advance Notice of Proposed Rulemaking (54 FR 46631) to report changes to the IMO draft regulations and reopened the comment period to solicit comments on both the technical merits and the probable economic effect of the revised formula for the required subdivision index. Only one additional comment was received. The comments in response to both ANPRM's have been combined in the following discussion.

Most comments stated support for the draft regulations and the use of the probabilistic methods. One comment indicated the draft regulations allow some simplification of arrangements resulting in reduced construction and operating costs as compared to ships using MARAD Design Letter No. 3. Another comment stated that use of the probabilistic method would result in a lower level of safety than MARAD's existing one compartment standard. This comment may have been based on the assumption that the minimum standard implemented by these proposed regulations would replace the MARAD standard, but this is not the case. These proposed regulations propose a minimum level of subdivision and damage stability for a type of ship for which no minimum requirements currently exist. This rulemaking does not prevent MARAD from maintaining a requirement for a higher standard for ships participating in federal subsidy programs.

Most comments were opposed to the possibility of applying the draft regulations to existing ships, although one suggested such action might be appropriate under special circumstances. It was suggested that existing ships designed to a recognized subdivision standard, such as MARAD Design Letter No. 3, be exempted from these regulations. One comment advocated application to existing ships on a voluntary basis only. One comment included detailed calculations for 18 U.S. flag dry cargo ships representing all common ship configurations. This information allowed comparison of the IMO standard with the one compartment standard in MARAD Design Letter No. 3. In all cases, the attained index for the U.S. flag ships exceeded the required index. On the average, the attained index of the U.S. flag dry cargo ships built to the MARAD one compartment standard, exceeded the minimum standard required by these draft regulations by over 46 percent. This data clearly indicates that MARAD Design Letter No. 3 requires a higher degree of subdivision than the international standard and that no modifications would be necessary for ships built to a one compartment standard in order to meet the requirements of these proposed regulations. Since virtually all U.S. flag ships have been built to the MARAD one compartment standard, there is no compelling reason to apply these proposed regulations to existing ships. Thus, as in the draft regulations, this NPRM applies to new ships only, but owners of existing ships that do not meet any other subdivision requirement will be encouraged to adopt these minimum standards.

Several comments were opposed to the implementation of U.S. regulations prior to an international agreement on this issue. There was opposition to unilateral regulations and concern that multiple standards could result. International agreement has since been reached and the standard that would be implemented by these proposed regulations became effective February 1, 1992.

One comment suggested that regulations should be presented in traditional/English units. The proposed regulations present all lengths in feet,

with the metric equivalent in parenthesis.

*B. Response to Specific Questions*

The April 6, 1988, ANPRM posed a series of questions related to a wide variety of aspects. Most of the questions concerned the application of the IMO standard to existing ships and foreign ships entering U.S. ports. As discussed above, the proposed regulations in this NPRM apply only to new U.S. flag ships. On the whole, these questions no longer apply and there is no need to discuss them in great depth. All relevant comments have been addressed elsewhere in this discussion.

*C. Specific Comments on Draft Regulations*

The draft regulations published in the ANPRM were based on a draft version of the international standard that was under development. The comments received as part of this rulemaking were considered during the development of the international standard and many of the suggestions made were incorporated into the SOLAS amendment prior to its adoption. In addition, explanatory notes have been developed and adopted internationally by the Maritime Safety Committee. The Coast Guard intends to publish a Navigation and Vessel Inspection Circular (NVIC) that will contain the MSC resolution adopting these explanatory notes in order to provide naval architects additional guidance in completing the probabilistic calculations and ensure uniform application of the subdivision standard. The following discussion will include both the regulation numbering used in the draft regulations of the April 6, 1988, ANPRM and the corresponding SOLAS regulation.

*Section XXX.200 (SOLAS Regulation 25–1).* One comment suggested that the subdivision standards should apply to non-self-propelled vessels such as barges. Another suggested that similar standards be developed for ocean going industrial ships. These suggestions both have merit, but are beyond the scope of this rulemaking. While the probabilistic concept is universal in application, the specific rules in this IMO standard were based on damage statistics for dry cargo ships and may not provide an appropriate level of safety to other ship types. It was also suggested that these rules should be applied to integrated tug and barge (ITB) vessels that are dry cargo carriers. It is the Coast Guard's position that when operating as a combined unit, these vessels are subject to the same danger as any other dry cargo ship and that these rules are an appropriate minimum standard of subdivision. To clarify this position, the applicability of the proposed regulations described in § 174.350 specifically mentions ITB's, and a definition of subdivision length of ITB's has been added to proposed § 174.355 that requires the overall length of the combined tug and barge be used in all calculations.

*Section XXX.205 (SOLAS Regulation 25–2).* One comment did not agree with the definition of partial load line and cited Resolution A.265(VIII) for comparison. Unlike the calculations in Resolution A.265(VIII) for passenger ships, which are based on three loading conditions, these rules are based on only two loading conditions. Consequently, the definition of partial load line was intentionally drafted in SOLAS Regulation 25–2 to be different from the definition in Resolution A.265(VIII).

*Section XXX.210 (SOLAS Regulation 25–3).* A suggestion that the equation for the required index be simplified was incorporated into the SOLAS Regulation.

As published in the November 6, 1989, ANPRM which reopened the comment period of this rulemaking, the coefficients $C_1$ and $C_2$ were revised by the MSC of IMO, resulting in a small reduction in the required index. Only one additional comment was received in this second comment period. The comment expressed concern that the required index was too low and suggested it be raised to a value that would provide an equivalent level of safety to the MARAD one compartment standard. It was not possible to gain international support for an increase in the required index. However, this minimum international standard will not preclude the continued use of higher standards such as MARAD Design Letter No. 3. Higher levels of safety will be sought, as appropriate, through continued refinement and improvement of international standards.

It was further suggested that the required index be redesignated as the minimum allowable index and that a second index be introduced as the recommended index which would be equal to the attained index found in ships built to a one-compartment standard. The intent of this suggestion is appreciated. However, the regulations are minimum standards. Recommendations encouraging higher standards to owners and builders of ships can be made by other means.

Two comments stated that the required index was attainable and provided a reasonable level of safety. The Coast Guard agrees; the creation of an international standard for subdivision and damage stability will result in an increase in vessel safety.

*Section XXX.215 (SOLAS Regulation 25–4).* One comment questioned the difference between the attained index in this rulemaking and that previously used for passenger ships in Resolution A.265(VIII). Refinements have been made in the calculation of the attained index to better represent small transverse penetrations and damage occurring near the ends of the ship. These changes will also be applied to Resolution A.265(VIII) when that twenty year old standard is modified by the upcoming harmonization of all international standards.

The same comment indicated that the wording requiring that "level trim shall be used except when inconsistent with the vessel's operation" when making these calculations, was too vague and could allow interpretations not in keeping with the intent of safety. The comment indicated that the worst operating trim should be required for all calculations. Any requirement that depends on a subjective evaluation to establish the "worst case" would, by necessity, allow various interpretations. This is counter to IMO's goal of reducing the number of issues left to the discretion of the various flag administrations. Consistency is more important than ensuring that the worst possible case is considered. Therefore, the final wording of the SOLAS amendment states specifically that level trim should be used for all calculations, removing the possibility of various interpretations. The fact that the attained index would be calculated based on level trim rather than a worst case condition was taken into consideration in the development of the required index.

One comment suggested that the attained index be calculated based on three drafts, such as in Resolution A.256(VIII) for passenger ships, as opposed to the two drafts required in the IMO standard. This suggestion has merit; while the Coast Guard considers the calculations for the attained index appropriate, suggestions such as this could be improvements, which could be developed through future review of the international standard.

In addition, this comment correctly points out that both loading conditions evaluated are not required to have an attained index that exceeds the required index, provided that the average attained index exceeds the required index. The suggestion that the attained index be required to exceed the required

index in both loading conditions has considerable merit, as does the suggestion of introducing additional loading conditions to better represent the full range of operating drafts. The Coast Guard will strive to incorporate suggestions such as this as part of the continued refinement of this international standard during its scheduled review in 1994.

*Section XXX.220 (Regulation 25–5).* One comment requested clarification on the value '$P_i$' used in the ANPRM, asking if it was the product of the factors '$A_i$' and '$P_i$' of Resolution A.265(VIII) regarding the probability of damage at a particular location and the extent of such damage. The comment was correct; the instructions and methodology were changed slightly from those used in Resolution A.265(VIII), but the procedure is essentially the same. A suggestion to clarify some of the wording in this section was incorporated into the international standard prior to adoption.

*Section XXX.225 (Regulation 25–6).* One comment suggested that a better definition of "capable of being closed weathertight" be provided for clarification. The International Convention on Load Lines, 1966, provides detailed definitions of both watertight and weathertight. It was determined that no additional clarification was needed.

One comment indicated that the survival criteria, specifically the 25 degree allowable angle of equilibrium, was too lenient and pointed out that lifesaving equipment and pumps were normally only designed to operate at angles up to 15 degrees. Items such as emergency generators, fire pumps, and lifesaving equipment can be designed to operate at higher angles with little additional cost, especially when this is done as part of the initial specifications of a new ship. While passenger ships are limited to a final heel angle of 12 degrees in order to allow for the simultaneous evacuation of large numbers of passengers from both sides of a ship, this is not necessary for dry cargo ships. These ships are equipped with sufficient lifeboat capacity to allow the total evacuation of the crew from either side of the ship without relying on lifeboats on the ship's high side, which may be impossible to launch. In addition, evacuation of the relatively small crew of trained mariners can be conducted much quicker on a dry cargo ship, even at higher angles of heel, than possible on passenger ships where most of the persons on board are passengers with no training.

This comment also expressed the opinion that shifting cargo may further reduce stability if high angles of heel are allowed, but there is currently no data available to support this position.

*Section XXX.230 (SOLAS Regulation 25–8).* Two comments expressed concern with the concept of an upper limit of the vertical extent of damage, one of which questioned how the upper limit was set and the other suggesting modifications that would essentially require an unlimited vertical extent of damage. The standard adopted by the IMO, that is proposed to be implemented in this NPRM, is based on actual international casualty statistics of the damage inflicted on ships hit by other ships. These statistics do not support the need for an unlimited vertical extent of damage. In simple terms, these statistics show a tendency for ships to collide with ships of the same relative size and that the vertical extent of damage can be related directly to a ship's bow height. This data was used to set an upper limit of the vertical extent of damage.

Although the criteria used in the international standard was based on actual damage statistics, the vertical extent of damage was not always available for analysis. Damage cards used to collect casualty statistics have been modified to allow this information to be recorded and will provide an improved data base for future revisions of this standard. The next revision is scheduled for 1994.

Although there may be minor changes in the international standard as more data becomes available, the approach used in this provision of the standard is necessary to account for the improvements in damage stability that are possible through the use of horizontal subdivision.

One comment indicated that the variable 'd' (draught) was not clearly defined. While this variable is not defined in this portion of the SOLAS ammendment, it is clearly defined in Regulation 25–2 and used consistently through out the amendment.

*Section XXX.235 (SOLAS Regulation 25–7).* Three comments did not agree with the use of a single value of permeability for all dry cargo spaces. They suggested that the value of permeability should vary to match the cargo type more realistically. This is counter to IMO's goal of reducing the number of issues left to the discretion of the various flag administrations. Consistency is more important than ensuring that the calculation represents an actual flooding condition. The international standard proposed to be implemented in this NPRM, limits the possible permeability to a single value in order to prevent circumvention of the standard's intent by mathematical manipulation. The fact that the attained index would be calculated based on a standard permeability rather than the actual permeability was taken into consideration in the development of the required index. Development of alternatives which could be used to refine these calculations have been initiated by IMO, and may be considered for future adoption.

*Section XXX.240 (SOLAS Regulation 25–8).* These proposed regulations require that information be provided to the master, that will provide rapid and simple guidance as to the stability of the ship in various conditions of service. Damage stability plans are to be posted on the bridge and detailed information made available to the officers of the ship. One comment suggested that stability information be posted on the bridge in a graphical format which provided information for each combination of damaged compartments possible. There are many ways to present this type of information to ship operators. Variations in ship design, complexity of stability information, and experience level of the crew warrant flexibility in the format utilized to allow ship owners and designers to provide this information in the most appropriate form. Therefore, this comment was not adopted in this NPRM.

One comment pointed out that posting a stability plan served little purpose if these regulations were applied to seagoing barges. These proposed regulations apply only to self-propelled seagoing ships. However, for the purpose of these proposed regulations, an ITB is considered a seagoing ship when operating in the combined mode and stability information required by these proposed regulations would be available on the tug for use by its crew.

One comment suggested a change to the wording used in the ANPRM that would clarify that the limiting metacentric height (GM) provided as part of a ship's stability information, must reflect both the intact and damage stability criterion as appropriate. The current requirements for a stability booklet in 46 CFR 170.110 make this point sufficiently clear as to not require duplication.

## Discussion of Proposed Regulations

This NPRM would amend the applicability provision of § 174.005 to include oceangoing ships of 500 gross tons or more, calculated in accordance with the International Convention on Tonnage Measurement of Ships, 1969, designed primarily for the carriage of

dry cargoes, including RO-RO ships. In addition, this NPRM would add a new subpart J to part 174, Special Rules Pertaining to Dry Cargo Ships. That subpart would include: a specific applicability section; definitions for "subdivision length" and "new ship", as used in these proposed regulations; and, loading restriction requirements. For each ship to which the subpart would apply, calculations must be performed that would demonstrate compliance with the international requirements for damage stability of dry cargo ships. These proposed regulations also include requirements for dry cargo ships of less than 328 feet (100 meters) in length. For these ships, the required index must be calculated from the proposed equation.

**Renumbering of Proposed Regulations**

The pending addition of subparts G and H to 46 CFR part 174, conflicted with the numbering used in the original draft regulations of the ANPRM. Therefore, the numbering used in the ANPRM has been revised in this NPRM.

**Regulatory Evaluation**

This proposal is considered to be non-major under Executive Order 12291. However, it is considered to be significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The ANPRM was considered significant because it suggested applying the proposed standard in advance of formal adoption by IMO. Further, the ANPRM announced that the Coast Guard would consider applying the proposed standard to new and existing foreign ships entering U.S. ports and generated a high level of interest in the international community. The adoption of a mandatory international subdivision and damage stability standard terminated the necessity for unilateral U.S. regulations. The proposed regulations in this NPRM would, if adopted, apply to new U.S. flag ships only. However, the Coast Guard continues to consider this rulemaking significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because of the public interest in, and importance of, establishing minimum standards of subdivision and damage stability for dry cargo ships. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. These proposed regulations would implement a mandatory minimum level of subdivision for new ships. As explained earlier, virtually all U.S flag dry cargo ships are already built to a higher standard in order to qualify for MARAD subsidies. This results in no increased cost for subsidized ships due to these proposed regulations. If new ships were built without MARAD subsidies, these proposed regulations would require a subdivision standard already adopted on a world wide basis and would have no adverse effects on competition.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). These proposed regulations will impact owners and operators of large, oceangoing ships. None of these entities can be classified as a small entity. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposal, if adopted will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the Office of Management and Budget (OMB) reviews each proposed rule which contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal would not increase the paperwork burden on the public. The only paperwork requirements involve ship design calculations that are used in the development of stability information that is already subject to Coast Guard review. The submittal of the stability information resulting from these and other calculations has already been approved by the Office of Management and Budget (OMB) and has been assigned OMB number 2115–0559.

**Federalism**

These proposed regulations would affect only large entities which own or operate ships engaged in interstate or international commerce. The authority to regulate the stability design criteria of these vessels has been committed to the Coast Guard by Federal statutes. These proposed regulations would, therefore, preempt state and local regulations regarding subdivision and damage stability for dry cargo ships engaged in interstate or international commerce.

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these proposed regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of these proposed regulations and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. These proposed regulations would require a minimum standard of subdivision and damage stability, for a type of ship for which none existed, with the intent of reducing the chance of a ship sinking and subsequently polluting the environment. This proposal will not result in any of the following:

1. Significant cumulative impacts on the human environment;

2. Substantial controversy or substantial change to existing environmental conditions;

3. Impacts which are more than minimal on properties protected under 4(f) of the DOT Act as superseded by Public Law 97–449, and section 106 of the National Historic Preservation Act; or

4. Inconsistencies with any Federal, State or local laws, or administrative determinations relating to the environment.

A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects in 46 CFR Part 174**

Marine safety, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend title 46, chapter I, subchapter S, part 174 of the Code of Federal Regulations as follows:

## PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

1. The authority citation for part 174 continues to read as follows:

**Authority:** 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

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2. Section 174.005 is amended by adding a new paragraph (i) to read as follows:

**§ 174.005 Applicability.**

* * * * *

(i) Oceangoing ships greater than 500 gross tons, as calculated by the International Convention on Tonnage Measurement of Ships, 1969, designed primarily for the carriage of dry cargoes, including roll-on/roll-off ships.

3. Part 174 is amended by adding a new Subpart J to read as follows:

**Subpart J—Special Rules Pertaining to Dry Cargo Ships**

Sec.
174.350 Specific applicability.
174.355 Definitions.
174.360 Calculations.

## Subpart J—Special Rules Pertaining to Dry Cargo Ships

**§ 174.350 Specific applicability.**

This subpart applies to each new ship of 500 gross tons or over, as calculated by the International Convention on Tonnage Measurement of Ships, 1969, designed primarily for the carriage of dry cargoes, including roll-on/roll-off ships and integrated tug and barges (ITBs) when operating as a combined unit.

**§ 174.355 Definitions.**

*New ship* means a ship:

(1) For which the building contract is placed on or after February 1, 1992; or

(2) In the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after August 1, 1992; or

(3) The delivery of which is on or after February 1, 1997; or

(4) Which has undergone a major conversion:

(i) For which the contract is placed on or after February 1, 1992; or

(ii) In the absence of a contract, the construction work of which is begun on or after August 1, 1992; or

(iii) Which is completed on or after February 1, 1997.

*Subdivision Length* ($L_s$) as used in this subpart, is the greatest projected molded length of that part of the ship at or below the deck or decks limiting the vertical extent of flooding with the ship at the deepest subdivision load line. Integrated tug and barges (ITBs) shall be considered a single ship when establishing subdivision length.

**§ 174.360 Calculations.**

(a) For each ship to which this subpart applies, calculations must be performed which demonstrate compliance with The International Convention for the Safety of Life at Sea, 1974, as amended, Chapter II–1, Part B–1. This compliance must be reflected in information on loading restrictions, such as a maximum height of the center of gravity (KG) or minimum metacentric height (GM) curve that is part of the stability information required by § 170.110 of this chapter.

(b) For ships with a subdivision length ($L_s$) of less than 328 feet (100 meters) the required index must be calculated from the following equation:

$$R_{<100} = 1 - (1/(1 + (L_s/100) * (R_{100}/(1 - R_{100}))))$$

Where:

$R_{100}$ is the required index calculated for a ship with a subdivision length of 328 feet (100 meters) and $L_s$ is in meters.

Dated: July 14, 1992.

J.W. Kime,

*Admiral, U.S. Coast Guard Commandant.*

[FR Doc. 92–17001 Filed 7–21–92; 8:45 am]

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Part III

# Department of Health and Human Services

**Administration for Children and Families**

## Office of Refugee Resettlement; Discretionary Grants for Fiscal Year 1992; Notice of Request for Applications

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Office of Refugee Resettlement; Request for Applications for Micro-Enterprise Development Projects Under the Office of Refugee Resettlement's Fiscal Year 1992 Discretionary Grants Program for Services to Refugees**

**AGENCY:** Administration for Children and Families, HHS.

**ACTION:** Request for applications for Micro-Enterprise Development projects under the Office of Refugee Resettlement's Fiscal Year 1992 discretionary grants program for services to refugees.[1]

**SUMMARY:** The Office of Refugee Resettlement (ORR) announces that competing applications will be accepted for grants pursuant to the Director's discretionary authority under section 412(c) of the Immigration and Nationality Act (INA), as amended by section 412 of the Refugee Act of 1980 (Pub. L. No. 96–212), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c) of the INA, as cited above; and the Refugee Assistance Extension Act of 1986 (Pub. L. No. 99–605).

Grants made under this program announcement are subject to the availability of funds for support of these activities. Awards, made on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three-year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, timely and successful completion of the project, and ORR's determination that this would be in the best interest of the government. This announcement contains forms and instructions for submitting an application.

**CLOSING DATE:** The closing date for submission of applications to be considered for FY 1992 is August 18, 1992.

**FOR FURTHER INFORMATION CONTACT:** Carmel Clay Thompson, Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone: (202) 401–4560.

**SUPPLEMENTARY INFORMATION:**

## Part A. General Information

### *1. Legislative Authority*

Section 412(c)(1)(A) of the INA authorizes the Director to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational, and other services. Additionally, INA section 412(a)(4)(A) states in carrying out this section, the Director, the Secretary of State, and such other appropriate administering official are authorized—(i) to make loans.

### *2. Agency Goal*

The Director has established a broad agency goal of promoting innovative program design, within the framework of joint public-private partnerships, in response to the challenge of reducing welfare dependency and advancing the attainment of economic self-sufficiency among refugees. To this end, ORR announces the availability of funding for Micro-Enterprise Development.

### *3. Purpose and Methodology*

The purpose of this program is to provide grants to intermediary agencies to develop and administer micro-enterprise programs consisting of (a) small-scale financing available through microloans to refugees who have been, or currently are, engaged in an activity designed to generate income, regardless of how small its size; and (b) technical assistance through training for micro-enterprise development to refugee entrepreneurs receiving the microloans.

This program also provides for technical assistance to the agencies funded under this announcement to coordinate their policies and procedures for developing and administering refugee microloan funds.

The targeted population for these loans may include refugees who are receiving public assistance, or are at risk of receiving public assistance, and who lack the financial resources, credit history, or personal assets to otherwise qualify for small loans through standard commercial institutions. Only refugees who have arrived in the United States within the five year period preceding enrollment in the project are eligible to receive ORR-funded microloans. All refugees may participate in all other components of the program.

Secondarily, ORR is interested in seeing the extent to which this initiative may result in the growth of micro-enterprises in refugee communities and the expansion of entrepreneurial skills and expertise among refugees.

### *4. Eligible Applicants*

Eligible applicants are States and public or private, nonprofit organizations and institutions. A partnership or consortium of eligible organizations may submit a joint application to participate in a micro-enterprise program as a single entity, so long as one organization is clearly identified as the grant recipient with primary administrative and fiscal responsibilities. Once a grant has been awarded to an affiliated group of applicants, a single partner of the group would be precluded from continuing the project alone without prior approval of ORR.

### *5. Availability of Funds*

ORR expects to award up to $550,000 in the fourth quarter of Fiscal Year 1992 for new grants. ORR anticipates awarding approximately four micro-enterprise development grants, at a funding level of approximately $125,000 for each award, and an additional single grant in the amount of $50,000 to an organization to assist with participating agencies' technical planning.

The Director reserves the right to award more or less than the funds described above in the absence of worthy applications or under such other circumstances as may be deemed to be in the best interest of the Government. Applicants may be requested to reduce the scope of selected projects to accommodate the level of assistance provided.

### *6. Prohibition on the Use of Funds*

ORR will not fund projects where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. This does not bar subgranting or contracting for specific services or activities.

[1] In addition to persons who meet all requirements of 45 CFR 400.43, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Pub. L. No. 100–461). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

ORR does not anticipate approving the funding of applications which propose to subgrant or contract all or most of the proposed activities under this initiative to an unrelated entity.

*7. Project Periods*

Projects will be approved on a competitive basis for a three-year period. Budget periods will be limited to 12 months each. Continuation applications will be entertained subsequently on a non-competitive basis, subject to the availability of funds, grantee's performance, continued need, and the best interest of the Government.

*8. Definition of Terms*

For purposes of applications under this announcement, the following definitions apply:

*Business* is any lawful activity that generates income regardless of its size.

*General program income* refers to all program income accruing to a grantee during the period of grant support or to a subgrantee during the period of subgrant support.

*Intermediary agencies* are micro-enterprise grantees responsible for developing and administering micro-enterprise programs.

*Peer borrower groups* are comprised of several prospective loan fund borrowers, each of whom is developing a separate micro-enterprise. Intermediary agencies typically make loans to peer borrower groups who collectively determine which member of the group will receive a loan and in what order. Members of a peer borrower group provide technical assistance and support to each other, and the loan repayment record of each member may influence the group's ability to receive future loans.

*Self-sufficiency* is, minimally, a condition whereby individuals or families do not require or qualify for financial support in the form of public assistance, by reason of earned income.

*Microloans* consist of small, short term amounts of credit, generally in sums less than $5,000, made by an intermediary agency to low-income entrepreneurs or potential entrepreneurs for start-up or very small micro-enterprise endeavors. These entrepreneurs typically have few personal assets, little savings, and do not qualify for standard commercial loans.

**Part B. Program Description**

*1. Use of Grant Funds by Intermediary Agencies*

ORR funds may be used for the administrative costs associated with managing and servicing a microloan portfolio, and for the provision of entrepreneurial technical assistance to prospective borrowers, to loan recipients and to grantee intermediary agencies. Grantees may also propose a model in which one or several of these activities will be provided by a subgrantee.

Applicants whose project design includes ORR-funded microloans must establish a revolving loan fund to disburse these funds. Funds residing in revolving loan funds may be utilized multiple times as loans to individuals. ORR grant funds for a revolving loan fund will be capped for all new grantees at $50,000 for the first budget period. ORR does not anticipate funding projects that propose individual loans for periods greater than three years.

Program Income. General program income, in the form of interest earned on a loan principal, may be retained by the intermediary agency during the period of grant support and used for costs of the project so long as these costs further the objectives of the grant and the Federal statute under which the grant was made. Specifically, program income of this type may be used to expand the number of micro-enterprise loans to be made available to the client population, in accordance with 45 CFR 74.42(e), *Additional Costs Alternative.* Program income generated by the repayment of the loan principal is to be placed in the revolving loan fund to be used for making microloans to eligible borrowers.

Applicants must include in the project design a schedule for the collection and liquidation of all loans and the reversion of repaid loan equity (including interest) to the Federal Government within a three-year period after the expiration of the grant. The applicant must also define the average anticipated loan period and the maximum loan period.

ORR encourages the submission of applications which propose to establish a revolving loan fund based on a peer borrowing group model. (Applicants interested in exploring peer group borrowing may wish to investigate current models in the field of micro-enterprise development, such as that of the Grameen Bank of Bangladesh which provides credit to very small enterprises.)

ORR also encourages the submission of applications which propose to establish a partnership with a commercial bank or other traditional lending institution whereby Federal grant money will be leveraged by commercial loans, and refugee borrowers will have the opportunity of establishing credit-worthy histories with traditional lending institutions. To that end, ORR does not encourage the use of below-market level rates of interest for the loan funds. If appropriate, applicants should include letters of intent or interest from a commercial bank in their application.

Successful applicants will be required to establish an advisory committee with representatives from the local commercial sector and from the refugee community.

To ensure the exchange of technical and training information among participants, all grantee agencies and designated partners are strongly encouraged to attend two training conferences during each year of their participation in the Program at their own cost. Grant funds may be used to offset the cost of attendance.

*2. Microloans to Refugee Entrepreneurs*

Overview

Successful applicants for these funds will establish refugee revolving loan funds, using ORR grant funds, funds obtained from commercial lending institutions, or a combination of both, to provide and manage microloans to individuals. The intended purpose of the loan funds is to address gaps in the existing capital market for micro-entrepreneurs and prospective micro-entrepreneurs, that is, small, individual entrepreneurs seeking to expand their income-generating capacity.

Intermediary Agency Responsibilities

The micro-enterprise grantees, referred to as intermediary agencies, will have primary responsibility for determining the eligibility and credit-worthiness of refugee borrowers. Intermediary agencies will also determine lending policies, procedures and loan amounts, and are responsible for collecting and servicing microloan payments. In support of these, intermediary agencies must maintain written loan policies and procedures.

Proceeds from loan collections are to be recycled through the revolving loan fund to be used for re-lending to eligible borrowers.

Restriction on Loan Amount

ORR grant funds may be used for microloans to individual refugee entrepreneurs in sums not to exceed $5,000. The total loan amount may exceed the $5,000 limitation only to the

extent that the intermediary agency is able to match the ORR-supported microloan amount with funding from other resources on a one-to-one basis. In no case may a microloan exceed $10,000 under this program.

Interest Rate

The interest rate charged on microloans may not exceed four percentage points above the New York Prime lending rate at the time of loan approval.

Maturity

Microloans will have a maximum maturity of three years.

Fees

The intermediary agency may not charge fees, points, or other amounts to the individual borrower applying for a microloan other than actual costs associated with obtaining, approving and closing the approved microloan. Additionally, individual borrowers may not be solicited for contributions toward the cost of training or technical assistance received under this program.

Use of Loans

Microloans may be used for working capital, inventory, supplies, furniture, fixtures, machinery, tools, equipment, building renovation and/or leasehold improvements.

Microloan funds may not be used for the following types of businesses:

- As venture capital for established businesses that are attempting major expansion, particularly where such businesses may qualify for commercial loans.
- For concerns engaged in gambling or speculation of any type.
- For any illegal activity or production, or for the service or distribution of illegal products.
- For purposes not related to micro-enterprise development, e.g., for the purchase of an auto for transportation.

Examples of micro-enterprises which might qualify for this type of loan or business credit are found in small-scale repair, manufacturing, service, or agricultural businesses.

Eligibility

Eligibility for individual loan applicants is limited to those refugees who have arrived in the United States within the five years preceding enrollment in the project. Applicants are encouraged to target a refugee population that has arrived in the United States within the two years preceding project enrollment.

*3. Application Content*

Each application must contain the following documents:

a. A description of the applicant's organizational structure.

b. A copy of the applicant's IRS Tax Exemption Certificate and identification of IRS code citation of tax exempt status.

c. Copies of the last two fiscal year financial statements, including balance sheets and income statements.

d. A monthly cash flow chart for the three year period beginning October 1, 1992 anticipating selection into this program at the requested funding level.

e. A program narrative that includes a description of the project and project activities, a plan for fiscal and project management, a time table for activities, a project organization chart, a description of staffing, and resumes or qualifications of staff.

Additionally, applicants should include the following information:

- An analysis of capital needs and interest in micro-enterprise development of targeted refugee populations;
- The purpose of the project, a description of the types of loans to be made, the types of micro-enterprises to which it will be targeted, and the credit needs these enterprises are anticipated to have;
- A description of the structure, approach or model of the project, e.g., the extent to which loans will be made on an individual or group basis; outreach activities; the relationship to affiliate agencies; provisions for credit enhancements, such as loan loss reserves; performance criteria to be used in evaluating loans and making decisions with intermediaries or commercial lending institutions; a description of the management and operation of the project, and the management and servicing of the loan funds; and a discussion of the applicant's lending history, if applicable;
- A discussion of the extent to which the applicant proposes to leverage grant monies with other sources of capital for program participants through access to other funding sources or linkage with other financial institutions;
- The anticipated size of the revolving loan fund and its terms (e.g., maximum number of loans and loan size to be made available, interest rates, repayment terms and policies, projected default rates, requirements for loan loss reserves, candidate screening and lending criteria, application procedures, projected loan activity and the activities for which loans to individuals may be used; and a schedule for the collection and liquidation of all loans and reversion of repaid loan equity to the Federal Government;
- A description of the entrepreneurial technical assistance proposed for refugee loan borrowers (individuals or groups);
- A profile of the refugee participants, including: projected employment and/or welfare status; qualifying income, length of time in the United States; and the degree to which English language proficiency will be a prerequisite to participation in the project;
- A discussion of the impact of loan funds and business assets on clients' welfare status if the project proposes to target borrowers who are receiving public assistance;
- A budget narrative which includes a discussion of administrative costs;
- A description of the data collection, management procedures and analysis for tracking project milestones, the outlays under the project and of the loan funds, loan repayments, profit and loss statements or business reports, site visits, and technical assistance needs of project participants;
- Projected performance, including the estimated number of micro-enterprise loans, dollars invested; the costs associated with creation of a micro-enterprise or job; business survival rates; average income earned; the extent to which participating refugees achieve self-support; the ability of the fund itself to achieve self-sufficiency; and savings to the Federal Government in welfare costs discontinued by project participants due to earned self-employment income;
- Policies and procedures proposed regarding program or grant-related income and its disposition.

**Part C. Criteria for Competitive Review of Applications**

Applications will be reviewed competitively and scored by a review panel of experts in accordance with the HHS Grants Administration Manual and according to the criteria stated below for each program area. The results of the review panel's scores and explanatory comments will assist the Director, ORR, in making recommendations for funding to the Assistant Secretary. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including: Comments of reviewers; ACF/ORR officials; previous program performance of applicants; compliance with grant

terms under previous DHHS grants; audit reports; and investigative reports. Final funding decisions will be made by the Director, ORR.

Specific review criteria are as follows:

Overall appropriateness of targeted population, to include, (1) an analysis of capital needs and evidence of refugee interest in micro-enterprise; and (2) a discussion of the extent to which the project structure, policies and procedures are consistent with the entrepreneurial knowledge base and skill level of the project participants. (25 points maximum).

Organizational management capability and history of experience with either refugees or low-income loan applicants. Factors to be considered here include the applicant's financial resources, performance and creditworthiness. (30 points maximum).

Clarity and appropriateness of the project design, demonstrating an understanding of the concept of micro-enterprise endeavors, clear and appropriate implementation procedures, a financial plan and a time table. (30 points maximum).

Appropriateness and reasonableness of the proposed budget, including a description of the applicant's plan for fiscal management of each proposed activity, including start-up time, ongoing timelines, and a narrative justification to support each line. (15 points maximum).

Bonus points: (20 points maximum).

Up to ten (10) bonus points may be scored on applications which propose to match ORR grant dollars used in microloan revolving funds with financing from commercial lending institutions or other non-Federal financial sources.

Up to ten (10) additional bonus points may be scored on applications which propose a project design in which a majority of the refugee borrowers will have arrived in the United States within the two-year period prior to enrollment in the project.

**Part D. Grant for Assistance to Intermediary Agencies**

ORR intends that the loan programs will be complementary to each other in design and implementation features. To that end, ORR will award one grant in an amount not to exceed $50,000 to a private non-profit, non-participating agency for the purpose of assisting grantees (intermediary agencies) in the administration of microloan funds, in the development of appropriate financial systems for administering these projects, and for securing additional financing for microloans from commercial lending institutions. Intermediary agencies will be given access to standardized documents, policies and procedures that have been developed or gathered during the first year of this initiative.

Interested organizations should submit an application package, in accordance with instructions stated below in part E, Application Preparation and Submission, including the following:

1. A description of the applicant's organizational structure, staff qualifications, experience in micro-enterprise development, and expertise in business management principles and the operation of revolving loan funds.

2. A narrative description of technical assistance activities for approximately 6 grantee intermediary agencies, with a timetable and schedule for the preparation of site-visit reports.

3. A line-item budget and budget narrative.

Applicants for the technical assistance grant will be reviewed competitively and scored by a review panel of experts in accordance with the HHS Grants Administration Manual and according to the criteria stated below. Funding decisions will be made in accordance with the procedures outlined in part C above. Specific review criteria are as follows:

Organizational expertise and history of experience in microenterprise development and in providing technical assistance and training to intermediary agencies (40 points maximum).

Clarity and appropriateness of the project design for technical assistance (30 points maximum).

Reasonableness and appropriateness of the proposed budget. (30 points maximum).

**Part E. Application Preparation and Submission**

*1. Availability of Forms*

Attachments contain all of the standard forms necessary for the application for awards under this announcement.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the following office: Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone: (202) 401–4560.

*2. Contents of the Application*

Each application should include one signed original and two additional copies of the following:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug- free workplace and debarment regulations.

b. The typed or printed names, titles and signatures of parties within the applicant agency who have fiduciary responsibility for microloan notes and/or microloan closing documents, to the extent these differ from a. above.

c. A completed "Budget Information—Non-Construction Programs" form (SF–424A).

d. A signed "Assurances—Non-Construction Programs" form (SF–424B).

e. Signed certifications for a Drug-Free Workplace, Debarment, and Anti-Lobbying.

f. A Project Narrative consisting of the elements described under part B, section 3, above.

*3. Application Procedures and Submission*

Applications for awards under this program announcement must be submitted on Standard Form (SF)–424 provided for that purpose. The instructions and forms required for submission of applications are attached. The forms may be reproduced for use in submitting applications. Applications must be submitted by the closing date of (Date to be determined).

a. Deadlines: Applications will be considered as meeting an announced deadline if they are either:

(1) Received on or before the deadline date at a place specified in the program announcement, or

(2) Sent on or before the deadline date and received by the granting agency in time for the independent review. (Applicants must be cautioned to request a legibly edited U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

b. Late Applications: Applications which do not meet the criteria in paragraph a. of this section are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

c. Extension of Deadlines: The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the

granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

d. Once an application has been submitted, it is considered as final and no additional materials will be accepted by ORR. An application with an original signature and two copies is required. Applications, if mailed, should be addressed to: Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447.

Applications, if hand delivered, should be taken to: Administration for Children and Families, Division of Discretionary Grants, 901 D Street SW., 6th Floor, Washington, DC 20447.

**Intergovernmental Review**

(For State applicants only).

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Oregon, Virginia, Pennsylvania, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these eleven jurisdictions need take no action regarding Executive Order 12372. Applicants for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), an SPOC has 30 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, OFM/DDG, 370 L'Enfant Promenade SW., Washington, DC 20447.

A list of single points of contact for each State and Territory is included as Attachment E of this announcement.

**Applicable Regulations**

The following HHS regulations are applicable under these grants:

42 CFR Part 441, Services: Requirements and Limits Applicable to Specific Services—
Subpart E, Abortions
Subpart F, Sterilizations
45 Part 16, Procedures of the Departmental Grant Appeals Board
45 CFR Part 46, Protection of Human Subjects
45 CFR Part 74, Administration of Grants
Sections 74.62(a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other non-profit organizations
74.304 Final decisions in disputes
74.710 Real property, equipment, and supplies
74.715 General program income
45 CFR Part 76, Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)
Subpart F, Drug-Free Workplace Requirements (Grants)
45 CFR Part 80, Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81, Practice and Procedures for Hearings Under Part 80 of this Title
45 CFR Part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
45 CFR Part 86, Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefitting from Federal Financial Assistance
45 CFR Part 91, Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance
45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
45 CFR Part 93, New Restrictions on Lobbying
45 CFR Part 95, General Administration—Grant Programs (Public Assistance and Medical Assistance)
(Subpart E, Cost Allocation Plans)
45 CFR Part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities
45 CFR Part 400, Refugee Resettlement Program
45 CFR Part 401, Cuban/Haitian Entrant Program

**Post-Award Requirements—Records and Reports**

Grantees are required to file Financial Status (SF–269) and Program Progress Reports on a quarterly basis. Funds shall be accounted for and reported upon separately from all other grant activities. Successful applicants for micro-enterprise development projects will be given specific instructions by ORR, following the award of the grant, for reporting grant performance and loan portfolio information.

The official receipt of all correspondence is the Division of Discretionary Grants. The original copy of each report shall be submitted to the Grants Management Specialist, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, OFM/DDG, 370 L'Enfant Promenade SW., Washington, DC 20447. A copy should be sent simultaneously to the Division of Operations, ORR. The mailing address is: Office of Refugee Resettlement, Division of Operations, Aerospace Building, Sixth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The final Financial and Program Progress Reports shall be due 90 days after the budget expiration date or termination of grant support.

Although ORR does not expect the proposed components/projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes and expenditures by budget line item. The following certifications are attached: Drug-Free Workplace, Debarment, and Anti-Lobbying.

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this announcement is 93.038.

Dated: July 13, 1992.

**Chris Gersten,**

*Director, Office of Refugee Resettlement.*

BILLING CODE 4130-01-M

Attachment A

**APPLICATION FOR FEDERAL ASSISTANCE**

OMB Approval No. 0348-0043

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction *Preapplication* ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code) |

| | |
|---|---|
| 6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐ | 7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐<br>A. State H. Independent School Dist.<br>B. County I. State Controlled Institution of Higher Learning<br>C. Municipal J. Private University<br>D. Township K. Indian Tribe<br>E. Interstate L. Individual<br>F. Intermunicipal M. Profit Organization<br>G. Special District N. Other (Specify): _____ |
| 8. TYPE OF APPLICATION:<br>☐ New ☐ Continuation ☐ Revision<br>If Revision, enter appropriate letter(s) in box(es): ☐ ☐<br>A. Increase Award B. Decrease Award C. Increase Duration<br>D. Decrease Duration Other (specify): _____ | 9. NAME OF FEDERAL AGENCY: |
| 10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐.☐☐☐<br>TITLE: | 11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: |
| 12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): | |

| | | | |
|---|---|---|---|
| 13. PROPOSED PROJECT: Start Date | Ending Date | 14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project |

| | | |
|---|---|---|
| 15. ESTIMATED FUNDING: | | 16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? |
| a. Federal | $ .00 | a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____ |
| b. Applicant | $ .00 | b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 |
| c. State | $ .00 | ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW |
| d. Local | $ .00 | |
| e. Other | $ .00 | |
| f. Program Income | $ .00 | 17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No |
| g. TOTAL | $ .00 | |

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

BILLING CODE 6130-01-C

**INSTRUCTIONS FOR THE SF 424**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4130-01-M

VOL 57 ISS 141 JL 22 1992 UMI

## BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A – BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B – BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

| SECTION D - FORECASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

| SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary) | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks | |

SF 424A (4-88) Page 2
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## INSTRUCTIONS FOR THE SF–424A

### General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

### Section A. Budget Summary, Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

### Lines 1–4, Columns (c) through (g)

*For new applications,* leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications,* submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5**—Show the totals for all columns used.

### Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a–i**—Show the totals of Lines 6a to 6h in each column.

**Line 6j**—Show the amount of indirect cost.

**Line 6k**—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7**—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

### Section C. Non-Federal-Resources

**Lines 8–11**—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)**—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)**—Enter the contribution to be made by the applicant.

**Column (c)**—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)**—Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)**—Enter totals of Columns (b), (c), and (d).

**Line 12**—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

### Section D. Forecasted Cash Needs

**Line 13**—Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14**—Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15**—Enter the totals of amounts on Lines 13 and 14.

### Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

**Lines 16–19**—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20**—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21**—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22**—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23**—Provide any other explanations or comments deemed necessary.

## ASSURANCES—NON-CONSTRUCTION PROGRAMS

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with Public Law 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 et seq.)

pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Title

Applicant organization

Date submitted

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Attachment B

## U.S. Department of Health and Human Services
## Certification Regarding Drug-Free Workplace Requirements
## Grantees Other Than Individuals

**By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.**

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

**"Controlled substance"** means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

**"Conviction"** means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

**"Criminal drug statute"** means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

**"Employee"** means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**The grantee certifies that it will or will continue to provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violatioe of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

**The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):**

**Place of Performance (Street address, City, County, State, ZIP Code)**_____

*Check ___ if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4130-01-C

**Attachment C—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions**

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction " provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**Attachment D—Certification Regarding Lobbying**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

*Statement for Loan Guarantee and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4130-01-M

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>**For Material Change Only:**<br>year _____ quarter _____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee<br>Tier _____, *if known:*<br><br>**Congressional District,** *if known:* | **Congressional District,** *if known:* |
| 6. Federal Department/Agency: | 7. Federal Program Name/Description:<br><br>CFDA Number, *if applicable:* _____ |
| 8. Federal Action Number, *if known:* | 9. Award Amount, *if known:*<br>$ |
| 10. a. Name and Address of Lobbying Entity<br>*(if individual, last name, first name, MI):* | b. Individuals Performing Services *(including address if different from No. 10a)*<br>*(last name, first name, MI):* |

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

| 11. Amount of Payment *(check all that apply):* | 13. Type of Payment *(check all that apply):* |
|---|---|
| $ _____ ☐ actual ☐ planned | ☐ a. retainer<br>☐ b. one-time fee<br>☐ c. commission<br>☐ d. contingent fee<br>☐ e. deferred<br>☐ f. other; specify: _____ |
| 12. Form of Payment *(check all that apply):*<br>☐ a. cash<br>☐ b. in-kind; specify: nature _____<br>value _____ | |

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

| 16. | |
|---|---|
| Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure. | **Signature:** _____<br>**Print Name:** _____<br>**Title:** _____<br>**Telephone No.:** _____ **Date:** _____ |

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Attachment E

**STATE SINGLE POINTS OF CONTACT**

**ALABAMA**

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905

**ARIZONA**

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315

**ARKANSAS**

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

**CALIFORNIA**

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

**COLORADO**

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, room 520, Denver, Colorado 80203, Telephone (303) 866–2156

**CONNECTICUT**

Under Secretary, Attn: Intergovernmental Review coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

**DELAWARE**

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

**DISTRICT OF COLUMBIA**

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727–9111

**FLORIDA**

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone: (904) 488–8114

**GEORGIA**

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

**HAWAII**

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol—room 406, Honolulu, Hawaii 96813, Telephone (808) 548–5893, FAX (808) 548–5173

**ILLINOIS**

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

**INDIANA**

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

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Part IV

# Department of Energy

10 CFR Part 707

**Workplace Substance Abuse Programs at DOE Sites; Final Rule**

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**DEPARTMENT OF ENERGY**

**10 CFR Part 707**

**Workplace Substance Abuse Programs at DOE Sites; Final Rule**

**AGENCY:** Office of Procurement, Assistance and Program Management, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is establishing minimum requirements for DOE contractors to use in developing and implementing programs that deal with the use of illegal drugs by their employees and certain other individuals. Minimum requirements address: (1) Prohibition on the use, possession, sale, distribution, or manufacture of illegal drugs; (2) education and training; (3) testing of certain employees in sensitive positions; (4) employee assistance; (5) removal, discipline, treatment, and rehabilitation of employees; and (6) notification to DOE. The rule provides for drug testing for: (1) contractor employees in, and applicants for, testing designated positions at sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, and (2) individuals with unescorted access to the control areas of certain DOE reactors. The Department has determined that possible risks of serious harm to the environment and to public health, safety, and national security justify the imposition of a uniform rule establishing a baseline workplace substance abuse program, including drug testing.

**EFFECTIVE DATE:** August 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Juanita E. Smith, Office of Contractor Human Resource Management (PR–15), Department of Energy, at (202) 586–9033.

**SUPPLEMENTARY INFORMATION:**

## I. General

The Department of Energy published in the **Federal Register** on July 3, 1991, a proposed regulation to create a new Part 707 of Title 10, Code of Federal Regulations, entitled "Workplace Substance Abuse Programs at DOE Facilities" (56 FR 30644).

DOE is issuing this rule under its broad authorities to carry out the purpose of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2012, 2013, 2051, 2061, 2165, 2201; the Energy Reorganization Act, 42 U.S.C. 5814, 5815; the Department of Energy Organization Act, 42 U.S.C. 7151, 7251, 7254, and 7256; and the Drug-Free Workplace Act of 1988, 41 U.S.C. 701 *et seq.*

Program requirements will include the following: training and education, testing of certain employees in sensitive positions, employee assistance, disciplinary measures for employees determined to have used illegal drugs in violation of this rule, and DOE actions in response to inadequate contractor programs. It is the intent of DOE to allow contractors a degree of flexibility in developing their programs; however, program components are subject to review and approval by DOE to assure that they meet the minimum baseline requirements.

Through implementation of the requirements of this rule, DOE expects to mitigate the potential for harm to the environment, public health and safety, and national security, and further reduce the possibility of accidents at DOE facilities by employees who use illegal drugs. Pursuant to Executive Order 12564, "Drug-Free Federal Workplace," DOE has implemented a Drug-Free Federal Workplace Program that includes testing provisions for Federal employees that are comparable to provisions in this rule. The final rule published today will assist DOE in assuring that contractor employees in sensitive and critical positions do not use illegal drugs.

Individual rights to protection and privacy were important considerations to DOE in the development of this rule. The program scope and requirements have been balanced to assure that any intrusiveness is minimized. The types of positions subject to testing under this program have been limited to those performing only the most sensitive or critical work having a direct effect on the environment, public health and safety, or national security. These positions are held by personnel representing less than 30 percent of all DOE contractor employees. Program elements and testing provisions included in this rule represent the minimum requirements necessary for DOE to implement a responsible program and establish reasonable measures to assure that employees in these positions perform their duties safely.

Approximately 65 percent of all contractor employees subject to testing under this program are currently tested under comparable requirements through programs administered by DOE contractors as a matter of corporate policy or by other Federal agencies. For these employees, DOE will not be imposing substantial additional requirements or costs. An objective of DOE in promulgating this rule is to promote a measure of uniformity and consistency in the existing programs of DOE contractors. DOE has made every effort to avoid any undue burdens on contractors and employees, particularly with regard to drug testing.

The rule will apply to all of DOE's management and operating contractors and certain other DOE selected contractors and subcontractors performing work at sites operated under the authority of the Atomic Energy Act of 1954, as amended; but drug testing provisions will apply only if those contractors and subcontractors have employees in positions subject to testing under the program.

The rule requires contractors to submit to DOE a written program that meets the rule's minimum requirements. All employees in testing designated positions will be subject to random testing for illegal drugs, and will also be subject to testing for illegal drugs upon reasonable suspicion or as a result of an occurrence, as defined in the rule. Applicants for testing designated positions and individuals with unescorted access to the control areas of certain DOE reactors will also be subject to testing under the conditions described in this part. DOE anticipates that a number of existing contractor drug-free workplace programs will meet or exceed the baseline requirements established by this part; such programs will be submitted to DOE for review and determination that they meet these baseline requirements.

In developing this proposed rule, DOE generally followed the models provided by related drug-free workplace programs, especially the program now in place for Federal employees under Executive Order 12564, "Drug-Free Federal Workplace," of September 15, 1986. This rule incorporates the requirements of the Drug-Free Workplace Act of 1988, 41 U.S.C. 701, *et seq.*, and the relevant implementing provisions of the Federal Acquisition Regulation (FAR): Subpart 23.5, section 52.223–5, and section 52.223–6; and Code of Federal Regulations (CFR): 48 CFR 23.5, 48 CFR 52.223–5, and 48 CFR 52.223–6. The Drug-Free Workplace Act requires certain entities that are awarded Government contracts for property or services of a value of $25,000 or more, and all individuals awarded contracts, to certify to the contracting agency that they will provide a drug-free workplace for the performance of the contract. Today's rule is consistent with such statutory requirements and the relevant provisions of the FAR.

Under the provisions of this rule, existing contracts will be modified, to the extent necessary, to ensure that the requirements set forth in the final rule are included as contract provisions. A

contract clause to be added to the Department of Energy Acquisition Regulation, 48 CFR part 9, and relating to this rule, is being published today in the **Federal Register** as an interim final rule, on which comments are invited.

This rule only relates to certain aspects of a workplace substance abuse program. Contractors are not relieved by this rule from any additional responsibilities they may have for law enforcement and security procedures, such as investigations, searches, and arrests for criminal violations, which are covered by other applicable laws, rules, and orders of appropriate governmental authorities.

## II. DOE Response to Comments Received

In its Notice of Proposed Rulemaking (NOPR), DOE allowed a 60-day period for public comment. Two public hearings were also scheduled to take place within that 60-day period. One of the public hearings was canceled for lack of interest, as allowed in the original NOPR. (See 56 FR 35796, July 26, 1991.) The other public hearing was conducted as scheduled in Washington, DC, on July 29, 1991 where two interested persons presented views. In addition, a total of seventeen written comments were received from commenters that included contractors, unions, professional associations, public interest groups, and universities. The comments fell under relatively few general headings, and some commenters raised the some points as others. Following is a summary of the substantive comments, and the DOE response. References are to section numbers of the proposed rule.

*Comment*: One commenter stated the rule is Constitutionally dubious. It raises serious questions of violations of the Fourth Amendment and will subject contractors to unnecessary and costly litigation. The testing required under the rule is "governmental action" subject to the "reasonableness" standard of the Fourth Amendment. The governmental interests sought to be advanced by the rule do not rise above individuals' expectations of privacy.

*Response*: The Supreme Court has established that drug testing *per se* is not unconstitutional, and that drug testing programs can be designed so as not to infringe upon Fourth Amendment protections. See *National Treasury Employees Union* v. *Von Raab*, 489 U.S. 656, and *Skinner* v. *Railway Labor Executives' Association*, 489 U.S. 602, both decided on March 21, 1989. Since the Supreme Court's decisions in the Von Raab and Skinner cases, the clear trend of case law has been in favor of allowing drug testing of employees in sensitive positions, where there is a strong governmental interest to be protected or advanced and certain procedural safeguards are observed. The governmental interests that DOE seeks to protect or advance by this rule should be readily apparent. DOE, among other responsibilities, is charged with the development and production of all our nation's nuclear weapons and other functions vital to our national interests and security. The Department's activities in these areas could pose serious health, safety, environmental, or security threats if improperly carried out. The risks of harm, whether accidental or deliberate, are substantially increased if employees in sensitive positions use illegal drugs. In its most basic essentials, this rule is designed to address a legitimate security concern. DOE, in conjunction with the Department of Justice and other Federal agencies, continues to monitor its drug testing programs for compliance with the latest judicial interpretations. The Department is confident that the provisions of this rule meet the standards for Constitutionally valid drug testing, as set by the courts. Litigation costs incurred by a management and operating contractor in complying with a DOE contract requirement can be claimed for reimbursement under normal cost principles.

*Comment*: The scope of the rule is unclear; or, alternatively, the scope should be narrowed so as to exclude certain classes of contractors and subcontractors.

*Response*: The "scope" section of the rule (section 707.2) makes it clear that the rule applies to all "management and operating" contractors, and to other contractors and subcontractors that meet certain criteria. However, no contractor or subcontractor otherwise within the scope of the rule will be required to carry out the testing provisions of the rule unless some of its employees are in "testing designated positions" and performing "sensitive duties," as described in the rule. All contractors and subcontractors within the scope of the rule will be required to implement the non-testing provisions, *e.g.*, education and counseling.

*Comment:* Commenters indicated at least one contract clause will have to be added to the Department of Energy Acquisition Regulation before contractors can be expected to comply with this rule.

*Response:* A contract clause is being published today in the **Federal Register** as an interim final rule. Persons interested in or affected by this rule are invited to comment on the clause.

*Comment*: Proposed § 707.5(a)(1) requires contractors to prohibit "individuals in testing designated positions who are not free from the effects of the use of illegal drugs from entering or remaining on sites owned or controlled by DOE." This goes beyond § 707.14(b), which only requires that such individuals be removed from sensitive duties, and conflicts with the further requirement that such individuals be placed in non-testing designated positions, if possible, pending rehabilitation.

*Response:* Section 707.5(a)(1) has been amended to conform with the provisions of § 707.14(b).

*Comment:* Proposed section 707.5(a)(8) requires that an employee in a testing designated position report to the Medical Review Officer the use, pursuant to a valid prescription, of any of the drugs to be tested for and listed in § 707.11. This places too great a burden on individual employees, who may not know that certain drugs they are taking by prescription must be reported.

*Response:* DOE adopted this comment. Section 707.13(b) has been amended to allow an employee or applicant an opportunity to report use of prescription and over-the-counter drugs to the MRO when there has been a confirmed positive test result, and proposed § 707.5(a)(8) has been deleted.

*Comment:* In § 707.5(c), the contractor should be allowed to develop its program on employee sanctions without being tied to standards applicable to Federal employees.

*Response:* The reference to Federal employees has been removed. Each contractor will be allowed to apply its own disciplinary standards, but employees who are determined, for the first time, to have used illegal drugs may be offered an opportunity for rehabilitation, consistent with the contractor's policies. Like other aspects of the program, disciplinary provisions will be reviewed by the DOE for a determination that they meet baseline requirements.

*Comment:* Section 707.7(b)(3)(v), as proposed, could apply to persons who are only peripherally connected with activity involving hazardous material, or handling only minute amounts of such substances, and subject those persons to testing.

*Response:* The section has been renumbered as § 707.7(b)(3)(E) and revised to cover only personnel "directly engaged" in activity involving amounts of hazardous material sufficient to cause "significant harm" to the environment, national security, or public health and safety.

*Comment:* The list of reactors in § 707.7(c) should distinguish between those that are "operating" and those in "cold standby" or otherwise not operating.

*Response:* DOE considers that all these reactors can present an environmental or safety hazard or a security risk, and has not shortened the list or amended the section.

*Comment:* Section 707.9 ("Drug testing as a result of an occurrence") is vague and indefinite.

*Response:* DOE has expanded the definition of "occurrence" in § 707.4 to clarify this section.

*Comment:* In proposed § 707.10(a), the Site Medical Director must be able to delegate the decision for testing on reasonable suspicion to another physician.

*Response:* Reference to the "site medical director" has been replaced with "a physician from the site occupational medical department." In any event, the rule is written so as to allow, but not require, participation of a physician in the decision to conduct reasonable suspicion testing.

*Comment:* The Medical Review Officer should not be required to report employee non-cooperation to DOE security officials, as in proposed § 707.12(b)(1).

*Response:* The section has been amended to reassign this responsibility to contractor management.

*Comment:* An employee subject to urinalysis testing should be allowed to retain a portion of the urine sample for independent testing.

*Response:* If any employee were allowed to retain a portion of the urine sample, there would be no way to maintain a secure chain of custody for that retained sample. It would not, of course, affect the security of the chain of custody of the urine sample under the control of DOE. However, a new § 707.14(f) has been added to allow an individual who has been notified of a positive test result to request DOE to conduct a retest at a certified laboratory.

*Comment:* Several commenters objected strongly to the provision in § 707.14(b) of the Notice of Proposed Rulemaking which provided that in the event of a first time determination that an employee had used an illegal drug, the employee shall be offered a reasonable opportunity for rehabilitation and placed in a non-testing designated position during the rehabilitation, if such a position is available. One commenter said this requirement would require the contractor to reverse its well-established position of terminating employees who use drugs, including first-time drug users. Another commenter objected to the mandated action stating it would be unnecessarily restrictive of the contractor's personnel policies and not allow for facts in individual situations to influence the action taken. A third commenter also stated that contractors should have the right to determine the appropriate discipline for employees found in violation of the employer's substance abuse program and, in addition, the policy was inconsistent with "accountability" rules for management and operating contractors promulgated recently by DOE. In summary, the commenter said these rules specifically hold contractors accountable for actions by their employees, such as damage to government property, while under the influence of a prohibited substance.

*Response:* DOE recognizes that the requirement to allow a "second chance" pursuant to a first-time finding of use of illegal drugs may override the personnel policies of some contractors. These policies require that the employee be terminated, rather than offered an opportunity for treatment and return to duty, when it is determined that it is safe to be reinstated. The provision may appear inconsistent with the Department's responsibilities for safety and security at its facilities. In proposing its rule, DOE's primary objective was to establish minimum requirements to assure that contractor employees employed in safety or security sensitive positions do not use illegal drugs, consistent with its responsibility for the protection of public health and safety and national security. DOE sought to balance these concerns with minimum intrusion in both the individual's right to protection and due process and the contractor's exercise of discretion in determining the appropriate personnel action to take pursuant to a finding of illegal drug use.

DOE has reviewed carefully the comments received regarding mandatory rehabilitation and reemployment or job security opportunities that are proposed for contractor employees. The Department considered the arguments offered to defend the right of contractors to terminate an employee who tests positive for illegal drugs and not offer a chance for rehabilitation. Arguments in defense of offering a single opportunity for rehabilitation to an employee who is identified as having used illegal drugs through drug testing were also considered. DOE has determined that it can substantially meet its obligation to mitigate the risk of accidents and harm to national security through the requirement in the rule for immediate removal of an employee from a testing designated position who has been tested and found to have used illegal drugs. Thereafter, the contractor may apply its employment policies regarding rehabilitation of employees with a substance abuse problem. If the contractor offers employees the opportunity for rehabilitation, the contractor must place the employee in a non-testing designated position, or if there is no such position available, place the employee on sick, annual, or other leave to permit rehabilitation. Upon successful completion of rehabilitation and a determination by the site occupational medical department that the employee can safely return to work, the employee may be reinstated in the same or comparable position to that held prior to removal. In addition, contractors have the full range of disciplinary action available to them for those actions of employees that result from violations of workplace rules other than having an initial positive drug test.

*Comment:* Proposed § 707.14 does not provide employees with fundamental due process. A positive test will result in an automatic removal from duty, and an effective termination in situations where there is no non-sensitive job available.

*Response:* A removal from sensitive duties is imperative in the event of a positive test result, because of the grave risks presented by drug use by employees in testing designated positions. However, DOE has amended the rule to provide that the employee may be placed on sick, annual, or other leave status for periods sufficient to permit rehabilitation, so that an employee in this situation will not necessarily be terminated.

*Comment:* The requirement that employees who have made a successful rehabilitation be reinstated will be burdensome and costly to the contractors.

*Response:* The reinstatement provision of the rule is viewed by DOE to be within its statutory power and in the Department's interest. DOE believes that qualified and capable contractor employees are a valuable and essential resource at DOE facilities. When rehabilitation is offered by the contractor, reinstatement of an employee who successfully completes rehabilitation, and is determined by the site occupational medical department to be capable of safely performing sensitive duties, will avoid the unnecessary loss of an otherwise productive employee. Because a determination to return an employee to work is essentially a "fitness-for-duty"

determination, it is more appropriate for the site occupational medical department rather than the Medical Review Officer.

*Comment:* The comments from several labor unions implied that the rule did not clearly state that participation in a drug testing program is a condition of employment and, as such, is a mandatory subject of bargaining between affected contractors and their respective unions. Other commenters acknowledged that § 707.15 of the rule does address collective bargaining rights, but recommended that the one year time limit to complete negotiations be eliminated. These commenters expressed concern that contractors either would not be able to satisfy their legal duty to bargain over the complex issues involved in drug testing within the one year time frame required by the section, or that instances could arise where they might fail to obtain mutual consent to reopen bargaining agreements during the one year period. One commenter stated that unilateral implementation by the contractor, if the union(s) refuses to agree to provisions in the rule, would violate another Federal agency's requirement, presumably the National Labor Relations Board. Some contractors requested additional guidance to cover those instances where a union refuses to accept modifications to the labor agreement.

*Response:* DOE does not agree that the rule fails to permit negotiations over drug testing programs to take place. On the contrary, § 707.15 of the rule explicitly provides for collective bargaining over the impact on working conditions of the baseline requirements of the rule. Further, nothing in the rule prevents collective bargaining over contractor requirements that exceed the baseline program elements set forth in the rule. DOE also believes that one year generally is sufficient to complete negotiations. However, to provide for situations where the parties may not have reached agreement within that time period, DOE has modified the rule so that the contractor is expected to negotiate to impasse, which is defined to mean one year of good faith bargaining prior to implementing the necessary provisions without agreement, at which time the contractor will implement unilaterally. DOE is confident that such unilateral implementation would not violate precedents of the National Labor Relations Board interpreting section 8(a)(5) of the National Labor Relations Act (29 U.S.C. 158(a)(5)). The Board's precedents permit such unilateral action by an employer who has bargained in good faith to impasse, but also provide for appropriate response to that action by the union(s) involved.

*Comment:* Provisions of the proposed rule dealing with records and confidentiality are in potential conflict with statute and other regulations, particularly 42 U.S.C. 290dd–3 and 290ee–3 and 42 CFR part 2.

*Response:* DOE takes the view that the proposed rule could have been interpreted and implemented in conformity with those statutes and regulations. Nevertheless, to remove any ambiguity, DOE has adopted part of a commenter's suggested alternative.

That section now makes specific reference to the above-mentioned statutes and regulations, which are those most pertinent to the procedures prescribed in this part. DOE expects that this change will make little or no difference in the practical application and implementation of the rule. In addition, DOE has begun the process for establishing a system of records to maintain any documents generated in accordance with the provisions of this part.

In response to other comments and following a final review, DOE has made these additional changes in the final rule:

In the Notice of Proposed Rulemaking, § 707.5(b), DOE stated that each contractor would have to "comply with relevant requirements of the Drug-Free Workplace Act of 1988 (Pub. L. No. 100–690) and its implementing rules in the Federal Acquisition Regulation (FAR)." The NOPR did not, however, include the specific requirements of the Act or the relevant FAR sections. To eliminate confusion and aid contractors subject to this part, DOE has now incorporated in § 707.5(a) all minimum requirements that contractors and subcontractors must include as baseline elements of their programs. This does not add any new requirements that were not present in the NOPR, but it will eliminate the need for a cross-reference between regulations.

Section 707.7(c) of the proposed rule provided that an individual, who is not an employee, with unescorted access to a reactor control area would be precluded from such unescorted access in the event of a positive drug test. The rule has been clarified to permit such an individual unescorted access if the individual provides evidence of successful completion of a counseling or rehabilitation program, undergoes a drug test with a negative result, and has been evaluated by the site occupational medical department which determines that the individual may be safely permitted access to such a reactor control area. Upon a second positive drug test, the individual will be denied unescorted access for at least three years, and then may be permitted unescorted access only if DOE approves.

The definition of "hazardous material" has been refined from that in the proposed rule, which was considered by some commenters to be overbroad. As proposed, the definition would have brought within the testing programs employees only tangentially involved with minute quantities of substances that are hazardous only in much larger quantities or concentrations. The testing of these additional employees would have increased the cost and intrusiveness of contractors' plans without significantly improving protection of public health and safety. The new definition, drafted in consultation with DOE technical program offices, will clarify the types and quantities of substances covered by this rule.

In response to the comments from a professional association, DOE modified the definition of "Counseling" and provisions dealing with employee assistance, but did not adopt the suggestions of two commenters for an alternative definition of "Employee Assistance Program." DOE has made a minor editorial change to the definition, but believes that the definition is appropriate to DOE operations. The definition of "drug certification" also has been clarified.

DOE also has deleted the definition of and references to "permanent record book," and replaced it with "specimen chain of custody form," based upon comments provided by the Department of Health and Human Services. This was determined to be desirable because the "batch" chain of custody concept is no longer used. Rather, a multi-part specimen chain of custody form has been determined to be preferable. One copy of the form will be retained at the collection site and will contain the same information that would have been found in the permanent record book.

The rule is being clarified to incorporate into § 707.5 requirements for the individual to report any arrest for or conviction of a drug-related offense, consistent with DOE security requirements. In addition, the individual will have to report the results of any positive drug test that the individual may have taken, for example, as a result of military service. The rule is also being clarified to require the contractor to identify in the plan what actions, if any, will be taken regarding an individual in a testing designated position for an

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arrest for or conviction of a drug-related offense.

References in the proposed rule to actions to be taken by the Head of Contracting Activity ("HCA") have been changed in this final rule to simply "DOE." A requirement that the HCA take certain actions was seen as too restrictive for a codified regulation.

A comparison of the final rule with the proposed rule will show that DOE made additional non-substantive refinements to the rule, largely editorial in nature, in response to public comments and following a final review. These changes were designed to make the rule more understandable to persons affected by it. The reasons for all changes, if not specifically explained above, should be apparent from the context of the rule.

### III. Review Under Executive Order 12291

Under Executive Order 12291, agencies are required to determine whether rules are major rules as defined in the Order. DOE has reviewed this rule and has determined that it is not a major rule because: Implementing the additional human reliability requirements in this rule will not have an annual effect of $100 million or more on the economy; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. Prior to publication, the rule was submitted to the Director of the Office of Management and Budget pursuant to Executive Order 12291. The Director has concluded his review.

### IV. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* DOE concluded that there was no need to prepare a regulatory flexibility analysis because the rule will affect only DOE contractors whose places of performance are at Government-owned or controlled sites operated under the authority of the Atomic Energy Act of 1954, as amended, and their subcontractors. It will not have a significant economic impact on a substantial number of small entities.

### V. Review Under the National Environmental Policy Act

This rule is not a major action significantly affecting the quality of the human environment. The rule is part of an overall employee human reliability and standards of conduct program that deals only with requirements for certain DOE contractors and subcontractors to include specified minimum elements in a workplace substance abuse program. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### VI. Review under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposal meets the requirements of sections 2(a) and (b) of Executive Order 12778.

### VII. Review Under Executive Order 12612

The principal impact of this rule will be on government contractors and certain subcontractors and their employees. The rule is unlikely to have a substantial direct effect on the States, the relationship between the States and the Federal government, or the distribution of power and responsibilities among various levels of government. No Federalism assessment under Executive Order 12612 is required. Although the rule, at section 705.5(i), contains a provision for the preemption of conflicting State and local law, DOE believes preemption will be rare, if it occurs at all. The Atomic Energy Act of 1954, as amended, reserves exclusively to the Federal government the entire field of the development and production of this country's nuclear weapons, including the production of "special nuclear material" and the control of "source material" and "byproduct material," as well as the exclusive control of "restricted data," as all of those terms are defined in the Act. This rule provides for preemption only in the rare instance where a State or local requirement interferes with DOE's conduct of health and safety or security programs within Federal enclaves and concerning an exclusively Federal function. DOE is well aware that preemption of State law is a serious matter, that it is disfavored, and only to be exercised with the greatest prudence. In its Notice of Proposed Rulemaking, DOE explicitly sought comment on situations that may exist that would require preemption of State law. No such situations were mentioned by commenters.

### VIII. Review Under the Paperwork Reduction Act

This rule imposes no additional paperwork burden on the public other than that already approved under OMB Control Number 1910–0600.

### List of Subjects in 10 CFR Part 707

Classified information, Drug testing, Employee assistance programs, Energy, Government contracts, Health and safety, National security, Reasonable suspicion, Special nuclear material, Substance abuse.

Issued in Washington, DC, on July 15, 1992.

**Berton J. Roth,**

*Acting Director, Office of Procurement, Assistance and Program Management.*

For the reasons set forth above, DOE hereby amends chapter III of title 10 of the Code of Federal Regulations by adding a new part 707, to read as follows:

## PART 707—WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES

### Subpart A—General Provisions

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707.2 Scope.
707.3 Policy.
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### Subpart B—Procedures

Sec.

707.5 Submission, approval, and implementation of a baseline workplace substance abuse program.
707.6 Employee assistance, education, and training.
707.7 Random drug testing requirements and identification of testing designated positions.
707.8 Applicant drug testing.
707.9 Drug testing as a result of an occurrence.
707.10 Drug testing for reasonable suspicion of illegal drug use..
707.11 Drugs for which testing is performed.
707.12 Specimen collection, handling, and laboratory analysis for drug testing.
707.13 Medical review of results of tests for illegal drug use.

Sec.

707.14 Action pursuant to a determination of illegal drug use.
707.15 Collective bargaining.
707.16 Records.
707.17 Permissible actions in the event of contractor noncompliance.

**Authority:** 41 U.S.C. 701 *et seq.*; 42 U.S.C. 2012, 2013, 2051, 2061, 2165, 2201b, 2201i, and 2201p; 42 U.S.C. 5814 and 5815; 42 U.S.C. 7151, 7251, 7254, and 7256.

## Subpart A—General Provisions

### § 707.1 Purpose.

The Department of Energy (DOE) promulgates this part in order to protect the environment, maintain public health and safety, and safeguard the national security. This part establishes policies, criteria, and procedures for developing and implementing programs that help to maintain a workplace free from the use of illegal drugs. It applies to DOE contractors and subcontractors performing work at sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, and to individuals with unescorted access to the control areas of certain DOE reactors. The procedures include detection of the use of illegal drugs by current or prospective contractor employees in testing designated positions.

### § 707.2 Scope.

(a) This part applies to the following contracts with DOE, at sites owned or controlled by DOE which are operated under the authority of the Atomic Energy Act of 1954, as amended:

(1) Management and operating contracts; and

(2) Other contracts or subcontracts with a value of $25,000 or more, and which have been determined by DOE to involve:

(i) Access to or handling of classified information or special nuclear materials;

(ii) High risk of danger to life, the environment, public health and safety, or national security; or

(iii) Transportation of hazardous materials to or from a DOE site.

(b) Individuals described in § 707.7 (b) and (c) will be subject to random drug testing; to drug testing as a result of an occurrence, as described in § 707.9; and to drug testing on the basis of reasonable suspicion, as described in § 707.10.

(c) Applicants for employment in testing designated positions will be tested in accordance with § 707.8.

### § 707.3 Policy.

It is the policy of DOE to conduct its programs so as to protect the environment, maintain public health and safety, and safeguard the national security. This policy is advanced in this rule by requiring contractors and subcontractors within its scope to adopt procedures consistent with the baseline requirements of this part, and to impose significant sanctions on individuals in testing designated positions or with unescorted access to the control areas of certain DOE reactors, who use or are involved with illegal drugs.

### § 707.4 Definitions.

For the purposes of this part, the following definitions apply:

*Collection Site Person* means a technician or other person trained and qualified to take urine samples and to secure urine samples for later laboratory analysis.

*Confirmed Positive Test* means, for drugs, a finding based on a positive initial or screening test result, confirmed by another positive test on the same sample. The confirmatory test must be by the gas chromatography/mass spectrometry method.

*Counseling* means assistance provided by qualified professionals to employees, especially, but not limited to those employees whose job performance is, or might be, impaired as a result of illegal drug use or a medical-behavioral problem; such assistance may include short-term counseling and assessment, crisis intervention, referral to outside treatment facilities, and follow-up services to the individual after completion of treatment and return to work.

*Drug Certification* means a written assurance signed by an individual with known past illegal drug involvement, as a condition for obtaining or retaining a DOE access authorization, stating that the individual will refrain from using or being involved with illegal drugs while employed in a position requiring DOE access authorization (security clearance).

*Employee Assistance* means a program of counseling, referral, and educational services concerning illegal drug use and other medical, mental, emotional, or personal problems of employees, particularly those which adversely affect behavior and job performance.

*Hazardous Material* means any material subject to the placarding requirements of 49 CFR 172.504, table 1, and materials presenting a poison-inhalation hazard that must be placarded under the provisions of 49 CFR 172.505.

*Illegal Drug* means a controlled substance, as specified in Schedules I through V of the Controlled Substances Act, 21 U.S.C. 811, 812. The term "illegal drugs" does not apply to the use of a controlled substance in accordance with terms of a valid prescription, or other uses authorized by law.

*Management and Operating Contract* means an agreement for the operation, maintenance, or support, on behalf of the Government, of a Government-owned or controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of DOE.

*Medical Review Officer* (MRO) means a licensed physician, approved by DOE to perform certain functions under this part. The MRO is responsible for receiving laboratory results generated by an employer's drug testing program, has knowledge of illegal drug use and other substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive test result, together with that person's medical history and any other relevant biomedical information. For purposes of this part a physician from the site occupational medical department may be the MRO.

*Occurrence* means any event or incident that is a deviation from the planned or expected behavior or course of events in connection with any Department of Energy or Department of Energy-controlled operation, if the deviation has environmental, public health and safety, or national security protection significance. Incidents having such significance include the following, or incidents of a similar nature:

(1) Injury or fatality to any person involving actions of a Department of Energy contractor employee.

(2) Involvement of nuclear explosives under Department of Energy jurisdiction which results in an explosion, fire, the spread of radioactive material, personal injury or death, or significant damage to property.

(3) Accidental release of pollutants which results or could result in a significant effect on the public or environment.

(4) Accidental release of radioactive material above regulatory limits.

*Random Testing* means the unscheduled, unannounced urine drug testing of randomly selected individuals in testing designated positions, by a process designed to ensure that selections are made in a non-discriminatory manner.

*Reasonable Suspicion* means a suspicion based on an articulable belief that an employee uses illegal drugs, drawn from particularized facts and reasonable inferences from those facts, as detailed further in § 707.10.

*Referral* means the direction of an individual toward an employee assistance program or to an outside treatment facility by the employee assistance program professional, for assistance with prevention of illegal drug use, treatment, or rehabilitation from illegal drug use or other problems. Referrals to an employee assistance program can be made by the individual (self-referral), by contractor supervisors or managers, or by a bargaining unit representative.

*Rehabilitation* means a formal treatment process aimed at the resolution of behavioral-medical problems, including illegal drug use, and resulting in such resolution.

*Special Nuclear Material* has the same meaning as in section 11aa of the Atomic Energy Act of 1954 (42 U.S.C. 2014(aa)).

*Specimen Chain of Custody Form* is a form used to document the security of the specimen from time of collection until receipt by the laboratory. This form, at a minimum, shall include specimen identifying information, date and location of collection, name and signature of collector, name of testing laboratory, and the names and signatures of all individuals who had custody of the specimen from time of collection until the specimen was prepared for shipment to the laboratory.

*Testing Designated Position* names a position whose incumbents are subject to drug testing under this part.

## Subpart B—Procedures

### § 707.5 Submission, approval, and implementation of baseline workplace substance abuse program.

(a) Each contractor subject to this part shall develop a written program consistent with the requirements of this part and the guidelines of the Department of Health and Human Services and subsequent amendments to those guidelines ("Mandatory Guidelines for Federal Workplace Drug Testing Programs," 53 FR 11970, April 11, 1988; hereinafter "HHS Mandatory Guidelines"), and applicable to appropriate DOE sites. Such a program shall be submitted to DOE for review and approval, and shall include at least the following baseline elements:

(1) Prohibition of the use; possession, sale, distribution, or manufacture of illegal drugs at sites owned or controlled by DOE;

(2) Plans for instruction of supervisors and employees concerning problems of substance abuse, including illegal drug use, and the availability of assistance through the employee assistance program and referrals to other resources, and the penalties that may be imposed upon employees for drug-related violations occurring on the DOE owned or controlled site;

(3) Provision for distribution to all employees engaged in performance of the contract on the DOE owned or controlled site of a statement which sets forth the contractor's policies prohibiting the possession, sale, distribution, or manufacture of illegal drugs at the DOE owned or controlled site. The statement shall include notification to all employees that as a condition of employment under the contract, the employee will:

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring on the DOE owned or controlled site no later than 10 calendar days after such conviction;

(4) Provision for written notification to the DOE contracting officer within 10 calendar days after receiving notice under paragraph (a)(3)(ii) of this section, from an employee or otherwise receiving actual notice of an employee's conviction of a drug-related offense;

(5) Provision for imposing one of the following actions, with respect to any employee who is convicted of a drug-related violation occurring in the workplace, within 30 calendar days after receiving such notice of conviction under paragraph (a)(4) of this section;

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Offering such employee, consistent with the contractor's policies, an opportunity to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency. If the employee does not participate in such a rehabilitation program, the contractor must take appropriate personnel action, up to and including termination, in accordance with the contractor's policies.

(6) Commitment to make a good faith effort to maintain a workplace free of substance abuse through implementation of paragraphs (a)(1) through (a)(5) of this section.

(b) In addition, the following baseline elements must be included in programs developed by contractors that have identified testing designated positions (see section 707.7(b));

(1) Notification to DOE of the positions subject to drug testing;

(2) Prohibition of individuals in testing designated positions who are not free from the use of illegal drugs from working in those positions;

(3) Sanctions for individuals in testing designated positions who violate the prohibitions of paragraphs (a)(1) or (b)(2) of this section;

(4) Provision for:

(i) Notification, at least 60 days in advance of initiating testing, to those individuals subject to drug testing, unless the contractor is currently conducting a testing program.

(ii) Urine drug analysis of applicants for testing designated positions before final selection for employment or assignment;

(iii) Random urine drug analysis for employees in testing designated positions;

(iv) Urine drug analysis for employees in testing designated positions on the basis of reasonable suspicion, as a result of an occurrence, or as a follow-up to rehabilitation; and

(v) Random urine drug analysis and urine drug analysis on the basis of reasonable suspicion or as the result of an occurrence, for any individual with unescorted access to the control areas of certain DOE reactors (see § 707.7(c)).

(vi) Written notice to the contractor by an employee in a testing designated position of a drug-related arrest or conviction, or receipt of a positive drug test result regarding that employee, as soon as possible but within 10 calendar days of such arrest, conviction, or receipt; and

(vii) Appropriate action, if any, to be taken regarding an employee who:

(A) is arrested for or convicted of a drug-related offense; or

(B) has a positive drug test result (consistent with § 707.14).

(5) Provision to employees of the opportunity for rehabilitation, consistent with the contractor's policies, under circumstances as provided in this part (see § 707.14(b));

(6) Immediate notification to DOE security officials whenever the circumstances in connection with procedures under this part raise a security concern as provided in DOE Orders, rules and regulations; such circumstances including, but are not necessarily limited to, a determination that an individual holding a DOE access authorization has used an illegal drug.

(c) Each contractor's written policy and procedures under this part shall comply with the requirements of 10 CFR part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material."

(d) Contractors are required to submit all subcontracts they believe to be

within the scope of this part to DOE for a determination as to whether the subcontract falls within the scope of this part. Subcontractors so determined to be within the scope of this part shall be required to agree to comply with its requirements, as a condition of eligibility for performing the subcontract work. Each subcontractor subject to this part shall submit its plan to the appropriate prime contractor for approval; the contractor shall be responsible for periodically monitoring the implementation of the subcontractor's program for effectiveness and compliance with this part.

(e) In reviewing each proposed workplace substance abuse plan, DOE shall decide whether the program meets the applicable baseline requirements established by this part. The responsible DOE official will reject proposed workplace substance abuse plans that are deemed not to meet the baseline requirements. DOE shall provide the contractor with a written notification regarding the decision as to the acceptability of the plan. Nothing in this rule is intended to prohibit any contractor subject to this part from implementing workplace substance abuse requirements additional to those of the baseline, including drug testing employees and applicants for employment in any position and testing for any illegal drugs. However, the contractor shall inform DOE of such additional requirements at least 30 days prior to implementation.

(f) DOE shall periodically review and evaluate each contractor's program, including the contractor's oversight of the covered subcontractors, to assure effectiveness and compliance with this part.

(g) Contractors or proposers will submit their program to DOE for review within 30 days of notification by DOE that the contract or proposed contract falls within the scope of this part. Workplace substance abuse programs, as provided in this part, shall be implemented within 30 days of approval by DOE. DOE may grant an extension to the notification or implementation period, as warranted by local conditions. Implementation may require changes to collective bargaining agreements as discussed in § 707.15 of this part.

(h) To assure consistency of application, DOE shall periodically review designated contracts and testing designated positions included in the workplace substance abuse plans approved by DOE. DOE will also periodically review implementation of programs conducted by prime contractors, to assure consistency of application among prime contracts (and subcontracts where appropriate) throughout DOE.

(i) This part preempts any State or local law, rule, regulation, order, or standard to the extent that:

(1) compliance with both the State or local requirement and any requirements in this part is not possible; or

(2) compliance with the State or local requirement is an obstacle to the accomplishments and execution of any requirement in this part.

### § 707.6 Employee assistance, education, and training.

Contractor programs shall include the following or appropriate alternatives:

(a) Employee assistance programs emphasizing preventive services, education, short-term counseling, coordination and referral to outside agencies, and follow-up. These services shall be available to all contractor on-site employees involved in the DOE contract. The contractor has no obligation to pay the costs of any individual's counseling, treatment, or rehabilitation beyond those services provided by the contractor's employee assistance program, except as provided for in the contractor's benefits programs. DOE undertakes no obligation to pay for any individual's counseling, rehabilitation, or treatment, unless specifically provided for by contract.

(b) Education and training programs for on-site employees on a periodic basis, which will include, at a minimum, the following subjects:

(1) For all on-site employees: Health aspects of substance abuse, especially illegal drug use; safety, security, and other workplace-related problems caused by substance abuse, especially illegal drug use; the provisions of this rule; the employer's policy; and available employee assistance services.

(2) For managers and supervisors:

(i) The subjects listed in paragraph (b)(1) of this section;

(ii) Recognition of deteriorating job performance or judgment, or observation of unusual conduct which may be the result of possible illegal drug use;

(iii) Responsibility to intervene when there is deterioration in performance, or observed unusual conduct, and to offer alternative courses of action that can assist the employee in returning to satisfactory performance, judgment, or conduct, including seeking help from the employee assistance program;

(iv) Appropriate handling and referral of employees with possible substance abuse problems, especially illegal drug use; and

(v) Employer policies and practices for giving maximum consideration to the privacy interests of employees and applicants.

### § 707.7 Random drug testing requirements and identification of testing designated positions.

(a)(1) Each workplace substance abuse program will provide for random testing for evidence of the use of illegal drugs of employees in testing designated positions identified in this section.

(2) Programs developed under this part for positions identified in paragraph (b)(3) of this section shall provide for random tests at a rate equal to 50 percent of the total number of employees in testing designated positions for each 12 month period. Employees in the positions identified in paragraphs (b)(1), (b)(2), and (c) of this section will be subject to random testing at a rate equal to 100 percent of the total number of employees identified, and those identified in paragraphs (b)(1) and (b)(2) of this section may be subject to additional drug tests.

(b) The testing designated positions subject to random drug testing are:

(1) Positions determined to be covered by the Personnel Security Assurance Program (PSAP), codified at 10 CFR part 710. PSAP employees will be subject to the drug testing standards of this part and any additional requirements of the PSAP rule.

(2) Positions which entail critical duties that require an employee to perform work which affords both technical knowledge of and access to nuclear explosives sufficient to enable the individual to cause a detonation (high explosive or nuclear), in what is commonly known as the Personnel Assurance Program (PAP). PAP employees will be subject to the drug testing standards of this part and any additional requirements of the PAP program.

(3) Positions identified by the contractor which entail duties where failure of an employee adequately to discharge his or her position could significantly harm the environment, public health or safety, or national security, such as:

(i) Pilots;

(ii) Firefighters;

(iii) Protective force personnel, exclusive of those covered in paragraphs (b)(1) or (b)(2) of this section, in positions involving use of firearms where the duties also require potential contact with, or proximity to, the public at large;

(iv) Personnel directly engaged in construction, maintenance, or operation of nuclear reactors; or

(v) Personnel directly engaged in production, use, storage, transportation, or disposal of hazardous materials sufficient to cause significant harm to the environment or public health and safety.

(4) Other positions determined by the DOE, after consultation with the contractor, to have the potential to significantly affect the environment, public health and safety, or national security.

(c) Each contractor shall require random testing of any individual, whether or not an employee, who is allowed unescorted access to the control areas of the following DOE reactors: Advanced Test Reactor (ATR); C Production Reactor (C); Experimental Breeder Reactor II (EBR–II); Fast Flux Test Facility (FFTF); High Flux Beam Reactor (HFBR); High Flux Isotope Reactor (HFIR); K Production Reactor (K); L Production Reactor (L); N Production Reactor (N); Oak Ridge Research Reactor (ORR); and P Production Reactor (P). A confirmed positive test shall result in such an individual being denied unescorted access. If such an individual is not an employee of the contractor, that individual may be granted unescorted access only after the individual meets the conditions established in § 707.14(d) of this part. If, after restoration of unescorted access, such an individual is determined to have used illegal drugs for a second time, unescorted access shall be denied for a period of not less than three (3) years. Such an individual thereafter shall be granted unescorted access only upon a determination by DOE that a grant of unescorted access to the individual presents no unacceptable safety or security risk. If such an individual is an employee, that individual is subject to the other requirements of this part, including appropriate disciplinary measures.

(d) A position otherwise subject to testing under this part may be exempted from such testing if it is within the scope of another comparable Federal drug testing program, as determined by DOE, after consultation with the contractor, to avoid unnecessary multiple tests.

### § 707.8 Applicant drug testing.

An applicant for a testing designated position will be tested for the use of illegal drugs before final selection for employment or assignment to such a position. Provisions of this part do not prohibit contractors from conducting drug testing on applicants for employment in any position.

### § 707.9 Drug testing as a result of an occurrence.

When there is an occurrence which is required to be reported to DOE by the contractor, under contract provisions incorporating applicable DOE Orders, rules, and regulations, it may be necessary to test individuals in testing designated positions, or individuals with unescorted access to the control areas of the DOE reactors listed in § 707.7(c), for the use of illegal drugs, if such individuals could have caused or contributed to the conditions which caused the occurrence. For an occurrence requiring immediate notification or reporting as required by applicable DOE Orders, rules, and regulations, the contractor will require testing as soon as possible after the occurrence but within 24 hours of the occurrence, unless DOE determines that it is not feasible to do so. For other occurrences requiring notifications to DOE as required by applicable DOE Orders, rules, and regulations, the contractor may require testing.

### § 707.10 Drug testing for reasonable suspicion of illegal drug use.

(a)(1) It may be necessary to test any employee in a testing designated position, or individuals with unescorted access to the control areas of the DOE reactors listed in § 707.7(c), for the use of illegal drugs, if the behavior of such an individual creates the basis for reasonable suspicion of the use of illegal drugs. Two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the employee, or is a physician from the site occupational medical department, must agree that such testing is appropriate. Reasonable suspicion must be based on an articulable belief that an employee uses illegal drugs, drawn from particularized facts and reasonable inferences from those facts.

(2) Such a belief may be based upon, among other things:

(i) Observable phenomena, such as direct observation of:

(A) The use or possession of illegal drugs; or

(B) The physical symptoms of being under the influence of drugs;

(ii) A pattern of abnormal conduct or erratic behavior;

(iii) Arrest for a conviction of a drug related offense, or the identification of the individual as the focus of a criminal investigation into illegal drug possession use, or trafficking;

(iv) Information that is either provided by a reliable and credible source or is independently corroborated;

(v) Evidence that an employee has tampered with a drug test; or

(vi) Temperature of the urine specimen is outside the range of 32.5–37.7 degrees centigrade or 90.5–99.8 degrees Fahrenheit.

(b) The fact that an employee had a confirmed positive test for the use for the use of illegal drugs at some prior time, or has undergone a period of rehabilitation or treatment, will not, in and of itself, be grounds for testing on the basis of reasonable suspicion.

(c) The requirements of this part relating to the testing for the use of illegal drugs are not intended to prohibit the contractor from pursuing other existing disciplinary procedures or from requiring medical evaluation of any employee exhibiting aberrant or unusual behavior.

### § 707.11 Drugs for which testing is performed.

Where testing is performed under this part, at a minimum, contractors will be required to test for the use of the following drugs or classes of drugs: marijuana; cocaine; opiates; phencyclidine; and amphetamines. However, when conducting reasonable suspicion or occurrence testing, the contractor may test for any drug listed in Schedules I or II of the Controlled Substances Act.

### § 707.12 Specimen collection, handling and laboratory analysis for drug testing.

(a) Procedures for providing urine specimens must allow individual privacy, unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. Contractors shall utilize a chain of custody procedure for maintaining control and accountability from point of collection to final disposition of specimens, and testing laboratories shall use appropriate cutoff levels in screening specimens to determine whether they are negative or positive for a specific drug, consistent with the HHS Mandatory Guidelines (see § 707.5(a)). The contractor shall ensure that only testing laboratories certified by the Department of Health and Human Services, under subpart C of the HHS Mandatory Guidelines are utilized.

(b)(1) If the individual refuses to cooperate with the urine collection (e.g., refusal to provide a specimen, or to complete paperwork), then the collection site person shall inform the MRO and shall document the non-cooperation on the specimen chain of custody form. The MRO shall report the failure to cooperate to the appropriate management authority, who shall report

to DOE if the individual holds an access authorization. Individuals so failing to cooperate shall be treated in all respects as if they had been tested and had been determined to have used an illegal drug. The contractor may apply additional sanctions consistent with its disciplinary policy.

(2) The collection site person shall ascertain that there is a sufficient amount of urine to conduct an initial test, a confirmatory test, and a retest, in accordance with the HHS Mandatory Guidelines. If there is not a sufficient amount of urine, additional urine will be collected in a separate container. The individual may be given reasonable amounts of liquid and a reasonable amount of time in which to provide the specimen required. The individual and the collection site person must keep the specimen in view at all times. When collection is complete, the partial specimens will be combined in a single container. In the event that the individual fails to provide a sufficient amount of urine, the amount collected will be noted on the "Urine Sample Custody Document." In this case, the collection site person will telephone the individual's supervisor who will determine the next appropriate action. This may include deciding to reschedule the individual for testing, to return the individual to his or her work site and initiate disciplinary action, or both.

**§ 707.13 Medical review of results of tests for illegal drug use.**

(a) All test results shall be submitted for medical review by the MRO. A confirmed positive test for drugs shall consist of an initial test performed by the immunoassay method, with positive results on that initial test confirmed by another test, performed by the gas chromatography/mass spectrometry method (GC/MS). This procedure is described in paragraphs 2.4 (e) and (f) of the HHS Mandatory Guidelines.

(b) The Medical Review Officer will consider the medical history of the employee or applicant, as well as any other relevant biomedical information. When there is a confirmed positive test result, the employee or applicant will be given an opportunity to report to the MRO the use of any prescription or over-the-counter medication. If the MRO determines that there is a legitimate medical explanation for a confirmed positive test result, consistent with legal and non-abusive drug use, the MRO will certify that the test results do not meet the conditions for a determination of use of illegal drugs. If no such certification can be made, the MRO will make a determination of use of illegal drugs. Determinations of use of illegal drugs will be made in accordance with the criteria provided in the Medical Review Officer Manual issued by the Department of Health and Human Services [DHHS Publication No. (ADM) 88–1526].

**§ 707.14 Action pursuant to a determination of illegal drug use.**

(a) When an applicant for employment has been tested and determined to have used an illegal drug, processing for employment will be terminated and the applicant will be so notified.

(b)(1) When an employee who is in a testing designated position has been tested and determined to have used an illegal drug, the contractor shall immediately remove that employee from the testing designated position; if such employee also holds, or is an applicant for, an access authorization, then the contractor shall immediately notify DOE security officials for appropriate adjudication. If this is the first determination of use of illegal drugs by that employee (for example, the employee has not previously signed a DOE drug certification, and has not previously tested positive for use of illegal drugs), the employee may be offered a reasonable opportunity for rehabilitation, consistent with the contractor's policies. If rehabilitation is offered, the employee will be placed in a non-testing designated position, which does not require a security clearance, provided there is such an acceptable position in which the individual can be placed during rehabilitation; if there is no acceptable non-testing designated position, the employee will be placed on sick, annual, or other leave status, for a reasonable period sufficient to permit rehabilitation. However, the employee will not be protected from disciplinary action which may result from violations of work rules other than a positive test result for illegal drugs.

(2) Following a determination by the site occupational medical department, after counseling or rehabilitation, that the employee can safely return to duty, the contractor may offer the employee reinstatement, in the same or a comparable position to the one held prior to the removal, consistent with the contractor's policies and the requirements of 10 CFR part 710. Failure to take the opportunity for rehabilitation, if it has been made available, for the use of illegal drugs, will require significant disciplinary action up to and including removal from employment under the DOE contract, in accordance with the contractor's policies. Any employee who is twice determined to have used illegal drugs shall in all cases be removed from employment under the DOE contract. Also, if an employee who has signed a DOE drug certification violates the terms of the certification, DOE shall conduct a timely review of the circumstances of such violation, and the individual's continued eligibility for a DOE access authorization shall be determined under the provisions of 10 CFR part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material."

(c) An employee who has been removed from a testing designated position because of the use of illegal drugs may not be returned to such position until that employee has:

(1) Successfully completed counseling or a program of rehabilitation;

(2) Undergone a urine drug test with a negative result; and

(3) Been evaluated by the site occupational medical department, which has determined that the individual is capable of safely returning to duty.

(d) An individual who is not an employee of a contractor who has been denied unescorted access because of the use of illegal drugs may not have the unescorted access reinstated until that individual has:

(1) Provided evidence of successful completion of counseling or a program of rehabilitation;

(2) Undergone a urine drug test with a negative result; and

(3) Been evaluated by the site occupational medical department, which has determined that the individual is capable of being permitted unescorted access to a reactor control area.

(e) If a DOE access authorization is involved, DOE must be notified of a contractor's intent to return to a testing designated position an employee removed from such duty for use of illegal drugs. Positions identified in § 707.7(b)(1) and (2) will require DOE approval prior to return to a testing designated position.

(f) An individual who has been notified of a positive test result may request a retest of the same sample at the same or another certified laboratory. The individual shall bear the costs of transportation and/or testing of the specimen. The contractor will inform employees of their right to request a retest under the provisions of this paragraph.

(g) After an employee determined to have used illegal drugs has been returned to duty, the employee shall be subject to unannounced drug testing, at intervals, for a period of 12 months.

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**§ 707.15 Collective bargaining.**

When establishing drug testing programs, contractors who are parties to collective bargaining agreements will negotiate with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change or alter the requirements of this rule because DOE security requirements themselves are non-negotiable under the security provisions of DOE contracts. Employees covered under collective bargaining agreements will not be subject to the provisions of this rule until those agreements have been modified, as necessary; provided, however, that if one year after commencement of negotiation the parties have failed to reach agreement, an impasse will be determined to have been reached and the contractor will unilaterally implement the requirements of this rule.

**§ 707.16 Records.**

(a) Confirmed positive test results shall be provided to the Medical Review Officer and other contractor and DOE officials with a need to know. Any other disclosure may be made only with the written consent of the individual.

(b) Contractors shall maintain maximum confidentiality of records related to illegal drug use, to the extent required by applicable statutes and regulations (including, but not limited to, 42 U.S.C. 290dd–3, 42 U.S.C. 290ee–3, and 42 CFR part 2). If such records are sought from the contractor for criminal investigations, or to resolve a question or concern relating to the Personnel Assurance Program certification or access authorization under 10 CFR part 710, any applicable procedures in statute or regulation for disclosure of such information shall be followed. Moreover, owing to DOE's express environmental, public health and safety, and national security interests, and the need to exercise proper contractor oversight, DOE must be kept fully apprised of all aspects of the contractor's program, including such information as incidents involving reasonable suspicion, occurrences, and confirmed test results, as well as information concerning test results in the aggregate.

(c) Unless otherwise approved by DOE, the contractors shall ensure that all laboratory records relating to positive drug test results, including initial test records and chromatographic tracings, shall be retained by the laboratory in such a manner as to allow retrieval of all information pertaining to the individual urine specimens for a minimum period of five years after completion of testing of any given specimen, or longer if so instructed by DOE or by the contractor. In addition, a frozen sample of all positive urine specimens shall be retained by the laboratory for at least six months, or longer if so instructed by DOE.

(d) The contractor shall maintain as part of its medical records copies of specimen chain of custody forms.

(e) The specimen chain of custody form will contain the following information:

(1) Date of collection;

(2) Tested person's name;

(3) Tested employee/applicant's social security number or other identification number unique to the individual;

(4) Specimen number;

(5) Type of test (random, applicant, occurrence, reasonable suspicion, follow-up, or other);

(6) Temperature range of specimen;

(7) Remarks regarding unusual behavior or conditions;

(8) Collector's signature; and

(9) Certification signature of specimen provider certifying that specimen identified is in fact the specimen the individual provided.

**§ 707.17 Permissible actions in the event of contractor noncompliance.**

Actions available to DOE in the event of contractor noncompliance with the provisions of this part or otherwise performing in a manner inconsistent with its approved program include, but are not limited to, suspension or debarment, contract termination, or reduction in fee in accordance with the contract terms.

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July 22, 1992

Part V

# Department of Energy

10 CFR Part 707

**Workplace Substance Abuse Programs at DOE Sites; Proposed Rule**

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## DEPARTMENT OF ENERGY

### Office of Procurement, Assistance and Program Management

### 10 CFR Part 707

### Workplace Substance Abuse Programs at DOE Sites

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking and public hearing; request for comment.

**SUMMARY:** The Department of Energy (DOE) proposes to amend its final rule establishing Workplace Substance Abuse Programs at DOE sites through this Notice of Proposed Rulemaking (NOPR). The proposed rulemaking would ensure comprehensive substance abuse programs at DOE sites, including programs to address misuse and abuse of alcohol, as well as the use of illegal drugs. Minimum requirements address: (1) Prohibition on the misuse or abuse of alcohol; (2) education and training; (3) employee assistance; (4) discipline, treatment, and/or rehabilitation or removal of employees; and (5) notification to DOE. In addition, for employees and other individuals performing health or safety-sensitive functions at sites owned or controlled by DOE, including individuals with unescorted access to the control areas of certain DOE reactors, contractors would be required to conduct performance related random, reasonable suspicion, and occurrence testing for misuse or abuse of alcohol. The possible risks of serious harm to the environment and to public health and safety justify the imposition of restrictions relating to misuse or abuse of alcohol on individuals who perform health or safety-sensitive functions.

**DATES:** Written comments (six copies) must be received by September 21, 1992. A public hearing will be held beginning at 9:30 a.m. local time and ending at 4:30 p.m., unless concluded earlier, at Washington, DC, on August 28, 1992, unless there are not a sufficient number of advance requests to present views, in which event the hearing will be canceled. Requests to speak at the hearing must be received by 4:30 p.m. on August 21, 1992.

**ADDRESSES:** Written comments (six copies) and requests to speak at a public hearing are to be submitted to the Director, Office of Contractor Human Resource Management, Department of Energy, Washington, DC 20585. The public hearing will be held in room GJ-015, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. Each person to be heard is requested to bring ten copies of that person's statement. In the event that any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Contractor Human Resource Management in advance by requesting permission, in the letter or telephone request, to make an oral presentation.

Relevant reference materials, a transcript of the public hearing, and the entire rulemaking record, will be available for inspection between the hours of 9 a.m., and 4 p.m., Monday through Friday except Federal holidays, at the following address: DOE Freedom of Information Reading Room, United States Department of Energy, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020.

**FOR FURTHER INFORMATION CONTACT:** Juanita E. Smith at (202) 586-9033.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The Department of Energy (DOE) today proposes to amend its final rule, published in today's **Federal Register**, that establishes a baseline for contractor programs to address substance abuse by (1) employees in testing designated positions at sites owned or controlled by DOE, and (2) other individuals with unescorted access to the control areas of certain DOE reactors. Also published in today's **Federal Register** is an interim final rule that would amend the Department of Energy Acquisition Regulations to require contractors to implement the requirements of this part. The final rule deals primarily with the use of illegal drugs. This proposed amendment would require such contractors to include alcohol misuse or abuse provisions within their Workplace Substance Abuse Programs, in order to assure comprehensive substance abuse prevention at DOE sites. DOE is proposing this rule under its broad authorities to carry out the purposes of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2012, 2013, 2051, 2061, 2165, 2201; the Energy Reorganization Act, 42 U.S.C. 5814, 5815; and the Department of Energy Organization Act, 42 U.S.C. 7151, 7251, 7254, and 7256. The possible risks of serious harm to the environment and to public health and safety as a result of alcohol misuse or abuse justify the imposition of the additional alcohol misuse and abuse requirements. This program includes training and education, testing, employee assistance, and disciplinary measures as well as sanctions for inadequate DOE contractor programs.

Through implementation of this component of the Workplace Substance Abuse Program, DOE expects to mitigate the potential for harm to the environment and to public health and safety, and further reduce the possibility of accidents at DOE sites by employees who misuse or abuse alcohol. The program elements contained in this proposed rule will assist DOE in assuring that contractor employees and other individuals performing health or safety-sensitive functions do not misuse or abuse alcohol while performing such functions. Impairment resulting from alcohol misuse or abuse is well documented. Scientific evidence is conclusive that cognitive and physicial task performance decreases as a result of the misuse or abuse of alcohol. Recent studies conducted on behalf of the Nuclear Regulatory Commission indicate that the misuse and abuse of alcohol is a serious and pervasive workplace problem. (See Barnes, *et al.*, Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues (1988) NUREG/CR-5227, U.S. Nuclear Regulatory Commission, Washington, DC; Moore *et al.*, Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues (1989) NUREG/CR-5227, Supplement 1, U.S. Nuclear Regulatory Commission, Washington, DC. These documents are available for review in the Department's reading rooms in the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 and the National Atomic Museum, Public Document Room, Building 20358, Wyoming Avenue, SE., Kirtland Air Force Base, Albuquerque, NM 87115.)

DOE believes that the potential effects resulting from alcohol misuse or abuse at both production and research and development sites represent a level of risk that is not compatible with the nature of work performed at these sites. The risk of alcohol misuse or abuse by employees at DOE sites warrants preventive action and intervention by DOE to ensure protection of the environment and public health and safety. The program will emphasize education and training, counseling, and employee assistance, as well as deterrence and detection of individuals who misuse or abuse alcohol.

Individual rights to protection and privacy are important to DOE and were major considerations in the development of this proposed rule. The program scope and requirements have been balanced to assure that intrusion

on these rights is minimized. The types of positions subject to testing under this program have been limited to only those performing the most sensitive or critical work, with potential for having a direct effect on the environment or public health and safety. These positions represent less than 30 percent of all DOE contractor employees. Program standards and testing provisions included in this rule represent the minimum requirements necessary for DOE to implement a responsible program and establish reasonable measures to assure that employees in these positions perform their duties safely.

The proposed rule would require contractors to include in their written programs, in addition to the minimum workplace substance abuse requirements currently set forth at 10 CFR part 707, an alcohol misuse or abuse component, including education, testing, and employee assistance programs. Contractors to be covered by the proposed alcohol component would include those contractors who are already subject to the requirements of 10 CFR part 707. The individuals to be covered by this rule, those performing health or safety-sensitive functions, are likely to be the same individuals who encumber testing designated positions, as currently provided in part 707—those individuals who perform work at sites owned or controlled by DOE and who occupy positions affording the potential to cause direct and/or immediate harm to the environment, to public health and safety, or to national security. Individuals performing health or safety-sensitive functions would be subject to testing for misuse or abuse of alcohol (a) on a random basis while performing the health or safety-sensitive functions, (b) upon reasonable suspicion, or (c) as a result of an occurrence. In developing this proposed rule, DOE has used as a model the rules of the Nuclear Regulatory Commission (NRC) for its licensees (10 CFR part 26).

## II. Elements of an Alcohol Misuse and Abuse Program Relating to Contractor Employees

### *A. Requirements*

Each contractor program would be required to assure that individuals performing health or safety-sensitive functions (including those with unescorted access to the control areas of certain DOE reactors) who enter or remain on a DOE site do not misuse or abuse alcohol. (See definition in § 707.4.)

Included is a requirement that an individual who performs health or safety-sensitive functions must report, in writing, an alcohol-related arrest as soon as possible but within 10 calendar days of such an arrest. DOE currently requires analogous reporting for security purposes through its management directives, including completion of a standard government-wide personnel security questionnaire and a continuing obligation on individuals with security clearances to report arrests for crimes involving a fine of $100 or more or imprisonment. DOE believes that health and safety concerns are as important as security concerns, and therefore that collection of similar information for individuals who perform health or safety-sensitive functions is necessary. DOE is well aware that an arrest, in itself, is not dispositive of whether a crime has been committed or whether the individual should be precluded from performing his or her duties. Moreover, disciplinary action would not necessarily be taken as a result of such an arrest. However, given the sensitivity of the functions being performed, arrest information could be useful in identifying an individual with a serious alcohol-related problem, and helping that individual in obtaining assistance. More importantly, it could assist in removing a troubled employee from a function that could result in great harm if improperly performed.

### *B. Education, Training, and Employee Assistance*

The proposed rule would require that the contractors include alcohol misuse and abuse education in their periodic training programs for employees, managers, and supervisors. This educational effort will familiarize employees with the program. It will also prepare managers and supervisors for the tasks they must perform effectively in order to make the program work properly.

The proposed rule would require contractors to offer employee assistance, including a provision for counseling and referral to outside agencies.

### *C. Testing for Alcohol*

The proposed rule would provide for alcohol testing on a random basis while an individual is performing health or safety-sensitive functions, upon "reasonable suspicion," and for an "occurrence." In developing the proposed rule, DOE consulted with the Department of Transportation, the Department of Health and Human Services, the Nuclear Regulatory Commission, and the National Aeronautics and Space Administration. DOE intends to continue consulting with those agencies to assure consistency, to the extent practicable, among Federal alcohol testing programs.

The proposed rule would require individuals performing health or safety-sensitive functions to abstain from the use of alcohol for at least five hours prior to a scheduled work tour. This is consistent with the requirements of the Nuclear Regulatory Commission for comparably situated individuals. However, other Federal agencies have established differing abstention periods for alcohol for individuals who perform health or safety-sensitive functions. For example, the Federal Aviation Administration currently requires pilots to abstain from the use of alcohol for eight hours prior to flight. Other Transportation agencies require an abstention period of four hours. DOE seeks the views of the public on whether the appropriate period of abstention should be four, five, or eight hours, or some other period.

The proposed rule would provide for alcohol testing by an evidential breath testing device (EBT) to determine breath alcohol concentration. For each screening test, a breath specimen would be collected. Test procedures are discussed in new § 707.15 of the proposed rule. In cases in which the initial test using an EBT indicates a breath alcohol concentration of 0.04 percent or greater, the proposed rule would require a confirmatory breath test. Confirmatory breath tests can be performed on the same EBT that indicated the initial positive reading. The proposed rule does not provide for review of positive alcohol breath test results by a Medical Review Officer (MRO) as is required for positive drug tests. The reason for this is that, unlike drug tests, there are no specimens that are susceptible to retesting, nor are there similar potential problems with chain of custody. There is nothing for the MRO to review from a medical standpoint other than the printout from the EBT. However, if the individual is unable to provide an adequate breath sample, any documentation supporting a medical condition which would prevent the individual from providing such a sample will be provided to the site occupational medical department for review. DOE is aware that there are some prescription and over-the-counter medicines that contain alcohol, and that proper use of these legal substances may result in a positive alcohol test. Nevertheless, DOE has proposed that any individual with an alcohol concentration of 0.04 or higher, no matter how attained, will be deemed incapable of performing a health or safety-sensitive function, and therefore

impaired by alcohol within the meaning of this rule.

In establishing the 0.04 minimum cut-off level, DOE has relied primarily on C. Moore, *et al.*, "Use of a 0.04% BAC Cutoff Level for Alcohol Testing," in Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues (1989) NUREG/CR-5227, Supplement 1, U.S. Nuclear Regulatory Commission, Washington, DC. This document is available for review in the Department's reading rooms in the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 and the National Atomic Museum, Public Document Room, Building 20358, Wyoming Avenue, SE., Kirtland Air Force Base, Albuquerque, NM 87115.

Scientific studies suggest that consumption of alcohol resulting in an alcohol concentration of 0.04 or above results in impairment. However, DOE solicits comments on whether the proposed alcohol concentration of 0.04 is the appropriate standard, or whether the standard should be lower, given the sensitivity of the functions at issue. DOE also solicits comments on what action, if any, should be taken if an individual has an alcohol concentration lower than 0.04, for example, between 0.02 and 0.04.

Section 707.6 proposes the conduct of performance related random alcohol tests at a rate of 50 percent of the total number of employees performing health or safety-sensitive functions; except for those employees serving in positions covered by the Personnel Security Assurance Program or the Personnel Assurance Program, or individuals with unescorted access to the control areas of certain reactors who will be tested at the rate of 100 percent, consistent with the NRC testing rate for comparably situated individuals. DOE seeks comments on the proposed random alcohol testing rates and any documentation of deterrence or detection at any other rate.

DOE is requiring use of an alcohol testing form. In order to assure standardization among DOE contractors and subcontractors, DOE intends to develop a form that must be used by all contractors and subcontractors subject to this part.

*D. Action Pursuant to a Determination of Alcohol Misuse or Abuse*

The proposed rule would require, as a function of the facts and circumstances, certain disciplinary actions by the contractor in response to a determination of alcohol misuse or abuse. For purposes of this rule, an individual who refuses to take an alcohol test may be subject to appropriate disciplinary action. An employee performing a health or safety-sensitive function, who has a positive breath test, would be removed from that function, and, under certain conditions, from the position the employee occupies. For a first time determination of misuse or abuse of alcohol, the employee may be offered a reasonable opportunity for rehabilitation consistent with the contractor's policies. However, disciplinary measures, including permanent removal for subsequent misuse or abuse of alcohol, may be applied by the contractor. An individual permitted unescorted access to the control areas of certain reactors will not be permitted such access after the first determination of misuse or abuse of alcohol until the individual meets the requirements specified in the rule, including successful completion of counseling, a negative breath test, and an evaluation by the site occupational medical department. The proposed rule would provide for specific notice to DOE security officials in the case of an individual who was determined to have misused or abused alcohol, if that individual has, or is an applicant for, an access authorization. Continued eligibility for such an access authorization is subject to determination under 10 CFR part 710.

The proposed rule also would require alcohol testing information to be held confidential, and would permit the release of information relating to a positive alcohol test to certain individuals, on a need to know basis. These include DOE officials, the contractor, the individual, and any decisionmaker in a lawsuit, grievance, or other procedure relating to a positive alcohol test by that individual.

**III. Contractor Performance**

Future performance of contractors will be evaluated in part by their effectiveness and success in implementing this rule. Noncompliance with the requirements of the rule may subject the contractor to existing contractual remedies available in the Federal procurement regulations.

**IV. Review Under Executive Order 12291**

Under Executive Order 12291, agencies are required to determine whether or not proposed rules are major rules as defined in the Order. DOE has reviewed this proposed rule and has determined that it is not a major rule because: Implementing the additional human reliability requirements proposed in this rule will not have an annual effect of $100 million or more on the economy; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The proposal was submitted to the Director of the Office of Management and Budget pursuant to Executive Order 12291. The Director has concluded his review.

**V. Review Under the Regulatory Flexibility Act**

The proposed rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* DOE has concluded that there is no need to prepare a regulatory flexibility analysis because, if promulgated, the rule will affect only DOE contractors performing work pursuant to the Atomic Energy Act whose places of performance are at Government-owned or controlled sites and their subcontractors, and will not have significant economic impact on a substantial number of small entities.

**VI. Review Under Executive Order 12778**

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposal meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

**VII. Review Under the National Environmental Policy Act**

This rule is not a major action significantly affecting the quality of the human environment. The rule is part of an overall employee human reliability and standards of conduct program that deals only with a requirement for

certain DOE contractors and subcontractors performing work pursuant to the Atomic Energy Act, to include certain minimum elements in a workplace substance abuse program. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

**VIII. Review Under Executive Order 12612**

The principal impact of this rule will be on government contractors and certain subcontractors and their employees. The rule is unlikely to have a substantial direct effect on the States, the relationship between the States and the Federal Government, or the distribution of power and responsibilities among various levels of government. No Federalism assessment under Executive Order 12612 is required.

**IX. Review Under the Paperwork Reduction Act**

The proposed rule imposes no additional paperwork burden on the public other than that already approved under OMB Control Number 1910–0600.

**X. Comment and Hearing Procedures**

*A. Written Comments*

The text of 10 CFR part 707 as it would be amended by this Notice of Proposed Rulemaking is available from the Office of Contractor Human Resource Management, Department of Energy, Washington, DC 20585 (202–586–9033).

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed rule set forth in this notice. Comments should be submitted to the address for the Director of the Office of Contractor Human Resource Management, which is given in the beginning of this notice. The envelope and written comments submitted should be identified with the designation "CAA" ("Contractor Alcohol Abuse"). Six copies should be submitted.

All comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action on this proposed rule.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, as well as six copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat them according to its determination. This procedure is set forth in 10 CFR 1004.11.

*B. Public Hearing*

DOE will hold a public hearing on the proposed rule as specified at the beginning of this notice. Any person who has an interest in the proposed rule, or who is a representative of a group or class of persons having an interest in it, may make a request for an opportunity to make an oral presentation. Such a request to speak at the hearing should be directed to the Director of the Office of Contractor Human Resource Management at the address given in the ADDRESSES section of this notice and must be received by 4:30 p.m., local time, on the date specified in the DATES section.

The person making the request should describe briefly his or her interest in the proceeding. The person should also provide a telephone number where the person may be reached. Persons requesting an opportunity to offer testimony should bring ten copies of their statements to the hearing.

DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 10 minutes.

**List of Subjects in 10 CFR Part 707**

Alcohol, Classified information, Drug testing, Employee assistance programs, Energy, Government contracts, Health and safety, National security, Reasonable suspicion, Special nuclear material, Substance abuse.

Issued in Washington, DC, on July 15, 1992.

**Berton J. Roth,**

*Acting Director, Office of Procurement, Assistance and Program Managment.*

For the reasons set forth in the preamble, DOE proposes to amend part 707 of title 10 of the Code of Federal Regulations as set forth below.

## PART 707—WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES

1. The authority citation for part 707 continues to read as follows:

**Authority:** 41 U.S.C. 701 *et seq.*; 42, U.S.C. 2012, 2013, 2051, 2061, 2165, 2201b, 2201i, and 2201p; 42 U.S.C. 5814 and 5815; 42 U.S.C. 7151, 7251, 7254, and 7256.

**§ 707.1 [Amended]**

2. Section 707.1 is amended by adding the phrase "and from the misuse or abuse of alcohol" after the phrase "illegal drugs" in the second sentence; in the last sentence by removing the period and adding the following: ", and (ii) misuse or abuse of alcohol by individuals performing health or safety-sensitive functions. This part will also require individuals who perform health or safety-sensitive functions to abstain from the use of alcohol for at least five hours prior to a scheduled working tour and during any working tour."

3. Section 707.2 is amended by redesignating paragraph (b) as (b)(1) and changing the references in (b)(1) from § 707.9 and 707.10 to 707.10 and 707.11 respectively; by adding paragraph (b)(2); and by changing the reference in (c) from § 707.8 to 707.9. Paragraph (b)(2) is set forth below:

**§ 707.2 Scope.**

* * * * *

(b) * * *

(2) Individuals described in § 707.8 (b) and (c) will be subject to random alcohol testing while performing health or safety-sensitive functions; and to alcohol testing as a result of an occurrence, as described in § 707.10; and on the basis of reasonable suspicion, as described in section 707.11

* * * * *

**§ 707.3 [Amended]**

4. Section 707.3 is amended in the final sentence by adding before the final period at the end thereof: " * * *, and on individuals performing health or safety-sensitive functions or with unescorted access to the control areas of certain DOE reactors who misuse or abuse alcohol".

**§ 707.4 Definitions.**

5. Section 707.4 is amended by adding in the proper alphabetical order definitions for the terms Air Blank, Alcohol, Alcohol Concentration, Alcohol Testing Form, Breath Alcohol Technician (BAT), Collection Site, Evidential Breath Testing Device, Health or Safety-Sensitive Function, Misuse or Abuse of Alcohol, and Substance Abuse to read as follows:

**§ 707.4 Definitions.**

*Air Blank* means a reading by an evidential breath testing device (EBT) of ambient air containing no alcohol.

*Alcohol* means any beverage, mixture, or preparation containing ethyl alcohol (including any medication).

*Alcohol Concentration* is a measure of the alcohol in a volume of breath, expressed in terms of grams of alcohol per 210 liters of breath. [For example, an alcohol concentration of 0.04 means that there is 0.04 gram (four one-hundredths of one gram) of alcohol in 210 liters of expired deep lung air.]

*Alcohol Testing Form* is a form used to document the breath test result. This form, at a minimum, shall include identifying information, including the sequential test number, the individual's identifying date and signature, date and location of the test, name signature of the breath alcohol technician, and the test results.

*Breath Alcohol Technican* (BAT) means a person who instructs and assists individuals in the testing process and operates the evidential breath testing device.

*Collection Site* means the location at which individuals subject to alcohol or drug testing are required to provide breath samples and/or urine specimens.

* * * * *

*Evidential Breath Testing Device* means a device which conforms to the model standards for evidential breath testing devices of the National Highway Traffic Safety Administration (NHTSA), capable of providing a printed copy of each breath test result. The model standards are available in the DOE Reading Room, room 1E–190, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–6020.

* * * * *

*Health or Safety-Sensitive Function* means a function with duties that, if not properly discharged, could directly and/or immediately cause significant harm to public health or safety, including any function that requires unescorted access to control areas of certain DOE reactors. (For purposes of this part, persons are considered to be performing a health or safety-sensitive function during any period when they are actually performing such functions or can be asked or directed to perform those functions. Such persons may be tested prior to, during, or following the performance of such functions.)

* * * * *

*Misuse or Abuse of Alcohol* means performing a health or safety-sensitive function while, (1) having an alcohol concentration at or above 0.04, (2) consuming alcohol within five hours of a scheduled working tour or during any working tour, or (3) being otherwise impaired by alcohol.

For purposes of this part, a person who refuses to take an alcohol test will be considered to have an alcohol concentration at or above 0.04.

* * * * *

*Substance Abuse* means the misuse or abuse of alcohol or the use of illegal drugs.

* * * * *

**§ 707.4 [Amended]**

6. Section 707.4 is further amended by adding the sentence "The collection site person may also be the BAT for a particular site." at the end of the definition of *Collection Site Person;* by adding the sentence "For alcohol, a confirmed positive is a breath test result of 0.04 or greater alcohol concentration, performed on an evidential breath testing device and repeated on the same or another evidential breath testing device with a breath test result of 0.04 or greater alcohol concentration." at the end of the definition for *Confirmed Positive Test;* by adding the phrase ", misuse or abuse of alcohol" after the phrase "illegal drug use" in the definitions of *Counseling, Employee Assistance,* and *Referral* (both occurrences); in the definition of *Random Testing,* by adding the paragraph designator (1) after "unannounced" and adding "or (2) alcohol breath testing of individuals performing health or safety-sensitive functions or having access to the control areas of certain DOE reactors," after "designated positions,"; in the definition of *Reasonable Suspicion,* by adding the phrase "or misuse or abuse of alcohol" after "illegal drugs" and changing the section reference from 707.10 to 707.11; and by adding the phrase "and alcohol misuse or abuse" after "illegal drug use" in the definition of *Rehabilitation.*

7. Section 707.5 is amended by adding the phrase "and the misuse or abuse of alcohol" after "illegal drug use" and adding the phrase "or alcohol-related" after "drug use" in paragraph (a)(2); by adding the phrase "the use, misuse, or abuse of alcohol or" after "policies prohibiting" in the first sentence of paragraph (a)(3); by adding the phrase "for an alcohol-related offense or" after "employee's conviction" in paragraph (a)(3)(ii); by adding the phrase "or alcohol-related" after "conviction of a drug-related" in paragraph (a)(4); by adding the phrase "or alcohol-related" after "drug-related" in paragraph (a)(5); by removing the word "drug" and adding the word "substance" before "abuse assistance" in the first sentence of (a)(5)(ii); by adding the phrase "or that have individuals performing health or safety-sensitive functions (see § 707.8(b))" before the colon in the introductory text to paragraph (b); by redesignating paragraphs (b)(3) through (6) as (b)(4) through (7), respectively; by adding new paragraph (b)(3); by adding the phrase "alcohol or" after "subject to" in paragraphs (b)(1) and (b)(5)(i); by adding the phrase "or who perform health or safety-sensitive functions" after "designated positions" in paragraph (b)(4); by adding the phrase "and random alcohol breath tests for individuals who perform health or safety-sensitive functions" after "designated positions" in (b)(5)(iii); by adding the phrase "and alcohol breath tests for individuals who perform health or safety-sensitive functions" after "designated positions" in paragraph (b)(5)(iv); by adding the phrases "Alcohol breath tests," and "and § 707.8(c)" at the beginning and end, respectively, of paragraph (b)(5)(v); in paragraph (b)(5)(vi), by adding the paragraph designator (A) after the phrase "by an employee" and adding the phrase "or (B) who perform health or safety-sensitive functions of an alcohol-related arrest or conviction," after "that employee,"; by adding the phrase "or alcohol-related" after "drug-related" in paragraph (b)(5)(vii)(A); by changing the reference from § 707.14 to § 707.16 and 707.17 in paragraph (b)(5)(vii)(B); by changing the reference from § 707.14 to § 707.16 and 707.17 in paragraph (b)(6); by adding the phrase "or has misused or abused alcohol" at the end of paragraph (b)(7); by adding the phrase "alcohol or" before "drug testing" in the fourth sentence of paragraph (e); by changing the reference in the last sentence of paragraph (g) from section 707.15 to § 707.16; and by adding the phrase ", positions with health or safety-sensitive functions," after the word "contracts" in the first sentence of paragraph (h). Newly added paragraph (b)(3) is set forth below:

**§ 707.5 Submission, approval, and implementation of a baseline workplace substance abuse program.**

* * * * *

(b) * * *

(3) Prohibition of misuse or abuse of alcohol by individuals performing health or safety-sensitive functions;

* * * * *

**§ 707.6 [Amended]**

8. Section 707.6 is amended by removing the phrase ", especially illegal drug use" in paragraph (b)(1) (both occurrences) and by adding the phrase "misuse or abuse of alcohol or" before the words "illegal drug use" in (b)(2)(ii) and (iv).

**§ 707.7 [Amended]**

9. Section 707.7 is amended by changing the reference in the third sentence of paragraph (c) from § 707.14(d) to § 707.16(d).

10. In subpart B, the following sections are redesignated:

§§ 707.16–707.17 [Redesignated as §§ 707.18–707.20]

a. Sections 707.15 through 707.17 are redesignated as §§ 707.18 through 707.20.

§ 707.14 [Redesignated as § 707.16]

b. Section 707.14 is redesignated as § 707.16.

c. Sections 707.8 through 707.13 are redesignated as §§ 707.9 through 707.14.

10a. A new § 707.8 is added to read as follows:

**§ 707.8 Performance related random alcohol testing requirements.**

(a) Each workplace substance abuse program shall provide for random testing for alcohol for individuals performing health or safety-sensitive functions and for individuals with unescorted access to the control areas of certain DOE reactors.

(1) Individuals are considered to be performing a health or safety-sensitive function during any period when they are actually performing such functions or can be asked or directed to perform those functions.

(2) Individuals subject to testing under this section may be tested prior to, during, or following the performance of such health or safety-sensitive functions.

(3) Programs developed under this part for positions identified in (b)(3) of this section shall provide for performance related random tests at a rate equal to 50 percent of the total number of employees performing health or safety-sensitive functions for each 12 month period. Employees in the positions identified in paragraphs (b)(1), (b)(2), and (c) of this section will be subject to performance related random testing at a rate equal to 100 percent of the total number of employees identified, and those identified in paragraphs (b)(1) and (b)(2) of this section may be subject to additional tests.

(b) Positions containing health or safety-sensitive functions subject to performance related random alcohol testing are:

(1) Positions determined to be covered by the Personnel Security Assurance Program (PSAP), codified at 10 CFR part 710. PSAP employees will be subject to the alcohol testing standards of this part and any additional requirements of the PSAP rule.

(2) Positions which entail critical duties that require an employee to perform work which affords both technical knowledge of and access to nuclear explosives sufficient to enable the individual to cause a detonation (high explosive or nuclear), in what is commonly known as the Personnel Assurance Program (PAP). PAP employees will be subject to the alcohol testing standards of this part and any additional requirements of that program.

(3) Positions identified by the contractor which entail duties where failure of an employee adequately to discharge his or her position could directly and/or immediately cause harm to the environment or public health and safety, such as:

(i) Pilots;

(ii) Firefighters;

(iii) Protective force personnel, exclusive of those covered in paragraphs (b)(1) and (b)(2) of this section, in positions involving use of firearms where the duties also require potential contact with, or proximity to, the public at large;

(iv) Personnel directly engaged in construction, maintenance, or operation of nuclear reactors; or

(v) Personnel directly engaged in production, use, storage, transportation, or disposal of hazardous materials sufficient to cause significant harm to the environment or public health and safety.

(4) Other positions determined by DOE, after consultation with the contractor, to have the potential to significantly affect the environment, or public health and safety.

(c) Each contractor shall require random testing of any individual, whether or not an employee, who is allowed unescorted access to the control areas of the following DOE reactors: Advanced Test Reactor (ATR); C Production Reactor (C); Experimental Breeder Reactor II (EBR–II); Fast Flux Test Facility (FFTF); High Flux Beam Reactor (HFBR); High Flux Isotope Reactor (HFIR); K Production Reactor (K); L Production Reactor (L); N Production Reactor (N); Oak Ridge Research Reactor (ORR); and P Production Reactor (P). A confirmed positive test shall result in such an individual being denied unescorted access. If such an individual is an employee, that individual is subject to the other requirements of this part, including appropriate disciplinary measures.

(d) A position otherwise subject to testing under this part may be exempted from such testing if it is within the scope of another comparable Federal alcohol testing program (e.g., Nuclear Regulatory Commission, Department of Transportation), as determined by DOE, after consultation with the contractor, to avoid unnecessary multiple tests.

11. Redesignated § 707.10 is amended by revising the section heading to add "and alcohol" after "Drug", by adding the paragraph designator "(a) Drug testing." before the first paragraph, and by adding paragraph (b) as set forth below:

**§ 707.10 Drug and alcohol testing as a result of an occurrence.**

(a) *Drug Testing.* * * *

(b) *Alcohol testing.* When there is an occurrence which is required to be reported to DOE by the contractor, under contract provisions incorporating applicable DOE Orders, rules, and regulations, it may be necessary to test individuals performing health or safety-sensitive functions, or individuals with unescorted access to the control areas of the DOE reactors listed in § 707.8(c) for the misuse or abuse of alcohol, if such individuals could have caused or contributed to the conditions which caused the occurrence. For an occurrence requiring immediate notification or reporting as required by applicable DOE Orders, rules, and regulations, the contractor will require testing as soon as possible after the occurrence but within one hour of the occurrence, unless DOE determines that it is not feasible to do so. For other occurrences requiring notification to DOE as required by applicable DOE Orders, rules, and regulations, the contractor may require testing.

12. Redesignated § 707.11 is amended by revising the section heading to add "and alcohol" after "Drug" and "or misuse or abuse of alcohol" after "drug use", by adding the paragraph heading "Drug testing." before the first paragraph, by redesignating paragraph (a) as paragraph (a)(1), by beginning a new paragraph, designated as (2), with the words "Such a belief may be based upon, among other things:", by redesignating subparagraphs (a)(1) through (a)(6) as (a)(2)(i) through (a)(2)(vi), respectively, by redesignating paragraph (b) as paragraph (a)(3), by adding a new paragraph (b), and by adding the phrase "or for the misuse or abuse of alcohol" after the words "illegal drugs" in paragraph (c). New paragraph (b) is set forth below.

**§ 707.11 Drug and alcohol testing for reasonable suspicion of illegal drug use or misuse or abuse of alcohol.**

* * * * *

(b) *Alcohol testing.*

(1) It may be necessary to test any employee encumbering a position entailing health or safety-sensitive functions, as defined in § 707.8(b), or with unescorted access to the control areas of the DOE reactors listed in § 707.8(c), for the misuse or abuse of alcohol, if the behavior of such an individual creates the basis for

reasonable suspicion of the misuse or abuse of alcohol. Two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the employee, or is a physician from the site occupational medical department, must agree that such testing is appropriate. Reasonable suspicion must be based on an articulable belief that an employee misuses or abuses alcohol, drawn from particularized facts and reasonable inferences from those facts.

(2) Such a belief may be based upon, among other things:

(i) Observable phenomena, such as direct observation of:

(A) The use of alcohol on-site; or

(B) The physical symptoms of being under the influence of alcohol;

(ii) A pattern of abnormal conduct or erratic behavior;

(iii) Arrest or conviction for an alcohol-related offense;

(iv) Information that is either provided by a reliable and credible source or is independently corroborated; or

(v) Evidence that an employee has tempered with, or attempted to tamper with, an alcohol test.

(3) The fact that an employee had a confirmed positive alcohol test at some prior time, or has undergone a period of rehabilitation or treatment, will not, in and of itself, be grounds for testing on the basis of reasonable suspicion.

* * * * *

13. §§ 707.15 and 707.17 are added to read as follows:

**§ 707.15 Alcohol testing requirements and procedures.**

(a) *Collection Site Requirements.* (1) All necessary equipment, personnel, and materials for breath testing shall be provided at the collection site. Any forms used shall be approved or provided by DOE.

(2) The collection site shall be an enclosed room or area affording visual and aural privacy to the individual being tested to the maximum extent practicable.

(3) No unauthorized persons shall be permitted access to the collection site at any time when testing is occurring.

(4) A mobile collection facility, such as a van equipped for alcohol testing, may be used as a collection site.

(5) In unusual or emergency circumstances, a test may be conducted at a place other than a designated collection site.

(6) The breath alcohol technician (BAT) shall supervise only one person's use of the EBT at a time. The BAT shall not leave the testing site while the preparation for, and testing of, a given person are in progress.

(b) *Alcohol testing procedures.* (1) The BAT shall be trained to proficiency in the operation of the evidential breath testing device (EBT) he or she is using and in the alcohol testing procedures of this part.

(i) Proficiency shall be demonstrated by successful completion of a course of instruction, which at a minimum, provides training in the principles of EBT methodology, operation, and calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required in this part for obtaining a breath specimen, interpreting, and recording EBT results.

(ii) Courses of instruction that meet standards of the National Highway Traffic Safety Administration (NHTSA) model course or a course approved by a state department of health or other relevant state agency may be used to demonstrate BAT proficiency.

(iii) The course of instruction shall include documentation that the BAT has demonstrated competence in the operation of the specific EBT he/she will use.

(iv) Any BAT who will perform an external calibration check of an EBT shall be trained to proficiency in conducting the check on the particular model of EBT, to include practical experience and demonstrated competence in preparing the breath alcohol simulator or alcohol standards, maintenance and calibration of the EBT.

(v) The BAT shall receive additional training, as needed, to ensure proficiency concerning new or additional devices or changes in technology that he or she will use.

(vi) The employer shall maintain documentation of the training and proficiency test of each BAT for a period of five years.

(vii) To the extent practicable, the supervisor of a particular employee shall not act as a BAT for that employee.

(2)(i) An EBT used to conduct breath tests shall be inspected, maintained, and calibrated in accordance with factory specifications, specific to the circumstances in which the EBT is used. These functions shall be performed by the manufacturer or a maintenance representative certified by the EBT's manufacturer or an appropriate state agency. Records of all such inspections, maintenance, and calibrations shall be maintained by the contractor for a period of five years, and shall be made available to DOE upon request.

(A) When not in use, the EBT shall be stored in a secure space to which unauthorized persons are denied access.

(B) Any EBT taken out of service because of failure to adequately conduct air blanks should not be used for testing until a check of external calibration is conducted and the EBT is found to be within tolerance limits.

(ii) Such an EBT, independently or in conjunction with a separate printer, shall be capable of the following:

(A) Numbering breath tests consecutively, and printing the appropriate number on the breath test result;

(B) Printing in triplicate or alternatively, three consecutive identical copies;

(C) Taking an air blank prior to or following each collection of a breath sample; and

(D) Performing an external calibration check.

(iii) In order to be used in alcohol testing subject to this part, and EBT shall be a quality assurance plan developed by the manufacturer.

(A) The plan shall designate the method or methods to be used to perform external calibration checks of the device.

(B) The plan shall specify the minimal intervals for performing external calibration checks of the device. Intervals shall be specified for different frequencies of use, temperatures, and contexts of operation (*e.g.*, stationary or mobile use).

(C) The plan shall specify the tolerance on an external calibration check within which the EBT is regarded to be in proper calibration.

(D) The plan shall specify inspection, maintenance, and calibration requirements and intervals for the device.

(E) Documentation of the contractor's compliance with the quality assurance plan of the manufacturer of each EBT used for alcohol testing under this part, including records of the results of external calibration checks, shall be maintained for a period of five years.

(F) For a plan to be regarded as valid for purposes of this paragraph, the manufacturer shall have submitted the plan to NHTSA for review and have received NHTSA approval of the plan.

(3) An individual who is required to take an alcohol breath test shall report to a designated collection site. The following procedures shall be followed:

(i) The BAT will require the individual to provide positive identification, such as a photo identification. The individual may request similar identification from the BAT.

(ii) The BAT shall explain the testing procedures to the individual. The BAT shall advise the individual not to eat, drink, put any object or substance in his or her mouth, or belch, in order to avoid

an artificially high alcohol reading. The test shall be conducted regardless of whether the individual has followed the instructions above. If the individual fails to follow the instructions, the BAT shall note that on the testing form.

(iii) The individual and the BAT both shall sign, date, and note the number of the breath test on an alcohol testing form. Refusal to sign the form shall be noted by the BAT on the form. Refusal to provide a breath sample, to provide an adequate breath sample, or to otherwise cooperate with the collection process shall be considered to be a refusal to take the test, and shall be noted by the BAT on the form. The contractor shall be notified by the BAT of an individual's refusal to take a test, and the contractor shall take appropriate disciplinary action.

(iv) Before the first test is administered, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the EBT reading in above 0.00, the BAT shall conduct one more air blank. Testing shall not proceed unless a 0.00 reading is obtained in the second air blank.

(A) The BAT shall open on individually-sealed mouthpiece, within view of the individual to be tested, and attach it to the EBT in accordance with the manufacturer's instructions. The individual shall then be instructed to blow firmly into the mouthpiece for at least six seconds or until the EBT indicates that a sufficient breath sample has been obtained.

(B) After the initial test is administered, the BAT shall ensure that the EBT registers 0.00 on an air blank. The test is valid only if this check results in a reading of 0.00.

(C) If the initial test results in a alcohol concentration of 0.04 or above, a confirmatory test is required. Such a test may be conducted on the same or a different EBT.

(D) If a confirmatory test is required, the BAT shall advise the individual not to eat, drink, put any object or substance in his or her mouth, or belch during a 15 to 20 minute waiting period before the administration of the confirmatory test, in order to avoid an artificially high alcohol reading. The test shall be conducted at the end of the 15- to 20-minute waiting period, regardless of whether the individual has followed the instructions above. If the individual fails to follow the instructions, the BAT shall note that on the testing form. A new mouthpiece shall be used for the confirmatory test. The results of the confirmatory test shall be considered the final result for purposes of any subsequent action, including discipline.

(E) The BAT shall ensure that the test result printout is affixed to the alcohol test form if the EBT does not print the results directly on the form, and sign and date the printed result, certifying that proper procedures were followed. The individual shall sign the printed result, certifying that he or she took the test with the appropriate sequential test result. If the individual declines to sign the printed result, it shall not be considered a refusal to be tested. However, the BAT shall note the individual's refusal to sign on the form.

(F) If the individual is unable to provide a sufficient breath sample due to a medical condition, such as asthma, the individual must provide medical documentation, as soon as possible, concerning the medical condition preventing the individual from providing an adequate breath sample. The contractor shall refer the individual and/or the medical documentation to the site occupational medical department for evaluation and confirmation of the condition. If the site occupational medical department determines that a medical condition is likely to have precluded the individual from providing an adequate breath sample, the test shall be declared invalid, and a written statement, with the basis for the conclusion, shall be provided to the contractor. If the site occupational medical department determines that a medical condition is not likely to have precluded the individual from providing an adequate breath sample, the individual's failure to provide an adequate sample will be treated as a refusal to take the test.

(G) The BAT shall transmit the test result to the contractor in a confidential manner. The information shall be maintained in a manner that ensures confidentiality. Information relating to a positive alcohol test may be provided by the BAT or the contractor to DOE upon request of DOE officials with a need for those records in the performance of their official responsibilities. Such information may also be provided by the BAT, the contractor, or DOE to the decisionmaker in any lawsuit, grievance, or other proceeding relating to the individual and arising from a positive alcohol test. The individual, upon request, may have access to any records relating to his or her test. If the individual has a positive test result, the contractor shall immediately remove that individual from the performance of health or safety-sensitive functions, and must notify DOE security officials if the individual holds, or is an applicant for, an access authorization.

**§ 707.17 Action pursuant to a determination of misuse or abuse of alcohol.**

(a) When an individual who performs a health or safety-sensitive function has tested positive for alcohol, the contractor shall immediately remove that employee from performing such a health or safety-sensitive function; if such employee also holds, or is an applicant for, an access authorization, then the contractor shall immediately notify DOE security officials for appropriate adjudication. If this is the first determination of alcohol misuse or abuse by that individual, the individual may be offered a reasonable opportunity for rehabilitation, consistent with the contractor's policies, and placed in a position that does not require the performance of a health or safety-sensitive function, provided that there is such an acceptable position in which the individual can be placed during rehabilitation. If there is no acceptable position available, the employee will be placed on sick, annual, or other leave status for a reasonable period sufficient to permit rehabilitation. However, the employee will not be protected from disciplinary action which may result from violations of work rules other than a positive test result. Following a determination by the contractor, in consultation with the site occupational medical department, that the individual can safely return to duty, the contractor may offer the individual reinstatement in the same or a comparable position to the one held prior to the removal, consistent with the requirements of 10 CFR part 710. Failure to take the opportunity for rehabilitation, if it has been made available, for the alcohol misuse or abuse will require appropriate disciplinary action up to and including removal from employment, in accordance with the contractor's policies. Any employee who is twice determined to have misused or abused alcohol shall in all cases be removed from employment under the DOE contract.

(b) An individual who has been removed from performing a health or safety-sensitive function because of the misuse or abuse of alcohol my not be returned to such position until that employee has:

(1) Successfully completed counseling or a program of rehabilitation;

(2) Undergone a breath test with a negative result; and

(3) Been evaluated by the site occupational medical department, and has been determined to be capable of safely returning to duty.

(c)(1) An individual who is not an employee of a contractor who has been denied unescorted access because of the misuse or abuse of alcohol may not have the unescorted access reinstated until that individual has:

(i) Provided evidence of successful completion of counseling or a program of rehabilitation;

(ii) Undergone a breath test with a negative result; and

(iii) Been evaluated by the site occupational medical department, and has been determined to be capable of being permitted unescorted access to a reactor control area.

(2) If, after restoration of unescorted access, such an individual is determined to have misused or abused alcohol for a second time, unescorted access shall be denied for a period of not less than three (3) years. Such an individual thereafter shall be granted unescorted access only upon a determination by DOE that a grant of unescorted access to the individual presents no unacceptable safety or security risk.

(d) If a DOE access authorization is involved, DOE must be notified of a contractor's intent to return an employee to performance of a health or safety-sensitive function, when such employee has been removed from the performance of such a function because of the misuse or abuse of alcohol. For an individual encumbering a position identified in § 707.8(b) (1) and (2), the individual may not return to work without prior DOE approval.

14. Redesignated § 707.19 is amended by adding the phrase "misuse or abuse of alcohol and" before the words "illegal drug use" in the first sentence of paragraph (b); by redesignating paragraph (c) as (c)(1) and adding a new paragraph (c)(2); by adding the phrase "and alcohol testing forms" after "custody forms" in paragraph (d); by adding the phrase "For illegal drugs," at the beginning of paragraph (e); and by adding paragraph (f). Paragraphs (c)(2) and (f) are set forth below:

**§ 707.19 Records**

* * * * *

(c) * * *

(2) Unless otherwise approved by DOE, the contractors shall ensure that all records relating to positive alcohol breath test results, including initial and confirmatory test records, are retained in such a manner as to allow retrieval of all information pertaining to the breath tests for a minimum period of five years, or longer if so instructed by DOE.

* * * * *

(f) For alcohol tests, the alcohol testing form will contain the following information:

(1) Date of breath test;

(2) Tested person's name;

(3) Tested employee's social security number or other identification number unique to the individual;

(4) Test number;

(5) Type of test (random, occurrence, reasonable suspicion, or rehabilitation follow-up);

(6) Remarks regarding unusual behavior or conditions; and

(7) BAT's signature.

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Part VI

# Department of Energy

48 CFR Parts 909, 923, and 970
Acquisition Regulation; Interim Final Rule

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DEPARTMENT OF ENERGY

48 CFR Parts 909, 923, and 970

Acquisition Regulation

**AGENCY:** Department of Energy (DOE).

**ACTION:** Interim final rule.

**SUMMARY:** DOE today publishes an interim final rule, with amends the Department of Energy Acquisition Regulation (DEAR), to implement the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites. This rule provides a mechanism to contractually impose the requirements of 10 CFR part 707 on affected contractors, and otherwise conforms the DEAR to 10 CFR part 707.

**DATES:** *Effective date:* The interim final rule is effective on August 21, 1992. This interim rule becomes final on September 21, 1992, unless DOE takes additional action in response to public comments and publishes a document in the Federal Register.

**COMMENT DATE:** Written comments on this interim final rule must be received by August 21, 1992.

**ADDRESS:** Comments should be addressed to: Edward Simpson, Office of Policy (PR–121), Office of Procurement, Assistance and Program Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Edward Simpson, Office of Policy (PR–121), Office of Procurement, Assistance and Program Management, U.S. Department of Energy, Washington, DC 20585, (202) 586–8240.

Mary Ann Masterson, Office of the Assistant General Counsel, for Procurement and Finance (GC–34), U.S. Department of Energy, Washington, DC 20585, (202) 586–1526.

**SUPPLEMENTARY INFORMATION:**

I. Background.
II. Procedural Requirements.
A. Review Under Executive Order 12291.
B. Review Under the Regulatory Flexibility Act.
C. Review Under the Paperwork Reduction Act.
D. Review Under the National Environmental Policy Act.
E. Review Under Executive Order 12612.
III. Public Comments.

## I. Background

In today's Federal Register, DOE is publishing a final rule establishing DOE's policies, criteria, and procedures regarding the development, implementation, and maintenance of a drug free workplace by contractors and subcontractors performing work at sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended. Because this final rule (codified at 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites) applies to certain contracts, conforming coverage in the DEAR is needed to provide a mechanism to contractually impose the requirements of 10 CFR part 707 on affected contractors. The interim final rule published today accomplishes this purpose.

DOE has determined that the promulgation of the amendments on an interim final basis is necessary to achieve the objectives of DOE's workplace substance abuse policies for contractors, as established in 10 CFR part 707. The amendments set forth in the interim final rule are derivative of the requirements of 10 CFR part 707, and impose no new requirements concerning the policies, criteria, and procedures of 10 CFR part 707. The contractual requirements, which are consistent with the statutory mandates of the Drug Free Workplace Act of 1988 (Pub. L. 100–690), are modeled after similar coverage now found in Subpart 23.5 of the Federal Acquisition Regulation (FAR). The amendments to the DEAR needed to implement 10 CFR part 707 are described below.

*Item I*

Part 909 is amended to add a new section 909.104–1, which adds the failure of an offeror or bidder to certify and agree to provide the contracting officer with its workplace substance abuse program as a standard in determining the offeror's eligibility for award.

*Item II*

Part 923 of the DEAR is amended to add a new subpart 923.5, entitled Workplace Substance Abuse Programs. This new subpart implements the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, in the DEAR in non-management and operating contracts. It provides general requirements concerning the applicability of 10 CFR part 707 and prescribes the use of the solicitation provision (a pre-award certification) and the contract clause set forth in section 970.2305–4.

An important part of this new subpart provides that contracts specifically within the scope of, and subject to, 10 CFR part 707 will not be subject to the government-wide drug free workplace requirements of FAR 23.5. DOE, in an effort to develop a stand-alone workplace substance abuse regulation at 10 CFR part 707, incorporated all of the elements of a drug free workplace program required by the Drug Free Workplace Act of 1988 in 10 CFR part 707, and has used the FAR coverage as an example in developing workplace substance abuse coverage for the DEAR.

The certification and contract clause are described in Item IV, below.

*Item III*

Subpart 970.23, entitled Environmental, Conservation, and Occupational Safety Programs, is amended to add a new section 970.2305, Workplace Substance Abuse Programs—Management and Operating Contracts. This section expressly implements the requirements of 10 CFR part 707 in all management and operating (M&O) contracts awarded under the authority of the Atomic Energy Act of 1954, as amended. In addition, this section requires the use of the solicitation provision and contract clause prescribed at subsection 970.2305–4 in solicitations and contracts for the management and operation of DOE-owned or -controlled sites. Finally, subsection 970.2305–5, by relying substantially on existing FAR 23.506 coverage, sets out the actions that may be taken by the Government in the event the contractor fails to comply with its approved workplace substance abuse program.

*Item IV*

Subpart 970.52, Contract Clauses for Management and Operating Contracts, is amended to add a solicitation provision (a pre-award certification) and a contract clause for use in implementing the requirements of 10 CFR part 707 in covered management and operating contracts.

The pre-award certification, identified as 970.5204–57, Certification Regarding Workplace Substance Abuse Programs at DOE Sites, will require the offeror/bidder to agree to provide the contracting officer with its workplace substance abuse program within 30 days after notification of selection for award, or of award of the contract, whichever is earlier. Consistent with the Drug Free Workplace Act of 1988, failure of the offeror or bidder to certify will be treated as a matter of contractor responsibility and will render the offeror/bidder ineligible for award. The certification is modeled after the certification required of offerors/bidders under FAR Subpart 23.5. That certification is found at FAR 52.223–15.

DEAR 970.5204–58, Workplace Substance Abuse Programs at DOE Sites, requires the contractor to develop, implement, and maintain a workplace

substance abuse program that is consistent with the requirements of 10 CFR part 707. In addition, the clause sets out the contractual remedies that may be imposed on the contractor for failure to (1) comply with 10 CFR part 707; or (2) perform in a manner consistent with its approved program. Such remedies are consistent with remedies set forth in the Drug Free Workplace Act of 1988. The clause also addresses the responsibility of the DOE prime contractor with regard to reviewing, approving, and monitoring workplace programs of all of its subcontractors; provides that subcontracts not subject to 10 CFR part 707 will be subject to the requirements of subpart 23.5 of the FAR; establishes the flow-down requirements for the clause; and provides the requirements for notifying the contracting officer of subcontracts that may be subject to 10 CFR part 707.

## II. Procedural Requirements

### *A. Review Under Executive Order 12291*

This Executive order entitled "Federal Regulation" requires that regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. The Director, OMB, by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This interim final rule falls into one of the types of regulations exempted by OMB. Accordingly, this rule was not submitted to OMB for review.

### *B. Review Under the Regulatory Flexibility Act*

This interim final rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant impact on a substantial number of small entities. DOE has concluded that there is no need to prepare a regulatory flexibility analysis because the rule will affect only DOE contractors whose places of performance are at Government-owned or -controlled sites operated under the authority of the Atomic Energy Act of 1954, as amended, and their subcontractors. Therefore, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis has been prepared.

### *C. Review Under the Poperwork Reduction Act*

No new information or recordkeeping requirements are imposed by this interim final rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.).*

### *D. Review Under the National Environmental Policy Act (NEPA)*

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and the DOE Guidelines (40 CFR 1021). Therefore, this interim final rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

### *E. Review Under Executive Order 12612*

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

This interim final rule, in essence, is derivative of the regulations at 10 CFR part 707, and merely implements the requirements of 10 CFR part 707 in DOE's acquisition regulations. This interim final rule provides a mechanism by which DOE can contractually implement the requirements of 10 CFR part 707 on its contractors. Because the universe of contractors to which the requirements of 10 CFR part 707 apply does not now, and will not in the foreseeable future, include States, DOE has determined that this rule will not have substantial direct effect on the institutional interests or traditional functions of the States.

## III. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this rule. Three copies of written comments should be submitted to the address indicated in the "**ADDRESS**" section of this notice. All written comments received by August 21, 1992 will be carefully assessed and fully considered prior to the effective date of these amendments to the DEAR as a final rule.

DOE has concluded that this interim final rule does not involve a substantial issue of fact or law, and that the interim final rule should not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Further, public hearings were conducted as part of the rulemaking process of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), DOE does not plan to hold a hearing on this interim final rule.

**List of Subjects in 48 CFR Parts 909, 923, and 970**

Government Contracts, Government Procurement.

For the reasons set out in the preamble, parts 909, 923, and 970 of title 48 of the Code of Federal Regulations are proposed to be amended as set forth below.

Issued in Washington, DC on July 15, 1992.

**Berton J. Roth,**

*Acting Director, Office of Procurement, Assistance and Program Management.*

The regulations in 48 CFR parts 909, 923, and 970 are amended as set forth below:

1. The authority citations for parts 909 and 923 continue to read as follows:

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. The authority citation for part 970 continues to read as follows:

**Authority:** Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1965 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

## PART 909—CONTRACTOR QUALIFICATIONS

3. Subpart 909.1 is amended to add a new paragraph (h) in § 909.104–1, General Standards, to read as follows:

**909.104–1 General Standards.**

* * * * *

(h) For solicitations for contract work subject to the provisions of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, the prospective contractor must certify and agree, in accordance with 970.5204–57, Certification Regarding Workplace Substance Abuse Programs at DOE Sites, to provide the contracting officer with its written workplace substance abuse program in order to be determined as responsible and, thus, eligible to receive the contract award.

## PART 923—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL HEALTH

4. Part 923 is amended by adding a new Subpart 923.5, Workplace Substance Abuse Programs, consisting of sections 923.570 through 923.570–3, to read as follows:

### Subpart 923.5—Workplace Substance Abuse Programs

Sec.
923.570 Workplace Substance Abuse Programs at DOE Sites.
923.570–1 Applicability.
923.570–2 Solicitation provision and contract clause.
923.570–3 Suspension of payments, termination of contract, and debarment and suspension actions.

### Subpart 923.5—Workplace Substance Abuse Programs

#### 923.570 Workplace Substance Abuse Programs at DOE Sites.

(a) The Department of Energy (DOE), as part of its overall responsibilities to protect the environment, maintain public health and safety, and safeguard the national security, has established policies, criteria, and procedures for contractors to develop and implement programs that help maintain a workplace free from the use of illegal drugs.

(b) Regulations concerning DOE's contractor workplace substance abuse programs are promulgated at 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

#### 923.570–1 Applicability.

(a) The policies, criteria, and procedure specified in 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, apply to contracts for work performed at site owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, where such work:

(1) Has a value of $25,000 or more, and;

(2) Has been determined by DOE to involve:

(i) Access to or handling of classified information or special nuclear materials;

(ii) High risk of danger to life, the environment, public health and safety or national security; or

(iii) The Transportation of hazardous materials to or from a DOE site.

(b) Except as otherwise provided for in this subpart, contracts subject to the requirements of 10 CFR part 707 and this subpart shall not be subject to FAR 23.5, Drug Free Workplace.

#### 923.570–2 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 970.5204–57, Certification Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 923.570–1, Applicability.

(b) The contracting officer shall insert the clause at 970.5204–58, Workplace Substance Abuse Programs at DOE Sites, in contracts where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 923.570–1, Applicability.

#### 923.570–3 Suspension of payments, termination of contract, and debarment and suspension actions.

(a) The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and the debarment and suspension of a contractor relative to failure to comply with 970.5204–58, Workplace Substance Abuse Programs at DOE Sites.

(b) For purposes of 10 CFR part 707, the specific causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are:

(1) The contractor fails to either comply with the requirements of 10 CFR part 707 or perform in a manner consistent with its approved program;

(2) The contractor has failed to comply with its certification;

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes for violations occurring on the DOE-owned or -controlled site, as to indicate that the contractor has failed to make a good faith effort to provide a drug free workplace; or

(4) The offeror has submitted a false certification in response to the provision at 970.5204–57, Certification Regarding Workplace Substance Abuse Programs at DOE Sites.

## PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

5. Subpart 970.23, Environmental, Conservation, and Occupational Safety Programs, is amended to add new sections 970.2305 through 970.2305–5 to read as follows:

Sec.
970.2305 Workplace Substance Abuse Programs—Management and Operating Contracts.
970.2305–1 General.
970.2305–2 Applicability.
970.2305–3 Definitions.
970.2305–4 Solicitation provision and contract clause.
970.2305–5 Suspension of payments, termination of contract, and debarment and suspension actions.

### 970.2305 Workplace Substance Abuse Programs—Management and Operating Contracts.

#### 970.2305–1 General.

(a) The Department of Energy (DOE), as part of its overall responsibilities to protect the environment, maintain public health and safety, and safeguard the national security, has established policies, criteria, and procedures for management and operating contractors to develop and implement programs that help maintain a workplace free from the use of illegal drugs.

(b) Regulations concerning DOE's management and operating contractor workplace substance abuse programs are promulgated at 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

#### 970.2305–2 Applicability.

(a) All management and operating contracts awarded under the authority of the Atomic Energy Act of 1954, as amended, are required to implement the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

(b) Except as otherwise provided for in this subpart, management and operating contracts subject to the requirements of 10 CFR part 707 and this subpart shall not be subject to FAR 23.5, Drug Free Workplace.

#### 970.2305–3 Definitions.

Terms and words relating to DOE's Workplace Substance Abuse Programs, as used in this section, have the same meanings assigned to such terms and words in 10 CFR part 707.

#### 970.2305–4 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 970.5204–57, Certification Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations for the management and operation of DOE-owned or -controlled sites operated under the authority of the Atomic Energy Act of 1954, as amended.

(b) the contracting officer shall insert the clause at 970.5204–58, Workplace Substance Abuse Programs at DOE

Sites, in contracts for the management and operation of DOE-owned or -controlled sites operated under the authority of the Atomic Energy Act of 1954, as amended.

**970.2305–5 Suspension of payments, termination of contract, and debarment and suspension actions.**

(a) The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and the debarment and suspension of a contractor relative to failure to comply with 970.5204–58, Workplace Substance Abuse Programs at DOE Sites.

(b) For purposes of 10 CFR part 707, the specific causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are:

(1) The contractor fails to either comply with the requirements of 10 CFR part 707 or perform in a manner consistent with its approved program;

(2) The contractor has failed to comply with its certification;

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes for violations occurring on the DOE-owned or -controlled site, as to indicate that the contractor has failed to make a good faith effort to provide a drug free workplace; or,

(4) The offeror has submitted a false certification in response to the provision at 970.5204–57, Certification Regarding Workplace Substance Abuse Programs at DOE Sites.

6. Subpart 970.52, Contract Clauses for Management and Operating Contracts, is hereby amended by adding a new Section 970.5204–57, Certification Regarding Workplace Substance Abuse Programs at DOE Sites, and a new Section 970.5204–58, Workplace Substance Abuse Programs at DOE Sites, to read as follows:

**970.5204–57 Certification Regarding Workplace Substance Abuse Programs at DOE Facilities.**

As prescribed in 970.2305–4(a), insert the following provision:

**Certification Regarding Workplace Substance Abuse Programs at DOE Sites (Aug 1992)**

(a) Any contract awarded as a result of this solicitation will be subject to the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

(b) The offeror/bidder certifies and agrees that it will provide to the contracting officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707.

(c) Failure of the offeror/bidder to certify in accordance with paragraph (b) of this provision, renders the offeror unqualified and ineligible for award.

(d) In addition to other remedies available to the Government, this certification concerns a matter within the jurisdiction of an agency of the United States, and the making of false, fictitious, or fraudulent statements may render the maker subject to prosecution under Title 18, U.S.C., section 1001.

Signature of officer/employee certifying regarding the offeror's workplace substance abuse program/Date

Typed name and title of signatory

(End of provision)

**970.5204–58 Workplace Substance Abuse Programs at DOE Sites.**

As prescribed in 970.5204–4(b), insert the following clause:

**Workplace Substance Abuse Programs at DOE Sites (Aug 1992)**

(a) *Program Implementation.* The contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) *Remedies.* In addition to any other remedies available to the Government, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) *Subcontracts.* (1) The contractor agrees to notify the contracting officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the contractor believes may be subject to the requirements of 10 CFR part 707.

(2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.

(3) The contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

(End of clause)

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Part VII

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 61**

**Amendment of the Annual and Biennial Flight Review Requirements; Notice of Proposed Rulemaking**

VOL 57 ISS 141 JL 22 1992 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 26927; Notice No. 92-8]

RIN 2120-AE11

# Amendment of the Annual and Biennial Flight Review Requirements

**AGENCY:** Federal Aviation Administration (FAA).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** In this notice, the FAA proposes to delete the requirement that recreational pilots and noninstrument-rated private pilots with fewer than 400 hours of flight time (hereafter, the "affected pilots") receive 1 hour of ground and 1 hour of flight instrumentation annually. This action responds to petitions for rulemaking from the Aircraft Owners and Pilots Association (AOPA) and the Experimental Aircraft Association (EAA). In this notice the FAA also proposes to require that the biennial flight review (BFR) for all pilots consists of a minimum of 1 hour of ground instruction and 1 hour of flight instruction. This action is needed to establish a minimum standard 2-hour requirement for the BFR for all pilots. The intended effect is to eliminate inadequate flight reviews while not unduly restricting the flight instructor from requiring additional instruction. In a minor conforming change, the proposal retains in the BFR alternative means of compliance for glider pilots, which currently is contained in the annual flight review requirement.

**DATES:** Comments must be submitted on or before September 21, 1992.

**ADDRESSES:** Comments on this notice should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26927, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26927. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m. except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Thomas Glista, Regulations Branch (AFS-850), General Aviation and Commercial Division, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8150.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be supported by adequate documentation and accompanied by cost estimates when appropriate. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26927." The postcard will be date stamped and mailed to the commenter.

## Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

## Background

The requirement for an annual flight review for the affected pilots originated, in part, from a petition for rulemaking submitted by the National Association of Flight Instructors (NAFI) (47 FR 11026; March 15, 1982). The Federal Aviation Administration (FAA) proposed the requirement in Notice of Proposed Rulemaking (NPRM) No. 85-13 (50 FR 26286; June 25, 1985).

In a comment to the NPRM dated October 24, 1985, the Aircraft Owners and Pilots Association (AOPA) objected to the NPRM because the FAA proposed to attach additional training requirements for already certificated pilots to NAFI's proposal for an additional pilot certificate. AOPA disputed the justification for the FAA's proposal for the annual flight review, and provided data to indicate that there was no significant difference in the accident profile of the affected pilots as compared to the profile for all pilots. However, the FAA evaluated the data in a different manner which supported the annual requirement.

The annual flight review requirement was issued in a final rule titled "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots with Fewer than 400 Flight Hours" [54 FR 13028; March 29, 1989]. This rule amended part 61 of the Federal Aviation Regulations (FAR), 14 CFR part 61.

By letter dated May 22, 1989, AOPA petitioned the FAA to revise FAR § 61.56(d) by deleting the annual flight review requirement. AOPA urged reconsideration of the annual flight review requirement and provided additional accident data for review.

By letter dated July 25, 1989, the Experimental Aircraft Association (EAA) also petitioned the FAA to delete the annual flight review requirement for the affected pilots.

On July 30, 1989, Secretary of Transportation Samuel Skinner spoke at EAA's annual convention in Oshkosh, Wisconsin. In response to requests from the aviation community, he promised that the FAA would review the data that was the basis and justification for requiring the annual flight review.

In further consideration of the data presented in the AOPA petition, representatives of AOPA and EAA met with FAA representatives on July 13, 1990. A record of that meeting is in Docket No. 24695. In that meeting, AOPA representatives stated that the safety data do not support singling out one particular segment of pilots for an annual flight review. EAA representatives noted the continuing decline in general aviation and commented that the general aviation public feels unduly burdened by additional rules. AOPA and EAA agreed that the current BFR requirement is vague and that standards for completion of the review vary considerably

between different instructors. In lieu of the annual flight review, AOPA and EAA expressed support for a minimum hour requirement for the BFR.

As a result of the petitions from AOPA and EAA, and further discussion of their safety data, the FAA determined that the annual flight review deserved further consideration. In order to reevaluate the rule without penalizing one group of pilots, the FAA extended the compliance date for the annual flight review until August 31, 1991, in Amendment No. 61–89 (55 FR 50312; December 5, 1990).

In addition, the FAA has received comments on the BFR from persons participating in the public hearings held in conjunction with the FAR parts 61, 141, and 143 Review. Individuals commented that the current BFR requirement is vague and ineffective. There were numerous requests at these hearings to standardize the review and for the FAA to provide additional guidance on the conduct of the BFR. Some commenters stated that the FAA should publish guidelines but not in the form of additional regulations. Other commenters stated that a minimum requirement for ground and flight instruction should be incorporated into the rule.

**FAA Analysis of the Annual Flight Review**

In March 1990, the FAA completed a preliminary reevaluation of the data that was the basis for adopting the annual flight review requirement for the affected pilots (§ 61.56(d)). This data showed the private pilot accident totals from 1976 to 1981; it was organized into fatal and nonfatal accidents, and by pilot age and total flight hours. Accident totals were provided for the various experience levels in 100-hour increments (through 999 hours).

Because the total number of accidents was higher in each of the first four 100-hour increments than in any of the other increments, the 400-hour pilot time level was selected as the time level for the annual flight review requirement. However, the FAA determined on reevaluation that the data did not indicate whether the higher accident totals for these subgroups reflected higher accident rates per pilot, or greater activity levels (i.e., exposure), or a combination of these factors.

Also, the accident data did not distinguish between instrument-rated and noninstrument-rated pilots. Thus, it was impossible to determine the extent to which relatively inexperienced instrument-rated pilots may have contributed to the accident totals.

Based on its reevaluation, the FAA concluded that the data used in the development of the annual flight review rule was insufficient to justify imposing this requirement on the affected pilots. Therefore the FAA proposes to delete it in this notice.

As mentioned above, the FAA currently is conducting a review of parts 61, 141, and 143. In connection with this review, the FAA is completing a thorough assessment of the skills that are needed for the different types of pilot certificates, ratings, and operations.

The FAA's Office of Safety Analysis has initiated three interrelated studies on general aviation safety.

The first study addresses requirements for general aviation exposure (activity) data. When combined with accident data, reliable exposure data will help the FAA develop rates of specific types of accidents and identify relative risks.

Another study concerns developing measures of pilot proficiency; the purpose of this project is to examine the relationships between accident rates and measures such as pilot recent and total flight time, age, certificate level, and ratings to determine the impact of these factors on safety performance.

The last study involves a detailed analysis of accident causes to help evaluate the need for remedial actions in various types of flying activity.

Preliminary work on all three studies was accomplished during FY91.

**FAA Analysis of Biennial Flight Review Requirements**

Currently, the flight review requirements of § 61.56 are very general. Section 61.56(a) requires a review of the current general operating and flight rules of part 91 of the FAR and a review of those maneuvers and procedures which, at the discretion of the person giving the review, are necessary for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate. This requirement could be interpreted in many different ways. At one extreme, a flight review could consist of a short discussion during preflight and a 10-minute flight with one takeoff and one landing. At the other extreme, a flight review could consist of a multihour oral and flight review of all of the maneuvers and procedures listed in the practical test standards for each certificate and rating the applicant holds.

To assist the general aviation public in maintaining proficiency, the FAA created the "Pilot Proficiency Award Program" (Wings) to provide pilots with the opportunity to establish and participate in a personal recurrent training program. This voluntary program has been very successful in reducing the number of accidents for participating pilots. The Report of the Safety Review Task Force of the Federal Aviation Administration Flight Safety Program, August 1985, stated that the Wings program has an outstanding record. Only 81 accidents, with a total of 10 fatalities, have occurred among the group of 45,000 airmen who have participated in the program since 1979. In addition, statistics show that participation in the Wings program has increased 42 percent between 1986 and 1988. This trend indicates that the general aviation public recognizes the need for recurrent training. Amendment 61–490 (56 FR 11308; March 15, 1991) amended § 61.56 to state that persons who have satisfactorily completed one or more phases of an FAA-sponsored pilot proficiency award program need not accomplish the flight review.

In spite of this recognition of the need for recurrent training by the majority of general aviation pilots, the FAA has determined that there is a segment of the pilot population which may not receive a satisfactory flight review. Therefore, a minimum of 1 hour of ground instruction and 1 hour of flight instruction should be required biennially to ensure that each person receiving a BFR receives a satisfactory review commensurate to the certificates and ratings held.

Requiring a minimum of 1 hour of flight instruction and 1 hour of ground instruction will help to eliminate inadequate flight reviews while not restricting the flight instructor from requiring additional instruction if, in his or her opinion, it is needed to ensure that the pilot is capable of exercising the privileges of the certificates and ratings held.

The FAA assumes that 1 hour of flight instruction and 1 hour of ground instruction is the average duration of a flight review for pilots who have recently and consistently been exercising the privilege of their certificates and ratings. This is consistent with the recommendations of Advisory Circular AC–61–98A, described below. The FAA realizes that there are occasions when a flight review will require more than 1 hour each of ground and flight instruction. For example, if the pilot being reviewed has not exercised the privileges of the certificate for an extended period (i.e., more than 2 years), it is very likely that the flight instructor would require the pilot to receive more than 1 hour each of ground and flight instruction. Thus, this minimum requirement of 1 hour each of

ground and flight instruction does not restrict the flight instructor from requiring additional instruction, as needed, depending on the experience and skills of the pilot.

In addition, in response to comments that the FAA should publish guidelines concerning maneuvers and procedures, the FAA has developed Advisory Circular AC-61-98A, Currency and Additional Qualification Requirements for Certified Pilots. The purpose of AC-61-98A, in part, is to provide information for certified pilots and flight instructors to use in complying with the flight review required by § 61.56. The Advisory Circular recommends that all flight reviews consist of a minimum of 1 hour of flight instruction and 1 hour of ground instruction for all pilots. The FAA has determined, however, that setting specific maneuvers and procedures requirements in the rules would unduly restrict a flight instructor's discretion in reviewing an individual's ability to safely exercise the privileges of the certificates and ratings held. Due to different pilot abilities, experience levels, type of operation, certificates, ratings, and aircraft, the flight review needs to be tailored to the individual pilot. Thus, guidance in the form of an AC will supplement this proposed rule and will continue to provide a useful reference source in putting together a BFR appropriate for the person receiving the review. The goals and objectives of the BFR still must be met in that the flight instructor must be able to determine whether the individual being reviewed can safely exercise the privileges of the certificates and ratings held.

**Other, Conforming Changes**

On October 5, 1989, the FAA issued an amendment to the recreational pilot rule [Amendment No. 61-86; 54 FR 41234]. This amendment, in part, modified the annual flight review requirements for certain glider-rated private pilots. The amendment allowed glider-rated private pilots to substitute three instructional flights in a glider, each of which included a 360-degree turn, in lieu of the 1 hour of flight instruction. That change resulted, in part, from comments submitted by the Soaring Society of America on the requirements for an annual review contained in the recreational pilot rule.

The FAA has determined that the proposed change to the BFR should provide glider-rated pilots the same option for complying with the 1 hour each of ground and flight instruction as provided in Amendment No. 61-86 for glider-rated private pilots receiving the annual flight review. In order to incorporate this alternative means of compliance for glider pilots into the proposed change to the BFR, the amendatory language that allows this alternative means of compliance is retained in § 61.56(b).

**Economic Evaluation**

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if benefits to society for each regulatory change outweigh potential costs. Accordingly, the FAA has prepared a detailed preliminary economic evaluation of this proposal and placed it in the docket. The evaluation identifies and analyzes both the quantifiable and nonquantifiable economic effects of the proposal. Based on the results of its investigation, the FAA has concluded that this proposal is cost-beneficial.

This section contains a summary of the benefits and costs analyzed in the preliminary regulatory evaluation. In addition, it includes an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full preliminary regulatory evaluation contained in the docket.

A pilot who has not satisfactorily completed an FAA-sponsored pilot proficiency award program, or a pilot proficiency check for a certificate, rating, or operating privilege within the past 2 years currently is required to receive a BFR. There may be cases where a BFR consists of an inadequate review that takes only a few minutes and other cases where a BFR consists of a multihour review. The FAA assumes, however, that most flight instructors are following the recommendations of AC 61-98A and are conducting BFRs that consist of 1 hour of ground instruction and 1 hour of flight instruction.

Since this proposal would merely codify in the rule what already is outlined in the AC and is generally accepted as standard practice, the FAA has concluded it has minimal associated costs.

The estimated benefits of the proposed rule are the cost savings from the elimination of the annual flight review requirement for the affected pilots. The FAA estimates that in 1992, approximately 129,600 pilots would be affected by the elimination of this requirement at a cost savings of $6.4 million in 1992. These estimated cost savings were calculated using representative rental rates for flight instruction and ground instruction by category of aircraft. Based on the estimate of the affected number of pilots from 1992 to 2001, the total estimated cost savings would be $85 million, or $44 million discounted at 10 percent over the period. The cost associated with this rule, resulting from requiring additional time in flight or ground instruction for some pilots as part of the BFR, are believed to be minimal since most pilots already meet the standards contained in the AC. In addition, because the data used in the development of the annual flight review were insufficient to justify imposing this requirement on the affected pilots, the FAA proposes to delete it in this notice. Therefore, the FAA has concluded that the proposed rule is cost-beneficial.

**International Trade Impact Analysis**

This proposed rule would have a negligible impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the U.S. The proposed rule primarily affects recreational pilots and noninstrument-rated private pilots with fewer than 400 hours of flight time, not businesses involved in the sale of aviation products or services.

**Regulatory Flexibility Determination**

The proposed rule would not have a significant economic impact, positive or negative, on small entities. Pilots, rather than business entities, would be affected by this proposed rule. Where a noninstrument-rated private pilot with fewer than 400 hours is also the sole proprietor of a small business, and exercises the privileges of his or her certificate in operations that are incidental to that business, the proposed rule would have a negligible impact. The FAA estimates that these pilots would save between $93 and $185 every other year, depending on the aircraft they used for their annual reviews.

**Federalism Impact**

The proposals contained herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

**Conclusion**

This notice proposes to amend § 61.56 of the FAR by deleting the annual flight review requirement for the affected

pilots that was established in the "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Noninstrument-Rated Private Pilots with Fewer than 400 Flight Hours" final rule.

For the reasons discussed in the preamble, and based on the findings in the initial Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not major under Executive Order 12291. In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation of this rule, including an initial Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

**List of Subjects in 14 CFR Part 61**

Aeronautical knowledge, Aviation safety, Cross-country flight privileges, Eligibility requirements, Limitations, Operational experience, Student pilots.

**The Proposed Amendment**

Accordingly, part 61 of the Federal Aviation Regulations (14 CFR part 61) is proposed to be amended as follows:

**PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS**

1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. Appendix 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. Section 61.56 is revised to read as follows:

**§ 61.56 Flight review.**

(a) A flight review consists of a minimum of 1 hour of flight instruction and 1 hour of ground instruction. The review must include—

(1) A review of the current general operating and flight rules of Part 91 of this chapter; and

(2) A review of those maneuvers and procedures which, in the discretion of the person giving the review, are necessary for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate.

(b) Glider pilots may substitute a minimum of three instructional flights in a glider, each of which includes a 360-degree turn, in lieu of the 1 hour of flight instruction required in paragraph (a) of this section.

(c) Except as provided in paragraphs (d) and (e) of this section, no person may act as pilot-in-command of an aircraft unless, since the beginning of the 24th calendar month before the month in which that pilot acts as pilot in command, that person has—

(1) Accomplished a flight review given in an aircraft for which that pilot is rated by an appropriately rated instructor certificated under this part or other person designated by the Administrator; and

(2) A logbook endorsed by the person who gave the review certifying that the person has satisfactorily completed the review.

(d) A person who has, within the period specified in paragraph (c) of this section, satisfactorily completed a pilot proficiency check conducted by the FAA, an approved pilot check airman, or a U.S. Armed Force, for a pilot certificate, rating, or operating privilege, need not accomplish the flight review required by this section.

(e) A person who has, within the period specified in paragraph (c) of this section, satisfactorily completed one or more phases of an FAA-sponsored pilot proficiency award program need not accomplish the flight review required by this section.

(f) The requirements of this section may be accomplished in combination with the requirements of § 61.57 and other applicable recency requirements at the discretion of the instructor.

Issued in Washington, DC, July 14, 1992

**Thomas C. Accardi,**

*Director, Flight Standards Service.*

[FR Doc. 92-17272 Filed 7-21-92; 8:45 am]

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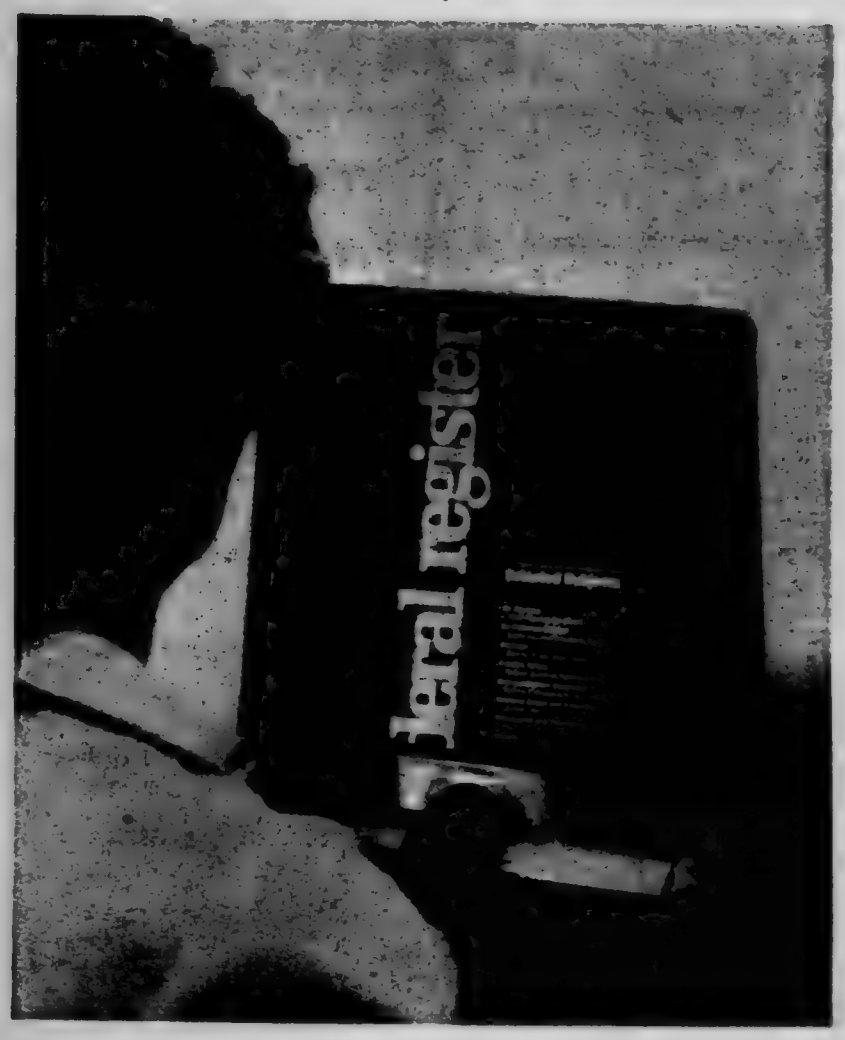


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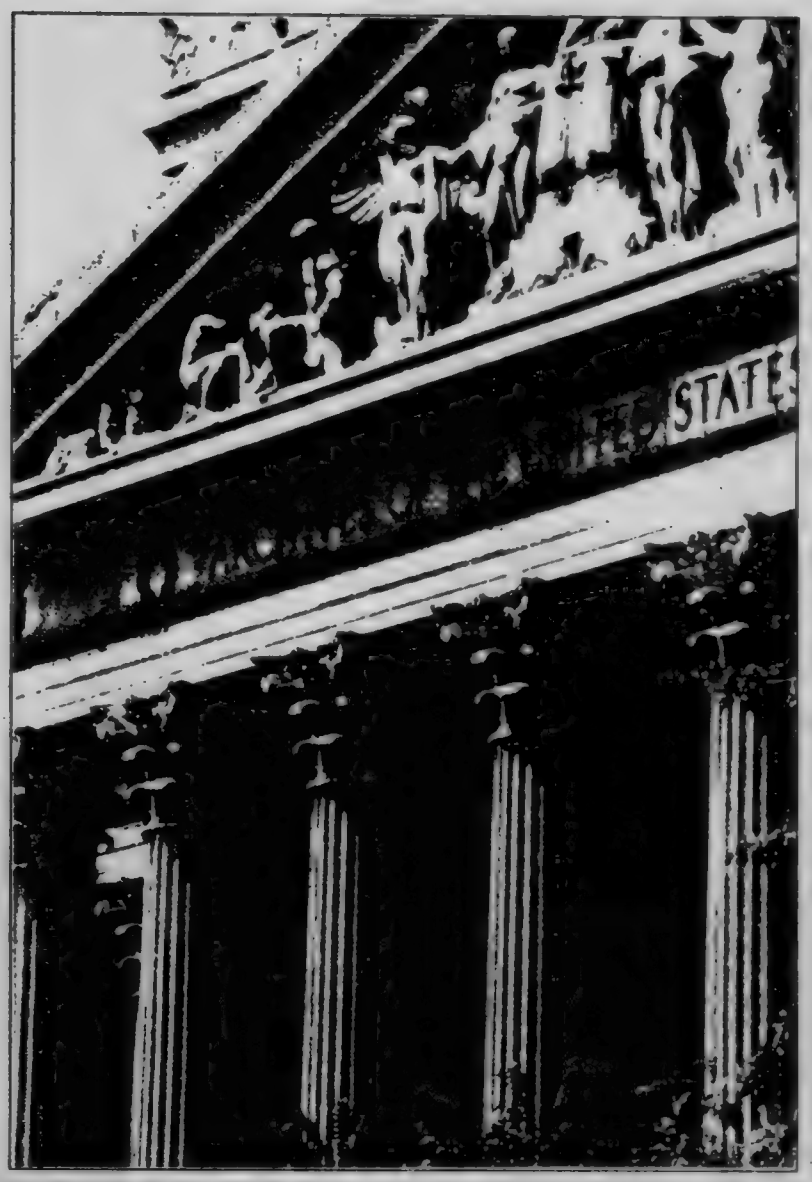


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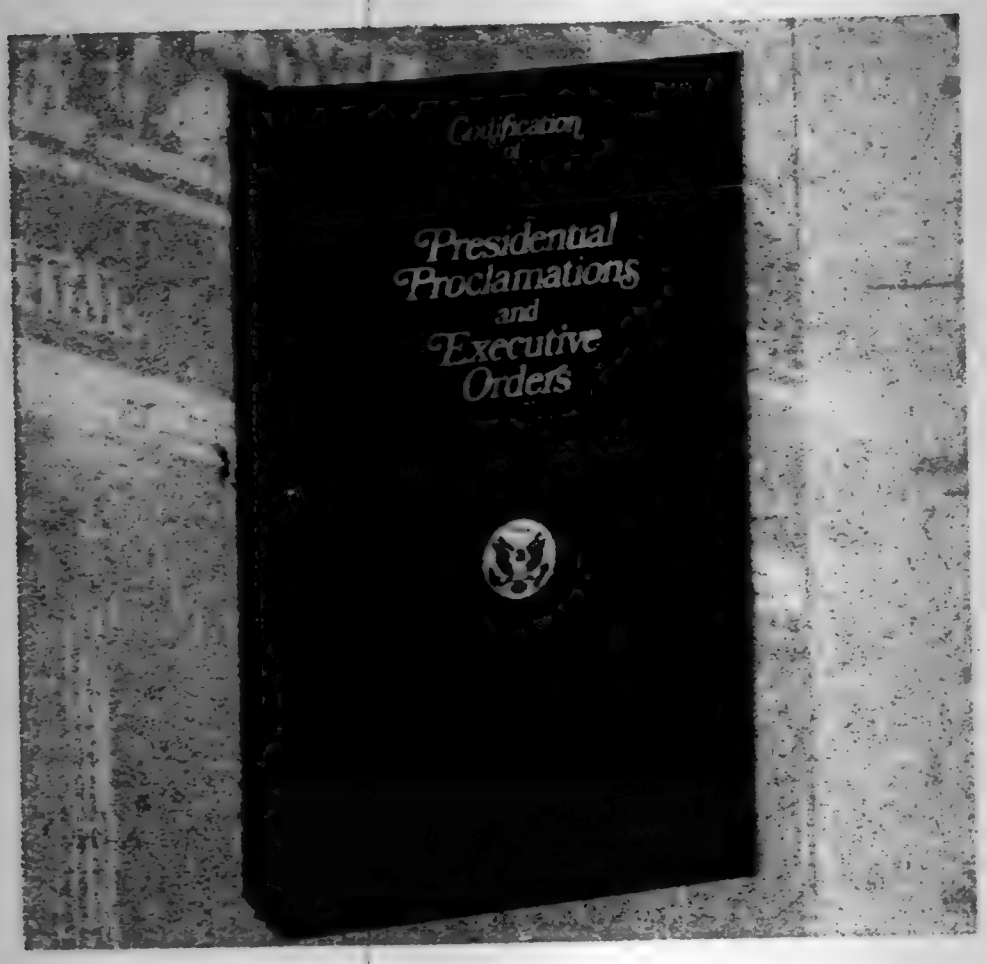


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# Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 351

### Reduction in Force Ratings for Retention—Longer Period to Credit Ratings; Clarification of Assignment Rights; Correction

**AGENCY:** Office of Personnel Management.

**ACTION:** Correcting amendments.

**SUMMARY:** This document corrects an error made in a final rule under 5 CFR part 351 published December 17, 1991 (56 FR 65415). A revision was made without reference to an amendment published on September 6, 1991 (56 FR 43995). This correction amends the December 17, 1991, final rule to conform to the earlier change.

**EFFECTIVE DATE:** January 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Glennon or Edward P. McHugh, (202) 606–0960.

**SUPPLEMENTARY INFORMATION:** On December 17, 1991, OPM published a final rule under 5 CFR part 351 that revised § 351.803(b). This revision was made without reference to an earlier revision published on September 6, 1991, which redesignated § 351.803 as § 351.802 and made a revision to paragraph (b). Correcting amendments are made to §§ 351.802(b) and 351.803(b) below.

**List of Subjects in 5 CFR Part 351**

Administrative practice and procedure, Government employees.

Office of Personnel Management.

**Douglas A. Brook,**

*Acting Director.*

Accordingly, 5 CFR part 351 is corrected by making the following correcting amendments:

## PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3502, 3503.

2. In § 351.802, paragraph (b) is revised to read as follows:

**§ 351.802 Content of notice.**

* * * * *

(b) The employee's competitive area, competitive level, subgroup, service date, and annual performance ratings of record received during the last 4 years as provided in § 351.504 of this part;

* * * * *

3. In § 351.803, paragraph (b) is revised to read as follows:

**§ 351.803 Notice of eligibility for reemployment and other placement assistance.**

* * * * *

(b) When 50 or more employees in a competitive area receive separation notices under this part, the agency must provide notification of the action, at the same time it issues specific notices of separation to employees, to:

(1) The State dislocated worker unit, as designated or created under title III of the Job Training Partnership Act;

(2) The chief elected official of local government(s) within which these separations will occur; and

(3) OPM.

* * * * *

[FR Doc. 92–17307 Filed 7–22–92; 8:45 am]
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### 5 CFR Part 842

**RIN 3205–AE15**

### Federal Employees Retirement System—Law Enforcement Officers, Firefighters, and Air Traffic Controllers

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is adopting, with amendments, its interim regulations governing the special retirement provisions for law enforcement officers, firefighters, and air traffic controllers employed under the Federal Employees Retirement System (FERS). These final regulations implement certain statutory changes enacted since the current regulations were issued; correct or clarify certain provisions; and put into effect a limited authority for Executive department heads to delegate the authority to determine that a position qualifies as a law enforcement officer or firefighter position.

**EFFECTIVE DATE:** August 24, 1992.

**FOR FURTHER INFORMATION CONTACT:** John E. Landers, (202) 606–0299.

**SUPPLEMENTARY INFORMATION:** Sections 8412 (d) and (e) of title 5, United States Code, provide immediate and enhanced retirement benefits for FERS employees who (1) have attained age 50 and completed 20 years of service as a law enforcement officer, firefighter, or air traffic controller; or (2) have completed 25 years of such service (regardless of age). Employees who qualify as law enforcement officers (5 U.S.C. 8401(17)), firefighters (5 U.S.C. 8401(14)), or air traffic controllers (5 U.S.C. 2109) are subject to special rules regarding employee deductions and agency contributions (5 U.S.C. 8422 and 8423). They are also subject to mandatory separation based on age (5 U.S.C. 8425).

Note: Public Law 101–428, enacted October 15, 1990, extended benefits under 5 U.S.C. 8412(d) to members of the Capitol Police, not by including them in the definition of "law enforcement officer," but by identifying them separately in 5 U.S.C. 8412(d). OPM's regulations at 5 CFR part 842, subpart H, which are the focus of this rulemaking, do not address members of the Capitol Police.

On January 16, 1987, we published interim regulations (at 52 FR 2068) to implement the special retirement law provisions for FERS employees serving as law enforcement officers, firefighters, and air traffic controllers. Those regulations provided necessary definitions, standards and procedures, and also delegated certain authorities to employing agencies. We are now adopting the interim regulations, with changes, as final rules. The changes are necessary to implement certain statutory changes, correct or clarify certain provisions, and to revise a particular delegation limit.

The remainder of this supplementary information section is divided into four parts. The first part addresses comments on the interim regulations. The second part discusses regulatory changes required by law changes. The third part explains the regulatory changes made to correct or clarify certain provisions. The fourth part describes other changes being made in the interim regulations.

**1. Comments on Interim Regulations**

OPM received written comments from various Federal agencies, employee associations, and individuals regarding the January 16, 1987, interim regulations on FERS law enforcement officers, firefighters, and air traffic controllers. We have carefully considered these comments, as discussed below.

*Maximum Entry Age*

A number of commenters objected to the requirement that maximum entry ages be established for rigorous law enforcement officer and firefighter positions. (See § 842.804(a).) Several commenters expressed concern that agencies had hired FERS employees into rigorous positions for which they had not yet established a maximum entry age; a grace period was suggested. One agency asserted that the statutory requirement that law enforcement officer and firefighter positions be limited to "young" individuals was satisfied by having a mandatory separation age. This is not true since the mandatory separation age is triggered only if an employee has acquired 20 years of law enforcement officer or firefighter service.

We continue to believe that carrying out the law requires that maximum entry ages be established for all rigorous law enforcement officer and firefighter positions. At the same time, we recognize that there was an unavoidable lag between the promulgation of the requirement and actual establishment of the maximum entry ages in many agencies. As explained in part 2, the FERS law was amended to provide some flexibility in application of the maximum entry age requirement. (See discussion of section 103(a)(2) of Public Law 100–238 in part 2.)

*Minimum Physical Qualifications*

Some commenters were concerned about the requirement that minimum physical qualifications be established for rigorous law enforcement officer and firefighter positions. Some were confused as to whether the regulations required rigorous positions to have both maximum entry age limits and physical qualifications. The law states that employment opportunities in these positions are to be "limited to young and physically vigorous individuals." This language clearly implies use of both maximum entry age limits and physical qualifications. The interim regulations noted these requirements in § 842.804(a). This section specifically provides that physical qualifications are to be determined by the agency head based on the personnel management needs of the agency. The physical qualifications may consist of either physical requirements or medical standards or a mix of the two, as long as the set of qualifications adopted ensures that the position in question is limited to physically vigorous individuals. Some commenters were concerned that agencies had hired FERS employees into rigorous positions for which they had not yet established physical qualifications. As discussed above relative to maximum entry ages, this problem was addressed by a subsequent law change. (See discussion of section 103(a)(2) of Public Law 100–238 in part 2.)

*Definition of Primary Duties*

Some commenters objected to the definition of the term "primary duties" as set forth in § 842.802—in particular, the statement that, in general, if an employee spends an average of at least 50 percent of his or her time performing a duty or group of duties, they can be considered his or her primary duties. A parallel statement was added to the CSRS regulations on law enforcement officers and firefighters on December 5, 1990, and this issue was fully addressed in the accompanying supplementary information (see 55 FR 50153). As explained there, the 50-percent standard is merely an optional substitute standard—in effect, a short-cut method of determining that an employee meets the regular definitional requirements without the need for further evidence or support. If, in a rare instance, an employee does not satisfy the 50-percent standard but does satisfy the regular definition requirements (duties are paramount, etc.), the employee's duties will qualify as primary duties.

*Experience Requirement for Administrative Positions*

A number of commenters objected to the regulatory requirement that an administrative secondary position (in which an employee can continue special retirement coverage) must be one where actual experience in the law enforcement or firefighting field is a mandatory prerequisite. (See the definition of "secondary position" in § 842.802.) Some preferred the old language used in the parallel CSRS regulations: "basic qualification" rather than "mandatory prerequisite." OPM's longstanding policy in administering the CSRS has been that an administrative secondary position must require past experience in a primary position. Coverage of administrative staff under the early retirement plan is justified only if it is necessary to fill the administrative positions with employees covered under the plan, who, if not allowed to continue the special retirement coverage, would not be willing to accept administrative posts. Where past primary position experience is not needed in the administrative position, the employing agency's ability to staff its administrative functions is enhanced because it can hire from sources other than primary positions. An administrative position that does not require primary experience is not really in the law enforcement officer or firefighter career track, and it was the intent of the law that the special early retirement benefit be reserved for individuals remaining on that career track. The term "basic qualification" has consistently been interpreted by OPM to mean a fundamental or essential requirement; however, since some agencies appeared to be confused about the term's meaning, we sought to clarify our policy by using the term "mandatory prerequisite." This change was made in the CSRS regulations governing law enforcement officers and firefighters on December 17, 1987 (see 52 FR 47893). The regulation provided some liberalization in the policy by expressly allowing for the experience requirement to be satisfied by equivalent work outside the Federal Government. The FERS interim regulations simply establish a parallel rule for FERS law enforcement officers and firefighters.

It should be noted that, on rare occasions, a position may qualify for approval as an administrative secondary position even though the official position description does not identify rigorous experience as a mandatory prerequisite. This would be appropriate if, at the time the position is being filled, there is a valid organizational need that mandates filling the administrative position only with someone having rigorous experience; in this case, the position would be deemed to meet the mandatory prerequisite requirement during the tenure of the individual hired to meet that need. As a general rule, however, position descriptions should be revised to reflect such an organizational need.

*Continuous Secondary Coverage Requirement*

A number of commenters objected to § 842.803(b)(iii), which required that an employee be continuously employed in a secondary position without a break in service (excluding involuntary separations) after transferring from a rigorous position. A parallel requirement is found in the CSRS regulations published on December 17, 1987, and

this issue was addressed in the accompanying supplementary information (see 52 FR 47893). The continuous secondary coverage requirement supports a basic purpose of the early retirement provision which is to retain young and vigorous employees in a special Federal career track. We note that employees in secondary positions continue to be subject to mandatory separation (at age 55 for firefighters and at age 57 for law enforcement officers). Since mandatory separation is triggered only when an employee has 20 years of law enforcement officer or firefighter service, it is reasonable to require employees to remain continuously in the Federal law enforcement or firefighting career field as a condition of secondary coverage. Many of the concerns raised by agencies about this requirement—for example, the need for cross training and career development—can be addressed by use of details and temporary promotions. Other situations can be addressed by putting employees in a leave-without-pay status.

*Redelegation of Approval Authority*

Several commenters objected to the prohibition on agency head redelegation of the authority to approve positions as law enforcement officer or firefighter positions. In addition, representatives of the Inspector General commmunity expressed concern about possible interference with their independence if agency heads had authority to make decisions regarding positions in their offices; they requested to be designated as "agency heads" for purposes of the regulations. As we explained in the supplementary information accompanying the interim regulations, we prohibited redelegation of the position approval authority because of the potentially significant impact of these decisions on an agency's budget. In addition, this redelegation limit ensures agency-wide consistency in coverage determinations. We continue to believe that the need for fiscal descipline and consistency argues for having this authority reside in a single high-level official who has responsibility for both personnel and budgetary matters for the entire agency. However, as explained in part 4 of this supplementary information, we are amending the regulations to allow Executive department heads to delegate position approval authority to a single headquarters-level official who is a direct subordinate.

*OMP Oversight*

Several commenters objected to § 842.808, which sets forth the possibility that OPM may overrule an agency decision to approve a law enforcement officer or firefighter position. Some agencies requested that there be a time limit on such OPM reversals or that the reversals be prospective only. If OPM determines that an agency approval is not valid under the law or regulations, it must order a retroactive correction. While agency decisions will be given due deference within the bounds of the law and regulations, agency errors cannot create statutory rights that do not otherwise exist. (See *OPM* v. *Richmond*, 110 S.Ct. 2465 (1990).) In any event, OPM's oversight role is an inherent part of its underlying statutory authority to make these determinations and its continuing responsibility to determine whether continued delegation of this authority is appropriate.

**2. Revisions Required Due to Changes in Law**

Public Law 100–238, enacted January 8, 1988, made a number of technical corrections to the FERS Act, including several changes to the retirement law provisions respecting law enforcement officers and firefighters. These changes require corresponding changes in the regulations.

Section 103(c) of Public Law 100–238 reduced from 10 years to 3 years the period of time a law enforcement officer or firefighter must serve in a rigorous position before transferring to a secondary position (that is, a supervisory or administrative position) with entitlement to continue his or her coverage under the special FERS provisions for law enforcement officers and firefighters. This statutory change was made effective retroactive to January 1, 1987. Accordingly, we are revising § 842.803(b)(ii) of the interim regulations, as well as several references in § 842.809, to reflect the change.

Section 103(a)(2) of Public Law 100–238 amended the definitions of "law enforcement officer" and "firefighter" under FERS. Previously, one of the conditions under the definition was that the duties of the position are "sufficiently rigorous that employment opportunities are required to be limited to young and physically vigorous individuals." This condition was changed by replacing the words "are required to be" with the words "should be." The legislative history of Public Law 100–238 provides no explanation for this change (see House Report 100–374, October 15, 1987, page 21). However, during the months prior to the law's passage, OPM had received comments from some agencies who expressed concern about the validity of their employees' coverage under 5 U.S.C. 8412(d) given the fact that they had not yet had time to establish maximum entry age limits or physical qualifications for their positions. Some agencies also expressed doubts about their authority to establish maximum entry age limits for FERS law enforcement officers and firefighters.

Section 103(a)(1) of Public Law 101–238 provided agency heads with express authority to establish maximum entry ages and the above-described change in section 103(a)(2) was labeled a "clarifying amendment." Since the law states that rigorous law enforcement officer and firefighter positions "should be" limited to young employees and since agencies have the power to ensure that this limiting occurs by establishing maximum entry ages, we conclude that agencies are obligated to establish maximum entry ages for rigorous positions as soon as reasonably possible. Given this, as well as the historical context of the law change, we are giving effect to the "should be" language by amending the interim regulations to allow a position to be considered a rigorous law enforcement officer or firefighter position during any temporary lag that is necessary in establishing a maximum entry age or physical qualifications for a position. The definition of "rigorous position" in section 842.802 of the interim regulations and § 842.804(a) (regarding position documentation requirements) are revised accordingly.

This regulatory change will have particular effect on FERS law enforcement officers and firefighters serving in rigorous positions when the FERS Act took effect or who were hired shortly afterward—before agencies were able to establish maximum entry ages or physical qualifications. It is anticipated that, in the future, agencies generally will be able to establish maximum entry age limits and physical qualifications at the time new rigorous positions are approved.

Section 103(c) of Public Law 100–238 also amended the definition of "law enforcement officer" by adding a new category of qualifying employees who are not subject to the normal definitional requirements. (See 5 U.S.C. 8401(17)(B).) This category consists of employees of the Department of Interior or the Department of Treasury (specifically, officers in the U.S. Park Police and the Uniformed Division of the Secret Service) who, but for enactment of the FERS Act, would be subject to the District of Columbia Police and Firefighters' Retirement System. This

provision was meant to ensure that a group of employees who had historically had eligibility for an early retirement benefit would continue such eligibility. We are therefore revising the regulatory definition of "law enforcement officer" in § 842.802 to include this category. A corresponding change is also made in the definition of "rigorous position" so that positions held by employees under 5 U.S.C. 8401(17)(B) are considered rigorous positions for the purpose of these regulations. In addition, § 842.808(a) is revised to note that determinations under 5 U.S.C. 8401(17)(B) are not subject to OPM review.

Public Law 100–92, which was enacted on August 18, 1987, provided that the definition of "air traffic controller" in 5 U.S.C. 2109 that took effect on January 1, 1987, was applicable to service performed before 1987, as long as the employee's annuity was based on a separation from service occurring on or after January 1, 1987. This allowed flight service station specialist service to be counted as air traffic controller service for employees separating for retirement on or after January 1, 1987, even though it did not qualify as air traffic controller service under the definition in effect at the time the service was performed. We are revising § 842.809(a) of the interim regulations accordingly.

Public Law 100–92 also provided that the Office of Personnel Management shall accept the certification of the "designee" of the Secretary of Transportation or the Secretary of Defense, as applicable, in determining the amount of service performed by any air traffic controller. Accordingly, we are revising the definition of "agency head" in § 842.802 to include such designees.

### 3. Revisions to Correct and Clarify

In § 842.802 of the interim regulations, we are removing an erroneous reference to 5 U.S.C. 8414(c), which deals with certain military reserve technicians who are eligible for early retirement. The regulations in subpart H do not address these military reserve technicians.

The definition of "air traffic controller" is revised to clarify that it includes only first-level supervisors of employees actively engaged in actual air traffic control duties. This is required by the law, which includes only "immediate supervisors in the definition of "air traffic controller" (see 5 U.S.C. 2109).

A grammatical error in § 842.802 is corrected by inserting a paragraph break after the first sentence in the definition of "primary duties." (This same correction was made in the parallel CSRS definition in a final rule published on December 5, 1990, at 55 FR 50153.)

The definition of "secondary position" is revised to be consistent with the parallel CSRS definition. As explained in the supplementary information accompanying the final CSRS regulation issued on December 17, 1987 (see 52 FR 47693), the revised language makes clear that a secondary position must be a position that is in the career track for a law enforcement officer or firefighter—that is, a position which requires actual experience in a rigorous position, or an equivalent position outside the Federal Government.

Section 842.803(b)(ii) is revised to clarify that the 3-year rigorous service requirement can be met using service not covered by FERS deductions, if otherwise qualifying. Thus, nondeduction service—for example, service under a temporary or intermittent appointment—can count toward the 3-year requirement. This rule is based on 5 U.S.C. 8401 (14)(B) and (17(C), which state that the 3-year requirement is met by an employee who transfers to a supervisory or administrative position "after performing duties" that met the conditions that would qualify a position as a rigorous position. Since an employee can perform the duties applicable to a rigorous position while not covered by FERS retirement deductions, nondeduction service in a qualifying Federal Government position can be counted toward the 3-year requirement.

For purposes of the 3-year requirement, it does not matter whether the service is actually made creditable by payment of a deposit or whether the service cannot be made creditable. Thus, even post-1988 nondeduction service (which can never be made creditable under FERS for annuity entitlement or computation purposes) can be used to meet the 3-year requirement. However, in all cases, to have the special benefit coverage while in a secondary position, the employee is still required to be serving in a rigorous position actually subject to FERS deductions at the time of transfer to a secondary position. (See § 842.803(b)(1).)

Several other revisions are made in § 842.803(b). Some of these are just a matter of reformatting the material. For example, the parenthetical phrase in § 842.803(b)(ii) dealing with first-level supervisors is removed and a new paragraph (a)(3) is added; this reformatting has no substantive effect. In addition, the language in paragraphs (a) and (b) dealing with details is broadened to expressly include temporary promotions.

A new § 842.805(g) is added to make clear that an employee occupying a law enforcement officer, firefighter, or air traffic controller position who is detailed or temporarily promoted to a position not conveying special retirement coverage continues to be covered under 5 U.S.C. 8412 (d) or (e).

Section 842.809 of the interim regulations provides transitional rules for employees with Federal service as law enforcement officers, firefighters, or air traffic controllers before becoming covered by FERS. We are making several revisions in the section to clarify when CSRS definitions and procedures apply in determining whether service qualifies as law enforcement officer or firefighter service. Generally, the FERS definitions of law enforcement and firefighter are more restrictive than those under CSRS. (See House Report 99–606, May 16, 1986, page 132.)

Section 842.809(b) provides that CSRS-covered service performed before an employee becomes covered under FERS (through automatic coverage or voluntary transfer) is not subject to the FERS definitions of law enforcement officer and firefighter. As stated in the supplementary information that accompanied the FERS interim regulations dated January 16, 1987 (52 FR 2068), the FERS definitions take effect on January 1, 1987, and "for employees under the current system [CSRS], the current definitions remain applicable until such time as he or she becomes subject to FERS, either automatically (for short-service employees) or by election * * *" Section 842.809(e) of the interim regulations states that determinations based on the CSRS definitions of law enforcement officer of firefighter must be made in accordance with the CSRS regulations, which require OPM approval. However, § 842.809(d) of the interim regulations appears to allow agency heads to make determinations regarding past CSRS-covered service that is now creditable under FERS (for annuity entitlement and computation purposes), even though the CSRS definitions apply. To eliminate any confusion, we are revising and consolidating § 842.809 (d) and (e) into a new paragraph (d).

The interim regulations in § 842.809 did not take into account the possibility of nondeduction service being performed before becoming covered under FERS. We are, therefore, revising the section to address when CSRS or FERS definitions apply to nondeduction service performed before an employee becomes covered by FERS. These

revisions are made in § 842.809(b) and (d).

These changes will make clear that the CSRS definitions of law enforcement officer and firefighter, as well as CSRS regulatory procedures, apply to all service before January 1, 1987 (when the FERS definition came into effect), and to post-1986 service that was subject to CSRS deductions at the time it was performed or that is creditable toward a CSRS component of a FERS annuity; conversely, FERS definitions and procedures apply to FERS-covered service and all other post-1986 service. (We note that even though post-1986 nondeduction service is not creditable under FERS rules, such service counts toward the 3-year requirement in § 842.803(b).)

**4. Other Changes**

Invoking its authority under 5 U.S.C. 1104, OPM delegated authority to employing agencies to approve positions as law enforcement officer or firefighter positions under FERS in the interim regulations. Because of the potentially significant impact of the coverage decisions on the Federal budget, coverage determination authority was delegated specifically to the head of the Executive agency—that is, a Cabinet-level Executive department, an independent establishment, or a Government corporation (see 5 U.S.C. 101–105)—with redelegation to lower levels expressly prohibited. (See § 842.803(d) of the interim regulations and supplementary information at 52 FR 2068.)

Upon further consideration, we believe that a very limited redelegation should be permitted. These final regulations would, by revising the definition of "agency head" in § 842.802 allow the head of an Executive department (as defined in 5 U.S.C. 101 to mean one of the 14 Cabinet-level departments in the Government) to delegate this coverage determination authority to a single headquarters-level official who reports directly to the department head. This change would allow Executive department heads to be relieved of this particular decision-making burden. At the same time, the deciding official would be at a level where he or she is sensitive to the long-term budget and personnel implications of these coverage determinations, and in a position to ensure department-wide consistency.

These regulations do not permit redelegation to any official below the head of a Federal agency except as explained above in the case of Executive departments. The head of a component of an Executive department—such as one of the military departments or a component agency such as the Internal Revenue Service (Treasury Department)—is not permitted to make these determinations.

Section 842.804(c) allows an individual to request a determination as to whether his or her position qualifies as a law enforcement officer, firefighter, or air traffic controller position. Of course, any affirmative determination must be made by the agency head in accordance with § 842.803. However, a denial of an individual request for position approval may be made by the agency head's designated representative, in accordance with agency delegations of authority. Any final agency decision denying an individual's request for position approval may be appealed to the Merit Systems Protection Board.

We are amending § 842.807 to clarify that (1) only agency denial decisions made in response to individual requests under § 842.804(c) are subject to appeal and (2) agency denial decisions may be made by officials below the level of agency head. We are also adding a new paragraph in § 842.807 to expressly address individual appeal rights in cases where an agency denies secondary coverage to an employee serving in an approved secondary position because the employee was found not to meet all the requirements for continuation of coverage.

Finally, we are revising the interim regulations at § 842.808(a) to require agencies to provide additional information when they approve a position as a law enforcement officer or firefighter position. In addition to providing the position title and number of incumbents, agencies are required to identify whether the position was rigorous or secondary and, if rigorous, provide the established maximum entry age or the date by which the maximum entry age will be established.

**Executive Order 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies.

**List of Subjects in 5 CFR Part 842**

Air Traffic Controllers, Claims, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

**Constance Berry Newman,**

*Director.*

Accordingly, OPM is adopting its interim regulations under 5 CFR part 842 published at 52 FR 2068 on January 16, 1987, as final with the following changes:

## PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

1. The authority citation for part 842 continues to read as follows:

**Authority:** 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 and 5 U.S.C. 8402(c)(1); §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

**Subpart H—Law Enforcement Officers, Firefighters, and Air Traffic Controllers**

**§ 842.801 [Amended]**

2. In § 842.801, paragraph (a)(1) is amended by deleting the word "and 8414(c)".

**§ 842.802 [Amended]**

3. In § 842.802, the definition of *agency head* is amended by adding the following sentence at the end of the definition:

**§ 842.802 Definitions.**

* * * * *

*Agency Head* * * * For purposes of this subpart, "agency head" is also deemed to include the designated representative of the head of an executive department as defined in 5 U.S.C. 101, except that for provisions dealing with law enforcement officers and firefighters, the designated representative must be a department headquarters-level official who reports directly to the executive department head and who is the sole such representative for the entire department.

* * * * *

4. In § 842.802, the last sentence in the definition of "air traffic controller" is revised to read as follows:

**§ 842.802 [Amended]**

* * * * *

*Air traffic controller* * * * Also included in this definition is an employee who is the first-level supervisor of any air traffic controller as described above.

* * * * *

5. In § 842.802, the second sentence of the definition of *firefighter* is amended by removing the word "in" the second time it appears and adding in its place the word "is".

6. In § 842.802, the definition of "law enforcement officer" is amended by adding after the second sentence the following sentence:

**§ 842.802 [Amended]**

* * * * *

*Law enforcement officer* * * * *Law enforcement officer* also includes, as required by 5 U.S.C. 8401(17)(B), an employee of the Department of the Interior or the Department of the Treasury who occupies a position that, but for enactment of chapter 84 of title 5, United States Code, would be subject to the District of Columbia Police and Firefighters' Retirement System, as determined by the Secretary of the Interior or the Secretary of the Treasury, as appropriate. * * *

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**§ 842.802 [Amended]**

7. In § 842.802, the definition of "primary duties" is amended by adding a paragraph break after the first sentence (ending with "basis") and redesignating the last two sentences as separate concluding text.

8. In § 842.802, the definition of "rigorous position" is amended by removing the words "are required to be limited" in the introductory text and adding in their place the words "should, as soon as reasonably possible, be limited (through establishment of a maximum entry age and physical qualifications)" and by adding the following sentence at the end of the definition:

**§ 842.802 [Amended]**

* * * * *

"Rigorous position" * * * "Rigorous position" is also deemed to include a position held by a law enforcement officer as identified in 5 U.S.C. 8401(17)(B) (related to certain employees in the Departments of the Interior and the Treasury).

* * * * *

9. In § 842.802, the definition of "secondary position" is revised to read as follows:

**§ 842.802 [Amended]**

* * * * *

*Secondary position* means a position that—

(a) Is clearly in the law enforcement or firefighting field;

(b) Is in an organization having a law enforcement or firefighting mission; and

(c) Is either—

(1) Supervisory; that is, a position whose primary duties are as a first-level supervisor or law enforcement officers or firefighters in rigorous positions; or

(2) Administrative; that is, an executive, managerial, technical, semiprofessional, or professional position for which experience in a rigorous law enforcement or firefighting position, or equivalent experience outside the Federal Government, is a mandatory prerequisite.

10. In § 842.803, paragraph (a), paragraph (b), and paragraph (d) are revised to read as follows:

**§ 842.803 Conditions for coverage.**

(a) *Rigorous positions.* (1) An employee's service in a position that has been determined by the employing agency head to be a rigorous law enforcement officer or firefighter position is covered under the provisions of 5 U.S.C. 8412(d).

(2) An employee who is not in a rigorous position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a rigorous position is not covered under the provisions of 5 U.S.C 8412(d).

(3) A first-level supervisor position may be determined to be a rigorous position if it satisfies the conditions set forth in § 842.802.

(b) *Secondary positions.* (1) An employee's service in a position that has been determined by the employing agency head to be a secondary law enforcement officer or firefighter position is covered under the provisions of 5 U.S.C. 8412(d), if all of the following criteria are met:

(i) The employee, while covered under the provisions of 5 U.S.C 8412(d), moves directly (that is, without a break in service exceeding 3 days) from a rigorous position to a secondary position;

(ii) The employee has completed 3 years of service in a rigorous position, including any such service during which no FERS deductions were withheld; and

(iii) The employee has been continuously employed in a secondary position or positions since moving from a rigorous position without a break in service exceeding 3 days, except that a break in employment in secondary positions that begins with an involuntary separation (not for cause), within the meaning of 5 U.S.C. 8414(b)(1)(A), is not considered in determining whether the service in secondary positions is continuous for this purpose.

(2) An employee who is not a rigorous position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a secondary position is not covered under the provisions of 5 U.S.C. 8412(d).

* * * * *

(d) Except as specifically provided in this subpart, an agency head's authority under this section cannot be delegated.

11. In § 842.804, the second sentence of paragraph (a) is revised to read as follows:

**§ 842.804 Evidence.**

(a) * * * The official documentation for the position should, as soon as is reasonably possible, establish that the primary duties of the position are so rigorous that the agency does not allow individuals to enter the position if they are over a certain age or if they fail to meet certain physical qualifications (that is, physical requirements and/or medical standards), as determined by the employing agency head based on the personnel management needs of the agency for the positions in question.* * *

* * * * *

12. In § 842.805, paragraph (f) is amended by removing the word "detained" and adding in its place the words "detailed or temporarily promoted"; and paragraph (g) is added to read as follows:

**§ 842.805 Withholding and contributions.**

* * * * *

(g) While an employee who holds a rigorous, secondary, or air traffic controller position is detailed or temporarily promoted to a position that is not a rigorous, secondary, or air traffic controller position, the additional withholdings and agency contributions will continue to be made.

13. § 842.807 is revised to read as follows:

**§ 842.807 Review of decisions.**

(a) The final decision of an agency denying an individual's request for approval of a position as a rigorous, secondary, or air traffic controller position made under § 842.804(c) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(b) The final decision of an agency denying an individual coverage while serving in an approved secondary position because of failure to meet the conditions in § 842.803(b) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

14. In § 842.808, paragraph (a) is revised to read as follows:

**§ 842.808 Oversight of coverage determinations.**

(a) Upon deciding that a position is a law enforcement officer or firefighter position, each agency head must notify OPM (Attention: Associate Director for Retirement and Insurance) stating the title of each position, the number of incumbents, whether the position is rigorous or secondary, and, if the position is rigorous, the established maximum entry age (or if no maximum entry age has yet been established, the date by which it will be established). The Director of OPM retains the authority to overrule an agency head's determination that a position is a rigorous or secondary position, except such a determination under 5 U.S.C. 8401(17)(B) (concerning certain employees in the Departments of the Interior and the Treasury) or under 5 U.S.C. 8401(17)(D) (concerning certain positions primarily involved in detention activities).

* * * * *

15. In § 842.809, paragraph (e) is removed; paragraph (a), the last sentence of paragraph (b) introductory text, and paragraph (d) are revised; and paragraphs (b)(1) and (2) are added to read as follows:

**§ 842.809 Transitional provisions.**

(a) Any service as an air traffic controller, within the meaning of this term under 5 U.S.C. 2109 as in effect on or after January 1, 1987—even if performed before that date—is included in determining an employee's length of air traffic controller service under 5 U.S.C. 8412(e) for the purposes of retirement eligibility and for mandatory separation under 5 U.S.C. 8425(a) as long as the annuity is based on a separation from service occurring after 1986.

(b) * * * The FERS definitions of firefighter under 5 U.S.C. 8401(14) and law enforcement officer under 5 U.S.C. 8401(17) are not applicable to service performed—

(1) Before 1987; or

(2) After 1986 and before an employee first becomes subject to chapter 84 (that is, subject to FERS deductions), unless that service was neither subject to CSRS deductions nor creditable in a CSRS component as described in § 846.304(b).

* * * * *

(d) (1) The CSRS definitions of law enforcement officer under 5 U.S.C. 8331(20) and firefighter under 5 U.S.C. 8331(21) are applicable to service performed before an employee became subject to chapter 84 if the service was—

(i) Subject to CSRS deductions at the time it was performed (including service that becomes creditable under FERS annuity computation rules);

(ii) Performed before 1987 and not subject to retirement deductions; or

(iii) Performed after 1986 and not subject to retirement deductions but is creditable in a CSRS component as described in § 846.304(b).

(2) The determination of whether any service meets the CSRS definitions of law enforcement officer under 5 U.S.C. 8331 (20) or firefighter under 5 U.S.C. 8331(21) must be made in accordance with the provisions of Subpart I of Part 831 of this chapter.

**§ 842.809 [Amended]**

16. In § 842.809, the term "10-year" is revised to read "3-year" in paragraphs (b), (c)(1)(ii), and (c)(2)(ii).

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 170 and 171

RIN 3150-AE20

### Revision of Fee Schedules; 100% Fee Recovery, FY 1992

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement Public Law 101-508, signed into law on November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1992 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1992 is approximately $492.5 million.

**EFFECTIVE DATE:** August 24, 1992.

**FOR FURTHER INFORMATION CONTACT:** C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-4301.

**SUPPLEMENTARY INFORMATION:**

I. Background.
II. Responses to Comments.
III. Final Action—Changes Included in Final Rule.
IV. Section-by-Section Analysis.
V. Environmental Impact: Categorical Exclusion.
VI. Paperwork Reduction Act Statement.
VII. Regulatory Analysis.
VIII. Regulatory Flexibility Analysis.
IX. Backfit Analysis.

### I. Background

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), signed into law on November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered Nuclear Waste Fund (NWF) for FYs 1991 through 1995 by assessing license, inspection, and annual fees.

On July 10, 1991 (56 FR 31472), the NRC published a final rule in the **Federal Register** which established the part 170 professional hourly rate and the materials licensing and inspection fees as well as the part 171 annual fees to be assessed to recover approximately 100 percent of the FY 1991 budget. The July 10, 1991, final rule became effective August 9, 1991. In addition to establishing the FY 1991 fees, the August 9, 1991, final rule established the underlying basis and method for determining the part 170 hourly rate and fees and the part 171 annual fees.

This final rule includes the limited changes made to 10 CFR parts 170 and 171 which were issued as a final rule on April 17, 1992 (57 FR 13625), with an effective date of May 18, 1992. The limited change to part 170 allows the NRC to bill quarterly for those license fees that are currently billed every six months. The limited change to part 171 adjusts the maximum annual fee assessed a materials licensee who qualifies as a small entity under the NRC's size standards. The maximum annual fee of $1,800 per licensed category is continued for FY 1992. However, a lower tier small entity fee of $400 per licensed category has been established for small businesses and non-profit organizations with gross receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

On April 29, 1992 (57 FR 18095), the NRC published the proposed rule that presented the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its

budget authority for FY 1992 less the appropriation received from the NWF. The basic methodology used in the proposed rule was unchanged from that used to calculate the part 170 professional hourly rate, the specific materials licensing and inspection fees in part 170, and the part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472). Because the public was provided an opportunity to comment on the basic approach, policies, and methodology used in the July 10, 1991, final rule and because these comments were fully addressed in that final rule, the NRC requested public comment only on the issue of whether the methodology adopted in FY 1991 was properly applied to the FY 1992 budget authority.

**II. Responses to Comments**

The NRC received nineteen public comments by the close of the comment period on May 29, 1992, and an additional ten comments by the close of business on June 22, 1992. These comments were evaluated in the development of this final rule.

Of the twenty-nine comments, two were from power reactor licensees or their representatives and twenty-seven were from persons concerned with other types of licenses, including eleven comment letters from the uranium industry or their representatives. Copies of all comment letters received are available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Many of the comments were similar in nature. For evaluation purposes, these comments have been grouped, as appropriate, and addressed in the context of the narrow focus of this final rule.

*A. Comments Regarding Application of the Methodology.*

1. *Comment.* A few commenters indicated that the NRC has not provided sufficient information on which to evaluate the fees to be assessed for FY 1992. These commenters stated that the NRC violated the Administrative Procedure Act (APA) by failing to provide an explanation of how it arrived at its final determination of the annual fees, particularly as they apply to fuel cycle facilities. They also stated that the NRC did not provide sufficient detail concerning the NRC budget to verify the significant changes in the proposed rule. Commenters recommended that the NRC make publicly available its Five Year Plan or other documents with an equivalent level of detail to provide the information necessary to allow an effective evaluation of, and permit affected licensees to provide constructive comments on, the proposed rule.

*Response.* The NRC believes it has provided sufficient information concerning the FY 1992 budget to allow effective evaluation and constructive comment on the proposed rule. In part III, the Section-by-Section Analysis of the proposed rule published April 29, 1992 (57 FR 18097), the NRC provided a detailed explanation of the FY 1992 budgeted costs for the various classes of licensees being assessed fees. In addition, the NRC workpapers pertinent to the development of the fees to be assessed were placed in the Public Document Room (PDR) on April 29, 1992, for public review. The workpapers provide additional information concerning the development of the fees, including the FY 1992 budgeted resources at the subactivity level for the major programs. The resources shown in the workpapers are the same as those identified in the Five Year Plan for FY 1992 and are displayed at the lowest level, the subactivity level, as in the Five Year Plan.

2. *Comment.* A few commenters indicated that the hourly rate of $123 for FY 1992 (a seven percent increase over FY 1991) is not justified, and that the NRC had not indicated that it is incurring an increase in the area of salaries, benefits, and overhead but rather an increase in total NRC spending. The commenters pointed out that the NRC professional rate has increased by approximately 115 percent over a seven year period while the Consumer Price Index (CPI) has shown an inflation rate of about 22 percent for the same period. The commenters recommended that the NRC bring its FY 1992 hourly rate back in line with the increase in the CPI and the average wage increases in the industry it regulates. This would be three to four percent a year or an hourly rate of $119 for FY 1992. These commenters suggested that it is inappropriate to raise the professional rate and inspection fees by 7 percent. The commenters recommended that the NRC use the CPI or other indices for determining future adjustments to its hourly rates.

*Response.* The NRC professional hourly rate is established to recover approximately 100 percent of the Congressionally approved budget, less the appropriation from the NWF, as required by OBRA–90. Both the method and budgeted costs used by the NRC in the development of the hourly rate of $123 for FY 1992 are discussed in detail in the part III, Section-by-Section Analysis, for § 170.20 of the proposed rule (57 FR 18097). For example, Table II shows the direct FTEs (full time equivalents) by major program for FY 1992 and Table III shows the budgeted costs (salaries and benefits, administrative support, travel and other G&A contractual support) which must be recovered through fees assessed for the hours expended by the direct FTEs. The budgeted costs have increased $38.6 million as compared to FY 1991 levels. This increase reflects the amount required by the NRC to effectively accomplish the mission of the agency. The specific details regarding the budget for FY 1992 are documented in the NRC's publication "Budget Estimates, Fiscal Years 1992–1993" (NUREG–1100, Volume 7), which is available to the public. Given the increase in the budget it is necessary to increase the 1992 hourly rate to recover 100 percent of the budget as required by OBRA–90. The NRC is unable to use the CPI or other indices in the development of the NRC hourly rate or the fees to be assessed under 10 CFR parts 170 and 171 because if the hourly rate were increased by only three to four percent over the FY 1991 levels, the NRC could not meet the statutory mandate requirement of OBRA–90 to recover approximately 100 percent of the NRC budget authority through fees.

3. *Comment.* Several commenters indicated that the imposition of the annual fees in certain instances bears no "reasonable relationship to the cost of providing regulatory services" and therefore the fees violate OBRA–90 in that they have not been "fairly and equitably" allocated among licensees. Commenters argued, for example, that the NRC should not charge two fees for one process covered by two licenses or that a higher amount of generic safety costs should not have been allocated to high enriched uranium facilities as compared to low enriched uranium facilities. Another commenter stated that it is not fair and equitable to assess a higher fee for a $UF_6$ converter than for a mill license. One commenter suggested that it is not considered "practicable" to assess all licensees of a class to compensate for revenue lost from other classes of licensees because of license terminations and that he should be provided an accounting of the component costs for NRC generic activities, e.g., rulemaking, upgrading safeguards requirements, modifying standard review plans, overseeing regional programs and developing inspection programs.

*Response.* In the final rule published July 10, 1991 (56 FR 31480), the NRC indicated that it is not practical to allocate costs on the basis of such

factors as difference in processes and whether or not the facility has more safety problems than another facility at a specific point in time. It must be recognized that NRC generic safety and safeguards costs included in the annual fee are not related to a specific individual licensee. Costs related to a specific application, license or approval that provide an identifiable service are recovered under the fee regulations of 10 CFR part 170. For the generic and other regulatory costs not recovered under 10 CFR part 170, the NRC, in compliance with the requirements of OBRA–90, has allocated these costs to major classes of licensees. The law permits, and the NRC has established, a schedule of annual charges that assesses different annual charges for different licensees or classes of licensees. To the extent practicable and where necessary for a more fair and equitable allocation of costs, a major class of licensees was divided into subclasses. Within a class or subclass of licensees, the costs were uniformly allocated to each licensee in the class or subclass based on the premise that there is no significant difference in the generic and other regulatory services provided to each licensee within a class or subclass. This approach and principle were used for all classes of licensees. Therefore, the NRC cannot provide each licensee an accounting of the component costs for NRC generic and other regulatory activities. However, the activities associated with a specific class of licensees are summarized in this rule and detailed in publicly available fee workpapers. With respect to license terminations that occurred during FY 1991, it must be recognized that for FY 1992 the base or total number of licensees has decreased for some classes of licensees, and therefore the fees must be increased in FY 1992 in order for the NRC to recover approximately 100 percent of its budget. Because the costs are allocated to a class of licensees, any terminations that occur within the class will raise the fees for the remainder of the licensees within that class.

4. *Comment.* A few commenters indicated that the NRC may have inappropriately included certain budgeted costs in the fee base. One commenter indicated that the proposed rule did not show any offsets to FY 1992 salaries and expenses from revenues received from cooperative nuclear safety research programs, services rendered to foreign governments and international organizations, and the material and information access authorization program. This commenter noted that the FY 1992 authorization language indicates that money from these programs may be retained and used for salaries and expenses associated with those activities. One commenter recommended that NRC review its FY 1992 allocation of funds and confirm that the Nuclear Waste Fund (NWF) appropriation of about $20 million includes $1.7 million in administrative costs for high level waste activities in order to avoid double payment by utilities, once through their mill/kwhr payment to the NWF and again through the annual charge that recoups total NRC administrative costs.

*Response.* The NRC provides some technical assistance to foreign governments and international organizations on a reimbursable basis and participates in cooperative research programs. For example, the Omnibus Budget Reconciliation Act, FY 1987, requires that the NRC certify containers that will be used to transport plutonium through United States air space and that all costs incurred for this certification be reimbursed by the foreign country involved. Examples of international cooperative research include the participation of Finland and Spain in severe accident research, Austria on source term research, and Korea on piping integrity research. These costs are not included in NRC's budget request but are paid for by the foreign government or international organization for which the work is being performed. These activities are therefore not included in the computation of 100 percent fee recovery for the funds appropriated to the NRC and are therefore not charged to licensees through the assessment of user fees. These monies are separately identified in the agency's financial systems, and are deposited and disbursed for the performance of the functions for which they are collected.

With respect to the NWF appropriation for the FY 1992 budget, $1.7 million of the NRC's total administrative support funds was allocated to the High-Level Waste Regulation program based upon the full-time equivalent staffing budgeted for that program. Funds for the NRC High-Level Nuclear Waste Regulation program are appropriated from the Nuclear Waste Fund. Licensees are not charged fees for the administrative support costs which are allocated to the Nuclear Waste Fund.

5. *Comment.* One commenter indicated that to assess fee Category 2.A.(2), Class I, fees for sites undergoing reclamation amounts to double charging because these types of facilities are already charged fees under part 170 for the full cost of regulatory services associated with the reclamation process.

*Response:* To recover 100 percent of the budget, the NRC assesses two types of fees. First, license and inspection fees are assessed under 10 CFR part 170 to recover the costs to the NRC of providing individual services to specific applicants for, and holders of, NRC licenses and approvals. The part 170 fees are billed for specific services rendered in response to an application filed with the NRC for review or an inspection conducted by the NRC. Second, annual fees are assessed under 10 CFR part 171 to recover NRC generic and other regulatory costs not recovered under 10 CFR part 170. This is the process used to charge uranium recovery licensees. Thus, there is no double charging of fees to uranium recovery licensees because the annual fee recovers only those costs not recovered under 10 CFR part 170.

6. *Comment.* A few commenters submitted comments on the methodology used by the NRC to develop the lower tier small entity fee of $400 established by the NRC effective May 18, 1992. While applauding the NRC for developing a lower tier small entity fee, commenters recommended that the NRC —

(1) Expand the criteria as to what constitutes a "small entity" and that a sliding scale fee should be considered based on ability to pay;

(2) Reexamine the method of allocation of costs, particularly the lower tier small entity fee of $400 because these commenters believe that it is inherently unfair to enable "mom and pop" operations to remain in business yet force modest companies, with comparably small radiographic testing departments, to subsidize them;

(3) Clarify whether the gross annual receipts are considered income generated only from the activities pertaining to the license or income generated from the entire entity composed of various departments; and

(4) Allow small county governmental jurisdictions to deduct the population of incorporated cities and villages not within the jurisdictional powers of the county.

*Response.* These types of comments were addressed by the NRC in section II, Responses to comments, item B., of the final limited rule published by the NRC on April 17, 1992 (56 FR 13628–13627). Briefly, the NRC indicated that any reduction in fees for small entities must be paid by other NRC licensees and that while the lower tier small entity fee of $400 does not eliminate the impact of the fees on small entities, it

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substantially reduces the impact for those licensees with relatively low gross annual receipts of less than $250,000 and for small governmental jurisdictions with a relatively low population of less than 20,000. With respect to the question of what constitutes gross annual receipts, the NRC stated clearly in establishing the size standards and in the promulgation of the final rule establishing the lower tier small entity fee that the term "annual receipts" is used in the same manner as used by the Small Business Administration (SBA). In 13 CFR 121.402(b)(2), annual receipts are defined "* * * to include all revenue in whatever form received or assessed from whatever sources * * *" (54 FR 52647; December 21, 1989) (57 FR 13625; April 17, 1992). Therefore, the term "annual gross receipts" refers to the licensee's entire business, not solely receipts from licensed activities. For purposes of qualifying as a small governmental jurisdiction under the NRC fee regulations, the population of a county includes the population of all cities, towns, and villages within the county. The NRC finds no basis to modify our approach in this area.

7. *Comment.* One commenter indicated that he had submitted a petition for rulemaking to the NRC to review the FY 1991 methodology so that medical licensees could be treated like similar licensees. The commenter believes the NRC is obligated to address the concerns raised in the petition in terms of whether the proposed fee schedule for FY 1992 is consistent with the methodology adopted in FY 1991. The commenter suggests that the NRC institute an immediate moratorium freezing fees at FY 1991 levels until the petition is considered in its entirety.

*Response.* The NRC is not obligated to address the concerns raised in the petition of rulemaking filed with the NRC before adopting the final rule establishing fees for FY 1992. The NRC clearly stated when it published receipt of the petition for rulemaking in the **Federal Register** that "NRC intends to consider the issues raised by the petitioners after the rulemaking action necessary to establish the license and annual fees for FY 1992 is completed * * *. The petitioners' concerns will be considered within the context of the review and evaluation of the fee program for FY 1993 which will be conducted as part of the NRC's continued implementation of Public Law 101-508" (57 FR 20213; May 12, 1992). The NRC has not yet completed that evaluation. To adopt an immediate moratorium freezing fees at the FY 1991 level until the petition is considered would result in the NRC not meeting the statutory requirements of OBRA-90 that NRC recover approximately 100 percent of its budget authority for FY 1992.

8. *Comment.* One commenter indicated that the NRC did not properly apply the methodology in FY 1991 to one of its licensees who conducts multiple activities under a single license. The commenter noted that one $UF_6$ converter operates multiple activities under a single license and therefore a substantially larger share of NRC budgeted costs allocated to $UF_6$ converters should be assessed to the one licensee that is conducting multiple activities. For the same reason, the commenter indicated that this licensee should be assessed a substantially larger portion of the low level waste (LLW) surcharge.

*Response.* The NRC has reexamined the allocation of costs to the $UF_6$ conversion licenses. This reexamination has been accomplished within the framework of the OBRA-90, accompanying Conference Report, and the fundamental principles used by the Commission in establishing annual fees for all classes of licensees.

OBRA-90 and the accompanying Conference Report provide that to the maximum extent practicable, the annual fee shall have a reasonable relationship to the cost of providing regulatory services to the licensees. Consistent with the law and the guidance in the Conference Report, the NRC allocated its budgeted generic and other regulatory costs not recovered from 10 CFR part 170 license fees to the major classes of licensees. To the extent practicable and where necessary for a more fair and equitable allocation of costs, a major class of licensees was further subdivided into subclasses. For example, NRC costs for the fuel facilities class of licensees were allocated further to $UF_6$ conversion, HEU fuel fabrication, LEU fuel fabrication and other licenses. Within a subclass, the cost was uniformly allocated to each license in the subclass based on the premise that there is no significant difference in the generic and other regulatory services provided to each license within a subclass. This approach and principle were used for all classes of licensees.

The costs allocated to the licenses within the $UF_6$ subclass are for the safety generic and other regulatory activities that are attributable to this subclass of licensees and that are not recovered by 10 CFR part 170 license and inspection fees. These costs were allocated uniformly to each of the two licenses within the $UF_6$ subclass, based on the premise that there is not a significant difference in the generic and other regulatory services provided to each of the licenses.

The same NRC regulations (e.g., 10 CFR part 40), guidance (e.g., Regulatory Guides) and policies are applicable to both the license which authorizes deconversion activities ($UF_6$ to $UF_4$) and 1 $UF_6$ conversion and the license that only authorizes $UF_6$ conversion. The 10 CFR part 40 generic safety regulations are applied in the same manner to each of the two licenses in the subclass independent of the source material activities authorized by the two licenses.

The NRC costs attributable to the $UF_6$ subclass are more related to the fact that a license exists, not to the $UF_6$ manufacturing process. Thus a uniform allocation of costs to each license results in an annual fee that has a reasonable relationship to the generic and other regulatory services provided.

The surcharge portion of the annual fee includes NRC budgeted costs that are not attributable to the $UF_6$ subclass. However, it is assessed to the licensees in the subclass for policy reasons. For the $UF_6$ subclass of licensees, the surcharge includes a portion of low-level waste costs and costs not recovered from small entities. In the Conference Report, Congress indicated that these types of costs "may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment." Following this guidance, the NRC decided to uniformly allocate these costs to each fuel facility resulting in the same surcharge for each license.

9. *Comment.* Several commenters indicated that it appeared as if uranium licensees are being billed for agency overhead that is not attributable to the regulation of the uranium mining industry. These commenters noted that a considerable amount of the agency resources are likely dedicated to interagency work for the Department of Energy (DOE), such as NRC review of DOE's reclamation plans for title 5 uranium mill tailings sites, and interaction with the Environmental Protection Agency (EPA) on the promulgation of regulations. The commenters noted that these agencies are not billed for these NRC activities which are associated with uranium recovery. The commenters disagreed with the NRC's position that all substantive review at DOE sites is essentially completed prior to the application for a general license for that site. The commenters also disagreed with NRC's interpretation of OBRA-90 that in order to be billed for annual fees one must be a licensee of the NRC. The

commenters argued that the test is whether "any person" receives a service or thing of value from the Commission because OBRA–90 allows the "collection of fees from any person" and "all licensees". That person, whether a licensee or not, commenters argued, is required to pay fees to cover the NRC's cost of providing the services or thing of value.

*Response.* With respect to the 10 CFR part 170 fees assessed pursuant to the Independent Offices Appropriation Act (IOAA) of 1952, the NRC is precluded, under the IOAA, from assessing fees to Federal agencies for specific services rendered. The OBRA–90 limits annual fee assessments to licensees of the NRC. Thus, the NRC does assess annual fees under 10 CFR part 171 to Federal agencies to the extent that those Federal agencies have a license or approval/certificate from the NRC. As indicated in the Conference Report accompanying OBRA–90, the Commission must collect approximately 100 percent of its budget through fees, even though in some instances certain activities are not attributable to an existing NRC licensee or class of licensees. With regard to NRC activities for DOE under the Uranium Mill Tailings Radiation Control Act [UMTRCA], the NRC is prohibited under the IOAA from assessing such part 170 fees to Federal agencies. The fees cannot be assessed to DOE under OBRA–90 and 10 CFR part 171 because DOE does not possess a license or approval. Thus, the NRC has assessed the costs for review of DOE's UMTRCA actions based on the Conference Report guidance that the costs be "recovered from such licensees as the Commission in its discretion determines can fairly, equitably and practicably contribute to their payment." These costs are being recovered from power reactor licensees, not from uranium recovery licensees as implied by the commenters. This was noted in the discussion in the final rule of the surcharge for power reactors (56 FR 31486; July 10, 1991). The interaction that NRC has with EPA is necessary for NRC to develop and execute NRC's generic safety regulatory programs, primarily as a result of the Clean Air Act. Thus, some of these costs are for NRC generic regulatory activities for uranium recovery facilities and have been appropriately included in the annual fee.

*B. Other Comments*

1. *Comment.* A few commenters stated that the short time frame (30 days) allowed by the NRC for comment on the proposed rule did not provide an adequate opportunity to comment on the proposed rule.

*Response.* The NRC indicated in section I, Background, of the proposed rule published April 29, 1992, that a 30 day public comment period was being provided because OBRA–90 requires that NRC collect the revised FY 1992 fees by September 30, 1992, and that in order to comply with the public law, fees would have to be assessed on an expedited basis to ensure collection of the required fees by the end of the fiscal year (57 FR 18095). Thirty days represents a sufficient time to provide comments particularly because the NRC is not changing the approach or methodology for assessing fees that it adopted in FY 1991.

2. *Comment.* One commenter indicated that sections of the proposed regulation should be included within President Bush's moratorium of new regulations. This commenter argued that the fees for source material licenses, especially fee Category 2.A.(2), Class I, do not meet key aspects of President Bush's regulatory initiative because they are burdensome, impede economic growth, do not incorporate market mechanisms and do not provide a strong, systematic cost benefit realization.

*Response.* OBRA–90 requires the NRC to promulgate each year a user fee schedule that will result in the collection by the end of the fiscal year of a sum approximating 100 percent of its budget, minus the appropriation received from the Nuclear Waste Fund. Any delay in the publication of this rule would result in the NRC's inability to meet its statutorily imposed deadline for collecting FY 1992 user fees. Therefore, the NRC must publish this rule at this time.

3. *Comment.* Several commenters addressed the proposed change to the § 171.16, Category 2.A.(2) for uranium recovery licensees. The commenters indicated that dividing the current Class I facilities into two classes, which has the effect of increasing the annual fee for a mill by 138 percent over the FY 1991 levels, does not seem justified or reasonable and that the proposed rule does not distinguish between active and inactive facilities. The commenters stated that because inactive mill sites undergoing reclamation do not generate uranium mill tailings but are included in fee Category 2.A.(2) Class I, the NRC has overstated the costs for the entire category and appropriate adjustments must be made. Commenters believe that any licensed facility that is serving solely as a cost center and not generating revenues should be exempt from fees. A few commenters indicated that the assessment of annual fees for part 71 Quality Assurance (QA) Plans that have increased 200 percent over 1991 levels have no reasonable relationship to the cost of providing regulatory services, particularly when the licensee pays separately on an hourly basis for all other services received from the NRC. Commenters pointed out that no other licensees or class of licensees is subject to the same exorbitant level of increase as fee Category 10.B, QA Program Approval Holders.

*Response.* OBRA–90 and the accompanying Conference Report provide that to the maximum extent practicable, the annual fee shall have a reasonable relationship to the cost of providing regulatory services to the licensees. Consistent with the law and the guidance in the Conference Report, the NRC allocated its budgeted generic and other regulatory costs not recovered from 10 CFR part 170 license fees to the major classes of licensees. To the extent practicable and where necessary for a more fair and equitable allocation of costs, a major class of licensees was further subdivided into subclasses. For example, NRC costs for the uranium recovery class of licensees were allocated further to "Class I," "Class II," and "Other" facilities. Within a subclass, the cost was uniformly allocated to each license in the subclass based on the premise that there is no significant difference in the generic and other regulatory services provided to each license within a subclass. This approach and principle were used for all classes of licensees.

The costs allocated to the licenses within the Class I subclass are for the safety generic and other regulatory activities that are attributable to this subclass of licensees and that are not recovered by 10 CFR part 170 license and inspection fees. These costs were allocated uniformly to each of the eight licenses within the Class I subclass. Uniform allocation is based on the premise that there is no significant difference in the generic and other regulatory services provided to each of the eight licenses. The NRC has reexamined the allocation of costs to the Class I uranium recovery facilities. This reexamination has been accomplished within the framework of the OBRA–90, the accompanying Conference Report, and the fundamental principles used by the NRC in establishing annual fees for all classes of licensees. The NRC generic and other regulatory costs attributable to the Class I facilities subclass are related to the fact that a license authorizing operation exists, not to whether the mill is active or inactive.

Thus, a uniform allocation of costs to each license results in an annual fee that has a reasonable relationship to the generic and other regulatory services provided.

With respect to QA plan approvals, the NRC experienced a significant number of requests from QA approval holders to change their plans during the past year. Many QA approval holders amended their plans, within the window of opportunity provided by the NRC. These QA approval holders downgraded the authorized use of the plan from "fabrication and use" to "use" only. These changes have resulted in a significant decrease in the number of plans authorizing "fabrication and use" and an increase in the number of plans authorizing "use only". Therefore, in order to recover the costs for plans authorizing "fabrication and use" from fewer approval holders, it is necessary to assess a much higher annual fee than was assessed in FY 1991. Similarly, to recover the costs for plans authorizing "use only" from an increased number of plan holders has resulted in a lower annual fee for these approval holders.

4. *Comment.* One commenter objected to the NRC proposal to exempt from the FY 1992 annual fee those licensees who filed for termination or possession only during the period October 1, 1991, through December 31, 1991. This commenter indicated that it appeared arbitrary to establish such a deadline when changes to a license occur throughout the year and that licensees should be permitted to file exemption requests related to the FY 1992 fees after December 31, 1991. Another commenter indicated that in cases where the fees have substantially increased, licensees should now be given the option of canceling the license or approval and thus avoid the annual fee for FY 1992.

*Response.* In the proposed rule, the Commission indicated that during the one month period from the publication of the FY 1991 final rule on July 10, 1991, to August 9, 1991, the effective date of the rule, many licensees filed requests for termination with the NRC and were not subject to the FY 1991 annual fees. Many other licensees have either called or written to the NRC since the final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible but it was unable to respond and take appropriate action on all of the requests before the end of the fiscal year on September 30, 1991. Therefore, based on the number of requests filed, the Commission will exempt from the FY 1992 annual fees those licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses prior to January 1, 1992. All other licensees and approval holders who held a license or approval on October 1, 1991, will be subject to the FY 1992 annual fees. This would not, however, preclude a licensee from filing a specific exemption request with respect to the FY 1992 fees after December 31, 1991 and within ninety days of the effective date of this rule as specified in 10 CFR 171.11. An exemption request would be handled on a case-by-case basis. As in FY 1991, the NRC plans to continue a very high threshold of eligibility for exemption requests and reemphasizes its intent to grant exemptions sparingly. With respect to the comment that licensees now be given the option of canceling the license or approval and avoid the FY 1992 fee, the NRC notes that licensees were put on notice in the proposed rule published April 12, 1991, and again in the final rule published July 10, 1991, that the NRC would assess annual fees that would significantly impact a substantial number of its licensees in order to recover 100 percent of its budget authority for FY 1991 through FY 1995. The NRC mailed copies of both the proposed and final notices to each licensee.

5. *Comment.* A few commenters claimed that NRC intends to make the final rule establishing the FY 1992 license and annual fees effective upon publication in violation of section 553(b) of the Administrative Procedure Act.

*Response.* The NRC clearly stated in Section I, Background, of the proposed rule that, as in FY 1991, the final rule would become effective 30 days after publication in the **Federal Register.** The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration or approval holder upon publication of the final rule. Payment is due on the effective date of the rule (57 FR 18095; April 29, 1992). This fully satisfies all legal requirements.

### *C. Comments Beyond the Scope*

There were four groups of comments that were not within the scope of the proposed rule, and therefore were not evaluated for the purposes of issuing this final rule. Briefly, they are—

The legality of the fees to be assessed by the NRC;

The appropriateness of the NRC budget and regulatory program;

The impact of the fees on licensees; and

The annual fee should be based on the amount of material, or the size of the licensee's operation.

#### 1. Legality of Fees

*Comment.* Commenters indicated that OBRA–90 fails to set forth adequate standards to guide NRC's discretion in setting annual charges under part 171. Therefore, the fees amount to a "tax" rather than a "fee" and NRC lacks legal authority to promulgate and assess the charges.

*Response.* The legal issues, including the issue of "tax" vs. "fee", involved in the assessment of annual fees were fully addressed in the final rule published on July 10, 1991 (Section III, Responses to Comments, item A., Legal issues (56 FR 31473–31475). The NRC's approach satisfies all legal requirements.

#### 2. Appropriateness of NRC Budget and Regulatory Program

*Comment.* There were several commenters who questioned the size of the NRC budget and regulatory program. Some commenters indicated that they would expect a decrease in the NRC budget because of the significant reduction in the number of licensees within the past year and the fact that Maine became an Agreement State during FY 1992. Other commenters do not believe the 42 percent increase in the budget for uranium recovery activities over the previous year is justified given the current size of the licensed uranium industry. These commenters noted that there are no active conventional uranium mines and mills in the United States and only three commercially operating in-situ leach facilities. They argued that the fee of $238,700 appears grossly out-of-line with the degree of NRC involvement for uranium recovery sites. Commenters suggested that the NRC—

(1) Freeze fees at FY 1991 levels;

(2) Distribute copies of the NRC budget to licensees for approval or disapproval; and

(3) Appoint an outside reviewer to evaluate the scope and effectiveness of the NRC medical program because the increases are tied to unnecessary and overly expensive medical regulation.

*Response.* OBRA–90 requires NRC to recover 100 percent of its budget authority through fees. The fees being assessed for FY 1992 fulfill this requirement. The budget is developed by the NRC, submitted by the President to the Congress, and approved by the Congress. The basis for the NRC FY 1992 resources are explained in the NRC's Budget Estimates, Fiscal Years 1992–1993 (NUREG–1100; Volume 7).

The basis for the resources are thoroughly addressed by the Congress through hearings and written questions and answers. The FY 1992 NRC hearings are documented, for example, in the publication Energy and Water Development Appropriations for FY 1992—Hearings Before a Subcommittee on Appropriations, House of Representatives, One Hundred Second Congress, First Session Part 6. The resources resulting from this review and decision process are those necessary for NRC to implement its statutory responsibilities. The fees must be consistent with this approved budget in order to comply with OBRA–90. The agency makes an extraordinary effort to ensure to the maximum extent possible that fees are related to the cost of providing services to the beneficiaries of the NRC activity. Questions relating to the NRC budget approval process were also addressed in the final rule published by the Commission on July 10, 1991, in Section III, Responses to Comments, item *E, Other comments,* (56 FR 31482).

3. Impact of Fees on Licensees

*Comment.* Several commenters expressed concern about the impact of the fees. Some commenters indicated that an exemption should be offered to nonprofit medical institutions similar to nonprofit educational institutions and that the previous exemption from fees for State and local governments be reestablished.

*Response.* The impact issues regarding the assessment of the annual fees were fully addressed by the Commission in the final rule published July 10, 1991 (see Section III., Response to comments, item B2. Major Policy Issues—Consideration of nonsafety impacts in assessing fees.) The NRC continues to believe that the previous assessment of impacts and resulting conclusions remain appropriate.

4. Fees Based on Material Possessed and Size of Operation

*Comment.* Commenters suggested that the NRC assess fees based on the amount of throughput of material, the size of the facility, the amount or type of material possessed, the sales generated by the licensed location, the competitive condition of certain markets including the assessment of fees to Agreement States and the effect of fees on domestic and foreign competition. Another commenter indicated that it is not fair and equitable, and is contrary to the intent of Congress, to assess $UF_6$ converters a fee that is larger than assessed for a mill. Another commenter stated that the methodology the NRC has applied is unjustified because it results in increased fees of over 2,000 percent over 1990 fee levels to some medical licensees while the risk to the patient remains the same. The commenter suggested that some consideration be given to the commensurate risk to the patient before exercising such exorbitant fees on the industry which has not increased the risk of radiation exposure to the public or to its patients.

*Response.* The issues of basing fees on the amount of material possessed, the frequency of use of the material, and the size of the facilities, were addressed by the NRC in the Regulatory Flexibility Analysis in appendix A to the final rule published July 10, 1991 (56 FR 31511–31513). The Commission did not adopt that approach, and finds no basis for altering its approach at this time.

**III. Final Action—Changes Included in Final Rule**

OBRA–90 requires that the NRC recover approximately 100 percent of its FY 1992 budget authority, including the funding of its Office of the Inspector General, less the appropriations received from the NWF, by assessing license and annual fees.

For FY 1992, the NRC's budget authority is $512.5 million, of which approximately $20.0 million has been appropriated from the NWF. Therefore, OBRA–90 requires that the NRC collect approximately $492.5 million in FY 1992 through part 170 licensing and inspection fees and part 171 annual fees. The NRC estimates that approximately $105 million will be recovered in FY 1992 from the fees assessed under part 170. This estimate represents an increase of $15 million over that estimated in the proposed rule because of one additional quarterly billing in FY 1992. This is the result of the rule change effective May 18, 1992, which permits the NRC to bill licensees on a quarterly rather than a semiannual basis (April 17, 1992; 57 FR 13625). The remaining $387.5 million would be recovered through the FY 1992 part 171 annual fees.

The Commission has not changed the basic approach, policies, or methodology for calculating the part 170 professional hourly rate, the specific materials licensing and inspection fees in part 170, and the part 171 annual fees set forth in the final rule published July 10, 1991 (56 FR 31472). The public was provided an opportunity to comment fully on the basic approach, policies, and methodology used in the July 10, 1991, final rule.Those comments were fully addressed by the Commission in its final rule. That rule has been challenged in Federal court by several parties and those lawsuits are pending. Under this final rule, fees for most licenses will increase because —

(1) NRC's budget has increased. This has resulted in a corresponding increase in the professional hourly rate; and

(2) Approximately 2,000 licensees have requested that their licenses be terminated or combined since the FY 1991 final rule was adopted. This has resulted in fewer licensees to pay for the costs of regulatory activities not recovered under 10 CFR part 170.

*A. Amendments to Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services*

Four amendments have been made to part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. These revisions also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, the agency-wide professional hourly rate, which is used to determine the part 170 fees, is increased from $115 per hour to $123 per hour ($214,509 per direct FTE). The rate is based on the FY 1992 direct FTEs and that portion of the FY 1992 budget that is not recovered through the appropriation from the NWF.

Second, the current part 170 licensing and inspection fees in §§ 170.21 and 170.31 for all applicants and licensees are increased by seven percent to reflect this increase in the professional hourly rate.

Third, the NRC is amending §§ 170.21, Facility Category K, and 170.31, Category 15, to make further refinements to the existing fee categories for import and export license applications and amendments.

Fourth, the NRC is amending § 170.3 to add a definition for nonprofit educational institutions.

*B. Amendments to Part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC*

Five amendments have been made to part 171. First, §§ 171.15, and 171.16 are amended to increase the annual fees for

FY 1992 to recover approximately 100 percent of the FY 1992 budget less fees collected under part 170 and funds appropriated from the NWF. It should be noted that the amount of the annual fees for several classes of licensees has decreased from the amount shown in the proposed rule. The reason for the decrease in annual fees is that an additional $15 million is estimated to be collected from part 170 fees in FY 1992 because of the change in the part 170 rule effective May 18, 1992, which permits the NRC to bill licensees on a quarterly rather than a semiannual basis.

Second, § 171.16, Category 2.A.(2), is amended to divide Class I facilities in the uranium recovery class of licensees into two classes. The additional category (Class II) would recognize those licensees who do not generate uranium mill tailings.

Third, § 171.11 is amended to require that licensees who wish to be considered for an exemption from the annual fees file their respective exemption requests within ninety (90) days from the effective date of the rule establishing the annual fees. As in FY 1991, the NRC plans to continue a very high threshold of eligibility for exemption requests and reemphasizes its intent to grant exemptions sparingly.

The NRC notes that during the one-month period from the publication of the FY 1991 final rule on July 10, 1991, to the effective date of the rule on August 9, 1991, many licensees filed requests for termination with the NRC and were not subject to the FY 1991 annual fees. Many other licensees have either called or written to the NRC since the final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible but was unable to respond and take action on all of the requests prior to the end of the fiscal year on September 30, 1991. Therefore, based on the number of requests filed, the Commission, for FY 1992, is exempting from the FY 1992 annual fees those licensees, and holders of certificates, registrations, and approvals who either filed for termination of their license or approval or filed for a possession only/storage only license during the period October 1, 1991, through December 31, 1991. All other licensees and approval holders who held a license or approval on October 1, 1991, are subject to the FY 1992 annual fees.

Fourth, § 171.19 is amended to credit the quarterly partial payments made by certain licensees in FY 1992 toward their FY 1992 annual fees.

Fifth, § 171.5 is amended to add a definition for nonprofit educational institutions.

The NRC notes that the impact of this final rule on small entities has been evaluated in the Regulatory Flexibility Analysis (see appendix A to this final rule). Based on this analysis, the NRC is continuing for FY 1992 a maximum annual fee of $1,800 per licensed category for those licensees who qualify as a small entity under the NRC's size standards. The lower tier small entity annual fee of $400 per licensed category for certain materials licensees, which was adopted by the NRC and became effective on May 18, 1992, will apply for FY 1992 (57 FR 13625; April 17, 1992).

The amounts to be collected through annual fees in the amendments to part 171 are based on the increased professional hourly rate. The part 171 annual fees have been determined using the same method used to determine the FY 1991 annual fees. These amendments to part 171 do not change the underlying basis for part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee." 136 Cong. Rec., at H12692–93.

*C. FY 1992 Budgeted Costs*

The FY 1992 budgeted costs by major activity, relating to the amendments to parts 170 and 171 are shown in Table I.

TABLE I.— RECOVERY OF NRC'S FY 1992 BUDGET AUTHORITY

| Recovery method | Estimated amount ($ in millions) |
|---|---|
| Nuclear Waste Fund | $20.0 |
| Part 170 (license and inspection fees) | 105.0 |
| Part 171 (annual fees): | |
| Power Reactors | [illegible] |
| Nonpower Reactors | .6 |
| Fuel Facilities | 9.9 |
| Spent Fuel Storage | .2 |
| Uranium Recovery | 2.0 |
| Transportation | 5.0 |
| Material Users | [1] 31.3 |
| Subtotal | 358.6 |
| Costs remaining to be recovered not identified above | 26.9 |
| Total | 512.5 |

[1] Includes $6.2 million that will not be recovered from small materials licensees because of the reduced small entity fees.

The $28.9 million identified for those activities which are not identified as either part 170 or part 171 or the NWF in Table I are distributed among the NRC classes of licensees as follows:

$25.1 million to operating power reactors;

$1.9 million to fuel facilities; and

$1.9 million to other materials licensees.

In addition, approximately $6.2 million must be collected as a result of continuing the $1,800 maximum fee for small entities and the lower tier small entity fee of $400 for certain licensees. In order for the NRC to recover 100 percent of its budget authority in accordance with OBRA–90, the NRC will recover $5.4 million of the $6.2 million from operating power reactors and the remaining $.8 million from large entities that are not reactor licensees.

This distribution results in an additional charge (surcharge) of approximately $272,000 per operating power reactor; $155,100 for each HEU, LEU, and $UF_6$ fuel facility; $38,800 for each other fuel facility license and waste disposal license in Category 4A; $1,600 for each materials licensee in a category that generates a significant amount of low level waste; and $150 for other materials licenses. When added to the base annual fee of approximately $2.8 million per reactor, this will result in an annual fee of approximately $3.1 million per operating power reactor. The total fuel facility annual fee would be between approximately $0.1 million and $2.3 million. The total annual fee for materials licenses would vary depending on the fee category(ies) assigned to the license.

These additional charges not directly or solely attributable to a specific class of NRC licensees or costs not recovered from all NRC licensees on the basis of previous Commission policy decisions would be recovered from the designated classes of licensees previously identified. A further discussion and breakdown of the specific costs by major classes of licensees are shown in section IV of this final rule.

The NRC notes that in prior litigation over NRC annual fees, the U.S. Court of Appeals for the District of Columbia Circuit concluded that the NRC "did not abuse its discretion by failing to impose the annual fee on all licensees," *Florida Power & Light Co.* v. *NRC*, 846 F.2d 765, 770 (D.C. Cir. 1988), *cert. denied*, 109 S. Ct. 1952 (1989). As noted earlier, the conferees on Public Law 101–508 have acknowledged the D.C. Circuit's holding

that the Commission was within its legal discretion not to impose fees on all licensees.

## IV. Section-by-Section Analysis

The following analysis of those sections that are affected under this final rule provides additional explanatory information. All references are to title 10, chapter I, U.S. Code of Federal Regulations.

### Part 170

*Section 170.3 Definitions*

The definition of a nonprofit educational institution is added to more specifically identify those applicants and licensees that are exempt from fees under § 170.11(a)(4) of the Commission regulations. Since the FY 1991 final rule was published, many licensees have commented that the NRC has not defined the term and that the criteria used by the NRC to classify licensees as nonprofit educational institutions are not clear. The NRC is defining the term "nonprofit educational institution" as a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

*Section 170.20 Average Cost Per Professional Staff Hour*

This section is amended to reflect an agency-wide professional staff-hour rate based on FY 1992 budgeted costs. Accordingly, the NRC professional staff-hour rate for FY 1992 for all fee categories that are based on full cost is $123 per hour, or $214,509 per direct FTE. The rate is based on the FY 1992 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The rate is calculated using the identical method established for FY 1991. The method is as follows:

1. All direct FTEs are identified in Table II by major program.

TABLE II.—ALLOCATION OF DIRECT FTES BY MAJOR PROGRAM

| Major program | Number of direct FTEs [1] |
|---|---|
| Reactor Safety & Safeguards Regulation | 1070.4 |
| Nuclear Safety Research | 154.1 |
| Nuclear Material & Low-Level Waste Safety & Safeguards Regulation | 294.5 |
| Special and Independent Reviews, Investigations, and Enforcement | 71.0 |
| Nuclear Material Management and Support | 23.0 |
| Total direct FTE | [2] 1613.0 |

TABLE II.—ALLOCATION OF DIRECT FTES BY MAJOR PROGRAM—Continued

[1] FTE (full time equivalent) is one person working for a full year. Regional employees are counted in the office of the program each supports.

[2] In FY 1992, 1,613 FTEs of the total 3,261 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,648 FTEs are considered overhead and general and administrative.

2. NRC FY 1992 budgeted costs are allocated, in Table III, to the following four major categories:

(1) Salaries and benefits.
(2) Administrative support.
(3) Travel.
(4) Program support.

3. Direct program support, the use of contract or other services in support of the line organization's direct program, is excluded because these costs are charged directly through the various categories of fees.

4. All other costs (i.e., Salaries and Benefits, Travel, Administrative Support, and Program Support contracts/services for G&A activities) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method, which was described in the final rule published July 10, 1991 (56 FR 31472), and excluding direct Program Support funds, the remaining $346.0 million allocated uniformly to the direct FTEs (1613) results in a rate of $214,509 per FTE for FY 1992. The Direct FTE Hourly Rate is $123 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing $346.0 million by the number of direct FTEs (1613 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OMB Circular A–76, "Performance of Commercial Activities."

TABLE III.—FY 1992 BUDGET AUTHORITY BY MAJOR CATEGORY

[Dollars in millions]

| | |
|---|---|
| Salaries and benefits | $238.4 |
| Administrative support | 86.5 |
| Travel | 13.4 |
| Total nonprogram support obligations | 338.3 |
| Program Support | 154.2 |
| Total Budget Authority | 492.5 |
| Less Program support (Direct Program) | 146.5 |
| Budget Allocated to Direct FTE | 346.0 |
| Professional Hourly Rate | $123/hour |

*Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses.*

The licensing and inspection fees in this section, which are based on full-cost recovery, are revised to reflect the FY 1992 budgeted costs and to more completely recover costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate as shown in § 170.20 and any direct program support (contractual services) cost expended by the NRC. Any professional hours expended on or after the effective date of this rule would be assessed at the FY 1992 rate shown in § 170.20.

Since July 10, 1991, the NRC has continued to receive comments regarding the fees assessed for import and export licenses in accordance with § 170.21, Facility Category K. Based on experience in implementing these fees for the first time, the Commission is amending the existing fee categories in this section to provide for more equitable flat fees by expanding the number of fee categories.

Footnote 2 of § 170.21 is revised to provide that for those applications currently on file and pending completion, the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, and July 10, 1991, rules as appropriate. For topical report applications currently on file which are still pending completion of the review, and for which review costs have reached the applicable fee ceiling established by the July 2, 1990, rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

*Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses.*

The licensing and inspection fees in this section are modified to recover more completely the FY 1992 costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. Those flat fees, which are based on the average time to review an application or conduct an inspection, are increased by seven percent across the board to reflect the increase in the professional hourly rate from $115 per hour in FY 1991 to $123 per hour in FY 1992. After application of the seven percent increase to the flat materials fees, the amounts were rounded, as in FY 1991, by applying standard rules of arithmetic so that the amounts rounded would be deminimus and convenient to the user. Fees that are greater than $1,000 are rounded to the nearest $100. Fees under $1,000 are rounded to the nearest $10.

For example, an industrial radiography licensee (Category 3.0.) will pay revised license and inspection fees as follows:

| Type of fees | Current fees | Increase (per-cent) | FY 1992 fees |
|---|---|---|---|
| Application | $3,000 | 7 | $3,200 |
| Renewal | 1,800 | 7 | 1,900 |
| Amendment | 490 | 7 | 520 |
| Routine inspection | 1,200 | 7 | 1,300 |
| Nonroutine inspection | 2,500 | 7 | 2,700 |

The increase is applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B and 16. The increased fees are assessed for applications filed or inspections conducted on or after the effective date of this rule. Based on experience in implementing the import and export license fees assessed under fee Category 15, the Commission is amending the existing fee categories to provide for more equitable flat fees by expanding the number of fee categories.

For those licensing, inspection, and review fees assessed that are based on full-cost-recovery (cost for professional staff hours plus any contractual services), the revised hourly rate of $123, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of this rule.

**Part 171**

*Section 171.5 Definitions*

The definition of a nonprofit educational institution is added to provide clarification and to more specifically identify those licensees that are exempt from the annual fees under § 171.11(a). Since the final rule was published, many licensees have commented that NRC has not defined the term and that the criteria used by the NRC to classify licensees as nonprofit educational institutions are not clear. The NRC is defining the term "nonprofit educational institution" as a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

*Section 171.11 Exemptions*

Paragraph (a) of this section is amended to require that requests for exemption from the annual fees be filed by the licensee within ninety (90) days from the effective date of the final rule establishing the annual fees. Based on the NRC's experience with the filing of exemption requests under the FY 1991 final rule, a defined time period must be established for the prompt filing of exemption requests. The NRC is, therefore, limiting the filing of exemption requests to the 90 day period immediately following the effective date of the rule establishing the annual fees. Absent extraordinary circumstances, any exemption requests filed beyond that date will not be considered. The NRC, in making this change, is not intending to change its exemption policy. As in FY 1991, the NRC plans to continue a very high eligibility threshold for exemption requests and reemphasizes its intent to grant exemptions sparingly.Therefore, the NRC strongly discourages the filing of exemption requests by licensees who have previously had exemption requests denied unless there are significantly changed circumstances.

Exemption requests, or any requests to clarify the bill, will not, per se, extend the interest-free period for payment of the bill. Bills are due on the effective date of the final rule. Therefore, only payment will ensure avoidance of interest, administrative, and penalty charges.

The NRC notes that during the one month period from the publication of the FY 1991 final rule on July 10, 1991, to August 9, 1991, the effective date of the rule, many licensees filed requests for termination with the NRC and were not subject to the FY 1991 annual fees. Many other licensees have either called or written to the NRC since the final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible but it was unable to respond and take appropriate action on all of the requests before the end of the fiscal year on September 30, 1991. Therefore, based on the number of requests filed, the NRC is exempting from the FY 1992 annual fees those licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses during the period October 1, 1991, through December 31, 1991. All other licensees and approval holders who held a license or approval on October 1, 1991, are subject to the FY 1992 annual fees.

*Section 171.15 Annual Fee: Reactor Operating Licenses*

The annual fees in this section are revised to reflect the FY 1992 budgeted costs. Paragraphs (b)(3), (c)(2), (d), and (e) are revised to comply with the requirement of OBRA–90 to recover approximately 100 percent of the NRC budget for FY 1992. Table IV shows the budgeted costs that have been allocated to operating power reactors. They have been expressed in terms of the NRC's FY 1992 programs and program elements. The resulting total base annual fee amount for power reactors is also shown. On the average, the power reactor base annual fees for FY 1992 have increased about seven percent above the FY 1991 annual fees. It is noted that the power reactor annual fees have decreased from the amount shown in the proposed rule. The decrease in power reactor annual fees is the result of additional collections which are estimated from part 170 power reactor fees because of the rule change effective May 18, 1992, which permits the NRC to bill licensees on a quarterly rather than a semiannual basis.

TABLE IV.—ALLOCATION OF NRC FY 1992 BUDGET TO POWER REACTORS BASE FEES [1]

| | Program element total | | Allocated to power reactors | |
|---|---|---|---|---|
| | Program support ($, K) | Direct FTE | Program support ($, K) | Direct FTE |
| Reactor Safety and Safeguards Regulation (RSSR): | | | | |
| Power Reactor Applications Reviews | $1,100 | 14.9 | 1,100 | 14.9 |
| Standard Reactor Designs Reviews | 2,438 | 56.4 | 2,438 | 56.4 |
| Other Reviews | 350 | 6.2 | | 5.9 |
| Reactor License Renewal | 1,913 | 13.7 | 1,913 | 13.7 |
| Improvements to Regulations | 2,600 | 14.5 | 2,600 | 14.5 |
| Reactor Performance Evaluation | 718 | 33.2 | 718 | 33.2 |
| Evaluation of Licensee Performance | 600 | 33.4 | 600 | 33.4 |
| Reactor Accident Management | 400 | 10.1 | 400 | 10.1 |
| Human Performance Evaluation | 600 | 3.2 | 600 | 3.2 |
| Reactor Operator Examinations | 6,620 | 55.9 | 6,255 | 53.7 |
| Resident Inspections | | 203.9 | | 203.9 |
| Region-Based Inspections | 5,258 | 285.7 | 5,258 | 280.5 |
| Specialized Inspections | 3,197 | 69.5 | 3,197 | 69.5 |
| Project Management | | 156.6 | | 156.6 |
| Licensing Activities Safety | 6,816 | 87.0 | 6,816 | 87.0 |
| Evaluations | | | | |
| Regulatory Improvements | 335 | 24.2 | 335 | 23.1 |
| RSSR Program Total | | | 32,430 | 1,059.6 |
| Nuclear Safety Research (NSR): | | | | |
| Integrity of Reactor Components | 27,650 | 17.5 | 26,150 | 17.4 |
| Prevent Damage to Reactor Cores | 19,555 | 26.5 | 19,455 | 26.2 |
| Reactor Containment Performance | 13,922 | 10.5 | 13,922 | 10.5 |
| Advanced Reactor Research | 13,050 | 22.5 | 13,050 | 22.5 |
| Generic Safety Issue Resolution | 4,313 | 24.1 | 4,313 | 24.1 |
| Developing and Improving Regulations | 5,450 | 22.0 | 5,200 | 13.4 |
| Severe Accident Implementation | 2,125 | 6.0 | 2,125 | 6.0 |
| Radiation Protection/Health Effects | 6,285 | 17.5 | 3,119 | 8.6 |
| NSR Program Total | | | 87,334 | 128.7 |
| Nuclear Material and Low Level Waste Safety and Safeguards Regulation: | | | | |
| Safeguards Licensing and Inspection | 485 | 0.8 | | .1 |
| Threat and Event Assess./International Safeguards | 525 | 13.2 | 405 | 6.8 |
| Decommissioning | 1,000 | 20.1 | 125 | 3.7 |
| NMLLWSSR Program Total | | | 530 | 10.6 |
| Special and Independent Reviews, Investigations, and Enforcement: | | | | |
| Diagnostic Evaluations | 350 | 7.0 | 350 | 7.0 |
| Incident Investigations | 50 | 3.0 | 50 | 3.0 |
| NRC Incident Response | 1,980 | 27.0 | 1,980 | 27.0 |
| Operational Data Analysis | 2,187 | 25.0 | 2,087 | 23.0 |
| Performance Indicators | 1,047 | 4.0 | 1,047 | 4.0 |
| Operational Data Collection/Dissemination | 2,016 | 5.0 | 2,016 | 5.0 |
| SIRIE Program Total | | | 7,530 | 69.0 |
| Total | | | 127,824 | 1,267.9 |

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.

[2] Note: Total Base Fee Amount Allocated to Power Reactors, [3]$399.8 million; less Estimated Part 170 Power Reactor Fees, 90.2 million; part 171 Base Fees for Operating Power Reactors, 309.6 million.

[3] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

Based on the information in Table IV, the base annual fees to be assessed for FY 1992 are the amounts shown in Table V below for each nuclear power operating license.

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS

| Reactors | Containment type | Annual fee |
|---|---|---|
| Westinghouse: | | |
| 1. Beaver Valley 1 | PWR Large Dry Containment | $2,855,000 |
| 2. Beaver Valley 2 | do | 2,855,000 |
| 3. Braidwood 1 | do | 2,855,000 |
| 4. Braidwood 2 | do | 2,855,000 |
| 5. Byron 1 | do | 2,855,000 |
| 6. Bryon 2 | do | 2,855,000 |
| 7. Callaway 1 | do | 2,855,000 |
| 8. Comanche Peak 1 | do | 2,855,000 |

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

| Reactors | Containment type | Annual fee |
|---|---|---|
| 9. Diablo Canyon 1 | do | 2,849,000 |
| 10. Diablo Canyon 2 | do | 2,849,000 |
| 11. Farley 1 | do | 2,855,000 |
| 12. Farley 2 | do | 2,855,000 |
| 13. Ginna | do | 2,855,000 |
| 14. Haddam Neck | do | 2,855,000 |
| 15. Harris 1 | do | 2,855,000 |
| 16. Indian Point 2 | do | 2,855,000 |
| 17. Indian Point 3 | do | 2,855,000 |
| 18. Kewaunee | do | 2,855,000 |
| 19. Millstone 3 | do | 2,855,000 |
| 20. North Anna 1 | do | 2,855,000 |
| 21. North Anna 2 | do | 2,855,000 |
| 22. Point Beach 1 | do | 2,855,000 |
| 23. Point Beach 2 | do | 2,855,000 |
| 24. Prairie Island 1 | do | 2,855,000 |
| 25. Prairie Island 2 | do | 2,855,000 |
| 26. Robinson 2 | do | 2,855,000 |
| 27. Salem 1 | do | 2,855,000 |
| 28. Salem 2 | do | 2,855,000 |
| 29. San Onofre 1 | do | 2,849,000 |
| 30. Seabrook 1 | do | 2,855,000 |
| 31. South Texas 1 | do | 2,855,000 |
| 32. South Texas 2 | do | 2,855,000 |
| 33. Summer 1 | do | 2,855,000 |
| 34. Surry 1 | do | 2,855,000 |
| 35. Surry 2 | do | 2,855,000 |
| 36. Trojan | do | 2,849,000 |
| 37. Turkey Point 3 | do | 2,855,000 |
| 38. Turkey Point 4 | do | 2,855,000 |
| 39. Vogtle 1 | do | 2,855,000 |
| 40. Vogtle 2 | do | 2,855,000 |
| 41. Wolf Creek 1 | do | 2,855,000 |
| 42. Zion 1 | do | 2,855,000 |
| 43. Zion 2 | do | 2,855,000 |
| 44. Catawba 1 | PWR—Ice Condenser | 2,850,000 |
| 45. Catawba 2 | do | 2,850,000 |
| 46. Cook 1 | do | 2,850,000 |
| 47. Cook 2 | do | 2,850,000 |
| 48. McGuire 1 | do | 2,850,000 |
| 49. McGuire 2 | do | 2,850,000 |
| 50. Sequoyah 1 | do | 2,850,000 |
| 51. Sequoyah 2 | do | 2,850,000 |
| Combustion Engineering: | | |
| 1. Arkansas 2 | PWR Large Dry Containment | 2,850,000 |
| 2. Calvert Cliffs 1 | do | 2,850,000 |
| 3. Calvert Cliffs 2 | do | 2,850,000 |
| 4. Ft. Calhoun 1 | do | 2,850,000 |
| 5. Maine Yankee | do | 2,850,000 |
| 6. Millstone 2 | do | 2,850,000 |
| 7. Palisades | do | 2,850,000 |
| 8. Palo Verde 1 | do | 2,844,000 |
| 9. Palo Verde 2 | do | 2,844,000 |
| 10. Palo Verde 3 | do | 2,844,000 |
| 11. San Onofre 2 | do | 2,844,000 |
| 12. San Onofre 3 | do | 2,844,000 |
| 13. St. Lucie 1 | do | 2,850,000 |
| 14. St. Lucie 2 | do | 2,850,000 |
| 15. Waterford 3 | do | 2,850,000 |
| Babcock & Wilcox: | | |
| 1. Arkansas 1 | PWR Large Dry Containment | 2,866,000 |
| 2. Crystal River 3 | do | 2,866,000 |
| 3. Davis Besse 1 | do | 2,866,000 |
| 4. Oconee 1 | do | 2,866,000 |
| 5. Oconee 2 | do | 2,866,000 |
| 6. Oconee 3 | do | 2,866,000 |
| 7. Three Mile Island 1 | do | 2,866,000 |
| General Electric: | | |
| 1. Browns Ferry 1 | Mark I | 2,810,000 |
| 2. Browns Ferry 2 | do | 2,810,000 |
| 3. Browns Ferry 3 | do | 2,810,000 |
| 4. Brunswick 1 | do | 2,810,000 |
| 5. Brunswick 2 | do | 2,810,000 |
| 6. Clinton 1 | Mark III | 2,810,000 |
| 7. Cooper | Mark I | 2,810,000 |
| 8. Dresden 2 | do | 2,810,000 |
| 9. Dresden 3 | do | 2,810,000 |
| 10. Duane Arnold | do | 2,810,000 |
| 11. Fermi 2 | do | 2,810,000 |
| 12. Fitzpatrick | do | 2,810,000 |

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

| Reactors | Containment type | Annual fee |
|---|---|---|
| 13. Grand Gulf 1 | Mark III | 2,810,000 |
| 14. Hatch 1 | Mark I | 2,810,000 |
| 15. Hatch 2 | do | 2,810,000 |
| 16. Hope Creek 1 | do | 2,810,000 |
| 17. LaSalle 1 | Mark II | 2,821,000 |
| 18. LaSalle 2 | do | 2,821,000 |
| 19. Limerick 1 | do | 2,821,000 |
| 20. Limerick 2 | do | 2,821,000 |
| 21. Millstone 1 | Mark I | 2,810,000 |
| 22. Monticello | do | 2,810,000 |
| 23. Nine Mile Point 1 | do | 2,810,000 |
| 24. Nine Mile Point 2 | Mark II | 2,821,000 |
| 25. Oyster Creek | Mark I | 2,810,000 |
| 26. Peach Bottom 2 | do | 2,810,000 |
| 27. Peach Bottom 3 | do | 2,810,000 |
| 28. Perry 1 | Mark III | 2,810,000 |
| 29. Pilgrim | Mark I | 2,810,000 |
| 30. Quad Cities 1 | do | 2,810,000 |
| 31. Quad Cities 2 | do | 2,810,000 |
| 32. River Bend 1 | Mark III | 2,810,000 |
| 33. Susquehanna 1 | Mark II | 2,821,000 |
| 34. Susquehanna 2 | do | 2,821,000 |
| 35. Vermont Yankee | Mark I | 2,810,000 |
| 36. Washington Nuclear 2 | Mark II | 2,814,000 |
| Other Reactors: | | |
| 1. Big Rock Point | GE Dry Containment | 2,810,000 |
| 2. Yankee Rowe | Westinghouse PWR Dry Containment | 2,855,000 |
| 3. Rancho Seco | B&W PWR-Dry Containment | 2,850,000 |
| 4. Three Mile Island 2 | B&W PWR-Dry Containment | 2,866,000 |

The "Other Reactors" listed in Table V have not been included in the fee base because historically they have been granted either full or partial exemptions from the annual fees. With respect to Big Rock Point and Yankee Rowe, the NRC, in this final rule, hereby grants partial exemptions from the FY 1992 annual fees based on requests filed with the NRC in accordance with § 171.11. The total amount of $781,300 to be paid by the two licensees has been subtracted from the total amount to be assessed operating reactors as a surcharge. The NRC, in this final rule, hereby grants full exemptions from the FY 1992 annual fees for Rancho Seco and Three Mile Island 2 based on the fact that these reactors are either permanently or prematurely shut down and do not intend to operate in the future.

Paragraph (b)(3) is revised to change the fiscal year references from FY 1991 to FY 1992. Paragraph (c)(2) is amended to show the amount of the surcharge for FY 1992, which is added to the base annual fee for each operating power reactor shown in Table V. This surcharge recovers those NRC budgeted costs that are not directly or solely attributable to operating power reactors, but nevertheless must be recovered to comply with the requirements of OBRA-90. The NRC has continued its previous policy decision to recover these costs from operating power reactors.

The FY 1992 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

| Category of costs | FY 1992 budgeted costs ($ in millions) |
|---|---|
| 1. Activities not attributable to an existing NRC licensee or class of licensee: | |
| a. Reviews for DOE/DOD reactor projects, West Valley Demonstration Project, DOE Uranium Mill Tailing Radiation Control Act (UMTRCA) actions | $4.1 |
| b. International cooperative safety program and international safeguards activities | 7.9 |
| c. 60% of low level waste disposal generic activities | 5.0 |
| d. Uranium enrichment generic activities | .7 |
| 2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on Commission policy: | |
| a. Activites associated with nonprofit educational institutions | 5.5 |
| b. Costs not recovered from part 171 for small entities | 5.4 |
| Subtotal budgeted costs | 30.5 |
| Less amount to be assessed to small older reactors with partial exemption under part 171 | .8 |
| Total budgeted costs | 29.7 |

The annual additional charge is determined as follows:

Total budgeted costs ÷ Total number of operating power reactors = $29.7 million ÷ 109 = $272,000 per operating power reactor.

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of $2,855,000 and an additional charge of $272,000 for a total annual fee of $3,127,000 for FY 1992.

Paragraph (d) is revised to show, in summary form, the amount of the total FY 1992 annual fee, including the surcharge, to be assessed for each major type of operating power reactor.

Paragraph (e) is revised to show the amount of the FY 1992 annual fee for non-power (test and research) reactors. In FY 1992, $557,000 in costs are attributable to those commercial and Federal government licensees that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors which are not exempt from fees results in an annual fee of $55,700 per operating license.

*Section 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC*

The introduction to paragraph (c) is being revised to include educational institutions in the list identifying the types of small entities that may be eligible to pay a reduced annual fee. The

change in this paragraph is necessary because educational institutions were inadvertently omitted from the final rule published on April 17, 1992 (57 FR 13625), relating to reduced annual fees for certain small entities. Paragraph (c)(4) is revised to indicate that the maximum annual fee per licensed category is $1,800 for a small entity in FY 1992.

Paragraph (d) is revised to reflect the FY 1992 budgeted costs for materials licensees, including Government agencies licensed by the NRC. These fees are necessary to recover the FY 1992 generic costs totalling $48.4 million applicable to fuel facilities, uranium recovery facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations. It is noted that the amount of the annual fees for some classes of licensees has decreased from the amount shown in the proposed rule. The decrease is the result of the additional collections which are estimated from part 170 fees because of a rule change effective May 18, 1992, which permits the NRC to bill licensees on a quarterly rather than a semiannual basis.

Tables VI and VII show the NRC program elements and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery class of licensees are those associated with uranium recovery licensing and inspection. For the uranium recovery class of licenses, the current Category 2.A.(2) for Class I facilities is further divided into Class I and Class II facilities. Class II facilities are those solution mining licensees, primarily in-situ and heap leach facilities, which do not generate uranium mill tailings. The NRC has reexamined the uniform allocation of costs to Class I facilities in the current rule to determine whether there is a significant difference between the regulatory services provided to operating in-situ facilities that do not generate mill tailings as compared to other licensees in Class I. The NRC is dividing the current Class I facilities into two classes to differentiate between those facilities that generate uranium mill tailings and those facilities that do not generate uranium mill tailings because there are generic regulatory activities (e.g., appendix A to 10 CFR part 40) that are necessary to regulate uranium mill tailings.

For transportation, the costs are those budgeted for transportation research, licensing, and inspection. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage research, licensing, and inspection.

TABLE VI.—ALLOCATION OF NRC FY 1992 BUDGET TO FUEL FACILITY BASE FEES [1]

| | Total program element | | Allocated to fuel facility | |
|---|---|---|---|---|
| | Program support $,K | FTE | Program support $, K | FTE |
| Nuclear Safety Research: | | | | |
| Environmental policy and decommissioning | $2,675 | 5.5 | $150 | .6 |
| NSR Program Total | | | 150 | .6 |
| Nuclear Material and Low Level Waste Safety and Safeguards Regulation: | | | | |
| Fuel facilities lic./inspections | $2,460 | 39.1 | $1,260 | 27.2 |
| Event evaluation | | 25.0 | | 3.6 |
| Safeguards licensing/inspection | 665 | 21.9 | 515 | 16.7 |
| Policy, threat and event assessment | 525 | 13.2 | 45 | .5 |
| Decommissioning | 1,000 | 28.1 | 54 | 4.7 |
| NMLLWSSR Program Total | | | 1,974 | 52.9 |
| Total | 2,154 | 53.4 | | |
| Total Base Fee Amount Allocated to Fuel Facilities | | | [2] $13.6 million | |
| Less Part 170 Fuel Facilty Fees | | | 3.7 million | |
| Part 171 Base Fees for Fuel Facilities | | | $9.9 million | |

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1992 BUDGET TO MATERIAL USERS BASE FEES [1]

| | Total | | Allocated to materials users | |
|---|---|---|---|---|
| | Program support $,K | FTE | Program support $,K | FTE |
| Nuclear Safety Research Mission Area: | | | | |
| Human factors | $5,750 | 5.2 | $180 | .3 |
| Radiation protection/health effects | 5,265 | 17.5 | 3,677 | 13.3 |
| Total | | | 3,857 | 13.6 |
| Nuclear Material and Low Level Waste Safety and Safeguards Regulation: | | | | |
| Licensing/inspection of materials users | $2,190 | 110.5 | $1,971 | 99.5 |
| Event evaluation | | 16.2 | | 13.1 |
| Decommissioning | 1,000 | 28.1 | 446 | 15.3 |
| NMLLWSSR program total | | | 2,417 | 127.9 |

TABLE VII.—ALLOCATION OF FY 1992 BUDGET TO MATERIAL USERS BASE FEES [1]—Continued

| | Total | | Allocated to materials users | |
|---|---|---|---|---|
| | Program support $,K | FTE | Program support $,K | FTE |
| Special and Independent Reviews, Investigations, and Enforcement: | | | | |
| Operational data analysis (PE) | | | 100 | 2.0 |
| Total | | | 6,374 | 143.5 |
| Base Amount Allocated to Materials Users ($,M) | | | [2] $37.1 million | |
| Less Part 170 Material Users Fees | | | $5.8 million | |
| Part 171 Base Fees for Material Users | | | $31.3 million | |

[1] Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

The allocation of the NRC's $9.9 million in budgeted costs to the individual fuel facilities is based, as in FY 1991, primarily on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Because the two high-enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC generic safety and safeguards costs (e.g., physical security) are attributable to these facilities.

Using this approach, the base annual fee for each facility is shown below.

| | Annual fee ($ in thousands) | | |
|---|---|---|---|
| | Safeguards | Safety | Total |
| High Enriched Fuel: | | | |
| Nuclear Fuel Services | $1,073 | $1,097 | $2,170 |
| Babcock and Wilcox | 1,073 | 1,097 | 2,170 |
| Subtotal | 2,146 | 2,194 | 4,340 |
| Low Enriched Fuel: | | | |
| Siemens Nuclear Power | 150 | 533 | 683 |
| Babcock and Wilcox | 150 | 533 | 683 |
| General Electric | 150 | 533 | 683 |
| Westinghouse | 150 | 533 | 683 |
| Combustion Engineering (Hematite) | 150 | 533 | 683 |
| Combustion Engineering (Windsor) | 150 | 533 | 683 |
| Subtotal | 900 | 3,198 | 4,098 |
| $UF_6$ Conversion: | | | |
| Allied Signal Corp. | | 381 | 381 |
| Sequoyah Fuels Corp. | | 381 | 381 |
| Subtotal | | 762 | 762 |
| Other fuel facilities (9 facilities at $72,000 each) | | 648 | 648 |
| Total | 3,046 | 6,802 | 9,848 |

The allocation of the costs attributable to uranium recovery is also based on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. It is estimated that approximately 60 percent of the $2.0 million for uranium recovery is attributable to uranium mills (Class I facilities). Approximately 20 percent of the $2.0 million for uranium recovery is attributable to those solution mining licensees who do not generate uranium mill tailings (Class II facilities). The remaining 20 percent is allocated to the other uranium recovery facilities (e.g. extraction of metals and rare earths). The resulting annual fees for each class of licensee are:

Class I facilities—$167,500;
Class II facilities—$73,200;
Other facilities—$58,800.

For spent fuel storage licenses, the generic costs of $172,000 has been spread uniformly to those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of $43,000.

To equitably and fairly allocate the $31.3 million attributable to the approximately 7,100 diverse material users and registrants, the NRC has continued to base the annual fee on the Part 170 application and routine inspection fees. Because the application and inspection fees are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency because the inspection frequency is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for each category of license is developed as follows:

Annual Fee = (Application Fee + Inspection Fee/Inspection Priority) × Constant + (Unique Category Costs)

The constant is the multiple necessary to recover $31.3 million and is 2.8 for FY 1992. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1992, unique costs of approximately $2.5 million were identified for the medical improvement program which is attributable to medical licensees; about $200,000 in costs were identified as being attributable to radiography licensees; and about $100,000 was identified as being attributable to irradiator licensees. On the average, the materials annual fees for FY 1992 are increased about 50 percent above the FY 1991 annual fees. The reason for this significant increase is twofold. First, the FY 1992 budgeted amount attributable to materials licensees is about 20 percent higher than the FY 1991 amount. Second, the number of licensees to be assessed annual fees in FY 1992 has decreased about 21 percent below the FY 1991 levels (from about 9,000 to about 7,000). The materials fees must be established at these levels in order to comply with the mandate of OBRA-90 to recover approximately 100 percent of the NRC's FY 1992 budget authority. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity on NRC Form 526.

To recover the $5.0 million attributable to the transportation class of licensees, $1.2 million will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 1B. The remaining transportation costs for generic activities ($3.8 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is $82,800 for users and fabricators and $1,500 for users only.

The amount or range of the FY 1992 base annual fees for all materials licensees is summarized as follows:

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MATERIALS LICENSES BASE ANNUAL FEE RANGES

| Category of license | Annual fees |
|---|---|
| Part 70—High enriched fuel. | $2.2 million. |
| Part 70—Low enriched fuel. | $683,000. |
| Part 40—$UF_6$ conversion | $381,000. |
| Part 40—Uranium recovery. | $58,800 to $167,500. |
| Part 30—Byproduct Material. | [1] $490 to $16,400. |
| Part 71—Transportation of Radioactive Material. | $1,500 to $62,800. |
| Part 72—Independent Storage of Spent Nuclear Fuel. | $43,000. |

[1] Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies which is $300,000.

Paragraph (e) is amended to establish the additional charge which is added to the base annual fees shown in paragraph (d) of this final rule. This surcharge continues to be shown, for convenience, with the applicable categories in paragraph (d). The additional charge recovers approximately 40 percent of the NRC budgeted costs of $3.8 million relating to LLW disposal generic activities because 40 percent of the LLW is generated by these licensees. Although these NRC LLW disposal regulatory activities are not directly attributable to materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA–90. The Commission has continued the previous policy decision to recover approximately 40 percent of these LLW costs from materials licensees. The FY 1992 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

| Category of costs | FY 1992 budgeted costs ($ in millions) |
|---|---|
| 1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., 40% of LLW disposal generic activities | $3.8 |

Of the $3.8 million in budgeted costs shown above for LLW activities, 50 percent of the amount ($1.9 million) are allocated to fuel facilities included in part 171 (19 facilities), as follows: $155,100 per HEU, LEU, and $UF_6$ facility and $38,800 for each of the other 9 fuel facilities. The remaining 50 percent ($1.9 million) are allocated to the material licensees in categories that generate low level waste (1,090 licensees) as follows: $1,600 per materials licensee except for those in Categories 4A and 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the $1,600 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.B, 4.C, 5.B, 6.A, and 7.B. The surcharge for Categories 4A and 17, which also generate and/or dispose of low level waste, is $38,800 for Category 4A and $36,000 for Category 17.

Of the $6.2 million not recovered from small entities, $.8 million is allocated to fuel facilities and other materials licensees. This results in a surcharge of $150 per category for each licensee that is not eligible for the small entity fee.

On the basis of this calculation, a fuel facility, a high enriched fuel fabrication licensee, for example, pays a base annual fee of $2,170,000 and an additional charge of $155,250 for LLW activities and small entity costs. A medical center with a broad-scope program pays a base annual fee of $12,200 and an additional charge of $1,750, for a total annual fee of $13,950 for FY 1992.

Section 171.19 Payment

This section is revised to give credit for those partial payments made by certain licensees in FY 1992 toward their FY 1992 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1992 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, NRC will credit payments received for those three quarters toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee. As in FY 1991, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

## V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the final regulation.

## VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

## VII. Regulatory Analysis

With respect to part 170, this final rule was developed pursuant to title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that (1) the NRC had the authority to recover the full cost of providing services to identifiable beneficiaries; (2) the NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations; (3) the NRC could charge for costs incurred in conducting environmental reviews required by NEPA; (4) the NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule; (5) the NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and (6) the NRC's fees were not arbitrary or capricious.

With respect to Part 171, on November 5, 1990, Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90). For FYs 1991 through 1995, OBRA–90 requires that approximately 100 percent of the NRC budget authority be recovered. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the final amount of the FY 1992 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that (1) the annual fees be based on the Commission's FY 1992 budget of $512.5 million less the amounts collected from part 170 fees and the funds directly appropriated from the NWF to cover the Commission's high level waste program; (2) the annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and (3) the annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment. Therefore, when developing the annual fees for operating power reactors the Commission continued to consider the various reactor vendors, the types of containment, and the location of the reactor. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

Parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.*, 109 S. Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

## VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1992. The final rule results in an increase in the fees charged to all licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as appendix A to this final rule.

## IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

## List of Subjects

*10 CFR Part 170*

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

*10 CFR Part 171*

Annual charges, Byproduct material, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material, Holders of certificates, registrations, approvals, Penalties.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

## PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

**Authority:** 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 170.3, the definition *nonprofit educational institution* is added to read as follows:

**§ 170.3 Definitions.**

* * * * *

*Nonprofit educational institution* means a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

* * * * *

3. Section 170.20 is revised to read as follows:

**§ 170.20 Average cost per professional staff-hour.**

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using a professional staff-hour rate equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support, travel, and certain program support. The professional staff-hour rate for the NRC based on the FY 1992 budget is $123 per hour.

4. In § 170.21, the introductory paragraph, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

**§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.**

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

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SCHEDULE OF FACILITY FEES

[see footnotes at end of table]

| Facility categories and type of fees | Fees [1] [2] |
|---|---|
| * * * * * | |
| K. Import and export licenses: | |
| Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR Part 110. | |
| 1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b). | |
| Application—new license | $8,000 |
| Amendment | 8,000 |
| 2. Application for import or export of reactor components and inimal exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8). | |
| Application—new license | $4,900 |
| Amendment | 4,900 |
| 3. Application for export of components requiring foreign government assurances only. | |
| Application—new license | $3,100 |
| Amendment | 3,100 |
| 4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review or foreign government assurances. | |
| Application—new license | $1,200 |
| Amendment | 1,200 |

SCHEDULE OF FACILITY FEES—Continued

[see footnotes at end of table]

| Facility categories and type of fees | Fees [1] [2] |
|---|---|
| 5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review. | |
| Amendment | $120 |

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of such Commission orders. Fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100% of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100% of full rated power, the total costs for the license will be at that decided lower operating power level and not at the 100% capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, and July 10, 1991 rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as apropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

* * * * *

5. Section 170.31 is revised to read as follows:

**§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.**

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2] [3] |
|---|---|
| 1 Special nuclear material: | |
| A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only: | |
| License, Renewal, Amendment | Full Cost. |
| Inspections: | |
| Routine | Full Cost. |
| Nonroutine | Full Cost. |
| B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI): | |
| License, Renewal, Amendment | Full Cost. |
| Inspections: | |
| Routine | Full Cost. |
| Nonroutine | Full Cost. |
| C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4] | |
| Application—New license | $540 |
| Renewal | 540 |
| Amendment | 410 |
| Inspections: | |
| Routine | 490 |
| Nonroutine | 1,400 |
| D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4] | |
| Application—New license | 740 |
| Renewal | 740 |
| Amendment | 250 |
| Inspections: | |
| Routine | 740 |
| Nonroutine | 860 |
| E. Licenses for construction and operation of a uranium enrichment facility | |
| Application | 125,000 |
| License, Renewal, Amendment | Full Cost |
| Inspections: | |
| Routine | Full Cost. |
| Nonroutine | Full Cost. |

## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2] [3] |
|---|---|
| 2. Source material: | |
| A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode: | |
| License, Renewal, Amendment | Full Cost. |
| Inspections: | |
| Routine | Full Cost. |
| Nonroutine | Full Cost. |
| B. Licenses for possession and use of source material for shielding: | |
| Application—New license | 120 |
| Renewal | 120 |
| Amendment | 120 |
| Inspections: | |
| Routine | 310 |
| Nonroutine | 370 |
| C. All other source material licenses: | |
| Application—New license | 850 |
| Renewal | 800 |
| Amendment | 480 |
| Inspections: | |
| Routine | 860 |
| Nonroutine | 1,600 |
| 3. Byproduct material: | |
| A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution: | |
| Application—New license | 2,500 |
| Renewal | 1,500 |
| Amendment | 250 |
| Inspections: [5] | |
| Routine | 2,200 |
| Nonroutine | 2,200 |
| B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution: | |
| Application—New license | 1,400 |
| Renewal | 2,500 |
| Amendment | 590 |
| Inspections: [5] | |
| Routine | 1,100 |
| Nonroutine | 2,100 |
| C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material: | |
| Application—New license | 3,600 |
| Renewal | 1,500 |
| Amendment | 490 |
| Inspections: | |
| Routine | 1,500 |
| Nonroutine | 2,000 |
| D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material: | |
| Application—New license | 1,200 |
| Renewal | 540 |
| Amendment | 330 |
| Inspections: | |
| Routine | 860 |
| Nonroutine | 1,300 |
| E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units): | |
| Application—New license | 540 |
| Renewal | 510 |
| Amendment | 270 |
| Inspections: | |
| Routine | 490 |
| Nonroutine | 740 |
| F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes: | |
| Application—New license | 1,300 |
| Renewal | 430 |
| Amendment | 370 |
| Inspections: | |
| Routine | 820 |
| Nonroutine | 1,400 |
| G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes: | |
| Application—New license | 4,900 |
| Renewal | 2,000 |
| Amendment | 490 |

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2 3] |
|---|---|
| Inspections: | |
| Routine | 1,100 |
| Nonroutine | 1,500 |
| H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter: | |
| Application—New license | 2,200 |
| Renewal | 1,200 |
| Amendment | 270 |
| Inspections: | |
| Routine | 740 |
| Nonroutine | 740 |
| I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter: | |
| Application—New license | 2,800 |
| Renewal | 1,300 |
| Amendment | 370 |
| Inspections: | |
| Routine | 490 |
| Nonroutine | 740 |
| J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter: | |
| Application—New license | 2,700 |
| Renewal | 620 |
| Amendment | 420 |
| Inspections: | |
| Routine | 740 |
| Nonroutine | 740 |
| K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter: | |
| Application—New license | 2,000 |
| Renewal | 1,000 |
| Amendment | 310 |
| Inspections: | |
| Routine | 740 |
| Nonroutine | 740 |
| L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution: | |
| Application—New license | 2,500 |
| Renewal | 2,100 |
| Amendment | 540 |
| Inspections: | |
| Routine | 1,000 |
| Nonroutine | 1,300 |
| M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution: | |
| Application—New license | 1,200 |
| Renewal | 1,200 |
| Amendment | 570 |
| Inspections: | |
| Routine | 860 |
| Nonroutine | 1,000 |
| N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C: | |
| Application—New license | 1,500 |
| Renewal | 860 |
| Amendment | 430 |
| Inspections: | |
| Routine | 740 |
| Nonroutine | 740 |
| O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations: | |
| Application—New license | 3,200 |
| Renewal | 1,900 |
| Amendment | 520 |
| Inspections: [5] | |
| Routine | 1,300 |
| Nonroutine | 2,700 |
| P. All other specific byproduct material licenses, except those in Categories 4A through 9D: | |
| Application—New license | 540 |
| Renewal | 540 |
| Amendment | 410 |
| Inspections: | |
| Routine | 1,300 |
| Nonroutine | 1,300 |

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## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2] [3] |
|---|---|
| 4. Waste disposal and processing: | |
| A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material: | |
| License, renewal, amendment | Full Cost. |
| Inspections: | |
| Routine | Full Cost. |
| Nonroutine | Full Cost. |
| B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material: | |
| Application—New license | 3,000 |
| Renewal | 2,000 |
| Amendment | 210 |
| Inspections: | |
| Routine | 2,200 |
| Nonroutine | 1,700 |
| C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material: | |
| Application—New license | 2,000 |
| Renewal | 1,000 |
| Amendment | 250 |
| Inspections: | |
| Routine | 1,700 |
| Nonroutine | 2,200 |
| 5. Well logging: | |
| A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies: | |
| Application—New license | 3,600 |
| Renewal | 2,100 |
| Amendment | 580 |
| Inspections: | |
| Routine | 860 |
| Nonroutine | 860 |
| B. Licenses for possession and use of byproduct material for field flooding tracer studies: | |
| License, renewal, amendment | Full Cost. |
| Inspections: | |
| Routine | 740 |
| Nonroutine | 1,100 |
| 6. Nuclear laundries: | |
| A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material: | |
| Application—New license | 1,500 |
| Renewal | 1,500 |
| Amendment | 370 |
| Inspections: | |
| Routine | 1,300 |
| Nonroutine | 2,000 |
| 7. Human use of byproduct, source, or special nuclear material: | |
| A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices: | |
| Application—New license | 3,500 |
| Renewal | 850 |
| Amendment | 460 |
| Inspections: | |
| Routine | 1,300 |
| Nonroutine | 2,000 |
| B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices: | |
| Application—New license | 2,500 |
| Renewal | 2,200 |
| Amendment | 390 |
| Inspections: | |
| Routine | 1,700 |
| Nonroutine | 1,900 |
| C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices: | |
| Application—New license | 760 |
| Renewal | 1,100 |
| Amendment | 460 |
| Inspections: | |
| Routine | 1,100 |
| Nonroutine | 1,600 |
| 8. Civil defense: | |
| A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities: | |
| Application—New license | 620 |
| Renewal | 430 |
| Amendment | 330 |

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2] [3] |
|---|---|
| Inspections: | |
| Routine | 740 |
| Nonroutine | 740 |
| 9. Device, product, or sealed source safety evaluation: | |
| A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution: | |
| Application—each device | 3,500 |
| Amendment—each device | 1,300 |
| Inspections: | |
| Routine | Full Cost. |
| Nonroutine | Full Cost. |
| B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices: | |
| Application—each device | 1,700 |
| Amendment—each device | 620 |
| Inspections: | |
| Routine | Full Cost. |
| Nonroutine | Full Cost. |
| C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution: | |
| Application—each source | 740 |
| Amendment—each source | 250 |
| Inspections: | |
| Routine | Full Cost. |
| Nonroutine | Full Cost. |
| D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel: | |
| Application—each source | 370 |
| Amendment—each source | 120 |
| Inspections: | |
| Routine | Full Cost. |
| Nonroutine | Full Cost. |
| 10. Transportation of radioactive material: | |
| A. Evaluation of casks, packages, and shipping containers: | |
| Approval, Renewal, Amendment | Full Cost. |
| Inspections: | |
| Routine | Full Cost. |
| Nonroutine | Full Cost. |
| B. Evaluation of 10 CFR part 71 quality assurance programs: | |
| Application—Approval | 250 |
| Renewal | 250 |
| Amendment | 250 |
| Inspections: | |
| Routine | Full Cost. |
| Nonroutine | Full Cost. |
| 11. Review of standardized spent fuel facilities: | |
| Approval, Renewal, Amendment | Full Cost. |
| Inspections | Full Cost. |
| 12. Special projects: | |
| Approvals and preapplication/licensing activities | Full Cost. |
| Inspections | Full Cost. |
| 13. A. Spent fuel storage cask Certificate of Compliance: | |
| Approvals | Full Cost. |
| Amendments, revisions, and supplements | Full Cost. |
| Reapproval | Full Cost. |
| B. Inspections related to spent fuel storage cask Certificate of Compliance: | |
| Routine | Full Cost. |
| Nonroutine | Full Cost. |
| C. Inspections related to storage of spent fuel under § 72.210 of this chapter: | |
| Routine | Full Cost. |
| Nonroutine | Full Cost. |
| 14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72 of this chapter: | |
| Approval, Renewal, Amendment | Full Cost. |
| Inspection: | |
| Routine | Full Cost. |
| Nonroutine | Full Cost. |
| 15. Import and Export licenses: | |
| Licenses issued pursuant to 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite. | |
| A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b). | |
| Application—new license | 8,000 |
| Amendment | 8,000 |
| B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(2)–(8). | |
| Application—new license | 4,900 |
| Amendment | 4,900 |
| C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only. | |

## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2] [3] |
|---|---|
| Application—new license | [illegible],100 |
| Amendment | [illegible],100 |
| D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances | |
| Application-new license | 1,200 |
| Amendment | 1,200 |
| E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review. | |
| Amendment | 120 |
| 16. Reciprocity: | |
| Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20. | |
| Application (each filing of Form 241) | [illegible]40 |
| Renewal | N/A |
| Amendment | N/A |
| Inspections: | |
| Routine and nonroutine | (4) |

[1] *Types of fees*—Separate charges as shown in the schedule will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that:

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and

(2) Applications for licenses under Category 1E must be accompanied by an application fee of $125,000.

(b) *License/approval/review fees*—Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12 (b), (e), and (f).

(c) *Renewal/reapproval fees*—Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment fees*—

(1) Applications for amendments to licenses and approvals, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees*—Separate charges will be assessed for each routine and nonroutine inspection performed, including inspections conducted by the NRC of Agreement State licensees who conduct activities in non-Agreement States under the reciprocity provisions of 10 CFR 150.20. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, unless the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 to which any applicable contractual support services costs incurred will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes.

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, and July 10, 1991, rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990 rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

[6] Fees as specified in appropriate fee categories in this section.

## PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

6. The authority citation for part 171 is revised to read as follows:

**Authority:** Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101–Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388 (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841).

7. In § 171.5 the definition *nonprofit educational institution* is added to read as follows:

**§ 171.5 Definitions.**

* * * * *

*Nonprofit educational institution* means a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

* * * * *

8. In § 171.11, paragraph (b) is revised to read as follows:

**§ 171.11 Exemptions.**

* * * * *

(b) The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this part as it determines are authorized by law or otherwise in the public interest. Requests for exemption must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which the exemption is sought in order to be considered. Absent extraordinary circumstances, any exemption requests filed beyond that date would not be considered. The filing of an exemption request does not extend the date on which the bill is payable. Only the timely payment in full ensures avoidance of interest and penalty charges. If a partial or full exemption is granted, any overpayment will be refunded.

* * * * *

9. In § 171.15, paragraphs (b)(3), (c)(2), (d), and (e) are revised to read as follows:

**§ 171.15 Annual Fees: Reactor operating licenses.**

* * * * *

(b) * * *

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 20 of this chapter, or operating the Incident Response Center. The base FY 1992 annual fees for each operating power reactor subject to fees under this section and due before September 30, 1992, are shown in paragraph (d) of this section.

(c) * * *

(2) The FY 1992 surcharge to be added to each operating power reactor is $272,000. This amount is calculated by dividing the total cost for these activities ($29.7 million) by the number of operating power reactors (109).

(d) The FY 1992 part 171 annual fees for operating power reactors are as follows:

PART 171 ANNUAL FEES BY REACTOR CATEGORY [1]

[Fees in millions]

| Reactor vendor | Number | Base fee | Added charge | Total fee | Estimated collections |
|---|---|---|---|---|---|
| Babcock/Wilcox | 7 | $2.866 | .272 | $3.138 | $22.0 |
| Combustion Eng | 15 | 2.850 | .272 | 3.122 | 46.8 |
| GE Mark I | 24 | 2.810 | .272 | 3.082 | 74.0 |
| GE Mark II | 8 | 2.821 | .272 | 3.093 | 24.7 |
| GE Mark III | 4 | 2.810 | .272 | 3.082 | 12.3 |
| Westinghouse | 51 | 2.855 | .272 | 3.127 | 159.5 |
| Totals | 109 | | | | 339.3 |

[1] Fees assessed by reactor vendor will vary for plants west of the Rocky Mountains and for Westinghouse plants with ice condensers.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under part 50 of this chapter except for those reactors exempted from fees under § 171.11(a), are as follows:

| | |
|---|---|
| Research reactor | $55,700 |
| Test reactor | 55,700 |

* * * * *

10. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(4), (d), and (e) are revised to read as follows:

**§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.**

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1992 as follows:

| | Maximum annual fee per licensed category |
|---|---|
| Small businesses and small not-for-profit organizations (gross annual receipts): | |
| $250,000 to $3.5 million | $1,800 |
| Less than $250,000 | 400 |
| Private practice physicians (gross annual receipts): | |
| $250,000 to $1.0 million | 1,800 |
| Less than $250,000 | 400 |
| Small governmental jurisdictions (including publicly supported educational institutions) (population): | |
| 20,000 to 50,000 | $1,800 |
| Less than 20,000 | 400 |
| Educational institutions that are not State or publicly supported, and have 500 employees or less | 1,800 |

* * * * *

(4) The maximum annual fee (base annual fee plus surcharge) a small entity is required to pay for FY 1992 is $1,800 for each category applicable to the license(s).

(d) The FY 1992 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

| Category of materials licenses | | | Annual fees [1] [2] [3] |
|---|---|---|---|
| 1. Special nuclear material: | | | |
| A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities. | | | |
| High enriched fuel | License No. | Docket No. | |
| Babcock and Wilcox | SNM–42 | 70–27 | $2,170,000 |
| Nuclear Fuel Services | SNM–124 | 70–143 | 2,170,000 |
| Low Enriched Fuel: | | | |
| B&W Fuel Company | SNM–1168 | 70–1201 | [illegible] |
| Combustion Engineering (Hematite) | SNM–33 | 70–36 | [illegible] |
| Combustion Engineering (Windsor) | SNM–1067 | 70–1100 | [illegible] |
| General Electric Company | SNM–1097 | 70–1113 | [illegible] |
| Siemens Nuclear Power | SNM–1227 | 70–1257 | [illegible] |
| Westinghouse Electric Co. | SNM–1107 | 70–1151 | [illegible] |

| Category of materials licenses | Annual Fees [1] [2] [3] |
|---|---|
| Surcharge | $155,250 |
| A. (2) All other special nuclear materials licenses not included in 1.A.(1) above for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form | 72,000 |
| Surcharge | [illegible] |
| B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI) | 45,000 |
| Surcharge | 1,750 |
| C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers | 1,700 |
| Surcharge | 150 |
| D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category I.A.(2) | 2,300 |
| Surcharge | 1,750 |
| E. Licenses for the operation of a uranium enrichment facility | N/A [11] |
| 2. Source material: | |
| A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride | [illegible] |
| Surcharge | 155,250 |
| (2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby modes | |
| Class I facilities [4] | 167,500 |
| Class II facilities [4] | 73,200 |
| Other facilities | 58,800 |
| Surcharge | 150 |
| B. Licenses which authorize only the possession, use and installation of source material for shielding | [illegible] |
| Surcharge | 150 |
| C. All other source material licenses | 3,000 |
| Surcharge | 1,750 |
| 3. Byproduct material: | |
| A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution | [illegible] |
| Surcharge | 1,750 |
| B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution | 4,600 |
| Surcharge | 1,750 |
| C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radio pharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license | 10,900 |
| Surcharge | 1,750 |
| D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license | [illegible] |
| Surcharge | 150 |
| E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) | [illegible] |
| Surcharge | 150 |
| F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes | 4,600 |
| Surcharge | 150 |
| G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes | 16,400 |
| Surcharge | 150 |

| Category of materials licenses | Annual Fees [1] [2] [3] |
|---|---|
| H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter | 6,300 |
| Surcharge | 150 |
| I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter | 7,600 |
| Surcharge | 150 |
| J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter | 7,500 |
| Surcharge | 150 |
| K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter | 6,000 |
| Surcharge | 150 |
| L. Licenses of broad scope for possession and use of byproduct material issued pursuant to part 30 and 33 of this chapter for research and development that do not authorize commercial distribution | 7,400 |
| Surcharge | 1,750 |
| M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution | 3,700 |
| Surcharge | 1,750 |
| N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C | 4,400 |
| Surcharge | 1,750 |
| O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when authorized on the same license | 12,800 |
| Surcharge | 150 |
| P. All other specific byproduct material licenses, except those in Categories 4A through 9D | 2,100 |
| Surcharge | 150 |
| 4. Waste disposal and processing: | |
| A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material | [5] 84,500 |
| Surcharge | 38,950 |
| B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material | 13,800 |
| Surcharge | 1,750 |
| C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material | 7,600 |
| Surcharge | 1,750 |
| 5. Well logging: | |
| A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies | 10,300 |
| Surcharge | 150 |
| B. Licenses for possession and use of byproduct material for field flooding tracer studies | 15,000 |
| Surcharge | 1,750 |
| 6. Nuclear laundries: | |
| A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material | 5,100 |
| Surcharge | 1,750 |
| 7. Human use of byproduct, source, or special nuclear material: | |
| A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license | 14,200 |
| Surcharge | 150 |
| B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [6] | 12,200 |
| Surcharge | 1,750 |
| C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [6] | 4,600 |
| Surcharge | 150 |
| 8. Civil defense: | |
| A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities | 1,900 |
| Surcharge | 150 |
| 9. Device, product, or sealed source safety evaluation: | |
| A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution | 9,300 |
| Surcharge | 150 |
| B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices | 4,500 |
| Surcharge | 150 |
| C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution | 1,900 |
| Surcharge | 150 |

| Category of materials licenses | Annual Fees [1] [2] [3] |
|---|---|
| D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel | 990 |
| Surcharge | 150 |
| 10. Transportation of radioactive material: | |
| A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers | |
| Spent Fuel, High Level Waste and plutonium air packages | N/A [8] |
| Other Casks | N/A [8] |
| B. Approvals issued of 10 CFR Part 71 quality assurance programs | |
| Users and Fabricators | 62,000 |
| Users | 1,500 |
| Surcharge | 150 |
| 11. Standardized spent fuel facilities | N/A [8] |
| 12. Special Projects | N/A [8] |
| 13. A. Spent fuel storage cask Certificate of Compliance | N/A [8] |
| B. General licenses for storage of spent fuel under 10 CFR 72.210 | 43,000 |
| Surcharge | 150 |
| 14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72 | N/A [8] |
| 15. Import and Export licenses | N/A [8] |
| 16. Reciprocity | N/A [8] |
| 17. Master materials licenses of broad scope issued to Government agencies | 300,000 |
| Surcharge | 36,150 |
| 18. DOE Certificates of Compliance | [10] 1,200,000 |

[1] Amendments based on applications filed after October 1 of each fiscal year that change the scope of a licensee's program or that cancel a license will not result in any refund or increase in the annual fee for that fiscal year or any portion thereof for the fiscal year filed. The annual fee will be waived where the license is terminated prior to October 1 of each fiscal year, and the amount of the annual fee will be increased or reduced where an amendment or revision is issued to increase or decrease the scope prior to October 1 of each fiscal year.

If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration or approval held by that person. For those licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, or 72 of this chapter.

[3] For FYs 1993 through 1995, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the FEDERAL REGISTER for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, part 71 and 72 Certificates of Compliance and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are operating.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes all Certificates of Compliance issued to DOE.

[11] No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is proposed for each category, except Category 18, for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $155,100 has been added to fee Categories 1.A.(1) and 2.A.(1); an additional charge of $38,800 has been added to fee Categories 1.A.(2) and 4.A.; an additional charge of $1,600 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.B., 4.C., 5.B., 6.A., and 7.B.; and an additional charge of $36,000 has been added to fee Category 17.

(2) To recoup those costs not recovered from small entities, an additional charge of $150 has been added to each fee Category, except Categories 1E, 10.A., 11., 12., 13.A., 14., 15., 16., and 18. Licensees who qualify as small entities under the provisions of § 171.16(c) and who submit a completed NRC Form 526 are not subject to the $150 additional charge.

11. In § 171.19, paragraph (b) and (c) are revised to read as follows:

**§ 171.19 Payment.**

* * * * *

(b) For FY 1992 through FY 1995, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest shall accrue from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1992 through 1995, annual fees in the amount of $100,000 or more and described in the **Federal Register** Notice pursuant to § 171.13, shall be paid in quarterly installments of 25 percent. A quarterly installment is due on October 1, January 1, April 1 and July 1 of each fiscal year. Annual fees of less than $100,000 shall be paid once a year.

Dated at Rockville, Maryland this 8th day of July, 1992.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Executive Director for Operations.*

**Editorial Note:** This appendix will not appear in the Code of Federal Regulations.

**Appendix A to This Final Rule—Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)**

*I. Background*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government

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jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act, the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). The NRC size standards are as follows:

(1) A small business is a business with annual receipts of $3.5 million or less except private practice physicians for which the standard is annual receipts of $1 million or less.

(2) A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of $3.5 million or less.

(3) Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

(4) A small educational institution is one that is (1) supported by a qualifying small governmental jurisdiction, or (2) one that is not state or publicly supported and has 500 employees or less.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. For FY 1991, the amount to be collected was approximately $445 million, and for FY 1992, the amount to be collected is approximately $492.5 million.

To comply with OBRA–90, the Commission proposed amendments to its fee regulations in 10 CFR parts 170 and 171 on April 12, 1991 (56 FR 14870). On the basis of a careful evaluation of over 400 comments, the Commission issued a final rule on July 10, 1991 (56 FR 31472). This final rule established the methodology to be used in identifying the fees to be assessed and determined the fees that were assessed and collected in FY 1991. Consistent with the Conference Committee Report accompanying OBRA–90, the NRC fairly and equitably allocated its budget costs. This resulted in the assessment of annual fees for all classes of licensees, including those classes of licensees with a substantial number of small entities. Using the same methodology established in the FY 1991 rulemaking, the NRC published a proposed rule on April 29, 1992 (57 FR 18095), that would establish the fees to be assessed for FY 1992.

*II. Impact on Small Entities*

The comments received on the proposed FY 1991 fee rule revisions and the small entity certifications received in response to the final FY 1991 fee rule indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, the NRC estimates that about 25 percent (approximately 2,000 licensees) qualify as small entities. Therefore, in recognition of this substantial number of small entities, the NRC requested comments from small entities on the proposed FY 1991 rule. Comments were specifically requested on (1) how the proposed regulations would affect each class of licensee and (2) how the regulations could be structured to further minimize the economic impact on the licensee but still meet the statutory mandate of OBRA–90.

For materials licensees, the increase in fees assessed in FY 1991 consisted of (1) an increase of 25 percent in the license and inspection fees assessed under 10 CFR part 170 and (2) a new annual fee assessed under 10 CFR part 171 that ranged from $290 to over $10,000. A number of small entities indicated that the 25 percent increase in license and inspection fees, although not desirable, would not have a significant economic impact on them. However, many other materials licensees commented that the new annual fee would have a negative economic impact on them. Therefore, the regulatory flexibility analysis prepared for the July 10, 1991, final rule, as well as this regulatory flexibility analysis, concentrates on the annual fee.

The commenters on the FY 1991 proposed fee rule indicated the following results if the proposed annual fees were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Although it was not clear to what extent these impacts would materialize at the time the July 10, 1991, final rule was promulgated, it was clear that the assessed annual fees would be a relatively high portion of the gross revenues of some licensees and far less of a portion for other larger material licensees. After the final rule was published, approximately 2,000 license, approval, and registration terminations were requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be

combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the $3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

Members of Congress, in many of the more than 100 Congressional letters the NRC has received since the July 10, 1991, final rule was published, have expressed concern about the size of the NRC annual fees and their economic impact on small entities. Some of these letters have suggested that the Commission should act to further reduce the economic impact on those licensees who conduct limited operations. The Small Business Administration (SBA), while commending the Commission for complying with and using the RFA in the final rulemaking, suggested that the Commission should act to further alleviate the impact of the fees on small businesses. The American Nuclear Society (ANS) also expressed concern about the impact of the annual fees on small entities and suggested that the Commission examine alternatives to further reduce the impacts.

Therefore, the NRC considered additional alternatives, in accordance with the RFA, to alleviate the continuing significant impact of the annual fees on a substantial number of small entities.

*III. Alternatives*

Commenters on the proposed rule published April 12, 1991, and comments received subsequent to publication of the final rule on July 10, 1991, and comments received on the limited amendments to the fee schedules published as a final rule on April 17, 1992 (57 FR 13625) suggested alternatives to reduce the impact on small entities. These comments are categorized as follows:

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).
—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).
—Base fees on the NRC size standards for small entities.

The first alternative would result in the annual fee being in direct proportion to the amount of radioactivity (e.g., number of radioactive sources) possessed by the licensee, independent of whether the licensee meets the size standard for a small business. Thus, a large diversified firm that owns one source would get a reduced fee, while a small entity, whose business may depend solely on the use of radioactive materials, would pay a larger fee because it has more than one source. Thus, this alternative does not necessarily achieve the goal of the RFA to minimize the impact on small entities. The NRC also believes that this approach would not result in a fair and equitable allocation of its generic and other costs not recovered under 10 CFR part 170. Therefore, the NRC rejected this approach.

For similar reasons, the second suggested alternative, basing the fee on the frequency of use of the licensed radioactive source, would not necessarily reduce the cost for small entities that meet the size standards discussed earlier. Therefore, the NRC also rejected this approach.

The last alternative would base fees on the size standards that the NRC has used to define small entities. This alternative would ensure that any benefits from modifying the proposed fees would apply only to small entities. Three basic options, each using the NRC size standards, were considered for modifying the annual fees imposed on small entities:

(1) Exempt all small entities which meet the size standards from annual fees.

(2) Require small entities to pay a fixed percent of the amount of the fee in each of the specific material license fee categories.

(3) Establish a maximum fee for small entities.

Under Option 1, all small entities would be exempted from fees. However, because small entities would not pay any of the generic costs attributable to their class of licensees, this option could be viewed as inconsistent with the objectives of OBRA–90. Under this option, all the annual fees attributable to small entities would be paid by other NRC licensees.

Under Option 2, small entities would pay a percentage (e.g., 50 percent) of the proposed fee for each specific category of materials license, regardless of how small or large the fee is. This option could result in a reduction in annual fees that are already relatively small and that do not have a significant impact on a substantial number of small entities. However, for those fee categories assessed large annual fees, the percentage of reduction may result in assessing small entities licensed under those fee categories relatively large annual fees.

Option 3 would establish a maximum fee for all small entities. Under this option, a small entity would pay either the smaller of the annual fee for the category or the maximum small entity fee. This alternative strikes a balance between the requirements of OBRA–90 and the RFA, which are to consider and reduce, as appropriate, the impact of an agency's regulatory actions on small entities. Therefore, the NRC has adopted Option 3 as the most appropriate to reduce the impact on small entities. Commenters on the proposed fee rule for FY 1992 did not present alternatives that have not been considered previously.

*IV. Maximum Fee*

To implement Option 3, the NRC established a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist in determining the amount or the percent of gross receipts that should be charged to a small entity. To determine a maximum annual fee for a small entity, the NRC examined the NRC 10 CFR part 170 license and inspection fees established in 1991 and the 1991 Agreement State fees for those fee categories that are expected to have a substantial number of small entities. Because these fees have been charged to small entities, the NRC believes that these fees do not have a significant impact on them. In fact, the NRC concluded, in issuing the July 10, 1991, final rule, that the existing materials license and inspection fees do not have a significant impact on small entities. This conclusion remains valid for the FY 1992 fee rule.

The maximum fees per year charged in 1991 by several Agreement States and by the NRC for materials license fee categories with a significant number of small entities are shown below.

| | 1991 Maximum average total fee per year |
|---|---|
| Washington | $3,760 |
| Texas | 2,100 |
| Illinois | 2,000 |
| NRC | 1,590 |
| Nebraska | 1,460 |
| New York | 1,030 |
| Utah | 440 |

Table 1 presents the estimated total fees (part 170 plus part 171) for materials licensees, assuming maximum annual fees for small entities of $2,000 or $1,500 and an average number of licensing actions and inspections per year. If the maximum annual fee for small entities is established at $2,000, the average fee per year for all of the categories would be below the approximately $3,800 maximum fee charged by Agreement States, except for radiography, waste receipt and packaging, and broad-scope medical licensees. The broad-scope medical, and waste receipt and packaging licensees are primarily large entities. Therefore, with a $2,000 maximum small entity annual fee and the average license and inspection fees, only small entities who are radiographers would pay slightly more than the current maximum Agreement State fee of approximately $3,800. If the maximum fee is reduced by $200 (from $2,000 to $1,800), then all categories of materials licensees, including radiographers, would pay no more for each category than the 1991 maximum Agreement State fee of about $3,800 if the licensee qualifies as a small entity.

By establishing the maximum annual fee for small entities at $1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, pay for most of the FY 1991 costs ($22.3 million of the total $27.2 million) attributable to them. Therefore, the NRC has established and will continue, for FY 1992, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity. Note that the costs not recovered from small entities are allocated to other materials licensees and to operating power reactors.

While reducing the impact on many small entities, the Commission agrees that the current maximum annual fee of $1,800 for small entities, when added to the Part 170 license and inspection fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, the Commission has further reduced the impact on small entities with relatively low gross annual receipts.

Commenters have suggested that the NRC could reduce the impact of the fees for materials licensees by basing them on the licensee's nuclear capacity (e.g., the number of sources possessed, the number of hospital beds, or the amount of radioactive material possessed), or the frequency of use of the radioactive material. In adopting the July 10, 1991, final rule, the Commission recognized that inherent differences exist in the nuclear capacity and the frequency of source use for many of the classes of materials licensees. However, as indicated in Section III of this analysis, the Commission concludes that basing the fee on the number of sources, frequency of use, or amount of radioactive material possessed does not necessarily reduce the impact of the fees on small entities, which is the goal of the RFA. The Commission continues to believe that uniformly allocating the generic and other regulatory costs to the specific license to determine the amount of the annual fee is a fair and equitable way to recover its costs and that establishing reduced annual fees based on gross receipts (size) is the most appropriate approach to minimize the impact on small entities. Consistent with this approach, the Commission will continue the $1,800 maximum annual fee for small entities. In addition, the Commission has created a lower tier annual fee for small entities with relatively small gross annual receipts or with a relatively small population (57 FR 13625; April 17, 1992).

To implement this action, relatively small annual receipts were defined. Based on data from an NRC survey of materials licensees and the Department of Commerce industry census, the following data shows the distribution of businesses with annual gross receipts of less than $3.5 million.

| Annual gross receipts | NRC Survey (%) | Department of Commerce |
|---|---|---|
| Less than $250K | 45 | 55 |
| $250–$499K | 14 | 22 |
| $500–$749K | 8 | 6 |
| $750–$999K | 9 | 6 |
| $1,000–$3,500K | 24 | 11 |

As shown, 45 to 55 percent (or about 50%) of small businesses with gross annual receipts of less than $3.5 million have gross annual receipts that are less than $250,000. Thus, by defining relatively small gross annual receipts as less than $250,000, a significant number of small entities would be eligible for a further reduction of the impact of the annual fees. This level would also help ensure that those small businesses which probably would be impacted the most would pay the lower fee.

A similar approach was used to define a relatively small governmental jurisdiction. Using 1990 data from the National Association of Counties, the distribution for counties located in non-Agreement States with a population of less than 50,000 shows that a population level of less than 20,000 would ensure that at least 50 percent of the small counties would be eligible for reduced fees (See the data presented below). This would also ensure that at least 50 percent of other governmental jurisdictions (cities, towns, villages, school districts, etc.) could also receive the benefits because these other jurisdictions are typically smaller than counties.

| Population | Percent of total |
|---|---|
| Less than 5,000 | 10 |
| 5,000–9,999 | 18 |
| 10,000–14,999 | 16 |
| 15,000–19,999 | 14 |
| 20,000–24,999 | 8 |
| 25,000–50,000 | 33 |

The NRC also determined the amount of the annual fee that should be assessed to lower tier small entities (less than $250,000 for small businesses and small non-profit organizations, or less than 20,000 population for small governmental jurisdictions). In establishing the annual fee for lower tier small entities, the Commission retained a balance between the objectives of the RFA and OBRA–90. This balance can be measured by (1) the amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower tier small entity. Nuclear gauge users were used to measure the reduction in fees because they represent about 40 percent of the materials licensees and most likely would include a larger percentage of lower tier small entities than would other classes of materials licensees.

Before presenting alternative fees, the NRC notes that the number of licensees filing small entity certifications for the FY 1991 annual fees is lower than originally estimated. The NRC estimated 3,000 certifications in the July 10, 1991, rule, which would have resulted in an estimated cost of about $5 million in the small entity subsidy. On the basis of the response to the FY 1991 billings, the NRC's estimate is now that there are about 2,000 small entities.

The following data shows four different lower tier small entity fees, their impact on the licensees, and their impact on the balance between OBRA–90 and RFA.

| Alternative lower tier small entity annual fee | Reduction in fee for gauge users (%) | Estimated FY 1992 small entity subsidy ($ M) | Estimated FY 1992 annual fees paid by small entities ($ M) |
|---|---|---|---|
| $1,200 | 30 | $5.0 | $4.5 |
| 900 | 50 | 5.3 | 4.2 |
| 700 | 60 | 5.5 | 4.0 |
| 400 | 75 | 6.0 | 3.5 |

Each of the alternative lower tier annual fees reduces the annual fee for qualifying nuclear gauge licensees. However, the Commission established an annual fee of $400 for the lower tier small entities because this amount should ensure that the lower tier small entities receive a reduction (75 percent for small gauge users) substantial enough to mitigate any severe impact. The amount of the small entity subsidy resulting from this fee is equivalent to the amount estimated in the July 10, 1991, final rule, increased by 20 percent to account for the FY 1992 budget increase and the reduced number of materials licensees resulting from license terminations after the FY 1991 rule became effective. Although the other reduced fees would result in lower subsidies, the Commission believes that the amount of the associated annual fees, when added to the license and inspection fees, would still be considerable for small businesses and organizations with gross receipts that are less than $250,000 or for governmental entities in jurisdictions with a population of less than 20,000.

## V. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analysis and the April 17, 1992, final rule the NRC concluded that a maximum annual fee of $1,800 for small entities and a lower tier small entity annual fee of $400 for small businesses and non-profit organizations with gross annual receipts of less than $250,000, and small governmental entities with a population of less than 20,000, will reduce the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991 fee rule in this rule establishing the FY 1992 fees. Therefore, the analysis and conclusions established in the FY 1991 rule remain valid for this final rule.

TABLE 1.—1991 AVERAGE TOTAL SMALL ENTITY FEES PER YEAR

| License fee category | Total small entity fee [1] | |
|---|---|---|
| | Max annual fee = $2K | Max annual fee = $1.5K |
| Special Nuclear Material (SNM): | | |
| 1C. Industrial Gauges | $1,672 | $1,672 |
| 1D. All other SNM | 2,506 | 2,006 |
| Source Material: | | |
| 2B. Shielding | 463 | 463 |
| 2C. Other Source Materials | 2,867 | 2,367 |
| Byproduct Material: | | |
| 3A. Manufacturing—Broad | 3,560 | 3,060 |
| 3B. Manufacturing—Other | 3,343 | 2,843 |
| 3C. Radiopharmaceuticals | 3,207 | 2,707 |
| 3D. Radiopharmaceuticals—Manufacturing | 2,677 | 2,177 |
| 3E. Irradiators—Self-shield | 1,699 | 1,699 |
| 3F. Irradiators—<10,000 Ci | 2,623 | 2,123 |
| 3G. Irradiators—>10,000 Ci | 3,840 | 3,340 |
| 3H. Exempt distribution—Device review | 2,815 | 2,315 |
| 3I. Exempt distribution—No device review | 2,682 | 2,182 |
| 3J. Gen. license—Device review | 2,679 | 2,179 |
| 3K. Gen. license—No device review | 2,708 | 2,208 |
| 3L. R&D—Broad | 3,210 | 2,710 |
| 3M. R&D—Other | 3,050 | 2,550 |
| 3N. Service license | 2,733 | 2,233 |
| 3O. Radiography | 4,050 | 3,550 |
| 3P. All other byproduct materials | 2,120 | 2,120 |
| Waste Disposal and Processing: | | |
| 4B. Waste receipt/packaging | 4,680 | 4,180 |
| 4C. Waste receipt—prepackaged | 3,216 | 2,716 |
| Well Logging: | | |
| 5A. Well logging | 3,207 | 2,707 |
| Nuclear Laundry: | | |
| 6A. Nuclear laundry | 3,030 | 2,530 |
| Human Use of Byproduct, Source, or SNM: | | |
| 7A. Teletherapy | 3,766 | 3,266 |
| 7B. Medical—broad | 4,360 | 3,860 |
| 7C. Medical other | 3,130 | 2,630 |
| Civil Defense: | | |
| 8A. Civil defense | 1,789 | 1,789 |
| Device, Product, or Sealed Source Safety Evaluation: | | |
| 9A. Device/product—Broad | 3,200 | 2,700 |
| 9B. Device/product—Other | 2,580 | 2,080 |
| 9C. Sealed sources—Broad | 1,530 | 1,530 |
| 9D. Sealed sources—Other | 770 | 770 |

[1] Based on average 10 CFR part 170 fees plus maximum annual fees.

[FR Doc. 92–17027 Filed 7–23–92; 8:45 am]
BILLING CODE 7590–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

### [Airspace Docket No. 91–ASO–15]

### Alteration of VOR Federal Airway V–157

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects the description of VOR Federal Airway V–157 located in the States of North Carolina and South Carolina. The final rule was published in the **Federal Register** on June 18, 1992 (57 FR 27158). During the time period prior to publication, the name of the VOR at Kenton, DE, was changed to Smyrna,

DE, in Airspace Docket No. 92-AEA-4, effective June 25, 1992 (57 FR 18083). The name change was not reflected in the final rule. This action reflects that name change in the description of V-157.

**EFFECTIVE DATE:** 0901 u.t.c., August 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:**

**History**

A final rule was published in the **Federal Register** on June 18, 1992 (57 FR 27158), with an effective date of August 20, 1992, that revised the description of VOR Federal Airway V-157 in the States of North Carolina and South Carolina. The airway's continuity was interrupted by a 130-mile gap between Florence, SC, and Kinston, NC. After this docket was published in the **Federal Register**, it was noted that the name of the Kenton VOR had been changed to the Smyrna VOR. This action corrects the name of the Kenton VOR to Smyrna VOR in the description of V-157. The prior description of the airway designation listed in this document is published in section 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designation of the airway listed in this document will be published subsequently in section 71.123 of the Handbook.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations corrects the description of VOR Federal Airway V-157 by reflecting the name change of the Kenton, DE, VOR to the Smyrna, DE, VOR. Accordingly, since this action merely involves a minor change and does not involve a change in the actual dimensions, configuration, or operating requirements of airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Incorporation by reference, VOR Federal airways.

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation.

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

*Section 71.123 Domestic VOR Federal Airways*

* * * * *

**V-157 [Revised]**

From Key West, FL; Miami, FL; INT Miami 337° and La Belle, FL, 124° radials; La Belle; Lakeland, FL; Ocala, FL; Gainesville, FL; Taylor, FL; Waycross, GA; Alma, GA; Allendale, SC; Vance, SC; Florence, SC; Fayetteville, NC; Kinston, NC; Tar River, NC; Lawrenceville, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Woodstown, NJ; Robbinsville, NJ; INT Robbinsville 044° and LaGuardia, NY, 213° radials; LaGuardia; INT LaGuardia 032° and Deer Park, NY, 328° radials; INT Deer Park 328° and Kingston, NY, 191° radials; Kingston, NY; to Albany, NY. The airspace within R-2901A and R-6602A is excluded. The airspace at and above 7,000 feet MSL which lies within the Lake Placid MOA is excluded during the time the Lake Placid MOA is activated. The airspace within R-4005 and R-4006 is excluded.

* * * * *

Issued in Washington, DC, on July 10, 1992.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 92-17367 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 97**

**[Docket No. 26917; Amdt. No. 1499]**

**Standard Instrument Approach Procedures; Miscellaneous Amendments**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase—*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on July 3, 1992.

**Thomas C. Accardi,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective October 15, 1992*

Barnesville, OH, Barnesville-Bradfield, VOR RWY 27, Amdt.11
St. Clairsville, OH, Alderman, VOR–A, Amdt. 3
Woodsfield, OH, Monroe County, VOR/DME RWY 25, Amdt. 6

* * * *Effective August 20, 1992*

Russellville, AR, Russellville Muni, NDB–1, Amdt. 4
Santa Monica, CA, Santa Monica Muni, LDA/DME RWY 21, Amdt. 1
Frankfort, IN, Frankfort Muni, NDB RWY 4, Amdt. 4, CANCELLED
Ludington, MI, Mason County, NDB RWY 25, Orig.
Ludington, MI, Mason County, NDB RWY 25, Amdt. 8, CANCELLED
Columbia, MO, Columbia Regional, VOR RWY 13, Amdt. 2
Columbia, MO, Columbia Regional, VOR RWY 20, Amdt. 3
Columbia, MO, Columbia Regional, VOR/DME RWY 20, Amdt. 2
Columbia, MO, Columbia Regional, LOC BC RWY 20, Amdt. 11
Columbia, MO, Columbia Regional, NDB RWY 2, Amdt. 8
Columbia, MO, Columbia Regional, ILS RWY 2, Amdt. 12
Cleveland, OH, Burke Lakefront, LOC RWY 24R, Amdt. 9
Cleveland, OH, Cuyahoga County, NDB RWY 23, Amdt. 6
Connellsville, PA, Connellsville, VOR–A, Amdt. 1 CANCELLED
Somerset, PA, Somerset County, RNAV RWY 24, Amdt. 1, CANCELLED
Washington, PA, Washington County, VOR–A, Amdt. 4, CANCELLED
Burlington/Mount Vernon, WA, Skagit Regional/Bay View, NDB RWY 10, Amdt. 2

* * * *Effective July 23, 1992*

Frankfort, IN, Frankfort Muni, NDB RWY 9, Orig.

* * * *Effective June 30, 1992*

Huntsville, AL, Huntsville Intl-Carl T. Jones Field, ILS RWY 36L, Amdt. 8

* * * *Effective June 25, 1992*

Cody, WY, Yellowstone Regional, VOR–A, Amdt. 6

* * * *Effective June 24, 1992*

Oklahom City, OK, Will Rogers World, NDB RWY 17R, Amdt. 23.

FR Doc. 92–17358 Filed 7–22–92; 8:45 am]

BILLING CODE 4910–13–M

VOL 57 ISS 142 JL 23 1992 UMI

**14 CFR Part 97**

[Docket No. 26918; Amdt. No. 1500]

## Standard Instruction Approach Procedures: Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore-(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on July 3, 1992

**Thomas C. Accardi,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority:
1421 and 151
L. 97–449, Ja
(b)(2).

2. Part 9
follows:

| Effective |
|---|
| 06/22/92 |
| 06/22/92 |
| 06/22/92 |
| 06/24/92 |
| 06/25/92 |
| 06/29/92 |
| 06/29/92 |
| 06/29/92 |
| 06/30/92 |
| 07/01/92 |

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Effective: 0

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Thompson-
Arkansas
NDB Rwy
Effective: 0

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Helena/We
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is NDB Rwy

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Tweed-New
Connecticu

**Authority:** 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49 (b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

| Effective | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 06/22/92 | IL | Carbondale/Murphysboro | Southern Illinois | FDC 2/3494 | ILS Rwy 18L Amdt 12 . . . |
| 06/22/92 | IL | Carbondale/Murphysboro | Southern Illinois | FDC 2/3495 | VOR-A Amdt 5 . . . |
| 06/22/92 | IL | Carbondale/Murphysboro | Southern Illinois | FDC 2/3496 | NDB Rwy 18L Amdt 12 . . . |
| 06/24/92 | AK | Sitka | Sitka | FDC 2/3545 | LDA/DME Rwy 11 Amdt 10 . . . |
| 06/25/92 | NJ | Newark | Newark Intl | FDC 2/3572 | NDB Rwy 4L Amdt 9 . . . |
| 06/29/92 | AR | Helena/West Helena | Thompson-Robbins | FDC 2/3672 | NDB Rwy 17 Amdt 3 . . . |
| 06/29/92 | CT | New Haven | Tweed-New Haven | FDC 2/3670 | VOR Rwy 2 Amdt 1 . . . |
| 06/29/92 | CT | New Haven | Tweed-New Haven | FDC 2/3671 | VOR Rwy 2 Amdt 21 . . . |
| 06/30/92 | CT | New Haven | Tweed-New Haven | FDC 2/3708 | ILS Rwy 2 Amdt 14 . . . |
| 07/01/92 | VA | Wise VA. SDF Rwy 24 Amdt 2 | Linsome Pine | FDC 2/3731 | ILS Rwy 23 Amdt 6A . . . |

**NFDC Transmittal Letter Attachment**

*Sitka*

Sitka
Alaska
LDA/DME Rwy 11 Amdt 10...
Effective: 06/24/92

FDC 2/3545/SIT/FI/P Sitka, Sitka, AK. LDA/DME Rwy 11 Amdt 10...MIN ALT 2200 From I-SIT LDA W CRS 10.9/12.1 DME TO I-SIT LDA W CRS 8 DME. This becomes LDA/DME Rwy 11 Amdt 10A.

*Helena/West Helena*

Thompson-Robbins
Arkansas
NDB Rwy 17 Amdt 3...
Effective: 06/29/92

FDC 2/3672/HEE/FI/P Thompson-Robbins, Helena/West Helena, AR. NDB Rwy 17 Amdt 3...S-17 MDA 1100/HAT 860 All CATS. Circling MDA 1100/HAA 858 All CATS. This is NDB Rwy 17 Amdt 3A.

*New Haven*

Tweed-New Haven
Connecticut
VOR Rwy 2 Amdt 1...
Effective: 06/29/92

FDC 2/3670/HVN/FI/P Tweed-New Haven, New Haven, CT. VOR Rwy 2 Amdt 1...Change Note to read..."When CTLZ not in effect use ISLIP ALSTG MIN." Change Altn MIN...NA when CTLZ not in effect. This is VOR-A Amdt 1A.

*New Haven*

Tweed-New Haven
Connecticut
VOR Rwy 2 Amdt 21...
Effective: 06/29/92

FDC 2/3671/HVN/FI/P Tweed-New Haven, New Haven, CT. VOR Rwy 2 Amdt 21...Change Note to read..."INOP table does not apply. When CTLZ not in effect use ISLIP ALSTG MIN." Change Altn MIN...NA when CTLZ not in effect. This is VOR Rwy 2 Amdt 21A.

*New Haven*

Tweed-New Haven
Connecticut
ILS Rwy 2 Amdt 14...
Effective: 06/30/92

FDC 2/3708/HVN/FI/P Tweed-New Haven, New Haven, CT. ILS Rwy 2 Amdt 14...Change Note to read..."Inoperative Table does not apply. When CTLZ not in effect, use ISLIP altimeter setting minimums." Change Alternate minimums...NA When CTLZ not in effect. This is ILS Rwy 2 Amdt 14A.

*Carbondale/Murphysboro*

Southern Illinois
Illinois
ILS Rwy 18L Amdt 12...
Effective: 06/22/92

FDC 2/3494/MDH/ FI/P Southern Illinois, Carbondale/Murphysboro, IL. ILS Rwy 18L Amdt 12...Delete Note...When Control Tower closed...Thru...HIRLS Rwy 18L-36R. Add note...When control tower closed, prior arrangements required for MIRLS/REILS Rwy 6/24, MIRLS Rwy 18R/36L. Delete Note...When Control Zone...thru...Girardeau Altimeter Setting. Add Note...When Control Tower closed, except for operators with approved weather reporting service, use Cape Girardeau altimeter setting. This is ILS Rwy 18L Amdt 12A.

*Carbondale/Murphysboro*

Southern Illinois
Illinois
VOR-A Amdt 5...
Effective: 06/22/92

FDC 2/3495/MDH/ FI/P Southern Illinois, Carbondale/Murphysboro, IL. VOR-A Amdt 5...Delete Note...When Control Tower closed...Thru. . HIRLS Rwy 18L-36R. Add Note...When Control Tower closed, prior arrangements required for MIRLS/REILS Rwy 6/24, MIRLS Rwy 18R/36L. Delete note...When Control Zone...Thru...Girardeau Altimeter setting. Add Note...When Control Tower closed, expect for operators with approved weather reporting service, use Cape Girardeau altimeter setting. This is VOR-A Amdt 5A.

*Carbondale/Murphysboro*

Southern Illinois
Illinois
NDB Rwy 18L Amdt 12...
Effective: 06/22/92

FDC 2/3496/MDH/ FI/P Southern Illinois, Carbondale/Murphysboro, IL. NDB Rwy 18L Amdt 12...Delete note...When Control Tower closed...Thru...HIRLS Rwy 18L-36R. Add Note...When Control Tower closed, prior arrangements required for MIRLS/REILS Rwy 6/24, MIRLS Rwy 18R/36L. Delete Note...When Control Zone...Thru...Girardeau altimeter setting. Add Note...When Control Tower closed, except for operations with approved weather reporting service, use Cape Girardeau altimeter setting. This is NDB Rwy 18L Amdt 12A.

*Newark*

Newark Intl
NJ.
NDB Rwy 4L Amdt 9...
Effective: 06/25/92

FDC 2/3572/EWR/ FI/P Newark Intl, Newark, NJ. NDB Rwy 4L Amdt 9...Change fix name Grity to Embay. This becomes NDB Rwy 4L Amdt 9A.

*Wise Va. SDF RWY 24 AMDT 2...*

Linsome Pine
Effective: 06/25/92

FDC 2/3552/LNP/FI/P Linsome Pine, Wise, VA. SDF Rwy 24 Amdt 2...Missed approach...Climbing right turn to 4500 VIA I-OWN LDA NE Course to STRYP Int and hold. This becomes SDF Rwy 24 Amdt 2A.

*Norfolk*

Norfolk Intl
Virigina
ILS Rwy 23 Amdt 6A...
Effective: 07/01/92

FDC 2/3731/ORF/ FI/P Norfolk Intl, Norfolk, VA. ILS Rwy 23 Amdt 6A...Delete note...Autopilot coupled APCH NA below 450'. This becomes ILS Rwy 23 Amdt 6B.

[FR Doc. 92-17359 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

**POSTAL SERVICE**

**39 CFR Part 233**

**Inspection Service Authority**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This rule revises portions of the Postal Service regulations on Inspection Service authority to include the criteria listed in the Department of Justice regulations pertaining to petitions for remission and mitigation, to clarify the time for filing a Petition for Remission or Mitigation of Forfeiture, and to describe more accurately the purpose of the Petition for Restoration of Proceeds of Sale.

**EFFECTIVE DATE:** July 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Fred I. Rosenberg, (202) 268–5477.

**SUPPLEMENTARY INFORMATION:** Section 233.7(j)(2) is revised to clearly outline the information that must be included in a Petition for Remission or Mitigation. The revision includes criteria for remission listed in 28 CFR 9.5. In addition, the last sentence of paragraph (j)(2) has been deleted.

The first sentence of § 233.7(j)(4) is amended to substitute the word "should" for the word "must." There is no requirement that a Petition for Remission or Mitigation be filed within 30 days from the date of the personal notice letter or within 30 days from the date of publication. A Petition for Remission or Mitigation may be filed at any time prior to disposition of the property by the Postal Service. After the property has been disposed of, a Petition for Restoration of Proceeds of Sale or for the appraised value of the forfeited property (when the forfeited property has been retained or delivered for official use of a government agency) may be filed.

The second sentence of paragraph (j)(4) is amended to more accurately describe the exact purpose of the Petition for Restoration of Proceeds of Sale.

**List of Subjects in 39 CFR Part 233**

Crime, Forfeiture, Postal Service.

In consideration of the foregoing, 39 CFR part 233 is amended as set forth below.

**PART 233—[AMENDED]**

1. The authority citation for part 233 continues to read as follows:

**Authority:** 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 1956, 1957, 2254; 21 U.S.C. 881.

2. Section 233.7 is amended by revising paragraphs (j)(2) and (4) to read as follows:

**§ 233.7 Forfeiture authority and procedures.**

* * * * *

(j) * * *

(2)(i) All such Petitions must include, at a minimum, the following:

(A) A complete description of the property, including model and serial numbers, if any;

(B) The date and place of seizure;

(C) The Petitioner's interest in the property, which must be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(D) Any facts and circumstances, established by satisfactory proof, relied upon by the Petitioner to justify the granting of the Petition.

(ii) The Postal official in charge of the decision (determining official) shall not consider whether the evidence is sufficient to support the forfeiture but shall presume a valid forfeiture.

(iii) *Remission.* The determining official shall not remit a forfeiture unless the petitioner establishes:

(A) That petitioner has a valid, good faith interest in the seized property as owner or otherwise; and

(B) That petitioner had no knowledge that the property in which petitioner claims an interest was or would be involved in any violation of the law; and

(C) That petitioner had no knowledge of the particular violation which subjected the property to seizure and forfeiture; and

(D) That petitioner had no knowledge that the user of the property had any record for violating laws of the U.S. or of any State for a related crime; and

(E) That petitioner had taken all reasonable steps to prevent the illegal use of the property.

(iv) *Mitigation.* In addition to having the discretionary authority to grant relief by way of complete remission of forfeiture, the determining official may, in the exercise of discretion, mitigate forfeitures of seized property. This authority may be exercised in those cases where the petitioner has not met the minimum conditions precedent to remission but where there are present other extenuating circumstances indicating that some relief should be granted to avoid extreme hardship. Mitigation may also be granted where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the determining official, complete relief is not warranted. Mitigation shall take the form of a money penalty imposed upon the petitioner in addition to any other sums chargeable as a condition to remission. This penalty is considered as an item of cost payable by the petitioner, and shall be deposited as an amount realized from forfeiture in accordance with 39 U.S.C. 2003(b)(7).

* * * * *

(4) A Petition for Remission or Mitigation of forfeiture should be filed within thirty days from the date of the personal notice letter or within thirty days from the date of publication notice. After property is disposed of, a Petition for Remission or Mitigation of forfeiture will no longer be accepted; thereafter, a Petition for Restoration of Proceeds of Sale, or for the appraised value of the forfeited property, when the property has been retained or delivered for official use by a government agency, may be filed. Such Petition shall be filed within ninety days of the sale of the property, or within ninety days of the date the property is placed in official use.

* * * * *

Stanley F. Mires,

*Assistant General Counsel, Legislative Division.*

[FR Doc. 92–17400 Filed 7–22–92; 8:45 am]

BILLING CODE 7710–12–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

**[FRL–4157–5]**

**California; Final Authorization of State Hazardous Waste Management Program**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final determination on application of California for final authorization.

**SUMMARY:** California has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed California's application and has reached a final determination that California's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to California to operate its program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA).

**EFFECTIVE DATE:** Final authorization for California shall be effective at 1 p.m. on August 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Deirdre Nurre, H–2–3, Program Development Section, EPA, 75 Hawthorne St., San Francisco, CA 94105; (415) 744–2106.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)).

On December 20, 1991, California submitted an official application for final authorization to administer the RCRA program. On May 1, 1992, EPA published a tentative determination announcing its intent to grant California final authorization. Further background on the tentative decision to grant authorization appears at Vol. 57, No. 85, FR 18827 to 18829, May 1, 1992.

Along with the tentative determination EPA announced the availability of the application for public comment and the date of a public hearing on the application. On May 27, 1992, EPA published a notice extending the public comment period and rescheduling the public hearing. The public hearing was held on June 15, 1992.

**B. Comments/Responses**

EPA received one oral comment, supplemented in writing, and twenty (20) letters containing written comments during the public comment period. Some of the letters expressed support for EPA's tentative determination. The significant issues raised by the commenters and EPA's responses are summarized below.

1. *Comment:* EPA received numerous comments relating to the transportation of hazardous waste in light of the new standard for preemption of State regulation of hazardous waste transportation under the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). The comments generally asserted that some portion of the State's regulations governing transportation of waste were inconsistent with and should be preempted by federal law. Specific issues included the State's requirements on the use of a cover manifest form, the reporting of spills, transfer facilities, vehicle inspection and marking, extremely hazardous waste, and the State's use of fees.

*Response:* The Hazardous Materials Transportation Uniform Safety Act of 1990 amended the Hazardous Materials Transportation Act (HMTA), by adding a new subsection which preempted many State and local regulations of hazardous materials transportation if the State and local regulations were not substantively the same as the federal regulation of the subject. The Department of Transportation's (DOT) final regulation explaining the relevant standard stated that " 'substantively the same' means that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis*, changes are permitted." 49 CFR 107.202. DOT has stated that "substantively the same" does not mean "identical." 57 FR at 20425. DOT cited legislative history which explained that "the state law must have the same effect as the Federal law." Id.

The regulations also established a procedure whereby any person affected by a requirement may apply for a determination as to whether the requirement is preempted and a procedure whereby a State could apply for a waiver of the preemption.

Although EPA has considered each of the specific comments raised with respect to this standard to determine whether the requirement renders the State program "inconsistent" with the Federal program (including regulations governing tracking of hazardous waste), EPA does not believe that it is appropriate to use the authorization process to make the specific determinations of inconsistency where the DOT has established procedures both for establishing inconsistency and providing waivers from preemption. The "inconsistency" is not related to RCRA authorities, but to another statute. A possible issue of preemption under the HMTUSA would not affect the program's eligibility for RCRA authorization.

2. *Comment:* Several commenters stated that the requirement of California Health and Safety Code Section 25160, which requires the use of a manifest cover form when hazardous waste is shipped out of California to a state which requires the use of its own manifest form is preempted by the Hazardous Materials Transportation Act.

*Response:* The form referred to by the commenters is a half-page form which repeats certain information contained on a portion of the California uniform manifest. Although EPA lacks authority to resolve preemption issues under the Hazardous Materials Transportation Act, as amended, it notes that RCRA rules also prohibit other forms from traveling with the uniform national hazardous waste manifest. See, for example, 40 CFR 271.10(f). The State, however, has assured EPA that the cover form need not accompany the manifest and hazardous waste shipment. Rather, the generator may simply submit the cover form to the State agency.

3. *Comment:* Several commenters stated that California's regulations on the management of extremely hazardous waste impose additional burdens on transporters inconsistent with the HMTA.

*Response:* EPA has reviewed the regulations identified by the commenters. The regulations do not appear to impose any additional paperwork or other restrictions on the transportation of hazardous waste. This issue is not a "consistency" issue for RCRA. There may be a preemption issue under the HMTUSA. However, it does not affect the eligibility of the program for RCRA authorization.

4. *Comment:* Several commenters complained of the regulation of hazardous waste transportation by the California Public Utilities Commission (CPUC).

*Response:* The commenters did not identify any specific action of the CPUC which is inconsistent with federal law or with authorization of the Department of Toxic Substances Control (DTSC) to operate the RCRA program. This issue is not a "consistency" issue for RCRA. There may be a preemption issue under the HMTUSA. However, it does not affect the eligibility of the program for authorization.

5. *Comment:* One commenter stated that the description of regulation of hazardous waste transportation contained in the California application "appears" to be incomplete. It also stated that the California application is incomplete because it does not discuss proposed regulations.

*Response:* Since the proposed regulations have not yet been adopted and are not part of the existing program for which the State is seeking authorization, EPA does not agree that the failure to discuss this matter affects the completeness of the State's application.

6. *Comment:* One commenter inquired "whether or not USEPA * * * intends to grant authority to California to adopt regulations affecting waste

transportation, which are far in excess of the USEPA and USDOT requirements?" (emphasis omitted). The commenter appeared to be objecting principally to the proposed requirement that transfer stations require permits.

*Response:* EPA agrees that a regulation preempted by any other Federal law is invalid. At this time, however, the regulations referenced by the commenter have not been adopted and are not part of the State's application. It also appears likely that any permit requirement for facilities not regulated under RCRA would be viewed as "broader in scope" and, therefore, not part of the authorized program. In the event the State adopts regulations which the commenter believes are inconsistent with the Hazardous Materials Transportation Act, the commenter has available the option of seeking an advisory inconsistency ruling from the Department of Transportation, which has jurisdiction over such matters.

7. *Comment:* One commenter stated that the State's requirement for a written report to be filed within 10 days of any incident which results in a spill or release of hazardous waste to the environment is inconsistent with the federal standard which requires that written reports be filed with the DOT within 30 days of the release of any quantity of hazardous waste during transportation.

*Response:* The regulation cited by the commenter is not part of the authorized program. Instead the specific requirement in 22 CCR 66263.41(h) relates solely to certain wastes not generally covered by RCRA requirements. DTSC regulations for reporting releases of RCRA hazardous waste are found in 22 CCR 66263.30 and are identical in all pertinent respects to the provisions of 40 CFR 263.30.

8. *Comment:* One commenter objected to the State regulations governing transfer facilities, noting that the State requires a permit for transfer facilities engaging in "break and bulk" activities or which hold hazardous waste for over 144 hours, suggesting that the permit requirement for these activities is a "prohibition" on these activities.

*Response:* The greater stringency of the State's program is not precluded by RCRA; if there is a preemption issue under HHTA, it should be resolved under the procedures governing such determinations. EPA does not agree that a permit requirement for some transfer facilities is a "prohibition"on these activities. EPA regulations limit the exemption from substantive and permitting regulations for transfer facilities to those facilities which hold hazardous waste less than ten days. 40 CFR 263.12.

9. *Comment:* One commenter objected to the State requirement that the California Highway Patrol conduct an annual inspection of vehicles and containers used to ship hazardous waste in the State. The commenter noted that the inspection requirement is identical to the federal annual highway vehicle inspection program found at 49 CFR 396.17. The commenter states that insofar as California attempts to enforce the inspection requirement against vehicles which have already been inspected under section 396.17, the DTSC requirements violate the Motor Carrier Safety Act. The commenter also argues that the requirement is a "candidate" for preemption under the Hazardous Materials Transportation Act.

*Response:* If there is an issue of possible preemption by other Federal laws, that issue does not affect the RCRA authorization standards. The vehicle inspection program of the California Highway Patrol is not part of the authorized program.

10. *Comment:* One commenter stated that the State's requirements for inspecting and marking bulk containers that transport hazardous waste should be preempted under the HMTA.

*Response:* It there is an issue of possible preemption by other Federal laws, that issue does not affect the RCRA authorization standards. The container inspection program is not part of the authorized program.

11. *Comment:* One commenter argued that the State manifest differs from federal regulation because the State "regulates down to zero generation," so that all waste shipped requires a manifest.

*Response:* The State is not altering the manifest form by this requirement; it is expanding the class of waste that requires a manifest to be shipped. RCRA allows a State to adopt and enforce requirements which are more stringent and to operate a program broader in scope than is the case under federal requirements. 40 CFR 271.1(i). The State does not exempt conditionally exempt or other small quantity generators from the basic requirements of hazardous waste regulation. This regulatory decision by the State is allowed by federal law and is not inconsistent with the federal manifest program.

12. *Comment:* One commenter argued that the State manifest differs from federal regulation because the State identifies many wastes as hazardous which are not regulated as hazardous under RCRA.

*Response:* RCRA allows a State to adopt and enforce requirements which are more stringent and to operate a program broader in scope than is the case under federal requirements. 40 CFR 271.1(i). The State's decision to regulate additional hazardous wastes is allowed by federal law and is not inconsistent with the federal manifest program.

13. *Comment:* One commenter noted that the State requires that a motor carrier of hazardous waste must obtain authority from DTSC, but that RCRA itself does not require such an approval. The commenter concedes that "the HMTA recognizes that states may have legitimate needs to permit and register transporters of hazardous materials," but notes further that "upwards of 30 states impose requirements on transporters of hazardous waste."

*Response:* The requirement for transporters to obtain DTSC approval is broader in scope than RCRA and is not a part of the authorized program. The RCRA authorization process examines the adequacy and consistency of the State's authorities to implement RCRA; if there are preemption issues under other Federal laws, they do not affect the State's RCRA authorization. In addition, EPA does not believe that an individual State's authorization application is the appropriate forum to resolve problems which clearly affect a large number of states. As the commenter recognizes, a process is already in place intended to address the problem pursuant to the HMTUSA.

14. *Comment:* One commenter complained regarding alleged inequities in the collection of fees from motor carriers by DTSC and other State agencies.

*Response:* The collection of fees by the State is not part of the authorized program.

15. *Comment:* One commenter opposed authorization because of difficulties in siting new commercial hazardous waste incinerators. In addition to its own recent experience, the commenter referred to two other cases. In general, the commenter believes that the environmental review process conducted by local agencies in making land use decisions acts as a bar to the siting such facilities.

*Response:* EPA has reviewed the cases cited by the commenter and does not agree that they demonstrate that the State's processes act as a bar to siting new facilities. In one of the cases cited, the Vernon incinerator, the DTSC issued a hazardous waste facility permit. In both of the other cases, there were admitted deficiencies in the environmental review conducted by the

lead agency. In addition, RCRA is not intended to supplant the land use decisions of local authorities. EPA agrees that siting new facilities is a difficult task but is unable to conclude that the local land use decisionmaking process in California is unique in this regard.

16. *Comment:* One commenter argues that under Health and Safety Code § 25162, DTSC requires that California hazardous wastes shipped to another state must be managed at a hazardous waste treatment, storage, and disposal site even if the waste would not otherwise be regulated as hazardous in the receiving state. The commenter states that this requirement poses "an unambiguous restraint on the interstate movement" of such wastes.

*Response:* EPA has reviewed the cited statute and does not agree with the commenter's interpretation of the law. The cited provision also allows shipment of the waste to a facility if "The facility is authorized by the state in which it is located, pursuant to the applicable laws or regulations of that state, to accept the transported hazardous waste for transfer, handling, recycling, storage, treatment, or disposal." Health and Safety Code § 25162(a)(2). Thus, if the receiving state, allowed the waste to be received at a Subtitle D facility, the California statute would allow the disposal of the waste there, "pursuant to the applicable laws or regulations of that state." This requirement is consistent with EPA's "designated facility" definition at 40 CFR 260.10.

### C. Decision

After reviewing the public comments and the administrative record, I conclude that California's application meets all of the requirements necessary to qualify for final authorization for the Federal RCRA program in effect as of July 8, 1984; for non-HSWA revision Clusters I, II, III, IV, V, and VI; and for HSWA cluster I and HSWA cluster II with the exception of Organic Air Emission Standards for Process Vents and Equipment Leaks (Rule Code 79). Accordingly, California is granted final authorization to operate its program as revised and approved herein in lieu of the Federal RCRA program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984(HSWA).

California has not sought the authority to operate the RCRA program on any Indian lands and is not authorized by the Federal government to operate the RCRA program on Indian lands. This authority remains with EPA.

California now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to the HSWA. California also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008 and 3013 and 7003 of RCRA.

In several respects, California's regulation of hazardous waste is broader in scope than federal regulation. Unlike more stringent provisions which are enforceable by EPA as part of the authorized program, EPA may not enforce State provisions which are broader in scope. California "broader in scope" provisions fall principally in two categories: California regulates hazardous wastes which are not regulated under the Federal program, and California requires permits for certain classes of units which are exempt from regulation under federal law.

Hazardous wastes regulated under California but not federal law include certain non-aqueous corrosives (see 22 CCR 66261.22(a)(3 and 4)) and solid wastes which meet additional California characteristics for hazardous waste (see 22 CCR 6261.24(a)(2)(A & B) (toxicity standards for which there is no federal counterpart) and 22 CCR 66261.24(a)(3–8)(threshold standards)). In addition, California regulates used oil as hazardous waste (see Health and Safety Code §§ 25250, *et seq.*), and regulates certain wastes exempt under 40 CFR 261.6(a)(3).

A significant area in which the State permit program is broader in scope is the State requirement of permits for recycling units exempt from permitting under federal regulations. California does not recognize the federal exclusions from the permit requirement for small quantity generators, totally enclosed treatment units and wastewater treatment units (40 CFR 270.1(c)(iii–v)).

### D. Effect of HSWA on California's Authorization

As stated above, California's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA to RCRA. Prior to that date, a State with final authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect immediately in all States regardless of their authorization status. EPA is directed to carry out those requirements and prohibitions. In authorized States, EPA implements the HSWA requirements or prohibitions, including the issuance of full or partial permits, until the State is granted authorization to do so. States must still adopt HSWA-related provisions as State law to retain final authorization.

As a result of HSWA, there will be a dual State/Federal regulatory program in California. To the extent the authorized program is unaffected by HSWA, the State program will operate in lieu of the Federal program. (Please note that all permits issued by EPA prior to the State being granted final authorization will continue in force until the effective date of the State's issuance or denial of a State RCRA permit, or the permit otherwise expires or is revoked.) To the extent HSWA-related requirements are in effect, EPA will administer and enforce those portions of the HSWA in California until the State receives the authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once California is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time, the State will assist EPA's implementation of HSWA under a Cooperative Agreement.

Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect under State law; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a FR notice which explains in detail HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28788, July 15, 1985.

### Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

**Certification Under the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of California's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

**List of Subjects in 40 CFR Part 271**

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 13, 1992.

**Daniel W. McGovern,**

*Regional Administrator.*

[FR Doc. 92-17404 Filed 7-22-92; 8:45 am]

BILLING CODE 6560-50-M

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 2740**

**[AA-320-4212-02 24 1A; Circular No. 2638]**

**RIN 1004-AA73**

**Recreation and Public Purposes Act**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends existing regulations to implement the Recreation and Public Purposes Amendment Act of 1988 (Public Law 100-648) (hereafter referred to as the Act). This Act amended section 3 of the Act of June 14, 1926 to provide special procedures for conveyances of public lands for solid waste disposal or related purposes. The Act authorizes the Secretary of the Interior to make permanent conveyances, without the standard reverter provision, of public lands when such lands are to be used for the express purpose of solid waste disposal or for any other purpose which may result in or include the disposal, placement, or release of any hazardous substance. This is a departure from the present requirement that the United States retain a reversionary interest in lands conveyed under the Recreation and Public Purposes Act.

**EFFECTIVE DATE:** 60 legislative days from date of publication.

**ADDRESSES:** Inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Jim Paugh (202) 208-4200.

**SUPPLEMENTARY INFORMATION:** The Act, which became effective on November 10, 1988, terminated authority for the Secretary of the Interior to lease public land for solid waste disposal purposes. It specifically authorizes the Secretary to: (1) Convey public land by patent for new solid waste disposal sites with a limited reverter, (2) convert existing leases into patents without a reverter provision, and (3) remove the reverter provision from existing patents.

Because of Federal liabilities associated with leased sites, it is the policy of the Bureau of Land Management (BLM) to work with local communities to patent public lands for new disposal sites. Existing leased sites would be closed and retained in Federal ownership. If, however, the community expresses an interest in obtaining a patent to an existing site and no new disposal sites are available, the authorized officer may convey the site, but only after all the requirements contained in this final rule have been met and with approval of the Director, BLM. Implementation of this rule will enable State and local governments that are in need of sanitary landfills to acquire sites at low cost. It would also reduce the potential for indiscriminate dumping of solid waste and hazardous substances on public land, and place primary responsibility for oversight and maintenance with the States and the Environmental Protection Agency (EPA)—entities that have the authority, staffs, and necessary expertise to regulate solid waste disposal facilities.

On November 29, 1991, the BLM published a proposed rule in the **Federal Register** (56 FR 61104), with a 30-day comment period. The rule incorporated provisions by which the authorized officer may convey public land for the purpose of solid waste disposal or for any other purpose that the authorized officer determines may include the disposal, placement, or release of any hazardous substance. Included in the proposed rule were requirements that pertained to: land use planning, land classification, compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), site investigation and State certification, and patent provisions. The proposed rule also made reference to the final EPA regulations that were published in the **Federal Register** (56 FR 50978) on October 9, 1991. These regulations established criteria for municipal solid waste landfills including location restrictions, facility design and operations, ground-water monitoring, corrective action measures, conditions for closure and post-closure use, and requirements for financial responsibility.

In response to the proposed rule published on November 29, 1991, the BLM received comments from 19 sources including: 1 individual, 1 business, 1 industry association, and 16 Governmental entities.

The comments relating directly to the proposed rule and the corresponding responses are discussed as follows. Editorial and grammatical corrections have been made as necessary.

**General Comments**

Three commenters questioned the BLM policy of retaining leased sites in Federal ownership and asked why the conveyance of existing sites will only be considered if no new disposal sites are available. The BLM has been advised by the Office of the Solicitor, Department of the Interior, that the United States is potentially liable for any problems that may occur at existing sanitary landfills under lease or at leased landfills that would be conveyed out of Federal ownership. Therefore, to minimize Federal liabilities, the BLM would prefer to close and retain the leased sites in Federal ownership and work with local governments in patenting new disposal sites.

One commenter asked if the proposed rule applied to landfills on National Forest lands. The Act and its implementing regulations apply only to public lands administered by the Department of the Interior.

One commenter requested clarification of the terms "hazardous substances" and "household hazardous waste". The BLM did not use the latter term in the proposed rule. The Act specifically authorizes the disposal of solid waste including hazardous substances. The definitions of these terms are found in EPA regulations 40 CFR 261.2 and 302.3, respectively. Household waste, as defined under 40 CFR 261.4, is a component of solid waste and is authorized for disposal under the Act. Neither the Act nor the current regulations specifically authorize the

disposal of permanent or long-term hazardous wastes as defined under 40 CFR 261.3. However, some hazardous wastes such as lawn care and gardening products, discarded paints, and household cleaners are commonly deposited with household wastes or have been deposited from conditionally exempt small quantity generators, as provided for in 40 CFR 261.5. Generally, such wastes would not be found in concentrations sufficient to threaten human health and the environment.

One commenter expressed concern that the proposed rule could apply to oil and gas drilling and production pits. The Recreation and Public Purposes Act only grants authority to the Secretary of the Interior to convey public lands for recreational and public purposes. Qualified applicants under the Act include Federal and State agencies, county and city governments, and nonprofit corporations and associations. The provisions of this rule only pertain to solid waste disposal sites including municipal landfills that would be owned and operated by governmental entities. The provisions of this rule would apply to oil and gas operations only to the extent that exploration and production wastes are disposed at municipal landfills and such wastes qualify as solid wastes or hazardous substances as defined under 40 CFR 261.2 and 302.3, respectively.

**Specific Comments**

*Price*

One commenter stated that the provision in § 2741.8(d) that disallows any adjustment in the sale price of public land for inclusion of the limited reverter was confusing and that the existing provisions under § 2741.8 adequately address the pricing requirements. The BLM agrees with the commenter and the provision is removed from the rule.

*Site Investigation*

One commenter expressed opposition to § 2743.3(a)(3) which requires the lessees to reimburse the Federal Government for the costs of investigating existing sites prior to their transfer out of Federal ownership. Since lessees are the primary beneficiaries of obtaining a patent to existing sites, BLM considers the cost reimbursement provision to be reasonable. In the event that investigative costs place an undue hardship on local governments, the BLM may provide financial assistance.

With regard to the requirement under § 2743.3(a)(3)(iv), one commenter requested clarification as to the standards and responsibility for costs associated with the analysis of soil, water, and air. The commenter also recommended that the regulations be more flexible by allowing local agencies to determine the need for analysis. This provision of the regulations requires that an "appropriate" analysis of soil, water, and air be completed as part of the site investigation. The use of the term "appropriate" is intended to allow the BLM authorized officer flexibility in determining the level and standards of investigation, in consultation with EPA, State and local government officials. The requirements and associated costs for investigating leased disposal sites may vary depending on site-specific factors such as climate, topography, geologic strata, soil types, surface and ground water characteristics, and the type and amount of waste materials deposited at the site.

The same commenter requested clarification as to the applicability of EPA regulations governing solid waste disposal in relationship to this rule and the site investigation requirement specified under § 2743.3(a)(3)(iv). The EPA regulations apply to all new, existing, and lateral expansion of solid waste landfills that receive waste on or after October 9, 1993. This would include existing landfills that are leased or disposal sites that are conveyed under the authority of the Recreation and Public Purposes Act. If the landfill units stop taking waste on or before October 9, 1991, the EPA requirements do not apply. If the units receive waste after October 9, 1991, but stop taking waste before October 9, 1993, the landfills are exempt from all EPA requirements except the final cover requirements specified under 40 CFR 258.60(a) or (b). Small landfill owners or operators that dispose of less than 20 tons of municipal waste per day, based on an annual average, are exempt from EPA design, ground-water monitoring, and corrective action requirements so long as there is no evidence of ground-water contamination from the landfill and the unit serves: (1) A community where surface transportation is interrupted for at least three consecutive months preventing access to a regional waste management facility, or (2) a community that has no practical waste management alternative, and the landfill is located in an area that receives no more than 25 inches of precipitation a year. These exemptions do not apply to this rule. The BLM will require that site investigations be conducted on all existing and new disposal sites prior to the conveyance of public lands out of Federal ownership.

Two commenters recommended that the degree of threat should be specified in § 2743.3 (a)(4), (a)(5), and (b) by revising the language to read " * * * contents of the disposal site do not pose a significant threat to human health and environment." The use of "significant" is subjective and how the term will be applied and interrupted would vary among site investigators and reviewers. Therefore, this suggestion was not adopted.

*State Certification*

Several comments were received on the provisions in §§ 2743.2(a)(7) and 2743.3(a)(5) of the rule which require State certification of investigative findings. One commenter recommended that conveyances of public land for solid waste disposal proceed without State agency involvement because the certification was unnecessary and cost prohibitive. Because of the concern for public health and in light of the recently promulgated regulations by EPA that direct the States to conduct their own solid waste program in accordance with new Federal guidelines, the certification prior to the transfer of public lands to local governments is reasonable and of benefit to the States and Federal Government in terms of reducing Federal and State liabilities in the event of future contamination disputes.

Another commenter recommended that the BLM should obtain State input in establishing the conditions of the site investigation and that financial assistance be provided in support of State certifications due to increased work outputs. As stated earlier in the preamble, the BLM fully intends to seek State input in determining the standards of investigation and may provide financial assistance to local governments if the costs of investigation pose an undue hardship. However, the rule does not provide for appropriation of Federal funds to support States in their review of investigative findings and certifications thereof.

A third commenter stated that the Federal Government has no authority to require the States to review the investigation reports and produce a certification of any kind, except in cases where the Federal Government conditions the payment of Federal funds to State agencies upon the performance of such tasks. The BLM considers the certification to be a discretionary action on the part of the States. Sections 2743.2(a)(7) and 2743.3(a)(5) of the rule were amended to clarify that it is the applicant's responsibility to obtain the certification.

One commenter stated that § 2745.3(a)(5) implied a concurrent State investigation. There is no intent to have

the State conduct a separate investigation. This provision and the provision under § 2743.2(a)(7) require that State agencies certify that they have reviewed documents submitted as part of the site investigation and concur with the BLM authorized officer as to the assessment concerning hazardous substances.

One commenter suggested that § 2743.3(a)(5) of the rule establish a 60-day time limit for the States to provide certification of investigative findings. The BLM would prefer to establish the review periods on an informal basis because the time necessary to review and certify the investigative reports may vary depending on the amount of technical data, environmental analyses, and support documentation completed for an existing site. Therefore, this suggestion was not adopted.

*Patent Provisions*

In reference to § 2743.2–1(b) of the rule, one commenter stated that the State should have a hold harmless provision in place. This provision is subject to State law and not appropriate for inclusion into Federal patents.

One commenter stated that the investigation "as of the date of patent" specified in §§ 2743.2–1(c) and 2743.3–1(c) was good in theory but not practical in terms of obtaining a State certification on the same day as the patent is issued. The BLM agrees with this assessment and the provisions are removed from the rule.

Three commenters stated that the 5-year limitation specified in § 2743.2–1(d) was unrealistic because most landfills are designed for a longer period of time due to the high costs of design, environmental evaluations, construction, and permitting. The intent of the Act is to allow local governments to obtain a tract of public land that is of sufficient size to accommodate their landfill needs for periods longer than 5 years. The BLM has tied the 5-year statutory limitation to the plan and schedule of development. Additional guidance on the application of this provision will be provided to the BLM's authorized officers via internal manuals.

Upon publication of this document in the **Federal Register**, the Bureau of Land Management will submit copies of this final rule to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives. Section 4(a) of the Act allows the committees 60 legislative days to review the rulemaking.

The principal authors of this final rule are Mike Ford of the Division of Lands and Realty, BLM Washington Office (WO), and Mike Pool of the Division of Legislation and Regulatory Management (WO), with assistance from the Office of the Solicitor, Department of the Interior.

It has been determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Additionally, this rule will not cause a taking of private property under Executive Order 12630.

**List of Subjects in 43 CFR Part 2740**

Intergovernmental relations, Public lands—sale, Recreation and recreation areas, Reporting and recordkeeping requirements.

Under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), part 2740, Group 2700, subchapter B, chapter II of title 43 of the Code of Federal Regulations is amended as follows:

Dated: June 5, 1992.

**Dave O'Neal,**

*Assistant Secretary of the Interior.*

## PART 2740—RECREATION AND PUBLIC PURPOSES ACT

1. The authority citation for part 2740 is revised to read as follows:

**Authority:** 43 U.S.C. 869 *et seq.*, 43 U.S.C. 1701 *et seq.*, and 31 U.S.C. 9701.

### Subpart 2740—Recreation and Public Purposes Act: General

2. Section 2740.0–3 is amended by adding paragraph (c) to read as follows:

**§ 2740.0–3 Authority.**

* * * * *

(c) Section 3 of the Act of June 14, 1926, as amended by the Recreation and Public Purposes Amendment Act of 1988, authorizes the Secretary of the Interior to convey public lands for the purpose of solid waste disposal or for any other purpose which may result in or include the disposal, placement, or release of any hazardous substance, with special provisions relating to reversion of such lands to the United States.

3. Section 2740.0–5 is amended by adding paragraphs (f) and (g) to read as follows:

**§ 2740.0–5 Definitions.**

* * * * *

(f) *Hazardous substance* means any substance designated pursuant to Environmental Protection Agency regulations at 40 CFR part 302.

(g) *Solid waste* means any material as defined under Environmental Protection Agency regulations at 40 CFR part 261.

4. Section 2740.0–6(a) is amended by removing the period at the end of the last sentence and adding a comma and phrase to read as follows:

**§ 2740.0–6 Policy.**

(a) * * * except for conveyances under subpart 2743 of this title.

5. Section 2740.0–7 is amended by adding paragraph (d) to read as follows:

**§ 2740.0–7 Cross references.**

* * * * *

(d) Requirements and procedures for conveyance of land under the Recreation and Public Purposes Act for the purpose of solid waste disposal or for any other purpose that the authorized officer determines may result in or include the disposal, placement, or release of any hazardous substance are contained in subpart 2743 of this chapter.

5a. Section 2740.0–9 is added to read as follows:

**§ 2740.0–9 Information collection.**

The collection of information contained in part 2740 of Group 2700 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0012. This information will be used to determine the suitability of public lands for lease and/or disposal to States or their political subdivisions, and to nonprofit corporations and associations, for recreational and public purposes. Responses are required to obtain benefits in accordance with the Recreation and Public Purposes Act.

Public reporting burden for this information is estimated to average 47 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to the Division of Information Resources Management (770), Bureau of Land Management, 1849 C Street NW., Washington, DC 20240; and the Paperwork Reduction Project (1004–0012), Office of Management and Budget, Washington, DC 20503.

## Subpart 2741—Recreation and Public Purposes Act: Requirements

### § 2741.5 [Amended]

6. Section 2741.5 is amended by removing existing paragraph (i) and redesignating paragraph (j) as new paragraph (i).

7. Part 2740 is amended by adding subpart 2743 to read as follows:

## Subpart 2743—Recreation and Public Purposes Act: Solid Waste Disposal

Sec.

2743.1 Applicable regulations.
2743.2 New disposal sites.
2743.2–1 Patent provisions for new disposal sites.
2743.3 Leased disposal sites.
2743.3–1 Patent provisions for leased disposal sites.
2743.4 Patented disposal sites.

### § 2743.1 Applicable regulations.

Unless the requested action falls within the provision of § 2743.2(b), applications filed or actions taken under this subpart shall be subject to all the requirements set forth in subpart 2741 of this chapter except §§ 2741.6 and 2741.9.

### § 2743.2 New disposal sites.

(a) Public lands may be conveyed for the purpose of solid waste disposal or for any other purpose that the authorized officer determines may include the disposal, placement, or release of any hazardous substance subject to the following provisions:

(1) The applicant shall furnish a copy of the application, plan of development, and any other information concerning the proposed use to all Federal and State agencies with responsibility for enforcement of laws applicable to lands used for the disposal, placement, or release of solid waste or any hazardous substance. The applicant shall include proof of this notification in the application filed with the authorized officer;

(2) The proposed use covered by an application shall be consistent with the land use planning provisions contained in part 1600 of this title, and in compliance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371) and any other Federal and State laws and regulations applicable to the disposal of solid wastes and hazardous substances;

(3) Conveyance shall be made only of lands classified for sale pursuant to the procedures and criteria in part 2400 of this title;

(4) The applicant shall warrant that it will indemnify and hold the United States harmless against any liability that may arise out of any violation of Federal or State law in connection with the use of the lands;

(5) The authorized officer shall investigate the lands covered by an application to determine whether or not any hazardous substance is present. The authorized officer will require full reimbursement from the applicant for the costs of the investigation. The authorized officer may, in his or her discretion, make an exception to the requirement of full reimbursement if the applicant demonstrates that such costs would result in undue hardship. The investigation shall include but not be limited to:

(i) A review of available records related to the history and use of the land;

(ii) A visual inspection of the property; and

(iii) An appropriate analysis of the soil, water and air associated with the area;

(6) The investigation conducted under paragraph (a)(5) of this section must disclose no hazardous substances and there is a reasonable basis to believe that no such substances are present; and

(7) The applicant shall present certification from the State agency or agencies responsible for environmental protection and enforcement that they have reviewed all records, inspection reports, studies, and other materials produced or considered in the course of the investigation and that based on these documents, such agency or agencies agree with the authorized officer that no hazardous substances are present on the property.

(b) The authorized officer shall not convey public lands covered by an application if hazardous substances are known to be present.

(c) The authorized officer shall retain as permanent records all environmental analyses and appropriate documentation, investigation reports, State certifications, and other materials produced or considered in determining the suitability of public lands for conveyance under this section.

### § 2743.2–1 Patent provisions for new disposal sites.

For new disposal sites, each patent will provide that:

(a) The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances;

(b) The patentee shall indemnify and hold harmless the United States against any legal liability or future costs that may arise out of any violation of such laws;

(c) Except as provided in paragraph (e) of this section, the land conveyed under § 2743.2 of this part shall revert to the United States unless substantially used in accordance with an approved plan and schedule of development on or before the date five years after the date of conveyance;

(d) If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and the approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon; and

(e) No portion of the land covered by such patent shall under any circumstance revert to the United States if such portion has been used for solid waste disposal or for any other purpose that the authorized officer determines may result in the disposal, placement, or release of any hazardous substance.

### § 2743.3 Leased disposal sites.

(a) Upon request by or with the concurrence of the lessee, and only with the express approval of the Director, Bureau of Land Management, the authorized officer may issue a patent for those lands covered by a lease, or portion thereof, issued on or before November 9, 1988, that have been or will be used, as specified in the plan of development, for solid waste disposal or for any other purpose that the authorized officer determines may result in or include the disposal, placement, or release of any hazardous substance, subject to the following provisions:

(1) All conveyances shall be consistent with the land use planning provisions contained in part 1600 of this title, and in compliance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371) and any other Federal and State laws and regulations applicable to the disposal of solid wastes and hazardous substances;

(2) Conveyances shall be made only of lands classified for sale pursuant to the procedures and criteria in part 2400 of this title.

(3) The authorized officer shall investigate the lands to be included in the patent to determine whether they are contaminated with hazardous substances. The authorized officer will require full reimbursement from the lessee for the costs of the investigation. The authorized officer may, in his or her discretion, make an exception to the requirement of full reimbursement if the

applicant demonstrates that such costs would result in undue hardship. The investigation shall include but not be limited to the following:

(i) A review of all records and inspection reports on file with the Bureau of Land Management, State, and local agencies relating to the history and use of the lands covered by a lease and any violations and enforcement problems that occurred during the term of the lease;

(ii) Consultation with the lessee and users of the landfill concerning site management and a review of all reports and logs pertaining to the type and amount of solid waste deposited at the landfill;

(iii) A visual inspection of the leased site; and

(iv) An appropriate analysis of the soil, water and air associated with the area;

(4) The investigation conducted under paragraph (a)(3) of this section must establish that the involved lands contain only those quantities and types of hazardous substances consistent with household wastes, or wastes from conditionally exempt small quantity generators (40 CFR 261.5), and there is a reasonable basis to believe that the contents of the leased disposal site do not threaten human health and the environment; and

(5) The applicant shall present certification from the State agency or agencies responsible for environmental protection and enforcement that they have reviewed all records, inspection reports, studies, and other materials produced or considered in the course of the investigation and that based on these documents, such agency or agencies agree with the authorized officer that the contents of the leased disposal site in question do not threaten human health and the environment.

(b) The authorized officer shall not convey lands identified in paragraph (a) of this section if the investigation concludes that the lands contain hazardous substances at concentrations that threaten human health and the environment.

(c) The authorized officer shall retain as permanent records all environmental analyses and appropriate documentation, investigation reports, State certifications, and other materials produced or considered in determining the suitability of public lands for conveyance under this section.

**§ 2743.3–1 Patent provisions for leased disposal sites.**

Each patent for a leased disposal site will provide that:

(a) The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances;

(b) The patentee shall indemnify and hold harmless the United States against any legal liability or future costs that may arise out of any violation of such laws; and

(c) No portion of the land covered by such patent shall under any circumstance revert to the United States.

**§ 2743.4 Patented disposal sites.**

(a) Upon request by or with the concurrence of the patentee, the authorized officer may renounce the reversionary interests of the United States in land conveyed on or before November 9, 1988, and rescind any portion of any patent or other instrument of conveyance inconsistent with the renunciation upon a determination that such land has been used for solid waste disposal or for any other purpose that the authorized officer determines may result in the disposal, placement, or release of any hazardous substance.

(b) If the patentee elects not to accept the renunciation of the reversionary interests, the provisions contained in §§ 2741.6 and 2741.9 shall continue to apply.

[FR Doc. 92–17309 Filed 7–22–92; 8:45 am]
BILLING CODE 4310–84–M

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

### Final Flood Elevation Determinations

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Final rule.

**SUMMARY:** Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

**ADDRESSES:** The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2754.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

### National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

### Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

**PART 67—[AMENDED]**

1. The authority citation for part 67 continues to read:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.11 [Amended]**

2. The tables published under the authority of § 67.11 are amended as follows:

| Source of flood and location | #Depth in feet above ground. *Elevation in feet |
|---|---|
| **ILLINOIS** | |
| **Huntley (Village), McHenry and Kane Counties (FEMA Docket No. 7006)** | |
| *South Branch Kishwaukee River:* | |
| About 950 feet upstream of mouth | *870 |
| About 2200 feet upstream of Chicago and North Western railroad | *879 |
| **Maps available for inspection** at the Village Administrator's Office, Village Hall, 11704 Coral Street, Huntley, Illinois. | |
| **NEW YORK** | |
| **Mamakating (Town), Sullivan County (FEMA Docket No. 7042)** | |
| *Basher Kill:* | |
| Approximately 250 feet upstream of confluence of Gumaer Brook | *532 |
| To a point approximately 1,050 feet upstream of the confluence of Gumaer Brook | *[illegible] |
| *Gumaer Brook:* | |
| At confluence with Basher Kill | *530 |
| Approximately 125 feet upstream of U.S. 209 | *579 |
| **Maps available for inspection** at the Town Hall, Route 209, Wurtsboro, New York. | |
| **Sackets Harbor (Village), Jefferson County (FEMA Docket No. 7042)** | |
| *Mill Creek:* | |
| At confluence with Lake Ontario | *249 |
| Approximately 575 feet upstream of corporate limits | *279 |
| Lake Ontario: Entire shoreline within community | *249 |
| **Maps available for inspection** at the Village Office, 112 North Broad Street, Sackets Harbor, New York. | |
| **PENNSYLVANIA** | |
| **Peters (Township), Franklin County (FEMA Docket No. 7040)** | |
| *Johnston Run:* | |
| Approximately 275 feet downstream of T-404 (Edwards Drive) | *517 |
| Approximately 350 feet upstream of Farm Access Road | *572 |
| **Maps available for inspection** at the Peters Township Building, 5000 Steele Avenue, Lemasters, Pennsylvania. | |
| **VIRGINIA** | |
| **Virginia Beach (City), Independent City (FEMA Docket No. 7042)** | |
| *Canal No. 2—London Bridge Creek:* | |
| Approximately .8 mile upstream of Shipps Corner Road | *7 |
| Approximately 0.5 mile upstream of Potters Road | *8 |
| *Canal No. 2—West Neck Creek.* | |
| Approximately 0.5 mile upstream of Indian River Road | *5 |
| Approximately 1.7 miles upstream of confluence of Colony Acres canal | *7 |
| *Holland Road Corridor System:* | |
| At confluence with Green Run Canal | *8 |
| Approximately 200 feet upstream of Rosemont Road | *8 |
| *Green Run Canal:* | |
| At confluence with Canal No. 2—London Bridge Creek | *8 |
| At downstream side of Lynnhaven Parkway | *9 |
| *Colony Acres Canal:* | |
| At confluence with Canal No. 2—West Neck Creek | *7 |
| Approximately 1,250 feet upstream of confluence with Canal No. 2—West Neck Creek | *7 |
| **Maps available for inspection** at the Virginia Beach City Hall, Department of Public Works, City Engineering Office, Municipal Center, Virginia Beach, Virginia. | |
| **WEST VIRGINIA** | |
| **Charles Town (City), Jefferson County (FEMA Docket No. 7042)** | |
| *Evitts Run:* | |
| Approximately .85 mile downstream of U.S. Route 340 | *[illegible] |
| Approximately 650 feet upstream of upstream corporate limits | *495 |
| **Maps available for inspection** at the Charles Town City Hall, 218 East Congress Street, Charles Town, West Virginia. | |

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: July 15, 1992.

**C.M. "Bud" Schauerte,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 92-17397 Filed 7-22-92; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 97**

**[FCC 92-310]**

## Space Station Operation

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action amends the amateur service rules to specify that any amateur station may be a space station. A space station is an amateur station that is located more than 50 km above the Earth's surface and that transmits on frequencies allocated to the amateur-satellite service. These amendments are necessary so that the public will have a more highly-trained pool of operators and electronic experts available in emergencies. It is also necessary so that the Commission will not have to issue waivers to astronauts who want to operate their amateur stations in space, but who are not eligible currently because they do not hold the required class of operator license. The effect of this rule amendment is to provide an additional privilege for most amateur operators.

**EFFECTIVE DATE:** September 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Maurice J. DePont, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, (202) 632-4964.

**SUPPLEMENTARY INFORMATION:**

In the matter of Amendment of the Amateur Radio Services Rules (Part 97) Concerning Space Station Operation.

[RM-7934 and RM-7957]

**Order**

*Adopted:* July 1, 1992.

*Released:* July 17, 1992.

By the Commission:

1. In this *Order*, we are amending the amateur radio services rules to authorize any amateur operator to be the licensee of a space station.[1] Section 97.207(a) of the Commission's Rules, 47 CFR 97.207(a), currently provides that only an Amateur Extra Class operator may be the licensee of a space station. Amateur Extra is the highest grade of the five classes of amateur operator license.[2]

[1] A space station is an amateur station located more than 50 km above the Earth's surface that transmits on frequencies allocated to the amateur-satellite service.

[2] The other classes of amateur operator licenses are: Novice, Technician, General, and Advanced. As

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2. On March 3, 1992, Neal A. Osborn filed rule making petition RM–7957. He requests that any amateur station be permitted to transmit from space. He also requests that "spacecraft" be included within the definition of "ship" in order to subject them to the restrictions pertaining to amateur stations aboard ships contained in § 97.11 of the Commission's Rules, 47 CFR 97.11. On March 5, 1992, Jim D. Haynie filed petition for rule making RM–7934. He also requests that any amateur station be permitted to transmit from space. Both petitioners note that waivers of Section 97.207(a) have been granted where astronauts holding lower classes of operator license sought permission for their amateur stations to be space stations.

3. We believe that amending the rules to permit any amateur station to transmit from space would benefit both the amateur community and the public. Amateur operators would have greater access to space telecommunications technology. The public would have a more highly-trained pool of operators and electronics experts available in emergencies. Additionally, the Commission would benefit because rule waivers to astronauts who want to operate their amateur stations in space would not have to be issued. We do not agree, however, that a spacecraft should be defined as a "ship." Our rules will continue to follow the definition of space station which is contained in the international Radio Regulations.[3] Further, we note that the volunteer-examiner coordinators (VECs) can rearrange in their pools the necessary questions concerning proper operation of a space station.[4]

4. This rule amendment would provide an additional privilege for most amateur operators. It is expected to be non-controversial and is considered to be a minor rule amendment in which the public is not particularly interested. We find, therefore, for good cause, that compliance with the notice and comment procedure of the Administrative Procedure Act is unnecessary. See 5 U.S.C. § 553(b)(B).

5. Accordingly, *it is ordered that* effective September 23, 1992, Part 97 of the Commission's Rules, 47 CFR part 97, *is amended* as set forth below. Authority for this action is found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

6. Pursuant to the authority contained in 47 U.S.C. 154(i), *it is further ordered* That the petitions for rule making of Neal A. Osborn and Jim D. Haynie *are granted* as indicated herein and *are denied* in all other respects.

7. For information concerning this Order contact Maurice J. DePont, Private Radio Bureau, (202) 632–4964.

**List of Subjects in 47 CFR Part 97**

Radio, Space station.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

**Rule Change**

Part 97 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

**PART 97—[AMENDED]**

1. The authority citation for part 97 continues to read as follows:

**Authority citation:** 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.207(a) is revised to read as follows:

**§ 97.207 Space Station.**

(a) Any amateur station may be a space station. A holder of any class operator license may be the control operator of a space station, subject to the privileges of the class of operator license held by the control operator.

* * * * *

[FR Doc. 92–17316 Filed 7–22–92; 8:45 am]

BILLING CODE 6712–01–M

of March 31, 1992, there were 555,989 amateur operators licensed by the Commission, including 58,543 who held the Amateur Extra Class operator license.

[3] See Radio Regulation No. 61, Geneva (1979). See also § 97.3(a)(36) of the Commission's Rules, 47 CFR § 97.3(a)(36).

[4] The VECs maintain the question pools for the amateur operator license examinations. Section 97.503(b) of the Commission's Rules, 47 CFR 97.503(b), requires that each written examination be structured so as to prove that an examinee possesses the operational and technical qualifications required to perform properly the duties of the class of operator license sought. The questions concerning space stations include frequencies authorized, types of transmissions, telecommand provisions, and notifications.

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**DEPARTMENT OF DEFENSE**

**48 CFR Parts 223 and 252**

**Defense Federal Acquisition; Regulation Supplement; Drug-Free Work Force**

**AGENCY:** Department of Defense (DOD).

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Defense is removing the drug-free work force final rule and reinstating the interim rule that was published as subpart 223.5 of the Defense Federal Acquisition Regulation Supplement on July 31, 1991 (56 FR 36280).

**EFFECTIVE DATE:** July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Linda W. Neilson, Procurement Analyst, DAR Council, (703) 697–7266.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The interim rule was originally published in the **Federal Register** on September 28, 1988 (53 FR 37763). Sixty-three comments were received from thirty-five respondents to the rule. After review of the public comments, and internal coordination, the rule was finalized on November 27, 1991 (56 FR 60066). Since the final rule was a significant departure from the interim rule, a question was raised as to whether the public was given adequate opportunity to express and have its views considered in the development of the final rule. Consequently, the decisions has been made to remove the final rule, reinstate the interim rule, and to publish the removed final rule as a proposed rule with a request for comments. The notice of proposed rule with request for comments is published elsewhere in this **Federal Register** edition. The removal of the final rule and reinstatement of the interim were effective July 16, 1992, upon issuance of Departmental Letter 92–006.

**B. Regulatory Flexibility Act**

When the interim rule was originally published on September 28, 1988 (53 FR 37663), the rule was not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, thus we did not perform an initial regulatory flexibility analysis at that time. However, our current assessment is that the interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the rule requires contractors to institute and maintain a program for achieving the objective of a drug-free work force. An initial regulatory flexibility analysis has been prepared and is summarized as follows.

The interim rule applies to all businesses, large and small, with DoD contracts that require contractor employees to have access to classified information, or to be in positions which the contractor determines involve national security, health or safety, or

which require a high degree of trust and confidence. In addition, the clause may be inserted in contracts in which the requirement is determined by the contracting officer to be necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract. The requirement does not apply to contracts for commercial or commercial-type products, or for contracts which require performance or partial performance outside the U.S., its territories, and possessions, unless the contracting officer determines inclusion of the requirement to be in the best interest of the Government. A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from Mrs. Linda W. Neilson, Defense Acquisition Regulations System, 3062 Defense Pentagon, Washington, DC 20301–3062. Comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR case 88–083 in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the interim rule does not impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 223 and 252**

Government procurement.

**Claudia L. Naugle,**

*Executive Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 223 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 223 and 252, continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, and Defense FAR Supplement 201.301.

## PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Subpart 223.5, consisting of sections 223.570 through 223.570–3, is revised to read as follows:

### SUBPART 223.5—DRUG-FREE WORKPLACE

223.570 Drug-free work force.
223.570–1 Definitions.
223.570–2 Policy.
223.570–3 General.
223.570–4 Contract clause.

**223.570 Drug-free work force.**

**223.570–1 Definitions.**

"Employee in a sensitive position" and "illegal drugs," as used in this section, are defined in the clause at 252.223–7004, Drug-Free Work Force.

**223.570–2 Policy.**

DoD policy is to ensure that its contractors maintain a program for achieving a drug-free work force.

**223.570–3 General.**

(a) The use of illegal drugs is inconsistent with the law-abiding behavior expected of all citizens. Employees who use illegal drugs tend to be less productive, less reliable, and prone to greater absenteeism. The use of illegal drugs by contractor employees results in the potential for increased cost, delay, and risk in the performance of a Government contract.

(b) If a contractor's employees use illegal drugs at any time, it can—

(1) Impair their ability to perform tasks that are critical to proper contract performance;

(2) Increase the potential for accidents and for failures that can pose a serious threat to the national security, health, and safety;

(3) Cause less than the complete reliability, stability, and good judgment required of an individual who has access to sensitive information;

(4) Create the possibility of coercion, influence, and irresponsible action under pressure that may post a serious risk to national security, health, and safety.

**223.570–4 Contract clause.**

(a) Use the clause at 252.223–7004, Drug-Free Work Force, in all solicitations and contracts—

(1) That involve access to classified information; or

(2) When the contracting officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract.

(b) Do not use the clause in solicitations and contracts for—

(1) Commercial or commercial-type products (see FAR 11.001); or

(2) Performance or partial performance outside the United States, its territories, and possessions, unless the contracting officer determines such inclusion to be in the best interest of the Government.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.223–7004 is revised to read as follows:

**252.223–7004 Drug-Free Work Force.**

As prescribed in 223.570–4, use the following clause:

**Drug-Free Work Force (SEP 1988)**

(a) *Definitions.* (1) *Employee in a sensitive position,* as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) *Illegal drugs,* as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing—

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such times as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing program shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

[FR Doc. 92-17314 Filed 7-22-92; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

[Docket No. 91-12; Notice 2]

RIN 2127-AD98

### Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This notice amends Motor Vehicle Safety Standard No. 108 to permit "Combination Headlighting Systems," headlighting systems in which the upper and lower beams can be provided by two types of dissimilar headlamps, or by combining aspects of performance of the two types within a single headlamp. A vehicle manufacturer may select upper and lower beam providers from three types of dissimilar headlighting systems: Type F sealed beam, integral beam, and replaceable bulb, provided that the individual headlamps are designed to conform to the photometrics of Figures 15 or 17 of Standard No. 108. The rule will further promote implementation of high intensity discharge headlighting technology in the relatively near future, which currently may be implemented only as an integral beam system.

**DATE:** The effective date of the rule is August 24, 1992.

**FOR FURTHER INFORMATION CONTACT:** Jere Medlin, Office of Rulemaking, NHTSA (202-366-5276).

**SUPPLEMENTARY INFORMATION:** Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment*, presently allows motor vehicles to be equipped with one of three types of headlighting systems. These are sealed beam systems as specified by S7.3 (Types A through H), integral beam systems as specified by S7.4, and replaceable bulb systems as specified by S7.5.

In response to recent requests for interpretation from two headlamp manufacturers, Koito Manufacturing Co. (Koito), and Hella KG Hueck (Hella), and a lighting engineer, Gordon Bonvallet, NHTSA advised that Standard No. 108 required that both the upper and lower headlamp beams for a vehicle be provided by the same headlighting system. Foreseeing such an interpretation, Koito asked that its letter be treated as a petition for rulemaking to allow intermixing of headlighting systems, so that the upper beam and lower beam could be provided by headlamps from different headlighting systems. After Hella received its interpretation, it petitioned for similar rulemaking. Koito, Hella, and Mr. Bonvallet inquired with respect to specific headlighting system designs. In the Koito system, the lower beam would be provided by a replaceable bulb headlamp and the upper beam by an integral beam lamp, either as separate headlamps, or combined as a single headlamp. In the Hella and Bonvallet systems, the lower beam would be provided by an integral beam headlamp, and the upper beam by a replaceable bulb headlamp combined as a single headlamp. NHTSA granted these petitions, and implemented the grants through a notice of proposed rulemaking published on September 19, 1991 (56 FR 47436).

As NHTSA stated in that notice, it has been the agency's goal for a number of years to reduce regulatory restrictions inhibiting design freedom in motor vehicle lighting if those restrictions are not necessary for safety. After reviewing its specifications for headlamps and the comments received in response to the NPRM, NHTSA has determined that some intermixing of headlamp systems may be allowed without apparent effect upon safety, and that such may be accomplished by relatively simple amendments to Standard No. 108.

By way of review, the headlamps and associated photometrics initially specified by Standard No. 108 were those of the Society of Automotive Engineers (SAE), specifically, headlamps of sealed beam design and photometrics of SAE Standard J579. These specifications do not provide for use of the lower beam during upper beam use. During the 1980's, headlamp manufacturers developed systems in which the lower beam can be used to supplement the upper beam should vehicle manufacturers desire the performance afforded by such usage. NHTSA amended Standard No. 108 to allow headlamps of new design, and adopted modified photometric specifications (Figure 15 for four-lamp systems, Figure 17 for two-lamp systems). This allows the lower beam lamp to remain illuminated when the upper beam lamp is energized in four-lamp systems. For two-lamp systems using Figure 17 photometrics, Standard No. 108 permits a manufacturer to design each lamp using one or two light sources to produce the lower beam, the upper beam, or both beams; this means that the designer may choose to use the outboard light sources for meeting the lower beam requirements and both light sources for meeting the upper beam requirements, thus achieving the same look or performance as in four-lamp systems. Thus, in the past 10 years Standard No. 108 has been amended to allow Types E through H sealed beam headlamps, replaceable bulb headlamps (with Type HB1 through HB5 light sources), and integral beam systems. Type F sealed beam headlamps must meet the photometrics of Figure 15. Replaceable bulb headlamps with Type HB2, HB3, and HB4 light sources must meet the photometrics of Figures 15/17. Integral beam headlamps may meet the photometry requirements of either Figures 15/17 or SAE J579 DEC84. Headlamps with only HB1 or HB5 light sources, and all sealed beam headlamps other than Type F must meet the photometry requirements of SAE J579 DEC84. Headlamps with HB1 and HB5 light sources used in combination with any light source other than HB1 or HB5 must meet the photometry of Figures 15/17.

The agency directed its proposal to those headlighting systems designed to conform with Figures 15/17 for two reasons. First, the Koito and Bonvallet systems would incorporate headlamps

designed to conform to the photometrics of Figures 15/17. Second, NHTSA is unaware of any desire to mix headlamp systems designed to conform to SAE J579 DEC84 (and has a reservation concerning such mixing, discussed below). For some years, gaseous, or high intensity discharge (HID) light sources for headlamps have been under development, and NHTSA is aware of the desire of some manufacturers to introduce this technology on production vehicles. It is probable that the initial application of HIDs, as in the Bonvallet design, will be as integral beam headlamps designed to meet lower beam photometry. Unlike other headlamp light sources, all of which provide essentially full intensity of illumination within one second after activation, the HID, at its present state of development, requires one to three seconds or more to reach its full photometric potential. From the driver's standpoint, this time lag is acceptable upon initial activation of an HID headlamp, but is not acceptable during a beam change from upper to lower, where a one to three second black-out can occur during which the level of illumination slowly arises from zero to near full intensity. Once a contemporary lower beam HID headlamp is activated, it is likely that it will remain activated even when the upper beam is selected. Thus today's use of HID light sources is largely limited to a system allowing the use of a lower beam light source during upper beam operation since the lower (HID) beam needs to remain on to prevent blackout. A lower beam HID headlamp is not acceptable in a system designed to the photometrics of SAE J579 DEC84, under which the lower beam light source must be extinguished when the upper beam is activated. Similarly, with the present state of HID development, an upper beam HID headlamp would be unacceptable with such a temporary blackout when switching from lower to upper beam. Thus, manufacturers designing such systems rely on Figure 15/17 photometry for achieving viable headlighting systems using HID light sources.

Additionally, under the proposal, the lamps emitting lower beams must be of the same type and provide a symmetrical effective projected luminous lens area when illuminated. This allows body designers the freedom to choose an asymmetrical front lighting design, but ensures that existing visual cues are retained when the headlamps are in operation that identify the vehicle to approaching traffic as a passenger car multipurpose passenger vehicle, truck, or bus, rather than as a motorcycle.

Therefore, NHTSA proposed that Standard No. 108 be amended to allow a new category of headlighting system, to be known as a "Combination Headlighting System". Each lamp of a four-lamp combination system would be designed to conform to the photometrics of Figure 15. The lower beam could be provided by a Type LF sealed beam, a replaceable bulb, or an integral beam headlamp. The upper beam headlamp could be either a replaceable bulb, Type UF sealed beam, or an integral beam headlamp as long as it was not the same type as the lower beam headlamp.

Each headlamp in a two-lamp system would incorporate two distinct sources of illumination, similar to current replaceable bulb headlamps in two lamp systems that often incorporate two light sources, each with a single filament. However, the two sources of illumination would themselves be dissimilar types. In a two-lamp combination system, the lower beams could be provided by either an integral beam headlamp that shares the headlamp housing with a headlamp other than an integral beam type, or a replaceable bulb headlamp that shares the headlamp housing with a headlamp other than a replaceable bulb type. The upper beam in a two-lamp system would be provided by a replaceable bulb headlamp or an integral beam headlamp, also sharing the same headlamp housing. Each beam in such a headlamp system would be designed to conform to the photometrics of Figure 17. Headlamps thus composed would be, in part, a replaceable bulb headlamp subject to the requirements for that type and, in part, an integral beam headlamp, subject to the requirements for that type.

Comments on the proposal were submitted by Advocates for Highway and Auto Safety ("Advocates"), BMW of North America, Chrysler Corporation, Ford Motor Company, General Motors Corporation ("GM"), GTE Sylvania, Mercedes-Benz of North America, and Volkswagen of America. All commenters supported the proposal. In addition, Ford, GM, and Advocates had specific comments which the agency wishes to address.

Ford recommended that any HID headlamp used to provide a lower beam should remain continuously activated so as to prevent a temporary "black out" when switching from the upper to the lower beam. It claimed that neither the existing standard nor the proposal appear to specify such a requirement. Ford is correct, but NHTSA does not believe that such a requirement is needed. The realities of the market place will encourage manufacturers to develop systems that do not "black out". These realities include the price of liability insurance, and acceptance by consumers. At the present state of development, HID's are likely to have a short delay before operating. To address the blackout problem, vehicle manufacturers may choose to leave the lower beam light source(s) illuminated during upper beam use (Figure 15), or to provide an upper beam by using two light sources, one of which is a lower beam light source (Figure 17). Standard No. 108 permits manufacturers to implement such designs through using the photometry of Figure 15 or Figure 17.

GM stated that it appeared that beam contributors, part of an integral beam system, had been omitted inadvertently from proposed S7.6. Although NHTSA believes that S7.6, as proposed, allows beam contributors, this was not evident to GM. Therefore, to clarify the matter, S7.6.2.1 and S7.6.3 as adopted include specific references to beam contributors.

GM also argued that a definition of "Combination Headlighting System" should be adopted. It suggested "A headlighting system in which upper and lower beams are provided by two types of dissimilar headlamps." In NHTSA's view, this implies that any type of headlamp could be part of a combination headlighting system (e.g., a Type A and Type F sealed beam headlamp). Because S7.6 is explicit in the types of headlamps that may be combined, NHTSA has concluded that a definition is not required. In another comment, GM suggested revision of the proposal to state that a combination headlighting system consists of two parts: an integral beam type headlamp and a replaceable bulb type. The agency did not adopt this suggestion because it would not permit use of Type F sealed beam lamps in a combination system, even though Type Fs are photometrically compatible. GM also believes that the definition of "Integral Beam Headlamp" should be amended to add the qualifier that it is not a "Combination Headlighting System." This amendment is unnecessary; a "headlamp" is not a "headlighting system," but a part of such a system.

Finally, GM suggested that the standard specifically state that lower and upper beam headlamps may be used simultaneously in combination headlighting systems when the upper beam is activated. S5.5.8 already contains the requested language with respect to integral beam systems and headlighting systems that are designed to conform to Figure 15. NHTSA

believes that permissibility for simultaneous use is also implicit in the requirements of Figure 17 that allow use of a lower beam light source to contribute to upper beam photometrics, but is adding language to S5.5.8 to clarify the point.

Advocates supported the proposal, but expressed concern that the frequency of NHTSA rulemaking proposals on front lighting has resulted in a failure of coordination to assure that the actions are mutually consistent "and also appropriately address the photometric needs of the current photometric driving environment." Although these comments were directed in the main towards other rulemaking actions, Advocates recommended that NHTSA refrain from issuing a final rule on combination headlighting systems until it had made a decision on the merits of the alternate choices proposed in Docket No. 85–15; Notice 10 for illumination above the horizontal. NHTSA sees no reason to do so. The current rulemaking pertains to the use of headlamps designed to conform to Figure 15/17 photometrics; the rulemaking action cited pertains to the performance of those headlamps. The amendment adopted with this notice simply allows a different way of using headlamps designed in conformance with current requirements, and is in no way inconsistent with the proposal still pending. If one of the photometric alternates is adopted, all headlamps designed to conform to Figure 15/17 photometrics will be required to meet them, including those used in combination headlighting systems.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in courts.

**Effective Date**

Because the amendment relieves a design restriction, and imposes no additional burden upon any regulated party, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance is in the public interest. The amendment is effective 30 days after its publication in the **Federal Register**.

**Rulemaking Analyses**

*Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

NHTSA has considered the impacts of this rulemaking action and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation," or significant under Department of Transportation regulatory policies and procedures. It will provide an alternate means of compliance with existing requirements. Accordingly, a Regulatory Evaluation has not been prepared.

*Regulatory Flexibility Act*

The agency has also considered the effects of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic effect upon a substantial number of small entities. Headlamp and vehicle manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected as the rule will not require vehicles to be equipped with mixed types of headlighting systems. Accordingly, no Regulatory Flexibility Analysis has been prepared.

*Executive Order 12612 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*National Environmental Policy Act*

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The rule would not have a significant effect upon the environment. It does not require any change in the manufacture of headlamps. The rule would not have an effect upon fuel consumption.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles

**PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

**§ 571.108 [Amended]**

2. Paragraph S5.5.8 is amended by adding a new sentence at the end thereof to read:

"S5.5.8 * * * On a motor vehicle equipped with a headlighting system designed to conform to the requirements of Figure 17, a lower beam light source may be wired to remain activated when an upper beam light source is activated if the lower beam light source contributes to compliance of the headlighting system with the upper beam requirements of Figure 17."

3. Paragraphs S7.7, S7.7.1, S7.7.2, S7.7.2.1, S7.7.2.2, S7.7.3, S7.7.4, S7.7.5, S7.7.5.1, and S7.7.5.2 are redesignated respectively S7.8, S7.8.1, S7.8.2, S7.8.2.1, S7.8.2.2, S7.8.3, S7.8.4, S7.8.5, S7.8.5.1, and S7.8.5.2.

4. Paragraph S7.6 is redesignated S7.7.

5. In redesignated paragraph S7.8.2.1(b), the reference to "S7.7.5.2(b)(3)" is changed to "S7.8.5.2(b)(3)."

6. In redesignated paragraph S7.8.2.2, the reference to "S7.7.3 and S7.7.4" is changed to "S7.8.3 and S7.8.4."

7. In redesignated paragraph S7.8.5.1(a), the reference to "S7.7.5.1(d)(1)" is changed to "S7.8.5.1(d)(1)."

8. In redesignated paragraph S7.8.5.1(c), the reference to "S7.7 is changed to "S7.8."

9. In redesignated paragraph S7.8.5.2(b)(3), the reference to "S7.7.2.1" is changed to "S7.8.2.1."

10. In redesignated paragraph S7.8.5.2(c)(3)(ii)(D), the reference to "S7.7.5.1(c)" is changed to "S7.8.5.1(c)."

11. In redesignated paragraph S7.8.5.2(c)(3)(ii)(E), the reference to "S7.7.5.2(c)(1) and (2)" is changed to "S7.8.5.2(c)(1) and (2)."

12. In paragraph S7.4(a)(3), the reference to "S7.7.5.2" is changed to read "S7.8.5.2."

13. In paragraphs S7.4(e), S7.5(d)(1), and S7.5(e)(1), the reference to "S7.7.5.1" is changed to "S7.8.5.1."

14. In paragraphs S7.4(f) and S7.5(c), the reference to "S7.7.1" is changed to "S7.8.1."

15. In paragraphs S7.4(g) and S7.5(h), the reference to "S7.7" is changed to "S7.8."

16. Paragraph S7.1 is revised to read:

"S7.1 Each passenger car, multipurpose passenger vehicle, truck, and bus shall be equipped with a headlighting system designed to conform to the requirements of S7.3, S7.4, S7.5, or S7.6."

17. New Paragraph S7.6 is added to read:

"S7.6 *Combination Headlighting System.* A combination headlighting system shall be comprised of either two headlamps designed to conform to the requirements of S7.6.2, or any combination of four headlamps designed to conform to the requirements of S7.3.7, S7.4, or S7.5 of this standard.

S7.6.1 A combination headlighting system shall provide in total not more than two upper beams and two lower beams. When installed on a motor vehicle, the headlamps (or parts thereof) that provide the lower beam shall be of the same type, and provide a symmetrical effective projected luminous lens area when illuminated.

S7.6.2 In a combination headlighting system consisting of two headlamps, each headlamps shall be designed to conform to Figure 17, and shall be a combination of two different headlamps chosen from the following types: a Type F headlamp, an integral beam headlamp, and a replaceable bulb headlamp.

S7.6.2.1 That part of the headlamp which contains an integral beam headlamp, or beam contributors used in place of a single headlamp, shall be designed to conform to the requirements of S7.4 (c) through (i) of this standard.

S7.6.2.2 That part of the headlamp which contains a replaceable bulb headlamp shall be designed to conform to the requirements of S7.5 of this standard.

S7.6.3 In a combination headlighting system consisting of four headlamps, each headlamp shall be designed to conform to Figure 15, or if an integral beam headlamp in which there is more than one beam contributor, designed to conform to Figure 15 in the manner required by S7.4(a)(3) of this standard.

Issued on: July 17, 1992.

**Frederick H. Grubbe,**

*Deputy Administrator.*

[FR Doc. 92-17328 Filed 7-22-92; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 661

[Docket No. 920412-2112]

### Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of closure.

**SUMMARY:** NMFS announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from Horse Mountain to Point Arena, California, at midnight, July 16, 1992, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational fishery quota of 3,400 chinook salmon for the subarea will be reached by midnight, July 16, 1992. The closure is necessary to conform to the preseason announcement of 1992 management measures. This action is intended to ensure conservation of chinook salmon.

**DATES:** Effective at 2400 hours local time, July 16, 1992, through 2400 hours local time, August 31, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through August 6, 1992.

**ADDRESSES:** Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070; or Gary Matlock, Operations Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at (206) 526-6140, or Rodney R. McInnis at (310) 980-4030.

**SUPPLEMENTARY INFORMATION:** Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and preseason notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 recreational fishery for all salmon species in the subarea from Horse Mountain to Point Arena, California, would have three seasons: The nearest Saturday to February 15 through the earlier of May 31 or attainment of the subarea chinook quota, June 30 through the earlier of August 31 or attainment of the subarea chinook quota, and September 1 through the nearest Sunday to November 15. The recreational fishery in this subarea is limited through August 31 by an impact quota of 3,400 chinook salmon.

Based on the best available information on July 14, the recreational fishery in the subarea from Horse Mountain to Point Arena, California, is projected to reach the subarea impact quota of 3,400 chinook salmon by midnight, July 16, 1992. Therefore, the fishery in this subarea is closed to recreational fishing for all salmon species. The fishery in this subarea will reopen as announced in the emergency interim rule and notice of 1992 fishery management measures (57 FR 19388, May 6, 1992) at 0001 hours local time, September 1, 1992.

In accordance with the revised inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this closure was given prior to 2400 hours local time, July 16, 1992, by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the California Department of Fish and Game regarding the closure of the recreational fishery between Horse Mountain and Point Arena, California. The State of California will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 6, 1992.

### Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

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**List of Subjects in 50 CFR Part 661**

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 17, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-17402 Filed 7-22-92; 8:45 am]

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**NUCLEAR
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**10 CFR Pa**

**[Docket No**

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**AGENCY:** N
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**ACTION:** Pe
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# Proposed Rules

Federal Register
Vol. 57, No. 142
Thursday, July 23, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 61

[Docket No. PRM-61-2]

### New England Coalition on Nuclear Pollution, Inc.; Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; Notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking dated April 25, 1992, which was filed with the Commission by New England Coalition on Nuclear Pollution, Inc. The petition was docketed by the NRC on May 4, 1992, and has been assigned Docket No. PRM-61-2. The petitioner requests that the NRC amend its regulations regarding waste classification of low-level radioactive waste to restrict the number and types of waste streams which can be disposed of in near-surface disposal facilities. The petitioner also requests that the NRC prepare a supplemental Environmental Impact Statement (EIS) to the original EIS prepared for 10 CFR part 61 (December 27, 1982; 47 FR 57446).

**DATES:** Submit comments by September 21, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

For a copy of the petition, write the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Chief, Rules Review Section, Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

**SUPPLEMENTARY INFORMATION:**

### Background

The Nuclear Regulatory Commission (NRC) has established specific requirements for licensing the land disposal of radioactive waste in 10 CFR part 61. These regulations specify the technical requirements that must be met for the near-surface disposal of waste. The technical requirements for waste classification are contained in 10 CFR 61.55.

Classification of waste for near-surface disposal is determined by the concentration of long-lived radionuclides whose potential hazard will continue long after precautions such as institutional controls, improved waste form, and deeper disposal are no longer effective and the concentration of short-lived radionuclides for which these precautions are effective. The three major classifications of waste for near-surface disposal are described as follows:

(1) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste must meet the minimum requirements set forth in § 61.56(a). If Class A waste also meets the stability requirements set forth in § 61.56(b), it is not necessary to segregate the waste for disposal.

(2) Class B waste is waste that must meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste must meet both the minimum and stability requirements set forth in § 61.56.

(3) Class C waste is waste that not only must meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste must meet both the minimum and stability requirement set forth in § 61.56.

### Petitioner

The New England Coalition on Nuclear Pollution, Inc., is a non-profit, tax-exempt organization which was incorporated in April 1971. The organization is based in Brattleboro, Vermont, and has members throughout the country. The Coalition has members in the following states hosting, or considering hosting, a low-level radioactive waste disposal facility: California, Connecticut, Illinois, Massachusetts, Maine, North Carolina, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Texas, and Vermont.

### Reasons for the Petition

The petitioner believes that the waste classified for near-surface disposal, which the petitioner terms "low-level" waste, comprises both long-lived and short-lived material. The petitioner believes that this combination of material would make facility engineering extremely difficult, if not impossible. The petitioner stated that recent studies by Rogers & Associates for the Vermont Low-Level Radioactive Waste Authority have shown that, in the state of Vermont, 6 already-separate waste streams account for more than 99% of all of the long-lived activity in the "low-level" waste stream, but only about 12% of the total waste volume. The petitioner believes that these studies also showed that, under modeling scenarios different from those used by NRC, these waste streams would cause an earth mounded concrete vault facility to fail. The petitioner believes that the results would not be any different for any near-surface facility design. The studies also showed that of the 6 waste streams, 3 are Class A, 2 Class B, and only 1 Class C. The petitioner believes that the problematic waste streams do not directly correspond to the current NRC waste classification system, though most of the activity is found in the Class C waste stream. The petitioner believes that siting these long-lived materials in near-surface facilities, such as those planned in most areas of the country, is unwise.

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**The Petition**

The petitioner requests that the NRC revise its regulations concerning the classification of waste for near-surface disposal to restrict the number and type of waste streams which may be disposed of in near-surface disposal facilities. The petitioner believes the requested changes are necessary because of significant new information concerning inadvertent intrusion into low-level radioactive disposal facilities that was not available at the time the original environmental impact statement for 10 CFR Part 61 was developed. The petitioner also believes that the NRC must develop a supplemental environmental impact statement (EIS) concerning the land disposal of radioactive waste because, according to the petitioner, the premises leading to the conclusions reached in the original EIS have substantively changed.

The petitioner is basing this petition on what the petitioner believes are three critical changes in the reasoning which resulted in the current regulations.

1. The original EIS was based on a 500 mrem/year dose to "inadvertent intruders," derived from the then current guidance from ICRP, NCRP, EPA and NRC. The petitioner cites present guidance that would limit the dose to inadvertent intruders to a level of 100 mrem (See § 20.1301, 56 FR 23375; May 21, 1991), rather than 500 mrem per year. The waste classification system NRC adopted was dependent on the level of intruder doses allowed at that time. The EIS analysis showed that setting the dose limits lower than 500 mrem would result in about 10% of the waste stream being declared unacceptable for disposal in the base case shallow-land burial facility. Therefore, the petitioner believes it is clear that lowering the dose limit would impact the final waste classification analysis.

2. The petitioner states that the NRC considered three intrusion events based on evaluation of the broad range of events possible, those considered by other investigators, and the likelihood of occurrence. According to the petitioner, the final EIS notes that NRC did not directly consider the probability of various intrusion events occurring except to the extent of considering reasonable, probable productive uses for which the land could be used. The petitioner believes that this was a matter of regulatory discretion rather than of scientific data. The original analysis was also based on the assumption that all intrusion would be inadvertent. However, the petitioner believes that this assumption is not valid because, according to the petitioner, there are many credible scenarios that would involve deliberate intrusion. The petitioner states that recent studies in Vermont show that, when intrusion is deliberate, the ability of near-surface facilities to contain all of the currently classified low-level radioactive waste stream is questioned. The petitioner requests that the NRC reconsider its decisions concerning possible intrusion scenarios.

3. The petitioner believes that the cost differential between the shallow-land burial facility and the geologic facilities needed to dispose of waste unacceptable for near-surface disposal was exaggerated and should be revised. At the time of the original EIS, it was assumed that low-level radioactive waste would be disposed of in shallow-land burial facilities on an "eastern humid site," based on the "shallow-land burial" disposal design. Shallow-land burial was assumed to be substantially cheaper than alternative facility designs, and cost considerations were a factor in determining which wastes should be disposed of at facilities licensed under 10 CFR part 61. However, according to the petitioner, none of the states or compacts east of the Mississippi is contemplating use of the shallow-land burial design. All of these states and compacts intend to use some form of facility engineering that would increase the cost of low-level waste disposal.

The petitioner believes that the supplement to the EIS would result in a small component of the waste currently considered acceptable for near-surface disposal being declared unacceptable. By removing additional waste streams than those originally eliminated by NRC, the petitioner believes that two major difficulties can be addressed without benefit of substantial but baseless speculation. Potential intruder doses could be held well within regulatory limits, while mistakes in scenario prognostication would not result in harm to intruders or to the public.

The petitioner believes that the reclassification of the waste by NRC would enable the NRC to specify the materials that are truly "low-level," and ensure that safety enhancements are required for that small portion of the "low-level" waste stream that cannot safely be disposed in near-surface facilities.

Dated at Rockville, Maryland, this 16th day of July 1992.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 92-17262 Filed 7-22-92; 8:45 am]

BILLING CODE 7590-01-M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 92-NM-18-AD]**

**Airworthiness Directives; Boeing Model 737 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes. This proposal would require modification of the main deck cargo door lock, viewing windows, and warning indication system. This proposal is prompted by a report that a cargo door opened in-flight, resulting in an explosive decompression of the airplane. The actions specified by the proposed AD are intended to prevent a cargo door from opening in flight, resulting in rapid decompression of the airplane.

**DATES:** Comments must be received by August 31, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-18-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Pliny Brestel, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2783; fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and

be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–18–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–18–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**Discussion**

In February 1989, a cargo door on a Boeing Model 747 series airplane opened in flight, resulting in an explosive decompression of the airplane. Investigation of that accident has revealed that the designs of the latching and locking assemblies and the warning systems of the cargo door were factors contributing to the opening of the door during flight.

In June 1989, the Air Transport Association (ATA) of America sponsored a conference to focus on continued structural airworthiness of non-plug type cargo doors. A Cargo Door Task Force was established, including representatives from the operators, the manufacturers, and the FAA. One objective of the Task Force was to select service bulletins to be recommended for mandatory accomplishment in order to eliminate design features that may contribute to unsafe conditions. One of the service bulletins recommended for mandatory action was Boeing Service Bulletin 737–52–1060, dated June 11, 1976, which describes a modification of the main deck cargo door of Model 737 series airplanes in the cargo configuration. The intent of this modification is to improve the main deck cargo door lock, viewing windows, and warning indication system. Such modifications are integral in preventing the unsafe condition presented by a cargo door opening in flight, which could result in rapid decompression of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 737–52–1060, dated June 11, 1976, that describes procedures for modification and test of the main deck cargo door lock, viewing windows, and warning indication system, to include relocating the warning light control from the cam latch torque tube to the lock pins, enlarging and illuminating certain latch viewing windows, and increasing the engagement of the lock pins.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification and test of the main deck cargo door lock, viewing windows, and warning indication system. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 57 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 52 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $519 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,758. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 92–NM–18–AD.

*Applicability:* Model 737 series airplanes; as listed in Boeing Service Bulletin 737–52–1060, dated June 11, 1976; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously. To prevent a cargo door from opening in flight, resulting in rapid decompression of the airplane, accomplish the following:

(a) Within 2 years after the effective date of this AD, modify and test the main deck cargo door lock, viewing windows, and warning indication system, in accordance with Section III of Boeing Service Bulletin 737–52–1060, dated June 11, 1976.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

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Issued in Renton, Washington, on June 29, 1992.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-17428 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 91-NM-277-AD]**

## Airworthiness Directives; British Aerospace Viscount Model 744, 745D, and 810 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to all British Aerospace Viscount Model 744, 745D, and 810 series airplanes, that would have required initial and repeated inspections to detect corrosion of the rear pressure bulkhead, using both visual and non-destructive test methods, and, if necessary, repair of damaged parts. That proposal was prompted by reports of corrosion found on the rear pressure bulkhead. This action revises the proposed rule by reducing the compliance time for one repetitive inspection, and changing visual inspections to non-destructive test inspections. The actions specified by this proposed AD are intended to prevent structural failure of the bulkhead and associated decompression of the passenger cabin.

**DATES:** Comments must be received by September 8, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-277-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-277-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-277-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

### Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to all British Aerospace Viscount Model 744, 745D, and 810 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 12, 1992 (57 FR 5099). That NPRM would have required initial and repeated inspections of the rear pressure bulkhead, using both visual and non-destructive test methods, and, if necessary, repair of damaged parts. That NPRM was prompted by reports of corrosion found on the rear pressure bulkhead. That condition, if not corrected, could result in structural failure of the bulkhead and associated decompression of the passenger cabin.

Since the issuance of that NPRM, British Aerospace has issued Viscount Alert Preliminary Technical Leaflet (PTL) 195, Issue 2, dated August 20, 1991 (for Model 810 series airplanes); and PTL 325, Issue 2, dated August 22, 1991 (for Model 744 and 745D series airplanes). Both revised service bulletins have been significantly reorganized to include only three parts in the Accomplishment Instructions, instead of five. (Repetitive inspections described in the original service bulletins as Parts Four and Five are now included under Parts One and Three in the revised service bulletins.)

The inspection areas specified in these revised service bulletins remain the same as in the original issue of the service bulletins. However, as a result of reports of cracking and corrosion service reports, the recommended interval for inspection of certain structural members has been reduced in the revised service bulletins to ensure that fatigue cracks and corrosion are found and repaired prior to any significant reduction in the structural integrity of the pressure bulkhead. The recommended interval for the repetitive visual inspections of the rear pressure bulkhead forward face has been shortened from 4,800 landings or 6 years, to 500 landings or 6 months, whichever occurs first; and certain visual inspections have been changed to non-destructive test inspections.

The Civil Aviation Authority classified the two revised service bulletins as mandatory.

The FAA has determined that, in order to adequately address the unsafe condition identified as corrosion on the rear pressure bulkhead, the proposed rule must be revised to reduce the visual repetitive inspection compliance time interval for the rear pressure bulkhead forward face from 4,800 landings or 6 years, to 500 landings or 6 months, whichever occurs first; and to change certain visual inspections to non-destructive test inspections. The actions would be required to be accomplished in accordance with the revised British Aerospace service bulletins described previously. (The proposed AD has been revised to cite the revised service bulletins as the appropriate sources of service information.)

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Paragraph (d) of the proposal has been revised to clarify the procedure for

requesting alternative methods of compliance with the AD.

There are approximately 87 Viscount Model 744, 745D, and 810 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 100 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. There would be no additional costs incurred as a result of the revisions to this proposed AD. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $159,500. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Docket 91-NM-277-AD.

Applicability: All Viscount Model 744, 745D, and 810 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the bulkhead and associated decompression of the passenger cabin, accomplish the following:

(a) Within 90 days after the effective date of this AD, using both visual and specified non-destructive test methods, inspect the rear pressure bulkhead for corrosion, cracks, and damage, in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 195, Issue 2, dated August 20, 1991 (for Model 810 series airplanes); or PTL 325, Issue 2, dated August 22, 1991 (for Model 744 and 745D series airplanes); as applicable.

(b) Repeat the visual and non-destructive test inspections required by paragraph (a) of this AD at the following intervals:

(1) For "Part One: Rear Pressure Bulkhead—Forward Face—Rear Face," as specified in the applicable service bulletin: Repeat the inspections at intervals not to exceed 500 landings or 6 months, whichever occurs first.

(2) For "Part Two: Rear Pressure Bulkhead Web Lap-Joints," as specified in the applicable service bulletin: Repeat the inspections at intervals not to exceed 1,600 landings or 2 years, whichever occurs first.

(3) For "Part Three: Rear Pressure Bulkhead Rear Face, Boundary Member, Adjacent Skin and Structure," as specified in the applicable service bulletin: Repeat the inspections at intervals not to exceed 2,500 landings or 3 years, whichever occurs first.

(c) If corroded, cracked, or damaged parts are found as a result of inspections required by paragraphs (a) or (b) of this AD, prior to further flight, repair in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 195, Issue 2, dated August 20, 1991; or PTL 325, Issue 2, dated August 22, 1991; as applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1992.

**Bill R. Boxwell,**

*Acting Manager, Transport Airplane Directorate Aircraft Certification Service.*

[FR Doc. 92-17426 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 92-NM-72-AD]**

## Airworthiness Directives; British Aerospace Model ATP Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model ATP series airplanes. This proposal would require a one-time functional inspection to detect tightness or seizure of the nose wheel steering quadrant pivot and the upper steering control toggle link assembly, and repair, replacement, or refit, if necessary. This action would also require, under certain circumstances, a further visual inspection of the support channels/structure for deformation or cracks, and repair or replacement of damaged parts. This proposal is prompted by a report of an airplane running off the runway as a result of failure of the nose wheel steering quadrant support structure. The actions specified by the proposed AD are intended to prevent failure of the nose wheel steering structure, which could adversely affect the controllability of the airplane.

**DATES:** Comments must be received by August 31, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-72-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L

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Street NW., Room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM-113, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-72-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-72-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**Discussion**

The Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model ATP series airplanes. The Civil Aviation Authority advises that a case has been reported of an airplane that ran off the runway as a result of seizure of the nose wheel steering quadrant and the upper steering control toggle link. The airplane had accumulated a total of 300 flight hours at the time of the incident. If uncorrected, this condition could result in failure of the nose wheel steering quadrant support structure, and subsequent loss of directional control of the airplane.

British Aerospace has issued Service Bulletin ATP-32-37, dated February 14, 1992, which describes procedures for a one-time functional inspection to detect tightness or seizure of the nose wheel steering quadrant pivot and the upper steering control toggle link assembly, and repair, replacement, or refit, if necessary. The service bulletin also recommends a further visual inspection, under certain circumstances, for deformation or cracks of the support channels/ structure, and repair or replacement of damaged parts. The Civil Aviation Authority classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA informed of the situation described above. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time functional inspection to detect tightness or seizure of the nose wheel steering quadrant pivot and the upper steering control toggle link assembly, and repair, replacement, or refit, if necessary. This proposed AD action would also require, under certain circumstances, a further visual inspection of the support channels/ structure for deformation or cracks, and repair or replacement of damaged parts. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately .5 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The FAA has confirmed that all 10 airplanes of U.S. registry have been inspected. Based on these figures, there will be no cost impact of the proposed AD on U.S. operators.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Docket 92-NM-72-AD.

*Applicability:* Model ATP series airplanes; serial numbers 2001 through 2044, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time functional inspection to detect tightness or seizure of the nose wheel steering quadrant pivot and the upper steering control toggle link assembly, in accordance with British Aerospace Service Bulletin ATP-32-37, dated February 14, 1992.

(1) If the quadrant pivot/upper toggle link attachment bolt can be turned freely, in accordance with paragraph 2.A.(1) through 2.A.(8) of the Service Bulletin, no further action is necessary.

(2) If the quadrant pivot/upper toggle link attachment bolt is still tight, prior to further flight, if possible, remove and replace the bolt, in accordance with paragraphs 2.A.(9) and 2.A.(8) of the Service Bulletin. After this procedure, if the bolt turns freely, no further action is necessary.

(3) If the quadrant pivot/upper toggle link attachment bolt is found to be seized and cannot be removed, prior to further flight, check to see if the upper toggle link is free to rotate about the bolt, in accordance with paragraphs 2.A.(10) through 2.A.(12) of the Service Bulletin.

(i) If the upper toggle link is free to rotate about the bolt, prior to the accumulation of 50 landings after the functional inspection required by this AD, accomplish paragraph (a)(4) of this AD.

(ii) If the upper toggle link is not free to rotate about the bolt, prior to further flight, accomplish paragraph (a)(4) of this AD.

(4) If the upper toggle link has been checked in accordance with paragraph (a)(3)(i) or (a)(3)(ii) of this AD, repair the quadrant pivot/upper toggle link and bolt assembly, visually inspect the support channels/structure for deformation or cracks, and repair or replace any deformed or cracked structure, in accordance with paragraph 2.B. of the Service Bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 29, 1992.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–17427 Filed 7–22–92; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 71

**[Airspace Docket No. 92–ANM–16]**

## Proposed Amended Transition Area; Lewistown, ID

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the transition area at Lewistown, Idaho, to provide additional controlled airspace to accommodate the holding pattern for the VOR/DME–B approach for the Lewistown-Nez Perce County Airport, Lewistown, Idaho. The intent of this proposal is to accurately define controlled airspace for pilot reference.

**DATES:** Comments must be received on or before September 10, 1992.

**ADDRESSES:** Send comments on the proposal to: Federal Aviation Administration, Docket No. 92–ANM–16, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 92–ANM–16, 1601 Lind Avenue, SW., Renton, WA 98055–4056, Telephone: (206) 227–2535.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ANM–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055–4056 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

### The Proposal

The FAA proposes an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace to accommodate the holding pattern for the VOR/DME–B approach for the Lewiston-Nez Perce County Airport, Lewiston, Idaho. The intent of this proposal is to accurately define controlled airspace for pilot reference. The airspace would be depicted on aeronautical charts. Transition areas are published in Handbook 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation

Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991 is amended as follows:

*Section 71.181 Designation*

* * * * *

**ANM ID TA Lewiston, ID [Revised]**

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 46°29'25" N., long. 117°34'05" W.; east to lat. 46°30'45" N., long. 117°00'45" W.; north to lat. 46°34'25" N., long. 117°04'40" W.; then via the arc of a 16.5-mile radius centered on the Lewiston VOR (lat. 46°22'54" N., long. 116°52'07" W.); to lat. 46°27'00" N., long. 116°32'05" W.; east to lat. 46°25'30" N., long. 116°26'00" W.; south to lat. 46°13'20" N., long. 116°30'00" W.; west to lat. 46°14'40" N., long. 116°35'40" W.; then via the arc of a 16.5-mile radius centered on the Lewiston VOR; to lat. 46°09'00" N., long 116°46'50" W.; north to lat. 46°17'00" N., long. 116°49'10" W.; west to lat. 46°18'05" N., long. 117°00'11" W.; west to lat. 46°17'42" N., long. 117°22'00" W.; south to lat. 46°10'30" N., long. 117°26'20" W.; west to lat. 46°12'00" N., long. 117°35'40" W.; north to point of beginning; that airspace extending upward from 1200 feet above the surface, within an area bounded by a line beginning at lat. 46°00'00" N., long. 116°00'00" W., to lat. 46°00'00" N., long. 116°23'00" W., to lat. 45°39'00" N., long. 116°10'00" W., to lat. 45°30'00" N., long. 116°14'00" W., to lat. 45°23'00" N., long. 116°21'00" N., to lat. 45°25'00" N., long. 116°34'00" W., to lat. 45°30'00" N., long. 116°46'00" W., to lat. 46°00'00" N., long. 116°56'00" W., thence west along lat. 46°00'00" N. to the Walla Walla VOR/DME (lat. 46°05'14" N., long. 118°17'29" W.) 16.6-mile radius, thence north along the 16.6-mile radius until intercepting V536, thence east along V536 to long. 116°00'00" W., thence south along long. 116°00'00" W., to lat. 46°00'00" N., to beginning.

* * * * *

Issued in Seattle, Washington, on July 10, 1992.

**Helen Parke,**

*Assistant Manager, Air Traffic Division.*

[FR Doc. 92-17368 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 5, 20, and 101**

**[Docket No. 92N-0162]**

## Food Labeling; Format for Nutrition Label; Notice of Hearing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public hearing.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public hearing on the notice of proposed rulemaking on the format for the nutrition label that it published in the **Federal Register** of July 20, 1992. This hearing will provide an opportunity for interested persons to present their views on the issues raised by the proposal. The public hearing is being held in accordance with 21 CFR Part 15.

**DATES:** Written notices of participation should be filed by August 10, 1992. The public hearing will be held on Monday, August 17, 1992 (and on August 18, 1992, if a second day is necessary), 8 a.m. to 6 p.m. The record of the underlying rulemaking will remain open for comments until August 19, 1992.

**ADDRESSES:** The public hearing will be held in the Jack Masur Auditorium, Warren Grant Magnuson Clinical Center, Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. Written notices of participation and any comments are to be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Transcripts of the hearing and copies of data and information submitted during the hearing will be available for review at the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document. The comments on the nutrition label format proposal will be available for review as part of the docket of the subject rulemaking. A copy of the proposal that was published July 20, 1992 (57 FR 32058), can be obtained by contacting John Tisler, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFF-326), 200 C St. SW., Washington, DC 20204, 202-205-5251 between 8 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Persons needing information about the various nutrition label format issues to be addressed at the public hearing should contact: Raymond E. Schucker, Center for Food Safety and Applied Nutrition (HFF-240), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-8956 or, Charles Edwards, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, 202-205-0080.

Questions about the hearing in general should be directed to: Annette Funn, Office of Consumer Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5006, 301-443-9767 (FAX).

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Federal government has launched a major initiative to improve the food label, led by Louis W. Sullivan, Secretary of Health and Human Services, David A. Kessler, Commissioner of Food and Drugs, and Edward Madigan, Secretary of Agriculture. In the **Federal Register** of July 20, 1992, as part of that initiative and in response to section 2(b)(1)(A) of the Nutrition Labeling and Education Act of 1990 (Pub. L. 101-535) (the 1990 amendments), FDA published a proposal on the format of the nutrition label (docket number 91N-0162). In its nutrition label format proposal, FDA requested public comment on the matters set forth. In addition, USDA intends to publish soon in the **Federal Register** a proposal on the nutrition label format for meat and poultry products. Interested persons are encouraged to review these proposals to become familiar with the many issues that they address.

### II. Scope of Hearing

Comments are specifically requested on what format would best meet the requirement in the 1990 amendments that required nutrition information be conveyed to the public in a manner which enables the public to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet (section 2(b)(1)(A) of the 1990 amendments). Although participants may comment on any issue raised by the nutrition label format proposals, time for presentations will be limited. Therefore, participants will be well advised to limit their comments to an indepth discussion of one or two topics. Participants can present the full range of their views in the written comments that they submit on the FDA and USDA nutrition label format proposals.

**III. Notice of Hearing under 21 CFR Part 15**

The Commissioner of Food and Drugs is announcing that the public hearing will be conducted in accordance with 21 CFR Part 15.

The presiding officer will be the Commissioner of Food and Drugs or his designee. The Administrator of the Food Safety and Inspection Service, USDA, or his designee, will also participate. The presiding officer will be accompanied by a panel of FDA employees with the relevant expertise.

Persons who wish to participate are requested to file a notice of participation with the Dockets Management Branch (address above) on or before August 10, 1992. To ensure timely handling, any outer envelope should be clearly marked with the docket number found in brackets in the heading of this document and the statement "Nutrition Label Format Hearing." The notice of participation should contain the name, address, telephone number, facsimile number, affiliation (if applicable) of the participant, and a brief summary of the presentation. FDA asks groups that have similar interests to consolidate their comments. FDA will allocate the time available for the hearing among the persons who have properly filed a notice of participation. If time permits, FDA may allow other interested persons attending the hearing who did not submit a notice of participation, in advance, to make an oral presentation at the conclusion of the hearing.

FDA will schedule each appearance after reviewing the notices of participation and accompanying information, and notify each participant by mail, telephone, or FAX of when the time allotted to the person's oral presentation is scheduled to begin. Presentations will be limited to 5 to 10 minutes depending on the number of participants. The hearing schedule will be available at the hearing, and after the hearing it will be placed on file in the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document.

Interested persons may, on or before August 19, 1992, submit to the Dockets Management Branch (address above) written comments on the FDA proposed rulemaking that underlies this hearing. Two copies of any comments are to be submitted by organizations. Individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of the proposal. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Under 21 CFR 15.30(e) and (f), the hearing is informal, and the rules of evidence do not apply. No participant will be allowed to interrupt the presentation of another participant. Only the presiding officer and panel members will be able to question any person during or at the conclusion of their presentation.

Public hearings, including hearings under Part 15, are subject to FDA's guidelines (21 CFR Part 10, Subpart C) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Any handicapped persons requiring special accommodations in order to attend the hearings should direct those needs to Annette Funn (address above).

Individuals and organizations who testify at this hearing should submit three copies of their written testimony for the official record on the day they are to appear at the hearing.

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in Part 15, this notice acts as a waiver of those provisions as specified in 21 CFR 15.30(h).

Dated: July 17, 1992.

**William K. Hubbard,**

*Acting Deputy Commissioner for Policy.*

[FR Doc. 92-17363 Filed 7-20-92; 3:54 p.m.]

BILLING CODE 4160-01-F

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**21 CFR Part 101**

**[Docket Nos. 91N-0099, 91N-0100, and 91N-0101]**

**RIN 0905-AB57**

## Food Labeling: Health Claims; Antioxidant Vitamins and Cancer, Dietary Fiber and Cardiovascular Disease, and Folic Acid and Neural Tube Defects; Reopening of the Comment Period.

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is reopening the comment period for 30 days on three proposed rules concerning health claims on certain nutrient-disease relationships, including antioxidant vitamins and cancer, dietary fiber and cardiovascular disease, and folic acid and neural tube defects, that appeared in the **Federal Register** of November 27, 1991 (56 FR 60624, 60610, and 60582, respectively). This action is being taken because the agency has received several new studies on the relationship between antioxidant vitamins and cancer and dietary fiber and cardiovascular disease that appear to be significant. In addition, on July 27, 1992, the Centers for Disease Control (CDC) will be holding a meeting that may bring to light new information on the relationship between the ingestion of folic acid and neural tube defects. The agency is also providing this additional comment period in conjunction with this meeting.

**DATES:** Written comments by August 24, 1992.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Linda Tollefson, Center for Food Safety and Applied Nutrition (HFF-265), Food and Drug Administration, 200 C St. SW., Washington DC 20204, 202-205-5652.

**SUPPLEMENTARY INFORMATION:** On November 27, 1991, FDA published three proposals in the **Federal Register** that announced its tentative findings that a basis does not exist on which to authorize the use on foods, including dietary supplements, of health claims relating to an association between (1) antioxidant vitamins and cancer (56 FR 60624); (2) dietary fiber and cardiovascular disease (56 FR 60582); and (3) folic acid and neural tube defects (56 FR 60610). These proposals were published under the requirements of sections 3(b)(1)(A)(vi) and (x) of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101-535). These provisions require, in part, that the agency determine whether to authorize health claims respecting these nutrient-disease relationships.

FDA has received information concerning several new studies on antioxidant vitamins and cancer and on dietary fiber and cardiovascular disease. Because these studies appear to present significant new information that could not be readily discerned from the studies that FDA reviewed in its proposals, FDA is providing 30 days for comment on these studies.

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

**Antioxidant Vitamins and Cancer (Docket No. 91N–0101):**

1. Benito, E., A. Stiggelbout, F. X. Bosch, A. Obrador, J. Kaldor, M. Mulet, N. Munoz, "Nutritional Factors in Colorectal Cancer Risk: A Case-control Study in Majorca," *International Journal of Cancer*, 49:161–167, 1991.

2. Boeing, H., R. Frentzel-Beyme, M. Berger, et al., "Case-control study on Stomach Cancer in Germany," *International Journal of Cancer*, 47:858–864, 1991.

3. Bravo, M. P., E. Castellanos, J. del Ray Calero, "Dietary Factors and Prostatic Cancer," *Urologia Internalis*, 46:163–166, 1991.

4. De Mesquita, H. B. B., P. Maisonneuve, S. Runia, C. J. Moreman, "Intake of Foods and Nutrients and Cancer of the Exocrine Pancreas: A Population-based Case-control Study in the Netherlands," *International Journal of Cancer*, 48:540–549, 1991.

5. Enstrom, J. E., L. E. Kanim, M. A. Klein, "Vitamin C Intake and Mortality Among a Sample of the United States Population," *Epidemiologic Reviews*, 3:194–202, 1992.

6. Gerber, M., S. Ricardson, R. Salkeld, P. Chappuis, "Antioxidants in Female Breast Cancer Patients," *Cancer Investigation*, 9:421–428, 1991.

7. Graham, S., R. Hellman, J. Marshall, J. Freudenheim, J. Venna, M. Swanson, M. Zielezny, T. Nemoto, N. Stubbe, T. Raimondo, "Nutritional Epidemiology of Postmenopausal Breast Cancer in Western New York," *American Journal of Epidemiology*, 134:552–566, 1991.

8. Herrero, R., N. Potischman, L. A. Brinton, W. C. Reeves, M. Stacewicz-Sapuntzakis, C. J. Jones, M. M. Brenes, F. Tenerio, R. C. de Britton, E. Gaitan, "A Case-control Study of Nutrient Status and Invasive Cervical Cancer II., Serologic Indicators," *American Journal of Epidemiology*, 134:1347–1355, 1991.

9. Knekt, P., R. Jarvinen, R. Seppanen, A. Rissanen, A. Aromaa, O. P. Heinonen, D. Albanes, M. Heinonen, E. Pukkala, L. Teppo, "Dietary Antioxidants and The Risk of Lung Cancer," *American Journal of Epidemiology*, 134:471–479, 1991.

10. Knight, T. M., D. Forman, H. Shishima, H. Bartsch, "Endogenous Nitrosation of L-proline by Dietary-derived Nitrate," *Nutrition and Cancer*, 15:195–203, 1991.

11. Moller, H., J. Landt, E. Pedersen, P. Jensen, H. Autrup, O. M. Jensen, "Urinary Excretion on N–Nitrosoproline in Relation to Consumption of Raw and Cooked Vegetables in a Danish Rural Population," *IARC Scientific Publications*, 105:168–171, 1991.

12. Potischman N., R. Herrero, L. A. Brinton, W. C. Reeves, M. M. Brenes, F. Tenerio, R. C. de Britton, E. Gaitan, "A Case-control Study of Nutrient Status and Invasive Cervical Cancer I., Dietary Indicators," *American Journal of Epidemiology*, 134:1335–1346, 1991.

13. Reed, P. I., B. J. Johnston, C. L. Walters, M. J. Hill, "Effect of Ascorbic Acid on the Intragastric Environment in Patients at Increased Risk of Developing Gastric Cancer," *IARC Scientific Publications*, 105:139-142, 1991.

14. Riboli, E., C. A. Gonzalez, G. Lopez-Abente, M. Errezola, I. Izarzugaza, A. Escolar, M. Nebot, B. Hemon, A. Agudo, "Diet and Bladder Cancer in Spain: A Multi-centre Case-control Study," *International Journal of Cancer*, 49:214–219, 1991.

15. Richardson, S., M. Gerber, S. Cenee, "The role of Fat, Animal Protein and Some Vitamin Consumption in Breast Cancer: A Case-control Study in Southern France," *International Journal of Cancer*, 27:420–423, 1991.

16. Rolton, H. A., K. M. McConnell, K. S. Modi, A. I. Macdougall, "The Effect of Vitamin C Intake on Plasma Oxalate in Patients on Regular Haemodialysis," *Nephrology Dialysis Transplantation*, 6:440–443, 1991.

17. Shi, K. X., D. J. Mao, W. F. Cheng, Y. S. Ji, L. Z. Xu, "An Approach to Establishing N-Nitroso Compounds as the Cause of Gastric Cancer," *IARC Scientific Publications*, 105:143-145, 1991.

18. Sierra, R., H. Ohshima, N. Munoz, S. Teuchmann, A. S. Pena, C. Malaveille, B. Pignatelli, A. Chinnock, F. El Ghissassi, C. Chen, A. Hautefeuille, C. Gamboa, H. Bartsch, "Exposure to N-Nitrosamines and Other Risk Factors for Gastric Cancer in Costa Rican Children," *IARC Scientific Publications*, 105:162-167, 1991.

19. Sobala, G. M., B. Pignatelli, C. J. Schorah, et al., "Levels of Nitrite, Nitrate, N-nitroso Compounds, Ascorbic Acid, and Total Bile Acids in Gastric Juice of Patients With and Without Precancerous Conditions of the Stomach," *Carcinogenesis*, 12:193–198, 1991.

20. Stillwill, W. G., H. X. Xu, J. Glogowski, J. S. Wishnok, S. R. Tannenbaum, P. Correa, "Comparison of Urinary Nitrate, N-Nitrosoproline, 7-Methylguanine and 3-Methyladenosine Levels in a Human Population at Risk for Gastric Cancer," *IARC Scientific Publications* 105:83-87, 1991.

21. You, W. C., Y. S. Chang, Z. T. Yang, L. Zhang, G. W. Xu, W. J. Blot, R. Kneller, L. K. Keefer, J. F. Fraumeni, Jr., "Eliological Research on Gastric Cancer and its Precursor Lesions in Shandong, China," *IARC Scientific Publications*, 105:33-38, 1991.

22. Zaridze, D., Y. Lifanova, D. Maximovitch, N. E. Day, S. W. Duffy, "Diet, Alcohol Consumption and Reproductive Factors in a Case-control Study of Breast Cancer in Moscow," *International Journal of Cancer*, 48:493–501, 1991.

23. Zatonski, W., K. Przewozniak, G. R. Howe, P. Maisonneuve, A. M. Walker, P. Boyle, "Nutritional Factors and Pancreatic Cancer: A Case–control Study from South–West Poland," *International Journal of Cancer*, 48:493–501, 1991.

24. Zhang, R. F., D. J. Deng, Y. Chen, H. Y. Wu, C. S. Chen, "Role of Nitrosamides in the High Risk for Gastric Cancer in China," *IARC Scientific Publications*, 105:152-157, 1991.

**Dietary Fiber and Cardiovascular Disease (Docket No. 91N–0099):**

1. Anderson, J. W., "Cholesterol-lowering Effects of Psyllium-enriched Cereal," unpublished report from industry, 1991.

2. Anderson, J. W., T. L. Floore, P. B. Geil, D. S. O'Neal, T. K. Balm, "Hypocholesterolemic Effects of Different Bulk-forming Hydrophilic Fibers as Adjuncts to Dietary Therapy in Mild to Moderate Hypercholesterolemia," *Archives of Internal Medicine*, 151:1597–1602, 1991.

3. Bremer, J. M., R. S. Scott, C. J. Lintott, "Oat Bran and Cholesterol Reduction: Evidence Against Specific Effect," *Australia and New Zealand Journal of Medicine*, 21:423–429, 1991.

4. Cara, L., P. Borel, M. Armand, M. Senft, H. Lafont, et al., "Plasma Lipid Lowering Effects of Wheat Germ in Hypercholesterolemic Subjects," *Plant Foods for Human Nutrition*, 41:135–150, 1991.

5. "Cholesterol-lowering Effects of Ready-to-eat Cereal Containing Psyllium," unpublished study submitted from food industry with comments, 1991.

6. Earll, J. M., "Feasibility and Metabolic Effects of a Precisely Measurable Dietary Food Supplement," unpublished report submitted with comments, 1986.

7. Haskell, W. L., G. A. Spiller, C. D. Jensen, B. K. Ellis, J. E. Gates, "Role of Water-soluble Dietary Fiber in the Management of Elevated Plasma Cholesterol in Healthy Subjects," *The American Journal of Cardiology*, 69:433–439, 1992.

8. Israelsson, B., G. Järnblad, K. Persson, "Serum Cholesterol Reduced with Fibrex™ Sugar-beet Fiber Preparation," unpublished, submitted with comments from the food industry, 1991.

9. Jenkins, D. J. A., S. Mueller, T. M. S. Wolever, V. Rao, T. Ransom, D. Boctor, et al., "High Soluble Fiber Foods Reduce Serum Lipids Even When Diets are Already Low in Saturated Fat and Cholesterol," unpublished report submitted from industry, 1991.

10. Jenkins, D. J. A., T. M. S. Wolever, V. Rao, R. Hegele, S. Mitchell, et al., "High Fiber Foods Reduce Serum Lipids Even on Diets Low in Saturated Fat and Cholesterol," unpublished report from industry, 1991.

11. Leadbetter, J., M. J. Ball, J. I. Mann, "Effects of Increasing Quantities of Oat Bran in Hypercholesterolemic People," *American Journal of Clinical Nutrition*, 54:841–845, 1991.

12. Karlander, S., I. Armyr, S. Efendic, "Metabolic Effects and Clinical Value of Beet Fiber Treatment in NIDDM Patients," *Diabetes Research and Clinical Practice*, 11:65–72, 1991.

13. Kawatra, A., A. C. Kapoor, S. Seghal, "Hypocholesterolemic Effect of Guar Gum in Overweight Adults," *Plant Foods for Human Nutrition*, 41:241–245, 1991

14. O'Connor, R. R., J. Jin, D. S. Hwang, "A Multicenter Study of a Five Fiber Supplement in the Treatment of Hypercholesterolemia," Final Report, unpublished study submitted with comments, 1992.

15. Resnicow, K., J. Barone, A. Engle, S. Miller, N. Haley et al., "Diet and Serum Lipids in Vegan Vegetarians: A Model for Risk Reduction," *Journal of the American Dietetic Association*, 91:447 453, 1991.

16. Spiller, G. A., J. W. Farquhar, J. E. Gates, S. F. Nichols, "Guar Gum and Plasma Cholesterol, Effect of Guar Gum and an Oat Fiber Source on Plasma Lipoproteins and Cholesterol in Hypercholesterolemic Adults," *Arteriosclerosis and Thrombosis*, 11:1204–1208, 1991..

17. Tinker, L. F., B. O'Schneeman, P. A. Davis, D. D. Gallaher, C. R. Waggoner, "Consumption of Prunes as a Source of Dietary Fiber in Men with Mild

Hypercholesterolemia," *American Journal of Clinical Nutrition*, 53:1259–1265, 1991.

18. Whyte, J., R. McArthur, D. Topping, P. Nestel, "Oat Bran Lowers Plasma Cholesterol in Mildly Hypercholesterolemic Men," *Journal of the American Dietetic Association*, 92:446–449, 1992.

19. Wolever, T., D. J. A. Jenkins, S. Mueller, D. Boctor, T. P. P. Ransom, et al., "Method of Administration Influences the Serum Cholesterol-lowering Effect of Psyllium," unpublished study submitted with comments.

20. Wolever, T., D. J. A. Jenkins, S. Mueller, C. Mehling, L. Katzman, et al., "Psyllium Reduces Blood Lipids to a Similar Extent in Hyperlipidemic Men and Women," unpublished study submitted with comments.

The agency is also reopening the period for submission of comments on the proposed rule on folic acid and neural tube defects because CDC will be holding a public meeting on this topic on July 27, 1992, in Atlanta, GA 30333 (57 FR 29323, July 1, 1992). FDA is reopening the comment period to permit the submission of any scientific data and information that may become publicly available as a result of that meeting and to provide an opportunity for comment on that data and information.

The agency points out, however, that it has been advised that the scientific evidence to be discussed at the CDC meeting is not yet publicly available, and FDA is not aware of when that evidence will become publicly available. In this regard, the agency also points out that the 1990 amendments require that the evidence relied upon by the agency as the basis for allowing health claims relating to a nutrient-disease relationship on the label and labeling of foods be publicly available, and that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the evidence supports the claim.

In accordance with section 3(b)(1)(B) of the 1990 amendments, the agency must issue by November 8, 1992, final regulations to implement section 403(r) of the Federal Food, Drug, and Cosmetic Act. If the agency does not promulgate final regulations by November 8, 1992, the 1990 amendments provide that the regulations proposed on November 27, 1991, concerning the relationship between the ingestion of (1) antioxidant vitamins and cancer, (2) dietary fiber and cardiovascular disease, and (3) folic acid and neural tube defects will become final regulations. The agency has determined that 30 days is the maximum time that it can provide for the submission of comments and still meet this statutory deadline for the issuance of final regulations. Thus, the agency is advising that it will not consider any requests under 21 CFR 10.40(b) for extension of the comment period beyond August 24, 1992. The agency must limit the comment period to no more than 30 days to assure sufficient time to develop a final rule based on the proposal and any additional comments it receives.

Interested persons may on or before August 24, 1992, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 17, 1992.

**William K. Hubbard,**

*Acting Deputy Commissioner for Policy.*

[FR Doc. 92–17362 Filed 7–20–92; 3:54 p.m.]

BILLING CODE 4160–01–F

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 180, 185, and 186

**[PP 6F3380, FAP 8H5502, and FAP 8H5568/P547; FRL–4073–9]**

**RIN 2070–AC18**

### Pesticide Tolerances and Food and Feed Additive Regulations for Glyphosate

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes tolerances and food and feed additive regulations for the combined residues of the herbicide glyphosate (N-(phosphonomethyl)glycine) and its metabolite aminomethyl phosphonic acid. The specific proposals are: an amended tolerance in or on the raw agricultural commodities (RACs) soybeans from 6 parts per million (ppm) to 20 ppm; a tolerance on soybean straw at 20 ppm; a food additive regulation proposing increases in tolerances for the processed human food instant tea from 4.0 ppm to 7.0 ppm; a feed additive regulation for citrus molasses at 1 ppm; and amended feed additive tolerances for dried citrus pulp from 0.4 ppm to 1 ppm and soybean hulls from 20 ppm to 100 ppm. This rule was requested by Monsanto Co. and would establish the maximum permissible residues of the herbicide in or on these RACs, this processed human food, and these animal feed commodities.

**DATES:** Comments, identified by the document control number [PP 6F3380, FAP 8H5502, FAP 8H5568/P547], must be received on or before August 24, 1992.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-305-6800.

**SUPPLEMENTARY INFORMATION:** EPA issued notices, published in the **Federal Register** of June 11, 1986 (51 FR 21233), in which it was announced that Monsanto Co., 1101 17th St., NW., Washington, DC 20036, proposed amending 40 CFR 180.364 by increasing established tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for the combined residues of the herbicide glyphosate (N-phosphonomethylglycine) and its metabolite aminomethyl-phosphonic acid in or on soybeans from 6 ppm to 20 ppm and soybean hay from 15 ppm to 200 ppm and proposed amending 21 CFR 561.253 by increasing the established food additive regulation under section 409 of the FFDCA, 21 U.S.C. 348, permitting residues of glyphosate in or on soybean hulls from 20 ppm to 100 ppm.

There were no comments or requests for referral to an advisory committee

received in response to the notice of filing.

The Agency subsequently issued a recodification document, published in the Federal Register of June 29, 1988 (53 FR 24688), redesignating 21 CFR part 561 under 40 CFR part 186 and redesignating glyphosate as 40 CFR 186.3500.

On August 26, 1988, the Agency received FAP 8H5568 from Monsanto Co. proposing to amend 40 CFR 185.3500 under section 409 of the FFDCA, 21 U.S.C. 348, permitting the combined residues of the herbicide glyphosate and its metabolite aminomethyl-phosphonic acid, by increasing the established food additive regulation on instant tea from 4.0 ppm to 7.0 ppm, and proposing to amend 40 CFR 186.3500 under section 409 of the FFDCA (21 U.S.C. 348) for these chemicals by increasing the established feed additive regulation on citrus, pulp, dried, from 0.4 ppm to 1.0 ppm and establishing a feed additive regulation to allow residues of 1.0 ppm in citrus molasses.

Subsequently, the petitioner amended PP 6F3380 by submitting a revised section F deleting the proposed increase in tolerance for soybean hay and proposing the establishment of a tolerance for the combined residues of the herbicide glyphosate and its metabolite on soybean straw at 200 ppm. Because the increased tolerances for instant tea to 7.0 ppm and citrus pulp, dried, to 1.0 ppm, and the proposed tolerances on citrus molasses of 1.0 ppm and soybean straw at 200 ppm have not been previously proposed, this document is being published as a proposed rule to allow a period of 30 days for public comment.

The data submitted in the petitions and other relevant material have been evaluated. The glyphosate toxicological data listed below were considered in support of these tolerances.

1. Several acute toxicology studies placing technical-grade glyphosate in Toxicity Category III and IV.

2. A 1-year feeding study with dogs fed dosage levels of 1, 20, 100, and 500 milligrams/kilogram/day (mg/kg/day) with a no-observable-effect level (NOEL) of 500 mg/kg/day.

3. A 2-year carcinogenicity study in mice fed dosage levels of 0, 150, 750, and 4,500 mg/kg/day with no carcinogenic effect at the highest dose tested (HDT) of 4,500 mg/kg/day.

4. A chronic feeding/carcinogenicity study in rats fed dosage levels of 0, 3, 10, and 31 mg/kg/day with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day (HDT) and a systemic NOEL of 31 mg/kg/day (HDT). Because a maximum tolerated dose (MTD) was not reached, this study was classified as supplemental for carcinogenicity.

5. A chronic feeding/carcinogenicity study in rats fed dosage levels of 0, 100, 400, and 1,000 mg/kg/day with no carcinogenic effects noted under the conditions of the study at dose levels up to and including 1,000 mg/kg/day (HDT) and a systemic NOEL of 400 mg/kg/day based on decreased body weight and body weight gain in females, cataracts in males, decreased urinary pH in males, increased relative liver weights (to body) at 12 months, increased absolute and relative liver weights (to brain) at 24 months at 1,000 mg/kg/day (HDT).

6. A developmental toxicity study in rats given doses of 0, 300, 1,000, and 3,500 mg/kg/day with a developmental NOEL of 1,000 mg/kg/day based on an increase in number of litters and fetuses with unossified sternbrae and decrease in fetal body weight at 3,500 mg/kg/day and a maternal NOEL of 1,000 mg/kg/day based on decrease in body weight gain, diarrhea, soft stools, breathing rattles, inactivity, red matter in the region of nose, mouth, forelimbs, or dorsal head and deaths at 3,500 mg/kg/day (HDT).

7. A developmental toxicity study in rabbits given doses of 0, 75, 175, and 350 mg/kg/day with no developmental effects occurring up to and including 350 mg/kg/day (HDT); a maternal NOEL of 175 mg/kg/day based on increased incidences of soft stool, diarrhea, nasal discharge, and deaths at 350 mg/kg/day (HDT).

8. A multigeneration reproduction study with rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with a developmental NOEL of 10 mg/kg/day based on increased incidence of focal tubular dilation of the kidney (both unilateral and bilateral combined) of male $F_1b$ pups. No effects on fertility or reproductive parameters were noted up to and including 30 mg/kg/day (HDT).

9. Mutagenicity data included chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S9 activation); DNA repair in rat hepatocytes; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis*; reverse mutation test with *S. typhimurium*; Ames test with *S. typhimurium*; and a dominant-lethal mutagenicity test in mice (all negative).

The reference dose (RfD) based on the multigeneration rat reproduction study (NOEL of 10 mg/kg/day) and using a hundredfold safety factor is calculated to be 0.1 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances and food and feed additive regulations is 0.005095 mg/kg/ bwt/day for the overall U.S. population. The current action will increase the TMRC by 0.004854 (4.9 percent of the RfD). These tolerances and food and feed additive regulations utilize a total of 10 percent of the RfD for the overall U.S. population. For U.S. subgroup populations, nonnursing infants, children aged 1 to 6, and nursing females, the current action and previously established tolerances and food and feed additive regulations utilize, respectively, a total of 39, 19.1, and 4.8 percent of the RfD, assuming that residue levels are at the established tolerances and that 100 percent of the crop is treated.

There are no desirable data lacking for this pesticide. There are currently no actions pending against the continued registration of this pesticide. No detectable residues of *N*-nitrosoglyphosate, a contaminant of glyphosate, are expected to be present in the commodities for which tolerances are established. The carcinogenic potential of glyphosate was first considered by a panel, then called the Toxicology Branch Ad Hoc Committee in 1985. The Committee, in a consensus review dated March 4, 1985, classified glyphosate as a Group C carcinogen based on an increased incidence of renal tumors in male mice. The Committee also concluded that dose levels tested in the 26-month rat study were not adequate for assessment of glyphosate's carcinogenic potential in this species. These findings, along with additional information, including a reexamination of the kidney slides from the long-term mouse study, were referred to the FIFRA Scientific Advisory Panel (SAP). The SAP in its report dated February 24, 1986, classified glyphosate as a Group D carcinogen (inadequate animal evidence of carcinogenic potential). The SAP concluded that, after adjusting for the greater survival in the high-dose mice compared to concurrent controls, that no statistically significant pairwise differences existed, although the trend was significant.

The SAP determined that the carcinogenic potential of glyphosate could not be determined from existing data and proposed that the rat and/or mouse studies be repeated in order to classify these equivocal findings. On reexamination of all information, the Agency classified glyphosate as a Group D carcinogen and requested that the rat study be repeated and that a decision on the need for a repeat mouse study would be made upon completion of review of the rat study.

Upon receipt and review of the second rat chronic feeding/carcinogenicity study, all toxicological findings for glyphosate were referred to the Health Effects Division Carcinogenicity Peer Review Committee on June 26, 1991, for discussion and evaluation of the weight of evidence on glyphosate with particular emphasis on its carcinogenic potential. The Peer Review Committee classified glyphosate as a Group E (evidence of noncarcinogenicity for humans), based upon lack of convincing carcinogenicity evidence in adequate studies in two animal species. This classification is based on the following findings: (1) None of the types of tumors (pancreatic islet cell adenomas in male, thyroid c-cell adenomas and/or carcinomas in males and females, and hepatocellular adenomas and carcinomas in males) observed in the rat study were determined to be compound related; (2) the renal tubular neoplasms occurring in the high-dose male mice were determined not to be compound related; (3) glyphosate was tested up to the limit dose on the rat and up to levels higher than the limit dose in mice; and (4) there is no evidence of genotoxicity for glyphosate. Also, currently there are no structurally related pesticides registered by the Agency which resemble glyphosate.

The nature of the residue in plants and animals is adequately understood, and adequate analytical methodology (HPLC) is available for enforcement purposes and has been published in the Pesticide Analytical Manual (PAM), Vol. II. Any secondary residues occurring in liver and kidney of cattle, goats, horses, poultry, and sheep will be covered by existing tolerances.

Based on the information cited above, the Agency has determined that the establishment of tolerances by amending 40 CFR part 180 will protect the public health and the establishment of a food additive and a feed additive regulation by amending 40 CFR parts 185 and 186 will be safe. The pesticide is considered useful for the purpose for which the tolerances are sought and is capable of achieving the intended physical or technical effect. It is proposed, therefore, that the tolerances and food and feed additive regulations be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6F3380, FAP 8H5502, FAP 8H5568/P547]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Parts 180, 185, and 186**

Administrative practice and procedure, Agricultural commodities, Animal feeds, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 30, 1992.

**Susan H. Wayland,**

*Acting Director, Office of Pesticide Programs.*

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

**PART 180—[AMENDED]**

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

b. In § 180.364, by revising the entry in the paragraph (a) table for soybeans and adding alphabetically the raw agricultural commodity soybean straw to read as follows:

**§ 180.364 Glyphosate; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Soybean straw | 200 |
| Soybeans | 20.0 |
| * * * * * | |

* * * * * *

**PART 185—[AMENDED]**

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

**Authority:** 21 U.S.C. 346.

b. In § 185.3500(a)(2) by revising in the table therein the entry for tea, instant to read as follows:

**§ 185.3500 Glyphosate.**

(a) * * *

(2) * * *

| Food | Parts per million |
|---|---|
| * * * * * | |
| Tea, instant | 7.0 |

* * * * * *

**PART 186—[AMENDED]**

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

**Authority:** 21 U.S.C. 346.

b. In § 186.3500(a) by revising the table therein, to read as follows:

**§ 186.3500 Glyphosate.**

(a) * * *

| Feeds | Parts per million |
|---|---|
| Citrus molasses | 1.0 |
| Citrus, pulp, dried | 1.0 |
| Soybean hulls | 100 |

* * * * * *

[FR Doc. 92-17138 Filed 7-22-92; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 3160**

**RIN 1004-AB72**

**[WO-610-4111-02-24 1A]**

## Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 1, Approval of Operations

**AGENCY:** Bureau of Land Management, Interior

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the existing Onshore Oil and Gas Order No. 1, which was published on November 12, 1983 (48 FR 48916), pursuant to 43 CFR 3164.1. The Order provides the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (except the Osage Tribe) onshore oil and gas leases. It also covers most approvals necessary for subsequent well operations, including abandonment. These approvals are granted by the Bureau of Land management (BLM). The revision is necessary due to provisions of the 1987 Federal Onshore Oil and Gas Leasing Reform Act (Reform Act), legal opinions and court cases since the Order was issued, and other policy and procedural changes. The revised Order would address the submittal of a complete Application for Permit to Drill or Deepen package, including a Drilling Plan, Surface Use Plan of Operations, evidence of bond coverage, and Operator Certification. The process for approval is explained including onsite predrill inspection, public notification, coordination with other surface management agencies, agency deadlines and time expectations, and Federal and operator responsibilities. The approval process for certain subsequent well operations is also explained. The revised Order would set forth the process whereby the Application for Permit to Drill (APD) package may serve as the application for an associated BLM right-of-way. This Order would also be incorporated by the Forest Service into its oil and gas regulations.

**DATES:** Comments should be submitted by September 21, 1992. Comments received or postmarked after this date may not be considered in the decision process of the final rulemaking.

**ADDRESSES:** Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

Comments will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday (excepting Federal holidays).

**FOR FURTHER INFORMATION CONTACT:** Lynn E. Rust, (307) 772-2293 or Sie Ling Chiang, (202) 653-2127.

**SUPPLEMENTARY INFORMATION:** The regulations at 43 CFR part 3160, Onshore Oil and Gas Operations, provide in § 3164.1 for the issuance of Onshore Oil and Gas Orders to supplement and implement specific provisions of the regulations. All Orders are promulgated by the rulemaking process and, when issued in final form, apply nationwide to all Federal and Indian (except the Osage tribe) oil and gas leases. The table in 43 CFR 3164.1(b) lists existing Orders. This proposed rulemaking will revise existing Onshore order no. 1 (the Order), which supplements primarily §§ 3162.3 and 3162.5. Section 3162.3 covers conduct of operations, application to drill on a lease, subsequent well operations, other miscellaneous lease operations, and abandonment. Section 3162.5 covers environmental and safety obligations. For further information on the Order, refer to the **Federal Register** of November 12, 1983, 48 FR 48916.

There are four primary reasons the Order is being revised:

1. The 1987 Reform Act includes two significant changes affecting APD processing on Federal leases. The first is the addition of a provision for public notification of a proposed action prior to approving an APD or substantially modifying the term or terms of a Federal lease. Because the Act specifically requires such notification, the Order would describe processes to satisfy the statutory requirement, and would incorporate them into current operating procedures.

The second important change is the allocation of authority to the Forest Service (FS) to approve and regulate the surface disturbing actions associated with oils and gas wells on National Forest System (NFS) lands, and to determine reclamation requirements. Where NFS lands are involved, the Surface Use Plan of Operations included in the APD is now approved by the FS, along with surface disturbing aspects of related and subsequent operations. The FS has actively participated in this revision, and will apply the Order in its review of oil and gas surface operations.

2. In response to protests on two Resource management Plans, in April 1988, the Solicitor of the Department of the Interior issued two opinions related to oil and gas issues. The first, and most far-reaching, concerned BLM responsibilities on Federal leases overlain by private surface (split-estate). In this opinion, the Solicitor ruled that the national Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA) required BLM to regulate exploration, development, and abandonment on Federal leases on split-estate lands in essentially the same manner as lease overlain by Federal surface. The Solicitor also stated that while a private owner's wishes should weigh in compliance decisions, they do not overrule compliance requirements of these statutes and their implementing regulations.

The second opinion lays out in more detail BLM's responsibilities under NHPA, elucidating further the discussion on cultural resources in the first opinion.

The pertinent requirements of the present Order No. 1 do not fully conform to the Solicitor's opinions. Therefore, amendments of portions of the order are required.

3. All requirements needed to approve a BLM right-of-way (R/W) are required to be met before it can be granted, whether or not the R/W is mineral related. However, it has been BLM policy that R/W applications in support of oil and gas wells can be initiated by APDS in lieu of a formal R/W form. This change involving APD submittals and necessary additional procedures is absent from the existing Order because the policy allowing such applications was implemented after the order was issued.

4. Existing Order No. 1 is over 6 years old. Conditions, regulations, policies, procedures, and requirements have been altered, added, and eliminated since the Order was issued. Because of these changes in law and policy, extensive amendments of the order are needed. The revision proposed is so extensive that a paragraph by paragraph comparison is not practical and would be confusing.

The former 8-point Drilling Program (also referred to as the Subsurface Use Plan) is now the 9-point Drilling Plan; and the former 13-point Surface Use Program (or Plan) is now the 12-point Surface Use Plan of Operations (SUPO). Note that the former item 13 of the Surface Use Program, "Operator Certification", has been removed from the SUPO and made into a separate component of the APD package. This was done to emphasize and ensure that the Operator Certification covers the

entire APD package and not just the SUPO.

The principal authors of this proposed rulemaking are Lynn Rust of the Wyoming State Office, Frank Lanzetta, Washington Office, Paul Dunlevy, California State Office, George Diwachak, Utah State Office, John Duhon, Jackson District Office, Bureau of Land Management, and William Robinson, Rocky Mountain Region, U.S. Forest Service, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. In part, the rule would merely transfer authority to regulate surface-disturbing activity from the BLM to the Forest Service. In implementing the Solicitor's opinion on the application of environmental and historical protection statutes to split estate lands, the rule would affect a minority of oil and gas leases. Most lessees with such leases would not be obligated to spend large sums to comply because in most cases endangered species and historical resources are not present. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The exact amounts that would have to be spent in both compliance and enforcement are not known, but it is clear that they will not approach the threshold amounts specified in the Executive Order. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rules would not require the surrender of any lease rights or otherwise lead to the loss of private property. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirements contained in this proposed Order have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0134.

**List of Subjects in 43 CFR Part 3160**

Government contracts, Indian lands—mineral resources, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Reporting requirements.

Under the authorities cited below, part 3160, Group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

**PART 3160—[AMENDED]**

1. The authority citation for part 3160 is revised to read:

**Authority:** 30 U.S.C. 181 *et eq.*; 30 U.S.C. 351–359; 30 U.S.C. 301–306; 25 U.S.C. 396; 25 U.S.C. 396a–396q; 25 U.S.C. 397; 25 U.S.C. 398; 25 U.S.C. 398a–398e; 25 U.S.C. 399; 43 U.S.C. 1457, see also Attorney General's Opinion of April 2, 1941 (45 Op.Atty.Gen 41); 40 U.S.C. *et seq.*; 42 U.S.C. 4321 *et seq.*; 42 U.S.C. 6508; Pub. L. 97–78; 30 U.S.C. 1701 et seq.; and 25 U.S.C. 2102.

2. Section 3164.1(b) is amended by revising the first entry on the table:

**§ 3164.1 Onshore oil and gas orders.**

* * * * *

(b) * * *

| Order No. subject | Effective date | Federal Register reference | Supersedes |
|---|---|---|---|
| 1. Approval of operations..... | | | Order No. 1 (11/21/83) |
| * * * * | | | * |

**Note:** Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

Dated: December 24, 1991.

**Dave O'Neal,**

*Assistant Secretary of the Interior.*

**Editorial Note:** This document was received in the Office of the Federal Register on July 22, 1992.

**Appendix—Text of Onshore Oil and Gas Order No. 1**

**Note:** This appendix is published for information only and will not appear in the Code of Federal Regulations.

*Onshore Oil and Gas Order No. 1*

Approval of Operations

I. Introduction
A. Authority
B. Purpose
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D. Rights-of-Way/Special Use Permits
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A. Environmental Protection of Resources
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**ONSHORE OIL AND GAS ORDER NO. 1**

**Approval of Operations**

*I. Introduction*

A. Authority

This Onshore Order is established pursuant to the authority granted to the Secretaries of the Interior and Agriculture by various Federal and Indian mineral leasing statutes as well as the Federal Onshore Oil and Gas Leasing Reform Act of 1987. The Secretary of the Interior has delegated his authority to the Bureau of Land Management (BLM). It is implemented by the onshore oil and gas operating regulations codified at parts 3150 and 3160 of title 43 of The Code of Federal Regulations. 43 CFR 3164.1 authorizes the Director of BLM to issue Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations, and provides that all such Orders shall be binding on the operator(s) of Federal and Indian (except the Osage Tribe) oil and gas leases that have been, or are hereafter, issued.

Specific BLM authority for the provisions contained in this Order is found at 43 CFR 3162.5–2 for drilling wells; Section 3162.3–1 for drilling applications and plans; Sections 3162.3–2 and 3162.3–3 for subsequent well operations and other lease operations; Section 3162.3–4 for well abandonment; Section 3162.5 for environmental and safety obligations, and § 3164.3 for surface rights. For leases on Indian lands, the specific authorities are at 25 CFR parts 211, 212, 213, and 227.

The authority for surface disturbing activities on National Forest System (NFS) lands is granted to the Secretary of Agriculture by the Federal Onshore Oil and Gas Leasing Reform Act of 1987. This authority has been delegated to the Forest Service (FS). Its regulatory authority is 36 CFR chapter II, including, but not limited to, part 251, subpart B, and part 261. The responsibility of the FS is limited to approval and administration of surface disturbing activities on NFS lands (36 CFR part 228, subpart E).

B. Purpose

The purpose of this Order is to state the necessary requirements for the approval of all proposed exploratory, development, and service wells, certain subsequent well operations, and abandonment.

C. Scope

This Order is applicable to all Federal and Indian (except the Osage Tribe) oil and gas leases and Indian Mineral Development Act agreements. The requirements in this Order do not relieve an operator from compliance with any applicable Federal, State, or local requirements regarding oil and gas drilling and producing operations and abandonment.

Operators have the responsibility to see that their construction, exploration, development, and production operations are conducted in a manner which (1) conforms with the lease terms, lease stipulations, and Conditions of Approval (COA) for Applications for Permit to Drill or Deepen (APD) and Sundry Notices (SN); (2) provides adequate safeguards for the environments; (3) results in the proper reclamation of disturbed lands; (4) conforms to best available technology and practices; (5) assures that underground sources of usable water will not be contaminated; (6) protects other prospectively valuable minerals; and (7) otherwise assures the protection of the public health and safety.

*II. General*

a. Definitions

As used in this order the following definitions apply:

*Authorized Officer:* Any person with the authority to approve or disapprove oil and gas actions on Federal and Indian lands.

*Authorized Forest Officer (AFO):* Any person with the authority to approve or disapprove surface activities on National Forest System lands.

*Blooie Line:* A discharge line used in conjunction with a rotating head in drilling operations where air or gas is the circulating medium.

*Condition of Approval (COA):* A site-specific requirement for operations that is incorporated into an approved APD or Sundry Notice.

*Development Well:* Any well drilled within the known productive limits of a pool for the purpose of obtaining oil or gas from the producing formation or formations in that field.

*Drilling Plan:* Documents submitted by an operator as part of an APD package or as a supplement to an approved plan of operations detailing the proposed drilling operations and containing such information as required in 43 CFR 3162.3–1(e).

*Exploratory Well:* Any well drilled beyond the known productive limits of a pool.

*Federal Lands:* All lands and minerals owned and administered by the Federal government.

*Indian Lands:* Lands on or as to which oil and gas leases or other agreements have been approved by the Bureau of Indian Affairs for Indian tribes and/or allottees.

*Lease:* Any contract or to her agreement issued by the BLM or BIA under the mineral leasing laws providing for exploration for, development of, and/or extraction of oil and gas.

*Lessee:* A person or entity holding record title in a lease issued or approved by the United States (43 CFR 3160.0–5, and 25 CFR 211.2 and 212.4(a).

*National Forest System (NFS) Lands:* Federal lands, such as the National Forests and the National Grasslands, administered by the Forest Service.

*Operator:* Any person or entity, including but not limited to the lessee or operating rights owner, who has acknowledged to the authorized officer, in writing, responsibility under the terms and conditions of the lease for the operations conducted on the leased lands or portions thereof (43 CFR 3160.0–5).

*Pre-drill Inspection:* An onsite inspection of the proposed drillpad and access road conducted prior to approval of the APD and commencement of construction activities.

*Prospectively Valuable Deposits of Minerals:* Any deposit of minerals, other than hydrocarbons, determined by the authorized officer to have characteristics of quantity and quality that warrant its protection from oil and gas operations.

*Public Lands:* Those Federal lands administered by BLM.

*Special Use Authorization (SUA):* A FS document that authorizes operations on NFS lands outside of the lease, unit, or communization agreement boundary, pursuant to 36 CFR part 211, 251, and 261.

*Split Estate:* A condition of land ownership where the surface is owned by one party (not Federal) and the subsurface (mineral estate) is owned by the Federal Government and leased under Federal leasing laws.

*Surface Disturbing Activities:* Any operation which alters (1) natural surface or (2) surface that has been previously reclaimed.

*Surface Management Agency (SMA):* Any Federal agency having jurisdiction over the surface of Federal or Indian lands.

*Surface Use Plan of Operations (SUPO):* A document submitted by an operator as part of an APD or a supplement to an approved plan of operations detailing proposed surface occupancy and planned operations pursuant to a Federal or Indian oil and gas lease.

*Usable Water:* Water containing less than 10,000 parts per million (ppm) total dissolved solids.

*Variance:* An approved alternative to a provision or standard of this Order.

B. Requirements

Mere reference to compliance with other Onshore Orders will not be sufficient to make an APD or SN technically complete. The operator shall describe or show, as set forth in this Order, the procedures, equipment, and materials to be used in the proposed operations. Neither drilling operations nor construction activities preliminary thereto may be commenced prior to the authorized officer's approval of the permit. Operators shall be held fully accountable for their contractor's and subcontractor's compliance with the requirements of the approved permit and/or plan. Drilling without approval on Federal or Indian lands is a violation under 43 CFR 3163.1(b)(2) and is subject to an immediate daily assessment. Noncompliance with, or alteration or deviation from, an approved APD or SN, without prior approval from the authorized officer or Authorized Forest Officer (AFO), is a violation.

In the event of an extreme emergency, immediate action may be taken without prior approval to safeguard life or prevent significant environmental degradation. Notification of the necessary emergency action taken by the operator shall be provided to the authorized officer as soon as possible, but not later than 24 hours after the action is commenced. If the emergency involves surface resources on SMA lands, the SMA shall also be notified within 24 hours. Upon conclusion of the emergency, the authorized officer or the SMA, where appropriate, will review the incident and determine whether assessments or penalties are warranted.

1. Approval of Form 3160–3. An Application for Permit to Drill or Deepen (APD) is required for each well. In order to be complete, an APD Package shall include all information required under 43 CFR 3162.3–1(d) and (e). A technically and administratively complete APD includes, in addition to Form 3160–3, a Drilling Plan, a Surface Use Plan of Operations (SUPO), evidence of bond coverage, operator certification, and such other information as may be required by applicable Order or Notice to evaluate the proposal. The APD form shall be used for new wells, any well that is a redrill of a permanently abandoned well, and for well deepenings. (Refer to section III.C. for more detailed guidance on completing APDs.) On NFS lands, the Authorized Forest Officer (AFO) is responsible for approving the SUPO of the APD package.

2. Subsequent Well Operations. Proposals for subsequent well operations, except well deepenings, shall be submitted on Form 3160–5, "Sundry Notice and Report on Wells", and approved under the provisions of this Order pursuant to 43 CFR 3162.3–2 or 3162.3–3. Lease operations involving new surface disturbance shall include an amended SUPO submitted with Form 3160–5. A report on all subsequent well operations shall be filed on Form 3160–5, as prescribed in 43 CFR 3162.3–2. A Notice of Intent to Abandon (NIA) a well, a Subsequent Report of Abandonment (SRA), and a Final Abandonment Notice (FAN) shall also be filed on Form 3160–5, as required by 43 CFR 3162.3–4. (Refer to Section VI for additional information.)

3. Office of Filing. All applications for approval under the provisions of this Order shall be submitted to the appropriate authorized officer of the BLM.

4. Compliance with Other Laws and Regulations. This Onshore Order does not exempt the operator from reporting requirements or compliance aspects of other Onshore Orders, Notices to Lessees, etc. An operator's compliance with the requirements of this Order shall not relieve the operator of the obligation to comply with other applicable laws and regulations in accordance with 43 CFR 3162.1(a). Submittal of either the APD or subsequent operations packages and/or forms shall not constitute an application for a variance from the requirements of other Onshore Orders. Requests for variances to any Orders shall be submitted in writing. Approval of proposals submitted under other Orders shall not authorize a variance to provisions of this Order.

C. Modification of Lease Stipulation

An operator may request the BLM/FS/BIA to accept, modify, or waive a lease stipulation. All requests for stipulation changes shall be forwarded in writing to the BLM or BIA. The BLM will forward the requests to the FS or other SMA on Federal leases for decision or recommendation, as applicable. These requests shall be accompanied by technical information that demonstrates that the resource to be protected by the stipulation is not present at the location or is no longer an issue, or that the problem can be mitigated. The modifications shall also be consistent with the planning objectives that prompted inclusion of the lease stipulation. Amendments to BLM Resource Management Plans, Forest Land and Resource Management Plans, or other appropriate agency planning documents may be necessary to accommodate certain requests. All final decisions on Federal leases will be processed through the BLM.

When the review of a requested change in a stipulation or Federal lease term has been completed and a decision has been reached, the operator will be notified in writing by the authorized officer or AFO. Prior to approving a substantial change to the provisions of the lease, the authorized officer or AFO will provide public notification of the proposed modification for at least 30 days, as specified in the Federal Onshore Oil and Gas Leasing Reform Act (Reform Act) of 1987, and III.B. of this Order. This requirement will not be waived or modified. However, this 30-day notification is not required on Indian lands.

D. Rights-of-Way/Special Use Authorization

At the time the APD or Notice of Staking (NOS) package or Sundry Notice is submitted, or during the predrill inspection, the BLM or FS will notify the operator of any additional right-of-way (R/W), Special Use Authorization (SUA), license, or other application needed for support facilities or off-lease access. If another SMA or Indian tribe is involved, the operator will be notified before or during the predrill inspection that the timing or actions or requirements under each permit or license may be different.

On-lease improvements, necessary for operations and production on the lease, do not require a R/W or SUA. These actions will be approved using the APD package or a Sundry Notice with a SUPO amendment. Refer to 43 CFR part 2880 and CFR part 169 for guidance on R/W.

1. *Rights-of-Way (BLM).* For Public lands, the APD package may serve as the supporting documents for the R/W application, in lieu of a R/W plan of development. An NOS will be considered an incomplete R/W application requiring a subsequent APD or a separate R/W application, Standard Form 299 (Application for Transportation and Utility Systems and Facilities on Federal Lands).

Within 10 days of the time an NOS, APD, or other notification is received, the operator will be informed as to what parts of the project will need a R/W, and will be furnished with a cost recovery determination, the proper forms, and supplemental information. This information should be submitted with the APD package if the NOS option has been used. The R/W approval will

be decided within the same time frames allotted for the APD package where possible, as long as the application fee, Form 2800–14, evidence of a bond or a lease rider, and rentals are submitted within 10 days of notification by the BLM.

No surface disturbing activities shall take place on the subject R/W until the associated APD is approved. The holder will adhere to the Conditions of Approval of the APD pertaining to any R/W facilities. Even if an APD is deemed complete, it will not be approved until any necessary R/W applications are also completed for all facilities related to the drilling of the well. The operator will be informed of the rental amount that is due before the R/W is approved. The completed APD and related R/W applications will be approved simultaneously.

2. *Special Use Authorizations (FS).* Applicants for a FS SUA shall identify the lands to be affected and submit an application, using Form FS–2700–3, for the SUA fully describing the proposed uses, improvements, effects on surface resources, and the length of time that the SUA will be needed. The area of land for the SUA will be limited to the minimum needed for the purpose of the authorization. Conditions regulating the use may be imposed to protect the public interest and to ensure compatibility with other NFS programs and activities and to comply with directions provided in the Forest Land and Resources Management Plan. SUAs require payment of the annual fee in advance, commensurate with the fair market value of the rights or privileges authorized, except where authorized otherwise by statute or regulation. Reclamation measures for areas of surface disturbance authorized by the SUA are part of the reclamation plan prepared as part of the SUPO.

E. Appeal Procedures

In accordance with 43 CFR 3165.3, any party adversely affected by a decision of the authorized officer issued under this Order may request an administrative review before the State Director. Any party adversely affected by the decision in the State Director Review may appeal that decision to the Interior Board of Land Appeals as specified in 43 CFR part 4. Complete information concerning the appeal process for BLM actions is contained in 43 CFR part 3165.

Forest Service decisions on consent or approval for use of NFS lands are subject to administrative appeal under 36 CFR parts 217 and 251. Decisions governing plans, projects, and activities to be carried out on NFS lands and that result from analysis, documentation, and other requirements of the National Environmental Policy Act (NEPA) and the National Forest Management Act and the implementing regulations, policy, and procedures are subject to appeal under 36 CFR part 217. These regulations provide for a public notice following these decisions 7 days before activities can be initiated.

The regulations in 36 CFR part 251 govern appeals of written decisions of FS line officers related to issuance, denial, or administration of written instruments to occupy and use NFS lands. A list of the types of written instruments is provided at 36 CFR 251.82 and includes SUAs and SUPOs related to the authorized use and occupancy of a particular site or area.

*III. APD Procedures*

A. Surveying, Staking, and Inventories

Surveying and staking activities and cultural resource inventories that meet the criteria of casual use, as defined in 43 CFR 3150.0–5(b), and that are in compliance with lease stipulation limitations, may be done on public lands without advance approval from the authorized officer of the BLM. Operators are strongly encouraged to notify the authorized officer prior to entry upon the lands.

Prior notice and approval of entry upon lands administered by the FS or the Department of Defense are required from these agencies for surveying, staking, conduct of cultural resource inventories, and other purposes.

On Indian lands (tribal and allotted), the operator is responsible for making access arrangements with the Bureau of Indian Affairs (BIA) and the affected Indian tribe or allottee prior to entry for surveying, staking, conducting cultural resource inventories, and for other purposes.

Where the surface is privately owned (split-estate), the operator is responsible for making access arrangements with the landowner prior to entry upon the land for the purpose of surveying, staking, and inventories.

Early notification will allow the SMA to apprise the operator of any unusual conditions on the lease, knowledge of which could result in savings of time and money by both industry and the government. These include, but are not limited to:

—Status of LRMP/RMP and management prescriptions;
—Presence of threatened or endangered species and/or habitat;
—Information on the most recent surveys and changes in land ownership or administration;
—Vehicular access restrictions;
—Road conditions, including weather and traffic;
—Other land use activities in the area, including wildlife management, recreation, and timber harvesting.
—Military mission activities and restrictions;
—Known concentrations of significant cultural resources.

Staking of the proposed drill pad shall include: the well location, two 200-foot directional reference stakes, the exterior pad dimensions, reserve pit, cuts and fills, outer limits of the area to be disturbed, and any off-location facilities. Staking is also required for surface disturbances that will result from construction of ancillary facilities. Proposed new roads will require centerline flagging with road stakes being clearly visible from one to the next. In rugged terrain, cut and fill staking and/or slopestaking of proposed new access roads and locations for ancillary facilities may be necessary, as determined by the authorized officer or AFO.

The onsite predrill inspection will not occur until after the proposed pad has been surveyed and staked, and any new access has been flagged.

B. Posting Requirements

In accordance with the Reform Act, no APD on Federal leases may be approved until at least 30 days after public notice is provided. To initiatve this process, the operator shall submit, via the APD or NOS, at a minimum, the company/operator name, well name/number, and the well location to the nearest 40 acre parcel (or a map showing the well site location) to the BLM when a drilling or deepening operation is proposed. This information will be posted as a public notice in the appropriate local office of the BLM and the SMA. The notice will be posted in an area of the office that is readily accessible to the public. This requirement cannot be waived or modified.

Should the proposed location be moved more than 200 meters, reposting of the proposal may be necessary, depending on the significance of the modification determined by the authorized officer or AFO. The purpose of the posted notice is for informational purposes only (43 CFR 3162.3–1), to give any interested party notification that an action is proposed on a Federal lease in a given area. Confidential information will not be posted. Therefore, NOSs, and even APDs with incomplete Drilling Plans or SUPOs, can serve to initiate the 30 days required for posting. BLM will notify any other SMA office having

jurisdiction as soon as possible, to allow the 30-day posting of the information by that office to commence. Notification by telephone, telefax, electronic mail, etc., will be used to aid in this process.

If an operator request, or other circumstance, results in a proposed significant modification to or waiver of lease stipulations before, during, or after the APD approval process is complete, then the proposed lease modification will be re-posted for 30 days. This posting will also serve as a notice of waiver.

The posting requirements outlined above are in addition to any public notice required by other laws.

C. APD Package

All operators wishing to drill, deepen, or re-enter a well shall have an approved APD prior to any surface-disturbing activity. An APD will not be approved until it is technically and administratively complete. A technically and administratively complete APD will contain, at a minimum, a completed Form 3160–3 (Application for Permit to Drill or Deepen), a well plat certified by a registered surveyor, a Drilling Plan, a Surface Use Plan of Operations, evidence of bond coverage, operator certification, and other information that may be required by the authorized officer or AFO.

1. *Drilling Plan.* A Drilling Plan, insufficient detail to permit a complete appraisal of the technical adequacy of, and environmental effects associated with, the proposed project, shall be prepared and submitted with each copy of Form 3160–3. The Drilling Plan shall adhere to the provisions of Onshore Oil and Gas Order No. 2 and, if applicable, Onshore Order No. 6, and shall include the following information:

(1) Names and estimated tops of important geologic formation/marker horizons.

(2) Estimated depths at which the top and bottom of formations potentially containing usable water, oil, gas, or prospectively valuable deposits of other minerals are expected to be encountered, and the operator's plans for protecting such resources.

(3) The operator's minimum specifications for Blowout Preventer (BOP) and related equipment to be used and schematic diagrams thereof showing sizes, pressure ratings, and the testing procedures and testing frequency. BOP and BOP-related equipment (BOPE) schematics shall include schematics of choke manifold equipment. Accumulator systems and remote controls shall be utilized.

(4) The proposed casing program, including size, grade, weight, type of thread and coupling, and the setting depth of each string and its condition (new or acceptably reconditioned). For exploratory wells, or for wells as otherwise specified by the authorized officer, the operator shall include the minimum design factors for tensions, burst, and collapse that are incorporated into the casing design. In cases where tapered casing strings are utilized, the operator shall also include the lengths and/or setting depths of each portion.

(5) The amount and type(s) of cement, including anticipated additives to be used in setting each casing string, shall be described. If stage cementing techniques are to be employed, the setting depth of the stage collars and amount and type of cement, including additives, and preflush amounts to be used in each stage, shall be given. The expected linear fill-up of each cemented string, or each stage when utilizing stage-cementing techniques, shall also be given.

(6) The anticipated characteristics, additives, use, and testing of drilling mud to be employed, along with the types and quantities of mud products to be maintained, shall be given. When air or gas drilling is proposed, the operator shall submit the following specific information:

(a) Length and location of blooie line, including the automatic igniter or continuous pilot light.

(b) Location of compressor equipment, including safety devices, and the distance from the wellbore.

(c) Schematics showing deduster equipment and rotating head.

(d) Amounts, types, and characteristics of stand-by mud and associated circulating equipment.

(7) The anticipated testing, logging, and coring procedures to be used, including drill stem testing procedures, equipment, and safety measures.

(8) The expected bottom-hole pressure and any anticipated abnormal pressures, temperatures or potential hazards that are expected to be encountered, such as lost circulation zones and hydrogen sulfide. The operator's plans for mitigating such hazards shall be discussed. Should the potential to encounter hydrogen sulfide exist, the mitigation procedures shall comply with the provisions of Onshore Oil and Gas Order No. 6.

(9) Any other facets of the proposed operation which the operator wishes for BLM to consider in reviewing the application.

2. *Surface Use Plan of Operations.* The Surface Use Plan of Operations (SUPO) shall contain descriptions of road and drill pad locations, construction methods to be used, and means for containment and disposal of all waste materials. The plan shall provide for safe operations and adequate protection of surface resources and uses, disposal of wastes and any hazardous materials, as well as other environmental components. For Federal and Indian surface, the plan shall also include adequate measures for stabilization and reclamation of disturbed lands no longer needed for drilling or production operations. Where the surface is privately owned, the submission of a surface use agreement and reclamation plan between the operator and land owner will be required in order to evaluate compliance with BLM requirements. Further discussion of activities on private surface is contained in Part IV. For operations proposed on SMA lands, operators shall submit the SUPO to the BLM for forwarding to the SMA. In developing a SUPO, operators should make use of such information as is available from local BLM and/or FS offices, or any other involved SMAs concerning surface resources and uses, environmental considerations, and local reclamation procedures, such as the BLM/FS "Surface Operating Standards for Oil and Gas Exploration and Development" (Gold Book). The SUPO will be reviewed by the BLM, FS, and/or the SMA as appropriate.

In preparing the Surface Use Plan of operations, the operator shall submit maps, plats, and narrative descriptions that include the following (maps shall be of a scale no smaller than 1:24,000, unless otherwise stated below):

(1) *Existing Roads:* A legible map (USGS topographic, county road, Alaska Borough, or other such map), labeled and showing the access route to the location, shall be used for locating the proposed well site in relation to a town, village, or other locatable point, such as a highway or county road. All access roads shall be appropriately labeled. Any plans for improvement and/or maintenance of existing roads shall be provided. All roads shall be improved or maintained in a condition the same as or better than before operations. The information provided for use and construction of roads will also be used by BLM for the required Plan of Development for a R/W application as described in section II.C. of this Order.

Existing roads under the jurisdiction of FS can be used for access if they meet agency standards and transportation objectives. When access involves the use of existing roads, the operator may be required to contribute to road maintenance. Existing multiple use roads may be used by an operator when

approved by the FS. This is usually authorized by a SUA or a joint road use agreement, and an operator will be charged a pro rata share of the costs of road maintenance and improvement, based upon the anticipated use of the road. Existing roads and newly constructed roads under the jurisdiction of any other SMA shall be maintained in accordance with the standards of that agency.

Information required by the following items (2), (3), (4), (5), (6), (8) and (11) of this subsection also may be shown on this map, if appropriately labeled, or on a separate plat or map.

(2) Access Roads to be Constructed or Reconstructed: All permanent and temporary access roads to be constructed or reconstructed in connection with the drilling of the proposed well shall be appropriately identified and submitted on a map or plat. The proposed route to the proposed drill site shall be shown, including distances from the point where the access route exits established roads. All permanent and temporary access roads shall be located and designed to implement the goals of transportation planning and meet applicable standards of the appropriate SMA, and shall be consistent with the needs of the users. Final selection of the rouge location may be accepted by the SMA as early as the predrill inspection or during approval of the APD.

Design standards for a constructed or reconstructed road will be based upon the class or type of road, the safety requirements and traffic characteristics, and the vehicles the road will be expected to carry. Width, maximum grade, crown design, turnouts, drainage and ditch design, location and size of culverts and/or bridges, fence cuts and/or cattleguards, major cuts and fills, source and storage sites of topsoil, and type of surfacing material, if any, shall be described for all construction. In addition, where permafrost exists, the methods for protection from thawing shall be indicated.

(3) Location of Existing Wells: This information shall be submitted on a map or plat, which includes all recorded wells (water, injection, or disposal, producing, or being drilled) within a 1-mile radius of the proposed location.

(4) Location of existing and/or proposed production facilities: For facilities planned either on or off the well pad, a plat or diagram shall be included showing, to the extent known or anticipated, the location of all production facilities and lines to be installed if the well is successfully completed for production. If new construction is planned, the dimensions of the facility layouts are to be shown. This information for off-pad production facilities may be used by BLM for R/W application information as specified in Section II.C. If the information required above is not known and cannot be accurately presented and the well subsequently is completed for production, the operator shall then comply with Section VI of this Order. However, to minimize further site inspections, the operator is strongly encouraged to submit, at the APD stage, a reasonable estimate of the anticipated production setup.

(5) Location of Types of Water Supply: Approval of the APD does not relieve the operator of any Federal, Indian, State, or local requirements for use of water.

Information concerning water supply, such as rivers, creeks, springs, lakes, ponds, and wells, may be shown by quarter-quarter section on a map or plat, or may be described in writing. The source and transportation method for all water to be used in drilling the proposed well shall be noted if the source is located on Federal or Indian lands or if water is to be used from a Federal or Indian project. If the water is obtained from other than Federal or Indian lands, the location and transportation method shall be identified. Any access roads crossing Federal or Indian lands that are needed to haul the water shall be described as provided in paragraphs (1) and (2) of this Section. If a water supply well is to be drilled on the lease, the APD shall so state. The authorized officer of BLM may require the filing of a separate APD of a water well.

(6) *Construction Materials;* The operator shall state the character and intended use of all construction materials, such as sand, gravel, stone, and soil material. If the materials to be used are Federally owned, the proposed source shall be shown either on a quarter-quarter section on a map or plat, or in a written description. The use of materials under BLM jurisdiction is governed by 43 CFR 3610.2–3. The authorized officer of AFO will inform the operator whether the materials are available, and if so, whether they may be used free of charge or a permit for sale is required. If the materials to be used are Indian-owned or under the jurisdiction of any other SMA, the specific tribe, BIA, or the appropriate SMA, according to the site location, shall be contacted by the operator for material disposal procedures.

(7) *Methods for Handling Waste Disposal:* A written description of the methods and locations proposed for safe containment and disposal of each type of waste material (e.g., cuttings, garbage, salts, chemicals, sewage, etc.) that results from the drilling and completion of the proposed well shall be provided. The narrative shall describe the procedures for the eventual disposal of drilling fluids and any produced water, and an accounting of any salable oil, recovered during testing operations. Disposal methods shall comply with Federal laws and appropriate regulations, including the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act. Refer to Onshore Order No. 7 for information concerning the temporary use of reserve pits for disposal of produced water. Procedures for proper handling and disposal of hazardous materials and/or dangerous chemicals shall also be included. The location of any off-site disposal facilities or sites shall be specified.

(8) *Ancillary Facilities:* All ancillary facilities such as camps and airstrips shall be identified on a map or plat. Information as to location, land area required, and methods to be used in construction shall also be provided. The approximate center of proposed camps and the center line of airstrips shall be staked on the ground. If the ancillary facilities are located off-lease, additional authorization will be needed.

(9) *Well Site Layout:* A plat of suitable scale (not less than 1 inch=50 feet) showing the proposed drill pad, reserve pit location, access road entry points, and its approximate location with respect to topographic features, along with cross section diagrams of the drill pad and the reserve pit showing all cuts and fills and the relation to topography. The plat shall also include the approximate proposed location and orientation of the drilling rig, dikes and ditches to be constructed, and topsoil and/or spoil material stockpiles.

(10) *Plans for Reclamation of the Surface:* A proposed interim plan for reclamation/stabilization of the site and also final reclamation plan shall be provided. The interim portion of the plan shall cover areas of the drillpad not needed for production. The final portion of the plan shall cover final abandonment of the well. The plan shall include, as appropriate, configuration of the reshaped topography, drainage systems, segregation of spoil materials, surface manipulations, redistribution of topsoil, soil treatments, revegetation, and any other practices necessary to reclaim all distributed areas, including any access roads and pipelines. An estimate of the time for commencement and completion of reclamation operations, including consideration of

weather conditions and other local uses of the area, shall be provided. Further details for reclamation are contained in Section VII.A. of this Order.

(11) *Surface Ownership:* The surface ownership (Federal, Indian, State, or private) and administration (BLM, FS, BIA, Department of Defense, etc.) at the well location, and of all lands crossed by roads which are to be constructed or upgraded, shall be indicated. Where the surface of the proposed well site is privately owned, the operator shall provide the name, address, and telephone number of the surface owner.

(12) *Other Information:* All other information or requirements that may be specified by the authorized officer and/or AFO shall be included. The operator is also encouraged to submit any additional information that may be helpful in processing the application, including information pertaining to possible delays described in Section III.E.2. below.

3. *Bonding.* The operator shall be covered by a bond in its own name as principal, or by a bond in the name of the lessee or sublessee.

Form 3000–4 (June 1988) covers all bonding needs for oil and gas operations, because it allows for surety bond or personal bond to cover all former requirements of lease bonds, operator bonds, and other types of bonds. If the lessee's or sublessee's bond (either Form 3000–4 or any valid earlier bond forms) is used, a rider (consent of surety or principal shall be furnished to include the operator under the coverage of the bond. The operator on-the-ground shall specify on the APD, Form 3160–3, the type of bond under which the operations are to be conducted.

Operators may be required to submit additional bond coverage for specific APDs. The regulations at 43 CFR 3104.5 and 36 CFR 228.107, or 25 CFR 211.212 for Indian lands, will be used to determine whether an increase in the bond amount is necessary. Other factors that may be considered include location and depth of wells, the total number of wells involved, the age and production capability of the field, and unique environmental issues. Separate bonds may be required for associated R/W's and SUA's.

On Federal leases, operators may ask for a reduction of the amount of a bond, but shall satisfy the terms and conditions in the reclamation plan for that particular operation prior to reduction. In appropriate circumstances, the bond may be reduced by the authorized officer in the amount prescribed by the appropriate SMA. A bond reduction will be based on a calculation of the sum that is sufficient for the remainder of the period of operation authorized by the SUPO.

4. Operator Certification. The name, address, and telephone number of the operator and their field representative shall be included. The operator submitting the APD shall certify as follows:

> I hereby certify that I, or persons under my direct supervision, have inspected the proposed drill site and access route; that I am familiar with the conditions that currently exist; that the statements made in this APD package are, to the best of my knowledge, true and correct; and that the work associated with operations proposed herein will be performed by _____ contractors and subcontractors in conformity with this APD package and the terms and conditions under which it is approved. I also certify responsibility for the operations conducted on that portion of the leased lands associated with this application, with bond coverage being provided under BLM bond #_____. This statement is subject to the provisions of 18 U.S.C. 1001 for the filing of a false statement.
>
> Date _____
>
> Name and Title _____

D. Notice of Staking Option

Prior to filing a complete APD, the operator may file a Notice of Staking (NOS) with the authorized officer. In Alaska, a copy of the NOS shall also be sent to the appropriate Borough and/or Native Regional or Village Corporation when a subsistence stipulation is part of the lease. Attachment A is a sample NOS form containing the minimum information to be submitted. For Federal lands managed by other SMAs, the BLM will provide a copy of the NOS to the appropriate SMA office.

Surveying and staking of the proposed drill pad and ancillary facilities, and flagging of new or reconstructed access routes, shall be completed prior to the onsite pre-drill inspection. The operator shall incorporate the information gathered at the NOS onsite pre-drill inspection into the APD package. The purpose of the NOS option is to allow the operator the opportunity to incorporate site-specific agency requirements into the APD package, thereby reducing the number of Conditions of Approval (COAs). The NOS shall contain information which will aid in identifying the need for associated R/Ws and SUPs. The operator shall attach a map (e.g., a USGS 7½" Quadrangle) for that portion of the area proposed. The operator shall also include any additional information as specified by the authorized officer and/or the SMA. If all required information is not included, the NOS will be returned to the operator for completion.

E. Processing Schedules

1. *Timetables.* The following tables summarize the important deadlines involved in processing most APD's. The schedules in the regulations at 43 CFR 3162.3–1 apply to a technically and administratively complete APD. If the APD is complete, it should be approved or rejected within 5 business days after the 30-day posting period except for unusual circumstances as outlined in E.2. below. The required information for NOSs and incomplete APDs also will be posted, but BLM may be required to either return the application unapproved or advised the applicant of the reasons why final action may be delayed within the same 30+5 day period (43 CFR 3162.3–1(h)). For operations on NFS lands, the FS is required to provide public notice 7 days before operations can commence. The following schedule itemizes the individual time frames:

a. APD Submitted. i. Public Notification—Begins as soon as the required information is posted in both the approving office and appropriate SMA office (if not BLM), and lasts for 30 days. Posting is not required for actions on Indian minerals.

ii. APD Completeness—Within 10 days of receipt of the APD, BLM will notify the operator as to whether or not the APD is technically and administratively complete, and identify any additional information necessary for the processing of the APD. Within 90 days of the predrill inspection, the APD package is required to be technically and administratively complete, or it will be returned and the entire APD process may have to be repeated.

iii. Pre-drill Inspection—Should be conducted within 15 days of receipt of the APD, assuming the information necessary to hold the inspection has been provided.

iv. Additional Requirements—Approval requirements for incorporation into the APD will be developed on site, or attached to the APD as COAs.

v. Complete Processing—If the APD is technically and administratively complete, it will be approved, or if not it will be returned disapproved, or the applicant advised in writing of any processing or other delay, within 5 business days after the 30-day posting period. For other SMAs not requiring a 30-day posting period, the applicant will be advised of the APD status within 35 days of receipt of a technically and administratively complete APD. However, a technically and administratively complete APD is

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required to be filed with the BLM at least 10 business days prior to a decision.

b. NOS Option. i. Public Notification—Begins as soon as the required information is posted in both the approving office and appropriate SMA office (if not BLM), and lasts for 30 days. Posting is not required for actions on Indian minerals.

ii. Pre-drill Inspection—Should be conducted within 15 days of receipt of the NOS, assuming the information necessary to hold the inspection has been provided.

iii. Additional Requirements—Approval requirements for incorporation by the operator into the APD to be submitted will be developed on site at the pre-drill inspection or mailed to the operator within 7 days after the pre-drill inspection.

iv. APD Completeness—Within 10 days of receipt of the APD, BLM will notify the operator as to whether or not the APD is technically and administratively complete, and identify any additional information necessary for the processing of the APD. Within 90 days of the predrill inspection, a technically and administratively complete APD is required to be submitted or the NOS will be returned and the entire NOS/APD process may have to be repeated.

v. Complete Processing—If the APD is technically and administratively complete, it will be approved, or if not it will be returned disapproved, or the applicant advised in writing of any processing or other delay, within 5 business days after the 30-day posting period. For other SMAs not requiring a 30-day posting period, the applicant will be advised of the APD status within 35 days of receipt of a technically and administratively complete APD. However, a technically and administratively complete APD is required to be filed with the BLM at least 10 business days prior to a decision.

2. *Delays.* The above time frames together comprise the total time the BLM anticipates will be required to process the majority of APD's. However, the days of the period may not run consecutively if APD processing is delayed by incomplete or erroneous information in the submitted application. Such delays beyond control of the BLM and/or FS shall not be counted as part of the "30+5 days" allowed in the schedule. However, BLM and the FS will continue to process applications up to the point where missing information or an uncorrected deficiency renders further processing impractical or impossible. Additionally, delays in conducting pre-drill inspections within 15 days of receiving an NOS (or APD if an NOS is not filed) may occur during periods of adverse weather conditions. Processing delays may also occur for unique technical proposals or in areas of high environmental sensitivity, or where jurisdictional conflicts exist. Such areas include, but are not limited to:

(1) Certain individually or tribally owned Indian trust or restricted lands.

(2) Lands withdrawn for Federal reservoirs and Federal lands surrounding such reservoirs.

(3) Lands in formally designated wilderness areas or proposed for such designation, lands within Wilderness Study Areas, or lands within FS Further Planning Areas.

(4) National and State Parks, Wildlife Refuges, Monuments and Recreation Areas.

(5) Areas known to contain threatened or endangered species and/or their critical habitat, or that need additional surveys to delineate critical habitat.

(6) Areas where concern exists with respect to significant cultural/historic resources or where consultation with the State Historic Preservation Officer is necessary.

(7) Certain Federal lands in Alaska.

(8) Lands under jurisdiction of the Department of Defense.

(9) Areas within or near population centers.

(10) Areas subject to particular public concern.

The environmental analysis process may extend the "30+5 day" deadline for some APD's. Where the environmental analysis process results in an environmental impact statement, this schedule will always be exceeded.

The APD is required to be technically and administratively complete not less than 10 business days prior to the end of the "30+5 day" time frame established by regulation. If the APD is not complete within 10 business days prior to the end of this time frame, then additional processing time will be added to the "30+day" time frame. Operators are reminded that if the APD process begins less than 30 days prior to the desired date of commencement of operations, the process cannot be completed within the time desired, such as by the end of the lease term.

Approval of an APD is valid for one year from the date of the authorized officer approval, provided lease expiration does not occur. At the end of this period, the APD will be returned to the operators without prejudice if a well is not drilled, and any initial construction shall be reclaimed if required by the authorized officer or AFO. Should the operator still desire to drill the well, a new APD shall be submitted. Upon written request by the operator, a one-time 90 day extension to this time period may be granted by the authorized officer with concurrence of the appropriate SMA.

F. Environmental Requirements

1. *Pre-drill Inspection.* The pre-drill inspection is to ensure that the staked location (as specified in section III.A.), access roads, and other areas proposed for surface disturbance are acceptable, and that they will comply with all applicable Federal laws and regulations. This inspection should be scheduled and conducted by the BLM or FS within 15 days of receiving the applicant's NOS or APD. The FS will schedule, conduct, and follow up the pre-drill inspection for actions involving NPS lands. Because of the need for close coordination between the SUPO and the drilling plan, the BLM will ordinarily have a representative at pre-drill inspections conducted by FS. Representatives of the appropriate BLM and/or FS office, the operator, any other involved SMA, the appropriate Alaska Borough and/or Native Regional or Village Corporation (when a subsistence stipulation is part of the lease), the operator's dirt contractor and drilling contractor, if known, shall attend the predrill inspection. When private surface is involved, the operator shall furnish the name, address, and telephone number of the surface owner in the NOS submission and in the SUPO. The BLM will invite the surface owner to participate in the pre-drill inspection. If a surface owner or SMA is not able to participate at the desired time, the inspection may be rescheduled. In some circumstances, such as those listed in section III. A. and III.E.2., the BLM or FS may require the filling of a complete APD package prior to scheduling the pre-drill inspection.

Surface use and reclamation requirements will be reviewed, or if necessary, developed. In some cases, the requirements will be incorporated into the APD package at the pre-drill inspection. Otherwise, the requirements will be incorporated as Conditions of Approval to the APD package when approved.

If the NOS option is followed, these requirements will be provided to the operator within 7 days from the date of the pre-drill inspection, to be incorporated by the operator into the complete APD package, when filed. This does not, however, preclude the possibility of additional COA's being imposed as a result of the review of the complete APD package.

In accordance with 43 CFR 3101.1–2, the BLM may require reasonable modifications of a proposal, including, but not limited to, siting and design of facilities, timing of operations, and reclamation measures. Such modifications will not require alteration of the lease terms or stipulations. These usually require additional environmental documentation, provided the modifications do not require relocation of proposed operations by more than 200 meters of rescheduling by more than 60 days in a lease year, or require operations to be sited off the leasehold, or prohibit new surface disturbing operations. Should it be necessary to exceed the 200 meter/60 day standards, additional environmental analysis will be required. Requirements for compliance with nondiscretionary statutes may require modifications beyond these limits.

For operations on NFS lands, FS review of a SUPO at the pre-drill inspection will include development and inclusion of COAs necessary for conducting operations. For operations on Indian lands, the BIA will furnish COAs to the BLM. Within 7 days of the pre-drill inspection, the AFO will notify the operator and the appropriate BLM office in writing that the proposed SUPO is (1) approved as submitted, (2) approved subject to specific operating conditions, or (3) unapproved for the reasons stated. Any resubmissions of disapproved applications shall be forwarded by the operator through the BLM.

2. *Federal Responsibilities.* The information obtained during a pre-drill inspection will be utilized by the BLM/FS to identify the reasonably foreseeable environmental consequences of the proposed action and to prepare the required environmental document. Except for NFS lands, the BLM has the lead responsibility for completing the environmental review process, including cultural resource surveys and threatened and endangered species requirements, identification of other environmental concerns and known or potential surface geological hazards, and establishing the terms and conditions under which the APD package and associated R/W may be approved. For proposed actions on NFS lands, FS has the lead responsibility for compliance with environmental requirements and approval of the SUPO. In these cases, the BLM will be a cooperating agency under the provisions found at 40 CFR parts 1500 through 1508.

3. *Operator Responsibilities.* The operator shall conduct operations to minimize adverse effects to surface and subsurface resources and shall prevent unnecessary or unreasonable amounts of surface disturbance. Operators shall comply with the provisions of the approved APD and other requirements, including laws, regulations, and the following:

a. Cultural and Historic Resources. Cultural resource surveys shall be conducted prior to commencement of ground disturbing activities. The operator shall inform all personnel in the area associated with the project that they will be subject to prosecution for knowingly disturbing historic or archaeological sites or for collecting artifacts. If historic or archaeological materials are uncovered during construction, the operator shall immediately stop work that might further disturb such materials, and contact the BLM and, if appropriate, the FS or other SMA. BLM or FS will inform the operator within 5 working days at to whether the materials appear eligible for the National Register of Historic Places. If the materials appear eligible, the BLM or FS will provide the mitigation measures the operator will likely be required to undertake before the site can be used and initiate a review under 36 CFR 800.11 to confirm, through the State Historic Preservation Officer, that the BLM or FS findings are correct and the mitigation is appropriate.

If at any time the operator wishes to relocate activities on lease to avoid the expense of mitigation and/or the delays associated with the process, the BLM, FS, or appropriate SMA will assume responsibility for whatever recordation and stabilization of the exposed cultural material may be required. Otherwise, the operator shall be responsible for mitigation and stabilization costs. The BLM, FS, or appropriate SMA will provide technical and procedural guidelines for the conduct of mitigation. Upon verification from the BLM or FS that the required mitigation has been completed, the operator will then be allowed to resume construction. Relocation of activities may subject the proposal to additional environmental review.

For activities on lands administered by other SMAs, procedures for preservation, recordation and/or avoidance of cultural resources discovered during construction shall be followed, according to appropriate SMA guidelines.

b. Endangered Species Act. The operator shall conduct all operations to avoid jeopardizing protected fisheries, wildlife, plants, and their habitats in compliance with the requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.), and its implementing regulations (50 CFR part 402).

c. Watershed Protection. The operator shall not conduct operations in areas subject to mass soil movement, riparian areas, floodplains, lakeshores, and/or wetlands, except as otherwise provided in an approved SUPO. The operator shall also take measures to minimize or prevent erosion and sediment production. Such measures may include, but are not limited to, siting of structures, facilities, and other improvements to avoid steep slopes and excessive land clearing, and temporary suspension of operations when frozen ground, thawing, or other weather-related conditions warrant.

d. Safety Measures and Hazardous Materials. The operator shall maintain structures, facilities, improvements, and equipment is a safe manner in accordance with the approved APD, and also take appropriate measures, as specified in applicable laws, regulations, Orders, and Notices to Lessees, to protect the public from any hazardous material sites or conditions resulting from operations. Such measures include, but are not limited to, obtaining appropriate Federal and/or State permits, proper disposal, posting signs, building fences, or otherwise identifying the hazardous site or condition and preventing public access or exposure. The operator is encouraged to avoid using hazardous substances during operations. Releases of reportable quantities of hazardous substances, as specified in 40 CFR 302.4, shall be reported to the BLM, appropriate SMA if applicable, and the National Response Center (800–424–8802).

e. Environmental Information. The operator may be required to provide additional information regarding the proposed operation in order for the authorized officer or AFO, as appropriate, to assess the environmental effects.

*IV. Split Estate (Private Surface/Federal Minerals or Private Surface/Indian Minerals)*

No surface disturbing activity shall commence without an approved APD, or it will be considered a violation subject to 43 CFR 3162.3–1(c). When authorizing lease operations on private surface/Federal minerals and on private surface/Indian minerals, the BLM will ensure operator compliance with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), and

related Federal statutes. For split estate lands within NPS administrative boundaries, the FS and BLM have joint responsibilities unless precluded by local agreements. In order to carry out these varied responsibilities, the BLM and FS may enter onto the leasehold for inspection and monitoring purposes. For any split estate situation involving Indian lands, refer to section V.

A Surface Owner Agreement (SOA) between the operator and the surface owner shall be submitted to the authorized officer or AFO in accordance with local agreements. The SOA shall contain a surface use agreement providing for protection of the environment and/or mitigation of impacts, and shall include a reclamation plan. If the operator and surface owner are unable to reach an agreement concerning surface protection and reclamation, the BLM or FS will provide appropriate requirements.

A. Environmental Protection of Resources

The BLM and/or FS will conduct an environmental analysis of the proposed action, using the agreement between the operator and the surface owner as the basis for mitigation. If the BLM or FS determines that the operations will cause unacceptable environmental impacts, the operator will be required to comply with additional mitigating measures to reduce environmental impacts to an acceptable level.

The BLM and/or FS will ensure compliance with section 106 of the NHPA for the area involved in the application. If approval from the surface owner cannot be obtained to enter the land for a survey, it may be necessary as a last resort for the BLM, the operator, or both to obtain a court order to be allowed access to perform the necessary survey.

Under the ESA, operations on split estate lands constitute Federal actions. As such, the requirements and procedures of the ESA apply to split estate lands as they do to Federal lands, including, as appropriate, preparation of biological assessments and conduct of consultations. If the surface owner refuses access to the lands, the BLM and/or FS will review existing records and inventories of the general area to determine if the lands are in an area that normally contains habitat for threatened and endangered species. If the review indicates that no habitat is present, the permit may be approved as to this resource.

If it is necessary to enter onto private surface to comply with the ESA, every effort will be made to obtain the surface owner's cooperation. If these efforts are not successful, an order from the district court may be necessary for entry. Section 7 consultation with the U.S. Fish and Wildlife Service may also be appropriate, based on the biological assessment. BLM will incorporate mitigation into the APD approval that will protect threatened and endangered species and habitat. The APD package will not be approved until all ESA requirements have been met. The surface use agreement and reclamation plan, contained in the required SOA, will be reviewed by BLM or FS to determine the environmental protection afforded and adequacy of the reclamation plan. If it is determined that additional protection is necessary and/or the reclamation plan is inadequate, additional mitigation measures will be required by the BLM or FS.

In the event that an agreement cannot be reached between the surface owner and the operator, the authorized officer may approve the permit if (1) the operator certifies that a good faith effort has been made to reach an agreement with the surface owner, (2) adequate bonding has been posted to pay for required reclamation, and (3) there is no legal obstacle to conducting operations in the absence of surface owner consent. The SUPO and the APD's Conditions of Approval will provide the reclamation requirements.

B. Bonding

Oil and gas operators may either obtain consent from surface owners or enter into an agreement with them to provide for surface owner compensation. If a good faith effort to accomplish these options has been made, but the options are not possible, the operator shall post, in accordance with 43 CFR parts 3813 or 3814, a bond sufficient to cover destruction of surface improvements, tangible crops, and environmental damages. BLM will establish the amount of this bond, taking into consideration the surface owner's needs. In most cases, the lease bond submitted in accordance with 43 CFR part 3104 will be sufficient to meet these requirements. If it appears to the authorized officer that the minimum coverage required for operations on a Federal oil and gas lease or an Indian lease or agreement under a lease bond is not adequate to protect the surface owner improvements or the local environment, the bond amount may be increased.

The procedures for termination of the period of liability of a bond are the same regardless of whether the surface ownership is Federal or private. Where private surface is involved, the authorized officer will contact the surface owner to determine what arrangements were made by the operator, and any objections or problems the surface owner may have. The operator is required to satisfy the terms and conditions of the lease, regardless of any arrangements made with the surface owner.

*V. Indian Oil and Gas Leases*

A. Approval of Operations

BLM will normally process APDs and Sundry Notices on Indian tribal and allotted oil and gas leases and Indian Mineral Development Act agreements in a manner similar to Federal leases. However, the processing procedures, including environmental and archaeological clearance procedures, may vary between reservations. For the purpose of processing such applications, the Bureau of Indian Affairs (BIA) and/or Tribe are considered the SMA. Operators are responsible for obtaining any special use or access permits from appropriate BIA and Tribal offices, if Tribal lands are involved. Unlike Federal leases, posting for public notification of APD's is not required on Indian leases.

B. Surface Use

Where the wellsite and/or access road are proposed on surface held in trust for an Indian tribe or for an individual Indian, the operator is responsible for reaching a surface use agreement with the Indian tribe or individual Indian and the BIA. This agreement is required to specify the requirements for protection of surface resources, mitigation requirements, and requirements for reclamation of disturbed areas. The BIA, the Tribe, and BLM will develop the COAs.

*VI. Subsequent Operations/Sundry Notices*

Subsequent operations shall be conducted in accordance with 43 CFR part 3160. However, where the proposed subsequent operation will result in the well being converted for injection purposes (disposal or production enhancement), operators shall obtain an Underground Injection Control permit from EPA, or from the State where the State has achieved primacy. Any information submitted in support of obtaining that permit shall be accepted by the authorized officer to the extent that it satisfies the information submittal requirements of this Order.

Within 30 days after initial completion, the operator shall file a copy of a Well Completion or Recompletion Report, Form 3160–4, along with a copy of all well logs, with

the authorized officer. Pursuant to 43 CFR 3162.3–2, a proposal for additional well operations shall be submitted by the operator on a Sundry Notice, Form 3160–5, to the authorized officer for approval prior to commencing the following: Casing repairs, nonroutine fracturing jobs, recompletion in a different interval, water shut-off, commingling production between intervals, and/or conversion to injection. A Notice of Intent on Form 3160–5 is valid for 90 days. If additional surface disturbance is involved, the proposal shall include an amendment to the SUPO. For lands under the jurisdiction of FS, this amended SUPO will require their approval. Additional environmental review may be required by SMAs for an amendment to the SUPO and for certain Sundry Notices involving additional surface disturbance. The authorized officer may prescribe that each proposal contain all or a portion of the information as set forth in 43 CFR 3162.3–1. Within 30 days of the completion of such operations, a subsequent report shall be filed on Form 3160–5, and if the well is recompleted, a recompletion report shall be filed on Form 3160–4. Additionally, if a plat showing the production facility layout was not provided at the APD stage, as required by Section III.C.2., the information is now required to be submitted for approval.

Routine fracturing jobs, acidizing jobs, or recompletions in the same interval will not require prior approval by the authorized officer, unless additional surface disturbance is involved, and/or if the operations do not conform to the standard of prudent operation practice. However, a subsequent report on these operations is required to be filed within 30 days of completion on Form 3160–5. No prior approval or subsequent report is required for well cleanout work, routine well maintenance, or bottom-hole pressure surveys. The modification of any production, treating, and/or measurement facilities shall require submission of a revised schematic diagram within 60 days pursuant to Onshore Order No. 3.

*VII. Reclamation and Abandonment*

A. Reclamation

The surface reclamation plan will be a part of the SUPO, as specified in paragraph 10 of section III.C.2., and will be designed to return the disturbed area to productive use to meet the objectives of the land and resource management plan. The operator shall commence and complete reclamation as soon as possible. Dirtwork shall be completed within one year of completion of drilling/testing or plugging, and revegetation shall be completed within the time period specified by the authorized officer or AFO. Unless otherwise provided for in an approved SUPO, reclamation shall be conducted concurrently with other operations. The operator may request the authorized officer or AFO, as appropriate, to approve a reduction in the amount of an individual lease bond, if partial reclamation of the site has been completed to the satisfaction of the SMA.

All pits and pads shall be reclaimed to a satisfactorily revegetated safe and stable condition. Pits containing fluid shall not be breached (cut) or filled (squeezed). The use of chemicals to aid in fluid evaporation, stabilization, or solidification shall have prior approval. Pit fluids or other contents, removed offsite, shall be disposed of in accordance with appropriate local, State, or Federal requirements. Pits shall be dry or solidified prior to backfilling. Synthetic pit liners shall be removed or otherwise disposed of as directed by the authorized officer or AFO.

B. Abandonment

No well plugging and abandonment operations shall be commenced without the prior written approval of the authorized officer. In the case of newly drilled dry holes or failures and in emergency situations, oral approval for plugging may be obtained from the authorized officer, subject to prompt written confirmation. for old wells not having an approved abandonment plan, a sketch showing the disturbed area and roads to be abandoned, along with the proposed reclamation measures in accordance with Section VII.A. of this Order, shall be submitted with Form 3160–5. On Federal and Indian surface, the appropriate SMA may request additional reclamation measures at abandonment, which shall be made part of BLM's approval of the abandonment.

*1. NIA/SRA/FAN.* Prior to commencing well abandonment operations, the operator shall submit a Notice of Intent to Abandon (NIA) on Form 3160–5, in accordance with the requirements of 43 CFR 3162.3–4, for approval by the authorized officer. Within 30 days following completion of well abandonment procedures, the lessee or operator shall file with BLM a Subsequent Report of Abandonment (SRA), also on Form 3160–5. Upon completion of reclamation operations, the operator shall notify the authorized officer when the location is ready for inspection via an additional Form 3160–5, Final Abandonment Notice (FAN). For wells involving other SMAs, a copy of the NIA/SRA/FAN shall be forwarded to the appropriate SMA office by the BLM. Final abandonment shall not be approved until the surface reclamation work required by the approved drilling permit or approved abandonment notice has been completed to the satisfaction of the involved SMA. The operator may request the authorized officer or AFO to approve a reduction in the amount of an individual lease bond following partial reclamation. On Indian lands, abandonment of a well may not be approved if a tribe determines to take over the operation of the well rather than have the well abandoned. Negotiation for transfer of ownership will be necessary and the operator will be relieved of any further obligations for the well.

*2. Onshore Orders No. 2 and 8.* Onshore Oil and Gas Order Number 2 specifically addresses drilling abandonment requirements, while Onshore Oil and Gas Order Number 8 addresses abandonments of depleted wells. Both orders establish minimum standards for abandonment involving both cased hole and open hole completions, including lengths, locations, and quality of cement plugs, surface caps, and mud to be used between plugs. The minimum standards of Orders 2 and 8 will be applicable. Approval of abandonment operations pursuant to this Order shall not constitute a variance from Orders 2 and 8.

C. List of Operators Found to be in Material Noncompliance

Operations shall be conducted in accordance with the lease and its stipulations, an approved SUPO, and all applicable Federal regulations. When an operator fails or refuses to comply with a reclamation requirement or other standard included in a lease, the operator will be notified in writing and given an opportunity to correct the noncompliance or take other action to reach an agreement with the authorized officer and/or AFO to remedy the noncompliance. When an operator does not correct or take other action to remedy the noncompliance, the procedures found at 43 CFR 3102.5–1(f) and 36 CFR 228.113–.114, will be applied. A list of operators found to be in material noncompliance with reclamation requirements and other standards will be compiled and maintained by the BLM and the FS. Operators who have been so identified will not be eligible to obtain Federal oil and gas leases in the future, until they have complied with the reclamation requirement or other standard involved.

Such operators may also be subject to other penalties as prescribed by Federal statutes or regulations.

D. Well Conversions

When subsequent operations will result in a well being converted for disposal or injection purposes on lease, the operator shall file a Notice of Intent to Convert to Injection on Form 3160–5 with the appropriate BLM or FS office (see Onshore Oil and Gas Order No. 7). Pursuant to part VI.A of this Order, operators shall also obtain an Underground Injection Control permit from EPA, or from the State, in cases where it has achieved primacy. A copy of all supporting data, including that submitted to the EPA, Indian tribe, or State, shall be attached to Form 3160–5. BLM will review the information to insure its technical and administrative accuracy. The authorized officer will either approve, approve with modifications, or disapprove the application based on the results of such review.

Where conversion operations involve waste water disposal wells which are used for more than one lease or for off-lease fluids, the operator shall file an application for a R/W or SUP with the appropriate SMA office. If the disposal well is located on a Federal oil and gas lease, the operator may attach a rider to an existing oil and gas lease bond. Disposal wells not covered by an existing bond or rider require separate bonds.

The complete abandonment of a well shall not be approved if the SMA or surface owner commits to acquiring the well for water use purposes. Conditions under which this may occur include:

(1) The well was drilled as a water supply source in support of exploration, development, and producing operations and is no longer needed by the operator;

(2) The well encountered usable water but was unsuccessful in discovering commercial quantities of oil and/or gas and is to be plugged and abandoned; or,

(3) The well encountered usable water and is to be plugged and abandoned because it is no longer capable of producing oil or gas in commercial quantities.

In these cases, the SMA or surface owner shall inform the appropriate BLM office of its decision prior to approval of the APD if possible. The operator shall abandon the well from the bottom hole to the base of the deepest usable water zone of interest, as required by the authorized officer, and shall complete the surface cleanup and reclamation, as required by the approved APD or approved NIA immediately upon completion of conversion operations. The SMA or surface owner shall reach agreement with the operator as to the satisfactory completion of reclamation operations. The authorized officer's subsequent approval of the partial abandonment fully relieves the operator of further obligation. When an SMA desires to acquire the well, that agency will take over responsibility for all monitoring, testing, and other actions necessary to ensure that the water quality of the well is in compliance with relevant regulations and laws.

*VIII. Variances*

An operator may request the authorized officer or AFO to approve a variance from any of the provisions and/or minimum standards in this or other Orders. All such requests shall be submitted in writing to the authorized officer or AFO and shall be accompanied by information as to the circumstances which warrant approval of the variance. The request should also indicate how the proposed alternative will satisfy the related provisions/standards of the corresponding Order. After any necessary concurrence or approval of the SMA, the authorized officer may approve the requested variance, if it is determined that the proposed alternative meets or exceeds the objectives of the applicable provisions/standards, the variance does not conflict with statutory or regulatory requirements, and, where necessary, the public is given notification of the variance.

Requests for variance may be oral in emergency or other situations of an immediate nature that could not be reasonably foreseen, either at the time of subsequent operation approval or during routine subsequent operations. However, such requests shall be followed by a written notice filed not later than 7 days following the oral request. Variances in such situations may be approved orally, with confirmation in writing within a reasonable time.

**Attachment A**

SAMPLE FORMAT

Notice of Staking
(Not to be used in place of Application for Permit to Drill Form 3160–3)
1. Oil Well ☐
Gas Well ☐
Other (Specify)
2. Name, Address & Phone No. of Operator.
3. Name & Phone No. of Specific Contact Person:
4. Surface Location of Well:
Attach:
(a) Sketch showing road entry onto pad, pad dimensions, and reserve pit.
(b) Topographical or other acceptable map showing location, access road, and lease boundaries.
5. Lease Number.
6. If Indian, Allotee or Tribe Name.
7. Unit Agreement Name.
8. Well Name and No.
9. API Well No.
10. Field Name or Wildcat.
11. Sec., T., R., M., or Blk and Survey or Area.
12. County, Parish or Borough.
13. State.
14. Name and depth of Formation Objective(s)
15. Estimated Well Depth
16. Additional Information (as appropriate; shall include surface owner's name, address and, if known, telephone number)
17. Signed _____
Title _____
Date _____
Note: Upon receipt of this Notice, the Bureau of Land Management (BLM) will schedule the date of the on site predrill inspection and notify you accordingly. The location must be staked and access road must be flagged prior to the onsite. Operators must consider the following prior to the onsite:
(a) $H_2S$ Potential.
(b) Cultural Resources (Archeology).
(c) Federal Right of Way or Special Use Permit.

[FR Doc. 92–17336 Filed 7–22–92; 8:45 am]
BILLING CODE 4310–84–M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 31 and 52

[FAR Case 91–12]

## Federal Acquisition Regulation; Precontract Costs

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are withdrawing the proposed Federal Acquisition Regulation (FAR) rule regarding precontract costs published for public comment in the **Federal Register** on April 8, 1991 (56 FR 14302).

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy F. Olson at (202) 501–3221 in

reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 91–12.

**SUPPLEMENTARY INFORMATION:** Precontract costs are currently allowable under FAR 31.205–32 if they are incurred directly pursuant to the negotiation of the contract and in anticipation of award, they are necessary to meet the proposed delivery schedule, and they would have been allowable if incurred after the date of the contract. The Defense Management Review (DMR) uncovered numerous supplemental clauses being used by Service components to impose additional limitations on the allowability of precontract costs. The DMR Task Force recommended development of a standard clause for use by all Federal agencies.

As a result, a proposed rule was published in the **Federal Register** on April 8, 1991 (56 FR 14302), which would have amended the cost principle at FAR 31.205–32, Precontract costs, to require that such costs must be authorized using a new contract clause to be allowable. However, after careful consideration of the public comments received, a determination was made that the proposed rule is unnecessary because the current FAR provisions at 31.109 and 31.205–32 adequately address the issue of precontract costs. Accordingly, the proposed rule is being withdrawn.

**List of Subjects in 48 CFR Parts 31 and 52**

Government procurement.

Dated: July 15, 1992.

**Albert A. Vicchiolla,**

*Director, Office of Federal Acquisition Policy.*

[FR Doc. 92–17312 Filed 7–22–92; 8:45 am]

BILLING CODE 6820–34–M

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**48 CFR Parts 223 and 252**

**Defense Federal Acquisition; Regulation Supplement; Drug-Free Work Force**

**AGENCY:** Department of Defense (DOD).

**ACTION:** Proposed rule and request for comments.

**SUMMARY:** The Department of Defense is proposing revisions of its Defense Federal Acquisition Regulation Supplement interim rule for Drug-Free Work Force.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before September 21, 1992 to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mrs. Linda W. Neilson, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301–3062. Please cite DAR Case 88–083 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Linda W. Neilson, Procurement Analyst, DAR Council, (703) 697–7266.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

An interim rule was published in the **Federal Register** on September 28, 1988 (53 FR 37763) to state DoD policy on a drug-free work force, and to provide a contract clause for use in solicitations and contacts meeting certain criteria. Sixty-three comments were received from thirty-five respondents to the rule. After review of the public comments, and internal coordination, the rule was finalized on November 27, 1991 (56 FR 60066). Subsequently, a question was raised as to whether the public was given adequate opportunity to express and have its views considered in the development of the final rule because the final rule was a significant departure from the interim rule. Consequently, elsewhere in this issue of the **Federal Register**, the final rule of November 27, 1991 is removed, the interim rule is reinstated, and the removed language is published here as a proposed rule with a request for comments.

**B. Regulatory Flexibility Act**

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the rule requires contractors to institute and maintain a program for achieving the objective of a drug-free work force. A final regulatory flexibility analysis was prepared when this language was originally published as a final rule in November, 1991 (56 FR 60066). We have subsequently revised the analysis to reflect updated information. The revised regulatory flexibility analysis is summarized as follows. The proposed rule will apply to all businesses, large and small, with DoD contracts (above the small purchase limitation in FAR part 13) that require contractor employees to perform in sensitive positions. Under such contracts, contractors will be required to: (a) Institute and maintain a program for achieving a drug-free work force; (b) Provide, in conformance with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs", for random drug testing of contractor employees working in sensitive positions; and (c) Obtain contracting officer approval prior to allowing employees to return to sensitive positions following violation of defense drug policy or a criminal drug statute. A copy of the revised Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the revised Regulatory Flexibility Analysis may be obtained from Mrs. Linda W. Nielson, Defense Acquisition Regulations System, 3062 Defense Pentagon, Washington, DC. Comments are invited. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR case 88–083 in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act applies because the proposed rule imposes reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.* OMB approval was granted on March 2, 1992 under OMB Control Number 0704–0336.

Subsequently, OMB approval for a revision to Control Number 0704–0336 was requested. The request for public comment on the revision was published in the **Federal Register** July 8, 1992 (57 FR 30203).

**List of Subjects in 48 CFR Parts 223 and 252**

Government procurement.

**Claudia L. Naugle,**

*Executive Director, Defense Acquisition Regulations System.*

Therefore, it is proposed that 48 CFR parts 223 and 252 be amended as follows:

1. The authority citation for 48 CFR parts 223 and 252, continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, and Defense FAR Supplement 201.301.

**PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

2. Subpart 223.5, consisting of sections 223.570 through 223.570–3, is revised to read as follows:

**Subpart 223.5—Drug Free Workplace**

Sec.
223.570 Drug-free work force.
223.570-1 Policy.
223.570-2 Definitions.
223.570-3 Contract Clause.

**223.570 Drug-free work force.**

**223.570-1 Policy.**

The unlawful use by contractor employees of controlled substances threatens national security and the safety of personnel and equipment. Therefore, DoD policy is to ensure that DoD contractors have a program for eliminating the unlawful use of controlled substances by employees whose duties affect health, safety, national security, or accomplishment of the DoD mission.

**223.570-2 Definitions.**

As used in this section—

"Controlled substance" and "employee" are as defined in FAR 23.503. "Employee in a sensitive position" is as defined in the clause at 252.223-7004, Drug-Free Work Force.

**223.570-3 Contract clause.**

(a) Use the clause at 252.223-7004, Drug-Free Work Force, in all solicitations and contracts that require contractor employees to perform in sensitive positions.

(b) Do not use the clause in solicitations and contracts—

(1) Below the small purchase limitation in FAR part 13;

(2) For performance or partial performance (but only to the extent of the partial performance) outside the United States, its territories, and its possessions, unless the contracting officer determines inclusion to be in the best interest of the Government; or

(3) For law enforcement agencies when the head of such agency or designee determines that application of the requirements of this section would be detrimental to the law enforcement agency's undercover operations.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.223-7004 is revised to read as follows:

**252.223-7004 Drug-Free Work Force.**

As prescribed in 223.570-3, use the following clause:

**Drug-Free Work Force (XXX 1992)**

(a) *Definitions.* As used in this clause—

(1) *Controlled substance, employee, and criminal drug statute* have the meanings given in the Drug-Free Workplace clause of this contract.

(2) *Employee in a sensitive position* means an employee whose duties could reasonably be expected to affect health, safety, or national security, including, but not limited to, duties involving—

(i) Access to classified information;

(ii) Possession or use of firearms;

(iii) Design, manufacture, test and evaluation, or maintenance of aircraft, vessels, vehicles, heavy equipment, munitions, toxic materials, weapons, weapons systems, potentially dangerous equipment/materials/or applications (such as lasers, explosives, unstable chemicals, or medical equipment with potentially life threatening consequences), or major components of the foregoing which are directly contracted for by the Department of Defense;

(iv) Control, operation or use of aircraft, vessels, vehicles, heavy equipment, toxic or nuclear materials, munitions, weapons, weapon systems, or potentially dangerous equipment/materials/or applications (such as lasers, explosives, unstable chemicals, or medical equipment with potentially life threatening consequences);

(v) Transportation, storage, or protection of toxic or nuclear materials, or munitions, or potentially dangerous materials (such as explosives or unstable chemicals);

(vi) Direct treatment or rehabilitation of employees for unlawful use or abuse of controlled substances; or

(vii) Air traffic control.

(b) The Contractor shall institute and maintain a program for achieving a drug-free work force. As a minimum, the program shall provide for the random drug testing of Contractor employees working in sensitive positions. The Contractor's drug testing program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (53 FR 11970), April 11, 1988.

(c) The Contractor shall not permit an employee to work in a sensitive position in the performance of a Department of Defense contract if—

(1) The employee tests positive for the use of a controlled substance during a test pursuant to this clause or a test based on reasonable suspicion of drug use; and

(2) The use is determined to be unlawful; or

(3) The employee is convicted of violating a criminal drug statute.

(d) The Contractor may permit an employee covered by paragraph (c) of this clause to work in a sensitive position on a Department of Defense contract only—

(1) With the approval of the Contracting Officer; and

(2) After the employee has successfully completed a supervised rehabilitation program.

(e) The requirements of this clause take precedence over any State and local laws to the contrary.

(End of clause)

[FR Doc. 92-17313 Filed 7-22-92; 8:45 am]
BILLING CODE 3810-01-M

VOL 57 ISS 142 JL 23 1992 UMI

# Notices

Federal Register
Vol. 57, No. 142
Thursday, July 23, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 92-113-1]

### Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of Permit To Field Test Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESSES:** Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7612. For copies of the environmental assessment and finding of no significant impact, write to Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of a no significant impact, which is based on data submitted by the applicant and on a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

An environmental assessment and finding of no significant impact has been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

| Permit No. | Permittee | Date issued | Organisms | Field test location |
|---|---|---|---|---|
| 92-106-01 | Calgene, Incorporated | 06-25-92 | Cotton plants genetically engineered to express a nitri-lase enzyme for tolerance to the herbicide bromoxynil. | Maricopa County, Arizona; Darlington County, South Carolina. |

The environmental assessment and finding of no significant impact has been prepared in accordance with: (1) the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 20th day of July 1992.

**Robert Melland,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92-17417 Filed 7-22-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-110-1]

### Veterinary Services Programmatic Environmental Impact Statement

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of intent.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service intends to utilize its in-house resources to prepare a

programmatic environmental impact statement (EIS) for the Veterinary Services Program. We will be studying the disease prevention, surveillance, and control activities of the Veterinary Services Program in order to identify any potential environmental effects. The preparation of the EIS will give us an opportunity to explore alternative means of dealing with any identified problem areas and enable us to establish a flexible framework for handling site-specific issues. In the near future, a notice of proposed scope of study will be published in the Federal Register for public comment.

**FOR FURTHER INFORMATION CONTACT:** Jack Edmundson or Nancy Sweeney, Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8565.

**SUPPLEMENTARY INFORMATION:** The Veterinary Services Program of the Animal and Plant Health Inspection Service (APHIS) deals with the prevention, surveillance, and control of certain animal diseases. Its prevention activities are designed to prevent the introduction or interstate spread of animal diseases. Its surveillance activities are designed to detect new disease outbreaks as soon as possible and collect data to determine the incidence and prevalence of certain diseases and disease conditions. Control activities include all activities designed to reduce the number of diseased animals and prevent the spread of certain diseases.

In order for us to identify the potential environmental effects of these prevention, surveillance, and control activities, APHIS will be using its inhouse resources to prepare an environmental impact statement (EIS). The preparation of the EIS will give us an opportunity to explore alternative means of dealing with any identified problem areas and enable us to establish a flexible framework for handling site-specific issues.

The EIS will be prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) ALPHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

In the near future, a proposed scope of study will be published in the Federal Register for comment. Following the comment period, a notice of final scope, reflecting, as appropriate, views and opinions submitted for consideration, will be published in the Federal Register. Any additional opportunities for public participation will be announced in the Federal Register.

Done in Washington, DC, this 20th day of July 1992.

**Robert Melland,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92–17418 Filed 7–22–92; 8:45 am]

BILLING CODE 3410–34–M

**[Docket No. 92–114–1]**

## Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

**ADDRESSES:** Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of these documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

| Application No. | Applicant | Date received | Organisms | Field test location |
|---|---|---|---|---|
| 92–176–01 | Monsanto Agricultural Company | 06–24–92 | Tomato plants genetically engineered to express a heterologous aminocyclo-propane-1-carboxylic acid (ACC) degradation gene, to delay ripening. | Yolo County, California; Jersey County, Illinois. |
| 92–182–01 renewal of permit 91–151–01, issued on 09–24–91. | Upjohn Company | 06–30–92 | Soybean plants genetically engineered to express the enzyme 5-enol-pyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate. | Isabela, Puerto Rico. |

Done in Washington, DC, this 20th day of July 1992.

**Robert Melland,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92-17416 Filed 7-22-92; 8:45 am]

BILLING CODE 3410-34-M

## Forest Service

## Exemption

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of exemption from appeal, Sierraville District Insect Salvage Timber Sales Environmental Assessment, Supplement 2, Tahoe National Forest.

**SUMMARY:** The Forest Service is exempting from appeal the decision to sell dead and dying trees that are being killed by the combined effects of severe drought and bark beetles. The environmental analysis for this decision will be documented in the Sierraville District Salvage Sale Environmental Assessment, Supplement 2. The project objectives are to reduce the fire hazard, to recover the value of the timber, and to rehabilitate the affected area. The current Sierraville District Insect Salvage Timber Sale Environmental Assessment is being supplemented to include new salvage areas located mostly on the eastside of the Ranger District. This area is in a southeasterly and easterly direction from the small rural community of Sierraville, California.

There are higher than normal levels of tree mortality occurring on the eastside of the Sierra Nevadas on the Tahoe National Forest due to six years of below-normal precipitation. The greatest effect of the drought has been reduced vigor and weakening of the natural defense mechanisms of over-stocked, young sawtimber stands and older, mature trees, which predisposes them to bark beetle attack. White fir makes up between 25 to 40 percent of the present timber stands and is experiencing the greatest mortality. This white fir is within the Eastside Pine and Mixed Conifer Forest Types located between approximately 6,200 feet and 7,200 feet elevation. The rapid rate of deterioration of true fir requires that it be removed as soon as possible if the timber is to be used, its value recovered and the fire hazard reduced.

The District Ranger determined through preliminary environmental analysis including public scoping, that there is good cause to expedite this project. Signs of mortality are visible on approximately 3,500 acres of the analysis area. It is estimated there may be 50 percent or more of the trees in some stands which are dead or dying. The analysis is proposing six to eight sales in 1992 using both tractor and helicopter harvest systems. It is estimated that up to 10 million board feet could be salvaged from this analysis area. The proposal to salvage in the project area is consistent with the direction provided in the Tahoe National Forest Land and Resources Management Plan, approved by the Regional Forester on June 14, 1990, which includes intensive management practices on commercial Forest lands.

There will be an estimated 2.4 miles of new road construction and 4.1 miles of reconstruction. The newly constructed roads will be low standard, 299 construction-type roads which fit the contours are low cost, and provide adequate drainage to minimize erosion.

Spotted owl surveys have been conducted using the current Regional owl-calling protocol in areas considered to be potential California spotted owl habitat. No owls have been detected.

The salvage proposal does not include any harvest within Spotted Owl Habitat Areas. Most of the acres being treated are within the Eastside Pine Type which were heavily logged at the turn of the century and are now young over-stocked stands of timber. It is estimated that there is less than 100 acres that might be considered old-growth within the proposed sale areas. Where stands of old trees, which may it the old-growth definition are found, they will be avoided.

Regional entomologists have visited the area and have stated that with the current drought conditions, the over-stocked stands and the numerous acres involved, there is no economical or practical means to control the insect epidemic. Although salvage harvesting will not control the insect epidemic, it would recover valuable timber that would otherwise deteriorate and create a severe fire hazard. The excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

It is important to remove the dead and dying timber before it deteriorates and causes a value loss. Through timber sales, fuels can be treated (or deposits collected to treat it) to a degree that could not be funded otherwise. It is important to harvest the dead and dying timber when there is the potential to get the highest return to the Government and to collect Knutsen-Vandenburg (K-V) funds to restore forest values being affected by extensive tree mortality. The salvage sales will also stimulate the local rural economy that has been impacted by reduced timber harvests.

The decision for the analysis area is scheduled for the latter part of July 1992. If projects are delayed because of appeals (delays can go from 100 days up to six months with an additional 15-20 days for discretionary review by the Chief of the Forest Service), it is unlikely that the projects could be implemented during the 1992 normal operating season and access would be difficult for a portion of the winter operating season. This would result in substantial monetary loss to the Government and reduced monies returned to the Counties. Any unnecessary delays of the proposed salvage sales could delay a portion of the harvesting until the 1993 logging season. Because of the small-sized timber involved and its deterioration rate, any unnecessary delays could cause the value to be decreased by as much as $375,000.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision to the harvest and restore lands affected by drought-induced timber mortality on the Sierraville Ranger District, Tahoe National Forest. The environmental document being prepared will address the effects of the proposed actions on the environment, document public involvement and address the issues raised by the public.

Revised 36 CFR 217 appeal regulations have been proposed. Project decisions made after revised regulations become effective would be subject to the revised regulations.

**EFFECTIVE DATE:** This decision will be effective July 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705-2648; or to John H. Skinner, Forest Supervisor, Tahoe National Forest, PO Box 6003, Nevada City, CA 95959, (916) 265-4531.

**ADDITIONAL INFORMATION:** Pursuant to 40 CFR 1501.7, scoping was conducted to determine the issues and concerns to be addressed in the supplement. Letters were mailed to various agencies, permittees, environmental organizations, timber industry, local private property owners and other known interested parties. Two separate notices were sent to the local newspapers discussing the salvage sale program, encouraging public input, as well as informing the public that the District would be requesting an exemption from the appeal process.

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Copies of the public involvement letters and responses are on file at the Sierraville Ranger District Office. The project files and related maps also are available for public review at Sierraville Ranger District Office, PO Box 95, Sierraville, CA 96126.

The catastrophic damage occurring within the salvage analysis area involves approximately 3500 acres and up to 10 million board feet. The value to the Forest Service of the salvage is estimated to be between $500,000 and $600,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Sierra County will share in 25% of the selling value for the timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures will be implemented for watershed protection, erosion prevention, and fuels reduction.

The proposal is not expected to adversely affect snag-dependant wildlife species. Sufficient numbers of hard snags of appropriate size for wildlife and protection of soft snags from potential damage during harvest activities will occur in compliance with management requirements. No Wild and Scenic Rivers, Wilderness areas, or roadless areas are within the proposed project area. Mitigation measures for streamside management zones, meadows, soil productivity, and fuels will follow the Forestwide Standards and Guidelines. Sensitive areas such as archaeological sites, spotted owl nest sites should they be found, or sensitive plant areas should they be identified will be avoided.

Dated: July 10, 1992.

**Robert L. Butler,**

*Acting Regional Forester.*

[FR Doc. 92-17349 Filed 7-22-92; 8:45 am]

BILLING CODE 3410-11-M

## Revised Land and Resource Management Plan for the National Forests and Grasslands in Texas, Angelina, Fannin, Houston, Jasper, Montague, Montgomery, Nacogdoches, Newton, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Walker, and Wise Counties, TX

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised notice; expansion of scope of revision and revised availability dates for draft and final environmental impact statements.

**SUMMARY:** The Forest Service has, as a result of monitoring and evaluation and comments received during the scoping process, expanded the scope of the revision of the Land and Resource Management (LRMP) for the National Forests and Grasslands in Texas. To allow sufficient time to adequately conduct the analysis, the Forest service has also revised the availability dates for the draft and final environmental impact statements.

**FOR FURTHER INFORMATION CONTACT:** Dennis Robertson, Land Management Planning Staff Officer, National Forests in Texas, 701 N. First Street, Lufkin, Texas 75901, (409) 639-8501.

**SUPPLEMENTARY INFORMATION:** The Notice of Intent (NOI) to prepare an environmental impact statement to revise the Land and Resource Management Plan for the National Forests and Grasslands for Texas was published in the **Federal Register** for October 23, 1990 (55 FR 42745-42747). On page 42746, column 1, paragraph 3, it indicated that reconsideration of existing allocations of Scenic, Protective Corridors, and Research Natural Areas was not within the scope of the revision and that previously made decisions would continue to apply. However, during a revision of a land and resource management plan, the National Forest Management Act (NFMA) implementing regulations at 36 CFR 219.17 require reconsideration of Roadless Area Review and Evaluation (RARE II) areas for recommendation as potential wilderness. Since many of the existing scenic areas are located within RARE II areas they must be reconsidered in the revision process. The NFMA implementing regulations at 36 CFR 219.25 also require identification and recommendation of Research Natural Areas (RNAs) be made through the forest planning process. Some of the existing scenic areas have been proposed as RNAs and must be considered for recommendation in the revision process. Therefore, the scope of the revision is being expanded to now include reconsideration of existing scenic areas for wilderness or research natural area recommendations and/or for some other type of management area.

The NOI also indicated on page 42746, column 1, paragraph 3, that actions to control southern pine beetle (SPB) were not within the scope of the revision and previously made decisions would continue to apply. The Final Environmental Impact Statement for Suppression of Southern Pine Beetle Record of Decision (FEIS-SPB-ROD) did not specifically describe control actions appropriate for special areas such as scenic areas and protective corridors. The existing LRMP, approved in 1987, addresses treatment of SPB in scenic areas and protective corridors. However, monitoring and evaluation as documented in the Five-Year Review/Analysis of the Management Situation, found that direction for SPB treatment in these areas is unclear. Therefore, the revision will clarify SPB treatment strategies for these areas. Control actions in General Forest and Wilderness areas will continue to be conducted in accordance with the direction found in the FEIS-SPB-ROD.

Since the scope of the revision has been expanded, the Forest Service has also revised the dates for availability of the draft and final environmental impact statements. The draft environmental impact statement was scheduled to be filed with the Environmental Protection Agency (EPA) and available for public review by September 1992. It is now expected to be available by April 1993. At that time EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**. The final environmental impact statement was scheduled to be completed by June 1993. It is now expected to be completed by December 1993.

Dated: July 17, 1992.

**Charles E. Steele,**

*Acting Deputy Regional Forester.*

[FR Doc. 92-17348 Filed 7-22-92; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### President's Export Council; Meeting

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of a closed meeting.

**SUMMARY:** The Executive Committee of the President's Export Council is meeting to discuss priorities as determined at the June 24 Full Council meeting. Agenda items include the discussion of export promotion resources, GATT and NAFTA negotiations, initiatives for the NIS, and other sensitive matters properly classified under Executive Order 12356. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is

available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, 202–377–4217.

**DATES:** August 7, 1992, from 9 a.m.-11 a.m.

**ADDRESSES:** Main Commerce Building, rooms 3407 and 5854, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tiffany Smith, President's Export Council, room 3215, Washington, DC 20230.

Dated: July 17, 1992.

**Wendy H. Smith,**

*Staff Director and Executive Secretary, President's Export Council.*

[FR Doc. 92–17355 Filed 7–22–92; 8:45 am]

BILLING CODE 3510-DR-M

## President's Export Council; Meeting

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of an open meeting.

**SUMMARY:** The Export Promotion, Resources, Communication and Marketing Subcommittee of the President's Export Council is holding a meeting to discuss export promotion resources and their allocation at the national and local levels of government and ways the Council can better work with District Export Councils in the future.

**DATES:** August 13, 1992, from 10 a.m. to 12 p.m.

**ADDRESSES:** Main Commerce Building, room 4830, 14th Street and Constitution Avenue NW., Washington, DC 20230. Seating is limited and will be on a first come, first serve basis.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sylvia L. Prosak, President's Export Council, room 3215, Washington, DC 20230.

Dated: July 17, 1992.

**Wendy H. Smith,**

*Staff Director and Executive Secretary, President's Export Council.*

[FR Doc. 92–17356 Filed 7–22–92; 8:45 am]

BILLING CODE 3510-DR-M

## National Oceanic and Atmospheric Administration

## Endangered Species

**AGENCY:** National Marine Fisheries Service.

**ACTION:** Issuance of Permit Modification (P77#58).

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 758 issued to the Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92038, on November 27, 1991, (56 FR 65498) to import one whole frozen totoaba specimen (*Cynoscion macdonaldi*) from Mexico is modified to extend the expiration date to December 31, 1992.

This Permit, as modified, becomes effective July 1, 1992.

Issuance of this Permit, as modified, as required by the Endangered Species Act of 1973, is based on the finding that the Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with this Permit, as modified, are available for review by appointment in the Permit Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, California 90802–4213 (310/980–4015);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, Florida 33702 (813/893–3141).

Dated: July 16, 1992.

**Nancy Foster,**

*Director, Office of Protected Resources National Marine Fisheries Service.*

[FR Doc. 92–17327 Filed 7–22–92; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Amendment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Mexico

July 17, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** July 24, 1992.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6711. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In an exchange of letters dated July 8 and 9, 1992, the Governments of the United States and the United Mexican States agreed to increase the designated consultation level (DCL) for Category 435.

Further, the two governments agreed to establish a Special Regime DCL for Category 435, effective on January 1, 1993.

Beginning on September 1, 1992, U.S. Customs will start signing the first section of form ITA-370P for shipments of U.S. formed and cut fabric in Category 435 that are destined for Mexico and re-exported to the United States on and after January 1, 1993.

Shipments of goods in Category 435 which are re-exported from Mexico prior to January 1, 1993 shall not be permitted entry under the Special Regime Program and shall be charged to the existing quota levels for Category 435.

Textile products in Category 435, which are assembled in Mexico from parts cut in the United States from fabric formed in the United States, are governed by Harmonized Tariff Schedule item 9802.00.8010, chapter 61 statistical note 5 and chapter 62 statistical note 3 of the Harmonized Tariff Schedule.

Interested parties should be aware that shipments of cut parts in Category 435 must be accompanied by a form ITA-370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Mexico in order to qualify for entry under the Special Regime.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Federal Register notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 65243, published on December 16, 1991.

Requirements for participation in the Special Regime Program are available in Federal Register notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49348, published on December 7, 1988; and FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the exchange of letters, but are designed to assist only in the implementation of certain of their provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 17, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 24, 1992, you are directed to increase the current limit for Category 435 to 20,000 dozen.

Beginning on September 1, 1992, you are directed to begin signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Category 435 that are destined for Mexico and re-exported to the United States on and after January 1, 1993. Shipments of goods in Category 435 which are re-exported from Mexico prior to January 1, 1993 shall not be permitted entry under the Special Regime Program and shall be charged to the existing quota level for Category 435.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92–17380 Filed 7–22–92; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF EDUCATION

### National Assessment Governing Board; Partially Closed Meetings

**SUMMARY:** This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Assessment Governing Board and its committees. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

**DATES:** August 5, 6, and 7, 1992.

**TIMES:** August 5, 1992—Achievement Levels Committee—3 p.m. to 4 p.m. (open), 4 p.m. to 5 p.m. (closed); Subject Area Committee #1—4 p.m. to 6 p.m. (open); Ad Hoc Committee on Future NAEP II—5 p.m. to 7 p.m. (open); Executive Committee—7 p.m. to 9 p.m. (open), 9 p.m. to 9:30 p.m. (closed). August 6, 1992—National Assessment Governing Board—8:30 a.m. to 9 a.m. (open), 11 a.m. to 12 noon (open), 12 noon to 1 p.m. (closed), 1 p.m. to 4:45 p.m. (open); Design and Analysis Committee—9 a.m. to 11 a.m. (open); Reporting and Dissemination Committee—9 a.m. to 11 a.m. (open); Subject Area Committee #2—9 a.m. to 9:45 a.m. (open), 9:45 a.m. to 11 a.m. (closed). August 7, 1992—Full Board—8:30 a.m. until adjournment, approximately 1:30 p.m. (open).

**LOCATION:** Madison Hotel, 15th and M Streets, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC 20002–4233, Telephone: (202) 357–6938.

**SUPPLEMENTARY INFORMATION:** The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297). (20 U.S.C. 1221e–1). The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On August 5, four committees will be in session. The Achievement Levels Committee will meet in open session from 3 p.m. to 4 p.m. to be briefed on the setting of achievement levels for the writing assessment, discuss achievement levels validation activities, and receive an update on the National Academy of Education's evaluation of the achievement levels setting process.

The Achievement Levels Committee meeting will be closed to the public between 4 p.m. and 5 p.m. to permit the Committee to review preliminary unreleased data from the 1992 math assessment. The discussion will include references to specific items from the assessment, the disclosure of which would significantly frustrate implementation of the NAEP. The results of the assessment must be presented in closed session because reference may be made to data which may be incorrect, incomplete, or misinterpreted. Premature disclosure of this data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

The Subject Area Committee #1 will meet from 4 p.m. to 6 p.m. The Committee will hear a presentation on the U.S. History Consensus project by the contractor, and discuss the plans for reviewing items developed for the 1994 assessment.

The Ad Hoc Committee on Future NAEP II will meet from 5 p.m. to 7 p.m. The Committee will discuss the recommendations it will make on assessment of non-mandated subjects and discuss plans for further work in obtaining comment to inform the development of policy positions on issues related to the future of NAEP.

Also on August 5, the Executive Committee will meet in open session from 7 p.m. to 9 p.m. to review a progress report from the Ad Hoc Committee on Future NAEP II, to receive a briefing on pending legislative actions, including appropriations for NAEP, and to review plans for releasing the 1992 assessment data for reading and writing.

For the remainder of the meeting, from 9 p.m. to 9:30 p.m., the Executive Committee will meet in closed session to discuss the qualifications of current Board members to serve as Chairman of NAGB. Based on these discussions, the Board will recommend a new Chairman to the Secretary. This session will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, and as

such, is protected by exemption (6) of section 552b(c) of title 5 U.S.C.

Between 9 p.m. and 9:30 p.m., the Executive Committee will also discuss the implementation of personnel policy recommendations set out in the Memorandum of Understanding recently entered into between the Secretary of Education and NAGB. This discussion will relate solely to the internal personnel rules and practices of an agency and is protected by exemption (2) of section 552b(c) of title 5 U.S.C.

On August 6, the full Board will meet in open session from 8:30 a.m. to 9 a.m. The agenda will be reviewed and the Executive Director's report will be presented. During the period from 9 a.m. to 11 a.m., there will be meetings of the Design and Analysis, Reporting and Dissemination, and Subject Area #2 committees. The Design and Analysis Committee and the Reporting and Dissemination Committee meetings, held from 9 a.m. to 11 a.m. are open to the public. The Subject Area Committee #2 will meet in open session from 9 a.m. to 9:45 a.m. to discuss the arts consensus, and from 9:45 a.m. to 11 a.m. in closed session to review secure science items for the 1994 assessment. Premature disclosure of this data might significantly frustrate implementation of the NAEP and/or a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

The full Board will reconvene at 11 a.m. to hear a briefing on test validity. From 12 noon, until approximately 1 p.m., the Board will meet in closed session for briefings by American College Testing to discuss unreleased preliminary data from the 1992 math assessment. The presentations will include discussions and references to specific items from the assessment, the disclosure of which might significantly frustrate implementation of the NAEP. The results of the assessment must be presented in closed session because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of this data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C. The remaining agenda, from 1 p.m. to 4:45 p.m., includes Board action on the 1992 Mathematics Achievement Levels, update on NAEP activities, and progress reports on two NAGB projects, Future NAEP II and the Arts Consensus.

On August 7, the full Board will meet from 8:30 a.m. until adjournment, at approximately 1:30 p.m. The proposed agenda for this portion of the meeting includes a presentation from the National Goals Panel, reports from the NAGB committees, nomination of a Board Chairperson, and election of a Vice Chairperson.

A summary of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: July 20, 1992.

**Roy Truby,**

*Executive Director, National Assessment Governing Board.*

[FR Doc. 92-17345 Filed 7-22-92; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Floodplain Statement of Findings for the Removal of the 100-D Vent Pipes From an Island in the Columbia River, Hanford Site, Richland, WA

**AGENCY:** Department of Energy (DOE).

**ACTION:** Floodplain statement of findings.

**SUMMARY:** This Statement of Findings is prepared pursuant to Executive Order 11988 and 10 Code of Federal Regulations (CFR) part 1022, Compliance with Floodplain/Wetlands, Environmental Review Requirements. DOE has determined that some activities associated with the removal of the 100-D Area vent pipes are proposed to be within the 100-year floodplain of the Columbia River. Following publication of a notice floodplain and wetland involvement in the **Federal Register** (56 FR 63504, December 4, 1991, DOE prepared a Floodplain/Wetlands Assessment for the proposed action, pursuant to 10 CFR 1022.12. DOE has determined that there is no practicable alternative to the proposed action and that the proposed action has been designed to avoid or minimize adverse impacts to the floodplain of the Columbia River. A map showing the location of the proposed action relative to the Columbia River 100-year floodplain is included in the Floodplain/Wetland Assessment.

The proposed action would remove vent pipes from an island in the Columbia River adjacent to the 100-D Area of the Hanford Site. The pipes seasonally are submerged or exposed, depending on the level of the Columbia River. The proposed action is necessary to eliminate a potential public and navigational hazard in the Columbia River and to prevent a potential exposure risk to human health and the environment.

Availability of Floodplain/Wetlands Assessment: Single copies of the Floodplain/Wetlands Assessment are available from Mr. Paul M. Pak, DOE Richland Field Office, Richland, Washington 99352 (509) 376-4798.

Timing of Floodplain Action/Public Review Period: The public will have the opportunity to review this Statement of Findings and the Floodplain/Wetlands assessment until August 7, 1992, in accordance with 10 CFR 1022.18(a). DOE will not implement the proposed action prior to the end of this public review period. Any comments should be forwarded to the same address or fax comments to: (509) 376-7818.

**PROPOSED ACTION:** During operation of the 100-D Reactor from 1944 to 1967, the reactor was cooled with water withdrawn from the Columbia River. After a holding period, the water was discharged back to the Columbia River through two 42-inch diameter process effluent lines. These two lines traversed under a channel of the Columbia River, crossed through the 100-D Area Island, and discharged water into the main channel of the Columbia River. Approximately 40 1-inch diameter T-shaped pipes were installed to allow venting of entrained gases from the reactor coolant to occur above the surface of the island. Although discharges to the river ceased in 1967 when the 100-D Reactor was closed, the vent pipes remained in place and now protrude 1 to 3 feet (0.3 to 0.9 meter) above grade elevation when the island is exposed. The proposed action would remove the vent pipes by excavating to below grade elevation around the vent pipes, cutting off and capping the pipes, and backfilling the holes.

The proposed action would be performed during seasonal low-water levels, when the island is exposed. Several steps would be taken to minimize potential harm to or within the floodplain. A biological survey would be performed before removal activity begins; all excavation and filling would be performed with hand tools; excavation would be limited to activities necessary to provide adequate access to cut off the pipes below the island surface; fill material would be surveyed before backfilling to ensure that the materials are not radioactively contaminated; and cobbles would be replaced after pipe removal to minimize

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turbidity when the river inundates the area.

Reviews of past land use indicates that the 100–D Area Island has not been used for any industrial or operational activity except for vent pipe installation. Hazardous waste contaminants are therefore not expected to be present.

Preliminary surveys of the site have indicated that the pipes exhibit low levels of contamination that is not removable by wiping, but the cobble, sand, and gravel material to be excavated is not radioactively contaminated. In the event that the excavated material is contaminated, the holes would be filled with uncontaminated cobble from other nearby portions of the island and the contaminated excavated material would be removed from the island and disposed at an existing permitted Hanford Site disposal unit. Fill material would not be brought to the island from other locations on the Hanford Site.

The proposed action was designed to conform to applicable Federal and State requirements. All applicable Federal, State, or local permits would be obtained, and applicable notifications made before commencement of the vent pipe removal activity. A general permit application would be submitted to the U.S. Army Corps of Engineers for excavation and removal of the vent pipes.

The Hanford Reach of the Columbia River is currently under consideration for Wild and Scenic River status. To comply with Public Law 100–605, the Hanford Reach Study Act, information about the proposed action was presented to representatives of the National Park Service (NPS) and the Fish and Wildlife Service (F&WS). Based on the review of the proposed action by NPS and F&WS, it was determined that this activity would have no adverse impact on the Hanford Reach of the Columbia River.

Two alternatives to the proposed action were analyzed and determined not to be practicable. The no action alternative, leaving the vent pipes in place, would leave a navigational hazard as well as a potential health hazard in a publicly accessible area.

The second alternative analyzed, the removal of the main 100–D reactor effluent pipes as well as the vent pipes, would preclude the determination of final disposition of the 100–D Area operable units of the Hanford Site; this determination will be made in accordance with the Hanford Federal Facility Agreement and Consent Order and future National Environmental Policy Act documentation.

**FURTHER INFORMATION CONTACT:** Mr. Paul M. Pak, DOE Richland Field Office, Richland, Washington 99352, (509) 376–4798.

**Paul D. Grimm,**

*Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.*

[FR Doc. 92–17425 Filed 7–22–92; 8:45 am]

BILLING CODE 6450–01–M

## Energy Information Administration

## Agency Information Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of request submitted for review by the Office of Management and Budget.

**SUMMARY:** the Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed on or before August 24, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of you intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

**FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:** Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–16
3. 1902–0025
4. Report of Gas Supply and Requirements
5. Extension
6. Semi-annually
7. Mandatory
8. Businesses or other for-profit
9. 50 respondents
10. 2 responses
11. 80 hours per response
12. 8,000 hours
13. FERC–16 data are used by the Commission in analyzing the natural gas supplies and requirements of interstate pipelines. The data are also used to evaluate certificate applications for construction and for pipeline rate cases.

**Statutory Authority:** Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 722(b), and 790a.

Issued in Washington, DC, July 15, 1992.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 92–17415 Filed 7–22–92; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

[Docket Nos. ER92-487-000, et al.]

## Tampa Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 16, 1992.

Take notice that the following filings have been made with the Commission.

### 1. Tampa Electric Company

[Docket No. ER92-487-000]

Take notice that on July 7, 1992, Tampa Electric Company (Tampa Electric) tendered for filing an amendment to its prior submittal of updated Committed Capacity and Short-Term Power Transmission Service rates under its agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry Phosphates) and Seminole Fertilizer Corporation (Seminole Fertilizer). Tampa Electric proposes a reduction in the updated Short-Term Power Transmission Service rate.

Tampa Electric proposes that the updated transmission service rates be made effective as of May 1, 1992, under the agreement with Mulberry Phosphates, and concurrently with the proposed effective date for the agreement with Seminole Fertilizer, *i.e.*, the earlier of October 1, 1992, or the in-service date of the power sale contract between Seminole Fertilizer and Florida Power Corporation. Accordingly, Tampa Electric requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Mulberry Phosphates, Seminole Fertilizer, and the Florida Public Service Commission.

*Comment date:* July 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 2. Colorado Public Service Company

[Docket No. ER92-507-000]

Take notice that on July 7, 1992, Colorado Public Service Company (Public Service Company) tendered for filing an amendment to the Power Purchase Agreement between Public Service Company and WestPlains Energy.

*Comment date:* July 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 3. PacifiCorp

[Docket No. ER92-701-000]

Take notice that on July 7, 1992, PacifiCorp tendered for filing the final executed Lost Creek Transmission Service Agreement between PacifiCorp and Bonneville Power Administration.

*Comment date:* July 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 4. PacifiCorp

[Docket No. ER92-695-000]

Take notice that on July 6, 1992, PacifiCorp tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 321.

*Comment date:* July 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 5. Vermont Electric Power Company, Inc.

[Docket No. ER92-686-000]

Take notice that on July 1, 1992, Vermont Electric Power Company, Inc. (VELCO) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 33.

*Comment date:* July 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 6. Florida Power Corporation

[Docket No. ER92-436-002]

Take notice that on July 6, 1992, Florida Power Corporation (FPC) tendered for filing its compliance filing in this docket pursuant to the Commission's order issued on June 4, 1992.

*Comment date:* July 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 7. Interstate Power Company

[Docket No. ER92-704-000]

Take notice that on July 10, 1992, Interstate Power Company (IPW) tendered for filing Amendment Nos. 1, 2, 3 and 4 to the Electric Service Agreement between the Municipal Light and Water Department Board of Trustees of the City of Bellevue and Company. These Amendments revise the firm power commitment.

*Comment date:* July 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 8. Pennsylvania Power & Light Company

[Docket No. ER92-700-000]

Take notice that Pennsylvania Power & Light Company (PP&L) on July 7, 1992, tendered for filing an executed Supplemental Agreement between PP&L and UGI Utilities, Inc. (UGI) ("1992 Supplemental Agreement") to the LU-PL Interconnection Operating Principles and Practices Issued in Accordance with the Interconnection Agreement Dated August 1, 1935. ("OPP Agreement"). The OPP Agreement is designated by the Commission as PP&L Rate Schedule No. 46 and as UGI Rate Schedule No. 3 and sets forth the terms and conditions governing the operation of the interconnections between PP&L and UGI.

PP&L and UGI are also parties to a Power Supply Agreement dated June 1, 1992 ("1992 PSA"), that will supersede and replace the November 22, 1977, Power Supply Agreement between PP&L and UGI, as supplemented to date, and designated by the Commission as PP&L Rate Schedule No. 68 ("1977 PSA"). PP&L filed the 1992 PSA for approval with the Commission on June 12, 1992 in Docket No. ER92-642-000. PP&L states that approval of the 1992 PSA requires that PP&L amend the OPP Agreement to prevent the 1977 Supplement to the OPP Agreement ("1977 Supplemental Agreement") from expiring by its terms when the 1992 PSA supersedes and replaces the 1977 PSA. Further, the 1992 Supplemental Agreement amends the OPP Agreement to allow PP&L, acting as UGI's agent, to pass on to UGI any credits received by PP&L as a result of the utilization of UGI's share of the PJM Transmission System Import Capability.

PP&L requests that the Commission permit the 1992 PSA to be effective on the same date the 1992 PSA is given effect. PP&L states that a copy of its filing was served on UGI and the Pennsylvania Public Utility Commission.

*Comment date:* July 29, 1992, in accordance with Standard Paragraph E end of this notice.

### 9. Duke Power Company

[Docket No. ER92-698-000]

Take notice that on July 7, 1992, Duke Power Company (Duke) filed a letter describing a proposed change in rate which amends Duke's Appendix B to the Contract for Short Term Power Transactions between Cajun Electric Power Cooperative, Inc. and Duke Power Company.

*Comment date:* July 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

### 10. Idaho Power Company

[Docket No. ER92-699-000]

Take notice that on July 7, 1992, Idaho Power Company (IPC) tendered for filing, pursuant to Section 205 of the Federal Power Act, an Energy Exchange Agreement executed on March 23, 1992, with the City of Seattle, City Light Department. IPC has requested an effective date for the Agreement of November 1, 1992.

*Comment date:* July 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

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**11. Portland General Electric Company**

[Docket No. ER92-702-000]

Take notice that Portland General Electric Company (PGE), on July 9, 1992, tendered for filing its Average System Cost (ASC) as calculated by PGE and determined by the Bonneville Power Administration under the revised ASC Methodology which became effective on November 1, 1991. This filing includes PGE's revised Appendix 1 to the Residential Purchase and Sale Agreement.

PGE states that the revised Appendix 1 shows the ASC to be 32.90 mills/kWh. The Bonneville Power Administration determined the ASC rate for PGE to be 32.59 mills/kWh.

Copies of the filing have been served on the persons named in the transmittal letter as included in the filing.

*Comment date:* July 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17339 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP92-154-001, et al.]**

**Colorado Interstate Gas Company et al.; Natural Gas Certificate Filings**

Take notice that the following have been made with the Commission:

**1. Colorado Interstate Gas Company**

[Docket No. CP92-154-001]

July 15, 1992.

Take notice that on July 13, 1992, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP92-154-001 a petition to amend the order issued in Docket No. CP92-154-000 [1] pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG proposes to amend the order issued in Docket No. CP92-154-000 by changing the capacity of the compressor units authorized therein. It is stated the CIG has reviewed its compression requirements and determined that the units authorized provided capacity in excess of CIG's actual needs. CIG proposes in the petition to amend to reduce the capacity of the unit at the Boehm Compressor Station (Boehm) from 1,650 horsepower to 1,100 horsepower and to reduce the capacity of the unit at the Flank Compressor Station (Flank) from 1,650 horsepower to 1,500 horsepower. It is asserted that the total reduction would be 700 horsepower and that the total capacity required for the project would be 2,600 horsepower. It is further asserted that these reductions would result in a total estimated savings of $2,361,500 ($1,226,700 for Boehm and $1,134,800 for Flank).

*Comment date:* August 5, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**2. City Gas Company of Florida, Inc.**

[Docket No. CP92-583-000]

July 15, 1992.

Take notice that on July 7, 1992, City Gas Company of Florida, division of Elizabethtown Gas Company (City Gas), 955 East 25th Street, Hialeah, Florida 33013 filed in Docket No. CP92-583-000 an application pursuant to section 7(a) of the Natural Gas Act (NGA) for an order directing Florida Gas Transmission Company (Florida Gas) to provide service to City Gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

City Gas states that it is a local gas distribution company in Florida and proposes to provide gas service to Port St. Lucie, Florida. City Gas states that the proposed market is primarily residential, with a few small commercial/industrial customers anticipated.

City Gas estimates third year maximum day requirements to be 10,060 therms and third year annual requirements to be 1,425,000 therms.

City Gas states that no increase in contract demand will be necessary since it will provide this new service within the constraints of its existing contracts with Florida Gas.

City Gas requests that Florida Gas be required to establish a new point of delivery to City Gas to enable it to provide service to Port St. Lucie, Florida.

*Comment date:* August 14, 1992, in accordance with Standard Paragraph F at the end of this notice.

**3. Williams Natural Gas Company**

[Docket No. CP92-594-000]

July 16, 1992.

Take notice that on July 13, 1992, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-594-000, a request pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act, to abandon the sale of gas for resale to Chase County Gas Company, Inc. (Chase), under its blanket certificate authorization issued in Docket No. CP82-479-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Williams proposes to abandon the sale of gas under its Rate Schedule PR(A) to Chase for resale to the cities of Cottonwood Falls, Strong City and Florence, Kansas. Chase elected to reject its sales contract with Williams and instead secured sales service from third parties for transportation by Williams, it is explained. Williams indicates further that it is currently transporting gas to Cottonwood Falls, Strong City, and Florence under Williams' Docket No. ST92-1275-000.

As stated by Williams, the facilities will remain in place to facilitate the transportation of gas.

*Comment date:* August 31, 1992, in accordance with Standard Paragraph G at the end of this notice.

**4. United Gas Pipe Line Company**

[Docket No. CP92-585-000]

July 16, 1992.

Take notice that on July 8, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP92-585-000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a portion of a sales lateral under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as

[1] Issued June 29, 1992, 59 FERC ¶61,393.

more fully set forth in the request that is on file with the Commission and open to public inspection.

United proposes to abandon by reclaim a 1.98-mile segment of a 4-inch lateral line which is no longer in use. United states that the facilities are located on its Avri 4-inch line from Abbeville Town Border Station 767+65 to Steen's Tap Station 662+76, located off United's TPL (transmission pipeline) 205-7 in Vermilion Parish, Louisiana. United explains that the line segment formerly was used to provide natural gas service to Entex, Inc. (Entex), at four farm taps located within Entex's Crowley, Louisiana, billing area, and was originally authorized in Docket No. CP80-356. United states that, in August 1991, Entex extended its own distribution system to those farm taps and now serves those customers directly. It is stated that, since United currently provides Entex's natural gas requirements for resale in the Crowley billing area, United can now abandon and remove the line segment without affecting service to Entex or any of Entex's customers. It is indicated that the cost of removal of the line segment would be approximately $67,669 and there would be no associated salvage value.

*Comment date:* August 31, 1992, in accordance with Standard Paragraph G at the end of this notice.

**5. Northern Natural Gas Company**

[Docket No. CP92-593-000]

July 16, 1992.

Take notice that on July 13, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-593-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate 5 new delivery points to accommodate deliveries of natural gas to Iowa Electric Power and Light Company (Iowa Electric), a jurisdictional sales customer, under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully described in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate the new delivery points in various locations in Iowa in response to a request from Iowa Electric. It is stated that Iowa Electric requires the delivery points as a result of expansion of its distribution system into new areas. It is explained that the delivery points would be located in the following counties in Iowa: Buchanan, Tama, Hardin, Story, and Marshall. It is stated that the gas would be used for residential and commercial end uses. It is explained that Northern makes sales of natural gas to Iowa electric under its CD-1 and FT-1 rate schedules. It is asserted that the volumes delivered at the proposed delivery point would total 1,145 Mcf on a peak day and 143,655 Mcf on an annual basis. It is further asserted that these volumes would be within currently authorized entitlements. It is estimated that the cost of installing the facilities would be $132,000.

*Comment date:* August 31, 1992, in accordance with Standard Paragraph G at the end of this notice.

**6. Eastern Natural Gas Company**

[Docket No. CP92-582-000]

July 16, 1992.

Take notice that on July 7, 1992, Eastern Natural Gas Company (Eastern), P.O. Box 377, Frazeysburg, Ohio 43822, filed a motion with the Commission requesting a waiver of the Commission's reporting and accounting requirements and all other rules and regulations under the Natural Gas Act (NGA) and Natural Gas Policy Act of 1978 (NGPA) that may be applicable to Eastern as a natural gas company, all as more fully set forth in the motion which is open to public inspection.

Eastern states that it is a local distribution company engaged in the purchase, distribution, and retail sale of natural gas in Ohio pursuant to authorization granted by the Public Utilities Commission of Ohio (PUCO). The Commission authorized Eastern on November 4, 1986, to exchange natural gas volumes on a no-fee displacement basis with National Fuel Gas Distribution Corporation (National Distribution) and to construct and operate associated metering facilities.[2] This authorization did not affect the nonjurisdictional status of Eastern's operations. Eastern now requests a waiver of the Commission's reporting and accounting requirements, especially the FERC Form 2-A but not limited to it, because complying with such requirements is unduly burdensome, costly, and unnecessary. Eastern further states that its compliance with such reporting and accounting requirements is unnecessary since Eastern is essentially a non-jurisdictional entity with no jurisdictional revenues.

[2] See Eastern Natural Gas Company, National Fuel Gas Distribution Corporation, and National Fuel Gas Supply Corporation, Docket No. CP 86-351-000 (37 FERC ¶ 61,082).

*Comment date:* August 6, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall

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be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17340 Filed 7-22-92; 8:45 am]

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**[Docket No. JD92-07745T, Oklahoma-24]**

## State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 17, 1992.

Take notice that on July 14, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Upper Hunton Formation underlying a portion of Major County, Oklahoma qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area consists of Sections 4, 5 and 6, Township 20 North, Range 11 West; Sections 16 through 22 and Sections 27 through 34, Township 21 North, Range 11 West and Section 24, Township 21 North, Range 12 West.

The notice of determination also contains Oklahoma's findings that the referenced portion of the Upper Hunton Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17386 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP92-504-000]**

## Arkla Energy Resources, a Division of Arkla, Inc. and Arkla Energy Resources Co.; Technical Conference

July 17, 1992.

A technical conference will be held to discuss issues raised in the above-captioned proceeding on Tuesday, August 4, 1992, at 10 a.m., in room 3400-D at the offices of the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend. However, attendance does not confer party status.

For additional information, contact Timothy W. Gordon at (202) 208-2059.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17381 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP91-65-007]**

## Arkla Energy Resources, a Division of Arkla, Inc.; Notice To Implement Settlement Rates on an Interim Basis

July 17, 1992.

Take notice that on July 1, 1992, Arkla Energy Resources, a division of Arkla, Inc., (AER), respectfully requests Commission authorization, pending action on a Stipulation and Agreement (Settlement) filed in this proceeding, to place into effect on an interim basis the base tariff rates included on the revised tariff sheets attached as appendix A to the filing.

AER states that on May 14, 1992, the parties filed the settlement, which will provide AER and its customers with the rate stability that they now need, while discussions continue concerning the structure of AER's future services. On July 18, 1992, the Presiding Administrative Law Judge certified the Settlement to the Commission.

AER states that the tariff sheets, are being filed in compliance with the Settlement, which requires AER to move to place the Settlement Rates into effect once the Settlement has been certified.

AER also requests Commission authorization, without waiting for rehearing, to reinstate its currently effective motion tariff rates on a prospective basis if the Commission (1) rejects the Settlement, or (2) approves the Settlement subject to conditions or modifications that are unacceptable to AER.

AER requests that the Commission grant this motion and permit AER to collect the appendix A rates beginning August 1, 1992 and continuing until the Commission acts on the Settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17383 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ92-3-32-001]**

## Colorado Interstate Gas Co.; Compliance Filing

July 17, 1992.

Take notice that on July 14, 1992, in compliance with the Federal Energy Regulatory Commission's (Commission's) order issued June 29, 1992 in Docket TQ92-3-32-000, Colorado Interstate Gas Company ("CIG") submitted for filing an original and five copies of Substitute Fifth Revised Sheet Nos. 7.1 through 8.2. CIG requests that these proposed tariff sheets be made effective on July 1, 1992.

As required by the order, the filing reflects the currently effective rate for Williston Basin Interstate Pipeline Company that came out of suspension during this PGA quarter. The tariff rates underlying Substitute Fifth Revised Sheet Nos. 71. through 8.2 reflect a 0.51 cent/Mcf decrease in the commodity rate for the G-1, P-1, SG-1, H-1, F-1 and PS-1 Rate Schedules. There is no change in the Demand-1 or Demand-2 rates because CIG does not currently incur "as billed" charges from its suppliers.

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17388 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-176-001]

## Colorado Interstate Gas Co.; Tariff Filing

July 17, 1992.

Take Notice that on July 10, 1992, Colorado Interstate Gas Company ("CIG") tendered for filing the following tariff sheet in its Original Volume No. 3 FERC Gas Tariff.

Substitute Original Sheet No. 60A

CIG states that the purpose of this filing is to comply with the Commission Order issued on June 30, 1992, in FERC Docket No. RP92-176-000 requiring CIG to modify Section 9.1 of Sheet No. 60A to clarify that Shippers are not required to pay a rate higher than the maximum rate contained in CIG's tariff for storage and transportation service.

CIG states that copies of its filing were served on all holders of Volume No. 3 of CIG's FERC Gas Tariff and appropriate state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17391 Filed 7-22-92; 8:45 am]

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[Docket No. RP92-185-000]

## El Paso Natural Gas Co.; Technical Conference

July 17, 1992.

Pursuant to the Commission's order, issued on July 2, 1992, a technical conference will be held to resolve the issues related to El Paso's proposed "Unauthorized Overpull Penalty," "Unauthorized Gas," and "Cash-out of Imbalances" tariff provisions, raised in the above-captioned proceeding. The conference will be held on Thursday August 6, 1992, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17384 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. RP91-78-003 and CP92-106-001]

## Midwestern Gas Transmission Co.; Tariff Filing To Implement Stipulation and Agreement

July 17, 1992.

Take notice that on June 30, 1992, Midwestern Gas Transmission Company (Midwestern) filed the following tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

Third Revised Sheet No. 43
Second Revised Sheet No. 47
Original Sheet No. 47A
Original Sheet No. 47B
Original Sheet No. 47C
Original Sheet No. 47D
Original Sheet No. 47E
Original Sheet No. 47F
Second Revised Sheet Nos. 48—49
Third Revised Sheet No. 62A
Third Revised Sheet No. 62B
Second Revised Sheet No. 62C
Third Revised Sheet No. 62D
Fourth Revised Sheet No. 62E
Fourth Revised Sheet No. 62F
Second Revised Sheet No. 62G
Original Sheet No. 62H
Original Sheet No. 62I
Original Sheet No. 62J
Original Sheet No. 62K
Third Revised Sheet No. 66
Original Sheet No. 66A
Second Revised Sheet No. 67
Third Revised Sheet No. 85
Third Revised Sheet No. 86
Third Revised Sheet No. 87
Third Revised Sheet No. 88
Third Revised Sheet No. 89
Fourth Revised Sheet No. 90
Third Revised Sheet No. 91
Third Revised Sheet No. 92
Third Revised Sheet No. 93
Third Revised Sheet No. 94
Third Revised Sheet No. 95—109
Second Revised Sheet No. 151
Original Sheet No. 151A
Original Sheet No. 151B
Original Sheet No. 151C
Original Sheet No. 151D
Original Sheet No. 151E
Original Sheet No. 151F
Second Revised Sheet No. 152
Original Sheet No. 152A
Original Sheet No. 152B
Original Sheet No. 152C
Original Sheet No. 152D
Original Sheet No. 152E
Second Revised Sheet Nos. 153—159

Midwestern States that the revised tariff sheets implement the rates, terms and conditions of the Stipulation and Agreement in these proceedings dated October 17, 1991 as revised by the agreed upon modifications filed contemporaneously with the instant filing. Midwestern states that the tariff sheets reflects a new commodity surcharge to recover take-or-pay buy-out and buy-down costs billed by Tennessee Gas Pipeline Company. (Midwestern's upstream supplier), consistent with Order Nos. 528 and 528-A, establish the rates, terms and conditions under which Midwestern will provide firm sales service through an interim gas inventory charge referred to as the "MGIC", and make various tariff changes to implement comparability of service. Midwestern requests approval of the filing so that the tariff sheets are effective on July 1, 1992.

Midwestern states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17387 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP92-192-000]

## Northern Natural Gas Co.; Petition for Limited Waiver

July 17, 1992.

Take notice that on June 23, 1992, Northern Natural Gas Company (Northern), petitioned the Commission for a limited waiver of Northern's FERC Gas Tariff in order to allow Madison Gas and Electric Company (Madison Gas) to add an alternate delivery point to an existing Firm Transportation Service Agreement between Northern and Madison Gas while permitting Madison Gas to retain its existing priority in Northern's first-come, first-served queue.

Northern requests a waiver of its FERC Gas Tariff as necessary to allow Madison Gas to retain its place in Northern's priority queue at the ANR-

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Janesville delivery point while adding the Madison TBS delivery point as an alternate delivery point to Madison Gas' Transportation Agreement so that all or part of the MDTQ may be used by Madison Gas at either delivery point.

Northern asserts that it seeks to add an alternate delivery point to an existing service agreement provided that (i) the same end-users and/or same customers would be served by such alternate delivery point; (ii) the alternate delivery point is in the same geographic location as the customers or end-users; and (iii) the addition to the alternate delivery point will not interfere with Northern's ability to render firm service to any other customer.

Northern states that copies of the filing were served upon all holders of Northern's FERC Gas Tariff, Third Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17385 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP92-1-007]**

## Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 17, 1992.

Take notice that Northern Natural Gas Company (Northern) on July 9, 1992, tendered for filing to become part of Northern's FERC Gas Tariff Third Revised Volume 1, the following tariff sheets, proposed to be effective the first day of the month following an Order, which is anticipated to be September 1, 1992:

Fourth Revised Sheet No. 52F.14
Second Revised Sheet No. 52F.14a
Original Sheet No. 52F.14b
Fourth Revised Sheet No. 52F.15
Sixth Revised Sheet No. 56A
Eleventh Revised Sheet No. 67

Northern states that such tariff sheets are being submitted in compliance with the Commission's Letter Order dated June 29, 1992, in Docket Nos. RP92-1-005 and RP91-224-003, to clarify the tariff provisions regarding processing.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17389 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP88-259-054]**

## Northern Natural Gas Co., Proposed Changes in FERC Gas Tariff

July 17, 1992.

Take notice that Northern Natural Gas Company (Northern), on July 14, 1992, tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, proposed to be effective November 22, 1991:

Sub Thirty-Fourth Revised Sheet No. 86
Sub Thirty-Sixth Revised Sheet No. 90
Sub Twenty-Fourth Revised Sheet No. 94

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order issued June 29, 1992, in Docket No. RP88-259-050. Northern further states that copies of the filing have been mailed to each of its customers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17390 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RS92-73-000]**

## Pacific Interstate Offshore Co.; Conference

July 17, 1992.

Take notice that on August 12, 1992, a conference will be convened in the above-captioned docket to discuss Pacific Interstate Offshore Company's (PIOC) summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Erica Yanoff at (202) 208-0708 or Marilyn Rand at (202) 208-0327.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17392 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RS92-74-000]**

## Pacific Offshore Pipeline Co.; Conference

July 17, 1992.

Take notice that on August 13, 1992, a conference will be convened in the above-captioned docket to discuss Pacific Offshore Pipeline Company's (POPCO) summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Erica Yanoff at (202) 208-0708 or Marilyn Rand at (202) 208-0327.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-17394 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-9-000]

**Questar Pipeline Co.; Conference**

July 17, 1992.

Take notice that on August 20, 1992, a conference will be convened in the above-captioned docket to discuss Questar Pipeline Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. The conference will begin at 9:30 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Erica Yanoff at (202) 208-0708 or Marilyn Rand at (202) 208-0327.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-17393 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-24-000]

**Texas Gas Transmission Corp.; Conference**

July 17, 1992.

Take notice that on July 30, 1992, a conference will be convened in the above-captioned docket to discuss Texas Gas Transmission Corporation's summary of its proposed plan for implementation of Order No. 636. This notice will supersede the notice issued on July 13, 1992, regarding the scheduling of this conference in this docket.

The conference will be held at the Washington Airport Dulles Marriott Hotel, located at 333 West Service Road, Chantilly, Virginia, 22021, on July 30 and 31, 1992. The conference will begin at 1 p.m. on July 30, 1992. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons may call Patrick Seferovich at (202) 208-0504 or Bob Szekely at (202) 208-0442.

Lois D. Cashell,

*Secretary.*

[FR Doc. 92-17382 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-569-000]

**Viking Gas Transmission Co; Request Under Blanket Authorization**

July 16, 1992.

Take notice that on July 1, 1992, Viking Gas Transmission Company (Viking), 1010 Milam Street, P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-569-000, as supplemented and amended on July 8 and 13, 1992, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add a new delivery point for transportation service provided for Peoples Natural Gas Company, a Division of UtiliCorp United Inc. (PNG), under Viking's blanket certificate issued in Docket No. CP82-414-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Viking proposes to install and operate a 2-inch hot tap and related facilities, including a skid mounted, positive displacement meter (maximum rated capacity of 3,200 Mcf per day), at M.P. 2213+20.7 (site 2) on Viking's system in Camp Ripley, Morrison County, Minnesota. Viking explains that the delivery point would be used for deliveries of gas under a gas transportation agreement dated October 1, 1990, under which Viking provides an interruptible transportation service to PNG in accordance with Viking's Rate Schedule IT-2. Viking states that PNG would reimburse it for the cost of the facilities estimated to be $111,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 92-17341 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

**Office of Fossil Energy**

[FE Docket No. 92-73-NG]

**OXY USA Inc.; Application for Blanket Authorization To Import and Export Natural Gas**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on June 16, 1992, by OXY USA Inc. (OXY) requesting blanket authorization to import from Canada and to export to Mexico a combined total of up to 29.2 Bcf of natural gas for resale to industrial and agricultural end users, electric utilities, pipelines, and local distribution companies. OXY requests authorization for a two-year term beginning on the date of first import or export. The proposed imports and exports would take place at any point on the international borders where existing facilities are located. OXY would provide DOE with quarterly reports detailing any import or export transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 24, 1992.

**ADDRESSES:** Office of Fuels Programs Fossil Energy U.S. Department of Energy Forrestal Building, room 3F-056, FE-50 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Susan K. Gregersen, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0063.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** OXY, a Delaware corporation with its principal place of business in Tulsa, Oklahoma, is a natural gas producer and marketer. The requested import authorization will enable OXY to sell Canadian natural

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gas in various U.S. markets. Blanket export authorization would allow OXY to sell U.S. natural gas for which there is no present domestic need. OXY would import and export natural gas for its own account, as well as for the accounts of others. The gas would be imported and exported under short-term, market-responsive contracts.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). When reviewing natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties who may oppose this application should comment in their responses on these issues. OXY asserts that imports made under this arrangement would be competitive and that there is no current need for the domestic gas which would be exported. Parties opposing OXY's application bear the burden of overcoming these assertions.

**NEPA Compliance**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of OXY's application is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

Issued in Washington, D.C., on July 16, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92–17414 Filed 7–22–92; 8:45 am]

BILLING CODE 6450–01–M

## Office of Hearings and Appeals

### Cases Filed During the Week of June 19 Through June 26, 1992

During the week of June 19 through June 26, 1992, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 15, 1992.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 19 through June 26, 1992]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 6/19/92 | Gulf/Teague Industries, Inc., Plano, TX | RR300–178 | Request for Modification/Recession in the Gulf refund proceeding. If granted: The June 17, 1992 Dismissal Letter (Case No. RF300–12769) issued to Teague Industries, Inc., regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified. |
| Do | Gulf/A.J. Miller Trucking Co., Atlanta Beach, FL | RR300–179 | Request for Modification/Rescission in the Gulf refund proceeding. If granted: The April 24, 1992 Dismissal Letter (Case No. RF300–13897) issued to A.J. Miller Trucking Company regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified. |

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 19 through June 26, 1992]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 6/22/92 | William P. Wells, North Miami Beach, FL | LFA-0218 | Appeal of an Information Request. If granted: William P. Wells would receive access to documents relating to Dr. Einstein. |
| 6/24/92 | Gulf/H. B. Ham Gulf, Atlantic Beach, FL | RR300-180 | Request for Modification/Rescission in the Gulf refund proceeding. If granted: The June 4, 1992 Decision and Order (Case No. RF300-14854) issued to H. B. Ham Gulf regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified. |
| 6/25/92 | John R. Brodeur, Seattle, WA | LFA-0217 | Appeal of an Information Request Denial. If granted: The June 18, 1992 Freedom of Information Request Denial issued by the Richland Field Office would be rescinded, and John R. Brodeur would receive access to requested documents. |

REFUND APPLICATIONS RECEIVED

| Date received | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| 6/19/92 thru 6/26/92 | Crude Oil Applications Received | RF272-92721 thru RF272-93191. |
| 6/19/92 thru 6/26/92 | Texaco Refund Applications Received | RF321-16717 thru RF321-16815. |
| 6/22/92 | Lee Langland Super 100 | RF342-235. |
| 6/22/92 | Dave's Supper 100 | RF342-235 |
| 6/22/92 | Systems Fuels, Inc | RF339-10. |
| 6/22/92 | Gulf Tri City Oil Company | RF300-20301. |
| 6/22/92 | BASF Wyandotte Chemicals | RF300-20302. |
| 6/22/92 | Tom Oil Company | RF300-20303. |
| 6/22/92 | James L. Turnbaugh | RF300-20304. |
| 6/22/92 | St. Pierre Gulf Service | RF300-20305. |
| 6/22/92 | Dow Chemical, USA | RF300-20306. |
| 6/22/92 | John C. Manchester, Inc. #2 | RF300-20307. |
| 6/22/92 | H & W Gulf Service | RF300-20308. |
| 6/22/92 | Newhall Land/Farming Company | RF304-13186. |
| 6/22/92 | Container Plus, Inc | RF304-13187. |
| 6/23/92 | Bucyrus Bulk Plant | RF304-13188. |
| 6/23/92 | J & J Arco | RF304-13189. |
| 6/25/92 | Jerry Harmon's Super "100" | RF342-237. |
| 6/26/92 | State of La, Div. of Admin | RF304-20390. |

[FR Doc. 92-17410 File 7-22-92; 8:45 am]

BILLING CODE 6450-01-M

## Cases Filed During the Week of June 26 Through July 3, 1992

During the Week of June 26 through July 3, 1992, the appeals and applications for other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 15, 1992.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 26 through July 3, 1992]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 6/26/92 | Gulf/Southland Gulf Super Service, Miami, FL | RR300-161 | Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The April 22, 1992 Dismissal Letter (Case No. RF300-11616) issued to Southland Gulf Super Service would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding. |
| 6/29/92 | Revere Petroleum Corp. & Richard E. Dobyns, Atlanta, GA | LRR-0011 | Request for Modification/Rescission. If granted: The May 29, 1992 Decision and Order (Case No. HRO-0125) would be rescinded regarding the alleged violations by Revere Petroleum Corporation of crude oil price regulations. |
| Do | Gulf/Ballejo Gulf, Woodbridge, VA | RR300-162 | Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The March 30, 1992 Dismissal Letter (Case No. RF300-13575) issued to Ballejo Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding |
| 7/1/92 | Gulf/Rosamilia Brothers' Gulf, Woodbridge, VA | RR300-163 | Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The April 6, 1992 Dismissal Letter (Case No. RF300-13295) issued to Rosamilia Brothers' Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding. |

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 26 through July 3, 1992]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Do | David K. Cox, Oak Ridge, Tennessee | LFA-0219 | Privacy Act Request Denial. If granted: The Privacy Act Request Denial issued by the Privacy Act Officer, U.S. Department of Energy, Oak Ridge Field Office, would be rescinded, and David K. Cox would receive access to information located in his personnel security file. |

REFUND APPLICATIONS RECEIVED

| Date received | Name of refund proceeding/name of refund application | Case No. |
|---|---|---|
| 6/26/92 thru 7/3/92. | Crude oil applications received. | RF272-83192 thru RF272-83561. |
| 6/26/92 thru 7/3/92. | Texaco refund applications received. | RF321-18816 thru RF321-18832. |
| 6/26/92 thru 7/3/92. | Gulf Oil refund applications received. | RF300-20310 thru RF300-20336. |
| 6/26/92 | City of Vinton | RA272-51. |
| 6/29/92 | Pat's ARCO | RF304-13190. |
| 6/29/92 | Humphrey Lloyd | RF304-13191. |
| 6/29/92 | Charley Monroe | RF342-238. |
| 6/29/92 | Lafoye's Clark Super 100. | RF342-239. |
| 6/29/92 | Bob's Clark Super 100 | RF342-240. |
| 6/29/92 | Oscar Price Super 100 | RF342-241. |
| 6/30/92 | Apex Oil Company | RF339-12. |
| 6/30/92 | Marathon Oil Company | RF339-11. |
| 6/30/92 | Al's Clark Super 100 | RF342-242. |
| 7/1/92 | Chala Enterprizes, Inc | RF315-10215. |

[FR Doc. 92-17411 Filed 7-22-92; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Decisions and Orders During the Week of June 29 Through July 3, 1992

During the week of June 29 through July 3, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

### Appeal

*Daniel Grossman, 7/1/92, LFA-0215*

Daniel Grossman filed an Appeal from a partial denial by the Director of the Office of the Executive Secretariat of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the search of the Office of the Executive Secretariat for responsive documents was adequate, and that it would be inappropriate to order the Office of Classification to immediately review classified documents identified as responsive to Mr. Grossman's request. However, the DOE also found that there was no basis for limiting the search for responsive documents to the Office of the Executive Secretariat. The DOE therefore remanded the matter to the Chief, FOI and Privacy Act Office, to determine if a search of other DOE offices is warranted.

### Refund Application

*Texaco Inc./Ray's Texaco, 7/1/92, RR321-18*

Raymond Esposito, the owner of Ray's Texaco, filed a Motion for Reconsideration of a Decision and Order that denied duplicate Texaco refund applications that he had filed. In the Motion, Mr. Esposito stated that he had signed the second application, and certified in it that no other application had been filed, because he believed that his representative had not filed an application that he had previously authorized. In considering the Motion, the DOE found that because of lack of communication from his representative, Mr. Esposito had reason to believe that no refund application on his behalf was pending with the Office of Hearings and Appeals. Accordingly, Mr. Esposito's Motion was granted and he was awarded a refund of $3,456.

### Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| Name | Case No. | Date |
|---|---|---|
| Atlantic Richfield Company/Anthony's ARCO in Keansburg *et al.* | RF304-13038 | 07/02/92 |
| Atlantic Richfield Company/Ben's ARCO #1. | RF304-3121 | 07/02/92 |
| Ben's ARCO #2 | RF304-3122 | |
| Ben's ARCO #3 | RF304-3123 | |
| Atlantic Richfield Company/Flippo's Oil Company. | RR304-42 | 06/29/92 |
| City of Frostproof *et al.* | RF272-86415 | 07/01/92 |
| City of Vinton | RA272-51 | 07/02/92 |
| Exeter Drilling Company. | RF272-21082 | 07/01/92 |
| Exeter Drilling Company. | RD272-21082 | |
| Gulf Oil Corporation/Baggett Transportation *et al.* | RF300-14541 | 07/01/92 |
| Gulf Oil Corporation/S&S Service Station *et al.* | RR300-143 | 07/02/92 |
| Gulf Oil Corporation/Wayne Banks Gulf Service *et al.* | RF300-15607 | 07/01/92 |
| Hughes School District *et al.* | RF272-78809 | 07/01/92 |
| Norton Company | RA272-52 | 07/01/92 |
| Shell Oil Company/Lynn's Shell Service *et al.* | RF315-332 | 07/02/92 |
| Shell Oil Company/Piedmont Aviation, Inc. | RF315-5517 | 07/01/92 |
| Speedway Transportation, Inc. | RF272-14593 | 06/29/92 |
| Speedway Transportation, Inc. | RD272-14593 | |
| Starrett City Associates | RF272-63905 | 07/01/92 |
| Starrett City Associates | RD272-63905 | |
| Texaco Inc./Public Service Electric & Gas *et al.* | RF321-6558 | 07/01/92 |

### Dismissals

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Alvarez Body Shop | RF304-4404 |
| B B Fuels, Inc | LEE-0022 |
| Bob's Gulf | RF300-14797 |
| Briarwood Texaco | RF321-12009 |
| Cliff's Gulf Service | RF300-14053 |
| Cooper Wiese | RF321-12212 |
| Eades Gulf | RF300-14984 |
| Floyd's Arco | RF304-13042 |
| Gene Luongo Arco | RF304-13044 |

| Name | Case No. |
|---|---|
| George and Sons Gulf | RF300-15272 |
| Guy Cuthrell's Gulf Station | RF300-14851 |
| Hammond Country Store | RF300-14783 |
| Jordan's Grocery | RF300-14942 |
| Joseph Mulligan Gasoline | RF300-14790 |
| Kearney National, Inc | RF300-20107 |
| Lamar Davis Gulf | RF300-14846 |
| Leighow Oil Co | RF304-3768 |
| Matador Gulf | RF300-14786 |
| Maxfield's Garage | RF300-14765 |
| McClure's Gulf | RF300-14769 |
| Nicklow's Gulf | RF300-14795 |
| Price Service Center | RF304-3751 |
| Pyramid Supply, Inc | RF326-197 |
| Ron Cook Tire | RF321-14043 |
| Rondeau's Service Station | RF304-3754 |
| Roseboro Gulf | RF300-14856 |
| Shannon Bros. Enterprises, Inc | RF300-14772 |
| Studies Service Station | RF304-3749 |
| T.E. Hinson Gulf | RF300-16940 |
| Tiger Oil & Heating Co | RF300-16705 |
| Ward Foods, Inc | RF300-16712 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 17, 1992.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 92-17424 Filed 7-22-92; 8:45 am]

BILLING CODE 6450-01-M

## Proposed Decisions and Orders During the Week of July 6 Through July 10, 1992

During the week of July 6 through July 10, 1992, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: July 17, 1992.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

*Bellman Oil Co., Inc., Bremen, Indiana, LEE-0041 Reporting Requirements*

Bellman Oil Co., Inc., (Bellman) filed an Application for Exception from the provision of filing Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Bellman to be exempted from filing Form EIA-782B. On July 9, 1992, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

*Shearon, Inc., Harvard, Illinois, LEE-0043 Reporting Requirements*

Shearon, Inc., (Shearon) filed an Application for Exception from the provision of filing Form EIA-863, entitled "Petroleum Product Sales Identification Survey." The exception request, if granted, would permit Shearon to be exempted from filing Form EIA-863. On July 6, 1992, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 92-17412 Filed 7-22-92; 8:45 am]

BILLING CODE 6450-01-M

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $1,064,798, plus accrued interest, in alleged crude oil and refined petroleum product violation amounts obtained by the DOE under the terms of a settlement agreement entered into with Oasis Petroleum Corporation, Case No. LEF-0007. The OHA has determined that 16% of the funds obtained from Oasis, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, and that the remaining 84%, plus accrued interest, will be distributed to those injured as a result of Oasis' alleged refined petroleum product allocation violation.

**DATE AND ADDRESS:** Applications for Refund to either the crude oil or refined product pool must be filed in duplicate, addressed to "Subpart V Crude Oil Overcharge Refunds" or "Oasis Special Refund Proceeding" as appropriate, and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Applicantions to the crude oil pool must be postmarked by June 30, 1994. Applications to the refined product pool should display a prominent reference to case number "LEF-0007" and be postmarked by December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $1,064,798, plus accrued interest, obtained by the DOE under the terms of

a settlement agreement entered into with Oasis Petroleum Corporation on November 20, 1989. The funds were paid by Oasis towards the settlement of alleged violations of the DOE price and allocation regulations involving the sale of crude oil and gasoline during the period January 1, 1978 through January 27, 1981.

The OHA will divide the Oasis settlement agreement fund into two different refund pools based on alleged crude oil overcharges and alleged refined petroleum product allocation violations.

For the crude oil refund pool (16% of the settlement agreement fund, plus accrued interest), the OHA has determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986 (the MSRP). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the degree to which they can demonstrate injury.

With respect to the refined product refund pool (84% of the settlement agreement fund, plus accrued interest), the OHA has determined to distribute these funds in two stages. In the first stage, we will accept claims from those injured as a result of Oasis' alleged allocation violation violations. The specific requirements which an applicant must meet in order to receive a refund are set out in Section V of the Decision. A claimant who meets these specific requirements will be eligible to receive refunds based on the demonstrated injury resulting from Oasis' failure to furnish gasoline that it was obliged to supply to the claimant.

If any funds remains in the refined product refund pool after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund to the crude oil pool must be postmarked by June 30, 1994. Any claimant which has already filed a subpart V crude oil refund application should not file another application, as the prior application will be deemed to be filed in this crude oil refund proceeding. Purchasers of gasoline from Research Fuels, Inc. during the period November 1, 1977 to October 31, 1978, who may have been injured as a result of Oasis' alleged allocation violations, may file Applications for Refund from the refined product pool. The refined product refund applications must be postmarked by December 31, 1992. Instructions for the completion of crude oil and refined product refund applications are set forth in the Decision that immediately follows this notice. Crude oil and refined product refund claims should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: July 15, 1992.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

**Decision and Order of the Department of Energy**

*Implementation of Special Refund Procedures*

July 15, 1992.

Name of Firm: Oasis Petroleum Corporation.

Date of Filing: January 5, 1990.

Case Number: LEF–0007.

On January 5, 1990, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which Oasis Petroleum Corporation (Oasis) remitted to the DOE pursuant to a November 20, 1989 settlement agreement between the DOE and Oasis. Oasis has remitted $1,064,798 pursuant to the settlement, to which $89,619 in interest has accrued as of May 29, 1992. In accordance with the procedural regulations codified at 10 CFR part 205, subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were resolved by the Oasis settlement agreement. This Decision and Order establishes the procedures which OHA will employ to distribute these funds.

**I. Background**

The ERA issued two Proposed Remedial Orders (PROs) to Oasis—one in 1986 and another in 1988. The PROs alleged that Oasis had violated the Federal petroleum price and allocation regulations. During the time of the alleged violations, Oasis was a corporation engaged, *inter alia*, in the purchasing and selling of motor gasoline and crude oil. In 1988, Oasis filed for bankruptcy protection in the United States Bankruptcy Court for the Central District of California. On November 20, 1989, the bankruptcy court approved a settlement agreement entered into by Oasis' Trustee and the DOE. In re Oasis Petroleum Corporation, No. LA 88–01225–AG (Bankr. C.D. Cal. 1989). Pursuant to the settlement, the Oasis bankruptcy estate remitted $200,000 to the DOE, after which the two PROs pending against Oasis were dismissed. See Letter from Thomas O. Mann, Deputy Director, OHA, to Emily Somers and Thomas B. DePriest, ERA, and Mark N. Savit, Doyle & Savit (Dec. 20, 1989). In addition, the DOE was allowed a general unsecured claim of $10,500,000 in the bankruptcy estate. The agreement stipulates that any monies received are to be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07, and subpart V. Oasis has since remitted additional payments of $491,365 and $373,433. Thus, to date, Oasis has remitted $1,064,798, to which $89,619 in interest has accrued as of May 29, 1992, making available a total of $1,154,417 (the Oasis settlement agreement fund) for distribution through subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

**II. Jurisdiction and Authority**

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501–07, Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

We have considered the ERA's petition that we implement a subpart V proceeding with respect to the Oasis settlement agreement fund and have determined that such a proceeding is appropriate. This Decision and Order sets forth the OHA's plan to distribute this fund.

**III. Division of the Oasis Settlement Agreement Fund**

The first PRO issued by the ERA alleged that Oasis has resold crude oil at a price in excess of its permissible average markup. The ERA determined that these violations amounted to $1,915,564. In the second PRO the ERA alleged that Oasis had sold allocated gasoline to parties without allocation rights, and thereby diverted gasoline in violation of federal allocation regulations. Oasis was found in the PRO to have profited from its diversion in the amount of $10,139,702. Thus, the violations alleged in the two PROs total $12,055,266, with alleged crude oil violations approximating 16% of the total, and alleged allocation violations making up the other 84%. Accordingly, we believe that it is most equitable to direct 16% of the Oasis

settlement agreement fund, plus accrued interest, into a crude oil refund pool. We will direct the remaining 84% of the fund, plus accrued interest, into a refined product refund pool.

## IV. The Proposed Decision and Order and Analysis of Comments Received

On February 4, 1992, OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Oasis settlement agreement fund. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 57 FR 4200 (February 4, 1992). In addition, OHA mailed the PD&O to many interested parties. Only one written comment was filed regarding our proposed refund procedures. This comment focused on the requirement that claimants in this proceeding demonstrate the existence of a supplier/purchaser relationship with Research Fuels, Inc. (RFI), the evaluation of affirmative defenses, and the prorating of allocation of refunds.[1]

### *A. Supplier/Purchaser Relationship*

In the PD&O we stated that 22 firms had been identified as being potentially injured by Oasis' alleged diversion of gasoline during the period August 3, 1979 to January 27, 1981. It was during this period that Oasis was under court order to supply gasoline to these firms, wholesale customers of RFI during the base period then in effect. See infra note 5.

Thus, the PD&O proposed requiring allocation claimants from the refined product refund pool to demonstrate the existence of a supplier/purchaser relationship with RFI during the base period. In addition, we proposed that claimants demonstrate that, during the period August 3, 1979 through January 27, 1981, Oasis failed to furnish gasoline that it was obliged under court order to supply to the claimant as a base period customer of RFI. The commentator requests that the claimants should instead demonstrate the existence of a supplier/purchaser relationship with RFI during the period in which injuries were alleged to have occurred, August 3, 1979 to January 27, 1981.

In Lucky Stores, Inc. 14 DOE ¶ 82,505 (1986), we found that "those wholesale purchasers which had purchased motor gasoline from RFI during the updated base period acquired a regulatory right to obtain gasoline based on their purchase volumes during the new base period." Effective with the August 3, 1979 court order, the obligation to supply that gasoline fell to Oasis. Accordingly, in order to demonstrate that it was entitled to be supplied by Oasis, we will require an allocation claimant in this proceeding to demonstrate that it purchased motor gasoline from RFI during the period November 1, 1977 to October 31, 1978.[2]

[1] See Letter from Jack P. Caolo to Thomas O. Mann, Deputy Director, OHA (March 4, 1992). Mr. Caolo is an attorney representing Lucky Stores, Inc., one of 22 wholesale purchasers previously identified as potentially injured by Oasis' alleged allocation violations. See Lucky Stores, Inc., 14 DOE ¶ 82,505 (1986).

[2] November 1, 1977 through October 31, 1978 was the base period in effect at the time of Oasis' alleged allocation violations, not July 1, 1977 through June 30, 1978 as stated in the PD&O. See 44 FR 26,172 (May 4, 1979).

### *B. Affirmative Defenses*

We stated in the PD&O that, in evaluating allocation claims, we will look at any affirmative defenses that Oasis may have had to the alleged allocation violation. The commentator agrees with our evaluation of affirmative defenses, so long as "they are subject to the same equitable principles and cases to which claims are subjected" and "are consistent with equity and are applied similarly to the other elements of a claim."

We have, in previous cases, considered a supplier's affirmative defenses to alleged allocation violations, and have done so consistent with the equitable principles of subpart V. A review of our grants of allocation claims demonstrates that in each case (i) the consent order firm and the applicant had a supplier/purchaser relationship under the relevant base period, (ii) the volumes reflected the applications of the supplier's allocation fraction to the purchaser's base period supply entitlement, (iii) the applicant demanded the volumes, (iv) the applicant complained to the agency about the allocation violation, and (v) evidence concerning any supplier defenses was not well developed.

Marathon Petroleum Co./Research Fuels, Inc. 19 DOE ¶ 85,575 at ¶ 89,056 (1989), *aff'd*, No. CA3–89–2983G, slip op. (N.D. Tex. Oct. 3, 1991), appeal docketed, No. 5–133 (Temp. Emer. Ct. App.) (Marathon/RFI). Thus, the absence of affirmative defenses is one among several factors we have considered in determining whether an allocation claim is "non-spurious." *Id.* at 89,056–57. We do not believe the comments submitted regarding affirmative defenses are in any way inconsistent with the principles expressed in our past evaluation of such defenses, and we intend to apply those same principles in this proceeding.

### *C. Distribution of Funds*

In the PD&O we stated that, because the Oasis settlement agreement is less than Oasis' potential liability in those proceedings, we will prorate those allocation refunds that would otherwise be disproportionately large in relation to the settlement agreement fund. The commentator asks for clarification as to how prorating will be applied to individual claims and requests that any ratio used be applied equally to all claimants. The commentator also requests notice and an opportunity to comment on any method of prorating refunds which may be adopted in this proceeding.

As in past refund proceedings, we may find it necessary to prorate refunds should the total of all valid claims received exceed the amount available in the settlement agreement fund. See *e.g.*, Aztec Energy Company/Quickway Market, 13 DOE ¶ 85,326 (1985). However, we will not disburse any refunds until the deadline for applications has passed and we have determined the aggregate amount of valid claims submitted. If necessary, we will at that time fashion an appropriate method of prorating refunds. Thus, it is premature at this stage in the Oasis proceeding to make a final decision about the method, *vel non*, of prorating refunds. This is an equitable proceeding for restitution to injured parties. Any such determination will ultimately depend on a weighing and balancing of the equities presented.[3] If the commentator submits a claim on behalf of a refund applicant, it will have ample opportunity upon filing a claim to raise any arguments it may have on this issue.

## V. Crude Oil Refund Procedures

### *A. Crude Oil Refund Policy*

The portion of the Oasis settlement agreement monies in the crude oil pool will be distributed in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement In re: The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶90,509 (1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil overcharge funds will be refunded to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This Notice was published at 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were

[3] The commentator requests that all of the settlement fund "be paid to claimants as direct restitution up to 100% of each valid claim," before any portion of the fund is made available for distribution through the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. Proceedings established pursuant to Subpart V are equitable in nature and designed to provide restitution to injured parties. As such, the OHA is required to "take into account the desirability of resolving to the maximum extent practicable all outstanding claims." 10 CFR 205.282(e). Accordingly, the portion of the settlement fund ultimately distributed through PODRA will depend in part on the number of valid claims submitted in this proceeding and the aggregate value of those claims.

injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. See City of Columbus, Georgia, 16 DOE ¶85,550 (1987). Additionally, we stated that crude oil refunds would be calculated on the basis of a per gallon (or "volumetric") refund amount, which is obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. The OHA has adopted the refund procedures outlined in the April 10 Notice in numerous cases. See, *e.g.*, Shell Oil Co., 17 DOE ¶85,204 (1988) (Shell); Mountain Fuel Supply Co., 14 DOE ¶85,475 (1986) (Mountain Fuel).

*B. Refund Claims*

We will adopt the DOE's standard procedures to distribute the crude oil portion of the Oasis settlement agreement fund. As mentioned above, 16% of the fund, plus accrued interest, is covered by the crude oil portion of this Proposed Decision. We have chosen to initially reserve twenty percent of the crude oil refund pool, plus accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims in a manner similar to that used in subpart V proceedings to evaluate claims based on alleged refined product overcharges. See Mountain Fuel, 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations.

We will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h (1982). In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See Shell, 17 DOE at 88,406.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in some refined product refund cases. *Id.* These applicants may, however, use econometric evidence of the type found in the OHA Report on Stripper Well Overcharges, 6 Fed. Energy Guidelines ¶90,507 (1985). See also Petroleum Overcharges Distribution and Restitution Act § 3003(b)(2), 15 U.S.C. § 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for Subpart V crude oil refund monies. *See Mid-America Dairymen* v. *Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶26,617 (1989); In re: Department of Energy Stripper Well Exemption Litigation, 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶26,613 (1987).

As has been stated in prior decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. *See, e.g., A. Tarricone, Inc.*, 15 DOE ¶85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The deadline for filing an Application for Refund from the current (fifth) pool of funds is June 30, 1994. It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1994, at the rate of $.0008 per gallon. While we anticipate that applicants which filed their claims by June 30, 1988, will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds.

*C. Crude Oil Application Requirements*

To apply for a crude oil refund, a claimant should submit an Application for Refund containing all of the following information.

(1) Identifying information including the claimant's name, address, taxpayer identification number, an indication whether the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.[4] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses, and descriptions of their relationship to the applicant's firm;

(3) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, an annual schedule displaying the number of gallons of each petroleum product purchased during this refund period, and the total number of gallons of all petroleum products claimed on the refund application;

(5) An explanation as to how the applicant obtained the above mentioned purchase volumes, and, if estimates were used, a description of its method of estimation;

(6) A statement that neither the claimant, its parent firm, affiliates, subsidiaries, successors, nor assigns has waived any right it may have to receive a crude oil refund (e.g., by having executed and submitted a valid waiver accompanying a claim to any of the escrow accounts established pursuant to the Stripper Well Settlement Agreement);

(7) A statement that the applicant has not filed any other refund application in the subpart V crude oil refund proceeding;

(8) If the applicant is not an end-user, was covered by the DOE price regulations or is related to the petroleum industry, a showing that the applicant was injured by the alleged crude oil overcharges;

(9) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(10) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

The filing deadline is June 30, 1994. Even though an applicant is not required to use any specific form for its crude oil refund application, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

[4] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

*D. Payments to the Federal Government and the States*

Under the terms of the MSRP, the remaining eight percent of the alleged crude oil overcharge amounts subject to this Proposed Decision, plus accrued interest, will be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

**VI. Refined Product Refund Procedures**

*A. Allocation Claims*

We will implement a two-stage refund procedure for the refined product portion of the Oasis settlement fund by which those injured as a result of Oasis' alleged allocation violations may submit Applications for Refund in the initial stage. As stated above, the ERA alleged that Oasis diverted gasoline in violation of federal allocation regulations by selling allocated gasoline to parties without allocation rights. In Lucky Stores, Inc., DOE ¶ 82,505 (1986), the OHA found that during the period August 3, 1979 through January 27, 1981, Oasis had an affirmative duty to supply gasoline to wholesale purchasers who had been supplied by Research Fuels, Inc. (RFI) during the period November 1, 1977 to October 31, 1978, pursuant to a court order issued by the United States District Court for the Northern District of Texas.[5] The OHA further found that RFI's wholesale customers probably incurred injury as a result of Oasis' alleged diversion of gasoline.

Therefore, we anticipate that we will receive claims based upon Oasis' alleged failure to furnish gasoline to RFI's wholesale customers. Any such applications will be evaluated with reference to the standards set forth in subpart V implementation cases such as Office of Special Counsel, 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as Mobil Oil Corp./Reynolds Industries, Inc., 17 DOE ¶ 85,608 (1988); Marathon Petroleum Co./Research Fuels, Inc., 19 DOE ¶ 85,575 (1989 *aff'd, No. CA3–89–2983G, slip op. (N.D. Tex. Oct. 3, 1991), appeal docketed,* No. 5–133 (Temp. Emer. Ct. App.) (Marathon/RFI). These standards will require an allocation claimant to demonstrate that it purchased motor gasoline from RFI during the period November 1, 1977 to October 31, 1978 and the likelihood that Oasis failed to furnish gasoline that it was obliged to supply to the claimant from August 3, 1979 through January 27, 1981. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Oasis may have had to the alleged allocation violation. See Marathon/RFI. In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of gasoline that it received from suppliers other than Oasis. Finally, since the Oasis settlement agreement reflects a negotiated compromise of the issues involved in the enforcement proceedings against Oasis and the settlement agreement amount is less than Oasis' potential liability in those proceedings, we may prorate refunds as discussed above in section IV, part C.

*B. Refined Product Application Requirements*

To apply for a refund from the Oasis refined product pool, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, address, taxpayer identification number, an indication whether the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check; [6]

(2) The applicant's use(s) of the gasoline purchased from Oasis or RFI: e.g., retail gasoline station, petroleum jobber, petroleum refiner, consumer (end-user), cooperative, or public utility;

(3) Monthly schedules covering purchases of gasoline from RFI and any other supplier from which the applicant purchased gasoline during the period November 1, 1977 to October 31, 1978. Monthly schedules of purchases of gasoline from Oasis and any other supplier from which the applicant purchased gasoline during the period August 3, 1979 through January 27, 1981. The applicant should specify the source of this information. In calculating its purchase volumes, an applicant should use actual records from the period, if available. If these records are not available, the applicant may submit estimates of its petroleum purchases, but the estimation methodology must be reasonable and must be explained in detail;

(4) If the applicant was a direct purchaser from Oasis or RFI, it should provide its customer number. If the applicant was an indirect purchaser (e.g., it purchased gasoline from Oasis or RFI through another supplier), it should submit the name, address, and telephone number of its immediate supplier and should specify why it believes that the gasoline purchased was originally sold by Oasis or RFI;

(5) All relevant material necessary to support its claim in accordance with the requirements outlined above in section VI, part A;

(6) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(7) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Oasis refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(8) If the applicant was or is in any way affiliated with Oasis or RFI, an explanation of the nature of that affiliation;

(9) A statement as to whether the ownership of the applicant's firm changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of sale (e.g., sale of corporate stock, sale of company assets);

(10) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private section 210 action. If so, an explanation of the case and copies of relevant documents should also be provided;

(11) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that

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[5] Oasis entered into an agreement with RFI on October 24, 1978, which attempted to transfer, from RFI to Oasis, allocation entitlements to gasoline supplies from Marathon Petroleum Company and Cities Service Corporation. On March 1, 1979, updated federal petroleum allocation regulations went into effect which obligated RFI to supply certain wholesale purchasers to which RFI had sold gasoline during the updated base period, July 1, 1977 through June 30, 1978. 44 FR 11,202 (February 28, 1979). Effective May 1, 1979, the ERA issued an Interim Final Rule which updated the base period to November 1, 1977 through October 31, 1978. 44 FR 26,712 (May 4, 1979); See 44 FR 42,549 (July 19, 1979) (interim final rule issued as final rule. (RFI claimed that the updated regulations entitled it to be supplied, by Marathon and Cities, the amount of gasoline that it had purchased from the two suppliers and resold to its wholesale customers during the updated base period. Oasis disputed this, contending that the 1978 agreement transferred to it the right to supply RFI's wholesale customers, and sought an injunction from the United States District Court for the Northern District of Texas to prevent RFI or the DOE from interfering with its rights under the agreement. The court issued an injunction on August 3, 1979, ordering Oasis to supply the wholesale customers. See Lucky Stores, Inc., 14 DOE ¶ 82,505 (1986).

[6] *See infra* note 4.

anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Oasis Special Refund Proceeding, Case No. LEF–0007." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than December 31, 1992, and sent to: Oasis Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

In addition, we are adopting the following procedures relating to refund applications filed on behalf of applicants by "representatives," including refund filing services, consulting firms, accountants, and attorneys. See Texaco, Inc., 20 DOE ¶ 85.147 (1990). Each such filing service shall, contemporanously with its first filing in the Oasis proceeding, submit a statement indicating its qualifications for representing refund applicants and containing a detailed description of the solicitation practices and application procedures that it has used and plans to use.[7] This statement should contain the following information: [8]

(1) A description of the procedures used to solicit refund applications in the Oasis proceeding and copies of any solicitation materials mailed to prospective Oasis applicants;

(2) A description of how the filing service obtains authorization from its clients to act as their representative, including copies of any type of authorization form signed by refund applicants;

(3) A description of how the filing service obtains and verifies the information contained in refund applications;

(4) A description of the procedures used to forward refunds to its clients;

(5) A description of the procedures used to prevent and check for duplicate filings.

Upon receipt of this information, we may suggest alteration of a filing service's procedures if they do not conform to the procedural requirements of 10 CFR part 205 and this proceeding.

Secondly, we will require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

Thirdly, in any case where an application has been signed and dated before the issuance of this Decision and Order, we will require a certification statement, signed and dated by the applicant after the date of the issuance of this Decision and Order. This certification should state that the applicant has not filed and will not file any other Application for Refund in the Oasis proceeding and that, after having been provided a copy of this Decision and Order, it still authorizes that filing service to represent it.

Fourthly, we will require from each representative a statement certifying that it maintains a separate escrow account at a bank or other financial institution for the deposit of all refunds received on behalf of applicants, and that its normal business practice is to deposit all Subpart V refund checks in that account within two business days of receipt and to disburse refunds to applicants within 30 calendar days thereafter. Unless such certification is received by the OHA, all refund checks approved will be made payable solely to the applicant. Representatives who have not previously submitted an escrow certification form to the OHA may obtain a copy of the appropriate form by contacting: Marcia B. Carlson, Chief, Docket & Publications Division, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Finally, the OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in this Decision and Order.

*C. Distribution of Funds Remaining After First Stage*

Any refined product funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Oasis settlement agreement escrow account that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the crude oil pool, remitted to the Department of Energy by the Oasis Petroleum Corporation bankruptcy estate pursuant to the Settlement Agreement dated November 20, 1989, may now be filed.

(2) All crude oil refund applications submitted pursuant to Paragraph (1) above must be postmarked no later than June 30, 1994.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Controller's Office, Department of Energy, shall transfer 6.4% of the funds in the subaccount denominated "Oasis Petroleum Corporation" (Consent Order No. 940X00217Z) into the subaccount denominated "Crude Tracking-States," Account No. 999DOE003W.

(4) The Director of Special Accounts and Payroll shall transfer 6.4% of the funds in the subaccount denominated "Oasis Petroleum Corporation" into the subaccount denominated "Crude Tracking-Federal," Account No. 999DOE002W.

(5) The Director of Special Accounts and Payroll shall transfer 3.2% of the funds in the subaccount denominated "Oasis Petroleum Corporation" into the subaccount denominated "Crude Tracking-Claimants 4," Account No. 999DOE010Z.

(6) Applications for Refund from the refined product pool, remitted by the Oasis Petroleum Corporation bankruptcy estate pursuant to the Settlement Agreement, dated November 20, 1989, may now be filed.

(7) Applications for Refund from the refined product pool must be postmarked no later than December 31, 1992.

Dated: July 15, 1992.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 92–17413 Filed 7–22–92; 8:45 am]

BILLING CODE 6450–01–M

[7] This statement should be submitted under separate cover and reference the Oasis refund proceeding, Case No. LEF–0007.

[8] This information with regard to some filing services has already been requested and received by this Office. Therefore, any filing service that has had more than 10 Applications for Refund approved before the issuance of the Proposed Decision and Order in this proceeding (January 29, 1992) need not submit this information if it has already done so in another proceeding. Instead, such a filing service need only include a copy of the previous submission(s) responsive to items (1)–(5) and provide an update if its response to any of these questions has changed since it first submitted its information. However, in light of the importance of this information, it is prudent for all filing services to review their practices and inform the OHA of any alterations or improvements that may have been made.

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## ENVIRONMENTAL PROTECTION AGENCY

**(FRL–4157–4)**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before August 24, 1992. To obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Water**

*Title:* Amendment to ICR for NPDES/State Sludge Management Monitoring Reports (0229.08). This ICR requests a revision of a currently approved collection.

*Abstract:* ICR 0229.08 amends the baseline NPDES Discharge Monitoring Report ICR (ICR 0229.06, OMB no. 2040–0004), incorporating into it the information requirements of the State Sludge Management Program (ICR 1237.03, OMB no. 2040–0128), whose clearance is due to expire on 07/31/92.

Described in this ICR are the sewage sludge monitoring, reporting and recordkeeping requirements imposed on treatment works handling domestic sewage. These requirements are included in NPDES or sludge-only permits. Under current regulations, NPDES permittees must submit effluent monitoring reports at least once a year. Sludge-only facilities must report monitoring data at a frequency determined by the permit writer, generally at least twice a year.

The required monitoring information usually includes the location and date of the effluent sampling, the name of the individual conducting the analyses, a description of the analytical techniques used, and the results of the analyses. The treatment works must maintain their monitoring information records for five years.

The present ICR also describes supplemental monitoring and reporting requirements associated with the 40 CFR part 501 regulations, which are due to be published later this Fiscal Year. Under the part 501 rule, permitting authorities may require additional information where necessary to protect human health and the environment. The Supplemental requirements will be determined by each permit writer and will often consist of requests for more frequent reporting or monitoring for additional pollutants.

EPA and the States use the information submitted in order to monitor compliance with national standards, to determine the need for enforcement, and to set appropriate permit conditions. On a larger scale, EPA uses the information for program management, policy development and reporting to Congress.

*Burden Statement:* The average burden associated with the Discharge Monitoring Report is 17.69 hours per response. This total includes time for searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. The average annual recordkeeping burden is 1.7 hours per recordkeeper.

*Respondents:* All facilities discharging wastewater.

*Estimated No. of Respondents:* 190,146.

*Estimated Total Annual Burden on Respondents:* 16,500,955 hours.

*Frequency of Collection:* Monthly, quarterly, semiannually, annually.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: July 17, 1992.

**David Schwarz,**

*Acting Director for Regulatory Management Division.*

[FR Doc. 92–17403 Filed 7–22–92; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed; San Francisco/Naveria Interamericana Terminal Agreement., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement no.:* 224–200375–001.

*Title:* San Francisco/Naviera Interamericana Terminal Agreement.

*Parties:* San Francisco Port Commission ("Port") Naviera Interamericana Navicana S.A. ("Naviera")

*Synopsis:* The amendment reflects Naviera's transfer of its operations from the Port's North Container Terminal to the Port's South Container Terminal and makes other non-substantive changes to the Agreement's provisions.

*Agreement no.:* 202–007680–082.

*Title:* American West African Freight Conference.

*Parties:* Joint Service of Societe Navale et Commerciale Delmas-Vieljeux and America-Africa-Europe Line GMBH d/b/a Delmas AAEL, Inc., Farrell Lines, Inc., Maersk Line, Societe Ivoirienne de Transport Maritime, Sitram, Torm West Africa Line, Westwind Africa Line, Wilhelmsen Lines A/S

*Synopsis:* The proposed amendment deletes the Azores, Canary Islands and Canada from the geographic scope of the Agreement. It also makes other technical changes to various Articles of the Agreement.

Dated: July 17, 1992.

By order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92–17337 Filed 7–22–92; 8:45 am]

BILLING CODE 6730–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Office of Family Assistance; Privacy Act of 1974; Computer Matching Program

Notice of intent to initiate an automated data matching program between the Internal Revenue Service (IRS) and the Administration for Children and Families (ACF), Office of Family Assistance (OFA).

**AGENCY:** Office of Family Assistance, ACF, DHHS.

**ACTION:** Publication of notice of intent to participate in an automated data matching program with IRS to comply with the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, as amended by Public Law 101–508.

**SUMMARY:** OFA announces its intention to participate in an automated data matching program that will allow the agency to obtain unearned income data from IRS return information. This information will be used by OFA's Division of Quality Control in verifying eligibility and payment amounts under the Aid to Families with Dependent Children (AFDC) program. A major benefit of the matching program is that it will provide an independent source of information for monitoring adherence to

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AFDC income and resource requirements.

**DATES:** Comments from members of the public must be received by August 24, 1992. The effective date of the computer matching agreement between ACF and IRS will be 30 days after the date on which such agreement is transmitted to the Committee on Government Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget. The computer matching program established by the agreement will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

**ADDRESSES:** Comments should be submitted in writing to the Administration for Children and Families, Office of Family Assistance, Aerospace Building, 5th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447. Comments received may be inspected by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Sean D. Hurley, Division of Quality Control, Office of Family Assistance, Administration for Children and Families, Aerospace Building—5th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone Number: (202) 401–9296.

**SUPPLEMENTARY INFORMATION:** Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State and local government records. The amendments require Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;

(2) Provide notification to applicants and beneficiaries that their records are subject to matching;

(3) Verify match findings before reducing, suspending or terminating an individual's benefits or payments;

(4) Furnish detailed reports to Congress; and

(5) Establish a Data Integrity Board (DIB) that must approve match agreements.

This notice is being published to ensure that the public is aware that OFA intends to participate in an automated data matching program with IRS, and that OFA has formally requested IRS to participate in such a program, that will make unearned income data from IRS return information available to OFA for verifying eligibility for AFDC through the Quality Control (QC) system of the AFDC program.

The AFDC–QC program is designed to monitor and improve the management of the AFDC program administered by State agencies. A primary objective of the system is to measure, identify, and reduce the level of misspent AFDC funds as a result of erroneous eligibility and payment determinations. Information from the data matching program will be used in verifying adherence to the AFDC program income and resource limits.

The authority for collecting information for use in the Federal AFDC–QC review process is sections 402(a)(6) and 408 of the Social Security Act. (See section 8004 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239).

Proposed OFA participation in the data matching program is in accordance with: the Computer Matching and Privacy Protection Act of 1988 (the Computer Matching Act), Public Law 100–503, as amended by Public Law 101–508; OMB guidelines published in the **Federal Register** on June 19, 1989 at 54 FR 25818; and, section 6103(1)(7) of the Internal Revenue Code (IRC) of 1986, providing that the IRS is required, upon written request, to disclose current information from returns with respect to unearned income to any Federal, State, or local agency administering certain federally approved programs that provide, among other resources, AFDC benefits.

Pursuant to the law and OMB guidance, IRS published a notice in the **Federal Register** on July 5, 1989, at 54 FR 28149, announcing its intention to conduct a match with a number of Federal and State agencies, including the Federal agency administering the AFDC program (ACF).

The matching program will provide OFA a third party source of information for monitoring adherence to AFDC income and resource requirements. A data match with IRS return records can expose income and resources more difficult and costly to discover through other means. Federal OC will also be able to evaluate and confirm cases reported by the State as having "no IRS data available."

OFA will again publish a notice in the **Federal Register** when all procedural requirements, including the approval of the agreement by the HHS Data Integrity Board, have been fulfilled, to announce the implementation of the agreement and the effective and inclusive dates of the matching program. The notice will also respond to comments received from the public.

Dated: July 13, 1992.

**Jason Turner,**

*Director, Office of Family Assistance.*

[FR Doc. 92–17353 Filed 7–22–92; 8:45 am]

BILLING CODE 4130–01

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## Food and Drug Administration

**[Docket No. 92D–0268]**

## Draft Nutrition Labeling Manual: A Guide for Developing and Using Data Bases; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft manual entitled "Nutrition Labeling Manual: A Guide for Developing and Using Data Bases" (Ref. 1). The draft manual is intended to aid companies and trade organizations in developing and using a data base for nutrition labeling that would meet the regulations proposed as a result of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments).

**DATES:** Written comments by September 8, 1992.

**ADDRESSES:** Submit written requests for single copies of the draft manual "Nutrition Labeling Manual: A Guide for Developing and Using Data Bases" to the Office of Nutrition and Food Science (HFF–266), Food and Drug Administration, Rm. 10–40, 200 C St. SW., Washington, DC 20204. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft manual to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. "Nutrition Labeling Manual: A Guide for Developing and Using Data Bases" and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** James T. Tanner, Center for Food Safety and Applied Nutrition (HFF–266), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5364.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of August 2, 1973 (38 FR 20702), FDA promulgated regulations that required nutrition labeling in certain circumstances (21 CFR 101.9(a)). The agency took this action largely in response to recommendations of the 1969 White House Conference on Food, Nutrition, and Health.

In the **Federal Register** of July 19, 1990 (55 FR 29487), FDA published a proposed rule entitled "Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision" to amend its food labeling regulations to require nutrition labeling on most food products that are meaningful sources of nutrients. On November 8, 1990, the President signed into law the 1990 amendments (Pub. L. 101-535), which among other changes, amended the Federal Food, Drug, and Cosmetic Act to require nutrition labeling on most foods. Subsequently, FDA acted to modify its proposal of July 19, 1990, to reflect the requirements of the 1990 amendments by publishing a supplementary nutrition labeling proposal on November 27, 1991 (56 FR 60366).

This draft manual is intended to provide generic instructions on how to develop and use a data base in preparing nutrition labeling for a food product. FDA welcomes comments on how to make this draft manual more useful and beneficial to persons who wish to use data bases. The agency intends to revise and update this manual as newer or more extensive information is obtained.

## II. Need for a Manual

Shortly after FDA adopted its nutrition labeling regulations in 1973, the agency recognized that some form of guidance was necessary to aid the food industry in developing label values that would comply with the new regulations. To meet this need, FDA prepared a manual entitled "Compliance Procedures for Nutrition Labeling" (Ref. 2) and made it available upon request.

The agency has nearly 20 years of experience assisting industry in the development of nutrition labeling information. This experience, together with the expansion of both mandatory and voluntary nutrition labeling of foods, led FDA to believe that an updated manual was needed. The guidance in the draft manual that FDA has prepared draws on the agency's experience in providing assistance in the development of valid analytical nutrient content values for product labeling.

The purpose of the draft manual is to assist the food industry in developing valid nutrition labeling for food products. A number of approaches may yield valid labels, depending upon one's definition of the term "valid." For the purpose of this draft manual, "valid" means that values in the nutrition labeling accurately portray the nutrient content based on analyses of the food within the limits prescribed by regulation.

## III. Use of Data Bases

The 1973 regulations required nutrition labeling only for certain foods, those with added nutrients or for which a nutrition claim was made in either labeling or advertising. Some foods, such as fresh produce, were specifically exempted. FDA encouraged manufacturers, however, to voluntarily provide nutrition labeling on a wider variety of food products, including the exempt foods.

Labels of over 60 percent (on a dollar volume basis) of FDA-regulated foods contained nutrition information by 1989. Many foods regulated by the U.S. Department of Agriculture (USDA) also bore nutrition information in compliance with that agency's labeling policies. However, while manufacturers expressed interest in providing more nutrition information, they often cited labeling costs as a hindrance. One cost that concerned manufacturers was the cost of sampling and analyzing foods to provide an accurate analytical value for each nutrient. This cost was of special concern to small manufacturers and manufacturers of seasonal products or products with low sales volume. Growers and distributors of fresh produce also shared this concern.

Industry-wide data bases were suggested as a possible means of reducing the cost of developing nutrition labeling for individual companies. FDA, USDA, and the Federal Trade Commission (FTC) encouraged this concept in a notice published in the **Federal Register** of December 21, 1979 (44 FR 75990), describing the agencies' policies and intentions with respect to numerous food labeling issues. In that notice, FDA, while not agreeing to approve data bases, stated that it would work with industry to resolve any compliance problems that might arise for food labeled on the basis of a data base that the agency had accepted.

FDA set out its general policy on the use of data bases most recently in the final rule on the voluntary nutrition labeling of raw produce and fish (56 FR 60880 at 60884, November 27, 1991). In that document, the agency reiterated statements that it had made in the proposal in that proceeding (56 FR 30468 at 30474, July 2, 1991), and in the notice that it issued with USDA and FTC in 1979 (44 FR 75990 at 76003).

## IV. Data Base Reliability and Selection

Expansion of mandatory nutrition labeling to nearly all foods regulated by FDA has heightened interest in the use of industry-wide data bases for some food products. Manufacturers of food products not currently labeled have expressed interest in using data available from other sources, for example, the open scientific literature, as the basis for nutrition labeling of their products.

A concern that FDA has had with the use of such sources, as well as with the use of existing data bases, is their reliability for compliance with nutrition labeling regulations. Nutrient data may be valid for some purposes and not for others. Data that were developed largely for determining average daily intakes, for example, generally serve that purpose well. However, the data usually have not been adequate to determine natural variability or for the development of a labeling value that is in compliance with the regulations.

Moreover, the data have been generated by different investigators using a variety of analytical methods. Some of the older methods are less reliable than current methods. Reference standards against which the accuracy of experimental analytical values can be measured have generally not been available.

The choice of a data source is the prerogative of the firm or organization that provides nutrition labeling information. The firm or organization needs to be judicious in this selection, however, to ensure that the product labeling is in compliance. FDA anticipates that the manual that it is developing will be of assistance in identifying data that are of a quality to provide an adequate basis for nutrition labeling.

## V. Summary

FDA is making this draft manual available for public comment before issuing a final manual. If following the receipt of comments, the agency concludes that the draft manual, as revised, presents acceptable criteria for use in developing nutrition labeling, FDA will finalize the manual and will announce its availability in the **Federal Register**.

The manual will be useful to manufacturers in developing nutrition labeling. A person may follow the manual or may choose to use alternate

procedures even though they are not provided for in the manual. If a person chooses to use alternate procedures, that person may wish to discuss the matter further with the agency to prevent expenditure of money and effort on activities that may later be determined to be unacceptable by FDA. This manual does not bind any person or the agency, and it does not create or confer any rights, privileges, or benefits for or on any person.

Interested persons may, on or before September 8, 1992, submit to the Dockets Management Branch (address above) written comments on the draft on the draft manual. FDA will consider these comments in determining whether further amendments to, or revisions of, the manual are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy.

**VI. References**

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Division of Mathematics, Center for Food Safety and Applied Nutrition, Food and Drug Administration, "FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases," Food and Drug Administration, Washington, DC, 1992.

2. Division of Mathematics, Center for Food Safety and Applied Nutrition, Food and Drug Administration, "Compliance Procedures for Nutrition Labeling," Food and Drug Administration, Washington, DC, 1973.

Dated: July 17, 1992.

**William K. Hubbard,**

*Acting Deputy Commissioner for Policy.*

[FR Doc. 92-17361 Filed 7-20-92; 3:54 pm]

BILLING CODE 4160-01-F

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**Health Care Financing Administration**

**Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance**

**AGENCY:** Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of request:* Reinstatement;
*Title of information collection:* Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy;
*Form number:* HCFA-484;
*Use:* Medicare claims for home oxygen therapy must be supported by the attending physician's statement including the diagnosis, prescription details, and the results of testing to establish the extent of hypoxemia. Form HCFA-484 obtains all pertinent information and promotes national consistency in coverage determinations;
*Frequency:* Annually;
*Respondents:* Individuals/households, businesses/other for profit, and small businesses/organizations;
*Estimated number of responses:* 660,000;
*Average hours per response:* .25;
*Total estimated burden hours:* 165,000.

2. *Type of request:* Revision;
*Title of information collection:* Laboratory Personnel Report;
*Form number:* HCFA-209;
*Use:* This form is used to determine laboratory compliance with the personnel requirements for laboratory certification and recertification under the Clinical Laboratory Improvement Amendments (CLIA);
*Frequency:* Biennially;
*Respondents:* State/local governments, businesses/other for profit, Federal agencies/employees, non-profit institutions, and small businesses/organizations;
*Estimated number of responses:* 100,000;
*Average hours per response:* .5;
*Total estimated burden hours:* 50,000.

3. *Type of request:* Revision;
*Title of information collection:* Statement of Deficiencies and Plan of Correction;
*Form number:* HCFA-2567;
*Use:* This form provides information regarding deficiencies noted during periodic facility and laboratory certification surveys. Information from this form is used to make decisions concerning certification and recertification of health care facilities participating in the Medicare/Medicaid programs and of laboratories regulated by CLIA;
*Frequency:* Annually;
*Respondents:* State/local governments, businesses/other for profit, Federal agencies/employees, non-profit institutions, and small businesses/organizations;
*Estimated number of responses:* 200,000;
*Average hours per response:* 2;
*Total estimated burden hours:* 400,000.

4. *Type of request:* New;
*Title of information collection:* Certification Recommendation—CLIA Laboratory;
*Form Number: HCFA-197;*
*Use:* This form provides information that is used to make decisions concerning CLIA certification, recertification, and limitations of laboratory services;
*Frequency:* Biennially;
*Respondents:* State/local governments, businesses/other for profit, Federal agencies/employees, non-profit institutions, and small businesses/organizations;
*Estimated number of responses:* 100,000;
*Average hours per response:* .25;
*Total estimated burden hours:* 25,000.

5. *Type of request:* Revision;
*Title of information collection:* Post-Certification Revisit Report;
*Form number:* HCFA-2567b;
*Use:* This form provides a uniform format depicting action accomplished. It is used as a follow-up to detected deficiencies reported on Form HCFA-2567 and is used to make decisions concerning certification of health care facilities participating in Medicare/Medicaid programs and laboratories participating in CLIA;
*Frequency:* Biennially;
*Respondents:* Individuals/households, businesses/other for profit, and small businesses/organizations;
*Estimated number of responses:* 100,000;
*Average hours per response:* .17;
*Total estimated burden hours:* 17,000.

6. *Type of request:* Revision;
*Title of information collection:* Blood Bank Inspection Checklist and Report;
*Form number:* HCFA-282;
*Use:* This form is used by the State Agency to record data collected as a part of the survey and certification process to determine compliance with the requirements for blood bank services under CLIA;
*Frequency:* Biennially;
*Respondents:* State/local governments;
*Estimated number of responses:* 2,500;
*Average hours per response:* .5;
*Total estimated burden hours:* 1,250.

7. *Type of request:* Revision;
*Title of information collection:* Survey Report Form (CLIA);
*Form number:* HCFA-1557;
*Use:* This form is used by the State Agency to record data collected in order to determine compliance with CLIA. This information is needed for laboratory certification and recertification;
*Frequency:* Biennially;
*Respondents:* State/local governments;
*Estimated number of responses:* 100,000;

*Average hours per response:* .54;
*Total estimated burden hours:* 54,000.
*Additional information or comments:* Call the Reports Clearance Office on 410–966–2093 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: July 15, 1992.

**William Toby, Jr.,**

*Acting Administrator, Health Care Financing Administration.*

[FR Doc. 92–17332 Filed 7–22–92; 8:45 am]
BILLING CODE 4120–03–M

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## Health Resources and Services Administration

### Program Announcement for a Cooperative Agreement to a Professional Trade Association Representing Health Maintenance Organizations

The Bureau of Health Professions (BHPr) of the Health Resources and Services Administration (HRSA) announces acceptance of applications for funding of a Cooperative Agreement for fiscal year 1992 to a recognized professional trade association representing health maintenance organizations (HMOs) for the purpose of supporting a model minority education program. This activity will be supported under the authority of title III, section 301 of the Public Health Service Act (the Act).

Approximately $100,000 is available to fund one Cooperative Agreement in fiscal year 1992. The Cooperative Agreement will be awarded on a competitive basis for a project period of one year.

### Background

The Health Resources and Services Administration (HRSA) and the Office of the Assistant Secretary for Health (OASH), Office of Minority Health (OMH) in the Department of Health and Human Services (the Department) have become aware of the low numbers of minority health administrators, especially African American Administrators, in health maintenance organizations (HMOs) in the United States. The few minority graduates of health services administration programs in schools of public health and of health administration programs outside schools of public health, usually schools of business/management, either find positions in other areas of the health care system or have not acquired the necessary knowledge, skills, and attitudes to accept an entry level position in an HMO. In response to this concern, the Department is proposing to develop and pilot test a model education program for minority, especially African American, entry level health administrators in HMOs. This project could serve as a demonstration of a practice oriented model of educating minority HMO health administrators which would involve the HMO management community in the education process and serve as an incentive to the academic community to become more practice oriented and increase the number of academic HMO management education tracks.

### Purpose

The primary objective of this project is to develop a model practice-oriented education track, focusing upon the need for more and better educated entry-level or mid-level minority health administration graduates entering HMO management. A secondary objective would be to establish and strengthen a practice oriented linkage between HMO management practice and the health administration academic community.

To achieve this objective, the recipient is to plan and develop a Health Management Training Institute for Minorities in Health Maintenance Organizations, "the training program," in the Washington, DC metropolitan area. The Washington, DC area is specified because of the substantive involvement of Federal officials in developing the training program, proximity to Federal expertise, and scarce Federal resources for travel. The training program should initiate activities such as:

1. Establishment of an Advisory Board for the development and pilot testing of the training program, including HMO managers and minority HMO managers.
2. Formal analysis of the knowledge, skills and abilities/attitudes required of minority health managers working in HMOs.
3. Analysis of the pedagogical methods to be used to accomplish the previously developed educational objectives, e.g., didactic lectures, role playing, on-the-job training with an experienced mentor, etc.
4. Establishment of HMO training sites for experiential learning rotations in the Washington DC area.
5. Establishment of advisory, consultative or, if feasible, working relationships with accredited health administration programs in Washington DC, e.g., George Washington University and Howard University.
6. Recruitment of at least 12 Fellows for the initial implementation of the previously developed educational objectives and curriculum of the training program.
7. Development of relationships with HMOs willing to hire Fellows upon completion of the training.
8. During the development and implementation period of the training program, development of private sector support for continuation of the model training program.
9. Evaluation of the training program, with the development of (1) appropriate recommendations concerning continued iterations of the training program and (2) recommendations to academic health administration programs concerning practice oriented HMO management.

### Federal Involvement

The Cooperative Agreement mechanism is being used for this project to allow for substantial Federal programmatic involvement in the development of the details of the Cooperative Agreement.

Substantial Federal programmatic involvement will occur through Federal membership on the Advisory Board representing the Health Resources and Services Administration, including the Bureau of Health Professions, and the Office of Minority Health. The involvement primarily would be in the following areas:

- Participation in the identification of emerging health management practice issues in HMOs;
- Participation in the identification of special needs of minority populations using HMOs, and how this might be reflected in the education of minority health managers;
- Participation in the identification of appropriate consultation for conduct of the proposed project;
- Assistance in defining the educational objectives of the model training program;
- Assistance in defining the educational methods to most appropriately convey the knowledge, skills, and attitudes contained in the educational objectives;
- Assistance in ensuring appropriate linkages with academic institutions and appropriate professional associations in the Washington, DC area; and
- Participation in the review and selection of contracts and agreements developed in implementing the project.

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**Eligibility**

Entities eligible to apply for funding under this Cooperative Agreement must:

1. Be a recognized professional association representing health maintenance organizations (HMOs), and
2. Be located in the Washington, DC metropolitan area.

**National Health Objectives for the Year 2000**

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Health People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

**Education and Service Linkage**

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

**Review Criteria**

The following criteria are proposed for review of applications for this program:

- The degree to which the proposal contains clearly stated, realistic, and achievable objectives;
- The extent to which the proposal includes an integrated methodology compatible with the scope of project objectives, including collaborative agreements with relevant institutions and professional associations;
- The administrative and management capability of the applicant to carry out the Cooperative Agreement; and
- The extent to which budget justifications are complete, appropriate, and cost-effective.

These review criteria are based on criteria established for the Bureau of Health Professions grant programs in fiscal year 1992.

Applications received will be reviewed by an *ad hoc* review panel using the criteria above for review guidance.

**Application Requests**

Eligible entities interested in receiving materials regarding this program should notify HRSA. Materials will be sent only to those entities making a request.

Requests for proposal instructions and other questions should be directed to: Mr. John R. Westcott, Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–6880.

Completed applications should be forwarded to the Grants Management Officer at the above address.

If additional programmatic information is needed related to health administration issues, please contact: Ronald B. Merrill, M.H.A., Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, HRSA, Parklawn Building, room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–6853, FAX: (301) 443–1164.

If additional programmatic information is needed related to minority issues, please contact: June Horner, Office of Minority Health/HRSA, PHS, Parklawn Building, room 14–48, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–2964.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application and General Instructions have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060. The deadline date for receipt of applications is August 24, 1992. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Sent* on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: June 16, 1992.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 92–17365 Filed 7–22–92; 8:45 am]

BILLING CODE 4160–15–M

## Title II—HIV Care Grant Program

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of grants made to States and territories.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces that fiscal year 1992 funds have been awarded to States and Territories (hereinafter States) for the HIV Care Grant Program. Although these funds have already been awarded to the States, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Care Grant Program and the statutory requirements governing the use of the funds.

Funds will be used by the States to improve the quality, availability and organization of health care and support services for individuals and families with HIV infection. The HIV Care Grant Program was authorized by title II of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Public Law 101–381, which amended title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 102–170.

**SUPPLEMENTARY INFORMATION:**

**Availability of Funds**

A total of $95,151,000 was made available for the title II HIV Care Grant Program. These funds have been allotted to the States according to a formula based on the number of AIDS cases reported to the Centers for Disease Control for the 24 months ending September 30, 1991, and a per capita income factor. Below is the distribution of funds by State.

| State | Amount |
|---|---|
| Alabama | 636,291 |
| Alaska | 100,000 |
| Arizona | 687,616 |
| Arkansas | 440,564 |
| California | 15,559,171 |
| Colorado | 832,606 |
| Connecticut | 915,334 |
| D.C. | 1,385,438 |
| Delaware | 173,168 |
| Florida | 9,856,630 |
| Georgia | 2,885,813 |
| Hawaii | 366,974 |
| Idaho | 100,000 |
| Illinois | 2,829,336 |
| Indiana | 728,781 |
| Iowa | 164,436 |
| Kansas | 256,907 |
| Kentucky | 406,244 |
| Louisiana | 1,672,504 |
| Maine | 136,527 |
| Maryland | 2,027,034 |
| Massachusetts | 1,793,707 |

| State | Amount |
|---|---|
| Michigan | 1,213,083 |
| Minnesota | 417,361 |
| Mississippi | 590,409 |
| Missouri | 1,330,744 |
| Montana | 100,000 |
| Nebraska | 117,188 |
| Nevada | 443,483 |
| New Hampshire | 104,655 |
| New Jersey | 4,711,438 |
| New Mexico | 254,732 |
| New York | 16,909,338 |
| North Carolina | 1,253,338 |
| North Dakota | 100,000 |
| Ohio | 1,373,305 |
| Oklahoma | 490,547 |
| Oregon | 658,551 |
| Pennsylvania | 2,536,697 |
| Rhode Island | 194,400 |
| South Carolina | 795,067 |
| South Dakota | 100,000 |
| Tennessee | 737,498 |
| Texas | 7,329,198 |
| Utah | 234,917 |
| Vermont | 100,000 |
| Virginia | 1,351,047 |
| W. Virginia | 153,234 |
| Washington | 1,322,995 |
| Wisconsin | 459,433 |
| Wyoming | 100,000 |
| Puerto Rico | 5,681,717 |
| Guam | 4,323 |
| Virgin Islands | 27,019 |

**Eligibility Criteria**

In order to receive funding under title II, each State was required to develop:

- A detailed description of the HIV-related services provided in the State to individuals and families with HIV disease during the year preceding the year for which the grant was requested, and the number of individuals and families receiving such services; and
- A comprehensive plan for the organization and delivery of HIV health care and support services to be funded with the title II grant, including a description of the purposes for which the State intends to use such assistance.

Each State was also required to submit an application containing such agreements, assurances, and information as the Secretary determined to be necessary to carry out this program, including an assurance that:

- The public health agency that is administering the grant for the State will conduct public hearings concerning the proposed use and distribution of the title II grant assistance;
- The State will, to the maximum extent practicable, ensure that HIV-related health care and support services delivered with title II assistance will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual; ensure that such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and provide outreach to inform such individuals of the services available; and, in the case of a State that intends to use grant funds for the continuum of health care coverage, submit a plan to the Secretary that demonstrates that the State has established a program that assures that such amounts will be targeted to individuals who would not otherwise be able to afford health care coverage, that income, assets, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance; and that information concerning such criteria will be made available to the public.
- The State will provide for periodic independent peer review to assess the quality and appropriateness of health and support services provided by entities that receive Title II funds from the State;
- The State will permit and cooperate with any Federal investigations undertaken regarding programs conducted under title II;
- The State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State applied to receive a grant under title II; and
- The State will ensure that grant funds are not utilized to make payments for any items or services to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis.

**General Use of Grant Funds**

States may use the HIV Care Grant dollars to:

- Establish and operate HIV care consortia within areas most affected by HIV. The statute defines a consortium as an association of one or more public, and one or more nonprofit private, health care and support service providers and community-based organizations operating within areas determined by the State to be most affected by HIV disease. Priority funding must be given to consortia that are receiving assistance from HRSA for adult and pediatric HIV-related care demonstration projects, and then to any other existing HIV care consortia.
- Provide home- and community-based care services for individuals with HIV disease. Funding priorities must be given to entities that provide assurances to the State that they will participate in HIV care consortia if such consortia exist within the State, and will utilize the funds for the provision of home- and community-based services to low-income individuals with HIV disease.
- Provide assistance to assure the continuity of health insurance coverage for low-income (as defined by the State) individuals with HIV disease. The State must establish a program that assures that (1) funds will be targeted to individuals who would not otherwise be able to afford health insurance coverage, and (2) income, asset, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance, and information concerning such criteria shall be made available to the public.
- Provide treatments that have been determined to prolong life or prevent serious deterioration of health for low-income individuals with HIV disease.

A State must use at least 15 percent of its grant funds to provide health and support services to infants, children, women and families with HIV disease.

At least 75 percent of the fiscal year 1992 title II grant awarded to a State must be obligated to specific programs and projects and made available for expenditure within 120 days of the receipt of the grant by the State.

**FOR FURTHER INFORMATION CONTACT:** Individuals interested in the HIV Care Grant Program should contact the appropriate office in their State, and may obtain information on their State contact by calling Dr. Eric Goosby, Director, Division of HIV Services, at (301) 443–6745.

**Executive Order 12372**

It has been determined that the title II HIV Care Grant Program is not subject to the provisions of Executive Order 12372 concerning inter-governmental review of Federal programs.

The Catalog of Federal Domestic Assistance Number is 93.917.

Dated: July 16, 1992.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 92–17324 Filed 7–22–92; 8:45 am]

BILLING CODE 4160–15–M

## Title I—HIV Emergency Relief Grant Program

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of grants made to eligible metropolitan areas.

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**SUMMARY:** The Health Resources and Services Administration (HRSA) announces that fiscal year 1992 funds have been awarded to 18 eligible metropolitan areas (EMAs) that have been the most severely affected by the HIV epidemic. Although these funds have already been awarded to the EMAs, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Emergency Relief Grant Program and the statutory requirements governing the use of the funds.

The purposes of these funds are to deliver or enhance HIV-related (1) outpatient and ambulatory health and support services including case management and comprehensive treatment services, for individuals and families with HIV disease; and (2) inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities. The HIV Emergency Relief Grant Program was authorized by title I of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, which amended title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 102–170.

**SUPPLEMENTARY INFORMATION:**

### Availability of Funds

A total of $119,426,000 was made available for the Title I HIV Emergency Relief Grant Program. Of the amount available, 50 percent was allocated to the 18 EMAs according to a formula based on the number and incidence of AIDS cases reported to the Centers for Disease Control (CDC) as of March 31, 1991. The other 50 percent was awarded competitively to the EMAs as supplemental grants. Below is a distribution of grants made to the 18 EMf

| EMA | Total awards |
|---|---|
| Atlanta, GA | 3,111,666 |
| Baltimore, MD | 1,898,561 |
| Boston, MA | 2,823,768 |
| Chicago, IL | 4,327,603 |
| Dallas, TX | 3,119,688 |
| District of Columbia | 5,127,184 |
| Ft. Lauderdale, FL | 3,065,827 |
| Houston, TX | 5,803,011 |
| Hudson Co., NJ | 2,181,853 |
| Los Angeles, CA | 9,788,087 |
| Miami, FL | 5,923,065 |
| Newark, NJ | 5,363,563 |
| New York, NY | 35,894,688 |
| Oakland, CA | 2,123,466 |
| Philadelphia, PA | 3,571,035 |
| San Diego, CA | 2,778,724 |
| San Francisco, CA | 18,944,229 |
| San Juan, PR | 3,579,982 |

### Eligible Grantees

Metropolitan areas which were eligible for grant awards under title I were those areas for which, as of March 31, 1991, there had been reported to and confirmed by the CDC a cumulative total of more than 2,000 cases of AIDS; or, for which the per capita incidence of cumulative cases of AIDS was not less than 0.0025, as computed on the basis of the most recently available data for the population in the area.

Grants were awarded to the chief elected official (CEO) of the city or urban county that administers the public health agency providing outpatient and ambulatory services to the greatest number of individuals with AIDS.

To be eligible for assistance under title I, the CEO was required to establish or designate an HIV health services planning council to: (1) Establish priorities for the allocation of funds within the eligible area; (2) develop a comprehensive plan for the organization and delivery of health services described in the statute that is compatible with any State or local plan regarding the provision of health services to individuals with HIV disease; and (3) assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the eligible area. The planning council must include representatives of: Health care providers; community-based and AIDS service organizations; social services providers; mental health services providers; local public health agencies; hospital planning agencies or health care planning agencies; affected communities, including individuals with HIV disease; non-elected community leaders; State government; grantees receiving categorical grants for early intervention services under title III of the CARE Act; and the lead agency of any HRSA adult and pediatric HIV-related care demonstration project operating in the area to be served. The allocation of funds and services within the EMA must be made in accordance with the priorities established by the planning council.

To be eligible to receive a grant under Title I, the EMAs were required to submit an application containing such information as the Secretary required, including assurances adequate to ensure:

- That funds received would be utilized to supplement not supplant State funds provided for HIV-related services;
- That the political subdivisions within the EMA would maintain HIV-related expenditures at a level equal to that expended for the 1-year period preceding the first fiscal year for which the grant was received. Funds received under title I may not be used in maintaining the required level of expenditures;
- That the EMA has an HIV health services planning council and has entered into intergovernmental agreements with the political subdivisions and has developed or will develop a comprehensive plan for the organization and delivery of health services, in accordance with the legislation;
- That entities within the EMA that received title I funds will participate in an established HIV community-based continuum of care if such continuum exists within the EMA;
- That title I funds will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis; and
- To the maximum extent practicable, that HIV health care and support services provided with title I assistance will be provided without regard to the ability of the individual to pay for such services, and without regard to the current or past health condition of the individual. Such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and a program of outreach will be provided to inform such individuals of such services.

### General Use of Grant Funds

EMAs must use the title I HIV Emergency Relief grants to provide financial assistance to public or nonprofit entities, for the purpose of delivering or enhancing—

- HIV-related outpatient and ambulatory health and support services, including case management and comprehensive treatment services, for individuals and families with HIV disease; and
- HIV-related inpatient case management services that prevent unnecessary hospitalization or that

expedite discharge, as medically appropriate, from inpatient facilities.

Services supported by the title I grant funds must be accessible to low-income individuals and families, including women and children with HIV infection, minorities, the homeless, and persons affected by chemical dependency.

**FOR FURTHER INFORMATION CONTACT:** Individuals interested in the title I HIV Emergency Relief Grant Program should contact the Office of the CEO in their locality, and may obtain information on their CEO contact by calling Dr. Eric Goosby, Director, Division of HIV Services, at (301) 443–6745.

**Executive Order 12372**

Grants awarded for the title I HIV Emergency Relief Grant Program are subject to the provisions of Executive Order 12372, as implemented under 45 CFR part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages made available by HRSA to the EMAs contained a listing of States which have chosen to set up such a review system and provided a point of contact in the States for the review.

The catalog of Federal Domestic Assistance Numbers are: Formula Grants—93.915; Supplemental Grants—93.914.

Dated: July 16, 1992.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 92–17323 Filed 7–22–92; 8:45 am]

BILLING CODE 4160–15–M

## Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending September 30, 1992

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

Section 60.13(a)(4) of the program's implementing regulations (42 CFR part 60, previously 45 CFR part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending September 30, 1992, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 7⅝ percent. Using the regulatory formula (45 CFR 126.13)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of the 91-day U.S. Treasury bills for the preceding calendar quarter (3.78 percent), and rounding the result 7.278 percent) upward to the nearest ⅛ percent (7⅜ percent).

However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending September 30, 1992, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 9⅛ percent for the quarter ending December 31, 1991; 8¼ percent for the quarter ending March 31, 1992; and 7⅝ percent for the quarter ending June 30, 1992.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 7⅜ percent. Using the regulatory formula (42 CFR 60.13(a)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (3.78 percent); adding 3.50 percent (7.28 percent) and rounding that figure to the next higher one-eighth of one percent (7⅜ percent).

3. For fixed rate loans executed during the period of July 1, 1992 through September 30, 1992, and for variable rate loans executed on or after October 22, 1985, the interest rate is 6⅞ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (3.78 percent); adding 3.0 percent (6.78 percent) and rounding that figure to the next higher one-eighth of one percent (6⅞ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: July 16, 1992.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 92–17322 Filed 7–22–92; 8:45 am]

BILLING CODE 4160–15–M

## Public Health Service

## Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 57 FR 9136, March 16, 1992) is being amended to reflect the current functions assigned to the Health Resources and Services Administration (HB).

Under Chapter HB, amend the functional statements for the following sections:

*Section HB–00, Mission*

The Health Resources and Services Administration (HRSA) provides leadership and direction to programs and activities designed to improve the health services for all people of the United States and to assist in the development of health care systems which are adequately financed, comprehensive, interrelated and responsive to the needs of individuals and families in all levels of society. Specifically: (1) Provides leadership and support efforts designed to integrate health services delivery programs with public and private health financing programs; (2) administers the health services categorical grants and formula grant-supported programs; (3) provides or arranges for personal health services, including both hospital and out-patient care to designated beneficiaries; (4) provides technical assistance for modernizing or replacing health care facilities; (5) provides leadership to improve the education, training, distribution, supply, use, and quality of the Nation's health personnel; and (6) provides advice and support to the Assistant Secretary for Health in the formulation of health policies.

*Section HB–10, Organization*

HRSA is directed by an Administrator who is responsible to the Assistant Secretary for Health. It consists of the following major components:

(1) Office of the Administrator (HBA):

(2) Bureau of Health Resources Development (HBB);
(3) Bureau of Primary Health Care (HBC);
(4) Maternal and Child Health Bureau (HBM); and
(5) Bureau of Health Professions (HBP).

*Section HB-20, Functions*

*Immediate Office of the Administrator (HBA1)*

(1) Provides leadership and direction to the programs and activities of the Health Resources and Services Administration;
(2) Advises the Assistant Secretary for Health on policy matters concerning the Agency's programs and activities; and
(3) Coordinates the Agency's international health activities.

*Office of Equal Opportunity and Civil Rights (HBA12)*

The Office of Equal Opportunity and Civil Rights directs, coordinates, develops, and administers the Health Resources and Services Administration (HRSA) equal opportunity and civil rights programs. Specifically: (1) Provides advice, counsel, and recommendations to the Administrator and other HRSA officials on equal opportunity, civil rights, and related concerns and responsibilities, and represents HRSA in dealing with Federal and non-Federal agencies and organizations on a wide range of equal opportunity, civil rights, and related functions; (2) administers affirmative action programs designed to ensure equality of opportunity in employment; (3) applies Department of Health and Human Services' policies for delivery of HRSA services for groups and individuals, including minorities, women, the handicapped, and the aged; (4) manages the system of processing, adjudicating, and resolving complaints of employment discrimination, including preparation of final Agency decisions; (5) manges the complaints system for Commissioned Corps personnel under provisions of Public Health Service Personnel Instruction 6, which requires investigation, preparation of investigative files, and issuance of proposed dispositions; (6) develops and directs implementation of the requirements of Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and the Americans With Disabilities Act, as they apply to recipients of HRSA funds; (7) promotes the awarding of contracts under Section 8(a) of the Small Business Act, which pertains to contracts with small businesses owned by minorities and women; (8) participates in the formulation of HRSA's goals, policies, priorities, and strategies, particularly as they affect professional organizations and institutions of higher education (medical, public health, etc.) involved in or concerned with the delivery of health services to minorities; (9) performs liaison and monitoring to assess and ensure equity and non-discrimination in the application for HRSA's programs to its minority constituencies; (10) provides technical assistance and guidance on the development of education and training programs on equal opportunity and Civil Rights regulations, philosophy, principles, and practices for all HRSA employees, especially managers, supervisors, and counselors; and (11) coordinates its activities with those of the Office of Equal Employment Opportunity and the Civil Rights Staff, Office of the Assistant Secretary for Health.

*Office of Rural Health Policy (HBA13)*

Serves as a focal point within the Department and as a principal source of advice to the Secretary for coordinating nationwide efforts to strengthen and improve the delivery of health services to populations in rural areas. Specifically: (1) Collects and analyzes information regarding the special problems of rural health care providers and populations; (2) works with States, State hospital associations, private associations, foundations, and other organizations to focus attention on, and promote solutions to, problems related to the delivery of health services in rural communities; (3) provides staff support to the National Advisory Committee on Rural Health; (4) stimulates and coordinates interaction on rural health activities and programs, both within the Department (particularly with the Health Care Financing Administration) and with other Federal agencies, such as the Veterans Administration, the Department of Agriculture, the Department of Defense, and the Department of Transportation; (5) supports rural health center research across the country and keeps informed of research and demonstration projects funded by States and foundations in the field of rural health care delivery; (6) establishes and maintains a resource center for the collection and dissemination of the latest information and research findings related to the delivery of health services in rural areas; (7) coordinates responses to inquiries from congressional and private section sources related tot rural health; (8) advises the Secretary on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes in the programs established under Titles XVIII and XIX of the Social Security Act on the financial viability of small rural hospitals, the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, and access to (and the quality of) health care in rural areas; (9) oversees compliance by the Health Care Financing Administration (HCFR) with the requirement that rural hospital impact analyses are developed whenever proposed HCFA regulations might have a significant impact on a substantial number of small rural hospitals; (10) oversees compliance by HCFA with the requirement that 10 percent of its research and demonstration budget is used for rural projects; (11) supports specialized rural programs on minority health, mental health, and agricultural health and safety; (12) plans and manages a nationwide grant program which provides health outreach services in rural areas; and (13) plans and manages a program of grants to States to initiate and expand offices of rural health.

*AIDS Program Office (HBA14)*

Serves as the Agency's focal point for AIDS Programs and activities. Specifically: (1) Coordinates all AIDS-related activities within the Agency; (2) advises the Administrator on policy, clinical, and educational issues pertaining to the administration of HRSA's AIDS programs; (3) keeps the Administrator informed of any difficulties arising either within or outside of HRSA, that might adversely affect the Agency's ability to carry out its AIDS responsibilities; (4) coordinates the formulation of an overall strategy and policy for the HRSA AIDS programs; (5) working with the Office of Planning, Evaluation and Legislation, coordinates the preparation of HRSA's AIDS-related programmatic, budgetary, and legislative proposals, including the preparation of testimony and budgetary information to be presented to the Congress; (6) monitors and analyzes AIDS-related policy and legislative developments, both within and outside the Department, for their potential impact on HRSA's AIDS activities, and advises the Administrator on alternative courses of action for responding to such developments; (7) serving as the point of contact for the Agency, develops and coordinates working relationships and conducts specific joint activities among HRSA's Bureaus and with outside organizations, including other Public Health Service (PHS) and Departmental components and including the PHS Regional Offices to assure optimum

interaction on related AIDS activities and to minimize duplication and overlap; (8) reviews AIDS-related program activities to determine their consistency with established policy, delegated authority, and assigned responsibilities; (9) coordinates HRSA's comments on AIDS-related reports, position papers, legislative proposals, etc., prepared outside the Agency; (10) coordinates responses to requests for information received from other OPDIVs of the Department and from outside the Department; (11) coordinates responses to incoming correspondence that concern AIDS-related issues involving more than one HRSA Bureau; (12) represents the Agency and the Department at AIDS-related meetings, conferences, task forces, or other gatherings for the purposes of dispensing or gathering information relevant to the conduct of HRSA's AIDS programs; and (13) plans and carries out special AIDS-related assignments for the Administrator.

*Office of Minority Health (HBA15)*

Serves as the principal advisor and coordinator to the Health Resources and Services Administration (HRSA) for health program activities that address the special needs and problems of minority and disadvantaged populations. Specifically, in coordination with the Office of the Administrator and HRSA bureaus: (1) Establishes short-term and long-range objectives for HRSA health activities addressing minority and disadvantaged populations; (2) develops reporting and monitoring requirements for those objectives; (3) participates in the organization and the planning of specific activities to meet minority health needs and monitors the HRSA budget to assure an appropriate share of funds in devoted to minority health problems; (4) provides ongoing technical assistance to the Agency, Department, and other Federal agencies, other Federal, State, and local programs, and works closely with public and private sectors to assure minority health issues are addressed; (5) serves as a resource in the promotion, investigation, development, and implementation of innovative health care models culturally unique to minority populations; (6) monitors program/project reviews and their strategies to improve the availability and accessibility of health professionals to minority communities; (7) participates in conferences on minority health; (8) assures that steps are taken to improve data sources and to integrate data systems reflecting minority and disadvantaged populations; (9) monitors and facilitates research in and fosters public awareness of research in factors affecting minority health; (10) oversees communications between HRSA and higher levels of Government on all matters that involve minority health; and (11) participates in the focus of activities and objectives in assuring equity in access to resources and health careers for minority women and the disadvantaged.

*Office of Public Health Practice (HBA16)*

Serves as the Agency's focal point on efforts to strengthen the practice of public health in the Nation, as it pertains to the HRSA mission. Specifically: (1) Collects and analyzes information regarding the assessment, policy development and assurance of public health services; (2) provides Agency managers with input on programs which impact on public health practice; (3) develops and implements plans to enhance public health practice through the Agency strategic plan, the program planning, budgeting and evaluation process, and other agency and PHS methods; (4) assists the Office of the Administrator on all public health practice communications with higher levels of the Department and coordinates responses to inquires from Congressional and private sector sources on matters related to public health practice; (5) develops and coordinates grants, contracts, and agreements for public health practice activities; (6) works with State and local governments, private associations, foundations, schools of public health and preventive medicine, and other organizations to focus attention on and to promote solutions to problems which may impair the delivery of public health services, especially as they affect comprehensive primary care to disadvantage populations; (7) promotes research to improve the effectiveness, efficiency and public acceptance of public health services; (8) develops and supports specialized programs which enhance the practice of public health; and (9) collaborates public health practice issues with the other Federal agencies.

*Office of Policy Coordination (HBA3)*

Under the direction of an Associate Administrator for Policy Coordination who is a member of the Administrator's immediate staff: (1) Advises the Administrator and, upon his direction, other key Health Resources and Services Administration officials, in the identification and, when appropriate, resolution of program policy issues, initiatives, and problems; (2) performs the secretariat functions for the Administrator in his role as Chairperson of the Health Resources and Services Administration Executive Management Team; (3) plans, organizes, and directs the Executive Secretariat of the Agency, with primary responsibility for preparation and management of written communications to and from the Administrator; (4) serves as the Administrator's primary staff advisor and coordination unit regarding intergovernmental affairs and regional operations; (5) coordinates the preparation of proposed rules and regulations relating to HRSA programs, and coordinates HRSA review and comment on other Public Health Service and Department of Health and Human Services regulations that may affect HRSA programs; and (6) oversees and coordinates the committee management system of the Agency.

*Office of Operations and Management (HBA4)*

Under the direction of the Associate Administrator for Operations and Management who is a member of the Administrator's immediate staff: (1) Provides Agency-wide leadership, program direction, and coordination of all phases of management; (2) provides management expertise and staff advice and support to the Administrator in program and policy formulation and execution; (3) plans, directs, and coordinates the Agency's activities in the areas of administrative management, financial management, personnel management, debt management, manpower management, grants and contracts management, procurement, real and personal property accountability and management, and administrative services; (4) coordinates the implementation of the Freedom of Information Act for the Agency; (5) oversees the development of annual operating objectives and coordinates HRSA work planning and appraisals; and (6) directs the Equal Employment Opportunity activities for the Office of the Administrator.

*Office of Communications (HBA5)*

Under the direction of the Associate Administrator for Communications, who is a member of the Administrator's immediate staff: (1) Provides leadership and general policy and program direction for, and conducts and coordinates communications and public affairs activities of the Health Resources and Services Administration; (2) provides communications and public affairs expertise and staff advice and support to the Administrator in program and policy formulations and execution

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consistent with policy direction established by the Assistant Secretary for Public Affairs; (3) develops and implements policies related to external media relations and internal employee communications; (4) establishes and implements procedures for the development, review, processing, quality control, and dissemination of Agency communications materials; (5) serves as Communications and Public Affairs Officer for the Agency, including the establishment and maintenance of productive relationships with the communications media; (6) provides central communications services to all Agency programs; and (7) serves as focal point for coordination of Agency communications activities with those of other health agencies within the Department of Health and Human Services and with regional, State, local, voluntary, and professional organizations.

*Office of Planning, Evaluation and Legislation (HBA6).*

Under the direction of the Associate Administrator for Planning, Evaluation and Legislation, who is a member of the Administrator's immediate staff: (1) Serves as the Administrator's primary staff element and principal source of advice on program planning, program evaluation, and legislative affairs; (2) develops, in collaboration with financial management staff, the long-range program and financial plan for the Agency; (3) oversees, in coordination with the Office of the Assistant Secretary for Health, communications between HRSA and higher levels of the Department on all matters that involve long-range plans, evaluations of program performance, or legislative affairs; (4) develops long-range goals, objectives, and priorities for the Agency; (5) directs all activities within the Agency which compare the costs of the Agency's programs with their benefits, including the preparation and implementation of comprehensive program evaluation plans; (6) directs all the legislative affairs of HRSA, including the development of legislative proposals and a legislative program; (7) conducts policy analyses and develops policy positions in programmatic areas for HRSA; and (8) manages the Interagency Committee on Infant Mortality.

*Office of Information Resources Management (HBA7)*

(1) Provides leadership in the development, review and implementation of policies and procedures to promote improved information resources management capabilities and practices throughout HRSA; (2) develops and coordinates Agency-wide plans and budgets for the management of information technology and services, including centralized data processing, office automation, and telecommunications; (3) develops and recommends policies and procedures relating to information resources management and support services; (4) identifies and coordinates Agency-wide information needs and develops or coordinates with other Agency components the development of creative answers to these needs; (5) plans, manages, administers and coordinates the Agency-wide microcomputer network, including all required linkages to other networks inside and outside HRSA, including mainframe systems; (6) provides information support to the Office of the Administrator; (7) signs, develops, catalogues and manages data bases, information resources, including those data bases developed within the HRSA Bureaus, and the acquisition and use of external bases and information resources that support HRSA needs; (8) manages and coordinates state-of-the-art expertise for information science and technology; (9) provides consultation, technical advice and assistance and coordinates training in the use of ADP resources; (10) develops and coordinates the implementation of information security programs; (11) maintains liaison and coordinates information resources management with the HRSA Bureaus; (12) maintains liaison with HHS, PHS, other Federal agencies, States and professional organizations and associations concerning health information interests allied to the HRSA mission; and (13) reviews all HRSA requests for ADP resources, providing ADP clearance for all appropriately justified requests.

*Bureau of Health Resources Development (HBB)*

Administers Federal policy and programs pertaining to health care facilities, activities associated with organ donations, procurements, transplantation, trauma care, and a variety of program activities related to HIV infection and acquired immune deficiency syndrome (AIDS). This includes financial, capital, organizational, and physical matters. Specifically: (1) Provides national leadership in supporting, identifying, and interpreting national trends and issues of significance relative to the health status of persons with AIDS, and with HIV infections, including the provision of facilities and services for AIDS and AIDS-related patients, persons in need and provision of services to persons and families of low income; and administers block and discretionary grants, contracts, and funding arrangements designed to address those issues; (2) administers and coordinates AIDS-related grants programs of National significance; (3) administers grant, loan, loan guarantees and interest subsidy programs relating to the construction, modernization, conversion, and closure of health and health care organizations; (4) administers grants, cooperative agreements and contracts to support research, training, evaluation, and demonstration projects for trauma care; (5) develops long and short range program goals and objectives for health facilities, and for specific health promotional, organ transplantation, trauma care, and AIDS activities; (6) develops, conducts, and maintains a program of grants to organ procurement organizations (OPOs) and other non-profit private entities to increase the availability of kidneys, livers, hearts, lungs, and pancreases to recipients who have failure of these organs and who might die without transplantation; (7) serves as advisor to and coordinates activities with other Agency organizational elements, other Federal organizations within and outside the Department, State, and local bodies, professional and scientific organizations; (8) develops, promotes, and directs efforts to improve the management, operational effectiveness, and efficiency of health care systems, organizations, and facilities; (9) provides technical assistance to OPOs and health care delivery systems and facilities in a wide variety of specific technical and technological systems; (10) administers HRSA's regional facility engineering and construction activities; (11) designs and implements special epidemiological and evaluation studies of the impact of the Bureau health care programs and of the characteristics of the population serviced; (12) evaluates models of health care delivery systems through grants, contacts, direct activities designs, and tests; (13) plans and develops collaborative efforts in the scientific aspects of Bureau programs with other PHS agencies, Federal departments, universities, and other scientific organizations; and (14) maintains liaison and coordinates with non-Federal public and private entities as necessary for the accomplishment of Bureau missions and objectives.

*Bureau of Primary Health Care (HBC)*

Serves as a national focus for efforts to assure the availability and delivery of health care services in medically underserved areas and to special service

populations. To this end, the Bureau, through its Central and Regional staffs:

(1) Assists States through program and clinical efforts to provide health care to underserved populations; (2) administers the Community Health Centers Program; (3) provides through project grants to State, local, voluntary, public, and private entities, funds to help them meet the health needs of special populations such as migrants, the homeless, and people with AIDS, substance abuse problems, and victims of black lung disease; (4) provides leadership and direction for the Bureau of Prisons Medical Program, the National Hansen's Disease Program, and support for Health Unit #1, the Federal Employees Occupational Health Program, the Coast Guard Medical Program, CHAMPUS Program, and the Cuban and Haitian Refugee Program; (5) administers a comprehensive health program for designated PHS beneficiaries, including active duty members of the PHS Commissioned Corps and the National Oceanic and Atmospheric Administration; and (6) administers the National Health Service Corps Program which assures accessibility of health care in underserved areas.

*Maternal and Child Health Bureau (HBM)*

Provides national leadership to develop, administer, direct, coordinate, monitor and support Federal policy and programs pertaining to health and related care for the Nation's mothers and children. Identifies and interprets trends and significant issues pertaining to the health and related care for the Nation's mothers and children by supporting activities that will: (1) Assure that all mothers and children have access to the highest quality health care; (2) reduce the need for inpatient and long-term services for mothers and children; (3) reduce infant mortality and incidence of preventable diseases and handicapping conditions among children; (4) assure the provision of services for children with special health care needs (5) support and promote the education of health professionals for leadership roles in addressing the health care needs of families and children; (6) support and promote the development of new knowledge for effective maternal and child health problem solving through research; (7) assure the provision of services in areas of special concern such as, mental retardation, sudden infant death syndrome, pediatric AIDS, genetic and metabolic disorders, hemophilia, childhood injury prevention, and adolescent pregnancy; and (8) provide national leadership in policy and program development and coordination, research, training, and resource development, and in building capacity of State programs for maternal and child health program development.

To this end, the Bureau, through its Central and Regional staffs: (a) assists the States in administering a program of Block Grants with emphasis on providing leadership and vision in defining and developing comprehensive systems of care, serving as a catalyst in linking resources of other Federal, State and local (public and private) resources to the Title V program; (b) administers the Federal set-aside for special projects of regional and national significance (SPRANS), with a renewed focus on supporting activities that improve State systems of care for all mothers and children; (c) provides consultation and technical assistance to the States in strengthening the maternal and child health (MCH) management infrastructure, especially in the areas of planning and accountability; (d) facilitates and maintains effective collaborative relationships with other Federal components that have child assistance program responsibilities, especially with those programs authorized under Title XIX of the Social Security Act, and Title X of the Public Health Service Act, and activities supported by the Administration for Children and Families, the Department of Agriculture, and the Department of Education; (e) implements in concert with other Federal programs and organizations, initiatives aimed at developing and maintaining effective surveillance/data systems and informing the public and the Congress on the state of health care delivery and the health status of mothers, children, and families; and (f) administers special programs such as Healthy Start to assure their effectiveness and coordination with Federal, State, local and private activities.

*Bureau of Health Professions (HBP)*

Provides national leadership in coordinating, evaluating, and supporting the development and utilization of the Nation's health personnel. To this end, the Bureau: (1) Assesses the Nation's health personnel supply and requirements and forecasts supply and requirements for future time periods under a variety of health resources utilization strategies; (2) collects and analyzes data and disseminates information on the characteristics and capacities of the Nations health personnel production systems; (3) proposes new or modification of existing Departmental legislation, policies, and programs related to health personnel development and utilization; (4) develops, tests, and demonstrates new and improved approaches to the development and utilization of health personnel within various patterns of health care delivery and financing systems; (5) provides financial support to institutions and individuals for health professions education programs; (6) administers Federal programs for targeted health personnel development and utilization; (7) provides leadership for assuring equity in access to health services and health careers for the disadvantaged; (8) provides technical assistance, consultation, and special financial assistance to national, State, and local agencies, organizations, and institutions for the development, production, utilization, and evaluation of health personnel; (9) provides linkage between Bureau headquarters and PHS Regional Office activities related to health professions education and utilization by providing training, technical assistance, and consultation to Regional Office staff; (10) coordinates with the programs of other agencies concerned with health personnel development and health care services; (11) provides liaison and coordinates with non-Federal organizations and agencies concerned with health personnel development and utilization; (12) in coordination with the Office of the Administrator, Health Resources and Services Administration, serves as a focus for technical assistance activities in the international aspects of health personnel development, including the conduct of special international projects relevant to domestic health personnel problems; (13) administers the National Vaccine Injury Compensation Program; and (14) serves as the PHS focal point for health professions quality assurance and risk management development efforts.

*Functional Statements for Divisions*

All division functional statements remain in effect as approved prior to this clarification.

**Section HB–30, Order of Succession**

During the absence or disability of the Administrator or in the event of a vacancy in that office, the first official listed below who is available shall act as Administrator, except that during a planned period of absence, the Administrator may specify a different order of succession. The order of succession will be:

(1) Deputy Administrator;
(2) Associate Administrator for Operations and Management;

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(3) Associate Administrator for Planning, Evaluation and Legislation;
(4) Associate Administrator for Policy Coordination;
(5) Director, Bureau of Primary Health Care;
(6) Director, Bureau of Health Professions;
(7) Director, Bureau of Health Resources Development; and
(8) Director, Maternal and Child Health Bureau.

**Section HB–40, Delegations of Authority**

All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganization.

This reorganization is effective upon date of signature.

Dated: July 13, 1992.

Louis W. Sullivan,

*Secretary.*

[FR Doc. 92–17333 Filed 7–22–92; 8:45 am]

BILLING CODE 4160–15–M

## DEPARTMENT OF THE INTERIOR

### Reopening of Comment Period on Draft Recovery Plan for the Northern Spotted Owl

**AGENCY:** Department of the Interior.

**ACTION:** Notice of reopening of comment period.

**SUMMARY:** The Department of the Interior reopens the comment period for public review of a draft recovery plan for the northern spotted owl. This species occurs in forested habitats from southern British Columbia, Canada, through western Washington, western Oregon, and northwestern California. The Department solicits review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before August 13, 1992, to be considered during preparation of a final plan.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Northern Spotted Owl Recovery Team, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR, 97232–4181 (telephone 503/231–6238). Written comments and materials regarding the plan should be directed to the same address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Donald Knowles, Associate Deputy Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240 (Telephone 202/208–6254), or Mr. Marvin Plenert, Regional Director, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR 97232 (Telephone 503/231–6118).

**SUPPLEMENTARY INFORMATION:**

**Background**

A primary goal of the Endangered Species Act of 1973 (Act) is the recovery of endangered and threatened species so that they are again secure, self-sustaining members of their ecosystems. The Act requires preparation of a recovery plan to help guide recovery efforts for any listed species likely to benefit from such a plan. A recovery plan describes actions considered necessary to conserve a species, establishes criteria for downlisting or delisting, and estimates time and cost for implementing recovery measures.

Section 4(f) of the Act, as amended in 1988, (16 U.S.C. 1531 *et seq.*), requires that public notice and an opportunity for public review and comment be provided during development of a recovery plan. All information presented during a public comment period must be considered prior to approval of a new or revised recovery plan. Federal agencies must also take these comments into account in the course of implementing an approved recovery plan.

The northern spotted owl (*Strix occidentalis caurina*) occurs in southern British Columbia, Canada; western Washington; western Oregon; and northwest California. Within its range, the owl demonstrates an affinity for older forested habitat. Evidence of significant reduction and fragmentation of suitable owl habitat and of concomitant decline in owl populations have led to concern for its continued survival. A final rule to list the owl as a threatened species was published on June 26, 1990 (55 FR 26114). Details regarding the evidence upon which the listing was based are available in that publication.

On February 15, 1991, a recovery team was appointed and given the charge of preparing a recovery plan for the owl. The team is multidisciplinary in composition, and includes biologists, foresters, economists, attorneys, individuals representing concerned Federal agencies, and representatives of the Governors of the three States involved. A draft recovery plan prepared by the team was made available for public review on May 15, 1992. At that time, a comment period was announced, to end on July 13, 1992. In response to several requests submitted during the initial comment period, a further opportunity for public review and comment is now provided. The new comment period closes on August 13, 1992.

**Public Comments Solicited**

The Department solicits written comments on the draft northern spotted owl recovery plan. All comments received by the date specified above will be considered prior to the approval of the plan.

**Authority**

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Manuel Lujan, Jr.,

*Secretary.*

[FR Doc. 92–17421 Filed 7–22–92; 8:45 am]

BILLING CODE 4310–55–M

## Bureau of Land Management

**[AZ–020–00–4332–11; AZA–25486,25487,25488,25489,25490,25496]**

### Intent To Prepare Two Wilderness Management Plans and Associated Environmental Documents and Invitation to Participate in the Identification of Issues; Phoenix District Office, Lower Gila Resource Area, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to prepare wilderness management plans and environmental documents.

**SUMMARY:** Notice is hereby given of intent to prepare two wilderness management plans. This notice also constitutes the scoping notice required by the National Environmental Policy Act (40 CFR 1501.7).

(1) Description of proposed planning action: In accordance with Bureau of Land Management wilderness management policy guidance, two Wilderness Management Plans will be developed for six wilderness areas. One plan will address four Wilderness Areas: the Sierra Estrella, North Maricopa, South Maricopa and Table Top; the other plan will address the Woolsey Peak and Signal Mountain Wilderness Areas. An Environmental Assessment of the impacts of the proposed actions and alternatives will be prepared prior to approval of each plan.

The plans will define the management practices and actions to be used to maintain each area's wilderness

resources and will consider those issues and alternatives identified in a number of public scoping and work group meetings. The public is invited to participate in scoping meetings beginning in August 1992.

(2) Geographic areas involved: The six wilderness areas are in the Lower Sonoran Desert of Southwestern Arizona, located in southern Maricopa and western Pinal Counties, within a 45 mile radius of Gila Bend, Arizona.

(3) Types of issues anticipated: Wilderness values such as naturalness, solitude and primitive recreational opportunities must be preserved. Use of these areas for developed public recreation and education, research, wildlife management and legal private purposes will be assessed. Acceptable levels of these uses as well as primitive recreational activities will be identified. Actions necessary to administer the areas, e.g., signing, compliance enforcement, search and rescue, wild burro removal, and fire suppression will also be identified and acceptable levels of these activities determined.

(4) Disciplines to be represented in the preparation of the management plans will include: Wilderness, Recreation, Cultural, Wildlife, Range and Livestock Grazing, and Fire Management.

(5) The kind and extent of public participation opportunities to be provided:

Four public scoping meetings will be held to identify issues in managing the six areas. These will be held in Gila Bend, Casa Grande, Goodyear, and Phoenix, Arizona at the following times and locations:

Monday, August 24, 1992, 6 p.m.–9 p.m., Gila Bend Community Center, 202 Euclid Ave., Gila Bend, Arizona
Tuesday, August 25, 1992, 6 p.m.–9 p.m., Goodyear Community Center, 420 E. Loma Linda Blvd., Goodyear, Arizona
Wednesday, August 26, 1992, 6 p.m.–9 p.m., Casa Grande City Hall Council Chambers, 300 E. 4th Street, Casa Grande, Arizona
Thursday, August 27, 1992, 6 p.m.–9 p.m., Phoenix District Office Conference Room, Bureau of Land Management, 2015 W. Deer Valley Road, Phoenix, Arizona

Written comments regarding issues will also be accepted until September 15, 1992. Comments should be sent to: Bureau of Land Management, Phoenix District Office, Attn: John R. Christensen, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

In addition, two work groups, one for each Wilderness Planning Area, made up of interested public and agency personnel, will be formed to assist in the development of each plan. Participation in these groups will be solicited through mailings, news releases, and personal contacts.

Interested publics will be sent copies of the completed draft Wilderness Management Plans and will have 45 days in which to comment. Interest in this mailing will be solicited and a mailing list maintained at the Phoenix District Office.

**ADDRESSES:** The location and availability of documents relevant to these management plans will be available for public review at the Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona.

**FOR FURTHER INFORMATION CONTACT:** John C. Jamrog, Lower Gila Resource Area, Telephone 602–863–4464.

**SUPPLEMENTARY INFORMATION:** The plan which will cover the four ares mentioned, includes a combined total of 173,300 wilderness acres, while the Woolsey Peak and Signal Mountain Plan affects 76,250 acres of wilderness. The areas were added to the Wilderness Preservation System by Public Law 101–628, of November 28, 1990, known as the Arizona Desert Wilderness Act of 1990. The management and use of these areas is directed by this law as well as the Federal Land Policy and Management Act of 1976 and the Wilderness Act of 1964.

Descriptions of the North Maricopa, South Maricopa, Table Top, Woolsey Peak, and Signal Mountain Wilderness Areas can be found in the Lower Gila South, Final Wilderness Environmental Impact Statement of April 1987. The Sierra Estrella Wilderness is described in the Arizona Mohave Final Wilderness Environmental Impact Statement of February 1989. All six of these areas share similar natural characteristics and generally are subject to the same type and amounts of uses.

Dated: July 9, 1992.

**David J. Miller,**

*Acting District Manager.*

[FR Doc. 92–17317 Filed 7–22–92; 8:45 am]

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**[OR–090–00–6310: G2–320]**

## Eugene District Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Advisory Council meeting.

**SUMMARY:** Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on Friday, August 28, beginning at 9 a.m. at the Eugene District Office, 2890 Chad Drive, Eugene, Oregon.

The agenda of the meeting will include: A discussion of the Draft Resource Management Plan and Preferred Alternative.

The meeting is open to the public. Interested persons may make oral statements to the council at the end of the meeting or file written statements for the council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of land Management, 1255 Pearl Street, Eugene, Oregon 97401 by the end of the business day on Wednesday, August 26, 1992. A time limit per person may be established by the District Manager.

Summary minutes of the council meeting will be maintained in the District office and will be available for public inspection and reproduction during regular business hours within 30 days of the meeting.

Dated: July 14, 1992.

**Ronald Kaufman,**

*District Manager.*

[FR Doc. 92–17319 Filed 7–22–92; 8:45 am]

BILLING CODE 4310–33–M

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**[OR–050–4410–10:GP2–319]**

## Oregon, Prineville District Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Prineville District, Interior.

**ACTION:** Notice is hereby given that a meeting of the Prineville District Advisory Council will be held on August 27, 1992. The meeting will begin at 10 a.m. in the conference room of the Bureau of Land Management Office located at 185 East Fourth Street, Prineville, Oregon 97754. The agenda will include the following items: (1) BLM 2015 reorganization plan; (2) Supplement to the Draft Lower Deschutes River Management Plan and Final Plan; (3) Rural-Urban Interface Plan; (4) Wild and Scenic River Planning; (5) Coordinated Resource Management Plans and (6) Deschutes/John Day Resource Management Plans.

Dated: July 10, 1992.

**James L. Hancock,**

*District Manager, Prineville District Office.*

[FR Doc. 92–17318 Filed 7–22–92; 8:45 am]

BILLING CODE 4310–33–M

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**Office of Surface Mining Reclamation and Enforcement**

**Contemplated Settlement of Case Involving Valid Existing Rights Determination Within the Wayne National Forest, Ohio**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Notice of reopening and extension of period for submitting information.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) published a notice in the **Federal Register** on June 14, 1992 (52 FR 27269) which announced that the OSM and the United States Forest Service and the Belville Mining Company are contemplating a settlement of *Belville Mining Co.* v. *United States*, No. 90–244L (Cl. Ct.) (Belville III). To implement such a settlement, OSM would reconsider its Valid Existing Rights (VER) determination with respect to the McMullen property, located within the boundaries of the Wayne National Forest in Ohio and sought information on that issue. The notice provided an opportunity to submit additional information on the VER reconsideration. For further information, see the referenced **Federal Register** notice.

The deadline for receipt of information was July 20, 1992.

The deadline for receipt of additional information on this matter is extended until July 27, 1992.

**DATES:** OSM will accept written materials on all issues pertaining to the McMullen property until 5 p.m. Eastern time on July 27, 1992.

**ADDRESSES:** Hand deliver written materials to the Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 800 North Capitol Street, room 660, Washington, DC.

Written materials may be mailed to Administrative Record Room, 800 NC Rm. 660, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240.

Documents comprising the administrative record are available for public review and copying during regular business hours at the Administrative Record Room, room 660, 800 North Capitol Street, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Richard Miller, Chief, Planning and Analysis Staff, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240 (202) 208–7851.

Dated: July 17, 1992.

**Thomas E. Williams,**

*Acting Director, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 92–17378 Filed 7–22–92; 8:45 am]

BILLING CODE 4310–05–M

**INTERNATIONAL TRADE COMMISSION**

**[Investigation No. 731–TA–622 (Preliminary)]**

**Dry Film Photoresist From Japan**

**AGENCY:** United States International Trade Commission.

**ACTION:** Institutional and scheduling of a preliminary antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–622 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of dry film photoresist, provided for in subheadings 3702.39.00, 3702.42.00, 3702.43.00, and 3702.44.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by August 31, 1992.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** July 16, 1992.

**FOR FURTHER INFORMATION CONTACT:** Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

**SUPPLEMENTARY INFORMATION:**

**Background**

This investigation is being instituted in response to a petition filed on July 16, 1992, by E.I. Du Pont de Nemours & Company, Wilmington, DE; Morton International, Inc., Tustin, CA; and Hercules Incorporated, Middleton, DE.

*Participation in the investigation and public service list*—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference*

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on August 6, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than August 5, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written Submissions*

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 11, 1992, a written brief

containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

By Order of the Commission.

Issued: July 17, 1992.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92-17375 Filed 7-22-92; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket Nos. 32095; 32096]**

### Burlington Northern Railroad Company—Trackage Rights Exemption—Chicago Central & Pacific Railroad Company; Chicago Central & Pacific Railroad Company—Trackage Rights Exemption—Burlington Northern Railroad Company

Burlington Northern Railroad Company (BN) and Chicago Central & Pacific Railroad Company (CCP) have filed notices of exemption under 49 CFR 1180.2(d)(7) for: (1) BN's acquisition from CCP of overhead trackage rights over approximately 12.24 miles of rail line between CCP milepost 168.96, near Portage, IL, and CCP milepost 181.20, in East Dubuque, IL, and over both CCP main tracks between CCP mileposts 181.20 and 181.48 and across CCP's two main track diamonds at milepost 181.88; and (2) CCP's acquisition from BN of overhead and local trackage rights (a) over approximately 12.24 miles of rail line between milepost 172.36, near Portage, and milepost 184.85, in East Dubuque, corresponding to CCP mileposts 168.96 and 181.20; and (b) over BN's interlocker and two main tracks between points corresponding to CCP mileposts 168.77 and 168.96. The involved lines are parallel main lines (and connecting track) now owned by CCP. BN is in the process of acquiring the westbound portion of these CCP lines between Portage and East Dubuque (and the indicated related trackage), over which BN is here prospectively granting CCP trackage rights. BN's acquisition of the CCP lines is the subject of a petition for exemption pending in Finance Docket 32097, *Burlington Northern Railroad Company—Purchase Exemption—Chicago Central & Pacific Railroad Company*. The trackage rights will become effective within 10 working days of a decision in that proceeding.

Any comments must be filed with the Commission and served on Michael E. Roper, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102-5384.

As a condition to the use of these exemptions, any employees adversely affected by the transaction will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen and revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the effectiveness of the exemption.

*Decided:* July 16, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 92-17420 Filed 7-22-92; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 92-53; Exemption Application No. D-8798, et al.]**

### Grant of Individual Exemptions; The Equitable Life Assurance Society of the United States, et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

*Statutory Findings*

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### The Equitable Life Assurance Society of the United States (Equitable), Located in New York, NY

**[Prohibited Transaction Exemption 92-53; Exemption Application No. D-8798]**

**Exemption**

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) shall not apply to the receipt of common stock of The Equitable Companies Incorporated (Equitable

Holdings], or the receipt of cash of policy credits, by certain plans (the Plans), other than those maintained by Equitable or an affiliate of Equitable for its own employees, in connection with a plan of reorganization (the Demutualization Plan) adopted by Equitable and implemented pursuant to section 7312 of the New York Insurance Law, provided the following conditions are met:

(1) The Demutualization Plan is implemented in accordance with procedural and substantive safeguards that are imposed under New York law and is supervised by the New York Superintendent of Insurance (the Superintendent).

(2) The Superintendent reviews the terms of the options that are provided to any policyholders of Equitable (the Eligible Policyholders) as part of his review of the Demutualization Plan, and the Superintendent only approves the Demutualization Plan following a determination that such Plan is fair and equitable to all Eligible Policyholders.

(3) Each Eligible Policyholder has an opportunity to comment on the Demutualization Plan and decide whether to vote to approve such Demutualization Plan after full written disclosure is given such policyholder by Equitable, of the terms of the Plan.

(4) Any election by a Plan to receive stock, cash or policy credits, pursuant to the terms of the Demutualization Plan is made by one or more independent fiduciaries of such Plan and neither Equitable nor any of its affiliates exercises any discretion or provides investment advice with respect to such election

(5) After each Eligible Policyholder is allocated a minimum of three shares of common stock (subject to adjustment if the total number of shares of common stock allocated to Eligible Policyholders and AXA is changed, as provided in the Demutualization Plan), additional consideration allocated to Eligible Policyholders who own participating policies is based on actuarial formulas that take into account each participating policy's contribution to the surplus of Equitable which formulas have been approved by the Superintendent with the assistance of Coopers & Lybrand.

(6) All Plans participate in the transactions on the same basis as other Eligible Policyholders that are not Plans within their respective groupings.

(7) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of stock.

(8) All of Equitable's policyholder obligations remain in force and are not affected by the Demutualization Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on April 10, 1992 at 57 FR 12527.

**Written Comments**

The Department received 55 written comments with respect to the Notice, 54 of which were submitted by Plan policyholders of Equitable and 1 by Equitable. Of the written comments received, 1 comment was withdrawn. Nine commentators said they approved of the Notice and indicated that it should be granted by the Department. Thirty commentators expressed their opposition to the Notice for various reasons ranging from general dissatisfaction with the Demutualization Plan to the propriety of having to pay withdrawal charges to Equitable if an annuity contract was prematurely canceled by the annuitant. Thirteen commentators neither affirmed nor objected to the Notice. Instead, these commentators sought additional information or clarification with respect to the impact of the proposed Demutualization Plan on their contracts with Equitable. Finally, Equitable in its comment letter made certain technical clarifications to portions of the operative and conditional language of the Notice as well as to several statements made in the Summary and Facts and Representations.

Following is a discussion of those comments which address the question of whether the Department should grant the proposed exemption and the responses made by Equitable with respect thereto. Also discussed is the comment that was submitted by Equitable and the Department's response to that comment.

*Plan Policyholder Comments*

Eight policyholders directed their comment letters to the merits of the Demutualization Plan, the financial condition of Equitable or, in some cases, the investment in Equitable by AXA, the French insurance company. In response to these comments, Equitable observes that the Notice is premised on extensive safeguards that New York law provides to policyholders of a mutual life insurance company that proposes to convert to a stock life insurance company and that all policyholders, including Plan investors, have had the benefit of these safeguards in the case of the Equitable demutualization. In this regard, Equitable further states that its Board of Directors has adopted the Demutualization Plan and all affected policyholders have had an opportunity to express their views at the public hearing and to vote on the Demutualization Plan. The vote was completed on May 6, 1992 with an affirmative vote of over 92 percent of the approximately 880,000 policyholders who voted. In addition, Equitable represents that the Superintendent issued an Opinion and Decision approving the Demutualization Plan and finding it fair and equitable to policyholders. According to Equitable, the Superintendent also concluded that the implementation of the Demutualization Plan would enhance the operations of Equitable and that Equitable would have an amount of capital and surplus deemed by the Superintendent to be reasonably necessary for its future solvency.

Equitable also notes that individual policyholders may be opposed to demutualization for various reasons, including the fact that a foreign investor will obtain a substantial equity interest in Equitable Holdings, concerns about stock life insurance companies generally and concerns about the effect of the implementation of the Demutualization Plan on Equitable's financial condition. However, Equitable believes that the procedural safeguards provided under section 7312 of the New York Insurance Law have provided policyholders with ample opportunity to express their concerns. According to Equitable, the ultimate question of whether or not it should demutualize is an issue that must be decided by its Board of Directors, its policyholders and the Superintendent who must approve the Demutualization Plan.

Several owners of individual retirement accounts (IRAs) and tax sheltered annuities (TSAs) expressed concern over the security of their retirement savings following demutualization. Two commentators questioned whether they could rollover their retirement funds without penalty. Another commentator said she was opposed to Equitable's Demutualization Plan because she did not want her TSA to be subject to stock market fluctuations.

In response to these comments, Equitable represents that the Policyholder Information Booklet contains language stating that a policyholder's benefits, values, premiums and guarantees will not be affected by the proposed demutualization. Equitable also notes that IRA and TSA owners generally have the contractual right to remove their funds (subject to applicable withdrawal charges) from Equitable, to

roll them over without loss of tax-favored status and that demutualization will not diminish this right. Equitable further explains that fluctuations in Equitable's stock price as a publicly-traded company will have no impact on the value of the commentator's TSA contract.

In another comment letter, the trustees of a Plan policyholder objected to the proposed demutualization on the grounds that the trustees believed it was more appropriate for the Plan to invest in an insurance contract issued by a mutual life insurance company rather than in a contract issued by a stock life insurance company. The trustees also stated that in view of Equitable's proposed demutualization, the Plan should be permitted to transfer amounts deposited with Equitable under its existing annuity contract without paying applicable withdrawal charges.

In response, Equitable again represents that the Demutualization Plan will have no effect on its contractual obligations or the rights of policyholders. Neither New York Insurance Law nor the Demutualization Plan permit a policyholder to receive more favorable treatment than other, similarly-situated policyholders merely because the policyholder opposes the Demutualization Plan. Therefore, Equitable considers it inappropriate to provide for a penalty-free withdrawal policy such as the one suggested by the policyholder.

An owner of an IRA objected to not having a choice as to the form of compensation received. Equitable represents that it had initially intended to provide IRA and TSA owners with the same type of compensation accorded to other policyholders (i.e., stock, with cash being available in certain circumstances for policyholders allocated a small number of shares). However, in a ruling Equitable obtained from the Internal Revenue Service it was stated that the tax status of IRA or TSA contracts would not be adversely affected if the compensation was in the form of policy credits. Therefore, Equitable explains that compensation in the form of cash or stock would have exposed these policyholders to a risk of loss of the tax-favored status of their contracts. Thus, to protect IRA and TSA owners, Equitable represents that the Demutualization Plan provides for compensation with respect to such contracts that will be in the form of policy credits.

In a comment letter submitted by the managing trustee of a Plan policyholder, objections were raised to the Demutualization Plan on the grounds that the current level of executive compensation is excessive and Equitable would have the ability to issue stock options as part of its executive compensation package.

Equitable disagrees with the comment. It notes that compensation in the form of stock of stock options is an effective means with which to provide executives with an incentive to improve a company's performance, since a portion of the value of an executive's compensation depends on the performance of the company as reflected in the company's stock price. Equitable represents that Equitable Holdings will adopt a stock incentive plan under which a committee of directors, each of whom must be a "disinterested person" within the meaning of Rule 16b-3 of the Securities Exchange Act of 1934, may grant stock options to officers and other key employees. Equitable explains that the committee will not be able to grant any stock options prior to the first anniversary of the initial public offering of holding company stock and options cannot be exercised for an additional year.

*Equitable's Comment*

With respect to modifications to the Notice, Equitable observes that in several places, the Notice refers to "employee benefit plans." However, as stated in the application, Equitable explains that it may be a "disqualified person" with respect to arrangements involving IRAs which are described in section 4975(e)(1) of the Code but which are not employee benefit plans as that term is defined under the Act. Accordingly, Equitable believes that the exemption should be modified throughout to refer to "plans" rather than to "employee benefit plans."

After considering this comment, the Department has decided to adopt Equitable's recommendation by modifying the exemption as requested and thereby substituting the word "plans" for "employee benefit plans" in the operative and conditional language as well as in the Summary of Facts and Representations.

Equitable states that Condition 5 of the Notice provides that, after each Eligible Policyholder receives a minimum of three shares of Equitable Holdings stock, additional consideration allocated to such Eligible Policyholders is to be based on actuarial formulas determined from the policy's contribution to the surplus of Equitable. While this statement is not inaccurate, Equitable states that it is not clear from the language of the Notice that the allocation of additional consideration will be limited to those Eligible Policyholders who own participating policies. Additionally, Equitable represents that Condition 5, as it is currently drafted, does not specify that the fixed allocation of three shares to each Eligible Policyholder may be adjusted in certain circumstances.[1] To address these points, Equitable believes that the following language should be substituted in place of the current Condition 5 of the Notice:

"(5) After each Eligible Policyholder is allocated a minimum of three shares of common stock (subject to adjustment if the total number of shares of common stock allocated to Eligible Policyholders and AXA is changed, as provided in the Demutualization Plan), additional consideration allocated to Eligible Policyholders who own participating policies is based on actuarial formulas that take into account each participating policy's contribution to the surplus of Equitable which formulas have been approved by the Superintendent with the assistance of Coopers & Lybrand."

The Department concurs with this comment and has modified Condition 5, accordingly.

In addition to these comments, Equitable has clarified certain portions of the Summary of Facts and Representations. In this regard, Equitable represents that Section 4 of the Summary of Facts and Representations indicates that "all Eligible Policyholders" will be eligible to vote on the Demutualization Plan. However, Equitable wishes to clarify that all policyholders whose policies were in force on the date of adoption of the Demutualization Plan—regardless of whether they are "Eligible Policyholders"—were provided with notice of the hearing on the Demutualization Plan and are entitled to vote on the Demutualization Plan. In addition, Equitable asserts that the policyholder voting requirements of section 7312 of the New York Insurance Law are satisfied if two-thirds of voting policyholders who cast ballots vote in favor of the Demutualization Plan

[1] To establish an appropriate share price for the shares of Equitable Holdings stock in the initial public offering, Equitable may, with the consent of the Superintendent, decrease the 100 million shares of Equitable Holdings stock to be allocated to Eligible Policyholders and AXA. Any decrease in the number of shares would serve to adjust the per share price to within a range which Equitable finds appropriate for purposes of the initial public offering that is expected to take place in connection with the Demutualization Plan. In such event, the fixed allocation of shares to Eligible Policyholders would also be reduced. The Demutualization Plan also permits the total allocation of shares to be increased and, in that event, the fixed allocation would be increased and there would be a corresponding adjustment in the price per share.

(rather than two-thirds of all Eligible Policyholders, as stated in section 4).

Equitable also explains that Section 9 of the Summary of Facts and Representations indicates that Eligible Policyholders will receive cash pursuant to the Demutualization Plan unless they affirmatively indicate a preference to receive stock. Equitable, however, emphasizes that while cash may be paid to Eligible Policyholders in a few specified circumstances, distributions made pursuant to the Demutualization Plan will generally be in shares of Equitable Holdings stock and not in cash.

Equitables notes that section 10 of the Summary of Facts and Representations contains a description of the commission-free sales program that will be established by Equitable. Under this program, Eligible Policyholders who receive 20 or fewer shares of common stock pursuant to the Demutualization Plan will be entitled to commission-free sales in the public market of all of the common stock they receive pursuant to the Demutualization Plan, for a limited time period beginning approximately nine months after the Demutualization Plan becomes effective. Such sales will be conducted at market prices and without the payment of any brokerage commissions or similar fees. In this respect, Equitable notes that the 20 share limitation may be subject to adjustment in certain circumstances which are explained herein in the footnote.

Equitable also notes that section 10 of the Summary of Facts and Representations indicates that it is currently "contemplated" that shares of Equitable Holdings stock will be listed on the New York Stock Exchange (the NYSE). Equitable represents that Equitable Holdings stock is not yet listed on the NYSE and that discussions with the NYSE are still underway at this time. In any event, Equitable represents that Equitable Holdings stock will be actively traded in the public markets.

As a final comment, Equitable wishes to note three technical corrections relating to the names of various companies involved in the proposed demutualization. First, the name of the holding company formed in connection with the Demutualization Plan is "The Equitable Companies, Incorporated" rather than "Equitable Companies Incorporated." Second, the correct name of the investment banking firm referred to in section 3, paragragh 3 of the Summary of Facts and Representations is "Alex. Brown & Sons, Inc." and not Alexander Brown & Sons, Inc." Third, the proper reference to AXA, is "AXA" rather than "AXA, S.A."

The Department notes that an exemption is subject to the truth and accuracy of the material facts and representations contained in the application and as summarized in the Summary of Facts and Representations. For clarity, the Department has determined that it would be helpful to modify the Summary of Facts and Representations and concurs with the recommendations made by Equitable.

After consideration of the entire record, including the written comments received, the Department has determined to grant the exemption subject to the modifications described herein.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Mobay Corporation Salaried Employees Savings Plan, Afga Corporation Employee Savings Plan, and Miles Savings Plan (collectively, the Plans), Located in Pittsburgh, Pennsylvania**

[Prohibited Transaction Exemption 92–54; Application Nos. D–8939, D–8940, D–8941]

**Exemption**

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) a restorative payment to the Plans (the Restorative Payment) by Miles Inc., the sponsor of the Plans, with respect to the Plan's interest in a guaranteed investment contract the (GIC) issued by Executive Life Insurance Company of California (Executive Life); and (2) the Plans' potential repayment of the Restorative Payment (the Repayments); provided that (a) all terms of such transactions are no less favorable to the Plans than those which the Plans could obtain in arms'-length transactions with an unrelated party, (b) the Restorative Payment is made only with respect to amounts owed under the terms of the GIC, (c) the Repayments shall not exceed the Restorative Payment, (d) the Plans will not pay any interest or expenses with respect to the Restorative Payment, and (e) the Repayments are restricted to, and shall in no event exceed, the amounts actually received by the Plans from Executive Life and other responsible third parties with respect to the GIC.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 8, 1992 at 57 FR 19950.

**WRITTEN COMMENTS:** The Department received one written comment to the proposed exemption and no requests for a hearing. The comment expressed concern that the proposed transaction might enable Miles to "gain favor at the expense of the Plan without violation of the proposed agreement," in the event that the GIC Payments by Executive Life and other GIC Payors are less than the full amount of principal and interest due the Plan under the terms of the GIC.

A response to the comment was submitted to the Department by Miles, the applicant with respect to the proposed exemption. Miles notes that under the Agreement establishing the terms of the Restorative Payment and its Repayment by the Plan, the Repayments are limited to the lesser of (1) total GIC Payments received by the Plan from GIC Payors, or (2) the amount of the Restorative Payment made to the Plan by Miles. Miles states that under this arrangement, it is not possible for Miles to receive more than it has paid to the Plans as the Restorative Payment. Miles also notes that the Agreement provides that if the Plan receives less in total GIC Payments than the Restorative Payment, the Plan will have no obligation to repay the difference, and Miles will bear the loss of any such difference. Miles points out that Miles is receiving no interest or other fees or commissions for making the Restorative Payment to the Plan.

After consideration of the entire record, the Department has determined to grant the exemption.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Sheboygan Drugs, Inc. Retirement Plan (the Plan), Located in Sheboygan, Wisconsin**

[Prohibited Transaction Exemption 92–55; Exemption Application No. D–9024]

**Exemption**

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (Sale) of certain coins by the Plan to William J. Zajkowski, a disqualified person with respect to the Plan, provided that (1) the Plan incurs no commissions, fees, or other expenses from the Sale, and (2) the Plan receives as consideration from the Sale the asking price in the open-market as stated in writing by a qualified, independent coin dealer on the date of the Sale.

For a more complete statement of the facts and representations supporting the

Department's decision to grant this exemption refer to the notice of proposed exemption published on June 11, 1992, at 57 FR 24826.

**FOR FURTHER INFORMATION CONTACT:** Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Gynecology-Obstetric Associates of Western New York, P.C. Profit Sharing Plan (the Plan), Located in Niagara Falls, NY**

[Prohibited Transaction Exemption 92–56; Exemption Application No. D–8833]

**Exemption**

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the proposed sale by the Plan, for the total cash consideration of $127,000, of an office condominium (the Property) to a partnership (the Partnership) comprised of the principal shareholders of Gynecology-Obstetric Associates of Western New York, P.C. (the Employer), provided the following conditions are met: (1) The amount paid for the Property is not less than fair market value on the date of the sale; (2) the sale is a one-time transaction for cash; (3) the Plan does not pay any real estate fees or commissions in connection therewith; (4) the sales price for the Property is based upon its independently appraised fair market value; (5) the Partnership assumes a pre-existing loan obligation of the Plan with respect to the Property; (6) an independent fiduciary monitors the terms of the proposed sale on behalf of the Plan; (7) within 90 days of the publication, in the **Federal Register**, of the grant of this notice of proposed exemption, the Employer pays the Internal Revenue Service all applicable excise taxes stemming from the Employer's past and continued leasing of the Property from the Plan; and (8) the Employer pays the Plan all rental amounts that may be in arrearage plus reasonable interest within 90 days of the granting of the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 29, 1992 at 57 FR 22835.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of July, 1992.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

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**[Application No. D–8890, et al.]**

**Proposed Exemptions; Holiday Inns, Inc. Savings and Retirement Plan, et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**WRITTEN COMMENTS AND HEARING REQUESTS:** All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

**NOTICE TO INTERESTED PERSONS:** Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective

December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Holiday Inns, Inc. Savings and Retirement Plan (the Plan), Located in Atlanta, Georgia [Application No. D-8890].**

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed extension of credit to the Plan (the Advances) by Holiday Inns, Inc. (the Employer), the sponsor of the Plan, with respect to guaranteed investment contract number CG0120303A (the GIC) issued to the Plan by Executive Life Insurance Company of California (Executive Life); and (2) the Plan's potential repayment of the Advances (the Repayments); provided that (a) all terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party, (b) the Advances are made only in lieu of payments due from Executive Life with respect to the GIC, (c) the Repayments shall not exceed the amount of the Advances plus any interest which may accrue thereon from the date of each Advance at the S.I. Daily Rate (as described below), (d) the Repayments of the Advances, including interest thereon, if any, shall be made only from, and shall not exceed, the amounts actually received by the Plan from Executive Life and other responsible third parties with respect to the GIC (Third Party Recoveries), and (e) the Repayments are waived to the extent the Advances exceed the Third Party Recoveries.

**Summary of Facts and Representations**

1. The Plan is a defined contribution plan with approximately 7,500 participants as of March 31, 1991. The Employer, a wholly-owned subsidiary of Bass Public Limited Company of England, is engaged in the public hospitality industry and sponsors the Plan on behalf of its employees and those of its affiliates. As of March 31, 1991, there were total assets of approximately $104 million in the Plan. The trustees of the Plan are Michael J. Rumke, Timothy V. Williams, Craig H. Hunt and Michael L. Smith (the Trustees), each of whom is an employee of the Employer or its affiliates.

2. Contributions to the Plan, made by the Employer and its affiliates and by Plan participants, are maintained in individually-directed participant accounts (the Accounts). Participants may invest their Account balances in any of three different investment funds within the Plan, including a Stable Income Fund (the S.I. Fund), which invests primarily in guaranteed investment contracts issued by insurance companies. As of March 31, 1991, the S.I. Fund, with assets of approximately $89 million, constituted about 86 percent of the total assets of the Plan. Discretion over the investment of assets in the S.I. Fund is exercised solely by the Trustees.

3. Among the assets in the S.I. Fund is the GIC, which the Trustees purchased on behalf of the Plan on December 31, 1986 with an initial premium deposit of $4,166,862.64. The terms of the GIC established a deposit period commencing December 31, 1986 and terminating December 31, 1987, and provided a guaranteed interest rate of 8.65 percent through the maturity date of June 30, 1992. Under the GIC terms, pre-maturity withdrawals (the Withdrawals) by the Plan are authorized to fund Account distributions to Plan participants and transfers by participants of their Accounts from the S.I. Fund to the Plan's other investment funds. The Employer represents that as of April 11, 1991 the GIC had a face value of approximately $12,700,000, constituting approximately 14.2 percent of the assets in the S.I. Fund and approximately 12.2 percent of the total assets held by the Plan.

4. On April 11, 1991 Executive Life was placed into conservatorship by the insurance commissioner of the State of California. The Employer represents that Executive Life has suspended payments on its guaranteed investment contracts, including the GIC held by the Plan, and that under the prevailing circumstances it is uncertain whether, or to what extent, Executive Life will be able to make any payments of principal or interest due the Plan under the terms of the GIC for Withdrawals and upon maturity.[1] The Employer represents that the uncertainties surrounding the problems of Executive Life and the GIC have caused substantial concern and anxiety among Plan participants and the Trustees. In order to relieve the participants' concerns and to protect the Accounts which are invested in the GIC, the Employer proposes to provide the S.I. Fund with the funds necessary to meet its distribution and liquidity requirements, and to prevent any losses which the Plan might otherwise experience as a result of its investment in the GIC. Accordingly, the Employer proposes the Advances to achieve these objectives, and is requesting an exemption for the Advances, and the potential Repayments, under the terms and conditions described herein.

5. The Advances and the potential Repayments will be made pursuant to an agreement (the Agreement) between the Employer and Trustees, under which the Employer agrees to guaranty all amounts due from Executive Life under the terms of the GIC, plus interest at a rate designated in the Agreement (the Guaranteed Amount). Under the terms of the Agreement, the Guaranteed Amount is the maturity value of the GIC as of June 30, 1992, plus interest on such amount from such date until the date of payment at a varying rate, compounded daily, equal to the rate of return earned from day to day by the assets of the S.I. Fund, excluding the GIC, during such period (the S.I. Daily Rate). Under the Agreement, the Employer's obligation to pay the Guaranteed Account to the Plan is reduced by Third Party Recoveries, defined as the total amounts received by the Plan from Executive Life or other responsible parties with respect to the GIC.

Pursuant to the Agreement, the Employer will commence immediately to make Advances to the Plan at such times and in such amounts necessary to enable the Plan to fund Account distributions to participants, or to enable transfers of Accounts out of the S.I. Fund to other Plan funds. The Advances will be credited toward the Guaranteed Amount. The Guaranteed Amount becomes fully payable in a final Advance by the Employer thirty days

[1] The Department notes that the Trustees' decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GIC.

following the date on which the Trustees and the Employer mutually agree that there remains no reasonable prospect of any future recovery from Executive Life or from any persons, other than Holiday Inns, with respect to the GIC.

In return, the Trustees agree to make the Repayments, which are reimbursements to the Employer for payments made by the Employer to the Plan pursuant to the Agreement in satisfaction of the obligation to pay the Guaranteed Amount. The Agreement states that the Repayments are limited to the lesser of (a) the total amount of Third Party Recoveries, or (b) the total Advances, plus interest. No Plan assets other than Third Party Recoveries may be used to make the Repayments, and the Repayments will be waived to the extent the Advances exceed the Third Party Recoveries. The Agreement provides that the Advances will bear interest at the S.I. Daily Rate (the Repayment Interest), but the Repayments by the Plan will include the Repayment Interest only in the event the Plan receives (from Third Party Recoveries and the Employer) the full amount due as the Guaranteed Amount under the Agreement, and only to the extent the amounts received with respect to the GIC are sufficient to pay such Repayment Interest. The Plan's payment of Repayment Interest, like the Repayments of the Advances, is limited to the amount of Third Party Recoveries received by the Plan. Further, no Repayments of the principal amounts of the Advances or Repayment Interest thereon may be made until the Plan has recovered the full Guaranteed Amount (see section 5, above) pursuant to the Agreement.

The Employer represents that its proposal to charge Repayment Interest on the Advances, to be paid only in the event the Plan recovers the full Guaranteed Amount under the Agreement, arises from the Employer's desire to be compensated in part for the earnings which the Plan would be deemed to have made on the Advances. The Employer states that under the Agreement, the Plan participants are assured that existing Plan assets invested in the GIC will continue to enjoy an earning capacity following the GIC's maturity date, at the same rate of return, the S.I. Daily Rate, being earned by other S.I. Fund assets. The Employer proposes the Repayment Interest at the same rate, the S.I. Daily Rate. The Employer represents that by recovering Repayment Interest at the S.I. Daily Rate only from Third Party Recoveries, and only to the extent the Plan receives amounts sufficient to enable any such payment of Repayment Interest, the Employer will realize only a reasonable compensation for the Plan's use of Advances, and only at the same rate earned by the Plan on such amounts.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will be relieved of any further risk or uncertainty with respect to payments due from Executive Life under the GIC; (2) The proposed transaction will enable the S.I. Fund to fund Account distributions and Account transfers to other Plan funds; (3) The Plan will receive the full maturity value of the GIC, together with interest thereon at the S.I. Daily Rate; and (4) Repayments of the Advances will be restricted to the Third Party Recoveries and will be waived to the extent the Advances exceed the Third Party Recoveries.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Polymer Group Retirement Savings Plan and Trust (the Plan), Located in Dayton, Ohio**

[Application No. D–9075]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extension of interest-free credit (the Advances) to the Plan by Cadillac Plastic Group, Inc. and its affiliates (collectively, the Employers), parties in interest with respect to the Plan, and (2) the repayment of the Advances by the Plan, provided that (a) no interest and/or expenses are paid by the Plan; (b) the Advances are used only in lieu of withdrawals due from the Guaranteed Investment Contract, Number CG01302A3A (the GIC) issued by Executive Life Insurance Company (Executive Life); (c) the repayment by the Plan of the Advances is restricted to cash proceeds paid to the Plan by or on behalf of Executive Life with respect to the obligations of Executive Life under the GIC; and (d) repayment of the Advances will be waived to the extent that the Plan receives less from the disposition of the GIC than the total amount of the Advances.

**EFFECTIVE DATE:** This proposed exemption, if granted, will be effective as of June 1, 1992.

**Summary of Facts and Representations**

1. The Employers, which are the sponsors of the Plan, include the following corporations: (a) M. A. Hanna Company (Hanna), a Delaware corporation which adopted the Plan for the employees of its division that is designed as Colonial Rubber Works, Inc. (manufacturer of rubber and plastics compounding); (b) Cadillac Plastic Group, Inc. (Cadillac), a Michigan corporation and wholly-owned subsidiary of Hanna (distributor of plastic sheet, rod, tube, and film); (c) Day International, Inc., a Delaware corporation and wholly-owned subsidiary of Cadillac (producer of printing and textile products); and (d) BenePlan Strategies, Inc., an Ohio corporation and wholly-owned subsidiary of Cadillac (third-party administrator of benefit plans).

The Plan is a defined contribution pension plan with 1,798 participants and approximately $33,025,152.81 in total assets, as of December 31, 1991. The fiduciaries of the Plan are the Employers and the Committee for Employee Benefits Administration (CEBA) which consists of a total of 7 individual members of whom 5 are vice presidents of Hanna, one is the Director of Employee Benefits for Hanna, and remaining member is the president of BenePlan Strategies, Inc. Wells Fargo Bank, N.A. (the Trustee), a national banking association, is the trustee of the Plan, holding all of the assets of the Plan except the GIC issued by Executive Life to the Plan. Bank One, Dayton, N.A. (Bank One), a national banking association, has been replaced as trustee for the assets of the Plan with the exception of one asset, the GIC issued by Executive Life to the Plan, which will remain titled in Bank one as trustee.

2. Funding of the Plan is made by the participants through salary reduction agreements and by the Employers through matching contributions. The Plan provides for individually-directed accounts under which participants may direct investment of deferrals of income and matching Employers contributions in one or more of several investment funds under the Plan that are

maintained and/or managed by the Trustee.[2]

Two additional funds under the Plan are the Retirement Fund and the Guaranteed Interest Fund (the Guaranteed Fund). The Guaranteed Fund had its assets primarily in contracts with insurance companies that provided a contract with a guaranteed specific rate of return for a specific time period. Currently all the guaranteed insurance contracts in the Guaranteed Fund have matured and distribution has been made to the Plan, except for the GIC issued by Executive Life. Except for their assets in the GIC, the assets in the Retirement Fund and the Guaranteed Fund are now invested in other funds, such as money market funds or other fixed income funds. Both the Retirement Fund and the Guaranteed Fund have assets totaling $7,269,740.74 invested in the GIC issued by Executive Life, which comprise 22 percent of the entire assets of the Plan, as of December 31, 1991. The Retirement Fund is allocated $548,553.46 of the assets in the GIC and the Guaranteed Fund is allocated $6,721,187.28 of the assets in the GIC. Also, as of December 31, 1991, there were 902 participants of the Plan who had portions their respective individually-directed account balances in the Retirement Fund and the Guaranteed Fund. Bank One remains the trustee for the Plan with respect to the GIC in order to preserve and enforce claims against Executive Life on behalf of the Plan and its participants, the GIC having been issued in the name of Bank One, as trustee, and because the accounting system of Wells Fargo Bank is not compatible with the maintenance of a frozen investment fund such as the Guaranteed Fund.

3. On September 1, 1988, the Plan acquired the GIC from Executive Life for the sum of $6,971,000, and had allocated portions of it to the Retirement Fund and the Guaranteed Fund. The GIC was to provide an annual guaranteed interest rate of 8.6 percent and a maturity date of September 30, 1991. At maturity, the accumulated book value of the GIC (i.e., the initial deposit, plus interest earned, and minus withdrawals, if any, during the term of the GIC) was to be paid to the Plan.

Executive Life did not make its required payment to the Plan on the maturity date of September 31, 1991, because on April 11, 1991, Executive Life was placed into conservatorship by the California Insurance Commissioner.[3] As a result of it being placed in conservatorship, Executive Life suspended all payments on its guaranteed investment contracts, including the GIC. Executive Life continues to send the Plan monthly statements following the maturity date showing additional interest credits on the GIC at the guaranteed rate. However, because of the suspension of payments on the GIC by Executive Life all assets of the Retirement Fund and the Guaranteed Fund which were invested in the GIC at the time of Executive Life conservatorship were frozen. Participants in the Plan were unable to obtain transfers, distributions, withdrawals, or loans with respect to that portion of their account balances invested in the GIC.

When, and to what extent, the Plan will receive payments from Executive Life, or from state guaranty funds, or other third parties, with respect to the GIC remains unclear. The applicant represents that the conservatorship for Executive Life has progressed to where some recovery seems certain, but ongoing issues concerning the relative priorities of various claims against Executive Life, and other matters, leave the timing and amount of recovery uncertain.

4. The Employer proposes the Advances to provide the Plan with sufficient cash to enable participants to obtain transfers, distributions, withdrawals, or loans from the portions of their respective account balances that are invested in the GIC. The applicant represents that the Advances are being made pursuant to written agreements between the Employers and Bank One only when and to the extent necessary to provide funds to enable participants to obtain distributions, withdrawals and loans from the portions of their account balance frozen in the Plan, and to enable participants to transfer the frozen portions of their account balance into other investment funds.

The Advances would be in the form of a non-interest bearing line of credit running from the Employers to the Plan in an amount up to the accumulated book value of the GIC as of September 30, 1991, and, additional amounts to be credited as interest after September 30, 1991.[4] The Plan would agree to repay the Advances to the Employers without interest, only from payments made to the Plan with respect to its investment in the GIC, by either Executive Life, state guaranty funds, or other third parties, which when combined with Advances previously made by the Employers, exceed the current value of the GIC.[5] To secure the repayment obligation of the Plan, the Plan would assign to the Employers the rights of the Plan to the proceeds from the GIC, but only in the total amount of the Advances. No other collateral would be required of the Plan and no other assets of the Plan would be used to repay the Advances. If the Plan recoups less than the amount of the Advances to the Plan by the Employers with respect to the GIC, any additional repayments would be waived by the Employers.

5. Since it is unlikely that Executive Life will make timely payments or provide the full amount of interest and principal under the GIC, and the Employers desire to protect participants from uncertainties of the Executive Life conservatorship and desire to facilitate transfers, distributions, withdrawals, and loans from the frozen portion of the account balances, the applicant requests that the proposed exemption for the Advances and their repayment be made effective June 1, 1992. The Plan has been amended to provide that participants have the ability and opportunity to reallocate the investments of their respective account balances in the Plan on a daily basis beginning June 1, 1992. Prior to that date participants could change the investment of their accounts on January 1 and July 1 of each year.

The applicant represents that the transaction involving the Advances will be undertaken pursuant to written agreements and is therefore administratively feasible for the Department to grant the exemption. Furthermore, the applicant represents that the exemption is in the best interest of the participants and beneficiaries of the Plan because the Advances would provide access to all of the amounts due under the GIC as of its maturity date on

[2] These funds consist of the Money Market Fund, the Bond Index Fund, the U.S. Treasury Allocation Fund, the Asset Allocation Fund, the S&P 500 Stock Fund, the Tilts & Timing Fund, and the M. A. Hanna Stock Fund. All of the funds, except the M. A. Hanna Stock Fund are products of Wells Fargo Bank.

[3] The Department notes that the decisions to acquire and hold the interest in the GIC are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department herein is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GIC.

[4] Accumulated book value is the total amount of deposit made to the GIC plus interest at the contract rate, less previous withdrawals.

[5] Current value of the GIC is the accumulated book value of the GIC, as of September 30, 1991, plus additional interest from the maturity date, September 30, 1991, through the dates of any Advances made to the Plan at a rate derived from money market fund yields for such period. For the period of September 30, 1991, through December 31, 1991, the rate was the rate paid by the Bank One Money Market Fund. For all periods after December 31, 1991, the interest rate will be the rate paid by the Wells Fargo Money Market Fund.

September 30, 1991 and will provide for the accumulation of interest after that date; and the Advances will facilitate the normal operation of the Plan with respect to distributions, withdrawals, loans, and transfers of the Plan assets invested in the GIC. The applicant also represents that the rights of the participants and beneficiaries will be protected by the terms of the Advances and their repayments. The Advances will be interest-free and the repayments will not require interest payments to the Employers. Further, the Advances will be repaid by the Plan only from funds received from Executive Life, state guaranty funds, or other third parties. No collateral will be required and no other assets of the Plan will be used to repay the Advances. To the extent that the Plan ultimately recoups from Executive Life, or others, an amount less than the amount guaranteed by the Employers, repayment to the Employers will be waived. The applicant represents that the transactions for the Advances and repayments have been designed to comply with the requirements of the Internal Revenue Service Revenue Procedure 92–16, thus insuring that participants and beneficiaries will not suffer unexpected adverse tax consequences as a result of the transactions.

6. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because (a) the Advances will guarantee the earnings of the Plan under the GIC at its stated interest rates through September 30, 1991 and will provide for the accumulation of interest after that date, and will protect the principal investment of the Plan in the GIC; (b) the Advances will enable the Plan and its participants to resume the ability to accomplish transfers, distributions, withdrawals, or loans out of that portion of their account invested in the GIC; (c) the Plan will pay no interest nor incur any expenses with respect to the Advances and their repayments; (d) repayments of the Advances will be restricted to payments by or on behalf of Executive Life with repsect to the GIC, and no other assets of the Plan will be involved in the transactions; and (e) repayment of the Advances will be waived to the extent the Plan recoups less than the total amount of the Advances from, or on behalf of, Executive Life with respect to the GIC.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Goldman, Sachs & Co. (Goldman Sachs) and the Goldman Sachs Trust Company (GSTC), Located in New York, New York**

[Application No. D–8977]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1) (A) through (D) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lending of securities to Goldman Sachs by employee benefit plans, including plans for which GSTC acts as custodian, and to the receipt of compensation by GSTC in connection with these transactions, provided that the following conditions are met:

1. Neither Goldman Sachs nor GSTC will have discretionary authority or control over a plan's investment in the securities to be loaned, and GSTC will have no discretionary authority or control over the investment of the plan assets involved in the transactions;

2. Goldman Sachs will directly negotiate an "exclusive borrowing" agreement with a plan fiduciary who is independent of Goldman Sachs and GSTC;

3. The exclusive borrowing agreement may be terminated by either party to the agreement at any time;

4. The market value of the collateral will initially equal at least 102 percent of the market value of the loaned securities and, if the market value of the collateral at any time falls below 100 percent, Goldman Sachs will deliver additional collateral on the following day such that the market value of all collateral will again equal 102 percent;

5. Goldman Sachs or GSTC will furnish weekly reports to the plan fiduciaries so that the value of the collateral may be monitored;

6. All procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of Prohibited Transaction Exemptions (PTEs) 81–6 and 82–63;

7. Goldman Sachs will indemnify the plan against any losses due to its use of the borrowed securities;

8. The plan will receive credit for all interest, dividends or other distributions on any borrowed securities; and

9. Upon delivery of loaned securities to the Goldman Sachs, GSTC or another custodian, on behalf of a plan, will receive from Goldman Sachs, the same day by physical delivery or book entry in a securities depository collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies, or other collateral permitted under PTE 81–6.

**Summary of Facts and Representations**

1. Goldman Sachs is owned by the Goldman Sachs Group, L.P. (the Goldman Group), the individual general partners of the Goldman Group, and one institutional investor. Goldman Sachs is an investment services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and a member of the National Association of Securities Dealers. Goldman Sachs is one of the largest investment firms in the United States, with consolidated capital (partners capital and subordinated debt) of $1.7 billion.

2. Goldman Sachs, acting as principal, borrows securities from institutions and either utilizes such securities to satisfy its own needs, or re-lends these securities to brokerage firms and other entities which need a particular security for a certain period of time. Borrowers often need securities to satisfy deliveries as a result of short sales or the failure of the broker to receive securities it is required to deliver. Goldman Sachs is one of the largest institutional securities borrowers and lenders in the United States, borrowing and lending securities equal in value to approximately $20 billion on an average daily basis. In making such loans, Goldman Sachs carefully reviews the creditworthiness of its counterparties.

3. GSTC is a wholly owned subsidiary of the Goldman Group and an affiliate of Goldman Sachs. GSTC is organized as a limited purpose trust company in New York and provides a variety of services to its clients, including serving as custodian and clearing agent.

4. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee in addition to any interest, dividends or other distributions paid on those securities. The lender generally requires that the security loans be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities such as U.S. Government or Federal Agency obligations or certain bank letters of credit. Institutional investors often utilize the services of an agent in the performance of their securities lending

transactions. The applicant believes that the essential functions which define a securities lending agent are the identification of appropriate borrowers of securities and the negotiation of the terms of loan to the borrowers. There are services ancillary to securities lending which may include monitoring the level of collateral and the value of the loaned securities and investing the collateral in some instances.

5. Goldman Sachs and GSTC request an exemption for the lending of securities owned by certain pension plans, including plans for which GSTC will serve as custodian, to Goldman Sachs, under the arrangements described below and for the receipt of compensation by GSTC in connection with such transactions. Neither Goldman Sachs nor GSTC will have discretionary authority or control over the plan's investment in the securities to be loaned. However, because Goldman Sachs under the proposed arrangements would have discretion with respect to whether there is a loan of plan securities to itself, the lending of securities to Goldman Sachs by plans may be outside the scope of relief provided by PTE 81–6[6] and PTE 82–63.[7]

6. Goldman Sachs will directly negotiate "exclusive borrowing" agreements with plans, including plans for which GSTC serves as custodian, with a fiduciary of the plan who is independent of Goldman Sachs and GSTC. Under such an agreement, Goldman Sachs will have exclusive access for a specified period of time to borrow certain securities of the plan pursuant to certain conditions. GSTC will not participate in the negotiation of the agreement. The involvement of GSTC, if any, will be limited to such activities as holding securities available for lending, handling the movement of borrowed securities and collateral and investing or depositing any cash collateral and supplying the plans with certain reports. The applicant represents that, under the exclusion borrowing agreement, neither Goldman Sachs nor GSTC will perform for plans the functions which constitute the essential functions of a securities lending agent.

7. Upon delivery of loaned securities to Goldman Sachs, GSTC, or another custodian, on behalf of a plan, will receive from Goldman Sachs, the same day by physical delivery or book entry in a securities depository, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies, or other collateral permitted under PTE 81–6. The market value of the collateral on the preceding day will be at least 102 percent of the market value of the loaned securities. GSTC or such other custodian will monitor the level of the collateral daily and, if its market value falls below 100 percent, Goldman Sachs will deliver sufficient additional collateral on the following day such that the market value of all collateral will equal at least 102 percent of the market value of the loaned securities. Goldman Sachs, or GSTC in the case of some plans, will provide a weekly report to the plan showing, on a daily basis, the aggregate market value of all outstanding security loans to Goldman Sachs and the aggregate market value of the collateral.

8. Before entering into an exclusive borrowing agreement, Goldman Sachs will furnish to the plan the most recent publicly available audited and unaudited statements of its financial condition. Further, the agreement will contain a representation by Goldman Sachs, as provided in section 15 of the Securities Lending Agreement, that as of each time it borrows securities, there have been no material adverse changes in its financial condition. All the procedures under the agreement will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63.

9. In exchange for the exclusive right to borrow certain securities from a plan, Goldman Sachs will pay the plan either a flat fee, or a minimum flat fee plus a percentage (negotiated at the time the exclusive borrowing agreement is entered into) of the total balance outstanding of borrowed securities, or such a percentage of the total balance outstanding without any flat fee. In light of this fee arrangement, earnings generated by collateral will be returned to Goldman Sachs. The plan will receive credit for all interest, dividends or other distributions on any borrowed securities. Under some arrangements, the earnings on collateral due to Goldman Sachs and the interest, dividends and other earnings on the borrowed securities due to the plan may be offset, so that only the net amount will be returned to Goldman Sachs.

10. The exclusive borrowing agreement may be terminated by either party to the agreement at any time. Goldman Sachs will agree that upon termination it will deliver any borrowed securities back to the plan within five business days of written notice of termination. If Goldman Sachs fails to return the securities or the equivalent thereof, the plan will have certain rights under the agreement to realize upon the collateral. Pursuant to the terms of the agreement, Goldman Sachs will indemnify the plan against any losses due to its use of the borrowed securities equal to the difference between the replacement cost of the securities and the market value of the collateral on the date a loan is declared to be in default.

11. With regard to those plans for which GSTC provides custodial, clearing and/or reporting functions relative to securities loans, GSTC might negotiate with an independent plan fiduciary to receive a fee for such services. Such fees, if any, would be fixed fees (e.g., GSTC might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services or to receive a stated dollar amount) and in addition to any fee GSTC has negotiated to receive from any such plan for standard custodial or other services unrelated to the securities lending activity. The plan and GSTC will agree in advance to the fee, subject to prior written approval of a plan fiduciary who is independent of Goldman Sachs and GSTC. The arrangement to have GSTC provide such functions relative to securities loans to Goldman Sachs will be terminable by the plan within five business days of receipt of written notice without penalty to the plan except for the return to Goldman Sachs of part of any flat fee paid by Goldman Sachs to the plan, if the plan has also terminated its exclusive borrowing agreement with Goldman Sachs. Before entering into an agreement with a plan to provide such functions relative to securities loans to Goldman Sachs, GSTC will furnish to the plan any publicly available information which it believes is necessary for the plan to determine whether to enter into or renew the agreement.

12. In summary, the applicants represent that the described transactions satisfy the statutory criteria of section 408(a) of the Act because: (1) Goldman Sachs will directly negotiate exclusive borrowing agreements with a

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[6]PTE 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a registered broker-dealer or a bank in which is a party-in-interest. Condition 1 of PTE 81–6 requires, in part, that neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction.

[7]PTE 82–63 (47 FR 14804, April 6, 1982) provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. PTE 82–63 permits the payment of compensation to a plan fiduciary for the provisions of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of the Act.

plan; (2) the lending arrangements will permit the plans to benefit from Goldman Sachs' substantial market position as a securities lender and will enable the plans to earn additional income from the loaned securities while still receiving dividends, interest and other distributions on those securities; (3) Goldman Sachs will provide sufficient information concerning its financial condition to a plan before the plan lends any securities to Goldman Sachs; (4) the collateral on each loan to Goldman Sachs initially will be at least 102 percent of the market value of the loaned securities and will be monitored daily by GSTC or another custodian; (5) Goldman Sachs (or GSTC in the case of some plans) will furnish a weekly report to the plans so that an independent fiduciary may also monitor the level of collateral; (6) neither Goldman Sachs nor GSTC will have discretionary authority or control over the plan's investment in the securities to be loaned; and (7) all the procedures will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63.

**FOR FURTHER INFORMATION CONTACT:** Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

**Garmac Company, Inc. Defined Benefit Pension Plan (the Plan), Located in White Plains, NY**

[Application No. D–9007]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a proposed loan (the Loan) by the Plan to the Garmac Company, Inc. (the Employer), a party in interest with respect to the Plan, provided that: (a) No more than 25% of the assets of the Plan are involved in the Loan; (b) the terms and conditions of the Loan are no less favorable to the Plan than those obtainable in an arm's length transaction involving an unrelated third party; (c) an independent qualified fiduciary determines on behalf of the Plan that the transaction is feasible, in the interest of the Plan, and protective of the participants and beneficiaries of the Plan; and (d) the independent qualified fiduciary monitors compliance with the terms of the Loan throughout the duration of the transaction.

**Summary of Facts and Representations**

1. The Plan is a defined benefit "employee benefit pension plan" within the meaning of section 3(2)(A) of the Act and is a qualified plan under section 401(a) of the Code. As of December 31, 1991, the Plan had approximately $1,428,000 in total assets and four participants. Gardner Grant (Mr. Grant) is the sole trustee of the Plan and has exclusive discretion with regard to the investment of the assets of the Plan.

2. The Employer, a Rhode Island corporation with offices at 200 Mamaroneck Ave., White Plains, NY, invests in and manages commercial real estate. Mr. Grant is the president of and the sole shareholder of the Employer. The Employer proposes to borrow an amount from the Plan which will not exceed 25% of the assets of the Plan. The Employer represents that the Plan will not incur any fees, commissions, or other costs as a result of the application or the proposed transaction.

It is represented that the proceeds from the Loan will be utilized to repay the Employer's outstanding loan from a third party bank which is due on July 1, 1992. Accordingly, the Employer has requested retroactive relief effective as of July 1, 1992.

3. The Loan will provide for equal monthly installments of principal and interest over a period of fifteen (15) years. It is represented that on the tenth anniversary date of the Loan and upon each subsequent anniversary date up to and including the fourteenth anniversary, an independent qualified fiduciary, as further described in paragraph 6 below, will determine whether it is in the interest of the Plan to call the Loan and accelerate the payment of the remaining principal balance, with such balance to be payable in full within 180 days after written notification is provided to the Employer.

It is represented that the interest rate for the Loan will be 220 basis points added to the current yield on comparable maturity treasury obligations. Assuming a July 1 closing on the Loan with an annual call option beginning on the tenth anniversary of the Loan, it is represented that a comparable treasury obligation would be a treasury bond with a due date of May 1, 2002. If the installment payments on the Loan are not paid within fifteen (15) days of the date due each month, a late charge equal to four percent (4%) of the installment payment will be added to the amount of the installment.

The Loan will be evidenced by a promissory note and a mortgage and security agreement. The Loan will be secured by a first mortgage on a certain parcel of improved real property (the Property) which has been owned by the Employer since 1977. It is represented that in accordance with the laws of the State of Florida, the Plan's interest in the first mortgage on the Property will be recorded in Brevard County, Florida where the Property is located. If is represented that there are no other liens or encumbrances of any kind on the Property, nor will there be at any time during the term of the Loan. Further, it is represented that the obligation of the Employer under the Loan will not be subordinated to any other debt of the Employer.

In addition, to the Property serving as collateral, it is represented that the Employer has also agreed to assign to the Plan all of the Employer's rights under any and all leases currently existing or hereafter made by the Employer for any portion of the Property. It is represented that this assignment of rents will serve as additional security for the payment of all amounts due under the terms of the Loan.

4. The Property which serves in part as collateral for the Loan is located at 1113 Byrd Plaza, Brevard County, Cocoa, Florida. The Property is described as a retail shopping center on a 20.15 acre tract with 800 feet of frontage along Dixon Boulevard and 1,700 feet of frontage along Plaza Parkway. It is represented that the Property is 90% occupied, has 4 anchor tenants, and has 39 satellite tenants. On the site there are four free standing buildings (Building A, B, C, and D; collectively the Buildings) which were constructed and improved at different times between 1959 and 1990 and which contain a total of 220,667 gross square footage covering approximately 25% of the area of the site.

Building A, the main shopping plaza, contains 188,218 square feet of leasable space divided into 39 rental units, 18 of which are located in a mall. Building B, designed as a single tenant restaurant containing 12,500 square feet of leasable space, has been vacant for about a year. Building C, a retail facility with 6,812 square feet of leasable space, is currently rented to two tenants. Building D, a 874 square foot bank building with three drive up bays, has been vacant about one year.

In addition, the site is 95% covered with asphalt paving and provides 1,200 parking spaces. It is represented that the Property is fully serviced with utilities

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and is accessed by improved streets. The Property is zoned for neighborhood commercial and wholesale commercial uses. It is represented that the existing improvements on the Property are considered legally permissible uses.

5. Two appraisers (the Appraisers), John H. Preston, IV (Mr. Preston), and Robert L. Leichtenberg, (Mr. Leichtenberg), MAI, of Hanson Appraisal Service, Inc., in Melbourne, Florida, were engaged to establish the fee simple market value and the leased fee value of the Property. Both of these values were subject to the following two special conditions: (a) The value estimates were based on measurements made by the Appraisers, because no plans of the Buildings were available in the city or county files; and (b) size calculations were based on measurements by the Appraisers using the legal description of the Property. As a result of their investigation, the Appraisers represent that, as of January 15, 1992, the fee simple market value of the Property was $10,300,000 and the leased fee value estimate of the Property was $8,100,000. The Appraisers represent that the leased fee value of the Property is less than the fee simple value of the Property, because the contract rents under the terms of existing leases of the Property are less than the current fair market rental value of the Property.

It is represented that the appraisal report was made in conformity with, and subject to, the requirements of the Code of Professional Ethics and Standards of Professional Conduct of the Appraisal Institute. Further, the Appraisers represent that they are independent in that they have no present or contemplated future interest in the Property and no personal interest or bias with respect to the parties involved. Mr. Leichtenberg's qualifications include membership in the American Institute of Real Estate Appraisers, state certification as a general real estate appraiser, attendance at appraisal courses offered by the Society of Real Estate Appraisers, and fifteen years of experience in preparing appraisal reports. Mr. Preston's qualifications include attendance at appraisal courses offered by the Appraisal Institute and experience in preparing appraisal reports since 1989.

6. Garrison Corwin, Esq. (Mr. Corwin), a partner in the law firm of Meighan & Necarsulmar, located in Mamaroneck, NY, has agreed to serve as the independent qualified fiduciary on behalf of the Plan with respect to the Loan. It is represented that pursuant to appropriate provisions in the Plan document Mr. Corwin has been empowered, authorized, and directed to act on behalf of the Plan with respect to the proposed transaction. After receiving advice of counsel, Mr. Corwin acknowledges that he understands and accepts the duties and responsibilities as fiduciary under the Act.

Mr. Corwin's qualifications to serve as independent fiduciary on behalf of the Plan include the experience he has gained since 1960 from the practice of law, a substantial portion of which has been in the area of commercial and residential real estate law. Mr. Corwin represents that he is independent in that he has no current affiliation or relationship with the Employer or Mr. Grant, the sole shareholder of the Employer. Although Mr. Corwin has previously provided legal services to the Employer and to Mr. Grant, it is represented that the fees received from such services have never constituted more than 1% of the total revenues on an annualized basis of Mr. Corwin or his firm.

In fulfilling his role as independent fiduciary, Mr. Corwin reviewed the following items: (a) The Plan documents; (b) the application for exemption; (c) the summary of the assets of the Plan at the beginning and end of plan year 1990; (d) the value of the Plan assets and the present value of the Plan benefits; (e) the appraisal report prepared by the Appraisers, as of January 15, 1992; (f) the 1988, 1989, and 1990 income tax return of the Employer; and (g) the investment portfolio of the Plan based on 1991 estimated balances.

Mr. Corwin has ascertained that if the proposed Loan is approved, assets currently invested in a fixed income pool earning approximately 6% will be liquidated in order to fund the Loan. In Mr. Corwin's opinion, the Plan will benefit from the projected higher rate of return on the loan. Further, after examining the Plan's portfolio, Mr. Corwin has determined that the Plan is not invested in mortgages, real estate, or any other real estate related or dependent assets and that the Loan represents a diversification which is advantageous to the Loan.

With respect to the liquidity of the Plan, none of the participants are presently entitled to benefits from the Plan, so no payments are being made out of the Plan at this time. It is represented that the Plan is currently over funded and that no contributions are anticipated in the near future. Mr. Corwin represents that the present assets of the Plan plus the income from such assets are more than adequate to meet any anticipated or unanticipated needs of the Plan. Further, it is represented that no cash flow requirements of the Plan will be adversely affected by the Loan.

It is represented that the Property prior to being improved was vacant agricultural land that had never been used for any industrial, commercial, or retail business or for storage of any industrial or hazardous products or wastes. Further, it is represented that there are no underground storage tanks on the Property, and that all pipes conduits and connections for sewage, water, electricity, gas and other utilities are in accordance with law and that all receipt and disposal is off site. Accordingly, Mr. Corwin has determined that an environmental review of the site of the Property would not be appropriate before to entering into the Loan.

Mr. Corwin represents that he negotiated, reviewed, and approved the terms and conditions of the Loan. Specifically, he represents that the method chosen to determine the interest rate for the Loan is commercially reasonable and appropriate. It is represented that after making independent inquiries about the range of interest rates currently charged by unrelated commercial mortgage lenders, Mr. Corwin determined that the interest rate on the Loan should be 220 basis points above the current yield on comparable treasury obligations. Because the Loan provides for an annual call option after the tenth year, in the opinion of Mr. Corwin, the closest comparable treasury obligation is the treasury bond due May 1, 2002. It is represented that Mr. Corwin will establish the interest rate on the Loan by adding 220 basis points to the asking yield at the close of market on Friday, June 26, 1992, for a treasury bond with a due date of May 1, 2002, as quoted in the June 19 issue of *Barron's*.

It is represented that an origination fee of 1% is usual in the context of a commercial mortgage loan, but that such charges cover various legal and administrative expenses of the commercial mortgage lender and do not function as pre-paid interest. It is represented that there will be no points charged as prepayment of future or additional interest for the Loan. However, it is represented that the Employer will pay all the commissions, fees, costs, and expenses of obtaining the Loan. In this regard, Mr. Corwin represents that it is commercially reasonable for the Employer, as borrower, to pay all of the direct costs of making a commercial mortgage loan. Further, Mr. Corwin represents that it is commercially reasonable for the

Employer, as borrower, to pay the indirect costs of originating the Loan of up to one percent (1%) of the amount of such Loan. Mr. Corwin represents that he will determine whether such costs have been incurred and will be responsible for ascertaining that the Employer fulfills its obligation with respect to the payment of all direct costs and up to 1% of the indirect costs of making the Loan to the extent the Plan incurs such indirect costs.

With respect to the adequacy of the collateral which secures the Loan, Mr. Corwin states that the value of the Property vastly exceeds the amount of the Loan and that therefore, the Loan is a secure and safe investment for the Plan. In this regard, Mr. Corwin represents that, if on the day the Loan is executed, and thereafter, as of the first day of any calendar quarter during the term of the Loan, he determines that the value of the collateral does not constitute at least 150% of the outstanding principal balance of the Loan, the Employer will be required to furnish to the Plan additional collateral having a value which is at least equal to the amount of the deficiency, or to repay the Loan to the extent necessary to eliminate the deficiency. Further, Mr. Corwin represents that the assignment of rents on the Property will provide additional protection for the Plan.

Mr. Corwin represents that he will monitor and enforce the terms of the Loan, including, without limitation, making demand for timely payment, collecting late charges due to the Plan, bringing foreclosure suit or other appropriate process on behalf of the Plan against the Employer in the event of default, and applying the proceeds thus obtained to the Loan.

After reviewing the 1988, 1989, and 1990 income tax returns for the Employer, Mr. Corwin has determined that the Employer's credit worthiness is sufficient to adequately protect the interest of the Plan and its participants and beneficiaries with respect to the Employer's obligations under the Loan.

Having concluded his analysis and review, Mr. Corwin has determined that the Loan would be an appropriate and suitable investment for the Plan, that the interest rate is at least equal to the current market rate for a loan of comparable amount, quality, and maturity, and that the other terms of the Loan are at least as favorable to the Plan as those which would be negotiated in a similar arm's length transaction with an unrelated third party. Further, Mr. Corwin represents that the Loan is a prudent investment and is in the best interest of and protective of the Plan and its participants and beneficiaries. It is represented that if Mr. Corwin should resign his position as independent fiduciary, Mr. Grant, as trustee for the Plan, will name a successor independent fiduciary.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The amount of the Loan will not exceed 25% of the assets of the Plan;

(b) The Loan will be secured, in part, by Property with a value determined by an independent appraiser;

(c) The Plan's interest in the Property will be recorded as a first mortgage;

(d) The Loan will be secured, in part, by an assignment of rents from the Property;

(e) The independent fiduciary has determined that the value of the Property and the assignment of rents serve as adequate collateral for the Loan;

(f) The independent fiduciary has reviewed the terms of the Loan and has concluded that the proposed transaction is feasible, in the interest of, and protective of the Plan and the participants and beneficiaries;

(g) The independent fiduciary will monitor compliance with the terms of the Loan throughout the duration of the transaction; and

(h) The Plan will incur no fees, commissions, or other charges as a result of the proposed transaction.

**FOR FURTHER INFORMATION CONTACT:** Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

**Amended and Restated Earth Consultants, Inc. Profit Sharing Plan (the Plan), Located in Bellevue, Washington**

[Application No. D–8993].

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the plan of three lots of unimproved real property located in Camano Island, Washington (the Properties) to Robert Levinson, a party in interest with respect to the Plan; provided that (a) the sale is a one-time transaction for cash; (b) the Plan receives a purchase price which is no less than the fair market value of the Properties as of the date of the sale; and (b) the Plan does not incur any costs or expenses related to the transaction.

**Summary of Facts and Representations**

1. The Plan is a defined contribution plan with 17 participants and total assets of $510,695.24 as of October 31, 1991. The Plan is sponsored by Earth Consultants, Inc. (the Employer), a Washington Privately-held corporation engaged in geological testing and consultation, with its principal place of business in Bellevue, Washington. Robert Levinson (Levinson) is the sole owner of the Employer, the sole trustee of the Plan, and a participant in the Plan.

2. Among the assets of the Plan are the Properties, described as lot numbers 66, 67 and 68 in Thunder Ridge Estates Division No. 2 in the city of Camano Island, Island County, Washington. The Plan purchased the Properties in 1983 from D&B Properties, Inc. (D&B), located in Bellevue, Washington. Levinson states that he purchased the Properties on behalf of the Plan for the investment potential of the Properties, which were part of a 56-lot development parcel (the Development), of which the remaining 53 lots were purchased by unrelated investors. Levinson represents that D&B is unrelated to and independent of the Plan, and that neither he nor the Employer invested in the Development. The Plan paid $5,000 for each of the Properties, a total of $15,000, pursuant to an appraisal of the Development by Edwin Muehlbach and Monty McCormick, professional real property appraisers in Redmond, Washington. Messrs. Muehlbach and McCormick determined that the undeveloped lots in the Development had values of $5,000 to $6,000, and that the values would increase by an additional $4,000 upon completion of water, power and sewage improvements. The Employer represents that these utility improvements were never completed and the Development remains undeveloped, due to legal problems involving title and deed restrictions which arose subsequent to the Plan's purchase of the Properties. Levinson represents that the since acquisition by the Plan, the Properties have remained idle and unused by any parties, and that he has made substantial efforts to sell the Properties.

Because the Properties failed to succeed as an income-producing investment for the Plan, with no foreseeable change in circumstances, Levinson, as Plan trustee, wishes to divest the Plan of the Properties. He

represents, however, that the local government's strict septic system requirements, which have prevented construction of the Development, also prevent development of the Properties individually. As a result, Levinson states that the Properties are not marketable, and that they lack the necessary water systems to enable their marketability. Levinson represent that there is no foreseeable likelihood that the local government will install a water and septic system for the Development, and, therefore, no foreseeable likelihood of any market for the Properties. Levinson states that if there had been an opportunity, the Plan would have divested of the Properties for any reasonable price. However, Levinson represents that his efforts to sell the Properties, through listings with real estate agencies, and his own independent efforts to secure buyers, have failed. Accordingly, Levinson proposes to purchase the Properties in his individual capacity from the Plan and is requesting an exempting for such transaction under the terms and conditions described herein.

3. Levinson will pay the Plan $15,000 for the Properties, representating $5,000 for each Property, which is the amount which the Plan paid for the Properties. Levinson represents that the Plan has not paid any taxes or insurance on the Properties since their acquisition, and that the expenses relating to the legal problems of the Development were paid by the Employer. Curt Cummings (Cummings), a professional real property appraiser in Camano Island, Washington, determined that as of January 31, 1992, each Property had a market value of $2,500. Levinson will pay the purchase price in cash, and the Plan will not incur any expenses, fees or commissions in connection with the proposed purchase.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will divest of assets which have failed to become income-producing, and for which there is no market in which the Plan has been able to secure a buyer; (2) The Plan will recover its original investment in the Properties; (3) The Plan will receive cash for the Properties, which can be invested in income-producing assets; and (4) The Plan will not incur any expenses, fees or commissions in connection with the proposed transaction.

**Tax Consequences of Transaction**

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department (202) 523-8881.

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of July, 1992.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 92-17335 Filed 7-22-92; 8:45 am]

BILLING CODE 4510-29-M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50-262]**

## Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Approving Decommissioning Plan and Authorizing Decommissioning; Brigham Young University

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order authorizing Brigham Young University (BYU) to decommission and dismantle their BYU L-77 Research Reactor located on the licensee's campus in Provo, Utah, and to dispose of the components in accordance with the application dated June 28, 1990, as supplemented on July 2, 1991 and March 9, 1992.

**Environmental Assessment**

*Identification of Proposed Action*

By application dated June 28, 1990, as supplemented, BYU requested authorization to decommission, decontaminate and dismantle the BYU L-77 Research Reactor, to dispose of its component parts in accordance with the proposed Decommissioning plan for the L-77 Research Reactor (Decommissioning Plan), and to terminate Facility License No. R-109. The BYU L-77 Research Reactor was shut down in May 1982, and has not operated since then. Following the reactor shutdown, the fuel was removed from the reactor and transferred offsite to the Department of Energy. Opportunity for hearing was afforded by a "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" published in the **Federal Register** on August 1, 1991, (56 FR 36851). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

*Need for Proposed Action*

The proposed action is needed in order to terminate the facility license

and transfer the area to the university for unrestricted use.

*Environmental Impact of the Proposed Action*

All proposed operations in connection with decommissioning and decontamination of the BYU reactor will be carefully planned and controlled, all contaminated components will be removed, packaged, and shipped offsite, and radiological control procedures will be in place and implemented to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as reasonably achievable (ALARA).

All decontamination will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The NRC staff has calculated that the collective dose equivalent to the BYU staff and public for the project will be less than 0.5 person-rem.

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the Brigham Young University L–77 Research Reactor, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area or have any other significant environmental impact.

*Alternatives Use of Resources*

The only alternative to the proposed decommissioning, dismantling and decontamination activities is to have BYU maintain possession of the reactor. This approach would include monitoring and reporting for the duration of the safe storage period. However, Brigham Young University intends to use the area for other purposes. The alternative of not decommissioning reactors was rejected in the Generic Environmental Impact Statement on Decommissioning, NUREG–0586. No alternative appears that will have different or lesser effect on the use of available resources, and other alternatives need not be evaluated.

*Agencies and Persons Consulted*

The Idaho National Engineering Laboratory, under contract to the NRC, assisted in the preparation of the Safety Evaluation Report for the decommissioning of the BYU L–77 Research Reactor.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. The Commission concludes that the proposed action will not have a significant effect on the quality of the human environment for the reasons set out above.

For detailed information with respect to this proposed action, see the application for decommissioning, dismantling, decontamination and license termination dated June 28, 1990, as supplemented, and the Safety Evaluation prepared by the staff. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 17th day of July 1992.

For the Nuclear Regulatory Commission.

**Seymour H. Weiss,**

*Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate Division of Reactor Projects—III/IV/V Office of Nuclear Reactor Regulation.*

[FR Doc. 92–17422 Filed 7–22–92; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### President's Council of Advisors on Science and Technology; Meeting

**ACTION:** Notice of meeting.

**SUMMARY:** The President's Council of Advisors on Science and Technology (the "Council") will meet on August 6–7, 1992, in Los Altos Hills, California on the "Rancho Grande" ranch on Big Sur. The Council will convene at approximately 9 a.m. on Thursday, August 6, 1992, with this session ending at approximately 5 p.m. On Friday, August 7, 1992, the meeting will begin at approximately 9 a.m. with this session ending at approximately 5 p.m.

**TYPE OF MEETING:** Open.

**AGENDA:** The Council will be discussing its strategic plan for the next year. No specific topics are set on the agenda. The Council will meet solely to discuss possible areas of interest and concern over the next year. Persons wishing to attend the meeting are requested to contact Ms. Ann Barnett, (202) 395–4692, prior to 3 p.m. on August 4, 1992.

Dated: July 20, 1992.

**Philip W. Bolus,**

*Special Assistant and Counsel, Office of Science and Technology Policy.*

[FR Doc. 92–17377 Filed 7–22–92; 8:45 am]

BILLING CODE 3170–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of publication.

**SUMMARY:** This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, a subject-matter index, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. These indexes and digests will increase the public's awareness of the Administrator's decisions and orders and will assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number ensures that the agency is in compliance with statutory indexing requirements.

**FOR FURTHER INFORMATION CONTACT:** James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 701 Pennsylvania Avenue NW., suite 925, Washington, DC 20004: telephone (202) 376–6441.

**SUPPLEMENTARY INFORMATION:** The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes that contain identifying information as to those materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), The FAA announced the public availability of several indexes and summaries that provide identifying information about the final decisions and orders issued by the Administrator pursuant to the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR part 13, subpart G. The FAA maintains an index of the

Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number of the Administrator's final decisions and orders in civil penalty cases.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (i.e., in January, April, July, and October of each year). Only the subject-matter index will be published cumulatively. Both the order number index and the digests will be non-cumulative.

In a notice issued on January 25, 1991, the FAA published the first supplement to the indexes and digests herein described, which included the decisions and orders issued by the Administrator from October 1, 1990 through December 31, 1990. 56 FR 4886; February 6, 1991. In a notice issued on May 1, 1991, the FAA published the second supplement, which included decisions and orders issued by the Administrator from January 1, 1991 through March 31, 1991. 56 FR 20250; May 2, 1991. In a notice issued on July 3, 1991, the FAA published the third supplement, which included decisions and orders issued by the Administrator from April 1, 1991 through June 30, 1991. 56 FR 31984; July 12, 1991. In a notice issued on October 8, 1991, the FAA published the fourth supplement, which included decisions and orders issued by the Administrator between July 1, 1991 and September 30, 1991. 56 FR 51735; October 15, 1991. In a notice issued on January 13, 1992, the FAA published the fifth supplement, which included decisions and orders issued by the Administrator between October 1, 1991 and December 31, 1991. 57 FR 2299; January 21, 1992. In a notice issued on April 3, 1992, the FAA published the sixth supplement, which included decisions and orders issued by the Administrator between January 1, 1992 and March 31, 1992. 57 FR 12359 (April 9, 1992).

As noted at the beginning of each of these documents, these indexes and digests do not constitute legal authority, and should not be cited or relied upon as such. The indexes and digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context. The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

## Civil Penalty Actions

## Decisions and Orders Issued by Administrator

*Index by Order Number*

(This supplement includes decisions and orders issued by the Administrator from April 1, 1992 through June 31, 1992.)

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

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*SUBJECT MATTER INDEX*

(Current as of June 30, 1992)

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.


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| 107.21 | 89–5 Schultz; 90–10 Webb; 90–22 Degenhardt; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–39 Hart; 91–3 Lewis; 91–10 Graham; 91–30 Trujillo; 91–38 Esau; 91–53 Koller; 92–32 Barnhill; 92–38 Cronberg. |
| 108.5 | 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines; 91–9 Continental Airlines; 91–33 Delta Air Lines; 91–54 Alaska Airlines; 91–55 Continental Airlines; 92–13 Delta Air Lines, Inc. |
| 108.7 | 90–18 Continental Airlines; 90–19 Continental Airlines. |
| 108.11 | 90–23 Broyles; 90–26 Waddell; 91–3 Lewis |
| 108.13 | 90–12 Continental Airlines; 90–19 Continental Airlines; 90–37 Northwest Airlines. |
| 121.133 | 90–18 Continental Airlines. |
| 121.317 | 92–37 Giuffrida. |
| 121.318 | 92–37 Giuffrida. |
| 121.367 | 90–12 Continental Airlines. |
| 121.517 | 92–37 Giuffrida. |
| 135.25 | 92–10 Flight Unlimited. |
| 135.87 | 90–21 Carroll. |
| 145.53 | 90–11 Thunderbird Accessories. |
| 145.61 | 90–11 Thunderbird Accessories. |

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| 191 | 90–12 Continental Airlines; 90–19 Continental Airlines; 90–37 Northwest Airlines. |
| 298.1 | 92–10 Flight Unlimited, Inc. |
| 302.8 | 90–22 USAir. |
| 49 CFR: | |
| 821.33 | 90–21 Carroll. |
| Statutes: | |
| 5 U.S.C.: | |
| 504 | 90–17 Wilson; 91–17 KDS Aviation. |
| 552 | 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines. |
| 554 | 90–18 Continental Airlines; 90–21 Carroll. |
| 556 | 90–21 Carroll; 91–54 Alaska Airlines. |
| 557 | 90–20 Degenhardt; 90–21 Carroll; 90–37 Northwest Airlines. |
| 11 U.S.C.: | |
| 362 | 91–2 Continental Airlines |
| 28 U.S.C.: | |
| 4282 | 90–21 Carroll. |
| 49 U.S.C. App.: | |
| 1356 | 90–18 Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines. |
| 1357 | 90–18 Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines; 91–41 [Airport Operator]; 91–56 [Airport Operator]. |
| 1421 | 92–10 Flight Unlimited. |
| 1471 | 89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–37 Northwest Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–53 Koller; 92–5 Delta Air Lines; 92–10 Flight Unlimited. |
| 1475 | 90–20 Degenhardt; 00–0012 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]. |
| 1486 | 90–21 Carroll. |

## Civil Penalty Actions Decisions and Orders Issued by the Administrator

*Digests*

(This supplement includes decisions and orders issued by the Administrator from April 1, 1992 through June 30, 1992.)

These digests do not constitute legal authority, and should not be cited or relied upon as such. These digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from January 1, 1992 through March 31, 1992. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (e.g. April, July, October, and January of each year).

*In the Matter of Delta Air Lines*

Order No. 92–28 (4/1/92)

*Withdrawal of Appeal.* Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

*In the Matter of Paul B. Haggland, Jr.*

Order No. 92–29 (4/15/92)

*Continuance of Hearing.* After a hearing at which Respondent failed to appear, the law judge held that Respondent had violated the FAR by not having met the requirements for check airmen. Respondent appealed to the Administrator, who remanded the case to the law judge to determine whether Respondent should have been granted a continuance of the hearing.

Respondent had claimed that he could not attend the hearing because he had to attend a mandatory FAA training course on the same date. The Administrator found that although Respondent failed to adequately explain his reasons for seeking a continuance, the law judge should have sought additional information from Respondent before ruling on his request. If the course was mandatory and no similar course was soon available, then Respondent was forced to choose between FAA training required by his employment, and defending himself against FAA charges at a hearing. The Administrator stated that attendance at a mandatory FAA safety course, when adequately explained and timely raised, should be a valid reason for rescheduling the hearing.

*In the Matter of Charles D. Eaddy*

Order No. 92–31 (5/5/92)

*Notice of Hearing.* The Administrator remanded this matter to the law judge to determine whether Respondent had received the Notice of Hearing advising Respondent of the exact time, date and location of the hearing.

The Notice of Hearing at issue is required under section 13.221(a) of the FAR, 14 CFR 13.221(a). Respondent denied receipt of the Notice of Hearing. The law judge stated in a subsequent notice that his case file showed that the Notice of Hearing had been served on Respondent at his correct address by regular mail. The law judge further explained that there was no envelope in his file indicating a returned piece of mail by the Postal Service. The Administrator found that the facts of this case gave rise to a rebuttable presumption that Respondent had received the Notice of Hearing. Respondent's denial of receipt rebutted the presumption. The issue of receipt of the Notice of Hearing became one to be resolved by the law judge, based on the totality of the circumstances.

*In the Matter of Florence L. Barnhill*

Order No. 92–32 (5/5/92)

*Law Judge's Jurisdiction.* The law judge did not have authority to reopen the case after he issued his order granting summary judgment. When a law judge issues an initial decision, his or her jurisdiction over a case ends. The Rules of Practice do not provide for reconsideration of an initial decision by a law judge. Assuming, *arguendo*, that a law judge has the power to correct or otherwise modify his or her decision within a reasonable time, that time would in any event have expired when the decision became an "order assessing civil penalty," *i.e.*, when Respondent failed to file a timely appeal from the law judge's initial decision.

*De Facto Answer.* The law judge erred in concluding that Respondent's letter to the FAA inspector, submitted more than 6 months before the complaint was issued, was a *de facto* answer to the complaint. The letter to the inspector *preceded* the complaint in time. To find that it was a *de facto* answer would be to eliminate, in effect, the requirement in the Rules of Practice for an answer to the complaint.

*Material Misrepresentation.* The law judge erred in finding that agency counsel materially misrepresented the facts in Complainant's motion for summary judgment by failing to apprise the law judge of Respondent's letter to the inspector. Agency counsel's representations to the law judge that Respondent failed to file an answer were made in good faith. They were based on a reasonable interpretation of the Rules of Practice, which is supported not only by the Rules themselves, but also by the decision in *In the Matter of Metz*, FAA Order No. 90–3 (1/29/90).

*Sanction.* The law judge's order granting summary judgment assessed a civil penalty of $2,000. After inquiry at the hearing into Respondent's financial situation, however, the law judge reduced the proposed civil penalty from $2,000 to $600, payable in 12 monthly installments of $50. Complainant states on appeal that it now believes that a civil penalty of only $550 is appropriate in this case. A civil penalty in the amount of $550, payable in 11 monthly installments of $50, is assessed.

*In the Matter of the Port Authority of New York and New Jersey*

Order No. 92–33 (5/15/92)

*Withdrawal of Appeal.* Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

*In the Matter of Lester Glen Carrell*

Order No. 92–34 (5/18/92)

*Failure to Perfect.* Respondent failed to perfect his appeal by filing an appeal brief. Respondent's appeal is dismissed.

*In the Matter of Bay Land Aviation, Inc.*

Order No. 92–35 (5/28/92)

*Failure to Perfect.* Respondent failed to perfect its appeal by filing an appeal brief. Respondent's appeal is dismissed.

*In the Matter of Southwest Airlines Co.*

Order No. 92–36 (5/28/92)

*Failure to Perfect.* Respondent failed to perfect its appeal by filing an appeal brief. Respondent's appeal is dismissed.

*In the Matter of Salvatore Giuffrida*

Order No. 92–37 (6/15/92)

*Smoking in Aircraft Lavatory.* Respondent was smoking in the lavatory of a flight. He claimed that he did not know that smoking in the lavatory was prohibited. The law judge held that Respondent could not afford to pay the $1000 civil penalty sought by Complainant and reduced the penalty to $500 payable in 10 monthly installments. Respondent appeals, arguing that he cannot even afford to pay that amount.

*Sanction.* Respondent's monthly income is $1400, his rent and utilities are $900 per month, and he must support a family of 4. Smoking in an aircraft lavatory poses such a serious risk to safety that ordinarily a $10000 civil penalty is warranted. But, under these circumstances, a $200 civil penalty, payable in 10 monthly installments, would be adequate to deter Respondent from smoking in a lavatory again.

*In the Matter of Monica Cronberg*

Order No. 92–38 (6/15/92)

*Inability to Pay Sanction.* The Administrator affirmed the law judge's finding that Respondent was able to pay a reduced sanction of $650 for attempting to enter a sterile area at an airport with a loaded gun in violation of 14 CFR 107.21(a)(1). Respondent's argument that her sanction should be reduced by the same amount as those assessed other respondents with similar violations at the same hearing, was rejected. A respondent's inability to pay a civil penalty is determined based upon that individual's financial circumstances. The law judge found that Respondent had sufficient income to pay the reduced fine, while the other respondents at that hearing did not.

The Administrator noted that the law judge could have taken into account the income of Respondent's husband. The fact that Respondent paid one half of the household expenses and maintained a separate bank account did not exempt her joint income from review for determining her ability to pay the sanction.

*In the Matter of Thomas A. Beck*

Order No. 92–39 (6/15/92)

*Appeal Perfected.* The Administrator construed Respondent's timely notice of appeal as an appeal brief because it was sufficiently detailed to met the requirements for an appeal brief under 14 CFR 13.233(d)(1).

*In the Matter of Michael Edward Wendt*

Order No. 92–40 (6/15/92)

*Runway Incursion; Adequacy of Visual Cues.* Because a number of the usual cues enabling a pilot to identify an intersecting runway were not present, the law judge's finding of a violation of 14 CFR 91.75(b) and 91.9 (1988) is reversed.

*Air Traffic Control Contribution.* Although no specific air traffic control procedure was violated, it is at least arguable that poor air traffic control coordination and technique was a factor in this incident.

*In the Matter of Michael K. Moore and Sabre Associates*

Order No. 92–41 (6/24/92)

*Late-filed Request for Extension of Time.* With the agreement of Respondent, Complainant sought an extension of time to file its reply brief. Complainant asserted in the letter that it had filed two requests for extension of time to file the reply brief, but had received no response from the Administrator. The Appellate Docket had no record of those requests. However, it is likely that those requests would have been granted had they been received by the Appellate Docket, as Complainant apparently believed they had been. Consequently, good cause was found for Complainant's late-filed request for an extension of time.

*In the Matter of Jeff Jayson*

Order No. 92–42 (6/29/92)

*Withdrawal of Appeal.* Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

*Commercial Reporting Services.* In June, 1991, as a public service, the FAA began releasing to commercial publishers the Administrator's decisions in civil penalty cases. The goal was to make these decisions and orders more accessible to the public. As a result, the

Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

*Avlex*, published by Aviation Daily, 1156 15th Street, NW., Washington, DC 20005, (202) 822–4669;

*Civil Penalty Cases Digest Service*, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD 21106.

Another publishing company, Clark Boardman Callaghan [50 Broad Street East, Rochester, NY 14694, (716) 546–1490], is expected to release its publication of the civil penalty decisions and orders soon.

The Administrator's decisions and orders in civil penalty cases are also available now on the following databases: Compuserve; Fedix; and Genie. Finally, the decisions and orders may be obtained on disk from Aviation Records, Inc., P.O. Box 172, Battle Ground, WA 98604, (206) 896–0376.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

The Administrator's final decisions and orders, indexes, and digests are also available for public inspection and copying at the following location in FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591; (202) 267–3641.

In addition, these materials are available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AAC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125; (405) 680–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AK 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 917–1035.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; (312) 694–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803; (617) 273–7310.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 18000 Pacific Highway South, Seattle, WA 98188; (206) 227–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 3400 Norman Berry Drive, East Point, GA 30344; (404) 763–7204.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 4400 Blue Mound Road, Fort Worth, TX 76193; (817) 624–5707.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 484–6605.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (213) 297–1270.

Issued in Washington, DC, on July 16, 1992.

**Kenneth P. Quinn,**

*Chief Counsel.*

[FR Doc. 92–17360 Filed 7–22–92; 8:45 am]

BILLING CODE 4910–13–M

## Proposed Modification of Terminal Control Area at Orlando, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of informal airspace meeting.

**SUMMARY:** This notice announces a fact-finding informal airspace meeting to solicit information from airspace users and others concerning a proposal to modify the Terminal Control Area (TCA) at Orlando, FL. The proposed modification to the TCA is in response to user suggestions for changes that would make the TCA design more efficient and user friendly.

**DATES:** Comments must be received on or before November 23,1992. This informal airspace meeting will be held on September 23, 1992.

**ADDRESSES:** The location of the informal airspace meeting is as follows:

*Date:* Wednesday, September 23, 1992.

*Time:* 7 p.m. to 10 p.m.

*Location:* Orlando Executive Airport, Terminal Building Lobby, Orlando, FL 32803.

Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

**FOR FURTHER INFORMATION CONTACT:** Wilburn T. Mowdy, Air Traffic Manager, Airport Traffic Control Tower, Orlando International Airport, 9353 Airport Boulevard West, Orlando, FL 32827; telephone: (407) 648–6291.

**SUPPLEMENTARY INFORMATION:**

**Meeting Procedures**

(a) This meeting will be informal in nature and will be conducted by a representative of the Administrator, FAA Southern Region. Each participant will be given an opportunity to make a presentation, although a time limit may be imposed.

(b) This meeting will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation so that timeframes can be established. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. This meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. This meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) This meeting will not be formally recorded. However, a summary of the comments made at this meeting will be filed in the docket.

*AGENDA*

Opening Remarks and Discussion of Meeting Procedures
Public Presentations
Closing Comments

Issued in Washington, DC, on July 15, 1992.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 92-17370 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

## Proposed Establishment of Terminal Control Area at Cincinnati/Northern Kentucky International Airport

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of informal airspace meetings.

**SUMMARY:** This notice announces fact-finding informal airspace meetings to solicit information from airspace users and others concerning a proposal to establish a Terminal Control Area (TCA) for the Cincinnati, OH, and Covington, KY, areas. The establishment of a TCA is being considered due to the increased volume of traffic arriving and departing the Cincinnati/Northern Kentucky International Airport.

**DATES:** Comments must be received on or before November 5, 1992. These informal airspace meetings will be held on September 3 and September 4, 1992.

**ADDRESSES:** The locations of the informal airspace meetings are as follows:

*Date:* Thursday, September 3, 1992.
*Time:* 7 p.m. to 10 p.m.
*Location:* Environmental Protection Agency, 26 W Martin Luther King Drive, Cincinnati, OH.

*Date:* Friday, September 4, 1992.
*Time:* 7 p.m. to 10 p.m.
*Location:* Northern Kentucky University, Louie B. Nunn Drive, University Center Theater, Highland Heights, KY.

Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

**FOR FURTHER INFORMATION CONTACT:** Wayne Goswick, Air Traffic Manager, Airport Traffic Control Tower, Cincinnati/Northern Kentucky Airport, Tower Drive, Hebron, KY 41048; telephone: (606) 283-3611.

**SUPPLEMENTARY INFORMATION:**

**Meeting Procedures**

(a) These meetings will be informal in nature and will be conducted by a representative of the Administrator, FAA Southern Region. Each participant will be given an opportunity to make a presentation, although a time limit may be imposed.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation so that timeframes can be established. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel. These meetings may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants wishing to submit handout material should present *three* copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded. However, a summary of the comments made at these meetings will be filed in the docket.

*Agenda*

Opening Remarks and Discussion of Meeting Procedures
Public Presentations
Closing Comments

Issued in Washington, DC, on July 15, 1992.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 92-17371 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

## Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel; Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given of a meeting of the Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel.

**DATES:** The meeting will be held August 26-27, 1992, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held in the Maintenance Conference Room, USAir Building #4, Commerce Drive, Pittsburgh, Pennsylvania, 15275.

**FOR FURTHER INFORMATION CONTACT:** Daniel C. Beaudette, Executive Director, 800 Independence Avenue, SW., Washington, DC 29591, telephone (202) 267-7804.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel to be held August 26-27, 1992. The meeting agenda will include:

- Opening comments.
- Background briefings.
- Public comments.
- Future operations.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before August 19, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on July 17, 1992.

**Daniel C. Beaudette,**

*Executive Director, Pilot and Aviation Maintenance Technician, Shortage Blue Ribbon Panel.*

[FR Doc. 92-17369 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

## Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Flagstaff Pulliam Airport, Flagstaff, AZ

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Flagstaff Pulliam Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before August 24, 1992.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, Standards Section, AWP-621, P.O. Box 92007, WPC, Los Angeles, California 90009.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Lynda S. Christensen, Finance Manager of the City of Flagstaff at the following

address: City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Flagstaff under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** John P. Milligan, Supervisor, Standards Section, AWP-621, Federal Aviation Administration, P.O. Box 92007, WPC, Los Angeles, California 90009, Telephone: (310) 297-1029.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Flagstaff Pulliam Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 1, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Flagstaff was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 29, 1992.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* October 1, 1992.

*Proposed charge expiration date:* November 30, 2014.

*Total estimated PFC revenue:* $2,463,581.

*Brief description of proposed project(s):* Prepare tentative plat; prepare drainage study; prepare master plan; construct new terminal building; construct utilities to new terminal building including electrical, natural gas, waste water, and water; construct access road to new terminal building; construct terminal apron at new terminal.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Air Taxi/Air Ambulance, Air Taxi/Commercial Services, Large Charter, and Government Aircraft.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Western-Pacific Regional Headquarters, Airports Division, room 3E23, 15000 Aviation Blvd., Hawthorne, California 90261

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Flagstaff.

Issued in Hawthorne, California on July 1, 1992.

**Herman C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 92-17372 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

## Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Fanning Field, Idaho Falls, ID

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fanning Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before August 24, 1992.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Seattle Airports District Office, SEA-ADO, Federal Aviation Administration, 1601 Lind Avenue SW, suite 250, Renton, WA 98055-4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to James H. Thorsen, Director of Aviation for the city of Idaho Falls at the following address: 2140 North Skyline Drive, Idaho Falls, Idaho 83402.

Air carriers and foreign air carriers may submit copies of written comments previously provided to City of Idaho Falls under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra M. Simmons, Civil Engineer, (206) 227-2656; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., suite 250; Renton, Washington 98055-4056. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fanning Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Ominbus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 10, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Idaho Falls was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 29, 1992.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* January 1, 1993.

*Proposed charge expiration date:* December 31, 1997.

*Total estimated PFC revenue:* $1,500,000.00.

*Brief description of proposed project(s):* Safety area improvements; Install access control system; Purchase Aircraft Rescue and Firefighting vehicle; Construct ground level gate with security door; Install handicap access lift device.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* None.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue, SW., suite 540; Renton, Washington 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Fanning Field.

Issued in Renton, Washington on July 10, 1992.

**Edward G. Tatum,**

*Manager, Airports Division, Northwest Mountain Region.*

[FR Doc. 92-17372 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

## Passenger Facility Charge (PFC) Approvals and Disapprovals

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In June 1992, there were eight applications approved.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate of PFC approvals

and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

**PFC Applications Approved**

*Public Agency:* City of San Jose, San Jose, California.

*Application Type:* Impose and Use PFC Revenue.

*PFC Level:* $3.00.

*Total Approved Net PFC Revenue:* $29,228,826.

*Earliest Permissible Charge Effective Date:* September 1, 1992.

*Duration of Authority to Impose:* August 1, 1995.

*Class of Air Carriers not Required to Collect PFC's:* Air taxi/commercial operators.

*Determination:* Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

*Brief Description of Projects Approved to Impose and Use:* Communications center upgrade, Fire truck replacement, Handi-lift replacement, Noise attenuation, Noise monitoring system upgrade, Noise remedy/land acquisition, Security access control system.

*Brief Description of Projects Approved to Impose:* Control tower site restoration, Fire station remodel, Runway 30L extension, Sign program.

*Brief Description of Projects Disapproved:* Advanced planning.

*Determination:* The draft chapter 4 of FAA Order 5100.38A, Airport Improvement Program (AIP) Handbook, states that continuous planning efforts such as this project proposed by the city of San Jose are AIP eligible only when accomplished by "* * * airport sponsors who operate two or more airports * * * if they are the authorized area-wide planning agency." Since the city of San Jose does not fit this definition, planning, design, and engineering services unrelated to specific eligible capital projects are ineligible under AIP criteria and, therefore, are ineligible under PFC criteria.

Fuel farm cleanup.

*Determination:* This project is not AIP eligible, therefore, not PFC eligible.

Automated vehicle identification system.

*Determination:* This equipment is not needed to meet airport safety requirements under part 139 or airport security requirements under part 107 and is not AIP eligible, therefore, not PFC eligible.

*Decision Date:* June 11, 1992.

*For Further Information Contact:* Mr. Joseph R. Rodriquez, Supervisor, Planning and Programming Section, FAA Airports District Office, 831, Mitten Road, room 210, Burlingame, California, 94010–1303, (415) 876–2805.

*Public Agency:* Charlottesville-Albemarle Airport Authority, Charlottesville, Virginia.

*Application Type:* Impose PFC.

*PFC Level:* $2.00

*Total Approved Net PFC Revenue:* $255,559.

*Earliest Permissible Charge Effective Date:* September 1, 1992.

*Duration of Authority to Impose:* November 1, 1993.

*Class of Air Carriers Not Required to Collect PFC's:* Air taxi/commercial operators, Foreign air carriers.

*Determination:* Approved. The FAA has determined that each of the proposed classes account for less than 1 percent of the total enplanements at Charlottesville-Albemarle Airport (CHO). The FAA notes that the class entitled "foreign air carriers" includes only those foreign carriers that operate at CHO and does not include foreign carriers which write interline tickets which include a CHO enplanement.

*Brief Description of Projects Approved:* Relocation of Taxiway A, Snow equipment storage building, ARFF vehicle, Snow vehicle/plow, General aviation south taxiway and ramp.

*Brief Description of Projects Disapproved:* Master plan update.

*Determination:* The FAA has concluded that the Charlottesville-Albemarle Airport Authority has not met either the requirements or the intent of section 158.23 for this project.

Land acquisition.

*Determination:* This project cannot be determined to be AIP eligible and, therefore, is ineligible under PFC criteria.

*Brief Description of Project Withdrawn:* ARFF training facility.

*Determination:* The Charlottesville-Albemarle Airport Authority withdrew this project from consideration by letter dated February 26, 1992.

*Decision Date:* June 11, 1922.

*For Further Information Contact:* Mr. Robert B. Mendez, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia, 22046, (703) 285–2570.

*Public Agency:* Missoula County Airport Authority, Missoula, Montana.

*Application Type:* Impose and Use PFC Revenue.

*PFC Level:* $3.00.

*Total Approved Net PFC Revenue:* $1,900,000.

*Earliest Permissible Charge Effective Date:* September 1, 1992.

*Duration of Authority to Impose:* August 1, 1997.

*Class of Air Carriers not Required to Collect PFC's:* Air taxis and charter carriers, which operate only as on demand carriers and do not provide regularly scheduled air transportation service, serving Missoula County Airport.

*Determination:* Approved. The FAA has determined that each class does not exceed 1 percent of the total enplanements.

*Brief Description of Projects Approved:* Taxiway "P" realignment, extension, and rehabilitation, Terminal access improvements, Terminal expansion project, Land acquisition for noise control purposes, Airfield vacuum broom.

*Decision Date:* June 12, 1992.

*For Further Information Contact:* Mr. David P. Gabbert, Manager, Helena Airports District Office, FAA Building, room 2, Helena Regional Airport, Helena, Montana 59601, (406) 449–5271.

*Public Agency:* City of Palm Springs, Palm Springs, California.

*Application Type:* Impose and Use PFC Revenue.

*PFC Level:* $3.00.

*Total Approved Net PFC Revenue:* $44,612,350.

*Earliest Permissible Charge Effective Date:* October 1, 1992.

*Duration of Authority to Impose:* June 1, 2019.

*Class of Air Carriers not Required to Collect PFC's:* Part 135 air taxi operations.

*Determination:* Approved. The proposed class accounts for less than 1 percent of the airport's total annual enplanements.

*Brief Description of Projects Approved:* Airport terminal expansion, Phase IA, Airport terminal expansion. Phase IIA.

*Decision Date:* June 25, 1992.

*For Further Information Contact:* Mr. John P. Milligan, Supervisor Standards Section, AWP–621, Federal Aviation Administration, P.O. Box 92007, WWPC, Los Angeles, California, 90009, (310) 297–1029.

*Public Agency:* Port of Oakland, Oakland, California.

*Application Type:* Impose and Use PFC Revenue.

*PFC Level:* $3.00.

*Total Approved Net PFC Revenue:* $8,736,000.

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*Earliest Permissible Charge Effective Date:* September 1, 1992.

*Duration of Authority to Impose:* September 1, 1993.

*Class of Air Carriers Not Required to Collect PFC's:* Air taxi/commercial operators.

*Determination:* Approved. The proposed class accounts for less than 1 percent of the airport's total annual enplanements.

*Brief Description of Projects Approved:* Handicap upgrades in Terminal One, Expansion to Terminal One baggage area, Upgrade and apply sealer to ramps, Terminal One and air cargo building, Install computerized security access control system, Overlay Taxiway 5 between Runway 27L and Taxiway 10, Overlay Taxiway 5 between Taxiway 10 to Taxiway 1 and widen, Upgrade Taxiway 1 (sections 1–1, 1–2, 1–3), Install emergency notification system, Install runway and taxiway signs, Remote aircraft rescue and firefighting (ARFF) pad and shelter, Purchase new ARFF vehicle, Overlay of inbound airport drive, Replace emergency water valve, Purchase of noise monitoring system, Planning studies.

*Brief Description of Projects Disapproved:* Recarpet Terminal Two, Recoat aircraft loading bridges.

*Determination:* These projects are not AIP eligible and therefore are not PFC eligible.

*Brief Description of Project Withdrawn:* 6-acre air cargo apron and taxilane.

*Determination:* The Port of Oakland deleted this project from its application by letter to the FAA dated June 17, 1992.

*Decision Date:* June 26, 1992.

*For Further Information Contact:* Mr. Joseph R. Rodriquez, Supervisor, Planning and Programming Section, FAA Airport District Office, 831 Mitten Road, Room 210, Burlingame, California, 94010–1303, (415) 876–2805.

*Public Agency:* Division of Aviation, Philadelphia, Pennsylvania.

*Application Type:* Impose PFC Revenue.

*PFC Level:* $3.00.

*Total Approved Net PFC Revenue:* $76,169,000.

*Earliest Permissible Charge Effective Date:* September 1, 1992.

*Duration of Authority to Impose:* July 1, 1995.

*Class of Air Carriers not Required to Collect PFC's:* Air taxi/commercial operators.

*Determination:* The proposed class accounts for less than 1 percent of the airport's total annual enplanements.

*Brief Description of Projects Approved:* Rescue boat facility, Upgrade of airfield signage system, Airfield expansion (land acquisition), Fire alarm system expansion, Terminal A Prime, phase I, Central heliport, Terminals B and C improvements, Ground transportation improvements, Land acquisition (east of Island Avenue, and north of Enterprise), Moving sidewalks, Terminals D and E improvements, Land acquisition (southeast corner of Island Avenue and Bartram), Land acquisition (Island Avenue south of Route 291).

*Brief Description of Projects Withdrawn:* Airfield expansion program, Relocation of State Route 291.

*Determination:* The Division of Aviation, withdrew these projects from its application by letter to the FAA dated June 23, 1992.

*Decision Date:* June 29, 1992.

*For Further Information Contact:* Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzsdale Drive, Suite 1, Camp Hill, Pennsylvania 17011, (717) 782–4548.

*Public Agency:* Sarasota Manatee Airport Authority, Sarasota, Florida.

*Application Type:* Impose PFC.

*PFC Level:* $3.00.

*Total Approved Net PFC Revenue:* $38,715,000.

*Earliest Permissible Charge Effective Date:* September 1, 1992.

*Duration of Authority to Impose:* September 1, 2005.

*Class of Air Carriers not Required to Collect PFC'S:* Air taxi/commercial operators.

*Determination:* Approved. The proposed class accounts for less than 1 percent of the airport's total annual enplanements.

*Brief Description of Projects Approved:* Federal Aviation Regulations Part 150 program funding, Airfield drainage improvements, Environmental assessment, Clear zone land acquisition—Runway 14/32 extension, Lengthen Runway 14/32, Rehabilitate Taxiway "A", Construct Airside "A", Construct Airside "A", Rehabilitate Taxiways "D", "I", and "C", Land Acquisition—parallel Runway 14/32, Construction—parallel Runway 14/32.

*Brief Description of Projects Disapproved:* Master plan update, Environmental assessment, Construct Airside "C".

*Determination:* These projects will not meet the requirement under § 158.33 which requires implementation within 5 years of the charge effective date of September 1, 1992. Drainage improvements—U.S. 41 to Sarasota Bay.

*Determination:* The scope of this project will not be determined until the completion of a drainage study. AIP eligibility for off-airport drainage projects is limited to outfall drainage ditches.

*Decision Date:* June 29, 1992.

*For Further Information Contact:* Mr. Bart Vernace, Airports Plans and Programs Manager, Federal Aviation Administration, 9677 Tradeport Drive, Suite 130, Orlando, Florida, 32827–5397, (305) 420–6582.

*Public Agency:* Akron-Canton Regional Airport Authority, Akron, Ohio.

*Application Type:* Impose and Use PFC Revenue.

*PFC Level:* $3.00.

*Total Approved Net PFC Revenue:* $3,594,000.

*Earliest Permissible Charge Effective Date:* September 1, 1992.

*Duration of Authority to Impose:* August 1, 1996.

*Class of Air Carriers not Required to Collect PFC'S:* Part 135 operators.

*Determination:* Approved. The proposed class accounts for less than 1 percent of the airport's total annual enplanements.

*Brief Description of Projects Approved:* Waterline installation, Gate area widening, Airfield maintenance and aircraft rescue and firefighting building expansion, Emergency generator, Aircraft rescue and firefighting (ARFF) vehicle, Baggage makeup area expansion and renovation, Snow removal equipment, Renovate/construct aircraft parking apron, construct security fence, and install airfield signage, Heavy duty airport sweeper, ARFF vehicle, Land acquisition (Goodyear property), Land acquisition (Clark, Yoders, and Nibert properties), Overlay Taxiway E, inner taxiways, and general aviation parking area including drainage and pavement marking.

*Brief Description of Projects Disapproved:* Local AIP matching funds for fiscal years 1993, 1994, 1995, and 1998.

*Determination:* Sufficient information on project descriptions and justifications was not provided in the application to allow the FAA to determine whether the projects meet the requirements of section 158.15. Snow removal equipment, Overlay of Runway 1/19 and parallel taxiway, Snow removal equipment, Terminal building expansion, Overlay Runway 5/23 and parallel taxiway.

*Determination:* Section 158.33(a)(1) requires the public agency to begin implementation of a project no later than 2 years after receiving approval to use PFC revenue on that project. The schedule submitted with the application shows implementation dates of April

1995 or later for the six disapproved projects listed above.

*Decision Date:* June 30, 1992.

*For Further Information Contact:* Mr. Peter Serini, Manager, Federal Aviation Administration Airports District Office, Willow Run Airport, east, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7300.

**Cumulative List of Applications Previously Approved**

Huntsville International Airport, Huntsville, Alabama

*Date approved:* March 6, 1992.
*Level of PFC:* $3.00.
*Total approved net PFC revenue:* $20,831,051.
*Earliest charge effective date:* June 1, 1992.
*Estimated charge expiration date:* November 1, 2008.

Muscle Shoals Regional Airport, Muscle Shoals, Alabama

*Date approved:* February 18, 1992.
*Level of PFC:* $3.00.
*Total approved net PFC revenue:* $104,100.
*Earliest charge effective date:* June 1, 1992.
*Estimated charge expiration date:* February 1, 1995.

Lake Tahoe Airport, South Lake Tahoe, California

*Date approved:* May 1, 1992.
*Level of PFC:* $3.00.
*Total approved net PFC revenue:* $928,747.
*Earliest charge effective date:* August 1, 1992.
*Estimated charge expiration date:* March 1, 1997.

Stapleton International Airport/Denver International Airport, Denver, Colorado

*Date approved:* April 28, 1992.
*Level of PFC:* $3.00.
*Total approved net PFC revenue:* $2,330,734,321.
*Earliest charge effective date:* July 1, 1992.
*Estimated charge expiration date:* January 1, 2026.

Savannah International Airport, Savannah, Georgia

*Date approved:* January 23, 1992.
*Level of PFC:* $3.00.
*Total approved net PFC revenue:* $39,501,502.
*Earliest charge effective date:* July 1, 1992.
*Estimated charge expiration date:* March 1, 2004.

Capital Airport, Springfield, Illinois

*Date approved:* March 27, 1992.
*Level of PFC:* $3.00.
*Total approved net PFC revenue:* $682,306.
*Earliest charge effective date:* June 1, 1992.
*Estimated charge expiration date:* May 1, 1994.

Minneapolis-St. Paul International Airport, Minneapolis, Minnesota

*Date approved:* March 31, 1992.
*Level of PFC:* $3.00.
*Total approved net PFC revenue:* $23,408,819.
*Earliest charge effective date:* June 1, 1992.
*Estimated charge expiration date:* April 1, 1993.

Golden Triangle Regional Airport, Columbus, Mississippi

*Date approved:* May 8, 1992.
*Level of PFC:* $3.00.
*Total approved net PFC revenue:* $1,693,211.
*Earliest charge effective date:* August 1, 1992.
*Estimated charge expiration date:* September 1, 2006.

Gulfport-Biloxi Regional Airport, Gulfport, Mississippi

*Date approved:* April 3, 1992.
*Level of PFC:* $3.00.
*Total approved net PFC revenue:* $384,020.
*Earliest charge effective date:* July 1, 1992.
*Estimated charge expiration date:* December 1, 1993.

Hattiesburg-Laurel Regional Airport, Moselle, Mississippi

*Date approved:* April 15, 1992.
*Level of PFC:* $3.00.
*Totl approved net PFC revenue:* $119,153.
*Earliest charge effective date:* July 1, 1992.
*Estimated charge expiration date:* January 1, 1998.

McCarran International Airport, Las Vegas, Nevada

*Date approved:* February 24, 1992.
*Level of PFC:* $3.00.
*Total approved net PFC revenue:* $428,054,380.
*Earliest charge effective date:* June 1, 1992.
*Estimated charge expiration date:* February 1, 2004.

Greater Buffalo International Airport, Buffalo, New York

*Date approved:* May 29, 1992.
*Level of PFC:* $3.00.
*Total approved net PFC revenue:* $189,873,000.
*Earliest charge effective date:* August 1, 1992.
*Estimated charge expiration date:* March 1, 2026.

Lawton Municipal Airport, Lawton, Oklahoma

*Date approved:* May 8, 1992.
*Level of PFC:* $2.00.
*Total approved net PFC revenue:* $334,078.
*Earliest charge effective date:* August 1, 1992.
*Estimated charge expiration date:* January 1, 1996.

Tulsa International Airport, Tulsa, Oklahoma

*Date approved:* May 11, 1992.
*Level of PFC:* $3.00.
*Total approved net PFC revenue:* $8,450,000.
*Earliest charge effective date:* August 1, 1992.
*Estimated charge expiration date:* August 1, 1994.

Portland International Airport, Portland, Oregon

*Date approved:* April 8, 1992.
*Level of PFC:* $3.00
*Total approved net PFC revenue:* $17,961,850.
*Earliest charge effective date:* July 1, 1992.
*Estimated charge expiration date:* July 1, 1994.

Memphis International Airport, Memphis, Tennessee

*Date approved:* May 28, 1992.
*Level of PFC:* $3.00.
*Total approved net PFC revenue:* $26,000,000.
*Earliest charge effective date:* August 1, 1992.
*Estimated charge expiration date:* December 1, 1994.

Issued in Washington, DC, on July 14, 1992.

**Leonard L. Griggs, Jr.,**

*Assistant Administrator for Airports.*

[FR Doc. 92–17374 Filed 7–22–92; 8:45 am]

BILLING CODE 4910–13–M

## RESOLUTION TRUST CORPORATION

**Statement of Policy on Contracting With Firms That Are Parties to Lawsuits With RTC/FDIC**

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Statement of policy.

**SUMMARY:** The Resolution Trust Corporation (RTC) has adopted a policy statement on the application of 12 CFR 1608.4(a)(11) concerning contracting

with firms that are being sued by it, the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC). Generally, the RTC does not do business with firms that are being sued by it, the FDIC or FSLIC. However, the RTC may do business with such firms where the contractor can screen the persons and/or office(s) charged with wrongdoing from work on the RTC contract and the firm agrees that it will not use its retention by the RTC as a defense in the pending litigation. Where a contractor is subject to multiple lawsuits, or a single suit of major proportions, the revised policy recognizes that, even though individuals and offices can be screened from the RTC contracts, continuing to do business with the firm can no longer be justified on fitness and integrity grounds under 12 CFR part 1606. A determination under this standard will be based on the scope and breadth of pending lawsuits, including the number of lawsuits, total amount claimed, the number of individuals or offices named, and the type of misconduct alleged.

**DATES:** This policy statement is effective July 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Martin Blumenthal, Supervisory Ethics Specialist, Office of Ethics, (202) 416–2029, Carl Gold, Counsel, Division of Legal Services, (202) 416–7327, or Paul Jeddeloh, Contractor Ethics Specialist, Office of Ethics, (202) 416–2832. (These are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**1. Background**

Generally, the RTC does not do business with firms that are being sued by it, the FDIC or FSLIC. However, on March 27, 1990, the FDIC/RTC Board of Directors adopted a policy that made it clear that the RTC and FDIC "may" do business with firms despite the presence of litigation if the firm agrees to certain screening devices and certain other conditions and if the firm is otherwise in compliance with the Fitness and Integrity regulations set forth in 12 CFR part 1606. The Board delegated its authority to grant waivers under the policy to the Contractors' Conflicts Committee. The Committee was authorized to find, in its discretion, that despite the presence of litigation with the FDIC, RTC or FSLIC, a firm could meet the minimum standards of fitness and integrity.

The policy is based on a paramount business need for the RTC/FDIC to use private sector firms and on the recognition that firms uniquely suited to provide certain services, including major accounting firms, may otherwise be unavailable to perform services for the RTC. Thus, where doing business with a particular firm will benefit the RTC, and the firm can meet the conditions imposed in these cases, the RTC may, in its discretion, make a determination that the firm meets RTC's minimum standards of fitness and integrity, notwithstanding the fact that it is being sued by the RTC/FDIC/FSLIC.

In such cases, the conditions imposed require the firm to screen the persons and/or office(s) charged with wrongdoing from work on the RTC contract and to agree that it cannot use its retention by the RTC as a defense in the pending litigation. Where the "offending" person or office cannot be effectively screened from working on, or influencing, RTC contract work, RTC has declined to contract with such firms.

**2. Discussion**

As noted above, the primary justification for the litigation policy has been RTC's urgent and immediate need for specific contract services, services that might have been delayed or unavailable if the RTC had refused to do business with firms being sued by it or the FDIC. Now, however, the pool of contractors ready and able to provide a broad range of services to the RTC has significantly expanded, and the business necessity rationale for continued contracting with such firms has been substantially attenuated.

In applying the litigation policy, RTC has generally looked at an individual lawsuit to determine whether the conditions required by the waiver policy can be appropriately applied. As additional suits were filed against a contractor, each was evaluated by the RTC staff without regard to the cumulative impact of multiple pending suits.

However, the filing of multiple suits or a single suit of major proportions or consequences against a contractor raises serious concerns that the firm lacks the competency or fitness and integrity to be an RTC contractor. It may create a presumption that the firm has engaged in widespread or systematic fraud or negligence or has otherwise substantially contributed to banking and/or thrift problems. Under such circumstances, an inherent conflict of interest exists which could adversely effect the ability of the contractor to perform under a contract or to represent the RTC. Furthermore, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and RTC regulations, adopted under the authority of FIRREA, establish a clear policy that, absent a compelling reason to the contrary, the RTC should not be doing business with firms that have contributed to the nation's thrift crisis. Finally, monitoring additional screening requirements imposes an increasing administrative burden on the RTC.

**3. General Policy**

When an RTC contractor is the defendant in multiple lawsuits or a single suit of major proportions, the RTC will evaluate the litigation to determine whether RTC can continue to contract with that firm. This determination will be based on the scope and breadth of pending lawsuits, including the number of lawsuits, the total amount claimed, the number of individuals or offices named, and the type of misconduct alleged. The fact that the "offending" offices or persons can be screened from RTC work would not be relevant to this evaluation. The following factors are among those that will be considered in determining whether RTC will continue to do business with the contractor:

a. Claims for substantial recoveries indicate a conflict of interest between the firm and the RTC;

b. A large number of lawsuits, particularly naming numerous individuals and offices, raise a legitimate concern of widespread wrongdoing within the firm;

c. Lawsuits that accuse "home office" or high-level officials of wrongdoing raise a legitimate concern of inherent or institutional misfeasance or malfeasance; and

d. Lawsuits accusing the firm of intentional wrongdoing or gross negligence are more significant than those alleging only negligence.

e. A single lawsuit may be so substantial in its claim for damages or in the conduct alleged to indicate a conflict of interest between the firm and the RTC.

The RTC will base its determination to continue to do business with a firm on whether some or all of these factors are present. In weighing these factors, the RTC will also consider whether it has a compelling business need for the services offered by the firm and whether those services are available from a significant number of competing firms.

Where RTC determines that it will do business with a firm in litigation, appropriate screening mechanisms will always be required, and the firm must agree that it cannot use its retention by the RTC as a defense in the pending litigation.

Finally, under previous policy, when the RTC waived the disqualifying effect of pending litigation, it retained the discretion to make an award to a competing firm that was not the subject

of such lawsuits, in circumstances where the competing firm submitted a "substantially equal bid." There have been no instances identified in which the option has been exercised by the RTC. Accordingly, the "substantially equal bid" requirement of previous policy is eliminated.

**4. Implementation**

The determination of whether a contractor's litigation has reached the critical point at which it no longer meets RTC's minimum standards of fitness and integrity will be made by the RTC Ethics Officer, with the concurrence of the Division of Legal Services, and in consultation with relevant program officials, on a case by case basis. Any such determinations would be periodically revisited.

Upon the filing of any new lawsuit, an RTC contractor will no longer be in compliance with RTC's minimum standards of fitness and integrity unless and until the RTC Ethics Officer determines that the RTC can continue to do business with such contractor. Contractors must inform the Office of Ethics of any suits filed by the RTC/FDIC within ten days after service of process in a manner consistent with 12 CFR 1606.6(e). In this manner, a decision can be made before the firm expends the time and money in preparing bids on future RTC contracts.

In considering whether the RTC has a compelling need for the services offered by the firm and whether there are a significant number of competing firms, the RTC Ethics Officer will consult with relevant program and contracting officials familiar with the firm's work, the RTC's needs and the availability of competing sources.

Finally, as noted above, any determinations to continue to do business with such firms will be subject to appropriate conditions, including the requirement that the firm screen the persons and/or office(s) charged with wrongdoing from work on the RTC contract and agree that it cannot use its retention by the RTC as a defense in the pending litigation. The RTC may, in its discretion, seek independent verification of the efficacy of the contractor's screening process.

By order of the Chief Executive Officer.

Dated at Washington, DC, this 16th day of July, 1992.

Resolution Trust Corporation.

**John M. Buckley, Jr.,**

*Secretary*

[FR Doc. 92-17175 Filed 7-22-92; 8:45 am]

BILLING CODE 6714-01-M

## Statement of Policy on Contracting With Firms With Related Entity Defaults on Financial Obligations

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Statement of policy.

**SUMMARY:** The Resolution Trust Corporation (RTC) has adopted a policy statement on contracting with related entities of firms that are in default on financial obligations to it, the Federal Deposit Insurance Corporation (FDIC), or the Federal Savings and Loan Insurance Corporation (FSLIC) in any of their capacities. RTC policy permits it to contract with components of large business organizations that, as a practical matter, could not provide certifications for all related entities as that term is defined in RTC regulations. See 12 CFR 1606.2(n). In some instances, related entities that had defaulted on obligations owed to the FDIC, RTC, or FSLIC in any of their capacities were excluded from a firm's reporting and certification requirement. Now, however, the RTC's new policy will further restrict contracting with firms whose related entities have defaulted on such obligations.

**DATES:** This policy statement is effective July 23, 1992. However, contractors that are subject to a decision limiting their "related entities" for reporting and certification purposes will have until November 1, 1992 to come into compliance with this policy.

**FOR FURTHER INFORMATION CONTACT:** Martin Blumenthal, Supervisory Ethics Specialist, Office of Ethics, (202) 416-2029, Carl Gold, Counsel, Division of Legal Services, (202) 416-7327, or Paul Jeddeloh, Contractor Ethics Specialist, Office of Ethics, (202) 416-2832. (These are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**1. Background**

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and RTC regulations adopted under the authority of FIRREA establish a clear policy that, absent a compelling reason to the contrary, the RTC should not be doing business with firms that have contributed to the nation's thrift crisis. See 12 U.S.C. 1441a(p)(6)(E); 12 CFR 1606.4(a)(2-6, 10-11). However, out of necessity, the RTC has, at times, contracted with firms whose related entities were in default on financial obligations, including obligations owed the RTC, FDIC or FSLIC.

During its early years, the RTC was faced with urgent and immediate needs for specific, usually large-scale, contract services. Frequently, the most readily available sources of those services were large firms which, given their size and organizational complexity, faced a massive administrative burden in complying with the full scope of our certification requirements for all their "related entities," as that term is defined at 12 CFR 1606.2(n). Consequently, it has been the policy of the RTC, established pursuant to certain decisions of the Contractor's Conflicts Committee, to limit the reporting and certification requirements of very large firms with respect to certain of their related entities. Similarly, in cases in which "related entities" of large business organizations had unsatisfied financial obligations to the RTC, FDIC, or FSLIC in any of their capacities (RTC/FDIC obligations), it became the policy of RTC, pursuant to decisions of the Contractor's Conflicts Committee, to find that such firms could meet the minimum standards of fitness and integrity under the regulations set forth at 12 CFR part 1606 if the firm's defaulting related entity could be screened off and not allowed to participate in RTC contract work.

**2. Discussion**

In both cases (limiting the reporting of the activities of certain of a contractor's related entities and making a discretionary determination that a contractor meets RTC's minimum standards of fitness and integrity even though a related entity may have an unsatisfied RTC/FDIC obligation) RTC policy was driven by the urgent and immediate need for a specific contract service. Now, however, RTC has developed a large pool of contractors ready and able to provide a broad range of services to the RTC and to ensure adequate competition. Moreover, under FIRREA, the RTC has very broad discretion in deciding with whom it wishes to do business. Based on recent experience, the RTC had decided that it is appropriate to further restrict RTC contracting with firms whose related entities have unsatisfied RTC/FDIC obligations.

Ultimately, the cost of unsatisfied RTC/FDIC obligations is borne by the American taxpayer. Where the defaulting party is related to a firm that is also doing business with the RTC, any such default requires RTC to carefully re-evaluate our ongoing business relationship with the firm.

Accordingly, in the future, in determining whether a contractor meets the regulatory minimum standards of fitness and integrity in 12 CFR part 1606, RTC will place greater emphasis on any unsatisfied RTC/FDIC obligations of the

contractor's related entities, even if the related entity can be screened off. In short, except under the most extenuating of circumstances, a contractor will be held more accountable for the failure of its related entities to pay such obligations which are in excess of $50,000.00.

RTC recognizes that it has contracted with components of large business organizations pursuant to decisions limiting the contractor's related entity reporting obligation. As noted above, these decisions were based on findings that, due to the size of the ultimate parent firm, the prospective contractor would find it administratively difficult to provide certifications for all "related entities," as defined in the part 1606 regulations. To accommodate such firms, RTC will require certification and reporting from a smaller group of entities, "affiliated business entities."

**3. General Policy**

An affiliated business entity is defined to be a business organization (*e.g.*, a corporation, partnership, etc.) that is controlled by the contractor, controls the contractor, or is under common control with the contractor. The term "control" is defined in the definition of "related entity" in 12 CFR 1606.2(n). For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership.

An unsatisfied RTC/FDIC obligation is either a "default" on an obligation to the RTC, FDIC or FSLIC in any of their capacities, as "default" is defined in 12 CFR 1606.2(d) or an unsatisfied final judgment in favor of the RTC, FDIC, or FSLIC or any depository institution under RTC/FDIC control. See 12 CFR 1606.2(g)(2).

It is the policy of the RTC that, any decision limiting a contractor's related entities for reporting and certification purposes notwithstanding, a failure to pay an RTC/FDIC obligation by a contractor's affiliated business entity will be considered in determining whether the contractor meets the minimum standards of fitness and integrity in 12 CFR part 1606. At the time any such unsatisfied RTC/FDIC obligations come to our attention, by whatever means, RTC will evaluate such obligations, and to the extent that a contractor's affiliated business entities have failed to pay such obligations, in a cumulative amount exceeding $50,000, RTC may institute proceedings to exclude the contractor from RTC's contracting program. If the matter is resolved to RTC's satisfaction, the RTC may continue to do business with the firm.

Contractors that are not subject to a decision limiting their "related entities" for reporting and certification purposes continue to be required to provide all the reports and certifications required pursuant to 12 CFR part 1606. On the other hand, contractors that are subject to a decision limiting their "related entities" for reporting and certification purposes will be required to provide reports and certifications required by 12 CFR part 1606 for relevant "affiliated business entities," as set forth below.

a. *Offers* When responding to an RTC solicitation of services, firms previously subject to a limitation on related entity reporting will be expected to make a reasonable effort to report any unsatisfied RTC/FDIC obligation of an affiliated business entity. RTC recognizes that the time constraints associated with responding to solicitations and the complexity of certain firms' organizational structures may make complete certifications difficult, if not administratively impossible. In this context, a reasonable effort will be defined by the totality of the circumstances facing a contractor required to make these certifications, and the failure to report an unsatisfied RTC/FDIC obligation would not be grounds for institution of administrative proceedings to excluding the contractor from the RTC contracting program if the RTC determines that the contractor used its reasonable efforts in completing the certifications.

b. *Annual Report* Contractors that are subject to a decision limiting their related entities will be required to report annually on any affiliated business entities that have unsatisfied RTC/FDIC obligations. Such contractors are expected to use their best efforts to diligently ascertain whether any of their affiliated business entities have any reportable unsatisfied RTC/FDIC obligation. To permit contractors to conduct the research necessary to fulfill this obligation in conjunction with other corporate information gathering projects, each contractor may select the dates of its reporting year. To further assist contractors in this effort, RTC will provide them with quarterly lists of financial institutions under RTC or FDIC control.

**4. Implementation**

The RTC will consider the impact of any unsatisfied RTC/FDIC obligation on its continuing business relationship with a contractor, and all future decisions granting a prospective contractor's request for limitations on its related entity reporting and certification obligations will specifically exclude from such limitations any unsatisfied RTC/FDIC obligations by the contractor's affiliated business entities.

RTC's Office of Ethics will notify all contractors that are subject to a decision limiting their related entities for reporting and certification purposes of the policy set forth above. Contractors required to file annual reports will notify the RTC Office of Ethics no later than November 2, 1992 of the date on which they intend to file their first such report and all subsequent reports.

By order of the Chief Executive Officer.
Dated at Washington, DC, this 16th day of July, 1992.

Resolution Trust Corporation

**John M. Buckley, Jr.,**

*Secretary.*

[FR Doc. 92-17178 Filed 7-22-92; 8:45 am]

BILLING CODE 6714-01-M

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 142
Thursday, July 23, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ELECTION COMMISSION**

**DATE AND TIME:** Tuesday, July 28, 1992, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This Meeting Will Be Closed to the Public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

**DATE AND TIME:** Thursday, July 30, 1992, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC. (Ninth Floor).

**STATUS:** This Meeting Will Be Open to the Public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992-20: Mr. Frederick T. Spahr of the American Speech-Language-Language-Hearing Association ("ASHA") and ASHA PAC ("ASHA-PAC")
Advisory Opinion 1992-21: Mr. Thomas N. Edmonds on behalf of Mr. James Jay Baker
Draft Final Rule on Petitions for Rulemaking with Statement of Basis and Purpose
Transfers of Funds from State to Federal Campaigns Final Rule
Notice of Proposed Rulemaking on Transfers Between Federal Candidate Committees
Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

**Delores Harris,**
*Administrative Assistant.*

[FR Doc. 92-17576 Filed 7-21-92; 2:58 pm]
BILLING CODE 6715-01-M

**INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** July 30, 1992 at 2:30 p.m.

**PLACE:** Room 101, 500 E Street S.W., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meetings.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-538 (Final) (Sulfanilic Acid from the People's Republic of China).
5. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Paul R. Bardos, Acting Secretary, (202) 205-2000.

Dated: July 20, 1992.

**Paul R. Bardos,**
*Acting Secretary.*

[FR Doc. 92-17489 Filed 7-21-92; 9:09 am]
BILLING CODE 7020-02-M

**NATIONAL TRANSPORTATION SAFETY BOARD**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Vol. 57, No. 136/Wednesday, July 15, 1992.

**PREVIOUSLY ANNOUNCED TIME AND DATE:** 9:30 a.m., Tuesday, July 21, 1992.

**CHANGE IN MEETING:** A majority of the Board Members determined by recorded vote that the business of the Board required adding the following item to the agenda at this time and that no earlier announcement was possible.

5612—Letter to FAA evaluating responses to safety recommendations relevant to Continental Airlines Accident

**FOR MORE INFORMATION, CONTACT:** Bea Hardesty, (202) 382-6525.

Dated: July 20, 1992.

**Bea Hardesty,**
*Federal Register Liaison Officer.*

[FR Doc. 92-17498 Filed 7-21-92; 2:46 pm]
BILLING CODE 7533-01-M

**NATIONAL WOMEN'S BUSINESS COUNCIL**

**SUMMARY:** In accordance with the Women's Business Ownership Act, Public Law 100-533 as amended, the National Women's Business Council announces a forthcoming Council meeting. This is a business meeting of the Council that will review the status of the upcoming Access to Capital Symposium. Induction of new members will also take place.

**DATE:** July 29, 1992 8:30 a.m.-4:30 p.m.

**PLACE:** U.S. Small Business Administration.

**STATUS:** Open to the public.

**CONTACT:** Wilma Goldstein, Executive Director or Paula Breitweiser, Hearing Coordinator, National Women's Business Council, 409 Third Street, S.W. Suite 7425, Washington, DC 20024, (202) 205-3850.

**Wilma Goldstein,**
*Executive Director, National Women's Business Council.*

[FR Doc. 92-17579 Filed 7-21-92; 3:21 pm]
BILLING CODE 6820-AB-M

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Part II

# Department of Transportation

## Federal Aviation Administration

**14 CFR Part 121**
**Aircraft Ground Deicing and Anti-Icing Program; Proposed Rule**

VOL 57 ISS 142 JL 23 1992 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 26930; Notice No. 92-9]

RIN 2120-AE51

## Aircraft Ground Deicing and Anti-Icing Program

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This proposed amendment would establish a requirement for part 121 certificate holders to develop an FAA-approved ground deicing/anti-icing program and to comply with that program any time conditions are such that frost, ice, or snow could adhere to the aircraft's wings, control surfaces, propellers, engine inlets, and other critical surfaces.

This rule is necessary because several accidents and the recent International Conference on Airplane Ground Deicing indicate that, under present procedures, the pilot in command may be unable to effectively determine whether the aircraft's wings, control surfaces, propellers, engine inlets, and other critical surfaces are free of all frost, ice, or snow prior to attempting a takeoff.

The proposal is intended to provide an added level of safety to flight operations in adverse weather conditions. This proposed rule and associated airport and air traffic control procedures would provide, to the extent possible, enhanced procedures to allow safe takeoffs during adverse weather conditions.

**DATES:** Comments must be submitted on or before August 7, 1992. The FAA is not able to provide a longer comment period for this NPRM because the FAA intends to issue a final rule in time to implement the proposed programs before the 1992–93 winter season. Comments received after the comment period closes will not be considered nor will the FAA consider requests to extend the comment period.

**ADDRESSES:** Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AG–10), Docket No. 26930, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26930. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Larry Youngblut, Flight Standards Service, Regulations Branch, AFS–240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3755.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comment, in the rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26930." The postcard will be date stamped and mailed to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Background

Section 121.629(a) of the Federal Aviation Regulations (14 CFR 121.629(a)) states, in pertinent part, that no person may dispatch or release an aircraft when, in the opinion of the pilot in command or aircraft dispatcher, icing conditions are expected or met that might adversely affect the safety of flight. Section 121.629(b) states, in pertinent part, that no person may take off an aircraft when frost, ice, or snow is adhering to the wings, control surface, or propellers of the aircraft. These requirements, which have been virtually unchanged for over 40 years, are based on what is commonly referred to as the "clean aircraft concept." The basis of this concept is that the presence of even minute amounts of frost, ice, or snow on particular aircraft surfaces (referred to as "contamination") can cause degradation of aircraft performance and changes in aircraft flight characteristics.

When conditions conducive to the formation of frost, ice, or snow on aircraft surfaces exist at the time of takeoff, or it is suspected that these contaminants are adhering to aircraft surfaces, common practice developed by the North American and European aviation community over many years of operational experience is to deice or anti-ice the aircraft before takeoff. Under the Federal Aviation Regulations, in icing conditions, as in all other conditions, ultimate responsibility for determining whether the aircraft is free of contamination—and thus airworthy—rests with the pilots in command.

Aircraft are commonly deiced and anti-iced during icing weather conditions. Deicing is the removal of accumulated frost, ice, or snow from aircraft surfaces by application of heated water followed by undiluted glycol-based fluid or the application of a heated water/glycol solution. Anti-icing is the treatment with undiluted glycol-based fluid to prevent frost, ice, or snow from adhering to aircraft surfaces. Normally, deicing and anti-icing are accomplished by a single application process; however, there may be two separate applications of deicing/anti-icing fluid. Two types of deicing/anti-icing fluids are used. AEA Type I fluids are unthickened fluids that are normally applied as a mixture of glycol and water. These fluids mainly provide protection against refreezing when no delays or only short delays occur between deicing and takeoff. AEA Type II fluids are thickened fluids. They provide protection against refreezing when longer delays occur. Type II fluid is used extensively in Canada and Europe, but is used less often in the United States because it is more expensive than Type I, more difficult to apply, and has a gel consistency that

may reduce a runway's coefficient of friction, thereby reducing an airplane's braking capability. Type II fluid provides longer holdover times. Holdover time is the estimated time deicing or anti-icing will prevent the formation of frost or ice and the accumulation of snow or slush on the treated surfaces of an aircraft.

According to the National Transportation Safety Board (NTSB), in the last 23 years there have been 15 accidents related to the failure to deice aircraft adequately before takeoff. Seven of the 15 accidents were in part 121 passenger-carrying or all-cargo operations. An eighth accident, for which the NTSB has not yet issued a probable cause finding, involved a USAir flight discussed more fully below. In all of these accidents, contamination on the aircraft surfaces during takeoff was the cause or a contributing cause of the accident. Specifically, the part 121 major accidents at least partially caused by ground deicing include the following:

December 27, 1968, Ozark DC–9–15, Sioux City, Iowa.
November 27, 1978, TWA DC–9, Newark, New Jersey.
January 13, 1982, Air Florida B–737, Washington DC.
February 5, 1985, ABX DC–9, Philadelphia, Pennsylvania.
February 5, 1985, BO–S–AIRE, DC–3, Charlotte, North Carolina.
November 15, 1987, Continental DC–9, Denver, Colorado.
February 17, 1991, Ryan DC–9, Cleveland, Ohio.
March 22, 1992, USAir F–28, La Guardia, New York.*

The NTSB investigations of the Air Florida and Continental accidents indicate that ice formation after deicing was a major contributing factor.

At Washington National Airport on January 13, 1982, Air Florida Flight 90, a Boeing 737, crashed into the 14th Street Bridge over the Potomac River shortly after takeoff. At the time of takeoff, the airport was experiencing moderate to heavy snowfall and low visibility. The aircraft failed to achieve a sufficient rate of climb, struck the 14th Street Bridge about 4,500 feet from the departure end of the runway, and crashed into the Potomac River. Seventy-four of the 79 persons aboard the aircraft were killed either on impact or by drowning, and 4 persons in automobiles on the bridge were killed when the vehicles were struck by the descending aircraft.

The aircraft had been deiced before it taxied from the gate area; however, it was exposed to continuing snowfall for about 50 minutes before takeoff. The conversation between the captain and the first officer, recorded by the cockpit voice recorder, showed that they were aware that some snow and ice had accumulated on the aircraft while waiting for takeoff.

The NTSB determined that the probable causes of the accident were the flight crew's failure to use the engine anti-ice (a system that detects and removes ice from the aircraft's engine nacelle and inlet guide vanes) during both ground operation and takeoff, their decision to take off with snow and ice on the airfoil surfaces of the aircraft, and the failure of the captain to reject the takeoff when anomalous engine instrument readings were noticed. Among other things contributing to the accident was the prolonged ground delay between deicing and takeoff.

On November 15, 1987, at Denver's Stapleton International Airport, Continental Airlines Flight 1713, a DC–9, was cleared for takeoff following a delay of approximately 27 minutes after deicing. The takeoff roll was uneventful, but following a rapid rotation, the airplane crashed. Both pilots, one flight attendant, and 25 passengers died. The NTSB concluded that the airplane was adequately deiced before it departed the deice pad. Nevertheless, since the airplane was exposed to a moderate snowstorm in subfreezing conditions for approximately 27 minutes after deicing, the NTSB concluded that portions of the airframe became contaminated with a thin, rough layer of ice. Several surviving passengers reported seeing some ice on engine inlets or patches on the wing after deicing.

According to McDonnell Douglas, even minute amounts of ice or other contaminants (equivalent to medium grit sandpaper) on the leading edges or upper surfaces of the wings of a DC–9–10 series airplane could result in the degradation of wing lift, causing the airplane to stall at lower than normal angles–of–attack during takeoff. The contamination of the airframe surfaces was a contributing factor in the crash of Flight 1713. This contamination of the airframe surfaces could have been eliminated or its formation delayed if the airplane had been anti-iced following the deicing.

These aircraft accidents probably could have been prevented if the pilot had been given more information to help determine whether the aircraft was free of all frost, ice, and snow prior to takeoff.

Until recently, the FAA and the aviation community in general had placed priority on emphasizing the need during icing conditions for the pilot in command to ensure "clean wings" before takeoff. The FAA believed that pilot education appeared key to combatting the threat of wing icing. Although the FAA still believes the pilot in command must ultimately make the decision on whether to take off, and that the decision must be based on a thorough understanding of factors involved in icing, the FAA has determined that the certificate holder must provide the pilot in command with criteria on which to make a proper decision. This proposed rule would require that the pilot in command be provided with information to assist the pilot in determining if the aircraft is free of contamination before takeoff.

In response to a USAir F–28–100 accident at La Guardia Airport on March 22, 1992, the FAA mounted a sharply focused effort to resolve the ground deicing issue before the winter of 1992/1993. USAir flight 405 crashed on takeoff in a snowstorm during nighttime operations. While the NTSB has not yet issued a probable cause finding for this accident, the FAA has proceeded on the assumption that the accident was caused, at least in part, by icing. The airplane had been deiced approximately 35 minutes before takeoff. On May 28 and 29, 1992, as a major part of the effort to resolve the ground deicing issue, the FAA held the International Conference on Airplane Ground Deicing in Reston, Virginia. The FAA has based this proposed rule, in part, on the results of this conference. Recommendations of the conference are discussed later in the preamble.

In April 1992, the FAA received a petition for rulemaking from Edward F. Ford (Docket No. 26848) on the issue of aircraft deicing and anti-icing. Mr. Ford's petition contains a number of proposals that were also discussed at the Reston conference and that are addressed in this NPRM; therefore, the FAA considers this NPRM to be a response to that petition for rulemaking.

*NTSB Recommendations*

As a result of accident investigations, the NTSB has issued 30 safety recommendations that address issues involving aircraft ground icing and deicing.

These recommendations cover such subjects as informing operators about the characteristics of deicing/anti-icing fluids; informing flight crews about ice formation after deicing; reviewing information that air carrier operators

* The NTSB has not yet established probable cause for this accident.

provide to flight crews on runway contamination and engine anti-ice during ground operations; requiring flight crew inspections before takeoff if takeoff is delayed after deicing; emphasizing to air carrier maintenance departments the importance of maintaining ground support equipment; and requiring air carrier training programs to cover the effect of wing leading edge contamination on aerodynamic performance.

In addition, the number of NTSB recommendations involve issuing airworthiness directives or air carrier operations bulletins directing specific procedures for specific aircraft that have characteristics that make them more susceptible to icing problems.

*Previous FAA Actions*

The FAA has taken various actions on its own and in response to the NTSB recommendations involving accidents in which ground icing was the cause or a contributing factor. The FAA has disseminated advisory circulars, bulletins, memoranda, informative articles, and notices related to winter operations. The FAA also published Air Carrier Operations Bulletins, Maintenance Bulletins, and Maintenance Action Notices. These materials were intended to impress upon operators the dangers of aircraft wing and control surface contamination and the need to assist the pilot in determining if the aircraft is free of contamination before takeoff.

On December 17, 1982, in response to several icing-related takeoff accidents involving transport category and general aviation airplanes, the FAA issued Advisory Circular 20–117. The purpose of this advisory circular (AC) was to emphasize the clean aircraft concept. This AC was directed to all segments of aviation including aircraft manufacturers; airline engineering, maintenance, service, and operations organizations; and flight crewmembers of all aircraft types and categories. Information in the AC was general and dealt with over a dozen variables.

The AC covered the following areas:

Aircraft deicing and anti-icing.

Preflight inspection.

Pretakeoff inspection.

Common or suggested practices necessary to assure the pilot has adequate supporting information for his/her judgments.

Suggested practices for pilots to assure that the aircraft is free of contamination.

AC 20–117 also contained an extensive bibliography of related FAA and private sector publications, training materials, and other deicing or related information. In 1988, in response to the Continental DC–9–14 accident in Denver, the FAA republished and widely distributed AC 20–117 to ensure that airlines, pilots, and other affected persons were fully apprised of its contents.

For several years, the FAA has conducted research and development on aircraft icing characterization, protection concepts, and deicing/anti-icing fluids. These projects have included among others:

Characterization of worldwide environmental icing conditions (freezing precipitation, mixed conditions, snow, etc.) to provide recommended design criteria for aircraft, ice protection equipment, and deicing facilities.

Development of standard icing severity terminology (i.e., trace, light, moderate, severe) applicable to aviation industry, manufacturers, certification officials, weather forecasters, air traffic controllers, and flight crews.

Determination of the feasibility of development of a device or methodology for predicting the effective time of deicing/anti-icing fluids during freezing precipitation in an operational airport environment.

Field measurements of effective time of advanced anti-icing fluids for various freezing precipitation conditions.

Investigation of the effects of underwing frost and/or ice on the takeoff performance of large transport category aircraft.

Development of a condensed and pocket-sized advisory circular for pilots on contamination.

Assessment of simplified methods for determining holdover times.

Feasibility assessment of predicting holdover times.

Development of a training video tape on aircraft icing.

In September 1988, the FAA organized, coordinated, and co-chaired the joint SAE/FAA Aircraft Ground Deicing Conference in Denver, Colorado. The conference was held to disseminate information to the aviation community and to inspire further knowledge of the principles of aircraft ground deicing and anti-icing.

*The Reston Conference*

In response to the USAir Flight 405 accident at La Guardia, the FAA held the International Conference on Airplane Ground Deicing on May 28 and 29, 1992, in Reston, Virginia. The conference brought together leading experts from all over the world to share information on the ground deicing/anti-icing of transport category airplanes and to recommend short-term actions for preventing accidents caused by icing and long-term actions for continuing improvement of flight safety under adverse weather conditions.

The two-day conference was attended by representatives from air carriers and air carrier associations, crewmember associations, manufacturers and manufacturing associations, airport operators, and air traffic controllers and other FAA personnel, as well as by scientific experts on weather, deicing fluids, and deicing equipment. Over 800 people attended the conference. Areas covered by working groups at the conference were aircraft design; ground deicing and anti-icing system; air traffic control and sequencing; deicing personnel, procedures, and training; and ice detection, recognition, and crew training.

Two major recommendations made by the working groups that support this rulemaking are: (1) Critical aircraft surfaces must be kept free of frost, ice, and snow; and (2) Each air carrier should have an approved aircraft deicing program that will assure full compliance with the clean aircraft concept. The program should include ground deicing, a comprehensive training program for flight crewmembers, holdover timetables to be used as guidelines, and criteria for determining if a pretakeoff inspection after deicing is needed. (There was no consensus on when a pretakeoff inspection must be conducted.)

The working groups also recommended training of ground personnel and flight crews, appropriate use of Type I and Type II fluids, developing holdover guidelines for Type I and Type II fluids, using pretakeoff inspections when exceeding holdover time guidelines, and establishing procedures for communications between ground and cockpit crews.

Recommendations made at the conference that are beyond the scope of this rulemaking cover long-term actions, including additional research, and actions which pertain to manufacturers, airports, and air traffic controllers.

A complete report on working group recommendations is in the docket established for this NPRM.

**The Proposed Rule**

As previously discussed, the clean aircraft concept, which for many years has been the basis for federal safety regulations applicable in icing conditions, relies almost exclusively on the pilot in command's responsibility for determining the airworthiness of the aircraft before takeoff. Recent icing-related accidents, together with the research and activities previously

described, have convinced the FAA that a new approach is needed. The pilot in command needs guidance and certificate holder-developed procedures and, under certain conditions, ground personnel support in determining the aircraft's airworthiness in potential icing conditions.

The range of subjects covered by the conference and by FAA research and other actions indicates that the icing problem involves a broad spectrum of factors: Weather conditions and reporting, weather procedures at airports, traffic controllers, air carriers, ground personnel, as well as the technology available to support bad weather operations, such as deicing/anti-icing equipment, deicing/anti-icing fluids, and aircraft design. As the conference illustrates, the problem is being attacked in all of these areas and in varying ways. But all of the knowledge and all of the planning eventually focus on the decision of the pilot in command to take off.

The accident information shows that icing accidents occur at different types of airports and in many different operations. After the USAir accident at La Guardia, the FAA announced its intention to put in place before next winter a rule that would improve safety during icing conditions. This proposed rule, if adopted, would be among the agency's actions to resolve the problem of ground icing. The proposed rule is directed at all part 121 passenger-carrying and cargo-carrying operations. It does not include part 135 operations. Specifically, part 135 accident statistics do not indicate that an urgent ground deicing problem currently exists. The FAA also believes that part 135 flight crewmembers are better able to determine if contaminants are adhering to their aircraft because of both size and design. The FAA will continue to study those part 135 operations that could experience ground icing problems to determine if future rulemaking is needed.

Formulated as a rule affecting operations under Part 121 of the Federal Aviation Regulations, the proposal does not directly affect operations of foreign airlines. Safety regulation of international commercial air transport operations is effected by the state of the operator in accordance with comprehensive standards issued by the International Civil Aviation Organization (ICAO). The FAA actively solicits and shares safety information with other countries. As discussed above, international participation in deliberations leading to the formulation of this rule (the "Reston Conference") has been extensive, and the proposal draws heavily on the experience of other countries. The FAA will continue to work aggressively with other nations' civil aviation authorities to learn from their safety regulatory experiences and share those of the U.S. so that we all may develop and adopt the most effective and efficient regulations to improve the safety of all aircraft during icing conditions. Accordingly, the FAA will request that ICAO initiate a review of pre-takeoff deicing and inspection procedures used by all air carriers.

Other factors, such as airport planning, aircraft design, air traffic control, and deicing/anti-icing technology, are being otherwise addressed and are briefly discussed later in this preamble. This proposed rule is what the FAA, in cooperation with part 121 certificate holders, can do before next winter to assure that the highest practicable standards in operations during icing conditions are met.

The proposed rule would require part 121 certificate holders to develop and comply with an FAA-approved ground deicing/anti-icing program that includes procedures that must be followed whenever ground conditions exist that might result in frost, ice, or snow adhering to the aircraft surfaces unless it uses the alternate inspection procedures described below under "Implementation of Program." The program is intended to provide the pilot in command with more complete information, procedures, and ground support which he or she needs for deciding if takeoff can be safely accomplished. Each program would include a detailed description of how the certificate holder determines that ground deicing/anti-icing procedures must be in effect, who is responsible for deciding that such procedures must be in effect, the operational procedures for implementing ground deicing, and the specific duties and responsibilities of each operational position or group responsible for getting the aircraft safely airborne while such procedures are in effect.

The FAA is proposing that, to be approved, each ground deicing/anti-icing program must cover at least the following areas:

(1) Ground training and qualification testing requirements for all flight crewmembers and all other personnel the certificate holder uses in implementing the approved ground deicing/anti-icing program.

(2) Procedures for the use of holdover times.

(3) Deicing/anti-icing and accompanying inspection procedures.

Each of these areas is discussed more fully below.

*Training of Flight Crewmembers and Other Personnel*

To be approved, ground deicing/anti-icing programs would have to include initial and recurrent ground training and qualification testing for all flight crewmembers, and all other personnel (e.g., aircraft dispatchers, maintenance crews, or contract personnel) the certificate holder uses in implementing its approved program. Initial training for all affected personnel would cover the areas described below and would include airplane-specific training as appropriate. Recurrent training would include a review of areas covered in initial training plus coverage of any changes in a certificate holder's ground deicing/anti-icing program and changes that relate to specific airplanes.

At a minimum, an individual would receive initial and recurrent training in the individual's specific responsibilities and duties as outlined in the certificate holder's program, as well as the certificate holder's overall program and any pertinent airplane-specific requirements. In addition to the above, training would have to address the following areas:

(1) Holdover times developed by the certificate holder, how the calculated holdover times are determined and used, and what variables might adversely affect the calculated holdover times. (See the "Use of Holdover Times" section below for further discussion.)

(2) Aircraft deicing/anti-icing inspection procedures and responsibilities to ensure that the aircraft's wings, control surfaces, propellers, engine inlets, and other critical surfaces are free of contamination.

(3) Procedures for communication between flight crewmembers and other deicing/anti-icing personnel on deicing/anti-icing procedures when those procedures are being used.

(4) Aircraft surface contamination and critical area identification and how aircraft contamination adversely affects aircraft performance and flight characteristics.

(5) The certificate holder's deicing/anti-icing procedures including types of fluids, fluid characteristics, and concentration percentage of these fluids.

(6) Cold weather (not limited to icing conditions) preflight inspection procedures.

(7) Techniques for recognizing contamination on the aircraft.

Other areas that should be included as appropriate are:

(1) Who is responsible for actual deicing/anti-icing for the certificate holder (the certificate holder or a contractor).

(2) Any other systems installed on the aircraft that may provide the pilot with information concerning contamination on the aircraft.

(3) Procedures to be followed if the deicing/anti-icing is interrupted for any reason.

(4) For personnel other than flight crewmembers, operation and capabilities of deicing/anti-icing equipment as well as any equipment required to inspect the aircraft after deicing/anti-icing.

*The Use of Holdover Times*

Holdover time is the estimated time the application of deicing or anti-icing fluid will prevent the adherence of frost, ice, or snow on the treated surfaces of an aircraft. Holdover time begins when aircraft ground deicing/anti-icing commences and expires when the deicing/anti-icing fluid applied to the aircraft wings, control surfaces, propellers, engine inlets, and other critical surfaces loses its effectiveness.

The Society of Automotive Engineers (SAE) has taken the lead in developing holdover time guidelines for particular freezing point depressant fluids (e.g., Association of European Airlines Type I and Type II fluids). SAE has taken into consideration a number of variables, such as type of fluid, wing surface temperature, type of precipitation, etc., that individually or in combination with others increase a decrease holdover time.

The certificate holder would develop for its approved program holdover timetables based upon information from the SAE-developed tables, the particular aircraft manufacturer, and the deicing/anti-icing fluid manufacturer. The certificate holder would develop and use approved procedures regarding its flight crewmembers' use of these tables. The certificate holder's procedures would include provisions for its flight crewmembers to determine holdover times following aircraft deicing/anti-icing and would prohibit takeoff following expiration of the holdover time unless approved alternative actions are taken.

For certain airplanes without wing leading edge devices (i.e., airplanes commonly referred to as "hard wing"), Airworthiness Directives issued by the FAA require a pretakeoff inspection whether or not a holdover time has been exceeded. Certificate holders operating these hard wing airplanes must include the procedures required by these ADs in their ground deicing/anti-icing programs. The FAA invites comments on the need for a mandatory pretakeoff inspection requirement for any other airplane types.

Takeoff after the expiration of any holdover time would be permitted only if—(1) a pretakeoff inspection has ensured that the wings, control surfaces, propellers, engine inlets, and other critical surfaces are free of frost, ice, snow; (2) it is otherwise determined that these surfaces are free of frost, ice, or snow; or (3) the wings, control surfaces, propellers, engine inlets, and other critical surfaces have been redeiced and a new holdover time has been determined. A pretakeoff inspection is an inspection of the wings, control surfaces, propellers, engine inlets, and other critical surfaces conducted within five minutes prior to implementing takeoff. This inspection may be accomplished from either inside or outside the aircraft, depending on the aircraft's design. Critical surfaces may be "otherwise determined" to be free of contamination, if, for example, precipitation has ended, ambient temperature has risen significantly, or approved new techniques have been developed for determining whether any surfaces are contaminated.

The certificate holder will develop procedures to allow flight crewmembers to increase or decrease the determined holdover time if changing conditions warrant. The certificate holder will also develop procedures to allow a pilot in command to require a pretakeoff inspection whenever the pilot in command believes one is warranted.

The requirement that holdover times may not be exceeded unless a pretakeoff inspection is accomplished is consistent with a recommendation from one of the working groups at the conference. There was not, however, conference-wide consensus on this issue. Therefore, the FAA invites comments on whether exceeding holdover times should be prohibited. In particular, the FAA is interested in receiving specific information about the cost, if any, that would be caused by a prohibition on exceeding holdover times and about alternative procedures that could ensure an equivalent level of safety.

*Inspection Procedures*

In addition to procedures for the flight crewmembers to scan the visible areas of the aircraft, each approved ground deicing/anti-icing program would have to include complete pretakeoff inspection procedures (i.e., visual, tactile, aids, etc.). This inspection must be accomplished from outside the aircraft unless the program specifies otherwise. Pretakeoff inspection procedures would be required to cover a variety of contingencies. For example, if weather conditions significantly improve after a deicing, it is possible that a holdover time could be extended so that no pretakeoff inspection is required. Or, if weather conditions deteriorate, it may be necessary to shorten the originally determined holdover time.

The pretakeoff inspection procedures would include coordination procedures between all personnel involved in the inspection. If a facility is available for a remote pretakeoff inspection, procedures for that inspection would be covered in the program.

*Implementation of Program*

The effective date for all part 121 certificate holders, as stated in the proposed rule, is November 1, 1992. A certificate holder who intends to operate in icing conditions on or after November 1, 1992, would have to have an approved program and would have to operate in compliance with that program. A certificate holder who does not have an approved program or has not implemented its program, would not be allowed to operate aircraft in icing conditions on or after November 1, 1992, unless it uses the alternative inspection procedure described below.

The FAA is aware that requiring all flight cremembers and other affected personnel (e.g., aircraft dispatchers, maintenance crews, contract personnel) to be fully trained and qualified by the effective date could be impractical for some certificate holders both financially and logistically. Therefore, in instances where training cannot be completed as part of a certificate holder's initial and recurrent training programs by the effective date, the certificate holder may submit for approval with its program a training implementation plan. For example, a certificate holder could implement the training requirements by providing initial training to flight crewmembers and other personnel by mailing to them a video cassette, written training and qualification materials, or computer-based instruction that explains and instructs on procedures contained in the certificate holder's deicing/anti-icing program.

The FAA recognizes that, given the short compliance time proposed for this rule, some certificate holders may be unable to submit a program in time for approval prior to the effective date. Other certificate holders who seldom fly in ground deicing conditions may

determine that it is impractical to develop a deicing program. Therefore, in proposed paragraph (d), the rule would allow continued operations under § 121.629 if the certificate holder includes in its operations specifications and complies with a requirement that, any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft, no aircraft will take off unless it has been inspected to ensure that the wings, control surfaces, propellers, engine inlets, and other critical surfaces are free of frost, ice, or snow. This inspection must occur within five minutes before takeoff. The inspection must be accomplished from outside the airplane. The FAA invites comments on this alternative inspection procedure.

**Long-Term FAA Actions**

As the background portion of this preamble states, the problem of airplane ground deicing/anti-icing is much broader than just the issue of the last-minute decision of a pilot in command on whether to attempt a takeoff. Airport and air traffic control procedures, airplane design, and other areas have been addressed in NTSB recommendations and were addressed at the Reston Conference. The FAA and the aviation industry are continuing their efforts to address these related issues. Efforts is some areas, such as airport and air traffic control procedures, are already underway and will continue concurrently with this rulemaking. Other efforts, such as potential design changes that require long-term research, will be undertaken, either by the FAA or as joint government/industry projects, subject to available funding.

This rulemaking, when implemented, will ensure that he FAA and part 121 certificate holders have taken every practical step possible to improve safety in icing conditions before the 1992/1993 winter season. In this regard, the FAA is aware that part 121 certificate holders have already, under the leadership of the ATA, taken steps to develop a standard model industry program that would meet the goals of this rulemaking.

**Paperwork Reduction Act**

The reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under the following:

*DOT No:* ——
*OMB No:* New.
*Administration:* FAA.
*Title:* Aircraft Ground Deicing and Anti-icing Program.

*Need for Information:* If adopted this NPRM requires each part 121 air carrier certificate holder develop an FAA approved ground deicing/anti-icing program.

*Proposed Use of this Information:* The FAA requires this information to evaluate each certificate holders proposed program and ensure certificate holders are operating at the highest possible level of safety during ground icing conditions.

*Frequency:* One-time.
*Burden Estimate:* 7616 total hours.
*Respondents:* Part 121 certificate holders.
*Forms(s):* None.
*Average Burden Hours per Respondent:* 144.

For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735 or the Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Office for the FAA, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340. It is requested that the comments sent to OMB also be sent to the FAA rulemaking docket for this proposed action.

**Regulatory Evaluation Summary**

This section summarizes the regulatory evaluation prepared by the FAA. The regulatory evaluation provides more detailed information on estimates of the potential economic consequences of this proposal. This summary and the evaluation quantify, to the extent practicable, estimated costs of the rule to the private sector, consumers, and Federal, State, and local governments, and also the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this proposal is not "major" as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposal has not been prepared. Instead, the agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If the reader desires more detailed economic information that this summary contains, then he or she should consult the regulatory evaluation contained in the docket.

*Costs*

For those elements of the proposed rule for which the FAA was able to estimate costs, the total present value cost of the proposed rule was estimated to be $38.6 million. Of this total, the 31 large part 121 air carriers, or those that own or operate more than nine airplanes, would incur present value costs of $37.8 million. The 22 small part 121 carriers would incur present value costs of $710,000. The present value cost associated with the purchase and operating of deicing equipment is $18.5 million. Approximately $18.0 million of this total would be incurred by large part 121 air carriers and $508,000 would be incurred by small part 121 air carriers. About $18.5 million of the total present value cost representing 48 percent of the estimated total would occur the first year.

To more accurately determine the total cost impact of this proposed rule, the FAA solicits comment on the following items.

1. Initially the change in procedures may add to delays already experienced during ground icing conditions. The FAA is uncertain as to the magnitude of such delays and seeks comment on this issue, including any methodology that could be used to measure this variable. Examples of information that would be of value include, but are not limited to, the following:

- The difference in delays that air carriers experience when using Type 1 and Type 2 fluids.
- The added time and associated cost (at various airports) to return for a second deicing (including the number of airplanes that have been delayed due to coming back for an additional or second deicing).
- The secondary effect of delays on the flow of air traffic. This includes airplanes waiting in queue to land or takeoff at the affected airport as well as on operators at other connecting hubs.

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2. Initial deicing will occur at the gate or at a central deicing station. The FAA seeks comment on the way airlines would perform deicing and additional deicing under the proposed rule.

3. There may be a switch to Type 2 fluids in later years to allow for longer holdover times. The FAA seeks comment on the likelihood that Type 2 fluids will replace Type 1 fluids in the future.

4. Part 121 air carriers will also incur costs at foreign airports where icing conditions may occur. What is the extent of icing at these airports, and how much will it cost to comply with the proposed rule?

*Delay Costs*

This section on delay costs is divided into two parts. Part I is an explanatory overview on the availability of delay data to the FAA. Part II describes a methodology that could be employed to measure potential incremental delay costs.

*Part I—Availability of Delay Data*

Air traffic control (ATC) personnel throughout the U.S. gather information daily required by the FAA. That information includes, among others, how many flights were delayed more than 15 minutes and the reasons for those delays. Data is collected for use in reports to Congress, reports to users of the National Airspace System, and for statistical purposes. FAA Order 6040.15B, the National Airspace Performance Reporting System, sets forth requirements and procedures as guidance for reporting interruptions to facilities and services in the National Airspace System. It requires that interruptions be reported in a uniform manner using standard definitions, criteria, procedures, and terminology. In addition, this order establishes requirements and procedures for reporting air traffic delays and air traffic counts. These delays result from the Air Traffic Control System detaining an aircraft at the gate, short of the runway, on the runway, on a taxiway and/or in a holding configuration en route. This Order defines weather related delays as delays to aircraft resulting from weather conditions which result in arrival, departure and/or en route delays. It defines weather related delays due to snow and ice as "poor or nil braking action because of snow or ice on runways, snow removal operations, and runways closed by snow." The definition does not include contamination of aircraft surfaces.

The FAA Office of Air Traffic System Management generated a computer database of air carrier departure delays reportedly due to snow and ice for the period June 1990 to May 1992. Between June 1, 1990, and May 31, 1991, and between June 1, 1991, and May 31, 1992, there were a total of 2,068 delays and 1,194 such delays, respectively. However, as the samples below demonstrate "snow and ice" delays are not related to delays attributable to contamination of aircraft surfaces.

The FAA examined the time period surrounding two icing related accidents to determine if delays due to snow and ice were reported during that time. The first accident occurred at Cleveland-Hopkins International Airport on February 17, 1991 at 12:19 a.m. No weather delays (for snow and ice or any other conditions) were reported at Cleveland-Hopkins on this day. The second accident occurred at LaGuardia International Airport on March 22, 1992, about 9:30 p.m. (Although the NTSB has not made a finding in this accident, we know that LaGuardia had experienced some periods of snow during that day.) There were 22 snow and ice air carrier delays reported on March 22 due to snow at LaGuardia, however, these delays occurred between 2 and 2:35 a.m. The FAA examination of the database revealed there were no snow or ice delays reported to the FAA Air Traffic Operations Management System during the time period these two accidents occurred. In other words, during two recent icing accidents, there were no delays attributed to snow and ice. Accordingly, the FAA concludes that snow and ice delays as reported pursuant to FAA Order 6040.15B do not correlate with ground icing conditions on critical aircraft surfaces. Further, given reliable data showing those delays due to contamination of aircraft surfaces, the FAA would still find it difficult to distinguish between those delays that would normally occur under the present rule and those that might occur under the proposed rule.

*Part II—Delay Cost Methodology*

As stated above, whether there are any delays resulting from the proposed rule cannot be reliably estimated at this time. In order to estimate potential delay costs, several prerequisite variables would have to be examined. The following is a general step-by-step procedure to estimate potential delay costs:

Step 1. Determine the total number of severe winter weather delays that take place, primarily between November and March.

Step 2. Adjust downward the number of delays caused by severe winter weather, by subtracting those delays that would not result from ice, snow, or frost. An example of delays to be subtracted from the total would be those delays due to weather where the airport was closed.

Step 3. The result is the number of flights potentially delayed by the proposed rule. Some flights will need a pretakeoff inspection, which could delay takeoff. If no ice is found, the delay would be, at most, the time taken to make the pretakeoff inspection. If ice is found, the aircraft must be re-deiced. No delay attributed to the proposed rule would occur where pretakeoff inspections show the presence of ice. Under the existing rule, the airplane is currently not allowed to takeoff if there is ice on the critical surfaces. The cost of returning could be attributed to the existing rule.

The remaining number of delays, which is likely to represent a low percentage of the total number of delays in the system, would be representative of the baseline to measure delays associated with this proposed rule. The FAA requests information on the incremental delay cost factor that can be used to formulate the best possible final rule.

*Benefits*

The FAA expects the proposed rule to generate total potential safety benefits estimated at $230 million (10 years, 1991 dollars). On a discounted basis, total potential benefits would amount to an estimated $136 million. This discounted total estimate of benefits is comprised of $125 million for significantly reducing the likelihood of ice-related accidents for passenger-carrying part 121 airplanes and $11 million for part 121 cargo airplanes. The derivation of these benefits were derived from two categories: (1) Part 121 passenger-carrying air carriers and (2) part 121 cargo-carrying air carriers. Each of these categories is discussed below.

*Part 121 Passenger Carrier Benefits*

Under the current rule, it is the responsibility of the pilot to decide whether ice, frost, or snow has accumulated on the structure of an airplane. This decision can be very difficult to make, especially when the airplane is sitting at the end of a runway waiting to take off during inclement weather. It is at these times that the likelihood of the pilot making the wrong decision is greatest.

Over the past 15 years, there have been five passenger-carrying air carrier accidents where ice, frost, or snow accumulations on the airplane was the primary factor. These accidents resulted in 135 fatalities and 66 serious injuries. In addition, four of the airplanes were destroyed and the other sustained substantial damage.

Based on estimated historical accident and casualty rates, the FAA expects

that over the next 10 years, approximately 4 accidents will occur, with 131 fatalities and 64 serious injuries. The present value dollar benefits of preventing these accidents and casualties, is estimated to be $166 million (discounted).

The FAA has attempted to develop a proposed rule that would be 100 percent effective in preventing all accidents by incorporating program development, training, testing, capital equipment, maintenance, etc. There is some uncertainty, however, as to how effective these components would be. It is conceivable that some aircraft could pass through the system due, in part, to human error and adverse weather conditions, thereby, reducing the effectiveness of the proposed rule. While the actual effectiveness rate would be lower than 100 percent, the FAA estimates that a rate of 75 percent rate would reflect the reality of correcting a problem that is influenced by a multitude of factors (weather, human error, etc.). Multiplying the $166 million benefits by the 75 percent effectiveness rate results in adjusted benefits of $125 million ($166 million × .75).

*Part 121 Cargo Carrier Benefits*

The proposed rule would also potentially reduce accidents among large part 121 cargo aircraft. Over the past eight years, there have been three accidents involving large cargo aircraft. These three accidents resulted in two fatalities and two serious injuries. Two of the aircraft were substantially damaged and one was destroyed.

Based on these rates, over the next 10 years, there would be approximately 4 accidents, 3 fatalities and 3 serious injuries. The estimated value of these potential cargo accidents would be $15 million (discounted). Multiplying the $15 million in cargo benefits by the 75 percent effectiveness rate results in adjusted benefits of $11 million ($15 million × .75).

In conclusion, the proposed rule would enhance air carrier safety under conditions of ground icing. The proposed rule would reduce pilot error related to taking off with ice on the airframe by using holdover times and ground inspection. The proposed rule is expected to generate potential total benefits over the next ten years estimated at $136 million (discounted).

*Conclusion*

The FAA estimates the discounted present value cost of the proposed rule, excluding the cost of delays, is about $39 million over the next 10 years. This includes the cost of plan development, training, qualification testing, and capital expenditures. This estimate also does not include the cost of overseas operations. The FAA seeks comment on the extent of these costs.

The benefits of this proposed rule are estimated at $136 million (discounted) over the next decade. These benefits are derived from avoided accidents due to reduced risk during ground icing conditions.

The FAA did not estimate the cost of delays and overseas operations for this proposed rule. If the present value cost of delays and overseas operations is less than approximately $97 million, this proposed rule would still be cost beneficial.

**International Trade Impact**

The proposed rule is not expected to have a significant incremental impact on international trade. This assessment is based on the belief that while U.S. part 121 operators are expected to incur total compliance costs of $54 million (undiscounted), they would not be placed at a competitive trade disadvantage.

The average cost of an international round trip airplane ticket is approximately $650. With a potential average cost increase of 4 cents per round trip ticket representing less than one-hundredth of a percent of the total cost of a ticket (without consideration of potential delay costs), the likelihood of U.S. air carriers being placed at a competitive trade disadvantage becomes extremely remote. For a more detailed analysis, the reader is referred to the full international trade impact assessment contained in the docket.

**Initial Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities (small business and small not-for-profit organizations that are independently owned and operated, and small government jurisdictions) are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires regulatory agencies to review rules that may have "a significant economic impact on a substantial number of small entities." A substantial number of small entities means a number that is not less than eleven and that is more than one-third of the small entities subject to a proposed or existing rule.

The proposed rule potentially impacts operators of an aircraft for hire with nine aircraft owned but not necessarily operated. Of the 53 active U.S. commercial domestic carriers, the FAA has identified 22 of them that own or operate nine or fewer airplanes under part 121. The FAA has determined that this is a substantial number since all 22 of these small entities are expected to be affected by the proposed rule.

To determine whether there is a significant cost impact on small part 121 operators, the annualized cost of the proposed rule must exceed the annualized cost threshold established by FAA Order 2100.14A. The threshold established by the Order for scheduled operators of aircraft for hire falls under two categories. The first category is scheduled operators whose entire fleet has a seating capacity of over 60. The cost threshold for these operators is $112,600. The second category is other scheduled operators with seating capacities less than 60. Their cost threshold is $62,900.

The FAA estimated the annualized cost of the proposed rule to an individual small operator to be $7,110. This number was derived by first summing the undiscounted costs for small operators. These costs are:

| | |
|---|---|
| Initial Plan Development | $5,145 |
| Initial Training | 60,436 |
| Qualification Testing | 201,090 |
| Initial Capital | 289,440 |
| Recurring Maintenance & Operating Costs | 384,990 |
| Total Undiscounted Costs | 961,101 |

The $961,101 total cost is then divided by the 22 small operators to get the $43,686 average undiscounted cost for any single small operator. This number is then multiplied by a capital recovery factor of .16275 (10% interest rate for 10 years) to give an annualized cost of $7,110.

The $7,110 annualized cost does not exceed the $62,900 cost threshold prescribed above. Thus, the proposed rule would not impose a significant cost on a substantial number of small Part 121 operators.

**Environmental Assessment**

The proposed rule is a federal action that is subject to National Environmental Policy Act (NEPA). Under applicable guidelines of the President's Council on Environmental Quality and agency procedures implementing NEPA, the FAA will prepare an environmental assessment (EA) to determine the need for an environmental impact statement (EIS) or whether a finding of no significant impact (FONSI) would be appropriate. 40 CFR 1501.3, FAA Order 1050.1D, appendix 7, par. 3(a).

The FAA's preliminary review suggests that an EIS would not be required. The FAA believes that the rule will not promote significant additional use of the current Type I deicing fluid. However, the FAA invites comments on any environmental issues associated with this proposed rule, and specifically requests comments on the following: (1) Whether the proposed rule will increase the use of Type I deicing fluid, (2) whether the proposed rule will encourage the use of Type II deicing fluid, (3) the impact, if any, of using these deicing fluids on taxiways "just prior to takeoff," and (4) containment methods currently used that can be adopted to other locations on an airport.

Upon receiving public comments on these issues, the FAA will, after consideration of all relevant issues, determine the potential environmental impacts of the proposed ground deicing and anti-icing rule.

**Federalism Implications**

The changes proposed by this NPRM would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that the proposed amendments would not have federalism implications requiring the preparation of a Federalism Assessment.

**Conclusion**

For the reasons discussed in the preamble, and based on the findings in the Initial Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. A draft regulatory evaluation of the proposal, including an Initial Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

**List of Subjects in 14 CFR Part 121**

Air safety, Air transportation, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

## PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. Section 121.629 is amended by revising paragraph (b) and by adding new paragraphs (c) and (d) to read as follows:

**§ 121.629 Operation in icing conditions.**

* * * * *

(b) No person may take off an aircraft when frost, ice, or snow is adhering to the wings, control surfaces, propellers, engine inlets, or other critical surfaces of the aircraft or when the takeoff would not be in compliance with paragraph (c) of this section.

(c) Except as provided in paragraph (d) of this section, on or after November 1, 1992, no person may dispatch, release, or take off an aircraft any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft, unless the certificate holder has an approved deicing program in its operations specifications and unless the dispatch, release, and takeoff comply with that program. The approved deicing program must include at least the following items:

(1) A detailed description of—

(i) How the certificate holder determines that conditions at an airport are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft and that ground deicing/anti-icing operational procedures must be in effect;

(ii) Who is responsible for deciding that ground deicing/anti-icing operational procedures must be in effect;

(iii) The operational procedures for implementing ground deicing/anti-icing operational procedures;

(iv) The specific duties and responsibilities of each operational position or group responsible for getting the aircraft safely airborne while ground deicing/anti-icing operational procedures are in effect.

(2) Initial and annual recurrent ground training and qualification testing for flight crewmembers and all other affected personnel (e.g., aircraft dispatchers, maintenance crews, contract personnel) concerning the specific requirements of the approved program and each person's responsibilities and duties under the approved program, specifically covering the following areas:

(i) The use of holdover times.

(ii) Aircraft deicing/anti-icing inspection procedures and responsibilities.

(iii) Communications procedures.

(iv) Aircraft surface contamination (i.e., adherence of frost, ice, or snow) and critical area identification, and how contamination adversely affects aircraft performance and flight characteristics.

(v) Types and characteristics of deicing/anti-icing fluids.

(vi) Cold weather preflight inspection procedures.

(vii) Techniques for recognizing contamination on the aircraft.

(3) The certificate holder's holdover times, specific to each aircraft type, and the procedures for the use of these times by the certificate holder's personnel. Holdover time is the estimated time the application of deicing or anti-icing fluid will prevent the adherence of frost, ice, or snow on the treated surfaces of an aircraft. Holdover time begins when aircraft ground deicing/anti-icing commences and expires when the deicing/anti-icing fluid applied to the aircraft wings, control surfaces, propellers, engine inlets, and other critical surfaces loses its effectiveness. The holdover times must be supported by data acceptable to the Administrator. The certificate holder's program must include procedures for flight crewmembers to increase or decrease the determined holdover time in changing conditions. The program must provide that takeoff after the expiration of any holdover time is permitted only when at least one of the following conditions exists:

(i) A pretakeoff inspection, as defined in paragraph (c)(4) of this section, determines that the wings, control surfaces, propellers, engine inlets, and other critical surfaces are free of frost, ice, or snow.

(ii) It is otherwise determined by an alternate procedure approved by the Administrator in accordance with the certificate holder's approved program that the wings, control surfaces, propellers, engine inlets, and other

critical surfaces are free of frost, ice, or snow.

(iii) The wings, control surfaces, propellers, engine inlets, and other critical surfaces are redeiced and a new holdover time is determined.

(4) Aircraft deicing/anti-icing inspection procedures and responsibilities and pretakeoff inspection procedures and responsibilities for use when a holdover time has been exceeded. A pretakeoff inspection is an inspection of the wings, control surfaces, propellers, engine inlets, and other critical surfaces conducted within five minutes prior to implementing takeoff. This inspection must be accomplished from outside the aircraft unless the program specifies otherwise.

(d) A certificate holder may continue to operate under this section without a program as required in paragraph (c) of this section, if it includes in its operations specifications a requirement that, any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft, no aircraft will take off unless it has been inspected to ensure that the wings, control surfaces, propellers, engine inlets, and other critical surfaces are free of frost, ice, and snow. The inspection must occur within five minutes prior to implementing takeoff. This inspection must be accomplished from outside the aircraft.

Issued in Washington, DC on July 17, 1992.

**Thomas C. Accardi,**

*Director, Flight Standards Service.*

[FR Doc. 92-17354 Filed 7-21-92; 8:45 am]

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Part III

# Department of Housing and Urban Development

## Office of the Assistant Secretary

## Fund Availability for FY 1992 and Program Guidelines for the Family Unification Demonstration Program; Notice

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Public and Indian Housing**

**[Docket No. N-92-3445; FR-3207-N-01]**

**Fund Availability (NOFA) for Fiscal Year 1992, and Notice of Program Guidelines for the Family Unification Demonstration Program**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of funding availability (NOFA) for Fiscal Year (FY) 1992; and Notice of Program Guidelines for the Family Unification Demonstration Program.

**SUMMARY:** This notice announces the availability of FY 1992 budget authority for competitive awards of section 8 rental certificates under the Family Unification Demonstration Program, and also sets forth program guidelines for this demonstration program.

The purpose of the Family Unification Demonstration Program is to test the effectiveness of promoting family unification by providing housing assistance to families for whom the lack of adequate housing is a primary factor in the separation, or imminent separation of children from their families. The demonstration program is to be conducted in 11 States, and is to be administered by public housing agencies (PHAs) and Indian housing authorities (IHAs) (hereafter, collectively referred to as housing agencies (HAs)) under HUD's regulations governing the section 8 rental certificate program (24 CFR part 882). Applications are solicited from eligible HAs in the following 11 States: Missouri, New York, New Jersey, California, Maryland, Michigan, Ohio, Texas, Pennsylvania, Florida, and Massachusetts.

The 11 States eligible to participate in the Family Unification Demonstration Program were designated in the Conference Report accompanying the HUD-Independent Agencies Appropriations Act of 1992 (Pub. L. 102-139, approved October 28, 1991; hereafter referred to as "HUD Appropriations Act for FY 1992"). (See Conference Report 102-226, September 27, 1992, at pg. 24.)

This NOFA contains information for HAs in the 11 States listed above regarding the allocation of rental certificate budget authority; the application process, including the application requirements and the deadline for filing applications; the selection criteria and the selection process.

**DATES:** The due date for submission of applications in response to this NOFA is September 8, 1992. Application forms may be obtained from the local HUD Field Office/Indian Programs Office. Applications must be received in the local HUD Field Office/Indian Programs Office on the due date by 3 p.m. local time.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

**FOR FURTHER INFORMATION CONTACT:** Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone number (202) 708-0477. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

**ADDRESSES:** Interested persons are invited to submit comments regarding the current rental certificate program regulations as these regulations relate to the Family Unification Demonstration Program to Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Assisted Housing, Department of Housing and Urban Development, room 4220, 451 Seventh Street, SW., Washington, DC 20410-8000. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act Statement**

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. OMB has approved the section 8 information collection requirements under the assigned control number 2577-0123.

**I. Purpose and Substantive Description**

*(A) Authority*

The Family Unification Demonstration Program is authorized by section 8(x) of the U.S. Housing Act of 1937, as added by section 553 of the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990); and the HUD-Independent Agencies Appropriations Act of 1992 (Pub. L. 102-139, approved October 28, 1991). The regulations governing the section 8 rental certificate program are codified at 24 CFR part 882.

*(B) Background*

The Family Unification Program is a demonstration program under which section 8 rental certificate assistance is provided to families for whom the lack of adequate housing is a primary factor which would result in: (1) The imminent placement of the family's child or children in out-of-home care, or (2) the delay in the discharge of the child or children to the family from out-of-home care. The purpose of the Family Unification Demonstration Program is to test the effectiveness of promoting family unification by providing housing assistance to families for whom the lack of adequate housing is a primary factor in the separation, or the threat of imminent separation, of children from their families. (Lack of adequate housing is defined in section II(A) of this NOFA.)

The Family Unification Demonstration Program is to be administered by HAs under HUD's current regulations for the section 8 rental certificate program (24 CFR part 882). The demonstration program funding available in FY 1992 is limited by the HUD Appropriations Act for FY 1992 to 11 States. These 11 States are identified in section I(D) of this NOFA.

*(C) Allocation Amounts*

(1) FY 1992 Budget Authority

Of the amounts made available by the HUD Appropriations Act for FY 1992, up to $47.7 million of budget authority for the section 8 rental certificate program is earmarked for the Family Unification Demonstration Program. This amount will support approximately 1,240 section 8 rental certificates. Table 1 of this NOFA identifies the amount of section 8 budget authority and the approximate number of rental certificates available for each eligible State.

The budget authority amounts were derived using the fair share allocation formula, which is based upon the general need for housing within each State. HUD has modified the allocations to assure that sufficient budget authority is available for each Field Office jurisdiction to support at least 20 rental certificates. HAs may not request more budget authority than the amount

allocated to the applicable Field Office. State-wide HAs may not request more budget authority for use in a Field Office jurisdiction than the amount allocated to the Field Office.

The Family Unification Demonstration Program is exempt from section 213(d) of the Housing and Community Development Act of 1974, and from 24 CFR part 791, subpart D, the HUD regulation implementing section 213(d) and various other constraints.

(2) Reallocations of Funds

The Field Office must make every reasonable effort to use the funds made available for the Family Unification Demonstration Program within its jurisdiction. However, if there are no acceptable applications submitted, it may be necessary to reallocate funds from one Field Office to another Field Office. In such cases, the following procedures shall be used:

(a) *Reallocations within the same state.* If the allocation of funds to a Field Office cannot be used within the Field Office's jurisdiction, the Regional Office must reallocate funds from that Field Office to another Field Office for use within the same state.

(b) *Reallocations between states.* If a Regional Office cannot use funds within the same State, the Regional Office should contact Headquarters for further instructions.

*(D) Eligibility*

The HUD Appropriations Act for FY 1992 limits participation in the FY 1992 Family Unification Demonstration Program to the following 11 States: Missouri, New York, New Jersey, California, Maryland, Michigan, Ohio, Texas, Pennsylvania, Florida, and Massachusetts. HAs in these States are invited by this notice to submit applications for rental certificates under this demonstration program.

**II. Guidelines**

*(A) Definitions*

For purposes of the Family Unification Demonstration Program:

(1) Family Unification eligible family means a family:

(a) Whom the public child welfare agency has certified is a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child or children in out-of-home care, or in the delay of discharge of a child or children to the family from out-of-home care; and

(b) Whom the HA has determined is eligible for section 8 rental certificate assistance.

(2) Lack of adequate housing means a situation in which a family:

(a) Is living in substandard housing, as defined in 24 CFR 882.219(f); or

(b) Is, or will be, involuntarily displaced from a housing unit under the circumstances described in 24 CFR 882.219(d)(2).

(3) Public child welfare agency means the public agency that is responsible under applicable State law for determining that a child is at imminent risk of placement in out-of-home care or that a child in out-of-home care under the supervision of the public agency may be returned to his or her family.

*(B) HA Responsibilities*

HAs are responsible for:

(1) Reviewing the section 8 waiting list to identify families that may be eligible for the Family Unification Demonstration Program, and referring the families on the section 8 waiting list to the public child welfare agency for a determination of whether the families meet the eligibility requirements described in section II(A)(1)(a) of this NOFA;

(2) Determining whether families referred by the public child welfare agency are eligible for section 8 assistance;

(3) Amending the administrative plan and equal opportunity housing plan, prior to Annual Contributions Contract (ACC) execution for Family Unification funding, to provide for issuance of rental certificates to Family Unification eligible families in a number equal to the rental certificates provided by HUD for this purpose, and providing for the opening of closed waiting lists to add applicants when necessary;

(4) Administering the rental certificate program in accordance with applicable program regulations and requirements; and

(5) To help assure the quality of the evaluation that HUD intends to conduct on the Family Unification Demonstration Program, submitting with the application a certification that the HA will agree to cooperate with and provide requested data to the HUD office having responsibility for program evaluation.

The HA may not bypass its regular section 8 waiting list in administering this program. Every HA must first review its waiting list to determine if there are any families already on its waiting list who may be eligible for this program. The HA can locate families by methods which include but are not limited to: a mailing to families on the waiting list; publication of a public notice in newspapers of general circulation which identifies the eligibility criteria and which states that families already on the waiting list must indicate their interest in this special program; or through coordination with the public child welfare agency.

Any HA with a closed waiting list is required to advertise the opening of its waiting list before accepting new applicants for this demonstration program. Opening the waiting list may be limited to applications from Family Unification eligible families. However, opening the waiting list may not be limited to families who are referred by or who are current clients of the public child welfare agencies which will be participating in the demonstration program. For administrative convenience, a HA may limit the number of applications taken in response to an advertisement.

*(C) Public Child Welfare Agency Responsibilities*

Public child welfare agencies are responsible for:

(1) Providing written certification to the HA that a family qualifies as a Family Unification eligible family, under the eligibility requirements described in section II(A)(1)(a) of this NOFA;

(2) Establishing and implementing a system to identify Family Unification eligible families within the agency's caseload and reviewing referrals from the HA;

(3) Committing sufficient staff resources to ensure that Family Unification eligible families are identified and the certification process is completed in a timely manner; and

(4) To help assure the quality of the evaluation that HUD intends to conduct on the Family Unification Demonstration Program, submitting with the application a certification that the PCWA will agree to cooperate with and provide requested data to the HUD office having responsibility for program evaluation.

*(D) Federal Preference*

To participate in the Family Unification Demonstration Program, a family must be a Family Unification eligible family as defined in section II(A)(1) of this NOFA. Generally, most families eligible for the Family Unification Demonstration Program will qualify for a Federal preference. However, whenever a HA selects a family without a Federal preference for its Family Unification Demonstration Program, that family will count against the HA's 10 percent authority to select non-Federal preference holders.

*(E) Section 8 Rental Certificate Assistance*

The Family Unification Demonstration Program provides assistance under the section 8 rental certificate program. HAs shall administer this demonstration program in accordance with HUD's regulations governing the section 8 rental certificate program, codified at 24 CFR part 882. If section 8 assistance for a family under this demonstration is terminated, the rental certificate must be reissued to another eligible family under this demonstration.

**III. Application Process**

*(A) Application Requirements*

All the items in this section III must be included in the application submitted to the HUD Field Office/Indian Programs Office. The application must include an explanation of how the application meets, or will meet, Selection Criteria 2 and 3. The public child welfare agency serving the jurisdiction of the HA is responsible for providing the information for Selection Criterion 3, "Need for Family Unification Demonstration Program," to the HA for submission with the HA application.

*(B) Selection Criteria/Ranking Factors*

To provide each applicant HA with a fair and equitable opportunity to receive an award of rental certificates for the Family Unification Demonstration Program during FY 1992, Field Offices/Indian Program Offices will use the three objective selection criteria listed below to rate all applications found acceptable for further processing.

(a) Selection Criterion 1: HA Administrative Capability (30 points)

(1) *Description:* Overall HA administrative ability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs, as evidenced by factors such as leasing rates and correct administration of housing quality standards (HQS), compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, and rent reasonableness requirements. If a HA is not administering either a Rental Certificate, Rental Voucher, or Moderate Rehabilitation Program, the Field Office/Indian Programs Office will rate HA administration of the Public or Indian Housing Program. For purposes of this NOFA, a HA administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program will not be rated on the administration of its Public or Indian Housing Program. If a HA is not administering a Rental Certificate, Rental Voucher, Moderate Rehabilitation, Public Housing or Indian Housing Program, the Field Office/Indian Programs Office will assess the administrative capability of the HA based on such factors as experience of staff, support of the HA by the local government, and the HA's administrative experience with non-HUD housing programs.

(2) *Rating:* 16–30 points. The Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or public/Indian housing or other housing programs) as excellent; there are no serious outstanding management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings; not more than 15 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet HQS at the time of the Field Office/Indian Programs Office inspection and failed to meet HQS at the time of the previous HA inspection; and the leasing rate for rental vouchers and rental certificates (or occupancy rate for public/Indian housing units) under Annual Contributions Contract (ACC) for one year was at least 95% as of September 30, 1991.

1–15 points. The Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or public/Indian housing or other housing programs) as good; any management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings are being satisfactorily addressed; not more than 25 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet HQS at the time of the Field Office/Indian Programs Office inspection and failed to meet HQS at the time of the previous HA inspection; *and* the leasing rate for rental vouchers and rental certificates (or occupancy rate for public/Indian housing units) under ACC for one year was at least 85 percent as of September 30, 1991.

0 points. If none of the above statements apply, assign 0 points.

(b) Selection Criterion 2: Coordination Between HA and Public Child Welfare Agency to Identify and Assist Eligible Families (30 points)

(1) *Description:* The method the HA and the public child welfare agency will use to identify and assist Family Unification eligible families.

(2) *Rating:* 16–30 points. A letter of intent from the public child welfare agency (PCWA) indicating its commitment to provide resources and support for the program is included with the HA application. The PCWA letter of intent and other information provided is comprehensive and includes an explanation of: the method used to identify eligible families; the PCWA's certification process for eligible families; responsibilities of each agency; PCWA assistance provided to families in locating housing units; PCWA staff resources committed to the program; any past PCWA experience administering a similar program; and any past PCWA/HA cooperation in administering a similar program.

1–15 points. The information provided is general and includes a discussion of the method and process used to identify and assist eligible families.

0 points. The information provided is either not coherent or fails to include an explanation of the method and process used to identify and assist eligible families. Proposed administration of program is not consistent with program regulations.

(c) Selection Criterion 3: Public Child Welfare Agency Statement of Need for Family Unification Demonstration Program (20 points)—

(1) *Description:* The need for a program providing assistance to families for whom lack of adequate housing is a primary factor in the placement of the family's children in out-of-home care, or in the delay of discharge of the children to the family from out-of-home care in the area to be served, as evidenced by the caseload of the public child welfare agency.

(2) *Rating:* 11–20 points. The public child welfare agency had adequately demonstrated that there is a need in the HA's jurisdiction for the Family Unification Demonstration which is not being met through existing programs. The narrative includes specific information, relevant to the area to be served, about homelessness, family violence resulting in involuntary displacement, families who are experiencing the placement of children in out-of-home care or the delayed discharge of children from out-of-home care as the result of inadequate housing, and the PCWA's past experience in obtaining housing through HUD and other sources for families lacking adequate housing.

1–10 points. The public child welfare agency has provided a general narrative describing a need for the Family Unification demonstration in the HA's jurisdiction.

0 points. There is no need, or the public child welfare agency has not adequately demonstrated the need for the number of certificates requested in the application.

*(C) Application Rating and Ranking*

The HUD Field Office/Indian Programs Office is responsible for rating the applications, and the Field Office is responsible for ranking and selection of applications (including applications rated by the Indian Programs Office) which will receive assistance under the Family Unification Demonstration Program.

The Field Office/Indian Programs Office will initially screen all applications, using the "Checklist for Technical Requirements" listed in Section IV(B) of this NOFA as a guide to determine if an application is complete.

The Field Office must develop a procedure for approval of applications (including applications rated by the Office of Indian Programs) in rank order until all the housing assistance budget authority is used. The Field Office may elect to approve 100 percent of the units requested, up to the maximum number of units allowed, in each top-ranked application, or approve some lower percentage of the units requested in each application (including applications from IHAs) which scores above a Field Office-determined funding cut-off.

If applications (including applications from IHAs) which score above a Field Office-determined funding cut-off are to be funded at less than 100 percent, the Field Office must apply the same percentage reduction to the number of units requested in each application.

Where a Field Office, as it funds applications in rank order, finds that it has some number of units left but not enough to fund the next fundable application in its entirety or for the minimum of 20 units, that application can be funded to the extent of the number of units available.

In the event of tie scores, the Field Office will make the selection between tied applications on the basis of the application receiving the highest score for Selection Criterion 2, Coordination between the HA and Public Child Welfare Agency to Identify and Assist Eligible Families.

If the tied applications have the same score on Criterion 2, the Field Office shall reduce the requested amount of rental certificates to partially fund each tied application. However, if the Field Office determines that partial funding will not result in a feasible sized program for a demonstration, the tie score can be broken in another objective manner approved by the Regional Public Housing Director.

HAs that do not wish to have the size of their allocation reduced may indicate in their application that they do not wish to be considered for a reduced number of rental certificates.

*(D) Unacceptable Applications*

Applications that fall into any of the following categories will not be processed:

(1) (a) The Department of Justice has brought a civil rights suit against the applicant HA, and the suit is pending;

(b) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance;

(c) HUD has deferred application processing by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(2) The HA has serious, unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings for one or more of its rental certificate, rental voucher, or moderate rehabilitation programs.

(3) The leasing rate for rental certificates and rental vouchers under ACC for at least one year is less than 75 percent.

(4) The HA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the HA to administer an additional increment of rental certificates.

*(E) Application Submission Deadline*

HA applications must be received by 3 p.m. local time on September 8, 1992 at the local HUD Field Office/ Indian Programs Office. Applications that are not received in the local HUD Field Office/Indian Programs Office by 3:00 p.m. local time on that date will not be considered. HAs should contact the local HUD Field Office/Indian Programs Office for the exact address and room number where the application must be received by HUD.

Form HUD–52515 may be obtained from the local HUD Field Office/Indian Programs Office. (Only an original application should be submitted. It is not necessary to submit copies of the application.) To assist HAs, the following are attached to this notice: Form HUD 52515 [Attachment 1]; Certification for a Drug-Free Workplace [Attachment 2]; Text for the Certification Regarding Lobbying [Attachment 3]; and Standard Form LLL, Disclosure of Lobbying Activities [Attachment 4].

*(F) Corrections to Incomplete Applications*

To be eligible for processing, an application must be received by the Field Office/Indian Programs Office no later than the application submission deadline date and time specified in this notice. The Field Office/Indian Programs Office will screen all applications and notify HAs of technical deficiencies by letter. Allowable corrections relate only to technical items, as determined by HUD, which do not improve the substantive quality of the application relative to the ranking factors.

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency. Information received after 3:00 p.m. local time on the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as being incomplete.

All HAs are encouraged to review the "Checklist for Technical Requirements" provided in Section IV of this NOFA. The checklist identifies all technical requirements needed for application processing. A HA application that does not comply with the requirements of 24 CFR 882.204(a) and this notice, including the drug-free workplace certification and the anti-lobbying certification disclosure requirements, after the 14-day technical deficiency correction period, will be rejected.

*(G) Local Government Comments*

The Field Office will obtain section 213 comments, in accordance with 24 CFR part 791, subpart C, from the unit of general local government. Comments submitted by the unit of general local government must be considered before an application can be approved.

Section 213 comments submitted by units of general local government that have approved Comprehensive Housing Affordability Strategies (CHASs) should address how the HA application for rental certificates relates to the local government's CHAS, and should include comments on the household types which the HA proposes to serve (i.e., family, large-family).

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**IV. Checklist of Application Submission Requirements**

*(A) Forms and Certification Statements*

The following describes basic forms and certifications required to be submitted with the application.

(1) Form HUD–52515

An Application for Existing Housing, Form HUD–52515, must be completed in accordance with the rental certificate program regulations. A copy of Form HUD 52515 is attached to this notice (Attachment 1), and can also be obtained from the local HUD Field Office/Indian Program Office.

(2) Certification Regarding Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each HA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with CFR part 24, subpart F (see attached Certificate for Drug Free Workplace, Attachment 2).

(3) Certification Regarding Lobbying

Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if warranted, a Disclosure of Lobbying Activities. To assist HAs, the text for the Certification Regarding Lobbying (Attachment 3) and Standard Form LLL, "Disclosure Form to Report Lobbying" (Attachment 4) are attached to this announcement. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

(4) Evaluation Certification

A separate certification from the HA and the Public Child Welfare Agency. The certification must state that the HA and Public Child Welfare Agency agree to cooperate with HUD and provide requested data to the HUD office designated responsibility for the program evaluation.

*(B) Checklist for Technical Requirements*

The checklist for technical requirements provided in this Section IV(B) specifies the information that must be included in the application. HAs are encouraged to review the checklist to ensure that the application submitted is complete.

| HA | | Field office | | |
|---|---|---|---|---|
| Yes | No | Yes | No | |
| ____ | ____ | ____ | ____ | The application contains a completed Form HUD–52515. |
| ____ | ____ | ____ | ____ | The application specifies the total number of rental certificates, by number of bedrooms, requested by the HA. |
| ____ | ____ | ____ | ____ | The application contains estimates of the average adjusted income for prospective participants for each bedroom size. |
| ____ | ____ | ____ | ____ | The application demonstrates that the applicant qualifies as a public housing agency and is legally qualified and authorized to participate in the rental assistance programs for the area in which the program is to be carried out. Such demonstration includes (i) the relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel. If such documents are currently on file in the field office they do not have to be resubmitted. |
| ____ | ____ | ____ | ____ | The application includes a statement that the housing quality standards to be used in the operation of the program will be as set forth in 24 CFR 882.109 or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified. |
| ____ | ____ | ____ | ____ | The application contains the HA schedule of leasing which must provide for the expeditious leasing of units. In developing the schedule, a HA must specify the number of units that are expected to be leased at the end of each three-month interval. The schedule must project lease-up by eligible families within twelve months or sooner after execution of the ACC by HUD. |
| ____ | ____ | ____ | ____ | The application contains a narrative explaining how the application meets Selection Criterion 2, Coordination Between HA and Public Child Welfare Agency to Identify and Assist Eligible Families. |
| ____ | ____ | ____ | ____ | The application contains the Public Child Welfare Agency Statement of Need for Family Unification Demonstration Program, Selection Criterion 3. |
| ____ | ____ | ____ | ____ | The application meets HUD's drug-free workplace requirements set out at 24 CFR part 24, subpart F (the application contains an executed Certification for a Drug-Free Workplace (Attachment 2)). |
| ____ | ____ | ____ | ____ | The application meets HUD's regulation regarding anti-lobbying set out at 24 CFR part 87. The anti-lobbying requirements apply to applications that, if approved, would result in the HA obtaining more than $100,000 in budget authority. To comply, HAs must submit an Anti-lobbying Certification (Attachment 3) and, if warranted, a Disclosure of Lobbying Activities (Attachment 4). |
| ____ | ____ | ____ | ____ | The application contains an evaluation certification from the HA. |
| ____ | ____ | ____ | ____ | The application contains an evaluation certification from the PCWA. |

**V. Funding Award Process**

In accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's regulation at 24 CFR 12.16, HUD will notify the public by notice published in the **Federal Register** of all award decisions made by HUD under this competition. HUD and recipients of awards under this NOFA also shall comply with the provisions of Section VI(D) of this NOFA.

Assistance provided under the section 8 existing housing program is generally categorically excluded from environmental assessment under the National Environmental Policy Act (42 U.S.C. 4332) (see 24 CFR 50.21(d)). However, where assistance provided under this NOFA is used by the recipient for project-based certificate assistance under 24 CFR part 882, subpart G, HUD will perform an environmental review to the extent required by 24 CFR 882.713 before the recipient enters into an agreement with the owner for such assistance.

**VI. Other Matters**

*(A) Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with the

Department's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

*(B) Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial, direct effects on the States, on their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, because this NOFA will not alter the established roles of HUD, the States and local governments, including PHAs/IHAs.

*(C) Impact on the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies contained in these guidelines may have a significant impact on the maintenance and general well-being of some families. The Family Unification Demonstration is expected to provide additional decent and sanitary housing for families, for whom, currently, a lack of adequate housing causes or threatens to cause a separation of children from their families. Since the impact on the family is considered beneficial, no further review is necessary.

*(D) Accountability in the Provision of HUD Assistance*

(1) Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

*(E) Prohibition Against Lobbying Activities*

The use of funds awarded this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

*(F) Prohibition Against Lobbying of HUD Personnel*

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to finance assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions concerning the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

*(G) Prohibition Against Advance Information on Funding Decisions*

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance that entails a competition for its distribution. HUD's regulations implementing section 103 are codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions under a competitive funding process are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving an applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

**Authority:** The Family Unification Demonstration Program is authorized by section 8(x) of the U.S. Housing Act of 1937, as added by section 553 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990); and the HUD-Independent Appropriations Act of 1992 (Pub.

L. 102–139, approved October 28, 1991). The regulations governing the section 8 rental certificate program are codified at 24 CFR part 882.

Dated: July 17, 1992.

BILLING CODE 4210-33-M

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TABLE 1

SECTION 8 RENTAL CERTIFICATE PROGRAM
FY 1992 FAMILY UNIFICATION DEMONSTRATION

| STATE | HUD FIELD OFFICE | ESTIMATED UNITS | TOTAL BUDGET AUTHORITY |
|---|---|---|---|
| MASSACHUSETTS | BOSTON, MASSACHUSETTS OFFICE | 63 | 3,168,395 |
| NEW YORK | BUFFALO, NEW YORK OFFICE | 69 | 2,204,380 |
| | NEW YORK, NEW YORK OFFICE | 193 | 8,575,045 |
| | NY TOTALS | 262 | 10,779,425 |
| NEW JERSEY | NEWARK, NEW JERSEY OFFICE | 59 | 2,844,455 |
| PENNSYLVANIA | PHILADELPHIA, PENNSYLVANIA OFFICE | 62 | 2,182,645 |
| | PITTSBURGH, PENNSYLVANIA OFFICE | 40 | 1,197,550 |
| | PA TOTALS | 102 | 3,380,195 |
| MARYLAND | BALTIMORE, MARYLAND OFFICE | 28 | 1,029,885 |
| | WASHINGTON D.C. OFFICE | 20 | 1,084,320 |
| | TOTALS | 48 | 2,114,205 |
| FLORIDA | JACKSONVILLE, FLORIDA OFFICE | 76 | 2,559,430 |
| OHIO | CINCINNATI, OHIO OFFICE | 21 | 597,020 |
| | CLEVELAND, OHIO OFFICE | 46 | 1,339,445 |
| | COLUMBUS, OHIO OFFICE | 33 | 894,770 |
| | OH TOTALS | 100 | 2,831,235 |

TABLE 1 continued

| | | | |
|---|---|---|---|
| MICHIGAN | DETROIT, MICHIGAN OFFICE | 39 | 1,274,830 |
| | GRAND RAPIDS, MICHIGAN OFFICE | 34 | 980,015 |
| | MI TOTALS | 73 | 2,254,845 |
| TEXAS | FORTH WORTH, TEXAS OFFICE | 69 | 1,879,685 |
| | HOUSTON, TEXAS OFFICE | 34 | 989,990 |
| | SAN ANTONIO, TEXAS OFFICE | 37 | 1,060,920 |
| | TX TOTALS | 140 | 3,930,595 |
| MISSOURI | KANSAS CITY, MISSOURI OFFICE | 21 | 519,515 |
| | ST. LOUIS, MISSOURI OFFICE | 32 | 846,230 |
| | MO TOTALS | 53 | 1,365,745 |
| CALIFORNIA | LOS ANGELES, CALIFORNIA OFFICE | 154 | 7,784,120 |
| | SACRAMENTO, CALIFORNIA OFFICE | 21 | 755,580 |
| | SAN FRANCISCO, CALIFORNIA OFFICE | 80 | 3,936,640 |
| | CA TOTALS | 255 | 12,476,340 |
| 11 STATES | GRAND TOTALS | 1,231 | 47,704,865 |

# Application for Existing Housing

## Section 8 Housing Assistance Payments Program

Send original and two copies of this application form and attachments to the local HUD Field Office

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

Attachment 1

OMB Approval No. 2502-0123 (exp. 3/31/92)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0123), Washington, D.C. 20503.

Name of the Public Housing Agency (PHA) requesting housing assistance payments:

Application/Project No. (HUD use only)

Mailing Address of the PHA

Requested housing assistance payments are for . How many Certificates? How many Vouchers?

Signature of PHA Officer authorized to sign this application

X

Have you submitted prior applications: No Yes
. . . for Section 8 Certificates? ☐ ☐
. . . for Section 8 Housing Vouchers? ☐ ☐

Title of PHA Officer authorized to sign this application

Phone Number

Date of Application

Legal Area of Operation (area in which the PHA determines that it may legally enter into Contracts)

**A. Primary Area(s)** from which families to be assisted will be drawn.

| Locality (City, Town, etc.) | County | Congressional District | Units |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
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| | | | |
| | | | |

**B. Proposed Assisted Dwelling Units**

| Housing Program | Number of Dwelling Units by Bedroom Count | | | | | | | | | Total Dwelling Units |
|---|---|---|---|---|---|---|---|---|---|---|
| | Elderly, Handicapped, Disabled | | | Non-Elderly | | | | | | |
| | Efficiency | 1-BR | 2-BR | 1-BR | 2-BR | 3-BR | 4-BR | 5-BR | 6+BR | |
| Certificates | | | | | | | | | | |
| Housing Vouchers | | | | | | | | | | |

**C. Need for Housing Assistance.** Demonstrate that the project requested in this application is consistent with the applicable Housing Assistance Plan including the goals for meeting the housing needs of Lower-Income Families or, in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped and disabled, large families and those displaced or to be displaced) residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

| **D. Qualification as a Public Housing Agency.** Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to carry out the project applied for in this application. (check √ the appropriate boxes) | Submitted with this application | Previously submitted |
|---|---|---|
| 1. The relevant enabling legislation | | |
| 2. Any rules and regulations adopted or to be adopted by the agency to govern its operations | | |
| 3. A supporting opinion from the Public Housing Agency Counsel | | |

Retain this record for the term of the ACC.
Previous editions are obsolete



form HUD-52515 (7/88)
ref. handbook 7420.3

**E. Financial and Administrative Capability.** Describe the experience of the PHA in administering housing or other programs and provide other information which evidences present or potential management capability for the proposed program.

**F. Housing Quality Standards.** Provide a statement that the Housing Quality Standards to be used in the operation of the program will be as set forth in the program regulation or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

**G. Leasing Schedule.** Provide a proposed schedule specifying the number of units to be leased by the end of each three-month period.

**H. Average Monthly Adjusted Income** (Housing Vouchers Only)

| Efficiency | 1-BR | 2-BR | 3-BR | 4-BR | 5-BR | 6+BR |
|---|---|---|---|---|---|---|
| | | | | | | |

**I. Attachments.** The following additional items must be submitted either with the application or after application approval, but no later than with the PHA executed ACC.

| | Submitted with this application | To be submitted | Previously submitted |
|---|---|---|---|
| 1. Equal Opportunity Housing Plan | | | |
| 2. Equal Opportunity Certifications, Form HUD-916 | | | |
| 3. Estimates of Required Annual Contributions, Forms HUD-52672 and HUD-52673 | | | |
| 4. Administrative Plan | | | |
| 5. Proposed Schedule of Allowances for Utilities and Other Services, Form HUD-52667, with a justification of the amounts proposed | | | |

**HUD Field Office Recommendations**

| Recommendation of Appropriate Reviewing Office | Signature and Title | Date |
|---|---|---|
| | | |
| | | |
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form HUD-52515



BILLING CODE 4210-33-C

Attachmen
Free Work
Appendix

*Instructio*

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**Attachment 2—Certification Regarding Drug-Free Workplace Requirements (From 24 CFR, Appendix C)**

*Instructions for Certification*

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

_____

_____

_____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

**Attachment 3—Certification Regarding Lobbying**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized PHA/IHA Official)

_____

(Name & Title)

_____

(Signature & Date)

BILLING CODE 4210-33-M

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# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Attachment 4

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>For Material Change Only:<br>year _____ quarter _____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee Tier _____, *if known*:<br><br>Congressional District, *if known*: | Congressional District, *if known*: |
| 6. Federal Department/Agency: | 7. Federal Program Name/Description:<br><br>CFDA Number, *if applicable*: _____ |
| 8. Federal Action Number, *if known*: | 9. Award Amount, *if known*:<br>$ |
| 10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*): | b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*): |

(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)

| 11. Amount of Payment (*check all that apply*): | 13. Type of Payment (*check all that apply*): |
|---|---|
| $ _____ ☐ actual ☐ planned | ☐ a. retainer<br>☐ b. one-time fee<br>☐ c. commission<br>☐ d. contingent fee<br>☐ e. deferred<br>☐ f. other; specify: _____ |
| 12. Form of Payment (*check all that apply*):<br>☐ a. cash<br>☐ b. in-kind; specify: nature _____<br>value _____ | |

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

## DISCLOSURE OF LOBBYING ACTIVITIES
### CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

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## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

[FR Doc. 92-17380 Filed 7-22-92; 8:45 am]
BILLING CODE 4210-33-C

federal register

Thursday
July 23, 1992

Part IV

# The President

Notice of July 21—Continuation of Iraqi Emergency

Proclamation 6460—Minority Enterprise Development Week, 1992

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Federal Register
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# Presidential Documents

Title 3—

## The President

### Notice of July 21, 1992

### Continuation of Iraqi Emergency

On August 2, 1990, by Executive Order No. 12722, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq. By Executive Orders Nos. 12722 of August 2 and 12724 of August 9, 1990, I imposed trade sanctions on Iraq and blocked Iraqi government assets. Because the Government of Iraq has continued its activities hostile to U.S. interests in the Middle East, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 1992. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iraq.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

George Bush

THE WHITE HOUSE,
*July 21, 1992.*

[FR Doc. 92-17586
Filed 7-21-92; 4:07 pm]
Billing code 3915-01-M

**Editorial note:** For the President's message to Congress on the continuation of the emergency, see issue 30 of the *Weekly Compilation of Presidential Documents.*

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## Presidential Documents

**Proclamation 6460 of July 21, 1992**

# Minority Enterprise Development Week, 1992

**By the President of the United States of America**

**A Proclamation**

Adherence to the principles of independent entrepreneurship and free enterprise has long formed the bedrock of America's economic strength. By guaranteeing the freedom of individuals to engage in private industry and commerce and by permitting them to reap the fruits of their labor, the United States has provided a model of growth and progress for the world. The creative energy and genius of the American people, unfettered by excessive government intervention in the marketplace, have enabled our Nation to achieve unparalleled levels of productivity and strength.

At a time when dramatic changes in the global marketplace are presenting new challenges and opportunities for American business and industry, our Nation's continued economic progress calls for the full participation and support of all citizens, regardless of gender, race, or ethnic background. During this 10th annual observance of Minority Enterprise Development Week, we recognize that our Nation's minority business community, which includes more than 1 million minority entrepreneurs, must be part of the United States strategy to remain a leader in the increasingly competitive world economy.

Minority Americans have long recognized that freedom and equality also require economic opportunity and independence. By making the most of every opportunity and by achieving economic advancement through determination and hard work, minority business men and women have set wonderful examples for others. Such a drive to succeed offers inspiration as we strengthen our Nation's commitment to producing high quality products and services that are competitive in the global marketplace. A similar commitment to excellence underlies America 2000, our national campaign to promote learning and achievement and to ensure that every American has the knowledge and skills that are necessary to lead a full, productive life in an increasingly technological workplace.

The spirit that we celebrate during Minority Enterprise Development Week is the spirit that will lead the United States to even greater heights of prosperity and progress in the next century. It is the spirit of individuals who avail themselves of every opportunity to fulfill the American dream and who help to extend opportunities to others, thereby enriching themselves, their communities, and our country.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of September 27 through October 3, 1992, as Minority Enterprise Development Week. I encourage all Americans to observe this week with appropriate programs and activities in celebration of the achievements of minority business men and women and in recognition of the successful public-private partnerships that are leading to greater educational and economic opportunities for all Americans.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of July, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-17617
Filed 7-22-92; 10:21 am]
Billing code 3195-01-M

# Reader Aids

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## INFORMATION AND ASSISTANCE

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## CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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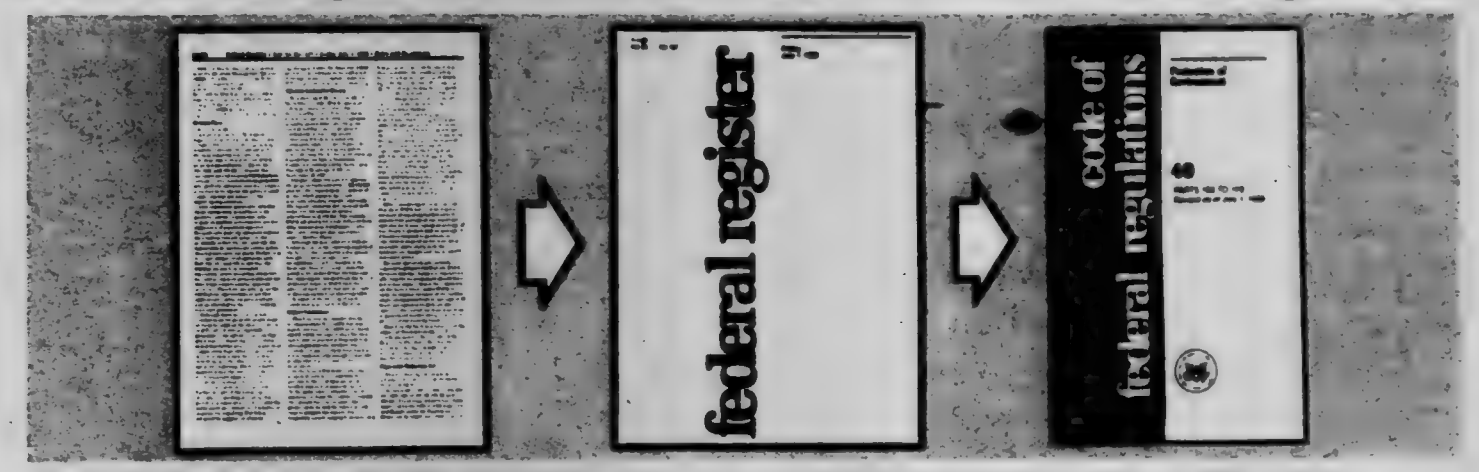


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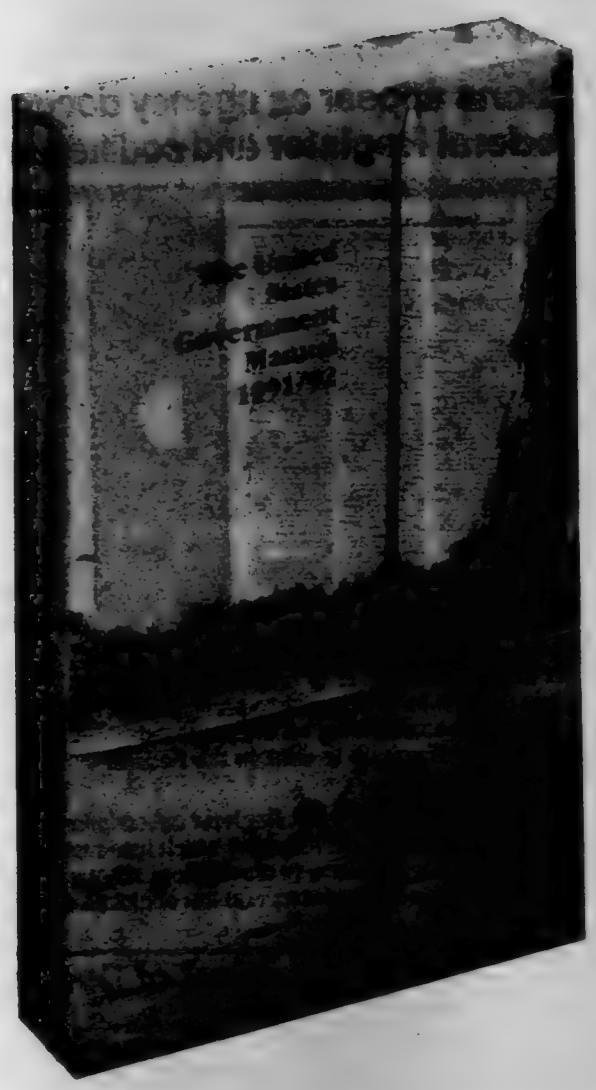

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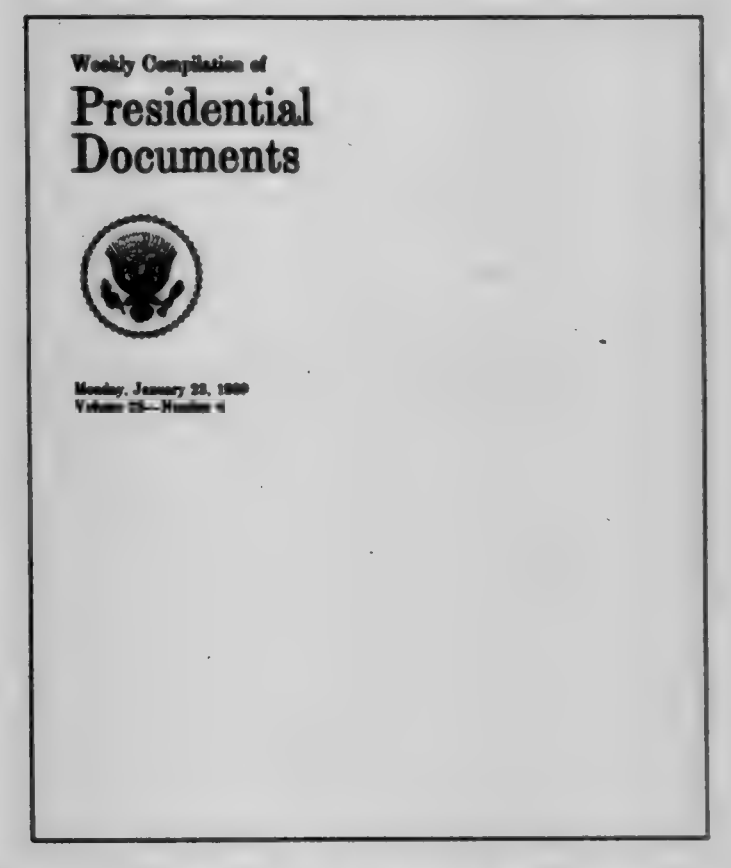


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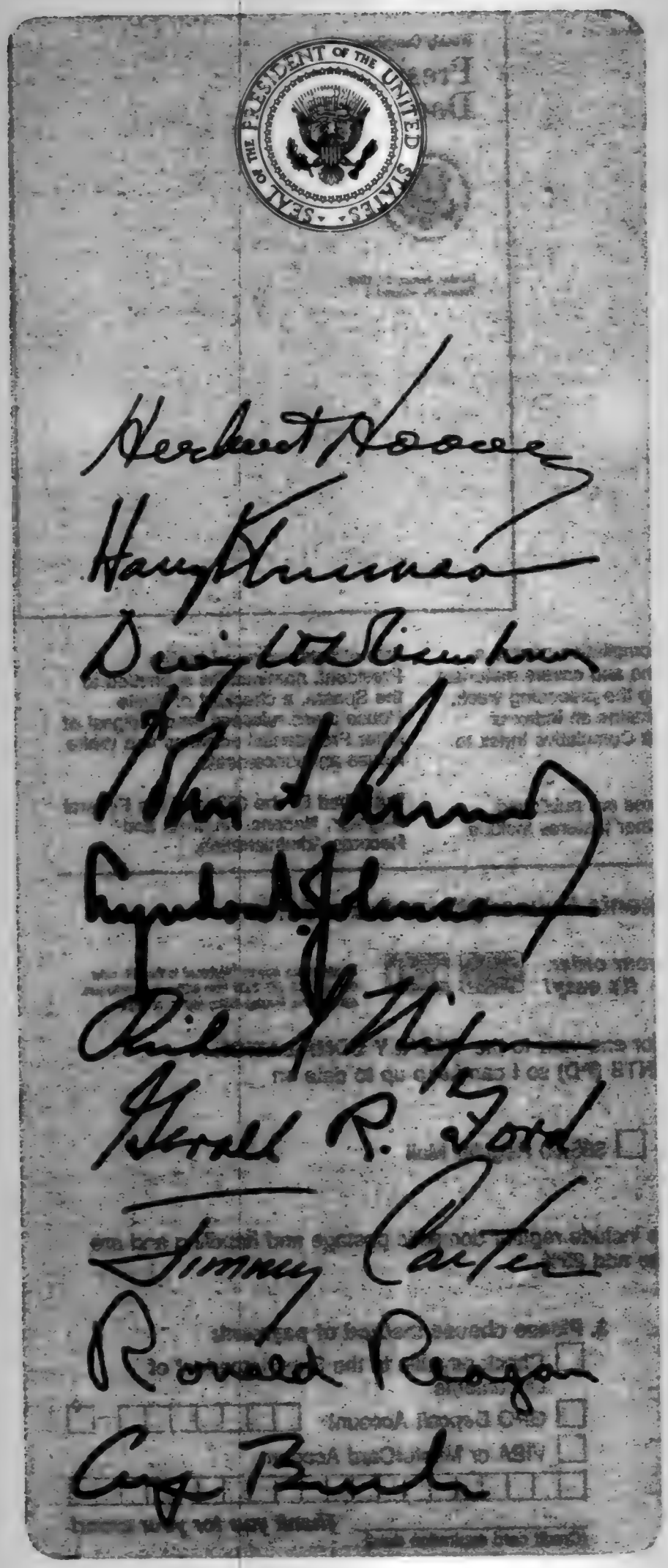


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